TITLE: FEDERAL REGISTER.

REEL NO: 5 of 9

VOLUME: 51 issues: 190-202
pages: 34,945-37,262

DATE: October 1 - October 20, 1986

PUBLICATION NO: 2575

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UNIVERSITY MICROFILMS INTERNATIONAL,
ANN ARBOR, MICHIGAN

10-1-86
Vol. 51 No. 190

federal register

Wednesday
October 1, 1986

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VOL
51
ISS
190
OCT
1
1986
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10-1-86
Vol. 51 No. 190
Pages 34945-35200

federal register

Wednesday
October 1, 1986

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VOL
51
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

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Rules and Regulations

Federal Register
Vol. 51, No. 190
Wednesday, October 1, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate authority to enter into contracts, grants, cooperative agreements, and cost-reimbursable agreements relating to the conduct of agricultural research, extension, or teaching activities.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6035.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to delegate to the Assistant Secretary for Science and Education and to the Administrator, Agricultural Research Service, the Administrator, Cooperative State Research Service, the Administrator, Extension Service, and the Director, National Agricultural Library, authority to enter into contracts, grants, cooperative agreements, and cost-reimbursable agreements, under sections 1472, 1473A, and 1473C of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by Pub. L. 99-198, December 23, 1985.

The amended section 1472 (7 U.S.C. 3318) authorizes use of contracts, grants, and cooperative agreements to further the research, extension, and teaching programs of the Department and specifically authorizes, notwithstanding the provisions of 31 U.S.C. 6301-6308, use of a cooperative agreement as the legal instrument reflecting a relationship between the Department of Agriculture and a State cooperative institution, State department of agriculture, college, university, other research or educational institution or organization, Federal, or private agency, organization, or individual, or any other party, when the objective of the agreement will serve a mutual interest of the parties to the agreement in agricultural research, extension, or teaching activities, including statistical reporting, and all parties will contribute resources to the accomplishment of those objectives. While the named officials currently are delegated authority to enter into contracts, grants, or cooperative agreements pursuant to 7 U.S.C. 3318, in view of the recent amendment to that section expanding the authority to use cooperative agreements under certain conditions, the expanded authority is hereby delegated by the republication of those delegations.

Section 1473A (7 U.S.C. 3319a) authorizes, notwithstanding any other provisions of law, use of cost-reimbursable agreements with State cooperative institutions without regard to any requirement for competition, for the acquisition of goods or services, including personal services to carry out agricultural research, extension, or teaching activities of mutual interest. Section 1473C (7 U.S.C. 3319c) authorizes the use of cooperative agreements to share the cost of a research project or to allow the use of a Federal facility or service on a cost-sharing or cost reimbursable basis for purposes of developing new technology to further research programs.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.30 is amended by republishing paragraph (a)(40), and by adding new paragraphs (a)(79) and (a)(80) to read as follows:

§ 2.30 Delegations of authority to the Assistant Secretary for Science and Education.

* * * * *

(a) * * *

(40) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

* * * * *

(79) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(80) Enter into cooperative agreements to share the cost of a research project or to allow the use of a Federal facility or service on a cost-sharing or cost reimbursable basis for purposes of developing new technology to further research programs (7 U.S.C. 3319c).

* * * * *

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

3. Section 2.106 is amended by republishing paragraph (a)(40), and by adding new paragraphs (a)(46) and (a)(47) to read as follows:

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§ 2.106 Administrator, Agricultural Research Service.

(a) * * *

(40) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

* * * * *

(46) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(47) Enter into cooperative agreements to share the cost of a research project or to allow the use of a Federal facility or service on a cost-sharing or cost reimbursable basis for purposes of developing new technology to further research programs (7 U.S.C. 3319c).

4. Section 2.107 is amended by republishing paragraph (a)(19), and by adding new paragraph (a)(23) to read as follows:

§ 2.107 Administrator, Cooperative State Research Service.

(a) * * *

(19) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

* * * * *

(23) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

5. Section 2.108 is amended by republishing paragraph (a)(20), and by adding new paragraph (a)(24) to read as follows:

§ 2.108 Administrator, Extension Service.

(a) * * *

(20) Enter into contracts, grants, or cooperative agreements to further extension programs in the food and agricultural sciences (7 U.S.C. 3318).

* * * * *

(24) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

6. Section 2.109 is amended by republishing paragraph (a)(14), and by adding a new paragraph (a)(17) to read as follows:

§ 2.109 Director, National Agricultural Library.

(a) * * *

(14) Enter into contracts, grants, or cooperative agreements to further library and related information programs supporting research, extension, and teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

* * * * *

(17) Enter into cost-reimbursable agreements to further library and related information programs supporting research, extension, and teaching programs in the food and agricultural sciences (7 U.S.C. 3319a).

For Subpart C.

Dated: September 10, 1986.

Richard E. Lyng,

Secretary of Agriculture.

For Subpart N.

Dated: September 10, 1986.

Orville G. Bentley,

Assistant Secretary for Science and Education.

[FR Doc. 86-22348 Filed 9-29-86; 4:56 pm]

BILLING CODE 3410-03-M

Agricultural Marketing Service

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends, for the months of September 1986 through February 1987, the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period under the Eastern Colorado order. Suspension of the provisions was requested by a cooperative association representing producers supplying the market. The action is necessary to assure that the milk of producers who regularly have supplied the fluid milk needs of the market will continue to be priced and pooled under the order without requiring unnecessary and uneconomic movements of milk.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding.

Notice of Proposed Suspension, Issued August 27, 1986; published September 3, 1986 (51 FR 31340).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on September 3, 1986 (51 FR 31340) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of September 1986 through February 1987 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a", and "of March through August".

Statement of Consideration

This action suspends for the months of September 1986 through February 1987 the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period.

The suspension was requested by Mid-America Dairymen, Inc., (Mid-Am), a cooperative association of producers supplying the market. The cooperative association indicated that producer receipts on the Eastern Colorado order during the first seven months of 1986 have exceeded those of the same period of 1985 by 10.7 percent, while producer milk used in Class I increased only 1.3 percent. The cooperative attributed the increased milk supply to good weather conditions, ample feed supplies and the conclusion of the Milk Diversion Program. Mid-Am recognized that the Dairy Termination Program will reduce milk supplies, but stated that ample supplies of locally produced milk will still be available to the Eastern Colorado marketing area. Mid-Am estimates that during the period of the suspension up to 75 tanker loads of milk will have to be moved each month from the Denver area eastward to surplus handling plants in Kansas and Nebraska. At the same time, without the suspension Mid-Am would be required to move 50 percent of the receipts at its supply plants located in Kansas and Nebraska to the Denver area. Without the suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado order. No comments in opposition to the proposed action were received. Mid-Am filed comments that provided additional information in support of the suspension.

Milk production is significantly above year-earlier levels and consequently a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses. Favorable weather conditions and ample feed supplies provide strong indications that the current production trends will not abate substantially in spite of the Dairy Termination Program. Significant increases in Class I use are not expected. In view of these circumstances, it is concluded that the provisions limiting the period of automatic pool plant status for a supply plant that met pool shipping standards during a previous September through February period should be suspended for the months of September 1986 through February 1987 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension. No views in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions § 1137.7(b) of the Eastern Colorado order are hereby suspended for the months of September 1986 through February 1987, as follows:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: (Sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 1137.7 [Amended]

2. In 7 CFR Part 1137, in the second sentence of § 1137.7(b), the words "plant which has qualified as a," and "of March through August".

Effective Date: Upon publication in the **Federal Register.**

Signed at Washington, DC., on September 25, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86-22166 Filed 9-30-86; 8:45 am]

BILLING CODE 3410-22-M

Farmers Home Administration

7 CFR Part 2003

Functional Organization of the Farmers Home Administration

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations to reflect a reorganization of Divisions and Staffs reporting to the Deputy Administrator, Financial and Administrative Operations. This change will result in a more efficient utilization of Agency personnel resources. This change provides the functional statements for the affected organizational units.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Timothy Ryan, Director, Personnel Division, Room 6900 South Building, 14th and Independence Avenue, SW, Washington, DC 20250, Telephone (202) 382-1056.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.**

Some major changes include the elimination of one Assistant Administrator position, abolishment of two Divisions (the Financial and Productivity Analysis Division and the Organization, Management and Training Division), creation of the Financial and Management Analysis Staff reporting to the Deputy Administrator for Management, and creation of the Information Resources Management Division. In addition, several titles are changed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This final action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, and Enviromental Impact Statement is not required.

List of Subjects in 7 CFR Part 2003

Organization and functions (government agencies).

Therefore, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for Part 2003 is revised to read as follows:

Authority: 7 U.S.C. 1981 and 1989; 42 U.S.C. 1471 and 1480; 5 U.S.C. 301 and 552; 7 CFR 2.23 and 2.70.

Subpart A—Functional Organization of the Farmers Home Administration

2. Exhibit A is amended by revising the text from the heading titled "07 06 Deputy Administrator Financial and Administration Operations" to the end of the exhibit to read as follows:

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Exhibit A—U.S. Department of Agriculture, Farmers Home Administration

* * * * *

07 06 Deputy Administrator for Management

Assignment of Functions

1. Responsible to the Administrator or Associate Administrator for the formulation of policy for the Farmers Home Administration (FmHA) in all areas of support services for FmHA's programs.

2. Provides overall supervision and direction to FmHA's staff support activities including administrative planning, accounting, budgeting, personnel, systems development, use of ADP, administrative services, information resources management, organization, financial matters, and management improvement.

3. Directs and supervises subordinate organizational activities consisting of the Assistant Administrator for Automated Information Services; the Assistant Administrator, Finance Office; the Assistant Administrator for Administration; the Budget Staff; and the Financial and Management Analysis Staff.

4. Maintains liaison and working relationship with the Department's Management Council; works with the Assistant Secretary for Administration and associated staff offices, the Office of Budget and Program Analysis (OBPA), the Office of Management and Budget (OMB), the Office of Personnel Management (OPM), General Services Administration (GSA), Treasury, Congressional staffs, and others as necessary to carry out assigned responsibilities.

07 06 00 0001 Financial and Management Analysis Staff

Assignment of Functions

1. Responsible to the Administrator and the Deputy Administrator for Management, for debt management initiatives, cash management initiatives, management analysis, and for management, financial and productivity improvement programs.

2. Develops and manages FmHA's debt collection efforts, including compliance with the Debt Collection Act. Monitors FmHA debt management systems to assess effectiveness and impact. Develops and manages FmHA's program for offsetting the salary of Federal employees who are delinquent on FmHA loans. Initiates pilots or tests of new and innovative methods, techniques, and processes in management.

3. Develops and manages FmHA cash management initiatives. Monitors FmHA cash management systems to assess effectiveness and impact. Initiates pilots or tests of new and innovative methods, techniques, and processes in cash management.

4. Responsible for FmHA's management analysis function. Initiates and performs all types of management improvement, productivity improvement, efficiency, and effectiveness studies and analyses. Serves as an in-house consultant and troubleshooter for management problems and concerns.

5. Responsible for FmHA implementation of OMB Circulars A–76, A–70, and A–129, and for other management, financial, and productivity improvement programs, including Presidential management initiatives.

6. Maintains liaison and working relationship with the USDA Financial Council, the Office of Management Reform, Office of Finance and Management (OFM), OMB, Treasury Department, and other appropriate Federal Agencies and private sector establishments that impact on or have an interest in the assigned program areas.

07 06 00 0002 Budget Staff

Assignment of Functions

1. Responsible to the Administrator and Deputy Administrator for Management, for FmHA's budget, travel, borrowing and interest rate management.

2. Develops plans and procedures for the formulation, presentation and execution of the total FmHA budget; on the basis of financial and budgetary planning, assists the Deputy Administrator and program officials in support of decision-making activities and establishment of policy necessary for efficient and effective management of FmHA programs; recommends reprogramming and policy changes to meet FmHA goals and objectives; recommends budgetary levels, budget strategy and program implementation.

3. Provides leadership and direction for planning, formulation, justification, presentation, execution, control and review of the total FmHA budget effort; responsible for preparation of FmHA budget estimates in order to develop the FmHA budget submission to the Secretary's Office, OMB and Congress; establishes and maintains controls over program and administrative funds to assure compliance with Agency policy, approved apportionments, Congressional interest and applicable laws and regulations.

4. Maintains liaison and working relationship with National program and administrative officials, FmHA State Directors, and other field personnel; participates in State meetings, conferences and other sessions and gives advice and counsel on budget operations and operating levels; serves as FmHA liaison for budget and financial program with Congressional Committees and staff, OMB, the General Accounting Office (GAO), the Secretary's Office, Office of the General Counsel (OGC), Office of Inspector General (OIG), and other USDA agencies, Treasury, Housing and Urban Development (HUD), and other agencies and, as required, news reporters, public and private interest groups and the general public.

5. Responsible for total Agency budget effort from planning and formulation to execution control and review. Reviews and recommends for approval by the Administrator or Deputy Administrator for Management changes in operating levels for personnel, travel, overtime, contracts and other reprogramming of funds.

6. Responsible for travel procedures in FmHA. Develops and recommends travel policies, prepares travel regulations, and reviews and evaluates travel programs of FmHA. Administers the Diners Club travel card program, use of travel agencies, and the employee relocation service.

7. Responsible for revolving fund analysis related to cash forecasting, timing of the sale of notes inventory, Treasury borrowings, outlay planning and analysis, and management of FmHA rates and interest projections.

07 06 01 Assistant Administrator, Finance Office

Assignment of Functions

1. Responsible to the Administrator and the Deputy Administrator for Management, for the development of policies that affect the operation of the accounting system.

2. Responsible for the day-to-day operation of the accounting system, including system maintenance; making all financial reports required by management and for the FmHA budget based on data in the accounting system; maintaining the supplies warehouse and meeting the needs of field offices for equipment and supplies within funds available for that purpose and under general direction of the Administrative Services Division; maintenance of necessary obligation and related funds control; and other duties as required by the Deputy Administrator for Management.

3. Directs and supervises subordinate organizational activity consisting of the Fiscal and Accounting, Operations, and Administrative Support functions of the Finance Office.

4. Maintains liaison and working relationship with the Department data processing manager to provide Automated Data Processing (ADP) support for the accounting operation, and with GAO on audit matters relating to the accounting systems.

5. Prepare Finance Office budget plans as required. Monitors and controls approved budgets including authorized personnel staffing.

6. Responsible for overall Departmental excess personal property coordination functions for disposal of personal property outside the Washington, D.C., area, the object of which is to effect reutilization or disposal of personal property Departmentwide. Maintains liaison with Departmental staff offices and agencies, GSA, and state and local governments.

07 06 03 Assistant Administrator for Administration

Assignment of Functions

1. Responsible to the Administrator and the Deputy Administrator for Management, for developing FmHA personnel, organization, and administrative services policies.

2. Develops procedure for and carries out a personnel program for the FmHA, including recruitment, evaluation, classification, employee relations, position management, training, and grievance appeals; develops a plan for and carries out career development and training activities for the FmHA; maintains personnel management systems; analyzes and reviews organizational relationsips within Farmers Home Administration and makes recommendations on changes.

3. Establishes and maintains a directives system for FmHA, to cover the clearance, approval and maintenance of formal regulations, administrative notices, and similar procedural announcements for FmHA.

4. Provides for FmHA space analysis and review services, forms management activities, mail management, communications system operations, printing and reproduction requirements, property management, contracting programs and records management.

5. Directs and supervises subordinate organizational activity consisting of the Personnel Division and the Administrative Services Division.

6. Maintains liaison and working relationships with the Departmental Office of Personnel (OP) and OBPA, OPM, GSA, OMB and other agencies in the areas reflected above.

7. Develops a budget for the training program for FmHA within overall budget constraints; provides major input to administrative budget for the FmHA and coordinates that budget with responsibilities of the Finance Office in this area.

07 06 03 0001 Personnel Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Administration, for the development, implementation, and evaluation of plans, policies, and procedures necessary for the efficient and orderly management of the FmHA nationwide personnel management and training programs.

2. Plans, develops, and implements FmHA-wide programs and activities related to: Employment, placement, and merit promotion; organization, position management, and classification; performance management and appraisal, and incentive awards and employee recognition, employee and labor-management relations (including adverse actions, conduct, discipline, grievances, and appeals); employee compensation and benefits; employee safety and health; training and career development. These activities are carried out within the legal mandates of Title 5 and 7 of the United States Code (including such specific legislation as 5 U.S.C. chapter 51 and subchapter III of Chapter 53 (classification), Civil Service Reform Act of 1978, Civil Rights Act of 1964 as amended, Fair Labor Standards Act, 5 U.S.C. Chapter 41 (training), etc.), various Executive Orders, Comptroller General decisions, decisions of the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority (FLRA), and the Equal Employment Opportunity Commission (EEOC), and OPM, and OP regulations.

3. Serves as the primary source of expert technical advice to FmHA management on personnel management, organization, and training programs and activities. Provides direct operating services involving personnel management and training for employees of the National Office, and those operating services that have not been specifically delegated to State Offices and the Finance Office for employees in the field. Provides technical direction, oversight, and guidance to State Offices and the Finance Office on organization, personnel management, and training programs and activities conducted at the field level. Maintains and administers directly or oversees at the field level, FmHA and USDA personnel and training information systems (including ADP based systems), procedures, and personnel action processing operations.

4. Monitors and evaluates the effectiveness of organization, personnel management, and training at all levels of the Agency and recommends improvements. Collects and analyzes data, conducts organizational, occupational, and other staff studies on personnel management and training issues, identifies the need for program changes, operations/processing systems and procedures, and develops options and recommendations for management decision.

5. Maintains liaison and working relationship with the Department's Secretarial Offices, OGC, OP; with OPM, FLRA, MSPB, and EEOC; with USDA Agency Personnel Offices, Federal Courts and Congressional Offices, and other Federal Departments and Agencies; with nonprofit and public organizations and educational institutions, and the national leadership of FmHA employee organizations and associations and recognized labor unions representing FmHA employees.

07 06 03 0003 Administrative Services Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Administration, for developing, recommending and executing standards, policies and procedures for operation of the FmHA directives system and the provision of administrative services to the FmHA, including implementation of the Freedom of Information and Privacy Acts.

2. Responsible for review and coordination of all Agency directives issuance and public participation functions including publication of regulations and legal notices in the **Federal Register**; real and personal property, space, procurement, printing, and reproduction control, communications, correspondence and mail management, including control of jacketed correspondence; forms; records retention and disposition; tort claims; word processing service; coordination of National Office review of requests to close or relocate field offices; contracting and grant agreements; and OMB circular A–40 compliance plan of action. Monitors responses to requests for information under the Freedom of Information Act; responds to inquiries received in the National Office, provides counsel and guidance to field offices on problem cases, and reviews and takes action on any proposed denials or appeals.

3. Maintains liaison and working relationship with other USDA agency Administrative Services Divisions and participates in the Department Administrative Services Division Council; works closely with General Services Administration and Office of Management and Budget; provides policy direction and serves as liaison with the Administrative Support Division in the Finance Office.

4. Prepares substantial input to administrative budget plans as required and administers administrative budget within administrative responsibilities.

07 06 04 Assistant Administrator for Automated Information Services

Assignment of Functions

1. Responsible to the Administrator and the Deputy Administrator for Management, for developing, and implementing Information Resources Management (IRM) policies, plans, and systems within the FmHA. Also responsible for identifying and applying ADP technology, other systems technology, and other IRM technologies to support program and administrative activities within FmHA.

2. Responsible for identifying FmHA information needs (both financial and management) and initiating actions to capture and report such information. Provides the policies, procedures, systems and ADP technology necessary to implement new and enhanced systems for the Agency designing, gathering data for and initiating reporting of management information as required by FmHA management officials, Department officials, other executive branch officials, and Congress; determining and managing the ADP software and hardware needed to serve FmHA most effectively at least cost; preparing the FmHA 5-year IRM plan, IRM budget, and IRM policies for FmHA use.

3. Directs and supervises subordinate organizational activity consisting of the Financial Systems Division, the Management Systems Division, the Accounting Systems Planning Division, and the Information Resources Management Division.

4. Maintains liaison and working relationship with FmHA personnel, the Office of Information Resources Management (OIRM), OFM, GAO, OMB, the Congress, and others as necessary to perform the above duties.

07 06 04 0001 Financial Systems Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Automated Information Services, for formulating policies and recommendations for design and development of new ADP system applications projects needed to support program policy implementation for loan making, loan servicing, cash and debt management, and program accounting activities for the FmHA. This responsibility also includes modifications to the existing financial systems in operation at the USDA Kansas City Computer Center based on regulatory changes, changes in law, changes in technology, and changes necessary to improve the effectiveness of FmHA operations.

2. Responsible for execution of ADP system design, development, and testing functions required to implement new program financial systems and modifications to existing program financial systems for the FmHA.

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These systems support the regulatory and policy agenda of the Agency in the areas of loan making, loan servicing, cash management and debt management.

3. Responsible for providing the centralized data base administration function for the FmHA, and the technical support necessary to ensure user availability of the FmHA nationwide network of terminals and microprocessors.

4. Maintains liaison and working relationship with OIRM, other USDA Agencies, FmHA program staff, FmHA administrative staff, and FmHA Finance Office as required to accomplish assigned responsibilities.

07 06 04 0002 Management Systems Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Automated Information Services, for the development of policies, methods, procedures, and strategies for ADP support systems for non accounting administrative systems and field office automation.

2. Designs, develops, tests, implements, documents, maintains and supports FmHA-wide management information systems in support of program area and administrative management.

3. Manages the planning, design, development, and implementation of administrative, office automation, and field office systems utilizing contractors and government staff; provides ADP technical and timesharing support to FmHA personnel.

4. Provides long-range ADP planning information on FmHA management information systems, office automation, and field office systems; provides ADP procurement support for equipment and software FmHA-wide.

5. Maintains liaison and working relationships with FmHA personnel, OIRM and other Federal and professional ADP organizations as necessary to perform assigned responsibilities.

07 06 04 0003 Accounting Systems Planning Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Automated Information Services, for planning and functional specifications related to the design and development of new automated accounting system projects. This responsibility also includes modifications to the existing automated accounting systems based on regulatory changes, changes in law, and changes necessary to improve the effectiveness of FmHA regulations.

2. Establishes plans, develops functional specifications for new accounting systems and modifications to existing accounting systems for the FmHA. These systems support the regulatory and policy agenda of the Agency in the areas of loan making and loan servicing.

3. Coordinates the establishment of priorities for implementing proposed accounting systems and enhancements to existing automated systems.

4. Develops and carries out the formulation of alternative development configurations in support of accounting system efforts and directs cost-benefit analysis of several such ADP configurations which could be adopted by the FmHA.

5. Maintains liaison with various program areas, Finance Office managers, other users, OFM, and others as necessary to perform assigned responsibilities.

07 06 04 0004 Information Resources Management Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Automated Information Services, for ensuring that all Departmental IRM regulations, and other Federal IRM related regulations are followed within FmHA.

2. Responsible for the development of policies, FmHA regulations, standards, and guidelines for all IRM activities; coordination and liaison with OIRM, OFM, OMB, GSA, and other Federal organizations as required concerning IRM policies, OMB Circulars, GSA regulations, and other IRM related regulations as necessary to perform assigned responsibilities.

3. Manages the IRM long-range planning process and the IRM budget development for the FmHA, including development of the annual plan for submission to the Department; provides policies, procedures, and coordination of the technical IRM Review Boards; develops and maintains FmHA telecommunications policies.

4. Provides the data administration function, including controlling of reports, inventories, standards, and electronic information holdings reviews. Develops and maintains FmHA reports management policy and procedures. Administers the weekly and monthly production of a variety of Management Information Systems reports.

5. Provides a focal point and coordination for FmHA participation in USDA cooperative processing initiatives and information sharing initiatives. Provides the single point of contact with the Department for all Technical Approval requests, IRM Standards, and IRM Reviews.

6. Provides the liaison function between the National Office and the Finance Office for review and clearance of FmHA regulations, policies, and procedures.

Dated: September 3, 1986.

Dwight O. Calhoun,

Acting Administrator, Farmers Home Administration.

[FR Doc. 86-22221 Filed 9-30-86; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 524, 526, 532, 545, 556, 571, and 584

Gold Bullion Coin Transactions

Dated: September 26, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulations pertaining to gold and gold related transactions to promote the sale of American eagle gold coins ("American eagles") to be minted and issued by the United States Treasury ("Treasury"). Specifically, the Board is amending its regulations to permit Federal associations to purchase, sell, and pay interest or dividends in American eagles and to permit the Federal Home Loan Banks ("Banks") to engage in transactions in the coins as a means of serving member institutions. The Board is also amending its regulations to permit, to the extent authorized by applicable law, State-chartered insured institutions to purchase, sell, and pay interest or dividends in American eagles, and service corporations of insured institutions and multiple savings and loan holding companies to purchase and sell American eagles. American eagles will be available to the public beginning October 1, 1986, and the Treasury will apply any profit it makes to reducing the Federal debt.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Michael D. Solomon, Attorney, Regulations and Legislation Division, Office of General Counsel, (202) 377-6432, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On December 17, 1985, the President signed into law the "Gold Bullion Coin Act of 1985," Pub. L. 99-185, 99 Stat. 1177 ("Coin Act"). The new law amends Title 31 of the United States Code by authorizing the minting of gold bullion coins. Four American eagle coins, with face values of $5, $10, $25, and $50, containing from one-tenth to one troy ounce of gold, will be minted and issued by the Treasury, and will be available for sale to the public beginning October 1, 1986. While these coins will be of particular interest to collectors, they will also constitute legal tender worth their face value if offered for payment.

American eagles will be available for purchase directly from the Treasury at a price equal to the market value of the bullion at the time of sale plus a premium for the cost of minting, marketing, and distribution. Bulk sales will be offered at a discount. Any profit earned by the Treasury will be deposited into its general fund and applied directly to reducing the federal debt. The gold used in minting the coins will come from natural deposits in the United States ("U.S.") or from U.S. gold reserves.

The Board has uniformly prohibited Federal associations, their service corporations, multiple savings and loan holding companies, and the Banks from engaging in any activity or transaction involving gold (including gold coin) or gold related instruments or securities. Consistent with this policy, the Board has declared that, notwithstanding its deference to the authority of state law regarding state-chartered insured institutions and their service corporations, the examinations and supervision staff of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") will carefully scrutinize such transactions and activities by all insured institutions and their service corporations and that the Corporation will regulate or prohibit practices it deems unsafe or unsound or otherwise inconsistent with the purposes of Title IV of the National Housing Act, 12 U.S.C. 1724-1730.

The restrictions on gold transactions and activities are designed to prevent unsafe or unsound speculative activity in the highly volatile metals market. The amendments to the regulations serve this purpose by maintaining all of the current restrictions with the one narrowly circumscribed exception of permitting the purchase and sale of American eagles, including payment by insured institutions of interest or dividends in such coins, and all activities reasonably incident thereto. The Board views these activities as safe, sound, and appropriate for limited thrift participation.

The amendments will enable the thrift industry to purchase American eagles at the bulk discount and resell them to the public at a premium to be prescribed by the Treasury, thereby contributing to an attempt to reduce the Federal debt. Thrift participation could also yield a direct profit from the permitted premium, and because other financial institutions are likely to offer the coins, thrift participation would secure for insured institutions both competitive parity and the good will generated by offering the coins for sale to the public.

The rule changes are permissive. Participation in the American eagle gold coin market would be a matter of choice. Under the amendments, Federal associations may purchase, sell, and pay interest or dividends in American eagles pursuant to their authority under section 5(c) of the Home Owners' Loan Act. *See* 12 U.S.C. 1464(c)(2)(A). To the extent permitted by applicable law, service corporations of Federal associations and multiple savings and loan holding companies may engage in American eagle transactions as a preapproved activity. The Board is also amending its policy statement for insured institutions—including State-chartered institutions—and their service corporations to reflect the proposed changes for Federal associations and their service corporations. Finally, under these amendments the Banks may engage in gold coin transactions as a means of serving member institutions. The Board views the Banks as a possible system-wide clearinghouse for bulk discount purchase and subsequent distribution of American eagles to members, subject to agreement between members and their respective Banks.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that notice and public procedure with respect to these amendments are unnecessary and contrary to the public interest, as is the 30-day delay of the effective date, because the amendments relieve restrictions with respect to trade in American eagles in furtherance of the public interest. Congress and the President have promoted trade in these coins—which will be available October 1, 1986—as a means of reducing the Federal debt, and the Board therefore believes it should act promptly to permit and facilitate thrift participation.

List of Subjects in 12 CFR Parts 524, 526, 532, 545, 556, 571, and 584

Accounting, Bank deposit insurance, Consumer protection, Credit, Electronic funds transfers, Federal home loan banks, Gold, Holding companies, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations, Securities, Surety bonds.

Accordingly, the Board hereby amends Parts 524, 526, and 532, Subchapter B; Parts 545 and 556, Subchapter C; Part 571, Subchapter D; and Part 584, Subchapter F, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

Subchapter B—Federal Home Loan Bank System

PART 524—OPERATIONS OF THE BANKS

1. The authority citation for Part 524 is revised to read as follows:

Authority: Sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

2. Section 524.13 is revised to read as follows:

§ 524.13 Gold and gold-related transactions.

No Bank may engage in any capacity or manner in any transaction or activity involving gold (including gold coin) or gold related instruments or securities, except for purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99-185, 99 Stat. 1177 (1985), and activities reasonably incident thereto.

§§ 524.1 and 524.7 [Amended]

3. Sections 524.1 and 524.7 are amended by removing the authority citations located at the end of the sections.

PART 526—ADVERTISING OF ACCOUNTS

4. The authority citation for Part 526 continues to read as follows:

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401, 402, 403, 407, 48 Stat. 1255, 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

5. Paragraph (h) of § 526.2 is revised to read as follows:

§ 526.2 Advertising interest or dividends on savings accounts.

* * * * *

(h) *Gold.* Any statement that any portion of interest or dividends is payable in gold (including gold coin), gold related instruments or securities, or an amount of money determined in any manner related to gold is prohibited: *Provided,* that such statement is permitted with respect to the payment of interest or dividends in gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99-185, 99 Stat. 1177 (1985).

PART 532—BOARD RULINGS

6. The authority citation for Part 532 continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

§ 532.1 [Amended]

7. Section 532.1 is amended by removing the period at the end of the last sentence and adding the clause ":

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Provided, that members may pay interest or dividends in gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985)".

Subchapter C—Federal Savings and Loan System

PART 545—OPERATIONS

8. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

9. Section 545.74 is amended by removing the period at the end of paragraph (c)(5)(viii) and inserting in lieu thereof a semicolon and by adding a new paragraph (c)(5)(ix) to read as follows:

§ 545.74 Service corporations.

* * * * *

(c) * * *

(5) * * *

(ix) Purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985).

* * * * *

10. Section 545.79 is revised to read as follows:

§ 545.79 Gold transactions.

No Federal association shall engage in any transaction or activity, including the payment of interest or dividends, involving gold (including gold coin) or gold related instruments or securities or pay interest or dividends in an amount of money determined in any manner related to gold: *Provided,* that Federal associations may purchase, sell, and pay interest or dividends in gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985).

PART 556—STATEMENTS OF POLICY

11. The authority citation for Part 556 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 341, 98 Stat. 1505, as amended (12 U.S.C. 1701j–3); secs. 402–403, 406–407, 48 Stat. 1256–1257, 1259–1260, as amended (12 U.S.C. 1725–1726, 1729–1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

12. Section 556.7 is revised to read as follows:

§ 556.7 Service corporation involvement with gold or gold related transactions.

Section 545.74 authorizes Federal associations to invest in service corporations engaging in certain preapproved activities and any other activities the Board approves upon application. Because the Board will not approve applications to engage in transactions or activities involving gold (including gold coin) or gold related instruments or securities, Federal associations should not invest or maintain an investment in a service corporation engaging in such transactions or activities except as provided for in § 545.74(c)(5)(ix).

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 571—STATEMENTS OF POLICY

13. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464); sec. 409, 94 Stat. 160; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

14. Section 571.10 is revised to read as follows:

§ 571.10 Gold and gold-related transactions.

The authority of state-chartered insured institutions and their service corporations to engage in transactions and activities involving gold (including gold coin) or gold related instruments or securities, including buying, holding, selling, or otherwise dealing with gold or gold related instruments or securities, is primarily a matter of state law. However, the Corporation's supervisory and examining personnel will carefully scrutinize any such transactions and activities by insured institutions or their service corporations. The Corporation will regulate or prohibit any such transaction or activity if it determines that such transaction or activity constitutes an unsafe or unsound practice or is otherwise inconsistent with the purposes of Title IV of the National Housing Act, 12 U.S.C. 1724–30: *Provided,* that to the extent that they have independent legal authority to do so, insured institutions may purchase, sell, and pay interest or dividends in, and their service corporations may purchase and sell, gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985), and engage in activities reasonably incident thereto.

Subchapter F—Regulations for Savings and Loan Holding Companies

PART 584—REGULATED ACTIVITIES

15. The authority citation for Part 584 is revised to read as follows:

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

16. Section 584.2–1 is amended by deleting the word "and" after the semicolon in paragraph (b)(9), by deleting the period and inserting in lieu thereof "; and" in paragraph (b)(10), and by adding a new paragraph (b)(11) to read as follows:

§ 584.2 Services and activities of multiple savings and loan holding companies.

* * * * *

(b) * * *

(11) Purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985), and activities reasonably incident thereto.

* * * * *

17. Part 584 is amended by removing the authority citations located at the ends of the applicable sections of the part.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–22225 Filed 9–30–86; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–167–AD; Amdt. 39–5433]

Airworthiness Directives; DeHavilland Aircraft of Canada, Ltd., Model DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all known persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of DeHavilland Model DHC–8 series airplanes by individual telegrams. This AD requires the isolation of the main landing gear actuation hydraulics by complying with a revised flight manual procedure for takeoff, landing, and while on the ground.

DATES: Effective October 20, 1986.

This AD was effective earlier to all recipients of telegraphic AD T86–16–51, dated August 15, 1976. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from DeHavilland Aircraft of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis or Mr. W. White, Systems Branch, ANE–173, FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427.

SUPPLEMENTARY INFORMATION: On August 18, 1986, the FAA issued telegraphic AD T86–16–51, applicable to DeHavilland Model DHC–8 series airplanes, which requires a revised airplane flight manual (AFM) procedure to isolate the main landing gear actuation hydraulics system during takeoff, landing, and while on the ground. This action was prompted by two incidents in which there was an uncommanded retraction of the right main landing gear (MLG). This situation, if not corrected, could result in extensive damage to the airplane and possible injury to passengers. The revised operating procedure required by this AD is necessary to preclude a hazardous condition, which may result in collapse of the main landing gear during takeoff, landing, or taxiing; operators are required to continue operating under these revised procedures until a certain modification to the landing gear system is incorporated.

The Canadian Air Transport Administration, which is the airworthiness authority for Canada, has also issued a telegraphic airworthiness directive, CF–86–13, on this subject.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration had determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 29, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 or Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449; January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

DeHavilland: Applies to DeHavilland Model DHC–8 airplanes, certificated in any category, serial numbers 003, 005, and subsequent. Compliance is required before further flight, unless previously accomplished.

To preclude the uncommanded retraction of the main landing gear, accomplish the following:

A. Insert a copy of this AD in the Airplane Flight Manual (AFM) and advise all flight crew members. For takeoff, landing, and while on the ground, isolate the main landing gear actuation hydraulics by complying with the following revised flight manual procedures:

1. Operating Limitations

(A) Nosewheel steering switch must be selected OFF.

(B) Takeoff or landing in cross winds exceeding 20 knots is not permitted.

Note.—Information presented in Supplement 12 of the Airplane Flight Manual (Operation with Inoperative Nose Wheel Steering) is in error and will be amended in the next AFM revision.

2. Normal Operating Procedures

—Flight Compartment Check—POWER ON.
—(ADD) Landing Gear Selector Lever—DOWN.
Check 3 green lights ON.
All door and gear unlocked lights OUT.
Selector level light OUT.
—Landing Gear Inhibit Switch—INHIBIT.
—Landing Gear Alternate Release Door—OPEN FULLY.
—Landing Gear Alternate Extension Door—OPEN FULLY.
—Hydraulic Pump Handle—INSERT IN HAND PUMP SOCKET AND OPERATE UNTIL HAND PUMP MOVEMENT BECOMES STIFF.
—Hydraulic Pump Handle—STOW.

Pre-taxi Checks

11. (CHANGE) Nosewheel Steering Switch—OFF. Steer the airplane on the ground by means of differential braking and power level adjustment.

After Takeoff

1. (CHANGE) Upon achieving positive rate of climb:
—Landing Gear Alternate Release and Landing Gear Alternate Extentsion Doors—CLOSE FULLY.
—Landing Gear Inhibit Switch—NORM.
—Landing Gear Selector Lever—UP. Check all gear and door lights and gear selector lever light OUT.

Note.—Should Landing Gear Selector Lever be selected UP prior to closing Landing Gear Alternate Release and Landing Gear Alternate Extension Doors, and prior to selecting Landing Gear Inhibit Switch to NORMAL, reselect Landing Gear Selector Lever DOWN and accomplish gear retraction as per revised procedure.

Note.—Landing Gear Alternate Release and Landing Gear Alternate Extension Doors and Landing Gear Inhibit Switch are not within reach of captain when secured in left-hand seat in normal flying position.

Approach

1. (CHANGE) Landing Gear Selector Lever—DOWN.
—Check 3 green lights ON.
—All door and gear unlocked lights OUT.
—Selector lever light OUT.
—Landing Gear Inhibit Switch—INHIBIT.
—Landing Gear Alternate Release Door—OPEN FULLY.
—Landing Gear Alternate Extension—OPEN FULLY.
—Hydraulic Pump Handle—INSERT IN HAND PUMP SOCKET AND OPERATE UNTIL HAND PUMP MOVEMENT BECOMES STIFF.
—Hydraulic Pump Handle—STOW.
—(ADD) Nosewheel Steering Switch—OFF.

Go-Around From Final Approach

5. (CHANGE) Upon achieving positive rate of climb:
—Landing Gear Alternate Release and Landing Gear Alternate Extension Doors—CLOSE FULLY.

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—Landing Gear Inhibit Switch—NORMAL.
—Landing Gear Selector Lever—UP. Check all gear and door lights and gear selector lever light OUT.

3. Emergency Operating Procedures

Engine Failure or Fire After V1

2. (CHANGE) Gear retraction procedure as above for go-round from final approach.

One Engine Inoperative Approach and Landing

1. (CHANGE) Landing Gear:
If No. 1 Engine inoperative:
—Gear extension procedure as above for approach.
If No. 2. Engine inoperative:
—Airspeed—140 KT IAS MAXIMUM.
—Landing Gear Inhibit Switch—INHIBIT.
—Landing Gear Selector Lever—DOWN.
—Landing Gear Alternate Release Door—OPEN FULLY.
—Main Landing Gear Release Handle—PULL FULLY DOWN.
—Landing Gear Alternate Extension Door—OPEN FULLY. Insert pump handle in hand socket and operate until main landing gear locks down (left and right green lights ON, and left door and right door amber lights ON) and handpump movement becomes stiff.
—Nose Gear Alternate Release Handle—PULL FULLY UP. Check nose green light and nose door amber light on. If any of the gear locked down (green) lights fail to illuminate:
—Gear locked down indicator light switch—ON. Check for illumination of appropriate gear down lock alternate light.
—Anti-skid Switch—TEST.
—PTU Manual Switch—PTU MANUAL.

One Engine Inoperative Approach Climb (Overshoot)

3. (CHANGE) Gear retraction procedure as above for go-around from final approach.

4. Performance Data

(A) Takeoff distance required—INCREASE BY TWO PERCENT.
(B) Takeoff run required—INCREASE BY TWO PERCENT.
(C) Accelerate-stop distance required—INCREASE BY TWO PERCENT.

B. No later than November 1, 1986, incorporate DHC Modification 8/0567 in accordance with DHC Service Bulletin 8–32–35, dated July 31, 1986. Remove the copy of this directive from the AFM.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to DeHavilland Aircraft of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective October 20, 1986, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T86–16–51, issued August 15, 1986.

Issued in Seattle, Washington, on September 24, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR. Doc. 86–22117 Filed 9–30–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24 and 113

[T.D. 86–178]

Interest Charges on Certain Delinquent Accounts

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish interest charges for the late payment of supplemental duty bills (bills for additional duties ascertained upon liquidation or reliquidation), reimbursable services, and miscellaneous bills issued by Customs to organizations outside the U.S. Government, including sureties.

Presently, there is no provision in the Customs Regulations to charge interest for late payments of supplemental duties, reimbursable services, and miscellaneous bills. However, interest charges for late payments of supplemental duties is now mandated by law. Customs and the Treasury Department believe that charging interest on all delinquent accounts will provide an incentive for prompt payment and, if accounts are not paid timely, provide for reimbursement of interest costs resulting from Government borrowing.

EFFECTIVE DATES:

For amendments: October 31, 1986.

For interest charges:

(1) *November 29, 1984:* By statute, for liquidations or reliquidations on or after this date upon which increased or additional duties are due.

(2) *November 1, 1986:* For overdue bills for reimbursable services and miscellaneous amounts, for all actions initially billed on or after October 1, 1986.

(3) *October 30, 1984:* By statute, for all refunds of amounts paid as increased or additional duties which had been determined to be due upon liquidation or reliquidation.

(4) *November 1, 1986:* For refunds of amounts of interest that have been paid by parties-in-interest on overpayments of reimbursable services and miscellaneous amounts.

FOR FURTHER INFORMATION CONTACT: Accounting Aspects: Robert B. Hamilton, Jr., National Finance Center, (317–298–1308); Bond Aspects: William Rosoff, Carriers, Drawback and Bonds Division, (202–566–5856); Legal Aspects: Arthur I. Rettinger, Office of the Chief Counsel, (202–566–2482); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

In a report from the Comptroller General to Congress dated August 21, 1978, the General Accounting Office recommended that Customs charge interest on all supplemental duty accounts 30 days past due as part of an effort for the U.S. Government to maximize its use of Customs collections to decrease Government borrowings. That report states that in four Customs Regions (Boston, Chicago, Los Angeles, and New York), accounts receivable for supplemental duties averaged $8.5 million each month from April 1976 to March 1977 and that approximately 38 percent of that amount was over 90 days past due.

Present Customs collection policy is to (1) issue a bill which indicates that it is due and payable, (2) pursue collection in accordance with Federal claims collection standards, and (3) inasmuch as a surety is jointly liable, to make a demand on the surety and the principal for payment if the bill remains unpaid. Importers are required to post a bond to cover each Customs entry to guarantee the payment of increased or additional duties and satisfy other Customs requirements. Enactment of Pub. L. 98–573 required Customs to charge interest on delinquent supplemental duty bills, and interest is currently assessed in accordance with the Act.

Currently, there is no provision in the Customs Regulations for collection of an interest charge exceeding the principal amount, regardless of the time period of delinquency or additional administrative costs to the U.S. Government incurred as the result of special collection efforts. Further, it is necessary to amend the Customs Regulations to address enactment of Pub. L. 98–573, and provide for interest assessment on delinquent reimbursable services and miscellaneous bills. In Fiscal Year 1979, for instance, the percentage of the number of Customs supplemental duty and reimbursable service bills issued during that fiscal year and paid within 30 days was 57 percent. Another 30 percent of these bills were paid within 60 days, and only the remaining 13 percent of the bills were paid more than 60 days after the date of the bill. Customs and the Treasury Department believe that charging interest on delinquent accounts will provide an incentive for prompt payment and, if accounts are not paid timely, provide for reimbursement of interest costs resulting from unnecessary Government borrowing. Customs believes that a majority of those bills which are now paid within 31 and 60 days after the date of billing will be paid within 30 days with the added incentive of interest charges. This means that approximately 13 percent of the bills issued would result in action by Customs to charge interest.

Notice of Proposed Rulemaking

In this regard, on March 10, 1983, Customs published a notice in the Federal Register (48 FR 10077), proposing to amend Parts 24 and 113, Customs Regulations (19 CFR Parts 24, 113), to provide that interest charges would apply to late payments of supplemental duty bills (bills for additional duties ascertained upon liquidation or reliquidation), reimbursable services, (such as provided for in §§ 24.16 and 24.17, Customs Regulations (19 CFR 24.16, 24.17)), and miscellaneous bills (bills other than duties, taxes, reimbursable services, liquidated damages, fines, and penalties) issued by Customs to organizations outside the U.S. Government, including sureties.

The notice stated that if payment for an above-mentioned bill was not received by Customs within 25 days after the due date of the bill, interest charges would be assessed upon the delinquent principal amount of the bill, and calculated from the due date of the bill. The applicable interest rate was to appear on the bill. Interest on an overdue bill would have been assessed on the delinquent principal amount by 30-day periods. The full 30-day interest charge would have been assessed for each additional 30-day period or portion thereof that payment is delayed. The rate of interest was to be determined pursuant to the Debt Collection Act of 1982, Pub. L. 97–365. The applicable interest rate would have been available from any Customs regional financial management office after it is published.

The principal (i.e., the importer of record or party-in-interest) and the surety, would have been individually issued bills for interest and evey 30 days thereafter, of the following elements: (i) The amount due, (ii) the accrual of interest charges if payment is not received within 25 days after the due date of the bill (iii) the applicable interest rate, and (iv) the joint and several liability of the principal and the surety.

Commenters had until May 9, 1983, to submit comments. Based upon the 20 comments received in response to the notice and Customs own initiative, changes have been made to the proposal. These changes also reflect T.D. 85–93, published in the Federal Register on May 29, 1985 (50 FR 21832), which implemented two provisions of the Trade and Tariff Act of 1984 (Pub. L. 98–573) relating to calculation of interest on overdue accounts and refunds. An analysis of the comments and discussion of the changes follow.

Discussion of Major Comments

Comment: The proposal to collect interest charges on delinquent accounts is not authorized under current law and should be commenced only after specific authorization by Congress. A former Assistant Secretary of the Treasury (Enforcement and Operations) is quoted in the August 21, 1978, Report by the Comptroller General that Customs has not been granted legislative authority to charge interest and that it would not be in the best interests of the Government to assess interest because interest would also have to be paid on refunds from protests, reliquidations, and other actions. Therefore, it is concluded that legislation is required.

It is further stated that the fact that the Government has been awarded interest in court proceedings to collect duties cannot clothe administrative collection of interest with the force of law.

The proposal is one-sided and inequitable in that it provides no mechanism for the payment of interest to an importer on duty refunds. It is proposed that Customs pay interest on all accelerated drawback payments due when refund is not made timely.

Analysis: After this comment was submitted, the President signed the Trade and Tariff Act of 1984 on October 30, 1984. By T.D. 85–93, published in the Federal Register on May 29, 1985 (50 FR 21832), Customs implemented two provisions of the Act to provide that interest on applicable overpayments or underpayments of increased or additional Customs duties shall be in accordance with the Internal Revenue Code rate established in 26 U.S.C. 6621 and 6622. This determination covers antidumping and countervailing duty payments as well as increased or additional duties determined to be due on a liquidation or reliquidation. In addition, it was determined that a uniform interest payment system should be established and that refunds pursuant to a court determination and payable under 28 U.S.C. 2644, and interest on overpayments and underpayments of estimated excise taxes determined at liquidation, shall be at the rate(s) prescribed under 26 U.S.C. 6621 and 6622.

Furthermore, section 623(b)(1), Tariff Act of 1930, as amended (19 U.S.C. 1623(b)(1)), clearly gives the Secretary of the Treasury statutory authority to prescribe the conditions of bonds. Section 623(d), Tariff Act of 1930, as amended (19 U.S.C. 1623(d)), provides that no condition in a Customs bond shall be held invalid on the ground that it is not specified in law.

Therefore, not only is this amendment equitable, it is also enacted pursuant to specific legislative authority.

Comment: Relating to bills for supplemental duties, adoption of the final rule will encourage a flood of protests, in large measure not intented to challenge the basis for the liquidated duty increase, but merely to stay the collection of interest. Any attempt by Customs to collect interest after the "25th day following liquidation" would subsequently be cancelled and negated by the filing of protest.

Analysis: It appears the commenters misread the proposal. Customs did not propose to collect interest after the "25th day following liquidation," but 25 days after the "due date" of the bill. However, pursuant to Pub. L. 98–573 and T.D. 85–93, the due date of the bill for supplemental duties, as provided in § 24.3(e), Customs Regulations (19 CFR 24.3(e)), shall be 15 days from the date of liquidation or reliquidation and if not paid within 30 days after this date (the 45th day) shall be considered delinquent and bear interest from the due date (15th day after liquidation or reliquidation).

Comment: The Debt Collection Act of 1982 provides that Customs is not covered by major portions of that law because, except as noted therein, the law does not apply to claims or indebtedness arising under the "tariff laws of the United States." Furthermore, it is suggested the rate of interest on a bill be changed every 3 months while

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the bill is delinquent rather than remain the same.

Analysis: The proposal advised that notwithstanding the above exclusion, because the Government also would be recovering similar costs in matters relating to Customs, consideration was being given to the use of the applicable percentage rate of interest based upon the current value of funds to the Treasury, in accordance with the Debt Collection Act.

However, Customs has reconsidered its position and determined not to use the rate of interest under the Debt Collection Act. Rather, it is appropriate that prejudgement interest be calculated at the same rate as provided for in 28 U.S.C. 2644 since it is that amount which Congress determined would compensate an importer for the loss of use of its money during a portion of the period in which the Government has the use of the money. In 28 U.S.C. 2644 it provides that interest shall be at an annual rate established under section 6621 of the Internal Revenue Code of 1954 (as modified by section 6622 (26 U.S.C. 6621 and 6622)). This is the rate which Customs will use. (see *United States v. Harold Goodman*, Slip Op. 83–92, Court No. 81–8–01150).

The notice proposed that the same percentage rate of interest applied to an overdue bill would remain in effect for that bill until complete payment is received. Customs has revised the proposal and determined that the percentage rate of interest will be adjusted based upon the semiannual determinations under section 6621 and be compounded daily in accordance with 28 U.S.C. 6622 for any period of time that such sums of the bill are outstanding.

Comment: Section 580 of the Tariff Act of 1930 (19 U.S.C. 580), imposes "interest", not an "exaction". It is inequitable to impose a greater burden upon the surety than upon the principal. The rule should state whether the 6 percent amount assessed against a surety is in addition to, or is included within, the interest charged, if any, against the principal. Customs is without authority to adopt regulations which are inconsistent with the Congressional scheme limiting interest at a 6 percent rate on unpaid debts which are the subject of collection actions.

Analysis: The Act of March 2, 1799, C. 22, Section 65, 1 Stat. 676 (19 U.S.C. 580), is applicable to suits brought to the Government upon all bonds for the recovery of duties. The importer of record is liable for the principal amount of the debt (duty) and interest which is assessed upon the late payment of that principal amount. A surety bears the same liability. If Customs must sue the debtor under a bond, it is entitled to recover the principal amount of the debt, plus interest assessed for the late payment, plus an additional amount of 6 percent assessed under 19 U.S.C. 580.

We believe 19 U.S.C. 580 is applicable only against delinquents where the Government must pursue collection through judicial action. Such action will be necessary under very limited circumstances. Most cases will not require use of the judicial process.

Comment: Charging interest should be made by regulation with no change in the bond form (no bond rider), or bond forms should be amended upon renewal to incorporate the interest provision.

Analysis: This comment has merit. The substance of the proposed bond rider on interest charges has been incorporated into the final rule relating to the bond structure which was published in the **Federal Register** as T.D. 84–213 on October 19, 1984 (49 FR 41152). Sections 113.62, 113.64 and 113.73, Customs Regulations (19 CFR 113.62, 113.64, 113.73), specify the agreement to pay charges demanded by Customs as a condition for basis importation and entry bonds, respectively. This document makes those same conforming changes to §§ 113.63 and 113.65, Customs Regulations (19 CFR 113.65). Customs has determined the word "charges" appearing in these sections to include interest charges for the late payment of supplemental duty bills (bills for additional duties ascertained upon liquidation or reliquidation), reimbursable services, and miscellaneous bills issued by Customs to organizations outside the U.S. Government, including sureties.

Comment: Customs should obtain from bonding companies their proposed premiums for the new bond provision and publish this information in the **Federal Register** requesting comments.

Analysis: This suggestion cannot be adopted because Customs lacks authority to do so.

Comment: This proposal to charge interest of delinquent bills should be compatible with the Customs proposal relating to the new bond structure project published in the **Federal Register** on March 15, 1983 (see 48 FR 11032).

Analysis: This comment has merit. As noted, the substance of the proposed bond rider on interest charges has been incorporated into the final rule relating to the bond structure which was published in the **Federal Register** as T.D. 84–213 on October 19, 1984 (49 FR 41152).

Comment: The principal on the bond is the primary obligor for the payment of monies due Customs and the surety is secondarily liable.

Analysis: This is incorrect. Customs Bonds make principals and sureties joint obligors. In this regard, see *U.S. v. Gissel*, 353, F. Supp. 768 (S.D. Tex. 1873) (T.D. 73–86); aff'd 493 F. 2d. 27 (5th Cir. 1974); cert. den. 955 Sup. Ct. 332, 419 U.S. 1012.

Comment: The language of the rider to be attached to applicable bonds uses the term "late charge." The appropriate terminology should be "interest."

Analysis: As noted, there is no bond rider. The new bonds provide for interest under the term "late charges".

Comment: By T.D. 82–204 published in the **Federal Register** on November 1, 1982 (47 FR 49355), an annual fee was instituted for reimbursement of costs of Customs supervision of warehouses. If the annual fee is not paid timely, liquidated damages will be assessed. Will interest be charged on the late payment of the annual fee?

Analysis: Provisions governing this fee are contained in §§ 19.2(a) and 19.5, Customs Regulations, rather than §§ 24.16 and 24.17, Customs Regulations, relating to reimbursable and overtime services. Although there is a billing system for the reimbursable services provided in §§ 24.16 and 24.17, there is no billing system for the annual warehouse fee. As no bills are issued to collect annual warehouse fees, no interest will be assessed at this time.

Comment: Interest charges should be assessed upon the late payment of liquidated damages, fines, and penalties. There should be a provision for extending the due date on liquidated damages, fines, or penalties that may be under appeal or further review.

Analysis: Customs does not agree. As stated in the proposal, miscellaneous bills do not include liquidated damages, fines, and penalties.

Comment: Bills for reimbursable services and miscellaneous amounts are due and payable upon receipt in accordance with § 24.3(e), Customs Regulations. Under the Proposed rule, interest would accrue on those bills which are not paid within 25 days after that due date. However, Customs would not know when a bill is due because, under existing procedures, only the debtor will know when the bill is received. It is suggested that Customs either provide a longer initial period before imposing interest (*e.g.*, 45 days) or provide a clear opportunity for the importer to prove that receipt of the bill in question was delayed and that interest is not owed. It also is suggested that the due date be made more specific by marking that date on the bill and by clearly identifying it.

Analysis: Customs agrees that, as proposed, it would not know when bills for reimbursable services and miscellaneous amounts are received by the debtor. Therefore, Customs has made extensive changes to the proposal. For those bills, if payment is not received by Customs on or before the "late payment date" specified on the bill, interest charges will be assessed upon the delinquent principal amount of the bill. The late payment date is the date 30 calendar days after the "interest computation date." The interest computation date is the date from which interest is calculated and is initially the "bill date" appearing on the bill.

Pursuant to section 210 of the Trade and Tariff Act of 1984, for bills for supplemental duties, (additional duties assessed upon liquidation or reliquidation) the principal amount of the bill shall be due 15 days from the date of liquidation or reliquidation and if not paid within 30 days after this date (the 45th day) shall be considered delinquent and bear interest from the due date (15th day after liquidation or reliquidation).

No interest will be assessed on bills for reimbursable services and miscellaneous amounts if Customs receives payment on or before the late payment date. To ensure processing within 30 days after the interest computation date (so that no interest will be assessed) it is essential that payment is received by Customs on or before the late payment date. No interest will be charged on bills for supplemental duties if Customs receives payment on or before the 45th day after liquidation or reliquidation.

This document amends § 24.3(e) to provide that except for a bill for supplemental duties, a bill for duties, taxes, or other charges is due and payable on the "bill date" appearing on the bill, rather than upon receipt thereof by the debtor.

This change is necessary because, as the commenters observe, Customs does not know exactly when a bill is received by a debtor. Moreover, it is Customs practice to mail a reimbursable service or miscellaneous bill before the "bill date." Therefore, in the usual situation, a party will receive a bill on or before the bill date. Customs notes that a debt for a reimbursable or miscellaneous service is incurred at the time of the action giving rise to such bill (*e.g.*,) when a reimbursable service was performed by a Customs officer).

Comment: Currently, there is no mechanism for Customs to remove bills for supplemental duties off the collection process when a protest is filed. An importer and the surety continue to get "dunned" by Customs. Under the current proposal, the importer would be faced with interest on the increased duty billing. It is suggested that disputed items be placed under a different system. The rule should provide that the automated billing cycle and resulting interest charges are automatically suspended whenever such bills are questioned or disputed.

Analysis: The billing system under development by Customs is designed to take into consideration entries under protest, as well as adjustments that are necessary due to improper billing addresses or other administrative errors. Under the terms of section 210 of Pub. L. 98–573 the bill is due and payable 15 days from the date of liquidation or reliquidation, whether or not a protest has been filed. Accordingly, a party will continue to receive a bill for supplemental duties from Customs even though a protest has been filed. Interest will be assessed if payment is not received by Customs within 30 calendar days after the due date for supplemental duty bills issued on or after November 29, 1984.

Comment: Because of the billing method used by Customs, it is impossible to pay numerous bills within the time frame specified in the new proposal. A bill may be mailed to a different address of the same business entity without the envelope indicating that it contains a bill, or it may be directed to someone other than the person authorizing the service. Bills are not always properly identified as to the services being charged, the person's name authorizing the service, or when or where the service was performed. Bills may be in error. If bills (or substantiating documentation) are not timely received, will the interest charge still be due or be cancelled with proof of untimely receipt? The regulations should provide administrative relief from payment of interest charges if delays resulted, at least partially, due to errors by Customs personnel.

Analysis: The Customs bill is used to collect amounts owed the Government. In the case of bills issued for amounts owed other than for supplemental duties, the party-in-interest is usually aware of the Customs billing schedule and the purpose for issuance of the bill. Bills for amounts owed as a result of the performance of a reimbursable service by a Customs official are issued approximately 2–3 weeks following actual performance. Requests for the service are made specifically by the party-in-interest receiving the service. The billing package of miscellaneous amounts received by the debtor contains the background information explaining the nature of the charge or provides a "Refer Inquiry To" name and address where the basis of the charge may be obtained. We believe that the time periods provided are sufficient for payment of Customs bills.

It is noted that the importer record number data provided by the importer/broker/party-in-interest is the basis for the Customs name and address file. If the legal provisions concerning the due date for entries under protest change, or verified administrative billing errors have occurred, the Customs billing system will be adjusted using an on-line data processing adjustment capability to update the accounts receivable and invoice files accordingly. Customs will make every effort to minimize any unnecessary administrative expense in a businesslike fashion similar to the usual private and banking interest assessment practices. The Customs bill designates a "Send Payment to" address and requests for administrative adjustments due to billing errors may also be sent to this address. Customs officials have the authority to make adjustments to interest amounts when there is a Customs billing error.

Comment: Interest rates should be published in the Customs Bulletin each quarter. Having to call a Customs regional office should not be necessary.

Analysis: The Customs bill will show the current interest rate in effect. In addition, as stated in T.D. 85–93, the current semiannual interest rate may be obtained from the IRS or the Customs National Finance Center, Indianapolis, Indiana, at any time, and Customs will also publish the current interest rate in the Customs Bulletin and **Federal Register** on a semiannual basis for the convenience of the importing public and Customs personnel.

Comment: Simultaneous billing of principal and surety will decrease collection efficiency. Sureties will begin immediate collection action against all importers instead of the truly delinquent debtor. Importers will receive two bills practically simultaneously: One bill from Customs and one bill from the surety. By forcing the surety to expand its collection activities over a substantially larger base, there will be a corresponding loss of collection efficiency.

Analysis: Customs has determined not to bill the principal and surety simultaneously at the time of the initial billing as proposed. However, upon the written request of a surety, Customs will provide a surety a notice containing billing information at the time of the

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initial billing to its principal. In addition to such notice, if any sureties will receive notice of the principal amount owed, any interest accuring, and other pertinent information on the monthly "Formal Demand on Surety for Payment of Delinquent Accounts Due" issued to sureties. This monthly notification to sureties will be issued for delinquent bills more than 30 days past due (60 days from bill due date). Surety demand notices will be issued to sureties monthly until the account is paid or otherwise closed.

Comment: It is suggested that no interest be assessed against a surety until Customs has provided a copy of the bond and entry in support of its claim. It is also suggested that the bill include the name and address of the principal, and name and address or code of the customs broker. The regulations should provide for placing the delinquent importer on the sanction list and withdrawing immediate delivery privileges.

Analysis: As previously stated, Customs bonds make principals and sureties joint obligors. In addition, the Customs bond revision, T.D. 84–213, provides for the joint and several liability of the principal and surety for interest charges for specified bills if such bills are not paid timely. Customs will continue to provide copies of entries and bonds as it is determined to be necessary. However, whether or not Customs provides such documents does not affect the liability of a surety on the surety's bond for the amount owed by the principal.

The surety will be notified of the available name and address of the principal on the "Formal Demand on Surety for Payment of Delinquent Amounts Due" and when the bill is issued if the surety desires such notification. Efforts to improve the availability of data elements, including broker's name and address, or code, will be considered during future improvements to existing data processing systems.

Customs will continue to use the importer sanction list as judiciously as possible. However, charging interest is necessary to permit the Government to recover its costs to borrow funds.

Comments: The effective rates of interest under the proposed regulations are unreasonable and to a great extent arbitrary because the interest would be charged for full 30-day periods. It is suggested either that interest be charged only for the time period of late payment, or that interest be calculated and charged in smaller time increments. (e.g., 10 days).

Analysis: Customs disagrees. It has been determined that the charge will only be for those payments already in arrears. In fact, no interest will be charged for the period in which payment is actually made.

Related Court Decision

The U.S. Court of International Trade in *Heraeus-Amersil, Inc., V. United States,* 515 F. Supp. 770 (1981), held that any increased or additional duties determined to be due upon a liquidation or reliquidation are not due and payable at that time, but rather at the time of filing of a court action, or at the expiration of the statute of limitations, if no action is filed. In *United States* v. *Heraeus-Amersil, Inc.,* Appeal No. 81–19 (February 18, 1982), the U.S. Court of Customs and Patent Appeals affirmed this decision. In light of this holding, Customs published a final rule document in the **Federal Register** (T.D. 83–14, 48 FR 1186, January 11, 1983) amending § 24.3(e), Customs Regulations (19 CFR 24.3(e)), to clarify the due date of Customs bills for supplemental duties. However, section 210 of the Trade and Tariff Act of 1984 (Pub. L. 98–573) overturned the decision in *Heraeus-Amersil.* Accordingly, § 24.3(e) is being amended to reflect these changes.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the rule will not have a significant economic impact on a substantial number of small entities. The large majority of delinquent bills outstanding tend to be from large importers, not small importers and other small entities. Indeed, neither small nor large entities are likely to be affected unless they are delinquent in their payments.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal authors of this document were Charles D. Ressin and Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 24

Customs duties and inspection, Imports, Accounting.

19 CFR Part 113

Customs duties and inspection, Imports, Surety bonds.

Amendments to the Regulations

Parts 24 and 113 Customs Regulations (19 CFR Parts 24, 113), are amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 31 U.S.C. 9701:

§ 24.1 also issued under 19 U.S.C. 197, 198, 1648;

§ 24.3 also issued under 19 U.S.C. 1505, 1520;

§ 24.4 also issued under 19 U.S.C. 1623, 26 U.S.C. 5007, 5054, 5061, 7805;

§ 24.11 also issued under 19 U.S.C. 1485(d);

§ 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 927;

§ 24.14 also issued under 19 U.S.C. 1;

§ 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623, 46 U.S.C. 2111, 2112;

§ 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562, 46 U.S.C. 2110, 2111, 2112;

§ 24.32 also issued under 19 U.S.C. 5562, 5583;

§ 24.36 also issued under 19 U.S.C. 6423.

2. Part 24 is amended by adding a new § 24.3a after § 24.3 to read as follows:

§ 24.3a Interest charges on certain bills; notice to principal and surety.

(a) *Due date of Customs bills.* Customs bills for Supplemental duties (additional duties assessed upon liquidation or reliquidation), reimbursable services (such as provided for in §§ 24.16 and 24.17), and miscellaneous amounts (bills other than duties, taxes, reimbursable services, liquidated damages, fines, and penalties) shall be due as provided for in § 24.3(e).

(b) *Assessment of interest charges—*(1) *Bills for reimbursable services and miscellaneous amounts.* If payment is not received by Customs on or before the late payment date appearing on the bill, interest charges will be assessed upon the delinquent principal amount of the bill. The late payment date is the date 30 calendar days after the interest computation date. The interest computation date is the date from which interest is calculated and is initially the bill date.

(2) *Bills for supplemental duties.* The due date for increased or additional duties, determined to be due upon a liquidation or reliquidation, is 15 days from the date of such liquidation or reliquidation. If such duties are not paid within 30 days after their due date (the

45th day), they shall be considered delinquent and bear interest from the due date.

(c) *Interest rate and applicability.* (1) The percentage rate of interest to be charged on such bills will be based upon the semiannual rate(s) established under sections 6621 and 6622 of the Internal Revenue Code of 1954 (26 U.S.C. 6621, 6622). The current rate of interest will appear on the Customs bill and may be obtained from the IRS or the Customs National Finance Center, Indianapolis, Indiana. Customs will also publish the current interest rate in the Customs Bulletin and **Federal Register** on a semiannual basis.

(2) The percentage rate of interest applied to an overdue bill will be adjusted as necessary to reflect any change in the annual rate of interest.

(3) Interest on overdue bills will be assessed on the delinguent principal amount by 30-day periods. No interest charge will be assessed for the 30-day period in which the payment is actually received at the "Send Payment To" location designated on the bill.

(4) In the case of any late payment, the payment received will first be applied to the interest charge on the delinquent principal amount and then to payment of the delinquent principal amount.

(5) The date to be used in crediting the payment is the date on which the payment is received by Customs.

(d) *Notice.*—(1) *Principal.* The principal shall be notified at the time of the initial billing, and every 30 days after the due date until the bill is paid or otherwise closed. The following elements will normally appear on the bill:

(i) Principal amount due;
(ii) Interest computation date;
(iii) Late payment date;
(iv) Accrual of interest charges if payment is not received by the late payment date:
(v) Applicable current interest rate;
(vi) Amount of interest owed;
(vii) Customs office where requests for administrative adjustments due to billing errors may be addressed; and
(viii) Transaction identification (e.g., entry number, reimbursable assignment number.).

(2) *Surety.* (i) Customs will report outstanding bills on a Formal Demand on Surety for Payment of Delinquent Amounts Due, for bills more than 30 days past due (approximately 60 days after bill due date), and every month thereafter until the bill is paid or otherwise closed.

The following elements will normally appear on the report:

(A) Principal amount due;
(B) Interest computation date;
(C) Late payment date;
(D) Accrual of interest charges if payment is not received by the late payment date;
(E) Applicable current interest rate;
(F) Amount of interest owed;
(G) Principal's name and address;
(H) Customs office where requests for administrative adjustments due to billing errors may be addressed; and
(I) Transaction identification (e.g., entry number, reimbursable assignment number).

(ii) Upon the written request of a surety, Customs will provide the surety a notice of containing the billing information at the time of the initial billing to its principal.

3. Section 24.3(e), Customs Regulations (19 CFR 24.3(e)), is revised to read as follows:

§ 24.3 Bills and accounts; receipts.

* * * * *

(e) All other bills for duties, taxes, or other charges are due and payable upon the bill date appearing on the bill. A bill for increased or additional duties determined to be due upon a liquidation or reliquidation is due 15 days from the date of such liquidation or reliquidation.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624:
Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. Section 113.63(f) is amended by removing the word "and" after paragraph (3), removing the period at the end of paragraph (4), adding "; and" after paragraph (4), and by adding a new paragraph (5) to read as follows:

§ 113.63 Basic custodial bond conditions.

(f) *Reimbursement and Exoneration of the United States* * * *

* * * * * *

(5) Pay any charges found to be due Customs arising out of the principal's custodial operation.

3. Section 113.65(a) is amended by removing the word "and" after paragraph (2), removing the comma after the word "claim" and replacing it with a period in paragraph (2), removing the period at the end of paragraph (3), adding the word "and" after paragraph (3), and by adding a new paragraph (4) to read as follows:

§ 113.65 Repayment of erroneous drawback payment bond conditions.

(a) *Agreement Under Exporter's Summary Procedure.* * * *

(4) The principal agrees to pay any changes due Customs as provided by law or regulation.

* * * * *

William von Raab,
Commissioner of Customs.
Approved:
Michael H. Lane,
Acting Assistant Secretary of the Treasury.
September 3, 1986.
[FR Doc. 86–22236 Filed 9–30–86; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Clindamycin Hydrochloride Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rules.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co. providing for safe and effective use of clindamycin hydrochloride capsules in dogs for treatment of osteomyelitis caused by *Staphylococcus aureus.*

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed supplemental NADA 120–161 providing for use of Antirobe® Capsules (clindamycin hydrochloride) in dogs for treatment of osteomyelitis caused by *Staphylococcus aureus* in addition to the current approval for treatment of canine infected wounds and abscesses caused by *S. aureus.* The supplemental NADA is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug

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Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.446 is amended by revising paragraph (c) to read as follows:

§ 520.446 Clindamycin hydrochloride capsules.

* * * * *

(c) *Conditions of use in dogs*—(1) *Amount.* Wound infections and abscesses: 2.5 milligrams per pound of body weight every 12 hours for a maximum of 28 days. Osteomyelitis: 5.0 milligrams per pound of body weight every 12 hours for a minimum of 28 days.

(2) *Indications for use.* For use in dogs for treatment of wound infections, abscesses, and osteomyelitis caused by *Staphylococcus aureus.*

(3) *Limitations.* Wound infections and abscesses: Do not use for more than 4 days if no improvement of acute infection is observed. Osteomyelitis: Do not use for more than 28 consecutive days if no improvement is observed. Because of potential adverse gastrointestinal effects, do not administer to rabbits, hamsters, guinea pigs, and horses. Use with caution in animals receiving neuromuscular blocking agents, as clindamycin may potentiate their action. Prescribe with caution in atopic animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 23, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–22148 Filed 9–30–86; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Clindamycin Hydrochloride Liquid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. providing for use of clindamycin hydrochloride liquid for dogs for treatment of osteomyelitis caused by *Staphylococcus aureus.*

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed a supplement to NADA 135–940 providing for use of Antirobe ® Aquadrops Liquid (clindamycin hydrochloride) in dogs for treatment of osteomyelitis caused by *Staphylococcus aureus.* The supplement is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)); 21 CFR 5.10 and 5.83.

2. Section 520.447 is amended by revising paragraph (c) to read as follows:

§ 520.447 Clindamycin hydrochloride liquid.

* * * * *

(c) *Condition of use. Dogs*—(1)(i) *Amount.* 2.5 milligrams per pound of body weight every 12 hours.

(ii) *Indications for use.* For treatment of infected wounds and abscesses caused by *Staphylococcus aureus.*

(iii) *Limitations.* Discontinue use after 3 or 4 days if no improvement of acute infection is observed; do not use for more than 28 consecutive days; use with caution in animals receiving neuromuscular blocking agents as clindamycin may potentiate their action; prescribe with caution in atopic animals; because of potential adverse gastrointestinal effects; do not administer to rabbits, hamsters, guinea pigs, and horses; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2)(i) *Amount.* 5 milligrams per pound of body weight every 12 hours.

(ii) *Indications for use.* For treatment of osteomyelitis caused by *Staphylococcus aureus.*

(iii) *Limitations.* Use for a minimum of 28 days; use with caution in animals receiving neuromuscular blocking agents as clindamycin may potentiate their action; prescribe with caution in atopic animals; because of potential adverse gastrointestinal effects, do not administer to rabbits, hamsters, guinea pigs, and horses; Federal law restricts this drug to use by or on the order of a licensed veterinarina.

Dated: September 24, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–22149 Filed 9–30–86; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Cadco, Inc., providing for the making of Type A medicated articles containing 20 or 40 grams per pound each of tylosin and sulfamethazine. Type A medicated atricles are for making Type C medicated feeds for use in swine.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Cadco, Inc., P.O. Box 3599, 10100 Douglas Ave., Des Moines, IA 50322, is the sponsor of a supplement to NADA 99–561 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of Type A medicated articles containing 20 or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine to make Type C medicated feeds for use in swine. The NADA is currently approved for use of such Type A medicated articles containing 5 and 10 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine. The resulting Type C medicated feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevention of swine dysentery (vibrionic), and control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.630 [Amended]

2. Section 558–630 *Tylosin and sulfamethazine* is amended in paragraph (b)(8) by removing "011490" and in paragraph (b)(10) by inserting numerically the number "011490."

Dated: September 25, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86–22153 Filed 9–30–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N–86–1640; FR–2274]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice is the annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and each such area's applicable limits. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices, and notice of the Secretary's determination is published in the Federal Register.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: For single family: John Coonts, Director, Single Family Development Division, Room 9270; telephone (202) 755–6720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160; telephone (202) 755–6880; 451 Seventh Street SW., Washington, DC 20410. (Telephones are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1701–1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features. (See 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. And, third, changes were made to the list based on a new definition of "metropolitan area".

On November 6, 1985 (50 FR 45993), January 7, 1986 (51 FR 596), January 10, 1986 (51 FR 1249), January 27, 1986 (51 FR 3333), April 29, 1986 (51 FR 15883), and June 11, 1986 (51 FR 21159), the Department published amendments to the "high-cost" mortgage amounts that added additional areas and further

increased the limits of several previously designated high-cost areas.

This Document

In this document, the Department publishes its entire list of high-cost areas with applicable mortgage limits. This document incorporates the updates published on November 6, 1985 (50 FR 45593), January 7, 1986 (51 FR 596), January 10, 1986 (51 FR 1249), January 27, 1986 (51 FR 3333), April 29, 1986 (51 FR 15883), and June 11, 1986 (51 FR 21159).

In addition, it adds to the list the following new high-cost areas, with applicable limits: Grand Forks County, North Dakota; Pinal County, Arizona; Albemarle County/Charlottesville City, Virginia; St Mary's County, Maryland; Columbia County, Georgia; Richmond County, Georgia; and Angelina County, Texas.

These high-cost limits are effective October 1, 1986, and supersede other published amounts in effect, to the extent they are inconsistent with figures appearing in this document.

The listing of high-cost areas appears in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists each high-cost area, with applicable limits for single family residences (including condominiums) insured under sections 203(b), 234(c), and 214 of the National Housing Act.

List of Subjects

24 CFR Part 201

Fire prevention, Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Reporting and recordkeeping requirements.

24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department publishes the revised dollar limitations as follows:

National Housing Act High-cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam, and Hawaii:* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, the first entry, Cumberland County, ME, has a one-family limit of $76,000. The combination home lot loan limit for Cumberland County is $76,000×.80, or $60,800.

B. *Section 2(b)(1)(E). Lot only (excluding Alaska, Guam, and Hawaii):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, the first entry, Cumberland County, ME, has a one-family limit of $76,000. The lot loan limit for Cumberland County is $76,000×.20, or $15,200.

C. *Section 2(b)(2). Alaska, Guam, and Hawaii limits:* The maximum dollar limits for Alaska, Guam, and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500×140%).
2. For combination manufactured homes and lots: $75,600 ($54,000×140%).
3. For lots only: $18,900. ($13,500×140%).

II. Title II.—Updating of FHA Section 203(b), 234(c) and 214 Area Wide Mortgage Limits

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Region I (HUD Field Office)				
Bangor Office; Cumberland County	$76,000	$85,500	$104,000	$120,500
Boston Office:				
Bristol County	90,000	101,300	122,650	142,650
Essex County				
Middlesex County				
Norfolk County				
Plymouth County				
Suffolk County				
Worcester County				
Barnstable County	87,400	98,400	119,600	138,000
Berkshire County	72,200	81,300	98,800	114,000
Hartford Office:				
Fairfield County	90,000	101,300	122,650	142,650
Hartford County				
Litchfield County				
New Haven County				
Middlesex County	79,800	89,850	109,200	126,000
New London County				
Tolland County				
Other Areas	71,800	80,900	98,300	113,400
Manchester Office:				
Chittenden County	73,050	82,250	99,950	115,350
Hillsborough County	90,000	101,300	122,650	142,650
Rockingham County				
Providence Office				
Providence, RI PMSA:				
Bristol County	81,450	91,750	111,450	128,600
Kent County	70,650	79,550	96,650	111,550
Newport County	85,850	96,700	117,500	135,550

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Region II (HUD Field Office)				
Caribbean Office:				
San Juan, PR PMSA:				
Barceloneta Municipio	$87,100	$98,100	$119,200	$137,550
Bayamon Municipio				
Canovanas Municipio				
Carolina Municipio				
Catano Municipio				
Corozal Municipio				
Dorado Municipio				
Fajardo Municipio				
Florida Municipio				
Guaynabo Municipio				
Humacao Municipio				
Juncos Municipio				
Las Piedras Municipio				
Loiza Municipio				
Luquillo Municipio				
Manati Municipio				
Naranjito Municipio				
Rio Grande Municipio				
San Juan Municipio				
Toa Alta Municipio				
Toa Baja Municipio				
Trujillo Alto Municipio				
Vega Alta Municipio				
Vega Baja Municipio				
Caguas, PR PMSA:				
Aguas Buenas Municipio	79,400	89,450	108,700	125,400
Caguas Municipio				
Cayey Municipio				
Cidra Municipio				
Gurabo Municipio				
San Lorenzo Municipio				
Mayaguez, PR MSA:				
Anasco Municipio	79,650	89,700	109,000	125,800
Cabo Rojo Municipio				
Hormigueros Municipio				
Mayaguez Municipio				
San German Municipio				
Ponce, PR MSA:				
Juana Diaz Municipio	81,700	92,000	111,800	129,000
Ponce Municipio				
New York Office:				
New York, NY PMSA:				
Bronx County	90,000	101,300	122,650	142,650
Kings County				
New York County				
Putnam County				
Queens County				
Richmond County				
Rockland County				
Westchester County				
Nassau-Suffolk, NY PMSA:				
Nassau County	90,000	101,300	122,650	142,650
Suffolk County				
Albany Office:				
Albany County	85,500	96,300	117,000	135,000
Saratoga County				
Schenectady County				
Dutchess County	90,000	101,300	122,650	142,650
Ulster County				
Onondaga County	84,350	95,000	115,400	133,200
Bergen-Passaic, NJ PMSA:				
Bergen County	90,000	101,300	122,650	142,650
Passaic County				
Jersey City, NJ PMSA: Hudson County	90,000	101,300	122,650	142,650
Middlesex-Somerset-Hunterdon, NJ PMSA:				
Hunterdon County	90,000	101,300	122,650	142,650

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Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Middlesex County				
Somerset County				
Monmouth-Ocean, NJ PMSA: Monmouth County	$90,000	$101,300	$122,650	$142,650
Newark, NJ PMSA:				
Essex County	90,000	101,300	122,650	142,650
Morris County				
Sussex County				
Union County				
Camden Office:				
Atlantic City, NJ PMSA:				
Atlantic County	89,000	100,000	121,000	141,000
Cape May County				
Monmouth-Ocean, NJ PMSA: Ocean County	90,000	101,300	122,650	142,650
Trenton, NJ MSA: Mercer County	70,650	79,550	96,550	111,550
Wilmington, DE-NJ-MD PMSA: Salem County, NJ	70,200	79,100	96,100	110,900
Philadelphia, PA-NJ PMSA:				
Burlington County, NJ	70,650	79,550	96,650	111,550
Camden County, NJ				
Buffalo Office:				
Monroe County	71,250	80,250	97,500	112,000
Region III (HUD Field Office)				
Philadelphia Office:				
Bucks County, PA	81,150	91,400	111,050	128,150
Chester County	90,000	101,300	122,650	142,650
Delaware County	78,850	88,800	107,900	124,500
Montgomery County	77,450	87,200	105,950	122,250
Washington, DC Office:				
Washington, DC–MD–VA MSA:				
District of Columbia	90,000	101,300	122,650	142,650
Montgomery County, MD				
Prince Georges County, MD				
Alexandria City, VA				
Arlington County, VA				
Fairfax County, VA				
Falls Church City, VA				
Loudon County, VA				
Manassas City, VA				
Manassas Park City, VA				
Prince William County, VA				
Baltimore Office:				
Washington, DC–MD–VA MSA:				
Charles County, MD	90,000	101,300	122,650	142,650
Calvert County, MD				
Frederick County, MD				
Baltimore, MD MSA (part):				
Howard County	90,000	101,300	122,650	142,650
Anne Arundel County				
Baltimore, MD MSA (part):				
Baltimore City, MD	81,400	91,700	111,400	128,550
Baltimore County				
Carroll County				
Harford County				
Queen Anne's County				
Wilmington, DE–NJ–MD PMSA: Cecil County, MD	70,200	79,100	96,100	110,900
Other Areas:				
Worcester County, MD	71,250	80,250	97,500	112,500
St. Mary's County, MD	75,500	85,050	103,350	119,250
Richmond Office:				
Washington, DC–MD–VA MSA: Stafford County, VA	90,000	101,300	122,650	142,650
Richmond-Petersburg, VA MSA:				
Charles City County	72,450	81,550	99,100	114,350

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Chesterfield County				
Colonial Heights City				
Dinwiddie County				
Goochland County				
Hanover County				
Henrico County				
Hopewell City				
New Kent County				
Petersburg City				
Powhatan County				
Richmond City				
Norfolk-VA Beach-Newport News, VA MSA:				
Chesapeake City	78,500	88,450	107,450	124,000
Gloucester County				
Hampton City				
James City County				
Newport News City				
Norfolk City				
Poquoson City				
Portsmouth City				
Suffolk City				
Virginia Beach City				
Williamsburg City				
York County	90,000	101,300	122,650	142,650
Other Areas:				
Fauquier	77,900	87,700	106,600	123,000
Albemarle County/Charlottesville City	76,650	86,300	104,900	121,050
Wilmington Office:				
Wilmington, DE–NJ–MD PMSA: New Castle County, DE	70,200	79,100	96,100	110,900
Region IV (HUD Field Office)				
Columbia Office:				
Charleston-North Charleston, SC MSA:				
Berkeley County	80,500	90,500	110,000	127,500
Charleston County				
Dorchester County				
Greenville-Spartanburg, SC MSA:				
Greenville County	72,900	82,100	99,700	115,100
Pickens County				
Spartanburg County				
Charlotte-Gastonia-Rock Hill, NC-SC MSA (part): York County, SC	76,000	85,500	104,000	120,500
Greensboro Office;				
Raleigh-Durham, NC MSA:				
Durham County	75,800	85,350	103,700	119,700
Franklin County				
Orange County				
Wake County	88,800	100,000	121,550	140,250
Charlotte-Gastonia-Rock Hill, NC-SC MSA (part):				
Cabarrus County	76,000	85,500	104,000	120,500
Gaston County				
Lincoln County				
Mecklenburg County	85,000	95,750	116,350	134,250
Rowan County	76,000	85,500	104,000	120,500
Union County				
Other Areas: Guilford County	74,550	83,950	102,050	117,750
Atlanta Office:				
Atlanta, GA MSA:				
Barrow County	85,250	96,000	116,650	134,600

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Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Butts County				
Cherokee County				
Clayton County				
Cobb County				
Coweta County				
DeKalb County				
Douglas County				
Fayette County				
Forsyth County				
Fulton County				
Gwinnet County				
Henry County				
Newton County				
Paulding County				
Rockdale County				
Spalding County				
Walton County				
Augusta, GA-SC MSA:				
Columbia County, GA	75,900	85,450	103,850	119,850
Richmond County, GA				
Birmingham Office:				
Mobile, AL MSA:				
Baldwin County	75,000	84,000	102,500	118,000
Mobile County				
Montgomery, AL MSA:				
Atauga County	75,000	84,000	102,500	118,000
Elmore County				
Montgomery County				
Birmingham, AL MSA:				
Blount County	69,550	78,300	95,150	109,800
Jefferson County				
St. Clair County				
Shelby County	80,000	90,700	110,200	127,200
Walker County	69,550	78,300	95,150	109,800
Knoxville Office:				
Knoxville, TN MSA:				
Anderson County	74,100	83,450	101,400	117,000
Blount County				
Graninger County				
Knox County				
Jefferson County				
Sevier County				
Union County				
Louisville Office:				
Cincinnati, OH-KY-IN PMSA (Part):				
Boone County, KY	80,750	90,950	110,500	127,500
Campbell County, KY				
Kenton County, KY				
Other Areas:				
Fayette County	85,500	96,300	117,000	135,000
Jefferson County	75,050	84,500	102,700	118,500
Memphis Office:				
Memphis, TN-AR-MS MSA:				
Shelby County, TN	87,750	98,850	120,100	138,600
Tipton County TN				
Nashville Office:				
Nashville, TN MSA:				
Cheatham County	86,700	97,650	118,650	136,950
Davidson County				
Dickson County				
Robertson County				
Rutherford County				
Sumner County				
Williamson County				
Wilson County				
Jackson Office:				
Jackson, MS MSA:				
Hinds County	76,000	85,600	104,000	120,000

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Madison County				
Rankin County				
Memphis, TN-AR-MS MSA:				
Desoto County, MS	87,750	98,850	120,100	138,600
Other Areas: Lowndes County	70,200	79,100	96,100	110,900
Coral Gables Office:				
Ft. Lauderdale-Hollywood-Pompano Beach, FL PMSA: Broward County	87,400	98,400	119,600	138,000
Miami-Hialeah, FL PMSA: Dade County	81,800	92,100	111,900	129,100
West Palm Beach-Boca Raton-Delray Beach, FL MSA: Palm Beach County	79,700	89,800	109,100	125,900
Ft. Pierce, FL MSA: Martin County	76,000	85,600	104,000	120,000
Other Areas:				
Collier County	76,000	85,600	104,000	120,000
Monroe County	80,750	90,950	110,500	127,500
Tampa Office:				
Sarasota, FL MSA: Sarasota County	76,100	85,700	104,100	120,100
Tampa-St. Petersburg-Clearwater, FL MSA:				
Hernando County	71,500	80,500	97,900	112,900
Hillsborough County				
Pasco County				
Pinellas County				
Jacksonville Office:				
Jacksonville, FL MSA:				
Clay County	72,800	82,000	99,600	114,950
Duval County				
Nassau County				
St. Johns County				
Orlando Office:				
Orlando, FL MSA:				
Orange County	72,800	82,000	99,600	114,950
Osceola County				
Seminole County	78,850	88,800	107,900	124,500
Region V (HUD Field Office)				
Minneapolis-St. Paul Office:				
Minneapolis-St. Paul, MN MSA:				
Anoka County	90,000	101,300	122,650	142,650
Carver County				
Chisago County				
Dakota County				
Hennepin County				
Isanti County				
Ramsey County				
Scott County				
Washington County				
Wright County				
St. Cloud, MN MSA:				
Benton County	68,500	77,000	93,500	108,500
Sherburn County				
Stearns County				
Fargo-Moorhead, ND-MN MSA: Clay County, MN	77,900	87,750	106,600	123,000
Rochester, MN MSA: Olmstead County	78,850	88,800	107,900	124,500
Milwaukee Office:				
Minneapolis-St. Paul, MN MSA: St. Croix County, WI	90,000	101,300	122,650	142,650
Milwaukee, WI PMSA:				
Milwaukee County	77,800	87,600	106,450	122,850
Ozaukee County				
Washington County				
Waukesha County				
Madison, WI MSA: Dane County	70,800	79,750	96,900	111,800
Chicago Office:				
Chicago, IL PMSA:				
Cook County	87,250	99,300	119,400	137,800
DuPage County				
McHenry County				
Lake County, IL PMSA: Lake County	87,250	99,300	119,400	137,800
Joliet, IL PMSA:				
Grundy County	87,250	99,300	119,400	137,800

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Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Will County				
Aurora-Elgin, IL PMSA:				
Kane County	87,250	99,300	119,400	137,800
Kendall County				
St. Louis, MO-IL PMSA: Monroe County, IL	85,500	96,300	117,000	135,000
East St. Louis-Belleville, IL PMSA:				
Clinton County	85,500	96,300	117,000	135,000
St. Clair County, IL				
Detroit Office:				
Detroit, MI PMSA:				
Lapeer County	75,300	84,800	103,000	118,900
Livingston County				
Macomb County				
Monroe County				
Oakland County				
St. Clair County				
Wayne County				
Ann Arbor, MI PMSA: Washtenaw County	76,800	86,500	105,100	121,250
Cleveland Office:				
Cleveland, OH PMSA:				
Cuyahoga County	75,400	84,900	103,100	119,000
Geauga County				
Lake County				
Medina County				
Columbus Office:				
Columbus, OH MSA:				
Delaware County	81,100	91,400	111,000	128,100
Fairfield County				
Franklin County				
Licking County				
Madison County				
Pickaway County				
Union County				
Cincinnati Office:				
Cincinnati, OH-KY-IN PMSA (part):				
Clermont County, OH	80,750	90,950	110,500	127,500
Hamilton County, OH				
Warren County, OH				
Hamilton-Middleton, OH PMSA: Butler County	80,750	90,950	110,500	127,500
Indianapolis Office:				
Cincinnati, OH-KY-IN PMSA (part): Dearborn County, IN	80,750	90,950	110,500	127,500
Other Areas:				
Hamilton County	80,750	90,950	110,500	127,500
Hendricks County				
Johnson County				
Marion County				
Region VI (HUD Field Office)				
Dallas Office:				
Dallas, TX PMSA:				
Collin County	90,000	101,300	122,650	142,650
Dallas County				
Denton County				
Ellis County				
Kaufman County				
Rockwall County				
Sherman-Denison, TX MSA: Grayson County	78,000	88,000	106,500	124,000
Fort Worth Office:				
Ft. Worth-Arlington, TX PMSA:				
Johnson County	90,000	101,300	122,650	142,650
Parker County				
Tarrant County				
Houston Office:				
Houston, TX PMSA:				
Brazoria County	90,000	101,300	122,650	142,650
Ft. Bend County				
Harris County				
Liberty County				
Montgomery County				
Waller County				

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Other Areas:				
Galveston County	90,000	101,300	122,650	142,650
Angelina County	68,400	77,00	93,600	108,000
Lubbock Office:				
Amarillo, TX MSA:				
Potter County	68,500	77,000	93,500	108,500
Randall County				
Lubbock, TX MSA: Lubbock County	70,000	78,500	95,500	110,500
Midland, TX MSA: Midland County	70,000	78,500	95,500	110,500
San Antonio Office:				
Austin, TX MSA:				
Hays County	90,000	101,300	122,650	142,650
Travis County				
Williamson County				
San Antonio, TX MSA:				
Bexar County	82,750	93,250	113,250	130,700
Comal County				
Guadalupe County				
Corpus Christi, TX MSA:				
Nueces County	70,000	78,500	95,500	110,500
San Patricio County				
Little Rock Office:				
Memphis, TN-AR-MS MSA: Crittenden County, AR	87,750	98,850	120,100	138,600
Oklahoma City Office:				
Oklahoma City, OK MSA:				
Canadian County	72,600	82,000	99,600	114,950
Cleveland County				
Logan County				
McClain County				
Oklahoma County				
Pottawatomie County				
New Orleans Office:				
Baton Rouge, LA MSA:				
Ascension Parish	76,000	85,600	104,000	120,000
East Baton Rouge Parish				
Livingston Parish				
West Baton Rouge Parish				
New Orleans, LA MSA:				
Jefferson Parish	76,000	85,600	104,000	120,000
Orleans Parish				
St. Bernard Parish				
St. Charles Parish				
St. John the Baptist Parish				
St. Tammany Parish				
Other Areas: Lafayette Parish	76,000	85,600	104,000	120,000
Shreveport Office:				
Shreveport, LA MSA:				
Bossier Parish	75,500	85,000	103,300	119,200
Caddo Parish				
Albuquerque Office:				
Albuquerque, NM MSA: Bernalillo County	90,000	101,300	122,650	142,650
Other Areas:				
Santa Fe County	90,000	101,300	122,650	142,650
Los Alamos County				
Tulsa Office:				
Tulsa, OK MSA:				
Creek County	82,500	92,900	112,800	130,300
Osage County				
Rogers County				
Tulsa County				
Wagoner County				
Region VII (HUD Field Office)				
Kansas City Office:				
Kansas City, MO PMSA:				
Cass County, MO	81,600	91,900	111,700	128,900

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Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Clay County, MO				
Jackson County, MO				
Lafayette County, MO				
Platt County, MO				
Ray County, MO				
Kansas City, KS PMSA				
Johnson County, KS	81,600	91,900	111,700	128,900
Leavenworth County, KS				
Miami County, KS				
Wyandotte County, KS				
Other Areas: Shawnee County	69,800	78,600	95,550	110,250
St. Louis Office:				
St. Louis, MO-IL PMSA				
St. Louis City	85,500	96,300	117,000	135,000
Franklin County				
Jefferson County				
St. Charles County				
St. Louis County				
Des Moines Office:				
Des Moines, IA MSA:				
Dallas County	69,300	78,000	94,850	109,450
Polk County				
Warren County				
Omaha, NE-IA MSA (part): Pottawattamie County, IA	78,800	88,750	107,800	124,400
Omaha Office:				
Omaha, NE-IA MSA (part):				
Douglas County, NE	78,800	88,750	107,800	124,400
Sarpy County, NE				
Washington County				
Topeka Office:				
Sedgwick County, KS	76,000	85,500	103,500	120,500
Region VIII (HUD Field Office)				
Denver Office:				
Denver, CO PMSA:				
Adams County	90,000	101,300	122,650	142,650
Arapahoe County				
Denver County				
Douglas County				
Boulder-Longmont, CO PMSA:				
Boulder County	90,000	101,300	122,650	142,650
Jefferson County				
Colorado Springs, CO MSA: El Paso County	85,500	96,300	117,000	135,000
State of Colorado:				
Eagle County	90,000	101,300	122,650	142,650
Elbert County	83,900	94,500	114,850	132,500
Grand County	80,750	90,950	110,500	127,500
Routt County	90,000	101,300	122,650	142,650
Summit County	90,000	101,300	122,650	142,650
Teller County	80,750	90,950	110,500	127,500
Other Areas	71,800	80,900	98,300	113,400
Helena Office:				
State of Montana	75,500	84,000	102,500	118,000
Salt Lake City Office:				
Salt Lake City-Ogden, UT MSA:				
Davis County	80,450	90,600	110,100	127,050
Salt Lake County				
Weber County				
Other Areas: Washington County	75,900	85,450	103,850	119,850
Casper Office:				
State of Wyoming	75,000	84,000	102,500	118,000
Fargo Office:				
Fargo-Moorhead, ND-MN MSA:				
Cass County, ND	77,900	87,750	106,600	123,000
Grand Forks, ND	72,500	81,650	99,250	114,500
Sioux Falls Office:				
Minnehaha County	75,000	84,000	102,500	118,000
Lincoln County				
Pennington County				
Meade County				

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Region IX (HUD Field Office)				
Los Angles Office:				
Los Angeles Office Metro and Non-Metro Areas:				
Los Angeles County	90,000	101,300	122,650	142,650
San Luis Obispo County				
Santa Barbara County				
Ventura County				
San Francisco Office:				
San Francisco Office Metro and Non-Metro Areas:				
Alameda County	90,000	101,300	122,650	142,650
Contra Costa County				
Del Norte County				
Humboldt County				
Lake County				
Marin County				
Mendocino County				
Monterey County				
Napa County				
San Benito County				
San Francisco County				
San Mateo County				
Santa Clara County				
Santa Cruz County				
Solano County				
Sonoma County				
Fresno Office:				
Fresno Office Metro and Non-Metro Areas:				
Fresno County	90,000	101,300	122,650	142,650
Kern County				
Kings County				
Madera County				
Mariposa County				
Merced County				
Stanislaus County				
Tulare County				
Sacramento Office:				
Sacramento Office Metro and Non-Metro Areas:				
Alpine County	90,000	101,300	122,650	142,650
Amador County				
Butte County				
Calaveras County				
Colusa County				
El Dorado County				
Glenn County				
Lassen County				
Modoc County				
Nevada County				
Placer County				
Plumas County				
Sacramento County				
San Joaquin County				
Shasta County				
Sierra County				
Siskiyou County				
Sutter County				
Tehama County				
Trinity County				
Tuolumne County				
Yolo County				
Yuba County				
San Diego Office:				
San Diego Office Metro and Non-Metro Areas:				
Imperial County	90,000	101,300	122,650	142,650
San Diego County				
Santa Ana Office:				
Metro Areas:				
Orange County	90,000	101,300	122,650	142,650
Riverside County				
San Bernardino County				

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Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Non-Metro Areas:				
Inyo County	75,000	84,000	102,500	118,000
Mono County				
Las Vegas Office:				
Las Vegas, NV MSA: Clarke County	90,000	101,300	122,650	142,650
State of Nevada:				
Non-Metro Areas				
Lincoln County	75,000	84,000	102,500	118,000
Nye County (part)				
Reno Office:				
Reno, NV MSA: Washoe County	89,500	101,000	122,000	142,000
State of Nevada Non-Metro Areas:				
Carson City County	75,000	84,000	102,500	118,000
Churchill County				
Douglas County				
Elko County				
Esmeralda County				
Eureka County				
Humbolt County				
Lander County				
Lyon County				
Mineral County				
Nye County (part)				
Pershing County				
Storey County				
White Pine County				
Phoenix Office:				
Phoenix, AZ MSA: Maricopa County	90,000	101,300	122,650	142,650
Other Areas:				
Coconino County	80,750	90,950	110,500	127,500
Pinal County	69,350	78,100	94,900	109,500
Tucson Office:				
Tucson, AZ MSA: Pima County	90,000	101,300	122,650	142,650
Honolulu Office:				
State of Hawaii: Metro and Non-Metro Areas	135,000	151,950	183,950	213,950
Territory of Guam	101,250	114,000	138,000	160,500
Region X (HUD Field Office)				
Seattle Office:				
Seattle, WA PMSA:				
King County	87,750	98,850	120,100	138,600
Snohomish County				
Tacoma, WA PMSA: Pierce County	75,300	84,800	103,050	118,900
Yakima, WA MSA: Yakima County	72,000	81,500	99,000	114,000
Bremerton, WA MSA: Kitsap County	80,200	90,350	109,750	126,650
Portland Office:				
Portland, OR PMSA:				
Clackamas County	86,450	97,350	118,300	136,500
Multnomah County				
Washington County				
Yamhill County				
Vancouver, WA PMSA: Clark County	86,450	97,350	118,300	136,500
All Other Areas	85,200	95,950	116,600	134,550
Anchorage Office:				
State of Alaska: All Areas	135,000	151,950	183,950	213,950
Spokane Office:				
Richland-Kennewick-Pasco, WA MSA:				
Benton County	72,000	81,500	99,000	114,000
Franklin County				
Spokane, WA MSA: Spokane County	72,000	81,500	99,000	114,000
Boise Office:				
Boise City, ID MSA: Ada County	75,000	84,000	102,500	118,000

Dated: September 23, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing—Federal Housing Commission.

[FR Doc. 86-21994 Filed 9-30-86; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E3249/R856] (FRL-3086-8)

Pesticide Tolerance for Triforine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide triforine in or on the raw agricultural commodity asparagus. The regulation to establish a maximum permissible level for residues of triforine in or on asparagus was requested in a petition by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on October 1, 1986.

ADDRESS: Written objections, identified by the document control number [PP 5E3249/R851], may be submitted to the: Hearing Clerk (A-10), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Jack Housenger, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: The EPA issued a proposed rule, published in the **Federal Register** of August 13, 1986 (51 FR 28959), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231,Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 5E3249 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of Arizona and California proposing the establishment of a tolerance for residues of the fungicide triforine (*N,N'*-[1,4-piperazinediylbis (2,2,2-trichloroethylidene)]bis(formamide)) in or on the raw agricultural commodity asparagus at 0.01 part per million (ppm). The petitioner proposed further that: (1) The use on asparagus be limited to Arizona and California based on the geographical representation of the residue data submitted, (2) additional residue data will be required to expand the area of usage, and (3) persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 18, 1986.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.382 is amended by designating the current paragraph and list of tolerances as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 180.382 Triforine; tolerances for residues.

* * * * *

(b) Tolerances with regional registration are established for residues of the fungicide triforine (*N,N'*-[1,4-piperperazinediylbis (2,2,2-trichloroethylidene)[bis (formamide)) in or on the following raw agricultural commodities:

Commodities	Parts per million
Asparagus	0.01

[FR Doc. 86-21823 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6E3451/R853; FRL 3088-7]

Pesticides; Poly-D-Glucosamine; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the biochemical plant growth regulatory poly-*D*-glucosamine (hereafter referred to as chitosan). This exemption was requested by the Natural Ag Division of Bentech Laboratories, Inc., of Albany, Oregon. This rule eliminates the need to establish a maximum permissible level for residues of chitosan in or on the raw agricultural commodity wheat.

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EFFECTIVE DATE: Effective on September 15, 1986.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: By Mail:

Richard F. Mountfort, Product Manager (PM–23), Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of September 15, 1986 (51 FR 32684), which announced that Natural Ag. Division of Bentech Laboratories, Inc., had submitted a pesticide petition 6E3451 to the EPA. The petition proposed that an exemption from the requirement for a tolerance be established for residues of the biochemical plant growth regulator chitosan in or on the raw agricultural commodity wheat.

Chitosan is a naturally occurring substance and is produced from chitin extracts of crustacean shells (e.g., crab, shrimp and lobster). The product is intended for use as a seed treatment of wheat seeds to stimulate plant root growth and enhance the strength of wheat stems. Stronger wheat stems prevent lodging (when the plant falls over because weak stems are unable to support it). Wheat plants which lodge are difficult to harvest and therefore may decrease crop yields.

The applicant states that chitosan's mode of activity involves augmenting the function of plant genes by enhancing the immunity system of plants. The chemical is taken up by plant cells where it enters the nucleus and stimulates messenger RNA and enzyme production. In the case of wheat, such enzymes are thought to be responsible for stimulating the plant to produce more lignin in the stems, resulting in stronger stems and decreased lodging.

In support of its request, the applicant noted that chitosan (1) is not toxic to humans and animals; (2) naturally occurs in the environment in large concentrations; (3) has been exempted from regulation by the Food and Drug Administration (FDA) when used as a food or feed additive; and (4) has been approved by the State of Oregon for use in unrestricted amounts as a soil amendment (fertilizer), a use not regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act.

The Agency has evaluated the toxicological data and other materials submitted in support of the proposed exemption from the requirements for a tolerance. They included an acute oral feeding study in mice, an acute oral toxicity study in rats, an acute eye irritation study with rabbits, and other published literature and items discussing the permitted uses and toxicity of chitosan. The results of these studies consistently show that chitosan is not toxic.

The applicant also submitted information from the U.S. Fish and Wildlife Service concerning a study conducted to assess the toxicity of chitosan to fish. The results of this study showed that chitosan is relatively non-toxic to small echo fingerlings.

The applicant also submitted residue information showing that use of the aqueous chitosan solution on wheat seed (0.4 oz./100 lb. of seed) is not expected to result in detectable levels of chitosan in or on food or feed. The applicant stated that he reached this conclusion on the basis of information demonstrating that chitin is the second most abundant organic compound found in the Earth's surface. It is commonly found in insects, fungi, micro-fauna, and plankton. Some fungi are known to produce significant quantities of chitin, some of which (roughly 16 percent) breaks down to chitosan. Studies show that naturally-occurring chitosan is contributed to the soil by live wheat pathogens (fungi), such as *F. Culmorum* and *Fusarium*. According to the applicant, these fungi produce massive amounts of chitosan in the soil. The applicant reported that *F. Culmorum* alone has been shown to contribute at least 24.654 grams of chitosan per acre of top soil. Based on the applicant's recommended application rate (04. oz./100 lb. of seed), 10 micrograms of chitosan would be present per plant, and would add 6.8 grams of chitosan per acre to the soil. (Approximately, 60 lbs. of wheat seed is used to plant one acre.) Compared to the naturally-occurring concentrations of chitosan, it appears that the contribution from treated seed would be insignificant. The applicant also states that most of the chitosan applied to wheat seed does not enter the plant, but instead, remains in the soil and decays with the expended seed. Finally, because naturally-occurring chitosan is so ubiquitous, the applicant asserts that it would be difficult to develop a method which could accurately determine whether any chitosan residue levels in wheat resulted from treated seed or from the naturally-occurring substance.

Scientific literature submitted by the applicant shows that chitosan products are permitted to be used in food as hypocholesterolemic agents, as dietary fiber, in low calorie diets, and as agents to increase the specific loaf volume of bread. Chitosan has also been exempted from regulation by the FDA for use as a livestock feed additive.

Acceptable daily intake (ADI) and miximum permissible intake (MPI) considerations are not relevant to this exemption. No enforcement actions are anticipated. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biochemical plant growth regulator.

This biochemical plant growth regulator is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the data and information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: September 15, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1072 is added to read as follows:

§ 180.1072 Poly-D-glucosamine; exemption from the requirement of tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical plant growth regulator poly-*D*-glucosamine in or on the raw agricultural commodity wheat.

[FR Doc. 86–22124 Filed 9–30–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC–331–FC]

Medicare Program; Determination of Reasonable Charges for Physician and Other Medical Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule revises the Medicare regulations to change the date for updating the reasonable charge levels applicable to physician and other medical services under the Medicare Supplementary Medical Insurance Program (Part B). We also are adding a provision to explain that the annual economic index that would have been used to determine the amount of any increase in physician prevailing charges from July 1, 1984 through September 30, 1985, and that, through the usual manner, would be used to increase the prevailing charges in subsequent years, is permanently relinquished. In addition, we are adding a provision to reflect the difference between prevailing charges for participating and nonparticipating physicians. These changes implement certain provisions of section 2306(a) of the Deficit Reduction Act of 1984 (DRA) (Pub. L. 98–369) and sections 9301 (b) and (d) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272), and make other conforming changes.

DATES: This rule is effective October 1, 1986. This rule is being issued in final for reasons explained in the Waiver of Proposed Rulemaking in the Supplementary Information section below. However, we will consider comments that we receive at the appropriate address, as provided below no later than 5:00 p.m. on December 1, 1986.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–331–FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC., or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–331–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Janet McNair, 301–597–6339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1842(b)(3) of the Social Security Act (the Act) provides that payment under the Medicare Supplementary Medical Insurance Program (Part B) for physician and other medical services must be based on a reasonable charge. Section 1842(b)(3) also requires that in determining the reasonable charge the Medicare carrier must take into consideration the customary charges for similar services generally made by the physician or supplier furnishing the service, as well as the prevailing charges in the locality for similar services. Before enactment of the Deficit Reduction Act of 1984 (DRA) (Pub. L. 98–369, July 18, 1984), section 1842(b) of the Act provided that the customary and prevailing charge levels that are used to determine the reasonable charge must be updated at the beginning of each 12-month period (referred to in our regulations as a "fee screen year") beginning on July 1. These charge levels were based on charges of physicians and other suppliers during the immediately preceding calendar year.

II. Reasonable Charge Update Changes

Section 2306(b) of the DRA and section 9301(d) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272; April 7, 1986) (COBRA) both amend section 1842(b) of the Act to revise the date of which customary and prevailing reasonable charge updates occur and the actual charge year period on which the updates or charges are based. The DRA moved the date of the update from July 1 to October 1, and COBRA moved it from October 1 to January 1, COBRA also delayed the scheduled October 1, 1986 update for lowest charge level (LCL) charges until January 1, 1987.

As a result of the enactment of COBRA, the next update of customary and prevailing charges will occur on January 1, 1987. Any October 1, 1986 updates are eliminated and services furnished during the period October 1, 1986 to December 31, 1986 are subject to reasonable charge screens in effect on September 30, 1986.

Physician Customary and Prevailing Charges

For services furnished on or after January 1, 1987, updated screens will apply. Subsequent updates will also occur on January 1 of each year. Those updates will be based on charges in the 12-month period ending on the immediately preceding June 30. However, consistent with other provisions of section 1842(b) of the Social Security Act, there will be limits on the charges to be recognized for physicians who were nonparticipating physicians (i.e., physicians who have not signed an agreement with us to accept assignment on all Medicare claims) during the applicable charge year. Specifically, in calculating customary charges to be applicable during the 12-month periods beginning January 1, 1987 and January 1, 1988, a portion of any charges made by a nonparticipating physician during the fee freeze will not be recognized to the extent that it exceeds the physician's charge level for a particular service during the quarter ending June 30, 1984. We notified the Medicare carriers in March to inform physicians and suppliers of the new cycle.

As noted earlier, there have been other prevailing and customary charge update cycles before those enacted by the DRA and COBRA. Before section

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1842(b) of the Act was revised by the DRA, the Medicare fee screen year was from July 1 to June 30, the customary and prevailing charge screens were based on charges made during the immediately preceding calendar year. With the enactment of the DRA, the new fee screen year became October 1 to September 30 and the screens were based on charges from April 1 to March 31.

As a result of the DRA, the update that under prior law would have occurred in July 1984 did not occur. For physicians, fee levels remained the same as those established in July 1983 because the DRA included a freeze on physician customary and prevailing charges which precluded a 1984 update.

The DRA also provided that the Medicare economic index adjustment to the prevailing charge, which was not implemented during the first 15 months of the freeze on prevailing charge increases, will never be reflected in subsequent adjusted prevailing charges. In other words, the economic index adjustment for the period beginning July 1, 1984 and continuing until September 30, 1985, which was not made because of the freeze, will be forever relinquished in subsequent calculations of adjusted prevailing charges.

The October 1985 physician customary and prevailing charge screen update did not occur due to extension of the DRA physician fee freeze provisions through April 30, 1986 by subsequent legislation [Pub. L. 99–135, enacted November 14, 1985, extended the delay through December 14, 1985; Pub. L. 99–161, enacted December 13, 1985, extended the delay through December 16, 1985; Pub. L. 99–169, enacted December 18, 1985, extended the delay through December 19, 1985; Pub. L. 99–201 enacted December 28, 1985, extended the delay through March 14, 1986; and Pub. L. 99–272 (COBRA) extended the delay through April 30, 1986). COBRA mandated an update for some physicians (depending on their status as "participating" physicians) effective May 1, 1986.

Section 9301(d) of COBRA includes provisions that affect the fee screen years of physicians and suppliers and the dates on which updates occur. A major consequence of this section of COBRA is to move the date on which updates occur from October to January. The statute makes a corresponding change in charge years (i.e., the period on which fee screens are based) to maintain the relationship that a charge year ends six months before the update or the beginning of the fee screen year. Consequently, the charge year is the 12-month period of July 1 through June 30 preceding the January 1 update. The change in the update cycle and charge years on which it is based is applicable to services furnished beginning October 1, 1986 and is the same for determining customary charges and prevailing charges.

COBRA adds another limitation on the prevailing charge. For services furnished on or after January 1, 1987, the prevailing charge of any physician who is nonparticipating at the time of furnishing the service cannot exceed the prevailing charge applicable in the prior year to services furnished by participating physicians. Thus, there is to be a continual differential between the prevailing charges applicable to participating and nonparticipating physicians.

Suppliers Customary and Prevailing Charges

For services furnished on or after January 1, 1987, an updated screen will apply. Subsequent updates will also occur on January 1 of each year. Those updates will be based on charges in the 12-month period ending on the immediately preceding June 30.

As noted earlier, there have been other prevailing and customary charge update cycles before those enacted by the DRA and COBRA. Before section 1842(b) of the Act was revised by the DRA on July 18, 1984, the Medicare fee screen year was from July 1 to June 30; the customary and prevailing charge screens were based on charges made during the immediately preceding calendar year. With the enactment of the DRA, after the July 1984 update occurred, the new fee screen year became October 1 to September 30 and the screens were based on charges from April 1 to March 31.

A new reasonable charge screen, known as the inflation-indexed charge (IIC), was implemented by regulations (42 CFR 405.509) on October 1, 1985 (50 FR 40174). The IIC is defined as the lowest reasonable charge screen (i.e., IIC, customary charge fee screen, prevailing charge fee screen, or lowest charge level fee screen) for a service from the prior fee screen year, adjusted for inflation. For the inflation-indexed charges that went into effect for fiscal year 1986, the adjustment factor was zero. Therefore, for nonphysician services furnished during the period beginning October 1985, payment is limited by whatever constituted the prior fee screen year's lowest charge screen, with no increase (a zero adjustment factor) for inflation. Consequently, use of the customary and prevailing charges update methodology effective October 1985 could not increase payment levels above the prior year's lowest fee screen level.

Also, under our regulations at 42 CFR 405.511(c), for items and services subject to the lowest charge level (LCL) furnished on or before September 30, 1986, an LCL is to be calculated in January and July of each year, and, for items and services furnished on or after October 1, 1986 an LCL is calculated in October of each year. Due to application of the IIC provision, any increase in the LCL as a result of the July 1986 update could not increase the Medicare allowance. Therefore, no July updates occurred.

Under our regulations at 42 CFR 405.509, determining the inflation-indexed charge, the next IIC update occurs "[f]or fee screen years beginning on or after October 1, 1986." Under COBRA, the next such updates will occur on January 1, 1987. Fee screen years are the same for all reasonable charge screens. For example, a change in the fee screen year for customary charges also changes the fee screen year for all other reasonable charge screens including the IIC. (See, for example, 50 FR 33324 and 40168.) Consequently, with the enactment of COBRA, we notified carriers in March, 1986 to inform suppliers whose reasonable charges are subject to the IIC screen that no updates will occur in October 1986 and that the next updates will occur, as with the other screens, on January 1, 1987.

III. New Provisions of the Regulations

A. Update Cycles

The revisions of section 2306(b) of the DRA were made obsolete by section 9301(d) of COBRA. Therefore, for the update cycle, these regulations include only the COBRA provisions.

1. We are revising current regulations at 42 CFR 405.501(c) (relating to determination of reasonable charges) and 405.504(a)(2)(ii)(A) and (B), (a)(3)(i)(B) Example and (a)(3)(ii)(B) (relating to determining prevailing charges) to reflect the statutory changes to show that, beginning with services furnished on or after October 1, 1986, the fee screen year is updated on January 1 and the updates are computed on the basis of charges for services during the prior period July 1 through June 30. These revisions conform to our regulations with changes required by the law as described in this preamble.

2. As part of the Medicare carrier procedures for determining reasonable charges for physician services, our regulations at 42 CFR 405.551 specify how to calculate reasonable charges for physicians who are compensated by or through a provider or other related organization under a physician compensation agreement. Section 405.551(e) provides that, if a physician ends his compensation agreement and, instead, bills patients on his own, the customary charge is determined on the basis of the former compensation agreement until the carrier has accumulated charge data for at least 3 months of the calendar year preceding the annual reasonable charge update. Since the calendar year is no longer the period for which data are used to compute the prevailing charges, we are making a conforming change in § 405.551(e) to make the time period consistent with the statute; i.e., July 1 through June 30.

These regulations also implement cycle changes for other reasonable charge screens. Those screens are the inflation-indexed charge and the lowest charge level screens. Those screens specifically reference the "fee screen year", which has been changed by COBRA. Thus, these regulations include the inflation-indexed charge and the lowest charge level screens in order to maintain the practice of having all reasonable charge screens on the same cycle.

3. We pay for some Part B services and items at a level that is no higher than the 25th percentile of the charges for a given item or service in the locality. Prior to COBRA, the charges were those incurred during the three-month period of April 1 through June 30 preceding the fee screen year (October through September), this fee screen year period implements section 2306(b) of the DRA. In conforming this section to the COBRA revisions, we are maintaining the relationship between the two time periods, that is, we will continue to base the lowest charge level on claims processed during the second calendar quarter preceding the fee screen year. We are revising the dates in § 405.511 to coincide with revised fee screen years and other dates discussed in detail in this preamble. January LCL updates will be effective January 1, 1987; there will be no October 1986 update.

4. As stated earlier, when we update reasonable charge screens for other than physician services each year, we take into account an inflation-indexed factor. Section 405.509 discusses the inflation adjustment factor in terms of the fee screen year, which is a term based on the statutory cycle for customary and prevailing charges and used consistently throughout our regulations. The regulations provide at § 405.509(b)(1) "[f]or the screen years beginning on or after October 1, 1986". Since the fee screen year has been changed, we are updating the references in § 405.509(a) to conform the fee screen years to those in effect beginning January 1987. We revise all references to fee screen years ending September 30 to December 31, in paragraphs (a) and (b)(1). The change in date of application of the inflation adjustment factor in paragraph (b)(1) by one calendar quarter results in a conforming delay in use of Bureau of Labor Statistics data for the period ending June 30 instead of March 31.

We are also revising § 405.509(b)(2) to conform to the update cycle occurring in January. In current § 405.509(b)(2) the application of the inflation adjustment factor for services, supplies and equipment during fiscal year 1986 is zero. This provision was added on October 1, 1985. (50 FR 40174). Our revision retains use of a zero adjustment factor through December 1986, which is an additional three months; i.e., from October 1, 1986 to January 1, 1987. These changes are a necessary result of the three-month delay for customary and prevailing charge updates mandated by COBRA.

B. Limitations on Prevailing Charges

1. To incorporate in our regulations the requirements of section 2306(a) of DRA, we are adding to § 405.504(a)(3)(ii)(A) a provision to indicate that the prevailing charges for physicians' services furnished during the 15-month period beginning July 1, 1984 may not exceed the prevailing charge for physicians' services in effect for the 12-month period beginning July 1, 1983. These regulations indicate subsequent increases may not reflect the rise in the economic index that would have otherwise been provided for the period beginning July 1, 1984.

2. To incorporate the requirements of section 9301(b)(2) of COBRA, we are revising our regulations to add a new paragraph (a) to § 405.504 to indicate that prevailing charges for nonparticipating physicians will be no higher than those for participating physicians the previous fee screen year. Also, consistent with the definition of "participating physician" in section 1842(h) of the statute, we are defining a nonparticipating physician as one who does not meet that definition. In effect, a "nonparticipating physician" is one who has not entered into an agreement to accept payment on an assignment-related basis for all items and services furnished to individuals enrolled under Part B during a given calendar year (the period for which physicians agree to participate).

IV. Waiver of Notice of Proposed Rulemaking and 30-Day Delay in Effective Date

We have not issued a proposed rule on the provisions in these regulations and we are publishing a final rule less than 30 days before its effective date because the amendments simply conform the Medicare regulations to the revisions to section 1842(b) of the Act made by section 2306 (a) and (b) of the DRA and section 9301 (b) and (d) of COBRA. Thus, we believe the changes would take effect even without the publication of this rule. We in any case find good cause to issue this final rule without prior notice and comment and without a 30-day delay in effective date because additional delay would be both unnecessary and contrary to the public interest. Additional delay is unnecessary because these changes with respect to the customary, prevailing, and LCL charge levels merely conform the regulations to the statute, which is, in any event, effective as provided in COBRA. Section 2306(b)(1) of the DRA and section 9301(d) of COBRA are specific concerning the update periods for customary and prevailing charge levels and the delay in the annual update for LCL charge levels, and leave virtually no discretion for interpretation with respect to those update periods. The IIC update is a necessary result of the COBRA changes in that the rules expressly tie the next IIC update to the fee screen year and the next fee screen year begins January, 1987, by virtue of COBRA. Further delay would be contrary to the public interest in that different update cycles for different screens (or update cycles different from published regulations) would promote confusion and inefficiency among suppliers and carriers.

Finally, in March and April, 1986, carriers gave suppliers and physicians actual written notice that reasonable charge screens (including, for suppliers, the IIC) would not be updated until January, 1987. Thus, we are publishing these amended regulations without proposed rulemaking. We have established a sixty-day comment period effective upon publication of the rule, however, and welcome comments on the rule.

Because the suppliers and physicians received actual notice of the substance of the rule and because the compelling purposes described above would be served by implementing these rules on October 1, 1986, we find good cause to publish this final rule at this time with an effective date of October 1, 1986.

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V. Regulatory Impact Statement

Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis on any major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) U.S.C. 601 through 612, we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. We consider all physicians and suppliers paid under Part B of the program and affected by this rule to be small entities. However, this regulation, in itself, will not have a significant effect on payment to these entities. Therefore, this regulation does not meet the criteria of Executive Order 12291. Also, we have determined, and the Secretary certifies, that this regulation will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

These changes do not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VII. Response to comments

Because of the large number of pieces of correspondence we normally receive on regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period. If changes to these regulations result from consideration of comments, we will publish all timely comments and our response in the preamble to the revised rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (agreements), Cost-based reimbursement, End-stage renal disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMOs), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare Nursing homes, Onsite surveys, Outpatient providers, Prospective payment system, Reasonable charges, Reporting and recordkeeping requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405 is amended as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for Subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886 and 1887 of the Social Security Act, as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (iv), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww and 1395xx).

2. Section 405.501 is amended by revising paragraph (c) to read as follows:

§ 405.501 Determination of reasonable charges.

* * * * *

(c) Carriers will determine the reasonable charge on the basis of the criteria specified in § 405.502, and the customary and prevailing charge screens in effect when the service was furnished. (Also see § 405.480 through 405.482 and §§ 405.550 through 405.557, which pertain to the determination of reimbursement for services performed by hospital-based physicians.) However, when services are furnished more than 12 months before the beginning of the fee screen year (January through December 30) in which a request for payment is made, payment is based on the customary and prevailing charge screens in effect for the fee screen year that ends immediately preceding the fee screen year in which the claim or request for payment is made.

3. In § 405.504, the introductory language in paragraphs (a)(2), (a)(2)(ii) and (a)(3)(i) is reprinted for reader comprehension, paragraph (a)(1) is added and paragraphs (a)(2)(ii)(A) and (B), (a)(3)(i)(B) Example, and (a)(3)(ii)(A) and (B) are revised to read as follows:

§ 405.504 Determining prevailing charges.

(a) *Ranges of charges.* (1) In the case of physicians' services furnished beginning January 1, 1987, the prevailing charges for a nonparticipating physician as defined in this paragraph will be no higher than the same level that was set for services furnished during the previous calendar year for a physician who was a participating physician during that year. A nonparticipating physician is a physician who has not entered into an agreement with the Medicare program to accept payment on an assignment-related basis (see §§ 405.1684, 405.1685 and 405.1675) for all items and services furnished to individuals enrolled under Part B of Medicare during a given calendar year.

(2) No charge for Part B medical or other health services may be considered to be reasonable if it exceeds the higher of:

* * * * *

(ii) The prevailing charge that, on the basis of statistical data and methodology acceptable to HCFA, would cover:

(A) 75 percent of the customary charges made for similar services in the same locality during the 12-month period of July 1 through June 30 preceding the fee screen year (January 1 through December 31) in which the service was furnished; or

(B) In the case of services furnished more than 12 months before the beginning of the fee screen year (January 1 through December 31) in which the claim or request for payment is submitted, 75 percent of the customary charges made for similar services in the same locality during the 12 month period of July 1 through June 30 preceding the fee screen year that ends immediately preceding the fee screen year in which the claim or request for payment is submitted.

(3)(i) In the case of physicians' services, each prevailing charge in each locality may not exceed the prevailing charge determined for the fiscal year ending June 30, 1973 (without reference to the adjustments made pursuant to the economic stabilization program then in effect), except on the basis of appropriate economic index data which demonstrate that such higher prevailing charge level is justified by:

* * * * *

(B) * * *

Example. The available data indicate the office-expense and earnings components of the index should be given relative weights of 40 percent and 60 percent, respectively, and it is calculated that the aggregate increase in expenses of practice for a particular July through June period was 112 percent over the expenses of practice for calendar year 1971 and the increase in earnings (less increases in workers' productivity) was 110 percent over the earnings for calendar year 1971. The allowable increase in any prevailing charge that could be recognized during the next fee screen year would be 110.8 percent ((.40×112)+(.60)×110)=110.8) above the prevailing charge recognized for fiscal year 1973.

(ii)(A) If the increase in the prevailing charge in a locality for a particular physician service resulting from an aggregate increase in customary charges for that service does not exceed the index determined under paragraph (a)(3)(i) of this section, the increase is permitted and any portion of the allowable increase not used is carried forward and is a basis for justifying increases in that prevailing charge in the future. However, if the increase in the prevailing charge exceeds the allowable increase, the increase will be reduced to the allowable amount. Further increases will be justified only to the degree that they do not exceed further rises in the economic index. The prevailing charge for physicians' services furnished during the 15-month period beginning July 1, 1984 may not exceed the prevailing charge for physicians' services in effect for the 12-month period beginning July 1, 1983. The increase in prevailing charges for physicians' services for subsequent fee screen years similarly may not reflect the rise in the economic index that would have otherwise been provided for the period beginning July 1, 1984, and must be treated as having fully provided for the rise in the economic index which would have been otherwise taken into account.

(B) Notwithstanding the provisions of paragraphs (a)(3)(i) and (a)(ii)(A) of this section, the prevailing charge in the case of a physician service in a particular locality determined pursuant to paragraphs (a)(2) and (3)(i) of this section for the fiscal year beginning July 1, 1975, and for any subsequent fee screen years, if lower than the prevailing charge for the fiscal year ending June 30, 1975, by reason of the application of economic index data, must be raised to such prevailing charge which was in effect for the fiscal year ending June 30, 1975. (If the amount paid on any claim processed by a carrier after the original reasonable charge update for the fiscal year beginning July 1, 1975, and prior to the adjustments required by the preceding sentence, was at least $1 less than the amount due pursuant to the preceding sentence, the difference between the amount previously paid and the amount due shall be paid within 6 months after December 31, 1975; however, no payment shall be made on any claim where the difference between the amount previously and the amount due shall be paid within 6 months after December 31, 1975; however, no payment shall be made on any claim where the difference between the amount previously paid and the amount due is less that $1.)

* * * * *

4. Section 405.509 is revised to read as follows:

§ 405.509 Determining the inflation-indexed charge.

(a) *Definition.* For purposes of this section, "inflation-indexed charge" means the lowest of the fee screens used to determine reasonable charges (as determined in § 405.503 for the customary charge, § 405.504 for the prevailing charge, this section for the inflation-indexed charge, and § 405.11 for the lowest charge level) for services, supplies, and equipment reimbursed on a reasonable charge basis (excluding physicians' services), that is in effect on December 31 of the previous fee screen year, updated by the inflation adjustment factor, as described in paragraph (b) of this section.

(b) *Application of inflation adjustment factor to determine inflation-indexed charge.* (1) For fee screen years beginning on or after January 1, 1987, the inflation-indexed charge is determined by updating the fee screen used to determine the reasonable charges in effect on December 31 of the previous fee screen year by application of an inflation adjustment factor, that is, the annual change in the level of the consumer price index for all urban consumers, as compiled by the Bureau of Labor Statistics, for the 12-month period ending on June 30 of each year.

(2) For services, supplies, and equipment furnished from October 1, 1985 through December 31, 1986 the inflation adjustment factor is zero.

5. In § 405.511, paragraph (c) is reprinted for the convenience of the reader, and the heading of paragraph (c)(1) and (c)(2) are revised to read as follows:

§ 405.511 Reasonable charges for medical services, supplies and equipment.

* * * * *

(c) *Calculating the lowest charge level.* The lowest charge level at which an item or service is widely and consistently available in a locality is calculated by the carrier in accordance with instructions from HCFA as follows:

(1) *For items or services furnished on or before December 31, 1986.*

* * * * *

(2) *For items or services furnished on or after* January 1, 1987.

(i) A lowest charge level is calculated for each identified item or service in January of each year.

(ii) The lowest charge level for each identified item or service is set at the 25th percentile of the charges (incurred or submitted on claims processed by the carrier) for that item or service, in the locality designated by the carrier for this purpose, during the 3-month period of July 1 through September 30 preceding the fee screen year (January through December 31) for which the item or service was furnished.

6. Section 405.551 is amended by revising paragraph (e) to read as follows:

§ 405.551 Reasonable charges for physician services in providers: General provisions.

* * * * *

(e) *Charge of agreements.* If a physician who has been compensated by or through a provider (or other entity) for physician services to individual patients ends his or her compensation agreement and instead bills all patients, or their insurers, directly for his or her services, the carrier will determine the physician's customary charges on the basis of the former compensation agreement until the carrier has accumulated charge data from at least 3 months of the 12 month period of July 1 through June 30 preceding the January 1 annual reasonable charge update. However, if a physician terminates a direct billing arrangement and enters into a compensation agreement with a provider, the carrier will determine compensation-related customary charges in accordance with paragraph (d) of this section except that during the first year, the total payments made on the basis of the compensation-related charges may not exceed what total payment would have been under the physician's former direct billing practice.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 12, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 25, 1986.

Otis R. Bowen,

Secretary.

[FR Doc 86-22161 Filed 9-30-86; 8:45 am]

BILLING CODE 4120-01-M

42 CFR Parts 405 and 412

[BERC-353-CN]

Medicare Program; Changes to the Inpatient Hospital Prospective, Payment System and FY 1987 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule, published September 3, 1986 (51 FR 31454), that revised the inpatient hospital prospective payment system and set forth the fiscal year 1987 rates for that system.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION:

In FR Doc. 86-19661, beginning on page 31454 in the issue of September 3, 1986, make the following corrections:

1. On page 31455, in the third column, in the third line of the fourth full paragraph, the phrase "FY 1985" is corrected to read "FY 1986".

2. On page 31464, in the first column, in the fourteenth line of the first paragraph, the second multiplication sign should be an addition sign. Therefore, the line is corrected to read "(2560×.8000)+640 or $2688 per."

3. On page 31471, in the third column, to correct a misalignment of information, the seventh and eighth lines from the top are corrected to read as follows:

(1.00−.1051=.8949)
6,000 times .8949=5,369

4. On page 31474, in the table that begins near the top of the second column, the regional case-mix index value for Region 6 ("1.1642") is corrected to read "1.1206". In the first full paragraph of the second column, the second sentence is corrected and a third sentence is added to read as follows:

However, because the actual median urban case-mix index values for Region 6 (1.1642) and Region 7 (1.1165) for Federal FY 1985 exceeded the benchmarks that we published in the September 3, 1985 final rule (which at that time applied to discharges in Federal FY 1985), and because we are publishing these standards in this final rule without opportunity for prior public comment, we have used, for these two regions, the lower case-mix index values published September 3, 1985 (50 FR 35676) so as not to disadvantage hospitals in those regions. We note that the actual median urban case-mix index value for Region 8 (1.1904) exceeded the September 3, 1985 benchmark (1.1579); however, we are not incorporating the September 3, 1985 value because the national case-mix index value (1.1275) is lower than either of the Region 8 values and thus no hospitals in that region are disadvantaged.

5. On page 31488, in the second column, the seventeenth line of the last paragraph, a parenthesis is added before the word "as".

§ 412.96 [Corrected]

6. On page 31497, in the second column, in § 412.96(h)(2), the phrase "paragraphs (h)(1) and (h)(2)" in the second and third lines is corrected to read "paragraph (h)(1)".

§ 412.113 [Corrected]

7. On page 31497, in the third column, in § 412.113(d) the word "*center*" in the title is corrected to read "*centers*"; the word "Payments" in the third line is corrected to read "Payment"; the word "are" in the sixth line is corrected to read "as".

8. On page 31500, in the second and third columns, we reiterate that the .405 and .5795 factors in the two formulas and exponents, and the formulas are corrected to read as follows:

$$2 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.405} - 1\right]$$

$$1.5 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.5795} - 1\right]$$

9. On page 31512, in the first and second colums, to reflect the correct arrangement of the values in Table 1, we are presenting a revised Table 1 as follows:

TABLE 1.—AVERAGE MEDICARE PAYMENTS PER DAY AND PER ADMISSION

Calendar year expense incurred	Medicare payments per day				Medicare payments per admission			
	Nominal Amount	Percent change	Real amount	Percent change in real	Nominal amount	Percent change	Real amount	Percent change in real
1978	$182		$262		$1,954		$2,834	
1979	204	12.5	271	3.3	2,116	7.7	2,807	−1.1
1980	232	13.4	275	1.5	2,459	16.2	2,917	3.9
1981	269	15.8	289	5.2	2,806	14.2	3,026	3.6
1982	314	16.9	314	8.6	3,227	14.9	3,227	6.7
1983	353	12.5	335	6.7	3,497	8.4	3,315	2.8
1984	441	25.0	399	19.2	3,931	12.4	3,551	7.2
1985	514	16.5	447	12.4	4,297	9.3	3,740	5.5
Average rate of growth per year:								
78–83 (Pre-PPS)		14.2		5.1		12.3		3.2
84–85 (Post-PPS)		20.7		15.8		10.9		6.4

Source: HCFA, Office of the Actuary. Data derived from calculations done in preparation of the Trustee's Report.
Notes: 1. Medicare payments include program benefit payments and beneficiary liabilities.
2. The "Real" column represents the payment per day or per admission deflated by HCFA's Hospital Input Price Index to remove the effects of price inflation.

10. On page 31522, in the first column, the table is corrected by moving the State abbreviations for Regions 8 and 9 out of the "Urban" column and to the "Region" column under Regions 8 and 9.

11. On page 31523, in the second column, in the fourth line of the second full paragraph, add the following phrase after the word "deviations":

"beyond the geometric mean length of stay."

12. On page 31524, in the third column, remove the comma at the end of the first line and remove the words "including capital" in the second line. At the end of the third line, move the parenthesis to the beginning of the fourth line so that the fourth line is corrected to read "($13,500×.2561)=$19,914.24".

13. On page 31574, in Table 5, under the ARITHMETIC MEAN LOS, GEOMETRIC MEAN LOS, and OUTLIER THRESHOLD columns the values for DRGS 469 and 470 are corrected to read "0".

14. On page 31576, in the second column, in the revised surgical hierarchy for MDC 3, the DRG numbers for tonsillectomy and/or adenoidectomy procedures are corrected to read as follows: "Tonsillectomy and/or adenoidectomy only (DRGs 59 & 60). Tonsil and adenoid procedures except tonsillectomy and/or adenoidectomy only (DRGs 57 & 58)".

15. On page 31577, in the second column, in the revised surgical hierarchy for MDC 6, several DRG numbers were inadvertently omitted. Add "& DRG 156" to "Stomach, esophageal and duodenal procedures". Add "& DRG 163" to "Hernia procedures". Add "& DRG 171" to other digestive system operating room procedures.

16. On page 31580, in the second column, in the fifth line under the second indented point, codes "6830, 6840, and 6850" are corrected to read "683, 684, and 685".

17. On page 31594, in the second column, in the second paragraph under the first indented point, in the eighth line, the word "proposing" is corrected to read "implementing".

(Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a-1, 1395hh, and 1395ww))

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Dated: September 25, 1986.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-22160 Filed 9-30-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2588; AA-140-06-4830-11]

Application Procedures; Amendment of List of Addresses of State Offices

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends 43 CFR Part 1820 to reflect the reorganization of the Bureau of Land Management in Alaska into 5 districts. It amends the list of State Office Addresses to remove the references to the Fairbanks District Office and to the separate addresses for Northern and Southern Alaska.

EFFECTIVE DATE: October 1, 1986.

ADDRESS: Any inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, Room 5555 MIB, 1800 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Eleanor R. Schwartz, (202)-343-8735.

SUPPLEMENTARY INFORMATION: This final rulemaking reflects the administrative action of reorganizing the Bureau of Land Management in Alaska into 5 districts. Because of the Alaska reorganization it removes the reference to the Fairbanks District Office and the division of the State into 2 regions. It makes no other changes in filing requirements that are spelled out in Subpart 1821. Therefore, this amendment is published as a final rulemaking with the effective date shown above.

Within 90 days after the effective date of this rulemaking, the Alaska State Office will publish in the **Federal Register** a notice of the reorganization, setting forth the addresses of the new district offices and their areas of management jurisdiction. Also, as stated at the end of the list of addresses in § 1821.2-1, the new addresses may be obtained from the Alaska State Office or the Washington Office of the Bureau of Land Management.

The Department of the Interior has determined that because this rule is an administrative action, it is not a major rule for purposes of E.O. 12291, and neither an environmental impact analysis nor a regulatory flexibility analysis is required. There are no additional information collection requirements imposed by this final rulemaking.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedures, Alaska, Archives and records, Public lands.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

September 26, 1986.

Steven Griles,

Assistant Secretary of the Interior.

PART 1820—[AMENDED]

Subpart 1821—Execution and Filing of Forms

1. The authority citation for Part 1820 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

§ 1821.2-1 [Amended]

2. The portion of § 1821.2-1(d) beginning with the heading "State Office and Area of Jurisdiction" and ending after the address and jurisdiction of the Wyoming State Office, is amended by removing the paragraph beginning "Fairbanks District Office", footnote 1, and the diagram to which the footnote refers. The paragraph beginning "Alaska State Office" is revised to read as follows:

* * * * *

(d) * * *

Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513—Alaska

* * * * *

[FR Doc. 86-22216 Filed 9-30-86; 8:45 am]

BILLING CODE 4310-JC-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Organization and Functions; Requests for Copies of Materials Which Are Available, or Made Available, for Public Inspection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is acting to administratively amend the regulations pertaining to copying materials which are available, or made available, for public inspection. The revisions update obsolete information, remove language routinely misinterpreted, add appropriate clarifying language where

needed, and provide for cost recovery from the distribution of Commission computer products in compliance with OMB Circular No. A–130.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Terry D. Johnson, (202) 634–1535.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of regulations pertaining to requests for copies of materials which are available, or made available, for public inspection.

Order

Adopted: September 23, 1986.
Released: September 26, 1986.
By the Managing Director:

1. Pursuant to authority delegated to him under § 0.231(d) of the Commission's Rules, the Managing Director proposes to make several nonsubstantive editorial amendments to § 0.465 of the Commission's Rules, and to bring the Commission into compliance with certain provisions of OMB Circular No. A–130, Management of Federal Information Resources.

2. Section 0.465(a) is being amended to remove address and pricing information concerning the Commission's duplication contractor from the bottom note and replacing it with a reference to where current information may be obtained.

3. Section 0.465(b) is being revised to provide current information for the Commission's transcription service contractor and to add a new bottom note to reference where current address and pricing information may be obtained.

4. Section 0.465(c)(1) is being redesignated as paragraph (e) and moved to the end of the section.

5. Section 0.465(c)(2) is being redesignated as paragraph (c)(1) and revised to clarify the Commission's policy with respect to permitting the public to use their own photocopying equipment on Commission premises by indicating that prior approval is required.

6. Section 0.465(c)(3) is being redesignated as paragraph (c)(2).

7. Section 0.465(c)(4) is being redesignated as paragraph (c)(3) and amended to indicate that requests from foreign requesters be sent to the General Counsel rather than to the Commission in general.

8. Section 0.465(d)(1) is being revised to clarify the media on which the Commission's data bases are available, the Commission's policy with respect to periodic updates to computer data bases, and to add a bottom note concerning the existence of a new contractor for providing the public with direct electronic access to a portion of the non-government Master Frequency File data base.

9. Section 0.465(d)(3) is being amended to improve the procedures for obtaining copies of computer source programs and associated documentation, and to provide for cost recovery as mandated by Appendix II to OMB Circular No. A–130.

10. Section 0.465(d)(4) is being added to reserve the right to copy and distribute computer source programs and data bases without charge when it serves the interests of the Government and the Commission.

11. Accordingly, it is ordered, that, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 CFR Part 0 is amended as specified below, effective upon publication in the **Federal Register.**

List of Subjects in 47 CFR Part 0

Freedom of information, Organization and functions.

Edward J. Minkel,
Managing Director.

PART 0—COMMISSION ORGANIZATION

47 CFR Part 0 is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted. Implement; 5 U.S.C. 552, unless otherwise noted.

2. Section 0.465 is amended by removing the second and fourth sentences of paragraph (a) and revising the note of paragraph (a) and revising paragraph (b) as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

(a) * * *

Note.—The name, address, telephone number, and schedule of fees for the current duplication contractor are published annually at the time of contract award or renewal in a Public Notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632–7000.

(b) The Commission awards a contract to a commercial firm to transcribe Commission proceedings in which a verbatim record is kept and to offer copies of the transcript for sale to the public. Except as authorized by the Commission, the firm is required to retain the capacity to furnish copies of the transcript for a period of 5 years, and may retain that capacity for a longer period, even though another firm is currently transcribing Commission proceedings. Requests for copies of the transcript of the current proceedings should be directed to the current contractor. Requests for transcripts of older proceedings will be forwarded by the Commission to the firm which made the transcript in question; and the names of contracting firms for past years will be furnished upon request.

Note.—The name, address, telephone number, and schedule of fees for the current transcription contractor are published annually at the time of contract award or renewal in a Public Notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632–7000.

* * * * *

3. Section 0.465 is further amended by redesignating paragraph (c)(1) as (e) and by redesignating (c)(2) as (c)(1) and revising the text as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

* * * * *

(c)(1) Contractual arrangements which have been entered into with commercial firms, as described in this section, do not in any way limit the right of the public to inspect Commission records or to extract therefrom whatever information may be desired. Coin-operated copy machines are available for use by the public in various reference rooms for the purpose of duplicating records available at those locations. In addition, any person may make photocopies of Commission records with his or her own equipment at locations where those records may be inspected. Prior approval for such arrangements, which must be obtained from the Operations Support Division, Office of Managing Director, is subject to the availabilty of adequate space and facilities to accommodate the user's equipment.

* * * * *

4. Section 0.465 is further amended by redesignating paragraph (c)(3) and note as (c)(2) and note, by redesignating paragraph (c)(4) as (c)(3) and replacing all occurrences of the word "Commission" with the words "General Counsel", by revising paragraph (d)(1), amending paragraph (d)(3) by revising the first sentence, and by adding paragraph (d)(4) as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

* * * * *

(d)(1) Copies of computer maintained data bases produced by the Commission may be obtained from the National Technical Information Service (NTIS), Department of Commerce, in the form of machine-readable media, e.g., magnetic tapes, microfiche, or diskettes. These materials are not available to the general public directly from the Commission. Data bases produced on magnetic tape and microfiche by the Commission are listed in two catalogs which may be obtained from NTIS. Extracts from these catalogs pertaining to the Commission are available without charge from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division. The catalogs describe the data base, state the estimated fee for providing it, and specify ordering information. Periodic updates to computer maintained data bases, as they occur, will not be furnished in machine-readable form.

Note: The Commission awards a contract to provide the public with direct electronic access to a portion of the non-Government Master Frequency File data base released for access and residing on the contractor's computer system. The name, address, telephone number, and schedule of fees for the current contractor are published annually at the time of contract award or renewal in a Public notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632–7000.

* * * * *

(d)(3) Copies of computer source programs and associated documentation produced by the Commission shall be obtained from the National Technical Information Service (NTIS), Department of Commerce. NTIS will forward each request received to the Commission. If it can be determined that the requested program is available, the Commission will forward the current edition to NTIS for distribution to the requester. Actual charges will be limited to cost of production plus overhead. NTIS will provide an estimate of the total cost for each request. NTIS will not stock Commission source programs and documentation, nor will they maintain a catalog of Commission computer programs that may be available due to the large volume of programs and the frequency with which they are revised. * * *

(d)(4) The Commission reserves the right to distribute copies of its computer source programs and data bases to other entities as it sees fit, and when it serves the regulatory interests of the U.S. Government or the Commission, as determined by the Managing Director.

[FR Doc. 86–22072 Filed 9–30–86; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 64

Application Form for Priorities for Restoration of Leased Intercity Private Line Service

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: This document amends the private line restoration priority rules in Appendix A of Part 64. Reference to a superceded edition of application form FCC 915 is deleted and the Domestic Services Division of the Common Carrier Bureau is specified as the mailing address for submission of applications. The changes are required due to the transfer of the restoration priority function from the Office of Managing Director to the Common Carrier Bureau and by the approval by Office of Management and Budget of the related collection of information requirement and associated FCC form.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Herbert J. Neumann, Common Carrier Bureau (202) 634–1806.

SUPPLEMENTARY INFORMATION:

Order

In the matter of amendment of Part 64 of the Commission's Rules 47 CFR Part 64.
Adopted: September 15, 1986.
Released: September 17, 1986.

1. This Order amends the private line restoration priority rules in Part 64 of Title 47 of the CFR. The changes are required due to the transfer of the restoration priority fuction from the Office of Managing Director to the Common Carrier Bureau and by the approval by Office of Management and Budget of the related collection of information requirement and a revised associated FCC Form 915. Applicants will submit the revised Form 915 to the Domestic Facilities Division of the Common Carrier Bureau.

2. The Office of Management and Budget has approved the collection of information requirement contained in this rule. The OMB control number for this collection of information is 3060–0102.

3. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act, Pub. L. 93–354, does not apply.

4. Because this amendment pertains only to agency procedure and practice and places no additional burden on the public, it constitutes a minor amendment to our Rules. Therefore, the notice and comment procedure and the 30 day effective date provision of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. 553(b)(3)(A).

5. Because this amendment is editorial in nature we find for good cause that the 30 days effective date requirement of the Administrative Procedure Act is inappropriate. *See* 5 U.S.C. 553(d)(3). Therefore, this amendment is effective upon publication in the **Federal Register.**

6. Accordingly, it is Ordered that Part 64 of the Commission's Rules is amended as set forth below, effective upon publication in the **Federal Register.**

List of subjects in 47 CFR Part 64

Civil Defense.
Federal Communications Commission.

Edward J. Minkel,
Managing Director.

Rules Change:

Part 64 of Title 47 of the CFR is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended: 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201. 218, unless otherwise noted.

Appendix A [Amended]

2. Part 64, Appendix A, Para. 10 is amended by removing the words "Office of Executive Director, Emergency Communications Division, Rm A201," and inserting, in their place, the words "Common Carrier Bureau, Domestic Facilities Division," and by removing the words "(June 1980 edition)" and by removing the sentence "Use of earlier editions of Form 915 is not authorized."

[FR Doc. 86–22068 Filed 9–30–86; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 80

Reorganization and Revisions of Parts 81 and 83 of the Rules To Provide a New Part 80 Governing the Maritime Radio Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects and clarifies the new Part 80 governing the maritime radio services which was published September 2, 1986 (51 FR 31206).

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Federal

Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION: On April 25, 1986, the Commission released a Report and Order in PR Docket No. 85–145, FCC 86–141. The corrections and clarifications contained in the following paragraphs are applicable to this proceeding as it was published in the Federal Register on September 2, 1986 (51 FR 31208) FR Doc. 86–19723.

1. In the "Summary of Report and Order", page 31206, the date in paragraph 9 is corrected to read "October 2, 1986."

PART 80—[CORRECTED]

2. In Subpart D, page 31235, add a new § 80.156 to read as follows:

§ 80.156 Control by Operator.

The operator on board ships required to have a holder of a commercial operator license or permit on board may, if authorized by the station licensee or master, permit an unlicensed person to modulate the transmitting apparatus for all modes of communication except Morse code radiotelegraphy.

§ 80.207 [Corrected]

3. In paragraph (d) of § 80.207, page 31237, the class of emission "R3D" in footnote [5] below the chart is corrected to read "R3E".

4. In § 80.313, page 31249, add the following sentence to the end of the introductory paragraph and before its table, "Distress and safety NB–DP frequencies are indicated by footnote [2] in § 80.361(b)".

§ 80.355 [Corrected]

5. In § 80.355, page 31252, correct section heading to read, "Distress, urgency, safety, call and reply Morse code". Also, remove paragraph (c)(2) and redesignate existing paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3), respectively.

§ 80.357 [Corrected]

6. In § 80.357, page 31254, correct section heading to read "Morse code working frequencies".

§ 80.373 [Corrected]

7. In paragraph (d)(1) of § 80.373, page 31264, remove the duplicative frequency band "7300–8100" appearing in the second row at the bottom of the table.

§ 80.559 [Corrected]

8. In § 80.559, page 31276, the fifth sentence in paragraph (c) is corrected to read, "These charts are contained in § 90.257 of Part 90 of this chapter".

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–22224 Filed 9–30–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 87

Amendment of the Rules To Reflect Reorganization of the Maritime Rules Into a New Part 80

AGENCY: Federal Communications Commission.

ACTION: Final rule clarification.

SUMMARY: This summary clarifies amendments to Part 87 of the Commission's rules to make a non-substantive change. In the Order, FCC 86–142, 51 FR 31305 (9/2/86), the last sentence of § 87.237 was amended by removing the number "83" and inserting in its place the number "80".

§ 87.237 [Corrected]

The number "83" also appears in the second sentence of § 87.237 and the section should be amended by removing the number "83" and inserting in its place the number "80". This action will update references to the maritime rules and aid the public in using the rules.

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: James A. Shaffer, Private Radio Bureau, (202) 632–7175.

William J. Tricarico,

Secretary.

[FR Doc. 86–22215 Filed 9–30–86; 8:45 am]

BILLING CODE 6712–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 725, 737, and 752

[AIDAR Notice 86–4]

Miscellaneous Amendments; AID Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended to provide rules for nationality of contractor employees under AID-financed construction contracts with U.S. firms; to retitle AIDAR Subpart 737.2 to conform to the title of FAR Subpart 37.2; to amend AID contract clauses concerning per diem to conform to Federal Acquisition Circular (FAC) 84–19; and to amend the contract clause on family planning activities to require contractors who provide family planning services to offer a broad range of methods or services, or information on where such methods or services may be obtained.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr James M. Kelly, M/SER/PPE, Room 1600I, TTII, Agency for International Development, Washington, D.C. 20523. Telephone (703) 875–1534.

SUPPLEMENTARY INFORMATION: The AIDAR is being amended to:

—Add a special requirement to 725.703 that under AID-financed construction projects where the contract is awarded to a U.S. firm, at least half of the supervisors and any other specified key personnel working at the project site must be U.S. citizens or permanent legal residents of the U.S., unless excepted in writing by the Mission Director.

—Retitle Subpart 737.2—Services of Experts and Consultants as Subpart 737.2—Consulting Services, to conform to the title of FAR Subpart 37.2.

—Revise 752.7002 contract clauses concerning travel to reflect the new government-wide per diem policies established by FAC 84–19. Paragraphs (a) through (c) of 752.7002 are removed; the subject matter of these paragraphs is now sufficiently covered by the new FAR 31.205–46 established by FAC 84–19. Paragraph (d) of 752.7002 is amended to cite the appropriate travel regulation specifically in place of the general citation of the Federal Travel Regulations; paragraph (d) is also redesignated as paragraph (a) of 752.7002. Paragraph (e) of 752.7002 is redesignated as paragraph (b).

—Amend 752.7016 to add a new requirement that funding will be available only for voluntary family planning projects which offer a broad range of family planning methods or services, or information about where such methods or services may be obtained.

This Notice is not considered a significant rule subject to FAR 1.301 or 1.5. This Notice is exempted from the requirements of Executive Order 12291 by OMB Circular 85–7. This Notice will not have an impact on a substantial number of small entities, nor will it require any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act, respectively.

List of Subjects in 48 CFR Parts 725, 737, and 752

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 725, 737, and 752 are unchanged, and continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 725—FOREIGN ACQUISITION

Subpart 725.70—Source, Origin, and Nationality

2. Section 725.703 is revised as follows:

725.703 Contractor employees.

(a) Except as specifically provided in paragraph (b) of this section, there are no nationality restrictions on employees or consultants of either contractors or subcontractors providing services under an AID-financed contract, except that they must be citizens of a Geographic Code 935 country, or non-U.S. citizens lawfully admitted for permanent residence in the U.S.

(b) For AID-financed construction projects where the contract is awarded to a U.S. firm, at least half of the supervisors, and any other specified key personnel, working at the project site must be U.S. citizens or permanent legal residents of the U.S. Exceptions may be authorized by the Mission Director in writing if special circumstances make compliance impractical.

PART 737—SERVICE CONTRACTING

Subpart 737.2—Consulting Services

3. The heading of Subpart 737.2 is revised to read as set forth above.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

752.7002 [Amended]

4. Section 752.7002, Travel and transportation, is amended as follows:

(a) Paragraphs (a), (b), (c), and their respective clauses are removed.

(b) Paragraph (d) *Alternate 73* is amended:

—By being redesignated as paragraph (a) *Alternate 70*;

—By revising the introductory material preceding the contract clause as follows:

"(a) *Alternate 70.* For use in cost-reimbursement contracts performed in whole or in part overseas."

—By changing the contract clause date from "(May 1986)" to "(Aug. 1986)"; and

—By removing all references to "Federal Travel Regulations" appearing in paragraphs (a), (b), and (d) of the contract clause, replacing them with reference to "Standardized Regulations (Government Civilians, Foreign Areas)".

(c) Paragraph (e), *Alternate 74*, is amended by redesignating it as paragraph (b), *Alternate 71*.

752.7016 [Amended]

5. 752.7016, Family Planning and Population Assistance Activities, is amended as follows:

(a) The contract clause date is changed from "(Aug. 1984)" to "(Aug. 1986)"; and

(b) Paragraph (a) of the contract clause is revised to read as follows:

* * * * *

(a) *Voluntary participation.* (1) The Contractor agrees to take any steps necessary to ensure that funds made available under this contract will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the Contractor agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.

(2) Activities which provide family planning services or information to individuals, financed in whole or in part under this contract, shall provide a broad range of family planning methods and services available in the country in which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.

* * * * *

Dated: September 23, 1986.

John F. Owens,

Procurement Executive.

[FR Doc. 86–22133 Filed 9–30–86; 8:45 am]

BILLING CODE 8116–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 171, 172, 173, 174, 175 and 178

[Docket No. HM–189D, Amdt. Nos. 106–6, 107–15, 171–89, 172–106, 173–187, 174–61, 175–38, and 178–67]

Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of these amendments to the Hazardous Materials Regulations (HMR) is to correct certain editorial errors, and to make minor regulatory changes which will not impose any new requirements on persons subject to the HMR.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Edward T. Mazzullo, Regulations Development Branch, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366–4488.

SUPPLEMENTARY INFORMATION: In its maintenance of the HMR, RSPA performs an annual review of the regulations to detect errors which may be causing confusion to users. Inaccuracies detected in Title 49, Code of Federal Regulations (CFR), Parts 100 through 199, Revised as of November 1, 1985, include incorrect references to other rules and regulations in the CFR, and misstatements of certain regulatory requirements. Also, in response to inquiries which RSPA received concerning the clarity of particular requirements specified in the HMR, changes are made which should reduce uncertainties.

Since these amendments do not impose new requirements, notice and public procedure thereon are unnecessary. For the same reason, these amendments are effective without the customary 30 day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

The RSPA has determined that this rule, as promulgated, is not a major rule under the terms of Executive Order 12291 or significant under DOT implementing procedures (44 FR 11034). A final regulatory evaluation and environmental assessment was not

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prepared as these amendments are not substantive changes to the HMR.

Based on limited information available concerning the size and nature of entities likely to be affected by these amendments, I certify that these amendments will not, as promulgated, have a significant economic impact on a substantial number of small entities.

The following is a section-by-section summary of the amendments:

Appendix A to Part 106. Obsolete language is removed from paragraphs (a) and (b) of the Appendix.

Section 107.105. Obsolete provisions in paragraph (d) are removed.

Appendix A to Subpart B of Part 107. Phone numbers and addresses are updated and two spelling errors are corrected.

Sections 107.303, 107.309, and 107.339. To correct omissions from the final rule issued on November 1, 1985 concerning office and personnel designations, "Office of the Chief Counsel" is added to § 107.303 and 107.339, and is deleted from § 107.309, and "OHMT" is added to § 107.309 and deleted from § 107.339.

Section 171.7. The reference in paragraph (d)(21) to the 1977 edition of the United Nations Recommendations on the Transport of Dangerous Goods is obsolete and is updated to the 1986 edition.

Sections 171.15 and 171.17. The National Response Center phone number is corrected in these two sections.

Section 172.101. The shipping name "Memtetrahydrophthalic anhydride" was removed in Docket HM–166–0, published November 17, 1983. The cross reference "Methyl norbornene dicarboxylic anhydride. *See* memtetrahydro phthalic anhydride" is no longer of use and is deleted from the § 172.101 Table. Also, the symbols "+" and "E" erroneously appear in Column 1 for the entry "Motor vehicle, *etc.* . . . ". *These symbols are deleted.*

Section 172.525. The height of letters for the word "RESIDUE" on the RESIDUE placard was changed from 1 and ½-inches to 1-inch in Docket HM–180, published on June 21, 1986. The graphic depiction of this placard in paragraph (b) is corrected to show lettering for the word "RESIDUE" properly proportioned to a 1-inch size on a full size placard.

Section 173.262. A misspelling of the word "screw-cap" is corrected.

Section 173.266. The reference in subparagraph (f)(1) to "179.3(e)" is corrected to read "179.3(a)".

Section 173.415. Type B packages were inadvertently omitted from paragraph (c) in the final rule issued in HM–169 on March 10, 1983. This error is corrected.

Section 174.750. The reference, in paragraph (b) to the "Energy Research and Development Administration (ERDA)" is obsolete and is changed to "U.S. Department of Energy (DOE)".

Section 175.20. The reference to FAA regulations is obsolete and is corrected to read "See 14 CFR 121.135, 121.401, 121.433a, 135.323, 135.327 and 135.333."

Sections 178.16–19, 178.45–17 and 178.65–14. The references to "Office of Hazardous Materials Regulation" are corrected to read "Office of Hazardous Materials Transportation."

Section 178.338–3. In formula which appears in paragraph (b) is corrected.

List of Subjects

49 CFR Part 106

Hazardous materials transportation, Rulemaking procedures,

49 CFR Part 107

Hazardous materials transportation, Program procedures,

49 CFR Part 171

Hazardous materials transportation, matter incorporated by reference.

49 CFR Part 172

Hazardous materials transportation, Labeling, packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Rail carriers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, 49 CFR Parts 106 through 178 are amended as follows:

PART 106—RULEMAKING PROCEDURES

1. The authority citation for Part 106 is revised to read as follows:

Authority: Sec. 902(h)(1), Pub. L. 85–726, 72 Stat. 784 (49 U.S.C. 1472(h)(1)); sec. 3, Pub. L. 90–481, 82 Stat. 720 (49 U.S.C. 1672); secs. 104, 105, 109, Pub. L. 93–633, 88 Stat. 2157 (49 U.S.C. app. 1803, 1804, 1808); sec. 21(a), Pub. L. 89–670 (49 U.S.C. 1653, 1657(e)); sec. 203, Pub. L. 96–126, 93 Stat. 1004 (49 U.S.C. 2002).

Appendix A—[Amended]

2. In Appendix A to Part 106:

a. The phrase "other than those concerning compliance, enforcement, and preemption matters ," is removed from paragraph (a).

b. The phrase "other than those concerning compliance and enforcement matters," is removed from paragraph (b).

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

3. The authority citation for Part 107 is revised to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, 1806, 1808–1811; Pub. L. 89–670 (49 U.S.C. 1653(d), 1655, 1657(e)).

§ 107.105 [Amended]

4. In § 107.105, paragraph (d) is removed.

Appendix A to Subpart B—List of Department of Transportation Officials Through Whom Application or Exemptions Seeking Priority Treatment on the Basis of Existing Emergencies May Be Initiated by Telephone

5. In Appendix A to Subpart B of Part 107, the following changes are made.

a. In the title to the appendix, the word "INITIALED" is changed to "INITIATED".

b. In the title to the second paragraph, the word "OPERATORS" is changed to "OPERATORS".

c. In the second paragraph of the appendix the telephone number "202–426–3333" is changed to "202–863–5100".

6. In Appendix A to Subpart B of Part 107, the paragraphs captioned "MOTOR CARRIERS", "RAIL CARRIERS", and "WATER CARRIERS" are revised to read as follows:

Motor Carriers

Chief, National Standards Division, Bureau of Motor Carrier Safety, Federal Highway Administration, Department of Transportation, Washington, DC 20590. Day 202–366–2989 and Night 202–267–2100.

Rail Carriers

Associate Administrator for Safety, Federal Railroad Administration, Department of Transportation, Washington, DC 20590. Day 202–366–9178 or 366–0488 and Night 202–267–2100.

Water Carriers

Chief, Hazardous Materials Branch, Marine Technical and Hazardous Materials Division, United States Coast Guard, Washington, DC 20593. Day 202–267–1577 and Night 202–267–2100.

§ 107.303 [Amended]

7. In § 107.303, the phrase "and the Office of Chief Counsel" is added after the term "OHMT".

8. In paragraph (a) and (b)(1) of § 107.309, "Office of Chief Counsel" is changed to "OHMT" at each occurrence.

§ 107.339 [Amended]

9. In § 107.339, "OHMT" is changed to "Office of the Chief Counsel".

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

10. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

11. § 171.7, paragraph (d)(21) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(21) **United Nations Recommendations (UN Recommendations)** is titled "Recommendations on the Transport of Dangerous Goods", Fourth revised edition (1986).

* * * * *

§ 171.15 [Amended]

12. In paragraph (b) of § 171.15, the toll call number for the Department is changed from "202–426–2675" to "202–267–2675".

§ 171.17 [Amended]

13. In paragraph (a) of § 171.17, the toll call number is changed from "202–426–2675" to "202–267–2675".

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

14. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

§ 172.101 [Amended]

15. In the § 172.101 Hazardous Materials Table:

a. The entry "Methyl norbornene dicarboxlic anhydride. *See* Memtetrahydro phthalic anhydride" is removed.

b. For the entry "Motor vehicle *etc.* . . ., the symbols "+E" are removed from column 1.

16. In § 172.525, the graphic depiction of the RESIDUE placard is revised to appear as follows:

§ 172.525 Standard requirements for the RESIDUE placard.

* * * * *

(b) * * *



* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

16. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

§ 173.262 [Amended]

17. In paragraph (b)(3) of § 173.262, the word "screw-up" is corrected to read "screw-cap"

§ 173.266 [Amended]

18. In paragraph (f)(1) of § 173.266, the reference "179.3(e)" is corrected to read "179.3(a)".

19. In § 173.415, paragraph (c) is revised to read as follows:

§ 173.415 Authorized Type A packages.

* * * * *

(c) Any Type B, B(U) or B(M) packaging pursuant to § 173.416.

* * * * *

PART 174—CARRIAGE BY RAIL

20. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

§ 174.750 [Amended]

21. In paragraph (b) of § 174.750, the agency "Engery Research and Development Administration (ERDA)" is changed to "U.S. Department of Energy (DOE)".

PART 175—CARRIAGE BY AIRCRAFT

22. The authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

23. In § 175.20, the last sentence is revised to read as follows:

§ 175.20 Compliance.

* * * (See 14 CFR 121.135, 121.401, 121.433a, 135.323, 135.327 and 135.333.)

PART 178—SHIPPING CONTAINER SPECIFICATIONS

24. The authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808, 1808; 49 CFR Part 1, unless otherwise noted.

§ 178.16–19 [Amended]

25. In paragraph (c)(2) of § 178.16–19, the word "Operation" is changed to "Transportation".

§ 178.45–17 [Amended]

26. In paragraph (e) of § 178.45–17, the word "Transportation" is added after the word "Materials".

§ 178.65–14 [Amended]

27. In paragraph (d) of § 178.65–14, the word "Regulation" is changed to "Transportation".

§ 178.338–3 [Amended]

28. In paragraph (b) of § 178.338–3 following the introductory text, the formula changes from "$S=(T/2)+((T^2/4)+S, 20.5$" to "$S=(T/2)+((T^2/4)+S, ^2)^{.5}$".

Issued in Washington, D.C., on September 26, 1986, under the authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86–22183 Filed 9–30–86; 8:45 am]

BILLING CODE 4910–60–M

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49 CFR Part 192

[Docket No. PS–90, Amdt. 192–53]

Transportation of Natural and Other Gas by Pipeline; Period for Confirmation or Revision of Maximum Allowable Operating Pressure

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This amendment clarifies a pipeline safety regulation regarding the period for confirmation or revision of a pipeline's maximum allowable operating pressure (MAOP). Under the present regulation, the MAOP of a pipeline must be confirmed or reduced within 18 months after a population increase near the pipeline results in a more restrictive class location. Some operators have misinterpreted this rule to preclude

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confirmation of the pre-existing MAOP at a date beyond the 18-month period if the initial action taken is to reduce the MAOP. The amendment makes it clear that confirmation by pressure testing may occur at any time after the 18-month period, if the initial compliance action was to reduce the MAOP under § 192.611(b).

EFFECTIVE DATE: October 31, 1986.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 426-2392. Copies of the amendment and documents related thereto may be obtained from the Dockets Branch, Room 8426, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-3148.

SUPPLEMENTARY INFORMATION: By letter of January 22, 1985, (P-30), The Gas Piping Technology Committee of the American Society of Mechanical Engineers (ASME) petitioned RSPA to clarify the period allowed for confirmation or revision of a pipeline's MAOP following a change in class location.

Whenever an increase in population density causes an increase in a pipeline's designated class location under § 192.5, and the hoop stress corresponding to the pipeline's MAOP is not commensurate with the new class location, the MAOP must be confirmed or revised according to the rules in § 192.611. Paragraph (e) of § 192.611 requires that the confirmation or revision be completed within 18 months of the change in class location.

Section 192.611 permits alternative actions for pipelines that have not previously been pressure tested for at least 8 hours to at least 90 percent of specified minimum yield stength. These alternatives are (1) reduce the pipeline's MAOP (to the level where the corresponding hoop stress does not exceed the stress permitted for new pipelines in that class location (§ 192.611(b)), or (2) pressure test the pipeline and either re-establish the original MAOP or establish a lower MAOP based on that test (§ 192.611(c)).

Because of operating constraints, reductions in market demand or gas supplies, or other economic factors, operators sometimes find it more practical to temporarily reduce a pipeline's MAOP and postpone pressure testing until operating conditions warrant re-instatement of the pre-existing MAOP. However, ASME argued that the 18-month rule of § 192.611(e) thwarts this option because it makes the two alternatives mutually exclusive. In other words, ASME said operators who choose pressure reduction as a temporary measure are precluded from pressure testing after the 18-month period to confirm the pre-existing MAOP. As a result, operators are compelled to test within 18 months to preserve an existing MAOP, even though that pressure level is not necessary for current operations.

Although, RSPA had not interpreted the 18-month rule to block operators who choose one compliance option from later selecting the other, it was concerned that § 192.611(e) may, through misinterpretion, be adversely affecting economical pipeline operations of some operators. Therefore, RSPA proposed in Notice 1 (51 FR 19878; June 3, 1986) to amend § 192.611(e) to make it clear that operators who reduce a pipline's MAOP under § 192.611(b) within the 18-month period may at a later date reinstate the preexisting MAOP by pressure testing under § 192.611(c).

Sixteen gas operators, one trade association and one State agency submitted written comments on the proposed rule. All commenters favored the clarifying rule change.

One commenter, however, thought that the ceiling § 192.553(d) sets on the level to which the MAOP of a pipeline may be increased would nullify the benefits intended by the proposed amendment to § 192.611(e). Section 192.553(d) restricts the increase in MAOP of existing pipelines to the level permitted for newly constructed pipelines of the same material in the same location. This restriction applies whenever a pipeline's MAOP is being increased as part of the uprating process under Subpart K. As indicated by § 192.553(d), itself, and the other provisions of Subpart K, uprating raises the MAOP of a pipeline to a "new" level to which the pipeline was not previously qualified. In contrast, increasing a temporarily reduced MAOP after testing under § 192.611(c) does not uprate the pipeline, because § 192.611(c)(2) does not permit the increase to exceed the previously qualified MAOP in effect at the time the class location change occurred. Therefore, the pressure restriction in § 192.553(d) on uprating does not apply to confirmation or revision of MAOP under § 192.611.

Advisory Committee Reivew

The Technical Pipeline Safety Standards Committee, a 15-member advisory committee established under section 4(b) of the Natural Gas Pipeline Safety Act of 1968, considered the proposed rule at a meeting in Washington, DC on June 10, 1986. The commitee declared the proposed rule to be technically feasible, reasonable, and practicable. A transcript of the Committee's deliberations and a report of its findings are available in the docket for this proceeding.

Classification

This final rule is not a "major" rule under Executive Order 12291, since the rule will have an economic impact on the economy of less than $100 million a year. The rule will result in cost saving to consumers, industry, and government agencies, and no adverse impacts are anticipated. This rule is not "significant" under Department of Transportation procedures (44 FR 11034). The rule will reduce the costs of confirmation or revision programs by allowing a more economical alternative to pressure testing in complying with the current rule. However, this savings is not expected to be large enough to warrant preparation of a Regulatory Evaluation.

Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Maximum allowable operating pressure.

PART 192—[AMENDED]

In view of the above, RSPA amends Part 192 of Title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 192 continues to read as set forth below:

Authority: 49 U.S.C. 1672; U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. Section 192.611(e)(2) is revised to read as follows:

§ 192.611 Change in class location: Confirmation or revision of maximum allowable operating pressure.

* * * * *

(e) * * *

(2) Confirmation or revision due to change in class location that occur on or after July 1, 1973, must be completed within 18 months of the change in class location. Pressure reduction under paragraph (b) of this section within the 18-month period does not preclude establishing a maximum allowable operating pressure under paragraph (c) of this section, at a later date.

Issued in Washington, DC, on September 2, 1986.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc 86-22189 Filed 9-30-86; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1008

Technical Amendments; Overcharges by Motor Carriers/Freight Forwarders Engaged in Transportation

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendment.

SUMMARY: In § 1008.2 two United States Code references regarding overcharges by motor carriers or freight forwarders engaged in the transportation of property are out of date. This notice brings those references up to date.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King (202) 275-7428.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1008

Claims, Freight forwarders, Investigations, Motor carriers.

Title 49 of the CFR, Part 1008 is amended as follows:

PART 1008—PROCEDURES GOVERNING THE PROCESSING, INVESTIGATION, AND DISPOSITION OF OVERCHARGE, DUPLICATE PAYMENT, OR OVERCOLLECTION CLAIMS

1. The authority citation for Part 1008 is revised to read as follows:

Authority: 49 U.S.C. 10321, 11101, 11705, 11706; 5 U.S.C. 553 and 559.

§ 1008.2 [Amended]

2. In § 1008.2, the words "sections 204a(6) and 406a(6) of the Interstate Commerce Act" in paragraph (b) are revised to read "section 11705(b)(1) of the Interstate Commerce Act."

Noreta R. McGee,

Secretary.

[FR Doc. 86-22217 Filed 9-30-86; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Parts 1011 and 1130

[Ex Parte No. 367]

Tariff Integrity Board

AGENCY: Interstate Commerce Commission.

ACTION: Notice of removal of final rules.

SUMMARY: The Commission is rescinding rules published at 49 CFR 1011.6(h) and 1130.3. The Tariff Integrity Board has not been operational since the decisions adopting the rules were reversed by the United States Court of Appeals for the Eleventh Circuit. The Commission did not appeal the court's decision. As the rules are no longer being used, they are being rescinded at this time to clear the record.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 275-7151.

SUPPLEMENTARY INFORMATION: Ex Parte No. 367 was an outgrowth of a management decision by the Commission to discontinue its practice of examining every tariff filing, prior to effectiveness, for defects in publication. Since only the title pages of tariff filings were to be examined, rules were adopted (see 44 FR 58511) which established the Tariff Integrity Board as a forum to act on complaints alleging nonsubstantive publication defects in tariffs that had become effective. The rules provided that Tariff Integrity Board decisions finding a tariff to have been unlawfully established would have a retroactive effect, *i.e.*, the tariff would be considered as never applicable as well as invalid for the future.

In *Southern Motor Carriers Rate Conference* v. *U.S.*, 676 F.2d 1374 (11th Cir. 1982), the United States Court of Appeals for the Eleventh Circuit held that 49 U.S.C. 10762(e) did not authorize the Commission to reject or strike an effective tariff using the Tariff Integrity Board procedures. The court reversed the Commission's decisions in which the Tariff Integrity Board rules were adopted.

The above-cited court decision was not appealed by the Commission and the Tariff Integrity Board rules have not been utilized by the Commission since the decision. In the absence of a functioning Tariff Integrity Board, complaints concerning effective tariffs continue to be handled under the Commission's formal docket procedures. Thus, we are removing the rules to clear the record and to avoid any confusion their continued presence in the Code of Federal Regulations may have. Since removal of the rules will not have any substantive effect and because the rules relate to agency organization, procedure, and practice, notice and public comment are unnecessary under 5 U.S.C. 553(b) and good cause exists for making the removal effective in less than 30 days after publication, under 5 U.S.C. 553(d).

This action will not significantly affect either the quality of the human environment or energy conservation. This action will not have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure; Authority delegation; Organization and functions (government agencies).

49 CFR Part 1130

Administrative practice and procedure.

Decided: September 23, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

Appendix

Title 49, Parts 1011 and 1130, of the Code of Federal Regulations are amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for Part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

§ 1011.6 [Amended]

2. 49 CFR 1011.6 is amended by removing paragraph (h) and reserving it for future use.

PART 1130—INFORMAL COMPLAINTS

1. The authority citation for Part 1130 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10707; 5 U.S.C. 553 and 559.

§ 1130.3 [Removed]

2. 49 CFR Part 1130 is amended by removing § 1130.3.

[FR Doc. 86-22218 Filed 9-30-86; 8:45 am]

BILLING CODE 7035-1-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 261 through 266

[Docket No. 60986-6196]

United States Standards for Grades; Voluntary National Seafood Inspection Program; Technical Amendments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendments.

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SUMMARY: NOAA issues a final rule making technical amendments to some of the United States standards for Grades provisions of NOAA's regulations governing the Voluntary National Seafood Inspection Program. The amendments correct errors in scientific names and inconsistent tabular entries and make very minor clarifications to textual ambiguities. All corrections and clarifications are consistent with how the Standards have been interprepted by NOAA and the Program's participants and, thus, will have no impact on the operation of the Program.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Rita Creitz, National Standards Coordinator, 202–673–5374.

SUPPLEMENTARY INFORMATION: NOAA's regulations governing the Voluntary National Seafood Inspection Program appear at 50 CFR Parts 260 through 266. Part 260 sets forth the procedures applicable to the inspection and certification of establishments and fishery products for human consumption. Parts 261 through 266 set forth standards for determining the United States grades of various fishery products (United States Standards for Grades). The United States Standards for Grades contain long standing errors in scientific names and inconsistent tabular entries and minor textual ambiguities. The corrections and very minor textual clarifications made by this final rule are consistent with how the United States Standards for Grades have been interpreted by NOAA and participants in the Program for many years. Thus, this final rule will have no impact other than providing potential new participants in the Program with an accurate and clear set of the regulations.

Because of this, no useful purpose would be served by providing the public with notice of, and an opportunity for comment upon, this rule; and the Assistant Administrator for Fisheries, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), has accordingly found, for good cause, that notice and public procedure for this rule is unnecessary.

Because this rule would not change how the regulations have been applied and interpreted for many years both by NOAA and the Program's participants and because of the desirability of making the corrections and clarifications made by this rule effective in time for them to be incorporated in the next annual codification of title 50 of the Code of Federal Regulations, the Assistant Administrator has found that good cause exists for waiving the 30-day delay in effective date otherwise required by section 553(d) of the APA.

Issuance of this rule is in compliance with Executive Order 12291.

The corrections and clarifications made by this rule do not involve collection of information requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Parts 261, 262, 263, 264, 265, and 266

Food grades and standards, Frozen foods, Seafoods.

Dated: September 26, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrotor for Science and Technology, National Marine Fisheries Service.

In consideration of the foregoing, Parts 261, 262, 263, 264, 265, and 266 of Title 50 of the Code of Federal Regulations are amended as follows:

1. The authority citation for Parts 261, 262, 263, 264, 265, and 266 continues to read as follows:

Authority: 7 U.S.C. 1621–1630.

PART 261—[AMENDED]

2. Section 261.104 is amended by correctly revising paragraph (e)(3)(iii) to read as follows:

§ 261.104 Determination of grade.

* * * * *

(e) * * *

(3) * * *

(iii) "Excessive—refers to the area affected by discoloration of significant intensity involving 50 percent or more of the total area.

* * * * *

§ 261.105 [Amended]

3. In § 261.105, the reference reading "21 CFR Part 128" is revised to read "21 CFR Part 110".

§ 261.161 [Amended]

4. In § 261.161 Table 1, in the entry reading "7. Evisceration . . .", "Small degree . . .", the "Deduct" column, is amended by revising "10" to read "2".

PART 262—[AMENDED]

§ 262.161 [Amended]

5. In § 262.161, Table 1, in the entry reading "5. Workmanship . . .", the footnote reference"[3]" is added after the word "sawdust"; and the following footnote is added at the end of Table 1:

[3] Sawdust is examined while the steaks are in the frozen state.

§ 262.171 [Amended]

6. In § 262.171(a)(2)(v), the formula is revised to read "Percentage glaze=C−D/Cx100."

§ 262.211 [Amended]

7. In § 262.211, Table 1, in the entry reading "5. Workmanship" "Excessive", the "Deduct" column is amended by revising "5–8" to read "6–8"; in the entry reading "6. Color defects", "(a) . . .", "Moderate", the "Deduct" column, is amended by revising "3–2" to read "3–5".

§ 262.221 [Amended]

8. In § 262.211(g)(6)(iii), the word "would" is removed from the last sentence and "s" is added to the word "include".

PART 263—[AMENDED]

§ 263.104 [Amended]

9. In § 263.104, Table 1, in the entry reading "3. Workmanship . . .", "(a) Cutting . . .", the numbers in parenthesis after the entry "Moderate" are revised to read "(3–4 instances)". In the entry reading "6. Size . . .", the number in parenthesis after "Excessive" is revised to read "(over 2 instances)".

§ 263.166 [Amended]

10. In § 263.166, Table IV, under the "Deduction points" column, in the entry reading "Cutting and trimming", "Moderate defects . . .", the number "45" is revised to read "4".

§ 263.261 [Amended]

11. In § 263.261(b), the table is amended in the entry reading "Character" by revising the "Points" column to read "15".

§ 263.301 [Amended]

12. In § 263.301(b), the species name reading "Pacific ocean perch" is revised to read *"Sebastes alutus"*.

§ 263.312 [Amended]

13. In § 263.312(a) "Sebastodes alutus" is revised to read *"Sebastes alutus"*.

§ 263.314 [Amended]

14. In § 263.314(b), the table heading reading "Table II—Score Deductions for Dehydration Subfactor" is revised to read "Score Deductions for Dehydration". In the entry reading "Excessive . . .", in the 2nd column, "Surface area affected", the number in the "Over" subcolumn reading "5" is revised to read "10" and the number in the "Not over" subcolumn reading "15" is revised to read "100".

PART 264—[AMENDED]

§ 264.111 [Amended]

15. In § 264.111, Table 1, under the "Aspects determining score" column in the entry reading "3 Uniformity of size", the two "±" symbols are removed for clarification.

§ 264.155 [Amended]

16. In § 264.155, Table 1, the following amendments are made to figures in the "Categories" column: In the entry reading "Frozen State:", "Dehydration", "Excessive", "24" is removed from the "Minor" column, and "63" is removed from the "Major" column. In the entry reading "Frozen State", "Uniformity of size", "Moderate", "15" is removed from the "Serious" column. In the entry reading "Thawed State", "Bones", "Moderate", "208" is removed from the "Minor" column and placed in the "Major" column.

§ 264.221 [Amended]

17. In § 264.221, Table 1, the following amendments are made to figures in the "Deduct" column: In the entry reading "8. Uniformity of weight", "Over 1.2 but not over 1.3", "5" is revised to read "2" and in the entry reading "Over 1.3 but not over 1.4", "2" is revised to read "5".

§ 264.252 [Amended]

18. In § 264.252(a) in the last sentence, "60 percent" is corrected to read "72 percent".

§ 264.271 [Amended]

19. In § 264.271(f)(2)(vii) the formula is revised to read "Percent fish flesh=Weight of fish flesh (vi)x100/Weight of three breaded fish sticks (i)".

§ 264.321 [Amended]

20. In § 264.321, Table 1, the following changes are made to figures in the "Deduct" column: In the entry reading "6. Weight", "Over 1.2 but not over 1.3", "0" is revised to read "2" and in the entry reading "Over 1.3 but not over 1.4", "2" is revised to read "5".

21. In paragraph (f)(2)(ii), the word "stick" is revised to read "portion".

22. In paragraph (f)(2)(vii) the formula is revised to read "Percent fish flesh=Weight of fish flesh (vi)x100/Weight of three raw breaded portions (i)" and in paragraph (g)(2)(ii) the formula is revised to read "Percent fish flesh=Weight of fish flesh [sample unit (i)]x100/Declared net weight of raw breaded portionsx5(ii)".

§ 264.371 [Amended]

23. In § 264.371(f)(2)(v), in the last sentence, "3" is revised to read "(iii)".

24. In paragraph (f)(2)(vii), the formula is corrected to read "% fish flesh=Weight of fish flesh (vi)×100/Weight of three fried fish sticks (i)" and in paragraph (g)(2)(ii), the formula is revised to read "% fish flesh=Weight of fish flesh [sample unit (i)]×100/Declared or actual net weight of five fried fish sticks".

§ 264.421 [Amended]

25. In § 264.421(f)(2)(vii), the formula is revised to read "% fish flesh=Weight of fish flesh (vi)×100/Weight of three fried fish portions (i)" and in paragraph (g)(2)(ii), the formula is revised to read "% fish flesh=Weight of fish flesh (vi)×100/Weight of five fried fish portions (i)".

PART 265—[AMENDED]

§ 265.106 [Amended]

26. In § 265.106, Appendix 3, the fourth word in the introductory text reading "new" is corrected to read "net" and in paragraph (b) and in paragraph (i) under the heading "Procedure", the conversion of temperature from Fahrenheit to Celsius, in parenthesis is revised to read "(26°C±3°C)".

§ 265.171 [Amended]

27. In § 265.171(u)(2)(ii), the formula is revised to read "% shrimp material=[Weight of debreaded sample (20 shrimp)×100/Weight of sample (20 shrimp)]+2" and in paragraph (v)(2)(ii), the formula is revised to read "% shrimp material=Weight of debreaded sample×100/Weight of sample."

§ 265.175 [Amended]

28. In § 265.175, Table 1, in the entry reading "4. Damaged breaded shrimp", "For each 5 percent by count of fraction thereof", the "Ded. allow. Points" column is amended by revising "1" to read "3" and the second entry reading "3" is revised to read "1". In Table 2, in the entry reading "4. Black spot", "Moderate, on average", the "Ded. allow Points" column is amended by adding "6" and the third entry reading "63" is revised to read "3".

PART 266—[AMENDED]

§ 266.121 [Amended]

29. In § 266.121(a), "273.25" is revised to read § 260.61." and in paragraph (b), Table 1, in the entry reading "1. Dehydration", "Small degree: . . .", the "Deduct" column is amended by adding "2" and the second entry reading "24" is revised to read "4".

§ 266.161 [Amended]

30. In § 266.161(b) the table is amended in the entry reading "Uniformity", by revising the "Points" column to read "20".

§ 266.171 [Amended]

31. In § 266.171(a)(2)(v) the formula is revised to read "Percent scallop meat=weight of scallop meat (iv)×100/Weight of frozen fried or breaded scallops(i)".

32. Paragraph (b)(1) is amended in the last sentence by removing the word "in" and inserting the word "with".

[FR Doc. 86–22222 Filed 9–26–86; 4:41 pm]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 681

[Docket No. 60902-6182]

Western Pacific Spiny Lobster Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The NOAA issues an emergency interim rule for the conservation and management of the lobster fishery of the Western Pacific Ocean. The rule prohibits all lobster fishing within 20 nautical miles of Laysan Island and within the fishery conservation zone (FCZ) landward of 10 fathoms in the Northwestern Hawaiian Islands (NWHI). The intended effects are to protect spiny lobster in designated refuge areas (refugia) for lobster resources.

EFFECTIVE DATES: In § 681.7, paragraph (b)(1) and in § 681.23, paragraphs (a) and (b) are suspended from September 26, 1986, through December 26, 1986. In § 681.7, new paragraph (b)(7) and in § 681.23, new paragraphs (c) and (d) are added, to be effective from September 26, 1986, through December 26, 1986.

ADDRESS: Send comments to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. A copy of the environmental assessment prepared for this rule may be obtained from the Regional Director.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Administrator, Western Pacific Program Office, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396, 808–955–8831.

SUPPLEMENTARY INFORMATION: Under section 305(e)(1) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary of Commerce (Secretary), upon finding that an emergency exists involving any

fishery, may promulgate emergency regulations deemed necessary to address that emergency. These regulations may remain in effect for no more than 90 days unless extended in accordance with section 305(e)(3) of the Magnuson Act. The Secretary has determined that an emergency exists with regard to the lobster fishery in designated refuge areas of the Western Pacific region. Therefore, NOAA issues this emergency interim rule to amend the regulations governing the Western Pacific Spiny Lobster Fisheries as deemed necessary to respond to the emergency.

Background

Regulations implementing the Fishery Management Plan for the Spiny Lobster Fisheries of the Western Pacific Region (FMP) appear at 50 CFR Part 661. These regulations at § 681.23(a) prohibit fishing for spiny lobster within 20 nautical miles of Laysan Island. The Western Pacific Fishery Management Council (Council) adopted this closure along with a closure to spiny lobster fishing landward of 10 fathoms in the NWHI at § 681.23(b) to enhance the probability of continued larval recruitment.

In 1983, the reported catch was 218,198 spiny lobsters and 25,610 slipper lobsters. In 1984, the catch was 980,022 spiny lobsters and 284,818 slipper lobsters. In 1985, the catch was 1,430,056 spiny lobsters and 1,189,842 slipper lobsters. Closed areas were defined in the FMP as a measure to aid recruitment. When the Council developed the FMP, Laysan Island and the 10 fathom closure were intended to be refuge areas for lobster recruitment. Thus, the FMP implies that no lobster fishing should occur in the closed areas, and the Council has confirmed this interpretation. To ensure that the Council's intent is effective, fishing for slipper lobster also must be prohibited in these areas.

When the existing regulations were put into place only spiny lobster fishing was prohibited in refuge areas because the only directed lobster fishing was for spiny lobsters. There is now a major directed fishery for slipper lobsters. Allowing fishing for slipper lobsters in the refuges causes two problems. First, some spiny lobster mortality can be expected from this fishing; therefore, the refuge does not provide the complete protection for spiny lobsters that was anticipated when the plan and regulations were adopted. Second, enforcement of the prohibition on spiny lobster fishing is nearly impossible because these regulations are primarily enforced at the dock. If a fisherman were seen fishing in a refuge, it would be impossible to tell if he was fishing for spiny lobsters or for slipper lobsters. This regulation will comply with the Council's original intent to provide a total refuge for spiny lobsters.

On August 6, 1986, the Council, at its 54th meeting in Kailua-Kona, Hawaii, recommended to the Secretary that slipper lobster fishing be prohibited within 20 nautical miles of Laysan Island and within 10 fathoms in the NWHI, consistent with the Council's original intent. The action was recommended by majority vote of the Council under section 305(e)(2)(B) of the Magnuson Act.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds good cause (i.e., to protect the reproductive potential of the spiny lobster stocks in the NWHI and prevent possible detrimental effects from fishermen harvesting lobsters in closed areas) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and a prior opportunity for public comment or to delay for 30 days the effective date of these emergency regulations, under the provisions of sections 553 (b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291, as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that Order.

It is impracticable to defer the effectiveness of this emergency rule to give the Hawaii Department of Planning and Economic Development 90 days to review a determination that the rule is consistent to the maximum extent practicable with Hawaii's approved coastal management program. While different from current State regulations applicable to State waters, this emergency rule has been determined to be consistent to the maximum extent practicable with Hawaii's approved coastal management program, as required by regulations under the Coastal Zone Management Act, 15 CFR 930.32. When the Council amends the FMP to adopt the emergency measure on a permanent basis, a formal consistency determination will be provided in accordance with 15 CFR 930.34(b).

The Director, Southwest Region, NMFS, prepared an environmental assessment for this rule and concluded that no significant impact on the human environment will result from its implementation.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because the rule is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 661

Fisheries, Reporting and recordkeeping requirements.

Dated: September 26, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 681 is amended as follows:

PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES

1. The authority citation for Part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 681.7, paragraph (b)(1) is suspended from September 26, 1986, through December 26, 1986. A new paragraph (b)(7) is added, effective from September 26, 1986, through December 26, 1986, to read as follows:

§ 681.7 Prohibitions.

* * * * *

(b)* * *

(7) Fish for, take, or retain lobsters:

(i) By methods other than lobster traps or by land for spiny lobster, as specified in § 681.24, or

(ii) From closed areas for lobsters, as specified in § 681.23.

3. In § 681.23, paragraphs (a) and (b) are suspended from September 26, 1986 through December 26, 1986. New paragraphs (c) and (d) are added, effective from September 26, 1986, through December 26, 1986, to read as follows:

§ 681.23 Closed areas (refugia).

* * * * *

(c) All lobster fishing is prohibited within 20 nautical miles of Laysan Island.

(d) All lobster fishing is prohibited within the FCZ landward of the 10 fathom curves as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

[FR Doc. 86-22223 Filed 9-26-86; 4:43 pm]

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Proposed Rules

Federal Register
Vol. 51, No. 190
Wednesday, October 1, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Subpart C—Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: The Agricultural Marketing Service proposes to amend the Official Standard Grades for Fire-Cured, Burley and Dark Air-Cured Tobacco to more accurately describe tobacco as it presently appears at the marketplace. This proposal would: (1) Reduce the number of size designations in fire-cured and dark air-cured tobacco; (2) and a special factor symbol in the fire-cured types to denote tobacco that is not sufficiently smoked; (3) add grades in burley tobacco to separate tannish-buff color from tan color, to describe fine quality mixed color leaf, and to describe variegated color in mixed groups; (4) delete certain grades determined to be no longer necessary; and (5) modify and add definitions to clarify terminology related to grade determinations of fire-cured tobacco.

DATE: Comments are due on or before October 16, 1986.

ADDRESS: Send comments to the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, Washington, DC 20250. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, telephone: (202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the Official Standard Grades for Fire-Cured Tobacco, U.S. Types 21–23 and Foreign Type 96, Burley Tobacco, U.S. Type 31 and Foreign Type 93, and Dark Air-Cured Tobacco, U.S. Types 35–37 and Foreign Type 95, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

The current standards for dark fire-cured tobacco, Types 21–23 and 96, and dark air-cured tobacco, Types 35–37 and 95, use the standard 4-inch tobacco sizes as a means of stating length in various grades and qualities. These standard sizes are 43, 44, 45, 46 and 47. With present day production and processing methods the accuracy with which tobacco needs to be sized is of less importance than in past marketing seasons. This proposal would reduce the number of standard sizes to three, specifying a range of 8 inches within individual sizes, and redesignate the standard size as "1", "2" and "3".

Marketing experience in fire-cured tobacco, Types 22–23 and 96, has shown that dark-brown and green colors can range from medium to heavy body. This proposal would change the specifications of body from "heavy" to "medium to heavy" in grades B1D, B2D, B3D, B4D, B5D, B3G, B4G, B5G, X1D, X2D, X3D and X3G.

Fire-cured tobacco is cured by the use of open fires from which the smoke and fumes are absorbed by the tobacco. However, a significant amount of fire-cured tobacco has appeared in past marketing seasons with low detectable levels of smoke and fumes. This proposal would add a special factor "semifired (SF)" to describe tobacco that has not received the amount of smoke characteristic of fire-cured tobacco. This would allow an alternative to grading some of such tobacco "No-G" (no grade).

The present fire-cured standards contain only one grade of best quality green nondescript. Heavy bodied green nondescript and thin bodied green nondescript should be separated because current marketing trends indicate that buying interests are placing more significance on body. This proposal would replace grade N1G with two new grades, N1GL and N1GX, to separate green nondescript from the thinner Lug group and green nondescript from the heavier bodied Leaf group.

The official standards for burley tobacco, Types 31 and 93, do not provide for a color shade lighter than tan color in the Leaf or Tip groups. During past marketing seasons, a significant amount of tobacco from the Leaf group has appeared at the marketplace that is lighter than tan color. This condition is a result of changes in fertilization programs and other production practices. This proposal would add a new combination color symbol and definition to describe tannish-buff (FL) color. Grades B2FL, B3FL and B4FL would be added to describe this color produced in the Leaf (B) group.

The highest quality of mixed color leaf in the current burley standards is B3M. During recent seasons a substantial amount of mixed color leaf which exceeded third quality has been marketed. This proposal would add Grade B2M in the Leaf (B) group to recognize this marketing change.

Grades M1F and M2F in burley tobacco, Types 31 and 93, would be deleted. In recent years tobacco characteristic of these grades has appeared in insufficient volume to justify retention of these grades.

Over the past several years a few crops of mixed variegated leaf have been sold on burley markets; however, the volume was not sufficient to justify mixed variegated grades. Currently, all burley tobacco imported into the United States is inspected. These inspections have revealed the need for variegated mixed grades in order to accurately describe imported burley tobacco from various countries around the world. Accordingly, this proposal would add new Grades M4K and M5K to describe such tobacco.

These proposed rules have been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and have been determined to be "nonmajor" because they do not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR Part 29 for need, currentness, clarity and effectiveness has been completed.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business of this proposed rule. The Administrator, Agricultural Marketing Service, has determined that these actions will not have a significant economic impact on a substantial number of small entities.

The purpose of the Official Standard Grades is to accurately describe tobacco as it presently appears in the marketplace, in terms of the characteristics which are significant in current marketing practice. This proposed rule would adjust the Official Standard Grades to reflect current conditions and practices relevant to the marketing of tobacco. The proposed changes would impose no additional burdens on persons affected by the regulations.

It is hereby found and determined that it is impractical, unnecessary and contrary to the public interest to provide a 30-day comment period on this proposal. A shorter comment period is necessary to provide sufficient lead time to train inspection personnel on the revisions in the grade standards and to allow the Commodity Credit Corporation to establish and announce price supports by grade prior to the opening of the 1986 marketing season. Therefore, a 15-day comment period will be provided on this proposal.

All persons who desire to submit written data, views or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, Agricultural Marketing Service, Room 502 Annex Building, U.S. Department of Agriculture, Washington, DC 20250 not later than October 16, 1986.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Tobacco.

Part 29—Tobacco Inspection

It is proposed that the regulations at 7 CFR Part 29, Subpart C, be amended as follows:

1. The authority citation for §§ 29.2251 to 29.2481 is revised to read as follows:

Authority: Section 29.2251 to 29.2481, issued under 7 U.S.C. 511m and 511r.

§§ 29.2295 through 29.2316 [Redesignated]

2. Current §§ 29.2295 through 29.2316 are redesignated as §§ 29.2296 through 29.2317, respectively.

3. A new § 29.2295 is added to read as follows:

§ 29.2295 Semifired (SF).

Tobacco that is partially or lightly smoked or has not received the amount of smoke that is characteristic of fire-cured tobacco.

4. § 29.2371 is revised to read as follows:

§ 29.2371 Standard sizes.[1]

Inches:	Size
12 to 20	1
20 to 28	2
Over 28	3

5. § 29.2404 is revised to read as follows:

§ 29.2404 Rule 13.

Length shall be stated in connection with each grade of the A,B and C groups and may be stated in connection with the grades of other groups. The standard tobacco sizes shall be used.

6. § 29.2405 is revised to read as follows:

§ 29.2405 Rule 14.

The standard tobacco size 2 shall be used to designate X group tobacco of M or G color when such tobacco is 20 inches or over in length.

7. A new § 29.2414 is added immediately after § 29.2413 to read as follows:

§ 29.2414 Rule 23.

Tobacco that is semifired but which otherwise meets the specifications of a grade shall be treated as a subgrade by placing the special factor "SF" after the grademark. This factor does not apply to tobacco designated "No-G".

§ 29.2461 [Amended]

8. The table in § 29.2461 is amended by revising the heading "321 Grades of lugs" to read "21 Grades of lugs".

9. § 29.2461 is further amended by revising the sentence beginning "Special factors" to read as follows:

Special factors "U", "W" and "SF" may be applied to all grades.

10. § 29.2461 is further amended by revising the heading and text of the chart 'U.S. Standard sizes applicable" to read as follows:

Standard sizes applicable	
A1, A2	2, 3
B1	2, 3
B2	1, 2, 3
B3, B4, B5	1, 2, 3
C1	2, 3
C2, C3, C4, C5	1, 2, 3
X3, X4, X5, M and G [1]	2

[1] No size is applied to these grades if tobacco is under size 2.

11. The authority citation for §§ 29.2501 to 29.2696 is revised to read as follows:

Authority: Sections 29.2501 to 29.2696 issued under 7 U.S.C. 511m and 511r.

[1] The application of sizes is governed by the major portion of the lot or package.

§§ 29.2547 through 29.2570 [Redesignated]

12. Current §§ 29.2547 through 29.2570 are redesignated as §§ 29.2548 through 29.2571, respectively.

13. A new § 29.2547 is added to read as follows:

§ 29.2547 Semifired (SF).

Tobacco that is partially or lightly smoked or has not received the amount of smoke that is characteristic of fire-cured tobacco.

14. § 29.2606 is revised to read as follows:

§ 29.2606 Standard sizes [1].

Inches:	Size
12 to 20	1
20 to 28	2
Over 28	3

§ 29.2629 [Amended]

15. § 29.2629 is amended to remove the words "4-inch series of" from the last sentence.

16. A new § 29.2640 is added immediately after § 29.2639 to read as follows:

§ 29.2640 Rule 24.

Tobacco that is semifired but which otherwise meets the specifications of a grade shall be treated as a subgrade by placing the special factor "SF" after the grademark. This factor does not apply to tobacco designated "No-G".

§ 29.2662 [Amended]

17. The table in § 29.2662 is amended in the text under the headings "B1D-Choice Dark-brown Heavy Leaf", "B2D-Fine Dark-brown Heavy Leaf", "B3D-Good Dark-brown Heavy Leaf", "B4D-Fair Dark-brown Heavy Leaf", "B5D-Low Dark-brown Heavy Leaf", B3G-Good Green Heavy Leaf", "B4G-Fair Green Heavy Leaf", and "B5G-Low Green Heavy Leaf" to remove the word "Heavy" and add in the place thereof the words "Medium to heavy body".

§ 29.2664 [Amended]

18. § 29.2664 is amended in the text under the headings "X1D-Choice Dark-brown Lugs", "X2D-Fine Dark-brown Lugs", "X3D-Good Dark-brown Lugs', and "X3G-Good Green Lugs to remove the word "Heavy" and add in the place thereof the words "Medium to heavy body".

[1] The application of sizes is governed by the major portion of the lot or package.

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§ 29.2665 [Amended]

19. § 29.2665 is amended to remove the grade "N1G-First Quality Crude Green Nondescript".

20. § 29.2665 is further amended to add two new grades following the grade "N1D-First Quality Dark Colored Nondescript" to read as follows:

N1GL-First Quality Crude Green Nondescript from the B Group
60 percent crude leaves or injury tolerance.

N1GX-First Quality Crude Green Nondescript from the X Group
60 percent crude leaves or injury tolerance.

§ 29.2686 [Amended]

21. § 29.2686 is amended by revising the heading and text of the chart "4 Grades of Nondescript" to read as follows:

5 GRADES OF NONDESCRIPT

N1L	N1D	N1GL	N1GX	N2

22. § 29.2686 is further amended by revising the sentence beginning "Special factors" to read as follows:

Special factors "U", "W", "S" and "SF" may be applied to all grades.

23. § 29.2686 is further amended by revising the chart "Standard Sizes Applicable" to read as follows:

A1, A2, A3	2, 3
B1, B2	1, 2, 3
B3, B4, B5	1, 2, 3
C1, C2	1, 2, 3
C3, C4, C5	1, 2, 3

24. The authority citation for §§ 29.3001 to 29.3182 is revised to read as follows:

Authority: Sections 29.3001 to 29.3182 issued under 7 U.S.C. 511m and 511r.

25. § 29.3013 is revised to read as follows:

§ 29.3013 Combination color symbols.

As applied to Burley, combination color symbols are as follows:

FL—tannish buff, FR—tannish red, VF—greenish tan, VR—greenish red, GF—tannish tan, and GR—green red. (See Rules 17 and 18.)

§§ 29.3067—29.3077 [Redesignated.]

26. Current §§ 29.3067 through 29.3077 are redesignated as §§ 29.3068 through 29.3078, respectively.

27. A new § 29.3067 is added to read as follows:

§ 29.3067 Tannish-buff (FL).

A light red-yellow shaded toward buff.

28. § 29.3118 is revised to read as follows:

§ 29.3118 Rule 15.

Any lot of tobacco containing over 20 percent of variegated leaves shall be described as "variegated" and designated by the color symbol "K".

29. Section 29.3153 is amended to add three new grades following the grade "B5F—Low Tan Leaf", and by adding one new grade following "B5K—Low Variegated Leaf" to read as follows:

29.3153 Leaf (B Group).

* * * * *

Grades	Grade names and specifications
* * * * *	
B5F	* * * * *

B2FL—Good Tannish-buff Leaf
Medium body, ripe, open, even, clear finish, strong color intensity, spready, 20" or over in length, 90 percent uniform, and 5 percent injury tolerance.

B3FL—Good Tannish-bull Leaf
Medium body, mature to ripe, firm to open, wavy to even, moderate finish and color intensity, narrow to normal width, 18" or over in length, 85 percent uniform, and 15 percent injury tolerance.

B4FL—Fair Tannish-buff Leaf
Medium body, mature firm, wavy dull finish, weak color intensity, narrow, 16" or over in length, 80 percent uniform, and 20 percent injury tolerance.

* * * * *

B5K

B2M—Fine Mixed Color Leaf
Fleshy to medium body, ripe, open, even, moderate finish and color intensity, 20" or over in length, 90 percent uniformity, and 10 percent injury tolerance.

§ 29.3155 [Amended]

30. § 29.3155 is amended to remove the grades "M1F—Choice Light Mixed" and M2F—Fine light Mixed".

31. § 29.3155 is further amended to add two new grades following the grade "M5FR—Low Dark Mixed" to read as follows:

§ 29.3155 Mixed (M Group).

* * * * *

Grades	Grade names and specifications
* * * * *	

M4K—Fair Variegated Mixed
General quality of X4, C4, B4, T4, fleshy to thin body, mature, under 20 percent greenish, and 20 percent injury tolerance.

M5K—Low Variegated Mixed
General quality of X5, C5, B5, T5, fleshy to thin body, underripe to mature, under 20 percent greenish, and 30 percent injury tolerance.

§ 29.3181 [Amended]

32. § 29.3181 is amended by revising the heading and text of the chart "35 Grades of Leaf" to read as follows:

§ 29.3181 Summary of Standard Grades.

* * * * *

39 GRADES OF LEAF

B1F	B3FR	B3K	B3VR
B2F	B4FR	B4K	B4VR
B3F	B5FR	B5K	B5VR
B4F	B1R	B2M	B3GF
B5F	B2R	B3M	B4GF
B2FL	B3R	B4M	B5GF
B3FL	B4R	B5M	B3GR
B4FL	B5R	B3VF	B4GR
B1FR	B4D	B4VF	B5GR
B2FR	B5D	B5VF	

* * * * *

33. § 29.3181 is further amended by revising the chart "8 Grades of Mixed Group" to read as follows:

8 GRADES OF MIXED GROUP

M3F	M5F	M4FR	M4K
M4F	M3FR	M5FR	M5K

34. § 29.3181 is further amended by revising the chart "7 Grades of Nondescript" to read as follows:

7 GRADES OF NONDESCRIPT

N1L	N1R	N2L	N2G
N1F	N1G	N2R	

§ 29.3182 [Amended]

35. § 29.3182 is amended under the heading "Colors" by adding "FL—Tannish red" following "F—Tan".

36. The authority citation for §§ 29.3501 to 29.3686 is revised to read as follows:

Authority: Sections 29.3501 to 29.3686 issued under 7 U.S.C. 511m and 511r.

37. § 29.3529 is revised to read as follows:

§ 29.3529 Length.

The linear measurement of cured tobacco leaves from the butt of the midrib to the extreme tip. (See Standard Tobacco Sizes, § 29.3591.)

38. § 29.3545 is revised to read as follows:

§ 29.3545 Size.

The length of tobacco leaves. Size does not apply to tobacco in strip form. (See Standard Tobacco Sizes § 29.3591.)

39. § 29.3591 is revised to read as follows:

§ 29.3591 Standard Tobacco Sizes.[1]

Inches:	Size
12 to 20	1
20 to 28	2
Over 28	3

40. § 29.3614 is revised to read as follows:

§ 29.3614 Rule 13.

Length shall be stated in connection with each grade of the A, B, and C groups, except strip grades, and may be stated in connection with grades of other groups. For this purpose, the standard tobacco sizes shall be used. (See Applicable Standard Sizes, § 29.3681.)

41. § 29.3681 is revised to read as follows:

§ 29.3681 Applicable standard sizes.

Types 35, 36, 37 and 95

A1, A2, A3	2, 3
B1, B2, B3, B4, B5	1, 2, 3
C1, C2, C3, C4, C5	1, 2, 3

Dated: September 26, 1986.

James C. Handley,

Administrator, Agricultural Marketing Service.

[FR Doc. 86-22270 Filed 9-30-86; 8:45 am]

BILLING CODE 3410-02-M

[1] The application of sizes is governed by the major portion of the lot or package.

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7 CFR Part 1036

[Docket Nos. A0-179-A49 and A0-179-A49-R01]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and To Order

Correction

In FR Doc. 86-21043 beginning on page 33273 in the issue of Friday, September 19, 1986, make the following correction:

On page 33274, in the first column, in the sixth line, insert a period after "milk order" and insert the following before "increased": "These increases became effective May 1, 1986. At that time, the Class I differential for the Eastern Ohio-Western Pennsylvania milk order".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-172-AD]

Airworthiness Directive; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the inspection for cracking and repair or replacement, as necessary, of the pylon midspar attach fitting horizontal clevis on certain Boeing Model 747 airplanes. This action is prompted by reports of cracks and corrosion in fastener holes of the attach fitting that, if not corrected, could result in possible separation of the pylon and engine from the wing.

DATES: Comments must be received on or before November 21, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (ATTN: AMN-103), Attention: Airworthiness Rules Docket No. 86-NM-172-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The service bulletin specified in this proposal may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-172-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several reports of cracking of the pylon midspar attach fitting horizontal clevis legs on Boeing Model 747 airplanes. On one airplane with approximately 34,000 flight hours and 8,200 landings, both legs of the horizontal clevis of the pylon inboard midspar fitting were fractured through at the aft-most two fastener holes. It has been determined that this cracking was the result of fatigue initiation at fastener holes, due to roughness of the hole finish and/or corrosion in the hole. Such cracking can lead to failure of associated structure, which could lead to separation of the pylon and engine from the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747-54-2118, dated July 25, 1986, which provides procedures to inspect for cracking of the pylon midspar attach fittings, and repair or replacement, as necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this proposed AD would require repetitive inspection for cracking of the pylon midspar attach fitting horizontal clevis of certain Boeing Model 747 airplanes in accordance with the Boeing service bulletin previously mentioned. If cracking of pylon midspar attach fitting structure is found, it must be repaired before further flight.

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It is estimated that 180 airplanes of U.S. registry would be affected by this AD, that it would take approximately 656 manhours per airplane to accomplish the required actions, and that the average labor costs would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,198,400 for the initial inspection cycle.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes listed in Boeing Service Bulletin 747-54-2118, dated July 25, 1986, certificated in any category.

To detect cracking of engine pylon midspar attach fittings, accomplish the following, unless already accomplished:

A. Within 5,000 flight hours after the effective date of this AD or prior to the accumulation of 20,000 flight hours, whichever occurs later, unless accomplished within the last 5,000 flight hours, and at intervals thereafter not to exceed 10,000 flight hours, perform an ultrasonic inspection for cracks initiating at the aft-most two fastener holes in both pylon midspar fittings on the inboard nacelle pylons on airplanes listed in Groups 1 through 5, and on the outboard nacelle pylons on airplanes listed in Group 1, in accordance with Boeing Service Bulletin 747-54-2118, dated July 25, 1986, or later FAA-approved revisions.

B. If cracking is found, repair prior to further flight in accordance with Boeing Service Bulletin 747-54-2118, dated July 25, 1986, or later FAA-approved revisions.

C. Terminating action for the requirements of this AD is rework or replacement of the pylon midspar fitting in accordance with Boeing Service Bulletin 747-54-2118, dated July 25, 1986, or later FAA-approved revisions.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

Note: Compliance with this AD does not terminate the inspection requirements of the Supplemental Structural Inspection Document (SSID) Airworthiness Directive AD 84-21-02 (Amdt. 39-4936; 49 FR 44890), if applicable.

All persons affected by this proposal who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 24, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22120 Filed 9-30-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-179-AD]

Airworthiness Directives; Garrett Turbine Engine Company Model GTCP331 Series Auxiliary Power Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to Garrett Model GTCP331-2001 and -200AC Auxiliary Power Units (APU) installed on Boeing Model 757 and Boeing Model 767 series airplanes, which requires modification of the APU cooling fan containment housing. This amendment is necessary to extend the applicability of the AD to all U.S.-registered airplanes equipped with the Garrett GTCP331 series APU's. This action is prompted by the recent U.S. registration of other make/model airplanes equipped with the Garrett GTCP series APU.

DATES: Comments must be received no later than November 21, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration (FAA), Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-179-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Garrett Turbine Engine Company, P.O. Box 5217, Phoenix, Arizona 85010. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Moring, Aerospace Engineer, Propulsion Section, ANM-174W, FAA Northwest Mountain Region, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; telephone (213) 297-1382.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-179-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

This notice proposes to amend AD 85-14-02, Amendment 39-5091 (50 FR 27933; July 9, 1985), which requires modification of the fan assembly containment housing on Garrett GTCP331-200A or -200AC APU's installed on Boeing Models 757 and 767 series airplanes. The AD was prompted by thirteen reports of failure of the APU cooling fan, two of which were uncontained. This condition, if not corrected, could result in a potential fire hazard.

It was noted in AD 85-14-02 that, if operators of other models of airplanes equipped with the Garrett Model GTCP331 series APU sought registration in the United States, an amendment to the AD would be considered to expand the AD's applicability to include all such APU installations. Airbus Industrie Models A310 and A300-600 airplanes have subsequently been certificated and registered in the U.S.; these airplanes are equipped with the GTCP331 series APU.

Since the potential for failure of the cooling fan is likely to exist or develop on auxiliary power units of the same type design, this amendment is being proposed which would expand the applicability of AD 85-14-02 to include all Garrett GTCP331 APU's installed on any airplane type certificated and registered in the U.S. This action would preclude the potential that the old APU configuration might be used in service on any U.S.-registered airplanes.

It is estimated that 12 additional airplanes of U.S. registry will be affected by this AD. It will require approximately 0.5 manhour per airplane to accomplish the required modification, at an average labor charge of $40 per hour. Modification parts will be furnished by the manufacturer at no charge. Based on these figures, the cost impact of this proposed AD on U.S. operators for 12 additional airplanes affected by this AD is estimated to be $240.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($20). A copy of a draft regulatory evaluation prepared for this section is contained in the Regulatory Docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending Airworthiness Directive AD 85-14-02, Amendment 39-5091 (50 FR 27933; July 9, 1985), by revising the applicability statement and paragraph A. to read as follows:

"Garrett Turbine Engine Company (GTEC) (formerly the AiResearch Manufacturing Company of Airzona): Applies to all GTEC Models GTCP331 series Auxiliary Power Units (APU) with fan assembly, Garrett Part Number 3862160-3 or -4 installed. Compliance is required as indicated, unless already accomplished.

To prevent an uncontained APU cooling fan failure, accomplish the following:

A. Upon removal of the cooling fan assembly, Garrett Part No. 3862160-3 or -4 from an affected GTCP331 series Auxiliary Power Unit (APU) for any reason; or within 1,000 airplane hours time-in-service after August 15, 1985, or prior to September 15, 1985, whichever comes first, for the Boeing Model 757 and 767 series airplane; and within 1,000 airplane hours time-in-service after the effective date of this AD, for all other airplanes with GTCP331 series APU installed; incorporate the new fan assembly with the improved fan containment housing as specified in Section 2.A, "Accomplishment Instructions," of GTEC Service Bulletin GTCP331-49-5546, dated August 9, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Garrett Turbine Engine Company, Post Office Box 5217, Phoenix, Arizona 85010. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

Issued in Seattle, Washington, on September 24, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22121 Filed 9-30-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-190-AD]

Airworthiness Directives; Lockheed-California Company Model L-1011 Series Airplanes Equipped With Carbon Fibre Cowls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require modification of the left rear fan cowl door support stowage mechanism on all Lockheed Model L-1011 series airplanes equipped with carbon fibre cowls. This proposed AD is prompted by nine reports of engine throttle control mechanism jamming caused by an unrestrained left rear fan cowl door support that fell among the throttle mechanism linkages. The throttle control jamming could result in loss of engine control.

DATES: Comments must be received on or before November 21, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-190-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained upon request to Rolls-Royce PLC, P.O. Box 31, Derby DE2 8BJ, England, Attention: Technical Publications Department. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region.

Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6327.

Comments Invited

Intersted persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103) Attention: Airworthiness Rules Docket No. 86-NM-190-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Nine incidents have been reported of the engine throttle control jamming on Lockheed Model L-1011 series airplanes and Boeing Model 747 series airplanes powered by Rolls-Royce RB211-524 engines, due to interference from an unstowed left rear fan cowl door support. On both types of airplanes, the support is a telescopic strut, which is attached at one end to the fan cowl door through a swivel joint, and, in a stowed position, it is secured at the other end in a housing by a pip-pin type mechanism. It is possible to close the fan cowl door with the strut in the unstowed position on multiple engines on the same airplane. The strut, if not stowed and secured properly, may fall on the engine throttle control cables and jam the cables, thereby restricting the crew's ability to manipulate the throttles.

Most Lockheed L-1011 series airplanes are equipped with metal cowls, but a few are equipped with carbon fibre (composite) cowls. Jamming of the throttle controls could occur on either types of cowls, due to the conditions described above.

To prevent incidents of jamming of the throttle controls on metal cowls, Rolls-Royce issued Service Bulletin (S/B) RB211-71-7254, Revision 1, on December 7, 1984, recommending modification to improve the stowage mechanism design. The improved design incorporates a baulking (restraining) bracket for the strut, which prevents the strut from falling on the throttle control cables, in the event the strut was not stowed properly and the fan cowl door was closed. The FAA issued AD 86-07-03 on March 26, 1986 (51 FR 11301; April 2, 1986), to require the above changes on Lockheed L-1011 airplanes equipped with metal cowls, in accordance with the Rolls-Royce service bulletin.

Since issuance of AD 86-07-03, Rolls-Royce has issued Service Bulletin RB211-71-8220, dated May 23, 1986, which describes similar modifications for Lockheed Model L-1011 airplanes equipped with the carbon fiber (composite) cowls.

Since this condition is likely to exist or develop on other airplanes of the same type design, the FAA is proposing an airworthiness directive (AD) which would require modifications in accordance with the above Rolls-Royce service bulletin.

Approximately 7 U.S. registered Model L-1011 series airplanes would be affected by this AD. It is estimated that it would take 6 manhours per nacelle to accomplish the required actions, and that the average labor cost would be $40 per manhour. Cost of parts for each engine modified is estimated to be $320. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,680 per airplane, or $11,760 for the affected U.S. fleet.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Execuitve Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model L-1011 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011 series airplanes equipped with carbon fibre cowls, certificated in any category. Compliance is required within 12 months after the effective date of this AD, unless already accomplished.

To prevent loss of throttle control caused by an unstowed left rear fan cowl door support on carbon fibre cowls, accomplish the following:

A. Modify the fan cowl support strut stowage mechanism in accordance with Rolls-Royce Service Bulletin RB211-71-8220, dated May 23, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Rolls-Royce PLC, P.O. Box 31, Derby DE2 8BJ, England, Attention: Technical Publications Department. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on September 24, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22122 Filed 9-30-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-196-AD]

Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Mystere Falcon 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to AMD-BA Mystere Falcon 200 series airplanes, which would require replacement of the fuel system booster crossfeed valve actuator on the fuel distributor block with a sealed actuator. This proposal is prompted by reports of malfunctions of the fuel system booster crossfeed valve actuator in flight. This condition, if not corrected, could cause fuel starvation if it becomes necessary to supply fuel from a single fuel feed line.

DATES: Comments must be received no later than November 21, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-196-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Avions Marcel Dassault-Breguet Aviation (AMD/BA), 40 FJC, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-196-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain AMD-BA Mystere Falcon 200 airplanes. Accumulation of water in the fuel system booster crossfeed valve actuator has resulted in several malfunctions of this actuator in flight. Malfunctions of the fuel system booster crossfeed valve actuator have been caused by freezing of the moving parts in the actuator or lack of electrical continuity as a result of corrosion. AMD-BA issued Service Bulletin No. AMD-BA-F200-64, dated March 3, 1986, which describes replacement of actuator AVIAC Part Number (P/N) 2778-1 (ZENITH P/N D97C00-215) with a sealed actuator, AVIAC P/N 2773 (ZENITH P/N D97C00-202). The DGAC issued an airworthiness directive on March 5, 1986, making AMD-BA Service Bulletin No. AMD-BA-F200-64 mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of the fuel system booster crossfeed valve actuator in accordance with the service bulletin previously mentioned.

It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts is estimated to be $500 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $11,880.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($660). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Avions Marcel Dassault-Breguet Aviation (AMD-BA): Applies to Model Mystere Falcon 200 series airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To prevent malfunction of the fuel system crossfeed valve actuator, accomplish the following:

A. Install a fuel system booster crossfeed valve actuator, AVIAC P/N 2778-1 (ZENITH P/N D97C00-215), in accordance with AMD-BA Service Bulletin No. AMD-BA F200-64, dated March 3, 1986.

B. Install a placard on the fuel distributor block in accordance with AMD-BA Service Bulletin No. AMD-BA F200-64, dated March 3, 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

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All persons affected by this proposed directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Avions Marcel Dassault-Breguet Aviation, 40 JFC, Teterboro Airport, Teterboro, New Jersey 07608. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 24, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22119 Filed 9-30-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-23643; File No. S7-18-86]

Concept Release on Takeovers and Contests for Corporate Control

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the period for public comment on three topics relating to takeovers and contests for corporate control.

DATE: Comments should be received on or before December 1, 1986.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-18-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Joseph G. Connolly, Jr., or Gregory E. Struxness, (202) 272-3097, Office of Tender Offers, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is extending the period for public comment on three topics relating to takeovers and contests for corporate control: (1) Whether the Williams Act should apply whenever a person acquires a substantial percentage of a target company's securities during or shortly after a tender offer; (2) whether there should be a governmental response to the proliferation of "poison pill" plans; and (3) whether the Commission should adopt a self-governance exemption to its "all holders" rule, as well as to other provisions of its tender offer rules. The concept release [1] requesting comment on these three topics was first published on August 5, 1986.[2] The comment period was originally scheduled to expire on September 30, 1986. The Commission is extending the comment period until December 1, 1986 because it believes that these issues are of great importance and wishes to assure that all interested persons have adequate time to prepare considered responses to the questions that the Commission has raised.

By the Commission.

Jonathan G. Katz,

Secretary.

September 24, 1986.

[FR Doc. 86-22201 Filed 9-30-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 331

[Docket No. 85N-0049]

Antacid Drug Products for Over-the-Counter Human Use; Proposed Amendment of Antacid Monograph; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 29, 1986, the comment period for the notice of proposed rulemaking to amend the labeling requirements for over-the-counter (OTC) antacid drug products in § 331.30(d) (21 CFR 331.30(d)) by adding a drug interaction precaution regarding prescription drug interactions. This action responds to a request to extend the comment period for an additional 30 days to allow more time for interested persons to address important issues proposed by the agency and to allow greater participation by those affected by this rulemaking.

DATE: Written comments by October 29, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 30, 1986 (51 FR 27342), FDA issued a notice of proposed rulemaking to amend the labeling requirements for OTC antacid drug products in § 331.30(d) (21 CFR 331.30(d)) by adding a drug interaction precaution regarding prescription drug interactions. Interested persons were given until September 29, 1986, to comment on the notice of proposed rulemaking.

In response to the proposal, The Proprietary Association requested a 30-day extension of the comment period in order to allow adequate time for the association to address important issues proposed by the agency concerning OTC antacid drug products. The Proprietary Association stated that the rulemaking is of significant interest to the OTC drug industry and that extending the comment period will allow greater participation by all those who will be affected by the proposal.

FDA has carefully considered the request. The agency believes that greater participation by those affected by the proposal is in the public interest, and may be of assistance in amending the labeling requirements for OTC antacid drug products. Thus, the agency considers a general extension of the comment period for 30 days to be appropriate.

Interested persons may, on or before October 29, 1986, submit to the Dockets Management Branch (address above) written comments concerning the notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 25, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-22210 Filed 9-26-86; 3:13 pm]

BILLING CODE 4160-01-M

[1] Release No. 34-23486 (July 31, 1986).

[2] 51 FR 28096 (August 5, 1986).

21 CFR Part 358

[Docket No. 82N-0214]

Dandruff, Seborrheic Dermatitis, and Psoriasis Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 29, 1986, the comment period for the notice of proposed rulemaking to establish conditions under which over-the-counter (OTC) dandruff, seborrheic dermatitis, and psoriasis drug products are generally recognized as safe and effective and not misbranded. This action responds to a request to extend the comment period for an additional 30 days to allow more time for interested persons to address important issues proposed by the agency and to allow greater participation by those affected by this rulemaking.

DATE: Written comments by October 29, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 30, 1986 (51 FR 27346), FDA issued a notice of proposed rulemaking to establish conditions under which OTC dandruff, seborrheic dermatitis, and psoriasis drug products are generally recognized as safe and effective and not misbranded. This notice of proposed rulemaking, which was based on the agency's evaluation of the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and public comments on those recommendations, is part of the ongoing review of OTC drug products conducted by the agency. Interested persons were given until September 29, 1986, to comment on the notice of proposed rulemaking.

In response to the proposal, The Proprietary Association requested a 30-day extension of the comment period in order to allow adequate time for the association to address important issues proposed by the agency concerning OTC dandruff, seborrheic dermatitis, and psoriasis drug products. The Proprietary Association stated that the rulemaking is of significant interest to the OTC drug industry and that extending the comment period will allow greater participation by all those who will be affected by the proposal.

FDA has carefully considered the request. The agency believes that greater participation by those affected by the proposal is in the public interest, and may be of assistance in establishing the conditions under which OTC dandruff, seborrheic dermatitis, and psoriasis drug products are generally recognized as safe and effective and not misbranded. Thus, the agency considers a general extension of the comment period for 30 days to be appropriate.

Interested persons may, on or before October 29, 1986, submit to the Dockets Management Branch (address above) written comments concerning the notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 25, 1986.

John M. Taylor,

Acting Associated Commissioner for Regulatory Affairs.

[FR Doc. 86-22211 Filed 9-26-86; 3:13 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-041]

Occupational Exposure to 1, 3-Butadiene

AGENCY: Occupational Safety and Health Administration [OSHA], Labor.

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: This notice announces the initiation of action by OSHA with respect to reducing worker exposures to 1, 3-butadiene (BD) under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)). This regulatory action follows: (a) The release of scientific studies indicating that BD caused cancer through inhalation in two animal species, and (b) OSHA's acceptance of the Environmental Protection Agency's (EPA's) referral of the chemical under the authority of section 9(a) of the Toxic Substances Control Act (TSCA) (50 FR 41393).

This notice summarizes information currently available to OSHA concerning production and use of BD, health effects, estimates of employees exposure and risk assessments. This notice invites interested parties to submit data, views, and comments regarding all issues involved in OSHA's development of a revised standard for BD, including the appropriate scope of coverage.

DATE: Comments in response to this Advance Notice should be submitted by December 30, 1986.

ADDRESS: Comments should be submitted in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H-041, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Office of Information, Room N-3641, Washington, DC 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

1. Chemical and Physical Characteristics

The chemical 1, 3-Butadiene (Chemical Abstracts Service Registry Number 106-99-0) is a colorless, noncorrosive, flammable gas at standard ambient temperature and pressure with a mild aromatic odor. It has a molecular weight of 54.1, boiling point of −4.7 °C at 760 mm Hg, a Lower Explosive Limit of 2%, and an Upper Explosive Limit of 11.5%. It is highly reactive, dimerizes to 4-vinylcychlohexane, and polymerizes easily. Because of its low odor threshold, high flammability and explosiveness, BD has been handled with extreme care in industry.

BD is a major commodity product of the petrochemical industry. Total U.S. production of BD in 1985 was 2.5 billion pounds. About 70% is used in production of styrene-butadiene rubber and polybutadiene rubber for the tire industry. Other uses include copolymer latexes for carpet backing and paper coating, as well as resins and polymers for pipes and automobile and appliance parts. It is also used as an intermediate in the production of such chemicals as fungicides. In "1, 3-Butadiene Use and Substitutes Analysis" (Ex. 17-15), EPA identified 140 major, minor and potential uses of butadiene in the chemical industry.

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2. History of the Standard

The present OSHA standard for BD requires employers to assure that employee exposure does not exceed 1,000 parts per million parts of air (ppm) determined as an 8-hour time-weighted average (TWA) (29 CFR 1910.1000, Table Z–1). This standard was adopted by OSHA in 1971 pursuant to section 6(a) of the OSH Act, 29 U.S.C. 655. The source of this standard was the Threshold Limit Value (TLV) for BD developed in 1968 by the American Conference of Governmental Industrial Hygienists (ACGIH). This TLV was developed to prevent irritation and narcosis.

In 1983, the National Toxicology Program (NTP) released the results of an animal study indicating that BD causes cancer in rodents (Ex. 20). Based on the strength of the results of this animal study, ACGIH in 1983 classified BD as an animal carcinogen and in 1984 recommended a new TLV of 10 ppm (Ex. 2–4). On the same basis, the National Institute for Occupational Safety and Health (NIOSH) published, on February 9, 1984, a Current Intelligence Bulletin recommending that BD be regarded as a potential occupational carcinogen, teratogen and a possible reproductive hazard (Ex. 23–17). On January 5, 1984, OSHA published a Request for Information (49 FR 844) and EPA published a notice announcing the initiation of a 180 day review under the authority of section 4(f) of TSCA (49 FR 845). Comments were to be submitted to OSHA by March 5, 1984. On April 4, 1984, OSHA extended the comment period until further notice (40 FR 13389).

Petitions for an Emergency Temporary Standard (ETS) of 1 ppm or less for workers' exposure to BD (Ex. 6–4) were submitted to OSHA on January 23, 1984, by the United Rubber, Cork, Linoleum and Plastic Workers of America (URW), the Oil, Chemical and Atomic Workers (OCAW), the International Chemical Workers Union (ICWU), and American Federation of Labor and Congress of Industrial Organizations (AFL–CIO). OSHA, on March 7, 1984, denied the petitions on the ground that the Agency was still in the process of evaluating the health data to determine whether regulatory action was appropriate.

On May 15, 1984, EPA published an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 20524). Information received in response to this ANPR was used by EPA in developing risk assessments. Subsequently, EPA identified BD as a probable human carcinogen (Group B2), and concluded that current exposures during the manufacturing of BD and its processing into polymers presented an unreasonable risk of injury to human health (Ex. 17–4). Additionally, EPA determined that the risks associated with exposure to BD may be reduced to a sufficient extent by action taken under the OSH Act. Following these findings, EPA, in accordance with section 9(a) of TSCA, on October 10, 1985, referred BD to OSHA to give this Agency an opportunity to regulate the chemical under the OSH Act. EPA requested OSHA to determine whether the risks described in the EPA report may be prevented or reduced to a sufficient extent by action taken under the OSH Act. If such a determination is made, then OSHA was requested to issue an order declaring whether the manufacture and use described in the report present the risk therein described. EPA requested OSHA to respond within 180 days, by April 8, 1986 (50 FR 41393).

On December 27, 1985, OSHA published a notice (50 FR 52952) soliciting public comments on EPA's referral report. Based on all the available information, OSHA published a notice (50 FR 12526) on April 11, 1986, responding to the EPA referral report by making a preliminary determination that a revised OSHA standard limiting occupational exposure to BD could prevent or reduce the risk of exposure to a sufficient extent and that such risk has been accurately described by EPA in the report. Since then OSHA has received three comments (International Institute of Synthetic Rugger Producers (IISRP), Ex 26–1; ICWU, Ex. 26–2; and Texaco Inc., Ex. 17–33), including a new mortality study of butadiene workers at Port Neches, Texas. OSHA is currently analyzing these comments.

With this ANPR, OSHA is initiating action within the meaning of section 9(a) of TSCA.

II. Health Effects

In assessing the potential health hazards to workers exposed to this chemical, OSHA evaluated the non-carcinogenic health effects, the carcinogenic effects demonstrated in two animal studies, the results of six epidemiological studies and the mutagenic effects. The summary of OSHA's preliminary evaluation is presented below.

1. Non-carcinogenic Adverse Health Effects

At low concentrations, BD vapor may cause slight irritation of the skin and eyes. It may cause blurring of vision, nausea, and quickening of pulse. At concentrations higher than 8,000 ppm, BD induces narcosis, or unconsciousness (Ex. 2–5). In addition, animal studies indicate that BD may be associated with diseases of the kidneys. Rats exposed to 1000 and 8000 ppm of BD showed elevated rates of death over controls due to kidney failure (Ex. 2–31).

2. Carcinogenic Effects

A. Animal Studies

BD was found to be a cancer causing agent in two animal species. Two independent chronic inhalation studies sponsored by NTP and the IISRP were made available in 1983 (Exs. 23–1; 2–31). Preliminary data from a subsequent study by the Chemical Industry Institute of Toxicology (CIIT) (Ex. 22–7) also show BD to be carcinogenic.

In the NTP study (Ex. 23–1), groups of 50 B6C3F1 mice of each sex were exposed to O ppm, 625 ppm and 1250 ppm of BD for six hours a day, five days a week. The study was terminated at 60 weeks and 61 weeks for the male and female mice, respectively. The carcinogenicity of BD in male and female B6C3F1 mice was demonstrated by a statistically significant increase of tumor incidences as well as early induction of hemangiosarcomas of the heart and malignant lymphomas. Among the other increased incidences of tumors were alveolar/bronchiolar adenomas and carcinomas, and papillomas of the stomach in both males and females; and acinar cell carcinomas of the mammary gland, granulosa cell tumors of the ovary, and hepatocellular adenomas/carcinomas in females. Additionally, BD was associated with non-neoplastic lesions in the respiratory epithelium, liver necrosis, and testicular or ovarian atrophy.

In the IISRP study (Ex. 2–31), groups of 100 Sprague-Dawley rats of each sex were exposed to BD at concentrations of 0 ppm, 1,000 ppm. and 8,000 ppm for 6 hours per day, 5 days per week. The study was terminated at 105 weeks and 111 weeks for the female and male rats, respectively. In females, significantly increased incidences of mammary gland tumors, Zymbal gland carcinomas, follicular cell tumors of the thyroid, and uterine stromal carcinomas were observed. In males, increased incidences of Leydig cell tumors and pancreatic exocrine tumors were observed.

Carcinogenic effects of BD have also been confirmed in a subsequent study conducted by CIIT, using B6C3F1 mice exposed through inhalation to 1250 ppm of BD for 6 hours per day (Ex. 22–7). Although this study was not designed to quantify tumor incidences, preliminary data have confirmed murine thymic lymphoma as the primary cause of death following chronic exposure to BD in male B6C3F1 mice.

The NTP and IISRP studies were reviewed by EPA's scientists and the NTP's Board of Scientific Counselors. They determined that the data are valid and concluded the BD is a potent carcinogen in B6C3F1 mice as shown in the NTP study and a weak carcinogen in Sprague-Dawley rats as shown in the IISRP study.

NTP and Chemical Manufacturers Association (CMA) (Exs. 17–23; 17–25) expressed concerns regarding the conclusiveness of the reported carcinogenicity findings in the NTP study (Ex. 23–1), due to deviations from Good Laboratory Practices (GLP) and inconsistencies in the study protocol. Since OSHA is primarily relying on the NTP study in assessing the cancer hazard posed to BD workers, OSHA analyzed the audit reports and evaluated suspected deviations from the GLP standards and their impact (if any) on the validity of data. The summary of OSHA's preliminary analysis is as follows:

In considering the major issues, the Agency has preliminary determined that first, at the time of the audits, Individual Animal Data Records (IADR's) were available in the archive files and thus could have been used to verify the statistical analyses and computer test results given in the technical report.

Moreover, OSHA believes that the increased tumor incidences were so overwhelming, that any reasonable statistical analysis would indicate a highly significant effect.

Secondly, OSHA has determined that the flow rate calculation used by NTP is a scientifically acceptable method of computation. The concentration of BD to which the animals were exposed was adequately measured for each exposure period and documented in the archives. There is no evidence that the effective flow rate resulted in long build-up or decay time.

Third, the Agency is satisfied that the 100% slide/block match for the high dose and control animals conducted by the NTP yields a reliable measure of the validity of the study.

Fourth, OSHA's preliminary findings are in agreement with the conclusion of NTP's Board of Scientific Counselors' Technical Reports Review Subcommittee regarding deviations from acceptable protocol, such as data collection of animal body weights and occasional non-removal of food prior to exposure. The Board concluded that the "less than perfect" study conduct had no significant impact on the final study results and conclusions.

Fifth, OSHA found no evidence that the minor genetic variations among the mice influenced the study findings. Both the treated animals and the controls were randomly selected from the same shipment. Evidence of carcinogenicity was weighed almost entirely on comparisons with concurrent controls, and because of the early termination of the study, historical controls could not have been used.

Sixth, with regard to the traumatic deaths of a small number of animals, the Agency has preliminarily determined that this has little or no effect on the incidence of tumor induction.

Seventh, the possibility of some animal mix-up does not invalidate the study results. The unique tumors (e.g. hemangiosarcomas of the heart) occurred only in the BD study and not in the other two studies performed in the same laboratory at that time (i.e. ethylene oxide and 1,2-epoxybutane experiments). If animal mix-up occurred, those unique tumors would have been detected in the other studies as well. Furthermore, since only a very few animals were involved, discounting those animals would not have a significant impact on the final interpretation of the study.

Finally, the loss of a few ear tags and the possibility of mix-ups between exposed and control animals, using the worst-case scenario, would most likely result in an underestimate rather than an overestimate of magnitude of risk.

For these reasons, the criticisms, while they point out instances of less than acceptable laboratory practices, can not be used to invalidate the final results of the study.

OSHA's review indicates that the NTP study (Ex. 23–1) was not published until after NTP conducted a detailed evaluation of the discrepancies indicated in its audit report (Ex. 17–23). The NTP Board of Scientific Counselors concluded that "no data discrepancies were found that influenced the final interpretatons of these experiments" (Ex. 23–1). In response to the specific audit performed by CMA (Ex. 17–25), on December 17, 1985, NTP reaffirmed its previous conclusion (Ex. 22–3). Furthermore, an independent review by EPA of the NTP study concluded that the NTP study is valid (Ex. 17–28). OSHA's preliminary evaluation of the study and the audit reports has lead OSHA to agree with the NTP's and EPA's conclusions.

Furthermore, OSHA has determined that the magnitude of the carcinogenicity evidence in the NTP animal study, almost 100% of the exposed animals developed tumors, warrants regulatory action. OSHA realizes the importance of Good Laboratory Practices in studies that form the basis for Agency regulations, but even though Good Laboratory Practices were not precisely followed in this NTP study, the Agency does not believe the study is critically flawed. The carcinogenicity evidence, especially the rare tumors, such as hemangiosarcomas of the heart, cannot be disregarded.

B. Epidemiologic Studies

Six epidemiologic studies were reviewed by EPA to assess the human carcinogenicity of BD (Ex. 17–27). Four studies are of rubber workers (Exs. 23–3; 23–4; 23–5; 23–6), and two studies are of styrene-butadiene workers (Exs. 2–26; 2–27). Four studies reported increases in mortality from cancer of the lymphopoietic system and three studies reported increases in mortality from leukemia. Two studies indicated significantly elevated mortality from stomach neoplasms. The different findings between studies may be due to confounding exposures. It is worth mentioning that these types of tumors were observed in the NTP study (Ex. 23–1).

Although these studies do show elevated cancer mortality, it is difficult to correlate these findings with BD exposure. Since the epidemologic studies do not separate the contribution of BD exposure from the contributions of other occupational exposures, and because they lack historical exposure data, EPA concluded that the studies wer inadequate, and neither the existence nor the absence of a link between BD and human cancer could be established. OSHA's preliminary conclusion is consistent with that reached by EPA.

3. Metabolism and Mutagenicity

The secondary evidence supporting the potential carcinogenicity of BD in humans comes from studies of absorption, distribution, metabolism, and short-term assays (Ex. 17–21). These studies show that BD is readily absorbed by animals and humans via inhalation and that in animals it is distributed to many organs and tissues.

There is evidence from metabolic studies that BD is converted to reactive epoxide metabolites (3,4-epoxybutene and 1,2; 3,4-diepoxybutane) which are DNA alkylators and are direct-acting mutagens, agents that cause a permanent transmissible change in a gene. This has been demonstrated in both *in vitro* and *in vivo* test systems. The mutagenicity of BD is observed in *Salmonella typhimurium* only in the

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presence of a liver S9 metabolic activation system. This evidence suggests that BD is a promutagen in bacteria, in that its mutagenicity depends on metabolic activation. Neither whole-animal mutagenicity nor information on the metabolism of BD in humans has been reported.

No information was found on the potential carcinogenicity of chemical compounds considered to be a structurally analogous to BD (Ex. 17–29).

III. The Assessment of Risk

EPA conducted two risk assessments: one by the Office of Toxic Substances (OTS) (Ex. 17–5); and the other by the Carcinogen Assessment Group (CAG) (Ex. 17–21). OTS estimated that workers exposed to BD in both the monomer and polymer industries face lifetime individual risks ranging from 1:100,000 to 1:1. These estimates represent 95% upper confidence limits and are dependent on the level of exposure. The upper-limits of estimated risks for daily, year-round exposures at 10, 1, and 0.1 ppm are 10^{-1}, 10^{-2}, and 10^{-3}, respectively, EPA further estimated that there are 22 to 80 and 148 to 838 extra lifetime cancer cases expected in the monomer and polymer industries, respectively (Ex. 17–3). These ranges of extra lifetime cancer cases depend on worker's exposure levels and represent an upper limit of risk.

According to EPA's "Proposed Guidelines for Carcinogen Risk Assessment," CAG classified BD as a "probable human carcinogen, Group B2," on the basis of sufficient evidence from studies in two species of rodents, and inadequate epidemiologic data. A 95% upper-limit unit cancer risk of 6.4 $x10^{-1}$ $(ppm)^{-1}$ was estimated for BD from the geometric mean of pooled male and pooled female significant tumor responses from the NTP mice study.

OSHA is currently conducting an independent risk assessment. Although this risk assessment has yet to be completed, OSHA believes the evidence from preliminary evaluation of data is sufficient to characterize BD as a probable human carcinogen. The two animal studies clearly showed the positive carcinogenic effects of BD (Exs. 2–31, 23–1). BD has been shown to cause mutations in several prokaryotic and eukaryotic cell assay systems (Ex. 17–21). Six epidemiologic studies (Exs. 23–3, 4,5,6;2–26,27) demonstrated elevated cancer mortality in some occupational groups in the rubber industry. Although these studies can not identify BD as the causal agent for the observed increases in mortality due to cancer, they do not show that BD is not a human carcinogen.

OSHA believes that the magnitude of risk shown in EPA's risk assessments suggests that exposures at OSHA's current PEL pose a risk to workers and that the risk may be significant. OSHA's record reflects agreement that reduction of the current PEL is needed (Dow Chemical, Ex. 22–4; CMA, Ex. 22–7; Amoco Corp., Ex. 24–1; OCAW and UAW, Ex. 24–3) ICWU, Ex. 26–2; and IISRP, Exs. 24–4, 26–1). OCAW, UAW (Ex. 24–3) and ICWU (Ex. 26–2) have proposed a standard of 1 ppm or less. They believe that 1 ppm if feasible and would reduce the cancer risk significantly. On the other hand, IISRP (Ex. 26–1) has proposed that the current PEL for BD should be lowered only to 10 ppm.

IV. Occupational Exposures and Control Measures

EPA estimates that the exposed populations in the monomer and polymer industries are 480–740 and 4800–7500 workers, respectively (Ex. 17–3). OSHA emphasizes that, especially for the polymer industry, these figures are only estimates. EPA is currently gathering additional exposure information on the polymer and end use industrial sectors which will permit OSHA to develop a more accurate exposure profile.

With regard to prevailing exposure levels, CMA's survey of fourteen monomer producers indicated that 91% of workers were exposed to less than 10 ppm (Ex. 3–21). IISRP obtained exposure data from eight North American polymer plants during the period from 1978 to 1984. Almost 95% of the samples were less than 10 ppm, although 1 out of 1,672 samples (0.06%) was in the 500 to 1,000 ppm range (Ex. 3–21).

OSHA's preliminary evaluation of available information indicates that exposures can be controlled by instituting engineering controls, improving work practices or requiring employees to use personal protective equipment wherever engineering controls fail to reduce the exposure to the desired level. The use of engineering controls; such as dual mechanical seals to prevent BD leaks from pumps and compressors, closed loop sampling techniques, and basic industrial ventilation designs would contribute significantly to the reduction of exposure levels in the workplace. The use of work practice controls such as establishing regular schedules for leak testing of packing glands and seals, decontaminating equipment before work is performed, purging sampling containers to outside atmosphere, and testing confined areas before entering or performing work would further reduce worker exposures. Using personal protective equipment such as respirators where necessary, and substituting the chemical if feasible could also further decrease worker exposures.

V. Technological Feasibility and Economic Analysis

EPA prepared a Regulatory Impact Analysis that assessed the cost of installing engineering equipment to control BD exposures and concluded that "the imposition of engineering controls should not materially effect the market for butadiene" (Ex. 17–30). Several companies have also submitted cost data (Exs. 22–1; 24–41).

EPA estimated that it will cost $118,000 to $320,000 per plant for control technology to achieve a 1 ppm exposure level (Ex. 17–30). Three IISRP North American Member companies have estimated that the preliminary costs for control technology to achieve a 10 ppm exposure level ranges from $0.5 million to $6.5 million per plant (Exs. 24–4, 26–1). Based on their experience with vinyl chloride, Goodyear Tire and Rubber Company determined that it costs $5.5 million for control technology in their four plants (Ex. 22–1). They indicated that they can not now determine what exposure levels will be achieved after instituting engineering controls.

OSHA's preliminary evaluation of the available information suggests that it would be technologically and economically feasible to implement engineering controls and other protective measures which may be necessary in order to reduce the current PEL. OSHA intends to develop a more detailed assessment prior to publishing a proposed standard.

Request for Comments

OSHA solicits information and comments relevant to the effects and controls of BD exposure. Interested parties are invited to express opinions as to what provisions, including those which set the permissible exposure limit(s), should be included in a revised BD standard. OSHA is specifically interested in methods, costs, and effectiveness of control strategies that have already been employed to reduce exposure to BD. The questions below will provide specific guidance on OSHA's request for information. Please provide the rationale that supports your submissions.

Information on BD that has already been submitted to EPA (Docket Nos. OPTS–91002, 62034, 48502) is part of the OSHA record (Docket No. H–041) and should not be resubmitted. Comments and data previously submitted to OSHA remain part of this record and likewise need not be resubmitted.

Comments should be sent in quadruplicate to the Docket Officer, at the address noted above, where they will be available for inspection and copying. The data received will be carefully reviewed by OSHA for use in the preparation of a proposed standard for BD.

A. Health Effects

(1) What studies should OSHA consider to assess potential health risks, especially the carcinogenic, teratogenic and mutagenic effects of BD?

(a) Are they any data, such as medical records or unpublished studies not now in the record, that should be included in OSHA's decision making?

(b) In light of the mammary and ovarian cancers in the animal studies, are there any human data that show incidence of such tumors?

(c) In the epidemiologic literature, increased mortality due to diabetes mellitus has been observed in rubber workers with possible exposure to BD. None of the studies, however, can identify BD as the etiologic agent, and the focus of these studies is on cancer mortality. Are there any studies which specifically examine the relationship of BD exposure to diabetes mellitus and its related complications?

(2) What dermal absorption studies are available and what is the extent of potential adverse health effects resulting from such dermal exposure?

(3) Are there studies or other evidence indicating the combined effects of inhalation and dermal exposures?

(4) How should OSHA estimate the significance of risk at the current exposure level of 1,000 ppm PEL for BD? Specifically:

(a) What mathematical models are most appropriate to quantify the risk of cancer or other adverse health effects from exposure to BD?

(b) Which studies should be used for a quantitative risk assessment of BD?

(c) Which tumor incidences in which animal species, by which route(s) of administration and at which dose level(s), should be selected for use?

(d) How should dose levels in experimental animal studies be converted to equivalent dose for occupationally exposed persons and how should the dose levels be expressed?

(e) Should corrections be made for species-to-species extrapolation and for combined routes of exposure (i.e. dermal and inhalation)? How?

(f) Are there data available to indicate a "dose-response" effect for BD exposure? (i.e., are any health effects of BD dependent on the time period over which exposure occurs rather than solely on the total dose received?)

(5) What, if any, are the non-carcinogenic effects of BD on the endocrine system?

B. Permissible Exposure Levels

(1) Should a revised standard for BD include an 8-hour time weighted average, ceiling level, an action level or a combination of limits?

(2) What permissible exposure levels should be proposed and what support, in the health evidence, is available for these numbers?

(3) What data support the feasibility for measuring the new permissible levels (including accuracy and precision of collection and analytical procedures)?

(4) What data support the technological feasibility of achieving the new permissible level for the various job categories?

(5) Is an action level appropriate for some or all job categories in BD industry? What impact should an action level have on employee health?

(6) What are appropriate action levels in the various job categories? Which regulatory provisions should be modified or eliminated when exposures are under the action level?

(7) What cost savings are expected from incorporation of an action level provision?

C. Production and Control Systems

(1) What current production processes and their associated engineering controls are utilized?

(2) Are there data indicating the efficiency of the currently employed control techniques?

(3) Is there any industrial sector or industrial operation within a certain sector that can demonstrate the infeasibility of employing engineering methods for controlling workers' exposure at levels lower than the current limits?

(4) What are the potential modifications in process or production technologies that are available or can be implemented for reducing workers' exposures?

(5) What level of exposure reduction can be expected from employing specific process modifications or installing specific engineering controls?

D. Substitution Availability

(1) Are there substitutes for BD and what are their limitations?

(2) For any available substitute are there studies available documenting potential adverse health effects?

(3) Are there unique situations or industrial operations or uses where substitutes are determined to be either unavailable or infeasible to use for controlling workers exposures?

(4) Are there industrial uses where substitutes can replace only a part of BD in a mixture?

(5) What is the extent and the impact of such partial substitution?

(6) How efficient are substitutes as compared to BD in specific industrial uses?

(7) Are there non-chemical substitutes for uses that now employ BD?

E. Protective Equipment and Respirators

(1) What types of respirators are currently being supplied by employers for protection against BD?

(2) What other types of protective equipment, such as gloves and aprons, are currently being supplied by employers?

(3) What is the durability or resistivity of this protective equipment?

(4) Under what conditions (e.g. exposure level, type of operation, duration of exposure) do employers presently provide protective equipment and respirators to their exposed employees?

F. Workers Exposure and Monitoring

(1) What are ther job categories in which workers are potentially exposed to BD? For each job category, please provide a brief description of the operation.

(2) How many workers are exposed or have the potential for exposure to BD in each job category?

(3) What are the frequency, duration and levels of exposures to BD at each job category? Please include the analytical method and type of samples used for determining exposure levels.

(4) What engineering controls and types of protective equipment are available or in use for each job category?

(5) What methods are currently available to measure BD in the workplace? Please provide details on the accuracy and precision of the sampling method, the range and limits of detection, method of validation of sampling and analysis and chemical interference.

G. Workers Training

(1) Describe the training workers currently receive for the purpose of reducing the risk associated with BD exposure (e.g. length of course, topics covered, frequency, and availability of audio visual aids, and written operating instructions).

(2) Is there any evidence documenting the effectiveness of the training being

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received by the employee (e.g. decreased absenteeism, decreased medical/insurance costs, a decrease in accident rates/severity, and increase in productivity)?

(3) What are the basic elements considered in developing or revising the training given to workers in the BD industry?

H. Medical Surveillance

(1) What illness or conditions attributable to BD have been observed?

(2) What elements are appropriate for inclusion in medical and clinical examinations performed to identify overexposed workers and/or to indicate the status of workers' health?

(3) Do employers currently provide specific tests or procedures as part of medical surveillance for BD-exposed employees? What is the basis for selecting or choosing these tests or procedures? At what frequency are these tests performed?

(4) What are the exposure levels encountered byworkers (including their job categories and/or job classifications) who are covered by medical surveillance programs?

(5) What evidence is available indicating risk reduction due to implementation of medical surveillance programs?

I. Control Measures and Benefits

(1) What are the costs of implementing engineering controls or modifications to production and process equipment (either currently in place or planned to be installed for reducing workers' exposures)? How much reduction in employee exposure can be achieved by each particular control measure? What are the service life and maintenance costs for this equipment?

(2) What is the cost of the personal protective equipment currently in use or projected for further use? Which employees or job descriptions would be required to wear what type of equipment? (Please indicate the type of protective equipment as well as process descriptions).

(3) What is the cost of the currently employed and/or projected medical surveillance program?

(4) What is the cost of the currently instituted and/or projected training program?

(5) What is the cost of the currently employed and/or projected personnel exposure monitoring and sampling analyses?

(6) What values can be determined for benefits or reduced BD exposure, such as projected reductions in medical treatment, insurance premiums, and workers compensation payments, decreased absenteeism and employment turnover, and increased productivity?

J. Environmental Effects

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). The Council on Environmental Quality (CEQ) regulations (49 CFR Part 1500, 43 FR 55978, November 29, 1978), and the Department of Labor (DOL) NEPA Compliance Regulations (29 CFR Part 11); (45 FR 51187 *et seq.*, August 1, 1980) require that Federal agencies give appropriate consideration to environmental issues and impacts of proposed actions significantly affecting the quality of the human environment. OSHA is currently collecting written information and data on possible invironmental impacts that may occur outside of the workplace as a direct or indirect result of promulgation of a revised standard for occupational exposure to BD. Such information should include any negative or positive environmental effects that could be expected to result from a revised regulation. Specifically, OSHA requests comments and information on the following:

(1) How might a revised regulation for BD exposure affect the environment?

(2) What is the potential direct or indirect impact on water and air pollution, energy usage, solid waste disposal and land use?

(3) How would BD substitutes (if available) alter the ambient air quality, water quality, solid waste disposal and land use?

K. Impact on Small Business Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), agencies are required to assess the impact of proposed and final rules on small entities. In that regard, OSHA solicits the following information:

(1) How many and what kind of small businesses or other small entities would be affected by revising the standard for BD?

(2) Could difficulties be encountered by small business entities when attempting to comply with specific provisions of a BD regulation covering such areas as exposure monitoring, exposure limits, methods of compliance, medical surveillance, respirators, protective clothing, hygiene facilities, recordkeeping, housekeeping information and training and labels and signs?

(3) Could such provisions be modified for small business entities which would assure equivalent protection of the health of their employees?

L. Duplication/Overlapping/Conflicting Rules

(1) Are there other federal regulations which may duplicate, overlap or conflict with an OSHA regulation concerning BD?

(2) Are there critical federal programs (defense, energy,) which may be impacted by an OSHA regulation concerning BD?

M. Financial and Economic Profile

(1) What are the total annual volumes and dollar values (for the last 5 years or relevant business cycle) of production, shipments, inventories, imports and exports of BD? Are these expected to increase or decrease in future years?

(2) What are the total annual investments of companies engaged in BD production, distribution and use (for the last 5 years) categorized as replacement, expansion, modernization and health and safety protection programs?

(3) For the last 5 years, what are total assets, stockholders' equity, net worth, depreciation charges, debt-equity ratios and rate of return on assets and equity?

(4) For each BD facility, what was the date it began operation and how much longer it is expected to remain in operation?

(5) How would the balance of trade in this or related products be affected by a more stringent U.S. occupational regulation or health standard for BD?

(6) What were the total annual employment and labor turnover rates for the industry for at least the last 5 years?

(7) Are there any unique characteristics of this industry (e.g., rental of capital equipment, unique employee skills) that could affect the ability to achieve compliance with a BD standard?

(8) What is the degree of market concentration in the industry including the role of small business and approximate number of firms?

(9) What is the geographic distribution of the industry and its customers?

(10) What were the total annual volume and dollar value of BD product output, shipments and inventories for at least 5 years? How much BD is manufactured by companies for their own use as a raw material or product?

(11) What are the availability, price and service ability of substitutes for products containing BD?

(12) Assuming no change in regulation, what are the projected trends in the use to BD?

(13) If the market price of BD were to increase by 5%

a. Would the production of BD increase or decrease?

b. Would the consumption of BD increase or decrease?

(14) How profitable are the production processes which either produce or consume BD? What are the most profitable processes in production?

(15) What is the gross annual consumption of BD? What is the approximate annual consumption of BD per plant?

(16) Does the company purchase BD from one of several suppliers of the product, and where are these suppliers located geographically with respect to the facility that uses or processes it?

(17) For products in which BD is used, what portion of the cost could be accounted for by the use of BD?

(18) As a firm using BD, what other chemicals covered by OSHA standards are currently used in the plant? How would engineering controls or process modification for BD affect exposure to these other chemicals.

References

The studies and other information listed in the notice by exhibit number are the primary sources upon which this notice has been based. A complete set of references is available for examination and copying at the OSHA Docket Office, Room N–3672, U.S. Department of Labor, 200 Constitution Avenues NW., Washington, DC.

Public Participation

Interested persons are invited to submit comments on these and other pertinent issues related to the development of a revised standard for occupational exposure to BD by December 30, 1986. Comments should be sent in quadruplicate to the Docket Officer, at the address noted above where they will be available for inspection and copying. The information received will be carefully reviewed by OSHA for use in preparation of a Notice of Proposed Rulemaking for BD.

Statutory Authority

This Advance Notice of Proposed Rulemaking was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW. Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act (84 Stat. 1593; 29 U.S.C. 655).

List of Subjects in 29 CFR Part 1910

Occupational safety and health.

Signed at Washington, DC, this 23rd day of September 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 86–21871 Filed 9–30–86; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Shenandoah National Park

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to modify the fishing regulations in Shenandoah National Park. The proposed rule changes would: (1) Close to public fishing all streams except those designated in Shenandoah's Fishery Management Plan as having sufficient year-round flow of water and populations of native brook trout to sustain both the expected fishing pressure and natural population pressures (drought, flood, etc.); (2) Add the North Fork of the Moormans River to Shenandoah's fish-for-fun program; and (3) Allow the removal of non-native game fishes from designated trout streams in Shenandoah National Park consistent with applicable state fishing regulations. The park's active stream monitoring program has identified preservation concerns. The proposed changes to the regulations address these concerns and will correct problems identified with the current regulations. With these proposed changes in place, the park will be able to better manage the fishery resources. The effects of the proposed rules are expected to be minimal. This rulemaking will not alter to any degree the number of angler days presently occurring.

DATES: Written comments will be accepted through October 31, 1986.

ADDRESS: Comments should be addressed to: Mr. Gerald W. Tays, Acting Superintendent, Shenandoah National Park, Route 4, Box 292, Luray, VA 22835.

FOR FURTHER INFORMATION CONTACT: David A. Haskell, Resource Management Specialist, Shenandoah National Park, Rt. 4, Box 292, Luray, Va. 22835, Telephone 703–999–2243, ext. 404.

SUPPLEMENTARY INFORMATION:

Background

The present Shenandoah National Park fishing regulations are codified at 36 CFR 7.15(a) and have been in effect since 1965. They permit only trout fishing in all waters of the park and limit the fish-for-fun program to the Rapidan and Staunton Rivers.

Since 1982, the National Park Service (NPS) has been engaged in the sampling of all streams having a trout population. Forty-five streams were identified and sampled. Prior to 1982 only sporadic monitoring of the trout streams had been conducted by the U.S. Fish and Wildlife Service (USFWS) and the Virginia Commission of Game and Inland Fisheries (VCGIF). Qualitative data such as relative abundance, age class distribution, and growth rates have been analyzed.

The findings of this analysis are that most of the park's larger streams are highly productive and are capable of sustaining a limited native brook trout harvest; however, some of the smaller or less productive streams are severely influenced by natural pressures (drought, floods, natural predators) and do not consistently produce sufficient excess native brook trout to allow harvest by angling. The few fish present in these marginal streams are needed to maintain the ecological balance of the aquatic ecosystems. Natural predators such as mink, raccoons, watersnakes, and kingfishers are dependent on these fish for their survival. Fishing of these streams could, during years of low native brook trout production, cause an unacceptable disruption of ecosystem dynamics, and could contribute to the total loss of a stream's native brook trout population during extreme conditions.

The goal of Shenandoah National Park's fishery management program is two-fold: (1) To preserve and perpetuate the native brook trout as an integral component of the park's aquatic ecosystems; and (2) To provide quality angling experiences. Therefore, it is proposed that angling be permitted only on those streams which consistently sustain adequate native brook trout populations. The park's current fish-for-fun program is one way to provide a quality angling experience while serving to protect the native brook trout population from excessive harvest. Fish returned to the stream are available to be caught by other anglers, thus enhancing overall angling success.

The park's two fish-for-fun streams (Rapidan and Staunton Rivers) were established in 1968. Since that time, the popularity of these streams as quality native brook trout fishing waters has greatly increased. These two streams are utilized heavily on a daily basis during the spring and early summer. The popularity of angling for its sport and recreational experience has continued to

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grow to the point that an additional fish-for-fun stream is desirable to accommodate public demand. This will disperse anglers over more miles of stream, reduce the handling of trout, reduce soil compaction along stream banks, and lessen other ecological impacts.

Eastern brook trout is the only species of trout native to Shenandoah waters. The exotic brown trout and rainbow trout have been found in park streams during recent years. These exotic species of trout are being found in increasing numbers and may be threatening the existence of the native brook trout in parts of certian streams. In other eastern national parks, such as the Great Smoky Mountains National Park, these exotic species of trout have successfully replaced the native brook trout in many streams in spite of all efforts to control their spread. Of special concern is the spread of these exotic trout species in Shenandoah's fish-for-fun streams.

In other cases, exotic species of warm water game fishes are found in the boundary sections of some park streams. Smallmouth bass and sunfish are the most common species found. Although these species pose little threat to native brook trout populations, they do interact with other species of native fishes, resulting in a disruption of the natural stream ecosystem. Current regulations prohibit the harvest of these exotic warm water fishes. It is the policy of the National Park Service to protect native flora and fauna from encroachment by exotic species and to eradicate exotic species which pose any possible threat to native species or park ecosystem balances.

The proposed rules would correct the problems identified with the present regulations by:

(1) Permitting fishing only on those streams listed in the current Fishery Management Plan that have been determined to be able to sustain the expected fishing pressure without jeopardizing the native brook trout populations or causing unacceptable disruption to their aquatic ecosystems.

(2) Increasing the number of fish-for-fun streams from two to three.

(3) Allowing the harvest of all species of fish listed by Virginia regulations as game fishes from all streams designated as park trout streams, except those designated as fish-for-fun streams.

(4) Allowing the harvest of game fishes other than trout in the park's fish-for-fun streams.

Section-by-Section Analysis

As currently codified in Title 36 of the Code of Federal Regulations, § 2.3 contains general fishing regulations that apply to all units of the National Park System. Section 7.15(a) contains specific requirements intended to protect and regulate the fishery use at Shenandoah National Park.

This proposed rulemaking completely revises 36 CFR 7.15(a) as follows:

Section 7.15(a)(1) Open Waters

The park's stream monitoring program has determined that a number of streams are capable of sustaining an adequate population of native brook trout which could be exposed to angling without their being jeopardized. These streams are identified in the Fishery Management Plan and will be open for fishing. Streams not listed in the Plan as trout streams are closed to fishing.

Section 7.15(a)(2) Applicability

All streams within Shenandoah National Park, except those which form part of the park boundary, are covered by this proposed rulemaking. To avoid confusion on those streams that constitute the boundary where one set of regulations could apply on one bank, and a different set of regulations apply on the other bank, the NPS is proposing that only the State of Virginia regulations apply on both.

Section 7.15(a)(3) Season

This regulation is similar in content to the existing § 7.15(a)(3), except that the closing date is established as October 15.

Section 7.15(a)(4) License

This regulation authorizes only those persons having a valid State of Virginia fishing license in their possession to fish in the streams of Shenandoah National Park. Anglers are required to conform to State license requirements as they move in and out of the park.

Section 7.15(a)(5) Size Limit

This regulation establishes the minimum size of trout that can be taken. Removal of fish below the established minimum would place a considerable stress on the population by removing the breeding stock. This paragraph sets no size limit on other species of game fishes.

Section 7.15(a)(6) Creel Limits

This regulation establishes the maximum number of trout permitted in one's possession at any time as five. Removal in excess of this number is the greatest threat to the population. This paragraph establishes the State of Virginia's creel limit on other species of game fishes, thus making it easier for anglers to comply and allowing for more consistent enforcement.

Section 7.15(a)(7) Lures; Bait

This is a rewording of the existing § 7.15(a)(6) which identifies permitted bait. This paragraph reaffirms that the only acceptable lure is artificial in nature with a single hook. The disturbance of adjacent stream banks looking for bait is not an acceptable practice. The use of natural bait may also introduce exotic species into the aquatic ecosytem.

Section 7.15(a)(8) Fish-for-Fun

This regulation establishes that the fish-for-fun streams will be listed in the Fishery Management Plan. Listing in the plan provides more flexibility than going through a lengthy rulemaking process if more were to be added or deleted. The specific fish-for-fun regulations listed here are similar in content to the existing § 7.15(a)(1).

Section 7.15(a)(9)

This regulation declares that violations of any of the various subparagraphs of this paragraph are prohibited.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

Drafting Information

The primary authors of these regulations are Larry Hakel, Chief Park Ranger, and David Haskell, Resource Management Specialist, both of Shenandoah National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public angling to the extent of adversely affecting the aquatic ecosystem;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Department regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By revising paragraph (a) of § 7.15 to read as follows:

§ 7.15 Shenandoah National Park.

(a) *Fishing*—(1) *Open waters.* All streams are closed to fishing except those designated by the superintendent as trout streams.

(2) *Applicability.* The provisions of paragraphs (a)(3) through (7) and (a)(9) of this section apply to all designated trout streams except fish-for-fun streams and portions of streams that form the park boundary line. Fishing in fish-for-fun streams is subject to the provisions of paragraphs (a)(4), (8) and (9) of this section and fishing in portions of streams that form the park boundary is governed solely by applicable State law.

(3) *Season.* The opening date of the trout season and the hours during which trout fishing is allowed are those established by applicable State law. Trout season closes October 15 except for designated fish-for-fun streams.

(4) *License.* Fishing license requirements imposed by applicable State law apply to persons fishing in park waters.

(5) *Size limit.* Trout eight (8) inches or longer may be retained. Trout under eight (8) inches in length shall be immediately and carefully returned to the water. There is no size limit on other species of game fishes.

(6) *Creel limits.* No person may retain more than five (5) trout per day nor have more than five (5) trout in possession. Creel limits on other species of game fishes are those established by applicable State law.

(7) *Lures; bait.* Fishing is restricted to an artificial fly or lure having a single hook.

(8) *Fish-for-fun.* Trout streams managed in the fish-for-fun program are designated by the superintendent. These streams are open to trout fishing all year. Fishing is governed by applicable State law except as follows:

(i) Fishing is restricted to an artificial fly or lure having a single barbless hook;

(ii) No trout of any size may be retained. All trout caught shall be handled carefully and returned immediately to the water; and

(iii) All other species of game fishes may be kept. The season and creel limit for species other than trout are governed by applicable State law.

(9) The following are prohibited:

(i) Violating a fishing closure, designation, use or activity restriction or condition or limit established in this paragraph; or

(ii) Violating a provision of applicable State law.

* * * * *

Dated: September 10, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-22212 Filed 9-30-86; 8:45 am]

BILLING CODE 4310-7-M

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Notices

Federal Register
Vol. 51, No. 190
Wednesday, October 1, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of the Market Stabilization Price for Sugar for Fiscal Year 1987

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the market stabilization price for sugar for the period October 1, 1986–September 30, 1987 as 21.78 cents per pound, raw value.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, Room 6603, South Building, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: The market stabilization price is used to determine bond requirements and maximum liabilities under certain programs authorized by Presidential Proclamation No. 5002 of November 30, 1982 (47 FR 54289). The calculation of the market stabilization price is provided for in 7 CFR 6.300–6.302 and is the sum of (1) the price support level of the applicable fiscal year, expressed in cents per pound of raw cane sugar; (2) adjusted average transportation costs; (3) interest costs, if applicable; and (4) 0.2 cent per pound. The adjusted average transportation costs are the weighted average costs of handling and transporting domestically produced raw cane sugar from Hawaii to Gulf and Atlantic Coast ports, as determined by the Secretary. Interest costs are the amount of interest, as determined and estimated by the Secretary, that would be required to be paid by a recipient of a price support loan for raw cane sugar upon repayment of the loan at full maturity. Interest costs shall only be applicable where, as under the current sugar price support program, a price support loan recipient is not required to pay interest upon forfeiture of the loan collateral.

The Secretary of Agriculture has announced that the applicable loan rate under the price support program for sugar, expressed in cents per pound for raw cane sugar, will be 18.00 cents per pound for loans disbursed during the period October 1, 1986–September 30, 1987.

Accordingly, after appropriate review, it has been determined that the market stabilization price for fiscal year 1987 shall be 21.87 cents per pound. This consists of the 18.00 cents per pound loan rate; adjusted average transportation costs of 2.93 cents per pound; an interest cost of .65 cent per pound; and 0.2 cent per pound. The transportation factor represents data for the most recent year for which complete data are available, 1985, projected forward to 1986 by applying a projected increase in the Produce Price index for finished goods over this time. The interest factor is based on an estimated average interest of 7.25 percent over the year, and a six month loan maturity period.

Notice is hereby given that, in conformity with the provisions of 7 CFR 6.300(a), the market stabilization price for sugar for fiscal year 1987 has been determined to be 21.78 cents per pound.

Signed at Washington, D.C. on September 26, 1986.

Peter Myers,

Acting Secretary of Agriculture.

[FR Doc. 86–22244 Filed 9–28–86; 5:02 pm]

BILLING CODE 3410-10-M

Commodity Credit Corporation

1986 Crop Sugar Beets and Sugarcane Price Support Loan Rates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination.

SUMMARY: This notice announces the national price support loan rates established by the Secretary of Agriculture with respect to the 1986 crop of domestically grown sugar beets and sugarcane. The national (weighted average) loan rate for raw cane sugar will be 18 cents per pound. The national (weighted average) loan rate for refined beet sugar will be 21.09 cents per pounds. Both of these rates will be further adjusted to reflect the processing location of the sugar offered as collateral for a price support loan (i.e., location differentials) and the quality of the sugar beets or sugarcane. This notice also sets forth the minimum price support levels to be paid sugarcane and sugar beet producers.

EFFECTIVE DATE: October 1,1986.

FOR FURTHER INFORMATION CONTACT: Lynda Flament, Loan Branch, Cotton, Grain and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 477–4229. Copies of the Regulatory Impact Analysis are available from Thomas W. Fink, Cotton, Grain and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with the provisions of Department Regulation 1512–1 and Executive Order 12291 and has been classified as "major" since this action may have an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

An Environmental Evaluation with respect to the price support loan program has been completed. It has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, land use, and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This notice set forth determinations with respect to the following issues which are briefly described:

1. Loan Rates

Section 201(j) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985, provides that the Secretary of Agriculture is required to support the price of the 1986 through 1990 crops of sugar beets and sugarcane through nonrecourse loans. Section 201(j) further provides that the Secretary shall support the price of domestically grown sugarcane at such level as the Secretary determines appropriate, but not less than 18 cents per pound, raw value, and the price of domestically grown sugar beets at such level as the Secretary determines is fair and reasonable in relation to the loan level for sugarcane.

2. Location Differentials

The application of location differentials to loan rates in common to most price support programs administered by CCC. The loan rates for sugar processed in specific regions will be based upon the transportation costs associated with moving sugar to the markets that are normal for those regions.

3. Minimum Price Support Levels

The minimum price support levels are the minimum amounts that must be paid to producers by a processor participating in the price support loan program. The minimum price support levels are set forth by regions. These support levels would be applicable for purposes of setting contracts between individual processors and producers for the crop of sugar beets and sugarcane harvested during the 1986 crop period.

4. Determination of Average Quality

The minimum price support levels may be adjusted for sugarcane or sugar beets of non-average quality. Accordingly, "average quality" needs to be defined.

5. Cost Reduction Options

Section 1009(a) of the Food Security Act of 1985 provides that whenever the Secretary determines that an action authorized by that section will reduce the total of the direct and indirect costs to the Federal Government of a commodity program administered by the Secretary without adversely affecting income to small and medium sized producers participating in such program, the Secretary shall take certain action with respect to that commodity program. For the purposes of the sugar price support program, these actions include: (1) The commercial purchases of commodities by the Secretary; and (2) the settlement of nonrecourse loans at an amount less than the total of the principal loan amount and accumulated interest, but not less than the principal amount, if such action will result in: (A) Receipt of a portion rather than none of the accumulated interest, (B) avoidance of default of the loan, or (C) elimination of storage, handling and carrying charges on the forfeited loan collateral.

These determinations are required to be made in accordance with the provisions of section 201(j) of the Agricultural Act of 1949 and section 1009 of the Food Security Act of 1985. Section 1017(b) of the Food Security Act of 1985 provides that the Secretary shall determine the rate of loans and price support levels for any of the 1986 through 1990 crops of commodities covered under the Agricultural Act of 1949 without regard to the requirements for notice and public participation in rulemaking prescribed in section 553 of Title 5, United States Code, or in any directive of the Secretary.

Determination

1. Loan Rates

The national (weighted average) loan rates for the 1986 crop shall be 21.09 cents per pound for refined beet sugar and 18 cents per pound for cane sugar, raw value, including the cane sugar, raw value, contained in refined cane sugar, sugarcane syrup, and edible molasses. This is the minimum statutory loan rate for cane sugar. It has been determined that the loan rate established for sugar beets is fair and reasonable in relation to the loan level for sugarcane. The loan rates for the 1987 through 1990 crops of sugar beets and sugarcane will be set forth in subsequent notices published in the **Federal Register**. In the case of refined or specialty sugar made from raw cane sugar, the rate shall be the appropriate regional rate applied to the quantity of the refined or specialty sugar converted to an equivalent quantity of cane sugar, raw value.

In the previous sugar price support loan program the sugar beet loan rate was established based on the relationship between the weighted average net returns for beet sugar and the weighted average New York spot price for raw sugar. Under the methodology, the loan rate for refined beet sugar was calculated by multiplying the raw cane sugar loan rate by a determined factor and then adding the fixed marketing expenses which are incurred by beet processors regardless of the disposition of the sugar. The factor referred to in the formula is determined by comparing the weighted average net returns for beet sugar (i.e., gross returns less all marketing expenses) to the weighted average New York spot price (#12 contract) for raw cane sugar for a specified number of years. In determining the loan rates for the 1985 crop, the weighted average New York spot prices for the years 1975 through 1983 were used. In 1985 the New York spot price was discontinued. Because the New York spot price is no longer available, a new method of determining the loan rate is required. In addition, because of changes in grower/processor contracts, the New York spot price no longer accurately reflected the processor's basis for paying sugarcane growers for sugarcane.

The 1986 loan rate for refined beet sugar will reflect the value of the sugar based on the relationship between the weighted average of grower returns for sugar beets and the weighted average of grower returns for sugarcane, expressed on a cents per pound basis for refined beet sugar and raw cane sugar, for the immediately preceding 10-year period. After adjustment to reflect the proper price relationship, the estimated 1986 sugar beet crop fixed marketing costs (which are incurred by beet processors regardless of the disposition of the sugar) are added to make up the basic loan rate for refined beet sugar. The relationship between grower returns for sugar beets and sugarcane for the period 1975 through 1984 (1.12 to 1.00) was used to determine the loan rate of 21.09 cents per pound for refined beet sugar under the 1986 crop loan program.

2. Location Differentials

The loan rates determined for both raw cane sugar and refined beet sugar have been adjusted to reflect the processing location of the sugar offered as collateral for a price support loan. These adjustments (i.e., location differentials have been calculated in the same manner as they have been in previous years. The loan rates for sugar processed in specific regions have been based upon the transportation costs associated with moving that sugar to the markets that are normal for those regions.

The processing regions and applicable 1986 crop regional loan rates for refined beet sugar shall be as listed below:

Region number and description	Cents per pound
1. Michigan and Ohio	$.2295
2. Minnesota and the eastern half of N. Dakota	.2111

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Region number and description	Cents per pound
3. Northeastern quarter of Colorado; Nebraska; and the southeastern quarter of Wyoming	.2054
4. Texas	.2130
5. Montana and the northwestern quarter of Wyoming and western half of N. Dakota	.2054
6. That part of Idaho east of the eastern boundary of Owyhee County and of such boundary extended northward	.2058
7. That part of Idaho west of the eastern boundary of Owyhee County and of such boundary extended northward; Oregon	.2058
8. California	.2120

Note: Fixed marketing expenses are considered in computation to insure equality with support prices for sugarcane.

The processing regions and applicable 1986 regional crop loan rates for cane sugar, raw value, shall be as listed below except that, for such sugar processed in Hawaii or Puerto Rico but placed under loan on the mainland of the United States, the applicable loan rate shall be 18 cents per pound:

Region	Cents per pound
Florida	$.1612
Louisiana	.1866
Texas	.1810
Hawaii	.1752
Puerto Rico	.1820

Note: Molasses is a by-product of sugar processing. It is not included in the calculation of the sugar loan rate.

3. Minimum Price Support Levels

Based on the established regional loan rates, the minimum price support levels for sugar beets and sugarcane of average quality are as follows:

For sugar beets harvested between July 1, 1986, and June 30, 1987:

Region (same as in previous beet sugar table)	Support price per Net Ton
1	$29.57 [1]
2	27.10 [2]
3	29.49
4	31.99
5	29.65
6	30.44
7	30.44
8	31.22

[1] If (1) the sugar extracted by a processor from the 1986 crop yields, on the average, less than 240.44 pounds per net ton of sugar beets delivered and accepted by the processor, or (2) the processor's net return on by-products per net ton of sugar beets delivered and accepted by the processor averages less than $7.18 per net ton, then the required minimum price support rate per ton of sugar beets will be adjusted. The adjusted rate will be determined by: (a) Multiplying $.2017 (the loan rate per pound less 4.3%, and less $.0093 considered as fixed marketing expenses) by the average pounds and hundredths of pounds of sugar extracted per ton, (b) adding thereto the net return to the processor on by-products per net ton of sugar beets delivered and accepted, and (c) multiplying the results by 53.1 percent.

[2] If (1) the sugar extracted by a processor from the 1986 crop yields, on the average, less than 231.55 pounds per net ton of sugar beets delivered and accepted by the processor, or (2) the processor's net return on by-products per net ton of sugar beets delivered and accepted by the processor averages less than $6.42 net ton, then the required minimum price support rate per ton of sugar beets will be adjusted. The adjusted rate will be determined by: (a) Multiplying $.1927 (the loan rate per pound less 4.3%, and less $.0093 considered as fixed marketing expenses) by the average pounds and hundredths of pounds of sugar extracted per ton, (b) adding thereto the net return to the processor on by-products per net ton of sugar beets delivered and accepted, and (c) multiplying the result by 53.1 percent.

For sugarcane harvested between July 1, 1986, and June 30, 1987, in Florida $24.07 per net ton.

For sugarcane harvested between July 1, 1986, and June 30, 1987 in Louisiana $22.60 per net ton. However, for sugarcane for which settlement is determined on the basis of a core sample, the minimum amount to be paid per gross ton of sugarcane shall be the amount determined by multiplying the total amount of sugar recovered per gross ton (commercial recoverable sugar) of sugarcane delivered to the processor times 10.716 cents per pound, plus 94 cents per gross ton of sugarcane for molasses.

For sugarcane harvested between July 1, 1986, and June 30, 1987, in Texas: The minimum amount to be paid per gross ton of sugarcane shall be the amount determined by multiplying the total amount of sugar recovered per gross ton (commercial recoverable sugar) of sugarcane delivered to the processor times 10.392 cents per pound, plus $1.17 per gross ton of sugarcane for molasses.

For sugarcane harvested in Hawaii: The amount determined according to the standard marketing contract for the calendar year in which the sugarcane was harvested between growers and processors of sugarcane and the cooperatively-owned refinery of raw cane sugar that markets refined and raw cane sugar on behalf of its members and non-member patrons: *Provided,* however, that non-members of this cooperative shall be treated no less favorably than the members of the cooperative under the terms of the standard marketing contract.

For sugarcane harvested in Puerto Rico: That price determined according to the provisions of Puerto Rico Law No. 426, also known as the Puerto Rico Sugar Law, and the rules issued under the law by the Sugar Board of Puerto Rico for the calendar year in which the sugarcane has harvested.

These minimum price support levels reflect the 4.3 percent reduction in loan proceeds disbursed to processors for the 1986 crop as a result of the President's fiscal year 1986 sequestration order under the Balanced Budget and Emergency Deficit Control Act of 1985 (the BBEDCA) (popularly known as the "Gramm-Rudman-Hollings Act"), Title II of Pub. L. 99–177. Section 401(c)(1) of the Agricultural Act of 1949 (7 U.S.C. 1421(c)(1)) requires the Secretary of Agriculture, to the extent practicable, to obtain adequate assurances from processors that the maximum benefits of the price support program are received by producers. In the case of the 1986 crop, the maximum benefits of the program reflect the effects of the BBEDCA. In determining the minimum price support levels, the reduction under the BBEDCA was factored into part of the formula used to translate the loan rate into the minimum price support level, but those elements not affected by the BBEDCA, such as fixed marketing expenses in the case of sugar beets and the value of molasses in the case of sugarcane, were not adjusted.

The prices indicated above must be adjusted for sugar beets or sugarcane of nonaverage quality if the producer and processor have agreed upon a method for such adjustment in the terms and conditions of their marketing contract.

4. Average Quality Sugar Beets and Sugarcane

For 1986 crop sugar beets, "average quality" means sugar beets containing 15.64 percent sucrose. For 1987 through 1990 crop sugar beets the average quality will be set forth in subsequent notices published in the **Federal Register.**

For 1986 crop sugarcane "average quality" means: (1) For Florida, sugarcane containing 14.11 percent sucrose in normal juice; (2) for Louisiana, sugarcane containing 13.15 percent sucrose in normal juice of 81.23 percent purity for sugarcane not sampled by a core sampler. For 1987 through 1990 crop sugarcane the "average quality" will be set forth in subsequent notices published in the **Federal Register.**

5. Cost Reduction Options

The decision not to implement any cost reduction options as outlined in the Supplementary Information has been made.

The Secretary reserves the right to initiate at a later date any action not previously included but authorized by section 1009 of the Food Security Act of 1985.

Signed at Washington, DC on September 25, 1986.

Peter Myers,

Acting Secretary of Agriculture

[FR Doc. 86–22245 Filed 9–26–86; 5:02 pm]

BILLING CODE 3410–05–M

Federal Grain Inspection Service

Designation Renewal of the Cairo Agency (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Cairo Grain Inspection Agency, Inc. (Cairo) as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: November 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Cairo's designation terminates on October 31, 1986, and requested applications for official agency designation to provide official services within a specified geographic area in the May 1, 1986, **Federal Register** (51 FR 16182). Applications were to be postmarked by June 2, 1986. Cairo was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

FGIS announced the applicant name and requested comments on the same in the July 1, 1986, **Federal Register** (51 FR 23801). Comments were to be postmarked by August 15, 1986. One favorable comment was received regarding Cairo's designation renewal.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Cairo is able to provide official services in the geographic area for which FGIS is renewing its designation. Effective November 1, 1986, and terminating October 31, 1989, Cairo will 1 provide official inspection services in its entire specified geographic area, previously described in the May 1 **Federal Register.**

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or by contacting the agency at the following address: Cairo Grain Inspection Agency, Inc., 4007 Sycamore Street, Cairo, IL 62914.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: September 17, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–22087 Filed 9–30–86; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicant in the Geographic Area Currently Assigned to the Farwell Agency (TX)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to Farwell Grain Inspection Company (Farwell).

DATE: Comments to be postmarked on or before November 17, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official service within a specified geographic area in the August 1, 1986, **Federal Register** (51 FR 27573). Applications were to be postmarked by September 2, 1986. Farwell was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation applicant. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the address listed above.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register,** and the applicant will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: September 17, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–22088 Filed 9–30–86; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Alton (IL), Grand Forks (ND), and McCrea (IA) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall termirate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to each specified agency. The official agencies are Alton Grain Inspection Department, Grand Forks Grain Inspection Department, and John R. McCrea Agency.

DATE: Applications to be postmarked on or before October 31, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the

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above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Alton Grain Inspection Department (Alton), 145 West Broadway, Alton, IL 62002; Grand Forks Grain Inspection Department (Grand Forks), 1823 State Mill Road, P.O. Box 639, Grand Forks, ND 58201; and John R. McCrea Agency (McCrea), P.O. Box 166, Clinton, IA 52732, were each designated under the Act as an official agency to provide inspection functions on April 1, 1984.

Each official agency's designation terminates on March 31, 1987. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alton in the State of Illinois pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: Calhoun, Jersey, and Madison (West of State Route 4 and North of Interstate 70 and 270) Counties.

The geographic area presently assigned to Grand Forks in the State of North Dakota pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the North Dakota State line;

Bounded on the East by the North Dakota State line south to State Route 200;

Bounded on the South by State Route 200 west-northwest to the western Traill County line; the western Traill County line; the southern Grand Forks and Nelson County lines; the southern Eddy County line west to U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52; U.S. Route 52 northeast to State Route 3; and

Bounded on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north to the North Dakota State line.

Exceptions to the described geographic area are the following locations situated inside Grand Fork's area which have been and will continue to be serviced by the following official agencies:

1. Grain Inspection, Inc., to service the following points: Farmers Coop Elevator, Fessenden; Farmers Union Elevator, and Manfred Grain, Manfred; all in Wells County.

2. Minot Grain Inspection, Inc., to service the following points: Farmers Elevator Company, Bottineau, Bottineau County; Farmers Feed & Grain, and Farmers Union, Harvey, Wells County; and Farmers Union, Rugby, Pierce County.

The geographic area presently assigned to McCrea in the States of Illinois and Iowa pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: Carroll and Whiteside Counties, Illinois; and Clinton and Jackson Counties, Iowa.

Interested parties, including Alton, Grand Forks, and McCrea, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning April 1, 1987, and ending March 31, 1990. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 17, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–22089 Filed 9–30–86; 8:45 am]

BILLING CODE 3410-EN-M

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: October 30, 1986.

Place: Sheraton Kansas City Airport Hotel, 7301 NW Tiffany Springs Road, Kansas City, Missouri 64153.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976, in order to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) Grain quality issues, such as wheat classification, soybean damage interpretation, and insect related matters; (2) financial matters, (3) miscellaneous subjects, and (4) dedication and tour of the Federal Grain Inspection Service Technical Center, 10383 North Executive Hills Boulevard, Kansas City, Missouri 64153.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact David R. Galliart, Acting Administrator, FGIS, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 382–0219.

Dated: September 26, 1986.

D.R. Galliart,

Acting Administrator.

[FR Doc. 86–22164 Filed 9–30–86; 8:45 am]

BILLING CODE 3410-EN-M

Invitation to Serve on Federal Grain Inspection Service Advisory Committee

Section 20 of the United States Grain Standards Act (Act), as amended, directed the Secretary of Agriculture to establish an advisory committee to provide advice to the Administrator of the Federal Grain Inspection Service with respect to the efficient and economical implementation of the Act. The Federal Grain Inspection Service Advisory Committee (Advisory Committee) was established by the Secretary on September 29, 1981. The Advisory Committee consists of 12 members appointed by the Secretary, representing the interests of all segments of the grain industry, and is governed by the provisions of the Federal Advisory Committee Act. Members of the Advisory Committee serve without compensation except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of Title 5, United States Code.

Alternate members of the Advisory Committee are needed to serve on behalf of members when they are temporarily unable to serve. In such situations, alternate members are subject to the same rules as are members. Persons interested in serving on this Advisory Committee as alternates, or wishing to submit names of individuals to be considered for appointment on the Advisory Committee as alternates, should contact, in writing, David R. Galliart, Acting Administrator, FGIS, U.S. Department of Agriculture, Washington, DC 20250, not later than October 31, 1986, and furnish the following information: Name, home address, employer, occupation and title, statement of reason for nomination, and major source of income.

The final selection of alternate committee members will be made by the Secretary.

Dated: September 26, 1986.

D.R. Galliart,

Acting Administrator.

[FR Doc. 86–22165 Filed 9–30–86; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

DATE: Comments should be submitted not later than October 21, 1986.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than October 21, 1986 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86–00008."

Applicant: Streamline Shippers Association, Inc., 970 East 3rd Street, Los Angeles, California 90013.

Application #: 86–00008.

Date Deemed Submitted: September 15, 1986.

Members (in addition to applicant): None.

Summary of the Application

Streamline Shippers Association, Inc. ("SSA") seeks certification for the following export-related activities:

A. Export Trade

Products

All products.

Services

Consulting; and market research and analysis.

Export Trade Facilitation Services (As They Relate to the Export of Products)

Overseas freight transportation; inland freight transportation to a U.S. export terminal, port, or gateway; packing and crating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; forwarder services; insurance; warehousing; foreign exchange; financing and financial services; export sale and trade documentation and services; overseas distribution; commissions; marketing; advertising; communication and processing of foreign orders; accounting; clerical services; consultation; customs services; feasibility studies; investment services; legal services; management services; and translation services.

B. Export Markets

Worldwide.

C. Export Trade Activities and Methods of Operation

SSA seeks certification to: 1. As an association of shippers, consolidate and distribute freight of its association members engaged in Export Trade for the purposes of securing the benefits of carload, truckload, containerload or other volume rates for its members' freight destined for export from the United States;

2. Procure and provide Services and Export Trade Facilitation Services, including, but not limited to, obtaining and arranging for the services of exclusive distributors, sales representatives, brokers or marketing agents in the Exports Markets. SSA may enter into exclusive agreements with export intermediaries in the Export Markets whereby:

a. SSA agrees to obtain Export Trade Facilitation Services only through the export intermediary(ies) in particular Export Markets, and/or

b. The export intermediary(ies) agrees not to provide Export Trade Facilitation Services to SSA's competitors.

3. Negotiate charges and other terms and enter into contracts which provide for Export Trade Facilitation Services including, but not limited to, the chartering and space chartering of vessels, the entering into of service contracts with ocean common carriers, the negotiation and utilization of through intermodal rates with common and contract carriers for inland freight transportation for export shipments to a U.S. export terminal, port, or gateway; and the combination and consolidation of container and less than containerload shipments into full containerized shipments in order to obtain volume rate discounts and satisfy service contract terms and conditions. SSA may conduct this activity (a) on behalf of its association members; and/or (b) jointly with and/or on behalf of other shippers' associations, non-vessel operating common carriers, and other shippers.

4. Meet and discuss ideas, methods and information with members concerning Export Trade; including trade opportunities, selling strategies, sales, projected demands and business growth, customary terms of sale, and legal agreements for conducting business in the Export Markets; and expenses of exporting to specific points in the Export Markets.

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5. Prescribe conditions on membership in, and withdrawal and expulsion from, SSA.

Dated: September 25, 1986.

James V. Lacy,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 86-22200 Filed 9-30-86; 8:45 am]

BILLING CODE 3510-DR-M

[C-401-602]

Initiation of Countervailing Duty Investigations; Certain Stainless Steel Hollow Products From Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating countervailing duty investigations to determine whether manufacturers, producers and exporters in Sweden of certain stainless steel hollow products, as described in the "Scope of Investigations" section below, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of these actions so that it may determine whether imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry. If our investigations proceed normally, we will make our preliminary determinations on or before December 1, 1986.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane or Barbara E. Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414 or 377-2438.

SUPPLEMENTARY INFORMATION:

Petition

On September 5, 1986, we received a petition in proper form from the Specialty Tubing Group and its individual members on behalf of the U.S. industry producing certain stainless steel hollow products (SSHP). The Specialty Tubing Group consists of six manufacturers in the United States of SSHP. On September 9, 1986, the scope of the articles subject to the petition was restricted to those with steel containing at least 11.5 percent chromium, by weight.

In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers and exporters in Sweden of SSHP receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Sweden is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to these investigations, and the ITC is required to determine whether imports of the subject merchandise from Sweden materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigations

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of countervailing duty investigations and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined this petition and we have found that it meets these requirements. Therefore, we are initiating countervailing duty investigations to determine whether manufacturers, producers and exporters in Sweden of SSHP as described in the "Scope of Investigations" section of this notice, receive benefits which constitute subsidies. If our investigations proceed normally, we will make our preliminary determinations on or before December 1, 1986.

Scope of Investigations

The products covered by these investigations are certain stainless steel hollow products including pipes, tubes, hollow bars and blanks therefor of circular cross-section containing at least 11.5 percent chromium by weight, as provided for in items 610.3701, 610.3727, 610.3731, 610.3732, 610.3741, 610.3742, 610.5130, 610.5201, 610.5202, 610.5229, 610.5230, and 610.5231 of the *Tariff Schedules of the United States, Annotated.*

Allegations of Subsidies

The petitioners allege that manufacturers, producers and exporters in Sweden of SSHP receive benefits which constitute subsidies. We are initiating on the following programs alleged in the petition.

- The 1977 Restructuring Program for the Specialty Steel Industry which petitioners allege provided various forms of assistance including the following:
  - —Loans and loan guarantees on terms inconsistent with commercial considerations, and
  - —Grants for inventory.

The 1984 Restructuring Program for the Specialty Steel Industry which petitioners allege provided various forms of assistance include the following:

- —Loans on terms inconsistent with commercial considerations including convertible loans, conditional loans, and interest-free loans,
- —Loan guarantees on terms inconsistent with commercial considerations,
- —Debt forgiveness, and
- —Interest holidays.

We are also initiating an investigation on the following programs which were not alleged by petitioner but which were found to confer a subsidy in the *Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Sweden* (50 FR 33375):

- Regional development incentives including the following:
  - —Loans and grants from the government for location in a development area,
  - —Freight relief,
  - —Investment projects,
  - —Health care facilities, and
  - —Building and construction assistance.
- Employment Promotion Grants.
- Research and Development Grants.

We are not initiating on the following program alleged in the petition:

- Energy Saving Grant to SKF Steel. Petitioners allege that the government of Sweden provided an energy saving grant to SKF Steel (a company not known by the Department or alleged by the petitioners to be affiliated with the SSHP industry) to develop a new process for sponge iron production which has no known connection with the manufacture or production of products under investigation.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of these actions, and to provide it with the informaion we used to arrive at these determinations. We will notify the ITC and make available to it all non-privileged and non-proprietary information relating to these investigations. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determinations by ITC

The ITC will determine by October 20, 1986, whether there is a reasonable indication that imports of SSHP from Sweden materially injure, or threaten material injury to, a U.S. industry. If its determinations are negative, these investigations will terminate; otherwise, these investigations will continue according to the statutory procedures. This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 25, 1986.

[FR Doc. 86-22229 Filed 9-30-86; 8:45 am]

BILLING CODE 3510-DS-M

Masters, Mates and Pilots MATES Program; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Eductional, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 82-00194. Applicant: Masters, Mates and Pilots MATES Program, 5700 Hammonds Ferry Road, Linthicum Heights, MD 21090. Instrument: Radar Navigational Aid Apparatus. Manufacturer: Vereinigte Flugtechnische Werke-Fokker GmbH (VFW), West Germany. Intended use: See notice at 47 FR 25396.

Comments: None received.

Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The Department of Commerce denied this application on April 25, 1983 (48 FR 17633), on the ground that the article possessed no scientific value for the purposes for which it was intended to be used. The applicant appealed.

On March 5, 1984, the United States Court of Appeals for the Federal Circuit (CAFC), 727 F2d 748 (1984), reversed and remanded our decision. The CAFC directed us to "perform a proper scientific equivalency evaluation in order to determine whether simulators can be imported duty-free."

The Educational, Scientific and Cultural Materials Importation Act of 1966 (the Act) requires the Department of Commerce to determine "whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States" (19 U.S.C. 1202, Headnote 851.60). We took the following into account in conducting our evaluation on remand. The applicant alleges five features of the foreign article pertinent to its intended purposes:

(1) 360° field of view;

(2) A continuous, seamless presentation;

(3) A high degree of resolution (one degree of arc);

(4) A full color day night presentation; and

(5) A reasonable operations staff level and low operating cost.

We note the following in regard to the five alleged pertinent features:

(1) 360° field of view.

There is no evidence that the foreign article met the specification as presented by the applicant. The foreign article does not meet the applicant's original specification dated September 17, 1978 for a 310° field of view, as confirmed in the communication dated April 28, 1981 by the foreign manufacturer. The domestic manufacturer (ATS), however, offered a wide angle, full 360° field of view.

(2) A continuous, seamless presentation. A visual scene free of seams and flicker was offered by domestic manufacturers at time of order.

(3) A high degree of resolution (one degree of arc). The applicant specified "more that 20,000 discrete lines on the horizon circle" which is equivalent to about one minute of arc which equals 21 600 lines on the horizon circle. This corresponds to resolving a navigational aide (CAN) at 2800 yards. The capability was offered by domestic manufacturers at time of order.

(5) A reasonable operations staff level and low operating cost. The specification is not pertinent within the meaning of 15 CFR 301.2(n) since this is a matter of cost.

On December 5, 1984 we contacted and subsequently forwarded the application to the Department of Transportation's National Maritime Research Center (NMRC) for its expert reviewed and comments. In its memorandum dated August 5, 1985, NMRC advised that the features claimed pertinent by the applicant were all within the state-of-the-art capability of domestic manufacturers at the time of order of the foreign article. Domestic suppliers could have provided the nocturnal navigation simulators in satisfaction of the applicant's requirements for the intended use. Based on the information contained in the record the applicant has not justified duty-free entry as required by former 15 CFR 301.6 (the regulations were amended, after original submission of this application, on July 28, 1982; 47 FR 32517). The applicant has not shown that the domestic manufacturers, Advanced Technology System (ATS), Sperry Division of Sperry Corporation or Ship Analytics, if they had been given the opportunity to respond to the applicant's specifications dated September 19, 1978, could not have provided an apparatus satisfying the applicant's requirements. The applicant merely enclosed with its application promotional materials describing some of the capabilities of the domestic manufacturers; such materials do not constitute a corporate response to a request for bid. The applicant, in the denial without prejudice to resubmission (DWOP) (Docket Number 81-244), was given the opportunity to provide additional information and further to justify the claim for duty waiver along the lines of scientific equivalency. The applicant did not do this. The applicant simply expanded the purposes to include possible studies at some unspecified future date. The applicant was advised in the (DWOP) that the regulations [15 CFR 301.5] did not permit the introduction of new purposed or intended uses in a resubmission. As a matter of procedure, the applicant's resubmitted application failed to comply with former 15 CFR 301.8 (1980), which controls for purposes of this case.

We note that the applicant's contact with domestic firms took place more than three years before the foreign article was ordered. (The records show that Sperry's latest proposal to the applicant occurred almost four years before purchase.) Based on the advice of the National Bureau of Standards and the Maritime Administration and on the domestic firm's established record in simulation technology, we conclude that the domestic firms would have been able to supply equivalent systems had they been formally requested to bid. The dated correspondence between the applicant and potential domestic suppliers does not evidence the inability to supply an equivalent custom-made system.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-22228 Filed 9-30-86; 8:45 am]

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National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to:

Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-626,960 (4,600,781)
2-Formyl-2-Halomalonates and Compound Derived Therefrom
SN 6-681,394 (4,600,581)
Synthetic Pheromones for the Spined Soldier Bug, Podisus Maculiventris
SN 6-827,142
Impact Detection Apparatus
SN 6-858,809
End Plug for Bee Shipping Tubes
SN 6-860,360
Reactions Between Immiscible Fluids
SN 6-882,103
Lipolytic Splitting of Fats and Oils
SN 6-882,104
Control of Lesser Mealworm
SN 6-886,502
Novel Phytotoxic and Plant Growth Regulating Oligopeptide
SN 6-889,070
Process for Dyeing Smooth-Dry Cellulosic Fabric

Department of Commerce

SN 6-598,602 (4,601,055)
Image Processor

Department of Health and Human Services

SN 6-729,206 (4,601,903)
Vaccine Against Neisseria Meningitidis Group B Serotype-2 Invasive Disease
SN 6-863,981
Automatic Orientation and Interactive Addressing of Display
SN 6-865,055
Use of Trimetrexate as Antiparasitic Agent
SN 6-865,403
Computer Software Which Plots DNA Sequences
SN 6-867,013
Electrochemical Sample Probe for Use in Fast-Atom Bombardment Mass Spectrometry
SN 6-869,714
Method for Detecting Melanin-Containing Matter
SN 6-869,741
Combined Spatial and Frequency Compound Ultrasonic Imaging System
SN 6-876,701
New Tertrazolium Reagents and Assays Using the Reagents
SN 6-894,251
Systematic Method for Matching Existing Radiographic Projections with Radiographs to be Produced From a Specified Region of Interest in Cancellous Bone
SN 6-903,879
Process and Apparatus for the Preparation of Multiple Gradients

Department of the Interior

SN 6-690,810 (4,601,207)
Measuring Mine Roof Bolt Strains

Department of the Army

SN 6-887,142
Method of Increasing the Useful Life of Rechargeable Lithium Batteries
SN 6-867,413
Millimeter Wave Microstrip Circulator Utilizing Hexagonal Ferrites
SN 6-892,015
Highly Decoupled Cosited Antennas
SN 6-893,837
Laser-Induced Chemical Vapor Deposition of Germanium and Doped-Germanium Films
SN 6-895,015
Cathode Including a Non Fluorinated Linear Chain Polymer as the Binder, Method of Making the Cathode, and Lithium Electrochemical Cell Containing the Cathode
SN 6-896,788
Aircraft Collision Warning System

Tennessee Valley Authority

SN 6-717,059 (4,588,498)
Single Float Step Phosphate Ore Beneficiation
SN 6-769,058 (4,589,904)
Granulation of Crystalline By-Product Ammonium Sulfate

[FR Doc. 86-22132 Filed 9-30-86; 8:45 am]
BILLING CODE 3810-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Apparel Products Produced or Manufactured in Mauritius

September 26, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 1, 1986. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, between the Governments of the United States and Mauritius establishes a twelve-month period of restraint for cotton, wool and man-made fiber apparel products in Categories 338/339, 340 and 638/639, and in Categories 345, 438, 445, 446, 645 and 646, as a group, during the agreement period beginning on October 1, 1986 and extending through September 30, 1987. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the foregoing categories, produced or manufactured in Mauritius and exported during the specified twelve-month period, in excess of the designated limits.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

September 26, 1986.

Committee for the Implementation of Textile Agreements

September 26, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber knitwear apparel products in Categories 338/339, 340 and 638/639, and in Categories 345, 438, 445, 446, 645 and 646, as a group, produced or manufactured in Mauritius and exported during the twelve-month period which begins on October 1, 1986 and extends through September 30, 1987, in excess of the following restraint levels:

Category	12-mo. restraint level [1]
338/339	212,000 dozen.
340	224,720 dozen.
638/639	243,800 dozen.
345, 438, 445, 446, 645 and 646, as a group	117,312 dozen.

[1] The limits have not been adjusted to reflect any imports exported after Sept. 30, 1986.

In carrying out this directive, textile products in the foregoing categories which have been exported to the United States during the restraint period immediately previous to that established in this directive, shall, to the extent of any unfilled balances, be charged against the limits established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of June 3 and 4, 1985, between the Governments of the United States and Mauritius, which provide, in part, that the limits may be exceeded by not more than 10 percent for carryover and carryforward and the limits for Categories 338/339 and 638/639 may be exceeded by not more than 7 percent swing, provided that an equal amount in equivalent square yards is deducted from one or more specific limits during the same agreement year. Any appropriate adjustments under the provisions of the agreement, referred to above, will be made to you by letter.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-22230 Filed 9-26-86; 4:34 pm]
BILLING CODE 3510-DR-M

Establishing Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

Correction

In FR Doc. 86-21748 beginning on page 34116 in the issue of Thursday, September 25, 1986, make the following correction: On Page 34117, in the table that appears in the first column, the twelve-month restrain level for category 638 should read "422,702 dozen".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Retirement Board of Actuaries; Meeting

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 95, title 10, United States Code. Persons desiring to attend the DoD Retirement Board of Actuaries meeting must notify Ms. Dorothy Hemby at 696-6336 by October 16, 1986. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: October 17, 1986, 9:00 a.m. to Noon.

ADDRESS: Room 3E752, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, DoD, Office of the Actuary, 4th Floor, 1600 Wilson Boulevard, Arlington, Virginia 22209-2593, (202) 696-5869.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 29, 1986.

[FR Doc. 86-22169 Filed 9-30-86; 8:45 am]
BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of statement of the need for and the uses to be made of the Information Collected; and Form Number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

New

Justification For Personnel Security Clearance; DIS Form 180

The Defense Invistigative Service (DIS) uses the Justification Form to determine if contractor employees have a bona fide need to have access to classified information and to ensure investigative resources are not wasted. The form is completed in its entirety by contractors at their official duty stations for each employee requiring a security clearance. The contractor justifies the employee's need for a specific level of clearance and indicates the frequency of access to classified information required by the employee.

Contractor facilities.

Responses 346,000.

Burden Hours 69,200.

ADDRESS: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3225, New Excutive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson

Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Richard H. Anderson, Chief, Industrial Security Clearances and International Programs Division, Room 5333, 1900 Half St., SW., Washington, DC 20324–1700, telephone (202) 475–0906.

September 29, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–22172 Filed 9–30–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collections and Form Number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Request for CHAMPUS Benefits Under the Basic Program, CHAMPUS Form 190, Request for CHAMPUS Benefits Under the Program for the Handicapped, CHAMPUS Form 190A.

The Request for Health Benefits Under the Program for the Handicapped and Basic Program is an official application for CHAMPUS benefits. It is used to ensure that CHAMPUS benefits are being provided only to those persons entitled to CHAMPUS benefits. The form requests pertinent sponsor/beneficiary information necessary for issuing authorization for payment.

Individuals or households, businesses or other for-profit, non profit institutions and small businesses or organizations.

Responses: 10,000.

Burden Hours: 5,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Suit 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–3509.

September 29, 1986.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–22173 Filed 9–30–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collections and Form Number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Diagnostic Evaluation, Program for the Handicapped—CHAMPUS Form 141.

The Diagnostic Evaluation, Program for the Handicapped Form is used to provide medical information for periodic reviews on benefits provided to physically handicapped or mentally retarded OCHAMPUS beneficiaries. The form is used to determine whether services/supplies provided under the Program for the Handicapped are cost-effective and efficient.

Individuals or households, businesses or other for-profit, non profit institutions and small businesses or organizations.

Responses: 840.

Burden Hours: 840.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–3509.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 29, 1986.

[FR Doc. 86–22174 Filed 9–30–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collection and Form Number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Revision of a Currently Approved Collection

Chaplain Candidate Training Record (ARPC Form 0–5) and U.S. Air Force Reserve Chaplain Candidate Inquiry (ARPC Form 0–285).

The Chaplain Candidate Training Record is used to identify chaplain candidates, to schedule tours of active duty training, and to readily identify trained candidates awaiting appointment. The U.S. Air Force Reserve Chaplain Candidate Inquiry form is used to record information required to properly respond to inquiries about eligibility for Air Force chaplain programs.

Individuals

Responses 150

Burden hours 50

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Major James T. Oldham, HQ ARPC/HCR, Denver, CO 80280, telephone (303) 370–4901.

September 29, 1986.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–22176 Filed 9–30–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Recreation Research-Use Survey

Recreation use figures are needed to supplement research efforts directed toward evaluation and increasing cost efficiency of planning, design and management of Corps projects and to report visitation to Congress as required by Pub. L. 92–347.

Responses: 25,000.

Burden Hours: 2,750.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3325, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela Petrarca, DAIM–ADI, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

Linda Lawson,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

September 29, 1986.

[FR Doc. 86–22170 Filed 9–30–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for Retired Pay Benefits, DD Form 108

Information collected on DD Form 108 enables the Armed Forces to process requests for Retired Pay Benefits of reserve members and is also used to verify service record data.

Individual reserve members

Responses: 11,547

Burden Hours: 1,924

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela Petrarca, DAIM–ADI, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754

Linda Lawson,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

September 29, 1986.

[FR Doc. 86–22171 Filed 9–30–86; 8:45 am]

BILLING CODE 3810–01–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Date of Meeting: 23 October 1986

Times of Meeting: 1200–1700 hours

Places: Los Alamos National Laboratory, Los Alamos, NM

Agenda: The Army Science Board Ad Hoc Subgroup on Chemical/Biological Warfare Intelligence will visit the Los Alamos National Laboratory to be briefed on the stand-off and remote detection of chemical agents. In-depth briefings will be presented by each directorate covering their work program. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–22182 Filed 9–30–86; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration

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(GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523-5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

Contracting officers terminate contracts, for default or convenience, only when it is in the best interest of the Government to do so. After receipt of the notice of termination, contractors are required to terminate subcontracts, advise the contracting officer of any special circumstances, submit any requests for an equitable adjustment, submit a settlement proposal, and take other action as directed. Records regarding the terminated contract must be maintained for 3 years.

The information submitted or retained in connection with contract terminations is used to reach an equitable settlement with firms and to protect the interests of the Government and the terminated contractor.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, 2,920; responses per respondent 1; total annual responses, 2,920; hours per response, 3; total reporting hours, 8,760; and total recordkeeping hours, 2,920.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0028, Termination Requirements.

Dated: September 22, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86-22155 Filed 9-30-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Cameron County Resort Community, TX; Environmental Impact Statement

To prepare a Draft Environmental Statement (DEIS) for Department of the Army Permit Application Number 17714, concerning activities in or affecting navigable waters of the United States and the discharge of dredged or fill material into waters of the United States associated with ". . . a master-planned international destination resort community. . ."

AGENCY: U.S. Army Corps of Engineers, DOD, Galveston District.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: 1. The proposed action to be addressed in the DEIS is development of a master planned resort community in Cameron County, Texas. The development would include marinas, residential sites, retail space, offices, commercial and convention space, golf courses, open space, schools, utility sites, and other amenities.

2. Alternatives to be considered inthe DEIS and available to the Corps of Engineers include issuing the permit, denying the permit, or issuing the permit with conditions. Alternatives available to the applicant will also be considered.

3. *Coordination.* A. Public involvement on this permit application began with issuance of the public notice dated 10 July 1986. A Public Hearing on this permit application was held on August 28, 1986 in Brownsville, Texas. Additional scoping meetings will be conducted and participation from Federal, State, and local agencies and organizations will be invited.

b. Environmental concerns initially identified in the permitting process to be analyzed include: Wetlands, cultural resources, endangered species, flood hazards, flood plain values, water and sediments quality, circulation, freshwater supplies, aesthetics, land use, estuarine resources and others.

c. Coordination will continue with various Federal, State, and local agencies and the interested public during preparation and review of the DEIS.

d. Other environmental consultation and review will be conducted in accordance with the National Environmental Policy Act and other applicable laws and regulations concerning endangered species, cultural resources and others.

4. Scoping meetings will be conducted during October and November 1986 to gather additional information and refine the scope to gather additional information and refine the scope of studies necessary for preparation of the DEIS. Agencies and interest groups will be contacted regarding their participation in these meetings.

5. The DEIS is scheduled to be available to the public in the fall of 1987.

ADDRESS: Questions about the proposed action and DEIS can be answered by Mr. C.R. Harbaugh, Chief, Environmental Resources Branch, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553-1229, (409) 766-3044.

Dated: September 23, 1986.

Gordon M. Clarke,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86-22190 Filed 9-30-86; 8:45 am]

BILLING CODE 3710-GK-M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Manufacturing Lead Time Production Solicitations

The collection of information is required to determine the domestic industrial base's ability to support Naval Sea System's Command shipbuilding, conversion and repair programs. The information collected is used by NAVSEA and substantially improves NAVSEA's decision making process regarding present and future shipbuilding, conversion and repair programs.

Businesses
Responses 1960
Burden hours 1,960

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Albert P. Mieskolainen, NAVSEA Shipbuilding Support Office, Philadelphia Naval Shipyard, Philadelphia, PA 19112-5087, telephone (215) 897-3161.

September 29, 1986.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-22175 Filed 9-30-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the National Advisory Council on Women's Educational Programs and its Executive; Federal Policies, Practices and Programs; WEEA and Civil Rights Committees. The agenda will include committee reports, budget report, Council goals and objectives and discussion of 1986 annual report and WEEA program. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: October 16, 1986: 10:00 a.m. to close of business (Committee Meetings)
October 17, 1986: 8:30 a.m. to close of business (Full Council Meeting)

ADDRESS: All meetings will be held in the State Room of the Governor's House, Holiday Inn, 17th St. at Rhode Island Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Patricia Weber, Deputy Director, National Advisory Council on Women's Educational Programs, 2000 "L" Street, NW., Suite 568, Washington, DC 20036, (202) 634-6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95-561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) make recommendations to the Secretary with respect to the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Executive Committee will meet on Thursday, October 16, 1986 from 4:00 p.m. until close of business. The agenda will include discussion of the budget, annual report and Council agenda.

The meetings of the Federal Policies, Practices and Programs; Civil Rights; and WEEA Program Committees will take place on Thursday, October 16, 1986 from 10:00 a.m. to noon when they will recess for lunch and then re-convene at 1:30 p.m. until close of business. The agenda will include general discussion.

The full Council will meet October 17, 1986, beginning at 8:30 a.m. until close of business. The agenda will include committee reports, budget report, council goals and objectives and discussion of 1986 annual report and WEEA program. These discussions will touch upon matters that would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C.

Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036.

Signed at Washington, DC on September 24, 1986.

Sally A. Todd,

Executive Director.

[FR Doc. 86-22188 Filed 9-30-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination To Establish Basic Energy Sciences Advisory Committee

Pursuant to the Federal Advisory Committee Act, Pub. L. No. 92-463, I hereby certify that the establishment of the Basic Energy Sciences Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariate of the General Services Administration pursuant to 41 CFR Subpart 101-6.10.

The purpose of the committee is to provide advice on a continuing basis to the Secretary of Energy, through the Director of Energy Research, on the Basic Energy Sciences program, including:

a. Periodic reviews of elements of the program and recommendations based theron;

b. Advice of long-range plans, priorities, and strategies to address more effectively the basic energy sciences issues of departmental policies and programs;

c. Advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the BES program;

d. Advice on any issues relating to the BES program, as requested by the Secretary or the Director of Energy Research.

Further information concerning this committee may be obtained from Gloria Decker (202-252-8990).

Issued in Washington, DC, on September 25, 1986.

Charles R. Tierney,

Advisory Committee Management Officer.

[FR Doc. 86-22156 Filed 9-30-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-695-000, et al.]

Arizona Public Service Company, et al.; Electric Rate and Corporate Regulation Filings, September 25, 1986.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Co.

[Docket No. ER86-695-000]

Take notice that on September 2, 1986, Arizona Public Service Company (APS)

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tendered for filing an Economy Energy Interchange Agreement between APS and the City of Colton, California (Colton), executed August 13, 1986.

APS requests that this Agreement become effective 60 days from the date of filing with FERC.

Copies of this filing were served upon Colton and the Arizona Corporation Commission.

Comment date: October 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Company

[Docket No. ER86-712-000]

Take notice that on September 18, 1986, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during July 1986, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power and Light Co.: Supplement No. 56.

Sierra Pacific Power Co.: Supplement No. 53.

Comment date: October 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

New England Power Co.

[Docket No. ER86-711-000]

Take notice that on September 19, 1986, New England Power Company (NEP) tendered for filing as an initial rate schedule an agreement between NEP and Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO) that provides for the sale and/or exchange of surplus energy from time to time. NEP requests an effective date of November 15, 1983 for the agreement and requests waiver of this Commission's Regulations for prior notice to allow that effective date in accordance with the terms of the agreement.

NEP states that the agreement thus far has produced revenues aggregating $501,500.

NEP states that copies of the filing were served upon CL&P, WMECO and the Massachusetts Department of Public Utilities.

Comment date: October 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are of file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22191 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9511-001, et al.]

C and O Hydro Associates, et al.; Surrender of Preliminary Permits, September 26, 1986.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. C and O Hydro Associates

[Project No. 9511-001]

Take notice that C & O Hydro Associates, Permittee for the Georgetown Project No 9511, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9511 was issued on March 27, 1986, and would have expired on February 28, 1989. The project would have been located on the C & O Canal in Washington, DC.

The Permittees filed the request on September 18, 1986.

2. Messrs. Ernest R. Field and Robert A. Bernhard

[Project No. 8571-004]

Take notice that Messrs, Ernest R. Field and Robert A. Bernhard Permittees for the C.M. Harden Dam Project No. 8571 have requested that the preliminary permit be terminated. The preliminary permit for Project No. 8571 was issued on Feburary 24, 1986, and would have expired on January 31, 1989. The project would have been located on the Big Raccoon Creek, in Parke County, Indiana.

The Permittees filed the request on September 9, 1986.

3. Messrs. Ernest R. Field and Robert A. Bernhard

[Project No. 9077-003]

Take notice that Messrs, Ernest R. Field and Robert A. Bernhard Permittees for the Salamonie Dam Project No. 9077 have requested that the preliminary permit be terminated. The preliminary permit for Project No. 9077 was issued on October 2, 1985, and would have expired on September 30, 1988. The project would have been located on the Salamonie River, in Wabash County, Indiana.

The Permittees filed the request on September 9, 1986.

Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22192 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8569-004, et al.]

Messrs. Ernest R. Field and Robert A. Bernhard, et al.; Surrender of Preliminary Permits, September 25, 1986

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Messrs. Ernest R. Field and Robert A. Bernhard

[Project No. 8569-004]

Take notice that Messrs. Ernest R. Field and Robert A. Bernhard, Permittees for the Huntington Dam Project No. 8569, have requested that the preliminary permit be terminated. The preliminary permit for Project No. 8569 was issued on February 18, 1986, and would have expired on January 31, 1989. The project would have been located on the Wabash River, in Huntington County, Indiana.

The Permittees filed the request on September 9, 1986.

2. Messrs. Ernest R. Field and Robert A. Bernhard

[Project No. 8570-003]

Take notice that Messrs. Ernest R. Field and Robert A. Bernhard Permittees for the Patoka Dam Project No. 8570 have requested that the preliminary permit be terminated. The preliminary permit for Project No. 8570 was issued on February 18, 1986, and would have expired on January 31, 1989. The project would have been located on the Patoka River, in Dubois County, Indiana.

The Permittees filed the request on September 9, 1986.

3. Messrs. Ernest R. Field and Robert A. Bernhard

[Project No. 9076-002]

Take notice that Messrs. Ernest R. Field and Robert A. Bernhard Permittees for the Monroe Dam Project No. 9076 have requested that the preliminary permit be terminated. The preliminary permit for Project No. 9076 was issued on September 20, 1985, and would have expired on August 31, 1988. The project would have been located on the Salt Creek, in Monroe County, Indiana.

The Permittee filed the request on September 9, 1986.

Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22193 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4114-001]

Long Lake Energy Corp., Availability of Environmental Assessment and Finding of No Significant Impact

September 26, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

LICENSES

Project No.	Project name	State	Water body	Nearest town or country	Applicant
4114-001	Lower Saranac	NY	Saranac River	Plattsburgh and Schuyler Falls	Long Lake Energy Corporation.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22194 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-31-000]

Carrah S. Steadman; Petition for Adjustment

Issued: September 25, 1986.

On August 26, 1986, Mrs. Carrah S. Steadman filed with the Federal Energy Regulatory Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA)[1] and Subpart K of the Commission's Rules of Practice and Procedure.[2] Mrs. Steadman seeks waiver of an obligation under Commission Order Nos. 399, 399-A, and 399-B [3] requiring payment of Btu adjustment refunds by first sellers of natural gas.

Mrs. Steadman has been billed by Mich La Oil and Gas Exploration Inc. as an interest owner for an amount of $1,153.76 as her share of a Btu refund obligation. From Commission records, the pipleline purchaser of the gas involved appears to have been Tennessee Gas Pipeline Company. Mrs. Steadman seeks relief on the ground that payment of the refund amount would cause her financial hardship.

[1] 15 U.S.C. 3412(c) (1982).

[2] 18 CFR Part 382, Subpart K (1986).

[3] 49 FR 37735 (September 26, 1984), FERC Stats. and Regs. [Regulations Preambles 1982-1985] ¶30,597; 49 FR 46353 (November 26, 1984), FERC Stats. and Regs. [Regulations Preambles 1982-1985] ¶30,612; and 50 FR 30141 (July 24, 1985), FERC Stats. and Regs. [Regulations Preambles 1982-1985] ¶30,651.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 22195 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-721-000, et al.]

Colorado Interstate Gas Co., et al.; Natural Gas Certificate Filings

September 26, 1986.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP86-721-000]

Take notice that on September 12, 1986, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86-721-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon a transportation service for the direct sale of gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG requests authorization for the partial abandonment of its transportation service for four non-jurisdictional direct sale customers by reducing the maximum volumes transported to reflect reduced sales entitlements as indicated below:

Customer	Former entitlement (Mcf)		Current entitlement (Mcf)	
	Daily	Annual	Daily	Annual
City of Trinidad, CO	1,100	401,000	10	2,000
CF&I Steel Corp	35,000	9,500,000	25,000	5,500,000
Ideal Basic Industries, Inc.	1,200	120,000	500	60,000
Western Sugar Co.	2,500	250,000	65	23,725

It is stated that the reduced entitlements have been agreed on by CIG and its four customers as a result of

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reduced gas usage. It is further stated that revised sales agreements showing the reduced entitlements have been filed with the Commission pursuant to § 155.1 of the Commission's Regulations.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Co.; Natural Gas Pipeline Co. of America

[Docket No. CP74-204-014]

Take notice that on September 11, 1986, Columbia Gulf Transmission Company P.O. Box 683, Houston, Texas and Natural Gas Pipeline Company of America 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148 (Petitioners), filed in Docket No. CP74-204-014, a joint petition to amend the order of March 3, 1977,[1] as amended, issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act so as to authorize the exchange of natural gas, as authorized in this docket, on a thermally equivalent basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Petitioners are presently authorized in the instant docket to exchange, on a gas-for-gas basis, up to 85,000 [2] Mcf of natural gas per day at certain points offshore Louisiana, pursuant to a gas exchange agreement dated October 12, 1973, as amended.

It is further stated that pursuant to an amendment dated October 1, 1984, to the gas exchange agreement, Petitioners agreed to exchange the gas as authorized in the instant docket on a thermally equivalent basis rather that on an Mcf-for-Mcf basis.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Midwestern Gas Transmission Co.

[Docket No. CP86-709-000]

Take notice that on September 4, 1985, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-709-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon a certain gas storage service and all related and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern states that it currently provides storage service to Northern Indiana Public Service Company (NIPSO) pursuant to a gas service contract dated August 28, 1967. To provide this service, it is stated, Midwestern uses its Nevins and Elbridge Storage Fields, located in Edgar County, Illinois.

Midwestern states that by letter dated May 8, 1986, NIPSCO gave notice to Midwestern that it elected to cease receiving this storage service and terminate the contract effective November 1, 1987.

By its application, Midwestern requests Commission approval to abandon the storage service presently provided to NIPSCO in the Nevins and Elbridge Fields and all related and appurtenant facilities.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Co.

[Docket No. CP73-219-009]

Take notice on September 16, 1986, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP73-219-009, a petition to amend the order issued May 6, 1974, in Docket No. CP73-219, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize a reduction in the total reserved daily capacity transported for Trunkline Gas Company (Trunkline) from Stingray Pipeline Company, (Stingray) (Holly Beach delivery point) and the U-T Offshore System (UTOS delivery point), a reduction in the reserved daily capacity for Trunkline from the UTOS delivery point, and the delivery of certain volumes of gas to Trunkline on a best efforts basis, at its sole option, at Montgomery County, Texas (Montgomery redelivery point), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued May 6, 1974, as amended, NGPL was authorized to transport up to 660,000 Mcf of natural gas per day (Mcfd) for Trunkline. It is also stated that NGPL received the gas from Trunkline at either the interconnection between Stingray and NGPL's Gulf Coast main line at Holly Beach, Cameron Parish, Louisiana, or at the interconnecting of UTOS and NGPL near Johnson Bayou, Cameron Parish, Louisiana. It is alleged that the amount of gas delivered by Trunkline to the Holly Beach delivery point was limited to 460,000 Mcfd with the remaining 200,000 Mcfd to be delivered at the UTOS delivery point. It is further stated that NGPL redelivered equivalent quantities of gas to Trunkline at either the Lakeside, Cameron Parish, Louisiana, or the Montgomery, Montgomery County, Texas, redelivery points.

By further amendment of the above-mentioned order, it is stated that on December 26, 1985, in Docket No. CP73-219-007,NGPL was authorized to reduce the amount of gas it delivers for Trunkline from 660,000 Mcfd to 560,000 Mcfd, to limit the quantity of gas received at the Holly Beach delivery point to 405,000 Mcfd and the quantity of gas received at the UTOS delivery point to 155.000 Mcfd, and to provide interruptible overrun service for Trunkline if requested.

NGPL requests further amendment of the May 6, 1974, order so as to again reduce the amount of gas NGPL delivers for Trunkline at the UTOS delivery point from 155,000 to 135,000 Mcfd effective November 1, 1986. NGPL states that the maximum quantity of 405,000 Mcfd delivered at the Holly Beach delivery point will remain unchanged and the maximum quantity delivered at the UTOS delivery point will not be in excess of 135,000 Mcfd. NGPL also requests authorization to deliver to Trunkline, at Trunkline's sole option, on a best efforts basis, the lesser of 100,000 Mcfd or the amount of gas received by NGPL at the UTOS delivery point, at the Montgomery redelivery point, at no added charge. NGPL also states that the proposed reduction in the amount of gas delivered for Trunkline will result in a corresponding reduction in the currently effective charge paid by NGPL by Trunkline.

Comment date: October 17, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northern Utilities, Inc.

[Docket No. CP86-712-000]

Take notice that on September 8, 1986, Northern Utilities, Inc. (Norther), P.O. Box 2800, Casper, Wyoming 82602, filed in Docket No. CP86-712-000 an application pursuant to section 7 of the Natural Gas Act and § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the sale and transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant agrees to comply with the conditions as set forth in § 284.224(e) of the Commission's Regulations.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Trailblazer Pipeline Co.

[Docket No. CP86-720-000]

Take notice that on September 12, 1986, Trailblazer Pipeline Company (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-720-000 an application pursuant to section 7 of the Natural Gas Act and § 284.221 of the Commission's Regulations for: (1) A blanket certificate of public convenience and necessity that would authorize Applicant to transport natural gas on behalf of others pursuant to Order No. 436; (2) permission and approval to abandon such services; (3) request for waiver of certain provisions of § 284.7 of the Regulations; and (4) approval of tariff sheets, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests that the Commission waive certain provisions of § 284.7 of its Regulations, to the extent necessary to enable Applicant to continue its existing firm service rate design. Applicant explains that it is a project-financed pipeline which only transports gas for others.

Applicant alleges that its lenders require Applicant to continue to charge its firm shippers a demand charge adequate to recover operating expenses and debt service. Applicant alleges that it cannot comply with certain provisions of § 284.7 without being in default of its loan agreement.

Applicant proposes to provide interruptible transportation service under Rate Schedule ITS. The maximum rate to be charged for interruptible transportation under Rate Schedule ITS will be based on a 100 percent load factor rate, currently 66.60¢ per Mcf. Any collection of the demand portion of the ITS maximum rate will be credited to firm shipers in proportion to contract demand. Applicant is proposing a minimum rate of one cent per Mcf.

Applicant will offer self-implementing firm transportation service pursuant to the terms and conditions of its proposed FTS Rate Schedule. The proposed reservation charge is currently $10.42 per Mcf, and a maximum commodity rate of 32.34¢ per Mcf, and a minimum rate of 1.00¢ per Mcf.

Both Rate Schedules ITS' maximum rate and FTS' reservation charge contain an interest expense tracker.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Co.

[Docket No. CP86-714-000]

Take notice that on September 8, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 (Applicant), filed in Docket No. CP86-714-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing transportation necessary to implement a direct interruptible sale of natural gas to Texas Electric Cooperatives, Inc.—Treating Diivsion (Texas Electric), all as more fully set forth in the application which is one file with the Commission and open to public inspection.

United states that it is authorized under Docket No. CP63-50 to render direct service to Texas Electric of up to 350 Mcf of natural gas per day on a firm service basis. United requests Commission authorization to convert the currently authorized firm service to interruptible service at the same volumetric level. United states that Texas Electrict has consented to the proposed change.

It is claimed that the amounts of gas would be used by Texas Electric as boiler fuel in the operation of its pole creosoting plant.

It is stated that the rate to be paid for the interruptible service would be pursuant to United's Rate Schedule IRS No. 86-51.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. United Gas Pipeline Co.

[Docket No. CP86-722-000]

Take notice that on September 15, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 filed a Prior Notice Requesting authorization to construct and operate a sales tap located on United's Latex-Ft. Worth 18-inch diameter mainline located in Dallas County, Texas, pursuant to Blanket Certificate Prior Notice Procedure [18 CFR Part 157 Subpart F, § 157.205(b) and 157.211(b)].

United states that the sales tap will enable United to supply an estimated daily average of 1 Mcf of natural gas per day for resale to the residence of L.J. King. United asserts that it will initially deliver and install the sales tap to supply Entex Inc. (Entex), for resale to L. J. King. It is stated that Entex will reimburse United for all costs resulting from the tap installation. United avers that the service will be provided under United's Rate Schedule DG-N. United further states it will construct and operate the proposed sales tap in compliance with 18 CFR Part 157, Subpart F, Appendices I and II, and that it has sufficient capacity to render the proposed service without deteriment or disadvantage to its other existing customers.

Comment date: November 10, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the

[1] This proceeding was commenced before by FPC. By joint regulation of October 1, 1977 (10 CFR 1000.0), it was transferred to the Commission.

[2] Petitioners are conditionally authorized to exchange an additional 30,000 Mcf per day when production from certain fields exceeds 75,000 Mdf per day.

Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22231 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-163-000 and TA87-1-44-000, 001]

Commercial Pipeline Co., Inc., Proposed Changes in Ferc Gas Tariff

September 26, 1986.

Take notice that Commercial Pipeline Company, Inc., (Commercial) on September 22, 1986, tendered for filing Fiftieth Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 23, 1986. The proposed changes would increase revenues from jurisdictional sales and service by $36,072 based on the 12-month period ending June 30, 1986, as adjusted, exclusive of the cost of gas sold.

Commercial states that the principal reasons for its proposed rate change are: (1) An increased operation and maintenance costs upon its transmission system; (2) the need to increase revenues to provide for an adequate rate of return; and (3) the requirement that Commercial comply with § 154.38 (d)(4)(vi)(a) of the Commission's regulations. Commercial has also included purchased gas costs adjustments to be effective October 23, 1986.

Copies of this filing were served upon Commercial's jurisdictional customers as well as the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 3, 1986. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22233 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-43-000 and 001

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

September 26, 1986.

Take notice that Northwest Central Pipeline Corporation (Northwest Central) on September 22, 1986, tendered for filing Eighth Revised Sheet Nos. 6, 7, and 8 to its FERC Gas Tariff, Original Volume No. 1. Northwest Central states that pursuant to the Purchased Gas Adjustment in Article 21 and the Incremental Pricing Provisions in Article 24 of its FERC Gas Tariff, it proposes to increase its rates effective October 23, 1986, to reflect:

(1) A 13.00¢ per Mcf increase in the Cumulative Adjustment due to an increase in Northwest Central's projected gas purchase costs.

(2) A 24.09¢ per Mcf increase in the Surcharge Adjustment (to a negative 3.08¢ per Mcf from a negative 27.98¢ per Mcf) to Amortize the Deferred Purchased Gas Cost subaccount balance.

(3) A .13¢ Mcf decrease in the Advance Payment Rate Adjustment (to a negative 1.59¢ per Mcf from a negative 1.46¢ per Mcf) in compliance with the Stipulation and Agreement in Docket No. RP82-114-000, *et al.*

Northwest Central states that it is also filing herewith Original Sheet Nos. 83a and 83b to its FERC Gas Tariff, Original Volume No. 1. These tariff sheets propose to the addition of § 21.7 of the General Terms and Conditions of its FERC Gas Tariff. Original Volume No. 1. If approved, these tariff provisions will permit Northwest Central to file at any time to adjust its Current Effective Rates prior to the filing of its next regular semi-annual Purchase Gas Adjustment (PGA). The purpose for such interim adjustments would be to recognize the cost effect of a change in Northwest Central's weighted average cost of gas from the level utilized in the immediately preceding PGA filing.

Such interim adjustments shall be limited to the cost impact of known and measurable changes in gas costs and may reflect either an increase or decrease in Northwest Central's Current Effective Rates. Northwest Central would be precluded from adjusting its Current Effective Rates, pursuant to the new § 21.7, above the level established in its immediately preceding PGA filing.

Northwest Central will file such interim adjustments with the FERC at least one day (twenty-four hours) prior to the proposed effective date. Northwest Central requests waiver of the notice requirements established by the Commission's regulations. However, Northwest Central will serve copies of each interim adjustment on its jurisdictional customers and interested state commissions. Further, Northwest Central's proposed tariff sheets require it to demonstrate that its actions are appropriate and that it is entitled to recover the under-recovered purchased gas costs which may result from Northwest Central's election to adjust its rates pursuant to this new § 21.7. Northwest Central's demonstration of appropriateness will be limited to amounts in excess of three percent (3%) of the jurisdictional portion of the Actual Cost of Purchased Gas during the Surcharge Adjustment Period that Northwest Central elected to adjust its Current Effective Rates pursuant to the proposed tariff sheets.

The proposed effective date of the above tariff sheets is October 23, 1986.

Northwest Central states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22234 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3239-002; Project Nos. 6373-000 and 6374-000]

Puget Sound Power and Light Co.; McMaster and Schroder; Order Modifying and Approving of Settlement Agreement

Issued September 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On May 27, 1982, McMaster & Schroder (MS) filed with the Commission, pursuant to a permit issued it on December 31, 1980,[1] applications for license for the Lower Rocky Creek Water Power Project No. 6373 and for the Upper Rocky Creek Water Power Project No. 6374. On June 1, 1982, the Puget Sound Power and Light Company (Puget) filed with the Commission, pursuant to a permet issued it in the same order issuing MS its permit, an application for a license for the Sandy Creek Project No. 3239. All three applications were subsequently accepted for processing by the Commission, and public notice was issued for each. Project Nos. 6373 and 6374 would be mutually exclusive with Project No. 3239. On June 25, 1986, MS and Puget jointly filed an offer of settlement to resolve the conflict created by their competing applications. We are in this order approving that settlement agreement with certain modifications.

Background

The project described in MS' permit application would have been located on Sulphur and Rocky Creeks in Whatcom County, Washington. The project described in Puget's permit application would have been located on Sandy, Rocky, Sulphur and Dillard Creeks in the same county. Since it appeared that both projects could coexist through the apportionment of flows from the upper portions of Rocky and Sulphur Creeks between the two projects or by allowing one project or the other to use all of the available flow from these portions of these two creeks, we issued separate permits to each to study the feasibility of developing and operating their respective projects. However, because we saw that there was a possibility that the permittees might submit license applications for projects the could not coexist, we provided in our order issuing the permits that, were this to occur, we would accord to MS, the first to file an application for a permit, permit priority over any application filed by Puget. In an effort to avoid any such conflict, however, we specifically directed the two permittees to "coordinate [their] studies to ensure the optimum development of the water resources of the region in the public interest."[2]

Despite our request for coordination, MS and Puget filed applications for projects that could not coexist.[3] However, soon thereafter the applicants requested our leave for time to reach an agreement between themselves whereby they could develop the region's water resources in a mutually satisfactory way. The settlement agreement before us is the result of their efforts.

Under the terms of the settlement agreement: (1) MS withdraws its applications for Project Nos. 6373 and 6374; (2) Puget amends its application for Project No. 3239 (renamed the Koma Kulshan Project) to add MS as a co-applicant; (3) the application for Project No. 3239 is amended to change the configuration of the proposed project in accordance with the data submitted with the settlement agreement;[4] and (4) the Commission would immediately issue a license to the joint applicants for Project No. 3239, as amended.

Copies of the settlement agreement (along with the amended license application for Project No. 3239) were served on all parties in these proceedings, and 20 days were provided for the filing of comments, all as required by the Commission's regulations governing offers of settlement.[5] Comments in opposition to the proposed settlement have been filed by the United States Fish and Wildlife Service (USFWS) and the Washington State Department of Fisheries (WDF). Comments have also been filed by the Office of the Secretary of the Interior. No hearing has been set in this proceeding.

USFWS and WDF object to the settlement agreement, contending that the use of the settlement agreement process in this situation would circumvent the agencies' ability to effectively comment on the new proposal. They each list several areas, including instream flows, erosion and sedimentation control and cumulative impacts, concerning which they believe there are unresolved issues which need to be addressed. MS and Puget filed a joint response to the agencies' comments, stating that they had consulted with the agencies in formulating their revised project and that the Commission should approve the settlement agreement and instruct the Commission's Office of Hydropower Licensing (OHL) to proceed to complete the processing of the Koma Kulshan Project, during which time all remaining environmental issues can be resolved.

Discussion

Under § 4.35 of our regulations,[6] when an applicant amends its filed development application in order to materially change its proposed plans of development, we treat it as a material amendment, assign it a new filing date, and reissue public notice of the application. This regulation is intended to preclude applicants from gaining an unfair competitive advantage by making material amendments to their applications after they were filed with the Commission or from wasting the Commission's limited resources by filing applications that are not fully developed.

It is clear that the changes proposed by MS and Puget to Project No. 3239 would constitute a material amendment under § 4.35. However, the changes proposed by the parties in this case are partly the result of our issuance of separate permits to each party to study projects that carried the potential to be in conflict. Therefore, we believe that equity requires us to waive § 4.35 to the extent applicable here, and we will so provide.

We have reviewed the provisions of the settlement agreement and believe they are fair, reasonable, in the public interest, and would adequately resolve the conflict created by by the issuance of the potentially conflicting preliminary permits. We do agree with USFWS and WDF, however, that approval of that portion of the settlement agreement requiring immediate issuance of a license would unduly restrict the agencies' ability to effectively comment on the new proposal.[7] In addition, this provision of the settlement agreement presupposes that we have completed all work on the new proposal and have

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[1] 13 FERC ¶ 61,288 (1980). MS was issued a permit for Project No. 3016. Its license applications were assigned new project numbers because MS filed two separate license applications.

[2] 13 FERC at 61,625.

[3] As originally proposed, Project No. 3239 would have diverted waters from Rocky, Sulphur, and Dillard Creeks and released them into Dillard Creek. This would have conflicted with Project Nos. 6373 and 6374, both of which would have been situated downstream of Project No. 3239 and which would have diverted waters from Rocky and Sulphur Creeks and released them into Rocky Creek, because it would have reduced the waters from Rocky and Sulphur Creeks available for use by both projects.

[4] The Koma Kulshan Project (Project No. 3239, as amended) would divert waters from Rocky and Sulphur Creeks and release it into Dillard Creek.

[5] *See* 18 CFR 385.602 (1986).

[6] 18 CFR ¶ 4.35 (1986).

[7] If § 4.35 of our regulations was applied to the new proposal, public notice of the application would be reissued, and the agencies would have approximately 60 days to comment on it.

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concluded that issuance of a license for it fulfills statutory requirements and would be in the public interest. This has not occurred. Finally, immediate issuance of the license would prohibit any public comment on the proposal. Accordingly, we will not approve that portion of the settlement agreement requiring the immediate issuance of a license.[9] Instead, we will instruct the Commission's Secretary to issue public notice of the new proposal providing interested entities with 30 days in which to submit comments on the proposal,[9 10] and instruct OHL to expeditiously process the application. We believe this procedure will provide USFWS, WDF, other agencies, and the public with adequate time to comment on the proposal without unduly delaying action on Koma Kulshan Project, and is equitable in light of the unique circumstances of this case.

In light of the above, we are approving the settlement agreement with the modification described herein.

The Commission order: (A) The Settlement Agreement filed jointly by McMaster and Schroder and the Puget Sound Power & Light Company on June 25, 1986, in the above-captioned proceeding is approved, except for that portion of the Settlement Agreement requiring immediate issuance of a license for Project No. 3239, as amended, and the terms and conditions of it are incorporated by reference in this order, with the same force and effect as if set forth fully in this Ordering Paragraph (A).

(B) To the extent they are applicable, the provisions of § 4.35 of the Commission's regulations, 18 CFR 4.35 (1986), are waived with regard to the filing made on June 25, 1986, in these proceedings.

(C) The license applications for Project No. 6373 and 6374 filed by McMaster and Schroder are deemed withdrawn effective on the date of this order.

(D) The Commission's approval of the Settlement Agreement shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

(E) The Commission Secretary shall promptly issue a public notice as described herein.

(F) The Commission's Office of Hydropower Licensing shall expeditiously process the amended application for Project No. 3239.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22235 Filed 9-30-86; 8:45 am]

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[9] MS' and Puget's response to the comments stated that they would be willing to have the settlement agreement modified so tht OHL would be instructed to proceed with processing of the application.

[9] Although WDF and USFWS only had 20 days to comment on the settlement proposal, they and the public had and opportunity to fully comment on the three original license applications, and the agencies wer consulted on the amendments to Project No 3239. Also, approximately 80 days have passed since the expirationof the 20-day settlement agreement comment period.

[10] Since we are waiving the provision of § 4.35 to the extent applicable here, the original acceptance date of Project No. 3239 remains unchanged. Therefore, the public notice issued by the Secretary willbe for the purpose of comment only; no competing applications may be filed.

[Docket Nos. CP86-731-000, et al.]

Southern Natural Gas Co., et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP86-731-000]

September 25, 1986.

Take notice that on September 18, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-731-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to construct and operate eight sales taps under the certificate issued in Docket No. CP82-406-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to construct and operate eight sales taps for delivery of natural gas to Mississippi Valley Gas Company (MVG), an existing customer, on Applicant's 6-inch North Meridian line in Winston County, Mississippi. Applicant states that the taps would be designated as Tap Nos. 7362, 7368, 7369, 7370, 7374, 7376, 7377, and 7382, and would be located at or near Mile Posts 6.3, 6.4, 8.3, 8.4, 9.4, 9.7, 10.4, and 11.4, respectively, on the North Meridian line. Applicant estimates the cost of each proposed tap to be $707, for which MVG has agreed to reimburse applicant. It is stated that the taps would enable MVG to sell gas to certain residential customers who currently are not being supplied with natural gas.

Applicant explains that MVG would be entitled to take a maximum quantity of 80 Mcf of gas per year at each tap. Applicant avers that the gas would be sold at the Commodity Charge specified in Applicant's OCD-1 Rate Schedule, which is currently $2.93724 per Mcf.

Comment date: November 10, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Gas Transmission Corp.

[Docket No. CP86-706-000]

Septembe 22, 1986.

Take notice that on September 8, 1986, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP86-716-000, an application pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to increase the capacity of an existing delivery point to Arkansas Louisiana Gas Company (ARKLA) and the Associated Natural Gas Company (Associated) by removing the existing 4-inch meter run and installing an 8-inch meter run under the authorization issued to it in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the expanded delivery point, to be located on Texas Gas' 26-inch Main Line System near the Mississippi-Tennessee state line in Desoto County, Mississippi, will have a capacity of approximately 2.430 billion Btu equivalent of gas per hour in order for Texas Gas to alleviate measurement difficulties encountered at the delivery point, the West Memphis Station, on certain peak days.

Texas Gas also states that no consent from any customer would be needed in order to abandon the existing facilities, since no service would be abandoned, but would be continued to those customers through the new 8-inch meter station.

It is asserted that the expanded delivery point would not result in an increase in ARKLA's or Associated's Contract Demand or Quantity Entitlement. Furthermore, service to ARKLA and Associated through the expanded delivery point would be accomplished without detriment to Texas Gas' other customers. It is claimed that the increase in amounts of natural gas, if any, delivered by Texas Gas through the expanded delivery point proposed herein would be so minimal that it would have virtually no effect on Texas Gas' peak day and annual deliveries.

Comment date: November 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Co.

[Docket No. CP86-724-000]

September 23, 1986.

Take notice that on September 16, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP86-724-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon certain sales services under the blanket authorization issued in Docket No. CP82-430-000, pursuant to section 7 of the National Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United requests authority to abandon certain industrial sales services as follows:

Customer name	Contract expiration date
Allied Paper Incorporated	1/1/83
Aluminum Company of America	1/1/87
Armstrong World Industries, Inc	1/1/87
Billeaud Sugar Refinery	2/1/77
Boise Southern Company	1/1/87
Candies, Dugas, Dugas and Sidhem	1/1/87
Brookhollow Wood Preserving Company (formerly Escambia Treating Company)	1/1/87
The Estate of Carleton D. Speed, Jr.	1/1/87
Columbia Sugar Company	2/1/87
Columbian Chemicals Company	1/1/87
Cooper Industries, Inc./Crouse-Hinds Company	1/1/87
Courtaulds North America Inc	12/1/82
Dameron Oil Corporation	1/1/87
East Texas Salt Water Disposal Company	1/1/87
	1/1/87
Equitable Petroleum Corporation	2/1/75
Estherwood Irrigation Company	1/1/87
Exxon Pipeline Company	1/1/87
Fernwood Industries	1/1/87
Georgia-Pacific Corporation	1/1/87
	1/1/85
Gonzales Products Company, Inc	1/1/87
Grant Chemical Division	1/1/87
Gulf Power Company	1/1/87
Town of Homer, Louisiana	1/1/87
Iberia Sugar Cooperative, Inc	1/1/87
International Salt Company	1/1/87
Kentwood Brick and Tile Manufacturing Company, Inc	1/1/87
Kleinpeter Farms Dairy, Inc	1/1/87
Kleinpeter Farms Dehydration Company	1/1/87
Luffkin Industries, Inc	1/1/87
McMurrey Pipe Line Company	2/1/75
Mobile Paperboard Corporation	1/1/87
Morton Thiokol, Inc	1/1/87
C-E Natco Formerly National Tank Company	1/1/87
Osborn Heirs Company	1/1/87
St. James Sugar Cooperative, Inc	1/1/87
St. Mary Parish Consolidated Gravity	1/1/87
Scott Paper Company	1/1/87
Scurlock Oil Company	1/1/87
South Mississippi Electric Power Association	1/1/87
Standard Products Company, Inc	1/1/87
Stone Container Corporation	9/6/86
B. F. Trappey's Sons, Inc	1/1/87
Triad Oil and Gas Company	1/1/87
R. W. Tyson Producing Company, Inc	1/1/87
Vicksburg Chemical Division/Cedar Chemical Corp. (formerly VERTAC)	1/1/87
Warren Petroleum Company A Division of Gulf Oil Corporation	1/1/87
Zapata Haynie Corporation	1/1/87

United States that the sales contracts have expired or will expire in the near future and that the proposed abandonments have been agreed to by the affected industrial customers. United further states that its facilities will remain in place in anticipation of future service.

Comment date: November 7, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22232 Filed 9-30-86; 8:45 am]

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Office of Hearings and Appeals

Implementation of Special Refund Procedures

Correction

In the issue of Friday, September 26, 1986, a correction to FR Doc. 86-21138 appeared in the first column on page 34246. In the third line of the correction, "September 13, 1986" should read "September 18, 1986".

BILLING CODE 1505-01-M

Western Area Power Administration

Extension of Time for Submitting Applications for Power From the Navajo Generating Station

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of an extension of time for submitting applications for power from the Navajo Generating Station.

SUMMARY: The Bouler City Area Office of the Western Area Power Administration (Western) published a "Request for Application for Power from the Navajo Generating Station" in the **Federal Register** (51 FR 30116) on August 22, 1986. Interested parties were invited to submit additional applications for power from the Navajo generating station by September 22, 1986. Subsequently several interested parties have requested that, due to administrative difficulties in preparing the applications, additional time be allowed for submittal. Consequently, it has been determined by Western that additional time should be allowed.

DATE: Applications for Navajo power, as presented in the **Federal Register** (51 FR 30116) on August 22, 1986, will be accepted until October 24, 1986. Applications postmarked after that date will not be accepted.

ADDRESS: Applications should be submitted to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City NV 89005.

Issued in Golden, Colorado, September 19, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-22157 Filed 9-30-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-466 (FRL-3087-1)]

Pesticide Tolerance Petitions, Rhone-Poulenc, Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces filing of petitions proposing tolerances and/or regulations for residues of certain chemicals in or on a certain agricultural commodities.

ADDRESSES: By mail, submit comments identified by the document control number [PF-466] and the petition number, attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:

Information Services Section (TS-747C), Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be

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disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: (PM named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone number	Address
Henry M. Jacoby, PM-21	Rm. 227, CM #2, 703-557-1900	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202
William H. Miller, PM-16	Rm. 211, CM #32, 703-557-2600	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA received pesticide (PP) and feed additive (FAP) petitions as follows, proposing the establishment of tolerances or regulations for residues of certain pesticide chemicals in or on certain raw agricultuml and/or animal feed commodities.

1. *PP 6F3443.* Rhone-Poulenc, Inc., P.O. Box 125, Blackhorse Lane, Monmouth, NJ 08852. Proposes amending 40 CFR 180.399 by establishing a tolerance for the combined residues of the fungicide iprodione [3=(3,5=dichlorophen yl)=*N*=(methylethyl]=2,4-dioxo-1-imidazolidinecarboximide], its isomer [3=(1-methylethyl)=*N*=(3,5-dichlorophenyl)=2,4-dioxo=1=imidazolidinecarboximide], and its metabolite [3=(3,5-dichlorophenyl)=2,4=dioxo=1=imidazolidinecarboximide] expressed as iprodione equivalents in or on rice at 10.0 parts per million (ppm) and rice straw at 20.0 ppm. The proposed analytical method for determining residues is gas chromatography with an Ni^{63} electron capture detector. (PM-21).

2. *FAP 6H5507.* Rhone-Poulence, Inc. Proposes amending 21 CFR 561.263 by establishing a regulation to permit the combined residues of the fungicide iprodione in or on the animal feed commodity rice hulls at 50.0 ppm. (PM-21).

3. *PP 6F3446.* Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419. Proposes amending 40 CFR 180.404 by establishing a tolerance for the combined residues of the insecticide profenofos [*O*=(4=bromo=2=chlorophenyl)=O=ethyl=*S*=propyl phosphorothioate] and its metabolites converted to 4=bromo=2=chlorophen yl >and calculated as profenofos in or on the agricultural commodity soybeans at 1.0 ppm. The proposed analytical method for determining residues is a gas chromatographic procedure equipped with a Dohrman microcoulometric detector in the chloride-specific mode. (PM-16).

4. *FAP 6H5508.* Ciba-Geigy Corp. Proposes amending 21 CFR 561.53 by establishing a regulation to permit the combined residues of profenofos in or on the animal feed commodities soybean hulls and soybean meal at 2.0 ppm. (PM-16).

Authority: 21 U.S.C. 346a and 348.

Dated: September 19, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-21822 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3088-9]

Chesapeake Bay Executive Council; Open Meeting

The Chesapeake Bay Executive Council established in accordance with the Chesapeake Bay Agreement of December 1983, will be held from 10:00 a.m. to 4:00 p.m. on October 16, 1986, at the EPA, Chesapeake Bay Liaison Office, 410 Severn Avenue, Annapolis, Maryland. This notice is published pursuant to section 10 (a) (2) of Pub. L. 92-463, "The Federal Advisory Committee Act."

The agenda of the quarterly council meeting will include, but is not limited to:

10:00 Call to Order

1. Minutes from the July 17th meeting—Seif
2. Changes to the Agenda—Seif
3. Executive Council Governance Issues—Seif
4. Report from the Citizens Advisory Committee—Coder
5. Report requested by the Executive Council—Morris
   - Chlorine Discharges and Control Programs in the Chesapeake Bay Basin
   - Great Lakes Agreement—can CBP adapt some of its approaches?—Wise
   - Communications Strategy—Seif
   - Mathematical Model—evaluation of the project model costs—Morris

Noon—Lunch break

1:00—Reconvene Meeting

6. Distribution of Implementation Funds—Seif
7. New Business—Seif
8. Information Items—Seif

Living Resources Workshop and Phase II update

Adjourn

Comments from the public will be welcomed at the end of the meeting as time permits. Questions about the meeting may be directed to Ms. Patricia Bonner, U.S. EPA, Chesapeake Bay Liaison Office, Annapolis The telephone number is: Area 301/266-6873.

Charles S. Spooner,

Director, Chesapeake Bay Liaison Office.

[FR Doc. 86-22127 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/47A; (FRL-3088-4)]

Intent To Cancel Registrations of Denial of Applications for Registration of Pesticide Products Containing Diazinon; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Determination and Intent to Cancel.

SUMMARY: On January 6, 1986, EPA initiated a Special Review of all pesticide products that contain the active ingredient diazinon and that are registered for use on golf courses and sod farms. On the same date EPA also issued the Preliminary Determination proposing to cancel registrations and deny applications for use of diazinon products on these two sites. The initiation of the Special Review and the proposed cancellation action were based on the Agency's determination that the use of diazinon on golf courses and sod farms would result in unreasonable adverse effects on non-target birds. A **Federal Register** Notice was published concerning these actions on January 15, 1986 (51 FR 1842).

This Notice concludes the Special Review and announces EPA's final decision to cancel registrations and deny applications of all pesticide products containing diazinon that are registered for use on golf courses and sod farms.

DATES: A request for a hearing by a registrant or applicant must be received by October 31, 1986, or 30 days from receipt by mail of this Notice, whichever is the later applicable deadline. A request for a hearing from any other adversely affected person must be received by October 31, 1986.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Ingrid M. Sunzenauer, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1010, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7400).

SUPPLEMENTARY INFORMATION: This Notice is organized into six units. Unit I is the Introduction. It provides the background information concerning this cancellation action. Units II and III summarize the avian hazard and the benefits associated with the use of diazinon on golf courses and sod farms. Unit IV contains the comments of the Scientific Advisory Panel, the Secretary of Agriculture, and other public comments and EPA's response to those comments. Unit V describes the Agency's final determination, and the regulatory actions required by this Notice. Unit VI describes the procedures which will be followed in implementing the regulatory actions EPA is announcing in this Notice.

I. Introduction

A. Notice of Special Review and Preliminary Notice of Intent To Cancel

On January 15, 1986, a **Federal Register Notice** (51 FR 1842) was published concerning the Special Review of all pesticide products that contain the active ingredient diazinon and that are registered for use on golf courses and sod farms. The Notice announced (1) the initiation of the Special Review on these two sites, (2) the Preliminary Determination proposing to cancel registrations and deny applications for diazinon products used on these two sites, and (3) the availability of the Support Document. The Support Document (Ref. 17) contained the background information which supported the Agency's actions. This information included an assessment of the hazard to birds, the benefits of use on golf courses and sod farms, and a discussion of several regulatory options to reduce the hazard to birds. The Agency concluded that diazinon must be cancelled on these two sites to prevent unreasonable adverse effects on birds.

The Agency was also concerned about the avian and human hazards of diazinon and its major alternatives. A comparative avian hazard assessment indicated that the major alternatives are not likely to be of greater hazard to birds than diazinon.

The Agency also reviewed information concerning the potential human toxicity of diazinon and its alternatives. Based on the available data, the alternatives did not appear to pose a greater human health hazard than diazinon.

B. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration, section 3(c)(5) of FIFRA. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined under FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with widespread and commonly recognized practice.

The burden of proving that a pesticide satisfies the standard for registration rests on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of registration whenever it is determined that the pesticide appears to cause unreasonable adverse effects on the environment.

In determining whether the use of a pesticide poses risks which are greater than the benefits of use, EPA considers both possible changes to the terms and conditions of registration which can reduce risks, as well as the impacts of such modifications on the benefits of use. If EPA determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require such changes be made in the terms and conditions of registration.

Alternatively, EPA may determine that no change in the terms and conditions of a registration will adequately ensure that use of the pesticide will not pose unreasonable adverse effects. In that event, the Administrator may issue a Notice of Intent to Cancel the registration or may hold a hearing to determine whether it should be cancelled under FIFRA section 6(b). In determining whether to issue such a Notice, the Administrator must take into account the impact of the action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days before formally issuing such a Notice, he must inform the Secretary of Agriculture in writing of the substance of the proposed actions and supply the Secretary with an analysis of the expected impact on the agricultural economy. At the same time, under FIFRA section 25(d), the Administrator is required to submit the proposal to the Scientific Advisory Panel for comment as to the impact on health and the environment of the action proposed in the cancellation notice. EPA is also required by law, where appropriate, to consult with the U.S. Department of the Interior's Office of Endangered Species to see if the proposed action may affect an endangered species.

EPA also informs the public of its proposals to issue cancellation notices so that registrants and other interested persons can also comment or provide relevant information before any final Notice of Intent to Cancel is issued. Registrants and other interested persons are invited to review the data upon which the proposal is based and to submit data and information to address whether EPA's initial determination of risk was in error. In addition to evidence relating to risk, comments may include evidence as to whether any economic, social, and environmental benefits of use of the pesticide outweigh the risks of use.

If, after reviewing the comments received, EPA decides to issue a Notice of Intent to Cancel, any adversely affected person may request a hearing to challenge the action. In the hearing, any party opposing cancellation would have an opportunity to present evidence to show that the registrations of the pesticide should be permitted to continue. Other interested parties could intervene to present evidence in favor of

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cancellation. At the end of the hearing EPA would decide on the basis of the evidence presented whether or not to cancel or restrict the registration of pesticide products. If no hearing is requested, each registration would be cancelled by operation of law 30 days after receipt by the registrant or publication in the **Federal Register** of the Final Notice, whichever occurs later.

II. Summary of the Avian Hazard

In this unit the Agency provides a summary of the avian hazard associated with the use of diazinon on golf courses and sod farms. This includes information discussed in the Support Document, as well as information reviewed after the Notice of Special Review and Preliminary Notice of Intent to Cancel was issued.

A. Summary of the Avian Hazard Assessment in the Support Document

In the Support Document the Agency evaluated acute toxicity studies which indicated that diazinon is very highly toxic to birds. The laboratory measurements of toxicity which the Agency used to evaluate the acute hazard were the median lethal concentration ($_{50}$) and the median lethal dose ($_{50}$) which kill 50 percent of the test organisms.

To evaluate the acute hazard, the Agency estimated residue levels on grass and seed to determine if the levels would exceed the $_{50}$ for grazing and seed-eating birds. The Agency also estimated the dose of diazinon that waterfowl or seed-eating birds would consume from residues on grass and seed to determine if the values would exceed the $_{50}$. Both residue level and dose estimates exceeded the toxicity measures for certain species.

The Agency also evaluated the bird kills which had been reported to the Agency. Approximately 60 bird kills were reported in which diazinon was either confirmed or implicated as the primary cause. These kills involved 23 species of birds, including migratory and non-migratory waterfowl, songbirds, shore birds, wading birds, and others. Twenty of these kills occurred on golf courses and 20 kills on other grassy sites such as lawns, recreational areas, and parks. These incidents occurred during all months of the year and were documented throughout the country.

The Agency's concern for acute hazard to avian wildlife included a concern for impact on populations of species at risk. The Agency reviewed information which indicated that diazinon caused a reduction of a local population of Atlantic Brant Geese. On May 7, 1984, Diazinon AG500 was applied according to label directions to a golf course in New York. Approximately 700 Atlantic Brant Geese died. Carcass analysis revealed acute diazinon poisoning. The New York population of Atlantic Brant was estimated to be 2,500 in 1984. The Agency determined that this reduction was an impact of concern.

The Agency was also concerned about the effect of diazinon on endangered species. In October 1985, the Agency requested a formal consultation with the Office of Endangered Species, U.S. Department of the Interior. Results of this consultation had not been received when the Agency issued its preliminary determination. Details concerning the consultation are discussed in the Unit II.B below.

B. New Information Concerning the Avian Hazard

1. Endangered Species

In accordance with section 7 of the Endangered Species Act of 1973, the Agency requested a formal biological consultation of the Office of Endangered Species (OES), U.S. Department of the Interior in October 1985. The consultation concerned the registration of products that contain diazinon and that are registered for use on golf courses and sod farms.

OES responded on January 17, 1986 (Ref. 12), that certain endangered species could be seriously affected by the use of diazinon on these two sites. Two categories of impacts were presented. Category one was that diazinon "is likely to jeopardize," and category two was that diazinon "may affect, but will not jeopardize." The following two species are likely to be jeopardized by use of diazinon on certain golf courses and sod farms: (1) Hawaiian Goose *(Branta sandvicensis)* and (2) Mohave Tui Chub *(Gila bicolor mohavenis)*. The following species may be affected, but will not be jeopardized: (1) Brown Pelican *(Pelecanus occidentalis)*, (2) Alabama Beach Mouse *(Peromyscus polionotus ammobates)*, (3) San Francisco Garter Snake *(Thamnophis sirtalis tetrataenia)*, (4) Oregon Silverspot Butterfly *(Speyeria zerene hippolyta)*, and (5) June Sucker *(Chasmistes liorus)*.

It is the responsibility of the Agency to ensure that the use of diazinon is not likely to jeopardize the continued existence of any endangered species and to take steps to preserve and promote the recovery of endangered species. The cancellation of diazinon on golf courses and sod farms will ensure that diazinon does not jeopardize the listed species on the golf courses and sod farms identified by OES.

2. Residue Data

In the Support Document the Agency estimated diazinon residue levels on grass and seed. Reliable data on actual residues were not available at that time. During the public comment period, however, Ciba-Geigy Corporation submitted data (Ref. 2) concerning diazinon grass residues and effects of diazinon on Canada Geese penned on treated turf.

Diazinon was mixed with 35 gallons of water per acre and applied to grass at 2, 4, and 6 pounds active ingredient per acre (lb ai/A). Application was followed by irrigation with 0.25 inch of water. Thirty-five gallons are less water than recommended on the labels and would thus represent a worst case scenario. Canada Geese were then held in pens on the treated grass.

The Agency reviewed this study, found a portion of the residue data acceptable and conducted a statistical analysis of these data (Ref. 14). These data were not generated according to EPA's guidelines. For example, applications were not made according to label directions. However, some conclusions can validly be drawn.

In the study most of the samples of grass residues appeared to have been collected from the plots after the Canada Geese were released into them. The statistical analysis considers only those samples taken before the Geese were released into the plots. Interpretation of residues after the Geese had been grazing on the plots would not be reliable because the effect from the presence of the Geese is not known.

Using analysis of variance and t-tests, the Agency calculated the residues expected to result from application of 1 lb ai/A, followed immediately by irrigation with 0.25 inch of water. The 95 percent upper confidence limit, which represents the statistically significant highest expected residue in 95 percent of applications, is 53 parts per million (ppm).

If 1 lb ai/A results in 53 ppm, then 4 lb ai/A would be expected to result in 4 times 53 ppm or 212 ppm. Considering the residue of 212 ppm in combination with factors concerning avian ecology, behavior and physiology, the Agency concluded that birds foraging on treated turf would be exposed to lethal residues within a very short time. The Agency concluded that rate reduction to 4 lb ai/A would not adequately reduce diazinon residues.

Ciba-Geigy, however, did not conduct a statistical analysis and provided only a mathematical summary of the data. The company concluded that with an application of 4 lb ai/A followed by 0.25 inch of water, residues were reduced and posed less of a hazard to birds. The Agency agrees that the residues are lower at 4 lb ai/A than at the present application rates for the major turf pests, but considers the residues still to be high enough to cause the death of foraging waterfowl.

The Ciba-Geigy data further indicate that irrigation, following application of diazinon, does not adequately reduce diazinon residues. Even if irrigation or rain could reduce residues on grass and seed, the Agency is still concerned about the formation of pools of contaminated water. If the water is not immediately absorbed by the soil, puddles with high concentrations of diazinon may form. As a result the birds may still be exposed to high diazinon residues.

3. Additional Bird Kill Reports

After the **Federal Register** Notice was published, the Agency received reports (Ref. 16) of 26 bird kills not mentioned in the Support Document. These reports included seven in California, eight in Washington, two in Connecticut, and nine in Canada.

The bird kills reported from California were all associated with use of diazinon in a State-administered program of Japanese beetle eradication. Experienced pesticide applicators applied diazinon, which was watered in immediately after application. Diazinon was applied to grassy areas such as lawns and pastures in suburban areas of Sacramento, California. State personnel warned residents to keep domestic fowl and pets away from treated areas. In some cases State employees assisted residents in building cages to keep domestic birds from wandering on to the treated grass and being exposed to diazinon for at least 24 hours following application. Despite these precautions domestic ducks and geese moved onto treated grass and were killed in two cases. In four additional cases wild birds, including magpies and robins, were killed. The California Bureau of Animal Health confirmed that diazinon caused all of these kills.

In another reported incident chickens were killed. The Bureau of Animal Health reported that the probable cause of the deaths was diazinon.

The State of Washington reported four separate incidents in which diazinon was either confirmed or strongly implicated as the cause or contributing factor of bird mortalities. The Washington State Department of Agriculture investigated one incident, and the U.S. Fish and Wildlife Service investigated the other three incidents.

The State of Washington also reported four other incidents of bird kills. These kills were attributed to diazinon, but not formally investigated. These cases were reported to the Agency because the State of Washington judged the reports to have been submitted by one or nore credible sources.

All of the incidents reported by Washington involved grassy sites, including a golf course. In some cases label directions were followed, and in some cases the applications were made by certified pesticide applicators. Ducks, geese, and songbirds were involved.

The two bird kills in the State of Connecticut included residue analysis confirming diazinon as the cause of mortality. Brown-headed Cowbirds were killed on a baseball field and on a home yard. A commercial pest control company made the diazinon application to the home lawn.

Canada reported nine bird kills. These kills occurred in the province of British Columbia, which has waterfowl known to winter in grassy areas. One bird kill occurred on a home lawn and another in a park. Three other incidents were reported in which Canada Geese were killed from grazing on orchard grass in areas where diazinon had been applied to fruit trees. In four additional cases geese and ducks were diagnosed as killed by diazinon, but the site for each incident is still being investigated. British Columbia is the only Canadian province which has a toll-free number to report bird kills.

C. Conclusions Concerning the Avian Hazard

Based on the hazard assessment described in the Support Document and on the new information, the Agency concludes that the weight of the evidence demonstrates that substantial numbers of birds are exposed to lethal diazinon residues. This hazard is widespread and continuous throughout the country and throughout the year.

III. Summary of the Benefit Analysis

In this unit the Agency provides a summary of the benefits associated with the use of diazinon on golf courses and sod farms. This includes information discussed in the Support Document, as well as information reviewed after the Notice of Special Review and Preliminary Notice of Intent to Cancel was issued.

A. Summary of the Benefits Analysis in the Support Document

The benefits of diazinon on golf courses and sod farms were assessed in terms of the economic impacts which would result if diazinon were cancelled and users forced to use alternatives. The alternatives were chosen on the basis of cost and market availability. Because of the lack of data, the Agency assumed that diazinon and its alternatives were equally efficacious.

Agency estimates indicated that at least 512,000 and 60,000 pounds active ingredient of diazinon are used on golf courses and sod farms, respectively. The estimated impact of cancellation would be a cost increase of $937,200 for golf courses and $300,000 for sod farms. The Agency anticipated that these cost increases would not cause a severe impact when compared to the maintenance cost of $1,900,000,000 for golf courses or average impact of $0.07 per golfer and the gross revenue of $210,000,000 on sod farms.

B. New Information Concerning the Benefits

The Agency reviewed efficacy data from the Insecticide and Acaricide Tests (Refs. 11, 21, 22, 23, and 24) and from Ciba-Geigy Corporation (Refs. 1 and 2). Based on the Insecticide and Acaricide tests, the Agency determined that the major alternatives do not appear to be less efficacious than diazinon (Ref. 15), as indicated in the following table. The principal pests are in groups in which formulations and application rates for particular tests are comparable.

Insecticide	Tests in which diazinon performed		
	Better	Not significantly different	Worse
Bendiocarb	2	24	4
Carbaryl	1	8	0
Chlorpyrifos	16	57	1
Isofenphos	9	125	0
Trichlorfon	1	33	1

Ciba-Geigy submitted data comparing the efficacy of diazinon for application rates from 4 to 6 lb ai/A. The Agency evaluated these data and concluded that diazinon was as effective at 4 lb ai/A as 6 lb ai/A for certain pests (Ref. 15). The Agency has found, however, that lowering the application rate of diazinon from 6 lb ai/A to 4 lb ai/A does not adequately reduce the risk to avian species. The Agency discussed this regulatory option further in Unit IV.E of the Support Document and Unit IV.C of this Notice.

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C. Conclusions Concerning the Benefits

The impact of cancellation estimated in the Support Document did not change as a result of the new information. As a result of the new data, the Agency concludes that the major alternatives do not appear to be less efficacious than diazinon.

IV. Comments of the Scientific Advisory Panel, the Secretary of Agriculture, and the Public

The Agency transmitted the Support Document to the United States Department of Agriculture (USDA) and the Scientific Advisory Panel (SAP) for review and requested comment. The Agency also submitted additional information (Ref. 19) to the SAP. Unit IV.A and B contain the SAP and USDA comments and the Agency's response. The Agency also received public comments in response to the public comment period for the Federal Register Notice. These comments along with the Agency's response are summarized in Unit IV.C.

Copies of all comments, minutes of meetings with and correspondence among various interested parties, and unpublished documents referenced in this Special Review are contained in a docket maintained for this Special Review, as provided in EPA's Special Review regulations under 40 CFR Part 154, published in the Federal Register of November 27, 1985 (50 FR 49003).

The docket is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays in: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The Agency notes that portions of the docket are considered Confidential Business Information and are not available for public inspection.

A. Comments of the Scientific Advisory Panel

EPA presented its proposed decision to the SAP in a public meeting held on May 21, 1986. On May 22 the Panel responded to EPA. The Panel's comments are reproduced in their entirety.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)—Scientific Advisory Panel

A Set of Scientific Issues Being Considered by the Agency in Connection With the Special Review of Diazinon

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of the data base supporting the Environmental Protection Agency's (EPA) preliminary determination proposing to cancel registrations and deny applications for diazinon products used on golf courses and sod farms. The review was conducted in an open meeting held in Washington, DC, on May 21, 1986. All Panel members were present for the review. In addition, Dr. Elwood Hill of the Patuxent Wildlife Research Center of the U.S. Fish and Wildlife Service served as an *ad hoc* member of the Panel.

Public notice of the meeting was published in the **Federal Register** on Friday, April 25, 1986.

Oral statements were received from staff of the EPA and from numerous members of the public and industry. The complete listing of the presenters is as follows: Dr. Darrell D. Sumner, Ciba-Geigy Corporation; Dr. Jeffrey Foran, National Wildlife Federation; Dr. Ward Stone, Department of Environmental Conservation for the State of New York; Mr. Gerald L. Faubel, Golf Course Superintendents Association of America; Mr. Chuck Pace, National Audubon Society; Ms. Diane Baxter, National Coalition Against the Misuse of Pesticides; and Dr. Norman W. Hummel, Jr., Department of Floriculture and Ornamental Horticulture at Cornell University.

In consideration of all matters brought out during the meeting and careful review of all documents presented by the Agency, the Panel unanimously submits the following report:

Report of SAP Recommendations

Diazinon

The Agency requested the Panel to focus its attention upon a set of issues relating to the pesticide diazinon. There follows a list of the issues and the Panel's response to the questions.

Panel response.—The Panel supports the Agency's preliminary determination to cancel diazinon uses on golf courses and sod farms to prevent unreasonable risks to avian populations. The strongest evidence in support of this action is the documentation of diazinon-caused bird kills at a number of sites over a number of years. But the Agency's position also is supported generally by a weight-of-evidence built upon laboratory toxicity studies, exposure analyses, and an understanding of avian physiology, behavior, and ecology.

Moreover, the Panel shares the Agency's concerns regarding risk of adverse impacts to birds that might be caused by other uses of diazinon such as home lawns, parks, etc. Thus, the current data call-in regarding risks of such uses is appropriate.

The Panel's responses to the Agency's specific questions are as follows.

1. The Agency specifically requests any comments that the Panel may wish to make with regard to the Agency's exposure analysis which considers measured residue data and avian foraging ecology, and the Agency's conclusion that use of diazinon on golf courses and sod farms at rates as low as 1 lb ai/A will result in lethal exposure to foraging birds.

Panel response.—The EPA was correct in intent to use both actual residues and avian foraging ecology to arrive at the conclusion that diazinon as presently applied will kill wild birds, but the data presented are not adequate to justify the conclusion that 1 lb ai/A is sufficient to kill. None of the data presented was adequate to permit such an extrapolation. However, 1 lb ai/A may be lethal to some birds simply because of the circumstances of the application, the attractiveness of the habitat to foraging birds, the ease of resultant exposure, and the acute sensitivity of birds to diazinon poisoning.

2. The Agency specifically requests any comments that the Panel may wish to make with regard to the Agency's preliminary decision that the number and size of bird kills attributed to diazinon demonstrate unacceptable risk to birds.

Panel response.—The Panel agreed. The true test has already been met in the historical demonstration of the problem through the array of avian die-offs under quite diverse sets of circumstances. Because of the diversity of circumstances and the vague factors contributing to the reported cases, it is reasonable to suggest that similar factors will kill some birds. It is likely that many similar instances have gone undetected. Thus, the risk is obvious and unacceptable if any value is placed on the resource. Further experimentation would certainly enhance our scientific understanding of factors that contribute to such kills, but the Panel does not believe that the kills can be eliminated simply by attempting to control the methods used for application. The attractiveness of the habitat and the sensitivity of birds to diazinon will continue to contribute to bird mortality.

It remains to be demonstrated whether alternative pesticides will be any less hazardous than diazinon. The EPA and registrants of such chemicals should be aware of the potential hazard associated with the use of alternative pesticides and initiate investigations to insure their safe use.

3. The Agency specifically requests any comments that the Panel may wish to make with regard to the Agency's analysis that the following regulatory options do not provide effective mitigation of unacceptable risk to birds:

(a) Continue registration without changes.
(b) Proposed label precautionary statement changes.
(c) Reduce application rate.
(d) Limit application to certain months.
(e) Limit application geographically.
(f) Require irrigation after application.
(g) Restrict use to certified pesticide applicators.
(h) Require more data prior to a regulatory decision.
(i) User education program.

Panel response.—Regarding other options proposed by the registrant and considered by the Agency for reducing risks (e.g., reducing application rates to 4 lb ai/A, restricting use to certified applicators), the Panel believes that such actions would reduce risks in some regions of the country and under some conditions. But the Panel concurs with the Agency's rejection of these alternatives, since there has not been sufficient evidence presented that would assure significant reduction of risks to avian populations. The burden of proof for support of these alternatives over that of cancellation should rest with the registrant, and, in the view of the Panel, insufficient evidence was presented to support a determination of environmental safety should these options be adopted. If the registrant is able to present scientific evidence, based on laboratory and field studies, to indicate that these alternatives for reducing risk would be effective, the registrant could apply for reregistration.

For the Chairman.
Certified as an accurate report of Findings.

Stephen L. Johnson,
Executive Secretary, FIFRA Scientific Advisory Panel.

Date: May 25, 1986.

The SAP's comments generally supported the Agency's conclusions concerning the avian hazard from diazinon application to golf courses and sod farms. The SAP made two points which were not in complete agreement with the Agency's conclusions.

First, the Panel commented that the available data were not adequate to permit extrapolation to 1 lb ai/A. However, the Panel did conclude that 1 lb ai/A may be lethal to birds because of the nature of the use sites and the acute sensitivity of some birds.

The Agency agrees that in some circumstances birds may be killed from application of 1 lb ai/A of diazinon.

Second, the Panel responded that the Agency did not adequately demonstrate the alternative pesticides to be less hazardous than diazinon.

The Agency responds that on the basis of laboratory testing, the alternatives appear to be almost as toxic to birds as diazinon. Residue estimates, however, indicated that the major alternatives are not likely to be of greater hazard. In addition bird kills associated with the use of the alternatives generally have not been reported. As a result the Agency still concludes that the alternatives are not likely to pose a greater hazard to birds than diazinon.

The Agency would also like to note that it is in the process of reevaluating its position concerning a Data Call-In Notice on home lawns, parks, and other sites through the reregistration process.

B. USDA's Comments

USDA's comments on the initiation of the Special Review of diazinon on golf courses and sod farms and the proposed cancellation are printed in full below:

Mr. Steven Schatzow, Director,
Office of Pesticide Programs, U.S. Environmental Protection Agency, (TS-766C), 401 M Street SW., Washington, DC 20460

Dear Mr. Schatzow: This is the U.S. Department of Agriculture's response to your letter of January 7, 1986 forwarding for comment the Agency's Position Document 1/2/3 for diazinon.

Our detailed comments are attached as an integral part of this letter. We therefore anticipate that they will also appear in the **Federal Register** together with the Agency's response.

As you will see from our comments, we believe that a cancellation of these two uses is premature at least and may be inappropriate. The attached information and perhaps additional research data should provide for the continued use of this valuable chemical.

We appreciate the agreement with Mr. P. Lapsley of your staff regarding our taking additional time to prepare our comments on this important issue.

Charles L. Smith,
Coordinator, Pesticides & Pesticide Assessment.

USDA Staff Comments on the EPA PD 1/2/3 for Diazinon

I. The large kill of Atlantic Brant Geese which gives the strongest support to a proposed Special Review by EPA may be the result of unusual circumstances.

A. A very strong argument is presented for cancellation of diazinon uses on golf courses and sod farms by using the large kill incident of Atlantic Brant geese. It is not pointed out, however, that the applicator responsible for that incident was later charged with a violation and forfeited a fine.

B. We have heard that several other insecticides were used at the sites where diazinon treatments were "confirmed or implicated" as the cause of bird kills. While EPA alludes to the presence of other insecticides, they do not attempt to identify them.

C. We also note that while it is common knowledge that golf course operators find the presence of large bird populations undesirable, the possibility of any deliberate misuse with the intent to reduce bird populations is not given consideration by the Agency. If misuse is occurring, the problem should be solved by enforcement, not cancellation.

D. The Executive Summary of PD 1/2/3 states on page (i) that "reduction of a local population of Atlantic Brant Geese" occurred as a result of applying Diazinon AG 500 according to label directions. We would suggest that improper application could have been a factor even if the applicator adhered to label directions. Proper use of irrigation as a means of washing down insecticide following application is largely discretionary and should be more clearly defined in label directions and educational programs. The practiced judgement of the applicator is critical in determining the quantity of water that should be applied, and explicit directions are mandatory.

II. Many years of successful use are weighty evidence that diazinon, when properly applied, is not a significant threat to birds.

A. One of the largest product uses of diazinon by itself or in combination with other insecticides has been as a seed-treatment. The seed for many thousands of acres of corn, peas, beans, sorghum, and soybeans have been treated prior to planting. Many of these treated seeds are consumed by seed foraging birds that successfully extract the planted seeds from the row or find them exposed on the soil surface. These seeds are a significant part of the diet of certain bird species during planting, and yet diazinon by itself and without extenuating factors has not been associated in bird kills. It would seem illogical that such kills would not be observed as these plantings are made nationwide. It must be concluded that barring misuse, or the unusual circumstance, diazinon is not a significant threat to birds.

B. Diazinon is a broad spectrum crop insecticide that has been used safely on alfalfa and clover with many years of experience. These forage crops are universally recognized as natural feeding and nesting sites for migratory birds and waterfowl. It is significant that there is no notation of any bird kills associated with these sites or with diazinon-treated forage grasses. Because these are highly visible pesticide use sites (especially in the Western flyways), it would logically follow that incidences of bird kills would be observed if they occurred. Additionally, these crop acreages are abundantly greater than those represented by golf courses and sod farms. We are not aware of possible EPA concern with rates, residues, timing, or toxicities on these sites. We therefore suggest that the proper application of diazinon on a crop does not by itself represent a hazard to birds.

C. We would point out that the Agency's concern that birds commonly confuse the diazinon granular formulations with grit is not valid. Diazinon granular formulations have numerous years of successful use as both soil-incorporated and surface applications on virtually all commercial and homeowner crop sites where broad spectrum pesticides are used and where birds commonly forage. Yet, diazinon has not been singled out as a pesticide that has contributed to bird kills from those aggregate uses.

III. Toxicological data, as well as associated information on the environmental fate of diazinon should be generated to more clearly define the potential hazards of use.

A. The PD states that irrigation practices are not relevant in bird kills and also states that while grass residues can be high and a source of toxicity without irrigation, excessive irrigation might result in surface puddling where birds may gather or drink and thus obtain lethal doses of insecticide. Additional research is needed on diazinon levels in water impoundments resulting from irrigation or precipitation. These impoundments or "traps" are commonplace on golf courses and are important habitats for waterfowl as well as drinking sites for other bird species. These data would be helpful in determining if acceptable application practices were followed with regard to uniformity of application, runoff, drift, or excessive application sites.

B. Further data are necessary regarding the presence of pesticide residues in bird tissues of dead birds. Allegations that several insecticides were used at sites where diazinon has been proposed as the causative

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agent in bird kills warrants further toxicological inquiry.

C. On page II-4 (last paragraph), it is indicated that there is lack of residue data on grasses. However, residue data should be available since diazinon is registered for use on pasture grass at similar label dosage rates and has a tolerance on those grasses of up to 60 ppm on fresh grass.

IV. The arbitrary indictment of sod farms as a hazardous use site may be capricious.

A. EPA concedes that no bird kills are attributed to diazinon application on sod farms. Still, they are included as a site for cancellation on the basis that sod farms are similar to golf courses. We would point out that sod farms are not necessarily similar to golf courses by nature of their prevalent subsoils, routine irrigation practices, or physical attributes of terrain. In fact, sod farms are noted for their common practice of overirrigation and obvious residual surface water (even after moderate rainfall). Yet, it is worth noting that bird kills have not been documented as being associated with these sites. These sites are commonly visible from public roads and highways and kills would surely have been reported.

V. There are outstanding benefits associated with properly administered pest control using diazinon.

A. The ARS Handbook No. 584, "Guidelines for the Control of Insect and Mite Pests of Food, Fibers, Feeds, Ornamentals, Livestock, and Households" lists 15 pests of lawn and turf areas which are not grazed. These would include turf farms and golf courses. Of these 15 pests, there are 14 for which diazinon is recommended for their control including the following: ants, armyworms, Bermudagrass mites (no other alternative recommended), billbugs, chinch bugs, cutworms, European chafter, green June beetle, japanese beetle (larvae), grass scales, leafhoppers, fruit fly (no other alternative exists), mole crickets, and sod webworms. Dosages range from 1.6 to 6.8 lb ai/A. Most of the recommendations are for 5.4 lb ai/A because those pests which require the high rates for control are rare occurrences.

B. In addition to the phytophagous insects, there are several medically significant arthropods that are controlled by the use of diazinon applications to grasses and lawns. The brown dog tick is a vector of Rocky Mountain spotted fever and anaplasmosis. Diazinon is also registered for control of chiggers and fleas on lawns and turf. Control of these medically important pests and the benefits derived from their control, including their potential for vectoring diseases, should be taken into consideration in the Benefit Section of the EPA analysis.

VI. Clarification is needed with respect to speculation regarding the effects of population size, genetic variability, and survival of a species as a function of each.

A. On page II-20 of the document it is stated that local interbreeding populations of birds are considered "at least partially genetically distinct," that they provide "genetic variability," and enable the "national population" to avoid the threat of extinction. We suggest that the origin of local interbreeding and behavior unique to intraspecific populations (known as demes) need have no genetic basis (this is discussed in detail in "The Origin of Species" E. Mayr). While the unfortunate loss of members from a deme might influence the rate of gene migration within the associated genotypes, there is no reason to anticipate a change in the residual gene pool. Thus, aside from the view that large scale decimation might numerically threaten species survival, there is no sound basis to assume that genetic variability is a limiting factor until a species population is very small. It then becomes a matter of population dynamics as well.

VII. We have assessed cost projections as presented by the Agency and do not concur with estimates of increased costs to consumers. The basis for this position is explained below:

A. The maximum application rate for AG 500 is 4 oz/1000 square feet. When expanded, this rate does not exceed 5.57 lb ai/A (maximum).

B. Recognizing the detailed estimates of alternative preferences made on the basis of the 10 EPA Regions, there is no real basis for presuming that proportionate preferences for alternative insecticides will vary in any great degree from current use preferences. In other words, the equivalent acre treatments denied diazinon by cancellations would be assumed by the alternative insecticides according to weighted quantities of the current proportionately preferred market.

C. The weighted proportion of the diazinon relinquished market is then increased as follows:

Compound	Pounds of diazinon replaced
Isofenphos	183,336
Trichlorfon	107,031
Carbaryl	56,623
Chlorpyrifos	46,090
Bendiocarb (1)	
Others	107,031
Total	512,111

(1) 0 lbs—not even comparable to others.

D. When those weights are divided by the equivalent acre-treatment rates of diazinon, and then multiplied by the maximum acre treatments rates of alternatives, the numbers that represent the equivalent lbs active for the increased amounts of alternative products are obtained. Further multiplying those amounts by the costs of alternatives provided by the Agency (and including low estimated costs for "other" insecticides), the increased costs are projected as follows:

Compound	Pounds of diazinon replaced
Isofenphos	$1,833,359
Trichlorfon	97,300
Carbaryl	24,953
Chlorpyrifos	16,760
Others	194,601
Total	2,166,973

It is thus demonstrated that the costs exceed 2 million dollars. These calculations result in higher costs than presented by EPA regardless of formulation considered. This higher cost to the consumer cannot be effectively resolved by equating it to the annual fees of the individual golfer.

E. We have not attempted similar comparative justifications regarding quantities and costs with respect to sod farms but assume that similar results would be obtained.

VIII. Possible alternatives to cancellation may best serve the public interests.

A. EPA has considered the regulatory option of reducing the application rate but rejected it. Diazinon has been in use on golf courses for controlling turf pests and medically important arthropods for a long time. Considering the amount of diazinon used annually for these uses, the bird kills are too infrequent for diazinon to pose a substantial threat to wildlife. Perhaps in specific areas where the higher doses are needed and where high bird populations exist, consideration could be given to the requirement of noisemakers or other precautions such as the use of liquid formulations or more specific irrigation practices. Also, the current registered dosage rates for the use of diazinon on these sites should be carefully reviewed to determine whether or not these dosages could be reduced with no loss in efficacy. For certain rarely occurring pests where the dosage rates seem to be high (such as 11 lbs ai/A for millipedes), it may be desirable to go to alternatives to maintain a reduced application rate for diazinon.

Before exercising its regulatory options, EPA may want to pursue with USDA's National Agricultural Pesticide Impact Assessment Program the possibilities of obtaining data to determine the minimum effective dosage rates for controlling these pests in various geographical locations throughout the U.S. At the same time, EPA should consider obtaining additional toxicological data, in cooperation with Ciba-Geigy, to more clearly define the potential hazard to birds, in particular to migrating waterfowl.

The Agency considered USDA's comments on the proposed regulatory decision. Following is a point-by-point response to their comments.

1. The hazard assessment for diazinon was based on the weight of the evidence and not just on a single bird kill. The Agency considered diazinon's acute toxicity, estimated residue levels on grass and seed, estimated dose levels consumed by birds, diazinon application practices, exposure, diazinon residue data, bird kill reports, problems associated with the reporting of bird kills, and the effect on endangered species. No single incident of avian mortality, such as the large kill of Atlantic Brant Geese, is the only basis for the ecological concerns or hazard assessment.

The Agency recognizes that intentional and accidental kills attributed to diazinon may have occurred in some instances or that other pesticides may have been involved as well. However, in other cases label directions were followed, and diazinon was the only pesticide involved. Certified pesticide applicators and experienced users of pesticides have applied diazinon properly, and bird kills have resulted. Thus, the Agency concluded that diazinon used on golf courses and sod farms will pose a lethal hazard to birds, whether it is applied properly or not.

In addition the Agency still concludes that the 700 Atlantic Brant Goose kill in New York was a result of proper application. The investigation by the State of New York concluded that diazinon was applied according to the label. The State cited the applicator for an infraction regarding licensing according to State law and not misuse (Ref. 20).

2. The Agency has determined that diazinon use poses a significant threat to birds. The Agency believes that the number of bird kills on record do not actually represent the number of kills which have occurred because of problems associated with the reporting of bird kills. Generally bird kills are not noticed and often not reported. The Agency received public comments from State, Federal, and private agencies involved with natural resource management and environmental protection that support the conclusion the bird poisonings, in general, go undetected and are not reported. In many cases predators may have carried the bird carcasses away from the site. In other cases birds may go into brush or cover on the site where they are poisoned and then die. These kills would probably go unnoticed. If the dead birds are found, the observer may not attribute the deaths to a recent insecticide application, and even if a person does suspect that a bird may have been poisoned, the individual may not know to whom to report the incident. Only a few States have personnel trained and equipped to respond to kill reports and to conduct the thorough investigation necessary to determine the pesticide, application rate used, and whether the label directions were followed. The fact that approximately 80 reports are associated with diazinon is strong evidence of repeated and regular hazardous exposure for birds from use of diazinon.

Concerning the lack of bird kills on agricultural sites such as alfalfa and clover, the Agency is concerned about the hazard to birds from diazinon application to these sites as well. As indicated in the Support Document, the data base is inadequate to evaluate the hazard at this time. The Agency will require the data necessary to evaluate fully the hazard through the reregistration process. A Registration Standard on diazinon is scheduled for completion by the end of this year.

3. Based on the weight of the evidence, the Agency has determined it has enough data to assess the avian hazard from diazinon application to golf courses and sod farms. The Agency considered diazinon's acute toxicity, estimated residue levels on grass and seed, estimated dose levels consumed by birds, exposure, diazinon residue data, bird kills, problems associated with the reporting of bird kills, diazinon application practices, and the effect on endangered species. As indicated in the Support Document, only bird kills in which diazinon was clinically diagnosed as the cause of mortality or was strongly implicated were considered.

Among the application practices considered, irrigation and the resulting grass residues were among the factors considered. The Agency determined in the Support Document that residues following application with or without irrigation would result in lethal exposure to birds. The puddles which may form after irrigation may contain diazinon residues and present another hazardous route of exposure.

The Agency realizes that residue data are available on pasture grasses. Fresh grasses have a tolerance of 60 ppm diazinon. However, the registered application rate on pasture grasses is 0.5 lb ai/A, which is less than the current application rate for the major pests on golf courses and sod farms. Direct extrapolation of the resulting residues to residues expected from higher application rates may or may not be reliable.

Instead, the Agency conducted a statistical analysis of measured residues resulting from 2, 4, and 6 lb ai/A to turf grass. This analysis is summarized in Unit II.B and provides statistically significant estimates of average residues expected to result from applications at typical turfgrass rates.

4. The Agency determined in the Support Document that sod farms are ecologically similar to golf courses. The Agency believes that the differences cited by USDA do not outweigh the similarities. Both are areas of lush, well-tended open spaces of grass which are commonly used by birds as forage sites.

EPA disagrees with USDA that the absence of reported bird kills indicates a lack of hazard. Unlike golf courses, sod farms are private businesses and are not subject to the degree of public observation occurring on most golf courses. Therefore, the Agency concluded that even though birds frequent sod farms and are likely to be exposed to lethal residues of diazinon, kills on sod farms are less likely to be observed and reported than are kills on golf courses.

5. The number of turf pests indicated by USDA is conservative. The 1986 Insecticide Product Guide (Ref. 10) lists at least twice the number of turf pests. Many are relatively minor, but under certain circumstances may be important. Diazinon is listed for control of at least 20 of those turf pests. However, other broad spectrum insecticides such as chlorpyrifos and carbaryl are also registered for the control of many of these pests.

Other pesticides are also registered for control of the Bermuda grass mite on golf courses and sod farms, including carbophenothion, dicofol, and ethion.

The inclusion of "fruit fly" among the pests of turf is probably an error and was probably intended to be "frit fly". Frit flies can be serious pests of turf, whereas fruit flies are normally not considered to be. Diazinon is the only pesticide currently registered for control of frit flies.

Cancellation of diazinon on golf courses and sod farms is not expected to affect the control of medically significant arthropods such as the brown dog tick, chiggers, and fleas. These pests are only occasionally found on golf courses and sod farms.

The brown dog tick is not a major vector of Rocky Mountain Spotted Fever in the United States. The American dog tick and the Rocky Mountain wood tick are the principal vectors of Rocky Mountain Spotted Fever in the U.S. (Ref. 5). A number of pesticides are registered for the control of these and other medically important arthropods.

6. USDA indicated that the loss of members from a deme could influence the range of the movement of genes within the associated genotype, but that a change in the residual gene pool would not necessarily result.

Demes are defined as having one or more characteristics that make the members of the deme distinct from other members of the species. Genetic make-up is one of many ways to define a deme (Refs. 4 and 8).

The Agency makes no assertion regarding population viability of any species other than the general comment that genetic variability is important in conferring individual fitness and population survivability.

7. Additional information is needed to understand adequately the assumptions USDA used in calculating its cost analysis. USDA's $2,000,000 estimate of

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the costs from cancellation on golf courses are higher than Agency estimates, but are still minor compared to the maintenance cost of $1,900,000,000 for golf courses. Thus, the analysis does not alter the general conclusions reached in the benefit analysis discussed in the Support Document.

8. In the Support Document and the information submitted to the SAP, the Agency considered a variety of regulatory options including those suggested by USDA, the public, and the registrant. However, the Agency concluded that only cancellation on golf courses and sod farms would reduce the risk to an acceptable level.

C. Public Commments Received in Response to the Special Review

The Agency received 96 public comments on the initiation of Special Review and the proposed cancellation on golf courses and sod farms.

1. Comments Relating to the Avian Hazard

The Agency received 76 comments relating to the avian hazard from diazinon application to golf courses and sod farms. Fifty-seven clearly supported the proposed cancellation, including but not limited to the Fish and Wildlife Service, U.S. Department of the Interior; Canadian Wildlife Service; the States of Indiana, Colorado, New York, Texas, California, New Jersey; environmental groups such as the National Audubon Society, the Natural Resources Defense Council, the National Wildlife Federation, the Rachel Carson Council, the National Coalition Against the Misuse of Pesticides; and pesticide user groups such as ChemLawn Services.

Several businesses representing sod farm interests submitted testimonials in opposition to the proposed cancellation. The substantive comments which were made in the public comments are addressed below.

a. *Cancellation on home lawns.* The majority of the comments which supported the cancellation on golf courses and sod farms proposed that EPA also cancel diazinon use on home lawns and other grassy sites as well.

The Agency responds that the concern over the avian hazard of diazinon application includes the hazard from application on other sites as well. This was discussed in the Support Document. As previously noted, the Agency is reviewing this hazard through the reregistration process.

b. *Problems with reporting.* The Agency received many comments from the public and Federal agencies, and environmental groups concerning problems with reporting of bird kills. Generally bird kills go unnoticed and are not reported. In addition only a few States have personnel trained and equipped to respond to kill reports, should they be reported.

The Agency agrees.

c. *Risk reduction measures.* The Golf Course Superintendents Association of America (GCSAA) and others agreed that diazinon poses a hazard to birds, but argued that diazinon could still be used safely. The Association suggested that diazinon be restricted for use by certified applicators, that the application rates be lowered, and that diazinon be used in conjunction with an integrated pest management (IPM) program.

The Agency responds that the hazard assessment described in the Support Document indicated that diazinon poses a hazard to birds, even when applied according to label directions. Use in conjunction with an IPM program, especially scouting, may reduce the number of diazinon applications. However, diazinon would still be applied and would pose a hazard to birds.

The Agency also considered lowering the application rates as a regulatory option in the Support Document. Based on residue levels estimated in the Support Document (Unit IV.E of the Support Document) and based on residue data submitted during the comment period (Unit III.A of this **Federal Register** Notice), the Agency still concludes that lowering the application rate would not reduce the risk to an acceptable level.

d. *Tee and green restriction.* Ohio State University proposed diazinon application be limited to tees and greens, if no solution to puddling could be found.

The Agency indicated in the Support Document that puddling cannot always be avoided for several reasons. First, uneven topography leads to runoff and puddle formation. Second, different soils under different conditions absorb water at different rates and puddles may form.

Even if puddling could be avoided, limiting application to tees and greens would not reduce the hazard to an acceptable level. These areas are among the grass areas most favored by grazing birds. They are the most fertilized, watered, and mowed of all grassy areas on golf courses. This intense cultivation of grass makes it especially attractive to grazing birds. Greens, especially the fringe where the grass is one to two inches high, are very attractive to waterfowl and are particularly dangerous (Ref. 7).

Ciba-Geigy Corporation submitted several major points in opposition to the proposed cancellation. These points are addressed as follows:

e. *Rate reduction.* Ciba-Geigy submitted a new study of residues (Ref. 2) on turf, which the company claims shows that application of 4 lb ai/A followed by irrigation reduces the hazard to an acceptable level.

The Agency reviews this study in Unit III and concludes that the data support the Agency's determination that diazinon cannot be safely used on grass at 4 lb ai/A. As also discussed in Unit III, the data also support the conclusion that irrigation does not reduce residues to an acceptable level.

f. *Open literature residue studies.* Ciba-Geigy argued that the Agency did not consider studies by Kuhr and Tashiro (Ref. 6) and Sears and Chapman (Ref. 9), which showed low residues resulting from diazinon application.

The Agency did review these studies and determined that they were not acceptable for use in the Agency's hazard assessment for several reasons (Ref. 18). First, the studies used too small a sample size. Second, application was done by throwing out the granules by hand and watering in with a watering can, which is not the normal method of application. Third, it rained after application and the amount of rain was not quantified.

g. *Erroneous invalidation of 1982 turf studies.* Ciba-Geigy submitted a residue and field dissipation study and a waterfowl study, which the company claims were improperly invalidated by the Agency.

The Agency discussed the many problems associated with these studies in Unit II.A of the Support Document. Both studies failed to use proper study design and sampling methods.

h. *Estimates of residues unreliable.* Ciba-Geigy claims that the Agency's estimates of residues are not reliable and should not be used when actual residue data are available.

The Agency used such estimates in the Support Document because sufficient measured residue data were not available. The Agency recognizes the limitations of these estimates.

During the public comment period the Agency received new experimental data on diazinon residues on grass. These data are analyzed in Unit III and confirm the Agency's conclusions.

i. *Significant population reduction.* Ciba-Geigy claims that the Atlantic Brant Geese killed on May 7, 1984, were from the wintering areas along the Atlantic Coast and not just from the New York population. As a result the 127,300 Atlantic Coast population were not significantly reduced by the loss of

700, especially considering that 20,000 to 70,000 are killed by hunters annually.

The Agency responds that a kill of 700 birds in a single incident is an important and significant loss. It is within the Agency's mandate to protect birds from unreasonable risk, which the Agency has determined is the case with diazinon's use on golf courses and sod farms.

The U.S. Fish and Wildlife Service (USFWS) of the Department of the Interior supports this conclusion. During the public comment period USFWS commented on the relative impact of diazinon on the management of migratory birds (Ref. 13). USFWS noted that the total kills caused by diazinon, even when considering the problems associated with the reporting of bird kills, may not be large compared with the number killed from hunting. USFWS further commented that the hunting of migratory birds is sanctioned by a number of international treaties and regulated by a highly developed regulatory process. Hunting is legal, conservation-oriented, and recognized as socially beneficial.

The poisoning of waterfowl and other birds, however, is not legally sanctioned and has no redeeming social value. USFWS indicated that the unplanned killing of migratory birds should be corrected. Thus, the USFWS supports the Agency's determination to cancel the use of diazinon on golf courses and sod farms.

j. *Label amendments.* Ciba-Geigy applied to amend their labels to reduce the hazard to birds. These amendments included a seasonal Nassau County restriction, a lower application rate of 4 lb ai/ A followed by irrigation, and additional avian hazard warning statements. Ciba-Geigy also proposed an extensive education program to promote the proper use of diazinon to reduce the risk to birds.

The Agency evaluated the label amendments in the Support Document and determined that lowering the application rate, adding seasonal or geographic restrictions, and adding precautionary labeling would not adequately protect birds. In addition an education program would also not protect birds because diazinon when properly applied still results in unacceptable exposure to birds.

k. *Bird kills.* Ciba-Geigy submitted an investigation (Ref. 3) of the bird kills reported in the Support Document. The investigation contains interviews with golf course and State personnel. Much of the report contains summaries of information from the Agency's files; maps and pictures of the kill sites; photocopies of portions of Agency documents, published literature, and laboratory reports. The report also contains new information, which is largely comprised of the phone and personal interviews with golf course personnel. In some cases the personnel interviewed were not employed at the golf course at the time of the kills, but recounted stories and gave opinions regarding the circumstances surrounding a particular bird kill. The investigators concluded that accidental or deliberate misuse of diazinon caused all of the bird kills.

Although the Agency is always concerned about the misuse of any pesticide, the Agency is not persuaded that this anecdotal information establishes that diazinon was misused in all of these circumstances. Other investigative reports conducted by State and local agencies contradict Ciba-Geigy's conclusions, and Agency records indicate bird kills resulting from proper application. Pesticide users on golf courses are generally trained or are certified pesticide applicators and are expected to follow label directions. However, bird kills have still resulted.

The kill reports along with the other information presented in the Support Document and in this Notice are part of the weight of evidence which support the conclusion that the use of diazinon on golf courses and sod farms poses a hazard to birds.

2. Comments Relating to the Benefits of Diazinon on Golf Courses and Sod Farms

The Agency received 25 comments relating to the benefits of diazinon use on golf courses and sod farms. The major points and the Agency's responses are discussed below.

a. *Lack of viable alternatives.* Several comments indicated that the alternatives either do not work or do not work as well. Also, some of the alternatives are erratic in their performance and are not as reliable.

The Agency responds that based on efficacy data reviewed in Unit III, no statistically significant difference was detected between diazinon and the five other principal pesticides in controlling most of the major turf pests. The Agency agrees that diazinon may work better than its alternatives in certain cases, but in general the Agency believes that the alternatives work as well.

b. *Efficacy of lower application rates.* Several comments expressed concern that diazinon would not work as effectively at 4 lb ai/A, 2 lb ai/A, or any application rate lower than present label application rates.

In Unit III the Agency reviews efficacy data submitted during the comment period. On the basis of the data no significant difference in the control of most major pests was evident at application rates as low as 4 lb ai/A.

c. *Efficacy of irrigation.* Several comments questioned diazinon's efficacy after irrigation.

The Agency responds that Ciba-Geigy Corporation labels already recommend thorough watering for most pests. However, the labels are not clear for certain pests and recommend against watering for others such as frit flies. Watering in would reduce the efficacy of diazinon for those pests that live and/or feed on the foliage and upper stems of the grass such as aphids, mites, ticks, frit flies, etc. For major turf pests (white grubs, sod webworm, chinch bug, mole cricket, billbugs, and European crane fly), the practice of watering in would probably enhance the efficacy of diazinon. Those pests for which watering in would reduce diazinon's efficacy (the top feeders) are relatively minor pests of turf.

d. *Non-chemical means of control.* New York State Department of Environmental Conservation, the Susquehanna Sierra Club, and others commented that there are alternative, non-chemical methods of control, which the Support Document did not address.

The Agency recognizes that considerable research is being conducted on non-chemical means of turf pest control, as indicated in Unit III.B of the Support Document. The Agency concentrated on evaluating the risks posed by alternative chemicals because they are the most likely substitutes on golf courses and sod farms if diazinon is removed from the market.

e. *Billbug control.* The University of Idaho and Washington State University were concerned about billbug control in their States. The University of Idaho indicated that they anticipate an increase in billbug damage to golf courses and sod farms, if diazinon is not available for use on these two sites. However, they were not able to quantify the impact because of the lack of data. Washington State University (WSU) submitted a report based on a 1984 field test, which they claimed demonstrated that diazinon was significantly more effective for billbug control than its major alternatives.

The Agency reviewed the data submitted by WSU. Although the test was reasonably well designed, it was a single test in one locality and involved low population levels of billbugs. Because the test was limited in sample size, limited geographically, and failed to test a worst-case situation, the

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Agency concluded that the data are not adequate to demonstrate that diazinon is the most effective insecticide available for billbug control.

f. *Economic value of wildlife.* The State of Indiana, the Adirondack Park Agency, and others indicated that wildlife resources are extremely valuable and that the cost-benefit analysis did not consider the value of wildlife. The analysis was based on the impact of users shifting to alternative insect control measures.

The Agency agrees that wildlife resources such as birds are extremely valuable. However, the Agency did not estimate their value in terms of economic values for two reasons. First, such an analysis would be limited to the reported bird deaths from diazinon, which may significantly underestimate the number of actual deaths. Second, dollar values are available only on game species and do not include all species of concern. As a result an economic assessment of the loss of birds due to diazinon poisoning on golf courses and sod farms would greatly underestimate any economic value, unless many assumptions were made.

In addition such an assessment would not include the subjective value of wildlife. Many citizens enjoy watching birds or just simply enjoy the knowledge that they are there. Any economic assessment. would be a crude indicator of the overall value of wildlife.

g. *Economic impact on individual golfers.* University of Massachusetts questioned the derivation of the 7 cents per golfer.

The estimated impact of 7 cents per golfer is based on the total national impact for all golf courses and the total number of golfers in the United States. The impact on an individual golfer may be different, depending upon the location of the course, the extent of the use of diazinon, and the alternative control methods applied after diazinon's cancellation.

h. *Diazinon's cost.* The Cornbelt Chemical Company and Ciba-Geigy Corporation indicated that diazinon is one of the least costly products for turf insect control, if application rates are considered.

Ciba-Geigy quoted prices per pound for diazinon and its alternatives which are identical to prices used by EPA in the benefit analysis. Their average application rates were fairly consistent with EPA estimates, with the exception of chlorpyrifos. Ciba-Geigy's estimate was approximately 50 percent over the reported rate estimated from the golf course survey discussed in the Support Document and is significantly higher than minimum label application rates.

The Agency's economic analysis of the impacts on golf courses was more detailed than Ciba-Geigy's analysis. The Agency estimated cost per acre for five of the top pest problems and calculated a weighted average cost per acre by region, depending on The pest problems found on golf courses in that area. The Agency's and Ciba-Geigy's conclusions regarding the differential cost per acre were not significantly different.

i. *Sod farm analysis.* The American Sod Producer's Association commented that the cost implications to sod farms were grossly miscalculated, but provided no details to support the comment. They also indicated that there is no evidence in the Support Document accounting for regional differences among sod producers.

The benefit analysis for sod farms did consider regional differences for percent of sod treated with diazinon and value of sod produced. Regional impacts were recognized and discussed in the analysis in Unit III.D of the Support Document.

3. Comments Relating to Other Issues

The Agency also received comments on issues not directly related to the avian hazard.

a. *Sulfotepp.* The Susquehanna Group Sierra Club commented that diazinon formulations contain sulfotepp as a major impurity. They indicated that sulfotepp is 30 to 120 times more toxic than diazinon and considerably more stable.

EPA is aware of the sulfotepp impurity in diazinon. Information on the levels of sulfotepp in diazinon products, and analytical methods to detect the sulfotepp impurities will be required as part of the reregistration process.

b. *Hazard to humans and pets.* The Agency received several comments relating to the potential hazards to humans and pets from the use of diazinon on golf courses, sod farms, and other sites from potential water contamination. As indicated, the Agency will be conducting an intensive review of the toxicology data base and the potential for water contamination for diazinon through the reregistration process.

V. Initiation of Regulatory Actions

This Unit has several sections. The first summarizes EPA's reasons for concluding that products that contain the active ingredient diazinon and that are registered for use on golf courses and sod farms should be cancelled. The second section defines the terms used in this unit. The third section specifies the conditions of registration that are required for federally registered products to remain registered. The fourth section establishes provisions concerning the sale, distribution, and use of existing stocks.

A. Agency's Conclusions

Based on the Agency's analysis in the Support Document and the information reviewed after the Notice of Special Review and Preliminary Notice of Intent to Cancel was issued, the Agency concluded that the risk to birds outweighs the benefits of use of diazinon products on golf courses and sod farms and that unreasonable adverse effects to birds will occur. In evaluating the hazard, the Agency considered diazinon's acute toxicity, estimated residue levels on grass and seed, estimated dose levels consumed by birds, diazinon application practices, exposure, diazinon residue data, bird kills, problems associated with the reporting of bird kills, and the effect on endangered species. In evaluating the benefits the Agency considered the biology of the insect pests, their control, the user cost impact of cancellation, and the efficacy of diazinon and its major alternatives.

The Agency also considered numerous restrictions as alternatives to cancellation and concluded that even with restrictions such as reduced application rates, additional hazard warnings, geographic and seasonal restrictions, and others, diazinon would still result in hazardous exposure to birds.

The weight of the evidence leads the Agency to conclude that the risk to birds outweighs the minor benefits and that cancellation is the only appropriate action.

B. Definitions

The following terms are defined for the purposes of this Unit.

1. "Manufacturer" refers to any registrant who, as defined, sells or distributes an end-use product containing diazinon registered for use on golf courses and sod farms.

2. "Existing stocks" refers to any quantity of diazinon products registered for use on golf courses and sod farms and which are in the United States on the date of publication of this Notice and which are formulated as an end-use product.

3. "Distribute and sell" and grammatical variants refer to the distribution, sale, offering for sale, holding for sale, shipping, delivering for shipment, or receiving and (having so received) delivering or offering to deliver a pesticide product.

C. Requirements for Complying With This Notice

A manufacturer of any product containing diazinon which is registered for use on golf courses and sod farms must submit an application to amend the registration of the product within 30 days of publication in the **Federal Register** or receipt of this Notice, whichever is later, to be allowed to continue to sell and distribute the product. The application must propose to amend the registration of the product to include the following statement on top of the front panel of the label or have supplemental labeling:

> This product must not be used on golf courses and sod farms.

D. Existing Stocks

The following paragraphs describe the conditions under which registrants and others may sell and distribute existing stocks of diazinon registered for golf courses and sod farms. Existing stocks may not be sold and distributed except as provided below.

1. No manufacturer may release for shipment after November 30, 1986, any diazinon product unless the product bears an amended label or has supplemental labeling affixed which complies with Unit V.C.

2. No diazinon product may be distributed or sold by a retailer or other person after April 30, 1987, unless the product bears an amended label or has supplemental labeling affixed which complies with Unit V.C.

The Agency has determined that this existing stock provision is consistent with the Act. The majority of the use season will have ended by this fall, and as a result, the Agency does not anticipate that much diazinon registered for use on golf courses and sod farms will be distributed during the period of time until November 30, 1986. These products will be quickly distributed through commerce until April 30, 1987. The Agency believes that this is the quickest and most effective way to proceed with existing stocks.

VI. Procedural Matters

This Notice announces EPA's intent to cancel the registrations of products that contain diazinon and that are registered for use on golf courses and sod farms. This Unit explains how current registrants may apply to amend their registrations to comply with the terms and conditions discussed in Unit V.

Under sections 6(b) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected persons are also entitled to respond to this Notice by requesting a hearing on the actions that EPA is initiating. Unless a hearing is properly requested with regard to a particular registration or application, this action will become final by operation of law.

This unit of the Notice explains how such persons may request a hearing on EPA's final cancellation and denial Notice (and the consequences of requesting a hearing and failing to request a hearing in accordance with those procedures).

A. Procedure for Amending the Terms and Conditions of Registration To Avoid Cancellation or Denial of Application

Registrants affected by the cancellation actions set forth in this Notice may avoid cancellation by filing for an application for an amended registration which contains the label modifications detailed in Unit V.B of this Notice. This application must be filed within 30 days of receipt of this Notice or within 30 days from the publication of this Notice, whichever occurs later. Applicants for a registration subject to this Notice must file an amended application for registration within the applicable 30-day period to avoid denial of their pending application.

Applications must be submitted to:

> George LaRocca, Product Manager 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703-557-2400).

B. Procedures for Requesting a Hearing

To contest the cancellation action set forth in this Notice, Federal registrants or applicants may request a hearing within 30 days of receipt of this Notice, or within 30 days from publication of this Notice, whichever occurs later. Any other person adversely affected by the action described in this Notice may request a hearing within 30 days of publication of this Notice in the **Federal Register.**

A registrant or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR Part 164. These procedures require, among other things, that all requests must identify the specific pesticide product(s) for which a hearing is requested, and that all requests must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of each pesticide product(s) for which a hearing is requested.

Requests for a hearing must be submitted to:

> Hearing Clerk (A-101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

1. Consequences of Filing a Timely and Effective Hearing Request

If a hearing on the action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164), as modified below. The hearing will be limited to the specific uses and specific product registrations for which the hearing is requested.

In the event of a hearing, the specific use or uses of the specific registered product which is the subject of the hearing will not be cancelled except pursuant to an order of the Administrator at the conclusion of the hearing. If the product is not cancelled at the conclusion of the hearing, the dates affecting release for shipment, sale, and distribution may be modified for products not relabeled in accordance with this Notice.

2. Consequences of Failure To File in a Timely and Effective Manner

If a hearing concerning the registration of a specific pesticide product subject to this Notice is not requested by the end of the applicable 30-day period, registration of that product will be cancelled, unless the registrant files a request for an amended registration within the statutory period provided herein (see Unit V).

If the registration of a product covered by this Notice is cancelled by operation of law, the sale and distribution of existing stocks is governed by the provisions of Unit V of this Notice.

C. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearing or this Notice of Intent to Cancel: The Office of the Administrative Law Judge, the

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Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA on the merits of any ot the issues involved in this proceeding, without fully complying with the applicable regulations.

D. Schedule

EPA believes that it would be in the public interest to reach a prompt, final decision in this matter, and accordingly is establishing a deadline for the issuance of an Initial Decision by the Administrative Law Judge (ALJ) in the event that a hearing is requested. The ALJ assigned to any adjudicatory hearing requested on the action initiated by this Notice shall issue an Initial Decision no later than 9 months from the date on which this Notice is published in the **Federal Register**. Review of any exceptions to the Initial Decision will follow the schedule provided in 40 CFR 164.101, and a Final Decision will be issued as soon as possible thereafter.

As explained earlier in this Notice, the use of diazinon on golf courses and sod farms poses a significant risk to nontarget bird species, and in fact such use may be killing substantial numbers of birds. A thorough, but prompt, examination of these risks and the associated benefits is in the public interest.

In view of the limited scope of the issues and their relatively straightforward nature, EPA believes that 9 months should give the participants ample time to conduct discovery, to present evidence, to conduct cross-examination, and to prepare briefs for the ALJ and for the ALJ to prepare and issue an Initial Decision. This schedule reflects the fact that only one kind of risk, hazard to birds, is at issue and that the proposed cancellation involves only two use sites. The schedule also reflects the fact that a considerable body of information and analysis has been assembled during the Special Review of diazinon.

Any party may by motion request that the deadline be extended. If it appears to the ALJ that additional time will be needed, the ALJ shall promptly inform the Judicial Officer of the circumstances which contribute to the need for more time and shall propose a schedule for completing the hearing, together with a new deadline for issuance of the Initial Decision. The Judicial Officer is given authority to establish a new schedule.

If an appeal from the Initial Decision is taken, it is expected that a final decision would be issued within 60 days.

VII. References

The references used in this **Federal Register** Notice are as follows:

(1) Ciba-Geigy Corporation, Agricultural Division. "Efficacy of Diazinon on Grubs and Chinch Bugs vs. Other Registered Insecticides." Submitted to the Agency October 18, 1985. Accession No. 260216.

(2) Ciba-Geigy Corporation, "Response of Ciba-Geigy Corporation to the Special Review and Proposed Cancellation of Diazinon." Public Docket No. D-05113, submitted to the Agency March 28, 1986. Accession No. 262151.

(3) Ciba-Geigy Corporation, "Reinvestigations of Bird Kills Associated With The Use of Diazinon on Turf Grass (Bio-Life Associates)." Volumes 1 and 2. Accession No. 263011 and 263012.

(4) Futuyma, D., 1979. Evolutionary Biology. Sinauer Associates, Inc., Cambridge, Massachusetts.

(5) Harwood, R.F. and M.T. James, 1979. Entomology in Human and Animal Health. 7th Edition. Macmillan Publishing Company. New York, New York.

(6) Kuhr, R.J. and H. Tashiro. "Distribution and Persistence of Chlorpyrifos and Diazinon Applied to Turf." Bulletin of Environmental Contamination and Toxicology 20, pp. 652–656, 1978.

(7) Littrell, E.E. "Mortality of American Wigeon on a Golf Course Treated with the Organophosphate Diazinon." California Fish and Game 72, pp. 12–14, 1986.

(8) Mayr, E., Animal Species and Evolution. 1963. Harvard University Press, Cambridge, Massachusetts.

(9) Sears, M. and R.A. Chapman. "Persistence and Movement of Four Insecticides Applied to Turfgrass." Journal of Economic Entomology 72, pp. 272–274, 1979.

(10) Stine, Charlotte, 1986. Insecticide Product Guide 1986. Ag Consultant and Fieldman. Volume 2.

(11) Sorensen, K.A., ed. "Insecticide and Acaricide Tests" 1981. Volume 6. Entomological Society of America, 1981.

(12) United States Department of the Interior, 1986. "Formal Section 7 Consultation on the Registration of Products Containing Diazinon For Use on Golf Courses and Sod Farms." Memorandum from Stephen W. Perry.

(13) United States Department of the Interior, 1986. "Review and Preliminary Determination To Cancel Registration of Diazinon." Memorandum from E. Lamberton.

(14) United States Environmental Protection Agency, 1986. "Analysis of Residue Data Submitted by Ciba-Geigy During Special Review of Diazinon." Memorandum from Margaret Rostker.

(15) United States Environmental Protection Agency, 1986. "Benefits/Entomological Information for the PD-4 Document on Diazinon Uses on Golf Courses and Sod Farms." Memorandum from John Kliewer.

(16) United States Environmental Protection Agency, 1986. "Bird Kills Associated With Diazinon and Reported to EEB Since Initiation of Special Review." Memorandum from Margaret Rostker.

(17) United States Environmental Protection Agency, 1986. "Diazinon Support Document." December 1985.

(18) United States Environmental Protection Agency, 1986. "EEB Review of Two Open Literature Studies." Memorandum from Margaret Rostker.

(19) United States Environmental Protection Agency, 1986. "Information Concerning Diazinon for the Scientific Advisory Panel." April 28, 1986.

(20) United States Environmental Protection Agency, 1986. "Transcript of Proceedings: United States Environmental Protection Agency, Scientific Advisory Panel, Open Meeting." May 21, 1986.

(21) York, A.C., ed. "Insecticide and Acaricide Tests," Volume 7. Entomological Society of America, 1982.

(22) York, A.C., ed. "Insecticide and Acaricide Tests," Volume 8. Entomological Society of America, 1983.

(23) York, A.C., ed. "Insecticide and Acaricide Tests," Volume 9. Entomological Society of America, 1984.

(24) York, A.C., ed. "Insecticide and Acaricide Tests," Volume 10. Entomological Society of America, 1985.

All but the published references are available for inspection in Rm. 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, Va., from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Dated: September 24, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-22126 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. ECAO-R-063; FRL-3088-8]

Draft Health Assessment Document for Hydrogen Sulfide

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of first external review draft.

SUMMARY: This notice announces the availability of the first external review draft of a Health Assessment Document for Hydrogen Sulfide.

DATES: The Agency will make the document available for public review and comment on or about Wednesday, October 8, 1986. Comments must be postmarked by Wednesday, December 10, 1986.

ADDRESSES: To obtain a copy of the document, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, OH 45268, (513) 569-7562 or FTS 682-7562, and request the first external review draft of the Health Assessment Document for Hydrogen Sulfide. Please provide your name, mailing address, and the EPA document number EPA/600/8-86/026A.

The draft document will also be available for public inspection and copying at the EPA library, EPA headquarters, Waterside Mall, 401 M Street SW., Washington, DC.

Comments on the draft should be sent to the Project Manager for Hydrogen Sulfide, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Ray, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711, (919) 541-3637 or FTS 629-3637.

SUPPLEMENTARY INFORMATION: In January 1986, EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the Environmental Criteria and Assessment Office (ECAO), Office of Health and Environmental Assessment (OHEA), prepare a health assessment document for hydrogen sulfide. The document will be used by EPA in the decisionmaking process regarding possible regulation of hydrogen sulfide under the Clean Air Act as amended, 42 U.S.C. 7401 *et seq.*

Dated: September 19, 1986.

Courtney Riordan,

Acting Assistant Administrator for Research and Development.

[FR Doc. 86-22125 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00224A; FRL-3088-5]

FIFRA Scientific Advisory Panel; Appointments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is given of the appointment of two members to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel established pursuant to section 25(d) of FIFRA, as amended (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 et seq.). Public notice of nominees along with a request for public comments appeared in the **Federal Register** of Wednesday, March 26, 1986 (51 FR 10438).

FOR FURTHER INFORMATION CONTACT: By mail:

Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel (TS-769C), Office of Pesticide Programs, Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA (703-557-7695).

SUPPLEMENTARY INFORMATION: Congress mandated that the Scientific Advisory Panel would consist of seven members, selected from candidates nominated by the National Science Foundation (NSF) and the National Institutes of Health (NIH). Congress also mandated that the terms of appointment would be staggered. Accordingly, seven members were appointed on March 24, 1983, to the Panel (which, at the time, was constituted under the Federal Advisory Committee Act rather than FIFRA), with the terms of two members scheduled to expire on September 30, 1984, the terms of three members scheduled to expire on September 30, 1985, and the terms of the remaining two members scheduled to expire on September 30, 1986. In accordance with the statutory requirement, lists of nominees were requested from NIH and NSF in the areas of biotechnology, reproductive toxicology and agricultural science and a public notice of nominees, including biographical data, appeared in the **Federal Register** on March 26, 1986. No comments were received in response to this Notice.

My decision to appoint the following nominee to serve as a member of the Scientific Advisory Panel is based on the need for expertise in biotechnology:

James Michael Tiedje, Ph.D., Professor, Microbial Ecology, Michigan State University. Expertise: Microbial Ecology, Soil Microbiology. Born: February 9, 1942. Education: Iowa State University, BS 1964; Cornell University, MS 1966, Ph.D. (soil microbiology) 1968. Professional experience: From Assistant Professor to Associate Professor, 1968–1978, Professor, Microbial Ecology, Michigan State University, 1978–present. Concurrent Positions: Eli Lilly Career Development Grant, 1974; Visiting Associate Professor, University of Georgia, 1974–1975; Editor, Applied Microbiology, 1974–present; Consultant, National Science Foundation, 1974–1977. Societies: American Society of Microbiologists; American Society of Agronomists; Soil Science Society of America; American Association for the Advancement of Science. Research: Deiutrification; microbial metabolism of pesticides and other organic chemicals; microbial activities in eutrophic lakes.

The nominations for a replacement for Dr. Kilgore, although recognized authorities in their fields, do not provide the scientific expertise needed for the duties of the Panel at this time. Until such time as additional nominees can be obtained, I am reappointing Wendell W. Kilgore, based upon his expertise in environmental toxicology, agricultural science and microbiology, which meets the need for a disciplinary mix and the need for wide geographic representation:

Wendell Warren Kilgore, Ph.D., Professor, Department of Environmental Toxicology, University of California, Davis, California 95616. Born: June 21, 1929. Educational Background: University of California, AB, (biology), 1951, Ph.D. (microbiology), 1958. Professional Experience: Assistant microbiologist, University of California, 1955–1958, microbiologist, 1958–1959; microbiologist, Stanford Research Institute, 1959–1960; chairman of department, 1970–1977; director, food protection and toxicology center, 1970–1978; professor, environmental toxicology, University of California, Davis, 1968–present. Societies: American Society of Microbiologists; American Chemical Society; Society of Toxicologists. Research: Insect biochemistry, microbial biochemistry; carbohydrate metabolism, effect of pesticides on human health, mechanism of action of insect sterilants.

Meetings of the Scientific Advisory Panel are always announced in the **Federal Register** at least 15 days prior to each meeting.

Dated: September 19, 1986.

A. James Barnes,

Deputy Administrator.

[FR Doc. 86-22126 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30273A; FRL-3088-6]

Natural Ag, Bentech Laborstories, Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Natural Ag, a Division of Bentech Laboratories, Inc. to register the pesticide product "YEA", containing the active ingredient poly-*D*-glucosamine (hereafter referred to as chitosan), an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

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FOR FURTHER INFORMATION CONTACT:
By mail: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, 401 M Street, SW., Washington, DC 20460.
Office Location and Telephone number: Rm. 237, CM#2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 15, 1986 (51 FR 32683), which announced that Natural Ag, a Division of Bentech Laboratories, Inc., 635 Water Ave., NE., Albany, OR 97321, submitted an application to EPA to register the pesticide product "YEA" containing the active ingredient chitosan at 2.50 percent, an ingredient not included in any previously registered products.

EPA approved registration of this product on September 15, 1986 for use as a plant growth regulator/wheat seed treatment, and assigned EPA Registration No. 56437-1.

The Agency considered all available information on the risks associated with the proposed use of chitosan and determined that it would be in the public interest to register this pesticide. A detailed description of the information evaluated by the Agency may be found in the related document [PP 6E3451/R853] published elsewhere in this issue of the **Federal Register** which establishes an exemption from the requirement of a tolerance for chitosan when used in or on wheat.

Authority: 7 U.S.C. 136.

Dated: September 22, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-22129 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-64004; FRL-3089-2]

Intent To Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel.

SUMMARY: EPA is issuing a notice of intent to cancel certain pesticide registrations under section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The registrations which the Agency intends to cancel are held by registrants whom the Agency, after a good faith effort, has been unable to contact. Persons adversely affected by this notice may request a hearing.

DATES: All registrations will be cancelled at the end of 30 days from the date of publication or receipt of this notice by registrants unless a hearing has been requested by a person adversely affected by this notice or the Agency is provided with a correct and current address of an affected registrant.

A request for a hearing by an affected registrant must be received by the Agency on or before October 31, 1986 or 30 days after receipt by mail by the affected registrant of this notice, whichever is the later date.

A request for a hearing submitted by any other adversely affected person must be received on or before October 31, 1986.

ADDRESS: Hearing requests must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Stanley J. Austin, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 716C, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4360).

SUPPLEMENTARY INFORMATION: Over the years, EPA has been unable to contact certain pesticide registrants at the addresses on file at the Agency or appearing on current pesticide product labels. EPA's inability to communicate with these registrants impairs the Agency's ability to discharge its statutory mandate to regulate pesticide products and their impact on the environment. Furthermore, it creates an undesirable situation in that some registrants may unknowingly be in violation of the Act and escape burdens assumed by other registrants in compliance with the Act.

Section 6(b) of FIFRA allows the Administrator to issue a notice of intent to cancel a pesticide's registration if that ". . . pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act. . . ."

Section 3(c)(1)(A) of FIFRA and 40 CFR 162.10(a)(1)(ii) make it a condition of registration that a registrant's address be filed with the Agency and appear on the label of the registrant's pesticide product. In addition, section 12(a)(1)(E) of FIFRA makes it unlawful to distribute, sell, offer for sale, hold for sale, ship, deliver or offer for delivery to any person a misbranded pesticide. Under FIFRA section 2(q)(2)(C)(i), failure to have the registrant's correct address on the label of its pesticide product constitutes misbranding. Therefore, failure of a registrant to submit a correct and current address and include such address as part of the label of its pesticide products is in violation of the Act's provisions and is grounds for cancellation of that registrant's registrations.

EPA issued a policy statement, published in the **Federal Register** of March 5, 1986 (51 FR 7834), indicating that the Agency may decide to initiate cancellation proceedings for registrations held by registrants whom the Agency has, after good faith efforts, been unable to contact by mail. This notice implements that policy.

This notice will be sent to all affected registrants by certified mail to the most current addresses the Agency has in its files. For the purposes of this notice, the Agency will consider validated non-delivery as receipt and the date of validated non-delivery as the date of receipt in those instances where actual receipt is not accomplished.

The impact of these cancellations on the agricultural economy is difficult to determine. It is believed that some or all of the pesticide products subject to this cancellation action are no longer on the market. Some of the pesticide products have no agricultural uses. At worst, the impact on the agricultural economy is expected to be slight.

Pursuant to section 6(b), the Secretary of Agriculture has reviewed this notice and has no comments. The Science Advisory Panel has waived its right (under section 25(d)) to review this notice.

Registrations Subject to Cancellation

The following registrations are subject to cancellation under this notice.

Registrant	Registration Nos.
Acrolite Products, Inc., E. Inman Ave., Rahway, NJ 07065.	9799-01
Albermarle Chem., Inc., Box 1423, Charlotteville, VA 22902.	9560-02, 9560-03
Ambroid Company, Inc., 612 Montello Street, Brockton, MA 02401.	8689-02
American Research Corp., 6699 Peachtree Ind. Blvd., Norcross, GA 30071.	9235-01, 9235-02
Arguicide Company, Box 39125, Cincinnati, OH 45239.	8507-01
Batesville Chemical Company, 205 Pamela Street, Batesville, MS 38606.	6807-01, 6807-4365
BBC Laborstones, 700 N. Sepulveda Blvd., El Segundo, CA 90245.	6253-02
Belfaire Products, Inc., 250 E. 43rd Street, New York, NY 10017.	9824-01
Bronco Chemical, Inc., Box 26398, Memphis, TN 38126.	9765-01
Cambridge Sales Company, 17 Barstow Road, Great Neck, NY 11021.	6063-19, 6063-44, 6063-52
C & H Chemical Co., 3708 Raymond Street, Houston, TX 77007.	10471-03, 10471-04
Chase Instruments Corp., P.O. Box 306, Lindenhurst, NY 11757.	10620-01
Chemical Machines, 120 Lombard, Winnipeg 2, Manitoba, Canada.	3462-06

Registrant	Registration Nos.
Chemical Service Company, 1001 Indiana Ave., Laporte, IN 46350.	10074-02, 10074-03
Continental Chemical & Research Corp., 2109 N. 11th Street, Reading, PA 19604.	10482-02
Cromwell Products, Inc., 489 East State Street, Westport, CT 06880.	5794-01
Crossland Manufacturing Co., Inc., 10009 East Toledo Road, Blissfield, MI 49228.	10158-01
Direct Chemical Company, 160 Broadway, New York, NY 10038.	10495-02
Distributors Supply Company, 2351 Hampden Ave., St. Paul, MN 55114.	630-39
D&S Sales Company, Attn: Mr. David Slocumh, P.O. Box 5281, Macon, GA 31208.	11303-01
Extrin Flavors, Inc., Research Labs, 34-18 Northern Blvd., Long Island City, NY 11101.	9942-02
Glenn Chemical Company, 4149 N. Milwaukee Ave., Chicago, IL 60641.	5644-01
Goodwill Chemical Co., Inc., Freemansville Road, P.O. Box 1451, Reading, PA 19603.	10714-05
Greer Bros., 6313 Townline Road, N. Tonawanda, NY 14120.	5756-02
Hanover Industrial Chem. Corp., P.O. Box K, Hanover Park, IL 60103.	9934-01
International Lubricant Corp., Box 51118, New Orleans, LA 70150.	6031-01, 6031-02
J.H. Weiler Inspec. Serv., Inc., 5909 N. Washington Street, Denver, CO 80216.	6732-03
Lilico Product, Inc., 4913 W. Nassau Street, Tampa, FL 33607.	9695-01, 9695-02, 9695-03, 9695-04
Michigan Company, 2011 High Street, Lansing, MI 48906.	5743-02, 5743-03, 5743-04
Midland Tar Distillers, Inc., 1143 E. Jersey Street, Elizabeth, NJ 07201.	4258-01
Miracle Pet Products, Inc., 245 Comelison Ave., Jersey City, NJ 07302.	10016-13
Mocho Industries, Inc., 200 Park Avenue, Suite 303 East, New York, NY 10017.	10354-01
Pabco Paint Corp., P.O. Box 5919, Fremont, CA 94538.	9708-01, 9708-02
RO-DI Chemical Company, Inc., 1460 W. Montrose, Chicago, IL 60640.	6339-04
Schwartz Chemical Co., Inc., 1041 Seminole Blvd., Casselberry, FL 32707.	9678-05, 9678-5389
Septi-San, Inc., 312 So. Main, Farmer City, IL 61842.	8950-11
Sportmen's Laboratories, Inc., P.O. Box 732, Anoka, MN 55303.	10725-01
Staff Supermarket Associates, Inc., 333 Jericho Turnpike, Jericho, NY 11753.	9969-03
Susgro Chemical Company, 185 E. 60th Street, New York, NY 10021.	10817-01
Talb Industries, Inc., 4041 Ridge Ave., Philadelphia, PA 19129.	4723-04
Texas State Do it Yourself Pest Control, 7526 Morley Street, Houston, TX 77017.	9717-01
The Bug Man, Box 1317, Asbury Park, NJ 07712.	11484-01, 11484-02
Trenor Laboratories, Box 586, Houston, TX 38851.	10485-02
TZL Laboratories, 103 Johnson Street, E. Syracuse, NY 13057.	10612-03
Van's Enterpeises, 15 Main Street, Sussex, NJ 07461.	12011-01
Vari-Chem Industries, Ltd., 6901 N. Crescent Blvd., Pennsauken, NJ 08109.	10433-05
Weedco Products, P.O. Box 508, Napa, CA 94558.	11238-5227, 11238-5228
W.C. Cook Company, Attn: George Redding, 1985 N. Anson Drive, Melrose Park, IL 60160.	9147-02, 9147-03, 9147-04, 9147-05
Williams Chemical Company, 612 Franklin Avenue, Waco, TX 76701.	864-01

Dated: September 23, 1986.

James W. Akerman,

Acting Director, Registration Division.

[FR Doc. 86-22206 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240071; FRL-3089-3]

State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 15 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register.**

DATE: The last entry of each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT:
Owen F. Beeder, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC.

Office location and telephone number: Rm. 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7893).

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in May and June 1986. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

California

EPA SLN No. CA 86 0029. San Diego City Department of Agriculture. Registration is for Pyrenone Crop Spray to be used on herbs and spices to control aphids and flea beetles. May 5, 1986.

EPA SLN No. CA 86 0030. San Diego City Department of Agriculture. Registration is for Dipel 2X Worm Killer to be used on herbs and spices to control loopers and armyworms. May 14, 1986.

EPA SLN No. CA 86 0035. FMC Corp. Registration is for Thiodan 3 EC to be used on seed alfalfa to control spotted alfalfa aphids. June 4, 1986.

EPA SLN No. CA 86 0037. Monterey City Agriculture Department. Registration is for Furadan 4F to be used on artichokes to control cribrate weevils. June 5, 1986.

Georgia

EPA SLN No. CA 86 0003. FMC Corp. Registration is for Ammo 2.5EC Insecticide + Ethion 4 Miscible Miticide-Insecticide to be used on pecans to control pecan aphids (yellow and black), weevils, pecan nut casebearers, and hickory shuckworms. June 24, 1986.

Maine

EPA SLN No. ME 86 0001. Nor-Am Chemical Co. Registration is for Botran 75W to be used on potatoes to control white mold. June 11, 1986.

EPA SLN No. ME 86 0002. Mobay Corp. Registration is for Mesurol 75WP to be used on blueberries to control flies and birds. June 11, 1986.

Michigan

EPA SLN No. MI 0003. Mobay Corp. Registration is for Mesurol 75 WP to be used on blueberries and cherries to control flies and birds. June 6, 1986.

EPA SLN No. MI 86 0004. Dow Chemical Co. Registration is for Dow Antimicrobial to be used in publicly owned treatment works for disinfection of discharge waste waters. June 26, 1986.

Montana

EPA SLN No. MT 86 0005. FMC Corp. Registration is for Furadan 4F to be used on corn to control European corn borers, Banks grass mites, and grasshoppers. June 24, 1986.

Nevada

EPA SLN No. NV 86 0006. Nor-Am Chemical Co. Registration is for Botran 75W to be used on potatoes to control botrytis blight and white mold. June 23, 1986.

New Jersey

EPA SLN No. NJ 86 0007. E.I. DuPont de Nemours. Registration is for DuPont Manzate 200 Fungicide to be used for disease control on flowers, foilage plants, and ornamentals in the State of New Jersey. May 22, 1986.

North Carolina

EPA SLN No. NC 86 0002. Union Carbide Agricultural Products. Registration is for Larvin 3.2 Thiodicarb to be used on sweet corn to control earworms, European corn borers, and armyworms. May 29, 1986.

EPA SLN No. NC 86 0003. Hopkins Agricultural Chemical Co. Registration is for Snail and Slug Pellets M-2 to be used on ginseng gardens to control snails and slugs. May 29, 1986.

EPA SLN No. NC 86 0004. Chevron Chemical Co. Registration is for Ortho Diquat H/A to be used as forest site preparation. May 29 1986.

Oregon

EPA SLN No. OR 86 0005. SDS Biotech Corp. Registration is for Bravo 500 to be used on mint to control rust and septoria leaf spot. June 13, 1986.

EPA SLN No. OR 86 0006. Mobay Corp. Registration is for Mesurol 75WP to be used on blueberries to control flies and birds. June 13, 1986.

South Carolina

EPA SLN No. SC 86 0001. Pennwalt Corp. Registration is for Peach, Nectarine, and Plum Luster 274 to be used on peaches, nectarines, and plums to control brown rot and Rhizopus spoilage. May 26, 1986.

South Dakota

EPA SLN No. SD 86 0001. Pestcon Systems, Inc. Registration is for Fumitoxin Aluminum Phosphide Tablets and Fumitoxin Aluminum Phosphide Pellets to control bees infested with tracheal mites in beehives, supers, and other beekeeping equipment. May 13, 1986.

Utah

EPA SLN No. UT 86 0004. FMC Corp. Registration is for Dimethoate 267 to be used on cherries to control cherry fruit flies. June 2, 1986.

Vermont

EPA SLN No. VT 86 0001. Mobay Corp. Registration is for Mesurol 75WP to be used on blueberries to control flies and birds. May 19, 1986.

Washington

EPA SLN No. WA 86 0001. Wilbur-Ellis Co. Registration is for Dimethoate 267 to be used on broccoli, brussels sprouts, cabbage, and cauliflower to control root maggots. January 16, 1986.

EPA SLN No. WA 86 0003. Aceto Agricultural Chemicals. Registration is for Dimethogon 267 to be used on lentils to control aphids and lygus bugs. January 16, 1986.

EPA SLN No. WA 86 0004. Wilbur-Ellis Co. Registration is for Dimethoate 267 to be used on lentils to control aphids and lygus bugs. January 16, 1986.

EPA SLN No. WA 86 0021. Mobay Corp. Registration is for Mesurol 75WP to be used on blueberries to control flies and birds. May 22, 1986.

EPA SLN No. WA 86 0023. PureGro Co. Registration is for Dimethoate 2.67 EC to be used on cherries to control cherry fruit flies. May 28, 1986.

EPA SLN No. WA 86 0025. Drexel Chemical Co. Registration is for Drexel Dimethoate 2.67 to be used on lentils to control aphids and lygus bugs. June 26, 1986.

West Virginia

EPA SLN No. WV 86 0002. Mobay Corp. Registration is for Mesurol 75WP to be used on blueberries and cherries to control birds. May 30, 1986.

(Sec. 24 as amended, 92 Stat. 835 (7 U.S.C. 136))

Dated: September 24, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-22207 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Cal America Savings and Loan Assn., Walnut Creek, CA.; Appointment of Receiver

Notice is hereby given that the Superior Court for the County of Contra Costa has confirmed the appointment by the Savings and Loan Commissioner for the State of California ("Commissioner") of a receiver for Cal America Savings and Loan Association, Walnut Creek, California ("Cal America"), and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended (12 U.S.C. 1729(c)(1) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Commissioner of the appointment as receiver for Cal America, for the purpose of liquidation, effective September 19, 1986.

Dated: September 26, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86-22226 Filed 9-30-86; 8:45 am]

BILLING CODE 6720-01-M

Cal America Savings and Loan Assn.; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Cal America Savings and Loan Association, Walnut Creek, California on September 19, 1986.

Dated: September 26, 1986.

Jeff Sconyers,

Secretary

[FR Doc. 86-22227 Filed 9-30-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp., et al.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York, Chase Manhattan National Corporation, New York, New York, and Chase Manhattan National Holding Corporation, Newark, Delaware; to engage through any existing subsidiaries or subsidiaries yet to be formed in acting as underwriter for credit life insurance, credit accident and health insurance, and credit unemployment insurance that is directly related to an extension of credit by Applicant and its subsidiaries, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Comments on this application must be received by October 20, 1986.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Bankvest, Inc.,* Wilkes-Barre, Pennsylvania; to engage *de novo* through its subsidiary, First Data Corp., Wilkes-Barre, Pennsylvania, in data processing and related services permissible under § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in Wilkes-Barre, Pennsylvania.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank Shares Incorporated,* Minneapolis, Minnesota; to engage *de novo* through its subsidiary Marquette Holm Insurance Agency, Inc., Minneapolis, Minnesota, in general insurance agency and insurance brokerage activities. The activities are being expanded *de novo* from a limited geographic area to nationwide, pursuant to section 4(c)(8)(G) of the Bank Holding Company Act. Comments on this application must be received by October 21, 1986.

Board of Governors of the Federal Reserve System, September 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22143 Filed 9-30-86; 8:45 am]

BILLING CODE 6210-01-M

Independence Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 22, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Independence Bancorp, Inc.,* Perkasie, Pennsylvania; to acquire 100 percent of the voting shares of Third National Bank and Trust Company of Scranton, Scranton, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Charter Banc Group, Inc.,* Northfield, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Glenbrook, Glenview, Illinois, Bank of Northfield, Northfield, Illinois, Bank of Wheaton, Wheaton, Illinois, and Bank of Winfield, Winfield, Illinois. Comments on this application must be received by October 20, 1986.

2. *City Bancorp of Bloomington-Normal, Inc.,* Bloomington, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Saybrook, Saybrook, Illinois.

3. *First Interstate Corporation of Wisconsin,* Sheboygan, Wisconsin; to acquire 100 percent of the voting shares of Mid-Continental Bancorporation, Inc., Milwaukee, Wisconsin, and thereby indirectly acquire Continental Bank & Trust Co., Milwaukee, Wisconsin.

4. *First Midwest Bancorp, Inc.,* Naperville, Illinois; to acquire 100 percent of the voting shares of Bancorp of Mundelein, Inc., Mundelein, Illinois, and thereby indirectly acquire Bank of Mundelein, Mundelein, Illinois. Comments on this application must be received by October 23, 1986.

5. *Mid-Continental Holdings, Inc.,* Sheboygan, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Mid-Continental Bancorporation, Inc., Milwaukee, Wisconsin, and thereby indirectly acquire Continental Bank & Trust Co., Milwaukee, Wisconsin.

6. *Suburban Bancorp, Inc.,* Palatine, Illinois; to acquire at least 51 percent of the voting shares of Addison State Bank, Addison, Illinois. Comments on this application must be received by October 23, 1986.

7. *Waterman Bancshares, Inc.,* Waterman, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Waterman State Bank, Waterman, Illinois.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *F&M Bank Holding Company of Valley City, Inc.,* Valley City, North Dakota; to become a bank holding company by acquiring 80.85 percent of the voting shares of Farmers & Merchants Bank of Valley City, Valley City, North Dakota. Comments on this application must be received by October 24, 1986.

2. *Shelard Bancshares, Inc.,* St. Louis Park, Minnesota; to acquire 100 percent of the voting shares of Minnesota National Bank of Eajan, Eajan, Minnesota. Comments on this application must be received by October 23, 1986.

Board of Governors of the Federal Reserve System, September 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22144 Filed 9-30-86; 8:45 am]

BILLING CODE 6210-01-M

NBD Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the, Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 22, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to acquire Computer Communications of America, Inc., Detroit, Michigan, and thereby engage in servicing loans and data processing pursuant to §§ 225.25(b)(1) and 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire Watson Agency, Inc., Watson, Minnesota, and thereby engage in general insurance agency activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act. These activities will be conducted in the State of Minnesota.

Board of Governors of the Federal Reserve System, September 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22145 Filed 9-30-86; 8:45 am]

BILLING CODE 6210-01-M

Signet Banking Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Signet Banking Corporation*, Richmond, Virginia; to engage *de novo* through its subsidiary, Corporate Finance Advisors, Inc., Richmond, Virginia, in providing advice in connection with questions related to structuring and arranging for loan syndications, interest rate "swap," interest rate "cap" and similar transactions; advice in connection with merger, acquisition/divestiture and financing transactions for financial institutions; valuations of financial institutions; and the rendering of fairness opinions in connection with merger, acquisition and similar transactions for financial institutions.

Board of Governors of the Federal Reserve System, September 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22146 Filed 9-30-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0205]

Biological Product Licenses; Interstate Blood Bank, Inc., of Louisiana; Revocation of U.S. License No. 438

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of establishment license (U.S. License No. 438) and product licenses issued to the Interstate Blood Bank, Inc., of Louisiana for the manufacture of Fresh Frozen Plasma, Plasma, Platelets, Red Blood Cells, Source Leukocytes, and Whole Blood. In a letter dated March 14, 1986, the firm requested that its establishment and product licenses be revoked and waived an opportunity for a hearting.

DATE: The revocation of the establisment and product licenses was effective on March 28, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: FDA has revoked the establisment license (U.S. License No. 438) and product licenses issued to the Interstate Blood Bank, Inc., of Louisiana for the manufacture of Fresh Frozen Plasma, Plasma, Platelets, Red Blood Cells, Source Leukocytes, and Whole Blood. Interstate Blood Bank, Inc., of Louisiana was located at 423 Crockett St. Shreveport, LA 71101. Before the licenses were revoked, the firm also operated a donor center at 700 Pennsylvania Ave., Fort Worth, TX, under the name of Interstate Blood Bank, Inc., of Texas. Together, the Shreveport and Fort Worth facilities constituted the Interstate Blood Bank, Inc., of Louisiana.

On December 9, 10, 13, and 16, 1985, FDA inspected the Fort Worth facility and found significant deviations from the applicable biologics regulations. These deviations included, but were not limited to: (1) overbleeding by frequency and volume (21 CFR 640.3(b) and (f) and 606.100(b)(5)), (2) bleeding unsuitable donors (21 CFR 640.31 and 640.3(c)), (3) using assumed names to conceal overbleeds (21 CFR 606.160(b)(1) and 640.4(e)), and (4) collecting units of blood that could not be traced back to the donor (21 CFR 606.100(b)(13) and 606.160(c)). Due to the serious nature of the deviations that posed a significant danger to health, FDA suspended the establishment license (U.S. License No. 438) on January 15, 1986, for the Fort Worth facility.

After the suspension, the agency conducted a comprehensive investigation into the operations of Interstate Blood Bank's Fort Worth and Shreveport facilities to determine the firm's compliance with the applicable Federal regulations and the standards established in the license.

In addition to the deficiencies that were acknowledged in written responses from Interstate Blood Bank, Inc., of Louisiana dated January 25, 1986, and January 30, 1986, FDA's followup investigation revealed additional serious violative practices. FDA investigators concluded that overbleeding was known to have occurred at the Fort Worth facility and the records of Whole Blood weights maintained in Shreveport were intentionally recorded in a manner to conceal the overbleeding.

FDA's inspection and followup investigation revealed that the firm's responsible head failed to exercise control of the establishment in all matters relating to complance and training of employees. In FDA's judgement, the firm's responsible head and other designated managers at Interstate Blood Bank, Inc., of Louisiana significantly failed to fulfill their responsibilities for: (1) Taking appropriate steps to prevent and correct violative practices; (2) assuring that records accurately reflect actual conditions of operations; and (3) assuring that employees, including managers, were adequately trained and competently performed assigned functions in critical areas.

In summary, the actions of Interstate Blood Bank, Inc., of Louisiana represent significant and continued noncompliance both with the standards established in the firm's licenses and with the applicable standards in regulations designed to ensure the continued safety, purity, and potency of the products that the firm was licensed to manufacture (i.e., Fresh Frozen Plasma, Plasma, Platelets, Red Blood Cells, Source Leukocytes, and Whole Blood). Furthermore, FDA found that a number of these actions represented intentional and willful disregard for the prescribed standards. Therefore, FDA initiated revocation proceedings without providing the establishment further opportunity to achieve compliance.

As provided in 21 CFR 601.5(b), FDA issued a letter on February 26, 1986, notifying the licensee of FDA's intention to revoke U.S. License No. 438, setting forth grounds for the revocation, and offering an opportunity for a hearing on the proposed revocation. In a letter dated March 14, 1986, Interstate Blood Bank, Inc., of Louisiana, requested that its establishment and product licenses be revoked and waived an opportunity for a hearing.

The agency granted the licensee's request. In a letter to the firm dated March 28, 1986, issued under 21 CFR 601.5(a), FDA revoked the establishment license (U.S. License No. 438) and product licenses of Interstate Blood Bank, Inc., of Louisana. FDA has placed copies of the letters dated January 15, 25, 30, February 26, and March 14 and 28, 1986, on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

Accordingly, under 21 CFR 12.38 and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Office of Biologics Research and Review (21 CFR 5.68), the establishment license (U.S. License No. 438) and product licenses issued to Interstate Blood Bank, Inc., of Louisiana, for the manufacture of Fresh Frozen Plasma, Plasma, Platelets, Red Blood Cells, Source Leukocytes, and Whole Blood were revoked effective March 28, 1986.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67 (see the **Federal Register** of July 29, 1985; 50 FR 30696).

Dated: September 24, 1986.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 86-22152 Filed 9-30-86; 8:45 am]

BILLING CODE 4160-01-M

Oncologic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Oncologic Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App.I)).

DATE: Authority for this committee will expire on September 1, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HEA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: September 23, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-22147 Filed 9-30-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OACT-006-N]

Medicare Program; Part A Premium for the Uninsured Aged for the 12-Month Period Beginning January 1, 1987

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces Medicare monthly hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1987.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION, CONTACT: Solomon Mussey, (301) 594-2829.

SUPPLEMENTARY INFORMATION: Under the authority in section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2)), I have determined that the monthly Medicare hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1987, is $248.

Section 1818 of the Social Security Act (Act) provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to hospital insurance. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d)(2) of the Act, as amended by section 606(b) of the Social Security Amendments of 1983 (Pub. L. 98-21) requires the Secretary to determine and publish, during the next

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to last quarter of each calendar year, the amount of the monthly Part A premium for voluntary enrollment for the following calendar year. The formula specified in this section requires that, for the period beginning January 1, 1987, the 1973 base year premium ($33) be multiplied by the ratio of: (1) The 1987 inpatient hospital deductible to (2) the 1973 inpatient hospital deductible, rounded to the nearest multiple of $1, or, if midway between multiples of $1, to the next higher multiple of $1.

Under section 1813(b)(2) of the Act, the 1987 inpatient hospital deductible was determined to be $572. The 1973 deductible was actuarially determined to be $76, although the 1973 deductible was actually promulgated to be only $72, to comply with a ruling of the Cost of Living Council. (See 37 FR 21452, October 11, 1972.) The monthly premium for the 12-month period beginning January 1, 1987 has been calculated using the $76 deductible for 1973, since this more closely satisfies the intent of the law. Thus, the monthly hospital insurance premium is $33 x (572/76) = $248.37, which is rounded to $248.

The monthly hospital insurance premium for the uninsured aged for the 12-month period beginning January 1, 1987, will increase to $248. That amount is 16 percent higher than the $214 monthly premium amount for the 12-month period beginning January 1, 1986.

The estimated cost of this increase to the approximately 23 thousand enrollees who do not otherwise meet the requirements for entitlement to hospital insurance will be about $9 million.

Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Sec. 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2)))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 12, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 23, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86–22372 Filed 9–29–86; 4:29 pm]

BILLING CODE 4120-01-M

Public Health Service

Privacy Act of 1974; Addition of Routine Use to Existing Systems of Records

AGENCY: Public Health Service, HHS.

SUMMARY: The Public Health Service (PHS) is proposing to add a new routine use to 91 systems of records, out of a total of 221 PHS systems of records. The new routine use will permit disclosure of individually identified information to the Department of Justice and to tribunals for both prosecution and defense litigation. An existing, more limited litigation routine use permitting disclosure only as necessary to defend the agency, which is contained in many of the 91 systems, will be deleted.

DATES: PHS invites interested parties to submit comments on the proposed new routine use on or before October 31, 1986. The new routine use will become effective 30 days after the date of publication unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please submit comments to: PHS Privacy Act Officer, Office of Organization and Management Systems, Room 17–41, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Comments received will be available for inspection at the above address from 8:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dorothea E. de Zafra, PHS Privacy Act Officer, Office of Organization and Management Systems, Room I7–41, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3917 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) requested in its "Privacy Act Guidance Update" of May 24, 1985, that all Federal agencies add a routine use to the published notices of all of their systems of records which will permit disclosure of information to the Department of Justice *and* to courts and tribunals for *both* prosecution and defense litigation.

PHS has been using a departmentwide standardized litigation routine use, which strictly limits the disclosure of information to the Department of Justice for defense litigation only, in notices of systems where the system manager and his/her legal advisors have determined that an employee or the agency could reasonably be expected to become a defendant in litigation initiated by individuals who are the subject of records in the system: e.g., clinical research and medical records systems. In those few instances where the system manager and his/her legal advisors have determined that the agency may need to disclose information to initiate legal proceedings against a subject individual, e.g., debt management records systems, PHS has been using a second litigation routine use permitting disclosure for prosecution purposes.

PHS has examined its systems of record and proposes to add the new routine use to those administrative systems which currently do not have any litigation routine use: e.g., administrative correspondence systems. PHS also proposes to replace the current, limited defense litigation routine use with the new, expanded litigation routine use in all other administrative systems which do not contain personal medical information: e.g., in scholarships or contracts and grants administration systems. The systems determined to be appropriate number 91 out of the total of 221 systems of records maintained by PHS.

The current defense litigation routine use reads as follows:

"In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected."

The new, expanded litigation routine use which PHS proposes to adopt in accordance with OMB Privacy Act guidance, reads as follows:

"The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected."

PHS has determined that the remaining 130 PHS systems of records which are principally statistical survey or biomedical research systems or systems containing patient medical records, all contain sensitive information which requires either limiting the litigation routine use or omitting altogether any routine use which would permit disclosure for litigation purposes. (In some cases disclosure is prohibited by law.) That is to say, PHS officials have determined either that (1) disclosure of information for litigation under a routine use is not compatible with the purpose of the system, or (2) the addition of the expanded litigation routine use with the implied potential of prosecution could exert a "chilling effort" on the willingness of individuals, such as volunteers in clinical research studies, to provide information to PHS. The published notices of systems in the first category will omit any routine use for litigation purposes; those in the second category will continue to contain the limited routine use permitting disclosure of information to the Department of Justice if this Department should be a defendant in litigation.

The proposed new, expanded routine use will be added to or substituted in the 91 PHS systems of records listed immediately following the signature line below. (The citation immediately following the system name indicates the date the system notice was last published in the **Federal Register**.)

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

Dated: September 24, 1986.

Office of the Assistant Secretary of Health

09–37–0001 Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM, 49 FR 39110, October 3 1984

09–37–0002 PHS Commissioned Corps Personnel Records, HHS/OASH/OM, 48 FR 51748, November 29, 1983

09–37–0005 PHS Commissioned Corps Board Proceedings, HHS/OASH/OM, 48 FR 51752, November 10, 1983

09–37–0006 PHS Commissioned Corps Grievance, Non-Board and Pre-Board Involuntary Retirement/Separation, and Disciplinary Files, HHS/OASH/OM, 48 FR 51755, November 10, 1983

09–37–0008 PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OM, 48 FR 51756, November 10, 1983

09–37–0009 Applicants for National Center for Health Statistics Technical Assistance, HHS/OASH/NCHS, 48 FR 53794 November 29 1983

09–37–0014 Curricula Vitae of Consultants to the National Center for Health Statistics, HHS/OASH/NCHS, 47 FR 45690, October 13, 1982

09–37–0015 National Center for Health Services Research Grants Records System, HHS/OASH/NCHSR, 49 FR 26151, June 26, 1984

09–37–0016 Users of Health Statistics, HHS/OASH/NCHS, 49 FR 22541, May 30, 1984

09–37–0017 Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM, 50 FR 29270, July 18, 1985

Alcohol, Drug Abuse, and Mental Health Administration

09–30–0012 Saint Elizabeths Hospital Pre-Service Education Records, HHS/ADAMHA/NIMH, 48 FR 53807, November 29 1983

09–30–0013 Saint Elizabeths Hospital Training Videotape Records, HHS/ADAMHA/NIMH, 48 FR 53808, November 29, 1983

09–30–0014 Saint Elizabeths Hospital Financial System, HHS/ADAMHA/NIMH, 50 FR 25469, June 19, 1985

09–30–0015 Saint Elizabeths Hospital General Security System, HHS/ADAMHA/NIMH, 48 FR 53810, November 29, 1983

09–30–0016 Saint Elizabeths Hospital Patients, Personal Property Record System, HHS/ADAMHA/NIMH, 48 FR 53811, November 29, 1983

09–30–0017 Saint Elizabeths Hospital Legal Office Record System, HHS/ADAMHA/NIMH, 48 FR 53812, November 29, 1983

09–30–0018 Saint Elizabeths Hospital Area D Community Mental Health Center Citizens Advisory Group Records, HHS/ADAMHA/NIMH, 48 FR 53813, November 29, 1983

09–30–0019 Saint Elizabeths Hospital Court-Ordered Forensic Investigatory Materials File, HHS/ADAMHA/NIMH, 48 FR 53813, November 29, 1983

09–30–0023 Records of Contracts Awarded to Individuals, HHS/ADAMHA/OA, 49 FR 22713, May 31, 1984

09–30–0024 Saint Elizabeths Hospital General Administrative Record System, HHS/ADAMHA/NIMH, 48 FR 53010, November 29, 1983

09–30–0027 Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Fellowships, Clinical Training, Community Services, HHS/ADAMHA/OA, 49 FR 22714, May 31, 1984

09–30–0029 Records of Guest Workers, HHS/ADAMHA/OA, 48 FR 53823, November 29, 1983

09–30–0030 Records of Visiting Fellows, HHS/ADAMHA/OA, 48 FR 53024, November 29, 1983

09–30–0031 Saint Elizabeths Hospital Management Information Reporting System, HHS/ADAMHA/NIMH, 49 FR 22716, May 31, 1984

09–30–0033 Correspondence Files, HHS/ADAMHA/OA 48 FR 53825 November 29, 1983

09–30–0043 Shipment Records of Drugs of Abuse of Authorized Researchers, HHS/ADAMHA/NIDA, 48 FR 53832, November 29, 1983

Centers for Disease Control

09–20–0001 Certified Interpreting Physician File, HHS/CDC/NIOSH, 48 FR 53854, November 29, 1983

09–20–0055 Research/Demonstration, and Training Grants, and Cooperative Agreements Application Files, HHS/CDC/NIOSH, 48 FR 53856, November 29, 1983

09–20–0059 Division of Training Mailing List, HHS/CDC/NIOSH, 48 FR 53857, November 29, 1983

09–20–0112 CDC Exchange Visitor and Guest Researcher Records, HHS/CDC/OPS, 47 FR 45491, October 13, 1982

09–20–0137 Passport File, HHS/CDC/IHPO, 48 FR 53865, November 29, 1983

09–20–0138 Epidemic Intelligence Service Officers Files, HHS/CDC/EPO, 47 FR 45486, October 13, 1982

09–20–0156 Cytotechnologists Proficiency Answer Sheets and Test Results (Medicare), HHS/CDC/LPO, 48 FR 53879, November 29, 1983

09–20–0157 Clinical Laboratory Technologists Proficiency Answer Sheets and Test Results (Medicare) HHS/CDC/LPO, 48 FR 53879, November 29, 1983

09–20–0158 Independent Laboratory Directors Proficiency Answer Sheets and Exam Results (Medicare), HHS/CDC/LPO, 48 FR 53880, November 29, 1983

09–20–0161 Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/CPS, 48 FR 30187, June 30, 1983

National Institutes of Health

09–25–0003 Administration: Authorized Radionuclide Users File, HHS/NIH/ORS, 47 FR 45778, October 13, 1982

09–25–0004 Administration: Registry of Individuals Exposed to Chemical Carcinogens, HHS/NIH/ORS, 47 FR 45777, October 13, 1982

09–25–0005 Administration: Library Circulation and User I.D. File, HHS/NIH/OD, 47 FR 45778, October 13, 1982

09–25–0007 Administration: NIH Safety Shoes and Safety Glasses Issuance Program, HHS/NIH/ORS, 47 FR 45778, October 13, 1982

09–25–0008 Administration: Radiation Workers Monitoring, HHS/NIH/ORS, 48 FR 30760, July 5, 1983

09–25–0010 Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI, 48 FR 30760, July 5, 1983

09–25–0033 International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC, 49 FR 37708, September 25, 1984

09–25–0034 International Activities: Scholars Program, HHS/NIH/FIC, 47 FR 45792, October 13, 1982

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09-25-0035 International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC, 47 FR 45793, October 13, 1982
09-25-0036 Grants: IMPAC (Grant/Contract Information), HHS/NIH/DRG, 48 FR 53848, November 29, 1983
09-25-0054 Administration: Property Accounting, HHS/NIH/ORS, 49 FR 37709, September 25, 1984
09-25-0075 Administration: Principal Investigators Submitting Proposals for Protection from Research Risks, HHS/NIH/OD 49 FR 33710 September 25, 1984
09-25-0078 Administration: Consultant File, HHS/NIH/NHLBI, 49 FR 37711, September 25, 1984
09-25-0087 Administration: Employees and Consultants HHS/NIH/NIAID, 47 FR 45816, October 13, 1982
09-25-0091 Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI, 47 FR 45818, October 13, 1982
09-25-0093 Administration: Authors, Reviewers and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI, 47 FR 45819, October 13, 1982
09-25-0096 Contracts: National Cancer Institute Contract Management System Principal Investigators, Projects Officers and Contract Specialists, HHS/NIH/NCI, 47 FR 45820, Otober 13, 1982
09-25-0102 Administration: Grants Associates Program Working Files, HHS/NIH/DRG, 47 FR 45822 October 13, 1982
09-25-0106 Administration: Executive Secretariat Correspondence Records, HHS/NIH/OD, 47 FR 45824, October 13, 1982
09-25-0108 Personnel: Guest Workers/ Visiting Fellows/ Student Scientists/ Scientists Emeriti, HHS/NIH/DPM, 47 FR 45825, October 13, 1982
09-25-0112 Grants: Research, Research Training Fellowship and Construction Applications and Awards, HHS/NIH/OD, 48 FR 53849, November 29, 1983
09-25-0115 Administration: Curricula Vitae of Consultants and Clinicial Investigators, HHS/NIH/NIAID, 47 FR 45828, October 13, 1982
09-25-0117 International Activities: U.S.-Japan Program Panel Members, HHS/NIH/NIAID, 47 FR 45829, October 13, 1982
09-25-0118 Contracts: Professional Services Contractors, HHS/NIH/NCI, 47 FR 45830, October 13, 1982
09-25-0121 International Activities: Senior International Fellowships Program, HHS/NIH/FIC, 47 FR 45830, October 13, 1982
09-25-0124 Administration: Pharmacology Research Associates, HHS/NIH/NIGMS, 47 FR 45832, October 13, 1982
09-25-0135 Grants: PROPHET System Applicants Research Prospectuses, HHS/NIH/DRR 47 FR 45842, October 13, 1982
09-25-0140 International Activities: Scientific Visitors at the National Institutes of Health, HHS/NIH/FIC, 47 FR 45844, October 13, 1982
09-25-0151 Administration: Alert Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research, HHS/NIH/OD, 48 FR 53851, November 29, 1983

Health Resources and Services Administration

09-15-0002 Records of Patients, Personal Valuables and Monies, HHS/HRSA/BHCDA, 48 FR 53885, November 29, 1983
09-15-0003 Contract Physicians and Consultants, HHS/HRSA/BHCDA, 48 FR 53886, November 29, 1983
09-15-0016 Unofficial Vital Records System, HHS/HRSA/IHS, 48 FR 53891, November 29, 1983
09-15-0022 Accounts Receivable, HHS/HRSA/OA, 48 FR 53897, November 29, 1983
09-15-0026 Medical Fellowships and Educational Loans HHS/HRSA/OA, 48 FR 53898, November 29, 1983
09-15-0027 National Health Service Corps (NHSC) and Indian Health Service (IHS) Pre-Application Recruitment and Provider File, HHS/HRSA/BHCDA, 48 FR 53899, November 29, 1983
09-15-0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BHCDA, 48 FR 53900, November 29, 1983
09-15-0036 Indian Health Service Scholarship Program, HHS/HRSA/IHS, 49 FR 38710, October 1, 1984
09-15-0037 PHS and National Health Service Corps (NHSC) Scholarship Program, HHS/HRSA/BHCDA, 48 FR 53903, November 29, 1983
09-15-0040 Health Professions Student Loan Repayment Program, HHS/HRSA/BHPr, 48 FR 53907, November 29, 1983
09-15-0041 Health Professions Student Loan Cancellation, HHS/HRSA/BHPr, 48 FR 53908, November 29 1983
09-15-0042 Physician Shortage Area Soholarship Program, HHS/HRSA/BHCDA, 48 FR 53909, November 29, 1983
09-15-0043 Cuban Loan Program, HHS/HRSA/OA 48 FR 53910, November 29, 1983
09-15-0045 HRSA Loan Repayment/Debt Management Records System, HHS/HRSA/OA, 49 FR 42837, October 23, 1984
09-15-0046 Health Professions Planning and Evaluation, HHS/HRSA/OA, 40 FR 53913, November 29, 1983
09-15-0050 National Research Service Awards, HHS/HRS/BHPr, 48 FR 53915, November 29, 1983
09-15-0052 Nurse Practitioner Traineeships, HHS/HRSA/BHPr, 48 FR 53917, November 29, 1983

Food and Drug Administration

09-10-0002 Regulated Industry Employee Enforcement Records, HHS/FDA/ACMO, 47 FR 45412, October 13, 1982
09-10-0003 FDA Credential Holder File, HHS/FDA/EDRO 47 FR 45415, October 13, 1982
09-10-0004 Communications (Oral and Written) With the Public, HHS/FDA/ACMO, 47 FR 45415, October 13, 1982
09-10-0005 State Food and Drug Official File, HHS/FDA/EDRO, 47 FR 45416, October 13, 1982
09-10-0007 Science Advisor Research Associate Program (SARAP), HHS/FDA/EDRO, 47 FR 45417, October 13, 1982
09-10-0008 Radiation Protection Program Personnel Monitoring System, HHS/FDA/CDRH, 47 FR 55425, December 9, 1982
09-10-0009 Special Studies and Surveys on FDA-Regulated Products, HHS/FDA/ACMO, 47 FR 55426, December 9, 1982
09-10-0010 Bioresearch Monitoring Information System, HHS/FDA, 47 FR 45419, October 13, 1982
09-10-0011 Certified Retort Operators, HHS/FDA/CFSAN, 47 FR 45420, October 13, 1982
09-10-0013 Employee Conduct Investigative Records, HHS/FDA/ACMO, 47 FR 45422, October 13, 1982
09-10-0015 Blood Donor for Tissue Typing Sera and Cell Analysis and Related Research, HHS/FDA/CDB/OB, 47 FR 45423, October 13, 1982
09-10-0018 Employee Identification Card Information Record, HHS/FDA/ACMO, 47 FR 45425, October 13, 1982

[FR Doc. 86-22154 Filed 9-30-86; 8:45 am]
BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

OMB Circular A-76 Studies and Efficiency Reviews

AGENCY: Department of the Interior.

ACTION: Notice of OMB Circular A-76 studies and efficiency reviews.

SUMMARY: The Department of the Interior plans to conduct OMB Circular A-76 studies and in-house efficiency reviews of the activities shown below. Other activities may be added to this listing and published in the Federal Register later.

ADDRESS: Department of the Interior, Office of Management Analysis, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen M. Stewart at (202) 343-6633.

SUPPLEMENTARY INFORMATION: A-76 studies and efficiency reviews are very detailed and labor intensive. The time required to complete a study or review depends on the size of the activity, its geographic location and dispersion, and its organizational and functional complexity. Invitations for bids or requests for proposals will be published in the Commerce Business Daily when the solicitation stage of an A-76 study is reached. Contracting offices of the Department's major organizational components where A-76 studies are scheduled do not maintain consolidated bidders lists.

A-76 Studies

Office of the Secretary

Headquarters Library Services (DC) (Note: This study will include the General Services Administration headquarters and National Capital Region library services), study start, 11/1/86.

Bureau of Reclamation

Tracy Field Office (CA), Canal O&M, study start, 10/1/86.
Willows Field Office (CA), Canal O&M, study start, 6/1/87.
Grand Coulee Project Office (WA), study start, 9/1/87.

U.S. Geological Survey

National Mapping Division (VA), Photographic Laboratory, study start, 8/15/87.

Efficiency Reviews

Bureau of Reclamation

Lower Colorado Regional Office (NV), Procurement and Contracts Division, review start, 10/1/86.
Missouri Basin Regional Office (MT), Administrative Operations, review start, 10/1/86.
Engineering and Research Center (CO), Water and Land Technical Services, review start, 10/1/86.
Upper Colorado Regional Office (UT), Property and Support Services, review start, 10/1/86.

Richard S. Bari,
Director, Office of Management Analysis.
[FR Doc. 86-22163 Filed 9-30-86; 8:45 am]
BILLING CODE 4310-RK-M

Bureau of Land Management

[AZ-940-06-4220-10; A-21017]

Order Providing for Opening of Public Lands in Apache County, AZ

September 23, 1986.

In an exchange of land madeunder the provisions of the General Exchange Act of March 20, 1922 (42 Stat. 465), as amended by the Act of February 28, 1925 (43 Stat. 1090), and the Federal Land Policy and Management Act of October 21, 1976 (Pub. L. 94-579; 90 Stat. 2743), the following lands have been reconveyed to the United States:

Gila and Salt River Meridian

T. 5 N., R. 31 E.,
sec. 17, Tract B, HES 500
Less and excepting therefrom beginning at Corner No. 9 of said Tract B, HES 500; thence N. 89°46'42" W., (record N. 89°41' W.) along the south line thereof, 3,052.03 feet to the southeast corner of that certain property described in Docket 175, page 174, records of Apache County, Arizona; thence N. 07°28'35" E. (record N. 07°36' E.) along the east line of said property described in Docket 175, page 174, 77.62 feet; thence S. 89°53'15" E., 2,622.14 feet; thence along the arc of a curve to the right, having a radius of 17,288.74 feet, 419.34 feet to the east line of Tract B, HES 500; thence S. 00°19'42" E., (record S. 00°14' E.) along said east line, 77.69 feet to the point of beginning; and

Less and Excepting Therefrom beginning at Corner No. 11 of said Tract B, HES 500, said point also being a 1/16 corner of said sec 17; thence S. 07°36' W., along the west line of Tract B, 944.10 feet to the point of beginning; thence continuning S. 07°36' W., along said line 333.00 feet to Corner No. 10 of said Tract B; thence S. 89°41' E., 298.00 feet along the south line of Tract B to a point; thence N. 07°36' E., 333.00 feet to a point; thence N. 89°41' W., 298.00 feet to the point of beginning; AND

1Less and Excepting Therefrom part of said Tract B, HES 500, commencing at Corner No. 11 of said Tract B, said point also being the southwest corner of the NW¼NW¼ sec. 17; thence S. 07°36' W., along the west line of said Tract B, also being the east line of Luna Lake Village Subdivision, according to Book 1 of Maps, page 55, records of Apache County, Arizona, 649.34 feet, being the True point of beginning: thence continuing S. 07°36' W., along said west line, 294.76 feet to the northwest corner of property described in Docket 175, page 174, records of Apache County, Arizona, thence S. 89°41' E., along the north line of the property described in Docket 175, page 174, 298.00 feet; thence N. 07°36' E. parallel to said west line, 294.76 feet; thence N.89°41' W., 298.00 feet to the west line of Tract B and the True Point of Beginning.

The area described contains 72.93 acres in Apache County.

Upon acceptance of title to such lands, they became part of the Apache National Forest and are subject to all the laws, rules, and regulations applicable thereto.

Inquiries concerning the lands should be addressed to the Forest Supervisor, Apache-Sitgreaves National Forest, South Mountain Ave., P.O. Box 640, Springerville, Arizona 85938.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.
[FR Doc. 86-22177 Filed 9-30-86; 8:45 am]
BILLING CODE 4310-32-M

[AZ-940-06-4220-10; A-21018]

Order Providing for Opening of Public Lands in Gila County, AZ

September 23, 1986.

In an exchange of lands made under the provisions of the General Exchange Act of March 20, 1922 (42 Stat. 465), as amended by the Act of February 28, 1925 (43 Stat. 1090), and the Federal Land Policy and Management Act of October 21, 1976 (Pub. L. 94-579; 90 Stat. 2743), the following lands have been reconveyed to the United States:

Gila and Salt River Meridian

Tps. 4¼ and 5 N., R. 16 E. (unsurveyed),
secs. 16 and 32.

Beginning at Corner No. 1 from which U.S. Location Monument No. 434, of HES No. bears S. 36°13' E., 19 chains distant; thence S. 77°18' W., 11.38 chains to Corner No. 2; thence N. 17°42' E., 56.78 chains to Corner No. 3; thence S. 19°48' E., 27.89 chains to Corner No. 4; thence S. 30°46' W., 31.70 chains to Corner No. 1, the place of beginning.

The area described contains 63.00 acres in Gila County.

Upon acceptance of title to such lands, they became part of the Tonto National Forest and are subject to all the laws, rules, and regulations applicable thereto.

Inquiries concerning the lands should be addressed to the Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, P.O. Box 5348, Phoenix, Arizona 85010.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.
[FR Doc. 85-22178 Filed 9-30-85; 8:45 am]
BILLING CODE 4310-32-M

[WY-920-06-4090-11-6001; W-80276]

Proposed Reinstatement of Terminated Oil and Gas Lease

September 23, 1986.

Pursuant to the provisions of Pub. L. 96-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatemen of oil and gas lease W-80276 for lands in Campbell County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16-2/3 percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-80276 effective January 1, 1986, subject to the original terms and conditions of the lease and the increase rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.
[FR Doc. 85-22784 Filed 9-30-85; 8:45 am]
BILLING CODE 4310-33-M

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[NV-060-4321-02]

Battle Mountain District Advisory Council Meeting in Eureka, NV

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Tuesday, October 28, 1986. The meeting will convene at 9:00 a.m. in the shoshone-Eureka Conference room at the Battle Mountain District Office in Battle Mountain, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Continuation of discussion of wild horse problems
2. Wilderness update and discussion.

The meeting is open to the public. Interested person may make oral statements between 1:00 and 1:30 p.m. on October 28, 1986. If you wish to make an oral statement, please contact Terry L. Plummer by 4:30 p.m. October 21, 1906.

FOR FURTHER INFORMATION CONTACT: Terry L. Plummer, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635-5181.

Dated: September 19, 1986.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

[FR Doc. 86-22158 Filed 9-30-86; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board Scientific Committee; Notice and Agenda of Subcommittee and Task Force Meetings

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A-63, Revised.

Subcommittees of the OCS Advisory Board Scientific Committee will meet November 6-7, 1986, at the Louisiana Universities Marine Consortium, Highway 56, Cocodrie, Louisiana.

The Social and Economics Effects Subcommittee, the Environmental Effects Subcommittee, the Study Design and Information Transfer Subcommittee and the Fisheries Task Froce of the OCS Advisory Board Scientific Committee will meet from 9 a.m. to 5 p.m. on November 6, and from 9 a.m. to 1 p.m. on November 7.

The agenda for the meeting will include the following subjects:

- Review of Fiscal Year 1988 Draft Regional Studies Plans;
- Discussion of Social and Economic Effects of Offshore Oil and Gas Development in the Gulf of Mexico; and
- Evaluation of Major Fisheries/Oil Spill Impact Models.

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come/first-served basis. All inquiries concerning this meeting should be addressed to:

Dr. Don V. Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division (644), Minerals Management Service, U.S. Department of the Interior, 18th & C Streets, NW., Washington, DC 20240; telephone (202) 343-7744.

Dated: September 22, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86-22186 Filed 9-30-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Alaska Region; Subsistence Resource Commission Meeting

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. Review and finalize commission recommendation on trapping.
2. Review status of previous recommendations.
3. Rural determination being made by the State of Alaska.
4. Consideration of other subsistence hunting proposals since last meeting.
5. NPS Wilderness Review process.
6. Status of General Management Plan and Resource Management Plan.
7. Public Comments.

DATES: The meeting of the Wrangell-St. Elias Subsistence Resource Commission will be held at the Park Headquarters in Blennallen, Alaska, Mile 105.5 Richardson Highway, starting at 1:00 p.m. on November 3 and continuing at 7:00 p.m. on November 3 and again at 9:00 a.m. on November 4.

FOR FURTHER INFORMATION CONTACT: Richard Martin, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 29, Glennallen, Alaska 99588.

SUPPLEMENTARY INFORMATION: The Wrangell-St. Elias National Park Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Dated: September 24, 1986.

Boyd Evison

Regional Director, Alaska Region.

[FR Doc. 86-22213 Filed 9-30-86; 8:45 am]

BILLING CODE 1310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in conncection with the investigation No. 332-135 for the annual Synthetic Organic Chemicals report, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

Summary of Proposal:

(1) Number of forms submitted: One
(2) Title of form. Synthetic Organic Chemicals, United States Production and Sales
(3) Type of request: Extension
(4) Frequency of use: Annual
(5) Description of respondents: Firms manufacturing synthetic organic chemicals in the United States
(6) Estimated number of respondents: 752
(7) Estimated total number of hours to complete the forms: 8,272
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the proposed form and supporting documents may be obtained from James A. Emanuel, telephone (202) 523-0334. Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of Comments: Comments should be submitted to OMB within 2 weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the 2 week period of your intent to comment on the proposal. Ms. Picoult's telephone number is (202) 395-7231. Copies of any comments should be provided to Charles Ervin (U.S. International Trade Commission, 701 E Street NW., Washington,DC 20436). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Issued: September 26, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-22242 Filed 9-30-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-320 Through 325 (Final)]

Certain Unfinished Mirrors From Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-320 through 325 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom of unfinished glass mirrors [1] 15 square feet or more in reflecting area, provided for in item 544.54 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before November 24, 1986, and the Commission will make its final injury determinations by January 9, 1987, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rule of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-523-0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as the result of affirmative preliminary determinations by the Department of Commerce that imports of certain unfihished mirrors from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom are being sold in the United States at less that fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on April 1, 1986, on behalf of the National Association of Mirror Manufacturers, Potomac, MD. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 19423, May 29, 1986).

Participation in the investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in these investigations will be placed in the public record on November 10, 1986, pursuant to §207.21 of the Commission's rules (19 CFR 207.21

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on December 2, 1986, at the U.S International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 12, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 17, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 24, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

[1] Mirrors which have not been subjected to any finishing operations such as beveling, etching, edging, or framing.

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Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 9, 1986. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 9, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 24, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22243 Filed 9-30-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 285X)]

Burlington Northern Railroad Co.; Exemption; Abandonment in Larimer County, CO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Burlington Northern Railroad Company from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon its 1.88-mile line of railroad in Larimer County, CO, subject to standard employee protective conditions, and a public use condition.

DATES: This exemption will be effective on October 31, 1986. Petitions to stay must be filed by October 16, 1986, and petitions for reconsideration must be filed by October 27, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-6 (Sub-No. 285X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's Representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan Area), or toll-free (800) 424-5403.

Decided: September 16, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22167 Filed 9-30-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Malco Products, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Malco Products, Inc.*, Civil Action No. C84-1566A, was lodged with the United States District Court for the Northern District of Ohio. The complaint filed by the United States alleged that defendant Malco Products, Inc. ("Malco") violated section 301 of the Clean Water Act, 33 U.S.C. 1311, by discharging pollutants to the Tuscarawas River without a National Pollutant Discharge Elimination System ("NPDES") permit.

The proposed Consent Decree immediately prohibits further discharges of process wastewater or boiler blowdown from the Malco facility. In addition, the decree requires Malco to address any remaining discharges to the Tuscarawas River by: (1) Conducting a detailed study of nature, quantity and sources of any remaining pollutants discharged from the Malco facility; (2) developing and implementing remedial measures to eliminate remaining discharges or to control such discharges through application of best available technology; and (3) requiring Malco to obtain and comply with an NPDES permit in the event that the company decides not to eliminate the remaining discharges altogether.

The proposed decree requires Malco to construct and use a new drum storage area with a roof, an impervious floor and curbing designed to prevent any spilled raw materials and products from entering existing storm drains that discharge to the Tuscarawas River. The decree also requires Malco to develop and implement a Best Management Practices plan consistent with 40 CFR 125.100 *et seq.*

The Department of Justice will receive comments relating to the proposed Consent Decree for a thirty (30) day period from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Malco Products, Inc.*, with the applicable D.J. Reference No. 90-5-1-1-2056 (N.D. Ohio).

The proposed Consent Decree may be examined at the office of the United States Attorney, 1404 East Ninth Street, Suite 600 Cleveland, Ohio 44114 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.40 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-22134 Filed 9-30-86; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action To Enjoin Violation of the Clean Air Act ("CAA"); New York State et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *State of New York; New York State Office of Mental Health; New York State Facilities Development Corporation; and Edward V. Regan, in his capacity as Comptroller, State of New York* (N.D.N.Y.), Civil Action No. 84-CV-1075, was lodged with the United States District Court for the Northern District of New York on August 29, 1986. The Consent Decree establishes a compliance program for the St. Lawrence facility at Ogdensburg, New York owned and operated by the defendants, to bring the facility into compliance with the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*, and the applicable New York State Implementation Plan ("SIP") Part 227.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *State of New York; New York State Office of Mental Health; New York State Facilities Development Corporation; and Edward V. Regan, in his capacity as Comptroller, State of New York*, D.J. Ref. No. 90-5-2-1-706.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of New York, 369 Federal Building, 100 Clinton Street, Syracuse, New York 13260; at the Region II office of the Environmental Protection Agency, Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-22135 Filed 9-30-86; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[86-71]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Task Force on Space Program Goals.

DATE AND TIME: October 16, 1986, 9 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, 400 Maryland Avenue SW., Washinton, DC 20546, Room 7002.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Task Force on Space Program Goals was established under the NASA Advisory Council to counsel NASA on the development of the appropriate space program goals, objectives, and policies for the next 15 to 20 years in the framework of the longer-term goals recommended by the National Commission on Space. The Task Force, chaired by Michael Collins, has a total of 8 members.

The meeting will be closed to the public from 1:15 p.m. to 3 p.m. for a discussion of qualifications of candidates to participate in the Task Force as additional members. Because this planning session will be concerned throughout with matters listed in 5 U.S.C. 552(c)(6), it has been determined that this session should be closed to the public.

Visitors will be admitted to the meeting room up to the capacity, which is approximately 60 persons including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting

Open—except for the closed session as noted in the following agenda.

Agenda

October 16, 1986
9 a.m.—Opening Remarks.
9:15 a.m.—Review of Recommendations of National Commission on Space.
10 a.m.—NASA Briefing on Current Planning Activities.
1:15 p.m.—Task Force Planning Session (closed).
3 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 25, 1986.

[FR Doc. 86-22199 Filed 9-30-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

President's Committee on the Arts and the Humanities; Plenary Meeting XIII

Thursday, October 16, 1986 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Plenary Meeting XIII. This meeting has been scheduled in the Council Room, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

Agenda items on October 16 will include:

- Briefings by the Chairmen of the National Endowment for the Arts and the National Endowment for the Humanities on the highlights of their activities.
- *Nurturing the New.* Willard Butcher, Chairman and CEO, Chase Manhattan Bank, will speak on developing relationships between corporations and emerging organizations.
- *A Look to the Future—The Arts Consortium. Emerging Institutions of Cultural Diversity, L.A.*, Gerald Yoshitomi, Executive Director of Japanese American Cultural and Community Center, will discuss how emerging institutions can collaborate to appeal to foundations.

A progress report on the Networks for Secondary Schools Improvement in the Arts and the Humanities (New Alliances for Secondary Schools) project will be made by Dr. Alberta Arthurs, Director for the Arts and Humanities at the Rockefeller Foundation. This project was developed in cooperation with the President's Committee on the Arts and the Humanities. Model programs are currently underway in Philadelphia, Los

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Angeles, Seattle, Atlanta, St. Louis, St. Paul and Pittsburgh. Dr. Judith Hodgson, Director of the Philadelphia model program and two participating teachers will describe developments in their project.

For further information individuals may call 202/682-5409.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

September 24, 1986.

[FR Doc. 86-22136 Filed 9-30-86; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Humanities; Performance Review Board Revisions

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This revises the notice of membership previously published for the National Endowment for the Humanities' Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Jack A. Crowder Jr., Director of Personnel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c) the National Endowment for the Humanities (NEH) hereby revises the notice of membership published in the **Federal Register** on August 12, 1986, by adding Mr. Donald D. Gibson, Director of the Division of General Programs, to serve as an additional alternate to the Endowment's Senior Executive Service Performance Review Board. This notice also amends the August 12, 1986 notice to limit all appointments to the NEH Performance Review Board to a term of three years from October 1, 1986.

Lynne Cheney,

Chairperson.

[FR Doc. 86-22198 Filed 9-30-86; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978; John L. Bengtson, et al.

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 670 of the Code of Federal Regulations.This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 30, 1986. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specifically Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1986.

The applications received are as follows:

1. Applicant

John L. Bengtson, National Marine Fisheries Service, Seattle, Washington 98115.

Activity for Which Permit Requested

Taking, and Import into the U.S.A. The applicant is conducting a study of the feeding ecology, reproduction, and population dynamics of the pelagic antarctic seals and their role in the antarctic marine ecosystem. The applicant proposes to take the following species and numbers:

Species	Number	
Lobodon sp	500	Capture/release.
Do	600	Sacrifice.
Hydrurga sp	300	Capture/release.
Do	150	Sacrifice.
Leptonychotes sp	250	Capture/release.
Do	20	Sacrifice.
Ommatophoca sp	130	Capture/release.
Do	20	Sacrifice.
Arctocephalus sp	700	Capture/release.
Do	20	Sacrifice.
Mirounga sp	350	Capture/release.
Do	20	Sacrifice.

Location

Antarctic Peninsula vicinity and Weddell Sea.

Dates

1 January 1987—31 December 1988.

2. Applicant

John L. Bengtson, National Marine Fisheries Serivce, Seattle, Washington 98115.

Activity for Which Permit Requested

Enter Specially Protected Area, Enter Site of Special Scientific Interest.

The applicant requests permission to enter Cape Shirreff and Byers Peninsula on Livingston Island to census pinniped and penguin rookeries. A comprehensive census of these populations is being planned for the South Shetland Islands during the 1986-87 austral summer. In order to complete the census, it is necessary to have access to this Specially Protected Area and Site of Special Scientific Interest.

Location

Cape Shirreff—Specially Protected Area and Byers Peninsula—Site of Special Scientific Interest.

Dates

1 December 1986 to 1 May 1988.

3. Applicant

John McWethy, 1717 DeSales Street NW., Washington, DC 20036.

Activity for Which Permit Requested

Enter Specially Protected Areas, Enter Sites of Special Scientific Interest. The applicant is head of an ABC Television News team. He requests access to protected areas accessible form MuMurdo Station. The activity to be unertaekn is phogography of wildlife. No species will be touched or disturbed in any way.

Location

McMurdo Station and vicinity, Antarctica.

Dates

November 17-24, 1986.

4. Applicant

Robert Martin, Room 254, State Capitol Building, Sante Fe, New Mexico 87503.

Activity for Which Permit Requested

Enter Specially Protected Areas, Enter Sites of Special Scientific Interest. The applicant is head of a television news team. He requests access to protected areas accessible from McMurdo Station. The activity to be undertaken is photography of wildlife. No species will be touched or disturbed in any way.

Location

McMurdo Station and vicinity, Antarctica.

Dates

November 10—December 31, 1986.

5. Applicant

Gerald L. Kooyman, University of California, San Diego, La Jolla, California 92093.

Activity for Which Permit Requested

Taking, Enter Site of Special Scientific Interest. The applicant requests permission to take Emperor penguins as part of a study of energetics of resting and foraging. The two sites proposed are alternatives in case it is not possible to conduct work at Cape Washington (covered by a separate Antarctic Conservation Act permit). Up to 75 adult birds, 20 chicks, and 10 eggs would be taken in order to attach instruments to them. Blood samples would be taken from up to 35 birds.

Location

Cape Crozier—site of Special Scientific Interest or Dumont d'Urville Station.

Dates

November 1986—February 1987.

Authority to publish this notice has been delegated by the Director of the National Science Foundation.

A.N. Fowler,

Acting Director, Division of Polar Programs.

[FR Doc. 86-22180 Filed 9-30-86; 8:45 am]

BILLING CODE 7555-01-M

Permit Applications Received Under the Antarctic Conservation Act of 1978; Stephen Green et al.

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 3, 1986. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1986.

The applications received are as follows:

1. Applicant

Stephen Green, Sacramento Bee, P.O. Box 15779, Sacramento, California 95852.

Activity for Which Permit Requested

Enter Specially Protected Areas and Enter Sites of Special Scientific Interest. The applicant requests permission to enter protected areas in the McMurdo Station area to take photographs of wildlife. The photographs will accompany and illustrate news articles informing the general public of activities related to the U.S. Antarctic Program. No disturbance of wildlife is anticipated.

Location

McMurdo Station area, Antarctica.

Dates

November 10-17, 1986.

2. Applicant

Ronald Kuntz, UPI Newspictures, 401 Euclid Avenue, Cleveland, Ohio 44114.

Activity for Which Permit Requested

Enter Specially Protected Areas and Enter Sites of Special Scientific Interest. The applicant requests permission to enter protected areas in McMurdo Station area to take photographs of wildlife. The photographs will accompany and illustrate news articles informing the general public of activities related to the U.S. Antarctic Program. No disturbance of wildlife is anticipated.

Location

McMurdo Station area, Antarctica.

Dates

November 10-17, 1986.

3. Applicant

David Lore, The Columbus Dispatch, 34 South Third Street, Columbus, Ohio 43216.

Activity for Which Permit Requested

Enter Specially Protected Areas and Enter Sites of Special Scientific Interest. The applicant requests permission to enter protected areas in the McMurdo Station area to take photographs of wildlife. The photographs will accompany and illustrate news articles informing the general public of activities related to the U.S. Antarctic Program. No disturbance of wildlife is anticipated.

Location

McMurdo Station area, Antarctica.

Dates

November 10-17, 1986.

Authority to publish this notice has been delegated by the Director of the National Science Foundation.

A.N. Fowler,

Acting Director, Division of Polar Programs.

[FR Doc. 86-22179 Filed 9-30-86; 8:45 am]

BILLING CODE 7555-01-M

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OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), this notice announces a proposed information collection from the public. RI Form 20–41, Application to Elect Reduced Annuity With Survivor Benefit for a Former Spouse, was developed by the Office of Personnel Management for use by eligible annuitants to provide a survivor annuity benefit to eligible former spouses under the spouse equity provisions of Pub. L. 98–615 as amended by Pub. L. 99–251. For copies of this proposal call James M. Farron, Agency Clearance Officer, on (202) 632–7714.

ADDRESSES: Send or deliver comments within 10 working days from the date of publication to

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86–22162 Filed 9–30–86; 8:45 am]

BILLING CODE 6325–01–M

Committee on Executive, Legislative, and Judicial Salaries; Meeting

The Committee on Executive, Legislative, and Judicial Salaries will meet on Thursday, October 2, 1986, from 3:30 to 5:30 p.m. at 734 Jackson Place, NW., Washington, DC 20006. This will be an open organizational meeting with background briefings. Due to the Committee's interest in beginning work at the earliest possible date from appointment, it was not feasible to postpone the meeting or to give earlier notice.

For further information, contact Patsy Semple at (202) 275–6834.

Constance Horner,

Director, Office of Personnel Management.

[FR Doc. 86–22421 Filed 9–30–86; 11:38 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; New System of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of new systems of records.

SUMMARY: The Railroad Retirement Board proposes to establish five new systems of records subject to the Privacy Act. The systems notices for these new systems of records are published below.

DATES: These new systems of records, with the exception of the proposed routine uses, will become effective as proposed without further notice in 60 calendar days from the date of this publication unless OMB approves the RRB request for a waiver of the 60-day advanced notice requirement for new or altered system reports, in which case the systems, with the exception of the routine uses, will become effective as of the date the waiver is granted. If the waiver is granted, the routine uses will be effective not earlier than 30 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination. If the waiver is not granted, the routine uses will become effective 60 days from the date of this publication unless comments are received which would result in a contrary determination.

ADDRESS: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, Telephone 312–751–4548.

SUPPLEMENTARY INFORMATION: After a comprehensive review of records maintained on RRB employees, and after consultation with the Office of Personnel Management, we determined that the following groups of records constitute systems of records under the Privacy Act: Employee Test Score Files, Employee Tuition Reimbursement Files, Personnel Security Files, Motor Vehicle Operator Records, and Employee Identification Card Files (Building Passes). These groups of records had not been previously published as agency systems in the **Federal Register** and are not covered under any other agency's government-wide system of records.

Because such systems are not proposed new systems but rather existing systems determined to be such but still requiring notice in the **Federal Register** and submission of a new/altered system report, we have requested the Office of Management and Budget to waive the 60-day comment period.

On September 24, 1986, the Railroad Retirement Board filed a new system report for these systems with the Speaker of the House of Representatives, the President of the Senate, and the Office of Management and Budget. This was done to comply with Section 3 of the Privacy Act of 1974 and OMB Circular No. A–130, Appendix III.

Dated: September 24, 1986.

By the Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB–44

SYSTEM NAME:

Employee Test Score File.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

All Railroad Retirement Board employees who have taken one or more tests in voluntary competition for posted positions under the Board's Merit Promotion Plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, social security account number, test score, type of test taken, date test taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 335.103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to the Office of Personnel Management in carrying out its functions.

b. Records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

d. Disclosure may be made to the Office of the President from the record of an individual in response to an inquiry from the Office of the President made at the request of that individual.

e. In the event of litigation where one of the parties is (a) the Board, any component of the Board, or any employee of the Board in his or her official capacity; (b) the United States where the Board determines that the claim, if successful, is likely to directly affect the operations of the Board or any of its components; or (c) any Board employee in his or her individual capacity where the Justice Department has agreed to represent such employees, the Board may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, word processing diskettes.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Records are stored in locked file cabinets in a secure building.

RETENTION AND DISPOSAL:

Retention period and disposal instructions have not yet been officially established.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

Employees who have taken the tests, bureau of personnel.

RRB–45

SYSTEM NAME:

Employee Tuition Reimbursement File.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Railroad Retirement Board employees who have applied for tuition reimbursement for educational courses taken pursuant to an agreement between them and the agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name; copies of memoranda written by requesting reimbursement, and approval actions which include the title of the course(s) taken; the school at which it was taken; the final grade, the tuition cost and the employee's written evaluation on the training received.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4103 of Title 5, United States Code and Federal Personnel Manual 410 section 1–l0a (11).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to the Office of Personnel Management in carrying out its functions.

b. Records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

d. Disclosure may be made to the Office of the President from the record of an individual in response to an inquiry from the Office of the President made at the request of that individual.

e. In the event of litigation where one of the parties is (a) the Board, any component of the Board, or any employee of the Board in his or her official capacity; (b) the United States where the Board determines that the claim, if successful, is likely to directly affect the operations of the Board or any of its components; or (c) any Board employee in his or her individual capacity where the Justice Department has agreed to represent such employees, the Board may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

f. In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, or regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders.

RETRIEVABILITY:

Name of employee.

SAFEGUARDS:

Kept in file cabinets in secured building with access limited to authorized personnel.

RETENTION AND DISPOSAL:

The folder and its contents are destroyed within 1 year after the employee leaves the agency.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager

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identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

Employees who request tuition reimbursement; school at which courses were taken.

RRB–46

SYSTEM NAME:

Personnel Security Files—RRB.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Railroad Retirement Board employees and individuals being considered for possible employment by the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of actions taken by the Railroad Retirement Board in a personnel security investigation. If the action is favorable, the information will include identifying information and the action taken; if the action is unfavorable, the information will include the basis of the action which may be a summary of, or a selection, of information contained in an OPM investigation report. Information in an OPM investigation report may include: Date and place of birth, marital status, dates and places of residence, education, information on treatment for a mental condition, dates and places of employment, foreign countries visited, membership in organizations, birth date and place of birth of relatives, arrest records, prior employment reports, dates and levels of clearances, and names of agencies and dates when, and reasons why, they were provided clearance information on Board employees.

Note.—This system of records does *not* include the OPM investigation report itself, even though it is in possession of the Railroad Retirement Board. The report is covered under system of records OPM Central–8. Access to the report is governed by OPM.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450 and OMB Circular A–130 dated December 15, 1985.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to the Office of Personnel Management in carrying out its functions.

b. Records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

d. Disclosure may be made to the Office of the President from the record of an individual in response to an inquiry from the Office of the President made at the request of that individual.

e. In the event of litigation where one of the parties is (a) the Board, any component of the Board, or any employee of the Board in his or her official capacity; (b) the United States where the Board determines that the claim, if successful, is likely to directly affect the operations of the Board or any of its components; or (c) any Board employee in his or her individual capacity where the Justice Department has agreed to represent such employees, the Board may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

f. In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Name.

SAFEGUARDS:

The records are kept in a lockable file cabinet, the combination of which is known only by the security officer and that officer's secretary. Retention and disposal: Permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Security Officer, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

The individual to whom the information applies, the Railroad Retirement Board, the Office of Personnel Management, the FBI and other law enforcement agencies, and other third parties.

RRB–47

SYSTEM NAME:

Motor Vehicle Operator Records.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Board employees who are required to operate motor vehicles regularly or incidentally in carrying out their official duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

The RRB Motor Vehicle Operator Records System consists of a variety of records related to the issuance of a Government Motor Vehicle Operator's permit. In addition to the name of the employee, the system includes information about the employee's birthplace, SSN, employing organization, number of years driven, type of vehicles operated, current driver's license number, the state issuing driver's license, date license expires, restrictions of state license, sex, date of birth, color of hair, color of eyes, weight, height, record of traffic violations, and record of accidents. These records also include expiration dates of Motor Vehicle Operator permit, any limitations imposed on its use and the results of the annual review of each driving record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 471.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Information may be disclosed to the Office of Personnel Management in carrying out its functions.

b. Records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

d. Disclosure may be made to the Office of the President from the record of an individual in response to an inquiry from the Office of the President made at the request of that individual.

e. In the event of litigation where one of the parties is (a) the Board, any component of the Board, or any employee of the Board in his or her official capacity; (b) the United States where the Board determines that the claim, if successful, is likely to directly affect the operations of the Board or any of its components; or (c) any Board employee in his or her individual capacity where the Justice Department has agreed to represent such employees, the Board may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

f. In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, or regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Access to and use of these records are limited to personnel whose official duties require such access and use. Records are maintained in a secure building.

RETENTION AND DISPOSAL:

Records are retained for 3 years after the individual's government motor vehicle operator's permit expires, or the individual leaves the Board, and are then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Supply and Service, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's records should be in writing addressed to the System Manager identified above, including full name and social security number of the individual. Before any information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained: (1) From information supplied by the individual, or (2) derived from information supplied by the individual, or (3) from information supplied by officials of the Board.

RRB–48

SYSTEM NAME:

Employee Identification Card Files (Building Passes).

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

All headquarters Railroad Retirement Board employees. Non-Railroad Retirement Board employees who require continuous access to the Board's headquarters building (e.g., employees of vendors and contractors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, color code for type of pass.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property Management Regulations, 41 CFR 101–20.301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal use only.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper.

RETRIEVABILITY:

Name. Identification cards are used for admission to the headquarters building; the application forms verify prior issuance in the event of loss or theft of card.

SAFEGUARDS:

Records are maintained in areas not accessible to the public and are not permitted to be removed from headquarters without authorization.

RETENTION AND DISPOSAL:

Application forms are retained until the person ceases to be employed by the Board at its headquarters office, or in the case of non-Railroad Retirement employees, until the building pass is withdrawn.

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SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

Individuals to whom building passes are issued.

[FR Doc. 86-22137 Filed 9-30-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23639; File No. SR-PSDTC-86-08]

Self-Regulatory Organizations; Pacific Securities Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change

Pacific Securities Depository Trust Company ("PSDTC"), on September 16, 1986, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"). The Commission is publishing this notice to solicit comments on the rule change.

PSDTC's proposed rule change would implement changes to improve the bookentry movement of issues between depositories. An interdepository subcommittee has agreed to introduce the changes in two phases. The first (or Interim) phase would implement the following changes:

- *Extension of Delivery Hours*—Cutoffs for original delivery orders will be extended from 8:00 am PST to 8:30 am PST and reclaims from 9:30 am PST to 10:45 am PST.
- *Enhancement of Record Formats*—The transmission record for interface movements has been expanded to include more information for each delivery and reclaim. Prior night deliveries from the Depository Trust Company ("DTC") will also be reported on this expanded record format. Furthermore, a standard list of reason codes will describe why a delivery reclaim is occurring.
- *Upgrading of Interdepository Communications*—Transmission of interdepository deliveries will be done over a dedicated line rather than the less dependable dial-up access.

The Interim Phase is the first step toward the establishment of more effective transmission processing between depositories. The proposed rule change would lead toward the unification of delivery systems and provide participants fair access, regardless of location.

PSDTC states that the proposed rule change is intended to promote the prompt and accurate clearance and settlement of securities transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule change at any time within 60 days of filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comments within 21 days after this Notice is published in the **Federal Register**. Please refer to File No. SR-PSDTC-86-08, and file six copies of your comments with the Secretary of the Commission, 450 Fifth St., NW., Washington, DC 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available for inspection at the Commission's Public Reference Room at the principal offices of PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 24, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22205 Filed 9-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23642; File No. SR-NASD-86-25]

Self-Regulatory Organizations; Filing and Order Granting Immediate Effectiveness to Proposed Rule Change; National Association of Securities Dealers, Inc. Relating to NASD Service Charges for Processing Installment Payments of Monetary Penalties

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed Section 11 of Schedule A establishes a service charge to be levied on all members or persons associated with a member who file a request with and are approved by the Corporation to pay on an installment basis monetary penalties imposed pursuant to Article V, section 1 of the Corporation's Rules of Fair Practice. The service charge for processing each approved installment payment request shall be an amount equal to 10% of the monetary penalty imposed. The service charge shall be due and payable in full with the first monthly payment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed section 11 of Schedule A establishes a service charge to be levied on all members or persons associated with a member who file a request with and are approved by the Corporation to pay on an installment basis monetary penalties imposed pursuant to Article V, section 1 of the Corporation's Rules of Fair Practice.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule changes contained in this filing.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act in that it affects charges imposed by the Corporation exclusively upon its members or persons associated with its members.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of section 15A(b)(5) and the rules and regulations thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 22, 1986.

It is therefore ordered, pursuant to section 19(b)(3) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3 (a)(12).

Dated: September 24, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22202 Filed 9-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23629; File No. SR-NSCC-86-11]

Self-Regulatory Organizations; Proposed Rule Change by National Securities Clearing Corp., Relating to a Statement of Policy by National Securities Clearing Corporation ("NSCC") Deemed To Be a Rule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 15, 1986 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is attached as Exhibit 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow Participants in the Automated Customer Account Transfer ("ACAT") service to submit transfer initiation requests in automated format as an alternative to the current method available of submitting the request in paper format.

Because the Receiving Member will be initiating the request by automated data format, the rule is also being modified to provide that the Receiving Member may, nonetheless, avail itself of NSCC's facilities in order to provide to the Delivering Member any physical documentation which the Delivering Member may need to act upon the request.

Since the proposed rule change will enable Participants to timely and efficiently request on an automated basis the transfer of securities accounts of their customers, the proposed rule change is consistent with the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments on the proposed rule change have been solicited or received although NSCC has informed Participants by Important Notice dated July 2, 1986 of NSCC's ability to receive Transfer Initiation Requests in automated format. If any comments are received, they will be forwarded to the Commission.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 22, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 22, 1986.

Jonathan G. Katz,

Secretary.

Exhibit 1.

(Italic indicates addition; [brackets] indicate deletion.)

Automated Customer Account Transfer Service

Rule 50.

* * * * *

SEC. 2. A Member to whom a customer's securities account is to be transferred (hereinafter referred to as the "Receiving Member") may initiate the procedure by submitting to the Corporation, within such time frame as established by the Corporation from time to time, *either:*

A. A completed and signed Transfer Initiation Request form as established by the Corporation from time to time and any additional documentation determined by the Member to be needed in order to transfer the account from the Member who currently has the account (hereinafter referred to as the "Delivering Member"); *or*

B. A transfer initiation request in such automated format as the Corporation may establish from time to time.

SEC. 3. If a transfer request is initiated by submitting a Transfer Initiation Request form to the Corporation, upon receipt of [a] *the* Transfer Initiation Request form, the Corporation will retain one copy, stamp one copy and make it immediately available to the Receiving Member's representative who submitted the form and, subject to any rights the Corporation may have as provided in these Rules generally and as specifically provided below [in Section 4 of this Rule], make the original Transfer Initiation Request form available to the Delivering Member to whom it is addressed at the Corporation's facilities. Each Delivering Member shall send to the Corporation, at frequent intervals and in any event not later than the time on business days from time to time specified by the Corporation, a messenger authorized to pick up such Transfer Initiation Request forms.

[SEC. 4.] The Corporation will review the Transfer Initiation Request form for such information which the Corporation determines from time to time to be necessary. If such form does not contain the information required by the Corporation, the Corporation will return the original Transfer Initiation Request form to the Receiving Member by making it available to the Receiving Member at the Corporation's facilities. The Corporation will not be responsible for the completeness or accuracy of any information contained on the Transfer Initiation Request form and the Corporation will not verify that it has been signed by the Receiving Member's customer. Further, the Corporation assumes no responsibility for the completeness or accuracy of any documentation necessary for the Delivering Member to transfer the account. The Corporation shall only be responsible to make the Transfer Initiation Request form available to the Delivering Member to whom it is addressed or to return it to the Receiving Member; *or*

SEC. 4. If a transfer request is initiated in automated form, the Corporation will review the transfer initiation request received for such data which the Corporation determines from time to time to be necessary. Notwithstanding the foregoing, the Corporation will not be responsible for the completeness or accuracy of any information contained in the transfer initiation request. If the request does not contain the required data, the Corporation will reject the request. If the Corporation rejects the request, the Receiving Member must reinitiate the request as if it had never been previously submitted. The Receiving Member may submit, through the facilities of the Corporation, a signed Transfer Initiation Request form and such other documentation as the Delivering Member requires to transfer the account, and any such delivery shall be made pursuant to the procedures of the Corporation as the Corporation may provide from time to time. The Corporation assumes no responsibility for the completeness or accuracy of any such form or documentation submitted through the facilities of the Corporation or otherwise.

SEC. 5. Each day the Corporation will produce a report, in such form as determined by the Corporation from time to time, indicating customer account transfer requests received by the Corporation that day. On a daily basis, Members must compare the list of customer account transfer requests as reported by the Corporation that were initiated that day with any Transfer Initiation Request forms delivered to or received from the Corporation *or from another Member.* Any discrepancies between the report and Transfer Initiation Request forms received or delivered must be immediately reported to the Corporation. To the extent necessary or appropriate, the Corporation will cause an adjustment to be made to such report within such time as the Corporation determines to be necessary.

* * * * *

[FR Doc. 86-22203 Filed 9-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23641; File No. SR-NSCC-86-10]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corp., Relating to an Amendment to National Securities Clearing Corporation's ("NSCC") Rules and Procedures Revising the Fee Structure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 29, 1986, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amend NSCC's SCC Division Rules and Procedures by revising the Fee Structure as follows:

National Securities Clearing Corporation Fee Structure

* * * * *

V. Pass-Through and Other Fees

* * * * *

B. Special Service Fees

11. Stock loan rebate payment and collection service $.50 per rebate per side

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In rule filing NSCC 86-08, NSCC established the authority to provide and the procedures for the Stock Loan Rebate and Collection Service (the "Service"). The purpose of the proposed rule change is to adopt the fee that NSCC will charge Participants who utilize the Service.

The proposed change to NSCC's Fee Structure is consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act"), as amended, and the rules and regulations thereunder applicable to a self-regulatory organization in that it allows for the equitable allocation of fees among NSCC Participants. Inasmuch as the proposed rule change relates only to NSCC's Fee Structure, it does not affect the safeguarding of securities and funds in NSCC's custody or control for which it is responsible.

B. Self-Regulatory Organization's Statement on Comments on the Burden on Competition

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, and Others

No comments on the proposed rule change have been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 22, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 24, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22204 Filed 9-30-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject To Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund twenty-five presently existent Small Business Development Centers (SBDC's) on January 1, 1987. Currently, there are 45 SBDC's operating in the SBDC program. The following SBDC's are intended to be refunded, subject to the availability of funds: Arkansas; the District of Columbia; Florida; Georgia; Idaho; Illinois; Indiana; Kansas; Maine; Minnesota; Nebraska; Nevada; New Hampshire; New Jersey; North Carolina; Oklahoma; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Tennessee, Utah; Washington; and Wisconsin. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDC's to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through December 1, 1986.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of twenty-five presently existent Small Business Development Centers (SBDC's) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the expected date of refunding of these SBDC's. Relevant information identifying these SBDC's and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC. 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 60 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 60-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to

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refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives:

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours of the host institution, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

Dated: September 25, 1986.

Charles L. Heatherly,

Acting Administrator.

Addresses of Relevant SBDC Directors

Mr. Paul McGinnis, Arkansas SBDC State Director, University of Arkansas, 5th Floor Libarary, Room 512, 33rd and University, Little Rock, AR 72204, (501) 371–5381

Ms. Nacy Flake, District of Columbia SBDC Director, Howard University, 6th and Fairmont St., NW., Washington, DC 20059, (202) 636–5150

Mr. Gregory Higgins, Florida SBDC State Director, University of West Florida, 627 University Office Boulevard, Pensacola, FL 32504, (904) 474–3016

Dr. Frank Hoy, Georgia SBDC State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (404) 542–5760

Mr. Ronald Hall, Idaho SBDC State Director, Boise State University, 1910 University Drive, Boise, ID 83725, (208) 385–1640

Mr. Jeff Mitchell, Illinois SBDC State Director, Dept. of Commerce and Community Affairs, Adams Street, Springfield, IL 62701, Morrill Hall, (217) 785–6267

Mr. Randy Meadows, Indiana SBDC State Director, Indiana Economic Development Council, One North Capitol, Suite 200, Indianapolis, IN 46204, (317) 634–6407

Ms. Susan, Osborne-Howes, Kansas SBDC State Director, Wichita State University, Campus Box 48, 021 Clinton Hall, Wichita, KS 67208, (316) 689–3193

Mr. Warren Purdy, Maine SBDC State Director, University of Southern Maine, 246 Deering Avenue, Portland, ME 04102, (207) 780–4423

Mr. Jerry Cartwright, Minnesota SBDC State Director, College of St. Thomas, 1107 Haxeltine Gates Blvd., Chaska, MN 55318, (612) 448–8610

Mr. Robert Bernier, Nebraska SBDC Director, University of Nebraska at Omaha, Peter Kiewit Center, Omaha, NE 68182, (402) 554–2521

Mr. Samuel Males, Nevada SBDC State Director, University of Nevada in Reno, College of Business 620 East Administration, Reno, NV 89557–0016, (702) 784–1717

Mr. Craig Seymour, New Hampshire SBDC State Director, University of New Hampshire, McConnell Hall, Durham, NH 03824, (603) 862–3558

Ms. Janet Holloway, Acting New Jersey SBDC State Director, Rutgers University, Ackerson Hall—3rd Floor, 180 University Street, Newark, NJ 07102, (201) 648–5950

Mr. Scott R. Daugerty, North Carolina SBDC State Director, University of North Carolina, 820 Clay Street, Raleigh, NC 27605, (919) 733–4643

Mr. Lloyd B. Miller, Oklahoma SBDC State Director, Southeastern Oklahoma State University Station A, Box 4194, Durant, OK 74701, (405) 924–0277

Mr. Sandy Cutler, Oregon SBDC State Director, Lane Community College, Downtown Center, 1059 Willamette Street, Eugene, OR 97401, (503) 726–2250

Ms. Susan Garber, Pennsylvania SBDC State Director, University of Pennsylvania, The Wharton School, 3201 Steinberg-Dietrich Hall/CC, Philadelphia, PA 19104, (215) 898–1219

Mr. Douglas Jobling, Rhode Island SBDC State Director, Bryant College, Smithfield, RI 02917, (401) 232–6000

Mr. W.F. Littlejohn, South Carolina SBDC State Director, University of South Carolina, College of Business Administration, Columbia, SC 29208, (803) 777–4907

Mr. Donald Greenfield, South Dakota SBDC State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677–5272

Dr. Leonard Rosser, Tennessee SBDC State Director, Memphis State University, Fogelman College of Business and Economics, Memphis, TN 38152, (901) 454–2500

Mr. Kumen Davis, Utah SBDC State Director, University of Utah, 660 South East—Suite 418, Salt Lake City, UT 84111, (801) 581–7905

Mr. Lyle M. Anderson, Washington SBDC State Director, Washington State University, College of Business and Economics, Pullman, WA 99164, (509) 335–1576

Ms. Dolores H. Niles, Wisconsin SBDC State Director, University of Wisconsin, 602 State Street, Second Floor, Madison, WI 53703, (608) 263–7794

[FR Doc. 86–22239 Filed 9–30–86; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86–9–73]

Fitness Determination of Iowa Airways, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination; order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Iowa Airways, Inc., fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses

All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, P–47, Department of Transportation, 400 7th Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 16, 1986.

FOR FURTHER INFORMATION CONTACT: Kathy A. Lusby, Special Authorities Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (202) 366–2337.

Dated: September 25, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–22197 Filed 9–30–86; 8:45 am]

BILLING CODE 4910–62–M

[Order 86–9–69; Docket 40345]

Proposed Revocation of Certificate of Airpac, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the the certificate of Airpac, Inc., issued under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than October 16, 1986.

ADDRESSES: Responses should be filed in Docket 40345 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, P–47, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: September 25, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–22196 Filed 9–30–86; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Intent to Prepare Environmental Impact Statement; Bothell, King County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a potential new road

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project affecting State Route 522. The project is the Riverside Parkway, a bypass of the downtown Bothell area, in King County, Washington.

FOR FURTHER INFORMATION CONTACT: Pat O'Neil, Federal Highway Administration, Evergreen Plaza, Suite 501, 711 South Capitol Way, Olympia, Washington 98501, Telephone: (206) 753-2120.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT) and the City of Bothell, Department of Community Development, will prepare an environmental impact statement (EIS) on a potential new road project affecting State Route 522. The 1.2 mile Riverside Parkway is a proposed new road currently under study by the City of Bothell. The road would be a landscaped, low-speed parkway which would serve as a through-traffic bypass around downtown Bothell. The need for the project is expressed in a 1984 study by the Urban Land Institute, as follows:

"Clearly, the single-most significant transportation improvement before the City of Bothell is the proposed bypass . . . In the view of the panel, the future of downtown, and its combination with the capture of the recreational, visual, and development potential of the areas along the Sammamish River, cannot be achieved without the elimination of the through traffic on Bothell Way."

The road would connect State route 522 at the Wayne Curve, carry traffic across the Sammamish River south of downtown, and return traffic to SR-522 by again crossing the river at Woodinville Drive. The Riverside Parkway is the key capital improvement of the City of Bothell's Transportation Improvement Plan (adopted 1984). The Riverside Comprehensive Plan, a 1985 update to Bothell's 1971 Comprehensive Plan, directed the proposed Riverside Parkway design to be as compatible with the existing and proposed land uses as possible, including the parkland and Sammamish River Trail.

Alternatives to the proposed Riverside Parkway are limited due to constraints imposed by the street system, area geography, and the heavy through-traffic use of SR-522. As a result, four alternatives have been identified: (1) No action, (2) An alignment which closely follows the Burlington Northern Railroad right-of-way, (3) The proposed Riverside Parkway, as identified in the City's adopted Transportation Improvement Plan, and (4) Upgrading the existing SR-522.

Prior to the decision to make this EIS a cooperative effort between FHWA, WSDOT, and Bothell, several meetings were conducted between September 1985 and March 1986. This included a public briefing, a public scoping meeting, an agency scoping meeting, and a Bothell City Council public hearing. Input from all of these meetings will be considered in the EIS process. In addition, more community briefings are planned, as well as a formal public hearing during the public review period for the draft EIS. A mailing list has been established with Federal, State, and local agencies, local citizens, and the affected property owners. Public notice will be given as to the time and place of the public hearing. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding state and local clearinghouse review of program)

Issued on: September 9, 1986.

Pat O'Neil,

Washington Division, Olympia, Washington.

[FR Doc. 86-22181 Filed 9-30-86 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 30-86]

Treasury Notes of Series AE-1988

Washington, September 24, 1986.

The Secretary announced on September 23, 1986, that the interest rate on the notes designated Series AE-1988, described in Department Circular—Public Debt Series—No. 30-86 dated September 17, 1986, will be 6⅝ percent. Interest on the notes will be payable at the rate of 6⅝ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-22138 Filed 9-30-86; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 31-86]

Treasury Notes of Series Q-1990

Washington, September 25, 1986.

The Secretary announced on September 24, 1986, that the interest rate on the notes designated Series Q-1990, described in Department Circular—Public Debt Series—No. 31-86 dated September 17, 1986, will be 6¾ percent. Interest on the notes will be payable at the rate of 6¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-22139 Filed 9-30-86; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 190
Wednesday, October 1, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 3, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-22306 Filed 9-29-86; 2:23 pm]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 10, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 22307 Filed 9-29-86; 2:23 pm]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, October 15, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed amendment to Rule 1.46—Application and Closing Out to Offsetting Long and Short Positions.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-22308 Filed 9-29-86; 2:23 pm]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Wednesday, October 15, 1986.

PLACE: 2033 K. Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-22309 Filed 9-29-86; 2:23 pm]

BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Wednesday, October 17, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-22310 Filed 9-29-86; 2:23 pm]

BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 21, 1986.

PLACE: 2033 K Street, NW., Washington, DC., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Board of Trade for designation as a contract market in Soybean Meal Options

Application of the Chicago Board of Trade for designation as a contract market in Soybean Oil Options

Application of the Commodity Exchange, Inc., for designation as a contract market in Grade 1 Copper futures

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR. Doc. 86-22311 Filed 9-29-86; 2:23 pm]

BILLING CODE 6351-01-M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, October 21, 1986.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR. Doc. 86-22312 Filed 9-29-86; 2:23 pm]

BILLING CODE 6351-01-M

8

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 24, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Sureillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-22313 Filed 9-29-86; 2:23 pm]

BILLING CODE 6351-01-M

9

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 31, 1986.

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PLACE: 2033 K Street, NW, Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR. Doc. 86–22314 Filed 9–29–86; 2:23 pm]

BILLING CODE 6351–01–M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:55 p.m. on Thursday, September 25, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Home State Bank, La Crosse, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, September 25, 1986; (2) accept the bid for the transaction submitted by Farmers Bank and Trust, National Association, Albert, Kansas; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchese and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. Wiliiam Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less that seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections(c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 2:15 p.m., and at 5:18 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Heritage National Bank, Richardson, Texas, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, September 25, 1986; (2) accepted the bid for the transaction submitted by Brookhollow National Bank, Richardson, Texas, a newly-chartered national bank; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In reconvening the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 26, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–22287 Filed 9–29–86; 10:42 am]

BILLING CODE 6714–01–M

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NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 29 and October 6, 13 and 20 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 29

Thursday, October 2

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Options for Response to Presiding Officer's Recommendation that Formal Hearing be Convened for Sequoyah Fuels Corporation UF6 to UF4 Conversion Facility (Tentative)

Week of October 6—Tentative

Thursday, October 9

9:30 a.m.
Briefing on Advanced Reactor Designs (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 13—Tentative

Thursday, October 16

2:00 pm.

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, October 17

10:00 a.m.
Briefing on Status of Fort St. Vrain (Public Meeting)

Week of October 20—Tentative

Thursday, October 23

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION:

Affirmation of "Governor Cuomo's May 15 Request for Termination of Shoreham Proceeding" and "Proposed Order Terminating NFS–Erwin Proceeding" (Public Meeting) was held on September 25.

Briefing on Status of Rancho Seco (Public Meeting) scheduled for October 16 was postponed.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

September 24, 1986.

[FR Doc. 86–22241 Filed 9–26–86; 5:05 pm]

BILLING CODE 7590–01–M

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UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, October 2, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
(Certain electronic wall stud finders (Docket Number 1341)).
5. Inv. No. 731–TA–341/346 (P) (Tapered roller bearings from Hungary, Italy, Japan, the People's Republic of China, Romania, and Yugoslavia)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

September 23, 1986.

[FR Doc. 86–22240 Filed 9–26–86; 5:04 pm]

BILLING CODE 7020–02–M

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RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 8, 1986, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 Rush Street, Chicago, Illinois, 60611. The agenda for the meeting follows:

(1) Proposed Changes in the RUIA Regulations
(2) Board Order 75–3
(3) Final Rule Regulation on Primary Insurance Amount Determinations

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 387–4920.

Dated: September 26, 1986.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86–22328 Filed 9–29–86; 3:51 pm]

BILLING CODE 7905–01–M

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federal register

Wednesday
October 1, 1986

Part II

United States Sentencing Commission

Preliminary Draft of Sentencing Guidelines for United States Courts

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UNITED STATES SENTENCING COMMISSION

Preliminary Draft of Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of preliminary draft of sentencing guidelines for the United States courts.

SUMMARY: This preliminary draft presents an approach currently being considered by the U.S. Sentencing Commission in developing guidelines and policy statements for use by the federal courts in determining the sentences to be imposed in criminal cases. The sentencing reform provisions of the Comprehensive Crime Control Act of 1984 created the U.S. Sentencing Commission and charged it with the duty of promulgating sentencing guidelines. The guidelines are designed to provide certainty and fairness in meeting the purposes of sentencing. The objective is to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct, while maintaining sufficient flexibility to permit individualized sentencing when warranted by mitigating or aggravating factors not taken into account in the guidelines. Final guidelines must be submitted to Congress by April 13, 1987.

DATES: Written comments on this preliminary draft of the guidelines must be received by the Commission on or before December 3, 1986. To facilitate public input on this preliminary draft, the Commission has scheduled the following series of regional public hearings:

1. Chicago, IL—October 17, 1986, 10:00 a.m. to 4:00 p.m., Ceremonial Courtroom, 25th Floor, Dirksen Federal Building, 219 South Dearborn Street.
2. New York, NY—October 21, 1986, 10:00 a.m. to 4:00 p.m., Room 318, U.S. Courthouse, Foley Square.
3. Atlanta, GA—October 29, 1986, 10:00 a.m. to 4:00 p.m., Ceremonial Courtroom, 23rd Floor, Richard B. Russell Federal Building, 75 Spring Street, S.W.
4. Denver, CO—November 5, 1986, 10:00 a.m. to 4:00 p.m., Room C–201, 2nd Floor, U.S. Courthouse, 1929 Stout Street.
5. San Francisco, CA—November 18, 1986, 10:00 a.m. to 4:00 p.m., Ceremonial Courtroom, U.S. Courthouse, 450 Golden Gate Avenue.
6. Washington, DC—December 2 and 3, 1986, 10:00 a.m. to 4:00 p.m., Ceremonial Courtroom, U.S. Courthouse, 3rd Street and Constitution Avenue N.W.

ADDRESS: Comments may be mailed to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW, Suite 1400, Washington, DC 20004, Attention: Guidelines Comments. The Commission encourages interested members of the public to submit their comments in writing.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, at the above address; telephone (202) 662–8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government. Ordinarily, the Administrative Procedure Act and rule making requirements (including publication in the **Federal Register**, public comment and public hearing procedure) are not applicable to the judicial branch. However, 28 U.S.C. 994(w) makes the Administrative Procedure Act rule making provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Sentencing Commission. Although Federal Register publication of a preliminary draft of guidelines is not required by the applicable statute, the Commission has chosen to publish this preliminary document well in advance of any required publication date in order to provide a vehicle for focused critical analysis and public comment.

This preliminary draft of guidelines appears in the Notice Document section of the Register, rather than in the Rules Document section, for the following reasons: First, neither the applicable statute nor the legislative history indicates that the sentencing guidelines, when finalized, shall become a part of the Code of Federal Regulations, which consists of rules promulgated by executive branch agencies. Secondly, the more informal format of the Notices section, rather than the formal, CFR codification requirements of the Rules section, is more suitable to the presentation of the Commission's preliminary draft of guidelines and related explanatory material. Finally, the Office of Federal Register has determined that publication in the Notices section is more appropriate. For the above reasons, the Commission concurs in that determination.

With the publication of this preliminary draft, the Commission is also providing a substantial period for submission of written comments and, additionally, an opportunity for interested persons to present views during a series of six regional public hearings. In revising this preliminary draft, the Commission intends to analyze and consider all relevant public comment material, written and oral, presented to it in a timely manner. The Commission expects to publish a complete set of proposed sentencing guidelines for public comment at a later date.

The final guidelines to be submitted to Congress by April 13, 1987, shall take effect six months after their submission unless, by law, Congress modifies, rejects, or postpones them.

Authority: Sec. 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a),(w),995.

William W. Wilkins, Jr.,
Chairman.

An Open Letter

The Sentencing Commission is committed to developing sentencing guidelines informed by the widest measure of public comment. To achieve this goal, the Commission has conducted its work openly. We have requested and received comment from hundreds of individuals and groups. We shall continue this approach as we work to produce a final product.

While this first draft is preliminary in nature, it does provide an excellent vehicle for public comment. We seek your critical analysis.

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Presently, judges in our federal criminal justice system are provided little guidance when confronted with the complex issue of sentencing a convicted offender. This lack of guidance has adversely affected the administration of justice by producing unwarranted disparity in sentencing. Analysis of past and current sentencing practices reveals that offenders with similar characteristics who commit similar crimes receive sentences that vary dramatically. This disparity has produced a system of justice that lacks an appropriate degree of certainty of punishment and, most importantly, fairness to the offender, the victim, and society.

After more than a decade of bipartisan efforts, the 98th Congress passed legislation that, in addition to other major criminal justice reforms, created the United States Sentencing Commission. Under its mandate from Congress, the Commission's primary responsibility is to establish sentencing policies and practices for the federal courts that avoid unwarranted disparity and meet the four purposes of sentencing: just punishment, deterrence, incapacitation, and rehabilitation. The Commission's goal is to provide a structure and framework for the sentencing decision so that similar offenders who commit similar offenses are sentenced in a similar fashion. The Commission's intention is that these efforts will ensure fairness and contribute to the reduction of crime.

The most pressing task of the Commission is to develop an intellectually sound, consistent, and workable set of sentencing guidelines for submission to Congress by April 1987. After the initial guidelines take effect, the Commission is charged with the ongoing responsibility of measuring the impact of the guidelines and their effectiveness in meeting the enumerated purposes of sentencing. In the years after initial implementation, the Commission will propose guideline amendments to Congress as revisions are needed and as new criminal statutes are enacted.

From its inception, the Commission has conducted its business openly, for it believes that this unique opportunity for sentencing reform can best be accomplished with full participation by all interested parties. Public policy is only as good as the quality and breadth of the public input that goes into its creation. The Commission has solicited comment from hundreds of individuals, organizations, and government agencies with an interest in the federal criminal justice system. In keeping with this philosophy, the Commission voted to publish a preliminary working draft of sentencing guidelines well in advance of any required publication date in order to provide a vehicle for critical analysis and public comment. While these guidelines do not reflect the views of all Commissioners, the Commission voted for publication to provide a means for identifying the issues that must ultimately be resolved. The Commission realizes that it runs a risk by publishing at this early date when the preliminary guidelines are not drafted for all offenses and when they are not as refined as they will be several months from now. The alternative, however, would severely limit public input, and the Commission finds this unacceptable.

The preliminary draft published for public comment seeks to accomplish several goals. The first is to focus public attention on a proposed format, a possible structure and suggested sentencing ranges. The format, structure, and suggested terms of imprisonment will all be reconsidered by the Commission before the final draft is written in light of further deliberation, continued empirical research, and the receipt of written and oral comment.

The publication also highlights a series of difficult policy issues that remain unresolved. The Commission underscores these policy issues for public comment because their resolution will determine, to a great extent, the final guidelines.

The Commission's ongoing sentencing data collection and analysis efforts will continue after the guidelines are in effect to assess the impact of the guidelines on the justice system as well as changes in the crime rate. The Commission will closely monitor the effectiveness of the guidelines in meeting the purposes of sentencing and will recommend to Congress changes to strengthen the system and eliminate unfairness. Significantly, for the first time in the history of the federal criminal justice system, the commitment to an efficient and just sentencing system will be inextricably linked to a continuous monitoring and measurement process. Refinement and improvement will be ongoing.

To achieve longer-term goals, the sentencing guidelines ultimately submitted to Congress must be workable, fair, and effective. That is why publication of this preliminary draft of guidelines is so important. Only with the benefit of the insight and experience of others will the Commission be able to achieve its goal of producing a

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sentencing system that truly serves the interests of justice.

In drafting these preliminary guidelines, the Commission has sought to identify facets of an offense that should lead to a greater or lesser punishment. In deciding what circumstances are relevant, the Commission has recognized that the guidelines cannot take all arguably relevant distinctions into account without producing guidelines that are unworkably complex. Too complex a system risks misapplication and invites a return to disparate sentences for similar offenses. An inadequate number of distinctions produces problems of a different kind. Guidelines that do not have a sufficient degree of complexity could result in two offenders engaging in quite different behavior receiving similar sentences.

The Commission has balanced the need for overall guideline simplicity and workability against the desirability of taking into account of all potentially relevant factors. The public is asked to review the tentative judgments embodied in the preliminary guidelines with this problem in mind. It will be helpful for those commenting not simply to identify other potentially relevant features of an offense, but also to decide whether those features are sufficiently important in enough cases to warrant additional complexity. Conversely, it would be useful to identify distinctions that these preliminary guidelines presently make that might be eliminated in the interest of simplicity, without making the guidelines significantly less fair or less effective.

Chapter One: Introduction and Overview

I. Authority and Responsibility of the Commission

The United States Sentencing Commission ("Commission") is an independent agency in the judicial branch of government composed of seven voting and two non-voting, *ex officio* members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system, including detailed guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes.

As specified in 28 U.S.C. 991(b), the policies, practices and sentencing guidelines established by the Commission are designed to:

1. effectuate the purposes of sentencing enumerated in 18 U.S.C. 3553(a)(2) (in brief, those purposes are just punishment, deterrence, incapacitation, and rehabilitation);

2. provide certainty and fairness in sentencing practices, by avoiding unwarranted sentencing disaparities among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating or mitigating factors; and

3. reflect, to the extent practicable, advancement in knowledge of human behavior as related to the criminal justice process.

The Commission is also charged with the ongoing responsibilities of: evaluating the effects of the sentencing guidelines on the criminal justice system, including the impact on the resources of the Bureau of Prisons; recommending to Congress appropriate modifications of substantive criminal law and sentencing procedures, as well as revisions of the sentencing guidelines; establishing a research and development program on sentencing practices and procedures; and other related duties.

Created by the sentencing reform provisions of the Comprehensive Crime Control Act, Pub. L. No. 98-473 (1984), the Commission's authority and duties are set out in Chapter 58 of Title 28, United States Code. Procedures for implementing the guidelines system of sentencing are prescribed in a new Chapter 227 of Title 18, United States Code.

The statutory authority affecting the Commission has been amended by Congress. Pub. L. 99-217 (December 26, 1985) postponed by twelve months, until April, 1987, the deadline for submission to Congress of the initial set of sentencing guidelines. The guidelines will be subject to six months of Congressional review and take effect if no contrary action is taken by law. That legislation also postponed until November 1, 1987, the effective date for the sentencing procedure revisions accompanying the guidelines. Pub. L. 99-363 (July 11, 1986) clarified the authority of the Commission to write policy statements concerning the imposition of fines and permitted a maximum variation of six months or 25 percent, whichever is greater, between the minimum and maximum sentences of incarceration in a guideline range. This same legislation also provided that if the maximum sentence is life imprisonment, the minimum sentence must be at least 30 years.

Pursuant to sections 218 and 235 of the Comprehensive Crime Control Act of 1984, parole will be abolished for all offenders sentenced under the determinate sentences prescribed by the guidelines. This means that a sentence of five years will require imprisonment for five years, less statutory good time.

II. Commission Activities Relating to Guidelines Development

Prior to Publication

Advisory and Working Groups. One of the Commission's first action was to establish advisory and working groups with whom the Commission could consult on a continuing basis as it considered sentencing issues and drafted guidelines. These represent each of the following groups: United States Attorneys, state district attorneys, federal probation officers, defense attorneys, researchers, and federal judges. In addition to receiving written comments and critiques from the members of these groups, the Commission, over a period of several months, invited representatives of each group (including three groups of federal judges) to participate in working sessions with Commission members and staff. During these sessions, early drafts of guidelines were examined, and many of the important issues facing the Commission were given a full airing.

Topical Hearings. In order to have the benefit of a wide range of informed views the Commission has solicited written advice from hundreds of criminal justice practitioners, interest groups and other interested individuals and organizations in conjunction with a series of five public hearings in Washington, D.C. The topics of these public hearings were: Offense Seriousness Ranking (April 15, 1986); Offender Characteristics: Prior Record (May 22); Organizational Sanctions (June 10); Sentencing Options (July 15); and Plea Agreements (September 23). In connection with these hearings, the Commission received oral testimony from 46 witnesses and written comments from more than 400 additional respondents. Those contributing to the hearing process included government officials representing all facets of the criminal justice system at the federal, state, and local levels, private attorneys, interest and advocacy groups espousing a range of philosophies, other specialists in sentencing issues, victim advocates, and inmates. These public hearings and written comments significantly contributed to the development of preliminary sentencing guidelines.

Meetings. Since its inception, the Commission has met regularly and all of these meetings have been open to the public. Although most of the work involved in drafting the preliminary guidelines necessarily was

accomplished in informal working groups, the Commission has used its meetings to set an overall agenda and direction for the development of the guidelines, as well as to discuss, revise, and approve working group drafts as they have been presented to the Commission. Commission meetings also have included informational briefings and discussions with a wide variety of resource groups, including the Education and Probation Committees of the United States Judicial Conference, the General Accounting Office, the Bureau of Prisons, the National Institute for Sentencing Alternatives, the Community Corrections Division of the National Institute of Corrections, various government agencies having law enforcement responsibilities, defense attorneys, and criminal justice scholars.

In-House Research. The Commission has established a research program to assist in the development, implementation, monitoring, and evaluation of the guidelines. The research staff has collected and will continue to collect pertinent data, including detailed information on past sentencing and correctional practices, and the post-conviction activities of probationers and parolees. These data are being used or will be used for several purposes: to describe offenses and offenders who are convicted in federal court; to determine which offenders pose a high risk of recidivism; to test the application of the guidelines to actual cases; to predict the impact of the guidelines on federal prison population and other components of the federal criminal justice system; and to monitor the use of the guidelines by the federal courts. In addition to performing empirical research, the research unit reviews criminal justice research, advises the Commission about the application of scientific theory and knowledge to sentencing practices, and provides general technical and computer support.

Liaison With Other Federal Agencies. The Commission solicited information from federal agencies about the specific nature and number of offenses occurring within their areas of responsibility. Information was provided by numerous divisions of the Department of Justice, the Department of the Treasury, the Departments of Defense, Education, Health and Human Services, Interior, and Labor, the Federal Deposit Insurance Corporation, the Postal Service, and the Securities and Exchange Commission. Many of these agencies cited sentencing factors they believed important in the cases within their respective jurisdictions.

Field Research and Related Activities. The Commission has traveled across the nation to obtain information and advice as well as to give presentations regarding the efforts of the Commission.

Commissioners and staff visited four federal prisons of various classifications to gain firsthand awareness of the current facilities and operations of the Federal Bureau of Prisons. In addition, Commission staff visited a number of states and communities in which a variety of sentencing options other than imprisonment were being used. Staff visited numerous intensive probation supervision programs, including those using house arrest, electronic monitoring, and community residential facilities. Specifically, staff met with officials of the New Jersey Intensive Supervised Program; the Massachusetts Intensive Probation Program; the Quincy, Massachusetts District Court; the San Mateo County, California Adult Probation Office; the Texas Adult Probation Commission; and the Georgia Department of Offender Rehabilitation. Additionally, Commission staff met with officials of the Massachusetts Commission on Correctional Alternatives and officials of the intensive supervision program formerly operated by the state of Washington.

The fine collection and community service programs of a number of state probation departments were studied. In its efforts to establish reasonable and collectable fines and to determine an offender's likelihood and ability to pay fines, Commission staff met with officials of several banking and financial institutions, including the Fair-Isaac Companies and the Bank of America in California, and the Credit Bureau, Inc., in Atlanta, Georgia. In addition, Commission staff met with the Vera Institute of Justice in New York City about its community service programs.

Commission representatives met with United States Probation Officers at ten regional seminars and district-wide staff meetings. Through these meetings, the Commission received input from officers in the majority of federal judicial districts.

Post-Publication

Distribution. These guidelines have been mailed to each Member of Congress, Article III Judge, United States Attorney, Federal Public Defender and Chief United States Probation Officer. Copies were also sent to hundreds of other individuals and groups on the Commission's mailing lists, including defense attorneys, academics, victim advocates, and private and professional membership groups.

Public Hearings. In order to structure and facilitate public comment on the preliminary guidelines, the Commission will hold a series of regional hearings. Public attendance and participation at any of the following hearings is encouraged:

October 17, 1986—Chicago
October 21, 1986—New York City
October 29, 1986—Atlanta
November 5, 1986—Denver
November 18, 1986—San Francisco
December 2-3, 1986—Washington, DC.

Each hearing will begin at 10:00 a.m. in the host city's United States Courthouse. Following testimony by invited witnesses, the Commission will reserve time for comments from interested members of the public at each hearing.

Written Comments. The public comment period on the preliminary guidelines extends until December 3, 1986. The Commission encourages all groups and individuals with an interest in criminal justice to study the preliminary guidelines and submit written comments to the Commission by the close of the public comment period.

It will be most helpful to the Commission if written comments relating to specific guideline sections are typed on separate pages. All comments should be mailed to the following address:

United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004; *Attention:* Guidelines Comments

As will be explained further in the overview of Chapter Two, preliminary guidelines for some offenses are not ready for publication at this time. They will be published in a timely fashion to allow public comment prior to submission of final guidelines to Congress.

Revision and Submission to Congress. The Commission will consider all written comments submitted, as well as the oral testimony presented at the public hearings. Based on public comment and its own continuing work, the Commission will revise and complete the guidelines and policy statements.

Under statute, the deadline for submission of the initial set of sentencing guidelines to Congress is April 13, 1987. In addition to the guidelines, the Commission must submit to Congress a report stating the reasons for the Commission's recommendations. Upon submission of the guidelines, the General Accounting Office must conduct

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a study assessing the potential impact of the Commission's guidelines in comparison with the operation of the existing sentencing and parole release system.

Congress has six months from the date the guidelines are submitted to study the guidelines and impact analyses. By law, the guidelines become effective at the conclusion of the six-month review period, if no contrary action is taken.

III. Overview of the Guidelines

The preliminary guidelines utilize three important features to produce a structure that considers the appropriate degree of actual offense conduct, facilitates similar treatment of similar offenders who commit similar crimes, and is easy to apply.

The first major feature is that these guidelines operate on a system of modified real offense sentencing. That system is described more fully later in this chapter (Section VII). It means that an offender will be sentenced on the basis of the conduct necessarily involved in the offense of conviction, plus the conduct done in furtherance of the offense of conviction and any injuries resulting from such conduct.

For example, every bank robbery involves some level of real, implicit, or threatened force, although those levels differ widely. The robbery in which the offender discharges a weapon is different from the robbery in which the offender pretends that there is a weapon in his or her pocket. The proposed modified real offense system takes these variations into account. This allows the sentencing judge to distinguish one offender from another, even though both are convicted of the same statutory offense.

The second feature of the guidelines is the use of generic offense descriptions. Federal criminal law contains scores of theft provisions, scores of false statement provisions, a dozen or more homicide statutes, and so forth. The preliminary guidelines group similar offense behavior and adjust that behavior by particular aggravating statutory factors where appropriate. This does not alter the substantive law, nor change the potential statutory range of punishment, but only provides offense categories for purposes of sentencing. Of course, where there is only one statute proscribing the conduct in question (tax evasion, for example), the guidelines identify the conduct by its statutory name.

The third feature, a narrative format, is one that seeks to reflect the thought process judges employ in making sentencing decisions. In this system, a numerical offense value is assigned to each relevant aspect of the offender's conduct. The offense value reflects each identified unlawful act or omission, injury or harm, hereinafter collectively referred to as the offense. The offense values in the preliminary guidelines designate the relative level of sanction for the offense in question, considering most prominently the harm resulting from the offense and the need to deter future similar offenses. The assigned values relate to a scale of 1–360. Comment is specifically invited on the offense values and aggravating and mitigating factors assigned to each offense.

To determine a sentence under these guidelines, the sentencing judge begins with the offense of conviction. The Statutory Index leads the judge to potentially applicable sections of the guidelines. The guidelines list aggravating and mitigating factors, including harms or injuries that may be present when a particular statutory offense is committed. This index is, in essence, a road map since it directs the judge to sections of the guidelines that may be applicable. If a specific section applies, the appropriate offense value is included.

To illustrate how the narrative guidelines system works, if an offender robs a bank, the offender is given a certain number of offense units for the robbery. If the offender uses a weapon, more units are added. If the offender injures someone, the judge is referred to the Assault and Battery section, where more specific units are added. A reference is also made to a property table, where additional units are assessed on the basis of the amount of money or value of the property stolen. This table is used for theft and burglary as well as for other offenses resulting in a financial loss or harm to property.

When all relevant offense characteristics have been identified and the corresponding offense values totaled, this score is adjusted up or down by applicable sections found in Chapter Three. This chapter deals with offender characteristics such as criminal history, role in the offense, acceptance of responsibility, and cooperation. Adjusting the total offense values by offender characteristics provides the total number of sanction units. Chapter Four translates those units into a sentence.

IV. Statement of Purpose

The preliminary guidelines and their accompanying policy statements are intended to establish sentencing policies and practices that:

1. Assure that the sentences imposed on offenders convicted of federal crimes:

a. Reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense;

b. Afford adequate deterrence to criminal conduct;

c. Protect the public from further crimes by the offender; and

d. To the extent consistent with the objectives of protecting the public and providing just punishment and deterrence, promote rehabilitation of the offender in the most effective manner;

2. Provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among offenders with similar characteristics who have been found guilty of similar criminal conduct, while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

3. To the extent practicable under the circumstances, reflect advancement in knowledge of human behavior as it relates to the criminal justice process. *See* 28 U.S.C. 991(b).

Conforming with the Congressional mandate, the guidelines adopt no single, overriding purpose for or theory of sentencing. Rather, in formulating the guidelines, the Commission has sought to take into consideration whether and to what extent each of the four stated purposes—just deserts, deterrence, incapacitation, and rehabilitation—applies in any given case, realizing that different forms of conduct are made criminal for different reasons.

Commentary

The Statement of Purpose reflects the Commission's commitment that the guidelines satisfy the multi-faceted Congressional mandate set forth in 28 U.S.C. 991(b).

Clause 1 and the last paragraph make it clear that no single purpose of sentencing has been given preeminence. By relying on rehabilitation as a rationale for sentencing only "to the extent that it is not inconsistent with other purposes," the Statement of Purpose acknowledges that the Commission is of the view that while the promoting of rehabilitation is an important goal of sentencing, it cannot be considered a substitute for the other goals of sentencing (*i.e.*, reflecting the seriousness of the offense, promoting respect for the law, providing just punishment and deterrence, and protecting the public from future criminality). The Commission believes that rehabilitation must be secondary to these other goals, especially that of protecting the public. As suggested by 28 U.S.C. 994(k), rehabilitation is not to be accomplished through imprisonment, but rather through educational or treatment programs that are conditions of probation or supervised release. Thus, under the guidelines, rehabilitation can be a primary sentencing consideration only for relatively minor offenses where other statutory considerations do not mandate imposition of a substantial penalty. However, rehabilitation may be an additional consideration beyond punishment in any appropriate case.

Clause 2, reflecting 28 U.S.C. 991(b), states that the guidelines are designed to reduce unwarranted sentencing disparity among similar offenders who have been found guilty of similar conduct. This statement is to be read in conjunction with the remainder of Chapter 58 of Title 28 and Chapter 227 of Title 18, including the need for guideline sentences to fulfill the purposes stated in 18 U.S.C. 3553(a). Because of the many considerations that enter into assessing seriousness of offenses, the amenability of the conduct to deterrence, and the need for incapacitation, the Commission has not assumed that any two offenses that produce the same level and type of harm, *e.g.*, dollar loss or physical injury, are necessarily similar and therefore require identical treatment in the guidelines. Rather, the nature and degree of harm is but one of the factors that Congress has required the Commission to consider. Other factors may vary the punishment for otherwise similar offenses. *See, e.g.*, 28 U.S.C. 994(c) (Commission to consider circumstances of the offense, community view of the gravity of offense, public concern generated by the offense, and the current incidence of the offense); 28 U.S.C. 994(d) (Commission to consider various offender characteristics). Thus, the guidelines may result in different punishment for seemingly similar crimes, such as embezzlement and tax evasion, or, in more limited instances, even for identical crimes committed by different types of offenders, for different motives, or under different circumstances.

Clause 3 signifies the Commission's cognizance of its obligation to incorporate knowledge regarding human behavior into the guidelines. Unfortunately, the limited time available has precluded development of an extensive system that relies heavily upon scientific investigation. The results of scientific research are reflected most clearly in the adjustments for criminal history in Chapter Three. The Commission plans further empirical inquiry and expects to refine the guidelines based upon analyses of the data collected to measure the impact of the guidelines, as well as information derived from other sources.

V. General Rules of Application

Rule of Construction

The provisions of these guidelines shall be construed according to the fair meaning of their terms. When a provision is susceptible to different interpretations, it shall be interpreted in the manner that is most compatible with the Statement of Purpose and the relevant commentary.

Standard of Proof

In determining the appropriate sentence under these guidelines, the court may rely on any information produced at trial, in the presentence report, or at the sentencing hearing that the court finds is supported by a preponderance of the evidence. *See* 18 U.S.C. 3577 (redesignated as 18 U.S.C. 3661 effective November 1, 1987).

Burdens of Production and Persuasion

1. The court may find that an offense characteristic exists or an adjustment factor applies if a preponderance of the evidence supports such finding.

2. The burdens of production and persuasion as to the existence of an offense characteristic or an adjustment factor shall be on the government unless the offense characteristic or adjustment factor mitigates the potential sentence in which case the burdens of production and persuasion shall be on the offender.

Commentary

The preponderance of the evidence standard is a less demanding standard than either the beyond a reasonable doubt standard used to determine the defendant's guilt or a clear and convincing evidence standard.

The use of the preponderance standard at sentencing was recently upheld in *McMillan v. Pennsylvania*, _____ U.S. _____, 106 S.Ct. 2411 (1986). In *McMillan*, the Court examined a Pennsylvania statute that permitted a judge to impose a mandatory minimum sentence of five years for specific felonies when the judge found by a preponderance of the evidence that the offender "visibly possessed a firearm."

The Court found that establishment of the preponderance standard was permissible under the Due Process clause, and noted that "sentencing courts have always operated without constitutionally imposed burdens of proof; embracing petitioners' suggestion that we apply the clear and convincing standard here would significantly alter criminal sentencing, for we see no way to distinguish the visible possession finding at issue here from a host of other express or implied findings sentencing judges typically make on the way to passing sentence." *McMillan, supra*, at 2420, n 8.

VI. Application Instructions

The guidelines are presented in numbered chapters, which are divided into alphabetical parts. The parts are subdivided into sections. Each section is identified by a letter and number that correspond to the part and chapter in which it is found. Section A412, for example, would be found in Part A of Chapter Four. A commentary is provided where necessary to explain the guideline in greater detail or to inform the reader of the statutory provisions governing the subject matter of a particular guideline.

The court should follow the steps set forth below to determine sentence:

1. Determine what statutes the offender has been convicted of violating.

2. Refer to the Statutory Index and determine which section of Chapter Two applies. If more than one section of Chapter Two is referenced, refer to each section and any applicable commentary to determine which is most appropriate to the offense before the court.

3. If the applicable section contains more than one base offense value, select the highest value that applies. Add special offense characteristics where applicable.

4. If the section contains a cross-reference to one or more other sections, refer to those sections and proceed as in step 3 above.

5. Repeat steps 3 and 4 for each offense of conviction.

6. When all offenses have been scored, total the offense value.

7. Refer to Chapter Three for applicable adjustments in offense value(s). After applying an adjustment, always round down to the nearest whole number.

8. Apply an adjustment for role in the offense (Chapter Three, Part A). If the offender is convicted of more than one offense and plays different roles in each offense, determine which offense values apply to which offenses and apply the adjustment separately to each. Total the offense values after they have been adjusted, rounding down to the nearest whole number.

9. Determine whether the offender is entitled to an adjustment for post-offense conduct (Chapter Three, Part B). If so, multiply the adjusted offense value from step 8 by the adjustment for post-offense conduct, rounding down to the nearest whole number.

10. Apply an adjustment for criminal history (Chapter Three, Part C) and multiply the adjusted offense value from step 9 by that adjustment, rounding down to the nearest whole number.

11. The new total is the offender's sanction unit score.

12. Refer to Chapter Four to determine the sentence.

VII. Application of Modified Real Offense Sentencing

The preliminary guidelines operate under a system of modified real offense sentencing that requires a judge to identify all relevant offense characteristics. These include unlawful acts or omissions that were done in furtherance of the crime of conviction,

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as well as threatened, attempted, or completed injuries or harms that resulted therefrom. The guidelines, through a series of cross-references, tell the judge which particular characteristics to take into account.

The following offenses are excluded in determining an offender's sentence under the guidelines:

1. Conduct for which the offender has already been fully sanctioned;

2. Conduct for which further prosecution is barred.

Commentary

At the outset the Commission must decide whether to base its sentencing guidelines upon the real conduct in which the offender engaged or only the conduct for which the offender was convicted. The decision is fundamental, for it will shape both the form and the content of any guideline system. It will affect the plea negotiation process, prosecutorial decision-making, and the type and terms of the sentence. The decision is unusually difficult, because there are important advantages and disadvantages of each.

In essence, a real offense system considers all of the offender's relevant behavior while a charge of conviction offense system considers only those elements of behavior that formed part of the charge of which the offender was convicted. To understand the difference between these alternatives, consider the following examples. First, a man walks in a bank, hands a teller a shopping bag, pretends to have a gun, and passes a note that says, "I have a gun. Give me all your money." The teller puts $1,500 in the shopping bag and the offender walks out. Second, a man walks up to a teller in a bank and points a loaded gun. The offender demands money. After the teller gives him $1,500, he strikes her with the gun and demands that she collect money from elsewhere in the bank. He leaves the bank with $20,000. Assume that the grand jury charges both these defendants with violations of the same statute, 18 U.S.C. 2113(a), and that both are convicted. A guidelines sentencing system based solely upon offense of conviction treats these two offenders similarly. Both violated the same statute. The elements of the crimes for which they were convicted are the same (taking property by threat from a bank). The sentencing system would not take account of the differences in their behavior—the amount of money received; the presence of the gun; the physical injury—unless that behavior constituted an element of a separately charged offense. A real offense sentencing system, however, would take account of all the harms that the offender actually caused during the course of the conduct for which he was charged. Thus, a real offense system would punish the second man more severely in light of the gun, the extra money taken, and the physical injury caused.

In evaluating between these approaches, the Commission has considered the following six questions:

1. What standard of proof should a court use when deciding factual questions relevant to the sentencing determination?

2. To what extent should the Commission preserve the real offense sentencing system often used by the courts?

3. To what extent can the sentencing guidelines avoid problems arising from overly broad statutory definitions of offenses?

4. To what extent should power to influence the sentence vest in the prosecutor rather than the judge?

5. How can the Commission maintain justice and the appearance of justice for convicted offenders?

6. To what extent can the Commission appropriately take account of the practical needs of a criminal justice system heavily dependent on guilty pleas?

The present system of federal sentencing is largely a system of real or actual criminal conduct sentencing, although the covert nature of the process sometimes hides this fact. At present, a sentencing judge reads a presentence report prepared by a probation officer. That report tells the judge what the officer believes really occurred with respect to the crime. The judge then exercises broad discretionary power with those real facts in mind. Since the judge does not articulate the precise factors considered, nor how they weighed in the decision, the differential impact of the real conduct factors versus only those subsumed under the charge for which the offender was convicted is never known. Although the offender may challenge disputed statements of fact in the report, such challenges rarely affect the sentence because judges often avoid a hearing by stating that they will disregard the challenged portion, leaving offenders uncertain whether judges, in fact, can really do so.

Nevertheless, judges commonly consider the real criminal conduct. Thus, for example, judges sentence differently two offenders, both convicted of armed bank robbery under 18 U.S.C. 2113(a), if Offender A was reported by the probation officer to have terrified hostages with games of Russian roulette at gunpoint, whereas Offender B was armed, but did not engage in this activity. Furthermore, after an offender is convicted and sentenced, the present parole guidelines system overtly relies on real criminal conduct, as determined by a hearing officer, in making release determinations. The standard of proof for sentencing facts that a judge or the Parole Board considers under this real criminal conduct system is often unclear, but it almost certainly does not rise to the ordinary criminal trial standard of proof beyond a reasonable doubt.

One might argue, in favoring a system that resembles the status quo, that the real offense feature of sentencing permits judges to mitigate the negative effects of inconsistent and overly broad offense-defining statutes. Two seemingly alike offenders, convicted under the identical statute, can be sentenced in a way that reflects differences in motive, the manner in which the crime was executed, the circumstances surrounding the offense, the degree of premeditation, the depth of their involvement, the injury to victims, and the like. Moreover, this flexibility allows judges to serve a critically important balancing function between society's needs for retribution, deterrence, and incapacitation and its administrative need to rely heavily on plea agreements for the disposition of criminal cases. Suppose, for example, an offender pleads guilty only to tax evasion, which was part of a drug distribution operation. The judge is bound by the statutory maximum for the tax evasion offense, but can, in selecting the exact sentence within the statutorily prescribed range, give a sentence that reflects the drug-related context of the offense.

On the other hand, there are several arguments against basing a guidelines system on real criminal conduct. First, there are arguments that focus on the problem of proof and the potential appearance of injustice. A jury will have found beyond a reasonable doubt that the offender committed those acts that make up the elements of the offense charged. But, what about the rest of the real conduct that the sentence takes into account? How will the sentencing judge learn, for example, whether the offender stole $100,000 or $20,000 from the bank? (The offender, claiming he did not rob the bank at all, will not likely wish to engage in a dispute before the jury about the amount.) Unless special interrogatories are submitted to the jury, how will the judge decide whether the offender, charged with bank robbery, actually pistol whipped a teller in the course of the robbery since the jury's verdict will be a general one? While presently judges do not use the beyond a reasonable doubt standard of proof in finding facts considered in sentence determinations, that standard nonetheless sets a kind of ideal against which new proposals might be tested. Even if a preponderance of evidence standard increases procedural safeguards compared to the status quo, one may argue that this standard falls short of this ideal.

Second, there is a risk that real criminal conduct sentencing may present the appearance of injustice. A stark example might be a sentencing guidelines system that permits judges to consider factors the defendant thought mooted by agreement to the negotiated plea. Thus, a defendant indicted for drug trafficking and tax evasion who pleads guilty only to tax evasion might take umbrage at a guideline system that permitted the judge nonetheless to add to the sentence otherwise appropriate for tax evasion, an amount that reflects the drug-related context. This problem is exacerbated when the evidence of the drug-related conduct would have failed if put to a test of beyond a reasonable doubt, but passes the lesser preponderance standard. The more distinct this secondary conduct is from the offense charged and the more relaxed the standard of proof, the more a real offense procedure may appear unfair.

Third, a pure real offense system could require significant additional judicial resources. Since the judge would fix the sentence based on the offender's real conduct, an armed bank robber would not benefit from the government's agreement to allow a plea of guilty to a lesser unarmed robbery offense, since the offender would receive a higher armed robbery sentence. Of course, the judge could not impose more than the statutory maximum for the lesser charged offense. However, the new sentencing law

means that the sentence given will, in fact, be served. A five-year sentence means five years in prison, roughly equivalent to a present sentence of fifteen years; thus, the statutory maximum will not often act as a serious constraint.

Since offenders would know in advance the likely sentence for the conduct at issue, and since bargaining could not readily affect the sentence, there may be less negotiation. Whether or not diminished opportunity for plea negotiations is desirable, is much debated. Does it produce unfair sentences, unrelated to actual conduct? Does the prosecutor face an inappropriate set of incentives? Would real offense sentencing create additional needed deterrence? Regardless of the theoretical advantages or disadvantages of plea negotiation, at present, the courts dispose of approximately ninety percent of all federal criminal cases through acceptance of guilty pleas. Thus, a change in sentencing practice that significantly raises the number of cases that must be tried would likely require a considerable increase in federal judicial resources.

Fourth, a pure real offense system, not bound by the conduct defined by the charge, must decide what additional conduct to take into account. This task may be far more difficult than it first appears. Consider the bank robbery example. Should the court take account not only of the money, the threat to the teller, the gun, and the physical injury, but also of the trespass into the bank, the further trespass into a secured area behind the counter, the fright caused the bank's other employees or its customers, the unwanted physical contact caused patrons when the offender pushed past them on the way out, the offender's refusal to stop when ordered to do so by a security guard or policeman, the lunge that the offender might have made at the guard, the restraint on the teller's freedom when the offender ordered the teller to go to the back of the bank and get more money, and so forth. The decision about including or excluding much of this conduct is not obvious. Having a rule that takes all conduct into account does not solve the problem. Judges might define similar conduct differently. This would perpetuate a form of sentencing disparity and it threatens to raise a vast number of questions for resolution on appeal. Moreover, the bank robbery example is an unusually simple one.

The near opposite of a real offense system is a charge of conviction system. Its major advantages are that offenders receive maximum procedural protection, and that they would know their approximate sentencing exposure at the time of a plea agreement if they plead guilty. But there are several serious disadvantages.

First, many federal statutes, written with jurisdictional considerations in mind, are phrased in ways that make it particularly difficult to develop a charge of conviction system. Some statutes use highly general language that can encompass widely differing behavior. The Travel Act, 18 U.S.C. 1952, for example, forbids travel "in interstate . . . commerce . . . with intent" to (among other things) "promote, manage, establish, carry on, or facilitate . . . any unlawful activity." The Hobbs Act, 18 U.S.C. 1951, forbids affecting commerce "by robbery or extortion" or threats of "physical violence to any person or property." Violations of the Hobbs Act or the Travel Act should not all be punished alike. Yet, given their broad language, the indictment may easily charge a violation of the statute while omitting much of the essential information relevant to sentencing. Other federal statutes use more specific language but still forbid a wide range of conduct of varying seriousness. *See, e.g.*, 18 U.S.C. 32 (destruction of aircraft or aircraft facilities), or 18 U.S.C. 33 (destruction of motor vehicles or motor vehicle facilities). The charge alone in such cases is not necessarily indicative of the seriousness of the crime.

Second, even in the case of simply defined crimes, any fair sentencing system must take account of at least some real, uncharged elements. A bank robbery indictment, for example, need not state how much money the offender took, yet sentencing systems typically treat an offender who takes one million dollars more seriously than one who takes one thousand dollars. Similarly, although the statute penalizes any assault that takes place during the robbery, a sentencing system should treat an assault that results in physical injury differently than an assault that consists only of pretending to have a gun.

A pure charge of conviction sentencing system might mean that all persons convicted of the same offense, *e.g.*, tax evasion, would be given the same sentence, regardless of the tremendous variation that characterizes the nature and circumstances of the offense. This would be contrary to the mandate of the Sentencing Reform Act to treat like offenders alike while maintaining sufficient flexibility to permit warranted individualized sentences. An offender convicted of tax evasion where the amount of taxes evaded was $250,000, and the motive was to conceal income from the distribution of drugs should not (under either just punishment or crime control theories of sentencing) receive the same sentence as an offender convicted of tax evasion for $10,000 where the motive was to pay for catastrophic family illness. Charge of conviction sentencing invites this kind of unwarranted similarity in sentences.

Third, the closer one comes to a pure charge of conviction system, the greater the transfer of influence to determine a sentence from the judge to the prosecutor. Imagine, for example, the frequently occurring circumstance of an offender's conduct violating many different federal laws, such as laws against false statements, drug conspiracy, mail fraud, etc. By carefully selecting the charges, the prosecutor would not (as now) simply determine the maximum statutory sentence, but, rather, the prosecutor could determine close to the exact sentence. (To use a simple example, if mail fraud carried a sentence of two months per $1,000 stolen, by selecting exactly how many fraudulently sent letters to charge—for example, ten out of 1,000—the prosecutor would determine a sentence of approximately 20 months). The defense attorney, of course, might affect the charges made through negotiation about the nature of the charges or the number of counts. The results of bargaining in many cases depend in part on a host of factors not related to the seriousness of the offender's conduct. The offender will also have little bargaining power where the charges can easily be proved. The likely increase in the amount of negotiation would likely mean increased discrepancy between the real seriousness of an offender's conduct and the sentence actually served. At a minimum, given the variation in United States Attorney practices, disparity (judged in relation to actual underlying conduct) could increase significantly. The Commission's statutory mandate, however, seeks to lessen disparity, not simply to transfer its source. Since one purpose of the Sentencing Reform Act is to structure the exercise of judicial sentencing discretion, it would seem counterproductive to do so by simply transferring it to another group.

All these considerations, some of which point toward real offense sentencing and some away from it, have led the Commission to tentatively develop a modified form of such sentencing, embodying two basic compromises, one substantive and one procedural. The substantive compromise consists of what is referred to as a road map. Its objective is to include, for sentencing purposes, only those real elements (not necessarily found as elements of the crime charged) that are importantly bound up with the conduct that constitutes the crime charged. The system works as follows: Prior to sentencing an offender convicted of bank robbery, the judge will look up bank robbery in the guidelines. An explicit reference to the amount of money stolen and cross-references to those (aggravating) physical harms and conduct that typically accompany most bank robberies are given. The judge will not find any reference to conduct (*e.g.*, drug trafficking) that is unusual in a bank robbery. The guidelines take account of those harms and conduct that it lists or cross-references. They do not take account of any other conduct. (Such other conduct will affect the sentence only if the offender is charged and convicted separately.)

The following examples demonstrate how modified real offense sentencing works under the preliminary guidelines:

1. The offense of conviction is unarmed bank robbery. At sentencing the judge finds by a preponderance of the evidence that the offender carried and pointed a firearm during the commission of the offense. The offense value for using a dangerous weapon is added to the offense value for the robbery. The use of the weapon is related to and done in furtherance of the crime of conviction.

2. The offense of conviction is armed bank robbery. The evidence at trial indicates that the offender's accomplice drove the getaway car at an extremely high rate of speed from the scene. At sentencing, additional evidence is presented that shows that a child was struck by the car two blocks from the bank and permanently paralyzed. The offense value for the child's injuries is added to that for the bank robbery. The operation of the vehicle is done in furtherance of the crime

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of conviction from which the injuries resulted.

3. The offender is indicted for two separate bank robberies in a two-count indictment. The bank robberies are unrelated and are not in furtherance of a conspiracy. As part of a plea agreement, Count II is dismissed on the government's motion. The offender pleads to Count I.

The offense value for the bank robbery in Count II is not added to the offense value for the bank robbery in Count I. Because the second bank robbery is not related to, resulting from, or done in furtherance of the first, it is not considered in sentencing the offender.

4. The offense of conviction is distribution of cocaine. The sentencing judge finds by a preponderance of the evidence that the purchaser died of an overdose after ingesting a small quantity of the cocaine. The offense value for the death is added to the offense value for the drug distribution. The ingestion is related to and results from the sale of the drug.

5. The offense of conviction is distribution of cocaine. Evidence at trial establishes that the offender used a twelve-year old child to transport the drugs.

The offense value for distribution of cocaine is aggravated by the offense value for using a minor child as a conduit for distributing drugs. The involvement of the child is related to and is an act done in furtherance of the offense of conviction.

6. The offense of conviction is distribution of cocaine. After the offender's arrest, officers execute a search warrant at the offender's apartment. The search reveals no other evidence linking the offender to other drug transactions. However, an illegal short-barreled shotgun is recovered. No indictment or conviction results from seizure of this weapon at the time of sentencing.

The offense for the shotgun is not, under these circumstances, added to the offense value for the drug distribution. The possession of the shotgun is not related to the offense of conviction.

7. The offense of conviction is obstruction of justice (Count I of a two-count indictment). The second count in the indictment, assaulting a federal police officer (the means of obstruction) is dismissed pursuant to a plea agreement.

The offense value for the assault in Count II is added to the offense value for the obstruction of justice in Count I. The assault is an act done in furtherance of the crime of conviction.

8. The offense of conviction is conspiracy to steal and forge one social security check. At sentencing the judge finds by a preponderance of the evidence that the offender stole, forged, and cashed 20 checks.

All of the offenses related to the 20 checks done in furtherance of the conspiracy, or that resulted therefrom, are used to calculate the total offense value for the conspiracy.

A guideline sentencing system might try to attain this same objective by promulgating a single rule, such as considering all real offense elements unless any such element constitutes a separate crime, in which case the government must charge that offense separately. However, the Commission does not believe this particular rule would work in the federal system, where the existence of separate crimes often depends upon the happenstance of factors creating federal jurisdiction.

A more promising possibility is the use of a rule that allows the sentencing judge to consider all conduct or harms (threatened or accomplished) committed in furtherance of the crime of conviction. However, this rule would prove to be unusually difficult because of the inherent problems in determining what conduct to consider. In order to simplify this process, the Commission has developed preliminary guidelines that rely on explicit cross-references to determine conduct the judge shall take into account.

The Commission requests comment on the use of the modified real offense sentencing system. The Commission also welcomes comments addressed specifically to the question of whether the guidelines should incorporate a specific rule of the sort just mentioned instead of, or in addition to, the explicit cross-references. The Commission also wishes comment addressed to the specific cross-references contained in the preliminary guidelines. The reader should review the preliminary guidelines with both real offense and charge of conviction problems in mind. The reader should decide whether cross-references sufficiently identify additional conduct that is often associated with the statutory elements charged in the indictment.

A related issue is procedural. Factual disputes are unlikely in the vast majority of cases, for the jury will have resolved some disputes and the presiding judge will be able to determine the presence of associated conduct from evidence produced during the course of the trial. Agreement among the parties, particularly when a guilty plea is entered, is likely to resolve most others. When a sentencing fact is disputed, the Commission proposes that the judge determine the fact using a preponderance of evidence standard. If a hearing is necessary, it will be less formal than a trial. The government will bear the burden of proof except if a mitigating factor is in issue. The parties will have the right to present and to cross-examine witnesses. The judge may admit all evidence that is relevant and reliable except for evidence that barred by evidentiary rules. The hearing procedure produces a workable sentencing system that avoids full-fledged trials at the sentencing stage.

The Commission solicits the public's comments and suggestions on these issues.

Chapter Two—Offense Conduct

Overview

Chapter Two contains the offense conduct sections of the preliminary guidelines. The Chapter divides offenses into topical Parts, which are then subdivided into related sections. The sections may cover one statute or many. Cross-references will guide the judge from the offense of conviction to other sections of the guidelines which may be applicable.

Because of time constraints and the need to solicit further advice on certain offenses, the preliminary guidelines do not address every offense that will be addressed in the final guidelines.

Parts addressing the following categories of offenses will be published for public comment as soon as possible: Inchoate Offenses; Treason, Sabotage, and Espionage; Atomic Energy; Foreign Relations; Obstruction of Government; Obstruction of Justice; Contempt of Court; Perjury; Corruption; Monetary Offenses; Public Health and Pollution; and General Regulatory Offenses. Comment is solicited on the manner in which Chapter Two organizes offenses.

The offenses listed in each section have a corresponding base offense value. There may also be one for more specific offense characteristics which raise or lower the base offense value. The number of these characteristics will vary according to the nature of the behavior involved. For instance, kidnapping has the potential aspects of abduction, ransom request, length of restraint, the nature of the victim, and physical and psychological injury.

When determining final offense values the Commission will consider the following: (1) The range of sentences contained in the relevant statutes, as a rough guide to Congressional intent; (2) actual present sentencing practice, as one indicator of current judicial judgments about appropriate sentences; (3) data relevant to crime control considerations, especially specific and general deterrence, recidivism and incapacitation; (4) data about the damage caused by various crimes; (5) data about the difficulty of detection and conviction for various crimes; (6) the parole guidelines; (7) systematic surveys designed to determine public judgments of the relative seriousness of crimes and the appropriateness of sentences; (8) analogous practices in states and other countries; and (9) written and oral testimony submitted to the Commission by knowledgeable groups and witnesses. Once final guidelines are implemented, factors that determine sentences under the guidelines will be monitored and revised. The Commission will continously examine the administrative impact of sentences by testing their effect upon the workload of the courts and prison capacity.

The Commission has not yet completed the research necessary to set firm numerical values. However, extensive data collection and data analysis are ongoing. The Commission has assembled past practices data from several sources, including the FPSSIS data from the Administrative Office of the U.S. Courts. In addition, over 10,000 presentence investigation reports have been collected and are being coded. Further analysis will be extensive.

Because final offense values remain to be determined, and because no final decision has been made about methods for including mitigating and aggravating factors, impact analysis would be premature.

Offense values rest on preliminary research results and initial efforts to reflect appropriate sentences for different forms of criminal conduct. Due to the Commission's desire to obtain early comment, the published numerical values must be treated as highly tentative, preliminary, and subject to change.

Each section may also contain one or more cross-references. These references are the means of carrying out the scheme of Modified Real Offense Sentencing described earlier. Cross-references will refer the sentencing judge to sections of the guidelines to determine if the harms described there took place in addition to the base offense and, if so, how many additional points should be added to the base offense value.

The Commission is particularly interested in receiving comment directed toward the approach taken in these sections, the apparent ease or difficulty in applying them, and the appropriateness of the factors described therein. It would be useful, in particular, if judges, probation officers, and others would attempt to apply this draft to actual cases. The principal objective of that exercise would be to determine if the format used can be practically applied and if the factors chosen are the ones a judge would consider in an actual sentencing situation.

Part A—Offenses Involving the Person

1. *Homicide Offenses.*

18 U.S.C. 113(a)
18 U.S.C. 241
18 U.S.C. 245(b)
18 U.S.C. 351
18 U.S.C. 1111
18 U.S.C. 1112
18 U.S.C. 1114
18 U.S.C. 1751
49 U.S.C. 1472(i)

Introduction. In all cases, the principal interest protected by federal laws against homicide is the physical security of the person. Laws prohibiting murder of certain officials and employees of the United States foster an additional interest: the ability of the government to function effectively and without disruption. This is accomplished by ensuring that individuals are protected from any enhanced dangers to which they may be subject as a result of their governmental position or employment. Murder of a foreign official within the United States creates a federal interest in the ability to effectively conduct foreign policy and foreign relations.

The homicide series of offenses is organized into five levels. Each level includes a list of specific aggravating factors and a cross-reference to the psychological injuries section for those cases in which the immmediate family of the victim suffers a significant or extreme level of emotional harm due to the conduct of the offender. The offense values take into account the culpability of the offender, any unique characteristics of the victim, the residual harm done to the immediate family of the victim, and the effectiveness of imprisonment in protecting the interests enumerated above.

The guidelines place emphasis on the circumstances in which the life was taken rather than the statutory categories of homicide, because most federal statutes prohibiting the taking of human life do not focus on the usual common law circumstances. Statutes concerning civil rights, aircraft hijacking, the use of explosives, trainwrecking, and others do not differentiate among the various classes of homicide. They simply provide an aggravation of the maximum available penalty when "death results."

A211. *Homicide—Level One.* If death resulted under any of the following circumstances, the sentence shall be life imprisonment, unless the penalty of death is imposed:

1. murder committed under any of the circumstances other than jurisdictional circumstances, described as murder in the first degree in 18 U.S.C. 1111;

2. death that resulted under such circumstances as would constitute murder and the victim was the President of the United States or the President-elect;

3. death that occurred as a result of an aircraft hijacking; or

4. murder that was motivated by the possibility of pecuniary gain or in order to enforce a political demand.

A212. *Homicide—Level Two.* If death resulted under circumstances that would constitute murder, other than as described in A211, the base offense value for each instance is 240.

a. Specific Offense Characteristics

1. If the victim was a government official or employee, other than a government official listed in A211, killed in or because of the performance of official duties, add 36 to the base offense value. It is not necessary for the offender to have been aware of the official status of the victim.

2. If the victim was vulnerable due to age or mental or physical condition, add 24 to the base offense value.

3. If the conviction of murder was based on reckless conduct that rises to the level of malice, subtract 100 from the base offense value.

b. Cross-References

1. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury). (*See* definition of victim in Commentary).

2. If the death occurred during the course of another offense, not included in 18 U.S.C. 1111, consult the guideline relevant to that offense and add the appropriate offense value.

A213. *Homicide—Level Three.* If death resulted under circumstances that would constitute voluntary manslaughter, the base offense value for each instance is 120.

a. Specific Offense Characteristics

1. If the victim was a government official or employee, other than a government official listed in A211, killed in or because of the performance of official duties, add 36 to the base offense value. It is not necessary for the offender to have been aware of the official status of the victim.

2. If the victim was vulnerable due to age or mental or physical condition, add 24 to the base offense value.

3. If the conviction of murder was based on reckless conduct that rises to the level of malice, subtract 100 from the base offense value.

b. Cross-References

1. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

2. If the death occurred during the course of another offense, not included in 18 U.S.C. 1111, consult the guideline relevant to that offense and add the appropriate offense value.

A214. *Homicide—Level Four.* If death resulted by reason of the offender's reckless conduct not amounting to malice, the base offense value is 30.

a. Specific Offense Characteristics

1. If the death was caused because the offender was under the influence of any intoxicating substance, add 24 to the base offense value.

2. If the offender used a weapon or other dangerous device, add 12 to the base offense value.

b. Cross-References

1. If the death occurred during the course of another offense, not included in 18 U.S.C. 1111, consult the guideline

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relevant to that offense and add the appropriate offense value.

A215. *Homicide—Level Five.* If death resulted by reason of the offender's negligent conduct, the base offense value is 12.

a. Specific Offense Characteristics

1. If the offender was under the influence of any intoxicating substance, add 12 to the base offense value.

2. If the offender used a weapon or other dangerous device, add 6 to the base offense value.

A216. *Assault with Intent to Kill (Attempted Murder).* See Assault and Battery, A221–A225.

Commentary

Homicide level one offenses involving death provide for mandatory life imprisonment in a limited number of cases. (The availability of the death penalty is a matter of Congressional and judicial determination.) These include first degree murder (premeditated murder and some felony murders) now subject to the mandatory maximum penalty of life imprisonment under 18 U.S.C. 1111. While persons convicted under that provision presently are entitled to consideration for early release on parole, the abolition of parole will effectively convert their punishment into life imprisonment. 18 U.S.C. 4205 providing for parole eligibility after ten years in life terms will be repealed effective with the implementation of guidelines. Other categories of offenses subject to the life imprisonment provision include: assassination of the President or President-elect, death occurring during an aircraft hijacking, and murder-for-hire. The risk of death during an aircraft hijacking is so great that if any life is lost the appropriate penalty should be the maximum allowed by law.

Homicide level two offenses provide substantial punishment for those who cause death under circumstances not described in the first level but under circumstances that would constitute murder. These penalties are further enhanced if the victim was vulnerable due to age or physical or mental condition, or the victim was a federal, state, local, or foreign government official, including a law enforcement or correctional officer, killed in or because of performance of official duties. Further aggravation of the penalty at this level is possible if the victim's immediate family suffered psychological injury as a result, or if the death took place during the course of another offense. In the latter case, the offense value for the underlying offense is added to the base offense value for the death. As a practical matter, an offender who knowingly causes a death during the course of a serious felony will be subject to life imprisonment, whether or not the felony is included in the list of felony murder predicates found in 18 U.S.C. 1111. Persons involved in lesser predicate offenses will be punished at proportionally lower levels. Under A212, if murder is based on reckless conduct that supports a finding that the offender acted with malice, the offense value is reduced to provide a distinction between this and intentional conduct.

Homicide level three offenses provide a base offense value for voluntary manslaughter. The statutory recognition that this offense should not be punished as severely as murder is reflected in the offense value. However, the same factors that increase a murder sentence also apply to voluntary manslaughter.

Homicide level four offenses establish a base offense value for reckless homicide. In recognition of the need to properly punish and deter individuals from operating a vehicle while intoxicated, an aggravating factor is included to punish drunk drivers. If the reckless conduct rises to the level of malice, consult A212.

Homicide level five offenses cover negligent homicide. The emphasis on motive and victim are removed since the offender has no motive and is indifferent to the victim's identity. As with reckless homicide, intoxicated offenders are treated at a higher level because their conduct is inherently more dangerous.

Assault with intent to kill is treated under Part A, Section 2, Assault and Battery.

In crimes of violence, the base offense values reflect the assumption that at least a minimal level of psychological injury occurred. The offense value for the lowest level of such injury has therefore been factored into the base offense value for offenses involving the person. In instances in which psychological injury has been significant or extreme, an appropriate increase in the penalty will result.

2. Assault and Battery.

18 U.S.C. 111
18 U.S.C. 112
18 U.S.C. 113
18 U.S.C. 114
18 U.S.C. 351

Introduction. The same interests protected by federal laws involving homicide, physical security, and the ability of the government to function effectively and without disruption are fostered by federal laws concerning physical injury. Physical injuries are defined in the Commentary. The specific aggravating factors focus on the nature of the victim, the use of weapons and the motivation of the offender. These items are also cross-referenced by a number of other guideline sections (*e.g.*, civil rights, criminal sexual conduct, kidnapping, and loansharking). The sections cross-referencing the physical injury provisions are those in which physical injury is likely to accompany the underlying offense.

A221. *Assault and Battery.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the victim was the President of the United States or the President-elect, add 60 to the base offense value.

2. If the offender used any deadly or dangerous weapon or device during and in relation to any crime of violence or drug trafficking crime, add 60 to the base offense value.

3. If the offender used a bomb or explosive, a short-barreled shotgun or short barreled rifle, acid, or other especially dangerous weapon or substance with the intent of injuring, add 60 to the base offense value.

4. If the victim was a government official or employee, other than named in 1 above, assaulted in or because of the performance of official duties, add 30 to the base offense value.

5. If the assault was motivated to enforce a political demand, add 30 to the base offense value.

6. If the offender discharged a firearm or used any dangerous weapon or device other than listed in 2 above with the intent of injuring, add 24 to the base offense value.

7. If the victim was vulnerable due to age or mental or physical condition, add 12 to the base offense value.

8. If the offender discharged or displayed a firearm or other dangerous weapon or device with the intent of threatening, add 12 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury, add the base offense value from A222–A225 (Assault and Battery).

2. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

3. If property was damaged, destroyed, or taken, add the appropriate offense value from Part B, Offenses Involving Property.

A222. *Severe Bodily Injury.* The base offense value is 120.

A223. *Permanent Bodily Injury.* The base offense value is 96.

A224. *Serious Bodily Injury.* The base offense value is 60.

A225. *Bodily Injury.* The base offense value is 20.

Commentary

Section A221a.2 and 3 satisfy the Congressional mandate of 18 U.S.C. 924(c).

Assaults represent a danger to personal safety whether or not bodily injury results to the intended victim. The base offense value of 6 reflects the potential seriousness of any behavior that evidences a disregard for the physical security of others. The penalty is increased when the conduct or the instrument used in the assault poses special additional danger to personal security. Therefore, the use of instruments or materials that are potentially life threatening, but are generally not criminalized elsewhere, results in an add-on of 24. The use of firearms, explosives, or similar devices results in an add-on of 60, consistent with the related provisions in Part K, Offenses Involving Public Order and Safety. However, when applying A221, additional add-ons for the use of weapons under Part K are not appropriate.

An aggravating factor could be provided for cases of family violence. This factor has not been included in this preliminary draft. The Commission solicits comment on the subject.

The Commission has not resolved the issue of how to treat inchoate crimes in general. Such resolution may affect the section on Assault and Battery as it relates to crimes such as attempted murder.

The levels of physical injury are:

1. *Severe Bodily Injury.* Severe bodily injury means that the victim suffered the loss, or long-term or permanent impairment of more than one bodily function.

2. *Permanent Bodily Injury.* Permanent bodily injury means that the victim suffered the loss, or long-term or permanent impairment of a bodily function.

3. *Serious Bodily Injury.* Serious bodily injury means that the victim received an injury that required medical intervention, such as surgery, hospitalization, or physical rehabilitation or that caused the temporary loss of a bodily function.

4. *Bodily Injury.* Bodily injury is any other physical injury.

3. Criminal Sexual Conduct.

18 U.S.C. 113(a)
18 U.S.C. 1153
18 U.S.C. 1203
18 U.S.C. 2031
18 U.S.C. 2032
Assimilative Crimes

Introduction. The interest protected in guidelines for unlawful sexual acts is the physical security of the person. A number of the cases involving such acts enter federal jurisdiction under assimilative crimes provisions. Although the federal provisions governing these acts are framed in the traditional (and narrower) language of rape, statutory rape, and sodomy, in recent years there have been many developments in reforms of existing law. For purposes of sentencing, the guidelines have therefore adopted broader categories of offender conduct to more easily include violations under the assimilative crimes provision. These categories are inclusive of traditional federal offenses and address those circumstances and factors that the Commission has concluded warrant additional consideration in sentencing the sex offender.

For purposes of this section, Criminal Sexual Conduct means a sexual act accomplished by means of aggravated force or coercion, or by such other means as are set forth herein. A Sexual Act means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any instrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes, or where otherwise authorized by law. Aggravated Force means that the offender used actual force of an aggravated nature to overcome the victim or threatened death or used a deadly weapon. Force of an aggravated nature is defined as any degree of violence above a simple assault and battery. Coercion means that the offender threatened to use actual force or physical violence to overcome the victim or threatened to retaliate in the future by actual force or physical violence or by kidnapping the victim or another person. Criminal Sexual Conduct with a Minor means a sexual act with a person under the age of sixteen years old, and not by means of aggravated force or aggravated coercion.

A231. *Criminal Sexual Conduct by Aggravated Force or Coercion.* The base offense value is 150.

a. Specific Offense Characteristics

1. If the victim was under age 16, add 60 to the base offense value.

2. If the victim was in the custody, care, or control of the offender, add 36 to the base offense value.

3. If the victim was vulnerable due to advanced age or mental or physical condition, or was a corrections officer, add 12 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury, add the appropriate offense value from A222–A225 (Assault and Battery).

2. If the victim suffered an unlawful restraint beyond that involved in and incidental to the commission of a sexual battery, add the appropriate offense value from A241–A242 (Unlawful Restraint).

3. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

Commentary

Sexual offenses addressed in this section are crimes of violence. The primary factors that differentiate such offenses for sentencing are the circumstances or means by which the act is accomplished and the vulnerability of the victim. Thus, the greatest sentence should be imposed for a sexual offense that is accomplished under circumstances of violence, where a weapon is used, and where such conduct is directed to a victim particularly vulnerable to both the conduct and its foreseeable results.

Although actual force of an aggravated nature is a primary consideration in determining seriousness of conduct, the threat of death or use of a deadly weapon poses a danger to the victim that is similar to physical violence. Such conduct is therefore punished to the same extent as the actual use of force.

When physical injury, additional restraint, or psychological injury result from the conduct, these factors should be reflected in the sentence imposed. Consequently, these are identified by cross-references.

A232. *Criminal Sexual Conduct by Other Means.* The base offense value is 40.

a. Specific Offense Characteristics

1. If the victim was under age 16, add 60 to the base offense value.

2. If the victim was in the custody, care, or control of the offender, add 36 to the base offense value.

3. If the victim was vulnerable due to advanced age or mental or physical condition, add 12 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury, add the appropriate offense value from A222–A225 (Assault and Battery).

2. If the victim suffered an unlawful restraint beyond that involved in and incidental to the commission of a sexual battery, add the appropriate offense value from A241–A242 (Unlawful Restraint).

3. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

Commentary

This section applies to sexual conduct that occurs without the presence of aggravated force or coercion. This would include the use of force that would equate to simple assault and battery or when drugs, intoxicants, or similar substances are used to initiate the commission of the offense. Physical injury, additional restraint, or psychological injury that result from the conduct should be reflected in the sentence imposed. Consequently, these are identified by cross-references.

A233. *Criminal Sexual Conduct with a Minor (Including Statutory Rape).* If the offender committed criminal sexual conduct with a minor, absent circumstances of any force or coercion, the base offense value is 12.

a. Specific Offense Characteristics

1. If the victim was under age 12 or the offender was more than three years older than the victim, add 60 to the base offense value.

2. If the victim was in the custody, care, or control of the offender, add 48 to the base offense value.

3. If the victim was otherwise vulnerable due to mental or physical condition, add 12 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury, add the appropriate offense value from A222–A225 (Assault and Battery).

2. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

3. If the offense involved the prostitution, recruiting for prostitution, transportion for prostitution, or transportion for sexual exploitation of a minor, add the appropriate offense value from Part E, Offenses Involving Criminal Enterprises.

4. If the offense involved exploitation of a minor by production of sexually explicit visual or printed material, or by prostitution, add the appropriate offense value from Part E, Offenses Involving Criminal Enterprises.

Commentary

Although the federal provision dealing with statutory rape, 18 U.S.C. 2032, prohibits only relations with a female under sixteen, the trend in reform of such laws has recognized gradations based upon the youthfulness of the victim as well as the age of the offender. Under such reforms, increased severity of sanctions has resulted when it should be obvious to the offender that the victim is an adolescent, and where the offender is considerably older than the victim.

A234. *Attempts and Assaults with Intent.* If the offender attempted to commit or assaulted with the intent to commit any act of criminal sexual conduct hereinabove, the base offense value is the offense value applicable if the act had been completed.

Commentary

Attempts pose significant danger and trauma. Since the legal distinction between an attempt and the completed act hinges on the occurrence of slight intrusion, no justification exists to mitigate an attempt.

A235. *Unlawful Sexual Contacts.* If the offender engaged in or attempted to engage in unlawful sexual contacts that are not within the definition of criminal sexual conduct, the base offense value is 6.

a. Specific Offense Characteristics

1. If the victim was under age 12, or the offender was more than four years older than the victim, add 12 to the base offense value.

2. If the victim was otherwise vulnerable due to age or mental or physical condition, add 12 to the base offense value.

3. If the victim was in the custody, care or control of the offender, add 24 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury, add the appropriate offense value from A222–A225 (Assault and Battery).

2. If the victim suffered an unlawful restraint beyond that involved in and incidental to the commission of a sexual act, add the appropriate offense value from A241–A242 (Unlawful Restraint).

3. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

Commentary

Unlawful sexual contacts deal with improper touching or fondling. If any intrusion occurs, consult the appropriate section above. Since circumstances under which this conduct occurs can vary greatly, it is difficult to capture all the various distinctions in the Specific Offense Characteristics.

The Commission solicits comment regarding the distinctions that should be made for this offense, and guidance for the circumstances in which it would be appropriate for the judge to deviate from the guideline.

4. Abduction or Unlawful Restraint.

18 U.S.C. 351
18 U.S.C. 1201
18 U.S.C. 1202
18 U.S.C. 1751
18 U.S.C. 2422
18 U.S.C. 2423

Introduction. As with other offenses involving the person, the principal interests protected by federal laws against unlawful restraint are the physical security of the person and the ability of the government to function effectively and without disruption. The unlawful restraint provisions take into account three general factors: the nature of the victim; the duration of the abduction; and the motivation of the offender.

The victim categories parallel those in other parts of Part A. The age or vulnerability of the victim is considered as well as the official status of the victim. The latter consideration allows enhanced treatment of terrorist acts, as does the provision aggravating the offense if a political demand is made.

A241. *Abduction or Unlawful Restraint of the President.* If any victim was the President of the United States or the President-elect, the base offense value is life imprisonment.

A242. *Abduction or Unlawful Restraint.* If any victim, other than the President or President-elect was abducted or unlawfully restrained, the base offense value is 60.

a. Specific Offense Characteristics

1. If a monetary or political demand was made, add 60 to the base offense value.

2. If the victim was a government official or employee victimized in or because of the performance of official duties (other than those described in A241) or was vulnerable due to age or mental or physical condition, add 36 to the base offense value.

3. If the abduction lasted more than one hour, add 24 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury or was the victim of criminal sexual conduct, add the appropriate value from A222–A225 (Assault and Battery) or A231–A235 (Criminal Sexual Conduct).

2. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

A243. *Ransom Money.* The base offense value is 60 unless the victim was a person identified in A241, in which case the base offense value is 72. (18 U.S.C. 1202)

Commentary

The durational aspect of an unlawful restraint is significant for purposes of sentencing. While it is possible to conceive of short term abductions that are as serious, if not more serious, than some long term abductions, in general, extended duration is a serious aggravator of the offense. A short term abduction will be aggravated if it took place during some other offense, the offense value of which may be added to the base offense value.

A life sentence is imposed if the President or President-elect is abducted, because of the significant effect on the operation of government. Because government officials may be especially vulnerable due to their official duties, there is an aggravating factor for these types of potential victims.

Cross-references are made to the physical injury, criminal sexual conduct, and psychological injury provisions for further aggravation.

Section A243 specifically includes conduct prohibited by 18 U.S.C. 1202.

5. Psychological Injury.

A251. *Psychological Injury*

a. Offenses Involving the Person

1. If the court determines that a victim suffered extreme psychological injury, add 48 to the base offense value.

2. If the court determines that a victim suffered significant psychological injury, add 24 to the base offense value.

b. Other Offenses

If the court determines that a victim of the offense suffered extreme or significant psychological injury, add 12 to the base offense value.

The levels of psychological injury are:

1. *Extreme Psychological Injury.* Extreme psychological injury means a substantial impairment of the intellectual, psychological, or emotional capacity of a victim that is likely to be of extended and continuous duration or to last for a period in excess of 120 days, that manifests itself by physical symptoms or changes in behavioral patterns that are capable of objective diagnosis, and that is established by a preponderance of the evidence by expert testimony.

2. *Significant Psychological Injury.* Significant psychological injury means a significant impairment of the intellectual, psychological, or emotional capacity of a victim that is likely to be temporary or intermittent and that is established by a preponderance of the evidence by any competent testimony.

Commentary

"Victim of the offense," for the purposes of A251, includes the victim and a member of the victim's immediate family who can demonstrate significant or extreme psychological injury as the result of the offense against the victim, *e.g.*, a parent of a homicide victim.

Although there is no provision of the federal criminal law that specifically punishes the infliction of emotional or psychological injury, such harm often results from the offender's conduct. Definitions are drawn from language developed in the civil tort of "outrage" or "infliction of emotional distress," as modified in the context of criminal law and procedure.

Offense Against the Person. If the court finds that the degree of psychological harm is much greater than that typically experienced by other victims of the same type of offense, it shall add 24 or 48 to the base offense value for the offense, depending on the level of psychological harm found to exist.

Other Offenses. An additional offense value of 12 is appropriate in nonviolent offenses where credible evidence shows that the victim suffered at least significant psychological injury as a result of the offender's conduct.

While the Commission believes that sentencing judges often consider psychological injuries, it recognizes that such harm is often difficult to quantify. Comment on the appropriateness of including such harm is invited.

Part B—Offenses Involving Property

1. Theft and Property Destruction.

18 U.S.C. 641
18 U.S.C. 657
18 U.S.C. 659
18 U.S.C. 661
18 U.S.C. 656
18 U.S.C. 1703
18 U.S.C. 1708
18 U.S.C. 2116
18 U.S.C. 2113(b)
18 U.S.C. 2314

B211. *Theft.* The base offense value is 2 plus the offense value from B251 (Property Table).

a. Specific Offense Characteristics

1. If the property stolen was a firearm, explosive, or destructive device, add 12 to the base offense value.

2. If the property stolen was a controlled substance, add 12 to the base offense value.

3. If the offender embezzled money, property, services, or any thing of value, add 6 to the base offense value.

4. If the property stolen was undelivered United States mail, add 6 to the base offense value.

B212. *Receiving Stolen Property.* The base offense value is 2 plus the offense value from B251 (Property Table).

a. Specific Offense Characteristics

1. If the property was for resale or included a firearm, explosive, or destructive device, add 12 to the base offense value.

B213. *Property Damage or Destruction.* The base offense value is 2 plus the offense value from B251 (Property Table).

a. Specific Offense Characteristics

1. If the offender used fire, an explosive, a dangerous device, or a firearm to damage a residence, building, vehicle, or other structure or place where persons were present or were likely to be present, add 60 to the base offense value.

2. If the offender used fire, an explosive, a dangerous device, or a firearm to damage property, other than one described in 1 above, add 24 to the base offense value.

3. If the offender damaged a public facility, and thereby caused a significant impairment of any function of a public facility, add 24 to the base offense value.

4. If the property destroyed was undelivered United States mail, add 6 to the base offense value.

b. Cross-References

1. If a victim suffered death, physical injury, or psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person.

Commentary

This subpart contains three sections involving the simplest forms of property offenses, theft, embezzlement, transactions in stolen goods, and damage or destruction of property.

Section B211 addresses theft offenses. The primary emphasis is placed on the amount of property taken. The sentencing court is referred to a Property Table, B251, which provides a point score based on the value of the property taken. To ensure that even minor thefts receive some level of punishment, the base offense value will always be at least 6.

Some property cannot be readily valued in a dollar amount. It has significance or worth beyond the monetary value, such as in those instances where a family heirloom is stolen or destroyed. Recognizing that value in such instances is difficult to determine, the Commission foresees that a sentence outside the guideline range may be appropriate when the court is faced with this issue.

The penalty for theft or destruction of mail is aggravated because theft from the mails disrupts the integrity of a public function. Therefore, it deserves a sanction that is higher than would be accorded the dollar loss alone.

Cases of embezzlement receive added punishment beyond the value of the property. This reflects the injury inflicted upon the victim as well as the greater opportunity for theft in such instances, and the resulting need to deter such conduct.

The theft of firearms or destructive devices also receives additional punishment in an effort to further purposes of deterrence and incapacitation of those involved in this type of criminal activity.

Receiving stolen property, B212, is treated like theft offenses. An aggravating factor is included to address the professional fence, a person who receives stolen property for resale, and a person who deals in stolen firearms. By providing an illegal market for stolen property, such persons provide an incentive for theft. As such, deterrence considerations support a significant additional sanction beyond that applied to the person who purchased stolen property for personal use.

The third section property offenses, B213, addresses property damage or destruction. As in cases of theft, to ensure that even minor damage to property receives some level of punishment, the base offense value will always be at least 6.

The use of fire, explosives, dangerous devices, or firearms to damage property where persons are likely to be present receives an additional offense value of 60, consistent with the specific aggravating factors found in related provisions of Part K, Offenses Involving Public Order and Safety. To avoid double counting, there is no further cross-reference to Part K.

The offense value for damage to property in cases where persons are not likely to be injured (*e.g.*, destruction of a mailbox or a barn that has been deserted for years) is still increased if the damage is caused by fire, an explosive, a dangerous device, or firearm, in recognition of the inherent threat of additional injury or harm arising from the criminal use of such devices or weapons.

In cases of property damage involving more extensive public disruptions, the monetary value of property damaged or destroyed may not alone reflect the injury inflicted. For example, the destruction of a $500 telephone line may cause a significant interruption in services to thousands of people.

2. Burglary and Trespass.

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18 U.S.C. 1362
18 U.S.C. 2113(a)
18 U.S.C. 2115

B221. *Burglary.* The base offense value is 24.

a. Specific Offense Characteristics

1. If the building was a dwelling occupied during the offense, add 40 to the base offense value.

2. If the building was a dwelling unoccupied during the offense, add 30 to the base offense value.

b. Cross-References

1. If any victim suffered death, physical injury, or psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any property was stolen or destroyed, add the appropriate value from B211 (Theft) or B213 (Property Damage) to the base offense value.

B222. *Trespass.* The base offense value is 6.

a. Specific Offense Characteristics

1. If on the premises of a highly secured government facility or a nuclear energy facility, add 6 to the base offense value.

2. If on the premises of a dwelling, add 12 to the base offense value.

b. Cross-References

1. If any victim suffered death, physical injury, or psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any property was stolen or destroyed, add the appropriate value from B211 (Theft) or B213 (Property Damage) to the base offense value.

Commentary

Burglary and trespass often are incidental to other offenses. The intent to commit further crimes and the risk to other persons are reasons for the severity of the punishment for burglary. This is especially true when a dwelling is involved. The guidelines reflect these factors in determining an appropriate sentence. Actual injuries to persons and property are reflected in the cross-references.

Most trespasses punishable under federal law involve federal lands or property. The trespass section includes two specific offense characteristics. The first deals with trespasses on highly secured facilities and nuclear energy facilities, where there is a significant federal interest to protect.

Additionally, a sentence enhancement is provided for trespass in a dwelling. There is obviously a greater danger of personal injury in such a trespass as well as a greater actual harm through loss of personal security to the owner.

3. Robbery, Extortion and Blackmail.

18 U.S.C. 1951
18 U.S.C. 1952
18 U.S.C. 2113
18 U.S.C. 2114
18 U.S.C. 2118

B231. *Robbery.* The base offense value is 36.

a. Specific Offense Characteristics

1. If the offender used a dangerous weapon or device, add 60 to the base offense value.

2. If the robbery was attempted or accomplished by more than one offender using force or threats of force to take control over any facility or any persons in the facility, add 36 to the base offense value.

3. If the offender robbed a financial institution or a federal facility or institution, add 24 to the base offense value.

4. If the property stolen was a controlled substance, add 12 to the base offense value.

b. Cross-References

1. For the property stolen, add the appropriate value from B211 (Theft) to the base offense value.

2. If any property was destroyed, add the appropriate value from B213 (Property Damage) to the base offense value.

3. If any victim suffered physical injury or psychological injury resulted, add the appropriate value from Part A, Offenses Involving the Person, to the base offense value.

4. If a hostage was taken during the robbery, add the appropriate value from Part A, Offenses Involving the Person, to the base offense value.

Commentary

The use of a dangerous weapon or device constitutes the most serious aggravating characteristic of a robbery.

A "take-over" robbery of a facility presents a high degree of planning and danger to human safety. Such robberies are often committed by gangs or experienced robbers. Considerations of incapacitation, deterrence and just punishment warrant the enhancement of a sentence for robberies committed under "take-over" circumstances.

Drugs or other controlled substances are often the motive for robberies of a Veterans Administration Hospital, a pharmacy on a military base or a similar facility. The specific offense characteristic for this type of robbery takes into consideration the dangers and security problems presented and satisfies Congressional intent.

If a robbery is aggravated by actual personal injury, the taking of a hostage, or loss or destruction of property, reference is made to other sections of the guidelines.

B232. *Extortion.* Reserved.
B233. *Blackmail.* Reserved.

4. *Counterfeiting and Forgery.*

18 U.S.C. 471
18 U.S.C. 472
18 U.S.C. 473
18 U.S.C. 495
18 U.S.C. 500
18 U.S.C. 501
18 U.S.C. 510
18 U.S.C. 1003
18 U.S.C. 2314
18 U.S.C. 2315

B241. *Counterfeiting and Forgery.* If the offender committed any offense involving counterfeiting, forgery, or uttering, the base offense value is 6 or, if the face value (if any) of the counterfeit, forged, altered, or fraudulently endorsed item exceeds $2,000, use the base offense value from B251 (Property Table).

a. Specific Offense Characteristics

1. If the offender possessed or had custody or control over counterfeiting devices and materials for use in illegally printing or coining any currency, obligation, or security of the United States, add 24 to the base offense value.

2. If the offense involved more than ten falsely made, forged, counterfeit, or altered currency bills, obligations, or securities of the United States, add 12 to the base offense value.

3. If the offense involved ten or fewer falsely made, forged, counterfeit, or altered currency bills, obligations, or securities of the United States, add 6 to the base offense value.

Commentary

The base offense value applies to a wide range of statutes dealing with forgery and counterfeiting, a variety of items protected by federal law, such as food stamps, postage stamps, foreign bank notes, military discharge papers, and automobile identification numbers. The more serious offenses will be appropriately aggravated by application of the property table to reflect the face value (if any) of the forged item.

Obligations and securities of the United States are treated as an aggravated subject of forgery, alteration, and counterfeiting. The offender who passes an altered or counterfeit $20 bill would be subject to a total offense value of 12, while an offender who possessed $5,000 in counterfeit $20 bills would be subject to a total offense value of 20, by application of the property table. Similarly, an offender who possesses or has control over counterfeiting devices and materials is viewed as the most culpable, because of the sophistication and planning involved in manufacturing counterfeit obligations and securities.

An offender who both forges and utters a check is treated the same as an offender who only forges or utters it.

5. Property Table.

B251. *Property Table.*

Monetary value	Offense value
Up to $1,000	4
$1,001 to $2,000	6
$2,001 to $5,000	8
$5,001 to $10,000	12
$10,001 to $25,000	16
$25,001 to $50,000	20
$50,001 to $100,000	24
$100,001 to $200,000	30
$200,001 to $500,000	36
$500,001 to $1,000,000	42
$1,000,001 to $2,000,000	48
$2,000,001 to $5,000,000	54
Over $5,000,000	60

Commentary

In punishing property offenses, the underlying principle is that an offender's sanction should increase with the dollar amount of property involved in the offense. There are ten categories in this table. Some cases may fall at the low end of a monetary grouping or the top of the next grouping. In those close cases, the sentencing court may adjust the sentence within the applicable discretionary guideline range to compensate for any concern that category range was too high or low for the particular offense involved.

Part C—Offenses Involving Taxation

1. Offenses Involving Income Taxes.

26 U.S.C. 7201
26 U.S.C. 7202
26 U.S.C. 7203
26 U.S.C. 7204
26 U.S.C. 7205
26 U.S.C. 7206
26 U.S.C. 7207
26 U.S.C. 7215

C211. *Tax Evasion.* The base offense value is determined by the table below. Application of the table is to be based upon the tax deficiency, *i.e.*, the total amount of tax that the taxpayer evaded or attempted to evade. The deficiency does not include any interest or penalties. If multiple counts are involved, *e.g.*, when the taxpayer evaded taxes in several years, the deficiencies should be added. If the offense involved an attempt to evade taxes that, as of the time of the offense had not yet become due, compute the deficiency using a tax rate of 30%.

Deficiency	Base offense value
Up to $1,000	10
$1,001 to $5,000	12
$5,001 to $10,000	14
$10,001 to $20,000	16
$20,001 to $35,000	18
$35,001 to $70,000	22
$70,001 to $120,000	26
$120,001 to $200,000	30
$200,001 to $350,000	36
$350,001 to $600,000	42
$600,001 to $1,000,000	48
$1,000,001 to $2,000,000	54
Over $2,000,000	60

a. Specific Offense Characteristics

1. If all or part of the taxpayer's income was obtained unlawfully, application of the table is to be based upon the deficiency plus the amount of any unreported unlawfully-obtained income. Unreported income is presumed to have been obtained unlawfully, unless otherwise established by the offender. Example: Suppose that the offender's tax deficiency is $25,000 and the amount of unreported income is $60,000. Unless it is established that the unreported income was obtained lawfully, the deficiency for purposes of applying the table would be $85,000, and the offense value would be 26 rather than 18.

b. Cross-References

1. If the offense occurred in connection with a course of conduct in which the offender aided, assisted, procured, counseled, or advised another to violate the internal revenue laws (other than in respect to the taxes that are involved in the instant tax evasion offense), whether through fraud or otherwise, add the offense value from C214.

C212. *Willful Failure to File Return, Supply Information or Pay Tax.* The base offense value is 80 percent of the offense value for Tax Evasion specified in C211.

a. Specific Offense Characteristics

1. If the offense involved only a failure to pay tax when due, the base offense value is 50 percent of the base offense value specified in C211 (Tax Evasion).

2. If the offense involved only a failure to file a return or supply required information, *i.e.*, no tax was due, the base offense value is 6.

b. Cross-References

1. If the offense occurred in connection with a course of conduct in which the offender aided, assisted, procured, counseled, or advised another to violate the internal revenue laws (other than with respect to the taxes that are involved in the instant tax evasion offense), whether through fraud or otherwise, add the offense value from C214.

C213. *Fraud and False Statements (Under Penalty of Perjury).* The base offense value is 10.

a. Cross-References

1. If the offense occurred in connection with a course of conduct in which the offender aided, assisted, procured, counseled, or advised another to violate the internal revenue laws (other than with respect to the taxes that are involved in the instant offense), whether through fraud or otherwise, add the offense value from C214.

2. If the conduct was in furtherance of an effort to evade payment of a tax, including a plan to evade a tax that, at the time of the offense had not yet become due, the offense value is the offense value for C211 (Tax Evasion).

C214. *Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud.* The base offense value is 10.

a. Specific Offense Characteristics

1. If the conduct occurred in connection with an effort to evade a specific tax obligation, the base offense value is that for evasion of tax by the principal from C211 (Tax Evasion). Use a tax rate of 30 percent to compute the deficiency.

2. If the offender was in the business of preparing or assisting in the preparation of tax returns or the provision of documentation for the substantiation of tax returns, or if the conduct was in furtherance of an organized movement to encourage others to violate the internal revenue laws, add 6.

C215. *Fraudulent Returns, Statements, or Other Documents.* The base offense value is 8.

C216. *Failing to Collect or Truthfully Account For and Pay Over Tax.* The base offense value is from C211 (Tax Evasion).

a. Specific Offense Characteristics

1. If the employer untruthfully accounted to his/her employees for any taxes withheld, add 4.

C217. *Failing to Deposit Collected Taxes in Trust Account as Required After Notice.* The base offense value is 6, or 25 percent of the offense value from C211 (Tax Evasion), whichever is greater.

C218. *Failing to Furnish an Employee a True Statement Regarding a Tax Withheld from the Employee.* The base offense value is 6.

C219. *Furnishing False Information to an Employer in a Withholding Exemption Certificate, or Failing to Supply Information that Would Require an Increase in the Tax to be Withheld.* The base offense value is 4.

2. Offenses Involving Alcohol and Tobacco Taxes.

26 U.S.C. 5601
26 U.S.C. 5604
26 U.S.C. 5662
26 U.S.C. 5686

C221. *Offenses Involving Non-Payment of Taxes.* The base offense value is the base offense value from C211 (Tax Evasion). The deficiency is

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the amount of unpaid taxes, or the taxes that the offender attempted to evade.

C222. *Regulatory Offenses.* The base offense value is 6.

3. Offenses Involving Customs.

18 U.S.C. 542
18 U.S.C. 545
18 U.S.C. 549

C231. *Evading Import Duties or Restrictions (Smuggling).* The base offense value is determined by applying the table in C211 (Tax Evasion) to the amount of the duty evaded.

a. Specific Offense Characteristics

1. If entry of the object is prohibited, restricted, or limited, then in lieu of the duty evaded, use (a) 25% of the fair market value of the object in the United States, or (b) the difference between the fair market value of the object in the United States and the fair market value of the object in the country of origin, or (c) the actual duty evaded, whichever is largest, in applying the table in C211 (Tax Evasion).

2. If the duty evaded (as defined in a.1., if applicable) is less than $500, and the object is for the personal use of the offender rather than resale, the offense value is 6.

C232. *Receiving or Trafficking in Smuggled Property.* The base offense value is the offense value from C231 (Smuggling) with respect to the smuggled object.

Commentary

1. Offenses Involving Income Taxes

This part deals with criminal violations of the internal revenue laws. The offense values have been set independently of those for offenses such as fraud or theft because the collection of taxes involves a unique governmental interest and estimates of the level of evasion are extremely high.

C211. Tax Evasion

This section deals with conduct proscribed by 26 U.S.C. 7201, which is entitled "Attempt to evade or defeat tax." In order for there to be a violation of 26 U.S.C. 7201, there must be an affirmative act in furtherance of the evasion of taxes. If there is no affirmative act another section may apply, *e.g.*, if the taxpayer did not pay the tax and did not file a return, *see* C212.

If the tax obligation involved is not the offender's (in which case this guideline may be applied by cross-reference), the offender will be liable only for the amount of the taxes that he/she aided, abetted, or caused the taxpayer to attempt to evade. The enhancement for unreported unlawfully obtained income applies to the extent that the offender was aware or should have been aware that the income was unlawfully obtained. A question has been raised over whether an employee who is required by his/her employer to prepare fraudulent returns for the purpose of evasion should be treated less severely than the principal, but the Commission tentatively has elected not to attempt to make that distinction.

False statements in furtherance of the evasion (*see* C213, C215 and C219) are considered part of tax evasion, and should not be treated as separate or additional offenses unless they occur in connection with taxes other than those that the offender is charged with evading or attempting to evade.

This guideline does not provide a lower penalty for an unsuccessful attempt. Such attempts generally involve fully completed acts that, but for fortuitous circumstances such as action by the I.R.S., would result in the evasion. The statute makes no distinction in punishment between an attempt and a completed offense; indeed, the offense is denominated an attempt.

In addition to reducing disparity, this guideline should result in a significant increase in average sentence length for large-scale evasions. Under current practices the sentence lengths tend to be relatively unrelated to the amount of tax evaded. The guideline should result in moderate increases for the great majority of cases that involve less than $100,000 in tax evaded. The most significant change is that fewer cases will result in probation or fines without any imprisonment.

Factors considered for incorporation into the guidelines included: (1) The amount of tax evaded, (2) whether the income on which the tax was evaded was unlawfully obtained, (3) the proportion of the tax evaded to the total tax due, (4) the number of years of evasion, (5) whether there was careful planning, (6) whether the offender encouraged others to evade taxes, and (7) whether the offender assisted to evade taxes.

Only factors 1, 2, and 7 were expressly incorporated.

Factor 1 (the amount of tax that the offender evaded or attempted to evade). This is the most important factor, since the primary injury is loss of revenue.

Factor 2 (whether the income was lawfully or unlawfully obtained). Assigning a higher offense value to evasion of tax on income obtained unlawfully involves some complexity. Nonetheless, because such income is generally unreported, making its existence especially difficult to prove, this factor is sufficiently important for deterrence purposes to require inclusion. Use of this factor requires the court to determine, in addition to the amount of tax evaded, whether and how much income was obtained unlawfully. One can imagine contentions as to the source of the income, *e.g.*, that it was derived from gambling activity, that would be complex to resolve. Because of this, and also because unreported income is probably the most difficult to detect and prove, the guidelines specify that it shall be presumed that unreported income was not obtained lawfully unless credible evidence to the contrary is produced.

Factors 3 (the proportion of the tax due that was evaded) and 4 (the number of years of evasion). Factor 3 raises issues as to whether it is more serious to evade, for example, $20,000 in tax when it is 40% of the tax due, or $20,000 in tax when that is 70% of the tax due. Factor 4 relates to whether it is more serious to evade $20,000 in tax during one year or spread out over three years. These factors appear less important than 1 and 2 for sentencing purposes. To include either of them would significantly increase the complexity of the guidelines without an adequate corresponding benefit. These factors might be taken into consideration within the guideline range.

Factor 5 (careful planning). It is difficult to commit tax evasion without planning. To the extent that this factor denotes unusual efforts to prevent detection (such as the use of off-shore bank accounts), it may be dealt with through a general aggravating factor applicable to most crimes, or might be taken into account as a factor warranting a sentence at the high end of the guideline range.

Factor 6 (encouraging others to evade taxes). Frequently, this factor will rise to the level of advising or assisting others to violate the internal revenue laws, in which case it will result in an adjustment to the total offense value. Otherwise, this factor might assist the court in setting a sentence within the guideline range.

Factor 7 (advising or assisting others to evade taxes.) This factor, which usually constitutes a violation of 26 U.S.C. 7206(2), significantly increases the risk of revenue loss and therefore has been expressly included as an aggravating factor.

C212. Willful Failure To File Return, Supply Information or Pay Tax

This section refers to violations of 26 U.S.C. 7203. Such violations are usually serious misdemeanors that are similar to tax evasion, except that there need be no affirmative act in support of the offense. Three types of violations are distinguished. The most frequently prosecuted case involves both a failure to file and a failure to pay the tax; but for the lack of the requisite affirmative act, it would constitute tax evasion. It therefore receives a relatively high punishment that is tied to the amount of unpaid tax. If the offender files a return and supplies the necessary information but nonetheless willfully fails to pay the tax when due, the offense is treated as less serious because it is easy to detect and does not violate as many of the taxpayer's duties. Cases in which the offender owes no tax but fails to file a return pose a relatively minor threat to the tax-collection system and therefore have been assigned a low offense value. If failure to file is part of a larger scheme, the offense value for that larger offense will be applicable under the "modified real offense" sentencing approach adopted by the guidelines.

C213 and C214. Fraud and False Statements; Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud

C213 refers primarily to conduct proscribed by 26 U.S.C. 7206(1), but also applies to 26 U.S.C. 7206(3)–(5).

C214 applies to conduct proscribed by 26 U.S.C. 7206(2). In addition, as an aggravating factor referred to in other guidelines, it applies to any conduct where the offender aids, assists, procures, counsels or advises another to violate the internal revenue laws, whether or not the method of violation amounts to fraud.

Together, these guidelines cover the wide variety of conduct prohibited by 26 U.S.C. 7206, which generally amounts to actual or attempted tax evasion (subdivision 1), or assisting in tax evasion (subdivision 2). Accordingly, the guidelines treat the offenses as tax evasion. The amount of the deficiency is the amount of tax that the conduct was intended to evade or assist in evading. If multiple tax obligations are involved, the deficiencies should be added.

In instances where the offender is setting the groundwork for future tax evasion, he/she may make false statements that state net income but, as of the time of conviction, may not yet have resulted in a tax deficiency. In those cases, the deficiency is to be computed using a rate of 30%—an approximation to the maximum under the new tax laws. The same rate is used when the taxes of another person are involved, so as to avoid complex problems of proof and invasion of privacy. Misreporting by the principal, which the offender facilitated, would still have to be established.

In certain instances, such as promotion of a tax shelter scheme, the offender may advise other persons to violate their tax obligations through filing returns that find no support in the tax laws. If this type of conduct is shown to have resulted in the filing of identifiable false returns (regardless of whether the principals were aware of their falsity), it will be treated as evasion of the approximate amount (computed by using a tax rate of 30%) by which the returns understate the taxes due; otherwise, the offense value is set at 6. A more severe punishment is specified for the tax preparers because their misconduct poses a greater risk of revenue loss and is more clearly willful. The same is true for tax protesters.

Currently, 26 U.S.C. 7206(1) is sometimes used to prosecute persons who, without attempting to evade taxes, misrepresent the source of their income. In such cases, the offender generally is seeking to disguise the unlawful source, such as drug dealing, presumably to avoid attracting the attention of law-enforcement authorities. Such offenses have been assigned a base offense value of 10. An alternative approach would tie the punishment to the source and amount of the income, resulting in larger penalties when serious criminal activity or large sums of money are involved. The Commission invites comment on whether such an approach would be preferable, and, if so, how it should be implemented.

C215. Fraudulent Returns, Statements, or Other Documents

This section refers to conduct proscribed by 26 U.S.C. 7207, a misdemeanor. It is to be distinguished from 26 U.S.C. 7206(1) (C213), a felony, an element of which is a false statement made under penalty of perjury.

C216. Willfully Failing to Collect or Account for and Pay Over Tax

This section refers to conduct proscribed by 26 U.S.C. 7202. The failure to collect or truthfully account for the tax must be willful, as must the failure to pay.

This offense is a felony that is prosecuted infrequently. Where no effort is made to cheat the employee, the offense is a pure form of tax evasion, and is treated as such in the guidelines. In the event that the employer not only fails to account to the IRS and pay over the tax, but also collects the tax from the employees and does not account to them for it, it is both a form of embezzlement and a form of tax evasion. To cover such instances, an aggravating adjustment has been provided.

C217. Failing to Deposit Collected Taxes as Required After Notice

This section refers to conduct proscribed by 26 U.S.C. 7215, 7512(b).

This offense is a misdemeanor that does not require any intent to evade taxes, nor even that the taxes have not been paid. The more serious felony is 26 U.S.C. 7202 (*see* C216).

This offense is likely to be relatively easy to detect and fines may be a feasible punishment. Accordingly, it has been graded considerably lower, than tax evasion, although some effort has been made to tie the offense value to the level of taxes that were not deposited. The deficiency is the amount of tax that was not deposited. If funds are deposited and withdrawn without being paid to the IRS, they should be treated as never having been deposited. A fine that is a percentage of the funds not deposited is suggested.

C218. Willfully Failing to Furnish an Employee a True Statement Regarding a Tax Withheld from the Employee's Remuneration

This section refers to conduct proscribed by 26 U.S.C. 7204, a relatively minor misdemeanor that is infrequently prosecuted.

C219. Willfully Furnishing False Information to an Employer in a Withholding Exemption Certificate, or Failing to Supply Information that Would Require an Increase in the Tax to be Withheld.

This section refers to conduct proscribed by 26 U.S.C. 7205.

Unless it is part of a tax-evasion scheme, this offense is not serious. Although the extent to which the employee claimed unwarranted deductions is probably significant for sentencing purposes, it was not incorporated into the guidelines because the range of judicial discretion permitted is adequate to deal with the factor.

2. Offenses Involving Alcohol and Tobacco Taxes

This part deals with 26 U.S.C. 5601–5605, 5607, 5608, 5661, 5671, 5697, and 5762, where the essence of the conduct is tax evasion or a regulatory violation. Because such offenses are no longer a major enforcement priority, no effort has been made to provide a section-by-section set of guidelines. Rather, the conduct is dealt with functionally, dividing it into two broad categories: tax evasion offenses and regulatory offenses.

C221. Offenses Involving Non-payment of Taxes

The most frequently prosecuted conduct violating this section is operating an illegal still (26 U.S.C. 5601(a)(1)). Offenses in this subsection are treated as equivalent to income tax evasion offenses. The tax deficiency is the total amount of all unpaid taxes that were due on the alcohol or tobacco.

Certain of these statutes deal with conduct that, in some instances, might more properly be characterized as theft. For example, 26 U.S.C. 5601(a)(12) proscribes "removing . . . any distilled spirits on which the tax has not been paid or determined." If the offender is not the owner of the spirits, in which case primary objective may be to steal, the guideline section for theft should be applied. If the offender also failed to pay taxes on the stolen spirits, the offense value for Tax Evasion would apply in addition.

C222. Regulatory Offenses

For offenses where there is no effort to evade taxes, such as recordkeeping violations, the offense value is set at 6. Prosecutions for these offenses are infrequent.

3. Offenses Involving Customs

This part deals with violations of 18 U.S.C. 541–545, 547, 1915 and 19 U.S.C. 283, 1436, 1484, 1485, 1586(e), 1708(b). *These guidelines are primarily aimed at offenses that thwart revenue collection or trade regulation.* They are not intended to deal with the importation of contraband, such as drugs, or other items such as obscene material or firearms, importation of which is prohibited or restricted for non-economic reasons and as to which other, more specific legislation applies.

C231. Evading Import Duties or Restrictions (Smuggling)

This offense is treated as equivalent to tax evasion. There are two exceptions: (1) A lower offense value, 6, is set for cases involving small amounts of customs duties evaded by tourists. Such conduct currently is rarely prosecuted. (2) Special provisions result in a higher offense value for certain items whose entry is prohibited, limited or restricted. Especially when protective quotas are in effect, the duties evaded on such items may not adequately reflect the economic harm resulting from their importation. Accordingly, an alternative measure of the "duty" evaded based upon the items' fair market value is provided. The rate of 25 percent was selected because it is considered an intermediate-range protective tariff. Although the increase in market value due to importation provides an even better estimate of the harm, it may be difficult to measure.

C232. Receiving or Trafficking in Smuggled Property

This offense, which is encompassed by 18 U.S.C. 545, is treated as equivalent to smuggling. Note that the reduced offense value for small tourist-type cases literally does not, and is not intended to, apply to traffickers. This reflects a judgment that a professional trafficker who is caught with even a small amount of merchandise should be treated more seriously than a person who merely acquires goods for personal own use.

Part D—Offenses Involving Drugs

1. *Unlawful Manufacturing, Importing, Exporting, Trafficking, or Possession With Intent; Continuing Criminal Enterprise.*

21 U.S.C. 841
21 U.S.C. 843
21 U.S.C. 845
21 U.S.C. 845a
21 U.S.C. 848
21 U.S.C. 952
21 U.S.C. 953
21 U.S.C. 955
21 U.S.C. 957
21 U.S.C. 959

Introduction. For any controlled substance not specifically defined below, any reference to a particular controlled substance is also meant to include in that reference the substance and any analogous substances including, all salts, isomers, and salts of isomers. For example, the reference to PCP also includes its analogs PHP and TCP.

"Narcotic" is defined as in 21 U.S.C. 802(17) and includes the following substances whether produced by extraction, chemical synthesis, or any other method: opium and opiates (or their derivatives); poppy straw and concentrate of poppy straw; coca leaves and their extracts that contain cocaine or ecgonine; all isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of the foregong as appliable (21 U.S.C. 802(17)); or any compound mixture or preparation which contains any quantity of any of these substances.

"Opiate" is defined as in 21 U.S.C. 802(18) to mean any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

"Traffic" means (a) to sell, pledge, transfer, distribute, dispense, or otherwise dispose of to another person; or (b) to buy, receive, possess, or obtain control of with intent to do any of the foregoing, or to otherwise knowingly aid or assist in any manner in any part of the distribution or sale.

"Marijuana" means all parts of the plant Cannabis sativa L, whether growing or not; the seeds therof; the resin extracted from any part of such plant; and every compound, manufactured salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. 21 U.S.C. 802(16).

The offense values assigned to offenses involving controlled substances depend on the type and amount of the controlled substance (*see* D211, A–D), and the presence of aggravating factors such as selling to minors and use of weapons (*see* D211 a and b).

Other factors being equal, offenses involving substances that present a similar danger are treated similarly. The guidelines were set so as to assure that larger quantities of a controlled substance considered to be less harmful are needed to achieve the same offense value as smaller amounts of a substance considered more harmful.

The drug offense tables measure the scale of the offense. The best evidence of the scale of the offense is normally the quantity of the controlled substance seized in the illegal transaction. For convenience in application, the tables provide the offense values for designated amounts of certain controlled substances that either are the subject of numerous prosecutions or have been specifically identified by statute. Equivalency conversion tables for other controlled substances are reserved for later publication.

Scale amounts for heroin and other schedule I–II opiates, cocaine, and marijuana and other cannabis products refer to the total weight of the controlled substance. If any mixture contains any detectable amount of a controlled substance, the entire amount of the mixture shall be considered in measuring the quantity. If a mixture contains a detectable amount of more than one controlled substance, the more serious controlled substance, as determined by its schedule classification, shall determine the name affixed to the entire quantity. Other substances are measured in terms of the number of doses. A pill, tablet, capsule, or other single unit of user packaging is considered a dose. Tables to convert bulk amounts into doses are reserved for later publication.

D211. *Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession With Intent to Commit Any of the Above Offenses)*

(A) If the substance is heroin or another Schedule I–II opiate,[1] the base offense value is that determined from the following table.

Amounts	Base offense value
1 kg. or more heroin or equivalent amount of other Schedule I–II opiate	160
500 to < 1,000 gms. heroin or equivalent amount of other Schedule I–II opiate	156
250 to < 500 gms. heroin or equivalent amount of other Schedule I–II opiate	144
100 to < 250 gms. heroin or equivalent amount of other Schedule I–II opiate	132
25 to < 100 gms. heroin or equivalent amount of other Schedule I–II opiate	72
10 to < 25 gms. heroin or equivalent amount of other Schedule I–II opiate	66
< 10 gms. heroin or equivalent amount of other Schedule I–II opiate	48

[1] A heroin equivalency table relating to other opiates is reserved for later publication.

(B) If the substance is cocaine, the base offense value is that determined from the following table.

Amount	Base offense value
2 kg. or more cocaine	150
1 kg to < 2 kg. cocaine	156
500 gms. to < 1 kg. cocaine	144
250 to < 500 gms. cocaine	132
100 to < 250 gms. cocaine	72
25 kg to < 100 gms. cocaine	66
10 to < 25 gms. cocaine	48
< 10 gms. cocaine	28

(C) If the substance is any other Schedule I–V controlled substance, except marijuana, the base offense value for the dose amounts [2] is determined from the following table.

Amount	PCP/LSD	Offense value: Other schedule I–III (except Marijuana)	Schedule
IV–V:			
200,000 or more doses	204	168	84
100,000 to < 200,000 doses	192	144	72
50,000 to < 100,000 doses	180	132	60
25,000 to < 50,000 doses	168	120	52
10,000 to < 25,000 doses	156	60	46
2,500 to < 10,000 doses	144	42	38
1,000 to < 2,500 doses	126	30	22
100 to < 1,000 doses	96	18	14
< 100 doses	48	12	12

(D) If the substance is marijuana or other cannabis product,[3] the offense value is that determined from the following table.

Amount	Base offense value
20,000 lbs. or more marijuana or equivalent	106
2,000 to < 20,000 lbs. marijuana or equivalent	72
200 to < 2,000 lbs. marijuana or equivalent	48
50 to < 200 lbs. marijuana or equivalent	32
10 to < 50 lbs. marijuana or equivalent	24
1 to < 10 lbs. marijuana or equivalent	18
< 1 lb. marijuana or equivalent	12

a. Specific Offense Characteristics

1. If the offender is at least 18 years of age and distributes any portion of a controlled substance to a person who is less than 18 years of age, or if the transaction takes place within 1,000 feet of an elementary or secondary school, add 18 to the base offense value.

[2] A dose is equal to one pill, tablet, capsule, or other single unit.

[3] A marijuana equivalency table relating to other cannabis products is reserved for later publication

2. If the offender is at least 18 years of age and uses a person who is less than 18 years of age to assist or in any way facilitate the commission of the offense, add 18 to the base offense value.

b. Cross-References

1. If a firearm was in the possession or under the control of the offender or an accomplice during the commission of the offense, add the appropriate offense value from Part K, Offenses Involving Public Order and Safety.

2. If the offender caused physical injury, add the appropriate offense value from Part A Offenses Involving the Person.

3. If the offender used a special skill, trade, training, education, or position with a financial or other institution or public office to significantly assist or facilitate the commission of the offense, the offender's role in the offense shall be presumed to be at least at the level defined in Chapter Three, Part A, Role In The Offense, which requires the sentencing judge to multiply the total offense value by 1.2.

4. If the offender has one or more final prior convictions for an offense described in D211, the base offense value is doubled.

D212. *Continuing Criminal Enterprise.* For a first conviction for engaging in a continuing criminal enterprise the base offense value is 120, or the total of the offense value(s) applicable to the predicate offenses, whichever is greater. In determining the total offense value for engaging in a continuing criminal enterprise:

1. If any of the predicate offenses have resulted in the imposition of a final sentence prior to sentencing for the current offense, do not add the offense value for the conduct covered by such sentence. However, any sentence imposed under a continuing criminal enterprise conviction shall be consecutive to such other sentence.

2. If any of the predicate offenses have been established initially during the prosecution under a continuing criminal enterprise charge by either special verdict of the jury, or by findings of the court subsequent to a general verdict or plea of guilty, then the base offense value shall be added to the offense value(s) for such predicate offenses.

For a second and subsequent conviction for engaging in a continuing criminal enterprise, the base offense value is 240, or the total of the offense value(s) applicable to the predicate offenses, whichever is greater.

a. Specific Offense Characteristics.

1. If the offender used a person who is less than 18 years of age to assist or in any way facilitate the commission of the offense, add 18 to the base offense value.

b. Cross-References

1. If a firearm was used by the offender or an accomplice in relation to or in furtherance of the offense, add the appropriate offense value from Part K, Offenses Involving Public Order and Safety.

2. If the offender caused death or physical injury add the appropriate offense value from Part A, Offenses Involving the Person.

Commentary

Section D212 refers to conduct proscribed by 21 U.S.C. 848.

As in Part E, Offenses Involving Criminal Enterprises, E211, which refers to violations of 18 U.S.C. 1962 (Racketeer Influenced and Corrupt Organizations offenses), emphasis is placed on the predicate offenses required for conviction. To avoid double-counting, the method for determining the total offense value that is used under E211 is also used under D212. The assigned offense value reflects the Congressional intent to provide a mandatory minimum term of imprisonment for the leaders of large-scale drug enterprises.

When sentencing for convictions under 21 U.S.C. 848, it is especially important that the sentence reflect the offender's role in the enterprise. A conviction will have already established that the offender controlled and exercised decision-making authority over one of the most serious forms of ongoing criminal activity. Therefore, attention is specifically directed to Chapter Three, Part A, Role in the Offense, and the Commentary thereunder, which expressly provides that a conviction under 21 U.S.C. 848 "automatically establishes the applicability of a multiplier of 2" to the base offense value.

D213. *Attempts and Conspiracies.* If any offender enters into a conspiracy or attempts to commit any offense involving a controlled substance, the offense value shall be the same as if the object(s) of the conspiracy or attempt had been completed. All applicable specific offense characteristics and cross-references shall be used in calculating the total offense value.

D214. *Determining Amount When No Seizure Occurs.* If there is no drug seizure or the amount seized does not reflect the actual scale of the offense, the sentencing judge shall determine the quantity of the controlled substance by a preponderance of the evidence. The government's burden of proof may be met by any competent evidence including, but not limited to the following:

1. the quantity associated with known price and market value;

2. financial or other records;

3. testimony concerning the offender's similar transactions, including testimony as to the quantities involved in previous transactions for controlled substance offenses;

4. if a laboratory was involved, testimony regarding the size and capability of the laboratory; or

5. testimony concerning other reliable facts for determining quantity.

Commentary

Violations of laws that prohibit the use or distribution of controlled substances represent a serious harm to individuals and to society. Illegal drug transactions in many instances fund the coffers of organized crime. Evidence increasingly has established a correlation between drug abuse and other crimes and additional resultant harms. Therefore, the controlling principles in formulating these guidelines were deterrence and incapacitation. Drug offenders at every level show a high rate of recidivism. Those who have not been deterred should be incapacitated.

The aggravating factors recognize the increased culpability for offenders who distribute to or use a minor to violate the drug laws. If the violator was also a minor, no aggravating factor is imposed. The possession of dangerous weapons or infliction of physical injury is not uncommon in drug violations. Weapons pose an additional danger not only to offenders but to undercover officers and the public at large. An aggravating factor was included to deter such conduct.

Certain types of offenders are essential to drug violations. These include but are not limited to pilots, boat captains, accountants, bankers, financiers, lawyers, doctors, laboratory technicians, public officials, and others who have a special skill, trade, profession, or position that is used to significantly facilitate the commission of a drug offense. An aggravating factor is included to enhance the punishment in an attempt to deter these individuals from criminal activity.

Recidivists should be dealt with more severely in recognition of the need to incapacitate those who repeatedly fail to obey the law.

While it is not necessary to have seized all or any of the controlled substances involved in a drug transaction to establish guilt, it is often difficult to establish the quantity. The intent of D214 is to allow for appropriate punishment for offenders by recognizing that the sentencing judge may determine the quantity involved even though there was no seizure.

If the offender is convicted of an offense involving negotiations to distribute a controlled substance, the weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount, provided that the government establishes by a preponderance of the evidence that the offender was reasonably capable of providing the amount of the controlled substance under negotiation.

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If the offender is convicted of a conspiracy that includes transactions in controlled substances in addition to those which are the subject of substantive counts of conviction, each conspiracy transaction shall be included with those of the substantive counts of conviction to determine scale. However, the same transaction shall not be subject to sanction under both a conspiracy count and a substantive count of conviction.

2. *Unlawful Possession.*

21 U.S.C. 844

D221. *Unlawful Possession*

(a) If the substance is heroin or any Schedule I–II opiate, the base offense value is 18.

(b) If the substance is cocaine, PCP, or LSD, the base offense value is 16.

(c) If the substance is any other controlled substance, the base offense value is 12.

a. Specific Offense Characteristics

1. If a firearm was in the possession or under the control of the offender or an accomplice during the commission of the offense, add 24 to the base offense value.

2. If a victim suffered physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

3. If the offender has one or more final prior convictions for an offense(s) involving a controlled substance, the base offense value shall be twice the base offense value shown above.

Commentary

The controlling principles are deterrence and incapacitation. Possession is a crime. The demand for unlawful drugs is a major part of the overall problem the drug laws attempt to address.

As with other drug violations, the possession of a weapon or infliction of physical injury are aggravating factors. Recidivists should be dealt with more severely in recognition of the need to incapacitate those who repeatedly fail to obey the law.

D222. *Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge (21 U.S.C. 843(a)(3)).* The base offense value is 12.

Commentary

This violation is infrequently prosecuted in federal court. The controlling consideration is deterrence.

3. *Regulatory Violations.*

D231. *Violations of 21 U.S.C. 843(a).* The base offense value is 6.

D232. *Violations of 21 U.S.C. 842 (a) or (b) (Prosecuted Under 21 U.S.C. 842(c)(2)).* The base offense value is 6.

D233. *Violations of 21 U.S.C. 954 (Prosecuted under 21 U.S.C. 961(2)).* The base offense value is 6.

Commentary

These violations are less frequently prosecuted in federal court. Again, deterrence is the controlling principle involved in formulating the preliminary guidelines.

Part E—Offenses Involving Criminal Enterprises

1. *Racketeering.*

18 U.S.C. 1951
18 U.S.C. 1952
18 U.S.C. 1952A
18 U.S.C. 1952B
18 U.S.C. 1962

E211. *Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations.* The base offense value is 12 plus the offense value applicable to the underlying racketeering activity. In determining the total offense value for RICO violations:

1. If any of the underlying racketeering activity has resulted in the imposition of a final sentence prior to sentencing for the current offense, do not add the offense value for the conduct covered by such sentence. However, any sentence imposed under RICO shall be consecutive to such other sentence.

2. If any of the underlying racketeering activity has been established initially during the prosecution under RICO by either special verdict of the jury or by findings of the court subsequent to a general verdict or plea of guilty, then the offense value(s) for such activity shall be added to the base RICO offense value (12).

E212. *Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise.* The base offense value is the offense value applicable to a) any crime of violence that was the purpose of the travel or transportation, or b) any other unlawful activity, as defined in 18 U.S.C. 1952(b), in pursuance or furtherance of which the travel or transportation was undertaken.

E213. *Interfering with Commerce by Threats or Violence* (18 U.S.C. 1951); *Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire;* (18 U.S.C. 1952A); *Violent Crimes in Aid of Racketeering Activity;* (18 U.S.C. 1952B). The base offense value is the offense value applicable to the underlying unlawful conduct done, caused, or intended.

Commentary

The federal racketeering offenses cover a wide variety of criminal activity, normally prosecuted as state offenses. The federal interest derives from conduct that affects interstate or foreign commerce or violates a federal law. Thus, while the conduct may be described in jurisdictional terms (*e.g.*, engaging in a pattern of racketeering activity), the real evil addressed is the underlying conduct. These sections, therefore, give primary emphasis to the underlying conduct.

When sentencing for racketeering offenses, it is especially important that the sentence reflect the offender's role in the racketeering scheme. Therefore, attention is specifically directed to Chapter Three, Part A, Role in the Offense, for the application of any appropriate adjustment to the offense values(s) determined under Chapter Two.

In E211, the underlying conduct is scored for sentencing purposes, and 12 offense value points are added. The additional RICO offense value reflects a recognition by the Commission that these offenses typically involve a pattern of illegal conduct often caused or supported by organized crime, with a high probability of continued illegal conduct; therefore, an enhanced sanction is both deserved and necessary for crime control purposes.

If the underlying activity has already been punished, it is not given a double count, but a sentence under this provision will be consecutive to any other such sentence.

Sections E212 and E213 deal with more specific offenses akin to racketeering conduct. All derive their offense values strictly from the underlying conduct, with no offense value attributable to the conduct that provides the federal jurisdiction nexus (*e.g.*, interstate travel or use of the mail). Unlike the previous section, there is no additional criminal conduct (*e.g.*, pattern of racketeering activity) for which sentencing value need be added to the offense value assignable to the underlying illegal activity.

Section E212 refers to "Travel Act" offenses proscribed by 18 U.S.C. 1952, a jurisdictional statute that reaches a broad variety of underlying unlawful conduct preceded by or involving interstate or foreign commerce travel, or use of commerce facilities.

Section E213 refers to "Hobbs Act" offenses proscribed by 18 U.S.C. 1951, a jurisdictional statute that reaches a broad variety of underlying criminal conduct involving interference with commerce or industry through robbery, extortion, or physical violence. This section also covers the "murder-for-hire" offense proscribed by 18 U.S.C. 1952A (Section 1002(a) of the Comprehensive Crime Control Act of 1984). That statute is jurisdictional, reaching the underlying conduct of murder or intended murder committed for pecuniary gain, with the requisite federal nexus provided by interstate or foreign commerce travel, use of commerce facilities, or use of the mail. Section E213 relates to violent crimes in aid of racketeering activity proscribed by 18 U.S.C. 1952B (Section 1002(b) of the Comprehensive Crime Control ACt of 1984). That statute is jurisdictional, reaching the underlying conduct of contract murder and other violent crimes committed by organized crime figures. The requisite federal nexus is provided by involvement of an "enterprise" (as defined in 18 U.S.C. 1952B(b)(2)) engaged in "racketeering activity" (as defined in 18 U.S.C. 1961).

2. *Extortionate Extension of Credit Offenses.*

18 U.S.C. 892
18 U.S.C. 893
18 U.S.C. 894

E221. *Making, Financing, or Collecting an Extortionate Extension of Credit.* The base offense value is 24, or the offense value from the property table, Part B, Offenses Involving Property, whichever is greater. For purposes of the guidelines, application of the property table is to be based on 5× the amount of money loaned.

a. Specific Offense Characteristics

1. If the offense involved an illegal debt, add 12 to the base offense value.

b. Cross-References

1. If the conduct involved death or physical injury, add the applicable offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person, (Psychological Injury).

3. If property was damaged, destroyed, or taken, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to offenses involving the making or financing of extortionate extensions of credit, or the collection of loans by extortionate means. Because these "loan-sharking" offenses typically involve violence or threats of violence and provide economic support for organized crime, they are considered a serious threat to public welfare, and the Commission has assigned offense values with these considerations in mind. For purposes of applying the table in Part B, Offenses Involving Property, a figure equivalent to five times the measurable amount of money loaned is a fair approximation of the real harm involved in such an offense.

If the evidence establishes that actual violence or damage to property was associated with the extortionate extension of credit, then reference should be made to Part A, Offenses Involving the Person, and Part B, Offenses Involving Property, and the appropriate offense values added. However, no additional offense value should be assigned for threats of violence or other harm, since threatening conduct is inherent in the offense and subsumed in the base offense value.

3. *Gambling Offenses.*

15 U.S.C. 1172
15 U.S.C. 1173
15 U.S.C. 1174
15 U.S.C. 1175
18 U.S.C. 1082
18 U.S.C. 1084
18 U.S.C. 1301
18 U.S.C. 1302
18 U.S.C. 1303
18 U.S.C. 1304
18 U.S.C. 1306
18 U.S.C. 1511
18 U.S.C. 1953
18 U.S.C. 1955

E231. *Engaging in a Gambling Business.* The base offense value is the offense value determined below, relative to the scale of the gambling enterprise. If the scale of the enterprise cannot be determined directly from the examples provided, it may be determined by analogy with the examples.

1. If a very large scale enterprise (*e.g.*, a sports book with an average daily gross of more than $18,000; a horse book with an average daily gross of more than $4,800; a numbers banker with an average daily gross of more than $2,400; a dice or card game with an average daily "house cut" of more than $1,200; or video gambling involving eight or more machines), the base offense value is 24.

2. If a large scale enterprise (*e.g.*, a sports book with an average daily gross of $4,501–$18,000; a horse book with an average daily gross of $1,201–$4,800; a numbers banker with an average daily gross of $601–$2,400; a dice or card game with an average daily "house cut" of $301–$1,200, or video gambling involving four–seven machines), the base offense value is 18.

3. If a medium scale enterprise (*e.g.*, a sports book with an average daily gross of $1,500–$4,500; a horse book with an average daily gross of $400–$1,200; a numbers banker with an average daily gross of $200–$600; a dice or card game with an average daily "house cut" of $100–$300; or video gambling involving two–three machines), the base offense value is 12.

4. If a small scale enterprise (*e.g.*, a sports book with an average daily gross of less than $1,500; a horse book with an average daily gross of less than $400; a numbers banker with an average daily gross of less than $200; a dice or card game with an average daily "house cut" of less than $100; or video gambling involving one machine), the the base offense value is 6.

E232. *Transmission of Wagering Information.* The base offense value is that applicable to E231 (Engaging in a Gambling Business).

E233. *Interstate Transportation of Wagering Paraphernalia.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the paraphernalia was intended for use in a gambling business, the base offense value is that applicable to E231 (Engaging in a Gambling Business).

E234. *Unlawful Conduct Relating to Gambling Ships.* The base offense value is that applicable to E231 (Engaging in a Gambling Business).

E235. *Unlawful Conduct Relating to Lottery Tickets or Related Matter.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the lottery tickets were intended for engaging in or for use in a gambling business, the base offense value is that applicable to E231 (Engaging in a Gambling Business).

E236. *Unlawful Conduct Relating to Slot Machines or Other Gambling Devices.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offense involved trafficking in devices for use in a gambling business, the base offense value is that applicable to E231 (Engaging in a Gambling Business).

Commentary

When gambling offenses are part of a criminal enterprise they often provide economic support for organized crime. With these considerations in mind, the Commission has set a minimal base offense value for isolated gambling transactions and a higher base offense value for gambling enterprise violations. In regard to the latter, the offense value is to be enhanced according to the scope of the criminal enterprise, using the examples in E231.

4. *Obscenity Offenses.*

18 U.S.C. 1461
18 U.S.C. 1462
18 U.S.C. 1463
18 U.S.C. 1464
18 U.S.C. 1465
18 U.S.C. 2252

E241. *Importing, Mailing, or Transporting Obscene Matter.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offense involved distribution for pecuniary profit, the base offense value is from the following table. Application of the following table is to be based on the retail value of the material if it can be determined. If the retail value of the material cannot be determined, application of the following table is to be based on the gross revenue derived from the obscene matter, or on a value of $10 per discrete book, pamphlet, film, thing, or device; whichever is greater.

Retail value of material	Offense value
$1,000 or less	6
$1,001 to $10,000	8
$10,001 to $25,000	12
$25,001 to $50,000	18
$50,001 to $100,000	24
$100,001 or more	30

2. If the offense involved distribution for pecuniary profit to any person less

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than sixteen years of age, add 12 to the base offense value.

b. Cross-References

1. If the conduct involved material relating to the sexual exploitation of a minor, apply E242 (Transporting, Receiving, or Distributing Material Involving the Sexual Exploitation of a Minor) rather than this section.

E242. *Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor.* The base offense value is 24, or 12 plus the offense value applicable to E241 (Importing, Mailing, or Transporting Obscene Matter), whichever is greater.

a. Specific Offense Characteristics

1. If the offense involved trafficking in or transporting material that depicts a minor under age twelve, add 12 to the base offense value.

b. Cross-References

1. If the conduct involved the sexual exploitation of a minor by production of sexually explicit visual or printed material, add the appropriate value from E261 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material).

E243. *Broadcasting Obscene Langauge.* The base offense value is 3.

a. Specific Offense Characteristics

1. If the offense was committed using, or on a communications frequency used by, a commercial broadcasting station, add 3 to the base offense value.

Commentary

Section E241 refers to offenses involving the mailing, importation, and interstate transportation for sale or distribution of obscene materials. The base offense value reflects a judgment that these types of offenses pose a threat to accepted moral standards and values and often provide economic support for organized crime. When the obscenity distribution offense is part of a for-profit enterprise, the sanction is enhanced according to the scope of the criminal scheme, as determined by the estimated retail value of pornographic materials involved.

If the evidence establishes distribution for profit to a minor under age 12, the sanction is further enhanced. The additional sanction reflects a judgment that minors are more impressionable and vulnerable purchaser-victims of obscenity purveyors. It is not necessary to establish that the offender knew the purchaser was under age 12.

If the offense involves the distribution of material that includes the visual depiction of a minor engaging in sexually explicit conduct, refer to guideline E242 for the determination of the base offense value.

Section E242 refers to the distribution of materials that visually depict a minor or minors engaging in sexually explict conduct. The base offense value is substantially higher than the base value applicable to the distribution of obscene materials not involving the visual depiction of minors engaging in such conduct. The severity of the sanction reflects a Commission and Congressional judgment (*See* preamble to the Child Protection Act of 1984, Pub. L. No. 98–292) that child pornography is a serious crime problem in which minors, particularly runaway and homeless youth, are exploited. Such exploitation of minors is harmful to the well-being of the children involved and society.

This section also reflects a Commission judgment that the distribution and sale of such material is generally more serious than the ultimate purchase or receipt by a customer. Nevertheless, the receipt of this material is deemed more serious than the ordinary customer purchase of obscene materials because these purchases supply the economic motive for exploitation of children.

This sanction is to be enhanced according to the scope of the child pornography enterprise, based on the retail value of the distributed materials and applicable offense values in E241. If the offense involves depiction of a minor or minors under age 12, a higher offense value is assigned.

If the conduct involves the production of child pornography (as opposed to its distribution, sale, or purchase), guideline E261 should be applied. Frequently, the unlawful conduct will involve both the production and distribution of child pornography, in which case both E261 and E242 should be applied.

Radio broadcasting of obscene language, 18 U.S.C. 1464, is generally considered a less serious offense than the distribution of obscene printed matter, which has greater permanence and typically involves an organized business enterprise. If the obscene or profane broadcasting occurs over a commercial radio station, as opposed to a citizens' band or other limited transmission, the sanction is more serve because of the generally wider audience affected by the broadcast and its commercial nature.

5. *Prostitution Offenses.*

18 U.S.C. 2421
18 U.S.C. 2422
18 U.S.C. 2423

E251. *Owning or Operating a Prostitution Business.* The base offense value is 12.

a. Specific Offense Characteristics

1. If the conduct involved the prostitution or recruiting for prostitution of a person less than sixteen years of age, the base offense value is 36.

2. If the conduct involved the prostitution or recruiting for prostitution of a person at least sixteen years but less than eighteen years of age, the base offense value is 24.

b. Cross-References

1. If the violation involved death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the offense involved criminal sexual conduct with a minor, add the appropriate offense value from Part A, Offenses Involving the Person.

E252. *Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the conduct was for the purpose of prostitution, the offense value is that from E251 (Owning or Operating a Prostitution Business).

2. If the conduct was for the purpose of the sexual exploitation of a minor, the offense value is that for E261 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material).

E253. *Engaging in Prostitution.* The base offense value is 4.

Commentary

Guidelines E251, E252 and E253 refer to prostitution offenses within federal jurisdiction.

Reflecting a concern for the exploitation of minors, particularly runaway and homeless youth, the Commission has enhanced the offense value when one or more minors are involved in a prostitution enterprise. The offense value is further enhanced if a minor under age 16 is involved.

If the conduct involves personal injury (death, bodily injury, or psychological injury) or a threat of personal injury to an individual involved in a prostitution enterprise or other person, then reference should be made to the applicable guidelines in Part A and the offense value from those applicable guidelines added.

6. Sexual Exploitation of a Minor.

E261. *Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material.* The base offense value is 36.

a. Specific Offense Characteristics

1. If the person exploited was under age 12 at the time of the exploitation, add 12 to the base offense value.

b. Cross-References

1. If the conduct involved a physical injury described in Part A, Offenses Involving the Person, add the appropriate offense value.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the conduct involved an offense described in E242 (Transportion, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor), add the appropriate offense value.

4. If the offense involved criminal sexual conduct with a minor, add the appropriate offense value from Part A, Offenses Involving the Person.

Commentary

This offense commonly involves the production source or base of a child pornography enterprise. Because the offense directly involves the exploitation of a minor or minors under age 16, the base offense value is higher than for the distribution of the sexually explicit material after production. Since offenders of this section frequently commit the conduct described in E242, cross-reference is made to that section. If the conduct involves the exploitation of a minor under age 12, the offense value is further enhanced. Additionally, if the exploitation involves personal or psychological injury to a minor, or the threat of such injury, reference should be made to Part A and the applicable offense value(s) from that Part should be added to the offense value determined under this guideline. Each minor child exploited shall be considered a separate offense.

7. Trafficking in Contraband Cigarettes.

18 U.S.C. 2342(a)

E271. *Unlawful Conduct Relating to Contraband Cigarettes.* The base offense value is 6, or the offense value from the tax evasion table, Part C, Offenses Involving Taxation, whichever is greater.

1. Application of the Tax Evasion Table is to be based upon the amount of tax that is the object of evasion.

Commentary

This offense generally involves evasion of state excise taxes and becomes a federal matter only upon the establishment of minimum quantities transported in interstate commerce or by use of interstate communications. The size of operations giving rise to federal jurisdiction typically suggests the involvement of criminal organizations. Since this offense is basically a tax matter, the other element considered, in addition to the nature of the offense arising under these statutes, is the amount of tax that is the object of evasion.

The section sets a base offense value reflecting the nature of the offense. The base value is to be used only where it is higher than the offense value established under the Tax Evasion Table.

8. Corruption in Employee Welfare or Pension Benefit Plans.

18 U.S.C. 1954

E281. *Unlawfully Offering, Accepting, or Soliciting Anything of Value to Influence the Operation of an Employee Welfare or Pension Benefit Plan.* The base offense value is 9, or the offense value from the property table in Part B, Offenses Involving Property, whichever is greater. Application of the property table is to be based upon the value of the unlawful gratuity or the value of the action to be taken or affected in return for the unlawful gratuity, whichever is greater.

Commentary

This offense proscribes solicitation or receipt of kickbacks and other illegal gratuities involving employee welfare or pension benefit plans. The base offense value reflects a concern for safeguarding employee funds covered under the Employee Retirement Income Security Act against those who would mismanage such funds for their own financial gain. The Commission recognizes that this offense may involve organized crime, particularly when large sums of money from pension plans are transacted in response to the kickback, or when the illegal gratuity is itself large. Hence, the base offense value is to be enhanced as appropriate through application of the property table, based upon the value of the unlawful gratuity or the value of the action to be taken or affected in return for the unlawful gratuity, whichever is greater. For example, if a benefit plan officer receives a $10,000 kickback for approving a $1,000,000 loan from a benefit plan, then the amount of money to be equated to a offense value in the property table would be $1,000,000 the value of the loan, rather than $10,000, the amount of the kickback.

Part F—Offenses Involving Fraud and Deception

18 U.S.C. 285–291
18 U.S.C. 371
18 U.S.C. 656, 659
18 U.S.C. 1001–1030
18 U.S.C. 1341–1344

Introduction. The base offense value for the fraud guidelines is determined by fundamental variables relating to single or multiple transactions and victims. Specific offense characteristics are then applied to reflect aggravated deceptive and fraudulent conduct and victim impact.

The fraud section does not link offense characteristics to specific statutes. Most fraud statutes contain general language that applies to a broad range of offenses of widely varying severity. For example, the mail and wire fraud statues, 18 U.S.C. 1341 and 1343, apply to any person who devises or intends to devise a scheme or artifice to defraud by use of false or fraudulent pretenses, representations, or promises in order to obtain money or property. By application of the statute, a mail order scheme to defraud an individual of $50 would constitute the same violation or offense as a multi-million dollar false billing scheme victimizing businesses nationwide. In order to differentiate among fraud offenses, the guidelines specify characteristics of the conduct and impact of these offenses on victims. For example, a violation of the mail fraud statute might be covered under a combination of several specific offense characteristics.

Some of the statutes to which Part F applies are referred to in the commentary on specific offense characteristics. While these guidelines are designed primarily for the fraud statutes, they may also relate to fraud involving specific statutory violations addressed elsewhere in the guidelines, such as securities and taxation.

Property Table for Fraud Offenses. Part F includes a table for property gained or lost through fraud offenses. The cumulative property loss or gain (whichever is higher) associated with the offense is treated as a general aggravating characteristic to be added to the base offense value. The table has been structured to add minimal offense values where the gain or loss is relatively low. The increasing offense values for losses or gains exceeding $20,000 recognize increased financial injury to the victim or victims and the higher level of planning and sophistication generally involved in financially successful fraudulent conduct.

The property table is based on actual gain or loss only. Many fraud schemes have a greater potential impact than the actual loss or gain. However, the guidelines partially compensate for this by using higher offense values for more aggravated conduct.

Multiple-Count Indictments. Ongoing fraud usually results in multiple count indictments. For example, mail and wire fraud schemes, check kiting, misapplication of bank funds, credit card fraud, and government program fraud generally involve multiple transactions. By using a modified real offense sentencing approach, aggravated criminal conduct and victim impact are captured without aggregating offense values for each count. However, the cumulative loss or gain produced by a common scheme or course of conduct shall be used in applying the Property Table for Fraud Offenses.

If the offender was convicted of other criminal offenses committed in the course of a fraudulent scheme, the offense values generated by those offenses are governed by the guidelines relating to the other criminal conduct. The offense values generated by other criminal offenses shall be added to the offense values for the fraud. For example, if the offender engaged in a scheme to defraud an insurance company by burning an insured building, the offense values flowing from the arson would be added to those

generated by the mail fraud scheme. If the offender was convicted of failure to report income from a fraudulent scheme on a federal tax return, the applicable guideline provisions for offenses involving taxation would be applied to determine the offense value to be added to that generated by the fraud itself.

If, in the same case, the offender was convicted of other fraud offenses that were not part of an ongoing scheme or course of conduct, the offense values generated by the other fraudulent offenses would be treated cumulatively. For example, if a bank officer or teller embezzled money from two prior employer-banks, the sanction units for the separate series of transactions would be treated cumulatively. If an offender engaged in a boiler room fraud by selling non-existent shares in precious metals futures, and was also convicted of submitting a fraudulent loan application to a federally insured bank, the offense values flowing from these fraudulent schemes would be treated cumulatively and added together.

F211. *Fraud and Deception.* The base offense value for criminal conduct constituting fraud or deception is determined as follows:

1. If the fraud consisted of a single occurrence or transaction and did not involve more than one victim, the base offense value is 6.

2. If the fraud consisted of more than one transaction or occurrence and did not involve more than one victim, the base offense value is 8.

3. If the fraud consisted of a scheme or artifice to defraud more than one victim, the base offense value is 12.

a. Specific Offense Characteristics

1. If the offender obtained money, property, services, or any other thing of value, by falsely representing that he/she was acting on behalf of a charitable, educational, or religious cause or organization, or on behalf of a government or law enforcement agency, add 4 to the base offense value.

2. If the offense involved the concealment of illicit gains or transactions by use of accounts or transactions outside the United States, add 6 to the base offense value.

3. If the offender knowingly violated a judicial or administrative order or decree by the fraudulent conduct, add 6 to the base offense value.

4. If the offender defrauded a victim or victims knowing that the victim or victims were vulnerable to the offense because of age, physical or mental condition, or similar characteristics, add 8 to the base offense value.

5. If the offense caused one or more victims to sustain a substantial loss relative to income or assets, add 8 to the base offense value.

6. If the offense potentially endangered the health or safety of a person or the general public, add 10 to the base offense value.

7. If the offense involved a breach of a fiduciary duty or professional trust, add 10 to the base offense value.

8. If the offense involved a breach of a public trust, add 12 to the base offense value.

9. If the offense involved property loss to the victim(s) or gain to the offender, then refer the Property Table for Fraud Offenses and add the offense value for the loss or gain, whichever is greater, to the total offense value for the fraudulent conduct.

b. Cross-References

1. If any victim suffered psychological injury as a direct result of the offender's conduct, add the appropriate offense value from Part A, Offenses Involving the Person.

PROPERTY TABLE FOR FRAUD OFFENSES

Dollar loss or gain	Base offense value
$5,000 or less	2
$5,001–$10,000	4
$10,001–$15,000	5
$15,001–$20,000	6
$20,001–$50,000	8
$50,001–$100,000	10
$100,001–$250,000	14
$250,001–$1,000,000	18
$1,000,001–$2,000,000	24
$2,000,001–$5,000,000	30
$5,000,001–$25,000,000	45
Over $25,000,000	60

Commentary

Base Offense Value

Overview. The base offense values distinguish between fraud offenses involving single and multiple transactions or occurrences and victims. These alternative base offense values are mutually exclusive. The provision that most accurately describes the offense shall be applied as the base offense value. All additional specific offense characteristics and cross-referenced aggravating factors are added to the appropriate base offense value.

For purposes of the fraud guidelines, a "transaction" is a fraudulent act, such as making a misleading or false statement or using a false pretense. The commission of a jurisdictional act, such as a mailing or an interstate telephone call, is not a "transaction."

1. *Single Transaction.* The lowest offense value level for the fraud guidelines is attributed to fraud involving a single occurrence or transaction that does not involve multiple victims. This low base line value would be applied to conduct such as the following:

a. An offender knowingly makes false statements on an application for a federally guaranteed student loan (18 U.S.C. 1001).

b. An applicant knowingly makes a false or inflated claim for benefits under a federal program (18 U.S.C. 287).

c. An offender uses a counterfeit or altered certificate of deposit to pledge as collateral for a loan from a federally insured savings and loan institution (18 U.S.C. 1014).

2. *Multiple Transactions.* This factor applies to two or more tansactions that do not involve multiple victims. A minimal increase in base offense value is given the offender who engages in multiple transactions. While repeated fraudulent conduct warrants some increase in the offense value, the application of specific offense characteristics captures the aggravating characteristics and victim impact of the offense. This approach takes into consideration the possibility that an offender who engages in only one offense may be far more culpable and cause more significant harm than an offender who engages in several fraudulent transactions of a relatively insignificant nature. The following is an example of the conduct to which this factor applies.

A testing laboratory provides the offender, a defense contractor, with a certification falsely representing that voltage regulators manufactured by the contractor conform to government specifications. The defense contractor thereafter use the fraudulent certification to obtain contracts and to provide defective, substandard voltage regulators to various United States and foreign military agencies (18 U.S.C. 371 1001, 1341).

3. *Multiple Victims.* The guidelines specify higher offense values for all multiple victim offenses without creating distinctions based upon the numbers of victims involved. Aggravated victim impact and property loss factors reflect the scale of the offense and its cumulative impact on victims.

Examples of the conduct to which this factor applies include the following:

a. An offender conducts a deceptive advertising campaign that induces victims to send money for non-existent goods or services (18 U.S.C. 1341).

b. An offender conducts a "boiler room" operation by making interstate telephone calls inducing victims to invest in non-existent commodities futures (18 U.S.C. 1343).

Specific Offense Characteristics

1. *False pretenses involving charitable causes and government agencies.* This factor applies to offenders who take advantage of victims' trust in government or law enforcement agencies or their generosity and charitable motives. Taking advantage of a victim's self-interest does not mitigate the seriousness of fraudulent conduct. However, offenders who exploit victims' charitable impuses or trust in government create particular harm.

Examples of conduct to which this factor applies include the following:

a. A group of offenders solicit by mail contributions to a non-existent famine relief organization (18 U.S.C. 1341).

b. An offender diverts donations for a religiously affiliated school by mail solicitations to church members in which she falsely claims to be a fundraiser for the school (18 U.S.C. 1341).

c. Three offenders conduct a land swindle in which one offender misrepresents to victims that he/she is an employee of the Tennessee Valley Authority and that the victim's land is to be seized by eminent domain so that T.V.A. can dam a nearby river. Shortly thereafter, a co-conspirator approaches the victim and offers to buy the land at a distress price. The victim agrees to sell, and the third offender assists in conducting the transaction. Some of the arrangements for the sale are made by mail (18 U.S.C. 1341).

d. An offender gains access to a federal agency's records. Posing as a federal debt collection agent, he/she mails notices to the victim threatening legal action if a substantial payment is not made immediately. The offender then appears in person to collect payment (18 U.S.C. 1341).

2. *Transactions and accounts outside the United States.* Offenses that involve manipulation of transactions or accounts outside the United States to conceal illicit profits and criminal conduct entail a particularly high level of sophistication and complexity. These offenses are difficult to detect, and require costly investigations and complex prosecutions. Diplomatic processes often must be used to secure testimony and evidence beyond the jurisdiction of United States courts. The offense value reflects the need to deter and punish this form of sophisticated conduct.

Examples of conduct to which this factor applies include the following:

a. A bank officer conceals the proceeds of unsecured loans that he/she has fraudulently diverted to himself by transferring the funds under an assumed name to accounts in the Cayman Islands (18 U.S.C. 656, 1343).

b. A party official deposits illegal campaign contributions in Swiss bank accounts to conceal the source and amount of money a public figure receives from a narcotics organization (18 U.S.C. 371, 1001, 1343 1952).

c. A brokerage house computer programmer transfers funds diverted from a pension fund investment account to a Canadian bank account in a relative's name (18 U.S.C. 1030, 1343 2314).

3. *Violation of judicial or administrative order or decree.* The offender who has been subject to civil or administrative proceedings for the same or similar fraudulent conduct demonstrates aggravated criminal intent and is deserving of additional punishment for not conforming with the requirements of judicial process of orders issued by federal, state, or local administrative agencies. If it is established that an entity the offender controlled was a party and the offender had knowledge of the prior decree or order, this provision applies even if the offender was not a specifically named party in that prior. For example, an offender whose business had been previously enjoined from selling a dangerous product, but who was engaged in fraudulent conduct to sell the product anyway, would be subject to this provision.

4. *Vulnerable victims.* This factor applies to offenders who intentionally exploit vulnerable victims. The offense value reflects the higher degree of moral culpability involved. This factor applies only if the characteristic rendered a victim vulnerable to the specific offense.

Examples of the conduct to which this factor applies include the following:

a. Offenders sell bogus cures for cancer to terminally ill victims (18 U.S.C. 1341).

b. A salesperson sells multiple insurance policies to victims who are not able to understand the terms of their policies (18 U.S.C. 1341).

c. An offender solicits advance employment fees from poor or unemployed victims for non-existent jobs (18 U.S.C. 1341, 1343).

5. *Substantial loss.* This factor applies to any offense in which a victim's assets or income were substantially affected by the fraudulent conduct. Application of this factor does not require that a victim become insolvent or be forced into bankruptcy as a direct result of the offender's conduct. Examples of substantial loss would include the loss of a major portion of the victim's savings, loss of equity in a residence due to a second mortgage, or the incurring of indebtedness as a direct result of the offender's fraud.

This factor also recognizes that fraud offenses may have a substantial impact on organizational or institutional victims, such as causing a business to become insolvent or a bank to fail.

6. *Risk to health or safety.* This characteristic applies to fraud that creates a danger to the health and safety of individuals or the general public.

Examples of offenses to which this factor applies include:

a. A businessman hires someone to commit arson for profit in an insurance fraud scheme. The lives of occupants of neighboring buildings are placed at risk and two firefighters are seriously hurt in the fire (18 U.S.C. 1341).

b. A defense contractor fraudulently provides the Air Force with defective parachute cord not conforming to government and contract specifications (18 U.S.C 1001, 1341).

c. A chemical manufacturer fails to disclose to the Food and Drug Administration the carcinogenic effects of a drug in tests on laboratory animals (18 U.S.C 1001, 13421).

d. A cardiologist perpetrates a Medicare fraud scheme, receiving kickbacks from a medical supply manufacturer for using that company's pacemakers and performs unnecessary pacemaker implants (18 U.S.C 371, 1341).

This factor also applies to mail frauds involving medical or cosmetic products where use is dangerous to health, such as "cures" for cancer that delay the victim's seeking appropriate medical care, treatments for baldness causing serious skin damage, or health-threating diet products (18 U.S.C 1341).

Physical injury need not actually occur for application of this special offense characteristic. However, physical injury does occasionally result from fraudulent conduct. The Commission cannot adequately consider or predicate guidelines based upon such unique cases. Therefore, a sentence exceeding the guidelines may be warranted in these unusual cases.

7. *Breach of professional trust or fiduciary duty.* Many of the most serious fraud offenses are facilitated by a breach of a fiduciary or professional trust. Exploiting a confidential or fiduciary relationship to defraud others is treated as a relatively sever aggravating factor because of the basic public policy and societal interests involved. Deterrence and just punishment are important considerations in sentencing an offender who abuses a position of trust.

Examples of conduct subject to this provisions are:

a. An executor of an estate converts liquid assets of the estate to his own use by transfer to his personal investment account in another state (18 U.S.C 1343).

b. An attorney advises a client to invest in an out of state recreational land development project, but the attorney conceals from the client his own financial interest in the project and that most of the client's "investment" will go directly to an out of state business controlled by the attorney (18 U.S.C 1341).

8. *Breach of public trust.* Corrupotion by a public official is a substantial aggravating factor because of the harm done to the integrity of public institutions and the loss of public confidence that results.

An example of conduct subject to this provision is:

a. A municipal court judge signs bail release forms that are then mailed to attorneys who give the judge cash payments from the released bail money (18 U.S.C. 1341).

Cross-References

Psychological injury. Fraud can cause significant psychological injury to victims, both because of the sense of personal betrayal that accompanies many crimes against individuals and because of stress resulting from financial difficulties. This provision is applicable to conduct that causes psychological injury as defined in Part A. Offenses Involving the Person.

The following is an example of the aggravated psychological stress to which this factor applies:

a. In an advance fee scheme, an offender fraudulently obtains money by promising to file reparation claims against the Federal Republic of Germany on behalf of Nazi concentration camp survivors. The offender requires the victims to prepare and submit chronologies of their experiences in concentration camps, including physical abuse, medical experimentation and the murder of family members (18 U.S.C 1341).

Part H—Offenses Involving Individual Rights

1. *Offenses Involving Civil Rights.*

18 U.S.C. 241
18 U.S.C. 242
18 U.S.C. 245
18 U.S.C. 246
18 U.S.C. 1231
42 U.S.C. 3631

H211. *Interfering with Civil Rights.* The base offense value is 6.

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a. Specific Offense Characteristics

1. If the offender conspired to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any civil right, add 12 to the base offense value.

2. If the offender and at least one other person went in disguise on the highway or on the premises of another with intent to prevent or hinder the exercise of any civil right, add 12 to the base offense value.

3. If the offender acted under color of law but not in a conspiracy with others, add 6 to the base offense value.

b. Cross-References

1. If the violation involved death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the violation involved damage to or taking of property, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to violation of civil rights or privileges secured under the Constitution or laws of the United States proscribed by 18 U.S.C. 241, 242, 245,and 246, and 42 U.S.C. 3631. For offenses involving political rights, see Subpart 2 of this Part. Often, a violation of this provision will include an offense from Part A (Offenses Involving the Person) or Part B (Offenses Involving Property). If so, consult those sections and add the applicable offense values.

These offense may involve property damage, assaults, and homicides. Such underlying conduct is so serious that it must be considered as the most significant factor in punishing the offender. Yet the fact that a person's civil rights have been violated is something more than a jurisdictional issue. Federal constitutional and statutory rights have real value, although it is a difficult task to quantify or distinguish among them for sentencing purposes.

The specific offense characteristics represent Congressional intent to punish more seriously those civil rights violators who act in concert with others or wear a disguise. In addition, a violation committed by an offender acting under color of law should be aggravated.

H212. *Transporting Strikebreakers.* The base offense value is 8.

a. Cross-References

1. If the violation involved death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the violation involved damage to or taking of property, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to the offense of transporting strikebreakers or interstate traveling of strikebreakers, conduct proscribed by 18 U.S.C. 1231.

This offense is treated under Part H, Offenses Involving Individual Rights, because the right to strike is a federally protected right.

2. Political Rights Offenses.

2 U.S.C. 437g(d)
18 U.S.C. 241
18 U.S.C. 242
18 U.S.C. 597
18 U.S.C. 601
42 U.S.C. 1973i

H221. *Obstructing an Election or Registration.* The base offense value is that determined below.

1. If the obstruction occurred by use or threat of force against person or property, the base offense value is 18.

2. If the obstruction occurred by forgery, fraud, theft, or deceit (except as provided in 4), the base offense value is 12.

3. If the obstruction occurred by offering, giving, or agreeing to give anything of value to another person, or a member of that other person's immediate family, for or because of that person's voting, refraining from voting, voting for or against a particular candidate, or registering to vote, the base offense value is 12.

4. If offender a) solicited, demanded, accepted, or agreed to accept anything of value for or because of his or her voting, refraining from voting, voting for or against a particular candidate, or registering to vote, b) gave information that he/she knows to be false, to establish his or her eligibility to vote, or c) voting more than once in a federal election, the base offense value is 6.

a. Specific Offense Characteristics

1. If the offese involved 20 or more voters, ballots, or registrations, add 6.

2. If the offense involved giving information that the offender knows is false to an election examiner or hearing officer, or knowingly and willfully concealing a material fact from an election examiner or hearing officer, add 6.

b. Cross-References

1. If the violation involved death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person.

3. If the violation involved damage to or taking of property, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 241, 242, 245(b)(1)(A), 592, 593, 594 and 597, and 42 U.S.C. 1973 i(c), 1973i(d) and 1973i(e).

Sections H221–H229 deal with violations of political rights. These sections are different from the conduct involved in H211 in that, while the underlying conduct here may appear to be quite trivial and harmless, the interference with political process is significant. For instance, the registrar of voting may deliberately deprive an individual of his or her right to vote by "losing" a piece of paper. While some emphasis is given to the manner in which the right is deprived, a somewhat greater emphasis is given to the scope of the scheme. Evidence of unlawful conduct involving 20 or more voters is indicative of a very widespread scheme, warranting significant enhancement of the offense value.

Aggravating factors also are provided for three major ways of obstructing an election: by force, by deceptive or dishonest conduct, or by bribery, with the most severe sanction being applied to use of force. If the use of force results in personal injury or property damage, the applicable sections should be consulted and appropriate offense values added.

A distinction is made between those who are seeking to obstruct an election and those who are allowing their individual votes to be corrupted. While the latter conduct is illegal, it may be viewed as the lesser of wrongs and may be less deterrable. Persons who direct others to engage in corruptive conduct will have their sentences further enhanced by reference to the provisions in Chapter Three, Part A, Role in the Offense.

H222. *Interfering with a Federal Benefit for a Political Purpose.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the conduct involved 20 or more votes, ballots, or registrations, add 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 595 and 598.

The section follows the general scheme of the previous section by placing special emphasis on the scope of the scheme. There are no special aggravating factors for the means used to implement the scheme since the means themselves are very limited and described by the underlying statutes.

H223. *Missing Authority Over Personnel for a Political Purpose.* The base offense value is 6.

a. Cross-references

1. If the conduct adversely affected an individual in his/her employment, add 6 to the base offense value.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 606.

The section aggravates the offense value in a case where the misuse of personnel involves an actual loss of employment, compensation, or position. A promise of promotion, actual promotion, or mere threat of adverse action are treated less severely.

H224. *Unlawfully Soliciting a Political Contribution or Making an Unlawful Political Contribution as a Federal Public Servant, or Soliciting or Receiving a Political Contribution in a Federal Building.* The base offense value is that determined below.

a. Specific Offense Characteristics

1. If the offender was a public servant who unlawfully solicited a political contribution from another person known to be a public servant or soliciting a political contribution in a federal building, the base offense value is 4.

2. If the offender was a public servant who unlawfully made a political contribution, the base offense value is 3.

3. If the offender unlawfully received a political contribution in a federal building, the base offense value is 2.

H225. *Making, Receiving, or Failing to Report an Excess or Otherwise Unlawful Campaign Contribution or Expenditure.* The base offense value is 6.

Commentary

These two sections (H224 and H225) refer to basically regulatory offenses. Guideline H224 covers conduct proscribed by 18 U.S.C. 602, 603 and 607. These statutes are primarily intended to protect the federal civil service from on-the-job political pressures. Minor distinctions are made in the guideline between civil servants who solicit other civil servants (the form most likely to be coercive), civil servants who make a contribution in a forbidden place, and other persons who collect the contribution in the wrong place.

Guideline H225 pertains to knowing and willful conduct proscribed by 2 U.S.C. 437g(d), regulatory offenses under the Federal Election Campaign Act.

H226. *Polling Armed Forces.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 596. The purpose of the statute is to protect the right to vote by secret ballot among members of the Armed Forces.

H227. *Promise of Appointment, Employment, or Other Benefit for Political Activity.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 599 and 600. The purpose of the statutes is to prevent the "buying" of votes or political support through promises of future federal employment, appointment, or other federal benefit.

H228. *Deprivation of Employment or Other Benefit for Political Contribution.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 601.

The converse of H228, this guideline covers the deprivation of or threat to deprive federal employment or other federal benefits in order to gain a political contribution.

H229. *Solicitation From, or Disclosure of Names of, Persons on Relief.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 604 and 605. The purpose of the statutes is to protect recipients of federal unemployment, welfare, and similar benefits from the solicitation of political contributions.

3. Privacy and Eavesdropping Offenses.

18 U.S.C. 1702
18 U.S.C. 1905
18 U.S.C. 2511
18 U.S.C. 2512
18 U.S.C. 331
21 U.S.C. 842
47 U.S.C. 605

H231. *Eavesdropping.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the purpose of the conduct was to facilitate another offense, add 6, or the offense value from the applicable section for the conduct attempted or completed, whichever is greater.

2. If the purpose of the conduct was political gain, or economic gain other than in a domestic dispute, and is not covered by a.1. above, add 6 to the base offense value.

H232. *Manufacturing or Trafficking in an Eavesdropping Device.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offense involved more than 25 eavesdropping devices, add 12 to the base offense value.

2. If the offense involved more than six but not more than twenty-five eavesdropping devices, add 6 to the base offense value.

H233. *Possessing an Eavesdropping Device.* The base offense value is 4.

Commentary

These three sections refer to eavesdropping or conduct that facilitates eavesdropping.

If the offense involves actual eavesdropping, emphasis is given to the motivation behind the eavesdropping. The motivation may range from attempts to obtain information in domestic disputes to attempts at espionage. Obviously a range of sanctions is appropriate. The distinctions made, aggravating preparatory criminal conduct, and conduct motivated by the expectation of economic or political gain, cover a reasonable portion of the sentencing range.

Section H231 refers to conduct proscribed by 18 U.S.C. 2511 and 47 U.S.C. 605. If the conduct is intended to facilitate the commission of another offense, the base offense value is increased by 6 or the offense value applicable to the other offense committed or attempted, whichever is greater. If the purpose of the conduct is political or economic gain but the conduct does not amount to the facilitation of another offense, then the base offense value is 12. Otherwise, a base offense value of 6 is assigned this conduct.

Section H232 refers to conduct proscribed by 18 U.S.C. 2512 covering the making and selling of illegal eavesdropping devices. The offense value is enhanced according to the scope of the scheme. The person who makes a device at home and sells it to a neighbor receives a lesser sanction than an offender who is in the business of manufacturing or selling illegal eavesdropping devices.

Section H233 is the least serious offense in this series. It is merely preparatory to eavesdropping and represents no offense other than a potential one. Thus, it is assigned a lower offense value.

H234. *Obstructing Correspondence.* The base offense value is 6.

a. Cross-references

1. If the purpose of the conduct is to facilitate the commission of another offense, consult the corresponding guideline section and add the appropriate offense value.

H235. *Revealing Private Information Submitted for a Government Purpose.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offense was committed for political or economic gain or for the purpose of obstructing a governmental function, add 6 to the base offense value.

Commentary

Sections H234 and H235 involve additional privacy protections and related criminal conduct.

Section H234 pertains to the unlawful intercepting of correspondence, conduct proscribed by 18 U.S.C. 1702. While this conduct often involves theft from the mails, it is not necessary that theft be involved. Misrouting or other forms of delaying delivery are also covered. In addition, the underlying statute specifically criminalizes efforts to pry into the secrets of others. The offense value is enhanced when the purpose of the offense is to aid in the commission of another offense.

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Section H235 refers to conduct proscribed by numerous statutes, including: 18 U.S.C. 1902, 1904, 1905, 1906, 1907, 1908; 7 U.S.C. 472, 608(d), 2105, 2157, 2276, 2833, 2823, 2708(c), 2904, 3204, 4307, 4504(k), 4534(c), 4810(c), 4908(c); 13 U.S.C. 214; 21 U.S.C. 842; 26 U.S.C. 7213(a)(1); 42 U.S.C. 2000g–2, 2181.

Section H235 deals with a sensitive area. Valuable information (trade secrets, crop reports, and so forth) is given to the government with an understanding that it will be kept confidential. This information is often vital to the operation of the government and business. In order to protect the flow of such information, it is necessary to punish and deter unlawful disclosures. While the base offense value is 6, if the aggravating factor of monetary or political gain is present, the conduct will be punished at a higher level.

Part K—Offenses Involving Public Order and Safety

1. *Explosives Offenses.*

18 U.S.C. 32
18 U.S.C. 34
18 U.S.C. 35
18 U.S.C. 842
18 U.S.C. 844
26 U.S.C. 5685

K211. *Failure to Report Theft of Explosives*

a. Cross-References

1. Treat this violation as a false statement and use the appropriate offense value from Part F, Offenses Involving Fraud and Deception.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 842(k). Conduct involved is generally in the nature of a regulatory violation.

K212. *Improper Storage of Explosives.* The base offense value is 6.

a. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If the property of another was damaged or destroyed, add the appropriate offense value from Part B, Offenses Involving Property.

3. If the violation involved stolen explosives, add the appropriate offense value from Part B, Offenses Involving Property.

4. If the violation involved a false statement or document, add the appropriate offense value from Part F, Offenses Involving Fraud and Deception.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 842(j).

Although the conduct involved is generally in the nature of a regulatory violation, where death or damage to property results from improper storage of explosive materials, such injuries are cross-referenced. (In such cases, the offense of conviction will usually be based upon the resultant injuries rather than a violation of 18 U.S.C. 842(j). However, the regulatory violation would be appropriate for sentencing consideration.)

In cases in which a false statement or record is used to conceal a theft of explosives, the conduct is cross-referenced to Part F, Offenses Involving Fraud and Deception.

K213. *Unlawfully Trafficking In, Receiving, or Transporting Explosives.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offender was a person prohibited by federal, state, or local law from possessing explosives, or if the offender knowingly distributed explosives to such person, add 24 to the base offense value.

b. Cross-References

1. If the violation involved stolen explosives, add the appropriate offense value from Part B, Offenses Involving Property.

2. If the violation involved a false statement or document, add the appropriate offense value from Part F, Offenses Involving Fraud and Deception.

Commentary

This section refers to various forms of conduct proscribed by 18 U.S.C. 842.

Many of the violations involved are in the nature of regulatory violations pertaining to licensees, or persons otherwise lawfully involved in transactions. Such persons are a potential source for explosive materials and represent a substantial danger to public safety in instances where they knowingly supply explosives to prohibited persons, or offer a market in stolen materials. Therefore, the base penalty in such instances is substantially enhanced. By the terms of 18 U.S.C. 842, the knowledge of offenders may be actual or constructive.

K214. *Threats Involving Explosives.* If the violation involved a threat or a maliciously false communication, the base offense value is 12.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 844(e). Threats involving explosives are, by their nature, likely to be treated with seriousness and may interfere with or impair public or private activities. Under 18 U.S.C. 844(e), the potential maximum penalty for threats is five years, one-half the potential maximum ten-year penalty where the act is attempted or completed. The base offense value for such threats is set at one-half the minimum offense value determined in Part B, Offenses Involving Property, where property is actually destroyed by fire or explosives.

K215. *Unlawfully Possessing an Explosive in a Government Building.* The base offense value is 12.

a. Cross-References

1. If the violation involved stolen explosives, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 844(g).

Possession of explosives in a government building can rarely be inadvertent or for reasons of personal security. The Commission considers this violation to constitute a substantial danger to public safety even though the statutory maximum prison term is one year.

K216. *Carrying or Attempting to Carry, or Placing an Explosive or Destructive Device, Firearm, or Dangerous Weapon Abroad an Aircraft* If the conduct involved:

1. an explosive, destructive device, or incendiary device, the base offense value is 24.

2. A loaded firearm or an unloaded firearm and ammunition for such firearm, the base offense value is 12.

3. any other firearm or other dangerous weapon, the base offense value is 6.

a. Specific Offense Characteristics

1. If the violation was committed willfully and without regard, or with reckless disregard for human life, and the conduct involved:

A. an explosive or destructive device, add 48 to the base offense value.

B. a loaded firearm or an unloaded firearm and ammunition for such firearm, add 36 to the base offense value.

C. any other firearm or dangerous weapon, add 24 to the base offense value.

b. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If property was damaged, destroyed, or taken, add the appropriate offense value from Part B, Offenses Involving Property.

4. If the violation involved stolen explosives, firearms, or destructive or incendiary devices, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 32, 33, and 49 U.S.C. 1472(1).

The possession of explosives or destructive or incendiary devices while aboard or attempting to board an aircraft can never be justified. Possession of such items constitutes a substantial danger to public safety and to commerce. A base penalty is therefore established to serve purposes of deterrence and incapacitation. In contrast to explosives, firearms are more likely to be possessed for purposes of personal security. Nevertheless, concerns for public safety, as well as the notice that is routinely provided to potential violators, warrant substantial penalties.

K217. *Shipping, Transporting or Receiving an Explosive with Knowledge or Intent that it be Used to Injure Persons or Property.* If the felonious purpose was completed, the base offense value is the value for such completed conduct. Otherwise, the base offense value is 18.

a. Cross-References

1. If the violation involved stolen explosives, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 844(d).

Conduct under this section may involve cases in which offenders use explosives felontously, in which instances there should not be a double counting with the offense value under K218. Conduct under this section may also involve cases in which offenders knowingly aid, abet or otherwise assist in the felonious use of explosives through transportation to or for others, in which instances the conduct will be punished the same as for the actual use.

K218. *Using or Carrying Explosives During or in Relation to Certain Crimes.*

If the offender used or carried an explosive to commit:

1. a crime of violence or drug trafficking crime, as defined by 18 U.S.C. 924, as amended, the base offense value is 60;

2. a felony described in 1 above, the base offense value is 12.

a. Specific Offense Characteristics

If the offender has previously been convicted under 18 U.S.C. 844(h), add 60.

b. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury)

3. If property was damaged, destroyed, or taken, add the appropriate value from Part B, Offenses Involving Property.

4. If the violation involved stolen explosives, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 844(h) and 26 U.S.C. 5685. The danger presented by explosives when used or carried in a violent or drug trafficking crime is reflected by a substantial penalty in such cases.

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2. *Firearms and Destructive Devices.*

18 U.S.C. 922
18 U.S.C. 923
18 U.S.C. 924
18 U.S.C. 949
26 U.S.C. 5861
26 U.S.C. 5871

K221. *Violations Involving the Manufacture, Receipt, Transportation, Distribution, Shipment or Possession of a Firearm, Destructive Device, Firearms Silencing or Muffling Device, or Ammunition.* The base offense value is 6.

a. Specific Offense Characteristics

1. If more than one weapon or device was involved, add the offense value from the following table. For the purpose of the following table, each weapon or device (not including the weapon or device used to establish the base offense value above) is to be converted to units as follows: one rifle=1; one handgun=3; one machine gun, short-barreled shotgun, short-barreled rafle, or firearm muffling or silencing device=10; one destructive device=20.

Units	Additional offense value
2–3	1
4–9	3
10–20	12
21–40	18
41 or more	36

2. If the violation involved a machine gun, short-barreled shotgun, short-barreled rifle, destructive device, or firearm muffling or silencing device, add 12 to the base offense value.

3. If the offender possessed, received or transported a firearm while in the employ of any person prohibited by federal, state, or local law from possessing a firearm, with knowledge of such prohibition, add 6 to the base of offense value.

4. If the offender was a person prohibited by federal, state, or local law from possessing firearms, or if the offender knowingly distributed firearms to such person, add 6 to the base offense value.

5. If the violation involved any firearm that had the importer's or manufacturer's serial number removed, obliterated, or altered, add 6 to the base offense value.

6. If the violation involved a handgun, add 3 to the base offense value.

b. Cross-References

1. If the violation involved a stolen firearm or destructive device, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to various forms of conduct proscribed by 18 U.S.C. 922, 923, and 924, and 26 U.S.C. 5861, 5871.

The conduct involved is often in the nature of a regulatory violation. However, where additional offenses are involved, the appropriate penalties are added. The specific offense characteristics address conduct that by law constitute a particular danger to public safety. Many of those weapons addressed are either of particular concern to public safety, or contribute substantially to other criminal activity.

K222. *Shipping, Transporting or Receiving a Firearm with Knowledge or Intent that it be Used to Commit a Felony.* If the felonious use that was the object of the shipping, transportation, or receipt was completed, the base offense value is the value for such completed conduct. Otherwise, the base offense value is 18.

a. Cross-References

1. If the violation involved a stolen firearm or destructive device, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 924(b).

The base offense value is the same as the penalty provided for completed felonious use of firearms. Conduct under this section may involve cases in which offenders use firearms feloniously, in which instances there should not be a double counting with the offense value under Section K223 below. Conduct under this section may also involve cases in which offenders knowingly aid, abet or otherwise assist in the felonious use of firearms through transportation to or for others, in which instances the conduct will be punished the same as for the actual use.

K223. *Use of Firearms or Armor-Piercing Ammunition During or in Relation to Certain Crimes.* If the offender use or carried a firearm during and in relation to any crime of violence, or drug trafficking or federal liquor law offense, the base value is 60.

a. Specific Offense Characteristics

1. If the offender used or carried a machine gun or a firearm equipped with

a firearm silencer or firearm muffler during and in relation to the commission of a crime of violence or drug trafficking offense, add 60 to the base offense value.

2. If the offender used or carried a firearm loaded with armor-piercing ammunition during and in relation to the commission of a crime of violence, add 60 to the base offense value.

3. If the violation is the offender's second conviction under 18 U.S.C. 924(c), add 60 to the base offense value.

4. If the violation is the offender's second conviction under 18 U.S.C. 924(c), and involved a machine gun or a firearm silencer or firearm muffler, add 120 to the base offense value.

b. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate value from Part A, Offenses Involving the Person (Psychological Injury).

3. If property was damaged or destroyed, add the appropriate value from Part B, Offenses Involving Property (Property Table).

Commentary

This section refers to conduct proscribed by 18 U.S.C. 924(c) and 929(a).

Specific offense characteristics reflect statutory mandatory minimum terms of incarceration. The seriousness of the conduct involved warrants substantial punishment for these offenders. In cases in which other injuries to persons or property result, there is a cross-reference to the guidelines specifically addressing those injuries.

3. *Transportation of Hazardous Materials.*

49 U.S.C. 1472(h)(2)
49 U.S.C. 1809(b)

K231. *Unlawfully Transporting Hazardous Material Aboard an Aircraft.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offender willfully and with intent to commit another crime, delivered the material or caused it to be delivered for transportation, add 42.

2. If the offender willfully, but without intent to commit another crime, delivered the material or caused it to be delivered for transportation, add 12.

b. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If property was damaged or destroyed, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 49 U.S.C. 1472(h)(2).

A distinction is made for sentencing purposes between those who recklessly violate 49 U.S.C. 1472(h)(2), those who do so with intent to commit another crime, and those who do so willfully but without other criminal intent.

K232. *Unlawfully Transporting Hazardous Material in Commerce.* The base offense value is 20.

a. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If property was damaged or destroyed, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 49 U.S.C. 1809(b).

The base offense value reflects the danger posed to public safety by unlawful transportation of hazardous materials.

4. *Rioting.*

18 U.S.C. 231
18 U.S.C. 1792

K241. *Engaging In, Inciting, or Attempting to Incite a Riot.* The base offense value is 6.

a. Cross-References

1. If the offender's conduct resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the offender's conduct resulted in the destruction, damage, or theft of property, add the appropriate offense value from Part B, Offenses Involving Property.

K242. *Engaging In, Inciting, or Attempting to Incite a Riot Involving Persons in a Facility for Official Detention.* The base offense value is 24.

a. Cross-References

1. If the offender's conduct resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the offender's conduct resulted in the destruction, damage, or theft of property, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

The base offense value for rioting reflects the danger posed to public safety by such conduct, and its potential effects upon personal and societal interests. In a prison environment, the danger to corrections officers as well as to other prisoners is substantial. When sentencing for rioting offenses, it is especially important that the sentence reflect the offender's role in the offense. Therefore, attention is specifically directed to Chapter Three, Part A, Role in the Offense.

5. *Miscellaneous Offenses.*

18 U.S.C. 13

K251. *Driving While Impaired.* The base offense value is 3.

a. Specific Offense Characteristics

If the violation involved other moving traffic violations, add 1 point for each.

b. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

K252. *Disorderly Conduct.* The base offense value is 2.

K253. *Public Intoxication.* The base offense value is 1.

Commentary

These violations are prosecuted in federal courts as assimilated crimes under 18 U.S.C. 13.

Part L—Offenses Involving Immigration, Naturalization, and Passports

1. *Immigration.*

8 U.S.C. 1324
8 U.S.C. 1325
8 U.S.C. 1326
8 U.S.C. 1327
8 U.S.C. 1328
29 U.S.C. 1816

Immigration offenses constitute a significant concern for federal authorities. The interests protected are: maintaining the integrity of the borders; safeguarding a policy of controlled immigration; and excluding certain undesirable aliens. The highest sanctions in these sections are reserved for those who aid or solicit others to enter the United States illegally.

L211. *Smuggling or Transporting an Unlawful Alien.* The base offense value is that determined below.

a. Specific Offense Characteristics

1. If the offender received anything of value directly for engaging in the conduct, then the base offense value is as follows:

No. of unlawful aliens	Base offense value
1–4	12
5–10	16
11–25	20
26–50	28
51 or more	32

2. If the offender had knowledge that one or more of the aliens was a member of the class of aliens that is excludable from the United States under 8 U.S.C. 1182(a)(27), (28), or (29), relating to the exclusion of aliens classified as subversives, the base offense value is the offense value from the table in subsection a.1 above, plus 2.

3. Otherwise, the base offense value is 50% of the offense value from the table in subsection a.1 above.

4. If the offender was armed with a firearm or other dangerous weapon during the commission of the offense, add 6 to the base offense value.

Commentary

This section refers to conduct proscribed by 8 U.S.C. 1324(a)(1), (2), and (4), 1327, 1328.

This section concerns the most serious immigration offenses and considers three main factors.

First, consideration is given to the motivation of the offender in aiding the entry of illegal immigrants. Those operating with a monetary motivation are given twice the sanction of those who act for other (*e.g.*, family) reasons. Those who violate immigration laws for monetary reasons pose the greatest problem since they are the ones most likely to engage in continuing activity.

Second, consideration is given to the scope of the scheme. While the number of illegal immigrants involved in the current offense will not always be an accurate barometer of the overall scope of the offender's involvement in immigration violations, it is a useful indicator.

Third, persons assisting the entry of aliens who are otherwise specifically excludable receive an additional penalty.

Consideration was given to adding an aggravating factor if the basic offense was one where one or more of the illegal immigrants had previously been deported. However, this type of provision would present problems of proof disproportionate to the benefits of any specific level of aggravation.

Being armed during the commission of the offense is treated as an aggravating factor because armed offenders pose a greater danger to law enforcement officers.

While no cross-reference is specifically listed for offenses involving the person, the Commission is aware that such harms do occur as a result of immigration offenses. The sentencing court in such cases may choose to go outside the guidelines.

L212. *Unlawfully Entering or Remaining in the United States as an Alien.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the conduct included fraudulently acquiring or improperly using evidence of citizenship, add 6 to the base offense value.

Commentary

This section refers to conduct proscribed by 8 U.S.C. 1325 and 1326.

Where the conduct included the improper use of evidence of citizenship, an offense value of 12 is assigned. Otherwise, the offense value is 6. Whether the offender was previously deported was not included in the offense characteristics; it is included as an offender characteristic only to the extent that it resulted in previous convictions.

L213. *Harboring an Alien Unlawfully in the United States.* The base offense value is the value from L211 (Smuggling or Transporting an Unlawful Alien).

Commentary

This section refers to conduct proscribed by 8 U.S.C. 1324(a)(3).

This offense is treated the same as smuggling an unlawful alien (L211). Thus, the number of aliens and a profit motive are the primary determining factors.

The Commission is aware that harboring illegal aliens is sometimes motivated by political or humanitarian concerns. No distinction based on such motives has been included. Comments on the advisability of doing so is solicited.

L214. *Unlawful Employment of an Alien by a Farm Labor Contractor.* The base offense value is 3.

a. Specific Offense Characteristics

1. If the contractor did not have a valid certificate of registration, add 9.

Commentary

This section refers to conduct proscribed by 29 U.S.C. 1816.

An aggravating factor based on the number of aliens employed was considered but not included. It is expected that this offense will generally involve employment of multiple aliens. The offense value is substantially enhanced if the conduct (unlawful employment of illegal aliens) is by a farm labor contractor who is not properly registered with the U.S. Department of Labor.

2. *Naturalization and Passport.*

18 U.S.C. 1423
18 U.S.C. 1424
18 U.S.C. 1425
18 U.S.C. 1426
18 U.S.C. 1427
18 U.S.C. 1428
18 U.S.C. 1542
18 U.S.C. 1543
18 U.S.C. 1544
18 U.S.C. 1546

L221. *Trafficking in Evidence of Citizenship and Documents Authorizing Entry.* The base offense value is that determined below.

a. Specific Offense Characteristics

1. If the offense was committed for pecuniary gain, the base offense value is that determined below:

No. of sets of documents	Offense value
1	11
2–10	16
11–25	20
26–50	28
51 or more	32

2. Otherwise, the base offense value is 12, or 50% of the offense value applicable from the table in subsection a.1 above, whichever is greater.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1425, 1426, 1427, and 1546.

This offense is assigned an offense value according to the scale of the conduct consistent with that of smuggling, transporting, or harboring an illegal alien.

The term "number of sets of documents" refer to the number of different identities that the documents provide, or, in the case of duplicate documents, the number of duplicate sets of documents.

L222. *Fraudulently Acquiring Evidence of Citizenship and Documents Authorizing Entry for Own Use.* The base offense value is 12.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1423, 1424, 1425, and 1546.

This offense is assigned an offense value consistent with unlawfully entering the United States by improper use of evidence of citizenship. Where both offenses occur, only the highest value should be considered.

L223. *Trafficking in a United States Passport.* The base offense value is determined by the following table:

No. of passports	Base offense value
1	14
2–10	22
11–25	26
26–50	32
51 or more	36

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1542, 1543, and 1544.

This offense is assigned an offense value according to the scale of the conduct, and at a higher level than the conduct of trafficking in evidence of citizenship. Passports provide a means of identification that is widely accepted. But in addition to their use as a

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means of illegal entry, they may also serve to hide the identity or aid the escape of a person engaging in other forms of illegal activity. For these reasons, the Commission has assigned this conduct a higher offense value.

L224. *Fraudulently Acquiring or Improperly Using a United States Passport.* If the conduct involved:

1. Fradulently acquiring a passport, or using a false, forged, or altered passport, or using a passport issued to another person, the base offense valued is 14.

2. Violating a condition or restriction pertaining to the passport, or a travel restriction, the base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1543 and 1544.

Fraudulently acquiring a passport, or using a false, forged, or altered passport, or a passport issued to another, is assigned a base offense value of 14, which results in a mandatory minimum prison term of two months. A lower base offense value of 6 is assigned to violating a passport or travel restriction with an otherwise valid passport.

L225. *Failure to Surrender Canceled Naturalization Certificate.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1428.

L226. *Neglect or Refusal to Answer Subpoena.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1429.

Part R—Antitrust Offenses

15 U.S.C. 1
15 U.S.C. 2
15 U.S.C. 3

Introduction. These guidelines deal with violations of the antitrust laws, 15 U.S.C. 1, 2, 3. Although they are not unlawful in all countries, there is near-universal agreement that restrictive agreements among competitors, such as bid rigging, horizontal price fixing or horizontal market allocation, can cause serious economic harm. However, there is little agreement about the harmfulness of other types of antitrust violations; the law involving them is frequently unsettled and criminal prosecutions are infrequent. Consequently, the guidelines divide antitrust offense into two categories: Restrictive Pricing or Marketing Agreements Among Competitors (R211), and all other antitrust violations (R212).

R211. *Restrictive Pricing or Marketing Agreements Among Competitors*

The base offense value is determined by the table below:

Dollar value of commerce	Base offense value
Up to $1,000,000	14
$1,000,0001–$3,000,000	16
$3,000,001–$10,000,000	18
$10,000,001–$25,000,000	21
$25,000,000–$50,000,000	24
Over $50,000,000	30

a. Specific Offense Characteristics

1. If the offender was previously convicted of an antitrust violaiton, add 12 ot the base offense value. (Prior convictions for antitrust offenses should not be counted in calculating the Chapter Three adjustment for prior record. Instead, use this specific adjustment and compute the general adjustment for prior record ignoring antitrust convictions.)

For purposes of applying the foregoing table, the volume of commerce attributable to any one participant in a conspiracy is the total volume of commerce done by all conspiring enterprises in the goods or services affected during the coirse of the conspiracy divided by the number of such participants, or the volume of commerce actually done by the individual offender or his/her principal, whichever is greater. For sentencing purposes only, a conspiracy involving a fixed group of participants and a single type of product or service should be treated as a single violztion, regardless of whether there ar multiple agreements or meetings in furtherance of the conspiracy that might result in multiple indictments. For example, if four construction contractors meet on several occasions to rig bids on paving projects, the offense should be treated as a single conspiracy with the volume of the commerce determined by the total value of the paving contracts on which they rigged bids.

Subject to statutory limitations, large fines are suggested in addition to imprisonment. The recommended fine for an individual conspirator is 10% of the volume of commerce; for an organization, it is 50% of the volume of commerce. One hundred sixty hours of unpaid community service is suggested as an alternative to each $5,000 of fine only when it appears that the individual offender will not, over a reasonable period of time, be able to pay the fine.

Commentary

The Commission believes that the best way to deter individuals from committing this type of economic crime is through prison sentences of short to moderate length, coupled with large fines. the guideline is designed with that purpose in mind. Mandatory minimum prison sentences will be two months in the smallest cases and longer in large cases. Of course, considerably longer sentences will be possible. For cases involving repeat offenders, the guideline sentences to imprisonment can reeach the statutory maximum of three years. These imprisonment terms represent a substantial change in present practice, where only 15% of all ofenders convicted of antitrust violations are imprisoned and the average time served by those who are sentenced to a term of imprisonment is less than four months.

The offense values are not based on the amount of damage caused by the violation because damages are difficult and time-consuming to prove. The volume of commerce is a reasonable substitute for gauging the seriousness of the offense. The overlapping offense value categories are intended to reduce problems with accurate estimation of the value of commerce.

Substantial fines are an important part of the sanction. It is estimated that the average additional profit attributable to price fixing is 10% of the selling price. Because of the low probability of detection, the Commission has recommended that a fine equal to that amount be imposed on individual offenders, and a fine of five times that amount be imposed on organizations. Additional monetary penalties can be provided through private treble damage actions. When several individuals participate in a conspiracy on behalf of one employer, the sentencing court should consider apportioning the fine.

No increase in the sanction is provided for offenders who initiate an antitrust conspiracy, since such persons generally engage in a large volume of commerce and therefore will receive a larger punishment witout such an adjustment.

R212. *Antitrust Violations Not Involving Restrictive Pricing or Marketing Agreements Among Competitors.* The offense value is 10.

Commentary

The offense value for antitrust offenses that do not involve restrictive agreements among competitors has been set at the level of 10 because there is considerable debate over whether such offenses cause significant harm. Historically, the Department of Justice has given little emphasis to criminal prosecution of this type of antitrust violation. In assition, the law as to what constitutes a criminal violation in these areas is unsettled. Consequently, mandating imprisonment would be unfair. In any event, sentences in excess of six months would rarely be necessary. The civil system, which allows for privatee treble damage actions and injunctive relief, may provide a sufficient deterrent and remedial effect, particularly because non-horizontal practices generally are relatively difficult to conceal.

Part S—Securities Offenses

15 U.S.C. 77a–80b–17

Introduction. The federal securities laws provide a regulatory framework that is primarily enforced through administrative proceedings. Criminal prosecution generally focus on cases involving intentional deception, insider trading, or other willfull misconduct that causes actual harm to the public. In addition, the securities laws contain numerous similar provisions that differ only in regard to the specific type of securities or the technical context in which the conduct occurs. For these reasons, this part of the guidelines is organized according to the functional characterization of the conduct rather than the specific code section that it may violate.

Because violations of the securities laws, although criminal, most frequently result in administrative sanctions, the guidelines provide for enhancements for offenders who have been subjected to previous administrative sanctions, in addition to the more general enhancements for prior criminal convictions.

S211. *Securities Fraud.* If the offender, in connection with the offer or sale of a security, made representations or omissions that are materially false or misleading, and the offender kenw such representations or omissions to be false or misleading or acted with reckless disregard as to their truth or falsity, then the base offense value is as follows:

Amount of loss to investors	Base offense value
Up to $30,000	14
$30,001–$100,000	16
$100,001–$300,000	18
$300,001–$500,000	22
$500,001–$1,000,000	26
$1,000,001–$3,000,000	30
$3,000,001–$5,000,000	34
$5,000,001–$10,000,000	40
$10,000,001–$25,000,000	46
Over $25,000,000	52

Special Minimum Value for Loss: The amount of loss to be utlitized in applying the table is 10% of the total offering price of the securities, or the actual loss to investors, whichever is larger.

a. Specific Offense Characteristics

1. If the security was unregistered and registration was required, add 3.

2. If the conduct violated an injunction or consent decree entered against the offender in an S.E.C. or state securities enforcement or administrative proceeding, add 6.

3. If an injunction or consent decree previously was entered against the offender in an S.E.C. or state securities enforcement proceeding relating to fraudulent or deceptive practices, add 3.

b. Cross-References

1. If the offender obtained or attempted to obtain something of value from another person by selling or offering to sell such person a security, with the intention of causing such persons to lose that investment, or without the intention of investing the funds substantially as disclosed, the offense value is that specified in Part F, Offenses Involving Fraud and Deception.

2. If the offender obstructed administrative proceedings or an investigation relating to the offense, add the offense value from S215 (Obstructing an S.E.C. Proceeding or Investigation).

Commentary

This guideline deals with certain conduct that violates 15 U.S.C. 66q, 78j or 80b–6. It also applies to convictions under 15 U.S.C. 78e (sale of unregistered securities) and 15 U.S.C. 77x (false statements in a registration statement) that involve an actual or attempted fraud. This guideline does not apply to insider trading, which is dealt with in S212.

Attempts to defraud that are unsuccessful (*i.e.*, offers that do not result in sales) or only partially successful should be punished in accordance with the provision entitled "Special Minimum Value for Loss," which scales the punishment to the size of the offering. The same provision ensures that offenders who make a fraudulent offering will be punished according to the size of the offering even if the investment results is no loss to investors. A lesser punishment is specified for offers that do not result in sales because the sale of the security would not necessarily result in injury to investors. Moreover, the inability to market the offering suggests that the disclosure adequate to dissuade investors was made or there was compliance with other regulations sufficient to enable the S.E.C. to stop the offering.

The securities laws prohibit a variety of conduct that would not necessarily have been unlawful at common law. However, many of the securities frauds that are prosecuted, including "boiler-room" operations and other offerings of what are essentially non-existent securities are as a practical matter no different from ordinary frauds. Such frauds, which involve a deliberate intent to steal, result in a complete waste of resoures, rather than merely a misallocation of investment funds due to misinformation. They are more harmful, more culpable, and more difficult to deter, and are therefore punished more severely by means of a cross-reference to the guidelines for Offense Involving Fraud and Deception.

This guideline provides for a mandatory minimum prison sentence of at least two months.

Because securities law violations most often result in administrative rather than criminal sanctions, the offender's record of criminal convictions does not adequately capture prior conduct. Accordingly, enhanced punishments are provided for offenders who previously have been adjudicated in an administrative proceeding to have violated the securities laws.

Because the requirements of registering securities is intended to provide some protection to investors, increased punishment is provided when the offering is unregistered. This adjustment does not apply when this guideline is applied by cross-reference to an offense that does not involve the offer of a security.

S212. *Insider Trading.* The base offense value is specified below.

Amount of gain to offender and persons to whom offender knowingly provided inside information	Base offense value
Up to $10,000	12
$10,001–$30,000	14
$30,001–$100,000	16
$100,001–$300,000	18
$300,001–$500,000	22
$500,001–$1,000,000	26
$1,000,001–$3,000,000	30
$3,000,001–$5,000,000	34
$5,000,001–$10,000,000	40
$10,000,001–$25,000,000	46
Over $25,000,000	52

a. Specific Offense Characteristics

1. If the offender was not an officer, director, or employee of, or attorney, auditor in investment banker for, a company in the securities of which he/she traded, or an acquiring or target company, and the offender was not expressly obligated by contract to keep the information confidential, subtract 3.

2. If the conduct violated an injunction or consent decree entered against the offender in an S.E.C. or state securities enforcement or administrative proceeding, add 6.

3. If an injunction or consent decree previously was entered against the offender in an S.E.C. or state securities enforcement proceeding relating to fraudulent or deceptive practices, add 3.

b. Cross-References

1. If the offender obstruct administrative proceedings or an investigation relating to the offense, add the offense value from S215 (Obstructing an S.E.C. Proceeding or Investigation).

Commentary

This guideline applies to conduct that violates 17 CFR 240.10b-5 (as incorporated by 15 U.S.C. 78j(b)) solely because it involves a misuse of "inside" information.

This offense is unique to the securities laws and is the subject of considerable controversy. Although the prevailing view is that insider trading should be prohibited, not everyone agrees, and other countries have not outlawed the practice. It is generally agreed, however that insider trading is neither as harmful not as reprehensible as outright deception.

With two exceptions, the Commission has nonetheless set the sanctions for insider trading at the same levels as securities fraud. This is because insider trading is more difficult to detect than deceit. The exceptions are for (1) offenses involving small profits and (2) offenses where the offender, because of his/her position, might not have appreciated the duty to refrain from trading on the basis of inside information. The

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changing state of the law interpreting the extent of the duty to refrain from trading on inside information justifies a lower penalty for those persons who are more likely to be unaware that such conduct is criminal. However, when the volume of trading becomes large, it is difficult to accept the argument that the behavior was innocent; accordingly, the discount for such offenders does not increase with the amount of profit.

In most of the cases that currently are prosecuted, this guideline will mandate a minimum term of imprisonment of two months or longer. Imprisonment is not required in every case because it may be possible to provide adequate deterrence and punishment without imprisonment in cases involving relatively small profits because the Insider Trading Sanctions Act provides for a civil penalty of treble the gain; in cases involving small profits, many offenders might be able to pay the penalty.

When multiple trades are involved, the gains should be added together. Losses as a result of insider trading should not be offset against gains.

S213. *Market Manipulation (Other than Insider Trading).* The offense value is that for Securities Fraud specified in S211.

Commentary

This guideline deals with certain forms of conduct that may violate 17 CFR 240.10b–5, as incorporated by 15 U.S.C. 78j(b), but is not characterized as insider trading. It also applies to conduct proscribed by 15 U.S.C. 78a(1)–(5) or 80b–6.

The offense is treated separately for clarity and completeness. It provides a cross-reference to the guideline for securities fraud, of which market manipulation is one form. The cross-reference in S211 to the guidelines for Offenses Involving Fraud and Deception will apply in some cases.

S214. *Fraudulent or Deceptive Purchases and Tender Offers.* The offense value is that for Securities Fraud specified in S211.

a. Cross-References

1. If the offender did not intend to deliver the consideration promised or if he/she materially misrepresented the value of the consideration, the base offense value is that specified in Part F, Offenses involving Fraud and Deception.

Commentary

This guideline applies to certain forms of conduct that may violate 15 U.S.C. 78n(a), 78n(e) of 17 CFR 240.10b–5, as incorporated by 15 U.S.C. 78j, as well as more general fraud statutes.

This conduct is another form of Securities Fraud and is broken out for clarity and completeness. The only difference between this section and S211 is in the wording of the cross-reference to the guidelines for Offenses Involving Fraud and Deception.

S215. *Obstructing an SEC Proceeding or Investigation.* The base offense value is 12.

a. Specific Offense Characteristics

1. If the offender committed or suborned perjury, whether orally or in writing, the base offense value is 16.

2. If the offender provided false material written information (not under oath) or destroyed evidence, the base offense value is 14.

3. If the conduct of the offender violated an injunction or consent decree entered against the offender in an SEC or state securities enforcement or administrative proceeding, add 4.

4. If an injunction or consent decree previously was entered against the offender in an SEC or state securities enforcement proceeding relating to fraudulent or deceptive practices, add 2.

Commentary

This guideline applies to conduct that is frequently prosecuted under 18 U.S.C. 1505. However, a separate guideline tentatively has been established because the context in which the obstruction occurred provides valuable information regarding the appropriate punishment. If a more serious obstruction of justice is involved, such as one involving the use or threatened use of violence, consult the appropriate guidelines section.

This form of behavior is classified into three levels: perjury, submitting false written information, and other. Perjury is punished most severely because of the need to protect the integrity of the adjudicative process. Providing false written evidence is punished more severely than the remaining forms of conduct because of the greater risk for error when the information is not provided formally. Perjury and submitting false written statements have mandatory minimum terms of imprisonment of two or four months because of the need to ensure the effectiveness of the regulatory process in protecting investors and markets. Other forms of obstruction do not carry a mandatory minimum, but a sentence to some term of imprisonment usually would be appropriate.

S216. *Violating an Injunction or Consent Decree.* The base offense value is 16, or the offense value for the underlying conduct (as aggravated for violating the injunction or decree), whichever is greater.

Commentary

As with S215, a separate guideline tentatively has been established for violating an injunction or consent decree because the context of the violation provides useful information regarding the appropriate punishment.

A minimum term of imprisonment of four months is required because of the need to ensure that injunctions are obeyed and the administrative enforcement process, which is the backbone of securities regulation, is effective.

S217. *Regulatory Violations.* The base offense value is 10.

a. Specific Offense Characteristics

1. If the conduct involved an intentional misrepresentation to the Securities and Exchange Commission, the base offense value is 14.

2. If an injunction or consent decree previously was entered against the offender in an S.E.C. or state securities enforcement proceeding relating to fraudulent or deceptive practices, add 4 to the base offense value.

Commentary

This guideline applies to registration and reporting violations of the securities laws that are not described in S211–S216. These include, for example, violations of 15 U.S.C. 78dd (transactions on unregistered exchanges) and 15 U.S.C. 78f (national securities exchanges); most violations prosecuted under 15 U.S.C. 78ff (general penalties provision); and non-fraudulent violations prosecuted under 15 U.S.C. 77e (unregistered securities) and 15 U.S.C. 77x (general penalties and false statements in registration statements).

These violations may be highly technical and their criminal prosecution is infrequent except when actual fraud is involved. Short mandatory terms of imprisonment are provided for those violations that involve intentional misrepresentation. Such violations undermine the regulatory process and pose the greatest risk of harm to investors. Such offenses may be prosecuted under 15 U.S.C. 78ff.

Chapter Three—Offender Characteristics

Overview

Chapter Three identifies offender characteristics that aggravate or mitigate a sentence. These adjustments are applied to the total offense value determined by Chapter Two. If more than one adjustment is applicable in a given case, follow the procedures set forth in Chapter One, Part VI, Application Instructions.

Part A provides aggravating and mitigating adjustments based upon the offender's role, level of relative involvement, and, if applicable, the nature of the criminal group or enterprise involved.

Part B identifies several aspects of an offender's post-offense conduct that aggravate or mitigate a sentence. Sentencing enhancements are provided in Section 1 for an offender who engages in or suborns perjury or obstructs justice in connection with the investigation, prosecution, or sentencing for the underlying offense(s). An offender who accepts responsibility for his or her conduct and takes objective steps toward rehabilitation may be eligible for a sentencing reduction under the provisions of Section 2. An offender may also qualify for a sentencing reduction if he or she provides assistance to authorities in accordance with the provisions of Section 3.

Part C provides for an enhancement of sentence if an offender has a prior history of criminal involvement. The adjustment takes into consideration the extent, seriousness, and recentness of the offender's prior criminal conduct.

Part D is reserved for the subject of plea agreements. The public is invited to comment and submit proposals on the policy issues relating to plea agreements presented in Chapter Six, Part C.

Public comment is also requested in Chapter Six, Part F, on the treatment of serious aggravating and mitigating factors that occur infrequently, such as brutal behavior or serious mental disability not rising to the level of a defense.

Part A—Role in the Offense

A311. If the offender was in a position of control over a criminal enterprise or organization, multiply the total offense value from Chapter Two by a number between 1.5 and 2 , depending upon the size of the enterprise and the nature of its criminal activities. If the offender is convicted under 21 U.S.C. 848, the total offense value from Chapter Two should be multiplied by 2.

The appropriate numerical multiplier shall be determined by the sentencing judge upon findings that may include, but are not limited to, the following considerations:

a. derivation of all or most of the income or resources of either the offender or the organization from illegal activities;

b. involvement by the offender or the organization in illegal activities on an ongoing basis;

c. involvement by the offender or the organization in more than one type of illegal activity;

d. size of the organization's illegal operation or scope of its illegal activities; and

e. use of violence, threats of violence, coercion, or intimidation to recruit and control subordinates in the organization or to procure other persons to perform illegal acts.

A312. If the offender directed or supervised another person or persons in the commission of the offense, or used a special skill, trade, training, education, or public position to facilitate the commission of an offense, multiply the total offense value from Chapter Two by 1.2.

A313. If the offender was either the sole participant or share comparable responsibility with another offender or offenders, no adjustment is made to the total offense value from Chapter Two.

A314. If the offender was a minor participant in the offense, multiply the total offense value from Chapter Two by a number within a range of .5 to .7, depending upon the the offender's relative culpability and the nature of the criminal conduct involved.

Commentary

Section A311 applies to offenders who are in positions of control over groups that engage in serious ongoing criminal activity. For purposes of this provision, control and the exercise of decision-making authority are significant considerations, rather than affixing a label such as "leader," "organizer," "financier," or "kingpin."

Engaging in a continuing criminal enterprise under 21 U.S.C. 848 presents one of the most aggravated forms of leadership of a criminal group. Conviction under that statute automatically establishes the applicability of a multiplier of 2.

The nature and scope of the criminal organization must be evaluated by the sentencing judge to determine the appropriate multiplier in the 1.5 to 2 range for an offender who is in a position of leadership or control.

Section A311 applies only if the criminal organization and the offender's position are relevant to the offense of conviction. For example, a leader of a motorcycle gang that is involved in the trafficking of narcotics, firearms, and stolen property would not be subject to this sentencing adjustment by reason of a conviction for an offense unrelated to gang activity.

Section A312 applies to an offender who is the most or more culpable member of any group that commits a crime, without regard to the size or nature of the group. A manager or supervisor in an otherwise legitimate business, or one of several casual acquaintances who directs or supervises the commission of a crime, qualify for this sentencing enhancement. Titles are not controlling. It is the offender's role in the offense that is significant. Objective factors of leadership may include recruitment of other offenders, planning of the offense, exercise of decision-making authority, use of a particular expertise (criminal, professional, or occupational), or right to claim a larger share of the fruits of the crime than other participants.

Section A312 also enhances the sentence of an offender who uses a special skill, training, education, trade, or public position to facilitate the commission of a crime. Thus, a pilot who smuggles cocaine from Colombia in a private plane, a doctor who prepares phony medical reports in an automobile accident insurance fraud, or a deputy sheriff who conspires with private citizens to commit a civil rights violation would be subject to this provision. A sole participant in an offense who uses professional expertise for criminal purposes qualifies for this adjustment.

Section A313 applies to a sole participant in an offense and to offenders who have comparable roles in the offense.

Section A314 applies to an offender who has a limited role in an offense that is planned, directed, and controlled by another person or persons. A minor participant is one who is not in a position to make decisions affecting the offense or to benefit substantially from its commission. In determining the appropriate numerical multiplier, the sentencing judge shall evaluate and made findings regarding the nature of the offender's role and conduct in relation to other participants.

Part B—Post-Offense Conduct

1. *Obstruction of Justice and Perjury.*

B311.. If the offender obstructed or attempted to obstruct the administration of justice, multiply the total offense value from Chapter Two by a number between 1.1 and 1.4, to be determined by the nature of the conduct.

The appropriate numerical multiplier shall be determined by the sentencing judge upon findings that may include, but are not limited to, the following considerations:

a. whether the offender knowingly and intentionally destroyed or concealed or attempted to destroy or conceal material evidence;

b. if the offender directed or procured or attempted to direct or procure another person to destroy or conceal material evidence;

c. if the offender knowingly and intentionally offered untruthful testimony concerning a material fact, or knowingly and intentionally produced or attempted to produce an altered, forged, or counterfeit document or record before a grand jury proceeding, during trial, or during a sentencing hearing;

d. if the offender directed or procured or attempted to direct or procure another person to offer perjured testimony, or to produce an altered, forged, or counterfeit document before a grand jury proceeding, during trial, or during a sentencing hearing.

B312. Section B311 shall not be applied to enhance a sentence if the United States Attorney states an intention to prosecute for the same conduct. An offender cannot later be sentenced in an independent prosecution for conduct previously used as a basis for application of this section.

Commentary

This section provides an aggravating adjustment for an offender who engages in conduct calculated to unlawfully mislead or deceive authorities and/or those involved in a judicial proceeding. Before a sentence may be aggravated under this section, the sentencing judge must find the specific conduct present by a preponderance of evidence and determine the appropriate multiplier according to the nature of the conduct and its impact on the administration of justice.

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The aggravation of a sentence because of perjury or obstruction of justice is in recognition of a basic principle that no one has a right to lie or deceive or direct others to do so or to destroy evidence of a crime. While no offender is obligated to give a statement, testify, or produce evidence, an offender should not present a fabricated defense or suborn perjury. For example, this provision applies to an offender who alters records or other evidence or procures false alibi testimony. A defendant's denial of guilt is not a basis for application of this provision.

2. *Acceptance of Responsibility.*

B321. If the offender demonstrates by a preponderance of evidence that he or she recognizes and sincerely accepts responsibility for the offense(s), the sentencing judge may reduce the offender's sentence by an amount the judge deems appropriate, provided the reduction does not exceed 20 percent of the total offense value from Chapter Two. Acceptance of responsibility for the offense(s) may be established by conduct that includes, but is not limited to, the following:

1. voluntarily surrendering to authorities before charges are filed or an arrest warrant is issued;
2. voluntarily making restitution of a substantial nature before sentencing;
3. voluntarily admitting actual involvement in the offense(s);
4. voluntarily providing assistance to authorities in the recovery of fruits and/or instrumentalities of the offense(s); or
5. any other conduct that establishes by a preponderance of evidence that the offender sincerely accepts responsibility for the offense(s) and has undertaken objective steps toward rehabilitation.

B322. An offender may qualify for a reduction under this section without regard to whether the offender's conviction is based upon a guilty plea or a finding of guilty by a court or jury. An offender who enters a guilty plea is not automatically entitled to a reduction under this section.

Commentary

The reduction of a sentence available under B321 recognizes a number of societal interests. The offender who sincerely accepts responsibility for wrongdoing, who takes affirmative steps toward disassociation from past criminal conduct, and who attempts to rectify the harm done to others is entitled to receive recognition for these socially desirable actions. This conduct also is a sound indicator of rehabilitatibe potential.

The sentencing judge is in a unique position to evaluate whether the offender's post-offense conduct is sincere or merely self-serving. For this reason, the sentencing judge is not required to find that conduct such as that described actually justifies a sentencing adjustment. If the sentencing judge finds that the offender is entitled to a reduction, the amount of the reduction is totally within the discretion of the sentencing judge. However, in no event may the reduction exceed 20 percent of the adjusted offense value for an offense.

While a plea of guilty may be some evidence of the offender's acceptance of responsibility for the offense(s), a guilty plea does not automatically entitle an offender to an adjustment. The availability for the reduction under B321 is not governed by the plea entered by the offender.

Offenders who plead guilty currently receive substantially lower sentences than those who are sentenced after a trial. The rationale for this disparity is that a guilty plea "is the first step toward rehabilitation," that such pleas conserve the resources of the criminal justice system, and that witnesses (particularly victims) are spared the stress of a trial. The Commission requests comment whether this practice should be perpetuated by providing an automatic sentencing reduction for a guilty plea or whether the approach suggested by Part 2 should be followed.

3. *Cooperation.*

B331. If the United States Attorney certifies that the offender provided truthful and significant information regarding the criminal activities of another person or persons, multiply the total offense value from Chapter Two by .8.

B332. If the United States Attorney certifies that the offender actively assisted authorities in an ongoing investigation or provided truthful and significant testimony before a grand jury or in a court proceeding, multiply the total offense value by .7.

B333. If the United States Attorney certifies that the offender provided exceptional assistance to law enforcement authorities, multiply the total offense value by .6.

Commentary

The Supreme Court has recognized that an offender's willingness to cooperate with authorities is a valid consideration at sentencing. Cooperation by knowledgeable offenders is particularly valuable in the investigation and prosecution of major narcotics offenses and other organized criminal activity.

Sections B331, B332, and B333 are mutually exclusive; the United States Attorney shall select the most appropriate category if an offender's cooperation overlaps several categories. The certification of the prosecuting United States Attroney is required before the offender is eligible for the adjustments set forth in B331, B332, or B333, either at sentencing or for a reduction of sentence under the new provisions of Rule 35, Federal Rules of Criminal Procedure that become effective simultaneously with the guidelines. These provisions apply whether the offender's cooperation is in the same case, a related case, or wholly unrelated to the offense committed by the offender.

Section B333 provides for a 40 percent sentencing reduction for exceptional cooperation, such as the offender who provides valuable information and assistance in the early stages of a major investigation or who performs undercover work or testimony under life-threatening or personally dangerous circumstances.

The certification may be made under seal if it contains information that endangers any person, including the offender, or jeopardizes an ongoing investigation. However, certifications of cooperation shall be subject to the rules of discovery otherwise applicable in criminal cases.

The sentencing judge shall apply the cooperation adjustment in accordance with the certification of the United States Attorney, unless a finding is made that the certification was made in bad faith or was made in an effort to circumvent the guidelines.

Cooperation by an offender is often a subject of plea agreements. The Commission recognizes, however, that occasional disputes may arise over the existence, level, or quality of an offender's cooperation. The Commission requests specific comment accompanied by suggestions for resolution of this issue.

Part C—Criminal History

A sentence adjustment for an offender's criminal history can be justified on both just punishment and utilitarian grounds. From a just punishment perspective, repeat offenders who have already experienced intervention from the criminal justice system has ignored warnings. Therefore, they are deemed more blameworthy than offenders who have not been confronted previously. The amount of the sentence adjustment that is justified by a criminal history is a subject of debate, but many just punishment proponents accept some sentence modification for criminal record.

Crime control arguments provide a stronger justification for using criminal history to adjust a sentence. Criminal record is a strong predictor of recidivism. As a result, it is often used to increase the length of imprisonment and the level of supervision for offenders, thus addressing incapacitation and deterrence respectively.

The major components of the criminal history adjustment are the number and severity of sanctions imposed for prior convictions, and whether the offender was under criminal justice control during the commission of the current offense or had recently been released from custody. These components reflect the extent, seriousness, and recentness of criminal history. An additional item deals with the use of heroin, opiate derivatives, and other dangerous drugs. A decay factor is used to eliminate old offenses from the criminal history adjustment.

The resulting criminal history score does not include a specific item that gives weight to a pattern of violent criminal behavior. Neither does it include any measure of unadjudicated factors that might indicate ongoing criminal behavior, such as prior failures to comply with administrative orders in major economic crime offenses, and evidence of significant income for which there is no legitimate source. Because these factors are present in a relatively small number of cases and tend to be context-specific, they are addressed in policy statements.

1. Criminal History Score.

The sum of the criminal history points from items A through E below provides the criminal history score. The definitions and instructions in Subpart 3 apply to the determination of criminal history points.

A. Score at least 3 points for each prior sentence of imprisonment for a maximum term of more than one year. For each such term:

1. score 3 points if the offender served less than three years;
2. score 4 points if the offender served three or more years but less than five years;
3. score 5 points if the offender served five or more years.

B. Score 2 points for each prior sentence of imprisonment for a maximum term of 60 days or more that is not counted above.

C. Score 1 point for each prior sentence that is not counted above.

D. Score 2 points if the offender committed the current offense:

1. while under any form of criminal justice control, including probation, parole, or supervised release, custody or escape status, or any form of release pending trial, sentencing, or appeal; or
2. within three years after any release from imprisonment on a sentence counted in (A) above; or within three years after the imposition or commencement of any sentence counted in (B) above.

E. Score 3 points if the offender had a positive urine test for heroin or any other opiate, cocaine, or PCP either at the time of arrest, during the pretrial release period, or during the presentence release period; or score 3 points if the offender is determined to have been an abuser of heroin or any another opiate, cocaine, or PCP within ten years of the current conviction.

2. Special Conditions: Policy Statements.

C321. If the offense of conviction is a violent offense or a controlled substance offense and the offender has at least two prior felony convictions, each of which is either a violent offense or a controlled substance offense, then the sentence shall equal the maximum term of imprisonment authorized for the offense. This policy statement implements 28 U.S.C. 994(h). Violent offenses are the state and federal counterpart of offenses in Chapter Two, Part A, Offenses Involving the Person, and any other offense that involves force or threat of force against a person, including burglary of a dwelling. Controlled substance offenses are described in Section 401 of the Controlled Substance Act (21 U.S.C. 841); Sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959); and Section 1 of the Act of September 15, 1980 (21 U.S.C. 955a).

C322. If it can be established by a prior failure to comply with an administrative order, a civil adjudication, or a preponderance of other evidence that the offender previously engaged in similar conduct (other than conduct that resulted in a previous criminal conviction), aggravation of the sentence beyond the guideline range shall be warranted.

C323. If it is determined by a preponderance of the evidence that the current offense was part of a pattern of criminal conduct from which the offender derived a substantial portion of his or her income, aggravation beyond the guideline range shall be warranted. This policy statement implements 28 U.S.C. 944(i)(2).

C324. If the offender knowingly fails to appear before a court as required by the conditions of his release, aggravation of the sentence beyond the guideline range shall be warranted; or, if the offender knowingly fails to surrender for service of sentence pursuant to a court order, he shall be sentenced to a mandatory consecutive sentence which may exceed the guideline range. This policy statement is consistent with 18 U.S.C. 3146.

3. Definitions and Instructions for Scoring Criminal History.

The following definitions and instructions apply to the scoring of criminal history points.

Prior Sentences. A prior sentence refers to a sentence imposed prior to sentencing on the current offense for conduct that is not part of the conduct constituting the current offense. If two or more prior sentences are imposed concurrently, they are to be treated as one sentence for purposes of the criminal history score, using the longest sentence of imprisonment imposed. If two or more prior sentences are imposed consecutively, they are to be treated as separate sentences for purposes of calculating the criminal history score.

When determining time served, the probation officer shall assume that the offender served one-third of the maximum term imposed, or one-third of the statutory maximum term when the maximum term was not stipulated. The offender shall be allowed to rebut this assumption and establish the fact that less time was served. However, the offender may not rebut the assumption if less time was served because the offender escaped or because the prison portion of a sentence has not yet been completed.

Sentences to Imprisonment. A sentence to imprisonment refers to an executed sentence of imprisonment, not one that has been suspended. If part of a sentence of imprisonment has been suspended, the term "sentence to imprisonment" refers to the part that has not been suspended.

Sentences for Non-Felony Offenses. Sentences based on convictions for certain non-felony offenses are to be counted only if the sentence was imprisonment for 30 days or more, or probation for at least one year. These are:

Criminal contempt of court
Disorderly conduct and similar offenses
Driving without a license or with a revoked or suspended license
False information to a police officer
Fish and game violations
Gambling
Loitering
Non-support
Prostitution
Resisting arrest
Trespassing

Sentences based on convictions for certain other non-felony offenses are not to be counted. There are:

Hitchhiking
Local regulatory violations
Public intoxication and similar offenses
Minor traffic infractions
Vagrancy

Juvenile Sentences. Juvenile sentences are counted for offenses against persons, including residential burglary and drug trafficking.

Decay Factor For Prior Sentences. If there exists a ten-year period during which the offender neither sustained a sentence of imprisonment including a maximum term of more than one year, nor is known to have served time in confinement on a sentence of imprisonment including a maximum term of more than one year, sentences imposed prior to the beginning of that ten-year period shall not be counted. Convictions for crimes of violence and

convictions for crime involving the distribution of drugs are, however, always counted. Violent offenses are the state and federal counterpart of offenses in Chapter Two, Part A, Offenses Involving the Person, and any other offense that involves force or threat of force against a person, including burglary of a dwelling. Controlled substance offenses are described in Section 401 of the Controlled Substance Act (21 U.S.C. 841); Sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959); and Section 1 of the Act of September 15, 1980 (21 U.S.C. 955a).

Diversionary Dispositions. A judicial determination of guilt or an admission of guilt before a judicial body for an otherwise countable offense shall be counted as a sentence under 1.C above, even if a conviction or sentence is not formally entered. This provision includes diversionary dispositions where the offender's guilt has been established but the offender is diverted prior to entry of a record of conviction.

Sentences Resulting From Military Offenses. Sentences resulting from military offenses are counted if they result from general or special court-martial for conduct that is prohibited by civilian criminal law (*e.g.*, theft, assault). Sentences resulting from summary court-martial or Article 15 proceedings are not counted. Sentences for conduct that has no counterpart in civilian criminal law (*i.e.*, strictly military offenses) are not counted.

Sentences Resulting From Foreign Convictions. Sentences resulting from foreign convictions are counted if they are for conduct that would be criminal if committed in the United States.

Sentences Resulting From Tribal Court Convictions. Sentences resulting from tribal court convictions are counted under the same conditions as sentences from any other convictions.

4. Effect of Criminal History Score.

The Commission faces a difficult problem: How should criminal history be used to promote efficiency and justice in sentencing? From a modified deserts standpoint, criminal record would play a role that is consistent with the increased blameworthiness of habitual offenders. However, no formula exists for determining how much a criminal record should matter when fixing blame. From a deterrence viewpoint, recidivists may be demonstrating their recalcitrance, and thus, may require more severe sentences. An alternative conclusion is that recidivists are not deterred by available sanctions, so from an efficiency perspective, enhanced sentences are wasteful of corrections resources. A third view is that criminal record should matter because offenders with serious criminal histories are likely to continue to victimize the public if given the opportunity, and thus, prison should be used to incarcerate offenders for periods of time during which they would otherwise be committing crimes. The quandary raised by this third view is how the Commission should determine which offenders are likely to recidivate and how to determine the appropriate term of incarceration.

The Commission invites public comment on the appropriate relationship between criminal record and sentence. To facilitate discussion, the Commission temporarily has adopted a criminal history score table that approximates the role that criminal history has played in past sentencing decisions. The Commission does not assume that replicating past practices is optimal. For example, from a pure incapacitation standpoint, an offender would be incarcerated for a long time only when the risk posed is sufficient to justify the prison costs. Otherwise, if the risk is not commensurate with the cost of incarceration, the offender would be freed. This suggests that past sentencing practices may be inconsistent with both the goals of pure incapacitation, and other pure sentencing objectives. Nevertheless, past practices provide a useful focal point for discussion.

A review of past practices indicates that the additional time attributable to criminal record is not a simple multiple of the base sentence. Rather, and perhaps surprisingly, the percentage increase attributable to criminal record is largest for offenders convicted of the least serious crimes and smallest for offenders convicted of the most serious crimes. The relationship between time served and criminal record is approximated in the criminal history score table.

The criminal history score table is somewhat complex. An alternative approach, which retains the differential proportionality across offense levels, is to provide step-by-step instructions for translating the criminal history score into as sentence enhancement. An example using this approach is shown below. In practice, other formulations are possible.

Both the criminal history score table and the step-by-step formulation have merit. The Commission seeks comment about which approach is more desirable, and seeks recommendations about the appropriate numbers to be used.

Criminal History Score Table. The criminal history score is the sum of the points from 1.A above. This table adjusts the offense value from Chapter Two by adding the appropriate number of points as set forth in the following table.

Criminal history score	Base offense value				
	1–17	18–23	24–31	32–59	60+
0	0	0	0	0	0
1	1	2	3	5	
5					
2	2	4	6	9	9
3	2	6	9	14	14
4	3	8	12	18	19
5	4	9	15	23	24
6	5	11	18	27	28
7	5	13	21	32	33
8	6	15	24	36	38
9	7	17	27	41	43
10	8	19	30	45	47
11	8	21	33	50	52
12 or more	9	23	36	54	57

Alternative Approach. This formulation provides sentence enhancements that are similar to those that appear in the criminal history score table. The criminal history score is the sum of the points from 1.A above. To adjust the offense value from Chapter Two, complete the following three steps:

1. Step 1.—Determine the multiplier from the following list. For example, if the base of offense value is 20, the multiplier is 2.

Base offense value	Multiplier
1–17	0.75
18–23	2.00
24–31	3.00
32–59	4.50
60 or more	5.00

2. Step 2.—Determine the appropriate adjustment as the product of the multiplier and the criminal history score. For example, if the multiplier is 3.00 and the criminal history score is 7, the adjustment is 21. Round the result down to the nearest whole number.

3. Step 3.—Add the adjustment to the base offense value to obtain an adjusted base offense value. For example, if the adjustment is 21 and the base offense value is 30, the adjusted base offense value is 51.

Commentary

Approximately half of the offenders convicted in federal courts have been convicted previously of misdemeanor or felony offenses. Their prior convictions result from prosecutions in the federal system, from fifty state systems and the District of Columbia, from the military, from territories, and from foreign countries. There are variations across jurisdictions and over time in offense definitions, sentencing structures, and manners of sentence pronouncement.

To minimize problems associated with cross-jurisdictional differences, the Commission tentatively determined that the criminal history score should be based on previous sentences imposed and time served but rather than other measures, such as evaluation of the offender's actual conduct underlying the offense of conviction, the definition of the offense of conviction, or the statutory maximum sentence available for the offense. Several considerations informed this choice. Basing the criminal history score on the sentence imposed and time served can perpetuate past sentencing disparity. However, other measures also may perpetuate past disparities. For example, prior convictions perpetuate prosecutorial disparity with respect to numbers of charges or counts and reductions in charges. In addition, examining the underlying conduct of prior convictions raises practical and legal problems.

Although past disparity is a problem when using prior sentences and time served to modify the current sentence, past sentences are not random. Length of sentence imposed reflects a judicial assessment of the seriousness and scope of the underlying criminal conduct, particularly when judges consider total offense behavior. Similarly, time served results from a judicial assessment combined with assessments made by prison and parole officials.

The three sentence distinctions used in the guidelines are a custody sentence longer than one year, a custody sentence of sixty days or more but not greater than one year, and other sentences including custody sentences of less than sixty days, probation, fines, and residency in a halfway house. Criminal history points are based on the sentence imposed. To consider a sentence to be a custody sentence, a portion of the custody sentence must have been executed; that is, time must have been served (or, if the offender escaped, would have been served). Time in custody that results from a split sentence (for example, two years suspended on the service of six months) is counted as if it were a custody sentence. If the offender was resentenced by the judge after the initial sentencing hearing, the later pronouncement is used in assigning criminal history points.

The three time-served distinctions used in the guidelines are terms of less than three years, terms of from three years to less than five years, and terms of five years or more. Because it is often difficult for probation officers to ascertain time served before the sentencing hearing, the probation officer is instructed to assume that time served equals one-third of the maximum sentence imposed. The Commission realizes that the percentage of the sentence served varies widely across the country, so to prevent injustice, the offender is allowed to rebut that assumption.

A time limit for considering prior sentences is included because recent offenses are more relevant to blameworthiness and are better predictors of recidivism than are older offenses. In addition, older records are difficult to access and are often less accurate than more recent records. Nevertheless, criminal conduct involving crimes of violence and drug transactions is counted in the criminal record score regardless of when it occurred.

Drug users commit crimes at a higher rate than non-users. In addition, drug users are more likely to recidivate than are non-users. Consequently, a drug abuse item is included in the guideline.

Specific Options for Consideration

1. *Drug Abuse.* Additional options would be to delete item E or to restrict it to abuse of heroin or other opiates. The argument against inclusion rests both on possible difficulty in scoring and because it would be the only item that does not involve past instances of adjudicated criminal conduct. It is also noted that the section by section analysis of the proposed 28 U.S.C. 994(d)(5) in S.1630, which deals with factors that should be considered by the Commission in formulating the guidelines, states "Drug dependency, in the Committee's view, generally should not play a role in the decision whether or not to incarcerate the offender."

On the other hand, the observations of criminal justice practitioners and the measurements of social science researchers agree that there is a strong association between substance abuse and criminal activity. A panel of the National Academy of Sciences (NAS) reached the following conclusions:

A. Drugs are more likely to be used by people who commit crimes than by people who do not commit crimes. According to the NAS, ". . . the available evidence on participation in serious criminal activity suggests that drug users, especially multiple drug users, are much more likely to be involved than non-users." Citing a national sample of youths studied by Ellicott and Huizinga, the NAS concluded: "The self-reported participation rates for felony assault, felony theft, and robbery increase dramatically as drug use becomes more serious. . ." (A. Blumstein, *et al.*, (eds.), *Criminal Careers and "Career Criminals"*, National Academy of Sciences, Washington, DC, 1986, p. 50).

B. Among active offenders, people who abuse drugs commit crimes at a greater rate than people who do not abuse drugs. According to the NAS: "Higher frequency rates are found both among active offenders currently using drugs and among those with histories of drug use, especially early drug use as juveniles, across a variety of offense types, and using both official-arrest and self-report data." For example, the NAS reports that ". . . active offenders among participants in drug treatment programs are estimated to commit an annual average of 3 assaults, 6 to 8 robberies, and more than 20 property offenses. These rates are twice those found for adult arrestees generally." And: "During these periods (of heavy drug use), crime spurts with frequencies as much as 6 times as high as those for nonusing offenders have been reported" (NAS pp. 74–75).

C. Past drug use predicts future criminal behavior. The National Academy of Sciences reviewed four empirically derived instruments that were developed to predict future criminal behavior. Past drug use was a factor in each scale. A scale developed by the Rand Corporation contained one item about drug use in the preceding two years and another item concerning drug use as a juvenile. A scale used by the U.S. Parole Commission contains an item concerning heroin or opiate dependence. The Iowa Risk Assessment scale coded substance abuse into specific categories: history of PCP use, non-opiate injections, sniffing volatile substances; history of opiate addiction; history of heavy hallucinogenic use; history of drug problems; history of opiate or hallucinogen use, or alcohol problem; and no history. A scale developed by the Institute for Law and Society uses an item concerning heroin use.

2. *Non-Felony Offenses.* The proposal enumerates various non-felony offenses and separates them into two categories: those that are more serious and more likely to be the result of a plea down from more serious behavior, which are to be counted if a significant sentence is imposed (*i.e.*, incarceration of 60 days or more or one year or more of probation); and those that are less serious (not to be counted at all). There are two other options for addressing non-felony prior offenses. The first, similar to that presented, would retain the list of excluded offenses but count any of them as convictions if the sentence imposed was a sentence to imprisonment of 60 days or more. This option does not differentiate among the offenses on the basis of seriousness and considers only incarcerative sentences of 60 days or more as a significant sentence. The second option would exclude from the score all offenses that carried a maximum term of six months or less. The difficulty with the latter option is that statutory maximums differ from jurisdiction to jurisdiction, thereby both building in disparity and creating work for the probation officer to determine what the maximum sentence was in the jurisdiction in which the conviction was given.

3. *Juvenile Sentences.* Attempting to count every juvenile conviction may have the potential for creating large disparities due to differential availability of records. Another option would be to limit sentences for offenses committed prior to age 18 by use of the following wording:

Sentences for Offenses Committed Prior to Age 18. Sentences for offenses committed prior to age 18 are counted only if one or more of the following is applicable:

A. the offender was convicted as an adult and received a sentence of imprisonment with a maximum term of more than one year; or

B. the offender was age 21 or younger at the commencement of the current offense, and the sentence imposed for the offense committed prior to age 18 resulted in a commitment (adult or juvenile) of 60 days or more, and was imposed not earlier than four years before the commencement of the current offense. Note: the maximum number of points that may be scored for any sentence under this paragraph is 2.

This option attempts to capture important juvenile indicators of risk (most relevant when dealing with a young offender who has not yet had the opportunity to build an adult record) that are likely to be available across most jurisdictions. Another option would be to eliminate paragraph B, thereby excluding juvenile offenses that did not result in an adult conviction. Because of the problem of record availablity and because of the added complexity, the first option may not be meaningful since only about five percent of federal offenders are under 21.

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4. *Decay Factor For Prior Sentences.* The option presented above excludes from the criminal history score criminal conduct that preceded a ten-year period within which the offender neither incurred nor served time on a sentence to incarceration of more than a year. If the offender had been convicted during this ten-year period, convictions prior to this ten-year period would be counted. Another option would be to limit consideration of prior sentences to those imposed within a certain interval before commencement of the current offense, regardless of what has occurred in the interim. Under this approach any sentence to imprisonment for which the offender remained under criminal justice control or was within three years of release at the commencement of the current offense behavior would be counted. The wording of this option would be as follows:

A. Score 3 points for each prior sentence of imprisonment for a maximum term of more than one year that was imposed within fifteen years of the commencement of the current offense behavior.

B. Score 2 points for each prior sentence to imprisonment for a maximum term of 60 days or more that is not counted above and that was imposed within ten years of the commencement of the current offense behavior.

C. Score 1 point for each prior sentence that is not counted above that was imposed within ten years of the commencement of the current offense behavior.

D. Score 2 points if the offender committed the current offense:

1. While under any form of criminal justice control, probation, parole, or supervised release, custody or escape status, or any form of release pending trial, sentencing, or appeal; or

2. within three years after any release from imprisonment on a sentence counted in A above; or within three years after the imposition or commencement of any sentence counted in B above.

Note to Section D: Any sentence giving rise to the scoring of points under either of the subsections in section D should be counted in A or B above, notwithstanding the fifteen or ten year limitation otherwise applicable.

This option is easier to apply because the date of sentencing is more easily available than the date of release on a sentence to incarceration. It adoption, however, could prevent the counting of the most serious prior criminal conduct.

Part D—Plea Agreements

[Reserved]

See Chapter Six, Part C, for a discussion of policy issues presented for public comment.

Part E—Other Offender Characteristics

The Commission's authorizing legislation requires it to consider whether a number of offender characteristics have "any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence" and to take them into account only to the extent they are determined relevant. 28 U.S.C. 994(d). The characteristics are:

1. age;
2. education;
3. vocational skills;
4. mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant;
5. physical condition, including drug dependence;
6. previous employment record;
7. family ties and responsibilities;
8. community ties;
9. role in the offense;
10. criminal history; and
11. degree of dependence upon criminal activity for a livelihood.

Chapter Three of the preliminary guidelines addresses role in the offense and degree of dependence on criminal activity for a livelihood in Part A, and criminal history in Part C. The other factors have not, however, been thoroughly addressed in this preliminary draft.

One method of permitting courts to address these characteristics would be to allow the court the discretion to consider one or more them, as appropriate, in setting the sentence within the 25 percent range. 28 U.S.C. 944(b). Another method would be to cite them as aggravating or mitigating factors where appropriate. A third method would be to treat them as multipliers in the same manner as Chapter Three adjustments.

In connection with its May 22, 1986 hearing on prior criminal history, the Commission asked over 200 persons and organizations to provide written comment on the extent to which these characteristics should be considered in sentencing. Public comment is now invited on which of these factors should be considered relevant to sentencing, and in what circumstances.

Chapter Four—Determining the Sentence

Overview

Chapter Four describes the process by which sanction units are converted into actual sentences and explains the range of sentencing options available to the court. A411 describes the conversion of sanction units into months of imprisonment. A412–A420 describe, in turn, each of the sentencing options other than imprisonment: probation, supervised release, community confinement, home detention, restitution, fines, forfeiture, community service, and order of notice to victims. Section A421 addresses the relationship of statutory maximum and mandatory minimum sentences to the guidelines, and A422 offers guidance on the use of consecutive and concurrent sentences.

The Commission has identified two issues in Chapter Four as particularly appropriate for public comment:

(1) How should sanction units be converted into terms of imprisonment?

(2) How should sanction units be converted into sentences other than imprisonment?

Two other Chapter Four-related issues are discussed in Chapter Six (Other Issues):

(1) How should the appropriate amount of a fine to impose on an offender be determined? (Chapter Six, Part A)

(2) What "eligibility criteria" or other restrictions should be established for offenders the court is considering for placement in community confinement or home detention? (Chapter Six, Part D)

A411. *Imprisonment.*

a. The guideline table set forth in (e) below displays the guideline range of months of imprisonment applicable to the total sanction units. If the exact number of the total sanction units is not listed in the table, it is to be rounded down to the nearest listed number.

b. Where the minimum number of months of imprisonment specified in the guideline range is greater than zero, that number must be satisfied by imprisonment or by custody for intervals of time as a condition of probation under 18 U.S.C. 3563(b)(11). The imprisonment or custody sentence may not exceed the highest number in that range. For example, if the offender's total sanction units are 26, the court must impose a term of imprisonment of between 14 and 20 months.

c. Where the minimum number of months of imprisonment specified in the guideline range is zero, no minimum term of imprisonment or custody is required. However, a term of imprisonment up to six months may be imposed.

d. A sentence is within the guidelines if it includes at least the minimum number, and not more than the maximum number of months of imprisonment specified in the guideline range.

e. Guideline Table

Total sanction units	Guideline range (in months of imprisonment)
Less than 14	0-6
14	2-8
16	4-10
18	6-12

Total sanction units	Guideline range (in months of imprisonment)
20	8-14
22	10-16
24	12-18
26	14-20
28	16-22
30	18-24
32	20-26
34	22-28
36	24-30
38	26-32
40	28-34
42	30-36
44	32-40
48	36-44
52	40-50
56	44-54
60	46-60
66	54-66
72	66-74
78	66-82
84	72-90
90	78-96
96	84-104
102	90-112
108	96-120
114	102-126
120	108-134
126	114-142
132	120-150
138	126-156
144	132-164
150	138-172
156	144-180
162	150-186
168	156-194
174	162-202
180	168-210
186	174-216
192	180-224
198	186-232
204	192-240
210	198-246
216	204-254
222	210-262
228	216-270
234	222-276
240	228-284
246	234-292
252	240-300
258	246-306
264	252-314
270	256-322
276	264-330
282	270-336
288	276-344
294	282-352
300	288-360
306	294-366
312	300-374
318	308-382
324	312-390
330	318-396
336	324-404
342	330-412
348	336-420
354	342-426
360	348-434
366	354-442
372 or above	360-life

Commentary

The guideline table presented above translates the offender's total sanction units into guideline ranges of months of imprisonment. Sanction units totaling less than 14 equate to an imprisonment range of zero to six months. The court may, therefore, impose a sentence other than imprisonment on offenders whose units total less than 14. Sanction unit totals of 14 or more will require the court to impose some term of imprisonment.

The selection of 14 sanction units as the level below which a court may sanction an offender without imprisonment was intended to establish a range of units (0–14) that was broad enough to permit the court to give minor offenders (including repeat violators of the most minor statutes) probation or other non-imprisonment sentences. Selection of a significantly lower number than 14 would have unnecessarily complicated the required mathematical calculations without any discernible benefit.

Because 14 sanction units correspond to a minimum of two months' imprisonment, the total of the offender's sanction units is always 12 more than the minimum months of imprisonment in the corresponding range. The maximum of the guideline range generally exceeds the minimum by the greater of 6 months or 25%, the limit allowed by 28 U.S.C. 994(b) (as amended by Pub. L. No. 98-363). For simplicity, it was decided to use only even numbers in the guideline range.

The court is required to impose a sentence within the guideline range set forth below unless the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Commission in formulating the applicable guideline (18 U.S.C. 3553(b)).

Subject to applicable policy statements, the determination of where to sentence within the guideline range is within the discretion of the court. For example, if the total sanction units are 56, the court, in order to sentence within the guidelines, must sentence the offender to a term of imprisonment of at least 44 months but not more than 54 months.

The court must explain its specific reasons for imposing a sentence at a particular point within the range, or outside the range, in open court at the time of sentencing. 18 U.S.C. 3553(c).

The guideline table presents one approach for converting sanction units into a term of imprisonment. Another approach would be to make the conversion rate from sanction units into imprisonment depend on the nature of the offense committed. Offenses resulting in the most serious harms would result in the imposition of proportionately greater prison terms. For example, an offender who committed an offense involving the person could be required to discharge 90% of his sanction units by imprisonment, while an offender who committed an offense involving property would be required to discharge only 50% of his units by imprisonment. Comment is invited on the guideline table approach as well as any other method of converting sanction units to terms of imprisonment.

Conversion of Sanction Units Into Sentences Other Than Imprisonment

The Commission has identified several ways to address this issue. One question is common to each approach, however: what types of sentences, other than imprisonment, should be measured by sanction units? The Commission could, for example, adopt a guideline that would require an offender to compensate a victim for his/her losses separate and apart from any punishment the offender might receive for his conduct. Accordingly, under such a guideline, restitution would be required whenever feasible without regard to the satisfaction of any sanction units; the offender would still be subject to other punishment(s) in satisfaction of all sanction units. A similar approach could be taken with respect to forfeiture and an order of notice to victims.

The same question occurs with respect to probation and supervised release: should those sentences or any conditions of those sentences be accorded sanction unit value? Because the underlying purpose of many probation sentences is fundamentally rehabilitative, some observers have noted that it is inappropriate to accord any sanction unit value to their imposition. Others have contended that it would be appropriate to accord sanction unit values to those conditions that are punitive or significantly deprive the offender of some liberty, such as a condition that the offender observe a curfew or submit to urinalysis on a frequent basis. Comment is specifically invited on these issues as well as the alternative proposals outlined below.

Option 1: Mandatory Satisfaction of All Sanction Units

Under this approach, the court would be required to impose a sentence that satisfied all of the offender's sanction units. If, for example, an imprisonment range of 80–100 months applied, and the court selected the minimum of the range as the appropriate term of imprisonment, the remaining 20 months in the range would still have to be discharged by alternative sanctions of equivalent weight. Establishment of a system of this nature would require the Commission to set equivalency rates between imprisonment and all other types of sentences determined to have sanction unit value. The Commission could, for instance, develop a table that established certain terms of community confinement or home detention as the equivalent of one month's imprisonment. Other equivalencies would be established for non-confinement sentences, like fines and community service, as well. Comment is invited on both the approach in general and the equivalency rates that should be established between imprisonment and other sanctions.

Option 2: Permissive Satisfaction of All Sanction Units

There are several pc ble approaches to this option. The common thread among all of them is that the court would not be obligated to impose a sentence that satisfied all sanction units.

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One approach would be to establish equivalencies between imprisonment and other types of sentences, but permit the court to impose non-imprisonment units in any amount up to the maximum of the range. So, for example, where the court chose to impose the minimum term of imprisonment in an 80 to 100 month range, the judge could impose additional 0–20 units of non-imprisonment sanctions.

A second approach would be to separate the sanction units into imprisonment and non-imprisonment categories, and to calculate imprisonment and non-imprisonment sanctions independently. A judge's decision to impose the minimum term of imprisonment in a range would have no bearing on the amount of non-imprisonment punishment imposed. This method obviates the need to establish equivalencies between imprisonment and other types of sentences, but would still require equivalency rates among non-imprisonment sanctions.

A third approach would be to calculate a range of imprisonment and leave the imposition of other sanctions to the total discretion of the judge. A variation on this approach, as well as the two described above, would require the court to discharge a certain minimum number or percentage of sanction units by non-imprisonment sanctions.

A412. *Probation.*

a. Imposition of Term of Probation

An offender may be sentenced to a term of probation in addition to any other sanction imposed unless:

1. the offense of conviction is a Class A or B felony (18 U.S.C. 3561(a)(1));

2. the offense of conviction is one which expressly precludes probation as a sentence (18 U.S.C. 3561(a)(2)); or

3. the offender is sentenced at the same time to a term of imprisonment for the same or a different offense (18 U.S.C. 3561(a)(3)).

b. Length of Term of Probation

When a term of probation is imposed, the length of such term shall be:

1. for a felony, not less than one nor more than five years;

2. for a misdemeanor, not more than five years;

3. for an infraction, not more than one year.

Commentary

The preliminary guideline for length of probation is identical to the maximum terms of probation set for th at 18 U.S.C. 3561(b). Comment is solicited as to whether more specific terms of probation should be provided.

C. Conditions of Probation

1. When a term of probation is imposed, the court shall impose the following conditions of probation in each case:

A. the offender shall not commit another federal, state, or local crime during the term of probation (18 U.S.C. 3563(a)(1));

B. the offender shall not leave the judicial district without obtaining permission from the probation officer;

C. the offender shall report to the probation officer as directed by the court or the probation office and submit a truthful written monthly report within the first five days of each month;

D. the offender shall permit a probation officer to visit his/her home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

E. the offender shall answer inquiries by a probation officer and follow the instructions of the probation officer;

F. the offender shall notify the probation officer promptly of any changes in address or employment;

G. the offender shall notify the probation officer promptly if arrested or questioned by a law enforcement officer;

H. the offender shall maintain reasonable hours, with individuals with criminal felony records unless granted permission to do so by the probation officer;

I. the offender shall not possess a firearm, dangerous weapon, or destructive device;

J. the offender shall not purchase, possess, use, distribute, or administer any controlled substance, including narcotics, marijuana, depressants, or stimulants, or any paraphernalia related to the foregoing unless precribed by a physician. The offender shall not frequent places where such drugs are illegally sold, dispensed, used or given away. Neither shall the offender drink alcoholic beverages to excess;

K. the offender shall not enter into any agreement to act as an informer or special agent of any law enforcement agency;

L. as directed by the probation officer, the offender shall provide notification to third parties as to risks that may be occasioned by the offender's criminal record or personal characteristics, and shall permit the probation officer to make such notifications and to confirm the offender's compliance; and

M. the offender shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons. The offender shall notify the probation officer immediately of any change in employment status to include job changes or being out of work.

2. If a term of probation is imposed for a felony, the court must impose a fine, an order of restitution, or community service as a condition of probation. 18 U.S.C. 3553(a)(2).

3. Custody for intervals of time may be ordered as a condition of probation during the first year of probation pursuant to 18 U.S.C. 3563(a)(11).

Commentary

Pursuant to 18 U.S.C. 3563(b), the court may impose any other conditions of probation that are reasonably related to the nature and circumstances of the offense, the history and characteristics of the offender, and the purposes of sentencing set forth at 18 U.S.C. 3563(a)(2).

A413. *Supervised Release*

a. Imposition of Term of Supervised Release

1. The court shall order a term of supervised release to follow imprisonment when:

A. a period of imprisonment of more than one year is imposed for an offense involving violence orf the distribution of sale of drugs;

B. the court determines that such a term is necessary to enforce conditions of restitution, community service, or a fine; or

C. the court determines that the offender's readjustment to society will require supervision.

2. The court may impose a term of supervised release to follow imprisonment in any other case.

b. Length of Term of Supervised Release

1. When a term of supervised release is ordered, the length of such term shall be:

A. for a Class A or B felony, 3 years;

B. for a Class C or D felony, 2 years;

C. for a Class E felony or a misdemeanor, 1 year.

c. Conditions of Supervised Release

1. When a term of supervised release is imposed, the court shall impose the following conditions of supervised release in each case:

A. the offender shall not commit another federal, state, or local crime during the term of supervised release (18 U.S.C. 3583(d));

B. the offender shall not leave the judicial district without obtaining permission from the probation officer;

C. the offender shall report to the probation officer as directed by the court or the probation office and submit a truthful written monthly report within the first five days of each month;

D. the offender shall permit a probation officer to visit him at his/her home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

E. the offender shall answer inquiries by a probation officer and follow the instructions of the probation officer;

F. the offender shall notify the probation officer promptly of any changes in address or employment;

G. the offender shall notify the probation officer promptly if arrested or questioned by a laws enforcement officer;

H. the offender shall maintain reasonable hours, shall associate only with law-abiding persons, and shall not associate with individuals with criminal felony records unless granted permission to do so by the probation officer;

I. the offender shall not possess a firearm, dangerous weapon, or destructive device;

J. the offender shall not purchase, possess, use, distribute, or administer any controlled substance, to include narcotics, marijuana, depressants or stimulants, or any paraphernalia related to the foregoing unless prescribed by a physician. The offender shall not frequent places where such drugs are illegally sold, dispensed, used, or given away. Neither shall the offender drink alcoholic beverages to excess;

K. the offender shall not enter into any agreement to act as an informer or special agent of any law enforcement agency;

L. as directed by the probation officer, the offender shall provide notification to third parties as to risks that may be occasioned by the offender's criminal record or personal characteristics, and shall permit the probation officer to make such notifications and to confirm the offender's compliance; and

M. the offender shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons. The offender shall notify the probation officer immediately of any change in employment status to include job changes or being out of work.

Commentary

Where supervised release is imposed, the terms of supervised release set forth in the guideline are the maximum terms authorized by law. 18 U.S.C. 3583(b).

By statute, the court may impose any other condition of supervised release that is reasonably related to (A) the nature and circumstances of the offense; (B) the history and characteristics of the offender; (C) the need to deter further criminal conduct; and (D) the need to provide the offender with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. Such condition must involve no greater deprivation of liberty than is reasonably necessary to achieve the needs of deterrence and rehabilitation as set forth in (C) and (D) above. The court may impose any condition that could be imposed as a condition of probation except the condition that the offender be placed in custody for intervals of time. 18 U.S.C. 3583(d).

A414. *Community Confinement*

a. Community confinement may be imposed as a condition of probation or supervised release.

b. "Community confinement" means residece in a community treatment center, restitution center, or other community residential correctional facility, and community service, employment, and/or treatment during nonresidential hours.

c. Community confinement may not be imposed for a period greater than six months.

Commentary

Subject to the restictions in A413 and A414, the court may impose such other discretionary conditions of probation or supervised release as it considers appropriate to effectuate community confinement.

A415. *Home Detention*

a. Home detention may be imposed as a condition of probation or supervised release.

b. "Home detention" means a program of confinement and supervision by means of the following:

1. restriction to the offender's home during specified hours, enforced by appropriate means of surveillance by the probation office;

2. community service, employment, and/or treatment during non-detention hours; and

3. a minimum of 8 probation officer contacts per month (including no less than 4 direct contacts per month).

c. Home detention may not be imposed for a period greater than six months.

Commentary

Subject to the restrictions listed in A413 and A414, the court may impose such other conditions of probation or supervised release as it considers appropriate to effectuate home detention.

A416. *Restitution*

a. Restitution may be imposed as a condition of probation or supervised release or as an independent sentence.

b. When an offender has been ordered to make restitution and to pay a fine, any money paid by that offender in satisfaction of sentence shall first be applied to satisfy the order of restitution.

Commentary

Where the record demonstrates sufficient evidence to justify an order of restitution and the imposition of such order will not unduly complicate or prolong the sentencing process (18 U.S.C. 3663(d)), the court shall order restitution.

A417. *Fines.* Reserved. (See discussion at Chapter Six, Part A).

A418. *Forfeiture.* Reserved.

A419. *Community Service.* Reserved.

A420. *Order of Notice to Victims.* The court may set off the cost of any notice ordered against any fine ordered.

Commentary

An order of notice to victims may only be imposed for an offense involving fraud or other intentionally deceptive practices. 18 U.S.C. 3555. The court may not require an offender to pay more than $20,000 to give notice to victims.

A421. *Statutory Maximum and Mandatory Minimum Sentences.*

a. If the application of the guidelines would result in a greater sentence than the maximum sentence authorized by statute for the offense of conviction (or, in the case of more than one count of conviction, than the maximum sentence that might be imposed if consecutive sentences were ordered), then the maximum sentence authorized by statute shall apply.

b. If the application of the guidelines would result in a sentence less than the minimum sentence required by statute, the mandatory minimum sentence shall apply.

A422. *Construction of the Sentence.*

a. The court generally shall impose a sentence on each count of the indictment on which the offender is convicted.

b. Where the court has discretion to impose concurrent or consecutive sentences, it shall exercise its discretion to produce the sentence most consistent with the applicable guidelines range set forth in A411(d).

c. The court may not impose consecutive sentences for an offense of conspiring to commit an offense or soliciting commission of an offense and for the offense that was the sole object of the conspiracy or solicitation.

Commentary

28 U.S.C. 994(1)(2) provides that the guidelines shall reflect the "general inappropriateness" of imposing consecutive terms of imprisonment for an offense of conspiring to commit an offense or soliciting commission of an offense and for the offense that was the sole object of the conspiracy or solicitation.

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18 U.S.C. 3584 provides that (1) sentences of imprisonment may not be imposed consecutively for an attempt and for another offense that was the sole object of the attempt; (2) terms of imprisonment imposed at the same time must run concurrently unless the court order or governing statute requires the terms to run consecutively; and (3) terms of imprisonment imposed at different times must run consecutively unless the court orders the terms to run concurrently.

Chapter Five—Violations of Probation and Supervised Release

The Comprehensive Crime Control Act expressly directs the Commission to establish guidelines or policy statements regarding the appropriate use of probation revocation provisions (28 U.S.C. 994(a)(3)). The act also grants the Commission the general authority to issue similar guidelines and policy statements regarding the revocation of supervised release.

The approach the Commission proposes to take to the handling of violations is to establish minimum standards of compliance for the conditions of supervision that might be imposed by the judge at sentencing. The standards would require that if the person under supervision does not adhere to at least a minimum level of compliance as directed by the guidelines, certain actions would be taken by the probation officer and, ultimately, by the sentencing judge. The violations would essentially be classified as serious, serious technical, and lesser technical. Upon revocation, certain sentences would be required depending on the classification of the violation.

1. Requirements of the Comprehensive Crime Control Act

Under the Comprehensive Crime Control Act, probation becomes a sentence in itself and constitutes a final judgment. As a sentence, it is to be imposed after consideration of the general sentencing factors described in 18 U.S.C. 3553(a), and the special sentencing factors set forth in 18 U.S.C. 3562(a). When a sentence of probation is imposed there is only one mandatory condition: that the offender not commit another crime (18 U.S.C. 3563(a)(1)). If the conviction is for a felony, the statute requires the additional condition that the offender either pay a fine, pay restitution, or perform community service (18 U.S.C. 3563(a)(2)).

Otherwise, the court may impose discretionary conditions to the extent they are related to the nature and circumstances of the offense and the history and characteristics of the offender; and are related to and involve only such deprivations of liberty or property as reasonably necessary for the purposes of reflecting the seriousness of the offense, promoting respect for the law, providing just punishment for the offense, affording adequate deterrence to criminal conduct, protecting the public from further crimes of the offender, and providing the offender with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. 3563(b)).

The Act provides that if the offender violates a condition of probation, the court may, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, and after considering the factors that are to be considered when a sentence is originally imposed (18 U.S.C. 3553(a)), either: (1) Continue the offender on probation, with or without extending the term or modifying or enlarging the conditions; or (2) revoke the sentence of probation and impose any other sentence that was available at the time of the initial sentencing (18 U.S.C. 3565(a)).

Under the new law, a term of supervised release may be imposed as part of a sentence to imprisonment. With the elimination of parole, supervised release permits a period of supervision by a U.S. Probation Officer upon the offender's release from imprisonment. The authorized terms of supervised release are: (1) Not more than three years for a class A or class B felony; (2) not more than two years for a class C or class D felony; and (3) not more than one year for a class E felony or a misdemeanor. The court is required to consider the following in including a term of supervised release, its length, and conditions: (1) The nature and circumstances of the offense and history and characteristics of the offender; (2) the need to afford adequate deterrence to criminal conduct; (3) the need to provide the offender with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (4) the kind of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of the offender as set forth by the Commission guidelines; (5) any pertinent policy statement issued by the Commission; and (6) the need to avoid unwarranted sentence disparities among offenders with similar records who have been found guilty of similar conduct (18 U.S.C. 3583(c)).

One mandatory condition applies whenever a term of supervised release is imposed: that the offender not commit another crime (18 U.S.C. 3583(d)). The same discretionary conditions that may be imposed with a sentence of probation may also be imposed with supervised release, with the exception of the requirement of remaining in the custody of the Bureau of Prisons. Any condition of supervised release must be reasonably related to the nature of the offense and history of the offender, to affording adequate deterrence to criminal conduct, and to providing correctional treatment; must involve no greater deprivation of liberty than is reasonably necessary for the purposes of affording adequate deterrence to criminal conduct and providing correctional treatment; and must be consistent with any pertinent policy statements issued by the Commission (18 U.S.C. 3583(d)).

Pursuant to 18 U.S.C. 3583(e), upon consideration of the same factors that relate to imposing the term of supervised release, the court may: (1) Terminate a term of supervised release; (2) after a hearing, extend a term to a maximum term or modify, reduce, or enlarge the conditions of supervised release; or (3) treat a violation of a condition of a term of supervised release as contempt of court under 18 U.S.C. 401(3).

2. Current Probation Practices

Although presently there are no statutorily required conditions of probation, aside from the requirement that the offender not commit another crime, seven standard conditions of probation are generally imposed. These conditions are not specifically enumerated by the judge at sentencing, but are explained to the offender by the probation officer after sentencing. These conditions require the probationer to:

1. Refrain from violation of any law, and to inform the probation officer immediately if arrested or questioned by a law enforcement officer;
2. Associate only with law-abiding persons and maintain reasonable hours;
3. Work regularly at a lawful occupation and support legal dependents, if any, to the best of the offender's ability. Persons who become unemployed must notify their probation officer immediately;
4. Not leave the judicial district without permission of the probation officer;
5. Notify the probation officer immediately of any change in place of residence;
6. Follow the probation officer's instructions and report as directed; and
7. Report to the probation officer as directed.

The sentencing judge occasionally imposes additional special conditions related to the specific offense or offender.

3. Current Procedures Regarding Violations

Under the present system, a number of considerations by both the probation officer and the court may influence the response to violations of probation. These considerations may include the policies and procedures of the Probation Division or a respective district, an assessment of the offender's overall adjustment to supervision, a personal philosophy of corrections, etc. For example, the individual probation officer may determine whether to report a violation to the court and, if so, whether to request a warrant. Ultimately, the court decides whether to issue a violation warrant after weighing information provided from a variety of sources.

The Probation Division currently distributes a supervision monograph to U.S. Probation Officers that distinguishes between violations of law and technical violations and provides general policy for each. Regarding violations of law, the monograph states that the probation officer should report the violation to the court and in making a recommendation regarding revocation:

> The probation officer must weigh the risk posed by the new offense to the community at large. In most cases the commission of a criminal offense as serious or more serious as that for which the offender is currently on supervision represents an untenable risk to the well-being of the community. A series of arrests or convictions for minor offenses should be thoroughly investigated by the probation officer to determine the risk posed to the community (The Supervision Process, Publication 106, Page 18).

The supervision monograph breaks technical violations into three types. The first, an unacceptable pattern of behavior, involves violations of conditions of supervision that have been associated with serious criminal activity in the offender's past (such as a drug addict not meeting the condition of drug treatment). These violations are to be reported to the court by the U.S. Probation Officer.

The second type of technical violation, flagrant disregard for conditions, involves a willful failure by the probationer to adhere to the conditions of probation (such as refusal to pay a fine or restitution, or absconding supervision). According to the monograph, flagrant disregard also necessitates a report to the court.

The third type, incidental behavior, involves violations representing "neglect or oversight on the part of the defendant." Here the monograph states that the violations may be reported to the court, but that "the primary responsibility of the probation officer is to bring the person under supervision into compliance" (*id.*, pp. 18–19).

Because supervised release is a new form of supervision created by the Comprehensive Crime Control Act, there are no established policies or procedures for the U.S. Probation Officer regarding its revocation. The Act contains no provisions regarding the revocation of supervised release. Pending legislative proposals, however, seek to grant courts the authority to revoke supervised release. The proposal set forth below is predicated on enactment of such legislation.

4. Commission Proposals

The approach that the Commission outlines below for handling violations of conditions of probation and violations of conditions of supervised release is identical for each up to the point of the judicial determination that violations have been committed. The Commission's approach establishes minimum standards of compliance for the conditions imposed by the judge. The standards would require that, should the person under supervision not adhere to at least the minimum level of compliance established by the Commission, the probation officer, and in some cases the sentencing judge, take action. While a violator's warrant could be requested by the probation officer and issued by the sentencing judge at any time for any violation of any condition, no action would have to be taken by either the probation officer or the sentencing judge until the offender failed to meet minimum levels of compliance.

The action required of the probation officer and the judge for each condition of supervision would depend on whether the noncompliance represented lesser technical violations, serious technical violations, or new criminal behavior.

For lesser violations, including certain petty offenses, the probation officer would generally be allowed to continue casework efforts in dealing with the noncompliance. If violations continue, the court would have to be notified, at which point it would make a determination as to what action, including the issuance of a violator's warrant, should occur. At a specified point of continued violations, a warrant would have to be issued and a violation hearing held. Depending upon the specific condition violated, the court could modify or increase the conditions of supervision, or order revocation.

In the matter of more serious technical violations, the probation officer would have less discretion in providing casework efforts before notifying the court, and the court itself would be required to conduct a violation hearing at earlier stages of noncompliance.

For the most serious of violations, including conduct that constitutes new criminal behavior (except certain petty offenses), the probation officer would have no discretion in reporting the violation and the court would be required to issue a violator's warrant and conduct a violation hearing. Upon a finding that the violation occurred, revocation would be in order.

At a violation hearing where the court elects to increase the sanctions, the conditions imposed would make supervision more restrictive and afford greater control in monitoring the case than the current conditions of supervision provide. Increased sanctions could include conditions such as conditions of custody (for probation cases only), curfew, home detention, association restrictions, participation in a rehabilitation program, submission to unrinalysis, and so forth.

Upon revocation of probation, the court would be required to impose a certain sentence. For lesser technical violations a custody sentence at the midpoint of the guideline range applicable to the offender at the time he was sentenced to probation would be imposed. For more serious technical violations, a custody sentence at the maximum of the originally applicable guideline range would be imposed.

For violations that represent unlawful behavior (except for certain petty offenses), a custody sentence of 90 days beyond the maximum of the originally applicable guideline range would be imposed, provided that the sentence did not exceed the statutory maximum.

Regarding supervised release, upon judicial determination that violation of a condition had occurred, the court would also be required to impose certain sanctions. For lesser technical violations, a custody sentence of 1/6 the term of supervised release, not to exceed 1/6 of the initial term of imprisonment, would be imposed. For more serious technical violations, a sentence of 1/3 of the term of supervised release, not to exceed 1/3 of the initial term of imprisonment, would be imposed. For violations representing new criminal behavior, except for minor law violations, a sentence equal to the total term of the period of supervised

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release, not to exceed the initial term of imprisonment, would be given. Under this approach, the maximum sentences that could be imposed upon revocation for lesser technical violations, serious technical violations, and new criminal behavior, respectively, would be: for class A and B felonies, six months, one year, and three years; for class C and D felonies, four months, eight months, and two years; and for class E felonies and misdemeanors, two months, four months, and one year.

5. Issues for Comment

The Commission invites public comment on several issues related to violations of probation and supervised release. These include:

1. Which violations of conditions of supervision should be considered less serious and more serious? (*See* Chapter Four of the guidelines, Determining the Sentence, for a list of proposed mandatory conditions of probation and supervised release, and 18 U.S.C. 3563(b) for examples of discretionary conditions available to court);

2. The extent to which the probation officer should have discretion in dealing with persons under supervision before formally reporting violations to the court;

3. The appropriateness of the sentences proposed above for application to revocation of supervision;

4. Upon revocation, the credit, if any, the offender should receive for time successfully spent on supervision or for compliance with other conditions of supervision such as payment of fine, community service, halfway house residency, or intervals of custody for probationers; and

5. The manner of handling probation violations for organizations.

Chapter Six—Other Issues

Part A—Fines

The Commission specifically invites comment on the method a court should use to determine the amount of a fine to be imposed on an individual offender. The next part of this chapter invites comment on the method that should be used to determine the amount of a fine to impose on an organization. See Chapter Six, Part B (Organizational Sanctions).

In October 1984, Congress enacted federal statutes that significantly raise the maximum limits on fines that may be imposed on convicted offenders. The new federal sentencing statutes that will take effect with enactment of the guidelines continue those new maximums. Under the new statutes, an individual may be fined up to $250,000 for a felony or a misdemeanor resulting in death. For any other misdemeanor, an individual may be fined up to $25,000 and, for an infraction, up to $1,000. An organization may be fined up to $500,000 for a felony or a misdemeanor resulting in death, $100,000 for any other misdemeanor, and $10,000 for an infraction. 18 U.S.C. 3571. Organizations convicted of antitrust offenses may be fined up to $1 million. 15 U.S.C. 1.

In establishing these new maximums, Congress clearly intended to make the fine a more effective sanction than it has been in the past. Previously, the low fine maximums often resulted in judges avoiding fines as a sentence because they could not be imposed in an amount sufficient to punish or deter. Congress has now granted the courts authority to impose meaningful fines and has charged the Commission with the responsibility to provide guidance in their use.

Under the new law, a sentencing judge contemplating whether to impose a fine must consider the general purposes of sentencing, including, among other things, the need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, and afford adequate deterrence to criminal conduct. In addition, the court must specifically consider the following five factors in determining whether to impose a fine, and the amount of the fine, the time for payment, and the method of payment:

(1) The ability of the offender to pay the fine in view of income, earning capacity, and financial resources (and, if the offender is an organization, the size of the organization);

(2) The burden the fine will impose on the offender and dependents, relative to the burden imposed by other punishments;

(3) Any restitution made or obligated to be made by the offender;

(4) Any measure an organizational offender has taken to discipline those officials responsible for the offense or to insure against its recurrence; and

(5) Any other pertinent equitable consideration. 18 U.S.C. 3572(a).

The Commission has identified two approaches for determining the appropriate amount of a fine to impose on an individual offender. Comment is specifically invited on these two approaches as well as on any other method of establishing an appropriate fine that meets Congressional intent. The first approach emphasizes the fine as punishment; the second emphasizes the deterrent effect of the fine.

1. The Proportionate ("Ability to Pay") Approach

The proportionate approach seeks to make the fine punitive in proportion to the offender's financial resources. While a punitive fine may have some deterrent effect, this approach does not purport to maximize deterrence. Under this approach, the sanction unit value of a fine would be expressed in terms of a percentage of the offender's income or assets determined to be "available" for fine payment.

"Available income" could be defined to mean either gross income less taxes paid, or gross income less taxes and that portion of income deemed necessary for housing, food, clothing, and other essential expenses. The first definition would render a greater amount of the offender's income available for fining; the second definition constricts the amount available by permitting the offender to protect a greater share of income from exposure to a fine. The choice of the appropriate technical definition requires resolution of a much more fundamental question about the use of the fine: how punitive is it intended to be?

Choosing the first definition would arguably permit a court to fine an offender to the extent of depriving him/her of all assets and income, including home and most basic possessions. This option affords the court the greatest opportunity to make the fine a truly punitive sanction. The more assets or income that an offender is permitted to shield from exposure to a fine, the more diluted the potential punitive impact of a fine becomes. The Commission invites public comment on whether an offender should be permitted to protect some portion of income or assets from a fine and, if so, which ones and to what extent.

Under either choice, the value of one sanction unit could be expressed, for example, as one percent of the offender's available annual income. Although the real dollar amount of the fine could differ between two offenders convicted of the same offense, the fine would have the same punitive "sting" on both of them in proportion to their respective financial resources. Any restitution obligation, on the other hand, would have to be paid in full regardless of the offender's income; if the court has to choose between imposing financial "suffering" on the offender or the victim, the guideline would direct it to impose the pain on the offender.

Proponents of basing a fine on the offender's resources argue that this approach would have two principal benefits: (1) The sentencing court will be able to impose a fine that actually punishes the offender to the desired degree; and (2) the offender will be able to pay the fine without imposing substantial, and often futile, fine collection burdens on the federal criminal justice system.

With respect to the first benefit, if a court imposes a fine without considering its actual impact on the offender, the fine is likely to be either excessively high or low. Excessively high fines may financially overwhelm the offender and punish unfairly in relation to both the offender's culpability and society's need to deter others from committing similar crimes. If too low, the offender is not punished and other potential offenders may be encouraged rather than discouraged.

With respect to the second benefit, this approach may ensure that the fine will be an effective sanction. An offender is not punished by a large fine that he/she cannot pay. If, however, the fine is set at an amount that imposes some hardship on an offender in relation to particular financial resources, it can be both punitive and payable. Setting the fine at a punitive but payable level will also benefit the Department of Justice, the Probation Office, and other components of the criminal justice system by reducing the substantial administrative burdens of collecting delinquent fines. The Commission could assure that relatively trivial fines would not be imposed for offenses resulting in serious financial losses either by issuing a guideline directing courts to impose sanctions other than a fine when the offender is too poor or debt-laden to pay a meaningful fine or by establishing a minimum dollar amount per sanction unit.

Attempting to establish a fine that punishes an offender in relation to his or her particular financial status always presents the risk that if the amount is set too high, it may not be paid. The Commission is exploring a variety of approaches used in other contexts, *e.g.*, the consumer credit industry and child support enforcement, that can be adapted to set a fine at the appropriate level. The Commission is also considering other steps a court could take to minimize the risk of nonpayment. One step would be to impose a condition of probation prohibiting the offender from either opening new lines of credit or placing new charges on existing lines until the fine is paid. Another step would be to require that all or a substantial portion of the fine be paid at the time of sentencing, particularly in cases when the fine is imposed as a result of a negotiated plea.

The Commission could also promulgate guidelines or policy statements that would authorize a sentencing judge to impose a fine that exceeds the offender's calculated "ability to pay" level in certain circumstances. For example, the Commission could authorize the judge to impose a greater fine in cases where the court has reason to believe the offender has unreported assets or income, *e.g.*, a drug trafficker, or where the crime caused a large, but unquantifiable loss to unidentified victims, *e.g.*, environmental pollution.

2. The Harm-Based Deterrent and Compensation Approach

This approach is based on the premise that fines should compensate society for the wrong done and deter future criminal conduct. According to theory, the monetary penalty best suited to achieving these purposes is a multiple of the harm caused by the criminal act, plus an amount representing the cost of enforcement. (The size of the multiple depends upon how likely offenders are to be caught and what additional punishments, including restitution, are imposed.) The financial resources of the offender are a secondary consideration; the conduct and its consequences matter most.

This proposed approach starts with an estimate of the monetary value of the harm caused. Where this is difficult to assess, the gain to the offender might be used as a substitute. The guideline for each offender would specify a multiplier and a suggested method for estimating the harm, including a base value. For some crimes, such as price fixing, the fine might be based upon a substitute indicator of the harm, such as the volume of commerce affected. For drug offenses, it might be based upon the value of the drugs sold or the offender's estimated income from the sale of drugs. For crimes primarily involving non-economic harms, the guidelines would specify a fine amount that would vary depending upon the extent of harm or risk created. Fines would be collected only after the offender made restitution to victims.

Once the fine had been calculated, the particular offender's present or prospective ability to pay the fine would be taken into account. Familial obligations, employment history, job skills, apparent standard of living, and probable assets (including those, such as fruits of the crime, that might be concealed) would be evaluated. This procedure could be bypassed for small fines or if the offender admitted an ability to pay the prescribed fine.

If the judge determined that there was a reasonable possibility that the offender would be able to pay the prescribed fine, the judge would impose that fine, establishing an appropriate payment schedule and making use of the civil enforcement provisions in 18 U.S.C. 3613 to ensure payment. If the offender later failed to pay the fine, the judge would proceed in accordance with 18 U.S.C. 3614. Offenders who refuse to pay the fine even though they have the ability to do so would be resentenced, probably to prison. If, on the other hand, the offender made a good-faith effort to pay the fine, the judge could (1) extend the payment terms; (2) sentence the offender to an alternative form of punishment, such as community service; (3) waive the unpaid portion of the fine if the total sanction has been sufficient; or (4) sentence the offender to prison, but only if no other alternative would adequately serve the purposes of just punishment and deterrence. If at the time of initial sentencing it was clear that the offender would be unable to pay the entire fine, the judge would impose a lesser fine and consider options (1) through (4) described above.

Proponents of this system argue that it has the advantages of:

(1) To the extent possible, forcing the offender to compensate society for his/her wrongs;

(2) Ensuring that, for all offenders, the sanction imposed will be sufficient to provide just punishment and deterrence;

(3) Avoiding demeaning the seriousness of the offense by appearing to recommend trivial fines (*e.g.*, the guideline punishment for stealing $10,000 could never be a fine of $1,000);

(4) Avoiding the injustice of imposing a huge fine on someone for a trivial offense merely because the offender may be wealthy;

(5) Minimizing discrimination on the basis of socioeconomic status;

(6) Avoiding incentives for offenders to dissipate their assets or lie about their financial resources;

(7) Making it possible to impose large fines on persons, such as major drug dealers, whose financial resources may be large but difficult to establish; and

(8) It gives the sentencing judge greater flexibility than any approach that relies upon a formula.

3. Additional Issues

The Commission also invites comment on whether the cost of investigating and prosecuting the case should be taxed to the convicted offender as part of a fine, regardless of the approach taken to

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calculate the amount of the fine. If so, what standard of proof should the government be required to meet to establish the cost and what procedures, if any, should the court establish to determine the government's claim for reimbursement?

Part B—Organizational Sanctions

The Commission specifically invites comment on the appropriate sentencing of organizational offenders. The oral testimony and written submissions presented to Commission in connection with its June 10, 1986 hearing on organizational sanctions have been very helpful in framing the issues and proposing possible solutions. The Commission invites public comment on the key questions it has yet to resolve in this area.

The principal provision of the Comprehensive Crime Control Act affecting the sentencing of organizations is 18 U.S.C. 3551(c). That section requires the sentencing court to impose a term of probation or a fine on a convicted organization. Section 3551(c) also authorizes a court to impose a fine as a condition of probation, and permits a court to order a forfeiture of property pursuant to 18 U.S.C. 3554 (when an organization is convicted of racketeering or drug offenses), a notice to victims pursuant to 18 U.S.C. 3555, or restitution pursuant to 18 U.S.C. 3556.

The statutory provisions affecting the imposition of fines and probation on organizations are described below, followed by two alternative approaches to their implementation. The Commission invites comments on the approaches presented as well as on any other approach, and the appropriate use of forfeiture, notice to victims, and restitution.

1. Fines

Under 18 U.S.C. 3571(b)(2), an organization convicted of a felony, or of a misdemeanor resulting in the loss of human life, may be fined up to $500,000. An organization may be fined up to $100,000 upon conviction of any other misdemeanor, and up to $10,000 upon conviction of an infraction. Organizations convicted of antitrust offenses may be fined up to $1 million. 15 U.S.C. 1.

As noted previously in the discussion of fines in the previous Part, a court contemplating whether to impose a fine on an organization must consider the general purposes of sentencing, including the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and afford adequate deterrence. In determining whether to impose a fine, the amount of a fine, and the time and method of payment, the court must also consider the following five specific factors:

(1) The ability of the organization yp pay the fine in view of its income, earning capacity , financial resources, and size;

(2) the nature of the burden the fine will impose on the organization relative to the burden imposed by other punishments;

(3) Any restitution made or obligated to be made by the organization:

(4) Any measure the organization has taken to discipline those officials responsible for the offense or to insure against its recurrence; and

(5) Any other pertinent equitable consideration. 18 U.S.C. 3572(a).

Section 3572(b) of Title 18 limits the aggregate amount of a fine that may be imposed on a offender convicted of different offenses that "arise from a common scheme or plan, and that do not cause separable or distinguishable kinds of harm or damage" to twice the amount that may be imposed for the most serious offense. The greatest amount, therefore, that could be imposed on an organization convicted of multiple felonies arising from a common scheme that did not cause "separable or distinguishable kinds of harm or damage" is $1 million. The statute does not discuss the maximum fine that could be imposed when separable or distinguishable kinds of harm or damage result.

The appropriate role of fines as organizational sanctions is a major consideration of the Commission. Fines may accomplish the purposes of just punishment and deterrence, but those two purposes have different implications for the structure of fines. Just punishment may compel judges to impose a fine in terms of a percentage of the organization's income or wealth. By this standard, large organizations would probably receive a higher fine than small organizations convicted of the same crime.

By contrast, when deterrence is the primary concern, the size of the fine would be determined by the injury resulting from the criminal act and the difficulty of discovering the crime. The fine would, at least in theory, be determined by multiplying the amount of damage (or harm) intended or done by a factor representing the likelihood of detection and conviction. Fines would always be a multiple of the harm intended. The lower the likelihood of detection, the higher the multiplier and hence the higher the fine. Those criminal acts most difficult to discover would be punished most severely. Given equal difficulties of discovery, those criminal acts likely to cause more harm will be punished more severely. The offender's ability to "harm and hide" determines the punishment. Ability to pay would not be a factor in setting the level of the fine, although it might be important in devising a payment schedule.

The Commission seeks comment on whether its approach to fines should emphasize the organization's culpability and ability to pay, or the harmfulness of its conduct and the likelihood of detection. In addition, the Commission solicits public comment on which aspects of the "size of the organization," as that term is used in 18 U.S.C. 3572(a)(1), should be considered in sentencing.

2. Probation

An organization convicted of an offense may be sentenced to a term of probation unless the offense is a Class A or B felony (a crime punishable by a maximum term of imprisonment of 20 years or more) or is an offense for which probation has been expressly precluded. An organization convicted of a Class C, D, or E felony may be sentenced to probation for not less than one more than five years. An organization convicted of a misdemeanor may be sentenced to probation for up to five years, and one convicted of an infraction may be sentenced to probation for not more than one year. 18 U.S.C. 3561.

Where sentencing an organization to probation for a felony, the court must impose the following conditions on the offender: (1) The organization must not commit another federal, state, or local crime while on probation; and (2) the organization must either pay a fine, make restitution, or perform community service. 18 U.S.C. 3563(a). The only mandatory condition imposed upon probationers convicted of a misdemeanor or an infraction is the requirement that they commit no further crimes while on probation.

In addition to those mandatory conditions, organizations may receive any of the discretionary conditions of probation permitted for individual probationers. (*See* 18 U.S.C. 3563(b)), with the exception of 18 U.S.C. 3563(b)(6), which permits a court to disqualify only an individual offender from a specific occupation, business, or profession.)

The Commission seeks comment on the types of probation conditions that might be imposed and the circumstances that would justify their imposition, including but not limited to the use of internal audits and disciplinary actions; the appointment of outside directors or

supervisors; recommendations for debarment or ineligibility for federal contracts, grants, or subsidies; charitable contributions; community service; and publicity about the organization's misdeeds and subsequent corrective action.

The Commission also seeks comment on when probation should be used rather than a fine and when the two should be used together. In addition, the Commission seeks comment on the appropriate term of probation to be imposed on an organization. Finally, the Commission requests public comment on when modification or revocation of an organization's probation might be appropriate,

3. Possible Approaches to Sanctioning the Organization

The alternative approaches to the use of organizational sanctions are based on just punishment and deterrence philosophies. These general approaches are presented for comment.

A. The Just Punishment Approach

The just punishment approach retains the guidelines concepts of the offense value for measuring the severity of the organization's offense and the sanction unit for establishing the appropriate quantity of punishment. The offense values for organizations would be the same as for individuals, but different adjustment multipliers would be used to measure the organization's culpability. Adjustments to offense values could be made, for example, on the basis of whether the crime resulted from a conscious plan of top management or by the independent actions of lower echelon employees or whether the organization took steps to discipline responsible employees prior to indictment.

The guideline might then establish fines and conditions of probation to be imposed for various ranges of sanction units and, in some circumstances; permit the court to impose additional penalties. For instance, if the organization's sanction units totalled 50 or less, the guideline could mandate a fine within a range of relatively low percentages of the organization's income or assets and conditions of probation requiring the organization to correct the harm caused by its conduct.

Similarly, sanction units totalling 50–100 could result in a fine within a higher range and additional conditions of probation, such as the appointment of outside counsel to prepare a report for distribution to shareholders on how the offense actually occurred. An offense resulting in 100 sanction units or more could be punished by a fine within a range capped by the statutory maximum. The court could also be required to imposed the previously noted probation conditions, and permitted to impose additional necessary conditions, such as a restructuring of management to avoid future criminal conduct the discipline or removal of organizational officers, and a limitation on the organization's activities in certain markets or for certain periods of time.

Other types of sentences, such as restitution, forfeiture, community service, and notice to victims, and discretionary conditions of probation such as publicity concerning the organization's conviction, could also be imposed regardless of the number of sanction units.

B. The Harm-Based Deterrence and Compensation Approach

The philosophy underlying the deterrence and compensation approach is that fines should both deter organizations from engaging in criminal conduct and compensate society for the harm that the organization's acts cause. Because organizations are motivated almost entirely by economic self-interest, the obvious way to deter them from committing crimes is to make crime unprofitable.

In order to ensure that society is compensated for the harm caused by all criminals, this approach requires that the fine be set at a level equal to the harm caused by the crime divided by the probability of conviction. This same fine would also make crime unprofitable, so that deterrence should be achieved.

Implementation of this approach requires estimation of two elements of the fine computation: the value, converted into money, of all harm caused and the probability of conviction. For purely monetary crimes, estimating the harm is straightforward. For many cases involving non-economic injuries, the government already calculates a suitable estimate of the harm—for example, the cost of clean-up in a toxic waste dumping case. For other crimes, the guidelines could substitute the offender's economic gain or specify a rule assigning monetary to various types and levels of harm. Offense values or sanction unit scores would not be utilized as a guide to setting fines because those numbers are based primarily on judgments about how long individuals should be imprisoned, not how much harm they caused. For this reason, the proposed just punishment approach, which makes the fine directly proportional to the offense value and the wealth of the organization would actually place heavier emphasis on wealth than the harmfulness of the conduct.

The probability of conviction would be based upon estimates of the level of occurrence of each crime type compared to the level of detection and conviction.The probability would be adjusted based upon the organization's actions in the specific case. If, for example, the organization notified authorities immediately upon learning of the crime, the probability of conviction might be treated as near certainty, resulting in a multiplier of one. On the other hand, if the organization took elaborate measures to conceal the crime, the probability would be treated as small, resulting in a large multiplier. An amount representing the cost of detecting crimes and convicting offenders would be added to the fine.

At least three additional considerations would enter into setting the actual fine amount. First, to the extent that the responsible employees had been identified and punished, the fine for the organization would be lowered. This might result in somewhat larger fines on average for large organizations, where the responsible individuals tend to be more difficult to identify. Second, to the extent that the organization was subject to civil penalties, the fine also would be lower. This is particularly important for regulatory crimes, where the civil and criminal enforcement schemes often are interrelated. For example, an antitrust violator would be fined more when the government is the victim, because the government can only recover actual damages in a civil action, whereas private plaintiffs can recover treble damages. Third, the assets and projected earnings of the organization would be considered insofar as they affect its ability to pay the fine.

Consideration of ability to pay presents difficult preblems. Imposing a fine so high that it might force a firm into bankruptcy seems undesirable because of the effects on relatively innocent parties, such as creditors and employees. However, if fines are lowered to prevent this from occurring, crime will be a good bet for the organization, and a good bet is sure to marginal firms will be encouraged to commit crimes. If firms cannot be profitable without engaging in criminal conduct, it might be better to force them out of business.

This is a prime area in which conditions of probation and other alternative sanctions designed to remove the actual wrongdoers from management and impose the cost of punishment on them might be desirable.

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We invite comment on what sanctions would achieve this objective. Although it seems undesirable at first glance, we suggest consideration of whether forcing an organization into Chapter 11 reorganization through imposition of a large fine might be consistent with these goals, since the bankruptcy court would be authorized to appoint new management which could continue the business and simultaneously pursue civil remedies against the offending management. Creditors might not be injured because of the lower priority that fines and penalties have relative to general unsecured claims in bankruptcy. Although shareholders would be likely to suffer, that happens whenever a fine that exceeds the organization's gains is imposed. The organizations most likely to be driven into bankruptcy by the imposition of large fines might well be relatively small firms in which there is a substantial overlap between management and shareholders. If that is the case, the burden of the fine ultimately would fall on the responsible parties.

Part C—Plea Agreements

The Commission specifically invites comment on issues relating to the role of plea agreements under the guidelines. Congress has directed the Commisson to promulgate general policy statements for consideration by federal judges in deciding whether to accept or reject a plea agreement. 28 U.S.C. 994(a)(2)(D). The legislative history of this provision reflects concern that plea agreements might be used to undermine guidelines. S. Rep. No. 225, 98th Cong., 1st Sess. 63 (1983). Policy statements are therefore needed to insure responsible plea negotiation practices that do not perpetuate unwarranted sentencing disparities.

Public comment is specifically requested on the following issues related to plea agreements.

(1) What are the appropriate limits on judicial scrutiny of plea agreements?

(2) What standards should a sentencing judge apply in evaluating whether a plea agreement is acceptable according to the letter and spirit of the sentencing guidelines?

(3) What is the impact of the Sentencing Reform Act on "charge bargaining" under Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure?

(4) What is the impact of the Sentencing Reform Act on "sentence bargaining" under Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure?

(5) To what extent can prosecutors and defense attorneys stipulate to the underlying facts of an offense and the offender's characteristics when such factors determine the sentencing result?

Part D—Community Confinement and Home Detention

The Commission is considering the use of community confinement and home detention as appropriate conditions of probation or supervised release for certain offenders. Community confinement would involve a condition of supervision requiring residency in a community treatment center, restitution center, or other community residential facility, along with additional conditions such as community service, employment, and treatment. Home detention would involve conditions of supervision including a curfew, community service, employment and/or treatment, and would require the probation officer to maintain a high degree of contact with the individual on supervision. These sanctions are described further in Sections A414 and A415, respectively.

1. As a Condition of Probation

The Commission is attempting to determine the categories of probationers for whom community confinement and home detention would be suitable sanctions. Many serious offenders will automatically be excluded from placement in a community confinement or home detention program as a condition of probation because the guidelines will not permit them to be sentenced to probation. When the guidelines do permit probation, a sentencing court may decide that community confinement or home detention affords acceptable levels of punishment or control for an offender who the court believes requires supervision but not imprisonment.

The Commission specifically invites comments on the following questions:

What purposes of sentencing might best be fulfilled through such sanctions? Which category of offenders and offenses should be eligible for those programs? What offender characteristics, *e.g.*, history of violent or sexually assaultive conduct, should exclude an offender from consideration for these programs? Would community residential correctional facilities and probation resources be misspent if an individual with "low risk" for recidivism was placed in such a program for punitive purposes?

2. As a Condition of Supervised Release

In conjunction with supervised release (where the offender has completed a prison term and is under supervision) other questions as to which offenders should be placed into programs of community confinement and home detention are appropriate. Because Congress intended the purpose of punishment to be fulfilled by way of the individual having served a prison term, that purpose may not statutorily be considered in determining whether to place an offender on supervised release. *See* 18 U.S.C. 3583(d).

For purposes of monitoring, control, or providing rehabilitative services, however, the Commission solicits public comment in determining which of these purposes might be most appropriately fulfilled through these programs. Which categories of offenders and offenses should be eligible for placement into these programs, and which should be excluded? For example, should violent criminals who might not be placed in community confinement on probation be placed in such confinement on supervised release as a means of control and assimilation back into the community?

Part E—Determining Offense Values for Multiple Crimes

Comment is solicited on how to calculate the offense value for multiple crimes. How should the guidelines treat a bank robber who pistol whips three (or ten) tellers, a conman who sends 10,000 letters defrauding each recipient of $10, or a drug dealer who shoots a police officer, while endangering several others?

The Commission could resolve some fundamental issues in this area with the following basic rules:

1. Where one crime is charged (and conviction obtained), take into account only uncharged conduct that the guideline for the crime of conviction explicitly cross-references. (This rule flows from the proposed approach to modified offense sentencing in part VII of Chapter One).

2. Where the offender is convicted of several crimes that are not related, add the offense values (as determined by the guidelines) for each separate crime.

3. Where the offender is convicted of an inchoate crime and also the related completed crime, ignore the inchoate crime. (This is the traditional merger rule.)

4. If the offender, during a single course of conduct, has committed a financial crime or caused financial injury more than once, add the financial injuries (on the basis of the relevant guideline tables) to determine the total offense value for that series of crimes. Treat similarly other offenses, such as drug offenses, where guideline sentences rest upon quantities.

5. When an offender is convicted of two or more crimes arising out of the same course of criminal conduct, apply the appropriate guideline to each conviction; insofar as the conduct underlying the conviction overlaps, eliminate any overlapping offense value (using the higher offense value in case of conflict).

The rule presented below is particularly suitable for public comment:

6. If more than one offense is committed or injury results during the same course of conduct, add the offense values of the three most serious injuries or crimes (after calculating the offense values for each according to rules 1–5) and ignore the others.

If no rule is adopted limiting multiple injuries, the guidelines will produce seriously anomalous results where there are many injuries or threats of injury during the same course of conduct. A car driver, for example, who recklessly runs a busload of passengers off the road would receive 50 times the penalty imposed on a similar person who knocked a bus with only one passenger off the road; yet the underlying conduct is the same. An offender who threatened one hundred people with physical injury would receive one hundred times the punishment imposed on an offender who threatened one person. Of course, in each example the multiple injuries caused are considerably worse than the single injury and courts should increase the sentence to reflect that difference. The Commission does not believe that the sentence should rise directly in proportion to the number of victims involved. That is not because the injury to the fiftieth victim is any the less serious than the injury caused the first. Rather, viewed from a just punishment perspective, it is because one who hurts three people is already so highly culpable that injuring three more is not viewed as twice as bad. Viewed from a crime control perspective, the penalty for injuring three people is likely to be severe enough to deter the conduct in question; a sentence twice as severe is not needed to deter injury to six.

The Commission has considered certain alternatives to Rule (6). For example, the injuries could be added up to a multiple other than three. Or, a multiplier could be used that diminishes according to a mathematical formula as the number of separate injuries increases (as with the approach taken with financial injuries and drugs).

The Commission requests comment on the proposed rules set forth above as well as suggestions regarding workable and just alternative approaches.

Part F—Treatment of Unusual Aggravating or Mitigating Factors

The Commission requests comment on the treatment of aggravating or mitigating factors that occur only rarely but are serious concerns in the few cases where they do arise. Examples of such mitigating factors might be the presence of a serious mental disability that did not rise to the level of a successful defense, self-defense, coercion, necessity, provocation, or a criminal act done for merciful purposes, *e.g.*, euthanasia. An example of a rare, but serious aggravating factor would be extremely barbaric behavior by the offender.

The Commission has identified several options for considering these factors. One would be to promulgate a guideline expressly permitting the court to go outside the guideline range where the factor was demonstrated to be present. The guideline could establish a general standard of proof, or specific standards for each circumstance. If the court determined the factor present, the guideline could establish a certain range or amount by which the sentence could be adjusted. Another approach would be to establish separate Chapter Three adjustment multipliers for each factor.

The Commission invites comment on (1) what specific unusual factors should be considered so compelling as to warrant special treatment; (2) the standards of proof that should govern the court's inclusion of any such factor in sentencing; and (3) the method by which the Commission should permit courts to take these factors into consideration.

Conclusion

As its work has progressed, the Commission has become increasingly aware of the difficulties of foreseeing and capturing in a single set of guidelines the vast range of human conduct likely to be relevant to a sentencing decision. For this reason, the Commission has concluded that the guideline writing process is a continuing one, to be carried on with progressive changes over a period of many years, as Congress contemplated in establishing a continuing Commission. Congress realized, and the Commission agrees, that greater knowledge and experience can only improve the guidelines over time.

The Commission will collect and carefully analyze public response to these guidelines. After the guidelines become effective, the Commission will carefully consider the reasons articulated by sentencing judges for departure from the guidelines and the impact of the guidelines on all aspects of the federal criminal justice system. Guided by this analysis, the Commission will then refine future versions of the guidelines. Reason, analysis, actual practice, and public comment all will be used to produce, over the years, a progressively more informed, just, and workable set of guidelines.

United States Sentencing Commission

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[FR Doc. 86-22005 Filed 9-30-86; 8:45 am]
BILLING CODE 2210-01-M

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federal register

Wednesday
October 1, 1986

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 334

Laxative Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 334

[Docket No. 78N-036L]

Laxative Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that amends the tentative final monograph for over-the-counter (OTC) laxative drug products by modifying the directions for the use of bulk laxatives. This notice is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by December 1, 1986. New data relating to the directions for the use of OTC bulk laxatives by October 1, 1987. Comments on the new data by December 1, 1987. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs [21 CFR 330.10). Written comments on the agency's economic impact determination by January 29, 1987.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC laxative, antidiarrheal, emetic, and antiemetic drug products, together with the recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. The agency's proposed regulation, in the form of a tentative final monograph, for OTC laxative drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2124). Interested persons were invited to file by May 15, 1985, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal.

In this amendment to the tentative final monograph, FDA is modifying its position on the directions for use and the dosage of OTC bulk laxative drug products that were proposed in Part 334 (50 FR 2124). Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC laxative drug products.

In comment 12 of the tentative final monograph (50 FR 2126), the agency stated that some of the Panel's recommendations regarding the directions for use of OTC laxative drug products required clarification. The agency stated that where the Panel recommended a daily dose of an ingredient without a dosage interval, the agency was proposing this to mean a single daily dose. However, in reviewing some of the comments submitted in response to the tentative final monograph and in further reviewing the directions for use of marketed bulk laxative drug products and the data on these products that were submitted to the Panel, the agency has found that the maximum daily dose of bulk laxatives is routinely administered in divided doses rather than as a single dose. In addition, the maximum daily dose of some bulk laxatives is so large that it may pose a risk of esophageal obstruction if taken at one time (Ref. 1). This risk can be minimized by administering bulk laxatives in divided doses rather than in a single daily dose, as originally proposed by the agency in the directions in the earlier tentative final monograph. The agency also recognizes that OTC bulk laxative ingredients are effective over a wide range of doses and dosing intervals; therefore, the dosages specified in the monograph for these drug products should be sufficiently flexible to accommodate the various dosages of marketed products that have been shown to be safe and effective.

Based on a review of the available data and information, the agency is revising the dosage and directions for the use of bulk laxatives that were previously proposed in § 334.52(d) (2), (3), (4), (5), (6), and (7) of the tentative final monograph. The dosages being proposed for children are based on the relationship of 1 dose for an adult; ½ the adult dose for children 6 to under 12 years of age; and ¼ the adult dose for children 2 to under 6 years of age. Pediatric dosages for particular ingredients have been proposed only when there is a marketing history of these ingredients being administered to children in these age groups. For example, an ingredient without a marketed pediatric dosage for children 2 to under 6 years of age will not have a dosage for this age group in the tentative final monograph.

The agency believes that these revised dosages and directions for use provide for necessary flexibility in developing appropriate directions for the wide range of OTC bulk laxative drug products.

Reference

(1) Brunton, L. L., "Laxatives," *in* "The Pharmacological Basis of Therapeutics," 7th Ed., edited by L. S. Goodman, A. Gilman, T. W. Rall, and F. Murad, The MacMillan Publishing Co., New York, pp. 996-997, 1985.

Testing of Category II and Category III Conditions

Interested persons may communicate with the agency about the submission of data and information relating to the directions for the use of OTC bulk laxative ingredients by folllowing the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC laxative drug products, is a major rule.

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 1, 1986, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before January 29, 1987. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the Office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register.**

Interested persons, on or before October 1, 1987, may also submit in writing new data relating to the directions for the use of OTC bulk laxatives. Written comments on the new data may be submitted on or before December 1, 1987. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Data and comments submitted in response to this amendment will be considered by the agency in establishing a final monograph. Data submitted after the closing of the administrative record on December 1, 1987 will be reviewed by the agency only after a final monograph is published in the **Federal Register,** unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 334

OTC drugs Laxative drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 334 (proposed in the **Federal Register** of January 15, 1985; 50 FR 2124) as follows:

PART 334—LAXATIVE DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for Part 334 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.11.

2. In Subpart B, § 334.52 is amended by revising paragraphs (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), and (d)(7), to read as follows:

§ 334.52 Labeling of bulk-forming laxative drug products.

* * * * * *

(d) * * *

(2) *For products containing bran identified in § 334.10(a).* Adults and children 12 years of age and over: Oral dosage is up to 14 grams daily in divided doses of 1 to 7 grams per dose. Children 6 to under 12 years of age: Up to 7 grams daily is divided doses of 1 to 3.5 grams per dose. Children 2 to under 6 years of age: Up to 3.5 grams daily in divided doses of 1 to 1.75 grams per dose. Children under 2 years of age: Consult a doctor.

(3) *For products containing methylcellulose and sodium carboxymethylcellulose identified in § 334.10(b) (1) and (2).* Adults and children 12 years of age and over: Oral dosage is up to 6 grams daily in divided doses of 0.45 to 3 grams per dose. Children 6 to under 12 years of age: Up to 3 grams daily in divided doses of 0.45 to 1.5 grams per dose. Children under 6 years of age: Consult a doctor.

(4) *For products containing karaya identified in § 334.10(c).* Adults and children 12 years of age and over: Oral dosage is up to 14 grams daily in divided doses of 3.5 to 7 grams per dose. Children under 12 years of age: Consult a doctor.

(5) *For products containing malt soup extract identified in § 334.10(d).* Adults and children 12 years of age and over: oral dosage is up to 64 grams daily in divided doses of 3 to 32 grams per dose. Children 6 to under 12 years of age: Up to 32 grams daily in divided doses of 3 to 16 grams per dose. Children 2 to under 6 years of age: Up to 16 grams daily in divided doses of 3 to 8 grams per dose. Children under 2 years of age: Consult a doctor.

(6) *For products containing polycarbophil identified in § 334.10(e).* Adults and children 12 years of age and over: Oral dosage is up to 4 grams daily in divided doses of 1 gram per dose. Children 6 to under 12 years of age: Up to 2 grams daily in divided doses of 0.5 grams per dose. Children 2 to under 6 years of age: Up to 1 gram daily in divided doses of 0.5 grams per dose. Children under 2 years of age: Consult a doctor.

(7) *For products containing any psyllium ingredient identified in § 334.10(f).* Adults and children 12 years of age and over: Oral dosage is up to 30 grams daily in divided doses of 2.5 to 7.5 grams per dose. Children 6 to under 12 years of age: Up to 15 grams daily in divided doses of 2.5 to 3.75 grams per dose. Children under 6 years of age: Consult a doctor.

Dated: August 9, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-22150 Filed 9-30-86; 8:45 am]

BILLING CODE 4160-01-M

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federal register

Wednesday
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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-40]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Airport Radar Service Areas (ARSA) at the following seven locations: Barksdale Air Force Base, LA; Boise Air Terminal, ID; Bishop Airport, Flint, MI; Fort Wayne Municipal Airport, IN; Capital City Airport, Lansing, MI; Dane County Regional Airport-Truax Field, Madison, WI; and Shreveport Regional Airport, LA. Each location is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before February 9, 1987. Informal airspace meeting dates are as follows:

1. Barksdale AFB and Shreveport Regional Airport, LA—December 2, 1986.
2. Boise Air Terminal, ID—December 1, 1986.
3. Bishop Airport, Flint, MI—December 16, 1986.
4. Fort Wayne Municipal Airport, IN—December 18, 1986.
5. Capital City Airport, Lansing, MI—December 17, 1986.
6. Dane County Regional Airport-Truax Field, Madison, WI—January 6, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 86-AWA-40, 800 Independence Avenue, SW., Washington, DC 20591.

Informal airspace meeting places are as follows:

Barksdale AFB and Shreveport Regional Airport, LA, ARSA's
Time: 7:00 p.m.
Location: Quality Inn, 5215 Monkhouse Drive, Shreveport, LA

Boise Air Terminal, ID, ARSA
Time: 7:00 p.m.
Location: Boise Interagency Fire Training Center, 3905 Vista Avenue, Boise, ID

Bishop Airport, Flint, MI, ARSA
Time: 7:00 p.m.
Location: Ainsworth High School Auditorium, 1409 W. Maple Avenue, Flint, MI

Fort Wayne Municipal Airport, IN, ARSA
Time: 7:00 p.m.
Location: Indiana Air National Guard Base, Maxwell Hall, Baer Field, Fort Wayne, IN

Capital City Airport, Lansing, MI, ARSA
Time: 7:30 p.m.
Location: Capital City Airport Terminal Building, Airport Cafeteria, Lansing, MI

Dane County Regional Airport-Traux Field, Madison, WI, ARSA
Time: 7:00 p.m.
Location: Madison Area Technical College, Truax Campus, Rooms 206A and 206B, 3500 Anderson Street, Madison, WI

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

Informal dockets may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION

Comments Invited

This notice involves seven locations. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-40." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for all proposed ARSA locations in order to receive additional input with respect to the proposal. The schedule of times and places of the hearings is listed above. No individual meetings will be held at the same time on separate locations in the same region, so that commenters will be able to attend all meetings in which they may have an interest. Persons who plan to attend any of the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The dates, times, and places for each meeting are listed above. There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of any meeting is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at each meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted at the discretion of the FAA representative. Participants submitting handout materials should present an original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR were the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD, (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which can included in the TRSA replacement program. The task group recommended this criteria consider—among other things—traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being circularized through the FAA directives system.

The FAA has established ARSA's at numerous locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's.

Related Rulemaking

This notice proposes ARSA designation at seven of the locations identified as candidates for an ARSA in the preamble to Amendment No. 71-10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the Federal Register.

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at each of the locations at which ARSA's are proposed in this notice. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as State III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a feeling shared among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR section 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at the following seven locations: Barksdale Air Force Base, LA; Boise Air Terminal, ID; Bishop Airport, Flint, MI; Fort Wayne Municipal Airport, IN; Capital City Airport, Lansing, MI; Dane County Regional Airport-Truax Field, Madison, WI; and Shreveport Regional Airport, LA. Each of the above locations is a public or military airport at which a nonregulatory TRSA is currently in effect. The proposed locations are depicted on charts in Appendix 1 to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with the ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a

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satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501, and Part 91, §§ 91.1 and 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a detailed Regulatory Evaluation of the proposed establishment of additional ARSA sites. The major findings of that evaluation are summarized below, and the full evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the ARSA program fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the ARSA program can be implemented without requiring additional controller personnel above current authorized staffing levels because participation at most TRSA locations is already quite high, and the reduced separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and existing TRSA facilities already operate the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA is modifying its terminal radar procedures in the ARSA program in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to remove TRSA airspace depictions and incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

Much of the need to notify the public and educate pilots about ARSA operations will be met as a part of this rulemaking proceeding. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. Because the expenses associated with these public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, they are more appropriately considered sunken costs attributable to the rulemaking process rather than costs of the ARSA program. Once the decision has been made to establish an ARSA through a final rule issued in this proceeding, however, any public information costs which follow are strictly attributable to the ARSA program. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA will also issue an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs for the seven airports at which ARSA's are being proposed by this notice is estimated to be approximately $3,150. This cost will be incurred only once upon the initial establishment of the ARSA's.

Information on ARSA's following implementation of the program will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and therefore will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings what will be held at each site following implementation of the ARSA to allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of change or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at the three locations where ARSA's have been in effect for the longest period of time, and is the trend at most of the locations that have been more recently designated.

The FAA does not expect that any operators will find it necessary to install radio transceivers as a result of establishing the ARSA's proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and therefore will not incur any additional costs as a result of the proposed ARSA's. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impacts will occur at the candidate ARSA sites proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable, and is attributable to simplification and standardization of ARSA configurations and procedures, which will eliminate much of the confusion pilots currently experience when operating in nonstandard TRSA's. Further, once experience is gained in ARSA operations, the greater flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic more efficiently than they currently are able to under TRSA's. These expected savings may or may not offset the delay that some sites may experience after the initial establishment of an ARSA, but are expected to eventually provide overall time savings to all traffic, IFR as well as VFR, that exceed delay as both pilots and controllers become more familiar with ARSA operating procedures.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States.The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at new ARSA locations will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The small entities that could be potentially affected by implementation of the ARSA program are the fixed-based operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude almost every satellite airport located within 5 nautical miles of the

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primary airport at candidate ARSA sites to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Barksdale AFB, LA—[New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of Barksdale AFB (lat. 32°30'08" N., long. 93°39'45" W.) and that airspace extending upward from 1,600 feet MSL to and including 4,300 feet MSL within a 10-mile radius of Barksdale AFB excluding that airspace designated as the Shreveport Regional Airport, LA, Airport Radar Service Area.

Boise Air Terminal, ID—[New]

That airspace extending upward from the surface to and including 6,900 feet MSL within a 5-mile radius of the Boise Air Terminal (lat. 43°33'54" N., long. 116°13'27" W.) and that airspace within a 10-mile radius of the Boise Air Terminal extending upward from 4,600 feet MSL to and including 6,900 feet MSL from the 098°T(080°M) bearing from the airport clockwise to the 183°T(165°M) bearing from the airport and from 4,200 feet MSL to and including 6,900 feet MSL from the 183°T(165°M) bearing from the airport clockwise to the 348°T(330°M) bearing from the airport; and from 5,200 feet MSL to and including 6,900 feet MSL from the 348°T(330°M) bearing from the airport clockwise to the 008°T(350°M) bearing from the airport.

Flint Bishop Airport, MI—[New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Bishop Airport (lat. 42°57'56" N., long. 83°44'37" W.) and that airspace extending upward from 2,100 feet MSL to 4,800 feet MSL within a 10-mile radius of the Bishop Airport.

Fort Wayne Municipal Airport, IN—[New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Fort Wayne Municipal Airport (lat. 40°58'42" N., long. 85°11'28" W.) and that airspace extending upward from 2,000 feet MSL to 4,800 feet MSL within a 10-mile radius of the Fort Wayne Municipal Airport.

Lansing Capital City Airport, MI—[New]

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of the Capital City Airport (lat. 42°46'43" N., long. 84°35'14" W.) and that airspace extending upward from 2,100 feet MSL to 4,900 feet MSL within a 10-mile radius of the Capital City Airport.

Madison Dane County Regional Airport-Truax Field, WI—[New]

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of the Dane County Regional Airport-Truax Field (lat. 43°08'22" N., long 89°20'13" W.) and that airspace extending upward from 2,300 feet MSL to 4,900 feet MSL within a 10-mile radius of the airport.

Shreveport Regional Airport, LA—[New]

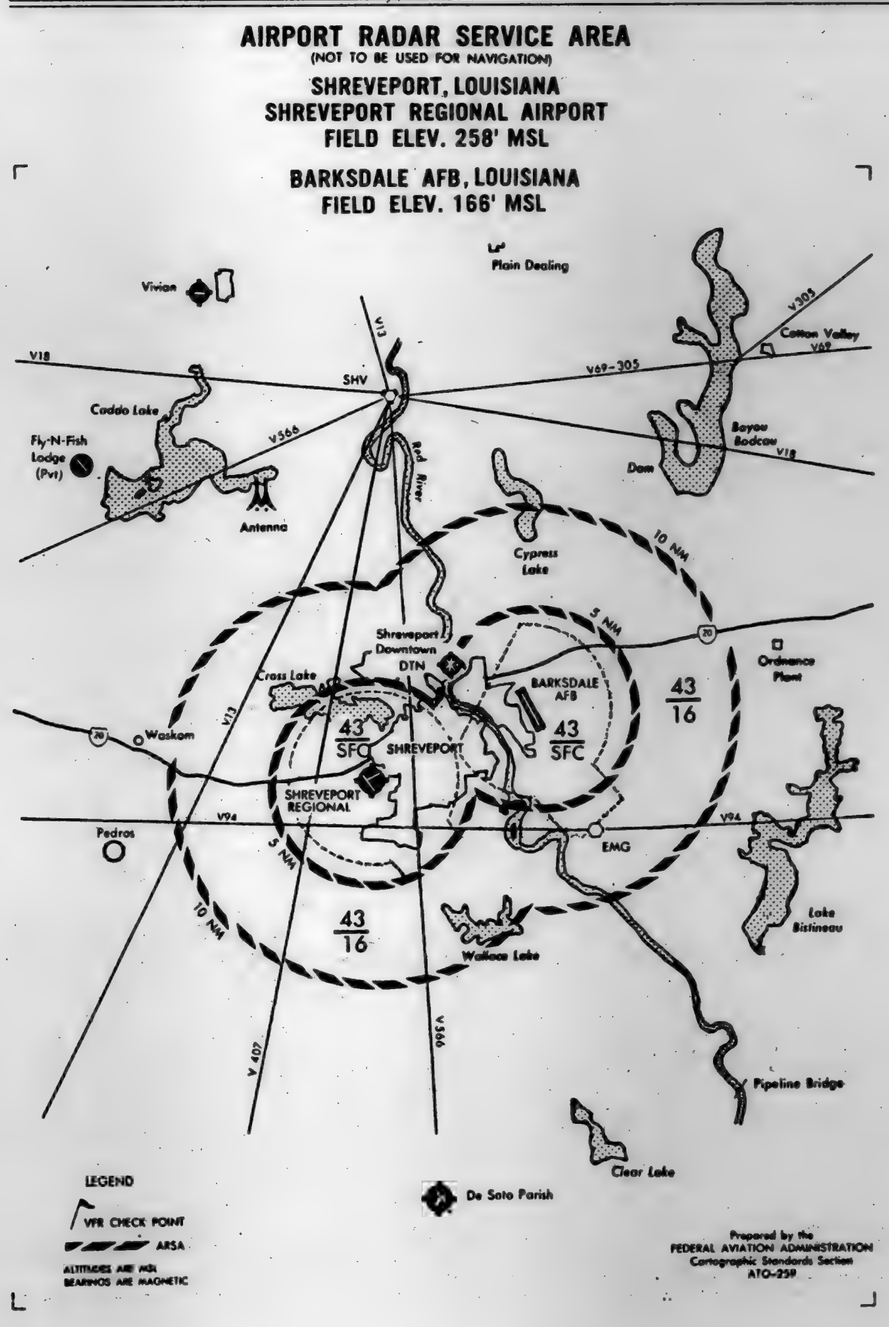
That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Shreveport Regional Airport (lat. 32°26'48" N., long. 93°49'30" W.) and that airspace extending upward from 1,600 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport excluding that airspace designated as the Barksdale AFB, LA, Airport Radar Service Area.

Issued in Washington, DC, on September 25, 1986.

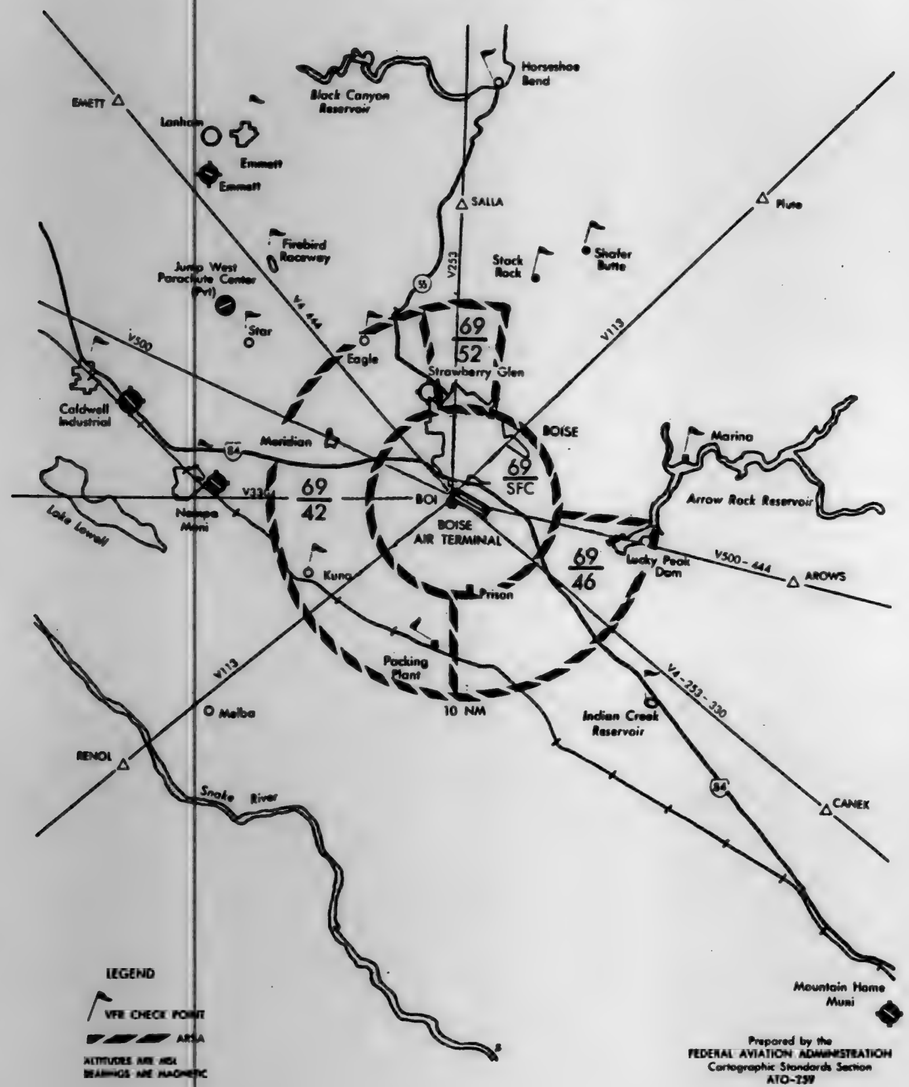
O.E. Falsetti,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

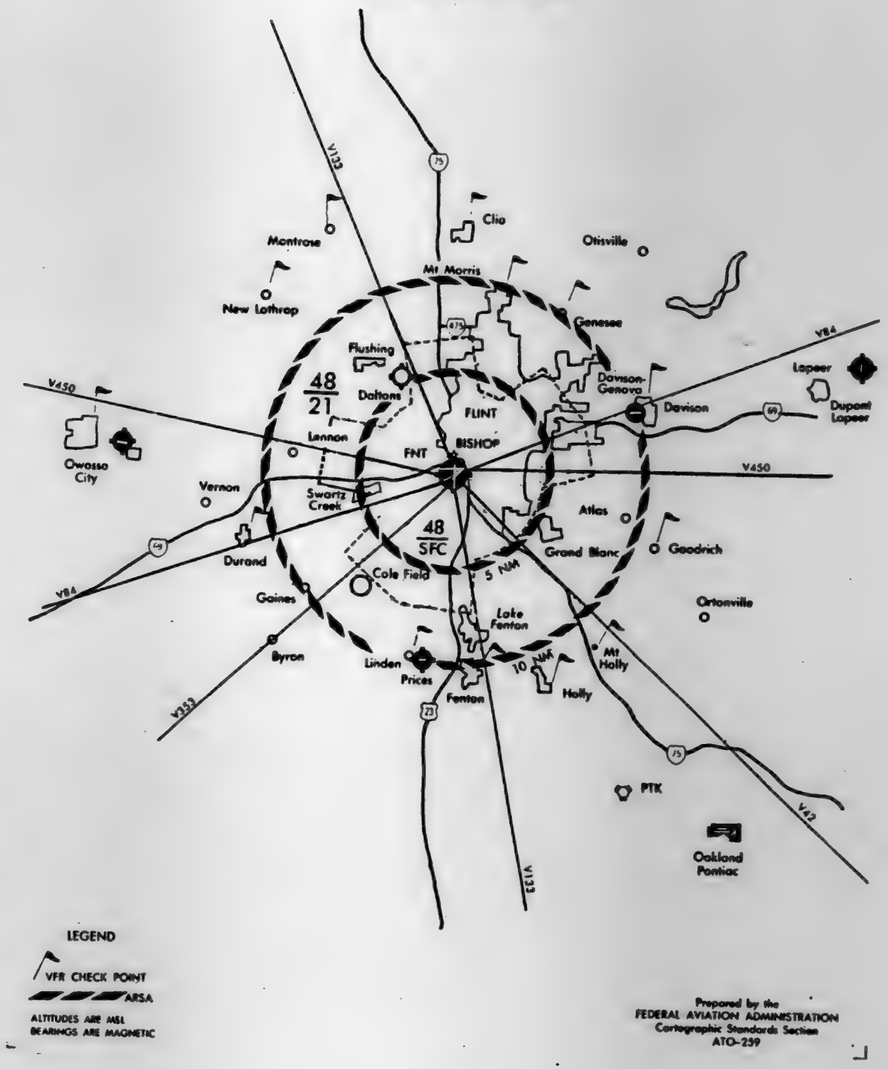
BILLING CODE 4910-13-M



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
BOISE, IDAHO
BOISE AIR TERMINAL (GOWEN FIELD) AIRPORT
FIELD ELEV. 2858' MSL



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
FLINT, MICHIGAN
BISHOP AIRPORT
FIELD ELEV. 782' MSL

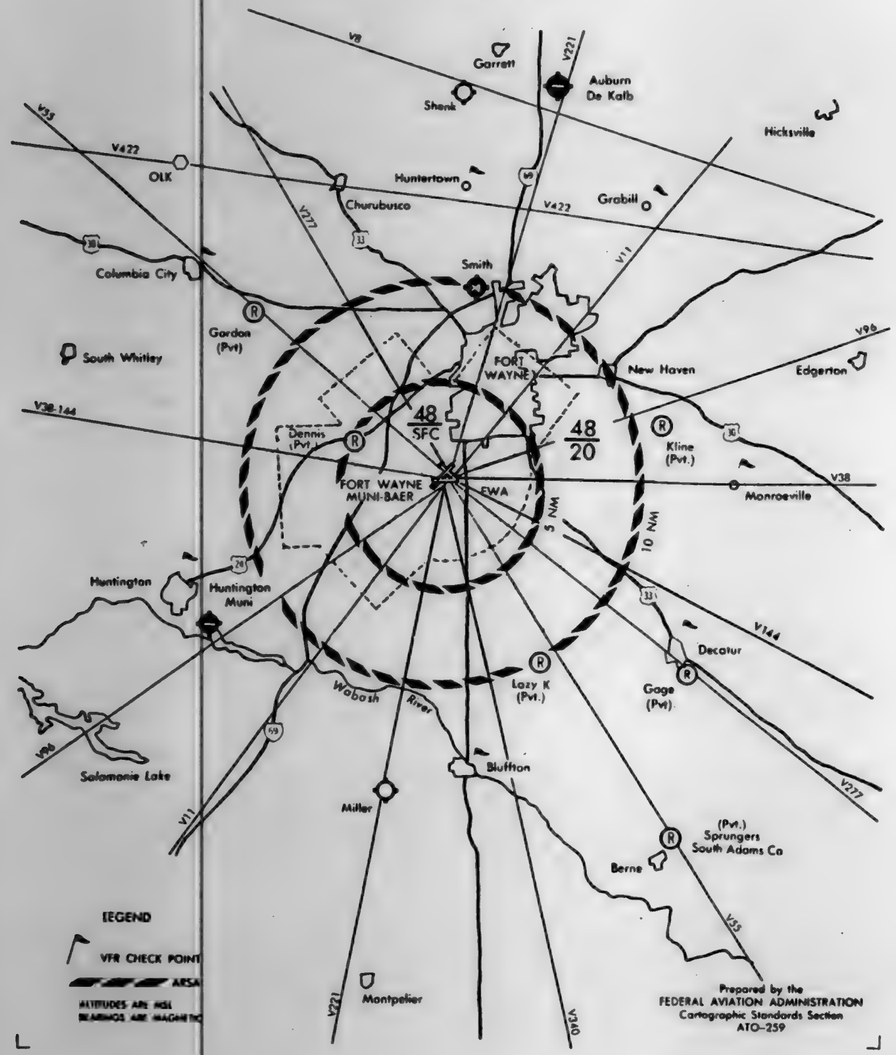


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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

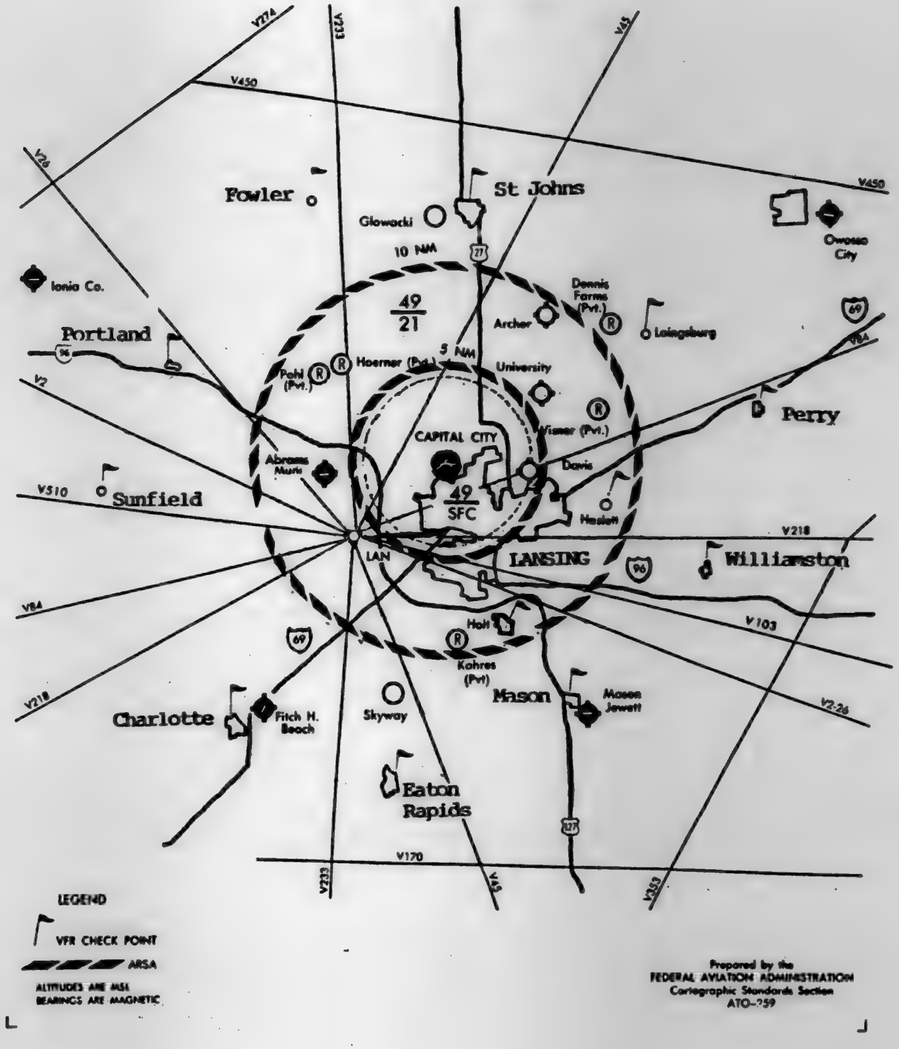
FORT WAYNE, INDIANA
FT WAYNE MUNI (BAER FIELD)
FIELD ELEV. 802' MSL



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

LANSING, MICHIGAN
CAPITAL CITY AIRPORT
FIELD ELEV. 860' MSL

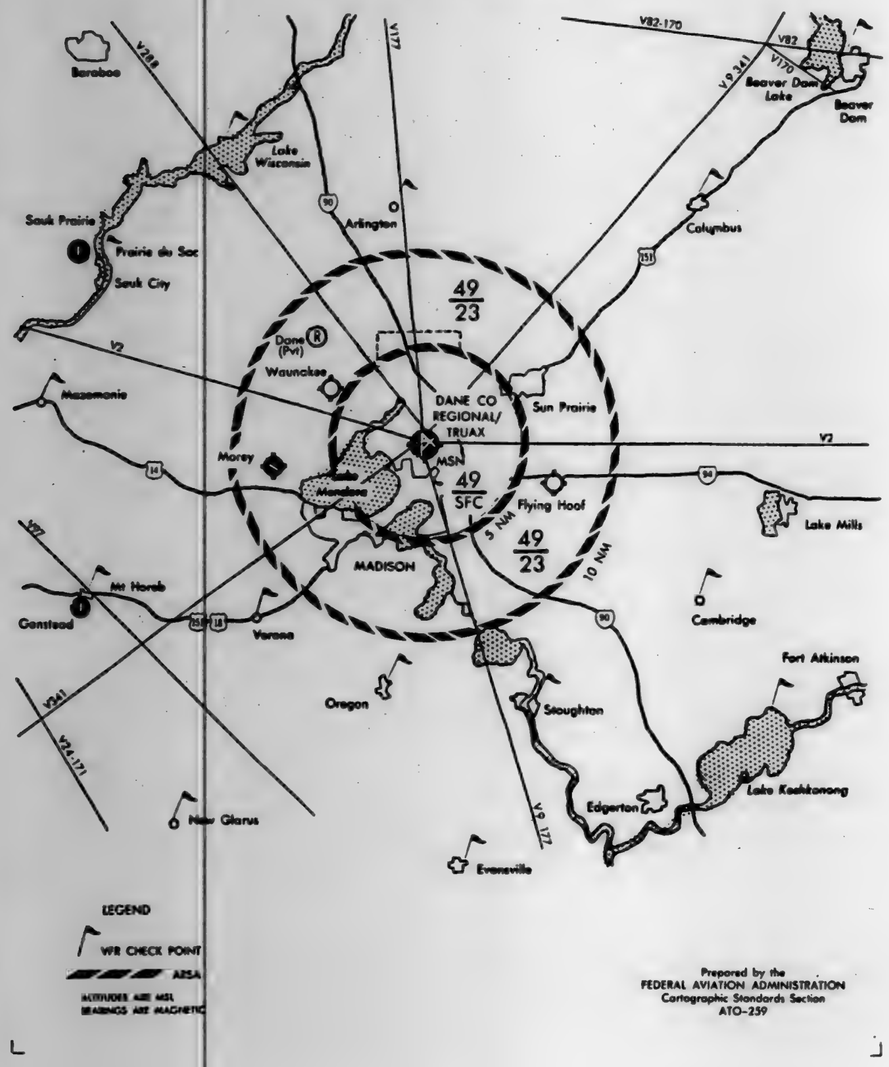


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AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

MADISON, WISCONSIN
DANE CO REGIONAL-TRUAX FLD
FIELD ELEV. 862' MSL



federal register

Wednesday
October 1, 1986

Part V

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 272, 273, 276, and 277
Food Stamp Program; Employment and Training Requirements; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 275, and 277

[Amdt. No. 275]

Food Stamp Program; Employment and Training Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes extensive changes in the work requirements of the Food Stamp Program based on provisions in the Food Security Act of 1985 (Pub. L. 99-198). The Act requires that no later than April 1, 1987 every State agency shall implement an employment and training program designed by the State agency and approved by the Secretary of Agriculture. The intent of the new requirements is to ensure that able-bodied food stamp recipients are involved in a meaningful work-related activity which will eventually lead to paid employment and a decreased dependency on assistance programs.

DATES: Comments must be received by October 31, 1986.

ADDRESS: Comments should be addressed to Patricia Warner, Food and Nutrition Service, Chief, Administration and Design Branch, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION: Questions regarding this proposed rulemaking should be addressed to Ms. Patricia Warner at the above address or by telephone at (703) 756-3383.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this rule as non-major. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices. Competition, investment, productivity, and innovation will remain unaffected. This rule will have an effect on employment in that its goal is to place food stamp recipients in employment. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related Notice(s) of 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be affected because they will administer the employment and training programs called for in this rule. Certain food Stamp applicants and recipients will also be affected, as they will have to fulfill the work requirements established by the State agencies.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB approval number for these requirements is 0584-0339.

Background

This rulemaking proposes major changes in the content, structure and administration of the work requirements of the Food Stamp Program. There are currently three major components to the Program's work requirements. First, all State agencies are responsible for work registering non-exempt household members at least once every twelve months. This requirement will be unchanged. A second component is job search. Certain work registrants deemed to be "job ready" are assigned to perform a job search which consists of a registrant contacting up to 24 employers in an eight week period in pursuit of employment. Job search has been administered, since Fiscal Year 1982, through contractual agreements between the Food and Nutrition Service and individual State agencies. Before FY 1982, both work registration and job search were operated jointly by USDA and the Department of Labor (DOL). Portions of current food stamp regulations read as though DOL were still involved in the process. The relationship with DOL was ended in FY 1982 and this will be reflected in this proposed rule. The third work components is Optional Workfare, which enables any political subdivision, in any State, to establish and operate a workfare program. Workfare-eligible recipients are assigned to public service work in return for the household's food stamp allotment. Workfare will remain an option to States. States may include workfare in their employment and training programs or operate it separately, under Title XX of the Food Stamp Act, as amended, with at least 50 percent Federal funding.

The Food Security Act of 1985 (Pub. L. 99-198), section 1517, requires each State agency to implement, by April 1, 1987, an employment and training program, designed by the State agency and approved by the Secretary of Agriculture. The purpose of the program is to assist food stamp recipients in gaining skills, training or experience that will increase their ability to obtain employment. The rule also proposes performance standards for the percentage of persons eligible to participate that each State agency must place in its employment and training program. Section 1516 requires the Secretary to establish standards for this purpose.

This rulemaking also sets out the new eligibility disqualification criteria specified in section 1516 of Pub. L. 99-198. Specifically, the rule subjects heads of households ages 16 and 17 who are not attending school half-time or more, nor participating in an employment and training program, to the work requirements. This rule proposes that when the primary wage earner, or if none exists, the head of a household fails to comply with a work requirement or voluntarily quits a job without good cause, the entire household is disqualified. This is consistent with current policy. However, if another member of the household fails to comply, only that person is subject to disqualification. This rulemaking provides a cure for non-compliance with work programs and it specifies a sanction procedure for situations when the household member who committed the violation leave the household.

This rulemaking also proposes a number of changes to and clarifications of the rules governing voluntary quit.

Work Registration

Current rules require work registrants who move out of a project area to reregister at their new location. This proposed rulemaking specifies that reregistration should take place within ten days of a move. This will preclude a long period during which the registrant's work status is unaccounted for, and should not be a burden to the registrant, who will be reporting his or her change of address within this timeframe anyway.

Under current regulation only persons between the ages of eighteen and sixty are subject to work registration. This proposed rulemaking subjects heads of households who are ages 16 and 17 and not attending school half-time or more, nor participating in an employment training program, to the work requirements. Other persons under the age of eighteen remain exempt from work registration.

Because work registration is no longer operated through the DOL and State Employment Security Agency offices, as is indicated in current regulation, the Department is no longer requiring that States use the ES-511 or any other nationwide form to record work registration. Under this proposed rulemaking State agencies will be able to record and keep track of work registration status by annotating application forms or work sheets, or by utilizing a form of their own design. The applicant may still work register for other household members. So that the other household members who have been registered by the person filing the application are aware of their work registration rights and responsibilities, and the consequences of failure to comply, the Department proposes that State agencies provide this information to the household in writing. A statement of rights and responsibilities is called for at 7 CFR 272.5(b)(2). This proposed rule would require that State agencies include work responsibilities on this statement. Because the rest of this statement applies to all household members and work responsibilities affect only certain members, this rule specifies that the names of those household members affected appear on the notice.

Employment and Training Programs

The change in food stamp work requirements form job search to employment and training programs reflects a desire on the part of Congress and the Department to strengthen and improve the Program's approach to work requirements. This proposed rulemaking allows States a great deal of flexibility in designing their employment and training programs. The design of the programs should be based on the goal of positive results—gaining employment for able-bodied food stamp receipients in the most cost effective manner. The Department encourages State agencies, to the maximum extent practicable, to design employment and training programs that are compatible with similar programs operating within the State. States are encouraged to take innovative approaches in designing their programs, and to avail themselves of the research that has been done in the area of work requirements. This proposed rulemaking permits each State to design an employment and training program which will best suit it needs. The Department expects that the employment and training programs will be continually evolving and improving as each State discovers, through evaluation, which interventions are successful and which are unsuccessful in ending welfare dependency. While the States will have a great deal of latitude, the statute reserves for the Secretary of Agriculture the final authority for approving or disapproving a State's plan, based on its substance. Services from the employment and training grant may only extend to applicants and participating food stamp households, not former recipients or other persons not applying for or participating in the Program.

For approval by the Secretary an employment and training program must contain one or more of the following statutorily required components.

(1) A job search program comparable with that of the AFDC program. As in AFDC, States may require applicants as well as program participants to perform job search.

(2) A job search program that includes job search training and suport activities that may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training, support, or educational programs which will expand the job search abilities or employability of those subject to the program.

(3) Workfare programs operated under section 20 of the Food Stamp Act of 1977 as amended and 7 CFR 273.22 of the Food Stamp regulations.

(4) Programs designed to improve the employability of work registrants through work experience or training, or both, and to enable them to move promptly into regular public or private employment. The Act specifies that employment or training programs established under these proposed regulations shall: (a) Limit assignments to projects that serve a useful public purpose; (b) to the maximum extent practicable, utilize the work registrant's skills, experience and training in making employment or training experience assignments; (c) not provide any work which replaces the work of an individual not participating in the employment or training program; (d) provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(5) With the approval of the Secretary, other programs, projects and experiments aimed at assisting recipients in obtaining employment, such as the Job Training Partnership Act (JTPA) or State administered programs.

Minimum Level of Effort of Components

Public Law 99-198 and this proposed rulemaking provide State agencies with a great deal of flexibility in designing and choosing the components which will comprise their employment and training programs. However, it is incumbent upon the Department in ensuring that meaningful programs are promulgated, to establish guidelines for the minimum level of participant effort a job component must require. For example, the Department would not consider a requirement that a participant watch a one hour film about finding a job sufficient effort for an approvable job search component. An assessment of skills or employability would not constitute a component. The Department recognizes that because there will be so many variations in the nature of the job components offered, it will be unrealistic to insist on a specific minimum level of effort for each participant. Instead, the Department is proposing that job components be designed in such a fashion that compliance would entail a level of effort by work registrants no less than the current job search requirements. This requirement is that the participant must contact up to 24 employers in an eight week period in an effort to locate suitable employment. We estimate that this equals approximately 12 hours per month for two months on the part of the participant. Thus, for FNS approval, States shall design their components so that, at a minimum, compliance will entail an average of 12 hours of activity per month per participant for two months. State designs can spread this total requirement across a different number of months, i.e., a one month job club which would take 24 hours to complete. We recognize that the current requirement takes different people varying amounts of time, and we are not establishing a rigid minimum which would entail recordkeeping by the State agencies, but rather offering this guidance to States in designing their components. This minimum level of effort would not apply to persons addressed in § 273.7(f)(3)(ii) whose

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benefit level divided by the minimum wage would result in fewer hours of participation than the minimum.

Exemptions From Employment and Training Programs

This rule affords State agencies a certain amount of flexibility in determining who shall participate in its employment and training programs. It is the Department's hope that such flexibility will maximize the impact of the resources expended on employment and training programs. The Department believes that work programs are appropriate for the great majority of work registrants. Only extraordinary circumstances would cause a State to exempt a person from all types of work programs. While the condition of the economy and general job readiness will have a certain impact on the number of a State's placements, there are a number of job components which do not rely on such factors. For example, the success of a workfare program is not contingent upon economic conditions, and many non-job ready persons are considered job ready after work experience. We expect States to involve non-job ready persons, rather than exclude them.

Exemptions requested by States would have to be justified to FNS in the State plan or in a separate request and the plan would not automatically be approved if the number of persons exempted is too high or the reasons for the exemptions are considered inadequate. Exemptions of more than 20 percent of the work registered case load would have to be accompanied by additional documentation of why the exemptions are warranted. If a State has a compelling reason to exempt more than 20 percent of its work registrants, it would have to explain why the additional persons it seeks to exempt are not suited to participate in any type of work program component. If exemptions above 20 percent are granted, they may affect a State's placement performance standards. Data received from job search contracts served as a guideline for the Department in proposing 20 percent as a maximum number of persons States should expect to exempt. Under the contracts 29 percent of those assessed were determined "not job ready." However, this proportion reflected data from several States which found most of their work registrants not job ready. The Department believes that the median rather than the mean is the best measure of State activity because it gives less weight to these unusual circumstances. The State median was 23 percent. The Department is rounding this down to 20 percent because the employment and training program will allow States to place persons who may not be immediately available for work in components other than job search.

Approvable plans may also exempt from participation in employment and training programs categories of work registrants for whom application of the requirements would be impracticable. Among the factors which might cause a State agency to exempt certain categories of work registrants are availability of work opportunities (high unemployment) and cost-effectiveness of the requirements.

State agencies may designate as exempt a category of all household members residing in a specific area of the State. This proposed rulemaking further implements the provision that State agencies may exempt from participation individual household members not exempted from the work registration requirements in § 273.7(b) when personal circumstances make the requirement impracticable. The rule specifies circumstances including, but not limited to, lack of job readiness and employability, the remote location of the household or work or training opportunities, physical condition, and the unavailability of child care. State agencies may also exempt, with the approval of the Secretary, members of households who have participated in the Food Stamp Program for 30 days or less. Requests for exemptions should be justified in State plans.

The proposal specifies that individual exemptions shall be evaluated at each recertification and that exemptions granted to categories undergo serious reconsideration annually, to ensure that the reason for the exemption is still valid.

Time Spent in An Employment and Training Program

There is no mention of a maximum or minimum total amount of time work registrants must devote to performing a job search, either in present regulations, or in the job search contracts. The only current restrictions on the number of hours worked apply to workfare obligations and appear in § 273.22 (e) and (f). Section 273.22(e) states that the maximum total number of hours of work required of a household each month should be determined by dividing the household's coupon allotment by the higher of the Federal or State minimum wage.

Section 273.22(f) specifies that recipients may be required to work up to, but not exceed 30 hours per week at a workfare job, or a workfare job combined with hours worked in any other compensated capacity.

This proposed rule would establish limits to the number of hours work registrants may be required to devote to food stamp employment and training programs. The maximum number of hours the members of a household may be required to devote to an employment and training obligation alone or combined with a workfare obligation shall not exceed the number of hours equal to the household's allotment for the month divided by the higher of the applicable State minimum wage or Federal minimum wage. The rule also proposes that no individual household member may be required to work more than 120 hours per month at a combination of an employment and training assignment, workfare assignment or hours worked for compensation. Both of these limitations are mandated by Pub. L. 99–198.

Voluntary Participation

The language in this proposed regulation encourages States to try to reach persons who are not required to participate in employment and training programs but for whom the participation would be worthwhile. We believe, for example, that involving persons who have children under the age of 6, and are thus exempt from work registration, but who wish to receive training and job finding assistance would be of value to the recipients and would lower long term federal costs. The Food Security Act provides State agencies the option to operate an employment and training component in which such persons may participate voluntarily.

The Act also provides that State agencies shall permit to the extent they determine practicable program participants to volunteer to participate in an employment and training program. This proposed rulemaking would implement these two statutory provisions. This rule also proposes that the number of volunteers in an employment and training program be considered by FNS in establishing State performance standards, and in determining the State's level of performance. State agencies should report, in their State plans the number of volunteers they expect to place, and count volunteers among those they report as having been placed and in their base of eligibles.

Failure To Comply

The current sanction for non-compliance with work registration and job search requirements is ineligibility for food stamp benefits for a two month period. The sanction always applies to the entire household. The Food Security Act codifies the two-month sanction. It further specifies that the sanction shall apply to the individual who commits the violation, rather than the entire household, unless the individual committing the violation is the head of the household, is physically and mentally fit and between the ages of sixteen and sixty. In such a case, the entire household will be sanctioned, as it currently the case. This rulemaking proposes these changes. Because the Act now differentiates between the penalties for household heads and other household members with respect to work program noncompliance, it is crucial that a clear and uniform definition be applied to the term "head of household." In a regulation published March 23, 1979 (43 CFR Part 85) the Department substituted the term "primary wage earner, age 18 or over" in lieu of "head of household" to apply the voluntary quit provisions. This rule proposes to extend this substitution to the provisions of § 273.7 in applying sanctions for non-compliance with work registration or employment and training requirements.

For households in which there is no primary wage earner this rule proposes that State agencies determine whether the non-compliance was caused by the person who was considered head of household as defined in § 273.1(d) immediately prior to the non-compliance. If the violation was caused by the head of household the entire household would be sanctioned. If the non-compliance was caused by someone other than the head of household then only the individual would be sanctioned.

Under present regulations at § 273.7(h) if the individual who commits a job search violation leaves the household during the disqualification period the household may reestablish eligibility, but any new household the violating member joins is ineligible for the remainder of the disqualification period. Pub. L. 99–198 provides that the original household may still regain eligibility if the violating member leaves, but the new household is ineligible for the balance of the disqualification period only if the violating individual joins as head of household. As in the current regulations, eligibility may be reestablished if the household member who committed the violation complies with the requirement that has been violated.

It is crucial that State agencies act promptly to discover noncompliance and to initiate sanction action once the noncompliance has been established. This rule retains the requirement in § 273.7(g) that State agencies shall provide the noncomplying individual or household with a notice of adverse action no later than 10 days after determining noncompliance without good cause.

State Agency Employment and Training Plans

The Department is planning to finalize the provisions of this proposed rule by December, 1986. State agencies will then be required to submit employment and training plans to their appropriate FNS regional office and to the National office in Alexandria, Virginia no later than March 2, 1987. The plans will be evaluated during March and should be approved and ready for implementation by April 1, 1987. A State's receipt of the employment and training grant is contingent upon the Secretary's approval of the State's employment and training plan. Because the initial plan submission and approval timeframe is not lengthy, the Department reserves the right to approve plans contingent upon modifications by State agencies if necessary. An updated plan will be required annually as part of the State Plan of Operation.

Plans must include a detailed description of the components the State chooses to operate, and why; the cost of operating the components for one full year; the categories and types of individuals the State plans to exempt from participation and why, with additional justification for exemptions which exceed 20 percent of the work registrants in the State, including any cost information on why such exemptions are necessary; the characteristics of the population the State does intend to place; the geographic areas covered and not covered by the plan, and why, and the type and location of the services to be offered; the method the State will use to perform the initial count of work registrants the first month of each fiscal year; the estimated number of volunteers; the relationship between the State agency and other organizations it plans to coordinate with for services; the organizational relationship between the units responsible for certification and those responsible for operating employment and training components; and the availability of employment and training programs to Indians living on reservations. State plans should include a discussion of the employment and training needs of the work registrant population; the characteristics of the groups to be reached within the work registrant population and the expected outcomes of the program. If a State plans to operate components which are significantly more intensive than the minimum level of effort specified in § 273.7(f) requiring greater staff assistance or more costly equipment or facilities, or if the State plans to concentrate efforts on harder to place recipients, additional cost information and justification for the components should be included to assist FNS in determining whether an adjustment should be made in the State's performance standard.

If a State wants to alter the number or type of persons to be placed, or the components or location of the components it offers, it should submit a description of the changes to the appropriate FNS regional office for approval in advance of implementation of the change.

Employment and Training Program Funding

Each State agency will receive an employment and training program grant, up to a specified level each year, which will not require any State matching. State agencies will also receive 50 percent matching funds for some expenses, as discussed below. Pub. L. 99–198 authorizes the Secretary to allocate among the States from funds appropriated for each fiscal year, $40 million in Fiscal Year 1986, $50 million in Fiscal Year 1987, $60 million in Fiscal Year 1988 and $75 million in Fiscal Years 1989 and 1990. The law does not prescribe how the Secretary is to distribute this money among States.

These regulations propose intitially to distribute the funds appropriated and available for 100 percent employment and training program grants on the basis of estimates of the number of work registrants in each State as a proportion of the total number of work registrants in the country. We believe this approach is appropriate for the first year and a half of program operation because it is straightforward and targets the distribution of funds to the number of potentially eligible persons. However, the Department also believes that the best funding formula would reward States that operate programs that are the most effective in reducing beneficiary dependence on food stamps. Therefore, the Department intends to move as quickly as practicable to a funding allocation formula that rewards exemplary State performance. During the initial year and a half of program operation, the Department will be monitoring and evaluating State programs. By the end of this period (using knowledge gained through monitoring and evaluation), the Department will devise measures of effectiveness that will be incorporated

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into the funding formula. Fiscal Year 1987 will be a transition year from use of job search contracts to employment and training programs. In the first half of the fiscal year, funding for job search programs will continue to be provided and overseen in a process separate from this rulemaking. In addition, some funding will be made available through grants for planning for employment and training program implementation. No more than half of the money available for 100 percent employment funding will be distributed for the first half of the fiscal year. In the second half of the fiscal year, the remainder of the available 100 percent funding will be distributed on the basis of the estimated proportion of work registrants in each State compared to the national total. The estimates of the number of work registrants in Each State will be derived from Fiscal Year 1985 quality control data, as entered in the integrated quality control system (IQCS). Fiscal Year 1988 grants will be based on estimates of the number of work registrants, according to Fiscal Year 1986 IQCS data or, if that is unavailable, Fiscal Year 1985 IQCS data in conjunction with Fiscal Year 1986 Food Stamp Program participation figures in each State.

In following fiscal years, adjustments will be made in the method of allocating funds in order to reflect differences among States in the number and characteristics of the persons served, and/or variations in program design, and/or program effectiveness. Data on the number of work registrants in each State may also be derived from reliable sources other than the IQCS data such as reports submitted by States during the previous fiscal year. In at least the first year and a half of operations, however, using a straightforward and simple allocation formula based on an existing data source will contribute to efficient implementation of work programs. Furthermore, the Department reserves the right to adjust Federal grant allocations in FY 1989 and following years if a pattern of unspent funds suggests the advisability of changes in the allocation process. Such changes will not reflect State non-performance. Non-performance is addressed separately in this rulemaking.

Under section 16(h)(2) of the Food Stamp Act, the Federal government will match administrative costs for employment and training program activities that exceed the 100 percent Federal grant. This availability of additional money will enable States to expand their programs beyond limits imposed by their Federal grant levels.

Work registration during the certification process and assessment of the readiness of the registrant to be placed in an employment and training program when performed by the certification worker will continue to be regarded as State administrative expenses funded at 50 percent. Further assessment of a registrant's readiness for placement will be considered part of the employment and training program, reimbursable at 100 pecent.

If localities wish to begin or continue optional workfare programs under Section 20 of the Act once the 100 percent funding for employment and training programs has been exhausted, the localities may receive at least 50 percent of the administrative costs of operating optional workfare programs. Because section 20(g)(2)(A) prohibits enhanced workfare funding which exceeds administrative expenses, enhanced cost sharing is available only for programs funded at the 50 percent level and reported as such.

Participant Reimbursement

Current rules at § 273.22(f) provide that participants in the Optional Workfare program shall be reimbursed for actual costs related to participation in workfare. The Federal government reimburses operating agencies for 50 percent of the costs up to $25 per month for any one individual. The proposed rule expands participant reimbursement to include 50 percent of actual costs incurred by participants in employment and training programs including applicants required to perform job search and volunteers, in any component of any employment and training program, up to $25 per month. Allowable costs may include the cost of transportation, child care, or personal safety items required for performance of work.

State agencies may assist participants with costs beyond $25, but such reimbursement will not be subject to Federal cost sharing.

Funding Mechanisms and Accountability

The rule proposes that all employment and training funds to State agencies will be distributed through State Letters of Credits (LOCs). In Fiscal Year 1987, because the implementation of these regulations is contingent on the approval of State plans, employment and training operating grants will not be available in the LOC for use until April 1, 1987. (Planning grants and grants to continue to operate job search programs will be available during the first half of the fiscal year.) It is our intent that for Fiscal Year 1987, each State will be informed of the amount of the 100 percent grant it will receive for the second half of the fiscal year prior to the beginning of the second quarter of the year.

State agencies will be responsible for reporting on work program expenditures on the SF-269 Financial Status report. Total work program expenditures will be reported in Column K of the form, the "Other" column, but will have to be further explained in an attachment to the SF-269. In the attachment, States should include the total amount spent on all work program activities, subdivided into: (a) 100 percent grant expenditures; (b) 50 percent participant reimbursement expenditures; (c) 50 percent optional workfare program funding (necessary for any enhanced funding to be paid); and (d) any other 50 percent funding for employment and training programs. These costs will be subject to the same auditing procedures as all other program costs. Enhanced funding for workfare shall be reported on the SF-270.

Non-Financial Reporting Requirements

In the current Food Stamp Program regulations the administration of work registration and job search are the responsibility of the Department of Labor's State Employment Security Agencies (SESAs). State agencies were to provide non-exempt household members with a work registration form containing the member's name, address, phone number, social security number, the expiration date of the household's certification period, an indication of an exemption from job search, and any other information agreed upon by the State agency and the SESA. This form was to be completed and taken to the SESA where the information was entered into the Employment Service Automated Reporting System (ESARS). Through the ESARS system the Department was able to monitor quarterly, for each State, the number of work registrants, the number of new applicants and renewals, the number of individuals referred to and placed in jobs, the number placed in job search, the number who obtained employment, and the number reported as not complying with the requirements.

When the Department's relationship with DOL was ended, State agencies which contracted with the Department to administer job search assumed the responsibility of reporting the number of persons referred for job search, the number assessed, the number classified as job ready, the number assigned to perform job search, the number who find employment, the number reported as not having complied, and the number of

persons disqualified as a result of noncompliance

Through this proposed rulemaking each State agency will have the responsibility to maintain information about its employment and training program and to report it quarterly to the Department. The specific information required of each State agency will be determined during the employment and training program plan approval process. Although the Department may vary reporting requirements according to the components which comprise each State's employment and training program and the characteristics of those participating, it is essential that the information reported by the States be consistent so programs can be accurately monitored and evaluated. Certain information shall be collected by all State agencies monthly, regardless of the nature of their employment and training programs. The number of persons work registered is essential for program evaluation, performance monitoring and may be a factor in determining each State's financial allotment for employment and training. Other information crucial to program monitoring and evaluation will be required as well. The Department proposes that in addition to the total number of work registrants, State agencies must report quarterly the monthly number of work registrants exempted by the State agency from placement in an employment and training program, separated by the reason for the exemption; the number of assigned persons who report to each component; the number of participants who volunteer and participate in a component; the number of program applicants placed in a component separated by those who were found ineligible for Program participation, those certified but not subsequently work registered and those subsequently work registered; the number of persons who complete a first component and who are placed in a second component the number placed in subsequent components; and the number of persons who are referred to a component but who never commence it, without good cause, and are sanctioned; the number who find employment during food stamp participation and the number who become ineligible due to that employment; and the number sanctioned for non-compliance after they have begun a component and have been counted as "placed." The Department is eager to receive comments on these proposed reporting requirements and to learn of obstacles States may have in compiling any of the requested information.

Voluntary Quit

Although the Food Security Act does not alter language pertaining to households whose primary wage earners voluntarily quit employment, the Department is proposing a number of regulatory changes through this rulemaking. Most of these changes clarify Department policy on issues about which we have received questions from State agencies.

Current regulations do not provide a method for curing a voluntary quit disqualification. This proposal provides two methods for households to regain eligibility during a voluntary quit disqualification period. First, eligibility may be reestablished if the member who caused the disqualification secures new employment which is comparable in salary or hours to the job which was quit.

Adding this provision is consistent with the intent of the Act to deter individuals from quitting their jobs and diminishing their income while receiving food stamp benefits. At the same time, this provision provides workers the flexibility of changing jobs without being penalized. The second way ineligibility can be ended is for the person who caused the disqualification to become exempt from the work registration provisions in § 237.7(b), although not under paragraph (b)(1)(iii) or (b)(1)(v). These two paragraphs exempt individuals who are participating in WIN or Unemployment Compensation work programs. The purpose of a voluntary quit penalty is to discourage people from quitting their jobs. Therefore, the Department does not believe that a household should be able to terminate the disqualification merely because its primary wage earner has begun to participate in a work program of another assistance program. Salaried employment should take precedence over work programs.

Current regulations are silent on the consequences of the departure from the household of the head of household causing the disqualification. This rulemaking proposes that the sanction shall follow the member who caused the disqualification. If that individual joins another household as head of that household, the new household shall be ineligible for balance of the disqualification period. The sanction will be applied only to the household which includes the noncomplying member. This is consistent with the provisions of § 273.7(h) which pertains to persons who do not comply with employment and training requirements.

Current regulations are also silent on the application of sanctions when household composition changes significantly between the time of the quit and the time when the sanction is to be applied. For example, State agencies have asked how they should handle cases where a non-participating individual voluntarily quits a job without good cause and then becomes a member of a household that is already participating. The question also has been raised whether a sanction should be applied when a member of a non-participating household (who is not the primary wage-earner in his or her household) quits a job, leaves that household, and applies for food stamps as a single-person household. Under current regulations, these persons would not be subject to any penalties because they were not providing the greatest amount of financial support to their household at the time of the quit, even though the household they belonged to at the time is not the one for which they are seeking food stamp assistance. The proposed rules would provide that in cases where the food stamp household's composition is different than it was when any of its members voluntarily quit a job, the State agency shall determine whether that member would have been the primary wage-earner of the food stamp applicant or participant household if there has been no voluntary quit. If the member would have been the primary wage-earner based on previous earnings, the State agency shall apply a 90-day sanction from the date the quit occurred. If the noncompliant primary wage-earner did not join or create the new household unit until part of the 90-day period has passed, the sanction would effectively be shortened. Under the proposal, persons who have voluntarily quit a job and seek food stamp assistance would not automatically be excused simply by changing their household composition.

Current rules apply the voluntary quit provisions only when the most recent job quit was 20 hours per week or more. This proposal specifies that the voluntary quit provisions apply if the recipient quits any job of 20 hours a week or more within 60 days prior to applying for benefits or at any time during participation unless the person subsequently accepts new employment of comparable wages or hours, thus nullifying the quit. By making this change the Department strengthens voluntary quit provisions and hopes to deter persons from quitting jobs without good cause.

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Current rules provide that if a household is determined ineligible because the primary wage earner quit a job without good cause but the household leaves the program before the sanction is levied, the sanction shall not be imposed until the household returns to the program. The Department is proposing that the sanction should instead be imposed beginning with the first of the month after all normal procedures for taking adverse actions have been followed and shall run continuously for 90 days or until it is cured. This is consistent with the procedure used for failure to comply with work registration and employment and training requirements, and will be easier for State agencies to administer by eliminating the need to track and impose outstanding sanctions.

Current regulations do not address how State agencies should proceed if a participant quits a job in the last month of a certification period and the quit is discovered during the recertification process. Rather than recertifying the household, issuing benefits, and then immediately issuing a notice of adverse action, we are proposing that States treat the household as if it is an applicant household, and to deny eligibility for 90 days, beginning with the date of the quit. The State agency should file a claim for benefits received during the last month of the previous certification period after the quit occurred. This will be consistent with the way the State agency treats other changes in circumstances at recertification. If the State agency discovers at recertification that a voluntary quit without good cause occured in the previous certification period other than during the last month of certification, the State agency shall disqualify the household for whatever time remains of the disqualification period and file a claim against the household for the benefits it should not have received.

The Department has received a number of questions from State agencies on how to proceed if a household quits a job after submitting an application but before being certified. The proposal makes a distinction between cases in which the State agency learns of the quit before certification and those in which it does not learn of the quit until after the household is certified. When the State agency learns of the quit before the household is certified, the Department proposes that the household be regarded as an applicant household. If the quit is discovered after certification, the household shall be regarded as a participant household and the sanction shall begin the first month after adverse action procedures are taken.

This proposed rulemaking also changes § 273.7(n)(2). Current rules specify that persons exempt from work registration are exempt from the voluntary quit provisions. This proposed rulemaking retains this provision except that those persons exempted from work registration through § 273.7(b)(vii) because they are working 30 hours or more, are not exempt from voluntary quit. In addition, the regulations clarify how State agencies shall treat households certified under expedited service standards in which a voluntary quit determination is not able to be made until after the household has been certified. In such cases, the State agency shall impose the sanction from the date of the quit—as for all other applicant households—and file a claim against the household for the expedited service benefits. Currently, State agencies treat such expedited service households as if the quit occurred during participation. This means that such households receive the full disqualification while other applicant households may be effectively disqualified for less time because the voluntary quit penalty is applied from the date of the quit. This change will result in equitable treatment among applicant households certified under either type of certification processing standards.

Performance Standards

Pub. L. 99-198 directs the Secretary to set criteria for the extent of State implementation of work program components. The philosophy behind the criteria, or performance standards, is to ensure that all States meet some minimum standard of rigor, but more importantly, that employment and training programs serve substantial numbers of able-bodied people. Programs which serve small numbers of people may be successful, but may also ignore an unacceptably high number of persons. We see the performance standards the Department is proposing as consistent with the flexibility provided in Pub. L. 99-198. The Department does not regulate States on how they should meet their established performance level. However, this rule does propose to establish the minimum number of eligible participants and applicants that States must place (as defined below) in employment and training programs. The law also requires the Secretary to vary the standards by differences in program components and participant characteristics, and to consider State costs and voluntary participation when setting the standards. This proposed rule establishes the standards for Fiscal Years 1988 and 1989. The Department is proposing to establish annual performance standard with quarterly reporting requirements for those two years. Although performance standards are not proposed for April 1 through September 30, 1987, the first six months of operation of employment and training programs, there are two reasons why the Department would require that States fulfill the reporting requirements for those months. First, this period will provide a trial run for States to implement their information gathering resources for these new reporting requirements, and second, the information reported to FNS will assist the agency in making future fund allocation decisions and in establishing performance standards.

Definition of "Placed" in an Employment and Training Program

For purposes of performance standard accountability a State agency will be considered to have placed a person in an employment and training program when the person either: (1) Commences a work program component; or (2) refuses to or does not commence a component to which he/she has been assigned and is sanctioned. By considering as "placed" those persons who are sanctioned for not reporting to an assignment or in some other way refusing to begin a work activity, as well as those who do begin their activity, the Department is recognizing the State's effort in trying to assist the individual. If a person fails to comply before commencing a work or training assignment and is found to have good cause for the noncompliance that person will not be considered "placed". If the good cause for noncompliance is temporary, the individual should be given another assignment. If the good cause is a condition which will last 60 days or longer, the person should be counted as having been exempted from participation by the State agency.

It is important that when a State reports placements to FNS, individuals who commenced a work assignment and then failed to comply and were sanctioned at some later point, should not be double counted. Although these persons are sanctioned for noncompliance, these sanctions should be reported to the Agency separately so they will not be counted twice for performance purposes.

In certain components it will only be possible to determine if a person has been "placed" once the assigned activity is completed. For example, when a State requires a self-directed job search, either at the time of application or after certification, the State may consider a person placed when it learns that the assignment is being carried out or is completed, or when sanction action is taken due to noncompliance without good cause.

Measuring the Placement of Participants

The Department is proposing that a placement be counted toward the State's performance level each time a new placement (as defined in this rule) has been made. If a person reports to a job component which spans several months, an individual would be counted as placed in the initial month only. Each time a participant is placed in a new job component, he may be counted as placed. For example, if the State places an individual in job search for two months and then in workfare, the individual would be counted as having been placed twice. This should provide State agencies with an incentive to place persons who do not find employment during their first component, into subsequent components. If a person does not comply and is sanctioned, the placement shall count in the month the sanction notice is mailed. This method of measure of the placement of participants will be evaluated during FY 88 and will be notified if the Department determines that another method would be more effective or efficient.

Counting Work Registrants

To ascertain the number of different work registrants in a State over the course of the year, the State need only count a person as being work registered in that State once in a twelve month period. The Department is aware that due to short certification periods, changes in household composition and other factors a person might actually be reregistered several times within the course of a year. However, by counting such persons as new registrants each time, the number of registrants available to be placed in the program during the course of the year is artificially inflated.

Measuring a State's Performance

When FNS evaluates a State's level of performance, two critical numbers will be used: the number of persons the State has placed in its employment and training program over the course of the year, and the number of persons who were eligible to have been placed. When the Department is determining whether or not a State has fulfilled its performance standard for the year it will weigh the number of persons placed (as defined earlier in this section) against the number of persons eligible to be placed, or the base of eligibles. The larger the base the greater number of placements a State will have to make. The majority of the base of eligibles consists of all work registrants not exempted from placement by the State agency. However, there are individuals other than work registrants who by statute are eligible to be placed. In addition to non-exempt work registrants the base of eligibles will contain persons who volunteer to participate in an employment and training program. It may also include program applicants who have been placed in a job search component. Since these persons may be counted as placed by the State, they must also be counted in the base. It is important, for evaluation, that FNS be able to differentiate between the different categories of individuals which will comprise the total base of eligibles at the end of the year. Therefore, this rule proposes that each State agency maintain separate counts of those categories eligible to participate; one for non-exempt work registrants (which should be no less than 80 percent of all work registrants), one for participants who volunteer to participate, and one for applicants who are placed in job search but are not subsequently work registered. This rule proposes that if an applicant is placed in a job search component, he or she would be counted as placed at the point of certification and if the applicant is certified and then work registered, he/she would be counted in the base of non-exempt work registrants. If, however, the applicant is either denied benefits or is certified but exempted from work registration, the applicant would be counted placed, at the point of denial, and then counted in a separate base of placed applicants who were not subsequently work registered. An applicant who is assigned a job search but who does not comply should not be counted as placed or in any base. State agencies need not count any individual in the total base of eligibles more than once in a twelve month period.

Maintaining Performance Statistics

This rule proposes that in the first month of each fiscal year, (and in April, 1987) each State count its total number of nonexempt work registrants, volunteers and if appropriate, applicants placed in job search who are not subsequently work registered. Each subsequent month the State will add to those numbers new nonexempt work registrants (excluding those who are registered at recertification during the course of a 12 month period), persons who have volunteered to participate that month, and applicants placed in job search who are not subsequently work registered. At the end of the fiscal year totals for the year (half-year in FY 1987) will have been obtained. The totals added together will be the State's base of eligibles. For example, a State counts 10,000 nonexempt work registrants in October, and adds 1,000 new nonexempt registrants each month. The State will report 12,000 nonexempt work registrants at the end of the first quarter, 15,000 by the end of the second quarter, 18,000 by the end of the third quarter, and its annual number for the year will be 21,000. If 100 volunteers are placed each month, those 1,200 volunteers would be added to the 21,000 work registrants for a total base of 22,200. The method of measuring placements would be the same. Placements will be added cumulatively each month. If the hypothetical example cited above had a 50 percent placement requirement, placements for the year would have to be 11,100.

The Department believes that this method of measurement affords States a great deal of flexibility in structuring their components and allows for a quarterly measurement so that States may measure their progress and, if necessary, take corrective action. This method of measurement also results in a more manageable amount of tracking, counting and reporting than other possible systems.

Percentage of Persons to be Placed

Pub. L. 99-198 specifies that the number of nonexempt registrants required to be placed in employment and training programs shall not exceed 50 percent through Fiscal Year 1989. The Department's research on work programs, including workfare and job search, has shown that broadly based, inexpensive job components are successful and cost effective. The Department would like to have as many food stamp recipients as possible exposed to employment and training programs. By serving a greater number of persons many of those with fewer job skills and less experience will be included in rather than exempted from participation.

To establish the standards for Fiscal Year 1988 the Department examined levels of performance (the number of job ready registrants counted as having performed job search and the number sanctioned) reached by States administering job search contracts. Based on Fiscal Year 1985 job search data, States with contracts reached a 17 percent performance level, if all placements and sanctions are counted

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and if the average monthly number of work registrants measured by the Quality Control system increased by a turnover factor of 2.375 to approximate the total number of different work registrants. If the base of eligibles is reduced by 20 percent (the maximum percent FNS expects State agencies to exempt), the proportion rises to 22 percent. The Department is proposing a standard of 35 percent for Fiscal Year 1988 and 50 percent for Fiscal Year 1989. We estimate that $48 million would be required to extend the current level of job search activity in 39 States to all 53 State agencies. However, Federal grant levels are scheduled to rise to $56 million in Fiscal Year 1988 and $75 million in Fiscal Year 1989. Since increased coverage is a goal of the employment and training programs increased funding will make it easier to achieve that goal. The standard for Fiscal Year 1989 may be changed to reflect actual State performance in Fiscal Year 1987 and 1988.

Variations in Performance Standards

Although the Department believes broad based job components are very successful, we recognize that certain individuals may profit from a more targeted and intensive intervention. The Department will adjust the performance standard for an individual State if, prospectively, the State agency can show that the intensity of the job components it plans to offer, or the type of participant it plans to serve, will require a greater level of effort by the State than that allowed for in § 273.7(o)(5) of this rulemaking. The State should show that the program it is offering is appropriate for the individuals being served. If the State's selection criteria are inadequate, it may serve people who do not derive full benefit from the program, at the expense of not treating other people at all. The State should propose an adjusted performance level and justify this level to the Agency. The Department proposes to establish a minimum percentage of persons placed in programs below which no State agency may fall without a potential sanction being levied, regardless of the intensity of the program components offered or the type of persons served. In directing the Department to approve State plans and monitor employment and training programs, the Congress stressed that States operate "meaningful" programs. To that end, this rule proposed that no State agency reduce the nationwide standard by more than 40 percent. In other words, if the nationwide performance standard is 50 percent, the Department will not approve any performance levels lower than 30 percent.

State Agency Non-compliance.

When a State does not place its established percentage of work program eligibles an employment and training program, or if it fails, without good cause, to comply with the employment and training requirements in this proposed rulemaking, the Secretary shall withhold administrative funds. The funds withheld will be proportional to the percentage below its performance standard a State has fallen. For example, if a State's standard is to place 40 percent of its work registrants in an employment and training component, and the State places only 36 percent, which is 90 percent of its standards, an amount equal to 10 percent of the State's allocation for employment and training programs will be withheld from its administrative funds. However, the Secretary shall have the authority to withhold a large percentage of State funds depending on the severity of the State's infractions. Public Law 99-198 instructs the Secretary to consider a number of factors in determining whether a State agency has met its performance standard. The Act requires the Secretary to consider the extent to which persons have elected to participate in employment and training programs; placement in unsubsidized employment; increases in earnings, and the reduction in the number of persons participating in the Food Stamp Program as a result of the employment and training program. This rule does not propose a requirement that State agencies maintain and report the above information.

However, States should be aware that the Department will consider these factors, as well as those provided for in § 276.6 when determining whether a State has good cause for failing to meet its standard if the State provides the Department with adequate documentation. The good cause criteria specified in § 276.6 include natural disasters or civil disorders that adversely affect Program operations; strikes by State agency staff; changes in the Food Stamp Program or other Federal or State programs that result in a substantial adverse impact upon a State agency's management of the Program; any other circumstances in which FNS determines good cause to exist. The Formal warning, appeal and administrative review procedures specified in §§ 276.4, 276.5 and 276.6 also apply.

Workfare

This rule proposes a procedure to follow when a benefit overissuance is paid in a month in which the household has already fulfilled its workfare obligation. When the households's workfare eligibility continues, State agencies would attempt to recover the entire overissuance and give households a credit of workfare hours in subsequent months for extra hours worked during the month or months of overissuance. If workfare eligibility does not continue the State agency would consider whether the overissuance was the result of an intentional program violation, inadvertent household error, or a State agency error. If the overissuance resulted from an intentional program violation, a claim for the entire amount of overissuance would be established and pursued in accordance with § 273.16. In effect, the hours worked beyond those which would have been worked had the correct benefit level been used in calculating the workfare obligation would be forfeited. If the overissuance was caused by an inadvertent household error or a State agency error, a claim would be established only if the hours worked in workfare multiplied by the prevailing minimum wage are less then the amount of the correct benefit plus the overissuance. In such a case a claim shall be established only for the difference.

A household's benefit level is statutorily defined on the basis of income and eligibility criteria. We believe that exchanging hours worked for a furture workfare obligation when possible is an equitable method of replacing hours worked beyond the correct workfare obligation, while exchanging hours worked for benefits is not. The only exception to this is when the hours were worked as a result of an inadvertent household or an error on the part of the State agency, and the household is no longer participating because the household has no method to recoup the extra hours worked due to the error.

Implementation

This proposal would require State welfare agencies to implement the provisions of the rulemaking no later than April 1, 1987. This date of implementation is established by the Food Security Act of 985.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs,

Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs, Social programs, Penalties.

7 CFR Part 277

Food stamps, Government procedure, Grant programs—social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, it is proposed that 7 CFR Parts 272, 273, 276 and 277 be amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation for Parts 272, 273, 276 and 277 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

2. In § 272.1 a new paragraph (g)(80) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation. * * *

(80) Amendment No. 278 State agencies shall implement the provisions of this amendment no later than April 1, 1987.

3. In § 272.2 the seventh sentence of paragraph (a)(2) is amended by adding the words, "the Employment and Training Plan," after the words "(currently reserved)," and a new paragraph (d)(1)(v) is added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) * * *

(v) Employment and Training Plan as required in § 273.7(c)(4) and (5)

* * * * *

4. In § 273.3, paragraph (a)(1) is amended by removing the period at the end of paragraph (a)(1)(ix); adding a semi-colon in its place; and adding a new paragraph (a)(1)(x) to read as follows:

§ 272.3 Operating guidelines and forms.

(a) *Coverage of operating guidelines.*

* * *

(1) * * *

(x) Work registration and employment and training requirements.

* * * * *

5. In § 273.1 paragraph (d) is redesignated as paragraph (d)(1) and a new paragraph (d)(2) is added. The addition reads as follows:

§ 273.1 Household concept.

* * * * *

(d) *Head of household.* (1) * * *

(2) For purposes of failure to comply with §§ 273.7 and 273.22 head of household shall be considered to be the primary wage earner. The primary wage earner shall be that household member age 16 or over who was acquiring the greatest amount of earned financial support for the household at the time of the violation. Persons age 16 or 17 who are not household heads nor attending school or are enrolled in an employment training program on at least a half-time basis shall not be considered primary wage earners. If no primary wage earner existed at the time of the violation the State agency should determine who was the designated head of household as defined in § 273.1(d)(1) immediately prior to the violation to determine the appropriate sanction.

* * * * *

6. In § 273.7 the title and paragraph (a) are revised to read as follows:

§ 273.7 Work requirements.

(a) *Persons required to register.* Each household member who is not exempt by paragraph (b)(1) of this section shall be registered for employment by the State agency at the time of application, and once every twelve months after initial registration, as a condition of eligibility. Registrants who move out of a project area shall reregister at their new location within ten days. The registration form need not be completed by the member required to register.

* * * * *

7. Paragraph (b)(1)(i) is amended by removing the number 18 in the first and second sentences and adding in its place the number 16; a new sentence is added to the end of paragraph (b)(1)(i), and paragraph (b)(2)(i) is revised to read as follows:

(b) *Exemptions from work registration.*

(1) * * *

(i) * * * A person age sixteen or seventeen who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time-basis is exempt.

* * * * *

(2)(i) Persons losing exemption status due to any changes in circumstances that are subject to the reporting requirements of § 273.12 (such as loss of employment that also results in a loss of income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported. If the State agency does not use a work registration form, it shall annotate the change to the member's exemption status. If a work registration form is used, the State agency shall be responsible for providing the participant with a work registration form when the change is reported. Participants shall be responsible for returning the form to the State agency within 10 calendar days from the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the household fails to return the form, the State agency shall issue a notice of adverse action stating that the household is being terminated but that the household can avoid termination by returning the form.

* * * * *

8. In § 273.7 paragraphs (c)(1), (c)(2), and (c)(3) are revised, and new paragraphs (c)(4) through (c)(8) are added. The revisions and additions read as follows:

* * * * *

(c) *State agency responsibilities.* (1) The State shall register for work each household member not exempted by the provisions of § 273.7(b), regardless of whether or not the geographic area where the member resides will be covered by an employment and/or training component. Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the State agency shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The State agency shall also provide a written statement of the above for other work registrants in the household. The State agency shall permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State agency.

(2) If a person is not exempt from employment and training requirements

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the State agency shall be responsible for assessing that person and if appropriate, referring him or her to an employment and training program component within ten days, and for taking appropriate sanction action within ten working days should the individual not comply.

(3) The State agency shall design and operate an employment and training program which may consist of one or more or a combination of employment and/or training components as described in § 273.7(f).

(4) By March 2, 1987 each State agency must prepare and submit an employment and training plan to its appropriate FNS Regional Office and to the FNS office in Alexandria, Virginia. The plan shall be available for public inspection at the State agency headquarters. In addition to a discussion of the employment and training needs of the State's work registrant population, and the expected outcomes of its employment and training program, the State should detail the following information:

(i) The nature of the employment and training components the State plans to offer and the reasons for such components, including any cost information;

(ii) An operating budget for the fiscal year with an estimate of the cost of operation for one full year;

(iii) The basis used to determine the categories and individuals the State plans to exempt from its components, with additional justification for exemptions which exceed 20 percent of the number of work registrants in the State, including any cost information;

(iv) The characteristics of the population the State does intend to place;

(v) The estimated number of volunteers the State expects to place in its employment and training program;

(vi) The geographic areas covered and not covered by the plan and why, and the type and location of services to be offered;

(vii) The method the State will use to count all work registrants the first month of each fiscal year;

(viii) If a State plans to offer components which are significantly more intensive than the minimum level of effort specified in § 273.7(f), or plans to concentrate its efforts on persons who may be difficult to place, due to employment obstacles, it should be made clear in the State's employment and training plan. If, because of the nature of its components, or the population served, the State believes before it begins the year, that it will be unable to meet the performance standard established in § 273.7(o) and wishes to request a revision in the standard, it should provide the Department with detailed information about why it has chosen to operate such a component, or chosen to focus on certain persons, the benefits which will be gained by the recipient and Federal and State governments, and the number of persons it plans to serve in the component. The information provided to the Department will be used in determining whether the State's performance standard will be affected;

(ix) The organizational relationship between the units responsible for certification and the units operating the employment and training components. FNS is specifically concerned that the lines of communication be efficient and that noncompliance be reported to the certification unit within 5 working days after such noncompliance is determined;

(x) The relationship between the State agency and other organizations it plans to coordinate with for the provision of services. Copies of contracts should be included with the plan;

(xi) The availability, if appropriate, of employment and training programs to Indians living on reservations.

(5) States must submit an updated employment and training plan annually, and must submit plan revisions to the appropriate FNS regional office for approval if it plans to alter the nature or location of its components or the number of characteristics of persons served. The proposed changes shall be submitted for approval prior to implementation. The plan shall be available for public inspection at the State agency headquarters.

(6) The State shall submit quarterly reports to FNS no later than 45 days after the end of the quarter containing monthly figures for:

(i) The number of persons newly work registered;

(ii) The number of work registrants exempted by the State from employment and training programs separated by the reasons for the exemption;

(iii) The number of assigned persons who report to each employment or training component;

(iv) The number of participants who volunteer and participate in an employment and training program;

(v) The number of program applicants placed in a component, separated by those persons who were found ineligible for food stamp participation, those who were certified but not subsequently work registered and those who were work registered.

(vi) The number of persons who complete a first component and are placed in a second component and the number placed in subsequent components;

(vii) The number of persons who are referred to an employment or training component but who do not commence the component without good cause, and are sanctioned;

(viii) The number who find employment during food stamp participation and the number who become ineligible for food stamp benefits due to the employment;

(ix) The number of persons sanctioned for non-compliance with work requirements after they have begun a component and have been counted as "placed" as defined in § 273.7(o)(2).

(7) The State agency is also responsible for deregistering those work registrants who obtain employment or otherwise become exempt from the work requirement subsequent to registration, who are no longer certified for participation in the Program, or who move from the area.

(8) States must ensure, to the maximum extent practicable, that employment and training programs are provided for Indians living on reservations.

* * * * *

9. In § 273.7 paragraph (d) including its title is revised in its entirety to read as follows:

* * * * *

(d) *Federal financial participation—*

(1) *Federal cost-sharing.*

(i) State agencies shall receive an employment and training program grant for each fiscal year or portion of fiscal year in which they operate an employment and training program. The grant shall be 100 percent Federally-funded.

(A) Except as otherwise provided in paragraph (d)(1)(i)(B), of this section, the Secretary shall allocate the funding available each fiscal year or portion of fiscal year for employment and training grants on the basis of the number of work registrants in each State as a percentage of the number of work registrants nationwide, according to the most recently available reliable information.

(B) For Fiscal Year 1988 or any Fiscal Year thereafter, the Secretary will adjust the basic allocation formula to take into account variations in program designs among States, the characteristics of work registrants served, substantial amounts of unused funds for employment and training programs in States in a previous fiscal year, program effectiveness, or other factors which he determines necessary to effectively and efficiently use Federal funds available for employment and training activities.

(C) State agencies shall use employment and training program grants to fund the administrative costs of implementing and operating employment and training programs in accordance with approved State agency plans. Employment and training grants shall not be used for the process of determining whether a participant shall be work registered, the work registration process, or any further assessment performed during the certification process.

(D) A State's receipt of the employment and training program grant as allocated under paragraph (d)(1)(i)(A) or (B) of this section is contingent on the Secretary's approval of the State's employment and training plan. If an adequate plan is not submitted, the Secretary may reallocate a State's grant among other States with approved plans. Non-receipt of an employment and training program grant does not release a State from performance requirements under paragraph (o) of this section, or sanctions for insufficient performance.

(ii) *Participant reimbursement.* Participants in employment and training programs, including volunteers and applicants required to perform job search, shall be reimbursed by the State agency for the actual costs of transportation, or other actual costs that are reasonably necessary and directly related to participation in the employment and training program. No participant cost which has been reimbursed under a workfare program operated under § 273.22, Title IV of the Social Security Act or any other work program shall be reimbursed under this section. Only costs which are up to but not in excess of $25 per month for any participant will be subject to Federal cost sharing. The State agency may reimburse participants for expenditures beyond $25 per month. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining benefits.

(iii) Fifty percent of all other administrative costs incurred by State agencies in operating employment and training programs, above the costs referenced in paragraphs (1)(i) of this section, shall be funded by the Federal government.

(iv) Enhanced cost-sharing due to placement of workfare participants in paid employment is available only for workfare programs funded under § 273.22(g) at the 50 percent reimbursement level and reported as such.

(2) *Funding mechanism.* Employment and training program funding will be disbursed through States' Letters of Credit in accordance with § 277.4 of the regulations. The State agency shall ensure that records are maintained which support the financial claims being made to FNS.

(3) *Fiscal recordkeeping and reporting requirements.* Employment and training expenditures shall be reported by the State agency on the Financial Status Report (SF–269) in the column containing "Other" expenses. Employment and training expenditures shall also be separately identified in an attachment to the SF–269, as follows: total State and Federal employment and training expenditures; expenditures funded with the 100 percent Federal grant; State and Federal expenditures for participant reimbursements; State and Federal expenditures for employment and training costs at the 50 percent reimbursement level; and State and Federal expenditures for optional workfare program costs, operated under section 20 of the Food Stamp Act and § 273.22 of the regulations. Claims for enhanced funding for placments of participants in employment after their initial participation in the optional workfare program shall be submitted in accordance with § 273.22.

* * * * *

10. In § 273.7 paragraph (e) including its title, is revised in its entirety to read as follows:

* * * * *

(e) *Work registrant requirements.* Work registrants shall:

(1) Report, at the direction of the State agency, to an assessment interview and/or to an employment and training program;

(2) Participate in an employment and training program if assigned;

(3) Respond to a request from the State agency or its designee for supplemental information regarding employment status or availability for work;

(4) Report to an employer to whom referred by the State agency if the potential employment meets the suitability requirements described in paragraph (i) of this section;

(5) Accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable State or Federal minimum wage;

* * * * *

11. In § 273.7 paragraph (f) including its title, is revised in its entirety to read as follows:

* * * * *

(f) *Employment and training programs.* Persons required to register for work and not exempted by the State agency from placement in a job component shall be subject to the employment/training requirements imposed by the State agency for that individual. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency shall result in disqualification of the individual, or in the case of noncompliance of the primary wage earned as defined in § 273.1(d)(2), the entire household shall be disqualified, as indicated in paragraph (g) of this section.

(1) *Components.* To be considered acceptable by FNS, any component offered by a State agency must require a minimum level of effort by the participants. An assessment does not constitute a component. The level of effort shall be comparable to spending approximately 12 hours a month for two months making job contacts. An employment and training program offered by a State agency must offer one or more of the following components:

(i) A job search program comparable to that required for the AFDC program under Part A of Title IV of the Social Security Act. This entails up to an eight week job search program which may be imposed at the time of application to the Food Stamp Program;

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program;

(iii) A workfare program as described in § 273.22;

(iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Such an employment or training experience shall:

(A) Limit employment experience assignments to projects that serve a useful public purpose in fields such as health, social services, environmental protection, urban and rural development, welfare, recreation, public facilities, public safety, and day care;

(B) To the extent possible, use the prior training, experience, and skills of the participating member in making

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appropriate employment or training experience assignments;

(C) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(D) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) A project, program or experiment such as a supported work program, aimed at accomplishing the purpose of the employment and training program.

(2) *Exemptions.* With the approval of the Secretary State agencies may exempt certain individuals and categories of individuals from employment and training participation. Individual exemptions shall be evaluated at each recertification and exemptions granted to categories of persons should be reviewed no less frequently than annually to determine whether they remain valid. If a State has a compelling reason to exempt more than 20 percent of its work registrants, it shall request additional exemption authority from FNS, and submit a justification for the additional exemptions, including information on the obstacles to placing those registrants in an employment and training program, and any pertinent cost information. An increased number of exemptions may result in an adjustment of the performance standard established for the State.

(i) Persons who have participated in the Food Stamp Program for 30 days or less may be exempted from participation.

(ii) Categories of persons for whom an employment and training requirement would be impracticable may be exempted. Factors such as the availability of work opportunities and the cost-effectiveness of the requirements may be considered. In making the determination of exemption the State agency may designate a category of all households residing in a specific area of the State. Such exemptions shall be evaluated annually to see if the reasons for the exemption remain valid.

(iii) State agencies may exempt from participation individual household members for whom participation is impracticable because of personal circumstances such as lack of job readiness, the remote location of work opportunities, physical condition, and the unavailability of child care.

(iv) Persons who are assigned to a job or training component, do not commence the component and are determined to have good cause shall be considered exempted if the reason for good cause will last for 60 days or longer.

(3) *Time spent in an employment and training program.* (i) The number of months a participant spends in an employment and training component shall be determined by the State agency. The State agency may also determine the number of successive components in which a participant may be placed.

(ii) The time spent participating each month in an employment and training program, combined with any hours worked that month in a workfare program under § 273.22 shall not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage. The total hours of participation for any household member individually in any month, together with any hours worked in a workfare program under § 273.22 and any hours worked for compensation, shall not exceed 120.

(4) *Voluntary participation.* (i) A State agency may operate program components in which individuals elect to participate.

(ii) A State agency shall permit, to the extent it deems practicable, persons exempt from the work requirements, or those not exempt who have complied or are complying with the requirements, to participate in any employment and training program it offers.

* * * * *

12. In § 273.7 paragraph (g)(1) is revised to read as follows:

* * * * *

(g) *Failure to comply*—(1) *Noncompliance with Food Stamp Program regulations.* If the State agency determines that an individual other than the primary wage earner as defined in § 273.1(d) has refused or failed to comply with the requirements imposed by this section and by the State agency, that individual shall be ineligible to participate, as provided in this paragraph. If the primary wage earner, or if none exists the person considered head of household as defined in § 273.1(d) immediately prior to the non-compliance, fails to comply, the entire household is ineligible to participate as provided in this paragraph. Such ineligibility shall continue either until the member who caused the violation complies with the requirement as specified in paragraph (h) of this section, leaves the household, becomes exempt, or for two months, whichever occurs earlier. If the member who failed to comply joins another household as primary wage earner or head of the household, that entire household is ineligible for the remainder of the disqualification period. The State agency should determine whether good cause for the non-compliance exists, as discussed in paragraph (m) of this section. Within 10 days of the State determining the non-compliance was without good cause, the State agency shall provide the individual or household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included with the notification on the procedures and requirements contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause, if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The results of the fair hearing shall be binding on the State agency.

* * * * *

13. In § 273.7, paragraph (h)(1) is redesignated as introductory paragraph (h) and the first sentence is revised; paragraphs (h)(1)(v) and (h)(2) are removed; paragraphs (h)(1)(i) through (h)(1)(i) are redesignated as paragraphs (h)(1) through (h)(4); newly redesignated paragraph (h)(2) is revised and paragraph (h)(3) is amended by removing the words "by the State employment security office" and paragraph (h)(4) is amended by removing the words "by the SESA". The revisions read as follows:

(h) *Ending disqualification.* Following the end of the 2 month disqualification period for noncompliance with the work registration or employment and training requirements participation may resume if a disqualified individual or household applies again and is determined eligible.

* * *

* * * * *

(2) Refusal to respond to a request from the State agency or its designee requiring supplemental information regarding employment status or availability for work compliance with the request.

* * * * *

14. In paragraph §273.7(i) introductory paragraph (1) is revised.

(i) *Suitable employment.* (1) In addition to any criteria established by State agencies, employment shall be considered unsuitable if:

* * * * *

15. In the first sentence of paragraph § 273.7(m), the words "job search" are removed and the words "employment and training" are added in their place.

16. The first sentence of introductory paragraph § 273.7(n) is revised; paragraphs (n)(1)(ii), (n)(1)(iv), (n)(1)(vi) and (n)(2) are revised; and a new paragraph (n)(5) is added. The additions and revisions follow:

* * * * *

(n) *Voluntary quit.* No household whose primary wage earner voluntarily quit a job of 20 hours a week or more without good cause shall be eligible for participation in the Program as specified below. * * *

(1) *Determining whether a voluntary quit occurred and application processing.* * * *

(ii) In the case of an applicant household, the State agency shall determine whether any current unemployed (i.e. employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for work or exempted from work registration by § 273.7(b)(vii) has voluntarily quit a job of 20 hours a week or more within the last 60 days and has not accepted a new job of comparable wages or hours. If the State agency learns that a household has lost a source of income after the date of application but before the household is certified, the State agency shall determine whether a voluntarily quit occurred. If the primary wage earner is found to have quit a job without good cause, the household should be treated as an applicant household and the sanction, if applicable, should begin at the time of the quit if the State agency learns of the quit before certification. If the State agency learns of the quit after certification, the household shall be treated as a participating household and the period of ineligibility shall begin with the first month after all normal procedures for taking adverse action have been followed.

* * * * *

(iv) If a determination of voluntary quit is established, the State agency shall then determine if that member is the households's primary wage earner or if he or she was the primary wage earner of any other household at the time of the quit. For purposes of this section, the primary wage earner shall be that household member age 18 or over who was acquiring the greatest amount of earned financial support at the time of the quit. The primary wage earner is determined by comparing the projected earnings of the member who quit employment in the month the voluntary quit occurred as if he/she has not ceased employment against the actual or, if not available, the projected earnings of the remaining household members in the household applying or receiving food stamps. If a non-participating person voluntarily quits a job of 20 hours a week or more 60 days before joining a food stamp household, and has not obtained comparable employment, the household that person joins shall be disqualified starting at the date of the quit.

* * * * *

(iv) If the State agency determines that the primary wage earner of a participating household voluntarily quit his or her job without good cause while participating in the Program, the State agency shall provide the household with a notice of adverse action as specified in § 273.13 within 10 days after the determination of a voluntary quit is made unless the discovery is made during the recertification process. Such notification shall contain the proposed period of disqualification and shall specify that the household may reapply at the end of the disqualification period. Except as otherwise specified in this paragraph, the disqualification period shall be for three months or 90 days beginning with the first of the month after all normal procedures for taking adverse action have been followed. The 90 day disqualification period may be converted to a three calendar month period only for participating households. If a sanction is imposed and the household later leaves the program, the disqualification continues until it expires. Should the quit occur in the last month of the certification period and be discovered during the recertification process, the household should be treated as an applicant household and will be ineligible for benefits for 90 days from the date of the quit. A claim shall be filed for benefits received after the voluntary quit. If the State agency discovers during the recertification process a voluntary quit that occured at any time during participation prior to the last month, the State agency shall disqualify the household for any remaining months of what should have been the disqualification period and file a claim against the household for the excess benefits it received in the months when it should have been disqualified. Persons who have been disqualified for quitting a job as primary wage earner of one household will carry their sanctions with them if they join a new household. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it per § 273.7(n)(5). Each household has a right to a fair hearing to appeal a reduction, termination, or denial of benefits due to a determination that the household's primary wage earner voluntarily quit his or her job without good cause. If the participating household requests a fair hearing and the State agency determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered. A household which loses such a fair hearing shall not be liable for benefits received pending the hearing.

* * * * *

(2) *Exemptions from voluntary quit provisions.* Persons who were exempt from the work registration provisions in § 273.7(b) at the time of the quit, with the exception of those exempted by § 273.7(b)(vii), shall be exempt from the voluntary quit provisions.

* * * * *

(5) *Ending a voluntary quit disqualification.* (i) Following the end of the disqualification period a household may begin participation in the program if it applies again and is determined eligible.

(ii) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification secures new employment which is comparable in salary or hours to the job which was quit. Eligibility may also be reestablished if the violator becomes exempt from the work registration requirements in § 273.7(b) other than paragraphs (b)(1)(iii), (b)(1)(v), or (b)(1)(vii) of that section. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow the member who caused the disqualification. If a sanctioned household member joins another food stamp household, that

household shall be ineligible for the balance of the period of ineligibility.

* * * * *

17. In § 273.7 a new paragraph (o) is added to read as follows:

* * * * *

(o) *Performance standards.* The Secretary shall establish an annual performance standard for the minimum number of eligible persons that States must place in employment and training programs.

(1) *Definition of "Placed' in an employment and training program.* State agencies may consider a person placed, for purposes of performance standards, if the person commences a work or training component, or does not commence a component to which he or she has been assigned and is sanctioned. Persons who do not commence a component but who have good cause for noncompliance shall not be counted as placed.

(2) *Measuring placements.* States shall count placements each time a new placement, as defined in § 273.7(o)(2) is made. If a person reports to a component which spans several months, an individual would be counted as placed in the initial month only. Each time a participant is placed in a different component after having successfully completed a prior component, they may be counted as placed. If participation is not continuous a person may be counted as having been placed more than once in the same component. If a person does not comply, and is sanctioned, the person is counted as placed in the month the sanction notice is mailed.

(3) *Counting the base of eligibles.* State agencies need not count any individual in the base of eligibles more than once in a twelve month period.

(4) *Maintaining performance statistics.* To ascertain a State's level of performance FNS will weigh the number of persons the State has placed in an employment and training program, as defined in (o)(1) of this section, against the base of persons eligible for placement. The base of eligibles shall include non-exempt work registrants, volunteers who have not been counted as work registrants, and if applicable, applicants placed in job search who have not been counted as work registrants. To arrive at an annual total of eligibles State agencies shall count the actual number of individuals in the base of eligibles in the first month of the fiscal year. Each subsequent month the State shall add to that figure the number of eligibles (non-exempt persons work registered, volunteers, and if appropriate, applicants placed in job search) added to the base that month. Separate counts should be maintained for the three types of eligibles in the base. The method of measuring the number of persons placed shall be the same. An actual count of persons placed in the first month of the fiscal year shall be taken, and the number of persons placed in each subsequent month shall be added. A cumulative total shall be kept monthly for the base of eligibles and the number of persons placed, and the monthly totals shall be reported to FNS no later than 45 days after the end of each quarter per paragraph (c)(6) of this section.

(5) *Percentage of persons to be placed.* In Fiscal Year 1988, 35 percent of eligible participants shall be placed in an employment and training program, and in Fiscal Year 1989, 50 percent of eligibles shall be placed. Beyond Fiscal Year 1989 State agencies will receive instructions and standards from FNS annually.

(6) *Variations in performance standards.* (i) The Department will adjust the performance standard for an individual State if the State can show, prospectively, that the components it plans to offer or the type of participant it plans to serve will require a significantly higher level of effort than the minimum level of effort described in § 273.7(f) and that the component will require a greater amount of State resources. If a State proposes that its performance standard be adjusted, it should propose the amount of the requested adjustment and provide a justification. The additional documentation called for in § 273.7(c) must be submitted to FNS in the State's employment and training plan. In determining whether an adjustment of the performance standard is warranted, and the level of the adjustment, FNS will consider the number of persons who will be placed, the intensity and effectiveness of the components and the cost.

(ii) The Secretary will not approve a performance standard which is lower than 40 percent of the established nationwide standard for a given year.

* * * * *

18. In § 273.7 a new paragraph (p) is added to read as follows:

* * * * *

(p) State noncompliance with Employment and Training requirements. (1) In determining whether a State agency has met a performance standard the Secretary will consider factors such as the extent to which volunteers have participated in the employment and training program; placement in unsubsidized employment; increases in earnings and the reduction in the number of persons participating in the Food Stamp Program, if the State supplies the Agency with appropriate documentation. If a State has failed to comply with the provisions of § 273.7 or failed to meet its established performance standard, FNS shall determine whether there was good cause for the noncompliance. Good cause for State noncompliance is specified in § 276.6. Lack of funding at the 100 percent Federal level shall not constitute good cause.

(2) If the Agency finds that there was no good cause for the State's noncompliance, the Agency shall withhold administrative funds. The dollar amount of the funds withheld shall be calculated by reducing the amount of the State's 100 percent Federal employment and training allocation for the pertinent year proportionately to the percentage below its standard the State's performance fell. This amount shall be withheld from the State's administrative funds as specified in § 276.4(c). The Secretary may withhold a larger percentage of the allocation depending on the severity of the noncompliance. Formal warning, appeal and administrative review provisions of §§ 276.4, 276.5 and 276.6 shall apply.

19. In § 273.18 a new paragraph (b)(4) is added to read as follows:

§ 273.18 Claims against households.

* * * * *

(b) Criteria for establishing inadvertent household and administrative error claims. * * *

(4) If a workfare obligation has been fulfilled during the month of an overissuance, a claim shall be established for the total amount of the overissuance, in accordance with the provisions of this section, except in cases where the overissuance is due to an inadvertent household or State administrative error and the household is no longer participating in the program. In such cases if the number of hours worked multiplied by the prevailing minimum wage are less than the amount of the overissuance, a claim shall be established for the difference. If there is no difference, no claim shall be established. Workfare obligations shall be adjusted in accordance with § 273.22(f)(9).

* * * * *

20. In § 273.22 paragraph (b)(1) is revised; and paragraph (f)(9) is added. The addition and revisions read as follows:

§ 273.22 Optional workfare program.

* * * * *

(b) *Program administration.* (1) A food stamp workfare program may be operated as part of a State's employment and training program, required in § 273.7(f) or may be operated outside the jurisdiction of such a program. Any State agency or other political subdivision choosing to establish and operate a workfare program must submit for FNS approval a workfare plan in accordance with the requirements of this section or § 273.7(c). For the purpose of this section, a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State workfare or employment and training plan.

* * * * *

(f) *Other program requirements.* * * *

(9) *Benefit overissuances.* If a benefit overissuance is discovered for a month or months in which a participant has already performed a workfare obligation, the State agency should follow claim recovery procedures specified in § 273.18.

(i) If the person who performed the work is still workfare eligible, the State shall determine how many extra hours were worked because of the improper benefit. The participant should be credited that number of hours toward future workfare obligations.

(ii) If workfare eligibility does not continue, the State agency shall determine whether the overissuance was the result of an intentional program violation, an inadvertent household error, or a State agency error. For an intentional program violation a claim should be established for the entire amount of the overissuance and no credit toward future workfare obligations shall be given. If this was caused by an inadvertent household error or State agency error, the State agency shall determine if the hours worked in workfare multiplied by the prevailing minimum wage total less than the amount of the correct benefit plus the overissuance. If this is the case, a claim shall be established for the difference. No credit for future workfare hours shall be given.

* * * * *

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

8. In § 276.1, a new paragraph (a)(4) is added to read as follows:

§ 276.1 Responsibilities and rights.

(a) *Responsibilities.* * * *

(4) Each State agency shall be responsible for operating an employment and training program in accordance with the provisions of § 273.7. If a State agency fails, without good cause, to comply with the requirements of that section, including the specific performance standards established for that State by FNS, the Secretary may withhold funds as indicated in §§ 276.1(a)(3) and 273.7(p) subject to the appeal procedure of paragraph (b) of this section.

* * * * *

PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

9. Section 277.4 is amended by adding a new paragraph (b)(9) to read as follows:

§ 277.4 Funding.

* * * * *

(b) * * *

(9) Employment and training program grants, as outlined in § 273.7(f) shall be 100 percent Federally—funded.

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Dated: September 25, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86-22130 Filed 9-30-86; 8:45 am

BILLING CODE 3410-30-M

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federal register

Wednesday
October 1, 1986

Part VI

Office of Management and Budget

1987 Standard Industrial Classification Revision; Notice of Final Decisions

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OFFICE OF MANAGEMENT AND BUDGET

1987 Standard Industrial Classification Revision

AGENCY: Office of Management and Budget.

ACTION: Notice of final decisions.

SUMMARY: This notice presents the Office of Management and Budget's final decisions for the 1987 revision of the Standard Industrial Classification (SIC) and information for ordering the new "Standard Industrial Classification Manual 1987." The SIC is revised periodically to reflect the economy's changing industrial composition and organization. Changes in the economy since the last major revision in 1972 require an updating of the standard. The revised SIC provides a more current classification structure with which to collect, disseminate, and analyze data on the industrial makeup of the U.S. economy.

EFFECTIVE DATE: The revision is effective January 1, 1987.

ADDRESSES: Correspondence about the final decisions should be sent to: Paul Bugg, Office of Management and Budget, 3001 New Executive Office Building, Washington, DC 20503. Orders for the new "Standard Industrial Classification Manual 1987" should be sent to the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703–487–4650).

FOR FURTHER INFORMATION CONTACT: Paul Bugg, Office of Management and Budget, telephone number 202–395–3093.

SUPPLEMENTARY INFORMATION: The Standard Industrial Classification (SIC) is the statistical classification system underlying all establishment-based Federal economic statistics. The SIC is used to promote the comparability of establishment data describing various facets of the U.S. economy. The SIC's basic classification unit is the establishment, i.e., an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed, such as a farm, mine, factory, store, or hotel. The SIC covers the entire field of economic activities by defining industries in accordance with the composition and structure of the economy. It is revised periodically to reflect the economy.s changing industrial composition and organization. The 1972 SIC Manual, as supplemented in 1977 contains the current classification of industries.[1] On February 22, 1984, the Office of Management and Budget (OMB) published a **Federal Register** (49 FR 6582) notice of intent to revise the Standard Industrial Classification for 1987, containing the "Principles and Procedures for the Review of the SIC."[2] In response, businesses; trade associations; individuals; and Federal, State, and local government agencies submitted proposals for over 1100 individual changes.

To provide technical advice for the 1987 SIC revision and to make recommendations on the individual proposals, OMB established a multiagency Technical Committee on Industrial Classification (TCIC). The TCIC is chaired by OMB and is composed of senior economists, statisticians, and classification specialists representing 18 of the Federal agencies that use the SIC. To aid in its review, the TCIC established subcommittees for Construction; Manufacturing; Trade (Wholesale and Retail); Communications; Transportation and Public Utilities; Finance, Insurance, and Real Estate; Services; and Computers. The TCIC evaluated each of the submitted changes and recommended approximately 40 percent for acceptance and inclusion in a revised SIC.

In evaluating each proposed change, the TCIC followed the guidelines presented in the published "Principles and Procedures." These guidelines specify how the proposed change should relate to: The structure of the classification; historical continuity of data; economic significance criteria; specialization and coverage ratios; compatibility with international industry and product classification systems; classification stability; the ability of statistical agencies to classify, collect, and publish industry data; disclosure of individual firm data; the cost and reporting burden to respondents; and the cost to the government.

For 1987, the scope of the review for the SIC revision took into account technological changes; institutional changes such as deregulation in the Banking, Communications, and Transportation industries; and the tremendous expansion in the service sector. Also, changes were made that improved industry detail, coverage, and definitions, or clarified definitions of individual activities and classification concepts.

The primary reasons why the TCIC accepted proposals to establish new industries are: (1) Proposed industries meet the minimum criteria for economic significance, (2) proposed industries meet required specialization and coverage ratios, (3) proposed industries present no significant difficulties or costs in collecting the information needed to make a correct classification of establishments, and (4) improvement in statistical information is large relative to the costs of the proposed change. Similarly, the TCIC generally recommended accepting proposals to combine an existing industry with a compatible category if the existing industry no longer meets the economic significance, specialization, or coverage criteria.

Special consideration was given to new industries and industry changes that meet the above criteria and also increase the capability of assessing the impact of international trade on domestic industries. In the course of U.S. participation in developing the new Harmonized Commodity Description and Coding System for international trade classification, comparisons were made between trade classification detail and the SIC. Problems and inconsistencies were identified in the SIC, in some cases confirming difficulties that had already been encountered in SIC data collection. Examples of such difficulties currently exist in Industries 3662, 3811, 3829, and 3832 covering the manufacture of communications equipment and certain instruments. To resolve such inconsistencies, changes and new industries have been accepted that meet basic SIC criteria and recognize products that are important in international trade.

After the TCIC completed its initial review, each accepted change was examined in terms of expected benefits relative to costs of implementation. During this process some changes that the TCIC had found technically feasible were rejected because the expected benefits did not balance the substantial costs involved. Once this process was finished, the TCIC recommendations were published in the **Federal Register** (51 FR 5640, February 14, 1986) with a 60-day comment period ending April 15, 1986.

OMB's Final Decisions

Taking into consideration benefits and costs, comments submitted in response to the February 14, 1986, **Federal Register** notice, and other factors, including the operating budgets of the Federal agencies that must implement the revised SIC, OMB has made the final determination of the scope and substance of the 1987 revision. In general, OMB accepted the TCIC recommendations. However, in response to public comment, OMB made several changes to improve the usefulness and administration of the classification, avoid unnecessary industry code number changes, and reduce the number of detailed industry distinctions. For example, in the depository banking area there are far fewer industries than were recommended by the TCIC. Instead, distinctions based on the type of charter—Federally chartered or not Federally chartered, are retained, but those related to regulatory body or insurance are dropped. A separate industry for bank holding companies is established. Two new industries are created for courier services in Motor Freight Transportation and Air Transportation. New industries, divided between freight and passengers, are created in Water Transportation to facilitate analyses of these components. The production of prepackaged computer software is recognized as a separate industry in Services (Division I) instead of Manufacturing. In Retail Trade a new industry is created for opticians stores.

Implementation

The revision is effective January 1, 1987. In some programs, data based on the new SIC may be available beginning in 1988. However, for most programs, such data will be introduced over several years. Data series for these programs may not always be revised for years prior to the programs' implementation of the new SIC.

Highlights of the 1987 SIC Revision

The 1987 SIC revision has resulted in a net increase of 19 industries for Services (Division I), 8 for Wholesale Trade, and 7 for Manufacturing, with a net decrease of 34 for the other SIC Divisions. Deleted industries are merged into other industries and new industries are created by subdividing or restructuring existing industries. Various industries are also changed by transfers of individual activities, primarily to increase data classification accuracy, consistency, and usefulness, or by renumbering to change the existing three-digit structure.

Most of the industries that are deleted no longer meet the economic significance criteria for continued recognition as a separate industry. However, a few are dropped because the number of companies represented by the establishments classified in the industry is now so small as to cause disclosure problems in publishing data or because the distinctions required cause difficulties in classification.

As a supplement to other proposals submitted, the revision process included a comprehensive review of Transportation (Major Groups 40–47), Communications (Major Group 48), and Finance (Major Groups 60–62, and 67) to identify revisions needed due to changes in technology and government regulation. As mentioned above, basic revisions occur in Water Transportation and in the structure and detail of Banking and Other Credit Agencies (Major Groups 60–61), in particular to recognize changes in depository regulations. In addition, the decisions include the recognition of new industries for Cable and Other Pay Television (from 4833 and 4899) and Radiotelephone Communications Services (from 4811).

The growth of computer-related activities has resulted in a number of new industries. Several new industries are recognized for computers and computer peripheral equipment in Manufacturing (from 3573). There are industries for the sale of Computers and Computer Peripheral Equipment and Software in Wholesale Trade (from 5081) and Retail Trade (from 5732). Computer establishments are classified in Wholesale Trade if they sell primarily for business or government use and in Retail Trade if they sell primarily for household use. Additional detail is also added for computer services within current Group 737, including a separate industry for Prepackaged Computer Software.

The 1987 revision places considerable emphasis on improved detail for Services (Division I). There is a new Major Group 87 for selected professional and technical services, comprising elements of the current Business Services (Major Group 73) and Miscellaneous Services (Major Group 89). Industry 7392, Management, Consulting, and Public Relations, is subdivided into five new industries, and 8911, Engineering, Architectural, and Surveying Services, is subdivided into three. A number of changes are incorporated for Major Group 80, Health Services, to improve detail and data accuracy for this area of rapid growth. Other changes include the recognition of industries for Physical Fitness Facilities (from 7299, 7997, and 7999), Tax Return Preparation Services (from 7299) and Video Tape Rental (from 7394). Various other industries are also subdivided (e.g., 7321, 7393, and 7629).

There are subdivisions of some of the largest and fastest growing current industries in Manufacturing, including Miscellaneous Plastics Products (3079), Radio and Television Communications Equipment (3662), and Electronic Components, NEC (3679). Recognition of a distinct operating technology is extended to fluid power (from 3494, 3561, 3566, 3569, 3599, and 3728) and of a different fabrication technology to the distinction between die casting and other casting (from 336). Existing problems in data collection and accuracy are corrected by grouping together all relays (from 3613, 3622 and 3679) and all packaging equipment (from 3551 and 3569) and by moving or combining instruments and instrumentation systems currently covered by 3662, 3811, 3829, and 3832.

Notable changes in other SIC Divisions include the recognition of Animal Aquaculture (from 0279); the separation of surface and underground bituminous coal mining (from 1211); the separation of freight and passenger transport in Water Transportation (from Major Group 44) and the recognition of surface and air courier services (from 4211, 4213, 4511, and 4521); the recognition in Wholesale Trade of Medical and Hospital Equipment and of Opthalmic Goods (from 5086); and the separation in Retail Trade of Record and Prerecorded Tape Stores (from 5733), and Opticians Stores (from 5999). Establishments selling used automobile parts at wholesale or retail are placed together in a new industry in Wholesale Trade, because of difficulties in determining whether individual units sell primarily to households or to businesses.

1987 SIC Manual Ordering Information

Clothbound copies of the "Standard Industrial Classification Manual 1987" may be ordered now from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. The Accession Number for the clothbound manual is PB 87–100012. The prepublication price is $24.00; for orders received after December 31, 1986, the price is $30.00. Orders (including prepublication orders) of five (5) or more copies receive a 25 percent discount. It is expected that the 1987 SIC Manual will be available for shipping in early Spring 1987. The "Standard Industrial Classification Manual 1987" will be available on computer tape (9-track 1600 bpi or 6250 bpi) for $175.00, including documentation. The Accession Number

[1] The "Standard Industrial Classification Manual 1972" is available from the Government Printing Office. The stock number and price are 041–001–00066–6 and $15.00, respectively. The "1977 Supplement" is now out of print and is no longer available.

[2] For your information the "Principles and Procedures for the Review of the SIC" are reprinted at the end of this notice.

for the tape is PB 87–100020. The "SIC Manual 1987" will also be available on diskettes upon request. A shipping and handling fee of $3.00 must accompany each order for either books or tapes. Telephone orders may be placed using an NTIS Deposit Account or an American Express, Master Card, or Visa credit card by calling (703) 487–4650. Payment must accompany all mail orders.

Description of the List of Changes

The attached list of changes shows only substantive modifications in content, detail, or structure to the current 1972/1977 Standard Industrial Classification. In addition, the new "Standard Industrial Classification Manual 1987" will update and clarify many industry titles and descriptions and add numerous new example items to the indexes to reflect new activities.

The current 1972/1977 industries that are changed are listed in the left-hand column with the corresponding 1987 industries directly opposite in the right-hand column. Where two or more current industries are combined into one, a brace indicates which industries are to be combined.

Instances in which new industries are created or an existing industry changed are indicated by: (1) Specifying each changed 1972/1977 industry code and title in the left-hand column, (2) listing short descriptions of the activities involved in any multiple changes to an industry beneath the industry title, and (3) listing in the right-hand column the corresponding 1987 industry code and title for each listed change. A 1987 industry having a code without an asterisk includes only those activities now covered by the industry code in the left-hand column. A 1987 industry having a code preceded by an asterisk includes the corresponding activities described in the left-hand column plus activities from one or more other 1972/1977 industries; the other activities are included in the 1972/1977 industries specified in the parenthetical note. For example, current Industry 2065 is changed by moving certain nut processing to new Industry 2068 (which also includes activities from current Industries 2034 and 2099) and establishing a new Industry 2064 (which includes only the remaining activities from current Industry 2065).

Note that only industry (i.e., four-digit) changes are listed. Changes at the two-digit and three-digit levels are only implied. For instance, Major Groups 11 and 66 are deleted since all their industries are deleted and Industry Group 738 is added because of the four-digit industry changes.

Please note that the abbreviation "nec" used in the attached list stands for Not Elsewhere Classified.

Authority: 31 U.S.C. 1104(d), 44 U.S.C. 3504(d).

Wendy L. Gramm,

Administrator for Information and Regulatory Affairs.

BILLING CODE 3110-01-M

VOL 51 ISS 190 OCT 1 1986 UMI

THE 1987 SIC REVISION
Summary of Changes in 1972/77 Sequence

1972/77		1987	
	A. AGRICULTURE, FORESTRY, AND FISHING		
0181	Ornamental nursery products	* 0181	Ornamental nursery products (See 0189)
0182	Food crops grown under cover	* 0182	Food crops grown under cover (See 0189)
0189	Horticultural specialties, nec		
	Ornamental nursery products	* 0181	Ornamental nursery products (See 0181)
	Food crops grown under cover	* 0182	Food crops grown under cover (See 0182)
0279	Animal specialties, nec		
	Animal aquaculture	0273	Animal aquaculture
	Other	0279	Animal specialties, nec
0721	Crop planting and protection	* 0721	Crop planting and protection (See 0729)
0722	Crop harvesting	* 0722	Crop harvesting (See 0729)
0723	Crop preparation services for market	* 0723	Crop preparation services for market (See 0729)
0724	Cotton ginning	* 0724	Cotton ginning (See 0729)
0729	General crop services		
	Crop planting and protection	* 0721	Crop planting and protection (See 0721)
	Crop harvesting	* 0722	Crop harvesting (See 0722)
	Crop preparation services for market	* 0723	Crop preparation services for market (See 0723)
	Cotton ginning	* 0724	Cotton ginning (See 0724)
0821	Forest nurseries and seed gathering		
0843	Extraction of pine gum	0831	Forest products ex. timber
0849	Gathering of forest products, nec		

* part 1

1972/77		1987	
	B. MINING		
1051	Bauxite and other aluminum ores	1099	Metal ores, nec
1092	Mercury ores		
1099	Metal ores, nec		
1111	Anthracite	1231	Anthracite mining
1112	Anthracite mining services	1241	Coal mining services
1213	Bituminous & lignite mining services		
1211	Bituminous coal and lignite		
	Bituminous coal mining, underground	1222	Bituminous coal mining, underground
	Other	1221	Bituminous and lignite coal mining, surface, and bituminous coal preparation plants
1452	Bentonite	1459	Clay and related minerals, nec
1453	Fire clay		
1454	Fuller's earth		
1459	Clay and related minerals, nec		
1472	Barite	1479	Chemical and fertilizer mining, nec
1473	Fluorspar		
1476	Rock salt		
1477	Sulfur		
1479	Chemical and fertilizer mining, nec		
1492	Gypsum	1499	Nonmetallic minerals, nec
1496	Talc, soapstone, and pyrophyllite		
1499	Nonmetallic minerals, nec		

* part 2

1972/77		1987	
	C. CONSTRUCTION		
1611	Highway and street construction		
	Recreational facilities; trailer camps	* 1629	Heavy construction, nec (See 1629)
	Culverts and curbs	* 1771	Concrete work (See 1771)
	Other	1611	Highway and street construction
1629	Heavy construction, nec	* 1629	Heavy construction, nec (See 1611)
1771	Concrete work	* 1771	Concrete work (See 1611)
	D. MANUFACTURING		
2016	Poultry dressing plants	2015	Poultry slaughtering, dressing, and processing
2017	Poultry and egg processing		
2032	Canned specialties		
	Fish cakes	* 2091	Canned and cured seafoods (See 2091)
	Other	2032	Canned specialties
2034	Dehydrated fruits, vegetables, soups		
	Nuts	* 2068	Salted and roasted nuts and seeds (See 2065, 2099)
	Other	2034	Dehydrated fruits, vegetables, soups
2038	Frozen specialties		
	Bakery products	2053	Frozen bakery products
	Other	2038	Frozen specialties, nec
2047	Dog, cat, and other pet food		
	Dog and cat food	2047	Dog and cat food
	Other pet food and meat not fit for human consumption	* 2048	Prepared feeds, nec (See 2048)
2048	Prepared feeds, nec	* 2048	Prepared feeds, nec (See 2047)

* part

1972/77		1987	
2065	Confectionery products		
	Salted and roasted nuts	* 2068	Salted and roasted nuts and seeds (See 2034, 2099)
	Other	2064	Confectionery products
2066	Chocolate and cocoa products	* 2066	Chocolate and cocoa products (See 2099)
2091	Canned and cured seafoods	* 2091	Canned and cured seafoods (See 2032)
2099	Food preparations, nec		
	Chocolate	* 2066	Chocolate and cocoa products (See 2066)
	Potato chips and similar products	2096	Potato chips and similar products
	Salted and roasted seeds	* 2068	Salted and roasted nuts and seeds (See 2034, 2065)
	Other	2099	Food preparations, nec
2258	Warp knit fabric mills	* 2258	Warp knit fabric mills (See 2292)
2271	Woven carpets and rugs		
2272	Tufted carpets and rugs	2273	Carpets and rugs
2279	Carpets and rugs, nec		
2281	Yarn mills	* 2281	Yarn mills (See 2283)
2282	Throwing and winding mills	* 2282	Throwing and winding mills (See 2283)
2283	Wool yarn mills		
	Thread	* 2284	Thread mills (See 2284)
	Yarn, made in spinning mills	* 2281	Yarn mills (See 2281)
	Yarn, made in throwing and winding mills	* 2282	Throwing and winding mills (See 2282)
2284	Thread mills	* 2284	Thread mills (See 2283)
2291	Felt goods, except woven felts and hats	* 2299	Textile goods, nec (See 2299)
2292	Lace goods	* 2258	Warp knit fabric mills (See 2258)
2293	Paddings and upholstery filling		
2294	Processed textile waste	* 2299	Textile goods, nec (See 2291)
2299	Textile goods, nec		

* part

1972/77		1987	
2321	Men's and boys' shirts and nightwear		
	Shirts	2321	Men's and boys' shirts
	Nightwear	* 2322	Men's and boys' underwear and nightwear (See 2322)
2322	Men's and boys' underwear	* 2322	Men's and boys' underwear and nightwear (See 2321)
2327	Men's and boys' separate trousers	* 2325	Men's and boys' separate trousers and casual slacks (See 2328)
2328	Men's and boys' work clothing		
	Jeans and jean-cut casual slacks	* 2325	Men's and boys' separate trousers and casual slacks (See 2327)
	Other	2326	Men's and boys' work clothing
2351	Millinery	2353	Hats, caps, and millinery
2352	Hats and caps, except millinery		
2363	Children's coats and suits	2369	Children's outerwear, nec
2369	Children's outerwear, nec		
2411	Logging camps and contractors	* 2411	Logging (See 2421)
2421	Sawmills and planing mills		
	Logging	* 2411	Logging (See 2411)
	Other	2421	Sawmills and planing mills
2431	Millwork	* 2431	Millwork (See 3442)
2492	Particleboard	* 2493	Reconstituted wood products (See 2499, 2661)
2499	Wood products, nec		
	Reconstituted wood products (e.g., medium density fiberboard, waferboard, oriented strandboard, hardboard)	* 2493	Reconstituted wood products (See 2492, 2661)
	Other	2499	Wood products, nec
2522	Metal office furniture	* 2522	Office furniture, except wood (See 2599)
2542	Metal partitions and fixtures	* 2542	Partitions and fixtures, except wood (See 2599)

* part

1972/77		1987	
2599	Furniture and fixtures, nec		
	Office furniture	* 2522	Office furniture, except wood (See 2522)
	Partitions and fixtures	* 2542	Partitions and fixtures, except wood (See 2542)
	Other	2599	Furniture and fixtures, nec
2611	Pulp mills	* 2611	Pulp mills (See 2621, 2631)
2621	Paper mills, except building paper		
	Pulp mills	* 2611	Pulp mills (See 2611, 2631)
	Other	* 2621	Paper mills (See 2661)
2631	Paperboard mills		
	Pulp mills	* 2611	Pulp mills (See 2611, 2621)
	Other	2631	Paperboard mills
2641	Paper coating and glazing		
	Paper coating and laminating for packaging	2671	Paper coating and laminating for packaging
	Other	2672	Paper coating and laminating, except for packaging
2642	Envelopes	2677	Envelopes
2643	Bags, except textile bags		
	Bags: uncoated paper and multiwall	2674	Bags: uncoated paper and multiwall
	Other	2673	Bags: plastics, laminated and coated
2645	Die-cut paper and paperboard	2675	Die-cut paper and paperboard
2646	Pressed and molded pulp goods	* 2679	Converted paper products, nec (See 2649)
2647	Sanitary paper products	2676	Sanitary paper products
2648	Stationery products	2678	Stationery products
2649	Converted paper products, nec	* 2679	Converted paper products, nec (See 2646)
2651	Folding paperboard boxes	* 2657	Folding paperboard boxes (See 2654)
2654	Sanitary food containers		
	Folding	* 2657	Folding paperboard boxes (See 2651)
	Other	2656	Sanitary food containers

* part

1972/77		1987	
2661	Building paper and board mills		
	Insulation board	* 2493	Reconstituted wood products (See 2492, 2499)
	Paper	* 2621	Paper mills (See 2621)
2751	Commercial printing, letterpress and screen	* 2759	Commercial printing, nec (See 2753)
2753	Engraving and plate printing		
	Platemaking	* 2796	Platemaking (See 2754, 2793, 2794, 2795)
	Printing	* 2759	Commercial printing, nec (See 2751)
2754	Commercial printing, gravure		
	Platemaking	* 2796	Platemaking (See 2753, 2793, 2794, 2795)
	Other	2754	Commercial printing, gravure
2793	Photoengraving	* 2796	Platemaking (See 2753, 2754)
2794	Electrotyping and stereotyping		
2795	Lithographic platemaking services		
2819	Industrial inorganic chemicals, nec	* 2819	Industrial inorganic chemicals, nec (See 2869)
2831	Biological products		
	Diagnostic substances	2835	Diagnostic substances
	Other	2836	Biological products, except diagnostic substances
2869	Industrial organic products, nec		
	Hydrazine	* 2819	Industrial inorganic chemicals, nec (See 2819)
	Other	2869	Industrial organic products, nec
3031	Reclaimed rubber	* 3069	Fabricated rubber products, nec (See 3069, 3555)
3041	Rubber and plastics hose and belting	3052	Rubber and plastics hose and belting

* part

1972/77		1987	
3069	Fabricated rubber products, nec		
	Molded, extruded, and lathe-cut rubber mechanical goods	3061	Molded, extruded, and lathe-cut rubber mechanical goods
	Other	* 3069	Fabricated rubber products, nec (See 3031, 3555)
3079	Miscellaneous plastics products		
	Unsupported sheet and film	3081	Unsupported sheet and film
	Unsupported profile shapes	3082	Unsupported profile shapes
	Laminated plate and sheet	3083	Laminated plate and sheet
	Pipe	3084	Pipe
	Bottles	3085	Bottles
	Plastics foam products	3086	Plastics foam products
	Custom compounding of purchased resins	3087	Custom compounding of purchased resins
	Plumbing fixtures	3088	Plumbing fixtures
	Plumbing fixture fittings: plastics	* 3432	Plumbing fixture fittings (See 3432)
	Other	3089	Plastics products, nec
3264	Porcelain electrical supplies	* 3264	Porcelain electrical and electronic supplies (See 3679)
3293	Gaskets, packing, and sealing devices	3053	Gaskets, packing, and sealing devices
3332	Primary lead	3339	Primary nonferrous metals, nec
3333	Primary zinc		
3339	Primary nonferrous metals, nec		
3361	Aluminum foundries		
	Die castings	3363	Aluminum die castings
	Other	3365	Aluminum foundries
3362	Brass, bronze and copper foundries		
	Die castings	* 3364	Nonferrous die castings, except aluminum (See 3369)
	Other	3366	Copper foundries

* part

1972/77		1987	
3369	Nonferrous foundries, nec		
	Die castings	* 3364	Nonferrous die castings, except aluminum (See 3362)
	Other	3369	Nonferrous foundries, except aluminum and copper
3423	Hand and edge tools, nec	* 3423	Hand and edge tools, nec (See 3555)
3432	Plumbing fixture fittings and trim (brass goods)	* 3432	Plumbing fixture fittings (See 3079)
3433	Heating equipment, except electric		
	Incinerators, metal: domestic and commercial	* 3567	Industrial furnaces and ovens (See 3567)
	Other	3433	Heating equipment except electric
3442	Metal doors, sash, and trim		
	Doors, windows, etc. of wood covered with metal	* 2431	Millwork (See 2431)
	Other	3442	Metal doors, sash, and trim
3444	Sheet metal work		
	Curtain wall	* 3449	Miscellaneous metal work (See 3449, 3469)
	Other	3444	Sheet metal work
3449	Miscellaneous metal work	* 3449	Miscellaneous metal work (See 3444, 3469)
3469	Metal stampings, nec		
	Curtain wall	* 3449	Miscellaneous metal work (See 3444, 3449)
	Other	3469	Metal stampings, nec
3494	Valves and pipe fittings		
	Hydraulic and pneumatic valves and hose fittings and assemblies	* 3492	Fluid power valves and hose fittings (See 3728)
	Industrial valves	3491	Industrial valves
	Plumbing and heating valves; fittings, flanges, and unions	3494	Valves and pipe fittings, nec
3531	Construction machinery	* 3531	Construction machinery (See 3536)

* part

1972/77		1987	
3536	Hoists, cranes and monorails		
	Aerial work platforms; automobile wrecker hoists	* 3531	Construction machinery (See 3531)
	Automatic stacking machines	* 3537	Industrial trucks and tractors (See 3537)
	Other	3536	Hoists, cranes and monorails
3537	Industrial trucks and tractors	* 3537	Industrial trucks and tractors (See 3536)
3549	Metalworking machinery, nec		
	Welding and soldering machines, nonelectric	* 3548	Welding apparatus (See 3623)
	Automotive maintenance equipment	* 3559	Special industry machinery, nec (See 3559, 3636)
	Other	3549	Metalworking machinery, nec
3551	Food products machinery		
	Packaging machinery	* 3565	Packaging machinery (See 3569)
	Other	3556	Food products machinery
3555	Printing trades machinery		
	Printers' rolls, blankets and roller covers	* 3069	Fabricated rubber products, nec (See 3031, 3069)
	Printers mallets	* 3423	Hand and edge tools, nec (See 3423)
	Other	3555	Printing trades machinery
3559	Special industry machinery, nec	* 3559	Special industry machinery, nec (See 3549, 3636)
3561	Pumps and pumping equipment		
	Fluid power equipment	* 3594	Fluid power pumps and motors (See 3566, 3569, 3728)
	Other	3561	Pumps and pumping equipment, except fluid power pumps
3565	Industrial patterns	3543	Industrial patterns
3566	Speed changers, drives and gears		
	Hydrostatic drives (transmissions)	* 3594	Fluid power pumps and motors (See 3561, 3569, 3728)
	Other	3566	Speed changers, drives and gears

* part

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1972/77		1987	
3567	Industrial furnaces and ovens	* 3567	Industrial furnaces and ovens (See 3433)
3569	General industrial machinery, nec		
	Fluid power pumps and motors	* 3594	Fluid power pumps and motors (See 3561, 3566, 3728)
	Packaging machinery	* 3565	Packaging machinery (See 3551)
	Other	3569	General industrial machinery, nec
3572	Typewriters	* 3579	Office machines, nec (See 3579)
3573	Electronic computing equipment		
	Computers	3571	Computers
	Computer storage devices	3572	Computer storage devices
	Terminals	* 3575	Computer terminals (See 3661)
	Magnetic disks	* 3695	Recording media (See 3679)
	Other	3577	Computer peripheral equipment, nec
3574	Calculating and accounting machines	3578	Calculating and accounting machines
3576	Scales and balances, except laboratory	3596	Scales and balances, except laboratory
3579	Office machines, nec	* 3579	Office machines, nec (See 3572)
3585	Refrigeration and heating equipment	* 3585	Refrigeration and heating equipment (See 3699)
3599	Machinery, except electrical, nec		
	Fluid power cylinders and actuators	* 3593	Fluid power cylinders and actuators (See 3728)
	Other	3599	Machinery, except electrical, nec
3613	Switchgear and switchboard apparatus		
	Relays	* 3625	Relays and industrial controls (See 3622, 3679)
	Other	3613	Switchgear and switchboard apparatus
3622	Industrial controls	* 3625	Relays and industrial controls (See 3613, 3679)
3623	Welding apparatus, electric	* 3548	Welding apparatus (See 3549)

* part

1972/77		1987	
3636	Sewing machines		
	Household	* 3639	Household appliances, nec (See 3639)
	Commercial and industrial	* 3559	Special industry machinery, nec (See 3549, 3559)
3639	Household appliances, nec	* 3639	Household appliances, nec (See 3636)
3641	Electric lamps	* 3641	Electric lamps (See 3699)
3661	Telephone and telegraph apparatus		
	Teletypewriters	* 3575	Computer terminals (See 3573)
	Other	* 3661	Telephone and telegraph apparatus (See 3662)
3662	Radio and television communications equipment		
	Modems and other interface equipment	* 3661	Telephone and telegraph apparatus (See 3661)
	Radio and TV communications systems and equipment, and broadcast and studio equipment	3663	Radio and TV communications systems and equipment, and broadcast and studio equipment
	Search, detection, navigation and guidance systems and equipment	* 3812	Search, detection, navigation, and guidance systems and instruments (See 3811)
	Other communications equipment	3669	Other communications equipment, nec
	Hydrological, hydrographic, meteorological, and geophysical equipment	* 3829	Measuring and controlling devices, nec (See 3811, 3829, 3832)
	Other	* 3699	Electrical equipment and supplies, nec (See 3699)
3671	Electron tubes, receiving type	* 3671	Electron tubes (See 3679)
3672	Cathode ray television picture tubes		
3673	Electron tubes, transmitting		
3679	Electronic components, nec		
	Ferrite electronic parts and porcelain electronic supplies	* 3264	Porcelain electrical and electronic supplies (See 3264)
	Relays	* 3625	Relays and industrial controls (See 3613, 3622)
	Electron tube parts	* 3671	Electron tubes (See 3671, 3672, 3673)
	Printed circuit boards	3672	Printed circuit boards
	Recording media	* 3695	Recording media (See 3573)
	Other	3679	Electronic components, nec

* part

1972/77		1987	
3693	X-ray apparatus and tubes		
	Electromedical and electrotherapeutic apparatus	3845	Electromedical and electrotherapeutic apparatus
	Other	3844	X-ray apparatus and tubes
3699	Electrical equipment and supplies, nec		
	Electric lamp bulb parts	* 3641	Electric lamps (See 3641)
	Electric comfort heating equipment	* 3585	Refrigeration and heating equipment (See 3585)
	Other	* 3699	Electrical equipment and supplies, nec (See 3662)
3728	Aircraft equipment, nec		
	Hydraulic and pneumatic valves	* 3492	Fluid power valves and hose fittings (See 3494)
	Fluid power pumps and motors	* 3594	Fluid power pumps and motors (See 3561, 3566, 3569)
	Fluid power cylinders and actuators	* 3593	Fluid power cylinders and actuators (See 3599)
	Other	3728	Aircraft equipment, nec
3811	Engineering & scientific instruments		
	Search, detection, navigation, and guidance instruments	* 3812	Search, detection, navigation, and guidance systems and instruments (See 3662)
	Laboratory apparatus and furniture	3821	Laboratory apparatus and furniture
	Surveying and drafting apparatus	* 3829	Measuring and controlling devices, nec (See 3662, 3829, 3832)
	Analytical instruments	* 3826	Analytical instruments (See 3832)
3829	Measuring & controlling devices, nec	* 3829	Measuring and controlling devices, nec (See 3662, 3811, 3832)
3832	Optical instruments and lenses		
	Analytical instruments	* 3826	Analytical instruments (See 3811)
	Meteorological, hydrographic, hydrological, and geophysical instruments	* 3829	Measuring and controlling devices, nec (See 3662, 3811, 3829)
	Optical instruments	3827	Optical instruments
3962	Artificial flowers	* 3999	Manufacturing industries, nec (See 3999)

1972/77		1987	
3963	Buttons	3965	Needles, pins, buttons, and clothing fasteners
3964	Needles, pins, and fasteners		
3999	Manufacturing industries, nec	* 3999	Manufacturing industries, nec (See 3962)
	E. TRANSPORTATION AND PUBLIC UTILITIES		
4171	Bus terminal services	4173	Bus terminal and service facilities
4172	Bus service facilities		
4212	Local trucking, without storage		
	Courier services	* 4215	Courier services, except by air (See 4213)
	Other	4212	Local trucking, without storage
4213	Trucking, except local		
	Courier services	* 4215	Courier services, except by air (See 4212)
	Other	4213	Trucking, except local
4224	Household goods warehousing	4226	Special warehousing and storage, nec
4225	Special warehousing and storage, nec		
4411	Deep sea foreign transportation		
	Freight	4412	Deep sea foreign transportation of freight
	Passengers	* 4481	Deep sea transportation of passengers, except by ferry (See 4421, 4422, 4423, 4431)
4421	Noncontiguous area transportation		
	Freight	* 4424	Deep sea domestic transportation of freight (See 4422, 4423)
	Passengers	* 4481	Deep sea transportation of passengers, except by ferry (See 4411, 4422, 4423, 4431)

1972/77		1987	
4422	Coastwise transportation		
	Freight	* 4424	Deep sea domestic transportation of freight (See 4421, 4423)
	Passengers	* 4481	Deep sea transportation of passengers, except by ferry (See 4411, 4421, 4423, 4431)
4423	Intercoastal transportation		
	Freight	* 4424	Deep sea domestic transportation of freight (See 4421, 4422)
	Passengers	* 4481	Deep sea transportation of passengers, except by ferry (See 4411, 4421, 4422, 4431)
4431	Great Lakes transportation		
	Freight	4432	Freight transportation on the Great Lakes and Saint Lawrence Seaway
	Passengers, except by ferry	* 4481	Deep sea transportation of passengers, except by ferry (See 4411, 4421, 4422, 4423)
	Passengers, by ferry	* 4482	Ferries (See 4452)
4441	Transportation on rivers and canals		
	Freight	* 4449	Water transportation of freight, nec (See 4459)
	Passengers	* 4489	Water transportation of passengers, nec (See 4459)
4452	Ferries	* 4482	Ferries (See 4431)
4453	Lighterage	* 4499	Water transportation services, nec (See 4464, 4469)
4454	Towing and tugboat services	4492	Towing and tugboat services
4459	Local water transportation, nec		
	Freight	* 4449	Water transportation of freight, nec (See 4441)
	Passengers	* 4489	Water transportation of passengers, nec (See 4441)
4463	Marine cargo handling	4491	Marine cargo handling

1972/77		1987	
4464	Canal operation	* 4499	Water transportation services, nec (See 4453, 4469)
4469	Water transportation services, nec		
	Marinas	4493	Marinas
	Oil spill cleanup	* 4959	Sanitary services, nec (See 4959)
	Other	* 4499	Water transportation services, nec (See 4453, 4464)
4511	Certificated air transportation		
	Air courier services	* 4513	Air courier services (See 4521)
	Other	* 4512	Air transportation, scheduled (See 4521)
4521	Noncertificated air transportation		
	Air transportation, scheduled, except sightseeing and airport services, e.g., air taxis	* 4512	Air transportation, scheduled (See 4511)
	Air courier services	* 4513	Air courier services (See 4511)
	Other	4522	Air transportation, nonscheduled
4582	Airports and flying fields	4581	Services related to air transportation
4583	Airport terminal services		
4712	Freight forwarding	4731	Freight forwarding and arrangement
4723	Freight transportation arrangement		
4722	Passenger transportation arrangement		
	Travel agencies	4724	Travel agencies
	Tour operators	4725	Tour operators
	Other	4729	Arrangement of passenger transportation, nec
4742	Railroad car rental with service	4741	Railroad car rental
4743	Railroad car rental without service		
4782	Inspection and weighing services	4785	Inspection services, fixed facilities, nec
4784	Fixed facilities for vehicles, nec		

1972/77		1987	
4811	Telephone communications		
	Radiotelephone communications services	4812	Radiotelephone communications services
	Other	4813	Telephone communications, except radio telephone
4821	Telegraph communications	* 4822	Telegraph and other message communications (See 4899)
4833	Television broadcasting		
	Subscription television	* 4841	Cable and other pay TV (See 4899)
	Other	4833	Television stations
4899	Communications services, nec		
	Cable television	* 4841	Cable and other pay TV (See 4833)
	Message communications	* 4822	Telegraph and other message communications (See 4821)
	Other	4899	Communications services, nec
4959	Sanitary services, nec	* 4959	Sanitary services, nec (See 4469)

F. WHOLESALE TRADE

5013	Automotive parts and supplies		
	New automotive parts and automotive equipment	5013	Motor vehicle parts and supplies, new
	Used automotive parts	* 5015	Motor vehicle parts, used (See 5931)
5039	Construction materials, nec		
	Brick, stone, and related products	5032	Brick, stone, and related products
	Roofing, siding, and insulation	5033	Roofing, siding, and insulation
	Other	5039	Construction materials, nec
5041	Sporting and recreational goods	5091	Sporting and recreational goods
5042	Toys and hobby goods and supplies	5092	Toys and hobby goods and supplies

* part

1972/77		1987	
5063	Electrical apparatus and equipment		
	Communications equipment	* 5065	Electronic parts and equipment (See 5065)
	Measuring and testing equipment	* 5084	Industrial machinery and equipment (See 5084)
	Other	5063	Electrical apparatus and equipment
5065	Electronic parts and equipment	* 5065	Electronic parts and equipment (See 5063)
5081	Commercial machines and equipment		
	Computers and computer peripheral equipment and software	5045	Computers and computer peripheral equipment and software
	Office equipment	5044	Office equipment
	Other	5046	Commercial equipment, nec
5084	Industrial machinery and equipment	* 5084	Industrial machinery and equipment (See 5063)
5086	Professional equipment and supplies		
	Medical and hospital equipment	5047	Medical and hospital equipment
	Ophthalmic goods	5048	Ophthalmic goods
	Other	5049	Professional equipment, nec
5133	Piece goods	5131	Piece goods and notions
5134	Notions and other dry goods		
5152	Cotton	5159	Farm-product raw materials, nec
5159	Farm-product raw materials, nec		
5161	Chemicals and allied products		
	Plastics materials and basic shapes	5162	Plastics materials and basic shapes
	Other	5169	Chemicals and allied products, nec
5199	Nondurable goods, nec		
	Books, periodicals, and newspapers	5192	Books, periodicals, and newspapers
	Flowers and florists' supplies	5193	Flowers and florists' supplies
	Other	5199	Nondurable goods, nec

* part

1972/77		1987	
	G. RETAIL TRADE		
5311	Department stores		
	Having fewer than 50 employees	* 5399	Misc. general merchandise stores (See 5399)
	Other	5311	Department stores
5399	Misc. general merchandise stores	* 5399	Misc. general merchandise stores (See 5311)
5422	Freezer and locker meat provisioners	5421	Meat and fish (seafood) markets
5423	Meat and fish (seafood) markets		
5462	Retail bakeries--baking and selling	5461	Retail bakeries
5463	Retail bakeries--selling only		
5561	Recreation and utility trailer dealers		
	Utility trailers	* 5599	Automotive dealers, nec (See 5599)
	Other	5561	Recreational vehicle dealers
5599	Automotive dealers, nec	* 5599	Automotive dealers, nec (See 5561)
5631	Women's accessory and specialty stores	5632	Women's accessory and specialty stores
5681	Furriers and fur shops		
5732	Radio and television stores		
	Computer and software stores	5734	Computer and software stores
	Radio, television, and electronics stores	5731	Radio, television, and electronics stores
5733	Music stores		
	Record and prerecorded tape stores	5735	Record and prerecorded tape stores
	Musical instrument stores	5736	Musical instrument stores
5931	Used merchandise stores		
	Automotive parts, used	* 5015	Motor vehicle parts, used (See 5013)
	Other	5932	Used merchandise stores

* part

1972/77		1987	
5982	Fuel and ice dealers, nec		
	Ice	* 5999	Miscellaneous retail stores, nec (See 5999)
	Other	5989	Fuel dealers, nec
5999	Miscellaneous retail stores, nec		
	Opticians stores	5995	Opticians stores
	Other	* 5999	Miscellaneous retail stores, nec (See 5982)
	H. FINANCE, INSURANCE, AND REAL ESTATE		
6022	State banks, Federal Reserve		
	Stock savings banks	* 6036	Savings institutions, Not Federally chartered (See 6023, 6024, 6032, 6033, 6034, 6123, 6124, 6125)
	Commercial banks	* 6022	State commercial banks (See 6023, 6024)
6023	State banks, not Federal Reserve, FDIC		
	Stock savings banks	* 6036	Savings institutions, Not Federally chartered (See 6022, 6024, 6032, 6033, 6034, 6123, 6124, 6125)
	Commercial banks	* 6022	State commercial banks, (See 6022, 6024)
6024	State banks, not Federal Reserve, not FDIC		
	Stock savings banks	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6032, 6033, 6034, 6123, 6124, 6125)
	Commercial banks	* 6022	State commercial banks (See 6022, 6023)
6025	National banks, Federal Reserve	6021	National banks
6026	National banks, not Federal Reserve, FDIC		
6027	National banks, not FDIC		
6028	Private banks, not incorp., not FDIC	6029	Commercial banks, nec
6032	State mutual savings banks, Federal Reserve	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6033, 6034, 6123, 6124, 6125)

* part

1972/77		1987	
1/	Federal savings banks, FDIC	* 6035	Savings institutions, Federally chartered (See Federal savings banks, FSLIC; 6122)
1/	Federal savings banks, FSLIC	* 6035	Savings institutions, Federally chartered (See Federal savings banks, FDIC; 6122)
6033	State mutual savings banks, not Federal Reserve, FDIC	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6032, 6034, 6123, 6124, 6125)
6034	State mutual savings banks, not FDIC	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6032, 6033, 6123, 6124, 6125)
6042	Nondeposit trust, Federal Reserve	6091	Nondeposit trust facilities
6044	Nondeposit trust, not FDIC		
6052	Foreign exchange establishments		
	Branches and agencies of foreign banks	6081	Branches and agencies of foreign banks
	Other	* 6099	Functions related to banking, nec (See 6054, 6055, 6056, 6059)
6054	Safe deposit companies	* 6099	Functions related to banking, nec (See 6052, 6055, 6056, 6059)
6055	Clearinghouse associations	* 6099	Functions related to banking, nec (See 6052, 6054, 6056, 6059)
6056	Corporations for banking abroad		
	Foreign trade and international banking institutions	6082	Foreign trade and international banking institutions
	Other	* 6099	Functions related to banking, nec (See 6052, 6054, 6055, 6059)
6059	Functions closely related to deposit banking, nec	* 6099	Functions related to banking, nec (See 6052, 6054, 6055, 6056)

1/ Federal savings banks did not exist prior to 1982.

1972/77		1987	
6112	Rediscounting, not for agricultural		
	Federal and Federally sponsored credit agencies	* 6111	Federal and Federally sponsored credit agencies (See 6113, 6131, 6159)
	Central reserve depository institutions	6019	Central reserve depository institutions, nec
6113	Rediscounting for agricultural	* 6111	Federal and Federally sponsored credit agencies (See 6112, 6131, 6159)
6122	Federal savings and loans	* 6035	Savings institutions, Federally chartered (See Federal savings banks, FDIC & FSLIC between 6032 and 6033)
6123	State savings and loan associations, insured	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6032, 6033, 6034, 6124, 6125)
6124	State savings and loan associations, noninsured, FHLB	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6032, 6033, 6034, 6123, 6125)
6125	State savings and loan associations, noninsured, nec	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6032, 6033, 6034, 6123, 6124)
6131	Agricultural credit institutions		
	Federal and Federally sponsored	* 6111	Federal and Federally sponsored credit agencies (See 6112, 6113, 6159)
	Other (i.e., private)	* 6159	Miscellaneous business credit institutions (See 6159, 6611)
6142	Federal credit unions	6061	Credit unions, Federally chartered
6143	State credit unions	6062	Credit unions, Not Federally chartered
6144	Nondeposit industrial loan companies		
6145	Licensed small loan lenders		
6146	Installment sales finance companies	* 6141	Personal credit institutions (See 6611)
6149	Miscellaneous personal credit institutions		

1972/77		1987	
6159	Miscellaneous business credit institutions		
	Federal and Federally sponsored	* 6111	Federal and Federally sponsored credit agencies (See 6112, 6113, 6131)
	Other	* 6159	Miscellaneous business credit institutions (See 6131, 6611)
6281	Securities and commodity services		
	Investment advice and research	6282	Investment advice and research
	Other	6289	Services allied with the exchange of securities or commodities
6411	Insurance agents, brokers, and service	* 6411	Insurance Agents, brokers, and service (See 6611)
6531	Real estate agents and managers	* 6531	Real estate agents and managers (See 6611)
6611	Combinations of real estate, insurance, loans, law offices		
	Loans, personal	* 6141	Personal credit institutions (See 6144, 6145, 6146, 6149)
	Loans, business	* 6159	Miscellaneous business credit institutions (See 6131,6159)
	Insurance	* 6411	Insurance agents, brokers and service (See 6411)
	Real estate	* 6531	Real estate agents and managers (See 6531)
	Law offices	* 8111	Legal services (See 8111)
6711	Holding companies		
	Bank holding companies	6712	Bank holding companies
	Other	6719	Holding companies, nec
6723	Management investment offices, closed-end	6726	Unit investment trust, face-amount certificate, and closed-end investment offices
6724	Unit investment trusts		
6726	Face-amount certificate offices		
6793	Commodity traders	6799	Investors, nec
6799	Investors, nec		

* part

1972/77		1987	
	I. SERVICES		
7214	Diaper services	* 7219	Laundry and garment services, nec (See 7219, 7299)
7219	Laundry & garment services, nec	* 7219	Laundry and garment services, nec (See 7214, 7299)
7299	Miscellaneous personal services		
	Tax return preparation services	7291	Tax return preparation services
	Medical equipment rental	7352	Medical equipment rental
	Health clubs and spas	* 7991	Physical fitness facilities (See 7997, 7999)
	Seamstress and dressmaking services, except custom	* 7219	Laundry and garment services, nec (See 7214, 7219)
	Other	7299	Miscellaneous personal services
7321	Credit reporting and collection		
	Adjustment and collection services	7322	Adjustment and collection services
	Other	7323	Credit reporting
7332	Blue printing and photocopying services	* 7334	Photocopying and duplicating services (See 7339)
7333	Commercial photography, art, and graphics		
	Commercial photography	7335	Commercial photography
	Other	7336	Commercial art and graphic design
7339	Stenographic and reproduction services, nec		
	Stenographic and court reporting services	7338	Stenographic and court reporting services
	Duplicating services	* 7334	Photocopying and duplicating services (See 7332)
7341	Window cleaning	7349	Building maintenance services, nec
7349	Building maintenance services, nec		
7351	News syndicates	7383	News syndicates
7362	Temporary help supply services	* 7363	Help supply services (See 7369)

* part

1972/77		1987	
7369	Personnel supply services, nec		
	Facilities support management services	8744	Facilities support management services
	Other	* 7363	Help supply services (See 7362)
7372	Computer programming and other software services		
	Custom computer programming services	7371	Custom computer programming services
	Prepackaged computer software	7372	Prepackaged computer software
	Computer integrated system design	7373	Computer integrated system design
7374	Data processing services		
	Electronic information retrieval services	7375	Electronic information retrieval services
	Computer facilities management services	7376	Computer facilities management services
	Other	7374	Computer processing and data preparation services
7379	Computer related services, nec		
	Computer rental and leasing	7377	Computer rental and leasing
	Computer maintenance and repair	7378	Computer maintenance and repair
	Other	7379	Computer related services, nec
7391	Research and development laboratories	8731	Commercial physical and biological research
7392	Management, consulting, and public relations		
	Management services	8741	Management services
	Management consulting services	8742	Management consulting services
	Public relations services	8743	Public relations services
	Commercial economic, sociological, and educational research	8732	Commercial economic, sociological, and educational research
	Other consulting services	8748	Business consulting services, nec

1972/77		1987	
7393	Detective and protective services		
	Detective, guard, and armored car services	7381	Detective, guard, and armored car services
	Security systems services	7382	Security systems services
7394	Equipment rental and leasing		
	Heavy construction and earthmoving equipment rental and leasing	7353	Heavy construction and earthmoving equipment rental and leasing
	Video tape rental	7841	Video tape rental
	Other	7359	Equipment rental and leasing, nec
7395	Photofinishing laboratories	7384	Photofinishing laboratories
7396	Trading stamp services	* 7389	Business services, nec (See 7399)
7397	Commercial testing laboratories	8734	Testing laboratories
7399	Business services, nec	* 7389	Business services, nec (See 7396)
7512	Passenger car rental and leasing, without drivers		
	Passenger car rental	7514	Passenger car rental, without drivers
	Passenger car leasing	7515	Passenger car leasing, without drivers
7523	Parking lots	7521	Automobile parking
7525	Parking structures		
7531	Top and body repair shops	7532	Top, body, and upholstery repair and paint shops
7535	Paint shops		
7539	Automotive repair shops, nec		
	Motor vehicle exhaust systems repair shops	7533	Motor vehicle exhaust systems repair shops
	Motor vehicle glass replacement shops	7536	Motor vehicle glass replacement shops
	Motor vehicle transmission repair shops	7537	Motor vehicle transmission repair shops
	Other	7539	Automotive repair shops, nec
7813	Motion picture production, except for television	7812	Motion picture production
7814	Motion picture production for television		

1972/77		1987	
7823	Motion picture film exchanges	7822	Motion picture and tape distribution
7824	Film or tape distribution services		
7932	Billiard and pool establishments	* 7999	Amusement and recreation services, nec (See 7999)
7997	Membership sports and recreation clubs		
	Physical fitness facilities	* 7991	Physical fitness facilities (See 7299, 7999)
	Other	7997	Membership sports and recreation clubs
7999	Amusement and recreation services, nec		
	Museums (commercial)	* 8412	Museums and art galleries (See 8411)
	Botanical and zoological gardens (commercial)	* 8422	Botanical and zoological gardens (See 8421)
	Nonmembership physical fitness facilities	* 7991	Physical fitness facilities (See 7299, 7997)
	Other	* 7999	Amusement and recreation services, nec (See 7932)
8011	Offices of physicians	* 8011	Offices and clinics of Doctors of Medicine (See 8081)
8021	Offices of dentists	* 8021	Offices and clinics of dentists (See 8081)
8049	Offices of health practitioners, nec		
	Offices of podiatrists	8043	Offices of podiatrists
	Other	8049	Offices of health practitioners, nec
8059	Nursing and personal care facilities, nec		
	Intermediate health care facilities	8052	Intermediate health care facilities
	Other	8059	Nursing and personal care facilities, nec
8081	Outpatient care facilities		
	Clinics of physicians	* 8011	Offices and clinics of Doctors of Medicine (See 8011)
	Clinics of dentists	* 8021	Offices and clinics of dentists (See 8021)
	Kidney dialysis centers	8092	Kidney dialysis centers
	Specialty outpatient clinics	8093	Specialty outpatient clinics, nec

* part

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1972/77		1987	
8091	Health and allied services, nec		
	Home health care agencies	8082	Home health care agencies
	Other	8099	Health and allied services, nec
8111	Legal services	* 8111	Legal services (See 6611)
8241	Correspondence schools	* 8249	Vocational schools, nec (See 8249)
8249	Vocational schools, nec	* 8249	Vocational schools, nec (See 8241)
8321	Individual and family social services	* 8322	Individual and family social services (See 8399)
8399	Social services, nec		
	Services to individuals and families (e.g., self-help; agencies for retarded, blind, etc.)	* 8322	Individual and family social services (See 8321)
	Other	8399	Social services, nec
8411	Museums and art galleries, noncommercial	* 8412	Museums and art galleries (See 7999)
8421	Botanical and zoological gardens, noncommercial	* 8422	Botanical and zoological gardens (See 7999)
8911	Engineering, architectural, and surveying services		
	Engineering services	8711	Engineering services
	Architectural services	8712	Architectural services
	Surveying services	8713	Surveying services
8922	Noncommercial research organizations	8733	Noncommercial research organizations
8931	Accounting, auditing, and bookkeeping services	8721	Accounting, auditing, and bookkeeping services

nec = not elsewhere classified

* part

Principles and Procedures for the Review of the SIC

A. Introduction

The Standard Industrial Classification (SIC) is a system for classifying establishments by type of economic activity. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments; and (2) to promote uniformity and comparability in the presentation of statistical data describing the economy. The SIC is used by agencies of the U.S. Government that collect or publish data by industry. It is also widely used by state agencies, trade associations, private businesses, and other organizations.

The SIC system is designed for statistical purposes. Although the classification is also used for various administrative purposes, the requirements of Government agencies that use it for nonstatistical purposes play no role in the development and revision of the SIC.

B. Principles of Classification

Following are the basic principles underlying the SIC classification (described more fully in the SIC Manual):

(1) The classification is organized to reflect the structure of the U.S. economy. It does not follow any single principle, such as end use, nature of raw materials, product, or market structure.

(2) The unit classified is the establishment. An establishment is an economic unit that produces goods or services—for example, a farm, mine, factory, or store. In most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity. An establishment is not necessarily identical with a company or enterprise.

(3) Each establishment is classified according to its primary activity. Primary activity is determined by identifying the predominant product or group of products produced or handled, or service rendered.

(4) An industry (4-digit SIC) consists of a group of establishments primarily engaged in the same activity. To be recognized as an industry, such a group of establishments must meet certain criteria of economic significance, as described in Section D.

C. Purpose and Scope of Review

The SIC is reviewed and revised periodically to reflect the changing structure of the U.S. economy. Revisions take account of technological change and the economic growth and decline of individual industries. They may include changes in industry detail or coverage, improvements to industry definitions, or the clarification of the classification of individual activities.

Review and revision of the SIC are the responsibility of the Office of Management and Budget, which has developed these principles and procedures with the assistance of the Technical Committee on Industrial Classification. Committee members include the following agencies: Office of Management and Budget (Chair), Board of Governors of the Federal Reserve System, Bureau of Economic Analysis, Bureau of Labor Statistics, Bureau of Mines, Bureau of the Census, Department of Transportation, Economic Research Service (USDA), Federal Emergency Management Agency, Federal Trade Commission, Internal Revenue Service, International Trade Administration, Interstate Commerce Commission, National Center for Health Statistics, National Science Foundation, Small Business Administration, Social Security Administration, and U.S. International Trade Commission.

Proposals for revision are accepted from Federal agencies and the public and are reviewed by the Technical Committee on Industrial Classification. Final decisions on revisions will be made by the Office of Management and Budget based on the recommendations of the Technical Committee.

Persons considering submitting proposals should note that it is not always necessary to revise the SIC to obtain more detailed statistical information. If statistical information is needed for specific products rather than establishments, it may be more appropriate to seek changes in the level of detail of data collected and published by individual Government agencies than to change the SIC.

D. Guidelines for Reviewing Proposed Changes in the Classification

Proposals for revisions to the SIC will be reviewed based on the following considerations:

(1) Structure of the Classification. The overall structure is a general-purpose framework that can have its 4-digit detail rearranged for various analytical purposes. Proposed changes should be designed to fit within this structure with minimum disruption to the existing configuration.

For example, a change which consists of breaking one 4-digit industry into two or more within the same 3-digit industry group is easier and less expensive than a change which affects 3-digit groups, particularly if this in turn affects the 2-digit or Divisional groupings. Changes to the basic 2- or 3-digit structure require exceptionally strong justification showing that they reflect changes in the economy and not simply a different view of what the basic structure should be.

(2) Historical Continuity. Maintaining the continuity of major Federal statistical series will be an important consideration in evaluating proposed changes in the SIC. Changes that would result in weakening principal economic indicators or that would necessitate costly backward revision of time series will require very strong justification on other grounds in order to be acceptable.

(3) Economic Significance. To be recognized as an industry, a group of establishments must have economic significance measured in terms of numbers of establishments, employment, payroll, value added, and volume of business (value of shipments or receipts). The following scoring system is used to evaluate economic significance for SIC purposes. Values for the "average" industry are calculated by Division (manufacturing, construction, retail trade, etc.) for each of the five factors. These values are used in evaluating the economic significance of a proposed SIC industry by comparing the Division averages to the values for the proposed industry, as illustrated below. For each factor, a proposed industry is assigned points. The number of points is equal to the value of the factor for a proposed industry as a percentage of the value for the Division average. The number of employees and value added are considered more significant and reliable measures of industry importance and are therefore given double weight when calculating the final score. The table below presents calculations (based on 1977 data) for a proposed potato chip and similar snack industry in Division D (Manufacturing). The final score for this industry is 59 (column E total divided by column D total).

	Pro-posed industry (A)	Average industry (B)	Number of points (A as percent of B) (C)	Weights (D)	Weight-ed points (C×D) (E)
Number of establishments	230	796	29	1	29
Number of employees (thousands)	26.7	43.0	62	2	124
Payroll (million dollars)	301.3	584.0	52	1	52
Value added (million dollars)	934.5	1,295.0	72	2	144
Shipments (million dollars)	1,929.0	3,008.0	64	1	64

In general, a score of at least 20 is needed to warrant recognition as a new SIC industry. However, an existing SIC industry will be retained if it has a score of at least 10.

The 1987 review will be based on the most recent data available. In cases where data are not available for all five factors, scores will be weighted averages of those factors for which data are available.

(4) Specialization and Coverage. In order that an industry properly reflect the activity being measured, the output of the industry should: (1) Consist mainly of the goods or services defining the industry, and (2) account for the bulk of the specified goods and services provided by all establishments. For manufacturing industries these factors are measured by the primary product specialization ratio and the coverage ratio.

The primary product specialization ratio indicates how much the establishments in a given industry concentrate on the activities that define the industry. This ratio is calculated by dividing the value of the primary product shipments of the establishments classified in the industry by the value of all shipments (both primary and secondary) for the same establishments.

The coverage ratio indicates the volume of shipments of products which define the industry that are accounted for by establishments classified in the industry. The coverage ratio is the proportion of products defining the industry shipped by establishments classified in the industry to total shipments of these products by all manufacturing establishments. For example, establishments classified in 1977 as primarily producing transformers (SIC 3612) had shipments of $2051.1 million for transformers, total shipments for all products of $2160.6 million, and a resulting specialization ratio of 95. Total shipments of transformers by all industries were $2117.8 million, yielding a coverage ratio of 97.

A 4-digit SIC industry should have a minimum primary product specialization ratio of 80. The minimum for the coverage ratio is generally 70 for establishments producing for commercial sale. This may be reduced somewhat for industries having significant interplant transfers or production for use within the same establishment (e.g., Gray Iron Foundries, Iron and Steel Forgings) or for industries producing the same final product as another industry but made from materials that are at a more advanced stage of manufacture (e.g., Blended and Prepared Flour). Where existing industries have relatively few large plants producing a wide range of products, the coverage ratio criterion often precludes the establishment of further industry detail.

(5) Other Statistical Considerations. In general, proposed new industries should meet each of the criteria of economic significance, specialization and coverage. However, industries that substantially exceed one or two of the criteria and fall slightly short on the others also may be accepted in some cases. For example, industries which are not yet large enough, but are growing rapidly may be accepted based on current size and evidence of growth by a specified time. Proposed industries which meet the criteria only marginally should also show substantial current growth and likelihood of future growth. Special considerations will be given to new industries and industry changes that increase comparability of the SIC with the United Nation's International Standard Industrial Classification and that increase the capability for assessing the impact of international trade on domestic industries such as increasing possibilities for comparability with the Customs Cooperation Council's Harmonized System.

Proposed new industries will be evaluated to make sure they provide for relatively stable classification of individual establishments. In some fields of activity, it is normal for the primary activity, if defined restrictively, to fluctuate from year to year. For example, shipbuilding establishments may work on defense contracts one year and on civilian contracts the next. Or establishments may perform primarily new work one year and rebuilding another. Separate industries will not be created where the distinction would result in industry shifts for establishments that are still engaged in similar industrial activity.

In some cases a proposed industry may meet all previously stated criteria but be rejected because the remaining part of the existing industry is too small for separate industry status and cannot logically be merged into other industries.

(6) Administrative Considerations. Cost to the Government, as well as cost and burden to businesses that furnish data to the Government, will be major considerations in evaluating proposed changes in the SIC. Revisions that involve major changes in record-keeping by business or in Government agencies' procedures, records, and data series will require very strong justification to be considered.

The ability of Government agencies to classify, collect, and publish data on the proposed basis will also be taken into account. Proposed changes must be such that they can be applied by agencies within their normal processing operations.

Proposed industries must also include a sufficient number of companies so that industry data can be published without disclosing information about the operations of individual firms.

[FR Doc. 86-22246 Filed 9-30-86; 8:45 am]
BILLING CODE 3110-01-M

VOL 51 ISS 190 OCT 1 1986 UMI

federal register

Wednesday
October 1, 1986

Part VII

Environmental Protection Agency

40 CFR Part 262

Hazardous Waste Management System; Standards for Generators of Hazardous Waste; Final Rule

VOL 51 ISS 190 OCT 1 1986 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[SWH-FRL 3074-6]

Hazardous Waste Management System; Standards for Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 24, 1986, the U.S. Environmental Protection Agency (EPA) promulgated final regulations for generators of between 100 kg and 1000 kg of hazardous waste in a calendar month (i.e., generators of 100–1000 kg/mo) under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). At that time, the Agency also requested public comment on whether these generators should be subject to the waste minimization certification contained on the Uniform Hazardous Waste Manifest. Today's action explains the Agency's decision to modify the waste minimization certification for small quantity generators of 100-1000 kg/mo and revises the Uniform Hazardous Waste Manifest to reflect this modification. In addition, today's notice makes a technical correction to the July 15, 1985 Final Codification Rule affecting the waste minimization provisions. Finally, this notice extends the OMB expiration date on the manifest form and stipulates a new OMB form number.

EFFECTIVE DATE: September 22, 1986.

ADDRESSES: The public docket for this rulemaking is located in Room S–212–C, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA RCRA Docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling Mia Zmud at 475–9327 or Kate Blow at 382–4675. A maximum of 50 pages of material may be copied from any regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, (800) 424–9346, (in Washington, DC, call 382–3000), or the Small Business Hotline, (800) 368–5888. For information on specific aspects to today's notice, contact Robert Axelrad, (202) 382–4761, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Waste Minimization Manifest Certification

A. Final Codification Rule

EPA amended its existing hazardous waste regulations on July 15, 1985, to incorporate a number of provisions contained in the HSWA of 1984 which had immediate or short term effects on the regulated community (50 FR 28720). Among the requirements for generators of hazardous waste contained in this 'Final Codification Rule' were the provisions of section 3002(b) of HSWA that a generator certify to the following on the Uniform Hazardous Waste Manifest:

> I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment.

This certification statement was contained on a revised Uniform Hazardous Waste Manifest Form and instructions published as the Appendix to Part 262. The preamble to the codification rule explained that the certification statement did not apply to small quantity generators at that time because they were not yet subject to the section 3002 generator requirements, including the waste minimization certification requirement. With respect to large quantity generators, (*i.e.*, those persons who generate greater than 1000 kg of hazardous waste in a calendar month or who accumulate greater than 1000 kg at any time), the preamble emphasized the self-implementing nature of the certification requirement and the fact that the Agency would not second guess generators' determinations of what a waste minimization 'program' should consist of or what methods of waste minimization or management were ultimately determined by the generator to be 'economically practicable'. (50 FR 28733)

B. Small Quantity Generator Rules

In a **Federal Register** notice accompanying the March 24, 1986 small quantity generator final regulations (51 *FR* 10146), the Agency explained that since it had not specifically addressed the issue of waste minimization in the August 1, 1985 proposed rules for small quantity generators, it was requesting public comment on whether generators of 100-1000 kg/mo should be required to certify to waste minimization on the Uniform Hazardous Waste Manifest. As explained in the March 24, 1986 proposal, the requirement that generators of 100–1000 kg/mo certify to waste minimization would automatically go into effect on September 22, 1986, the date these generators become subject to the section 3002 generator standards, unless the Agency acted to exempt them.

At the time, EPA proposed that generators of 100–1000 kg/mo be required to certify to waste minmization since the Agency did not believe that the requirement posed an unreasonable burden and because the Agency believed that protection of human health and the environment would be enhanced. The Agency requested public comment as to whether the waste minimization certification requirement would pose undue administrative burden and whether generators of 100–1000 kg/mo should be exempted from the requirement. Congress has directed EPA to consider the impacts on small business in developing regulations for this group of generator and to specifically consider reducing the administrative and paperwork burdens whenever possible, consistent with protection of human health and the environment. In addition, the legislative history accompanying the waste minimization provisions indicates that Congress did not intend the manifest certification to result in significant paperwork burdens for small quantity generators. See S. Rep. No. 284, 98th Cong., 1st sess. 67 (1983).

As explained in the following section, EPA has decided not to exempt the small quantity generators of 100–1000 kg/mo from the waste minimization manifest requirements. However, for the reasons discussed below, the Agency is modifying the certification statement as it applies to these generators to require only a good faith effort to minimize waste generation and selection of what they believe to be the best available and affordable treatment, storage, or disposal alternative.

C. Response to Comments

In the March 24, 1986 proposal, EPA indicated that it believed it appropriate to allow the waste minimization certification requirement to take effect on September 22, 1986, along with the other requirements for small quantity generators, since the requirement, in the Agency's view, would impose a negligible burden. As explained at that time, the certification provision does not impose any specific regimen; rather, it directs the generator to review his waste generation and management practices and decide whether they are the most environmentally protective, given his individual economic and waste management circumstances. The Agency explicitly stated that it would not expect generators to maintain any records related to the minimization certification, and that no civil or criminal penalties, nor other Agency action, would be imposed under RCRA on generators for failing to take a specific action related to waste minimization.

Nevertheless, a number of commenters on the waste minimization proposal objected to application of the requirement to small quantity generators and asserted that an exemption was warranted for a veriety of reasons. Many commenters argued that the certification requirement imposed greater burden on small businesses than indicated in the proposal. Specifically, some commenters were concerned that a small business was being asked to certify that they had minimized their waste generation without actually having taken any substantive steps to do so. Other commenters expressed concern over the use of the phrase "a program in place" in the certification statement as indicating a need for far more substantive and formal actions than indicated in the preamble. Failure to be able to demonstrate that such a program was "in place" it was reasoned, would subject these generators to significant potential obligations and liabilities. Other commenters advanced the argument that small quantity generators could do little to minimize their waste generation and that they lacked the financial and technical capability to implement a meaningful waste minimization program. Several commenters also argued that economic necessity would dictate that these generators minimize the amount of hazardous waste requiring disposal and that the certification statement would only serve to confuse them.

The Agency appreciates the concern expressed with respect to the wording of the waste minimization statement to require that generators "have a program in place to minimize waste generation. This statement appears to direct generators to establish a formal system for waste minimization, and from many commenters' perspective, such a requirement would be burdensome because of the attendent need to be able to demonstrate that such a program exists. Some commenters were further concerned that their waste generation did not lend itself to substantial minimization and thus, they would be certifying to having a 'program' in place where none was truly present. The Agency's statements that it would not mandate what a 'program' must consist of only served to heighten commenters' uncertainty as to what is expected of them.

The Agency strongly supports the concept of waste minimization and believes that attention to opportunities for minimizing waste generation is in everyone's interest. Therefore, the Agency is not exempting small quantity generators from the waste minimization statement. However, the Agency also believes that the same purpose can be accomplished with a modified certification statement that is clearer and less intimidating to small businesses. Therefore, the Agency is modifying the waste minimization certification to read as follows:

> If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment OR if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method available to me and which I can afford.

The Agency recognizes that the certification requirement may impose some short term costs on generators as they seek to identify waste minimization options and perhaps modify their waste management practices, if appropriate. However, the Agency does not agree that the waste minimization certification imposes an unreasonable burden for small quantity generators and that an exemption from the requirement is warranted. First, the certification only asks that generators make a good faith effort to minimize their hazardous wastes. In this regard, the Agency intends only for generators to consider the waste minimization options available to them. In addition, the Agency intends to make information available to improve generators' understanding of waste minimization opportunities. For example, EPA is sponsoring, in cooperation with the Public Broadcasting Service (PBS), a national teleconference on the new small quantity generator regulations which will devote a full half hour to the practical benefits and concepts of waste minimization. (The teleconference is scheduled to be telecast October 22, 1986.) EPA is also completing work on a Report to Congress that will describe a variety of waste minimization techniques and options. Second, as discussed in both of the Agency's public notices on this issue (50 FR 28733, July 15, 1985 and 51 FR 10177, March 24, 1986), no specific actions either with respect to process or management changes or the keeping of records demonstrating waste minimization are required of small quantity generators of 100–1000 kg/mo. Furthermore, generators are only expected to take actions which they deem to be affordable. Thus, a generator is not expected to take any actions to minimize waste generation or modify their waste management practices where it is not economically practicable to do so, particularly where the firms' economic viability may be damaged. Finally, many small quantity generators that take steps to minimize their waste generation are likely to benefit from such efforts since minimizing their waste generation could reduce their waste management costs as well as future liability. It should also be noted that EPA recognizes that many small businesses have already taken those actions which are available to them to reduce their waste generation and move to ward better waste management practices. For these generators, waste minimization has already been accomplished and the signatory requirement on the manifest should, therefore, be of no consequence.

Some commenters argued that the Agency had not gone far enough in its waste minimization requirements, and that small quantity generators should be required to develop and implement a 'program' for waste minimization. The Agency agrees that all regulated generators of hazardous waste should be subject to the requirement to minimize their waste generation; however, EPA believes that modifying the certification for small quantity generators in this manner is consistent with the statutory requirements, including the Congressional directive to minimize impacts on small business while still providing the necessary degree of protection of human health and the environment. See HSWA section 3001(d). Today's modification will achieve this goal by reducing the perceived impacts of the minimization statement on small quantity generators while furthering the national policy of minimizing hazardous waste generation by requiring these generators to consider waste minimization options.

II. Technical Corrections to the Uniform Hazardous Waste Manifest Form

A. Wording Change

In establishing the language for the manifest waste minimization certification in the July 15, 1986, codification rule, the Agency

inadvertently omitted wording contained in the statute which allows the generator to select the *practicable* (emphasis added) method of treatment, storage, or disposal currently available to them. Since the Agency never intended to covey a meaning different from the statutory language, this amendment is simply intended to bring the waste minimization certification statement for large quantity generators into conformance with the statute.

B. Extension of OMB Manifest Form Number

The Agency is also revising the Uniform Hazardous Waste Manifest (EPA Form 8760-22) to include a new OMB Number (2050-0039) and expiration date (9-30-88).

C. Manifest Certification Signature

Members of the regulated community have asked whether it is permissable for officers or employees of generator companies to sign the manifest certification "on behalf of" the company or other entity that is deemed to be the generator. EPA regulations require that the generator sign the generator certification by hand (40 CFR 262.23(a)(1)), but do not specify who must sign the certification if the generator is not an individual. The regulations define a generator as "any *person* (emphasis added), by site, whose act or process produces hazardous waste. . . . or whose act first causes a hazardous waste to become subject to regulation". (40 CFR 260.10) The term 'person' includes corporations, partnerships, and other legal entities for which some individual must sign the certification. EPA did not intend by the § 262.23(a)(1) handwritten signature requirement to impose personal liability on the individual who actually signs the certification. The question of whether an officer or employee is held responsible for the generator requirements will depend on the facts and circumstances of individual cases and not solely on whether such person signed the manifest.

In order to clarify that employees or other individuals may sign the manifest certification for a generator who is a legal entity, such as a corporation, EPA is revising Item 16 of the manifest instructions to state that the handwritten signature may be made "on behalf of" the generator.

III. Executive Order 12291—Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement to perform a Regulatory Impact Analysis. Since today's notice makes only minor modifications to the Uniform Hazardous Waste Manifest and does not impose any substantive regulatory requirements on the regulated community, I have determined that this notice is not a major rule subject to the Regulatory Impact Analysis requirements of Executive Order 12291.

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This final rule will not impose any information collection requirements.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis for all final rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Today's final rule will not result in significantly increased compliance costs for 100-1000 kg/mo generators. This rule only asks these generators to make a good faith effort to minimize their waste generation, and under no circumstances requires them to incur costs which may in any way impair their economic viability.

Therefore, I hereby certify, pursuant to 5 U.S.C. 601(b), that this final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 262

Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste minimization.

Dated: September 22, 1986.

Lee M. Thomas,

Administrator.

PART 262—[AMENDED]

For the reasons set forth in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937).

2. The Uniform Hazardous Waste Manifest Form in the Appendix to Part 262 is revised as follows:

3. The Appendix to Part 262 is further amended by adding the following paragraph to Item 16 of the instructions after the first paragraph and preceding the Note:

* * * * *

Item 16: Generator's Certification

* * * * *

Generators may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator certification.

* * * * *

Please print or type. *(Form designed for use on elite (12-pitch) typewriter.)*

Form Approved. OMB No. 2050-0039. Expires 9-30-88

UNIFORM HAZARDOUS WASTE MANIFEST

1. Generator's US EPA ID No. | Manifest Document No. | 2. Page 1 of | Information in the shaded areas is not required by Federal law

3. Generator's Name and Mailing Address

4. Generator's Phone ( )

5. Transporter 1 Company Name | 6. US EPA ID Number

7. Transporter 2 Company Name | 8. US EPA ID Number

9. Designated Facility Name and Site Address | 10. US EPA ID Number

GENERATOR

11. US DOT Description *(Including Proper Shipping Name, Hazard Class, and ID Number)*	12. Containers No.	Type	13. Total Quantity	14. Unit Wt/Vol	Waste No.
a.					
b.					
c.					
d.					

15. Special Handling Instructions and Additional Information

16. **GENERATOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations

If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name | Signature | Month Day Year

TRANSPORTER

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

18. Transporter 2 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

FACILITY

19. Discrepancy Indication Space

20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.

Printed/Typed Name | Signature | Month Day Year

EPA Form 8700-22 (Rev. 9-86) Previous editions are obsolete.

Please print or type. (Form designed for use on elite (12-pitch) typewriter.) Form Approved. OMB No. 2050-0039. Expires 9-30-88

UNIFORM HAZARDOUS WASTE MANIFEST (Continuation Sheet)	21. Generator's US EPA ID No.	Manifest Document No.	22. Page	Information in the shaded areas is not required by Federal law.
23. Generator's Name			L. State Manifest Document Number	
			M. State Generator's ID	
24. Transporter ___ Company Name	25. US EPA ID Number		N. State Transporter's ID	
26. Transporter ___ Company Name	27. US EPA ID Number		O. Transporter's ID	
			P. State Transporter's ID	

GENERATOR

28. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)	29. Containers No.	Type	30. Total Quantity	31. Unit Wt/Vol	R. Waste No.
a.					
b.					
c.					
d.					
e.					
f.					
g.					
h.					
i.					

S. Additional Descriptions for Materials Listed Above

32. Special Handling Instructions and Additional Information

TRANSPORTER

33. Transporter ___ Acknowledgement of Receipt of Materials		Date
Printed/Typed Name	Signature	Month Day Year
34. Transporter ___ Acknowledgement of Receipt of Materials		Date
Printed/Typed Name	Signature	Month Day Year

FACILITY

35. Discrepancy Indication Space

EPA Form 8700-22A (Rev. 9-86) Previous edition is obsolete.

federal register

Wednesday
October 1, 1986

Part VIII

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1260

Beef Promotion and Research; Interim Final Rule

VOL
51
ISS
190
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1986
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

Beef Promotion and Research

AGENCY: Agricultural Marketing Service.

ACTION: Interim Final Rule with request for comments.

SUMMARY: This rule implements the Beef Promotion and Research Order, which established a national, industry-funded and -operated beef promotion and research program. This rule: (1) Identifies those States in which State brand inspectors will collect assessments; (2) simplifies the collection and remittance process; (3) establishes a form of certification for exempt transactions; (4) identifies the qualified State Beef Councils certified by the Cattlemen's Beef Promotion and Research Board; and (5) effectuates the recordkeeping requirements of the Beef Promotion and Research Order as approved by the Office of Management and Budget.

DATES: Effective September 29, 1986. Comments must be received by October 31, 1986.

ADDRESS: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610–S, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447–2650.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Final Rule-Beef Promotion and Research Order (published July 18, 1986), (51 FR 26132).

This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512–1, and is hereby classified as a nonmajor rule because the annual impact will be less than $100 million. Accordingly, a regulatory impact analysis is not required. This action was also reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 et seq.) provides for the establishment of a coordinated program of promotion and research designed to strengthen the beef industry's position in the marketplace and to maintain and expand foreign and domestic markets and uses for beef and beef products. This program will be financed by assessments on domestic and imported cattle and on imported beef and beef products. Pursuant to the Act, a Beef Promotion and Research Order has been issued and assessments will begin on October 1, 1986. The Act and the order require that persons making payments to producers for cattle shall collect an assessment from those producers and remit such assessment to the Board or the qualified State beef council within the collecting person's State. It is also provided that each importer of cattle, beef or beef products shall pay an assessment in the manner prescribed by the order issued by the Secretary.

This rule: (1) Identifies those States in which State brand inspectors will collect assessments; (2) clarifies and simplifies the collection and remittance process; (3) establishes a form of certification for exempt transactions; (4) identifies qualified State beef councils certified by the Cattlemen's Beef Promotion and Research Board, and (5) effectuates the recordkeeping requirements of the order.

The effect of the order upon small entities was discussed in the July 18, 1986, issue of the **Federal Register** (51 FR 26132) and its was determined that the order would not have a significant effect on a substantial number of small entities. This rule merely implements the order provisions in the manner provided for therein. No new additional requirements are imposed. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

The Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35) seeks to minimize the paperwork burden imposed by the Federal Government while maximizing the utility of the information requested. In March 1983, the Office of Management and Budget (OMB) implemented this Act by adopting procedures contained in Part 1230 of 5 CFR Chapter III. In accordance with these procedures, the information collection request in this Part has been approved by OMB and has been assigned OMB Control No. 0581–0152.

Background

The Beef Promotion and Research Act (Title XVI, Subtitle A, of the Food Security Act of 1985) approved December 23, 1985, authorizes the establishment of a national beef promotion and research program. The program will be funded by an assessment of one dollar ($1) per head of cattle sold in the United States, and an equivalent assessment on imported cattle, beef, and beef products.

The final order establishing a beef promotion and research program was published in the July 18, 1986, issue of the **Federal Register**. The order requires that the collecting person remit assessments to qualified State beef councils or to the Board if the State does not have a qualified State beef council. The order further provides that producers participating in such qualified State beef promotion and research programs shall be entitled to a credit of up to 50 cents per head for participating in such a program. At its initial meeting, the Board reviewed 40 applications from State beef promotion entities and certified as qualified all 40 State beef promotion entities pursuant to § 1260.181 of the order. These qualified State beef councils are listed in § 1260.315 of these rules and regulations. The addresses of the qualified State beef councils will be as published in a separate notice which will be updated from time to time as necessary. The addresses of Qualified State Beef Councils may be obtained from the Board. In the 10 States which do not have qualified State beef councils, collecting persons in those States are required by the order to remit the assessments collected to the Board.

During its meeting the Board developed and recommended the adoption of rules and regulations to implement the collection of assessments pursuant to the order. Those recommendations are adopted herein.

The order defines a collecting person as the person making payment to a producer for cattle, or any other person who is responsible for collecting and remitting an assessment pursuant to the Act, the order and regulations prescribed by the Board and approved by the Secretary. There are marketing situations in which the collection and remittance process would be facilitated if a person other than the person making payment to the producer were deemed the collecting person. Therefore, the Board has determined that the use of brand inspectors in those States and parts of States where brand inspectors are authorizes by State law to collect assessments under existing State beef promotion and research programs would be an appropriate and expeditious means of collecting and remitting assessments. These regulations authorize the brand inspectors in the States listed herein to serve as the collecting person in those transactions where assessments are due under the order.

Another marketing situation addressed by the Board involved deliveries on futures contracts. In these transactions there are several persons

who could be considered as making payment to the producer within the meaning of the order. The Board has determined that the collection and remittance process would be most effective and efficient if the commission firm or market agency representing the seller in the delivery were deemed the collecting person. Such persons will already be involved and familiar with the collection procedure. Accordingly, that recommendation is adopted.

The Board also recommended a clarification of § 1260.172(a)(2) of the order, which specifies that "any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall remit to a qualified State beef council or to the Board an assessment on such cattle at the rate of one dollar ($1) per head of cattle or the equivalent thereof." The order did not specify when the assessment was due. It was the intent of the order that the assessment on such cattle shall be due upon the slaughter of such cattle and that procedure is specified herein.

Section 1260.172 of the order provides that collecting persons shall remit assessments to the qualified State beef councils in the State where the cattle originated prior to sale, or to the Board if there is no qualified State beef council in that State, unless the Board recommends and the Secretary approves a modification of that process. The Board has recommended that collecting persons be required to remit assessments to the qualified State beef council in the State in which the collecting person resides or to the Board if the collecting person resides in a State which does not have a qualified State beef council. This method of handling assessment remittance was recommended because the qualified State beef councils are in a better position to ensure effective coordination and distribution of assessments to the appropriate qualified State beef council. Consequently, collecting persons will be required to remit assessments to the council of the State within which they reside and will not be required to remit assessments separately to each State in which the cattle originated prior to sale.

The Board also recommended the form of the certification which must be used to claim that a transaction is exempt from an assessment under the order because ownership of such cattle was acquired merely to facilitate the transfer of such ownership to a third party. This certification will relieve the seller of such cattle of the responsibility for paying an additional $1 per head assessment upon the resale of such cattle and would provide the collecting person with documented evidence that an assessment is not due.

It is hereby found and determined that it is impractical, unnecessary and contrary to the public interest to delay the effective date of the issuance of these rules for 30 days after their publication in the **Federal Register**. In order to carry out the timetable for implementation of the order, it is necessary that this interim final rule be effective on September 29, 1986.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Marketing agreements, Meat and meat products, Beef and beef products.

Title 7 of the CFR, Part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for Part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

Subpart B [Redesignated as Subpart C]

2. Present Subpart B is redesignated Subpart C.

3. A new Subpart B is added as follows:

Subpart B—Rules and Regulations

Sec.

1260.301 Terms defined.
1260.310 Domestic assessments.
1260.311 Collecting persons for purposes of collection of assessments.
1260.312 Remittance to the Cattleman's Board or qualified state beef council.
1260.313 Document evidencing payment of assessments.
1260.314 Certification of non-producer status for certain transactions.
1260.315 Qualified state beef councils.
1260.316 Paperwork Reduction Act assigned number.

Subpart B—Rules and Regulations

§ 1260.301 Terms defined.

As used throughout this subpart, unless the context otherwise requires, term shall have the same meaning as the definition of such terms as appears in Subpart A of this part.

§ 1260.310 Domestic assessments.

(a) A $1.00 per head assessment on cattle sold shall be paid by the producer of the cattle in the manner designated in § 1260.311.

(b) If more than one producer shares the proceeds received for the cattle sold, each such producer is obligated to pay that portion of the assessments which are equivalent to his proportionate share of the proceeds.

(c) Failure of the collecting person to collect the assessment on each head of cattle sold as designated in § 1260.311 shall not relieve the producer of his obligation to pay the assessment to the appropriate qualified State beef council or the Cattlemen's Board as required in § 1260.312.

§ 1260.311 Collecting persons for purposes of collection of assessments.

Collecting persons for purposes of collecting and remitting the $1.00 per head assessment shall be:

(a) Except as provided in paragraphs (b) and (c) of this section, each person making payment to a producer for cattle purchased in the United States shall collect from the producer an assessment at the rate of $1.00 per head of cattle purchased and shall be responsible for remitting assessments to the qualified State beef council or the Cattlemen's Board as provided in § 1260.312. The collecting person shall collect the assessment at the time the collecting person makes payment or any credit to the producer's account for the cattle purchased. The person paying the producer shall give the producer a receipt indicating payment of the assessment.

(b) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, shall be responsible for remitting to the qualified State beef council or the Cattlemen's Board pursuant to § 1260.312, an assessment on such cattle at the rate of $1.00 per head of cattle or the equivalent thereof. The obligation to remit the assessment shall attach upon slaughter of the cattle, and the producer responsible for remitting the assessment shall remit the assessment in the manner provided in § 1260.312. For the purpose of this subpart, a producer marketing cattle of his own production in the form of beef or beef products shall be considered a collecting person.

(c) In the States listed below there exists a requirement that cattle be brand inspected by State authorized inspectors prior to sale. In addition when cattle are sold in certain sales transactions in those States, these State authorized inspectors are authorized to, and shall, collect assessments due pursuant to this subpart as a result of the sale of cattle. In those transactions in which inspectors are responsible for collecting assessments, the person paying the

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producer shall not be responsible for the collection and remittance of such assessments. The following chart establishes the party responsible for collecting and remitting assessments in these States:

State	Sales through auction market	Sales to a slaughter/packer	Sales to a feedlot	Sales to an order buyer/dealer	Country sales*
Arizona	CP	CP	CP	B	B
California	CP	CP	B	B-CP	B
Colorado	CP	B	B	B	B
Idaho	CP	CP	B	B	B
Montana	CP	B	B	B	B
Nebraska	CP	CP	B-CP	B-CP	B-CP
Oregon	CP	B-CP	B	B	B
New Mexico	CP	B-CP	B-CP	B-CP	B-CP
Utah	CP	B-CP	B	B	B
Washington	CP	CP	B	B-CP	B
Wyoming	CP	B	B	B	B

Key:
B—Brand inspector has responsibility to collect and remit assessments due.
CP—The person paying the producer shall be the collecting person and has responsibility to collect and remit the assessments due.
B-CP—Brand inspector has responsibility to collect, however when there has not been a physical brand inspection the person paying the producer shall be the collecting person and has the responsibility to collect and remit assessments due.
*—For the purpose of this subpart, the term "country sales" shall include any sales not conducted at an auction or livestock market and which is not a sale to a slaughter/packer, feedlot or an order buyer or dealer.

(d) For cattle delivered on futures contracts, the commission firm or the market agency representing the seller in the delivery of cattle shall be the collecting person.

(e) In a case where a producer sells cattle as part of a custom slaughter operation, the producer shall be the collecting person in the same manner as if the cattle were slaughtered for sale.

§ 1260.312 Remittance to the Cattlemen's Board or qualified state beef council.

Each person responsible for the collection and remittance of assessments shall transmit assessments and a report of assessments to the qualified State beef council of the State in which such person resides or if there is no qualified State beef council in such State, then to the Cattlemen's Board as follows:

(a) *Reports.* Each collecting person shall make reports on forms made available or approved by the Cattlemen's Board. Each collecting person shall prepare a separate report for each reporting period. Each report shall be mailed to the qualified State beef council of the State in which the collecting person resides, or its designee, or if there exists no qualified State beef council in such State, to the Cattlemen's Board. Each report shall contain the following information:

(1) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transactions;

(2) The amount of assessment remitted;

(3) The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by one dollar; and

(4) The date any assessment was paid.

(b) *Reporting periods.* Each calendar month shall be a reporting period and the period shall end at the close of business on the last business day of the month.

(c) *Remittances.* The remitting person shall remit all assessments to the qualified State beef council or its designee, or, if there is no qualified State been council, to the Cattlemen's Board at P.O. Box 27–275, Kansas City, Missouri 64180–0001, with the report required in paragraph (a) of this section not later than the 15th day of the following month. All remittances sent to a qualified State beef council or the Cattleman's Board by the remitting persons shall be by check or money order payable to the order of the qualified State beef council or the Cattlemen's Board. All remittances shall be received subject to collection and payment at par.

§ 1260.313 Document evidencing payment of assessments.

Each collecting person responsible for remitting an assessment to a qualified State beef council or the Board, other than a producer slaughtering cattle of his own production for sale, is required to give the producer from whom he collected an assessment written evidence of payment of the Beef Promotion and Research Assessments. Such written evidence serving as a receipt shall contain the following information:

(a) Name and address of the collecting person.

(b) Name of producer who paid assessment.

(c) Number of head of cattle sold.

(d) Total assessments paid by the producer.

(e) Date.

§ 1260.314 Certification of non-producer status for certain transactions.

(a) The assessment levied on each head of cattle sold shall not apply to cattle owned by a person

(1) If the person certifies that the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee or other service fee; or

(2) If the person:

(i) Certifies that the person acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party,

(ii) Establishes that such cattle were resold not later than 10 days from the date on which the person acquired ownership; and

(iii) Certifies that the assessment levied upon the person from whom the person purchased the cattle, if an assessment was due, has been collected and has been remitted, or will be remitted in a timely fashion.

(b) Each person seeking non-producer status pursuant to § 1260.116 of this part shall provide the collecting person with a Statement of Certification of Non-Producer Status on a form approved by the Board and the Secretary.

(c) A copy of the Statement of Certification of Non-Producer Status shall be forwarded, upon request, by the collecting person to the qualified State beef council or the Cattlemen's Board.

§ 1260.315 Qualified State beef councils.

The following State beef promotion entities have been certified by the Board as qualified State beef councils:

(a) Alabama Cattlemen's Association
(b) Arizona Beef Council
(c) Arkansas Beef Council
(d) California Beef Council
(e) Colorado Beef Council
(f) Florida Beef Council, Inc.
(g) Georgia Beef Board, Inc.
(h) Idaho Beef Council
(i) Illinois Beef Council
(j) Indiana Beef Council
(k) Iowa Beef Cattle Producers Assoc.
(l) Kansas Beef Council
(m) Kentucky Beef Cattle Assoc.
(n) Louisiana Beef Industry Council
(o) Maryland Beef Council
(p) Michigan Beef Industry Commission
(q) Minnesota Beef Council
(r) Mississippi Cattle Industry Board
(s) Missouri Beef Industry Council
(t) Montana Beef Council
(u) Nebraska Beef Industry Development Board
(v) Nevada Beef Council
(w) New Mexico Beef Council
(x) New York Beef Industry Council
(y) North Carolina Cattlemen's Assoc.
(z) North Dakota Beef Commission

(aa) Ohio Beef Council
(bb) Oklahoma Beef Commission
(cc) Oregon Beef Council
(dd) Pennsylvania Beef Council, Inc.
(ee) South Carolina Cattle and Beef Board
(ff) South Dakota Beef Industry Council
(gg) Tennessee Beef Industry Council
(hh) Texas Beef Industry Council
(ii) Utah Beef Council
(jj) Virginia Cattle Industry Board
(kk) Washington State Beef Commission
(ll) West Virginia Beef Industry
(mm) Wisconsin Beef Council
(nn) Wyoming Beef Council

§ 1260.316 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851–0152.

Done at Washington, DC, on September 29, 1986.

James C. Handley,
Administrator, Agricultural Marketing Service.

[FR Doc. 86–22303 Filed 9–30–86; 8:45 am]
BILLING CODE 3410–05–M

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1986

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
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October 16	October 31	November 17	December 1	December 15	January 14
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October 27	November 12	November 26	December 11	December 26	January 26
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CFR ISSUANCES 1986
January–July 1986 Editions and Projected October, 1986 Editions

This list sets out the CFR issuances for the January–July 1986 editions and projects the publication plans for the **October, 1986** quarter. A projected schedule that will include the **January, 1987** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1985–1986 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

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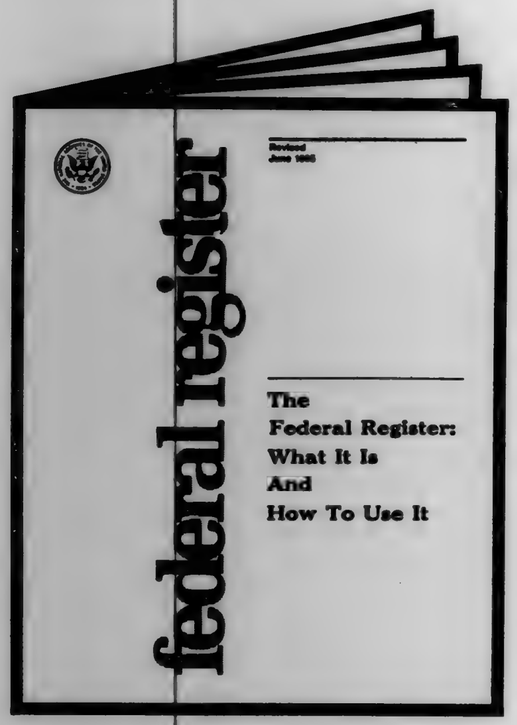
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Pages 35201-35344

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Federal Register
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Thursday, October 2, 1986

Presidential Documents

Title 3—

The President

Proclamation 5535 of September 30, 1986

Fire Prevention Week, 1986

By the President of the United States of America

A Proclamation

The American people must redouble their efforts to prevent fires and their terrible toll in human lives and the destruction of property. There are encouraging signs: Today smoke detectors have been installed in 75 percent of American homes. Our target is 100 percent. National public awareness campaigns have prompted many families to plan and practice means of quick escape if fire strikes in the home. Fire safety concepts, such as "Stop, Drop, and Roll" to smother a clothing fire, are gaining currency. Many homes have installed sprinkler systems to extinguish fires quickly, and more Americans are making it a practice to keep fire extinguishers handy in the home, especially in the kitchen, where many fires start. There is an increased awareness and avoidance of such dangerous practices as smoking in bed, leaving matches where young children can get at them, and overloading electrical circuits.

Despite all these efforts, the annual deaths, injuries, and economic losses from fire are still staggering. We cannot afford any letup in our efforts to prevent fires.

The Federal Emergency Management Agency and its United States Fire Administration are working with all levels of government, the private sector, service organizations, and volunteer groups to launch a national campaign to assure that every home in the United States has a properly installed and maintained smoke detector. The Operation Life Safety program, a consortium of the private sector, the International Association of Fire Chiefs, and the United States Fire Administration, also is making valuable contributions by encouraging the installation of residential sprinkler systems. Over 150 communities have established such programs at last count.

We are very proud of, and grateful to, our Nation's fire fighters: the more than one million men and women, both volunteer and career, who daily risk their own lives to save the lives and property of others. Last year 122 fire fighters gave their lives in the line of duty. They are true heroes to whom we owe a lasting debt of gratitude. I am pleased to know they will be honored at the National Fallen Fire Fighters Memorial Service at the National Emergency Training Center in Emmitsburg, Maryland, on October 12.

I commend the many national, State, and local organizations whose dedicated commitment to fire safety has done so much to reduce our Nation's fire losses in the last decade, and I am grateful for the contributions of the National Fire Protection Association, the originator of Fire Prevention Week, and I congratulate this organization as it celebrates its 90th anniversary this year.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning October 5, 1986, as Fire Prevention Week, and I call upon the people of the United States to plan and actively participate in fire prevention activities during this week and throughout the year.

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IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-22500
Filed 10-1-86; 9:41 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 191
Thursday, October 2, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[Docket No. 86-409]

Revision of Delegation of Authority; Assistant Secretary for Marketing and Inspection Services et al.

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department by delegating to the Assistant Secretary for Marketing and Inspection Services and the Administrator of the Animal and Plant Health Inspection Service the authority to act under section 1458(a)(3) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended [7 U.S.C. 3291(a)(3)].

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Michael A. Lidsky, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5533.

SUPPLEMENTARY INFORMATION:

Background

The National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3101 *et seq.)* was enacted in part to increase cooperation and coordination in the performance of agricultural research by Federal departments and agencies. Specifically, § 1458(a)(3) of NARETPA authorizes the Secretary of Agriculture to "work with developed and transitional countries on food, agricultural, and related research and extension, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists at national and international institutions in such countries".

The Animal and Plant Health Inspection Service (APHIS) is authorized to cooperate with various foreign countries to carry out operations to detect, eradicate, suppress, control, and prevent the spread of communicable diseases of animals and plant pests. The Secretary of Agriculture believes that for APHIS to be able to work with all foreign countries on agricultural and related research with respect to animal and plant health will benefit APHIS' activities both domestic and abroad. Such cooperation by APHIS with foreign countries should include, where appropriate, agreements for the exchange of personnel to study the prevention, diagnosis, control, and eradication of animal diseases and plant pests as well as providing training, technical assistance, and advice to persons engaged in such activities.

Therefore, this document amends the delegations of authority of the Department of Agriculture in 7 CFR Part 2 by delegating to the Assistant Secretary for Marketing and Inspection Services, and the Administrator of APHIS the authority to act under section 1458(a)(3) of NARETPA

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this subject is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, 7 CFR Part 2 is amended as follows:

1. The authority citation of Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953 unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding a new paragraph (b)(39) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(b) * * *

(39) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists of national and international institutions in such countries (7 U.S.C. 3291(a)(3)).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.51 is amended by adding a new paragraph (a)(42) to read as follows:

§ 2.51 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(42) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists at national and international institutions in such countries (7 U.S.C. 3291(a)(3)).

Dated: September 29, 1986.

For Subpart C:

Richard E. Lyng,
Secretary of Agriculture.

Dated: September 29, 1986.

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For Subpart F:
Kenneth A. Gilles,
Assistant Secretary for Marketing and Inspection Services.
[FR Doc. 86-22356 Filed 10-1-86 8:45 am]
BILLING CODE 3410-01-M

Federal Crop Insurance Corporation

7 CFR Part 412

[Doc. No. 3548S]

Public Information

AGENCY: Federal Crop Insurance Corporation. USDA.
ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the regulations governing the availability of information to the public as found in 7 CFR Part 412—Public Information—Freedom of Information. The intended effect of this final rule is to properly identify the individuals from whom information may be sought by the public; to correct the location of the Records Management Officer; and to provide reference to information collection control numbers under the Paperwork Reduction Act. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are unnecessary and contrary to the public interest, and good cause is found for making this rule effective in less than 30 days after publication in the **Federal Register.**

Further, since this rule relates to internal agency management it is exempt from the provisions of Executive Order 12291. E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

Under the Freedom of Information Act (FOIA) affirmative disclosure provisions contained in 5 U.S.C. 552(a) (1) and (2), the Federal Crop Insurance Corporation (FCIC) is required to make certain information on its organization, operations, and regulations available for public use so the public can deal with FCIC knowledgeably and effectively.

In compliance with 5 U.S C 552(a)(1) relative to where and how the public may obtain information, FCIC published a final rule on January 5, 1979, in the **Federal Register** at 44 FR 1365, (7 CFR Part 412—Public Information). The current regulations do not reflect changed titles and locations, nor indicate the Office of Management and Budget (OMB) information collection control numbers issued to FCIC. The regulations as revised and reissued contain these changes.

List of Subjects in 7 CFR Part 412

Administrative practice and procedure; Freedom of Information Act; Availability of information to the public.

Final Rule

Accordingly, under the authority contained in the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues 7 CFR Part 412, Public Information, to read as follows:

PART 412—PUBLIC INFORMATION

Freedom of Information

Sec.
412.1 General statement.
412.2 Public inspection and copying.
412.3 Index.
412.4 Requests for records.
412.5 Appeals.
412.6 OMB control numbers.

Authority: 5 U S.C. 301, 552; 7 CFR 1.1–1.16; 7 U.S.C 1516(b).

§ 412.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR 1.1–1.16, and Appendix A, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern availability of records of the Federal Crop Insurance Corporation (FCIC) to the public.

§ 412.2 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by the FCIC at the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Agriculture Building, U.S Department of Agriculture, Washington, DC, 20250, from 8:15 a.m. to 4:45 p.m., Monday through Friday, or at the office of any FCIC Field Operations Office Director during the regular operating hours of that office. To obtain the addresses of Field Operations Offices, either call or write the Deputy Manager, FCIC, Room 4096, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-6795. When the information desired is not available at a given FCIC location, the FCIC office where the request is received will assist the requester by directing the request to another FCIC office where the information may be obtained. The requester will be informed that the request has been forwarded to the appropriate FCIC office. Except for such information as is generally available to the public, requests should be made in writing and submitted in accordance with 7 CFR 1.3 and 412.4 of this part.

§ 412.3 Index.

5 U.S.C. 552(a)(2) requires that each agency publish, or otherwise make available, a current index of all materials available for public inspection and copying. The FCIC will maintain a current index providing identifying information for the public as to any material issued, adopted, or promulgated by the Corporation since July 4, 1967, and required by section 552(a)(2). Pursuant to the Freedom of Information Act provisions, FCIC has determined that in view of the small number of public requests for such index, publication of such an index would be unnecessary and impracticable. Copies of the index will be available upon request in person or by mail to the Records Management Officer, Federal Crop Insurance Corporation, Room 4806, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250.

§ 412.4 Requests for records.

The Deputy Manager, FCIC, located in Washington, DC, and all Directors of Field Operations Offices are authorized to receive requests for records submitted in accordance with 7 CFR 1.3(a), and to make determinations whether to grant or deny these requests, and other determinations in accordance with 7 CFR 1.4(c).

§ 412.5 Appeals.

Any person whose request under § 412.4 above is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 1.3(e) and addressed to the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

§ 412.6 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400, Title 7 CFR.

Done in Washington, DC on September 4, 1986.
E. Ray Fosse,
Manager, Federal Crop Insurance Corporation.
[FR Doc. 86-22187 Filed 10-1-86; 8:45 am]
BILLING CODE 3410-08-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Cathay Pacific Airways, Ltd.

AGENCY: Immigration and Naturalization Service, Justice.
ACTION: Final rule.

SUMMARY: This rule adds Cathay Pacific Airways, Ltd. to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: September 16, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Cathay Pacific Airways, Ltd., on September 16, 1986, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by adding in alphabetical sequence "Cathay Pacific Airways, Ltd."

Dated: September 24, 1986.
Harriet B. Marple,
Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.
[FR Doc. 86-22298 Filed 10-1-86; 8:45am]
BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 86-102]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of Puerto Rico from Class A to Class Free. This action is necessary because it has been determined that Puerto Rico meets the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from Puerto Rico.

DATES: Effective date is October 2, 1986. Written comments must be received on or before December 1, 1986.

ADDRESSES: Written comments should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that they are in response to Docket Number 86-102. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jan D. Huber, Domestic Program Support Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-5965.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine. This document changes the classification of Puerto Rico from Class A to Class Free.

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The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing of certain cattle when cattle are moved from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to affected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, Puerto Rico was classified as a Class A State. It had been necessary to classify Puerto Rico as "Class A" rather than Class Free because of the presence of brucellosis. To attain and maintain Class Free status, a State or Area must, among other things, remain free from brucellosis in cattle for the preceding 12-month period and the adjusted MCI reactor prevalence rate for such 12-month period must not exceed one reactor per 2,000 cattle tested (0.050 percent). A review of brucellosis program records established that Puerto Rico should be changed to Class Free since Puerto Rico now meets the criteria for classification as Class Free.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from Puerto Rico.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments are being solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule". Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy, will not cause a major increase in costs or prices for consumers, individuals industries, Federal, State, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Puerto Rico reduces certain requirements on the interstate movement of these cattle. Cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the changes in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.20 [Amended]

2. Section 78.20(a) is amended by adding "Puerto Rico;" immediately before "Rhode Island."

3. In § 78.20(b), "Puerto Rico" is removed.

Done at Washington, DC, this 26th day of September 1986.

Billy G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86–22296 Filed 10–1–86; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

Amendment to Access Authorization Fee Schedule; Publication for Licensee Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the schedule for publishing access authorization investigation fees charged to licensee personnel who require access to National Security Information and/or Restricted Data and Special Nuclear Material. The amendments are needed to notify licensees that NRC will publish fee adjustments concurrent with notification from the Office of Personnel Management (OPM).

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Richard A. Dopp, Chief, Facilities Security and Operational Support Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4124.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management conducts access authorization background investigations for the NRC and sets the cost for these investigations. In accordance with current regulations, the access authorization fee rates are published in the **Federal Register** during July of each year.

Since NRC's fees are wholly dependent on the background investigation rate charged by OPM, a more accurate and efficient regulatory requirement would be to publish revisions to the access authorization fee concurrently with OPM's notification to NRC of a revised background investigation rate change.

Because these are amendments dealing with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in effective date because the amendments are of a minor and administrative nature dealing with a matter of agency procedure, a change in the schedule for notifying licensees of adjustment in access authorization fees.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.).

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Single copies of the analysis may be obtained from Richard A. Dopp, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–4124.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Each NRC licensee or other organization which may require access to classified information or Special Nuclear Material in connection with a license or application for a license will be affected by this final rule. Less than 13 entities are currently required to meet the requirements of 10 CFR Parts 11 and 25. Because none of these has been determined to be small as defined by the Regulatory Flexibility Act of 1980, the Commission finds that this rule will not have significant economic impact upon a substantial number of small entities.

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 11 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. Section 11.15(e) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance payable to the U.S. Nuclear Regulatory Commission according to the following schedule:

i. NRC–U requiring full field investigation	$1,580
ii. NRC–U based on certification of comparable full field background	[1] 0
iii. NRC–U or R renewal	[2] 15
iv. NRC–R	[2] 15
v. NRC–R based on certification of comparable investigation	[2] 0

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $1,580 will be assessed prior to the conduct of such investigation.

[2] If the NRC determines, based on its review of available data, that a National Agency Check investigation is necessary, a fee of $15.00 will be assessed prior to the conduct of such investigation; however, if a full field investigation is deemed necessary by the NRC based on its review of available data, a fee of $1,580 will be assessed prior to the conduct of such investigation.

(2) Material access authorization fees will be published each time the Office of Personnel Management notifies NRC of a change in the background investigation rate it charges NRC for conducting the investigation. Any such changed access authorization fees will be applicable to each access authorization request received upon or after the date of publication. Applications from individuals having current Federal access authorizations may be processed expeditiously at no cost, since the Commission may accept the certification of access authorizations and investigative data from other Federal government agencies which grant personnel access authorizations.

* * * * *

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701.)

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. Section 25.17(e) is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(e) Applications for access authorization processing must be accompanied by a check or money order, payable to the United States Nuclear Regulatory Commission, representing the current cost for the processing of each "Q" and "L" access authorization request. Access

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authorization fees will be published each time the Office of Personnel Management notifies NRC of a change in the background investigation rate it charges NRC for conducting the investigations. Any such changed access authorization fees will be applicable to each access authorization request received upon or after the date of publication. Applications from individuals having current Federal access authorizations may be processed expeditiously at less cost, since the Commission may accept the certification of access authorization and investigative data from other Federal Government agencies which grant personnel access authorizations.

Dated at Bethesda, Maryland, this 17th day of September, 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86-22364 Filed 10-1-86 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 86-ANE-19; Amendment 39-5415]

Airworthiness Directives; Rolls-Royce Dart Mks. 506, 506F, 510, 510A, 511, 511-7E, 514, 514-7, and 515 Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires installation of oversize high pressure turbine (HPT) nozzle guide vanes on certain Rolls-Royce (R-R) Dart turboprop engines. The AD is needed to prevent high cycle fatigue (HCF) cracking of the HPT disk which could result in an uncontained engine failure.

DATE: Effective November 4, 1986.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on November 4, 1986.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Rolls-Royce plc—East Kilbride, Attn: Dart Engine Service Manager, Glasgow G74-4PY, Scotland.

A copy of the SB is contained in Rules Docket Number 86-ANE-19, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD which would require installation of oversize HPT nozzle guide vanes on certain R-R Dart turboprop engines was published in the Federal Register on June 17, 1986 (51 FR 21924).

The proposal was prompted by reports of HCF cracking of HPT disk rims in certain R-R Dart turboprop engines. These cracks have caused uncontained separation of the disk rim. It has been determined by test that excessive gap between nozzle guide vane groups can allow hot gases to impinge on the disk rim, in turn softening the rim material and allowing HCF cracks to form. There have been 31 known occurrences of disk rim HCF cracking, 19 of which resulted in release of a segment of disk rim, of which 5 were uncontained. Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires installation of oversize HPT nozzle guide vanes to achieve the required interplatform gap between vane groups.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

Conclusion

The FAA has determined that this regulation involves 102 engines, and the cost per engine will vary with the amount of rework or replacement required, but is not considered significant with respect to the cost of engine overhaul. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Rolls-Royce plc: Applies to Rolls-Royce Dart Mks. 506, 506F, 510, 510A, 511, 511-7E, 514, 514-7, and 515 turboprop engines.

Compliance is required as indicated, unless already accomplished.

To prevent cracking of high pressure turbine disks, install new or reworked oversize high pressure nozzle guide vane(s) in accordance with Rolls-Royce Dart (R-R) Service Bulletin (SB) Da72-451, Revision 5, dated June 1982, or FAA approved equivalent, by October 1, 1987.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

R-R SB Da72-451, Revision 5, dated June 1982, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Rolls-Royce plc—East Kilbride, Attn: Dart Engine Service Manager, Glasgow G74-4PY, Scotland. This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 86-ANE-19, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on November 4, 1986.

Issued in Burlington, Massachusetts, on September 12, 1986.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 86-22249 Filed 10-1-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ANM-19]

Alteration of Portland, OR, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action is necessary to redefine the current geographical boundaries of the Portland, Oregon, 700 foot transition area to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901, UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-534, Federal Aviation Administration, Docket No. 86-ANM-19, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2534.

SUPPLEMENTARY INFORMATION:

History

On June 26, 1986, the FAA proposed to amend Part 71 of the Fderal Aviation Regulations (14 CFR Part 71) to redefine the geographical boundaries of the Portland, Oregon, 700 foot transition area. (51 FR 23240). This action will provide additional controlled airspace to accommodate aircraft executing the VOR/DME-B approach to McMinnville Municipal Airport, McMinnville, Oregon.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) will provide additional controlled airspace to accommodate aircraft executing the VOR/DME-B approach to McMinnville Municipal Airport, McMinnville, Oregon.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas

Adoption of the Amendment

PART 181—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.181 is amended as follows:

Portland, Oregon Transition Area (Amended)

That airspace extending upward from 700 feet above the surface bounded on the north by lat. 46°00'00" N., on the east by long. 122°00'00" W; thence via a line to lat. 45°51'00" N, long. 122°00'00" W; to lat. 45°51'00" N, long. 122°05'00" W; bounded on the south by lat. 45°10'00" N, and on the west by long. 123°30'00" W; including that airspace 2.26 miles either side of the Newburg VORTAC 215° (T) radial between a point 13.5 nautical miles and 19.78 nautical miles of the Newburg VORTAC 215° (T) radial; that airspace extending upward from 1,200 feet above the surface bounded on the north by a line beginning at a point 3 miles offshore at lat. 46°30'30" N, extending easterly via lat. 46°30'30" N, to long. 121°40'00" W; thence easterly along the south edge of V-204 to lat. 46°30'40" N, long. 120°36'00"W; on the east by V-25, on the south by V-536 to Corvallis, VOR; thence via lat. 44°30'00" N, to a point 3 miles offshore and on the west by a line 3 miles offshore to the Point of beginning.

Issued in Seattle, Washington, on September 24, 1986.

William E. O'Neill,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-22247 Filed 10-1-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 917

[Docket No. 60845-6145]

National Sea Grant Program Funding Regulations; Identification of Updated National Needs

AGENCY: Office of Sea Grant and Extramural Programs, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: Section 206 of the National Sea Grant College Program Act, 33 U.S.C. 1125, specifies that the Secretary of Commerce (delegated to NOAA) shall identify national needs and problems with respect to ocean and coastal resources and the grants for projects involving such needs may be funded without regard to matching requirements. In accordance with this requirement, a list was published in the Federal Register in August 1978 (43 FR 35030). Since then priorities have changed and it is necessary to update the list. Proposed changes were published in the Federal Register on April 11, 1986 (51 FR 12525). Limited comments were received, primarily suggesting ways to eliminate minor ambiguities, and for the most part are incorporated in this final rule. There is no priority significance intended by their numerical sequence. The ordering of the statement is based on a thematic grouping of related concepts, not relative importance.

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. David B. Duane, (301) 443-8894, Assistant Director, Program Development, National Sea Grant College Program, R/SE1, 6010 Executive Blvd., Rm. 824, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Response to Comments

A number of comments were received with respondents addressing one or more of the proposed national needs.

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The National Sea Grant College Program Office reviewed and carefully considered all comments received.

Generally, each commentor suggested in some manner that the stated need be made more specific. For example, as initially proposed, need number 1, relating to extreme natural events referred to ocean coast and continental shelf, neglecting specific mention of the Great Lakes. Another example can be illustrated by need number 13. As originally proposed, it mentioned real time, in-situ monitoring techniques. Now it is more specific as it mentions monitoring of biological, chemical, and physical processes. However, the needs were purposely prepared to be generic, and still remain so, both to encourage the widest possible range of activities in response to a need, and to avoid implying any preferred position on controversial issues where more knowledge is needed. It is the desire of the National Sea Grant College Program Office that new knowledge gained, or goods and services produced as a consequence of a specific activity responding to one or more of these general needs, will lead to improved and equitable development and conservation of marine resources.

As a consequence of consideration given comments received, specific reference is made to the Great Lakes where doing so clarified intent as in needs 1, 11, 13, and 33. Also in response to commentors, changes to clarify initial ambiguities were made to needs 13, 15, 18, 20, and 27 and a new need was added and inserted as number 26.

Other Actions Associated with Rulemaking

(A) Classification under Executive order 12291

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of Section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(B) Administrative Procedure Act and Regulatory Flexibility Act

This rule is matter relating to grants and contracts. Although comments were solicited, the rule is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2) or any other law, and therefore, the Regulatory Flexibility Act does not apply. Accordingly, a Regulatory Flexibility Analysis has not been prepared.

(C) Effective Date

For the reasons explained in the immediately preceding paragraph, the 30-day delayed effectiveness requirement of the Administrative Procedure Act does not apply, and the rule is being made effective on the date of publication in the **Federal Register.**

(D) Paperwork Reduction Act

The regulations do not contain any information collection requirements.

List of Subjects in 15 CFR Part 917

Grant programs—ocean and Great Lakes resources.

For the reasons set forth in the preamble, 15 CFR Part 917 is amended as follows:

PART 917—NATIONAL SEA GRANT COLLEGE PROGRAM FUNDING REGULATIONS

1. The authority for 15 CFR part 917 continues to read as follows:

Authority: Pub. L. 94-461, 90 stat. 1961, 1965; 33 U.S.C. 1121 et seq.

2. Section 917.21 is amended in paragraph (C) by revising paragraphs (c)(1) through (c)(15) and adding new paragraphs (c)(16) through (c)(33).

§ 917.21 National needs and problems.

* * * * *

(c) * * *

(1) Improve the prediction of extreme natural events and their effects on ocean coastal and continental shelf locations as well as analogous regions of the Great Lakes.

(2) Improve the predictability of global sea-level change and determine the impact of this change on coastal areas.

(3) Define the processes that determine ocean variability on the time scale of a few weeks to a few years, and the relationship to fluctuations in global and regional climate, primary productivity, and fisheries production.

(4) Improve understanding of the flow fields and mixing processes on the continental shelves of the United States.

(5) Develop an increased understanding of the arctic and antarctic environment and a capability to predict the special hazards posed to transportation and resource development.

(6) Develop and increased capability to characterize the engineering properties of ocean botton sediments.

(7) Reduce the recurring economic loss due to corrosion of structures, vessels, and other devices in the marine environment.

(8) Gain a fundamental understanding of the processes by which biological fouling and associated corrosion are initiated upon material surfaces exposed to seawater.

(9) Investigate methods to improve man's underwater capability to conduct undersea research and perform useful work.

(10) Investigate the wider application of remotely operated and artificial intelligence techniques for vehicles for undersea activities.

(11) Expand/improve remote sensing technologies for use on the ocean and Great Lakes.

(12) Advance knowledge of acoustics in the ocean and ocean bottom in order to exploit the burgeoning acoustics technologies.

(13) Develop techniques for in-situ monitoring of biological, chemical, and physical processes in the Great Lakes, oceans, and their connecting waterways which are cost effective and provide data in real time.

(14) Improve the position of the U.S. seafood industry in world seafood markets.

(15) Design more efficient mechanisms to allocate U.S. fish resources to achieve optimum yield and minimize industry dislocations.

(16) Gain a fundamental understanding of the biological productivity of estuarine and coastal waters.

(17) Conduct research leading to the restoration and/or enhancement of heavily exploited fishery stocks.

(18) Improve the capability for stock assessment, predicting yield, age-class strength, and long-term population status of important fisheries.

(19) Conduct research to increase the economic potential of low-value, high-volume fish products.

(20) Develop productive and profitable aquaculture industries in the United States and technology that can be exported to less developed nations of the world with different climate, cultural, and economic constraints.

(21) Explore marine biochemicals as source of chemical feedstocks, enzymes, pharmacological substance, and other bioactive agents such as pesticides.

(22) Apply modern biotechnology to exploiting marine plants, animals, and microorganisms for good and services.

(23) Develop rapid, efficient, and specific methods for assaying the potential of marine organisms to communicate disease to humans.

(24) Develop innovations that would promote safe, nondestructive, recreational access to and use of marine and Great Lakes water.

(25) Re-examine the ocean as an appropriate place for the disposal of wastes from land-based society.

(26) Develop an increased understanding of the impacts of low density, nonbiodegradable, solid wastes on marine and Great Lakes species.

(27) Conduct research for realizing the economic potential of the nonliving resources of the U.S. 200-mile Exclusive Economic Zone.

(28) Investigate the effect of seafloor hydrothermal systems on the seafloor, oceans, and atmosphere.

(29) Develop a better understanding of the value the marine sector contributes to the U.S. economy and culture.

(30) Improve the competitive position of American ports in the face of rapid technological and social change.

(31) Improve the capability of developing nations to address their marine resource needs.

(32) Develop eductional programs to increase application of marine sector research.

(33) Develop syntheses of and better access to existing multidisciplinary marine and Great Lakes information.

Dated: September 25, 1986.

Joseph O. Fletcher,

Assistant Administrator, Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 86-22319 Filed 10-1-86; 8:45 am]

BILLING CODE 3510-12-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3196]

Saga International, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Compton, Calif. manufacturer and seller of ultrasonic pestcontrol devices to refund the full purchase price of its "Home Free" pest-control product to any consumer who bought the device after Dec. 31, 1983. Additionally, respondent is required to provide signs for retailers to post about the availability of refunds and advertise their availability through newspaper ads. Further, respondent is prohibited from making any performance or efficacy claims about any ultrasonic pest-control product unless it possesses and relies upon competent and reliable evidence that substantiates its claims.

DATE: Complaint and order issued August. 20, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Harrison J. Sheppard, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, CA 94102. (415) 556-1270.

SUPPLEMENTARY INFORMATION: On Thursday, June 5, 1986, there was published in the **Federal Register**, 51 FR 20500, a proposed consent agreement with analysis In the Matter of Saga International, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.20 Comparative data or merits; § 13.170 Qualities or properties of product or service; § 13.170-46 Insecticidal or repellant; § 13.170-80 Rodenticidal; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-55 Refunds, rebates, and/or credits. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th St. & Pa. Ave., NW., Washington, DC 20580.

List of Subjects in 16 CFR Part 13

Ultrasonic pest control devices, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86-22258 Filed 10-1-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 448

[Docket No. 86N-0351]

Antibiotic Drugs; Bacitracin-Polymyxin B Sulfate Topical Aerosol

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of bacitracin-polymyxin B sulfate, bacitracin-polymyxin B sulfate topical aerosol. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective October 2, 1986 comments, notice of participation, and request for hearing by November 3, 1986; data, information, and analyses to justify a hearing by December 1, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard Norton, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of bacitracin-polymyxin B sulfate, bacitracin-polymyxin B sulfate topical aerosol. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should

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be amended in Part 448 (21 CFR Part 448) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective October 2, 1986. However, interested persons may, on or before November 3, 1986, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before November 3, 1986, a written notice of participation and request for hearing, and (2) on or before December 1, 1986, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 448

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 448 is amended as follows:

PART 448—PEPTIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 448 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. By adding new § 448.510f to read as follows:

§ 448.510f Bacitracin-polymyxin B sulfate topical aerosol.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Bacitracin-polymyxin B sulfate topical aerosol is bacitracin and polymyxin B sulfate in a suitable and harmless vehicle, packaged in a pressurized container with a suitable and harmless inert gas. Each gram contains 500 units of bacitracin and 5,000 units of polymyxin B. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. The bacitracin used conforms to the standards prescribed by § 448.10(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

(2) *Labeling.* (i) On the label of the immediate container and on the outside wrapper or container, if any:

(*a*) The batch mark;

(*b*) The name and quantity of each active ingredient contained in the drug; and

(*c*) An expiration date that conforms to the requirements prescribed by § 432.5(a)(3) of this chapter.

(ii) On the label of the immediate container or other labeling attached to or within the package, adequate directions under which the layman can use the drug safely and efficaciously.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The bacitracin used in making the batch for potency, loss on drying, pH, and identity.

(*b*) The polymyxin B sulfate used in making the batch for potency, loss on drying, pH, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The bacitracin used in making the batch: 10 packages, each containing approximately 1.0 gram.

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing 1.0 gram.

(*c*) The batch: A minimum of 12 immediate containers.

(*b*) *Tests and methods of assay.* The container must remain inverted throughout the sampling procedure. Freeze the container overnight at −70 °C. Remove from the freezer and puncture the container to allow the propellant to dissipate. Open the container, mix well, and proceed as described in paragraph (b) (1) and (2) of this section.

(1) *Potency*—(i) *Bacitracin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample from the container into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the sample and ether until homogeneous. Add 20 to 25 milliliters of 1.0 percent potassium phosphate buffer, pH 6.0 (solution 1), and shake well. Allow the layers to separate. Remove the buffer layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of solution 1. Combine the buffer extractives in a suitable volumetric flask and dilute to volume with solution 1. Remove an aliquot, add sufficient hydrochloric acid so that the amount of acid in the final solution will be the same as in the reference concentration of the working standard, and further dilute with solution 1 to the reference concentration of 1.0 unit of bacitracin per milliliter (estimated).

(ii) *Polymyxin B content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place an accurately weighed portion of the sample from the container into a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Shake the sample and ether until homogeneous. Add 20 to 25 milliliters of 10 percent potassium phosphate buffer, pH 6.0 (solution 6), and shake well. Allow the layers to separate. Remove the buffer layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of solution 6. Combine the buffer extractives in a suitable volumetric flask and dilute to volume with solution 6. Remove an aliquot and further dilute with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

(2) *Moisture.* Proceed as directed § 436.201 of this chapter, using the titration procedure and calculation in paragraph (e)(3) of that section and 1- to 2-milliliter portions of the sample from the container.

Dated: September 25, 1986.

Sammie R. Young,

Deputy Director, Office of Compliance.

[FR Doc. 86-22279 Filed 10-1-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 452

[Docket No. 86N-0354]

Antibiotic Drugs; Erythromycin for Prescription Compounding

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new form of erythromycin, erythromycin for prescription compounding. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective October 2, 1986; comments, notice of participation, and request for hearing by November 3, 1986; data, information, and analyses to justify a hearing by December 1, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard Norton, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new form of erythromycin, erythromycin for prescription compounding. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Part 452 (21 CFR Part 452) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective October 2, 1986. However, interested persons may, on or before November 3, 1986, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 3, 1986, a written notice of participation and request for hearing, and (2) on or before December 1, 1986, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 452 is amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 452 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. By adding and reserving new Subpart I, and by adding new Subpart J and new § 452.910 to read as follows:

Subpart I—[Reserved]

Subpart J—Certain Other Dosage Forms

§ 452.910 Erythromycin for prescription compounding.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Erythromycin for

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prescription compounding is the odorless, white to grayish-white or slightly yellow compound of a kind of erythromycin or a mixture of two or more such compounds. It is so purified and dried that:

(i) It contains not less than 850 micrograms of erythromycin per milligram calculated on an anhydrous basis.

(ii) Its moisture content is not more than 10 percent.

(iii) Its pH is not less than 8.0 nor more than 10.5.

(iv) Its residue on ignition is not more than 2.0 percent.

(v) It gives a positive identity test for erythromycin.

(vi) It is crystalline.

(2) *Packaging.* The immediate container shall be a tight container as defined by the United States Pharmacopeia XXI. It shall be so sealed that the contents cannot be used without destroying such seal. Each such container shall contain 10 grams, 25 grams, or 100 grams of erythromycin.

(3) *Labeling.* In addition to the requirements of § 432.5(a)(3) of this chapter, each package shall bear on its outside wrapper or container and on the immediate container the following:

(i) The statement "Caution: Federal law prohibits dispensing without prescription."

(ii) The statement "Not sterile."

(iii) The batch mark.

(iv) The number of micrograms of erythromycin activity in each milligram of erythromycin and the number of grams of erythromycin in the immediate container.

(v) The statement "The potency of this drug cannot be assured for longer than 90 days after the container is first opened for compounding a prescription."

(vi) The statements "For use only in extemporaneous prescription compounding. Not for manufacturing use."

(4) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, moisture, pH, residue on ignition, identity, and crystallinity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics: 10 packages, each containing not less than 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient methyl alcohol to obtain a concentration of 10 milligrams of erythromycin base per milliliter (estimated). Dilute this solution further with sufficient 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to obtain a stock solution containing 1.0 milligram of erythromycin base per milliliter (estimated). Further dilute an aliquot of the stock solution with solution 3 to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, except standardize the pH meter with pH 7.0 and pH 10.0 buffers and prepare the sample as follows: Dissolve 200 milligrams of sample in 5 milliliters of reagent grade methyl alcohol. Add 95 milliliters of water and mix. Record the pH when an equilibrium value has been reached.

(4) *Residue on ignition.* Proceed as directed in § 436.207(a) of this chapter.

(5) *Identity test.* Proceed as directed in § 436.211 of this chapter, using the sample preparation method described in paragraph (b)(3) of that section.

(6) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

Dated: September 25, 1986.

Sammie R. Young,

Deputy Director, Office of Compliance.

[FR Doc. 86-22283 Filed 10-1-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 452

[Docket No. 86N-0346]

Antibiotic Drugs; Sterile Erythromycin Lactobionate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of erythromycin, sterile erythromycin lactobionate. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective October 2, 1986; comments, notice of participation, and request for hearing by November 3, 1986; data, information, and analyses to justify a hearing by December 1, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard Norton, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of erythromycin, sterile erythromycin lactobionate. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Part 452 (21 CFR Part 452) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective October 2, 1986. However, interested persons may, on or before November 3, 1986, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 3, 1986, a written notice of participation and request for hearing, and (2) on or before December 1, 1986, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR

314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 452 is amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 452 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. By adding new § 452.32a to read as follows:

§ 452.32a Sterile erythromycin lactobionate.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Erythromycin lactobionate is the white to off-white powder of the lactobionate salt of erythromycin or a mixture of two or more such salts. It is so purified and dried that:

(i) If the erythromycin lactobionate is not packaged for dispensing, its erythromycin potency is not less than 525 micrograms of erythromycin per milligram on an anhydrous basis. If the erythromycin lactobionate is packaged for dispensing, its erythromycin potency is not less than 525 micrograms of erythromycin per milligram on an anhydrous basis and also, each container contains not less than 90 percent and not more than 120 percent of the number of milligrams of erythromycin that it is represented to contain.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its moisture content is not more than 5.0 percent.

(v) Its pH is not less than 6.5 and not more than 7.5.

(vi) Its residue on ignition is not more than 2.0 percent.

(vii) Its heavy metals content is not more than 50 parts per million.

(viii) It passes the identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, moisture, pH, residue on ignition, heavy metals, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) If the batch is packaged for repacking or for use as an ingredient in the manufacture of another drug:

(*1*) For all tests except sterility: A minimum of 12 immediate containers.

(*2*) For sterility testing: 20 packages, each containing equal portions of approximately 300 milligrams.

(*b*) If the batch is packaged for dispensing:

(*1*) For all tests except sterility: A minimum of 12 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows:

(i) *Product not packaged for dispensing (micrograms of erythromycin per milligram).* Dissolve an accurately weighed sample with sufficient methyl alcohol to obtain a concentration of 10 milligrams of erythromycin base per milliliter (estimated). Further dilute an aliquot of this solution with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(ii) *Product packaged for dispensing.* Determine both micrograms of erythromycin per milligram of sample and milligrams of erythromycin per container. Use separate containers for preparation of each sample solution as described in paragraph (b)(1)(ii)(*a*) and (*b*) of this section.

(*a*) *Micrograms of erythromycin per milligram.* Dissolve an accurately weighed sample with sufficient methyl alcohol to obtain a concentration of 10 milligrams of erythromycin base per milliliter (estimated). Further dilute an aliquot of this solution with 0.1M potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(*b*) *Milligram of erythromycin per container.* Reconstitute the sample as directed in the labeling. Then using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute an aliquot of the solution thus obtained with sterile distilled water to obtain a concentration of 10 milligrams of erythromycin base per milliliter (estimated). Further dilute an aliquot of this solution with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 30 milligrams of erythromycin per milliliter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using a concentration of 50 milligrams of erythromycin per milliliter.

(6) *Residue on ignition.* Proceed as directed in § 436.207(a) of this chapter.

(7) *Heavy metals.* Proceed as directed in § 436.208 of this chapter.

(8) *Identity.* Proceed as directed in § 436.211 of this chapter, using the sample preparation method described in paragraph (b)(3) of that section.

3. By redesignating § 452.232 as § 452.232a and by adding new §§ 452.232 and 452.232b to read as follows:

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§ 452.232 Erythromycin lactobionate injectable dosage forms.

§ 452.232a Erythromycin lactobionate for injection.

* * * * *

§ 452.232b Sterile erythromycin lactobionate.

The requirements for certification and the tests and methods of assay for sterile erythromycin lactobionate packaged for dispensing are described in § 452.32a.

Dated: September 25, 1986.

Sammie R. Young,

Deputy Director, Office of Compliance.

[FR Doc. 86-22282 Filed 10-1-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3-86-50]

Regatta; Long Island Gran Prix, Long Island Sound and Smithtown Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Long Island Gran Prix sponsored by the Gateway Powerboat Association of Greenwich, CT. This racing event, involving high speed powerboats, will be held in Smithtown Bay which is located between Eatons Neck and Crane Neck Point on the north shore of Long Island, New York. This regulation is needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: This regulation becomes effective on October 11, 1986 at 11:00 a.m. and terminates the same day at 3:00 p.m. The approved postponement date in the event of inclement weather is October 12, 1986 during the same times.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopolsky, (212) 668-7974.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The application for this event was received at the Third District Boating Safety Office on September 2, 1986. Due to the nature of this race, extensive coordination with other marine interests was necessary to preclude interference with other events. A Coast Guard Permit For Marine Event was issued for a major sail race to be held on 11 and 12 October 1986 in western Long Island Sound. Upon review of that permit and discussion with the sponsor it was determined that this sail regatta would take place in the same location initially proposed for the Long Island Gran Prix (Long Island Sound in the vicinity of Matinicock and Oak Neck Points). Additional time was needed to develop an alternative area (Smithtown Bay) for the power boat race. Therefore, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Mr. Lucas A. Dlhopolsky, Project Officer, Third Coast Guard District Boating Safety Division and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Long Island Gran Prix, sponsored by the Gateway Powerboat Association of Greenwich, CT, will be held in Smithtown Bay on the north shore of Long Island on October 11, 1986. This powerboat racing event was held for the first time on Long Island Sound between Matinicock and Oak Neck Points last year on October 5, 1985. This year an expected 50 powerboats, 20 to 50 feet in length, will race around a triangular course in Smithtown Bay, approximately 7.5 nautical miles in length. The race is scheduled to be held between 11:00 a.m. and 3:00 p.m. The sponsor will provide from 10 to 15 vessels which will be used to mark the corners of the race course and to assist the Coast Guard and local authorities in patrolling this event. Since it is anticipated that the powerboats participating in this race will be traveling at speeds around 100 m.p.h., spectator vessels will be required to remain at least 150 yards away from any straight leg of the course and shall not approach any closer than ¼ nautical mile from any of the three turning points of the race course. When these powerboats make high speed turns, they can be expected to swing wide of the turning markers. Mariners should use extreme caution while near the race course area. The Coast Guard will issue a safety voice broadcast and information will be published in the weekly Local Notice to Mariners to notify boaters of this event. In order to provide for the safety of life and property on navigable waters, the Coast Guard will restrict vessel movement in the regulated area.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary § 100.35-332 to read as follows:

§ 100.35-332 Long Island Gran Prix.

(a) *Regulated Area.* Smithtown Bay and part of Long Island Sound off the north shore of Long Island, New York in the area within a ¼ nautical mile radius of each of the following three points, and within 150 yards of each race leg connecting these points:

Latitude 40 Degrees 56.0 Minutes North
Longitude 73 Degrees 14.1 Minutes West
Latitude 40 Degrees 57.4 Minutes North
Longitude 73 Degrees 17.8 Minutes West
Latitude 40 Degrees 58.2 Minutes North
Longitude 73 Degrees 14.0 Minutes West

(b) *Effective Period.* This regulation will be effective from 11:00 a.m. to 3:00 p.m. on October 11, 1986. The approved postponement date in the event of inclement weather is October 12, 1986 during the same times.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No spectator shall enter, pass through or remain within the regulated area as marked by the sponsor or Coast Guard patrol personnel during the effective period.

(3) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(4) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: September 24, 1986.

J.C. Uthot,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 86-22322 Filed 10-1-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD3 86-51]

Special Local Regulations; Head of Connecticut Regatta, Connecticut River, Middletown, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Head of Connecticut Regatta being sponsored by the City of Middletown, Connecticut. This event involves some 2000 participants racing rowing shells in scheduled heats on the Connecticut River. These rowing shells can be swamped by a passing vessel's wake. This regulation is needed to provide for the safety of participants and spectators on navigable waters during this event.

EFFECTIVE DATES: This regulation becomes effective at 9:00 a.m. on October 12, 1986 and terminates the same day at 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopolsky (212) 668-7974.

SUPPLEMENTARY INFORMATION: On August 21, 1986, the Coast Guard published a Notice of Proposed Rule Making in the **Federal Register** for this regulation [51 FR 29948]. Interested persons were requested to submit comments, and no comments were received. This regulation is being made effective in less than 30 days from the date of publication. There was not sufficient time remaining to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Mr. Lucas A. Dlhopolsky, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The twelfth annual Head of Connecticut Regatta sponsored by the City of Middletown, Connecticut is a marine event well known to the boaters and residents of this area. In the past few years it has grown to become one of the largest crew shell race events of its type on the East Coast. Approximately 430 crew shells will race against the clock in 18 heats during the day. The sponsor will provide 6 to 8 vessels in conjunction with Coast Guard and local authorities to patrol this event. Several of the sponsor's vessels may assist in controlling the spectator fleet which has been growing larger in the past few years despite the late date of this event. The race course will be the same as in 1985 located on the Connecticut River off Cromwell, Portland and Middletown, Connecticut. There is minimal commercial traffic this far up the Connecticut River at this time of the year. On the average, fewer than 2 fuel barges transit this section of the river on any given day enroute to oil facilities along the river. The Coast Guard will restrict vessel movement within the regulated section of the Connecticut River during this event to provide for the safety of the participants and spectators on navigable waters. All non-participating vessels wishing to transit through the regulated area will be permitted to do so only at the discretion of the Coast Guard Patrol Commander. Vessel movements shall be at no wake speeds and with Coast Guard or Coast Guard Auxiliary escort when directed by the Patrol Commander. Mariners are urged to use extreme caution when transiting the regulated area. The Coast Guard Captain of the Port, New London will make notification to and request the cooperation of the upstream commercial facilities in scheduling any vessel deliveries prior to or after completion of the races. The Coast Guard will issue a safety voice broadcast on the day of the race and information about this regulation will be published in this Local Notice To Mariners to advise the general boating public and commercial users of the Connecticut River of the event.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory polices and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. Coordination with local commercial marine interests in advance of the event date should minimize any adverse impact on waterborne commerce during the effective period of these regulations. Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—AMENDED

1. The authority citation for Part 100 continues to read ad follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary § 100.35-329 to read as follows:

§ 100.35-329 Head of Connecticut Regatta, Middletown, Connecticut.

(a) *Regulated Area.* That section of the Connecticut River between the southern tip of Gildersleeve Island and aids to navigation light Number 87.

(b) *Effective Period.* This regulation will be effective from 9:00 a.m. to 6:00 p.m. on October 12, 1986.

(c) *Special Local Regulations.* (1) The regulated area shall be closed to all vessel traffic during the effective period. No person or vessel shall enter or remain in the regulated area when it is closed unless participating in the event or authorized by the sponsor or the Coast Guard Patrol Commander.

(2) Vessels awaiting passage through the regulated area shall be held in the vicinity of the southern tip of Gildersleeve Island, if southbound; and at Light 87 if northbound, until escorted at no wake speeds by Coast Guard or Coast Guard Auxiliary patrol vessels through the race course.

(3) The sponsor shall ensure that all races completed by 6:00 p.m. on October 12, 1986.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

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(iv) Suspension or revocation of a license for a licensed officer.

Dated: September 23, 1986.

G.D. Passmore,

Rear Admiral (Lower Half) U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 86-22321 Filed 10-1-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 1-85-4]

Drawbridge Operation Regulations; Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Maine Department of Transportation, the Coast Guard is amending the regulations governing the highway drawspan over the Kennebec River between the Towns of Richmond and Dresden, Maine, by requiring that advance notice of opening be given during the times of decreased water traffic. These amendments are being made to accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: William J. Naulty, Chief, Bridge Branch, First Coast Guard District, Boston, MA 02210-2209 (617-223-8386).

SUPPLEMENTARY INFORMATION: On June 2, 1986, the Coast Guard published in 51 FR 19756 a proposal to revise these regulations. The Commander, First Coast Guard District, also published these proposals as a Public Notice dated 9 June 1986. Interested persons were given until 17 July 1986 to submit comments.

Drafting Information

The drafters of these regulations are: W.J. Naulty, Chief, Bridge Branch, First Coast Guard District, and Lieutenant D. J. St. James, USCGR, Project Attorney, Assistant Legal Officer, First Coast Guard District.

Discussion of Comments

No comments were received in response to the notice in the **Federal Register** or the public notice issued by the First Coast Guard District. The lack of response to either notice is assumed to mean that the proposed amendment is acceptable to all concerned parties.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations impose no additional restrictions on navigation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, 49 CFR 1.46, and 33 CFR 1.05-01(g).

2. Section 117.525(b) is revised to read as follows:

§ 117.525 Kennebec River.

* * * * *

(b)(1) The draw of the Main Department of Transportation highway bridge, mile 27.1, between Richmond and Dresden, shall be opened promptly, on signal, for the passage of vessels between the hours of 9 a.m. and 5 p.m. from June 1 through September 30. At other hours during this period the draw need not be opened for the passage of vessels except on advance notice given to the drawtender on duty between the hours of 9 a.m. and 5 p.m.

(2) At times other than those specified above, the draw need not be opened for the passage of vessels, except when 24 hours notice is given in person, in writing, or by telephone to the Maine Department of Transportation Division Office, At Rockland.

Dated: September 29, 1986.

R.L. Johanson,

Rear Admiral (Lower Half), U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 86-22320 Filed 10-1-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 4

Department Hearings and Appeals Procedures; Indian Probate Fees

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This Office is removing a regulation providing for the collection of probate fees from the estates of deceased Indians for whom the United States held land in Indian trust status. This action is taken because Congress repealed the legislation providing for the collection of such fees. The action deletes the Department's obsolete regulation. The Office also amends a second regulation referring to the collection of probate fees.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce A. Johnson, Deputy Director, Office of Hearings and Appeals, (703) 235-3810.

SUPPLEMENTARY INFORMATION: On December 19, 1985, the Office of Hearings and Appeals published proposed amendments deleting references to the collection of fees for probating the trust estates of deceased Indians. The amendments were proposed because, effective September 26, 1980, Pub. L. 96-363 repealed 25 U.S.C. 375b and 377, the legislation requiring the Department of the Interior to collect probate fees. The Department's regulations in 43 CFR 4.280 provided for the collection and amount of such fees. Because this regulation was made obsolete by Pub. L. 96-363, it was proposed that the regulation be removed. No fees have been collected since the repeal of sections 375b and 377.

Conforming amendments were also proposed to 43 CFR 4.251, which refers to the collection of probate fees.

No comments were received on the proposed amendments.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the amendment provides for the removal of an obsolete regulation that has not been enforced since 1980.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, *as amended* (42 U.S.C. 4321-4347).

This rule was written by Kathryn Lynn, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians.

Dated: August 14, 1986.

Ann McLaughlin,

Under Secretary.

43 CFR Part 4, Subpart D, is amended as follows:

1. The authority citation for Part 4, Subpart D, continues to read as follows:

Authority: Secs. 1, 2, 38 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b.

§ 4.280 [Removed]

2. Section 4.280 is removed.

3. In § 4.251, the introductory text and paragraph (b) are revised to read as follows:

§ 4.251 Priority of claims.

After allowance of the costs of administration, claims shall be allowed:

* * * * *

(b) The preference of claims may be deferred, in the discretion of the administrative law judge, in making adjustments or compromises beneficial to the estate.

* * * * *

[FR Doc. 86-22358 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-10-M

43 CFR Part 4

Department Hearings and Appeals Procedures; Indian Trust Property, etc.

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This office is adding a new regulation allowing persons receiving Indian trust property or an interest in such property either under a will or through intestate succession to renounce succession to that property or interest in property. A conforming amendment clarifies that the office's Administrative Law Judges (Indian Probate) have authority to accept such a renunciation of interest. A second amendment to the regulation setting forth the general authority of Administrative Law Judges (Indian Probate) explicitly provides authority for the partial distribution of estates when a potential heir or devisee is missing and cannot be located.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce A. Johnson, Deputy Director, Office of Hearings and Appeals, (703) 235-3810.

SUPPLEMENTARY INFORMATION: On May 19, 1986, the Office of Hearings and Appeals published proposed regulations concerning renunciations of inherited and devised interests in Indian trust property and the partial distribution of estates in which a possible heir is missing and cannot be located. Based upon its experience in probating Indian trust estates, this office observed that allowing renunciations of Indian trust property or interests in such property would frequently be in the best interests of an Indian decedent's survivors. Property often passed to individuals who either did not want it or believed that another person needed or deserved it more. When property passed to a non-Indian, it lost its Indian trust status, often to the detriment of all persons concerned.

Therefore, the office proposed that a new regulation providing a consistent mechanism for renunciations be adopted. The proposed rule was intended to be lenient, with few mandatory procedural requirements, so that it would be easy to use, while still ensuring that the person renouncing both understood and intended the results.

A proposed conforming amendment to 43 CFR 4.202 would show that the office's Administrative Law Judges (Indian Probate) had authority to accept such renunciations.

A second amendment was also proposed to 43 CFR 4.202 that would explicitly provide for partial distribution of Indian trust estates when a potential heir or devisee was missing and could be located. The lack of such explicit authority had resulted in delays in the distribution of interests in Indian trust estates to those determined entitled to receive interests. The office believed such unnecessary delay was not in accordance with the Department's trust responsibility to Indians. This amendment conformed with recent decisions of the Interior Board of Indian Appeals (IBIA) and the Director of the Office of Hearings and Appeals in *Estate of Frances Ingeborg Conger (Ford)*, 13 IBIA 296, 92 I.D. 512 (1985), *on review by Director*, 13 IBIA 361, 92 I.D. 634 (1985).

Three public comments were received concerning the proposed renunciation amendment. One comment addressed the general question of fractionation of undivided interests in Indian trust land. Because this comment was not specifically addressed to the proposed regulations, it has been addressed apart from this rulemaking proceeding.

A second comment supported the proposed renunciation rule.

A third comment suggested that specific procedures should be incorporated within the rule to ensure that renunciations were entered into voluntarily, knowingly, and without coercion. The commentor was particularly concerned that renunciations not be used by non-Indians as a means to deprive Indians of their interests, thereby resulting in more land being taken out of trust.

The office expects that every Administrative Law Judge (Indian Probate) presented with a renunciation will conduct whatever investigation is necessary to ensure that the person renouncing an interest understands and intends the consequences of the action and is not acting under duress or coercion. Because, however, any such investigation will vary considerably from case to case, it is not deemed advisable to regulate specific requirements and procedures in this area. Instead, the Department will rely upon the expertise of its judges as to the depth of any investigation needed.

This commentor also suggested the deletion of the provision ratifying any prior renunciations that might have been accepted. The office believes that an explicit ratification is necessary to avoid the possibility of having to reopen each such estate. The comment is, therefore, not accepted.

One comment was received concerning the missing heir regulation. The comment suggested the incorporation of a specific procedure for distributing the retained portion of the estate if the missing heirs were not located. This comment is not accepted because it is beleived that existing procedures are sufficient to permit the later distribution of the retained portion of the estate.

The Department of the Interior has determined that neither rule is a major rule under E.O. 12291 and certifies that they will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the new regulations concern only procedures for distributing the trust estates of certain deceased Indians.

Paperwork Reduction Act

These rules do not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 301 *et seq.*

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The Department of the Interior has determined that the rules do not constitute major Federal actions significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, *as amended* (42 U.S.C. 4321–4347).

The rules were written by Paul T. Baird, Director, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedures, Indians, Indians—Lands.

Dated: August 15, 1986.

Ann McLaughlin,

Under Secretary.

43 CFR Part 4, Subpart D, is amended as follows:

1. The authority citation for Part 4, Subpart D, continues to read as follows:

Authority: Secs. 1, ,2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 50 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b.

2. Section 4.202 is revised to read as follows:

§ 4.202 General authority of administrative law judges.

Administrative law judges shall determine the heirs of Indians who die intestate possessed of trust property, except as otherwise provided in §§ 4.205(b) and 4.271; approved or disapprove wills of deceased Indians disposing of trust property; accept or reject full or partial renunciations of interest in both testate and intestate proceedings; allow or disallow creditors's claims against estate of deceased Indian; and decree the distribution of trust property to heirs and devisees, including the partial distribution to known heirs or devisees where one or more potential heirs or devisees are missing but not presumed dead, after attributing to and setting aside for such missing person or persons the share or shares such person or persons would be entitled to if livng.

3. A new § 4.208 is added immediately after § 4.207 to read as follows:

§ 4.208 Renunciation of interest.

Any person 21 years or older, whether of Indian descent or not, may renounce intestate succession or devise of trust or restricted property, wholly or partially (including the retention of a life estate), by filing a signed and acknowledged declaration of such renunciation with the administrative law judge prior to entry of the administrative law judge's final order. No interest in the property so renounced is considered to have vested in the heir or devisee and the renunciation is not considered a transfer by gift of the property renounced, but the property so renounced passes as if the person renouncing the interest has predeceased the decedent. A renunciation filed in accordance herewith shall be considered accepted when implemented in an order by an administrative law judge and shall be irrevocable thereafter. All disclaimers or renunciations heretofore filed with and implemented in an order by an administrative law judge are hereby ratified as valid and effective.

[FR Doc. 86–22357 Filed 10–1–86; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 159

[CGD 85–057]

OMB Control Numbers; Reporting and Recordkeeping Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), requires generally that all regulations which contain recordkeeping or reporting requirements must be approved by the Director, Office of Management and Budget (OMB). Once approved, these regulations are assigned an OMB Control Number. OMB Control Numbers for regulations within certain parts of Title 46, Code of Federal Regulations are displayed in a Table appearing at 46 CFR 159.001–9. This document updates the table to display OMB Control Numbers assigned to certain regulations within Part 160.

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Lt. Sandra Sylvester, (202) 267–1534.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking and is being made effective in less than 30 days. This rule merely displays existing OMB Control Numbers pertaining to specific Coast Guard regulations for the public's information. Therefore the Coast Guard has determined that notice and comment procedure are unnecessary under the Administrative Procedure Act [5 U.S.C. 553(b)(B)]. Since this rule has no substantive effect, good cause exists to make this rule effective in less than thirty days under 5 U.S.C. 553(d)(3).

Drafting Information

This rule was drafted by Lt. Sandra R. Sylvester, Office of Chief Counsel, Regulations and Administrative Law Division.

Regulatory Evaluation

This regulation is considered to be non-major under Executive Order 12291, and non-significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule merely displays existing OMB Control Numbers and imposes no new substantive requirements. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 159

Business and Industry, Laboratories, Marine safety, Recordkeeping and reporting requirements.

PART 159—[AMENDED]

In consideration of the foregoing, Part 159 of Chapter I, Title 46, Code of Federal Regulations, is amended to read as follows:

1. The authority citation for Part 159 continues to read as follows:

Authority: 44 U.S.C. 3507; 49 CFR 1.45(a).

2. Section 159.001–9(b) is amended by adding the following new entries in numerical order to read as follows:

§ 159.001–9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) Display.

* * * * *

§ 160.171–15	2115–0141
§ 160.171–23	2115–0141

* * * * *

Dated: September 25, 1986.

J.E. Vorbach,

Chief Counsel, RADM, U.S. Coast Guard.

[FR Doc. 86–22323 Filed 10–1–86; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 546

[APD 2800.12 CHGE 31]

General Services Administration Acquisition Regulation; Destination and Certification Testing

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended by revising Subpart 546.4 to clarify the applicability of the subpart to GSA contracting activities other than those in the Federal Supply Service; by revising sections 546.402 and 546.403 to change the requirements for source inspection and destination inspection; and by revising Section 546.470–2 to delete the reference to the National Bureau of Standards (NBS) because NBS does not provide certification testing. Other minor editorial changes are made in Part 546 for clarity. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: September 22, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations on (202) 566–1224.

SUPPLEMENTARY INFORMATION: This rule will not have a significant cost or administrative impact on contractors or offerors. Therefore, it was not published for public comment in the **Federal Register**. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The final rule raises the dollar thresholds to $25,000 for source inspection; changes the requirements for destination inspection, and clarifies instructions on certification testing. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Part 546

Government procurement.

PART 546—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 546 continues to read as follows:

Authority: 40 U.S.C. 486(c).

546.407 [Removed]

2. The table of contents for Part 546 is amended by removing § 546.407—Nonconforming supplies and services.

3. Section 546.400 is revised to read as follows:

546.400 Scope of subpart.

This subpart prescribes policies and procedures which are to be used by the Federal Supply Service and which may be used by other GSA activities.

4. Section 546.402 is revised to read as follows:

546.402 Government contract quality assurance at source.

Contracts should provide for inspection of supplies to be performed at source under the following circumstances, unless brand name products are being purchased or supplies are being purchased using small purchase procedures (see FAR Part 13 and GSAR Part 513).

(a) The contract is for national requirements (including shipments to key GSA supply distribution facilities);

(b) The contract is a Schedule contract that has been selected for source inspection;

(c) The contract is for regional requirements;

(d) The contract is an indefinite delivery, definite quantity contract;

(e) The contract is for class 8010 items;

(f) The contract is for special purpose vehicles, trucks that are over 10,000 pounds gross vehicle weight (GVW), trucks weighing 10,000 pounds GVW or less that are not covered by a Federal standard, and vehicles to be shipped outside the conterminous United States; or

(g) When the contracting director determines for other reasons that it is in the best interest of the Government due to the critical nature of the material. In these instances, the contracting director shall notify the appropriate Contract Management Division that the contract provides for source inspection and explain the reason for inspecting at source.

5. Section 546.403 is revised to read as follows:

546.403 Government contract quality assurance at destination.

Contracts should provide for inspection to be performed at destination when—

(a) Supplies are being purchased using small purchase procedures outlined in FAR Part 13 and GSAR Part 513;

(b) Brand name products are being purchased;

(c) The Schedule contract has not been selected for source inspection;

(d) Standard vehicles are being purchased for domestic consignees; or

(e) Trucks weighing 10,000 pounds GVW or less are being purchased for domestic consignees using a Federal Standard.

6. Sections 546.470 and 546.470–1 are revised to read as follows:

546.470 Testing.

Testing to determine conformance with specifications and standards may be conducted at facilities of Federal agencies, manufacturers, independent testing laboratories, and others, as appropriate.

546.470–1 Acceptance testing.

(a) Acceptance testing is conducted to determine conformance with requirements of purchase descriptions or specifications before a shipment is accepted. Such testing must not be solely for the purpose of furnishing information to a producer or vendor as to conformance of an article or commodity with specification requirements.

(b) The cost of services for acceptance testing of representative samples of a shipment normally will be borne by GSA. However, if the samples tested fail to meet the requirements of the specification or purchase description, the contractor shall be required to pay any additional costs incurred for a retest as a result of the failure.

7. Section 546.470–2 is amended by revising paragraph (b) to read as follows:

546.470–2 Certification testing.

* * * * *

(b) A certificate from a recognized laboratory may be a requirement in a Federal specification. When there is a lack of suitable commercial testing facilities, producers or vendors may obtain a certification from a Government laboratory, and are required to bear the cost of testing, including all items of the cost. In this event, GSA will, when feasible, arrange for the required testing upon receiving a request from a producer or vendor and upon payment of the required fee.

Dated: September 22, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86–22331 Filed 10–1–86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 19]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule, correction.

SUMMARY: This notice corrects errors occurring in the final rule published on May 2, 1986, adopting HB3 and HB4 light sources for replaceable bulb headlamps. The notice also clarifies an apparent discrepancy between the amendment published on May 2, and an amendment published on May 7 with reference to the amendment of paragraph S4.1.1.38 and its redesignation as paragraph S4.1.1.39. An error in Figure 13 is corrected. An explanation is provided with respect to two of the nonsubstantive amendments published on August 6, 1986.

EFFECTIVE DATE: The corrections are effective October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Officer of Rulemaking, National Highway Traffic Safety Administration, Washington DC 20590 (202-366-5281).

SUPPLEMENTARY INFORMATION: During the first week of May 1986 the agency published two notices amending Standard No. 106. The notice that appeared on May 2 (51 FR 16325) adopted the HB3 and HB4 light sources for use in replaceable bulb headlamps, and redesignated the existing light source as HB1. This amendment was not effective until June 2. Several days later, on May 7, a notice was published (51 FR 16847) amending the specifications for the existing light source, but this notice was effective upon publication.

When read in order of publication, some confusion results. The notice of May 2 removes S4.1.1.39, redesignates S4.1.1.40 as S4.1.1.38 and revises it, and redesignates S4.1.1.38 as S4.1.1.39 and revises it. The notice of May 7 revises S4.1.1.38. It is impossible to revise S4.1.1.38 (formerly S4.1.1.40) as adopted on May 2 on the basis of the revision of S4.1.1.38 published on May 7. However, there should be no confusion when revision is made on the basis of the effective dates of May 7 and June 2: S4.1.1.38 (as it appears in 49 CFR 571.108 as of October 1, 1985) is revised for the period May 7-June 2, 1986; on June 2 S4.1.1.38 is redesignated as S4.1.1.39 and further revised. On June 2 the existing S4.1.1.40 becomes the new S4.1.1.38 and is revised in certain respects. Because amendments are effective on the date specified, there is no legal reason to republish the May 2 amendments, and the agency regrets any confusion that may have been caused by publication of the notices out of sequence.

The notice of May 2, however, does contain errors in the text of S6.7.2(c) and S6.8. In both these sections the value of relative humidity is given and 40 plus or minus 10%. Although this was the value initially proposed, between the time of the proposal and the rule NHTSA had adopted 30% as the value in another rulemaking (50 FR 21052, May 22, 1985); therefore correction is made to specify 30 plus or minus 10%. In the amendment redesignating S4.1.1.38 as S4.1.1.39, the plus sign was inadvertently omitted from the general specification for lower beam of the HB1 light source, and the word "Engineering" was omitted from the title of the Illuminating Engineering Society of North America. In paragraph S4.5.8 the word "replacement" should have been "replaceable."

General Motors has brought to the agency's attention the fact that the value for dimension AB in Figure 11 is properly .56 inch rather than .54 inch, and an appropriate correction is made.

The agency has found an error in Figure 13 pertaining to the Type LF headlamp unit, in which letters representing Dimensions C and L were transposed. This notice corrects that error.

Finally, the nonsubstantive amendments published on August 6, 1986 (51 FR 28238), purported to change paragraphs S6.7.2(a)(2), (b)(2), and (c)(2), and S6.7.2(c)(3); however, the three subparagraphs (2), and subparagraph (3) were eliminated by the amendments published on May 2, so that the purported amendments are without legal effect.

Because the amendments are corrective in nature and impose no additional burdens on any person, it is hereby found that for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendment is effective upon publication in the Federal Register.

PART 571—[AMENDED]

In consideration of the foregoing Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Corrected]

2. In Subparagraph (b) of paragraph S4.1.1.39 the lower beam for the HB1 Specification is changed from "700—15 percent to" "700 ± 15 percent."

3. In Subparagraph (d) of paragraph S4.1.1.39 the word "Engineering" is inserted between the words "Illuminating" and "Society."

4. In Paragraph S4.5.8 the word "replacement" is corrected to read "replaceable."

5. Subparagraph (c) of paragraph S6.7.2 is revised by changing the numeral "40" to "30."

6. In the penultimate sentence of paragraph S6.8 the numeral "40" is changed to "30."

7. In Figure 11 the value ".54" for letter AB occurring under the column headed "Inch" is changed to ".56."

8. In Figure 13 under the diagram pertaining to the Type LF headlamp unit, the letters "C REF." and "L" are transposed.

Issued on: September 26, 1986.

Barry Felrice,
Associate Administrator for Rulemaking.

[FR Doc. 86-22395 Filed 10-1-86; 8:45 am]
BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011 and 1152

[Ex Parte No. 274 (Sub-No .17)]

Abandonments; Delegation of Authority

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: To clarify its delegation of authority, the Commission is specifically delineating the necessary authority in the rules for the Director of the Office of Proceedings to issue initial decisions determining (a) whether to designate protested abandonments for investigation (including action on requests for oral hearing); and (b) whether offers of financial assistance satisfy the statutory standards of 49 U.S.C. 10905(d) in order for negotiations to begin. In both instances, an appeal to the full Commission will be available as a matter of right on an expedited basis.

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commisson Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

The revisions in the Appendix are adopted.

This action does not significantly affect the quality of the human environment or energy conservation. Since public comment is not required under 5 U.S.C. 553, the Regulatory Flexibility Act does not apply to this proceeding. See 5 U.S.C. 603.

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure, Authority delegations.

List of Subjects in 49 CFR Part 1152

Abandonments and discontinuances, Investigations, Offers of financial assistance.

Dated: August 29, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Chairman Gradison concurred in part and dissented in part with a separate expression. Commissioner Andre dissented with a separate expression.

Noreta R. McGee,
Secretary.

49 CFR Chapter X is amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for 49 CFR Part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.2 is amended by adding new paragraph (a)(8) to read as follows:

§ 1011.2 The Commission.

(a) * * *

(8) All appeals of initial decisions determining (i) whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing), and (ii) whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d), for purposes of negotiations. Appeals on these matters must be filed 10 days of the date the action is taken, and responses must be filed within 10 days thereafter.

* * * * *

3. Section 1011.8 is amended by adding a new paragraph (c) to read as follows:

§ 1011.8 Delegation of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

* * * * *

(c) *Office of Proceedings.* The Director shall have authority initially determinative of the following:

(1) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing).

(2) Whether offers of financial assistance satisfy the statutory standards of 49 U.S.C. 10905(d), for purposes of negotiations.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

4. The authority citation for 49 CFR Part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 16 U.S.C. 1247(d); 31 U.S.C. 9701; 45 U.S.C. 904 and 915; and 49 U.S.C. 10321, 10362, 10505, and 10903 et seq.

5. Section 1152.25 is amended by revising paragraph (e)(1) to read as follows:

§ 1152.25 Participation in abandonment or discontinuance proceedings.

* * * * *

(e) *Appellate procedures*—(1) Scope of rule. Except as specifically indicated below, these appellate procedures are to be followed in abandonment and discontinuance proceedings in lieu of the general procedures at 49 CFR Part 1115. Appeals of initial decisions of the Director of the Office of Proceedings determining (i) whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing) and (ii) whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations will be acted upon by the entire Commission pursuant to the rule set forth at 49 CFR 1011.2(a)(8). An original and 10 copies of all appeals, and replies to appeals, under this section should be filed with the Commission.

6. Section 1152.27 is amended by revising paragraph (e) to read as follows:

§ 1152.27 Financial assistance procedures.

* * * * *

(e) *Review of offers.* The Commission will review each offer submitted to determine if the offeror is a financially responsible person offering assistance which is likely to cover: (1) The difference between the revenues attributable to the line and the avoidable cost of providing freight service on the line plus a reasonable return on the value of the line, or (2) the acquisition cost of all or any portion of the line. If these criteria are met, the Commission will issue a decision postponing the issuance of a certificate of abandonment or, if a certificate has been issued, postponing the effective date of the certificate. This decision will be issued within 15 days of the Federal Register publication described in paragraph (b) of this section [or five days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(iii) of this section]. Under the delegation of authority at §1011.8, the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations will be acted upon by the entire Commission pursuant to the rule set forth at 49 CFR 1011.2(a)(8).

* * * * *

[FR Doc. 86-22289 Filed 10-1-86; 8:45 am]
BILLING CODE 7035-01-M

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Proposed Rules

Federal Register
Vol. 51, No. 191
Thursday, October 2, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

Official U.S. Standards for Grain

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: According to the requirements for a periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the Official U.S. Standards for Grain. FGIS proposes to revise these standards by revising the format of the standards and making certain other changes to provide uniformity between all grain standards.

The proposed format changes include (1) The establishment of a Subpart A—General Provisions; (2) Removing specific terms common to all grains from the individual grain standards and incorporating them into the General Provisions subpart; (3) Designating each grain standard as a separate subpart within the Part 810 regulations; (4) Providing a consistent format structure throughout all 11 standards with common language, where possible; (5) Making the format of all the grade tables consistent between standards; (6) Reorganizing the standards in alphabetical order; (7) Renumbering the standards; and (8) Removing most footnotes and references to footnotes throughout the standards. These changes would simplify, enhance clarity, eliminate duplication, and facilitate use of the standards by providing for ease of reference and identification of individual standards. Also, these changes would conform the grain standards to specific requirements of the Office of the Federal Register for promulgation of regulations in the Code of Federal Regulations.

In addition, other changes proposed to the grain standards to enhance accuracy and to improve uniformity among the various standards are: (1) Redesignate the special grade "weevily" to the more inclusive and meaningful term "infested"; (2) Revise the definitions of barley, oats, and flaxseed to limit mixtures of other grains to 10.0 percent as currently stated in other grain standards; (3) Remove the section relating to additional interpretations from the corn standards as unnecessary; (4) Revise FGIS rounding procedures as stated in the section on Percentages to more generally accepted mathematical procedures; and (5) Further revise procedures for stating percentages and values so that all figures are reported to the nearest tenth, except for ergot which is reported to the nearest hundredth of a percent.

DATE: Comments must be submitted on or before December 1, 1986.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue SW., Washington, DC 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

D.R. Galliart, Acting Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees and licensed persons.

Review of Standards

During the last review of the individual grain standards, FGIS proposed, received public comments, and published final rules dealing with specific substantive changes for the individual grain standards. These reviews also included clarification and simplifying the language of the standards.

Included in these reviews was the identification of similar provisions common to each individual standard. Where feasible, uniform and common language was developed. For example, test weight per bushel language in the majority of the standards was revised to contain identical language; while particular terms and provisions unique to individual standards were retained.

The language common to all standards is repeated eleven times in the Part 810 regulations. It is impossible to make a change to a provision common to all standards without eleven separate rulemakings which ultimately may have effective dates staggered over several years. If adopted, a change to any section of the new General Provisions subpart would automatically apply to all standards while a change in the individual standards would affect only the specific standard for which the change is made.

FGIS has determined that it is appropriate to propose revisions to the format of the standards at this time to further simplify the standards and to eliminate unnecessary duplication. These changes would accomplish several objectives including: (1) Conforming Part 810 regulations into a format generally used for standards in other USDA programs; (2) Enhancing clarity, simplicity, and cost effectiveness as well as eliminating duplication; and (3) Conforming the Official U.S. Standards for Grain to specific requirements for promulgation of regulations in the Code of Federal Regulations, 1 CFR Part 21, Preparation of Documents Subject to Codification, including code structure, numbering, headings, and the like.

Accordingly, FGIS proposes to revise the format of the standards by standardizing the language of terms common to all standards, remove such terms from the individual standards and incorporate them into a subpart headed *General Provisions*. In addition, terms and provisions in the individual standards that appear in the remaining subparts would be revised to provide for uniform and common language, where possible. For example, the terms damage and dockage would be revised, as appropriate in each standard to reflect uniform language. Accordingly, language of the terms and provisions in the proposed standards may not, in all instances, reflect the language currently in the standards. However, these revisions do not represent substantive changes to the standards.

In the last regulatory review, the majority of the grain standards were revised to change format, as discussed above. Some standards, such as those for corn, do not reflect the same format or include the same language for similar provisions as appear in the majority of the grain standards. For example, the provisions for test weight per bushel does not appear within the same format or include the same language as most other grain standards. Such changes are made herein. Further, some nonsubstantive changes are proposed as to uniform language, such as removing references concerning where certain information is placed on an official certificate. In certain instances, such information is deleted from the text of the standards and will appear only in the FGIS Instructions, as appropriate. Elimination of this application corresponds to similar changes recently made by Part 800 of the regulations. In like manner, information which appears in the instructions would be included in certain of the individual standards to accomplish uniformity for common terms and provisions; where possible.

All of the grain standards except for corn generally consist of a format whereby the standard is divided into several parts by headings. These headings are: *Terms Defined*, which includes common and standard specific definitions; *Principles Governing The Application of Standards*, which includes three sections, Basis of determination, Temporary modifications in equipment and procedures, and Percentages: *Grade, Grade Requirements, and Grade Designations*, which includes two sections, Special grades and special grade requirements, and Special grade designations.

As proposed, the *General Provisions* subpart would parallel the format of the current standards. Definitions common to all grain standards would be contained under the heading Terms Defined. The heading, *Principles Governing The Application of Standards* would contain a general *Basis of determination* common to all grain standards, the provisions for *Temporary modifications in equipment and procedures*, and the revised rules for rounding and recording *Percentages*. Included under the heading, *Grades, Grade Requirements, and Grade Designations*, would be a general description of grades and grade requirements and a grade designation section applicable to all standards. Similarly, the *Special Grades, Special Grade Requirements, and Special Grade Designations* heading would include a section generally describing *Special grades and special grade requirements* and a section covering Special grade designations applicable to all standards.

With the creation of the *General Provisions* subpart, certain sections are removed from individual grain standards and are included in Subpart A. For example, common definitions such as *Test weight per bushel, Moisture* and *Stones* would be removed from each standard. The common wording for *Basis of determination, Temporary modifications of equipment and procedures*, and rounding *Percentages* would be removed from each standard. Also, the wording for *Grade designations*, and *Special grade designations* would be removed from the individual standards and rewritten in general terms for inclusion into Subpart A.

Similarly, the sections remaining in each of the eleven individual grain standard subparts would remain unchanged except for conforming changes for format and uniform language purposes. For instance, the grade tables which presently appear in each grade standard would virtually remain unchanged except for changes to formats for consistency among standards and minor changes for purposes of clarity.

To provide ease in reference and identification of individual standards, each standard would be established as a subpart to the Part 810 regulations. The standards also would be reorganized numerically and in alphabetical order as follows:

Subpart A—General Provisions (§§ 810.101—109)
Subpart B—U.S. Standards for Barley (§§ 810.201—207)
Subpart C—U.S. Standards for Corn (§§ 810.401—405)
Subpart D—U.S. Standards for Flaxseed (§§ 810.601—604)
Subpart E—U.S. Standards for Mixed Grain (§§ 810.501—505)
Subpart F—U.S. Standards for Oats (§§ 810.1001—1005)
Subpart G—U.S. Standards for Rye (§§ 810.1201—1205)
Subpart H—U.S. Standards for Sorghum (§§ 810.1401—1405)
Subpart I—U.S. Standards for Soybeans (§§ 810.1601—1605)
Subpart J—U.S. Standards for Sunflower Seed (§§ 810.1801—1805)
Subpart K—U.S. Standards for Triticale (§§ 810.2001—2005)
Subpart L—U.S. Standards for Wheat (§§ 810.2201—2205)

The presence of footnotes in the standards has caused confusion among users of the standards and made publication difficult. To eliminate such confusion, most footnotes and references to footnotes would be removed from the standards. The information contained in the footnotes would be included, as appropriate, within the text of the standards. Footnotes contained within the body of the grade tables would be, for the most part, retained.

Other changes are also proposed to improve the uniformity between the grain standards. The first of these changes is a redesignation of the Special grade "weevily" to "infested." Two U.S. standards for grain (soybeans and sunflower seed), currently use the term "infested" to refer to grain found to contain live insect infestation above a threshold level. It is proposed that the term "infested" be used in all the grain standards because it more appropriately describes grain containing live insects injurious to stored grain. The term "weevily" connotes a specific insect species, e.g., *Sitophilus* spp., Other insects, in addition to types of weevils, are included within the scope of the term infested grain.

It is also proposed that the definitions of the terms barley, oats, and flaxseed be revised. Currently, these definitions specify that mixtures of other grains should not exceed 25 percent in barley and oats and 20 percent in flaxseed to conform to the grain's identity. All remaining grain standards restrict mixtures of other grains for which standards have been established to 10 percent. In the remaining grain standards, if a mixture of more than 10 percent is present in a sample, the grain would normally be graded under the U.S. Standards for Mixed Grain. For uniformity between standards, it is proposed that the definitions for barley, oats, and flaxseed be revised so that all standards restrict mixtures of standardized grain to not more than 10.0 percent. Inasmuch as the definition of mixed grain corresponds to the definitions of the individual grains in the standards, these proposed changes would provide for a more concise and uniform parameter for the definition of mixed grain. Based on inspection experience and current production

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practices, it is not expected that a significant number of barley, oats, and flaxseed inspections would be adversely affected by this proposed change.

Further, it is proposed that the U.S. Sample grade requirements for all grains be made more consistent in wording and tolerances for various factors. In some instances information would be included in the language of the standards from the FGIS Instructions. Specifically, the limits for animal filth would be revised to be consistent among the standards. Currently two standards, barley and corn, have a limit of animal filth for U.S. Sample grade in excess of 0.2 percent per 1,000 grams of grain. Also, the current standards for flaxseed, oats, soybeans, and sunflower seeds have a Sample grade limit for animal filth of 10 or more pieces per 1,000 grams of grain (sunflower seed equivalent volume is 600 grams). The remaining standards, rye, sorghum, triticale, and wheat currently limit animal filth for Sample grade at 2 or more pieces per 1,000 grams of grain. Accordingly, it is proposed that the U.S. Sample grade equivalent for animal filth be set at 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of grain (600 grams for sunflower seed). In addition, miscellaneous revisions would be made to the language for U.S. Sample grade in the individual grain standards, as deemed appropriate, for uniformity.

Another proposed change is to remove the current "Interpretations [Added]" from the U.S. Standards for Corn. These sections are currently §§ 810.904 and 810.905; Interpretations with respect to the term "yellow kernels of corn with a slight tinge of red," and Interpretations with respect to the term "white kernels of corn with a slight tinge of light straw or pink color," respectively. In the last 5-year review period similar provisions for other standards have been deleted. The information contained in the corn interpretations, as is similar information for the other grains, appear in current FGIS Instructions and therefore there is no need to retain this information in the corn standards. It is proposed to remove these sections in the revised standards.

It is also proposed that FGIS change its current procedure for rounding percentages. The current rounding procedures for percentages provides that when a figure to be rounded is followed by a figure greater than 5, the figure is rounded up to the next higher figure, e.g., 0.46 is reported as 0.5; when a figure to be rounded is followed by a figure less than 5, the figure is to be retained, e.g., 0.54 is reported as 0.5; when figures that are even are followed by the figure 5, the even figure is retained; and when a figure is odd and followed by a figure of 5 the odd value, the figure is rounded to the next highest even figure, e.g., 0.45 is reported as 0.4, 0.35 is reported as 0.4.

As proposed, the rounding procedures are removed from each standard and included in Subpart A, General Provisions § 810.105, *Percentages*. A new rounding procedure is proposed which is consistent with rounding performed by calculators and in computer applications. Accordingly, this proposed change would adopt more generally accepted mathematical rounding procedures and would facilitate the understandability and usage of the standards. The new rounding rules simply stated provide that a figure to be rounded followed by a 5 or a figure greater than 5 be rounded up to the next highest figure, e.g., report 0.35 as 0.4, 6.4621 as 6.5. If the figure is followed by a number less than 5, the figure is retained, e.g., report 8.3499 as 8.3.

In addition, it is also proposed that FGIS report all percentages (except ergot) to the nearest tenth of a percent. FGIS has determined that reporting such percentages to the nearest tenth of a percent is reproducible. With this change, dockage percent ages in barley, flaxseed, rye, sorghum, and triticale will be reported to the nearest tenth of a percent. Dockage is barley, flaxseed, rye, and sorghum is currently reported to the nearest whole percentage with a fraction of a percent being disregarded. Dockage in triticale is currently reported to the nearest one-half percent. Less than one-half percent is disregarded. Dockage in triticale is currently rounded so that ranges from 0.5 to 0.9 are reported as 0.5 percent, 1.0 to 1.4 as 1.0 percent, 1.5 to 1.9 as 1.5 percent, and the like. These various systems of reporting dockage percentages have caused confusion. The systems also may understate dockage found in grain. As discussed below foreign material in sunflower seed and foreign material and fines in mixed grain is also proposed to be reported to the nearest tenth of a percent.

FGIS has revised the method of reporting dockage in the wheat standards (51 FR 30323). The new method for wheat is to report dockage to the nearest tenth percent. To enhance accuracy and for uniformity and consistency between standards, it is proposed herein that the dockage provisions in barley, flaxseed, rye, and sorghum also be revised to report to the nearest tenth of a percent.

Many of the benefits as presented in the wheat dockage final rule are applicable to barley, flaxseed, rye, and sorghum. Reporting dockage to the nearest tenth of a percent provides a more accurate description of the raw grain. Overall, grain quality may also improve. A more accurate method of reporting dockage may strengthen the creditability of the official inspection certificate, enhance buyer confidence, and help gain competitive position in world grain markets.

Currently foreign material in sunflower seed is reported to the nearest one-half percent. Ranges of sunflower seed foreign material are rounded as follows: 0.0 to 0.25 is reported as 0.0 percent; 0.26 to 0.75 as 0.5 percent; 0.76 to 1.25 as 1.0 percent, and the like. Foreign material and fines in mixed grain is currently reported to the nearest whole percent. It is proposed that both foreign material factors be revised to be reported to the nearest tenth of a percent enhance accuracy and for uniformity and consistency between standards. Foreign material in all other grain standards is reported to the nearest tenth of a percent.

In the determination whether grain conforms to the definition identifying for each grain, figures will also be reported to the nearest tenth of a percent. For example, currently the definition of wheat requires that the grain after the removal of dockage, consists of 50 percent or more of whole kernels of wheat . . . and not more than 10 percent of other grains . . . The figures in this definition and other similar definitions are proposed to be expressed in tenths such as 50.0 percent of whole kernels of wheat . . . and not more than 10.0 percent of other grains . . . This change would enhance accuracy and would be consistent with other determinations expressed to the nearest tenth of a percent.

Similarly, the definitions for subclasses in the U.S. Standards for Wheat are proposed to be revised to be stated to the nearest tenth of a percent. Several definitions for classes (and subclasses) are currently stated in tenths such as in barley, corn, sorghum, and soybeans. Subclass definitions in the U.S. Standards for Wheat, however, are currently expressed in whole percents. For enhanced accuracy and for uniformity and consistency, these definitions are revised to express tenths of a percent. For example, the subclass Dark Northern Spring wheat would be required to contain 75.0 percent or more of dark, hard, and vitreous kernels instead of the present 75 percent.

An exception to this uniform system of expressing values in tenths of a percent is the determination of ergot. Ergot is determined for the Special grade "Ergoty" and is applicable to the U.S. Standards for Barley, Mixed Grain, Oats, Rye, Triticale, and Wheat. The determination for ergot is currently expressed in hundredths of a percent and is unchanged with this proposal because of the need for and the capability of achieving as much precision as possible due to the toxicity of this special grading factor.

Test weight per bushel values are also proposed to be expressed in tenths. Currently, test weight results are rounded to whole and half pounds in the U.S. Standards for Barley, Corn, Flaxseed, Mixed Grain, Oats, Sorghum, Soybeans, and Sunflower Seed. A value of less than a half pound is disregarded. The rounding of the test weight per bushel is viewed as unnecessary. The proposed revision would enhance accuracy and would be consistent with the current practice of reporting test weight per bushel to the nearest tenth of a pound as followed in the U.S. Standards for Rye, Triticale, and Wheat. It is proposed that all test weight per bushel values be reported to the nearest tenth of a pound for all grain standards. The revision is included in Subpart A, General Provisions, § 810.102 (d), *Test Weight per bushel*.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b) of the Act, upon request, such information may be orally presented in an informal manner. Also, pursuant to section 4(b) of the Act, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. If adopted FGIS intends that these changes should become effective on May 1, 1987 to coincide, as nearly as practicable, with the beginning of the crop year for the various grains.

List of Subjects in 7 CFR Part 810

Export, Grain.

Accordingly, it is proposed that 7 CFR Part 810 be revised to read as follows:

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

Subpart A—General Provisions

Sec.

Terms Defined

810.101 Grains for which standards are established.
810.102 Definitions of other terms.

Principles Governing the Application of Standards

810.103 Basis of determination.
810.104 Temporary modifications in equipment and procedures.
810.105 Percentages.

Grades, Grade Requirements, and Grade Designations

810.106 Grades and grade requirements.
810.107 Grade designations.

Special Grades, Special Grade Requirements and Special Grade Designations

810.108 Special grades and special grade requirements.
810.109 Special grade designations.

Subpart B—U.S. Standards for Barley

Terms Defined

810.201 Definition of barley.
810.202 Definition of other terms.

Principles Governing the Application of Standards

810.203 Basis of determination.

Grades and Grade Requirements

810.204 Grades and grade requirements for the subclasses Six-rowed Malting Barley and Six-rowed Blue Malting Barley.
810.205 Grades and grade requirements for the subclasses Two-rowed Malting Barley.
810.206 Grades and grade requirements for the subclasses Six-rowed Barley, Two-rowed Barley, and the class Barley.

Special Grades and Special Grade Requirements

810.207 Special grades and special grade requirements.

Subpart C—U.S. Standards for Corn

Terms Defined

810.401 Definition of corn.
810.402 Definition of other terms.

Principles Governing the Application of Standards

810.403 Basis of determination.

Grades and Grade Requirements

810.404 Grades and grade requirements for Corn.

Special Grades and Special Grade Requirements

810.405 Special grades and special grade requirements.

Subpart D—U.S. Standards for Flaxseed

Terms Defined

810.601 Definition of flaxseed.
810.602 Definition of other terms.

Principles Governing the Application of Standards

810.603 Basis of determination.

Grades and Grade Requirements

810.604 Grades and grade requirements for Flaxseed.

Subpart E—U.S. Standards for Mixed Grain

Terms Defined

810.801 Definition of mixed grain.
810.802 Definition of other terms.

Principles Governing the Application of Standards

810.803 Basis of determination.

Grades and Grade Requirements

810.804 Grades and grade requirements for Mixed Grain.

Special Grades and Special Grade Requirements

810.805 Special grades and special grade requirements.

Subpart F—U.S. Standards for Oats

Terms Defined

810.1001 Definition of oats.
810.1002 Definition of other terms.

Principles Governing the Application of Standards

810.1003 Basis of determination.

Grades and Grade Requirements

810.1004 Grades and grade requirements for Oats.

Special Grades and Special Grade Requirements

810.1005 Special grades and special grade requirements.

Subpart G—U.S. Standards for Rye

Terms Defined

810.1201 Definition of rye.
810.1202 Definition of other terms.

Principles Governing the Application of Standards

810.1203 Basis of determination.

Grades and Grade Requirements

810.1204 Grades and grade requirements for Rye.

Special Grades and Special Grade Requirements

810.1205 Special grades and special grade requirements.

Subpart H—U.S. Standards for Sorghum

Terms Defined

810.1401 Definition of sorghum.
810.1402 Definitions of other terms.

Principles Governing the Application of Standards

810.1403 Basis of determination.

Grades and Grade Requirements

810.1404 Grades and grade requirements for Sorghum.

Special Grades and Special Grade Requirements

810.1405 Special grades and special grade requirements.

Subpart I—U.S. Standards for Soybeans

Terms Defined

810.1601 Definition of soybeans.
810.1602 Definition of other terms.

Principles Governing Application of Standards

810.1603 Basis of determination.

Grades and Grade Requirements

810.1604 Grades and grade requirements for Soybeans.

Special Grades and Special Grade Requirements

810.1605 Special grades and special grade requirements.

Subpart J—U.S. Standards for Sunflower Seed

Terms Defined

810.1801 Definition of sunflower seed.
810.1802 Definition of other terms.

Principles Governing the Application of Standards

810.1803 Basis of determination.

Grades and Grade Requirements

810.1804 Grades and grade requirements for sunflower seed.

Special Grades and Special Grade Requirements

810.1805 Special grade and special grade requirements.

Subpart K—U.S. Standards for Triticale

Terms Defined

810.2001 Definition of triticale.
810.2002 Definitions of other terms.

Principles Governing the Application of Standards

810.2003 Basis of determination.

Grades and Grade Requirements

810.2004 Grades and grade requirements for triticale.

Special Grades and Special Grade Requirements

810.2005 Special grades and special grade requirements.

Subpart L—U.S. Standards for Wheat

Terms Defined

810.2201 Definition of wheat.
810.2202 Definition of other terms.

Principles Governing the Application of Standards

810.2203 Basis of determination.

Grades and Grade Requirements

810.2204 Grades and grade requirements for wheat.

Special Grades and Special Grade Requirements

810.2205 Special grades and special grade requirements.

Authority: Secs. 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76)

Subpart A—General Provisions

Note.—Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal Laws.

Terms Defined

§ 810.101 Grains for which standards are established.

Grain refers to barley, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale, and wheat. Standards for these food grains, feed grains, and oilseeds are established under the United States Grain Standards Act.

§ 810.102 Definitions of other terms.

Unless otherwise stated, the definitions in this section apply to all grains. All other definitions unique to a particular grain are contained in the appropriate subpart for that grain.

(a) *Distinctly low quality.* Grain that is obviously of inferior quality because it is in an unusual state or condition, and that cannot be graded properly by use of other grading factors provided in the standards. Distinctly low quality includes the presence of any objects too large to enter the sampling device, i.e., large stones, wreckage, or similar objects.

(b) *Moisture.* Water content in grain as determined, by an approved device, according to procedures prescribed in FGIS Instructions.

(c) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate in water.

(d) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inches). Test weight per bushel in the U.S. Standards for Barley, Corn, Mixed Grain, Oats, Sorghum, and Soybeans, is determined on the original sample. Test weight per bushel in the U.S. Standards for Flax seed, Rye, Sunflower Seed, Triticale, and Wheat is determined after mechanically cleaning the original sample. Test weight per bushel is recorded to the nearest tenth pound.

(e) *Whole kernels.* Grain with ¼ or less of the kernel removed.

Principles Governing the Application of Standards

§ 810.103 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality is made on the basis of the lot as a whole at the time of sampling when a condition exists that may or may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, cockleburs, crotalaria seeds, dockage, garlic, live insect infestation, large stones, moisture, temperature, an unknown foreign substance(s), and a commonly recognized harmful or toxic substance(s) is made on the basis of the sample as a whole. When a condition exists that may not appear in the representative sample, the determination may be made on the basis of the lot as a whole at the time of sampling according to procedures prescribed in FGIS Instructions.

(c) *All other determinations.* The basis of determination for all other factors is contained in the individual standards.

§ 810.104 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the grain standards are applicable to grain produced and harvested under normal environmental conditons. Abnormal environmental conditions during the production and harvest of grain may require minor temporary modifications in the equipment or procedures to may require minor temporary modifications in the equipment or procedures to obtain results that would have been expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner.

§ 810.105 Percentages.

(a) *Rounding.* Percentages are determined on the basis of weight and are rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than or equal to 5, round to the next higher figure; e.g., report 6.362 as 6.4, 0.3507 as 0.4, and 2.45 as 2.5

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., report 8.3499 as 8.3, and 1.22 as 1.2.

(b) *Recording.* The percentage of ergot is recorded to the nearest hundredth percent. The percentages of all other factors are recorded to the nearest tenth of a percent.

Grades, Grade Requirements, and Grade Designations

§ 810.106 Grades and grade requirements.

The grades and grade requirements for each grain (except mixed grain) are shown in the grade table(s) of the respective standards. Mixed grain grade requirements are not presented in tabular form.

§ 810.107 Grade designations.

(a) *Grade designations for grain.* The grade designations include in the following order (1) the letters "U.S."; (2) the number of the grade or the words "Sample grade"; (3) when applicable, the special grade(s); (4) when applicable, the subclass; (5) the class or kind of grain; (6) when applicable, the word "dockage" together with the percentage thereof; and (7) when applicable, in the case of a mixed class or mixed grain, the remarks section of the certificate shall include in the order of predominance, the name and approximate percentage of the classes or in the case of mixed grain, the grains present in excess of 10.0 percent that comprise the mixture and when applicable, the words *other grains* followed by a statement of the percentage of the combined quantity of those kinds of grains, each of which is present in quantity less than 10.0 percent shall be shown in the remarks section of the certificate.

(b) *Optional grade designations.* In addition to paragraph (a) above, grain may be certificated under certain conditions as described in FGIS Instructions when supported by official analysis, as "U.S. No. 2 or better (*type of grain*)", "U.S. No. 3 or better (*type of grain*)", and the like.

Special Grades, Special Grade Requirements, and Special Grade Designations

§ 810.108 Special grades and special grade requirements.

A special grade serves to draw attention to a special factor or condition present in the grain and, when applicable, is supplemental to the grade assigned under § 810.107. Special grades are identified and requirements are established in each respective grain standard.

§ 810.109 Special grade designations.

Special grade designations are shown as prescribed in § 810.107. Multiple special grade designation will be listed in alphabetical order.

Subpart B—United States Standards for Barley

Terms Defined

§ 810.201 Definition of barley.

Grain that, before the removal of dockage, consists of 50.0 percent or more of whole kernels of cultivated barley (*Hordeum vulgare* L. and *H. distichum* L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act. The term "barley" as used in these standards does not include hull-less barley.

§ 810.202 Definition of other terms.

(a) *Black barley.* Barley with black hulls.

(b) *Broken kernels.* Barley with more than ¼ of the kernel removed.

(c) *Classes.* There are three classes for barley: Six-rowed Barley, Two-rowed Barley, and Barley.

(1) *Six-rowed Barley.* Barley of the six-rowed type with white hulls that contains not more the 10.0 percent of two-rowed barley or black barley, either singly or combined. This class is divided into the following three subclasses:

(i) *Six-rowed Malting Barley.* Six-rowed barley of a suitable malting type that has 90.0 percent or more of kernels with white aleurone layers; that is not semisteely in mass; that is not badly stained or materially weathered, bleached, blighted, ergoty, garlicky, infested, or smutty; and that otherwise meets the grade requirements for the subclass Six-rowed Malting Barley.

(ii) *Six-rowed Blue Malting Barley.* Six-rowed barley of a suitable malting type that has 90.0 percent or more of kernels with blue aleurone layers; that is not semisteely in mass; that is not badly stained or materially weathered, bleached, blighted, ergoty, garlicky, infested, or smutty, and that otherwise meets the grade requirements for the subclass Six-rowed Malting Barley.

(iii) *Six-rowed Barley.* Any barley of the class Six-rowed Barley that does not meet the requirements of the subclass Six-rowed Malting Barley or Six-rowed Blue Malting Barley.

(2) *Two-rowed Barley.* Barley of the two-rowed type with white hulls that contains not more than 10.0 percent of six-rowed barley or black barley, either singly or combined. This class is divided into the following two subclasses:

(i) *Two-rowed Malting Barley.* Two-rowed barley of a suitable malting type, that is not semisteely in mass; that is not badly stained or materially weatherd, bleachd, blighted, ergoty, garlicky, infested, or smutty; and that otherwise meets the grade requirements for the subclass Two-rowed Malting Barley.

(ii) *Two-rowed Barley.* Two-rowed barley that does not meet the requirements of the subclass Two-rowed Malting Barley.

(3) *Barley.* Barley that does not meet the requirements for the classes Six-rowed Barley or Two-rowed Barley, or that contains more than 10.0 percent of black barley.

(d) *Damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are: badly ground-damaged, badly weather-damaged, diseased, frost-damaged (major), germ-damaged, heat-damaged (major and minor), insect-bored, mold-damaged (major), sprout-damaged, or otherwise materially damaged.

(e) *Dockage.* All matter other than barley that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS Instructions. Also, underdeveloped, shriveled, and small pieces of barley kernels removed in properly separating the material other than barley and that cannot be recovered by properly rescreening or recleaning.

(f) *Foreign material.* All matter other than barley, other grains, and wild oats that remains in the sample after removal of dockage.

(g) *Frost-damaged kernels (major).* Kernels, pieces of barley kernels, other grains, and wild oats that are badly shrunken and distinctly discolored black or brown by frost.

(h) *Frost-damaged kernels (minor).* Kernels, and pieces of barley kernels that are distinctly indented, immature or shrunken in appearance or that are light green in color as a result of frost before maturity.

(i) *Germ-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that have dead or discolored germ ends.

(j) *Heat-damaged kernels (major).* Kernels, pieces of barley kernels, other grains, and wild oats that are materially discolored and damaged by heat.

(k) *Heat-damaged kernels (minor).* Kernels, pieces of barley kernels, other grains, and wild oats that are slightly discolored as a result of heat.

(l) *Mold-damaged kernels (major).* Kernels, pieces of barley kernels, other grains, and wild oats that are weathered and contain considerable evidence of mold.

(m) *Mold-damaged kernels (minor).* Kernels and pieces of barley kernels containing slight evidence of mold.

(n) *Other grains.* Corn, cultivated buckwheat, einkorn, emmer, flaxseed,

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guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wheat.

(o) *Plump barley.* Barley that remains on top of a 6/64 x 3/4 slotted-hole sieve after sieving according to procedures prescribed in FGIS Instructions.

(p) *Sieves.* (1) $^{6}/_{64} \times ^{3}/_{4}$ *slotted-hole sieve.* A metal sieve 0.032 inch thick with slotted performations 0.0781 ($^{5}/_{64}$) inch by 0.750 ($^{3}/_{4}$) inch.

(2) $5^{1}/_{64} \times ^{3}/_{4}$ *slotted-hole sieve.* A metal sieve 0.032 inch thick wich slotted perforations 0.985 ($5^{1}/_{64}$) inch by 0.750 ($^{3}/_{4}$) inch.

(3) $^{6}/_{64} \times ^{3}/_{4}$ *slotted-hole sieve.* A metal sieve 0.032 inch thick with slotted perforation 0.0937 ($^{6}/_{64}$) inch by 0.750 ($^{3}/_{4}$) inch.

(q) *Skinned and broken kernels.* Barley kernels that have one-third or more of the hull removed, or that the hull is loose or missing over the germ, or broken kernels, or whole kernels that have a part or all of the germ missing.

(r) *Sound barley.* Kernels and pieces of barley kernels that are not damaged, as defined under (d) of this section.

(s) *Suitable malting type.* Varieties of malting barley that are approved by the Federal Grain Inspection Service as being suitable for malting purposes. The recommended varieties are listed in FGIS Instructions.

(t) *Thin barley.* Six-rowed barley which passes through a $^{6}/_{64} \times ^{3}/_{4}$ slotted-hole sieve and two-rowed barley which passes through a $5^{1}/_{64} \times ^{3}/_{4}$ slotted-hole sieve after sieving according to procedures prescribed in FGIS Instructions.

(u) *Wild Brome grasses.* Seeds of brome grasses such as *Bromus rigidus* Roth that have harsh awns that are injurious when fed to livestock.

(v) *Wild oats.* Seeds of *Avena fatua* L. and *A. sterilis.* L.

Principles Governing the application of Standards

§ 810.203 Basis of determination.

Each determination of heat-damaged kernels (major and minor) and white or blue aleurone layers in Six-rowed Barley is made on pearled, dockage-free barley. Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

Grades and Grade Requirements

§ 810.204 Grades and grade requirements for the subclasses Six-rowed Malting Barley and Six-rowed Blue Malting Barley.

Grade [1]	Minimum limits of—				Maximum limits of—					
	Test weight per bushel	Suitable malting type	Sound barley [2]	Damaged kernels [3]	Foreign material	Other grains	Skinned and broken kernels	Thin barley	Black barley
	(pounds)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)
U.S. No. 1	47.0	95.0	97.0	2.0	1.0	2.0	4.0	7.0	0.5
U.S. No. 2	45.0	95.0	94.0	3.0	3.0	3.0	8.0	10.0	1.0
U.S. No. 3	43.0	95.0	90.0	4.0	3.0	5.0	8.0	15.0	2.0

[1] Six-rowed Malting Barley and Six-rowed Blue Malting Barley may contain: not more than 1.9 percent of frost-damaged kernels that may include not more than 0.4 percent of frost-damaged kernels (major); not more than 0.2 percent of heat-damaged kernels that may include not more than 0.1 percent of heat-damaged kernels (major) and may contain unlimited amounts of mold-damaged Kernels (minor); however, mold-damaged Kernels (major) count as damaged kernels and against sound barley limits.

[2] Frost-damaged kernels (minor) and mold-damaged kernels (minor) are not considered damaged kernels or scored against sound barley.

NOTE.—Six-rowed barley that meets the requirements of U.S. No. 1 to U.S. No. 3, inclusive, for the subclasses Six-rowed Malting Barley and Six-rowed Blue Malting is classified and graded according to the requirements in this section. Otherwise, it will be graded according to the requirements in § 810.206

§ 810.205 Grades and grade requirements for the subclass Two-rowed Malting Barley.

Grade [1]	Minimum limits of—				Maximum limits of—			
	Test weight per bushel	Suitable malting type	Sound barley [2]	Wild oats	Foreign material	Skinned and broken kernels	Thin barley	Black barley
	(pounds)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)
U.S. No. 1 Choice	50.0	97.0	98.0	1.0	0.5	5.0	5.0	0.5
U.S. No. 1	48.0	97.0	98.0	1.0	0.5	7.0	7.0	0.5
U.S. No. 2	48.0	95.0	96.0	2.0	1.0	10.0	10.0	1.0
U.S. No. 3	48.0	95.0	93.0	3.0	2.0	10.0	10.0	2.0

[1] Two-rowed Malting Barley may contain: not more than 1.9 percent of frost-damaged kernels that may include not more than 0.4 percent of frost-damaged kernels (major); not more than 0.2 percent of heat-damaged kernels, that may include not more than 0.1 percent of heat-damaged kernels (major), and not more than 1.9 percent of mold-damaged kernels that may include not more than 0.4 percent of mold-damaged kernels (major).

[2] Frost-damaged kernels (minor) and mold-damaged kernels (minor) are not scored against sound barley.

NOTE.—Two-rowed barley that meets the requirements of U.S. No. 1 Choice to U.S. 3, inclusive, for the subclass Two-rowed Malting Barley is classified and graded according to the requirements in this section. Otherwise, it shall be graded according to the requirements in § 810.206.

§ 810.206 Grades and grade requirements for the subclass Six-rowed Barley, Two-rowed Barley.

Grade	Minimum limits of—				Maximum limits of—			
	Test weight per bushel	Sound barley	Damaged kernels [1]	Heat damaged kernels	Foreign material	Broken kernels	Thin barley	Black barley [2]
	(pounds)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)
U.S. No. 1	47.0	97.0	2.0	0.2	1.0	4.0	10.0	0.5
U.S. No. 2	45.0	94.0	4.0	0.3	2.0	8.0	15.0	1.0
U.S. No. 3	43.0	90.0	6.0	0.5	3.0	12.0	25.0	2.0

Grade	Minimum limits of—				Maximum limits of—			
	Test weight per bushel	Sound barley	Damaged kernels [1]	Heat damaged kernels	Foreign material	Broken kernels	Thin barley	Black barley [2]
	(pounds)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)
U.S. No. 4 [3]	40.0	85.0	8.0	1.0	4.0	16.0	35.0	5.0
U.S. No. 5	36.0	75.0	10.0	3.0	5.0	28.0	75.0	10.0

U.S. Sample grade—

U.S. Sample grade is barley that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(b) Contains a quantity of smut so great that one or more of the grade requirements cannot be determined accurately; or

(c) Contains 8 or more stones that have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 8 or more cockleburs (*Xanthium* spp.) or similar seeds singly or in combination, 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of barley; or

(d) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(e) Contains the seeds of wild brome grasses; or

(f) Is heating or otherwise of distinctly low quality.

[1] Includes heat-damaged kernels (major). Frost-damaged kernels (minor), and mold-damaged kernels (minor) are not considered as damaged kernels.

[2] These limits do not apply to the class Barley.

[3] Barley that is badly stained or materially weathered is graded not higher than U.S. No. 4.

Special Grades and Special Grade Requirements

§ 810.207 Special grades and special grade requirements.

(a) *Bleached barley.* Barley that, in whole or part, has been treated with sulphurous acid or any other bleaching agent.

(b) *Blighted barley.* Barley that contains more than 4.0 percent of blight-damaged and/or mold-damaged kernels (major).

(c) *Bright barley.* Barley, except bleached barley, that is of exceptionally good nature color.

(d) *Ergoty barley.* Barley that contains more than 0.10 percent ergot.

(e) *Garlicky barley.* Barley that contains three or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets in 500 grams of barley.

(f) *Infested barley.* Barley that is infested with live weevils or other insects injurious to stored grain according to procedures prescribed in FGIS Instructions.

(g) *Smutty barley.* Barley that has kernels covered with smut spores to give a smutty appearance in mass, or which contains more than 0.2 percent smut balls.

(h) *Stained barley.* Barley, except bleached barley, that is badly stained or weathered.

(i) *Tough barley.* Barley that contains more than 14.5 percent moisture.

Subpart C—United States Standards for Corn

Terms Defined

§ 810.401 Definition of corn.

Grain that consists of 50.0 percent or more of whole kernels of shelled dent corn and/or shelled flint corn (*Zea mays* L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.402 Definition of other terms.

(a) *Classes.* There are three classes for corn: Yellow Corn, White Corn, and Mixed Corn.

(1) *Yellow Corn.* Corn that is yellow-kerneled and contains not more than 5.0 percent of corn of other colors. Yellow kernels of corn with a slight tinge of red and considered yellow corn.

(2) *White Corn.* Corn that is white-kerneled and contains not more than 2.0 percent of corn of other colors. White kernels of corn with a slight tinge of light straw or pink color are considered white corn.

(3) *Mixed Corn.* Corn that does not meet the color requirements for either of the classes Yellow Corn or White Corn and includes white-capped yellow corn.

(b) *Broken corn and foreign material.* All matter that passes readily through a $^{12}/_{64}$ round-hole sieve and all matter other than corn that remains in the sieved sample after sieving according to procedures prescribed in FGIS Instructions.

(c) *Damaged kernels.* Kernels and pieces of corn kernels that are: badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(d) *Heat-damaged kernels.* Kernels and pieces of corn kernels that are materially discolored and damaged by heat.

(e) *Sieve—$^{12}/_{64}$ round-hole sieve.* A metal sieve 0.032 inch thick with round perforations 0.1875 ($^{12}/_{64}$) inch in diameter which are ¼ inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

Principles Governing the Application of Standards

§ 810.403 Basis of determination.

Each determination of class, damaged kernels, heat-damaged kernels, flint corn, and flint and dent corn is made on the basis of the grain after the removal of the broken corn and foreign material. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole, except the determination of ordor is made on either the basis of the grain as a whole or the grain when free from broken corn and foreign material.

Grades and Grade Requirements

§ 810.404 Grades and grade requirements for corn.

Grade	Minimum test weight per bushel	Maximum limits of—		
		Damaged kernels		Broken corn and foreign material
		Heat damaged kernels	Total	
	(pounds)	(percent)	(percent)	(percent)
U.S. No. 1	56.0	0.1	3.0	2.0
U.S. No. 2	54.0	0.2	5.0	3.0
U.S. No. 3	52.0	0.5	7.0	4.0
U.S. No. 4	49.0	1.0	10.0	5.0
U.S. No. 5	46.0	3.0	15.0	7.0

U.S. Sample grade—

U.S. Sample grade is corn that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(b) Contains 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 8 or more cockleburs (*Xanthium* spp.) or similar seeds singly or in combination, 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more roden pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of corn; or

(c) Has a musty, sour, or commercially objectionable foreign odor; or

(d) Is heating or otherwise of distinctly low quality.

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Special Grades and Special Grade Requirements

§ 810.405 Special grades and special grade requirements.)

(a) *Flint corn.* Corn that consists of 95.0 or more of flint corn.

(b) *Flint and dent corn.* Corn that consists of a mixture of flint and dent corn containing more than 5.0 percent but less than 95.0 percent of flint corn.

(c) *Infested corn.* Corn that is infested with live weevils or other insects injurious to stored grain according to procedures prescribed in FGIS Instructions.

(d) *Waxy corn.* Corn that consists of 95.0 percent of more waxy corn, according to procedures prescribed in FGIS Instructions.

Subpart D—United States Standards for Flaxseed

Terms Defined

§ 810.601 Definition of flaxseed.

Grain that, before the removal of dockage, consists of 50.0 percent or more of common flaxseed (*Linum usitatissimum* L.) and not more than 10.0 percent of other grains for which standards have been established under the Unites States Grain Standards Act and which, after the removal of dockage, contains 50.0 percent or more of whole flaxseed.

§ 810.602 Definition of other terms.

(a) *Damaged kernels.* Kernels and Pieces of flaxseed kernels that are: badly ground-damaged, badly weather-damaged, deseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Dockage.* All matter other than flaxseed that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS Instructions. Also, underdeveloped, shriveled, ans small pieces of flaxseed kernels removed in properly separating the material other than flaxseed and that cannot be recovered by properly rescreening or recleaning.

(c) *Heat-damaged kernels.* Kernels and pieces of flaxseed kernels that are materially discolored and damaged by heat.

(d) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, wheat, and wild oats.

Principles Governing the Application of Standards

§ 810.603 Basis of determination.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

Grades and Grade Requirements

§ 810.604 Grades and grade requirements for flaxseed.

Grade	Minimum test weight per bushel	Maximum limits of—	
		Damaged kernels	
		Heat damaged kernels	Total
	(pounds)	(percent)	(percent)
U.S. No. 1	48.0	0.2	10.0
U.S. No. 2	47.0	0.5	15.0
U.S. Sample grade			

U.S. Sample grade is flaxseed that:
(a) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or
(b) Contains 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles or an unknown foreign substance(s), or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of flaxseed; or
(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic ordor), or
(d) Is heating or otherwise of distinctly low quality.

Subpart E—United States Standards for Mixed Grain

Terms Defined

§ 810.801 Definition of mixed grain.

Any mixture of gains for which standards have been established under the United States Grain Standards Act, provided that such mixture does not come within the requirements of any of the standards for such grains; and that such mixture consists of 50.0 percent or more of whole kernels of grain and/or whole and broken soybeans which will not pass through a 5/64 triangular-hole sieve and/or whole flaxseed that passes through such a sieve after sieving according to procedures prescribed in FBIS Instructions.

§ 810.802 Definition of other terms

(a) *Grades.* U.S. Mixed Grain, or U.S. Sample grade Mixed Grain, and special grades.

(b) *Foreign material and fines.* All matter other than whole flaxseed that passes through a ⁹⁄₆₄ triangular-hole sieve, and all matter other than grains or which standards have been established under the Act, that remains in the sieved sample.

(c) *Damaged kernels.* Kernels and pieces of grain kernels for which standards have been established under the Act, that are: badly ground-damaged, badly-weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(d) *Heat-damaged kernels.* Kernels and pieces of grain kernels for which standards have been established under the Act, and that are materially discolored and damaged by heat.

(e) *Sieve—⁹⁄₆₄ triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of which are 0.0781 (⁹⁄₆₄) inch in diameter.

Principles Governing the Application of Standards

§ 801.803 Basis of determination

Each determination of damaged and heat-damaged kernels, and the percentage of each kind of grain in the mixture is made on the basis of the sample after removal of foreign material and fines. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from foreign material and fines.

Grades and Grade Requirements

§ 810.804 Grades and grade requirements for mixed grain.

(a) *U.S. Mixes Grain (Grade).* Mixed grain with not more than 15.0 percent of damaged kernels, and not more than 3.0 percent of heat-damaged kernels, and that otherwise does not meet the requirements for the grade U.S. Sample grade Mixed Grain.

(b) *U.S. Sample grade Mixed Grain.* Mixed grain that:

(1) Does not meet the requirements for the grade U.S. Mixed Grain; or

(2) Contains more than 16.0 percent moisture; or

(3) Contains 8 or more stones that have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of broken glass, 3 or more Crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 8 or more cocklebur (*Xanthium* spp.) or similar seeds singly or in combination, 4 or more pieces of an unknown foreign substance(s) or a recognized harmful or toxic substance(s), 10 or more pieces or

rodent pellets, bird droppings, or an equivalent quantity or other animal filth per 1,000 grams of mixed grain; or

(4) Is musty, sour, or heating; or

(5) Has any commercially objectionable foreign ordor except smut or garlic; or

(6) Is otherwise of distinctly low quality.

Special Grades and Special Grade Requirements

§ 810.805 Special grades and special grade requirements.

(a) Blighted mixed grain. Mixed grain in which barley predominates and that contains more than 4.0 percent of blight-damaged and/or mold-damaged barley kernels.

(b) *Ergoty mixed grain.* (1) Mixed grain in which rye or wheat predominates and that contains more than 0.30 percent erogot, or

(2) any other mixed grain that contains more than 0.10 percent ergot.

(c) *Garlicky mixed grain.* (1) Mixed grain in which wheat, rye, or triticale predominates, and that contains 2 or more green garlic bublets, or an equivalent quantity of dry or partly dry bulblets in 1,000 grams of mixed grain; or

(2) Any other mixed grain that contains 4 or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets, in 500 grams of mixed grain.

(d) *Infested mixed grain.* Mixed grain that is infested with live weevils or other insects injurious to stored grain according to procedures prescribed in FGIS Instructions.

(e) *Smutty mixed grain.* (1) Mixed grain in which rye, triticale, or wheat predominates, and that contains 15 or more average size smut balls, or an equivalent quantity of smut spores in 250 grams of mixed grain, or

(2) Any other mixed grain that has the kernels covered with smut spores to give a smutty appearance in mass, or that contains more than 0.2 percent smut balls.

(f) *Treated mixed grain.* Mixed grain that has been scored, limed, washed, sulfured, or treated in such a manner that its true quality is not reflected by the grade designation U.S. Mixed Grain or U.S. Sample grade Mixed Grain.

Subpart F—United States Standards for Oats

Terms Defined

§ 810.1001 Definition of oats.

Grain that consists of 50.0 percent or more of oats (*Avena sativa* L. and *A. byzantina C.* Kock) and may contain, singly or in combination, not more than 10.0 percent of wild oats and other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1002 Definition of other terms.

(a) *Fine seeds.* All matter that passes through a ⁹⁄₆₄ triangular-hole sieve after sieving according to procedures prescribed in FGIS Instructions.

(b) *Foreign material.* All matter other than oats, wild oats, and other grains.

(c) *Heat-damaged kernels.* Kernels and pieces of oat kernels, other grains, and wild oats that are materially discolored and damaged by heat.

(d) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wheat.

(e) *Sieves.*—(1) ⁹⁄₆₄ *triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed cricles of which are 0.0781 (⁹⁄₆₄) inch in diameter.

(2) *0.064 x ⅜ oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (⅜) inch.

(f) *Sound oats.* Kernels and pieces of oat kernels (except wild oats) that are not: badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(g) *Wild oats.* Seeds of *Avena fatua* L. and *A. sterilis* L.

Principles Governing the Application of Standards

§ 810.1003 Basis of determination.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole.

Grades and Grade Requirements

§ 810.1004 Grades and Grade Requirements for Oats.

Grade	Minimum limits—		Maximum limits—		
	Test weight per bushel	Sound oats	Heat-damaged kernels	Foreign material	Wild oats
	(pounds)	(percent)	(percent)	(percent)	(percent)
U.S. No. 1	36.8	97.0	0.1	2.0	2.0
U.S. No. 2	33.0	94.0	0.3	3.0	3.0
U.S. No. 3[1]	30.0	90.0	1.0	4.0	5.0
U.S. No. 4[2]	27.0	80.0	3.0	5.0	10.0
U.S. Sample grade—					

U.S. Sample grade are oats which:
(a) Do not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or
(b) Contain 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 8 or more cocklebur (*Xanthium* spp.) or similar seeds singly or in combination, 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings or equivalent quantity of other animal filth per 1,000 grams or oats; or
(c) Have a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
(d) Are heating or otherwise or distinctly low quality.

[1] Oats that are slightly weathered shall be graded not higher than U.S. No. 3.
[2] Oats that are badly stained or materially weathered shall be graded not higher than U.S. No. 4.

Special Grades and Special Grade Requirements

§ 810.1005 Special grades and special grade requirements.

(a) *Bleached oats.* Oats that in whole or in part, have been treated with sulphurous acid or any other bleaching agent.

(b) *Bright oats.* Oats, except Bleached oats, that are of good natural color.

(c) *Ergoty oats.* Oats that contain more than 0.10 percent ergot.

(d) *Extra-heavy oats.* Oats that have a test weight per bushel of 40 pounds or more.

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(e) *Garlicky oats.* Oats that contain 4 or more green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in 500 grams of oats.

(f) *Heavy oats.* Oats that have a test weight per bushel of 38 pounds or more but less than 40 pounds.

(g) *Infested oats.* Oats that are infested with live weevils or other insects injurious to stored grain according to procedures prescribed in FGIS Instructions.

(h) *Smutty oats.* Oats that have kernels covered with smut spores to give smutty appearance in mass, or that contain more than 0.2 percent smut balls.

(i) *Thin oats.* Oats that contain more than 20.0 percent of oats and other matter, that pass through a 0.064 x ⅜ oblong-hole sieve but remain on top of a 5/64 triangular-hole sieve after sieving according to procedures prescribed in FGIS Instructions.

Subpart G—United States Standards for Rye

Terms Defined

§ 810.1201 Definition of rye.

Grain that, before the removal of dockage, consists of 50.0 percent or more of common rye (*Secale cereale* L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act and that, after the removal of dockage, contains 50.0 percent or more of whole rye.

§ 810.1202 Definition of other terms.

(a) *Damaged kernels.* Kernels, pieces of rye kernels, and other grains that are: badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Dockage.* All matter other than rye that can be removed from the original sample by use of an approved device in accordance with procedures prescribed in FGIS Instructions. Also, underdeveloped, shriveled, and small pieces of rye kernels removed in properly separating the material other than rye and that cannot be recovered by properly rescreening and recleaning.

(c) *Foreign material.* All matter other than rye that remains in the sample after the removal of dockage.

(d) *Heat-damaged kernels.* Kernels, pieces of rye kernels, and other grains that are materially discolored and damaged by heat.

(e) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, wheat, and wild oats.

(f) *Sieve—0.064 x ⅜ oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 by 0.375 (⅜) inch.

(g) *Thin rye.* Rye and other matter that passes through a 0.064 x ⅜ inch oblong-hole sieve after sieving according to procedures prescribed in FGIS Instructions.

Principles Governing the Application of Standards

§ 810.1203 Basis of determination.

Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

Grades and Grade Requirements

§ 810.1204 Grades and grade requirements for Rye.

Grade	Minimum test weight per bushel	Maximum limits of—				
		Foreign material		Damaged kernels		Thin rye
		Foreign matter other than wheat	Total	Heat damaged	Total	
	(pounds)	(percent)	(percent)	(percent)	(percent)	(percent)
U.S. No. 1	56.0	1.0	3.0	0.2	2.0	10.0
U.S. No. 2	54.0	2.0	5.0	0.2	4.0	15.0
U.S. No. 3	52.0	4.0	10.0	0.5	7.0	25.0
U.S. No. 4	49.0	8.0	10.0	3.0	15.0	—
U.S. Sample grade—						

U.S. Sample grade is rye that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contains 8 or more stones that have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of rye; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

Special Grades and Special Grade Requirements

§ 810.1205 Special grades and special grade requirements.

(a) *Plump rye.* Rye that contain not more than 5.0 percent of rye and other matter that passes through a 0.064 x ⅜ oblong-hole sieve.

(b) *Ergoty rye.* Rye that contains more than 0.30 percent of ergot.

(c) *Light garlicky rye.* Rye that contains in a 1,000-gram portion two or more, but not more than six, green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(d) *Garlicky rye.* Rye that contains in a 1,000-gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(e) *Infested rye.* Rye that is infested with live weevils or other insects injurious to stored grain according to procedures prescribed in FGIS Instructions.

(f) *Light smutty rye.* Rye that has an unmistakable order of smut, or that contains in a 250-gram portion smut balls, portions of smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(g) *Smutty rye.* Rye that contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls but not in excess of a quantity equal to 30 smut balls of average size.

Subpart H—United States Standards for Sorghum

Terms Defined

§ 810.1401 Definition of sorghum.

Grain that, before the removal of dockage, consists of 50.0 percent or more of whole kernels of sorghum (*Sorghum bicolor* (L.) Moench) excluding nongrain sorghum and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1402 Definitions of other terms.

(a) *Broken kernels,* foreign material, and other grains. All matter, other than dockage, that passes through a 5/64 triangular-hole sieve after sieving according to procedures prescribed in FGIS Instructions and all matter other than sorghum that remains in the sieved sample.

(b) *Classes.* There are four classes for sorghum: White Sorghum, Yellow Sorghum, Brown Sorghum, and Mixed Sorghum.

(1) *White Sorghum.* Sorghum with white or translucent pericarps. Such sorghum containings spots that singly or in combination cover 25.0 percent or less of the kernel is considered as White Sorghum. White Sorghum will contain not more than 2.0 percent (singly or combined) of kernels of sorghum of other colors.

(2) *Yellow Sorghum.* Sorghum with yellow, salmon-pink, red, white, or translucent pericarps, that contains not more than 10.0 percent of sorghum with brown pericarps or pigmented subcoats, and that does not meet the requirements for the class White Sorghum.

(3) *Brown Sorghum.* Sorghum with brown pericarps or pigmented subcoats that contains not more than 10.0 percent of sorghum of other colors.

(4) *Mixed Sorghum.* Sorghum that does not meet the requirements for any of the classes White Sorghum, Yellow Sorghum, or Brown Sorghum.

(c) *Damaged kernels.* Kernels, pieces of sorghum kernels, and other grains that are: badly ground damaged, badly weather damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(d) *Dockage.* All matter other than sorghum that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS Instructions. Also, underdeveloped, shriveled, and small pieces of sorghum kernels removed in properly separating the material other than sorghum and that cannot be recovered by properly rescreening or recleaning

(e) *Heat-damaged kernels.* Kernels, pieces of sorghum kernels, and other grains that are materially discolored and damaged as a result of heating.

(f) *Nongrain sorghum.* Seeds of broomcorn, Johnson-grass, *Sorghum almum* Parodi, sorghum-sudangrass hybrids, sorgrass, sudangrass, and sweet Sorghum (*sorgo*).

(g) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, soybeans, spelt, sunflower seed, sweet corn, triticale, wheat, and wild oats.

(h) *Pericarp.* The pericarp is the outer layers of the sorghum grain and is fused to the seedcoat.

(i) *Sieves—(1) 5/64 triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of that are 0.0781 (5/64) inch in diameter.

(2) *2–1/2/64 round-hole sieve.* A metal sieve 0.032 inch thick with round holes 0.0391 (2–1/2/64) inch in diameter.

Principles Governing the Application of Standards

§ 810.1403 Basis of determination.

Each determination of broken kernels, foreign material, and other grains is made on the basis of the grain when free from dockage. Each determination of class, damaged kernels, heat-damaged kernels, and stones is made on the basis of the grain when free from dockage and broken kernels, foreign material, and other grains. Other determinations not specifically provided for in the general provisions are made on the basis of the grain as a whole or the grain when free from dockage except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage and broken kernels, foreign material, and other grains.

Grades and Grade Requirements

§ 810.1404 Grades and grade requirements for sorghum.

Grade	Minimum test weight per bushel	Maximum limits of—		
		Damaged kernels		Broken kernels, foreign material and other grains
		Heat damaged	Total	
	(pounds)	(percent)	(percent)	(percent)
U.S. No. 1	57.0	0.2	2.0	4.0
U.S. No. 2	55.0	0.5	5.0	8.0
U.S. No. 3 [1]	53.0	1.0	10.0	12.0
U.S. No. 4	51.0	3.0	15.0	15.0
U.S. Sample grade—				

U.S. Sample grade is sorghum that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contains 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, or 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of sorghum; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut odor); or

(d) Is badly weathered, heating, or distinctly low quality.

[1] Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

Special Grades and Special Grade Requirements

§ 810.1405 Special grades and special grade requirements.

(a) *Infested sorghum.* Sorghum that is infested with live weevils or other live insects injurious to stored grain according to procedures prescribed in FGIS Instructions.

(b) *Smutty sorghum.* Sorghum that has kernels covered with smut spores to give a smutty appearance in mass, or that contains 20 or more smut balls in 100 grams of sorghum.

Subpart I—United States Standards for Soybeans

Terms Defined

§ 810.1601 Definition of soybeans.

Grain that consists of 50.0 percent or more of whole or broken soybeans (*Glycine max* (L.) Merr.) that will not pass through an 8/64 round-hole sieve and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1602 Definition of other terms.

(a) *Classes.* There are two classes for soybeans: Yellow Soybeans and Mixed Soybeans.

(1) *Yellow Soybeans.* Soybeans that have yellow or green seed coats and which in cross section, are yellow or have a yellow tinge, and may include

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not more than 10.0 percent of soybeans of other colors.

(2) *Mixed Soybeans.* Soybeans that do not meet the requirements of the class Yellow soybeans.

(b) *Damaged kernels.* Soybeans and pieces of soybeans that are: badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, stinkbug-stung, or otherwise materially damaged. Stinkbug-stung kernels are considered damaged kernels at the rate of one-fourth of the actual percentage of the stung kernels.

(c) *Foreign material.* All matter that passes through an 8/64 round-hole sieve and all matter other than soybeans remaining in the sieved sample after sieving according to procedures prescribed in FGIS Instructions.

(d) *Heat-damaged kernels.* Soybeans and pieces of soybeans that are materially discolored and damaged by heat.

(e) *Purple mottled or stained.* Soybeans that are discolored by the growth of a fungus; or by dirt; or by dirt-like substance(s) including nontoxic inocculants; or by other nontoxic substances.

(f) *Soybeans of other colors.* Soybeans that have green, black, brown, or bicolored seed coats. Soybeans that have green seed coats will also be green in cross section. Bicolored soybeans will have seed coats of two colors, one of which is brown or black, and the brown or black color shall cover 50 percent of the seed coats. The hilum of a soybean is not considered a part of the seed coat for this determination.

(g) *Sieve—8/64 round-hold sieve.* A metal sieve 0.032 inch thick perforated with round holes 0.125 (8/64) inch in diameter with approximately 4,736 perforations per square foot.

(h) *Splits.* Soybeans with more than ¼ of the bean removed and that are not damaged.

Principles Governing the Application of Standards

§ 810.1603 Basis of determination.

Each determination of class, heat-damaged kernels, damaged kernels, splits, and soybeans of other colors is made on the basis of the grain when free from foreign material. Other determinations not specifically provided for under the general provisions are made on the basis of the grain as a whole.

Grades and Grade Requirements

§ 810.1604 Grades and grade requirements for Soybeans.

Grade	Minimum test weight per bushel	Maximum limits of—				
		Damaged kernels		Foreign material	Splits	Soybeans of other colors
		Heat damaged	Total			
	(pounds)	(percent)	(percent)	(percent)	(percent)	(percent)
U.S. No. 1	56.0	0.2	2.0	1.0	10.0	1.0
U.S. No. 2	54.0	0.5	3.0	2.0	20.0	2.0
U.S. No. 3 [1]	52.0	1.0	5.0	3.0	30.0	5.0
U.S. No. 4 [2]	49.0	3.0	8.0	5.0	40.0	10.0
U.S. Sample grade—						

U.S. Sample grade is soybeans that:
(a) Do not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
(b) Contain 8 or more stones that have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more Crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of soybeans; or
(c) Have a musty, sour, or commercially objectionable foreign odor (except garlic odor); or
(d) Are heating or otherwise of distinctly low quality.

[1] Soybeans that are purple mottled or stained are graded not higher than U.S. No. 3.
[2] Soybeans that are materially weathered are graded not higher than U.S. No. 4.

Special Grades and Special Grade Requirements

§ 810.1605 Special grades and special grade requirements.

(a) *Garlicky soybeans.* Soybeans that contain 5 or more green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in a 1,000 gram portion.

(b) *Infested soybeans.* Soybeans that are infested with live weevils or other insects injurious to stored grain according to procedures prescribed in FGIS Instructions.

Subpart J—United States Standards for Sunflower Seed

Terms Defined

§ 810.1801 Definition of sunflower seed.

Grain that, before the removal of foreign material, consists of 50.0 percent or more of cultivated sunflower seed (*Helianthus annuus* L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.1802 Definition of other terms.

(a) *Cultivated sunflower seed.* Sunflower seed grown for oil content. The term seed in this and other definitions related to sunflower seed refers to both the kernel and hull which is a fruit or achene.

(b) *Dehulled seed.* Sunflower seed that has the hull completely removed from the sunflower kernel.

(c) *Damaged sunflower seed.* Seed and pieces of sunflower seed that are: badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, mold-damaged, sprout-damaged, or otherwise materially damaged.

(d) *Foreign material.* All matter other than whole sunflower seeds containing kernels that can be removed from the original sample by use of an approved device and by handpicking a portion of the sample according to procedures prescribed in FGIS Instructions.

(e) *Heat-damaged sunflower seed.* Seed and pieces of sunflower seed that

are materially discolored and damaged by heat.

(f) *Hull (husk).* The ovary wall of the sunflower seed.

(g) *Kernel.* The interior contents of the sunflower seed that are surrounded by the hull.

Principles Governing the Application of Standards

§ 810.1803 Basis of determination.

Each determination of heat-damaged kernels, damaged kernels, test weight per bushel, and dehulled seed is made on the basis of the grain when free from foreign material. Other determinations not specifically provided for in the general provisions are made on the basis of the grain as a whole, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from foreign material.

Grades and Grade Requirements

§ 810.1804 Grades and grade requirements for sunflower seed.

Grade	Minimum test weight per bushel	Maximum limits of—		
		Damaged sunflower seed		Dehulled seed
		Heat damaged	Total	
	(pounds)	(percent)	(percent)	(percent)
U.S. No. 1	25.0	0.5	5.0	5.0
U.S. No. 2	25.0	1.0	10.0	5.0
U.S. Sample grade—				

U.S. Sample grade is sunflower seed that:
(a) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or
(b) Contains 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sampe weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or a more particles of an unknown foreign substance(s), or a commonly recognized harmful or toxic substances(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 600 grams of sunflower seed; or
(c) Has a musty, sour, or commercially objectionable foreign odor; or
(d) Is heating or otherwise of distinctly low quality

Special Grades and Special Grade Requirements

§ 810.1805 Special grades and special grade requirements.

Infested sunflower seed. Sunflower seed that is infested with live weevils or ther insects injurious to stored grain according to procedures prescribed in FGIS Instructions

Subpart K—United States Standards for Triticale

Terms Defined

§ 810.2001 Definition of triticale.

Grain that, before the removal of dockage, consists of 50.0 percent or more of triticale (*X Triticosecale* Wittmack) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act and that, after the removal of dockage, contains 50.0 percent or more of whole triticale.

§ 810.2002 Definitions of other terms.

(a) *Damaged kernels.* Kernels, pieces of triticale kernels, and other grains that are; badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Defects.* Damaged kernels, foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for the factor Defects for each numerical grade.

(c) *Dockage.* All matter other than triticale that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of triticale kernels removed in properly separating the material other than triticale and that cannot be recovered by properly rescreening or recleaning.

(d) *Foreign material.* All matter other than triticale.

(e) *Heat-damaged kernels.* Kernels, pieces of triticale kernels, and other grains that are materially discolored and damaged by heat.

(f) *Other grains.* Barley, corn, cultivated buckwheat, einkorn emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, wheat, and wild oats

(g) *Shrunken and broken kernels.* All matter that passes through a 0.064×⅜ oblong-hole sieve after sieving according to procedures prescribed in FGIS Instructions.

(h) *Sieve—0.064×⅜ oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (⅜) inch.

Principles governing the Application of Standards

§ 810.2003 Basis of determination.

Each determination of heat-damaged kernels, damaged kernels, material other than wheat and rye, and foreign material (total) is made on the basis of the grain when free from dockage and shrunken and broken kernels. Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

Grades and Grade Requirements

§ 810.2004 Grade and grade requirements for Triticale

Grade	Minimum test weight per bushel	Maximum limits of—					
		Damaged Kernels		Foreign material		Shrunken and broken kernels	Defects [3]
		Heat damaged	Total [1]	Material other than wheat or rye	Total [2]		
	(pounds)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)
U.S. No. 1	48.0	0.2	2.0	1.0	2.0	8.0	5.0
U.S. No. 2	45.0	0.2	4.0	2.0	4.0	8.0	8.0
U.S. No. 3	43.0	0.5	8.0	3.0	7.0	12.0	12.0
U.S. No. 4	41.0	3.0	15.0	4.0	10.0	20.0	20.0

U.S. Sample grade—
U.S. Sample grade is triticale that:
(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or
(b) Contains 8 or more stones that have an aggregate weight in excess of 0.2 percent ofthe sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of triticale; or
(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
(d) Is heating or otherwise of distinctly low quality.

[1] Includes heat-damaged kernels.
[2] Includes material other than wheat or rye.
[3] Defects include damaged kernels (total), foreign material (total) and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.

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Special Grades and Special Grade Requirements

§ 810.2005 Special grades and special grade requirements.

(a) *Ergoty triticale.* Triticale that contains more than 0.10 percent of ergot.

(b) *Light garlicky triticale.* Triticale that contains in a 1,000 gram portion two or more, but not more than six, green garlic bulblets or an equivalent quantity of dry and partly dry bulblets.

(c) *Garlicky triticale.* Triticale that contains in a 1,000 gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(d) *Infested triticale.* Triticale that is infested with live weevils or other insects injurious to stored grain according to procedures prescribed in FGIS Instructions.

(e) *Light smutty triticale.* Triticale, that has an unmistakable odor of smut, or that contains in a 250 gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(f) *Smutty triticale.* Triticale that contains in a 250 gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

Subpart L—United States Standards for Wheat

Terms Defined

§ 810.2201 Definition of wheat.

Grain that, before the removal of dockage, consists of 50.0 percent or more common wheat (*Triticum aestivum* L.), club wheat (*T. compactum* Host.), and durum wheat (*T. durum* Desf.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act and that, after the removal of the dockage, contains 50.0 percent or more of whole kernels of one or more of these wheats.

§ 810.2202 Definition of other terms.

(a) *Classes.* There are seven classes for wheat: Durum Wheat, Hard Red Spring Wheat, Hard Red Winter Wheat, Soft Red Winter Wheat, White Wheat, Unclassed Wheat, and Mixed Wheat.

(1) *Durum Wheat.* All varieties of white (amber) durum wheat. This class is divided into the following three subclasses:

(i) *Hard Amber Durum Wheat.* Durum wheat with 75.0 percent or more of hard and vitreous kernels of amber color.

(ii) *Amber Durum Wheat.* Durum Wheat with 60.0 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

(iii) *Durum Wheat.* Durum wheat with less than 60.0 percent of hard and vitreous kernels of amber color.

(2) *Hard Red Spring Wheat.* All varieties of hard red spring wheat. This class shall be divided into the following three subclasses:

(i) *Dark Northern Spring Wheat.* Hard red spring wheat with 75.0 percent or more of dark, hard, and vitreous kernels.

(ii) *Northern Spring Wheat.* Hard red spring wheat with 25.0 percent or more but less than 75.0 percent of dark, hard, and vitreous kernels.

(iii) *Red Spring Wheat.* Hard red spring wheat with less than 25.0 percent of dark, hard, and vitreous kernels.

(3) *Hard Red Winter.* Wheat. All varieties of hard red winter wheat. There are no subclasses in this class.

(4) *Soft Red Winter Wheat.* All varieties of soft red winter wheat. There are no subclasses in this class.

(5) *White Wheat.* All varieties of white wheat. This class is divided into the following four subclasses:

(i) *Hard White Wheat.* White wheat with 75.0 percent or more of hard kernels. It may contain not more than 10.0 percent of white club wheat.

(ii) *Soft White Wheat.* White wheat with less than 75.0 percent of hard kernels. It may contain not more than 10.0 percent of white club wheat.

(iii) *White Club Wheat.* White club wheat containing not more than 10.0 percent of other white wheat.

(iv) *Western White Wheat.* White wheat containing more than 10.0 percent of white club wheat and more than 10.0 percent of other white wheat.

(6) *Unclassed Wheat.* Any variety of wheat that is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class includes:

(i) Red Durum wheat.

(ii) Any wheat which is other than red or white in color.

(7) *Mixed Wheat.* Any mixture of wheat that consists of less than 90.0 percent of one class and more then 10.0 percent of one other class, or a combination of classes that meet the definition of wheat.

(b) *Contrasting classes.* Contrasting class are:

(1) Durum Wheat, White Wheat, and Unclassed Wheat in the classes Hard Red Spring Wheat and Hard Red Winter Wheat.

(2) Hard Red Spring Wheat, Hard Red Winter Wheat, Soft Red Winter Wheat, White Wheat, and Unclassed Wheat in the class Durum Wheat.

(3) Durum Wheat and Unclassed Wheat in the class Soft Red Winter Wheat.

(4) Hard Red Spring Wheat, Durum Wheat, Hard Red Winter Wheat, and Unclassed Wheat in the class White Wheat.

(c) *Damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are: badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(d) *Defects.* Damaged kernels, foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for the factor Defects for each numerical grade.

(e) *Dockage.* All matter other than wheat that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS Instructions. Also, underdeveloped, shriveled, and small pieces of wheat kernels removed in properly separating the material other than wheat and that cannot be recovered by properly rescreening or recleaning.

(f) *Foreign material.* All matter other than wheat that remains in the sample after the removal of dockage and shrunken and broken kernels.

(g) *Heat-damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are materially disclored and damaged by heat which remain in the sample after the removal of dockage and shrunken and broken kernels.

(h) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wild oats.

(i) *Shrunken and broken kernels.* All matter that passes through a 0.064 x ⅜ oblong-hole sieve after sieving according to procedures prescribed in the FGIS Instructions.

(j) *Sieve—0.064 x ⅜ oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (⅜) inch.

Principles Governing Application of Standards

§ 810.2203 Basis of determination.

Each determination of heat-damaged kernels, damaged kernels, foreign material, other classes, contrasting classes, and subclasses is made on the basis of the grain when free from dockage and shrunken and broken kernels. Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

Grades and Grade Requirements

§ 810.2204 Grades and grade requirements for wheat.

(a) Grades and grade requirements for all classes of wheat, except Mixed Wheat.

Grade	Minimum limits of— Test weight per bushel: Hard Red Spring Wheat or White Club wheat[1]	Minimum limits of— Test weight per bushel: All other classes and subclasses	Maximum limits of— Damaged kernels: Heat damaged kernels	Damaged kernels: Total[2]	Foreign material	Shrunken and broken kernels	Defects[3]	Wheat of other classes[4]: Contrasting classes	Wheat of other classes[4]: Total[5]
	(pounds)	(pounds)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)	(percent)
U.S. No. 1	58.0	60.0	0.2	2.0	0.5	3.0	3.0	1.0	3.0
U.S. No. 2	57.0	58.0	0.2	4.0	1.0	5.0	5.0	2.0	5.0
U.S. No. 3	55.0	56.0	0.5	7.0	2.0	8.0	8.0	3.0	10.0
U.S. No. 4	53.0	54.0	1.0	10.0	3.0	12.0	12.0	10.0	10.0
U.S. No. 5	50.0	51.0	3.0	15.0	5.0	20.0	10.0	10.0	10.0
U.S. Sample grade	U.S. Sample grade is wheat that: (a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or (b) Contains 8 or more stones that have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of wheat; or (c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or (d) Is heating or otherwise of distinctly low quality.								

[1] These requirements also apply when Hard Red Spring Wheat or White Club wheat predominate in a sample of mixed wheat.
[2] Includes heat-damaged kernels.
[3] Defects include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.
[4] Unclassed wheat of any grade may contain not more then 10.0 percent of wheat of other classes.
[5] Includes contrasting classes.

(b) *Grades and grade requirements for Mixed Wheat.* Mixed Wheat is graded according to the U.S. numerical and U.S. Sample grade requirements of the class of wheat that predominates in the mixture, except that the factor wheat of other classes is disregarded.

Special Grades and Special Grade Requirements

§ 810.2205 Special grades and special grade requirements.

(a) *Ergoty wheat.* Wheat that contains more than 0.30 percent of ergot.

(b) *Garlicky wheat.* Wheat that contains in a 1,000 grams portion more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(c) *Infested wheat.* Wheat that is infested with live weevils or other insects injurious to stored grain according to procedures prescribed in FGIS Instructions.

(d) *Light smutty wheat.* Wheat that has an unmistakable odor of smut, or which contains in a 250 gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(e) *Smutty wheat.* Wheat that contains, in a 250 gram portion, smut ball, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

(f) *Treated wheat.* Wheat that has been scoured, limed, washed, sulfured, or treated in such a manner that the true quality is not reflected by either the numerical grades or the U.S. Sample grade designation alone.

Dated: September 16, 1986.

D.R. Galliart,

Acting Administrator.

[FR Doc. 86-22297 Filed 10-1-86; 8:45 am]

BILLING CODE 3410-EN-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 84-029P]

Meat Fat Shortening; Container Size Restriction

AGENCY: Food Safety and Inspection Service (FSIS) USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal meat inspection regulations by removing the restriction limiting the packaging of artificially

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flavored meat fat shortening to which artificial color has been added to conventional, round, 3 pound, containers.

This revision would allow producers of artificially flavored and colored meat fat shortening to market their product in institutional and other size containers. It also would promote consistency with Food and Drug Administration regulations for vegetable shortenings, which do not call for a container size restriction.

DATE: Comments must be received on or before: December 1, 1986.

ADDRESS: Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3168, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Mr. C. R. Brewington, Chief, Labeling Policy and Approval Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-5388.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that the proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposal would provide meat fat shortening processors greater flexibility by permitting them to package their product in commercial as well as retail size containers. Since no similar container size restriction exists for vegetable shortening the proposal would allow meat fat shortening producers to compete on a fair and equitable basis with vegetable shortening producers.

Effects on Small Entities

Under the circumstances mentioned above, the Administrator, Food Safety and Inspection Service, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601).

Comments

Interested parties are invited to submit comments concerning this notice. Written comments should be sent in duplicate to the Regulations Office. The comments should reference Docket Number 84-029P. All comments submitted pursuant to the notice will be available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Under the Federal Meat Inspection Act, the Food Safety and Inspection Service is responsible for assuring that meat and meat food products are wholesome, not adulterated, and that labeling of these products is not false or misleading. In accordance with this statutory authority, the Agency has for some time maintained a maximum limit of 3 pounds for containers of artificially flavored meat fat shortening to which coloring has been added (9 CFR 318.7(c)(3)).

The container size restriction was added to the regulations in 1957 in response to comments concerning a proposal to change ingredient nomenclature for substances that may be added to meat products. The preamble of this regulation did not discuss the rationale for adding a container size restriction for artificially flavored and colored meat fat shortening. However, it is likely that the restriction was added to the regulations to assist in preventing consumers from mistaking artificially flavored and colored meat fat shortening for butter or margarine.

The Agency has been petitioned by Ed Miniat, Inc., of Chicago, Illinois to remove the container size restriction on artificially flavored meat shortening to which coloring has been added. The petitioner supplies meat fat shortening to the fast food restaurant industry and has been requested by a customer to supply artificially flavored and colored meat fat shortening in 50 pound containers. The petitioner contends that his firm operates at an unfair disadvantage to vegetable shortening producers, since no container size restriction exists in the Food and Drug Administration regulations for artificially flavored and colored vegetable shortening. The petitioner notes that packaging 3 pound units creates production costs not applicable to the production of vegetable shortening which may be packed in larger units.

The Agency believes that the container size restriction was probably more appropriate 30 years ago when hydrogenated shortenings were newer products. By requiring that the product be packaged in conventional, round, 3 pound containers, the Agency provided extra assurance that consumers were alerted to the fact that the product was not butter or margarine. Since the time that the restriction was added to the regulations, consumer awareness of hydrogenated shortenings has increased. In addition, meat fat shortenings are required by § 319.701 of the meat inspection regulations to be clearly labeled as "Shortening" (with an ingredient statement), "Shortening Prepared with Meat Fats and Vegetable Oils," or "Shortening Prepared with Vegetable Oils and Meat Fats," whichever is appropriate. Product labeled according to this regulation is unlikely to be deceptive to consumers.

Accordingly, since the container size restriction for flavored and colored meat fat shortening is probably out-dated, and since this restriction places meat fat shortening producers at a competitive disadvantage to vegetable fat shortening producers, the Administrator is proposing to delete the last sentence from § 318.7(c)(3) of the meat inspection regulations.

List of Subjects in 9 CFR Part 318

Meat inspection, Preparation of product, Approval of Substances.

PART 318—[AMENDED]

1. The authority citation for 9 CFR Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et. seq.*); 72 Stat. 862, 92 Stat. 1068, as amended (7 U.S.C. 1901 *et. seq.*); 76 Stat. 663 (7 U.S.C. 450 *et. seq.*), unless otherwise noted.

§ 318.7 [Amended]

2. 9 CFR 318.7(c)(3), would be amended by removing the last sentence.

Done at Washington, DC, on September 29, 1986.

Donald L. Houston,

Administrator, and Inspection Service.

[FR Doc. 86-22295 Filed 10-1-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Classification of Orange Juice Concentrate-Based Product; Solicitation of Comments

AGENCY: Customs Service, Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning the classification of orange juice concentrate-based product. Customs received a petition submitted on behalf of a domestic interested party with respect to a Customs ruling that an orange juice concentrate-based product consisting of orange juice concentrated to 65° Brix to which certain ingredients were added was classified under item 183.05, Tariff Schedules of the United States (TSUS), as other edible preparations, not specially provided for. The petitioner contends that the subject product should be classified under item 165.29, TSUS, as concentrated orange juice or orange juice made from concentrated orange juice. The petitioner argues that orange juice is now provided for *eo nomine* in the TSUS because of an amendment by the Trade and Tariff Act of 1984 (Pub. L. 98-573).

A previous solicitation for comments was published in the Federal Register on July 30, 1986 (51 FR 27196). Comments were to have been received on or before September 29, 1986. Customs has received several requests to extend the comment period because additional time is required to prepare reasonably responsive comments. Customs believes the requests have merit. Accordingly, the period of time for the submission of comments is being extended 60 days.

DATE: Comments are requested on or before November 28, 1986.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Classification and Value Division, (202-566-8181).

Dated: September 26, 1986.

John P. Simpson,

Director, Office of Regulations & Rulings.

[FR Doc. 86-22315 Filed 10-1-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-750]

Health and Safety Standards; Manual Lifting

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Request for comments and information.

SUMMARY: The Occupational Safety and Health Administration (OSHA) seeks information which could potentially lead to the reduction of risk of back injury to the American workforce. OSHA solicits information and comments on issues raised in this Request for Comments and Information, and any other pertinent information that will aid in the development of mechanism or intervention strategies to reduce the level of back injuries occurring at the workplace.

DATES: All comments on this notice should be received by January 30, 1987.

ADDRESSES: All comments should be submitted in quadruplicate to the Docket Officer, Docket No. S-750, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3670, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 523-7894. Comments will be available for public inspection and copying at the above location.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue, NW. Washington, DC 20210, Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

Manual materials handling is the principal source of compensable work injuries in the United States, and four out of five of these injuries affect the lower back. Bureau of Labor Statistics data for 1980 show that one million workers suffered back injuries, which accounted for one out of every five injuries and illnesses in the workplace. Almost one-fourth of worker's compensation indemnity expenditures were for claims involving back injuries. The plain and suffering endured by the exposed population and the several billions of dollars expended annually as a result of back injuries justify an effort to deal with this problem.

Methods for preventing lifting injuries can be grouped into two major categories, administrative controls and engineering controls. Administrative controls attempt to prevent injuries by carefully selecting and/or training workers so that they can safety perform lifting tasks. Engineering controls attempt to redesign the job so that the lifting task becomes less hazardous.

The purposes of employee selection programs has been to identify individuals who are predisposed to back injury and who should not be placed on strenuous jobs. These programs have often been incorported into the preemployement physical examination. Techniques such as lumbar-spine X-rays, medical history, and physical examination for postural abnormalities have been advocated as effective in identifying "high risk" job applicants.

However, a recent study performed by a large carrier of workers' compensation insurance found none of these approaches to be effective in reducing compensable back injuries. Furthermore, because of the hazards associated with exposure to radiation during spinal X-rays, the American Occupational Medical Association has taken a position that discourages using the procedure as a routine as a routine screening method.

Strength testing is a relatively new approach advocated as an employee selection method. Recent studies have shown that the method can be used to reduce injuries by discouraging the assignment of weaker workers to jobs that exceed their strength capacities. In one study, it was shown that job simulation strength tests can reduce up to one-third of the work related injuries.

Training programs have also been suggested as an administrative approach for preventing injuries during lifting. For many years organizations such as the National Safety Council have recommended that workers be taught to maintain a straight back, to bend their knees, and to use the muscles of their legs to generate the power required for lifting. However, recent studies have found no differences in the rate of back injuries in companies that utilize these training programs and companies without these programs.

The engineering approach to controlling lifting injuries is to design the requirements of the job to be within the capabilities of the workforce. Examples of engineering controls include reduction in the size or weight of the object lifted, changing the height of a pallet or shelf, or installing a mechanical lifting aid. In a recently published insurance company study, it was

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determined that up to one-third of compensable back injuries could be prevented through better job design.

To date, no approach has been found for totally eliminating back injuries caused by lifting. However, it has been demonstrated that a substantial portion of lifting injuries can be prevented through the implementation of an effective control program involving both administrative and engineering controls. It is the elements of these effective control programs which OSHA intends to identify and evaluate in developing an overall strategy which will reduce the risk of back injury to the American workforce.

Parameters of a Lifting Task

Lifting is a complex activity that cannot be described with a single measurement.

Some of the major parameters that define a lifting task and that could be included in a program to establish safe lifting limits are listed below. OSHA solicits comments and data on ways in which each of these parameters may be incorporated into a proposed intervention strategy.

A. Parameters of the Object Lifted

1. *Weight.* The weight of an object is directly related to the stresses incurred while lifting. It is anticipated that any intervention strategy will specify a maximum allowable weight for a *given set of task parameters.*

2. *Size and Shape.* The size and shape of an object determines how closely it can be held to the body during a lift. In general, it is easier and safer to lift a compact object than a bulky object of equal weight. Should the approach consider the effects of size? If so, how should the maximum allowable weight be adjusted for objects of different size?

3. *Presence of Handles.* Objects with handles are easier to grip and are less likely to be dropped than objects without handles. Should the approach include a factor for adjusting the maximum allowable weight based on the presence or absence of handles? Should there be any criteria for size, strength, or configuration of hands for use on different size and shapes of objects to be lifted?

4. *Stability.* Objects of constant shape (e.g., a rigid box) may be easier to handle than objects whose shape may change (e.g. a bag of grain). Should the lifting approach include a factor for adjusting the maximum allowable weight based on an object's stability?

B. Parameters of the Workplace

1. *Vertical Location.* Workplace layout frequently determines the height at which an object is presented to a worker, and the height to which it must be lifted. Lifting which occurs below knee height or above shoulder height is more strenuous than lifting that occurs between these limits. Should the lifting approach include a factor which considers vertical location?

2. *Horizontal Obstruction.* Any item or structure which prevents a worker from placing his or her body in contact with the object increases the horizontal distance between the worker and the object. How should the lifting recommendations be adjusted for horizontal obstructions?

3. *Walking/Working surfaces.* Should a lifting program include special considerations for slippery and/or uneven working surfaces?

C. Parameters of the Job

1. *Frequency of Lifting.* Jobs that require high frequency lifting may result in fatigue that could lead to an accident. Should the maximum allowable weight be adjusted downward as lifting frequency increases?

2. *Duration of Lifting Activities.* In addition to frequency, the duration of a lifting activity may contribute to fatigue. Should the program approach establish more stringent criteria for jobs where lifting occurs continuously? Should different criteria be established for different shift lengths?

3. *Type of lift.* Should separate criteria be established for one-handed versus two-handed lifts? Should more restrictive criteria be established for lifts that require twisting?

Individual Variability

Lifting requires muscular strength and consumes muscular energy. An individual's lifting capacity is related to factors such as age, body size and weight, general state of health, training and experience, degree of muscular development, and general physical fitness. However, without specific measurements of physical fitness and strength, it is difficult to predict an individual's ability to perform a lifting task.

Physical fitness and strength vary considerably within the working population. To assure effectiveness, criteria developed to protect workers from the hazards associated with lifting must recognize the existence and extent of interworker variability.

Potential Approaches for Establishing Lifting Limits

Numerous approaches have been suggested for establishing limits that define safe lifting. In general, these approaches attempt to prevent damaging stresses to a worker's body by limiting the maximum weight that is allowed to be lifted. With most approaches, the maximum allowable weight is a variable, and must be determined for a given set of object, workplace, and job parameters.

Several approaches for establishing safe lifting criteria are presented below. Comments and information are requested regarding their suitability for use in an OSHA program.

A. NIOSH Work Practices Guide

The *NIOSH Work Practices Guide for Manual Lifting* is based on an equation that uses four variables (horizontal location of object at lift origin, vertical location of object at lift origin, vertical travel distance of the object, and lifting frequency) to compute an "Acceptable Lift (AL)" and a "Maximum Permissible Lift (MPL)." If the object weighs less than the computed AL, then the lifting task is considered to be non-hazardous. If the object weighs more than the computed MPL, then the lifting task is hazardous and should be redesigned. If the object weight falls between the computed AL and MPL values, the employer is encouraged to either redesign the job or implement administrative controls.

The NIOSH approach was developed from an extensive review of recent literature on the topic of lifting. It is an integrated approach that incorporates the principles of some of the approaches that are discussed below.

B. Maximum Acceptable Weight

A simple approach for defining safe lifting would be to set a maximum weight limit which could not be exceeded in a single lift. This approach has been proposed by the International Labor Organization and has been adopted as an "operating rule" by some organizations in the private sector. An attractive feature of this is its simplicity; a load can be designated as either "safe" or "unsafe" based on a single, unambiguous measurement. This approach has been criticized, however, becasue it does not recognize important factors such as object size, workplace geometry, and lift frequency.

In addition to setting the maximum acceptable weight for a single lift, an extended version of this approach could specify limits on the total weight that could be lifted over the duration of a work shift. The extended version implicitly considers the effects of lift frequency, and may prevent fatigue caused by excessive expenditure of muscular energy.

C. Maximum Load-Moment

The maximum acceptable weight approach can be modified to recognize effects of object size and workplace geometry. The modified approach is based on the variable "Load-Moment" that is computed using the following equation:

Load-Moment equals Object Weight times Separation Distance

Separation Distance equals Horizontal Distance Between the Worker's Body and the Load Center of Gravity

Using this approach, a maximum value of load-moment would be established that could not be exceeded on a single lift. An attractive feature of the load-moment approach is that the computed value is a reasonable approximation of stresses incurred by musculoskeletal tissues in the spine, and only two measurements are needed to classify a lift as either "safe" or "unsafe." This approach has been criticized, however, because it does not recognize factors such as vertical location of the object or lift frequency.

In addition to setting the maximum load-moment for a single lift, and extended version of this approach could establish limits on the cumulative load-moment that could be lifted over the duration of work shif. This extended version would implicitly consider the effects of frequency and fatigue.

D. Psychophysics

This approach is based on a series of laboratory experiments that have been conducted in order to measure the maximum weight that workers judge to be acceptable when their jobs require that they perform lifting activities during an eight hour work shift. These experiments have determined the effects of four task parameters (object size, vertical location of the object at lift origin, vertical travel distance of the object, and lift frequency) on maximum acceptable weight for a single lift. Tables have been developed which list maximum acceptable weights for different percentiles of the male and female working populations for a broad range of task parameters.

The psycophysical approach recognizes the variability of lifting capability within the population, and allows the difficulty of a lifting task to be expressed in terms of a population percentile. For example, one could measure the parameters of a lifting task, and use the tables to determined that the task is acceptable to 90 percent of the population. Such task would be easier and safer than another task acceptable to say only 10 percent of the population.

Using the psychophysical approach, lifting limits could be estimated by selecting a population percentile. For example, a strategy could be developed for all lifting tasks to be of a type deemed to be acceptable to 75 percent of the working population. Any task accetable to fewer people would need to be redesigned to reduce the risk of injury.

E. Biomechanics

This approach is based on the principle that musculoskeletal tissues will suffer injury if they are subjected to excessive stresses during lifting. Four task parameters (object weight, vertical location of the object at lift origin, horizontal location of the object at lift origin, and obstructions in the workplace) must be measured in order to use the biomechanical approach. These measurements are them processed by a computer program that calculates stresses at the lower back and other key joints. If these stresses exceed established safe limits, there is an increased risk of injury associated with the lifting task.

A lifting strategy based on the biomechanical approach would necessitate the specification of standard procedures for measuring task parameters and computing the resultant stresses, and the specification of maximum stress levels that could not be exceeded. Any task found to exceed these levels would have to be redesignated to reduce the risk of injury.

The biomechanical approach does not utilize either frequency or job duration as parameters needed to describe a lifting task.

F. Work physiology

This approach is based on the principle that muscular energy is expended every time that a lifting task is performed. If the level of energy expenditure is excessive, then continued performance of the task can lead to fatigue and increased risk of injury. In order to use the physiological approach it is necessary to measure six task parameters (object weight, vertical location of the object at task origin, horizontal location of the object at task origin, vertical travel distance of the object, task frequency, and job duration). This information is used in conjunction with tables, graphs, and/or equations in order to predict the rate of energy expediture, the total energy expenditure, and the total energy consumption associated with a lifting job.

A lifting strategy based on the physiological approach would require the specification of standardized procedures for estimating energy expenditure, and a maximum allowable energy expenditure rate. Any task that requires the expenditure of energy in excess of this rate would have to be redesigned to reduce the risk of injury.

G. Other Considerations

Regardless of the approach or combination of approaches selected as a basis for a lifting strategy, it must be recognized that hazards associated with regular, repetitive lifting tasks (such as those performed on a production line or in a shipping department) are usually easier to control than hazards associated with irregular, infrequent lifting tasks. For example, hazardous lifting that occurs on an assembly line can oftern be controlled using engineering approaches such as reducing the size and weight of objects that are lifted, designing the workplace to eliminate stressful or hazardous lifting postures, and installing automated materials handling equipment. Unfortunately, in many cases it is either impossible or infeasible to implement engineering controls for lifting tasks that occur infrequently or at an uncertain location. Whatever strategy may be adopted, provision should be made for special situations where administrative controls (e.g. "team" lifting, employee training, employee selection) are the only practical means for protecting the workers.

OSHA believes that any mechanism developed for manual lifting must be both easily applied and cost effective. The feasibility and utility of the various approaches must be evaluated and demonstrated prior to selection of the best approach for implementation. Comments regarding injury data, material handling methods, training and selection techniques, safety benefits, and costs of compliance associated with the aforementioned approaches applicable to the implementation of a lifting program are requested.

Public Participation

Interested persons are invited to submit written data, views and information with respect to the issues raised in this Request for Comments and Information. Written comments must be submitted by January 30, 1987, in quadruplicate, to the Docket Officer, Docket No. S–570, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must clearly identify the issues and areas which are addresses and the position taken with respect to each issue and area.

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Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of September 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 86-22238 Filed 10-1-86; 8:45 am]

BILLING CODE 4510-26-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 86-5]

Recordation of Transfers and Other Documents

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed Regulations.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is considering the deletion of the requirement in its regulations (37 CFR 201.4(a)) that, to be recordable, a reproduction of a signed document must be accompanied by a sworn certification signed by at least one of the persons who executed the document, or by an authorized representative of that person. These regulations implement section 205 of the Copyright Act, title 17 U.S.C., and govern the formal requirements such as the signatures, completeness, and legibility of documents that must be satisfied in order to record a document pertaining to a copyright.

DATE: All comments should be received on or before November 3, 1986.

ADDRESSES: Interested persons should submit ten copies of their written comments to: Office of the General Counsel, Copyright Office, Library of Congress, Department 100, Washington, DC 20540, or if by hand, to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Ave., SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 205(a) of title 17 U.S.C. provides that: "Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document." The legislative history of this provision also stipulates that any "document pertaining to a copyright" may be recorded if it "bears the actual signature of the person who executed it," or "if it is appropriately certified as a true copy." H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 128 (1976).

In implementing section 205, the Copyright Office adopted final regulations on the recordation of transfers and certain other documents. The regulations were published in the **Federal Register** on August 8, 1978 (43 FR 35044). Under § 201.4(c)(1) of the regulations, the Copyright Office permitted the recordation of a legible photocopy or other fullsize facsimile reproduction of a signed document pertaining to a copyright, provided that the reproduction of the document was accompanied by a sworn certification or an official certification that the reproduction is true copy of the signed document, and provided further that, "[a]ny sworn certification accompanying a reproduction *shall be signed by at least one of the persons who executed the document*, or by an authorized representative of that person." (Emphasis added.)

The Association of American Publishers has requested a review of the Copyright Office regulations on the recordation of documents. Specifically, the Association has requested the Office to amend its regulations on certification of documents for recordation "to permit certifications signed by publishers, or their representatives, to accompany reproductions of documents retained in the regular course of publishing business." Letter of April 18, 1983 to Register of Copyrights from Association of American Publishers, Inc. They pointed out that the requirement in § 201.4(c)(1) that a sworn certification accompanying a reproduction of a transfer document be signed by one of the *persons* who executed the document (or an authorized agent) imposed a substantial burden on publishers, and, in particular, journal publishers, who maintain their records of transfer documents in microform. Since transfer documents are often signed *only* by the transferor, (generally the author), when a publisher wants to record a reproduction of a document of transfer, often years after the transaction occurred, the publisher must try to locate the transferor, or an authorized representative of that person, to sign the required sworn certification. Where only a microform reproduction of a document is maintained (and it is our understanding that this is common practice in the journal publishing industry), a publisher is deterred and, in some cases, precluded from recording such reproductions in the Copyright Office.

To alleviate the difficulties experienced by journal publishers in complying with the recordation requirements in § 201.4 of 37 CFR, the Copyright Office proposes to amend its regulations to permit the required sworn certification to be signed by a *party* to a document of transfer, regardless of whether that person actually signed the document. For example, where an author transfers the copyright in an article to a periodical publisher, and the publisher does not sign the document of transfer, a reproduction of this document may be submitted for recordation, provided it is accompanied by a sworn certification signed by either the author or the publisher, or an authorized representative of either. The Copyright Office will continue to require that the person or persons submitting a reproduction of a transfer document for recordation certify that the reproduction is "a true copy of the signed document."

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7.) The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this proposed regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulations

PART 201—[AMENDED]

In consideration of the foregoing, the Copyright Office proposes to amend Part 201 of 37 CFR, Chapter II.

1. The authority citation for Part 201 would continue to read as follows:

Authority: Copyright Act, Pub. L. 94-553; 90 Stat. 2541 (17 U.S.C. 702).

2. Section 201.4(c)(1) would be revised to read as follows. Paragraph (c) introductory text is republished.

§ 201.4 Recordation of transfers and certain other documents.

* * * * *

(c) *Recordable documents.* Any transfer of copyright ownership (including any instrument of conveyance, or note or memorandum of the transfer), or any other document pertaining to a copyright, may be recorded in the Copyright Office if it is accompanied by the fee set forth in paragraph (d) of this section, and if the requirements of this paragraph with respect to signatures, completeness, and legibility are met.

(1) To be recordable, the document must bear the actual signature or signatures of the person or persons who executed it. Alternatively, the document may be recorded if it is a legible photocopy or other full-size facsimile reproduction of the signed document, accompanied by a sworn certification or an official certification that the reproduction is a true copy of the signed document. Any sworn certification accompanying a reproduction shall be signed by at least one of the parties to the signed document, or by an authorized representative of that person.

* * * * *

Ralph Oman,

Register of Copyrights.

Approved:

William J. Welsh,

Acting Librarian of Congress.

[FR Doc. 86-22291 Filed 10-1-86; 8:45 am]

BILLING CODE 1410-33-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-56

Salary Offset for Indebtedness of General Services Administration Employees to the United States

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration proposes regulations to implement the Debt Collection Act of 1982. The proposed regulations establish rules and procedures for the General Services Administration to collect, compromise or terminate collection action on claims owed to the U.S. from activities arising under GSA jurisdiction. In particular, procedures are set forth by which GSA can collect debts owed by Federal employees through the use of administrative offset from the employee's disposable pay.

DATE: All comments must be in writing and received on or before November 3, 1986.

ADDRESS: David C. Fisher, Jr., Chief Counsel, General Services Administration, 18th & F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Jr., Office of General Counsel, (LG), 202-566-1460.

Background

Until amended in 1982 by the Debt Collection Act, 5 U.S.C. 5514 was the authority for heads of agencies to offset an erroneous overpayment of pay from the disposable pay of Federal employees. The Debt Collection Act of 1982, Pub. L. 97-365, expanded Federal agency authority to offset debts owed to the United States. The intention of Congress in passing these amendments was to minimize the cost to the Government of recovery of the debts. In addition, the amendments imposed more stringent procedural requirements to protect the interests of Federal employees who have been determined to be indebted to the U.S. The proposed regulations are based on guidelines and standards published by the Office of Personnel Management, 49 FR 27470, July 3, 1984.

Paperwork Reduction Act of 1980

Under section 3518 of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the information collection provisions contained in these regulations are not subject to the Office of Management and Budget review and approval.

Executive Order 12291

These proposed regulations have been reviewed in accordance with E.O. 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

For the reasons set out in the preamble, Title 41 of the Code of Federal Regulations is proposed to be amended as follows:

Part 105-56 is added to read as follows:

PART 105-56—SALARY OFFSET FOR INDEBTEDNESS OF GENERAL SERVICES ADMINISTRATION EMPLOYEES TO THE UNITED STATES

Sec.

105-56.001 Scope.
105-56.002 Excluded debts or claims.
105-56.003 Definitions.
105-56.004 Pre-offset notice.
105-56.005 Employee response.
105-56.006 Petition for pre-offset hearing.
105-56.007 Pre-offset oral hearing.
105-56.008 Non-oral pre-offset hearing.
105-56.009 Written decision.
105-56.010 Deductions.
105-56.011 Non-waiver or rights.
105-56.012 Refunds.
105-56.013 Coordinating offset with another Federal agency.

Authority: 5 U.S.C. 5514: Pub. L. 97-365, 96 Stat. 1754.

§ 105-56.001 Scope.

(a) This part covers both internal and Goverment-wide collections under 5 U.S.C. 5514. It applies when certain debts to the U.S. are recovered by administrative offset from the disposable pay of an employee of the U.S. Government, except in situations where the employee consents to the recovery.

(b) The collection of any amount under this section shall be in accordance with the standards promulgated pursuant to the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*) or in accordance with any other statutory authority for the collection of claims of the U.S. or any Federal agency.

§ 105-56.002 Excluded debts or claims.

This part does not apply to:

(a) Debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (41 U.S.C. 301 *et seq.*), or the tariff laws of the United States.

(b) To any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute. For example, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108.

(c) An employee election of coverage or of a change of coverage under a Federal benefits program which requires periodic deductions from pay if the amount to be recovered was accumulated over thirteen pay periods or less.

§ 105-56.003 Definitions.

The following definitions apply to this part:

"Administrator" means the Administrator of the General Services or the Administrator's designee.

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"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources.

"Disposable pay" means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions that are required by law to be withheld."

"Employee" means a current employee of the General Services Administration, or other executive agency.

"FCCS" means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR 101.1 *et seq.*

"Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

"Program official" means a supervisor or management official of the employee's service or staff office.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

"Waiver" means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 105–56.004 Pre-Offset notice.

The employee is entitled to written notice from an appropriate program officer in his or her employing activity at least 30 days in advance of initiating a deduction from disposable pay informing him or her of:

(a) The nature, origin and amount of the indebtedness determined by the General Services Administration or another agency to be due;

(b) The intention of the agency to initiate proceedings to collect the debt through deductions from the employee's current disposable pay;

(c) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(d) An explanation of GSA's policy concerning how interest is charged and penalties and administrative costs assessed, including a statement that such assessments must be made unless excused under 31 U.S.C. 3717 and the FCCS, 4 CFR 101.1 et seq.;

(e) If Government records of the debt are not attached, the employee's right to inspect and copy Government records relating to the debt, or if the employee or his or her representative cannot personally inspect the records, the right to receive a copy of such records. Any costs associated therewith shall be borne by the debtor. The debtor shall give reasonable notice in advance to GSA of the date on which he or she intends to inspect and copy the records involved;

(f) A demand for repayment providing for an opportunity, under terms agreeable to GSA, for the employee to establish a schedule for the voluntary repayment of the debt by offset or to enter into a written repayment agreement of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the appropriate program official of his or her employing activity and a copy of the agreement must be sent to the regional finance division serving the program activity. The acceptance of such an agreement is discretionary with the agency.

(g) Where a waiver of repayment is authorized by law, the employee's right to request a waiver from the General Accounting Office.

(h) The employee's right to pre-offset hearing conducted by a hearing official arranged by the appropriate program official of his or her employing activity if a petition is filed as prescribed by § 105–56.005. Such hearing official will be either an administrative law judge or a hearing official not under the control of the head of the agency and will be designated in accordance with the procedures established in 5 CFR 550.1107.

(i) The method and time period for petitioning for a hearing, including a statement that the timely filing of a petition for hearing will stay the commencement of collection proceedings.

(j) That a final decision on the hearing, if requested, will be issued at the earliest practicable date, but no later than 60 days after the petition is filed unless a delay is requested and granted.

(k) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR Part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal Penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority.

(l) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made.

(m) Where amounts paid or deducted are later waived or found not owed, unless otherwise provided by law, they will be promptly refunded to the employee.

(n) The specific address to which all correspondence shall be directed regarding the debt.

§ 105–56.005 Employee response.

(a) *Voluntary repayment agreement.* An employee may submit a request to the official who signed the demand letter to enter into a written repayment agreement of the debt in lieu of offset. The request must be made within 7 days of receipt of notice under § 105–56.004. The agreement must be in writing, signed by both the employee and the program official making the demand and a signed copy must be sent to the regional finance division serving the program activity. Acceptance of such an agreement is discretionary with the agency. An employee who enters into such an agreement may nevertheless seek a waiver under paragraph (b) of this section.

(b) *Waiver.* Where a waiver of repayment is authorized by law, the employee may request a waiver from the General Accounting Office.

(c) *Reconsideration.* (1) An employee may seek a reconsideration of the Agency's determination regarding the existence or amount of the debt. The request must be submitted to the official who signed the demand letter within 7 days of receipt of notice under § 105–56.004. The request shall include a detailed statement of reasons for reconsideration and must be accompanied by supporting documentation.

(2) An employee may request a reconsideration of the proposed offset schedule. The request must be submitted to the program official who signed the demand letter within 7 days of receipt of notice under § 105–57.004. The request shall include an alternative repayment schedule proposed by the employee and a detailed statement supported by documentation evidencing financial hardship resulting from the agency's proposed schedule. Acceptance of the request is discretionary with the agency. The agency must notify the employee in writing of its decision concerning the request to reduce the rate of an involuntary deduction.

§ 105–56.006 Petition for pre-offset hearing.

(a) The employee may petition for a pre-offset hearing by filing a written petition with the program official who signed the demand letter within 15 days of receipt of the written notice. The petition must state why the employee believes the agency's determination concerning the existence or amount of the debt is in error, and set forth objections to the involuntary repayment schedule only if the employee previously filed a request for reconsideration of the proposed schedule under § 105–56.005(c)(2). The timely filing of a petition will suspend the commencement of collection proceedings.

(b) The employee's petition or statement must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses which the employee believes support his or her position.

(c) Petitions for hearing made after the expiration of the 15 day period may be accepted if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit.

(d) If the employee timely requests a pre-offset hearing or the timeliness is waived, the program official must:

(1) Notify the employee whether the employee may elect an oral hearing; the program official will arrange for a hearing official; and

(2) The program official will provide the hearing official with a copy of all records on which the determination of the debt and any involuntary repayment schedule are based.

(e) An employee who elects an oral hearing must notify the hearing official and the program official in writing within 5 days of receipt of the notice under paragraph (d)(1) of this section and must identify all proposed witnesses and all facts and evidence about which they will testify.

(f) The hearing official notifies the program official and the employee of the date, time and location of the hearing.

(g) If the employee later elects to have the hearing based only on the written submissions, notification must be given to the hearing official and the program official at least 3 calendar days before the date of the oral hearing. The hearing official may waive the 3-day requirement for good cause.

(h) Failure of the employee to appear at the oral hearing will result in dismissal of the petition and affirmation of the agency's decision.

§ 105–56.007 Pre-offset oral hearing.

(a) Oral hearings are informal in nature. The agency, represented by a program official or a representative of the Office of General Counsel, and the employee, or his or her representative, explain their case in the form of an oral presentation with reference to the documentation submitted. The employee may testify on his or her own behalf, subject to cross examination. Other witnesses may be called to testify where the hearing official determines the testimony to be relevant and not redundant.

(b) The hearing official shall—

(1) Conduct a fair and impartial hearing; and

(2) Preside over the course of the hearing, maintain decorum, and avoid delay in the disposition of the hearing.

(c) The employee may represent himself or herself or may be represented by another person at the hearing. The employee may not be represented by a person who creates an actual or apparent conflict of interest.

(d) Oral hearings are open to the public. However, the hearing official may close all or any portion of the hearing when doing so is in the best interests of the employee or the public.

(e) Oral hearings may be conducted by conference call at the request of the employee or at the discretion of the hearing official.

§ 105–56.008 Non-oral pre-offset hearings.

If a hearing is to be held only upon the written submission, the hearing official reviews the record and responses submitted by both the agency and the employee.

§ 105–56.009 Written decision.

(a) Within 60 days of filing of the employee's petition for a pre-offset hearing, the hearing official will issue a written decision setting forth: the facts supporting the nature and origin of the debt; the hearing official's analysis, findings and conclusions as to the employee's or agency's grounds, the amount and validity of the debt and the repayment schedule.

§ 105–56.010 Deductions.

(a) *When deductions may begin.* If the employee filed a petition for hearing with the program official before the expiration of the period provided for in § 105–56.006, then deductions will begin after the hearing official has provided the employee with a hearing, and the final written decision is in favor of the agency. It is the responsibility of the employee's program official to issue the pre-offset notice to the employee and to instruct the National Payroll Center to begin offset per a final written decision.

(b) *Retired or separated employees.* If the employee retires, resigns, or is terminated before collection of the amount of the indebtedness is completed, the remaining indebtedness will be offset from any subsequent payments of any nature. If the debt cannot be liquidated from subsequent payments, then the debt must be collected according to the procedures for administrative offset pursuant to 31 U.S.C. 3716.

(c) *Types of collection.* A debt will be collected in one lump sum or in installments. Collection will be by lump sum unless the employee is financially unable to pay in one lump-sum. In these cases, collection will be by installment deductions.

(d) *Methods of collection.* If the debt cannot be collected in one lump sum, the debt will be collected by deductions at officially established pay intervals from an employee's current pay account, unless the employee and the program official agree to an alternative repayment schedule. The alternative arrangement must be in writing and signed by both the employee and the program official.

(1) *Installment deductions.* Installment deductions will be made over the shortest period possible. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. The installment payment will be sufficient in size and frequency to liquidate the debt over the shortest period possible and never to exceed three years. Installment payments of less than $100 per pay period will be accepted only in the most unusual circumstances.

(2) *Sources of deductions.* GSA will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of a employee not entitled to basic pay, other authorized pay.

(e) Interest, penalties and administrative costs on debts under this part will be assessed according to the provisions of 4 CFR 102.13.

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§ 105-56.011 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 105-56.012 Refunds.

GSA will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) GSA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 105-56.013 Coordinating offset with another Federal agency.

(a) *When GSA is owed the debt.* When GSA is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until GSA provides the agency with a written certification that the debtor owes GSA a debt and that GSA has complied with these regulations. This certification shall include the amount and basis of the debt and the due date of the payment.

(b) *When another agency is owed the debt.* GSA may use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Any such request must be accompanied by a certification from the requesting agency that the person owes the debt, the amount of the debt and that the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR Part 550, Subpart K.

Dated: July 23, 1986.

Nancy Potter,

Acting Comptroller, General Services Administration.

[FR Doc. 86-22254 Filed 10-1-86; 8:45 am]

BILLING CODE 6820-BH-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rules.

SUMMARY: The Office of Hearings and Appeals proposes procedures for adjudicatory proceedings for the permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977. The proposed rules set forth who may request a hearing, where and when to file pleadings, what the contents of the pleadings must be, who bears the burden of proof, and similar matters involved in administrative proceedings to review decisions of the Office of Surface Mining Reclamation and Enforcement (OSM). These proposed rules would supplement those already contained in 43 CFR Part 4, Subpart L, governing hearings and appeals under the Surface Mining Act.

DATE: Comments are due on or before November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone 703-235-3750.

ADDRESS: Comments may be hand delivered or mailed to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

SUPPLEMENTARY INFORMATION:

Introduction

On April 9, 1986, the Office of Hearings and Appeals published proposed rules setting forth procedures for hearings and appeals of decisions made by the Office of Surface Mining Reclamation and Enforcement under the permanent regulatory program established by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq. See* 51 FR 12168-12175. (The proposed rules were revisions of rules originally proposed on January 14, 1981. *See* 46 FR 3242.) Comments were received from Arch Mineral Corporation, Facts About Coal in Tennessee, the Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations, Kiewit Mining Group Inc., the Mining and Reclamation Council of America, the National Wildlife Federation and the Environmental Policy Institute, and employees of the Department of the Interior's Office of Surface Mining Reclamation and Enforcement and Office of Hearings and Appeals.

Several changes to the proposed procedures were decided upon as a result of these comments. Therefore, the rules are re-proposed for public comment. Responses to the comments submitted about the April 9, 1986, proposed rules as well as further explanation of these proposed rules are provided in this supplementary information discussion, as needed.

In general, these rules provide procedures for review of OSM decisions that implement a Federal program (*see* 30 U.S.C. 1254 and 30 CFR Parts 733 and 736), a Federal lands program (*see* 30 U.S.C. 1273 and 30 CFR Parts 740 and 745), or a Federal program for Indian lands (*see* 30 CFR Chapter VII, Subchapter E). The Surface Mining Act provides for hearings to review various decisions made by OSM (*see, e.g.*, 30 U.S.C. 1264), and OSM's program rules refer to administrative review under 43 CFR Part 4 for other decisions (*see, e.g.*, 30 CFR 775.11). The following discussion is organized by kind of decision made by OSM.

Review of a Preliminary Finding Concerning a Demonstrated Pattern of Willful Violations

Section 510(c) of the Act, 30 U.S.C. 1260(c), provides that "no permit shall be issued to an applicant after a finding by the regulatory authority, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this Act of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this Act." 30 CFR 773.15(b)(3) and 740.13(c)(7) provide for an adjudicatory hearing before a final determination or finding that there is such a demonstrated pattern of willful violations. Proposed rules 43 CFR 4.1350-4.1356 implement these provisions.

A comment objected to the phrase at the end of 43 CFR 4.1350, as proposed on April 9, 1986, "other applicable Federal or State laws or regulations or individual permit conditions," on the grounds that it goes beyond the language of section 510(c). The regulation has been revised to substitute "or the applicable State or Federal program." *Cf.* 30 U.S.C. 1260(b)(1)-(2). The corresponding language in 43 CFR 4.1355(a) has been changed in the same manner.

A comment suggested that 43 CFR 4.1351 provide that OSM's notice of a preliminary finding of a demonstrated pattern of willful violations set forth specifically the basis for the finding, *i.e.*, what violations demonstrate a pattern. The regulation has been revised to include this requirement. Another comment suggested that OSM's issuance of a notice of a preliminary finding should not suspend or postpone its review of the permit application in other aspects. It is not the intent of these rules that a notice would have this effect, although whether it should is a matter for OSM to decide.

A comment suggested removing the time limit in 43 CFR 4.1352(b) for filing a request for a hearing and deleting the sanction in 43 CFR 4.1352(c) for failure to file a request timely. The suggestion is not accepted. Prompt resolution of whether the permit must be denied is important to both the Department and the applicant.

A comment was made that the ultimate burden of persuasion in 43 CFR 4.1355(b) should be on OSM because the applicant has already discharged this burden before OSM during the permit application review process and because the applicant would otherwise be placed in the position of proving there was no pattern of willful violations. The comment cannot be accepted. A preliminary finding occurs during the permit application review process, and the applicant has the burden of establishing that his application is in compliance with all the requirements of the applicable State or Federal program. 30 U.S.C. 1260(a). If the notice of the preliminary finding and OSM's evidence at the hearing do not establish a prima facie case, as required by 43 CFR 4.1355(a), or the person requesting the hearing overcomes the prima facie case, the ultimate burden of persuasion is carried. This is the standard allocation of burdens of proof, and conforms to due process and the Administrative Procedure Act. *EDF v. EPA*, 548 F.2d 998, 1012-15 (D.C. Cir. 1976); *Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals*, 523 F.2d 25, 34-42 (7th Cir. 1975); *Harry Smith Construction Co. v. OSM*, 78 IBLA 27, 29-32 (1983).

Review of Approval or Disapproval of Applications for New Permits

Section 514(c) of the Act, 30 U.S.C. 1264(c), provides that a hearing may be requested on the reasons for a final determination on a permit application. Section 514(d), 30 U.S.C. 1264(d), provides for temporary relief pending final determination in such a proceeding. Proposed rules 43 CFR 4.1360-4.1369 implement these provisions.

43 CFR 4.1360 is revised from the April 9, 1986, version to clarify that the procedures in 4.1361-4.1369 apply to review of decisions on applications for new permits only, including decisions by OSM on applications for new permits to mine on Federal lands in states with cooperative agreements where both the state and OSM issue Federal lands permits (*e.g.*, Montana and Wyoming). (*See also* 30 CFR 774.13(d).) These rules also apply to review of permit terms and conditions imposed or not imposed by OSM, *i.e.*, terms and conditions included to which the applicant or a person with an interest which is or may be adversely affected objects on the grounds they are not required or terms and conditions omitted that the applicant or person believes are required. Review of decisions on applications for permit revisions and renewals, including terms and conditions imposed or not imposed, and for the transfer, assignment, or sale of rights under a permit is conducted under 4.1370-4.1376.

A comment suggesting that a person must have participated through public comment in order to be able to file a request for review under 43 CFR 4.1361 (as well as 4.1371, 4.1381, and 4.1391) was not accepted. *See* H.R. 218, 95th Cong., 1st Sess. at 90; H.R. 537, 95th Cong., 1st Sess. at 106-07.

A comment objected that the times for filing a request for review in 43 CFR 4.1362(a) and (b) as proposed on April 9, 1986, were inconsistent with 30 U.S.C. 1264(c) and 30 CFR 775.11(a). The rule is revised to allow thirty days "after the applicant is notified" of OSM's decision. Corresponding changes have been made to proposed 43 CFR 4.1372, 4.1382, and 4.1391.

A comment suggested adding a requirement that the applicant be served with a copy of a request for review filed by any person having an interest which is or may be adversely affected. Because a request for review is a "document by which [a] proceeding is initiated" it must be served on the applicant in accordance with 43 CFR 4.1109(b) because the applicant is a statutory party under 43 CFR 4.1105. An initiating document must also be served on the Field Solicitor or Regional Solicitor, Division of Surface Mining, who represents OSM in the state in which the surface mining operation is located. 43 CFR 4.1109(a). These service requirements also apply to requests for review filed under proposed 43 CFR 4.1352, 4.1371, 4.1381, and 4.1391. The current addresses of Field and Regional Solicitors and the states for which they are responsible for Surface Mining Act cases are:

For cases arising in Arizona, Arkansas, California, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, Nevada, New Mexico, Oklahoma, Texas, Utah: Office of the Regional Solicitor, U.S. Department of the Interior, P.O. Box 3158, Tulsa, Oklahoma 74101. Phone 918-581-7502.

For cases arising in Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia: Office of the Field Solicitor, U.S. Department of the Interior, Suite 302, U.S. Post Office and Courthouse, Pittsburgh, Pennsylvania 15219. Phone 412-644-4455.

For cases arising in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia: Office of the Field Solicitor, U.S. Department of the Interior, P.O. Box 15008, Knoxville, Tennessee 37901. Phone 615-673-4233.

For cases arising in Alaska, Hawaii, Idaho, Oregon, Montana, Minnesota, North Dakota, South Dakota, Washington, Wisconsin, and Wyoming: Office of the Regional Solicitor, U.S. Department of the Interior, Denver Federal Center, P.O. Box 25007, Denver, Colorado 80225. Phone 303-236-6444.

Any party or other person shall serve any other documents being filed subsequently with OHA on all other parties and all other persons participating in the proceeding.

A comment suggested that the requirements of 30 U.S.C. 1264(c) that a hearing be held within thirty days of the filing of a request for review and that a written decision be issued within thirty days after the hearing should be able to be waived because administrative review of many technical issues cannot realistically be conducted within these time limits and because the parties should be allowed time to resolve their differences by settlement. 43 CFR 4.1364(b) has been revised to authorize an administrative law judge to allow more time to convene a hearing and to authorize the administrative law judge or the Board to allow more than thirty days to issue a written decision upon motion signed by all parties. 43 CFR 4.1368 and 4.1369 have revised accordingly.

Commenters objected that the suspension of a permit upon filing of a request for review, as proposed in the April 9, 1986, version of 43 CFR 4.1365, was inconsistent with the first sentence of section 514(c), 30 U.S.C. 1264(c). It was noted, further, that an automatic suspension of a permit is inappropriate considering the extensive permit approval criteria of OSM and the opportunity afforded during the OSM review process for those objecting to the issuance of the permit to register their objections. Interested persons adversely affected by the issuance of the permit may seek temporary relief pursuant to section 514(d), 30 U.S.C. 1264(d). The

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rule has been revised to remove the suspension.

A comment suggested that OSM should bear the ultimate burden of persuasion under 43 CFR 4.1366(a) because for OSM to challenge the permit after having approved it and thereby replace the burden on the applicant would be inequitable. Although it seems unlikely that OSM would do this, if it did, 43 CFR 4.1366(b) would allocate the ultimate burden of persuation to OSM. Where the applicant challenges OSM's decision, 43 CFR 4.1366(a) properly allocates the ultimate burden of persuasion to the applicant. 30 U.S.C. 1260(a).

Because the suspension of a permit upon filing of a request for review has been deleted from 43 CFR 4.1365, the provisions relating to it in 43 CFR 4.1367 (4.1367(c)(5), 4.1367(e)(4)) are unnecessary and have also been deleted. The remaining provisions are retained to implement 30 U.S.C. 1264(d).

Because a hearing will have been held and a written decision issued by an administrative law judge on all material issues of fact, law, and discretion raised as a result of the filing of a request for review, the Board of Land Appeals will have discretion whether to accept appeals from these decisions similar to that provided in 43 CFR 4.1270. 43 CFR 4.1369 has been revised to authorize the Board to deny petitions for discretionary review that are clearly without merit. If a petition is denied the administrative law judge's initial decision will be final for the Department, subject to 43 CFR 4.5; if the petition is granted the rules in 43 CFR 4.1273–4.1276 are applicable. For the same reason, corresponding changes have been made in 4.1378 and 4.1387 (now 4.1388).

Review of OSM Decisions on Permit Revisions, Permit Renewals, and the Transfer, Assignment or Sale of Rights Granted Under a Permit

Sections 506(d), 510, and 511 of the Act, 30 U.S.C. 1256(d), 1260, and 1261, respectively, and 30 CFR 774.11(c), 774.15(f), and 775.11(a) provide for administrative review of OSM decisions on permit revisions, permit renewals, and the transfer, assignment, or sale of rights granted under a permit. Proposed rules 43 CFR 4.1370–4.1378 implement these provisions.

A comment suggested clarification that terms and conditions imposed or not imposed as a result of revision or renewal of permits would be reviewed under these procedures rather than 4.1360–4.1369. 4.1360–4.1369 are intended to govern the review of initial (new) permits only.

Another comment questioned why a hearing should be provided for renewal of permits when the Act (*see* 30 U.S.C. 1256(d)) and regulations (*see* 30 CFR 774.15(a)) provide that a valid permit carries with it a right of successive renewal within the approved boundaries of the existing permit. Approval of renewal applications is subject to 30 CFR 774.15(c), however, and 30 CFR 774.15(f) provides that any person having an interest which is or may be adversely affected by the decision of the regulatory authority shall have the right to administrative review.

It was also questioned why a hearing is provided for the transfer, assignment, or sale of rights when none is provided by 30 U.S.C. 1261(b). As indicated above, the answer may be found in 30 CFR 775.11(a).

A comment suggested due process requires that 43 CFR 4.1375 should provide that the filing of a request for review would stay an OSM order requiring revision of a permit because it is an "ex parte action by OSM." As indicated in the April 9, 1986, preamble, because the purpose of such an order is to ensure compliance with the Act (*see* 30 CFR 774.11(b)), no stay is appropriate, just as it is not under 30 U.S.C. 1275(a)(1) when an application for review is filed for a notice of violation or cessation order (unless temporary relief is granted). *Cf.* 43 CFR 4.1116. Because of the enforcement nature of such an order, the ultimate burden of persuasion is properly on the permittee in 43 CFR 4.1376(a). *Cf.* 43 CFR 4.1171(b).

A comment suggested that OSM should bear the ultimate burden of persuasion in accordance with 30 U.S.C. 1256(d)(1) if it denies an application for permit renewal. To clarify that this would be so under 43 CFR 4.1376(b), the words "or disapproval" are added. The applicant for a permit revision, however, properly bears the ultimate burden under 4.1376(c)(1). 30 U.S.C. 1260(a).

A comment suggested 43 CFR 4.1377 (as well as 4.1387) could be deleted as unnecessary. Temporary relief could be important to any party (*e.g.*, to a permittee wishing relief from a condition imposed by OSM), so procedures based on 30 U.S.C. 1264(d) have been retained. A comment suggesting that a request for temporary relief should be decided within a specified period of time cannot be accepted, however. 43 CFR 4.1367(e) and 4.1377(e), and 43 CFR 4.1367(f)(2) and 4.1377(f)(2), respectively require the administrative law judges and the Board to issue such decisions expeditiously, but it is not practical to limit the administrative law judges or the Board to specified times to decide certain kinds of cases, given their other responsibilities. Unlike 30 U.S.C. 1275(c), 30 U.S.C. 1264(d) does not require decisions on requests for temporary relief within a certain time.

Review of Approval or Disapproval of a Coal Exploration Permit Application

30 U.S.C. 1262 governs coal exploration operations and 30 CFR 772.12(e)(2) provids for administrative review of OSM decisions on applications for coal exploration permits. Proposed rules 43 CFR 4.1380–4.1388 implement these provisions.

43 CFR 4.1380 has been revised to clarify the scope of applicability of these procedures. Only applications for permits to conduct coal exploration operations involving the removal of more than 250 tons under a Federal program are covered. Notices submitted for removal of less than that amount under 30 CFR 772.11 are not subject to administrative review. The references to the Federal lands program and the Federal program for Indian lands are deleted because coal exploration operations on those lands are regulated by the Bureau of Land Management (BLM) under 43 CFR Part 3480 and 30 CFR 750.6(b), respectively. Appeals from BLM decisions are the subject of 43 CFR Part 4, Subpart E.

Comments objecting to a stay of the issuance of a permit as a result of the filing of a request for review of the approval of a permit were not accepted. The Act does not mandate issuance of a coal exploration permit upon approval of an application, and a stay of coal exploration operations pending completion of administrative review is unlikely to cause the applicant hardship. However, provisions have been added (43 CFR 4.1387) so that an applicant or any person having an interest which is or may be adversely affected may seek temporary relief of an OSM decision.

As with an application for an initial permit or pemit revision under 30 U.S.C. 1260(a), the applicant bears the ultimate burden of persuasion under 43 CFR 4.1386(a) that he is entitled to approval of the application.

Review of OSM Determinations of Issues Under 30 CFR Part 761

Section 522(e) of the Act, 30 U.S.C. 1272(e), prohibits surface coal mining operations on certain lands "subject to valid existing rights" and except for operations "which exist on the date of enactment of this Act." 30 CFR 761.12(h) provides for administrative review of determinations under 30 U.S.C. 1272(e). Proposed rules 43 CFR 4.1390–4.1395 implement these provisions.

Because these determinations will usually involve legal rather than factual issues, 43 CFR 4.1391(a) has been revised to provide that the request for review may be filed with the Board of Land Appeals rather than the Hearings Division. If the Board determines a fact-finding hearing is necessary it may order one under 43 CFR 4.415. 43 CFR 4.1393 and 4.1396, as proposed on April 9, 1986, are therefore deleted.

43 CFR 4.1394 is renumbered 4.1393 and revised to provide that 43 CFR 4.21(a) is applicable to OSM determinations under 30 U.S.C. 1272(e). That regulation provides:

(a) *Effect of decision pending appeal.* Except as otherwise provided by law or other pertinent regulation, a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the Director or an Appeals Board may provide that a decision or any part of it shall be in full force and effect immediately.

43 CFR 4.1395 is renumbered § 4.1394.

Miscellaneous Issues

A comment suggesting that bond release and bond forfeiture decisions be subject to administrative review by the Office of Hearings and Appeals was not accepted. 30 U.S.C. 1269 does not require adjudication under the Administrative Procedure Act for the public hearings on bond releases. *See* 30 CFR 800.40. Adequate due process is available via administrative review of the notices of violation and cessation orders that precede bond forfeiture.

A comment questioned whether review of decisions of the Director of OSM were affected by these proposed rules. Except for the decisions under 30 U.S.C. 1272(e) covered by 43 CFR 4.1390–4.1394, these rules do not affect review of decisions made by the Director of OSM.

Determination of Effects

Because these rules only set forth the details of procedures for conducting hearings and appeals of decisions of the Office of Surface Mining Reclamation and Enforcement under the Surface Mining Control and Reclamation Act of 1977, the Department has determined that they are not major, as defined by Executive Order 12291, and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

National Environmental Policy Act

The Department has determined that this proposed rule will not significantly affect the quality of the human environment on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, § 1.10.

Paperwork Reduction Act

The proposed rules contain no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

The author of these regulations is Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure; mines; public lands-mineral resources; surface mining.

For the reasons set forth in the preamble, Subpart L and M of Part 4 of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below.

Dated: August 29, 1986.

Paul T. Baird,

Director, Office of Hearings and Appeals.

PART 4—[AMENDED]

43 CFR Part 4 is amended as follows:

1. The authority citation for Part 4, Subpart L, continues to read as follows:

Authority: 30 U.S.C. 1250, 1260, 1261, 1266, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. 43 CFR Part 4, Subpart L, is amended by adding new center headings and §§ 4.1350 through 4.1394 to read as follows:

3. The authority for Part 4, Subpart M continues to read as follows:

Authority: 5 U.S.C. 301.

4. 43 CFR Part 4, Subpart M, is amended by redesignating existing §§ 4.1300–4.1310 as §§ 4.1600–4.1610. All references to §§ 4.1300–4.1310 are changed to reference §§ 4.1600–4.1610 respectively.

Request for Hearing on a Preliminary Finding Concerning a Demonstrated Pattern of Willful Violations Under Section 518(c) of the Act, 30 U.S.C. 1260(c) (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

Sec.
4.1350 Scope.
4.1351 Preliminary finding by OSM.
4.1352 Who may file; where to file; when to file.
4.1353 Contents of request.
4.1354 Determination by the administrative law judge.
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Request for Review of Approval or Disapproval of Applications for New Permits (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

4.1360 Scope.
4.1361 Who may file.
4.1362 Where to file; when to file.
4.1363 Contents of request; amendment of request; responses.
4.1364 Time for hearing; notice of hearing; waiver of time for hearing or issuance of decision.
4.1365 Status of permit pending administrative review.
4.1366 Burden of proof.
4.1367 Request for temporary relief from a decision to approve or disapprove a permit application in whole or in part.
4.1368 Determination by the administrative law judge.
4.1369 Petitions for discretionary review.

Requests for Review Concerning Permit Revisions, Permit Renewals, and the Transfer, Assignment, or Sale of Rights Granted Under Permits (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

4.1370 Scope.
4.1371 Who may file; where to file.
4.1372 When to file.
4.1373 Contents of request; amendment of request; responses.
4.1374 Notice of hearing.
4.1375 Status of decision pending administrative review.
4.1376 Burden of proof.
4.1377 Requests for temporary relief.
4.1378 Petitions for discretionary review.

Request for Review of Approval or Disapproval of a Coal Exploration Permit Application (Federal Program)

4.1380 Scope.
4.1381 Who may file.
4.1382 Where to file; when to file.
4.1383 Contents of request; amendment of request; responses.
4.1384 Notice of hearing.
4.1385 Status of permit pending administrative review.
4.1386 Burden of proof.
4.1387 Request for temporary relief.
4.1388 Petitions for discretionary review.

Request for Review of OSM Determinations of Issues Under 30 CFR Part 761 (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

4.1390 Scope.
4.1391 Who may file; where to file; when to file.
4.1392 Contents of request; amendment of request; responses.

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4.1393 Status of decision pending administrative review.
4.1394 Burden of proof.

Request for Hearing on a Preliminary Finding Concerning a Demonstrated Pattern of Willful Violations Under Section 510(c) of the Act, 30 U.S.C. § 1260(c) (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

§ 4.1350 Scope.

These rules set forth the procedures for obtaining review of a preliminary finding by OSM, prior to approval or disapproval of a permit application, that the applicant, or operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this Act or the applicable State or Federal program.

§ 4.1351 Preliminary finding by OSM.

If OSM determines during review of the permit application that the applicant, or operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply, OSM shall issue the applicant or operator a notice of such preliminary finding. The notice shall state with specificity the violations upon which the preliminary finding is based.

§ 4.1352 Who may file; where to file; when to file.

(a) The applicant or operator may file a request for hearing on OSM's preliminary finding of a demonstrated pattern of willful violations.

(b) The request for hearing shall be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800), within 30 days of receipt by the applicant or operator of the notice of the peliminary finding.

(c) Failure to timely file a request shall constitute a waiver of the opportunity for a hearing prior to a final finding by OSM concerning a demonstrated pattern of willful violations, and the request shall be dismissed.

§ 4.1353 Contents of request.

The request for hearing shall include—

(a) A clear statement of the facts entitling the one requesting the hearing to administrative relief;

(b) An explanation of the alleged errors in OSM's preliminary finding; and

(c) Any other relevant information.

§ 4.1354 Determination by the administrative law judge.

The administrative law judge shall promptly set a time and place for and give notice of the hearing to the applicant or operator and shall issue a decision within 60 days of the filing of a request for hearing. The hearing shall be of record and governed by 5 U.S.C. 554.

§ 4.1355 Burden of proof.

(a) OSM shall have the burden of going forward to establish a prima facie case as to the existence of a demonstrated pattern of willful violations of the Act or the applicable State or Federal program which are of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply.

(b) The ultimate burden of persuasion shall rest with the person requesting a hearing.

§ 4.1356 Appeals.

(a) Any party aggrieved by the decision of the administrative law judge may appeal to the Board under procedures set forth in § 4.1271 *et seq.* of this subpart, except that the notice of appeal must filed within 20 days of receipt of the administrative law judge's decision.

(b) The Board shall order an expedited briefing schedule and shall issue a decision within 45 days of the filing of the appeal.

Request for Review of Approval or Disapproval of Applications for New Permits (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

§ 4.1360 Scope.

These rules set forth the procedures for review of decisions by OSM on applications for new permits, including applications under 30 CFR Part 785, and the terms and conditions imposed or not imposed in permits by those decisions. They do not apply to decisions on applications to mine on Federal lands in states where the terms of a cooperative agreement provide for the applicability of alternative administrative procedures (*see* 30 CFR 755.11(c); 48 FR 44384 (Sept. 28, 1983)), but they do apply to OSM decisions on applications for Federal lands in states with cooperative agreements where OSM as well as the state issue Federal lands permits.

§ 4.1361 Who may file.

The applicant or any person having an interest which is or may be adversely affected by a decision of OSM to approve or disapprove a permit application, in whole or in part, may file a request for review of that decision.

§ 4.1362 Where to file; when to file.

(a) The request for review shall be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800), within 30 days after the applicant is notified of OSM's written decision approving or disapproving the permit application in whole or in part.

(b) Failure to file a request for review within the time specified in paragraph (a) of this section shall constitute a waiver of a hearing and the request shall be dismissed.

§ 4.1363 Contents of request; amendment of request; responses.

(a) The request for review shall include—

(1) A clear statement of the facts entitling the one requesting review to administrative relief;

(2) An explanation of the alleged errors in OSM's decision;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review, or a statement that no answer or motion will be filed, within 15 days of receipt of the request specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to receipt of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the administrative law judge. A request for review may not be amended after a hearing commences.

(d) An interested party shall have 10 days from receipt of a request for review that is amended as a matter of right or the time remaining for response to the original request to file an answer, motion, or statement in accordance with paragraph (b) of this section, whichever is longer. If the administrative law judge grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting it.

§ 4.1364 Time for hearing; notice of hearing; waiver of time for hearing or issuance of decision.

(a) The administrative law judge shall commence a hearing within 30 days of the date of the filing of the request for review or amended request for review and shall simultaneously notify the applicant and all interested parties of the time and place of such hearing before the hearing commences. The hearing shall be of record and governed by 5 U.S.C. 554.

(b) The administrative law judge may allow more than thirty days for commencement of the hearing and the administrative law judge or the Board may allow more than thirty days for issuance of a written decision upon motion signed by all parties.

§ 4.1365 Status of permit pending administrative review.

The filing of a request for review of the approval of an application for a permit shall not suspend the permit pending completion of administrative review.

§ 4.1366 Burden of proof.

(a) If the permit applicant is seeking review, OSM shall have the burden of going forward to establish a prima facie case as to failure to comply with the applicable requirements of the Act or the regulations or as to the appropriateness of the permit terms and conditions, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit or as to the inappropriateness of the permit terms and conditions.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application fails in some manner to comply with the applicable requirements of the Act or the regulations, or the appropriateness of terms and conditions that were not imposed by OSM.

§ 4.1367 Request for temporary relief from a decision to approve or disapprove a permit application in whole or in part.

(a) Where review is requested pursuant to § 4.1362, any party may file a request for temporary relief at any time prior to a decision by an administrative law judge, so long as the relief sought is not the issuance of a permit where a permit application has been disapproved in whole or in part.

(b) The request shall be filed with the administrative law judge to whom the case has been assigned. If no assignment has been made, the application shall be filed in the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800).

(c) The application shall include—

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceeding; and

(4) A showing that the relief sought will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(d) The administrative law judge may hold a hearing on any issue reaised by the application.

(e) The administrative law judge shall issue expeditiously an order or decision granting or denying such temporary relief. Temporary relief may be granted only if—

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding; and

(3) Such relief will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(f) Appeals of temporary relief decisions.

(1) Any party desiring to appeal the decision of the administrative law judge granting or denying temporary relief may appeal to the Board, or, in the alternative, may seek judicial review pursuant to section 526(a), 30 U.S.C. 1276(a), of the Act.

(2) The Board shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

§ 4.1368 Determination by the administrative law judge.

The administrative law judge shall issue a written decision in accordance with 43 CFR 4.1127 within 10 days of the date the hearing record is closed by the administrative law judge, unless more than thirty days after a hearing for issuance of the decision has been allowed in accordance with 43 CFR 4.1364(b).

§ 4.1369 Petitions for discretionary review.

(a) Any party aggrieved by a decision of an administrative law judge shall have five days from receipt of the decision to file a petition for discretionary review with the Board, unless more than thirty days after hearing has been allowed for issuance of a decision in accordance with 43 CFR 4.1364(b), in which case the petition shall be filed within thirty days of receipt of the decision. The five-day period shall not be tolled over weekends, holidays, or other nonbusiness days. A copy of the petition shall be served on the administrative law judge who issued the decision as well as on all other parties in the proceeding.

(b) The petition shall contain a statement of reasons in support and shall attach a copy of the decision.

(c) All parties may file a response to the petition within five days of receipt.

(d) The Board shall grant or deny the petition by order within five days of the filing of the responses. If the petition is granted and more than thirty days for issuance of a decision has not been allowed in accordance with 43 CFR 4.1364(b), the Board shall issue a decision within five days of granting the petition.

Requests for Review Concerning Permit Revisions, Permit Renewals, and the Transfer, Assignment, or Sale of Rights Granted Under Permits (Federal Program; Federal Lands Program; Federal Program for Indian Lands)

§ 4.1370 Scope.

These rules set forth the procedures for obtaining review of decisions by OSM concerning permit revisions, permit renewals, and the transfer, assignment or sale of rights granted under permits.

§ 4.1371 Who may file; where to file.

The applicant, permittee, or any person having an interest which is or may be adversely affected by a decision of OSM ordering revision of a permit, or approving or disapproving applications for permit revisions, permit renewals, or the transfer, assignment or sale of rights granted under permits, may file a request for review of that decision with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800).

§ 4.1372 When to file.

(a) The request for review shall be filed within 30 days after the applicant

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or permittee is notified of OSM's written order or decision.

(b) Failure to file a request for review within the time specified in paragraph (a) of this section shall constitute a waiver of a hearing and the request shall be dismissed.

§ 4.1373 Contents of request; amendment of request; responses.

(a) The request for review shall include—

(1) A clear statement of the facts entitling the one requesting review to administrative relief;

(2) An explanation of the alleged errors in OSM's decision;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review of a statement that no answer or motion will be filed, within 15 days of receipt specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to receipt of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the administrative law judge. A request for review may not be amended after a hearing commences.

(d) An interested party shall have 10 days from receipt of a request for review that is amended as a matter of right or the time remaining for response to the original request to file an answer, motion, or statement in accordance with paragraph (b) of this section, whichever is longer. If the administrative law judge grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting the motion.

§ 4.1374 Notice of hearing.

The administrative law judge shall notify the applicant or permittee and all interested parties of the time and place of the hearing. The hearing shall be of record and governed by 5 U.S.C. 554.

§ 4.1375 Status of decision pending administrative review.

The filing of a request for review of the approval or disapproval of an application for a permit revision, permit renewal, or the transfer, assignment, or sale or rights granted under a permit or of an order requiring revision of a permit shall not stay the effectiveness of the decision pending completion of administrative review.

§ 4.1376 Burden of proof.

(a) In a proceeding to review a permit revision ordered by OSM, OSM shall have the burden of going forward to establish a prima facie case that the permit should be revised and the permittee shall have the ultimate burden of persuasion.

(b) In a proceeding to review the approval or disapproval of an application for a permit renewal, those parties opposing renewal shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the renewal application should be disapproved.

(c) In a proceeding to review the approval or disapproval of an application for a permit revision or an application for the transfer, assignment, or sale of rights granted under a permit—

(1) If the applicant is seeking review, OSM shall have the burden of going forward to establish a prima facie case as to failure to comply with applicable requirements of the Act or the regulations, and the applicant requesting review shall have the ultimate burden of persuasion as to entitlement to approval of the application; and

(2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the Act and the regulations.

§ 4.1377 Request for temporary relief.

(a) Where review is requested pursuant to § 4.1371, any party may file a request for temporary relief at any time prior to decision by an administrative law judge, so long as the relief sought is not the issuance of a permit where an application has been disapproved in whole or in part.

(b) The request shall be filed with the administrative law judge to whom the case has been assigned. If no assignment has been made, the request shall be filed in the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800).

(c) The request shall include—

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceedings; and

(4) A showing that the relief sought will not be adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(d) The administrative law judge may hold a hearing on any issue raised by the request.

(e) The administrative law judge shall issue expeditiously an order or decision granting or denying such temporary relief. Temporary relief may be granted only if—

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding; and

(3) Such relief will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(f) Appeals of temporary relief decisions.

(1) Any party desiring to appeal the decisions of the administrative law judge granting or denying temporary relief may appeal to the Board or, in the alternative, may seek judicial review pursuant to section 526(a), 30 U.S.C. 276(a), of the Act.

(2) The Board shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

§ 4.1378 Petitions for discretionary review.

(a) Any party aggrieved by a decision of the administrative law judge on a request for review of a permit revision, permit renewal, or the transfer, assignment, or sale of rights may file a petition for discretionary review with the Board no later than thirty days from receipt of the decision. The time for filing a petition may not be extended.

(b) The petition shall contain a statement of reasons in support and shall attach a copy of the decision.

(c) All parties may file a response to the petition within twenty days of receipt.

(d) The Board shall grant or deny the petition by order within thirty days of the filing of responses.

Request for Review of Approval or Disapproval of a Coal Exploration Permit Application (Federal Program)

§ 4.1380 Scope.

These rules set forth the procedures for obtaining review, pursuant to 30 CFR 772.12(e)(2), of a decision by OSM to approve or disapprove a coal exploration permit application to remove more than 250 tons of coal.

§ 4.1381 Who may file.

The applicant or any person having an interest which is or may be adversely affected by a decision of OSM to approve or disapprove a coal exploration permit application, in whole or in part, may file a request for review of that decision.

§ 4.1382 Where to file; when to file.

(a) The request for review shall be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703–235–3800), within 30 days after the applicant is notified of OSM's written decision approving or disapproving the coal exploration permit application.

(b) Failure to file a request for review within the time specified in paragraph (a) of this section shall constitute a waiver of a hearing and the request shall be dismissed.

§ 4.1383 Contents of request; amendment of request; responses.

(a) The request for review shall include—

(1) A clear statement of the facts entitling the one requesting review to administrative relief;

(2) An explanation of the alleged errors in OSM's decision;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review or a statement that no answer or motion will be filed within 15 days of receipt specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to receipt of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the administrative law judge. A request for review may not be amended after a hearing commences.

(d) An interested party shall have 10 days from receipt of a request for review that is amended as a matter of right or the time remaining for response to the original request to file an answer, motion, or statement in accordance with paragraph (b) of this section, whichever is longer. If the administrative law judge grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting the motion.

§ 4.1384 Notice of hearing.

The administrative law judge shall notify the applicant and all interested parties of the time and place of the hearing. The hearing shall be of record and governed by 5 U.S.C. 554.

§ 4.1385 Status of permit pending administrative review.

The filing of a request for review of approval of an application for a coal exploration permit shall stay the issuance of the permit pending completion of administrative review.

§ 4.1386 Burden of proof.

(a) If the coal exploration permit applicant is seeking review, OSM shall have the burden of going forward to establish a prima facie case as to failure to comply with the applicable requirements of the Act or the regulations, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the approval.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the Act or the regulations.

§ 4.1387 Request for temporary relief.

(a) Where review is requested pursuant to § 4.1381, any party may file a request for temporary relief at any time prior to decision by an administrative law judge, so long as the relief sought is not the issuance of a permit where an application has been disapproved in whole or in part.

(b) The request shall be filed with the administrative law judge to whom the case has been assigned. If no assignment has been made, the request shall be filed in the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203 (phone 703–235–3800).

(c) The request shall include—

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceedings; and

(4) A showing that the relief sought will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(d) The administrative law judge may hold a hearing on any issue raised by the request.

(e) The administrative law judge shall issue expeditiously an order or decision granting or denying such temporary relief. Temporary relief may be granted only if—

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding; and

(3) Such relief will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

(f) Appeals of temporary relief decisions.

(1) Any party desiring to appeal the decision of the administrative law judge granting or denying temporary relief may appeal to the Board or, in the alternative, may seek judicial review pursuant to section 526(a), 30 U.S.C. 1276(a), of the Act.

(2) The Board shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

§ 4.1388 Petitions for discretionary review.

(a) Any party aggrieved by a decision of the administrative law judge on a request for review of an application for a coal exploration permit may file a petition for discretionary review with the Board no later than thirty days from receipt of the decision. The time for filing a petition may not be extended.

(b) The petition shall contain a statement of reasons in support and shall attach a copy of the decision.

(c) All parties may file a response to the petition within twenty days of receipt.

(d) The Board shall grant or deny the petition by order within thirty days of the filing of responses.

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Request for Review of OSM Determinations of Issues Under 30 CFR Part 761 (Federal Program; Federal Lands Program; Federal Program for Indian Lands).

§ 4.1390 Scope.

These rules set forth procedures for obtaining review pursuant to 30 CFR 761.12(b) of a determination by OSM that a person holds or does not hold a valid existing right, or that surface coal mining operations did or did not exist on the date of enactment of the Act, on lands where operations are prohibited or limited by section 522(e) of the Act, 30 U.S.C. 1272(e), or that surface coal mining operations may be permitted within the boundaries of a national forest in accordance with section 522(e)(2).

§ 4.1391 Who may file; where to file; when to file.

(a) The permit applicant or any person with an interest which is or may be adversely affected by a determination of OSM that a person holds or does not hold a valid existing right, or that surface coal mining operations did or did not exist on the date of enactment of the Act, or that surface coal mining operations may be permitted within the boundaries of a national forest, may file a request for review of that determination with the Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203 (phone 703–235–3750).

(b) The request for review shall be filed within 30 days after the applicant or permittee is notified of OSM's written determination.

(c) Failure to file a request for review within the time specified in paragraph (b) of this section shall constitute a waiver of a hearing and the request shall be dismissed.

§ 4.1392 Contents of request; amendment of request; responses.

(a) The request for review shall include—

(1) A clear statement of the reasons for appeal;

(2) A request for specific relief;

(3) A copy of the decision appealed from; and

(4) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review or a statement that no answer or motion will be filed within 15 days of receipt specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to receipt of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the Board.

(d) An interested party shall have 10 days from receipt of a request for review that is amended as a matter of right or the time remaining for response to the original request to file an answer, motion, or statement in accordance with paragraph (b) of this section, whichever is longer. If the Board grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting the motion.

§ 4.1393 Status of decision pending administrative review.

43 CFR 4.21(a) applies to determinations of the Office of Surface Mining under 30 U.S.C. 1272(e).

§ 4.1394 Burden of proof.

(a) If the permit applicant is seeking review, OSM shall have the burden of going forward to establish a prima facie case and the permit applicant shall have the ultimate burden of persuasion.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that a person holds or does not hold a valid existing right, or that surface coal mining operations did or did not exist on the date of enactment of the Act, or that surface coal mining operations may or may not be permitted within the boundaires of a national forest.

[FR Doc. 86–22360 Filed 10–1–86; 8:45 am]

BILLING CODE 4310–10–M

Notices

Federal Register
Vol. 51, No. 191
Thursday, October 2, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Request Under Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

BACKGROUND: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Information About This Proposed Collection:

Agency Clearance Officer—Melvin E. Beetle, (202) 634–9318.

Agency address: ACTION, 806 Connecticut Ave., NW., Washington, DC 20525.

Office of ACTION issuing the Proposal: Office of Management and Budget

Title of Form: Financial Status Report

Type of Request: Extension (No burden change)

Frequency of Collection: Quarterly

General Description of Respondents: State and local governments; non-profit organizations

Estimated Number of Annual Responses: 6,000

Estimated Annual Reporting or Disclosure Burden: 18,000

Respondent's Obligation to Reply: Mandatory

Person responsible for OMB Review: Bruce Artim, (202) 395–7316.

Dated: September 26, 1986.

Melvin E. Beetle,

ACTION Clearance Officer.

[FR Doc. 86–22369 Filed 10–1–86; 8:45 am]

BILLING CODE 6050–25–M

Information Collection Request Under Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

BACKGROUND: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instruction), transmittal letter, and other documents] may be obtained from the agency clearance officer.

Information About This Proposed Collection:

Agency Clearance Officer—Melvin E. Beetle, (202) 634–9318.

Agency Address: ACTION, 806 Connecticut Ave., NW. Washington DC 20525.

Office of ACTION issuing the Proposal: Office of Compliance, Evaluation Division

Title of Form: Demonstration volunteer management support program goal accomplishment and perceived effects evaluation

Type of Request: New

Frequency of Collection: One round of data collection

General Description of Respondents: VMSP Volunteer and staff of VMSP/MBDA organizations

Estimated Number of Annual Responses: 162

Estimated Annual Reporting or Disclosure Burden: 114.2 hours

Respondent's Obligation to Reply: Voluntary

Person responsible for OMB Review: Judy McIntosh, (202) 395–6880.

Dated: September 23, 1986.

Melvin E. Beetle,

ACTION Clearance Officer.

[FR Doc. 86–22368 Filed 10–1–86; 8:45 am]

BILLING CODE 6050–25–M

Foster Grandparent and Senior Companion Programs; Income Eligibility Levels

AGENCY: ACTION.

ACTION: Notice of revision of income eligibility levels for Foster Grandparent and Senior Companion Programs.

SUMMARY: This notice revises the schedules of income eligibility levels for individuals and families for the Foster Grandparent and Senior Companion Programs published in the Federal Register June 25, 1986 (51 FR 23106). This revision incorporates adjustments to eligibility levels of certain States which were not made in the previous notice. The revised schedule is based on Poverty Guidelines from the Department of Health and Human Services (DHHS) published in the **Federal Register**, February 11, 1986 (51 FR 5105). This revision adopts as the income eligibility level for each State the amount of either (a) 125 percent of the DHHS Poverty Income Guideline, or (b) 100 percent of the DHHS Poverty Income Guideline plus the amount each State supplements Federal Supplemental Security Income, rounded to the next highest multiple of $5.00.

Any person whose income is not more than 100 percent of the DHHS Poverty Income Guideline for his/her specific family unit status shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs.

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: C. Wade Freeman, Assistant Director, Older American Volunteer Programs, ACTION, 806 Connecticut Avenue NW., Room M–1008, Washington, DC, 20525, or telephone (202) 634–9355.

SUPPLEMENTARY INFORMATION: These ACTION programs are authorized pursuant to sections 211 and 213 of the

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Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93-113, 87 Stat. 394. The income eligibility levels are determined by the current applicable guideline published by DHHS pursuant to sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which required poverty guidelines to be adjusted for Consumer Price Index changes.

The income eligibility levels will be reviewed at least once a year, and similar schedules will be prepared to reflect any changes as a result of that review.

Schedule of Income Eligiblity Levels: Foster Grandparent and Senior Companion Programs.

For all States (except Alabama, Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Massachusetts, New Jersey and Wisconsin), the District of Columbia, Puerto Rico and the Virgin Islands:

For Family Units Of:							
One	Two	Three	Four	Five	Six	Seven	Eight
$6,700	$9,050	$11,400	$13,750	$16,100	$18,450	$20,800	$23,150

For the following States:

For Family Units Of:							
State	One	Two	Three	Four	Five	Six	Seven	Eight
AL	$6,700	$10,425	$12,775	$15,125	$17,475	$19,825	$22,175	$24,525
AK	8,830	13,660	16,590	19,530	22,470	25,410	28,350	31,290
CA	7,725	13,060	15,410	17,760	20,110	22,460	24,810	27,160
CO	5,780	10,850	13,000	15,350	17,700	20,050	22,400	24,750
CT	7,110	9,550	11,400	13,750	16,100	18,450	20,800	23,150
DE	7,040	13,900	15,446	17,800	20,150	22,500	24,850	27,200
HI	7,715	10,415	13,115	15,815	18,815	21,215	23,915	26,615
MA	6,900	9,985	12,015	14,365	6,715	19,065	21,415	23,765
NJ	7,160	12,635	14,985	17,335	19,685	22,035	24,385	26,735
WI	6,700	9,215	11,565	13,915	16,265	18,615	20,965	23,315

For family units with more than eight members, add the appropriate supplement for each additional member (over eight) as follows:

Alaska	$2,940
Hawaii	2,700
All Others	2,350

All of the above levels are calculated from the base DHHS Poverty Income Guidelines now in effect.

Those guidelines are:

Size of family unit	For all States (except Alaska and Hawaii and the District of Columbia	For Alaska	For Hawaii
1	$5,360	$6,700	$6,170
2	7,240	9,050	8,330
3	9,120	11,400	10,490
4	11,000	13,750	12,650
5	12,880	16,100	14,810
6	14,760	18,450	16,970
7	16,640	20,800	19,130
8	18,520	23,150	21,290

Signed in Washington, DC, on September 25, 1986.

Donna M. Alvarado,

Director of ACTION.

[FR Doc. 86-22367 Filed 10-1-86; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Forest Service

Trailside and Grassy Butte Oil and Gas Field Development Plan; Little Missouri National Grasslands Administered by the Custer National Forest McKenzie County, ND; Intent To Prepare an Environmental Assessment

The USDA, Forest Service, as lead agency, and the USDI, Bureau Land Management will cooperatively prepare an Environmental Assessment to disclose the environmental effects of a proposed development of the Trailside and Grassy Butte Oil and Gas fields on the McKenzie Ranger Distict.

In 1985 a proponent had proposed to drill a well in the SE¼, section 4, T147N, R100W. The Bureau Land Management considers this proposed well to be a confirmation well that, in this case, requires the preparation a Field Development Environmental Assessment. A Notice of Intent to prepare an Environmental Assessment and to conduct a public meeting to identify significant public issues was filed in the **Federal Register** Vol. 50, No 230 dated November 29, 1985. A public meeting was held on December 11, 1985 at Watford City, and comments were taken. Subsequent to the publication of the Notice of Intent, action was suspended on the Environmental Assessment and, consequentlv no decision was made on the original proposal. In 1986 five additional well sites were staked in the Trailside and Grassy Butte Fields. All six of these sites are located in the area designated as the Bennett-Cottonwood Essentially Roadless Area (ERA).

Federal, State and local agencies, potential developers, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

4. Identification of possible alternatives.

5. Determination of potential cooperating agencies and assignment of responsibilities.

6. Identification of a recommended alternative.

The District Ranger will hold a public meeting at the Watford City Civic Center, Watford City, North Dakota, at 7 p.m. Wednesday, November 5, 1986. A pubic meeting will also be held at Gate City Saving and Loan Building in Dickinson, North Dakota, at 7 p.m. Thursday, November 6, 1986. One of the purposes of these meetings will be to validate the issues identified at the public meeting held in 1985 at Watford City, and to identify any new or emerging issues.

David A. Filius, Forest Supervisor, P.O. Box 2556, Billings, MT 59103, is the responsible official.

Written comments and suggestions concerning the analysis should be sent to the District Ranger, Star Rt. 2, Box 8, Watford City, ND 58854 by December 22, 1986.

Questions about the proposed action and environmental assessment should be directed to Tex Williams, Minerals Assistant, McKenzie Ranger District, phone 701-842-2393.

Dated: September 25, 1986.

David A. Filius,

Forest Supervisor.

[FR Doc. 86-22335 Filed 10-1-86; 8:45 am]

BILLING CODE 3410-11-M

Scientific Advisory Board, Mount St. Helens National Volcanic Monument; Gifford Pinchot National Forest; Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9:00 a.m., November 6, 1986, at the Mount St. Helens National Volcanic Monument Visitor Center, Gifford Pinchot National Forest, 3029 Spirit Lake Highway, Castle Rock, Washington 98611, to receive information on and discuss the following:

1. A review of National Volcanic Monument scientist's concerns.

2. A review of the fish stocking history of National Volcanic Monument lakes.

3. Open discussion of topics of interest to the Advisory Board and public comments.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, Washington 98660, 206-696-7570. Written statements may be filed with the Board before or after the meeting.

Dated: September 25, 1986.

Allan O. Lampi,

Acting Regional Forester.

[FR Doc. 86-22341 Filed 10-1-86; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Lovills Creek Watershed Site 9B, Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lovills Creek Watershed Site 9B, Carroll County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240-9999, telephone (804) 771-2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns the installation of a floodwater retarding structure Site 9B on Lovills Creek in Carroll County, Virginia. The structure will reduce floodwater damages to 65 structures in Mount Airy, North Carolina.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Norris, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Executive Order 12372 regarding intergovernmental review of federal and federally-assisted programs and projects is applicable)

Dated: September 23, 1986.

George C. Norris,

State Conservationist.

[FR Doc. 86-22332 Filed 10-1-86; 8:45 am]

BILLING CODE 3410-16-M

Black Creek, MI; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Black Creek Watershed, Allegan and Ottawa Counties, Michigan.

FOR FURTHER INFORMATION CONTACT: Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 S. Harrison Road, East Lansing, Michigan, 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include two floodwater retarding dams, 3700 acres of conservation tillage, 42 acres of grassed waterways, 18 grade stabilization structures, 185 acres of tree plantings, and accelerated technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: September 25, 1986.

Jerry L. Keller,

Deputy State Conservationist.

[FR Doc. 86-22261 Filed 10-1-86; 8:45 am]

BILLING CODE 3410-16-M

Tyronza River Watershed, Arkansas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Gene Sullivan, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001 through

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1008, in the State of Arkansas, is hereby providing notification that a record of decision to proceed with the installation of the Tyronza River Watershed project is available. Single copies of this record of decision my be obtained from Gene Sullivan at the address shown below.

FOR FURTHER INFORMATION CONTACT: Gene Sullivan, State Conservationist, Soil Conservation Service, Room 5423 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201. Telephone: 501–378–5445.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires integovernmental consultation with State and local officials.

Dated: September 24, 1986.

Gene Sullivan,

State Conservationist.

[FR Doc. 85–22250 Filed 10–1–86; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidation Decision on Applications for Duty-Free Entry of Electron Microscopes; Veterans Administration Medical Center et al.

Correction.

In FR Doc. 86–21858, beginning on page 34238, in the issue of Friday, September 26, 1986, make the following correction:

On page 34238, in column three, the fifteenth line, after the first two words insert: "California at".

BILLING CODE 1505–01–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Medical Dynamics, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Medical Dynamics, Inc. having a place of business in Englewood, Colorado an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Use of Paramagnetic Metalloporphyrins as Contrast Agents for Tumors in NMR Imaging," U.S. Patent Application Serial Number 6–706,622. The patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.9. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86–22294 Filed 10–1–86; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATES: 14 October and 5 November 1986, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301. (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on U.S. Strategic Defense Initiative.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 29, 1986.

[FR Doc. 86–22292 Filed 10–1–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board, Meeting

September 25, 1986.

The meeting of the USAF Scientific Advisory Board Engineering and Services Advisory Group published in the **Federal Register** on September 19, 1986, (51 FR 33292) has been changed. Meeting location for October 16, 1986 will be Kirtland AFB, NM. October 17, 1986 location as well as all other information remains the same.

The purpose of the meetings will be to receive classified briefings on results of recent SAB studies.

These meetings concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–22305 Filed 10–1–86; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Grant Award, National Academy of Sciences

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis a grant of $70,000 to the National Academy of Sciences.

Procurement Request No: 01–86CE31010.000

Project Scope: National Academy of Sciences, National Research Council, will conduct a study to address the effectiveness of the government-industry-academia infrastructure in support of research in geothermal technologies. Infrastructure describes communication links, cooperative efforts, coordination between and among programs, and technology transfer between the three sectors. This study will identify the difficulties and recommend alternatives for developing an effective cooperative research program in geothermal energy.

This activity to enhance the effectiveness of the government-industry-academia infrastructure in geothermal technologies research is in furtherance of the DOE mission to ensure a continued source of energy to the consumer in a safe, economic and environmentally acceptable manner. The National Academy of Sciences is uniquely qualified to effect an unbiased and scientific report that will generate improved cooperative in government-industry-academia geothermal technology research. Therefore, is has been determined that it is appropriate to award this grant to the National Academy of Sciences on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–1024.

Issued in Washington, DC on September 29, 1986.

Robert J. Walsh,

Acting Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 86–22340 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate; Field Fleet Tests of Computerized Driver Controller For Diesel Engine Braking System; CAMACAN, Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of restricted eligibility for a grant award.

SUMMARY: DOE announced that it is awarding a grant to CAMACAN, INC. pursuant to 10 CFR 600.7(b). The award will allow CAMACAN to field fleet test a fleet of computerized driver controllers for diesel engine braking systems in the amount of $21,975.

Procurement Request Number: 01–86CE15274.000

Authorities: DOE Organization Act, Pub. L. 95–91, 41 U.S.C 7101; Federal Non-Nuclear Energy Research and Development Act of 1974, Pub. L. 93–577, 42 U.S.C. 5901 *et seq;* DOE Financial Assistance Rules, 10 CFR Part 600, 600.7(b), (47 FR 44086, October 5, 1982).

Scope of Work:

The Grant will be to allow the field testing of the computerized driver controller for diesel engine braking systems. The grantee will provide for the production, installation, and performance data collection and interpretation.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Helen D. Carmona, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–1017.

Edward T. Lovett,

Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 86–22353 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate; Continuation Grant to the National Academy of Sciences

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis a continuation grant to the National Academy of Sciences to support the International Atomic Energy Agency Fellowship Program. The DOE support under this grant will be $800,000 over a twelve month period.

Procurement request No.: 01–86IE10484.001.

Project scope: The NAS will provide technical advice and administrative assistance and will be responsible for the day-to-day implementation of U.S. commitments to the International Atomic Energy Agency (IAEA) to provide scientists from developing countries with opportunities for training and study in the United States in the field of nuclear science and its application for peaceful uses. These scientists are selected by the IAEA. The IAEA fellowship program was initiated in April 1958.

The NAS was awarded a five year project grant in September 1985. The DOE has determined that award of this second budget year funding to the NAS Grant on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–1024.

Issued in Washington, DC on September 26, 1986.

Robert J. Walsh,

Acting Director, Contract Operations, Division "A", Office of Procurement Operations.

[FR Doc. 86–22264 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate; Grant Award to National Academy of Sciences; Restriction of Eligibility

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b) it intends to award on a restricted eligibility basis a grant to the National Academy of Sciences (NAS) to support the Board on Chemical Sciences and Technology (BCST). The DOE support under this grant will be $30,000 over a seven month period.

Procurement request number: 01–86FE61132.000.

Project scope: The NAS BCST is to develop a study on Future Directions in Fundamental Science for Fossil Energy Research. The objective is to delve into novel and promising areas of fundamental fossil fuels research, the scientific questions that cut across the full spectrum of fossil fuels, and the current research areas that may be broadened or refocused beyond their current focus on coal science and technology.

The NAS is uniquely qualified to develop an unbiased and prestigious study due to its closeness to and ties with the world of academia and the scientific community. Such study will be of immense value to the DOE in fulfilling its mission to ensure a continued supply of fossil fuels to the consumer in a safe economic and environmentally acceptable manner.

Therefore, it has been determined it is appropriate to award this grant to the NAS on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–5569.

Issued in Washington, DC on September 26, 1986.

Robert J. Walsh,

Acting Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 86–22263 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Consent Order With Calumet Industries, Inc.

AGENCY: Economic Regulatory Administration, DOE.

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ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed consent order between the Department of Energy (DOE) and Calumet Industries, Inc. (Calumet) should be issued as a final order of the DOE without amendment. The consent order resolves all remaining issues relating to Calumet's compliance with the federal petroleum price and allocation regulations during the period August 19, 1973 through January 27, 1981. Calumet will pay DOE a total amount of $800,000 to be deposited in a suitable account for appropriate disposition by DOE.

Persons claiming to have been harmed by Calumet's alleged misreporting will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA).

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy, Washington, DC 20585, Telephone: 202–252–4387.

SUPPLEMENTARY INFORMATION:

I. Background

On July 8, 1986, ERA issued a notice announcing a proposed consent order between DOE and Calumet which would resolve all civil and administrative disputes, claims and causes of actions relating to the Calumet's compliance with the federal petroleum price and allocation regulations during the period August 19, 1973 through January 27, 1981 (51 FR 26463, July 23, 1986). Included in the settlement was the resolution of the Notice of Probable Violation issued to Calumet on December 24, 1980 (Case Number NOOS80139) charging Calumet with violations of the Entitlements Program amounting to $735,323 (with interest through March 1986 of $1,177,232).

The proposed consent order requires Calumet to pay DOE a total of $800,000, $400,000 of which is to be paid within 10 days after the effective date of the consent order and the remaining $400,000, plus interest, to be paid within two years. DOE will deposit the payments in the Deposit Fund Escrow Account and petition the OHA to conduct a special refund proceeding pursuant to 10 CFR Part 205, Subpart V.

The July 8th notice detailed the basis of ERA's view that the settlement provided a favorable recovery by the government and was in the public interest. The notice solicited written comments from the public concerning the terms and conditions of the settlement. The consent order also provides for the maintenance of records, disclosure of information and for its enforcement.

II. Comments

ERA received comments from the Controller of California and a representative of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah and West Virginia. The comments concerned the disposition of the funds DOE would receive from Calumet pursuant to the consent order. Both maintained that the "Modified Restitutionary Policy in Crude Oil Cases" (51 FR 27899, August 4, 1986), announced by DOE as a result of the Settlement Agreement in the *Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.), requires that a set proportion of the funds be distributed to the states. The Controller of California further maintains that distribution of 80 percent of this be made immediately upon receipt by DOE without any additional administrative proceedings.

Because the principal matter resolved by the consent order is an entitlements allegation, ERA agrees that the Stripper Well Settlement Agreement and the Statement of Modified Restitutionary Policy govern the disposition of funds in this case. Accordingly, a portion of the funds will be set aside for a Subpart V proceeding and the balance will be distributed to the States and DOE. However, neither the Agreement nor the Policy Statement required that the funds be made immediately available without adminstrative proceedings. Furthermore, the use of the Subpart V process does not conflict with either the Agreement or the Policy. In fact, the Agreement comtemplates that funds obtained by ERA will be submitted to the OHA, paragraph IV.B.4., and that OHA will set a 20 percent reserve in order to allow that "amounts in excess of the reserve shall be distributed while awaiting the completion of the first stage refund proceedings." Paragraph IV.B.6. Accordingly, it appears that there is not only no prohibition on the use of the Subpart V process in the distribution of funds to the States and DOE, it may be required. In any event, DOE has determined that the administrative responsibilities for the distribution can be managed better through OHA and the use of Subpart V.

III. Decision

As stated in the notice publishing the proposed consent order for comment, ERA believes the settlement is a satisfactory resolution of the matters remaining unresolved between DOE and Calumet. None of the comments disagreed with that conclusion. Accordingly, ERA has determined to issue the consent order as a final order.

By this notice, and pursuant to 10 CFR 205.199J, the proposed consent order between Calumet and DOE executed on May 15, 1986 is made a final order of the Department of Energy, effective on the date of publication of this notice in the **Federal Register**

Issued in Washington, DC September 17, 1986.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 86–22355 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–55–NG]

Direct Energy Marketing Limited, Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 17, 1986, of an application filed by Direct Energy Marketing Limited (DEML) a Canadian natural gas company, for blanket authorization to import into the U.S. from Canada up to 200 Bcf of natural gas over a two-year period beginning on the date of first delivery. DEML also seeks authorization to transfer its import authorization to its designated U.S. subsidiary corporation when created. The gas would be supplied from DEML's own shareholders' production and reserves and sold on a short-term or spot basis to U.S. purchasers, including pipelines, local distribution companies, and industrial end-users. DEML would either purchase and resell the imported gas or act as agent for its Canadian suppliers and U.S. purchasers. The specific terms of each import and sale would be individually negotiated and would be responsive to current market conditions. Accordingly to DEML, no new pipeline facilities will be required to import the gas. DEML or the proposed U.S. subsidiary will file quarterly reports with the ERA within 30 days of each quarter showing the quantities of gas imported, suppliers, purchasers, the average price paid per MMBtu, and take-or-pay or make-up provisions, if any, in supply contracts.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than November 3, 1986.

FOR FURTHER INFORMATION:

Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9478.

Diane Stubbs, Office of the General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9478. They must be filed no later than 4:30 p.m. e.s.t., November 3, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of DEML's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 26, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–22351 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–36–NG]

Yankee International Co.; Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Yankee International Company (Yankee) a blanket authorization to export natural gas on a short-term or spot basis, primarily to Canada. The order issued in ERA Docket No. 86–36–NG authorizes Yankee to export up to 200 MMcf of natural gas per day and a maximum of 146 Bcf over a two-year period.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC., September 26, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–22350 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

[86–51–NG]

Natural Gas Imports, Kerr-McGee Chemical Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 9, 1986, of an application filed by Kerr-McGee Chemical Corporation (Kerr-McGee Chemical) to import up to 18,000 Mcf of Canadian natural gas per day for use in the operation of its chemical manufacturing plants located near Trona and Argus, California. The imported volumes are to be purchased from KM Gas Company (KM Gas) at an initial price paid at the border of $2.28 per MMBtu (in Canadian dollars). The agreement with KM Gas has an initial term which begins on the date of first delivery and ends on October 31, 1988. Thereafter, it continues until terminated by either party.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protest, motions to intervene,

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notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notice of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on November 3, 1986.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–4819.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., (202) 252–6667.

SUPPLEMENTARY INFORMATION: The applicant and KM Gas are corporations registered in the State of Delaware, each of which is a wholly-owned subsidiary of Kerr-McGee Corporation (Kerr-McGee), also a Delaware corporation. Kerr-McGee owns oil and gas leasehold interests in the Canadian Province of Alberta. The import volumes supplied by KM Gas will come from the parent company and other Canadian sources. They will be transported from the international border near Kingsgate, British Columbia, through the existing pipeline facilities of Pacific Gas Transmission Company and in California through existing facilities of Pacific Gas and Electric Company.

With respect to pricing, the initial gas cost of $2.28 per MMBtu (in Canadian dollars) is set until November 30, 1986. Thereafter, either party may nominate at any time on 15 days notice the price Kerr-McGee Chemical will pay. If both parties do not agree to the new price either one would be entitled to terminate the sales contract. The sales price may never be less than the Canadian natural gas floor price established for exports by the Canadian government. There is no take-or-pay requirement for these purchases and no minimum bill obligation.

Further, the contract provides that if Kerr-McGee Chemical receives an offer from a third party to sell less expensive supplies, it would have the option to propose that the rate paid to KM Gas be reduced to equal the cheaper price. So long as KM Gas elects to match any bona fide below-contract offer, Kerr-McGee Chemical may not cancel their agreement before the end of the initial contract period.

In support of the application, Kerr-McGee Chemical asserts that the import proposal is not inconsistent with the public interest because it will furnish a reliable supply of natural gas to meet its manufacturing and heating requirements. Also, the applicant believes that the arrangement complies with DOE's gas import policy guidelines on the basis that the absence of minimum bill and take-or-pay obligation taken together with the right to periodically adjust the price provide assurance that the gas will only be imported when it is fully competitive.

The decision on the application to import natural gas will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Kerr-McGee Chemical requests expedited treatment of its application given the fact that the authorization requested is similar to existing import authorizations. A decision on Kerr-McGee Chemical's request will be made after the close of the comment period established by this notice.

Public Comment Procedures

In response to the notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9478. They must be filed no later than 4:30 p.m., November 3, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Kerr-McGee Chemical's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–22265 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–53–NG]

Natural Gas Imports, Wessely Marketing Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 15, 1986, of an application from Wessely Marketing Corporation (Wessely) for blanket authorization to import up to 100 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. Wessely, a corporation registered in the State of Delaware, is a wholly-owned subsidiary of Wessely Energy Corporation, a Texas firm whose business activities include producing and selling natural gas. Wessely would receive its supply of gas from Canadian sources in the Province of Alberta, and resell it on a short-term basis in the U.S. spot market. Each import and sale would be individually negotiated and contain market-based terms and prices. Wessely proposes to submit quarterly reports to the ERA describing each transaction. Only existing pipeline facilities would be used to transport the gas from the international border.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than November 3, 1986.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9482.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9478. They must be filed no later than 4:30 p.m. e.s.t., November 3, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Wessely's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, September 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–22266 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Forms EIA–820, "Annual Refinery Report" and EIA–810, "Monthly Refinery Report"

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of intent to revise Forms EIA–820, "Annual Refinery Report" and EIA–810, "Monthly Refinery Report.".

SUMMARY: The purpose of this notice is to inform interested parties of the intent to revise Forms EIA–820, "Annual Refinery Report" and EIA–810, "Monthly Refinery Report" for implementation in January 1987.

DATES: The Energy Information Administration (EIA) will consider any comments filed with the EIA on or before November 3, 1986.

ADDRESSES: Those wishing to provide comments should send them to: Susan J. Harris, Office of Oil and Gas, Energy Information Administration, Department of Energy, Mail Stop 2H–058, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–8384.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE REVISED FORMS AND INSTRUCTIONS, CONTACT: Petroleum Supply Division, Energy Information Administration, Department of Energy, Mail Stop 2E–050, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9884.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Comments

I. Background

The Energy Information Administration (EIA) conducts an extensive review of petroleum supply survey forms every three years. The last review was conducted during 1985 and resulted in revisions to the Petroleum Supply Reporting System survey forms in January 1986. Review of the Form EIA–820, "Annual Refinery Report" was

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postponed in order to incorporate the findings of the National Petroleum Council's (NPC) Refinery Capacity Study. The revisions to the Form EIA–820 and to the Form EIA–820, "Monthly Refinery Report," are the result of discussions held with participants in the NPC Study and with members of the petroleum industry.

II. Current Actions

The form changes are designed to reduce respondent burden, better reflect current refinery operations through updated terminology, and measure the utilization of key downstream processing units. These changes, along with the proposed changes to the publications in which the data are displayed, are summarized below:

Form EIA–820, "Annual Refinery Report"

1. Eliminate Sections 1 and 2.
2. Modify Section 4, "Operable Capacity (Operating Plus Idle) of Refining Facilities"

a. Combine Thermal Cracking types, Gas Oil (Code 424) and Other (Code 406) into a single category, "Other (include Gas Oil)."

b. Combine Catalytic Hydrotreating types, Naphtha (Code 423) and Reformer Feeds (Code 428) into a single category, "Naphtha/Reformer Feeds" and Residual Fuel Oil (Code 412) and Other (Code 429) into a single category, "Other (include Residual)."

c. Catalytic Reforming types, Conventional (Code 409) and Bi-metallic (Code 410) have been eliminated. Catalytic Reforming units will now be reported as low pressure processing units (less than 225 pounds per square inch gauge (PSIG) measured at the outlet separator) or as high pressure processing units (equal to or greater than 225 PSIG).

d. A new category, Fuels Solvent Deasphalting, is added to the charge capacity section.

e. A new category, Sulfur Recovery, is added to the production capacity section.

3. In the EIA publication, *Petroleum Supply Annual,* Volume I, Tables 29, 30, 31 and 36 will be modified to incorporate the revised reporting categories. Table 33 will be eliminated.

Form EIA–810, "Monthly Refinery Report"

1. Data will be collected on fresh feed input to Catalytic Cracking Units, Hydrocracking Units and Cokers in Section 1, "Refinery Input and Capacity."

2. In the EIA publication, *Petroleum Supply Monthly,* Table 13 will be modified to incorporate the additional categories for fresh food imports and the calculation of utilization rates.

3. In the EIA publication, *Petroleum Supply Annual,* Volumes I and II, Table 11 will also be modified to incorporate the additional categories for fresh feed inputs and the calculation of utilization rates.

III. Comments

For those wishing to comment on these revisions and modifications, the following guidelines to assist in preparation of responses are provided. If you are a possible data provider:

1. Considering these proposed deletions on the Form EIA–820, "Annual Refinery Report," how many hours will you require to complete and submit the required form?

2. Considering the proposed additions on the Form EIA–810, "Monthly Refinery Report," how many hours will you require to complete and submit the required form?

3. Do you agree that these revisions will better reflect current refinery operations and improve the measurement of utilization of downstream processing units that produce gasoline?

If you are a data user:

1. Do you need any of the elements of information that would be eliminated by these revisions? For what purposes would you use these data?

2. Do you agree that these revisions will better reflect current refinery operations and improve the measurement of utilization of downstream processing units that produce gasoline?

Comments or summaries of comments will be included in EIA's submission to the Office of Management and Budget and will become a matter of public record. EIA is also interested in receiving comments concerning the need to continue the collection of the data required on these forms.

(Sections 13(b), 5(b), 5(a), and 52 of the Federal Energy Administration (FEA) Act of 1974, [15 U.S.C. 772(b), 764(b), 764(a) and 790a]).

Issued in Washington, DC on September 29, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 86–22352 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–11–M

Federal Energy Regulatory Commission

[Docket No. RM85–1–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Order Dismissing Requests for Waivers

Issued September 29, 1986

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Vessels Oil and Gas Company, Standard Gas Marketing Company, and French Petroleum Corporation filed requests for waivers of the transitional provisions of Order No. 436 [1] as they apply to transportation transactions performed by Panhandle Eastern Pipe Line Company and ANR Pipeline Company under section 311 of the Natural Gas Policy Act of 1978. We will dismiss the requests.

In *United Gas Pipe Line Company, et al.,* 35 FERC ¶ 61,424 (1986), we granted waivers of § 284.10(a)(1) of the Commission's Regulations in order that Panhandle and ANR, among other pipelines, could continue existing section 311 transactions, or begin new section 311 transactions, as long as they transported gas in a manner consistent with the other provisions of Order No. 436. Accordingly, Vessel's, Standard Gas's, and French's requests for waivers are moot because Panhandle and ANR can perform the section 311 transportation under the waivers granted in *United.* Vessel's, Standard Gas's, and French's requests for waivers are dismissed.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–22376 Filed 10–1–86; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders By the Office of Hearings and Appeals for the Week of August 11 Through August 15, 1986

During the week of August 11 through August 15, 1986, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

[1] 33 FERC ¶ 61,007 (1985); FERC Statutes and Regulations ¶ 30,665 (1985).

Motions for Discovery

Gear Petroleum Company, Inc., 8/14/86; (HRD–0133, HRH–0133)

On May 16, 1983, the Gear Petroleum Company, Inc. (Gear) filed Motions for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order (PRO). In the discovery motion, Gear sought access to documents and information relating to an audit of the firm by the Economic Regulatory Administration. In addition, Gear requested documents and information concerning (1) the newly discovered crude oil price rule, 10 C.F.R. 212.79, (2) Ruling 1980–3 which interprets the rule, and (3) Interpretation 1980–17.

In considering the discovery motion, the Department of Energy (DOE) found that all of Gear's requested administrative record discovery was non-discoverable because Gear had made no showing of improper promulgation. The DOE also found that the public administrative record of a regulation need not precisely explain the regulation promulgated, but only the basis for the agency action. Gear's requested discovery for audit material, contemporaneous construction, background material to Ruling 1980.3, evidence of document destruction, and the bulk of its legal contention discovery were denied as irrelevant to the resolution of the PRO. However, the DOE did allow seven of Gear's legal contention discovery interrogatories because, among other reasons, they were likely to produce relevant evidence that could clarify the contentions of the parties.

In considering the evidentiary hearing motion, the DOE found that a limited hearing should be convened due to conflicting documentation in the record. In order to fully inform the DOE of the facts to be adduced at the hearing, the DOE ordered the parties to file Briefs on the Kansas and Federal Law of Property Unitization. The DOE cautioned the parties, however, that legal arguments are inappropriate at an evidentiary hearing.

Texas Armada Refining Company and Economic Regulatory Administration, 8/15/86; HRD–0217, (HRH–0217, HRD–0260)

On April 16, 1984, Texas Armada Refining Co. (TARCO) filed Motions for Discovery and Evidentiary Hearing. In considering TARCO's Motion for Discovery, the DOE determined that contemporaneous construction discovery was unwarranted and that the firm had already been supplied with the audit workpapers upon which the PRO was based. TARCO was granted administrative record discovery of the official administrative record of the rulemaking proceedings relating to 10 C.F.R. § 212.36, but discovery of material beyond the official record was denied. The DOE also determined that TARCO's Motion for Evidentiary Hearing failed even to attempt to satisfy the requirements of the DOE procedural regulations governing such motions. Accordingly, TARCO's Motion for Evidentiary Hearing was summarily denied.

On December 11, 1984 and May 23, 1985, the ERA filed Motions for Discovery seeking information relating to TARCO's corporate status and ownership. In considering these Motions, the DOE determined that TARCO had provided adequate responses to the ERA's first Motion, and that it was therefore unnecessary to rule on that Motion. The DOE further determined that the ERA's Supplemental Motion for Discovery was timely submitted and concerned issues that were both relevant and material to the proceeding. Accordingly, ERA's second Motion for Discovery was granted.

Interlocutory Orders

Economic Regulatory Administration, 8/14/86; (KRZ–0030)

On June 12, 1986, the Economic Regulatory Administration (ERA) filed a Motion to Disqualify Counsel from further participation in a proceeding concerning a Proposed Remedial Order (PRO) which alleges that Shell Oil Company violated the crude oil producer price regulations. The ERA claimed that there was a substantial relationship between past activities of Shell's counsel as an agency employee and his current arguments on behalf of Shell's crude oil property determinations. Thus, the ERA asserts that Shell's counsel should be disqualified in the PRO proceeding pursuant to the Disciplinary Rules of the Code of Professional Responsibility which generally prohibit a lawyer from accepting employment regarding matters in which he substantially participated as a public employee.

In considering the ERA's Motion, the DOE determined that there was no evidence to indicate that Shell's counsel, while an agency employee, had any personal knowledge of Shell's method of implementing the property definition or that he was involved in any investigative or deliberative process concerning Shell's implementation of the property definition. Therefore, the DOE found no reason to disqualify counsel from continuing to represent Shell in the PRO proceeding, and denied the ERA's Motion.

Economic Regulatory Administration/ Telum, Inc., 8/13/86; KRZ–0014, KRZ–0015

The Economic Regulatory Administration (ERA) filed a motion to amend the Proposed Remedial Order (PRO) issued to Telum, Inc. (Telum) in order to reclassify certain customers of Telum pursuant to new item/ new market rule at 10 CFR 212.111. In response, Telum filed a Motion to Dismiss the enforcement proceeding in its entirety.

In considering the ERA Motion, the OHA found that good cause existed for amending the PRO, and that no undue prejudice to Telum would result. With respect to Telum's Motion to Dismiss, the OHA found that having granted the ERA Motion, Telum's arguments were moot. Accordingly, the ERA's Motion to Amend was granted, and the firm's Motion to Dismiss was denied.

Implementation of Special Refund Procedures

Northeast Petroleum Industries, Inc., 8/15/86; HEF–0138

The DOE issued a Decision and Order implementing a plan for the distribution of $1,009,609.84 received as a result of a consent order with Northeast Petroleum Industries, Inc. (Northeast) on June 17, 1980. The DOE determined that the Northeast settlement fund should be distributed to both identified and as yet unidentified customers who purchased motor gasoline fuel from Northeast during the period May 1, 1974 through August 31, 1979. The specific information required in refund applications is set forth in the Decision.

Refund Applications

Eastern of New Jersey, Inc./Vornado, Inc., et al., 8/12/86; RF232–358 et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the 14 applications under the standards specified in *Eastern of New Jersey, Inc.,* 13 DOE ¶ 85,364 (1986). The refunds granted total $30,948, representing $19,267 in principal and $11,681 in interest.

Eastern of New Jersey, Inc./ Warner Theatre et al., 8/12/86; RF–232–58 et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the 15 applications under the standards specified in *Eastern of New Jersey, Inc.,* 13 DOE ¶ 85,364 (1986). The refunds granted total $10,022, representing $6,239 in principal and $3,783 in interest.

Eastern of New Jersey, Inc./ Wincenter Associates et al., 8/12/86; FR232–59–et al.

The DOE issued a Decision and Order concerning 22 Applications for Refund in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the 22 applications under the standards specified in *Eastern of New Jersey, Inc.,* 13 DOE ¶ 85,364 (1986). The refunds granted total $21,870, representing $13,616 in principal and $8,254 in interest.

Leonard E. Belcher, Inc./D. Petracone & Sons Co., Borsari Oil, Inc. and McCarthy Bros. Fuel Oil, 8/14/86; RF227–22, RF227–23, RF227–24

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Leonard E. Belcher, Inc. special refund proceeding. All of the firms applied for refunds greater than $5,000. In accordance with the standards specified in *Leonard E. Belcher, Inc.,* 13 DOE ¶ 85,348 (1986), they were all required to demonstrate that they had cost banks greater than the amount of refunds due and that they were injured as a result of the overcharges. After examining the evidence and supporting documentation, the DOE concluded that D. Petracone & Sons. Co. and Borsari Oil, Inc. had costs banks and had been injured in many of the months during the consent order period. Since McCarthy

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Bros. Fuel Oil could not demonstrate that it had been injured by an amount greater than the small claims threshold amount, its claim was limited to $5,000 plus interest. All three refunds granted total $28,592, representing $22,945 in principal and $5,647 interest.

Marathon Petroleum Co./Archbold Board of Education et al., 8/13/86; RF250-130 et al.

The DOE issued a Decision and Order concerning 30 Applications for Refund filed in the Marathon Petroleum Company refund proceeding. The applicants were all end-users of Marathon petroleum products. In its Decision, the DOE granted the 30 Applications under the standards specified in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986). The refunds granted total $6,322, representing $6,117 in principal and $205 in interest.

Mobil Oil Corp./A&M Trucking Co. et al., 8/11/86; RF225-1609 et al.

The Office of Hearings and Appeals granted 49 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users that had purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $2,428, representing $2,061 in principal and $365 in interest.

Mobil Oil Corp./Albert Motors, Inc. et al., 8/14/86; RF225-1195 et al.

The Office of Hearings and Appeals granted 44 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users that had purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $6,889, representing $5,843 in principal and $1,046 in interest.

Mobil Oil Corp./Alderman-Cave Milling and Grain Co. et al., 8/15/86; RF225-1472 et al.

The Office of Hearings and Appeals granted 48 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users that had purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $2,949, representing $2,506 in principal and $443 in interest.

Mobil Oil Corp./Anthony Archetti et al., 8/12/86; RF225-3414 et al.

The DOE issued a Decision granting 96 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the small claims presumption set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of refunds granted was $38,164, representing $32,368 in principal and $5,796 in interest.

Northwest Pipeline Corp./Westport Energy Corp., 8/14/86; RF116-6

Westport Energy Corporation (Westport) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Northwest Pipeline Corporation (Northwest). Westport demonstrated that it purchased 2,280,465 gallons of butane from Northwest during the consent order period. Using a volumetric methodology, the DOE determined that Westport's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted Westport a refund of $6,521.21, representing $4,426.38 in principal and $2,094.83 in interest. However, the DOE also concluded that it would not be appropriate to issue the refund directly to Westport at the present time since the firm is a respondent in an enforcement proceeding currently before the Office of Hearings and Appeals. Pending the outcome of the enforcement proceeding, the DOE determined that the refund should be deposited into a separate interest-bearing escrow account on behalf of Westport.

Quaker State Oil Refining Corp./Petrolec, Inc., et al., 8/15/86; RF213-003 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund filed by resellers of Quaker State Oil Refining Corporation refined petroleum products. Each applicant presented evidence that it purchased refined petroleum products from Quaker State during the consent order period and claimed a refund at or below the $5,000 small claims threshold level. According to the methodology set forth in *Quaker State Oil Refining Corp.*, 13 DOE ¶ 85,211 (1985), each applicant was found to be eligible for a refund from the Quaker State consent order fund based on the volume of its purchases claimed times the volumetric refund amount. The refunds approved totalled $50,941.

Union Texas Petroleum Corp./Hillman Oil Co. et al., 8/15/86; RF104-4 et al.

The DOE issued a Decision and Order concerning 6 Applications for Refund filed by resellers of petroleum products purchased from Union Texas Petroleum Corporation (UTP). Two of the applicants in this proceeding elected to apply under the presumption of injury for small claims set forth in *Union Texas Petroleum Corp.*, 12 DOE ¶ 85,166 (1985) *(UTP)*, and were granted refunds on that basis. Two other applicants applied for refunds in excess of the small claims threshold amount but failed to provide the evidence necessary to support such claims of injury. Accordingly, the DOE determined that these applicants should be granted the threshold refund amount on the basis of their documented purchase volumes of UTP product. Another applicant requested a refund in excess of the small claims threshold and, in support of its claim, provided cumulative and non-cumulative monthly records of its unrecouped increased product costs. The DOE determined that this information indicated that the applicant maintained adequate cost banks. In addition, the DOE found that the applicant made a sufficient showing that the prices it paid for UTP products were higher than those of other local suppliers in 13 months of the consent order period. Accordingly, the DOE approved a refund for the volumes which the applicant purchased during those months. However, the DOE denied the application of another firm which it determined had failed to make the requisite showing of injury necessary to support its claim in excess of the threshold amount. The refunds granted in this proceeding, all of which were computed using the volumetric methodology set forth in the *UTP* Decision, total $67,044.

Dismissals

The following submissions were dismissed:

Company name	Case No.
Downtown Gulf	RF40-1725.
James C. Tarleton	RF213-142.
Ladd Marshall Gulf Service	RF40-3224.
Lost Gap Gulf Service	RF40-1526.
Public Service Company of Indiana, Inc.	RF21-12622, RF21-12623, RF21-12624
Mrs. Donald Schmidt	RF320-320, RF320-321, RF320-322.
Town & Country Gulf	RF40-723.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 19, 1986.

[FR Doc. 86-22271 Filed 10-1-86; 8:45am]

BILLING CODE 6450-01-M

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals for the Week of August 18 Through August 22, 1986

During the week of August 18 through August 22, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

John D. Morris; 8/22/86; KFA-0046

John D. Morris filed an Appeal from a denial by the Director of Personnel Management of the Bonneville Power Administration of a request for information which he had submitted under the Freedom of Information Act (FOIA). Mr. Morris had sought information concerning persons hired for the position of Power System Electrician by the agency. For each selected individual, he sought the name, raw numerical rating, amount of veterans preference, and whether the individual was handicapped, had prior civil service status or had relatives employed by the agency. In considering the Appeal, the DOE found that the Director had improperly withheld most of this material pursuant to Exemption 6 of the FOIA since the minimal privacy interest in this information did not outweigh the substantial public interest in knowing the qualifications of government employees. The DOE found, however, that information concerning whether the selected individuals were handicapped was properly withheld by the director since there is a greater privacy interest surrounding a person's physical condition and since that information was not directly relevant to an applicant's qualification for employment. Accordingly, the Appeal was granted in part.

Ivan Von Zuckerstein; 8/20/86; KFA-0047

Ivan Von Zuckerstein filed an Appeal from a partial denial by the Manager of the DOE Chicago Operations Office of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the Manager properly withheld portions of the requested memo under FOIA Exemption 5. Important issues that were considered in the Decision and Order were (i) whether a DOE memorandum that is addressed to a private contractor is an intra-agency communication, and (ii) whether DOE comments on a contractor's draft report to the DOE are pre-decisional.

Petition for Special Redress

Lucky Stores, Inc., and Research Fuels, Inc.; 8/22/86; HEG-0031, KEX-0017, KEX-0018

The Department of Energy (DOE) issued a Decision and Order concerning a Petition for Special Redress, a Motion for Show Cause Order and a consolidated case remanded to the Office of Hearings and Appeals (OHA) by the United States District Court for the Northern District of Texas. Each of the three matters before the DOE pertained to a seven year old dispute among Research Fuels, Inc. (RFI), Oasis Petroleum Corporation (Oasis) and Lucky Stores, Inc. (Lucky) concerning the proper application of the DOE allocation regulations to a series of agreements entered into in October 1978 by Oasis and RFI. By those agreements, RFI transferred 84 retail motor gasoline outlets to Oasis and assigned to Oasis its right to receive a supply of motor gasoline from Marathon Oil Company and Cities Service Company.

In considering the special redress petition, the show cause motion and the remanded case, the DOE first resolved a number of factual disputes pertaining to the October 1978 agreements. The DOE then outlined the regulatory rights and obligations of the parties to the October 1978 agreements as of the date of execution of those agreements. Next, the DOE set forth the status of the parties after the motor gasoline base period was revised on March 1, 1979. The DOE also determined the regulatory effect of a Three Party Agreement, a Substitute Supplier Agreement and an April 1979 Settlement Agreement on the rights and obligations of the parties to the October 1978 Agreements. Other matters which the DOE resolved concerned the authority of the DOE to establish an updated base period to determine base period volumes and supplier/purchaser relationships and the discretion of the DOE not to approve a three party agreement when the agreement is procedurally and substantively defective.

Of particular importance was the DOE's finding that Oasis improperly diverted motor gasoline to Apex Oil Company (Apex) in contravention of the spirit of the DOE allocation regulations. The DOE determined that Oasis, by selling motor gasoline to the non-allocated purchaser, Apex, deprived allocated purchasers of product. In reaching this determination, the DOE found that Oasis had failed to produce convincing evidence to rebut the evidence in the record which established a pattern of diversion from Oasis to Apex. Based on this finding, the DOE recommended that the district court sustain paragraph 7 of RFI's Counterclaim, Cross-Claim and Third Party Action.

The Motion for Show Cause Order considered by the DOE alleged that Oasis had made material misrepresentations before the agency. Even though the motion was predicated upon a finding of diversion by Oasis to Apex, the DOE determined that one of the requisite elements of misrepresentation was lacking. Therefore, the DOE decided to dismiss the show cause motion.

As a final matter, the DOE decided that in order to advise the district court as to the proper manner in which to distribute approximately $1,000,000 currently held in escrow by the court and any other monies that Oasis may be required to disgorge because of its diversion activities, it is necessary to conduct further fact-finding. The DOE outlined a claims process by which RFI, Lucky and 21 wholesale purchasers of RFI can submit evidence to OHA to claim a portion of the escrow monies and any other monies that Oasis may disgorge.

Request for Modification and/or Rescission

Charter Oil Co.; 8/22/86; BYR-0154

Charter Oil Company requested that the DOE amend the firm's entitlements purchase obligation for its fiscal year 1978 because the DOE had erroneously included the firm's foreign results in the calculation of its entitlements purchase obligation. In granting Charter's request, the DOE determined that the firm should be credited with a sale of entitlements worth $950,905. That amount was netted against the firm's outstanding entitlements dispense obligation of $5 million. Charter's net entitlements purchase obligation will not be enforced according to the policy set forth in 50 FR 1919 (1985).

Motion for Evidentiary Hearing

Intercoastal Operating Co. Inc., et al.; 8/20/86; KRH-0007

Intercoastal Operating Company Inc., 1.O.C. Production, Inc., and four working interest owners (IOC) filed a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firms and individuals on August 28, 1983. The PRO alleges that IOC improperly treated several of its properties as stripper well properties. In its Motion for Evidentiary Hearing, IOC requests a hearing in order to present evidence that one of these properties, the North Shongaloo Red Rock Pettit Unit (NSRRPU), was properly treated as a stripper well property. The DOE found that a genuine factual dispute exists regarding the property's average daily production of crude oil, and that presentation of testimony on that issue would substantially assist the DOE in resolving the dispute. Accordingly, the Motion for Evidentiary Hearing was granted to permit IOC to present evidence regarding the stripper well status of the NSRRPU.

Supplemental Order

M&M Minerals Corp., et al.; 8/19/86; KRX-0010

On August 19, 1986, the Office of Hearings and Appeals (OHA) issued a Supplemental Order to M&M Minerals Corporation which addressed the applicability of the royalty owner accountability exception (ROAE) to the crude oil producing property at issue in the underlying Remedial Order proceeding involving the firm, Case No. HRO-0018. OHA found that the respondents had satisfactorily met the necessary criteria to apply the ROAE to at least four premises. In particular, OHA determined that Mississippi was a non-apportionment state for purposes of this proceeding, and that the respondents were thus required to account separately to royalty owners for production from each of the premises sought to be treated as separate properties. Accordingly, the proceeding was remanded to the Economic Regulatory Administration to determine the amount of overcharges, if any, which occurred in view of OHA's determination that there were at least four properties.

Implementation of Special Refund Procedures

Arkansas Valley Petroleum; 8/19/86; HEF-0029

The DOE issued a Decision and Order which establishes procedures for the distribution of funds totalling $27,571 obtained as a result of a Consent Order entered into by the DOE and Arkansas Valley Petroleum. The Decision sets forth refund application procedures for customers who purchased motor gasoline from Arkansas Valley during the Consent Order period—March 1, 1979 through October 31, 1979. Specific information regarding the data to be included in Applications for Refund is discussed in the Decision.

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Refund Applications

Coline Gasoline Corp./Nevada and Belridge Oil Co./Nevada; 8/20/86; RM3–28, RM8–27.

The DOE approved the Motions for Modification filed by the State of Nevada regarding two of its refund plans. Nevada will use its Coline funds, $714 including interest, and its Belridge funds, $590.60 including interest, to print and distribute the Alternative Energy Source Book, 1986 and the "How to Keep Your Car in Tune" brochure.

Farmers Union Central Exchange, Inc.; 8/19/86; (RR171–1)

Farmers Union Central Exchange, Inc. (Cenex) had received additional entitlements exception relief in an order issued on February 12, 1986. *Farmers Union Central Exchange, Inc.*, 14 DOE ¶ 85,019 (1986). That order approved interest on the relief from February 12. Cenex in this proceeding requested that interest accrue from October 2, 1985, the date on which similar relief was approved for 14 other firms. In denying the request, the OHA found that interest should accrue from the date on which the additional exception relief was approved.

Gulf Oil Corp./BF Goodrich Chemical Group; 8/18/86; (RF40–602, RF40–3087, RF40–3088)

The DOE issued a Decision and Order concerning three Applications for Refund filed by the BF Goodrich Chemical Group in the Gulf Oil Corporation special refund proceeding. BF Goodrich was an end-user of petroleum products purchased directly from Gulf. In its Decision, the DOE granted the three applications under the standards specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refund granted totals $250,238, representing $206,277 in principal and $43,961 in interest.

Gulf Oil Corp./Blue Bell Gulf et al.; 8/22/86; (RF40–102 et al.)

The DOE issued a Decision granting 17 Applications for Refund filed by retailers and resellers Of Gulf Oil Corporation products. All of the claimants applied for a refund based on the procedures outlined in Gulf Oil Corp., 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, all of the 17 claimants demonstrated that they would not have been required to pass through to their customers a cost reduction equal to the amount of the refund claimed. The total amount of refund granted was $57,193, representing $47,146 in principal and $10,047 in interest.

Gulf Oil Corp./Mossman's Gulf Service et al.; 8/22/86; (RF40–02210 et al.)

In accordance with the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), the DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation escrow fund to 32 purchasers of Gulf refined petroleum products. The refunds to these firms totaled $46,972.

Gulf Oil Corp./Pat's Gulf Service Station; 8/19/86; (RF40–200)

The Office of Hearings and Appeals (OHA) issued a Decision and Order concerning an Application for Refund filed by Pat's Gulf Service Station, a retailer of Gulf petroleum products located in Darien, Connecticut. In its determination, the OHA found that Pat's had failed to make the requisite showing established in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), that it would not have been required to pass through to customers cost reductions equal to the refund amount claimed. Therefore, the Application for Refund filed by Pat's Gulf was denied.

Gulf Oil Corp./Pearland Gulf et al.; 8/22/86; (RF40–3256 et al)

In accordance with the procedures outlined in Gulf Oil Corp., 12 DOE ¶ 85,048 (1984), the DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation escrow account after examining the evidence and supporting documentation submitted by five purchasers of Gulf refined petroleum products. These refunds totaled $8,018.

Gulf Oil Corp./R & W Oil Products; 8/21/86; (RF40–3222)

The DOE issued a Decision and Order concerning an Application for Refund filed by R & W Oil Products., a retailer-reseller of Gulf Oil Corporation products. R & W, which previously received a refund in the Gulf special refund proceeding, informed DOE that it had purchased more product than it had indicated in its original refund application. R & W was therefore granted an additional refund of $2,261 in principal and $482 in interest.

Marathon Petroleum Co./Abercrombie, et al.; 8/20/86; (RF250–397 et al)

The DOE issued a Decision and Order concerning 38 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $35,430 in principal and $1,265 in interest.

Marathon Petroleum Co./Acree Oil Co., et al.; 8/20/86; (F250–306 et al)

The DOE issued a Decision and Order concerning 37 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $27,941 in principal and $972 in interest.

Marathon Petroleum Co./Airport Marathon, et al.; 8/20/86; (RF250–213 et al)

The DOE issued a Decision and Order concerning 60 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $44,009 in principal and $1,585 in interest.

Marathon Petroleum Co./Alexander's 12 and Southfield, et al.; 8/20/86; (RF250–47 et al)

The DOE issued a Decision and Order concerning 51 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refund approved in this Decision is $41,573 in principal and $1,499 in interest.

Marathon Petroleum Co./Bell's Marathon Inc., et al., 8/21/86; RF250–516 et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision was $39,437 in principal and $1,471 in interest.

Marathon Petroleum Co./Boron Oil Co., et al., 8/21/86; RF150–476 et al.

The DOE issued a Decision and Order concerning 41 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $29,597 in principal and $1,196 in interest.

Marathon Petroleum Co./Patriot Petroleum Dist., Inc., 8/18/86; RF250–347

The DOE issued a Decision and Order concerning an Application for Refund filed by Patriot Petroleum Dist., Inc., a purchaser and reseller of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Under the refund procedures established for Marathon applicants, Patriot's purchase volume corresponded to a volumetric refund amount exceeding the $5,000 small claims refund level. However, because the firm did not attempt to demonstrate that it absorbed the alleged Marathon overcharges, Patriot was eligible for a refund of either $5,000 or 35% of its volumetric refund amount. In this case, 35% of the firms volumetric refund amount was less than the small claims amount. Accordingly, the DOE granted Patriot a refund of $5,000 in principal and $183 in interest.

Marathon Petroleum Co./"T" Grocery and Service Station, et al., 8/21/86; RF250–420 et al.

The DOE issued a Decision and Order concerning 35 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $22,748 in principal and $845 in interest.

Mitchell Energy Corp./Warren Petroleum Co., E.I. du Pont de Nemours and Co., 8/18/86; RF50–2, RF50–3

Warren Petroleum Company filed an Application for Refund, seeking a portion of funds remitted by Mitchell Energy Corporation, pursuant to a consent order that Mitchell entered into with the DOE. Warren purchased 1,019,104,679 gallons of natural gas liquid products from Mitchell during the consent order period. The DOE found that for a major portion of the NGLPs that Warren purchased, Warren was charged prices above the average market price levels. As a result, Warren incurred a substantial excess cost. Considering the competitive disadvantage that Warren suffered from its purchases from Mitchell, the DOE granted Warren a refund of $703,000 plus accrued interest, which equals the share of the consent order fund allocated to the firm on the purchase volume basis.

E. I. Du Pont de Nemours & Co. also filed an Application for Refund in the Mitchell refund proceeding on the basis that it purchased the Mitchell products from Warren. Since the DOE had determined that Warren was unable to pass through the alleged overcharges, it denied Du Pont's refund request.

Mobil Oil Corp./Andrew Roman et al., 8/20/86; RF225–1898 et al.

The DOE issued a Decision granting 103 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $32,873 ($27,886 principal plus $4,987 interest).

Mobil Oil Corp./Bast Chevrolet Inc. et al., 8/21/86; RF225–2813 et al.

The Office of Hearings and Appeals granted 48 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount pursuant to the procedures adopted in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $3,556, consisting of $3,016 in principal plus $538 in interest.

Mobil Oil Corp./Bill Rogers Flying Service et al., 8/19/86; RF225–2423 et al.

The Office of Hearings and Appeals granted 47 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount pursuant to the procedures adopted in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $4,738, consisting of $4,018 in principal plus $720 in interest.

Mobil Oil Corp./Bob Hayes Chevrolet Co. et al., 8/18/86; RF225–2031 et al.

The Office of Hearings and Appeals granted 49 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount pursuant to the procedures adopted in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $1,942, consisting of $1,649 in principal plus $293 in interest.

Mobil Oil Corp./Robert F. Scott Co., Inc., et al., 8/20/86; RF225–4254 et al.

The Department of Energy issued a Decision and Order granting refunds from the Mobil Oil Corporation deposit fund escrow account to 54 purchasers of Mobil motor gasoline. The refund approved for these firms totaled $18,120, including accrued interest. All of the refund applicants are retailers of Mobil motor gasoline who elected to apply for refund under the applicable level-of-distribution presumption outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).

Northwest Pipeline Corp./Chevron U.S.A., Inc., 8/18/86; RF116–5

Chevron U.S.A., Inc. (Chevron) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Northwest Pipeline Corporation (Northwest). The DOE found that Chevron demonstrated that it purchased Northwest butane during the consent order period and that Chevron was injured by those purchases. Using a three-step competitive disadvantage methodology, the DOE calculated a range of Chevron's competitive disadvantage. A refund of $36,197.04 was found to equitably compensate Chevron for any injury experienced as a result of Chevron's alleged overcharges. In addition, the firm received accrued interest of $17,130.00 for a total refund of $53,327.04.

Sage Creek Refining Co., 8/18/86; RF171–36

On June 19, 1986, the OHA issued an order approving $57,019 in additional entitlements exception relief for Saga Creek Refining Co. Pursuant to policies established in *Amber Refining, Inc.*, 12 DOE ¶ 85,217 (1986), the DOE directed payment of that amount from the DOE Deposit Fund Escrow Account.

Tenneco Oil Co./Narragansett Electric Co., 8/20/86; RF7–136

The Department of Energy issued a Decision and Order granting a refund to Narragansett Electric Company from the Tenneco Oil Company deposit fund escrow account. Narragansett was an end-user of Tenneco No. 6 fuel oil. The refund granted to Narragansett totaled $436, including accrued interest.

Dismissals

The following submissions were dismissed.

Name	Case No.
Holly Mobil	RF225–1774.
Small's LP Gas Co.	RF237–6.
Ray Wrycha	RF213–35.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

September 16, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–22276 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals for the Week of August 25 Through August 29, 1986

During the week of August 25 through August 29, 1986, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Lone Star Oil & Chemical Co. and Michael A. McAlister; 8/26/86 HRO–0185

Lone Star Oil and Chemical Company and Michael A. McAlister (Lone Star) objected to a Proposed Remedial Order which the Economic Regulatory Administration issued to the firm on July 15, 1983. In the Proposed Remedial Order (PRO), the ERA found that Lone Star received illegal revenues totalling $140,146.25 as a result of reselling crude oil at prices in excess of those permitted by 10 CFR 212.186 during the period June 1978 through January 1980. After considering Lone Star's Statement of Objections, the DOE concluded that the PRO should be issued as a final Decision and Order of the DOE. An important issue discussed in this Decision and Order was whether a reseller's assisting a refinery to obtain additional benefits under the entitlement program constituted a traditional and historical reseller activity.

Requests for Exception

Beard Oil and Supply, 8/25/86; KEE–0017

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Beard Oil and Supply filed an Application for Exception from the requirement that the firm file Form EIA–782B, the Resellers'/Retailers' Monthly Petroleum Product Sales Report. The DOE found that Beard had not shown that the burden which completing the form placed upon the firm outweighed the benefit to the nation provided by the EIA–782B survey results. Accordingly, exception relief was denied.

Cummings Transfer Co., 8/26/86; KEE–0044

Cummings Transfer Company filed an Application for Exception from its obligation to submit Form EIA–194, entitled "Monthly Alternate Fuel/Incremental Price Monitoring Report," and Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the applicant's request, the DOE found that the firm had failed to demonstrate that it was particularly adversely affected by the requirement that it file either Form EIA–194 or Form EIA–782B. Accordingly, exception relief was denied.

Motion for Discovery

Tonkawa Refining Co., 8/28/86; KRD–0005, KRH–0005

Tonkawa Refining Company (Tonkawa) filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order (PRO) issued to the firm on May 31, 1985. In the discovery motion, Tonkawa sought to depose unnamed DOE auditors and attorneys who conducted the audit of Tonkawa, and unnamed officers and executives from various companies that did business with Tonkawa during the audit period. The DOE denied this motion, since the firm failed to identify the information which was sought or the issues to be explored in the depositions, and only offered a generalized assertion of relevance and need for the information. In considering Tonkawa's Amended Motion for Discovery, the DOE directed the ERA to provide the firm with relevant audit workpapers and an explanation of the methodology used in calculating the firm's crude oil receipts during the audit period. Finally, the DOE denied Tonkawa's Motion for Evidentiary Hearing since the firm failed to identify any witnesses whose testimony was required and did not present specific reasons why such testimony was necessary. Tonkawa also failed to explain why its asserted positions could be established effectively only through direct questioning and cross examination rather than by written submission, documentary evidence and oral argument.

Interlocutory Order

Texaco Inc., 8/28/86; KRZ–0043,

Texaco Inc. (Texaco) filed a petition for review of a Special Report Order (SRO) that was issued to Texaco by the Deputy Director for Economic Analysis, Office of Hearings and Appeals, on July 9, 1986. *Texaco Inc.*, 14 DOE ¶ ——, Case No. KRX–0016 (July 9, 1986). In its petition for review, Texaco argued that the SRO should be rescinded since (i) Texaco was improperly denied an administrative appeal of the matters concerned by the SRO, (ii) issuance of the SRO improperly involved the Office of Hearings and Appeals (OHA) in investigatory functions, (iii) the Economic Regulatory Administration had not established a *prima facie* case with respect to the matters concerned by the SRO, and (iv) the SRO prematurely imposed enormous burdens on Texaco. In considering the petition for review OHA determined that Texaco's contentions were without legal and factual basis. Accordingly, OHA upheld the SRO. OHA determined, however, that the SRO should be modified to afford Texaco a 60-day extension of time for compliance with the SRO reporting requirements.

Refund Applications

Conoco Inc./Goy Oil, Inc. et al., 8/25/86; RF220–37 et al.

The DOE issued a Decision and Order concerning fifty-five Applications for Refund filed by Goy Oil, Inc. *et al.* The applicants, each of whom had purchased refined petroleum products from Conoco Inc., sought a portion of the settlement fund obtained by the DOE through a consent order with Conoco, and applied for refunds based upon the procedures for filing small claims outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the applications, the DOE concluded that each of the fifty-five firms should receive a refund, based on its volumetric per gallon refund amount. The total amount of refunds granted was $92,070.

Conoco Inc./Kingsport Oil, Corp., et al., 8/28/86; RF220–164 et al.

The DOE issued a Decision and Order concerning fifty Applications for Refund filed by Kingsport Oil Corporation, *et al.* The applicants, each of whom had purchased refined petroleum products from Conoco Inc., sought a portion of the settlement fund obtained by the DOE through a consent order with Conoco, and applied for refunds based upon the procedures for filing small claims outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the applications, the DOE concluded that each of the fifty firms should receive a refund, based on its volumetric per gallon refund amount. The total amount of refunds granted was $70,343.

Crystal Oil Co., System Fuels, Inc. et al., 8/27/86; RF233–010 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by two resellers and two end-users of Crystal Oil Company refined petroleum products. Each applicant presented evidence that it purchased refined petroleum products from Crystal during the Crystal consent order period. The two reseller claims were based upon purchases which entitled them to refunds below the $5,000 threshold amounts. According to the methodology set forth in *Crystal Oil Co.*, 13 DOE ¶ 85,381 (1986), each applicant was found to be eligible for a refund from the Crystal consent order fund based upon the volume of its purchases times the volumetric refund amount. The refunds approved in the Decision total $15,543.

E.B. Lynn Oil Co./Hill Oil of Pennsylvania et al., 8/26/86; RF240–1 et al.

The DOE issued a Decision and Order concerning eight Applications for Refund in the E.B. Lynn Oil Company special refund proceeding. The applicants were all resellers of Lynn motor gasoline whose purchases from the firm entitled them to a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the eight Applications under the standards specified in *E.B. Lynn Oil Co.*, 14 DOE ¶ 85,228 (1986). The refunds granted total $20,744, representing $15,507 in principal and $5,237 in interest.

Gulf Oil Corp., Sullivan's Gulf Station, et al.; 8/28/86; (RF40–369, et al.)

The DOE issued a Decision and Order concerning three Applications for Refund from the Gulf Oil Corporation escrow fund. All of the applicants were retailers of Gulf petroleum products during the period covered by the Gulf consent order, but had submitted only estimates of their purchases from Gulf in support of their claims. In its determination, the DOE found that none of the applicants had sufficiently explained the estimated purchase figures to allow the DOE to determine whether the estimates were reasonable approximations of the purchases each was likely to have made during the period. Since actual purchase data may become available at a later date, rather than denying the claims, the applications were dismissed without prejudice to a refiling at a later date.

Howell Oil Corp. and Quintana Refining Co./Conoco, Inc. et al., 8/27/86; (RF245–002 et al.)

The DOE issued a Decision and Order concerning two refiners and four end-users of Howell/Quintana refined petroleum products. Each applicant presented evidence that it purchased refined petroleum products from Howell/Quintana during the period covered by the consent order entered into by Howell Oil Corporation and Quintana Refining Company with the DOE. The refiners limited their claims to the $5,000 small claims threshold amount. According to the methodology set forth in *Howell Oil Corp. and Quintana Refining Co.*, 14 DOE ¶ 85,129 (1986), each applicant was found to be eligible for a refund from the Howell/Quintana consent order fund based on the volume of its eligible purchases times the volumetric refund amount. The refunds approved in the Decision total $71,721.

Howell Oil Corp. and Quintana Refining Co./Wellen Oil, Inc./Defense Logistics Agency and Fine Petroleum Co./Defense Logistics Agency; 8/29/86; (RF245–4, RF247–1, RF429–1)

The DOE issued a Decision and Order concerning three Applications for Refund filed by the Defense Logistics Agency, an end-user of Howell/Quintana, Wellen Oil, and Fine Petroleum Co. refined petroleum products. The DLA presented evidence that it purchased refined petroleum products from Howell/Qqintana, Wellen, and Fine during the respective period covered by the consent orders entered into by the DOE with the three firms. According to the methodology set forth in *Howell Oil Corp. and Quintana Refining Co.*, 14 DOE ¶ 85,129 (1986); *Wellen Oil, Inc.*, 14 DOE ¶ 85,118 (1986); and *Fine Petroleum Co.*, 14 DOE ¶ 85,120 (1986), the DLA was found to be eligible for a refund from the respective consent order funds based on its purchase volumes times the applicable volumetric refund amounts. The refunds approved in the Decision total $651,423.

Inland U.S.A., Inc./Ray Oil Company; 8/28/86; (RF176–4)

The DOE issued a Decision and Order concerning an Application for Refund filed in the Inland, U.S.A. special refund proceeding. The applicant, Ray Oil Company, was a reseller of Inland motor gasoline that made spot purchases from Inland during the consent order period. The DOE determined that the firm had overcome the spot purchaser presumption with respect to a portion of its Inland purchases and hence was entitled to a refund on those purchases. The refunds granted total $979, representing in principal and $323 in interest.

MAPCO, IN./Dresselhaus Thermogas Service; 8/26/86; (RF108–14)

Dresselhaus Thermogas Service filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with MAPCO, inc. The firm claimed a refund on the basis of its purchase of 2,777,776 gallons of LPG from MAPCO during the consent order period. The DOE determined that Dresselhaus Thermogas Service's claim was at the presumption of injury threshold level of $5,000. The DOE therefore granted DTS a refund of $5,000 plus accrued interest of $3,967.95 for a total refund of $8,967.95.

Marathon Petroleum Co/Arlie's Marathon Service, et al.; 8/25/86; (RF250–258 ET AL)

The DOE issued a Decision and Order concerning 51 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $31,116 in principal and $1,123 in interest.

Mobil Oil Corp./A. L. Mark et al.; 8/25/86; RF225–4061 et al)

The DOE issued a Decision and Order granting refunds from the Mobil Oil Corporation escrow fund to 52 retailers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $21,045 ($17,843 principal plus $3,202 interest).

Mobil Oil Corp./A. Martini Coal & Oil Co., Inc. et al.; 8/29/86; RF225–1775 et al).

The DOE issued a Decision granting 64 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.* 13 DOE ¶ 85,339 (1985). The DOE granted refunds totaling $22,779 ($18,285 principal plus $3,494 interest).

Marathon Petroleum Co./A. T. Williams Oil Co., Inc. et al.; 8/26/86; (RF250–604 et al)

The DOE issued a Decision and Order concerning 41 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $34,886 in principal and $1,413 in interest.

Mobil Oil Corp./A. Weldon Bailey et al.; 8/25/86; (RF225–2547 et al)

The DOE issued a Decision granting 47 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $21,534 ($18,267 principal plus $3,267 interest).

Mobil Oil Corp./Abby's Mobil et al.; 8/29/86; (RF225–3049 et al).

The DOE issued a Decision and Order granting 48 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $21,573 ($18,256 principal plus $3,315 interest).

Mobil Oil Corp./American Flange and Manufacturing Co., Inc. et al.; 8/28/86; (RF225–3238 et al.).

The DOE granted 49 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount in accordance with the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $9,238, representing $7,820 in principal and $1,418 in interest.

Mobil Oil Corp., Borg-Warner Corp. et al.; 8/27/86; (RF225–3152 et al)

The Office of Hearings and Appeals granted 46 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount in accordance with the procedures established in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refund granted was $2,684, representing $2,273 in principal and $411 in interest.

Mobil Oil Corp., David J. Minkel et al.; 8/26/86; (RF225–5576 et al)

The DOE issued a Decision and Order granting refunds from the Mobil Oil Corporation escrow account to 31 retailers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $14,545 ($12,338 principal plus $2,207 interest).

OKC Corp./Missouri Self Service Gas Co.; 8/29/86; (RF13–44)

The DOE issued a Decision and Order concerning a submission filed by Missouri Self Service Gas Company (MSS), in which MSS sought to obtain a refund granted it from the settlement fund obtained by the DOE through a consent order entered into with OKC Corporation (OKC). In *OKC Corp./Missouri Self Service Gas Co.*, 14 DOE ¶ 85,201 (1986), the DOE granted MSS a refund of $22,491 from the OKC escrow account. However, rather than remit the refund to MSS, the DOE placed the refund into a separate, interest bearing account pending a determination by the DOE regarding the appropriateness of applying the firm's OKC refund as a partial offset against an inadvertent overpayment which MSS received in another refund proceeding involving Panhandle Eastern Pipeline Company (Panhandle). In *Panhandle Eastern Pipeline Co./Missouri Self Service Gas Co.*, 11 DOE ¶ 85,213 (1983), MSS was ordered by the DOE to return the Panhandle overpayment. MSS defended its refusal to comply with the DOE repayment directive by claiming that the Panhandle refund had been disbursed to MSS shareholders, while MSS itself was without assets. After considering the arguments advanced by MSS in favor of releasing the OKC refund to MSS, the DOE determined that MSS failed to show cause why its OKC refund should not be applied as a partial repayment of its obligation to the Panhandle escrow account. Accordingly, the DOE's Office of the Controller was directed to transfer the MSS refund into the Panhandle escrow account.

Pride Refining, Inc./West Texas Utilities; 8/29/86; (RF235–19)

The DOE issued a Decision and Order concerning an Application for Refund filed in the Pride Refining, Inc. special refund proceeding. The applicant, West Texas Utilities Co., was an end-user of Pride products who had received a refund in *Pride/L&L, Inc.*, 14 DOE ¶ 85,385 (1986). However, its purchase volumes in that Decision were listed incorrectly and the firm received a refund of less than that to which it was entitled. Accordingly, West Texas Utilities was granted an additional refund of $39,862, representing $31,352 in principal and $8,510 in interest. In its Decision, the DOE granted the Application under the standards specified in *Pride Refining Co.*, 13 DOE ¶ 85,307 (1986).

Quaker State Oil Refining Corp./Bridgeport Gas, Inc.; 8/28/86; (RF213–0164, RF213–0210)

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The DOE issued a Decision and Order concerning two separate Applications for Refund in the Quaker State Oil Refining Corp. special refund proceeding filed in connection with Bridgeport Gas, Inc.'s purchases of Quaker State motor gasoline. In determining which applicant was the proper recipient of Bridgeport's refund, the DOE found that, absent special circumstances, the impact of Quaker State's pricing practices would have been felt by the firm's owner at the time of those alleged overcharges. The owner at the time of the overcharges, however, was unable to document its purchase volumes because all records had been transferred to the new owner. The DOE therefore used the current owner's statement of volumes in calculating the refund approved to the previous owner in this Decision. According to the methodology set forth in *Quaker State Oil Refining Corp.*, 13 DOE ¶ 85,211 (1985), Bridgeport was found to be eligible for a refund from the Quaker State consent order fund based on the volume of its purchases times the volumetric refund amount. The refund approved totaled $6,085.

Dismissals

The following submissions were dismissed:

Company name	Case No.
Keystone Fuel Oil Company	KCX-0009
Morris Chevrolet-Oldsmobile	RF213-110
Total Petroleum, Inc.	HRO-0295

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

September 19, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–22272 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

Notice of Issuance of Proposed Decision and Order by the Office of Hearings and Appeals for the Period of August 11 Through August 29, 1986

During the period of August 11 and throught August 29, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 16, 1986.

Wondrack, Distributing, Inc.; Tri-Cities, Washington; KEE–0053.

Wondrack Distributing, Inc. filed an Application for Exception from the requirement to file Form EIA–782B. The exception request, if granted, would relieve Wondrack from its monthly reporting obligation. On August 26, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 86–22275 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

Notice of Issuance of Proposed Decision and Order By the Office of Hearings and Appeals for the Period of September 1 Through September 12, 1986

During the period of September 1 through September 12, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

September 19, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Mclain Truck Service, Inc.; Monahans, TX; KEE–0028, Reporting Req'MTS

McLain Truck Service, Inc. filed an Application for Exception from the requirement to file Form EIA–782B, entitled "Resellers'/ Retailers' Monthly Petroleum Sales Report," Form EIA–821, "Annual Fuel Oil and Kerosene Sales Report," and Form EIA–863, "Etroleum Product Sales Identification Survey." After considering the application, on September 11, 1986, the DOE issued a Proposed Decision and Order which tentatively determined that the relief be denied in part and granted in part.

[FR Doc. 86–22274 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

Notice of Cases Filed With the Office of Hearings and Appeals for the Week of August 29 Through September 5, 1986

During the Week of August 29 through September 5, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

September 17, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 29 through Sept. 5, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 2, 1986	Brooks Oil Co. Inc., Middlesboro, KY	KEE–0069	Exception to the reporting requirements. If granted: Brooks Oil Co., Inc. would no longer be required to file forms EIA–782B "Reseller/Retailer's Monthly Petroleum Products Sales Report" and EIA–821 "Annual Fuel Oil and Kerosene Sales Report."
Do.	Butler Bros. Oil Company, Inc., Westerly, RI	KEE–0068	Exception to the reporting requirements. If granted: Butler Bros. Oil Company, Inc. would no longer be required to file form EIA–782B "Reseller/Retailer's Monthly Petroleum Product Sales Report."
Sept. 3, 1986	Research Fuels, Inc., Washington, DC	KER–0013	Request for modification/rescission. If granted: The August 22, 1986, Decision and Order issued to Research Fuels, Inc. and Lucky Stores, Inc. (Case Nos. HEG–0031, KEX–0017 and KEX–0018) would be modified regarding the funds held in escrow by the United States District Court for the Northern District of Texas.

Date received	Name of refund proceeding/ Name of refund applicant	Case number
9/2/86	Erie Sand Steamship Company	RF271–1
9/2/86	Everette Truck Line, Inc.	RF270–2
9/4/86	Union Texas/Glenn B. Eddy & Sons, Inc.	RF140–47
9/4/86	Amanolt/Darch Bottle Gas and Appliance.	RF139–157
9/4/86	Gull/Fred Wambaugh	RF259–2
9/4/86	Farstad/Abmann's Service Center.	RF261–2
9/4/86	Farstad/Don Moe Motors, Inc.	RF261–1
9/4/86	Quaker State/Madelyat Properties.	RF213–213
9/4/86	Jersey Coast Freight Lines	RF270–5
9/4/86	Bilkays Express Company	RF270–4
9/3/86	Rocky Ford Moving Vans, Inc.	RF270–3
9/3/86	OKC Corp/Jones Oil Company	RF13–45
8/29/86	Gulf Refund Applications	RF40–3287–RF40–3361
8/29/86	Marathon Refund Applications	RF250–1199–RF250–1254
8/29/86	Mobil Refund Application	RF225–10142–RF225–10210

[FR Doc. 86–22273 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $353 million (including accrued interest) obtained from 28 firms. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 F.R. 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate by November 3, 1986 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to Case No. KEF–0049.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director; Roger Klurfeld, Assistant Director; Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2094 (Mann) or (202) 252–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute alleged crude oil violation amounts obtained from 28 firms. The firms remitted monies to the DOE to settle possible violations of DOE regulations. The firms' payments are being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively decided that distribution of the monies received from these firms will be governed by the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 F.R. 27899 (August 4, 1986). That policy states that alleged crude oil violation amounts will be divided among the states, the federal government, and eligible purchasers of crude oil and refined products.

Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products. Refunds to eligible purchasers would be based on the number of gallons of crude oil or refined products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW. Washington, DC 20585.

Dated: September 23, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 23, 1986.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Cases: A. Tarricone, Inc. and Those Listed in Appendix A

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Date of Filing: August 21, 1986
Case Numbers: KEF-0049 and Those Listed in Appendix A

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

On August 21, 1986, the ERA filed 28 Petitions for the Implementation of Special Refund Procedures with respect to overcharge funds obtained from firms whose names and OHA case numbers appear in Appendix A. These refund proceedings all involve alleged crude oil violations, and the funds involved totalled $353,002,725.24 including interest as of August 31, 1986. This Decision and Order proposes procedures by which the Office of Hearings and Appeals will distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered ERA's requests to implement Subpart V procedures with respect to the monies received from the 28 firms and have determined that such procedures are appropriate. Accordingly, we will grant ERA's requests.

These cases are subject to the Department of Energy's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges issued on July 28, 1986, 51 FR 27899 (August 4, 1986) (hereinafter referred to as the "MSRP"). The MSRP announced that the DOE will employ a refund process for restitution of alleged crude oil violation amounts (held in escrow by the DOE or received in the future) using the special refund procedures codified at 10 CFR Part 205, Subpart V. Under that process, OHA will accept and process refund applications from persons who claim they were injured by alleged crude oil violations. Up to 20 percent of the alleged crude oil violation amounts will be reserved to satisfy valid claims. The MSRP calls for the remaining 80 percent of the funds to be disbursed to the state and federal governments for indirect restitution. In addition, after all valid claims are paid, unclaimed funds from the claims reserve will be divided equally between the state governments and the federal government. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

Under the MSRP, the OHA will institute a claims process for the $353 million involved in these proceedings. We have decided to reserve the full 20 percent of the alleged crude oil violation amounts for direct restitution to claimants. The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel Supply Co.*, 14 DOE ¶ ——, No. KEF-0025 (September 11, 1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged violations (i.e. that they did not pass on alleged overcharges to their own customers). The standards for showing injury which the OHA has developed in analyzing non-crude oil claims will also apply to claims based on alleged crude oil violations. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the money available in each subaccount by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Appendix A shows the volumetric refund amount for each of these 28 proceedings as of August 31, 1986. The total volumetric amount for these proceedings is $0.0001746676.

We propose that the remaining 80 percent of the funds—$282,402,180.19—be immediately disbursed to the state and federal governments for indirect restitution. We propose to direct the DOE's Office of the Controller to segregate this amount and distribute $70,600,545.05 plus appropriate interest to the States and $211,801,635.14 plus appropriate interest to the federal government.[1] Appendix B to this Decision lists the share (ratio) of the funds in the state account which each state will receive if these procedures are adopted.

We should note that in an order implementing the MSRP, 51 FR 29,689 (August 20, 1986), the OHA solicited comments and objections regarding the proper application of the MSRP to all present and future OHA refund proceedings involving alleged crude oil violations. Comments and objections must be filed no later than September 19, 1986. Among the matters we expect these comments to address are the scope of the release of claims delivered by firms accepting funds under the Settlement Agreement, and the nature of the proof of injury that is required in the crude oil claims process.

It is therefore ordered that:

The refund amounts remitted pursuant to consent orders by the firms identified in Appendix A to this Decision and Order shall be distributed in accordance with the foregoing Decision.

Name of firm	OHA case No.	Consent order No.	Total equity as of Aug. 31, 1986	Volumetric refund
A Tarricone Inc	KEF-0048	N00M900252	$295,669.79	0.0000001414
Alliance Oil & Refining Co	KEF-0050	650X003002	2,591,746.64	.0000012824
Atlantic Richfield Company	KEF-0051	RARE00901Z	325,754,371.80	.0001611185
Avant Petroleum, Inc	KEF-0052	6C0X00284Z	1,717,995.28	.0000008501
Bass Enterprises Production Co	KEF-0053	650C00376Z	1,733,973.53	.0000008581
Coastal Petroleum Refiners	KEF-0054	6C0X00305Z	541,211.91	.0000002678
Condor Operating company	KEF-0055	670C00233Z	298,492.25	.0000001416
Corpening Interprises	KEF-0056	800C00105Z	114,206.96	.0000000565
Crestmont Oil & Gas, C/Coxypex	KEF-0058	950C00057Z	260,247.77	.0000001288
Dorchester Exploration Inc	KEF-0059	6C0C00676Z	283,929.26	.0000001405
Double U Oil Co./J.E. Guenther	KEF-0060	610C00467Z	262,789.49	.00000013
Edwin L. Cook & Berry R. Cox	KEF-0057	650C00396Z	1,240,729.03	.0000006139
Enstar Corporation	KEF-0061	6C0C00257Z	3,177,941.29	.0000015725
Franks Petroleum Inc	KEF-0062	650C00375Z	362,257.52	.0000001792

[1] On July 7, 1986, the United States District Court for the District of Kansas approved the Settlement Agreement in the Department of Energy Stripper Well Exemption Litigation, MDL No. 378. That Settlement Agreement resolves a number of matters, including the distribution of funds collected by the Court and the distribution of alleged crude oil violation amounts collected by DOE in other cases. For amounts transferred by OHA to the state and federal governments in excess of $100 million, the Settlement Agreement provides that of the next $400 million DOE shall receive 75 percent and the States shall receive 25 percent. Settlement Agreement, Paragraph II.B.3.c.ii. On August 4, 1986, the OHA transferred $104,061,950.61 to the state and federal governments. Stripper Well Exemption Litigation, 14 DOE ¶ 85,382 (1986).

Name of firm	OHA case No.	Consent order No.	Total equity as of Aug. 31, 1986	Volumetric refund
IU International & Texfel Petr	KEF-0064	960C00025Z	1,028,397.64	.0000005089
Jones Drilling Corporation	KEF-0066	660C00494Z	368,137.04	.0000001822
J.M. Petroleum Corporation	KEF-0065	6A0X00318Z	306,780.85	.0000001528
Kilroy Company of Texas	KEF-0067	650C00368Z	190,714.20	.0000000944
Lunday Thargard Oil Corp	KEF-0068	N00S980076Z	3,620,656.18	.0000017915
Mar Low Corporation	KEF-0069	640X00254Z	187,054.66	.0000000926
McMoran Oil & Gas Co	KEF-0070	650C00373Z	397,235.11	.0000001966
Minro Oil Company	KEF-0071	650X00351Z	2,928,707.56	.0000014491
Oxy Petroleum	KEF-0072	920C000322	2,912,895.42	.0000014413
P.L. Herschburg/United Ind Oil	KEF-0063	N00S904782	77,330.42	.0000000383
Sabine Corporation	KEF-0073	650C00370Z	193,170.80	.0000000956
Southerwestern Refining Co. Inc	KEF-0075	888S000226Z	510,227.73	.0000002525
Texakota, Inc	KEF-0076	BD0C00255Z	329,957.78	.0000001633
Texas Pacific Oil Company, Inc	KEF-0077	6A0C00257Z	1,335,865.75	.0000006611
Total			353,002,725.24	.0001746676
Twenty percent for direct restitution			70,600,545.05	
Eighty Percent for indirect restitution			282,402,180.19	
For distribution to States			70,600,545.05	
For distribution to Federal Gov't			211,801,635.14	

CASE NO. KEF-0049—APPENDIX B

[Calculation of ratios for distribution to States and territories—M.D.L. 378]

State	Consumption	Ratio
Alabama	626,803,520	0.01534512450
Alaska	158,047,980	.00386926023
American Samoa	7,275,000	.00017810331
Arizona	418,994,930	.01025764719
Arkansas	519,811,670	.01272579770
California	3,739,318,300	.09154432453
Colorado	439,201,380	.01075233348
Connecticut	693,889,220	.01698259040
Delaware	193,932,730	.00474777489
Distrct of Columbia	97,574,660	.00238877935
Florida	1,887,260,600	.04620307312
Georgia	909,619,580	.02226890861
Guam	60,196,000	.00147369165
Hawaii	280,655,260	.00687087703
Idaho	167,643,790	.00410418057
Illinois	1,876,159,080	.04593129065
Indiana	1,006,156,560	.02463227660
Iowa	532,299,530	.01302986821
Kansas	457,905,310	.01121023378
Kentucky	523,601,010	.01281856863
Louisiana	971,591,210	.02378606310
Maine	300,279,730	.00735131456
Maryland	731,363,020	.01790490359
Massachusetts	1,398,309,100	.03423278036
Michigan	1,391,772,090	.03407274419
Minnesota	708,814,590	.01735268297
Mississippi	557,786,510	.01365548081
Missouri	806,514,320	.01974472423
Montana	184,882,510	.00452621123
Nebraska	301,217,700	.00737427752
Nevada	165,454,200	.00405057600
New Hampshire	190,375,330	.00466065401
New Jersey	1,507,862,710	.03691482302
New Mexico	267,574,460	.00655063871
New York	3,162,994,520	.07743502253
No. Mariana Islands	3,763,000	.00009212409
North Carolina	916,800,700	.02244470625
North Dakota	149,717,090	.00366530709
Ohio	1,534,904,170	.03757684000
Oklahoma	504,488,400	.01235066023
Oregon	404,894,790	.00991245384
Pennsylvania	1,901,863,900	.04656056461
Puerto Rico	389,132,000	.00952855624
Rhode Island	161,953,570	.00396487514
South Carolina	486,978,850	.01192199923
South Dakota	146,053,670	.00357562087
Tennessee	660,920,850	.01618036977
Texas	3,013,545,120	.07377626891
Utah	240,978,330	.00589952410
Vermont	97,762,860	.00239338878
Virgin Islands	188,953,000	.00462586316
Virginia	1,048,324,650	.02566481699
Washington	823,786,920	.01527127344
West Virginia	244,121,480	.00597647330
Wisconsin	718,698,070	.01759484593
Wyoming	166,569,650	.00407788395
Totals	40,847,079,480	1.00000000000

[FR Doc. 86-22277 Filed 10-1-86; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $646,614 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with La Gloria Oil & Gas Company of Houston, Texas. The funds will be available to customers who purchased refined petroleum products from La Gloria during the period November 1, 1973 through May 30, 1979.

DATE AND ADDRESS: Applications for Refund of a portion of the La Gloria consent order funds must be filed within 90 days of publication of this notice in the **Federal Register** and should be addressed to La Gloria Oil and Gas Company Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case Number HEF-0210.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order relates to a Consent Order entered into by La Gloria Oil and Gas Company, of Houston, Texas, which settled possible pricing violations with respect to the firm's sales of petroleum products during the period November 1, 1973 through May 30, 1979. Under the terms of the Consent Order $646,614 has been remitted by La Gloria and is being held in an interest-bearing escrow account pending determination of its proper distribution by the Office of Hearings and Appeals (OHA).

The OHA previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the La Gloria consent order funds. The Proposed Decision and Order discussing the distribution of the La Gloria consent order funds was issued on April 8, 1986. 51 FR 13074 (April 17, 1986).

As the La Gloria Decision and Order indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from custmers who purchased refined petroleum products, including propane, from La Gloria during the period November 1, 1973 through December 31, 1975, and motor gasoline from November 1, 1973 through May 30, 1979. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: September 22, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 22, 1986.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: La Gloria Oil and Gas Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0210.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive

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as a result of enforcement proceedings. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with La Gloria Oil and Gas Company (La Gloria) of Houston, Texas. La Gloria, a wholly owned subsidiary of Texas Eastern Transmission Corporation, is engaged in the production, refining, and sale of crude oil, the marketing of refined petroleum products, and other petroleum related activities. La Gloria was therefore subject to the Mandatory Petroleum Allocation and Price Regulations set forth at 10 CFR Parts 210, 211 and 212.

A DOE audit of La Gloria's refining and marketing operations during the period November 1, 1973 through May 30, 1979 revealed possible regulatory violations with respect to the firm's pricing of refined petroleum products. In order to settle all claims and disputes between the parties concerning La Gloria's compliance with the price regulations concerning motor gasoline from November 1, 1973 through May 30, 1979, and all other covered products, including propane, from November 1, 1973 through December 31, 1979, La Gloria and the DOE executed a consent Order on October 30, 1980.[1] In that agreement La Gloria agreed to remit to the DOE $646,614 to be deposited into an interest-bearing escrow account for ultimate distribution by the DOE. In addition, under the terms of the La Gloria Consent Order, the firm reduced its "bank" of unrecouped increased costs by $2,293,905. The Consent Order refers to the DOE's allegations of regulatory violations, but notes that no findings of violation were made. Additionally, the Consent Order states that La Gloria does not admit that it committed any such violations.

On April 8, 1986, the OHA issued a Proposed Decision and Order tentatively setting forth procedures to distribute the funds received pursuant to the Consent Order to parties who were injured by La Gloria's alleged regulatory violations. *See La Gloria Oil and Gas Company*, 51 FR 13074 (April 17, 1986). In the Proposed Decision, we described a two-stage process for distribution of the funds made available pursuant to the La Gloria Consent Order. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were injured by La Gloria's alleged overcharges during the applicable consent order period. We stated that money available after payment of refunds to eligible claimants in the first stage would be distributed through a second-stage process, but that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage.

We received comments on the Proposed Decision from several States concerning the disposition of funds in the second stage of the proceeding.[2] This Decision and Order establishes the procedures to be used for filing and processing claims in the first stage of the La Gloria refund process. We will not, therefore, determine second-stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*).

II. Jurisdiction and Authority

The Subpart V procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution of funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as a part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the Proposed Decision, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the La Gloria consent order fund. The OHA will therefore grant the ERA's petition and assume jurisdiction over the funds received pursuant to the La Gloria Consent Order.

III. General Refund Procedures

Since we did not receive any comments objecting to the first-stage procedures tentatively established in the Proposed Decision, we have concluded that those procedures should be adopted. The La Gloria consent order funds will be distributed to claimants who satisfactorily demonstrate that they were injured by La Gloria's alleged regulatory violations during the relevant consent order periods. We expect that claimants will fall into the following general categories: (i) refiners, resellers and retailers (hereinafter collectively referred to as resellers) who resold La Gloria petroleum products; (ii) individuals or firms that consumed La Gloria petroleum products for their own use (end-users); and (iii) regulated non-petroleum entities which used La Gloria products in their businesses, or cooperatives which sold La Gloria products to their members.

A. Showing of Injury

Resellers of La Gloria refined petroleum products generally will be required to demonstrate injury in order to receive a refund. To demonstrate injury, a reseller claimant must provide evidence that it would have maintained its prices for the petroleum products purchased from La Gloria at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased petroleum products from La Gloria, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In additional, a reseller tht files a claim based upon La Gloria's pricing practices will be required to make a convincing demonstration that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,123 (1982); *Standard Oil Co. (Indiana)/ Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 (1985). This requirement is generally satisfied by a showing that the reseller had "banks" of unrecovered increased product costs. The presence of banks alone, however, does not automatically establish injury. *See, e.g, Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982).

As we proposed we will adopt certain presumptions commonly used in refund proceedings. Presumptions in refund cases are specifically authorized by the DOE procedural regulations. *See* 10 CFR 205.282(e). These presumptions will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

[1] La Gloria's sales of crude oil are not included in the present proceeding. On April 18, 1978, the DOE entered into a separate Consent Order with La Gloria settling crude oil disputes between the firm and the agency.

[2] Comments were filed on behalf of the States of Florida, Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia. These states assert that state governments are the proper recipients of second-stage refunds.

B. Volumetric Presumption

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by La Gloria. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. A volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of products sold by the consent order firm during the consent order period. In the present case, based on the information available to use, the volumetric refund amount is $0.0002068 per gallon, exclusive of interest ($646, 614 consent order fund divided by 3,126,457,769 gallons).[3] Since a consent order is necessarily the result of compromise, the volumetric refund amount derived from that consent order settlement is also a compromise. The volumetric refund amount does not purport to calculate the exact amount that a customer may have been overcharged. Rather, it is a method by which we can estimate the portion of the consent order fund that should be allocated to a given purchaser. However, we recognize that the impact on an individual purchaser could have been greater than this volumetric refund amount, and any purchaser may file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon & Gasoline Co.*, 12 DOE ¶ 85.54 at 88,164 (1984), and cases cited therein.

C. Small Claims Presumption

We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased a relatively small amount of La Gloria petroleum products. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims procedure to assure that the costs of filing and proccessing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); (*Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984)) (*Texas Oil*). We shall adopt such a procedure in this case. Therefore, any reseller applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.

D. Spot Purchasers

A reseller that made only spot purchases from La Gloria shall be presumed not to have suffered an injury, and will therefore be ineligible to receive a refund, even one below the threshold level, unless it makes a showing that rebuts this presumption. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they are able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit evidence which rebuts the spot purchaser presumption and establishes the extent to which it was injured as a result of its spot purchase(s).

E. End-Users

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil*, 12 DOE at 88,209, and cases cited therein. End-users of La Gloria petroleum products will need only to document their purchase volumes from La Gloria to make a sufficient showing that they were injured by the alleged overcharges.

F. Cooperatives and Public Utilities

Firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement will not be required to demonstrate injury in this case. Although such firms, e.g., public utilities and agricultural cooperatives, generally would pass overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a full explanation of how they plan to accomplish this restitution, and to explain how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,450–51 (1986). We note, however, that a cooperative's sales of La Gloria products to non-members will be treated in the same manner as sales by other resellers.

G. Minimum Refund Level

As in previous cases, we will establish a minimum refund amount of $15.00 for first-stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less that $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982).

IV. Refund Application Procedures

We have determined that the procedures described in the Proposed Decision are the most equitable and efficacious means of distributing the La Gloria consent order fund. Accordingly, Applications for Refund will now be accepted from parties who purchased La Gloria petroleum products during the applicable consent order period. The following information should be included in all Applications for Refund:

1. Case No. HEF–0210 and the applicant's business name and address at the top of the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. How the claimant used the La Gloria petroleum product(s), i.e., whether it was a refiner, reseller, retailer, or end-user.

4. The volume of each La Gloria petroleum product it purchased by month for the period of time for which it is claiming it was injured by the alleged

[3] The total gallon amount was extrapolated from volume figures in the available ERA audit records, taking into account the different consent order periods and various product decontrol dates.

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overcharges.[4] If the product was not purchased directly from La Gloria, the claimant must include a statement setting forth the reasons for believing the product originated from La Gloria.

5. If the applicant is a reseller (or retailer or refiner) who wishes to claim a refund in excess of $5,000 it should also:

(a) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with quarterly bank calculations up through decontrol of the product category concerned,

(b) State whether it or any of its affiliates have filed any other Applications for Refund in which it referred to its level of banks as a basis for a refund, and

(c) submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

6. Whether the claimant was in any way affiliated with La Gloria. If so, it should state the nature of the affiliation.

7. Whether there had been any change in ownership of the entity that purchased La Gloria petroleum products since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

8. Whether it is or has been involved as a party in any DOE enforcement or private Section 210 actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

9. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the confidential material has been deleted, together with a statement specifying why the information is privileged or confidential.

All Applications should be sent to: The La Gloria Oil & Gas Company Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications must be postmarked within 90 days after the publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All Applications for Refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It Is Therefore Ordered That: (1) Applications for Refunds from the fund remitted to the Department of Energy by La Gloria Oil & Gas Company pursuant to the Consent Order executed on October 30, 1980 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: September 22, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-22268 Filed 10-1-86; 8:45 am]

BILLING CODE 6450-01-M

[4] Under the terms of the Consent Order, the period of alleged violations by La Gloria in sales of propane and all other covered products except motor gasoline (November 1, 1973 through December 31, 1975) includes the deregulation date for several general refinery products (April 1, 1974). Since no refunds are available with respect to purchases of deregulated products, claimants should make sure that the volumes they submit do not include products purchased after their decontrol

Implementation Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $80,382.82 (plus accrued interest) obtained as a result of a consent order which the DOE entered into with Cranston Oil Service Company, Inc. of Cranston, Rhode Island, and its successor-in-interest Galego Oil Company of Pawtucket, Rhode Island (Case No. KEF-0029). The fund will be available to customers who purchased No. 2 heating oil from Cranston during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be filed within 90 days of publication of this notice in the Federal Register and should be addressed to: Cranston Oil Service Company Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0029.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a consent order entered into by Cranston Oil Service Company, Inc. of Cranston, Rhode Island, and its successor-in-interest, Galego Oil Company of Pawtucket, Rhode Island. The consent order settled possible pricing violations with respect to Cranston's sales of No. 2 heating oil during the November 1, 1973 through May 29, 1976 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on July 10, 1986, 51 FR 26590 (July 24, 1986).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Applications will be accepted from customers who purchased No. 2 heating oil from Cranston during the relevant consent order period. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: September 19, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 19, 1986.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Cranston Oil Service Company, Inc.

Date of Filing: April 11, 1986.

Case Number: KEF-0029.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on April 11, 1986. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Cranston Oil Service Company, Inc. (Cranston) and its successor-in-interest, Galego Oil Company (Galego).[1]

I. Background

Cranston was a "retailer" of No. 2 heating oil as this term was defined in 10 CFR 212.31, and was therefore subject to the Mandatory Petroleum Price Regulations. The firm was located in Cranston, Rhode Island and marketed No. 2 heating oil to end-users, predominantly residential customers. A DOE audit of Cranston's operations was conducted for the period November 1, 1973 through May 29, 1976 (the audit period). On February 8, 1977, Cranston and Galego entered into a Consent Order with the Federal Energy Administration (FEA), predecessor agency to the DOE, to settle all disputes and claims between Cranston and the FEA regarding the firm's compliance with the price regulations in sales of No. 2 heating oil during the audit period (hereinafter referred to as the consent order period). Under the Consent Order, Galego agreed, for a period of five years following the transfer of Cranston's assets, to deposit 0.9 cents for every gallon of No. 2 heating oil sold to former Cranston customers into an escrow account. The escrow account funds were to be used to provide restitution for the alleged overcharge plus interest, pending a final decision on an Application for Exception from the price regulations filed by Cranston. After several administrative and judicial decisions were issued concerning Cranston's request for exception relief, Galego was ordered on October 8, 1985, to remit to the DOE the amount held in escrow less an overpayment of $843.57, for ultimate distribution to No. 2 heating oil customers of Cranston injured by the alleged overcharges. *See Cranston Oil Service Co.*, 13 DOE ¶82,513 (1985). Accordingly, on November 22, 1985, Galego remitted $80,382.82 to the DOE and that amount was deposited in an interest bearing escrow account under the jurisdiction of the DOE.

On July 10, 1986, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 51 FR 26590 (July 24, 1986). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they are eligible to receive a refund from the monies remitted by Cranston.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments were solicited regarding the proposed refund procedures. In addition, copies of the PD&O were mailed to potential claimants identified in the audit file whose addresses were available. None of Cranston's customers submitted comments on the proposed procedures. Comments were submitted collectively on behalf of the states of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia, and also by Paul F. Galego, President of Galego Oil Company. Mr. Galego's comments will be discussed in Part III below. The comments from the states assert that state governments are the appropriate recipients of second-stage refunds. However, the purpose of this Decision is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature to address the issues raised by the states' comments concerning the disposition of any residual funds until after all meritorious first stage claims have been paid.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is the DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Cranston consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Refund Procedures

In the PD&O, we proposed that the distribution of refunds take place in two stages. In the first stage refund monies would be refunded to those customers of Cranston who purchased No. 2 heating oil during the consent order period and who demonstrate that they were injured by Cranston's alleged overcharges. In his comments, Mr. Galego suggests that these procedures be modified. He argues that direct restitution should be made only to three categories of Cranston's customers. Under Mr. Galego's proposal, each category would receive an equal one-third share. These categories are: (i) Cranston's former customers still doing business with Galego on February 8, 1977 (the date of execution of the Consent Order); (ii) Cranston's former customers still doing business with Galego on February 8, 1982 (the date of Galego's final payment into the escrow account); and (iii) Cranston's former customers still doing business with Galego from February 8, 1981 to February 8, 1982. Mr. Galego claims that any other customers, i.e., customers who purchased during the consent order period, but ceased doing business with Cranston prior to February 8, 1977—are not easily identifiable and thus it would be impractical to attempt to reimburse them.

Although we recognize that these suggestions are well intentioned, we find that they neglect the stated purpose of our refund procedures—to make restitution only to those customers who were actually injured by the alleged

[1] On February 8, 1977, Cranston completed a transfer of its assets to Galego and ceased operation as a petroleum products retailer.

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overcharges. 10 CFR 205.280. Under Mr. Galego's proposal, refunds could be made to former Cranston customers who commenced puchasing from Cranston subsequent to the end of the Cranston consent order period. Such customers clearly could not have been injured by the alleged overcharges which were settled by the Cranston consent order. Our proposed procedures, unlike Mr. Galego's proposal, insure that refunds will be made only to Cranston customers who purchased No. 2 heating oil from Cranston during the consent order period. Accordingly, we will not incorporate Mr. Galego's suggestions into this refund proceeding. Furthermore, we find that our proposed refund procedures remain the most efficacious means of implementing refunds, and we will adopt them.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). However, we will not discuss second-stage refund procedures in this Decision and Order.

A. Eligible Claimants

During the first stage of the refund process, the Cranston consent order fund will be distributed to claimants who satisfactorily demonstrate that they were injured by Cranston's alleged regulatory violations during the consent order period. As we indicated earlier, Cranston's customers are individuals or firms that consumed Cranston No. 2 heating oil for for their own use (end-users). In the PD&O, as in many prior decisions, we made a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges covered by the Cranston settlement. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit period, and were not required to keep records which justified selling price increases by reference to cost increases. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984); *Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) and cases cited therein. We have received no comments objecting to this finding. We will therefore adopt our proposal that end-users of Cranston No. 2 heating oil need only document their purchase volumes during the consent order period to make a sufficient showing that they were injured by the alleged overcharges.

B. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. In the PD&O, we proposed to use a volumetric refund methodology. The volumetric refund presumption assumes that the alleged overcharges by a firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence providing this claim in order to receive a larger refund. *See Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

Under the volumetric system we are adopting, a claimant will be eligible to receive a refund equal to the number of gallons of No. 2 heating oil purchased from Cranston times the volumetric factor. The volumetric factor in this case equals $0.020060 per gallon.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

We will also establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See Uban Oil Co.*, 9 DOE ¶ 82,541 (1982); *see also* 10 CFR 205.286(b). Thus, an applicant must have purchased a minimum of approximately 748 gallons of No. 2 heating oil ($15 divided by the volumetric refund amount $0.020060) during the consent order period to obtain a refund.

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Cranston consent order fund. Accordingly, we shall now accept applications for refund from eligible customers who purchased No. 2 heating oil from Cranston during the consent order period.

There is no official application form. Applications for refund should be written or typed on business letterhead or personal stationery. The following information should be included in all applications for refund:

1. The name of the consent order firm, Cranston Oil Service Company, Inc., the case number KEF–0029, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

3. The volume of Cranston No. 2 heating oil that the applicant purchased in each month of the period of time for which it is claiming it was injured by the alleged overcharges.

4. A statement of whether there has been any change in ownership of the entity that purchased No. 2 heating oil from Cranston since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

5. A statement of whether the applicant is or has been involved as a party in any private legal action against Cranston. If this action has been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the application for refund. *See* 10 CFR 205.9(d).

6. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All applications for refund must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeal, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

[2] The volumetric factor in the present case is computed by dividing the consent order amount ($60,382.82) by the 3,010,066 gallons of No. 2 heating oil which the ERA audit files indicate Cranston sold during the consent order period.

All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It is Therefore Ordered That: (1) Applications for refund from the funds remitted to the Department of Energy by Galego Oil Company on behalf of Cranston Oil Service Company, Inc. pursuant to the Consent Order executed on February 8, 1977 and the Decision and Order issued on October 8, 1985 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Date: September 19, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–22289 Filed 10–1–86; 8:45 am]

BILLING CODE 6450–01–M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $180,000 (plus accrued interest) obtained from MAPCO, Inc., Case No. HEF–0577. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate by [30 days from date of publication in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to Case No. HEF–0577.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue, SW. Washington, DC 20585. (202) 252–2390 (Wieker) or (202) 252–2400 (Bleiweiss).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from MAPCO, Inc. (MAPCO). MAPCO remitted monies to the DOE to settle possible pricing violations with respect to its sales of crude oil. The firm's payment is being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively decided that distribution of the monies received from MAPCO will be governed by the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). That policy states that crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of crude oil and refined products.

Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products. Refunds to eligible purchasers would be based on the number of gallons of crude oil or refined products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: September 19, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 19, 1986.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Case: MAPCO, Inc.
Date of Filing: April 3, 1985
Case Number: HEF–0577

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

On April 3, 1985, the ERA requested that the OHA formulate such procedures to distribute $180,000 which the DOE received pursuant to a settlement with MAPCO, Inc. (MAPCO). This Proposed Decision and Order sets forth the OHA's tentative plan to distribute the MAPCO monies.

I. Background

During the period of crude oil price controls, MAPCO was the operator of two crude oil producing properties located in Oklahoma.[1] Therefore, MAPCO was a "producer" of domestic crude oil and was subject to the provisions of the DOE's Mandatory Petroleum Price Regulations. The ERA conducted an audit of MAPCO's activities and determined that MAPCO violated the regulations and overcharged its customers by improperly classifying crude oil as "stripper well" crude oil. Therefore, on June 24, 1981, the ERA issued a Proposed Remedial Order to MAPCO requiring the firm to refund its alleged overcharges. MAPCO maintained that it did not violate the regulations, and contested the ERA's determination.

The DOE and MAPCO settled their dispute on August 1, 1984 when they entered into a Consent Order. Under the terms of the settlement, MAPCO paid $180,000 to the DOE to resolve all claims by DOE for the period September 1973 through January 27, 1981 with respect to MAPCO's pricing practices at the Sarasota 1–B #6 and Yarhola properties. MAPCO's payment is being held in an interest-bearing escrow account pending distribution.

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

[1] These properties were known as the Sarasota 1–B #6 property and the Yarhola property.

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We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from MAPCO and have determined that such procedures are appropriate. Accordingly, we will grant the ERA's request.

III. Proposed Refund Procedures

The monies which MAPCO remitted to the DOE settle alleged crude oil overcharges. Therefore, we propose that the MAPCO monies be distributed in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases. *See* 51 FR 27899 (August 4, 1986) (hereinafter "the DOE Policy"). Under the DOE Policy, crude oil overcharge monies are to be divided among the States the federal government, and eligible purchasers of crude oil and refined petroleum products.

The DOE Policy was announced on July 28, 1986, as the result of a court-approved Settlement Agreement in *In Re The Department of Energy Stripper Well Litigation*, M.D.L. 378 (D. Kan.).[2] On August 8, 1986, the OHA announced its intention to follow the policy. *Notice of Order Implementing Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges*, 51 FR 29689 (August 20, 1986).[3] In at least one case involving the distribution of alleged crude oil overcharges, the OHA has determined that it is appropriate to follow the DOE Policy. *Mountain Fuel Supply Co.*, No. KEF-0025, 14 DOE ¶ _____ (September 11, 1986) (*Mountain Fuel*).

A. Proposed Refunds to Eligible Purchasers

The DOE Policy provides that claimants who allege injury as a result of crude oil overcharges may file claims. The DOE Policy further provides that up to 20 percent of the crude oil overcharge funds will be reserved for direct restitution to such claimants who prove injury. The funds in this reserve will be distributed in accordance with the existing DOE refund regulations codified at 10 CFR Part 205, Subpart V. The OHA has decided to set aside the full 20 percent and to calculate refunds to eligible claimants who purchased refined petroleum products on the basis of a per gallon refund amount. *Mountain Fuel*, slip op. at 2. This figure is derived by taking the crude oil overcharge monies received and dividing by the total U.S. Consumption of Petroleum Products during the period of price control. *Id.* Using this method, the refund amount in this case would be $.0000000891 per gallon.[4]

The OHA had determined that applications for refund based on crude oil overcharges should be evaluated using methods similar to those which the OHA has used to evaluate claims based on refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel*, slip op. at 4. As in non-crude oil refund cases, applicants should be required to docment their purchase volumes and to prove that they were injured by the alleged overcharges (i.e., that they did not pass the overcharges on to their own customers). *Id.*

The standards for showing injury which the OHA has developed in non-crude oil claims should also apply to claims based on crude oil overcharges. *Id.; see, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). We propose to follow such procedures to distribute these MAPCO monies to eligible claimants.

B. Proposed Refunds to the State and Federal Governments

The DOE Policy provides that the 80 percent of the crude oil funds which are not reserved for direct restitution, as well as any portion of the 20 percent reserve which is not distributed, will be divided between the states and the federal government for indirect restitutionary purposes. Half of these funds will go to the states, in proportion to each state's consumption of petroleum products, and the other half will go to the federal government.[5] *See* "Calculation of Ratios For Distribution to States and Territories," *Final Settlement Agreement*, Exhibit H, *In Re Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378, (D. Kan. 1986) (attached to this Decision as the Appendix). We propose to use this method to distribute a portion of the MAPCO monies to the state and federal governments.

IV. Conclusion

This is a case involving the distribution of alleged crude oil overcharges. Since the DOE has announced a policy regarding crude oil overcharges and the OHA has indicated its intention to follow the DOE Policy in crude oil overcharge cases, we propose to follow the DOE Policy to distribute the monies received from MAPCO.

Before taking the action we have proposed, we intend to publicize our proposal and to solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Decision and Order in the **Federal Register.**

It is therefore ordered that:

The refund amount remitted to the Department of Energy by MAPCO, Inc. pursuant to a Consent Order executed on August 1, 1986, will be distributed in accordance with the foregoing Decision.

Appendix

CALCULATION OF RATIOS FOR DISTRIBUTION TO STATES AND TERRITORIES—M.D.L. 378

State	Consumption	Ratio
Alabama	626,603,520	0.01534512450
Alaska	156,047,980	0.00386926023
American Samoa	7,275,000	0.00017810331
Arizona	418,994,930	0.01025784719
Arkansas	519,811,670	0.01272579770
California	3,739,318,300	0.09154432453
Colorado	439,201,380	0.01075233249
Connecticut	693,689,220	0.01698259040
Delaware	193,932,730	0.00474777469
District of Columbia	97,574,660	0.00238877935
Florida	1,887,280,800	0.04620307312
Georgia	909,619,580	0.02226890861
Guam	80,196,000	0.00147369165
Hawaii	280,655,260	0.00687087703
Idaho	187,643,790	0.00410418057
Illinois	1,878,159,080	0.04593129065
Indiana	1,006,156,560	0.02463227660
Iowa	532,229,530	0.01302980621
Kansas	457,905,310	0.01121023376
Kentucky	523,601,010	0.01281858663
Louisiana	971,591,210	0.02378606319
Maine	300,279,730	0.00735131456
Maryland	731,363,020	0.01790490359
Massachusetts	1,398,309,100	0.03423278036
Michigan	1,391,772,090	0.03407274419
Minnesota	708,814,590	0.01735288297
Mississippi	557,786,510	0.01365548061
Missouri	806,514,320	0.01974472423
Montana	184,882,510	0.00452621123
Nebraska	301,217,700	0.00737427752
Nevada	185,454,200	0.00405057600
New Hampshire	190,375,330	0.00466058401
New Jersey	1,507,862,710	0.03691482302
New Mexico	267,574,460	0.00655063871
New York	3,162,994,520	0.07743502253

[2] For a detailed discussion of the events in the Stripper Well Litigation which brought about the DOE Policy see the OHA's recent decision, *Stripper Well Exemption Litigation*, 14 DOE ¶ 85,382 (1986).

[3] The OHA is seeking comments on that notice.

[4] We derived this figure by dividing the monies received from MAPCO ($180,000) by an estimate of the number of gallons of petroleum products consumed in the United States during the period August 1973 through January 1981 (2,020,997,335,000). *Cf.* "Petroleum Consumption for OECD Countries," *Monthly Energy Review*, Energy Information Administration, April 1986, page 109. Successful applicants will also receive their proportion of interest accrued.

[5] In this case we propose that the actual distribution reflect a ratio of 25 percent to the state governments and 75 percent to the federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for this advance, the Settlement Agreement provides that for amounts which the OHA transfers to the state and federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. *Settlement Agreement*, Paragraph II.B.3c.ii. This arrangement shall continue until the OHA had distributed $400 million under the 75/25 arrangement.

CALCULATION OF RATIOS FOR DISTRIBUTION TO STATES AND TERRITORIES—M.D.L. 378—Continued

State	Consumption	Ratio
No. Mariana Islands	3,763,000	0.00009212409
North Carolina	916,800,700	0.02244470625
North Dakota	149,717,090	0.00366530709
Ohio	1,534,904,170	0.03757684000
Oklahoma	504,488,400	0.01235066023
Oregon	404,894,790	0.00991245384
Pennsylvania	1,901,863,900	0.04656058451
Puerto Rico	389,132,000	0.00952655624
Rhode Island	161,953,570	0.00396487514
South Carolina	466,978,850	0.01192199923
South Dakota	146,053,670	0.00357562087
Tennessee	660,920,850	0.01618036977
Texas	3,013,545,120	0.07377626891
Utah	240,976,330	0.00589952410
Vermont	97,762,860	0.00239338678
Virgin Islands	188,053,000	0.00462586316
Virginia	1,045,324,650	0.02586481699
Washington	632,796,920	0.01527127344
West Virginia	244,121,480	0.00597647330
Wisconsin	718,696,070	0.01759484593
Wyoming	166,569,650	0.00407788395
Totals	40,847,079,480	1.00000000000

[FR Doc. 86-22267 Filed 10-1-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00072; FRL-3089-9]

Toxic Substances Control Act Hot Line

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Toxic Substances Control Act (TSCA) Assistance Office (TAO) announces that the toll-free telephone number for information is replaced with a commercial telephone number.

DATE: This action is effective October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klien, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC, 20460, (202)-554-1404.

SUPPLEMENTARY INFORMATION: For the past 10 years, TAO has maintained a toll-free telephone hot line to answer questions relating to TSCA. The telephone information service will remain in effect at (202)-554-1404. The toll-free number will no longer be available after September 30, 1986.

Dated: September 26, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-22384 Filed 10-1-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no.: 202-000050-045.

Title: Pacific Coast/Australia-New Zealand Tariff Bureau.

Parties:

Blue Sar Line, Ltd.
Columbus Line
Pacific Australia Direct LIne
Associated Container Transportation (Australia) Ltd.
The Shipping Corporation of New Zealand Limited

Synopsis: The proposed amendment changes the name of the agreement from Pacific/Australia-New Zealand Conference and republishes the agreement to reflect this change. It also reduces the admission fee to $10,000 and makes certain changes to the agreement's voting provisions as well as other minor, clerical amendments. The parties have requested a shortened review period.

Agreement no.: 224-011006.

Title: Richmond, California Terminal Agreement.

Parties:

City of Richmond
Surplus Property Authority of the City of Richmond
Pasha Properties, Inc. (Pasha)

Synopsis: The proposed agreement would permit Pasha to manage a portion of the Port of Richmond, California, primarily as a vehicle handling facility, for an inititial period of ten years.

Dated: September 29, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-22316 Filed 10-1-86; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regualtions. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-011005.

Title: Hilo Terminal Agreement.

Parties:

State of Hawaii (State)
Matson Terminals, Inc. (Matson)

Synopsis: The proposed agreement would permit the State to grant easements to Matson to provide electrical power for Matson's refrigerated cargo container operations at Hilo Harbor. Matson also agrees to buy from the State 32 existing refrigerated container power receptacles, conduits for power, wiring and switches within ten days of the agreement's effectiveness.

Dated: September 29, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-22317 Filed 10-1-86; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice

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appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 124–011004.

Title: Honolulu Terminal Agreement.

Parties:

State of Hawaii (State)

Puget Sound Tug & Barge Company (PST&B)

Synopsis: The proposed agreement would permit the State to lease space for general office use in the Pier 2 Transit Shed at Honolulu Harbor to PST&B for a period of ten years.

Filing Party: Wayne T. Yamasaki, Director of Transportation, State of Hawaii, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813.

Dated: September 29, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86–22318 Filed 10–1–86; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegation of Authority; Office of the General Counsel

Part A of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services covers the Office of the Secretary. Chapter AG of Part A, which was published at 38 FR 17032 on June 28, 1973 and most recently amended at 51 FR 22961, is amended to reflect organizational charges in the OGC. Effective March 17, 1986, the title of Regional Attorney Region I–X was changed to Chief Counsel, Regions I–X. Effective May 5, 1986, the Business and Administrative Law Division was reorganized requiring changes in delegations regarding adjudication of claims. Notice is hereby given that on May 9, 1986, authority to adjudicate claims under the Federal Tort Claims Act and authority to take action under Section 224(f) of the Public Health Service Act as detailed below were delegated to the Chief, Litigation Branch. Authority to adjudicate other claim matters was delegated to the Chief, Administrative Law Branch.

The following changes to Chapter AG reflect these changes:

Section AG.23 amend the heading to read:

Section AG.23 *Office of the Chief Counsel, Regions I–X.*

These offices provide professional legal and managerial expertise for the Office of the General Counsel in their respective geographical locations.

Amend Section AG.30 to read:

Section AG.30 *Department Claims Officer.*

A. The Associate General Counsel, Business and Administrative Law Division, or, in his absence or inability to act, the Deputy Associate General Counsel, Business and Administrative Law Division, is designated Department Claims Officer and is authorized:

1. As the designee of the Secretary for the purpose, to perform the duties and exercise the authority vested in him by—

(a) the Federal Tort Claims Act (28 U.S.C. 2671 et seq.) as amended and section 233(a)–(f)) of the Emergency Health Personnel Act of 1970 (42 U.S.C. 233(a)–(f).

(b) the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 3721 et seq.) as amended.

(c) the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 et seq.) as amended, except with respect to erroneous payments under Titles II and XVIII of the Social Security Act.

(d) 5 U.S.C. 5584 authorizing waiver, in certain cases, of claims arising out of erroneous payments of pay to employees of the agency.

The authority to adjudicate claims arising under the statutes enumerated in (a) above has been redelegated to the Chief, Litigation Branch, Business and Administrative Law Division, by the Department Claims Officer.

The authority to adjudicate claims arising under the statutes enumerated in (b), (c), and (d) above has been redelegated to the Chief, Administrative Law Branch, Business and Administrative Law Division by the Department Claims Officer.

2. To formulate, prescribe, and issue rules, regulations, procedures, and instructions for investigating, collecting evidence, reporting, processing, and otherwise handling throughout the Department, claims and situations out of which claims or suits may arise under the statutes, and situations of the character contemplated by any law out of which claims or suits by the Government for damage to Government property may arise.

3. To arrange for the maintenance and control of the necessary files and records of such claims and situations.

4. To generally direct and coordinate the activities of the operating divisions and staff divisions of the Department in carrying out the provisions of this section.

B. Any notice or writing, required by 28 U.S.C. 2675(b) to be served on the Department or on an operating or staff division, may be served on the Department Claims Officer.

C. The Department Claims Officer shall, as often as he deems proper but not less than once a year, submit to the Secretary a report of his activities pursuant to this section. Such report or reports shall include all of the data required by the statutes to be reported by the Secretary to the Congress and may also include any accident trends, practices, procedures, or other circumstances, including the operation of safety programs, as evidenced by situations and claims which come to his attention in the performance of his duties and which may indicate the need for administrative action.

Amend Section AG.40 to read:

Section AG.40 *Delegation by the Secretary of Authority for Recovery of the Cost of Hospital and Medical Care and Treatment Furnished by the United States.*

Pursuant to the authority contained in the Federal Medical Care Recovery Act (42 U.S.C. 2651 et. seq.) as amended, and in accordance with the regulations of the Attorney General (28 CFR Part 43), the General Counsel is authorized, in connection with any claim for the recovery of the reasonable value of hospital and medical care and treatment furnished by this Department to: (1) Accept the full amount of a claim and execute a release therefor, (2) compromise or settle and execute a release of any claim, not in excess of $40,000, which the United States has for the reasonable value of such care or treatment, or (3) waive and in this connection release any claim, not in excess of $40,000, in whole or in part, either for the convenience of the Government, or if he determines that collection would result in undue hardship upon the person who suffered the injury or disease for which care and treatment were furnished, and (4) with the prior approval of the Department of Justice, compromise, settle, or waive any claim in excess of $40,000 and execute a release therefor.

Amend Section AG.41 to read:

Section AG.41 *Redelegation by the General Counsel.*

The authorities delegated to the General Counsel by Section AG.40 have been redelegated to the Associate General Counsel, Business and Administrative Law Division.

Amend Section AG.42 to read:

Section AG.42 *Redelegations by the Associate General Counsel, Business and Administrative Law Division.*

The authorities delegated to the Associate General Counsel, Business and Administrative Law Division by section AG.40 have been redelegated to the Chief, Administrative Law Branch. They have also been redelegated to the Chief Counsel in each of the ten Regional Offices of this Department, with respect to claims within their respective regions for the recovery of the reasonable value of hospital and medical care and treatment furnished by this Department in the amount of $2,500.00 or less which have not been referred to the Department of Justice for further action.

Dated: September 22, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86–22299 Filed 10–1–86; 8:45 am]

BILLING CODE 4110–12–M

Senior Executive Service Performance Review Board Membership

Title 5, U.S. Code, section 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95–454, requires that the appointment of Performance Review Board members be published in the Federal Register.

The following persons will serve on the Performance Review Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services:

Federal Performance Review Board Members

Richard H. Adamson, Ph.D.
Duane F. Alexander, M.D.
Loran D. Archer
William H. Aspden, Jr.
Joseph P. Autry, M.D.
Gerald L. Barkdoll
Carol A. Bauer
Edwin D. Becker, Ph.D.
Katherine L. Bick, Ph.D.
James D. Bloom
Windell R. Bradford
Everett F. Bryant
Barbara S. Bynum
Hugh C. Cannon
Ronald H. Carlson
Bruce A. Chabner, M.D.
Vivian Chang, M.D., M.P.H.
Philip S. Chen, Jr., Ph.D.
Winston M. Cobb
Bartholomew J. Crivella
Rhoda M. Davis
John L. Decker, M.D.
James J. Delaney, II
Walter R. Dowdle, Ph.D.
John C. Eberhart, Ph.D.
Jo Eleanor Elliott
Gail F. Fisher, Ph.D.
Bartlett S. Fleming
Carl A. Fretts
Barbara J. Gagel
John L. Gallin, M.D.
Norman M. Goldstein
Frederick K. Goodwin, M.D.
Carolyn D. Gray
Jerome C. Green, M.D.
Richard C. Greulich, Ph.D.
Gerald B. Guest, D.V.M.
Louis B. Hays
George R. Holland
Donald R. Hopkins, M.D.
Vernon N. Houk, M.D.
Robert A. Israel
Gerald H. Ivey
Barry L. Johnson, Ph.D.
Elke Jordan, Ph.D.
John H. Kelso
Roland E. King
Eugene Kinlow
Jin H. Kinoshita, Ph.D.
Ruth L. Kirschstein, M.D.
Irwin J. Kopin
Richard P. Kusserow
Claude J. Lenfant, M.D.
Joseph R. Leone
Arthur S. Levine
Hulda Lieberman
Samuel Lin, M.D.
Donald A.B. Lindberg, M.D.
Harald A. Loe, D.D.S.
John D. Mahoney
Joel D. Mangel
Norman D. Mansfield
Jaime L. Manzano
Jack N. Markowitz
Jack W. Martin
Warren Master
S. Anthony McCann
Charles R. McCarthy, Ph.D.
Thomas S. McFee
Gerald F. Meyer
J. Donald Millar, M.D.
Richard A. Millstein
Donald N. Mings
Larry D. Morey
Jay Moskowitz, Ph.D.
Joseph A. Mottola
William E. Muldoon, Jr.
John A. Norris
Abner L. Notkins, M.D.
James F. O'Donnell, Ph.D.
Jack Orloff, M.D.
Delores L. Parron, Ph.D.
Betty H. Pickett, Ph.D.
Julie C. Ponquinette, M.D.
Arnold W. Pratt, M.D.
Alan S. Rabson, M.D.
David P. Rall
Joseph E. Rall, M.D.
William F. Raub, Ph.D.
Richard J. Riseberg
Martin Rodbell, Ph.D.
Jesse Roth, M.D.
Thomas Scarlett
Sandra H. Shapiro
Gordon M. Sherman
Lawrence E. Shulman, M.D.
Clay E. Simpson, Jr., Ph.D.
Barbara S. Sledge
Frank V. Smith, III
Kent A. Smith
Vivian L. Smith
Marvin Snyder, Ph.D.
Dale W. Sopper
Frank J. Sullivan, Ph.D.
Dennis D. Tolsma
Robert L. Trachtenberg
Carl W. Tyler, Jr., M.D.
John C. Villforth
Craig K. Wallace, M.D.
James A. Walsh, Dr., Ph.D.
Barbara S. Wamsley
Norman W. Weissman, Ph.D.
Daniel F. Whiteside, D.D.S.
Robert A. Whitney, Jr., D.V.M.
T. Franklin Williams
Judith B. Willis

Summary Statement

Department of Health and Human Services

Action: Listing of members of this Department's Senior Executive Service Performance Review Boards.

Date: Performance Review Boards effective September 24, 1986.

For further information contact: Brenda J. Clinton, 202: 426–2753.

Dated: September 24, 1986.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

[FR Doc. 86–22361 Filed 10–1–86; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 86F–0375]

The Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of vinylidene chloride/methyl acrylate copolymers as a food-contact surface in packaging systems employing hydrogen peroxide as a sterilizing agent.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3953) has been filed by

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The Dow Chemical Co., Midland, MI 48674, proposing that § 178.1005 *Hydrogen peroxide solution* (21 CFR 178.1005) be amended to provide for the safe use of vinylidene chloride/methyl acrylate copolymers as a food-contact surface in packaging systems employing hydrogen peroxide as a sterilizing agent.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 24, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-22280 Filed 10-1-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0385]

Petrolite Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Petrolite Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of synthetic primary linear aliphatic alcohols as components of food-packaging adhesive formulations.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3954) has been filed by Petrolite Corp., P.O. Box 21538, Tulsa, OK 74121, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of synthetic primary linear aliphatic alcohols as components of foodpackaging adhesive formulations.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 24, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-22281 Filed 10-1-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 49, No. 228, pp. 46502-46505, dated Monday, November 26, 1984) is amended to reflect a reorganization within the Bureau of Data Management and Strategy (BDMS) in the Office of the Associate Administrator for Management and Support Services. In order to facilitate the amendment to Part F. of the Department statement, we are republishing the entire set of BDMS functional statements even though the Bureau statement and several subordinate statements are unchanged.

The specific amendments to Part F. are as follows:

Section FH.20.D., Bureau of Data Management and Strategy (FHE), is deleted in its entirety and replaced by a new set of functional statements for the entire Bureau. The Bureau title, functional statement, and administrative code remain unchanged, however, it is being republished in order to keep all of the Bureau's functional statements together in one location in the **Federal Register**. The new set of statements read as follows:

D. Bureau of Data Management and Strategy (FHE)

Manages statistical data systems on HCFA programs to support program decisions by various HCFA components. Provides mathematical and statistical programming required to answer research inquiries. Develops and coordinates statistical and information policy. Coordinates the development of HCFA information policy as it relates to HCFA's long-range information plans with non-Federal segments of the health care industry. Develops common coding standards and quality assurance monitoring mechanisms. Provides technical information planning and developmental review of HCFA data collection initiatives. Coordinates the development of special purpose statistical data bases required for assessing the impact of proposals which change health care financing programs, special research and evaluation studies, and general data dissemination. Designs and develops the production of periodic statistical tabulations to assess the characteristics of HCFA beneficiaries and the utilization and cost of program benefits. Provides direction for the nationwide operation of a centralized automated data processing (ADP) and telecommunications facility for HCFA including systems analysis, programming, computer operations, and data transmission. Establishes and maintains computerized records supporting HCFA programs including records for determining entitlement to the utilization of Medicare benefits and program management records that facilitate the administration of HCFA programs. Negotiates and administers agreements and provides ADP liaison between HCFA users, the Social Security Administration, and other external organizations for the provision of ADP capacity and support services. Develops, coordinates, and directs the HCFA ADP systems security program including its application to Medicare contractors, in accordance with the Executive Office of Management and Budget, General Services Administration, and Department of Health and Human Services' guidelines.

1. Office of Information Resources Management (FHE-2)

Serves as the focal point for the planning of HCFA's information systems. Develops and assures compliance with HCFA's long- and short-range information plans and processes. Determines and assures compliance with internal HCFA automated data processing (ADP) policies and procedures including information systems planning, systems approval, security, and privacy. Provides systematic identification, assessment, and certification of new, revised, or existing HCFA information systems and processes in accordance with Departmental, and other higher monitoring authorities,and with HCFA policies, standards, and information plans. Develops and maintains an inventory of HCFA's information systems. Coordinates and provides liaison on policy and planning for information systems within HCFA and between HCFA and other governmental agencies and nongovernmental groups. Develops, implements, and maintains a HCFA-wide ADP financial management program to fund and support ADP operation and information systems development activities. Formulates and executes the HCFA ADP common expense budget and the Information Technology System plan and budget in conjunction with Agency-wide budgetary submissions to the Department. Administers the HCFA ADP project management program to monitor selected system-related activities. Performs the Agency-wide ADP resource management function to assess and monitor ADP resource utilization. Develops, coordinates, and directs the HCFA ADP systems security program to ensure the protection of HCFA systems and ADP equipment. Negotiates and administers agreements and provides liaison between HCFA, the Social Security Administration, and other external organizations for the provision of ADP support services. Develops and coordinates HCFA's participation in the Federal Information Processing Standards Program. Develops and controls a comprehensive Bureau-wide management and organization development program, including management analysis, management information systems, personnel management, training, and administrative services. Develops, implements, and maintains a Bureau-wide financial management program to support administrative operations.

2. Office of Health Programs Systems (FHE5)

Designs, develops, implements, and maintains automated data processing (ADP) and telecommunications systems and software, data files and formats, and manual procedures required to support the Agency's programmatic mission from operational, program management, and quality control aspects. Establishes and maintains a national file of eligible Medicare beneficiaries. Establishes and maintains a history of Medicare benefit utilization. Integrates entitlement data and information from other programs (e.g., Medicaid, Veterans Administration) into Medicare files. Receives and responds to queries regarding beneficiary entitlement and benefit and deductible status from a nationwide network of Medicare fiscal agents. Provides program data and related information to authorized requestors. Maintains systems that support the certification of providers of service in the Medicare and Medicaid programs. Determines and reconciles payment liability for group health organizations. Prepares billings for and receives and processes ADP records for Medicare premium remittances from third party payors and beneficiaries. Prepares a variety of program management reports (e.g., workloads, processing times) for distribution throughout the Agency, Department, and Medicare fiscal agents. Provides ADP support to the Agency for quality control systems, fraud and abuse detection systems, and beneficiary and provider overpayment systems. Consults with central and regional office components and other government agencies to define programmatic ADP systems performance requirements. Negotiates, reviews, and approves systems designs. Consults with Bureau of Data Management and Strategy components to define ADP and teleprocessing resource requirements and provides input to the budget planning and procurement processes. Insures an awareness of and compliance with government-wide and local security and privacy requirements within the Office. Directs and coordinates implementation of the Project to Redesign Information Systems Managment for the Office. Serves as the Data Base Administrator for the Office. Provides technical support to Office programmers.

a. Division of Beneficiary and Provider Systems (FHE51).

Designs and implements automated data processing (ADP) systems, manual processes, and procedural instructions for: development and maintenance of a master file of all individuals eligible for Medicare benefits (including Railroad Retirement annuitants); enrollment of beneficiaries and issuance of identification cards; posting of benefit utilization data and responding to utilization queries from intermediaries and carriers; issuance of notices of benefit utilization; maintenance of controls for reconciliation and audit of providers and carriers; determination, billing, and collection of Medicare premium liability from third party entities and direct paying beneficiaries; and the determination and reconciliation of the payment liability for group health plans. Furnishes a variety of management data for review, appraisal, and planning purposes and assists other HCFA systems components in developing and interpreting the data. Provides systems support and technical expertise to the Office of Management and Budget in resolving electronic exceptions and processing correspondence.

b. Division of Program Management Systems (FHE52). Designs, develops, and maintains a wide variety of automated data processing (ADP) and telecommunications systems in support of HCFA program management functions including: workload operating systems, Supplementary Medical Insurance physician and laboratory payment information systems, fraud and abuse detection systems, management support systems, beneficiary and provider overpayment systems, provider certification and billing data including an on-line query and reply subsystem, accounting controls for the reconciliation and audit of providers and carriers, and the Medicare Quality Control system. Provides technical support ot HCFA regional offices in the program management systems areas. Provides technical and state-of-the-art expertise in the use of current program data bases for the design and development of new systems which support HCFA program management objectives.

3. Office of Computer Operations (FHE6)

Directs the management, selection, acquisition, operation, maintenance of, and establishes workload planning and controls for: HCFA's automated data processing (ADP) and data communications (DC) facilities and equipment; including mainframe computers, minicomputers, microcomputer and word processing (WP) equipment, and associated vendor supplied software and ADP training. Provides technical assistance and consultation to all HCFA components regarding solutions to ADP equipment and support software problems including systems design, selection, procurement, technical evaluation, security, utilization, and operations. Controls Office of Computer Operations (OCO) managed ADP resources including cost estimates, planning and scheduling of expenditures, inventory, purchase, lease, and maintenance of ADP hardware, software, and services. Provides technical review and serves as the Agency's final technical authority for the approval for purchase, lease, and maintenance of all ADP equipment and systems throughout HCFA. Develops HCFA-wide ADP budget estimates and spending plans. Provides technical evaluation and liaison to the Department and other Federal agencies related to ADP acquisitions. Provides analyses, installation, modification, and maintenance of operating systems, micor and mincomputers, and WP and DC systems software for all HCFA components. Manages systems software and software products including data base management systems, graphics, program generators and statistical analysis packages, personal computer packages, and office automation

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systems. Monitors ADP equipment utilization, capacity, and performance and makes available the necessary reports for all levels of management. Responsible for all long-term technical and operational capacity planning for solution to HCFA's ADP mission needs and requirements. Advises the Bureau and HCFA management on ADP issues and concerns and represents HCFA in dealing with Federal and non-Federal agencies and organizations on the full Agency-wide range of OCO functions including vendor supplied software, hardware systems plans, and ADP acquisition and utilization.

a. Division of ADP Operations (FHE81). Manages, operates, and maintains the HCFA Data Center (HDC) and data communication (DC) facilities. Establishes workload planning and controls and schedules work to be processed. Coordinates the resolution of hardware and software problems with appropriate vendors. Notifies, reviews approves, schedules, implements, and coordinates HDC and DC systems changes. Develops and maintains problem resolution logs to rapidly identify the extent to problems with the systems. Monitors operational performance and informs appropriate technical staff of system abnormalities or failures. Recommends and implements changes to improve resource availability and performance. Provides the necessary operational data to advise the Office Director and other HCFA officials concerning automated data processing operations and on matters concerning DC networks and facilities. Provides liaison with other HCFA components, other Federal agencies, and private organizations concerning HDC operations and DC systems. Serves as the HCFA telecommunication office representing HCFA on the Department of Health and Human Services Telecommunications Advisory Committee (TAC).

b. Division of User Support (FHE82). Supports the Office Director in the role as the principal focal point for coordinating matters relating to the acquisition and use of approved automated data processing (ADP) hardware within HCFA, as required in Section 1–10–50 of the Department of Health and Human Services ADP Systems Manual. Serves as the Agency focal point for coordinating, controlling, and approving component requests for the acquisition of ADP hardware equipment, supplies, software, and services. Provides ADP liaison between HCFA users and ADP suppliers. Manages a HCFA-wide ADP capcity planning and management program to plan for, acquire, and oversee the utilization of all HCFA ADP software and hardware. Develops and operates a chargeback, billing, utilization, and performance monitoring system pertaining to the HCFA Data Center (HDC). Provides a lead role to support the Office Director in matters relating to ADP budget, planning, and coordination with other Agency components. Develops, manages, and operates the Agency-wide ADP training program including: Personal computers, word processors, minicomputers, mainframes, and related software and ADP design techniques. Provides technical assistance to HDC users as requested. Provides Agency-wide direction and leadership in the development of office automation technology including analysis of user needs, selection of alternative solutions, procurement, training, and implementation. Provides Agency-wide direction, standards setting, and approval in the areas of word processors, personal computers, and minicomputers. Maintains awareness of current developments in all the above areas in order to serve as the HCFA expert for end-users and programming components who require technical assistance. Creates and operates liaison groups for all the above areas in order to provide a communication mechanism between and among users and the Office of Computer Operations.

4. Office of Statistics and Data Management (FHE7)

Develops and implements plans and policies for the classification, standardization, identification, development, and security of data, procedures, and standards to meet HCFA's information requirements. Develops and conducts data needs assessments. Develops and maintains the Agency program information strategy and plan for applying data planning and management techniques to support the redesign and functioning of Agency systems. Designs, implements, maintains, and ensures the continuing operation of current and revised national health care information and program decision support systems. Extracts health care data necessary to support HCFA activities from HCFA, the Social Security Administration, and other health-related sources using large-scale computer systems and/or personal computers, as necessary. Provides sophisticated computational and statistical services, mathematical modeling, simulations, systems analysis, and statistical programming. Design information systems, data bases, and software applications for research and development. Conducts special purpose information retrieval and processing activities in support of project undertaken by HCFA. Develops programs to array data in accordance with general specifications developed within HCFA. Develops standards for and monitors the quality of program management and statistical data. Participates in the evaluation, development, and operation of automated medical coding systems and in the formulation and use of medical codes including: International Classification of Diseases, Ninth Revision, Clinical Modifications, HCFA Common Procedure Coding System, and diagnosis related groups. Coordinates and provides liaison on data standards activities within HCFA and between HCFA and other governmental agencies and non-governmental groups. Serves as the focal point for the planning and evaluation of HCFA's data standards development, including coding convention. Disseminates statistical data, estimates, analyses, and related information on health-related programs in response to questions from legislators, program administrators, policymakers, researchers, and health planners in the public and private sectors. Prepares statistical reports for external publications and management reports on HCFA programs and related areas. Provides support for program analysis, policy development, and epidemiological research for the Federal End Stage Renal Disease (ESRD) program and disseminates ESRD program information in publications, management reports, and responses to ad hoc requests.

a. *Division of Data Development (FHE71).* Designs, implements, maintains, and ensures the continuing operation of national health care information and decision support systems. Extracts health care data necessary to support HCFA activities from HCFA components, the Social Security Administration, and other health-related sources using large-scale computer systems and/or personal computers, as necessary. Develops programs to array data in acordance with HCFA. Develops and maintains file management systems, data storage techniques, file documentation libraries, and information retrieval systems. Ensures the quality and integrity of program statistical data by advising and consulting on data collection policy and procedures, forms design, and forms clearance with other HCFA components requiring program data. Arranges for necessary revisions in source records due to legislation or changes in administrative operations.

b. *Division of Statistical Analysis (FHE72).* Provides sophisticated computational and statistical services, mathematical modeling, simulations, systems analysis, and statistical programming. Designs information systems, data bases, and software applications for research and development. Conducts special purpose information retrieval and processing activities in support of projects undertaken by HCFA. Processes and disseminates statistical reports and information in support of program managers, researchers, and policymakers. Manages the Hospital Cost Report Information System which is the national data base for all Medicare hospital cost reports.

c. Division of Information Analysis (FHE73). Disseminates statistical data, estimates, analyses, and related information on health-related programs in response to questons from legislators, program administrators, policymakers, researchers, and health planners in the public and private sectors. Maintains a data library including publications, computer output, microfilm, and machine-readable data files. Designs and maintains data systems for the analysis and dissemination of program data. Prepares statistical reports for external publications and management reports on HCFA programs and related areas. Provides support for program analysis, policy development, and epidemiological research for the Federal End Stage Renal Disease (ESRD) program and disseminates ESRD program information in publications, management reports, and responses to ad hoc requests.

d. Division of Data Administration (FHE74). Develops and implements plans and policies for the classification, standardization, identification, development, and security of data, procedures, and standards to meet HCFA's information requirements. Develops and conducts data needs assessments. Develops and maintains a strategy and plan for applying data planning and management techniques to support the redesign and functioning of Agency systems. Assists user groups in defining reporting requirements and data needs. Establishes and maintains standards and procedures for creating and modifying data definitions to ensure uniform use of program and administrative data. Develops standards for and monitors the quality of program management and statistical data. Participates in the evaluation, development, and operation of automated medical coding systems and in the formulation and use of medical codes including: Internal Classification of Diseases, Ninth Revision, Clinical Modifications, HCFA Common Procedure Coding System, and diagnosis related groups. Coordinates and provides liaison on data standards activities within HCFA and between HCFA and other governmental agencies and non-governmental groups (e.g., National Center for Health Statistics, American Medical Record Association, American Medical Association, American Hospital Association). Serves as the focal point for the planning and evaluation of HCFA's data standards development, including coding conventions.

Dated: September 24, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86–22363 Filed 10–1–86; 8:45 am]

BILLING CODE 4120-03-M

[OACT 007–N]

Medicare Program; Monthly Actuarial Rates and Part B, Premium Rates Beginning January 1, 1987

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for calendar year 1987. It also announces the monthly SMI premium rate to be paid by all enrollees during calendar year 1987. The 1987 monthly Part B premium will be increased from $15.50 to $17.90. However, the premium will not be increased if monthly Social Security benefits are not increased for 1987, as now appears likely under current law. (Legislation is pending that would ensure a cost-of-living increase in Social Security benefits for 1987.)

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Carter S. Warfield, (301) 594–2893.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Supplementary Medical Insurance (SMI) program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient hospital services, home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (Medicare Part A). The SMI program is available to individuals who are entitled to hospital insurance and to U.S. residents who have attained age 65 and are citizens, or aliens who were lawfully admitted for permanent residence and have resided in the United States for five consecutive years. This program requires enrollment and payment of monthly premiums, as provided in 42 CFR Part 405, Subpart I.

The Secretary of Health and Human Services is required by law to issue two annual notices relating to the SMI program.

One notice announces two amounts that, according to actuarial estimates, will equal respectively, one-half the expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the calendar year beginning the following January. These amounts are called "monthly actuarial rates."

The second notice announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the calendar year beginning the following January. (Although the costs to the program per disabled enrollee are higher than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of Pub. L. 92–603, (the Social Security Amendments of 1972) and until the passage of section 124 of Pub. L. 97–248, (the Tax Equity and Fiscal Responsibility Act of 1982) the premium rate was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II social security benefits. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

Section 606 of Pub. L. 96–21, section 2302 of Pub. L. 98–369 (the Deficit Reduction Act of 1984) and section 9313 of Pub. L. 99–272 (Consolidated Omnibus Reconciliation Act) amended section 1839 of the Social Security Act ("the Act") to extend through 1988 the provision that the premium be based on 25 percent of program costs. In January 1989, calculation of the premium rate will revert to the method in section 1839(a) of the Act used before the passage of Pub. L. 97–248, Pub. L. 98–21, Pub. L. 98–369 and Pub. L. 99–272, except

that it will remain on a calendar year basis.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act that was added by Pub. L. 98–369. This provision refers to section 215(i) of the Act, which provides for cost-of-living increases in social security benefits. Section 1839(f)(1) of the Act, as amended by section 9313 of Pub. L. 99–272, states that if no cost-of-lving increase under section 215(i) of the Act becomes effective in December 1985, 1986 or 1987, there will be no increase in the SMI monthly premium paid by the enrollees for the following year. Thus, the premium will remain at the December level. (However, those individuals who enroll in the SMI program after the expiration of their initial enrollment period, or reenroll after a termination of a coverage period, are still subject to the increase in premium described in section 1839(b) of the Act. That increase is a percentage of the premium and would be based on the new premium rate.)

Section 1839(f)(2) of the Act, as added by Pub. L. 98–369 and amended by Pub. L. 98–617 and Pub. L. 99–272, contains provisions that are applicable if there is a cost-of-living increase for 1986, 1987 or 1988. The law provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the SMI premiums deducted from these benefit payments, the premium increase would be reduced to avoid causing a decrease in the individual's benefit payment. This would occur if the increase in the individual's social security benefit due to the cost of living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits.[1]

Generally, the reduced SMI premium for the individual for that January and for each of the succeeding 11 months for which he or she is entitled to benefits under section 202 or 223 of the Act is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the SMI premium for December.

(2) The monthly premium for that individual for that December.

Again, those individuals who have enrolled in the SMI program late or have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. In these cases, the monthly premium would be calculated as specified in (1) and (2) above with the addition of the amount specified under the provisions of section 1839(b) of the Act. That increase is a percentage of the premium and would be based on the new premium rate.

In determining the premium limitations under section 1839(f)(2) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f)(2) of the Act, it will not be changed during the calendar year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

For calendar year 1987, the notices of the monthly actuarial rates and the monthly premium rate are as follows:

II. Notice of Monthly Actuarial Rates

As required by sections 1839(a) (1) and (4) of the Act (42 U.S.C. 1395r(a) (1) and (4)), as amended, I have determined that the monthly actuarial rates applicable for calendar year 1987 are $35.80 for enrollees age 65 and over, and $53.00 for disabled enrollees under age 65. The accompanying statement (section IV.) gives the actuarial assumptions and bases from which these rates are derived.

III. Notice of Monthly Premium Rate

As required by section 1839(a)(3), (e)(1) and (f) of the Act (42 U.S.C. 1395r(a)(3), (e)(1) and (f)), as amended, I have determined that the standard monthly premium amount will be $17.90 during calendar year 1987. However, if monthly Social Security benefits are not increased for 1987, as now appears likely unless legislation is enacted to ensure a cost-of-living increase, the premium will not be increased, but will remain at $15.50 monthly. The accompanying statement shows how the premium amount was derived.

IV. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Standard Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 1987

A. Actuarial Status of the Supplementary Medical Insurance Trust Fund

The law requires that the SMI program be financed on an incurred basis; that is, program income during the calendar year for which the actuarial rates are effective must be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the calendar year is added to the trust fund until needed. Thus the assets in the trust fund at any time should be no less than benefit and administrative costs incurred but not yet paid.

Because the rates are established prospectively, they are subject to projection error. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of projection error in addition to the amount of incurred but unpaid expenses. Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for periods from 1985 through 1986.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SMI TRUST FUND AS OF THE END OF THE FINANCING PERIODS, JAN. 1, 1985 TO DEC. 31, 1986

[In millions of dollars]

Financing period ending	Assets	Liabilities	Assets less liabilities
Dec. 31, 1985	$10,924	$3,237	$7,687
Dec. 31, 1986	8,715	3,660	5,055

B. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate is one-half of the monthly projected cost of benefits and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of projection error and to amortize unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for calendar year 1987 was determined by projecting per-enrollee cost for the 12-month periods ending June 30, 1987 and June 30, 1988, by type of service. Although the actuarial rates are now applicable for calendar years, projections of per-enrollee costs were determined on a July to June period, consistent with the July 1 annual fee screen update used for benefits prior to the passage of section 2306(b) of Pub. L. 98–369. The values for the 12-month period ending June 30, 1984, were established from program data. Subsequent periods were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 2. Those per-enrollee values are then adjusted to apply to a calendar year period. The projected values for financing periods from January 1, 1984, through December 31, 1987, are shown in Table 3.

The projected monthy rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for calendar year 1987 is $39.02. The monthly actuarial rate of $35.80 provides an adjustment for interest earnings and −$2.86 for a contingency margin. Based on current estimates, it appears that the assets are more than sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of projection error. Thus, a negative margin is needed to reduce assets to a more appropriate level.

C. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement to disability benefits for not less than 24 months or because of entitlement to Medicare under the end-stage renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parallel to projection for the aged, using appropriate actuarial assumptions (see Table 2). Costs for the end-stage renal disease program are projected differently because of the complex demographic problems involved. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for calendar year 1987 is $61.15. The monthly actuarial rate of $53.00 provides an adjustment for interest earnings and a −$1.45 for a contingency margin. As in the determination of the monthly actuarial rate for aged enrollees, a negative margin is needed to reduce the surplus to a more appropriate level.

D. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy of the rates announced here using alternative assumptions. The most unpredictable factors that contribute significantly to future costs are outpatient hospital costs, physician residual (as defined in Table 2), and increases in physician fees as constrained by the program's reasonable charge screens and economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. One set represents increases that are lower and is, therefore, more optimistic than the current estimate. The other set represents increases that are higher and is, therefore, more pessimistic than the current version. The values for the alternative assumptions were determined from a study on the average historical error in the respective increase factors. All assumptions not shown in Table 5 are the same as in Table 2.

Table 5 was prepared based on the assumption that there will be no cost-of-living increase under section 215(i) of the Act for December 1986. Current information indicates that it is unlikely that the applicable increase in the consumer price index would exceed the three percent required by section 215(i) of the Act for any cost-of-living increase to take effect. The assumption that there will be no cost-of-living increase under section 215(i) of the Act has two impacts on the trust fund for 1987. First, section 1839(f)(1) of the Act freezes the SMI premium for 1987 at $15.50 for all SMI enrollees, except for those individuals subject to section 1839(b) of the Act. Second, section 1844(a)(1) of the Act allows for general revenue transfers to be made based on the premium rate determined by section 1839(a)(3) or 1839(e) of the Act ($17.90) and not by the rate determined by section 1839(f)(1) of the Act ($15.50). Consequently for 1987 the income to the trust fund, and, therefore, the assets of the trust fund, will be less than what they would have been if there had been a cost-of-living increase. Furthermore, based on the general revenue determination of section 1844(a)(1) of the Act, this loss of assets in 1987 will be the same regardless of the margins included in the actuarial rates, provided that the aged actuarial rate for 1987 exceeds the rate for 1986.

With regard to the above, Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates will result in an excess of assets over liabilities of −$737 million by the end of December 1987. This amounts to −2.1 percent of the estimated total incurred expenditures for the following year. Assumptions which are somewhat more pessimistic (and, therefore, test the adequacy of the assets to accommodate projection errors) deplete the trust fund by the end of December 1987. Under fairly optimistic assumptions, the monthly actuarial rates will result in a surplus of $2,978 million by the end of December 1987, which amounts to 9.4 percent of the estimated total incurred expenditures for the following year.

E. Standard Premium Rate

For calendar years 1984 through 1988, the law provides that the standard monthly premium rate for both aged and disabled enrollees shall be 50 percent of the monthly actuarial rate for enrollees age 65 and older. Therefore, the standard monthly premium rate for both aged and disabled enrollees for calendar year 1987 is $17.90, which is 50 percent of the monthly actuarial rate for this period ($35.80).

V. Regulatory Impact Statement

The monthly SMI premium rate of $17.90 for all enrollees during calendar year 1987 is 15.5 percent higher than the $15.50 monthly premium amount for the previous financing period. The estimated cost of this increase over the current premium to the approximately 31.2 million SMI enrollees will be about $898 million for calendar year 1987.

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

[1] Note.—A check for benefits under section 202 or 223 is received in the month following the month for which the benefits are due. The SMI premium that is deducted from a particular check is the SMI payment for the month in which the check is received. Therefore, a benefit check for November is not received until December and has the December's SMI premium deducted from it.

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TABLE 5.—PROJECTION FACTORS AND THE ACTUARIAL STATUS OF SMI TRUST FUND UNDER ALTERNATIVE ASSUMPTIONS

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TABLE 2.—PROJECTION FACTORS[1] 12-MONTH PERIODS ENDING JUNE 30 OF 1984–1988

[In percent]

12-month period ending June 30	Physicians' services		Radiology and pathology	Outpatient hospital services	Home health agency services	Group practice prepayment plans	Independent lab services
	Fees[2]	Residual[3]					
Aged:							
1984	7.2	4.7	−12.3	22.7	28.6	22.3	23.3
1985	0.8	4.8	1.8	17.2	1.5	12.6	111.2
1986	0.	7.3	13.5	22.3	8.0	21.5	13.1
1987	5.1	2.6	13.4	15.2	10.7	22.0	11.8
1988	5.1	2.7	13.7	15.9	12.3	22.3	16.3
Disabled:							
1984	7.2	3.7	−11.5	−2.0	0	4.9	20.2
1985	0.8	6.6	−0.3	9.2	0	29.7	113.1
1986	0.1	8.7	14.5	21.7	0	12.5	12.7
1987	5.1	4.5	14.4	18.1	0	11.1	12.7
1988	5.8	4.7	14.2	17.8	0	15.7	15.8

[1] All values are per enrollee.
[2] As recognized for payment under the program.
[3] Increases in the number of services received per enrollee and greater relative use of more expensive services.

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DEC. 31, 1984 THROUGH DEC. 31, 1987

	Financing periods			
	CY 1984	CY 1985	CY 1986	CY 1987
Covered services (at level recognized):				
Physicians' reasonable charges	$26.00	$29.81	$32.05	$34.54
Radiology and pathology	0.99	1.07	1.21	1.38
Outpatient hospital and other institutions	5.68	7.06	8.47	9.95
Home health agencies	0.04	0.04	0.05	0.05
Group practice prepayment plans	1.08	1.21	1.47	1.80
Independent lab	0.79	1.15	1.29	1.47
Total services	36.74	40.38	44.54	49.19
Cost-Sharing:				
Deductible	−2.50	−2.51	−2.51	−2.52
Coinsurance	−6.73	−7.83	−8.14	−9.03
Total benefits	27.51	30.50	33.89	37.64
Administrative expenses	1.17	1.31	1.33	1.38
Incurred expenditures	28.68	31.81	35.21	39.02
Value of interest	−0.96	−1.16	−0.82	−0.35
Contingency margin for projection error and to amortize the surplus or deficit	1.47	0.36	−3.29	−2.66
Monthly actuarial rate	29.20	31.00	31.00	35.00

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES, FINANCING PERIODS ENDING DEC. 31, 1984 THROUGH DEC. 31, 1987

	Financing periods			
	CY 1984	CY 1985	CY 1986	CY 1987
Covered services (at level recognized):				
Physicians' reasonable charges	$33.47	$38.44	$40.10	$44.46
Radiology and pathology	1.02	1.09	1.24	1.42
Outpatient hospital and other institutions	19.73	21.87	24.58	27.41
Home health agencies	0	0	0	0
Group practice prepayment plans	0.26	0.21	0.24	0.28
Independent lab	1.08	1.48	1.67	1.91
Total services	55.54	61.10	67.91	75.59
Cost-Sharing:				
Deductible	−2.26	−2.27	−2.27	−2.28
Coinsurance	−10.54	−11.54	−12.86	−14.36
Total benefits	42.74	47.28	52.78	58.97
Administrative expenses	1.83	2.05	2.09	2.18
Incurred expenditures	44.57	49.43	54.87	61.15
Value of interest	−5.40	−7.47	−7.42	−6.70
Contingency margin for projection error and to amortize the surplus or deficit	15.13	10.74	−6.65	−1.45
Monthly actuarial rate	54.30	52.70	40.80	53.00

TABLE 5.—PROJECTION FACTORS AND THE ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER ALTERNATIVE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DEC. 31, 1987

	This projection 12-month periods ending June 30—			Low cost projection 12-month periods ending June 30—			High cost projection 12-month periods ending June 30—		
	1986	1987	1988	1986	1987	1988	1986	1987	1988
Projection factors (in percent):[1]									
Physician services—fees:[2]									
Aged	0.1	5.1	5.1	−0.4	4.6	4.4	0.6	5.6	5.8
Disabled	0.1	5.1	5.1	−0.4	4.6	4.4	0.6	5.6	5.8
Physician services—Residual:[3]									
Aged	7.3	2.4	2.7	5.8	0.7	0.4	8.6	4.1	5.0
Disabled	8.7	4.5	4.7	4.7	−0.5	−0.3	12.7	9.5	9.7
Outpatient hospital services:									
Aged	22.3	16.2	16.9	17.3	11.2	6.9	27.3	25.2	26.9
Disabled	21.7	16.1	17.1	13.7	8.1	7.1	29.7	26.1	27.1
	As of Dec. 31—								
	1985	1986	1987	1985	1986	1987	1985	1986	1987
Actuarial status (in millions):									
Assets	$10,924	$8,715	$3,378	$10,924	$9,595	$6,586	$10,924	$7,694	(4)
Liabilities	3,237	3,660	4,116	2,949	3,285	3,610	3,526	4,043	4,544
Assets less liabilities	7,687	5,055	−737	7,975	6,410	2,976	7,398	3,651	(4)
Ratio of assets less liabilities to expenditures (in percent)[5]	26.3	16.5	−2.1	30.5	22.5	9.4	28.2	11.1	(4)

[1] All values are per enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] The trust fund will be depleted by Dec. 31, 1987 under this set of assumptions.
[5] Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

(Sections 1639(a)(1), (3), and (4); (e) and (f) of the Social Security Act; 42 U.S.C. 1395r(a) (1), (3), and (4); (e) and (f))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 22, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 26, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-22440 Filed 9-30-86; 4:26 pm]

BILLING CODE 4120-01-M

National Institutes of Health

Division of Research Resources; Meeting of the General Clinical Research Centers Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), November 20-21, 1986, Conference Room 10, Bldg 31, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting will be open to the public on November 21, from 1:30 p.m. to recess during which time there will be comments by the Director, DRR; an update on the GCRC Program; reports on the Clinical Associate Physician Program; the diffusion of the CLINFO System; possible new technologies for GCRCs; and clinical research data management. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 20 from 9:00 a.m. to recess and on November 21 from approximately 8:00 a.m. to 1:30 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the Committee members upon request. Dr. Michael A. Oxman, Acting Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B-09, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4390, will furnish program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: September 19, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-22380 Filed 10-1-86; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; Meeting of the Sucommittee on Animal Resources of the Animal Resources Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Subcommittee on Animal Resources, Animal Resources Review Committee, Division of Research Resources, on November 7, 1986, at 8:00 a.m., National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on November 7, 1986 from approximately 1:00 p.m. to approximately 3:00 p.m. for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 7,

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1986 from 8:00 a.m. to approximately 12:00 noon for the review, discussion, and evaluation of individual grant applications submitted to the Laboratory Animal Sciences Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. Carl E. Miller, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496-5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: September 19, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-22378 Filed 10-1-86; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; Meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), November 24-25, 1986, at 8:30 a.m., at the National Institutes of Health. The meeting will be held in conference room 9, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to approximately 12:00 p.m. November 24, to discuss policy matters relating to the Minority Biomedical Research Support Program (MBRSP). Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 24, from approximately 1:00 to 5:00 p.m. and from 8:30 a.m. to adjournment on November 25 for the review, discussion, and evaluation of individual grant applications submitted to the Minority Biomedical Research Support Program (MBRSP). These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B10, Bethesda, Maryland 20892, telephone (301) 496-5545, will provide a summary of the meeting and a roster of members upon request. Dr. Lawrence Alfred, Executive Secretary of the General Research Support Review Committee (GRSRC), Building 31 Room 5B11, Bethesda, Maryland 20892, telephone (301) 496-4390, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.375, Minority Biomedical Research Support Program, National Institutes of Health)

Dated: September 19, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-22381 Filed 10-1-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute

Cancer Biology-Immunology Contract Review Committee; Meeting Cancellation

Notice of the meeting of the Cancer Biology-Immunology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 17, 1986, published in the **Federal Register**, (51 FR 32848) is hereby cancelled because the number of contract proposals to be reviewed was less than anticipated.

For further Information, please contact Dr. Wilna A. Woods, Executive Secretary, National Cancer Institute, Westwood Building, Room 807, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7153).

Dated: September 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-22383 Filed 10-1-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting of the Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on October 22, 1986, at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the meeting of the Transplantation Biology and Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until adjournment. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A-32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496-5717, will provide summaries of the meetings and rosters of the committees members upon request.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transplanation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301) 496-7966, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: September 19, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-22377 Filed 10-1-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Subcommittee Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the following subcommittees of the Arthritis, Diabetes, and Digestive and Kidney Diseases Special Grants Review Committee (ADDK) of the National Institute of Diabetes and Digestive and Kidney Diseases.

These meetings will open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notices. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Carole Frank, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Subcommittee: ADDK-A
Executive Secretary: Dr. Tommy Broadwater, Westwood Building, Room 404, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-7531
Date of Meeting: November 14, 1986
Place of Meeting: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814
Open: November 14, 8 a.m.—9 a.m.
Agenda: Review of administrative details
Closed: November 14, 9 a.m. to adjournment
Closure Reason: To review grant applications

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Name of Subcommittee: ADDK-B
Executive Secretary: Dr. Michael K. May, Westwood Building, Room 419, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-7697
Date of Meeting: November 6-7, 1986
Place of Meeting: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814
Open: November 6, 7:30 p.m.—8:30 p.m.
Agenda: Review of administrative details
Closed: November 6, 8:30 p.m. to adjournment, November 7, 8:30 a.m. to adjournment
Closure Reason: To review grant applications

(Catalog of Federal Domestic Assistance Program No. 13.847, project grants in diabetes, endocrinology and metabolic research, National Institutes of Health)

Name of Subcommittee: ADDK-C
Executive Secretary: Ms. Tommie Sue Tralka, Westwood Building, Room 406, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-8830
Date of Meeting: November 13, 1986
Place of Meeting: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814
Open: November 13, 8 a.m.—9 a.m.
Agenda: Review of administrative details
Closed: November 13, 9 a.m. to adjournment
Closure Reason: To review grant applications

(Catalog of Federal Domestic Assistance Program No. 13.848, project grants in digestive diseases and nutrition research, National Institutes of Health)

Subcommittee Name: ADDK-D
Executive Secretary: Dr. William Elzinga, Westwood Building, Room 421, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-7546
Date of Meeting: November 17, 1986
Place of Meeting: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814
Open: November 17, 6:30 p.m.—7:30 p.m.
Agenda: Review of administrative details
Closed: November 17, 7:30 p.m. to adjournment
Closure Reason: To review grant applications

(Catalog of Federal Domestic Assistance Program No. 13.849, project grants in kidney diseases, urology and hematology research, National Institutes of Health)

Dated: September 19, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-22379 Filed 10-1-86; 8:45 am]

BILLING CODE 4140-01-M

Public Health Services

National Toxicology Program; Availability of Fourth Annual Report on Carcinogens; Call for Public Comments, Fifth Annual Report on Carcinogens

Background

The National Toxicology Program (NTP) hereby announces the availability of the *Fourth Annual Report on Carcinogens*, and requests comments on actions which the Program plans to take with regard to the *Fifth Annual Report on Carcinogens*. The report is a Congressionally-mandated listing of certain carcinogens and is prepared by the National Toxicology Program under delegation from the Secretary, Department of Health and Human Services. The pertinent provision of Pub. L. 93-622 requires an Annual Report which contains "a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed . . ." The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed, and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

All previous editions of the report and the proposed new entries for the Fifth Report have undergone a multiphased peer review process involving a variety of Federal research and regulatory agencies. All evidence of carcinogenicity of the proposed new entries has been peer reviewed by scientists of either the International Agency for Research on Cancer (IARC) or the Technical Review Subcommittee of the NTP Board of Scientific Counselors before the chemicals were considered for selection. This notice is being published to provide for appropriate public comment to supplement these selection and review processes.

Proposed Actions

1. The *Fourth Annual Report on Carcinogens* contains 148 entries, which

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are listed in Appendix A along with their Chemical Abstracts Service Registry Numbers (CAS) and references.[1] NTP is proposing adding to these entries the twenty-one substances in Appendix B (listed with their CAS numbers and references). The Program seeks public comment on this action, including information and data pertaining to these substances.

2. The Program is considering deleting methyl iodide from the Report. Methyl iodide was included in the Fourth Report because of its designation by the American Council of Governmental Industrial Hygienists, its use in the United States, and its classification by IARC as a "sufficient evidence" animal carcinogen. However, in January 1986, IARC reevaluated methyl iodide and lowered its classification to one of "limited evidence". Based on its review of the evidence, the Program now believes that there may not be sufficient evidence to merit the continued listing of this chemical; comments and the submission of additional data or information are invited.

3. As indicated in Appendix A, the Fourth and previous Reports list a number of processes for which there is an acceptable finding of carcinogenicity, but where no specific carcinogen has been identified. Public commentary on the Fourth Annual Report engendered a general reexamination of these listings. The Program now believes that certain of these processes should be deleted as separate entries because their hazards are likely to be specific to particular times and situations, and the specific exposures are likely to be quite variable. Nevertheless, because of continuing public health concerns, the Program plans to discuss these processes in the *Introduction* of the Fifth and future Reports. Two processes, boot and shoe manufacture and repair and furniture manufacture, are dealt with in this fashion in the Fourth Annual Report.

The additional processes and mixtures proposed for this action are:

- Certain combined chemotherapy for lymphomas
- Hematite underground mining
- Isopropyl alcohol manufacturing (strong-acid process)
- Manufacture of auramine
- Rubber industry (certain occupations)

Separate listings for three processes would be retained in the Fifth Annual Report since the carcinogens of these exposures are likely to vary little with time and place of use:

- Occupational exposure to soots, tars and mineral oils
- Nickel refining
- Coke oven emissions

The public is invited to comment on this action.

4. The Program is considering adding to the *Introduction* section of the Report a new table. In this table would be listed those substances formerly included in the Report which are either known carcinogens or could be reasonably anticipated to be carcinogens, but which, based on available data, do *not now* meet the use/production/exposure criteria as ". . . (carcinogens) to which a significant number of persons residing in the United States are exposed." For the Fifth Report, this new table would contain three entries: cycasin (CAS No. 014901-08-7), aramite (CAS No. 000140-57-8), and N,N-bis(2-chloroethyl)-2-naphthylamine (chlornaphzine) (CAS No. 000494-03-1). In subsequent Reports, this table (and all its former entries) will continue to be printed in the *Introduction* of the Report. Chemicals/substances may be added to this table as new data about use/production/exposure with reference to these chemicals becomes available and is reviewed by the peer review process of the Report. The Program seeks comment on this step, and specifically with regard to the three entries proposed for this table in this edition.

5. The Program seeks information about the use/production/exposure for two chemicals considered for selection for the Fifth Annual Report. The review committees agreed that these two chemicals were carcinogens, but could find no evidence for the possible continued exposure of U.S. citizens to these chemicals. These two chemicals: 4,4'-thiodianiline (CAS No. 00139-65-1) and 3-amino-9-ethylcarbazole hydrochloride (CAS No. 00132-32-1), will not be added to the Fifth Annual Report unless information about their existence as hazards can be provided. Public comment, data, and information about these chemicals is hereby requested.

Submission of Comments on the Fifth Annual Report

Comments on the actions proposed for the *Fifth Annual Report on Carcinogens* will be accepted for a period of 45 days, ending November 17, 1986. Comments should be sent to the National Toxicology Program Public Information Office, MD B2-04, P. O. Box 12233, Research Triangle Park, North Carolina 27709.

Availability of Fourth Annual Report on Carcinogens

Copies of Summary of the *Fourth Annual Report on Carcinogens* are sent to those on the NTP mailing list or may be obtained without charge while supplies last by contacting the National Toxicology Program, Public Information Office, MD B2-04, P. O. Box 12233, Research Triangle Park, North Carolina 27709.

Copies of the *Fourth Annual Report on Carcinogens* are available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 2261. Telephone: (703) 487-4560. There is a $46.95 charge for the document plus a $3.00 per order shipping and handling fee. Specify Report No. PB 85-134633.

Dated: September 29, 1986.

David P. Rall,

Director.

[FR Doc. 86-22382 Filed 10-1-86; 8:45 am]

BILLING CODE 4140-01-M

[1] In response to public comment on the *Fourth Annual Report on Carcinogens*, two industrial processes are no longer covered as separate listings, but instead are discussed in the *Introduction*. For the sake of simplicity, all entries are listed in Appendix A, regardless of their location in the report.

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise five notices describing systems of records maintained by the Geological Survey. Except as noted below, all changes being published are editorial in nature, and reflect organization, address, and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register**. The five notices being revised, which are published in their entirety below, are:

1. INTERIOR/USGS-7 (formerly EGS-7), Personal Property Accountability Records—Interior, GS-7 (previously published on January 7, 1982; 47 FR 861).
2. INTERIOR/USGS-11 (formerly EGS-11), Security—Interior, GS-11 (previously published on January 18, 1983; 48 FR 2213).
3. INTERIOR/USGS-15, Cartographic Information Customer Records—Interior, GS-15 (previously published on July 5, 1985; 50 FR 27695).
4. INTERIOR/USGS-18, Computer Services Users—Interior, GS-18 (previously published on July 5, 1985; 50 FR 27696).
5. INTERIOR-USGS-24 (formerly EGS-24), Employee Work Report Edit and Individual Employee Production Rates—Interior, GS-24 (previously published on June 23, 1983; 48 FR 28750).

In all five notices, the existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. Also, in all five notices the retention and disposal statements are amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective October 2, 1986. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

Dated: September 23, 1986.

INTERIOR/USGS-7

SYSTEM NAME:

Personal Property Accountability Records—Interior-GS-7.

SYSTEM LOCATION:

(1) Branch of Administrative Services, Geological Survey, National Center, Reston, Virginia 22092.

(2) Administrative offices in all or substantially all field locations. (For a listing of specific locations, contact the System Manager.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Survey employees who are accountable for government owned controlled property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of assignment of an internal identification number and acknowledgement of receipt by employees. Records of transfers to other accountable employees. Inventory records containing employee social security numbers and duty stations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 483(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to: (a) Maintain control over bureau owned and controlled property; (b) to maintain up-to-date inventory of the property and to record accountability for the property. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are both manual and computerized.

RETRIEVABILITY:

By employee social security number.

SAFEGUARDS:

Access by authorized employees only.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 102-02.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Administrative Services, Geological Survey, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual employees.

INTERIOR/USGS

SYSTEM NAME:

Security—Interior, GS-11.

SYSTEM LOCATION:

(1) Office of the Chief Geologist, Geologic Division, Reston, Virginia 22092, (2) Central and Western Regional Offices of the Geologic Division. (Addresses may be obtained from the System Manager.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Geologic Division employees who have been granted security clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of Security Clearance, for Division Personnel; contains name, title, organization, office, location, social security number, and place and date of birth and type of security clearance of person being granted access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10501.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to keep current records on security clearances in the Geologic Division. Disclosure outside the Department of the Interior may be made: (1) To the Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a

statute, regulation, rule, order or license, must meet the content requirements of foreign agencies responsible for

statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual systems maintained in locked files. Automated system maintained in dBASE III file.

RETRIEVABILITY:

Indexed by individual name.

SAFEGUARDS:

Maintained with security meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 306–16.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Geologic Division, U.S. Geological Survey, National Center, Mail Stop 912, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

INTERIOR/USGS–15

SYSTEM NAME:

Cartographic Information Customer Records-Interior, GS–15.

SYSTEM LOCATION:

(1) National Cartographic Information Center (NCIC), National Mapping Division, Geological Survey, Reston, VA 22092. (2) NCIC Field Offices (for specific locations contact the System Manager.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested Cartographic Information directly from, or whose requests have been forwarded to the National Cartographic Information Center or its sponsored field centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, address, customer's inquiry, response to inquiry, appropriate accounting entries, and information on debts owed the Bureau as a result of customer orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Executive Order 3206. (2) OMB Circular A–16. (3) 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is for reference by Survey and Survey contract employees in processing customer inquiries, orders, and complaints. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license; to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders, correspondence may be recorded on microfilm and key information recorded on magnetic disk or on magnetic tape in some instances.

RETRIEVABILITY:

Stored by account number, indexed by name and zip code.

SAFEGUARDS:

Maintained in GS areas occupied by GS personnel during working hours with building locked and/or guarded during off hours.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 102–01.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, National Cartographic Information Center (NCIC), National Mapping Division, GS, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

Same as above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Customers on whom record is maintained and GS or GS contract information researchers.

INTERIOR/USGS–16

SYSTEM NAME:

Computer Services Users—Interior, GS–16.

SYSTEM LOCATION:

U.S. Geological Survey, Information Systems Division, National Center, Mail Stop 801, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of Computer Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, computer user number, work location, and information on charges for services used as a result of computer services billed to users or customers

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is: (a) To bill computer users; (b) to mail information to computer users. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk.

RETRIEVABILITY:

By individual user's name.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 102-01.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Division, U.S. Geological Survey, Mail Stop 801, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual users of computer services.

INTERIOR/USGS–24

SYSTEM NAME:

Employee Work Report Edit and Individual Employee Production Rates—Interior, GS–24.

SYSTEM LOCATION:

(1) U.S. Geological Survey, National Mapping Division, National Center, Stop 511, 12201 Sunrise Valley Drive, Reston, Virginia 22092. (2) Eastern Mapping Center, National Mapping Division, National Center, Stop 567, 12201 Sunrise Valley Drive, Reston, Virginia 22092. (3) Mid-Continent Mapping Center, National Mapping Division, USGS Building, 1400 Independence Road, Rolla, Missouri 65401. (4) Rocky Mountain Mapping Center, National Mapping Division, Box 25046, Stop 510, Denver, Colorado 80225. (5) Western Mapping Center, National Mapping Division, 345 Middlefield Road, Menlo Park, California 94025. (6) Office of Plans and Production Control, National Center, Stop 580, 12201 Sunrise Valley Drive, Reston, Virginia 22092. (7) EROS Data Center, National Mapping Division, Sioux Falls, South Dakota 57198.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Production employees in Mapping Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, social security number, cost and production rates, hours, and miles by individual production employee in each of the offices listed above, as well as GS professionals (geologists, hydrologists, etc.) who conducted research and investigations for which results are published in GS reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 3010, 43 U.S.C. 31, 1467.

Management, 800 Truxtun Avenue, [illegible]

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is for analysis of cost and production rate for individual employees and for units of National Mapping Division. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies, responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefits; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on punched cards, magtape, and disc.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access restricted to authorized persons only from locked storage.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 102–01.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Chief, Branch of Management Systems and Reports, Office of Program Management, National Mapping Division, National Center, Stop 511, 12201 Sunrise Valley Drive, Reston, Virginia 22092. (2) Chief, Program Management Branch, Eastern Mapping Center, National Mapping Division, National Center, Stop 567, 12201 Sunrise Valley Drive, Reston, Virginia 22092. (3) Chief, Branch of Program Management, Mid-Continent Mapping Center, National Mapping Division, USGS Building, 1400 Independence Road, Rolla, Missouri 65401. (4) Chief, Branch of Plans and Production, Rocky Mountain Mapping Center, National Mapping Division, Box 25046, Stop 510, Denver, Colorado 80225. (5) Chief, Branch of Plans and Production, Western Mapping Center, National Mapping Division, 345 Middlefield Road, Menlo Park, California 94025. (6) Chief, Office of Plans and Production Control, National Center, Stop 560, 12201 Sunrise Valley Drive, Reston, Virginia 22092. (7) Systems Analyst, Data Management, EROS Data Center, National Mapping Division, Sioux Falls, South Dakota 57198.

NOTIFICATION PROCEDURE:

A request for notification shall be addressed to the appropriate System Manager. See 43 CFR 2.60 for submission requirements.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the appropriate System Manager. See 43 CFR 2.61 for submission requirements.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the appropriate System Manager. See 43 CFR 2.71 for submission requirements.

RECORD SOURCE CATEGORIES:

Data from work report prepared by individuals.

[FR Doc. 86–22262 Filed 10–1–86; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Indian Affairs

Information Collection Submitted for Review

September 24, 1986

The proposal for the collection of information listed has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirements related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made to the Office of Management and Budget Interior Desk Officer at (202) 395–7340.

Title: Higher Education Annual Report, 25 U.S.C. 13, and 25 CFR Part 40.

Abstract: The Office of Indian Education Programs needs and uses this information for program integrity while performing its mission of educating Native American Indian College students.

Frequency: Annually

Description of Respondents: Indian/Alaskan Native students applying for admission to postsecondary schools.

Annual Response: 1280

Annual Burden Hours: 5,120 Hours

Bureau Clearance Officer: Cathie Martin (202) 343–3577.

Henrietta Whiteman,

Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs).

[FR Doc. 86–22260 Filed 10–1–86; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CA–010–06–5105–09; Project Number YBFK]

Public Hearings for San Joaquin Valley Pipeline Project, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearings for the San Joaquin Valley pipeline draft environmental impact report/environmental impact statement (EIR/EIS).

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 40 CFR Part 1503 that the State Lands Commission, State of California, and the Bureau of Land Management, Department of the Interior, will be holding public hearings on Thursday, November 6, and on Monday, November 17, 1986 to receive comments on the Draft Environmental Impact Statement for the San Joaquin Valley Pipeline Project.

SUPPLEMENTARY INFORMATION: The public hearings will be on the dates and at the places listed below from 2:00 p.m. to 4:30 p.m. and from 7:00 p.m. to conclusion of comments. On November 6, the hearing will be held in the Kern County Library, Southwest Branch, 8301 Ming Avenue, Bakersfield, California; and on November 17 in the Board of Supervisors Hearing Room, Contra Costa County Administrative Building, 651 Pine Street, Martinez, California.

FOR FURTHER INFORMATION CONTACT: H. Edward Lynch, Jr., Bureau of Land Management, 800 Truxtun Avenue, Bakersfield, California 93301, (805) 861–4191; or John B. Lien, State Lands Commission, 1807 13th Street, Sacramento, California 95814, (916) 322–7805.

Dated: September 25, 1986.

Robert D. Rhoiner, Jr.,

District Manager.

[FR Doc. 86–22293 Filed 10–1–86; 8:45 am]

BILLING CODE 4310–40–M

[AZ–940–06–4220–10; A–21384]

Notice of Conveyance of Public Lands; Arizona

September 24, 1986.

In an exchange of lands made under the provisions of the General Exchange Act of March 20, 1922 (42 Stat. 465), as amended by the Act of February 28, 1925 (43 Stat. 1090), and the Federal Land Policy and Management Act of October 21, 1976 (Pub. L. 94–579; 90 Stat. 2743), the following lands have been conveyed to the United States without the mineral estate:

Gila and Salt River Meridian, Arizona

T. 13 N., R. 12 E.,
Sec. 5, lots 3 and 4, S½NW¼, SE¼
T. 14 N., R. 9 E.,
Sec. 21, lot 1, NE¼, NW¼, S½NW¼, SW¼.
T. 14 N., R. 12 E.,
Sec. 29, lots N½, SW¼;
Sec. 33, NE¼.

The areas described aggregate 1,606.30 acres in Coconino County, according to the official plats of surveys of said land, on file in the Bureau of Land Management.

The real estate value of the selected National Forest Land is $2,131,000 and the real estate value of the offered land is $2,110,000. The loss of Forest Timber Sales because of the conveyance of the selected lands was given an estimated value of $38,700. A cash payment of $59,700 was deposited with the United States Forest Service to equalize values.

Upon acceptance of title to the lands, they became part of the Coconino National Forest and are subject to all the laws, rules, and regulations applicable thereto.

Inquiries concerning the lands should be addressed to the Forest Supervisor, Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, Arizona 86001.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–22252 Filed 10–1–86; 8:45 am]

BILLING CODE 4310–32–M

[R–4761]

California; Termination of Proposed Withdrawal and Reservation of Land

September 24, 1986.

Notice of Forest Service, Department of Agriculture, application R–4761 for withdrawal and reservation of the following described land for Soldier Meadow and Granite Creek recreation sites from location and entry under the mining laws (30 U.S.C., Ch. 2) for the reservation and protection of established campgrounds from surface disturbance was published as FR Doc 73–1513 on pages 2472 and 2473 of the issue of January 26, 1973. The applicant has withdrawn its application in its entirety.

Sierra National Forest

Granite Creek Recreation Area

Mount Diablo Meridian

T. 4 S., R. 25 E.,
Sec. 31, N½NE¼SE¼SE¼, E½NE¼SE¼, E¼W½NE¼SE¼, W½SE¼NE¼, and W½E½SE¼NE¼ (unsurveyed).
Sec. 32, W½SW¼SW¼, W½E½S W¼SW¼, SW¼NW¼SW¼, W½SE¼NW¼SW¼, and W½NW¼N W¼SW¼ (unsurveyed).

Soldier Meadow Recreation Area

T. 4 S., R. 25 E.,
Sec. 32, S½SE¼NE¼, S½N½SE¼NE¼, E½E½SE¼SW¼NE¼ and E½SE¼N E¼SW¼NE¼ (unsurveyed).

The area described aggregates 148.75 acres in Madera County, California. Therefore, pursuant to the regulations contained in 43 CFR 2310.2–1, these lands shall immediately be relieved of the segregative effect of the above mentioned application.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 86–22256 Filed 10–1–86; 8:45 am]

BILLING CODE 4310–40–M

[UT–060–06–4212–14; U–58713]

Realty Action; Sale of Public land in San Juan County, UT

September 25, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, U–58713, sale of public land in San Juan County, Utah.

SUMMARY: The following public lands have been examined, and through the development of land-use planning decisions based upon public input, resource considerations, regulations, and Bureau policies, have been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at the appraised fair market value of $80,000:

Salt Lake Meridian, Utah

T. 36 S., R. 22 E.,
Section 28: SE¼ NE¼, E½ SE¼.
The described land aggregates 120 acres.

The land is being offered as a direct sale to the Navajo Tribe in accordance with 43 CFR 2711.3–3(a)(5). The sale of this land will result in the termination of several occupancy trespasses. The lands will not be offered for sale until at least sixty (60) days after publication of this notice.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

The publication of this notice in the **Federal Register** constitutes notice to the grazing permittees, the White Mesa Ute Cattle Company and Bar MK Ranches, c/o Lynn Patterson, that their allotments and privileges as affected by this sale will be cancelled effective October 15, 1988.

The Terms and Conditions Applicable to the Sale Are:

1. All minerals, and right of ingress and egress thereto, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

2. The sale of the lands will be subject to valid existing rights. These include, but are not limited to, Federal oil and gas leases U–23141 and U–49864 and a R.S.2477 road belonging to San Juan County authorized under right-of-way U–53767.

3. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

4. The Navajo Tribe agrees that they will take the real estate subject to the existing grazing use of the White Mesa Ute Cattle Company, holder of grazing authorization No. 6836 and Bar MK Ranches, c/o Lynn Patterson, holder of grazing authorization No. 6831. The rights of the White Mesa Ute Cattle Company and Bar MK Ranches to graze domestic livestock on the real estate according to the conditions and terms of their respective authorizations shall

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cease on October 15, 1986. The Navajo Tribe is entitled to receive annual grazing fees from both grazing lessees in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

Sale Procedures:

The Navajo Tribe, the designated bidder, will be required to submit payment of at least 20 percent ($12,000) of the fair market value by certified check, cashier's check, or money order to the Bureau of Land Management, P.O. Box 970, Moab, Utah 84535 within 45 days of this notice date. The balance of the appraised fair market value ($48,000) will be due within 180 days, payable in the same form at the same location. Failure to submit either payment within the time allowed will result in cancellation of the sale offering and forfeiture of deposited monies.

DATES: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this really action. In the absence of any objections, this really action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the land and terms and conditions of sale is available from the Moab District Office, P.O. Box 970, Moab, Utah 84532, or the San Juan Resource Area Office, P.O. Box 7, Monticello, Utah 84535.

Gene Nodine,

District Manager.

[FR Doc. 86-22259 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-DQ-M

[F-14838-A]

Alaska Native Claims Selection; Bethel Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Bethel Native Corporation for approximately 0.06 acre. The lands involved are in the vicinity of Bethel, Alaska, and located within U.S. Survey No. 3230B, Block 18, lot 5.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Tundra Drums. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 3, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Steven L. Willis,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-22343 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-JA-M

Arizona Wilderness Residuals Environmental Impact Statements

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare two Environmental Impact Statements (EISs) for 37 Wilderness Study Areas (WSAs) in Arizona, California and New Mexico. These WSAs are located in Greenlee, La Paz, Maricopa, Mohave, Yavapai and Yuma Counties, Arizona; Imperial, Riverside, and San Bernardino Counties, California; and Grant County, New Mexico.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act of 1976 (FLPMA) requires that the Secretary of the Interior review those lands with roadless areas of 5,000 acres or more and roadless islands of public lands having wilderness characteristics, and determine the suitability or nonsuitability of each such area for wilderness preservation. The Bureau of Land Management, Arizona, will prepare two EISs for 37 WSAs. These WSAs are the only remaining WSAs under jurisdiction of the Bureau of Land Management, Arizona, that have not undergone the study process. The draft statements will be made available to the public for review and comment in the Fall of 1987.

The environmental impact statements will analyze the suitability of the areas for wilderness designation. The anticipated issues to be analyzed are minerals, crucial habitats, cultural resources and land uses. The EISs will be prepared by an interdisciplinary team composed of wilderness, recreation, minerals, cultural, land use, wildlife and botanical specialists.

Initially public meetings will be held to gather information and help clarify the issues and concerns. Those unable to attend the public meetings are invited to submit written comments. The scope of the EISs will be determined following receipt of this information. After publication of the draft EISs, public hearings will be held.

The public meetings are scheduled as follows:

Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, AR.	Oct. 29, 1986, 7-9 p.m.
Chamber of Commerce, Meeting Room, 333 W. Andy Devine Avenue, Kingman, AR.	Oct. 30, 1986, 7-9 p.m.
Suverkrup Junior High School, Multipurpose Room, 1590 Avenue C, Yuma, AR.	Oct. 30, 1986, 7-9 p.m.
Wallace School Gymnasium (Dome), 1659 Navaho, Parker, AR.	Nov. 3, 1986, 7-9 p.m.
Ruth Brown School, 241 N. 7th, Blythe, CA.	Nov. 3, 1986, 7-9 p.m.
Smoketree Elementary School, Multipurpose Room, 2395 Smoketree Avenue, Lake Havasu City, AZ.	Nov. 5, 1986, 7-9 p.m.

For information concerning the wilderness EISs, contact Bill Carter, Team Leader, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, AZ 85027, Telephone (602) 863-4464 or Hal Hallett, Assistant Team Leader, Yuma District Office, P.O. Box 2390, Yuma, Arizona, 85364-0697, Telephone (602) 726-6300.

Dated: September 25, 1986.

Henri R. Bisson,

Associate District Manager.

[FR Doc. 86-22255 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-32-M

[ORO-935-06-4410-06; GP 6-348]

Environmental Impact Statement; Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the proposed Baker Resource Management Plan and final environmental impact statement for the Baker Resource Area, Vale District, Oregon; notice of proposed area of Critical Environmental Concern (ACEC) designation.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 1600, the Bureau of Land Management has prepared a proposed Resource Management Plan, known as the Baker RMP, and a final Environmental Impact Statement covering 429,754 acres in 8 counties in northeast Oregon and portions of two counties in southern Washington. Note that this final EIS is an abbreviated document. The draft and final EIS's collectively provide the complete description and analyses of all alternatives that were considered.

The draft Baker RMP/EIS was made available to members of the public in March 1985. Comments on the draft were considered in preparing the final EIS. Any person who participated in the planning process and has an interest which is or may be adversely affected by approval of the Baker RMP may protest. A protest may raise only those issues which were submitted for the record during the planning process.

DATES AND ADDRESSES: Comments for the District Manager's consideration in the development of the decisions should be submitted to the District Manager by November 10, 1986. Copies of the Proposed Plan and Final EIS are available at Baker Resource Area Office, 1550 Dewey, Baker, Oregon 97814 (503) 523-6391, Vale District Office, BLM, 100 East Oregon, Vale, Oregon 97918 (503) 473-3144, Public Affairs BLM, Oregon State Office, 825 NE Multnomah, Portland, Oregon 97208 (503) 231-6277, Public Affairs BLM, Interior Building, 18th and C Streets, Washington, DC 20240 (202) 343-6433. To be timely, protests should be filed with the Director (202) Room 906 Premier Building, Bureau of Land Management, 1800 C Street NW., U.S. Department of the Interior, Washington, DC 20240 before November 10, 1986. The procedures for filing a protest are in the Proposed Plan and in 43 CFR 1610.5-2.

SUPPLEMENTARY INFORMATION: The final EIS summarizes four alternative plans for managing natural resources in the Baker Planning Area over the next 10 years. One alternative has been identified as the proposed Resource Management Plan for the Baker Planning Area.

The alternative plans included in the EIS are designed to resolve the planning issues identified earlier through public involvement. The general topics covered are livestock grazing management, riparian management, wildlife habitat management, land tenure and access, forestry, minerals management, recreation and the management of special areas.

The emphasis of the proposed plan for each of these resource programs are as follows:

1. Forage available for livestock grazing on (section 15) lands in the Blue Mountain and Grande Ronde planning units would remain at 4,258 Animal Unit Months (AUMs).

2. Riparian zones on section 15 lands would be prioritized for management based on their need and potential. Riparian zone management would emphasize cooperative efforts with adjacent federal, state and private adjacent land owners.

3. All forage on 3700 acres within Cooperative Wildlife Management Areas (approximately 350 AUMs) would be allocated to deer and elk on Section 15 areas.

4. A total of 16,307 acres of public lands would be available for disposal pending site-specific study.

5. Nearly all public lands would remain open for mineral exploration and development. A total of 385 acres (less than 1% of the BLM managed surface) would be recommended for withdrawal from mineral entry to protect the Oregon Trail and Keating Riparian Research Natural Area. In addition, 18,955 acres (2%) would be open to oil and gas leasing with a "no surface occupancy" stipulation. A seasonal oil and gas leasing restriction would apply to 201,720 acres (21.5%) due to wildlife habitat considerations.

6. The 10-year sustainable harvest level for forest products would be approximately 27 million board feet from the available commercial forest land base of 25,353 acres.

7. Existing recreation facilities would be maintained or improved, as funding allows, to mitigate damage and sanitary problems associated with increased visitor use. The natural character of BLM lands along the Grande Ronde River, the Snake River and Joseph Creek will be protected pending the resolution of the wild and scenic issue.

8. Approximately 139,160 acres of public land would be limited or closed to off-road vehicle use.

9. Nine Special Management Areas (SMA) would be designated as Areas of Critical Environmental Concern (ACEC) including one Outstanding Natural Area (ONA) and one Research Natural Area (RNA). Unique values within other possible SMAs would be maintained under existing authorities. They are: Oregon Trail (ACEC) 1,495 acres, Homestead (ACEC) 8,537 acres, Grande Ronde River (ACEC) 9,715 acres, Joseph Creek (ACEC/ONA) 3,360 acres, Keating Valley Riparian (ACEC/RNA) 2,173 acres, Powder River Canyon (ACEC) 5,680 acres, Unity Reservoir Bald Eagle Nest Habitat (ACEC) 200 acres, Hunt Mountain (ACEC) 2,230 acres and Sheep Mountain (ACEC) 5,398 acres.

FOR FURTHER INFORMATION CONTACT: Sam Montgomery, Team Leader, Bureau of Land Management, 1550 Dewey, Baker, Oregon 97814, telephone (503) 523-6391.

David Ledbetter,

Acting District Manager.

[FR Doc. 86-22304 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-33-M

[WY-060-06-4322-12]

Casper District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District grazing advisory board meeting.

SUMMARY: The Casper District Grazing Advisory Board will meet at 10:00 a.m. on November 6, 1986. The meeting will convene at the BLM Casper District Office, 951 North Poplar, Casper, Wyoming. The agenda will include: (1) The election of a board chairman and vice-chairman, (2) new member orientation, (3) a follow-up report to the Board from the last meeting of November, 1985 and (4) a discussion on range improvement projects and Allotment Management Plans.

DATE: November 6, 1986, 10:00 a.m.

ADDRESS: To request summary minutes or time on the agenda, contact: Bureau of Land Management, Casper District Office, 951 North Poplar, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with Section 3, Executive Order 12548 of February 14, 1986. The meeting is open to the public. Time will be available for public statements to the Board. Interested persons may testify or submit written statements for Board consideration. Anyone wishing to make an oral statement should notify the district manager by November 6, 1986. Depending on the number of persons wishing to make statements, a per person time limit may be imposed by the district manager.

Summary minutes of the Board meeting will be maintained in the district office and will be available for public inspection within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bruce Daughton, (307) 261-5575.

Dated: September 25, 1986.

James W. Monroe,

District Manager.

[FR Doc. 86-22334 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-22-M

Field Trip; Medford District Advisory Council

Notice is hereby given in accordance with Pub. L. 92-463 that a field trip of the Bureau of Land Management, Medford District Advisory Council will be held October 29, 1986.

On October 29, the field trip will begin at 8:00 a.m., in the parking lot of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The purpose of the field trip is to visit Forestry Intensified Research (FIR) sites on the district. FIR researchers will explain program results of the past several years.

The field trip of the advisory council is open to the public; however, transportation needs must be met by those members of the public who choose to take part in the field trip. Persons wishing to accompany the Advisory Council should be prepared for inclement weather and hikes to some sites on steep slopes may be arduous. Anyone wishing to attend the field trip must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by close of business October 27, 1986. Depending on the number of persons wishing to attend, a limit may be established by the District Manager.

Dated: September 25, 1986.

David A. Jones,

District Manager.

[FR Doc. 86-22336 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-33-M

[WO-150-06-4830-11]

National Public Lands Advisory Council; Call For Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for National Public Lands advisory council.

SUMMARY: The purpose of this notice is to call for nominations for seven memberships on the Bureau of Land Management's National Public Lands Advisory Council.

The Council consists of 21 members. Under the staggered-term arrangement instituted by the Secretary of the Interior in 1981, the terms of seven members on the Council will expire on December 31, 1986. Current Council members may be reappointed or new members may be appointed. Terms of appointment will be for 3 years, beginning January 1, 1987, and expiring December 31, 1989.

Nominees for membership should be well qualified through education, training and experience to give informed and objective advice concerning land use and resource planning for the public lands.

DATE: Nominations should be received by the Bureau of Land Management by October 31, 1986.

ADDRESS: Persons wishing to nominate individuals to serve on the Council should send biographical data that includes name, address, profession, and other relevant information about the candidate's qualifications to: Director (150), Bureau of Land Management, Room 5558 MIB, Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The function of the Council is to advise the Secretary of the Interior, through the Director, Bureau of Land Management, on policies and programs of a national scope related to the resources and uses of public lands under the jurisdiction of the Bureau of Land Management.

The Council is expected to meet three times a year. Additional meetings may be called by the Director in connection with special needs for advice. Members will serve without salary, but will be reimbursed for travel and per diem expense rates prevailing for Government employees.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Bureau of Land Management (150), Room 5558 MIB, Department of the Interior, Washington, DC 20240. Telephone: (202) 343-2054.

David C. O'Neal,

Acting Director.

September 29, 1986.

[FR Doc. 86-22362 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-84-M

[CO-942-06-4520-12]

Colorado; Filing of Plats of Survey

September 18, 1986.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., September 18, 1986.

The supplemental plat prepared to create new lots 183, 184, and 185 in section 8, T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted August 20, 1986.

This supplemental plat was prepared to meet certain administrative needs of this Bureau.

The supplemental plat, creating new lots and areas in the NE¼NE¼ of sec. 19 and in the N½NW¼ of sec. 20, T. 5 S., R. 78 W., Sixth Principal Meridian, Colorado, was accepted August 29, 1986.

This supplemental plat was prepared to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the south boundary and subdivisional lines, T. 10 S., R. 101 W., Sixth Principal Meridian, Colorado, Group No. 808, was accepted September 2, 1986.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the subdivision of certain sections, T. 1 N., R. 2 W., Ute Meridian, Colorado, Group No. 808, was accepted September 2, 1986.

The plat representing the dependent resurvey of a portion of the south boundary, portions of the east boundary, subdivisional lines, and the subdivision of certain sections; and the survey of the subdivision of certain sections, T. 2 N., R. 2 W., Ute Meridian, Colorado, Group No. 808, was accepted September 2, 1986.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

The plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines; the survey of the subdivision of certain sections and the east boundary, Pinon Canyon Maneuver Site, T. 28 S., R. 55 W., Sixth Principal Meridian, Colorado, Group No. 802, was accepted August 21, 1986.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines; the survey of the subdivision of certain sections and a portion of the east boundary, Pinon Canyon Maneuver Site, T. 28 S., R. 56 W., Sixth Principal Meridian, Colorado, Group No. 802, was accepted August 21, 1986.

These surveys were executed to meet certain administrative needs of the U.S. Corp of Engineers.

The protraction diagrams of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., November 3, 1986.

Protraction Diagram No. 45, prepared to delineate the remaining unsurveyed public lands in T. 6 S., R. 78 W., Sixth Principal Meridian, Colorado, was accepted August 20, 1986.

Protraction Diagram No. 46, prepared to delineate the remaining unsurveyed public lands in T. 6 S., R. 79 W., Sixth Principal Meridian, Colorado, was accepted August 20, 1986.

These diagrams were prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 86-22342 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-JB-M

Serial No.	Legal description	Acreage	Appraised value
Brown County:			
W-86129	T. 25 N., R. 21 W., 6th P.M., Sec. 1: S½SE¼, Sec. 2: S½SW¼.	160.00	$80,000.00
W-86130	T. 25 N., R. 21 W., 6th P.M., Sec. 9: W½NW¼.	80.00	3,600.00
W-86131	T. 27 N., R. 21 W., 6th P.M., Sec. 22: NW¼SE¼.	40.00	2,200.00
W-86133	T. 25 N., R. 22 W., 6th P.M., Sec. 1: SW¼SW¼.	40.00	2,000.00
W-86134	T. 25 N., R. 22 W., 6th P.M., Sec. 30: NE¼SW¼.	40.00	2,480.00
W-86135	T. 26 N., R. 22 W., 6th P.M., Sec. 5: NW¼SE¼.	40.00	2,000.00
W-86136	T. 25 N., R. 23 W., 6th P.M., Sec. 21: E½SE¼, Sec. 22: S½SW¼.	160.00	8,000.00
W-86138	T. 31 N., R. 24 W., 6th P.M., Sec. 4: SW¼SE¼.	40.00	2,480.00
W-86139	T. 31 N., R. 26 W., 6th P.M., Sec. 14: SW¼SW¼.	40.00	2,000.00
Cherry County:			
W-86162-A	T. 33 N., R. 29 W., 6th P.M., Sec. 3: NE¼SW¼.	40.00	2,200.00
W-86163	T. 25 N., R. 30 W., 6th P.M., Sec. 11: N½NE¼, Sec. 12: W½NW¼.	160.00	8,000.00
W-86167	T. 29 N., R. 34 W., 6th P.M., Sec. 22: SE¼NW¼, NE¼SW¼.	80.00	3,600.00
W-86168	T. 33 N., R. 37 W., 6th P.M., Sec. 13: SE¼SW¼.	40.00	2,000.00
W-86171	T. 36 N., R. 29 W., 6th P.M., Sec. 6: Lot 7.	39.24	2,160.00
Holt County:			
W-86107	T. 28 N., R. 14 W., 6th P.M., Sec. 24: SE¼SE¼.	40.00	2,000.00
W-86108	T. 33 N., R. 14 W., 6th P.M., Sec. 22: NE¼NE¼.	40.00	2,000.00
W-86109	T. 28 N., R. 18 W., 6th P.M., Sec. 19: Lot 3.	22.50	900.00
Sheridan County:			
W-86236	T. 28 N., R. 44 W., 6th P.M., Sec. 13: NE¼SW¼.	40.00	2,800.00
W-86237	T. 35 N., R. 44 W., 6th P.M., Sec. 24: SW¼SE¼.	40.00	2,400.00
W-86238	T. 33 N., R. 45 W., 6th P.M., Sec. 20: SE¼SW¼.	40.00	2,000.00

[WY-060-06-4212-14]

Wyoming; Land Sale Appraisal Update for Lands in Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Land sale appraisal update for lands in Brown, Cherry, Holt, and Sheridan Counties, Nebraska.

SUMMARY: The Bureau of Land Management (BLM) has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable laws.

These parcels are continuing to be reoffered for sale under competitive procedures as per Federal Register Notices which appeared as follows:

Brown and Holt Counties: 49 FR 2566-2568 incl. (January 20, 1984), 49 FR 4043 (February 1, 1984)

Cherry County: 49 FR 42799-42802 incl. (October 24, 1984), 49 FR 44814 (November 9, 1984)

Sheridan County: 50 FR 36497-36498 incl. (September 6, 1985)

The planning document, environmental assessment/land report, and memorandums and letters of Federal, state, and local contacts concerning the sale are available for review at the Bureau of Land Management, Newcastle Resource Area Office. All bids and requests for information should be sent to BLM, Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701 (phone (307) 746-4453).

Dated: September 26, 1986.

James W. Monroe,

District Manager.

[FR Doc. 86-22338 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-22-M

[WY-060-86-4212-14]

Wyoming; Rescheduled Land Sale and Appraisal Update for Lands in Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Reschedule of date appraisal update for land parcels (W-86114 through W-86122 incl., and W-86124 through W-86126 incl.) in Blaine County, Nebraska.

SUMMARY: The Bureau of Land Management (BLM) has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 USC 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable laws.

These parcels will be offered for sale under the procedures as per Federal Register Notices which appeared as follows:

49 FR 2541-2546 incl. (January 20, 1984)

49 FR 4043 (February 1, 1984)

49 FR 7156 (February 27, 1984)

The sale date of March 15, 1984 was postponed [49 FR 9624 (March 14, 1984)] due to a protest and subsequent appeal resolution. This sale date has been rescheduled for Wednesday, November 26, 1986. All affected and interested parties will be contacted.

The planning document, environmental assessment/land report, and memorandums and letters of Federal, state, and local contacts concerning the sale are available for review at the Bureau of Land Management, Newcastle Resource Area Office. All bids and requests for information should be sent to BLM, Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701 (phone (307) 746-4453).

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Serial No.	Legal description	Acreage	Appraised value
Blaine County:			
W-86114	T. 22 N., R. 21 W., 6th P.M., Sec. 2: Lot 3.	40.16	$2,200.00
W-86115	T. 21 N., R. 22 W., 6th P.M., Sec. 13: NE¼SE¼.	40.00	1,800.00
W-86116	T. 23 N., R. 22 W., 6th P.M., Sec. 19: S½SE¼.	80.00	4,800.00
W-86117	T. 23 N., R. 22 W., 6th P.M., Sec. 30: Lot 2, SE¼NW¼.	76.80	3,800.00
W-86118	T. 23 N., R. 22 W., 6th P.M., Sec. 34: SE¼NW¼.	40.00	2,400.00
W-86119	T. 24 N., R. 22 W., 6th P.M., Sec. 25: SE¼SE¼.	40.00	2,200.00
W-86120	T. 24 N., R. 22 W., 6th P.M., Sec. 29: NW¼SW¼.	40.00	2,000.00
W-86121	T. 21 N., R. 23 W., 6th P.M., Sec. 6: Lot 5, SE¼NW¼.	76.57	5,100.00
W-86122	T. 23 N., R. 23 W., 6th P.M., Sec. 23: S½SW¼.	80.00	4,800.00
W-86124	T. 24 N., R. 23 W., 6th P.M., Sec. 27: SE¼NE¼.	40.00	1,800.00
W-86125	T. 23 N., R. 25 W., 6th P.M., Sec. 5: S½NW¼.	80.00	4,000.00
W-86126	T. 24 N., R. 25 W., 6th P.M., Sec. 32: NW¼SW¼.	40.00	2,000.00

Dated: September 26, 1986.

James W. Monroe,

District Manager.

[FR Doc. 86-22337 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-22-M

Geological Survey

Information Collection Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau Clearance Officer and the Office of Management and Budget, Washington DC 20503, Interior Desk Officer, telephone: (202) 395-7340.

Title: Water Data Sources Directory Registration

Abstract: The collection is required to provide a Water Data Sources Directory data base for the coordination of water-data acquisition activities in compliance with OMB Circular A-67. It is used within all governmental, academic, and private levels of the water-data community for national or regional network design and operation and for water resources and environmental management planning. In addition, the data base is required for performing the National Water Data Exchange Referral services for water data provided by the 76 Assistance Centers.

Bureau Form Number: 9-2002-1 through 9-2002-7

Frequency: On occasion

Description of Respondents: State, County, River Basin, Municipality, Local Government, Consultant

Annual Responses: 400

Annual Burden Hours: 180

Bureau Clearance Officer: Geraldine A. Wilson (703) 648-7309

Dated: July 24, 1986.

Philip Cohen,

Chief Hydrologist.

[FR Doc. 86-22329 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-31-M

Information Collection Submitted for OMB Review

The proposal for the Collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau Clearance Officer and the Office of Management and Budget, Washington DC 20503, Interior Desk Officer, telephone: (202) 395-7340.

Title: Inventory of Hydrologic Data

Abstract: The collection is required to provide a data base for coordination of water-data acquisition activities in compliance with OMB Circular A-67. It is used within all governmental, academic, and private levels of the water-data community for national or regional network design and operation and for water resources and environmental management planning.

Bureau Form Number: 9-1981-1 through 9-1981-9A

Frequency: On occasion

Description of Respondents: Federal, State, County, River Basin, Interstate, Municipality, Local Government

Annual Responses: 4,300

Annual Burden Hours: 1,376

Bureau Clearance Officer: Geraldine A. Wilson (703) 648-7309

July 24, 1986.

Philip Cohen,

Chief Hydrologist.

[FR Doc. 86-22330 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the actvities it proposes to conduct on Lease OCS-G 4727, Block A-127, Galveston Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons above support activities to be conducted from an onshore base located at galveston, Texas.

DATE: The subject DOCD was deemed submitted on September 22, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 24, 1986.

J. Roger Pearcy,

Regional Director Gulf of Mexico OCS Region.

[FR Doc. 86-22344 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Mangement Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7245, Block 320, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on September 24, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Regiona, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendment of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 25, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-22345 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 072 and 073, Blocks 12 and 19, respectively, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on September 23, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Units; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 25, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-22346 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5386, Block 235, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 25, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the

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Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 26,1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-22347 Filed 10-1-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Public Hearing

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Board of Directors of Overseas Private Investment Corporation (OPIC) on November 13, 1986. The hearing is required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATE: The hearing will be held on November 13, 1986 and will begin promptly at 1:00 p.m. Prospective participants must submit to OPIC on or before October 31, 1986 notice of their intent to participate.

ADDRESS: The location of the hearing will be: Interstate Commerce Commission, Hearing Room "C", 12th Street and Constitution Avenue NW., Washington, DC.

Notices and prepared statements should be sent to: Robert C. O'Sullivan, Office of General Counsel, Overseas Private Investment Corporation, 1615 M Street NW., Washington, DC 20527.

Procedure:

(a) *Attendance; Participation.* The hearing will be open to the public. However, a person wishing to present his or her views at the hearing must provide OPIC with advance notice on or before October 31, 1986. The notice must include the name, address, and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) *Prepared Statements.* Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5:00 p.m. on November 10, 1986. Prepared statements must be typewritten, double spaced and may not exceed thirty (30) pages.

(c) *Duration of Presentations.* Oral presentations will in no event exceed twenty (20) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) *Agenda.* Upon receipt of the required notices, OPIC will draw up an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) *Publication of Proceedings.* A verbatim transcript of the hearing will be compiled and a record of the hearing will be published. The record of the hearing will be available to members of the public at the cost of reproduction.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries for projects which confer positive developmental benefits upon the project country while avoiding negative effects on the U.S. economy. OPIC's Board of Directors is required by 22 U.S.C. 2191A(b) to hold at least one public hearing each year. This provision was added as one of the 1985 amendments to OPIC's legislation. The November 13, 1986 hearing will be the first public hearing conducted pursuant to this new provision.

FOR FURTHER INFORMATION CONTACT: Robert C. O'Sullivan, Office of General Counsel, Overseas Private Investment Corporation, 1615 M Street NW., Washington, DC 20527 (202/457-7029).

Mildred A. Osowski,

Corporate Secretary.

September 16, 1986.

[FR Doc. 86-22253 Filed 10-1-86; 8:45 am]

BILLING CODE 3210-01-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire contol of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register** and ICC Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable

provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

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MC-F-17791, filed September 12, 1986. JEFFERSON LINES, INC. (Jefferson Lines) (1206 Currie Avenue, Minneapolis, MN 55403)—CONTROL—OKLAHOMA TRANSPORTATION COMPANY (OTC) (1206 Exchange Avenue, Oklahoma City, OK 73108). Representative: Elliott Bunce, Esq., Rice, Carpenter and Carraway, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209. Motor common carrier of passengers Jefferson Lines (MC-80325) seeks authority to acquire control, through stock purchase, of motor common carrier of passengers OTC (MC-460).

Jefferson Lines controls K. G. Lines, Inc. (MC-30608), and is controlled by noncarrier The Jefferson Transportation Group, Inc. (Jefferson Group), which also controls broker of passenger transportation Jefferson Tours and Travel, Inc. (MC-130016), and motor common carrier of passengers Midland Lines, Inc. (Midland) (MC-44770). Midland, in No. MC-F-17792, is seeking authority to acquire control of MK&O Coach Lines, Inc.

Jefferson Group is controlled by noncarrier The Jefferson Company, Inc., the stock of which is owned by Bruck & Co. (Zelle Estate), Mary Susan Zelle Reed, Louis N. Zelle, Charles A. Zelle, and 38 other stockholders, none of whom holds more than 3 percent of the outstanding stock.

Decided: September 23, 1986.

By the Commission, Motor Carrier Board, Members Hartley, Barnes and Thomas.

Volume OP2-504

MC-F-17792, filed September 12, 1986. MIDLAND LINES, INC. (Midland) (1206 Currie Avenue, Minneapolis, MN 55403)—CONTROL—MK&O COACH LINES, INC. (MK&O) (321 South Cincinnati, Tulsa, OK 74120). Representative: Elliott Bunce, Esq., Rice, Carpenter and Carraway, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209. Motor common carrier of passengers Midland (MC-4470) seeks authority to acquire control, through stock purchase, of motor common carrier of passengers MK&O (MC-36364).

Midland is controlled by noncarrier The Jefferson Transportation Group, Inc. (Jefferson Group), which also controls broker of passenger transportation Jefferson Tours and Travel, Inc. (MC-130016), and motor common carrier of passengers Jefferson Lines, Inc. (Jefferson Lines) (MC-80325). Jefferson Lines controls K.G. Lines, Inc., and, in No. MC-F-17791, is seeking authority to acquire control of Oklahoma Transportation Company (MC-460).

Jefferson Group is controlled by noncarrier The Jefferson Company, Inc., the stock of which is owned by Bruck & Co. (Zelle Estate), Mary Susan Zelle Reed, Louis N. Zelle, Charles A. Zelle, and 38 other stockholders, none of whom holds more than 3 percent of the outstanding stock.

Decided: September 23, 1986.

By the Commission, Jane Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22290 Filed 10-1-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 183X)]

CSX Transportation, Inc.; Exemption; Abandonment in Halifax County, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of a 0.72-mile segment of the Roanoke Rapids Spur in Halifax County, NC, subject to standard labor protective conditions.

DATES: This exemption will be effective on November 3, 1986. Petitions for stay must be filed by October 13, 1986, and petitions for reconsideration must be filed by October 22, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 183X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 24, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary

[FR Doc. 86-22288 Filed 10-1-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Task Force on Economic Adjustment and Worker Dislocation; Meeting

Notice is hereby given that the Task Force on Economic Adjustment and Worker Dislocation will hold its fifth meeting at 10:00 a.m. on Thursday, October 16, 1986, in Room C-5515—Seminar Room 6, 200 Constitution Avenue NW., Washington, DC 20210. The public is invited to attend.

The purpose of the meeting is to further discuss a draft outline of the Task Force report.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Holmes, U.S. Department of Labor, Room S-5014, Washington, DC 20210 (202) 523-7571.

Signed at Washington, DC, this Friday of September 26, 1986.

Michael E. Baroody,

Assistant Secretary for Policy.

[FR Doc. 86-22257 Filed 10-1-86; 4:57 am]

BILLING CODE 4510-23-M

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-456-OL, 50-457-OL; ASLBP No. 79-410-03-OL]

Commonwealth Edison Co.; (Braidwood Nuclear Power Station, Units 1 and 2); Reconvening of Hearing

September 25, 1986

Atomic Safety and Licensing Board. Before Administrative Judges: Herbert Grossman, Chairman, Dr. A. Dixon Callihan, Dr. Richard F. Cole.

Please take notice that at 2:00 p.m. on September 30, 1986, the evidentiary hearing in the matter of the Braidwood Station will reconvene at the Federal Building, in Courtroom #1919, 219 South Dearborn Street, Chicago, IL 60604, and continue on weekdays, unless otherwise stated.

The public in invited to attend all hearing sessions.

Bethesda, Maryland.
For the Atomic Safety and Licensing Board.
Herbert Grossman,
Chairman, Administrative Judge.
[FR Doc. 86-22325 Filed 10-1-86; 8:45 am]
BILLING CODE 7590-01-M

Applications for Licenses To Export Nuclear Facilities or Materials; Nissho Iwai American Corp.

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning this application follows.

NRC Export Applications

Name of applicant, Date of application, Date received, Applicabon No.	Material type	Material in Kilograms		End use	Country of destination
		Total element	Total isotope		
Nissho Iwai American Corp., 08-18-86, 08-22-86, XSNMO1778, Amend. 04.	Enriched Uranium.	Add'l 50.93.....	Add'l 22.92.....	Add'l fuel for JMTR Research Reactor.	Japan.

Dated this 25th day of September 1986 at Bethesda, Maryland.

For The Nuclear Regulatory Commission.
Marvin R. Peterson,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.
[FR Doc. 86-22366 Filed 10-1-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Transfer of Control of License

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval under 10 CFR 50.80 of the tranfer of control of the license for Point Beach Nuclear Plant Units 1 and 2 to Wisconsin Energy Corporation, a holding company. The current licensee, Wisconsin Electric Power Company (WEPCO) will remain as holder of the license. By letter dated August 5, 1986, WEPCO informed the Commission that Wisconsin Energy Corporation has filed its Registration Statement with the Securities and Exchange Commission and that under the laws of the State of Wisconsin, the approval of the Public Service Commission of Wisconsin was obtained on May 27, 1986 for formation of the holding company. That letter also advised the Commission that Wisconsin Energy Corporation, will become the sole holder for WEPCO stock, and the current holders of shares of WEPCO common stock will become holders of shares of the common stock of Wisconsin Energy Corporation, on a share-for-share basis.

Pursuant to 10 CFR 50.80 the Commission may approve the transfer of control of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the tranfer of control is qualified to have the control of the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission.

For further details with respect to the subject transfer, see the letter from WEPCO, of August 5, 1986 which is available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Joseph P. Mann Public Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Bethesda, Maryland, this 25th day of September 1986.

For the Nuclear Regulatory Commission.
Eileen M. McKenna,
Acting Director, PWR Project Directorate #1, Division of PWR Licensing-A.
[FR Doc. 86-22365 Filed 10-1-86; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23845; File No. SR-NASD-86-20]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on August 14, 1986, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder to amend its Board of Governors' Interpretation with respect to "Free Riding and Withholding" under Article III, section 1 of the NASD's Rules of Fair Practice. The proposal provides exemptive releif from the Interpretation's restrictions on the purchase of "hot issue" securities for persons who purchase publicly offered securities issued in connection with the conversion of savings and loan associations and certain other organizations form a mutual to a stock form of ownership, if those persons are eligible to purchase under the regulations of the Federal Home Loan Bank Board or other agency authorized to regulate the conversion process.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 23538, August 15, 1986) and by

publication in the **Federal Register** (51 FR 30155, August 22, 1986). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 25, 1986.
Jonathan G. Katz,
Secretary.
[FR Doc. 86-22300 Filed 9-29-86; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-15325; (File No. 812-6402)]

Daily Money Fund, et al.; Application for Exemption

September 25, 1986.

Notice is hereby given that Daily Money Fund, Equity Portfolio: Growth, Equity Portfolio: Income, Fidelity Cash Reserves, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Corporate Trust, Fidelity Daily Income Trust, Fidelity Destiny Portfolios, Fidelity Discover Fund, Fidelity Equity-Income Fund, Fidelity Exchange Fund, Fidelity Fund, Fidelity Flexible Bond Fund, Fidelity Freedom Fund, Fidelity High Income Fund, Fidelity Income Fund, Fidelity Magellan Fund, Fidelity Mercury Fund, Fidelity Money Market Trust, Fidelity Overseas Fund, Fidelity Puritan Fund, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Special Situation Fund, Fidelity Thrift Trust, Fidelity Trend Fund, Financial Reserves Fund, Fixed-Income Portfolios, Institutional Cash Portfolios, The North Carolina Cash Management Trust, Variable Insurance products Fund, and Zero Coupon Bond Fund ("Applicants" or "Funds"), 82 Devonshire Street, Boston, Massachusetts 02109, each of which is registered under the Investment Company Act of 1940 ("Act") as an open-end, management investment company, filed an application on June 5, 1986, and an amendment thereto on September 16, 1986, requesting an order of the Commission pursuant to section 6(c) of the Act, exempting Applicant from the provisions of Section 12(d)(3) of the Act to the extent necessarry to permit the Funds, consistent with their investment policies, to invest in the equity and convertible debt securities of major Japanese securities companies which are listed and publicly traded on the Tokyo Stock Exchange ("TSE"), (First Section) ("TSE1"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of its relevant provisions.

According to the application, Fidelity Management & Research Company is the investment adviser to each of the Funds. Certain Applicants, such as Fidelity Overseas Fund, invest primarily or excusively in foreign issuers, and all Applicants may invest in the securities of broker-dealers and do so to various extents. Applicants state that each Fund invests and will continue to invest in the securities of foreign companies, including foreign securities companies, only to the extent permitted by its investment policies.

Applicants propose that the Funds invest in the equity and convertible debt securities of major Japanese securities companies whose securities are listed and publicly traded on the TSE 1, which currently are: Cosmo Securities Co., Ltd., Dai-ichi Securities Co., Ltd., Daiwa Securities Co., Ltd., New Japan Securities Co., Ltd., The Nikko Securities Co., Ltd., The Nippon Kangyo Kakumaru Securites Co., Ltd., The Nomura Securities Co., Ltd., Okasan Securities Co., Ltd., Sanyo Securities Co., Ltd., Wako Securities Co., Ltd., Yamaichi Securities Co., Ltd., and Yamatane Securities Co., Ltd., (collectively, the "Securities Companies").

Applicants represent that Japanese companies with publicly issued securities, including the Securities Companies, are required by the Japanese Securities and Exchange Law ("Law") to file with the Minister of Finance ("Minister") annual reports containing information relating to the company's objectives, stated capital, securities issued and financial position, the nature and state of its business operations, and such other infoamtion as the Minster may request. Amended reports must be filed with the Minister upon the occurence of any material change of information. According to the application, the Law further requires that the financial statements contained in annual reports be certifed by a certified public accountant or an incorporated accounting firm which has no special interest in the reporting corporation. According to Applicants, the Securities Companies also publish their annual reports in English.

Applicants state that Japanese securities companies are subject to regulation as broker-dealers under separate provisions of the the Law. Before a company may act as a broker, dealer, or underwriter of securites, or handle a public offering, it must apply for and obtain a license from the Minister. Applicants state that before issuing a license, the Minister must be satisfied that such company has sufficient financial resources, knowledge, and experience to conduct the proposed buisness profitably and farily, and that the proposed business is necessary and appropriate in light of economic conditions, such as the number of existing securities companies and the state of securities trading in the area. According to Applicants, the Law authorizes the Minister to cancel a license if the securities company violates a statutory provisions, administrative order, or a condition attached to its license, or if it is threatened with insolvency.

Applicants further state that Japanese securities companies may not engage in businesses other than those that are securities related without approval by the Minister and may not act as both principal and broker in the same transaction. Applicants represent that all securities companies must file business reports with the Minister within two months after the close of the business year, and if the Minister deems it necessary and appropriate in the public interest or for the protection of investors, he may cause the inspection, without notice, of the business condition, financial position, accounting, books and documents or other articles of the securities corporation. According to Applicants, the Minister may also order a securities company to alter its method of business or take other corrective measures, in the event that the company's ratio of total debt to net assets is excessive or that the company's borrowing or lending position is unsound or as necessary in the public interest or for the protection of investors.

In terms of both the total dollar transaction volume and the total market value of equity shares of domestic companies listed, Applicants state the TSE ranks second in the world. Listing criteria for the more seasoned listed stock assigned to TSE 1 include: at least 20 million listed shares; capital stock of Y1 billion; 3,000 shareholders holding no less than 500 nor as much as 50,000 shares; an average monthly trading volume for three months of 200,000 shares; and, dividends for each of the last three years of Y5 per share.

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Applicants represent that the TSE listing requirements are comparable, in terms of share distribution, total market value and earning power, to those imposed by the New York and American Stock Exchanges, by the NASD for eligibility for the NASDAQ system and by the Board of Governors of the Federal Reserve System ("Board") for inclusion on the OTC margin list.

Section 12(d)(3) of the Act prohibits registered investment companies from acquiring any interest in the business of a broker, dealer, or underwriter. Rule 12d3–1 under the Act provides generally that a registered investment company may purchase securities issued by companies deriving more than 15% of their gross revenue from securities related activities provided certain quantitative and qualitative conditions are satisfied. The "quantitative" requirements are met if, immediately after the acquisition, the investment company has not invested more than 5% of the value of its total assets in the target company's securities and does not own more than 5% of the outstanding equity securities of the class acquired, or more than 10% of the outstanding principal amount of the issuer's debt securities. The "qualitative" condition of Rule 12d3–1 requires that the stock acquired be a "margin security" as defined in Regulation T promulgated by the Board which includes any security listed on a national securities exchange, or an OTC security designed as a margin stock by the Board. Because only securities the principal market for which are in the United States can qualify as "margin securities" as required by Regulation T, the securities of the Securities Companies could not be acquired by Applicant within the latitude afforded by Rule 12d3–1, without an exemption from section 12(d)(3) of the Act.

In support of this exemptive request, Applicants state that, with the one exception noted above, each of the conditions set forth in Rule 12d3–1 are satisfied under its proposal to purchase shares of the Securities Companies. In particular, Applicants assert that the availability of annual reports will enable Applicants to calculate the percentage limitations under Rule 12d3–1. Applicants state that the Funds may currently, consistent with Rule 12d3–1 and their respective investment policies and restrictions, purchase debt securities of foreign broker-dealers. Applicants agree, however, to purchase only those convertible debt securities of the Securities Companies that satisfy the qualitative requirements of Rule 12d3–1(b)(5), where the underlying equity securities thereto are listed on the TSE 1. Applicants state that the Securities Companies are, in terms of size and soundness of investment, comparable to U.S. securities firms which meet the requirement of Rule 12d3–1(b)(4). Applicants represent that none of the Securities Companies are the investment adviser, promoter, or principal underwriter of any of the Applicants nor are they affiliated with Applicants' investment adviser, promoter or principal underwriter. Therefore, it is stated, Rule 12d3–1 will also be complied with in this regard.

Finally, Applicants represent that the boards of directors of the Funds have made or will make a specific business decision to permit Funds to purchase, as the Applicants' investment adviser sees fit, the equity and convertible debt securities of the Securities Companies and that such purchases will benefit the Funds. Applicants conclude that the public information available about the Securities Companies is equal to the information concerning other issuers listed on the TSE in which the Funds may freely invest, and that the adviser to the Funds is knowledgeable and experienced in foreign market investments.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 20, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–22301 Filed 10–1–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24203]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 25, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 20, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power & Light Company (70–7230)

Mississippi Power and Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39215–1640, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its declaration in this matter with this Commission pursuant to sections 6(a) and 7 of the Act and Rule 50 thereunder.

By order dated May 28, 1986, the Commission authorized MP&L to issue and sell 350,000 shares of its Preferred Stock, Cumulative, $100 par value ("New Preferred Stock"), which shares were sold on July 31, 1986. MP&L now proposes to issue and sell an additional 350,000 shares of New Preferred Stock ("Additional Shares"), in one or more sales from time to time not later than December 31, 1987, subject to Rule 50 under the Act as modified by HCAR No. 22623. MP&L may include provisions for an adjustable dividend rate for one or more series of the Additional Shares, and a sinking fund.

Central Power and Light Company et al. (70–7284)

Central Power and Light Company, 120 North Chaparral Street, Corpus Christi, Texas 78401, Public Service Company of Oklahoma, 212 East 6th Street, Tulsa, Oklahoma 74102, Southwestern Electric Power Company, P.O. Box 21106, Shreveport, Louisiana 71156, and West Texas Utilities Company, 301 Cypress, Abilene, Texas 79601, (collectively, the "CSW Companies") subsidiaries of Central and South West Corporation, a registered holding company, have filed an application-declaration pursuant to sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder.

The CSW Companies propose through December 31, 1988, to acquire (and retire) outstanding shares of their preferred stock and first mortgage bonds in open market and negotiated transactions at prices not exceeding the then current general redemption prices for such securities. Such acquisitions for each company will not exceed 20% of the par value of the preferred stock and 10% of the aggrevated principal amount of the first mortgage bonds, respectively, issued and outstanding as of September 30, 1986. Acquisitions would be made only if the issuer of the security in question determined that it would be in the best interest of the issuer to do so, based on, among other things, the interest or dividend rates of the security, the issuer's financing plans and capital structure, and the issuer's then current cash position. Such purchases will be made with internally generated funds or short-term borrowings.

New England Power Company (70–7285)

New England Power Company ("NEP"), 25 Research Drive, Westborough, Massachusetts 01582, an electric utility subsidiary of New England Electric System, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder.

NEP proposes to execute and deliver one or more loan agreements with the Industrial Development Authority of the State of New Hampshire and the Connecticut Development Authority in connection with the issue by one or both of such authorities on behalf of NEP of up to $50 million aggregate principal amount of pollution control revenue bonds with a maturity of less than one year. Any bonds issued on NEP's behalf will be sold by the issuing authority through arrangements negotiated with underwriters. The bonds will be backed by NEP's promise to make payments to the issuing authority which correspond in both timing and amount to the payments the issuing authority is obligated to make to bondholders. NEP has requested the option to roll over the short-term financing for a period not exceeding 3 years, subject to Commission approval. NEP has requested an exception to competitive bidding pursuant to Rule 50(a)(5) in connection with its execution and delivery of the loan agreements.

System Energy Resources, Inc. (70–7289)

System Energy Resources, Inc. ("SERI"), P.O. Box 61000, New Orleans, Louisiana 70161, a subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed a declaration with this Commission pursuant to section 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

SERI proposes to amend its Articles of Incorporation, as amended, to provide for a new class of cumulative preferred stock not exceeding 20 million shares, no par value, with an aggregate value not in excess of $500 million ("Preferred Stock"). SERI further proposes to issue and sell not to exceed $200 million aggregate amount of Preferred Stock to be issued in one or more series from time to time through August 31, 1988 ("New Stock"). Except in one respect the terms of the Preferred Stock will adhere to the Commission's Statement of Policy on Preferred Stock (HCAR No. 13106, February 16, 1958, as amended by Release No. 16758, June 22, 1970) ("Statement"). SERI requests an exception from the Statement regarding the required ratio of "gross income" to interest and dividends for the issuance of additional Preferred Stock. The Statement requires a ratio of 1½ times. SERI seeks permission to employ a ratio of 1¼ times, subject to the Commission granting approval for the use of such lower ratio on a case-by-case basis.

Additionally, SERI proposes to split its authorized common stock on a 100 for 1 basis prior to issuing the New Stock, in order to have the relative voting powers of the two classes of stock more fairly reflect the relative contributions of each class of stock, and the expected book values of each share of each class. Following the split, SERI would have 100 million shares of common stock authorized and 78,935,000 shares of common stock outstanding.

Due to the legal, regulatory and financial complexities surrounding the sale of the preferred stock, SERI proposes that the Commission grant it an exception from the competitive bidding requirements of Rule 50 under the Act so that SERI may negotiate the terms of any series of New Stock and arrange for the sale thereof through negotiated public offering(s) or private placement(s). SERI proposes to retain an investment banker(s) to assist in structuring the terms of the New Stock and to arrange for the sale thereof. The exception from the competitive bidding requirements of Rule 50 under the Act is hereby granted, and SERI may begin negotiations.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–22371 Filed 10–1–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–15327; (File No. 812–6417)]

Saastopankkien Keskus-Osake-Pankki; Notice of Application

September 25, 1986.

Notice is hereby given that Saastopankkien Keskus-Osake-Pankki ("Applicant"), c/o Thomas H. Bell, Esq., Simpson Thacher & Bartlett, One Battery Park Plaza, New York, New York 10004, filed an application on June 23, 1986, for a Commission order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting it and a proposed subsidary ("Subsidiary") from all provisions of the Act in connection with the issuance and sale of commercial paper notes and other debt securities in the United States. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the Securities Act of 1933 ("Securities Act") and the rules thereunder for the text of the applicable provisions.

Applicant states that it acts as the central bank for savings banks in Finland and also operates as a commercial bank offering a full range of banking services. Applicant further states that it promotes, supports and balances the liquidity of the Finnish savings banks, manages and develops their payment transactions, acts as their clearing center and handles their foreign banking and trade financing business. As a commercial bank, Applicant states that it is primarily engaged in the receipt of deposits and the making of loans. Applicant represents that it also engages, directly or through subsidiaries, in other banking and bank-

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related activities, such as fiduciary activities, payment transmissions, foreign exchange dealings, syndications of loans, mortgage banking, installment purchase financing, leasing and factoring. Applicant conducts its international banking activities through a worldwide correspondent bank network.

According to Applicant, at December 31, 1985, it was the fourth largest commercial bank in Finland. On a consolidated basis stated in United States dollars at the conversion rate on December 31, 1985 of 5.4170 Finmarks to the dollar, Applicant represents that it had assets of approximately $4040 million, deposits of approximately $1929 million, and share capital and reserves of approximately $257 million. Further, Applicant states that at that date, its loans represented approximately 72.4% ($2926 million), and its investment in bonds and stocks and receivables from other banks represented approximately 10.9% ($442 million) of its total assets, respectively.

Applicant states that it is subject to a system of extensive supervision and regulatory control by Finnish authorities which is comparable to that which United States banks are subject. Applicant also states that it is subject to supervision by the Bank Inspectorate, which in turn is responsible to the Ministry of Finance. The Bank Inspectorate makes periodic formal inspections, gives directives in various matters and may take measures to prevent unlawful or undesirable activities. Applicant must meet minimum liquidity and solvency requirements and is also subject to constraints on non-banking operations and extensions of credit. Applicant must also participate in a private industry security fund which is supervised by the Ministry of Finance.

Applicant represents that Subsidiary will be incorporated under the laws of Delaware and all of its outstanding capital stock will be owned by Applicant. Further, Applicant represents that Subsidiary's sole business purpose will be to issue commercial paper notes and other debt obligations and provide the proceeds thereof to Applicant.

Applicant proposes to issue and sell, or cause Subsidiary to issue and sell, in the United States unsecured prime quality commercial paper notes ("Notes") denominated in United States dollars. The Notes will be sold in the minimum denomination of $100,000, in an outstanding face amount not intended to exceed $150 million at any one time, although the aggregate outstanding face amount of the Notes may increase above such amount in the future. Applicant represents that the Notes will either be issued and sold directly by Applicant or be issued and sold by Subsidiary with the unconditional guarantee of Applicant as to the payment of principal and premium, if any, and interest.

Applicant represents that the Notes will be offered through one or more commercial paper dealers to institutional investors and individuals who normally purchase commercial paper notes, which will enable the Notes to qualify for the exemption from the registration requirements of the Securities Act provided by section 3(a)(3) thereof. Applicant undertakes to ensure that each offeree will be provided with a memorandum ("Memorandum") which will briefly describe the business of Applicant and contain its most recent publicly available audited financial statements. Applicant represents that the Memorandum will describe any material differences between the accounting principles employed by Applicant and by United States banks. Further, Applicant represents that the Memorandum will be at least as comprehensive as those customarily used by United States bank holding companies and will be updated periodically to reflect material changes in the financial condition of Applicant.

Applicant and Subsidiary may offer other securities ("Securities") in the future, such as debt securities, but not including shares of their capital stock, for sale in the United States. Any Securities issued by Subsidiary will also be unconditionally guaranteed by Applicant as to the payment of principal and premium, if any, and interest. Applicant undertakes that any offering of Securities in the United States will be done on the basis of disclosure documents at least as comprehensive as those customarily used by United States banks and bank holding companies in offering similar securities under similar circumstances and undertakes to ensure that each offeree of any Securities will be provided with such disclosure documents. Applicant also undertakes that in the case of any future offering of the Securities made pursuant to a registration statement under the Securities Act, disclosure documents will be furnished to such persons and in such manner as may be required by the Securities Act.

Applicant states that neither Applicant nor Subsidiary will issue and sell the Notes until it has received on opinion of United States legal counsel that the Notes will be exempt under section 3(a)(3) of the Securities Act. Applicant states that it does not request Commission review or approval of such opinion, and the Commission expresses no opinion as to the availability of any such exemption. Applicant represents that the Notes and all future issues of debt securities will have received prior to issuance one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that United States counsel will have certified that such rating has been received; provided, however, that no such rating will be obtained if in the opinion of such counsel, having considered the doctrine of integration under Rule 502 of the Securities Act, exemption from registration is available under section 4(2) of the Securities Act or Regulation D thereunder.

Applicant will expressly consent to the enforcement of its guarantees of the Notes and Securities directly by the holders thereof against it without first proceeding against Subsidiary. The obligations of Applicant with respect to the Notes will rank *pari passu* among themselves and equally with all other unsecured indebtedness (including liabilities to depositors but excluding subordinated debt of Applicant which will rank below such obligations) and will rank prior to the equity securities of Applicant.

Applicant represents that it will appoint the Commercial Secretary and Vice Consul of Finland in the City and State of New York as its agent to accept any process which may be served on Applicant or Subsidiary in any action based on the Notes or Securities or Applicant's guarantees thereof and instituted by any holder thereof in any state or federal court. Such appointment and consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes and Securities have been paid. Further, Applicant represents that it and Subsidiary will expressly submit to the jurisdiction of any state or federal court in the City and State of New York with respect to any such action. Applicant and Subsidiary will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of offering of the Notes or Securities, or otherwise in connection with the Notes or Securities.

Applicant asserts that granting the requested exemption is consistent with the protection of investors and purposes of the Act and is appropriate in the public interest. Applicant argues that its activities are extensively regulated by Finnish authorities. Further, Applicant consent to any order granting the application being expressly conditioned upon compliance with the undertakings described in the application. Applicant also asserts that absent an exemption, it would be precluded for selling securities in the United States, contravening the public policy expressed in the International Bank Act of 1978 of placing United States and foreign banks on a basis of competitive equality in their transactions in the United States. Finally, Applicant contends that since Subsidiary's sole business purpose will be to issue and sell commercial paper notes and other debt securities and provide the proceeds thereof to Applicant, and that the obligations of Subsidiary will in effect be the obligations of Applicant, the same rationale for exempting Applicant from the provisions of the Act applies to Subsidiary.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 16, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22370 Filed 10-1-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Reform Observation Panel for UNESCO; Partially Closed Meeting

The Reform Observation Panel for UNESCO will meet on October 21, 1986 in Room 3524 of the Department of State, 2201 C Street, NW., Washington, DC. The meeting will begin at 2:00 p.m.

The principal agenda items will be:

—Assessment of the results of the 124th and 125th sessions of the UNESCO Executive Board;

—Report on the progress of reform at UNESCO during 1986.

The purpose of the meeting will be to discuss the progress of reform at the 124th and 125th sessions of the UNESCO Executive Board and the possibilities of continued reform of the Organization. Because the meeting will include a classified briefing by Department of State officers and discussion of documents classified pursuant to Executive Order 12356, a determination has been made that the meeting be closed in part to the public pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(b), (c)(1) and (c)(9)(b). The initial portion of the meeting will be open to the public until approximately 3:00 p.m.

Access to the Department of State is controlled for security reasons. Members of the public who wish to attend the open portion of the meeting or who have requests for further information on the meeting should be directed to the Panel's Executive Secretary: Mr. Raymond E. Wanner, Room 5331, Department of State, 2201 C Street, NW., Washington, DC 20520, (202) 647-6882.

Dated: September 18, 1986.

Raymond E. Wanner,

Executive Secretary, Reform Observation Panel.

[FR Doc. 86-22284 Filed 10-1-86; 8:45 am]

BILLING CODE 4710-19-M

[Public Notice CM-8/1008]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, October 30, 1986 at 9:30 a.m. in Room 1105, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The agenda for this meeting is as follows:

a. Debriefing of most recent CCITT Study Group III meeting (October, Geneva); and

b. Make final preparations and review U.S. contributions for the November/December meetings of CCITT Study Groups I and VIII.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, D.C.; telephone (202) 647-6700. All attendees must use the C Street entrance to the building.

Dated: September 22, 1986.

Earl S. Barbely,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-22285 Filed 10-1-86; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1009]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Radio Communications; Meetings

The Working Group on Radio Communications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 0930 on October 16 and November 20, 1986, room 9230 of the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

The purpose of the meetings is to prepare position documents for the Thirty-second Session of the Subcommittee on Radiocommunications of the International Maritime Organization to be held in London during December 1986. In particular the working group will discuss the following topics:

Maritime Distress System
Digital Selective Calling
Satellite EPIRBs
Preparations for the ITU WARC for Mobile Telecommunications
Marine Safety Broadcast

For further information contact LT McDannold, U.S. Coast Guard Headquarters (C-TTS-1/63), 2100 2nd Street, SW., Washington, DC 20593. Telephone: (202) 267-1258.

Dated: September 19, 1986.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee

[FR Doc. 86-22286 Filed 10-1-86; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1000]

Advisory Committee on International Law; Partially Closed Meeting

The 1st meeting of the subject Advisory Committee will take place at

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10:00 a.m. on Monday, October 6, 1986, in Room 1105 of the Department of State, 2201 C Street, NW, Washington, DC. The morning session will not be open to the public; the afternoon session (3:00 p.m. to 4:30 p.m.) will be open to the public, up to the capacity of the meeting room.

The meeting will focus on policy and legal issues relating to the future relationship of the United States to the International Court of Justice at The Hague. As the morning session will include discussion of classified material, it has been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and 5 U.S.C. 552b (c)(9)(B). The disclosure of classified material and related discussions could adversely affect the foreign relations interests of the United States. The morning session will include classified briefings and examination and discussion of documents classified pursuant to Executive Order 12356.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the general public planning to attend the afternoon session should, prior to October 3, notify the Office of the Assistant Legal Adviser for United Nations Affairs (L/UNA), Department of State, Washington, DC 20520 (telephone: (202) 647-6771) of their name, affiliation, address and telephone number.

Dated: September 12, 1986.

Abraham D. Sofaer,

Legal Adviser.

[FR Doc. 86-22339 Filed 10-1-86; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice CM-8/1001]

Advisory Committee on International Investment, Technology, and Development; Subcommittee on Transborder Data Flows; Meeting

The Department of State will hold a meeting of the Subcommittee on Transborder Data Flows of the Advisory Committee on International Investment, Technology, and Development on October 21, 1986 from 10:00 a.m. to noon. The meeting will be in the East Auditorium at the Department of State, 2201 C Street, NW, Washington, DC 20520.

The purpose of the meeting will be to discuss preparations for the October 27-31, 1986 meeting of the OECD's Committee on Information, Computer, and Communications Policy (ICCP) and its Working Party on Transborder Data Flows. Particular agenda items will include the ICCP work in development of a conceptual framework for trade in communications and information (C&I) services, a U.S. paper on laws and regulations affecting communications and information services, and the ICCP's work on telecommunications services and the economic effect of liberalization in telecommunications.

Access to the State Department is controlled. Therefore, members of the public wishing to attend the meeting must contact the Office of Investment Affairs (202) 647-2728 in order to arrange admittance. Please use the "C" street entrance.

The Chairman of the Working Group will, as time permits, entertain comments from members of the public at the meeting.

Dated: September 9, 1986.

Walter B. Lockwood, Jr.,

Executive Secretary.

[FR Doc. 86-22340 Filed 10-1-86; 8:45 am]

BILLING CODE 4710-07-M

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Friday, October 3, 1986 at 11:00 a.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 12:30 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in March 1986, the announcement of gifts, loans, and financial contributions from January 1, 1986—July 1, 1986 a report on the completed project on the 7th floor.

Public access to the Department of State is controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Wednesday, October 1, 1986, telephone (202) 647-1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: September 9, 1986

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 86-22518 Filed 10-1-86; 10:55 am]

BILLING CODE 4710-38-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 86-058]

Towing Safety Advisory Committee; Meeting of Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of meetings of various Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittees will meet as follows:

1. The Subcommittee on Personnel Manning and Licensing will meet on 30 October 1986 in Room 1105 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The meeting will begin at 1:00 p.m. and end at 3:30 p.m. The agenda for the meeting consists of the following discussion items:

(a) Round trip requirements to serve as pilot (46 CFR 157.20-40(e)(1));

(b) Definition of "coastwise seagoing vessel" for pilotage purposes;

(c) Definition of pilotage waters;

(d) A written test alternative to the chart sketch for a first class pilot's license restricted to tug and barge only; and

(e) Require first class pilots to have experience on vessels of more than 40,000 gross tons in order to be authorized to pilot vessels of more than 50,000 gross tons.

2. The Subcommittee on Personnel Safety and Workplace Standards will meet on 31 October 1986 at 9:30 a.m. in the same room described above to discuss the Coast Guard proposed rulemaking relating to 46 CFR Part 12 which is titled Certification of Seamen. This proposal contemplates additional requirements; such as physical examinations, mandatory training, and drug/alcohol screening for initial certification and retention of merchant mariners documents. In addition, this revision will incorporate changes in the statutes, clarify policy and procedures, and improve the overall readability of the regulations.

3. The Subcommittee on Existing Regulations Review and Restructure will meet on 4 December 1986 at 10:00 a.m. in Room 6319 at U.S Coast Guard Headquarters to discuss the American Bureau of Shipping rules for towing vessels as they relate to the sinking of the Tug EAGLE and the NTSB recommendations.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Captain J. H. Parent, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, DC 20593 or by calling (202) 267-1477.

Dated: September 29, 1986.

J. H. Parent,

Executive Director, Towing Safety Advisory Committee.

[FR Doc. 86-22324 Filed 10-1-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 162—Aviation System Design Guidelines for Open Systems Interconnection (OSI); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 162 on Aviation System Design Guidelines for Open Systems Interconnection (OSI) to be held on October 21-22, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Introductory Remarks; (2) Review Terms of Reference; (3) Briefing on Open Systems Interconnection (OSI); (4) Review of Recent Applications of OSI to Aviation Systems; (5) Develop Committee Work Program and Schedule of Accomplishment; (6) Assignment of Tasks; (7) Other Business; and (8) Time and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 25, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86-22248 Filed 10-1-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Nevada and Placer Counties, Near Truckee, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Nevada and Placer Counties, California.

FOR FURTHER INFORMATION CONTACT: Michael A. Cook, District Engineer, Federal Highway Administration, P. O. Box 1915, Sacramento, California 95809, Telephone (916) 551-1307.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (CALTRANS) will prepare an EIS on a proposal to construct a State Route 267 bypass of the downtown Truckee area.

The proposal will improve safety and traffic service by providing an alternate facility that will remove state highway traffic from: an at-grade railroad crossing (five tracks); a crossing of the Truckee River on a narrow bridge, passage through a local historical area, and the downtown area of Truckee.

Alternatives for this project presently consist of: (1) no project; (2) constructing one of two bypass alignment alternatives.

An informal public meeting was held in Truckee on December 17, 1985, to receive comments from public and private organizations and from individuals.

Additional scoping meetings will be arranged with all responsible/cooperating agencies and with special interest groups upon request. In addition at the time of Draft EIS circulation, a public hearing will be held. Public notice will be given as to the time and place of the hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

Issued on: September 25, 1986.

Michael A. Cook,

District Engineer, Sacramento, California.

[FR Doc. 86-22251 Filed 10-1-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 25, 1986.

The Department of the Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0029
Form Number: ATF F 10 (ATF F 5320.10)
Type of Review: Extension
Title: Application for Registration of Firearms Acquired by Certain Governmental Entities

OMB Number: 1512-0046
Form Number: ATF REC 5520/2—Form 27-G
Type of Review: Reinstatement
Title: Applications—Volatile Fruit-Flavor Concentrate

Clearance Officer: Robert G. Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Financial Management Service

OMB Number: 1512-0027
Form Number: POD 1681
Type of Review: Reinstatement
Title: Application for Payment of a Deceased Depositor's Postal Savings Certificate

OMB Number: 1510-0028
Form Number: POD 134
Type of Review: Reinstatement
Title: Release Form

OMB Number: 1510-0030
Form Number: POD 1690
Type of Review: Reinstatement
Title: Certification of Bill From Undertaker

Clearance Officer: Douglas C. Lewis, Financial Management Service, Room

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100, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: 1545–0126
Form Number: IRS Form 1120F
Type of Review: Revision
Title: U.S. Income Tax Return of a Foreign Corporation

OMB Number: 1545–0257
Form Number: IRS Forms 8109, 8109A, and 8109B
Type of Review: Revision
Title: Federal Tax Deposit Coupon, FTD Reorder Form

OMB Number: 1545–0715
Form Number: IRS Form 1099–B
Type of Review: Revision
Title: Statement for Recipients of Proceeds From Real Estate, Broker, and Barter Exchange Transactions

OMB Number: 1545–0770
Form Number: None
Type of Review: Extension
Title: Transfers of Securities Under Certain Agreements (LR–182–78 NPRM)

OMB Number: 1545–0890
Form Number: IRS Form 1120–A
Type of Review: Revision
Title: U.S. Corporation Short-Form Income Tax Return

Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Robert Neal, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86–22374 Filed 10–1–86; 8:45 am]

BILLING CODE 4810–25–M

Office of the Secretary

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92–463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on October 28 and October 29, 1986 of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies, Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on October 28 and the preparation of a written report to the Secretary on October 29, 1986.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92–463, and vested in me by Treasury Department Order 101–5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b (c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the finaicial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92–463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are " trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: September 29, 1986.

Charles O. Sethness,

Assistant Secretary (Domestic Finance).

[FR Doc. 86–22359 Filed 10–1–86; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy

A joint meeting of the U.S. Advisory Commission on Public Diplomacy and the U.S. Information Agency's Television Telecommunications Advisory Committee will be held October 8, 1986, in Room 800, 301 4th Street, SW., Washington, DC from 10:30 a.m. to 12:00 noon. The Commission and the Committee will discuss developing international telecommunications technologies and their implications for public diplomacy policies and programs.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: September 29, 1986.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 86–22373 Filed 10–1–86; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The document contains a revision and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Jill Cottine, Agency Clearance Officer (732), Veterans Administration 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joe Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 29, 1986.

By direction of the Administrator:

David A. Cox

Associate Deputy Administrator for Management.

Revision

1. Department of Veterans Benefits
2. Veterans Application for Counseling
3. VA Form 28–8832
4. On occasion
5. Individuals or households
6. 5,000 responses
7. 417 hours
8. Not applicable

Extension

1. Department of Medicine and Surgery
2. Soft Tissue Sarcoma Study Questionnaire
3. VA Form 10–20763
4. One time
5. Individuals or households
6. 1,126 responses
7. 563 hours
8. Not applicable

[FR Doc. 86–22327 Filed 10–1–86; 8:45 am]

BILLING CODE 8320–01–M

Veterans Administration Wage Committee Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, October 16, 1986, at 2:30 p.m.
Thursday, October 23, 1986, at 2:30 p.m.
Thursday, November 6, 1986, at 2:30 p.m.
Thursday, November 20, 1986, at 2:30 p.m.
Thursday, December 4, 1986, at 2:30 p.m.
Thursday, December 18, 1986, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 22, 1986.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–22326 Filed 10–1–86; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 191
Thursday, October 2, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL ENERGY REGULATORY COMMISSION

September 26, 1986.

The Commission took action on the following items at the meeting of September 25, 1986:

CAP-1.
Project No. 7037-001, Okanogan Public Utility District
CAP-3.
Project Nos. 5376-002 and 003, Boise Cascade Corporation
CAP-4.
Project No. 2959-011, City of Seattle, Washington
CAP-5.
Project Nos. 8915-001, 7791-002 and 8235-002, Hydroelectric Development, Inc.
CAP-6.
Project No. 8499-002, City of Redding, California
CAP-7.
Project No. 2548-007, Georgia-Pacific Corporation
CAP-9.
Project No. 3991-002, STS Energenics Ltd.
CAP-10.
Docket No. ER86-272-003, Pacific Gas and Electric Company
CAP-11.
Docket No. ER86-615-000, Commonwealth Edison Company
CAP-12.
Docket No. ER86-622-000, Philadelphia Electric Company and Susquehanna Electric Company
CAP-13.
Docket Nos. ER86-638-000 and ER86-368-001, El Paso Electric Company
CAP-14.
Docket Nos. ER86-405-001, ER86-466-001 and ER86-517-001, Boston Edison Company
CAP-15.
Docket No. ER86-549-000, Illinois Power Company
CAP-16.
Docket No. QF86-886-000, Martin Marietta Aluminum Properties, Inc.
CAP-17.
Docket No. ER84-322-000, Pacific Gas and Electric Company
CAP-19.
Docket Nos. EL86-10-000 and ER84-579-008, Kentucky Power Company
CAP-20.
Docket No. ER86-361-001, Upper Peninsula Power Company
CAP-21.
Docket No. ER86-277-001, Central and South West Services, Inc.
CAP-22.
Docket No. ER86-646-000, Middle South Services, Inc.
CAM-1.
Docket No. FA85-71-001, Central Illinois Public Service Company
CAM-2.
Docket No. FA85-34-000, Stingray Pipeline Company
CAM-3.
Pacific Interstate Transmission Company, Pacific Offshore Pipeline Company, Pacific Interstate Offshore Company, Southern California Edison Company
CAM-4.
Docket No. RM85-1-000, regulation of natural gas pipelines after partial wellhead decontrol (Kaiser-Francis Oil Company and Essex Exploration Company)
CAM-5.
Docket No. RM85-1-000, regulation of natural gas pipelines after partial wellhead decontrol (Vessels Oil and Gas Company, Standard Gas Marketing Company and French Petroleum Corporation)
CAM-6.
Docket No. GP86-9-001 and 002, Consolidated Gas Transmission Corporation
Docket No. GP82-31-001 and 002, Mid-Louisiana Gas Company
Docket No. GP82-41-001 and 002, Columbia Gas Transmission Corporation
CAM-7.
Docket No. GP85-39-000, Commonwealth of Pennsylvania, Department of Environmental Resources, section 102, determinations, Appalachian Energy, Inc., Adrian Sorenson #1 well, FERC JD No. 80-32779; Richard C. Farver #1 well, FERC JD No. 80-45787; R. Marsh #1 well, FERC JD No. 81-2011; R.K. Farver #1 well, FERC JD No. 81-2012; A. Bishop #1 well, FERC JD No. 81-2013; B. Wilson #1 well, FERC JD No. 81-9864; W. Wilson #1 well, FERC JD No. 81-10302; L. Meerdink #1 well, FERC JD No. 81-19066; B. Warner #1 well, FERC JD No. 81-21756; R. Warner #1 well, FERC JD No. 81-47187
CAM-8.
Docket No. GP85-44-000, Commonwealth of Pennsylvania, Department of Environmental Resources, section 102 determinations, Meridian Exploration Corporation, V. Mahan #570-1 well, FERC JD No. 82-20126, V. Mahan #583-3 well, FERC JD No. 82-26991
CAM-9.
Docket No. GP85-46-000, Commonwealth of Pennsylvania, Department of Environmental Resources, section 102 determinations, Victory Development Company, Kopp #1 well, FERC JD No. 83-30338; #1 defense & emergency well, FERC JD No. 83-30335; #3 defense & emergency well, FERC JD No. 83-30337; #1 Loins Recreation Center well, FERC JD No. 83-30336; #2 Loins Recreation Center well, FERC JD No. 83-30339
CAM-10.
Docket No. RM85-1-000, regulation of natural gas pipelines after partial wellhead decontrol (Tejas Power Corporation and TXO Production Corporation)
CAM-11.
Docket No. RM85-11-000, revision of FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis
CAG-1.
Docket No. RP86-159-000, Blue Dolphin Pipe Line Company
CAG-2.
Docket Nos. RP86-158-000 and CP86-526-000, United Gas Pipe Line Company
CAG-4.
Docket Nos. RP86-104-001 and CP86-589-000, Colorado Interstate Gas Company
CAG-5.
Docket Nos. RP84-59-005 and RP85-13-013, Northwest Pipeline Corporation
CAG-7.
Docket Nos. TA87-1-42-000 and 001 (PGA87-1) and TA86-3-4-42-000, Transwestern Pipeline Company
CAG-9.
Docket Nos. TA87-1-35-000 and 001 (PGA87-1), West Texas Gas, Inc.
CAG-10.
Docket Nos. TA87-1-34-000, 001, TA86-4-34-000, TA86-3-34-000 and TA86-1-34-000, Florida Gas Transmission Company
CAG-11.
Docket Nos. TA87-1-33-000, 001 and RP86-156-000, El Paso Natural Gas Company
CAG-13.
Docket Nos. TA87-1-31-000, 001 and RP86-160-000, Arkla Energy Resources, a division of Arkla, Inc.
CAG-14.
Docket Nos. TA87-1-7-000 and 001, Southern Natural Gas Company
CAG-15.
Docket Nos. TA86-8-51-000 and 001, Great Lakes Transmission Company
CAG-16.
Docket No. TA86-1-30-000 (PGA86-1), Trunkline Gas Company
CAG-19.
Docket No. RP86-133-001, National Fuel Gas Supply Corporation
CAG-20.
Docket Nos. RP63-34-007 and RP79-10-025, Great Lakes Gas Transmission Company
CAG-21.
Docket No. RP78-20-026, Columbia Gas Transmission Corporation
CAG-22.
Docket No. RP86-137-002, Florida Gas Transmission Company
CAG-23.
Docket Nos. RP86-35-006 and 007, Great Lakes Gas Transmission Company
CAG-24.
Docket No. TA86-1-40-002, Raton Gas Transmission Company
CAG-25.
Docket Nos. TA86-2-15-002, 003, 004, RP86-138-001, 002 and 003, Mid-Louisiana Gas Company
CAG-26.
Docket No. RP86-113-003, Gas Transport, Inc.
CAG-27.
Docket Nos. RP86-75-002 and 003, Northern Natural Gas Company, division of Enron Corporation
CAG-29.
Docket No. RP86-92-001, Northwest Pipeline Corporation
CAG-30.
Docket Nos. TA86-1-12-000 and 001, Distrigas Corporation
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CAG-31.
Docket Nos. TA86-6-5-000, TA85-5-5-000 and 002, Mid-Western Gas Transmission Company
CAG-32.
Docket Nos. TA86-4-37-000, 001 and 002, Northwest Pipeline Corporation
CAG-33.
Docket No. RP86-150-000, El Paso Natural Gas Company
CAG-36.
Docket Nos. ST86-1498-000 and ST85-354-001, SNG Intrastate Inc.
CAG-37.
Docket Nos. ST86-1338-000 and ST86-1014-000, Cranberry Pipeline Corporation
CAG-38.
Docket Nos. RI74-188-085 and RI75-21-060, Independent Oil & Gas Association of West Virginia
CAG-39.
Docket No. CI77-329-002, Texaco, Inc.
CAG-40.
Docket Nos. CP86-389-001 and 002, Transcontinental Gas Pipe Line Corporation
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Docket No. CP82-535-003, Texas Eastern Transmission Corporation
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Docket No. CP86-465-000, Tennessee Gas Pipeline Company, division of Tenneco Inc.
CAG-51.
Docket No. CP86-517-000, Northern Natural Gas Company, a division of Enron Corporation
CAG-52.
Docket Nos. CP86-206-000 and 001, Midwestern Gas Transmission Company
CAG-53.
Docket Nos. CP86-85-001, CP86-96-001 and CP85-826-001, National Fuel Gas Supply Corporation
Docket No. CP86-294-001, Northern Natural Gas Company, division of Enron Corporation
Docket No. CP86-169-001, Colorado Interstate Gas Company
Docket No. CP86-282-001, MIGC, Inc.
Docket Nos. CP86-414-002, CP86-556-000, CP86-557-001 and CP86-437-001, Natural Gas Pipeline Company of America
CAG-54.
Docket No. CP84-637-002, Northern Natural Gas Company, division of Enron Corporation
Docket No. CP84-579-003, Northern Border Pipeline Company
CAG-55.
Docket No. RP86-94-005, Sea Robin Pipeline Company
CAG-56.
Docket Nos. CP85-875-000 and CP86-275-000, East Tennessee Natural Gas Company
P-1.
Project No. 2890-011 and 013, Kings River Conservation District
ER-1.
Docket No. EF86-2061-000, U.S. Department of Energy—Bonneville Power Administration
ER-4.
Docket No. EL86-30-000, Oxbow Geothermal Corporation
ER-5.
Docket No. EL86-28-000, Unitil Power Corporation, Concord Electric Company and Exeter and Hampton Electric Company
Docket No. ER86-559-000, Unitil Power Corporation
Docket No. ER86-565-000, Public Service Company of New Hampshire
M-1.
Docket Nos. RM82-38-001 through 009, fees applicable to electric utilities, cogenerators and small power producers
RP-2.
Docket No. RP86-117-000, Gas Research Institute
RP-7.
Docket No. RP86-44-000, Valero Interstate Transmission Company
CP-3.
Docket No. CP86-251-000 and 001, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-22375 Filed 9-29-86; 5:06 pm]
BILLING CODE 6717-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:25 p.m. on Friday, September 26, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in American Bank & Trust Company, Lafayette, Louisiana, which was closed by the Commissioner of Financial Institutions for the State of Louisiana, on Friday, September 26, 1986; (2) accept the bid for the transaction submitted by Whitney National Bank of New Orleans, New Orleans, Louisiana; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Director C.C. Hope, Jr. (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 29, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 86-22439 Filed 9-30-86; 3:33 pm]
BILLING CODE 6714-01-M

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FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 7, 1986, 10:00 a.m.

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PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, October 9, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Final audit report—Mondale for President Committee, Inc.
Draft Advisory Opinion 1986-31—David E. Johnson for Democratic Senatorial Campaign Committee
Draft Advisory Opinion 1986-33—Areta K. Guthrey on behalf of Metropolitan Mortgage and Securities Co., Inc. PAC
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 86–22436 Filed 9–30–86; 2:16 pm]
BILLING CODE 6715–01–M

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INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 9, 1986.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED:

Docket No. 39021—
Midtec Paper Corporation, et al. v. Chicago and North Western Transportation Company (Use of Terminal Facilities and Reciprocal Switching Agreement).

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,
Secretary.
[FR Doc. 86–22424 Filed 9–30–86; 11:45 am]
BILLING CODE 7035–01–M

federal register

Thursday
October 2, 1986

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 341 and 369

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Bronchodilator Drug Products; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 341 and 369

[Docket No. 75N-052B]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Bronchodilator Drug Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) bronchodilator drug products (drug products used in the symptomatic treatment of wheezing and shortness of breath of asthma) are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on bronchodilator drug products that have come to the agency's attention. This final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: October 2, 1987. For additional information concerning this effective date, see "Paperwork Reduction Act of 1980" appearing in the preamble of this document.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 9, 1976 (41 FR 38312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by December 8, 1976. Reply comments in response to comments filed in the initial comment period could be submitted by January 7, 1977.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products is being issued in the following segments: anticholinergics and expectorants, bronchodilators, antitussives, nasal decongestants, antihistamines, and combinations. The second segment, the tentative final monograph for OTC bronchodilator drug products, was published in the Federal Register of October 26, 1982 (47 FR 47520). Interested persons were invited to file by December 27, 1982, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by February 23, 1983. New data could have been submitted until October 26, 1983, and comments on the new data until December 26, 1983. Final agency action occurs with the publication of this final monograph, which is a final rule establishing a monograph for OTC bronchodilator drug products.

In the Federal Register of August 30, 1983 (48 FR 39242), the agency published a notice reopening the administrative record for OTC bronchodilator drug products to accept comments that had been filed with the Dockets Management Branch, FDA, since the date the administrative record officially closed and to include the results of a meeting of FDA's Pulmonary-Allergy Drugs Advisory Committee held on May 13 and 14, 1983. This meeting was held to discuss the issue of OTC marketing of the bronchodilator drug metaproterenol sulfate. The administrative record was also reopened for the filing of additional comments on the OTC marketing of metaproterenol sulfate metered-dose inhaler products. Interested persons were invited to submit comments on the OTC marketing of metaproterenol sulfate on or before October 31, 1983. Data and information received after the administrative record was reopened are on display in the Dockets Management Branch.

The agency's final rule, in the form of a final monograph, for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products is also being published in segments. Final agency action on OTC bronchodilator drug products occurs with the publication of this document, which establishes §§ 341.1, 341.3, 341.16, 341.76, and 341.90 for OTC bronchodilator drug products in new Part 341 (21 CFR Part 341).

The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

As discussed in the proposed regulation for OTC bronchodilator drug products (47 FR 47520), the agency advises that the conditions under which the drug products that are subject to this monograph will be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the Federal Register. Therefore, on or after October 2, 1987, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In response to the proposed rule on OTC bronchodilator drug products, 4 drug manufacturers, 275 health professionals, 7 health care professional societies, 1 citizen's group, and 3 private individuals submitted comments. A request for oral hearing before the Commissioner was also received on one issue. Copies of the comments and the hearing request received are on public display in the Dockets Management Branch. Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

In proceeding with this final monograph, the agency has considered all objections, requests for oral hearings, and the changes in the procedural regulations.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the Federal Register of August 9, 1972 (37 FR 16029), or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. General Comment on Bronchodilator Drug Products

1. Several comments from health care professionals and one comment from a health care professional society objected to the OTC marketing of any drug product for the treatment of asthma. These comments generally expressed the opinion that self-diagnosis and self-treatment of asthma can lead to serious clinical consequences and that this condition should be treated only under the supervision of a physician. One comment noted "the potential for rebound phenomenon in regard to the bronchospasm with overuse of the [bronchodilator] inhalers" and stated that "with judicial use [of bronchodilators] involving medical care and patient education, this potential is still present, but minimized." One comment contended that if the safety of a drug were the sole requirement for OTC status, many current prescription drugs could qualify. Another comment stated that the asthmatic episode may result in an impairment of respiratory functions ranging from a moderate degree of disability to life-threatening asphyxiation. One comment agreed that OTC bronchodilator drug products should be available to asthmatics who have been diagnosed by a physician.

The Panel reviewed the available data for OTC bronchodilator drug products and was aware of the risks associated with the self-diagnosis and self-treatment of asthma. The Panel concluded that it is reasonable to have bronchodilators available on a nonprescription basis and that, when taken as directed, the drugs are safe for OTC use (41 FR 38320). The Panel recommended that bronchodilator drug products be available OTC with appropriate labeling, and in the tentative final monograph the agency concurred in this recommendation.

Bronchodilator drug products have been available OTC and used extensively for many years. The agency concludes that the benefits of the continued OTC availability of these drug products outweigh the risks mentioned by the comments. OTC availability of bronchodilator drug products provides asthmatics ready access to this essential medication without the need for additional visits to a physician's office or to a hospital emergency room. This availability especially benefits those asthmatics whose attacks are triggered by common environmental factors (e.g., primarily by exertion, anxiety, exposure to cold, etc.) when immediate use may be essential. In addition, physician-diagnosed asthmatics who do not have easy access to medical care will continue to benefit from OTC use.

For many years, asthmatics have safely and effectively used OTC drug products containing ingredients included in this final monograph. However, in order to minimize inappropriate use of these products by consumers who may be tempted to self-diagnose and self-treat asthma, the Panel recommended and the agency is requiring in this final regulation a warning on the products that they should not be used unless a diagnosis of asthma has been made by a doctor. In addition, the agency has added a new warning in this final monograph to limit the use of OTC bronchodilators by asthmatics who have been hospitalized for asthma or who are taking a prescription drug product for asthma. This new warning is intended to alert patients with active, serious asthma that they should not rely solely on an OTC bronchodilator without consulting a physician. (See comment 15 below.)

The agency is requiring in this final monograph appropriate warnings to provide for the proper use of OTC bronchodilators. First, persons with heart disease, high blood pressure, thyroid disease, diabetes, or difficulty in urination due to enlargement of the prostate gland are informed not to use the drug unless directed by a doctor. Second, persons who are taking a prescription drug for high blood pressure or depression are informed not to use the drug without first consulting their doctor. Third, the labeling for each specific active ingredient includes a warning not to continue use of the drug, but to seek medical assistance immediately, if symptoms are not relieved within the time interval specified for that ingredient or if the symptoms become worse. Finally, the labeling also describes side effects that may occur and advises the consumer to consult a doctor if these effects persist or become worse. The agency concludes that this labeling will provide adequate information to asthmatics to provide for the safe and effective use of OTC bronchodilator drug products.

B. Comments on the Switch of Prescription Bronchodilators to OTC Status

2. Numerous comments objected to FDA's decision to initiate a prescription to OTC switch of metaproterenol sulfate in a metered-dose inhaler without prior consultation with experts outside of FDA. The comments stated that the agency's intention to switch metaproterenol sulfate from prescription to OTC use was first announced in the Federal Register of October 26, 1982 (47 FR 47524) and contended that the agency should have obtained input in advance from FDA's Pulmonary-Allergy Drugs Advisory Committee and other health professionals directly involved in the management of asthma. According to the comments, if such experts had been consulted, the agency would have obtained a broad spectrum of expert opinion concerning the safety of metaproterenol sulfate for use as an OTC drug. One comment added that, although the switch was announced in the Federal Register, few physicians who treat asthma read this publication. One comment also asked for assurance that a similar lapse in the advisory review process not occur in the future.

Although the agency publishes notices in the Federal Register, it is concerned, as pointed out by one comment, that physicians may not be aware of the Federal Register publications, and therefore cannot provide comment on various drug decisions contained in the Federal Register. The agency believes that the dissemination of information published in the Federal Register is of the utmost importance. Some of the methods FDA uses to disseminate such information are by the use of press releases, which are provided by FDA to the news media, and the FDA Drug Bulletin, which contains information regarding new drug developments, changes in labeling, etc., and is sent to physicians and other health professionals. In addition, FDA routinely mails information to professional

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organizations and societies, which then can be instrumental in disseminating information to their members.

As stated in the tentative final monograph on OTC bronchodilator drug products (47 FR 47524), the proposal to switch metaproterenol in a metered-dose inhaler to OTC status was based on the agency's review of the published literature on metaproterenol sulfate's safe and effective use as a prescription drug and on the 9 years of safe use of the product as demonstrated by a review of adverse reaction experiences reported to the agency. It is true that metaproterenol was not reviewed by the Cough-Cold Panel and, therefore, there was no public announcement that the drug was being considered for OTC use. However, following publication of the tentative final monograph that allowed OTC marketing of metaproterenol, there was a 60-day comment period during which interested persons could comment on the proposed regulation. Eight comments were received during the comment period, but only four concerned metaproterenol; three favored and one opposed OTC status for metaproterenol. After one company began OTC marketing of metaproterenol in January 1983, considerable criticism was voiced by the medical community, particularly allergists and pediatricians. The main concern stressed by the comments opposing OTC use of metaproterenol was the drug's potential for misuse by both adults and children and the lack of sufficient input from the medical-scientific community before metaproterenol was allowed to be marketed OTC.

Because of this controversy, a special meeting of FDA's standing Pulmonary-Allergy Drugs Advisory Committee was convened on May 13 and 14, 1983. The meeting was called in order to provide a public forum for discussion of the marketing status of metaproterenol in a metered-dose inhaler. Formal presentations were made by individuals as well as professional organizations. During the actual Committee deliberations, the complexity of the issue was apparent. In voting to recommend that the FDA rescind its proposal to make metaproterenol an OTC drug, the Committee did not reach a clear consensus but ultimately voted four to three in favor of recommending to FDA that the drug be restricted to prescription status. The Committee also felt that this issue merited further discussion.

In May 1983, the only U.S. manufacturer of metaproterenol sulfate in metered-dose inhalers stopped marketing the drug OTC pending FDA's review of this matter and, on June 3, 1983, the agency published a notice in the **Federal Register** (48 FR 24825) advising that metaproterenol could be marketed only as a prescription drug until a final decision is made by the agency either under this OTC drug review rulemaking or under the established regulations for exempting prescription drugs in 21 CFR 310.200. At this time, the agency advises in this final rule that metaproterenol is a nonmonograph ingredient and may not be marketed as an OTC drug unless it is the subject of an approved application for OTC use or is eventually included at a later date in the final monograph. (See comment 3 below.)

Given the public response to the agency's decision to switch metaproterenol from prescription to OTC use, the agency agrees that in this particular situation it would have been preferable to have involved the Pulmonary-Allergy Drugs Advisory Committee in the decision-making process leading to the OTC marketing of metaproterenol. However, it is important to emphasize that the agency does not believe that all decisions it makes about drugs require the prior involvement of an advisory committee or the use of notice-and-comment rulemaking procedures. This issue was extensively discussed in the proposed rule-related notice in the **Federal Register** of June 3, 1983 (48 FR 24925 to 24928). That notice stated that:

> FDA has been given the statutory responsibility to make a broad range of decisions involving the suitability of drugs for use by the American public. These decisions involve the safety and effectiveness of drugs, their status as a prescription or OTC drug, the indications for their use, and other vital labeling information. In general, these decisions are made without rulemaking. Moreover, although many important decisions affecting drug approval are made with the assistance of advisory committees, many are not. FDA's advisory committees cannot, as a practical matter, be involved in all important decisions affecting drug approval or drug use. Even if they could be, it would be inappropriate for FDA to refrain in all cases from exercising its statutory responsibility to regulate drugs and their uses unless and until an advisory committee approved the agency's intended actions. Congress has given the duty of approving drugs to FDA, not to advisory committees. The agency believes that advisory committees are an important adjunct to its decision-making, but it does not believe that advisory committees should be viewed as an indispensable part of all FDA procedures for regulating drugs. Less than a decade ago, a Congressional subcommittee strongly criticized FDA for relying too often and too heavily on advisory committees in deciding important drug issues. Although FDA believes that that criticism was misplaced given the factual background against which it was made, the subcommittee's underlying point is valid; FDA is responsible for making decisions about drugs, and the agency must therefore exercise restraint in the extent to which it uses advisory committees to improve its decision-making process, making sure that committee advice supplements FDA's expertise without displacing the agency's authority.

Because of the ongoing controversy regarding possible OTC status for beta-adrenergic bronchodilator drug products in metered-dose inhalers, and based on the Advisory Committee's previous recommendation that this issue merited further discussion, the agency held an open public meeting of its Pulmonary-Allergy Drugs Advisory Committee on May 19, 1986 to discuss the possible OTC marketing of current prescription beta adrenergic drug products in metered dose inhalers. The following professional groups opposed switching from prescription to OTC status for these drug products and submitted comments for the Committee's consideration: the American Academy of Allergy and Immunology, the American Thoracic Society, the American Academy of Pediatrics, and the American Society of Hospital Pharmacists (Refs. 1 through 4). The American Academy of Allergists also opposed switching these drugs to OTC status and presented its statement at the Committee's meeting (Ref. 5). A comment from the American Pharmaceutical Association (Ref. 6) supported OTC status for these beta adrenergic drugs in metered-dose inhalers if these drugs are required to be dispensed by pharmacists. At the May 19th meeting, the Committee discussed the role of physicians, drug companies, and pharmacists in providing adequate patient education and the role of asthma patients themselves in gaining adequate information to assure the proper use of inhaled beta adrenergic drug products. The Committee considered the importance of physician monitoring of the use of beta adrenergic metered-dose inhalers by asthmatic patients. The Committee members felt that such monitoring was essential because asthmatic patients represent a broad spectrum of severity of disease, and the Committee expressed the opinion that OTC availability of inhaled beta adrenergic drug products would be detrimental to physician monitoring of the use of these drug products. The Committee commented on recently published data concerning the lack of patient compliance with the physician's directions for use of aerosolized medications and concluded that insufficient data were available describing the success of physician monitoring of patient compliance in the use of these drugs to evaluate approving OTC availability of current prescription beta adrenergics in metered-dose inhalers. The importance of educational programs to improve patient care was discussed at length and the drug companies that gave presentations to the Committee emphasized their continued commitment to developing such programs whether these drugs remain prescription drugs or become available OTC. The Committee concluded that the available data did not provide support for OTC availability of prescription beta adrenergic drugs in metered-dose inhalers at this time.

References

(1) Comment No. C00005, Docket No. 86N-0063, Dockets Management Branch.
(2) Comment No. C00007, Docket No. 86N-0063, Dockets Management Branch.
(3) Comment No. C00019, Docket No. 86N-0063, Dockets Management Branch.
(4) Comment No. C00018, Docket No. 86N-0063, Dockets Management Branch.
(5) Transcripts of the May 19, 1986, Meeting of the FDA Pulmonary-Allergy Drugs Advisory Committee, Dockets Management Branch.
(6) Comment No. C00002, Docket No. 86N-0063, Dockets Management Branch.

3. Many comments, mostly from health care professionals and health care professional societies, objected to the agency's proposal that metaproterenol sulfate in metered-dose inhalers be switched from prescription to OTC status because of the following major concerns: this drug in the inhaler dosage form has abuse and misuse potential, particularly in teenagers; possible drug interactions between metaproterenol sulfate and theophylline could cause adverse reactions such as arrhythmia and myocardial toxicity; in the 1960's the United Kingdom and Australia experienced deaths that were associated with OTC availability of beta agonists such as metaproterenol sulfate in aerosol dosage forms (Refs. 1 and 2); the physician will lose the ability to closely supervise the care of asthmatic patients and to properly instruct the patient in the use of the inhaler; OTC availability may cause delay in the emergency treatment of a serious life-threatening asthmatic attack because metaproterenol is an effective long-lasting drug; it is inappropriate to "prescribe" via advertising directed towards asthmatics; the proposed OTC warnings regarding fatalities with metaproterenol sulfate inhaler drug products are not comparable to the warnings required for prescription drug products; the potential for the development of patient tolerance of beta agonists with increased use of metaproterenol sulfate due to the OTC status of the drug could result in the eventual lack of drug effect; and there may be a decrease in the effectiveness of inhaled bronchodilators when viral respiratory tract infections, allergic reactions, or other stimuli result in an inflammatory component to airways obstruction.

Several comments urged the agency to require safety studies, particularly in children, prior to the OTC release of metaproterenol sulfate in metered-dose inhalers. Two comments from a health care professional society urged the agency to monitor possible misuse and abuse of metaproterenol sulfate inhalers as well as adverse reactions once this drug is switched to OTC status. A comment from another health care professional society urged the agency to reverse its decision to allow OTC marketing of metaproterenol sulfate in metered-dose inhalers until the medical and scientific community could study further the possibility of switching this drug to OTC status.

However, several comments supported OTC status for metaproterenol sulfate in metered-dose inhalers. These comments expressed confidence in the ability of asthmatics to understand and heed label warnings and directions. One comment contended that maintaining drug products on prescription status does not endow the products with increased safety and argued that OTC status for metaproterenol would provide savings in medical costs. The comment stated that the OTC availability of metaproterenol sulfate in metered-dose inhalers would benefit mild asthmatics, especially those in isolated areas or inner cities where medical care is not easily available, and that the hazards of overuse of the drug are exaggerated. Other comments contended that metaproterenol sulfate in metered-dose inhalers is safer than currently available OTC inhalers.

One comment rebutted several of the concerns raised by comments opposing OTC status for metaproterenol sulfate. The comment submitted statements by experts who argued that there is no factual basis to the claim that OTC sales of metaproterenol sulfate in metered-dose inhalers were associated with asthma deaths in the United Kingdom or Australia (Ref. 3). The comment submitted a review of the pharmacologic literature on metaproterenol, of data collected by the Drug Abuse Warning Network of the National Institute on Drug Abuse, of FDA adverse reaction reports, and of information compiled by the FDA's Poisoning Surveillance and Epidemiology Branch (Ref. 3). Based on its review of the above data, the comment concluded that there is no significant potential for abuse or misuse of metaproterenol sulfate inhalers.

Another comment submitted a "consumer information booklet" designed to enhance the consumers' understanding of asthma, how to control attacks, and how to use medication properly. The booklet describes asthma, several situations that can precipitate an asthma attack, the symptoms of an asthma attack, the steps asthmatics should take when they have an asthma attack, and how to properly use the inhaler containing the medication. The booklet emphasizes the need for the diagnosis of asthma by a physician and the importance of continued supervision of the treatment of asthma by a physician. The booklet also states that "asthma is a serious condition. You should work closely with your doctor and take any needed medications regularly. Call your doctor immediately or go to the hospital if you are unable to control an attack in its early stages." The comment contended that the booklet addresses many of the concerns raised in opposition to the switch of metaproterenol sulfate metered-dose inhalers to OTC status and that "such labeling could be considered a viable approach to alleviating the concerns of the medical community when the issue of metaproterenol sulfate aerosols and OTC status is considered again."

One comment supported OTC status of this drug if it is dispensed in consultation with a pharmacist because patients must be clearly and strongly warned that chronic use of sympathomimetic bronchodilators may lead to a decrease in the effectiveness of these drugs. However, this comment also stated that if provisions for dispensing metaproterenol OTC only in consultation with a pharmacist could not be required under current regulations, it would support OTC status for the drug anyway. Another comment supported OTC status of this drug only if it is dispensed in consultation with a pharmacist. This comment stated that "pharmacy students receive many, many hours of training concerned with drug consultation to patients."

As noted above, on June 3, 1983, the agency clarified the marketing status of metaproterenol sulfate in metered-dose inhalers in a **Federal Register** notice. The agency stated that the drug may not be marketed OTC until a final decision is made by the agency either under the OTC drug review rulemaking or under

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the provisions of 21 CFR 310.200. The agency also stated that since the proposal to switch metaproterenol sulfate in metered-dose inhalers to OTC status, "the agency has evaluated the critical comments made in response to the OTC marketing of [this drug] and the data and arguments presented at the May 13, 1983 [Pulmonary-Allergy Drugs], advisory committee meeting. Despite the advisory committee's vote [to return metaproterenol to prescription status], FDA continues to believe that a careful weighing of risks and benefits supports the proposal that metaproterenol sulfate metered-dose inhaler should be made available without a prescription."

In the **Federal Register** of August 30, 1983 (48 FR 39242), the agency reopened the administrative record for OTC bronchodilator drug products to accept additional comments made after the closing of the record on December 27, 1982. The additional comment period ended October 31, 1983. Comments submitted in the additional comment period after the agency reopened the administrative record did not provide any additional data in support of restricting this drug product to prescription status. Although the comment period has closed, the agency continues to receive letters both for and against the OTC status of this drug. Copies of these letters have been included in this docket. As discussed in comment 3 above, the agency received additional comments concerning OTC availability of beta adrenergic drugs, such as metaproterenol, in metered-dose inhalers that are included in Docket No. 86N–0063, Dockets Management Branch, and held an open public meeting of its Pulmonary-Allergy Drugs Advisory Committee to discuss the general issue of OTC marketing of beta-adrenergic bronchodilator drug products in metered-dose inhalers on May 19, 1986.

The agency recognizes that at this time controversy remains in the medical and scientific community concerning the switch of metaproterenol sulfate in metered-dose inhalers to OTC status. This was made evident by the narrow vote of the Pulmonary-Allergy Drugs Advisory Committee in 1983 to retain prescription status and the discussion of the Advisory Committee at its May 19, 1986 meeting. Under the current circumstances, the agency concludes that a metered-dose inhaler which contains metaproterenol sulfate cannot be generally recognized as safe and effective at this time. Therefore, this drug is not being included in this final monograph. However, it should be noted that the present nonmonograph status of the drug would not necessarily preclude FDA approval for OTC marketing under an approved application. A drug that is not generally recognized as safe and effective for OTC use may nonetheless be determined to be safe and effective under 21 U.S.C. 355 following FDA's evaluation of data submitted in support of an application for that purpose. OTC marketing under an application would provide FDA with postmarketing controls, such as adverse reaction reporting, generally not available to drugs covered by an OTC drug monograph.

References

(1) Campbell, A.H., "Mortality from Asthma and Bronchodilator Aerosols," *Medical Journal of Australia*, 1:386–291, 1976.

(2) Inman, W.H.W., and A.M. Adelstein, "Rise and Fall of Asthma Mortality in England and Wales in Relation to Use of Pressurized Aerosols," *Lancet*, 2:279–285, 1969.

(3) Comment C00224, Docket No. 76N–052B, Dockets Management Branch.

(4) Transcripts of the May 13 and 14, 1983, Meeting of the FDA Pulmonary-Allergy Drugs Advisory Committee, identified as TS, Docket No. 76N–052B, Dockets Management Branch.

4. Three comments recommended that the agency consider switching metaproterenol sulfate in oral dosage forms from prescription to OTC status. One comment stated that "oral dosage forms are . . . important in the safe and effective management of bronchial asthma" and would provide alternative therapy to other currently available oral bronchodilators. Another comment contended that oral agents "should be used much more than asthma inhalers" and that oral beta agonists are safer than oral theophylline. This comment stated that "only the oral beta agonists [such as metaproterenol sulfate] should be allowed OTC." The third comment stated that oral metaproterenol sulfate is a more likely candidate for OTC dispensing than the inhaler dosage form of the drug because the oral form has "been studied sufficiently for FDA approval in children aged 6 to 12 years and [the oral form] is free of the inhaler abuse potential."

Oral dosage forms of metaproterenol sulfate have been approved for prescription use as bronchodilators since 1974 (Ref. 1). However, the agency does not believe that metaproterenol sulfate in oral dosage forms can be generally recognized as safe for OTC use. The agency notes that while both the oral and inhaled dosage forms of metaproterenol sulfate have been shown to be effective, the oral dose of 20 milligrams (mg) three to four times a day for a maximum daily dose of 80 mg for metaproterenol sulfate is approximately ten times greater than the inhaled dose of 1 to 3 inhalations containing 0.65 mg metaproterenol sulfate per inhalation, not to exceed 12 inhalations a day for a maximum daily dose of 7.8 mg. In a study comparing oral and aerosol bronchodilators in children 7 to 15 years of age, side effects such as heart discomfort, headache, and dizziness occurred more frequently with the oral dosage form of this drug than with the inhaled form (Ref. 2). In addition, a review of FDA's adverse reaction reporting system for the years 1974 to 1984 (Ref. 3) indicates that adverse reactions are reported more frequently for the oral dosage forms of metaproterenol sulfate than for the inhalation dosage forms of the drug. Specifically, these records indicate (when the only drug involved in the reported adverse reaction was either oral metaproterenol or inhaled metaproterenol) over 100 reactions reported for the oral dosage forms whereas less than 50 reactions were reported for the inhalation dosage forms. Side effects involving the heart such as palpitations, tachycardia, and hypertension accounted for over one-third of the reactions with the oral drug. Such side effects were reported five times more frequently with the oral forms of the drug than with the inhaled dosage form. Almost half of the adverse reactions with oral metaproterenol involved nervous reactions such as tremor, agitation, anxiety, and nervousness, and these reactions were three times more frequent for the oral forms of the drug than for the inhaled form. Chest pain, headache, and abdominal pain were reported for oral metaproterenol, while no reactions of pain were reported for the inhaled drug. In view of this adverse reaction information, the agency has determined that oral dosage forms of metaproterenol sulfate will not be included in this final monograph.

References

(1) Letters from J.R. Crout and M.J. Finkel, FDA, to R. Munies, Boehringer-Ingelheim, Ltd., OTC Volume 04BFM, Docket No. 76N–052B, Dockets Management Branch.

(2) Lee, H.S., "Comparison of Oral and Aerosol Adrenergic Bronchodilators in Asthma," *Journal of Pediatrics*, 99:805–807, 1981.

(3) Department of Health and Human Services, Food and Drug Administration, "Annual Adverse Reaction Summary Listing," pertinent pages for the years 1974–1984, OTC Volume 04BFM, Docket No. 76N–052B, Dockets Management Branch.

5. One comment assumed that inhaler bronchodilator drug products that contain either albuterol sulfate or isoetharine mesylate are currently marketed OTC and requested that these inhalers be removed from OTC status because of contraindications and potentially harmful side effects for some individuals. Another comment (in support of OTC availability of metaproterenol in aerosol dosage forms) urged the agency to consider other beta$_2$ agonists such as albuterol sulfate and terbutaline sulfate in aerosol dosage forms for OTC availability. The comment contended that "these newer drugs have extensive worldwide experience, and dose-response data support a high margin of safety." The comment added that albuterol sulfate and terbutaline sulfate have "greater specificity for beta$_2$ receptors" and a longer duration of action than metaproterenol and thus are more effective and potentially safer than metaproterenol.

The agency clarifies that albuterol, isoetharine, and terbutaline are currently available only by prescription and have never been approved for OTC use in the United States. Additionally, the agency is not aware that any of these drugs has ever been marketed OTC in this country. The Panel did not review any of these drugs as possible switches from prescription to OTC status. At the time of the Panel's deliberations, terbutaline had been approved under an application and was marketed as a prescription drug for a relatively short time in the United States. At that time albuterol was not approved for prescription use. Under the agency's Drug Efficacy Study Implementation program, drug products containing isoetharine were classified as effective bronchodilators (43 FR 30349). However, isoetharine was not considered for OTC status. The agency did not propose to switch any of these drug products to OTC status in the tentative final monograph.

Furthermore, the agency believes that general recognition of the safety of the beta$_2$ agonists albuterol and terbutaline for OTC use does not exist at this time as a result of the controversy in the medical and scientific community concerning the safety of the beta$_2$ agonist metaproterenol sulfate for OTC use. (See comment 3 above.) Therefore, albuterol and terbutaline will not be included in this final rule. However, the agency may consider changing the status of these drugs at a later time under the new drug procedures or 21 CFR 310.200.

With respect to the request to remove albuterol and isoetharine mesylate from OTC status, these drugs remain prescription drug products. Therefore, the comment's request is moot.

6. Several comments from health care professionals and one comment from a health care professional society assumed that the ingredient isoproterenol is currently marketed as an OTC bronchodilator and objected to OTC status for this ingredient. The comments stated that isoproterenol is an extremely dangerous medication. Some of the comments noted that this ingredient is overused and abused. The comments requested that isoproterenol be removed from the OTC marketplace.

The agency notes that isoproterenol has never been approved for OTC status nor has it been marketed OTC in the United States to the agency's knowledge. The agency has not proposed that isoproterenol be switched from prescription to OTC status. Therefore, this drug remains a prescription drug and the comments' request to remove isoproterenol from the OTC marketplace is moot.

7. One comment stated that theophylline for use as a bronchodilator should be restricted to prescription status only.

The agency agrees with the comment. Although the Panel classified theophylline preparations as safe and effective for OTC use as bronchodilators and recommended that theophylline be available OTC as a single ingredient at specified dosages (41 FR 38373 to 38374), the agency mentioned in the preamble of the advance notice of proposed rulemaking (41 FR 38313) that the Panel's decision might be subject to modification in the tentative final monograph. Following publication of the Panel's report in the **Federal Register**, the agency received additional information regarding theophylline which suggested that the safe and effective use of the drug requires careful dosage titration based on theophylline serum concentrations. The agency discussed this additional information in a notice published in the **Federal Register** of December 10, 1976 (41 FR 54032) announcing that it disagreed with the Panel's recommendation regarding OTC use of theophylline, and that theophylline should not be made available as a single ingredient in OTC drug products. This decision limited the use of theophylline as a single ingredient to prescription products only.

In the tentative final monograph for OTC bronchodilator drug products, the agency reaffirmed its dissent from the Panel's recommendations to switch theophylline as a single ingredient from prescription to OTC status, and placed theophylline in Category II for OTC use as a single ingredient (47 FR 47521). Following publication of the tentative final monograph, no comments or data were submitted in support of changing the agency's Category II decision concerning theophylline as a single ingredient. Therefore, theophylline is considered a nonmonograph ingredient and is not included in this final monograph.

The agency notes that combination drug products that contain theophylline will be discussed in the tentative final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products in a future issue of the **Federal Register**. Therefore, such combinations will not be discussed in this document.

C. Comments on Specific OTC Bronchodilator Active Ingredients

8. Three comments objected to the continued OTC availability of asthma medications containing ephedrine. One comment mentioned serious cardiac side effects associated with ephedrine and asked that FDA reconsider its position. Another comment mentioned the death of a youngster who was not receiving regular medical care and developed severe asthma which he tried to self-treat with ephedrine. The third comment speculated that, if asked, a majority of the membership of the American Academy of Allergy and Immunology would oppose the OTC availability of ephedrine.

The Cough-Cold Panel thoroughly evaluated ephedrine as an OTC bronchodilator drug product. The Panel was aware of serious side effects such as rapid heart beat and elevated blood pressure associated with the use of ephedrine. However, the Panel cited two studies in which 25 mg ephedrine (adult OTC dosage is 12.5 to 25 mg every 4 hours) was demonstrated to have little or no effect on the heart beat or blood pressure of adult asthmatics (41 FR 38370). Other side effects associated with the use of ephedrine include tenseness, nervousness, tremor, sleeplessness, loss of appetite, nausea, and difficulty in urination in older males who may have an enlarged prostate gland. However, the Panel concluded from the data available to it that ephedrine preparations are safe and effective bronchodilator drug products for OTC use in physician-diagnosed mild cases of asthma when labeled as it recommended (41 FR 38370 to 38371).

The agency agrees with the Panel and believes that the labeling proposed in the tentative final monograph in § 341.76(c) (1) through (6), and as expanded in this final monograph (see comment 1 above), adequately advises consumers not to use this drug without

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consulting a physician, not to use the drug if they have certain medical conditions, and to consult a doctor when the drug does not provide relief within a specific time interval or causes side effects that persist.

The comment did not provide any details about the death of the youngster who developed severe asthma which he tried to self-treat with ephedrine. The agency points out that OTC bronchodilator drug products containing ephedrine are not labeled for use in children under 12 years of age. The directions in § 341.76(d)(1) advise that for children under 12 years a doctor should be consulted. The agency has provided a dosage schedule for children under 12 years in § 341.90, the professional labeling section of the monograph, to inform physicians of the appropriate dosages to use.

The agency concludes that with appropriate labeling ephedrine can be safely and effectively used as an OTC bronchodilator drug product and is including this drug in the final monograph.

9. A number of physicians submitted comments objecting to the continued OTC availability of epinephrine as a bronchodilator drug product; some stated that epinephrine metered-dose inhalers should be removed from the market because they are a significant threat to the public health. Some of the comments stated that the OTC marketing of metaproterenol is a safer alternative and preferable to the OTC marketing of epinephrine. One comment from the American Academy of Allergy and Immunology cited epinephrine as an extremely hazardous medication and urged FDA to undertake a vigorous campaign to remove it from the OTC market once metaproterenol is approved. Several comments contended that asthmatic patients rely too heavily upon inhalers that often contain epinephrine and over-medicate themselves in the mistaken belief that if the regular dose fails to achieve the desired results, a more frequent dose will work. This approach to medication causes tolerance and dependency and often causes a patient with serious asthma to delay seeking professional treatment until it is too late. One comment pointed out that some patients tend to use inhalers as frequently as every 10 minutes to obtain further relief. Another comment maintained that patients over-medicate to the point of tachyphylaxis, i.e, decreasing response following consecutive doses at short intervals.

Several comments mentioned that serious side effects, even death, can result from the overuse of epinephrine. One comment stated that the death rate from asthma reached epidemic proportions in the United Kingdom some years ago until it was correlated with the sale of epinephrine nebulizers. The comment also maintained that epinephrine causes rebound congestion in the bronchial airways identical to the rebound congestion caused by epinephrine on the nasal mucosa. In addition, the comment voiced concern that epinephrine affects both alpha and beta receptors causing a rise in blood pressure, increased cardiac rate, and cardiac irritability. Some comments mentioned personal experiences with significant and troublesome side effects that required emergency room treatment and that were caused by the unsupervised and excessive use of epinephrine inhalers.

Three comments expressed a favorable view of OTC epinephrine inhalers. Two comments noted that there are few, if any, adverse reaction reports involving epinephrine abuse and/or overdose in the literature, adding that the paucity of adverse reaction reports is probably a result of epinephrine's weak potency as an aerosol bronchodilator. Although epinephrine may relieve cases of simple asthma, patients with more severe symptoms do not get relief and therefore are likely to seek appropriate medical care promptly. Another comment maintained that because currently available OTC bronchodilator inhalers are of sufficient potency and of an appropriately short acting nature, consumers can be trusted to use these inhalers safely.

The agency notes that similar comments were submitted following publication of the Panel's report in the Federal Register of September 9, 1976 (41 FR 38312). In its report, the Panel thoroughly reviewed the available literature and evaluated the risks associated with the OTC use of epinephrine (41 FR 38371 to 38372). At that time, the Panel recognized that although the wide use of epinephrine aerosols for the temporary relief of bronchospasms has been attended by few and mild side effects, a patient with a severe and worsening obstructive pulmonary disease may obtain temporary relief from an epinephrine inhaler and thus feel a false sense of security. As a result, the patient may delay seeking professional attention until the disease has reached life-threatening severity. The Panel, nevertheless, believed that the hazards associated with epinephrine use were avoidable by using low concentrations of epinephrine and by requiring proper labeling. The Panel also stated that because epinephrine stimulates both alpha and beta receptors, it would be expected to have a local constrictor effect on blood vessels in the lungs which would limit systemic absorption and toxicity of the drug (41 FR 38371 to 38372).

The Panel was fully aware of the risks associated with the self-diagnosis and self-treatment of asthma as well as the abuse potential and the possible adverse effects with the use of epinephrine inhalation products. As pointed out by the agency in the tentative final monograph, the Panel concluded that these data and these risks are adequately defined for epinephrine inhalation products in the labeling and do not outweigh the benefits to be derived from the OTC use of these products (47 FR 47522).

Because a number of comments to the Panel's report disagreed with the Panel's recommendation to allow the OTC marketing of epinephrine to continue, the agency, in its tentative final monograph on OTC bronchodilator drug products published in the Federal Register of October 26, 1982 (47 FR 47520), reevaluated the risks associated with the OTC availability of epinephrine. The agency concluded that epinephrine, epinephrine bitartrate, and epinephrine hydrochloride (racemic) (since renamed racepinephrine hydrochloride) in pressurized metered-dose inhalation aerosol dosage forms can be generally recognized as safe and effective for OTC use at a dosage for adults and children 4 years of age and older of 1 to 2 inhalations of a metered-dose equivalent to 0.16 to 0.25 mg epinephrine per inhalation not more often than every 3 hours. The agency concluded that the proposed dose provides an adequate margin of safety for the OTC marketing of epinephrine or equivalent in a metered-dose aerosol inhalation dosage form.

The agency finds that none of the comments submitted to the tentative final monograph provide additional data that could persuade the agency to limit epinephrine inhalation products to prescription use only. The Panel and the agency acknowledge that asthma requires professional diagnosis and management and concludes that a warning statement not to use the product unless a diagnosis of asthma has been made by a physician is adequate.

Regarding the comment on the relationship between the use of the drug and a rise in the death rate from asthma in the United Kingdom several years ago, the Panel reviewed and discussed this matter in its report (41 FR 38371 to 38372). The Panel and the agency note that the question arose because of an increase in the number of deaths among those using a chemically related drug, isoproterenol. Reports of an increase in deaths from isoproterenol had their origin in England. Epinephrine aerosol had been marketed for many years before its safety was seriously questioned by the incidence of side effects and deaths in England. The Panel stated that the preparation used in England had a concentration of isoproterenol five times greater than that used in Sweden, Australia, and the United States where no such increase in deaths had been noted. It was inferred that the high concentration of isoproterenol accounted for the increase in deaths. Deaths decreased when a lower concentration of isoproterenol was used.

The agency notes that the labeling proposed in the tentative final monograph and as expanded in this final monograph (see comment 1 above) adequately warns the consumer against initial self-diagnosis of asthma and against abuse and excessive use of bronchodilator drug products. The agency shares the concern voiced by the comments regarding the possibly serious consequences that could develop from the excessive use of epinephrine drug products. Therefore, the agency is requiring that the first sentence of the warning in § 341.76(c)(6)(i) and the warning contained in § 341.76(c)(6)(ii) appear on the label of the marketed product in boldface type. (See comment 11 below.)

Based on the Panel's recommendations and an OTC marketing history of many years under approved applications, the agency concludes that, with this expanded and revised labeling of the drug product, the continued OTC availability of epinephrine benefits the consumer and is not a safety hazard. Therefore, in this final monograph, the agency is including epinephrine, epinephrine bitartrate, and racepinephrine as bronchodilator active ingredients.

Regarding the comments' remarks concerning the OTC marketing of metaproterenol sulfate as a safe and preferable alternative to epinephrine, the agency notes that because many specialists in the field have serious reservations about the OTC availability of metaproterenol sulfate, it is not being given monograph status at this time. (See comment 3 above.)

D. Comments on Dosages for OTC Bronchodilators

10. One comment agreed that bronchodilators in metered-dose inhaler dosage forms should be available OTC. However, the comment objected to allowing drug products with such dosage delivery systems to enter the marketplace without FDA preclearance through approval of applications. The comment contended that the complexities of pressurized metered-dose aerosol dosage forms for inhalation are such that agency preclearance is necessary to assure the safety and effectiveness of these drug products. The comment stated that the proposed rulemaking is deficient because it does not discuss the complexities of the design, control, manufacture, and market use of metered-dose inhalation dosage delivery systems, nor does the tentative final monograph set forth manufacturing standards for metered-dose inhaler delivery systems.

The comment noted that some of the factors that influence the safety, effectiveness, and bioavailability of aerosolized bronchodilator drugs are the geometric pattern and propulsive force of the aerosol spray, the maintenance of a proper seal for the metering valve container closure, the maintenance of a constant accurate dose from the first dose delivered to the last dose delivered from a container, inactive ingredients in the products such as propellents, and the size of the aerosolized droplets containing the drug (the droplets must be of an appropriate size to ensure that they reach the desired site in the lungs).

The comment noted that the agency considers timed-release dosage forms to be new drugs under 21 CFR 200.31 and claims that metered-dose inhalation drug delivery systems are of a comparable complexity as timed-release dosage forms. The comment contended that, if FDA considers timed-release dosage forms new drugs, metered-dose inhalation dosage forms should also be new drugs and suggested that they be handled under the provisions of 21 CFR 330.11 as "NDA deviations" from OTC drug monographs. The comment explained that a full new drug application (NDA) would not be required, but that preclearance of "manufacturing controls information and bioavailability data" by the agency would be required. The comment argued that such a preclearance process is necessary to assure that metered-dose inhalation dosage forms are safe and effective. The comment included a copy of an oral presentation concerning "dosage reproducibility of inhalation metering aerosol drug dose delivery systems" (Ref. 1) in support of the position that the complexity of these dosage forms requires preclearance under NDA's. The comment noted that FDA has required preclearance of products marketed in this dosage form as new drugs for many years and questioned the sudden change in policy and what protection the agency was providing consumers to ensure that these drug products would be formulated as safe and effective. The comment requested a public hearing before the Commissioner if FDA does not require in the final monograph premarket approval of these products through a NDA.

For the reasons discussed below, the agency disagrees with the comment and believes that the state of the technology for metered-dose inhalation drug delivery systems is such that bronchodilator drug products in metered-dose inhalers in dosage ranges specified in the monograph can be generally recognized as safe and effective. As with all OTC drug products covered by monographs, it is the responsibility of the manufacturer to ensure that the products meet the standards set forth in the appropriate drug monograph and that the product design provides an appropriate effective dose. The agency believes that requirements in the Current Good Manufacturing Practice regulations (21 CFR Part 211) adequately address the control of the quality of drug product containers, components, and the drug product itself and that specific requirements for metered-dose inhalation drug delivery systems in the monograph are unnecessary. Specifically, § 211.160 states that:

(b) Laboratory controls shall include the establishment of scientifically sound and appropriate specifications, standards, sampling plans, and test procedures designed to assure that components, drug product containers, closures, in-process materials, labeling, and drug products conform to appropriate standards of identity, strength, quality, and purity. Laboratory controls shall include:

(1) Determination of conformance to appropriate written specifications for the acceptance of each lot within each shipment of components, drug product containers, closures, and labeling used in the manufacture, processing, packing, or holding of drug products. . . .

In addition, § 211.165 states that:

(a) For each batch of drug product, there shall be appropriate laboratory determination of satisfactory conformance to final specifications for the drug product, including the identity and strength of each active ingredient, prior to release. . . .

* * * * *

(d) Acceptance criteria for the sampling and testing conducted by the quality control unit shall be adequate to assure that batches of drug products meet each appropriate specification and appropriate statistical

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quality control criteria as a condition for their approval and release. The statistical quality control criteria shall include appropriate acceptance levels and/or appropriate rejection levels.

(e) The accuracy, sensitivity, specificity, and reproducibility of test methods employed by the firm shall be established and documented. . . .

In addition, by regulation (21 CFR 330.1(e)), a product may contain only suitable inactive ingredients which are safe and do not interfere with the effectiveness of the preparation or with suitable tests or assays to determine if the product meets its professed standards of identity, strength, quality, and purity.

The agency has reviewed data from its Drug Product Problem Reporting System computerized data base for all bronchodilator drug products in metered-dose inhaler dosage forms including prescription drug products as well as OTC drug products (Ref. 2). A total of 27 product problems have been reported for metered-dose inhalers marketed OTC between 1973 and 1984. Over 17 million units of metered-dose inhalers containing epinephrine have been marketed after 1980. No problems related to the metered-dose mechanisms have been reported for these OTC drug products since 1980. During the period 1982 through 1984, 71 product problems possibly related to the metered-dose mechanism or the product closure have been reported for prescription metered-dose inhalers. Approximately twenty of these reports concern leaking of the product around the closure or the seal of the product. Five complaints concerned clogging of the inhaler even though the patient had cleaned the inhaler properly. Defective mouthpieces were reported several times. Two complaints stated that the product sprayed continuously after releasing the mechanism used to deliver a dose, another complaint stated that the inhaler sprayed too much, a few complained that the product did not aerosolize properly, and one complained that the dose was too strong. Several reports stated that the inhaler would not spray at all, while one report stated that the inhaler would not spray at first and then when it did spray there was no drug effect. Another complaint contended that the inhaler did not work because the propellant had leaked. Approximately twenty reports complained that the inhaler either did not work after only part of the medication had been delivered or that the product delivered fewer doses than the labeling indicated it should deliver. Several of these reports questioned whether the inhaler was giving the proper dose. In four cases, the reports complained that the dose was too low or the product had low potency. One report stated that the inhaler worked intermittently and another report stated that the product "backfires" after it is half used. One report complained that the propellant or other ingredient was bad, another report said that the product was defective, and a third report stated that the actuator did not work.

The agency believes that the relatively small number of product problems reported since 1982 for prescription drug products in metered-dose inhalers and the lack of any such reports related to the metered-dose mechanism for OTC inhalers indicates that the current state of the technology available to produce reliable metered-dose inhaler mechanisms allows the agency to generally recognize metered-dose inhaler dosage forms for OTC bronchodilators containing epinephrine preparations as specified in the monograph. The agency therefore believes that the concerns raised by the comment are adequately addressed under the Current Good Manufacturing Practice regulations (21 CFR Part 211) and that requiring application approval for such drug products is no longer necessary unless the product contains a chlorofluorocarbon as a propellant.

Agency regulations in 21 CFR 2.125(d) state that the use of a chlorofluorocarbon as a propellant in a self-pressurized container of a drug product will not result in the drug product being adulterated and/or misbranded provided the drug has an approved NDA. Therefore, OTC bronchodilator drug products in metered-dose inhalers that contain a chlorofluorocarbon as a propellant may be marketed only under an approved NDA.

The agency notes that the Panel recommended that 1 to 3 inhalations of a 1-percent solution of epinephrine be generally recognized as safe and effective as an OTC bronchodilator and the agency concurred in the tentative final monograph (47 FR 47522). Such solutions are used in hand-held rubber bulb nebulizers for oral inhalation in much the same manner as metered-dose inhalers are used. The precise dose of epinephrine delivered with a hand-held rubber bulb nebulizer is variable and the reproducibility of factors such as the pattern of the spray and the size of the aerosolized droplets are also variable. In addition, the agency has provided a three-fold dosage range, i.e., a range of 0.16 to 0.5 mg, for epinephrine in metered-dose inhalers of one to two inhalations containing the equivalent of 0.16 to 0.25 mg of epinephrine per inhalation.

In view of the general recognition and current use of 1 percent epinephrine in hand-held rubber bulb nebulizers with their recognized variables, the lack of significant reports of problems with currently marketed bronchodilator drug products in metered-dose inhalers, and the requirements of 21 CFR Part 211 and 21 CFR 330.1(e), the agency disagrees with the comment that preclearance of bronchodilators such as epinephrine in metered-dose inhalers is necessary or that specific manufacturing standards for metered-dose inhalers be included in the monograph for OTC bronchodilator drug products. Because concerns regarding variability and reproducibility of precise doses of epinephrine are not critical to the general recognition of this drug as safe and effective for use in inhalation dosage forms, the Commissioner concludes that a hearing on this issue is not warranted.

References

(1) Comment No. C00002, Docket No. 76N–052B, Dockets Management Branch.

(2) Department of Health and Human Services, Food and Drug Administration, "Drug Product Problem Reporting System: Products Searched for: All Aerosols for Inhalation," pertinent pages for the years 1971–1984, OTC Volume 04BFM, Docket No. 76N–052B, Dockets Management Branch.

11. Several comments were received from physicians expressing views that inhaled bronchodilators should not be available as OTC drug products. The comments expressed concern over the potential for overuse and abuse of metered-dose aerosols for asthmatic patients. One comment was concerned about the "problem patient who has free access to inhaled bronchodilators and uses more and more of the medication with less and less beneficial effect and more and more side effect." Another comment stated that "past problems (morbidity and mortality) seem to be related to repeated use of inhaled medications thus delaying more vigorous treatment. What safeguards are being initiated to lessen rather than increase this problem?" The comments felt strongly that these kinds of medications should be available by prescription only, to ensure satisfactory monitoring of patient response to prevent unnecessary tragedies. One comment suggested that more investigative research should be conducted "into the overuse and/or poor treatment results" from any OTC aerosolized bronchodilators when used as the sole treatment for bronchospasm. Another comment agreed with the agency's decision that OTC medication should be available to asthmatics and noted that there is considerable evidence documenting the effectiveness of therapeutic sprays and aerosols in a wide variety of allergic and respiratory disorders including asthma.

The agency responded in the tentative final monograph to similar comments which disagreed with the Panel's recommendation to allow the OTC marketing of epinephrine inhalation products for the treatment of asthma. Those comments recommended that the FDA require these products to be dispensed only by prescription (47 FR 47522). The comments expressed similar objections to the self-treatment of asthma with OTC inhalation drug products, specifically products containing epinephrine. As the agency stated in the tentative final monograph, the Panel was well aware of the abuse potential and the possible adverse effects that may occur with the use of inhalation products, but felt the risks involved do not outweigh the benefits to be derived from the OTC use of these products. (See comment 1 above.)

The agency concurred with the Panel's recommendation that asthma requires a professional diagnosis and recommended the following warning for all bronchodilators in § 341.76(c)(1) of the tentative final monograph: "Do not take this product unless a diagnosis of asthma has been made by a doctor." The agency recognizes that once a diagnosis of asthma has been made, physicians may prescribe medication in oral dosage forms and recommend the use of an aerosol bronchodilator as needed, depending upon the patient's condition. The agency acknowledges that inhaled OTC bronchodilators are not necessarily appropriate for use as the sole treatment for bronchospasm and that the use of other dosage forms in conjunction with them may be indicated. Decisions regarding the appropriate dosage forms for a particular patient should be made by the patient and the physician. However, it is reasonable to have bronchodilator aerosols available OTC so that relief may be obtained quickly when necessary without the need to obtain a physician's prescription.

The agency believes that the warning statements and the directions for use required on the label adequately inform a consumer about the dangers of overusing an aerosol bronchodilator. For instance, § 341.76(c)(6)(i) of this final monograph states: "Do not use this product more frequently or at higher doses than recommended unless directed by a doctor. Excessive use may cause nervousness and rapid heart beat, and, possibly, adverse effects on the heart." The agency has added the words "more frequently" to the first sentence of this warning and slightly revised the statement for clarity. The agency has also determined that the first sentence of this warning shall be required to appear in bold print to further emphasize to consumers not to overuse this type of product. The directions instruct the consumer to start with one inhalation, then to wait at least 1 minute. If not relieved, to use once more and not to use again for at least 3 hours. The agency emphasizes that, unless directed by a physician, the use of OTC inhaled bronchodilators is not recommended for use by patients who have been diagnosed as having severe asthma. As an added safeguard, the agency is including in this final monograph an additional warning statement that alerts patients who have active, serious asthma, i.e., have been hospitalized for asthma or who are taking any prescription drug for asthma, against using any OTC bronchodilators unless directed to do so by a physician. (See comment 15 below.)

E. Comments on OTC Bronchodilator Labeling

12. One comment requested that the final monograph for OTC bronchodilator drug products be modified to clarify which isomer of epinephrine is to be used as a standard in determining equivalency to epinephrine base. The comment stated that the biological activity of racemic epinephrine either as epinephrine base or as epinephrine hydrochloride (racemic) (since renamed racepinephrine hydrochloride) has approximately one-half the biological activity of *l*-epinephrine. The comment cited two references to substantiate the different biological activities of the isomers of epinephrine (Refs. 1 and 2). The comment suggested that, because of the difference in biological activity between the *d* and *l* forms of epinephrine, proposed § 341.76(d)(2)(ii) should be revised to clarify that the concentration of epinephrine for use in a hand-held rubber bulb nebulizer is equivalent to 1 percent *l*-epinephrine base.

Section 502(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(e)) requires that a drug's label bears the "established name" of the drug. It is the agency's policy to use as established names those names designated in official compendia such as the United States Pharmacopeia (USP). When the tentative final monograph for OTC bronchodilator drug products was published on October 26, 1982, epinephrine was the official USP XX nomenclature for *l*-epinephrine (Ref. 3); it remains the official name for *l*-epinephrine in USP XXI (Ref. 4). The agency acknowledges the varying biological activity of the different isomers of epinephrine, but because the term "epinephrine" is the official USP terminology, it is intended to convey the same meaning as "*l*-epinephrine." Similarly, both "epinephrine" and "*l*-epinephrine" convey the same meaning as "epinephrine base." Therefore, the agency is revising the term "epinephrine base" in § 341.76(d) of the tentative final monograph to read "epinephrine" in this final monograph.

References

(1) Weiner, N., "Norepinephrine, Epinephrine, and the Sympathomimetic Amines" *in* "The Pharmacological Basis of Therapeutics," 6th Ed., Macmillan Publishing Co., New York, p. 144, 1980.

(2) Patil, P.N., J.B. La Pidus, and A. Tye, "Steric Aspects of Adrenergic Drugs," *Journal of Pharmaceutical Sciences*, 59:1205–1234, 1970.

(3) "The United States Pharmacopeia XX—The National Formulary XV," United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 278–282, 1980.

(4) "The United States Pharmacopeia XXI—The National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 374–375, 1985.

13. One comment contended that the labeling indications in the tentative final monograph for metaproterenol sulfate in a metered-dose inhaler for OTC use are unnecessarily restrictive because they do not specifically include emphysema and bronchitis as conditions that can be relieved by the drug. The comment stated that the two conditions are contained in the approved prescription drug labeling for metaproterenol sulfate and that published clinical data and extensive clinical experience also support the safety and efficacy of metaproterenol sulfate for OTC use by persons with emphysema or bronchitis. The comment requested that the indications be revised to include emphysema and bronchitis as follows: "For temporary relief of shortness of breath, tightness of chest, and wheezing due to bronchial asthma, emphysema, or bronchitis." Likewise, the comment requested that the warnings for metaproterenol sulfate be revised to include the two conditions as follows: "Do not take this product unless a diagnosis of asthma, emphysema, or bronchitis has been made by a doctor."

The agency advises that the latest FDA approved labeling for metaproterenol sulfate in a metered-dose inhaler indicates the drug for use "as a bronchodilator for bronchial

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asthma and for reversible bronchospasm which may occur in association with bronchitis and emphysema" (Ref. 1). The prescription drug labeling does not recommend the generalized use of metaproterenol sulfate in all cases of bronchitis and emphysema as implied by the comment. However, because metaproterenol sulfate is not included as a monograph condition in this final rule, the comment's labeling request is moot (see comment 3 above).

Reference

(1) Copy of FDA-approved labeling from NDA 16-402, OTC Volume 04BTFM, Docket No. 76N-052B, Dockets Management Branch.

14. Many comments objecting to OTC status for metaproterenol sulfate in metered-dose inhalers stated that this drug is inappropriate for use in children under 12 years of age. Some of the comments contended that OTC status for this drug product would make the drug widely available for use in the under 12 age group even though it is not labeled for use in this age group. The comments stated that existing data are inadequate to demonstrate the safety of the drug in children under 12 years of age and that the drug has not been approved by FDA for use in this age group. Several comments stated that OTC availability of this drug product will increase abuse and misuse by children under 12 years of age. Some comments further stated that because parents cannot accurately diagnose the severity of a child's asthma attack, they would inappropriately attempt to treat a severe attack with metaproterenol sulfate inhalers, and this could result in serious consequences such as adverse reactions, delayed medical care, or even death.

One comment, posing a counter argument, noted that metaproterenol sulfate metered-dose inhalers are not labeled for use in children under 12 years of age, and stated that "there is no evidence in the available literature or any other reason to suggest that metaproterenol [metered-dose inhaler] would pose serious risks for this age group if it were made available OTC with appropriate warnings against use by children under the age of 12." The comment pointed out that, although this drug product is not approved by FDA for use in children under 12 years of age, it "is in fact widely used in younger patients without serious adverse results." The comment further stated that "the American Academy of Pediatrics, Section on Allergy and Immunology, recently recommended oral metaproterenol for infants and toddlers, and metaproterenol [metered-dose inhaler] for acute pediatric episodes in a dosage of two to three inhalations." The comment noted that oral dosage forms of metaproterenol sulfate are approved by FDA for use in children under 12 years of age and that metaproterenol metered-dose inhalers are approved for use in children under 12 years of age in the United Kingdom. The comment compared the OTC availability of metaproterenol sulfate in metered-dose inhalers, labeled with directions to consult a physician for use in children under 12 years of age, with similar OTC labeling for codeine and diphenhydramine antitussive drug products that direct the parent to consult a physician for use in children under 6 years of age. The comment pointed out that FDA dealt with the safety problems of using these drugs in younger children through appropriate labeling, and argued that such labeling would be equally effective in assuring the safe OTC use of metaproterenol inhalers.

The comment stated further that it is committed to performing additional pediatric studies, in an effort to increase scientific knowledge of the drug and to confirm the safety of the drug "in the unlikely event that a child under 12, or his parent, ignored prominent label warnings and purchased the drug for the child's use." The comment added that the research effort is not intended to secure a pediatric indication for OTC use.

In the tentative final monograph, the agency cited one study concerning the use of metaproterenol sulfate in metered-dose inhalers in children (Ref. 1). In that double-blind crossover study in a group of 10 children between the ages of 7 and 14 years, the pulse rate of each child was recorded for 60 minutes following the administration of 1.5 mg metaproterenol sulfate as an aerosol. No significant increase in pulse rates was found. Also, the authors did not note any adverse effects from this treatment. In addition, the agency is aware that this drug is widely used in children under 12 years of age as a prescription drug product. However, the labeling for the use of metaproterenol sulfate in metered-dose inhalers, as proposed in the tentative final monograph, did not include directions for use in children under 12 years of age. Instead, the labeling directed the parent to consult a physician before using the drug in this age group. The directions, warnings, and drug interaction statements for many OTC drug products instruct the consumer to seek the supervision of a physician or other health care professional under specified circumstances, particularly when using the drug in young children. The agency believes that such labeling is adequate to provide for the safe and effective use of OTC bronchodilator drug products.

Because metaproterenol sulfate in metered-dose inhalers is used widely in children under 12 years of age, the agency acknowledges and commends the commitment of one drug manufacturer to perform studies of the drug in this age group. However, because metaproterenol sulfate is not included in this final monograph, the agency will not address further the safety of this drug in children under 12 years of age in this document. (See comment 3 above.)

Reference

(1) Blackhall, M.I., B. Macartney, and S.R. O'Donnell, "The Acute Effects of the Administration of Rimiterol Aerosol in Asthmatic Children," *British Journal of Clinical Pharmacology*, 6:59-62, 1978.

15. One comment supporting OTC status for metaproterenol sulfate in metered-dose inhalers suggested that all OTC bronchodilators in aerosol dosage forms be labeled with additional warnings against their use (1) if the person has been hospitalized within the past several years for asthma, or (2) if the person is presently taking steroids for asthma. The comment suggested these additional warnings to ensure that patients with active, serious asthma do not purchase and rely on OTC bronchodilators without consulting a physician. The comment requested that FDA modify the tentative final monograph to include these additional warnings.

The agency agrees with the comment that patients with active, serious asthma should not rely on aerosol bronchodilator drug products unless directed by a physician, and that such patients need medical supervision by a physician. FDA's Pulmonary-Allergy Drugs Advisory Committee discussed its concerns about the use of OTC bronchodilator drug products by severe asthmatics at its meeting on May 13 and 14, 1983, concerning OTC status for metaproterenol sulfate (Ref. 1). The Advisory Committee indicated and the agency agrees that a medical history of hospitalization for asthma within the past several years and/or current use of prescription drug products such as steroids are indications that a patient may have serious active asthma (Ref. 1). The Advisory Committee believed that the use of OTC metaproterenol metered-dose inhalers should be restricted to adults who are not receiving concomitant medication, have not been hospitalized previously for asthma, and have never received steroids for asthma. Although the Advisory Committee only discussed metaproterenol metered-dose inhalers, the agency believes that the Committee's concerns are applicable to the use of any OTC bronchodilator, whether an aerosol or other dosage form, and that additional warnings are warranted under the circumstances above.

The agency believes that the comment's suggested phrase, "hospitalized within the past several years," would be helpful to describe "active, serious" asthma. However, as the Advisory Committee discussed, people who have previously been hospitalized for asthma should not use metaproterenol metered-dose inhalers unless directed by a doctor. The agency agrees that if a person has been hospitalized for asthma there is a presumption that the condition is serious. Under these circumstances, no OTC bronchodilator drug should be used unless directed by a doctor.

In addition, the agency agrees with the comment and with the Advisory Committee that people with active, serious asthma who are taking steroids prescribed by a doctor for this condition should not use OTC bronchodilators without first consulting the doctor. The agency also believes, in view of the Advisory Committee's concerns regarding concomitant asthma medication, that patients should not take any OTC bronchodilator drug product without consulting a doctor if they are also taking a prescription drug product for asthma. Therefore, the agency is adding to the final rule the following warning for all OTC bronchodilator drug products: "Do not use this product if you have ever been hospitalized for asthma or if you are taking any prescription drug for asthma unless directed by a doctor." The agency believes that this warning statement will better alert these patients not to use the product unless directed to do so by a doctor.

Reference

(1) Transcripts of the May 13 and 14, 1983, meeting of the FDA Pulmonary-Allergy Drugs Advisory Committee, identified as TS, Docket No. 78N-052B, Dockets Management Branch.

16. One comment questioned the agency's decision to propose professional labeling in § 341.90 of the tentative final monograph. The comment suggested that this proposal establishes a new category of OTC drug products in which only the adult dose is provided and the directions for the product state that a doctor be consulted for children under 12 years of age. Thus, information about the dosage for children under 12 years may appear in the labeling of the product provided to health professionals but not to the general public. The comment agreed with the intent of the proposal, i.e., that these products are not suitable for medically unsupervised use in children; however, the comment questioned the mechanism proposed. The comment stated that "If professional labeling refers to package inserts," it is hard to envision companies preparing separate labeling for professional samples. The comment added that the wording is permissive, not mandatory, and that it is possible that dosing information for children may not be provided at all. The comment was also concerned about the possible publication of the information in publications that are available to the general public in bookstores.

The comment asked the agency to consider the following questions: "(1) Is it in anyone's interest to try to restrict information about dosage, knowing that while the regulation may be enforced, the information will still be disseminated? Does the ability to avoid the intent of the regulation promote disrespect for regulation in general? (2) Does restricting information about dosage for the general public interfere with the availability of the information to the physician?"

The comment proposed the following labeling for these drug products: "Dosage for children under 12 must be determined by your doctor. The dosage will usually be within the following ranges." The above labeling would be followed by the dosage ranges for the individual age groups. The comment felt that this would provide the correct information and warnings, allow a user's check on the doctor's instructions, and provide a written reminder of the oral directions received from the physician.

The agency defines professional labeling as information that is provided to health care professionals only and not to the general public. There are often situations in which the use of OTC drug products requires the supervision of a physician, such as the use of ephedrine preparations in asthmatic children under 12 years of age. In these situations, professional labeling provides information to the physician concerning such things as dosages or other indications for the OTC drug product. This information is generally not found in the labeling or package inserts made available to consumers or in publications such as the Physician's Desk Reference (PDR) for Nonprescription Drugs. Information in professional labeling is made available to health care professionals through literature and samples provided by representatives of the drug companies, through advertisements in professional journals, and by publication in professional books such as the PDR discussing prescription drugs. Because these are the principal methods for disseminating the information, the agency does not believe that limiting the information about dosage that is available to the general public interferes with the availability of this information to physicians.

As the comment pointed out, some professional books and journals may be obtained by consumers who then will have access to information in professional labeling. The agency cannot prevent consumers from obtaining such information. However, the agency can require sufficient information on the label of the drug product for the safe and effective use of the product on an OTC basis. For example, the agency believes that the dosage regimen for ephedrine for asthmatic children under 12 years of age requires medical supervision by a physician. Therefore, this information should be provided to physicians and is not intended to be included in the labeling provided to the consumer. The required OTC labeling directs parents who wish to give the drug to asthmatic children under 12 years to consult their physicians for information on how to give the drug. The agency believes that the regulations concerning the dosage information for ephedrine are in the best interest of the patient and does not believe that they encourage consumers to try to circumvent the intent of regulations or that they promote disrespect for regulation in general.

The agency disagrees with the comment's proposed labeling that would state that the dosage for children under 12 years of age must be determined by a doctor, followed by a dosage range for the individual age groups. Consumers may not consult a doctor concerning dosage requirements for children under 12 years if such information is provided on the label. Therefore, the agency is retaining in this final monograph, § 341.90 *Professional labeling*, which provides to health care professionals (but not to the general public) recommended dosage ranges for ephedrine, ephedrine hydrochloride, ephedrine sulfate, and racephedrine hydrochloride for children under 12 years of age.

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II. Summary of Significant Changes From the Proposed Rule

1. The name "Epinephrine hydrochloride (racemic)," proposed in § 341.16(f) of the tentative final monograph, was not an official or a compendial name for this drug. A compendial monograph for racepinephrine hydrochloride became official on January 1, 1986 (Ref. 1). Therefore, the name "Racepinephrine hydrochloride" is used in this final monograph for this ingredient. In addition, because the term "epinephrine" is the official terminology for the term "epinephrine base," this term has been revised to read "epinephrine" in § 341.76(d) in the monograph. (See comment 12 above.)

Reference

(1) "The United States Pharmacopeia XXI—The National Formulary XVI, Supplement 3," United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 2031–2032, 1985.

2. The agency believes that metaproterenol sulfate in metered-dose inhalers cannot be generally recognized as safe and effective as an OTC bronchodilator at this time and has not included this drug in the final monograph. (See comment 3 above.)

3. The agency is not including proposed § 341.76(b)(2) *Other allowable statements*, in this final monograph but is incorporating the statements proposed in that section of the tentative final monograph in the indications section in this final monograph.

4. The agency has added a warning to § 341.76(c) against use, unless directed by a doctor, of OTC bronchodilators in asthmatics who have been hospitalized for asthma or who are taking prescription drugs for asthma. This warning helps ensure that patients with active, serious asthma do not use OTC bronchodilators except under the supervision of a physician. (See comment 15 above.)

5. To further emphasize that asthmatics should not overuse epinephrine in aerosol dosage forms, the agency has modified, for clarity, the warning in § 341.76(c)(6)(i) and is requiring that the first sentence of this warning appear on the label of the product in boldface type. This warning instructs the asthmatic not to use higher doses than recommended nor to use the product more frequently than recommended. In addition, the warning explains the possible consequences of excessive use of the product. (See comment 11 above.)

6. Because of concern that possibly serious consequences could develop from the excessive use of epinephrine drug products, the agency is also requiring that the warning in § 341.76(c)(6)(ii) appear on the label of the marketed product in boldface type. This warning instructs the asthmatic to discontinue use of the product, and to seek medical assistance if relief is not obtained in 20 minutes or if symptoms become worse. (See comment 9 above.)

7. The agency has substituted the word "use" for the word "take" in the warning statements for clarity and consistency. The word "use" is more appropriate for inhalation drug products and is also appropriate for oral dosage forms.

8. The agency has moved the portion of § 369.20 Epinephrine Inhalation 1:100 (not for injection) that warns against use of the product if it is brown in color or contains a precipitate, with minor modifications for clarity, to the bronchodilator monograph as § 341.76(c)(6)(iii). This warning is needed to ensure that an ineffective product is not used.

III. The Agency's Final Conclusions on OTC Bronchodilator Drug Products

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC bronchodilator drug products are generally recognized as safe and effective and not misbranded. Specifically, the following ingredients are included in this final rule for OTC bronchodilator use: ephedrine, ephedrine hydrochloride, ephedrine sulfate, epinephrine, epinephrine bitartrate, racephedrine hydrochloride, and racepinephrine hydrochloride. All other ingredients for OTC bronchodilator use are considered nonmonograph ingredients. These include by example, but not by way of limitation, those ingredients previously considered by the Panel or the agency in the course of this rulemaking, e.g., belladonna alkaloids, euphorbia pilulifera, metaproterenol sulfate, methoxyphenamine hydrochloride, pseudoephedrine hydrochloride, pseudoephedrine sulfate, and single-ingredient theophylline preparations (theophylline, anhydrous; aminophylline; theophylline calcium salicylate; theophylline sodium glycinate). Any drug marketed for use as an OTC bronchodilator drug product that is not in conformance with the monograph (21 CFR Part 341) will be considered a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) and misbranded under section 502(a) of the act (21 U.S.C. 352(a)) and may not be marketed for this use unless it is the subject of an approved NDA.

In the **Federal Register** of April 22, 1985 (50 FR 15810) the agency proposed to change its "exclusivity" policy for the labeling of OTC drug products that has existed during the course of the OTC drug review. Under that policy, the agency had maintained that the terms used in an OTC drug product's labeling were limited to those terms included in a final OTC drug monograph.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing the exclusivity policy and establishing three alternatives for stating the indications for use in OTC drug labeling. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "Approved Uses"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "Approved Uses"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "Approved Uses," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All required OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under an OTC drug monograph.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (47 FR 47520). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 6, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC bronchodilator drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC bronchodilator drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements of § 341.76(d)(2)(i)(*b*) in these regulations will be submitted for approval to the Office of Management and Budget (OMB). These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register** prior to April 2, 1986.

The agency is removing portions of § 369.20 applicable to epinephrine in inhalation dosage forms and to oral ephedrine preparations because these portions of that regulation are superceded by the requirements of the bronchodilator final monograph (Part 341). The items being removed include the entries for "Ephedrine Preparations (oral)" and "Epinephrine Inhalation 1:100 (not for injection)" under § 369.20. As noted above, the agency has moved the portion of § 369.20 Epinephrine Inhalation 1:100 (not for injection) that warns against use of the product if it is brown in color or contains a precipitate, with minor modifications for clarity, to the bronchodilator monograph.

List of Subjects

21 CFR Part 341

Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Medical Devices, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

1. By adding new Part 341, to read as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
341.1 Scope.
341.3 Definitions.

Subpart B—Active Ingredients

341.16 Bronchodilator active ingredients.

Subpart C—Labeling

341.76 Labeling of bronchodilator drug products.
341.90 Professional labeling.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.11.

Subpart A—General Provisions

§ 341.1 Scope.

(a) An over-the-counter cold, cough, allergy, bronchodilator, or antiasthmatic drug product in a form suitable for oral, inhalant, or topical administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part and each of the general conditions established in § 330.1.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 341.3 Definitions.

As used in this part:

(a) *Bronchodilator drug.* A drug used to overcome spasms that cause narrowing of the bronchial air tubes, such as in the symptomatic treatment of the wheezing and shortness of breath of asthma.

(b) [Reserved]

Subpart B—Active Ingredients

§ 341.16 Bronchodilator active ingredients.

The active ingredients of the product consist of any of the following when used within the dosage limits established for each ingredient:

(a) Ephedrine.
(b) Ephedrine hydrochloride.
(c) Ephedrine sulfate.
(d) Epinephrine.
(e) Epinephrine bitartrate.
(f) Racephedrine hydrochloride.
(g) Racepinephrine hydrochloride.

Subpart C—Labeling

§ 341.76 Labeling of bronchodilator drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "bronchodilator."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the phrase listed in paragraph (b)(1) of this section. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed below, may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) "For temporary relief of shortness of breath, tightness of chest, and wheezing due to bronchial asthma."

(2) In addition to the required information identified in paragraph (b)(1) of this section, the labeling of the product may contain one or more of the following statements:

(i) "For the" (select one of the following' "temporary relief" or "symptomatic control") "of bronchial asthma."

(ii) "Eases breathing for asthma patients" (which may be followed by: "by reducing spasms of bronchial muscles").

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "Do not use this product unless a diagnosis of asthma has been made by a doctor."

(2) "Do not use this product if you have heart disease, high blood pressure, thyroid disease, diabetes, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor."

(3) "Do not use this product if you have ever been hospitalized for asthma or if you are taking any prescription drug for asthma unless directed by a doctor."

(4) *"Drug Interaction precaution.* Do not use this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor."

(5) *For products containing ephedrine, ephedrine hydrochloride, ephedrine sulfate, or racephedrine hydrochloride identified in § 341.16 (a), (b), (c), and (f).* (i) "Do not continue to use this product, but seek medical assistance

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immediately if symptoms are not relieved within 1 hour or become worse."

(ii) "Some users of this product may experience nervousness, tremor, sleeplessness, nausea, and loss of appetite. If these symptoms persist or become worse, consult your doctor."

(6) *For products containing epinephrine, epinephrine bitartrate, or racepinephrine hydrochloride identified in § 341.16 (d), (e), and (g).* (i) "Do not use this product more frequently or at higher doses than recommended unless directed by a doctor. [first sentence in boldface type] Excessive use may cause nervousness and rapid heart beat, and, possibly, adverse effects on the heart."

(ii) "Do not continue to use this product, but seek medical assistance immediately if symptoms are not relieved within 20 minutes or become worse." [sentence in boldface type]

(iii) *For products intended for use in a hand-held rubber bulb nebulizer.* "Do not use this product if it is brown in color or cloudy."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing ephedrine, ephedrine hydrochloride, ephedrine sulfate, or racephedrine hydrochloride identified in § 341.16 (a), (b), (c), and (f).* Adults: oral dosage is 12.5 to 25 milligrams every 4 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Do not exceed recommended dose unless directed by a doctor. Children under 12 years of age: consult a doctor.

(2) *For products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride identified in § 341.16 (d), (e), and (g)*—(i) *For use in a pressurized metered-dose aerosol container.* Each inhalation contains the equivalent of 0.16 to 0.25 milligram of epinephrine.

(*a*) Inhalation dosage for adults and children 4 years of age and older: Start with one inhalation, then wait at least 1 minute. If not relieved, use once more. Do not use again for at least 3 hours. The use of this product by children should be supervised by an adult. Children under 4 years of age: consult a doctor.

(*b*) The labeling must include directions for the proper use of the inhaler and for the proper care and cleaning of the mouthpiece. The directions must be clear, direct, and provide the consumer with sufficient information for the safe and effective use of the product.

(ii) *For use in a hand-held rubber bulb nebulizer.* The ingredient is used in an aqueous solution at a concentration equivalent to 1 percent epinephrine. Inhalation dosage for adults and children 4 years of age and older: 1 to 3 inhalations not more often than every 3 hours. The use of this product by children should be supervised by an adult. Children under 4 years of age: consult a doctor.

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

§ 341.90 Professional labeling.

The labeling of the product provided to health professionals (but not to the general public) may contain the following additional dosage information for Products containing the active ingredients identified below:

(a) *For products containing ephedrine, ephedrine hydrochloride, ephedrine sulfate, or racephedrine hydrochloride identified in § 341.16 (a), (b), (c), and (f).* Children 6 to under 12 years of age: oral dosage is 6.25 to 12.5 milligrams every 4 hours, not to exceed 75 milligrams in 24 hours. Children 2 to under 6 years of age: oral dosage is 0.3 to 0.5 milligram per kilogram of body weight every 4 hours, not to exceed 2 milligrams per kilogram of body weight in 24 hours.

(b) [Reserved].

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

2. The authority citation for 21 CFR Part 369 continues to read as follows:

Authority: Secs. 502, 503, 506, 507, 701, 52 Stat. 1050–1052 as amended, 55 Stat. 851, 59 Stat. 463 as amended, 52 Stat. 1055–1056 as amended (21 U.S.C. 352, 353, 356, 357, 371); 21 CFR 5.11.

§ 369.20 [Amended]

3. In Subpart B, § 369.20 *Drugs; recommended warning and caution statements* is amended by removing the entries for "Ephedrine Preparations (Oral)" and "Epinephrine Inhalation 1:100 (nor for injection)."

Dated: September 10, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-22151 Filed 10-1-86; 8:45 am]

BILLING CODE 4160-01-M

federal register

Thursday
October 2, 1986

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 928

Papayas Grown in Hawaii; Change in Fiscal Year and Approval of Budgeted Expenditures and Assessment Rates

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

Papayas Grown in Hawaii; Change in Fiscal Year and Approval of Budgeted Expenditures and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the fiscal year to the 12-month period (July 1–June 30) from the current 12-month period (January 1–December 31). It also establishes a 9-month interim fiscal period from October 1, 1986, through June 30, 1987, and approves expenses and an assessment rate for this interim period. The new fiscal year more closely approximates the seasonal production cycle of Hawaiian papayas, and is expected to improve the functioning and effectiveness of committee operations.

EFFECTIVE DATES: Sections 928.106, and 928.216 become effective October 1, 1986. Section 928.215 is removed effective September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This final rule changes the fiscal year, establishes an interim 9-month fiscal period, and authorizes committee expenditures of $366,000 and an assessment rate of $0.007 per pound of papayas for such interim period. The current 12-month fiscal year and related budgeted expenditures of $447,240 and assessment rate of $0.006 per pound of papayas is terminated on September 30, 1986. Hence, this action increases the assessment rate slightly, by $0.001, effective October 1, 1986. The fiscal year change is designed to improve the functioning and operations of the marketing order program. Approval of the expenditures and assessment rate is necessary for the committee to function during the interim period.

It is estimated that 100 handlers of Hawaiian papayas under the marketing order for papayas grown in Hawaii, will be subject to regulation during the course of the current season and that the great majority of these firms may be classified as small entities. The changes contemplated in the final rule would not signficantly change the regulatory burden on such handlers.

A proposed rule was issued September 16, 1986, and published in the **Federal Register** (51 FR 33272) on September 19, 1986, pertaining to the proposed changes. Interested persons had until September 29, 1986, to file comments on the proposals. No comments were received.

The final rule is issued under the marketing agreement and Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The rule is based upon the recommendations and information submitted by the Papayas Administrative Committee, established under the order, and upon other available information. The authority for the rule is specified in §§ 928.6, 928.40, 928.41, and 928.42.

This final rule changes the fiscal year established under the marketing order, and approves expenditures and an assessment rate which are necessary because of the fiscal year change. Currently, the fiscal period is the 12-month period from January 1 through December 31 of each year. The new fiscal year is the 12-month period beginning July 1 and ending June 30 of each season, with the first full fiscal year beginning July 1, 1987. The new fiscal year more closely approximates the seasonal production cycle for Hawaiian papayas, and coincides with the Hawaiian State fiscal year. The new fiscal year is expected to improve the functioning and effectiveness of committee operations, and facilitate the partial funding of marketing research and development projects by Hawaiian State government agencies.

To effectuate the fiscal year change as quickly as possible, the current fiscal year is terminated on September 30, 1986, and an interim 9-month fiscal period is established beginning October 1, 1986. Expenditures are authorized and an assessment rate is established for the 9-month fiscal period ending June 30, 1987, to allow the committee to function during the interim period. Such expenditures are estimated at $366,000, and the assessment rate needs to be $0.007 per pound of papayas to generate sufficient income to fund program operations. Currently authorized expenditures and an assessment rate of $0.006 for the current fiscal year (January 1, 1986, through December 31, 1986) is terminated effective September 30, 1986.

Pursuant to 5 U.S.C. 553, it is hereby found that it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register**, because: (1) This action is based upon the unanimous recommendation of the committee at a public meeting; (2) affected persons will not need additional time to comply with the changes specified in the rule; and (3) notice of the proposed interim 9-month fiscal period and related expenditures and assessment rate beginning October 1, 1986, and the proposed termination of currently authorized expenses and assessment rate on September 30, 1986, was published in the **Federal Register** and no objections were received.

List of Subjects in 7 CFR Part 928

Marketing agreements and orders, Papayas.

PART 928—[AMENDED]

Subpart—Rules and Regulations (7 CFR Part 928.141–928.313) is amended as follows:

1. The authority citation for 7 CFR Part 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 928.106 is added to read as follows:

§ 928.106 Fiscal year.

Pursuant to § 928.6, the term "fiscal year" is redefined to mean the 12-month period beginning on July 1 of each year and ending on June 30 of the following year: *Provided*, That an interim fiscal period is established for the period October 1, 1986, through June 30, 1987.

3. Section 928.215 (51 FR 8789) is removed effective September 30, 1986.

4. Section 928.216 is added to read as follows:

(§ 928.216 expires June 30, 1987, and will not be published in the annual Code of Federal Regulations.)

§ 928.216 Expenses and assessment rate.

Expenses of $366,000 by the Papaya Administrative Committee are authorized and an assessment rate of $0.007 per pound of papayas is established for the 9-month fiscal period October 1, 1986, through June 30, 1987. Unexpended funds may be carried over as a reserve.

Dated: October 1, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–22525 Filed 10–1–86; 11:21 am]

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Part III
Department of Labor, Employment and Training Administration, 35492

Reader Aids
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Presidential Documents

Title 3—

The President

Memorandum of September 30, 1986

Annual Determination on Steel Industry Modernization

Memorandum for the United States Trade Representative

In accordance with Title VIII, Section 806 of the Trade and Tariff Act of 1984, you are hereby authorized and directed to report my determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, together with the attached report and the report of the United States International Trade Commission (USITC), on the efforts undertaken by the domestic steel industry to modernize and maintain its international competitiveness. The Act requires the major companies of the steel industry to commit substantially all of their net cash flow to investment in modern plant and equipment, and research and development; to maintain their international competitiveness in quality and cost, improve productivity, and control production costs; and to commit one percent or more of their net cash flow to worker retraining programs (which may be waived for unusual economic circumstances).

The attached report, together with the report prepared by the USITC at my direction and under the authority contained in Section 332(g) of the Tariff Act of 1930, enumerates the actions taken by the domestic industry consistent with an affirmative determination under Section 806. Based upon these reports and upon further examination of all available data, I hereby make an affirmative determination for the second annual period, and waive the application of Section 806(b)(1)(B) with respect to a major company which neither has nor reasonably anticipates significant unemployment.

This memorandum shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 30, 1986.

[FR Doc. 86-22568
Filed 10-1-86; 3:15 pm]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 529]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 529 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 227,961 cartons during the period October 5 through October 11, 1986. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 529 (§ 910.829) is effective for the period October 5 through October 11, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administrative Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This regulation is consistent with the marketing policy for 1986-87. The committee met publicly on September 30, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommend a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons has improved slightly.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.829 is added to read as follows:

§ 910.829 Lemon Regulation 529.

The quantity of lemons grown in California and Arizona which may be handled during the period October 5 through October 11, 1986, is established at 227,961 cartons.

Dated: October 1, 1986.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-22604 Filed 10-2-86; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM82-35-001, etc.; Order No. 435-A]

Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers

Issued: September 29, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing and clarifying final rule.

SUMMARY: The Federal Energy Regulatory Commission denies rehearing of its final rule setting fees under the Independent Offices Appropriation Act for filings by electric utilities, cogenerators, and small power producers under the Federal Power Act and the Public Utility Regulatory Policies Act. This order also amends the final rule to make it clear that initial rate filings are subject to fees.

EFFECTIVE DATE: The amendments to 18 CFR 381.502 and 381.503 are effective November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, (202) 357-8470.

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SUPPLEMENTARY INFORMATION:

Order Denying Rehearing and Clarifying Final Rule

Issued: September 29, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

On September 30, 1985, the Federal Energy Regulatory Commission (Commission) issued a final rule [1] establishing fees under the Independent Offices Appropriation Act of 1952 (IOAA) [2] for the services the Commission provides to electric utilities, cogenerators, and small power producers under the Federal Power Act (FPA) [3] and the Public Utility Regulatory Policies Act of 1978 (PURPA).[4] The Commission established fees for twelve categories of filings, including three types of rate filings: Class 1 (filings with no rate impact or involving only rate decreases); Class 2 (filings that affect rates and that are not supported by Period II cost of service data); and Class 3 (filings that affect rates and that are supported by Period II cost of services data). The Commission received six timely petitions for rehearing or requests for clarification,[5] two untimely requests for rehearing,[6] and two "Motions to Intervene" requesting changes in the rule.[7] On November 25, 1985, the Commission issued an order granting rehearing for purposes of further consideration.[8]

Rehearing or clarification is requested on twelve issues: (1) The level of fees for rate filings; (2) the treatment of rate filings with little revenue effect; (3) the treatment of combined rate filings; (4) the treatment of filings adding purchasers; (5) the treatment of certificates of concurrence; (6) the treatment of notices of termination; (7) the treatment of economy or coordination transactions; (8) the treatment of successive filings of a standard contract; (9) the treatment of filings related to interconnection agreements; (10) the treatment of "borderline" filings; (11) the situation in which the fee will be passed through to an entity that is exempt from fees; and (12) the fee for certification as qualifying facility under PURPA. In addition to addressing these issues, this order amends the regulatory language to make it clear that initial rate filings are subject to fees.

II. Discussion

A. Level of Fees for Rate Filings

Iowa-Illinois argues that the fees for the three categories of rate schedule filings are unreasonable and excessive. It claims that these fees are not related to the amount of Commission processing time involved. Because of the level of the fees, utilities will delay filings until a large increase is needed, Iowa-Illinois states. According to Iowa-Illinois, the fee for rate filings made under the abbreviated filing requirements should be limited to no more than ten percent of the proposed increase.

The Commission does not agree. The fees established in the final rule are a direct result of reported time spent processing rate schedule filings. The derivation of the fee for each filing is explained in detail in the preamble to the final rule, and Iowa-Illinois has provided no evidence indicating any flaw in that derivation. Although some filings within a given category will take somewhat less time to process than others, use of a fee based on the average processing time for filings in each category is the most appropriate alternative to having a direct billing system for each individual rate filing. Such a direct billing system is not administratively practicable at present and is not required by the IOAA. As discussed in the preamble of the final rule, the IOAA allows an agency to determine its costs based on the best available records in the agency.[9]

Moreover, Congress intended that agencies become self-sustaining to the extent possible, and a ten percent cap on fees would undermine this goal by preventing the Commission from recouping its costs. For this reason, the fees in the final rule are based on the average time the Commission spends on a particular type of filing, not on the value of the filing to the applicant (*see* discussion in section B). If a utility contemplates using the Commission's services to receive permission to undertake a particular activity, that utility must decide beforehand whether the benefits to be obtained from the activity outweigh the various costs associated with the activity, *including the fee.*

With regard to Iowa-Illinois' argument that the level of the fees will cause utilities to delay rate filings until a large rate increase is needed, the Commission does not believe the effects of any such delays will be so onerous as to justify abandoning the methodology for determining fees adopted in the final rule. The fees are generally small in comparison to the size of most requested rate increases. Furthermore, the filing fee is a legitimate cost of service expense which the utility may recover from its customers.

Iowa-Illinois and Puget argue that the level of the fees for rate filings will discourage voluntary transmission arrangements. The Commission has stated that it wishes to encourage such arrangements.[10] The Commission must strike a reasonable balance between the IOAA policy that agencies become as self-sustaining as possible and the Commission's other policy goals. Moreover, the Commission dose not believe that its policy of encouraging such transactions requires it to forego charging the full applicable fee. It is unlikely that the fee for these filings will make most transactions unprofitable. It is not uncommon that a rate schedule filing establishes a rate for potential transactions over some period of time. In those cases, the fee cost is spread over an increasingly larger base as sales are transacted under the rate schedule, thus lessening its impact on individual transactions. Thus, the Commission does not believe the fee generally will discourage voluntary transmission agreements.

B. Rate Filings with Little Revenue Effect

FPL argues that the Commission should keep the old charge of $100 for rate schedule filings with little revenue impact, such as minor amendments that merely identify delivery points. It says that applying the Class 1 filing fee to such minor amendments is unreasonable. FPL also states that the Class 1 fee fails to reflect the fact that in most such filings, the customers have agreed to the change. Puget makes a similar argument that short-term agreements and agreements with little effect on revenue (such as agreements under which Puget revises its rates to reflect an agreed-upon cost index) should be treated separately from other rate filings and assessed a lower fee. It states that the fee established in the final rule would often exceed the value of the transaction, thus discouraging these types of arrangements.

Puget also argues that under the IOAA, a fee must have some relation to the value of the service; thus, a filing with inconsequential rate effects should not be charged a fee larger than the value of the filing. This can be done in a manner that is not administratively burdensome, Puget argues, by creating a special category for such filings.

The Commission does not agree with Puget's claim that the IOAA requires fees to be based on the value of the service to the applicant. The Supreme Court noted in *National Cable Television Association v. U.S.*[11] that fees are to be based on the value of the service the agency performs. However, as the United States Court of Appeals for the District of Columbia Circuit noted later in *National Cable Television Association v. FCC,*[12] the Supreme Court meant that the value on which fees are based is "*not* . . . the value which the regulated party may immediately or eventually *derive* from the regulatory scheme, but . . . the value of the direct and indirect services which the agency *confers.*" [13] Thus, the fees are properly based on the costs this agency incurs.

Moreover, it can be said of any fee that it might discourage some transactions. When the benefits of a transaction are small, even the utility's own administrative costs might outweigh the benefits. As noted above, utilities must decide whether the benefits of the transaction outweigh its various costs, including the fee.

In response to FPL's argument that the customers have agreed to the change in most instances, the Commission also notes that its staff must perform a complete analysis of the proposed transaction regardless of whether the customers have agreed to a change. Thus, costs are incurred whether the customers have agreed to the filing or not.

Finally, in further response to Puget's argument that the fees will discourage transactions with small revenue benefits, the Commission again notes that the IOAA requires agencies to be as self-sustaining as possible.

C. Combined Rate Filings

AEP argues that only one filing fee should be required when rate schedules are combined for filing and when the combined filing does not require substantially more review time than a similar filing for a single purchaser or party.

Although AEP has not described the situations in which combined filings would be made, the Commission believes that two possible situations exist. One situation is where the proposed transaction is characterized as a system sale involving affiliate utilities within the system. In that case, the Commission must consider not only the cost and market factors associated with the transaction from a system perspective, but also each affiliate selling utility's contribution to and effect on the system transaction. Thus, an analysis must be performed for each affiliate utility involved in the transaction. Consequently, a filing fee from each affiliate utility under this combined filing situation is appropriate.

The other situation is where a utility files rate changes for its various wholesale requirements customers in concurrent but separate applications. While this method of filing multiple concurrent changes separately is allowed by the Commission's regulations, the almost universal practice among utilities is to consolidate rate changes to all wholesale requirements customers into one application, incurring only one filing fee. If a utility chooses to file separately, a fee will be assessed for each individual application.

D. Adding Purchasers

AEP and Iowa-Illinois suggest that once a rate schedule has been approved, no additional fee should be imposed for adding another purchaser to the rate schedule.

The Commission does not agree that a fee should not be required for such filings because these filings do require staff analysis and processing resources. The staff must analyze the filing to determine whether the new customers will be provided the same service as existing customers, and must ensure that pertinent cost or market considerations have not changed significantly.

E. Certificates of Concurrence

When two utilities sell power to one another under the same rate schedule, one may file the rate schedule and the other may file a "certificate of concurrence." [14] Such a certificate simply states that the second utility agrees to a rate schedule filed by the first utility; that is, the rates, charges, terms, and conditions of service specified in the rate schedule are also applicable in instances where the second utility provides service.[15] Under the final rule, when the second utility files such a certificate, it is treated as an ordinary rate filing and is assessed the filing fee for the rate schedule filed by the first utility and agreed to in the certificate.

Iowa-Illinois argues that certificates of concurrence should not be treated as ordinary rate filings. It argues that a lesser fee should be charged in order to encourage the use of certificates of concurrence. It reasons that use of these certificates lessens workload for both the Commission and the utilities.

The Commission does not agree that certificates of concurrence take less time to process than ordinary rate filings. As noted in the preamble to the final rule,[16] a certificate of concurrence is simply a convenience for the utility allowing it to dispense with filing the rate schedule itself when that schedule has already been filed by another utility. Each selling utility must still file cost support for its rates, and the Commission must separately analyze the supporting data for each individual utility. Iowa-Illinois provides no support for its statement that use of certificates of concurrence lessens the Commission's workload.

Iowa-Illinois also challenges the statement in the preamble that treating certificates of concurrence as ordinary rate filings is consistent with the Commission's past practice.[17] According to Iowa-Illinois, the practice dates back only to April 2, 1984, when Iowa-Illinois was advised of a fee deficiency in one of its filings.

The Commission does not agree. Under the previous fees rule,[18] special treatment was not afforded to filings that included certificates of concurrence, even though applicants who did not submit fees with these filings inadvertently may not have been informed of any fee deficiency. Iowa-Illinois may not have been directly

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[1] Order No. 435, 50 FR. 40, 347 (Oct. 3, 1985), III FERC Statutes & Regulations ¶ 30,663 (codified at 18 CFR Parts 32, 33, 34, 35, 36, 45, 101, 292, 375, and 381 (1986)).

[2] 31 U.S.C. 9701 (1982).

[3] 16 U.S.C. 792–828c (1982).

[4] 16 U.S.C. 2601–2645 (1982).

[5] These requests were from the Iowa-Illinois Gas and Electric Company (Iowa-Illinois), the American Electric Power Service Corporation (AEP), the New York State Electric & Gas Corporation (NYSEG), Public Entities, the Central Vermont Public Service Corporation (Central Vermont), and Decker Energy International, Inc. (Decker).

[6] These requests were from the Florida Power & Light Company (FPL) and the American Gas Association (AGA).

[7] These requests were from the Puget Sound Power and Light Company (Puget) and the Massachusetts Municipal Wholesale Electric Company (MMWEC).

[8] Anyone may request rehearing and has a right to have such a request considered as long as the request is timely. However, under section 313(a) of the FPA, a person who does not make a timely request for rehearing may not apply for judicial review. The filings by Puget Sound, MMWEC, FPL, and the AGA are not timely requests for rehearing under 18 CFR 385.713(b) (1986). The Commission will, however, consider the issues raised in their filings.

[9] 50 FR 40,347, 40,351 (Oct. 3, 1985).

[10] *See, e.g.,* Regulation of Electricity Sales-for-Resale and Transmission Services, Notice of Inquiry, 50 FR 23,445 (June 4, 1985), IV FERC Statutes and Regulations ¶ 35,518.

[11] 415 U.S. 336 (1974).

[12] 554 F.2d 1094 (D.C. Cir. 1976).

[13] 554 F.2d at 1107 (emphasis in original).

[14] 18 CFR 35.1(e) (1986).

[15] 18 CFR 131.52 (1986).

[16] 50 FR 40,347, 40,348 (Oct. 3, 1985).

[17] *Id.*

[18] 18 CFR 36.2 (1985).

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informed of the requirements of the old fees rule until the filing it mentions, but this does not change the fact that the old fees rule clearly required the full fee regardless of whether a certificate of concurrence was used in lieu of filing duplicate copies of a rate schedule.

F. Notices of Termination

AEP and Puget argue that notices of termination should not be assessed filing fee. Puget argues that the fee is excessive in relation to the allegedly small amount of review time involved. No substantive ratemaking is needed, Puget says. It also points out that in many instances, rate schedules terminate by their own terms, and argues that there is no rate "change" under these circumstances.

The Commission does not agree that termination filings necessarily require little review time. Rate schedules do not automatically terminate by their own terms. The contract between the parties may expire, but the rate schedule continues in effect until a termination filing is made and approved. Review of filings requesting termination is necessary to ensure that an adequate alternative power supply exists and that the change does not constitute undue discrimination or violate the antitrust laws. Thus, these termination filings will be charged the Class 1 fee when a notice of cancellation is filed.[19] The fee is simply one among the various costs associated with a transaction that a utility must consider in deciding whether the transaction will be profitable.

G. Economy or Coordination Transactions

When utilities interchange power with one another, it is called an "economy transaction" or a "coordination transaction." The Commission generally charges a Class 2 fee for the filing of such transactions. Public Entities and MMWEC argue that such transactions should be subject to a nominal fee or no fee. Public Entities argues that the Class 2 fee is excessive for these filings because the filings allegedly are simpler than other Class 2 filings and thus require less Commission processing time. Public Entities states that these transactions are often of very short duration and argues that where there is no general system tariff covering such a transaction, imposing a Class 2 filing fee on both initiating and terminating[20] the arrangement would make the transaction uneconomical. Public Entities points out that the Commission has recently stated a policy favoring coordination transactions.[21] As an alternative to the final rule, Public Entities suggests that fees be waived for economy transactions that are under six months in duration or involve less than $100,000.

The Commission disagrees with Public Entities and MMWEC. The Commission's staff must perform an analysis of a rate filing regardless of the duration of the transaction involved. Furthermore, it is not uncommon that a rate schedule filing for coordination transactions establishes a rate for potential transactions over some period of time. In those cases, the fee cost is spread over an increasingly larger base as sales are transacted under the rate schedule, thus lessening its impact on individual transactions. Thus, the Commission does not believe the fee generally will discourage coordination transactions.

H. Successive Filings of Standard Contracts

Central Vermont points out that utilities sometimes have a standard form of contract or rate schedule for a particular type of service which they file for each customer in a class. It states that under these circumstances, the Commission should charge a full Class 2 or Class 3 fee only for the first filing of the standard form, arguing that a full cost of service review is needed only for the first filing.

The Commission rejects Central Vermont's argument. If a selling utility chooses not to coordinate its rate change filings with the Commission, and instead makes separate filings at different times for individual customers, each subsequent filing constitutes a separate Class 2 or 3 rate change and incurs a separate fee. By definition, each subsequent filing constitutes a rate change for the particular purchaser; thus, it is a Class 2 or 3 rate change filing. Furthermore, although identical cost of service data may be incorporated in subsequent filings, Commission staff efforts are not necessarily reduced. In the case of coordination service filings, for instance, the staff must analyze whether cost or market factors have changed. This may involve additional review of cost data as well as other items, such as the regional competition for capacity; the generation mix of the buyers and sellers; the reciprocal relationship of the parties; the contribution toward the seller's fixed costs; and availability of transmission. Therefore, as noted above, either a Class 2 or a Class 3 fee will be assessed for successive filings. A utility must consider the fee along with all the other costs associated with the transaction in deciding whether the transaction will be worthwhile. Utilities are free, of course, to file a single tariff with the Commission with individual service agreements under the tariff in lieu of individual bilateral rate schedules with each purchaser.

I. Interconnection Agreement Filings Under Delegated Authority

Iowa-Illinois suggests that filings related to interconnection agreements that are usually handled by the Commission's Office of Electric Power Regulation (OEPR) under its delegated authority be treated separately from interconnection type filings that are the subject of Commission orders. It argues that these types of filings require less processing time than filings handled by the Commission and thus should be assessed a lower fee.

Filings processed under delegated authority do not necessarily take substantially less processing time than filings relied upon by the Commission. Both OEPR and the Office of the General Counsel must still review the filing, regardless of whether it is ultimately dealt with by the Commission or by the Director of OEPR.

J. Borderline Filings

Utilities sometimes provide service to ultimate consumers located in the service (franchise) areas of neighboring utilities when it would be more expensive for the second utility to serve these customers—for instance, when the second utility would have to construct a transmission line over a mountain range in order to serve the customers. The first utility then bills the second utility at the first utility's retail rate level. These transactions are sales of electricity for resale and thus are subject to the Commission's jurisdiction.

NYSEG argues that uncontested borderline filings that are already approved by state utility commissions should not be considered Class 2 rate filings. It argues that its borderline filings require little review time because the rate levels have already been approved by the Public Service

[19] However, when a rate schedule is superseded by the filing or another rate schedule, a separate fee is not required, because the cancellation is subsumed within the filing of the superseding rate schedule.

[20] As noted above in section F, no fee is required for terminating a rate schedule when it is superseded by another rate filing. A separate termination filing would be assessed a Class 1 fee.

[21] See, e.g., Regulation Electricity Sales-for-Resale and Transmission Services, Notice of Inquiry, Docket No. RM85-17-000,50 F.R. 23,495, 23,649 (June 4, 1985), IV FERC Statutes and Regulations ¶ 32,516.

Commission of the State of New York (PSCNY). NYSEG also argues that the Class 2 filing fee would exceed the additional revenue generated by the sale in many cases.

Regardless of whether a state commission has approved a retail rate, borderline sales are wholesale sales under this Commission's jurisdiction. The Commission must ensure that they are just and reasonable under the FPA.[22] Thus, these filings do not necessarily take substantially less review and processing time than other filings in the same category. As with the other fees, the fees for these filings are part of the costs of the transaction, and utilities must consider all such costs before deciding whether to raise the rate.

NYSEG also claims that unless the fee is reduced, its other customers will be subsidizing the fee for its borderline customers. This is incorrect. Assuming proper cost allocation techniques are used by the various regulatory jurisdictions, the fee for the borderline sale will be specifically allocated to the borderline customers; otherwise, it will not be recovered by the utility. Thus, these customers will not be subsidized by other customers.

K. Fees Passed Through to Exempt Entities

Under the Commission's rules,[23] certain entities are exempt from fees. These entities are states, municipalities, and anyone engaged in official Federal business. Public Entities asks the Commission to state that a filing entity is exempt from fees when the transaction is for the benefit of an exempted entity and the fee flows directly to the exempted entity. Otherwise, according to Public Entities, the Commission would indirectly be charging filing fees to exempted entities.[24]

As the Commission pointed out in the preamble of the final rule,[25] the rule setting forth the exemption for certain public entities was promulgated in 1984 as part of the Commission's general rules applicable to all fees.[26] The period for requesting rehearing of that provision under EPA section 313(a) has long since passed. The rule at issue in this rehearing procedure sets forth specific fees for electric utilities, but makes no change in the general standards or procedures related to the Commission's fees program; the Commission merely pointed out in the preamble that the already promulgated exemption provision applies to certain public entities. Thus, this issue is inappropriate for rehearing. If Public Entities wishes to suggest a change to the exemption provision, it should petition for a new rulemaking under the Commission's Rule 207.[27]

L. Applications for Certification of Qualifying Status

The AGA objects to the $1,800 fee (now $1,400)[28] for an application for certification of qualifying status as a small power producer or cogenerator under PURPA. It argues that the fee will discourage these projects and points out that PURPA was intended to encourage them. The AGA challenges the statement in the preamble to the final rule that these projects generally require an investment of at least $120,000 and that the $1,800 fee is too small by comparison to be a serious disincentive. According to the AGA, many new cogeneration projects will cost much less than $120,000. It gives an example of a project being built by one of its members that it says will cost between $15,000 and $22,500. The AGA argues that the $1,800 filing fee would increase the cost of this project by a substantial percentage.

Commission certification of qualifying status is usually sought because the utility buying the project's power requires it or because the financing institution requires it. A large portion of qualifying facilities do not seek Commission certification, but rather declare that they are qualifying facilities under a procedure set forth in the Commission's regulations.[29] This procedure involves simply notifying the Commission that they meet certain criteria. No fee is required for filing such a notice of qualifying status.[30] Moreover, the fee for Commission certification is not large relative to most projects. The Commission concludes that the fee for Commission certification will not be a significant disincentive to congeneration or small power production projects.

The AGA also challenges the statement in the preamble of the final rule that the Commission's general waiver provision [31] provides additional insurance that the fee will not substantially discourage small power production or congeneration. That provision allows a waiver if the applicant demonstrates that the fee would cause "severe economic hardship." The applicant must show that paying the fee would place it in a state of financial distress. According to the AGA, that provision will not prevent small power production or congeneration projects from being discouraged because it allegedly is not available to a small but profitable company. The AGA argues that such a company will not receive a waiver simply because it is difficult for it to pay the fee. Thus, a company that can just barely afford to install a small congeneration facility probably would choose not to install the facility.

The AGA cites *Inter-City Minnesota Pipelines Ltd., Inc.*,[32] in which the Commission denied a waiver, to support its claim that the waiver provision will provide no relief in any instance in which the full filing fee is likely to prevent a congeneration or small power project from being built. However, the AGA misconstrues that case. The Commission said:

> We find that Inter-City *fails to demonstrate* severe economic hardship or circumstances indicating that it may be unable to pay. In its pleading, Inter-City *merely alleges* that "although the filing fee is not in excess of the amount that Inter-City can pay, payment will represent a financial hardship to this very small company." Such *statements* are not sufficient to warrant waiver of the filing fee. (Emphasis added.)[33]

[22] In NYSEG's case, the Commission has indicated (Docket No. ER78-321-000) that it would waive the cost support requirements of §§ 35.13 and 35.14 of the Commission's regulations, 18 CFR 35.13, 35.14 (1986), provided that NYSEG demonstrates that its borderline rates track its pertinent retail rates as approved by the PSCNY. The Commission's Staff must still review NYSEG's filings to ensure that they do in fact track the PSCNY's approved rates and they otherwise comply with general Commission policy and precedent.

[23] 18 CFR 381.108 (1986).

[24] As discussed below, the Commission does not believe that this argument is properly raised as a request for rehearing of this rule. However, on the merits, the Commission wishes to point out that adopting Public Entities' suggestion would eviscerate the fees program, since many wholesale sales are either directly or indirectly to exempted entities. The Commission does not believe that exempting such transactions from filing fees would be consistent with the intentions behind the IOAA.

[25] 50 FR 40,347 at 40,355 (Oct. 3, 1985).

[26] 18 CFR 381.108 (1986); Fees Applicable to General Activities, 49 FR 35,348 (Sept. 7, 1984), (codified at 18 CFR Parts 3, 375, 381, 385 and 388 (1986)) (Order No. 360).

[27] 18 CFR 385.207 (1986).

[28] The fees are revised every year to reflect updated data on the Commission's costs.

[29] 18 CFR 292.207(a)(2) (1986). About 30% of all qualifying facilities filed notices of qualification in fiscal year 1985. About 80% of all qualifying facilities have filed such notices thus far in fiscal year 1986. The percentage of the *smaller* facilities filing such notices is probably higher.

[30] Decker points out that although the rule itself imposes no fee, a footnote in the preamble, 50 FR 40,350 n.18 (Oct. 3, 1985), refers to both applications for certification and "self-certification." The Commission does not intend to charge a fee for notices of qualifying status.

[31] 18 CFR 381.106(e) (1986).

[32] 30 FERC ¶ 61,231 (1985).

[33] 30 FERC ¶ 61,231 at 61,460.

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Inter-City failed to *factually support* its request for a waiver, as the underlined language makes clear. The case does not stand for the proposition that proven financial hardship does not justify a waiver. A waiver may be granted where the company demonstrates that payment of the fee would cause severe economic hardship. The fact that a company is solvent does not mean it cannot qualify, if payment of the fee would cause such hardship. Thus, the AGA is incorrect in its claim that the waiver provision provides no additional insurance that the fee for Commission certification will not significantly discourage cogeneration and small power production facilities.

M. Initial Rate Filings

The final rule does not make it clear that the Class 1 and 2 rate filing fees apply to initial as well as changed rates. Therefore, the Commission is clarifying the definition of "Class 1 rate schedule filings" in § 381.502(a) and the definition of "Class 2 rate schedule filings" in § 381.503(a) so that they refer to rate schedule "filings" rather than rate schedule "changes."

List of Subjects in 18 CFR Part 381

General fees.

In consideration of the foregoing, the Commission is amending Part 381, Subchapter X, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 381—[AMENDED]

1. In Part 381, the Authority citation continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 CFR 142 (1978); Independent Offices Appropriation Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

2. Section 381.502 is amended by revising paragraph (a) to read as follows:

§ 381.502 Class 1 rate schedule filings.

(a) *Definition.* For purposes of this section, "Class 1 rate schedule filings" are rate schedule filings under sections 205 and 206 of the Federal Power Act having no effect on the rate the utility charges or involving only rate decreases.

* * * * *

3. Section 381.503 is amended by revising paragraph (a) to read as follows:

§ 381.503 Class 2 rate schedule filings.

(a) *Definition.* For purposes of this section, "Class 2 rate schedule filings" are rate schedule filings under sections 205 and 206 of the Federal Power Act and under § 35.13(a)(2) of this chapter that have an effect on the rate the utility charges and that are not supported by Period II data.

* * * * *

[FR Doc. 86-22444 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 86-177]

Consolidation of New Orleans, Gramercy, and Baton Rouge, LA, Customs Ports for Marine Purposes

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document consolidates the ports of entry of New Orleans, Gramercy, and Baton Rouge, Louisiana, for marine purposes only. This change will enable Customs to obtain more efficient use of its personnel, facilities, and resources. It will eliminate duplication of port functions and permit better control of staffing resources without impairing services to area businesses or the general public. Moreover, it will simplify vessel entry and clearance procedures and reduce expenses and paperwork for all parties involved thereby enabling Customs to provide better and more economical service to carriers, importers, and the public.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Richard C. Coleman, Office of Inspection (202–566–8157). Legal Aspects: Donald H. Reusch, Carriers, Drawback and Bonds Division (202–566–5706).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service field organization currently consists of seven geographical regions further divided into districts, with ports of entry within each district. Customs ports of entry are locations (seaports, airports, or land border ports) where Customs officers or employees are assigned to accept entries of merchandise, collect duties, clear passengers, vehicles, vessels, and aircraft, examine baggage, and enforce the Customs and related laws.

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, by notice published in the Federal Register on April 10, 1986 (51 FR 12239), Customs proposed to consolidate, for marine purposes only, the ports of entry of New Orleans, Gramercy, and Baton Rouge, Louisiana, located in the New Orleans, Louisiana, Customs district in the South Central Region.

Inasmuch as these ports are located within approximately 60 miles of one another on the Mississippi River and perform similar services, it was estimated that the proposed consolidation would significantly reduce expenses without impairing Customs ability to provide services to area businesses or to the general public. The notice solicited public comment on the matter.

Discussion of Comments

Few comments were received in response to the notice. One from the New Orleans Steamship Association expressed general support for the consolidation. They welcome the elimination of duplicate port functions, the simplification of vessel entry and clearance procedures, and the reduction of paperwork and expenses. However, they voiced concerns that it might cause problems if different shipping agents are involved in the entry and clearance of vessels visiting more than one of the consolidated ports.

Customs does not believe that the consolidation will cause any particular burden for the public or the various elements of the industry. Any accommodations necessary to adapt to the consolidation should not block the benefits to the public and industry resulting from fewer entries and clearances. Splitting the responsibilities for entry and clearance between different shipping agents should not be a major problem for the industry.

The New Orleans Steamship Association was also concerned that the proposed consolidation was similar to the New Orleans Vessel One-Stop System (NOVOSS), a trial program in the three port area that tested the practice of consolidating the ports. The Association was concerned that the NOVOSS program would not be fully evaluated if the consolidation took place too quickly.

The New Orleans district director has indicated that the NOVOSS program has been accepted by the local shipping industry and there was no reason to delay adopting the consolidation. Also, the district director noted that quick consolidation would be of benefit to the industry in regard to the payment of user fees for arriving vessels. (See T.D. 86–109, published in the Federal Register on June 11, 1986 (51 FR 21152), for an explanation of recently imposed user fees for obtaining Customs services.) Without legally binding regulatory amendments to consolidate the ports, a user fee would be required upon transacting Customs business at each port. After consolidation, one user fee can cover an entry even if it involves a vessel visiting more than one port in the consolidated port area.

After review of the comments and further analysis of the matter, Customs is adopting the proposal to consolidate the ports of entry of New Orleans, Gramercy, and Baton Rouge, Louisiana, for marine purposes only.

Under this change, the laws and regulations administered and enforced by Customs relating to the entry of merchandise will continue to apply at the ports of New Orleans, Gramercy, and Baton Rouge, with each of these ports retaining its port code as well as its current geographical limits. However, the three ports will be considered to be one port for the purposes of the navigation laws. All of the requirements prescribed by the navigation laws administered and enforced by Customs, such as reporting the arrival and making formal entry of vessels arriving at the consolidated marine port from a foreign or another U.S. port (depending upon the vessel's nationality); and obtaining a permit to proceed between the consolidated port and other U.S. ports, will have to be complied with, as is now the case in existing consolidated ports.

It is anticipated that the consolidation also will result in reducing penalties incurred under the navigation laws if carriers fail to enter and properly clear merchandise being shipped in a residue cargo movement within the consolidated marine port (i.e., the ports of New Orleans, Gramercy, and Baton Rouge), and will reduce paperwork for carriers, importers, and Customs because of the reduction of penalty cases.

These will be no change in the current geographical limits of each port. However, the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended to reflect the consolidation of these ports for the purposes of the navigation laws.

Executive Order 12291

Because this amendment relates to the organization of Customs, it is not a regulation or rule subject to E.O. 12291.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are not applicable to this amendment because it will not have a significant economic impact on a substantial number of small entities.

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although the amendments may have a limited effect upon some small entities in the affected areas, it is not expected to be significant because changes in the Customs field organization in other areas have not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1, 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended as follows:

In the South Central Region—New Orleans La., Under the column headed "Name and headquarters", the following phrase is added under the listing "New Orleans, La.":

(The ports of New Orleans, Baton Rouge, and Gramercy, consolidated for purposes of the navigation laws. See T.D. 86–177.)

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: September 9, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-22001 Filed 10-3-86; 8:45 am]

BILLING CODE 4820-02-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 270

[T.D. ATF-232; Correction]

Implementation of the Consolidated Omnibus Budget Reconciliation Act of 1985; Chewing Tobacco and Snuff

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Temporary rule (treasury decision); correction.

SUMMARY: This document corrects an error made in FR Doc. 86–17441, published in the Federal Register on August 5, 1986, at 51 FR 28078, which implemented Title XIII Subtitle B of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272, 100 Stat. 311).

FOR FURTHER INFORMATION CONTACT: Nancy Cook or Clifford A. Mullen, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Room 8235, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566–7531.

SUPPLEMENTARY INFORMATION: In the middle column of page 28081, Paragraph 29, § 270.162 was inadvertently amended and should be revised to read as follows:

§ 270.162 Semimonthly tax return.

Every manufacturer of tobacco products shall file, for each of his factories, a semimonthly tax return on Form 5000.24 for each return period, including any period during which a manufacturer begins or discontinues business. The return shall be filed with the district director or the director of the service center in accordance with the instructions on the form. The manufacturer shall file the return at the time specified in § 270.165 regardless of whether tobacco products are removed or whether tax is due for that particular return period. However, when the manufacturer requests by letter and the regional director (compliance) grants specific authorization, the manufacturer

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need not during the term of such authorization file a tax return for which tax is not due or payable.

Approved: September 24, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-22405 Filed 10-2-86; 8:45 am]

BILLING CODE 4810-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2603

Examination and Copying of Pension Benefit Guaranty Corporation Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation implementing the Freedom of Information Act. The amendment revises the uniform schedule of fees established by that regulation for document search and duplication in connection with Freedom of Information Act requests. This action is needed to reflect current salary scales and copying costs. The effect of the amendment is to increase the fees for document search and duplication.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850, or E. William FitzGerald, PBGC Disclosure Officer, Communication and Public Affairs Department, Code 38000, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8840 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") is a Federal Government agency established to administer the pension plan insurance program under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. 1001 *et seq.* (1982). Pursuant to section 552(a)(4) of the Freedom of Information Act, 5 U.S.C. 552, the PBGC has promulgated a regulation to implement the Freedom of Information Act, entitled Examination and Copying of Pension Benefit Guaranty Corporation Records (29 CFR Part 2603). On August 18, 1986, the PBGC published in the **Federal Register**, 51 FR 29497, a proposed amendment to § 2603.52 of that regulation that would increase the fees charged for document searches and for copies of records made available for inspection pursuant to Freedom of Information Act requests. The PBGC proposed to increase those fees to levels that more accurately reflect actual salary scales and copying costs as they exist in today's workplace. The PBGC received no comments on the proposal and hereby promulgates the amendment.

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 of February 17, 1981 (46 FR 13193) because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers, individual industries or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export-markets.The total amount of search and copying charges assessed by the PBGC for calendar year 1985 was $11,051.00. The PBGC does not expect the number of search and copying requests in future years to change significantly. Assuming that the number of requests for the calendar year 1986 will be equivalent to the number received for 1985, the increase in fees set forth in amended § 2603.52 will result in an increase in assessments of approximately 50%, or $5000, for calendar year 1986. Accordingly, the PBGC certifies pursuant to section 605 of the Regulatory Flexibility Act that this regulation will not have a significant economic impact on a substantial number of small entities. In light of this certification, compliance with sections 603 and 604 is waived.

List of Subjects in 29 CFR Part 2603

Freedom of information.

In consideration of the foregoing, the Pension Benefit Guaranty Corporation hereby amends Part 2603 of Subchapter A of Chapter XXVI, Title 29, Code of Federal Regulations, as follows:

PART 2603—[AMENDED]

1. The authority for Part 2603 is revised to read as follows:

Authority: 5 U.S.C. 552; sec. 4002(b)(3), Pub.L. 93-406, 88 Stat. 829, 1004, as amended by sec. 403(1), Pub.L. 96-364, 94 Stat. 1208, 1302 (29 U.S.C. 1302 (b) (3)).

2. In § 2603.52, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 2603.52 Search and copying charges.

(a) * * *

(1) *Search time.* (i) Ordinary search by custodial or clerical personnel, $1.75 for each one-quarter hour or fraction thereof of employee worktime in excess of the first quarter-hour required to reach or obtain the records to be searched and to make the necessary search; and (ii) Search requiring services of professional or supervisory personnel to locate requested record, $4.00 for each such quarter-hour or fraction thereof of such services required in excess of the first quarter-hour required.

* * * * *

(b) * * *

(1) *Standard copying fee.* $0.15 for each page of record copies furnished. This standard fee is also applicable to the furnishing of copies of available computer printouts as stated in § 2603.53.

* * * * *

Issued in Washington, DC, this 29th day of Sept.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86-22390 Filed 10-2-86; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-2779-3]

National Emission Standards for Hazardous Air Pollutants; Standards for Inorganic Arsenic

Correction

In FR Doc. 86-16408 beginning on page 27956 in the issue of Monday, August 4, 1986, make the following corrections:

1. On page 27960, in the third column, in the eleventh line from the bottom of the page, "on" should read "or".

2. On page 27970, in the second column, in the third complete paragraph, first line, "source" should read "sources".

3. On page 27973, in "Table III-1", in the fourth, fifth, and sixth column headings, "milligrams" should read "megagrams", and in the eighth column heading, "milligram" should read "megagram".

4. On the same page, in "Table III-2", in the third, fourth, and fifth column headings, "milligrams" should read "megagrams", and in the seventh column heading, "miligram" should read "megagram".

5. On page 27974, in "Table III-3", the first column heading, "Maximum lifetime risk" and the heading "Smelter" should be transposed.

6. On the same page, second column, after the Table, first complete paragraph, eighth line, "contains" should read "contain".

7. On the same page, third column, after the Table, last line, "practices" should read "practice".

8. On page 27975, second column, first complete paragraph, third line, "cooper" should read "copper".

9. On page 27979, second column, third line, "We" should read "He".

10. On page 27980, second column, seventh line from the bottom, "Morenic" should read "Morenci", and in the third column, fourteenth line, "of" should read "for".

11. On page 27981, first column above the Table, in the second line, "cooper" should read "copper".

12. On the same page, second column above the Table, first complete paragraph, eighth line, "every" should read "very".

13. On the same page, third column, first paragraph, under the heading "Control Technology", sixth line from the bottom of the paragraph, "(0.001 to 0.05 gr/dscf)" should read "(0.001 to 0.055 gr/dscf)".

14. On page 27986, third column, twelfth line, after "analysis" insert "assumed".

15. On page 27987, second column, fifteenth line, "on" should read "no".

16. On page 27988, third column, first complete paragraph, thirteenth line from the bottom of the paragraph, "reference" should read "references".

17. On page 27992, first column, under the heading "Compliance Provisions", second paragraph, fifth line, "be" should be removed.

18. On page 27995, in "Table IV-3", at the bottom of the page, third column heading, fourth line, "milligrams" should read "megagrams".

19. On page 27996, "Table IV-3 continued", third column heading, "milligrams" should read "megagrams", and at the end of "Table IV-3", in footnotes 1 and 2, "Milligrams" should read "Megagrams".

20. On the same page, in "Table IV-4", third column heading, "Manufactured" should read "Megagrams".

21. On page 27997, first column, under the heading "Selection of Standard", second paragraph, seventh line, after "cost" insert "of".

22. On page 27999, third column, second line, "furnace" should read "furnaces".

23. On page 28001, third column, first complete paragraph, second line from the bottom of the paragraph, "by" should read "be".

24. On page 28007, first column, under "Continuous Monitoring", second line, "exist" should read "exit".

25. On page 28008, first column, eleventh line, "candidate" was misspelled.

26. On page 28010, second column, first complete paragraph, fifth line, "conveyors" was misspelled.

27. On page 28012, third column, seventh line, "wil-controlled" should read "well-controlled".

28. On page 28013, first column, first complete paragraph, sixteenth line, "agree" should read "degree".

29. On page 28014, first column, fourteenth line, "ae" should read "are".

30. On page 28015, second column, thirteenth and seventeenth lines, "smelter" should read "smelters".

31. On page 28021, third column, second complete paragraph, seventeenth line, "project" should read "product".

32. On page 28023, third column, second complete paragraph, fourth line, "date" should read "data".

33. On page 28025, first column, ninth line, "Owning" should read "Owing"

34. On the same page, first column, under the heading "Regulatory Flexibility Act Certification", last line, "ae" should read "are".

§ 61.161 [Corrected]

35. On the same page, second column, § 61.161, in the definition of "Arsenic-containing glass type", "naw" should read "raw".

§ 61.164 [Corrected]

36. On page 28026, second column, § 61.164 (b)(1), second line, "data" should read "date".

37. On page 28027, third column, § 61.164 (d)(4), second line, "to" should be removed.

§ 61.161 [Corrected]

38. On page 28033, first column, § 61.161, in the definition of "Inorganic arsenic", third line, "particular" should read "particulate".

Appendix B—[Corrected]

39. On page 28037, first column, in Appendix B, Method 108, in 3.3.5, first line, "Iodine" should read "Iodide".

40. On the same page, second column, in 3.3.11, first line, "Suitable" was misspelled.

41. On page 28040, first column, in 5.1, fourth line, "a-ml" should read "5 ml".

BILLING CODE 1505-01-T

40 CFR Part 261

[SW-FRL-3060-7]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petitions submitted by two petitioners to exclude their wastes from the hazardous waste lists. Both of the petitioners currently have temporary exclusions for the petitioned wastes. The Agency is today revoking these temporary exclusions. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Our basis for denying these petitions is that these petitions are incomplete (*i.e.*, the Agency does not have sufficient information to determine the hazardous or non-hazardous nature of the waste). The effect of this action is that all of this waste must be handled as hazardous in accordance with 40 CFR Parts 262-through 266, and Parts 270, 271, and 124.

EFFECTIVE DATE: The effective date of the revocation of these temporary exclusions and denial of these petitions is November 8, 1986.

ADDRESS: The RCRA regulatory public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (Sub-basement), Washington, DC 20460, and is available for public viewing from 9:30 a.m. 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The reference number for this docket is "F-86-02DF-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost., Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Ms. Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M

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Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

I. Background

On April 29, 1986, EPA proposed to deny 16 petitions to exclude certain wastes from the hazardous waste lists (see 51 FR 15916-15919). The petitions were submitted by various companies pursuant to 40 CFR 260.20 and 260.22.

Throughout the course of the Agency's review of a petition, additional or supplemental information, other than that included in the initial submission, is normally required to enable the Agency to conduct a complete and informed evaluation of the petition. The acquisition and analysis of this additional information is necessary before a tentative determination (*i.e.*, a proposal to exclude or deny a petition) can be made for the petitioned wastes. Most of this information was requested because of the Hazardous and Solid Waste Amendments of 1984 (HSWA) (*i.e.*, the Agency now must consider all factors, including additional constituents, if there is a reasonable basis to believe that these factors could cause the waste to be hazardous).

In all of these cases, the Agency has made a number of requests for information from these facilities. The Agency made at least two written requests for information indicating the specific information the petitioner was to supply in order for the Agency to consider the petition complete. In addition, the Agency published a notice in the **Federal Register** of its intent to collect this information (see 49 *FR* 4802-4803, February 8, 1984). The proposed denial notice, published on April 29, 1986, provided yet another notification of the information required and provided a 45-day comment period for that additional information to be submitted to the Agency.

In some cases, the Agency has not heard from these petitioners in over a year. Waiting for the requested information has resulted in delays that have disrupted the continuity of the petition review process, and has created a backlog of petitions awaiting review. The Agency believes that we have given these petitioners an adequate period of time to provide this information. The Agency, therefore, is making final the denials of two petitions, as incomplete, since all the additional information requested has not been provided within a reasonable period of time.

II. Petition Denials

A. Proposed Denials

EPA proposed to deny 16 petitions requesting an exclusion for certain wastes. Our basis for this decision was that the additional information needed had not been provided within a reasonable period of time. The petitions were not complete and, consequently, the Agency could not determine whether the wastes are hazardous. (See 51 *FR* 15916-15919, April 29, 1986, for a more detailed explanation of why EPA proposed to deny these petitions.)

Neither comments nor additional information were provided for one of the petitions. We, therefore, are making final our decision to deny this petition as incomplete. This facility had previously been granted a temporary exclusion for their waste. Today's final rule also revokes this temporary exclusion.

Petition No.	Petitioner's name
0274	Hytec, Inc., Tumwater, WA.

For this 15 other petitions, either additional information was provided or comments on the proposal were received which effect the final Agency decision for these petitions. The remainder of this section will discuss the comments received, and the Agency's response to these comments. Some of the comments received were petition-specific and some comments were general.

B. Agency's Response to Public Comments

Two of the petitioners submitted additional information during the comment period. For one of these petitioners, the information received is currently being reviewed by the Agency to determine whether the petitioner has satisfied all of the requirements for a complete petition. The following petition, therefore, does not appear among the petitions for which a final denial is being announced today:

Petition No.	Petitioner's name
0302	American Chrome & Chemicals, Inc., Corpus Christi, TX.

The Agency has completed its review of the information submitted by the other petitioner. Based on this review, the Agency has determined that the petitioner has not satisfied all of the requirements for a complete petition. The Agency, therefore, is denying the following petition as incomplete. This facility had previously been granted a temporary exclusion for their waste. Today's final rule also revokes this temporary exclusion.

Petition No.	Petitioner's name
0220	Imperial Clevite, Caldwell, OH.

One commenter, representing 11 petitions, submitted comments requesting the Agency to reevaluate its listing criteria for one particular wastestream, F006—Wastewater treatment sludges from electroplating operations. One other petitioner, which generates an F006 waste, submitted additional information to the Agency during the comment period. One petitioner, which also generates an F006 waste, did not provide comments during the Agency's comment period. The Agency has reevaluated its F006 listing and will explain its conclusions in a future **Federal Register** notice. The following 13 petitions, which involve F006 wastes, therefore, do not appear among the petitions for which a final denial is being announced today. The facility which had previously been granted a temporary exclusion is denoted by an asterisk (*) in the table below.

Petition No.	Petitioner's name
0297*	ACR Electronics, Inc., Hollywood, FL.[1]
0343	Iowa Industries, Inc., Burlington, IA.
0509	Ford Motor Co., Sterling Heights, MI.
0511	Ford Motor Co., Norfolk, VA.
0512	Ford Motor Co., Sandusky, OH.
0513	Ford Motor Co., Louisville, KY.
0514	Ford Motor Co., Lorain, OH.
0515	Ford Motor Co., Indianapolis, IN.
0516	Ford Motor Co., Brookpark, OH.
0517	Ford Motor Co., Avon Lake, OH.
0518	Ford Motor Co., Chicago, IL.
0521	Ford Motor Co., Romeo, MI.
0527	Ford Motor Co., Wixom, MI.

[1] Additional information was submitted by ACR during the public comment period for the proposed rule. The Agency did not complete its review of this information since ACR generates an F006 waste which is currently being reevaluated by the Agency.

C. Final Agency Decision

The Agency believes that it has given more than sufficient time and notification to the following petitioners to provide the needed additional information to complete their petitions and, consequently, enable them to be reviewed. The Agency, therefore, is announcing today the final denial of the following two petitions as incomplete. Both of these facilities had previously been granted temporary exclusions. Today's final rule revokes these temporary exclusions.

Petition No.	Petitioner's name
0220	Imperial Clevite, Caldwell, OH.
0274	Hytec, Incorporated, Tumwater, WA.

III. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months for good causes, and when the regulated community does not need the six-month period to come into compliance. The two petitions included in today's notice are having their temporary exclusions revoked and their petitions denied and will be required to revert back to handling their wastes as they did before being granted these exclusions (*i.e.*, they must handle their waste as hazardous). The Agency must make a final decision to grant or deny those petitions which were temporarily granted by November 8, 1986, however, or the temporary granting of the petition will cease to be in effect. See RCRA section 3001(f)(2)(B). The Agency is attempting to make a final decision on all such petitions before November 8, 1986. The petitions denied today are being denied because the petitioners either have not responded at all to the Agency's requests for additional data or have responded incompletely. These petitioners should have known of the statutory deadline at least since November 1984, and yet have not pursued their exclusion petitions. In such cases, the Agency believes that these petitioners should not have (and do not need) more time to come into compliance than they would have had under the statute, if the Agency had not acted. Accordingly, the effective date of the revocation of these temporary exclusions and the denial of these petitions in November 8, 1986. The Agency is providing less than six months for these petitioners to come into compliance, pursuant to RCRA 3010(b)(1),(3).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This final denial, which would revoke temporary exclusions and deny the exclusion petitions submitted by two facilities, is not major. The effect of this final rule would increase the overall costs for these facilities, which currently have temporary exclusions. The actual costs to these companies however, would not be significant. In particular, in calculating the amount of the waste that is generated by these petitioners that currently have temporary exclusions and considering a disposal cost of $300/ton, the increased costs to these facilities is approximately $16,000, well under the $100 million level constituting a major regulation, therefore, the impact of this rule will be relatively small. This final denial is not a major regulation; therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs for these facilities which currently have temporary exclusions. The facilities included in this notice may be considered small entities; however, this rule only effects two petitioners. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this final regulation will not have a significant impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: September 29, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86-22407 Filed 10-2-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 20]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Corrections

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Corrections to final rule.

SUMMARY: This notice corrects two errors appearing in the final rule published on May 2, 1986, adopting HB3 and HB4 light sources for replaceable bulb headlamps, specifically in paragraphs S6.7.2(b) and S6.8.

EFFECTIVE DATE: The corrections are effective October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, DC 20590 (202-366-5281).

SUPPLEMENTARY INFORMATION: NHTSA published a final rule on May 2, 1986, amending Federal Motor Vehicle Safety Standard No. 108 (51 FR 16325) which, in pertinent part, revised the internal heat test and humidity test for replaceable bulb headlamps (paragraph S6.7.2 and S6.8 respectively). In paragraph S6.7.2(b) the Celsius value for the headlamp soak temperature was mistakenly given as "34 +4 − 0 degrees C;" the correct value is "35 + 4 − 0 degrees C." In paragraph S6.8 the Celsius value for the headlamp soak temperature was erroneously given as "20 + 4 − 0 degrees C;" the correct value is "23 + 4 − 0 degrees C". These errors are corrected.

Because the amendments are corrective in nature and impose no additional burdens on any person, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendments are effective upon publication in the **Federal Register.**

In consideration of the foregoing Part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50

§ 571.108 [Corrected]

2. In the final sentence of subparagraph (b) of paragraph S6.7.2, the numeral "34" is changed to "35".

3. In the penultimate sentence of paragraph S6.8 the numeral "20" is changed to "23."

Issued on: October 1, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-22546 Filed 10-2-86; 8:45 am]

BILLING CODE 4910-59-M

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Proposed Rules

Federal Register
Vol. 51, No. 192
Friday, October 3, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

Tomatoes Grown in Florida and Tomatoes Imported into the United States; Proposed Amendment to Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the minimum size requirement for domestic tomatoes covered under the marketing order for tomatoes grown in Florida, and for imported tomatoes. Increasing the minimum size is designed to provide fresh markets with better quality and slightly larger size tomatoes and improve grower returns. USDA is seeking public comments concerning this proposal. The proposal is based upon the recommendation of the Florida Tomato Committee.

DATE: Comments due October 23, 1986.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2065–S, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of the businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 108 handlers of Florida tomatoes subject to regulation under the Florida tomato marketing order handling regulation. There are approximately 180 growers of tomatoes in the production area. Finally, there are approximately 31 importers of fresh tomatoes who would be subject to the tomato import regulation during the 1986–1987 season. The majority of handlers, growers, and importers may be classified as small entities.

Pursuant to requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact on small entities. The regulatory action in this instance is a proposed increase in the minimum size requirements for tomatoes that would eliminate the 7 x 7 classification for fresh tomatoes having a minimum diameter of 2⅝ inches and a maximum diameter of 2 1⅝ inches. The handling regulation is applicable to fresh tomatoes grown in the production area and shipped outside the regulated area during the period October 10 through June 15 each marketing season. Pursuant to section 8e of the Act, when such a regulation is in effect for domestic shipments, imports are required to meet the same requirements.

The 1985–86 annual report of the Florida Tomato Committee provides data on shipments of 7 x 7 classification tomatoes during the October 10, 1985, through June 15, 1986, shipping season for fresh tomatoes grown in the Florida production area and shipped outside the regulated area. The statistics divide tomatoes into two categories, mature green and vine ripe. For mature green tomatoes in the 7 x 7 classification, there were 3,132,860 containers of 25 pound equivalents or 6.69 percent of the total mature green shipments of 46,834,876 containers for all sizes. With an average price of $4.07 a container, the 7 x 7 mature green tomatoes were valued at $12,739,586 or about 3.5 percent of the total sales dollars of $364,055,331 for all sizes of matue green tomatoes. Vine ripe tomatoes in the 7 x 7 classification totaled 131,710 containers in 20 pound equivalents or 1.89 percent of the total of 6,983,646 containers for all sizes. At an average price of $3.00, the 7 x 7 vine ripe tomatoes were valued at more than $395,000 or about one percent of the total sales dollars of $44,048,160 for vine ripe tomatoes of all sizes. Therefore, the total sales dollar volume of all 7 x 7 classification tomatoes shipped last season represented about 3.2 percent of the total dollar volume of all sizes of tomatoes shipped.

The vast majority of fresh tomatoes imported into the United States during last season was almost exclusively from Mexico with approximately one percent of imports from Caribbean countries. Preliminary import information for fresh tomatoes from Mexico indicates that the tomatoes imported from Mexico for the upcoming season will be at least slightly greater than the 1985–1986 season. In addition, imports of fresh tomatoes from the Caribbean also may increase when compared with the last season.

While the proposed regulation would not permit shipment of 7×7 classification tomatoes outside of the regulated area, exemptions to the handling regulation would continue to be available. For example, several varieties or types of tomatoes are completely exempt and handlers may ship up to 60 pounds of tomatoes per day without regard to the requirements of the handling regulation. The handling regulation does not prevent the handling of tomatoes within the regulated area and the regulation permits shipments of tomatoes for canning, experimental purposes, relief, charity, or export. Importers could also ship up to 60 pounds of tomatoes per day.

It is the Department's view that under the proposed regulation the impact of the regulation upon the growers, handlers, and importers would not be adverse. Although the information currently available to AMS is limited in some respects, the known costs to handlers, growers, and importers of implementing the regulation appear to be significantly offset when compared to potential benefits of the regulation. The Florida Tomato Committee believes that the proposed regulatory change is needed to improve returns to growers in the production area while consistently providing fresh markets with slightly larger, good quality tomatoes.

Marketing Order No. 966 regulates the handling of tomatoes grown in Florida. The program is effective under the Agricultural Marketing Agreement Act. The Florida Tomato Committee, established under the order, is responsible for its local administration.

At its meeting on September 5, 1986, the committee recommended that the current minimum size requirement of 2⅝ inches in diameter for tomatoes grown in the production area be increased to 2⅝ inches in diameter. The effect of this change would be the elimination of the 7×7 size classification for tomatoes with a minimum diameter of 2⅝ inches and a maximum diameter of 2 1⅝ inches. The committee recommended that the change be effective at the start of the 1986–87 season. Other handling requirements under M.O. 966, including the minimum requirement that tomatoes be at least U.S. No. 3 grade remain unchanged.

According to the committee, the proposed increase in the minimum size requirements is necessary to prevent tomatoes of lower quality and maturity and undesirable size from being distributed in fresh market channels. It also stated that such tomatoes are usually of negligible economic value to producers. The committee believes this action would provide consumers with tomatoes of good quality and size throughout the season consistent with the overall quality of the crop and improve economic returns to growers.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this proposal would increase the minimum size requirement for domestically produced tomatoes, this change would also be applicable to imported tomatoes during the period that the domestic handling requirements are in effect.

Conforming changes to § 966.323(d)(3) *For Special packed tomatoes* and § 966.323(f) *Applicability to imports* will be made to reflect the proposed increase in the minimum size requirement. No change is needed in the import regulation for tomatoes which appears in Part 980 (7 CFR 980.212; 42 FR 55192; October 4, 1977).

A comment period of 20 days is appropriate because the handling regulation for Florida tomatoes is effective for a period October 10 through June 15 for each season. Since the comment period for the proposed rule will not be closed prior to the beginning of the 1986–1987 season on October 10, the existing handling requirements that appear in § 966.323 (49 FR 47189; December 3, 1984) will be in effect unchanged. If any change is adopted as a result of this rulemaking, a final rule would become effective as soon as practicable after the beginning of the 1986–1987 season.

Additionally, the Department has received letters from several tomato repackers, tomato brokers and a grower, concerning the change recommended by the committee in the handling regulation. Several expressed concern that the change would adversely affect employment and costs for tomato repacking firms. Comments are specifically invited on the impact of the proposed rule including its impact on repackers and related firms. The committee's recommendation, the letters in opposition to the change, and all written comments timely received in response to this request for comments will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes, Import regulations.

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 966 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 966.323 is proposed to be amended by revising paragraphs (a)(2)(i), (d)(3), and (f) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(a) * * *

(2) *Size.* (i) Tomatoes shall be at least 2⅝ inches in diameter and be sized with proper equipment in one or more of the following ranges of diameters. Measurements of diameters shall be in accordance with the methods prescribed in § 51.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

Size classification	Inches	
	Minimum diameter	Maximum diameter
6×7	2⅝	2 1⅝
6×6	2 1⅝	2⅝
5×6 and larger	2⅝	

* * * * *

(d) * * *

(3) *For special packed tomatoes.* Tomatoes which met the inspection requirements of paragraph (a)(4) which are resorted, regarded, and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from (i) the tomato grade classifications of paragraph (a)(1), (ii) the size classifications of paragraph (a)(2) except that the tomatoes shall be at least 2⅝ inches in diameter, and (iii) the container weight requirements of paragraph (a)(3).

* * * * *

(f) *Applicability to imports.* Under section 8e of the Act and § 980.212 "Import regulations" (7 CFR 980.212) tomatoes inspected during the period October 10 through June 15 each season shall be at least U.S. No. 3 grade and at least 2⅝ inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter.

Dated: October 1, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–22824 Filed 10–2–86; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1942

Fire and Rescue Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: FmHA proposes to revise the regulations for community facility loans by providing a separate regulation for community facility loans for fire or rescue type facilities. This action is necessary because loans for fire or rescue facilities receive high priority for available funds and have proven to be low risk loans that rarely become delinquent. They are usually small and are often made to unsophisticated volunteer groups. We believe that current application processing

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requirements and procedures, although necessary for other loan purposes, create an unnecessary burden and deterrent for applicants for fire and rescue loans. The intended effect of this action is to make obtaining a loan for fire and rescue facilities easier and faster.

DATE: Comments must be received on or before November 3, 1986.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Stansbery, Loan Specialist, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6308, South Agriculture Building, Washington, DC 20250, telephone 202–382–1490.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor". The proposed action is not likely to result in any of the following:

(a) An annual affect on the economy of $100 million or more.

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions.

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.423 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instructions 1901–H and 1940–J.

Environmental Impact

This document has been revised in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program". FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Background

Subpart A of Part 1942 is now the primary regulation for receiving and processing applications, and providing management assistance for loans for water and waste disposal facilities and community facilities. Community facilities include public safety, health care, and public service facilities varying widely in size and complexity. Historically, more than 35 percent of community facility loans approved have been for public safety, primarily fire and rescue facilities.

Applicants, borrowers, and other members of the public have indicated they feel it takes too long and is too difficult to obtain a community facility loan for fire and rescue facilities. We believe some of the most deserving potential applicants do not apply because of the processing time, paper work, and other requirements for obtaining a loan. We want to develop more simple procedures and requirements for use where appropriate. We have had experience with fire and rescue loans over a period of ten years and the repayment record has been excellent. We believe this action will maximize the net benefit to society.

The more simplified procedures in the proposed Subpart C of Part 1942 include the following:

1. Allow applicants to bypass the preapplication process and file only one application form.
2. Allow more flexibility for District Offices to process applications without waiting for State Office review.
3. Provide more flexibility in security requirements.
4. Reduce appraisal requirements.
5. Allow use of simple cash flow budgets instead of detailed statements of income and expenses.
6. Encourage competitive negotiation for certain procurements.
7. Limit architectural/engineering requirements for certain facilities.
8. Allow District Offices to close loans to nonprofit corporations without OGC review.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply.

Accordingly, as proposed, Part 1942, Chapter XVIII, Title 7, Code of Federal Regulations is amended to read as follows:

PART 1942—ASSOCIATIONS

Authority: 7 USC 1989; 16 USC 1009; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

Subpart A—Community Facility Loans

2. Section 1942.1 is amended by revising paragraph (a) to read as follows:

§ 1942.1 General.

(a) This subpart outlines the policies and procedures for making and processing insured loans for community facilities except fire and rescue facilities. This subpart applies to community facility loans for fire and rescue facilities only as specifically provided for in Subpart C of Part 1942 of this chapter. The Farmers Home Administration (FmHA) shall cooperate fully with State and local agencies in making loans to assure maximum support to the State strategy for rural development. FmHA State Directors and their staffs shall maintain coordination and liaison with State agency and substate planning districts. Funds allocated for use under this subpart are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity to participate in the benefits of these programs as compared with other residents of the State. Federal statutes provide for extending FmHA financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes.

* * * * *

3. Section 1942.17 is amended by removing paragraph (d)(1)(i)(B)(*1*), by redesignating paragraphs (d)(1)(i)(B) (*2*) through (*6*) as paragraphs (d)(1)(i)(B) (*1*) through (*7*) respectively, and by revising paragraphs (c)(2)(iii)(D)(*2*)(*i*) and (d)(1)(i)(C)(*1*) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) * * *

(*2*) * * *

(*i*) **Public safety—10 points. (Examples include police services and fire, rescue and ambulance services as authorized by Subpart C of Part 1942 of this chapter.)**

* * * * *

(d) * * *

(1) * * *

(i) * * *

(C) * * *

(*1*) **The purchase of major equipment, such as solid waste collection trucks and X-ray machines, which will in themselves provide an essential service to rural residents;**

* * * * *

4. Section 1942.17 is amended by changing the reference in paragraph (d)(2)(iv) from "paragraph (d)(1)(i)(B)(*5*), (d)(1)(i)(B)(*6*) or (d)(1)(i)(B)(*7*)" to "paragraph (d)(1)(i)(B)(*4*), or (d)(1)(i)(B)(*5*)."

5. Subpart C is added to read as follows:

Subpart C—Fire and Rescue Loans

Sec.

1942.101 General.
1942.102 Nondiscrimination.
1942.103 Definitions.
1942.104 Application processing.
1942.105 Environmental review.
1942.106 Intergovernmental review.
1942.107 Priorities.
1942.108 Application docket preparation and review.
1942.109–1942.110 [Reserved].
1942.111 Applicant eligibility.
1942.112 Eligible loan purposes.
1942.113 Rates and terms.
1942.114 Security.
1942.115 Reasonable project costs.
1942.116 Economic feasibility requirements.
1942.117 General requirements.
1942.118 Other Federal, State, and local requirements.
1942.119 Professional services and borrower contracts.
1942.120–1942.121 [Reserved]
1942.122 Actions prior to loan closing and start of construction.
1942.123 Loan closing.
1942.124–1942.125 [Reserved]
1942.126 Planning, bidding, contracting, construction, procuring.
1942.127 Project monitoring and fund delivery.
1942.128 Borrower accounting methods, management reports and audits.
1942.129 Borrower supervision and servicing.
1942.130–1942.131 [Reserved]
1942.132 Subsequent loans.
1942.133 Delegation and redelegation of authority.
1942.134 State supplements and guides.
1942.135–1942.150 [Reserved]

Subpart C—Fire and Rescue Loans

§ 1942.101 General.

This subpart provides the policies and procedures for making and processing insured community facility loans for facilities that will primarily provide fire or rescue services. Community facility loans for other types of facilities are covered in Subpart A of Part 1942 of this chapter.

§ 1942.102 Nondiscrimination.

(a) Federal statutes provide for extending FmHA financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequacy of FmHA's security or the adequacy of service to users of the facility and all other requirements of this subpart must be met.

§ 1942.103 Definitions.

For the purpose of this subpart: (a) *Construction* means the act of building or putting together a facility that is a part of or physically attached to real estate. This does not include procurement of major equipment even though the equipment may be custom built to meet the owner's requirements.

(b) *Owner* means an applicant or borrower.

(c) *Regional Attorney* or OGC means the head of a Regional Office of General Counsel.

§ 1942.104 Application processing.

(a) *General.* Prospective applicants should request assistance by filing Form AD 624, "Application for Federal Assistance (for Construction Programs)" with the County or District FmHA Office. When practical, District Directors should meet with prospective applicants before an application is filed to discuss eligibility and FmHA requirements and processing procedures. Throughout loan processing FmHA should confer with applicant officials as needed to ensure that applicant officials understand the current status of the processing of their application, what steps and determinations are necessary and what is required from them. FmHA should assist the applicant as needed and generally try to develop and maintain a cooperative working relationship with the applicant.

(b) *County Office.* The County Office may handle initial inquiries and provide basic information about the program, application forms, and assistance in completing applications. Applications filed in the County Office should be forwarded immediately to the District Office. The applicant should be informed that further processing will be handled by the District Office. When an application is received the County Office must establish and maintain an information folder.

(c) *District Office.* If the application is filed in the District Office the District Director must send a copy to the County Supervisor to set up the information file. The District Director must supply information on fire and rescue loan activity within the County Office service area to the County Supervisor at key points throughout the loan making process. As a minimum, the District Director should provide appropriate copies or notice to the County Office when the following actions occur:

(1) Project summary is completed.

(2) Letter of conditions is issued.

(3) Applicant declines to execute Form FmHA 442–46, "Letter of Intent to Meet Conditions."

(4) Applicant is notified of loan approval.

(5) A loan is properly closed.

(6) A construction contract is awarded.

(7) A final inspection is completed.

(d) *Unfavorable decision.* If at any time prior to loan approval it is decided that favorable action will not be take on an application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with Subpart B of Part 1900 of this chapter. The following statement will also be made on all notifications of adverse action.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance

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program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

§ 1942.105 Environmental review.

FmHA must conduct and document an environmental review for each proposed project in accordance with Subpart G of Part 1940 of this chapter. The review should be completed as soon as possible after receipt of an application. The loan approval official must determine an adequate environmental review has been completed before requesting an obligation of funds.

§ 1942.106 Intergovernmental review.

(a) Loans under this subpart are subject to intergovernmental review in accordance with Subpart H of part 1901 and Subpart J of Part 1940 of this chapter.

(b) State intergovernmental review agencies that have selected community facility loans as a program they want to review may not be interested in reviewing proposed loans for fire and rescue facilities. In such cases the State Director should obtain a letter from the State single point of contact exempting fire and rescue loans from A–95 and intergovernmental consultation review. A copy of the letter should be placed in the case file for each fire and rescue facility application in lieu of completing the intergovernmental review process.

(c) When an application is filed and adverse comments are not expected, the District Director should proceed with application processing pending intergovernmental review. The loan should not be obligated until any required review process has been completed.

(d) Funds allocated for use under this subpart are also for the use of eligible Indian tribes within the State, regardless of whether State development strategies include Indian reservations. Eligible Indian tribes must have equal opportunity to participate in the program as compared with other residents of the State.

§ 1942.107 Priorities.

(a) Eligible applications must be selected for processing in accordance with § 1942.17 (c) of Subpart A of part 1942 of this chapter.

(b) The District Director must score each eligible application in accordance with § 1942.17 (c)(2)(iii) of Subpart A of Part 1942 of this chapter. The District Director must then notify the State Director of the score, proposed loan amount, and other pertinent data. The State Director should determine as soon as possible if the project has sufficient priority for further processing and notify the District Director. Normally, this consultation should be handled by telephone and documented in the running record.

(c) Applicants who appear eligible but do not have the priority necessary for further consideration at this time should be notified that funds are not available, requested to advise whether they wish to have their application maintained for future consideration and given the following notice:

> You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be fulfilled without FmHA funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work, taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting constuction bids until notified by Farmers Home Administration (FmHA) to proceed.

§ 1942.108 Application docket preparation and review.

(a) *Guides.* Application dockets should be developed in accordance with § 1942.2 (c) of Subpart A of Part 1942 of this chapter.

(b) *Project summary.* The District Director should complete the project summary using Form FmHA 1942–43, "Project Summary-Community Facilities (Other Than Utility—Type Projects)." Comments by the State Architect/State Engineer and program chief may be omitted unless the District Director or State Director requests their review. Form FmHA 442–14, "Association Project Fund Analysis," and a budget or cash flow projection should be completed and attached.

(c) *Budgets.* All applicants must complete Form FmHA 442–7, "Operating Budget," except as provided in this paragraph. Applicants with annual incomes not exceeding $100,000 may, with concurrence of the District Director, use Form FmHA 1942–52, "Cash Flow Projection," instead of Form FmHA 442–7. Projections should be provided for the current year and each year thereafter until the facility is expected to have been in operation for a full year and a full annual installment paid on the loan.

(d) *Letter of conditions.* the District Director should prepare and issue a letter of conditions in accordance with § 1942.5(a)(1)(i), (ii), (iii) and (c) of subpart A of Part 1942 of this chapter.

(e) *Organizational review.* As early in the application process as practical the District Director should obtain copies of organization documents from each applicant and forward them through the State Office to the Regional Attorney for review and comments. The Regional Attorney's comments should be received and considered before obligation of funds.

(f) *National Office review.* Applications that require National Office review will be submitted in accordance with § 1942.5 (b) of Subpart A of Part 1942 of this chapter.

(g) *State Office review.* The State Office must monitor fire and rescue loan making and servicing and provide guidance, assistance, and training as necessary to ensure the activities are accomplished in an orderly manner consistent with FmHA regulations. The District Director should request advice and assistance from the State Office as needed. The State Director may require all or part of a specific application docket to be submitted to the State Office for review at any time. The State Director may determine one or more District Office staffs do not have adequate training and expertise to routinely complete application dockets without State Office review. In such cases the State Director should establish guidelines by memorandum or by State supplement to this subpart, for the necessary State Office reviews.

(h) *Loan approval and fund obligation.* Loans must be approved and obligated in accordance with § 1942.5 (d) of Subpart A of Part 1942 and Subpart A of Part 1901 of this chapter.

§§ 1942.109—1942.110 [Reserved]

§ 1942.111 Applicant eligibility.

(a) *General.* Loans under this subpart are subject to the provisions of § 1942.17(b), of Subpart A of Part 1942 of this chapter.

(b) *Credit elswhere determinations.* The Distict Director must determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated the District Director should inform the applicant and recommend the applicant apply to commercial sources for financing. To provide a basis for referral of only those applicants who may be able to finance projects through commercial sources District Directors should maintain liaison with representatives of lenders in the district. The State Director should keep District Director informed regarding lenders outside the district that might make loans in the district. District Directors should maintain criteria for determining applications that should be referred to commercial lenders and maintain a list of lender representatives interested in receiving such referrals.

(c) *Public use.* Loans under this subpart are subject to the provisions of § 1942.17 (e) of Subpart A of Part 1942 of this chapter.

§ 1942.112 Eligible loan purposes.

(a) Funds may be used: (1) To construct, enlarge, extend or otherwise improve essential community facilities primarily providing fire or rescue services primarily to rural residents. "Otherwise improve" includes but is not limited to the following:

(i) The purchase of major equipment, such as fire trucks and ambulances, which will, in themselves, provide an essential service to rural residents;

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(2) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraph (a)(1) of this section:

(i) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting but not for more than 3 years unless a longer period is approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than 2 years unless a longer period is approved by the National Office; and interest on interim financing, including interest charges on interim financing from sources other than FmHA.

(iii) Costs of acquiring interest in land, rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding 1 year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts are incurred for the facility or service being financed or any part thereof; and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(3) To pay obligations for construction or procurement incurred before loan approval. Construction work or procurement actions should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction or procurement before loan approval, applicants may request FmHA approval to pay such obligations. Such requests may be approved if FmHA determine that:

(i) Compelling reasons exist for incurring obligations before loan approval; and

(ii) The obligations will be incurred for authorized loan purposes; and

(iii) Contract documents have been approved by FmHA; and

(iv) All environmental requirements applicable to FmHA and the applicant have been met; and

(v) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic, material or other liens that may attach to the security property. FmHA may authorize payment of such obligations at the time of loan closing. FmHA's authorization to pay such obligations, however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant's request and FmHA authorization for paying such obligations shall be in writing. If construction or procurement is started without FmHA approval, post approval in accordance with this section may be considered.

(b) Funds may not be used to finance:

(1) Facilities which are not modest in size, design, and cost.

(2) Loan finder's fees.

(3) Projects located within the Coastal Barriers Resource system that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, Pub. L. 97–348.

§ 1942.113 Rates and terms.

Rates and terms for loans under this subpart are as set out in § 1942.17(f) of Subpart A of Part 1942 of this chapter.

§ 1942.114 Security.

Specific requirements for security for each loan will be included in the letter of conditions. Loans must be secured by the best security position practicable, in a manner which will adequately protect the interest of FmHA during the repayment period of the loan, and in accordance with the following:

(a) Security must include one of the following:

(1) A pledge of revenue and a lien on all real estate and major equipment purchased or developed with the FmHA loan; or

(2) General obligation bonds or bonds pledging other taxes.

(b) Additional security may be required as determined necessary by the loan approval official. In determining the need for additional security the loan approval official should carefully consider:

(1) The estimated market value of real estate and equipment security.

(2) The adequacy and dependability of the applicant's revenues, based on the applicant's financial records, the project financial feasibility report, and the project budgets.

(3) The degree of community commitment to the project, as evidenced by items such as active broad based membership, aggressive leadership, broad based fund drives, or contributions by local public bodies.

(c) Additional security may include, but is not limited to, the following:

(1) Liens on additional real estate or equipment.

(2) A pledge of revenues from additional sources.

(3) An assignment of assured income in accordance with § 1942.17(g)(3)(iii)(A)(1) of Subpart A of Part 1942 of this chapter.

(d) Review and approval or concurrence in the State Office is required if the security will not include a pledge of taxes and the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application.

(e) Review and concurrence in the National Office is required if the security will not include a pledge of taxes, the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application, and the amount of the loan will exceed $250,000.

(f) Loans under this subpart are subject to the provisions of § 1942.17(g)(1) of Subpart A of Part 1942 of this chapter, regarding security for projects utilizing joint financing.

§ 1942.115 Reasonable project costs.

Applicants are responsible for determining that prices paid for property rights, construction, equipment, and other project development are reasonable and fair. FmHA may require

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an appraisal by an independent appraiser or FmHA employee.

§ 1942.116 Economic feasibility requirements.

All projects financed under this section must be based on taxes, assessments, revenues, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the FmHA staff and approval official. All applicants will be expected to provide a financial feasibility report. These financial feasibility reports will normally be:

(a) Included as part of the preliminary engineer/architectural report using Guide 6 to Subpart A of Part 1942 of this chapter (available in any FmHA Office), or,

(b) Prepared by the applicant using Form FmHA 1942–54, "Applicant's Feasibility Report."

§ 1942.117 General requirements.

(a) *Reserve requirements.* Loans under this subpart are subject to the provisions of § 1942.17(i) of Subpart A of Part 1942 of this chapter.

(b) *Membership authorization.* The membership of organizations other than public bodies must authorize the project and its financing except the District Director may, with the concurrence of the State Director (with advice of OGC as needed), accept the loan resolution without such membership authorization when State statutes and the organization charter and bylaws do not require such authorization.

(c) *Insurance and bonding.* Loans under this subpart are subject to the provisions of § 1942.17(j)(3) of Subpart A of Part 1942 of this chapter.

(d) *Acquisition of land and rights.* Loans under this subpart are subject to the provisions of § 1942.17(j)(4) of Subpart A of Part 1942 of this chapter.

(e) *Lease agreements.* Loans under this subpart are subject to the provisions of § 1942.17(j)(5) of Subpart A of Part 1942 of this chapter.

(f) *Notes and bonds.* Loans under this subpart are subject to the provisions of § 1942.17(j)(6) and § 1942.19 of Subpart A of Part 1942 of this chapter.

(g) *Public information.* Loans under this subpart are subject to the provisions of § 1942.17 (j)(9) of Subpart A of Part 1942 of this chapter.

(h) *Joint funding.* Loans under this subpart are subject to the provisions of § 1942.2 (e) and § 1942.17(j)(11) of Subpart A of Part 1942 of this chapter.

§ 1942.118 Other Federal, State, and local requirements.

(a) Loans under this subpart are subject to the provisions of § 1942.17(k) of Subpart A of Part 1942 of this chapter.

(b) an initial compliance review should be completed under Subpart E of Part 1901 of this chapter.

§ 1942.119 Professional services and borrower contracts.

(a) Loans under this subpart are subject to the provisions of § 1942.17(1) of Subpart A of Part 1942 of this chapter.

(b) The District Director will, with assistance as necessary by the State Director and OGC, concur in agreements between borrowers and third parties such as contracts for professional and technical services. The State Director may require State Office review of such documents in accordance with § 1942.106(g) of this subpart. State Directors are expected to work closely with representatives of engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other matters to expedite application processing, minimize referrals to OGC, and resolve problems which may arise. Standard forms should be reviewed by and approved by OGC.

§§ 1942.120–1942.121 [Reserved]

§ 1942.122 Actions prior to loan closing and start of construction.

(a) *Excess FmHA loan funds.* Loans under this subpart are subject to the provisions of § 1942.17(n)(1) of Subpart A of Part 1942 of this chapter.

(b) *Loan resolutions.* Loans under this subpart are subject to the provisions of § 1942.17(n)(2) of Subpart A of Part 1942 of this chapter.

(c) *Interim financing.* Loans under this subpart are subject to the provisions of § 1942.17(n)(3) of subpart A of Part 1942 of this chapter.

(d) *Applicant contribution.* Loans under this subpart are subject to the provisions of § 1942.17(n)(5) of Subpart A of Part 1942 of this chapter.

(e) *Evidence of and disbursement of other funds.* Loans under this subpart are subject to the provisions of § 1942.17(n)(6) of Subpart A of Part 1942 of this chapter.

(f) *Assurance agreement.* All applicants must execute Form FmHA 400–4, "Assurance Agreement," at or before loan closing.

§ 1942.123 Loan closing.

(a) *Ordering loan checks.* Checks will not be ordered until:

(1) Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," has been received from the Finance Office.

(2) The applicant has complied with approval conditions and any closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto.

(3) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(b) *Public bodies and Indian tribes.*

(1) After loan approval the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instuctions, the District will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(2) Loans will be closed in accordance with the closing instructions issued by OGC and § 1942.19 of Subpart A of Part 1942 of this chapter.

(c) *Organizations other than public bodies and Indian tribes.* District Directors are authorized to close loans to organizations other than public bodies and Indian tribes without closing instructions from OGC. State Directors, in consultation with OGC, should develop standard closing procedures and forms as needed. Assistance with loan closing and a certification regarding the validity of the note and mortgage or other debt instruments should be provided by the applicant's attorney. Appropriate title opinion or title insurance is required as provided in § 1942.17 (j)(4)(i)(B) of Subpart A of Part 1942 of this chapter.

(d) *Authority to execute, file, and record legal instruments.* District Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgments, and other certificates.

(e) *Mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument. The real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(f) *Notes and bonds.* When the debt instrument is a note or single instrument non-negotiable bond a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used the original bond(s) will be fowarded to the Finance Office immediately after loan closing.

(g) *Disposition of title evidence.* All title evidence other than the opinion of title and mortgage title insurance policy, will be returned to the borrower when the loan has been closed.

(h) *Multiple advances.* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper right-hand corner of such paper by the District Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made, except that for notes and single instrument non-negotiable bonds the original will be retained in the District Office and a copy will be forwarded to the Finance Office. The following actions will be taken prior to issuance of the permanent instruments:

(1) The finance Office will be notified of the anticipated date for the retirement of the interim instruments and the issuance of permanent instruments of debt.

(2) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be fowarded to the District Director.

(3) The District Director will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Finance Office immediately, except that for notes and single instrument non-negotiable bonds the original will be retained in the District Office and a copy will be fowarded to the Finance Office. In developing the permanent instruments, the sequence of preference set out §1942.19(e) of Subpart A of Part 1942 of this chapter will be followed.

(i) *Bond registration record.* Form FmHA 442–28, "Bond Registration Book," may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(j) *Loan checks.* Whenever a loan check is received, lost, or destroyed, the District Director will take the appropriate actions outlined in FmHA Instruction 102.1 (available in any FmHA office). Checks which cannot be delivered within a reasonable amount of time (no more than 20 calendar days) will be handled in accordance with FmHA Instruction 102.1 (available in any FmHA office.)

(k) *Safeguarding bond shipments.* FmHA personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in FmHA Instruction 2018–E (available in any FmHA office), whenever they mail or deliver these items.

(l) *Review of loan closing.* When the loan has been closed, the District Director will submit the completed loan closing documents and a statement showing what was done in closing the loan to the State Director. The State Director will review the documents and the District Director's statement to determine whether the transaction was closed properly. For loans to public bodies or Indian tribes the State Director will forward all documents, along with a statement that all administrative requirements have been met, to the Regional Attorney. The Regional Attorney will review the submitted material to determine whether all legal requirements have been met. The Regional Attorney should review FmHA standard forms only for proper execution, unless the State Director brings attention to specific questions. Facility development should not be held up pending receipt of the Regional Attorney opinion. When the review of the State Director has been completed, and for public bodies and Indian tribes the Regional Attorney's opinion has been received, the State Director must advise the District Director of any deficiencies that must be corrected and return all material that was submitted for review.

(m) *Loan cancellation.* Loans under this subpart are subject to the provisions of § 1942.12 of Subpart A of Part 1942 of this chapter.

§§ 1942.124—1942.125 [Reserved]

§ 1942.126 Planning, bidding, contracting, constructing, procuring.

(a) *General.* This section provides procedures and requirements for planning, bidding, contracting, constructing and procuring facilities financed under this subpart. These procedures do not relieve the owner of contractual obligations that arise from procurement of services.

(b) *Technical services.* Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting and constructing their facilities. Services may be provided by the owner's "in-house" engineer or architect or through contract, subject to FmHA concurrence. Architects and engineers must be licensed in the State where the facility is to be located.

(1) *Preliminary reports.* A preliminary architectural or engineering report conforming with customary professional standards is required for all construction, except that FmHA may waive the requirement for a preliminary architectural/engineering report or accept a brief report if the cost of the construction does not exceed $100,000. Guide 6 to Subpart A of Part 1942 of this chapter (available in any FmHA office) may be used.

(2) *Final reports.* Detailed final plans and specifications are required for all construction and must be approved by FmHA. When negotiated procurement is used the final plans and specifications may be provided by the contractor who submits the successful proposal.

(3) *Major equipment.* An architect/engineer is not required for major equipment if FmHA determines the owner has the ability to develop an adequate request for proposal and evaluate the proposals received or can obtain adequate assistance from other sources, such as State or Federal agencies or trade associations.

(c) *Design policies.* Facilities financed by FmHA must be designed and constructed in accordance with sound engineering and architectural practices, and must meet the requirements of Federal, State and local agencies. All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90–480) as implemented by the General Services Administration regulations 41 CFR 101–19.6 and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–

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112) as implemented by 7 CFR Parts 15 and 15b.

(d) *Construction contracts.* Contract documents must be sufficiently descriptive and legally binding to accomplish the work as economically and expeditiously as possible.

(1) *Standard construction contract documents.* When standard construction contract documents available from FmHA are used, or when the amount of the contract does not exceed $100,000, it will normally not be necessary for the Regional Attorney to perform a detailed legal review. If construction contract documents used are not in the format of guide forms approved by FmHA, and the contract amount exceeds $100,000, the Regional Attorney must review the documents before their use.

(2) *Contract review and approval.* The owner's attorney will review executed contract documents, including performance and payment bonds, and certify that they are adequate, legal and binding, and that the persons executing the documents have been authorized to do so. The contract documents, bid bonds, and bid tabulation sheets will be forwarded to FmHA for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by FmHA. The FmHA District Director is responsible for approving construction contracts with advice and guidance of the State Director and Regional Attorney when necessary.

(3) *Separate contracts.* Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job) should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as prefabricated buildings. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(e) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspection is provided in accordance with paragraph (l)(3) of this section. The inspection services normally should be provided by the architect/engineer.

(f) *Owner's contractual responsibility.* Loans under this subpart are subject to the provisions of § 1942.18(i) of Subpart A of Part 1942 of this chapter.

(g) *Owner's procurement regulations.* Loans under this subpart are subject to the provisions of § 1942.18(j) of Subpart A of Part 1942 of this chapter.

(h) *Procurement methods.* Unless the FmHA National Office gives prior written approval of another method, procurement must be made by one of the following methods:

(1) Small purchase procedures as provided in § 1942.18 (k)(1) of Subpart A of Part 1942 of this chapter.

(2) Competitive sealed bids as provided in § 1942.18(k)(2) of Subpart A of Part 1942 of this chapter. Competitive sealed bids is the preferred procurement method for construction projects, except for buildings costing $100,000 or less when the owner desires to use a "preengineered" or "packaged" building.

(3) Competitive negotiation as provided in § 1942.18(k)(3) of Subpart A of Part 1942 of this chapter. Competitive negotiation is the preferred procurement method for buildings not exceeding $100,000 in cost when the owner desires to use a "pre-engineered" or "packaged" building and for major equipment.

(4) Noncompetitive negotiation as provided in § 1942.18 (k)(4) of Subpart A of Part 1942 of this chapter.

(i) *Contracting methods.* Loans under this subpart are subject to the provisions of § 1942.18(l) of Subpart A of Part 1942 of this chapter.

(j) *Contracts awarded prior to preapplications.* Loans under this subpart are subject to the provisions of § 1942.18(m) of Subpart A of Part 1942 of this chapter.

(k) *Construction Contract provisions.* Construction contracts for loans under this subpart are subject to the provisions of § 1942.18(n) of Subpart A of Part 1942 of this chapter. Construction contracts for loans under this subpart are also subject to the provisions of § 1901.205 of Subpart E of Part 1901 of this chapter, regarding nondiscrimination in construction, except that guides 18 and 17 or 19 to Subpart A of Part 1942 of this chapter will normally be used instead of Form FmHA 425–5, "Invitation for Bid (Construction Contract)," and Form FmHA 424–6, "Construction Contract."

(l) *Construction contract administration.* Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) *Preconstruction conference.* Prior to beginning construction the owner will schedule a preconstruction conference where FmHA will review the planned development with the owner, its architect or engineer, project inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form FmHA 424–16, "Record of Preconstruction Conference," and the discussions and agreements will be documented. Form FmHA 424–16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to FmHA on actual performance during construction for each project financed, or to be financed, in whole or in part with FmHA funds. The reports are to include:

(i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the projects, the owner will notify FmHA as soon as any of the following conditions are known:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less FmHA assistance.

(3) *Inspection.* The borrower must provide for inspection of all construction. When the borrower enters into an agreement for technical services with an engineer/architect, the agreement should provide for general engineering/architectural inspection of the construction work. When no such agreement exists, or FmHA or the borrower determines the inspection services of the engineer/architect may not be sufficient, the owner must provide a project inspector. Prior to the preconstruction conference, the borrower must submit a resume of qualifications of the project inspector to FmHA for acceptance in writing. The project inspector will be responsible for making inspections necessary to protect the borrower's interest and for providing written inspection reports to the borrower with copies of the FmHA District Director. Guide 11 of Subpart A of Part 1942 of this chapter (available in any FmHA office) may be used as a guide format for inspection reports. For new buildings, additions to existing buildings, and rehabilitation of existing buildings, the project inspector should make inspections at the following stages of construction and at other stages of construction as determined by the District Director and the borrower. Inspections by FmHA are for solely its benefit as lender.

(i) An initial inspection should be made just prior to or during the placement of concrete footings or monolithic footings and floor slabs. At this point, foundation excavations are complete, forms or trenches and steel are ready for concrete placement and the subsurface installation is roughed in. If the building design does not include concrete footings the initial inspection should be made just after or during the placement of poles or other foundation materials.

(ii) An inspection should be made when the building is enclosed, structural members are still exposed, roughing in for heating, plumbing and electrical work is in place and visible, and wall insulation and vapor barriers are installed.

(iii) A final inspection should be made when all development of the structure has been completed and the structure is ready for its intended use.

(4) *Prefinal inspections.* A prefinal inspection will be made by the owner, project inspector, project architect or engineer, representatives of other agencies involved, and the District Director. The inspection results will be recorded on Form FmHA 424–12, "Inspection Report," and a copy provided to all interested parties, including the FmHA State Director.

(5) *Final inspection.* A final inspection will be made by FmHA before final payment is made.

(6) *Changes in development plans.*

(i) Changes in development plans may be approved by FmHA when requested by owners, provided:

(A) Funds are available to cover any additional costs; and

(B) The change is for an authorized loan purpose; and

(C) It will not adversely affect the soundness of the facility operation or FmHA's security; and

(D) The change is within the scope of the contract; and

(E) Any applicable requirements of FmHA Instruction 1940–G have been met.

(ii) Changes will be recorded on Form FmHA 424–7, "Contract Change Order," or, other similar forms may be used with the prior approval of the District Director. Regardless of the form, change orders must be approved by the FmHA District Director.

(iii) Changes should be accomplished only after FmHA approval on all changes which affect the work and shall be authorized only by means of contract change order. The change order will include items such as:

(A) Any changes in labor and material and their respective cost.

(B) Changes in facility design.

(C) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule.

(D) Any increase or decrease in the time to complete the project.

(iv) Any changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

§ 1942.127 Project monitoring and fund delivery.

(a) *Coordination of funding sources.* When a project is jointly financed, the District Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These responsibilities will include supervision of construction, inspections and determination of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the State Office for advice.

(b) *Multiple advances.* Loans under this subpart are subject to the provisions of § 1942.17(p)(2) of Subpart A of Part 1942 of this chapter.

(c) *Use and accountability of funds.* Loans under this subpart are subject to the provisions of § 1942.17(p)(3) of Subpart A of Part 1942 of this chapter.

(d) *Development inspections.* Loans under this subpart are subject to the provisions of § 1942.17(p)(4) of Subpart A of Part 1942 of this chapter.

(e) *Payment for project costs.* Each payment for project costs must be approved by the borrower's governing body.

(1) *Construction.* Payment for construction must be for amounts shown on payment estimate forms. Form FmHA 424–18, "Partial Payment Estimate," may be used for this purpose or other similar forms may be used with the prior approval of the District Director. However, the District Director cannot require more reporting burden than is required by Form FmHA 424–18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project cost, including construction partial payment estimates, by FmHA does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(2) *Major equipment.* Payment for major equipment should generally coincide with delivery of the usable equipment, along with any necessary title or certifications, to the borrower. Borrowers may not use FmHA loan funds to make deposits on equipment not ready for delivery. If a borrower purchases a truck chassis from one supplier and another supplier will complete the development of a fire or rescue vehicle, FmHA may release funds to pay for the chassis when title to the chassis is transferred to the borrower.

(f) *Use of remaining funds.* Loans under this subpart are subject to the provisions of § 1942.17(p)(6) of Subpart A of Part 1942 of this chapter.

§ 1942.128 Borrower accounting methods, management reports and audits.

(a) Loans under this subpart are subject to the provisions of § 1942.17(q) of Subpart A of Part 1942 of this chapter except as provided in this section.

(b) Borrowers with annual incomes not exceeding $100,000 may with concurrence of the District Director, use Form FmHA 1942–53, "Cash Flow Report," instead of page one of schedule one and schedule two of Form FmHA 442–2, "Statement of Budget, Income, and Equity." When used for budgeting, the cash flow statement should be projected for the upcoming fiscal year. When used for quarterly or annual

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reports the cash flow report should include current year projections and actual data for the prior year, the quarter just ended, and the current year to date.

§ 1942.129 Borrower supervision and servicing.

Loans under this subpart are subject to the provisions of § 1942.17(r) of Subpart A of Part 1942 and Subpart E of Part 1951 of this chapter.

§§ 1942.130–1942.131 [Reserved]

§ 1942.132 Subsequent loans.

Subsequent loans will be processed under this subpart.

§ 1942.133 Delegation and redelegation of authority.

Loan approval authority is in Subpart A of Part 1901 of this chapter. State Directors may delegate approval authority to District Directors to approve fire and rescue loan regardless of whether authority to approve other community facility loans is delegated. Except for loan approval authority, District Directors may redelegate their duties to qualified staff members.

§ 1942.134 State supplements and guides.

State Directors will obtain National Office clearance for all state supplements and guides under FmHA Instruction 2006–B, (available in any FmHA Office).

(a) *State supplements.* State Directors may supplement this subpart to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to bids, contract awards, and materials more restrictive than those in this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart and Subpart A of Part 1942 of this chapter are not adequate. State Directors may prepare guides for items needed for the application; items necessary for the docket; and items required prior to loan closing or construction starts.

§§ 1942.135—1942.159 [Reserved]

Dated: December 23, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

Editorial Note: This document was received at the Office of the Federal Register September 30, 1986.

[FR Doc. 86–22454 Filed 10–2–86; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86–015]

Tuberculosis Test Requirements for Cattle From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning tuberculosis test requirements for importing cattle from Canada. This document would amend the regulations to (1) require certain cattle to be tested for tuberculosis within 60 days preceding arrival at a port of entry instead of the previous requirement that such cattle be tested within 30 days preceding offer for entry and (2) remove restrictions imposed upon the importation of certain cattle from "restricted areas" of Canada. These proposed amendments appear to relieve restrictions without increasing the risk of the spread of tuberculosis from Canada into the United States. Further, this document would amend the regulations to prohibit the importation of cattle from a herd in which a tuberculosis reactor has been found. This additional restriction appears to be necessary to prevent the introduction of tuberculosis from Canada into the United States. Further, this document would delete the provisions regarding "range cattle." The deletion appears to be necessary because the other proposed amendments in this document would, if adopted, result in the deletion of all distinctions between the tuberculosis provisions regarding "range cattle" from Canada and all other types of cattle from Canada.

DATE: Written comments concerning this proposal must be received on or before December 2, 1986.

ADDRESS: Written comments should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket No. 86–015. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, Import-Export And Emergency Planning Staff, VS, APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8493.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) regulate the information into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases. Section 92.20 of the regulations contains specific provisions concerning the importation into the United States of cattle from Canada.

First Proposal

A document published in the **Federal Register** on December 4, 1985 (50 FR 49702–49704), referred to below as the first proposal, proposed to amend the regulations in § 92.20(b) to (1) require certain cattle to be tested for tuberculosis within 60 days preceding arrival at a port of entry instead of the previous requirement that such cattle be tested within 30 days preceding offer for entry and (2) remove restrictions imposed upon the importation of certain cattle from "restricted areas" of Canada. This first proposal proposed these amendments to relieve restrictions without increasing the risk of the spread of tuberculosis from Canada into the United States. Further, the first proposal proposed to amend the regulations to prohibit the importation of cattle from a herd in which a tuberculosis reactor has been found until such herd attains tuberculosis-free status under Canadian regulations. This additional restriction was proposed to prevent the introduction of tuberculosis from Canada into the United States. Further, the first proposal would delete the provisions regarding "range cattle." This deletion would be necessary if the other proposed actions in the first proposal were adopted, because such adoption would result in the deletion of all distinctions between the tuberculosis provisions regarding "range cattle" from Canada and all other types of cattle from Canada.

Comments were solicited concerning the first proposal for a 60-day comment period ending February 3, 1986. One comment was received. The commenter supported the proposal amendments. However, a final rule has not been promulgated because additional information provided by Canadian officials indicates that the first proposal is flawed in several respects. Except for substantive changes to correct errors in the first proposal, this document reproposes the first proposal for the reasons set forth in the first proposal.

Additional Changes

In the first proposal, proposed § 92.20(b)(1) would have prohibited the importation of cattle from Canada from a herd in which any cattle have been found to have tuberculosis unless "the herd attains tuberculosis-free status under Canadian regulations." An official of the Canadian Government has informed representatives of this Department that Canada does not have regulations under which herds found to have tuberculosis are designated as tuberculosis-free and, presently, the Canadian policy is to slaughter all cattle in a herd found to have tuberculosis. Therefore, no cattle from a herd in which any cattle have been determined to have tuberculosis would be available or eligible for importation into the United States under proposed § 92.20(b)(1). Therefore, this proposal would prohibit the importation of cattle from a herd in which cattle have been found to have tuberculosis.

Also in the first proposal, proposed § 93.20(b)(2)(ii)(A) sets forth one method by which certain cattle could be imported into the United States. That proposed provision would have required that cattle be accompanied by certificate issued or endorsed by a salaried veterinarian of the Canadian Government showing, among other things, that the cattle are from a "Canadian-listed tuberculosis-free accredited herd." An official of the Canadian Government has informed representatives of this Department that, while such list still exists, most tuberculosis-free herds are not on such list. Therefore, this document proposes to delete the reference to "Canadian-listed tuberculosis-free accredited herd" and instead requires that the certificate show that the cattle are from a "tuberculosis-free herd."

A second method by which certain cattle could be imported into the United States was proposed in § 92.20(b)(2)(ii)(B) of the first proposal. That proposed provision would have required that cattle be accompanied by a certificate issued or endorsed by a salaries veterinarian of the Canadian Government showing, among other things, that the cattle are from an "accredited area." An official of the Canadian Government has informed representatives of this Department that the entire country of Canada is now an "accredited area." Therefore, this document proposes to delete the requirement for certification that cattle are from a herd in an accredited area since all Canadian cattle are now "from an accredited area." Since the term "accredited area" would no longer be used, this document proposes to remove the definition of "accredited area" from § 92.1.

Further, the terms, "tuberculosis-free herd" and "United States" are used in proposed § 92.20(b). To increase clarity, this document proposes to add definitions of these terms to § 92.1 as follows:

1. *Tuberculosis-free herd.* A herd which is not known to be infected with bovine tuberculosis (*M. bovis*) and which is certified by the Canadian Government as a tuberculosis-free herd.

2. *United States.* All of the States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

Executive Order 12291 and Regulatory Flexibility Act

This proposed action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have an effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; and would not have any adverse effects on competition, employment, investment, productivity, innovation, or on the ability United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Extending the tuberculin testing period from 30 to 60 days prior to importation would be a relief of existing restrictions that would make compliance with the regulations easier for persons moving cattle from herds in Canada into the United States. Removal of the provisions for cattle from "restricted areas" would have no impact on the importation of cattle into the United States from Canada since there are no longer any "restricted areas" in Canada. Removal of the provisions for the importation of range cattle from reactor herds would have no impact on the importation of cattle from Canada into the United States, since Canadian regulations prohibit the exportation of such cattle.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 would be amended as follows:

1. The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.1 [Amended]

2. Paragraphs (k) and (l) of § 92.1 would be removed.

3. The remaining definitions in § 92.1 would be placed in alphabetical order and the paragraph designations would be removed.

4. Section 92.1 would be amended by adding, in alphabetical order, the following:

Tuberculosis-free herd. A herd which is not known to be infected with bovine tuberculosis (*M. bovis*) and which is certified by the Canadian Government as a tuberculosis-free herd.

United States. All of the States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

5. Section 92.20(b) would be revised to read as follows:

§ 92.20 Cattle from Canada.

* * * * *

(b) *Tuberculin-test certificates.* (1) Cattle from Canada from a herd in which any cattle have been determined to have tuberculosis shall not be imported into the United States.

(2) Except for cattle prohibited from importation under paragraph (b)(1) of

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this section, cattle from Canada may be imported into the United States if:

(i) The cattle are imported for slaughter in accordance with § 92.23; or

(ii) The cattle are accompanied by a certificate issued or endorsed by a salaried veterinarian of the Canadian Government showing:

(A) That the cattle are from a tuberculosis-free herd; or

(B) The date and place the cattle were last tested for tuberculosis; that the cattle were found negative for tuberculosis on such test; and that such test was performed within 60 days preceding the arrival of the cattle at the port of entry.

* * * * *

6. In § 92.20, paragraph (b), footnote number 10 would be removed.

Done at Washington, DC, this 29th day of September 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-22422 Filed 10-2-86; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 703

Rule on Informal Dispute Settlement Procedures; Advisory Committee Meetings

AGENCY: Federal Trade Commission.

ACTION: Notice of advisory committee meetings.

SUMMARY: This notice announces the date, time, location, and agenda of the next four meetings of the Rule 703 Advisory Commitee. Fifteen days' notice of advisory committee meetings is required under the Federal Advisory Committee Act. This notice also announces minor changes in the committee's membership.

DATES: The Rule 703 Advisory Committee will meet on October 22, 1986 at 10:00 a.m.; on November 13, 1986 at 8:30 a.m.; on December 11, 1986 at 8:30 a.m.; and on January 8, 1987 at 8:30 a.m. All four meetings will be open to the public.

ADDRESS: All four meetings will be held at the Conservation Foundation, 1255 23rd Street N.W., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT:

Chairpersons:

John A.S. McGlennon, ERM-McGlennon Associates, 283 Franklin Street, Boston, MA 02110 (617) 357-4443.

Gail Bingham, Conservation Foundation, 1255 23rd Street, NW., Washington, DC 20037, (202) 293-4800.

FTC Staff: David W. Koch, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580 (202) 523-3811.

SUPPLEMENTARY INFORMATION: On August 20, 1986, the Commission published a notice [51 FR 29666] announcing the formation of an advisory committee to develop proposed revisions to the Rule on Informal Dispute Settlement Procedures ("Rule 703"), 16 CFR Part 703. The Rule 703 Advisory Committee met for the first time on September 23, 1986. At that meeting, the Committee attended to several organizational matters, including setting the dates for future committee meetings.

The Federal Advisory Committee Act, 5 U.S.C. App. I sections 1–15, and its implementing regulations require that advisory committee meetings be open to the public and that notice be published in the **Federal Register** at least fifteen days in advance of each meeting. Accordingly, the Commission is publishing this notice to announce the date, time, location, and agenda of the next four meetings of the Rule 703 Advisory Committee.

The date, time, and location of the four scheduled meetings appear above. In addition, the committee has established a tentative agenda for the October 22, 1986 meeting. At that meeting, the committee will finalize a number of organizational matters, including the adoption of protocols to guide the committee's operation. The committee will also review a list, prepared by the chairpersons, of issues proposed for discussion during the September 23, 1986 meeting. Finally, the committee will consider the organization of working groups to discuss substantive matters in greater detail.

Because of the inherently fluid nature of the negotiation process, it is not possible for the committee to develop specific agendas for the November, December, and January meetings at this time. In general, however, those meetings will be devoted to substantive discussions of the issues raised during the September 23, 1986 meeting. The committee will also receive progress reports and recommendations from the working groups to which particular issues have been referred.

The public is invited to contact the chairpersons or the FTC staff to obtain the list of issues that will serve as the basis for discussions at future meetings. (Readers may also refer to the preliminary list of issues in the February 12, 1986 notice [51 FR 5025] announcing the Commission's intention to form the advisory committee.) The public is also encouraged to contact the chairpersons or FTC staff as the November, December, and January meetings approach for further information on the specific matters likely to be brought up.

Membership Changes

In addition to notifying committee members and the public of the next four advisory committee meetings, a purpose of this notice is to announce minor changes in the committee's membership. Two of the organizations listed in the August 20, 1986 notice establishing the Rule 703 Advisory Committee have decided not to participate in the committee's activities. Those organizations are Nissan Motor Corporation and the Union County, New Jersey, Division of Consumer Affairs. All of the other organizations appearing in the August 20, 1986 notice are participating on the committee.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-22450 Filed 10-2-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Public Comment and Opportunity for Public Hearing on a Modification to the Pennsylvania Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Pennsylvania as a modification to the Pennsylvania Permanent Regulatory Program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment includes revisions to the State's civil penalty program which provides that the Pennsylvania Department of Reclamation may accept reclamation of abandoned mine lands in lieu of cash payment of civil penalties.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment are

available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before 4:00 p.m., November 3, 1986, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on October 28, 1986, beginning at 9:00 a.m. at the location shown below under "**ADDRESSES**".

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. Robert Biggi, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101.

If a public hearing is held its location will be: Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. 11 and 15, Camp Hill, Pennsylvaina.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Pennsylvania program, the proposed modifications to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each person may receive, free of charge, one single copy of the proposed modifications by contacting the Harrisburg Field Office.

Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 "L" Street, NW., Washington, DC 20240

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, Pennsylvania 17120

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Harrisburg, Pennsylvania, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business October 20, 1986. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** notice (47 FR 33050). Subsequent action concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.15 and 938.16.

III. Submission of Program Amendment

On August 21, 1986, Pennsylvania submitted to OSMRE a proposed amendment to the State program (OSMRE Administrative Record PA 609). The amendment modifies the State's civil penalty program to provide that the State may accept reclamation of abandoned mine lands in lieu of cash payment of civil penalties.

The amendment provides that the penalty amount shall be set before the Department may consider the operator's request to perform reclamation in lieu of cash payment.

The amendment also includes provisions which cover the following:

—Specifications as to the site which are eligible for reclamation;

—The eligibility requirements for operators who desire to perform reclamation in lieu of making cash payments of civil penalties;

—The requirements for the Consent Order and Agreement to be signed by the operator;

—The methods for calculating the cash value of the proposed reclamation;

—The content requirements for the operator's proposal of reclamation work to be completed in lieu of cash payment;

—The inspection requirements for sites being reclaimed;

—Minimum requirements for reclamation work to be performed; and

—The requirements pertaining to combining civil penalty assessments to be resolved by reclamation.

The Director is seeking comment on the adequacy of the proposed amendment in satisfying the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. With respect to penalty provisions, the Director must find that the State's rules incorporate penalties no less stringent than those set forth under section 518 of SMCRA and Section 845 of the Federal regulations and contain the same or similar procedural requirements relating thereto.

The full text of the proposed amendment is available for review in the OSMRE Administrative Record under No. PA 609 at the addresses listed above.

IV. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact

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statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 26, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86-22423 Filed 10-2-86; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3090-6]

Control of Air Pollution for New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emissions Regulations for 1994 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines and Vehicles

AGENCY: U.S. Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: This Notice extends the period for comments to the Advance Notice of Proposed Rulemaking (ANPRM) which announced that the Agency is considering actions in three areas related to motor vehicle emission standards and regulations. (51 FR 32032; September 8, 1986.) First, EPA is evaluating more stringent hydrocarbon (HC) exhaust emission standards for light-duty trucks (LDTs). Second, EPA is contemplating more stringent HC standards for light and heavy LDTs at higher elevations that, as is currently the case, would require the same percentage reduction in emissions at high altitude as is required at low altitude. Third, the Agency also is contemplating a requirement that lighter heavy-duty trucks (Class IIB) be certified in compliance with the LDT standards using the applicable certification protocols.

DATE: In order to insure full consideration in the Agency's preparation of this rulemaking, comments pertaining to the ANPRM should be submitted in writing by November 21, 1986.

ADDRESS: Written comments should be submitted in duplicate to: Central Docket Section (LE-131A); Attention: Docket No. A-85-22; U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Wilcox, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4390.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) has received separate requests from the Automobile Importers of America, Inc. and the Motor Vehicle Manufacturers Association for an extension of time to comment on the subject ANPRM. These requests were based on the need of these organizations for additional time to adequately review and analyze the issues raised in the ANPRM in order to prepare and submit comments to EPA.

The Agency has considered these requests and decided that an extension would be appropriate. Therefore, the comment period is extended to November 21, 1986.

Dated: September 26, 1986.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-22408 Filed 10-2-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3090-4]

Identification and Listing of Hazardous Waste; Proposed Exclusions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at two facilities from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at two particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated one of the petitions which is discussed in today's notice. Based on our review at that time, this petitioner was granted a temporary exclusion. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition as well as the other petition for which we propose to grant an exclusion have been evaluated both for the factors for which the wastes were originally listed, as well as all other factors and toxicants which might reasonably cause the wastes to be hazardous.

DATES: EPA will accept public comments on these proposed exclusions until October 20, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on either of these proposed exclusions by filing a request with Bruce R. Weddle, whose address appears below, by October 20, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Requests for a hearing should be addressed to Bruce R. Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Communications should identify the regulatory docket number: "F-86-HAPE-FFFFF".

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement) Washington, DC 20460, and is available for viewing

from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*e.g.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) That the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constitutents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constitutents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetical receptor wells)—the "compliance point" (*i.e.*, the model estimates the ability of an aquifer to

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dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating wastes proposed for exclusion in today's publication. As a result of this evaluation, the Agency is proposing to grant the petitions discussed in this notice.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a final exclusion. Thus, a final exclusion will not be granted for any of the petitions proposed today until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Holston Army Ammunition Plant, Kingsport, Tennessee;

William L. Bonnell Co., Newnan, Georgia.

I. Holston Army Ammunition Plant

A. Petition for Exclusion

Holston Army Ammunition Plant (Holston), located in Kingsport, Tennessee, manufactures explosives. Holston has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. K044—Wastewater treatment sludges from the manufacturing and processing of explosives. Holston's waste is also considered hazardous due to the presence of spent non-halogenated solvents listed under EPA Hazardous Waste No. F003 (*i.e.*, xylene, acetone, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol) and EPA Hazardous Waste No. F005 (*i.e.*, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine). Holston has petitioned to exclude its waste because it does not meet the criteria for which it is listed.[3]

EPA Hazardous Waste No. K044 is listed only for reactivity, EPA Hazardous Waste No. F003 is listed only for ignitability, and EPA Hazardous Waste No. F005 is listed for ignitability and toxicity. Holston claims that its wastewater treatment process generates a non-hazardous sludge that is not reactive or ignitable, and the constituents of concern, if present, are present in insignificant quantities. In addition, Holston claims that its sludge is not hazardous for any other reason.

Holston has provided a detailed description of its manufacturing and wastewater treatment processes, including schematic diagrams; results from reactivity tests including impact sensitivity, detonator tests, and exposure to excessive heat,[4] reactive cyanide and sulfide analyses; and results from ignitability tests. Holston also provided results from EP toxicity and total constituent analyses of the sludge for all of the EP toxic metals and nickel; total constituent analyses, and distilled water leachate test results for cyanide, and results from total and free cyanide analyses. Holston submitted results from total oil and grease analyses as well as total constituent analyses for all of the solvents listed under EPA Hazardous Waste No. F005. The raw materials list provided by Holston demonstrated that phenols and acetonitrile had the potential to enter the wastewater treatment system; therefore, samples were also analyzed for these constituents. Raw materials information was requested in order to determine whether hazardous constituents, other than those for which the waste was orginally listed, may be present in the waste at levels of regulatory concern.

Holston manufactures explosive chemicals: cyclonite (cyclotrimethylene trinitramine or RDX) and cyclotetramethylene tetranitramine or HMX). Holston also formulates TNT-containing explosives. The basis chemistry used by Holston is the Bachmann process; hexamine is nitrated with an ammonium nitrate-nitric acid mixture in the presence of acid-acetic anhydride.

Wastewaters are generated from the manufacturing areas of the facility and piped to the industrial wastewater treatment plant (IWTP). The IWTP includes a neutralization and nutrient addition tank, an upflow anoxic packed bed reactor for nitrate removal, a second neutralization and nutrient addition tank, a bi-modal bio tower/activated sludge system, and clarifiers for solids separation. After the sludge builds up in the system, a portion is removed for treatment and dewatering. This sludge undergoes pre-thickening, is aerobically digested for twenty days, and then thickened to a 2–3 percent solids content. This thickened sludge is conditioned with 7 percent ferric chloride and 25 percent lime, and then dewatered in a diaphragm pressure filter that achieves, approximately, a 35 percent solids content. The dewatered sludge is the subject of this petition.

Grab samples were collected from the sludge pile that accumulates beneath the pressure filters. Samples were collected in February, April, and July, 1984, and August and November, 1985 (a total of 23 grab samples were collected and analyzed). The wastewater treatment process used at Holston involves a number of steps prior to dewatering. As a result, each filter pressure "batch" represents approximately 20 days of sludge generation. The 1984 samples and the August, 1985 samples, were collected from the sludge pile beneath the pressure filter units. The November, 1985 samples were collected directly from the filter press. The 1985 samples were daily grab samples while the 1984 samples were collected at varying intervals over a six month period. Holston claims that the samples collected are representative of any concentration variation over time of the listed and non-listed constitutents in the waste stream.

Maximum total constituent analysis and leachate values for the EP toxic metals, nickel, and cyanide are presented in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS (ppm)

Constituents	Total constituent analysis	EP leachate analyses
As	7.5	0.07
Ba	1204	4.11
Cd	1.3	0.039
Cr(total)	810	0.052
Pb	26	0.23
Hg	3.6	0.005
Se	0.16	0.005
Ag	3.3	<0.1
Ni	320	1.6
CN [1]	<2	<1

[1] From distilled water leach test. Distilled water is used rather than the normal acidic EP extraction medium to avoid the destruction of cyanide during the extraction procedures.

The maximum concentration detected in the waste of the spent solvents listed under EPA Hazardous Waste No. F005, are listed in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS (ppm)

Constituents	Concentrations
Toluene	2.7
Methyl ethyl ketone	[1] 0.04
Carbon disulfide	<1
Isobutanol	<1
Pyridine	<1

[1] A concentration of 12 ppm of methyl ethyl ketone (MEK) was found during the analyses for EPA Hazardous Waste No. F003 solvents where 5 ppm was used as a detection limit (MEK was not detected required significant "noise" during these analyses. Subsequent analyses of four additional samples found less than 1 ppm of MEK, and further testing (of four more samples in order to lower detection limits) found a maximum of 0.04 ppm of MEK in the waste when a detection limit of 0.01 ppm was used. The Agency believes that the 12 ppm value for MEK is not representative, as is demonstrated by evaluating the complete data set using Dixon's Extreme Value Test.

Holston also analyzed their waste for phenols because waste tar decant water may enter the IWTP as a result of floor washings or minor drips. 2,4,6-Trichlorophenol and 2,4-dinitrophenol were not detected at a detection limit of 1 ppm. Acetonitrile was not detected at 10 ppm.

The total oil and grease content of Holston's sludge is less than 0.5 percent. Holston provided a list of raw materials used in their processes which might contribute to the waste stream. From this list it was determined that no Appendix VIII hazardous constitutents, other than those tested for, are used in the manufacturing processes and that formation of any of these constituents is unlikely. Finally, Holston claims to generate a maximum of 3,800 tons of dewatered sludge annually.

B. Agency Analysis and Action

Holston has demonstrated to the Agency that the sludge generated from their pressure filters is non-hazardous. The Agency believes that the 23 grab samples taken during the three sampling periods were non-biased and adequately characterize the waste petitioned for exclusion. Due to the nature and consistency of the operations involved (Holston is not a job shop and there are no seasonal product variations), the Agency believes that Holston's claim of uniformity in manufacturing and treatment processes is substantiated. The samples, therefore, are representative of the treated sludge generated by Holston.

As mentioned previously, Holston performed reactivity tests on their treated sludge. The sludge was stable when exposed to flame, impacts, detonators, and heat. Holston's waste was tested for the properties associated with reactive wastes (instability; readily undergoing violent change; reaction with water; and capability of detonation or explosive decomposition at standard temperature and pressure) and these properties were not found. The sludge was also stable when exposed to a flame as part of the ignitability test. The sludge's reactive sulfide and cyanide content (<0.05 and <1 mg/kg, respectively) are not of regulatory concern through an air contamination route; the Agency believes these levels to be low enough to preclude the generation of hazardous levels of toxic gases. In addition, free cyanide levels were less than 2 mg/kg.

The Agency has evaluated the mobility of constituents from Holston's waste using the vertical and horizontal spread (VHS) model.[5] This model incorporates the maximum amount of waste generated by Holston annually (3,800 cubic yards), and the leachate levels of the constituents of concern, as input parameters. In order to determine the concentrations of leachable organic compounds, the organic leachate model (OLM) was used.[6] Table 3 lists the predicted leachate concentration for the constituents, the concentration of the constituent after it has been dispersed in the aquifer and arrived at a compliance point, and the regulatory standard developed for that constituent.

TABLE 3.—VHS MODEL: COMPLIANCE POINT CONCENTRATIONS (mg/l)

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	Mean	95%	Mean	95%	
Toluene	0.04	0.05	0.0035	0.0075	10.5
Methyl ethyl ketone	0.02	0.04	0.003	0.006	1.8
Acetonitrile	1.7	2.7	0.26	0.41	1.3

[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 *FR* 1602, January 14, 1986). The Agency, however, has not completed its evaluation of the comments on this proposal. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis at that time.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

[3] Holston submitted their initial petition in May, 1985; additional information, as requested by the Agency, was submitted in August and December, 1985.

[4] In order to determine whether Holston's waste has the potential for detonation or explosive decomposition, Holston sent four samples of their waste to the Pittsburgh Research Center of the U.S. Bureau of Mines for evaluation using methods developed by the United Nations Group of experts on Explosives. These methods are the "Deflagration-to-Detonation Transition Test," and the "CAP test for Solids and Liquids;" copies of these methods are available from the RCRA docket. Holston also performed reactivity tests entitled "Auto-Ignition of Explosive Compositions" (Method No. P–22) and "Impact Sensitivity of HMX and RDX," (Method No. P–4). These methods were developed by Holston Defense Corporation, and copies of the procedures are available in the RCRA docket.

[5] See 50 FR 7882, Appendix I, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

[6] For a discussion of the Agency's proposed organic leachate model (OLM), see 50 FR 48953, Appendix, November 27, 1985. See 51 FR 27061, Notice of Data Availability and Request for Comments, July 29, 1986, for a discussion of the revised OLM.

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Table 3 indicates that all of the organic constituents identified at or above detectable levels generated compliance point levels below their respective levels of regulatory concern. The Agency also notes that the detection limit of 1 ppm generates carbon disulfide, isobutanol, pyridine, and 2,4-dinitrophenol compliance point concentrations below the Agency's levels of regulatory concern for these compounds.[7]

The EP toxic metals were also analyzed using the VHS model. The Agency's evaluation of Holston's 3,800 cubic yards of dewatered sludge, and the maximum reported EP test results, predicted the compliance point concentrations exhibited in Table 4. (Where concentrations were below the detection limits, the detection limit was used in the VHS calculations.)

TABLE 4.—CALCULATED COMPLIANCE POINT CONCENTRATIONS (mg/l)

Constituents	Compliance point concentrations	Regulatory standards
As	0.01	0.05
Ba	0.83	1
Cd	0.008	0.01
Cr (total)	0.005	0.05
Pb	0.025	0.05
Hg	<0.001	0.002
Se	<0.001	0.01
Ag	<0.016	0.05
Ni	0.39	0.35
CN	<0.15	<0.2

As indicated in Table 4, the maximum predicted concentrations of the EP toxic metals are all less than the health-based standards (the National Interim Primary Drinking Water Standards). The predicted nickel and cyanide concentrations are less than the Agency's interim standard[8] and the U.S. Health Service's suggested drinking water standard,[9] respectively. The presence of these toxicants at the reported levels is, therefore, not of regulatory concern. In addition, the Agency's evaluation of the processes and raw materials used at Holston indicates that no hazardous constituents (organic or inorganic), other than those tested for, are expected to be present in the sludge.

Based upon the constituents and factors evaluated, the Agency believes that Holston has demonstrated that the dewatered sludge generated at their facility is non-hazardous and, as such, should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Holston Army Ammunition Plant, located in Kingsport, Tennessee, for its dewatered sludge, as described in the petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition, (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment processes).[10] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. William L. Bonnell Company

A. Petition for Exclusion

The William L. Bonnell Company (Bonnell), a subsidiary of Ethyl Corporation, located in Newnan, Georgia, has petitioned the Agency to exclude their wastewater treatment sludge. The facility manufactures aluminum extrusions of various forms, sizes, and finishes for end uses, primarily in the building materials trade. The sludge presently is listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.[11] The listed constituents of concern for this waste are hexavalent chromium and cyanide (complexed). Bonnell has petitioned to exclude its wastewater treatment sludge because it does not meet the criteria for which the waste was originally listed.

Based upon the Agency's review of their petition, Bonnell was granted a temporary exclusion on March 18, 1981 (see 46 *FR* 17169). The basis for granting the exclusion (at that time) was negligible concentrations of cyanide, and the low migration potential of chromium in the waste. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Bonnell. As a result, the Agency has re-evaluated Bonnell's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed and (2) determine whether the waste is nonhazardous with respect to factors and toxicants other than the original listing criteria. Today's notice is the result of the Agency's re-evaluation of Bonnell's petition.

In support of their petition, Bonnell has submitted a detailed description of its manufacturing and treatment processes, including schematic diagrams;[12] total constituent analyses and EP toxicity test results of the sludge for total chromium; and analytical results for total cyanide. Bonnell also submitted total constituent analyses and EP toxicity tests results for arsenic, barium, cadmium, lead, mercury, selenium, silver, and nickel; results for total sulfide analyses; and results for total oil and grease analyses on representative waste samples. Bonnell further submitted a list of raw materials used in the manufacturing process. As noted above, the Agency requested much of this information to determine whether toxicants, other than those for which the waste originally was listed, are present in the waste at levels of regulatory concern.

Bonnell uses a manufacturing process that involves the cleaning and conversion coating of aluminum extrusions to prepare the surfaces for finishing and painting. The pre-paint treatment process uses a five-stage series of cleaning and rinsing tanks. Bonnell claims that cyanide is not used in their process. The chromium-bearing wastwater originating from this manufacturing process is treated by a batch reaction process that involves pH adjustment with sulfuric acid, and reduction of hexavalent chromium to the trivalent state with sulfur dioxide. The reaction tanks are agitated to ensure thorough mixing and chromium reduction. Lime is added to adjust the pH and precipitate the trivalent chromium. The precipitates are removed by sedimentation and the accumulated sludge is dewatered using a vacuum filter. Bonnell petitioned the Agency to exclude this dewatered wastewater treatment sludge. Bonnell claims that its wastewater treatment sludge in non-hazardous due to the immobile nature of chromium and negligible levels of cyanide in the sludge. In addition, Bonnell claims that paints and solvents used at the facility cannot contact the chromium-bearing wastewater stream, and thus cannot contribute toxicants to the wastewater treatment sludge. Bonnell therefore believes that the dewatered sludge is not hazardous for any other reason.

For the purpose of providing supporting analytical data, Bonnell collected grab samples from the vacum filter. Bonnel's initial petition was based upon two grab samples collected in March and August of 1980. Following the Agency's request for additional data, 4 grab samples were collected in September and October of 1983, 12 samples were collected in March and April of 1985, and 4 grab samples were collected in May of 1986. Overall a total of 22 grab samples were collected and analyzed for various parameters. At least four representative samples for each constitutent were analyzed. Bonnell claims that all of the samples collected are representative of any variation of the listed and non-listed constitutent concentrations in the waste because the manufacturing processes used at the facility are uniform and the use of raw materials does not vary significantly over time. Bonnell also claims that there is no significant seasonal variation in the amount of waste generated.

Total constitutent and EP toxicity analyses of the dewatered sludge for the listed constitutents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS (ppm)

Listed constituents	Total constituent analyses	EP leachate analyses
Chromium (total)	4,180	[1] 0.8
Cyanide	0.41	[2] 0.02

[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

[2] Free and leachable cyanide tests were not required, since cyanide is not used in the process and the total content was low. Leachable cyanide was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

Total constituent and EP toxicity analyses of the dewatered sludge for the non-listed EP toxic metals revealed the maximum concentration reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS (PPM)

Non-listed constituents	Total constituent analyses	EP leachate analyses
Arsenic	<6	<0.5
Barium	34	0.011
Cadmium	<1	<0.1
Lead	<3	<0.1
Mercury	2	[1] <0.02
Nickel	30	0.1
Selenium	<6	0.13
Silver	<1	0.4

< = Denotes concentrations below the detection limit.

[1] The leachable mercury concentration for 1 sample out of 13 was 0.1 ppm. The concentrations in the other 12 samples were less than 0.02 ppm. The Agency believes that the 0.1 ppm value is an outlier and does not reflect the typical mobility of mercury in Bonnell's waste. This conclusion is supported by the Dixon Extreme Value Test. The Agency, therefore, believes that a level equal to 0.02 ppm more accurately reflects mercury mobility in the waste.

The maximum total oil and grease value reported was 0.2 percent. Bonnell also analyzed their dewatered sludge for total sulfides; the maximum concentration reported was 0.16 ppm. Bonnell also submitted a list of all raw materials used in its manufacturing and chromium-bearing wastewater treatment processes. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Bonnell also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Bonnell claims to generate approximately 575 cubic yards of sludge per year.

B. Agency Analysis and Action

Bonnell has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the 22 grab samples collected by Bonnell from the vacuum filter were non-biased and adequately represent any variations that may occur in the waste stream petitioned for exclusion. The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Variation in raw materials can be expected either when the facility performs as a job shop or when the product line changes seasonally. The Agency believes that the sampling period used by Bonnell was long enough to cover any scheduled changes in the product line, since the petitioner has verified that there is no significant seasonal variation in the process and that the raw materials used do not vary. Accordingly, the samples are believed to be representative of the waste generated by Bonnell at its Newnan, Georgia facility.

The Agency has evaluated the mobility of the listed constituents from Bonnell's waste using the vertical and horizontal spread (VHS) model.[13] The VHS model generated compliance point values using the waste generation rate of 575 cubic yards per year and the maximum reported extract levels as input parameters. The calculated compliance point concentrations for the listed constituents are reported in Table 3.

TABLE 3.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS/DEWATERED SLUDGE (PPM)

Listed constituents	Compliance point concentrations	Regulatory standards
Chromium (total)	0.08	0.05
Cyanide	0.0007	0.2

The dewatered sludge exhibited chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standard and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[14] The waste's maximum sulfide and cyanide contents (0.16 and 0.41 ppm, respectively) also are low enough not to be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases. (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) These constituents, therefore, are not of regulatory concern.

The Agency also concluded, through using the VHS model, that the other EP toxic metals and nickel are not present in the dewatered sludge at levels of regulatory concern. The compliance

[7] The Agency notes that although the detection limit of 1 ppm for 2,4,5-trichlorophenol would generate a compliance point concentration above its regulatory standard, this constituent is not of regulatory concern. The recommended extraction and analytical procedures described in SW-846 cannot achieve low enough detection limits to pass the VHS analysis for 2,4,5-trichlorophenol. Where hazardous constituents in a waste are not detectable using appropriate analytical methods (as determined by the Agency), the Agency, as a matter of policy, will not regulate the waste as hazardous. The Agency is not indicating that this detection limit is an appropriate minimum limit for all petitioners. This will be determined on a case-by-case basis and will depend on the waste matrix. The Agency further notes, that as recommended clean-up and analytical tests improve and are incorporated into SW-846 the required detection limits will decrease for those petitioners submitting petitions at that point in time. In addition, this constituent, if present in waste, would be expected to be present in concentrations above the reported detectable limit.

[8] See 50 FR 20547 (May 15, 1985) for a complete description of the development of the Agency's interim standard for nickel.

[9] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

[10] The curent exclusion applies only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. Should such a change occur, the facility must treat its waste as hazardous until a new exclusion is granted.

[11] Bonnell petitioned the Agency to exclude its wastewater treatment sludge and sludge contained in its on-site surface impoundments. This proposed exclusion applies only to the wastewater treatment sludges currently generated at the facility, and not to sludges in the on-site surface impoundments.

[12] Bonnell has claimed their raw materials list and process descriptions as confidential business information (CBI). This information is not available for public inspection.

[13] See footnote 5.

[14] See footnote 9.

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point values generated from these extract levels are displayed in Table 4. Where the maximum reported extract levels were below the detection limits, the value of the detection limit was used in the model.

TABLE 4.— VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS/DEWATERED SLUDGE (ppm)

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	<0.019	0.05
Barium	0.004	1.0
Cadmium	<0.004	0.01
Lead	<0.004	0.05
Mercury	<0.0007	0.002
Nickel	0.004	0.35
Selenium	0.005	0.01
Silver	0.015	0.05

< = Denotes that the leachate concentration was below the detection limit.

Bonnell also had demonstrated that the sludge does not demonstrate the characteristics of ignitability and corrosivity. The Agency also reviewed Bonnell's raw materials list and material safety data sheets for each component in the raw materials list. The Agency has concluded from this review that not other Appendix VIII hazardous constituents, other than those tested for, are present in the waste.

The Agency believes that Bonnell's treatment process for chromium-bearing wastewater generates a non-hazardous waste that should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Ethyl Corporation's subsidiary, William L. Bonnell Company, located in Newnan, Georgia, for its dewatered slude, as described in the petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the manufacturing or treatment processes).[15] In addition, generators still are obligated to determine whether the wastes exhibit any of the characteristics of a hazardous waste.)

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

[15] See footnote 10.

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's list of hazardous wastes, thereby enabling facilities to treat their wastes as non-hazardous.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: September 26, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C., 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams to Table 1 in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Holston Army Ammunition Plant.	Kingsport, Tennessee.	Dewatered wastewater treatment sludges (EPA Hazardous Wastes Nos. F003, F005, and K044) generated from the manufacturing and processing of explosives and containing spent non-halogenated solvents after [insert date of final rule's publication].
William L. Bonnell Co.	Newnan, Georgia.	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after [insert date final rule's publication].

[FR Doc. 86–22400 Filed 10–2–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–760–06–4410–02]

43 CFR Part 1600

Planning Guidance; Availability of Draft Revisions to Resource Management Planning

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability for public review and comment on the proposed revisions to areas of critical environmental concern guidance.

SUMMARY: This notice is to advise the public of the availability of planning guidance setting forth proposed revisions in procedures for the identification, evaluation and designation of Areas of Critical Environmental Concern (ACEC) in resource management planning. the revised guidance, when issued, will aid implementation of ACEC requirements

established in the Federal Land Policy and Management Act and the Bureau of Land Management's planning regulations (43 CFR Part 1610.7–2). The revisions are also intended to improve understanding of the established requirements and to promote a more consistent approach to ACEC designations in Bureau planning. The revisions reflect more than two years experience with current guidance and implementation procedures.

DATES: Comments are due by November 28, 1986.

ADDRESS: Copies of the draft revisions to resource management planning guidance may be obtained by writing: Director (760), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

Copies may also be obtained from each BLM State Office or by calling (202) 653–8824.

FOR FURTHER INFORMATION CONTACT:

Gordon Knight, 202–653–8824
James Colby, 202–653–8830

David C. O'Neal,

Deputy Director.

[FR Doc. 86–22077 Filed 10–2–86; 8:45 am]

BILLING CODE 4310–84–M

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Notices

Federal Register
Vol. 51, No. 192
Friday, October 3, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

State of Wisconsin Soil Erosion Control Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the Wisconsin Soil Erosion Control Program are made primarily for the purpose of soil conservation. This determination which is made in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended, and the provisions of 7 CFR Part 14, permits recipients of these payments to exclude them from gross income for Federal income tax purposes if certain other conditions are met.

FOR FURTHER INFORMATION CONTACT: Howard C. Richards, Secretary, Wisconsin Department of Agriculture, Trade and Consumer Protection, 801 West Badger Road, P.O. Box 8911, Madison, Wisconsin 53708 (608) 266–1721 or James R. McMullen, Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013, (202) 447–6221.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as added by the Revenue Act of 1978 and amended by the Technical Corrections Act of 1979, provides that certain payments made under State programs may be eligible for exclusion from gross income if certain determinations are made. The Secretary of Agriculture must determine whether payments under a state program, as described in section 126(a)(10), are "made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." In making this determination, the Secretary of Agriculture must evaluate each program according to criteria set forth in 7 CFR Part 14.

One of the State conservation programs is the Wisconsin Soil Erosion Control Program (WSECP) which is authorized by the section 91.10 of the Soil and Water Conservation Law (Wis. Stat. Ann. section 92.10). The purposes of the program are to: (1) Conserve long-term soil productivity and protect the quality of related natural resources; (2) Provide the necessary administrative framework and financial assistance to meet soil erosion control needs of the state; (3) Focus program resources in areas of the state with the most severe soil erosion problems; and (4) Assure adequate program evaluation to develop recommendations for improvements in erosion control programs. (See Wis. Stat. Ann. section 92.10)

There are two primary components of the program: (1) The preparation of county soil erosion control plans; and (2) The implementation of county soil erosion control plans, including making state cost-share assistance available to landowners and land users. The Wisconsin Department of Agriculture, Trade and Consumer Protection, which administers the program in conjunction with its land conservation board and county land conservation committees, assists committees in preparing the soil erosion control plans and may allocate funds for this purpose, reviews and approves or disapproves the soil erosion control plans and may require committees to indicate specific projects to be funded under each plan, and provides funds from state general purpose revenues to committees to cover up to 75 percent of the cost of implementing conservation practices. It gives priority to those areas in which the most severe soil erosion problems are located.

Cost-share assistance is available only to landowners and land users who enter into a contract with a land conservation committee. Practices eligible for cost-share assistance are: stripcropping, diversions, terrace systems, waterways, critical area stabilization, grade stabilization structures, conservation tillage, and field windbreaks (establishment or restoration).

The authorizing legislation, regulations, and operating procedures for the WSECP have been carefully examined using the criteria set forth in 7 CFR Part 14. It has been concluded that the cost-share payments made under the WSECP to agricultural landowners and/or land users are made primarily for the purpose of conserving soil resources. A "Record of Decision, Wisconsin Soil Erosion Control Program; Primary Purpose Determination for Federal Tax Purposes" has been prepared and is available upon request from the Conservation and Environmental Protection Division, ASCS. Requests may be sent to the address listed above.

Determination

Therefore, it is hereby determined in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended, and 7 CFR Part 14, that all cost-share payments made after February 1, 1985, for conservation practices under the Wisconsin Soil Erosion Control Program which is authorized by section 92.10 of the Soil and Water Conservation Law (Wis. Stat. Ann. section 92.10), are made primarily for the purpose of conserving soil resources.

Signed at Washington, DC, on September 27, 1986.

Richard E. Lyng,
Secretary of Agriculture.

[FR Doc. 86–22455 Filed 10–02–86; 8:45 am]
BILLING CODE 3410–05–M

Forest Service

Grand Mesa, Uncompahgre, and Gunnison National Forests; Reanalysis of Forest Land and Resource Management Plan

In the Matter of: Reanalysis of Forest Land and Resource Management Plan for the Grand Mesa, Uncompahgre, and Gunnison National Forests, Delta, Garfield, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, San Juan, and San Miguel Counties, CO; Notice of Reanalysis of the Forest Plan.

Pursuant to the September 1983 Record of Decision for the Forest Plan which specified a new timber demand study be completed by the end of 1987, to Deputy Assistant Secretary Douglas W. MacCleery's decision of July 31, 1985, and in response to post Forest Plan issues related to aspen management, the Forest Service, Department of Agriculture is reanalyzing the Forest Land and Resource Management Plan and its alternatives for the Grand Mesa, Uncompahgre, and Gunnison National Forest.

The Proposed Action (Forest Plan) and alternatives are described in the Final Environmental Impact Statement (EIS) prepared for the Forest Plan, Chapter II, pages II–15 through II–60. A discussion of the scope of the issues which were addressed in the Final EIS is on pages I–10 through I–14. Public comment on the issues and the Forest Service responses appear in Chapter VI of the Final EIS.

Preliminary issues have been identified since the original Record of Decision for the Forest Plan was signed on September 29, 1983, by the Rocky Mountain Regional Forester. These issues focus on demand for wood fiber on the Forest, treatment of vegetation including aspen to provide non-timber benefits, "below-cost" timber sales, and the six aspects of the MacCleery decision. These six aspects deal with economic implications of the timber program, the timber program's contribution to net public benefits; timber cost reduction—revenue enhancement, timber demand, land suited for timber production, and again "below-cost" timber sales.

Preliminary plans call for the above issues to be the main areas involved in the reanalysis. Each has been summarized in Planning Action 1. This document includes specific details on the purpose and need, issues, concerns and opportunities involved. It is available for public review by contacting the Forest Supervisor at the address below.

Federal, State, and local agencies, individuals, and organizations are invited to submit comments on these or other issues which may affect management of the National Forest.

The following state and local agencies and organizations have shown interest in the management of this National Forest, and have been specifically invited to participate in the scoping and subsequent reanalysis.

Montrose County Commissioners
City of Montrose
City of Crested Butte
Louisiana-Pacific Corporation
Colorado Timber Industry Assoc.
Southwest Forest Industries
National Forest Products Assoc.
Allied Forest Products
Western Colorado Congress
The Sierra Club
Gunnison County Commissioners
American Wilderness Alliance
Natural Resources Defense Council
Public Lands Institute
Wilderness Society
Colorado Environmental Coalition
High Country Citizens Alliance
National Audubon Society
Western Slope Energy Research Center
Colorado Wildlife Federation
Colorado Division of Wildlife
Delta County Commissioners
Sierra Club Legal Defense, Inc.

Colorado Department of Natural Resources—Current Forest Plan Mailing List

The public involvement activities (including scoping) planned during the reanalysis are detailed in the Action Plan now available to the public. The public will be notified when other documents are available through paid legal notices, news releases, and letters.

The Forest is using the same approach to the reanalysis effort as was used in the first planning effort. Additional documents will follow the "Planning Action" concept established in the original planning process. The Forest anticipates five addendum sections to the following Planning Actions:

1. Addendum to Planning Action 1 (Issues, Concerns, and Opportunities; Purpose and Need; Planning Questions).

2. Addendum to Planning Action 2 (Planning and Decision Criteria) sections on decision criteria for new planning questions, demand determination process, multiple-use identification process, list of identified benefits, FORPLAN analysis process with analysis area and zone identifiers, data base list and anticipated completed data base timeframe.

3. Addendum to Planning Action 3 (Inventory Data and Information Collection) sections on Costs and Benefits.

4. Preliminary Results of (1) demand analysis, (2) cost reduction/revenue enhancement studies, and (3) land suited for timber production analysis.

5. Combined Addendum to Planning Actions 4 (Analysis of Management Situation), Planning Action 6 (Estimated Effects of Alternatives), and Planning Action 7 (Evaluation of Alternatives) sections on results of demand analysis, FORPLAN prescription development, relationship between FORPLAN prescriptions and Plan's management area prescriptions, efficiency of timber and nontimber prescriptions, transportation analysis, cost reduction/revenue enhancement studies, land suited for timber production, benchmark analysis, constraint analysis, and effects (including economic) and evaluation of current Forest Plan alternative and other alternatives.

This reanalysis may lead to an amendment of the Forest Plan. An environmental assessment or an environmental impact statement may be required to document the reanalysis. If an EIS is necessary, a Notice of Intent will be published in the **Federal Register**. This determination is anticipated in September 1987.

Regardless, a new Record of Decision for the Forest Plan for the Grand Mesa, Uncompahgre, and Gunnison National Forest will be issued to respond to the Deputy Assistant Secretary's decision. It is unknown at this time when a new Record of Decision will be prepared.

Gary E. Cargill, Regional Forester, Rocky Mountain Region, is the responsible official.

Please contact Raymond J. Evans, Forest Supervisor, Grand Mesa, Uncompahgre, and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416; telephone (303) 874–7691, for further information or to provide comments on the reanalysis.

Dated: September 25, 1986.

Raymond J. Evans,
Forest Supervisor.

[FR Doc. 86–22441 Filed 10–2–86; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–123–047]

Elemental Sulphur from Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and nine respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers nine of the forty known producers and/or exporters of this merchandise to the United States currently covered by the finding and the period December 1, 1982 through November 30, 1983. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences

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between United States price and foreign market value. One firm failed to respond to our questionnaire. As a result, we used the best information available for assessment and antidumping duties cash deposit purposes for that firm.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On September 18, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 37889) the final results of its last administrative review of the antidumping finding on elemental sulphur from Canada (38 FR 34855, December 17, 1973). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, the petitioner, Freeport McMoRan, Inc. (formerly Freeport Minerals Company), and nine respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We subsequently published a notice of initiation of the antidumping duty administrative review on November 27, 1985 (50 FR 48825).

Scope of the Review

Imports covered by the review are shipments of elemental sulphur from Canada, currently classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated. The review covers nine of the forty known producers and/or exporters of Canadian elemental sulphur to the United States currently covered by the finding, Allied Corporation, B.P. Resources Canada, Ltd., Cities Service Oil and Gas Corp., Drummond Oil & Gas Ltd., Imperial Oil Limited, Koch Industries, Inc., Mobil Oil Canada, Ltd. Suncor Inc., and Texaco Canada Resources, Ltd., and the period December 1, 1982 through November 30, 1983. B.P. Resources Canada, Ltd. failed to respond to the Department's antidumping questionnaire. The Department used the best information available for assessment and estimated antidumping duties cash deposit purposes for that firm.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the ex-factory price to unrelated purchasers in the United States. No deductions were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. When there were no sales of such or similar merchandise in the home market or to third countries, the Department used constructed value, as defined in section 733 of the Tariff Act. Home market price was based on the ex-factory price to unrelated purchasers in the home market. Constructed value was calculated as the sum of materials, fabrication costs, general expenses, and profit. Because actual general expenses were lower than the statutory minimum of ten percent of the sum of materials and fabrication costs, the Department used the statutory minimum. The Department used actual profits because they were higher than the statutory minimum of eight percent of the sum of materials, fabrication, and general expenses. No adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period December 1, 1982 through November 30, 1983:

Manufacturer/exporter	Margin (percent)
Allied Corporation	0
B.P. Resources Canada, Ltd.	5.58
Cities Service Oil and Gas Corp.	[1] 6.60
Drummond Oil & Gas Ltd.	0
Imperial Oil Limited	0.46
Koch Industries, Inc.	[1] 26.95
Mobil Oil Canada, Ltd.	[1] 5.58
Suncor Inc.	[1] 26.95
Texaco Canada, Inc. (formerly Texaco Canada Resources, Ltd.)	[1] 26.90

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margin for Imperial Oil Limited is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for this firm. For any shipments from the remaining 31 producers and/or exporters not covered by this review, the cash deposit will continued to be at the rate published in the final results of the last administrative review for each of these firms (50 FR 37889, September 18, 1985).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1985 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements and waiver are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from Warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with § 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: September 29, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–22473 Filed 10–2–86; 8:45 a.m.]

BILLING CODE 3510-DS-M

[A–423–601]

Postponement of Final Antidumping Duty Determination; Mirrors in Stock Sheet and Lehr End Sizes From Belgium

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final determination as to whether sales of mirrors in stock sheet and lehr end sizes from Belgium have occured at less than fair value until not later than January 26, 1987.

EFFECTIVE DATE: October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Gregory G. Borden ([202) 377–3003) or Mary S. Clapp, ([202) 377–1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On April 21, 1986, we published a notice in the **Federal Register** (April 29, 1986, 51 FR 15933) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether mirrors in stock sheet and lehr end sizes from Belgium were being, or were likely to be, sold at less than fair value. On May 16, 1986, the International Trade Commission determined that there is a reasonable indication that imports of mirrors in stock sheet and lehr end sizes from Belgium are materially injuring a U.S. industry. On September 12, 1986, we published a preliminary determination of sales at less than fair value with respect to this merchandise (51 FR 32505). The notice stated that if the investigation proceeded normally, we would make our final determination by November 24, 1986.

On September 11, 1986, Glaverbel S.A., the respondent in this investigation requested a postponement of the final determination until not later than the 135th day after the date of publication of our preliminary determination in the **Federal Register**, pursuant to section 735(a)(2)(A) of the Act. The respondent is qualified to make such a request because it is the only known producer selling the subject merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than January 26, 1987.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 29, 1986.

[FR Doc. 86–22475 Filed 10–2–86; 8:45 am]

BILLING CODE 3510-DS-M

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and tentative determination to revoke in part.

SUMMARY: In response to requests by the petitioner and four respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. The review covers eight of the twenty-five known manufacturers and/or exporters of this merchandise to the United States and generally consecutive periods from July 1, 1979 through September 30, 1985. The review indicates the existence of dumping margins for some of the firms during the periods.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value, and has tentatively determined to revoke the finding with respect to Manuli.

When no information was received in response to our questionnaire, we used the best information available for assessment and estimated antidumping duties cash deposit purposes.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, Alfredo Montemayor, or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5505/3601.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 35666) the final results of its last administrative review of the antidumping finding on pressure sensitive plastic tape from Italy (42 FR 56100, October 22, 1977). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, the petitioner and four manufacturers and/or exporters requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published notices of initiation of the antidumping duty administrative reviews on November 12, 1985 (50 FR 46889) and November 27, 1985 (50 FR 48825).

The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of pressure sensitive plastic tape measuring over 1⅝ inches in width and not exceeding 4 mils in thickness, currently classifiable under items 790.5530, 790.5545, and 790.5555 of the Tariff Schedules of the United States Annotated.

The review covers eight of the twenty-five known manufacturers and/or exporters of Italian pressure sensitive plastic tape to the United States, and generally consecutive periods between July 1, 1979 through September 30, 1985. Two firms failed to respond to our antidumping questionnaire. For these firms we used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available was the rate from the original fair value investigation. We published a tentative revocation for Autoadesivitalia on October 5, 1982 (47 FR 43993). We are not considering that revocation further because we found margins for that firm in this review.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act") or section 203 of the 1921 Act, as appropriate. Purchase price was based on the packed f.o.b.,

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c.i.f. duty paid, or delivered price to the first unrelated purchasers in the United States. Where applicable, we made adjustments for ocean freight, U.S. and foreign brokerage fees, U.S. and foreign inland freight, U.S. and foreign insurance, U.S. customs duties, handling fees, and cash discounts. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act or section 204 of the 1921 Act, as appropriate, since sufficient quantities of such or similar merchandise were sold in the home market for comparison purposes. Home market price was based on the packed ex-factory f.o.b., or delivered price to unrelated purchasers in the home market, with adjustments, where applicable, for foreign inland freight, insurance, differences in credit expenses, commissions to unrelated parties, other selling expenses when a commission was paid in one market and not the other, and expenses incurred due to the return of defective U.S. merchandise. We adjusted for differences in the physical characteristics of the merchandise in accordance with § 353.15 of the Commerce Regulations. We disallowed certain claimed adjustments for differences in physical characteristics of the merchandise since we did not use these home market models for comparison purposes. We disallowed claimed level-of-the-trade adjustments because they were inadequately quantified. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Tentative Determination To Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

	Margin (percent)
Autoadesivitalia:	
10/01/80–9/30/81	2.18
10/01/81–10/05/82	5.19
Boston:	
10/01/80–9/30/81	9.82
10/01/81–9/30/84	[1] 9.82
Comet:	
10/01/80–9/30/81	4.54
10/01/81–9/30/82	3.02
10/01/82–9/30/83	4.41
Irplastnastri:	
1/16/84–6/15/84	12.66
Manuli:	
10/01/82–9/30/83	0.32
10/01/83–9/30/84	0.01
10/01/84–9/30/85	0.34
NAR:	
7/01/79–9/30/80	7.03
10/01/80–9/30/81	5.59
10/01/81–9/30/82	5.49
10/01/82–9/30/83	5.33
10/01/83–9/30/84	5.17
Sicad:	
10/01/80–9/30/81	4.81
10/01/81–9/30/82	0.16
10/01/82–9/30/83	3.05
SYROM:	
6/01/82–9/30/85	12.00

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Manuli requested partial revocation of the finding and, as provided for in § 353.54(e) of the Commerce Regulations, has agreed in writing to an immediate suspension of liquidation and reinstatement in the finding under circumstances specified in the written agreement. Manuli had *de minimis* margins for 4 years.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margin for Manuli for the latest period is less than 0.5 percent and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for this firm. For any shipments from the remaining 17 manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of these firms (48 FR 35686, August 5, 1983).

For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipments occurred after September 30, 1985 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements and waiver are effective for all shipments of Italian pressure sensitive plastic tape entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative revocation in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985; 353.54).

Dated: September 29, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-22476 Filed 10-2-86; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 3, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a)(5) and 355.10(a)(2) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than October 31, 1987.

Antidumping Duty Proceedings and Firms	*Periods to be reviewed*
Salted Codfish from Canada: Grand Banks	07/03/85–09/30/86
Carbon steel plate from Japan:	
A.J. Forsyth	07/77–09/83
Balfour Guthrie	07/77–09/84
Calkins Burke	07/77–09/84
Drumsond McCall	04/83–09/84
Kansai Steel	04/77–07/77
	04/80–09/84
Kobe	04/83–09/84
Lambton Steel	07/77–09/84
Nippon Steel	04/83–09/84
Sumitomo Metal	04/81–09/82
Tideco Industries	07/77–09/84
Impression fabric from Japan:	
Marubeni	05/82–04/85
Mitsui	05/82–04/85
Nissei	05/82–04/85
Portable Electric Typewriters from Japan: Tokyo Juki	05/82–02/83
Roller chain, other than bicycle, from Japan: Nissan	04/85–03/86
Tapered roller bearings and certain components thereof from Japan:	
Kawasaki Heavy Ind	08/01/80–05/14/84
Komatsu	08/01/83–07/31/85
Nissan	08/01/80–05/14/84
Suzuki	04/01/82–05/14/84
Polyvinyl chloride Sheet and film from Taiwan: Orchard Corp	06/86–05/86
Barium carbonate from W. Germany: Kali-Chemie	07/83–06/84
Countervailing Duty Proceeding	
Stainless steel plate from the United Kingdom	04/84–03/85

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 353.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c); 50 FR 32550, August 13, 1985).

Dated: September 26, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-22472 Filed 10-2-86; 8:45 am]

BILLING CODE 3510-DS-M

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup of Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our July 1, 1986 quarterly update to our annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: September 29, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

(In cents per pound)

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Belgium	European Community (EC) Restitution Payments.	7.7	7.7
Canada	Export Assistance on Certain Types of Cheese.	25.3	25.3
Denmark	EC Restitution Payments.	8.6	8.6
Finland	Export Subsidy	66.3	66.3
	Indirect Subsidies	17.2	17.2
		83.5	83.5
France	EC Restitution Payments.	7.8	7.8
Greece	do	8.6	8.6
Ireland	do	7.9	7.9
Italy	do	28.8	28.8
Luxembourg	do	7.7	7.7
Netherlands	do	5.3	5.3
Norway	Indirect (Milk) Subsidy	16.4	16.4
	Consumer Subsidy	36.3	36.3
		52.7	52.7
Switzerland	Deficiency Payments	82.4	82.4
U.K.	EC Restitution Payments.	7.4	7.4
W. Germany	do	8.2	8.2

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 86-22477 Filed 10-3-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Kentucky: Decision on Application for Duty-Free Entry of Scientific Instrument

Correction

In FR Doc. 86-21975 appearing on page 34488 in the second column in the issue of Monday, September 29, 1986, make the following correction in the second paragraph, first line: The Docket No: "82–263" should read "86–263".

BILLING CODE 1505-01-M

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National Oceanic and Atmospheric Administration

Marine Fisheries Advisory Committee; Partially Closed Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA.

Time and Date: The meeting will convene at 1:00 p.m., October 27, 1986, and adjourn at approximately 4:00 p.m. October 29, 1986.

Place: Holiday Inn Golden Gateway, 1500 Van Ness Avenue, San Francisco, California.

Status: As require by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). Parts of this meeting will be open to the public. The remainder of the meeting will be closed to the public. MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academia, and other national interests.

Matters to be Considered:

Portions Open to the Public: October 27, 1986, 1:00 p.m.—5.00 p.m., marine fishing license.

October 28, 1986, 9:00 a.m.—5:30 p.m., (1) foreign ownership of U.S. flag vessels, (2) seafood inspection, and (3) non-tariff trade barriers.

Portions Closed to the Public: October 29, 1986, 8:30 a.m.—4:00 p.m. (Executive Session), (1) fishery management issues, and (2) budget/program priorities.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with concurrence of the General Counsel, formally determined on September 24, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda items to be covered during the Executive Session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because the items will be concerned with matters that are within the purview of 5 U.S.C.

Section 552b(c)(9)(B) as information the premature disclosure of which will be likely to significantly frustrate the implementation of proposed agency action. (A copy of the determination is available for public inspection and duplication in the Central Reference and Records Inspection Facility, Room 6628, Department of Commerce.) All other portions of the meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, National Marine Fisheries Service, NOAA, Washington, DC 20235. Telephone: (202) 673–5429.

Dated: September 29, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–22400 Filed 10–2–86; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; Pacific Whale Foundation (P254B)

On June 30, 1986, notice was published in the **Federal Register** (51 FR 23573) that an application had been filed by the Pacific Whale Foundation, Dr. Paul H. Forestell and Mr. Gregory D. Kaufman, P.O. Box 1033, Suite 303, Azeka Place, Kihei, Maui, Hawaii 96753, to inadvertently harass humpback whales (Megaptera novaeangliae) during distribution studies.

Notice is hereby given that on September 24, 1986 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC 20009;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415; and;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: September 23, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–22494 Filed 10–2–86; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Charges for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

September 30, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 6, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 30, 1985 a notice was published in the **Federal Register** (50 FR 53182), which announced the import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 336, 338, 339, 341, 352, 445/446, 636, 639 and 641, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. CITA has determined in a data investigation concerning these categories that certain 1985 exports, currently charged to 1986 limits, should have been charged to the 1985 limits. Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to deduct these amounts from the import charges made to the current year limits and to charge them to the applicable 1985 limits. The twelve-month limits for cotton and man-made fiber textile products in Categories 341, 352 and 641 are currently filled. Implementation of these adjustments will permit entry for consumption, or withdrawal from warehouse for consumption, in the United States of goods in the latter three categories up to the amounts listed in the letter to the Commissioner of Customs.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

September 30, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on October 6, 1986, you deduct the following amounts from charges made to the restraint limits established in the directive of December 24, 1985 for cotton, wool, and man-made fiber textile products in Categories 336, 338, 339, 341, 352, 445/446, 636, 639, and 641 produced or manufactured in China and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986. These same amounts should be charged to the limits established for the categories during the agreement year which began on January 1, 1985 and extended through December 31, 1985.

Category:	*Amount to be deducted/charged*
336	3,143 dozen.
338	22,793 dozen.
339	34,586 dozen.
341	18,897 dozen.
352	90,861 dozen.
445/446	7,143 dozen.
636	17,721 dozen.
639	19,048 dozen.
641	44,700 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–22549 Filed 10–2–86; 8:45 am]

BILLING CODE 3510–DR–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 86–C0004]

Franzus Co., Inc., a Corporation; Provisional Acceptance of a Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the consumer product safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR Part 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Franzus Company, Inc., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on it's contents by filing a written request with the Office of the Secretary by October 20, 1986.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6626.

Dated: September 30, 1986.

Sheldon D. Butts,

Deputy Secretary.

In the Matter of Franzus Company, Inc., a corporation (CPSC No. 86–C0004).

Settlement Agreement and Order

1. This Settlement Agreement and Order is made by and between Franzus Company, Inc., a corporation (hereinafter "Franzus"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff") to resolve the staff allegations described herein.

2. The provisions of the Settlement Agreement and Order shall apply to Franzus, and to each of its successors and assigns.

I. The Parties

3. Franzus is a corporation organized and existing under the laws of the State of New York with its principal corporate offices located at 352 Park Avenue South, New York, New York 10010.

4. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory Commission of the United States of America (hereinafter, "Commission") created pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended (15 U.S.C. 2053).

II. Statement of Facts

5. In 1984, Franzus distributed in United States interstate commerce two models of the "Wrinkles Away" Electric Clothes Steamer, model number WA–111 and WA–222 (hereinafter, "steamers"). These models of clothes steamers were manufactured, assembled, and packaged by Venture Plastics Company, a division of MTL Sales, Inc., of 4300 Kinsman Road, Mesopotamia, Ohio, and/or by Venture Plastics, Inc. of 4000 Warren Road, Newton Falls, Ohio (hereinafter jointly referred to as "Venture Plastics").

6. By the end of December 1984, Franzus had received several consumer complaints stating that consumers had been burned while using the Wrinkles Away when the base of the steamer separated from the rest of the product.

7. In December 1984, Franzus met with the manufacturer of the steamers, Venture Plastics, to try to identify the problem.

8. In January 1985, Franzus received nine additional consumer complaints or claim letters alleging that burn injuries were sustained by consumers when the base of the steamer separated from the rest of the unit.

9. In January 1985, after evaluating the product itself, Franzus returned approximately 60,000 steamers to Venture Plastics to be rechecked and reworked.

10. In February 1985, Franzus and Venture Plastics agreed on the addition of a back-up device to prevent the base separation problem in future production.

11. By April 1985, Franzus was aware of at least 23 consumers complaints, claim letters and lawsuits alleging that consumers had been burned when the base of the steamer separated from the rest of the steamer while in use.

12. Franzus did not notify the Commission of the complaints, claims or lawsuits it had received involving the base separation problem exhibited by the Wrinkles Away steamers until the visit of a staff investigator to Franzus in March 1985.

13. Franzus has had prior formal dealings with the compliance staff involving an allegedly defective consumer product and Franzus' obligation to comply with Section 15 of the CPSA. This prior dealing is reflected in a Complaint and a Consent Agreement entered into between the staff and Franzus dated November 9, 1978 and January 24, 1979, respectively. (CPSC Docket No. 78–5). The Consent Agreement was accepted by the Commission on March 2, 1979.

14. In August 1985, Franzus began to conduct a voluntary product recall of the steamers in cooperation with the staff.

III. Staff Allegations

15. The staff alleges that the clothes steamers distributed by Franzus between July and December 1984, contained a defect which permitted the base of the steamer to separate from the rest of the unit and that the defect could create a substantial risk of injury to the public.

16. The staff further alleges that Franzus possessed sufficient information on or about December 1984, to reasonably support the conclusion that the steamers contained a

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defect which could create a substantial product hazard but failed to report that information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

IV. Agreement of the Parties

17. Franzus and the staff agree that the Commission has jurisdiction in this matter over Franzus and the steamers.

18. Franzus agrees to pay the Commission a settlement sum in the amount of $60,000.00. This amount shall be paid over a nine month period in accordance with the following schedule.

Franzus shall pay to the Commission the amount of $6,666.66 on the first day of each month for nine consecutive months. The first month's payment shall be made on the first day of the first month after the date upon which the Commission's Order, reflecting its final acceptance of this Settlement Agreement, is served upon Franzus.

Concurrent with the payment of the first installment of $6,666.66, as set forth in paragraph 18 above, Franzus shall execute in favor of the Consumer Product Safety Commission, a promissory note in the sum of $60,000.00 due and payable without interest or penalties accruing before the due dates for each of the installment payments required by this paragraph of this Settlement Agreement. The said promissory note shall contain provisions for interest of 18% for late payment prior to entry of judgment for default of payment; interest at the legal rate for judgments upon entry of judgment for default of payment, and confession of judgment for the entire sum of the promissory note, less payments made, upon default of any payment.

Full and timely payment of the $60,000.00 sum is made in full settlement and release of allegations by the staff that Franzus violated the reporting requirements of Section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to those steamers described in paragraph 5 of this Settlement Agreement, *supra*. Franzus makes no admission of any fault or liability and expressly denies any fault or liability. The signing of this Settlement Agreement and Order does not constitute an admission by Franzus that either (i) reportable information or (ii) a substantial product hazard or imminent hazard exists or existed with respect to any steamers.

19. Upon final acceptance of this Settlement agreement by the Commission, Franzus knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission whether a violation has occurred, and (4) to a statement of findings of fact and conclusions of law. By acceptance of this Settlement Agreement, the Commission does not make a preliminary hazard determination respecting the steamers. Should the Commission decide not to accept and adopt this Settlement Agreement and Order, the Settlement Agreement and Order shall have no force and effect.

20. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued and the Settlement Agreement and Order will be made available to the public.

21. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and the provisional acceptance of the agreement shall be announced in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date of the announcement in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

22. The requirements of the Settlement Agreement and the Order and promissory note attached hereto and incorporated herein by reference, resolve all issues that have arisen or could arise under section 15(b) of the Consumer Product Safety Act, with respect to the allegations contained in Paragraphs 15 and 16, *supra*, and are in addition to and not to the exclusion of other remedies under the Consumer Product Safety Act.

23. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Franzus to appropriate legal action.

24. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Dated: June 9, 1986.

Franzus Company, Inc.

Stuart Leventhal,

President.

Dated: September 24, 1986.

David Schmeltzer,

Associate Executive Director Directorate for Compliance and Administrative Litigation.

[FR Doc. 86-22491 Filed 10-2-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program; Contracted Provider Arrangement—Norfolk Mental Health Services Demonstration Project of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of contracted provider arrangement (CPA) Norfolk Mental Health Services demonstration project.

SUMMARY: Chapter 55, Title 10 United States Code, section 1092(a) authorizes the Secretary to establish demonstrations of alternative approaches to delivery and financing of CHAMPUS health benefits and alternative approaches to reimbursement for the administrative charges for health care plans. OCHAMPUS has determined that an innovative approach wherein selected providers are under contract and at financial risk, using a case management system to control the delivery of mental health services offers some potential, especially in localities where there is high utilization of these benefits. This at-risk model involves a change from the current CHAMPUS benefit package by incorporating the use of partial hospitalization as a means of reducing utilization of higher cost inpatient services. This notice sets forth the general parameters of this demonstration.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT:

Contracting Officer's Representative: Troy Baxley, Office of Demonstrations, OCHAMPUS, Washington, DC 20301-1600 [202/697-8975].

Operations Manager, Alliance Alternative Delivery System Corporation (AADSC): Nancy Eleuterius, AADSC, 15 Koger Executive Center, Suite 140, Norfolk, VA 23502 [804-466-8700].

Claims Processing Manager, AADSC: Pam Broskey, AADSC, 15 Koger Executive Center, Suite 140, Norfolk, VA 23502 [804-466-8700].

Contracted Provider Management, AADSC: Pete Dawson, AADSC, 15 Koger Executive Center, Suite 140, Norfolk, VA 23502 [804-466-8700].

Medical/Surgical Claims Processing Management: Wisconsin Physician's Service, 1617 Sherman Avenue, Madison, WI 53707 [Toll Free: 800-356-5954] [Commercial: 608-221-4711].

SUPPLEMENTARY INFORMATION:

OCHAMPUS has a mental health services demonstration project, referred to as the Contracted Provider Arrangement, in the Portsmouth, Norfolk and Newport News, Virginia area. The prime contractor is Alliance Alternative Delivery Systems Corporation of Norfolk, Virginia, hereinafter referred to as the Contractor. The Contractor is responsible for paying for all necessary mental health services delivered to CHAMPUS-eligible beneficiaries, as identified in the contract and in the CHAMPUS Regulation, DoD 6010.8-R and as interpreted in part by the CHAMPUS Policy Manual, Volume One, (Benefits), Chapter 1, Section 12, and Chapter 8, Section 21, and are identified in final decisions of appeals cases issued by the Assistant Secretary of Defense (Health Affairs). It should be noted that CHAMPVA beneficiaries are not eligible for the mental health

services descrtibed in this demonstration. Those beneficiaries who are domiciled in the following Zip Code areas are included in the demonstration project as participants and are subject to the conditions and limitations prescribed herein and in the above references:

All five-digit Zip Codes in the 233XX area *except*:

23301	23347
23302	23350
23303	23354
23306	23356
23307	23357
23308	23358
23310	23359
23313	23369
23316	23395
23336	23396
23337	23398
23341	23399
23349	

All five-digit Zip Codes in the 234XX area *except:*

23401	23421
23403	23422
23404	23423
23405	23428
23407	23427
23408	23429
23409	23440
23410	23441
23412	23442
23413	23443
23414	23480
23415	23482
23416	23483
23417	23484
23418	23486
23419	23488
23420	

All five-digit Zip Codes in the 235XX area. (No exceptions)

All five-digit Zip Codes in the 236XX area. (No exceptions)

All five-digit Zip Codes in the 237XX area. (No exceptions)

Services included in the demonstration are full impatient, partial hospitalization, residential treatment and outpatient mental health care. Custodial and domiciliary care cases are not payable under CHAMPUS.

Services included under the contract include:

Inpatient institutional services which cover:

Room and board;

Nursing;

Settings that protect the patient and others, crisis intervention, and other intensive care settings;

Drugs and medicines;

Special therapy, except as otherwise excluded;

Emergency;

Other medical and psychological services as authorized by CHAMPUS, provided they are directly related to the diagnosis or definitive set of symptoms and rendered by a member of the institution's medical and professional staff (salaried or contractual).

Partial hospitalization services, which differ from inpatient institutional services only to the extent that the patient does not require the fully sheltered environment of the 24-hour inpatient institutional setting.

Residential treatment center services which include all of the inpatient institutional services (except the acute care setting), plus: Therapeutically-related recreational and social activity services;

Other general services deemed medically and psychologically appropriate to the age and condition of the patient.

Inpatient and outpatient professional services including:

Individual psychotherapy;

Group psychotherapy;

Family or conjoint psychotherapy;

Psychoanalysis;

Psychological testing and assessment;

Administration of psychotropic drugs;

Convulsive and subconvulsive shock treatments;

Collateral visits.

Inpatient, partial hospitalization and outpatient services for active treatment of alcohol and drug abuse, subject to the provisions and limitations of CHAMPUS Regulation, DoD 6010.8-R, Chapter 4 (32 CFR 199.4). Inpatient institutional and professional services rendered in excess of sixty days are not reimbursable, except when approved by the Contractor on the basis of a request of the patient and meeting the criteria published in the **Federal Register** (51 FR 2490) on January 17, 1986, and republished in the **Federal Register** of July 1, 1986 (51 FR 24026).

The decisions of the Contractor may be appealed as outlined in the CHAMPUS Regulation, DoD 6010.8-R, Chapter 6 (32 CFR 199.6). Exceptions to the waiver requirement are:

Services in a residential treatment center;

Partial hospitalization services;

Services rendered to patients admitted before January 1, 1983, and continuously hospitalized since that date.

The Contractor is required to provide adequate geographic, incidence and type of coverage to the CHAMPUS eligible beneficiaries domiciled in the service area. This access must meet the following criteria:

Emergency care within two hours of the Contractor being notified, if the beneficiary is within 50 miles of his/her domicile when the need occurs.

Urgently needed care within fourteen hours of the Contractor being notified.

Psychiatric diagnostic interviews for ninety-five percent of all users within twenty miles of their place of domicile within forty-eight hours of such a request, with additional care as indicated by the initial interviews available to ninety-five percent of all users within twenty driving miles of their domicile unless the needed care is nonroutine.

Inpatient and partial hospitalization care (except residential treatment center care) shall be available to ninety-five percent of the users within forty driving miles of the beneficiary's domicile and within forty-eight hours of the time that an individual provider determines the need for such care.

Residential treatment center care shall be available to ninety percent of all users within fifty driving miles of the beneficiary's domicile within forty-eight hours of the time that an individual professional provider determines the need for such care.

Exclusions and limitations to the mental health benefit and to the contract include:

Aversion therapy for treatment of alcoholism;

Biofeedback;

Care directed by a court or other governmental agency unless such care is otherwise medically or psychologically necessary to diagnose or treat a covered condition, is at the appropriate level of care to treat the condition and if the beneficiary (or the beneficiary's family) has the legal obligation to pay for the service;

Educational counseling, vocational counseling and counseling for socio-economic purposes;

Mind expansion or elective psychotherapy such as Erhard Seminar Training (EST), transcendental meditation, Rolfing and Z-therapy;

Megavitamins and orthomolecular psychiatric therapy;

Miscellaneous ancillary therapy modalites such as art, music, dance and occupational therapy except as included by the attending provider in an approved inpatient or outpatient treatment plan;

Psychoanalysis or psychotherapy as part of education; Services of pastoral counselors, or family and child counselors, or marriage counselors unless the patient has been referred to such counselors by a physician for treatment of a specific problem with the results of that treatment to be reported back to the physician who made the referral;

General and special education;

Therapy or counseling for sexual dysfunctions or sexual inadequacies.

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The Contractor shall use a case management approach for all CHAMPUS eligible beneficiary care under the contract, regardless of whether the provider is a contracted or non-contracted provider. The case management shall include pre-admission screening; use of a brief intensive inpatient treatment model for patient stabilization; partial hospitalization, when appropriate; concurrent review of all outpatient treatment for appropriateness of treatment modalities; preparation of treatment plans; use of an established objective instrument for measuring patient status, treatment progress and treatment outcome; development and updating of treatment objectives with medical and psychological treatment documentation and progress notes; and discharge planning.

Transitional Care: The Contractor shall be responsible for the case management of ongoing care obtained from a non-contracted provider after October 10, 1986. This means that when the contract becomes effective on October 1, 1986, all OCHAMPUS beneficiaries who are domiciled in the demonstration area and currently receiving mental health services from non-contracted providers in the demonstration area will become subject to the case management provisions of the contract effective October 10, 1986. The non-contracted providers will be required to furnish the Contractor care summaries by October 10, 1986. No decisions to terminate payment (because of inappropriateness or non-necessity) for care initiated prior to October 1, 1986 will be made by the Contractor without a patient (or responsible party) interview. Both the patient and the non-contracted provider will be notified of the purpose of the interview at the time the interview is requested, and shall be notified of the decision within 24 hours following the interview. If a decision is made by the beneficiary or the non-contracted provider to transfer care to a contracted provider, the Contractor must allow the following *maximum* periods of time for the transfer to become effective:

For inpatient care in a non-RTC institution, five (5) calender days from the date of notification;

For inpatient care in an RTC, thirty (30) calendar days from the date of notification;

For outpatient care, fifteen (15) calendar days from the date of notification.

Only OCHAMPUS may take retroactive denials of payment for care initiated prior to October 1, 1986. If it is the opinion of the Contractor that the care may have been medically or psychologically unnecessary, the Contractor shall recommend to the OCHAMPUS Office of Medical Affairs that payment be denied and shall send all supporting evidence necessary to arrive at a decision. At the time of the recommendation, the Contractor shall notify the beneficiary or responsible family member and either the institution or individual provider involved or both.

Claims for mental health care received prior to October 1, 1986 will be processed by the CHAMPUS fiscal intermediary, and should be sent to: CHAMPUS/CHAMPVA, Wisconsin Physician's Service; P.O. Box 8966; Madison, WI 53708–8966. Claims for mental health care received on or after October 1, 1986 will be processed by the Contractor and should be sent to: Claims Manager; AADSC; P.O. Box 1877; Norfolk, VA 23501. Claims for all other CHAMPUS authorized health care services will continue to be sent to Wisconsin Physician's Service, at the address listed above.

Payment for all covered mental health services received prior to October 1, 1986 will be made in accordance with existing OCHAMPUS procedures to providers or beneficiaries, as appropriate, by the CHAMPUS fiscal intermediary. For all mental health care delivered on and after October 1, 1986, to beneficiaries who are domiciled in the demonstration area, whether such care is received from a contracted provider or a non-contracted provider, providers and beneficiaries, as appropriate, will receive payment by the Contractor at the same rates that the Contractor pays its contracted providers and subject to the other limitations of this demonstration. This means that if a contracted psychiatrist has a contracted rate of $80 for a fifty minute outpatient visit, the Contractor will pay, for an active duty family member, 80% of the $80, or $48, while the beneficiary will pay 20% of the $80, or $12. If a non-contracted psychiatrist has a rate of $80 for a fifty minute outpatient visit, the provider will receive 80% of $80 (the contracted psychiatrist rate), or $48 from the Contractor, and must collect the remaining $32 from the active duty family member beneficiary. It should be further noted that all mental health care delivered as part of this demonstration is subject to the Contractor's case management system, and that non-contracted providers will only be reimbursed by the Contractor for that care which, under the case management system, is deemed by the Contractor to be appropriate, delivered at the appropriate level, and medically or psychologically necessary.

Patients retain their freedom of choice of providers; that is, any CHAMPUS beneficiary may choose to use any CHAMPUS-approved mental health provider for any authorized mental health service. However, any beneficiary who is domiciled in the demonstration area must be aware that any mental health services received by any CHAMPUS authorized mental health provider in the states of Delaware, District of Columbia, Maryland, North Carolina, Pennsylvania, South Carolina and Virginia, will be subject to the limitations of this demonstration. That is, the provider or the beneficiary, as appropriate will receive payment from the Contractor at the rate the Contractor pays a contracted provider and that such care is subject to the other limitations of this demonstration. Further, any patient who is domiciled in the demonstration area, as specified by the Zip Codes described above, and who receives authorized mental health care from any authorized OCHAMPUS provider in any state other than those listed above, or overseas, is subject to the normal rules and regulations of the CHAMPUS program, and their treatment is not subject to the limitations of the demonstration.

Likewise, any CHAMPUS beneficiary who is domiciled outside the demonstration area, as specified by the Zip Codes described above, and who receives mental health care from any authorized CHAMPUS provider is not considered to be part of the demonstration project, regardless of where the mental health services are rendered. Payment for these services will be based on the provider's usual and customary charges, and subject to the allowable limits prescribed by the CHAMPUS program.

The rules of cost-sharing for mental health services provided in the demonstration remain the same as under the existing CHAMPUS program, but are based on the contractor's reimbursement schedule. This means that the amount the patient must pay as an out-of-pocket expense may be higher with a non-contracted provider than with a contracted provider (the annual deductible is the same in both cases). The non-contracted provider's charges which are in excess of the amount paid by the Contractor are the responsibility of the patient.

For example, a retiree or a retiree's family member who is domiciled in the demonstration area and receives inpatient care at either a contracted provider's or non-contracted provider's facility, will be required to pay 25% of the allowable charges and 100% of any charges in excess of the allowable charges of both the facility's charges and those for professional services. For contracted providers, total charges for authorized services are the allowable charges. If the contracted provider's facility charges are $300 per day and the professional services amount to $100 per day, the patient's cost-share is 25% of $400 per day or $100 per day. If, however, the beneficiary chooses a non-contracted facility and a non-contracted individual provider, and the non-contracted provider's facility charges are $400 per day and the professional services are $200 per day, the non-contracted provider will be paid, by the Contractor, 75% of $300 per day for facility charges and 75% of $100 per day for professional services, or $225 plus $75 which is $300 per day. The patient would then be required to pay $300 per day, which is the difference between the non-contracted provider's total charge of $600 per day and the amount paid by the Contractor to the non-contracted provider of $300.

Likewise, a retiree or a retiree's family member who is domiciled in the demonstration area and receives outpatient care from either a contracted provider or non-contracted provider, will be required to pay 25% of the allowable charges and 100% of any charges in excess of the allowable charges for those professional services. For contracted providers, total charges for authorized services are the allowable charges. If the contracted provider professional services amount to $80 per visit, the patient's cost-share is 25% of $80 per visit or $20 per visit. If the non-contracted provider charges are $100 per visit, the non-contracted provider will be paid, by the Contractor, 75% of $80 per visit for professional services, or $60 per visit. The patient would then be required to pay $40 per visit, which is the difference between the non-contracted providers total charge of $100 per visit and the amount paid by the Contractor to the non-contracted provider of $60.

The patient's rights to appeal remain essentially the same under this contract as they are under the existing CHAMPUS Program. Since the non-contracted provider is subject to the same case management system as the contracted providers, the Contractor is required to review all cases. If the Contractor determines that the care given by a non-contracted provider was either inappropriate or medically unnecessary, the Contractor may refuse to reimburse the non-contracted provider for such care in the same manner that the current CHAMPUS fiscal intermediaries do for all other mental health claims. In such cases the beneficiary or the provider may appeal the decision of the Contractor as outlined in the CHAMPUS Regulation, DoD 6010.8–R, Chapter 10 (32 CFR 199.10). If the appeal is sustained, the beneficiary is responsible for all charges for care determined to be either inappropriate or medically unnecessary. All care provided by contracted providers is under control of the Contractor's case management system. As such, as long as the Contractor determines that the care is appropriate or medically necessary the beneficiary bears no additional financial risk for such care. The beneficiary is, under any circumstance, free to enter into a voluntary agreement with a contracted or a non-contracted provider for non-covered mental health services with the clear understanding that the beneficiary is responsible for 100% of all cost incurred in such an agreement.

The Contractor is required to assure compliance with the Freedom of Information Act, the Drug Abuse and Treatment Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention and Rehabilitation Act and the Privacy Act, in keeping with the requirements of the CHAMPUS Operations Manual—Fiscal Intermediary—Medical, Part 1, Chapter 1, Section VII.

Since there are certain financial incentives in an at-risk contract which may have significant impacts on utilization and quality of care, CHAMPUS will, in the near future, award a Quality Monitoring contract to conduct concurrent and retrospective reviews of patient care, monitor the Contractor's quality assurance program and case management system and conduct focused reviews of potential problem areas. An Evaluation Contract will also be awarded to assess the impact of the concept and execution of the contracted provider arrangement on the beneficiaries, the providers, the Contractor and the government and recommend the expansion, modification or the elimination of the concept.

The demonstration is scheduled to run from October 1, 1986 through March 31, 1989.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 30, 1986.

[FR Doc. 86–22426 Filed 10–2–86; 8:45 am]

BILLING CODE 3810–01–M

Medical Reimbursement Rates for Fiscal Year 1987

Notice is hereby given that the Assistant Secretary of Defense (Comptroller) in a September 19, 1986, memorandum to the Assistant Secretary of Defense (Health Affairs) and the Assistant Secretaries of the Military Departments (FM) established reimbursement rates for inpatient and outpatient medical care provided during Fiscal Year 1987 as follows:

	IMET [1]	Inter-agency [2]	Other
Per inpatient day			
Burn Center	$883	$1,506	$1,635
General medical and dental care	153	410	441
Per outpatient visit			
General	19	55	58
Per Fast Traffic Controller Examination		87	

[1] International Military Education and Training Students.
[2] Other Federal Agency-sponsored patients and Government civilian employees and their dependents outside the United States.

The per diem rate (supplies and subsistence) charged to dependents of military personnel in Federal medical facilities is $7.55 per day.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 30, 1986.

[FR Doc. 86–22425 Filed 10–2–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Applications for New Awards Under the Lectures Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1987 (CFDA No. 84.116G)

Purpose: Provides grants and cooperative agreements to institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education and educational opportunities through the development and presentation of lectures on key issues in postsecondary education at conferences and educational institutions.

Priorities: In accordance with 34 CFR 75.105 (c)(1), the Secretary invites applications that address the following issues. However, proposals that address other significant issues in postsecondary education are also eligible for support.
(1) What has been the social and economic impact of the dramatic increase since 1960 in the proportion of American young people attending college, and what has been the impact

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on the nature and quality of college education itself? (2) How can postsecondary education best respond to changes in the country's racial and ethnic composition? What can we learn from earlier educational responses to previous demographic shifts? (3) What are the most important changes in colleges' curricular offerings and students' curricular choices during the past decade? Are there significant commonalities in the way the particular disciplines have evolved during this period?

Deadline for Transmittal of Applications: December 2, 1986.

Applications Available: October 3, 1986.

Available Funds: The Department of Education Appropriations Act of 1986 appropriated $12,710,000 for FIPSE. The Department of Education requested $10,000,000 in its FY 1987 budget request for FIPSE. Of the appropriated amount for FY 1987, the Department anticipates that $30,000 will be available for new awards under the FIPSE Lectures Program early in the fiscal year, with an additional $30,000 available for new awards in the summer of 1987. It is estimated that 12 grants of no more than $5,000 each will be made during FY 1987. In addition, the current statutory authority for this program expires at the end of fiscal year 1986. Grant awards in 1987 are contingent on the Congress reauthorizing this program.

Estimated Size of Awards: $5,000.

Estimated Number of Awards: 12.

Project Period: 12 months.

For Applications and Information Contact: Russell Y. Garth, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3100 ROB-3, Washington, DC 20202. Telephone (202) 245-8091.

Applicable Regulations: The following regulations are applicable to the FIPSE Lectures Program:

(1) When published in final and effective, the priority for the FIPSE Lectures Program, published as a proposed priority in the Federal Register on September 4, 1986, 50 FR 31712-31713.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Administration of Grants), Part 75, (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board), with the exceptions noted in the following regulations.

(3) The Fund for the Improvement of Postsecondary Education, 34 CFR Part 630.

Program Authority: 20 U.S.C. 1135a-3.

Dated: September 29, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 22490 Filed 10-2-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Coordinating Subcommittee on U.S. Oil and Gas Outlook; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Oil and Gas Outlook will meet in October 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Oil and Gas Outlook will be addressing the current activities of all task groups and providing guidance for future studies. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Coordinating Subcommittee on U.S. Oil and Gas Outlook will hold its sixth meeting on Tuesday and Wednesday, October 14 and 15, 1986, starting at 9:00 a.m., in the 29th Floor Conference Room of Tenneco Inc., the Tenneco Building, 1010 Milam Street, Houston, Texas.

The tentative agenda for the Coordinating Subcommittee on U.S. Oil and Gas Outlook meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review task group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee on U.S. Oil and Gas Outlook is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee on U.S. Oil and Gas Outlook will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Advanced Fuels, Technology, Extraction and Environmental Controls, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington DC, on September 26, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-22417 Filed 10-2-86; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; Economic and Environmental Impacts Task Group; Meeting

Notice is hereby given that the Economic and Environmental Impacts Task Group will meet in October 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Economic and Environmental Impacts Task Group will evaluate the impact of the 1970's energy crises on the U.S. economics—economic growth, employment, inflation, oil and gas industry cash flow, capital investment, international trade, the financial markets (U.S. and international), real interest rates, etc. This Task Group will also analyze the potential future economic impact of the factors on issues identified by the other Task Groups.

The Economic and Environmental Impacts Task Group will hold its sixth meeting on Tuesday, October 21, 1986, starting at 10:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Economic and Environmental Impacts Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review the factors affecting petroleum supply and demand.
3. Discuss the group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Economic and Environmental Impacts Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Economic and Environmental Impacts Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Advanced Fuels, Technology, Extraction and Environmental Controls, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington DC, on September 26, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-22418 Filed 10-2-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-57-NG]

Paramount Resources U.S. Inc., Application to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 19, 1986, of an application filed by Paramount Resources U.S. Inc. (Paramount) for blanket authorization to import from Canada up to 400 MMcf of natural gas per day, not to exceed a total of 300 Bcf during a two-year term beginning on date of first delivery. The Canadian gas would be purchased from Paramount's Canadian parent, Paramount Resources Ltd., and a variety of producers, producer groups, associations, and pipeline companies located in Canada. The Canadian gas would be sold in the U.S. spot market to local distribution companies, pipelines, and industrial and commercial end-users at competitive prices. Paramount would import the gas for its own account or as an agent for both foreign suppliers and U.S. purchasers. Paramount intends to use existing facilities of U.S. pipelines to transport the imported gas, the proposes filing quarterly reports to the ERA. The quarterly reports would be filed within 30 days following each calendar quarter and would show the details of each transaction including: parties, price, volume, transporters, term of the agreements, take-or-pay or make-up provisions, if any, points of entry and markets served.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than November 3, 1986.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-078, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9482.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 253-6837

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their response on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to the application will not serve to make the protestant a party to this proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-078-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW Washington, DC 20585, (202) 252-9478. They must be filed no later than 4:30 p.m., e.s.t., November 3, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Paramount's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 26, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-22487 Filed 10-2-86; 8:45 am]

BILLING CODE 6450-01-M

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[ERA Docket No. 86-52-NG]

Bonus Energy, Inc.; Application To Import Natural Gas From Canada for Short-Term and Spot Sales

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 11, 1986, of an application from Bonus Energy, Inc. (Bonus), a wholly-owned subsidiary of Bonus Petroleum Corporation for blanket authorization to import Canadian natural gas for short-term sales in the domestic spot market. Authorization is requested to import up to 100 MMcf of Canadian natural gas per day and a maximum of 50 Bcf over a two-year term beginning on the date of first delivery of the import. Bonus proposes to purchase the volumes of natural gas from its affiliate, Bonus Gas Processors Corporation, from Diamond Shamrock and from other reliable Canadian suppliers for its own account or for others, and to resell those imported volumes on the short-term or spot market to purchasers in the U.S. Bonus proposes to submit quarterly reports giving details of individual transactions in the month following each calendar quarter. Bonus intends to use existing facilities for transportation of the gas.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than November 3, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-9622

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Bonus requests consideration of its application on an expedited basis, including dispensing with the procedure of providing an opportunity for additional comments. An ERA decision on Bonus' request for expedited treatment, particularly with respect to whether additional written comments or other procedures will be necessary in this case, will not be made until all responses to this notice have been received and evaluated.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. They must be filed no later than 4:30 p.m. e.s.t., November 3, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316. A copy of Bonus' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 26, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-22419 Filed 10-2-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-50-NG]

Great Lakes Gas Transmission Co. and Michigan Consolidated Gas Co.; Joint Application To Reassign an Import Authorization Without Increasing the Volumes of Natural Gas Imported From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of joint application to reassign an import authorization without increasing the volumes of natural gas imported from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 25, 1986, of a joint application from Great Lakes Gas Transmission Company (Great Lakes) and Michigan Consolidated Gas Company (MichCon) requesting that the volumes of natural gas that Great Lakes is authorized to import from Canada be reduced by the amount it resells to MichCon, and that MichCon be authorized to import the gas directly. TransCanada PipeLines Limited (TransCanada) would remain the supplier of the gas and Great Lakes would transport it for MichCon. The authorized import for resale to MichCon is for a total of up to 59,578 Mcf per day and MichCon requests authorization to import identical volumes. The only significant change is the proposed transfer of the import authority from Great Lakes to MichCon.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-1111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than November 3, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-9822

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: During the last two years, Great Lakes has encouraged MichCon and its other resale customers to negotiate pricing arrangements directly with TransCanada. This has resulted in significantly lower prices and arrangements that include indices which adjust prices in accordance with market conditions. As a result of this experience the applicants believe it is in their mutual interest for MichCon to purchase directly from TransCanada the volumes of gas now being purchased by Great Lakes and resold to MichCon, and for Great Lakes only to transport these volumes for MichCon. This would allow MichCon more flexibility in future price negotiations and will provide better communication of market signals between MichCon and TransCanada. The authorizations issued to Great Lakes would be modified to eliminate the volumes that Great Lakes is authorized to import from TransCanada for resale to MichCon, and MichCon would be authorized to import the identical volumes directly from TransCanada.

The application included a July 31, 1986, precedent agreement between Great Lakes, MichCon and TransCanada, a proposed gas purchase contract between MichCon and TransCanada, and a proposed transportation service agreement between Great Lakes and MichCon. According to the precedent agreement, the gas purchase contract and the transportation service agreement will be executed by the respective parties within five days after receipt of all regulatory approvals acceptable to the parties, excluding the approval of Great Lakes' FERC gas tariff under which Great Lakes will transport the gas for MichCon. Effective as of the first day of the month following the receipt of all regulatory and governmental approvals acceptable to the parties, MichCon will import the volumes of gas directly from TransCanada; Great Lakes and MichCon will terminate their service agreement; and Great Lakes will transport the MichCon volumes from the Emerson, Manitoba, interconnection to the MichCon delivery points in accordance with the FERC gas tariff. The proposed gas purchase contract has identical pricing provisions to those currently in effect and the contract term remains the same, ending November 1, 1991. The pricing provisions include a monthly demand charge based upon a combination of the tolls of TransCanada and NOVA, the transporting pipeline in Alberta, and a commodity price that is initially $2.52 per MMBtu bu which can be adjusted whenever ANR Pipeline, MichCon's chief domestic supplier changes its tariffs by more than five percent in any month.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their response on the issue of competitiveness as set forth in the policy guidelines. The applicants assert that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. They must be filed no later than 4:30 p.m. e.s.t., November 3, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316. A copy of this joint application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m.and 4:30 p.m., Monday through Friday, except Federal holidays.

BEST COPY AVAILABLE

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Issued in Washington, DC, September 26, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-22420 Filed 10-2-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-558-000 etc.]

Gulf States Utilities Company et al.; Electric Rate and Corporate Regulation Filings

September 26, 1986.

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket No. ER86-558-000]

Take notice that on September 22, 1986, Gulf States Utilities Company (Gulf States) tendered for filing revisions to its filing in Docket No. ER86-558-000 in compliance with the Commission's order of August 22, 1986.

Gulf States asserts that it has mailed copies of this filing to all parties that were served with copies of the original filing of Gulf States.

Comment date: October 9, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Louisiana Public Service Commission v. System Energy Resources Inc. (formerly Middle South Energy, Inc.)

[Docket No. EL86-58-000]

Take notice that on September 18, 1986, the Louisiana Public Service Commission (the Louisiana Commission) tendered for filing a complaint pursuant to Rule 206 of the Commission's rules of practice and procedures, 18 CFR 385.206, and sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d, 824e (1982).

In its filing the Louisiana Commission asserts that the rate of return on equity under the Unit Power Sales Agreement for the sale of capacity and energy by System Energy Resources, Inc. to operating companies of the Middle South Utilities, Inc. system should be reduced. The Louisiana Commission asks that its complaint be set for hearing at the earliest possible date, that the allowed rate of return on common equity under the Unit Power Sales Agreement be reduced to a just and reasonable level based on current conditions, and that the Commission grant the Louisiana Commission any other relief to which it may be entitled.

Comment date: October 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp, doing business as Pacific Power & Light Company

[Docket No. ES86-63-000]

Take notice that on September 17, 1986, PacfiCorp, dba Pacific Power & Light Company (Pacific), filed an application with the Federal Energy Regulatory Commission seeking an order (1) authorizing it to issue and sell, in one or more public offerings or private placements, prior to December 31, 1988, fixed or floating rate debt in aggregate principal amount of not more than $200,000,000 (or its equivalent amount in, or based upon, foreign currencies determined at the time of issue), (2) authorizing it to enter into a letter of credit agreement with one or more banks or such other agreements as may be necessary or appropriate to provide additional credit support for the payment of the principal of, in interest on, and the premium (if any) on the debt, (3) authorizing it to enter into one or more currency payment echanges, and (4) exempting the issuance from competitive bidding pursuant to 18 CFR 34.2(b)(2).

Comment date: October 16, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Western Area Power Administration

[Docket No. EF86-5161-000]

Take notice that on September 17, 1986, the Under Secretary of the Department of Energy, by Rate Order No. WAPA-30, did confirm and approve on an interim bases, to be effective on the date Stampede Powerplant is placed into commercial operation, Western Area Power Administration's (Western) Power Rate Schedules SNF-1 and SNF-2 for the Stampede Division, Washoe Project (Stampede). The power rate will be in effect pending the Commission's approval of them, or substitute rates, on a final basis, or until superseded.

The power repayment study dated July 31, 1986, on which the power rates are based, indicates that a nonfirm energy charge of 40.65 mills per kWh is needed to recover the full cost of service. This rate will be used in the event that the Government operates and maintains the Stampede facilities.

In the event that the customer operates and maintains all of the Stampede Powerplant facilities at its own expense, the customer will pay the cost of service, less the operations and maintenance expenses, now calculated at 27.86 mills per kWh. Under both rate structures, the customer will pay for each kWh of nonfirm energy delivered to the customer at the Stampede Powerplant, except for the energy designated to service the project loads.

The Administrator of Western certifies that the rates are consistent with applicable laws and that they are the lowest possible rates consistent with sound business principles. The Under Secretary states that the rate schedules are submitted for confirmation and approval on a final basis for a 5-year period pursuant to authority vested in the Commission by Amendment No. 1 to Delegation Order No. 0204-108.

Comments date: October 9, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22457 Filed 10-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1250-001 etc.]

City of Pasadena Water & Power Department et al.; Availability of Environmental Assessment and Finding of No Significant Impact

September 29, 1986.

In the matter of City of Pasadena Water & Power Department, Project No. 1250-001; Energeology, Inc., 4948-002; Energos Management, Inc., 6897-001; Commercial Energy Management, Inc., 7447-002; Nockamixon Hydro Associates, 8662-000; Bellows-Tower Hydro, Inc., 9672-000; Harden Manufacturing Company, 6492-002.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town or county	Applicant
			Licenses		
1250-001	Azusa Water Power	CA	San Gabriel River	Azusa	City of Pasadena Water and Power Department.
4948-002	Thief Valley	OR	Powder River	North Powder	Energeology, Inc.
6897-001	Centers Reregulation Dam	GA	Coosawattee River	Murray County	Energos Management, Inc.
7447-002	Portneuf River	ID	Portneuf River	Lava Hot Springs	Commercial Energy Management, Inc.
8662-000	Nockamixon	PA	Tohickon Creek & Lake Nockamixon	Quakertown	Nockamixon Hydro Associates.
9672-000	St. Regis Falls	NY	St. Regis River	Waverly	Bellows-Tower Hydro, Inc.
			Amendments		
6492-000	Hardins Hydro-Power	NC	South Fork Catawba River	Dallas	Harden Manufacturing Company.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

FR Doc. 86-22458 Filed 10-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-1075-000]

Merck & Co., Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 26, 1986.

On September 18, 1986, Merck & Co., Inc. (Applicant), of P.O. Box 2000, Rahway, New Jersey 07065 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the junction of Scott Avenue and Routes 1 & 9 in Rahway, New Jersey. The facility will consist of two combustion turbine-generators, two supplementally fired heat recovery steam generators (HRSGs) and a back pressure steam turbine-generator. The new facility will integrate with existing two back-up boilers and two back-up pressure turbines (one for peak steam load and one for back-up service). Steam recovered from the facility will be used in heating application associated with pharmaceutical manufacturing facility. The net electrical power production capacity of the facility will be 40.7 MW. The primary energy sources will be natural gas and No. 2 fuel oil. The installation of the facility will commence in September 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22465 Filed 10-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-11762-005, etc.]

Sun Exploration and Production Company, et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

September 29, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 15, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-11762-005, D, Sep. 15, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Northern Natural Gas Company, Harper Field, Clark County, Kansas.	(1)	
G-14943-001, D, Sep. 15, 1986	do	Tennessee Gas Pipeline Company, North Sun K-1 Sand Field, Starr County, Texas.	(2)	
G-15296-000, D Sep. 15, 1986	do	Northwest Pipeline Corporation, Aztec (Pictured Cliff Formation) Field, San Juan County, New Mexico.	(3)	

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Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C82-462-000, D, Sep. 15, 1986	do	Northern Natural Gas Company, Harper Field, Clark County, Kansas.	(1)	
C70-654-000, D, Sep. 15, 1986	do	Transcontinental Gas Pipe Line Corp., North Rincon Field, Starr County, Texas.	(2)	
C77-4-002, D, Sep. 15, 1986	do	El Paso Natural Gas Company, Blanco Mesa Verde Field, San Juan and Rio Arriba Counties, New Mexico.	(3)	
C77-769-002, D, Sep. 15, 1986	do	United Gas Pipe Line Company, Carthage North & Bethany Fields, Harrison County, Texas.	(4)	
C81-1332-001, D, Sep. 15, 1986	Oxy Cities Service NGL Inc., P.O. Box 300, Tulsa, Okla. 74102.	Transwestern Pipeline Company, Bluitt Plant, Roosevelt County, New Mexico.	(5)	
C85-561-001, D, Sep. 15, 1986	do	Natural Gas Pipeline Company of America, Bluitt Plant, Roosevelt County, New Mexico.	(6)	
G-7318-000, D, Sep. 12, 1986	ARCO Oil & Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Mountain Fuel Supply Company, Powder Wash Field, Moffat County, Colorado.	(7)	
G-13289-005, D, Sep. 12, 1986	do	ANR Pipeline Company, Laverne Field, Beaver County, Oklahoma.	(8)	
G-3984-025, D, Sep. 17, 1986	do	Texas Gas Transmission Corporation, North Tepetate Field, Acadia Parish, Louisiana.	(9)	
G-6829-000, D, Sep. 17, 1986	Sun Exploration & Production Co.	Transcontinental Gas Pipe Line Corp., North Sun Field, Starr County, Texas.	(10)	
C86-736-000 (CT61-1462), B, Sep. 15, 1986	Texaco Inc., P.O. Box 52332, Houston, Texas 77052.	Tennessee Gas Pipeline Company, LaBlanc Field, Allen Parish, Louisiana.	(11)	
C86-731-000, A, Sep. 16, 1986	Hamilton Oil Corporation, et al., P.O. Box 908, Ardmore, Okla. 73402.	Cumberland Gas Inc., NW SE 35-15-55W, Washington County, Colorado.	(12)	
C86-739-000, B, Sep. 10, 1986	Citizens Energy Corporation and Citizens Resources Corporation, 590 Atlantic Avenue, Boston, Mass. 02210.	Commonwealth Gas Pipeline Corporation and Chicago and Rockford Utilities, Inc., South Marsh Island Area, Block 281, Offshore Louisiana, Federal Domain.	(13)	
C86-734-000, A, Sep. 16, 1986	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, Calif. 90051.	ANR Pipeline Company, Blocks 156, 159, 160 and 161, East Breaks Area, Offshore Texas.	(14)	
C86-736-000, B, Sep. 10, 1986	Viking Resources, P.O. Box 2441, Monroe, Louisiana 71207.	United Gas Pipe Line Company, Monroe Field, Ouachita Parish, Louisiana.	(15)	
C75-223-001, D, Sep. 10, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	ANR Pipeline Company, Mocane Laverne Field, Harper County, Oklahoma.	(16)	
C77-259-002, D, Sep. 10, 1986	do	Texas Gas Transmission Corporation, South Bayou Middle Field, Acadia Parish, Louisiana.	(17)	
C86-733-000, (C71-845), B, Sep. 17, 1986	Pennzoil Company, P.O. Box 2967, Houston, Texas 77252-2967.	Equitable Gas Company, Homer F. Smith and John M. Smith Leases, Otter District, Braxton County, West Virginia.	(18)	

[1] Property sold to Kaiser-Francis Oil Company.
[2] Expiration of leases.
[3] Property sold to Unit Drilling and Exploration Company.
[4] Property sold to Kan Pertens Oil and Gas, Inc.
[5] Property sold to the Maurice L. Brown Company.
[6] No gas has been purchased under the percentage-of-proceeds contract for some time due to line deterioration. Replacement of the line would be uneconomical so the percentage contract was terminated 9-1-86.
[7] Deletion of acreage because of Partial Assignment executed 9-27-85. ARCO assigned its interest in certain acreage to BHP Petroleum (Americas) Inc.
[8] Deletion of acreage because of Partial Assignment executed 8-21-85. ARCO assigned its interest in certain acreage to Natural Gas Compression Corp.
[9] Deletion of acreage because of Partial Assignment executed 4-1-86. ARCO assigned its interest in certain acreage to Rockford Petroleum Co.
[10] Texaco released all its right, title and interest to the oil, gas, and mineral leases committed to the contract. At the time of release, the acreage was non-productive.
[11] Applicant is filing under contract dated 5-16-86.
[12] Short-term contracts with purchasers expired; Sellers entered into contracts to sell gas based on erroneous warranty from supplier that gas was exempt from Natural Gas Act regulation.
[13] Applicant is filing under Gas Purchase Contract dated 8-12-86.
[14] Uneconomical.
[15] Property sold to Kenneth W. Cory.
[16] Property sold to John W. McGarvan.
[17] Low production for several years. Pennzoil Company has terminated the contract effective 9-9-86. Effective 9-23-86, Pennzoil Company sold to Penn & Wheaton Gas Company, Inc., the leasehold interests and the two wells.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-22467 Filed 10-2-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP86-729-000]

Consolidated Gas Transmission Corporation; Application

September 30, 1986.

Take notice that on September 17, 1986, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-729-000 an application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act authorizing the transportation of natural gas on behalf of Transcontinental Gas Pipe Line Corporation (Transco) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consolidated states that it is currently transporting up to 75,000 Mcf of natural gas per day on behalf of Transco pursuant to a self-implementing agreement scheduled to expire on November 1, 1986 under the "grandfather" provisions of Order No. 436. Consolidated states that it receives the gas from Tennessee Gas Pipeline Company (Tennessee) at three existing interconnections in New York and Pennsylvania and redelivers equivalent volumes to Transco at an existing interconnection in Pennsylvania.

Consolidated states that it has entered into a new transportation contract with Transco dated September 10, 1986 to provide for the continuation of service after the November 1, 1986 termination date of the grandfathered service. It is stated that under the terms of the new contract, which would run through October 31, 1994, Consolidated would provide transportation of up to 75,000 Mcf per day for Transco under its T1 Rate Schedule. Tennessee is said to have filed for similar authorization to continue transportation for Transco in Docket No. CP86-543-000.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 16, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-22445 Filed 10-2-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-179-002]

Consolidated Gas Transmission Corp.; Petition for Extension of Authority to Institute Direct Billing Procedure for Retroactive Production-Related Cost Allowances

September 26, 1986.

Take notice that on September 19, 1986, Consolidated Gas Transmission Corporation (Consolidated) filed a petition for an order extending through March 31, 1987, the authority of Consolidated to directly bill its customers for certain retroactive production related cost allowances provided for by Order No. 94, *et al.*, as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Consolidated initially received authorization to institute direct billing procedures for Order No. 94 costs by order issued September 30, 1985 (32 FERC ¶ 61,448). That order defined the retroactive period for collection of such costs claimed by producers but not yet paid by Consolidated as beginning on July 25, 1980 and ending on September 30, 1986. Consolidated states that most of its outstanding producer claims are based on area rate clauses contained in the gas purchase contracts. In a recent notice of proposed rulemaking, issued in accordance with the court's instruction in *Texas Eastern Transmission Corporation v. FERC* (TETCO),[1] the Commission established protest procedures which would allow parties the opportunity to show that a particular area rate clause did not authorize collection of Order No. 94 costs. Consolidated states that because of the pendancy of the final rule, it cannot resolve all questions involving its outstanding producer claims by September 30, 1986. Consolidated further states that its outstanding claims are not significant.

According to Consolidated, the *TETCO* decision hindered its evaluation of producer claims by creating uncertainty about the effect of the area rate clauses. Consolidated states that the proposed six-month extension would allow time for the Commission to act on its proposed rule and would give Consolidated the opportunity to consider all relevant rules and regulations in deciding whether to pay these outstanding claims.

Consolidated states that it has served a copy of the Petition on its customers and all parties interested in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-22459 Filed 10-2-86; 8:45 am]
BILLING CODE 6717-01-M

[1] 799 F.2d 1053 (5th Cir. 1986), *cert. denied*, 106 S.Ct. 1967 (1986). This decision was issued August 19, 1986.

[Docket No. RP86-118-002]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 29, 1986.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on September 23, 1986, filed the following revised tariff sheets to supplement its filing of May 30, 1986, in this proceeding:

First Revised Sheet No. 33
Original Sheet No. 34
First Revised Sheet No. 75
Original Sheet Nos. 76–82
Original Sheet No. 87
First Revised Sheet Nos. 113 and 114
Original Sheet Nos. 115–118

all the Original Volume No. 1 of Consolidated's FERC Gas Tariff.

The tariff sheets propose a firm transportation rate and rate schedule and operation conditions for transportation as may be required under 18 CFR 284.7(a). The proposed tariff sheets are essentially the same as those agreed to by Consolidated in the Stipulation and Agreement filed on February 10, 1986, in Docket No. RP85-100.

Copies of the filing were served upon Consolidated's customers, interested state commissions and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before October 6, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-22461 Filed 10-2-86; 8:45 am]
BILLING CODE 6717-10-M

[Docket No. ST85-1014-000]

Cranberry Pipeline Corp.; Staff Panel

September 29, 1986.

Pursuant to the Commission's July 23, 1986 order in Docket No. ST86-1014-000, a Staff Panel (Panel) shall be convened

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to allow opportunity for written comments and for the oral presentation of views, data, and arguments. The Panel will not be a judicial or evidentiary-type hearing and there will be no cross-examination of persons presenting statements. Members participating on the Panel before whom the presentations are made may ask questions. If time permits, Panel members may also ask such relevant questions as are submitted to them by participants. Other procedural rules relating to the Panel will be announced at the time the proceeding commences.

The Staff Panel will be held on Tuesday, October 7, 1986 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426. Any questions regarding these proceedings should be directed to Randall Keen, Esquire at 202-357-9112. All interested persons and staff may attend the proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22446 Filed 10-2-86; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket No. TC86-12-000 etc.]

El Paso Natural Gas Co. et al.; Tariff Sheet Filings

September 30, 1986.

In the matter of El Paso Natural Gas Company, Docket No. TC86-12-000; Eastern Shore Natural Gas Company, Docket No. TC86-13-000; Mississippi River Transmission Corporation; Docket No. TC86-14-000; Southwest Gas Corporation, Docket No. TC86-17-000.

Take notice that the following pipelines [1] have filed revised tariff sheets to become effective November 1, 1986, pursuant to § 281.204(b) of the Commission's Regulations, which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

Pipeline and docket No.	
(1) El Paso Natural Gas Company, TC86-12-000, Filed: September 15, 1986.	Fifth Revised Sheet No. 329 to First Revised Volume No. 1, Nineteenth Revised Sheet, No. 1-M.3 to Third Revised Volume No. 2, Nineteenth Revised Sheet No. 7-MM.3 to Original Volume No. 2A

[1] Addresses of the pipelines are listed in the Appendix hereto.

Pipeline and docket No.	
(2) Eastern Shore Natural Gas Company, TC86-13-000, Filed: September 15, 1986.	Eighth Revised Sheet No. 424 of FERC Gas Tariff, Original Volume No. 1.
(3) Mississippi River Transmission Corporation, TC86-14-000, Filed: September 15, 1986.	Seventh Revised Sheet No. 75, Sixth Revised Sheet No. 76, Fourth Revised Sheet No. 77, Seventh Revised Sheet, NO. 78, Sixth Revised Sheet No. 79 of FERC Gas Tariff, Second Revised Volume No. 1.
(4) Southwest Gas Corporation, TC86-17-000, Filed: September 16, 1986.	Sixth Revised Sheet No. 25C of FERC Gas Tariff, Original Volume No. 1

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before October 10, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Appendix

El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978

Eastern Shore Natural Gas Company, P.O. Box 615, Dover, Delaware 19903-0615

Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124

Southwest Gas Corporation, P.O. Box 15015, 5241 Spring Mountain Road, Las Vegas, Nevada 89114

[FR Doc. 86-22447 Filed 10-2-86; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket No. FC86-29-000]

Kentucky Utilities Company; Application

September 26, 1986.

Take notice that on September 19, 1986, the Kentucky Utilities Company (the Company) tendered for filing an Application pursuant to Title 18, CFR 33.1. *et seq,* requesting that authority be granted under Title 16, U.S.C. 824b(a) allowing the Company to purchase, acquire, hold and sell securities of other public utilities as part of a planned investment program. The Company proposes to limit its holding or ownership of any given class of securities to an amount not to exceed one percent (1%) of the capital stock or funded debt outstanding of any other public utility subject to the provisions of the Federal Power Act. Additionally, the Company is requesting a modification of the reporting requirements under Title 18 CFR 33.8 to allow an annual report of acquisitions and holdings of securities. The Application sets forth the limitations and requirements protecting the public interest. The Application is on file with the Commission and open to public inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 6, 1986. Protests will be considered by the Commission in determining the appropriate action ot be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22471 Filed 10-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-148-001]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 29, 1986.

Take notice that on September 22, 1986 Mississippi River Transmission Corporation ("Mississippi") tendered for filing First Revised Sheet Nos. 59A and 59B to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective on September 1, 1986.

Mississippi states that the above-referenced tariff sheets are being submitted pursuant to a Commission order issued September 3, 1986, in the captioned docket which accepted for filing Original Sheet Nos. 59A and 59B effective September 1, 1986, subject to refund and certain conditions. Such tariff sheets revised Paragraph 17 of Mississippi's tariff by adding Paragraph 17.5 "Interim Commodity Unit Adjustments Between Effective Dates" (Interim Adjustment) to allow Mississippi greater flexibility to adjust its jurisdictional rates in response to changes in gas costs more frequently than twice a year. Ordering Paragraph (D) required Mississippi to file within thirty (30) days revised tariff sheets to clarify the effective date for interim adjustments, and to reflect that Mississippi shall be required to justify its undercollections to the extent it appears the adjustments were not used to track known and measurable changes in gas costs.

Mississippi states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 6, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22462 Filed 10-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-142-002]

Natural Gas Pipeline Company of America; Proposed Change to FERC Gas Tariff

September 29, 1986.

Take notice that on September 22, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective August 25, 1986:

Substitute Seventh Revised Sheet No. 121
Substitute First Revised Sheet No. 121A
Substitute Original Sheet No. 121B
Substitute Original Sheet No. 121C
Original Sheet No. 121D

Natural states the purpose of these tariff sheets is to reflect the tariff language clause revisions to Natural's Purchased Gas Adjustment, as required by Ordering Paragraphs (C)(1), (C)(2) and (C)(3) of the Commission Order issued August 22, 1986, in Docket No. RP86-142-000. Natural states that the tariff language clause requiring revision pertains to its efforts to provide greater flexibility within the Purchased Gas Adjustment framework to permit rate adjustments in response to changes in gas costs more frequently than twice a year.

A copy of this filing is being mailed to Natural's jurisdictional customers, interested state regulatory agencies, and intervenors in the subject docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests must be filed on or before October 6, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22463 Filed 10-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-28-004]

Panhandle Eastern Pipe Line Co., Proposed Changes in FERC Gas Tariff

September 29, 1986.

Take notice that on September 19, 1986 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheet to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 43-4.3.

The proposed effective date of this revised tariff sheet is September 1, 1986.

This revised tariff sheet is being submitted by Panhandle at this time in compliance with the Commission's August 29, 1986 Order to reflect revised tariff language for Panhandle's flexible PGA to exclude the effects of storage activity from the determination of gas costs in determining compliance with the three percent limitation.

Panhandle states that the filing of this revised tariff sheet by Panhandle in compliance with the Commission's August 29, 1986 Order in this proceeding is without prejudice to Panhandle's rights to seek rehearing or review of the conditions contained in the August 29, 1986 Order.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Section 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 8, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22464 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-523-000 and CP86-524-000]

Iroquois Gas Transmission System; Extension of Time

September 29, 1986.

On September 18, 1986, the Attorney General of the State of Connecticut (Connecticut) filed a motion for an extension of time to file comments on the Notice of Intent to Prepare a Draft Environmental Impact Statement and Request for Comments on its Scope, issued September 3, 1986 in the above-docketed proceeding. In support of its request, Connecticut states that additional time is required because Iroquois Gas Transmission System (Iroquois) has not yet filed its final Environmental Report on the project. Connecticut is concerned that Iroquois' final environmental report may present different environmental concerns than the company's preliminary report and requests the extension so that it can respond to the final report.

Upon consideration, notice is hereby given that an extension of time for the filing of comments in the above-docketed proceeding is granted to 5:00 PM on November 20, 1986. This extension should allow sufficient time for Iroquois to file its final environmental report and for the parties

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to take the report into consideration in preparing their comments on the scope of the environmental impact of the project.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22448 Filed 10-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-50]

Northern Natural Gas Company, Division of Enron Corp.; Request for Waiver of Tariff Provisions

September 26, 1986.

Take notice that on September 19, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern) tendered for filing a request that the Commission grant a limited waiver of the provisions of Paragraph(s) 18 and 21 of Northern's FERC Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Paragraph(s) 1 and 4 of Northern's Original Volume No. 2 Tariff (Volume 2 Tariff) so as to permit Northern to file its Annual Rate Adjustments for Purchased Gas Cost and the Cost of Transportation of Gas through the Alaskan Natural Gas Transportation System by November 27, 1986 rather than October 27, 1986 as is presently required.

Northern states its Offer of Settlement and Stipulation and Agreement of Settlement (S&A) currently pending before the Commission in Docket No. RP85-206 will directly impact upon the computation of purchased gas costs and rate design in Northern's Purchased Gas Adjustment (PGA). The requested one month extension will provide Northern with additional time to incorporate into its PGA filing the applicable aspects of the S&A and avoid the unnecessary confusion of an amended PGA filing in the event an acceptable final order is issued approving the S&A within a reasonable time prior to November 27, 1986. Furthermore, pursuant to the timing schedule established in the S&A, Northern's customers had until September 10 to advise Northern of the level of contract demand they intended to be turned back or converted to firm transportation during the first year of the Contract Demand Turnback/Conversion Program. In turn, Northern must complete its review of these requests, finalize all transporation agreements, and file, by November 9, 1986, the applicable adjustments to its demand rates based upon the revised level of firm entitlement.

Northern is not proposing to change the effective date of the Annual Rate Adjustments which will continue as December 27 or January 1, whichever is applicable. Northern has served copies of this request upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22470 Filed 10-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-85-002]

Texas Gas Transmission Corp.; Tariff Filing

September 26, 1986.

Take notice that on September 23, 1986, Texas Gas Transmission Corporation (Texas Gas) tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1. Such changes have been filed to comply with § 284.8 of the Federal Energy Regulatory Commission's (Commission) regulations, applicable to firm transportation service authorized on a self-implementing basis pursuant to Subpart B of Part 284 of the Commission's regulations, all as more fully set forth in the filing on file with the Commission and open to public inspection.

Texas Gas requests waivers of all Commission rules and regulations, as necessary, to permit the tendered tariff sheets to become effective July 1, 1986. Texas Gas expressly states that its filing is without prejudice to its certificate application pending in Docket No. CP86-521.

Copies of this filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22471 Filed 10-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-107-001, ER86-107-002, ER86-120-002, ER86-107-003]

Pacific Gas and Electric Co.; Filing

September 26, 1986.

Take notice that on September 18, 1986, Pacific Gas and Electric Company (PG and E) tendered for filing a compliance report containing the calculation of refunds and interest payable to CPNational; and calculations of refunds and interest payable to the Department of Water Resources of the State of California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 6, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22469 Filed 10-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-783-000

Valley Gas Transmission, Inc.; Request Under Blanket Authorization

September 26, 1986.

Take notice that on September 25, 1986, Valley Gas Transmission, Inc. (Valley), P.O. Box 32999, San Antonio, Texas 78216, filed in Docket No. CP86-739-000 a request pursuant to §§ 157.205 and 284.223 of the Commisison's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to transport natural gas on behalf of W.M. Laughlin (Laughlin) under the authorization issued in Docket No. CP86-171-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Valley states that, pursuant to a transportation agreement dated June 5, 1986, it proposes to transport natural gas on behalf of Laughlin on Valley's system in Duval and Jim Wells Counties, Texas. Valley further states that peak day volumes under this agreement would not exceed 1,976 million Btu per day, annual volumes would not exceed 199,080 million Btu per day, and the average daily volume would be 553 million Btu per day. The proposed transportation service commenced on June 25, 1986, pursuant to the 120-day self implementing provisions of § 284.223(a)(1) of the Regulations.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.206) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22468 Filed 10-2-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. CAC-001]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Test Procedures for Central Air Conditioners, Including Heat Pumps, to Carrier Corp.

AGENCY: Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. CAC-001) granting Carrier Corporation a waiver for its variable speed (VSP) model carrier air conditioners and heat pumps for existing DOE test procedures for central air conditioners and heat pumps.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9513

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, Carrier Corporation has been granted a waiver for its variable speed central air conditioners and heat pumps, permitting the company to use an alternate test method.

Issued in Washington, DC, September 19, 1986.

John R. Berg,

Principal, Deputy Assistant Secretary, Conservation and Renewable Energy.

In the Matter of: Carrier Corporation.

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations by adding paragraph 430.27 to allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. 45 FR 64108 (September 26, 1980).

Carrier Corporation (Carrier) filed a "Petition for Waiver" in accordance with paragraph 430.27 of 10 CFR Part 430. DOE published in the Federal Register Carrier's petition and solicited comments, data, and information respecting the petition. Comments were received from Lennox Industries Inc., Rheem Manufacturing Company, and Borg-Warner Air Conditioning, all manufacturers of air conditioners and heat pumps. Comments were also received from Coil Company, Inc., manufacture of heat transfer and air handling systems. The comments received by DOE were sent to the petitioner on March 25, 1986. The petitioner submitted DOE a rebuttal statement to the comments on April 11, 1986. DOE consulted with the Federal Trade Commission on May 23, 1986, concerning the Carrier petition.

Assertions and Determinations

Carrier's petition seeks a waiver from the DOE test procedures for central air conditioners and heat pumps for Carrier's variable speed units. The petition requests authorization to substitute the test and calculation methods in Appendix B of the Air Conditioning and Refrigeration Institute (ARI) Standard 210/240-84 for the test and calculation methods in Appendix M to Subpart B of 10 CFR Part 430. In addition, the petition requests five modifications to Appendix B of ARI Standard 210/240-84 to be included in the waiver to allow proper representation of the unique operating characteristic of the equipment.

All interested parties, including DOE, agree that the existing test and calculation methods of Apendix M to Subpart B of 10 CFR Part 430 are inappropriate for variable speed units. All interested parties also agree that appropriate test and calculation methods of variable speed units would be those based on Appendix B of ARI Standard 210/240-84 with modifications. However, there is not total agreement with Carrier's requested modifications to Appendix B of ARI Standard 210/240-84. Consequently, the following five determinations are made regarding the five modifications requested by Carrier.

1. The ARI Standard 210/240 includes a cyclic test pattern which represents 20 percent compressor "on" time, i.e., the compressor runs for six minutes of a 30 minute cycle (6/30=.2). Since efficiency is the quotient of output capacity and input energy, the cyclic efficiency is determined by actual measurement of cooling capacity and electric energy

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during this cyclic test. Since cooling can continue after the compressor is off, the ARI standard allows cooling capacity to be measured for the compressor "on" period plus an additional two minutes, i.e., a capacity integration period of eight minutes.

Carrier states that the microprocessor control on its variable speed units has a minimum run time of 12 minutes; and as such, it is not possible for an "on" period of less than 12 minutes to occur in normal operation of the equipment. Consequently Carrier requests that the cyclic test pattern representing a 20 percent "on" time fraction consisting of six minutes "on" and 24 minutes "off" be replaced by a cyclic test pattern representing a 20 percent "on" time fraction consisting of 12 minutes "on" and 48 minutes "off." Regarding the capacity integration period, Carrier requests 14 minutes, which is consistent with the ARI standard, i.e., compressor run time plus two minutes.

In their comments, Lennox and Rheem suggested different "on" time fractions from that simulated by a six minutes "on" and 24 minutes "off" cycle. Although Lennox agreed to the requested 12 minutes "on" time, Lennox suggested 18 minutes "off" time as more realistic, substantially shorter to run and providing necessary repeatability. Borg-Warner supported 12 minutes "on" and 48 minutes "off" cyclic test with the reservation that this test cycle is only appropriate for variable speed systems that can operate down to approximately 50 percent compressor speed or lower. Borg-Warner also commented in support of the 14-minute capacity integration period requested by Carrier.

Responding to the Lennox and Rheem comments, Carrier agreed that it is the intent of the cyclic test to model a unit satisfying a building load. Therefore, it is not necessary to perform the test with the same fractional run time (loading) as single speed and two speed units. In response to the Borg-Warner comment, Carrier agreed that the proposed 12 minutes "on" and 48 minutes "off" cycle test should be allowed only for systems which have ability to modulate capacity to approximately 50 percent or less of maximum capacity.

The National Bureau of Standards (NBS) and DOE reviewed this request in terms of compatibility with variable speed system operation, existing DOE procedures and the thermostat theory. The analysis showed that 12 minutes "on" time, 48 minutes "off" time will constitute a cycle that is compatible with a residential thermostat curve while 12 minutes "on" and 18 minutes "off" cycle will not. Furthermore, the cyclic test requested by Carrier represents an "on" time fraction, 20 percent, that is consistent with the existing DOE test procedures. It also appears that a cyclic test with a longer "off" period will provide conservative (lower) efficiency results. DOE considers such conservative results appropriate until the Department addresses this issue thoroughly in the test procedure amendment process.

Carrier's request to set the capacity integration period to 14 minutes allows for a two-minute capacity integration after compressor shut-off, as does the ARI method. However, DOE believes that the capacity integration time should not be extended beyond the compressor's time of operation because it would result in over-estimations of unit capacity. Furthermore, in the current test procedure, the capacity integration time equals the compressor's time of operation.

Based on all of the above, DOE has determined that Carrier should be granted a waiver to perform a cyclic test of its variable speed systems at 12 minutes "on" and 48 minutes "off" compressor operation and a 12-minute capacity integration time, with limitation that this waiver apply only to systems that can modulate down to approximately 50 percent maximum capacity or lower.

2. The primary efficiency advantage of a variable speed unit is the ability to avoid cycling losses for most of the cooling (or heating) season. Specifically, cycling losses are avoided when the unit modulates its speed to meet a partial load rather than cycle on and off. The range of outdoor temperatures for which the unit does not cycle is called the load matching region. To capture this advantage in the analytic geometry of the SEER calculations, ARI procedures require an additional test point termed the intermediate test point. This test is in addition to the already required high speed/high outdoor temperature test and the lower speed/lower outdoor temperature test. All agree that the intermediate test should be reflective of the loan matching region. However, specifying the laboratory test conditions for the intermediate test is a difficult matter, since cooling load and the unit's cooling capacity both vary with outdoor temperature.

The ARI procedures require the intermediate test to be conducted at an intermediate outdoor temperature of 87°F. The capacity of the unit during this test is to be 67 percent of the capacity measured during the high speed/high outdoor temperature test. This specification method requires the conductor of the laboratory test to "hunt" interactively for the correct intermediate compressor speed to satisfy the specifications. In lieu of the ARI method of specification, Carrier requests a less burdensome specification based on outdoor temperatures and compressor *speed*. Specifically, Carrier requests testing at the intermediate outdoor temperature of 87°F, identical to the ARI procedures, and any compressor speed between maximum and minimum speeds. Carrier contends that the capacity and power for an appropriate intermediate test point can be determined using the minimum speed, intermediate speed and maximum speed test points to find the outdoor temperature at which the equipment capacity intersects the load line (respective equations are included in the petition). The capacity and power values for this intersection can be then used as the intermediate speed test results for determining SEER. Carrier states that the present specification of the intermediate test point by the temperature conditions and equipment capacity requires an iterative test and is unnecessarily burdensome. Lennox, Rheem, and Borg-Warner commented on this request. Lennox considered an arbitrary speed test as unacceptable and questioned the technical feasibility of auditing such a test point. Lennox also was concerned that such a test would be run at the lowest possible speed to increase the SEER. Rheem also opposed the petitioner's request and insisted that the intermediate test point be specified by the temperature conditions and capacity. Rheem suggested ± 2 percent allowance for variation from the test value to the calculated building load value. Rheem also contended that allowing the compressor speed to vary between the minimum and maximum value would introduce excessive errors when attempting to adjust the test values. Borg-Warner requested sample calculations that would allow better understanding of Carrier's proposal.

In its rebuttal to these comments, Carrier maintained again that specification of the intermediate speed point by capacity was impractical. However, Carrier suggested that an improvement to its requested method for the intermediate speed test would be to bracket the speed range from ⅓ to ⅓ between minimum and maximum speed in lieu of any speed between minimum and maximum. Carrier also stated that verification of the efficiency claim by an "audit test," conducted by ARI in its certification program, may be conducted at any speed. Carrier explained that the adjustment method based on high speed and low speed test points will always match the intermediate speed point to the load line, and the effect of changing the intermediate speed value from test to test should be within the uncertainty of the test data. Carrier's rebuttal also contained an example of calculations for the intermediate speed point as requested by Borg-Warner.

DOE accepts Carrier's argument that an intermediate speed test specified, in part, by equipment capacity is excessively burdensome. Also, after reviewing information prepared by the petitioner and in consultation with NBS, DOE accepts the bracketed speed provision of the intermediate test point suggested by Carrier and agrees that correcting the capacity and power based on low and high speed test points is a reasonable method for evaluating the intermediate performance of a variable speed unit. However, DOE concluded that material submitted by the petitioner does not support entirely its statement that verifying the intermediate speed test can be done by running the "audit test" at any speed. Consequently, DOE has determined that verification of the intermediate cooling test should be performed by testing at the same speed as the manufacturer's test.

3. In its petition Carrier maintained that, in order to evaluate fairly its variable speed unit, an appropriate intermediate test point is needed for the heating performance procedures as well as the cooling performance procedures. However, because of the added complexities of the heating performance evaluation procedures, an appropriate intermediate test point is not easily defined. Specifically, unlike cooling performance which is based on a single sizing, i.e., the relationship of the capacity of the unit to the cooling load at design conditions, heating performance is based on several different sizing possibilities. Also, the heating evaluation procedures already include a test point at an intermediate outdoor temperature, called the frost accumulation test point. This test point is designed to capture the degradation in performance due to the frosting and defrosting of a heat pump and is specified in ARI and DOE procedures to be run at maximum speed with 35 °F outdoor temperature. Carrier claims the 35 °F outdoor temperature is appropriate for an intermediate test point but the maximum speed provision is inappropriate. Carrier is seeking modifications to Appendix B allowing the test to be performed at an intermediate speed specified as a value between the minimum and maximum speeds for the equipment. Carrier states that the capacity and power of the intermediate speed test point may be corrected with respect to temperature to find the intersection with the heating load line in the same manner as the intermediate speed cooling point. Carrier contends that the frost accumulation test run at maximum speed is not well-matched to the load line and, as a result, has almost no influence on the HSPF.

Lennox, Rheem and Borg-Warner commented on this request. Lennox commented that maximum speed capacity is well-matched to the load line since 35 ° temperature is very close to the balance point in most residences. As with the intermediate test point for cooling, Lennox expressed concern about the technical feasibility of auditing an arbitrary speed test point. Lennox also was concerned that the intermediate test point would be run at lowest possible speed to increase the coefficient of performance (COP).

Rheem suggested that the intermediate speed should be specified in relationship to building load, which would parallel the cooling intermediate speed determination. Borg-Warner also recommended that the frost accumulation test be conducted at the same compressor speed as that used for the 95 °F outdoor temperature for the cooling mode.

Responding to Lennox's comment, Carrier stated that while maximum speed capacity may be well matched to the load line at 35 °F in actual residences, it is not true for the prescribed heating load line. Rebutting Rheem's comment, the petitioner proposed to bracket the speed at the intermediate heating point, as for the cooling mode, in the range from ⅓ to ⅓ between minimum and maximum speed.

In response to the Borg-Warner comment, Carrier stated that the building load at 35 °F, as shown in the example, is only slightly greater than the unit capacity at minimum speed. Carrier contended that running a defrost test at the maximum speed would mean requiring variable speed heat pumps to satisfy a different load line than it is required for single- and two-speed heat pumps.

DOE analyzed Carrier's request in consultation with NBS and determined that an intermediate speed frost accumulation test is appropriate for the Carrier variable speed unit in lieu of the maximum speed frost accumulation test contained in DOE and ARI procedures. However, where Carrier felt the compressor speed for the intermediate test could be specified as any compressor speed between maximum and minimum, DOE and NBS believe more guidance is needed regarding this intermediate speed specification. Specifically, today's Decision and Order requires the intermediate compressor speed to be high enough to obtain system capacity that is 95 percent or more of the building load at 35 °F for which the HSPF is being calculated. It is believed this specification is necessary to avoid testing at unrealistically low compressor speeds which could overstate the performance improvement due variable speed units.

4. Carrier requests that HSPF for variable speed heat pumps that employ a demand defrost control be increased by four percent instead of making any adjustments to the frost accumulation test point data as provided in the current test procedure. Carrier contends that a simple increase of the capacity at the frost accumulation test by seven percent (Appendix M to Subpart B of Part 430, § 5.2) is not appropriate since the HSPF calculation method for variable speed systems is substantially different from that for single speed systems. Carrier's request for a four percent HSPF credit is based on an analysis of comments on the proposed rule as published in the December 1979 final rule. 44 FR 76703 (December 27, 1979).

Lennox and Borg-Warner commented on this request. Lennox stated that a demand defrost credit should be applied to the test point which it affects and should be consistent with the test procedures currently being used. Borg-Warner supported the HSPF enhancement requested by Carrier.

The enhancement factor for a demand defrost control system was introduced by DOE in order "to compensate for improved performance not measured in the Frost Accumulation Test". 44 FR 76714 (December 27, 1979). The enhancement factor was introduced for single-speed and two-speed systems because otherwise the calculation would assume that a system with a demand defrost control would defrost as often as a system with a time defrost control, while at weather conditions other than those specified in the Frost Accumulation Test, a system with a demand defrost control would defrost only when necessary.

Based on available evidence, DOE has concluded that in the case of a variable speed heat pump, most of the performance improvement due to a demand defrost control would be measured in the Frost Accumulation Test run at intermediate speed. For example, it appears that a frost accumulation test run at a low speed to match the minimum prescribed building load with system capacity would result

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in minimal or no frost-related degradation if the system is equipped with a demand defrost control. If the system will not defrost during the test, the maximum improved performance will be measured by the test.

In conclusion, DOE determined not to grant Carrier's request for a flat four percent HSPF enhancement factor for demand defrost control system. Instead, DOE is granting an enhancement factor ranging from zero to four percent, adjustable according to the number of defrost cycles in a 12-hour period. Accordingly, today's Decision and Order included an equation allowing a full enhancement credit for heat pumps having the defrost test period less than 90 minutes, and linearly, based on the number of defrost cycles saved, prorates the enhancement credit for longer test periods resulting in zero credit if a tested heat pump does not go into defrost during a 12-hour test.

5. In addition to varying the compressor speed, Carrier's unit also varies the indoor air fan speed with various part loads. Carrier requested that the indoor air flow rate at fan speeds less than the maximum speed be determined as the ratio of fan speed to maximum fan speed multiplied by air flow at maximum fan speed. The petitioner states that present standards, DOE's and ARI's, do not provide instructions for determining the indoor mass flow of air at intermediate fan speeds.

Borg-Warner commented in support of this request stating that the Carrier requested method for determining air mass flow rate was used by Borg-Warner on its variable speed heat pumps.

Based on the information provided by the petitioner and the commenters, DOE has determined to grant Carrier's request for the method for determining indoor air mass flow rate.

It is, therefore ordered that: (1) The "Petition of Waiver" filed by Carrier Corporation (CAC-001) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4).

(2) Notwithstanding any contrary provisions of Appendix M of 10 CFR Part 430 Subpart B, Carrier Corporation shall be permitted to test its variable speed (VSP) model heat pumps and cooling units on the basis specified in 10 CFR Part 430, with the modifications set forth below:

(i) *Test Procedure.* Test procedures shall be as specified in section 5 of ARI Standard 210/240-84 and in section 8.0 of ANSI/ASHRAE Standard 116-1983, with the inclusion of the following conditions.

(A) *Cooling and heating cycle tests* shall be conducted by cycling the compressor 12 minutes "on" and 48 minutes "off". The capacity and all electrical energy shall be measured for the compressor "on" time of 12 minutes. All off-cycle electrical energy shall be measured for the compressor 48 minutes "off" time. Off-cycle electrical energy does not include fan power.

(B) *Intermediate cooling and heating steady-state tests* shall be conducted at indoor coil and outdoor coil air conditions selected for the intermediate cooling steady-state test and heating frost accumulation test, respectively, in Table B1 of ARI Standard 210/240-84. The tolerances for the dry-bulb and wet-bulb temperatures of the air entering the indoor and outdoor coils shall be within the test operating tolerance and test condition tolerance specified in Table III-A of ANSI/ASHRAE Standard 116-1983. the intermediate compressor speed during the cooling test shall be in the range from ⅓ to ⅔ between the minimum and maximum speed. The intermediate compressor speed during the frost accumulation test shall be high enough to obtain system capacity that is 95 percent or more of the building load at 35 °F for which HSPF is to be calculated. Determination of the compressor speed shall be conducted by a method which has the ability to provide results with less than two percent error.

The air volumetric flow rate at fan speeds less than the maximum speed shall be determined using the fan laws for a fixed resistance systems. The following equation shall be used to calculate the flow rate of air:

$$CFM^{v} = (CFM^{max}) * (RPM_F^{v} / RPM_F^{max})$$

where:
- CFM^{v} = volumetric flow rate of air at fan speed less than maximum speed
- CFM^{max} = volumetric flow rate of air at the maximum fan speed
- RPM_F^{v} = the fan speed for which air flow rate is calculated
- RPM_F^{max} = the maximum fan speed

Fan speed shall be determined by a method having the ability to provide results with uncertainty less than two percent.

(ii) *Seasonal Energy Efficiency Ratio, SEER.* The SEER shall be determined by the method for two-speed or two compressor units, as specified in ANSI/ASHRAE Standard 116-1983 and ARI Standard 210/240-84, and in accordance with the following changes. The capacity for the unit modulating at the intermediate compressor speed (k=v) at any temperature (t_x) shall be defined as:

$$O^{k=v}(t_x) = O_{ss}^{k=v}(87) + M_q\,(t_x - 87)$$

where: $O_{ss}^{k=v}(87)$ = the capacity of the unit at 87°F determined by the intermediate cooling steady-state test

M_q = slope of the capacity curve for the intermediate compressor speed (k=v)

$$M_q = \frac{O_{ss}^{k=1}(82) - O_{ss}^{k=1}(67)}{82 - 67} * (1 - N_q) + N_q * \frac{O_{ss}^{k=2}(95) - O_{ss}^{k=2}(82)}{95 - 82}$$

$$N_q = \frac{O_{ss}^{k=v}(87) - O_{ss}^{k=1}(87)}{O_{ss}^{k=2}(87) - O_{ss}^{k=1}(87)}$$

Where: All O's, except for $O_{ss}^{k=v}(87)$, are determined by ANSI/ASHRAE 116-1983 and ARI Standard 210/240-84 by test or linear interpolation.

Once the equation for $Q^{k=v}(t_x)$ has been determined, the temperature where $Q^{k=v}(t_x) = BL(t_x)$ can be found. This temperature is designated as t_{vc} and replaces 87 °F in the equations for Case II in Appendix B of ARI Standard 210/240-84.

The electrical power input for the unit operating at the intermediate compressor speed (k=v) and the temperature (t_{vc}) shall be defined as:

$$E_{ss}^{k=v}(t_{vc}) = E_{ss}^{k=v}(87) + M_E\,(t_{vc} - 87)$$

where: $E_{ss}^{k=v}(87)$ = the electrical power input of the unit at 87°F determined by the intermediate cooling steady-state test

M_E = slope of the electrical power input curve for the intermediate compressor speed (k=v)

$$M_E = \frac{E_{ss}^{k=1}(82) - E_{ss}^{k=1}(67)}{82 - 67} * (1 - N_E) + N_E \frac{E_{ss}^{k=2}(95) - E_{ss}^{k=2}(82)}{95 - 82}$$

$$N_E = \frac{E_{ss}^{k=v}(87) - E_{ss}^{k=1}(87)}{E_{ss}^{k=2}(87) - E_{ss}^{k=1}(87)}$$

Where: All E's, except $E_{ss}^{k=v}(87)$, are determined from ANSI/ASHRAE 116-1983 and ARI Standard 210/240-84 by test or linear interpolation.

Once $E_{ss}^{k=2}(t_{vc})$ has been determined, it replaces $E_{ss}^{k=v}(87)$ in the equations for Case II in Appendix B of ARI Standard 210/240-84.

(iii) *Heating Seasonal Performance Factor, HSPF.* The HSPF shall be determined by the method for two-speed or two compressor units, as specified in ANSI/ASHRAE Standard 116-1983 and ARI Standard 210/240-84, and in accordance with the following changes. The capacity for the unit modulating at the intermediate compressor speed (k=v) at any temperature (t_x) shall be defined as:

$$O^{k=v}(t_x) = O_{def}^{k=v}(35) + M_q(t_x - 35)$$

where: $O_{def}^{k=v}(35)$ = the capacity of the unit at 35°F determined at the intermediate compressor speed (k=v) in defrost accumulation test

M_q = slope of the capacity curve for the intermediate compressor speed (k=v)

$$M_q = \frac{O_{ss}^{k=1}(62) - O_{ss}^{k=1}(47)}{62 - 47} * (1 - N_q) + N_q \frac{O_{ss}^{k=1}(47) - O_{ss}^{k=2}(17)}{47 - 17}$$

$$N_q = \frac{O_{def}^{k=v}(35) - O_{ss}^{k=1}(35)}{O_{ss}^{k=2}(35) - O_{ss}^{k=1}(35)}$$

where: All O's, except $O_{def}^{k=v}(35)$, are determined from ANSI/ASHRAE Standard 116-1983 and ARI Standard 210/240-84 by test or linear interpolation.

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Once the equation for $Q^{k=v}(t_v) = BL(t_v)$ has been determined, the temperature where $Q^{k=v}(t_v) = BL(t_v)$ can be found. This temperature is designated as t_{VH}. A separate t_{VH} shall be determined for each design heating requirement.

The electrical power input for the unit operating at the intermediate compressor speed (k=v) and at the temperature (t_{VH}) shall be defined as:

$$E_{ss}^{k=v}(t_{VH}) = E_{ss}^{k=v}(35) + M_E(t_{VH} - 35)$$

where: $E_{ss}^{k=v}(35)$ = the electrical power input of the unit at 35°F determined at the intermediate compressor speed (k=v) in the frost accumulation test

M_E = slope of the electrical power input curve for the intermediate compressor speed (k=v)

$$M_E = \frac{E_{ss}^{k=1}(62) - E_{ss}^{k=1}(47)}{62 - 47} * (1 - N_E) + N_E \frac{E_{ss}^{k=2}(47) - E_{ss}^{k=2}(17)}{47 - 17}$$

$$N_E = \frac{E_{ss}^{k=v}(35) - E_{ss}^{k=1}(35)}{E_{ss}^{k=2}(35) - E_{ss}^{k=1}(35)}$$

Where: All E's except $E_{ss}^{k=v}(35)$ are determined from ANSI/ASHRAE Standard 116-1983 and ARI Standard 210/240-84 by test or linear interpolation.

The following section replaces Case II in section 2.2 of ARI 210/240-84.

Case II

When the compressor speed varies between the maximum speed (k=2) and minimum speed (k=1) such that k=v to satisfy the building load at temperature t_j evaluate the following equations:

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$$Q_{ss}^{k=v}(t_j) = BL(t_j)$$

where: $Q_{ss}^{k=v}(t_j)$ = steady-state capacity delivered by the unit at any speed between the minimum and maximum compressor speeds at temperature t_j

when $t_j \geq t_{VH}$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(t_{VH}) + \frac{E_{ss}^{k=1}(t_3) - E_{ss}^{k=v}(t_{VH})}{t_3 - t_{VH}} * (t_j - t_{VH})$$

where: $E_{ss}^{k=v}(t_j)$ = the electrical power input required by the unit at temperature t_j and at a variable compressor speed between the minimum and maximum compressor speeds

$E_{ss}^{k=v}(t_{VH})$ = the electrical power input required by the unit at temperature t_{VH} and at the intermediate compressor speed (k=v), as determined above

$E_{ss}^{k=1}(t_3)$ = the electrical power input required by the unit at temperature t_3 and at the minimum compressor speed

t_3 = temperature at which $Q_{ss}^{k=1}(t_j) = BL(t_j)$

when $t_j < t_{VH}$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(t_{VH}) + \frac{E_{ss}^{k=2}(t_4) - E_{ss}^{k=v}(t_{VH})}{t_{VH} - t_4} * (t_{VH} - t_j)$$

where: $E_{ss}^{k=2}(t_4)$ = the electrical power input required by the unit at temperature t_4 and at the maximum compressor speed

t_4 = temperature at which $Q_{ss}^{k=2}(t_j) = BL(t_j)$

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For air-source units with variable-speed compressors that are equipped with "demand defrost control systems", the value for HSPF, as determined above shall be multiplied by an enhancement factor, E_{def}, to compensate for improved performance not measured in the Frost Accumulation Test.

The factor, F_{def}, depends on the number of defrost cycles in a 12-hour period (n) and should be calculated as follows:

$$F_{def} = 1 + 0.04\ \frac{N-1}{7}$$

where: n = 720/t, or 8, whichever is smaller
t = length of the frost accumulation test period in minutes

(3) The waiver shall remain in effect from the date of issuance of this Order until the Department of Energy prescribes final test procedures appropriate to the type of variable-speed central air conditioners and heat pumps manufactured by Carrier Corporation.

(4) This waiver is based upon the prescribed validity of statements, allegations, and documentary materials submitted by the applicant and commenters. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

[FR Doc. 86-22354 Filed 10-2-86; 8:45 am]

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Energy Conservation Program For Consumer Products; Petition for Waiver of Central Air Conditioner Test Procedures From The Trane Co. (CAC-002)

AGENCY: Conservation and Renewable Energy Office, Department of Energy.

SUMMARY: Today's notice publishes a "Petition for Waiver" from The Trane Company (Trane) of Tyler, Texas, requesting a waiver from the existing Department of Energy (DOE) test procedures for central air conditioners. Trane manufactures residential and commercial air conditioning appliances. The petition requests DOE to grant relief from the test procedure relating to the compressor speed specification for Trane's TTS/TWS model series central air conditioners (heat pumps). Trane seeks to test using intermediate compressor speeds instead of the single speed specified. Trane requests the test and calculation methods of Appendix B to the Air Conditioning and Refrigeration Institute Standard 210/240-84, with modifications, be substituted for the DOE test procedures for central air conditioners. DOE is soliciting comments, data, and information respecting the petition.

DATE: DOE will accept comments, data and information not later than November 3, 1986.

ADDRESS: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. CAC-002, Mail Stop CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station, CE-132, Forrestal Building, 1000 Independence Avenue, Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252-9513

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPAC), Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3266, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27, Petitions of Waiver, to allow the Assistant Secretary for Conservation and Renewable Energy temporarily to waive test procedures for a particular basic model. 45 FR 64109 (September 26, 1980). Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedures, or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendment become effective, resolving the problem that is the subject of a waiver.

Trane's petition seeks a waiver from the DOE test provisions that require testing at a single compressor speed. Trane requests allowance to use Appendix B of the Air Conditioning and Refrigeration Institute (ARI) Standard 210/240-84 with amendments. The amendments to ARI Standard 210/240-84 requested by Trane include revisions to cycling period and intermediate steady state test point. The intermediate speed proposed by Trane matches system capacity to building load at 87 °F. Also, Trane requests the allowance of test and calculation procedures which incorporate test data for system operation at minimum and maximum speeds.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirely. The petition contains no confidential information DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC September 11, 1986.

John R. Berg,

Principal Deputy Assistant Secretary, Conservation and Renewable Energy.

July 9, 1986.

Assistant Secretary, Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Gentlemen: This petition for waiver is being submitted pursuant to 10 CFR, Part 430, Appendix M to Subpart B, *Test Procedures for Central Air Conditioners, Including Heat Pumps.* Waiver is requested for Trane's TTS/TWS model variable speed cooling-only products and heat pumps in the cooling mode.

Models in the TTS/TWS product lines use variable speed motors to drive the compressor, indoor blower, and outdoor fan. The compressor is controlled over a wide range of speeds: the indoor blower and outdoor fan motors operate over a smaller range. Modulation of all three motors allows the system to better meet specific load requirements, thereby minimizing energy use. The system requires use of our micro-processor design in conjunction with a special thermostat, offering a wide range of additional energy conserving options.

York demonstrated (Case BEE-1338, January 13, 1981) that the current two-speed rating procedure did not adequately represent true seasonal performance and efficiency of a variable speed system, and was granted permission to use a modified test and rating calculation procedure for their ENMOD heat pump products. ARI has since published a revised standard (ARI 210/240-84) that incorporates variable speed test and calculation procedures, almost identical to the York method, and plans to further edit and revise this procedure. Carrier requested that they be allowed to use a modified version of the ARI/York procedures in their petition of December 4, 1985, which was published in the February, 1986 **Federal Register.**

We believe the York/ARI procedures to be the fairest method of estimating variable speed system cooling performance. However, the York/ARI procedures require further clarification for laboratory repeatability and verification purposes. Carrier attempted to address this issue in their petition, but some of their proposed procedures, such as the "floating intermediate point" testing, were not specific enough to ensure a consistent interpretation of test data for rating of variable speed products. Furthermore, the Carrier petition appears to be predicated on the specific design details of their intended product offering.

This petition is a request for authorization to substitute the test and calculation methods, with some minor modifications, of Appendix B of ARI 210/240-84 for Appendix M, Subpart B of Part 230 as applied to the cooling mode of variable speed products. The modifications proposed herein are independent of design details of any specific system, and are offered as a universal rating procedure for variable speed air conditioners (and heat pumps in the cooling mode.) A subsequent petition will be submitted, as appropriate, for rating of heat pumps in the heating mode.

The proposed rating method and modifications, to ARI 210/240-84 are described below and further detailed in an attachment. Graphical representations of the requested procedure can also be found in the attachment.

1. Two steady state test points at both minimum and maximum speed are used to establish a pair of lines that describe the extremes of the operating range as a function of outdoor temperature for both capacity and energy usage. The specific points and equations for the lines are defined in ARI 210/240-84, Appendix B and in the attachment. Proposed procedural clarifications are as follows:

A. Rated capacity for the system will be based on the tested capacity at an indoor condition of 80 °F dry bulb and 67 °F wet bulb and an outdoor condition of 95 °F dry bulb, maximum speed, with minimum indoor static pressure requirements as defined in ARI 210/240-84, Section 5.1.3.6.

B. We propose that indoor airflow at speeds lower than maximum be determined by using the fan laws for fixed resistence systems. The ratio of measured fan speed to maximum fan speed is multiplied by the volumetric airflow rate at maximum speed. Minimum static requirements only apply at the capacity rating point (Test A, Table 1 in the Appendix). This modification was also requested in Carrier's petition.

C. Outdoor airflow is as determined by the unit controls. Neither Carrier nor York addressed variable outdoor airflow.

2. A building cooling load line, described by Equation 1 in ARI 210/240-84, Appendix B, and the attachment, is applied to the minimum/maximum operating lines so that the distinct operating modes (i.e., max. speed operation vs. load matching vs. cycling) can be established. No modifications in the building cooling load line are requested.

The temperature intersections of the building cooling load line and the maximum speed and minimum speed lines define the modulating speed range of the system. At temperatures above the intersection of the load line and the maximum speed line, the system will operate continuously at maximum speed. At temperatures below the intersection of the load line and the minimum speed line, the system will cycle on and off.

3. Additional intermediate points in the load matching area could be tested to more accurately describe the system's energy reduction at lower speeds. Our testing confirms the work done by York, which indicated that a linear relationship for an energy approximation in the load matching area does not adequately reflect the reduction in energy usage at the lower speed range. This deficiency can be substantially eliminated by measuring the energy consumption at a test condition which matches system capacity to building load at 87 °F. This approach is consistent with both the York petition and ARI 210/240-84. However, neither of these references stipulated a tolerance for acceptability of the match between the load line and the system capacity. Our proposal is that this match be defined by:

A. If the measured capacity is within 1% of the calculated building load at 87 °F, then the tested power is used as described in ARI 210/240-84, Case II Calculations.

B. If the measured capacity is within 3% but not within 1% of the calculated building load at 87 °F, then another test point is run per the procedure below, and the power at the 87 °F bin is interpolated based on the two points and the calculated cooling building load at 87 °F (details in attachment).

1. If the first tested capacity falls above the building load line, then the speed is lowered so that the second test capacity is below the building load line and within 3% of the line.

2. If the first tested capacity falls below the building load line, then the speed is raised so that the second test capacity is above the buiding load line and within 3% of the line.

C. A measured capacity that is not within 3% of the calculated building load at 87 °F is unacceptable, and the point must be rerun.

In contrast to this proposal, Carrier's test/interpolation procedure appears to have been written for their specific system. It is unfair to assume that all variable speed systems will have similar speed range and other operating characteristics. There may be significant differences in operating characteristics which make it difficult to specify an intermediate test by speed. Testing based on building load, as in the York/ARI procedures, will be more applicable to a broader range of variable speed products.

4. Using the system power at each extreme of the load matching region and the measured power at the intermediate point(s), the power at the bin temperatures in the load matching region can be approximated using a series of straight line relationships. This procedure is described in ARI 210/240-84, Appendix B, Case II Calculations and in the attachment. No modifications to it are requested.

5. For the portion of the load line where the unit is cycling, ARI 210/240-84, Appendix B allows the option of using a degradation coefficient value (Cd) of 0.25 or performing cycling tests at the 67 °F bin temperature, which we agree is representative of the temperature range in which cycling actually occurs for variable speed products. However, variable speed products will cycle less than single speed products.

A. We propose that the "on" time for cyclic testing be determined by the minimum "on" time allowed by the controls or multiplying six (6) minutes by the maximum to minimum speed capacity ratio at 80/67-67, whichever is longer. For example, a product having a 2:1 maximum to minimum capacity ratio at 80/67-67 would be tested with the longer of 12 minutes or the minimum "on" time allowed by its controls. This is consistent with the stated intent of carrier's proposal, but sets a specific procedure that can be applied to a broader range of variable speed products.

B. We propose that the "off" time for cyclic testing be determined by either the minimum "off" time allowed by the controls or thirty (30) minutes less the "on" time, whichever is longer. This procedure, unlike Carrier's proposal, maintains a comparable 30 minute cycle for all systems when practical, and credits those systems whose controls allow less cycling.

6. For the portion of the load line where the unit is operating at maximum speed, both the capacity and power of the system at maximum speed, as determined by the established maximum operating line, are used as described in ARI 210/240-84, Appendix B and the attachment. No modifications are requested.

Test data could be supplied to further demonstrate that the proposed method of rating variable speed products in the cooling mode is more representative of the efficiency

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of a variable speed system than the current two-speed rating method.

We understand that York's ENMOD model variable speed system is no longer being offered. No other manufacturer to our knowledge is domestically marketing a product that incorporates variable speed compressors, blowers, and fans in their design.

Sincerely,

L.E. Chaump,

Vice-President Engineering.

Attachment I: Details of Rating Method for Variable Speed Products in the Cooling Mode

This attachment is a revised version of ARI 210/240-84, Appendix B. The changes reflected herein are to adapt the appendix to the proposed rating method and to clarify notation and terminology.

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ATTACHMENT I: DETAILS OF RATING METHOD FOR VARIABLE SPEED PRODUCTS IN THE COOLING MODE

Test conditions and methodology for rating unitary air conditioning with variable speed compressors as diagrammed in Figure 1.

1. Test Conditions

1.1 The tests and test conditions which are required to determine values of capacity ratings and values of measure of energy efficiency appear in Table 1.

1.2 The "on" time for cyclic testing is determined by the minimum "on" time allowed by the controls or multiplying the maximum to minimum speed capacity ratio at 80/67-67 by six minutes; whichever is longer.

$$\text{"on" time} = \frac{q_{ss}^{k=2}(67F)}{q_{ss}^{k=1}(67F)} \quad (6)$$

where $q_{ss}^{k=2}(67F)$ is determined using eq. (4)

$q_{ss}^{k=1}(67F)$ is from Low Ambient Cooling Steady State Test, Table 1.

1.3 The "off" time for cyclic testing is determined by the minimum "off" time allowed by the controls or thirty minutes less the determined "on" time from 1.2 above, whichever is longer.

1.4 In lieu of conducting the Cyclic Cooling and Low Ambient Dry Coil tests, an assigned value of .25 may be used for the cooling degradation coefficient, C_D.

1.5 Minimum indoor static pressure requirements as defined in ARI 210/240-84, Section 5.1.3.6, apply to Test A in Table 1.

1.6 At speeds less than maximum, the indoor airflow is determined by the following equation:

$$CFM_{k=v} = \frac{RPM_{k=v}}{RPM_{k=2}} CFM_{k=2}$$

where

$CFM_{k=v}$ = Airflow rate at lower speed
$CFM_{k=2}$ = Airflow rate from Test A in Table 1
$RPM_{k=2}$ = Fan RPM from Test A in Table 1
$RPM_{k=v}$ = Fan RPM at lower speed

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2. Calculations (NOTE: Refer to Bin Analysis method in ASHRAE 116)

2.1 Cooling Seasonal Performance Factor. For variable speed compressor units the seasonal energy efficiency ratio (SEER) is found from the following equation:

$$SEER = \frac{\sum_{j=1}^{n} q(t_j)}{\sum_{j=1}^{n} E(t_j)}$$

The terms $q(t_j)$ and $E(t_j)$ as defined in ASHRAE 116, summed over temperature bins, are evaluated at each temperature bin according to the three possible casees listed below.

The building cooling load $BL(t_j)$ for the three cases is obtained from the following equation:

eq.(1)

$$BL(t_j) = \frac{t_j - 65}{95 - 65} \frac{[q_{ss}^{k=2}(95F)]}{\text{Size Factor}}$$

where $q_{ss}^{k=2}(95)$ = steady state capacity measured from Test "A" in Table 1.

Size Factor = 1.1 for 10% oversizing.

CASE I

Units operating at minimum compressor speed (k=1) for which the steady state cooling capacity $q_{ss}^{k=1}(t_j)$ is greater than or equal to the building cooling load $BL(t_j)$, evaluate the following.

eq.(2)

$$q_{ss}^{k=1}(t_j) = q_{ss}^{k=1}(67F) + \frac{q_{ss}^{k=1}(82F) - q_{ss}^{k=1}(67F)}{82 - 67}(t_j - 67)$$

where $q_{ss}^{k=1}(67F)$ = steady state capacity measured from the Low Ambient Cooling Steady State Test, Table 1.

$q_{ss}^{k=1}(82F)$ = steady state capacity measured from Test "B-1", Table 2.

$q_{ss}^{k=1}(t_j)$ = steady state capacity at the minimum compressor speed intended for normal operation in the cooling mode at temperature t_j.

eq.(3)

$$E_{ss}^{k=1}(t_j) = E_{ss}^{k=1}(67F) + \frac{E_{ss}^{k=1}(82F) - E_{ss}^{k=1}(67F)}{82 - 67}(t_j - 67)$$

where $E_{ss}^{k=1}(67F)$ = the electrical power input for the Low Ambient Cooling Steady State Test.

$E_{ss}^{k=1}(82F)$ = the electrical power input from Test "B-1"

$E_{ss}^{k=1}(t_j)$ = the electrical power input at the minimum compressor speed in the cooling mode at temperature t_j.

Cooling Building Load Factor $X^{k=1} = \frac{BL(t_j)}{q_{ss}^{k=1}(t_j)}$

Cooling Part Load Factor

$$PLF^{k=1} = 1 - C_D(1 - X^{k=1})$$

where C_D is as defined in Chapter 9 of ASHRAE 116 with the Dry Coil Cooling Steady State test construed as Test C and the Cyclic Cooling Dry Coil test construed as Test D, both run at minimum compressor speed. (See Table 1)

$$q(t_j) = X^{k=1} q_{ss}^{k=1}(t_j) n_j$$

$$E(t_j) = \frac{X^{k=1} E_{ss}^{k=1}(t_j) n_j}{PLF^{k=1}}$$

where n_j = is the number of cooling hours in the jth temperature bin given in ARI Standard 210/240, Appendix A.

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CASE II

When the compressor speed varies between the maximum (k=2) and minimum (k=1) compressor speeds (such that k=v) to satisfy the building cooling load at temperature t_j. (NOTE: unit does not cycle on and off), evaluate the following equations.

$$q_{ss}^{k=v}(t_j) = BL(t_j)$$

where $q_{ss}^{k=v}(t_j)$ = steady state capacity delivered by the unit at any speed between minimum and maximum compressor speeds at temperature t_j.

when $t_j \geq 87°F$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(87F) + \frac{E_{ss}^{k=2}(t_2) - E_{ss}^{k=v}(87F)}{t_2 - 87}(t_j - 87)$$

where t_2 = temperature t_j at which $q_{ss}^{k=2}(t_j) = BL(t_j)$ found by equating eq.(1) and eq.(4) and solving for t_j.

$E_{ss}^{k=2}(t_2)$ = the electrical power input at maximum compressor speed at temperature t_2 calculated from eq.(5).

$E_{ss}^{k=v}(t_j)$ = the electrical power input required by the unit at temperature t_j and some variable compressor speed between the minimum and maximum compressor speeds.

$E_{ss}^{k=v}(87F)$ = the electrical power input at 87F, from either equation (6) or equations (7) and (8).

When the measured capacity at the intermediate test point (Table 1), $q_{ssi}^{k=vi}(87F)$, is within 1% of BL(87F), then

eq.(6)

$$E_{ss}^{k=v}(87F) = E_{ssi}^{k=vi}(87F)$$

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When two intermediate points are measured, where one measured capacity, $q_{ssi}^{k=vi}(87F)$, is within +3% of BL(87F) and the other, $q_{ss2}^{k=v2}(87F)$, is within -3% of BL(87F), then $E_{ss}^{k=v}(87F)$ is evaluated using eq.(7) and (8):

eq.(7)

$$WEIGHT = \frac{q_{ssi}^{k=vi}(87F) - BL(87F)}{q_{ssi}^{k=vi}(87F) - q_{ss2}^{k=v2}(87F)}$$

eq.(8)

$$E_{ss}^{k=v}(87F) = E_{ssi}^{k=vi}(87F) - WEIGHT\left(E_{ssi}^{k=vi}(87F) - E_{ss2}^{k=v2}(87F)\right)$$

When $t_j < 87°F$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(87F) + \frac{E_{ss}^{k=2}(t_2) - E_{ss}^{k=v}(87F)}{t_2 - 87F}(t_j - 87)$$

where t_1 = temperature t_j at which $q_{ss}^{k=1}(t_j) = BL(t_j)$ found by equating eq.(1) and eq.(2) and solving for t_j.

$E_{ss}^{k=1}(t_1)$ = the electrical power input at minimum compressor speed at temperature t_1 calculated from eq.(3).

$$q(t_j) = q_{ss}^{k=v}(t_j)n_j$$

$$E(t_j) = E_{ss}^{k=v}(t_j)\,n_j$$

CASE III

When a unit operates continuously at maximum compressor speed (k=2) at an outdoor temperature t_j, evaluate the following equations:

eq. (4)

$$q_{ss}^{k=2}(t_j) = q_{ss}^{k=2}(82F) + \frac{q_{ss}^{k=2}(95F) - q_{ss}^{k=2}(82F)}{95 - 82}(t_j - 82)$$

where $q_{ss}^{k=2}(t_j)$ = steady state capacity at the maximum compressor speed at temperature t_j.

$q_{ss}^{k=2}(82F)$ = steady state capacity from Test "B-2", Table 1

eq.(5)

$$E_{ss}^{k=2}(t_j) = E_{ss}^{k=2}(82F) + \frac{E_{ss}^{k=2}(95F) - E_{ss}^{k=2}(82F)}{95 - 82}(t_j - 82)$$

where $E_{ss}^{k=2}(t_j)$ = the electrical power input at the maximum compressor speed at temperature t_j.

$E_{ss}^{k=2}(82F)$ = the electrical power input from Test "B-2", Table 1

$E_{ss}^{k=2}(95F)$ = the electrical power input from Test "A", Table 1

$$q(t_j) = q_{ss}^{k=2}(t_j)\, n_j$$

$$E(t_j) = E_{ss}^{k=2}(t_j)\, n_j$$

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TABLE I: Test Conditions

Test	INDOOR COIL AIR ENTERING DB F	INDOOR COIL AIR ENTERING WB F	OUTDOOR COIL AIR ENTERING DB F	OUTDOOR COIL AIR ENTERING WB F
"A" Cooling Steady State At Maximum (k=2) Compressor Speed	80	67	95	75[1]
"B-2" Cooling Steady State At Maximum (k=2) Compressor Speed	80	67	82	65[1]
"B-1" Cooling Steady State At Minimum (k=1) Compressor Speed	80	67	82	65[1]
Low Ambient Cooling Steady State At Minimum (k=1) Compressor Speed	80	67	67	53.5[1]
Dry Coil Cooling Steady State At Minimum (k=1) Compressor Speed	80	57[4]	67	53.5[1]
Cyclic Cooling Dry Coil[3] At Minimum (k=1) Compressor Speed	80	57[4]	67	53.5[1]
Intermediate Cooling Steady State[2] At Variable (k=v) Compressor Speed	80	67	87	69[1]

All Tests are performed at the condenser speed and indoor blower speed intended for normal operation.
NOTES:
1. Not maintained if no condensate rejected to outdoor coil.
2. Compressor speed is selected to provide capacity as described in Case II calculations, Attachment I.
3. Test conducted by cycling compressor as described in Attachment I, Sections 1.2 and 1.3.
4. Wet bulb sufficiently low that no condensate forms on evaporator.

[FR Doc. 86-22418 Filed 10-2-86; 8:45 am]
BILLING CODE 6450-01-C

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Southwestern Power Administration

[Rate Order No. SWPA-19]

Order Confirming, Approving and Placing Increased Sam Rayburn Dam Power Rate in Effect on an Interim Basis

AGENCY: Department of Energy, Southwestern Power Administration.

ACTION: Notice of Power Rate Order.

SUMMARY: The Under Secretary of Energy, acting under Delegation Order No. 0204–108, as amended May 30, 1986 (51 FR 19744), has confirmed, approved and placed in effect on an interim basis, an increased annual power rate of $1,715,040 for the sale of power and energy by the Southwestern Power Administration from Sam Rayburn Dam to Sam Rayburn Dam Electric Cooperative, Inc. The rate supersedes the annual rate of $1,704,504 that was placed in effect by the Federal Energy Regulatory Commission (FERC) June 22, 1983, and will produce additional annual revenue of $10,536, or 0.6 percent beginning FY 1987.

EFFECTIVE DATES: Rate Order No. SWPA–19 specifies October 1, 1986, through September 30, 1990, as the effective period for the annual rate of $1,715,040 for the sale of power and energy from Sam Rayburn Dam.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529.

SUPPLEMENTARY INFORMATION: The SWPA Administrator has prepared the 1986 Sam Rayburn Dam Current Power Repayment Study based on the annual power rate of $1,704,504, that has been in effect since June 22, 1983. The study indicates that the power rate is no longer adequate to satisfy cost recovery criteria for the sale of power and energy from Sam Rayburn Dam to Sam Rayburn Dam Electric Cooperative, Inc., under Contract No. 14–02–0001–1124. The Administrator prepared a 1986 Revised Sam Rayburn Dam Power Repayment Study which indicates that additional annual revenue of $10,536, or 0.6 percent is required beginning October 1, 1986, to satisfy the provisions of Section 5 of the Flood Control Act of 1944 and Department of Energy Order No. RA 6120.2. In this regard, the Administrator has determined that the annual rate of $1,715,040 is the lowest possible rate to the customer consistent with sound business principles. The rate has been approved on an interim basis through September 30, 1990, or until confirmed and approved on a final basis by the FERC.

Issued in Washington, DC, September 26, 1986.

Joseph F. Salgado,

Under Secretary.

In the matter of: Southwestern Power Administration—Sam Rayburn Dam Rate.

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60636 (December 29, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to conform, approve and place into effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the Delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204–33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664 (December 14, 1983) the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission on an exclusive basis the authority to confirm, approve and place in effect power and transmission rates on a final basis. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of the Department of Energy rather than the Deputy Secretary of the Department of Energy. This rate order is issued pursuant to the Delegation Order to the Under Secretray of Energy.

Background

The existing annual Sam Rayburn Dam power rate of $1,704,504 has been in effect since confirmed and approved on a final basis by the Federal Energy Regulatory Commission (FERC) for the period June 22, 1983, through June 15, 1984. The rate was extended on an interim basis by the Deputy Secretary of Energy through September 30, 1986, in Rate Order No. SWPA–14, and the rate extension was confirmed and approved on a final basis by the FERC November 6, 1984. The 1986 Sam Rayburn Dam Current Power Repayment Study indicates that the rate is no longer adequate to satisfy cost recovery criteria for the isolated project. The 1986 Sam Rayburn Dam Revised Power Repayment Study indicates that an annual rate of $1,715,040 will be required beginning October 1, 1986, to repay the project's investment and annual costs in accordance with Department of Energy Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944. The proposed increase in revenue amounts to $10,536, or 0.6 percent annually and is classified as a minor rate adjustment in accordance with Title 10, Part 903, Subpart A of the code of Federal Regulations (10 CFR 903), "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions" (50 FR 37837). SWPA published Notice in the **Federal Register** June 24, 1986, announcing a 30-day period for public review and comment concerning the proposed rate adjustment as required by 10 CFR 903. By letter dated June 13, 1986, SWPA mailed a preliminary copy of the **Federal Register** Notice and supporting data for the 1986 Power Repayment Studies to the Customer for information and review. By letter dated July 1, 1986, SWPA provided the customer a copy of the official publication of the **Federal Register** Notice. Based on the date of publication, written comments from the customer and interested parties were accepted through July 24, 1986, and are contained along with SWPA's responses in the Comments and Responses Section of this Rate Order.

Discussion

The 1986 Current Power Repayment Study tests the adequacy of the existing rate based on the latest cost evaluation period extending from FY 1986 through FY 1990. This study is an update of the 1985 Power Repayment Study which was based on a cost evaluation period FY 1985 through FY 1989. The most significant difference in the two studies results from extending the cost evaluation period the additional year and updating costs to current levels. Page A–5 of the 1986 Power Repayment Study compares the 1985 and 1986 Studies.

The U.S. Army Corps of Engineers (Corps) provided estimates of Sam Rayburn Dam Operations and Maintenance (O&M) expense for the 1986 Power Repayment Study based on FY 1985 cost levels and SWPA adjusted those projections for inflation using Gross National Product Deflators for FY 1986 through FY 1990. The 1985 Power Repayment Study included Corps O&M expense estimates based on FY 84 cost levels which SWPA adjusted for inflation using Gross National Product Deflators for FY 1985 through FY 1989. The estimates of Corps O&M expense for the 1985 Power Repayment Study varied from $503,000 (plus a one-time major maintenance item of $294,500) in FY 1985 to a maximum escalated O&M expense figure of $612,900 for FY 1989, which was extended through the end of the repayment period in FY 2016. Estimates of Corps O&M expense for the 1986 Power Repayment Study increased to $686,000 per year for FY 1990 through the end of the repayment period. The average annual level of estimated Corps O&M expense increased some $61,600 from $613,500 in the 1985 Power Repayment Study to $675,100 in the 1986 Power Repayment Study, or 10 percent. This increase in projected costs results from a substantial underestimate of base level O&M expenses in the earlier 1985 projections. Further detailed information regarding the level of Corps O&M expense estimates may be found on pages G–21 and G–22 of the 1986 Power Repayment Study.

SWPA estimates of General Administrative and Overhead (GA&O) expense for the 1986 Power Repayment Study are based on the FY 1986 Budget of the U.S. Government for FY 1986 and the FY 1987 OMB Target for FY 1987 through FY 1990. The FY 1990 amount is used for each subsequent year of the Power Repayment Study. General Administrative and Overhead (GA&O) Expense is assigned to the Sam Rayburn Dam project based on the capital investment in the Southwestern Federal Power System, excluding transmission investment, as a percentage of total capital investment in the Southwestern Federal Power System, and the hydroelectric capacity of the project as a percent of the total hydroelectric capacity in the Southwestern Federal Power System. Previously, the GA&O Expense was allocated based only on investment, but as new projects such as Truman and Cannon have been added to the Southwestern Federal Power System in recent years, at significantly increased investment to installed capacity ratios (cost of capacity), it became apparent that the assignment of marketing costs (General Administration and Overhead) was becoming increasingly skewed toward the newer projects with no apparent corresponding and related increase in the normal level of effort required to market such projects and maintain such marketing arrangements. Consequently, a revised methodology was developed to more accurately and realistically reflect the relative costs of marketing individual projects having various levels of investment, production capability and transmission requirement. In FY 1985, as a result of the revised methodology, an adjustment of $444,769 was made to GA&O for the Sam Rayburn Dam project for FY 1986—FY 1984. This expense was reassigned to be recovered from the Integrated System. A five year average (FY 1981—FY 1985) of actual Transmission and GA&O Expense for the Southwestern Federal Power System indicates that GA&O Expense comprises 44.4 percent and Transmission Expense 55.6 percent of the total Transmission and GA&O Expense. Transmission Expense is not chargeable to the Sam Rayburn Dam project. The 1985 Power Repayment Study estimated GA&O expense for the Sam Rayburn Dam Project to be $107,800 in FY 1985 and increase to $121,100 in FY 1989, which was carried through the end of the repayment period. The 1986 Power Repayment Study estimates the GA&O expense to be $102,000 for FY 1986 and increase to $115,800 in FY 1990 which is projected through the end of the repayment period. The average annual GA&O Expense projected in the 1986 Power Repayment Study is 5.3 percent less than projected in the 1985 Power Repayment Study. Estimates of the future project replacements were provided by the Corps of Engineers July 22, 1985, based on 1985 cost data. The 1985 cost estimates have been escalated to FY 1986 cost levels by SWPA using "The Handy-Whitman Index of Public Utility Construction Costs" for January 1986. The 1985 Power Repayment Study estimated project replacements totaling $3,769,500 for the period FY 1986 through FY 2016. The 1986 Power Repayment Study estimates replacements totaling $3,493,600 for the same period. This is a decrease of 7.3 percent based on the latest estimates from the Corps.

SWPA has made significant progress toward repayment of the Federal investment. Through FY 1985, repayment status for the Sam Rayburn Dam Project is $4,537,365, which represents approximately 19 percent of the $23,820,836 Federal investment in the project. The status of repayment has increased almost 75 percent above the $2,603,000 noted by the FERC in their Order issued November 6, 1984. The FERC also previously indicated an interest in SWPA's progress toward repayment as compared to various amortization methods which assume scheduled payments without ever falling behind. SWPA has prepared an analysis which indicates that under such a scheduled compound interest amortization method SWPA would have repaid approximately 21 percent of the Federal investment through FY 1985. A corresponding analysis of a scheduled straight-line amortization method, similar to the method proposed in the President's FY 1987 Budget as Repayment Reform for application in future years, would have resulted in 34 percent of the investment being repaid through FY 1985. The 1986 Power Repayment Study shows that Sam Rayburn Dam repayment status will reach the level of the scheduled compound interest amortization method by FY 1988. As an additional matter of interest, SWPA's financial records indicate that through FY 1985, amortization for the project exceeds accumulated depreciation of $1,949,331 (based on compound interest depreciation and an average service life exceeding 80 years) by $2,588,034.

Comments and Responses

The Southwestern Power Administration received one written reply concerning the Notice published in the **Federal Register** June 24, 1986, announcing the proposed Sam Rayburn Dam power rate increase scheduled for implementation October 1, 1986.

Comment

By letter dated July 8, 1986, Sam Rayburn Dam Electric Cooperative, Inc., (SRDEC) expressed no opposition or objection to the October 1, 1986, implementation of the proposed annual rate of $1,715,040 for the sale of power and energy from Sam Rayburn Dam. SRDEC expressed their opinion that the June 24, 1986, **Federal Register** Notice announcing the opportunity for public review and comment concerning the proposed rate increase is inadequate because it does not clearly state whether the proposed power rate is in excess of cost recovery criteria.

Response

The Southwestern Power Administration is not required in the **Federal Register** Notice announcing the period of public review and comment to state whether a power rate is in excess of cost recovery criteria, but rather if it satisfies or meets cost recovery criteria. This rate proposal, as indicated by the 1986 Revised Sam Rayburn Dam Power Repayment Study, clearly meets cost recovery criteria, which is stated as follows in the **Federal Register** Notice, "Therefore, the SWPA Administrator has developed a proposed annual rate of $1,715,040 which is shown by the 1986 Revised Power Repayment Study to satisfy repayment criteria outlined in Section 5 of the Flood Control Act of 1944 and Department of Energy Order No. RA 6120.2."

Availability of Information

Information regarding this rate proposal including studies, comments and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, 333 West 4th, Tulsa, Oklahoma 74103.

Administrator's Certification

The 1986 Revised Sam Rayburn Dam Power Repayment Study indicates that the increased annual Sam Rayburn Dam power rate of $1,715,040 will repay all costs of the project including amortization of the power investment consistent with provisions of Department of Energy Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204–108, as amended May 30, 1986 (51 FR 19744), the Administrator has determined that the proposed Sam Rayburn Dam power rate is consistent with applicable law and is the lowest possible rate consistent with sound business principles in accordance with section 5 of the Flood Control Act of 1944.

Environment

The environmental impact of the proposed Sam Rayburn Dam power rate has been analyzed in consideration of the Department of Energy "Environmental Compliance Guide". The amount of the proposed increase does not warrant an Environmental Assessment or an Environmental Impact Statement in accordance with these regulations.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective October 1, 1986, the proposed annual rate of $1,715,040 for the sale of power and energy from Sam Rayburn Dam to Sam Rayburn Dam Electric Cooperative, Inc., under Contract No. 14–02–0001–1124, as amended November 1, 1960. The rate shall remain in effect on an interim basis through September 30, 1990, or until the FERC confirms and approves the rate on a final basis.

Issued in Washington, DC, September 26, 1986.

Joseph F. Salgado,

Under Secretary.

[FR Doc. 86–22488 Filed 10–2–86; 8:45 am]

BILLING CODE 6450–01–M

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ENVIRONMENTAL PROTECTION AGENCY

[OAR-FRL-3090-9]

Phillips Petroleum Co.; Administrative Determination and Denial of Waiver Under Clean Air Act.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of a request for an administrative determination and an application for a waiver under section 211(f) of the Clean Air Act (Act) from the Phillips Petroleum Company (Phillips) for a tetraethyl lead fuel additive package known as Phil AD PB. In addition, this notice announces the Agency's determinations that Phil AD PB does not require a waiver and, thus, that the waiver requested by Phillips has been denied.

ADDRESS: Copies of the information relative to this request for administrative determination and waiver application, and subsequent submissions, are available for inspection in Public Docket No. EN-86-16 at the Central Docket Section (LE-131A) of EPA, Gallery-I, West Tower, 401 M Street, SW., Washington, DC 20460, (202) 382-7548, between the hours of 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Attorney/Advisor, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2655.

SUPPLEMENTARY INFORMATION:

I. Phillips' Submissions

On April 3, 1986, Phillips submitted a request for a formal determination by EPA that the marketing of a fuel additive known as Phil AD PB[1] would not violate the prohibition in section 211(f) of the Act against the introduction of certain new fuels or additives, into the market without a waiver from EPA. Nonetheless, Phillips also submitted a waiver application under section 211(f)(4) of the Act for Phil AD PB.

Phil AD PB is a proprietary mixture formulated to provide valve lubrication in older engines not designed for the use of unleaded gasoline. The additive would contain about 4.2 grams per gallon elemental lead, and would be recommended for blending with unleaded or leaded gasoline at a ratio of 1:80 additive to gasoline (or one pint per five gallons of gasoline) for normal usage and 1:20 additive to gasoline (1 quart per five gallons of gasoline) for severe engine operation.

In its request for an administrative determination, Phillips stated that its fuel additive would be sold only as a consumer additive through discount stores, service station display counters, supermarkets and other establishments where individual consumers would purchase the product. Phil AD PB would be sold in pints, quarts, gallons and 55-gallon drums. Phillips stated that the pint, quart, and gallon sizes of Phil AD PB would be sold under the following marketing conditions designed to prevent the use of the additive in unleaded vehicles:

(1) *Labeling*—Phillips stated that each container of Phil AD PB would be boldly labeled that it was not for use in "unleaded gasoline only" vehicles. The label would also indicate that the use of Phil AD PB in an unleaded gasoline vehicle may void warranties on that vehicle.

(2) *Promotional material*—Phillips stated that the promotional material associated with its product would not promote the octane enhancement qualities of the product. Promotional material would be limited to advertising the reduction of valve seat recession associated with the use of unleaded gasoline in some older leaded engines.

(3) *Container Design*—Phillips also stated that all small containers of Phil AD PB (i.e., pints, quarts, and gallons) would be designed so that the container spout would not fit into the fuel filler inlet of a vehicle equipped with a restricted filler inlet pursuant to 40 CFR 80.24(b).

In addition to these three conditions, Phillips claimed that another factor likely to reduce the likelihood of Phil AD PB being used in unleaded vehicles would be the cost. Phillips stated that the expense of Phil AD PB would cause the cost of misfueling to be greater than the cost of proper fueling, and this in turn would eliminate a large part of the incentive to misuse the product.

A. Request for an Administrative Determination

In its request for an administrative determination, Phillips argued, among other things, that the prohibition in section 211(f)(1) of the Act was not applicable if the fuel or fuel additive manufacturer could demonstrate that the fuel or fuel additive would be sole only as a consumer additive.

Phillips stated that its additive would be marketed through discount stores, service station display counters, supermarkets and other establishments where individual consumers would purchase the product, and, in some cases, through marinas and farmer cooperatives for use by boat owners and farmers. The product would be sold in pints, quarts, gallons and 55-gallon drums.

B. Waiver Request Under Section 211(f)

In the event that EPA disagreed with Phillips' argument that no waiver is necessary, Phillips also submitted a request under section 211(f)(4) that the Administrator waive the prohibitions established under section 211(f)(1). Under section 211(f)(4), EPA may grant a waive only if the applicant demonstrates that its product will not cause vehicles in which it is used to exceed the emission standards to which the vehicles have been certified. Phillips pointed out that it was *not* attempting to demonstrate that its additive, if used in vehicles certified for use on unleaded gasoline, would not cause a failure to meet emission standards. Rather, it argued that the additive would not cause or contribute to a failure of unleaded vehicles to meet emission standards because it would not be used in unleaded vehicles.

Phillips argued that the measures discussed earlier, intended to reduce the possibility of misfueling, along with the cost of the product, would ensure that Phil AD PB would not be used in vehicles certified for the use of unleaded gasoline, and therefore, would not result in the failure of any vehicle in which it is used to meet applicable emission standards.[2] As such, Phil AD PB would qualify for a waiver under section 211(f)(4) of the Act.

II. EPA Determinations

EPA has consistently maintained—in accordance with Congress' intent—that additive sales to consumer end users (who put the additive into gasoline for their own vehicles) are not subject to the section 211(f)(1) prohibition and thus not require waivers. In EPA's March 7, 1985 lead phasedown regulations, the Agency reiterated this longstanding interpretation, stating that the leaded gasoline sold as a consumer additive would not require a waiver from EPA, unlike certain fuels or additives sold at the pump. 50 FR 9386. Today's notice once again reiterates that policy. Of course, the Agency retains the authority to regulate any additive or fuel under section 211(c) of the Act, if appropriate, to protect public health and welfare or to maintain the effectiveness of emission controls.

Thus, EPA agrees that sales of Phil AD PB (for mixing by consumers for use in their own vehicles) in accordance with the marketing restrictions described in Phillips' April 3 correspondence, would be well within the Agency's stated interpretation and would not require a waiver. Nor would such sales be subject to the lead phasedown regulations. EPA's policy regarding consumer end users does not extend, however, to individuals or groups (e.g., marinas or farm cooperatives) who would mix the additive into gasoline and then sell the blend to a final consumer. Individuals or groups mixing the additive with gasoline for resale would be considered refiners (*see* 40 CFR 80.2(h), (i)) and, in the case of a lead additive, would have to comply with the lead phasedown regulations at 40 CFR Part 80. These persons would have to report their lead usage as well as the lead content of the final fuel. This leaded gasoline production must be in accordance with the current lead phasedown standard and associated regulations in 40 CFR Part 80. Moreover, Phillips would be required to report lead transferred to these individuals or groups in Supplement B of its Lead Additive Report (EPA Form 3520-6B). *See* 40 CFR 80.20 (a)(ix). However, in accordance with the legislative history of section 211(f), no waiver would be required for the sale of lead additives to a refiner for use in leaded gasoline.

In summary, the Clean Air Act permits the sale of an additive such as Phil AD PB for direct use by consumer end users without a waiver. If the sale of the additive is not for the purpose of mixing by a consumer end user for use in the consumer's own vehicle, but rather to a party who will blend the additive with gasoline for resale to others, then that party must abide by regulations pertaining to refiners, including the lead phasedown regulations. The Agency is aware that the 55-gallon drum containers in particular could be purchased by a person who purports to be a consumer at the time of purchase, but who subsequently mixes the additive with gasoline for resale. EPA is concerned with such potential abuse of its lead phasedown rules and encourages Phillips to consider use of extra protection measures in marketing 55-gallon drum containers. EPA intends to monitor sales of lead additives closely to ensure that they are not used to circumvent or undermine the lead phasedown rules.

Concerning the waiver request, if the Administrator does not act to grant or deny an application within 180 days of receipt of the application, the waiver shall be treated as granted. As stated above, Phillips' additive, Phil AD PB, is not required to obtain a waiver if sold as a consumer additive under the conditions specified in its April 3 correspondence. However, a formal waiver application has been submitted, and thus, the 180-day deadline for action by the Administrator applies. Since the Agency has determined that a waiver is not necessary or appropriate for the uses of Phil AD PB described in Phillips' letter of April 3, the waiver request is hereby denied.

III. Additional Information

This action is not a "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), because it is not required to undergo "notice and comment" under section 553(b) of the Administrative Procedure Act or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

EPA has also determined that this action does not meet any of the criteria for classification as a "major rule" under Executive Order 12291. Thus, no regulatory impact analysis has been prepared.

This is a final Agency action of national applicability. Jurisdiction to review this action lies exclusively in the U.S. Court of Appeals for the District of Columbia Circuit. In accordance with section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of the date of publication. Under section 307(b)(2), judicial review may not be obtained in any subsequent judicial proceeding brought by the Agency to enforce the statutory prohibitions.

Dated: September 29, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-22412 Filed 10-2-86; 8:45 am]

BILLING CODE 6560-50-M

[1] In its April 3, 1986 submission, Phillips referred to its product as "VALUPRO." Subsequently, Phillips informed EPA that the product's name had been changed to Phil AD PB.

[2] Phillips also stated that proper use of Phil AD PB in vehicles designed to use leaded gasoline would not affect emissions of any pollutants for which emission standards apply.

[ER-FRL-3090-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed September 22, 1986 Through September 26, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860390, DSuppl, FHW, MN, WI, US 10 Improvement, St. Croix River Bridge Replacement, MN-61 to WI-29 and WI-10, Funding, Due: November 17, 1986, Contact: Roger Borg (612) 349-5230.

EIS No. 860391, Draft, USA, NM, White Sands Missile Range Ground Based Free Electron Laser Technology Integration Experiment Facility, Construction and Operation, Due: November 18, 1986, Contact: Rebecca Griffith (817) 334-2095.

EIS No. 860392, Draft, AFS, CA, Mendocino National Forest, Land and Resource Management Plan, Implementation, Due: January 2, 1987, Contact: Lyle Laverty (916) 934-3316.

EIS No. 860393, Draft, COE, OH, Wm. H. Zimmer Conversion Project, Nuclear Power Plant into Coal Fired Electrical Generating Plant, 10 and 404 Permit, Clermont County, Due: November 17, 1986, Contact: Robert Oliver (502) 582-5601.

EIS No. 860394, Final, FHW, CA, CA-4 Freeway Construction, Wilson Way to CA-99, Funding, San Joaquin County, Due: November 3, 1986, Contact: Michael Cook (916) 551-1307.

EIS No. 860395, Final, BLM, UT, Warm Springs Resource Area, Resource Management Plan, Implementation, Millard County, Due: November 3, 1986, Contact: Wayne Kammerer (801) 896-8221.

EIS No. 860396, Final, BLM, OR, WA, Baker Resource Area, Resource Management Plan, Implementation, Due: November 10, 1986, Contact: Sam Montgomery (503) 523-6391.

EIS No. 860397, Final, BLM, CO, Little Snake Resource Area, Resource Management Plan, Implementation, Due: November 3, 1986, Contact: Duane Johnson (303) 824-8261.

EIS No. 860398, Final, BLM, ID, Challis Planning Unit, Corral-Horse Basin, Jerry Peak West and Jerry Peak Wilderness Study Areas, Wilderness Recommendations, Custer County, Due: November 3, 1986, Contact: Jerry Goodman (208) 756-5400.

EIS No. 860399, Final, BLM, ID, Big Lost and Pahsimeroi Planning Units, Appendicitis Hill, White Knob Mountains and Burnt Creek Wilderness Study Areas, Wilderness Recommendations, Butte and Custer Counties, Due: November 3, 1986, Contact: Jerry Goodman (208) 756-5400.

EIS No. 860400, Final, BLM, ID, North Idaho Planning Area, Selkirk Crest, Crystal Lake, Grandmother Mountain, Snowhole Rapids and Marshall

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Mountain Wilderness Study Areas, Wilderness Recommendations, Due: November 3, 1986, Contact: Fritz Rennebaum (208) 765-7369.

EIS No. 860401, Draft, COE, OR, Malheur Lake Flood Damage Reduction Plan, Implementation, Harney County, Due: December 2, 1986, Contact: Witt Anderson (509) 522-6833.

EIS No. 860402, Final, OSM, TN, Rock Creek Watershed, Designation of Lands Unsuitable for Surface Coal Mining Operations, Bledsoe and Hamilton Counties, Due: November 3, 1986, Contact: Willie Gainer (615) 673-4346.

Amended Notices

EIS No. 860357, Draft, NOA, REG, PAC, Japanese Salmon Fishery 1987 through 1991 Incidental Take of Dall's Porpoise, Permit Issuance, Due: November 24, 1986, Published FR 9-5-86—Review period extended.

EIS No. 860220, DRevised, UAF, AZ, Sells Military Operations Area/Air Traffic Control Assigned Airspace Supersonic Flight Operations Overlying Tohono O'Odham Indian Reservation and Organ Pipe Cactus National Monument, Continuation, Pima County, Due: November 10, 1986, Published FR 6-13-86—Review period extended.

EIS No. 860288, Draft, AFS, SEV, Southern Region, Southern Pine Beetle Suppression Program on Federal and Non-Federal Lands, Implementation, Due: October 20, 1986, Published FR 9-19-86—Incorrect due date.

EIS No. 860361, DRevised, AFS, CA, Sierra National Forest, Land and Resource Management Plan, Due: December 12, 1986, Published FR 9-19-86—Incorrect due date.

EIS No. 860333, Draft, UAF, ND, SD, MN, Central Radar System, Over-the-Horizon Backscatter Radar System, Construction and Operation, Due: October 31, 1986, Published FR 8-22-86—Review period extended.

Dated: September 30, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-22492 Filed 10-2-86; 8:45]

BILLING CODE 6560-50-M

[ER-FRL-3092-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 15, 1986 through September 19, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in Federal Register dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-FRC-L05194-WA, Rating 3, Snohomish River Basin, 7 Hydroelectric Development Projects, Construction, Operation, and Maintenance, License, WA. SUMMARY: EPA believes the information presented in the draft EIS is insufficient to determine the significance or likelihood of adverse impacts, either from individual projects or cumulative effects. Critical deficiencies are: (1) Lack of instream flow agreements; (2) lack of site-specific geotechnical data; (3) presumed adequacy of yet undetermined mitigative measures; and (4) inadequate consideration of alternatives. In addition, the draft EIS analysis appears to be inconsistent with regional power forecasts. EPA believes that these deficiencies are of such a magnitude as to require preparation of a supplemental or revised draft EIS for full public review.

Final EISs

ERP No. F-AFS-F65008-WI, Nicolet Nat'l Forest, Land and Resource Mgmt. Plan, WI. SUMMARY: EPA's review resulted in no objections to the preferred alternative. EPA requested that the Record of Decision be amended to reflect a commitment to mitigation of wetland impacts and encouraged strict enforcement of erosion controls during road construction.

ERP No. F-AFS-K65085-NV, Humboldt Nat'l Forest, Land and Resource Mgmt. Plan, NV. SUMMARY: EPA is satisfied that concerns raised on the draft EIS have been addressed in the final EIS. EPA has asked to be kept informed of progress in carrying out mitigation measures that were adopted by the Forest Service in its Record of Decision.

ERP No. F-COE-F32183-MI, Great Lakes Connecting Channels and Harbors Improvements, St. Marys Fall Channel, St. Marys River, MI. SUMMARY: EPA's review resulted in no objections to the preferred alternative.

ERP No. F-COE-G36127-00, Slidell-Pearlington Flood Control Plan, Pearl River Basin, Pearl River, LA and MS. SUMMARY: The final EIS adequately responded to EPA comments issued on the draft EIS. EPA has not identified any new issues of concern with regard to the proposed action.

ERP No. F-FHW-G40113-AR, US 71 Construction, I-40 to Fayetteville Freeway, AR. SUMMARY: EPA has no objections to the proposed action as described.

ERP No. FS-FHW-H40133-IA, Relocated IA-58 and US 218 (formerly 518) Improvements, Relocated US 20 in Cedar Falls to IA-3 in Waverly, 404 Permit, IA. SUMMARY: EPA has concerns with noise impacts resulting from the project, but expressed no objections provided that FHWA provide noise mitigation during final design. EPA will coordinate with FHWA during this noise abatement evaluation. EPA complimented FHWA on their extensive effort to ensure that project impacts were suitably mitigated.

ERP No. F-IBR-K39016-CA, Grass Valley Creek Debris Dam Sediment Control Project, Trinity River, Construction and Operation, CA. SUMMARY: The final EIS addressed the concerns EPA raised on the draft EIS. EPA requested that it be kept informed of the progress.

ERP No. FA-USN-E11006-GA, Kings Bay Fleet Ballistic Missile Submarine Support Base, North River Access Restriction, Construction, GA. SUMMARY: EPA finds their initial comments satisfactorily addressed.

Regulations

ERP No. R-COE-A35151-00, 33 CFR Parts 209, 325, 336, 337, and 338, Operations and Maintenance Regulations for Activities Involving the Discharge of Dredged or Fill Material in Waters of the US and Ocean Waters (51 FR 19693). SUMMARY: EPA's review of the subject draft regulation revealed two major areas of concern. These two areas are the time allotted for states' actions with respect to: 1) water quality certifications, and 2) coastal zone consistency certifications.

ERP No. R-MMS-A02217-00, 30 CFR Parts 250 and 256, Oil, Gas, and Sulphur Operations in the Outer Continental Shelf (OCS), OCS Minerals and Rights-of-Way Mgmt., General and OCS Orders for all Regions of the OCS (51 FR 9316). SUMMARY: EPA believes the proposed rule simplifies and consolidates the existing mix of regulations, operating orders, and other directives without lessening environmental safeguards. EPA did, however, recommend several changes that would strengthen the rule.

Dated: September 30, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-22493 Filed 10-2-86; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-3088-5]

Science Advisory Board; Executive Committee Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board (SAB) on October 23-24. The meeting will be held at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Room 1101 West Tower. The meeting will begin at 9:00 a.m. October 23 and will adjourn at approximately 12:00 noon on October 24.

The purpose of the meeting is to brief and discuss with the Committee a number of issues including: reports of Science Advisory Board committees and subcommittees; new EPA requests for SAB reviews; a SAB risk communication discussion paper and other issues of interest to Committee members.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street SW. Washington, DC 20460 or call (202) 382-4126 by close of business October 17, 1986.

Dated: September 26, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-22413 Filed 10-2-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-58231; FRL-3090-8]

Toxic and Hazardous Substances Control; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

NOTICE: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two application for exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: October 20, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-58231]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86-69

Close of Review Period. November 7, 1986.

Manufacturer. Uniroyal, Incorporated.

Chemical. (G) An isocyanate terminated polyurethane prepolymer.

Use/Production. (G) Chemical intermediate for industrial applications. Prod. range: 45,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: inhalation, a total of 3 workers, up to 4 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. No data submitted.

T 86-81

Manufacturer. Confidential.

Chemical. (G) Amines, bis (hydrogenated tallow alkyl) methyl, citrates.

Use/Production. (G) Additive for commercial products Prod. range: Confidential.

Toxicity Data. No data on TME substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: September 30, 1986.

V. Paul Fuschini,

Acting Division Director, Information Management Division.

[FR Doc. 86-22414 Filed 10-2-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59787 FRL-3091-1]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMNs and provides a summary of each.

DATES: Close of Review Period.

Y 86-252, 86-253, 86-254 and 86-255—October 12, 1986.

Y 86-256 and 86-257—October 13, 1986.

Y 86-258—October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-252

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production: (S) Coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-253

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production: (S) Coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-254

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production: (S) Coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-255

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production: (S) Coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-256

Manufacturer. Confidential.
Chemical. Esterified copolymers of alpha olefins and maleic anydride.
Use/Production: (G) Oil additive. Prod. range: 273,000 to 1,500,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-257

Manufacturer. CYRO Industries.
Chemical. (G) Modified methyl methacrylate polymer.
Use/Production: (S) Industrial, commercial and consumer polymer phase of a thermoplastic molding and extrusion compound. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-258

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Polymer. Prod. range: 1,000 to 3,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 1 worker, up to 8 hrs/day, up to 4 day/yr.
Environmental Release/Disposal. No data submitted.

Dated: September 20, 1986.

V. Paul Fuschini,

Acting Division Director, Information Management Division.

[FR Doc. 86-22415 Filed 10-2-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51643; FRC-3091-2]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-two such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-1701, 86-1702, 86-1703, 86-1704, 86-1705, 86-1706, 86-1707, 86-1708, 86-1709, 86-1710, 86-1711 and 86-1712—December 17, 1986.

P 86-1713, 86-1714, 86-1715, 86-1716, and 86-1717—December 20, 1986.

P 86-1718, 86-1719, 86-1720, 86-1721, 86-1722, 86-1723, 86-1724, 86-1725, 86-1726, 86-1727, 86-1728, 86-1729, 86-1730, 86-1731 and 86-1732—December 21, 1986.

P 86-1733, 86-1734, 86-1735, 86-1736, and 86-1737—December 22, 1986.

P 86-1738, 86-1739, 86-1740, 86-1741, and 86-1742—December 23, 1986.

Written comments by:

P 86-1701, 86-1702, 86-1703, 86-1704, 86-1705, 86-1706, 86-1707, 86-1708, 86-1709, 86-1710, 86-1711 and, 86-1712—November 17, 1986.

P 86-1713, 86-1714, 86-1715, 86-1716, and 86-1717—November 20, 1986.

P 86-1718, 86-1719, 86-1720, 86-1721, 86-1722, 86-1723, 86-1724, 86-1725, 86-1726, 86-1727, 86-1728, 86-1729, 86-1730, 86-1731 and 86-1732—November 21, 1986.

P 86-1733, 86-1734, 86-1735, 86-1736, and 86-1737—November 22, 1986.

P 86-1738, 86-1739, 86-1740, 86-1741 and 86-1742—November 23, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51643]" and the specific PMN number should be sent to: document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by the EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-1701

Manufacturer. Alcolac, Incorporated.
Chemical. (G) Hydroxylated, unsaturated natural ester.
Use/Production. (G) A moisturizer and a chemcial intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 1 worker, up to 2 hrs/day, up to 117 days/yr.
Environmental Release/Disposal. 21 to 42 kg released to water. Disposal by Publicly Owned Treatment Work (POTW).

P 86-1702

Manufacturer. Alcolac, Incorporated.
Chemical. (G) Polyalkoxylated, hydroxylated natural ester.
Use/Production. (G) Moisturizer. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 1 to 2 workers, up to 3 hrs/day, up to 25 days/yr.
Environmental Release/Disposal. 94 to 188 kg released to water. Disposal by POTW.

P 86-1703

Manufacturer. Alcolac, Incorporated.
Chemical. (S) Poly alkoxylated alkyl pheny sodium sulfate.
Use/Production. (S) Emulsifier for emulsion polymerization. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 1 worker, up to 2 hrs/day, up to 30 days/yr.

Environmental Release/Disposal. 88 to 176 kg released to aqueous. Disposal by POTW.

P 86-1704

Manufacturer. Alcolac, Incorporated.
Chemical. (S) Sodium sulfate of oxirane, methyl-polymer with oxirane, mono (octyl phenyl) ether.
Use/Production. (S) Emulsifier for emulsion polymerization. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 1 worker, up to 2 hrs/day, up to 30 days/yr.
Environmental Release/Disposal. 88 to 176 kg released to aqueous. Disposal by POTW.

P 86-1705

Manufacturer. Alcolac, Incorporated.
Chemical. (G) Alkyl phenyl polyalkoxylate.
Use/Production. (G) Emulsifier, intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/day, up to 28 days/yr.
Environmental Release/Disposal. 97 to 194 kg released to aqueous. Disposal by POTW.

P 86-1706

Manufacturer. Alcolac, Incorporated.
Chemical. (S) Polypropylene glycol octyl phenyl ether.
Use/Production. (S) Raw material for DV-1777. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/day, up to 10 days/yr.
Environmental Release/Disposal. 97 to 194 kg released to aqueous. Disposal by POTW.

P 86-1707

Manufacturer. Occidental Chemicals Company.
Chemical. (G) Dialkyl, dihydroxyalkyl quarternary sulfate salt.
Use/Production. (G) Intermediate (precursor reactant). Prod. range: Confidential.
Toxicity Data. No data (on PMN substance) submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-1708

Manufacturer. American Hoechst Corporation.
Chemical. (G) Fiber reactive monoazo dyestuff.
Use/Production. (G) Fiber reactive dye for fibers. Prod. range: Confidential.
Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin — Non-irritant, Eye — Non-irritant.
Exposure. Confidential.
Environmental Release/Disposal. No release. Disposal by on site NPDES Treatment Works.

P 86-1709

Importer. Rohm and Haas Company.
Chemical. (G) Crosslinked poly (acrylic aminium chloride).
Use/Import. (G) For use with aqueous solutions with a contained use. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No exposure.
Environmental Release/Disposal. No release.

P 86-1710

Importer. Rohm and Haas Company.
Chemical. (G) Crosslinked poly (acrylic acid).
Use/Import. (G) For use with aqueous solutions in a contained use. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No exposure.
Environmental Release/Disposal. No release.

P 86-1711

Importer. Rohm and Haas Company.
Chemical. (G) Crosslinked poly (aminoacrylamide).
Use/Import. (G) For use with aqueous solutions in a contained use. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No exposure.
Environmental Release/Disposal. No release.

P 86-1712

Manufacturer. Milliken and Company.
Chemical. (G) Alkoxylated diphenol.
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-1713

Importer. Confidential.
Chemical. (G) Urethane oligomer.
Use/Importer. (G) Wood coatings. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No release.

P 86-1714

Importer. Cray Valley Products, Incorporated.
Chemical. (G) Carboxyacrylic resin solution.
Use/Import. (S) Industrial paint. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal and inhalation, a total of 100 workers, up to 200 hrs/yr each.
Environmental Release/Disposal. No data submitted.

P 86-1715

Importer. Interchem, Incorporated.
Chemical. (G) Cesr phosphate ester, sodium salt.
Use/Import. (S) Industrial, commercial and consumer film former, specialty on paper surface. Import range: Confidential.
Toxicity Data. Acute oral: 20 ml/kg.
Exposure. Use: dermal, inhalation and ocular, a total of 1 person/shift, 3 shifts/day, up to 1 hr/shift.
Environmental Release/Disposal. No data submitted.

P 86-1716

Importer. CIBA-GEIGY Corporation.
Chemical. (G) Substituted triazine azo naphthalenesulfonic acid.
Use/Importer. (G) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral: >2,000 mg/kg. Acute dermal: >2,000 mg/kg. Irritation: Skin—Non-irritant, Eye—Irritant: Skin sensitization—Sensitizer; Ames test: Non-mutagenic; NOEL: 300 mg/kg/day.
Exposure. Processing: inhalation, a total of 1 worker, up to .5 hr/day, up to 3 days/yr.
Environmental Release/Disposal. 0.4 kg/batch released to water. Disposal by POTW.

P 86-1717

Manufacturer. Scher Chemicals Incorporated.
Chemical. (S) Benzenemethanaminium, N-(3-amidopropyl)-N, N-dimethyl,-N-(hydrogenated C^{18}-unsaturated dimer acyl) deriv. chlorides.
Use/Production. (S) Cationic surfactant and emulsifier for liquid detergents and for fabric softeners. Prod. range: 7,000 to 10,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 2 hrs/day, up to 5 days/yr.
Environmental Release/Disposal. 5 kg/batch released to water. Disposal by POTW.

P 86-1718

Manufacturer. Dynamit Nobel Chemical.
Chemical. (S) 2-Methoxyethyl cyanoacetate.

Use/Production. (S) Industrial intermediate for specialty cyanoacrylate adhesives. Prod. range: 50,000 to 100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to .5 hr/day, up to 15 days/yr.

Environmental Release/Disposal. 7.5 kg released to land. Disposal by Resource Conservation Recovery Act (RCRA) permitted landfill.

P 86-1719

Importer. Confidential.

Chemical. (G) Polycyclic organic pigment.

Use/Import. (G) Colorant. Import range: Confidential.

Toxicity Data. No data submitted on the PMN substance submitted.

Exposure. Processing: inhalation, dermal and occular, a total of 1 worker.

Environmental Release/Disposal. Disposal by landfill and incineration.

P 86-1720

Manufacturer. Fritzsche Dodge & Olcott—A Unit of BASF K&F Corporation.

Chemical. (S) 4-(1,5-Dimethyl hexylidene)-1-methylcyclohexene 1 4-(1-methylene-5-methylhexyl)-1-methylcyclohexene 1, 4-(1,5-dimethyl-1-hexenyl)-1-methylcyclohexene 1.

Use/Production. (S) Consumer, as a component of fragrance compounds which may find end use in household chemicals such as dishwashing and laundry detergents, air fresheners, etc. Prod. range: 90 to 180 kg/yr.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Less than 1 kg/day released to air and water. Disposal by plant waste water treatment.

P 86-1721

Importer. Confidential.

Chemical. (G) Phenolic acrylic.

Use/Import. (G) Coating resin. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1722

Importer. Confidential.

Chemical. (G) Phenolic polyurethane resin.

Use/Import. (G) Coating resin. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1723

Manufacturer. Fritzsche Dodge & Olcott—A Unit of BASF K&F Corporation.

Chemical. (S) 3-(1-Ethoxyethoxy)-3,7-dimethyl-octene.

Use/Production. (S) Consumer, as a component for fragrance compounds which may find end use in household chemicals such as dishwashing and laundry detergents, air fresheners, etc. Prod. range: 100 to 1,000 kg/yr.

Toxicity Data. Irritation: Skin—Non-irritant, Eye—Non-irritant, Skin sensitization—Non-sensitizer.

Exposure. Confidential.

Environmental Release/Disposal. Less than 1 kg/day released to air and water. Disposal by waste water treatment plant on-site.

P 86-1724

Manufacturer. AZS Chemical Corporation.

Chemical. (G) Acid-terminated, isophthalic/terphthalic polyester resin.

Use/Production: (S) Industrial binder in warp sizing of spun yarns, sizing agent for filament yarns and hand builder for some types of finished goods. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal inhalation, a total of 18 workers, up to 2 hrs/day, up to 12 days/yr.

Environmental Release/Disposal. 1,400 kg/batch released to water. Disposal by waste water treatment facility.

P 86-1725

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified ethylene carbon monoxide copolymer.

Use/Production: (G) Adhesives for polar substrates. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1726

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified ethylene carbon monoxide copolymer.

Use/Production: (G) Adhesives for polar substrates. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1727

Manufacturer. The Dow Chemical Company.

Chemical. (G) Difunctional organo lithium initiator.

Use/Production: (S) Site-limited polymerization initiator. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 3 workers.

Environmental Release/Disposal. No release. Disposal by incineration.

P 86-1728

Manufacturer. The Dow Chemical Company.

Chemical. (G) Difunctional organo lithium initiator.

Use/Production: (S) Site-limited polymerization initiator. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 3 workers.

Environmental Release/Disposal. No release. Disposal by incineration.

P 86-1729

Manufacturer. Confidential.

Chemical. (G) Polyalkylene oxide, aromatic diisocyanate prepolymer.

Use/Production: (G) Reactive elastomer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1730

Importer. Confidential.

Chemical. (G) Diarylaroylphosphine oxide.

Use/Import. (G) Photoinitiator to be used in fast curing thin sections of polyester and vinyl ester resin. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1731

Manufacturer. Confidential.

Chemical. (G) Disubstituted quinoline.

Use/Production: (S) Industrial agricultural chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Mild-irritant, Eye—Irritant; Ames test: Mutagenic.

Exposure. Manufacture and use: dermal and inhalation, a total of 158 workers, up to 5 hrs/day, up to 177 days/yr.

Environmental Release/Disposal. Released to air. Disposal by incineration.

P 86-1732

Manufacturer. Confidential.

Chemical. (G) Substituted heterocycle azo naphthalenesulfonic acid, salt.

Use/Production: (G) Open, non-dispersive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1733

Manufacturer. King Industries, Incorporated.

Chemical. (G) Alkyl benzene sulfonic acid, compound with amine.

Use/Production: (G) Coatings additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers.

Environmental Release/Disposal. Confidential.

P 86-1734

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester urethane.

Use/Production: (S) Industrial, commercial and consumer coating and adhesive. Prod. range: 20,000 to 40,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/day, up to 10 days/yr.

Environmental Release/Disposal. No data submitted.

P 86-1735

Manufacturer. AZS Corporation.

Chemical. (G) Saturated polyester resin.

Use/Production: (S) Industrial and commercial pigment binder in polyester coatings. Prod. range: 50,000 to 400,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 6 hrs/day, up to 6 days/yr.

Environmental Release/Disposal. 2 kg/batch released to air with 900 kg to water. Disposal by wastewater treatment.

P 86-1736

Importer. Cray Valley Products, Incorporated.

Chemical. (G) Carboxyacrylic resin solution.

Use/Import: (S) Industrial paint. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-1737

Importer. Cray Valley Products, Incorporated

Chemical. (G) A polyamino amide solution.

Use/Import: (S) Industrial protective paints. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-1738

Manufacturer. P–S Chemicals, Incorporated.

Chemical. (G) Neutralized acrylic acid homopolymer.

Use/Production: (S) Industrial dispersant for water base minerals slurries. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers, up to 8 hrs/day, up to 100 day/yr.

Environmental Release/Disposal. .5 kg/batch released to water. Disposal by POTW.

P 86-1739

Manufacturer. Confidential.

Chemical. (G) Acrylylalkyl substituted benzenepolycarboxylic acid derivative.

Use/Production: (G) Contained use in an article. Prod. range: 700 to 12,500 kg/yr.

Toxicity Data. Acute oral: 5,000 kg/mg; Acute dermal: 20 ml/kg; Irritation: Skin—Slight irritant; Eye—Slight irritant.

Exposure. Manufacture and processing: dermal, a total of 36 workers, up to .3 hr/day, up to 24 days/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

P 86-1740

Manufacturer. Confidential.

Chemical. (G) Mixed arylamides from reaction of arylaminoindenamine with an aryl acid chloride, an alkoxy substituted aryl acid chloride and a monobrominated aryl acid chloride.

Use/Production: (G) Contained use in an article. Prod. range: 10 to 300 kg/yr.

Toxicity Data. Acute oral: 5,000 kg/mg; Acute dermal: 2,000 mg/kg Irritation: Skin—Slight irritant.

Exposure. Manufacture and processing: dermal, a total of 30 workers, up to .7 hr/day, up to 24 days/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

P 86-1741

Manufacturer. Confidential.

Chemical. (G) Acrylaminoindenamine.

Use/Production: (G) Chemical intermediate. Prod. range: 10 to 200 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 8 workers, up to .3 hr/day, up to 2 days/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

P 86-1742

Importer. Cray Valley Products, Incorporated.

Chemical. (S) Polymer of epoxidized soya bean oil and acrylic acid.

Use/Import: (S) Industrial metal coatings. Import range: 1,000 to 10,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import: dermal, inhalation and occular, a total of 5 workers.

Environmental Release/Disposal. No data submitted.

Dated: September 26, 1986.

V. Paul Fuschini,

Acting Division Director, Information Management Division.

[FR Doc. 86-22416 Filed 10-2-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51640; FRL-3060-1]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 86-20751 beginning on page 32956 in the issue of Wednesday, September 17, 1986, make the following corrections:

1. On page 32956, in the third column, in the sixth line under, "Dates", "86-6124" should read "86-1624".

2. On page 32956, in the third column, in the fourth and fifth lines under "Written comments by:", move "November 2, 1986." after "1617" and before "86-1618".

3. On page 32957, in the second column, under "P 86-1619", in the first line, "*Manufacturer.*" should read "*Importer.*".

4. On page 32958, in the first column, under "P 86-1629", in the sixth line, "50 to" should read "500 to".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

Citco Bancshares, Inc., et al; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation

Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citco Bancshares, Inc.*, Elizabethton, Tennessee; to engage *de novo* through its subsidiary, Southeast Financial Services, Inc., Nashville, Tennessee, in the servicing and making of loans, primarily SBA loan packages, pursuant to section 225.25(b) (1) of the Board's Regulation Y. These activities will be conducted throughout the State of Tennessee.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Busey Corporation*, Urbana, Illinois; to engage *de novo* through its subsidiary, First Busey Trust and Investment Co., Urbana, Illinois, in trust company functions and investment of financial advice pursuant to sections 225.25(b) (3) and (4) of the Board's Regulation Y.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. **Commonwealth Bancorp, Inc.**, Arlington, Texas; to engage *de novo* through its subsidiary, Commonwealth Services, Inc., Arlington, Texas, in data processing and data transmission services, facilities, and data bases; or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, September 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22402 Filed 10-2-86; 8:45 am]

BILLING CODE 6210-01-M

City Holding Co. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 24, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *City Holding Company*, Charleston, West Virginia; to acquire 100 percent of the voting shares of The Peoples Bank of Point Pleasant, Point Pleasant, West Virginia.

2. *Maxwell Corporation*, Northfork, West Virginia; to become a bank holding company by acquiring 27.72 percent of the voting shares of Ameribank, Charleston, Charleston, West Virginia. Comments on this application must be received by October 27, 1986.

3. *National Banc of Commerce Company*, Charleston, West Virginia, to acquire 100 percent of the voting shares of The Chemical Bank and Trust Company, South Charleston, West Virginia. Comments on this application must be received by October 27, 1986.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Community Bancshares, Inc.*, Blountsville, Alabama; to acquire 100 percent of the voting shares of Madison County Bank, New Hope, Alabama, a *de novo* bank.

2. *Community Bancshares, Inc.*, Blountsville, Alabama; to acquire 100 percent of the voting shares of Morgan County Bank, Falkville, Alabama, a *de novo* bank.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Avoca Financial Services, Inc.*, Council Bluffs, Iowa; to become a bank holding company by acquiring 94.58 percent of the voting shares of Citizens Savings Bank, Avoca, Iowa.

2. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to acquire 67 percent of the voting shares of Peoples National Bank of Springfield, Springfield, Illinois.

3. *Security Bancorp, Inc.*, Southgate, Michigan; to acquire 100 percent of the voting shares of Trenton Bank and Trust Company, Trenton, Michigan.

4. *Sturm Investment, Inc.*, Omaha, Nebraska; to merge with First National Bank of Macomb, Macomb, Illinois, and thereby indirectly acquire First Holdings, Inc., Omaha, Nebraska. Comments on this application must be received by October 20, 1986.

5. *Western Iowa Consultants, Inc.*, Council Bluffs, Iowa; to become a bank holding company by acquiring 94.58 percent of the voting shares of Citizens Savings Bank, Avoca, Iowa.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commercial Bank Investment Company*, Denver, Colorado, and Commercial Bancorporation of Colorado, Denver, Colorado; to acquire 83.8 percent of the voting shares of Rocky Mountain Bank and Trust Company, Fort Collins, Colorado.

2. *First United Bancshares, Inc.*, Ord, Nebraska; to acquire 100 percent of the voting shares of Mid-Nebraska Bancshares, Inc., Ord, Nebraska, and thereby indirectly acquire Nebraska State Bank, Ord, Nebraska; Wolbach Insurance Agency, Inc., Ord, Nebraska, and thereby indirectly acquire Peoples State Bank, Wolbach, Nebraska; Broken Bow Enterprises, Inc., Ord, Nebraska, and thereby indirectly acquire Broken Bow State Bank, Broken Bow, Nebraska; and Grant Bancshares, Inc., Ord, Nebraska, and thereby indirectly acquire The Farmers National Bank of Grant, Grant, Nebraska.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Amtex Bancshares, Inc.*, Bridge City, Texas; to acquire 100 percent of the voting shares of Pavillion National Bank, Dallas, Texas.

2. *Rio Grande City Bancshares, Inc.*, Rio Grande City, Texas; to merge with Floresville Bancshares, Inc., Floresville, Texas, and thereby acquire Bank of Floresville, Floresville, Texas.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Orange National Bancorp*, Orange, California; to become a bank holding company by acquiring 100 percent of the voting shares of Orange National Bank, Orange, California.

Board of Governors of the Federal Reserve System, September 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22403 Filed 10-2-86; 8:45 am]

BILLING CODE 6210-01-M

GAB Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 1986.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *GAB Bancorp*, Jasper, Indiana; to engage *de novo* through its subsidiary, GAB Mortgage Corp., Jasper, Indiana, in the making and servicing of loans, limiting its activities to loan origination activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Indiana.

Board of Governors of the Federal Reserve System, September 30, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-22521 Filed 10-2-86; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 1986.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northwest Corporation*, Minneapolis, Minnesota; to acquire through its subsidiaries, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa, Dial Bank, Sioux Falls, South Dakota. In connection with this application, Norwest Financial Services, Inc., and Norwest Financial, Inc. have applied to become bank holding companies. Norwest Corporation, Norwest Financial Services, Inc., and Norwest Financial, Inc., propose to continue to engage, directly or through their subsidiaries, in the activities of consumer finance; sales finance;

commercial finance (including, but not limited to, accounts receivable financing, factoring and other secured lending activities); lease financing; the underwriting of credit life and credit accident and health insurance related to extensions of credit by Norwest Corporation or its subsidiaries; and the offering for sale and selling of bookkeeping, payroll and other management financial reporting services in the states of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indian, Iowa, Kansas, Kentucky, Louisian, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming; and to continue to engage, directly or through their subsidiaries on a nationwide basis, in general insurance agency activties, pursuant to section 4(c)(8)(G) (subject to any state law restrictions) of the Bank Holding Company Act of 1956; and in the activities of servicing loans and other extensions of credit for others; and making, acquiring or servicing loans and other extensions of credit of a type made by a mortgage company pursuant to § 225.25(b)(1), (b)(5), (b)(7), and (b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–22404 Filed 10–2–86; 8:45 am]

BILLING CODE 6210–01–M

United Bancorp of Kentucky, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 24, 1986.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *United Bancorp of Kentucky, Inc.*, Lexington, Kentucky; to acquire 100 percent of the voting shares of Bank of Lexington & Trust Company, Inc., Lexington, Kentucky.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Corporation*, Harwood Heights, Illinois; to acquire 100 percent of the voting shares of Parkway Bank and Trust Company, Harwood Heights, Illinois. Comments on this application must be received by October 23, 1986.

2. *Fort Wayne National Corporation*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Old-First National Corporation, Bluffton, Indiana, and thereby indirectly acquire Old-First National Bank in Bluffton, Bluffton, Indiana. Comments on this application must be received by October 23, 1986.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Coleman Bancshares, Inc.*, Coleman, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Coleman National Bank of Coleman, Coleman, Texas.

Board of Governors of the Federal Reserve System, September 30, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–22522 Filed 10–2–86; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 26, 1986.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of packages)

National Institutes of Health

Subject: Piedmont Health Survey of the Elderly—Revision—(0925–0287)
Respondents: Individuals or households

Centers for Disease Control

Subject: Dust and Endotoxin Dose Response Relationship for Cotton Dust—Extension—(0920–0177)
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

Social Security Administration

(Call Reports Clearance Officer on 301–594–5706 for copies of package)
Subject: Report of Student Beneficiary About to Attain Age 19—Extension—(0960–0274)
Respondents: Individuals or households
OMB Desk Officer: Judy A. McIntosh

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–8650 for copies of package)
Subject: Quarterly Acute Care General Hospital Report Summary and the Quarterly Specialty Hospital Review Reporting Summary—Extension—(0938–0418)—HCFA–510–511
Respondents: Small businesses or organizations
Subject: Condition of Approval and Reapproval and Procedures for Reduction of FFP 45 CFR 433.112, 433.116, and 433.117—Extension—(0938–0442)—HCFA–R–82
Respondents: Small businesses or organizations
Subject: Financial Statement of Debtor—Extension—(0938–0270)—HCFA–379
Respondents: Individuals or households; Businesses or other for-profits; Small businesses or organizations
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Dated: September 29, 1986.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–22521 Filed 10–2–86; 8:45 am]

BILLING CODE 4160–17–M

Health Resources and Services Administration

Application Announcement for Grants for Residency Training in General Internal Medicine and General Pediatrics; Amendment

The Bureau of Health Professions, Health Resources and Services Administration, announces the following amendment to the application announcement for Grants for Residency Training in General Internal Medicine and General Pediatrics which was published in the Federal Register, Vol. 51, No. 177, September 12, 1986, page 32541.

The following paragraph is deleted:

Additionally, all applicants must either demonstrate an increase in minority and disadvantaged residents or show evidence of efforts to recruit minority and disadvantaged residents into their medical education program. The deleted paragraph is replaced by the following:

Additionally, it is proposed to give special consideration to applicants who either demonstrate an increase in minority and disadvantaged residents or show evidence of efforts to recruit minority and disadvantaged residents into their medical education programs.

Interested persons are invited to comment on the proposed special consideration. Normally, the comment period would be 60 days. However, due to the need to implement changes in time for the Fiscal Year 1987 award cycle, this comment period has been reduced to 30 days. All comments received on or before November 3, 1986, will be considered before the final special consideration is established. No funds will be allocated or final selections made until a final notice is published indicating whether the proposed special consideration is to be applied.

Written comments should be addressed to: Acting Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm. 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: September 29, 1986.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 86–22434 Filed 10–2–86; 8:45 am]

BILLING CODE 4160–17–M

Public Health Service

Food and Drug Administration; Statement of Organizations, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 49 FR 10165, March 19, 1984, and at 50 FR 25329, June 18, 1985) is amended to reflect organizational changes in the Food and Drug Administration (FDA).

The changes include transferring food chemistry, science, and technology functions from the Office of Nutrition and Food Sciences, Center for Food Safety and Applied Nutrition, FDA, to the Office of Physical Sciences. This reorganization will enable the Center to redirect sufficient laboratory resources which will assist the agency in addressing emerging public health concerns regarding food processing and technology.

Section HF–B, Organization and Functions is amended as follows:

1. Delete paragraph (k–4), *Office of Physical Sciences (HFFW)* in its entirety and replace it with a new paragraph (k–4) reading as follows:

(k–4) *Office of Physical Sciences (HFFW).* Provides scientific evaluation of the chemical data in food additive petitions. Estimates human exposure to food additives and their impurities.

Evaluates color additive petitions for adequacy and reliability of chemical data; administers examination of foods, drugs, and cosmetics for unpermitted uses of color additives and for uses of permitted color additives in an unsafe manner. Provides analytical services in support of Center and field programs.

Originates, plans, and conducts research to elucidate the composition/identity of cosmetics, color additives, color additive diluents, natural toxins, inadvertent industrial chemical contaminants, metals, and related substances to determine potential contamination. Develops methodology for the determination of these substances.

Administers the color certification program and performs inspections of color manufacturers in conjunction with the field.

Develops methods of analysis for foods, food additives, color additives, pesticides, cosmetics, metals, adulterated products, and inadvertent natural and industrial contaminants in food.

Determines marketing patterns for food contact materials and establishes estimates for dietary exposure to indirect food additives.

Provides information to appropriate components on the planning, administration, and evaluation of compliance programs to minimize public health and economic problems associated with cosmetic production, packaging, distribution, and contamination of foods by pesticides, industrial chemicals, metals, and natural toxins.

Develops, collects, coordinates, and interprets technical information regarding the composition, quality, manufacture, packaging, marketing, and consumption patterns of foods.

Develops, evaluates, and drafts the substantive content of food standard proposals establishing standards of identity, quality, and fill of container and the technological and engineering specifications of Current Good Manufacturing Practice (CGMP) regulations.

Develops, collects, coordinates, and interprets technical information to evaluate the effect of processing on the composition, interaction and transformation of dietary and other components in food matrices. Provides training in food processing technologies in support of agency programs. Develops, evaluates, and monitors studies to address the impact of biotechnology on food processing and issues of public health concern.

2. Delete paragraph (k–5) *Office of Nutrition and Food Sciences (HFFV)* in its entirety and replace it with a new paragraph (k–5), reading as follows:

(k–5) *Office of Nutrition and Food Sciences (HFFV).* Develops, recommends, and implements the Center's policy and regulatory approaches on the nutritional aspects of the national food supply and the application of modern clinical nutritional knowledge to evolution of special foods for dietary management of disease and injury.

Originates, plans, conducts, and monitors research and surveillance on the nutritional composition and quality of foods, the nutritional status and food consumption patterns of the population, factors affecting nutrient requirements, the microbial hazards associated with food and cosmetic products, the adverse effects of nutrient imbalance and excesses, and methods of nutrient analysis.

Maintains the Center's nutrient analytical capability for compliance purposes in cooperation with the field and maintains the data concerning food composition, food consumption, food ingredients, and microbial hazards in cooperation with other Government agencies.

Develops, implements, and evaluates information and education programs for consumers, arising from consumer experiences and expectations with regard to nutrition and products regulated by the Center.

Originates, plans, conducts, and monitors research on consumer exposure, experience, and expectations pertaining to products regulated by the Center.

Originates, plans, conducts, and monitors research (including planning field studies) to identify, evaluate, and resolve problems of food hygiene and sanitation, specifically microbiological research and technical support to all components of the Center and to the field.

Provides advice and guidance to the Center in the areas of consumer behavior, societal trends, and forecasts.

Dated: September 23, 1986.

Willard J. Forbush,

Director, Office of Management.

[FR Doc. 86-22482 Filed 10-2-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-8448-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Chenega Corporation for approximately 1 acre. The lands involved are in the vicinity of Chenega, Alaska.

Seward Meridian, Alaska

T. 2 N., R. 8 E. (Surveyed)

Sec. 28, Lot 1.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the CORDOVA TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 3, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-22398 Filed 10-2-86; 8:45 am]

BILLING CODE 4310-JA-M

Availability of Proposed Southern Rio Grande Plan Amendment; Environmental Impact Statement, (SRGPA/EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the proposed (SRGPA/EIS). The document considers and analyzes a proposed State of New Mexico land exchange (73,560 acres of offered State land in the White Sands Missile Range and 5,000 acres of selected public land east of Las Cruces, New Mexico) and other land tenure adjustments for Dona Ana County, New Mexico. The Final contains the Proposed Plan. The Proposed Plan is a modified version of the Preferred Alternative (Alternative III) published in the Draft in March 1986. The Proposed Plan was developed as a result of comments received on the Draft SRGPA/EIS. Any person who participated in the planning process and has an interest that is or may be affected by approval of the proposed plan may file a protest.

DATE: Protest to the Proposed Plan must be filed by November 10, 1986.

ADDRESS: Protest must be sent to: Director (760), Bureau of Land Management, Department of the Interior, 18th & C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Marvin M. James, SRGPA/EIS Team Leader, 1800 Marquess Street, Las Cruces, New Mexico 88005, (505) 525-8228 or FTS 571-6312.

SUPPLEMENTARY INFORMATION: Persons who have participated in the planning process and have interests which may be adversely affected may protest approval of the plan. Protests should be made to the BLM Director with the following information:

1. Name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue and issues being protested.
3. A statement of the part or parts being protested.
4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records.
5. A concise statement explaining why the protesting party disagrees with BLM's Proposed Plan.

At the end of the 30-day protest period, the Proposed Plan, excluding any portions under protest, shall become final. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest. Upon approval the final plan will be published with the Record of Decision.

A limited number of copies of the Final SRGPA/EIS are available from the BLM, Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005. Public reading copies are available for review at the BLM New Mexico State Office, other BLM District Offices in New Mexico, and public and university libraries in Alamogordo, Truth or Consequences, Las Cruces, Portales, Santa Fe, and Albuquerque, New Mexico and El Paso, Texas.

Dated: September 23, 1986.

Monte G. Jordan,

Acting State Director.

[FR Doc. 86-22401 Filed 10-2-86; 8:45 am]

BILLING CODE 4310-FB-M

Iditarod National Historic Trail Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: The Iditarod National Historic Trail (INHT) Advisory Council will meet to advise the Secretary of the Interior, through the designated official with regard to the implementation of a comprehensive management plan for the Iditarod National Historic Trail, Alaska.

Designated Official: Wayne A. Boden, District Manager, Anchorage District Office, Bureau of Land Management.

DATES: November 18 and 19, 1986.

Place: Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507.

Agenda

Monday, November 18, 1986

1:00 P.M.—Call to Order
1:15 P.M.—A Brief History of the National Trail by Joseph Redington, Sr.
1:30 P.M.—Iditarod National Historic Trail Slide Program
2:00 P.M.—Staff Reports: Cooperative Agreements—(BLM), Rights-of-Way Report—(BLM), National Register of Historic Places Report—(BLM), Gift Catalog Report—(FWS)
3:30 P.M.—Agency and Organization Reports

Tuesday, November 18, 1986

8:30 A.M.—Call to Order/Discussion of Issues
9:00 A.M.—Open Public Testimony
10:30 A.M.—Break
11:15 A.M.—Close of Public Testimony Summary of Issues
11:30 A.M.—Lunch Break
1:00 P.M.—Open Discussion and Resolutions
4:00 P.M.—Summary and Adjournment

Wayne A. Boden,

Anchorage District Manager.

[FR Doc. 86-22442 Filed 10-2-86; 8:45 am]

BILLING CODE 4310-JA-M

[AK-975-07-4215-02]

Fairbanks District Advisory Council Meeting

The Advisory Council for the Fairbanks District of the Bureau of Land Management will have a general meeting on Wednesday, November 5, 1986. The meeting will be held in the training rooms of the BLM/Fairbanks District Office, 1541 Gaffney Road, Fairbanks (on Fort Wainwright).

The meeting will convene at 9 a.m. and conclude at 5 p.m. Public comments will be received by the Council from 3 to 4 p.m. Oral comments may be limited by time and it is recommended that public comments be submitted in writing at the meeting.

The major topics of discussion will be:

1. Review of Preferred Alternative of the Utility Corridor Resource Management Plan.
2. Proposals for off-road vehicle management in the Utility Corridor.
3. Review of draft charter and by-laws for the Northern Alaska Advisory Council.
4. Recreational opportunities on public lands under the management of the Bureau of Land Management in the interior and northern parts of Alaska.

All Advisory Council meetings are open to the public. For additional information contact the Bureau of Land Management, Public Affairs Office, 1541 Gaffney Road, Fairbanks, Alaska 99709, telephone (907) 356-2345.

Donald E. Runberg,

District Manager, Fairbanks District Office.

[FR Doc. 86-22435 Filed 10-2-86; 8:45 am]

BILLING CODE 4310-JA-M

[ID-040-08-4332-08]

Environmental Impact Statement Availability; Challis and Big Lost/Pahsimeroi Wilderness Proposals

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability of two final Environmental Impact Statements [EISs] for the Challis wilderness proposals and the Big Lost/Pahsimeroi wilderness proposals.

SUMMARY: The Challis EIS assesses the environmental consequences of managing three wilderness study areas (WSAs) as wilderness or non-wilderness and of managing a portion of two of those WSAs as wilderness. The alternatives assessed in the Challis EIS include: (1) A "no action/no wilderness" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) "partial wilderness" alternatives for the Corral-Horse Basin and Jerry Peak WSAs.

The names of the three WSAs analyzed in the Challis EIS, their total acreage, and the proposed action for each are as follows:

—Corral/Horse Basin—46,500 acres, all non-suitable for wilderness designation;
—Jerry Peak—46,150 acres, 26,750 suitable, and 19,400 non-suitable for wilderness designation;
—Jerry Peak West—13,530 acres, all non-suitable for wilderness designation.

The Big Lost/Pahsimeroi EIS assesses the environmental consequences of managing three wilderness study areas (WSAs) as wilderness or non-wilderness, and of managing a portion of two of those WSAs as wilderness. The alternatives assessed in the Big Lost/Pahsimeroi EIS include: (1) A "no wilderness" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) a "partial wilderness" alternative for the Appendicitis Hill and Burnt Creek WSAs.

The names of the three WSAs analyzed in the Big Lost/Pahsimeroi EIS, their total acreage, and the proposed action for each are as follows:

—Appendicitis Hill—21,800 acres, all non-suitable for wilderness designation;
—White Knob Mountains—6,950 acres, all non-suitable for wilderness designation;
—Burnt Creek—24,980 acres, all non-suitable for wilderness designation.

Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of these two EISs. This complies with the Council of Environmental Quality Regulations 40 CFR, Part 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of these EISs may be obtained from the District Manager, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20240; or
Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Jerry Goodman, District Manager, Shoshone District Office, P.O. Box 430, Salmon, Idaho 83467. Telephone (208) 756-5400.

Dated: September 25, 1986.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 86-22432 Filed 10-2-86; 8:45 am]

BILLING CODE 4310-84-M

[ID-060-08-4332-08; FES 86-33]

Availability of Final Environmental Impact Statement; North Idaho Wilderness Proposals

AGENCY: Bureau of Land Management, Department of the Interior.

BEST COPY AVAILABLE

ACTION: Notice of availability of final environmental impact statement [EIS] for the North Idaho wilderness proposals.

SUMMARY: This EIS assesses the environmental consequences of managing five wilderness study areas (WSAs) as wilderness or non-wilderness. On three of the WSAs, one or more additional management alternatives are assessed, including designation as Outstanding Natural Area, designation of a portion of the WSA as Research Natural Area, designation of part of the WSA as wilderness, and management with emphasis on timber production.

The names of the five SWAs analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

—Selkirk Crest, 720 acres, all nonsuitable for wilderness designation
—Crystal Lake, 9,027 acres, all non-suitable for wilderness designation; Outstanding Natural Area designation on entire WSA
—Grandmother Mountain, 17,129 acres, all non-suitable for wilderness designation; Outstanding Natural Area and Research Natural Area designations on portions with intensive timber management on remainder
—Snowhole Rapids, 5,068 acres, all non-suitable for wilderness designation
—Marshall Mountain, 6,524 acres, all non-suitable for wilderness designation

Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of Interior and President to Congress. The final decision on wilderness designation rests with the Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR, Part 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of this EIS may be obtained from the District Manager, Coeur d'Alene District Office, 1808 North 3rd Street, Coeur d'Alene, Idaho 83814. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20240;
or
Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: District Manager, Coeur d'Alene District Office, 1808 North 3rd Street, Coeur d'Alene, Idaho 83814. Telephone (208) 765–7365.

Dated: September 25, 1986.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 86–22433 Filed 10–2–86; 8:45 am]

BILLING CODE 4310–GG–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggests on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 395–7313.

Title: Permanent Regulatory Program Requirements-Standards for Certification of Blasters (30 CFR Part 850).

Abstract: Sections 515(b)(15)(d) and 719 of Pub. L. 95–87 require the State Regulatory Authority to promulgate regulations requiring the training, examination and certification of persons engaging in or directly responsible for blasting or the use of explosives.

This information will ensure that blasting is conducted in a safe and environmentally sound manner.

Bureau Form Number: None
Frequency: One-time requirement
Description of Respondents: State Regulatory Authorities
Annual Responses: 6
Annual Burden Hours 22,460
Bureau Clearance Officer: Darlene Grose Boyd 343–5447.

Dated: September 29, 1986.

Carson W. Culp,

Assistant Director, Budget and Administration.

[FR Doc. 86–22443 Filed 10–2–86; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30896]

Nashville and Ashland City Railroad—Lease and Operation Exemption—Sequatchie Valley Railroad Co., Inc., Exemption

The Nashville and Ashland City Railroad (NAC) filed a notice of exemption for NAC to lease and operate a one-mile portion of rail line between RC milepost 0 and milepost 1.1 at or near Richard City, TN, being acquired by Sequatchie Valley Railroad Co., Inc. (SVR) from the Seaboard System Railroad Company (SBD).[1]

The lease and operation by NAC does not involve a class I carrier; is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and will not connect NAC's present operations to the proposed operations. The lease and operation comes within the class of transactions exempted from prior approval under 49 CFR 1180.2(d)(2).[2]

As a condition to the use of this exemption, any employee affected by the lease and operation shall be protected pursuant to Mendocino Coast Ry. Inc.—Lease and Operate, 354 I.C.C. 732 (1978), as modified at 360 I.C.C. 653 (1980).

Decided: September 29, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–22531 Filed 10–2–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30906]

Wisconsin and Calument Railroad Co.; Modified Rail Certificate

On September 11, 1986, a notice was filed by the Wisconsin and Calumet Railroad Company (W&C) for a modified certificate of public convenience and necessity under 49 U.S.C. 1150.23. By contract with the Wisconsin River Rail Transit Commission (WRRTC), W&C was authorized to operate the following 117.72 miles of rail in the State of Wisconsin between August 14 and October 16, 1986: [1] Middleton (milepost 146.72) the Prairie du Chien (milepost 237.4), excluding trackage between milepost 233.75 and milepost 233.59; Lone Rock (milepost 0.26) to Richland Center (milepost 16.14); and Mazomanie (milepost 0.07) to Prairie du Sac (milepost 13.07).

Prior to abandonment, the lines were owned and operated by the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (MILW). The Lone Rock-Prairie du Chien line was recommended for abandonment in Docket No. AB–7 (Sub–No. 83), *Chicago, M., St. P., & Pac. R. Co.-Abandonment-Between Lone Rock and Prairie du Chien, WI* (not printed), served February 28, 1980; MILW's Reorganization Court authorized abandonment in Order No. 300. The Middleton-Richland Center and Mazomanie-Prairie du Chien lines were recommended for abandonment in Docket No. AB–7 (Sub-No. 99), *Chicago, M., St. P., & Pac. R. Co.—Abandonment—Middleton to Richland Center, WI,* (not printed), served May 6, 1982; MILW's Reorganization Court then authorized abandonment in Order No. 587.

The lines were acquired from MILW by the Wisconsin Department of Transportation. Operation of the lines is the responsibility of the WRRTC, a pulic agency within the State of Wisconsin. WRRTC contracted with W&C to operate the lines.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: September 29, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–22529 Filed 10–2–86; 8:45 am]

BILLING CODE 7035–01–M

[1] See, Notice of Exemption in Finance Docket No. 30831, *Sequatchie Valley R. Co.*, 51 FR 27473 (July 31, 1986).

[2] A decision in Finance Docket No. 30895 is being served concurrently dismissing a Notice of Exemption alternatively filed by NAC under 49 CFR 1150.31.

[1] We note that under Rule 1150.23 operations may commence upon filing. The notice was filed September 11; operations, however, apparently commenced August 14. Although there is no adverse impact here, I admonish WTC to comply with the Commission's rules in the future as to commencement of operations.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Verd J. Erickson, D.D.S.; Revocation of Registration

On July 21, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Verd J. Erickson, D.D.S., 75 Yellow Creek Road, Suite 201, Evanston, Wyoming 82930, proposing to revoke his DEA Certificate of Registration AE4419481 as a practitioner in Schedules II, III, IV, and V. The statutory predicate for the Order to Show Cause was the November 22, 1985 conviction of Dr. Erickson in the Third Judicial District Court, Salt Lake County, Utah of three counts of unlawful distribution of controlled substances, felonies relating to controlled substances.

The Order to Show Cause was sent to Dr. Erickson registered mail, return receipt requested. DEA received the receipt which indicated that the Order to Show Cause was received on July 28, 1986 by Dr. Erickson. More than thirty days have elapsed since the Order to Show Cause was received, and the Drug Enforcement Administration has received no response. Pursuant to 21 CFR 1301.54 (a) and (d), Dr. Erickson is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file 21 CFR 1301.57.

The Administrator finds that in May, 1985, Dr. Erickson sold controlled substances to an undercover law enforcement officer in the State of Utah. On May 24, 1985, he sold thirty capsules of amphetamine to the undercover agent for sixty dollars, and on June 3, 1985, he sold 1,000 amphetamine tablets and 10, 30cc vials of Demerol to the same agent for $5,000. Dr. Erickson was arrested on June 3, 1985, and on October 23, 1985, he was found guilty of three counts of unlawful distribution of a controlled substance. On November 22, 1985, Dr. Erickson was convicted in the Third Judicial District Court, Salt Lake City, Utah of these three counts of unlawful distribution of controlled substances and was sentenced to not less than one year, not more than fifteen years, in the Utah State Prison. During proceedings involving a petition for bankruptcy, Dr. Erickson testified that he sold the controlled substances because he needed the money.

The Administrator further finds that the Wyoming Board of Dental Examiners ordered the revocation of Dr. Erickson's license to practice dentistry in the State of Wyoming on February 25, 1986. On March 6, 1986, the revocation of Dr. Erickson's dental license was stayed in the District Court, Third Judicial District, County of Uinta, State of Wyoming. That action is still pending. On July 18, 1986, the Utah Department of Business Regulation revoked Dr. Erickson's license to practice dentistry in Utah, but stayed the revocation pending the appeal of Dr. Erickson's criminal conviction. The Department did, however, revoke Dr. Erickson's license to administer controlled substances in the State of Utah effective August 18, 1986.

The Administrator concludes that in light of Dr. Erickson's felony conviction, and the actions of the Wyoming and Utah regulatory boards, Dr. Erickson should not continue to be registered with the Drug Enforcement Administration to handle controlled substances. Dr. Erickson sold substantial quantities of controlled substances, obtained with his DEA registration, in order to get money. This was clearly an abuse of his registration and a total abdication of his professional responsibility as a dentist and a DEA registrant.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that DEA Certificate of Registration AE4419481 previously issued to Verd J. Erickson, D.D.S. is revoked effective November 3, 1986. Any outstanding applications for renewal of this registration are hereby denied.

Dated: September 29, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–22451 Filed 10–2–86; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 85–05]

Aziz S. Gourji, M.D.; Revocation of Registration

On December 5, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Aziz M. Gourji, M.D. (Respondent), of 81A Somerset Drive South, Great Neck, New York 11020, an Order to Show Cause proposing to revoke his DEA Certificate of Registration AG0754665 and deny any pending applications for renewal of that registration. The Order to Show Cause alleged that the continued

registration of Dr. Gourji as a practitioner pursuant to 21 U.S.C. 823(f) was inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing filings, a hearing was scheduled in Washington, DC on July 15, 1986. Due to Respondent's medical condition, counsel for Respondent requested that the hearing be rescheduled in mid-August, 1986. The hearing was rescheduled for August 20, 1986, in Washington, DC. Counsel for Respondent was advised of that fact by an Order issued by the Administrative Law Judge on July 14, 1986, and a Notice of Hearing published in the Federal Register on July 25, 1986, 51 FR 26766. Neither the Respondent nor any person representing him appeared at the place designated for the hearing on August 20, 1986. The Administrative Law Judge found that pursuant to 21 CFR 1301.54(d), Respondent had waived his right to a hearing, the Administrative Law Judge terminated the proceedings before him on September 11, 1986.

The Administrator finds that Respondent in this matter has waived his right to a hearing and enters this final order on the record and investigative file as its appears. 21 CFR 1301.57.

The Administrator finds that from February, 1982 through April, 1982, Respondent worked at Jorum Associates, Inc., a clinic located at 201 E. 34th Street in New York City. Respondent worked two to three days a week during that period. The clinic represented that it was established to treat individuals with insomnia. At the time Respondent was employed there, an individual named Barbara Quinlan was the clinic owner. On April 8, 1982, a DEA Special Agent, acting in an undercover capacity went to the Jorum clinic at 201 E. 34th Street. The Agent was using the name Elvin Barks. He checked in with the receptionist, completed some forms, and was given a physical examination by a physician's assistant. The physician's assistant also gave the Agent a brief lecture on the effects of Quaalude. Following this, the Agent was shown into the Respondent's office where he told the Respondent that he was having trouble sleeping. The Respondent asked whether the Agent understood the physician's assistant's lecture and concluded the visit. The Agent was in the Respondent's office for approximately 45 seconds. After leaving Respondent's office, the Agent was given a prescription signed by the Respondent for 45 tablets of Quaalude and asked to pay $150.

The following day, April 9, 1982, the same DEA Special Agent, using the name Paul Hess, went to the Jorum clinic at 201 E. 34th Street in New York City in an undercover capacity. The same procedures were followed as on his April 8, 1982 visit, with the Agent being observed by the same receptionist, examined by the same physician's assistant, and seen by Respondent for approximately 45 seconds. Although the Agent's appearance had not changed, none of these individuals made any comment concerning his visit the day before. After leaving the Respondent's office, he was given a prescription for 45 tablets of Quaalude written by Respondent and was asked to pay $150.

On May 24, 1982, a search warrant was executed at Respondent's home. Patient files from the Jorum clinic were seized. On this same day, Respondent was interviewed at the United States Attorney's Office in New York City. He told those present that when he began working at the clinic in February, he was told by Barbara Quinlan to try and prescribe Quaaludes. Respondent stated that he did prescribe Quaaludes to about 95% of all the individuals who he saw at the clinic. Respondent also indicated that some individuals tried to come into the clinic on consecutive days, but that he was good at remembering people, and he would not treat them if they came too often.

An analysis of Respondent's patient files, and the prescriptions that he wrote for Quaalude showed that during the less than three months that he worked at the Jorum clinic, he wrote over 1,100 prescriptions for Quaalude for a total of over 50,000 tablets. The analysis also showed that for the 34 days that Respondent worked at the clinic from February through April, 1982, he prescribed Quaalude for 99% of the individuals who he saw at the clinic.

On December 13, 1984, Respondent was indicted along with three other physicians and four other individuals in the United States District Court for the Southern District of New York, of conspiracy to illegally distribute Quaalude, and illegal distribution of Quaalude. On August 7, 1985, following a five week jury trial, Respondent was found guilty of the charge that he illegally distributed Quaalude in violation of 21 U.S.C. 841(a)(1). Respondent has not yet been sentenced.

Several physicians testified at the trial and also provided letters to the Government which stated that upon review of selected patient files and the procedures at the clinic that it was their professional opinion that the clinic was merely acting as a front for the distribution of Quaalude outside of medical practice. They further stated that the clinic was a sham operation, not intended to seriously treat patients.

The Administrator concludes that continued registration of Respondent to prescribe, administer, dispense or otherwise handle controlled substances would be inconsistent with the public interest. Respondent's activities caused the diversion of thousands of Quaalude tablets, a much abused controlled substance which is now in Schedule I under the Controlled Substances Act. Respondent has been found guilty of illegal distribution of Quaalude by a jury, after an extensive trial. Respondent was clearly acting outside the scope of professional practice by participating in an operation for the distribution of Quaalude. Respondent failed to responsibly prescribe controlled substances, and abdicated his duty as a physician and a DEA registrant.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that DEA Certificate of Registration AG0754665 previously issued to Aziz S. Gourji, M.D. is revoked effective November 3, 1986. Any outstanding applications for renewal of this registration are hereby denied.

Dated: September 29, 1986.

John C. Lawn,
Administrator.

[FR Doc. 86-22452 Filed 10-2-86; 8:45 am]
BILLING CODE 4410-09-M

K-9 Security Services, Inc.; Revocation of Registration

On April 28, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to K-9 Security Services, Inc. (K-9), Route 1, Box 119, Natchitoches, Louisiana 71457, proposing to revoke their DEA Certificates of Registration PK0184818 and PK0205422. DEA Certificate of Registration PK0184818 was issued to K-9 as a researcher in Schedule I, and DEA Certificate of Registration PK0205422 was issued to K-9 as a researcher in Schedules II, III, IV, and V. The statutory predicate for the Order to Show Cause was that on March 20, 1986, Robert J. Bond, owner of K-9 was convicted in the First District Court of Louisiana, Parish of Caddo, of possession of controlled dangerous substances with intent to distribute, and distribution of controlled dangerous substances, felonies relating to controlled substances.

The Order to Show Cause was sent to K-9 Security Services, Inc. by registered mail, return receipt requested. DEA received the receipt, which indicated that the Order to Show Cause had been received on May 2, 1986. More than thirty days have passed since the Order to Show Cause was received, and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and (d), K-9 Security Services, Inc. is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that in 1980, K-9 Security Services, Inc. was issued a DEA Certificate of Registration in Schedule I in order to train dogs in the detection of marijuana. In 1981, Mr. Robert Bond, owner of K-9, requested registration as a researcher in Schedules II, III, IV, and V in order to train dogs in the detection of other controlled substances, specifically amphetamine and cocaine. Mr. Bond told investigators that he would obtain the controlled substances via order form from state and local law enforcement laboratories. Mr. Bond advised investigators that the small quantities of controlled substances which he utilized would be stored in a 200 pound safe located on the registered premises. At this time K-9 was registered with DEA at 900 Seafood Lane, Lafayette, Louisiana.

During 1982 and 1983, DEA investigators noted that K-9 was purchasing significant quantities of cocaine from a local wholesale pharmaceutical supplier. In 1981, K-9 purchased three ounces of pharmaceutical cocaine. In 1982, K-9 purchased six ounces of pharmaceutical cocaine. In 1983, K-9 began purchasing other Schedule II controlled substances including Dilaudid, Quaalude, Demerol and Preludin. In July, 1983, DEA Investigators found that the registered location of K-9 Security had been abandoned. They subsequently met with Robert Bond at his new location in Natchitoches, Louisiana. They advised Mr. Bond that he could not obtain any controlled substances until he became properly registered at his new address. The Investigators reviewed the records kept by the firm, and advised Mr. Bond that he was not in compliance with the law and regulations. Mr. Bond and the Drug Enforcement Administration entered into a Memorandum of Understanding which required Mr. Bond to submit monthly reports to the Drug Enforcement Administration detailing all his transactions with controlled substances.

In June, 1984, the Shreveport, Louisiana DEA Office received information that Robert Bond of Natchitoches was trafficking in controlled substances. During an undercover investigation by DEA and the State of Louisiana, Robert and Kim Bond were observed transferring the controlled substances Dilaudid and Quaalude to an informant. This investigation resulted in the arrest of Robert and Kim Bond in a motel room. A search of the room resulted in the seizure of over 1,000 dosage units of controlled substances including Dilaudid, Quaalude, and Ritalin, and small quantities of marijuana and cocaine. After the arrest, it was determined that K-9 had purchased approximately 12,300 dosage units of controlled substances from January through September of 1984 from a local pharmaceutical wholesaler. On January 22, 1985 Robert Bond pled guilty, in Caddo Parish District Court to illegal distribution of Dilaudid, Preludin and Desoxyn, and possession with intent to distribute cocaine. On March 20, 1986, Robert Bond was convicted and sentenced to four years in Louisiana State Prison.

The Administrator finds that Robert Bond, owner of K-9 Security Services, Inc. was using his DEA Certificates of Registration to obtain controlled substances which were not utilized in the manner contemplated by his registration. He purchased dosage unit quantities of Schedule II controlled substances, which are inappropriate for training dogs in drug detection, and distributed the controlled substances for profit. There is no justification for K-9 Security Services, Inc. to continue to remain registered with the Drug Enforcement Administration. The Administrator concludes that the DEA Certificates of Registration previously issued to K-9 Security Services, Inc. should be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that DEA Certificates of Registration PK0184818 and PK0205422 previously issued to K-9 Security Services, Inc. are hereby revoked effective November 3, 1986. Any outstanding applications for renewal of those registrations are hereby denied.

Dated: September 29, 1986.

John C. Lawn,
Administrator.

[FR Doc. 86-22453 Filed 10-2-86; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Lusignan Textile, Inc.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 8, 1986—September 12, 1986 and September 15, 1986–19, 1986

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both,of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that creation (3) has not been met. A survey of customers inidicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-17,276; Lusignan Textile, Inc., Linwood, MA
TA-W-17,351; The Stackpole Corp., St. Mary's, PA
TA-W-17,769; Allied Embroidery Co., Fairview, NJ
TA-W-16,844; H & G Thread & Scallop, Fairview, NJ
TA-W-16,926; S.G. Embroidery Corp., Fairview, NJ
TA-W-16,935; Stitch-O-Matic, Inc., Guttenberg, NJ

TA–W–17,281; Hanover Mills, Yanceyville, NC
TA–W–17,277; Modern Stock Creations, Inc., Allentown, PA
TA–W–17,361; Preformed Metal Products Co., Shreveport, LA
TA–W–17,344; Roman's, Inc., Scranton, PA
TA–W–17,190; Barker's Contract Stitching, South Paris, ME

In the following cases the investigation revealed that creation (3) has not been met for the reasons specified.

TA–W–17,355; Burlington Northern Railroad Co., Superior, WI

The Workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,217; Ramco/Fitzsimons Steel Co., Buffalo, NY

Aggregate U.S. imports of Carbon steel bars and bar-size light shapes did not increase required for certification.

TA–W–17,911; Dresser Industries, Mogcobar Group, Lake Charles, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,881; Caskey Drilling Co., Jonesboro, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,584; Amerada Hess Corp., Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,580; Oil Field Safety, Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,583; Williston Basin Sales, & Service, Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,487; Baker Service Tools, Casper, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,459; Maverick Tube Corp., Union, MO

Aggregate U.S. imports of carbon and alloy steel pipe and tubing did not increase as required for certification.

TA–W–17,697; New Misco Supply Co., Inc., Plainsfield, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,892; Dowell Schlumberger, Inc., Mt. Carmel, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,809; Texas Geolog, Inc., Tyler, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,706; War Roustabout Service, Thermopolis, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,612; Phoenix Steel Corp., Phoenixville, PA

Aggregate U.S. imports of seamless carbon steel pipe and tubing did not increase as required for certification.

TA–W–17,637; Cherokee Drilling & Development Corp., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,861; Cam Drilling Co., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,490; Williston Steel Work, Williston, ND

Aggregate U.S. imports of seamless carbon steel pipe and tubing did not increase as required for certification.

TA–W–17,480; Dresser Industries, Swoco Division, Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,587; E.W. Moran Drilling, Inc., Witchita Falls, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,591; Hydro-Static Tubing Testers, Inc., Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,596; Western Company of North America, Sidney, MT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,802; Eagle Enterprises, Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,615; Amax Lead Company of Missouri, Boss, MO

Aggregate U.S. imports of refined and recovered lead did not increase as required for certification.

TA–W–17,283; Kaiser Aluminum & Chemical Corp., Mead Works, Mead, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–17,360; Molycorp, Inc., Questa Division, Questa, NM

Aggregate U.S. imports of molybdenum are negligible.

TA–W–17,337; Beckley Nick Run Co., Mount Hope, WV

Aggregate U.S. imports of coal are negligible.

TA–W–17,665; N.L. Baroid, Williston, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,748; Glen Irvan Corp., Penfield, PA

Aggregate U.S. imports of coal are negligible.

TA–W–17,764; Four Flags Drilling Co., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,765; Massy Construction Co., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,816; Globe Drilling Co., Tyler, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,403; TRW, Inc., Reda Pump Co. Division, Thermopolis, WY

Aggregate U.S. imports of submergible pumps used in oil drilling are negligible.

TA–W–17,447; Pittsburg & Midway Coal Mining Co., Pleasant Hill Mine and Preparation Plant, White Plains, KY

Aggregate U.S. imports of bituminous coal are negligible.

TA–W–17,454; Hughes Tool Company, Williston, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,455; Magcobar Division, Dresser Industries, Williston, ND

Aggregate U.S. imports of drilling fluid are negligible.

TA–W–17,428; Connor Sales Co., Inc., Williston, ND

Aggregate U.S. imports of metal oil storage tanks are negligible.

TA–W–17,446; Nowsco Well Service Limited, Wooster, OH

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,440; Rocket Sales and Rental Tank-Div., Inc., Williston, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,451; TMBR Drilling Co., Inc., Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,453; Harpel Drilling Co., Inc., Casper, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,539; Blake Drilling & Exploration, Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,540; The Dia-Log Co., Natchez, MS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,541; The Dia-Log Co., Kilgore, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,547; Roughrider Drilling Fluids, Williston, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,784; Bovaird Supply Company, Williston, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,785; Lynco Drilling Co., Leveland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,790; The Western Company of North America, Edinburg, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,792; J.W. Humbard & Associates, Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,798; Wes-Tex Drilling Company, Abilene, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,801; R. & S Well Service, Inc., Thermopolis, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,897; Young Trucking, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,902; Franks Casing Crews, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,905; Renco Drilling Co., Carrizo Springs, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,908; Terrell Drilling, Graysville, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,912; Bobs Casing Crews, Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,914; A.J. Hunt, Inc., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,915; Black Gold Rental Tools, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,918; Safari Drilling, Abilene, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,919; Dakota Drilling, Bottineau, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,922; Arapahoe Drilling Co., Inc., Albuquerque, NM

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,618; Rine Drilling Co., Wichita, KS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,625; Lin-Mour Drilling Co., Wichita FAlls, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,631; Burris Drilling Co., Denver, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,630; Geo Quest International, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,657; Rowan Drilling—US, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,606; Boelens' Well Service, Thermopolis, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,666; Bi Rite Mud and Chemical Company, Dallas, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,670; Nichols Mudlogging Co., Carthage, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,671; Pro Well Service, Thermopolis, WY

The workers' firm does not produce an article as required for certification

under Section 222 of the Trade Act of 1974.

TA–W–17,406; Delco Systems Operation, Culpeper, VA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–17, 466; Mustang Tripsaver, Inc., Corpus Christi, TX

Aggregate U.S. imports of oilfields are negligible.

TA–W–17,461; Inland Steel Mining Co., Minorca Mine, Virginia, MN

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA–W–17,561; Dresser Magcobar Minerals, Greybull, WY

Aggregate U.S. imports of bentonite are negligible.

TA–W–17,800; Dresser Industries, Guiberson Division, Thermopolis, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,488; Prorie Energy, Watford City, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,357; Cyclops Corp., Cytemp Div., (Formerly Universal Cyclops Specialty Steel Div.), Headquarter Staff, Mt. Lebanon, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–17,294; Keystone Fireworks Manufacturing Co., Dunbar, PA

Separations from the subject firm were seasonal in nature.

TA–W–17,513; Wyo-Ben, Inc., Greybull, WY

Aggregate U.S. imports of bentonite are negligible.

TA–W–17,799; Halluburton Co., Wellex Division, Casper, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,762; Sivall, Inc., Odessa, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA–W–17,728; Dresser Atlas Div., of Dresser Industries, Houston, TX

Aggregate U.S. imports of oilfield equipment are negligible.

TA–W–17,771; Henley Drilling Co., Dallas, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,781; Newpark Drilling Fluids, Dickinson, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,781A; Newpark Drilling Fluid, Denver, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,707; Halliburton Services, Monhans, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,708; Halliburton Service, Woodward, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,714; Halliburton Service, Gillette, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,779; Stamper Drilling Corp., Waller, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,782; Parker Drilling Co., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,800; Rogers Exploration, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,806; Bearden Drilling Co., Witchita Falls, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,834; G.H. Bear, Wichita Falls, TX

Aggregate U.S. imports of oilfield machinery are negligible.

Affirmative Determinations

TA–W–17,330; Lou Taylor, Inc., Hialeah, FL

A certification was issued covering all workers of the firm separated on or after March 27, 1986.

TA–W–17,256; C.F. Hathaway Co., Waterville, ME

A certification was issued covering all workers of the firm separated on or after February 16, 1986.

TA–W–17,257; C.F. Hathaway Co., Dover Foxcroft, ME

A certification was issued covering all workers of the firm separated on or after February 16, 1986.

TA–W–17,218; Swimtex, Inc., Miami, FL

A certification was issued covering all workers of the firm separated on or after December 31, 1984 and before April 11, 1986.

TA–W–17,338; Bershop Co., New York, NY

A certification was issued covering all workers of the firm separated on or after March 26, 1985 and before March 26, 1986.

TA–W–17,338A; MIM Dress Co., New York, NY

A certification was issued covering all workers of the firm separated on or after March 26, 1985 and before March 26, 1986.

TA–W–17,338B; Arjoy Mfg, New York, NY

A certification was issued covering all workers of the firm separated on or after March 26, 1985 and before March 26, 1986.

TA–W–17, 286; Portec, Inc., Forgings Div., Canton, OH

A certification was issued covering all workers of the firm separated on or after March 1, 1985.

TA–W–17, 448; Timer Product Line, Robertshaw Controls, Tennessee Div., Lebanon, TN

A certification was issued covering all workers of the firm's timer product line separated on or after May 12, 1985.

TA–W–17, 379; National Standard Co., Strandflex Plant, Oriskany, NY

A certification was issued covering all workers of the firm separated on or after April 17, 1985 and before January 1, 1986.

TA–W–17, 282; Imperial Reading Corp., Lynchburg, VA

A certification was issued covering all workers of the firm separated on or after February 28, 1985 and before March 15, 1986.

TA–W–17, 233; Ultralight Systems, Inc., Perris, CA

A certification was issued covering all workers of the firm separated on or after February 5, 1985.

TA–W–17, 325; Somerset Technologies, Inc., Dept 12, Somerset, NJ

A certification was issued covering all workers of the firm separated on or after March 26, 1985 and before August 31, 1986.

TA–W–17, 786; Plastronics, Inc., (Kendall Co.), Milwaukee, WI

A certification was issued covering all workers of the firm separated on or after July 9, 1985 and before August 31, 1986.

TA–W–17, 394; Brier of Amsterdam, Inc., Amsterdam, NY

A certification was issued covering all workers of the firm separated on or after March 20, 1985.

TA–W–17, 207; Sweet Orr & Co., Inc., Anniston, AL

A certification was issued covering all workers of the firm separated on or after June 1, 1985.

TA–W–17, 324; Coleman Products, Inc., Iron River, MI

A certification was issued covering all workers of the firm separated on or after March 24, 1985 and before August 31, 1986.

TA–W–17, 236; Bel-Aire Products Co., Akron, OH

A certification was issued covering all workers of the firm separated on or after February 7, 1985 and before September 7, 1985.

TA–W–17, 758; Lynchburgh Foundry Co., Rodford, VA

A certification was issued covering all workers of the firm separated on or after July 14, 1985.

TA–W–17, 371; Westland Manufacturing Corp., Greenburg, PA

A certification was issued covering all workers of the firm separated on or after June 1, 1985 and before July 31 1986.

TA–W–17, 120; F. Rulison & Sons, Inc., Johnston, NY

A certification was issued covering all workers of the firm separated on or after June 3, 1985.

TA–W–17, 215; Milo Woodcrafters, Milo, ME

A certification was issued covering all workers of the firm separated on or after September 1, 1985 and before February 28, 1986.

TA–W–17, 420; J.H. Wood, Inc., Lebam, WA

A certification was issued covering all workers of the firm separated on or after April 24, 1985.

TA–W–17, 307; Interstyle, Inc., Sparta, IL

A certification was issued covering all workers of the firm separated on or after March 13, 1985.

TA–W–17, 308; Interstyle, Inc., Carbondale, IL

A certification was issued covering all workers of the firm separated on or after March 13, 1985.

TA–W–17, 114; SK Wellman, Inc., Bedford, OH

A certification was issued covering all workers of the firm separated on or after December 27, 1984.

TA–W–17, 328; Emhart Industries, Inc., Hardware Div., Berlin, CT

A certification was issued covering all workers of the firm separated on or after September 1, 1986.

TA–W–17, 411; Wire Rope Corp., of America, Inc., St. Joseph, MO

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA–W–17, 368; Transit America, Inc., Philadelphia, PA

A certification was issued covering all workers of the firm separated on or after April 10, 1985.

TA–W–17, 394; Dresser Industries, Galion Operation Construction & Mining Equipment Div., Galion, OH

A certification was issued covering all workers of the firm separated on or after April 23, 1985.

TA–W–17, 224; Carleanis, Inc., Minersville, PA

A certification was issued covering all workers of the firm separated on or after January 3, 1985 and before Auust 6, 1985.

TA–W–17, 359; Herman Iskin & Co., Inc., Telford, PA

A certification was issued covering all workers of the firm separated on or after April 8, 1985 and before August 31, 1986.

I hereby certify that the aforementioned determination were issued during the period September 8–12, 1986 and September 15–19, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 23, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–22429 Filed 10–2–86; 8:45 a.m.]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Old Mountain Gas Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than (October 14, 1986).

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than (October 14, 1986).

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 22nd day of September 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Old Mountain Gas Co. (workers)	Pleasantville, PA	9/9/86	9/4/86	TA–W–16, 122	Crude oil.
Giant Drilling Co., Inc. (workers)	Abilene, TX	9/8/86	8/22/86	TA–W–16, 123	Oil drilling.
Philbeck, Inc. (company)	Corpus Christi, TX	9/9/86	9/4/86	TA–W–16, 124	Pressure vessels.
Cimmeron Rigs, Inc. (workers)	Odessa, TX	9/9/86	9/4/86	TA–W–16, 125	Oil drilling.
Basin Drilling Corp. (workers)	Oklahoma City, OK	9/5/86	9/4/86	TA–W–16, 126	Oil and gas drilling.
Burt Stringer & Assoc. Well Service (workers)	Odessa, TX	9/5/86	9/4/86	TA–W–16, 127	Oil and gas well services.
Kelech Basin Tire, Inc. (workers)	Williston, ND	9/9/86	9/25/86	TA–W–16, 128	Auto mechanical work.
Henkel Corp. (AFGM)	Kenedy, TX	9/5/86	9/5/86	TA–W–16, 129	Guar and guar derivatives.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
B&B Construction Co. (workers)	Odessa, TX	9/5/86	9/2/86	TA-W-18, 130	Oil field services.
Cuerlee Drilling Co. (workers)	Tulsa, OK	9/4/86	8/13/86	TA-W-18, 131	Oil drilling.
West Oats, Inc. (workers)	Bellinger, TX	9/3/86	8/18/86	TA-W-18, 132	Oil well service.
Oilwood Energy (workers)	Pasadena, CA	9/12/86	9/8/86	TA-W-18, 133	Research and reviews oil deposits.
H.I. Biggs Trucking (workers)	Bridgeport, IL	9/3/86	8/28/86	TA-W-18, 134	Trucking service.
Pasco Fishing & Rental Tools (wkrs)	Laredo, TX	9/8/86	9/2/86	TA-W-18, 135	Rental of oilfield equipment.
C&S Specialty Common Equip. (Co.)	Corpus Christi, TX	9/8/86	8/28/86	TA-W-18, 136	Rental of oil drilling tools.
Jamco Sales & Service (workers)	Miranda City, TX	9/8/86	8/21/86	TA-W-18, 137	Gauging service.
Spain Construction Service, Inc. (wkrs)	St. Elmo, IL	9/8/86	9/2/86	TA-W-18, 138	Oil field construction.
Core Service, Inc. (company)	Corpus Christi, TX	9/8/86	9/4/86	TA-W-18, 139	Physical analysis on rock samples from oil wells.
Core Service, Inc. (company)	San Antonio, TX	9/8/86	9/4/86	TA-W-18, 140	Physical analysis on rock samples from oil wells.
Core Service, Inc. (company)	Carrizo Springs, TX	9/8/86	9/4/86	TA-W-18, 141	Physical analysis on rock samples from oil wells.
Core Service, Inc. (company)	Hebbronville, TX	9/8/86	9/4/86	TA-W-18, 142	Physical analysis on rock samples from oil wells.
Core Service, Inc. (company)	Victoria, TX	9/8/86	9/4/86	TA-W-18, 143	Physical analysis on rock samples from oil wells.
Homco International (workers)	Oklahoma City, OK	9/3/86	8/23/86	TA-W-18, 144	Buys and distributes oilfield supplies.
Kell-Ray Corp. (workers)	Oklahoma City, OK	9/4/86	8/17/86	TA-W-18, 145	Oil well services.
Sellet & Sons, Inc. (workers)	Ross, ND	9/18/86	9/8/86	TA-W-18, 146	Buy steel and builds.
Arco Oil & Gas (workers)	Houston, TX	9/2/86	8/21/86	TA-W-18, 147	Oil and gas.
Arco Oil & Gas (workers)	Denver, CO	9/2/86	8/21/86	TA-W-18, 148	Oil and gas.
Enserch Corporation (workers)	Newtown, ND	9/3/86	8/20/86	TA-W-18, 149	Oil rigs maintenance.
Arco Oil & Gas (workers)	Lafayette, LA	9/2/86	8/21/86	TA-W-18, 150	Oil and gas.
Arco Oil & Gas (workers)	Pasadena, CA	9/2/86	8/21/86	TA-W-18, 151	Oil and gas.
Arco Oil & Gas (workers)	Bakersfield, CA	9/2/86	8/21/86	TA-W-18, 152	Oil and gas.
Arco Oil & Gas (workers)	Anchorage, AK	9/2/86	8/21/86	TA-W-18, 153	Oil and gas.
Arco Oil & Gas (workers)	Midland, TX	9/2/86	8/21/86	TA-W-18, 154	Oil and gas.
Reliant Management Service Co. (wkrs)	Stafford, TX	9/8/86	9/4/86	TA-W-18, 155	Oil and gas drilling.
Halliburton Services (workers)	Amarillo, TX	9/2/86	8/28/86	TA-W-18, 156	Oilfield equipment.
Geo-Search Corp. (workers)	Lubbock, TX	9/3/86	8/28/86	TA-W-18, 157	Records geological data for oil industry.
Chromalloy (workers)	Laredo, TX	8/11/86	8/18/86	TA-W-18, 158	Sells chemicals for drilling.
Schlumberger Production Service (wkrs)	Laredo, TX	9/8/86	9/2/86	TA-W-18, 159	Logging services for oil industries.
Schlumberger Offshore (company)	Beaumont, TX	7/30/86	7/16/86	TA-W-18, 160	Wireline services.
R.L. McCullough Corp. (workers)	McAllen, TX	9/8/86	9/3/86	TA-W-18, 161	Oil field services.
Lafayette Well Testing, Inc. (workers)	Laredo, TX	9/8/86	9/3/86	TA-W-18, 162	Oil well testing services.
John Drilling Company (workers)	Odessa, TX	9/3/86	8/20/86	TA-W-18, 163	Oil drilling.
Arrow Pants (ILGWU)	Garfield, NJ	8/15/86	8/25/86	TA-W-18, 164	Ladies skirts and pants.
Simonds Cutting Tools (USWA)	Newcomertown OH	9/12/86	9/9/86	TA-W-18, 165	Files and rasps for metal and wood cutting.
Confer Smith & Company (USA)	Hamburg, PA	9/11/86	9/10/86	TA-W-18, 166	Gray and ductile iron castings.
Federal Mogul Corp. (workers)	Mooresville, IN	9/15/86	9/3/86	TA-W-18, 167	Sleeve bearings for autos.
Ridgway Color Co. (USWA)	Ridgway, PA	9/15/86	9/11/86	TA-W-18, 168	Organic pigments, barium lithol red.
Cowden Company (workers)	Mt. Sterling, KY	9/17/86	9/10/86	TA-W-18, 169	Denim jackets and jeans.
Jay Cement Co. (workers)	Clarksville, TN	9/17/86	9/9/86	TA-W-18, 170	Worksuits, shirts, jeans.
USX Corp., USS Imperial Works (workers)	Oil City, PA	9/18/86	9/9/86	TA-W-18, 171	Continous casters, molds, mold supports for steel mills.
Edison Battery Products (Edison Employee Assoc.)	Bellevile, NJ	9/17/86	9/11/86	TA-W-18, 172	Primary batteries.
United Dressed Beef Inc. (workers)	Minneapolis, MN	9/17/86	9/26/86	TA-W-18, 173	Boneless beef.
Phoenix Footwear (workers)	Secaucus, NJ	9/17/86	9/13/00	TA-W-18, 174	Womens casual shoes—sandals.
Quantum Logic Corp. (workers)	Secaucus, NJ	9/16/86	9/6/86	TA-W-18, 175	Laser pyrometer.
Schweizer Dipple, Inc. (Pipefitters Union)	Cleveland, OH	8/15/86	8/14/86	TA-W-18, 176	Mechanical contractor.
Allgretti Rowe, Inc. (workers)	El Paso, TX	9/3/86	8/25/86	TA-W-18, 177	Portable electric blowers for outside use.
C & S Dress Mfg (ACTWU)	Union City, NJ	8/25/86	8/20/86	TA-W-18, 178	Ladies dresses.
Transamerica Delaval Inc. (workers)	Oakland, CA	9/8/86	9/5/86	TA-W-18, 179	Commercial castings.
Nylon Net Company (company)	Memphis, TN	9/15/86	9/4/86	TA-W-18, 180	Netting for catching fish.
Columbian Cutlery (USWA)	Reading, PA	9/15/86	9/11/86	TA-W-18, 181	Grass and weedcutting hand tools.
Church & Dwight, Inc. (USWA)	Solvay, NY	9/16/86	9/11/86	TA-W-18, 182	Household soap and laundry detergent.
Empire Steel Castings (USWA)	Reading, PA	9/15/86	9/11/86	TA-W-18, 183	Steel castings.
PA Steel Foundry & Machine Co. (USWA)	Hamburg, PA	9/15/86	9/11/86	TA-W-18, 184	Steel castings.
Prestolite Wire Corp. (AIW)	Port Huron, MI	9/12/86	9/5/86	TA-W-18, 185	Automotive wire and battery cable.
Allen Testproducts (AIW)	Kalamazoo, MI	9/12/86	9/9/86	TA-W-18, 186	Auto engine and emission analyzers.
E.I. Dupont de Nemours (workers)	Corpus Christi TX	9/15/86	9/5/86	TA-W-18, 187	Sodium hyroxide, carbon tetrachloride, chlorine, perchlorpethylene.
Hapco, Inc. (ILGWU)	Hamelsville, NC	9/11/86	9/5/86	TA-W-18, 188	Children's clothing.
HKH Industries, Inc. (ILGWU)	Jacksonville, FL	9/11/86	9/4/86	TA-W-18, 189	Children's coats.
Hubbard Sales Co. (workers)	Tallapoosa, GA	9/11/86	9/22/86	TA-W-18, 190	Men's slacks, sportcoats, and suits.
Birdsboro Corporation (USWA)	Birdsboro, PA	9/11/86	9/10/86	TA-W-18, 191	Production/fabrication of heavy machinery.
Birdsboro Corporation (USWA)	Reading, PA	9/11/86	9/10/86	TA-W-18, 192	Production/fabrication of heavy machinery.
Portec, Inc., Railway Maintenance Products Div. (USWA)	Troy, NY	9/11/86	9/5/86	TA-W-18, 193	Joints for railroad tracks.
Manitowoc Engineering Co. (IAM/AW)	Manitowoc, WI	9/9/86	9/5/86	TA-W-18, 194	Self propelled truck mounted cranes.
Marathon Oil Co. (workers)	Bridgeport, IL	9/8/86	9/1/86	TA-W-18, 195	Crude oil.
LTV Steel Co, Mahoning Cold Finished Bar Plant (USWA)	Youngstown, OH	9/11/86	9/10/86	TA-W-18, 196	Cold finished bars.
Emerald Mines Corp. (UMWA)	Waynesburg, PA	9/9/86	9/13/86	TA-W-18, 197	Coal mining.
Clyde, Div. of AMCA Int'l (company)	Duluth, MN	9/15/86	9/10/86	TA-W-18, 198	Heavy material handling equipment.
Carrier Corp. (Eimco Mines Wkrs)	Syracuse, NY	9/16/86	9/16/86	TA-W-18, 199	Air conditioners and similar products.
Printronix/Data Printer Div. (IUEW)	Malden, MA	9/17/86	9/12/86	TA-W-18, 200	Computer printers used in main frame computers.
International Shoe Co. (URW)	Bryan, TX	9/9/86	9/5/86	TA-W-18, 201	Shoes soles, heels and slabs.
J.R. Handbags, Inc. (workers)	Ope Locka, FL	9/8/86	9/25/86	TA-W-18, 202	Ladies handbags.
Armco Steel Corp., National Supply Div. (workers)	Houston, TX	9/8/86	9/15/86	TA-W-18, 203	Provides administrative services.
Johnson Steel Wire Co., Inc. (USWA)	Worcester	9/8/86	9/2/86	TA-W-18, 204	High carbon specialty steel wire.
Eastman Kodak (workers)	Dallas, TX	9/26/86	9/19/86	TA-W-18, 205	Photo-finishing.
Westmoreland Coal Co. (workers)	Clothier, WV	9/3/86	9/25/86	TA-W-18, 206	Coal mining.
Blumenthal Mfg Co., Inc. (workers)	Los Angeles, CA	9/2/86	9/27/86	TA-W-18, 207	Childrens sportswear.
International Play-tex (workers)	LaGrange, GA	9/2/86	9/27/86	TA-W-18, 208	Panties, bras, garden.
Dana Corporation (workers)	Ashland, OH	9/17/86	9/12/86	TA-W-18, 209	Hydraulic cylinders and parts.

[FR Doc. 86-22430 Filed 10-2-86; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a), and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statues, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled, "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanation forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determinaion Decisions

The numbers of the decisions listed in the Government Printing Office document entitled, "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT86-1 (Jan. 3, 1986) ..... p. 64, pp. 66–69.
Maryland:
MD86-1 (Jan. 3, 1986) ..... p. 384.
MD86-2 (Jan. 3, 1986) ..... pp. 390–391.
MD86-15 (Jan. 3, 1986) ..... p. 420.
New York:
NY86-2 (Jan. 3, 1986) ..... pp. 645–647, pp. 649–652.
NY86-11 (Jan. 3, 1986) ..... pp. 736–736.
Pennsylvania
PA86-4 (Jan. 3, 1986) ..... p. 821.
PA86-5 (Jan. 3, 1986) ..... pp .829–831.
P86-6 (Jan. 3, 1986) ..... pp. 834–844.
PA86-8 (Jan. 3, 1986) ..... pp. 859–861.
PA86-12 (Jan. 3, 1986) ..... p. 887.
PA86-14 (Jan. 3, 1986) ..... p. 894.
PA86-16 (Jan. 3, 1986) ..... p. 904.
PA86-19 (Jan. 3, 1986) ..... pp. 920–922.
PA86-21 (Jan. 3, 1986) ..... pp. 933–934.

Volume II

Illinois:
IL86-1 (Jan. 3, 1986) ..... pp. 62–67, pp. 80, 82
IL86-2 (Jan. 3, 1986) ..... pp. 88–89, p. 19, pp. 98–99.
IL86-3 (Jan. 3, 1986) ..... p. 105, pp. 107–109.
IL86-5 (Jan. 3, 1986) ..... pp. 116, 118.
IL86-7 (Jan. 3, 1986) ..... pp. 125, 127.
Il86-8 (Jan. 3, 1986) ..... pp. 131–132.
Il86-9 (Jan. 3, 1986) ..... p. 137.
IL86-11 (Jan. 3, 1986) ..... pp. 146, 148.
Kansas:
KS86-7 (Jan. 3, 1986) ..... p. 333.
Missouri:
MO86-1 (Jan. 3, 1986) ..... pp. 540–541.
MO86-3 (Jan. 3, 1986) ..... pp. 569–570.
MO86-4 (Jan. 3, 1986) ..... pp. 576–577.
MO86-8 (Jan. 3, 1986) ..... p. 595.
MO86-10 (Jan. 3, 1986) ..... pp. 606–607.
Ohio:
OH86-1 (Jan. 3, 1986) ..... pp. 662, 671.
OH86-2 (Jan. 3, 1986) ..... pp. 676–678,pp. 680–684.
OH86-3 (Jan. 3, 1986) ..... p. 697–698, p. 700.
OH86-26 (Jan. 3, 1986) ..... pp. 752, 754.
OH86-29 (Jan. 3, 1986) ..... pp. 757–762, pp. 764–769, pp. 784–789, p. 795.
Oklahoma:
OK86-14 (Jan. 3, 1986) ..... p. 831.

Volume III

Colorado
CO86-1 (Jan. 3, 1986) ..... p. 98, pp. 101–105.
Hawaii:
HI86-1 (Jan. 3, 1986) ..... pp. 120–121.
Montana:
MT86-1 (Jan. 3, ... p. 155–156, p. 160.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 60 Regional Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include annual edition (issued on or

about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 26th day of September 1986.

James L. Valla,

Assistant Administrator.

[FR Doc. 86-22237 Filed 10-2-86; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-72]

NASA Advisory Council (NAC), Space Application Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee (SAAC).

DATE AND TIME: October 21, 1986—8 a.m. to 5 p.m.; October 22, 1986, 8:15 a.m. to 4:30 p.m., October 23, 1986, 8 a.m. to 1 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 226 A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-1430.

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications programs. The Committee is chaired by Leonard Jaffe and is composed of 34 members. The Committee operates both through a number of informal subcommittees and as a whole. The agenda which follows includes all Committee and subcommittee sessions. Each of the sessions will be open to the public up to the seating capacity of the room which is approximately 40 persons including Committee members and other participants.

Type of meeting: Open.

Agenda

Communications Subcommittee

October 21, 1986—Capital Gallery East, Room 770

8 a.m. Review and Finalize Communications Long Range Plan
4:30 p.m. Adjourn

October 22, 1986—Capital Gallery East, Room 770

8:15 a.m. Full Committee Convenes
10 a.m. Adjourn for Subcommittee Meeting
10:15 a.m. Review and Finalize Communications Long Range Plan
4:30 p.m. Adjourn

October 23, 1986—Capital Gallery East, Room 770

8 a.m. Review and Finalize Communications Long Range Plan
9 a.m. Summary of Subcommittee Activities; Agree on Draft Subcommittee Report to Full Committee
11 a.m. Full Committee Reconvenes
1 p.m. Adjourn

Information Systems Subcommittee

October 21, 1986—Room 226B

1 p.m. Attend Discussion of Remote Sensing Subcommittee
4:30 p.m. Adjourn

October 22, 1986—Room 226B

8:15 a.m. Full Committee Convenes
10 a.m. Adjourn for Subcommittee Meeting
10:15 a.m. Introduce New Committee Members
10:30 a.m. Review Status of Information Systems Operations (ISO) Plan
1:30 p.m. Update on Earth Observatory Systems/Science and Applications Information Systems (EOS/SAIS)
2:30 p.m. Briefing on National Space Science Date Center (NSSDC) and Scientific Computing at Goddard Space Flight Center
4:30 p.m. Adjourn

October 23, 1986—Room 226B

8 a.m. Discuss Subcommittee Work Plan for 1986-87
9 a.m. Summary of Subcommittee Activities; Agree on Draft Subcommittee Report to Full Committee
11 a.m. Full Committee Reconvenes
1 p.m. Adjourn

Microgravity Subcommittee

October 21, 1986—Capitol Gallery West, Room 100

8 a.m. Review of Extramural Research (Centers of Excellence, Commercialization Centers)
5 p.m. Adjourn

October 22, 1986—Capitol Gallery West, Room 100

8:15 a.m. Full Committee Convenes
10:15 a.m. Discuss Response to Vanderalice Report
2 p.m. Future Directions for Microgravity Research
4:30 p.m. Adjourn

October 23, 1986—Capitol Gallery West, Room 100

8 a.m. Work Plan to Review Discipline Working Group Reports
9 a.m. Summary of Subcommittee Activities; Agree on Draft Subcommittee report to Full Committee
11 a.m. Full Committe Reconvenes
1 p.m. Adjourn.

Remote Sensing Subcommittee

October 21, 1986—Room 226A

1 p.m. General Overview and Information
1:30 p.m. Review of the Long Range Applications Plan
4:30 p.m. Adjourn

October 22, 1986—Room 226A

8:15 a.m. Full Committee Convenes
10 a.m. Adjourn for Subcommittee Meeting
10:15 a.m. Budget Review and Shuttle Manifest Reviews
12 Noon Review and Respond to Earth System Sciences Committee (ESSC) Report

October 23, 1986—Room 226A

8:30 a.m. Final Review of Long Range Plan; Earth System Science Committee (ESSC) Comments
9 a.m. Plan January Subcommittee Meeting Agenda
11 a.m. Full Committee Reconvenes
1 p.m. Full Committee Adjourns

Richard L. Daniels,

Advisory Committee Management Officer National Aeronautics and Space Administration.

September 26, 1986.

[FR Doc. 86-22287 Filed 10-2-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice 86-73]

NASA Advisory Council, Space Systems and Technology Advisory Committee (SSTAC) Meeting

AGENCY: National Aeronautics and Space Administration.

Federal Register Citation of Previous Announcement: 51 FR 33823, September 23, 1986.

Previously Announced Time and Date of Meeting: October 22, 1986, 9 a.m. to 12:30 p.m.

Changes in the Meeting: Date changed to October 23, 1986, 9 a.m. to 12:30 p.m.

CONTACT PERSON FOR MORE INFORMATION: Mr. James Romero, Code RS, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2738).

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 26, 1986.

[FR Doc. 86-22288 Filed 10-2-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences
Date and Time: October 20-21, 1986; 9 a.m. to 5 p.m.
Place: National Science Foundation
October 20—Room 1242/1243
October 21—Room 540
Type of Meeting: Open
Contact Person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357-9488)
Summary Minutes: May be obtained from the contact person at the above address
Purpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.
Agenda:

Monday, October 20; 9 a.m. to 5 p.m.

Introductory Remarks; Status of FY87 Budget; Report of Subcommittee Evaluating Procedures Used to Review the Quality of the Science Activities at the National Astronomy Centers; FY 87 Budget Impacts on AST Research Grant Programs and on National Astronomy Centers; AST Program Balance.

Tuesday, October 21; 9 a.m. to 5 p.m.

Status of Programs in NASA Astrophysics Divisions; Continued Discussion of Topics from Previous Day.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-22386 Filed 10-2-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics
Date and Time:
October 23, 1986; 9:00 a.m. to 6:00 p.m.
October 24, 1986; 9:00 a.m. to 4:00 p.m.
Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550
Type of Meeting: Open
Contact Person: Dr. Harvey B. Willard, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20050.
Summary of Minutes: May be obtained from Mrs. Denise S. Henry, Division of Physics, National Science Foundation, Washington, DC 20550.
Purpose of Committee: To provide advice and recommendations concerning support for research in physics.
Agenda:

October 23, 1986: 9:00 a.m. to 6:00 p.m.

Oversight review of NSF support of elementary particle physics, including presentations by NSF staff and the report of the Subcommittee for Review of the NSF Elementary Particle Physics Program. Discussion of funding issues in Physics.

October 24, 1986: 9:00 a.m. to 4:00 p.m.

Continuation of discussions on the Report of the Subcommittee for Review of the NSF Elementary Particle Physics Program. Status of FY87 and FY88 funding. Discussion of major projects, infrastructure, and balance among programs. Election of new chairman and other business.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-22388 Filed 10-2-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Biochemistry; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, The National Science Foundation announces the following meeting:

Name: Advisory Panel for Biochemistry
Date: Monday and Tuesday, October 20 and 21, 1986, from 9:00 am to 5:00 pm
Place: Historic Inns of Annapolis, Annapolis, Maryland
Type of Meeting: Closed
Contact Person: Sigmund R. Suskind and H.T. Huang, Program Directors, Biochemistry Program, Room 329-D, Telephone (202) 357-7945
Purpose of Advisory Panel: To provide advice and recommendations concerning support for Biochemistry research proposals.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-22387 Filed 10-2-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Developmental Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Developmental Biology
Date and Time: October 16, 17, 18, 1986, starting at 9:00 A.M. to 5:30 P.M.
Place: Conference Room 628, National Science Foundation, 1800 G Street, NW Washington, DC 20550
Type of Meeting: Closed
Contact Person: Dr. Joseph P. Mascarenhas, Program Director or Dr. Judith Plesset, Assistant Program Director, Developmental Biology Program, Room 332, National Science Foundation, Washington, DC 20550, Telephone 202/357-7989.
Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in developmental biology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.
Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, National Science Foundation, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-22385 Filed 10-2-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Psychobiology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L., 92-

463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Psychobiology.
Date and Time: October 20-22, 1986, 8:30 a.m.—5:00 p.m. each day.
Place: National Science Foundation, 1800 G Street, NW., Room 543, Washington, DC
Type of Meeting: Closed.
Contact Person: Dr. Fred Stollnitz, Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, DC, 20550, Telephone (202) 357-7949.
Purpose of Panel: To provide advice and recommendations concerning support for research in psychobiology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a propietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.
Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 86-22789 Filed 10-2-86; 8:45 am]
BILLING CODE 7555-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act of the Information Collection Requirement Contained in 29 CFR Part 2643

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of extension.

SUMMARY: The Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for an extension of the expiration date of a currently approved information collection requirement (1212-0021) without any change in the substance or in the method of collection. The information collection, which is scheduled to expire on October 31, 1986, is contained in the PBGC's regulation on Variances for Sale of Assets, 29 FR Part 2643. The purpose of this notice is to advise the public of the PBGC's request for OMB approval of this extension.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Steven Rothenberg, Attorney, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202-956-5050 (202-956-5059 for TTY and TDD). These are not toll-free numbers.

Issued at Washington, DC, this 29th day of September 1986.

Kathleen P. Utgoff,
Executive Director.
[FR Doc. 86-22683 Filed 10-2-86; 8:45 am]
BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 29, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Lockheed Corporation (Delaware)
Common Stock, $1.00 Par Value (File No. 7-9246)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 21, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 86-22678 Filed 10-2-86; 8:45 am]
BILLING CODE 8010-01-M

[File No. 1-9017]

Issuer Delisting; Application To Withdraw From Listing and Registration; First Capital Holdings Corp.

September 29, 1986.

First Capital Holdings Corp. ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the Common Stock, Par Value $.01, from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's stocks was recently listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before October 21, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 23679 Filed 10-2-86; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 15381; File No. 812-6448]

Polycast Technology Corp. Application Requesting Temporary Exemption From All Provisions of the Act

September 29, 1986.

Notice is hereby given that Polycast Technology Corporation (the "Applicant"), 60 Southfield Avenue, Stamford, Connecticut 06902, filed an application on August 6, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting it from all provisions of the Act for a period ending October 31, 1986, or in the alternative, an order pursuant to section 3(b)(2) of the Act declaring that Applicant is primarily engaged in a business other than investment company activities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions thereof.

According to the application, Applicant, a Delaware corporation, is a reporting company under the Securities Exchange Act of 1934. Applicant states that the principal market for Applicant's common stock is the over-the-counter market and that it is also listed on the Boston Stock Exchange. Applicant further states that it is engaged in the manufacture and distribution of cell cast acrylic sheet, thermoplastic sheet, and acrylic rods and tubes.

Applicant represents that on August 7, 1986, it completed a public offering (the "Offering") of 40,000 Units (the "Units"), each Unit consisting of one 9-7/8% Subordinated Note due 1995 in the principal amount of $1,000 and 100 warrants (the "Warrants"), each Warrant entitling the holder thereof to purchase one share of the Applicant's common stock. The net proceeds from the Offering of the Units were approximately $37.8 million in cash. Applicant further represents that most of the cash has been invested in short-term and marketable securities so it may be readily available for the financing of potential acquisitions by Polycast. As of June 30, 1986, Applicant states that its assets consisted of approximately $670,000 of cash and cash equivalents, marketable securities of approximately 29,000,000, an investment in a repurchase agreement of approximately $10,000,000, trade receivables of approximately 5,300,000, inventories of approximately 3,800,000 prepaid expenses and other assets of approximately 3,000,000, fixed assets of approximately 12,300,000 and investments in wholly-owned subsidiaries of approximately 7,000,000.

Applicant states that prior to completion of the Offering and consistent with the requirements of Rule 3a-2 under the Act, the Board of Directors of the Applicant adopted a resolution declaring Applicant's intention to become engaged primarily in non-investment company businesses as soon as reasonably possible and in any event within one year from completion of the Offering. Applicant also states that the officers of Applicant had, even prior thereto, begun to direct their efforts toward acquiring such non-investment company businesses.

According to the application, representatives of Applicant began discussions with representatives of Uniroyal, Inc. ("Uniroyal") concerning acquiring Uniroyal's plastics business in March 1985. Applicant states that in October 1985, Uniroyal completed a restructuring of its businesses, following a leveraged buy-out, and has subsequently been engaged in selling various of its subsidiaries. Applicant further states that along with several other potential acquirers, it received an invitation in March 1986, to submit a bid to acquire Uniroyal Plastics Company, Inc. ("Plastics"), a subsidiary of Uniroyal. Applicant represents that it submitted its initial bid in April 1986 and subsequent bids were tendered by other potential acquirers from then until July 23, 1986, when Uniroyal accepted Applicant's bid. Applicant also represents that on July 23, 1986, it entered into a definitive agreement to purchase all of the outstanding shares of Plastics and the closing of the purchase of Plastics is subject to the satisfaction of various conditions, including receipt of government approvals and Applicant obtaining sufficient additional financing. Presently, Applicant states that the closing is scheduled to occur not later than September 30, 1986, but will not occur before August 7, 1986. Therefore, Applicant will not succeed in completing the acquisition of Plastics within the one-year exception provided by the Rule 3a-2 safe harbor.

Applicant asserts that it has been and is presently committed to its operating businesses as expeditiously as possible. Since the Offering, Applicant also asserts that it has been studying other potential acquisitions, some of which have been considered for acquisition in addition to Plastics and some of which have been considered as alternatives. On the closing of the purchase of Plastics, Applicant submits that it would clearly be primarily engaged in non-investment company businesses.

According to the application, Applicant and Uniroyal are presently engaged in meeting the closing conditions specified in the purchase agreement. In particular, Applicant represents that it is preparing to obtain approximately $135 million in bank and debt financing. On completion of the purchase of Plastics, Applicant believes that it would clearly be primarily engaged in non-investment company businesses. Applicant also believes that it is in the best interest of its stockholders to complete the acquisition of Plastics, and that it will complete such acquisition prior to September 30, 1986. In the meantime, Applicant contends that substantially all of Applicant's resources will remain committed to the acquisition of Plastics.

Applicant asserts that the request for exemption is necessary and appropriate in the public interest and consistent with the protection of investors. Applicant further asserts that it failed to become primarily engaged in operating businesses within the one-year period allowed by Rule 3a-2 due to factors beyond its control (such as its lack of control over the bidding process of Uniroyal). Applicant believes that its officers and employees have been trying since, and even prior to, the sale of the Units, and will continue to try, in good faith, to effectuate the investment of its assets in a non-investment company business. Finally, Applicant submits that it has invested substantially all the cash received upon the sale of the Units in securities solely to preserve its value pending application of such assets to an acquisition of non-investment company assets.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 28, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the

request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-22461 Filed 10-2-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15330; File No. 812-6457]

Sparekassen SDS and North America Inc.; Foreign Bank Application

September 26, 1986.

Notice is hereby given that Sparekassen SDS (the "Bank"), a Danish savings bank, and its wholly-owned subsidiary SDS North America Inc., a Delaware corporation, (the "Company," collectively, "Applicants"), c/o C. Thomas Kunz, Esq., Seward & Kissel, Wall Street Plaza (88 Pine Street) New York, New York 10005, filed an application on August 13, 1986 and an amendment thereto on September 22 and 25, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for a statement of the relevant provisions thereof.

Applicants state that the Bank is currently the fourth largest financial institution in Denmark in terms of size of assets, the third largest financial institution in Denmark in terms of amount of deposits and the largest savings bank in Scandinavia. The Bank is authorized to engage in bank activities under the provisions of the Commercial Banks and Savings Banks Act, Consolidation Act No. 374, August 15, 1985 (the "Banking Act"). Applicants represent that the Bank's business includes the receipt of deposits and the utilization of such deposits and the making of various types of loans, fiduciary services, payment transmission, brokerage, leasing, foreign exchange and loan syndication. As permitted under Danish law, the Bank also engages in underwriting activities and conducts various international operations.

Applicants state that the Bank is subject to a regulatory structure comparable to, and in certain important respects more restrictive than, that to which United States banks are subject. The Bank is regulated under the Banking Act, and is supervised by the Inspectorate of Commercial Banks and Savings Banks, under the auspices of the Danish Ministry of Industry. Applicants represent that, under the Banking Act, the Bank is required to comply with extensive requirements, including, among other things, requirements with respect to net capital, diversification of loans, liquidity, reporting and examination requirements.

Applicants state that the Company's sole business will consist of issuing and selling its short-term debt securities as described below and advancing the net proceeds of the sale thereof to the Bank and to subsidiaries of the Bank (the "Advances"). Applicants state that substantially all of the Company's assets will consist of the Company's rights to receive repayments from the Bank and its subsidiaries of indebtedness arising by reason of the Advances made by the Company from the net proceeds of sales of the Company's debt securities. The Bank represents that there has been, and undertakes that there will be, no future offering of the Company's capital stock or of any other equity of the Company. All of the Company's outstanding capital stock is owned by the Bank.

Applicants propose to offer for sale in the United States short-term negotiable promissory notes of the type generally referred to as commercial paper (the "Notes). According to the application, the Notes will be sold in minimum denominations of $100,000, will have maturities not exceeding 270 days, and will neither be payable on demand prior to maturity nor eligible for any extension, renewal, or automatic "rollover" at the option of the either the holders or whichever of the Applicants issued the Notes. Applicants state that it is anticipated that the Notes will be: (i) Issued by the Company and guaranteed by the Bank, (ii) issued directly by the Bank, or (iii) some combination of (i) and (ii). Applicants represents that the Notes will not be advertised or otherwise offered for sale to the general public, but, instead, will be issued and sold through one or more commercial paper dealers ("Dealer") in the United States to investors in the United States who normally purchase commercial paper. According to the application, if the Notes are issued by the Company and guaranteed by the Bank, the Notes will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of the Company, and the Bank's guarantee of the Notes will rank equally with all deposit liabilities and all other unsecured, unsubordinated indebtedness of the Bank. If the Notes are issued by the Bank, Applicants represent that they will be the direct liabilities of the Bank, will rank *pari passu* among themselves and equally with all deposit liabilities and all other unsecured, unsubordinated indebtedness of the Bank.

Applicants undertake not to market any Notes until they have received an opinion from their United States counsel to the effect that the proposed offering of Notes is entitled to an exemption under section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Applicants do not request Commission review or approval of such opinion.

Applicants state that the Company will agree to advance to the Bank or its controlled subsidiaries all of the net proceeds of the sale of any Notes issued by the Company (after deduction for certain minor related incidental costs). Applicants further state that the Bank and its subsidiaries will be obligated to repay to the Company on the maturity date of each Advance the principal amount thereof, together with interest thereon payable from time to time in an amount sufficient to enable the Company to satisfy its liabilities in connection with the transaction. Each Advance will have the same maturity date as the maturity date of the Notes issued by the Company to obtain funds to make such Advance. The Bank and its controlled subsidiaries will use the proceeds of the Advances in the ordinary course of their respective businesses for "currrent transactions" within the meaning of section 3(a)(3) of the 1933 Act.

Applicants may from time to time offer their debt securities other than the Notes for sale in the United States. The proceeds of any such debt securities would, in the case of debt securities of the Company, be loaned or advanced to the Bank or its controlled subsidiaries in a similar manner to the Advances and, in the case of such debt securities issued by the Bank, be utilized directly by the Bank or its subsidiaries for general banking or other purposes. The obligations of the Company in respect of any such debt securities issued by the Company will be supported by the Bank's unconditional guarantee and the Bank will expressly consent to the enforcement of such guarantee directly by the holders of the debt securities. The future issuances of debt securities will have the same *pari passu* status as described above for the Notes.

Applicants undertake that no future debt securities shall be offered or sold by either of them unless they have received an opinion of United States counsel or a "no-action" letter issued by the Staff of the Commission to the effect that the proposed offering is in compliance with, or entitled to an exemption from, the registration requirements of the 1933 Act, or unless the offering is made pursuant to a registration statement under the 1933 Act.

Applicants state that they will require each Dealer in the Notes to provide each offeree of the Notes and any future offerings of debt securities in the United States (together hereinafter referred to as "Securities") with a memorandum ("Offering Memorandum") describing the business of the Bank and the Company and providing the most recent annual audited financial statements for the Bank, together with a brief description of the material differences between the Danish accounting principels utilized in the preparation of the Bank's financial statements and generally accepted accounting principles as applied in the United States. Applicants contend that the Offering Memorandum prepared by each Dealer will be at least as comprehensive as Offering Memorandum customarily used in offering commercial paper in the United States and will be updated promptly to reflect material changes in the financial condition of the Applicants.

Applicants further represent that the Securities shall have received prior to issuance one of the two highest investment grade ratings from at least two nationally recognized statistical rating organizations and that Applicants' United States counsel will certify that such a rating has been received, provided, however, that no such rating need be obtained with respect to any such issue if, in the opinion of Applicants' United States counsel (such counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in Rule 502 of Regulation D under the 1933 Act and various "no-action" letters made public by the Commission), an exemption from registration is available for the issuance of the Securities pursuant to section 4(2) of the 1933 Act or Regulation D promulgated thereunder.

Applicants state that they will select a major commercial bank or trust company to act as issuing and paying agent for the Securities. Applicants further state that the Bank will submit to the jurisdiction of any State or Federal court in the City of New York, and will authorize an agent to accept service or process, in any actions based upon the Securities or guarantees relating thereto. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to the Securities have been paid. Applicants consent to any order granting their application being expressly conditioned on the Applicants' compliance with the undertakings set forth above.

Applicants represent that issuance of the Securities is in the public interest and consistent with the protection of investors and the purposes of the Act. Applicants state that approval of the application would serve the national interest in permitting ready and economical access to the attractive rates available in the commercial paper market by entities which do not require the regulation provided by the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 20, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-22480 Filed 10-2-86; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Nondiscrimination on the Basis of Handicap in Selective Service System; Change in Telephone Number (TDD)

AGENCY: Selective Service System.

ACTION: Notice.

SUMMARY: The telephone number (TDD) of the Selective Service System for use by hearing impaired persons is changed to 312-688-2567.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, Phone 202-724-1167, TDD Phone 312-688-2567.

Wilfred L. Eiel,

Acting Director of Selective Service.

September 26, 1986.

[FR Doc. 86-22390 Filed 10-3-86; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 09/83-0169]

Notice of Application for a Small Business Investment Company License; Washington Ventures, Inc.

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, *et seq.*) has been filed by Washington Ventures, Inc. (Applicant), 619 14th Street NW., Washington, DC 20005 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1986).

The officers, directors, and sole shareholder of the Applicant are as follows:

Name	Title or relationship	Percent of ownership
Luther H. Hodges, Jr., 2301 H. Street NW., Washington, DC 20007.	Chairman of the Board of Directors.	
Kenneth A. Swain, 4625 N. 29th Street, Arlington, VA 22207.	President, Director	
C. James Nelson, 3709 Blackhorn Ct., Chevy Chase, Maryland 20815.	Director	
Donald E. Ervin, 11509 Fairway Drive, Reston, Virginia 22090.	Director	
Kathleen W. Collins, 199 4th Street NE., Washington, DC 20002.	Senior Vice President, Secretary, Director.	
Patrick G. Hurley, 309 Bemiere Drive, Alexandria, VA 22305.	Senior Vice President, Treasurer, Director.	
James G. Tardif, 1882 Oak Street NW., Washington, DC 20010.	Director	
Washington Bancorporation, 619 14th Street NW., Washington, DC 20005.	Sole Shareholder	100

Washington Bancorporation is a bank holding company whose major asset is the National Bank of Washington. Washington National Holdings, N.V. a Netherlands Antilles corporation, is the only beneficial owner of more than ten percent of the voting securities of the Applicant by virtue of its partial ownership of Colson, Inc., a Delaware

corporation, who owns in excess of 80 percent of Washington Bancorporation.

The Applicant, a District of Columbia corporation will begin operations with $1,000,000 in private capital. The Applicant will conduct its activities primarily in the States of Virginia and Maryland and the District of Columbia.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St. NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Washington, DC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 26, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-22456 Filed 10-2-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Shipping Coordinating Committee; Meeting of the Subcommittee on Safety of Life at Sea, Working Group on Ship Design and Equipment

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on October 8, 1986 at 9:30 AM in Room 2415 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting will be to discuss the activities of the 29th Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE), held May 19 to 23, 1986, and to prepare for the 30th Session of IMO DE, tentatively scheduled for June 1 to 5, 1987.

Major items of discussion include the following:

1. Maneuverability of Ships—Discussions will focus on the review of Resolution A.209(VII) and the recommendation on the Provision and Display of Maneuvering Information on Board Ships, which will supersede the recommendation on maneuvering information adopted by Resolution A.209(VII).

2. Watertight Doors in Passenger Ships—At the 29th Session of IMO DE, progress was made to further develop draft amendments to Regulation II-1/15 of the 1974 SOLAS Convention, as amended. Discussions will focus on the substance of these draft amendments and the need for a U.S. position paper to the 30th Session of IMO DE commenting on the particular amendments.

3. Review of the MODU Code—An ad hoc working group, established at the 29th Session of IMO DE, considered most chapters of the MODU Code with the following results: agreement on retaining the existing Preamble to the MODU Code, advising the Subcommittee on Stability, Loan Lines and Fishing Vessel Safety on Chapter 3, and proposing amendments to Chapters 1, 10, and 14. A U.S. draft MSC Circular on existing MODUs was adopted at the 29th Session and forwarded to the Maritime Safety Committee (MSC) without change. Chapter 4 and 5 of the MODU Code have not as yet been considered by the ad hoc working group on machinery and electrical installations. These chapters are scheduled for consideration by the ad hoc group at either the 30th Session of IMO DE or at an intersessional meeting—to be determined by the MSC at its 53rd Session, schedulde for September 8 to 17, 1986.

Other items of discussion include the following:

4. Harmonization of alarms.

5. Helicopter facilities.

6. Safety provisions for ships converted to floating receptions facilities.

7. MSC Circular on operating and emergency instructions in various languages.

8. Study of problems arising in emptying fuel oil from damaged double bottom tanks.

9. Possible inclusion of height above the keel in ships plans.

10. Proposed amendments to the Code of Safety for Special Purpose Ships regarding survival craft on sail training ships.

Members of the public may attend up to the seating capacity of the room.

For further information contact Captain G. G. Piche, U.S. Coast Guard Headquarters (G-MTH/12), 2100 Second Street SW., Washington, DC 20593, Telephone: (202)267-2967.

Dated: September 3, 1986.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 86-22517 Filed 10-2-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on September 26, 1986, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on September 26, 1986.

DOT No: 2792
OMB No: 2132-0015
By: Urban Mass Transportation Administration
Title: Supporting Services/Cost Allocation Plan
Form(s): N/A
Frequency: On occasion
Respondents: State and local Governments
Need/Use: The plan is needed for audit purposes and must be submitted only if a grantee desires reimbursement for administrative costs in connection with a capital grant.

DOT No: 2793
OMB No: 2133-0506
By: Maritime Administration
Title: Merchant Marine Medals and Awards
Form(s): None
Frequency: On occasion
Respondents: Merchant seamen
Need/Use: For processing and verifying requests for merchant seamen's service awards.

DOT No: 2794
OMB No: 2120-0067
By: Federal Aviation Administration
Title: Air Taxi and Commercial Operator Airport Activity Survey
Form(s): FAA Form 1800-31
Frequency: Annually
Respondents: Air Carriers
Need/Use: Emplanement data collected from air taxi and commercial operators are required for the calculation of air carrier airport sponsor apportionments as specified by the Airport and Airway Improvement Act of 1982.

DOT No: 2795
OMB No: 2115-0092
By: United States Coast Guard
Title: Fleeting Facility Records
Form(s): N/A
Frequency: On occasion
Respondents: Barge facility owners in New Orleans, LA vincinity
Need/Use: This information collection requires the person-in-charge of barge fleeting facilities to keep records of barge mooring activities and hazardous cargo movements. The records are used to assure regulatory compliance and to provide documentary evidence should enforcement action be necessary.

DOT No: 2796
OMB No: 2133-0505
By: Maritime Administration
Title: Revised Standby Voluntary Tanker Agreement
Form(s): N/A
Frequency: On occasion
Respondents: Agreement participants (certain tanker companies)
Need/Use: Controlled tonnage reports are occasionally required of participants for defense mobilization/emergency planning.

DOT No: 2797
OMB No: 2133.0504
By: Maritime Administration
Title: Regulations for Making Excess and Surplus Federal Property Available to the U.S. Merchant Marine Academies and Approved Nonprofit Maritime Training Institutions
Form(s): N/A
Frequency: On occasion
Respondents: USMMA, State Maritime Academies, and certain maritime schools
Need/Use: Upon notification certain vessels, shipboard equipment, and other marine equipment owned by the Government and determined to be excess or surplus can be made availalble to qualified maritime training institutions for instructional purposes.

DOT No: 2799
OMB No: 2105-0507
By: Office of the Secretary of Transportation
Title: Department of Transportation, FAR Supplement
Form(s): DD Forms 375, 882, and 1567 DOT Forms 4220.3, 4220.4, 4220.5, 4220.6, 4220.7, 4220.10, and 4220.21
Frequency: Varies
Respondents: Government Contractors
Need/Use: These requirements are necessary for DOT to carry out its mission. The information is used to evaluate bids and proposals, establish and monitor contracts, and ensure compliance with mandatory public provisions. Respondents include manufacturers, suppliers, engineering firms, etc., both large and small.

DOT No: 2800
OMB No: New
By: Office of the Secretary of Transporation
Title: Procurement Operations DOT
Form(s): Various GSA Standard Forms Used in Procurement
Frequency: Varies
Respondents: Government Contractors
Need/Use: DOT must have approval in order to carry out its mission. The information is necessary in order for DOT to evaluate bids and proposals, establish and monitor contracts, and ensure compliance with mandatory public policy provisions. Respondents include manufacturing, supply, engineering firms, etc., both large and small.

DOT No: 2802
OMB No: 2115-0073
By: United States Coast Guard
Title: Alternative Compliance—COLREGS
Form(s): N/A
Frequency: On occasion
Respondents: Vessel owners, operators, builders and agents
Need/Use: Vessel owners, operators, builders, and agents whose vessel cannot fully comply with equipment requirements of 72 COLREGS without interference with special functions of the vessel may apply for an alternative compliance. This information collection is needed to determine that the alternative compliance is justified, and to determined the conditions thereof.

Issued in Washington, DC, on September 26, 1986.

John E. Turner,

Director of Information Resource Management.

[FR Doc. 86-22394 Filed 10-2-86; 8:45 am]

BILLING CODE 4910-62-M

Order Adjusting International Cargo Rate Flexibility Level

Policy statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility, within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The SFRL for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the relevant ratemaking entity. The first adjustment was effective April 1, 1983. By Order 86-4-8, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period starting October 1, 1986, we have projected nonfuel costs based on the year ended June 30, 1986, data and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department by the carriers.

By Order 86-9-91 cargo may be adjusted by the following adjustment factors over the April 1, 1982, level:

Atlantic.....0.8446

Western Hemisphere	.0094
Pacific	1.0145

For Further Information Contact: Julien Schrenk, (202) 366-2441.

By the Department of Transportation.

Dated: September 29, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-22460 Filed 10-2-86; 8:45 a.m.]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending September 26, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44274

Parties

Members of International Air Transport Association

Date Filed: September 25, 1986

Subject: SCR Description Writer's Guidelines

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-22397 Filed 10-2-86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended

September 26, 1986.

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44286

Date Filed: September 22, 1986

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 20, 1986

Description:

Application of Continental Airlines, Inc. and Air Micronesia, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations requests amendment of certificates of public convenience and necessity for Route 171 and Route 170, respectively, so as to authorize Continental/Air Micronesia to operate nonstop service between the United States coterminals Guam and Saipan, Northern Mariana Islands, and Fukuoka, Japan.

Docket No. 44287

Date Filed: September 22, 1986

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 20, 1986

Description:

Application of American Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to provide service between the co-terminal points New York and Miami and the terminal point Caracas, Venezuela.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-22392 Filed 10-2-86; 8:45 am]

BILLING CODE 4910-62-M

Galaxy Airlines, Inc., Continuing Fitness Investigation; Change in Location of Prehearing Conference

[Docket No. 43940]

Notice is hereby given that the location of the prehearing conference in the above-entitled proceeding scheduled to commence on September 30, 1986, at 10:00 a.m. (local time), in Hearing Room 2, Lower Level, 2120 L Street NW., is moved to Room 5332, Nassif Building, 400 7th Street SW., before the undersigned administrative law judge.

Dated at Washington, DC, September 25, 1986.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 86-22393 Filed 10-2-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[RSAI-Ap-No. 1031]

National Railroad Passenger Corp.; Public Hearing

The National Railroad Passenger Corporation (Amtrak) has petitioned the Federal Railroad Administration (FRA) for relief from certain requirements of § 236.23 and 236.514 of the Rules, Standards and Instructions (49 CFR 236.23 and 236.514).

In particular Amtrak requests permission: (1) To use a wayside signal aspect consisting of a flashing series of lights at an angle of approximately 45 degrees to the vertical over a flashing series of vertical lights with an indicator illuminated to display the numerals 70 in order to indicate "Proceed approaching next signal at diverging speed" and (2) to use a wayside signal aspect of flashing vertical lights with an indicator illuminated to display the numerals 70 to indicate "Proceed: Diverging speed within the interlocking limits." The illuminated numerals would indicate the diverging speed. The cab signal aspect would simultaneously display a series of vertical lights or a green light, either of which would indicate "Proceed."

This relief is sought in connection with the installation of a high speed crossover between tracks No. 1 and No. 2 at Grove Interlocking, near Odenton, Maryland, on the Baltimore Division of the Northeast Corridor.

This proceeding is identified as FRA Rules, Standards and Instructions application No. 1031.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on the proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on November 13, 1986, in Room 8236 of the Nassif Building at 400 7th Street, SW., Washington, DC.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.21), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, cross-examination of persons presenting statements will be somewhat limited. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on September 30, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-22513 Filed 10-2-86; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 30, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0195.
Form Number: ATF F 5110.25.
Type of Review: Extension.
Title: Application for Operating Permit Under 26 U.S.C. 5171(d).

OMB Number: 1512-0204.
Form Number: ATF F 5110.38.
Type of Review: Extension.
Title: Formula for Distilled Spirits Under the Federal Alcohol Administration Act—Supplemental.

OMB Number: 1512-0309.
Form Number: ATF REC 5120/4.
Type of Review: Extension.
Title: Notices and Records Relating to the Use of Carbon Dioxide in Still Wine.

OMB Number: 1512-0399.
Form Number: ATF F 5400.21.
Type of Review: Extension.
Title: Application Permit for User Limited Special Fireworks Under 18 U.S.C. Chapter 40, Explosives.

Clearance Officer: Robert G. Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-22484 Filed 10-2-86; 8:45 am]

BILLING CODE 4810-25-M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 51, No. 192
Friday, October 3, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: 51 FR 34311, Friday, September 26, 1986.

TIME AND DATE OF MEETING: Wednesday, October 1, 1986.

CHANGES: Meeting canceled.

Listed below are the agenda items which were canceled.

Commission Meeting, Wednesday, October 1, 1986, 10:00 a.m., Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

Open to the Public

1. General Policy Statement

The Commission will consider a proposed Statement of General Policy concerning the structure and workings of the Commission staff and the flow of information within the Agency.

2. Commission Structure

The Commission will consider certain Agency structural realignments initiated by the Chairman.

3. Industrial Safety Handbook.

The Commission will consider the proposal forwarded by the American National Standards Institute/CPSC Coordinating Committee for the Commission to lead in the development of a publication to be used by manufacturers of Consumer Products. The publication would assist in the manufacture of safer products.

4. Management Review: Field Operations Reorganization

The staff will brief the Commission on issues related to reorganization options for field operations.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

September 30, 1986.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 86-22498 Filed 10-1-86; 9:27 am]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: 51 FR 34311, Friday, September 26, 1986.

TIME AND DATE OF MEETING: Thursday, October 2, 1986.

CHANGES: Meeting Canceled.

Listed below is the agenda item which was canceled.

Commission Meeting, Thursday, October 2, 1986, 10:00 a.m., Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

Open to the Public

FOIA Fees: Options

The Commission will consider proposed amendments to sections of the Freedom of Information Act regulatons pertaining to fees.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 86-22459 Filed 10-1-86; 9:28 am]

BILLING CODE 6355-01-M

3

FARM CREDIT ADMINISTRATION

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 7, 1986, from 10:00 a.m. until such time as the Board concludes it business.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters at the meeting are:

1. Approval of Minutes of September Meeting.
2. Regulations:

Final

Parts 614 and 618—Shareholder/Borrower's Rights
Parts 600 thru 619—Technical Amendments

3. Other Financial Institutions Requests for Retire Equity Investment in Federal Intermediate Credit Banks.

*4. Examination and Enforcement Matters.

*Closed Session—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

Dated: October 1, 1986.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration.

[FR Doc. 86-22560 Filed 10-1-86; 3:20 pm]

BILLING CODE 6705-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, October 7, 1986, to consider the following matters:

Summary Adenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an intem be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge and establish one branch:

First Security Bank, Searcy, Arkansas, an insured State nonmember bank, for consent to merge, under its charter and title, with The First Bank, Griffithville, Arkansas, and for consent to establish the sole office of The First Bank as a branch of the resultant bank.

Application for consent to merge and establish four branches:

The Islamorada Bank, Monroe County (P.O. Islamorada), Florida, an insured State nonmember bank, for consent to merge, under its charter and with the title "T.I.B. State Bank of the Florida Keys," with Florida Keys First State Bank, Key West, Florida, and for consent to establish the four offices of Florida Keys First State Bank as branches of the resultant bank.

Applications for consent to merge and establish 63 branches and to exercise full trust powers:

Key Bank of Oregon, Woodburn, Oregon, an insured State nonmember bank, for consent to merge, under its charter and title, with Citizens Valley Bank, Albany, Oregon; Pacific Western Bank, Portland, Oregon; Hood River County Bank, Hood River, Oregon; and The First National Bank of McMinnville McMinnville, Oregon, for consent to establish the 61 operating branches and the two approved but unopened branches of these banks as branches of the resultant bank, and for consent to exercise full trust powers.

Application for consent to purchase assets and assume liabilities:

Pike County Bank, Murfreesboro, Arkansas, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the Murfreesboro, Arkansas, Office of FirstSouth, F.A., Pine Bluff, Arkansas, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,486-NR (Amendment)
Golden Pacific National Bank, New York (Manhattan), New York
Case No. 46,664-L (Amendment)
Toney Brothers Bank, Doerun, Georgia
Case No. 46,665-SR (Amendment)
The Farmers and Merchants State Bank of Rush County, La Crosse, Kansas
Case No. 46,889-L
Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico
Case No. 46,890-L
South Coast Bank, Costa Mesa, California
Case No. 46,891-SR (Amendment)
The Des Plaines Bank, Des Plaines, Illinois
Memorandum and Resolution re:
American City Bank, Los Angeles, California

Memorandum and Resolution re: Revision of Part 304 of the Corporation's rules and regulations, entitled "Forms, Instructions and Reports," which (1) removes obsolete information from the regulation, updates information which still pertains, and adds information not previously included; and (2) reogranizes the regulation in order to improve its clarity and overall utility to the reader.

Reports of Committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re:
California Heritage Bank, San Diego, California (2516) (Memo dated August 22, 1986)
Summary Audit Report re:
The Farmers and Merchants State Bank of Rush County, La Crosse, Kansas (6650) (Memo dated August 21, 1986)
Summary Audit Report re:
Decatur County National Bank of Oberlin, Oberlin, Kansas (2514) (Memo dated August 21, 1986)
Summary Audit Report re:
Bank of Dixie, Lake Providence, Louisiana (2525) (Memo dated September 11, 1986)
Summary Audit Report re:
State Bank of Frost, Frost, Minnesota (2505) (Memo dated September 3, 1986)
Summary Audit Report re:
The Farmers State Bank of Barry County, Exeter, Missouri, Exeter, Missouri (2520) (Memo dated September 12, 1986)
Summary Audit Report re:
Lake National Bank, Lake Ozark, Missouri (2521) (Memo dated September 12, 1986)
Summary Audit Report re:
Farmers & Merchants Bank, Comstock, Nebraska (6642) (Memo dated September 10, 1986)
Summary Audit Report re:
Farmers State Bank, Bagnet, Nebraska (2524) (Memo dated September 5, 1986)
Summary Audit Report re:
The Diff State Bank, Diff City, Oklahoma (2515) (Memo dated August 21, 1986)
Summary Audit Report re:
The Farmers and Merchants National Bank of Hennessey, Hennessey, Oklahoma (5635) (Memo dated September 5, 1986)
Summary Audit Report re:
American Bank of Casper, Casper, Wyoming (6652) (Memo dated September 5, 1986)
Summary Audit Report re:
Cash Study (Memo dated August 21, 1986)
Summary Audit Report re:
Payroll System Development Project (Memo dated August 28, 1986)
Summary Audit Report re:
Review of 1985 Reconciliation of Accounts Payable, Cash Disbursements, and General Ledger Accounts (Memo dated August 28, 1986)

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation at (202) 898-3813.

Dated: September 30, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-22519 Filed 10-1-86; 11:31 am]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, October 7, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6),(c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(6), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

A report regarding the Corporation's assistance agreement with an insured bank.

Recommendation regarding the Corporation's liquidation activities.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 30, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson.

Executive Secretary.

[FR Doc. 86–22520 Filed 10–1–86; 11:01 am]

BILLING CODE 6714–01–M

6

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—October 8, 1986.

PLACE: Hearing Room One—1100 L Street NW., Washington, DC 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER TO BE CONSIDERED: Portion open to the public:

1. Docket 85–18: Member Lines of the Transpacific Westbound Rate Agreement—Possible Violations of the Shipping Act of 1984; Review of Initial Decision.

Portions closed to the public:

1. Agreement No. 204–010986 and 204–010986–001: United States Peru Equal Access Agreement. Peruvian Decree No. 009–86–TC; Section 19 Status Report.

2. Docket No. 82–49: Reefer Express Lines Pty., Ltd. v. Uiterwyk Cold Storage Corp., Eller & Company, Inc. and Tampa Port Authority—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 86–22534 Filed 10–1–86; 8:45 am]

BILLING CODE 6730–01–M

7

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE 10:00 a.m., Wednesday, October 8, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street enterance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed change to the Board's policy on the frequency of consumer compliance examinations.

Discussion Agenda

2. Proposal regarding fees for examinations of Edge corporations and for processing applications for banks and bank holding companies.

3. Proposed market research study on new currency design.

4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: October 1, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–22626 Filed 10–1–86; 11:22]

BILLING CODE 6210–01–M

8

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Wednesday, October 8, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Request from an outside organization for funding.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 1, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–22527 Filed 10–1–86; 11:23 am]

BILLING CODE 6210–01–M

9

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold an open meeting as soon as possible following the signing of the Tax Reform Act of 1986:

To consider whether to authorize the issuance of an interpretive release concerning the disclosure of the effects of the Tax Reform Act of 1986. The Commission may discuss the disclosure by registrants of the effects of the Tax Reform Act, and whether it should object to the presentation of disclosures which quantify the effects of the Tax Reform Act by the pro forma application of the provision of the Financial Accounting Standards Board's Exposure Draft, "Proposed Statement of Financial Accounting Standards—Accounting for Income Taxes." For further information, please contact John A. Heyman at (202) 272–2130.

Commission Fleischman, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272–3195.

Shirley E. Hollis,

Assistant Secretary.

September 30, 1986.

[FR Doc. 86–22528 Filed 10–1–86; 12:59 pm]

BILLING CODE 8010–01–M

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federal register

Friday
October 3, 1986

Part II

Environmental Protection Agency

Final NPDES General Permit for Oil and Gas Operations on the Outer Continental Shelf and in State Waters of Alaska: Cook Inlet/Gulf of Alaska; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OW-10-FRL-3089-4]

Final NPDES General Permit for Oil and Gas Operations on the Outer Continental Shelf and in State Waters of Alaska: Cook Inlet/Gulf of Alaska

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final NPDES General Permit.

SUMMARY: The Regional Administrator of Region 10 is today issuing a final National Pollutant Discharge Elimination System (NPDES) general permit for oil and gas exploration wells on the Alaskan Outer Continental Shelf (OCS) and in offshore and coastal waters of the State of Alaska. Notice of the draft general permit was published on July 17, 1985, at 50 FR 28974. The permit authorizes exploratory discharges in all areas offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) in Federal Lease Sales 55 (Gulf of Alaska) and 60 (Cook Inlet). Additionally, the authorized exploratory discharge sites include all Cook Inlet blocks previously offered for lease by the State of Alaska or offered under state lease sales held during the effective period of this permit.

The Cook Inlet/Gulf of Alaska general permit also covers discharges from oil and gas development and production operations in waters of the State of Alaska located in Upper Cook Inlet (i.e., north of the Forelands). The permit does not authorize discharges into any wetlands adjacent to the territorial seas or inland coastal waters of the State of Alaska, or from facilities defined as "onshore" (40 CFR Part 435, Subpart C).

Issuance of the final general permit constitutes Agency action under the Administrative Procedure Act (5 U.S.C. 558(c)) and renders null and void as of the permit effective date all individual permits in the area covered by this general permit which have been continued under 40 CFR 122.6 and the Administrative Procedure Act. There are eighteen facilities with active individual NPDES permits in this category. Each of these individual permittees has complied with reissuance application procedures and has indicated a preference to be covered under this general permit. Region 10 announced its intention when the draft general permit was proposed to cover these facilities under the general permit. Since no objections were received during the public comment period, these facilities, which are listed in the permit, are automatically covered by the general permit as of its effective date.

The final permit establishes effluent limitations, standards, prohibitions, and other conditions on discharges from facilities in these areas. A copy of the permit is printed below. The conditions are based on material contained in the administrative record. A brief description of the basis for the conditions and requirements of the final general permit is given in the final fact sheet and statement of basis published below. Changes made in response to comments received during the public comment period are briefly discussed in the fact sheet. They are addressed in full in a document entitled "Response to Comments Received on Cook Inlet/Gulf of Alaska Permit (NPDES General Permit No. AKG285000)." This document is being sent to all commenters and is available to other parties from the address below upon request.

DATES: This permit shall become effective on October 10, 1986. The short timeframe between the issuance and effective dates is necessary in order not to delay a new production operation in Cook Inlet. In accordance with 40 CFR 23.2, Region 10 hereby specifies that this permit shall be considered final agency action for purposes of judicial review at 9 a.m. Alaska Daylight Savings Time on October 10, 1986.

Comments on any typographical errors, incorrect cross-references, or similar errors may be submitted on or before the date 60 days after publication of this notice. The permit effective date will not be delayed by consideration of the comments.

Request For Coverage

Facilities receiving automatic coverage under the general permit need not submit a formal request for coverage prior to commencement of discharges. However, the information required by Part I.C. of the permit must be submitted within 30 days of the effective date of the permit. Specific permit numbers under the general permit have been assigned to each permittee of this type. The numbers are listed at the beginning of the permit.

For all other facilities, written request for coverage under the general permit shall be provided to EPA, Region 10, at least 60 days prior to initiation of discharges, as described in Parts I.A.1. and I.B.1. of the final permit. Written requests for authorization to discharge shall be provided at least 30 days prior to initiation of discharges, as described in Parts I.A.2. and I.B.2. of the permit. Facilities wishing to start discharging within 60 days after the permit becomes effective need not comply with the 60-day requirement, but shall provide the request for coverage as soon as possible prior to initiation of discharges.

Authorization to discharge requires written notification from EPA that a specific permit number has been assigned to operations at the discharge site. The permit also requires permittees to notify EPA within the 7-day period prior to the initiation of discharges at the site, and prior to the initiation of discharges from each new well at a given site.

The administrative record for the final permit is available for public review at EPA, Region 10, 13th Floor, at the address lised below.

ADDRESS: Requests for coverage and authorization to discharge should be sent to: Environmental Protection Agency, Region 10, Attn: Ocean Programs Section M/S 430, 1200 Sixth Avenue, Seattle, Washington 98101. For state waters, copies of the requests should also be sent to: Southcentral Regional Office, Alaska Department of Environmental Conservation, 437 E Street, Suite 200, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: Kerrie Schurr, Region 10, at the address listed above or telephone (206) 442-1774. Copies of the final general permit, response to comments, and today's notice will be provided upon request.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Regional Administrator of Region 10 is today issuing a final NPDES general permit for discharges from oil and gas exploration wells in state waters of Cook Inlet and in federal waters offered for lease in OCS Lease Sales 55 and 60. The permit also covers discharges from oil and gas development and production operations in Upper Cook Inlet (i.e., north of the Forelands). The final permit replaces any expired individual permits for oil and gas facilities in these areas. The draft permit proposed to grant automatic coverage under the general permit to 20 such facilities with active operations. The final permit automatically covers only 18 facilities, since one permittee indicated that it no longer needed coverage for two exploratory operations.

On July 17, 1985 (50 FR 28974), the Region published a notice of the draft general permit which is being issued in final form today. Comments and supporting documents on the draft permit were received from 12 parties. No public hearing was held since no requests to hold it were received. All of the material submitted during the public comment period is included in the administrative record and was considered in determining the conditions for today's final permit.

Region 10 published a detailed fact sheet for the draft permit (50 FR 28974). Section I of that fact sheet (General Permits and Requests for Individual NPDES Permits) is being incorporated by reference without change as part of the final fact sheet and statement of basis for today's final permit. Section II (Covered Facilities and Nature of Discharges) and Section III (Statutory Basis for Permit Conditions) are incorporated by reference with minor changes, which are discussed in Sections II and III of this final fact sheet. The material in these sections should be consulted in reviewing the applicability and scope of the final permit conditions.

The remaining sections of the fact sheet for the draft permit discussed specific conditions of the proposed permit (Section IV) and the required findings made with respect to other legal requirements (Section V). Because the draft permit was revised in response to public comments, Section IV of the original fact sheet required changes. The new Section IV discusses the basis for each of the conditions in today's final permit, and explains major changes made in response to public comments. Section V presents the necessary legal findings for the final permit.

A detailed listing of and response to public comments received on the draft permit is included in the document entitled "Response to Comments Received on Cook Inlet/Gulf of Alaska Permit (NPDES General Permit No. AKG285000)." The comments and responses have not been printed in today's notice due to their number and length. The document and the original comment letters have been included in the administrative record for the permit. The document is being sent to all commenters and is also available upon request from EPA Region 10.

II. Covered Facilities and Nature of Discharges

This section incorporates by reference Section II (including Figure 1) of the fact sheet for the draft permit, with minor changes as noted below. The following discussion also explains changes in the final permit related to the facilities covered and the nature of the discharges.

A. Nature of Discharges

Under the final permit, the number of wells per exploratory site is not limited to five. Instead, the number of wells from which discharges may occur has been limited to five. The change was made in response to a comment that EPA does not have authority under NPDES permits to limit the number of wells per site.

The final permit authorizes all of the discharges proposed in the draft permit. The category of well treatment fluids, which was proposed in the draft permit to include workover, completion, and test fluids as well, has been divided into four separate categories: well treatment fluids, completion fluids, workover fluids, and test fluids. The revision more closely matches industry's terminology and emphasizes the distinctions between the four fluids, each of which has a different function.

A new discharge has been added to the final permit in response to requests by commenters: produced solids. The basis for the decision is discussed in Section IV of this fact sheet and the Response to Comments. No other new discharge categories were requested.

Because of the change to the well treatment fluids category above, the statement that "The major production operation pollutant sources are produced water and well treatment fluids" is revised to read ". . . and well treatment, workover, and completion fluids."

Since the draft permit was proposed, the Endicott Development Project in the Beaufort Sea has commenced drilling. As a result, the sentence "Thus, the Cook Inlet region differs from other offshore regions of Alaska, where development and production are either nonexistent or in the early stages of planning" is modified to read ". . . or in the early stages of development."

B. Facilities and Areas of Coverage in Federal Waters

Sale 88, which had been postponed indefinitely at the time that the permit was proposed, was cancelled by MMS in May 1986.

Continued permits for two Chevron exploratory operations in federal waters will be rendered null and void by issuance of this general permit. There is no longer a need to give the operations automatic coverage under the general permit since Chevron stated that the leases had already been surrendered to MMS or would be surrendered soon.

C. Facilities and Areas of Coverage in State Waters

The production platform "planned to be built near existing platforms in the Trading Bay area in 1986" is under construction. The operator expects to apply for coverage for this facility, the Steelhead gas platform, under the general permit and begin discharging a few waste streams as early as mid-October, 1986. Drilling discharges would likely commence in early 1987.

III. Statutory Basis For Permit Conditions

This section incorporates by reference Section III of the fact sheet for the draft permit. The following brief discussion provides additional information relating to material presented in paragraphs A. and B. of Section III. of that fact sheet.

A. Technology-Based Effluent Limitations

1. BPT Effluent Limitations: The BPT effluent limitations guideline for produced sands (i.e., produced solids) required "no discharge of free oil."

2. BAT and BCT Effluent Limitations: BAT and BCT effluent limitations guidelines and New Source Performance Standards were proposed on August 26, 1985 (50 FR 34592). Promulgation is currently expected to occur in 1986.

B. Ocean Discharge Criteria

A Final Ocean Discharge Criteria Evaluation has been completed for discharges in the areas where the Ocean Discharge Criteria apply (i.e., all federal waters and those state waters located shoreward of the inner boundary of the territorial seas).

C. State of Alaska Standards and Limitations

All discharges to state waters must comply with state and local coastal management plans as well as with state water quality standards. Discharges to state waters must also comply with limitations imposed by the State as part of its coastal management program consistency determinations, and of its certification of NPDES permits under section 401 of the Act.

D. Section 308 of the Clean Water Act

No changes are necessary.

IV. Specific Permit Conditions

A. Approach

The determination of appropriate conditions for each discharge was accomplished through:

(1) Consideration of technology-based effluent limitations to control convention, pollutants under BCT;

(2) Consideration of technology-based effluent limitations to control toxic pollutants under BAT;

(3) Evaluation of the Ocean Discharge Criteria for discharges in the Offshore Subcategory, assuming conditions in parts (1) and (2) were in place; and

(4) For state waters, inclusion of permit terms necessary to ensure

compliance with state water quality standards and stipulations of state lease sales, and with state and local coastal management plans. Some permit terms for state waters were imposed by the State of Alaska as part of its certification under section 401.

Discussions of the specific effluent limitations and monitoring requirements derived from (1) through (4) appear below in Sections B. through E., respectively. Additional monitoring requirements based on the determinations in (1) and (2) are discussed in Section F. For convenience, these conditions and the regulatory basis for each are cross-referenced by discharge in the following table. Differences between this table and the table in the fact sheet for the draft permit are due to necessary clarification or to changes in the final permit.

Discharge and permit condition	Statutory basis
Drilling muds and cuttings:	
Authorized muds and additives only	BAT.
No free oil	BCT.
An oil-based mud	BCT.
No diesel	BAT.
10% max. oil limitation on cuttings—Federal waters.	BCT.
5% max. oil limitation on cuttings—State waters.	Section 401.
No visible sheen/monitoring of visible oil and grease—State waters.	Section 401.
3 mg/kg cadmium and 1 mg/kg mercury in barite.	BAT.
Monitoring of metals, oil content, and toxicity.	Section 308.
Chemical inventory	Section 308.
Monitor volume discharged	Section 308.
Flow rate limitations	Section 403(c), WQS.
Environmental monitoring requirements	Section 403(c), 401, WQS.
Deck drainage:	
No free oil	BCT.
Monitor flow rate	Section 308.
Sanitary wastes:	
No floating solids	BCT.
Chlorine 1.0 mg/l (facilities with more than 10 people).	BCT.
Chlorine contact time of 30 min.—State waters.	Section 401.
Monitor flow rate	Section 308.
BOD and suspended solids—State waters.	WQS.
Discharge below surface—State waters	Section 401.
Domestic wastes:	
No floating solids	BCT.
Monitor flow rate	Section 308.
No free oil—State waters	WQS.
Discharge below surface—State waters	Section 401.
Miscellaneous discharges (005-015 as defined in permit).	
No free oil	BCT.
Monitor flow rate in cooling water, desalinator wastes, waterflooding discharges.	Section 308.
Produced water:	
pH 6–9	BCT, WQS, Section 403(c).
Oil and grease limits	BCT.
Monitor flow rate	Section 308.
Mixing zones and mixing zone verification study.	WQS, Section 401.
Well treatment fluids, completion fluids, and workover fluids:	
No free oil	BCT.
No oil-based fluids	BCT.
pH 6–9	BCT, WQS, and Section 403(c).
Monitor volume and frequency of discharge.	Section 308.
Monitor oil and grease	Section 308.
Test fluids:	
No free oil	BCT.
No oil-based fluids	BCT.
pH 6.5–8.5	BCT, WQS, and Section 403(c).
Oil & grease limits (48/72)	BCT.
Monitor frequency and volume of discharge.	Section 308.
Produced solids:	
No free oil	BCT.
No visible sheen/monitoring of visible oil and grease—State waters.	Section 401.
Monitor frequency and volume of discharge.	Section 308.
All Discharges:	
No halogenated phenol compounds, diesel oil, trisodium nitrilotriacetic acid, sodium chromate, or sodium dichromate.	BAT.
No biocides not FIFRA registered and authorized under permit.	BAT, Section 403(c), WQS.
No floating solids or visible foam	BCT.
No oily wastes or toxic or deleterious substances.	WQS.
Minimize discharge of surfactants, dispersants, and detergents.	BAT.
Area and depth related requirements	WQS, Section 403(c).
Discharge monitoring study	Section 308.

B. BCT Requirements

1. Oil and Grease in Produced Water and Test Fluids

Oil and grease concentrations in discharges of produced water from all facilities except Phillips Platform A will be limited to a 48 mg/l monthly average and a 72 mg/l maximum daily based on oil/water separation technologies. These limits are the same as the BPT effluent limitation guidelines. Oil and grease limitations for Phillips Platform A, a gas platform, will be set at 15 mg/l monthly average and 20 mg/l maximum daily. The limitations for Phillips Platform A are equal to those in the most recent BPT permit for the facility, limitations with which Phillips is currently in compliance. This issue is discussed in detail in the Response to Comments (available from Region 10 upon request). More stringent limits than 48/72 and 15/20 were considered for all the oil and gas facilities covered by the permit, but the Region does not have sufficient technology performance data available at this time on which to base more stringent limitations. As these BCT limitations are equal to the BPT level of control, there is no incremental cost involved.

Oil and grease concentrations in discharges of test fluids (an exploratory discharge) will be subject to the same limitations as produced water. The limit on test fluids was included in the draft permit. Test fluids, like produced water, contain water from the oil-bearing formation. EPA has determined that the BPT effluent limitations guideline for oil and grease in produced water should also apply to test fluids. Thus, the limitation is Region 10's best professional judgment determination of a BPT control for this discharge. Operators under the recent Region 10 general permits for exploratory operations in the Bering and Beaufort Seas and Norton Sound have had no difficulty in complying with identical limits. No technology performance data available to Region 10 indicate that a more stringent standard is appropriate at this time. Thus, the Region has set the BCT limitation equal to the BPT level of control. As such, the limitation imposes no incremental cost to the operators.

2. Free Oil and Oil-Based Muds

No discharge of free oil is permitted from the discharges of drilling mud, drill cuttings and washwater, deck drainage, well treatment fluids, completion fluids, workover fluids, test fluids, and produced solids, based on BPT guidelines. The four fluids were included in a single category, "well treatment fluids," under the draft permit. The Region has listed each separately in the final permit, with the applicable free oil limit applied to each.

Under the final permit, the discharge of oil-based drilling fluids, well treatment fluids, completion fluids, workover fluids, and test fluids is prohibited since oil-based fluids would violate the BCT effluent limitation of no discharge of free oil.

Region 10 has determined that the BPT effluent limitations guidelines of no discharge of free oil should also apply to all miscellaneous discharges, including uncontaminated bilge water, uncontaminated ballast water, desalination unit wastes, boiler blowdown, non-contact cooling water, excess cement slurry, blowout preventer fluid, fire control system test water; mud, cuttings and cement at the seafloor; and waterflooding discharges. Thus, the no free oil limitation is Region 10's best professional judgment determination of BPT controls for these discharges. All of these miscellaneous discharges except waterflooding discharges have been subject to a no free oil limitation in previous permits issued by Region 10, and past practices have not resulted in violations of this limitation. Region 10's best professional judgment of BPT controls on free oil also extends to waterflooding discharges, which generally have no free oil.

No technology performance data available to Region 10 indicate that more stringent standards are appropriate at this time. Region 10 has, therefore, set BCT limitations equal to the BPT level of control. As such, these limitations impose no incremental costs.

Compliance with the free oil limitation for deck drainage and miscellaneous discharges will be by visual observation for sheen on the receiving water, except for deck drainage and bilge water during unstable or broken ice or stable ice conditions.

Compliance with the free oil limitation will be monitored by year-round use of the Static Sheen Test for mud, cuttings, well treatment fluids, completion fluids, workover fluids, test fluids, and produced solids. The Static Sheen Test is being required for the four fluids because these represent a significant discharge from production operations and are likely to be contaminated with oil. The Static Sheen Test will also be required year-round for produced solids, a new category added to the final permit. Produced solids have been in contact with produced fluids, and are expected to be contaminated with oil. Use of the Static Sheen Test will prevent a violation of the free oil limitation due to those discharges most likely to be contaminated with oil.

3. Oil Content of Cuttings

The final permit restricts the discharge of oil-contaminated cuttings by prohibiting the discharge of free oil (see Part IV.B.2. above) and by limiting the maximum mineral oil content of cuttings. The limitation of 10% by weight on oil content is based on the efficiency of currently available cuttings washers in removing mineral oil from drill cuttings. Region 10 expects that cuttings washers will routinely be required only for drilling operations which use mineral oil-based drilling muds or water-based muds with high concentrations of mineral oil additives. Due to the rare usage of such muds by exploratory drilling operations, very few, if any, exploratory facilities will require the installation of cuttings washers. Such muds may be used more frequently by development or production facilities. However, since cuttings washers, at a minimum, would be required for these cuttings to pass the sheen test (for determining compliance with the no free oil limitation), there is no incremental cost to the 10 percent limitation beyond the cost of monitoring compliance, and the 10 percent oil limitation passes the BCT cost test.

Region 10 has taken an approach to controlling the oil content of cuttings which differs from that taken by Regions 4 and 6 in their Gulf of Mexico permit (51 FR 24897). Regions 4 and 6 have imposed a visible sheen test to determine compliance of cuttings with the no free oil limit, in combination with a prohibition on the discharge of cuttings from oil-based mud systems. The prohibition on the discharge of cuttings from oil-based mud systems is necessary since some of these cuttings are expected to have free oil and the visible sheen test results would not be evident until after a discharge to the receiving water had occurred. Region 10 has chosen to require the Static Sheen Test rather than the visible sheen test. An advantage of the Static Sheen Test is that it is done prior to discharge and cuttings which do not pass the test cannot be discharged. This test is also appropriate for the harsh weather and extended periods of darkness common in Alaska. Although the 10 percent oil limitation in Region 10 is less stringent thatn the prohibition by Regions 4 and 6 on discharges of cuttings from oil-based mud systems, any cuttings which pass the 10 percent limitation must also pass the Static Sheen Test prior to discharge.

The permit requires an analysis of cuttings for oil content daily when oil-based drilling fluids or oil additives are used. Analysis is also required daily when drilling fluids could be contaminated with hydrocarbons from the formation. In addition, analysis is required immediately on any sample that has failed the daily Static Sheen Test if a discharge has occurred. Two alternative analytical methods for determining the oil content of drill cuttings are specified in the permit: (1) the soxhlet extraction procedure for oil and grease (as specified in 40 CFR Part 136), and (2) the American Petroleum Institute retort distillation procedure for oil.

4. pH

Under the draft permit, the pH of discharged well treatment fluids and produced water was proposed to be limited to a range of 6.5–8.5 at the point of discharge. In response to comments received on this issue, the Agency has changed the limits in the final permit to pH 6–9 for produced water and for workover, completion, and well treatment fluids. The latter three fluids (all included in the well treatment fluid category under the draft permit) usually have been commingled with the produced water stream at the existing facilities. Thus, they were limited to pH 6–9 in previous permits as was produced water. The produced water BPT effluent limitations guideline is pH 6–9. In the Agency's best professional judgment, the same limits are appropriately equal to a BPT level of control for workover, completion, and well treatment fluids. While this limit has only rarely been violated in the last 7 years, there have been frequent discharges outside the 6.5–8.5 pH range for some facilities. As a result, it appears that limits of pH 6.5–8.5 are not feasible for all operators to achieve using existing technology. A BCT limit of pH 6–9 would make BCT equal to BPT. There would be no backsliding, nor any incremental cost to operators. No more stringent standards have been identified by the Agency at this time. Therefore, the Agency is setting the BCT effluent limitations for the pH of produced water, and workover, completion and well treatment fluids equal to that of BPT.

The requirement of pH 6.5–8.5 for test fluids, which was a subset of well treatment fluids under the draft permit, has been and is routinely complied with by exploratory operations under previous Region 10 BPT and BPJ/BCT permits. Thus, the requirement is being retained in the final permit. It will incur no cost incremental to BPT.

5. Floating Solids and Visible Foam

The BCT prohibition of floating solids is equal to the BPT level of control for sanitary and domestic wastes. Region 10 has determined that the BPT effluent limitations guideline of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. They have been subject to this limitation, as well as to a no visible foam limit, in previous permits issued by Region 10, and past practices have not resulted in violations of these limitations. No technology performance data available to Region 10 indicate that more stringent standards are appropriate at this time. Therefore, Region 10 has determined that the BCT effluent limitations on floating solids and visible foam from these discharges are equal to the BPT level of control. As such, there will be no incremental cost.

6. Chlorine

Pollutants of concern in sanitary wastes include fecal coliform, a conventional pollutant, to be regulated at the BCT level of control. Fecal coliform is controlled by a residual chlorine limitation. The requirement of maintaining residual chlorine levels as close as possible to, but no less than, 1 mg/l in sanitary discharges for facilities manned by 10 or more people is a BCT determination equal to BPT. There is therefore no incremental cost to the industry.

C. BAT Requirements

1. Diesel Oil

The discharge of muds which have been contaminated by diesel oil (i.e., those drilling muds which have contained diesel oil) or drill cuttings associated with these muds is prohibited. Diesel oil, which is

sometimes added to a water-based mud system, is a complex mixture of petroleum hydrocarbons, known to be highly toxic to marine organisms and to contain numerous toxic and nonconventional pollutants. While this limitation thereby controls the toxic as well as nonconventional pollutants present in diesel oil, the Agency's primary concern is to control the toxic pollutants. The pollutant "diesel oil" is being used as an "indicator" of the listed toxic pollutants present in diesel oil which are controlled through compliance with the effluent limitation (i.e., no discharge). The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

The Agency selected "diesel oil" as an "indicator" as an alternative to establishing limitations on each of the specific toxic and nonconventional pollutants present in the diesel oil-contaminated waste streams. The listed toxic pollutants found in various diesel oils include naphthalene, benzene, ethylbenzene, phenanthrene, toluene, fluorene, and phenol. Diesel oil may contain from 20 to 60 percent by volume aromatic hydrocarbons. The light molecular weight aromatic hydrocarbons, such as benzenes, naphthalenes, and phenanthrenes, constitute the most toxic major components of petroleum products. Mineral oils, with their lower aromatic hydrocarbon content and lower toxicity, contain lower concentrations of toxic pollutants than do diesel oils. Diesel oil also contains a number of nonconventional pollutants, including polynuclear aromatic hydrocarbons such as methylnaphthalene, dimethylnaphthalene, methylphenanthrene, and other alkylated forms of each of the listed toxic pollutants.

The Region has determined that eliminating the discharge of drilling fluids contaminated with diesel oil will reduce the levels of toxic pollutants present in discharged fluids. Studies show that when the amount of diesel oil is reduced in drilling muds, the concentrations of toxic pollutants and the overall toxicity of the fluid generally are reduced. While concentrations of toxic pollutants vary among different diesel oils, available data clearly establish that diesel oils as a class contain significantly higher levels of toxic pollutants than do mineral oils as a class. It is reasonable and appropriate to conclude that BAT-level control of toxic pollutants (i.e., reduction in concentrations through substitution of mineral oil for diesel oil) will be achieved by regulating diesel oil as an indicator pollutant.

Region 10 has concluded that establishing effluent limitations for each of the seven toxic pollutants present in diesel oil is not economically or technically feasible at this time. The level achievable by BAT controls on the specific toxics can be calculated using available data on the three mineral oils which have been extensively characterized. However, the limited data on the many diesel and mineral oils, mud formulations, and the various additives used, and on the unquantified changes in toxic pollutant concentrations during drilling, all frustrate an attempt to develop specific toxic pollutant effluent limitations at this time.

Not only is it scientifically infeasible to establish limitations on the specific toxic pollutants, but to comply with specific limitations on each of the toxic pollutants would be costly and technically complex. The analytical costs for specific pollutant analyses would be much greater than the cost of analyzing for diesel by gas chromatography alone. The high cost of compliance monitoring, which may include awaiting results of analyses, conducted onshore, possibly outside the State of Alaska, also would be unwarranted. Either operators would have to delay discharge until monitoring results confirmed compliance or they would discharge and risk permit noncompliance. A permit limitation that prohibits the discharge of diesel oil is economically and technologically feasible and allows a determination of permit compliance prior to discharge.

The prohibition on the discharge of diesel is a technology-based BAT limitation based on product substitution. As documented extensively in the administrative record, low toxicity mineral oils are available as product substitutes for diesel oil.

Substitution with low-toxicity mineral oils does not impose unreasonable additional costs on industry. The Agency has relied primarily on the increased cost of mineral oil over diesel oil as a basis for this determination. For example, mineral oil costs Alaskan operators approximately $2.80 per gallon more than does diesel oil. The increased costs associated with using mineral oil rather than diesel oil for 50 barrels (2,100 gallons) of oil (the maximum amount generally expected in a concentrated spotting or "pill" formulation used to free stuck drill pipe) would therefore be equal to approximately $5,500. Since the frequency of differential sticking of drill pipe requiring the use of oil-based spotting formulations is low for most drilling operations (less than once per well on an average), this cost would not be incurred for each operation. The Agency has evaluated other costs associated with either diesel oil or mineral oil use in response to comments on the draft Norton Sound permit (50 FR 28580, Response to Comment 10). Both analyses show that the cost associated with the prohibition on the discharge of diesel oil clearly is economically achievable.

Region 10 has considered limiting "free oil," "oil-based drilling fluids," and "oil content of cuttings" as indicators of toxic pollutants. While the Agency has determined that such effluent limitations will control the discharge of toxic pollutants in these oils it is unnecessary to designate these pollutants as indicators since the same levels of control have been established under BCT, which are equal to levels of control required by the BPT effluent limitations guidelines. Therefore, redundant limitations under BAT have not been imposed for those pollutant parameters.

Region 10 received a number of comments on the diesel oil limitation. Among these comments was a request that, in lieu of a diesel oil limitation, that Alaska operators be allowed to participate in the EPA/API Diesel Pill Monitoring Program now underway as part of the recently issued NPDES general permit for the Gulf of Mexico (51 FR 24897, July 9, 1986). The Gulf of Mexico was selected for this study because of the large number and diversity of drilling operations. The experimental program will last from one to two years from the date of issuance of the permit. EPA will then evaluate the data and, under 40 CFR 124.5, develop any appropriate modifications of the general permit for the Gulf of Mexico based on the study results. The Gulf of Mexico general permit excludes from the study operators who discharge in the vicinity of areas of biological concern, where discharge rate limitations of less than 1,000 bbl/hr apply, or in areas where shunting is required by MMS lease stipulations due to environmental concerns. The discharge of drilling muds to which diesel was added is prohibited in these areas.

EPA has decided not to allow the discharge of diesel-oil contaminated muds and cuttings in the arctic and subarctic regions of Alaska prior to evaluating the results from the Gulf of Mexico. In the absence of data on the effectiveness of pill recovery, product substitution is a reasonable and appropriate basis for limiting the toxic pollutants arising from the use of diesel oil in muds discharged from wells in regions of Alaska. After evaluation of the Diesel Pill Monitoring Program results, EPA will then reconsider the alternative approach to limiting toxic pollutants which allows the discharge of muds from which a diesel pill has been removed. (See 40 CFR 124.5 and 122.62 regarding requirements for permit modifications.)

2. Mercury and Cadmium in Barite

The final permit, like the draft permit, contains limits of 1 mg/kg mercury and 3 mg/kg cadmium on barite, a major constituent of drilling muds. These restrictions are designed to limit the discharge of mercury, cadmium, and other potentially toxic metals which can occur as contaminants in some sources of barite. An identical limitation is included in the Bering and Beaufort Seas and Norton Sound general permits. Although the Agency solicited comments and supporting data from individuals who did not believe they could meet the above limitations, as well as from permittees who might have incurred increased costs in meeting the barite limitations contained in the Bering and Beaufort Seas general permits, no such data was received. The Agency considered all other comments relevant to this issue in determining that no change should be made to the limit proposed for the draft permit.

As discussed in the fact sheet for the draft permit, the justification for the limitation under BAT is product substitution; i.e., Alaskan operators can substitute "clean" barite which meets the above limitations for contaminated barite which does not meet the limitations. Numerous offshore exploratory wells have been drilled in Alaska over the past two years, and chemical analyses have shown that the barite used has not exceeded the limitations. Given that "clean" barite is available and that operators in the Bering and Beaufort Seas and Norton Sound have been complying with an identical limitation, Region 10 believes that this limitation is both technologically feasible and economically achievable.

Region 10 has determined that it is impractical at this time to place the limitations on drilling mud until additional data are collected. Furthermore, if the limitation were placed on the drilling mud rather than on the barite, it would not be feasible for an Alaskan operator to determine in advance if the discharge complied with the permit requirements since metals analyses must be conducted at commercial laboratories onshore.

EPA does recognize the possibility of changes in the available supply of "clean" barite. The permit contains a provision which would allow the Director the discretion to grant a waiver from the limitations on a case-by-case basis if the permittee (1) satisfactorily demonstrates that barite which meets the limitations is not available, and (2) provides results of analyses of the substitute barite. In determining the availability of "clean" barite under this provision, Region 10 will reasonably consider all relevant factors, including the cost of obtaining barite which meets the limitations. The final permit does differ slightly from the draft on the barite issue in that operators drilling more than one well at a site need not submit new analyses for mercury and cadmium for each well if no new supplies of barite have been received.

3. Generic Muds and Authorized Additives

The permit limits the discharge of toxic substances in drilling fluids by allowing only the discharge of generic drilling muds (listed in Table 1 of the permit) and additives for which acceptable bioassay or chemical data are available. Permittees are required to certify that only generic drilling muds and authorized additives will be discharged. The Region has determined that the toxicity limitations (i.e., generic muds and authorized additives) constitute a reasonable approach which is expected to control not only listed toxic pollutants, but other toxic substances (i.e., toxic nonconventional pollutants) as well. The technology basis for this permit condition is product substitution; i.e., mud additives and components which would cause the toxicity of a mud system to exceed that of Generic Mud No. 1 can be replaced by less toxic mud additives and components.

In response to comments received on the draft permit, Region 10 has determined that operators who will be drilling within 90 days after the permit becomes effective will be allowed a 90-day period in which to plan for and obtain authorization to discharge their mud systems. This schedule allows time for the permittees to request authorization to discharge muds and additives not listed in the permit, and for Region 10 to respond to the requests. During the transition period, operators must continue to comply with the applicable requirements of their most recent permits.

Permittees may discharge additives listed in Table 2 of the permit up to the specified concentrations without special permission. This table has been expanded from the Table 2 which appeared in the draft permit, based on additive authorizations made by Region 10 in the past year. The draft permit contained a provision (Table 2) which allowed updates to the table by allowing the discharge of additives which would be published in the Federal Register in Table 2 of subsequent Region 10 general permits. The final permit has been made more flexible, in response to comments received during the comment period. Both Tables 1 and 2 now contain clauses which allow them to be updated in the future. The mechanism has also been made more flexible, since it allows administrative updates rather than updates published in the Federal Register as part of future permits. At this time, the federal lease sale schedule for Alaska has been substantially cut back for the near future. As a result, very few general permits are likely to be written, and opportunities to update the tables would be few. Administrative updates could be made on a more frequent basis. Updated Tables 1 and 2 will be mailed to each permittee, and will be available to other parties upon request. Any additive receiving authorization through updates will be evaluated according to the regional criteria used for this permit.

The generic muds list in Table 1 has also been modified in response to comments. The final Table 1 now allows up to 50 lb/bbl of bentonite in Muds 4; up to 575 lb/bbl of barite in Muds 1, 2, and 3; and up to 2 lb/bbl of lime in Muds 2, 4, and 5. The three lignosulfonate muds (previously Mud Nos. 2, 7, and 8) have been combined into a single mud (Mud No. 2) as a result of several suggested changes, resulting in a total of six rather than eight generic muds. The Region will use the toxicity of the most toxic of the three (old Mud 8) in performing additive toxicity calculations. This is not expected to greatly affect most authorizations since the majority of operators in the past have requested authorizations to discharge additives in any of Muds 2 through 8. For the authorizations, the Region has used the toxicity of the most toxic of these muds (Mud 2). However, if a permittee requests authorization to discharge an additive in the new Mud 2 and can demonstrate that the generic mud components will not exceed the concentrations of old Mud 2 or Mud 7, Region 10 will use the toxicity values for those muds instead.

Any discharge of a generic mud from Table 1 which has been modified other than be addition of an additive listed in Table 2 requires prior authorization by Region 10. Permittees may request authorization to discharge additives

(including mineral oils and biocides) not listed in Table 2 by submitting appropriate information and bioassay data in advance of discharge. Region 10 will determine whether the use of the requested additives is likely to cause the mud system to be more toxic than Generic Mud No. 1, which is the base mud formulation the Agency uses to determine acceptable toxicity levels for discharge of fluids. Other criteria (e.g., persistence and degradation), as appropriate, are also considered in the evaluation process. The permit furthermore contains a provision (Part II.C.1.g.) which allows an exception for the discharge of mineral oil-containing or biocide-containing muds which exceed the toxicity of Mud No. 1 if the least toxic available alternative is discharged.

In some cases, interim discharge authorizations may be granted if preliminary bioassay data are submitted and EPA determines that additional bioassay testing is required. Such testing may be required, for example, to examine possible cumulative or synergistic effects if the additive is to be used in combination with a number of other additives. Because the additional testing may take a considerable amount of time to conduct, interim authorization to discharge may be granted so that operations are not impaired for an unreasonable amount of time. Interim authorizations may also require testing a used drilling mud from a rig.

Under section 308 of the Act, compliance with this permit condition will be monitored in two ways: first, by requiring that permittees certify that only generic muds and authorized additives will be discharged; and second, by requiring that permittees submit an end-of-well inventory listing all chemicals and the amounts of each added to each mud system. In addition, permittees must analyze one or more mud samples per well for metals content and toxicity. The metals data will be used to verify that mercury and cadmium limits on barite are adequately controlling metal concentrations in discharged muds. The Drilling Fluids Toxicity Test will provide a comparison between the toxicity of used muds containing mixtures of additives and the bioassay data submitted on individual additives prior to discharge. Under the final permit, permittees must also analyze the same samples for oil content. The data will be used in combination with the metals and toxicity data to look for correlations between toxicity of mud systems and their oil and/or metals content. The oil data will also provide information on the oil concentrations present in drilling muds discharged offshore of Alaska.

4. Other Toxic and Nonconventional Compounds

Under the final permit, prohibitions on discharges of the following pollutants are retained: halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate, and sodium dichromate. The class of halogenated phenol compounds includes toxic pollutants, and sodium chromate and dichromate contain chromium, also a toxic pollutant. Trisodium nitrilotriacetic acid is a nonconventional pollutant. The discharge of these compounds was previously prohibited in the BPT general permits for the Beaufort Sea and Norton Sound (48 FR 54881, December 7, 1983) as well as in the BAT/BCT general permits for the Bering and Beaufort Seas and Norton Sound. These compounds are therefore subject to BAT limitations. Because operators complied with this provision in the BPT permits, there is no additional cost to the industry.

As in the draft permit, the final permit contains a provision that the discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service. These products contain primarily nonconventional pollutants. This provision previously appeared in the BPT permits for the Beaufort Sea and Norton Sound, as well as in the Region's other BAT/BCT permits. Because operators complied with the provision in the BPT permits, there is no additional cost to the industry.

The final permit contains an additional restriction on all discharges under BAT. As proposed in the draft permit, discharges of biocides are limited to those biocides registered with EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for the use(s) in which they are intended (e.g., noncontact cooling water, or waterflooding operations), and discharges shall be in accordance with product registration labeling. This provision of the permit has been modified at the request of industry to provide specific guidelines for discharge, in conjunction with FIFRA wording on product labels. Products which contain a label stating that the product may not be discharged "unless specifically identified and addressed in an NPDES permit" are subject to an authorization process similar to that for drilling mud additives. Permittees must submit the information listed in Part II.J.5. of the permit at least 30 days in advance of the proposed discharge. EPA will then evaluate whether the proposed product is the technologically and economically feasible alternative which would be least harmful to the environment. In addition, as discussed in Parts IV.D.5. and IV.E.8. of this fact sheet, the Region will consider whether the proposed discharge will comply with all applicable water quality standards and criteria. EPA will also evaluate proposed discharges to the waters seaward of the inner boundary of the territorial seas with respect to the Ocean Discharge Criteria regulations.

D. Requirements Based on the Ocean Discharge Criteria Evaluation

1. Prohibited Areas for All Discharges From Offshore Subcategory Operations

The final general permit prohibits discharges from Offshore Subcategory exploratory operations in the following areas, as was proposed in the draft permit:

(1) Water depths less than 5 m (as measured from mean lower low water)

(2) Within 1,000 m of a coastal marsh, river delta, river mouth, designated Area Meriting Special Attention (AMSA), game refuge, game sanctuary, or critical habitat area

(3) In Kamishak Bay west of a line from Cape Douglas to Chinitna Point

(4) In Chinitna Bay inside a line (see Figure 1 of the final permit) from latitude 59°52'45" N., longitude 152°48'18" W., to latitude 59°46'12" N., longitude 153°00'24" W., in Tuxedni Bay inside of the following lines on either side of Chisik Island (Figure 2): From latitude 609°04'06" N., longitude 152°34'12" W., to the southern tip of Chisik Island (latitude 60°04'06" N., longitude 152°33'30" W) and from latitude 60°13'45" N., longitude 152°32'42" W to the point on the north side of Snug Harbor on Chisik Island (latitude 60°06'36" N., longitude 152°32'54" W).

These restrictions are necessary to ensure that unreasonable degradation of these areas will not occur. No Offshore Subcategory development or production operations are covered by the permit. Development and production facilities covered by the permit are restricted to Upper Cook Inlet north of the Forelands. They are in the Coastal Subcategory and are not subject to a 403(c) evaluation.

Discharges are prohibited in waters shallower than 5 m because shallow nearshore waters in Lower Cook Inlet are an important habitat for many species. In addition, dilution and dispersion of drilling mud discharges in waters less than 5 m deep is uncertain given that field data are limited and that available models of mud dilution and dispersion are not field-verified for shallow depths. A similar condition on drilling muds and cuttings was included in an individual BAT/BCT permit (NPDES Permit No. AK-004155-8) for Champlin Petroleum's operations near Kalgin Island.

The condition restricting discharges within 1,000 m of coastal marshes, river deltas, and other areas is necessary to comply with local and state Coastal Management Plan prohibitions on discharges of toxic wastes and silt materials in these areas, and on activities that may affect the protected biological resources of these areas.

Chinitna, Tuxedni, and Kamishak Bays are, or are contiguous with, areas of high resource value. In addition, Kamishak Bay is a known net depositional environment where accumulation of drilling mud solids and other pollutants would be likely to occur if allowed to be discharged in this area.

2. Muds and Cuttings

Several additional restrictions on these discharges are necessary to ensure no unreasonable degradation of the marine environment. The discharge rate limitation of 1,000 bbl/hr on total muds and cuttings into waters greater than 40 m in depth was established through the Ocean Discharge Criteria Evaluation process in order to allow adequate dispersion of the discharges. In addition, the muds and cuttings discharge rate is restricted to 750 bbl/hr in water depths greater than 20 m but not more than 40 m, and to 500 bbl/hr in 5 to 20 m of water. These limits are necessary because for any given discharge rate, the dilution of drilling muds and cuttings is not as great in shallow waters as in deeper waters. However, at any particular water depth, greater dilution close to the discharge point will be achieved with a lower discharge rate. These maximum rates will ensure that acceptable toxicity limits will not be exceeded at the edge of the 100 m mixing zone (Bigham et al., 1984).

3. Deck Drainage, Sanitary and Domestic Wastes, Miscellaneous Discharges Other Than Waterflooding Discharges, and Test Fluids

These discharges are adequately controlled by the technology-based limitations above to ensure no unreasonable degradation of the marine environment.

4. Other Discharges

All other discharges not addressed in sections 2. and 3. above are development and production discharges, and are not subject to a 403(c) evaluation for this permit because of their location.

5. Biocides

The limitation on biocides described in Part IV.C.4. above includes a provision that authorization to discharge biocides to areas subject to the Ocean Discharge Criteria regulations will not be granted unless the discharge can comply with those regulations, and thus applicable water quality criteria and standards as well. This provision is necessary because the technology-based portion of the authorization may not be sufficient to ensure that these regulations are met in all cases.

E. Requirements To Ensure Compliance With State Water Quality Standards

1. No Visible Sheen and Monitoring of Elutriate Oil and Grease

As part of its final certification under section 401 of the Act, the State of Alaska is requiring that muds and cuttings and produced solids not be discharged onto sea ice or into waters of the State of Alaska if the discharges would result in violation of the State of Alaska's visible sheen standard.

In addition, the state is requiring monitoring of elutriate oil and grease concentrations in muds and cuttings samples collected prior to changeover discharges and end-of-well bulk discharges, and at least weekly during routine discharges. The test is also required for all mineral oil-spotted muds. Produced solids shall be sampled prior to each discharge. Permittees are required to submit an analysis of total recoverable oil and grease if the elutriate oil and grease concentration exceeds 50 mg/l. The Alaska Department of Environmental Conservation (ADEC) will evaluate the results after two years from the permit effective date, to determine whether an elutriate oil and grease limitation should be placed on future discharges to Cook Inlet for the remaining life of the permit.

As a condition of its 401 certification, ADEC may also choose, at its discretion, to require a one-time marine sediment sampling program at a single shallow water development drilling site to determine the fate of discharged muds and cuttings containing oils, or at a single production site to determine the fate of discharged produced solids. The scope of the sampling program would be determined in conjunction with the operators and EPA.

2. pH

Well treatment fluids, completion fluids, workover fluids, and produced water will be limited to a pH of 6–9 at the point of discharge, and test fluids will be limited to a pH of 6.5–8.5, based on the discussion in Part IV.B.4. above. Since the pH of these fluids will be in the range of 6.5–8.5 and be within 0.1 pH unit of the ambient condition at or within a few meters of the discharge point, no violation of Alaska Water Quality Standards will occur.

3. Prohibited Areas For All Discharges in State Waters

State waters covered by the general permit are located in Cook Inlet, and include both Offshore and Coastal Subcategory operations. Prohibited discharge areas for Offshore Subcategory operations (described in Part IV.D.1. above), as determined through the Ocean Discharge Criteria Evaluation process, are sufficient to ensure that Alaska Water Quality Standards will be met.

Prohibited discharge areas for Coastal Subcategory operations were determined as discussed below:

First, all discharges are prohibited within 1000 m of a coastal marsh, river delta, river mouth, designated Area Meriting Special Attention (AMSA), game refuge, game sanctuary, or critical habitat area. This is consistent with the discharge restriction on these areas for Offshore Subcategory operations, and is imposed for the same reasons.

Second, as proposed under the draft permit, all discharges must occur to water depths beyond the intertidal zone since in intertidal areas there is no water available for dilution and dispersion of effluents during portions of the tidal cycle. Dilution and dispersion are necessary for effluents to meet Alaska Water Quality Standards. The major impact of this provision will be on three shore-based facilities in Upper Cook Inlet which currently discharge produced water either to the intertidal zone, or above the high-tide mark. Effluent concentrations of total aromatic hydrocarbons at these facilities exceed the state aromatic hydrocarbon standard of 10 µg/l by factors of 660 to 2100. This standard is intended to protect for "growth and propagation of fish, shellfish, aquatic life, and wildlife including seabirds, waterfowl and furbearers" (18 AAC 70.020). Staff members of EPA and ADEC who visited the facilities in August 1985 observed shorebirds in direct contact with the effluent at two of the three sites.

Discharges are therefore authorized only to deeper waters, as discussed below, in order to provide sufficient water depth for dilution and dispersion of wastes.

Discharges other than produced water are prohibited in shallow subtidal areas shoreward of the 5 m isobath (as measured from mean lower low water (MLLW)). Where terms of state lease sales prohibit discharges shoreward of isobaths deeper than 5 m, the deeper isobath shall be the boundary instead. Specifically, there shall be no discharges shoreward of the 5.5 m isobath adjacent to (a) Clam Gulch Critical Habitat Area and (b) from the Crescent River northward to a point one-half mile north of Redoubt Point. This provision is the same as proposed in the draft permit.

Discharges of produced water from the three existing shore-based facilities are prohibited shoreward of the specified isobaths (as measured from MLLW): Marathon Granite Point facility, 3.5 m; Marathon Trading Bay facility, 6.5 m; and Shell East Foreland facility, 6.5 m.

The minimum isobath for these facilities was proposed to be 5 m in the draft permit, based on preliminary results of computer modeling using the EPA PLUME model. The modeling also assumed a mixing zone of 100 m consistent with that prescribed in the Ocean Discharge Criteria (40 CFR 125.121(c)), in the absence of mixing zone determinations by the State of Alaska. The fact sheet for the draft permit stated that mixing zone determinations would not be made until further information and computer modeling data were submitted by Marathon and Shell. Both companies provided EPA and ADEC with this information during the public comment period.

After carefully evaluating this information and comments received during the public comment period, EPA determined that the modeling results based on the PLUME model should be revised. The new model results are based on a related EPA model, UMERGE, which takes into account current speeds and momentum whereas PLUME does not. UMERGE is therefore a more appropriate model for the high energy environment of Cook Inlet. The new model runs also incorporated new information on effluent and ambient conditions provided during the public comment period. The modeling results support the prohibition of produced water discharges for waters shoreward of the modified isobaths specified above, with associated mixing zones of 450 m, 750 m, and 750 m, respectively, for the three facilities. A complete description of the modeling is given in the document "Computer Modeling of Dilution of Produced Water Discharges in Cook Inlet," which is included in the administrative record. EPA developed the new isobaths and mixing zones in accordance with Alaska's mixing zone policy and water quality standards. ADEC then certified that these isobaths/mixing zones would enable the discharges to meet the applicable requirements of state law, including water quality standards.

ADEC is requiring as part of its 401 Certification that a mixing zone verification study be carried out at one of the three facilities. Operators may jointly contract for such a study. The specifics of the study will be determined by ADEC, in consultation with EPA and the permittee(s).

The discharge of produced water from new facilities is prohibited shoreward of the 10 m isobath, unless an alternative isobath and mixing zone are determined by EPA and ADEC. The determination will be based on computer modeling of compliance of the discharge with the Alaska Water Quality Standard for total aromatic hydrocarbons. Alternative isobaths shall not be any shallower, however, than any isobath specified for produced water in state oil and gas lease terms for the area of the proposed location.

The prohibition on discharges to shallow subtidal waters and to intertidal areas is consistent in its intent with a lease term in State of Alaska leases for oil and gas operations in Cook Inlet. Any new operator wishing to locate in areas leased in State Sales 32, 33, 35, 40, 46A, and 49 would not be allowed to discharge produced water or muds and cuttings to an intertidal area. In addition, under the same lease term, the discharge of muds and cuttings to waters 5.5 m (3 fathoms) or less would be allowed only during the period from 2 hours before to 2 hours after each high tide. This lease term is intended to "protect shallow areas," "help maintain the sale area as a pollution-free environment," "mitigate disturbance to marine mammals," "help maintain the integrity of avian habitats and prevent disturbances to avian wildlife," and "protect anadromous fish and their habitat."

By extending the restriction on discharges to shallow subtidal waters and intertidal areas to existing operations, marine mammal, avian, and anadromous fish resources will be fully protected from potential adverse effects. Each of the existing facilities is, in fact, located in an area covered by a past lease sale, or to be covered in the near future by a lease sale.

4. Interim Mixing Zones for Production Platforms Which Discharge Produced Water to Cook Inlet

The computer modeling effort discussed above also addressed mixing zones necessary for two of the five production platforms in Cook Inlet. Based on the results, the State of Alaska has certified that the interim mixing zone for the Amoco Dillon platform shall be 625 m, while that for Phillips Platform A shall be 150 m. Mixing zones of 625 m were also certified for the other three Amoco facilities. Although not enough site-specific information was available to do modeling runs for these facilities, they have much smaller flowrates than the Amoco Dillon, and probably have effluent concentrations roughly similar to that at Dillon. Thus, they are not expected to need mixing zones any larger than that specified for the Dillon.

In order to obtain further information for final mixing zones, ADEC has required that these facilities submit the information specified in Part II.B.2. of the permit within one year of the effective date of the permit. Upon evaluation of this information, as well as results of the mixing zone verification study required of existing shore-based facilities which discharge produced water, ADEC may modify the interim mixing zones according to the criteria of 18 AAC 70.032.

ADEC also certified that new production facilities in Upper Cook Inlet wishing to discharge produced water to state waters must submit the information in part II.B.2. as well as information on water depth and depth of discharge, to ADEC and EPA at least 6 months prior to the initiation of discharge in order that an appropriate mixing zone may be established.

5. Environmental Monitoring of Muds and Cuttings Discharges From New Development and Production Facilities.

As was proposed in the draft permit, new development and production facilities which discharge drilling muds or drill cuttings within 1500 m of an area of biological significance, such as a coastal marsh, river delta, river mouth, designated Area Meriting Special Attention, game refuge, game sanctuary, or critical habitat area, will be required to undertake environmental monitoring of the fate and effects of the discharges. The monitoring is needed because the active natural transport processes in Cook Inlet will likely carry discharged materials from the development and production operations into these sensitive areas. Region 10 has identified a need for further information on the fate and effects of muds and cuttings discharges from long-term development and production operations.

The specifics of each monitoring program, including survey design, analytical techniques, participants, and reporting requirements, will be determined by EPA, Region 10, in consultation with ADEC and the permittee. Monitoring shall include, but not be limited to, relevant hydrographic, sediment hydrocarbon, and heavy metal data from surveys conducted before and during drilling mud disposal operations and for at least one year after drilling operations ceases.

In response to a comment received on the draft permit, Region 10, in consultation with ADEC, will grant an exemption (rather than "consider granting an exemption") from this monitoring requirement if the permittee can satisfactorily demonstrate that information on the fate and effects of the discharge is available and/or the discharge will have insignificant impacts on the area of biological significance. Also, an exemption to post-drilling monitoring will be granted if no impact was indicated during drilling.

6. Environmental Monitoring of Muds and Cuttings Discharges in Water Depths of 5–20 m (State Waters Only)

As part of its 401 certification, ADEC has required that the permit include a provision stating that monitoring of muds and cutting discharges in water depths of 5–20 m may be required, at ADEC's discretion. The goal of the monitoring would be to verify predicted water column dilutions and bottom deposition at representative sites. Specifics of the study would be determined by ADEC in consultation with EPA and the permittee.

7. Sanitary and Domestic Wastes

As part of its certification under section 401 of the Act, the State of Alaska is requiring that sanitary waste discharges to state waters comply with the following limits on BOD and suspended solids:

For 30 consecutive days, 30 mg/l mean.
For 7 consecutive days, 45 mg/l mean.
For a 24 hour period, 60 mg/l mean.

The state is also requiring that the chlorine contact time for sanitary wastes discharged to state waters be at least 30 minutes, to ensure that fecal coliform levels will meet state standards at the edge of the mixing zone.

The state has imposed a requirement that sanitary wastes and domestic wastes be discharged below the water surface. This condition was imposed as a result of health concerns raised by a recent incident in which crew members on a boat tending one of the platforms were sprayed by sanitary waste discharged from the underside of the platform.

Finally, the 401 Certification includes a provision that domestic wastes (which include kitchen oils and greases) not cause a sheen on the receiving water.

8. Biocides

The limitation on biocides described in Part IV.C.4. above includes a provision that authorization to discharge biocides cannot be granted unless the discharge will comply with applicable water quality criteria and standards. In state waters, the applicable standards are the Alaska Water Quality Standards. This provision is necessary because the technology-based portion of the authorization may not be sufficient to ensure that these standards are met.

F. Discharge Monitoring Study

Region 10 has limited data on discharges from development and production facilities. In order to extend the data base for these discharges, a discharge monitoring study has been included in Part VI of the general permit. Development and production operators will have the choice of (1) participating in the proposed joint study, which would not examine discharges at every facility in detail, or (2) being subject to similar monitoring requirements on each of the operators' individual facilities. The advantage of the larger study is that operators would have a single contractor undertake sampling, analyses, and compilation of data at the various facilities. This would ensure uniformity of work procedures, and better data as an end result. It would also be less expensive for the operators than having to arrange that the work be done for each of their facilities.

The monitoring study shall commence within six months after the effective date of the permit, except that monitoring of produced water shall commence within two years of the effective date of the permit. This will allow time for final development of a produced water bioassay procedure by EPA's Gulf Breeze laboratory.

Under the final permit, operators are required to report any changes in chemical products in their waste streams after the study is complete. If a particular waste stream was not included in the joint study, the first report shall also include a complete chemical inventory of products in use prior to the first reported change. This will keep Region 10 abreast of current chemical usage at each facility.

1. Deck Drainage

Based on information received during the public comment period, EPA has determined that collection of analytical data on deck drainage is not necessary at this time, and that data would probably be of limited usefulness. Operators will still be required to report information on chemical product usage as part of the study, however, to keep EPA informed of any chemicals present in the discharge which might warrant analytical monitoring in the future.

2. Non-contact Cooling Water and Desalination Wastes

In response to comments which stated that these discharges are anticipated to have very few, if any additives, EPA will not require monitoring of BOD, COD, and biocides at this time. The requirement to reprt flow rates and chemical inventories is being retained, however, to monitor additive usage in these waste streams. The use of biocides is also subject to the conditions of Part II.J.5. of the permit.

3. Blowout Preventer Fluid, Boiler Blowdown, Fire Control System Test Water, Uncontaminated Ballast Water, Uncontaminated Bilge Water, and Waterflooding Discharges

As proposed in the draft permit, flow rates shall be measured and chemical inventories reported for a period of 6 months for all platforms.

4. Excess Cement Slurry, and Mud, Cuttings, Cement at Seafloor

The total volumes shall be estimated and chemical inventories reported for the first five development or production wells drilled and completed after the effective date of the study. This requirement is essentially the same as that proposed for the draft permit.

5. Produced Water

In order to get a broader spectrum of data on produced water in Alaska, sampling will be undertaken as proposed in the draft permit: once each summer and in winter from the three shore-based facilities and three of the five platforms which discharge directly into Cook Inlet. The three platforms shall include two oil platforms located on different fields, and the existing gas platform in Cook Inlet. Additionally, one of the oil platforms to be sampled in summer and winter shall be sampled in fall and spring of the same year.

Flow rates and chemical inventories shall be estimated for each sample. In addition, chemical analyses shall be performed on each sample as follows: pH; oil and grease; dissolved oxygen;

biochemical oxygen demand (BOD); chemical oxygen demand (COD); total organic carbon (TOC); ammonia; salinity; total aromatic hydrocarbons; total naphthalenes; dimethylnaphthalenes; trimethylnaphthalenes; tetramethylnaphthalenes; xylene; benzene; ethylbenzene; naphthalene; toluene; phenol; 2,4-dimethylphenol; bis (2-ethylhexyl) phthalate; anthracene; phenanthrene; and zinc.

All of the pollutants including benzene and listed after benzene are priority pollutants which were found in at least 50% of produced water samples analyzed by EPA as part of a 30-platform survey in the Gulf of Mexico. These pollutants, along with xylene, have also been reported in Cook Inlet produced water discharges.

There are very few toxicity data available on produced water in general, and for Cook Inlet operations in particular. Therefore, toxicity testing is also required. A suitable procedure for produced water bioassays is currently under development at EPA's Gulf Breeze laboratory. Thus, the method to be used will be determined by EPA, in consultation with ADEC, prior to the start of the produced water study. Under the permit, the produced water study is scheduled to begin two years after the effective date of the permit.

6. Well Treatment Fluids

These fluids are among the most poorly characterized of production discharges. To increase the available information on them, the following requirements are included in the study.

First, the total volumes of fluid collected and discharged, the job type, and composition of the fluid shall be reported for the first ten jobs discharged to Cook Inlet after the effective date of the study, or for each job for a period of 1 year, whichever is more. The first ten jobs to be discharged must be sampled and analyzed for pH, oil and grease, dissolved oxygen, BOD, COD, TOC, and salinity.

Second, there is a special concern that highly acidic well treatment fluids may leach greater amounts of metals from the formation. To investigate this concern, well treatment fluids for the first three acidizing jobs (with an initial pH of 4 or less) discharged to Cook Inlet after the effective date of the study shall be sampled and analyzed for cadmium, chromium, copper, mercury, zinc, and lead.

V. Other Legal Requirements

A. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permit are excluded from the provisions of section 311. However, this permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by Section 311 of the Act.

B. Endangered Species Act

Based on information in the Final Ocean Discharge Criteria Evaluation for discharges covered by this permit, and on information in the Environmental Impact Statements prepared for the federal lease sale areas, EPA has concluded that the discharges authorized by this general permit are not likely to adversely affect any endangered or threatened species nor adversely affect their critical habitat. EPA requested comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the draft permit. Both agencies concurred with EPA's determination.

C. Coastal Zone Management Act

The proposed permit and consistency determination were submitted to the State of Alaska for state interagency review at the time of public notice. The State of Alaska has concurred that the activities allowed by this permit are consistent with local and State Coastal Management Plans.

D. Marine Protection, Research, and Sanctuaries Act

No marine sanctuaries as designated by this Act exist in the vicinity of the permit area.

E. State Water Quality Standards and State Certification

The State of Alaska has certified pursuant to section 401 that the discharges authorized in state waters by this permit comply with state water quality standards and regulations. The portion of Cook Inlet receiving waters located within the territorial seas of the State of Alaska and shoreward of the inner boundary of the territorial seas are classified by the State Water Quality Standards as Class II A(i)(ii)(iii), B(i)(ii), C and D for use in aquaculture; seafood processing and industrial water supply; water contact and secondary recreation; growth and propagation of fish, shellfish, aquatic life and wildlife; and harvesting for consumption of raw mollusks or other raw aquatic life.

F. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Most of the information collection requirements of the permit have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Act. In addition, the environmental monitoring requirements pursuant to section 403(c) of the Act in Part II.B. of this permit are similar to the monitoring requirements that were approved by OMB for the 1983 Beaufort Sea and Norton Sound NPDES general permits. EPA's response to public comments received on this issue is included in the response-to-comments document available from Region 10 upon request.

H. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 et seq. (February 8, 1984). These facilities are classified as Major Group 13—Oil and Gas Extractions SIC 1311 Crude Petroleum and Natural Gas.

Dated: September 4, 1986.

Robert S. Burd,

Acting Regional Administrator, Region 10.

References

Bigham, G. L. Hornsby, and G. Wiens. 1984. Technical support document for regulating dilution and deposition of drilling muds on the Outer Continental Shelf. Prepared for U.S. Environmental Protection Agency, Region 10, Seattle, WA, and Jones and Stokes Associates, Bellevue, WA, by Tetra Tech, Inc., Bellevue, WA. November 1984. 65 pp. plus appendices.

Final, General NPDES Permit, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

Authorization To Discharge to Coastal and Offshore Waters Under the National Pollutant Discharge Elimination System for Oil and Gas Exploration, Development, and Production Facilities

In compliance with the provisions of the Federal Water Pollution Control Act, as amended, [33 U.S.C. 1251 et seq.; the "Act"), the following discharges are authorized:

Discharge name	Discharge No.
Drilling Mud	001
Drill Cuttings and Washwater	002
Deck Drainage	003
Sanitary Wastes	004
Domestic Wastes	005
Desalination Unit Wastes	006
Blowout Preventer Fluid	007
Boiler Blowdown	008
Fire Control System Test Water	009
Non-Contact Cooling Water	010
Uncontaminated Ballast Water	011
Uncontaminated Bilge Water	012
Excess Cement Slurry	013
Mud, Cuttings, Cement at Seafloor	014
Waterflooding Discharges	015
Produced Water	016
Completion Fluids	017
Workover Fluids	018
Well Treatment Fluids	019
Test Fluids	020
Produced Solids	021

from oil and gas development and production facilities (in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category, as defined in 40 CFR Part 435, Subpart D) to state waters north of the Forelands in Upper Cook Inlet. Discharges are also authorized from exploratory facilities (in the Offshore and Coastal Subcategories, as defined in 40 CFR Part 435, Subparts A and D) to state and federal offshore and state inland coastal waters. The receiving waters are Cook Inlet, Shelikof Strait, and the Gulf of Alaska. Discharges shall be in accordance with effluent limitations, monitoring and reporting requirements, and other conditions set forth in Parts I through VI hereof.

Permittees who are not granted coverage under this general permit as described in Part I are not authorized to discharge to the specific waters unless an individual permit has been issued to the permittee by EPA, Region 10, on or after July 1, 1984. Discharges from facilities in the Onshore Subcategory (40 CFR Part 435, Subpart C), or to wetlands adjacent to the territorial seas and inland coastal waters of the State of Alaska, are not authorized under this permit.

The authorized discharge sites include all blocks offered for lease by the U.S. Department of the Interior's Minerals Management Servcie (MMS) in Federal Lease Sales 55 (Gulf of Alaska) and 60 (Cook Inlet). Additionally, the authorized discharge sites include all Cook Inlet blocks previously offered for lease by the State of Alaska (including blocks offered in Sales 32, 33, 35, 40, 40A and 49) or offered under state lease sales held during the effective period of this permit. For the purposes of this permit, the southern boundary of Cook Inlet is defined to be the line between Cape Douglas on the west and Port Chatham on the east.

The facilities listed below are authorized to discharge under this permit. Their previous individual permits, which were continued under 40 CFR 122.6 and the Administrative Procedures Act [5 U.S.C. 558(c)], become null and void upon the effective date of this permit.

Facility	Individual NPDES permit No.	General NPDES permit No.
Marathon Granite Point Treatment Facility	AK-000018-3	AKG285001
Marathon Trading Bay Treatment Facility	AK-000141-4	AKG285002
Shell East Foreland Treatment Facility	AK-000346-8	AKG285003
Amoco Platform Anna	AK-000375-7	AKG285004
Amoco Platform Baker	AK-000377-8	AKG285005
Amoco Platform Bruce	AK-000076-1	AKG285006
Amoco Platform Dillon	AK-000075-2	AKG285007
ARCO Platform King Salmon	AK-000020-5	AKG285008
Marathon Platform Dolly Varden	AK-000041-8	AKG285009
Marathon Platform Spark	AK-000018-1	AKG285010
Phillips Platform A	AK-000118-8	AKG285011
Shell Platform A	AK-000044-2	AKG285012
Shell Platform C	AK-000045-1	AKG285013
Texaco-Superior Platform A	AK-000143-1	AKG285014
Union Platform Granite Point	AK-000081-7	AKG285015
Union Platform Grayling	AK-000348-6	AKG285016
Union Platform Monopod	AK-000047-7	AKG285017
ARCO—Fire Island	AK-004054-1	AKG285018

This permit shall be modified or revoked at any time if, on the basis of any new data, the Regional Administrator determines that this information would have justified the application of different permit conditions at the time of issuance. Permit modification or revocation will be conducted in accordance with 40 CFR 122.62, 122.63, 122.64, and 124.5, and, for state waters, State of Alaska procedures found at 18 AAC 15.130 and AS 46.03. In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Regional Administrator determines that continued discharges may cause unreasonable degradation of the marine environment. In accordance with the procedures under 18 AAC 15.130 and AS 46.03, for permit modifications which affect state waters or for reissuance of the general NPDES permit, a copy of the proposed modification, together with a cover letter requesting certification, must be served on the central office of the Department of Environmental Conservation at least 60 days before any EPA deadline for certification action on the modification.

Under 40 CFR 122.44(c)(3), if an applicable standard or limitation is promulgated under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2), and that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

This permit does not authorize discharges from "new sources" as defined in 40 CFR 122.2.

This permit shall become effective on October 10, 1986.

This permit and the authorization to discharge shall expire at midnight on October 10, 1991 (five years from effective date).

Signed this 4th day of September 1986.

Robert S. Burd,

Acting Regional Administrator, Region 10.

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Part I. Notification Requirements

A. New Exploration Facilities

1. *Requests to be Covered by General Permit.* Written request to be covered by this permit shall be provided to EPA at least 60 days prior to initiation of discharges. Facilities wishing to start discharging within 60 days after the permit becomes effective need not comply with the 60-day requirement, but shall provide the request for coverage as soon as possible prior to initiation of discharges. The request shall include the following information:

a. Name and address of the permittee.

b. General location (including lease and block numbers) of operations and discharges.

c. Any discharge or operating conditions which will require special monitoring or will require special consideration by EPA.

d. Certification that only authorized muds and additives will be discharged (Part II.C.1.d.).

e. Certification of lessee's responsibility. The permittee shall be the owner and/or operator of the facility. However, the lessee may become the permittee after certifying that the lessee assumes responsibility for compliance with the permit. If the lessee has multiple leases, the lessee may submit a single certification for all of its leases. Submission of this certification does not remove the responsibility of the owner or operator for compliance with the conditions of the permit.

If possible, the request for coverage shall also contain any required request for EPA authorization to discharge muds and additives not listed in Tables 1 and 2 (see section 2.e. below).

2. *Authorization to Discharge.* The permittee's discharges are not authorized until written notification is received from EPA that operations at the discharge site have been assigned a permit number under this general permit. A permit number cannot be assigned until the following information is received. This information shall be provided to EPA in the request for coverage, if possible, but in no case less than 30 days prior to commencement of discharges.

a. Name(s) of proposed site(s).

b. Location of discharge site(s), including lease block number(s) and approximate coordinates within lease block(s).

c. Range of water depths (below mean lower low water) in lease block(s), and depth of discharges.

d. Initial date(s) and expected duration(s) of operations.

e. If necessary, request for EPA authorization to discharge muds or additives not listed in Tables 1 and 2 (Parts II.C.1.f. and g.).

3. *Commencement of Discharges.* The permittee shall notify EPA, Region 10, within the 7-day period prior to initiation of discharges from the facility and from each well. The notification may be oral or in writing. If notification is given orally, written confirmation must follow within 7 days.

The notification shall include the exact coordinates (latitude and longitude) and water depth of the discharge site.

B. New Development and Production Facilities

1. *Requests to be Covered by General Permit.* Written request to be covered by this permit shall be provided to EPA at least 60 days prior to initiation of discharges. Facilities wishing to start discharging within 60 days after the permit becomes effective need not comply with the 60-day requirement, but shall provide the request for coverage as soon as possible prior to initiation of discharges. The request shall include the following information:

a. Name and address of the permittee.

b. Name of platform or facility.

c. Specific location (including latitude and longitude, and section, range, and township) of operations and discharges.

d. Water depth at site and depth of discharge(s).

e. Initial date and expected duration of operations.

f. Any discharge or operating conditions which will require special monitoring or will require special consideration by EPA and ADEC.

g. Certification that only authorized muds and additives will be discharged (Part II.C.1.d.).

h. Certification of lessee's responsibility. The permittee shall be the owner and/or operator of the facility. However, the lessee may become the permittee after certifying that the lessee assumes responsibility for compliance with the permit. If the lessee has multiple leases, the lessee may submit a single certification for all of its leases. Submission of this certification does not remove the responsibility of the owner or operator for compliance with the conditions of the permit.

If possible, the request for coverage shall also contain any required request for EPA authorization to discharge muds or additives not listed in Tables 1 and 2 (see section 2, below).

2. *Authorization to Discharge.* The permittee's discharges are not authorized until written notification is received from EPA that operations at the discharge site have been assigned a permit number under this general permit.

In addition, permittees wishing to discharge muds and additives other than those listed in Tables 1 and 2 will not be authorized to discharge the non-listed muds and additives until they have (1) submitted a request to discharge these items (Parts II.C.1.f. and g.) and (2) received authorization from EPA to discharge the items. The request to EPA shall be provided in the request for coverage, if possible, but in no case less than 30 days prior to commencement of drilling discharges.

3. *Commencement of Discharges.* The permittees shall notify EPA, Region 10, within the 7-day period prior to initiation of discharges from the new facility. Drilling operators shall also notify Region 10 within the 7-day period prior to initiation of discharges from each new well thereafter. The notification may be oral or in writing. If notification is given orally, written confirmation must follow within 7 days.

C. Existing Facilities

1. *Coverage by General Permit.* Facilities operating under individual permits which have been continued under 40 CFR 122.6 and the Administrative Procedures Act [5 U.S.C. 558(c)] are automatically covered by this general permit as of its effective date. These facilities are listed above. Continued individual permits for these facilities are null and void as of the effective date of this permit. These permittees need not submit a formal request for coverage prior to commencement of discharges under this permit. However, the permittee shall provide the information below within 30 days after the effective date of the permit.

a. Name and address of the permittee.

b. Name of platform or facility.

c. Specific location (including latitude and longitude, and section, range, and township) of operations and discharges.

d. Water depth at site and depth of discharge(s).

e. Any discharge or operating conditions which will require special monitoring or will require special consideration by EPA.

f. Certification of lessee's responsibility. The permittee shall be the owner and/or operator of the facility. However, the lessee may become the permittee after certifying that the lessee assumes responsibility for compliance with the permit. If the lessee has multiple leases, the lessee may submit a single certification for all of its leases. Submission of this certification does not remove the responsibility of the owner or operator for compliance with the conditions of the permit.

g. Certification that only authorized muds and additives will be discharged (Part II.C.1.d.).

i. For facilities which will not be drilling within 90 days after the effective date of the permit: as of the date of the requests for coverage.

ii. For facilities, which are or will be drilling within the 90-day period after the effective date of the permit: as of 90 days after the effective date of the permit.

2. *Authorization to Discharge.* The permittee's discharges are automatically authorized as of the effective date of the permit. EPA has assigned each permittee a permit number under the general permit as listed on page 2 of this permit.

Permittees wishing to discharge muds and additives other than those listed in Tables 1 and 2 may be so in accordance with the applicable requirements of their most recent NPDES individual permits until 90 days after the effective date of this permit. After the 90-day period, permittees must have written authorization from EPA to discharge non-listed muds and additives. Requests for authorization to discharge these items shall be submitted as soon as possible, but in no case less than 30 days prior to commencement of drilling discharges following the 90-day period.

3. *Commencement of discharges from New Wells.* The permittee shall notify EPA, Region 10, within the 7-day period prior to initiation of discharges from each new well. The notification may be oral or in writing. If notification is given orally, written confirmation must follow within 7 days.

D. All Facilities Covered by Permit

1. *Submission of Plans of Operation, Environmental Reports, and Biological Surveys.* The permittee is responsible for providing EPA with final copies of any plans of operation, environmental reports, and biological surveys required by the Alaska Department of Natural Resources (ADNR), or by the Regional Supervisor, Field Operations, of the Minerals Management Service (MMS), for the identification and/or protection of biological populations or habitats. The permittee may provide these directly to EPA, or ensure that ADNR or MMS have provided them to EPA. Existing production facilities need not submit plans of operation written prior to the effective date of this permit, however, if final plans and environmental reports submitted to MMS are identical to review copies received by EPA, Region 10, the permittee need not submit them under this permit provision.

2. *Termination of Discharges.* The permittee shall notify EPA within 30 days following cessation of discharges from each well and from the discharge site. The notification may be provided in a DMR or under separate cover.

3. *Submission of Requests to be Covered and Other Reports.* Reports and notifications required herein shall be submitted to the following addresses. Copies of requests, reports, and notifications shall be sent to the Alaska Department of Environmental Conservation (ADEC) only for those discharges which occur in state waters.

All requests for coverage and additive authorizations
*Director, Water Division
*U.S. Environmental Protection Agency, Region 10
*Attn: Ocean Programs Section, M/S 430
*1200 Sixth Avenue
*Seattle, Washington 98101
*(206) 442-8155

All other reports and notifications
*Director, Water Division
*U.S. Environmental Protection Agency, Region 10
*Attn: Water Compliance Section, M/S 513
*1200 Sixth Avenue
*Seattle, Washington 98101
*(206) 442-1213

For state waters only: copies of all requests, reports, and notifications
*Regional Environmental Supervisor
*South Central Regional Office
*Alaska Department of Environmental Conservation
*437 E Street, Suite 200
*Anchorage, Alaska 99501

E. Facilities Covered Under Current Individual Permits

A source excluded from coverage under this general permit solely because it already has an individual permit issued on or after July 1, 1984, may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit and granting of coverage under this general permit, the general permit shall apply to the source.

F. Changes from Coverage under General Permit to Coverage under Individual Permits

The Director of the Water Division (Director), EPA, Region 10, may require any permittee discharging under the authority of this permit to apply for and obtain an individual NPDES permit when any one of the following conditions exist:

a. Storm water discharge(s) is(are) a significant contributor of pollution.

b. The permittee is not in compliance with the conditions of this general permit.

c. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

d. Effluent limitation guidelines are promulgated for point sources covered by this permit.

e. A Water Quality Management Plan containing requirements applicable to such point source is approved.

f. The point sources covered by this permit no longer:

(1) Involve the same or substantially similar types of operations,

(2) discharge the same types of wastes,

(3) require the same effluent limitations or operating conditions or

(4) require the same or similar monitoring.

g. In the opinion of the Director, the discharges are more appropriately controlled under an individual permit than under a general NPDES permit.

2. The Director may require any permittee authorized by this permit to apply for an individual NPDES permit only if the permittee has been notified in writing that an individual permit application is required.

3. Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The owner or operator shall submit an application together with the reasons supporting the request to the Director no later than 90 days after the effective date of the permit.

4. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

Part II. Effluent Limitations and Monitoring Requirements

A. Definitions

1. "AAS" means atomic absorption spectrophotometry.

2. "Authorized additive" means any drilling mud additive listed in Table 2 or authorized for discharge under Part II.C.1.e., f., or g.

3. "Ballast water" means seawater added or removed to maintain the proper ballast floater level and ship draft.

4. "bbl/hr" means barrels per hour. One barrel equals 42 gallons.

5. "Bilge water" means water which collects in the lower internal parts of the drilling vessel hull.

6. "Biocide" means any chemical agent used for controlling the growth of or destroying nuisance organisms (e.g., bacteria, algae, and fungi).

7. "Blowout preventer fluid" means fluid used to actuate hydraulic equipment on the blowout preventer.

8. "BOD" means biochemical oxygen demand.

9. "Boiler blowdown" means the discharge of water and minerals drained from boiler drums.

10. "Bulk discharge" means the discharge of more than 100 barrels in a one-hour period.

11. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

12. "Cd" means cadmium.

13. "COD" means chemical oxygen demand.

14. "Completion fluid" means any borehole fluid placed across the producing zone prior to producing hydrocarbons from the well.

15. A "composite sample" for oil and grease analysis means a set of four individual grab samples taken a minimum of two hours apart within a 24-hour period. The samples shall be of equal size and of not less than 100 ml each. They shall be collected and stored in accordance with procedures in 40 CFR Part 136. They shall be analyzed separately and the results of the four analyses averaged to provide a single value for the composite sample.

16. "Cooling water" means once-through non-contact cooling water.

17. "Cuttings"—see "Drill cuttings".

18. "Daily discharge" means the discharge measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units other than mass, the "daily discharge" is calculated at the average measurement over the sampling day. When grab samples are used, the "daily discharge" determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that sampling day.

19. "Deck drainage" means all waste resulting from platform washings, deck washings, spillings, rainwater, and runoff

from curbs, gutters, and drains including drip pans and wash areas.

20. "Desalination unit wastes" means wastewater associated with the process of creating freshwater from seawater.

21. "Development" operations are those operations that are engaged in the drilling and completion of production wells. These operations may occur prior to or simultaneously with production operations.

22. "Diesel oil" means the class of distillate fuel oil typically used in conventional oil-based drilling fluids which contains a number of toxic pollutants. For the purpose of this permit, "diesel oil" includes the fuel oil present at the facility.

23. "Domestic wastes" includes wastes from showers, sinks, galleys, and laundries.

24. "Drill cuttings" means particles generated by drilling into subsurface geological formations and carried to the surface with the drilling fluid.

25. "Drilling Fluids Toxicity Test" means a bioassay conducted and reported in accordance with the following bioassay methodology: "Drilling Fluids Toxicity Test," EPA Industrial Technology Division, May 1985, or other methods approved in advance by Region 10.

26. "Drilling mud" means any fluid sent down the hole, including any specialty products, from the time a well is begun until final cessation of drilling in that hole. It also includes fluids used in workover operations involving drilling. A water-base drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. An oil-based drilling fluid has diesel, crude, or some other oil as its continuous phase with water as the dispersed phase.

27. "Elutriate oil and grease" means the oil and grease concentration in elutriates of drilling muds or cuttings samples, as determined by the ADEC procedure.

28. "Excess cement slurry" means the excess cement and wastes from equipment washdown after a cementing operation.

29. "Exploratory" operations are limited to those operations involving drilling to determine the nature of potential hydrocarbon reserves and does not include drilling of wells once a hydrocarbon reserve has been defined. Discharges from exploratory operations are limited to five wells per site.

30. "Fire control system test water" means the water released during the training of personnel in fire protection and the testing and maintenance of fire protection equipment.

31. "GC" means gas chromatography. "GC/MS" means gas chromatography/mass spectrometry.

32. "Generic drilling muds" or "generic muds" means the primary mud types which have been evaluated and authorized by EPA. These mud types have been authorized for discharge with limitations on composition given in Table 1. A list of authorized specialty additives is given in Table 2.

33. A "grab" sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

34. "Hg" means mercury.

35. "lb/bbl" means pounds per barrel.

36. "Maximum daily" means the highest measured "daily discharge" during the monitoring month.

37. "Maximum hourly rate" as applied to drilling mud, cuttings, and washwater means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

38. "MGD" means million gallons per day.

40. "mg/kg" means milligrams per kilogram.

41. "mg/l" means milligrams per liter.

42. "Mineral oil" means a class of low volatility petroleum product, generally of lower aromatic hydrocarbon content and lower toxicity than diesel oil.

43. "Minimum daily" means the lowest measured "daily discharge" during the monitoring month.

44. "Monitoring month" means the period consisting of the calendar weeks which end in a given calendar month.

45. "Monthly average" means the average of "daily discharges" over a monitoring month, calculated as the sum of all "daily discharges" measured during a monitoring month divided by the number of "daily discharges" measured during that month.

46. "Muds, cuttings, cement at sea floor" means the materials discharged at the surface of the ocean floor in the early phases of drilling operations, before the well casing is set, and during well abandonment and plugging.

47. "NAA" means neutron activation analysis.

48. "No discharge of free oil" means that waste streams that would cause a film or sheen upon or a discoloration of the surface of the receiving water or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines may not be discharged.

49. "No discharge of diesel oil" in drilling mud means a determination that diesel oil is not present based on a comparison of the gas chromatogram from an extract of the drilling mud and from diesel oil obtained from the drilling rig or platform. GC/MS may also be used.

50. "Non-contact cooling water"—see "Cooling water."

51. "Oil-based" means that the mud or fluid contains oil as the continous phase with water as the dispersed phase.

52. "Open water" means less than 25% ice coverage within a one (1) mile radius of the discharge site.

53. "Produced fluid" means fluid extracted from a hydrocarbon reserve during development or production. The fluid is generally a mixture of oil, water, and natural gas.

54. "Produced solids" means sands and other solids deposited from produced water which collect in vessels and lines and which must be removed to maintain adequate vessel and line capacities.

55. "Produced water" means water associated with a hydrocarbon reserve and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

56. "Production" operations are those operations involving active recovery of hydrocarbons from producing formations. These operations may occur simultaneously with or following development operations.

57. "Sanitary wastes" means human body waste discharged from toilets and urinals.

58. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

59. "Site" means the single, specific geographical location where a mobile drilling facility (jackup rig, semi-submersible, or arctic mobile rig) conducts its activity, including the area beneath the facility, or to a location of a single gravel island.

60. "Slush ice" occurs during the initial stage of ice formation when unconsolidated individual ice crystals (frazil) form a slush layer at the surface of the water column.

61. "Stable ice" means ice that is stable enough to support discharged muds and cuttings.

62. "Static Sheen Test" means those procedures which are described (1) in the draft "Proposed Methodology: Laboratory Sheen Test for the Offshore Subcategory, Oil and Gas Extraction Industry," prepared by Technical Resources, Inc., April 10, 1983; and (2) in EPA, Region 10's Interim Guidance for the Static (Laboratory) Sheen Test," January 10, 1984.

63. "Test fluid" means the discharge which would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content. This would consist of fluids sent downhole during testing along with water from the formation.

64. "TOC" means total organic carbon.

65. "Unstable or broken ice conditions" means greater than 25% ice coverage within a one (1) mile radius of the discharge site after spring breakup or after of slush ice formation in the fall, but not stable ice.

66. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

67. "Water depth" means the depth of the water between the surface and the seafloor as measured from mean lower low water (0.0).

68. "Waterflooding discharges" means discharges associated with the treatment of seawater prior to its injection into a hydrocarbon bearing formation to improve the flow of hydrocarbons from production wells. These discharges include strainer and filter backwash water, and treated water in excess of that required for injection.

69. "Well treatment fluid" means any fluid used to enhance production by altering the oil-bearing strata after a well has been drilled.

70. "Workover fluid" means any fluid used for remedial or maintenance work on a well which has been producting for a period of time, or fluids left in a well and later displaced out of a well during workover operations. Workover fluids used for drilling operations are included in the drilling mud category.

71. "XFA" means x-ray fluorescence analysis.

72. "96-hr LC_{50}" means the concentration of a test material that is lethal to 50 percent of the test organisms in a bioassay after 96 hours of constant exposure.

73. "µg/l" means micrograms per liter.

B. General Area and Depth-Related Requirements

Discharges from operations in Cook Inlet are prohibited in the following cases. Potential permittees should contact EPA if they ar uncertain whether or not their discharges will be located in a prohibited area. The Agency will also provide a map showing the approximate location of prohibited areas upon request.

1. Discharges from the following facilities are prohibited shoreward of the specified isobaths, including intertidal areas.

Facility	Isobath (in m below mean lower low water)
Marathon Granite Point Production Facility	2.5
Marathon Trading Bay Production Facility	4.5
Shell East Foreland Production Facility	6.5

2. The discharge of produced water from new facilities is prohibited in intertidal areas. New facilities are also prohibited from discharging produced water shoreward of the 10 m isobath, unless an alternative isobath and mixing zone are determined by EPA and ADEC. The determination shall be based on compliance of the discharge with the Alaska Water Quality Standard for total aromatic hydrocarbons. No alternative isobath will be allowed which is shallower than any isobath specified for produced water in the terms of a state oil and gas lease sale covering the area of the proposed location. Specifically, there shall be no discharges shoreward of the 5.5 m isobath adjacent to (a) Clam Gulch Critical Habitat area (Sales 32, 40, 40A, and 49) and (b) from the Crescent River northward to a point one-half mile north of Redoubt Point (Sales 35 and 49). Alternative isobaths and mixing zones will be determined on a case-by-case basis. Permittees requesting a determination shall do so at the time they request coverage under the general permit, and shall provide EPA and ADFE with the following information: (1) Expected maximum flowrate, in m^3/sec; (2) Expected salinity (in ppt) and temperature (in °C) which correspond to the maximum density expected of the discharge; (3) Expected maximum concentration of total aromatic hydrocarbons (in mg/l); (4) Inner diameter of the proposed outfall pipe (in m); (5) Orientation of the pipe relative to the prevailing current direction and to the water surface or seafloor; and (6) Proposed diffuser design (if applicable). The agencies will use this information together with information on ambient conditions to model predicted dilution of the effluent, using the model UMERGE or another appropriate model selected by EPA and ADEC. The alternative isobath and mixing zone will be based on the worst-case modeling analsis.

3. The discharge of all effluents other than those addressed in sections 1. and 2. above is prohibited shoreward of the 5 m isobath (as measured from mean lower low water) including intertidal areas. Where terms of state lease sales prohibit discharges shoreward of isobaths deeper than 5 m, the deeper isobath shall be the boundary instead Specifically, there shall be no discharges shoreward of the 5.5 m isobath adjacent to (a) Clam Gulch Critical Habitat Area (Sales 32, 40, 40A, and 49) and (b) from the Crescent River northward to a point one-half mile north of Redoubt Point (Sales 35 and 49).

3. All discharges are prohibited in the following areas:

a. Within the boundaries or within 1,000 m of a coastal marsh, river delta, river mouth, designated Area Meriting Special Attention (AMSA), game refuge, game sanctuary, or critical habitat area.

The seaward edge of a coastal marsh is defined as the seaward edge of emergent wetland vegetation.

The following state game refuges (SGR), game sanctuaries (SGS), and critical habitat areas (CHA) are located in the area covered by this permit:

Palmer Hay Flats SGR
Goose Bay SGR
Potter Point SGR
Susitna Flats SGR
McNeil River SGS
Trading Bay SGR
Kalgin Island CHA
Clam Gulch CHA
Kachemak Bay CHA

The legal descriptions of these state special areas are found in AS 16.20. The present boundaries of these state special areas are described in "State of Alaska Game Refuges, Critical Habitat Areas, and Game Sanctuaries," Alaska Department of Fish and Game, Habitat Division, July 1985. Further information shall also be obtained from the Alaska Department of Fish and Game, Habitat Division, 333 Raspberry Road, Anchorage, AK 99502, (907) 267–2264.

b. In Kamishak Bay west of a line from Cape Douglas to Chinitna Point.

c. In Chinitna Bay inside of the line between the points on the shoreline at latitude 59°52'45" N, longitude 152°48'18" W on the north and latitude 59°46'12" N, longitude 153°00'24" W on the south (Figure 1).

d. In Tuxedni Bay inside of the lines on either side of Chisik Island (Figure 1):

(1) From latitude 60°04'08" N, longitude 152°34'12" W on the mainland to the southern tip of Chisik Island (latitude 60°05'45" N, longitude 152°33'30" W).

(2) From the point on the mainland at latitude 60°13'45" N, longitude 152°32'42" W to the point on the north side of Snug Harbor on Chisik Island (latitude 60°06'36" N, longitude 152°32'54" W).

C. Drilling Mud, and Drill Cuttings and Washwater (Discharges 001 and 002)

1. *General Requirements.* These discharges shall be limited and monitored by the permittee in accordance with Parts II.B., II.C.2., II.C.3., II.J., III., and the following requirements. The requirements apply to each of the discharges except where otherwise noted.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported value(s)
Flow rate [1] Water depth:				
>40 m	1,000 bbl/hr	Continuous during discharge	Estimate	Maximum hourly rate.
>20–40 m	750 bbl/hr			
5–20 m	500 bbl/hr			
<5 m	No discharge			
Total volume (bbl)	(*)	Daily	Estimate	Monthly total.
Drilling mud constituents	Generic muds and authorized additives only.	See Parts II.C.1.d.–g. and i.		
Free oil	No free oil	Daily, and before bulk discharges	Grab/Static Sheen Test	Number of days sheen observed.
Oil-based fluids	No discharge	See Part II.C.1.a.		
Oil content of cuttings	10% by wt, 6% by wt.[2]	See Part II.C.1.a.		
Elutriate oil and grease/Visible sheen.	No visible sheen	See Part II.C.1.c	Elutriate test/Observation	Maximum daily (mg/l)/Number of days sheen observed.
Diesel oil content	No discharge of diesel oil	See Part II.C.1.a	Grab/GC	Presence or absence.
Mercury and cadmium content of barite.	1 mg/kg Hg, 3 mg/kg Cd, dry wt.[3]	Once per well	AAS	Concentrations (mg/kg dry wt).
Chemical inventory		Once per mud system	See Part II.C.1.i.	
Metals in drilling mud		See Part II.C.1.j.		Concentrations (mg/kg dry wt).
Oil content of drilling mud		See Part II.C.1.j.		
Toxicity of drilling mud		See Part II.C.1.k		96-hr LC_{50}.

[1] Maximum flow rate of total muds and cuttings (Part II.C.2. and II.B.). Includes predilutent water.
[2] Exploratory drilling discharges are limited to discharges from no more than five wells at a single drilling site. If a step-out (kick-off) well is drilled from a previously drilled well hole, the step-out (kick-off) well is counted as a new well. Requests to discharge from more than five wells per site will be considered by the Water Division Director on a case-by-case basis.
[3] Applies to discharges to state waters only.
[4] Waivers may be granted in some cases. See Part II.C.1.h.

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a. *Prohibition on the discharge of all oil-based muds, diesel oil, and cuttings with an oil content greater than 10%.* The discharge of oil-based drilling muds (containing oil as the continuous phase with water as the dispersed phase) is prohibited.

In addition, the discharge of cuttings containing more than 10% oil by weight (or 5% oil by weight for state waters) is prohibited. Analysis for both state and federal waters is required (a) daily at the time that oil-based drilling fluids or oil additives (except those containing diesel oil) are used; (b) daily at the time that drilling fluids could be contaminated with hydrocarbons from the formation; and (c) immediately on any sample that has violated the Static Sheen Test if a discharge has occurred. The method of analysis shall be that listed for oil and grease in 40 CFR Part 136, or the retort distillation method for oil (American Petroleum Institute, Recommended Practice 13B, 1980). The results of each analysis shall be provided to the Director by written report within 45 days following sample collection.

The discharge of water-based drilling muds which have contained diesel oil or of cuttings associated with any muds which have contained diesel oil is prohibited. Compliance with the limitation on diesel oil shall be demonstrated by a gas chromatography (GC) analysis of drilling mud collected from the mud system used at the greatest well depth, ("end-of-well" sample) and of any muds and cuttings which fail the daily Static Sheen Test if a discharge has occurred in the past 24 hours (Part II.C.1.b. below). In all cases, the determination of the presence or absence of diesel oil shall be based on a comparison of the GC spectra of the sample and of diesel oil in storage at the facility. The method for GC analysis shall be that described in "Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings," (CENTEC, 1985), available from EPA, Region 10. Gas chromatography/mass spectrometry (GC/MS) may be used if an instance should arise where the operator and EPA determine that greater resolution of the drilling mud "fingerprint" is needed for a particular drilling mud sample.

The end-of-well analysis for diesel oil shall be done in conjunction with any end-of-well analyses required in Part II.C.1.j. The results and raw data, including the spectra, from the GC analysis shall be provided to the Director by written report (a) within 30 days of a positive result with the Static Sheen Test, or (b) for the end-of-well analysis, within 45 days of well completion.

b. *No discharge of free oil.* There shall be no discharge of free oil as a result of the discharge of drill cuttings and/or drilling muds. The permittee shall perform the Static Sheen Test on separate samples of drilling muds and cuttings on each day of discharge and prior to bulk discharges. The test shall be conducted in accordance with "Proposed Methodology: Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry" (Petrazzuolo, 1983) and EPA, Region 10's "Interim Guidance for the Static (Laboratory) Sheen Test." The discharge of drilling muds or cuttings which fail the Static Sheen Test is prohibited.

Whenever muds or cuttings fail the daily Static Sheen Test and a discharge has occurred in the past 24 hours, the permittee is required to analyze an undiluted sample of the material which failed the test to determine the presence or absence of diesel oil. The determination and reporting of results shall be performed according to Part II.C.1.a above.

c. *Elutriate test for oil and grease (applies to state waters only).* Drilling muds and/or cuttings containing oil shall not be disposed of on sea ice or into waters of the State of Alaska if such discharge will result in violation of EPA's free oil standard or the State of Alaska's visible sheen standard. Monitoring of elutriate oil and grease concentrations in representative samples of drilling effluents shall be required prior to changeover discharges and end-of-well bulk discharges, and at least weekly during routine discharges. In addition, the elutriate test is required for all mineral oil-spotted muds.

The procedure for the elutriate test shall be that required by ADEC. Copies of the procedure may be obtained from ADEC. Results shall be reported to the ADEC, Southcentral Regional Office, and to EPA within 45 days of sample collection, and shall include correlations between the results of the static laboratory sheen test and the elutriate oil and grease test.

In cases where monitoring indicates an elutriate oil and grease concentration of 50 mg/l is exceeded and a discharge has occurred in compliance with Part II.C.1.b., the permittee shall also conduct an analysis of total recoverable oil and grease and shall report the results in writing to ADEC and to EPA within 45 days.

Discharges which pass the elutriate test requirements are not exempt from the free oil requirements of section b. above.

After two years from the effective date of this permit, ADEC shall evaluate the results of elutriate oil and grease and visible sheen correlation tests to determine whether a 50 mg/l or other elutriate oil and grease discharge limitation shall be placed on future discharges to Cook Inlet for the remaining life of the permit. Operators are encouraged to evaluate a range of alternatives to marine disposal of muds and cuttings containing oil, including developing and maintaining individual and/or centralized onshore special waste disposal site(s), barging, technological capabilities of cuttings washers to remove oils, and reinjection of waste fluids.

ADEC may, in its discretion, require a one-time marine sediment sampling program at a single shallow water development drilling site to determine the fate of discharged muds and cuttings containing oils. The scope of the sampling program shall be determined by ADEC in conjunction with the operators and EPA.

d. *Certification of discharge of authorized muds and additives.* The permittee is required to certify in accordance with Part I.A.1., I.B.1., or I.C.1. that only generic muds and authorized additives (Part II.C.1.e.) or muds and additives authorized in accordance with Parts II.C.1.f. and g. will be discharged.

e. *Generic drilling muds and authorized additives.*

Only generic drilling muds and authorized additives shall be discharged. The generic mud types which have been authorized for discharge are given in Table 1, with specified limitations on composition. A list of additional authorized mud components (specialty additives) is given in Table 2. Tables 1 and 2 may be updated by EPA, Region 10, during the effective period of this permit. If so, the latest updated versions will supersede all earlier versions. Updated versions will be mailed to permittees at the time that the updates become effective. They will be available to other parties upon request.

f. *Authorization to discharge drilling muds and additives not listed in Tables 1 and 2.* The discharge of drilling muds containing any additive (or component) not allowed under Part II.C.1.e. shall require authorization by Region 10 *prior* to discharge. In the authorization process, Region 10 will evaluate whether the requested additives or components will unacceptably increase the toxicity of the drilling mud. The permittee shall supply the information listed below to Region 10 and shall submit it with the information required by Part I.A.2., I.B.2., or I.C.2.

(1) Approximate date and duration of proposed discharge.

(2) Bioassay testing and reporting of results in accordance with the Drilling Fluids Toxicity Test or other procedures approved in advance by Region 10, and also ADEC for discharges to state waters. Additives may be tested with this methodology in a standard reference mud, a generic mud, or in the proposed drilling mud system. *The bioassay report shall specify the concentration of each constituent in the tested drilling fluid.*

(3) Chemical characterization of the additive; estimate of total amount required for any particular well, requested application rate (lb/bbl and % by volume) in the drilling mud, total volume of the drilling mud in which the additive will be dispersed. For the particular well under consideration, a description of drilling mud type and list of other additives, including concentrations (lb/bbl) and % by volume) likely to be present in the drilling mud.

(4) (For biocides only)

(a) Product registration and label information required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and

(b) Any other available information (e.g., on rate of degradation).

Additives may be authorized on an interim basis, at the discretion of Region 10, if preliminary bioassay data and other information are submitted and if the Director determines that additional information is required. The requested additional information may include bioassay data on a used drilling mud sample containing the requested additive. Interim authorization of some mineral oil spotting agents may require that a pill containing the mineral oil spot be removed prior to discharge of the mud system. This information shall be submitted by the date specified in the letter granting interim authorization.

Region 10 will also consider any cost information provided by permittees as part of its evaluations.

g. *Authorization to discharge biocides or mineral oil lubricity or spotting agents.* Biocides or mineral oil lubricity or spotting agents will be authorized as additives in discharged drilling muds (subject to other limitations; e.g., on free oil) in accordance with Part II.C.1.f., if (1) the Drilling Fluids Toxicity Test demonstrates that the selected biocide or mineral oil would not cause the drilling mud to be more toxic than the most toxic generic mud, or (2) the permittee adequately demonstrates that the use of biocides or mineral oils which meet this limitation is not possible and that the requested product is the least toxic available alternative.

In addition, Region 10 will consider the following factors:

(1) For operations in State waters, the likelihood that the biocide will meet the Alaska Water Quality Standard for "toxic and other deleterious organic and inorganic substances," at 18 AAC 70.020(b), as well as other applicable Alaska Water Quality Standards;

(2) For all operations, the likelihood that the biocide will meet federal marine water quality criteria;

(3) For operations in the Offshore Subcategory (i.e., located seaward of the inner boundary of the territorial seas), factors required to be considered by the Ocean Discharge Criteria regulations; and

(4) For all operations, the availability of other products which would be technologically and economically feasible, but less harmful to the environment.

Determinations for state waters will be made in consultation with ADEC.

h. *Mercury and cadmium content of barite.* The permittee shall not discharge a drilling mud to which barite was added if such barite contained mercury in excess of 1 mg/kg or cadmium in excess of 3 mg/kg (dry weight basis). The permittee shall analyze a representative sample of stock barite once prior to drilling each well and submit the results for total mercury and total cadmium in the Discharge Monitoring Report upon well completion. If more than one well is drilled at a site, new analyses are not required for subsequent wells if no new supplies of barite have been received since the previous analyses. In this case, the DMR should state that no new barite was received since the last reported analysis. Analyses shall be conducted by atomic absorption spectrophotometry and results expressed as mg/kg (dry weight) of barite.

If the permittee is unable to comply with this provision due to the lack of availability of barite which meets the above limitations, the Director may, on a case by case basis, allow the discharge of barite which exceeds these limitations. Prior to discharge the permittee shall demonstrate to the satisfaction of the Director that barite which meets the limitations is unavailable and shall provide the results of analyses of the substitute barite.

i. *Chemical inventory.* For each mud system discharged the permittee shall maintain a precise chemical inventory of all constitutents added downhole, including all drilling mud additives used to meet specific drilling requirements. The permittee shall report the following information for each discharged mud system: (1) Generic mud type (from Table 1), (2) Name and total amount (volume or weight) of each constituent added downhole, (3) The total volumes of mud created and added downhole, and (4) Maximum concentration of each constitutent in discharged mud. In addition, for each mud system discharged, the permittee shall report (5) The total volume of mud discharged, and (6) Estimated amount of each constitutent discharged. The inventory shall be submitted within 45 days following well completion.

j. *Chemical analysis.* The permittee shall analyze each discharged mud system containing a mineral oil lubricity and/or spotting agent. Samples shall be collected when the additive concentration is at its maximum value. If no mineral oil is used, the analysis shall be done on a drilling mud sample collected from the mud system used at the greatest well depth. All samples shall be collected prior to any predilution. Each drilling mud sample shall be of sufficient size to allow for both the chemical testing described here and the bioassay testing described in Part II.C.1.k. below.

The chemical analysis of the drilling mud shall include the following metals: barium, cadmium, chromium, copper, mercury, zinc, and lead. The total concentration shall be reported for each metal and shall be obtained by the methods given in 40 CFR Part 136 with, exception of barium. Neutron activation analysis (NAA) or x-ray fluorescence analysis (XFA) shall be used for total barium. Flame or flameless atomic absorption spectrophotometry (AAS) shall be used for mercury, cadmium, copper, zinc and lead. Either NAA or AAS may be used for chromium. The results shall be reported in "mg/kg of whole mud (dry weight)," and the moisture content (% by weight) of the original drilling mud sample shall be reported.

In addition, permittees shall analyze mud samples for oil content (percent by weight and by volume). The analytical method shall be the retort distillation method for oil (American Petroleum Institute, Recommended Practice 13B, 1980).

Results of chemical analyses shall be submitted within 45 days following well completion. Results shall be submitted with the end-of-well chemical inventory, Part II.C.1.i., and shall identify the corresponding mud system from the end-of-well inventory.

This requirement may be discontinued if EPA (and ADEC, for state waters) determine that additional data collection is unnecessary.

k. *Bioassay test.* The permittee shall complete one bioassay test on each discharged mud system where a mineral oil lubricity or spotting agent is used. If no mineral oil is used, the bioassay test shall be conducted on the drilling mud sample collected for end-of-well chemical analysis. Each sample shall be a representative subsample of that collected for chemical analysis in Part II.C.1.j. above. The testing and reporting of results shall be in accordance with the Drilling Fluids Toxicity Test or other procedures approved in advance by EPA, Region 10.

Results of the bioassay testing shall be reported together with the end-of-well chemical inventory and chemical analysis results of Parts II.C.1.i. and j. Results are due within 45 days following well completion.

This requirement may be discontinued if EPA (and ADEC, for state waters) determine that additional data collection is unnecessary.

2. *Depth-Related Requirements.* The total drilling muds, drill cuttings, and washwater discharge rate shall not exceed 750 bbl/hr in water depths greater than 20 m but not exceeding 40 m, nor exceed 500 bbl/hr in water depths of 5–20 m (as measured from mean lower low water). Discharges of drilling muds and cuttings are prohibited shoreward of the 5 m isobath (as measured from mean lower low water) under the provisions of Part II.B.

3. *Environmental Monitoring Requirements.*

Within 1500 m of sensitive areas. Monitoring of the fate and effects of drilling muds and/or cuttings discharges shall be required for new development and production facilities when the location of the discharges is within 1500 m of an area of biological significance, such as a coastal marsh, river delta, river mouth, designated Area Meriting Special Attention, game refuge, game sanctuary, or critical habitat area.

The specifics and each monitoring program, including survey design, analytical techniques, and reporting requirements, will be determined by EPA, Region 10, in consultation with the South Central Regional Office of ADEC and the permittee. Monitoring shall include, but not be limited to, relevant hydrographic, sediment hydrocarbon, and heavy metal data from surveys conducted before and during drilling mud disposal operations and for a minimum of one year after drilling operations cease.

Region 10, in consultation with ADEC, will grant an exemption to this requirement if the permittee can satisfactorily demonstrate that information on the fate and effects of the discharge is available and/or the discharge will have insignificant impacts on the area of biological significance. An exemption to post-drilling monitoring will be granted if no impact was indicated during drilling.

In water depths of 5–20 m (state waters only). In state waters where drilling muds and/or drill cuttings are discharged in water depths of 5–20 m (as measured from mean lower low water) under the depth-related discharge requirements of Part II.C.2., monitoring may be required, at the discretion of ADEC, for verification of predicted water column dilutions and bottom deposition at representative sites. Permittees requesting

such discharge may be required to participate in monitoring of actual water column dilutions and bottom deposition. The specifics of any monitoring programs, including survey design, analytical techniques, participants, and reporting requirements, will be determined by ADEC, in consultation with EPA, Region 10, and the permittee.

Outfall/effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported value(s)
Flow rate (MGD)		Monthly	Estimate	Monthly avg.
Free oil	No visible sheen	Daily, during discharge	Visual/Sheen on receiving water [1]	Number of days sheen observed

[1] If discharge occurs during broken ice or unstable ice conditions, or during stable ice conditions, the sample type/method shall be "Grab/Static Sheen Test."

2. Area drains for other washdown water or rainfall that may be contaminated with oil and grease shall be separated from those area drains that would not be contaminated. The contaminated deck drainage shall be processed through an oil-water separator prior to discharge and samples for that portion of the deck drainage collected from the separator effluent.

3. Any deck drainage which is commingled with other wastes prior to discharge shall be subject at the point of discharge to the most stringent of the limitations on the individual effluents.

E. Sanitary Wastes and Domestic Wastes (Discharges 004 and 005)

1. These discharges shall be limited and monitored by the permittee in accordance with Parts II.B., II.J., III., VI., and the following requirements:

Outfall/effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported value(s)
Both Discharges:				
Flow rate (MGD)		Monthly	Estimate	Monthly avg.
Solids [1]	No floating solids	Daily	Observation [2]	Number of days solids observed
Sanitary Wastes [3]:				
Residual chlorine (mg/l) [4, 5]	As close as possible to, but no less than 1.0 mg/l [6]	Monthly	Grab [7]	Concentration.
BOD and suspended solids (mg/l) [8].		Monthly	Grab	Concentration.
24-hr period	60 mg/l, avg.			
7 consecutive days	45 mg/l, avg.			
30 consecutive days	30 mg/l, avg.			
Domestic Wastes:				
Free oil [9]	No visible sheen	Daily, during discharge	Observation [2]	Number of days sheen observed

[1] Any facility using a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with these limitations until such time as the device is replaced or is found not to comply with such standards and regulations. The MSD shall be tested yearly for proper operation and test results maintained at the facility.

[2] Monitoring by visual observation of the surface of the receiving water in the vicinity of the outfall(s), shall be done during daylight at a time of maximum estimated discharge. In cases where sanitary and domestic wastes are mixed prior to discharge and dumping of the sanitary waste component stream is infeasible, the discharge may be sampled after mixing. In such cases, the discharge limitations for sanitary wastes shall apply to the mixed waste stream.

[3] This limitation applies only to discharges continuously manned by ten or more persons.

[4] For state waters chlorine contact time shall be no less than 30 minutes. In addition, residual chlorine shall not exceed 2.0 ug/l outside the boundary of the mixing zone, or shall be below the detection limit based upon the DPD (N,N-diethyl-p-phenylenediamine) method or the amperometric method for detection of chlorine.

[5] Residual chlorine may be monitored according to test procedures approved under 40 CFR Part 136 or using a Hach Test Kit capable of measuring chlorine in the range from 0-3.5 mg/l with a sensitivity of 0.1 mg/l or better.

[6] Limits apply only to discharges to state waters and separately for BOD and suspended solids. For each parameter, the arithmetic mean of values for effluent samples collected in the specified period may not exceed the specified concentration. At a minimum, one measurement must be made monthly to meet the 24-hr period limitation. If measurements are made for 7 or 30 consecutive days, the more stringent discharge limitations shall also apply.

[7] For state waters, monitoring by visual observation of the surface of the receiving waters in the vicinity of the outfall(s) is required during open water conditions only, and shall be done in daylight at the least six maximum estimated discharge.

2. For state waters, domestic and sanitary wastes shall be discharged below the water surface.

F. Miscellaneous Discharges (Discharges 006–035)

The following limitations and monitoring requirements in addition to those in Parts II.B., II.J., III., and VI. apply to these discharges:

Outfall/effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type method	Reported value(s)
All Miscellaneous Discharges:				
Free oil [1]	No free oil	Once/discharge for intermittent discharges or once/day for continuous discharges.	Visual/Sheen on receiving water [2]	Number of days sheen observed.
Cooling Water				
Desalter Water				
Waterflooding Discharges				
Flow rate (MGD)		Monthly	Estimate	Monthly average.

[1] Bilge water shall be processed through an oil-water separator prior to discharge.

[2] If bilge water is discharged during broken or unstable ice conditions, or during stable ice conditions, the sample type/method shall be "Grab Static Sheen Test."

C. Produced Water (Discharge 016)

1. *General Requirements.* This discharge is subject to the requirements of Parts II.B., II.J., III., VI., and the conditions listed below:

Outfall/effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported value(s)
Oil and grease: (mg/l) [1]:				
Phillips A platform	20 max. daily, 15 monthly avg	Weekly	Composite	Max. and min. daily, and monthly avg.
Other facilities	72 max. daily, 48 monthly avg	Weekly	Composite	Max. and min. daily, and monthly avg.
pH [1]	6–9	Weekly	Grab	Max. and min. daily, and monthly avg.
Flow rate (gal/day)		Daily	Estimate	Max. and min. daily, and monthly avg.

[1] Produced water shall be processed through at least one oil-water separator prior to discharge. Samples shall be collected after the final step of treatment.

2. Discharges of produced water to waters shoreward of the 10 m isobath are provided the mixing zones listed below. The following mixing zones are specified for existing facilities covered by the permit:

Facility	Mixing zone radius (m)
Marathon Granite Point Production Facility	450
Marathon Trading Bay Production Facility	750
Shell East Foreland Production Facility	750

Mixing zones for new facilities will be determined on a case-by-case basis as described in Part II.B.2.

3. A mixing zone verification study for mixing zones for existing produced water discharges shoreward of the 10 m isobath is required to ascertain model fit. Operators will be allowed to jointly contract for such a study to verify the model for one of the three indicated mixing zones. This mixing zone verification study must be completed within one year from the initiation of discharges from new outfalls which meet the depth limitations in the permit for the shore-based facilities. The specifics of the verification study, including survey design, analytical techniques, and reporting requirements will be determined by ADEC, in consultation with EPA, Region 10 and the permittee(s). The verification study shall include, but not be limited to, determination of total aromatic hydrocarbon concentrations in the effluent, and at points within, on, and outside the boundary of the mixing zone.

4. Produced water discharges from the following offshore platforms are provided interim mixing zones as follows:

Facility	Mixing zone radius (m)
Amoco Platforms Anna, Baker, Bruce, and Dillon	825
Phillips A Platform	150

Upon further evaluation of modeling efforts, the receipt of any additional information and evaluation of the results of the mixing zone verification study required of the produced water discharges from onshore facilities, ADEC may modify these mixing zones according to the criteria of 18 AAC 70.032. Existing production platforms in the Upper Cook Inlet discharging produced water must submit the information specified in Part II.B.2. within one year of the effective date of the permit.

5. New production facilities in the Upper Cook Inlet wishing to discharge produced water to state waters must submit the information specified in Part II.B.2. as well as water depth and depth of discharge to ADEC and EPA at least 6 months prior to the initiation of discharge in order that an appropriate mixing zone may be established.

H. Completion Fluids, Workover Fluids, Well Treatment Fluids, and Test Fluids (Discharges 017–020)

Each of these discharges shall be limited and monitored by the permittee in accordance with Parts II.B., II.J., III., VI., and the following requirements:

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type method	Reported values
Frequency of discharge		Once/discharge	Count	Total number of discharges.
Volume (bbl)		Once/discharge	Estimate	Total for each discharge.
Free oil [1]	No free oil	Once/discharge	Grab/Static Sheen Test	Number of times sheen observed.
Oil-based fluids	No discharge	Included in free oil monitoring above		
pH of test fluids	6.5–8.5	Once/discharge	Grab	pH.
pH of other fluids	6–9	Once/discharge	Grab	pH.
Oil and grease in test fluids (mg/l)	72 max. daily 48 monthly avg	Once/discharge	Grab	Max. daily and monthly average.
Oil and grease in other fluids (mg/l) [2].	[2]	Once/discharge	Grab	Max. daily and monthly average.

[1] The discharge of oil-based fluids is prohibited. All fluids shall be processed through an oil-water separator prior to discharge. Samples shall be collected after the final step of treatment.
[2] The produced water oil and grease limits apply to the combined discharge of any workover, completion, epr well treatment fluid which is commingled with produced water prior to discharge.

I. *Produced Solids (Discharge 021)*

1. This discharge shall be limited and monitored by the permittee in accordance with Parts II.B., II.J., III., and the following requirements:

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type method	Reported value(s)
Frequency of discharge		Once/discharge	Count	Total number of discharges.
Volume (m³)		Once/discharge	Estimate	Total for each discharge.
Free oil	No free oil	Once/discharge	Grab/Static Sheen test	Number of times sheen observed.
Elutriate oil and grease (mg/l) [1]	No visible sheen	See Part II.I.3	Elutriate test	Maximum daily.

[1] Applies to discharges to state waters only.

2. The permittee shall perform the Static Sheen Test once prior to each discharge. the test shall be conducted in accordance with "Proposed Methodology: Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry" (Petrazzuolo, 1983) and EPA, Region 10's "Interim Guidance for the Static (Laboratory) Sheen Test." The discharge of produced solids which fail the Static Sheen Test is prohibited.

3. *Elutriate test or oil and grease (applies to state waters only).* Produced solids

containing oil shall not be disposed of on sea ice or into waters of the State of Alaska if such discharge will result in violation of EPA's free oil standard or the State of Alaska's visible sheen standard. Monitoring of elutriate oil and grease concentrations in representative samples of produced solids shall be required prior to each discharge.

The procedure for the elutriate test shall be that required by ADEC. Copies of the procedure may be obtained from ADEC. Results shall be reported to the ADEC, Southcentral Regional Office, and to EPA within 45 days of sample collection, and shall include correlations between the results of the static laboratory sheen test and the elutriate oil and grease test.

In cases where monitoring indicates an elutriate oil and grease concentration of 15 mg/l is exceeded and a discharge has occurred in compliance with section II.C.1.h., the permittee shall also conduct an analysis of total recoverable oil and grease and shall report the results in writing to ADEC and EPA within 45 days.

Discharges which pass the elutriate test requirements are not exempt from the free oil requirements of section 2, above.

After two years from the effective date of this permit, ADEC shall evaluate the results of elutriate oil and grease and visible sheen correlation tests to determine whether a 30 mg/l or other elutriate oil and grease discharge limitation shall be placed on future discharges to Cook Inlet for the remaining life of the permit. Operators are encouraged to evaluate a range of alternatives to marine disposal of produced solids, including developing and maintaining individual and/or centralized onshore special waste disposal site(s), barging, and reinjection.

ADEC may, in its discretion, require a one-time marine sediment sampling program at a single shallow water production site to determine the fate of discharged produced solids containing oils. The scope of the sampling program shall be determined by ADEC in conjunction with the operators and EPA.

J. Other Discharge Limitations

1. *Floating Solids, Visible Foam, Oily Wastes, and Toxic or Deleterious Substances.* There shall be no discharge of floating solids or visible foam in other than trace amounts. Additionally, in state waters, discharges shall not, alone or in combination with other substances or wastes, cause the water to be unfit or unsafe for the uses listed at 18 AAC 70.020, or cause acute or chronic problem levels as determined by bioassay or other appropriate methods. Discharges shall not, alone or in combination with other substances, cause a film, sheen, or discoloration on the surface of the water or adjoining shorelines; cause leaching of toxic or deleterious substances; or cause a sludge, solid, or emulsion to be deposited beneath or upon the surface of the water, within the water column, on the bottom, or upon adjoining shorelines. Surface waters shall be virtually free from floating oils.

2. *Applicable Marine Water Quality Criteria.* There shall be no discharge of any constituent in concentrations which exceed applicable marine water quality criteria or standards after allowance for initial mixing. Initial mixing in federal waters is defined at 40 CFR 227.29, and federal marine water quality criteria at 45 FR 79318, 28 November 1980 and in subsequent updates in the Federal Register. Mixing zones in state waters and state water quality standards are defined at 18 AAC 70.010 through 70.110.

3. *Highly Toxic Compounds and Materials.* There shall be no discharge of diesel oil, halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate or sodium dichromate.

4. *Surfactants, Dispersants, and Detergents.* The discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service.

5. *Biocides.* Biocides for use in drilling fluids shall not be discharged unless authorization has been obtained from EPA under Part II.C.1.g. Discharges of biocides in all waste streams are limited to those biocides registered with EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for the use(s) in which they are intended (e.g., non-contact cooling water, drilling muds, packer fluids, or water flooding operations). Discharges shall be in accordance with product registration labeling and shall not exceed the maximum recommended numerical concentration value (for all discharges except drilling muds), or (for drilling muds only), the maximum allowable concentration authorized under Part II.C.1.g.

In addition, biocides for use in waste streams other than drilling muds which contain a label which states that the product may not be discharged unless "specifically identified and addressed in an NPDES permit" shall not be discharged without prior written authorization from EPA. The maximum allowable concentration required by EPA in the authorization takes precedence over the maximum recommended numerical concentration value on the product label. Requests for authorization to discharge shall be submitted to EPA, Region 10 at least 30 days ahead of the proposed discharge date. Requests shall include the information listed below:

(1) Product name, and manufacturer/distributor;

(2) Product registration and label information required by FIFRA;

(3) Chemical description;

(4) Bioassay test results (preferably for a 96-hr test) using a marine test organism and a concentration of product greater than or equal to the requested discharge concentration. The acceptability of test results is subject to EPA approval. EPA will require new test results if submitted test results are unsatisfactory.

(5) Approximate date and duration of discharge;

(6) Application in which biocide will be used;

(7) Estimated concentration of biocide in discharge; and

(8) Any other available information (e.g., on rate of degradation).

In evaluating requests, EPA, Region 10, in consultation with ADEC for state waters, will consider the following factors:

(1) For operations in state waters, the likelihood that the product will meet the Alaska Water Quality Standard for "toxic and other deleterious organic and inorganic substances," at 18 AAC 70.020(b), as well as all other applicable Alaska Water Quality Standards;

(2) For all operations, the likelihood that the product will meet federal marine water quality criteria;

(3) For operations in the Offshore Subcategory (i.e., located seaward of the inner boundary of the territorial seas); factors required to be considered by the Ocean Discharge Criteria regulations; and

(4) For all operations, the availability of other products which would be technologically and economically feasible, but less harmful to the environment.

Part III. Monitoring, Recording and Reporting Requirements

A. Representative Sampling. Samples taken in compliance with the monitoring requirements established under Part II shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

B. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or have received written prior approval by Region 10.

C. Penalties for Tampering. The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

D. Reporting of Monitoring Results. The permittee shall be responsible for submitting monitoring results.

1. The effluent monitoring requirements in this permit shall take effect upon commencement of discharge. Monitoring results shall be summarized each month on a Discharge Monitoring Report (DMR) form (EPA No. 3320-1). The reports shall be submitted monthly and are to be postmarked by the 10th day of the following month. Legible copies of these, and all other reports, shall be signed and certified in accordance with the requirements of Part V.H. Signatory Requirements, and submitted to EPA and, for discharges to state waters, to ADEC at the addresses specified in Part I.D.3.

2. If any discharge has more than one discharge point, all permit limitations apply to each discharge point. The discharge points shall be designated as 001A, 001B, 001C, etc. Flow limitations apply to the total discharge of each category of wastes; i.e., to the sum of 001A, 001B, 001C, etc., except where otherwise noted.

3. If any category of waste (solids) is not applicable due to the type of operation or facility, no reporting is required for that particular outfall. Only DMRs representative of the activities occurring need to be submitted. Information indicating the type of operation should be provided with DMRs.

4. The permittee shall specify on each DMR the nature of ice conditions (stable, unstable, or open water) during the month covered by that DMR. If conditions changed during the month, the permittee shall report the date and nature of change for each variation.

E. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

G. Records Contents. Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

H. Retention of Records. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to comply with this permit, for a period of at least 3 years from the date of the sample, measurement, or report. This period may be extended by request of the Director, or for state waters, ADEC, at any time. Data collected onsite, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained onsight during the duration of activity at the permitted location.

I. Twenty-Four Hour Notice of Noncompliance Reporting.

1. The following occurrences of noncompliance shall be reported by telephone within 24 hours from the time the permittee becomes aware of the circumstances:

a. Any noncompliance which may endanger health or the environment.

b. Any unanticipated bypass which exceeds any effluent limitation in the permit. (See Part IV.C., Bypass of Treatment Facilities).

c. Any upset which exceeds any effluent limitation in the permit. (See Part IV.M., Upset Conditions).

d. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit as requiring whichever to be reported within 24 hours.

2. A written submission shall also be provided within 5 days of the time that the permittee becomes aware of the circumstances. The written description shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected;

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 442-1213.

4. Reports shall be submitted as specified in Part III.D., Reporting of Monitoring Results.

J. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part III.D. are submitted. The reports shall contain the information listed in Part III.I.2.

K. Inspection and Entry. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premise where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

Part IV. Compliance Responsibilities

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, termination of coverage under the general permit, or for requiring a permittee to apply for and obtain an individual NPDES permit.

B. Penalties for Violations of Permit Conditions. The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing Sections 301, 302, 306, 307, or 308 of the Act is subject to a fine of not less than $2,500, nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Except as provided in permit conditions in Part IV.C. (Bypass of Treatment Facilities) and Part IV.H. (Upset Conditions), nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

2. A written submission shall also be provided within 5 days of the time that the permittee becomes aware of the circumstances. The written description shall contain:

a. A description of the noncompliance and its cause.

b. The period of noncompliance, including exact dates and times.

c. The estimated time noncompliance is expected to continue if it has not been corrected.

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 442-1213.

4. Reports shall be submitted as specified in Part III.D., Reporting of Monitoring Results.

J. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part III.D. are submitted. The reports shall contain the information listed in Part III.I.2.

K. Inspection and Entry. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premise where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

Part IV. Compliance Responsibilities

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, termination of coverage under the general permit, or for requiring a permittee to apply for and obtain an individual NPDES permit.

B. Penalties for Violations of Permit Conditions. The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing Sections 301, 302, 306, 307, or 308 of the Act is subject to a fine of not less than $2,500, nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Except as provided in permit conditions in Part IV.C. (Bypass of Treatment Facilities) and Part IV.H. (Upset Conditions), nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, adequate laboratory and process controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances. Solids (with the exception of Discharge 021, Produced Solids), sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

G. Bypass of Treatment Facilities.

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operations. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. Notice:

a. *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part III.I. (Twenty-Four Hour Notice of Noncompliance Reporting).

3. Prohibition of bypass.

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under paragraph 2 of this section.

b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a of this section.

H. *Upset Conditions*

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2. of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required under Part III.I. (Twenty-Four Hour Notice of Noncompliance Reporting); and

d. The permittee complied with any remedial measures required under Part IV.D. (Duty to Mitigate.)

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. *Toxic Pollutants.* The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

J. *Samples of Wastes.* If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

Part V. General Requirements

A. *Changes in Discharge of Toxic Substances.* Under 40 CFR 122.42(a) notification shall be provided to the Director as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 μg/l);

b. Two hundred micrograms per liter (200 μg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 μg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony; or

c. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 μg/l);

b. One milligram per liter (1 mg/l) for antimony; or

c. The level established by the Director in accordance with 40 CFR 122.44(f).

B. *Planned Changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Part V.A.1.

C. *Anticipated Noncompliance.* The permittee shall also give advance notice of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. *Permit Actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

E. *Duty to Reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at lease 180 days before the expiration date of this permit.

F. *Duty to Provide Information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

G. *Other Information.* When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.

H. *Signatory Requirements.* All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation or

(ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

(i) The chief executive officer of the agency, or

(ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph V.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph V.H.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I. *Penalties for Falsification of Reports.* The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

J. *Availability of Reports.* Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of ADEC and EPA. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

K. *Oil and Hazardous Substance Liability.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

L. *Property Rights.* The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

M. *State Laws.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

N. *Severability.* The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

O. *Transfers.* This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue authorization under this general permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part V.0.2.

Part VI. Development/Production Discharge Monitoring Study

Development and production operators in Cook Inlet shall jointly study certain discharges from their facilities. Monitoring required by Parts A., B., C., and F. shall commence within 6 months of the effective date of this permit. Monitoring required by Part E. shall commence within two years of the effective date of the permit. Development and production operators who choose not to participate in the joint study will be subject to similar monitoring requirements on each individual facility. At a minimum, the study shall include the monitoring requirements listed below. Where 6-month study periods are listed. those study periods shall include both summer and winter samples.

From the time that the joint study is completed, each operator shall be responsible for promptly reporting any changes in the chemical products present in waste streams at that facility. The following waste streams are exempt from this requirement: excess cement slurry; mud, cuttings and cement at the seafloor; drilling muds; drill cuttings, produced solids; sanitary wastes; and domestic wastes. For such changes, the following information shall be included in the report: product name, chemical composition, use, application rate, and estimated concentration in the discharge. If a particular waste stream was not included in the joint study, the first report shall also includes a complete chemical inventory of products in use prior to the first reported change. The inventory shall include the same information as required by the joint study for the appropriate waste stream.

Monitoring requirements are as follows:

A. *Deck Drainage.* All operators shall report the product names, chemical compositions, and uses of any products present in significant amounts in the deck drainage of the respective facilities at the end of the one-year period beginning on the effective date of the study.

B. *Non-contact Cooling Water and Desalination Wastes.* Chemical inventories of additives (other than seawater) added to non-contact cooling water and desalination wastes shall be reported for all platforms at the end of the one-year period beginning on the effective date of the study. Inventories shall include product names, chemical compositions, uses, addition rates, total amounts used, and concentrations in discharge. In addition, monthly average flow rates shall be estimated and reported in MGD.

C. *Blowout Preventer Fluid, Boiler Blowdown, Fire Control System Test Water, Uncontaminated Ballast Water, Uncontaminated Bilge Water, and Waterflooding Discharges.* The monthly average flow rate of each of the above discharges shall be estimated for all platforms for a period of 6 months, beginning on the effective date of the study. Flow rates shall be reported in MGD.

Chemical inventories of additives (other than seawater) added to each of the above wastes shall be reported at the end of 6 months. Inventories shall include product names, chemical compositions, uses, addition rates, total amounts used. and concentrations in discharge.

D *Excess Cement Slurry, and Mud, Cuttings, Cement at Seafloor.* The total volume of each of these discharges shall be estimated for the first five development or production wells drilled and completed in Cook Inlet after the effective date of the study.

Chemical inventories shall be reported as in Section C. above, except that inventories shall be done for each of the first five wells instead of for a 6-month period.

E. *Produced Water.* The discharge flow rate shall be estimated at the time each sample below is collected. Flow rates shall be reported in MGD and shall be reported together with the chemical and toxicological results. Rates may be calculated by taking the difference between the total flowrates of produced fluid (oil plus water) and of recovered oil.

Produced water from the three shore facilities and three of the five platforms which discharge directly into Cook Inlet shall be sampled once each in summer and in winter of the year begining 18 months after the effective date of the study (i.e., two years after the effective date of the permit). Two of the three platforms shall be oil platforms located on different oil fields. The third platform shall be an existing gas platform. In addition, one of the two oil platforms sampled in summer and winter shall be sampled once each in fall and in spring of the same year. Produced water samples shall be collected from the treated effluent just prior to discharge. Grab samples shall be collected at 8 a.m., 12 noon, and 6 p.m., and shall be large enough to allow for chemical and toxicological tests as outlined below.

Chemical analyses of produced water samples shall include the following parameters: pH, oil and grease, dissolved oxygen, BOD, COD, TOC, NH_3, zinc, salinity, benzene, ethylbenzene, total naphthalenes, naphthalene, dimethylnaphthalenes, trimethylnaphthalenes, tetramethylnaphthalenes, phenol, toluene, 2,4-dimethylphenol, bis (2-ethylhexyl) phthalate, anthracene, phenanthrene, xylene, and total aromatic hydrocarbons. Analyses shall be perfomed in accordance with methods in 40 CFR Part 136 or as otherwise required by EPA or ADEC. Results shall be reported in mg/l, if the concentration is 1 mg/l or larger, or in ug/l if the concentration is less than 1 mg/l. Exceptions are pH, to be reported in pH units, and NH_3, to be reported as mg/l N.

Toxicological test procedures shall be determined by EPA, in consultation with ADEC, prior to the start of the produced water study.

Estimated concentrations of additives in the produced water shall be reported for each sample. Reports shall include product names, chemical compositions, uses, addition rates, and estimated concentration at point of sample collection.

F. *Workover, Completion, and Well Treatment Fluids.* The total volumes of workover, completion, and well treatment fluids collected and discharged shall be reported for each completion, workover, or well treatment job for a period of 1 year after the effective date of the study, and/or the first 10 jobs discharged to Cook Inlet after the effective date of the study, whichever is more. For each job, the operator shall also state the type of job and composition of the fluid.

The first 10 jobs above which are discharged shall be sampled and analyzed for pH, oil and grease, dissolved oxygen, BOD, COD, TOC, and salinity.

Additionally, well treatment fluids for first three acidizing jobs discharged to Cook Inlet after the effective date of the study will be sampled before and after downhole addition. Only acidizing jobs with an initial pH of 4 or less will be sampled. The following metal concentrations will be determined in the samples: cadmium, chromium, copper, mercury, zinc, and lead. The total concentration shall be reported for each metal and be obtained by the methods given in 40 CFR Part 136. Flame or flameless AAS shall be used for mercury, cadmium, copper, zinc, and lead. Either NAA or AAS may be used for chromium. Results shall be reported in mg/l

[illegible]

TABLE 1. AUTHORIZED DRILLING MUD TYPES

Table 1 may be updated by EPA, Region 10, during the effective period of the permit. If so, the latest updated version will supersede all earlier versions. Updated versions will be mailed to permittees at the time that the updates become effective. They will be available to other parties upon request.

Components	Maximum Allowable Concentration (lb/bbl)
1. Seawater/Freshwater/Potassium/Polymer Mud	
KCl	50
Starch	12
Cellulose Polymer	5
Xanthan Gum Polymer	2
Drilled Solids	100
Caustic	3
Barite	575
Seawater or Freshwater	As needed
2. Lignosulfonate Mud	
Bentonite*	50
Lignosulfonate, Chrome or Ferrochrome	15
Lignite, Untreated or Chrome-treated	10
Caustic	5
Lime	2
Barite	575
Drilled Solids	100
Soda Ash/Sodium Bicarbonate	2
Cellulose Polymer	5
Seawater or Freshwater	As needed
3. Lime Mud	
Lime	20
Bentonite*	50
Lignosulfonate, Chrome or Ferrochrome	15
Lignite, Untreated or Chrome-treated	10
Caustic	5
Barite	575
Drilled Solids	100
Soda Ash/Sodium Bicarbonate	2
Seawater or Freshwater	As needed
4. Nondispersed Mud	
Bentonite*	50
Acrylic Polymer	2
Lime	2
Barite	180
Drilled Solids	70
Seawater or Freshwater	As needed
5. Spud Mud	
Lime	2
Bentonite*	50
Caustic	2
Barite	50
Soda Ash/Sodium Bicarbonate	2
Seawater	As needed
6. Seawater/Freshwater Gel Mud	
Lime	2
Bentonite*	50
Caustic	3
Barite	50
Drilled Solids	100
Soda Ash/Sodium Bicarbonate	2
Cellulose Polymer	2
Seawater or Freshwater	As needed

*Attapulgite, sepiolite, or montmorillonite may be substituted for bentonite.

Table 2

Authorized Mud Components/Specialty Additives

Table 2 may be updated by EPA, Region 10, during the effective period of this permit. If so, the latest updated version will supersede all earlier versions. Updated versions will be mailed to permittees at the time the updates become effective. They will be available to other parties upon request.

Product Name	Generic Description*	Maximum Allowable Concentration (lb/bbl, unless otherwise noted)**
Aktaflo-S	Aqueous solution of non-ionic modified phenol (equivalent of DMS)	3 (3)**
Aluminum stearate	----	0.2
Ammonium nitrate	----	200 mg/l nitrate or 0.05 lb/bbl
Aqua-Spot	Sulfonated vegetable ester formulation	1% by vol.
Bara Brine Defoam	Dimethyl polysiloxane in an aqueous emulsion	0.1
Ben-Ex	Vinyl acetate/maleic anhydride copolymer	1 (1)**
Bit Lube II	Fatty acid esters and alkyl phenolic sulfides in a solvent base	2
Calcium carbide	----	As needed
Cellophane flakes	----	As needed
Chemtrol-X	Polymer treated humate	5 (4)**
Con Det	Water solution of anionic surfactants	0.4 (0.25)**
D-D	Blend of surfactants	0.5 (0.25)**
DMS	Aqueous solution of nonionic modified phenol	3 (3)**

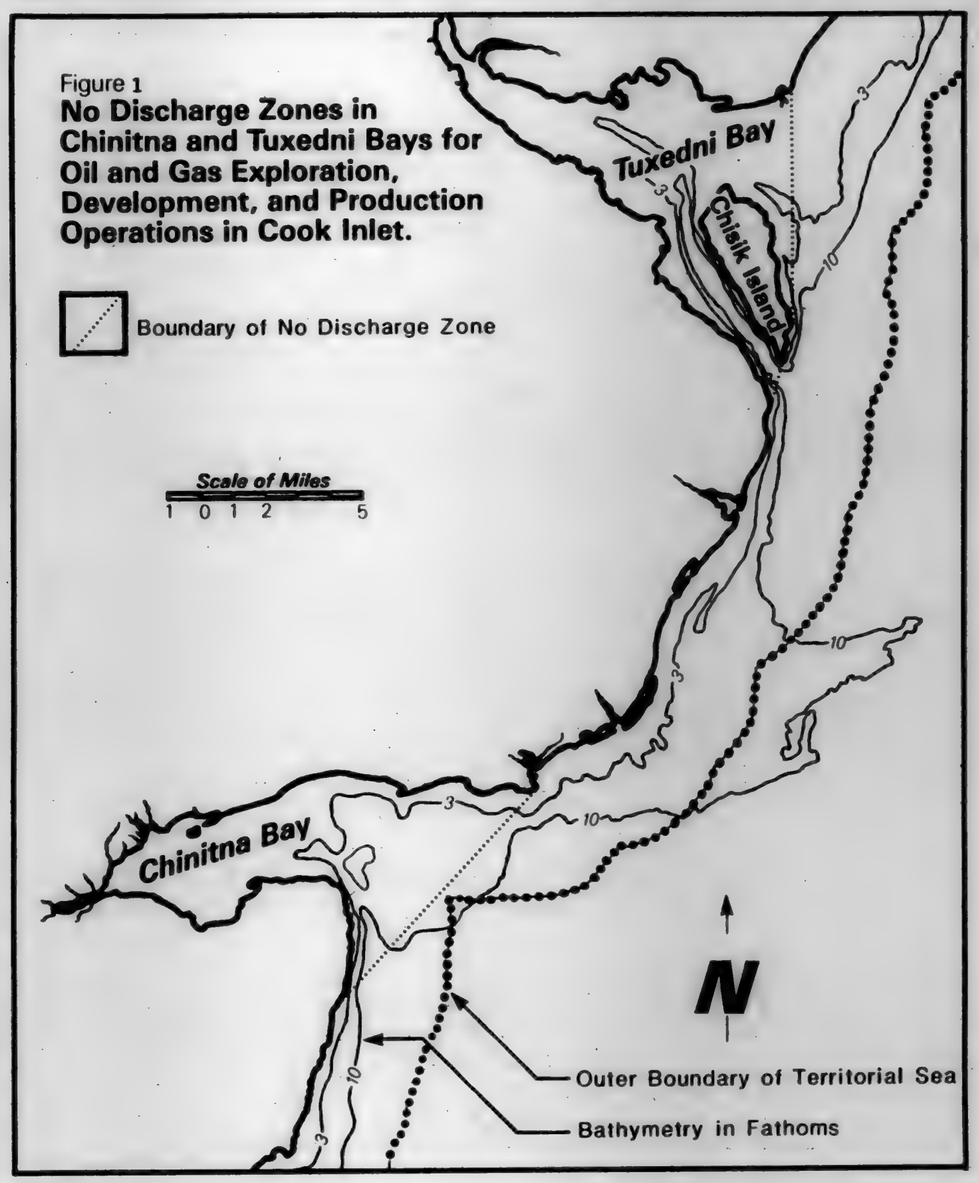
Product Name	Generic Description*	Maximum Allowable Concentration (lb/bbl, unless otherwise noted)**
Desco CF	Chrome-free organic mud thinner containing sulfomethylated tannin	0.5
Duovis	Xanthan gum.	2
Durenex	Lignite/resin blend	6 (4)**
Flakes of silicate mineral mica	----	45
Gelex	Sodium polyacrylate and polyacrylamide	1 (1)**
Glass beads	----	8
LD-8	Aluminum stearate in propoxylated oleylalcohol	10 gal/1500 bbl
Lube-106	Oleates in mixed alcohols	2
Lubri-Sal	Vegetable ester formulation	2.0% (by vol)
MD (IMCO)	Fatty acid ester	0.25 (0.25)**
Milchem MD	Ethoxylated alcohol formulation	0.04 gal/bbl or 0.3 (0.25) lb/bbl**
Mil-Gard	Basic zinc carbonate	As needed
Nut hulls, crushed granular	----	As needed
Phosphoric acid esters and triethanolamine	----	0.4
Plastic spheres	----	8
Poly RX	Polymer treated humate	4 (4)**
Resinex	Reacted phenol-formaldhyde-urea resin containing no free phenol, urea, or formaldehyde	4 (4)**
Selec-Floc	High molecular weight poly-acrylamide polymer packaged in light mineral oil	0.25

Product Name	Generic Description*	Maximum Allowable Concentration (lb/bbl, unless otherwise noted)**
Sodium chloride	----	50,000 mg/l chloride
Sodium nitrate	----	200 mg/l nitrate or 0.05 lb/bbl
Sodium polyphosphate	----	0.5
Soltex	Sulfonated asphalt residuum	6
Sulf-X ES	Zinc oxide	As needed
Therma Check	Sulfono-acrylamide copolymer	1
Therma Thin	Polycarboxylic acid salt	4
Torq-Trim II	Liquid triglycerides in vegetable oil	6
Vegetable plus polymer fibers, flakes, and granules	----	50
VG-69	Organophilic clay	12
XC Polymer	Xanthan gum polymer	2
XO_2	Ammonium bisulfite	0.5
Zinc carbonate and lime	----	As needed

* Any proprietary formulation that contains a substance which is an intentional component of the formulation, other than those specifically described, must be authorized by the Director.

** If a listed product will be used in combination with other functionally equivalent products, the maximum allowable concentration (MAC) for the sum of all of the products is the lowest MAC for any of the individual products. Four examples of functionally equivalent products are: (1) Aktaflo-S and DMS, MAC = 3 lb/bbl; (2) Ben-Ex and Gelex, MAC = 1 lb/bbl; (3) Chemtrol-X, Durenex, Poly RX, and Resinex, MAC = 4 lb/bbl, and (4) Con Det, D-D, MD (IMCO), and Milchem MD, MAC = 0.25 lb/bbl. For these examples, the MAC for any combination of the products is given in parentheses. For guidance on whether other products are considered to be functional equivalents, contact the regional office of EPA.

Figure 1
No Discharge Zones in Chinitna and Tuxedni Bays for Oil and Gas Exploration, Development, and Production Operations in Cook Inlet.



[FR Doc. 86-22302 Filed 10-2-86; 8:45 am]
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federal register

Friday
October 3, 1986

Part III

Department of Labor

Employment and Training Administration

Reexamination of the Purpose and Role of the Employment Service; Public Meetings; Extension of Time; Notice

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DEPARTMENT OF LABOR

Employment and Training Administration

Reexamination of the Purpose and Role of the Employment Service; Public Meetings; Extension of Time

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of public meetings; request for comments; extension of time for filing notices of intent to present oral statements.

SUMMARY: The Employment and Training Administration is extending the deadline for filing notices of intent to present oral statements at four public meetings reexamining the purpose and role of the Employment Service.

DATE: Persons desiring to present oral statements must provide the Employment and Training Administration a notice of intent to appear, postmarked on or before October 10, 1986.

ADDRESSES: Notices of intent to present oral statements must be mailed to the addresses listed below:

San Francisco—Ramada Renaissance Hotel, 55 Cyril Magnin Street, San Francisco, California 94102, 415–392–8000.

Denver—Holiday Inn Denver Downtown, 1450 Glenarm Place, Denver, Colorado 80202, 303–573–1450.

Atlanta—Georgia International Convention and Trade Center, 1902 Sullivan Road, College Park, Georgia 30337, 404–997–3566.

Washington—J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004, 202–393–2000.

FOR FURTHER INFORMATION CONTACT: Robert A. Schaerfl, Director, U.S. Employment Service, Employment and Training Administration, Room N4470, 200 Constitution Avenue, NW., Washington, DC 20210, 202–535–0157.

SUPPLEMENTARY INFORMATION: On September 15, 1986, the Employment and Training Administration published a notice in the **Federal Register** at 51 FR 32772 announcing a series of four public meetings to reexamine the purpose and role of the Employment Service. This notice extends through October 10, 1986, the date by which notice of intent to present oral comments at the meetings must be postmarked. All other dates and information in that notice remain unchanged.

This extension is being made to permit a more broadly based and representative cross-section of individuals and organizations an oppportunity to participate in the meetings.

Signed at Washington, DC, this 30th day of September, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86–22428 Filed 10–2–86; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.R. 1483/Pub. L. 99-433
To authorize the Smithsonian Institution to plan and construct facilities for certain science activities of the Institution, and for other purposes. (Sept. 30, 1986; 100 Stat. 983; 1 page) Price: $1.00

H.R. 3602/Pub. L. 99-434
Executive Exchange Program Voluntary Services Act of 1986. (Sept. 30, 1986; 100 Stat. 984; 2 pages) Price: $1.00

H.R. 4421/Pub. L. 99-435
Human Services Reauthorization Act of 1986. (Sept. 30, 1986; 100 Stat. 986; 13 pages) Price: $1.00

H.R. 4638/Pub. L. 99-436
To amend the Department of Defense Authorization Act, 1985, to provide that members of the Commission on Merchant Marine and Defense shall not be considered to be Federal employees for certain purposes, to extend the deadline for reports of the Commission, and to extend the availability of funds appropriated to the Commission. (Sept. 30, 1986; 100 Stat. 979; 1 page) Price: $1.00

S. 1963/Pub. L. 99-437
To direct the Secretary of the Interior to convey certain interests in lands in Socorro County, New Mexico, to the New Mexico Institute of Mining and Technology. (Sept. 30, 1986; 100 Stat. 980; 2 pages) Price: $1.00

S. 2695/Pub. L. 99-438
Tribally Controlled Community College Assistance Amendments of 1986. (Sept. 30, 1986; 100 Stat. 982; 3 pages) Price: $1.00

S. 2908/Pub. L. 99-439
To temporarily delay the repeal of the United States Trustee System. (Sept. 30, 1986; 100 Stat. 985; 1 page) Price: $1.00

S.J. Res. 353/Pub. L. 99-430
To provide for the extension of certain programs relating to housing and community development, and for other purposes. (Sept. 30, 1986; 100 Stat. 986; 1 page) Price: $1.00

S.J. Res. 415/Pub. L. 99-431
To provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute. (Sept. 30, 1986; 100 Stat. 987; 2 pages) Price: $1.00

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10-6-86
Vol. 51 No. 193

federal register

Monday
October 6, 1986

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10-6-86
Vol. 51 No. 193
Pages 35495-35624

federal register

Monday
October 6, 1986

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VOL 51 ISS 193 OCT 6 1986 UMI

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

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Presidential Documents

Title 3—

The President

Executive Order 12567 of October 2, 1986

Inter-American Investment Corporation, Commission for the Study of Alternatives to the Panama Canal, and Pacific Salmon Commission

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 1 of the International Organizations Immunities Act (22 U.S.C. 288), Reorganization Plan No. 4 of 1965, and the Inter-American Investment Corporation Act (22 U.S.C. 283aa–283ii), and having found that the United States participates in the Commission for the Study of Alternatives to the Panama Canal pursuant to the Panama Canal Treaty of 1977 and the Panama Canal Act (22 U.S.C. 3619) and participates in the Pacific Salmon Commission pursuant to the Pacific Salmon Treaty and the Pacific Salmon Treaty Act (16 U.S.C. 3631 *et seq.*), it is hereby ordered as follows:

Section 1. The Inter-American Investment Corporation, in which the United States participates pursuant to the Inter-American Investment Corporation Act and the Agreement Establishing the Inter-American Investment Corporation, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges and immunities that such organization has acquired or may acquire by treaty or congressional action. This designation shall not affect in any way the applicability of Sections 3 and 9 of Article VII of the Agreement.

Sec. 2. The functions vested in the President by Section 210 of the Inter-American Investment Corporation Act are hereby delegated to the Secretary of the Treasury.

Sec. 3. The Commission for the Study of Alternatives to the Panama Canal is hereby designated as a public international organization entitled to the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges, exemptions, or immunities that such organization may have acquired or may acquire by international agreements or by congressional action.

Sec. 4. The Pacific Salmon Commission is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges, exemptions, or immunities that such organization may have acquired or may acquire by international agreements or by congressional action.

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Sec. 5. Executive Order No. 11269, as amended, is further amended by deleting "and African Development Bank" and adding ", African Development Bank, and Inter-American Investment Corporation," in Sections 2(c), 3(d), and 7, respectively.

Ronald Reagan

THE WHITE HOUSE,
October 2, 1986.

[FR Doc. 86-22725
Filed 10-3-86; 4:35 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12568 of October 2, 1986

Employment Opportunities for Military Spouses at Nonappropriated Fund Activities

By the authority vested in me as President by the laws of the United States of America, including section 301 of Title 3 of the United States Code, it is ordered that the Secretary of Defense and, as designated by him for this purpose, any of the Secretaries, Under Secretaries, and Assistant Secretaries of the Military Departments, are hereby empowered to exercise the discretionary authority granted to the President by subsection 806(a)(2) of the Department of Defense Authorization Act of 1986, Public Law No. 99-145, to give preference in hiring for positions in nonappropriated fund activities to qualified spouses of members of the Armed Forces stationed in the same geographical area as the nonappropriated fund activity for positions in wage grade UA-8 and below and equivalent positions and for positions paid at hourly rates.

Ronald Reagan

THE WHITE HOUSE,
October 2, 1986.

[FR Doc. 86-22726
Filed 10-3-86; 4:36 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 51, No. 193
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Compania Panamena De Aviacion S.A.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Compania Panamena de Aviacion S.A. (COPA) to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Compania Panamena de Aviacion S.A. (COPA), on September 15, 1986, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

2. In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, Compania Panamena de Aviacion S.A. (COPA).

Dated: September 25, 1986.

Harriet B. Marple,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-22558 Filed 10-3-86; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 21, and 73

Changes in Telephone Numbers for Uranium Recovery Field Office

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to indicate changes in the commercial and FTS telephone numbers for the NRC's Region IV Uranium Recovery Field Office located in Denver, Colorado. These amendments are necessary to inform the public of these administrative changes to NRC regulations.

EFFECTIVE DATE: October 6, 1986.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086.

SUPPLEMENTARY INFORMATION: Recently, the commerical and FTS telephone numbers for the NRC's Region IV Uranium Recovery Field Office were changed. This notice is being published to inform the public of the changes in the telephone numbers.

Because these amendments deal with agency practice and procedures, the notice provisions of the Administrative Procedure Act do not apply to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register.** Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing solely with agency procedures.

Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection rquirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.)

List of Subjects

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

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10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 73

Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1975, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 20, 21, and 73.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Appendix D—[Amended]

2. In Appendix D, the commercial telephone number for the NRC Region IV Uranium Recovery Field Office (Denver, Colorado) is changed from (303) 234-7232 to (303) 236-2805 and the FTS telephone number is changed from (FTS) 234-7232 to (FTS) 776-2805.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

3. The authority citation for Part 21 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 21.2 [Amended]

4. In footnote 1 to § 21.2, the commercial telephone number for the NRC Region IV Uranium Recovery Field Office (Denver, Colorado) is changed from (303) 234-7232 to (303) 236-2805.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

5. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Appendix A—[Amended]

6. In Appendix A, the commercial telephone number for the NRC Region IV Uranium Recovery Field Office (Denver, Colorado) is changed from (303) 234-7232 to (303) 236-2805 and the FTS telephone number is changed from (FTS) 234-7232 to (FTS) 776-2805.

Dated at Bethesda, Maryland, this 22nd day of September 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86-22366 Filed 10-3-86; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 569a

Federal Savings and Loan Insurance Corp.; Powers and Duties as Receiver

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: In order to eliminate the antiquated procedures that a receiver of a State-chartered Federal Savings and Loan Insurance Corporation ("FSLIC")-insured institution must follow prior to effectuating a sale of receivership property, the Federal Home Loan Bank Board ("Board") is amending 12 CFR 569a.6(c)(3) in order to eliminate the text following the first sentence, which requires the receiver to publish a notice of intent to sell certain property, solicit objections comments or higher bids, report the same to the Board, etc.

EFFECTIVE DATE: October 6, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel of FSLIC ((202)—377-6426), or Kathy Norcross, Attorney ((202)-377-6383), Office of the General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Existing regulations, codified in the Rules and Regulations for the Federal Savings and Loan System, provide for the powers of conservators and conduct of conservatorships for federal associations in Part 548, and the powers of receivers and conduct of federal association receiverships in Part 549. Part 569a of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation now cover the appointment and conduct of the FSLIC as receiver of a State-chartered association appointed by the Board pursuant to section 406(c)(2) of the National Housing Act of 1933 as amended ("NHA"). Prior to the expiration of certain provisions of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 ("Garn-St Germain Act"), on September 15, 1986 when the FSLIC was appointed as receiver for a State-chartered association pursuant to section 406(c)(1)(B) NHA, the Board had by order and pursuant to section 406(c)(1)(B)(i)(II) directed the receivership to operate under Part 549. Owing to the expiration of certain Provisions of the Garn-St Germain Act, however, a receiver for a State-chartered institution that is appointed by the Board under sections 406(c)(2) must operate pursuant to 12 CFR 569a *et seq.* Those receivers appointed pursuant to section 406(c)(1)(B) will of course continue to operate under Part 549.

The amendment to § 569a.6(c)(3) accomplished by this rule deals with the conduct of receiverships for State-chartered associations established under section 406(c)(2) NHA, and does not disturb the framework for federal associations in Part 549. The amendment serves to update § 569a.6(c)(3) to bring it in line with the corresponding regulations for federal associations and with the Board's proposed receivership regulations. Specifically, the amendment would eliminate the cumbersome sales procedures contained in existing § 569a.6(c)(3) that must be satisfied before the receiver may dispose of any asset over $25,000.00. These restrictions, and the other asset disposition procedures imposed by existing regulations, unnecessarily burden the receiver's ability to deal with receivership assets in the best interests of the receivership estate.

The notice provisions of 12 CFR 506.12 have been observed in connection with this rule. The Proposed Rule for Conservators and Receivers, published in the Federal Register on November 27, 1985 (50 FR 48970) expressly stated that the Proposed Rule for Conservators and Receivers would eliminate the cumbersome sales procedures now required by § 569a.6(c)(3). 50 FR 48976. Although the Proposed Rule would eliminate 12 CFR 569a.6(c)(3) completely and a receiver of a State-chartered institution would be required to look to new § 569c.6 to determine its powers and duties, the "SUPPLEMENTARY INFORMATION" preceding the Proposed Rule specifically stated that "the cumbersome sales procedures set forth in existing § 569a.6(c)(3), which must be satisfied before the receiver may dispose of any significant assets, would be eliminated."

The Proposed Rule for Conservators and Receivers was published in the Federal Register on November 27, 1985. Comments were requested by January 22, 1986, and comments were received through July, 1986. Although 19 comment letters were received, not one voiced an objection to or expressed an opinion on the elimination of the sales procedures now required by § 569a.6(c)(3).

Because the Proposed Rule for Conservators and Receivers contains a provision substantially similar to the amendment to § 569a.6(c)(3) set forth below, the "SUPPLEMENTARY INFORMATION" expressly stated that the sales procedures now mandated by § 569a.6(c)(3) would be eliminated, and no comments were received on this specific point, the Board finds that the notice and comment procedure prescribed by 5 U.S.C. 552(b) (1982) and 12 CFR 508.12 (1986) has been observed.

Furthermore, the Board finds that there is good cause that the 30-day delay of the effective date of an amendment to a regulation otherwise required by § 508.14 should not apply to the amendment of § 569a.6(c)(3) set forth below. Specifically, in that certain temporary provisions of the Garn-St Germain Act have expired, a receiver appointed by the Board for a State-chartered insured institution under section 406(c)(2) must derive its powers and duties from § 569a *et seq.* Since that regulation requires a Board appointed receiver for a State-chartered institution to comply with burdensome procedures prior to effecting a sale of receivership property, such a receiver will be stymied in its attempt to dispose of receivership assets in a manner which is quick, efficient, and which results in the maximum benefit to the receivership. Unless the amendment takes place immediately, such a receiver may be unable to act in the best interests of creditors and the receivership. Therefore, good cause exists to specify that this amendment will take effect upon publication in the Federal Register.

List of Subjects in 12 CFR Part 569a

Savings and loan associations.

Accordingly, the Board hereby amends Part 569a, Subchapter D, Chapter V, Title 12 Code of Federal Regulations, as set forth below.

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 569a—RECEIVERS FOR INSURED INSTITUTIONS OTHER THAN FEDERAL ASSOCIATIONS

1. The authority citation for Part 569a continues to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132 as amended (12 U.S.C. 1462, 1464); Secs. 401-403, 405-407, 48 Stat. 1255-1257, 1259-1260, as amended (12 U.S.C. 1724-1728, 1728-1730); Sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

2. Amend § 569a.6 by revising paragraph (c) to read as follows:

§ 569a.6 Powers and duties as receiver.

* * * * *

(c) *Assets, claims and contracts.* The Receiver shall have power to:

(1) Sell for cash or on terms, exchange, or otherwise dispose of, in whole or in part, any or all of the assets and property of the institution, real, personal and mixed, tangible and intangible, of any nature, including any mortgage, deed of trust, chose in action, bond, note, contract, judgment, or decree, share or certificate of share of stock or debt, owing to such institution or the Receiver.

(2) Surrender, abandon, and release any choses in action, or other assets or property of any nature, whether the subject of pending litigation or not, and settle, compromise, modify, or release, for cash or other consideration, claims and demands in favor of the institution or the Receiver.

(3) Reject or repudiate any lease or contract which it considers burdensome.

* * * * *

§ 569a.1 and § 569a.7 [Amended]

3. Amend § 569a.1 and § 569a.7 by removing the authority citations located at the end of the sections.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 86-22497 Filed 10-3-86; 8:45 am]

BILLING CODE 6725-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Revision 2; Amdt. 44]

Delegations of Authority To Conduct Program Activities in Field Offices; Business Credit and Assistance

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule reflects unlimited 8(a) authority for the Washington District Director and excludes this individual from needing a certificate of appointment to purchase goods or services or enter into contracts for the purpose of 8(a) contracting activity.

EFFECTIVE DATE: October 6, 1986.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Zaic, Deputy Director, Office of Administrative Services, Small Business Administration, 1441 L Street, NW., Washington, DC. 20416, Telephone No. (202) 653-6823.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 are not required and this amendment to Part 101 is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies); Administrative practice and procedures; Organization and functions (Government agencies).

PART 101—[AMENDED]

For the reason set forth in the preamble and pursuant to authority in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 101, 13 CFR 101.3-2 is amended as set forth below:

1. The authority citation for 13 CFR 101.3-2 continues to read as follows:

Authority: Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958 72 Stat. 689, as amended.

* * * * *

§ 101.3-2 [Amended]

1a. In 13 CFR 101.3-2, Part VII, Section C is revised to read as follows:

Part VII—* * *

Section C—Section 8(a)(1)(A) Contracting Authority (SBAct)

1. To enter into the contracts on behalf of the Small Business Administration with the United States Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies, services or materials to the Government or to perform construction work for the Government subject to the following:

Each individual who is warranted to purchase goods or services or enter into contracts has dollar limit inherent in the certificate of appointment. That certificate of appointment limit determines the amount limit that person may procure. Regional Administrators and the Washington District Director, as heads of procurement activities, are exempt from this requirement for a certificate of appointment.

2. Subcontracting to arrange for the performance of such procurement contracts as stated in paragraph 1 above by negotiating or otherwise letting subcontracts to socially and economically disadvantage small business concerns for the construction work, services or the manufacture, supply or assembly of such articles, equipment, supplies or materials or parts thereof, or services or processing in connection therewith or such management services as may be necessary to enable the Small Business Administration to perform such contracts, subject to the following:

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Each individual who has a certificate of appointment to purchase goods or services or enter into contracts has a dollar limit inherent in the certificate of appointment. That certificate of appointment determines the amount that person may procure. Regional Administrators and the Washington District Director have no dollar limit under this section.

3. To certify to any Officer of the Government having procurement powers that the Small Business Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, subject to following:

Each individual who has a certificate of appointment to purchase goods or services or enter into contracts has a dollar limit inherent in the certificate of appointment. That certificate of appointment limit determines the amount that person may procure. Regional Administrators and the Washington District Director have no dollar limit under this section.

Dated: November 20, 1986.

Charles L. Blakely

Acting Administrator.

[FR Doc. 86-22543 Filed 10-3-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-201-AD; Amdt. 39-5434]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series -10, Through -50, -61, -61F, -71 and -71F Airplanes, Equipped With Left and/or Right Wing Front Spar Lower Cap, Part Numbers 5597838-1 and -2,

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive inspections and repair, as necessary, of the left and right wing front spar lower caps, between stations Xfs = 515.000 and Xfs = 528.780 on certain McDonnell Douglas model DC-8 Series -10 thru -50, -61, -61F, -71 and -71F airplanes. This amendment is prompted by reports of fatigue cracking on the spar caps of two airplanes. This condition, if not corrected, could result in loss of structural integrity of the wing.

EFFECTIVE DATE: October 20, 1986.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855, Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: On August 29, 1986, the FAA was notified by McDonnell Douglas that, while investigating a fuel leak on a DC-8-61, a crack was found on the wing front spar lower cap, which was approximately 95% severed. The crack originated at an attach hole in the forward tang of the front spar lower cap and was located at Station Xfs=522, along with other cracks in both the adjacent lower skin panel and stringer number 64. The affected area is located inboard of the outboard engine. The airplane had accumulated approximately 46,093 flight-hours and 18,00 landings. All cracks are attributed to metal fatigue.

There has been a previous case reported, where a spar cap fatigue crack was found in the same area on a DC-8-51 airplane with 48,942 flight-hours and 20,000 landings. That incident prompted the release of McDonnell Douglas DC-8 Service Bulletin 57-90, dated October 3, 1983, which provided instructions for inspection, modification, and repair, as necessary to prevent fatigue cracking.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspections for fatigue cracks found in the left and right wing front spar lower cap, and repair, as necessary, in accordance with Service Bulletin previously mentioned. This AD also provides for terminating action for the repetitive inspection requirements by modification of attach holes in accordance with the service bulletin to prevent fatigue cracking in original type design spar caps.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends §39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8 series -10 thru -50, -61, -61F, -71 and -71F airplanes with left and/or right wing front spar lower cap Part Numbers 5597838-1, -2, not modified in accordance with McDonnell Douglas DC-8 Service Bulletin 57-90, dated October 3, 1983, certificated in any category. Compliance required as indicated.

To prevent the loss of structural integrity of the left and/or right wing due to metal fatigue failure of the front spar lower cap, prior to the accumulation of 30,000 flight-hours or within 200 flight-hours after the effective date of this AD, whichever occurs later, accomplish the following, unless already accomplished within the last 3,400 flight-hours:

A. Visually or eddy current inspect left and right wing front spar lower cap, P/N's 5597838-1, -2, between Stations Xfs=515.000 and Xfs=528.780 for cracks in accordance with paragraph 2.B. of McDonnell Douglas DC-8 Service Bulletin 57-90, dated October 3, 1983, or later FAA-approved revisions.

B. If no crack is found, accomplish repetitive inspections on the spar cap in accordance with paragraph A. of this AD, at intervals not to exceed 3,400 flight-hours or one calendar year, whichever occurs first.

C. If crack(s) are found, before further flight:

1. For cracks within repairable limits, as defined by paragraph 2.B. of DC-8 Service Bulletin 57-90, repair cracked spar cap in accordance with paragraph 2.B. of that service bulletin.

2. For cracks greater than those specified by the above service bulletin, repair in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Modification of the attach holes in the foward tang of the front spar lower cap in accordance with paragraph 2.B. of DC-8 Service Bulletin 57-90 constitutes terminating action for the repetitive inspection requirements in paragraph B. of this AD.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective October 20, 1986.

Issued in Seattle, Washington, on September 26, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22501 Filed 10-3-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-ASW-30; Amendment 39-5431]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model SA 365 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which reduces the service life of main rotor head sleeves and requires inspections of sleeves on Aerospatiale Model SA 365 series helicopters. The AD is prompted by a report of a cracked sleeve in a Model SA 365 helicopter. This condition, if undetected, could result in failure of the main rotor head and loss of control of the helicopter.

EFFECTIVE DATE: October 24, 1986.

ADDRESSES: The applicable service documents may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attn: Customer Support.

A copy of each of the service documents is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Aircraft Certification Office, FAA, Europe Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone 513.38.30; or R.T. Weaver, Rotorcraft Standards Staff, ASW-110, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624-5122.

SUPPLEMENTARY INFORMATION: There has been a report of a crack in the main rotor head sleeve of an Aerospatiale Model SA 365C helicopter. This condition, if not detected, could cause failure of the main rotor head and loss of control of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires inspection of the sleeve for cracks and replacement, as necessary, on Aerospatiale SA 365 series helicopters and reduction of the sleeve time-in-service life as follows: Model SA 365C, C1, C2, and C3 sleeves are reduced to 2,000 hours' time in service and Model SA 365N and N-1 sleeves are reduced to 1,000 hours' time in service.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to all Aerospatiale Model SA 365 series helicopters certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the main rotor head sleeves, accomplish the following:

(a) For those helicopters exhibiting a severe tracking defect, inspect the main rotor head sleeves as follows before further flight:

(1) Remove main rotor blades and visually inspect the sleeves for cracks, delaminations, or seperated bushes; and

(2) Replace any sleeves found damaged with serviceable sleeves.

(b) For Model SA 365C, C1, C2, and C3 helicopters, replace Part Numbers (P/N's) 365A31.1851.00, .01, .02, .03, and 365A31.1851.00 and .01 main rotor head sleeves as follows:

(1) For sleeves which have 1,900 or more hours' time in service on the effective date of this AD, replace the sleeves within 100 hours' time in service; and

(2) For sleeves which have less than 1,900 hours' time in service on the effective date of this AD, replace the sleeves before they reach 2,000 hours' time in service.

(c) For Model SA 365N and N-1 helicopters, replace P/N's 365A31.1828.02 and .03 and 365A31.1828.00 and .01 main rotor head sleeves as follows:

(1) For sleeves which have 900 or more hours' time in service on the effective date of this AD, replace the sleeves within 100 hours' time in service; and

(2) For sleeves which have less than 900 hours' time in service on the effective date of this AD, replace the sleeves before they reach 1,000 hours' time in service.

(d) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Aircraft Certification Division, Federal Aviation Administration,

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P.O. Box 1689, Fort Worth, Texas 76101, or by the Manager, Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium.

(e) In accordance with FAR 21.197 and 21.199, flight is permitted to a base where the maintenance required by this AD may be accomplished.

Note.—Aerospatiale Telex Service SA 365C Nos. 01.18 and 01.19 and Aerospatiale Telex Service SA 365N-FS No. 01.18 pertain to this subject.

This amendment becomes effective October 24, 1986.

Issued in Fort Worth, Texas, on September 24, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 86-22502 Filed 10-3-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASW-19]

Revision of Transition Area; Junction, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the transition area at Junction, TX. The intended effect of this revision is to provide the necessary amount of controlled airspace for aircraft executing standard instrument approach procedures (SIAP's) to the Kimble County Airport, Junction, TX. This action is necessary since a review of existing controlled airspace at Junction, TX, revealed that there was more controlled airspace than needed in some areas and less than required in other areas. This action will correct this situation by reducing the size of the existing transition area northwest of the Junction VORTAC and by enlarging the transition area east and south of the Kimble County Airport to accommodate the type aircraft now utilizing the airport under instrument flight rules (IFR) conditions.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101, telephone (817) 624-5535.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Junction, TX, transition area (51 FR 25573).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the 700-foot transition area at Junction, TX. A recently developed RNAV SIAP to Kimble County Airport prompted a review of the existing controlled airspace, designated transition area. The development of the RNAV RWY 17 SIAP requires modification of the existing transition area; however, coincident with this action, there will be a reduction to the transition area northwest of the Junction VORTAC. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft operating under IFR and other aircraft operating under Visual Flight Rules (VFR).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas, Etc.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Junction, TX [Revised]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Kimble County Airport (latitude 30°30'30" N., longitude 99°46'00" W.).

Issued in Fort Worth, TX, on September 23, 1986.

Richard L. Failor,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86-22503 Filed 10-3-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASW-18]

Revision of Transition Area; Monahans, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will revise the transition area at Monahans, TX. The intended effect of this revision is to provide the necessary controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Roy Hurd Memorial Airport, Monahans, TX, utilizing the new Monahans nondirectional radio beacon (NDB). This action is necessary to ensure segregation of aircraft operating to and from the airport under the instrument flight rules (IFR) conditions and other aircraft under visual flight rules (VFR).

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101, telephone (817) 624-5566.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise

the Monahans, TX, transition area (51 FR 25571).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the 700-foot transition area at Monahans, TX. The establishment of a new SIAP, utilizing the Monahans NDB, requires designation of additional controlled airspace, designated transition area, at Monahans, TX. The intended effect of this action is to ensure segregation of aircraft operating under IFR conditions and other aircraft operating under VFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Monahans, TX [Revised]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Roy Hurd Memorial Airport (latitude 31°34'55" N., longitude 102°54'30" W.) and within 3.5 miles each side of the 314-degree bearing from the Monahans NDB (latitude 31°34'41" N., longitude 102°54'19" W.) extending from the 8.5-mile radius area to 11 miles northwest of the NDB.

Issued in Forth Worth, TX, on September 23, 1986.

Richard L. Failor,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86-22504 Filed 10-3-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASW-20]

Designation of Transition Area; Ballinger, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will designate a transition area at Ballinger, TX. The intended effect of this action is to provide adequate controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Bruce Field Airport, Ballinger, TX, utilizing the new Ballinger nondirectional radio beacon (NDB). This action is necessary to ensure segregation of aircraft operating to and from the airport under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR). Coincident with this action, the airport status will change from VFR to IFR.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-5535.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Ballinger, TX, transition area (51 FR 25572).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the airport status from VFR to IFR and lowers the floor of controlled airspace to 700 feet above the surface within a designated transition area encompassing the Bruce Field Airport, Ballinger, TX. The purpose of this transition area is to ensure segregation of aircraft operating under IFR conditions from others operating under VFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

Ballinger, TX [New]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Bruce Field Airport (latitude 31°40'30"

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N., longitude 99°58'30" W.) and within 3 miles each side of the 186-degree bearing from the Ballinger NDB (latitude 31°40'48.8" N., longitude 99°58'27.9" W.) extending from the 7-mile radius area to 9 miles south of the NDB.

Issued in Fort Worth, TX, on September 23, 1986.

Richard L. Failor,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 86-22505 Filed 10-3-86; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Reparation Proceedings; Double Bond Filing and Entitlement to Waiver

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On July 9, 1986, the Commission issued its final order in *Adham v. Drexel Burnham Lambert*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,156, which, *inter alia*, confirmed a previous pronouncement that the filing of the double bond (or of evidence of entitlement to a waiver thereof) by a nonresident reparation complainant, required by section 14(c) of the Commodity Exchange Act, is jurisdictional, and therefore must occur within the two year limitations period established by section 14(a) of the Act. Section 12.13(b)(4) of the Commission's reparation rules currently provides that the double bond requirement of section 14(c) of the Act must be satisfied before a formal reparation proceeding is commenced, but does not explicitly state that the bond must be filed within two years after the nonresident complainant's cause of action accrued. The Commission is amending §12.13(b)(4) to clarify the provisions of that regulation in light of *Adham* and to make clear that the complaint is deemed filed only when received by the Proceedings Clerk.

DATES: Effective October 6, 1986. Interested persons wishing to comment may submit comments on or before December 5, 1986.

ADDRESS: Comments may be submitted to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Attention: Office of the Secretariat. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: James T. Kelly, Assistant Chief, Opinions Section, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-7110.

SUPPLEMENTARY INFORMATION:

I. Background

On February 14, 1984, the Commission adopted §12.13(b)(4) of its rules relating to reparation proceedings which, consistent with section 14(c) of the Commodity Exchange Act (the "Act"), 7 U.S.C. 18(c), requires nonresident reparation complainants to file a bond in double the amount of the reparation claim (or to file evidence of the complainant's entitlement to a waiver of the bond requirement) before formal action could be taken on the reparation complaint. The language of §12.13(b)(4), however, simply stated that this bond had to be filed before a formal reparation proceeding was commenced pursuant to §12.26(a), (b), or (c), and did not explicitly require that the bond (or documented request for waiver of the bond) be filed within the limitations period established by section 14(a) of the Act.

In the **Federal Register** preamble (49 FR 6602, 6607-09 and n. 14) accompanying final adoption of reparation rule 12.13(b)(4), however, the Commission stated that it considered the bond requirement of section 14(c) of the Act to be "jurisdictional," *e.g.*, for statute of limitations purposes. Consistent with this prior announcement, the Commission stated in *Adham v. Drexel Burnham Lambert*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,156, that:

> A reparation complaint by a non-resident is not filed—and the statute of limitations is not tolled—until the complainant submits either evidence of the requisite double bond, or the necessary request for a waiver of the double bond requirement and appropriate documentation supporting that request. Section 14(c) of the Act contemplates that the bonding requirement must be satisfied "before any formal action is taken" by the Commission. The first "formal action" taken on any reparation complaint is assigning it a docket number; thus we hold that a non-resident's complaint may not be accepted for docketing until it is "in proper form."

Id. at 32,389.

To conform the express language of §12.13(b)(4) to the holding of *Adham*, and to the Commission's earlier pronouncement that section 14(c)'s bond requirement is considered "jurisdictional," the Commission has determined to amend §12.13(b)(4) of its reparation rules. The revised rule makes clear that, in the case of a nonresident reparation complainant, a complaint to be considered "in proper form" must be accompanied by a bond (or appropriate evidence of the complainant's entitlement to a waiver of the bond requirement) at the time it is filed, and, in any event, no later than two years after the complainant's cause of action accrued. Because certified and registered mail have meaning only within the domestic postal system, and because complaints are not served upon opposing parties (*see* 17 CFR 12.13(b)(3) (1986)), a nonresident complaint shall be deemed filed only upon receipt by the Commission's Proceedings Clerk, and not upon the date of mailing from a foreign country.

Section 4(a) of the Administrative Procedure Act ("APA"), 5 U.S.C. 553 (1982), generally provides that a notice of proposed rulemaking must be published in the **Federal Register** and that an opportunity for comment must be afforded to the public when an agency proposes new regulations. However, the notice and comment requirements do not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest." [1] For the following reason, we find the notice and comment procedure contemplated by 5 U.S.C. 553 to be unnecessary.[2]

As indicated above, the Commission has already announced its interpretation of the jurisdictional nature of the bond requirement of section 14(c) of the Act in the **Federal Register** and by way of adjudication in *Adham v. Drexel Burnham Lambert, Inc., supra.* The amendment of § 12.13(b)(4) effected hereby only codifies the Commission's prior pronouncements in the **Federal Register** and the holding in *Adham*, and does not in itself impose any new or different substantive rights or liabilities upon any parties subject to the rule as amended.[3] Although the present rule

[1] 5 U.S.C. 553(b)(B) (1982). For the same reason, we have determined not to delay the effective date of this rule for the thirty day period contemplated by 5 U.S.C. 553(d). *See* 5 U.S.C. 553(d)(3).

[2] 5 U.S.C. 553(b)(A) exempts interpretive rules from the notice and comment requirements of the APA. Because the Commission's amendment to § 12.13(b)(4) of its reparation rules, requiring the filing of a double bond before a reparation complaint will be considered in "proper form," is interpretive in nature, it is likewise exempt from notice and comment under 5 U.S.C. 553(b)(A), and may become effectively immediately pursuant to 5 U.S.C. 553(d)(2).

[3] The Commission also finds that the amendment to § 12.13(b)(4) is a "rule of agency . . . procedure" within the meaning of 5 U.S.C. 553(b)(A), and therefore, not subject to the prior notice and comment requirements of the APA.

modifications will take effect immediately upon publication in the **Federal Register**, interested persons are nevertheless invited to submit written comments on or before December 5, 1986.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies when promulgating rules to consider the economic impact of the rules on small business entities. Because the rule promulgated herein simply codifies an interpretation of its reparation rules previously announced in the **Federal Register** and in a Commission adjudication, the rule itself would have no economic impact on any small business entities. Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman certifies that § 12.13(b)(4), as amended herein, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations.

PART 12—[AMENDED]

For the reasons set forth in the preamble, Title 17, Part 12 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 12 continues to read as follows:

Authority: 7 U.S.C. 12a(5), 18(b) (1982).

2. Section 12.13 is amended by revising paragraph (b)(4) as follows:

§ 12.13 Complaint; election of procedure.

* * * * *

(b) * * *

(4) *Bond required if complainant is nonresident; filing date of nonresident's complaint.*

(i) If a complaint in reparations is filed by a nonresident of the United States, the complaint shall not be considered duly filed in proper form unless it is accompanied by:

(A) A bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States or two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond, which bond shall run to the respondent and be conditioned upon the payment of costs (including reasonable attorney's fees, for the respondent if the respondent shall prevail) and any reparation award that may be issued by the Commission against the complainant on any counterclaim asserted by respondent; or

(B) A written request that the bond requirement be waived in accordance with section 14(c) of the Commodity Exchange Act, accompanied by sufficient proof that the country of which the complainant is a resident permits the filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

(ii) The provisions of paragraphs (b)(4)(i)(A) or (b)(4)(i)(B) of this section must be satisfied within two years after the complainant's cause of action accrues.

(iii) When mailed from a foreign country, a nonresident's complaint shall be deemed filed on the date that it is received in proper form by the Commission's Proceedings Clerk, not on the date of mailing from the country of origin.

Issued in Washington, DC, on September 30, 1986 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-22511 Filed 10-3-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 357

[Docket No. RM 85-11-000; Order No. 456]

Revision of FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis

Issued: September 29, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending FERC Form No. 73 and the instructions applicable to the collection of service life depreciation data from oil pipeline companies. The information collected on FERC Form No. 73 supplies the data base for several computer programs known collectively as the Depreciation Life Analysis (DLAS), that assists the Commission in the selection of appropriate oil pipeline service lives and book depreciation rates. Oil pipeline companies use the book depreciation rates to compute their operating expenses for accounting and cost of service purposes.

The final rule eliminates certain data currently collected from oil pipeline companies and modifies the instructions to the form to encourage submission of data in a form useable in the Commission's DLAS computer programs. The rule modifies the format and filing instructions of FERC Form No. 73 to prescribe a standard filing format.

EFFECTIVE DATE: This final rule is effective December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Gwendolyn D. Prioleau, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8486.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is modifying the format and filing instructions of FERC Form No. 73 to prescribe a standard filing format, and adding a new § 357.3 to its regulations to set forth the filing requirements and the format for FERC Form No. 73.[1] In addition, the Commission eliminates from the form certain data currently collected from oil pipeline companies and modifies the instructions to the form to encourage submission of data in a form useable in the Commission's Depreciation Life Analysis System (DLAS) computer programs. This rule will reduce the reporting burden of oil pipeline companies and will make the data used in the analysis of oil pipeline depreciation rates and service lives easier to process at the Commission.

II. Background

On September 4, 1985, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to revise FERC Form No. 73, 50 FR 36601 (Sep. 9, 1985). The Commission uses the information reported in the FERC Form No. 73 to conduct a depreciation rate investigation for oil pipelines on an average of once every five years. The information is also used as data for use in several computer programs know collectively as the DLAS. This program assists the Commission in the selection of appropriate oil pipeline service lives and book depreciation rates.[2] The book

[1] The format for FERC Form No. 73 will not be printed in the **Federal Register** or the Code of Federal Regulations. A copy of the form, including all instructions to the form, is available at the Federal Energy Regulatory Commission, Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8118.

[2] The definitions for "depreciation" and "service life" are set forth in 18 CFR Part 352.

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depreciation rates which are computed using the FERC Form No. 73 data are set forth in orders periodically issued by the Commission and are used by oil pipeline companies to compute their operating expenses.

III. The Final Rule

A. Filing Requirements for Actuarial and Simulation Data

The final rule requests that oil pipelines submit actuarial and simulation data identified in FERC Form No. 73 on magnetic computer tape. Information would be submitted on FERC Form No. 73 only as an alternative to magnetic computer tape. The current preference for reporting data on FERC Form No. 73 is reversed by the final rule.

In the NOPR the Commission Proposed that actuarial and simulation data should be reported by vintage year from the year 1900, or the date of initial operations if later than 1900. The proposed format for FERC Form No. 73 specified that the year 1900 would be the earliest date for which respondents would be required to submit actuarial or simulation data, since the Commission no longer used data prior to 1900.

The Commission sought comments on: (1) The average amount of time currently required by respondent oil pipeline carriers to complete the filing requirements of FERC Form No. 73 for actuarial and simulation data, for both initial and updated information and specifying whether respondent currently reports on FERC Form No. 73, computer cards, magnetic tape or some other format; and (2) whether respondent anticipates an increase in the amount of time required to prepare initial or updated information for either actuarial or simulation data if it reports by magnetic tape, as opposed to FERC Form No. 73.

Williams Pipe Line Company (Williams) states that the date of its initial operations is 1908 and that it would require 6 to 12 months to develop actuarial data, and 4 to 8 months to develop simulation data, depending on when the last report was filed. Williams indicates that it currently reports data on FERC Form No. 73, but that it would prefer to report on magnetic tape. Amoco Pipeline Company (Amoco) questions the usefulness of data prior to 1973, stating that the current econoimic environment of oil pipelines would not be reflected in data prior to 1973. Amoco estimates that it would require 2 to 3 years to develop actuarial data for its system, and an additional 1 to 2 years to develop simulation data because its pipeline operations started in 1917. Amoco currently reported on FERC Form 73, but indicated that magnetic tape is preferable. It also estimates that the cost of converting data to a magnetic tape could be significant because of the manual labor involved in converting data from the last report to a current status and retrieving historical or missing data from the company's archives. Amoco states that updated information would require approximately the same amount of time to prepare as initial data, and that the amount of time required to prepare updates depends upon the amount of time that had lapsed since preparation of the last report. G&T Pipeline Company (G&T) filed comments, but did not specifically respond to either question, stating that it had no experience in compiling the data required by FERC Form No. 73. G&T supports the use of magnetic tape only as an alternative to use of FERC Form No. 73 because converting to magnetic tape would create a financial burden for G&T.

In consideration of the comments which indicate that retrieval of data dating back to 1900 would create a burden for respondents, the final rule modifies the NOPR by changing the reporting date from 1900 to 1940. The year 1940 is appropriate since the Commission's records also indicate that most oil pipelines have previously reported data from 1940 or the date of their initial operations. In addition, the Commission notes that its records indicate that Amoco has reported simulation data dating as early as 1939, and Williams has reported simulation data from 1936, the date of its initial operations. For these reasons, the instructions for FERC Form No. 73 have been revised to reflect that the initial filing of actuarial or simulation service life data should be reported by vintage or transaction year, respectively, from the year 1940, or the date of initial operations if later than 1940.

B. Effects of Opinion No. 154–B

In the NOPR the Commission also sought comments on whether and how the Commission's decision in Opinion No. 154–B [3] affects the Commission's need for the data collected in FERC Form No. 73. Williams states that although it was uncertain of the full effect of Opinion No. 154–B, it did not appear that the data to be collected in Form No. 73 was not necessary to implement Opinion No. 154–B.

The other comments regarding the effect of Opinion No. 154–B on the Commission's collection of data on FERC Form No. 73 indicate uncertainty about the use of the service life data collected by FERC Form No. 73. G&T states that the data required by FERC Form No. 73 is duplicative of the data required on valuation reports filed pursuant to 18 CFR Part 361, and that the necessity of filing valuation reports has been eliminated because Opinion No. 154–B rejected the valuation rate base methodology and adopted a trended original cost methodology.

It appears that G&T has not distinguished between the valuation regulations in 18 CFR Part 361 with the accounting regulations in 18 CFR Part 352. The Commission recognizes that there is a similarity between the valuation data collected on the ACV forms described in 18 CFR Part 361 and the accounting data collected in FERC Form No. 73 pursuant to 18 CFR Part 352. This fact alone does not obviate the need for the accounting data requested by FERC Form No. 73. Oil pipeline companies are required to submit depreciation information to the Commission pursuant to 1–8(b)(2) and 1–8(b)(3) of the General Instructions found at 18 CFR Part 352. These instructions require oil pipeline carriers to compute percentage rate studies for their depreciable property accounts, and to maintain records as to the service life and net salvage value of their property and property retirements. The information reported in the FERC Form No. 73 assists the Commission in the selection of appropriate oil pipeline service lives and book depreciation rates. The book depreciation rates are computed in part by using the FERC Form No. 73 data, and are set forth in orders periodically issued by the Commission. Oil pipeline companies use the book depreciation rates to compute their operating expenses for accounting and cost of service purposes. Depreciation is an element of the cost of service and rate base in the trended original cost methodology set forth in Opinion No. 154–B.[4]

Amoco acknowledges that depreciation rates and the addition and retirement of assets are essential to the trended original cost methodology, but asserts that the data collected by FERC Form No. 73 is not essential to the development of data for trended original cost. Amoco's comments do not reflect the way the Commission uses the Form No. 73 service life data. FERC Form No. 73 is a summary of plant additions and retirements. The data is compiled by the Commission and is used in the determination of service lives and book depreciation rates.

The Commission finds that the collection of data regarding a pipeline's physical assets is essential to establishing book depreciation rates under a trended original cost methodology. FERC Form No. 73 provides that data as a summary of plant additions and retirements. Accordingly, the final rule adds a new § 357.3 to the Commission's regulations, which states that any oil pipeline company directed by the Commission to file service life data during an investigation of its book depreciation rates must submit data in the format prescribed in FERC Form No. 73.

C. Other Modifications

The final rule makes two additional changes to FERC Form No. 73 because the data is no longer needed by the Commission. The final rule eliminates from FERC Form No. 73 and the instructions the reporting of data on net salvage value, since net salvage value data is not used in the DLAS programs. In addition, the final rule eliminates certain categories of information required in the instructions that are not applicable in the DLAS simulation programs. These categories are "Installation Year," Corrected Transaction Year," "Number of Units," "Gross Salvage," and "Cost of Removal."

The final rule adopts the proposal in the NOPR to eliminate the option to sumbit simulation data on cards, indicating that data would be submitted on either FERC Form No. 73 or on magnetic computer tape.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), requires certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities. In defining small entities, the RFA refers to the Small Business Act's definition of a small business concern, which is a business independently owned and operated, and which is not dominant in its field of operation.[5]

In the NOPR the Commission indicated that the data required by FERC Form No. 73 is readily available to the oil pipeline carriers and imposes the least burden possible on respondents because no new burden is created by the proposed revision of FERC Form No. 73. The final rule provides alternative methods for submitting the data collected by FERC Form No. 73. Once the data base is established during an initial depreciation rate investigation, only minor updates are required for a subsequent rate investigation. The Commission also certified in the NOPR that the rule would not have a significant economic impact on a substantial number of small entities since the majority of oil pipeline companies subject to the Commission's jurisdiction are not independently owned and operated. No comments were received addressing the RFA or the Commission's RFA analysis in the NOPR.

For the reasons stated in the NOPR and this rule, the Commission affirms its certification that the rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act Statement

The information collection provisions of this rule are being submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR Part 1320 (1986). The information collection requirements are in fact being reduced by this rule. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Gwendolyn D. Prioleau, 202/357–8486).

VI. Effective Date

This rule is effective December 22, 1986. If OMB's approval and control numbers have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date.

List of Subjects in 18 CFR Part 357

Pipelines, Reporting requirements.

In consideration of the foregoing, the Commission hereby amends FERC Form No. 73, the instructions for submitting depreciation data, and Part 357 of Chapter I, Subchapter R, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 357—[AMENDED]

1. The authority citation for Part 357 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Executive Order No. 12,009, 3 CFR Part 142 (1976).

2. Part 357 is amended by adding a new § 357.3 to read as follows:

§ 357.3 FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis.

(a) *Who must file.* Any oil pipeline company directed by the Commission to file service life data during an investigation of its book depreciation rates.

(b) *When to submit.* Service life data is reported to the Commission by an oil pipeline company ony during a depreciation rate investigation.

(c) *What to submit.* The format and data which must be submitted are prescribed in FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis, available for review at the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

[FR Doc. 86–22576 Filed 10–3–86; 8:45 am]

BILLING CODE 6717–01–M

[3] Williams Pipe Line Co., Op. No. 154–B, 31 FERC ¶ 61,377 (1985).

[4] 31 FERC ¶ 61,377 at 61,834, 61,836.

[5] 5 U.S.C. 610(3) (1982).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 83C–0102]

Listing of D&C Orange No. 17 for Use in Externally Applied Drugs and Cosmetics

Correction

In FR Doc. 86–17719, beginning on page 28331 in the issue of Thursday, August 7, 1986, make the following correction: On page 28335, in the first line of the third column, "1.0 percent" should read "10 percent".

BILLING CODE 1505–01–M

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21 CFR Parts 74, 81, and 82

[Docket Nos. 83C–0102 and 83C–0129]

D&C Orange No. 17 and D&C Red No. 19

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has received objections to the permanent listing of D&C Orange No. 17 and D&C Red No. 19 as color additives for use in externally applied drugs and cosmetics. The objections to these listings were filed under the formal rulemaking provisions of the Federal

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Food, Drug, and Cosmetic Act. The objections contended that the Delaney Clause prohibits the agency from approving the use of D&C Orange No. 17 and D&C Red No. 19 because the color additives are animal carcinogens. Neither hearings nor stays were requested. FDA has evaluated the objections and is rejecting them. The agency is also establishing new effective dates for these color additive regulations.

EFFECTIVE DATE: New effective date established: October 6, 1986.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of August 7, 1986, FDA permanently listed D&C Orange No. 17 and D&C Red No. 19. Those actions responded to petitions filed by the Cosmetic, Toiletry and Fragrance Association, Inc.

A. D&C Orange No. 17

The final rule for D&C Orange No. 17 (51 FR 28331; Docket No. 83C–0102) established 21 CFR 74.1267 and 74.2267, which list D&C Orange No. 17 for use in externally applied drugs and in externally applied cosmetics, respectively. The final rule also amended 21 CFR 81.1(b) and 81.27 by removing the entries for D&C Orange No. 17 from these regulations. The final rule also revised 21 CFR 82.1267 to state that D&C Orange No. 17 shall conform in identity and specifications to the requirements of § 74.1267 (a)(1) and (b).

B. D&C Red No. 19

The final rule for D&C Red No. 19 (51 FR 28346; Docket No. 83C–0129) established 21 CFR 74.1319 and 74.2319, which list D&C Red No. 19 for use in externally applied drugs and in externally applied cosmetics, respectively. The final rule also amended §§ 81.1(b) and 81.27 by removing the entries for D&C Red No. 19 from these regulations. The final rule also revised 21 CFR 82.1319 to state that D&C Red No. 19 shall conform in identity and specifications to the requirements of § 74.1319 (a)(1) and (b) and D&C lakes shall be made only from batches of D&C Red No. 19 previously certified in accordance with the requirements of § 74.1319 (a)(1) and (b).

In the final rules, FDA gave interested persons until September 8, 1986, to file objections. Concurrently with publication of the final rule on August 7, 1986, FDA extended the closing date for the provisional listing of D&C Orange No. 17 and D&C Red No. 19 until October 6, 1986 (51 FR 28363), to provide time for the receipt and evaluation of any objections submitted in response to the final rule for these color additives.

The agency received from the Public Citizen Litigation Group objections to the permanent listing regulations for both D&C Orange No. 17 and D&C Red No. 19. The objections are on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, under the docket numbers found in the heading of this document. FDA also received comments in support of both regulations for the Cosmetic, Toiletry and Fragrance Association, that have also been placed on file under the same docket numbers. No requests for a hearing were received in response to the listing regulations. The objections and the agency's response to them are summarized below.

II. Objections and the Agency's Response

In two letters dated August 21, 1986, the Public Citizens Litigation Group (PCLG) filed separate objections to FDA's final rules of August 7, 1986, permanently listing D&C Orange No. 17 and D&C Red No. 19. However, PCLG also stated in each of the letters that "* * * because our objections do not raise any issue of material fact, we do not request a hearing" in regard to either of the two listings.

PCLG summarized its objections as follows:

> Since the FDA has concluded that Orange No. 17 [and Red No. 19] is an animal carcinogen, the Delaney Clause * * * absolutely and unequivocally prohibits the agency from approving the use of Orange No. 17 [and Red No. 19] as a color additive in foods, drugs or cosmetics.

PCLG concluded:

> * * * the sole basis for our objection is the contention that the Delaney Clause prohibits the approval of color additives which cause cancer in animals. * * * [B]ecause the agency has already rejected our arguments on this issue [*Public Citizen* v. *Department of Health and Human Services*, No. 86–5150, which is currently pending in the U.S. Court of Appeals for the District of Columbia Circuit], there is no purpose which can be served by delaying consideration of this objection. Therefore, we urge the agecy to rule promptly on this objection * * *, so that the objectors may seek review in the Court of Appeals of the FDA's interpretation of the Delaney Clause.

The agency rejects the narrow legal interpretation of the Color Additive Amendments of 1960 (21 U.S.C. 376) set forth in these objections. The final rules for D&C Orange No. 17 and D&C Red No. 19 discuss fully the bases for the agency's conclusion that, under any reasonable standard, D&C Orange No. 17 and D&C Red No. 19 are safe for use in externally applied drugs and cosmetics and that the Delaney Clause does not bar the permanent listings of these color additives. FDA incorporates by reference herein all scientific, legal, and policy discussions set forth in the preambles to the August 7, 1986, final rules for these two color additives. Further explanation of the agency's position would serve no useful purpose.

The filing of objections served to stay automatically the effective date of September 9, 1986, for the regulations listing D&C Orange No. 17 and D&C Red No. 19. Section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(2)) states: "Until final action upon such objections is taken by the Secretary * * *, the filing of such objections shall operate to stay the effectiveness of those provisions of the order to which the objections are made." Section 701(e)(3) of the act further stipulates that "As soon as practicable * * *, the Secretary shall by order act upon such objections and make such order public."

The agency has completed its evaluation of the objections and concludes that a continuation of the stay of the regulations is not warranted in response to the objections. Additionally, there was no request for a hearing in conjunction with the objections that were submitted.

In the absence of any other objections and requests for a hearing, the agency, therefore, further concludes that this document constitutes final action on the objections received in response to the regulations as prescribed in section 701(e)(2) of the act. Therefore, the agency is acting to end the stay of the regulations by establishing a new effective date of October 6, 1986, for the regulations of August 7, 1986, listing D&C Orange No. 17 and D&C Red No. 19 as color additives for use in externally applied drugs and cosmetics. The regulations of August 7, 1986, listing D&C Orange No. 17 and D&C Red No. 19 also deleted the entries for the color additives under Part 81. Thus, on October 6, 1986, D&C Orange No. 17 and D&C Red No. 19 will be removed as entries in the provisional listing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that the objections filed in response to issuance of 21 CFR 74.1267, 74.2267, 74.1319, and 74.2319 that were published on August 7, 1986 (51 FR 28331 and 28346) do not form a basis for further stay of their effectiveness or require amendment of the regulations. Accordingly, all the amendments promulgated thereby become effective October 6, 1986.

Dated: October 1, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 22863 Filed 10–2–86; 2:50 pm]

BILLING CODE 4160–01–M

21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 8 and D&C Red No. 9 for use as color additives in drugs and cosmetics and for the provisional listing of FD&C Yellow No. 6 for use as a color additive in food, drugs, and cosmetics. The new closing date will be December 5, 1986. FDA has decided that this postponement is necessary to provide time for the preparation of Federal Register documents that will permanently list the general food, drug, and cosmetic uses of FD&C Yellow No. 6, and the ingested drug and cosmetic lip product uses and uses in externally applied drugs and cosmetics of D&C Red No. 8 and D&C Red No. 9.

DATES: Effective October 6, 1986, the new closing date for FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9 will be December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of October 6, 1986, for the provisional listing of FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9 by regulation published in the Federal Register of August 7, 1986 (51 FR 28363). FDA extended the closing date for these color additives until October 6, 1986, to provide time for the preparation and publication of appropriate Federal Register documents. The regulation set forth below will postpone the October 6, 1986, closing date for the provisional listing of these color additives until December 5, 1986.

In the Federal Register of June 6, 1986 (51 FR 20786), FDA announced that the agency has essentially completed its review and evaluation of available information relevant to the use of these color additives in food, drugs, and cosmetics. The agency has concluded that the external drug and cosmetic uses of D&C Red No. 8, and D&C Red No. 9, and the food, drug, and cosmetic uses of FD&C Yellow No. 6 are safe. Thus, the agency has decided to permanently list the color additives for these uses. The agency has also decided, based on its evaluation of the ingested drug and cosmetic uses of D&C Red No. 8 and D&C Red No. 9 that they are safe and may be permanently listed for these uses at significantly reduced concentrations. New certification specifications are also being developed for these color additives.

FDA concludes that this extension is consistent with public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d (D.C. Cir. 1982).

Because of the shortness of time until the October 6, 1986, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of October 6, 1986. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553(b) and (d) (1) and (3), this postponement is issued as a final regulation, effective on October 6, 1986.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

> **Authority:** Secs. 701, 706, 52 Stat. 1055–1060, as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 85–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "FD&C Yellow No. 6" in paragraph (a) and for "D&C Red No. 8," and "D&C Red No. 9," in paragraph (b), to read "December 5, 1986."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "FD&C Yellow No. 6," "D&C Red No. 8," and "D&C Red No. 9," and in paragraph (d) to read "December 5, 1986."

Dated: October 1, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86–22862 Filed 10–2–86; 1:47 pm]

BILLING CODE 4160–01–M

21 CFR Part 178

[Docket No. 86F–0074]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to increase the maximum permitted level of use of 2,2'-ethylidenebis(4,6-di-tert-butylphenol) as an antioxidant and stabilizer and to delete the temperature limitation on its use in rubber modified polystyrene intended for use in contact with food. This action responds to a petition filed by Schenectady Chemicals, Inc.

DATES: Effective October 6, 1986; objections by November 5, 1986.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 27, 1986 (51 FR 10572), FDA announced that a petition (FAP 6B3926) had been filed on behalf of Schenectady Chemicals, Inc., c/o 1150 17th St. NW., Washington, DC 20036, proposing that § 178.2010 *Antioxidants and/or*

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stabilizers for polymers (21 CFR 178.2010) of the food additive regulations be amended to increase the maximum permitted level of use of 2,2'-ethylidenebis(4,6-di-*tert*-butylphenol) as an antioxidant and stabilizer and to delete the temperature limitation on its use in rubber-modified polystyrene intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before November 5, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010(b) is amended in the entry for 2,2'-ethylidenebis(4,6-di-*tert*-butylphenol) by revising item 8, redesignating item 9 as new item 10, and by adding a new item 9, to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

• • • • •

(b) • • •

Substances	Limitations
• • • • • • •	
2,2'-Ethylidenebis(4,6-di-tert-butylphenol) (CAS Reg. No. 35958-30-6).	For use only: • • • 8. At levels not to exceed 0.1 percent by weight of polystyrene complying with § 177.1640 of this chapter and under conditions of use D through G described in table 2 of § 176.170(c) of this chapter. 9. At levels not to exceed 0.2 percent by weight of rubber-modified polystyrene complying with § 177.1640 of this chapter. 10. In adhesives complying with § 175.105 of this chapter.
• • • • • • •	

Dated: September 24, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-22516 Filed 10-3-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 73

[DoD Directive 1430.13]

Training Simulators and Devices

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This part establishes training simulator and device development, acquisition, and utilization policy; provides guidance for establishing Service policy for training simulators and devices; and, authorizes the Department of Defense to use training simulators and devices to make training systems more effective and to help maintain military readiness. The part emphasizes the concepts of training simulators and devices as part of a total training system and concurrency of those training simulators and devices with the system supported.

EFFECTIVE DATE: August 22, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Croach, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 3B930, the Pentagon, Washington, DC 20301-4000, telephone (202) 695-0975.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 73

Armed Forces, Education, Goverment procurement.

Accordingly, Title 32 is amended to add Part 73 to read as follows:

PART 73—TRAINING SIMULATORS AND DEVICES

Sec.

73.1 Purpose.
73.2 Applicability and scope.
73.3 Definitions.
73.4 Policy.
73.5 Responsibilities.
73.6 Procedures.
73.7 Effective date and implementation.

Authority: 5 U.S.C. 301 and 10 U.S.C. 133.

§ 73.1 Purpose.

This part: (a) Establishes training simulator and device development, acquisition, and utilization policy implementing Assistant Secretary of Defense memorandum dated October 5, 1984 in accordance with DoD Directive 5000.1,[1] DoD Instruction 5000.2,[1] DoD Directive 5000.3,[1] DoD Directive 5000.39,[1] DoD Directive 5000.19,[1] DoD Instruction 7041.3,[1] DoD 7110.1-M, and Executive Order 12344.

(b) Provides guidance for establishing Service policy for training simulators and devices.

(c) Authorizes the Department of Defense to use training simulators and devices to make training systems more effective and to help maintain military readiness. Emphasizes the relationship between the system(s) supported and the training system and supports the requirements for coincident development and concurrency between the system(s) supported and the training system. A systematically developed training system with appropriate training simulators, devices, and embedded training capability cost-effectively provides training for any given weapon or support system. Properly used, such training simulators and devices facilitate: training that might be impractical or unsafe if done with actual systems or equipment; concentrated practice in selected normal and emergency actions; the training of operators and maintainers to diagnose and address possible equipment faults; enhanced proficiency despite shortages of equipment, space, ranges, or time; control of life-cycle training costs; and reducing systems required in maintenance training.

(d) Emphasizes that training simulators and devices are integral parts of an overall training system. Those training systems without training simulators or devices specifically are excluded from this part.

§ 73.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD) and the Military Departments, including their National Guard and Reserve components. The term "Military Services," as used herein, refers to the Army, Navy, Air Force, Marine Corps, and the National Guard and Reserve components.

(b) This part shall not be construed to usurp management prerogatives or responsibilities of the Military Departments or their Guard or Reserve Components.

(c) For reporting purposes supporting acquisition review for training simulators or devices supporting a major system or comprising a nonsystem training equipment, the dollar thresholds shall be those established in DoD 7110.1-M, part II.

(d) When the Secretary of Defense designates any training simulator or device as being of significant interest based on criteria other than cost, the Military Service concerned shall provide the documentation required by this part.

(e) The policies of this part shall be followed regardless of the cost of the training simulators or devices.

(f) In accordance with the responsibilities in E.O. 12344, the Department of Energy (DoE) has cognizance over the development of training systems and devices used in the training of naval nuclear propulsion plant operators. Such systems and devices are not covered by this Directive, but are coordinated separately with DoE.

§ 73.3 Definitions.

Embedded training. Training using operational equipment that involves simulating or stimulating of equipment performance.

Non-system training device. A training simulator or device not supporting a single, specific, parent defense system.

Training simulator and/or device. Hardware and software designed or modified exclusively for training purposes involving simulation or stimulation in its construction or operation to demonstrate or illustrate a concept or simulate an operational circumstance or environment. Under this part, training simulators and devices are considered part of an overall training system that may or may not be identified as part of a parent defense system. Under this part, the term training device shall apply to training simulators and devices.

Training system. A systematically developed curriculum including, but not necessarily limited to, courseware; classroom aids; training simulators and devices; operational equipment; embedded training capability; and personnel to operate, maintain, or employ a system. The training system includes all necessary elements of logistic support.

§ 73.4 Policy

(a) *General.* (1) It is DoD policy to optimize the operational readiness of the total forces by effecting the development and acquisition of training devices, in accordance with DoD Directive 5000.1. The requirement for development and acquisition of training devices shall be based on a Military Service's training requirements analysis process. The analysis shall define the training need, determine whether existing training devices shall satisfy the training requirement, and evaluate the benefits and tradeoffs of potential alternative training solutions. This process shall consider how recommended training devices shall function in the National Guard and Reserve environment and how they shall meet any unique National Guard and Reserve training needs.

(2) All training devices supporting and unique to a major system acquisition should be documented and reviewed with the parent major system. Major system training devices shall be identified in the acquisition process in the Integrated Program Summary (IPS), in accordance with DoD Instruction 5000.2. Those training devices that are not included in a major system acquisition should be identified and justified in relation to a specific training program or course. The Military Services shall ensure that all development, procurement, operation, and support costs are programmed and funded.

(3) These policies do not imply that a training system, simulator, or device must be procured from the prime contractor for the defense system being supported.

(4) The acquisition of a training system that supports a new defense system or equipment shall be assigned the same priority as that of the parent system or equipment.

(5) Those training devices dedicated to defense systems or equipment should be available in time for the fielding of the parent system.

(6) These policies and the guidelines to implement them apply to acquisition funds from advanced development through procurement.

(7) Joint-Services acquisition of common training devices should be fully considered in *each* Military Service's training analysis and planning.

(b) *Development planning guidelines.* (1) Once a training device requirement has been established, the training device program must be described and documented in a Military Service's approved development plan (DP) or equivalent before development of the training device may proceed.

(2) The DP, which documents the Military Service's training requirement, must integrate the proposed, specific training device hardware or software system being developed and acquired

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

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with the training system for which it is intended.

(3) The DP shall address the following items as data become available:

(i) Assessment of Training need and expected benefit from the training device(s).

(ii) Description of the training device(s).

(iii) Acquisition and modification schedule.

(iv) Ability of the training devices to maintain or improve safety.

(v) Course and training estimates including projected student flows and loads, requirements for instructors and other staff, location of training facilities, and other training requirements.

(c) *Acquisition guidelines.* (1) Training device alternatives including, but not limited to, trainers, general versus specific devices, real equipment versus simulated equipment, and embedded training capability should be evaluated by the Military Service concerned. Where applicable, economic analyses of alternatives should be conducted in accordance with the methods and assumptions in DoD Instruction 7041.3. The evaluation of each alternative should consider as appropriate:

(i) Life-cycle use versus costs.

(ii) Trade-off with requirements for munitions, if applicable.

(iii) Capability of the training device(s) to accommodate changes made to the parent defense systems based on data on minimum and maximum changes made over the life cycle of similar defense systems.

(iv) Student load and curriculum changes or field application training changes anticipated during the life cycle.

(2) When military specification equipment is not required to meet performance needs, commercial practices and equipment should be used to contain initial procurement and follow-on support costs. Commercially available training programs also deserve serious consideration.

(3) Specifications should cover training functions, performance levels, and required proficiency.

(d) *Training effectiveness evaluation guidelines.* Analysis of training capability and potential should focus on data based on actual experience.

§ 73.5 Responsibilities.

(a) The *Assistant Secretary of Defense for Force Management and Personnel* (ASD(FM&P)) shall:

(1) Monitor the Military Services' compliance with this part.

(2) Designate action officers for training devices associated with major system acquisitions' constituting major systems in themselves, and non-system training devices meeting the documentation threshold. These action officers shall:

(i) Monitor the status of training devices, as assigned.

(ii) Review Military Service-provided DPs.

(iii) Obtain such reports and information as may be necessary in performing assigned functions, in accordance with DoD Directive 5000.19.

(3) Review the Military Service's Regulations, Manuals, or Instructions implementing this part.

(4) Review the Military Service's acquisition documentation to identify areas of potential joint applicability.

(5) Respond to Congressional inquiries on implementation of this part and results achieved.

(6) Administer a continuing review of policy on training devices, updating this part as necessary.

(b) The *head of each DoD component* shall:

(1) Ensure development of the Military Service's documents implementing this part.

(2) Ensure that the Military Service's charters for program managers of all major defense system acquisitions adequately address their training device responsibilities, and that program managers are supported by training system managers.

§ 73.6 Procedures.

(a) OSD oversight for training devices that support a major system or constitute major systems in themselves, shall be accomplished during the system acquisition review process. Military Service-approved DPs, which will evolve as data from detailed training analyses become available, shall be forwarded to OSD not later than the Program Objectives Memorandum (POM) submission in which budget year funds are requested for manufacture of the initial or prototype device(s), but in no case before the milestone listed in paragraph (1) or (2) of this section. Service charges to the DP shall be submitted to OSD as changes occur.

(1) DPs for training devices integral to a major system acquisition shall be submitted to support the Decision Coordinating Paper/Integrated Program summary of the parent defense system by Milestone II.

(2) For training devices designated major systems acquisitions, DPs shall be submitted with, or incorporated into, the System Concept Paper prepared for Milestone I.

(3) For non-system training devices, DPs, shall be submitted not later than the POM submission in which budget year funds are requested for manufacture of the prototype or the first device.

(b) *Training Effectiveness Evaluation Plan (TEEP).* (1) The Training Effectiveness Evaluation Plan shall be developed as applicable with regard to DoD Directive 5000.3 to ensure that acquired training devices meet the Military Service's training requirements and effectiveness levels. The TEEP shall describe the Service's plan to accomplish training effectiveness evaluations, to the extent the Services deem appropriate, for training devices associated with each major defense system acquisition, training devices constituting major systems in themselves or non-system training devices that meet the threshold described in § 73.2 of this section.

(2) The TEEP should document the planned evaluation of the training functions, performance levels, and proficiency requirements incorporated in the specifications. The TEEP should be approved by the sponsoring Service at least 6 months before the planned commencement of training effectiveness evaluation.

(3) For training devices not meeting thresholds described in § 73.2 of this part, the Military Servcies are encouraged to prepare, approve, and support a TEEP at least 6 months before the planned commencement of training effectiveness evaluation.

§ 73.7 Effective date and implementation.

This part is effective August 22, 1986. Forward one copy of each implementing document to the Assistant Secretary of Defense (Force Management and Personnel). Management reports and information specified herein shall be submitted for training devices reaching the stated milestones beginning with FY 87 as required by the ASD memorandum. Requirements shall be waived on a case-by-case basis for training devices for which this implementation date shall cause inordinate cost of manpower expenditures.

Linda M. Lawson,

Alternative OSD, Federal Register Liasion Officer, Department of Defense.

October 1, 1986.

[FR Doc. 86-22809 Filed 10-03-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 97, 170 and 172

[CGD 80-159]

Damage Stability and Flooding Protection for Great Lakes Vessels; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects several errors in the final rule regarding damage stability and flooding protection for Great Lakes vessels which appeared in 51 FR 33056, published on September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert M. Letourneau (202) 267-2988.

SUPPLEMENTARY INFORMATION:

a. On page 33056, second column, last paragraph, last line—replace "bad" with "boarding".

b. On page 33057, third column, second paragraph, line 13—replace "last" with "lack".

c. On page 33058, first column, replace first paragraph of "Regulatory Evaluation" with the following:

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). Due to the lack of demand for new construction, the small percentage increase in construction cost, and the potential that future construction may be through the MARAD loan guarantee program, the potential for economic impact has been found to not require further evaluation. There is currently no demand for new Great Lakes bulk dry cargo ships, nor is there expected to be any in the near future. Even if there were new construction, the increased cost to construct a new Great Lakes bulk dry cargo ship to conform to these standards is very small in relation to the total cost of the vessel. The estimated cost of constructing a new Great Lakes bulk carrier is 100 million dollars. Based on the study, "Economic Benefits of Improved Watertight Subdivision for Great Lakes Bulk Carriers", conducted for the Maritime Administration in 1978, the cost for one ship to comply with these regulations would be approximately one million dollars, adding only one percent to the cost of building the ship. In exchange for this small cost, the risk of catastrophic loss of life from a sudden sinking is substantially reduced.

d. On page 33059, first column, Part 170—[Amended], replace change 6 with the following:

"6. Section 170.055 is amended by redesignating existing paragraphs (k) through (t) as paragraphs (l) through (u) respectively and by adding a new paragraph (k) to read as follows:"

e. On page 33059, third column, § 172.220(b)(2);

1. Remove "(the effective date of these regulations)" and insert "November 17, 1986" in its place.

2. Remove "(one year of the effective date of these regulations)" and insert "November 17, 1987" in its place.

M.J. Schiro,

(Acting), Chief Office of Marine Safety, Security and Environmental Protection.

September 29, 1986.

[FR Doc. 86-22807 Filed 10-3-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-15; RM-5067]

Television Broadcasting Services; Ozark, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF Channel 34 to Ozark, AL, as that community's first local television service, in response to a petition filed by Johnny La Carter. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-15, adopted September 18, 1986, and released September 25, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washinton, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. In § 73.606(b), the table of assignments is amended by adding Ozark, Channel 34, under Alabama.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-22562 Filed 10-3-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-372; RM-5172]

Radio Broadcasting Services; Rock Harbor, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 271C2 for Channel 272A at Rock Harbor, Florida, and modifies the Class A license for Station WKLG(FM) to specify Channel 271C2 at the request of the licensees, David W. Freeman, Sr., David W. Freeman, Jr., Elizabeth M. Freeman, and Elizabeth C. Freeman. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-372, adopted September 19, 1986, and released September 25, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

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§ 73.202 [Amended]

2. In § 73.202 (b), the table of FM allotments is amended, under Florida, by amending the entry for Rock Harbor to add Channel 271C2 and delete Channel 272A.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-22560 Filed 10-3-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-58; RM-5033, 5092]

Radio Broadcasting Services; Tomah, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channels 233A and 241A to Tomah, Wisconsin, as that community's second and third FM services, at the request of Tony J. Trunkel and Phyllis Rice, respectively. Channel 233A requires a site restriction of 0.8 kilometers (0.5 miles) east of Tomah and Channel 241A requires a site restriction 1.1 kilometers (0.7 miles) northeast of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1986; the window period for filing applications will open on November 4, 1986, and close on December 3, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-58, adopted September 18, 1986, and released September 25, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 37 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the table of FM allotments is amended by adding Channels 233A and 241A under the entry for Tomah, Wisconsin.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-22566 Filed 10-3-86; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 51, No. 193
Monday, October 6, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Marketing Policy and request for comments.

SUMMARY: This notice sets forth a summary of the 1986-87 marketing policy for navel oranges grown in Arizona and designated part of California. The marketing policy was submitted by the Navel Orange Administrative Committee, which functions under the marketing order covering California-Arizona Navel oranges. The marketing policy contains information on crop and market prospects for the 1986-87 season.

DATE: Written suggestions, views, or pertinent information relating to the marketing of the 1986-87 California-Arizona navel orange crop will be considered if received by October 16, 1986.

ADDRESS: Interested persons are invited to submit written comments concerning this notice. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2065, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250; telephone: (202) 447-5697. Growers and handlers of navel oranges may obtain a copy of the marketing policy directly form the Navel Orange Administrative Committee. Copies of the marketing policy are also available from Mr. Cioffi.

SUPPLEMENTARY INFORMATION: Pursuant to § 907.50. of the marketing order covering navel oranges grown in Arizona and designated part of California, the Navel Orange Administrative Committee, hereinafter referred to as the "committee," is required to submit a marketing policy to the Secretary prior to recommending regulations for the ensuing season. The order authorizes volume and size regulations applicable to fresh shipments of navel oranges to domestic markets, including Canada. Export shipments of oranges and oranges utilized in the production of processed orange products are not regulated under the order.

The committee has adopted its marketing policy for the 1986-87 marketing season. The marketing policy is intended to inform the Secretary and persons in the industry of the committee's plans for recommending regulation of shipments during the marketing season and the basis therefor. The committee evaluates market conditions and makes recommendations to the Secretary as to the quantity of navel oranges that can be shipped each week to domestic outlets without disrupting markets. Under certain conditions, the committee may recommend size regulations applicable to fresh domestic shipments.

In its 1986-87 marketing policy, the committee projects the 1986-87 California-Arizona navel orange crop at 80,500 cars (1 car=1,000 cartons of 37½ pounds net weight each). This compares with last year's production of 67,867 cars. In Distict 1, Central California, 1986-87 production is estimated at 70,000 cars compared to 58,943 cars produced in 1985-86. In District 2, Southern California, the crop is expected to be 9,000 cars compared to 7,851 cars produced last year. In District 3, the Arizona-California desert valley, the committee estimates a production of 1,000 cars compared to 885 cars in 1985-86. In District 4, Northern California, a 400 car crop is projected compared to 188 cars last year.

It is expected that orange sizes will be almost identical to last year. Fruit quality shipped to domestic markets is expected to be outstanding.

The committee estimates that shipments to domestic fresh market outlets, including Canada, will account for 52,500 cars. Last year a total of 47,985 cars were shipped to domestic markets. Fresh export shipments are expected to total 6,500 cars compared to 5,360 cars last year. Processing and other disposition is forecast at 21,500 cars compared to 14,522 cars last year.

Based on current projections, shipments are expected to begin in mid-October and finish in late May. The committee has developed a schedule of estimated weekly shipments during the 1986-87 season.

The committee reports that the Florida round orange production is expected to be 280,000 cars, about nine percent greater than last year. In Texas, following severe freeze damage in 1983, orange production for the 1986-87 season is expected to be 1,400 cars. Production of apples is estimated at 186.6 million bushels in 1986-87 compared to 189.3 million bushels in 1985-86. Winter pear production is estimated at 7.4 million bushels in 1986-87 compared to 8.4 million bushels last year. General economic conditions are expected to be favorable.

The 1985-86 season average fresh equivalent on-tree grower returns for California-Arizona navel oranges as reported by the National Agricultural Statistics Service were $3.64 per carton. This was about 74 percent of the equivalent season average parity of $4.91 per carton. The 1986-87 parity is projected to be $5.20 per carton. The Agricultural Marketing Service is currently evaluating the 1986-87 price outlook and will use the results of this evaluation in reviewing the committee's marketing policy.

In order to provide for public input, the Department will accept written views and information pertinent to the proposed marketing policy and the need for, or level of, regulation for the 1986-87 season. The Department is also concerned with developing criteria for determining when volume regulations, if implemented, should be terminated for the season. Interested persons are also invited to submit their views and comments on this issue.

Publication of this summary of the marketing policy does not create any legal obligations or rights, either substantive or procedural.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

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PART 907—[AMENDED]

1. The Authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: October 1, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 86–22820 Filed 10–3–86; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–45]

Kenneth G. Sexton; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemakeing.

SUMMARY: The Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated August 4, 1986, which was filed with the Commission by Kenneth G. Sexton. The petition was docketed by the Commission on August 7, 1986, and has been assigned Docket No. PRM–50–45. The petitioner requests that the Commission amend its regulations in 10 CFR Part 50 to require that current methodologies and analytical techniques be used to reevaluate the establishing Emergency Planning Zone (EPZ) for nuclear power plants.

DATE: Submit comments by December 5, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESS: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition write: Division of Rules and Records, Office of Administration, 4000 MNBB, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7086 or Toll Free (800) 368–5642.

SUPPLEMENTARY INFORMATION:

Background

I. Petitioner's Interest

The petitioner, an atmospheric chemist and computer modeler, owns property within the 10-mile EPZ of the Shearon Harris Nuclear Power Plant, which is located 15 miles southwest of Raleigh, North Carolina. The petitioner is concerned that emergency planning for areas within and beyond the 10-mile distance provided in the Commisson's regulations is inadequate because the current 10-mile EPZ was determined with what the petitioner assets is now considered outdated methodologies and data. The petitioner states that advanced techniques and new information obtained through research in the last 10 years have produced improved calcilations and estimates for determining the reasonable size of an EPZ. Consequently, petitioner believes that there is overwhelming justification to request that the size of the EPZ be reevaluated on a site-specific based using more current risk-analysis methodologies and meterological data.

II. Proposed Amendment to 10 CFR Part 50

The petitioner proposes that § 50.47(c)(2) be amended to read as follows: "The plume exposure pathway EPZ for all nuclear power plants consists of an area to be determined by the NRC on a site-specific basis, after allowing for review of the determination report by any interested parties. The report shall list, describe, and reference all input data and methodologies used and all other factors considered. The NRC shall use methodologies and procedures which are generally accepted as reasonably current and appropriate by recognized professional grouips in each supporting field (including the American Meteorology Society (AMS) and Environmental Protection Agency (EPA)). Likewise, best available estimates for model input (such as source terms) shall be used. This distance shall be reevaluated at least every five years, using latest techniques and information, unless petitioned earlier by the NRC, another professional group (such as the EPA or AMS), or the general public. Generally, the models shall be at least as complex and realistic as described in NUREG–0654 for Class B models. Meteorological submodels shall consider all factors which can have an effect on the impact of the release of radioactive materials to the environmental. The exact size and configuration of the EPZ surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as power plant specifics (type, power output, age, etc.), local meteorology (including data from both the power plant site and local national weather service), demography, topograpy, land characteristics, access routes, jurisdictional boundaries, and proximity of seats of local government."

III. Conclusion

The petitioner concludes that the officials responsible for assuring the health and safety of the public should be aware that current techniques have not been used in establishing the EPZ and that serious questions exist regarding some of the assumptions under which it was established. The obvious implication, the petitioner further concludes, is that the calculations and the resulting 10-mile EPZ are therefore suspect and uncertain for purposes of protecting the health and safety of the public.

The petition includes additional justification and support for the requested amendment not included in this Federal Register notice. Members of the public interested in filing comments on PRM–50–45 can obtain a copy of the petition and supporting docmentation by writing to the address noted above.

This petition is similar in the issues it raises to petition for rulemaking PRM–50–31 submitted to NRC on December 21, 1981, by the Citizens' Task Force of Chapel Hill, North Carolina. That petition requested that the 10-mile emergency planning zone be expended into a 20-mile planning zone. It was published for public comment in the Federal Register on March 24, 1982 (47 FR 12839), and 74 comments were received. That petition and comments are available at the NRC Public Document Room at 1717 H Street, NW, Washington, DC.

Dated at Washington, DC, this 30 day of September 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission

[FR Doc. 86–22597 Filed 10–3–86; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF ENERGY

10 CFR Part 862

[Docket No. DP–RM–86–101]

Proposed Restrictions on Aircraft Landing and Air Delivery at Department of Energy Nuclear Sites

AGENCY: Defense Programs, DOE.

ACTION: Notice of proposed rulemaking and hearings.

SUMMARY: The Department of Energy (DOE) proposes to issue regulations prohibiting the landing of aircraft on lands or waters of nuclear sites subject to the jurisdiction, administration or in the custody of the DOE. Exceptions include aircraft (1) on official business of the Federal Government, (2) on official business of a state or local law enforcement agency, with prior notification to DOE if possible or, (3) forced to land due to an emergency beyond the control of the operator, with prior notification to DOE if possible.

The proposed regulations would also prohibit airdrops by parachute or other means of persons, cargo, or objects from aircraft on DOE nuclear sites. Exceptions, with prior notification to DOE if possible, include (1) emergencies involving the safety of human life or (2) threat of serious property loss. Retrieving persons or objects from DOE nuclear sites would be prohibited by the proposed regulations.

The proposed regulations would establish a voluntary minimum altitude of 2,000 feet above the terrain subject to the regulations for all aircraft. This would complement more stringent FAA restrictions or prohibitions regarding airspace over certain DOE property. In all cases, the more stringent FAA restriction or prohibit would take precedence over this voluntary minimum attitude. A radio frequency for emergency and non-emergency communication between aircraft and DOE nuclear sites would be designated. the UNICOM frequency would be that radio frequency pending FAA designation of a dedicated frequency.

DATES: Written comments must be received no later than 4:00 p.m. November 20, 1986, to ensure their consideration.

Public hearings will be held as follows:

Las Vegas, Nevada: Beginning at 9:30 a.m. on October 28, 1986

Washington, DC: Beginning at 9:30 a.m. on October 30, 1986

Requests to speak at either hearing must be received no later than 4:00 p.m. on October 22, 1986.

Eight copies of speakers statements are requested to be submitted at the appropriate DOE hearing location.

ADDRESSES: Written comments should be submitted to Eric A. Rojo, Department of Energy, Defense Programs, DP–30, Germantown, Washington, DC 20545, (301) 353–5133.

Requests to speak at either of the two hearings and requests for a list of speakers should be submitted to: Eric A. Rojo, Department of Energy, Defense Programs, DP–30, Germantown, Washington, DC 20545, (301) 353–5133.

The hearing locations are:

Las Vegas, Nevada: The Foley Federal Building, 300 Las Vegas Blvd., South Second Floor Conference Room, Las Vegas, Nevada 89101

Washington, DC: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Room 1E–245 (1st Floor, E Corridor), Washington, DC 20585

Copies of the transcripts of the public hearings and the written public comments received may ve viewed and/or obtained from the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6020, 9:00 a.m.—4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Eric A. Rojo, Department of Energy, Defense Programs, DP–30, Germantown, Washington, DC 20545, (301) 353–5133

Jo Ann Williams, Department of Energy GC–31, Room 6B–256, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6975

SUPPLEMENTARY INFORMATION:

I. Background
II. List of Major DOE Nuclear Sites
III. Procedural Requirements
IV. Opportunity for Public Comment

I. Background

The DOE has the responsibility for the design, development, and production of the Nation's nuclear weapons. DOE also has the responsibility for protecting and defending the highly valuable and hazardous resources housed at these facilities. The proposed establishment of a security policy regarding aircraft landing and air delivery is one segment of a DOE comprehensive effort to enhance the protection of these vital nuclear weapons research, development, and production facilities. This notice is also in response to the concerns for greater airspace security at these facilities expressed by the National Security Council, the Congress, and the General Accounting Office.

These proposed regulations are modeled after regulations of the National Park Service regarding aircraft and air delivery at 36 CFR 2.17.

II. List of Major DOE Nuclear Sites

These proposed regulations would apply to DOE nuclear sites including, but not limited to, those set forth in the chart below.

DOE Site and Location

Site	Location
DOE Headquarters, Forrestal Building.	Washington, D.C.
DOE Headquarters, Germantown Facility.	Germantown, MD.
Idaho National Engineering Lab and Associated Facilities.	Idaho Falls, ID.
West Valley Demonstration Project.	West Valley, NY.
Nevada Test Site	Mercury, NV.
Portsmouth Gaseous Diffusion Plant.	Piketon, OH.
Goodyear Aerospace	Akron, OH.
National Lead	Fernald, OH.
Oak Ridge National Laboratory and Associated Facilities.	Oak Ridge, TN.
Pantex	Amarillo, TX.
Los Alamos National Laboratory.	Los Alamos, NM.
Rocky Flats Plant	Golden, CO.
Kansas City Plant	Kansas City, MO.
Mound Laboratory	Miamisburg, OH.
Sandia National Laboratory	Tonopah, NV.
Sandia National Laboratory	Albuquerque, NM.
Pinellas Plant	St. Petersburg, FL.
Ames Laboratory	Ames, IA.
Battelle Project Management Division.	Columbus, OH.
Brookhaven National Laboratory.	Upton, NY.
Argonne National Laboratory	Lemont, IL.
New Brunswick Laboratory	Chicago, IL.
Bettis Atomic Power Laboratory.	West Mifflin, PA.
Bettis Atomic Power Laboratory.	Schenectady, NY.
Knolls Atomic Power Laboratory.	Windsor, CT.
Kesselring Site	West Milton, NY.
Hanford Site	Richland, WA.
Energy Technology Engineering Center.	Canoga Park, CA.
Lawrence Berkeley Laboratory.	Berkeley, CA.
Lawrence Livermore National Lab.	Livermore, CA.
Lawrence Livermore National Lab.	Tracy, CA.
Savannah River Plant	Aiken, SC.

III. Procedural Requirements

A. Executive Order 12291

The Proposed Rule was reviewed under Executive Order 12291 (46 FR 13193, February 19, 1981). DOE has concluded that the rule is not a "major rule" under the Executive Order. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State, Federal, or local Government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to section 3(c)(3) of Executive Order 12291, this Proposed Rule was submitted to the Director of OMB for a 10-day review. The Director has concluded his review under that Executive Order.

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B. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601 et seq.) requires, in part, that an agency prepare a regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and an explanation of that determination in the Federal Register. The Proposed Rule deals with a security policy regarding aircraft landing and air delivery. The economic impact on small business is negligible. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that the Proposed Rule will not have a significant economic impact on a substantial number of small entities.

C. Environmental Review

DOE has determined that the Proposed Rule is not a major Federal action with significant environmental impact, and therefore does not require preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.)

D. Paperwork Reduction Act

The Proposed Rule does not impose a collection of information requirement; therefore, it is not necessary to submit it to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

IV. Opportunity for Public Comment

A. Written comments—Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposal set forth in this notice. Comments should be submitted to the address given in the beginning of this notice. The envelope and documents submitted should be identified with the designation "Proposed Restrictions on Aircraft Landing and Air Delivery. Docket Number DP-RM-86-101.

All comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action on this rule.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as one copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. This procedure is set forth in 10 CFR 1004.11 (44 FR 1906, January 8, 1979).

B. Public hearings—DOE will hold two public hearings on the proposed rule in the cities and on the dates specified at the beginning on this notice.

Any person who has an interest in the proposed regulation or who is a representative of a group or class or persons which has an interest in it may make a request for an opportunity to make an oral presentation. Such a request to speak at the hearings should be directed to the address given in the addresses section of this notice and must be received by 4:00 p.m. local time, on the date specified in the dates section.

The person making the request should indicate which hearing they wish to attend and should describe briefly his or her interest in the proceeding. The person should also provide a phone number where the person may be reached. Those persons requesting an opportunity to provide testimony should bring eight copies of their statement to the hearing. If a person cannot provide eight copies, he or she should mention this in the letter requesting an opportunity to speak so that alternate arrangements can be made in advance of the hearing.

C. Conduct of Hearing—DOE reserves the right to schedule oral presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation will be limited to 20 minutes.

A DOE official will preside at each hearing. This will not be a judicial or evidentiary type hearing. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all the information available to DOE.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

D. Transcript of Hearing—A transcript of each hearing will be made and the entire record of the hearings, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office at the address given in the beginning of this notice, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal Holidays. Any person may purchase a copy of the transcript from the reporter.

E. Cancellation of Hearing—If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the Federal Register. Notice of cancellation will also be given to all persons scheduled to speak at the hearing.

List of Subjects in 10 CFR Part 862

Security measures, Penalties, Nuclear energy, Aircraft.

For reasons set out in the preamble, a new 10 CFR Part 862 of the Code of Federal Regulations is proposed to be issued as set forth below.

Issued in Washington, DC, this 30th day of September, 1986

Donald Ofte,

Principal Deputy Assistant Secretary for Defense Programs

Part 862 would be added to 10 CFR Chapter III to read as follows:

PART 862—RESTRICTIONS ON AIRCRAFT LANDING AND AIR DELIVERY AT DEPARTMENT OF ENERGY NUCLEAR SITES

Sec.
862.1 Purpose.
862.2 Scope.
862.3 Definitions.
862.4 Prohibitions and penalties.
862.5 Voluntary minimum altitude.
862.6 Radio frequency.

Authority: 42 U.S.C. 2201.b.,i.; 2278.a.

§ 862.1 Purpose.

The purpose of this part is to set forth Department of Energy, hereinafter "DOE", security policy regarding aircraft and air delivery on nuclear sites under the jurisdiction of DOE.

§ 862.2 Scope.

This part applies to all persons entering or otherwise within the boundaries of lands or waters subject to the jurisdiction, administration, or in the custody of the DOE.

§ 862.3 Definitions.

Aircraft. A device that is used or intended to be used for flight in the air, including powerless flight.

Boundary. A delineation of Federal interest on a map:

(1) Authorized by Congress, or

(2) Published pursuant to law in the Federal Register, or

(3) Filed or recorded by a State or political subdivision in accordance with applicable law.

Downed aircraft. An aircraft that cannot become airborne as a result of mechanical failure, fire, or accident.

§ 862.4 Prohibitions and penalties.

(a) The following are prohibited:

(1) Operating or using aircraft on lands or waters.

(2) Delivering a person or object by parachute, helicopter, or other airborne means, except in emergencies involving public safety or serious property loss. If possible, notification shall be given to DOE prior to any emergency delivery.

(3) Retrieving a person or object by helicopter or other airborne means.

(b) The provisions of this section, other than paragraph (c) of this section, shall not be applicable to official business of the Federal government; landing due to circumstances beyond the cotrol of the operator with prior notification to DOE, if possible; or official business of a state or local law enforcement agency with prior notification to DOE, if possible.

(c)(1) Except as provided in paragraph (c)(3) of this section, the owners of a downed aircraft shall remove the aircraft and all component parts thereof in accordance with procedures established by the cognizant DOE Manager of Operations. In establishing removal procedures, the Manager of Operations is authorized to:

(i) Establish a reasonable date by which aircraft removal operations must be completed;

(ii) Determine times and means of access to and from the downed aircraft; and

(iii) Specify the manner or method of removal.

(2) Failure to comply with procedures and conditions established under paragraph (c)(1) of this section is prohibited.

(3) The Manager of Operations may waive the requirements of paragraph (c)(1) of this section or prohibit the removal of downed aircraft, upon a determination that:

(i) The removal of a downed aircraft would pose an unacceptable safety or security risk;

(ii) The removal of a downed aircraft would result in extensive resource damage or an unacceptable disruption of DOE activities; or

(iii) The removal of a downed aircraft is impracticable or impossible.

(d) The use of aircraft shall be in accordance with regulations of the Federal Aviation Administration. Such regulations are adopted as a part of these regulations.

(e) The operation or use of hovercraft is prohibited.

(f) Any person who violates these regulations may be subject to criminal penalties under section 223 or 229 of the Atomic Energy Act (42 U.S.C. 2273, 2278a.).

§ 862.5 Voluntary minimum altitude.

In addition to complying with any applicable FAA prohibitions or restrictions, all aircraft are requested to maintain a minimum altitude of 2,000 feet above the terrain subject to these regulations. Any applicable FAA prohibition or restriction takes precedence over this voluntary minimum altitude.

§ 862.6 Radio frequency.

Aircraft may communicate with any DOE installation for emergency or non-emergency purposes by radio on the appropriate UNICOM frequency.

[FR Doc. 86-22615 Filed 10-3-86; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; Doc. No. 0580]

Equal Credit Opportunity; Intent To Preempt Wisconsin Law

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make preemption determination.

SUMMARY: The Board is publishing for comment a proposed determination that certain provisions in Wisconsin Statutes Chapter 766 are inconsistent with the Equal Credit Opportunity Act or Regulation B. Any provision of state law that is inconsistent with the federal law, unless more protective, is preempted. (A State law is inconsistent, for example, if it requires or permits a practice or act prohibited by the Federal act or regulation.) The act and regulation prohibit discrimination in any credit transaction on the basis of race, color, national origin, religion, sex, marital status, age, receipt of income from public assistance programs, or good faith exercise of any rights under the Consumer Credit Protection Act.

DATE: Comments must be received on or before December 2, 1986.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the guard station (Attention: Mail Services) at the courtyard entrance to the Eccles Building, on 20th Street between C Street and Constitution Avenue, NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. 0580. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Brueger, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-2412, or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Board has been asked to determine whether certain provisions of Wisconsin law are inconsistent with, and therefore preempted by, the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1601 *et seq.*, and Regulation B (12 CFR Part 202). The requests came from an oil company creditor and a trade association of financial services companies. These requests are available for public inspection and copying, subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261).

Section 705(f) of the ECOA authorizes the Board to determine whether an inconsistency exists between a provision of the act and a state law relating to credit discrimination. If, in addition to being inconsistent, a state law provides less protection for credit applicants than does the Federal law, that State law is preempted.

This notice of proposed preemption, based on a review of the Wisconsin provisions, is issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR Part 265).

(2) Standards for and Effect of Preemption Determination

Under the provisions of the Equal Credit Opportunity Act (section 705) and implementing Regulation B (§ 202.11), state law provisions that are inconsistent with the requirements of the act and the regulation are preempted. If the state law is more protective of an applicant, however, that state law is not inconsistent for Regulation B purposes. Section 202.11 sets forth some specific factors deemed to result in an inconsistency. A State law is inconsistent with the act and the regulation and therefore preempted if it, for example, requires or permits a practice or act prohibited by the act or regulation (§ 202.11(b)(1)(i)).

Based on comparison of the federal and State laws, the Board has made a preliminary determination that certain provisions in the Wisconsin law are inconsistent with the federal law. If the

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Board ultimately adopts the proposed determination, the State law will be preempted, but only to the extent of the inconsistency. Creditors would then be barred from following the procedures outlined in the affected Wisconsin law section. Specifically, creditors would be barred from terminating accounts based upon a nonapplicant spouse's request, as presently allowed. However, Wisconsin could continue to require creditors to notify nonapplicant spouses of an extension of credit that may encumber marital property.

(3) Discussion of Wisconsin Law and Proposed Determination

Preemption determinations generally are limited to those provisions of state law identified in the request for a Board determination. At the Board's discretion, however, other state provisions that may be affected by the federal law are also addressed. Wisconsin Statutes §§ 766.56(3)(b), 766.565(5), and 766.56(2)(d) are the primary focus of this inquiry. The language of those Wisconsin provisions is set forth below, along with Board's construction of them and an analysis of those provisions in light of Regulation B.

Section 766.56(3)(b)—Credit transactions with married persons.

This section reads as follows:

Except as provided in paragraph (c), if a creditor extends credit to a spouse in a credit transaction governed by Chs. 421 to 427 and the Extension of credit may result in an obligation described under § 766.55(2)(b) [a marital or family purpose obligation], the creditor shall give the nonapplicant spouse written notice of the extension of credit before any payment is due. . . . Notice is considered given on the date it is mailed to the address of the nonapplicant spouse provided to the creditor by the applicant spouse. . . .

Chapters 421 to 427 referred to in this section comprise the Wisconsin Consumer Act, and the term "extends credit" here refers to open-end credit plans (as stated in § 766.56(3)(a)). Thus, this subsection requires that whenever an open-end consumer credit plan is established for an individual who is married, and the possibility exists that credit extended under the plan may result in marital or family purpose obligations, the creditor must give written notice of the credit extension to the nonapplicant spouse. Because all obligations incurred by the spouses during the course of a marriage are presumed under the statute to be marital or family purpose obligations (§ 766.31(1)), this notice requirement appears to apply to all open-end consumer credit plans established for married persons. An exception to this notice requirement is possible only if the nonapplicant spouse already has knowledge of the credit extension or waives the right to notice.

The notice requirement of § 766.56(3)(b) appears to have been included for the purpose of enabling the nonapplicant spouse to exercise the termination right outlined in § 766.565(5), discussed below. In addition, § 766.56(3)(b) implicitly requires the creditor to ask about an applicant's marital status in every application, and to ask for the name and address of the spouse if the applicant is married, in order to comply with the notice requirement.

Section 766.565(5)—Relationship to consumer act.

This section states that:

The spouse of a person who establishes an open-end credit plan that may result in an obligation described under § 766.55(2)(b) may terminate the plan by giving written notice of termination to the creditor. A writing evidencing an open-end credit plan may include a provision that authorizes the creditor to declare the account balance due and payable upon receipt of notice of termination, notwithstanding § 425.103 or § 425.105. Notice of termination does not affect the liability of the incurring spouse or the availability of the incurring spouse's interest in marital property or other property of that spouse to satisfy obligations incurred under the open-end credit plan, both before and after the notice of termination. Subject to the limits under § 422.4155(1), the terminating spouse's interest in marital property continues to be available under § 766.55(2)(b) to satisfy obligations incurred in the interest of the marriage or family both before and after notice of the termination. A creditor may consider in its evaluation of subsequent applications for credit the fact that a prior open-end credit plan offered by the creditor and entered into by the applicant spouse has been terminated under this subsection.

This section grants the nonapplicant spouse the unilateral right to terminate an open-end credit plan whenever the conditions of the credit extension warrant notice to the nonapplicant spouse under § 766.56(3)(b).

Under § 766.565(5), any consumer credit applicants who are married are affected by this termination provision unless they can somehow guarantee that no marital or family purpose obligation will be incurred under the credit plan. Given the statutory presumption that all obligations incurred during the course of a marriage are marital or family purpose obligations, it would be necessary to establish by some special means that no marital or family purpose obligation could be incurred by the credit extension. The use of the phrase "may result" in the first sentence of § 766.565(5), moreover, suggests the legislative intent that if there is even a possibility that a marital or family purpose obligation could be incurred, the nonapplicant spouse has the right to terminate the account. The result is that whenever a married applicant applies for and is granted open-end credit, the credit plan can be terminated once the applicant's spouse receives the statutory notice of a credit extension.

The legislative council's notes to this section indicate that § 766.565(5) was intended to supplement an existing provision of Wisconsin law, § 422.4155. The latter provision allows a person with joint liability under an open-end credit plan to terminate his or her own interest in the account. In contrast, § 766.565(5) appears to go further, as discussed below, in that it allows the applicant's spouse, who has not signed the contract, to terminate and to do so with respect to the entire account.

Section 766.565(5) also permits the creditor to consider in a subsequent evaluation process the fact that an applicant's account has been closed by virtue of the spouse's unilateral termination. The clear implication is that the creditor may use a prior termination as the basis for refusing to consider opening a new account for the applicant.

Section 766.56(2)(d)—Credit transactions with married persons.

This section reads as follows:

When a person applies for credit, the creditor may inquire as to whether the person is married, unmarried or separated, under a decree of legal separation.

Under § 766.56(2)(d), a creditor is allowed to inquire, with regard to any credit application, whether the applicant is "married, unmarried or separated, under a decree of legal separation." It is unclear from the statute whether in framing the inquiry the creditor must use the specific statutory language.

Regulation B Analysis

The Board has made a comparison of these three provisions—Wisconsin Statutes §§ 766.56(3)(b), 766.565(5) and 766.56(2)(d)—to relevant provisions of Regulation B. Based on the Board's construction and understanding of what these Wisconsin provisions require or permit, several inconsistencies with the federal law appear to exist. Where inconsistencies would result in less protection for an applicant under the Wisconsin law than under Regulation B, the state law will be preempted.

Section 202.5—Rules concerning taking of applications.

There are several potential conflicts between the Wisconsin law and provisions of § 202.5 of Regulation B with respect to limitations on inquiries made in the application process. Section 202.5(d) contains a prohibition against inquiring into an applicant's marital status in applications for individual unsecured credit, and § 202.5(c) limits requests for information about a nonapplicant spouse. On the other hand, under § 766.56(2)(d) of the Wisconsin law, a creditor is allowed to inquire about marital status in any credit application; and, under § 766.56(3)(b), creditors would have to both inquire into the applicant's marital status and solicit the name and address of the applicant's spouse, in order to comply with the State law requiring notice to the nonapplicant spouse.

These particular conflicts are nonexistent, however, if Wisconsin is deemed to be a community property State. Regulation B provides an exception in community property States applicable both to inquiries about marital status and to information about a spouse (§ 202.5(c)(2)(iv) and (d)(1)).

Several factors point to classifying Wisconsin as a community property State in light of Wisconsin Statutes Chapter 766. Wisconsin's system of property rights incorporates various elements of a community property system. Each spouse is a present owner of an undivided one-half interest in any property acquired by the spouses during the marriage. Each has equal management and control of all marital property (unless the property is titled, in which case the rules that govern will depend on how title is worded). For purposes of applying for credit, one spouse alone may manage and control all the marital property. The Wisconsin scheme also utilizes a presumption common to other community property systems—that all debts incurred during the marriage are communal, and that as a result, each spouse is responsible for such debts in the sense that satisfaction can be had from the community property. Finally, there is the express legislative intent that Wisconsin be considered a community property State, as evidenced by § 766.001(2) of the Wisconsin law. That provision reads: "It is the intent of the legislature that marital property is a form of community property."

In sum, the Board believes there is strong support for viewing Wisconsin as a community property State for purposes of Regulation B. It would be permissible, therefore, for creditors to obtain information about the nonapplicant spouse, as allowed under § 202.5(c)(2)(iv) of Regulation B, and to ask about marital status as permitted by § 202.5(d)(1).

There remains the question of the language used in Wisconsin Statutes § 766.56(2)(d) regarding the creditor's marital status inquiry. Under § 202.5(d)(1) of Regulation B, the creditor is only allowed to frame a marital status inquiry in terms of "married," "unmarried," and "separated." If the intent of the Wisconsin provision (which uses the wording "separated, under a decree of legal separation") is merely to make clear the nature of the permissible inquiry but not to require that any particular language be used, the provision is not inconsistent because a creditor is able to comply both with the Wisconsin and with the Federal law. Based on this construction, the Wisconsin law on marital status inquiries would not be preempted by Regulation B.

Section 202.7—Rules concerning extensions of credit.

Section 202.7(a) of Regulation B prohibits creditors from refusing to grant an individual account to a creditworthy applicant on the basis of the applicant's marital status. Under § 766.565(5), the nonapplicant spouse is able to unilaterally terminate an account, leaving the applicant unable, in effect, to get an open-end extension of credit from that creditor. Similarly, the creditor is permitted to consider in the evaluation process a prior termination by the spouse—and to refuse on that basis to open a new account for the applicant. The Wisconsin provision may operate to effectively nullify the right of a creditworthy married applicant to have individual credit extended. It is both inconsistent with Regulation B, because it ". . . permits a practice or act prohibited by the act or this regulation" (§ 202.11(b)(1)(i)), and less protective because it can result in a restriction of a creditworthy applicant's access to credit.

Section 202.11—Relation to State law.

Section 202.11(d) of Regulation B (which implements section 705(b) of the ECOA) provides that the preemption provisions of the federal law do not alter or annual any provisions of "state property laws." The Board has considered whether Wisconsin Statutes § 766.565(5) might fall within the ambit of § 202.11(d); if so, it would be allowed to stand, notwithstanding its impact on married applicants.

After appropriate review and analysis, the Board has determined that while § 766.565(5) is contained within marital property provisions, this section does not constitute property law, but merely establishes a relationship to provisions in the Wisconsin Consumer Act governing the liability that can be imposed on a nonapplicant spouse. Section 766.565(5) is therefore not entitled to special deference for purposes of preemption.

Effect of Preemption

If the proposed determination of preemption is adopted in final form, creditors in Wisconsin would be barred from terminating the account in response to a request from the nonapplicant spouse. A creditor could, however, continue to send the notice required by § 766.56(3)(b), which makes no mention of the right to terminate the account. Further, because the Board's proposed preemption of § 766.565(5) goes only to the right of unilateral termination, it would not affect the rest of § 766.565(5) with respect to the applicability of § 422.4155(1), the section that presently governs the availability of the nonapplicant spouse's interest in marital property to satisfy obligations incurred under the open-end plan, and the availability of the applicant's interest in the marital property to satisfy obligations.

(4) Comment Requested

Interested persons are invited to submit comments regarding the proposed finding that the termination provision of Wisconsin Statutes § 766.565(5) is preempted by Regulation B. After the close of the comment period and analysis of the comments received, notice of final action will be published in the **Federal Register.**

List of Subjects in 12 CFR Part 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Sex discrimination, Women.

Board of Governors of the Federal Reserve System, September 29, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-22523 Filed 10-3-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM-20; Notice No. SC-86-2-NM]

Special Conditions: Fokker B.V. Model F27 MK050 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

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ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Fokker B.V. Model F27 MK050 airplane. The airplane will have novel or unusual design features associated with an automatic takeoff power control system (ATPCS) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the safety standards which the Administrator finds necessary, because of these design features, to establish a level of safety equivalent to that established in the regulations.

DATE: Comments must be received on or before November 20, 1986.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-20, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-20. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James Walker, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-20." The postcard will be date/time stamped, and returned to the commenter.

Background

On July 31, 1985, Fokker B.V., 1117 ZJ Schiphol, the Netherlands, made an application to the Federal Aviation Administration (FAA), for an amended Type Certificate (TC) for the Fokker F27 MK050 airplane, which will be equipped with two Pratt & Whitney Model PW-124 engines having an ATPCS installed.

The Fokker F27 airplane, Model F27 MK050 is a high wing, pressurized transport category airplane with a certificated takeoff gross weight of 41,865 pounds (optional 45,900 pounds). The airplane has a maximum permissible altitude of 25,000 feet and a total occupancy of 59 persons. The airplane will be equipped with two Pratt and Whitney of Canada Model PW-124 engines each rated at 2,400 shaft horsepower for maximum takeoff power at sea level standard day and Dowty-Rotol 6-bladed constant speed propellers. The powerplant installation will incorporate an ATPCS. The ATPCS is designed to automatically increase the power on the operating engine to the maximum installed power approved for the takeoff ambient conditions, in the event an engine fails during the takeoff.

Special conditions are necessary to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate and the certification basis for the airplane, and to support a finding by the Administrator that no feature or characteristic of the airplane with the ATPCS installed makes it unsafe for the category in which certification is requested. These special conditions specify limits on the maximum power increment which may be applied to the operating engines by the ATPCS, prescribe system reliability and status monitoring requirements, require provisions for manual selection of the maximum takeoff power approved for the airplane under existing conditions, prohibit approval of the system if the automatic or manual application of maximum takeoff power would result in an engine operating limit being exceeded, and require the installation of an independent engine failure warning system if the inherent characteristics of the airplane do not provide a clear warning to the crew.

Type Certification Basis

The proposed type certification basis for the Fokker F27 MK050 airplane with the ATPCS installed is:

Part 25 of the FAR dated February 1, 1965, as amended by Amendments 25-1 through 25-58, 25-56 and 25-59, except for the following sections which will be certified to earlier amendments as noted: § 25.109, Amendment 25-41; § 25.931 (not applicable, § 25.931 was added by Amendment 25-23); § 25.671(c)(3), Amendment 25-22; § 25.701, Amendment 25-22 and § 25.1309, Amendment 25-22. The automatic flight control system will comply with § 25.1309 as amended by Amendment 25-56.

Part 36 of the FAR with amendments in effect at the time the type certificate is issued.

Special Federal Aviation Regulations (SFAR) 27 with amendments in effect at the time the type certificate is issued.

Equivalent safety findings for § 25.777(e) (Flap handle location), § 25.781 (Flap handle shape); § 25.729(e)(4) (Landing gear position indicator and warning device) and these special conditions proposed for the automatic takeoff power control system and any exemptions that may be developed and issued for this airplane series.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions for the Fokker F27 MK050 airplane equipped with an automatic takeoff power control system (ATPCS).

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1346, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

A. *General*—With the ATPCS and associated systems functioning normally as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without

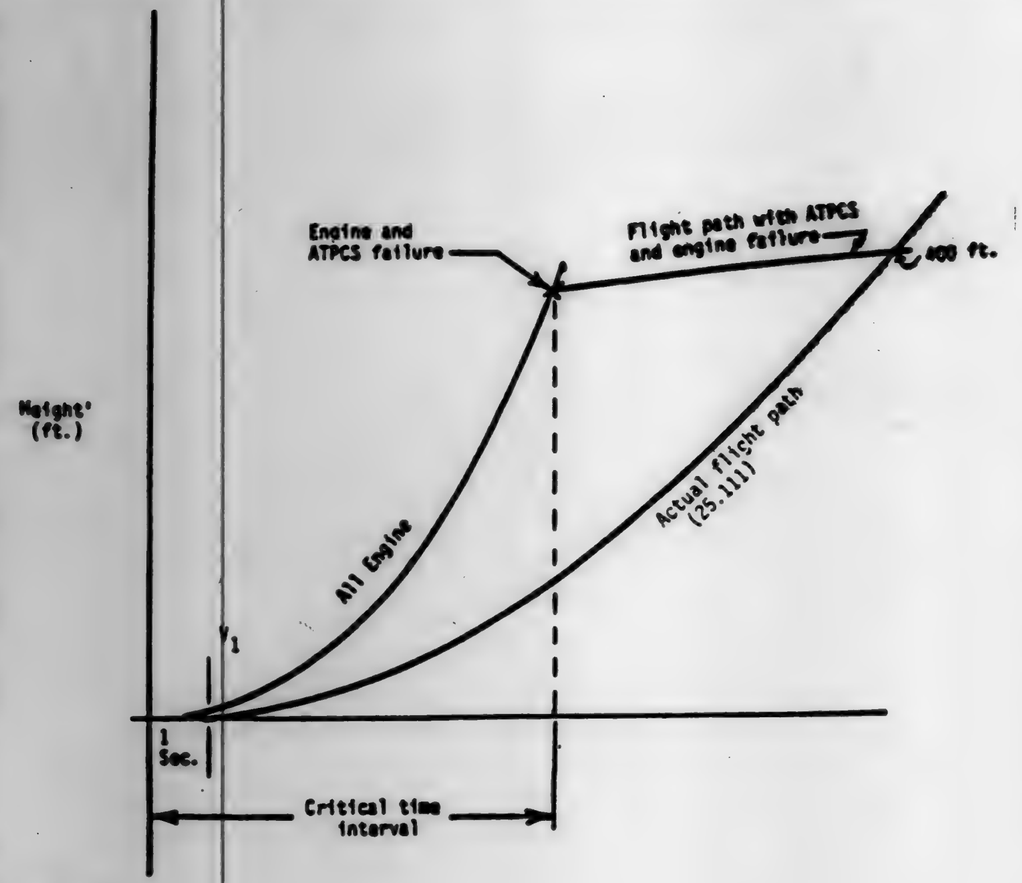
requiring any action by the crew to increase power.

B. *Definitions*—(1) *ATPCS.* An ATPCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled power increase, and furnish cockpit information on system operation.

2. *Critical time interval.* When conducting an ATPCS takeoff, the critical time interval is between V_1 minus 1 second and a point on the minimum performance, all-engine path where, assuming a simultaneous engine and ATPCS failure, the resulting minimum flight path thereafter intersects the Part 25 required actual flight path at not less than 400 feet from the takeoff surface. This definition is shown in the following graph.

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3. *Takeoff power.* Notwithstanding the definition of "takeoff power" in Part 1 of the FAR, "takeoff power" means the horsepower obtained from each initial power setting approved for takeoff under these special conditions.

C. *Performance requirements*—The applicant must comply with the following performance and reilability requirements.

1. An ATPCS system failure during the critical time interval must be shown to be improbable.

2. The concurrent existence of an ATPCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

3. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATPCS system functioning.

D. *Power setting*—The initial takeoff power set on each engine at the beginning of the takeoff roll may not be less than:

1. Ninety percent (90%) of the power level set by the ATPCS (the maximum takeoff power approved for the airplane under existing conditions);

2. That required to permit normal operation of all safety related systems and equipment dependent upon engine power or power position; or

3. That shown to be free of hazardous engine response characteristics when power is advanced from the initial takeoff power level to the maximum approved takeoff power.

E. *Powerplant controls*—1. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATPCS system, including associated systems, may cause the failure of any pererplant funciton necessary for safety.

2. The ATPCS must be designed to:

a. Apply power on the operating engine, following an engine failure during takeoff, to achieve the selected takeoff power without exceeding engine operating limits;

b. Permit manual decrease or increase in power up to the maximum takeoff power approved for the airplane under existing conditions through the use of the power lever, except that for aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of power controlled by the power levers in the event of an ATPCS failure. In this case, the means must be located on or forward of the power levers, must be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and must meet the requirements of § 25.777, paragraphs (a), (b), and (c);

c. Provide a means to verify to the flightcrew prior to takeoff that the ATPCS is in a condition to operate; and

d. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

F. *Powerplant instruments*—In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATPCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATPCS must be provided to give the pilot a clear warning of any engine failure during takeoff.

Issued in Seattle, Washington, on September 24, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22508 Filed 10-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWA-61]

Proposed Alteration and Establishment of VOR Federal Airways; Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V-312, V-6, V-408, V-93, V-3, V-147 and V-457 and establish new Federal Airway V-605. This proposal is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

DATE: Comments must be received on or before November 12, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-61, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-61." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC. 20591, or by calling (202) 267-3484. Communications must

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identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-312, V-6, V-408, V-93, V-3, V-147 and V-457 and establish new Federal Airway V-605. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. The airway actions proposed are part of this plan. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-312 [Amended]

By removing the words "Sea Isle, NJ, 050° radials." and substituting the words "Kennedy, NY, 148°T(160°M) radials."

V-6 [Amended]

By removing the words "to Broadway, NJ," and substituting the words "Solberg, NJ: INT Solberg 105°T(115°M) and Canarsie, NY, 245°T(256°M) radials; INT Canarsie 245°T(256°M) and LaGuardia, NY 209°T(221°M) radials; to LaGuardia."

V-408 [Revised]

From Baltimore, MD; INT Baltimore 004°T(012°M) and Lancaster, PA, 204°T(213°M) radials; INT Lancaster 204°T(213°M) and Modena, PA, 261°T(270°M) radials; Modena; INT Modena 016°T(025°M) and Pottstown, PA, 196°T(205°M) radials; Pottstown; INT Pottstown 345°T(354°M) and East Texas, PA, 165°T(174°M) radials; East Texas; INT East Texas 050°T(059°M) and Allentown, PA, 230°T(240°M) radials; Allentown; INT Allentown 358°T(008°M) and Lake Henry, PA; Lake Henry; INT Lake Henry 056°T(066°M) and Chester, MA, 256°T(270°M) radials; to Chester.

V-605 [New]

From Gardner, MA; INT Barnes, MA, 265°T(279°M) and Hancock, NY, 091°T(102°M) radials; to Hancock.

V-93 [Amended]

By removing the words "Baltimore; Lancaster, PA;" and substituting the words "Baltimore; INT Baltimore 004°T(012°M) and Lancaster, PA, 204°T(213°M) radials; Lancaster;"

V-3 [Amended]

By removing the words "Solberg, NJ; Carmel, NY;" and substituting the words "Solberg, NJ; INT Solberg 044°T(054°M) and Carmel, NY, 243°T(255°M) radials; Carmel;"

V-147 [Revised]

From Yardley, PA; INT Yardley 294°T(304°M) and East Texas, PA, 124°T(133°M) radials; East Texas; Wilkes-Barre, PA; Elmira, NY; Geneseo, NY; to Rochester, NY.

V-457 [Revised]

From Broadway, NJ; Lancaster, PA; Westminster, MD; to Martinsburg, WV.

Issued in Washington, DC, on September 26, 1986.

O.E. Falsetti

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-22507 Filed 10-3-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 86-AWA-63]

Proposed Alteration of VOR Federal Airways and Jet Routes; Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V-31, V-34, V-164, V-252, V-265 and Jet Route J-77. These proposals are part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

DATE: Comments must be received on or before November 12, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-63, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC. 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or agruments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-63." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC. 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-31, V-34, V-164, V-252, V-265 and Jet Route J-77. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. The airway and jet route actions proposed are part of this plan. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Jet routes.

The Proposed Amendments

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-31 [Amended]

By removing the words "INT Rochester 289° and Kleinburg, ON, Canada, 133° radials;" and by substituting the words "INT Rochester 279°T(286°M) and Geneseo, NY, 304°T(313°M) radials; INT Geneseo 304°T(313°M) and Kleinburg, ON, Canada, 133°T(142°M) radials;"

V-34 [Amended]

By removing the words "From Kleinburg, ON, Canada, INT Kleinburg 113° and Rochester, NY, 309° radials; Rochester;" and by substituting the words "From Rochester, NY;" and by removing the words "The airspace within Canada and R-5207 is excluded."

V-164 [Amended]

By removing the words "From Toronto, ON, Canada, via Toronto 172° and Buffalo, NY, 294° radials;" and by substituting the words "From Kleinburg, ON, Canada, INT Kleinburg 133°T(142°M) and Buffalo, NY, 336°T(346°M) radials;"

V-252 [Amended]

From Kleinburg, ON, Canada; INT Kleinburg 133°T(142°M) and Geneseo, NY, 304°T(313°M) radials; Geneseo; Binghamton, NY; to Hugenot, NY. The airspace within Canada is excluded.

V-265 [Amended]

By removing the words "Dunkirk, NY." and by substituting the words "Dunkirk, NY; INT Dunkirk 325°T(332°M) and Toronto, ON, Canada, 167°T(196°M) radials; Toronto. The airspace within Canada is excluded."

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. § 75.100 is amended as follows:

J-77 [Revised]

From Boston, MA; Barnes, MA; Sparta, NJ; Broadway, NJ; Pottstown, PA; to Westminster, MD.

Issued in Washington, DC, on September 29, 1986.

O.E. Falsetti,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-22508 Filed 10-3-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 60958-6158]

Antidumping and Countervailing Duties; de minimis Dumping Margins and de minimis Countervailable Subsidies

AGENCY: International Trade Administration; Department of Commerce.

ACTION: Proposed rule and request for public comments.

SUMMARY: The International Trade Administration proposes to amend the regulations on antidumping duties (19 CFR Part 353) and countervailing duties (19 CFR Part 355) to disregard any weighted-average dumping margin and any net subsidy that is *de minimis*. For this purpose, the proposed rule defines *de minimis* at less than 0.5 percent *ad valorem* or the equivalent.

DATE: Written comments must be received not later than November 20, 1986.

ADDRESS: Address written comments (10 copies) to Gilbert B. Kaplan, Deputy Assistant Secretary for Import Administration, Room B-099, U.S.

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Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:
Stephen J. Powell, Deputy Chief Counsel for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230; (202) 377-1411.

SUPPLEMENTARY INFORMATION:

Background

When the International Trade Administration (ITA) in 1980 promulgated final rules concerning antidumping and countervailing duties (19 CFR Parts 353 and 355, respectively), it did not include a provision for disregarding *de minimis* dumping margins or net subsidies. In practice, however, the ITA has considered weighted-average dumping margins and aggregated net subsidies of less than 0.5 percent *ad valorem* or the equivalent as *de minimis* and has disregarded them.

In *Carlisle Tire and Rubber Co. v. United States*, ——— C.I.T. ———, Slip Op. 86-45 (April 29, 1986), the Court of International Trade held that the ITA must either promulgate a rule in accordance with the notice and comment procedures of the Administrative Procedure Act establishing 0.5 percent as the *de minimis* standard for its determinations, or it must explain the basis for each determination in which it decides that a weighted-average dumping margin below 0.5 percent is *de minimis*.

Accordingly, the ITA is publishing this notice of proposed rulemaking and request for pulbic comments to establish the general rule that a weighted-average dumping margin or an aggregated level of net subsidization of less than 0.5 percent *ad valorem* or the equivalent is *de minimis* and will be disregarded for purposes of the preliminary and final determinations in antidumping and countervailing duty proceedings. The ITA will continue to instruct the Customs Service to assess antidumping duties regardless of the size of the dumping margin on each individual transaction, consistent with its practice since 1980.

2. Description

The proposed rule would add a new § 353.24 to the current antidumping regulations (19 CFR Part 353) and add a new § 355.8 to the current countervailing duty regulations (19 CFR Part 355). These additions are described below.

1. *Section 353.24.* The proposed rule would add a new § 353.24 consisting of three paragraphs.

Paragraph (a) would state that the Secretary will disregard any weighted-average dumping margin that is less than 0.5 percent *ad valorem* or the equivalent. Since 1980 the ITA has consistently applied this standard for *de minimis*.

Paragraph (b)(1) would define "dumping margin" as the amount, by which the fair value or foreign market value exceeds the United States price of the merchandise, as determined by the Secretary. This is the amount of dumping duty that the Secretary instructs the Customs Service to assess on the merchandise under section 751 of the Tariff Act of 1930, as amended (the "Act") (19 U.S.C. 1675).

Paragraph (b)(2) would define "weighted-average dumping margin" as the percentage which the total of all dumping margins, as defined in paragraph (b)(1), comprises of the total U.S. prices for all entries of the merchandise into the United States during the period investigated or reviewed. In fair value investigations, the ITA calculates a weighted-average dumping margin for each company investigate; in administrative reviews, for cash deposit purposes only the ITA calculates a weighted-average dumping margin for each company reviewed. In addition, in fair value investigations the ITA calculates a weighted-average dumping margin for all companies not specifically investigated, and this margin is a weighted average of the weighted-average margins (above *de minimis*) for each company investigated. In administrative reviews, for new firms, that is firms not previously investigated, for cash deposit purposes the ITA uses the highest weighted-average dumping margin for reviewed firms with shipments during the review period. The weighted-average dumping margin is usually expressed as a percentage of U.S. price and, therefore, is sometimes referred to as the *ad valorem* dumping margin. It is the amount used to establish the bond or cash deposit requirement.

Paragraph (c) would state that for the purpose of assessing dumping duties, the Secretary will take into account *de minimis* dumping margins. Therefore, paragraph (a) would not apply to references to the assessment of duties that are found in 19 CFR 353.48, 353.50, and 353.53. Paragraph (c) is intended to clarify that paragraph (a) would apply to the following determinations: preliminary determinations and application of provisional measures described in 19 CFR 353.39, final determinations and deposit requirements described in 29 CFR 353.44, exclusions under 19 CFR 353.45, deposit requirements under 19 CFR 353.48, administrative review determinations (other than assessment determinations) and deposit requirements under § 353.53, and revocation determinations under 19 CFR 353.54.

2. *Section 355.8.* The proposed rule would add a new § 355.8 to 19 CFR Part 355 stating that the Secretary will disregard any aggregate net subsidy, as defined in section 771(6) of the Act (19 U.S.C. 1677(6)), that the Secretary determines is less than 0.5 percent *ad valorem* or the equivalent. Since 1980 the ITA has consistently applied this standard for *de minimis*.

Section 355.8 would apply to the assessment of countervailing duties as well as to all determinations of aggregate net subsidies under 19 CFR 355.28, 355.31, 355.33, 355.38, 355.41, and 355.42.

3. Executive Order 12291

The ITA has determined that the proposed revisions of the current antidumping and countervailing duty regulations in 19 CFR Parts 353 and 355, respectively, are not major rules as defined in section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981) because they will not: (1) Have a major monetary effect on the economy; (2) Result in a major increase in costs or prices; or (3) Have a significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

4. Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small business entities because it does not change existing practices. As a result, an initial Regulatory Flexibility Analysis was not prepared.

5. Paperwork Reduction Act

This rule does not contain a provision for collection of information that is subject to the requirements of the Paperwork Reduction Act.

List of Subjects in 19 CFR Parts 353 and 355

Business and industry, Foreign trade, Imports, Trade practices.

Dated: September 26, 1986.
Gilbert B. Kaplan,
Deputy Assistant Secretary for Import Administration.

PART 353—[AMENDED]

For the reasons stated in the preamble, we propose to amend 19 CFR Part 353 and 355 as follows:

1. The authority citation for 19 CFR Part 353 continues to read as follows:

Authority: 5 U.S.C. 301, and subtitle IV, parts, II, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 2948.

2. A new § 353.24 is added to 19 CFR Part 353, Subpart A, to read as follows:

§ 353.24 De minimis weighted-average dumping margin.

(a) *Disregarding de minimis weighted-average dumping margin.* For purposes of this part, the Secretary will disregard any weighted-average dumping margin, as defined in paragraph (b), that is less than 0.5 percent *ad valorem*, or the equivalent.

(b) *Dumping margin and weighted-average dumping margin defined.* (1) The "dumping margin" is the amount by which the fair value or foreign market value, as applicable, exceeds the United States price, as determined by the Secretary under this part.

(2) The "weighted-average dumping margin" is the result of dividing the sum of the dumping margins determined in an investigation or an administrative review under this part, by the sum of the United States prices calculated in the same investigation or review.

(c) *Assessment of de minimis margins.* For purposes of assessment of a dumping duty, the Secretary will not disregard any *de minimis* dumping margin.

PART 355—[AMENDED]

3. The authority citation for 19 CFR Part 355 continues to read as follows:

Authority: 5 U.S.C. 301: 19 U.S.C. 1303; 19 U.S.C. 2501 note; subtitle IV, parts I, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 2948.

4. A new § 355.8 is added to 19 CFR Part 355 to read as follows:

§ 355.8 De minimis net subsidy disregarded.

For purposes of this part, the Secretary will disregard any aggregate net subsidy that the Secretary determines is less than 0.5 percent *ad valorem*, or the equivalent.

[FR Doc. 86-22594 Filed 10-3-86; 8:45 am]
BILLING CODE 3510-DS-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 84P-0387]

The American Society for Artificial Internal Organs; Petition To Amend Investigational Device Exemption Regulations; Reopening of Comments Period.

AGENCY: Food and Drug Administration.

ACTION: Notice of citizen petition; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the time within which interested persons may submit to FDA comments on a citizen petition submitted by the American Society for Artificial Internal Organs (ASAIO) requesting the agency to amend its investigational device exemption (IDE) regulations. The requested amendments would allow certain limited investigations of significant risk medical devices to be subject to abbreviated IDE requirements.

DATE: Comments by November 21, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 1, 1986 (51 FR 11266), FDA published a notice announcing the agency's receipt from the ASAIO of a citizen petition requesting FDA to amend its IDE regulations (21 CFR Part 812). In that notice, FDA provided a comment period of 90 days (until June 30, 1986). FDA received only a few comments on this notice institutional review boards (IRB's) and other interested persons. Many IRB's meet infrequently and FDA believes that some IRB's were unable to review the notice and submit comments within the 90-day comment period. Therefore, FDA is reopening the comment period on the notice of April 1, 1986. FDA is closing the reopened comment period on November 21, 1986, to coincide with the closing of an extended comment period FDA is providing in a related notice, as shown below.

In the Federal Register of July 25, 1986 (51 FR 26830), FDA published a notice announcing its retrospective review of the IDE regulations and requesting comments, data, and information on these regulations. In that notice, FDA provided a comment period of 60 days (until September 23, 1986). Elsewhere in this issue of the Federal Register, in response to receiving two requests for extension of the comment period, FDA is published a notice extending until November 21, 1986, the comment period on the notice of July 25, 1986.

In accordance with section 520(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(d)) and the agency's administrative practices and procedures regulations (21 CFR Part 10), FDA believes that good cause exists to reopen the comment period to allow further comment period and close the comment period again on November 21, 1986, to provide a total comment period in excess of 90 days.

Interested persons may, on or before November 21, 1986, submit to the Dockets Management Branch (address above) written comments on the ASAIO petition. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 29, 1986.
John M. Taylor,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-22515 Filed 10-3-86; 8:45 am]
BILLING CODE 4160-01-M

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21 CFR Part 812

[Docket No. 86N-0072]

Review of Investigational Device Exemption Regulations; Invitation To Submit Comments, Data, and Information; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice of inquiry; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the time within which interested persons

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may submit to FDA comments, data, and information to assist the agency in assessing the benefits, costs, and need for revision of its investigational device exemption (IDE) regulations.

DATE: Comments, data, and information by November 21, 1986.

ADDRESS: Written comments, data, and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raymond F. Coakley, Jr., Center for Devices and Radiological Health (HFZ–83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 25, 1986 (51 FR 26830), FDA published a notice requesting submission of comments, data, and information on FDA's IDE regulations (21 CFR Part 812) to assist the agency in assessing the benefits, costs, and need for revision of these regulations as part of FDA's retrospective review of regulations. In that notice, FDA provided a comment period of 60 days (until September 23, 1986). In response to receiving requests for extension of this comment period from a professional association and a trade association, FDA is extending the comment period on this notice for 60 days (until November 21, 1986). FDA is closing the extended comment period on November 21, 1986, to match the close of the reopened and extended comment period FDA is providing in a related notice, as shown below.

In the **Federal Register** of April 1, 1986 (51 FR 11266), FDA published a notice announcing the agency's receipt from the American Society for Artificial Internal Organs of a citizen petition requesting FDA to amend its IDE regulations. In that notice, FDA provided a comment period of 90 days (until June 30, 1986). Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice reopening the comment period on the notice of April 1, 1986. FDA is closing the reopened comment period on November 21, 1986.

In accordance with section 520(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(d)) and the agency's administrative practices and procedures regulations (21 CFR Part 10), FDA believes that good cause exists to extend the comment period on the notice of July 25, 1986, to provide a total comment period in excess of 90 days.

Interested persons may, on or before November 21, 1986, submit to the Dockets Management Branch (address above) written comments, data, or information on the retrospective review of the IDE regulations. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 29, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–22514 Filed 10–3–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 120

Reimbursement of the Ute Tribe of the Uintah and Ouray Reservation, Utah

August 21, 1986.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed removal of rule..

SUMMARY: The Bureau of Indian Affairs is publishing a proposed rule that removes 25 CFR Part 120, Reimbursement of the Ute Tribe of Uintah and ouray Reservation, Utah. It has been determined that there is no further need for or applicability of the rule.

DATE: Comments must be received on or before November 5, 1986.

ADDRESSES: Send written comments to Director, Office of Administration, Bureau of Indian Affairs, Room 4143—Main Interior, 1951 Constitution Avenue, NW., Washington, DC 20245: telephone number (202) 343–4174.

FOR FURTHER INFORMATION CONTACT: Mitchell Parks, Division of Accounting Management, Bureau of Indian Affairs, Room 4623, N. Interior, 1951 Constitution Avenue, NW., Washington, DC 20245, telephone number: (202) 343–4594 (FTS 343–4594).

SUPPLEMENTARY INFORMATION: The authority to remove this rule and regulation is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9. This proposed rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8..

This regulation, found at 25 CFR Part 120, Reimbursement of the Ute Tribe of the Uintah and Ouray Reservation, Utah, is being removed because it has been determined that there is no further need for the rule. The rule governed the one-time payment to those persons whose names appeared on the final roll of mixed blood-Indians that was prepared pursuant to Section 8 of the Act of August 27, 1954 (68 Stat. 868) or to their heirs or legatees. Claims for reimbursement were required to be filed not later than September 18, 1973. Final payments were made and no claims or appeals have been filed with the Bureau of Indian Affairs since that date. Therefore, there is no further need for or applicability of this rule.

The Department of the Interior has determined that this rule is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not constitute a major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The Office of Management and Budget has informed the Bureau of Indian Affairs that the information collections contained in this regulation need not be reviewed by them under the Paperwork Reduction Act.

List of Subjects in 25 CFR Part 120

Indians-claims, Indians-judgment funds.

PART 120—[REMOVED]

Accordingly, Part 120 of Chapter 1 of Title 25 of the Code of Federal Regulations is hereby proposed to be removed.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86–22579 Filed 10–3–86; 8:45 am]

BILLING CODE 4310–02–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Public Comment and Opportunity for Public Hearing on a Modification to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment

period and for a public hearing on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments pertain to the establishment and implementation of a bond pool to supplement reduced performance bonding of surface mining operations. The amendments are intended to implement the provisions of Kentucky Senate Bill No. 130 which was approved by OSMRE on July 18, 1986 (51 FR 26002). The proposed rules are also intended to address the requirement at 30 CFR 917.16(c)(1) that prior to implementation of Senate Bill 130, Kentucky must submit to the Director and obtain his approval of regulatory amendments to implement the bill.

This notice sets forth the times and location that the Kentucky program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before November 5, 1986, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on October 31, 1986, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

If a public hearing in held, its location will be: The Harley Hotel 2143 North Broadway, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, 340 Legion Drive, Site 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE Offices and the Office of State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining Reclamation and Enforcement, Room 5315 A, 1100 "L" Street, NW., Washington, DC 20240.

Bureau of Surface Mining Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business ten working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Kentucky State Program

On December 30 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice. Subsequent action concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16 and 917.17.

III. Submission of Program Amendments

On September 5, 1986, Kentucky submitted to OSMRE, pursuant to 30 CFR 732.17, certain revisions to the Kentucky regulatory program. The revisions are intended to implement Kentucky Senate Bill No. 130 (codified at KRS 350.700 through 350.990) which was approved by the Director, OSMRE, on July 18, 1986 (51 FR 26002). The proposed rules are also intended to address the requirement at 30 CFR 917.16(c)(1) which states that Kentucky is required, prior to implementation of Senate Bill 130, to submit to the Director proposed regulations to implement the bill and to receive the Director's approval of the regulations.

To implement Senate Bill 130 (KRS 350.700 *et seq.*), the Natural Resources and Environmental Protection Cabinet has promulgated an emergency regulation, 405 KAR 10:200E. The Cabinet also filed a proposed regulation (405 KAR 10:200) which will be processed through Kentucky's ordinary regulation promulgation process. The proposed regulation, 405 KAR 10:200, will eventually supersede the emergency regulation. Copies of both regulations have been submitted for OSMRE review and approval. The contents of the proposed regulation are identical to

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emergency regulation. Both 405 KAR 10:200E and 405 KAR 10:200 are briefly summarized below.

405 KAR 10:200E and 405 KAR 10:200 implement an alternative bonding program known as a bond pool. These regulations establish requirements for applications for membership in the bond pool; procedures for submittal of, review of, and decisions on such applications, including determinations of financial standing and reclamation compliance records of applicants; procedures for acceptance of specific permit areas into coverage by the bond pool; and procedures for keeping of production records, reporting of production, and payment of fees based on coal production. Membership in the Kentucky bond pool is voluntary. Members must meet the minimum requirements set forth in KRS 350. 720, and those contained in sections 6, 7 and 9 of the proposed amendments.

Therefore, the Director, OSMRE, is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 30, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86-22571 Filed 10-3-86; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 934

Public Comment Period and Opportunity for Public Hearing on an Amendment to the North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the adequacy of an amendment submitted by the State of North Dakota to amend its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of modifications to the State's minimum coverage requirements for liability insurance.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment, and information pertinent to the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on November 5, 1986, will not necessarily be considered. A public hearing on the proposal will be held, if requested, on October 31, 1986, at the address listed below under **"ADDRESSES"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. Jerry R. Ennis at the OSMRE Casper Field Office by 4:00 p.m. on October 21, 1986. If no one has contacted Mr. Ennis to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Ennis, a public meeting, rather than a hearing, may be held and the results of the meeting including in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918.

The public hearing, if requested, will be held at the North Dakota Capitol Building, Bismarck, North Dakota 58505.

See **"SUPPLEMENTARY INFORMATION"** for address where copies of the North Dakota program amendment, the North Dakota program, and the administrative record on the North Dakota program are available. Each requester may receive, free of charge, one single copy of the proposed program amendment by contacting the OSMRE Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918; Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION: Copies of the North Dakota program amendment, the North Dakota program, and the administrative record on the North Dakota program are available for public review and copying at the OSMRE office and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Records, 1100 L Street NW., Room 5124, Washington, DC 20240

Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918

North Dakota Public Service Commission, Reclamation Division, Capitol Building, Bismarck, North Dakota 58505.

Background

Information concerning the general background on the permanent program, general background on the State program approval process, general background on the North Dakota program submission, Secretary's findings, disposition of public comments, and Secretary's decision of conditional approval can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 934.11 and 934.15.

Proposed Amendment

On September 8, 1986, the State of North Dakota submitted to OSMRE an amendment to its approved permanent regulatory program. The amendment consists of revisions to the approved North Dakota regulations. The amended section of the regulations and brief description of the amended subject area is as follows: Section 69-05.2-13-30—revised regulations governing the minimum amount of public liability insurance coverage required.

OSMRE is seeking comment on whether North Dakota's proposed revisions to its regulations are in accordance with SMCRA and no less effective than the requirements of the revised Federal regulations and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the proposed program modifications submitted by North Dakota for OSMRE's consideration is available for public review at the addresses listed under **"SUPPLEMENTARY INFORMATION"**.

Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 30, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-22570 Filed 10-3-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 43

[DoD Directive 1344.7]

Personal Commercial Solicitation on DoD Installations

AGENCY: Department of Defense.

ACTION: Proposed change to final rule.

SUMMARY: This proposed change would apply the provisions reflected in Part 43 to Defense Agencies, since certain agencies are located on DoD installations and fall under the term "DoD Installation" as defined in Part 43. It would allow an exception to the prohibition on advertising addresses or telephone numbers of commercial sales activities for members of military families authorized to conduct such activities in family housing.

DATE: Written comments must be received by November 5, 1986.

ADDRESS: Assistant Secretary of Defense (Force Management and Personnel), ODASD (MM&PP), PA&S, Room 3C975, Pentagon, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Schoenberger, (202) 697-9525.

SUPPLEMENTARY INFORMATION: In the Federal Register on March 5, 1986 (43 FR 7552) the Department of Defense published a final rule reissuing Part 43.

List of Subjects in 32 CFR Part 43

Consumer protection, Military personnel, Federal building and facilities.

PART 43—[AMENDED]

Accordingly, 32 CFR Part 43 is amended as follows:

1. The authority citation for Part 43 continues to read as follows:

Authority: 5 U.S.C. 301.

§ 43.2 [Amended]

2. Section 43.2(a) is amended by removing the word "and" before "the Unified Command" and adding before the parenthetical phase "and the Defense Agencies".

§ 43.6 [Amended]

3. Section 43.6(d)(14) is amended by adding after the word "installation" the following: ", except for authorized activities conducted by members of military families in family housing."

Linda M. Lawson,

Alternate OSD Federal Register Liaison Office, Department of Defense.

October 1, 1986.

[FR Doc. 86-22649 Filed 10-3-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDT 86-32]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Manatee County, Florida, the Coast Guard is considering changing the regulations governing the Anna Maria Bridge across the Gulf Intracoastal Waterway by permitting the number of openings to be limited during certain periods. This proposal is being made because vehicular traffic has increased. This action should accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before November 20, 1986.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130-1681. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments,

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data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The State Route 64 highway bridge across Anna Maria Sound (Gulf Intracoastal Waterway at mile 89.2) is one of several connections between Anna Maria Island and the Bradenton, Florida, metropolitan area. The double-leaf bascule drawbridge provides 24 feet of vertical clearance at the center in the closed position. The bridge opens on signal Monday through Friday, except on holidays. On Saturday, Sunday, and holidays, from 9 a.m. to 6 p.m., the bridge opens on the hour, quarter-hour, half-hour, and three-quarter hour to allow waiting vessels to pass. At all times, the bridge opens on signal for public vessels of the United States, tugs with tows, and vessels in distress. The proposed change would limit openings on weekdays during the busiest months of highway use to the 15-minute schedule now in effect on weekends and holidays. The intent is to reduce or eliminate "back-to-back" openings that contribute significantly to highway traffic delays.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.287 is proposed to be amended by revising paragraph (d)(2) to read as follows:

§ 117.287 Gulf Intracoastal Waterway, Calooosahatchee River to Perdido River.

* * * * *

(d) * * *

(2) The draw of the Anna Maria (S.R. 64) bridge, mile 89.2, shall open on signal except that from 9 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. From December 1 to May 31, Monday through Friday, from 9 a.m. to 6 p.m. the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: September 19, 1986.

M. J. O'Brien,

Captain, U.S. Coast Guard Commander, Seventh Coast Guard District Acting.

[FR Doc. 86–22606 Filed 10–3–86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 86–212]

Amendment of the Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order granting extension of time for filing comments.

SUMMARY: In response to requests by the Bell Atlantic Companies, the Arizona Public Service Company, and the National Cable Television Association, Inc., the Commission's Common Carrier Bureau has granted an extension of time for filing reply comments on matters discussed in the Commission's Notice of Proposed Rulemaking, Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles in CC Docket No. 86–212, published on June 16, 1986, 51 FR 21774.

DATE: Reply Comments are now due by October 27, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bert Weintraub or Suzan Friedman (202) 632–4887.

In the Matter of amendment of rules and policies governing the attachment of cable television hardware to utility poles; Order.

Adopted September 24, 1986.

Released September 25, 1986.

By the Chief, Common Carrier Bureau.

1. Before the Bureau are three motions filed by the Bell Atlantic Telephone Companies ("Bell Atlantic"), Arizona Public Service Company ("APS"), and the National Cable Television Association ("NCTA"), seeking extensions of time to October 27, October 24, and October 17, 1986, respectively, to file reply comments in the above-captioned proceeding.[1]

2. Bell Atlantic, in support of its request, states that it has received comments from 27 parties totalling approximately 1,000 pages, and that many are technical in nature and require considerable analysis. It adds that additional time would provide the Commission with a full and adequate record in the proceeding. In support of its request, APS states that the extension is needed to afford it ample time to thoroughly review and analyze the comprehensive and voluminous comments filed by NCTA. APS also asserts that it has had difficulty in obtaining copies of other comments. Additionally, APS asserts that NCTA, in its comments, has raised a matter not addressed by the NPRM and, thus, ample review and reply time is required to reply to this new issue and adequately complete the record. NCTA, in support of its request, states that the Commission's Notice of Proposed Rulemaking ("NPRM") raises issues that are extremely complex, and that the utilities have made the task of preparing replies more difficult by raising new and extraneous issues not contemplated by the NPRM. Further, NCTA adds that an extension of time would permit a more complete record upon which the Commission can base its decision.

3. Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, the "Southern Utilities") have filed a response in support of APS' motion. The Southern Utilities also state that they have experienced delays in receiving the comments, and that more time is needed to properly analyze the voluminous comments filed by the cable television interests.

4. Good cause has been shown to grant an extension, and no evidence has been submitted that any interested parties will suffer harm from a delay. In the interest of obtaining as complete a record as possible without having to resort to additional extensions of time, we will grant Bell Atlantic's request, which will extend the time to file reply comments from September 26, 1986, to October 27, 1986. In so doing, APS' and NCTA's requests for a shorter extension are being included hereby.

5. Accordingly, it is ordered, pursuant to authority delegated in Section 0.291 of the Commission's Rules, 47 CFR 0.291, that the request for extension of time filed by the Bell Atlantic Telephone Companies is granted, including Arizona Public Service Company and the National Cable Television Association.

6. It is further ordered that all interested parties may file reply comments no later than October 27, 1986.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86–22563 Filed 10–3–86; 8:45 am]

BILLING CODE 6712-01-M

[1] 51 FR 21774 (1986).

47 CFR Parts 1 and 43

[CC Docket 86–388, FCC 86–393]

Common Carrier Reporting Requirements; Elimination of FCC Form 903 and Form 905; Telegraph Reports

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to eliminate Report Form 903 and Report Form 905, the monthly reports filed by radiotelegraph, ocean-cable and wire-telegraph carriers which had operating revenues in excess of $250,000 for the preceding year. This proposal is part of the Commission's overall effort to eliminate unnecessary and burdensome reporting requirements.

DATES: Comments must be received on or before October 15, 1986 and replies by October 31, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Feldman, Common Carrier Bureau, Industry Analysis Division, (202) 632–0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commissions notice of proposed rulemaking, CC Docket 86–388, adopted September 16, 1986 and released September 30, 1986.

The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this Notice may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. Sections 1.786 and 43.31 of the Commission's Rules, 47 CFR 1.786, 43.31, require Radiotelegraph, Ocean-Cable, and Wire-Telegraph carriers which had annual operating revenues in excess of $250,000 for the preceding year to file monthly reports of financial, operating and statistical information. In this Notice of Proposed Rulemaking (Notice) we propose to eliminate from these sections a reporting requirement that is unnecessary and burdensome. Specifically, we propose to eliminate the monthly FCC Forms 903 and 905. Form 903 is required from Radiotelegraph and Ocean-Cable Carriers, and Form 905 is required from Wire-Telegraph carriers. Five companies filed Form 903 for 1985. They were FTC Communications Inc., ITT World Communications Inc., RCA Global Communications Inc., TRT Telecommunications Corp., and Western Union International, Inc. Western Union Telegraph Company was the only company to file Form 905.

2. To further our goal of reducing unnecessary regulatory paperwork we propose to eliminate Forms 903 and 905. The information in the forms has only been used by this Commission on an infrequent and limited basis. Although we summarize the forms on a quarterly basis, and generate an industry total, the quarterly summary is also rarely used by this Commission.

3. Eliminating the Form 903 and 905 does not preclude us from directing the affected carriers to file detailed information should the need arise. We believe that most of our needs for data are adequately met with the annual reports filed by these carriers. When necessary, special data requests can be tailored to specific needs. Since there is no ongoing need for monthly data, special studies will eliminate the need for radiotelegraph, ocean-cable and wire-telegraph carriers to submit monthly reports. This will not only reduce the costs to the carriers, it will also reduce this Commission's costs.

4. We presently believe that the annual reporting requirement, as defined §§ 1.785 and 43.21 of the Commission's rules, 47 CFR § 1.785, and 43.21, should be continued for these carriers. The annual reports (Forms O and R) provide more detail than contained in the monthly reports and are necessary for us to monitor the effects of competition on the traditional international carriers. As we experience with streamlined regulation and as the new international market structure develops, we will be in a better provision to evaluate additional streamlining and forbearance options.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to reduce information collection requirements on the public.

6. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that the elimination of the reporting of radiotelegraph, ocean-cable, and wire telegraph carriers on monthly Form 903 and 905 will not have a significant economic impact and will ease the recordkeeping and reporting requirement of these carriers. The rationale for the proposed elimination is outlined in the above discussions.

Ordering Clauses

7. Accordingly, It Is Ordered, That pursuant to the provisions of sections 219 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 219 and 403 there is Hereby Instituted a notice of proposed rulemaking into the foregoing matter.

8. It Is Further Ordered, That interested persons may file comments on the specific proposals discussed in this Notice on or before October 15, 1986. Reply comments shall be filed on or before October 31, 1986. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket Reference Room, 1919 M Stret NW., Washington, DC.

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List of Subjects in 47 CFR Parts 1 and 65

Communications common carriers, Reporting requirements, Radiotelegraph, Ocean-cable, Wire-telegraph.

William J. Tricarico,

Secretary.

[FR Doc. 22565 Filed 10-3-86; 8:45 am]

BILLING CODE 4712-01-M

Federal Highway Administration

49 CFR PART 391

[BMCS Docket No. MC-125; Notice No. 86-13]

Qualifications of Drivers—Driver Licenses

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued an advance notice of proposed rulemaking (ANPRM) which was published in the Federal Register August 1 (51 FR 27567), with the comment period closing on September 2. Subsequently, the comment period was extended to October 2 (51 FR 31150). Further extension of the closing date has been requested in which the petitioner believe there are a number of critical issues raised that cannot be fully evaluated within the time currently provided. The closing date is therefore being extended to November 5, 1986.

DATE: Comments must be received on or before November 5, 1986.

ADDRESS: All comments should refer to the docket number which appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Office of Motor Carrier Standards, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202)366-2983; or Mr. Edward J. Mullaney, Office of the Chief Counsel, (202)366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA received a petition from the American Association of Motor Vehicle Administrators (AAMVA) requesting further extension of the comment period. The AAMVA stated that it discussed the items contained in the ANPRM at its Driver License Steering Committee planning meeting and stated that the group needs extra time to adequately respond. This request for extension has merit and therefore the comment period is being extended to November 5, 1986.

List of Subjects in 49 CFR Part 391

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Driver qualifications.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety).

Issued on: October 2, 1986.

R. D. Morgan,

Executive Director, Highway Administration.

[FR Doc. 86-22639 Filed 10-5-86; 10:56 am]

BILLING CODE 4910-22-M

Notices

Federal Register

Vol. 51, No. 193

Monday, October 6, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Petitions for Rulemaking; Availability of Report; Public Meeting

AGENCY: Administrative Conference of the United States, Committee on Rulemaking.

ACTION: Notice of Public Meetings; Availabilty of Draft Report.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of two meetings of the Committee on Rulemaking of the Administrative Conference of the United States. The Committee on Rulemaking has scheduled these meetings to consider a draft report and recommendations prepared by Professor William V. Luneburg (University of Pittsburgh, School of Law) on agencies' handling of public petitions for rulemaking.

DATE: Tuesday, October 21, 1986, at 9:45 a.m.

LOCATION: Gelman Building, 2120 L Street, NW., Lower Level, Hearing Room No. 3, Washington, DC.

DATE: Thursday, October 30, 1986, at 9:45 a.m.

LOCATION: Law firm of Jones, Day, Reavis & Pogue, Metropolitan Square, 655 Fifteenth Street, NW., Suite 600 (use G Street entrance), Washington, DC.

PUBLIC PARTICIPATION: The committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meetings will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, DC 20037. Telephone: (202) 254-7065. Single copies of Professor Luneburg's draft report may be obtained free of charge by calling or writing the Office of the Chairman.

Dated: October 2, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86-22672 Filed 10-3-86; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Amendment of an Existing System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Amendment of an existing system of records.

SUMMARY: The purpose of this notice is to add a new routine use to the system of records known as USDA/OP-1.

DATES: 5 U.S.C. 552(e)(11) requires that the public be provided a 30-day period in which to comment. Comments received on or before November 5, 1986 will be considered. Unless comments are received which would require a contrary determination, ths amendment shall be effective as proposed without further notice at the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Carolyn Wright, Security, Employee and Labor Relations Staff, Office of Personnel, Department of Agriculture, Washington, DC 20250, (202) 447-3083.

SUPPLEMENTARY INFORMATION: The Spending reduction Act of 1984 established a tax refund offset program by which agencies could request that tax refunds of persons indebted to it be reduced by the amount of the debt with the amount offset being paid instead to the creditor agency. The Department of Agriculture is participating in this program.

Because prior collection efforts have failed, it has been determined that a listing of those former employees who continue to owe past-due legally enforceable debts to the Department of Agriculture will be referred to the Internal Revenue Service for offset of the debt against any tax refund due.

The following routine use is being added to the Office of Personnel's system of records known as USDA/OP-1 published at 49 FR 45071 et seq., December 10, 1984.

USDA/OP-1

System Name: Personnel and Payroll System for USDA Employees, USDA/OP.

* * * * *

Routine use of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

(23) the Internal Revenue Service to enable it to offset and satisfy past-due, illegally enforceable debts owed to USDA against Federal income tax refunds.

Dated: September 30, 1986.

Richard E. Lyng,

Secretary.

[FR Doc. 86-22532 Filed 10-3-86; 8:45 am]

BILLING CODE 3410-01-M

Foreign Agricultural Service

1986 White or Irish Potato Production Estimates

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of estimates with respect to 1986 white or Irish potato production.

SUMMARY: Headnote 2 of Subpart A of Part 8 Schedule 1 of the Tariff Schedules of the United States (TSUS) provides that, if for any calendar year the production in the United States of white or Irish potatoes, including seed potatoes, according to the estimate of the Department of Agriculture made as of September 1, is less than 21 billion pounds, an additional quantity of potatoes equal to the amount by which such estimated production is less than 21 billion pounds shall be added to the 45 million pounds provided for in TSUS item 137.25 for the 12-month period beginning September 15.

Notice

The estimate of the Department of Agriculture, made as of September 1, 1986 is that for the calendar year 1986 the production in the United States of

white or Irish potatoes, including seed potatoes, will exceed 21 billion pounds.

Issued at Washington, DC, this 18th day of September, 1986.

Lee V. Mayes,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 86-22603 Filed 10-3-86; 8:45 am]

BILLING CODE 3410-10-M

COMMISSION ON CIVIL RIGHTS

Appointment of Individuals to Serve as Members of the Performance Review Board—Senior Executive Service

October 1, 1986.

The Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4) requires that notice of the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of the performance review board for the United States Commission on Civil Rights for the rating year beginning October 1, 1985 and ending September 30, 1986.

Gerald Hinch, Assistant Director
Office of Training and Development
Office of Personnel Management
Albert G. Maltz, Assistant Staff Director for Administration
U.S. Commission on Civil Rights
James Mann, Acting Deputy Staff Director
U.S. Commission on Civil Rights

J. Al Latham, Jr.,

Staff Director.

[FR Doc. 86-22544 Filed 10-3-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 30-86]

Proposed Foreign-Trade Zone in Monroe County, NY; Amendment of Application

Correction

In FR Doc. 86-21972 beginning on page 34478 in the issue of Monday, September 29, 1986, make the following correction:

On page 34479, in the first column, in the second complete paragraph, third line, the first word should read "public".

BILLING CODE 1505-01-M

International Trade Administration

[C-333-001]

Cotton Sheeting and Sateen From Peru; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: In response to a request from the Government of Peru, the Department of Commerce has conducted an administrative review of the countervailing duty order on cotton sheeting and sateen from Peru. The review covers the period January 1, 1983 through December 31, 1983 and three programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant for the period of review to be 15.04 percent *ad valorem*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 6, 1986.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 34542) the final results of its last administrative review of the countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4501, February 1, 1983). We began this review under our old regulations. On September 19, 1985, after the promulgation of our new regulations, the Government of Peru requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of the order. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Peruvian cotton sheeting and sateen consisting of: (1) Plain-woven cotton fabric sheeting, not fancy or figured and not napped, made of singles yarn, with an average yarn number between 3 and 26, imported in Textile and Apparel Category 313, currently classifiable under items 320.—19 and 320.—34 of the Tariff Schedules of the United States Annotated ("TSUSA"); and (2) 100% carded cotton sateen fabrics woven with a satin weave and not napped, imported in Textile and Apparel Category 317, and currently classificable under TSUSA items 320.—52 and 321.—93.

The review covers the period January 1, 1983 through December 31, 1983 and three programs: (1) CERTEX; (2) FENT; and (3) Article 16 of the Export Law.

Analysis of Programs

(1) CERTEX

Under the Certificates of Tax Rebate ("CERTEX") program, the Government of Peru issues tax certificates to exporters in amounts equal to a percentage of the f.o.b. invoice price of export shipments. Exporters can use the certificates to pay taxes owed to the Peruvian government. Four exporters used this program during the period of review.

We calculated the benefit under the program by dividing the total amount of CERTEX tax certificates issued on U.S. exports by total exports of cotton sheeting and sateen to the United States during the period of review. We preliminarily determine the benefit conferred by the program to be 11.61 percent *ad valorem*.

The Peruvian government discontinued this program, effective September 15, 1983, for shipments of this merchandise to the United States. We therefore preliminarily determine, for purposes of cash deposits of estimated countervailing duties, that there is no current benefit from this program.

(2) FENT

Under the Nontraditional Export Fund ("FENT") program, the Government of Peru makes short-term export financing available to exporters of goods not traditionally exported. There are three types of short-term financing: Soles loans, foreign currently loans and mixed currency loans. Exporters of cotton sheeting and sateen used only foreign currency (dollar) loans during the period of review. The loans are drawn from a fund established by the Banco Central de Reserva Del Peru ("BCRP") and passed through the Banco Industrial del Peru and a commercial bank. Because this program is available only to exporters, we preliminarily determine that it confers a bounty or grant on cotton sheeting and sateen.

Foreign currency loans are granted for a maximum period of 180 days at a concessional annual interest rate of 1 percent. The amount of the loan cannot exceed 90 percent of the export value of the shipment. In order to receive this FENT loan, the firm must borrow in foreign currency from an external commercial source an amount equal to 80 percent of the value of the FENT loan. The BCRP reports the interest rate on these exernal dollar loans to be the prime rate plus a spread of 1.15 percentage points, plus finance charges. The firm must deposit the full amount of this external loan, for the duration of the FENT loan, with the BCRP, where it earns an interest rate of the London Interbank Offer Rate ("LIBOR") plus 5 percentage points.

To calculate the benefit, we first determined the annual interest differential between the 1 percent interest on the FENT loan and the average commercial rate for dollar loans available in Peru during the period of review. We multipled the differential by the full amount of the FENT loan, adjusting for the duration of the loan. We then calculated the net cost to the firm of the required external dollar loans by subtracting the return on the BCRP deposits of those loans from the cost of the loans. For the period of review, the cost to each firm of the external dollar loans exceeded the return on the BCRP deposits. We subtracted the net cost of those loans from the benefit on the FENT loans. Since the FENT loans are allocated specifically to U.S. shipments, we divided the total benefit by the total exports of cotton sheeting and sateen to the United States. On this basis, we preliminarily find the benefit from this program to be 0.81 percent *ad valorem*.

The Peruvian government discontinued this program, effective September 13, 1983, for exports of cotton sheeting and sateen to the United States. We therefore preliminarily determine, for purposes of cash deposits of estimated countervailing duties, that there is no current benefit from this program.

(3) Article 16 of the Export Law

The aim of the Law for the Promotion of Exports of Nontraditional Goods ("the Export Law") is to improve the foreign trade structure by promoting nontraditional exports. Under Article 16 of the Export Law, exporters may defer payment of import duties on machinery used to manufacture merchandise for export if they meet specified export targets set in the Export Law. The deferral of duties is contingent upon meeting yearly export targets. If exporters acheive all targets within a maximum of five years, they are eligible for full exemption from payment of the duties. The exemption takes effect in the year that the export targets are reached. If the firm fails to meet the export targets, it must pay the duties with penalties.

During the period of review, three firms obtained import duty deferrals on exports to the United States and one of those three fulfilled the requirements for a partial exemption from payment of import duties. We consider these import duty deferrals to be equivalent to one-year interest-free loans because there is uncertainty from year to year whether the duties will be paid or exempted from payment. If exemption occurs, we expense the full amount of the exemption in the year of receipt.

We calculated the benefit from the deferrals, or "loans," outstanding during the period of review using a 1982 benchmark because we assume that the interest paid in 1983 was based on a loan rolled over in 1982.

We applied a 1982 commercial benchmark rate, which is the effective annual interest rate for short-term promissory notes. We allocated each company's benefit over its total exports during the period of review. For the firm that obtained the partial exemption, we allocated the full amount of the exemption plus the interest benefit (from the import duty deferral during the portion of the review period before the actual exemption occurred) over that firm's total exports. We then weight-averaged each company's benefit by its share of total exports of the merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 2.62 percent *ad valorem*.

Because we have expensed the full amount of the import duty exemption for one firm in the review period, the potential benefit from this program for that firm is reduced. We therefore preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the current benefit to be 1.86 percent *ad valorem*.

Preliminary Results of Review

As a result of the review, we preliminarily determine the total bounty or grant to be 15.04 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 15.04 percent of the f.o.b. invoice price on any shipments of this merchandise exported on or after January 1, 1983 and exported on or before December 31, 1983.

Because of the changes described for FENT, CERTEX and Article 16 of the Export Law, the total estimated bounty or grant is 1.86 percent *ad valorem*. Therefore, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 1.86 percent of the invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 1, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-22595 Filed 10-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-047]

Elemental Sulphur From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by three respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers three of the forty known producers and/or exporters of this merchandise to the United States currently covered by the

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finding and the period December 1, 1984 through November 30, 1985. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On September 18, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 37889) the final results of its last administrative review of the antidumping finding on elemental sulphur from Canada (38 FR 34055, December 17, 1973). We received requests for an administrative review from three respondents in accordance with § 353.53a(a) of the Commerce Regulations that we conduct the administrative review. We subsequently published a notice of initiation of the antidumping duty administrative review on January 21, 1986 (51 FR 2747).

Scope of the Review

Imports covered by the review are shipments of elemental sulphur from Canada, currently classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated. The review covers three of the forty known producers and/or exporters of Canadian elemental sulphur to the United States currently covered by the finding, Cornwall Chemicals, Ltd., Canadian Reserve Oil & Gas, Ltd., and Texaco Canada, Inc., and the period December 1, 1984 through November 30, 1985.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the ex-factory price to unrelated purchasers in the United States. No deductions were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Home market price was based on the ex-factory or delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exists for the period December 1, 1984 through November 30, 1985:

Manufacturer/exporter	Margin (percent)
Cornwall Chemicals, Ltd.	[1] 3.84
Canadian Reserve Oil and Gas, Ltd.	[1] 15.24
Texaco Canada, Inc. (formerly Texaco Canada Resources, Ltd.)	0

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall instruct the Customs Service not to assess antidumping duties on all appropriate entries.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments from the remaining 37 producers and/or exporters not covered by this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (50 FR 37889, September 18, 1985).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1985 and who is unrelated to any reviewed firms, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: September 29, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–22474 Filed 10–3–86; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Financial Assistance Application Announcement; CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $380,118 for the project performance period of February 1, 1987 to January 31, 1988. The MBDC will operate in the San Jose Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $323,100 in Federal funds and a minimum of $57,018 in non-Federal Funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09–10–87001–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, October 23, 1986 at 10:00 A.M.

Proposals are to be mailed to the following address:

Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974–9597.

Closing date: The closing date for applications is November 17, 1986. Applications must be postmarked by midnight November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

September 30, 1986.

[FR Doc. 86–22509 Filed 10–3–86; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Approval of the Virginia Coastal Resources Management Program/ Final Environmental Impact Statement

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of approval of program.

SUMMARY: Notice is hereby given that the Assistant Administrator for Ocean Services and Coastal Zone Management (on behalf of the Secretary of Commerce) on September 18, 1986 approved the Coastal Resources Management Program of Virginia pursuant to the authority contained in Section 306(a) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1455(a)).

Approval activates the responsibility of Federal agencies and persons applying for Federal licenses and financial assistance for activities affecting the Virginia coastal zone to be consistent with the Program pursuant to the Federal consistency provisions of the Coastal Zone Management Act as of the date of approval. Further information on the responsibilities of affected Federal agencies and applicants for Federal licenses and permits in this regard may be found in 15 CFR Part 930.

A copy of the findings made by Assistant Administrator in determining that this program meets the requirements of the Coastal Zone Management Act may be obtained upon request from the Office of Ocean and Coastal Resource Management, Mr. Joseph A. Uravitch, Regional Manager, South Atlantic and Gulf Regions, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, Washington, DC 20235, (202) 673–5138.

(Federal Domestic Assistance Catalog 11.418 Coastal Zone Management Program Administration)

Dated: September 25, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86–22547 Filed 10–3–86; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Limits for Certain Man-Made Fiber Apparel Products Produced or Manufactured in the Philippines

September 26, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 26, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated December 30, 1985 (50 FR 53639) established limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986. At the request of the Government of the Republic of the Philippines, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines, the 1986 limit for category 659–NT is being increased by the application of swing to 1,822,259 pounds. The limit for Category 659–T is being reduced to 4,963,853 dozen to account for the increase in Category 659–NT.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for the categories, as indicated.

A description of the cotton, wool and Man-Made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July

16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

September 26, 1986.

Committee For the Implementation of the Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 20, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on September 26, 1986, the directive of December 20, 1985 is hereby further amended to include the following adjusted restraint limits:[1]

Category	Adjusted twelve-month limit [1]
859-NT	1,822,295 pounds
859-T	4,043,063 dozen

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-22548 Filed 10-3-86; 8:45 am]

BILLING CODE 3510-DR-M

Waiver of Visa Requirement for Certain Wool Apparel Products Produced or Manufactured in the Republic of Korea

September 29, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 3, 1986. For further information contact Eve Anderson, International Trade Apparel, U.S. Department of Commerce (202) 377-4212.

Background

As a interim measure, pending resolution of a trade problem that has arisen concerning export visas issued by the Government of the Republic of Korea for certain wool apparel products in Category 459, the Committee for the Implementation of Textile Agreements (CITA) has decided to waive the correct visa requirement for merchandise visaed as Category 459-A or 459-F, properly classifiable as Category 459-O (all TSUSA numbers in the category except 702.7500 and 702.8000), which has been produced or manufactured in the Republic of Korea and exported before October 31, 1986. In the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to implement this waiver procedure until December 31, 1986 for goods entered on or before that date.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

William H. Houston, III,

Chairman, Committee for the Implementation of Textiles Agreements.

September 29, 1986.

Committee For the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982 as amended, between the Governments of the United States and the Republic of Korea, I request that, effective on October 3, 1986 you waive the correct visa requirement for merchandise visaed as Category 459-A or 459-F, properly classifiable as Category 459-O [1] which has been produced or manufactured in the Republic of Korea and exported before October 31, 1986. This waiver is applicable to merchandise entered into the United States for consumption or withdrawn from warehouse for consumption by December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston, III,

Chairman, Committee for the Implementation of Textiles Agreements.

[FR Doc. 86-22550 Filed 10-3-86; 8:45 am]

BILLING CODE 3510-DR-M

Change in Officals of the Government of Pakistan Authorized to Issue Export Visas for Certain Cotton Textile Products from Pakistan

September 29, 1986.

The Government of Pakistan has notified the United States Government under the terms of the Bilateral Cotton Textile Agreement of March 9 and 11, 1982 that Mr. Muhammad Shahid Awan and Mr. S.M. Ismail are now authorized to issue export visas for cotton textile products exported to the United States in place of Mr. Rehmat-ur-Rehman and Mrs. Nighat Perveen, who will no longer sign these documents. The purpose of this notice is to advise the public of this change.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

September 30, 1986.

[FR Doc. 86-22551 Filed 10-3-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Malaysia to Review Trade in Category 605 pt. (Sewing Thread)

September 29, 1986.

On August 29, 1986, the Government of the United States requested consultations with the Government of Malaysia with respect to Category 605 pt. (only TSUSA number 310.9500). This request was made on the basis of the agreement between the Governments of the United States and Malaysia relating to trade in cotton, wool, and man-made fiber textile products, effected by exchange of notes dated July 1, and July 11, 1985. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, pending exchange of notes on a mutually satisfactory solution concerning this category, the Government of the United States has decided to control imports during the ninety-day consultation period which began on August 29, 1986 and extends through November 26, 1986 at a level of 61,407 pounds. If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may establish a prorated specific limit of 20,100 pounds for Category 605 pt. for the entry and withdrawal from warehouse for consumption of textile products, produced or manufactured in Malaysia and exported during the period beginning on November 27, 1986 and extending through December 31, 1986.

In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the level established for the prorated period.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 605 pt. under the agreement production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Comerce, 14th and Constitution Ave., NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553 (a)(1) relating to matters which constitute "a foreign affairs function of the United States."

September 30, 1986.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

September 30, 1986.

Malaysia—Market Statement

Category 605—Thread, Man-Made Fiber

August 1986

Summary and Conclusions

U.S. imports of Category 605—Thread, man-made fiber, from Malaysia amounted to 247,585 pounds during the year ending June 1986, 52 times the 4,752 pounds imported a year earlier. During the first half of 1986, imports from Malaysia amounted to 224,673 pounds. This was equal to 47 times the amount imported during the first six months of 1985 and eight times the level imported during the calendar year 1985.

The sharp and substantial increase in imports of Category 605—Thread from Malaysia is disrupting the U.S. market for man-made fiber thread.

U.S. Production and Market Share

U.S. production of man-made fiber thread in 1985 dropped 14 percent below the 1984 level and is 8 percent below the 1983 level. The U.S. producers' share of the U.S. man-made fiber thread market declined from 89 percent in 1983 to 73 percent in 1985.

Import and Import Penetration

U.S. imports of man-made fiber thread from all sources increased 44 percent in 1985 to a record level of 4.7 million pounds. Imports for the first half of 1986 were up 32 percent over the comparable period in 1985. The ratio of imports to domestic production increased threefold from 12.8 percent in 1983 to 37.5 percent in 1985.

Import Values and Domestic Prices

Malaysia's Category 605—Thread imports enter under TSUSA No. 310.9500—polyester sewing thread. This thread enters at duty-paid landed values well below the U.S. producers price for comparable thread.

September 29, 1986.

Committee For the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agriculture Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and July 11, 1985, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 3, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 605 pt. [1] produced or manufactured in Malaysia and exported during the ninety-day period which began on August 29, 1986 and extends through November 26, 1986, in excess of 61,407 pounds.[2]

Textile products in Category 605 pt. which have been exported to the United States prior to August 29, 1986 shall not be subject to this directive.

Textile products in Category 605 pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of The United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-22552 Filed 10-3-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Socialist Federal Republic of Yugoslavia on Man-Made Fiber Sweaters in Category 845/846

September 29, 1986.

On August 29, 1986, the Government of the United States, under Article 3 of the Arrangement Regarding

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) Specific limits may be adjusted for swing, carryover and carryforward; and (3) Administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[1] In Category 459, all TSUSA numbers in the category except 702.7500 and 702.8000.

[1] In Category 605, only TSUSA number 310.9500.

[2] The limit has not been adjusted to account for any imports exported after August 28, 1986.

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International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on July 31, 1986, requested the Government of the Socialist Federal Republic of Yugoslavia to enter into consultations concerning exports to the United States of man-made fiber sweaters in Category 845/846, produced or manufactured in Yugoslavia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the Socialist Federal Republic of Yugoslavia, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Category 845/846, produced or manufactured in Yugoslavia and exported to the United States during the twelve-month period which began on August 29, 1986 and extends through August 28, 1987 at a level of 77,199 dozen.

A summary market statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Anyone wishing to comment or provide data or information regarding the treatment of Category 845/846 under Article 3 of the Multifiber Arrangement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC., and may be obtained upon written request.

Further comment may be invited regarding prticular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Yugoslavia—Market Statement

Category 845/846—Man-Made Fiber Sweaters

August 1986.

Summary and Conclusion

U.S. imports of Category 645/646 from Yugoslavia were 91,983 dozen during the year ending June 1986, approximately 50 times the 1,858 dozen imported a year earlier. During the first half of 1986, man-made fiber sweater imports from Yugoslavia were 43,477 dozen compared to 1,031 dozen imported during the same period of 1985.

The U.S. market for Category 645/646 has been disrupted by imports. The sharp and substantial increase of imports from Yugoslavia is contributing to this disruption.

U.S. Production and Market Share

U.S. production of man-made fiber sweaters declined 16 percent between 1983 and 1985 to 5,947 thousand dozen. The U.S. producers' share of this market declined from 40 percent in 1983 to 33 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 645/646 grew from 10,775 thousand dozen in 1983 to 12,167 thousand dozen in 1985, a 13 percent increase. Year ending June 1986 imports of Category 645/646 reached 12,429 thousand dozen, 14 percent higher than the level imported during the year ending June 1985. Category 645/646 import are up 5 percent through the first half of 1986. The ratio of imports to domestic production increased from 149 percent in 1983 to 205 prcent in 1985.

Duty-Paid Value and U.S. Producers' Price

Approximately 81 percent of imports in Category 645/646 from Yugoslavia during the first six months of 1986 entered under TSUSA No. 384.8071—infants' man-made fiber knit sweaters, not ornamented and TSUSA No. 384.8073—Women's and girls' man-made fiber knit sweaters, not ornamented. These sweaters entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable sweaters.

[FR Doc. 86-22553 Filed 10-3-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Macau Concerning Trade in Sweaters of Silk Blends and Vegetable Fibers (Other Than Cotton) in Category 845/846

September 30, 1986.

On August 28, 1986, the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, and as extended by Protocols on December 15, 1977, December 22, 1981, and July 31, 1986 requested consultations with the Government of Macau to enter into consultations concerning exports to the United States of sweaters of silk blends and vegetable fibers (other than cotton) in Category 845/846, produced or manufactured in Macau.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Macau, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Category 845/846, produced or manufactured in Macau and exported to the United States during the twelve-month period which began on August 28, 1986 and extends through August 27, 1987 at a level of 183,778 dozen.

A summary market statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986 (51 FR 27068).

Anyone wishing to comment or provide data or information regarding the treatment of Category 845/846 under Article 3 of the Multifiber Arrangement or Paragraph 24 of the July 31, 1986 Protocol or on any other aspect thereof, or to comment on domestic production of directly competitive products or availability of texile products included in the categories, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Macau—Market Statement

Category 845/846—Silk-Blend and Other Vegetable Fiber Sweaters

August 1986.

Summary and Conclusions

U.S. imports of Category 845/846 from Macau were 62,190 dozen during the first half of 1986 compared to 40,449 dozen imported during the first half of 1985, a 54 percent increase. Macau is the fifth largest supplier of Category 845/846 accounting for two percent of total imports during the year ending June 1986.

Imports of silk-blend sweaters and sweaters of vegetable fibers other than cotton have increased dramatically in recent years. Most silk-blend sweater imports are silk/wool or silk/rayon blends; most vegetable fiber sweater imports are ramie/cotton blends although ramie/rayon, ramie/acrylic, ramie/cotton/rayon, ramie/acrylic/cotton and linen/cotton blends are also being imported.

Imports of silk-blend and other vegetable fiber sweaters compete directly with domestically produced cotton, wool and man-made fiber sweaters. The U.S. market for cotton, wool, and man-made fiber sweaters, Category 345/445/446/645/646, has been disrupted by imports. The sharp and substantial increase of Category 845/846 imports from Macau is cntributing to the disruption of this market.

Import Penetration and Market Share

The ratio of imports to production in Category 345/445/446/645/646, cotton, wool and man-made fiber sweaters, increased to 154 percent in 1985. The share of this market held by domestic manufacturers dropped to 39 percent in 1985. When 1985 imports of Category 845/846 are included, the import to production ratio jumps to 236 percent and the domestic manufacturers' share of this market falls to 320 percent.

U.S. imports of Category 845/846 were 9,433 thousand dozen in 1985. They increased dramatically in 1986, reaching 6,217 thousand dozen in the first half, 83 percent higher than the January-June 1985 level.

Duty-Paid Value and U.S. Producer Price

Approximately 82 percent of the imports of Category 845/846 from Macau during the first half of 1986 entered under TSUSA No. 384.5315—women's, girls', and infants' vegetable fiber knit sweaters, not oramented. These sweaters entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable sweaters.

[FR Doc. 86-22555 filed 10-3-86; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of the People's Republic of China to Review Trade in Category 845/846

September 30, 1986.

On August 29, 1986, the Governent of the United States, in accordance with Article 3 of the Arrangement Regarding International Trade in Textiles, requested consultations with the Government of the People's Republic of China with respect to sweaters of silk blends and vegetable fibers, other than cotton, produced or manufactured in China.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Category 845/846, produced or manufactured in China and exported to the United States during the twelve-month period which began on August 29, 1986 and entends through August 28, 1987 at a level of 991,254 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986 (51 FR 27068).

A summary market staement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of this category, or to comment on demestic production or availability of textile products included in the categories, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information recieved from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 845/846—Silk-Blend and Other Vegetable Fiber Sweaters

August 1986.

Summary and Conclusions

U.S. imports of Category 845/846 from China were 511,631 dozen during the first half of 1986 compared to 287,132 dozen imported during the first half of 1985, a 78 percent increase. China is the third largest supplier of Category 845/846 accounting for eight percent of total imports during the year ending June 1986.

Imports of silk-blend sweaters and sweaters of vegetable fibers other than cotton have increased dramatically in recent years. Most silk-blend sweater imports are silk/wool or silk/rayon blends; most vegetable fiber sweater imports are ramie/cotton blends although ramie/rayon, ramie/acrylic, ramie/cotton/rayon, ramie/acrylic/cotton and linen/cotton blends are also being imported.

Imports of silk-blend and other vegatable fiber sweaters compete with domestically produced cotton, wool, and man-made fiber sweaters. The U.S. market for cotton, wool, and man-made fiber sweaters, Category 345/445/446/645/646, has been disrupted by imports. The sharp and substantial increase of Category 845/846 imports from China is contributing to the disruption of this market.

Import Penetration and Market Share

The ratio of imports to production in Category 345/445/446/645/646, cotton, wool and man-made fiber sweaters, increased to 154 percent in 1985. The share of this market held by domestic manufacturers dropped to 39 percent in 1985. When 1985 imports of

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Category 845/846 are included, the import to production ratio jumps to 236 percent and the domestic manufacturers share of this market falls to 30 percent.

U.S. imports of Category 845/846 were 9,433 thousand dozen in 1985. They increased dramatically in 1986, reaching 6,217 thousand dozen in the first half, 83 percent higher than the January-June 1985 level.

Duty-Paid Value and U.S. Producer Price

Approximately 85 percent of the imports of Category 845/846 from China during the first half of 1986 entered under TSUSA No. 384.5315—women's, girls', and infants' vegetable fiber knit sweaters, not ornamented. These sweaters entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable sweaters.

[FR Doc. 86–22554 Filed 10–3–86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Defense Language Institute (DLI) Board of Visitors

Under the provisions of Pub. L. 92–463, "Federal Advisory Committee Act," notice is hereby given that the Defense Language Institute (DLI) Board of Visitors has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

The nature and purpose of the DLI Board of Visitors is to povide the Commander, DLI, with advice on matters related to the Institute mission, policies, staff and faculty, students, curricula, educational philosophy and objectives, program effectiveness, instructional methods, research, administration, learning resources, physical resources, and financial resources

Dated: October 1, 1986.

Particia H. Means,

OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 86–22612 Filed 10–3–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy (Marine Corps)

Privacy Act of 1974; New System of Records

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Notice of a new system of records subject to the Privacy Act.

SUMMARY: The U.S. Marine Corps is adding a new system of records to its inventory of systems of records subject to the Privacy Act of 1974.

DATE: The proposed action will be effective without further notice November 5, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. B.L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001, telephone: (202) 694–1452.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps systems notice for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93–579 were published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22674) May 29, 1985 A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on Spetember 2, 1986, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 15, 1985.

Patricia H. Means,

OSD Federal Register Liaison Office, Department of Defense

October 1, 1986.

MRS00002

SYSTEM NAME:

Marine Corps Reserve Support Center (MCRSC) Managment System.

SYSTEM LOCATION:

Primary System—The Director, Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, Kansas 66211–1408.

Decentrailzed System—At Marine Corps mobilization and prior service recruiting stations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps Reservists in the Individual Ready Reserve, Standby Reserve, Fleet Marine Corps Reserves, Individual Mobilization Augmentees, Selected Marine Corps Reserves, Full-Time Support (FTS) Marine Reserves, active duty Marines attached to the MCRS, and civilian employees of MCRSC.

CATEGORIES OF RECORDS IN SYSTEM:

Personnel, financial, and manpower data records. Training history for financial obligations and expenditures for reservists and reservists' qualifications, and program management records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code 301; Title 10, U.S. Code 5031;

Title 10, U.S. Code 275; Title 10, U.S. Code 652.

PURPOSE(S):

To provide record of all personnel, financial and manpower data on all Marine Corps military and civilian employees attached to MCRSC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Blanket Routine Uses that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF A RECORDS IN THE SYSTEM:

STORAGE:

Direct access storage device, magnetic tape, paper files, microfiche and other documents.

RETRIEVABILITY:

Social Security Number, name, grade, and unit.

SAFEGUARDS:

Restricted access to building and all areas where data maintained. Records are maintained in areas accessible only to those personnel that are authorized and have been properly screened, cleared, and trained. The system contains security features designed to restrict unauthorized access.

RETENTION AND DISPOSAL:

There are two types of files, permanent and working. After the Marine Reservist retires or is deceased, microfiche/paper records are sent to Headquarters Marine Corps for a period of six months. Thereafter, records are sent to the National Personnel Records Center, St. Louis, Missouri, idenfinitely. Computer records are maintained for a minimum of three years in the National Archives. After three years, the tapes are erased. Working files are disposed of when obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, Kansas 66211–1408.

NOTIFICATION PROCEDURE:

Information may be obtained from system manager. Requesters should provide their full name. Visitors should provide proper verification of identity. On written requests, signature of the requesting individual is required.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appeaing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual, Marine Corps recruiting districts, depots, bases, and other duty stations, Headquarters Marine Corps, Veterans Administration, Civilian Personnel Records, and changes caused by law are the principal sources of the information contained in the MCRSC Management System.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–22610 Filed 10–3–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before November 5, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waiver the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Administrator, Information Technology Services, publishes this notice containing proposed informaton collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 1, 1986.

Carlos U. Rice,

Administrator Information Technology Services.

Office of Postsecondary Education

Type of Review: New
Title: Guarantee Agency Request for Supplemental Pre-Claims Assistance Costs
Agency Form Number: E40–24P
Affected Public: State or local governments; Non-profit institutions
Reporting Burden:
Responses: 3,016
Burden Hours: 452
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form is used to reimburse the Guarantee Agencies for certain costs related to servicing delinquent loans under the Guaranteed Student Loan Program.

Office of Postsecondary

Type of Review: Extension
Title: Performance Report Under the Law School Clinical Experience Program
Agency Form Number: ED 595A
Affected Public: Non-profit Institutions
Reporting Burden:
Responses: 100
Burden Hours: 300
Recordkeeping Burden:
Recordkeepers: 100
Burden Hours: 300

Abstract: The informaton collected in this performance report will be utilized to assess the accomplishment of project goals and objectives, and to aid in effective program management under the Law School Clinical Experience Program.

Office of Postsecondary Education

Type of Review: Revision
Title: Application form for Cooperative Education
Agency Form Number: ED 1193
Frequency: NA
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 357
Burden Hours: 3376
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This application is needed by eligible applicants to apply for grant funds authorized under Title VIII of the Higher Education Act, as amended. Application information is used to evaluate proposals and obligate grant funds.

Office of Educational Research and Improvement

Type of Review: Extension
Title: Library Services and Construction Act Final Financial Status, Performance and Completion Reports for State Administered Programs
Agency Form Number: ED 921–1, 912–2, 915–1
Affected Public: State or local governments
Reporting Burden:
Responses: 54
Burden Hours: 2160
Recordkeeping Burden:
Recordkeepers: 54
Burden Hours: 54

Abstract: The Financial Status, Performance and Completion Reports are needed to obtain information relating to expenditures of funds, project performance, and completion of projects from State library administrative agencies under the Library Services and Construction Act (LSCA) Title I, II, and III, as amended.

Office of Educational Research and Improvement

Type of Review: Extension
Title: Common Core of Data Survey System 1986–87
Agency Form Number: 2442, 2443, 2443–1, 2446, 2447
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57
Burden Hours: 5130
Recordkeeping Burden:
Recordkeepers: 0

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Burden Hours: 0

Abstract: These surveys provide information about student enrollment, graduates, teachers, and related finances and are used in the allocation of Federal funds under Chapter 1, Education Consolidation and Improvement Act. Data are also provided to the general public as requested.

Office of Vocational and Adult Education

Type of Review: Extension
Title: Financial Status Report and Annual Performance Report for the Adult Education State-Administered Program
Agency Form Number: ED 365, 365–1
Affected Public: State or local governments
Reporting Burden:
Responses: 55
Burden Hours: 220
Recordkeeping Burden:
Recordkeepers: 55
Burden Hours: 4,400

Abstract: State educational agencies receiving grants under the Adult Education State-Administered Program submit Annual Financial Status and Performance Reports as prescribed by the Adult Education Act, as amended, and by OMB Circular No. A–102. Program officials use the data collected in accounting for the expenditure of funds and for monitoring program activities required by the approved State plan.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Nominations for the National Advisory Council on Indian Education
Agency Form Number: AI0–10P
Affected Public: Individuals or households
Reporting Burden:
Responses: 80
Burden Hours: 80
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form is used by the Department of Education to request names and information about individuals who wish to be nominated to serve on the National Advisory Committee on Indian Education.

[FR Doc. 86–22537 Filed 10–3–86; 8:45 am]
BILLING CODE 4000–01–M

Inviting Applications for New Awards Under the Leadership in Educational Administration Development (LEAD) Program for Fiscal Year 1987 (CFDA No. 84.178)

Purpose: Provides grants to eligible parties to establish and operate a technical assistance center in each of the 50 states to promote leadership skills for school administrators.

Deadline for transmittal of applications: December 5, 1986.

Deadline for intergovernmental review comments: January 4, 1987.

Applications available: October 8, 1986.

Available funds: $7,175,547 (fiscal year 1986 appropriation).

Estimated average size of awards: $143,500.

Estimated number of awards: 50.

Project period: 36 months.

Applicable regulations: (a) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79. (b) Proposed regulations governing the Leadership in Educational Administration Development Program were published on September 16, 1986 (50 FR 33218). If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.

Invitational priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1), the Secretary especially urges the submission of fiscal year 1987 applications that propose projects with the purpose of upgrading the skills of school administrators in one or more of the following invitational priority areas:

(a) Enhancing the schoolwide learning environment by assessing the school climate, setting clear goals for improvement, and devising strategies for completing manageable projects with measurable objectives.

(b) Evaluating the school curriculum in order to assess its effectiveness in meeting academic goals.

(c) Analyzing instruction and evaluating teacher performance to improve the quality of teaching through classroom observation and supervision.

(d) Appraising and diagnosing student achievement as well as overall school performance as measured by student achievement and other pertinent indicators.

(e) Identifying, understanding, analyzing, and applying the findings of research relevant to educational administration, instructional leadership, and school improvement.

(f) Organizing and managing school resources through such processes as effective communication, problem-solving, time-management, and budgeting.

(g) Establishing and improving school discipline and security policies that effectively respond to and prevent disorder and crime.

Applications submitted under this notice that meet an invitational priority area will not be given preference over other applications that do not meet any of the priority areas.

Information conference: An information conference for prospective applicants will be held on October 28, 1986, from 1:00 p.m. to 4:00 p.m. in Room 1134 (Horace Mann Learning Center Auditorium), 400 Maryland Avenue, SW. (FOB–6), Washington, DC. *Potential applicants who are unable to attend the Information Conference are invited to contact Hunter Moorman for a written report of the conference.*

For applications or information contact: Hunter Moorman, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 500–K, Capital Place, Washington, DC 20208. Telephone: (202) 357–6116.

Program authority: 20 U.S.C. 4206

Dated: October 1, 1986.

Ronald P. Preston,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 86–22538 Filed 10–3–86; 8:45 am]
BILLING CODE 4000–01–M

National Graduate Fellows Program Fellowship Board; Meeting

AGENCY: National Graduate Fellows Program Fellowship Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth proposed agenda of a forthcoming meeting of the National Graduate Fellows Program Fellowship Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463, section 10(a)(2)).

DATE: October 16, 1986 at 8:30 a.m. through October 18, 1986 at 12:00 noon.

ADDRESS: Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Louise R. White, Executive Director, National Graduate Fellows Program Fellowship Board, Office of Post-secondary Education, 7th and D Streets SW., Washington, DC 20202 (202) 245–9758.

SUPPLEMENTARY INFORMATION: The National Graduate Fellows Program Fellowship Board is established under section 931 of the Higher Education Act of 1980, Title IX, Part C (20 U.S.C. 1134h-k). The Presidentially-appointed National Graduate Fellows Program Fellowship Board establishes program policies, oversees program operations, and annually selects fields of study in which fellowships are to be awarded. The Fellowship Board determines the number of fellowships to be awarded in each designated field, and appoints panels to select fellows on the basis of demonstrated achievement and exceptional promise.

The meeting of the Fellowship Board will be open to the public. The agenda will include the determination of the applicant screening and review process and logistics, the appointment of panelists for applicant review and selection, and the program implications of the legislative changes contained in the reauthorization of the Higher Education Act.

Records shall be kept of all Board proceedings and shall be available for public inspection at the National Graduate Fellows Program, 7th and D Streets SW., Room 3082, Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m. weekdays, except Federal holidays.

C. Ronald Kimberling,

Assistant Secretary for Post Secondary Education.

[FR Doc. 86–22557 Filed 10–3–86; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Remedial Order to Mt. Airy Refining Co.

AGENCY: U.S. Department of Energy, Economic Regulatory Administration.

ACTION: Notice of proposed remedial order to Mt. Airy Refining Company.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Mt. Airy Refining Company, Lamar Lund, President, 13715 Chelwood Place, Houston, Texas 77069; William P. Boswell, 6806 Camargo Club Drive, Cincinnati, Ohio 45243; W. Luke Boswell, 4790 Burley Hills Drive, Cincinnati, Ohio 45243; Lindsay B. McLean, 7407 Star Key Road, Pleasant Plain, Ohio 45162; David P. Boswell, Route 5, Box VV, Priest River, Idaho 83856; P. Wilson Boswell, II, Route 1, P.O. Box 405A, Priest River, Idaho 83856; and Ellen W. Boswell, 2531 Waterside Drive, Washington, DC 20006. This Proposed Remedial Order alleges violations in the amount of $1,833,305.34 plus interest, resulting from Mt. Airy's improper reporting of its crude oil receipts on its Refiners Monthly Reports during the time period June 1977 through November 1977. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room IE–234, 1000 Independence Avenue SW., Washington, DC 20585, in accordance wth 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Sandra K. Webb, Director, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002

and upon:

Marshall A. Staunton, Acting Solicitor, Economic Regulatory Administratin, U.S. Department of Energy, Room 3H–017, RG–40, 1000 Independence Avenue SW., Washington, DC 20585

Issued in Washington, DC, on the 24th day of September 1986.

Marshall A. Staunton,

Acting Solicitor, Economic Regulatory Administration.

[FR Doc. 86–22541 Filed 10–3–86; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RM85–1–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Kaiser-Francis Oil Co. and Essex Exploration Co.; Order Granting, and Dismissing in Part, Requests for Waivers

Issued: September 29, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Kaiser-Francis Oil Company and Essex Exploration Company filed requests for waivers of the transitional provisions of Order No. 436 [1] as they apply to transportation transactions performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA) and former § 157.209(a) of the Commission's Regulations. We will grant in part, and dismiss in part, the requests.

On September 19, 1984 and January 15, 1985, respectively, ANR Pipeline Company commenced transporting gas for Cincinnati Gas and Electric Company and Southeastern Michigan Gas Company under section 311 of the NGPA. On March 15, 1984, ANR Pipeline commenced transporting gas for Sohio Chemical Company under former § 157.209(a) of the Commission's Regulations.

Kaiser-Francis Oil Company

On April 15, 1985, Kaiser, a producer, entered into a written agreement to sell gas from its Sumpter well in Roger Mills County, Oklahoma, to ANR Gathering Company. The gas from the Sumpter well was to be transported by ANR Pipeline under the transportation agreements with Cincinnati Gas, Southeastern Michigan, and Sohio. Kaiser states that:

Prior to October 9, 1985, it was ANR Pipeline's usual practice to accept gas from new points of receipt on the basis of oral arrangements. After commencement of flow from the new point of receipt, the transportation agreements would have been amended to reflect the addition of the point of receipt.

Prior to October 9, 1985, ANR Pipeline installed a receipt point to receive gas from the Sumpter well into its system. Kaiser has spent approximately $27,700 to construct its gathering system and

[1] 33 FERC ¶ 61,007 (1985); FERC Statutes and Regulations ¶ 30,665 (1985).

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has agreed to reimburse ANR Pipeline for its receipt point. Construction on the gathering facilities was completed in late October 1985. ANR Pipeline has declined to transport gas from the Sumpter well due to the issuance of Order No. 436. The Sumpter well receipt point was not added to the written transportation agreement.

Essex Exploration Company

On March 16, 1985, Essex, a producer, entered into an agreement to sell gas from its Piersall well in Beaver County, Oklahoma, to ANR Gathering Company. The gas from the Piersall well was to be transported by ANR Pipeline under the transportation agreements with Cincinnati Gas, Southeastern Michigan, and Sohio.

In order to connect the Piersall well to ANR Pipeline's system, Essex constructed a gathering line at an estimated cost of $21,500. The gathering line was "readied for service" on September 25.

Essex states that a transportation contract covering gas from the Piersall well was not signed until October 16, 1985, because "[i]n accordance with ANR Pipeline's usual practice . . . ANR Pipeline withheld writen amendment of the transportation contracts until the actual commencement of deliveries." Transportation commenced on October 16 and continued until December 14 under the initial transition period for NGPA section 311 transportation provided in Order No. 436.

Discussion

In *CLARCO Gas Company, Inc. II*, 35 FERC ¶ 61,339 (1986), we held that waiver of the transitional provisions of Order No. 436 will be granted where evidence exists to show (1) an agreement prior to October 9, 1985, between two or more parties that commits the parties to an element of the transaction, (2) the construction of significant facilities or the expenditure of substantial funds prior to October 9, 1985 in reliance on that agreement, and (3) if the agreement relied upon was oral, execution of the agreement in writing prior to October 9, 1985. In addition, we stated that we will require a showing that the transaction for which waiver is sought is of a type that qualifies for transitional treatment.

We conclude that of Kaiser and Essex meet the test established in *CLARCO II* insofar as ANR Pipeline's transportation for Sohio is concerned. In the case of Kaiser, there was a written agreement between Kaiser and ANR Gathering for the sale of gas prior to October 9, 1985. Further, Kaiser constructed facilities before October 9 in reliance on that agreement. In the case of Essex, there was a written sales contract between Essex and ANR Gathering prior to October 9, 1985. Essex also constructed facilities prior to October 9 in reliance on that agreement. Accordingly, the portion of the waiver requests dealing with ANR Pipeline's transportation for Sohio under § 284.223(g)(1) can continue for its full term and the portion of the waiver requests dealing with ANR Pipeline's transportation for Southeastern Michigan under section 311 can continue for its full term, *i.e.*, until January 14, 1987.

We note that we granted ANR Pipeline a waiver of § 284.10(a)(1) of the Commission's Regulations in *United Gas Pipe Line Company, et al.*, 35 FERC ¶ 61,424 (1986). The waiver allows an interstate pipeline to continue an existing section 311 transaction, or begin a new section 311 transaction, as long as the pipeline transports in a manner consistent with the other provisions of Order No. 436. ANR Pipeline's waiver expires on January 1, 1987. Accordingly, the portion of the requests for waivers dealing with ANR Pipeline's section 311 transportation for Cincinnati Gas (whose contract expired on September 18, 1986) is dismissed as moot because ANR Pipeline can perform the transactions under the waiver granted to it in *United* until January 1, 1987.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22573 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Tejas Power Corp. and TXO Production Corp.; Order Denying Requests for Waivers

Issued: September 29, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

In *CLARCO Gas Company, Inc.*, 35 FERC ¶ 61,339 (1986), we held that waiver of the transitional provisions of Order No. 436 [1] will be granted where evidence exists to show:

(1) An agreement (either oral or written) entered into prior to October 9, 1985, between two or more parties (e.g., a transporter and a shipper, or a buyer and a seller) that commits the parties to an element of the transaction (*e.g.*, the transportation of the gas, the sale of the gas to be transported, or storage of the gas before or after transportation), (2) the construction of significant facilities or the expenditure of substantial funds prior to October 9, 1985 in reliance on that agreement, and (3) if the agreement relied upon was oral, execution of the agreement in writing prior to October 9, 1985.

In addition, we stated that the transaction must be of a "type that qualifies for transitional treatment, *i.e.*, that the gas is destined for the system supply of an interstate or intrastate pipeline . . . or local distribution company, or is for a high priority end-user."

With the *CLARCO* standard in mind, we will examine the requests for waivers filed by Tejas Power Corporation and TXO Production Corp. We will deny the requests.

Tejas Power Corporation

On August 20, 1985, Tejas, a gatherer, entered into an agreement to purchase gas from two producers in Harrison County, Texas. Prior to the August 20 agreement, Tejas had entered into negotiations with Mississippi River Transmission Corporation (MRT) and with Texas Eastern Transmission Corporation contemplation that MRT would purchase the gas and Texas Eastern would transport the gas.

Tejas acquired a right-of-way and constructed facilities in order to connect the producers' wells to Texas Eastern's system. Construction of the facilities was completed on October 31, 1985, at an estimated cost of $140,000.

MRT and Texas Eastern executed a transportation agreement on October 29, 1985, whereby Texas Eastern agreed to transport the gas under former § 284.221 of the Commission's Regulations, but Texas Eastern declined to transport the gas due to its concern with the open access provisions of Order No. 436.[2]

Tejas has failed to demonstrate that its agreement to purchase gas from the two producers was executed in writing prior to October 9, 1985. In addition, the transportation agreement was not executed until after October 9, 1985. Accordingly, we will deny Tejas's request.

TXO Production Corp.

On June 7, 1985, TXO, a producer, entered into an agreement to sell gas to Tenngasco Exchange Corporation. On August 7, 1985, TXO commenced the construction of gathering facilities in order to connect its well in Monroe County, Mississippi, to the facilities of Tennessee Gas Pipeline Company, a Division of Tenneco Inc., in order to deliver the gas to Tenngasco. Construction was completed on October 28 at an approximate cost of $465,000.

On May 6, 1985, Tenngasco requested approval from Tennessee to amend an existing NGPA section 311 transportation agreement to include the new receipt point for TXO's gas. TXO states that "Tennessee advised Tenngasco that it was agreeable to adding the receipt point, [but] such approval was contingent upon Tenngasco['s] agreeing to reimburse Tennessee for any costs incurred in the installation of facilities necessary to receive gas from TXO." Tenngasco agreed to reimburse Tennessee on October 1. A written transportation contract was executed after October 9, 1985.

Even though the facilities were completed by October 28, Tennessee has not transported any gas due to its reluctance to become a non-discriminatory access transporter under Order No. 436.

We will deny TXO's request for waiver because TXO has been unable to demonstrate that Tennessee's transportation is a type that qualifies for transitional treatment under the standard announced in *CLARCO*.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22572 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

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[1] 33 FERC ¶ 61,007 (1985); FERC Statutes and Regulations ¶ 30,665 (1985).

[2] Subsequently, on October 30, 1985, TPC Pipeline, Inc., an intrastate pipeline and subsidiary of Tejas, entered into a transportation agreement with Texas Eastern under section 311 of the NGPA. Under the agreement, Texas Eastern agreed to transport gas from the same receipt point to the same delivery point as was contemplated in the October 29 agreement between Texas Eastern and MRT. Gas commenced flowing on November 23, pursuant to the initial 45-day transition period for NGPA section 311 transportation provided in Order No. 436.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions in Rule 214. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22589 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-26-000]

Edwin L. Cox; Petition for Adjustment

October 1, 1986.

Take notice that on July 22, 1986, Edwin L. Cox (Cox) filed with the Federal Energy Regulatory Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) requesting relief from the Btu refund obligation of Order Nos. 399, 399-A, and 399-B. Cox requests the Commission to waive its obligation to make certain Order No. 399 refunds attributable to royalty payments previously made by Cox to the State of Louisiana. Cox states that the amounts owed by Louisiana and for which it is responsible under Order Nos. 399, *et al.* are uncollectible.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions in Rule 214. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22590 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-29-000]

Dale Gas Joint Venture 1979-A; Petition for Adjustment

October 1, 1986.

Take notice that on July 25, 1986, Dale Gas Joint Venture 1979-A (Dale) filed with the Federal Energy Regulatory Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) requesting relief from the Btu refund obligations of Order Nos. 399, 399-A, and 399-B. Dale requests the Commission to waive its obligation to make certain Order No. 399 refunds attributable to royalty payments previously made by Dale to certain royalty owners. Dale states that the amounts owed by certain royalty owners and for which it is responsible under Order Nos. 399, *et al.* are uncollectible.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions in Rule 214. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22580 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-28-000]

I&S Oil and Gas Co.; Petition for Adjustment

Issued: October 1, 1986.

Take notice that on August 4, 1986, I&S Oil and Gas Company (I&S) filed with the Federal Energy Regulatory Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 and Part 385 (Subpart K) of the Commission's regulations. I&S seeks waiver of its obligations under Commission Order Nos. 399, 399-A, and 399-B requiring payment of Btu adjustment refunds by first sellers of natural gas.

I&S states it is a small partnership which at this time has no assets and is no longer conducting business. The I&S partnership was originally established to sell the production from the JA Minitry No. 2 Well in the Telferner Field, Telferner, Texas. According to I&S, one of the partners is deceased and the well is no longer productive, thus leaving the remaining partners responsible for the BTU refund obligation. I&S states that the refund obligation presents a special hardship to the partners as they are experiencing financial difficulties and do not have sufficient assets to pay the refund obligation.

The procedures applicable to the conduct of this waiver proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Rules 214 and 1106 of the Commissions rules of practice and procedure. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22591 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-713-000]

Central Illinois Public Service Co.

September 30, 1986.

Take notice that on September 22, 1986, Central Illinois Public Service Company (Central Company) tendered for filing an Interconnection Agreement dated August 27, 1986, between Central Illinois Public Service Company (Central Company) and Wabash Valley Power Association, Inc. (Wabash Valley).

The Interconnection Agreement provides for coordinated interconnection operation including the interchange of Power and Energy under Service Schedule A, Seasonal Power, Service Schedule B, Short Term Power, Service Schedule C, Maintenance Power, Service Schedule D, Emergency Energy, Service Schedule E, Interchange Energy, Service Schedule F, Reserve Capacity and Energy.

Copies of this filing have been sent to Wabash Valley Power Association, Inc., the Public Service Commission of

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Indiana and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 9, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22565 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA85-71-001]

Electric Rates: Accounting; Fuel Adjustment Clause; Central Illinois Public Service Co.; Order Establishing Hearing Procedures

Issued: September 29, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On July 31, 1986, the Commission issued a letter order noting Central Illinois Public Service Company's (CIPS) disagreement with certain items contained in staff's audit report of CIPS' books and records. The disagreement relates to CIPS' accounting and fuel adjustment clause treatment of the proceeds from a coal supplier settlement.[1] CIPS was requested to advise whether it would agree to the disposition of the issues under the shortened procedures provided for by § 41.3 of the Commission's regulations. 18 CFR 41.3 (1986).

On August 28, 1986 CIPS responded that it did not consent to the shortened procedures. Instead, CIPS requested that the matter be set for hearing pursuant to § 41.7 of the Commission's regulations. 18 CFR 41.7 (1986).

Section 41.7 of the regulations provides that the proceeding will be assigned for hearing in case consent to the shortened procedures is not given. Accordingly, the Commission will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the Federal Register.

The Commission Orders

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly sections 205, 206, and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR Chapter I), a public hearing shall be held concerning the appropriateness of CIPS' accounting practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's rules of practice and procedure.

(C) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment—Central Illinois Public Service Company

Contested Issue—Accounting and Fuel Adjustment Clause Treatment of Coal Supplier Settlement Proceeds

The Company did not seek Commission approval to retain for the benefit of its stockholders a portion of fuel supplier settlement proceeds and its proposed method of distributing a portion of the balance among its wholesale customers.

On September 21, 1976, the Company filed suit against Consolidation Coal Company (Consol) alleging that Consol had failed to deliver the quantity and quality of coal called for in the contract between the two parties. On August 28, 1980, the Company filed an amended complaint, alleging breaches of warranty and fraudulent conduct on the part of Consol. The Company argued that Consol consistently failed to deliver coal which met the contract minimum of 9,500 BTU. The Company sought damages in excess of $10 million. Consol also filed counterclaims against the Company, seeking an unspecified amount of damages for alleged breaches of the contract by the Company. During the trial, the Company introduced evidence of damages of about $90 million. On March 21, 1983, the parties agreed to an out-of-court settlement. The settlement agreement called for payment of $25 million by Consol to the Company and termination of the contract. Consol paid the Company $5,000,000 immediately and the remaining balance was paid on June 10, 1983.

The Company initially recorded the settlement proceeds in Account 253, Other deferred credits. The Company then credited to Account 421, Miscellaneous nonoperating income, $7 million or 28% of the refund. The $7 million was passed on to the Company's stockholders in the form of a special 10¢ per share common stock dividend in June 1983.

The Company began amortizing the remaining $18 million of the fuel supplier settlement proceeds as a credit to fuel expense during the period April 1, 1983 through March 31, 1987. The wholesale portion of the settlement proceeds has reduced the monthly allowable fuel cost in wholesale fuel adjustment clause billings beginning in April 1983.

The staff concluded that all amounts received from Consol should have been considered as an adjustment of the fuel costs charged to customers through fuel adjustment clauses unless an alternative disposition of these amounts had been approved by regulatory authorities. The Company apparently was of the same view as evidenced by its submission to the Illinois Commerce Commission for approval to pass through only $18 million of the proceeds to retail customers through the fuel adjustment clause. However, the Company did not seek Federal Energy Regulatory Commission (FERC) approval of its plan to distribute the proceeds among its wholesale customers from the Federal Energy Regulatory Commission (FERC). Absent such approval, it was improper for the Company to record in Account 421, the wholesale portion of the proceeds which it unilaterally determined not to pass on to wholesale customers as an adjustment of fuel costs.[1]

To the extent that the Company believed a portion of the Consol proceeds should not be accounted for as a reduction in fuel costs, it should have retained the wholesale portion of such amounts in Account 253 pending a determination by the FERC as to the proper disposition of the amount.

The staff recommended that the Company: (1) Determine the wholesale portion, subject to review by the FERC, of the $7 million credited to Account 421 in 1983 and record the amount in Account 253 pending a determination by the FERC of the appropriate disposition of such amounts; (2) file with the FERC within 60 days the plan for distributing to wholesale customers their portion of the $7 million referred to the above as well as the $18 million of Consol proceeds which the Company is currently in the process of refunding; and (3) in the future, obtain prior FERC approval of plans to dispose of amounts received from fuel suppliers.

[FR Doc. 86-22574 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL86-30-000]

Electric Rates: Small Power Production; Waiver; Jurisdiction; Transmission Line; Oxbow Geothermal Corp.; Order Granting in Part and Denying in Part Petition for Declaratory Relief, Noting Intervention, and Terminating Docket

Issued: September 29, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On March 24, 1986, Oxbow Geothermal Corporation (Oxbow) filed a petition for an order waiving the regulations governing interlocking directorates, security issuances, liability assumption, property disposition, and accounting and reporting regulations under the Federal Power Act (FPA). These regulations are applicable to public utilities.[1] Oxbow also seeks a declaration that its ownership of a proposed transmission line will not affect the status of its qualifying facility (QF).[2]

Oxbow proposes to build, own and operate an approximately 210 mile, 230 kV transmission line that would transmit electricity exclusively from Oxbow's small power production facility in Churchill County, Nevada, to Southern California Edison Company's (SCE) substation in Bishop, California. Oxbow will not charge SCE for the use of the transmission line to transmit the power Oxbow generates. Rather, under the power purchase contracts, SCE will pay Oxbow for the QF power on the basis of SEC's avoided costs.

Notice of Oxbow's filing was published in the Federal Register,[3] with comments due on or before April 14, 1986. On April 14, 1986, Northern National Resources Company, Division on Enron Corporation (Resources) filed a motion to intervene in this docket. Resources is involved in the financing, construction, and operation of qualifying cogeneration facilities in Texas, California, and elsewhere. Resources alleges that the outcome of this proceeding will affect its decision on whether to proceed with current and future qualifying cogeneration projects. Resources does not object to the filing. After outlining the various positions it believes that the Commission could adopt in this docket,[4] Resources states that it "favors an approach which will result in the least amount of regulation of these transmission lines necessarily installed as a means of delivering electricity generated by qualifying facilities to electric utilities pursuant to the Public Utility Regulatory Policies Act of 1978." Intervention, pp. 3–4.

On April 28, 1986, Oxbow filed a reply to Resources' motion to intervene. Oxbow does not object to the intervention; rather, it seeks to limit the Commission's order to the requested regulation waivers and the declaration. Oxbow contends that the Commission need not address the issues raised by Resources, although it believes that its circumstances would justify a finding that the transmission line is part of the qualifying facility[5]

Discussion

Under Rule 14 of the Commission's rules of practice and procedure (18 CFR 385.214 (1986)), Resource's timely, unopposed motion to intervene serves to make it a party to this proceeding.

Oxbow seeks complete waiver of the ratemaking regulations (18 CFR Part 35 (1986)); the accounting regulations (18 CFR Part 101 (1986)); and the reporting regulations (18 CFR Part 41 (1986)). Oxbow requests that it be allowed to file only minimal information necessary to satisfy the statutory requirements on property disposition (18 CFR Part 33 (1986)). Oxbow seeks authorization of otherwise proscribed interlocking directorates upon the filing of an abbreviated application describing the interlocks. (18 CFR Part 45 (1986)). Oxbow seeks waiver of the full filing requirements regarding the issuance of securities (18 CFR Part 34 (1986)) and the assumption of liability (18 CFR Part 34 (1986)) so that it need only file notice and receive Commission approval prior to assumption of liability or the issuance of securities. We believe that Oxbow is generally entitled to the waivers requested for the reasons stated below.

Ratemaking, Accounting, and Reporting Regulations:

We do not believe that compliance with the ratemaking, accounting, and reporting regulations are necessary in this case. The primary purpose of Parts 41, 50, 101, and 141 of our regulations is to assist the Commission in determining a public utility's cost-of-service in order to determine whether the rates are cost-based. As stated above, Oxbow will not charge transmission rates and its rates for power produced by the QF can be no greater than SEC's avoided costs. In light of the fact that rates for the purchase of power from QFs are not based on the selling facility's cost-of-service, and that Oxbow does not propose to charge for transmission service, we find that it is not necessary or in the public interest to require that Oxbow comply with Parts 41, 50, 101, and 141 of our regulations at this time. We shall therefore waive these requirements as they apply to Oxbow in this case.[6]

Waiver of Part 35 of our regulations, however, is unnecessary. Oxbow will not charge any rates when it is operating its transmission line. The only rates Oxbow will charge are for the purchase of QF generated power which our regulations already exempt from FPA regulations. *See* 18 CFR Part 292 (1986). However, Part 35 would apply if Oxbow charged a fee to transmit electricity.

Corporate Regulations:

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[1] See Tariff Compliance Exceptions on the attached schedule.

[1] The staff does not challenge the portion of the proceeds not treated as a reduction in the cost of coal for retail fuel adjustment clause purposes because the Company's proposal to retain such amounts was approved by the Chief Accountant of the Illinois Commerce Commission in a letter dated April 21, 1983.

[1] 16 U.S.C. 824(e) (1982).

[2] Oxbow recently acquired three geothermal small power projects, in Churchill County, Nevada, each of which was certified as a qualifying small power production facility under prior ownership. Oxbow filed an application for recertification, which was later amended. On August 4, 1986, the Commission granted Oxbow's amended application for recertification. *Oxbow Geothermal Corporation*, 36 FERC ¶ 62,152 (1986).

[3] 51 FR 1,118 (1986).

[4] Resources states in its motion to intervene on p. 3:

Resources believes the Commission could take one of a number of positions concerning such installation and ownership; provided the transmission line is used solely to transmit electricity generated by a qualifying facility, the Commission could determine that the transmission line is a part of the qualifying facility; the Commission could take the approach suggested in Oxbow's petition and subject the owner of the transmission line to minimal electric utility regulation; the Commission could subject the owner of the transmission line to the entire panoply of electric utility regulation under the Federal Power Act; or the Commission could devise a hybrid of the foregoing approaches.

[5] The record with regard to the includibility of the transmission line in the qualifying facility is not well developed. However, the Commission agrees with Oxbow that this issue need not be addressed to pass upon Oxbow's request for waiver.

[6] *See also* Resources Recovery (Dade County), Inc., 20 FERC ¶ 61,136 (1982). In *Resources* the Commission waived certain regulatory requirements which applied to 30–80 MW qualifying small power production facilities; the Commission has also waived certain regulatory requirements which apply to public utilities under appropriate circumstances. *See* Cliffs Electric Service Corp., *et al.*, 33 FERC ¶ 61,372 (1985) (waiving regulatory requirements where natural resources companies with generating facilities had excess capacity being sold to utilities); Sees also Citizens Energy Co., 35 FERC ¶ 61,196 (1986) (waiving regulatory requirements for a non-profit entity engaging in jurisdictional transactions).

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Oxbow seeks waivers in order to file the minimum information necessary to satisfy statutory requirements on property disposition; to dispense with the full filing requirements regarding the issuance of securities and the assumption of liability; to authorize otherwise proscribed interlocking directorates upon the filing on an abbreviated application describing the interlocks; and to require notice to and approval of the Commission prior to undertaking such actions. Since the transmission line is being used exclusively to transmit power generated by the QF, we find no reason to impose the full filing requirements of Part 33 on Oxbow.[7] Rather, we shall require Oxbow to file only such information as will satisfy the minimum requirements of section 203 of the FPA. We believe reduction of the regulatory impact of this section on Oxbow may encourage the development of the small power production industry. *See generally* 20 FERC ¶ 61,138.

Section 204 of the FPA allows a public utility to issue securities or assume liability only if the Commission approves the issuance or assumption after making specific findings. Section 204 requires that an opportunity for hearing be given before granting an application under section 204 and allows the Commission to condition or modify such orders.[8] For the same reasons stated above, we find that it is in the public interest to waive the full filing requirements of section 204 as contained in Part 34 of the regulations. However, Oxbow will be required to file notice of any proposed issuance or assumption consistent with the provisions of section 204 of the FPA.[9] *See generally* 20 FERC ¶ 61,138.

The Commission cannot exempt Oxbow from the requirements of section 305(c) of the FPA. Section 305(c) requires annual filings from officers or directors of public utilities who hold or held during the previous year similar positions in financial institutions, securities underwriting, or utility supply companies. Thus, Oxbow is required to file annual reports with the Commission if any of its officers or directors during that year held similar positions in certain other entities. Given that the line will transmit only QF power to the purchasing utility and the Commission's intent to encourage the development of QF's, we will lessen the regulatory burden here. *See generally* 20 FERC ¶ 61,138.

We believe that an abbreviated filing, much like that required in *Edison Electric Institute*, 14 FERC ¶ 61,286 (1981), *order on reh.*, 15 FERC ¶ 61,173 (1981), will protect both public and private interests. Accordingly, for interlocking positions involving Oxbow, we shall waive the full requirements of Part 45 of our regulations and shall instead require only the filing of an abbreviated statement identifying the interlock.[10] In order to protect against any potential harm, however, we shall reserve the right to require, at any time, a further showing that Commission authorization should continue and that neither public nor private interests will be adversely affected by the holding of such interlocks. *See generally* 20 FERC ¶ 61,138.

It should be noted that we are inclined to grant the above waivers because of the particular circumstances of this case. Here Oxbow is not transmitting power for any other entity. If Oxbow's actions deviate from those outlined here, the waivers may no longer be appropriate. Any deviation from these actions would require notice to the Commission.

C. QF Status

Oxbow has requested a declaration as to the effect of its ownership of the transmission line on the benefits and exemptions it enjoys as the owner of a QF. The regulations prohibit the ownership of QFs by "a person primarily engaged in the generation or sale of electric power (other than electric power solely from . . . small power production facilities)." 18 CFR 296.206(a) (1986). Our regulations contain a specific test which states that a small power production facility "shall be considered owned by a person primarily engaged in the generation or sale of electric power if more than 50% of the equity interest in the facility is held by an electric utility. . . ." 18 CFR 292.206(b) (1986). If this test is met, the facility will be classified as a QF. Since the electric power which Oxbow intends to generate and sell comes solely from a QF, the determination that Oxbow's facility is a qualifying small power production facility and is entitled to the exemption provided under §§ 292.601 and 292.602 of the regulations remains unchanged.

The Commission Orders

(A) Oxbow's request for waiver of the Commission's accounting regulations, specifically Parts 41, 50, 101, and 141, is hereby granted.

(B) Oxbow's request for wavier of Part 33 of our regulations regarding property dispositions and consolidations is hereby granted; provided that Oxbow shall provide notice to and seek approval of the Commission prior to undertaking any such actions.

(C) Oxbow's request for waiver of Part 34 of our regulations regarding the issuance of securities and assumptions of liability is hereby granted; provided that Oxbow shall provide notice to and seek the approval of the Commission prior to undertaking any such actions.

(D) Until further order of this Commission, any person now holding or who may hold an otherwise proscribed interlock involving Oxbow is authorized to hold such positions; provided that such person files the application required in paragraph (E) below.

(E) Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to those persons subject to paragraph (D) above, and those persons instead shall file a sworn application providing the following information:

(1) Full nane and business address; and

(2) All jursdictional interlocks, identifying the affected companies and the positions held by that person.

(F) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by the continued holding of the interlocks authorized by this order.

[7] 18 CFR 292.601 (b) and (c) (1986), exempts geothermal QFs from section 203 of the FPA. Section 203 imposes certain requirements of notice to and approval by the Commission of the disposition of property, consolidation, and purchase of securities in excess of $50,000. Part 33 of the regulations governs the content of the reports required for these types of transactions.

[8] We note that section 204 of the FPA applies only to "public utilities." Section 201(e) of the FPA defines "public utility" as a person who owns or operates facilities subject to the jurisdiction of the Commission. Section 201(b)(1) provides that the Commission as jurisdiction over facilities "for such transmission . . . of electric energy in interstate commerce . . . ." Therefore, public utility status attaches when such interstate transmission has commenced. As a result, the issuance of securities by a person owning facilities that have not yet been used for such transmission does not require advance Commission approval. To the extent that securities issuances for the transmission line occur before any power is transmitted, advance Commission approval will not be required. *See also* 20 FERC ¶ 61,138.

[9] With regard to the hearing requirements of sections 203 and 204, we note that the Commission is not required to hold hearings where the ultimate decision would not be assisted by the receipt of evidence. City of Lafayette, Louisiana v. SEC, 454 F.2d 941 (1971). But the Commission has an obligation to consider requests for a hearing and provide an explanation of its decision not to hold a hearing if it decides one is unnecessary. *See, e.g.*, Gulf States Utilities Co. v. FPC, 411 U.S. 747 (1972).

[10] However, only the interlock which includes Oxbow would be eligible for the reduced filing requirements described above.

(G) All requests for waivers not specifically granted herein are hereby denied.

(H) Docket No. EL86-30-000 is hereby terminated.

(I) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22575 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-714-000]

The Washington Water Power Co.; Filing

September 30, 1986.

Take notice that on September 22, 1986, the Washington Water Power Company (Washington), the Seller, tendered for filing copies of a Firm Capacity and Energy Agreement dated August 1, 1986 with Puget Sound Power & Light Company, the Purchaser. Washington states that this Agreement is to be effective August 1, 1986 through June 30, 1991 with contractual provisions for its extension through June 30, 1993.

The Agreement provides for the Seller to make available to the Purchaser 55 Mw of capacity and associated energy to be scheduled by the Purchaser under provisions of the Agreement.

Washington requests an effective date of August 1, 1986, and therefore requests a waiver of the Commission's notice requirements stating that there will be no effect upon purchasers under other rate schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 9, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22567 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE86-31-004]

Western Area Power Administration; Application for Exemption

October 1, 1986.

Take notice that Western Area Power Administration (WAPA) filed an application on July 28, 1986 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on, or prior to June 30, 1988, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption WAPA states, in part, that it should not be required to file the specified data for the following reason:

The nature of WAPA's retail service during the current reporting period is substantially the same as in previous reporting periods for which a comparable exemption was granted (Docket No. RE80-31-002 and Docket No. RE80-31-003).

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capital Street, NW., Washington, DC 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period, such person must also serve a copy of such comments on: Mr. William H. Clagett, Administrator, Western Area Power Administration, P.O. Box 3402, Golden, Colorado 80401.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22568 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Notice of Public Comment Forum on Proposed Navajo Interim Power Rate

AGENCY: Western Area Power Administration.

ACTION: Notice of Public Comment Forum on Proposed Navajo Interim Power Rate.

SUMMARY: The Boulder City Area Office of the Western Area Power Administration (Western) published a "Notice of Proposed Rates and Request for Comments" in the Federal Register (51 FR 30120) on August 22, 1986. Interested parties were invited to submit comments concerning the rate methodology and proposed rates to Western within 90 days of the publication of the notice and at a public comment forum. This notice provides the date and location of the public comment forum.

DATE: Interested parties may submit written comments or make oral comments concerning the proposed rates at the public comment forum to be held on November 7, 1986, beginning at 9:30 a.m.

ADDRESSES: The public comment forum will be held at the Phoenix Hilton Hotel, Apache Room A, Central and Adams, Phoenix, Arizona, on the date cited above. Written comments concerning the proposed rates should be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Carter, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

Issued in Golden, Colorado, September 26, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-22540 Filed 10-3-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3090-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

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SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the Federal Register a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382–2712 or FTS 382–2712.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for Petroleum Refineries (Subpart J)—Recordkeeping and Reporting (EPA ICR #1054). (This is a reinstatement of a previously approved ICR; no changes are proposed.)

Abstract: Owners and operators of petroleum refineries are required to give notification of construction modifications, startups, shutdowns, or malfunctions. They must also report semi-annually any excess emissions of particulate matter SO_2 and CO. This information is used to identify sources subject to the standard and to monitor use of emission control equipment.

Respondents: Owners and operators of petroleum refineries.

Agency PRA Clearance Requests Completed by OMB EPA ICR #1168, Rights in Data and Contract Requirements for Delivery of Additional Data, was approved 9/17/86 (OMB #2030–0012; expires 4/30/87).

Comments on all parts of this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM–223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, D.C. 20460

and

Wayne Leiss, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: September 26, 1986.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Divison.

[FR Doc. 86–22411 Filed 10–3–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 86–365; File No. 20721–CD–P–1–84]

Iowa Radio Service, Inc.; Reconsideration Designating Application for Hearing

This is a summary of *Memorandum Opinion and Order on Reconsideration Designating Application for Hearing* in CC Docket No. 86–365, Adopted by the Chief, Common Carrier Bureau on September 10, 1986, and Released September 26, 1986.

The full text of the decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of the decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order on Reconsideration Designating Application for Hearing (Designation Order),* the Chief, Common Carrier Bureau (Bureau) considers a Petition for Reconsideration filed by Waterloo Communications (Waterloo). Waterloo seeks reconsideration of *Memorandum Opinion and Order (MO&O),* Mimeo No. 5457, released June 28, 1985, which conditionally granted the application of Iowa Radio Service, Inc. (Iowa), File No. 20721–CD–P–1–84, for an additional two-way channel on frequency 454.100 MHz at Waterloo, Iowa. Waterloo argues that the *MO&O* ignored a pleading filing by Waterloo which challenged the accuracy of Iowa's traffic loading studies based upon the monitoring of Iowa's frequency by employees of a Waterloo affiliated company.

2. The Bureau finds merit in Waterloo's petition. In addition, the Bureau finds that the monitoring of Iowa's frequency does not violate 47 U.S.C. 605, but refers possible violation of 18 U.S.C. 2511(1)(a) to United States Department of Justice. Accordingly, the *Designation Order:* (1) Grants Waterloo's petition; (2) Sets aside the *MO&O;* and (3) Designates Iowa's application for hearing.

3. Within 20 days of the release date of the *Designation Order,* parties must file a written notice of their intention to appear on the day of the hearing to present evidence on the specified issues.

Ordering Clauses

4. It is further ordered, that, pursuant to section 309(e) of the Communications Act of 1934, as amended, the captioned application of Iowa Radio Service, Inc., File No. 20721–CD–P–1–84, is designated for hearing upon the following issues:

(a) to determine the level of use of the Station KPA312 frequency 454.025 MHz presently licensed to Iowa Radio Service, Inc., and

(b) to determine, in light of the evidence adduced pursuant to the foregoing issue, what disposition of the referenced application would best serve the public interest, convenience, and necessity.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86–22561 Filed 10–3–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[No. 86–1064]

Approval of Application for Unlisted Trading Privileges; Philadelphia Stock Exchange, Inc.

Dated: September 26, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: On July 18, 1986, The Philadelphia Stock Exchange, Inc. filed with the Federal Home Loan Bank Board ("Board") an application ("Application"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and rule 12f–1 [17 CFR 240.12f–1] thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange:

Great American First Savings Bank, San Diego, California (FHLBB No. 0789), Common Stock, $1.00 Par Value.

Notice of the Application and opportunity for hearing was published in the **Federal Register** on August 22, 1986, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 86–846, dated August 14, 1986. (51 FR 30124, August 22, 1986). The Board received no comments with respect to the Application. Notice is hereby given that the Board approved the Application for unlisted trading privileges in these securities on September 23, 1986.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to Section 6 of the Act, the Philadelphia Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act [17 CFR 240.11Aa3–1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Philadelphia Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Application for unlisted trading privileges in the above named securities was approved on September 23, 1986.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 86–22496 Filed 10–3–86; 8:45 am]

BILLING CODE 6720–01–M

[No. 86–1072]

Approval of Application To Withdrawal Securities From Listing and Registration On the American Stock Exchange

Date: September 29,1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: On September 15, 1986, the American Stock Exchange ("AMEX") filed with the Federal Home Loan Bank Board ("Board") an application ("Application"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(c) thereunder, for the withdrawal from listing and registration on the AMEX of the following securities, since the Board determined that the Association was insolvent and appointed the Federal Savings and Loan Insuance Corporation ("FSLIC") as sole receiver on July 18, 1986:

Sun Savings and Loan Association, San Diego, California (FHLBB No. 7780), Guarantee Stock, Par Value $4.

The Association's common stock has been listed and registered on the AMEX and, following the receivership, trading in such securities has been suspended by the AMEX, since July 18, 1986.

Notice is hereby given that the Board, pursuant to section 12(d) of the Act and Rule 12d2–2(c) thereunder, approved the Application for the withdrawal from listing and registration on the AMEX, effective as of the opening of business on September 25, 1986.

SUPPLEMENTARY INFORMATION: The reasons stated in the AMEX's application for withdrawing the securities from listing and registration on the AMEX include the following:

1. The Constitution of the AMEX provides that its Board of Governors may suspend dealings in or remove any security from listing and registration at any time.

The delisting policies of the AMEX provide, among other things, that consideration may be given to the suspension or removal of a security when ". . . the financial condition and/or operating results of the issuer appear to be unsatisfactory . . ."

In applying these policies, the AMEX gives consideration to delisting the securities of an issuer which ". . . has a tangible net worth of less than $2,000,000 if such company has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years . . ." or it it ". . . has sustained losses which are so substantial in relation to its overall operations or its existing financial resources, or its financial condition has become so impaired that it appears questionable, in the opinion of the AMEX, as to whether such company will be able to continue operations and/or meet its obligations as they mature . . ."

2. The common stock of the Association does not qualify for continued listing under the AMEX's policies for the following reasons:

(a) The Association has incurred losses in each of its past two fiscal years ended December 31, 1985 as follows:

Fiscal years ended December 31,	Net (loss)
1984	$(5,765,150)
1985	(5,066,844)

(b) According to the Association's most recent Form 10–Q, the Association reported a net loss of $1,917,000 for the three months ended March 31, 1986 at which time its tangible net worth amounted to a deficit of $646,000.

(c) In a letter to the Association's stockholders dated July 18, 1986, the Board advised that the Association was insolvent, that the FSLIC had been appointed as sole receiver for the Association, and that the FSLIC has been authorized to dispose of the Association's assets.

3. In reviewing the eligibility of the Association's common stock for continued listing, the AMEX has complied with its delisting policies as follows:

(a) By letter dated July 22, 1986, the FSLIC was formally advised of the Association's status in relation to the delisting policies of the AMEX and furnished a copy of the AMEX's delisting policies and procedures.

(b) Since FSLIC did not request the Association's continued listing, the matter was reviewed by the AMEX on the basis of existing information and a determination was reached that the Association's common stock did not qualify for continued listing under the AMEX's policies and guidelines. This determination along with the Association's right of appeal was communicated to the FSLIC by letter dated August 19, 1986.

(c) By letter dated August 29, 1986, the FSLIC did not exercise its right to appeal the determination. Accordingly, the decision to remove the Association's common stock from listing and registration on the AMEX has become final in accordance with the rules and guidelines of the AMEX.

Any interested person may inspect the Application at the Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

The Board, pursuant to section 12(d) of the Act and Rule 12d2–(c) thereunder, having considered the facts stated in the Application and having due regard for the public interest and protection of investors, approved the Application for withdrawal from listing and registration on the AMEX, effective as of the opening of business on September 25, 1986.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 377–6415 or at the above address.

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By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-22495 Filed 10-3-86; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 024-003079-008
Title: Tampa Port Authority Lease Agreement
Parties:
Tampa Port Authority
Eller & Co., Inc.
Synopsis: The proposed amendment would modify the annual terms of the lease, change the designations in the lease of three berth numbers and provide for calculation of various revenue garantees and rental credits from a period of approximately 18 years, 9 months with two-five year options.

Agreement No.: 024-003079-009
Title: Tampa Port Authority Lease Agreement
Parties:
Tampa Port Authority
Eller & Co., Inc.
Synopsis: The proposed amendment would add 7.5 acres of bear land to the original agreement andprovide for periodic rental increases and rental credits for a period of 19 years, 2 months with two 5-year options.

Agreement No.: 224-011007
Title: Tampa Port Authority Lease Agreement
Parties:
Tampa Port Authority
Trans-Florida Warehouse Corporation
Garrision Terminals, Inc.
Synopsis: The proposed amendment provides for lease of land (certain premises situated in Hillsborough County, Florida) by the Tampa Port Authority to Trans-Florida Warehouse and Garrison Terminals, Inc.

Agreement No.: 224-011008
Title: Tampa Port Authority Lease Agreement
Parties:
Tampa Port Authority (Authority)
ST. phillips Towing Company (St. phillips)
Synopsis: Agreement No. 224-011008 provides for leaes by the Authority to St. phillips of one building consisting of 966 square feet to be utilized in their operations as a tug and towing company. The term of the agreement is for 10-½ years with two 5-year option periods with a 15% increase in rental.

Agreement No.: 224-011009
Title: Tampa Terminal Agreement
Parties:
Tampa Port Authority (Port)
St. Phillips Towing Company (St. Phillips)
Synopsis: The proposed agreement would permit the Port to lease 1.578 acres at Hookers Point in the Port of Tampa to St. Phillips for use in conjunction with St. Phillips' tug boat operations.

Agreement No.: 224-011010
Title: Tampa Terminal Agreement
Parties:
Tampa Port Authority (Port)
Petroleum Packers, Inc. (PPI)
Synopsis: The proposed agreement would permit the Port to lease approximately 4.2 acres of land to PPI for the construction of warehouse and office space at Hookers Point in the Port of Tampa.

Agreement No.: 224-011011
Title: Tampa Terminal Agreement
Parties:
Tampa Port Authority (Port)
St. Phillips Towing Company (St. Phillips)
Synopsis: The proposed agreement would permit the Port to lease space at Hookers Point in the Port of Tampa to St. Phillips for use in conjunction with its tug boad operations.

Agreement No.: 224-011012
Title: Tampa Terminal Agreement
Parties:
Tampa Port Authority (Port)
Tampa Bay Terminals Company (TBTC)
Synopsis: The proposed agreement would permit the Port to lease to TBTC approximately 4 acres of land at the George B. Howell Maritime Center in the Port of Tampa for use in conjunction with TBTC's scrap metal export operation.

Dated: October 1, 1986.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 86-22535 Filed 10-3-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 19, 1986

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 19, 1986[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting indicates a mixed pattern of developments but suggests on balance that economic activity is expanding moderately in the current quarter. In July total nonfarm payroll employment grew strongly, boosted in part by the return of striking workers. However, continued weakness in the industrial sector was reflected in further declines in employment in manufacturing and mining. The civilian unemployment rate moved down to 6.9 percent from 7.1 percent in June. Industrial production declined slightly further in July. The nominal value of total retail sales was about unchanged during the month, as sales of new autos declined somewhat but spending on other consumer goods remained strong. Housing starts fell somewhat in May and June from a relatively high level earlier in the year. Business capital spending appears to have remained weak, partly reflecting continuing declines in the energy sector. While fluctuations in energy prices have caused some month-to-month volatility, on average prices and wages are rising more slowly this year than in 1985.

The trade-weighted value of the dollar against major foreign currencies has continued to decline since the July 8-9 meeting of the Committee. The U.S. merchandise trade deficit in the second quarter appears to have been about unchanged from the first quarter. The value of total exports and of total imports remained about the same in the two quarters, although the value of oil imports continued to fall in the second quarter while that of non-oil imports rose further.

[1] Copies of the Record of policy actions of the Committee for the meeting of August 19, 1986, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Growth of M2 and especially of M3 picked up in July, lifting expansion of these two aggregates for the year through July well into the upper portion of their respective ranges established by the Committee for 1986. In July M1 continued to grow at a rate close to the very rapid pace of the second quarter. Expansion in total domestic nonfinancial debt remains appreciably above the Committee's monitoring range for 1986. Short-term interest rates have declined somewhat since the July meeting of the Committee, while most long-term interest rates are about unchanged to slightly lower on balance. On July 10, the Federal Reserve Board approved a reduction in the discount rate from 6½ to 6 percent.

The Federal Open Market Committee seeks monetary and financial conditions that will foster reasonable price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at the July meeting to reaffirm the ranges established in February for growth of 6 to 9 percent for both M2 and M3, measured from the fourth quarter of 1985 to the fourth quarter of 1986. With respect to M1, the Committee recognized that, based on the experience of recent years, the behavior of that aggregate is subject to substantial uncertainties in relation to economic activity and prices, depending among other things on the responsiveness of M1 growth to changes in interest rates. In light of these uncertainties and of the substantial decline in velocity in the first half of the year, the Committee decided that growth of M1 in excess of the previously established 3 to 8 percent range for 1986 would be acceptable. Acceptable growth of M1 over the remainder of the year will depend on the behavior of velocity, growth in the other monetary aggregates, developments in the economy and financial markets, and price pressures. Given its rapid growth in the early part of the year, the Committee recognized that the increase in total domestic non-financial debt in 1986 may exceed its monitoring range of 8 to 11 percent, but felt an increase in that range would provide an inappropriate benchmark for evaluating longer-term trends in that aggregate.

For 1987 the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1986 to the fourth quarter of 1987, of 5-1/2 to 8-1/2 percent for M2 and M3. While a range of 3 to 8 percent for M1 in 1987 would appear appropriate in the light of most historical experience, the Committee recognized that the exceptional uncertainties surrounding the behavior of M1 velocity over the more recent period would require careful appraisal of the target range at the beginning of 1987. The associated range for growth in total domestic nonfinancial debt was provisionally set at 8 to 11 percent for 1987.

In the implementation of policy for the immediate future, the Committee seeks to decrease slightly the existing degree of pressure on reserve positions, taking account of the possibility of a change in the discount rate. This action is expected to be consistent with growth in M2 and M3 over the period from June to September at annual rates of about 7 to 9 percent. While growth in M1 is expected to moderate from the exceptionally large increase during the second quarter, that growth will continue to be judged in the light of the behavior of M2 and M3 and other factors. Somewhat greater or lesser reserve restraint might be acceptable depending on the behavior of the aggregates, the strenghth of the business expansion, developments in foreign exchange markets, progress against inflation, and conditions in domestic and international credit markets. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 4 to 8 percent.

By order of the Federal Open Market Committee, September 30, 1986.
Normand Bernard,
Assistant Secretary, Federal Open Market Committee.
[FR Doc. 86-22545 Filed 10-3-86; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration; Statement of Organization, Functions, and Delegations of Authority

This notice establishes Part M, Family Support Administration in the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services. This notice announces the organizational structure and assignment of responsibilities for the Family Support Administration, as established April 4, 1986 (51 FR 11641). In addition, this notice amends: Part S, Social Security Administration, as last amended at 49 FR 4989 (February 9, 1984); Chapter SF, Office of Family Assistance, as last amended at 49 FR 49920 (February 9, 1984); Chapter SK, Office of Refugee Resettlement, as last amended at 50 FR 34760 (August 27, 1985); Part X, Chapter XW, Office of Child Support Enforcement, as last amended at 50 FR 46515 (November 8, 1985); and Part C, Chapter C, Office of Community Services, as last amended at 48 FR 43728 (September 26, 1983) to reflect the transfer of these organizations into the Family Support Administration. The changes are as follows:

1. Establish Part M, Family Support Administration, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services to read as follows:

Chapter M, Family Support Administration

M.00 Mission. The Family Support Administration (FSA) provides leadership and direction to plan, manage and coordinate the nationwide administration of financial assistance and several other assistance programs designed to promote stability, economic security, responsibility and self-support for families. FSA administers and directs the following family support programs: Aid to Families with Dependent Children (AFDC); Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands; the U.S. Repatriate Programs; the Low Income Home Energy Assistance Program (LIHEAP); programs providing domestic refugee and entrant resettlement assistance; and the Community Services Block Grant and Discretionary Grant Programs. FSA jointly administers the Work Incentive Program (WIN) with the Assistant Secretary for Employment and Training, Department of Labor. The Administrator of FSA also serves as Director of the Office of Child Support Enforcement.

FSA develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. It directs reviews, provides consultation and conducts negotiations to achieve adherence to Federal law and regulations for administration of these programs. FSA assesses State performance in administering these programs; reviews and approves or disapproves State Plan materials; and encourages, initiates and supports actions to improve program effectiveness and efficiency. The Administration directs financial management and cost analyses in the review and approval of expenditure estimates as well as State formula grant awards and discretionary grants related to these several programs.

Directs, coordinates, manages and provides leadership in planning and developing FSA programs; supervises the use of research, demonstration and impact evaluation funds, and promotes the development of an integrated family support system. FSA provides national leadership to develop and coordinate public and private programs and a focal point for States in the administration of financial assistance and vital programs which promote family stability.

M.10 Organization. The Family Support Administration is a principal operating division of the Department of Health and Human Services. FSA is headed by the Administrator of the Family Support Administration, who

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reports directly to the Secretary and also serves as the Director of the Office of Child Support Enforcement. FSA consists of:

Office of the Administrator (MA)
Office of Management and Information Systems (MB)
Office of Communications (MC)
Office of Policy (ME)
Office of Financial Management (MF)
Office of Family Assistance (MH)
Office of Refugee Resettlement (MJ)
Office of Child Support Enforcement (MK)
Office of Community Services (ML)

M.20 Functions. The functions of the organizational elements of FSA are summarized in this chapter and are described in detail in successive chapters.

A. The Office of the Administrator of the Family Support Administration provides executive direction, leadership, and guidance to all FSA components; advises the Secretary and Under Secretary of FSA programs; and recommends actions and strategies to improve coordination of FSA efforts with other programs, agencies and governmental levels (or jurisdictions). Directs equal employment opportunity and civil rights policies and programs for FSA. Provides membership on the National Coordinating Committee for WIN.

B. The Office of Management and Information Systems (OMIS) provides management and administrative support and analysis for FSA including personnel, staff development, support services, management analysis, and organizational studies. Serves as the focal point for liaison with FSA regional offices. Provides management and oversight of FSA internal systems and of State information systems which support FSA programs.

C. The Office of Communications (OC) provides leadership, direction and oversight to plan, develop and assure consistency of FSA's public affairs policy and internal/external communications. The Office of Communications serves as the Administrator's principal public affairs policy advisor and provides centralized professional communication services.

D. The Office of Policy (OP) provides leadership, direction and oversight to plan, develop and assure consistency of FSA program policies among FSA components and between HHS Operating Divisions. Develops and manages crosscutting research and demonstration programs including evaluation proposals and projects and the conduct of special studies on programmatic issues of priority concern to the FSA Administrator. Serves as the focal point for legislative development activities including Congressional Affairs in FSA.

E. The Office of Financial Management (OFM) provides leadership to establish and monitor financial management objectives, policies and controls necessary for the implementation and execution of FSA programs. Reviews and coordinates internal financial operating plans developed by FSA components and provides financial systems liason. Provides technical processing of grant awards; manages procedures for handling grant disallowances and appeals.

F. The Office of Family Assistance (OFA) provides direction and technical guidance to the nationwide administration of the following public assistance programs: Aid to Families with Dependent Children (AFDC); Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands; the U.S. Repatriate Programs; Emergency Welfare Services; and the Low-Income Home Energy Assistance Program (LIHEAP). It develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. The Office assesses the performance of States in administering these programs; reviews State planning for administrative and operational improvements; and supports actions to improve program effectiveness. It directs reviews; provides consultations; and conducts necessary negotiations to achieve adherence to Federal law and regulations in State plans for public assistance program administration.

G. The Office of Refugee Resettlement (ORR) plans, develops, and directs implementation of a comprehensive program for domestic refugee and entrant resettlement assistance. The Office provides direction and technical guidance to the nationwide administration of programs funded from the ORR refugee and entrant resettlement appropriations. It develops, recommends, and issues program policies, procedures, and interpretations to provide program direction. The Office monitors and evaluates the performance of States and other public and private agencies in administering these programs and supports actions to improve them. It provides national leadership in the development and coordination of national, public and private programs giving refugee and entrant assistance.

H. The Office of Child Support Enforcement (OCSE) provides leadership in the planning, development, management and coordination of the Child Support Enforcment (CSE) program and activities authorized and directed by title IV–D of the Social Security Act and other pertinent legislation. The general purpose of the CSE legislation is to require States to enforce support obligations owned by absent parents of their children by locating absent parents, establishing paternity when necessary and obtaining child support. The specific responsibilities of this office are to: establish policies and standards for State programs for locating absent parents, establishing paternity, and obtaining child support; review and approve or disapprove State plan material; conduct annual audits of State programs to assure their conformity with appropriate requirements and conduct other audits as may be necessary; assist States in establishing adequate reporting procedures and maintaining records for the operation of the CSE programs; maintain records of all amount collected and disbursed under the CSE program and of the costs incurred in collecting such amounts; and provide technical assistance to the States to help them establish effective systems for establishing paternity and collecting child support. Operates Parent Locator System.

I. The Office of Community Services (OCS) is responsible for administering: (1) The Community Services block grant and discretionary grant programs established by section 672 and 681 of the Omnibus Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35); (2) the community development credit union programs administered under subchapter A of chapter 8 of subtitle A of title VI of said Act; (3) the close-out of the Community Services transition project grants authorized by section 682 of OBRA for implementation during Fiscal Year (FY) 1982, at the discretion of the State governments not electing to administer Community Services Block Grants in FY 1982, and the closeout thereof; and (4) the programmatic close-out functions related to funds awarded by the Community Services Administration (CSA) in FY 1981 and prior years.

Chapter MA. Office of the Administrator of the Family Support Administration

MA.00 Mission. The Office of the Administrator of the Family Support Administration advises the Secretary and Under Secretary of Health and Human Services and provides direction and leadership to manage the nationwide administration of assistance programs designed to provide economic security and promote self-support for families. Directs, coordinates, manages and provides leadership in planning and developing FSA programs, policies and special initiatives; supervises use of research and impact evaluation funds which increase alternatives to public assistance dependency and which promote program improvements to target assistance to the most needy. Provides direction and leadership to improve efficiencies in FSA programs. Directs equal employment opportunity and civil rights programs for FSA.

MA.10 Organization. The Office of the Administrator is headed by the Administrator of the Family Support Administration who reports directly to the Secretary and consists of: Immediate Office of the Administrator; Executive Assistant; and the Executive Secretariat.

MA.20 Functions. A. The Immediate Office of the Administrator is responsible to the Secretary for carrying out FSA's mission and provides general supervision to the major components of FSA. These responsibilities include providing executive leadership and direction to plan and coordinate FSA program activities to assure their effectiveness; approving instructions, policies, publications, and grant awards issued by FSA staff; representing FSA in relationships with government and non-government groups; and effectively utilizing FSA resources.

The Administrator serves as the Director of the Office of Child Support Enforcement and on the National Coordinating Committee for the Work Incentive Program. The Office jointly administers the WIN Program with the Assistant Secretary for Employment and Training, Department of Labor. The Deputy Administrator for FSA assists the Administrator in carrying out these responsibilities and acts in the absence of the Administrator.

B. The Executive Assistant to the Administrator assists the Administrator by performing special assignments on critical issues impacting FSA programs. Ensures coordination and/or integration of operational activities among the FSA components. Represents the Office of the Administrator in meetings with external groups and serves as liaison to the Deputy Under Secretary for Intergovernmental Affairs.

C. The Executive Secretariat ensures that issues requiring the attention of the Administrator, Deputy Administrator and/or Executive Staff are addressed on a timely and coordinated basis. Facilitates decisions on matters requiring immediate action including White House, Congressional and Secretarial assignments. Serves as FSA liaison with HHS Executive Secretariat and as audit liaison with the General Accounting Office and the Department's Office of Inspector General. Receives, assesses and controls incoming correspondence and assignments to the appropriate FSA unit(s) for response and action. Provides assistance and advice to FSA staff on the development of responses to corespondence and on the context and style of completed assignments. Corrdinates and/or prepares Congressional correspondence. Tracks development of periodic reports and facilitates Departmental clearance.

Exercises quality control for all major written work products for executive signature. Coordinates and prepares program responses/reports for FSA. Serves as the Freedom of Information Officer for FSA; handles hotline calls received by the Office of Inspector General and the General Accounting Office on FSA operations and personnel.

Chapter MB. Office of Management and Information Systems

MB.00 Mission. The Office of Management and Information Systems (OMIS) is a staff office for the FSA and advises the Administrator in the areas of internal administration and management of FSA, internal information systems in FSA and State automated systems designed to support FSA programs. Provides leadership, guidance and liaison throughout FSA on administrative policies, procedures and activities including: personnel management, employee development, management studies and assessments, facilities and material management and similar supporting services. Serves as the focal point for liaison with FSA regional offices. Establishes policy, requirements, standards and guidelines for State automated data processing (ADP) systems which support FSA programs and operations.

MB.10 Organization. The Office of Management and Information Systems is headed by an Associate Administrator who reports directly to the Administrator, and consists of: Office of the Associate Administrator, Division of Management and Regional Operations and Division of Information Systems.

MB.20 Functions. A. Office of the Associate Administrator directs and coordinates all elements of the Office of Management and Information Systems; provides guidance and services to FSA staff and program components, in accordance with HHS and other federal policy, in the areas of personnel; administrative procedures, policies and requirements; support services and management analysis. Directs activities to plan, budget, direct, promote and control information technology for FSA programs and internal operations.

Provides oversight of relationships between FSA headquarters and FSA regional offices to insure effective operations, communications and regional representation of FSA issues.

B. Division of Management and Regional Operations provides services, support and liaison to meet the management and operational needs of FSA components. Provides services directly or through FSA program administrative staff. Functions as liaison between FSA components and the Office of the Assistant Secretary for Personnel to provide personnel management support including staff resource planning, position development position management, recruitment, employee relations, labor relations and staff development. Manages the performance recognition systems and the systems of awards for FSA. Coordinates implementation of the Equal Opportunity and Affirmative Action programs for FSA in accordance with Departmental policies and procedures. Provides administrative management support services including coordination and management of office space, equipment, supplies, telecommunications, mail, messenger, printing, publication distribution, inventory control, contracts, procurement for FSA staff offices, safety, forms/records management, payroll and travel. Performs management studies, analysis and evaluations of administrative processes and functions in FSA programs and staff components to ensure FSA organizational and operational effectiveness. Develops administrative management policies and procedures. Develops and tracks administrative plans for personnel, facilities and equipment. Studies structural, functional and management problems of particular interest to the Administrator. Acts as liaison with the Assistant Secretary for Management and Budget in coordinating organizational proposals requiring Secretarial approval; maintains official organizational files for FSA. Prepares formal program, administrative, and personnel delegations for authority for the Administrator.

Serves as FSA focal point for liaison between FSA regional offices and the Administrator on region-related matters; supports the FSA Regional Administrators in administering regional office activities and establishing and implementing crosscutting program and operational initiatives, develops and implements systems and procedures for communicating with the regional offices

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and monitoring and evaluating regional office operations. Plans for the utilization of regional resources to accomplish approved objectives. Develops work measurement techniques and tools and provides tracking and evaluation of the use of regional resources. Works with other FSA organizations to plan and clarify requirements placed on regional offices. Monitors regional involvement in operational planning initiatives to assure fulfillment of FSA goals and objectives; and collects and analyzes information on regional program, operational and administrative issues for submission to the Administrator.

C. Division of Information Systems develops and assists in the planning and installation of automated systems for program use by the States; provides consulting services and technical assistance to States on Advance Planning Documents (APD) for Federal financial participation. Reviews, evaluates and approves requests for Federal matching funds for automated State/local Public Assistance and Child Support Enforcement programs and conducts periodic reviews and certification of State automated data processing (ADP) installations. Establishes and maintains ADP standards for the States.

Provides computer services, automated systems design, development and maintenance services to FSA programs. Manages, maintains and operates Agency Computer Center. Develops long range hardware and telecommunication acquisitions plans. Provides technical assistance on automated systems to State/local IV–D Agencies for Federal Parent Locator Services, Federal Tax Refund Offset Service and Project 1099. Designs, develops and implements application systems to support FSA program requirements. Manages and maintains Management Information Systems for all FSA components. Manages an Information Center offering services such as design assistance, application evaluation, user training, new product evaluation and specialized technical assistance.

Develops the information resource management (IRM) policy, procurement plan and budget, and monitors the approval plan/budget for potential overruns in the area of equipment leases, telecommunications services and service contracts. Coordinates the development of the FSA ADP Security Management Plan and enforces ADP directives to ensure compliance.

Chapter MC. Office of Communications

MC.00 Mission. The Office of Communications develops, directs and coordinates public affairs and communication services for the Administrator, FSA. In this capacity provides leadership, direction and oversight in the promoting and marketing of FSA's public affairs policies, programs and initiatives.

MC.10 Organization. The Office of Communications is headed by an Associate Administrator who reports directly to the Administrator and consists of: Office of the Associate Administrator, Division of Public Affairs and the Division of Communications Planning.

MC.20 Functions. A. Office of the Associate Administrator provides direction and executive leadership in the areas of public relations policy and communication services. Serves as the principal advisor to the Administrator of FSA in the areas of public affairs. Plans, designs and manages the promoting and marketing of FSA programs. Coordinates and serves as FSA liaison with the Assistant Secretary for Public Affairs. Serves as Regional Liaison on public affairs issues.

B. Division of Public Affairs develops and implents public affairs strategies to achieve FSA program objectives in coordination with other FSA components. Coordinates press strategy. Responds to all media inquiries concerning FSA programs and related issues. Develops fact sheets, news releases, feature articles for magazines and other publications on FSA programs and initiatives. Manages preparation and clearance of speeches and official statements on FSA programs. Manages the speaker request system. Advances trips of the FSA Adminstrator and Deputy Administrator including speaking engagements. Monitors media outlets and provides appropriate summaries to FSA components. Manages preparation and clearance of audio-visual products and publications including planning, budget oversite and technical support. Corrdinates regional public affairs policies and public affairs activities pertaining to FSA programs and initatives.

C. *Division of Communications Planning* serves as the focal point for development communication strategies with States, special interest groups, professional organinzations, and other Federal agencies. Reviews correspondence and other releases of a sensitive or controversial nature requiring the Administrator's or Secretary's signature. Tracks Meetings, conferences and proposals and legislative positions of outside groups. Coordinates marketing of FSA initiatives to the above groups. Fields requests for information on FSA programs and positions from the above groups. Manages FSA conference plans and preparation including organizing, coordinating conferences, workshops and other events promoting FSA policies and priorities. Develops and coordinates approaches for meeting internal communication needs. Coordinates FSA representation at non-FSA sponsored meetings and conferences.

Chapter ME Office of Policy

ME.00 Mission. The Office of Policy (OP) is a staff office for the Family Support Administration responsible for managing the policy, planning, legislation, Congressional affairs, research, evaluation and special program initiatives within the Family Support Administration (FSA). Plans, develops and monitors strategies for promoting FSA program directions; manages agency-wide planning systems for determining program goals, objectives and priorities and for operational implementation. Recommends to and advises the Administrator, FSA on all policy matters in FSA. Ensures consistency with overall Administration, Departmental and FSA policies for all FSA programs. Serves as the focal point for Congressional and legislative activities affecting FSA. Coordinates the development of priority areas for funding research and evaluation programs; manages crosscutting research, demonstration and evaluation projects.

ME.10 Organization. The Office of Policy is headed by an Associate Administrator who reports directly to the Administrator, Family Support Administration, and consists of: Office of the Associate Administrator, Division of Policy and Legislation, Division of Research, Demonstration and Evaluation and Division of Planning and Priority Initiatives.

ME.20 Functions. A. Office of the Associate Administrator provides direction and executive leadership to OP in the administration of its responsibilities. Serves as the principal advisor to the Administrator on all policy-relatd matters for FSA. Serves as the focal point of legislative and Congressional activities affecting FSA. Coordinates program policies and policy analysis. Provides advice to the Administrator on all matters related to policy, planning, research, evaluation and demonstration issues and programs. Manages special projects and initiatives of priority concern to the Administrator.

B. Division of Policy and Legislation provides leadership for development of policy and legislation and for ensuring consistency of policies among FSA program and staff offices and with other HHS Operating Divisions. Develops short and long range policy strategies, goals and objectives and ensures their accomplishment for FSA. Reviews and clears all policy relevant materials. Coordinates, reviews and clears all FSA regulations. Reviews and evaluates program statistics and performance to determined policy effectiveness and develops proposals for changes in policies, regulations and legislation. Represents FSA in Departmental legislative development and manages the legislative planning cycle for FSA.

Serves as the focal point for Congressional affairs in FSA; counsels and advises the FSA Administrator and program directors on varous aspects of Congressional relations. Serves as liaison to the Assistant Secretary for Legislation. Tracks and reports on legislative development.

C. Division of Research, Demonstration and Evaluation provides guidance and oversight to FSA program components in the conduct of research, demonstration and evaluation (RD&E) and discretionary programs. Identifies major issues which may merit research and demonstration intervention. In cooperation with program components, develops research and demonstration planning guidance to be used by those components; reviews and recommends approval of RD&E plans prepared by the program components; prepares the annual FSA RD&E plan. Clears all FSA discretionary program announcements for compliance with the discretionary funds plan; insures the compliance of all grant awards with the discretionary plans; tracks overall progress of projects funded. Develops crosscutting research and demonstration and evaluation programs, priority statements and project proposals; manages crosscutting research and demonstration and evaluation programs. Ensures the transfer of technologies and best practices of crosscutting research, demonstration and evaluation projects; ensures that products of crosscutting RD&E projects are disseminated to the field.

D. Division of Planning and Priority Initiatives develops and implements an FSA-wide long and short range planning system. Develops the planning guidance for the FSA Administrator and provides guidance and technical assistance to FSA in developing operational plans. Develops and implements a review system to assess progress in implementing plans. Develops and manages priority initiatives for which the Administrator has lead responsibility for the Department.

Chapter MF Office of Financial Management

MF.00 Mission. The Office of Financial Management (OFM) is a staff office for the Family Support Administration. OFM develops, directs and coordinated financial policies, budgets and controls necessary for the implementation of FSA programs. Provides technical processing of grant awards; manages procedures for handling grant disallowances and appeals.

MF.10 Organization. The Office of Financial Management is headed by an Associate Administrator who reports directly to the Administrator, Family Support Administration, and consists of: Office of the Associate Administrator, Division of Grants Management and Division of Budget and Finance.

MF. 20 Functions. A. Office of the Associate Administrator directs and coordinates all elements of the Office of Financial Management; provides guidance to all FSA program and staff office components, in accordance with HHS and other federal policy, in the ares of grants, budget and finance. Serves as the FSA liaison with the Assistant Secretary for Management and Budget on all financial matters.

B. Division of Grants Management provides centralized management and technical administration of formula, entitlement, discretionary and project grants for FSA programs. Assures that all grants awarded conform with applicable statutes, regulations and policies. Provides technical processing of research and development and of discretionary grants; negotiates grants budgets. Processes appeals and reviews allowances.

Manages the procedures for making disallowances under FSA assistance programs. Provides technical assistance and guidance to FSA components on Federal/State financial matters. Develops proposals for improving the efficiency in awarding grants and coordinating financial operations among FSA headquarters and regional components; establishes priorities and develops procedures for financial monitoring review activities for FSA grant programs. Develops FSA regulations, instructions and procedures for the administration of discretionary grants, formula grants and block grants.

C. Division of Budget and Finance in coordination with other FAS staff offices and program components, consolidates, formulates, justifies and presents budget estimates and forecasts before HHS, Office of Management and Budget and the Congress. Participates in planning, directing and coordinating financial and budgetary programs of FSA. Provides guidance to FSA components in preparing budgets, justifications and other budgetary materials. Reviews the budget as approved by Congress and recommends an FSA financial plan; makes allotments and allowances to FSA offices within the guidelines of the approved financial plan. Develops and maintains budgetary controls to ensure observance of established ceilings on both funds and personnel; maintains commitment records against allowances and certifies funds availability for FSA staff offices and certain program components as requested. Prepares requests for apportionment of appropriated funds. Prepares spending plans and status-of-funds reports for the Administrator. Develops financial operating procedures and manuals, assuring implementation within FSA of Departmental and Federal fiscal policies and procedures. Participates in program development and implementation plans where there are budgetary implications. Serves as the FSA liaison with HHS and OMB on all budgetary matters.

2. Amend Part S, Chapter S, Section S.10, Social Security Administration (Organization) by deleting paragraphs F. The Office of Family Assistance (SF) and N. The Office of Refugee Resettlement (SK).

3. Amend Chapter SF, Office of Family Assistance by deleting the Chapter in its entirety and inserting it in Part M, as Chapter MH.

4. Amend Chapter SK, Office of Refugee Resettlement by deleting the Chapter in its entirety and inserting it in Part M, as Chapter MJ.

5. Amend Part X by deleting Chapter XW, Office of Child Support Enforcement in its entirety and inserting it in Part M, as Chapter MK.

6. Amend Chapter C, Office of Community Services by deleting the Chapter in its entirety and inserting it in Part M, as Chapter ML.

Dated: September 29, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86–22805 Filed 10–3–86; 8:45 am]

BILLING CODE 4150–11–M

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Alcohol, Drug Abuse, and Mental Health Administration

Development Research Grants for Alcoholism Treatment Assessment Research

AGENCY: National Institute of Alcohol Abuse and Alcoholism, HHS.

ACTION: Issuance of a special program announcement for Development Research Grants (R21) on Alcoholism Treatment Assessment Research.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces the availability of a special program announcement for Development Research Grants (R21) on Alcoholism Treatment Assessment Research. Development grants (R21) are intended to generate studies which will be research building blocks in the development of future, more intensive research studies on alcoholism treatment. Areas of interest include: client typology, therapeutic process, and treatment regimens, settings, and formats. Grants supported under this announcement will be limited to a one-year effort and a maximum of $30,000 direct costs per project in FY 1988 only. It is estimated that up to $300,000 will be available in FY 1988 to support projects under this announcement.

Receipt Date for Applications. February 1, 1987, June 1, 1987, and October 1, 1987 only.

For Further Information or a Copy of the Announcement, Contact: National Clearinghouse for Alcohol Information (NCALI), Box 2345, Rockville, Maryland 20852, Telephone (301) 468–2600.

Donald Ian Macdonald, M.D.,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86–22578 Filed 10–3–86; 8:45 am]

BILLING CODE 4160–20–M

Family Support Administration

Use of Exxon Petroleum Violation Escrow Funds in the Low Income Home Energy Assistance Program

Correction

In FR Doc. 86–21502, beginning on page 33808, in the issue of Tuesday, September 23, 1986, make the following corrections:

On page 33809, in column two, the third and fourth lines should read: "increase the base to which the transfer cap of 10% is applicable. Under section". In the seventeeth line, after "of Pub. L. 97–377," insert "no".

BILLING CODE 1505–01–M

Food and Drug Administration

[Docket No. 86M–0305]

Bausch & Lomb Inc.; Premarket Approval of Bausch & Lomb® (Amefocon A) Oxygen Permeable Lens

Correction

In FR Doc. 86–17724, beginning on page 28435 in the issue of Thursday, August 7, 1986, make the following corrections:

1. On page 28436, in the first column, in the fourth line of the first complete paragraph, "369e(g)" should read "360e(g)".

2. Also on page 28436 in the first column, in the fifth line of the last complete paragraph, "authority of the Commissioner" should read "authority delegated to the Commissioner".

BILLING CODE 1505–01–M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting:

Minneapolis District Office, chaired by John Feldman, Distict Director. The topics to be discussed are: Talk About Prescriptions—October Campaign, Sulfiting Agents, and the Delaney Clause.

DATE: Tuesday, October 7, 1986, 11 a.m. to 12:30 p.m.

ADDRESS: Labor Center, 2002 London Rd., Duluth, MN 55812.

FOR FURTHER INFORMATION CONTACT: Don Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–349–3906.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 1, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–22664 Filed 10–3–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86M–0388]

Barnes-Hind, Inc.; Premarket Approval of SOFT MATE® Peroxide System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Barnes-Hind, Inc., Sunnyvale, CA, for premarket approval, under the Medical Device Amendments of 1976, of the SOFT MATE® Peroxide System. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by November 3, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On April 2, 1985, Barnes-Hind, Inc., Sunnyvale, CA 94086, submitted to CDRH an application for premarket approval of the SOFT MATE® Peroxide System consisting of the SOFT MATE® Peroxide Solution, SOFT MATE® Neutralizing Solution, and SOFT MATE® Hydra-Mat® II Cleaning and Storage Unit. The SOFT MATE® Peroxide System is designed to disinfect, neutralize, and store daily and extended wear soft (hydrophilic) contact lenses.

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 29, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at

CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the SOFT MATE® Peroxide System states that the system is designed to disinfect, neutralize, and store daily and extended wear soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 3, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 26, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–22512 Filed 10–3–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86–M–0389]

Thompson-CGR Medical Corp.; Premarket Approval of Magniscan 5000 (Nuclear Magnetic Resonance Device)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Thomson-CGR Medical Corp., Columbia, MD, for premarket approval, under the Medical Device Amendments of 1976, of the Magniscan 5000. After reviewing the recommendation of the Radiologic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by November 3, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7514.

SUPPLEMENTARY INFORMATION: On November 26, 1985, Thomson-CGR Medical Corp., Columbia, MD 21046, submitted to CDRH an application for premarket approval of the Magniscan 5000. The device is a nuclear magnetic resonance device with multi-slice operation and a 0.5 tesla (T) superconducting magnet operating at 0.5T. The Magniscan 5000 is indicated for use as a diagnostic imaging device that produces transverse, sagittal, and coronal images that display the internal structure of the head or body. The images produced by the Magniscan 5000 reflect the spatial distribution of proton (hydrogen nuclei) exhibiting magnetic resonance. The nuclear magnetic resonance properties that determine image appearance are proton density, spin-lattice relaxation time (T1), spin-spin relaxation time (T2), and flow. When interpreted by a trained physician, these images provide information that can be useful in the determination of a diagnosis. All other uses of the Magniscan 5000 remain investigational.

On June 9, 1986, the Radiologic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 29, 1986, FDA approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert A. Phillips (HFZ–430), address above.

Opportunity For Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CHRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitoner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 3, 1986, file with the

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Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 29, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-22513 Filed 10-3-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0343]

Pacesetter Systems, Inc.; Premarket Approval of Model 676 Pulse Generator and Model 800 AV Programmer

Correction

In FR Doc. 86-20112, appearing on page 31964, in the issue of Monday, September 8, 1986, the subject heading should read as set forth above.

BILLING CODE 1505-01-M

Health Care Financing Administration

[ORD-056-N]

Medicare and Medicaid Programs; Cooperative Agreements and Grants; Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces that HCFA is revising the next closing date, which is November 3, 1986, for the receipt of cooperative agreement and grant applications as published in the Federal Register on January 30, 1985 (50 FR 4480). The November 3, 1986 closing date for waiver-only applications and applications requesting discretionary funds is being changed to December 15, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Spodnik, Health Care Financing Administration, Office of Research and Demonstrations, Office of Operations Support, 2-D-6 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187 (301) 594-3825.

SUPPLEMENTARY INFORMATION: HCFA is in the process of amending the descriptions of current funding priorities to reflect the major research and demonstration initiatives of HCFA and the Department through an amendment to the Federal Register document published on January 30, 1985 (50 FR 4480). The notice announcing the amendment will be published shortly in the Federal Register. We are postponing the closing date for the receipt of applications for research and demonstration cooperative agreements and grants for Federal fiscal year 1987 until December 15, 1986 to give applicants sufficient time to review the revised statement of HCFA funding priorities. This will also permit HCFA to conduct a national technical assistance conference on November 14, 1986 for interested applicants. Particulars about the technical assistance conference are available upon request to the above HCFA contact. There will also be a direct invitational mailing to potential participants concerning the conference.

(Catalog of Federal Domestic Assistance Program No. 13766, Health Financing Research, Demonstrations and Experiments)

Dated: October 2, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86-22751 Filed 10-3-86; 10:32 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Establishment of the Atchafalaya National Wildlife Refuge; Iberville and St. Martin Parishes, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of establishment of the Atchafalaya National Wildlife Refuge.

SUMMARY: This Notice advises the public that approximately 15,255 acres of land and water in Iberville and St. Martin Parishes, Louisiana, constitute the Atchafalaya National Wildlife Refuge. These lands will be protected and administered in accordance with the Congressional Acts, Treaties, and Executive Orders that provide the legal basis for operation of units of the National Wildlife Refuge System.

EFFECTIVE DATE: October 6, 1986.

FOR FURTHER INFORMATION CONTACT: Sam O. Drake Jr., Refuge Supervisor, District II, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street, SE., Atlanta, Georgia 30303. Telephone (404) 331-3538 or FTS 242-3538.

SUPPLEMENTARY INFORMATION: The Act to establish the Atchafalaya National Wildlife Refuge was enacted by Congress on October 26, 1984 (Pub. L. 98-548). As directed by the Act, the Secretary published a notice in the Federal Register on April 24, 1985 (Vol. 50, No. 78), advising the public that the detailed map depicting the lands and water designated as appropriate for the refuge was available for public inspection. Additionally, Title III, section 303(c) of the Act directs the Secretary to establish the Atchafalaya National Wildlife Refuge by Federal Register notice whenever sufficient property has been acquired that can be effectively managed as a refuge.

Notice is hereby given that, pursuant to the above Act, sufficient property, approximately 15,255 acres, has been acquired from within the selection area to constitute lands and water that can be effectively managed as a unit of the National Wildlife Refuge System. Therefore, the Atchafalaya National Wildlife Refuge is established effective on the date of this Notice.

September 19, 1986.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 86-22185 Filed 10-3-86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[CA-940-06-4520-12; C-3-86]

California; Filing of Plat of Survey

September 23, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Claveras County

T. 5 N., R 14 E.

2. This supplemental plat of section 5, Township 5 North, Range 14 East, Mount Diablo Meridian, California, showing amended lottings created by the cancellation of the mineral segregation survey of the Rainbow lode, Fallen Pine lode, and the White Elephant lode was accepted September 10, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86-22583 Filed 10-3-86; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-06-4520-12]

[C-17-85]

California; Filing of Plat of Survey

September 23, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Mono County

T. 7 N., R 25 E.

2. This supplemental plat of a subdivision of original lots 12, 13, 14, and 15, section 33, Township 7 North, Range 25 East, Mount Diablo Meridian, California, was accepted September 12, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management and the U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86-22581 Filed 10-3-86; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-06-4520-12; Group 872]

California; Filing of Plat of Survey

September 23, 1986.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Amador County

T. 7 N., R. 11 E.

2. This plat representing the dependent resurvey of a portion of the north boundary and subdivisional lines, and the survey of the subdivision of sections 3, 4, 10, 11, 12, 13, 15, 22, and 28, Township 7 North, Range 11 East, Mount Diablo Meridian, California, under Group No. 872, California, was accepted September 10, 1986.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86-22580 Filed 10-3-86; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-06-4520-12; Group 892]

California; Filing of Plat of Survey

September 23, 1986.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Calaveras County

T. 6 N., R. 14 E.

2. This plat representing the dependent resurvey of the First Standard Parallel North along a portion of the south boundary, a portion of the east, west, and north boundaries, a portion of the subdivisional lines, certain boundaries of mineral surveys and mineral segregation surveys, and the survey of the subdivision of sections 1, 3, 9, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, Township 6 North Range 14 East, Mount Diablo Meridian, California, under Group No. 892, California, was accepted September 4, 1986.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86-22582 Filed 10-3-86; 8:45 am]

BILLING CODE 4310-40-M

[WY-040-05-4111-09]

Rock Springs District, Uinta County, WY

AGENCIES: Bureau of Land Management, Department of the Interior and U.S. Forest Service, Department of Agriculture.

ACTION: Notice of Intent to prepare an environmental impact statement for proposed oil and gas field development in the Hickey Mountain-Table Mountain area of Uinta County, Wyoming.

SUMMARY: The Bureau of Land Management, in cooperation with the Forest Service, Department of Agriculture, is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed development of an oil and gas field in the Hickey Mountain-Table Mountain area of Uinta County in southwestern Wyoming. This area contains public land administered by the Rock Springs District, Bureau of Land Management, and land within the Wasatch-Cache National Forest.

DATES: Preparation of the EIS began with public scoping for an environmental assessment in October and November of 1985. The determination that an EIS was necessary was made on September 12, 1986. A draft EIS will be available for public review and comment in November 1986.

ADDRESSES: Copies of the draft EIS will be mailed to all known interested parties when available. Information and materials providing a description of the project are available for review at the following locations:

Bureau of Land Management, Rock Springs District Office, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902-1869

Forest Supervisors Office, Wasatch-Cache National Forest, 125 S. State Street, Suite 6226, Salt Lake City, Utah 84138

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Mountain View Ranger District, Wasatch-Cache National Forest, P.O. Box 129, Mountain View, Wyoming 82339

FOR FURTHER INFORMATION CONTACT: For further information, or if you would like to be placed on the draft EIS mailing list, contact Wally Mierzejewski, team leader, at the Bureau of Land Management, address listed above or phone (307) 382-5350.

SUPPLEMENTARY INFORMATION: The public was provided a notice of public scoping statement for this proposal in the Federal Register on October 21, 1985. That notice requested written comments to assist in determining the scope of an environmental assessment. The notice also stated, "should an EIS be prepared, additional scoping would not be initiated." No additional scoping comments are requested.

The project proposal calls for construction of access roads and well pads, drilling and completion of oil and gas wells, repressurization wells and wastewater injection wells, and construction and use of hydrocarbon separation plants. Approval of applications for permit to drill, sundry notices, rights-of-way, or special use permits would be required for specific project components.

The alternatives to be analyzed in the EIS include variations in collector access road locations, product transportation methods, and processing facilities. A no action alternative will also be considered. The cumulative impacts of this development proposal along with existing and anticipated land uses will be analyzed.

Issues to be analyzed in the EIS include potential impacts to big game particularly elk, visual resources, sensitive soils and watershed, existing land uses, vegetation, fisheries, socioeconomic resources, cultural and paleontological resources, geology, and human health and safety.

L. Christian Voeler,
Acting State Director.

[FR Doc. 86-22567 Filed 10-3-86; 8:45 am]
BILLING CODE 4310-84-M

National Park Service

Mining Plan of Operations

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et. seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Angst Corporation has filed a plan of operations in support of proposed mining on lands embracing the Gold Bar patented mining claim group, M.S. 2321 and 2604, within Death Valley National Monument. The plans are available for public inspection during normal business hours at the Death Valley National Monument Headquarters, Death Valley, California.

Dated: September 5, 1986.

Edwin L. Rothfuss,
Superintendent, Death Valley National Monument.

FR Doc. 86-22614 Filed 10-3-86; 8:45 am
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

[OSM-EIS-22]

Availability of Final Petition Evaluation Document/Environmental Impact Statement on the Rock Creek Watershed, TN

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Availability of final petition evaluation document/environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available a final petition evaluation document/environmental impact statement (PED/EIS) on the Rock Creek watershed in Tennessee. The PED/EIS has been prepared to assist the Secretary of the Interior in making a decision on the petition to designate certain lands as unsuitable for surface coal mining operations in the Rock Creek watershed in Tennessee.

ADDRESS: Copies of the final EIS may be obtained from Willis Gainer, Chief, Southern Branch, Division of Tennessee Permitting, OSMRE, 530 Gay Street, SW., Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Willis Gainer, at the location given under **"ADDRESS"**, telephone: (615) 673-4348).

SUPPLEMENTARY INFORMATION: On October 10, 1984, the Legal Environmental Assistance Foundation filed a petition to designate certain lands as unsuitable for surface coal mining operations in the Rock Creek watershed in Tennessee. OSMRE determined the petition to be administratively complete on December 7, 1984. On March 21, 1986, OSMRE made available the draft PED/EIS for a 60 day public review and comment period.

The Final PED/EIS was prepared by OSMRE in accordance with section 522(d) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). It analyses five alternatives which range from designation of the entire petition area as unsuitable for all surface coal mining operations to not designating any of the petition area as unsuitable for surface coal mining operations.

In preparing the final PED/EIS, OSMRE has revised the draft PED/EIS in response to comments received during the public comment period. These comments and OSMRE's responses to them are included in the final PED/EIS.

No decision will be made on the petition by the Secretary of the Interior until at least 30 days from the time the PED/EIS is made available to the public. Notice of such a decision by the Secretary of the Interior will be made available to the public at that time.

Dated: September 26, 1986.

Len Richeson,
Assistant Director, Program Operations.

[FR Doc. 86-22533 Filed 10-3-86; 8:45 am]
BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 23]

Middle Atlantic Conference Petition for Assumption of Steel Carriers Tariff Association, Inc., Functions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of clarification of prior decision.

SUMMARY: By petition filed July 30, 1984, Middle Atlantic Conference (MAC), a motor carrier rate bureau, seeks reconsideration of the Commission's June 27, 1984, decision partially approving proposed amendments to MAC's pending rate agreement that would accommodate a proposed merger with Steel Carriers Tariff Association, Inc. (STA), also a motor carrier rate bureau. Alternatively, MAC requests a clarification of that decision. *See Middle Atlantic Conference—Assumption of Steel Carriers Tariff Association, Inc., Functions,* 49 FR 27643 (July 5, 1984). That decision specifically disapproved two amendments that would broaden MAC's territorial scope for collective ratemaking activities with respect to effective STA tariffs. We will clarify our prior decision to specifically disapprove the amendments to the extent the territorial scope of the amendments exceeds the approved territorial scope of STA's rate bureau agreement.

EFFECTIVE DATE: This clarification is effective October 6, 1986.

FOR FURTHER INFORMATION CONTACT: Robert G. Rothstein (202) 275-7912
or
Louis E. Gitomer (202) 275-7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. A copy may be purchased from T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423; or call toll-free (800) 424-5403, or (202) 275-7428 in the Washington, DC, metropolitan area.

Energy and Environmental Statement

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706.

Decided: September 26, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,
Secretary.

[FR Doc. 86-22530 Filed 10-3-86; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 85-9]

Bernard Leroy Langston, III, M.D.; Grant of Registration

Correction

In FR Doc. 86-21771, beginning on page 34268, in the issue of Friday, September 26, 1986, make the following correction:

On page 34269, in the first column, the third line should be removed and "application for renewal" should be removed from the fourth line.

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

4,4'-Methylenedianiline Negotiated Rulemaking Advisory Committee; Relocation of Meetings

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of relocation of meetings, correction.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of the relocations of three Committee meetings to be held from October 1986 through January 1987. It is anticipated that the meetings will last from one to three days but this may vary as the work of the Committee proceeds. For the purpose of this notice only the beginning dates will be given. Additionally, a technical correction is made to the earlier notice, dated August 4, 1986 (51 FR 27919).

DATES: The meetings are scheduled to begin on:

October 7, 1986 at 9:30 a.m. in the Quality Inn Capitol Hill Hotel, 415 New Jersey Avenue, NW, Washington, DC 20001, (202) 638-1616;

November 18, 1986 at 9:30 a.m. in the Quality Inn Capitol Hill Hotel, indicated above;

December 9, 1986, at 9:30 a.m. at the Phoenix Park Hotel, 520 North Capitol Street, NW, Washington, DC 20001, (202) 638-6900; and

January 13, 1987 at 9:30 a.m. in the Hyatt Regency Washington, 400 New Jersey Avenue, NW, Washington, DC 20001, (202) 737-1234.

Status: These meetings will be open to the public.

ADDRESS: Submissions presented in response to this notice should be sent in quadruplicate to the Docket Officer, Docket No. H-040, Room N3670, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Washington, DC 20210; (202) 523-7894. Written comments received, as well as other information in Docket H-040, will be available for inspection and copying at this address, Monday through Friday, 8:15 a.m. to 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW, Washington, DC 20210; Telephone (202) 523-8615.

SUPPLEMENTARY INFORMATION: On October 22, 1985, OSHA announced its intent to make use of negotiated rulemaking in developing a proposed standard for MDA (50 FR 42790-42793). The notice also set forth the basic concepts of negotiated rulemaking and outlined the participant selection criteria which OSHA expected to use in establishing an MDA Advisory Committee.

OSHA established the committee in accordance with the Federal Advisory Committee Act (FACA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to mediate issues associated with the development of a Notice of Proposed Rulemaking on MDA.

Appointees to the committee include representatives from labor, industry, health and safety groups, and government agencies.

Members of the public wishing to submit written statements to the Committee that are germane to the agenda may do so. Such statements should be in reproducible form and should be submitted to the OSHA Division of Consumer Affairs at least 5 days before the meeting. In addition, the Mediator or Chairman of the Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting.

Minutes of these meetings will be available for public inspection at the OSHA Docket Office, U.S. Department of Labor, Room N-3670, 200 Constitution Ave., NW, Washington, DC 20210; Telephone (202) 523-7894.

On August 4th, 1986, a notice was published in the Federal Register indicating the schedule for six meetings of the OSHA MDA "Mediated" Rulemaking Advisory Committee. While the committee was chartered as the "Negotiated" Rulemaking Advisory Committee, OSHA has decided to change the name of the Committee to "Mediated" inasmuch as this term better describes the process. A new charter is being prepared which reflects this change but will not take effect until the expiration of the current charter on November 7th, 1986. Federal Advisory Committee Act regulations require that notices of meetings contain the exact name of the committee as chartered. Therefore, the earlier notice, even though adequate for the post-October meetings, must nonetheless be corrected to comply with FACA regulations.

In light of this discussion, the notice of August 4, 1986 (51 FR 27919) is hereby corrected by adding the following sentences at the end of the paragraph in the center column which begins with the words "OSHA established" and ends with the words "on MDA":

Although originally chartered as the "4,4'-Methylenedianiline Negotiated Rulemaking Advisory Committee," OSHA is taking steps to change the official name of the committee to the "4,4'-Methylenedianiline Mediated Rulemaking Advisory Committee." The reason for this change is that the term 'mediated' better describes the process.

Signed in Washington, DC, this 1st day of October 1986.

John A. Pendergrass,
Assistant Secretary of Labor.

[FR Doc. 86-22617 Filed 10-3-86; 8:45 am]
BILLING CODE 4510-26-M

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Available and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments..

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the records retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before December 5, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved shedules.

This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. *Department of the Air Force,* Directorate of Administration (N1–AFU–86–69). Housing reservation forms.

2. *Department of the Army,* Records Management Operations Office (N1–156–86–1). Housekeeping records of Army ordnance plants (schedules provides for permanent retention of mission-related records)

3. *Department of Agriculture,* Forest Service, Office of Information (N1–95–86–7). Records of the Chief of Service, including copies of court cases, press releases, copies of interagency agreements, calendar of daily activities and facilitative correspondence.

4. *Department of the Interior,* Bureau of Land Management (N1–49–86–2). Paper copies of serial registers and logs that have been microfilmed for archival retention.

5. *Department of Commerce,* Office of the Secretary, Office of Technical Service (NC1–40–86–3). Miscellaneous records of the Industrial Research and Development Division, 1945–49.

6. *Library of Congress,* Central Services Division, Copyright Office, Licensing Division (N1–297–86–1). Routine records relating to licensing and accounting of Juke boxes and Cable Systems.

7. *Administrative Office of the U.S. Courts,* Criminal Justice Act Division (NC1–116–85–4). Records relating to the administration of the Criminal Justice Act program.

8. *Environmental Protection Agency,* Office of International Activities (NC1–412–85–16). Comprehensive schedule covering records relating to EPA's international programs and activities and agency participation in international bodies, conferences, and negotiations.

9. *Environmental Protection Agency,* Facilities and Support Services Division (NC1–412–85–26). Comprehensive schedule relating to facilities and support services for the agency.

10. *Office of the Secretary of Defense,* Records Management Division (N1–330–86–3). Internal Control Program Records.

11. *Department of State,* Personnel Office of Management, Regulations and Research Division (N1–59–86–8). Revision in destruction period for communications relating to Foreign Service employees conduct, suitability, and discipline.

12. *Tennessee Valley Authority,* Office of Corporate Services, Division of Medical Services (N1–142–86–13). Emergency Response Unit Weekly Inspection Sheet, used to ensure the proper equipage of ambulances at project sites.

13. *Department of Transportation,* Federal Aviation Administration (N1–237–86–5). Inventory Control Records.

14. *Department of Transportation,* Federal Aviation Administration (N1–237–86–6). Aeromedical certification records.

15 *Department of the Treasury,* Bureau of Engraving and Printing (N1–318–84–1 and 2). Final receipts of perfect deliveries of material other than National Bank Currency, ca. 1924–1957 and Treasury Department Circulars.

Dated: September 25, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–22542 Filed 10–3–86; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL ENDOWMENT ON THE ARTS AND HUMANITIES

Joint Collaboration Initiative Sections of the Design Arts Advisory Panel and Visual Arts Advisory Panel to the National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Joint Collaboration Initiative Sections of the Design Arts Advisory Panel and the Visual Arts Advisory Panel to the National Council on the Arts will be held on October 21, 1986, from 9:00 a.m.—5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

September 30, 1986.

[FR Doc. 86–22584 Filed 10–3–86; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel to the National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater New American Works Prescreening) to the National Council on the Arts will be held on October 28–30, 1986, from 9:00 a.m.–5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

September 30, 1986.

[FR Doc. 86–22585 Filed 10–3–86; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–187]

The Northrop Corporation Triga Reactor (Northrop Corp.); Order Terminating Facility License

By application dated January 14, 1985, as supplemented, Northrop Corporation (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to dispose of the component parts of the research reactor and to terminate Facility Operating License No. R–90. A Notice of "Proposed Issuance of Order Authroizing Dispositionof Component Parts and Terminating Facility License", was published in the **Federal Register** on May 22, 1985, at 50 FR 21153. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The reactor was shut down December 21, 1984 and all fuel rods have been removed from the core and shipped to other research reactors for continued use. The reactor facility has been completely dismantled and all requirements, particularly those relevant to residual radioactivity and the packaging and shipping of fuel and radioactive material, have been met. Therefore, pursuant to the application filed by Northrop Corporation, located in Hawthorne, Los Angeles County, California, Facility License No. R–90 is terminated as of the date of this Order.

For further details with respect to this action see (1) the application for termination of facility license, dated January 14, 1985, as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the Notice of Proposed Issuance of Order Authorizing Disposition of Component Parts and Terminating Facility License published in the **Federal Register** on May 22, 1985 (50 FR 21153). Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 29th day of July 1986.

For the Nuclear Regulatory Commission

Frank J. Miraglia,

Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86–22601 Filed 10–3–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–312]

Sacramento Municipal Utility District; Rancho Seco Nuclear Generating Station;

Notice is hereby given that, by a letter dated August 26, 1986, the Honorable Tom Bradley, Mayor of Los Angeles requested that the Nuclear Regulatory Commission conduct public hearings and permanently close the Rancho Seco Nuclear Generating Station. Bases for the action were alleged to be that the facility (1) is the twin of the "doomed" TMI reactor, (2) has had a troubled operating record, (3) has suffered nearly one hundred unplanned outages including the worst overcooling incident in industry history in 1978 and two severe overcooling incidents in 1985, and (4) has been plagued by poor management, inadequate training and sloppy maintenance.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations and, accordingly, appropriate action will be taken on the request within a reasonable time. A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Rancho Seco facility located at the Sacramento City—County Library, 828 I Street, Sacramento, California 95814.

Dated at Bethesda, Maryland, this 26th day of September, 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director Office of Inspection and Enforcement.

[FR Doc. 86–22598 Filed 10–3–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. STN 50–447]

General Electric Co., Standard Safety Analysis Report (Gessar II BWR/6 Nuclear Island Design) Issuance of Amendment No. 2 to Final Design Approval No. FDA–1

Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has issued Amendment No. 2 to FDA–1, the Final Design Approval for the BWR/6 Nuclear Island design described in the General Electric Standard Safety Analysis Report GESSAR II. FDA–1, which was issued by the NRC staff on July 27, 1983 (48 FR 35050), permitted the GESSAR II design to be referenced in utility applications for operating licensee for those plants that referenced the Preliminary Design Approval for the GESSAR–238 Nuclear Island design (PDA–1) at the construction permit stage. Amendment No. 1 to FDA–1 which was issued on August 9, 1985, removed the constraint on the forward referenceability of the GESSAR II design and permitted it to be referenced in new construction permit (CP) and operating license (OL) application as provided for by paragraph B.3.b(1) of the Commission's

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"Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants" (50 FR 32138). Paragraph B.3.b(1), however, prohibits the issuance of a CP or OL to an application that references the design until successful completion of the severe accidents review. Amendment No. 2 to FDA–1 documents the completion of the staff's and the ACR's review of GESSAR II for the severe accident concerns described in paragraph B.2. of the Commission's policy statement.

GESSAR II contains final safety-related design information for the nuclear island portion of a BWR/6 boiling water reactor type nuclear power plant which includes the nuclear steam supply system (NSSS), engineered safety feature systems, reactor building (including shield building and Mark III containment), auxiliary building, control building, radwaste building, fuel handling building, and related systems and structures. The BWR/6 Nuclear Island reference design is for a facility which would operate at a core thermal power level of 3730 megawatts (1289 megawatts electrical, nominal net).

The GESSAR II design was reviewed by the NRC staff pursuant to Appendix O to 10 CFR Part 50. The Safety Evaluation Report (SER), NUREG–0979, dated April 1983 and Supplements 1 through 5 thereof dated July 1983, November 1984, January 1985, July 1985, and May 1986, respectively, document the results of the NRC staff's review and evaluation of the GESSAR II design including Amendments 1 through 21 thereto. The SER also addresses the comments of the Advisory Committee on Reactor Safeguard, (ACRS) as reflected in its reports to the Commision dated June 15, 1983, and January 14, 1986. A copy of the ACR's reports are included as Appendix F to SER Supplement 1 and Appendix H to SER supplement 5.

Based on its review, the NRC staff has concluded, subject to the conditions set forth in Amendment 2 to FDA–1, that the information provided in GESSAR II complies with the requirements of 10 CFR Part 50, Appendix O, and with paragraphs B.2 and B.3.b(1) of the Commission's "Policy Statement on Severe Reactor Accidents Regarding Future Designs of Existing Plants," and is acceptable for incorporation by refernce in utility applications for construction permits and operating licenses. Amendment 2 allows a CP or OL to be issued to applicants who reference the GESSAR II design without further staff or ACRS review of those portions of the design covered by FDA–1.

Issuance of Amendment No. 2 to FDA–1 does not constitute a commitment to issue a permit or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards and other presiding officers in any proceeding under Subpart G of 10 CFR Part 2. This action only approves the design of a facility for use for reference purposes in applications for construction permits and operating licenses for nuclear power plants. It does not authorize the operation of any nuclear power plant or any other facility. The environmental impacts associated with any facility proposed to be operated utilizing the approved reference design will be considered in accordance with the Commission's regulations in 10 CFR Part 51.

The final Design Approval as amended is effective as of its date of issuance and shall expire on September 22, 1991, unless extended by the NRC staff. The expiration of the Final Design Approval on September 22, 1991, shall not affect its use in licensing applications docketed prior to such date.

For further details with respect to this action, see (1) Amendment No. 2 to FDA–1 and Attachment A thereto; (2) the NRC staff's Safety Evaluation Report, NUREG–0979, dated April 1983 and Supplements 1 thorugh 5 thereto, dated July 1983, November 1984, January 1985, July 1985, and May 1986, respectively; (3) the reports of the Advisory Committee on Reactor Safeguards dated June 15, 1983 and January 14, 1986; (4) the General Electric Standard Safety Analysis Report GESSAR II and Amendments 1 through 21 thereto; and (5) the Commission's "Policy Statement on Severe Reactor Accidents regarding Future Design and Existing Plants." These documents are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC 20555. A copy of Amendment No. 2 to FDA–1 and Attachment A thereto may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of BWR Licensing. Copies of the Safety Evaluation Report and Supplements (NUREG–0979) may be purchased through the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 200313–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 22nd day of September 1986.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 22599 Filed 10–3–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Company et al; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–55 to the licensees which authorizes operation of the Clinton Nuclear Power Station, Unit No. 1 (the facility), at reactor core power levels not in excess of 2894 megawatts thermal (100 percent rated power) in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (144.7 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

The Clinton Nuclear Power Station, Unit No. 1 is a boiling water nuclear reactor located in Harp Township, DeWitt County, approximately six miles east of the city of Clinton in east-central Illinois. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on September 29, 1980 (45 FR 64307).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–55, with Technical Specifications (NUREG–1209) and the Environmental Protection Plan: (2) the report of the Advisory Committee on Reactor Safeguards, dated March 9, 1982: (3) the Commission's Safety Evaluation Report, dated February 1982 (NUREG–0853), and Supplements 1 through 7: (4) the Final Safety Analysis Report and Amendments thereto: (5) the Environmental Report and supplements thereto: and (6) the Final Environmental Statement dated May 1982 (NUREG–0854).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555 and in the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of Facility Operating License NPF–55 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of BWR Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 7 (NUREG–0853) and the Final Environmental Statement (NUREG–0854) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, or may be ordered by calling (202) 275–2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. All orders should clearly identify the NRC publication number and the requestor's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Bethesda, Maryland, this 29th day of September 1986.

Walter R. Butler,

Director, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 86–22600 Filed 10–3–86; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 30, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Snyder Oil Partners (Delarware) Units of Limited Partnership Interests (File No. 7–9249).

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 22, 1986 written data, views and arguments concerning the above-referenced applications. Pesons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenace of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR. Doc. 86–22602 Filed 10–3–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86–9–59]

Commuter Air Carrier; Fitness Determination of; Air Cape, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Air Cape, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Response: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, P–47, Department of Transportation, 400 7th Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 28, 1986.

FOR FURTHER INFORMATION CONTACT: Kathy A. Lusby, Special Authorities Division, Department of Transportation 400 7th Street, SW., Washington, DC 20590 (202) 366–2337.

Dated: September 29, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–22593 Filed 10–3–86; 8:45 am]

BILLING CODE 4910–62–M

Docket 44380; Order 86–9–52]

Institution of Seattle/Portland-Japen Service Review Case

AGENCY: Department of Transportation.

ACTION: Institution of Seattle/Portland-Japan service review case.

SUMMARY: The Department has decided to institute the *Seattle/Portland-Japan Review Case* to examine whether a carrier should be chosen to replace United Air Lines on the Seattle/Portland-Tokyo/Osaka route. The proceeding will be set for oral evidentiary hearing before an Administrative Law Judge of the Department.

DATE: Certificate applications (which will be assigned separate docket numbers), motions to consolidate, petitions for leave to intervene, and petitions for reconsideration shall be filed by October 24, 1986.

Answers shall be filed by October 31, 1986.

ADDRESSES: Applications, motions, petitions, and answers should also be filed in Docket 44380, and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., room 4107, Washington, DC 20590, and should be served on all parties in Docket 44380.

Dated: September 30, 1986.

Matthew Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–22592 Filed 10–3–86; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Advisory Circular: Procedures for Conducting Fuel System Hot Weather Operations Tests

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft advisory circular (AC) availability and request for comments..

SUMMARY: This AC provides information and guidance concerning an acceptable means of showing compliance with Part 3 of the Civil Air Regulations (CAR) and Part 23 of the Federal Aviation Regulations (FAR) applicable to procedures for conducting fuel system

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hot weather operation tests in small airplanes.

DATE: Commenters must identify File AC 23.961–X; Subject: Procedures for Conducting Fuel System Hot Weather Operation Tests, and comments must be received on or before December 5, 1986.

ADDRESS: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Richard F. Yotter, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106: commercial telephone (816) 374–6941, or FTS 758–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited: Interested parties are invited to submit comments on the proposed draft AC. The proposed draft AC and comments received may be inspected at the Standards Office (ACE–110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background: Section 23.961 (CAR 3.438) of the Federal Aviation Regulations (FAR) requires that each fuel system conducive to vapor formation must be free from vapor lock when using fuel at a temperature of 110°F under critical operating conditions. An AC has been developed to provide at least one method of showing compliance with this regulation. The AC will identify the method of heating the fuel, the various fuels available, and the critical flight conditions to be tested.

Issued in Kansas City, Missouri, September 25, 1986.

Barry D. Clements,

Manager Aircraft Certification Division.

[FR Doc. 86–22509 Filed 10–3–86; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Huntsville-Madison County Airport Authority (HMCAA) for the Huntsville-Madison County Airport (HMCA), under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the MHCA Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved on or before March 11, 1987.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is September 12, 1986. The public comment period ends November 11, 1986.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Civil Engineer, Jackson Airports District Office, Post Office Box 6111, Jackson, Mississippi 39208; telephone no. (601) 965–4628.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the HMCA are in compliance with applicable requirements of Part 150, effective September 12, 1986. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 11, 1987. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The HMCAA submitted to the FAA on May 5, 1986, noise exposure maps, descriptions and other documentation which were produced during an airport noise compatibility planning study from July 1983 to May 1985. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and the surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA completed its review of the noise exposure maps and related descriptions submitted by the HMCAA. The specific maps under consideration are "Noise Contours— Base Year 1983 Operations" and "Noise Contours—1990 Operations—Noise Abatement." The FAA has determined that these maps for the HMCA are in compliance with applicable requirements. This determination is effective on September 12, 1986. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedure contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. The local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying or noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator

which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA formally received the noise compatibility program for the HMCA, also effective on September 12, 1986. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 11, 1987.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps and the proposed noise compatibility program are available for examination of the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC

Airports District Office, FAA Building, Jackson Municipal Airport, Jackson, Mississippi

Mr. J. E. Mitchell, Jr., Executive Director, Huntsville-Madison County Airport, Huntsville, Alabama

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT."**

Issued in Jackson, Mississippi, September 12, 1986.

Newton L. Taylor,

Manager, Airports District Office.

[FR Doc. 86–22510 Filed 10–3–86; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[BS–Ap–No. 2601]

Burlington Northern Railroad Co., Norfolk and Western Railway Co. and Chillicothe Southern Railroad Co.; Public Hearing

The Burlington Northern Railroad Company, Norfolk and Western Railway Company and the Chillicothe Southern Railroad Company have petitoned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the traffic control signal system from Brookfield, Missouri, to Maxwell, Missouri, on the Burlington Northern Railroad, including the modification of Summer interlocking where the Chillicothe Southern Railroad crosses at grade the Burlington Northern Railroad and modification of the Norfolk and Western Railway Company Junction at Maxwell.

This proceeding is identified as FRA Block Signal application No. 2601.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on November 20, 1986, in the County Commission Room on the 2nd Floor of the Livingston County Courthouse in Chillicothe, Missouri.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on September 30, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86–22816 Filed 10–3–86; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. IP86–05; Notice 2]

General Motors Corp.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by General Motors Corporation of Warren, Michigan to be exempted from the notification and remedy requirements of the National Highway Traffic Safety Act (15 U.S.C. 1381 *et. seq.*) for an apparent noncompliance with 49 CFR 571.209, Motor Vehicle Safety Standard No. 209, *Seat Belt Assemblies.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on May 19, 1986, and an opportunity afforded for comment (51 FR 18398).

Paragraph S4.3(a) of Standard No. 209 requires that:

(1) Attachment hardware of a seat belt assembly after being subjected to the conditions specified in S5.2(a) shall be free of ferrous corrosion on significant surfaces except for permissible ferrous corrosion at peripheral edges or edges of holes on underfloor reinforcing plates and washers.

Section (c)(1) of paragraph S4.3 also requires that:

Eye bolts, shoulder bolts, or other bolts used to secure the pelvic restraint of a seat belt assembly to a motor vehicle shall withstand a force of 9,000 pounds or 4,080 kilograms when tested by the procedure specified in S5.2(c)(1).

General Motors produced approximately 7,802 vehicles between May 7 and May 10, 1985, which included the Pontiac 6000, Oldsmobile Ciera, Chevrolet Caprice, and Oldsmobile Delta 88 whose seat belt assembly attachment bolts did not meet the corrosion requirements of Standard No. 209.

General Motors indicated that an estimated 50% of the bolts which may have been improperty plated are the front inner and outer seat belt floor anchorage bolts.

General Motors performed tensile strength load tests which showed that the bolts exceeded the strength requirement of S4.3(c)(1) of Standard No. 209. Test results showed a minimum load of 12,050.35 pounds, and maximum of 14,208.63 pounds, with an average of 12,899.85 pounds.

The petition also stated that:

An examination of the bolts was also conducted at the University of Pennsylvania by Professor Charles J. McMahon, Jr. Concerning this examination, Professor

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McMahon states: For our examination, we sectioned the bolts through rusted area and examined microscopically the surface profile in these regions. As was expected from the prior visual examination of the surface, in which no significant pits were observed, the rusting was superficial and did not involve any subsurface damage, such as cracking, pitting, etc. Thus, the mechanical performance of the bolts would not be affected by this surface rust. Therefore, since the strength performance of these bolts exceeds the specific requirements in Standard No. 209, it is believed that no safety concern exists.

Two comments were received on the petition, both of which opposed it. Robert F. Schlegel, P.E. brought to the agency's attention situations in which the bolts might be required to be removed such as replacement of the carpet or of the bolts themselves; in his experience, corroded bolts are difficult to remove. The Center for Auto Safety argued that the no-corrosion requirement helps to ensure that seat belt components will be able to meet significant stress loads for years after passing the initial compliance test, and that early corrosion provides a clear early warning signal of significant deterioration in the future. The comments misunderstand to some extent the purpose of the corrosion test. This is an accelerated lifetime test, simulating lifetime exposure of the bolt to corrosion producing elements. In the enclosed environment of the car where the bolts are located they are unlikely to come into contact with these elements, or at least to the extent necessary over their lifetime to duplicate the test results. Thus, test failures of the nature encountered with the bolts used by GM, do not portend significant future deterioration. Also, any potential difficulty in removing the bolts appears to be maintenance-related rather than safety-related. The tests of the petitioner indicate that the strength of the bolts has not been affected by their test failure, and that they exceed the minimum requirements of the standard by a substantial margin.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: September 30, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-22536 Filed 10-3-86; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 193
Monday, October 6, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 1, 1986.

TIME AND DATE: 10:00 a.m., Thursday, October 9, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Jimmy Mullins v. Beth-Elkhorn Corporation, & UMWA, etc., Docket No. KENT 83-268-D. (Issues include whether the administrative law judge properly concluded that the operator discriminated against Mullins by removing him from a dispatcher's job in violation of his rights as a Part 90 miner.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Following the oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the above mentioned item.

It was determined by a unanimous vote of Commissioners that this portion of the meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-22630 Filed 10-2-86; 10:31 am]

BILLING CODE 6735-01-M

2

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1376]

TIME AND DATE: 2:00 p.m. (e.d.t.), October 8, 1986.

PLACE: Chattanooga Office Complex, Missionary Ridge Place, Auditorium, 1101 Market Street, Chattanooga, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on September 25, 1986.

Discussion Item

1. Chattanooga Technology Economic Development Initiative.

Action Items

B—Purchase Awards

B1. Invitation RA-101540—Multichannel Microwave Radio Equipment for PSCC-Wilson and PSCC-Volunteer Microwave Radio Systems.

C—Power Items

C1. Revision of Limited Interruptible Power Arrangements.

D—Personnel Items

D1. Supplement No. 2 to Employee Loan Agreement with Institute of Nuclear Power Operations—Contract No. TV-68552A.

D2. Supplement to Personal Services Contract with Gilbert Commonwealth, Inc., Reading, Pennsylvania, for Services of Qualified Personnel to Perform Rigorous Analysis, Alternate Piping Analysis, and Pipe Support Design for TVA Nuclear Plants, Requested by Office of Nuclear Power.

D3. Supplement to Personal Services Contract with Impell Corporation, Norcross, Georgia, for Services of Qualified Personnel to Perform Rigorous Analysis, Alternate Piping Analysis, and Pipe Support Design for TVA Nuclear Plants, Requested by Office of Nuclear Power.

D4. Supplement to Consulting Contract with Charles F. Reeves of Belmont, Massachusetts, for Consulting Services in the Broad Areas of Civil, Mechanical, and Construction Engineering with Emphasis on Structures, Piping, and Equipment Response to Earthquake Ground Motion, Requested by Office of Nuclear Power.

D5. Project Life Severance Pay Eligibility for Certain Employees.

F—Unclassified

*F1. Designation of James R. Durall to Represent TVA in the Administration of TVA's Limited Partnership Interest in the Valley Venture Fund Limited Partnership.

*Item approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: October 1, 1986.

W.F. Willis,

General Manager.

[FR Doc. 86-22647 Filed 10-2-86; 8:45 am]

BILLING CODE 8120-01-M

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federal register

Monday
October 6, 1986

Part II

Department of Education

34 CFR Parts 76 and 653

Carl D. Perkins Scholarship Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Parts 76 and 653

Carl D. Perkins Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to govern the actions of designated State agencies in their administration of the Carl D. Perkins Scholarship Program. The regulations are needed to implement Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984, 20 U.S.C. 1119d–1119d–8. These regulations specify the responsibilities of the U.S. Secretary of Education, the State agencies which administer the scholarships, and the scholarship recipients.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Neil C. Nelson, Chief, State Student Incentive Grant Program, Office of Student Financial Assistance, Office of Postsecondary Education, U.S. Department of Education, (Room 4018, ROB–3), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 245–9720.

SUPPLEMENTARY INFORMATION: The Carl D. Perkins Scholarship Program is authorized under Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984. The purpose of the program is to provide scholarships to enable and encourage outstanding high school graduates who demonstrate an interest in teaching to pursue teaching careers at the elementary or secondary school level.

The scholarships are to be awarded on the basis of academic merit and an interest in teaching. The intention in awarding a scholarship is not merely to enable the recipient to complete successfully a course of study and obtain a teaching certificate, but to commit that individual to the pursuit of a teaching career. The legislation requires that a scholarship recipient teach at the elementary or secondary school level for two years for each year of scholarship assistance. A scholar who does not complete the teaching obligation is required to repay the scholarships received, prorated according to the fraction of the teaching obligation not completed, plus interest and collection fees.

These regulations also amend the Education Department General Administrative Regulations to make the provisions of 34 CFR Part 76 (State-Administered Programs) applicable to the Carl D. Perkins Scholarship Program.

On June 4, 1986, the Secretary published in the **Federal Register** (51 FR 20408–20412) a notice of proposed rulemaking for the Carl D. Perkins Scholarship Program. Interested parties were provided 30 days to submit their comments to the Secretary. A summary of the significant comments received and the Secretary's response to those comments is included as an appendix to the regulations.

In addition to the changes identified in the appendix, § 653.30, concerning scholarship eligibility requirements, is being revised. Paragraph (a) is being amended to include the requirement that a student, to be eligible for a scholarship, must not only be a permanent resident of the United States, but he or she must provide evidence from the Immigration and Naturalization Service of his or her permanent resident status. This additional requirement is being made in the final rule so that this program will be consistent with other Federal student financial assistance programs in regard to citizenship eligibility. Currently, the Pell Grant regulations (34 CFR 690.4) contain this provision as does the Guaranteed Student Loan (GSL) NPRM published in the **Federal Register** on September 4, 1985 (50 FR 35964–36013).

Section 653.30(a) is also being amended to conform with the Compact of Free Association Act of 1985, enacted on January 14, 1986 (Pub. L. 99–239), which provides for the termination of the trusteeship status of the islands formerly known as the Trust Territory of the Pacific Islands. This Compact will create two new entities—the Federated States of Micronesia and the Marshall Islands. In addition, another separate Compact is currently under consideration by the Congress which will create an independent entity, the Republic of Palau. Although the first Compact was signed into law on January 14, 1986, the effective date is being delayed, pending enactment of the Palau Compact.

Although the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau will not be eligible to participate in the Carl D. Perkins Scholarship Program, citizens of these islands who are in attendance at institutions of higher education in States that are participating in the program will continue to be eligible for Carl D. Perkins Scholarships, under the Compacts of Free Association. Therefore, the Secretary is revising the eligibility criteria in § 653.30(a) to include the citizens of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, in anticipation that the Compacts will become effective in the near future. However, the Secretary has also retained the references to the Trust Territory of the Pacific Islands to maintain the eligibility of permanent residents of the Trust Territory until the Compacts become efective.

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local governmental coordination and review of proposed Federal financial assistance. In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 76

Grant Programs—education, Grants Administration, Intergovernmental relations, State-administered programs.

34 CFR Part 653

Education, Grant Programs—education, Scholarship, State-administered—education, Teachers.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of the regulations.

(Catalog of Federal Domestic Assistance Number 84.176: Carl D. Perkins Scholarship Program)

Dated: September 30, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by amending Part 76 and adding a new Part 653, as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for Part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted.

2. In the table following § 76.1, Section D., Higher Education Programs, is amended by adding a new entry at the end of Section D, to read as follows:

§ 76.1 Programs to which Part 76 applies.

* * * * *

Name of program	Authorizing statute	Implementing regulations (34 CFR)	CFDA No.
D. Higher Education Programs			
* * * * * * *			
Carl D. Perkins Scholarship Program.	Title V, Part E of the Higher Education Act (20 U.S.C. 1119d–1119d–8).	Part 653	84.176
* * * * * * *			

3. Section 76.102 is amended by adding a new paragraph (aa) to read as follows:

§ 76.102 Definitions of "State plan" for Part 76.

* * * * *

(cc) *Carl D. Perkins Scholarship Program.* The application under Section 563 of the Higher Education Act.

* * * * *

4. The table following § 76.125 is amended by adding the following language to the list under "Postsecondary Education Programs":

§ 76.125 What is the purpose of these regulations?

* * * * *

POSTSECONDARY EDUCATION PROGRAMS

CFDA No. and name of program	Authorizing legislation	Implementing regulations Titles 34 CFR (Part)
* * * * *		
84.176 Carl D. Perkins Scholarship Program.	Title V Part E of the Higher Education Act (20 U.S.C. 1119d–1119d–8).	653
* * * * *		

5. A new Part 653 is added, to read as follows:

PART 653—CARL D. PERKINS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

653.1 What is the Carl D. Perkins Scholarship Program?
653.2 Who is eligible to participate in this program?
653.3 What regulations apply to this program?
653.4 What definitions apply to this program?

Subpart B—What Assistance Does the Secretary Provide Under This Program?

653.10 For what purposes may a State use its payments under this program?

Subpart C—How Does a State Apply for Grants?

653.20 What must a State do to receive grants under this program?
653.21 What requirements must be met by States in the administration of this program?

Subpart D—How Does a State Select Scholars Under This Program?

653.30 What are the eligibility requirements?
653.31 Who selects the scholars?
653.32 What are the selection criteria and procedures?

Subpart E—What Are the Scholarship Conditions?

653.40 What agreement must a scholar have with the State agency?
653.41 What are the requirements for a scholar to continue to receive payments under this program?
653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?

Authority: 20 U.S.C. 1119d–1119d–8, unless otherwise noted.

Subpart A—General

§ 653.1 What is the Carl D. Perkins Scholarship Program?

Under the Carl D. Perkins Scholarship Program the Secretary makes available, through grants to the States, scholarships to eligible individuals to enable and encourage them to pursue teaching careers at the elementary or secondary school level.

(Authority: 20 U.S.C. 1119d)

§ 653.2 Who is eligible to participate in this program?

(a) States are eligible to apply for grants under this program.

(b) Outstanding high school graduates who wish to pursue teaching careers at the elementary or secondary level are eligible to apply to their respective States of residence for scholarships under this program.

(Authority: 20 U.S.C. 1119d–2)

§ 653.3 What regulations apply to this program?

The following regulations apply to the Carl D. Perkins Scholarship Program:

(a) The regulations in this Part 653.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Educational Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1119–d *et seq.*)

§ 653.4 What definitions apply to this program?

The following definitions apply to terms used in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Application
EDGAR
Elementary school
Nonprofit
Private

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Public
Secondary school
Secretary
State
State educational agency

(b) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one of the following:

(1) Two semesters.

(2) Two trimesters.

(3) Three quarters.

"Act" means the Higher Education Act of 1965, as amended.

"Award year" means the period of time from July 1 of one year through June 30 of the following year.

"Full-time student" means a student enrolled in an institution of higher education, other than a correspondence school, who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

"Handicapped children" has the same meaning under this part as the same term defined in 34 CFR 300.5 of the Assistance to States for Education of Handicapped Children regulations.

"Institution of higher education" has the same meaning under this part as the same term defined in 34 CFR 668.2 of the Student Assistance General Provisions regulations.

"Limited English proficiency" has the same meaning under this part as the same term defined in 34 CFR 500.4 of the General Provisions regulations for the Bilingual Education Program.

"Scholar" means a scholarship recipient.

"Scholarship" means an award made to an individual under this part for one academic year.

(Authority: 20 U.S.C. 1119d—1119d–6)

Subpart B—What Assistance Does the Secretary Provide Under This Program?

§ 653.10 For what purposes may a State use its payments under this program?

A State may use its payments under the Carl D. Perkins Scholarship Program, including principal and interest payments it receives from scholars under § 653.42, only for making payments to scholars.

(Authority: 20 U.S.C. 1119d)

Subpart C—How Does a State Apply for Grants?

§ 653.20 What must a State do to receive grants under this program?

(a) To receive grants under the Carl D. Perkins Scholarship Program, a State shall submit an application to the Secretary for review and approval.

(b) The Secretary approves an application that—

(1) Designates as the State agency for the administration of the Carl D. Perkins Scholarship Program, either—

(i) The State agency which administers the State Student Incentive Grant Program under Title IV, Part A, Subpart 3 of the Act; or

(ii) The State agency which administers the Guaranteed Student Loan Program and with which the Secretary has an agreement under section 428(b) of the Act;

(2) Identifies the panel or agency which has established criteria and procedures for the selection of scholars and will select the scholars as required by §§ 653.31 and 653.32;

(3) Describes a program of activities for carrying out the purposes set forth in § 653.1 in such detail that the Secretary may determine the degree to which the State's program will accomplish those purposes. This description must include—

(i) The selection criteria and procedures to be used by the State, in the selection of scholars, which satisfy the provisions of this part; and

(ii) The procedures by which the designated State agency intends to publicize the availability of Carl D. Perkins Scholarships to secondary school students in the State;

(4) Explains how the criteria and procedures for the selection of scholars were developed and in what ways they reflect the State's present and projected needs for elementary and secondary teachers in general and for those with training in specific academic disciplines;

(5) Provides assurances that—

(i) No changes will be made in the designation of an agency to administer the Carl D. Perkins Scholarship Program, in the selection criteria and procedures to be used in the selection of scholars, or any other aspect of the program of activities described in its application without the prior written approval of the Secretary;

(ii) No one will receive a Carl D. Perkins Scholarship without entering into an agreement with the designated State agency under which he or she agrees to the terms specified in § 653.40;

(iii) The terms and conditions of the agreement which the State agency will enter into with scholars under § 653.40 will be fully disclosed in the scholarship application form;

(iv) The State agency will monitor scholars' compliance with the provisions of §§ 653.40, 653.41(b), and 653.42;

(v) The State agency will make particular efforts to attract students from low-income backgrounds or who express a willingness or desire to teach in school having less than average academic results or serving large number of economically disadvantaged students; and

(vi) Scholarships will be awarded without regard to sex, race, handicapping condition, creed, or economic background; and

(6) Contains a copy of the agreement referred to in paragraph (b)(5)(ii) of this section.

(c) Upon the Secretary's approval of its application, a State need not submit additional applications in order to continue to be considered for funding undr this program.

(Authority: 20 U.S.C. 1119d–2)

(Approved by the Office of Management and Budget under control number 1840–0578)

§ 653.21 What requirements must be met by States in the administration of the program?

(a) To continue to receive payments under this part, a State shall—

(1) Provide scholarship assistance only to students who meet the requirements of §§ 653.30, 653.40, and 653.41;

(2) Limit scholarship assistance to no more than four academic years for each scholar;

(3) Make reports to the Secretary that are necessary to carry out the Secretary's functions under this part;

(4) Establish and implement policies and procedures which are necessary to administer the repayment provisions of § 653.42 and, in cases of noncompliance with these provisions, implement collection and litigation procedures consistent with 34 CFR Part 682; and

(5) Except as otherwise provided in paragraph (d) of this section—

(i) Expend all funds received from the Secretary for scholarships during the award year specified by the Secretary with regard to those funds; and

(ii) Expend in that award year, for scholarships, all funds received by the State prior to that award year from principal and interest payments made under the provisions of § 653.42.

(b) A State shall award a scholarship in the amount of $5,000 for an academic year, except as otherwise provided in paragraph (c) of this section.

(c) A State shall not award a scholarship which exceeds the scholar's cost of attendance. If a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Act, would otherwise exceed the scholar's cost of attendance, as defined for the National Direct Student Loan Program in 34 CFR 674.11, the State shall reduce the scholarship by the amount in which the combined awards would be in excess of the scholar's cost of attendance.

(d) After awarding all scholarships for payment during an award year, as required by paragraph (a)(5) of this section, a State may reserve for expenditures in the following award year a remaining amount of funds which is less than the amount required for a scholarship as well as any funds that were awarded but were returned or not expended.

(Authority: 20 U.S.C. 1119d–3, 1119d–4, 1119d–5)

Subpart D—How Does a State Select Scholars Under This Program?

§ 653.30 What are the eligibility requirements?

To be selected as a scholar, an individual shall—

(a)(1) Be a United States citizen or National;

(2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(3) Be a permanent resident of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands: or

(4) Be a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau;

(b)(1) Have graduated from high school;

(2) Be scheduled to graduate from high school within 3 months of the date of the award; or

(3) Have received a certificate of high school equivalency for successfully completing the Tests of General Educational Development (GED); and

(c)(1) Rank in the top ten per cent of his or her graduating class; or

(2) Have received GED test scores recognized by the State to be equivalent to ranking in the top ten per cent of the high school graduates in the State, or nationally, in the academic year for which the eligibility determination is being made.

(Authority: 20 U.S.C. 1119d–4)

§ 653.31 Who selects the scholars?

(a) Scholars must be selected by—

(1) A seven-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency;

(2) An existing grant agency designated by the chief State elected official and approved by the Secretary, or

(3) An existing panel designated by the chief State elected official and approved by the Secretary.

(b) A selection panel must be representative of school administrators, teachers, and parents.

(Authority: 20 U.S.C. 1119d–4)

§ 653.32 What are the selection criteria and procedures?

(a) The panel or agency appointed or designated by the chief State elected official in accordance with § 653.31 shall establish criteria and procedures for the selection of scholars.

(b) The selection criteria and procedures must reflect the present and projected needs of the State for elementary and secondary teachers as required by section 563(c) of the Act and must be developed after consideration of the views of the State and local educational agencies, private educational institutions, and other interested parties as required by section 563(d) of the Act.

(c) The State shall make applications available to high schools in the State and in other locations convenient to applicants, parents, and other interested parties.

(d) The panel or agency referred to in paragraph (a) of this section shall select scholars without regard to whether applicants plan to attend publicly or privately controlled institutions.

(Authority: 20 U.S.C. 1119d–2, 1119d–4)

Subpart E—What Are the Scholarship Conditions?

§ 653.40 What agreement must a scholar have with the State agency?

(a) To receive a scholarship, an individual shall enter into an agreement with the State agency under which he or she agrees, except as otherwise provided in paragraph (b) of this section—

(1) To teach on a full-time basis, as determined by the institution or agency in which he or she is teaching, for a period of not less than two years for each year for which scholarship assistance was received—

(i) In a public elementary or secondary school in any State;

(ii) In a public elementary or secondary education program in any State;

(iii) In a private nonprofit elementary or secondary school located and serving students in a district eligible for assistance under Chapter 1 of the Education Consolidation and Improvement Act of 1981; or

(iv) Handicapped children, or children with limited English proficiency, in a private nonprofit elementary or secondary school;

(2) To fulfill the teaching obligation described in paragraph (a)(1) of this section within ten years after completing the postsecondary education degree program for which the scholarship was awarded;

(3) To provide the State agency evidence of compliance with paragraphs (a) (1) and (2) of this section and § 653.41 as required by the State agency; and

(4) To repay all or part of the scholarship plus interest and reasonable collection fees as specified in § 653.42 if the conditions of paragraphs (a) (1) and (2) of this section are not met or if the State agency determines that the individual is no longer pursuing a course of study leading to certification as a teacher at the elementary or secondary level.

(b) The requirement to teach two years for each year of scholarship assistance is reduced by one-half in the case of individuals who teach on a fulltime basis—

(1) In a school which is designated by the Secretary as meeting the provisions of 34 CFR 674.54(a) of the National Direct Student Loan Program regulations for the year in which the individual is teaching at the school or the prior year; or

(2) Handicapped children, or children with limited English proficiency, in an education program or school referred to in paragraph (a)(1) of this section.

(c) The agreement referred to in paragraph (a) of this section must include—

(1) A description of the procedures under which the provisions of § 653.42 (g) through (k) will be implemented; and

(2) A description of the procedures under which a scholar may appeal any determination of noncompliance with any provisions under this part.

(Authority: 20 U.S.C. 1119d–2)

(Approved by the Office of Management and Budget under control number 1840–0578)

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§ 653.41 What are the requirements for a scholar to continue to receive payments under this program?

(a) A State agency shall continue to make payments to a scholar under this program only during the periods that the State agency finds that the scholar meets the conditions described in paragraph (b) of this section.

(b) To maintain eligibility for a scholarship, a scholar must be—

(1) Enrolled as a full-time student in an institution of higher education that is currently accredited by a nationally recognized accrediting agency or association that the Secretary determines to be a reliable authority as to the quality of training offered, in accordance with section 1201(a) of the Act;

(2) Pursuing a course of study leading to certification as a teacher at the elementary or secondary level, as determined by the State agency but not including graduate study that is not required for initial teacher certification; and

(3) Maintaining satisfactory progress as determined by the institution of higher education the student is attending, in accordance with the criteria established in 34 CFR 668.16(e) of the Student Assistance General Provisions regulations.

(Authority: 20 U.S.C. 1119d-5)

§ 653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?

(a) A scholar found by a State to be in noncompliance with the agreement entered into under § 653.40, or to be no longer pursuing a course of study leading to certification as a teacher at the elementary or secondary level, shall—

(1) Repay the amount of the scholarships received, prorated according to the fraction of the teaching obligation not completed, as determined by the State agency;

(2) Pay a simple, per annum interest charge on the outstanding principal; and

(3) Pay all reasonable collection costs as determined by the State agency.

(b) The interest charge referred to in paragraph (a)(2) of this section accrues from—

(1) The date of the initial scholarship payment if the State agency has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the elementary or secondary level; or

(2) The day after that portion of the scholarship period for which the teaching obligation has been fulfilled.

(c)(1) The interest charge referred to in paragraph (a)(2) of this section is adjusted annually, except as provided for under paragraph (c)(2) of this section, and is set at a rate which is the greater of—

(i) Fourteen percent; or

(ii) Five percent above the average of the bond equivalent rates of 91-day Treasury bills auctioned during the most recent quarter ending March 31.

(2) The interest charge applicable during the repayment period is the greater of the rates described in paragraphs (c)(1) (i) and (ii) of this section as determined when the repayment schedule is established.

(d) A scholar required by paragraph (a) of this section to repay his or her scholarship shall—

(1) Enter repayment status on the first day of the first calendar month after—

(i) The State has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the elementary or secondary level, but not before six months has elapsed after the cessation of the scholar's full-time enrollment in such a course of study;

(ii) The date the scholar informs the agency he or she does not plan to fulfill the teaching obligations; or

(iii) the latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded, as determined by the State agency; and

(2) Make monthly or quarterly payments to the State which—

(i) Cover principal, interest, and collection costs according to a schedule established by the State which calls for compete repayment within ten years after the scholar enters repayment status, except as provided in paragraph (j) of this section; and

(ii) Amount annually to no less than $1200 or the unpaid balance, whichever is less, unless the scholar's inability to pay this amount because of his or her financial condition has been established to the State's satisfaction.

(e) The State agency shall not require scholarship repayments amounting to more than $1200 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (d)(2) of this section.

(f) The State agency shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

(g) A scholar is not considered in violation of the repayment schedule established under paragraph (d) of this section during the time he or she is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit or a qualified physician;

(4) Unable to secure employment for a period not to exceed twelve months by reason of the care required by a spouse who is disabled;

(5) Seeking and unable to find full-time employment for a single period not to exceed twelve months; or

(6) Unable to satisfy the terms of the repayment schedule established by the State under paragraph (d)(2)(i) of this section and is also seeking and unable to find full-time employment as a teacher in a public elementary or secondary school or public education program.

(h) To qualify for any of the exceptions in paragraph (g) of this section, a scholar shall notify the State agency of his or her claim to the exception and provide supporting documentation as required by the State agency.

(i) During the time a scholar qualifies for any of the exceptions in paragraph (g) of this section, he or she need not make the scholarship repayments referred to in paragraph (d) of this section and interest does not accrue.

(j) The State agency shall extend the ten-year scholarship repayment period established under paragraph (d) of this section by a period equal to the length of time a scholar meets any of the conditions listed in paragraph (g) of this section or if a scholar's inability to complete the scholarship repayments within this ten-year period because of his or her financial condition has been established to the State's satisfaction.

(k) The State agency shall cancel a scholar's repayment obligations if it determines—

(1) On the basis of a sworn affidavit of a qualified physician, that the scholar is unable to teach on a full-time basis because of an impairment that is expected to continue indefinitely or result in death; or

(2) On the basis of a death certificate or other evidence of death that is conclusive under State law, that the scholar has died.

(Authority: 20 U.S.C. 1119d-6, 1119d-7)

Note.—This appendix will not be codified in the Code of Federal Regulations.

Appendix—Summary of Comments and Responses

Section 653.4 What definitions apply to this program?

Comment. One commenter recommended that a reference to 900 clock hours be added to the definition of "academic year" in § 653.4.

Response. No change has been made. The Department does not know of any institution of higher education offering a course of study leading to teacher certification that uses clock hours to measure an academic year.

Section 653.10 For what purposes may a State use its payments under this program?

Comment. Eight commenters recommended that some provision be made for States to receive administrative funds for operation of this program.

Response. No change has been made. Section 653.10 accurately reflects the statutory limitation on the use of funds made available for the Carl D. Perkins Scholarship Program by limiting the use of such funds to the awarding of Perkins scholarships.

Comment. Five commenters recommended that the same section be amended to enable States to make scholarship payments "for" or "on behalf of" eligible students so that States could make the scholarships payable to the institution to cover educational expenses.

Response. No change has been made. The provision that program funds are to be used for payments to scholars does not prohibit a State from making the payments to institutions to cover the educational expenses of scholarship recipients. In order to ensure that these scholarship funds are used for the educational purposes identified in § 653.1 and that the scholarships are coordinated with assistance provided under Title IV of the Act, as defined in § 653.21(c), the Department strongly encourages States to make the scholarship payments to institutions on behalf of the scholars.

Section 653.20 What must a State do to receive grants under this program?

Comment. One commenter indicated that the regulations do not provide adequate guidance to States on how to describe their scholar selection criteria and procedures in their application for funding.

Response. No change has been made. Section 653.20(b)(3) requires States to describe scholar selection criteria and procedures in such detail that the Secretary may determine the degree to which they will satisfy the provisions of § 653.1.

Comment. Five commenters took issue with § 653.20(b)(5)(i) and the prohibition against a State making changes in any aspect of the program of activities described in its application without the prior written approval of the Secretary. "No substantive changes" was the wording recommended by three of the commenters.

Response. No change has been made. Since the statute requires that a State's application be approved by the Secretary, it follows that any changes to the program of activities described in the application must also be approved by the Secretary.

Comment. Three commenters took exception to the requirement in § 653.20(b)(5)(iii) that a copy of the agreement which the State and the scholars to whom scholarships are awarded will enter into must be included in the application form. They indicated that significant printing and distribution costs could be saved if they could inform applicants of the terms of the agreement by other means.

Response. A change has been made. The State no longer has to include a copy of the agreement as long as it fully discloses the terms and conditions of the agreement between the State and the scholar in the scholarship application form.

Section 653.21 What requirements must be met by States in the administration of this program?

Comment. One commenter stated that more than four years of education may be necessary for those scholars who combine teacher certification with degrees in fields other than education. Therefore, the commenter recommended expanding the four-year limitation for receiving scholarships in § 653.21(a)(2) to five years.

Response. No change has been made. The four-year limitation is statutory.

Comment. Two commenters felt that the applicability to this program of the collection procedures in 34 CFR 682.410(b)(4) is inadequately defined.

Response. No significant change has been made. Detailed collection procedures will be established by the provisions of 34 CFR 682.410(b)(4), proposed regulations for the Guaranteed Student Loan Program (50 FR 35984–36013, September 4, 1985) which are expected to be published in final form shortly. Section 682.410 will be construed in the context of the Carl D. Perkins Scholarship Program. For example, "guarantee agency" should be understood to mean the State agency administering the scholarship program. "Borrower" should be understood to mean a scholar who is repaying his or her scholarship, and "loan" refers to the scholarship repayments. Paragraph (b)(4)(i) should be understood to mean: "The State agency administering the scholarship program shall engage in at least the collection efforts described in paragraphs (4)(iii)—(ix) of this section on scholarship repayments not made when due." The time frames identified, for collection on scholarship repayments, refer to the number of days that elapse from the date the scholar fails to make a payment when due. The first sentence of paragraph (b)(4)(iii)(A) of this section does not apply to the Carl D. Perkins Scholarship Program.

Comment. Eight commenters took issue with the proposed § 653.21(a)(5)(ii) requirement that a State must provide from its own funds an amount equal to the debt a scholar owes under the repayment provisions if the State fails to litigate as required by proposed § 653.21(a)(5)(i). Some questioned the ability of many States to commit funds for this purpose. One commenter recommended that the collection and litigation requirements of § 653.21(a)(4) be a condition of a State's participation in the program.

Response. A change has been made. Proposed § 653.21(a)(5)(ii) has been deleted, because it is unnecessary. States will tend to comply with the program's collection and litigation requirements, since § 653.21(a)(4) provides that their failure to do so will result in a discontinuance of their funding under this program.

Comment. Nine commenters strongly argued that the litigation provision of proposed § 653.21(a)(5)(i) should not be mandatory. The commenters pointed out that requiring litigation in cases where there is no prospect of receiving significant return of funds is not cost-effective. Two commenters wanted States to be given the prerogative to use alternative procedures to recover the funds.

Response. A change has been made. Section 653.21(a) has been revised to limit the requirements for litigation to procedures consistent with those specified in proposed 34 CFR 682.410(b)(4), relating to the Guaranteed Student Loan Program. (See citation above.) States are not required to litigate, therefore, if the cost of litigation would exceed the amount of the debt or if the scholar does not have the means to satisfy the likely judgment on the amount of the debt or a substantial portion thereof. In addition, although § 653.21(a)(4) contains minimum collection and litigation requirements, it

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is not intended to limit State collection efforts. States may use other procedures than those specified to recover funds from scholars who are delinquent in their payments, *e.g.*, the garnishment of wages and State tax offsets.

Comment. Three commenters asked that the regulations be revised to indicate that the principal and interest payments the States collect from scholars in repayment and those deposited under the provisions of proposed § 653.21(a)(5)(ii) be kept for redistribution as scholarships.

Response. A change has been made. A new provision, revised § 653.21(a)(5)(ii), has been added to require that principal and interest payments collected by the State from scholars who have entered repayment status be expended by the State for additional scholarships. Using these payments for additional scholarships is consistent with the intent of the statute, which is that program funds are to be used only for scholarships. It is also consistent with the practice in other State-administered grant programs wherein unexpended and recovered funds are re-issued in new subgrants. As indicated above, proposed § 653.21(a)(5)(ii) has been deleted from the regulations.

Comment. Four commenters recommended changing § 653.21(c) to permit reduction in either the Perkins scholarship or the scholar's Title IV aid, if the scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV, exceeds the scholar's cost of attendance.

Response. No change has been made. The requirement, as worded, is statutory.

Comment. Two commenters recommended that § 653.21(d) be revised to provide that States be allowed to reserve for expenditure in the following award year more than the current "remaining amount of funds which is less than the amount required for a scholarship." They pointed out that their experience with other programs, shows that previously awarded funds are inevitably returned, by students who did not use the funds, too late to be re-awarded. States wish to be able to reserve these funds for expenditure in the following year.

Response. A change has been made. Section 653.21(d) now provides that previously awarded funds that were returned or not expended may be reserved for expenditure in the following award year.

Section 653.30 What are the eligibility requirements?

Comment. One commenter recommended changing the wording of § 653.30(b) to emphasize enrollment in a higher education teacher certification program and to emphasize the intention to teach following graduation. Two commenters recommended that recruitment efforts and awards be concentrated, or even restricted, to students entering the junior or senior year of college, as opposed to recruiting high school seniors or incoming college freshman, since students are unlikely to be committed to a teaching career that early.

Response. No change has been made. The language of § 653.30(b) accurately reflects the statutory requirement that scholars be selected from outstanding students who are graduating or who have graduated from high school. The scholar's commitment to teaching is addressed in the conditions of the agreement between the State agency and the scholar.

Comment. One commenter recommended eliminating the use of GED test scores in scholar eligibility determinations so that the applicants' persistence in school and academic achievement can be fairly and accurately considered. The commenter noted that evidence "suggests that GED test takers are generally students who have failed to persist in their completion of traditional high school programs."

Response. No change has been made. If the appropriate State GED data is not available, a State may obtain national data to determine if a specific GED test score is equivalent to ranking in the top ten per cent of high school graduates in the nation, and thereby satisfy the eligibility requirement of § 653.30(c)(2). The Department has no data which suggests that a student who receives a GED test score, determined by the above method, to be equivalent to a highly ranked high school graduate is any less likely than the high school graduate to persist and succeed in a postsecondary program of study.

Section 653.31 Who selects the scholars?

Comment. Two comments were received concerning § 653.31. One recommended that the requirement that a scholar selection panel be representative of school administrators, teachers, and parents be revised to show an existing grant agency that is designated to select the scholars need not be so representative. The other recommended that the selection of students and other administrative functions be decentralized to institutions of higher education.

Response. No change has been made. The current regulatory language clearly indicates that only the panels designated to select the scholars must be representative of school administrators, teachers, and parents. With regard to decentralization of the program, the requirement in question—that this program be administered by either the State grant agency that administers the State Student Incentive Grant program or the State agency that administers the Guaranteed Student Loan program—is statutory, as are the scholar selection requirements of § 653.31.

Section 653.32 What are the selection criteria and procedures?

Comment. One commenter was concerned that § 653.32(c) refers only to the convenience of the public. He expressed the belief that the regulations should require a State to have an efficient application process as well as one that is convenient to the public.

Response. No change has been made. The requirement that applications be made available to the public at convenient locations is statutory.

Comment. Two commenters pointed out that the statutory provision that financial need may be a criterion in selecting scholars is in apparent contradiction to the requirement in § 653.32(d) that scholars be selected "without regard to the applicants' eligibility for assistance under Title IV of the Act."

Response. A change has been made. The Title IV reference has been deleted to avoid confusion.

Section 653.40 What agreement must a scholar have with the State agency?

Comment. One commenter recommended adding pre-school teaching to the elementary or secondary school teaching which fulfills the scholar's teaching obligation.

Response. No change has been made. The requirement to teach in an elementary or secondary school is statutory.

Comment. A number of commenters made recommendations for revisions to § 653.40(a)(1). Several commenters recommended that if a scholar received significantly less than the full $5,000 scholarship for an academic year, the scholar's teaching obligation should be reduced from two years to one year. Five commenters urged that § 653.40(a)(1) (i) and (ii) be changed to require the teaching agreement to be fulfilled through teaching in the State that awarded the scholarship. Finally, one commenter requested that § 653.40(a)(1)(iii) be revised to allow scholars to satisfy the teaching obligation by teaching in any private nonprofit elementary or secondary school.

Response. No change has been made. The provisions contained in § 653.40(a)(i)–(iii) are all derived from the statute, which provides no discretion with regard to the length of the teaching period required or the schools in which scholars must teach. Nor does the statute restrict the scholar in his or her choice of the State in which to teach.

Comment. One commenter recommended amending § 653.40(a)(2) to indicate that the ten-year period during which scholars have to fulfill their teaching obligation is "exclusive of periods delineated in § 653.42(g)," to allow for "temporary interruption or postponement of the teaching service."

Response. No change has been made. The current regulations allow for, at minimum, a two-year "grace period," in that they allow a scholar ten years in which to satisfy the maximum eight-year obligation. The statute provides no additional allowance for temporary interruptions. The exceptions listed in section 568 of the statute apply specifically to the repayment provisions, rather than the teaching obligation period.

Comment. One commenter recommended that the collection fees referred to in § 653.40(a)(4) be retained by the State which awarded the scholarship.

Response. No change has been made. Collection fees are to be retained by the State agency, since they are intended to reimburse the State agency for collection expenses. No change is necessary.

Section 653.41 What are the Requirements for a Scholar to Continue to Receive Payments Under This Program?

Comment. One commenter observed that the term "postsecondary institution" in § 653.41 should be replaced by the term "institution of higher education" for consistency with the definition of full-time student.

Response. A change has been made. The term "institution of higher education" is now used throughout the regulations, and a definition of the term has been added to §653.4 (by cross-reference to the Student Assistance General Provisions regulations).

Comment. One commenter recommended that scholars be allowed to be enrolled less than full-time, but not less than half-time, to maintain eligibility for scholarship payments.

Response. No change has been made. Full-time enrollment is a statutory requirement.

Comment. Nine commenters recommended changes in the wording of § 653.41(b)(2). They felt that scholars in States that do not require a four-year program for teacher certification will be eligible under the wording of § 653.30 to receive an initial scholarship for their freshman year, but will not be eligible in their sophomore year, because of the wording of § 653.41(b)(2). One commenter observed that "course of study leading to certification as a teacher at the elementary or secondary level" may be interpreted to include master's and doctorate degree programs.

Response. A change has been made. Section 653.41(b)(2) has been revised to allow State agencies to continue to make payments to scholars who continue to pursue appropriate courses of study. This section now indicates that the State agency administering the scholarship program determines whether or not a course of study leads to teacher certification. However, the course of study may not include graduate study that is not required for initial teacher certification. Scholarships are awarded to encourage and enable scholars to obtain initial certification and to teach, not to pursue graduate degrees in education.

Comment. Two commenters recommended that, in addition to having to maintain satisfactory progress, scholars should also have to maintain a reasonable minimum cumulative grade point average to continue to receive scholarship payments.

Response. No change has been made. Under the regulations States have the option of including grade point average as a scholar selection factor.

Section 653.42 What are the Consequences of a Scholar's Noncompliance With the Teaching Requirement?

Comment. Four commenters argued that the repayment requirement is too burdensome. They pointed out that college students often change their major field of study. One suggested that scholars who change their minds about their careers should not have to repay the total amount of the scholarship. Others suggested a lower interest rate or not capitalizing the accrued interest.

Response. No change has been made. Congress provided for the repayment requirement in the statute and further provided that the rate of interest was to be prescribed by the Secretary through the issuance of regulations. The reason the Secretary established a substantial interest rate for repayment is to ensure that the purposes of the program are fulfilled, to discourage the use of the scholarship program as a loan program and to discourage scholars who have begun teaching from leaving the profession.

Comment. Five commenters believed that the 25% maximum collection fee, in § 653.42(a)(3), is not adequate to cover actual expenses. One wanted to know specifically what is covered by the term "reasonable collection cost" and whether or not the collection fee may be covered in the State's agreement with the scholar.

Response. A change has been made. The 25% maximum has been removed. However, State agencies still must comply with applicable State and Federal laws in the amount they charge. Collection costs consist of all State expenses which the State can document as being attributable to the collection and litigation procedures identified in § 653.21(a)(4) for which the State is not reimbursed through court decisions. The collection fee must be explained in the agreement between the State and the scholar, under the provisions of § 653.40(a)(4).

Comment. Two commenters took opposing views on § 653.42 (a) and (d)(1)(i), which state that scholars can be found to be in noncompliance with the agreement to teach if they cease to pursue *the* postsecondary education degree program for which the scholarship was awarded. One commenter hoped this provision allowed States to determine a scholar to be in noncompliance if he or she changes from a teacher certification program in the specific field of study for which the scholarship was awarded to a teacher certification program in another field of study. The other commenter expressed hope that that was not the meaning of the proposed regulations because the commenter believed that scholars should not be penalized for changing their field of study while remaining in a teacher certification program.

Response. A change has been made. Sections 653.42(a) and (d)(1)(i), as well as §§ 653.40(a)(4) and 653.42(b)(1), have been revised to indicate that scholars are in noncompliance if the State agency finds them to be no longer pursuing a course of study leading to certification as a teacher at the elementary or secondary level. While a State may decide not to award another scholarship to a scholar who remains in a teacher certification program but changes his or her field of study, it may not, for this

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reason, require such a scholar to repay the scholarships he or she has received.

Comment. One commenter wanted to know if the interest referred to in § 653.42(b)(1) begins accuring when the scholar ceases to be enrolled as a full-time student.

Response. No change has been made. A scholar does not enter repayment status if he or she is enrolled, on either a full-time or a part-time basis, in a course of study leading to certification as a teacher at the elementary or secondary level. When a scholar discontinues such a course of study, he or she enters repayment status. At that time, the State agency capitalizes the interest which has accrued from the date of the initial scholarship payment and establishes a payment schedule.

Comment. Eight comenters said they found the adjustable interest rate to be needlessly complex and burdensome: it woud require the States to monitor a multitude of rates, to make annual administrative changes, and to recalculate interest charges annually for every scholar.

Response. No change has been made. Since the adjustable rate applies only to the period in which interest is accured up to the time the scholar enters repayment status, it does not require the States to recalculate charges annually or made administrative changes annually. A State must consider the varying annual rates only at the time it calculates and capitalizes accrued interest when it establishes the repayment schedule. The applicable rate for any year may be obtained from the U.S. Department of Education.

Comment. One commenter was concerned that the adjustable interest rate would make it impossible to disclose accurately the rate of interest at the time the funds are disbursed.

Response. No change has been made. While the exact rate cannot be disclosed at the time the funds are disbursed, the method of computing the rate will be disclosed for the applicant's consideration before he or she applies for the scholarship. Examples of the computation can also be provided.

Comment. One commenter raised the issue of the necessity for the State agency to keep track of scholars who have teaching certification but who do not enter teaching. In the most extreme cases, a scholar who has received only one scholarship, therefore having only a two-year teaching obligation, still has eight years following graduation before either teaching or beginning scholarship payment, because all scholars have a total of ten years to fulfill a maximum of eight years of teaching obligation.

Response. No change has been made. Allowing scholars ten years to complete the teaching obligation is statutory.

Comment. One commenter indicated that § 653.42(d)(1) does not adequately identify the month in which a scholar enters repayment status.

Response. A change has been made. The section now clearly states that the scholar enters repayment status the first calendar month after the specified events.

Comment. Three commenters urged that § 653.42(d)(1) include a grace period before a scholar is required to begin repayment.

Response. A change has been made. Section 653.42(d)(1)(i) now includes a six-month grace period before a scholar is required to begin repayment. However, it should be noted that the grace period applies only to those scholars who cease to pursue a course of study leading toward a teaching certificate. This change will provide scholars who discontinue their education an opportunity to find employment before they begin repayment. Scholars who have received a teaching certificate but fail to satisfy the program's teaching requirement have at least a two-year "grace period" in that they have ten years to complete a maximum eight-year obligation.

Comment. One commenter requested that States be given the authority to accept less than the $1,200 annual scholarship repayment if the scholar is unable to make payments at that rate but would likely repay at a lesser rate. The commenter pointed out that if the agency has no authority to accept less than $1,200 annually, litigation would be required, with the likelihood that the litigation settlement would be a lower repayment schedule.

Response. A change has been made. Sections 653.42(d)(2)(ii) and 653.42(i) have been revised to allow the States to accept payments that total less than $1,200 annually where the scholar's inability to pay that amount because of his or her financial condition has been established to the State's satisfaction.

Comment. One commenter questioned the maximum annual scholarship repayment specified in § 653.42(e). The commenter wanted the maximum repayment left open to mutual agreement between the State and the scholar.

Response. No change has been made. While a State cannot require a payment in excess of $1,200 annually unless higher payments are needed to complete the entire repayment in ten years, this provision does not preclude a State and a scholar from mutually agreeing to higher payments.

Comment. One commenter suggested that a scholar should be considered to qualify for the repayment exception specified in § 653.42(g)(1) if he or she is enrolled at least half-time.

Response. No change has been made. The statute provides for an exception to repayment when the scholar "returns to a full-time course of study."

Comment. One commenter recommended that § 653.42(g)(2) be amended to indicate that the exception to repaying the scholarship while the scholar is serving in the armed services applies only to a period of active duty.

Response. A change has been made. Section 653.42(g)(2) has been amended to be consistent with other Federal student financial assistance programs. It now states that the exception applies to active duty members of the armed services.

Comment. One commenter wanted to know if the definition of "temporarily totally disabled" in § 653.42(g)(3) included pregnancy and a reasonable amount of time after childbirth.

Response. No change has been made. Pregnancy, like any other medical situation, could be such that a physician would consider it to be temporarily totally disabling.

Comment. Six commenters noted that the § 653.42(g)(6) exception to having to repay the scholarship because the scholar is "seeking and unable to find full-time employment as a teacher in a public elementary or secondary school or public education program" is open-ended and is an invitation to abuse. Several commenters recommended that a twelve-month limit be added.

Response. A change has been made. While a time limit cannot be added, since the statute does not provide for one, the exception has been amended to prevent its abuse. Section 653.42(g)(6) now provides that a scholar must be unable to satisfy the terms of his or her repayment schedule to qualify for this exception.

Comment. One commenter pointed out that administration of the six temporary exceptions to repayment of the scholarship will be much more difficult for the States if the scholars do not take the initiative to inform the administering agencies of their claim to an exception. The commenter recommended that the scholars be required to inform the administering agency.

Response. A change has been made. A new § 653.42(h) has been added to require the scholar to notify the State agency of his or her claim to an exception and provide supporting documentation.

Comment. One commenter recommended that what is now § 653.42(i) be amended to have any of the six exceptions from scholarship repayment begin either on the date that a State determines the eligibility exists or on the date the scholar informs the agency of the eligibility and provides supporting proof.

Response. No change has been made. The statute directly relates the exceptions to the six conditions specified in § 653.42(g) and not to the time a State determines the conditions exist.

Comment. One commenter believed that the State agency's authority to cancel a scholar's repayment obligation if that obligation has been discharged in bankruptcy should be included in what is now § 653.42(k).

Response. No change has been made. The statute does not provide for cancellation of repayment obligations for reasons other than those currently cited. In addition, such a provision is unnecessary since State agencies already have this authority under the provisions of the Bankruptcy Code.

Comment. One commenter recommended that what is now § 653.42(k)(1) be amended to provide for prorated cancellation of a scholar's repayment obligation in the case of a disability that may permit less than half-time teaching.

Response. No change has been made. The provision for cancelling a scholar's repayment obligation because he or she becomes permanently and totally disabled is statutory. The statute does not provide authority for the cancellation of a scholar's repayment obligation for any circumstances less severe than permanent and total disability.

Comment. Three commenters urged that the regulations be revised to provide for a scholar seeking a leave of absence for child birth or adoption and child care during the early formative months of life. One referred to a parenting deferment, limited to two years, in a State financial assistance program.

Response. No change has been made. Under the regulations scholars who take on parenting obligations during the ten-year teaching obligation period have at least two years during which they may fulfill those parenting obligations.

Comment. One commenter raised the issue that this program is not need-based and therefore undermines all existing Federal student aid programs which are need-based.

Response. No change has been made. Section 565(b) of the program statute provides that States may include financial need as a scholar selection criterion.

[FR Doc. 86-22489 Filed 10-3-86; 8:45 am]
BILLING CODE 4000-01-M

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federal register

Monday
October 6, 1986

Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 531

Passenger Automobile Average Fuel Economy Standards for Model Years 1987-88; Final Rule

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. FE-85-01; Notice 5]

Passenger Automobile Average Fuel Economy Standards for Model Years 1987-88

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the average fuel economy standards applicable to passenger automobiles manufactured for model years (MY) 1987 and 1988, by reducing the standards from 27.5 mpg to 26.0 mpg. This rulemaking was initiated in response to petitions for rulemaking submitted by General Motors (GM) and Ford. The agency earlier reduced the MY 1986 standard from 27.5 mpg to 26.0 mpg as part of the rulemaking related to those petitions. Based on all available information, including public comments, NHTSA has concluded that GM and Ford, constituting a substantial part of the industry, took or planned appropriate steps to meet the 27.5 mpg standard for MY 1987–88 and made significant progress toward doing so, but have been prevented from fully implementing those steps by unforeseen events. Among other things, there has been a substantial shift in expected consumer demand toward larger cars and engines, and away from the more fuel-efficient sales mixes anticipated for MY 1987–88 by GM and Ford when they developed their product plans. This shift is largely attributable to a decline in gasoline prices, which has stimulated consumer demand for the new mix. Also, a number of technological improvements planned by GM and Ford did not achieve the full fuel economy benefit that was anticipated by those manufacturers. The agency's analysis further indicates that the only actions now available to those manufacturers to raise the fuel economy of their domestic fleets to 27.5 mpg in MY 1987–88 would involve a combination of (1) product restrictions likely resulting in significant adverse economic impacts, including substantial job losses and sales losses and unreasonable restrictions on consumer choice, and (2) transferral of the production of large cars outside of the United States, thereby costing American jobs, while having absolutely no energy conservation benefits. Such actions could also severely exacerbate the U.S. trade deficit.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective November 5, 1986. The standards are applicable to the 1987 and 1988 model years. Petitions for reconsideration must be received by November 5, 1986.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shelton, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION:

Background

A. The Energy Policy and Conservation Act

1. Overview

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, the Congress enacted the Energy Policy and Conservation Act (EPCA). Congress included a provision in that Act establishing the automotive fuel economy regulatory program. That provision added a new title, Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Savings Act.

Title V specified corporate average fuel economy (CAFE) standards for cars of 18, 19, and 20 mpg for model years 1978, 1979, and 1980, respectively, and 27.5 mpg for 1985 and thereafter. The Secretary of Transportation was required to establish standards for model years 1981–84. Section 502(a)(3) required that the standards for each of those model years be set at a level which (1) was the maximum feasible average fuel economy level and (2) would result in steady progress toward meeting the 27.5 mpg standard for model year 1985.

Although Congress clearly established the 27.5 mpg value as a goal to strive for (27.5 mpg is roughly twice the MY 1974 CAFE), it recognized that such long-term goals are subject to considerable uncertainty. As discussed below, the Act permits, but does not require, the Department to change the standard based on up-to-date information and changing trends and assumptions.

When EPCA was enacted, Congress declared its long-term purpose to be to "decrease dependence upon foreign imports, enhance national security, achieve the efficient utilization of scarce resources, and guarantee the availability of domestic energy supplies at prices consumers can afford." Conference Report (S. Rep. No. 94–516, 94th Cong., 1st Sess. (1975)) at p. 117. In considering EPCA, Congress predicted that the nation's dependence on foreign oil could be "nearly 12 million barrels per day in 1985," and expressed concern about the adverse effect of such a level of imports on the international balance of trade. (H.R. Rep. No. 94–221, 94th Cong., 1st Sess. (1975).) It was noted that the cost of foreign oil had risen from about $7 billion to $25 billion between 1973 and 1974 and could easily increase to $60 billion in 1985 (in constant dollars).

EPCA was passed in an environment of Congressional concern about a weak economy and a desire by Congress to encourage energy conservation without causing adverse economic and employment consequences. See H.R. Rep. No. 94–221, 94th Cong., 1st Sess. (1975) at pp. 14–15, and H.R. Rep. No. 94–340, 94th Cong., 1st Sess. (1975) at pp. 9–11, 87–88. The legislative history of amendments to EPCA that were enacted in 1980 also indicates Congressional concern about jobs. Indeed, one of the stated purposes of the 1980 amendments was "to encourage full employment in the domestic automobile manufacturing sector." See section 2 of the Act.

Congress' goal of energy conservation by improved automotive fuel efficiency has largely been realized. By 1985, U.S. imports of oil were less than when EPCA was enacted, and the cost in constant 1974 dollars was not the $60 billion feared by Congress but instead approximately $24 billion. In MY 1986, for the first time, the average fuel economy of the total fleet of new cars will in fact exceed 27.5 mpg. In addition, not only has the average fuel economy for all cars sold reached the basic congressional goal, but consumers now have wide choice in purchasing fuel-efficient cars of all types and sizes.

While EPCA's energy conservation goals have largely been realized, NHTSA confronts a record in this rulemaking which indicates that EPCA's secondary concern of ensuring that the fuel economy program does not result in losses of American jobs is at risk. As discussed below, the only actions available to GM and Ford in the near-term to achieve fuel economy levels of 27.5 mpg, i.e., for MY 1987–88, would involve a combination of (1) product restrictions likely resulting in significant adverse economic impacts, including substantial job losses and sales losses and unreasonable restrictions on consumer choice, and (2) transferring the production of large cars outside of the United States, thereby costing

American jobs while having absolutely no energy conservation benefits. Indeed, it should be noted that this could severely exacerbate the U.S. trade deficit, which, as noted above, was one of Congress' concerns when it enacted EPCA. In 1975, Congress was concerned about the effect of increased oil imports on the U.S. balance of trade; The agency notes that the trade deficit is now at an all-time high, due in large measure to the increase in automobile imports.

A major reason that GM and Ford are having difficulty achieving a CAFE of 27.5 mpg, in addition, as discussed below, to an unexpected drop in gasoline prices since their MY 1987–88 product plans were developed, relates to major changes which have occurred in the structure of the automotive industry since EPCA was passed. Due to major cost advantages in producing small cars abroad, imports comprise an increasing share of U.S. car sales. For example, while imports represented between 15 and 20 percent of all cars sold in the U.S. between 1973 and 1977, they are expected to comprise 35 percent of sales in 1987–88. Since imports are concentrated in the smaller, most fuel-efficient market segment, the rising share of imports makes it more difficult for the full-line domestic manufacturers to achieve CAFE of 27.5 mpg, since their cars are concentrated more in the mid-size and larger market segment.

Moreover, as discussed below, although GM and Ford themselves can attempt to solve the problem of their small car production cost disadvantage by importing small cars, they cannot count the imports toward their domestic CAFE for purposes of meeting CAFE standards. NHTSA notes that the Japanese manufacturers find it easy to meet CAFE standards due to their concentration on the smaller car market. Similarly, GM's import fleet will easily surpass CAFE of 27.5 mpg during MY 1987–88, as will Ford's by MY 1988. Thus, the present difficulties faced by the full-line manufacturers in complying with CAFE standards are in fact largely limited to an artificial subset of their cars. The agency notes that not only will the average fuel economy of the total fleet of new cars exceed 27.5 mpg during MY 1987–88, but GM's total fleet, including domestic, import and joint venture cars, is expected to be 27.5 mpg by MY 1988.

The provision in EPCA which prevents manufacturers from averaging their import and domestic cars for purposes of complying with CAFE standards was, as discussed below, intended to discourage manufacturers from meeting CAFE standards by increasing imports of small cars. Ironically, that same provision now creates an incentive for the domestic manufacturers to meet standards by producing their larger, less-fuel efficient cars outside the U.S., since the larger cars could then be averaged with small car imports, rather than with mid-size domestic cars.

As indicated above, Congress recognized the difficulties in predicting CAFE levels a decade in advance and, therefore, permitted the Department to amend CAFE standards. Section 502(a)(4) provides that the Secretary of Transportation may raise or lower the 27.5 mpg standard for model year 1985 or for any subsequent model year if he or she determines that some other standard represents the maximum feasible average fuel economy level. In determining maximum feasible average fuel economy, the Secretary is required under section 502(e) of the Act to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. (Responsibility for the automotive fuel economy programs was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976).)

While compliance with fuel economy standards is determined by averaging, enabling manufacturers to produce vehicles with fuel economy below the level of the standard if they produce sufficient numbers of vehicles with fuel economy above the level of the standard, manufacturers may not average their imported cars together with their domestically manufactured cars. Instead, manufacturers must meet fuel economy standards separately for their imported and domestically manufactured fleets. (See section 503.) Cars are considered to be domestically manufactured if they have at least 75 percent domestic content. Conversely, cars are considered to be imports, or as the statute characterizes them, "not domestically manufactured," if they have less than 75 percent domestic content.

While a separate fuel economy standard is set for each model year, the Cost Savings Act does not require absolute achievement of the standard within each year. Instead, it allows a shortfall in one year to be offset if a manufacturer exceeds the standard for another year or years. Under the Act, as amended by the Automobile Fuel Efficiency Act of 1980, manufacturers earn credits for exceeding average fuel economy standards which may be carried back for three model years or carried forward for three model years.

2. Congressional intent

While the Congress established a goal of 27.5 mpg, it also recognized the need for flexibility and authorized the Department to adjust the standards to the maximum feasible level.

The report accompanying H.R. 7014, the bill containing the House version of the fuel economy provisions (which would have specified a 28.0 mpg standard for 1985 and thereafter), stated that "the automobile industry has a central role in our national economy and that any regulatory program must be carefully drafted so as to require of the industry what is attainable without either imposing impossible burdens on it or unduly limiting consumer choice as to capacity and performance of motor vehicles." H.R. Rep. No. 94–340, 94th Cong., 1st Sess. 87 (1975). As another indication of the congressional view of the need for flexibility, the report recognized the difficulty in establishing goals ten years in the future by stating that "(t)he 1985 average fuel economy standard presented a different problem [than establishing standards for MY's 1979–80] because of the high level of uncertainty which attends any attempt to predict technological feasibility a decade into the future." Id. at 86. The Committee also stated that although the 1985 standard was a "clear target," it also provided DOT the authority to amend that target so as to provide the program "with the necessary flexibility." *Ibid.*

It is noteworthy that the Secretary was given authority to lower the standard for MY 1985 or for any subsequent year to 26.0 mpg without such action being subject to a one-house veto. Conversely, any action to raise the standard above 27.5 mpg or to lower it below 26.0 mpg was subject to that form of congressional review and disapproval. While such legislative vetoes have since been declared unconstitutional, the separate treatment in the original legislation of action to lower the standard to any level between 26.0 mpg and 27.5 mpg appears to reflect Congress' view of the likelihood of such events and its willingness to accept—without formal review—Departmental actions making slight reductions in the long-term goal established by the Act.

B. Setting the 1981–84 Standards

On June 30, 1977, NHTSA published in the Federal Register (42 FR 33534) a final rule establishing the 1981–84 passenger automobile CAFE standards. The selected standards were 22 mpg for

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1981, 24 mpg for 1982, 26 mpg for 1983, and 27 mpg for 1984.

As part of establishing the 1981–84 standards, the agency developed estimates of the maximum feasible fuel economy for each manufacturer for model years 1981 through 1985. The agency's conclusion at that time was that "levels of average fuel economy in excess of 27.5 mpg are achievable in the 1985 time frame." 42 FR 33552. The agency believed that it was feasible in model year 1985 for General Motors to achieve an average fuel economy level of 28.9 mpg, Ford 27.9 mpg, and Chrysler 28.7 mpg. See 1977 Rulemaking Support Paper (RSP), p. 5–38 (Table 5.11). Those levels were based on a number of assumptions, including the ability of manufacturers to maintain a rapid rate of introduction of technology, consumer acceptance of a 10 percent reduction in vehicle acceleration and significant use of a widespread range of technological options, including weight reduction, improved transmissions and lubricants, reduced aerodynamic drag, reduced accessory losses and reduced tire rolling resistance.

The agency's estimates did not assume a downward mix shift in automobile sizes or the use of diesel engines. The agency concluded that a standard set at a level that required substantial mix shifts would not be economically practicable due to the risk that a significant number of consumers might defer purchasing new automobiles, resulting in a substantial sales drop. However, these techniques were viewed in the 1977 rule as "constituting a safety margin" for manufacturers in the event that other technological improvements did not result in sufficient CAFE improvements. 42 FR 33545, June 30, 1977. The agency also noted that some manufacturers might decide to use some of those measures in place of some of the ones assumed by the agency's estimates. 42 FR 33545.

As to foreign manufacturers, the 1977 RSP projected that all but three of them could improve their average fuel economy levels, without expanded use of diesel engines, sufficiently to meet the 27.5 mpg standard. With fleet fuel economy improvements from additional diesels included in the foreign fleet projections, only one manufacturer, Mercedes-Benz, was projected to fall below the 1985 standard.

It should be emphasized that the agency's 1977 estimates were intended to demonstrate the feasibility of achieving the 27.5 mpg standard and not to predict what specific actions the manufacturers would actually take to achieve that standard. The agency's estimates were based on one scenario of what the agency believed manufacturers could do to achieve an average fuel economy level of 27.5 mpg by 1985. Manufacturers were free to pursue other courses of action to achieve the 27.5 mpg fuel economy level.

C. Events From 1977 to 1984

In January 1979, NHTSA presented new feasibility estimates for each manufacturer for model years 1980 through 1985 in its Third Annual Report to the Congress on the Automotive Fuel Economy Program (44 FR 5742, January 29, 1979). The agency stated that "(o)n balance, the conclusions reached during the 1981–84 rulemaking . . . are similar to those resulting from the most recent assessments. These assessments indicate that all domestic manufacturers can exceed the scheduled standards for each year through 1985." 44 FR 5757.

NHTSA recognized in its Third Annual Report that the changes in vehicle design necessary to meet the fuel economy projections would require tremendous outlays of capital. The agency also recognized that its feasibility estimates were dependent on the continued financial health of the industry and could be subject to change in the event of a severe economic downturn.

The Third Annual Report noted that a number of manufacturers did not agree with the agency's conclusion that "(t)he technology is available that will enable manufacturers to achieve an average fuel economy of 27.5 mpg without reducing vehicle interior space or significantly affecting performance and without changing the mix of size classes."

Between January and May of 1979, NHTSA received a number of submissions from Ford and General Motors on the 1981–84 fuel economy standards for passenger automobiles asserting that those standards should be reduced. In response to these submissions, the agency published a document entitled "Report on Requests by General Motors and Ford to Reduce Fuel Economy Standards for MY 1981–85 Passenger Automobiles," DOT HS–804 731, June 1979. The report concluded that the standards were technologically feasible and economically practicable and noted that both companies had submitted product plans for meeting the standards. Report, p. 14.

Shortly thereafter, the nation was in the midst of another energy crisis, brought on by events in Iran. Gasoline prices were rising rapidly, creating significantly increased consumer demand for small cars. The U.S. city average retail price for unleaded gasoline rose from 90 cents per gallon in 1979 to $1.25 in 1980. (In 1985 dollars, this increase would have been from $1.28 in 1979 to $1.63 in 1980.) In light of these changed conditions, the industry announced that it would significantly exceed the 27.5 mpg standard for 1985. Both Ford and GM as well as Chrysler and American Motors, indicated that they expected to achieve average fuel economy in excess of 30 mpg for that model year. Product plans submitted to NHTSA by those companies indicated that the projections assumed significant mix shifts toward smaller cars and rapid introduction of new technology. A letter submitted to the agency by Ford in July 1980, however, cautioned that "it is important to emphasize that the affordability of many of these programs is dependent upon substantial improvement in the market and economic conditions."

On January 26, 1981, NHTSA published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (46 FR 8056) which addressed the issue of passenger automobile fuel economy standards for model year 1985 and beyond. That notice and an accompanying paper entitled "Analysis of Post-1985 Fuel Economy," assumed that manufacturers would achieve their announced average fuel economy goals of over 30 mpg for 1985. The notice also took note, however, of a deepening economic crisis then facing the auto industry and possible effects on financing investments for improving fuel economy.

On April 16, 1981, NHTSA published in the **Federal Register** (46 FR 22243) a notice withdrawing the ANPRM. The notice stated that "(t)his action is being taken in recognition of market pressures which are creating strong consumer demand for fuel-efficient vehicles and sending clear signals to the vehicle manufacturers to produce such vehicles. It is expected that the market will continue to act as a powerful catalyst. . . ."

Conditions affecting fuel economy changed dramatically after 1981, following completion of decontrol of domestic oil and other external factors increasing available supplies. Gasoline prices did not rise as they had in the 1970's but instead declined over time. This, combined with economic recovery, caused actual consumer demand to shift back toward larger cars and larger engines. Data submitted to the agency by GM and Ford in mid–1983 indicated that instead of achieving fuel economy well in excess of the 27.5 mpg standard for MY 1985, they would be unable to meet the level prescribed by the standard.

Petitions

In July 1984, NHTSA received a petition for rulemaking from the Center for Auto Safety (CFAS) and the Environmental Policy Institute (EPI) requesting that the MY 1987–90 passenger automobile average fuel economy standards be increased. The agency granted the CFAS/EPI petition in a notice published in the **Federal Register** (49 FR 46770) on November 28, 1984. The agency stated that it believed the issues raised by the petition should be analyzed in the context of rulemaking and granted the petition to that extent.

In March 1985, both GM and Ford submitted petitions for rulemaking requesting that NHTSA reduce the passenger automobile average fuel economy standard for the 1986 model year and beyond from 27.5 mpg to 26.0 mpg. The petitioners stated that factors beyond their control, including lower gasoline prices and resultant greater consumer demand for larger cars and engines, had reduced their fuel economy capability. NHTSA granted the GM and Ford petitions in a notice published in the **Federal Register** (50 FR 12344) on March 28, 1985, and requested public comments. The agency noted that it was already considering the CFAS/EPI petition with respect to model years 1987 and thereafter.

MY 1986 Standard

On September 30, 1985, NHTSA issued a final rule which reduced the MY 1986 standard from 27.5 mpg to 26.0 mpg (50 FR 40528, October 4, 1985).

In developing the MY 1986 final rule, NHTSA proceeded from the premise that because the Cost Savings Act had imposed a long-term obligation on manufacturers to achieve a 27.5 mpg fuel economy level, it would be inappropriate to exercise its discretion to reduce the standard if a current inability to meet the standard simply resulted from manufacturers previously declining to take appropriate steps to improve their average fuel economy as required by the Act. The agency therefore evaluated the manufacturers' past efforts to achieve higher levels of fuel economy as well as their immediate capabilities.

Based on all available information, including the public comments received in response to the March 1985 **Federal Register** notice and a subsequent NPRM (50 FR 22912, July 22, 1985), NHTSA concluded that GM and Ford, constituting a substantial part of the industry, had taken or planned appropriate steps to meet the 27.5 mpg standard in MY 1986 and made significant progress toward doing so, but were prevented from fully implementing those steps by unforeseen events. A decline in gasoline prices which began in 1982 had been expected to be temporary and quickly reverse, but instead continued. The agency concluded in the MY 1986 rulemaking that, among other things, there had been a substantial shift in expected consumer demand toward larger cars and engines, and away from the more fuel-efficient sales mixes recently anticipated for MY 1986 by GM and Ford. The agency's analysis indicated that this shift was largely attributable to the continuing decline in gasoline prices. NHTSA's analysis further indicated that the only actions then available to those manufacturers to improve their fuel economy for MY 1986 would have involved product restrictions likely resulting in significant adverse economic impacts, including sales losses well into the hundreds of thousands and job losses well into to the tens of thousands, and unreasonable restrictions on consumer choice. Based on its analysis of the relevant statutory criteria, NHTSA determined that the maximum feasible average fuel economy level for MY 1986 was 26.0 mpg.

NPRM for MY 1987–88

On January 22, 1986, NHTSA published in the **Federal Register** (51 FR 2912) an NPRM to amend the MY 1987–88 passenger automobile average fuel economy standards, within a range of 26.0 mpg to 27.5 mpg for each model year. The agency invited both written and oral comments on the proposal. A public meeting was held on February 19, 1986, in Washington, DC, to receive oral comments.

Public Comments

Comments were received both from parties strongly supporting a reduction in the MY 1987–88 passenger automobile CAFE standards and parties strongly opposing such action. Many of the parties took positions similar to those taken in the MY 1986 proceeding.

Both of the petitioners, GM and Ford, continued to urge that the standards be reduced to 26.0 mpg. GM argued that it had met or exceeded EPCA's technological objectives, and that changed circumstances over the past decade support a determination that the standards for the 1987–88 model years must be amended to a level no higher than 26.0 mpg. That company stated that any higher standard would threaten substantial production curtailments, job losses, limitations on consumer choice, and other economically impracticable consequences that far outweigh any marginal energy conservation benefit of a higher CAFE standard. GM emphasized that its current MY 1987–88 CAFE projections are subject to uncertainties, and urged that the standards be set at levels to enable it to generate sufficient carryback credits to cover unanticipated shortfalls with respect to the MY 1985 standard.

Ford argued that a 26.0 mpg standard for both model years is consistent with the uncertainties in predicting consumer demand and market conditions, the fuel economy benefits associated with its new products, and technology and fuel prices. While emphasizing the steps it has taken to improve its fuel economy, Ford stated that it believes an analysis of the relevant statutory factors demonstrates that the same major changes in market conditions which led NHTSA to amend the MY 1986 CAFE standard from 27.5 mpg to 26.0 mpg have an even greater impact on the ability of full line manufacturers to comply with the existing MY 1987–88 standards. That company emphasized the continuing decline in fuel prices, which it stated is expected to encourage further shifts toward larger cars and engines, and the increasing market share of Japanese and other imports in the small car market. Like GM, Ford argued that any impact on petroleum consumption associated with reducing the MY 1987–88 standards to 26.0 mpg would be minimal.

Professor Robert Leone of Harvard University, commenting on behalf of the Automobile Importers of America (AIA), presented an analysis concluding that MY 1987–88 standards above 26.0 mpg are not feasible because of constraints on manufacturers' attempts to pursue competitive strategies consistent with the globalization of the auto industry, not efficient because of the excessive costs incurred as a consequence of restrictions on consumer diversification options, and not sound energy policy because of possible adverse effects on energy consumption and economic efficiency that result from regulation-induced market distortions.

The National Automobile Dealers Association (NADA) urged that the MY 1987–88 standards be set at 26.0, arguing that higher standards would result in manufacturers restricting the availability of larger, less fuel-efficient vehicles. According to NADA, such product restrictions would send an "economic shock-wave" from dealers to manufacturers and through the economy in general.

The Recreational Vehicle Industry Association (RVIA) supported MY 1987–88 standards of 26.0 mpg, arguing that

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any increase beyond that level could result in a lack of available tow vehicles to safely pull the four million travel trailers presently on the road.

As in the MY 1986 proceeding, individual European manufacturers supported lowering the standards for both model years to 26.0 mpg, citing the significant steps they have taken to improve fuel economy, increased market demand for larger cars and engines, and the difficulty that limited-line manufacturers have in achieving higher average fuel economy if they do not produce small cars whose fuel economy can be averaged in with that of their larger cars.

The U.S. Department of Commerce (DOC) urged that the MY 1987–88 standards be reduced to 26.0 mpg, stating that based on its analyses of the short- and long-term competitive challenges facing the U.S. automobile industry, the changed energy outlook, and the industry's progress in developing and applying new technology to improve fuel economy, a CAFE standard of 27.5 mpg no longer appears to be the maximum feasible level attainable for those model years. That Department stated that a large part of the U.S. automobile industry will not be able to exceed the current CAFE standards by a margin sufficient to carry back credits to meet an expected shortfall in MY 1985 unless it reduces its domestic fleet product offerings and adjusts its output mix. DOC stated that its analysis indicates that such changes in product mix and reduced product offerings could result in significantly reduced automobile production and employment, and could have economically damaging consequences for producers, workers and consumers.

The Bureau of Consumer Protection, Competition, and Economics of the Federal Trade Commission (FTC Staff) submitted a theoretical model and analysis assessing the economic consequences of a 27.5 mpg standard for MY 1987–88. The FTC Staff analysis concluded the following:

> . . . in the short-term, the costs borne by society if the 27.5 mpg standard is imposed would be substantial. The price of large cars may rise by as much as 22 percent as large-car production drops by 1.7 million units. While small-car production may rise by an amount between 350,000 and 670,000 units, total domestic car production nonetheless may fall by more than 900,000 units. The short-term employment effects are substantial: over 130,000 jobs in the domestic automobile industry will disappear. Overall, the sum of the deadweight loss to consumers and producers and the output losses caused by the temporary unemployment generated by the higher CAFE standard would range between a low of $3.0 billion and a high of $3.5 billion. . . .

Based on its analysis, the FTC Staff urged NHTSA to set the MY 1987–88 standards at 26.0 mpg.

The U.S. Department of Energy (DOE) submitted a comment focusing on three areas: Market uncertainty, technology marketability and cost-effectiveness, and manufacturers' fuel economy capabilities. That Department stated that its analysis shows that market uncertainty has not been a decisive factor by itself with respect to year-to-year changes in new car CAFE. DOE commented that the industrywide car size mix has been relatively stable over the past few years as fuel prices have continued to decline, but what has happened is that the mix failed to further shift towards smaller cars to the degree some manufacturers had anticipated. With respect to technology marketability and cost-effectiveness, DOE stated that its analysis of the cost-effectiveness of a range of fuel economy technologies found that all those that it examined were cost-effective at a fuel cost of $1.00/gallon and all were either cost-effective or neutral at $.75 a gallon. DOE stated that it does not find any reason to believe that consumers are rejecting the concept of technology-based fuel economy improvements. That Department stated that its analysis of technology has shown that most cost-effective technologies have already been adopted by both Ford and GM in their subcompacts and compacts, but many technologies that are cost-effective to the consumer have not been introduced in several models in the large and intermediate size classes. DOE commented that NHTSA should evaluate the economic feasibility of GM and Ford introducing such technologies in MY 1987–88. DOE stated that it estimates Ford and GM could achieve CAFE of between 27 mpg and 27.3 mpg in 1987 and above 27.5 mpg in 1988, although these estimates are subject to uncertainties about a number of market-related factors. DOE did not recommend specific values for the MY 1987–88 standards, but emphasized its opposition to setting standards at a level that would require product restrictions.

Several civil rights organizations and other groups and individuals interested in minorities urged that the MY 1987–88 standards be reduced to 26.0 mpg. The Reverend Jesse Jackson of the National Rainbow Coalition commented that a reduction is needed as "it will be necessary to drop from production many family line vehicles, and the consequent layoffs would have a severe adverse impact in the black communities." Rev. Jackson stated that "(a)s one in every five assembly line production workers in the auto industry is black and some 204 dealerships comprising over 35 percent of the top businesses listed in Black Enterprise 100 are an integral part of the black economy, these workers and dealerships contribute measurably to the economic stability and growth of the black community." According to that commenter, "(t)he imposition of the 27.5 mpg standards could seriously threaten that growth by removing thousands of workers from auto assembly lines." Benjamin Hooks, Executive Director of the National Association for the Advancement of Colored People (NAACP), commented that "(w)ith the minority community reeling from double digit unemployment, some caused by the massive layoffs in the automobile industry, we are cognizant of the fact that unless efforts are made to strengthen our domestic industries, there is a great likelihood that we will experience additional increases [in] unemployment." That commenter stated that while the NAACP shares "the nation's goal of decreasing gas consumption and decreasing our dependence on foreign petroleum products, it is our belief that decreasing gas consumption would not compensate for the possible job loss if the American automobile industry is forced to comply with the 27.5 mpg standards." John E. Jacob, President of the National Urban League, commented that "(o)ur greatest concern is that abandoning the 26 mpg standard could encourage American manufacturers to drop or restrict production of family-size cars, resulting in further job losses in an industry that has already experienced wrenching unemployment problems." That commenter added that "the industry and its suppliers are major employers of black and minority workers and rules that retard employment in the industry will harm a black economy impacted by 15 percent unemployment rates." Other organizations supporting standards of 26.0 mpg include the National Urban Coalition, the United Negro College Fund, the Labor Council for Latin American Advancement, and the Ibero-American Chamber of Commerce.

The Heritage Foundation urged that the MY 1987–88 standards be reduced to 26.0 mpg, arguing that the single most important factor affecting the domestic manufacturers' CAFE, the price of oil, is beyond the manufacturers' control, that few benefits would result from enforcing standards of 27.5 mpg, and that 27.5 mpg standards would result in significant economic harm to the domestic industry and the nation as a whole.

The Insurance Institute for Highway Safety (IIHS) argued that CAFE standards can have a potentially adverse effect on vehicle safety, since vehicle size is an extremely important factor in safety. That commenter urged that the agency consider this issue when choosing an appropriate CAFE target.

The Competitive Enterprise Institute argued that the MY 1987–88 standards should be reduced to a "non-forcing level," which it suggested might be 22 mpg. That commenter argued that fuel economy standards result both in economic disruptions to the American economy and in additional fatalities as the car fleet changes toward smaller cars.

Numerous other commenters, including automotive suppliers; dealers, employees and stockholders of GM and Ford; states and local governments; almost 100 members of Congress; and private individuals, also supported standards of 26.0 mpg for MY 1987–88. The states and local governments included the Kentucky State Senate and House of Representatives, the governor of Kansas; and a number of mayors and city councils.

Standing in sharp contrast to the comments favoring a reduction in the MY 1987–88 standards were those urging that the standards be left at 27.5 mpg. Chrysler argued that NHTSA has two options: enforcing the law as Congress wrote it or cutting the ground out from under a vital energy conservation program by granting an unwarranted reduction in the standards. That commenter argued that the changes in market conditions on which GM and Ford base their present CAFE difficulties were plainly in evidence as long ago as 1982, and that there is no reasonable basis on which the agency could now find that those companies were unable to respond to these changes by the 1987 and 1988 model years. Chrysler alleged that GM and Ford chose corporate strategies that emphasized short term profit maximization over a longer term strategy of meeting the law. That company cited past and current decisions by GM and Ford to continue selling what it termed "older technology rear wheel drive cars," and listed a number of technological improvements which it argued GM and Ford could have taken to meet the standards within the available time.

The Center for Auto Safety (CFAS) argued that Ford and GM can attain 27.5 mpg in MY 1987–88; that the agency has grossly overestimated market uncertainty, particularly with respect to how falling gasoline prices and foreign competition may affect CAFE; and that the recent drop in oil prices increases the chance of yet another energy disruption and underscores the urgent necessity of maintaining the current fuel economy standards. With respect to the issue of possible job losses, CFAS argued that the job losses NHTSA should really consider are those associated with Ford and GM moving production of their small cars outside the U.S. That commenter noted that Ward's Auto World has reported that Ford is already planning to outsource 400,000 to 450,000 small cars by 1988, and argued that with lower fuel economy standards for MY 1987–88, Ford and GM would take the opportunity to further export American small car jobs to foreign countries.

The Americans for Energy Independence stated that the current condition of abundant oil and plummeting prices is temporary and that in the circumstances of today's oil market public policy, including CAFE standards, is needed to compensate for market signals that favor cheap oil.

The state of California, the cities of Los Angeles and New York, and the Southern California Association of Governments argued that a reduction in the MY 1987–88 standards would have a significant adverse impact on the environment and that the agency is required to prepare a full Environmental Impact Statement instead of an Environmental Assessment for this rulemaking.

Numerous other commenters, including private individuals and a few members of Congress, also urged that the standards remain at 27.5 mpg.

Supplemental NPRM

On July 30, 1986, NHTSA published in the **Federal Register** (51 FR 27224) a supplemental NPRM (SNPRM) concerning the argument put forth by GM that the agency may (or indeed, must) consider a company's need for carryback credits in determining the maximum feasible average fuel economy level. The notice requested comment on a tentative conclusion by the agency that the argument should be rejected, and also asked commenters to address whether their position on the issue would differ if adoption of the GM argument would necessitate establishing the standard below 26.0 mpg for either or both model years.

Agency's Analytical Approach

NHTSA is following the same basic analytical approach it adopted for the MY 1986 rulemaking. In that rulemaking, the agency explained its approach as follows:

> . . . section 502(a)(4) provides that if NHTSA determines that a level other than 27.5 mpg is the maximum feasible average fuel economy for 1985 or any subsequent model year, the agency may change the standard for that year to that level. If NHTSA were writing on a blank slate and establishing the MY 1986 standard for the first time, it would simply evaluate the current average fuel economy levels of the manufacturers and determine what improvements could be made in those levels between now and the end of MY 1986. This would involve taking into account the capabilities of each manufacturer and considering the four factors listed in section 501(c), i.e., technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.
>
> The agency agrees with Chrysler and other commenters, however, that the issue is not solely whether manufacturers are not capable of meeting the 27.5 mpg standard. Since the Cost Savings Act imposed a long-term obligation on manufacturers to achieve a 27.5 mpg fuel economy level, it would be inappropriate to reduce the standard if a current inability to meet the standard simply resulted from manufacturers previously declining to take appropriate steps to improve their average fuel economy as required by the Act. Therefore, the agency must evaluate the manufacturers' past efforts to achieve higher levels of fuel economy as well as their current capabilities.
>
> On the other hand, the agency does not consider it appropriate to judge each and every manufacturer product action by 20–20 hindsight. In assessing the sufficiency of manufacturers' fuel economy efforts, it is necessary to take account of the information available to manufacturers at the time product decisions were being made.
>
> Manufacturers had an obligation to take whatever steps were necessary, consistent with the factors of section 502(c), to meet the 27.5 mpg standard. To the extent that manufacturers had plans to meet the standard which subsequently became infeasible due to unforeseen events, NHTSA does not believe the manufacturers should be charged with a failure to make a sufficient effort.
>
> The agency's analytical approach thus consists of first evaluating the maximum feasible average fuel economy level that manufacturers are now capable of achieving in MY 1986, taking into account the four factors of section 502(c) and second, to the extent that level is determined to be below 27.5 mpg, assessing the sufficiency of manufacturers' efforts to meet the 27.5 mpg standard, in light of the information available to manufacturers at the time fuel economy product decisions were being made and the four factors of section 502(c).

GM stated in its comment on the NPRM for MY 1987–88 that it "agrees . . . that such an approach generally reflects a reasonable interpretation of EPCA and the Agency's authority to set amended standards." However, that company

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also commented that the "sufficiency" assessment is not required by the statute and is unnecessary for accomplishment of the legislative goals. GM argued that the significance of the original 27.5 mpg standard adopted by Congress should not be "overstated" and that neither NHTSA nor the manufacturers are compelled to present a special justification or "defense" for the finding that the actual "maximum feasible" level is now less than 27.5 mpg. That company also commented that the agency's finding in the MY 1986 rulemaking concerning the sufficiency of original product plans need not be reopened and could be considered final for purposes of this proceeding as well.

NHTSA believes that evaluating the sufficiency of efforts to date by the manufacturers to achieve 27.5 mpg CAFE is required under EPCA and the Administrative Procedure Act (APA). EPCA's basic statutory scheme consists of mandatory CAFE standards, set in advance of a model year in order to provide the manufacturers time to bring their fleets into compliance, and civil penalties for failure to meet the standards. Manufacturers thus have a legal obligation to pursue over time all feasible means, consistent with the factors of section 502(e), necessary to meet CAFE standards. The primary significance of the 27.5 mpg level with respect to amending standards is that it is the law unless and until it is amended by NHTSA. The agency's amendment authority is discretionary. Under the APA, a reviewing court would examine whether the agency had abused its discretion in exercising that authority. Given the overall statutory scheme, NHTSA believes, and thinks that a court would likely find, that it would be an abuse of discretion for the agency to reduce a CAFE standard if a current inability to meet such standard simply resulted from the regulated industry previously declining to take reasonable steps to meet the standard.

Moreover, while NHTSA agrees that its evaluation of this issue in the MY 1986 rulemaking is relevant to the current rulemaking, it believes that sufficiency of past efforts must specifically be considered for MY 1987–88. The agency's determinations in the MY 1986 rulemaking with respect to both sufficiency of efforts made through September 1985 and maximum feasible average fuel economy level were not necessarily determinative with respect to MY 1987–88. While the agency determined in the MY 1986 rulemaking that manufacturers had made sufficient efforts to achieve 27.5 mpg for that model year, which had been overtaken by unforeseen events, it also acknowledged that with 20–20 hindsight it was possible to point to various additional actions that manufacturers could have taken to improve their fuel economy, e.g., greater penetration of certain fuel-efficient technologies. The agency also emphasized that while changes in product plans which may, as an unintended effect, reduce CAFE are consistent with the statutory criteria to the extent that they reflect changes in what is economically practicable, manufacturers recognizing the consequences of such changes must then pursue additional means, consistent with the factors of section 502(e), to meet standards.

Manufacturer Capabilities for MY 1987–88

As part of its consideration of technological feasibility and economic practicability, the agency has evaluated the manufacturers' fuel economy capabilities for MY 1987–88. In making this evaluation, the agency has analyzed the manufacturers' current projections and underlying product plans and has considered what, if any, additional economically practicable actions the manufacturers could take to improve their fuel economy.

A. Manufacturer Projections

GM and Ford have submitted a number of different projections of their MY 1987–88 CAFE levels over the past several years, reflecting changing product plans. This section focuses on the manufacturers' latest projections, since those projections reflect the manufacturers' current product plans. The current MY 1987–88 projections of both GM and Ford are lower than earlier projections. The differences between those manufacturers' current product plans and earlier ones are discussed below in the section entitled "Manufacturer Compliance Efforts."

The agency notes that one factor which complicates a discussion of manufacturer projections is Environmental Protection Agency (EPA) test adjustment credits. Between 1983 and 1985, EPA was engaged in rulemaking to provide CAFE adjustments to compensate for the effects of past test procedure changes. During this time, some but not all manufacturers included CAFE adjustments in their projections based on what they expected EPA to do. EPA ultimately adopted a formula approach for calculating CAFE adjustments. While the CAFE adjustment differs among manufacturers due to their different vehicle mixes, a typical adjustment during the MY 1987–88 time period is 0.1 or 0.2 mpg. In the discussion of manufacturer projections in this notice, the projections include the EPA test credit adjustment unless it is noted otherwise.

GM projected in July 1986 that it could achieve a CAFE no higher than 26.3 mpg in MY 1987 and 26.9 mpg in MY 1988. Based on GM's pre-model year report, NHTSA used a MY 1986 baseline of 26.4 mpg in analyzing that company's projections. GM's mid-model year report, submitted on July 31, 1986, confirmed that GM's MY 1986 CAFE will be about 26.4 mpg.

While there are a number of changes in GM's fleet between MY 1986 and MY 1987, they largely cancel each other out for CAFE calculation purposes. A number of mix effects reduce the company's CAFE by 0.2 mpg. An additional decline of about 0.1 mpg is attributable to test results, related to EPA testing. There is also a slight decline related to a draft EPA Advisory Circular concerning coastdown requirements. Largely offsetting these declines are various technological improvements, a number of which are engine improvements.

(The details of the changes are subject to a claim of confidentiality as confidential business information whose release could cause competitive harm. This is also true with respect to this notice's discussion of other manufacturer projections.)

For MY 1988, GM itself projects a CAFE increase of 0.6 mpg, to 26.9 mpg. More favorable model and engine mixes result in 0.5 mpg of this projected gain. A number of technological actions, related to engines and transmissions, result in a 0.2 mpg gain. Among other things, as GM testified at the February 1986 public meeting, a new 4-cylinder, 16 valve engine "will provide a major advance in fuel economy." GM stated that this 4-cylinder engine in fact outperforms the 6-cylinder engine and that will replace both 6-cylinder and 8-cylinder engines. The agency notes that GM's projection assumes full consumer acceptance of this new engine and the fact that technical difficulties will not arise that could delay introduction of the engine. Past experience, however, indicates that there are significant uncertainties associated with major new products, particularly those incorporating new technology. For example, GM experienced problems related to consumer acceptance and/or technical difficulties for its diesel engine and its V8–6–4 engine. Should GM experience technical difficulties that delay introduction of its new engine, or should there be a lag in consumer acceptance of the engine, there would be a decline in GM's projected MY 1988 CAFE. GM's expected CAFE gains are partially offset by another change related to improving performance in response to anticipated consumer demand.

Ford projected in May 1986 that it could achieve a CAFE level between 26.3 mpg and 27.1 mpg in MY 1987, and between 25.5 mpg to 26.3 mpg in MY 1988. The material supporting the Ford submission indicates that Ford considers the high ends of its projected ranges to be its most likely CAFE levels. The high ends are based on Ford's estimates of probable consumer demand conditions and incorporate certain technical risks which Ford considers likely to occur. The lower ends represent additional risks, relating to possible sales mix shifts, beyond what Ford has already incorporated based on its primary estimate of consumer demand conditions. These additional risks include potential increases in larger car sales, due to drops in gasoline prices, and the possibility of increasing Korean and Japanese car sales. Ford's projections do not include the significant usage of extraordinary marketing and incentive programs.

Based on Ford's 1986 pre-model year report and sales data during the model year, NHTSA used a MY 1986 baseline of 26.8 mpg in analyzing that company's projections. The general magnitude of this number was confirmed in Ford's mid-model year report, submitted on July 29, 1986, which indicated that Ford's MY 1986 CAFE would be between 26.8 mpg and 27.0 mpg. The 26.8 number is 0.5 mpg higher than the Ford projection NHTSA cited in the MY 1988 proceeding. In that proceeding, NHTSA indicated that Ford's maximum projected MY 1986 CAFE was 26.3 mpg, which was subject to risks amounting to 0.5 mpg. See 50 FR 40547 (October 4, 1985). Ford indicated in its mid-model year report that increased sales of fuel-efficient models/powertrains had significantly increased its CAFE. A number of other factors, each having a relatively small impact on Ford's CAFE, also affected that company's CAFE.

Ford's high end MY 1987 projection of 27.1 mpg would represent a 0.3 mpg increase over its MY 1986 CAFE. There are a number of changes expected in Ford's fleet for MY 1987. Changing sales mix, including completion of the replacement of the rear-drive LTD/Marquis mid-size sedans and station wagons with the more fuel-efficient Taurus/Sable front-drive cars, accounts for a CAFE gain of 0.3 mpg. Technological improvements relating to transmissions and engines account for an additional 0.3 mpg gain. Partially offsetting these gains, resulting in a 0.3 mpg loss, are certain changes designed to enhance consumer acceptability of particular products.

Ford's high end MY 1988 projection of 26.3 mpg would represent a 0.8 mpg drop in its CAFE as compared to MY 1987. Changing sales mix accounts for a CAFE decline of 0.9 mpg. The changing sales mix reflects, among other things, fewer sales of domestically produced smaller cars as Ford sells larger numbers of imported small cars, and the timing of model years. Certain added technical risks account for an additional 0.1 mpg decline. Partially offsetting these losses, by 0.2 mpg, are technological improvements in a number of areas.

Chrysler: Chrysler projects that, not including the EPA test credit adjustment, it will achieve a CAFE of 27.5 mpg in 1987 and 28.6 mpg in MY 1988. By comparison, Chrysler projects that it will achieve a CAFE of 27.4 mpg in MY 1986 (again not including the EPA adjustment).

For MY 1987, Chrysler's CAFE projection is almost identical to its MY 1986 projection. Chrysler projects minor mix shifts and the introduction of the Shadow/Sundance "upscale" compacts.

For MY 1988, Chrysler's CAFE projection increases by 1.1 mpg. The primary reasons for this increase are technological improvements and model changes.

Chrysler's projected technological improvements are comparable to those already used by other manufacturers. As discussed in the MY 1988 proceeding, the primary reason Chrysler's CAFE is higher than that of GM and Ford is that Chrysler does not compete in all the market segments in which GM and Ford sell cars.

Other Manufacturers: As part of its analysis for this rulemaking, NHTSA asked four import car manufacturers to provide their latest CAFE projections for MY 1987–88, as well as lists of planned technological improvements for those model years. The import companies are Toyota and Honda, which are the two largest selling imports, and Volvo and Mercedes-Benz, which are among the largest selling European imports. Both Volvo and Mercedes-Benz produce a relatively narrow range of models in the larger and heavier size classes. In the discussion which follows, none of the projections include EPA adjustments.

Both Toyota and Honda project reductions in their MY 1987–88 CAFE levels as compared to MY 1986, although they will continue to remain well above 27.5 mpg due to their emphasis on smaller cars. Toyota projects that its CAFE will decline from 32.2 mpg in MY 1986 to 31.8 mpg in MY 1987 and 31.7 mpg in MY 1988. Honda projects that its CAFE will decline from 34.2 mpg in MY 1986 to 32.2 mpg in MY 1987 and 32.0 mpg in MY 1988. One reason accounting for the decline in Honda's CAFE is the introduction of the Acura Legend, which is less fuel-efficient than Honda's other cars. Since that car was introduced mid-way through MY 1986, Honda's CAFE projection for that year does not reflect full year sales of that car. Both companies project CAFE declines attributable to mix shifts toward less fuel-efficient cars, which are partially offset by technological improvements.

Volvo projects that its CAFE will decline from 26.5 mpg in MY 1986 to 26.2 mpg in MY 1987 and MY 1988. Mercedes-Benz projects that its CAFE will rise from 21.1 mpg in MY 1986 to 22.7 in MY 1987, and then decline slightly to 22.5 mpg in MY 1988. Since Mercedes introduced a more fuel-efficient, 300 series diesel late in MY 1986, that company's MY 1986 projection does not reflect full year sales of that car.

None of the four import manufacturers which provided detailed information to NHTSA project any dramatic changes in CAFE due to improved technology or model offerings for MY 1987 and 1988. Technology developments are generally typical of those already used or projected to be used by the rest of the industry. The differing CAFE levels are primarily attributable to the different market segments served by the manufacturers.

NHTSA has less detailed information for other manufacturers. American Motors and Volkswagen, however, are expected to easily exceed 27.5 mpg for MY 1987–88. Other European manufacturers, including BMW, Peugeot, Saab and Jaguar, are expected, like Volvo and Mercedes-Benz, to be below the 27.5 mpg level for MY 1987–88. By way of example, BMW and Peugeot projected in their MY 1986 mid-model year reports that they would achieve a CAFE of 25.7 mpg and 24.8 mpg, respectively, for that model year, and Saab and Jaguar projected in their MY 1986 pre-model year reports that they would achieve a CAFE of 26.0 mpg and 19.1 mpg, respectively, for that model year.

In analyzing the manufacturers' fuel economy projections and underlying product plans, NHTSA has considered the reasonableness of mix assumptions. The agency has particularly focused on GM's and Ford's assumptions in this area, since, as discussed below, those companies' MY 1987–88 projections

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have declined in recent years due to changed expectations concerning mix.

Given the dynamic and interactive nature of (1) an individual manufacturer's product plan, (2) the product plans of the manufacturer's competitors, and (3) consumer demand, analyzing mix assumptions is a highly complex matter. The agency notes that since many factors affect mix, sales mix changes between model years for a particular manufacturer may relate to several factors and may or may not indicate a trend with respect to overall consumer demand. For example, if a manufacturer introduces a new model, the high level of sales ordinarily associated with a new model may result in increased sales of whatever size class the vehicle happens to be, thereby altering the mix. Similarly, the deletion of particular models or the gradual aging and resultant reduced popularity of particular models may also result in mix effects. The agency also notes that, for GM and Ford, the mix effects generally discussed in this notice reflect only changes in those companies' domestic production and not mix effects for their sales as a whole, which include captive imports. For all of these reasons, mix effects between model years for a particular manufacturer, which can have substantial effects on the manufacturer's CAFE level, need not result from a change in overall consumer demand. Thus, even if total industrywide consumer demand for larger cars is not increasing, a variety of other economic factors can adversely GM's and Ford's year-to-year CAFE capabilities.

In analyzing specific manufacturer capabilities below, the agency has considered whether particular expectations concerning sales of various models are reasonable.

CFAS argued in its comment that GM's and Ford's current projections "undoubtedly" assume an excessive sales mix for the large car segment. That commenter argued that the assumption that falling oil prices will have a substantial impact on automakers' CAFE in 1987 and 1988 is speculative, illogical, ignores current market data and contradicts the most recent statistical data from the Department of Energy and Oak Ridge National Laboratory. CFAS cited a DOE report which stated that the large car share does not appear to have been affected by the drop in the real price of gasoline over the past four years. That commenter stated that Hard's Automotive Reports indicates that the large car segment has eroded by 30 percent from just one year ago. CFAS argued that market trends demonstrate low actual market demand for rear-wheel drive cars, and submitted an article headlined "Rear-Wheel Big Cars Slipping," which it contended supported its position. That commenter also argued that consumer demand for larger engines has decreased since 1981, based on statistics showing that the sales weighted engine size in terms of CID has dropped for both large and mid-size cars.

NHTSA has analyzed GM's and Ford's MY 1987–88 projections and concluded that they do not assume an excessive sales mix for the large car segment. In making this conclusion, the agency has compared GM's and Ford's projections with the sales experience for MY 1986. GM and Ford are not assuming significantly higher sales of large cars. Similarly, the agency has concluded that the projections do not assume an excessive sales mix for rear-wheel drive cars. Both manufacturers' product plans for MY 1987–88 indicate a higher percentage of front-wheel drive cars than for MY 1986.

With respect to CFAS's argument that it is illogical that falling oil prices will have a substantial impact on GM's and Ford's CAFE in MY 1987 and 1988, the agency agrees that the impact is relatively small as compared to the CAFE achieved in MY 1986. However, as discussed below, the impact is substantial as compared to earlier product plans for MY 1987–88 that were made based on expectations of significantly rising gasoline prices.

CFAS's argument about consumer demand for larger engines is incorrect to the extent it suggests that manufacturers have been aided by a drop in demand for larger engines. It is true that engine size in terms of CID has decreased for large and mid-size cars as those cars have been downsized. One of the potential fuel economy benefits of downsizing is that a smaller engine can be substituted without a reduction in performance. However, consumer demand for performance has increased over the past several years, resulting in higher than expected sales of optional, larger engines, and reducing the fuel economy benefits that would otherwise have resulted from downsizing. GM provided data indicating that its performance, as measured by horsepower-to-weight ratio, increased each year between MY 1982 to MY 1986.

As in the MY 1986 proceeding, CFAS also argued that GM's and Ford's projections incorporate "accounting tricks" to lower their CAFE levels. That commenter alleged that EPA test information indicates that a number of car models achieve higher CAFE than projected by those manufacturers.

NHTSA has concluded that there is no basis for CFAS's allegation that GM and Ford have "artificially" lowered their MY 1987–88 CAFE projections by means of "accounting tricks." Among other things, NHTSA requested that EPA review CFAS's claims relating to EPA test data. EPA noted that a number of fuel economy values reported by CFAS were approximately equal to unadjusted label values which use early 1986 model year EPA test car list data. However, EPA pointed out that these values were determined at the start of the model year and that the fuel economy of a model type may change between the time of initial labeling and the time when a CAFE value is calculated. According to EPA, such change may be due to one or all of the following factors: (1) additional vehicle testing is completed after initial labels have been approved, (2) vehicle running changes are implemented throughout the course of the model year, and (3) initial values are calculated based on projected model type sales. Thus, by the time the manufacturer's CAFE is calculated, additional vehicle fuel economy data may have been generated which may affect the model type fuel economy. EPA also stated that differences in data requirements between label and CAFE calculations may also result in discrepancies between fuel economy label values and those fuel economy values used in CAFE calculations. EPA noted that while model type fuel economies require only one set of test data to represent a broad range of vehicles within a model type, a CAFE calculation requires test data which represent at least 90 percent of a manufacturer's total vehicle sales. EPA also indicated that, until the model year in question has ended, only the manufacturer has access to the potential effects of increased testing, running changes and actual customer demand on their final CAFE value. Thus, EPA concluded that "(i)t is quite possible that the manufacturer's projection is more accurate, due to this information, than a projected CAFE based on label values."

NHTSA has used data provided by the manufacturers in all of its CAFE proceedings and knows of no instance where a manufacturer has knowingly provided inaccurate or misleading information. The agency notes that as GM and Ford have updated their CAFE projections during this rulemaking proceeding to reflect the latest available information, they have taken account of new information or plans which improve their CAFE, as well as new information or plans which result in lower CAFE.

B. Possible Actions to Improve MY 1987–88 CAFE

The possible additional actions which manufacturers can take to improve their MY 1987–88 CAFE above the levels which are currently projected may be divided into four categories: further technological changes (beyond what is contained in their product plans), increased marketing efforts, restricting the sale of their less fuel-efficient cars and engines, and transferring the production of their less fuel-efficient vehicles, or parts of those vehicles, outside of the United States. As discussed below, this fourth possible action would have no effect on overall industry CAFE or on energy conservation, but would raise the manufacturer's domestic CAFE.

1. Further technolgical changes

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel-efficiency enhancing technologies which can be applied by available means within available time.

GM commented that leadtime and other constraints preclude significant technological advances for the 1987 and 1988 model years. Ford similarly commented that introduction of additional technological improvements beyond those presently planned through the late 1980's may not be achievable because of the short leadtimes. It stated that it believes the plans presently in place accurately reflect its CAFE capabilities through the rest of the decade. Chrysler stated that it agrees that it is essentially too late for meaningful technological changes to be effected for even the 1988 model year.

At the outset, NHTSA notes the substantial technological progress that has been made by GM and Ford since EPCA was passed. As the MY 1986 preamble noted, manufacturers have over the past decade reduced average car weight by 1000 pounds, reduced average engine displacement from 288 CID to 177 CID, increased the use of front-wheel drive from seven percent to 64 percent, increased the use of transmissions with overdrive and/or lockup from five percent to 84 percent, and increased the use of fuel-injected engines from five percent to 54 percent.

Now, in light of limited leadtime, NHTSA agrees that it is too late to initiate further major technological improvements for MY 1987–88. For example, once a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and test components such as new body sheet-metal subsystems for mass production is typically 22 to 29 months. Other potential major changes often take longer. Leadtimes for new vehicles are typically at least three years.

In analyzing specific manufacturer capabilities below, however, the agency has considered whether manufacturers have available capacity to increase the penetration of particular technologies.

2. Increased Marketing Efforts

NHTSA addressed the issue of improving fuel economy by additional marketing efforts in the MY 1986 rulemaking. The agency concluded, based on its analysis, that GM and Ford have in the past been, and are now, making efforts to improve the sales of fuel-efficient cars. The agency determined that the manufacturers have undertaken extensive and significant marketing efforts to shift consumers toward their more fuel-efficient vehicles and options. Both GM and Ford have undertaken pricing actions to discourage large car sales and the purchase of optional, less fuel-efficient engines. Below-market financing offerings, cash discounts, and non-cash consumer and dealer incentives were some of the other measures undertaken by Ford and GM to increase their CAFE through marketing actions.

Chrysler commented that GM and Ford have the option of adopting marketing measures to boost sales of their smaller, more efficient vehicles, and shift sales from their older, less efficient models to their more efficient and equally large newer products.

The agency has consistently noted that the ability to improve CAFE by additional marketing efforts, beyond what the manufacturers have already been doing, is relatively small. As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient cars less expensive or less fuel-efficient cars more expensive. Moreover, the ability to increase sales of fuel-efficient cars relates in part to either increasing market share at the expense of competitors or pulling ahead a manufacturer's own sales from the future. A factor which makes it particularly difficult for the domestic manufacturers to increase sales of fuel-efficient cars is the strong competition in that market from the Japanese and other foreign manufacturers. The domestic industry is currently facing new competition in small cars from Yugoslavia, Korea and Brazil. The Japanese, Korean and other foreign manufacturers enjoy a significant cost advantage over the domestic manufacturers. This cost advantage limits the ability of the domestic manufacturers to increase sales of small cars through price reductions, since the Japanese, Korean and other foreign manufacturers will be able to match or exceed any price reduction.

The agency also notes that the fuel efficiency of modern large cars makes it more difficult for full-line manufacturers to sell smaller cars. The reason for this is that there are diminishing returns in terms of fuel economy from purchasing small cars as the fuel efficiency of larger cars increases. Similarly, as gasoline prices have declined, there are diminishing returns from purchasing more fuel-efficient vehicles.

A problem with pulling ahead sales is that the manufacturer's CAFE for subsequent years is reduced. For example, if a manufacturer increases its MY 1987 CAFE by pulling ahead sales of fuel-efficient cars from MY 1988, the MY 1988 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

Ford indicated in its MY 1986 mid-model year report that its increased sales of fuel-efficient models/powertrains, beyond what it had earlier projected, was largely attributable to incentive, marketing and pricing programs that were designed to increase its CAFE. In light of Ford's MY 1986 experience, the agency has considered whether additional marketing efforts, beyond what Ford is already planning, should be considered as part of "economic practicability" in setting the MY 1987–88 standards. Among other things, the agency analyzed confidential data provided by Ford concerning the costs and potential fuel economy benefits of extraordinary marketing efforts. Given the enormous costs and relatively small and uncertain potential impact on Ford's CAFE levels, NHTSA has concluded that extraordinary marketing efforts of the type identified by Ford to improve its MY 1987–88 CAFE levels would be inconsistent with economic practicability. This is particularly true since the relative costs for Ford of improving its CAFE by this means would be six times that of improving its domestic CAFE level by converting large cars to imports, a subject which is discussed below. The agency notes here that such outsourcing would result in absolutely no energy conservation benefits but would reduce American jobs. With respect to the

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incentives facing Ford for meeting CAFE standards, however, improving its domestic CAFE by outsourcing would not only be far less expensive than extraordinary marketing efforts, but the benefits to its domestic CAFE level would also be certain. Thus, the agency is concerned, based on the factual record of this specific proceeding, that including the potential CAFE effect of the extraordinary marketing programs for MY 1987–88 could encourage Ford to outsource larger car models, thereby reducing U.S. employment.

3. Product Restrictions

Manufacturers could improve their CAFE by restricting their product offerings, e.g., cutting or dropping production of less fuel-efficient car lines or higher performance engines. However, as discussed in the preamble to the MY 1986 final rule, such product restrictions could have significant adverse economic impacts on the industry and the economy as a whole, and could run counter to the congressional intent that the CAFE program not unduly limit consumer choice. The agency took account of similar concerns in 1977, concluding that standards should not be set so high as to necessitate the manufacturers using compliance methods that would result in a substantial sales drop. See 42 FR 33544–45, June 30, 1977.

A number of commenters provided estimates of job losses and cited other deleterious economic effects that they believe would occur if the MY 1987–88 standards remained at 27.5 mpg. For example, the FTC Staff analysis concluded that over 130,000 jobs in the domestic economy would disappear if the standards remained at 27.5 mpg. This conclusion was based on the assumption that GM and Ford can attain CAFE of only 25.9 mpg, other than by product restrictions, and that the two manufacturers could meet the 27.5 mpg standard only by restricting the sales of their large cars in order to make up the difference between 25.9 mpg and 27.5 mpg.

The agency agrees with the FTC Staff analysis that serious economic consequences, including significant job losses, would result if GM and Ford restricted large car production in order to make significant improvements in CAFE.

As in the MY 1986 proceeding, the agency also notes that there is no sharp dividing line between marketing efforts and product restrictions. GM and Ford have already raised the prices of their larger cars and engines as part of their efforts to improve CAFE, although sales of larger, optional engines continued to increase, even as prices have risen. While very large price increases would likely reduce sales of less fuel-efficient vehicles significantly, such increases would amount to product restrictions. The agency believes that expecting manufacturers to make such very large price increases would be inconsistent with Congress' intent that consumer choice not be unduly limited and with the statutory criterion of "economic practicability."

4. Transferring Production of Less Fuel Efficient Cars Abroad

As discussed above, manufacturers must meet fuel economy standards separately for their imported and domestically manufactured fleets. Cars are considered to be domestically manufactured if they have at least 75 percent domestic content. The purpose of this requirement was to attempt to prevent the fuel economy program from directly encouraging the importation of small, fuel-efficient, foreign-produced cars. At the time EPCA was passed, the domestic manufacturers were already importing some fuel-efficient cars, and Congress was concerned that the manufacturers might decide to meet fuel economy standards largely by increasing such imports.

Today, the domestic manufacturers are importing or planning to import substantial numbers of smaller, fuel-efficient cars for reasons unrelated to CAFE. However, the manufacturers could improve their domestic CAFE by transferring the production of their larger, less fuel-efficient vehicles to production facilities outside of the United States, while still maintaining relatively high import CAFE by virtue of their fuel-efficient captive imports.

Ford commented that it has identified an alternative compliance program for MY 1988 by which it could improve its domestic CAFE by 0.6 mpg by sourcing sufficient LTD Crown Victoria and Mercury Grand Marquis components outside the United States to transfer these vehicles into its import CAFE fleet. In Ford's import fleet, those cars would be averaged in with new small cars Ford is planning to introduce, enabling Ford to meet or exceed 27.5 mpg for its import fleet. GM has also indicated that it is considering outsourcing some of its less fuel-efficient cars.

Transferring the production of less fuel-efficient cars abroad would reduce the number of American jobs while having no effect on improving actual fuel economy. As discussed in the NPRM, given the complete absence of energy conservation benefits and in light of a clear congressional intent to avoid having fuel economy standards directly induce manufacturers to increase their importation of foreign-produced cars, NHTSA will not include such actions as part of of its consideration of the actions manufacturers could reasonably take to improve their CAFE.

C. Uncertainties

Consistent with its two prior passenger car CAFE proceedings, the agency believes it is appropriate to consider the significant uncertainties that surround the establishment of CAFE standards and the assessment of projected manufacturer CAFE. Whether it is characterized as "allowance for unforeseen contingencies" (see 42 FR 33548, June 30, 1977) or "providing a slight margin for risks" (see 50 FR 40547, October 4, 1985), NHTSA has traditionally accounted for uncertainties by providing a slight downward adjustment to the CAFE levels that seem achievable in advance of the model years. This is particularly appropriate when these uncertainties result from events that are outside the control of the full-line manufacturers, such as the price of oil, the effect of new tax laws on consumer and business purchasing decisions, and increased imports of small cars by foreign manufacturers. These and other uncertainties are discussed later in this notice.

GM submitted an economic study which concluded that unexpected changes in the price of gasoline and import sales statistically explain approximately two-thirds of that company's past CAFE forecast error. GM argued that this study shows that the most recent declines in gasoline prices could cause its CAFE to fall as low as 25.0 mpg in MY 1987 and 25.5 mpg in MY 1988, and that if errors in forecasting import volumes are also taken into account, its CAFE could fall to 24.8 mpg in MY 1987 and 25.2 mpg in MY 1988. That company stated that if its current CAFE estimates for MY 1987–88 are affected by gas price changes to the same degree as previous one- and two-year forecasts, its CAFE will deteriorate to 25.4 mpg in MY 1987 and 25.8 mpg in MY 1988.

As indicated above, Ford provided ranges of CAFE projections for MY 1987–88, with the lower ends of the ranges reflecting risks. Ford's low end MY 1987 projection of 28.3 mpg and low end MY 1988 projection of 25.5 mpg reflect potential sales mix shifts. These include potential increases in larger car sales, due to drops in gasoline prices, and the possibility of increasing Korean and Japanese car sales. Ford submitted the results of an economic study of fuel price forecast errors and errors in the estimation of the small car market share for the industry which concluded that a 20 percent error in fuel price is typically associated with a nine percent error in small car share of the market. Ford stated that a shift of this magnitude could affect its MY 1987–88 CAFE projections by approximately 0.5 mpg.

CFAS argued that NHTSA has grossly overestimated market uncertainty with respect to consumer demand and falling gasoline prices and the impact of foreign competition. CFAS's comments discussed above with respect to the market mix assumed by GM's and Ford's projections also relate to this issue. With respect to foreign competition, CFAS argued that the rising value of the yen against the dollar has begun to substantially raise the price of Japanese cars, reducing the Japanese cost advantage. CFAS also argued that imports from Korea and Yugoslavia will not have a significant market penetration in the 1987–88 model years.

As discussed in the section of this preamble entitled "Determining the MY 1987–88 Standards," NHTSA recognizes that manufacturer CAFE projections are subject to uncertainties. In the timeframe of this rulemaking, the major uncertainty relates to market mix.

While NHTSA believes the economic models submitted by GM and Ford are useful in analyzing the historical effects of lower gasoline prices and increased imports on CAFE, and in demonstrating that these factors can result in lower CAFE, it does not consider the analyses to be valid for predicting specific MY 1987–88 CAFE values. Among other things, the agency notes that the MY 1986 experience demonstrates that the models are unreliable as predictive tools. Both models would have predicted that GM and Ford would achieve much lower CAFE in MY 1986 than they projected, due to the lower-than-expected gasoline prices. As discussed above, however, this did not occur. Also, the GM model shows that when examining estimates of import sales for the succeeding one-to-two-year time period, there was no statistical significance between errors in forecasts of import sales and of CAFE levels.

The agency also notes that the models are inaccurate in that other factors may have a constraining effect on CAFE changes. For example, very substantial changes in passenger car mix, beyond present plant capacity, would be required for reductions of the magnitude cited by GM to occur.

In addition, there are several shortcomings with GM's statistical model. First, as the author cautions, the data include multiple estimates within calendar years and model years. Therefore, the basic assumption of independent, normally distributed errors for significance testing is not met. Also, there is a question as to whether data consisting of "errors in estimation" are actually amenable to standard statistical analysis. Estimates of future gas prices and of import sales several years hence are of necessity based on a large degree of subjective judgment. Such data lack objectivity and may embody systematic biases.

Finally, the agency notes that GM's latest projections and underlying product plans for MY 1987–88, submitted to the agency in July 1986, were made at a time after the substantial drop in gasoline prices had occurred and thus reflect the current very low price of gasoline, and expectations that prices will remain low for at least the next couple of years.

While NHTSA does not believe that the GM and Ford models are reliable for predicting specific CAFE values, the directional conclusions of the models are clearly correct. As gasoline prices decrease, the costs of operating larger cars and of greater performance, decrease. Thus, all other things being equal, consumer demand for larger cars and greater performance increases. Similarly, as sales of smaller, more fuel-efficient imports increase, sales of domestic smaller cars decrease. NHTSA believes that the GM and Ford models do help show the sensitivity of CAFE estimates to changes in certain variables, particularly gasoline prices, everything else being equal.

D. Manufacturer-Specific CAFE Capabilities

In analyzing manufacturer-specific CAFE capabilities, the agency has focused on GM and Ford, because they have the lowest projected MY 1987–88 CAFE levels among manufacturers with a substantial share of the market.

As discussed above, GM projects that it can achieve CAFE levels no higher than 26.3 mpg for MY 1987 and 26.9 mpg for MY 1988, and Ford projects that it can achieve CAFE levels no higher than 27.1 mpg in MY 1987 and 26.3 mpg in MY 1988. Since Ford's stated maximum capability for MY 1987 is 0.8 mpg higher than that of GM, the agency focused on GM in determining the maximum feasible average fuel economy level for that model year. Conversely, since GM's stated maximum capability for MY 1988 is 0.6 mpg higher than that of Ford, the agency focused on Ford in determining the maximum feasible average fuel economy level for that model year. As discussed in the section of the preamble entitled "Determining the MY 1987–88 Standards," the agency believes that setting standards above the capabilities of either Ford or GM would not be in keeping with Congress' direction that standards be set based on industrywide considerations, given the large market share of each company.

GM: NHTSA has analyzed GM's MY 1987 maximum CAFE projection and underlying product plan. The only additional technological action identified by the agency that GM could take to improve its CAFE within the available leadtime would be to increase the installation rates of 4-speed automatic transmissions. GM has available capacity to install a higher number of 4-speed automatic transmissions in certain mid-size cars, and the agency has concluded that doing so would not have a significant effect on sales. However, such increases in 4-speed automatic transmission usage would add less than 0.1 mpg to GM's MY 1987 CAFE. The agency has concluded that other changes, consistent with consumer acceptability, to improve fuel economy are not feasible for GM's MY 1987 fleet. Therefore, NHTSA concludes that GM's maximum CAFE capability is no higher than 26.3 mpg to 26.4 mpg. As discussed elsewhere in this preamble, that figure is subject to uncertainties which could lower GM's MY 1987 CAFE level.

Since NHTSA focused on Ford in determining the maximum feasible average fuel economy level for MY 1988, the agency did not calculate a specific CAFE capability for GM. However, the agency does conclude that GM's MY 1988 CAFE capability exceeds that of Ford.

Ford: NHTSA has analyzed Ford's MY 1988 maximum CAFE projection and underlying product plan. One of the reasons Ford's projected CAFE declines between MY 1987 and MY 1988 relates to the timing of model years. Under the statute and applicable regulations, manufacturers have a degree of flexibility concerning the timing of model years for individual models. Thus, the model year for different models may vary in length. The agency emphasizes that there is nothing wrong with manufacturers utilizing this flexibility, whether for competitive reasons, i.e., the timing of new models, or for compliance flexibility. For purposes of considering amending an existing standard, however, NHTSA does not believe it would be appropriate to consider extended production runs. While extended production runs for certain vehicles can result in lower or higher CAFE levels for a particular model year, those effects are offset in the opposite

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directions in the preceding or subsequent model year. Thus, changes in CAFE attributable to extended production runs do not reflect a manufacturer's CAFE capability but are instead simply a matter of accounting within the control of the manufacturer. Just as the agency does not consider the ability of manufacturers to improve their CAFE by extending the model year of their more fuel-efficient cars, the agency will not consider decisions by manufacturers to extend the model year of their less fuel-efficient cars as indicating a reduction in their fuel economy capabilities.

For purposes of analyzing Ford's MY 1987–88 capabilities in the context of standard-setting, NHTSA is thus adjusting that company's projections to "normalize" the timing of the model years. In doing so, the agency emphasizes that (1) there is nothing wrong with Ford's planned actions in this area, and (2) that Ford actually can, if it chooses to do so, specify the model year for the vehicles in question consistent with the agency's adjustment. The effect of the adjustment is to lower Ford's MY 1987 projection by 0.2 mpg to 28.9 mpg and to raise Ford's MY 1988 projection by 0.1 mpg to 28.4 mpg.

Since NHTSA focused on GM in determining the maximum feasible average fuel economy level for MY 1987, the agency did not calculate a specific CAFE capability for Ford. However, taking account of the model year adjustment discussed above, the agency does conclude that Ford's MY 1987 capability exceeds that of GM.

For MY 1988, the agency has not identified any additional technological actions that Ford could take within the available leadtime to improve its CAFE level. No other changes, consistent with consumer acceptability, to improve fuel economy are feasible for Ford's MY 1988 fleet. Therefore, NHTSA concludes that Ford's maximum MY 1988 fuel economy capability is no higher than 28.4 mpg. As discussed elsewhere in this preamble, that figure is subject to uncertainties which could lower Ford's MY 1988 CAFE level.

DOE commented that it views a number of technologies as cost-effective for MY 1987–88, and that NHTSA should evaluate the possibility of additional uses of these technologies in the MY 1987–88 timeframe. These include front-wheel drive, aerodynamic improvements, material substitution, four-speed automatic transmissions, and fuel injection.

With respect to front-wheel drive, DOE stated that this technology has been adopted in both large and intermediate cars by GM, but that company has continued sales of older rear-wheel drive models and is expected to retain most of these models through 1988. DOE stated that Ford has no front-wheel drive models in the large size class. DOE commented that conversion to front-wheel drive could provide a 12 percent increase in fuel economy for a vehicle of constant interior volume and that at $1.00 a gallon for gasoline the technology appears cost-effective, and at $0.75 approximately cost-neutral. That commenter asserted that consumer acceptance of front-wheel drive has been very favorable, stating that where both rear- and front-wheel drive models of similar size have been offered by GM, the front-wheel drive model has been strongly favored. DOE indicated that one aspect of front-wheel drive that could limit its acceptability is trailer towing, and suggested that NHTSA develop data concerning how many large cars are used for towing.

NHTSA requested that GM and Ford provide data concerning large car towing use. GM stated that it does not offer trailer hitches or optional trailer-towing packages on passenger cars as factory installed equipment and that it was unaware of data defining the percentage of passenger cars or trucks that tow trailers. Ford submitted the results of a study indicating that less than one percent of its small car owners report trailer towing usage, while three percent of Crown Victoria buyers and five percent of Grand Marquis buyers report trailer towing. With respect to optional trailer towing packages, Ford reported MY 1985 factory installation rates of 0.1 to 0.2 percent on mid-size Thunderbirds and Cougars and installation rates of 2.3 to 3.3 percent on large cars. Thus, the limited data available to NHTSA indicate that trailer towing is not a significant purchase consideration for the great majority of larger car buyers.

GM commented that front-wheel-drive provides little or no direct fuel economy benefit but merely facilitates "downsizing." GM argued that since it has already downsized all of its mid-size and full-size sedans, including the rear-wheel-drive "B," "D," and "G" cars, the conversion of these cars to front-wheel drive would yield at best a relatively modest fuel economy benefit. That company provided comparisons between several cars with different engines and transmissions in arguing that the fuel economy benefit of front-wheel-drive is overshadowed by other factors such as engine size. NHTSA does not agree with GM's assertion that conversion of cars to front-wheel drive yields at best a relatively modest fuel economy benefit. When front-wheel-drive vehicles are compared to rear-wheel-drive vehicles of equal interior roominess, performance and transmission class on a systematic basis, the front-wheel-drive vehicles achieve 10 to 15 percent greater fuel efficiency.

GM and Ford product plans indicate a higher percentage of front-wheel drive cars for MY 1987–88 than for MY 1986. While the figures for MY 1987–88 are subject to a claim of confidentiality, the agency can state that GM's front-wheel drive usage in MY 1986 is approximately 69 percent while Ford's is 55 percent. Given that application of front-wheel drive entails entire redesigns of cars, NHTSA believes that front-drive usage beyond planned levels would not be feasible for GM and Ford in MY 1987–88.

With respect to aerodynamic improvements, DOE commented that this technology provides a two- to three-percent benefit in fuel economy for a 10-percent reduction in drag coefficient, while being very cost-effective even at fuel prices of $0.75 a gallon. DOE stated that while Ford has converted all but the "Panther" (Crown Victoria/Grand Marquis/Town Car) series of cars to aerodynamic designs, GM's large and intermediate cars have relatively high drag coefficients, leaving room for improvement.

In general, both GM and Ford plan additional aerodynamic improvements as new car designs are introduced or significant sheet metal changes are made. Using average dynamometer power absorber unit (PAU) values as a surrogate for aerodynamic drag, both manufacturers project improvements in this area by MY 1988. Since significant aerodynamic drag reductions are generally achieved only when new cars are introduced or major sheet metal changes are made, the agency concludes that it is not feasible for GM and Ford to introduce significant additional improvements in this area beyond those that are already planned.

DOE commented that the current technologically feasible level of material substitution requires use of high strength low alloy steel (HSLA) and, in some applications, plastics. DOE stated that material substitution is cost-effective with gasoline at $1.00 a gallon but marginal at $0.75 a gallon. DOE asserted that Ford lags behind GM in this technological area, arguing that both the "Panther" and Taurus/Sable are approximately eight percent heavier than their counterparts from GM and Chrysler. According to DOE, a 250 pound weight reduction in the Ford Panther would result in a 3.9 percent benefit to fuel economy, while a 250 pound weight reduction in the Taurus/Sable would result in a fuel economy benefit of 5 percent.

While Ford may be able to improve its CAFE by additional material substitution in the future, there is insufficient leadtime to make sufficient improvements in this area to significantly affect CAFE for MY 1987–88.

DOE also commented that four-speed automatic transmissions and fuel injection are already in use in several models at both Ford and GM, indicating that both technologies are economically practicable and accepted by the consumer. DOE indicated that GM has stated that these technologies will be used in only a few additional models in the large and intermediate size classes in MY 1987–88, while Ford is expected to use both technologies in all applicable large and intermediate cars. DOE stated that NHTSA should consider the ability of GM to introduce these technologies on the remainder of their large/intermediate cars in setting standards for MY 1987–88.

In general, both GM and Ford are rapidly replacing carburetors with either throttle-body fuel injection or individual port fuel injection in their fleets. With respect to four-speed transmissions, the agency concludes, as it did in the MY 1986 proceeding, that the additional cost of four-speed transmissions over three-speed designs would significantly exacerbate the production cost differential between domestic and Japanese small cars, and therefore be impracticable. As indicated above, however, the agency has considered GM's ability to increase the penetration of this technology for their large/intermediate cars in MY 1987–88.

GM commented that every one of its full-size and mid-size cars is available with a four-speed automatic transmission, but argued that in the mid-size class four-speed transmissions may not always be cost-effective for the consumer. In support of this assertion, GM did not provide data concerning the actual costs and benefits of its four-speed transmissions but instead mixed a variety of estimates from NHTSA and itself concerning factors relevant to costs and benefits. Based on these various estimates, GM concluded that the average owner would save about $108 in fuel expenses over the expected lifetime of the car, as compared to costs of $115 to $165 for a four-speed automatic transmission.

The agency continues to believe that four-speed transmissions are cost-effective. The cost figures used in the PRIA and cited by GM were based on manufacturer data submitted during the late 1970's. While the agency has not conducted an independent analysis of the cost of four-speed transmissions, it has sponsored research showing that the consumer cost for a three-speed transmission alone for a 1980 Chevrolet Citation is $284 in 1982 dollars. The agency does not believe that the addition of a fourth gear could increase the cost of the transmission by more than 50 percent. The agency also notes that the four-speed offers other advantages, including reduced noise and vibration at highway speed and enhanced acceleration (as currently being applied). Moreover, NHTSA notes that this technology has long been identified by the agency to be an economically practicable method of improving fuel efficiency.

While, as discussed above, NHTSA has concluded that GM can install a higher number of 4-speed transmissions in certain mid-size cars for MY 1987, inclusion of this factor in GM's capability adds less than 0.1 mpg to that company's CAFE.

DOE submitted a report prepared by one of its contractors, Energy and Environmental Analysis, Inc. (EEA), which included projections of GM's and Ford's MY 1987–88 CAFE levels. The November 1985 report projected that CM could achieve MY 1987–88 CAFE levels of 27.8 mpg and 29.2 mpg, respectively, and Ford 27.75 mpg and 28.05 mpg.

DOE revised these projections to account for the following four factors: (1) fuel prices could be in the $0.70 to $0.90 per gallon range in 1987 and 1988, (2) the Japanese voluntary import agreement may continue through MY 1988, (3) GM, Ford and Chrysler are pursuing aggressive captive import strategies that may cause declines in domestic small car sales, and (4) product plan revisions may cause shifts in strategy for specific carlines. DOE concluded that the fuel price decline would primarily increase consumer demand for acceleration performance, rather than significantly affecting size class mix. DOE estimated the change in fuel price projections would reduce manufacturers' CAFE levels by 0.5 to 0.7 mpg. With regard to continued export restraint by Japanese manufacturers, DOE concluded that the potential domestic manufacturer CAFE increases due to capturing a larger share of the small car market will be offset by "aggresive" captive import strategies. On the issue of product plan changes, DOE stated that Ford is moving to reclassify its large cars as imports for MY 1988, which will increase that company's CAFE by 1.4 mpg. DOE also stated that GM "has delayed its GM–10 body coupe for 1988 reducing fuel economy by 0.3–0.4 mpg." With all of these changes, DOE concluded that GM can achieve CAFE of 27.1 to 27.3 mpg in MY 1987 and 28.1 to 28.4 mpg in MY 1988, and that Ford can achieve CAFE of 27.0 to 27.2 mpg in MY 1987 and 28.9 to 29.1 mpg in MY 1988. DOE noted that the GM estimates include the GM-Toyota joint venture car (the Chevrolet Nova) as a domestic car.

NHTSA has analyzed the EEA report and concluded that it does not provide a basis for determining that GM and Ford have higher CAFE capabilities than those discussed above. As part of this analysis, the agency compared the EEA projections to those of the manufacturers.

For GM, NHTSA compared the EEA MY 1987–88 projections to those made by GM in April 1986. Since, as discussed below, the agency separately considered the reasonableness of the reductions in GM's projections between April 1986 and July 1986, it concluded that it was unnecessary to re-perform the analysis and directly compare the EEA projections to GM's July 1986 projections. Thus, the GM projections discussed in this section below represent that company's April 1986 projections rather than the July 1986 projections discussed above.

EEA's MY 1987 projection of 27.1 to 27.3 mpg for GM is higher than that company's April 1986 projection of 26.4 mpg. One reason for the difference is that EEA assumes that the GM-Toyota joint venture car produced by New United Motor Manufacturing, Inc. (NUMMI), the Chevrolet Nova, is included in GM's domestic fleet. Currently, NUMMI reports its CAFE separately from GM's domestic fleet. For the same reasons discussed in the MY 1986 proceeding, NHTSA concludes that it would be too speculative for the agency to count this vehicle in GM's domestic CAFE. See 50 FR 40534–40535. Removing these vehicles from the EEA projection would reduce it by 0.3 mpg. Differences in EEA's and GM's assumptions concerning model mix account for another 0.1 mpg of the difference. The remaining 0.3 to 0.5 mpg difference between the GM and EEA projections is due primarily to GM projecting lower carline fuel economy levels than EEA.

EEA's MY 1988 projection of 28.1 to 28.4 mpg for GM is also higher than that company's April 1986 projection of 27.4 mpg. As in the case of MY 1987, one reason for the difference is that EEA assumes the Nova is included in GM's domestic fleet. Removing these vehicles from the EEA projection would reduce it by 0.3 mpg. Differences in assumptions

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concerning the GMIO car account for 0.2 to 0.3 mpg of the difference. GM's April 1986 projection reflected a sales mix biased more toward fuel-efficient models than the EEA sales mix. The impact of this assumption would raise the EEA CAFE projection by 0.2 mpg. The remaining 0.4 to 0.6 mpg difference between the two projections primarily reflects GM projecting lower carline fuel economy levels than EEA.

For Ford, the EEA MY 1987 projection of 27.0 to 27.2 mpg is essentially the same as Ford's high end projection. However, there are a number of differences in the underlying product plans. Among other things, Ford's projected sales mix among models results in a 0.3 mpg higher CAFE level than the assumed EEA mix. The different sales mix is partially attributable to the model year timing issue, discussed above. This 0.3 mpg gain is offset, however, by other factors. For one thing, EEA assumed that an adjustment it made to Ford's MY 1986 CAFE, raising Ford's CAFE by 0.16 mpg, carries over into MY 1987. The adjustment in question involved reducing Ford's stated technological risk by half. As discussed in the MY 1986 proceeding, NHTSA evaluated Ford's MY 1986 risks and saw no reason to arbitrarily reduce them by half. Moreover, it is incorrect to assume that any 0.16 mpg "gain" through reducing risks associated with MY 1986 CAFE projections carry forward into subsequent years. For example, some of Ford's MY 1986 risk related to likely delays in the introduction of certain technology, which has now been introduced and which is already reflected in Ford's MY 1987 projection. Ford's MY 1987 projection and underlying product plan also reflect a number of factors not taken into account by EEA.

EEA's MY 1988 projection of 28.9 to 29.1 mpg for Ford is substantially above Ford's high end MY 1988 projection of 26.3 mpg. The largest reason for the difference is that EEA assumes that Ford will reduce the domestic content of its "Panther" cars, i.e., Crown Victoria, Grand Marquis, and Town Car, in order to include the cars in its import fleet. While, as indicated above, Ford is considering such outsourcing of the Crown Victoria and Grand Marquis as part of an alternative compliance program for MY 1988, it has not made the decision to carry out that program. Moreover, Ford has never indicated that it is considering outsourcing the Town Car. Another reason for the difference in the EEA and Ford projections is different sales mix assumptions, in part reflecting the model year timing issue. Other differences between the EEA and Ford projections include EEA's continuing to carry forward the 0.16 adjustment it made with respect to mix, a slight difference in the EPA test adjustment credit, additional technological risks identified by Ford that were not taken into account by EEA, and the projection by Ford of lower fuel economy levels for each carline than EEA. Among other things, the EEA projection does not reflect a decision by Ford not to continue a certain technological change, for reasons related to consumer acceptability.

NHTSA's analysis of EEA's projections does not indicate any additional means by which GM and Ford could improve their MY 1987–88 CAFE levels, beyond those already taken into account above, or any reason why the manufacturers' assumptions concerning such things as carline fuel economy levels or mix are incorrect. The agency notes that much of the difference between EEA's and GM's and Ford's projections reflects the fact that the companies have more up-to-date data concerning the fuel economies their various carlines will achieve.

Manufacturer Compliance Efforts

While there is now insufficient leadtime for GM and Ford to initiate further significant technological improvements to achieve CAFE of 27.5 mpg in MY 1987–88, the standards have been in existence since 1975. Thus, as part of deciding whether to exercise its discretion to reduce the standards to the maximum feasible average fuel economy level, NHTSA has evaluated whether the manufacturers made sufficient efforts through September 1986 to meet the standard.

As discussed in the MY 1986 proceeding and noted above, the agency does not consider it appropriate to judge each and every manufacturer product action by 20–20 hindsight. Rather, in assessing the sufficiency of the manufacturers' fuel economy efforts, it is necessary to take account of the information available to the manufacturers at the time product decisions were being made.

Much of the analysis NHTSA conducted with respect to this issue in the MY 1988 rulemaking is relevant to this proceeding. Among other things, the agency discussed the impressive progress GM and Ford have made since the mid-1970's in improving their fuel economy. The agency concluded for purposes of the MY 1988 standard that GM and Ford had made sufficient efforts through September 1985 to improve their fuel economy to comply with the Cost Savings Act, but that those efforts had been overtaken by unforeseen events whose effects could not be overcome by available means within the time available. In particular, due to unexpected declines in the price of gasoline, there had been a substantial shift in expected consumer demand toward larger cars and larger engines, and away from the sales mixes that had been anticipated by GM and Ford for that model year.

As indicated above, the agency's determinations in the MY 1986 proceeding concerning sufficiency of efforts are not determinative with respect to MY 1987–88. Thus, the agency has evaluated this issue for those model years.

As part of evaluating whether GM and Ford made sufficient efforts to achieve a 27.5 mpg CAFE, the agency has evaluated changes in MY 1987–88 projections submitted to it by GM and Ford since late 1983. NHTSA used the 1983 projections as the baseline for its evaluation for several reasons. First, both companies projected in 1983 that they would exceed 27.5 mpg CAFE in MY 1987–88. Thus, the agency wanted to determine why the companies are now unable to implement their earlier product plans. Also, by late 1983, gasoline prices had been declining for two years, and the distribution of vehicle sales was roughly comparable to today's levels. Thus, sales patterns at that time did not reflect the high consumer demand for smaller cars and cars with less performance that was typical of the 1980–81 period when fuel prices and consumer demand for fuel efficiency were at their peak.

The approach taken by NHTSA in evaluating the changes in fuel economy projections is similar to that recommended by DOE. That commenter suggested using the 1983 projections as a reference, "since both Ford and GM had forecasts exceeding 27.5 mpg in 1987 and 1988," and "the 1983 submissions also provide adequate leadtime for introducing new technologies as products in 1987 and 1988."

In conducting its evaluation, NHTSA selected several major projections for MY 1987–88 submitted by GM and Ford since 1983. While GM and Ford submitted several other projections as well, the agency concluded that the ones it selected would enable it to understand the major trends and reasons for the decline in projected CAFE.

For purposes of consistency, the agency deleted EPA test credit adjustments in analyzing the different

projections, since slightly different assumptions about the magnitude of the adjustments were made by GM and Ford at different times. Thus, the projections discussed in this section, below, are slightly lower (by 0.1 to 0.3 mpg) than the numbers in the manufacturers' submissions.

GM: GM projected in December 1983 that it could achieve a CAFE of 27.6 mpg for MY 1987. In a carryback plan dated November 1984, GM raised its MY 1987 projection to 28.1 mpg. A mix shift toward more fuel-efficient models accounts for 0.3 mpg of the increase. A certain product plan change accounts for the other 0.2 mpg increase.

Between November 1984 and February 1985, GM lowered its MY 1987 projection by 0.2 mpg, to 27.9 mpg. Mix effects account for 0.1 mpg of the decline, while a product plan change and miscellaneous reasons account for the other 0.1 mpg decline.

GM lowered its MY 1987 projection by an additional 1.7 mpg between February 1985 and April 1986. Almost half, about 0.8 mpg, of the decline relates to changes in vehicle mix. Model mix changes account for 0.5 mpg of the decline, while engine mix changes account for 0.3 mpg of the decline. The remaining 0.9 mpg CAFE decline is distributed among a large number of items. About 0.4 mpg is due to GM achieving lower-than-anticipated fuel economy levels on certain engines, 0.1 mpg is due to GM not achieving expected gains related to a certain technology, 0.1 mpg is associated with increased axle ratios on several carlines, and 0.1 mpg relates to a one-year deferral of a technological change due to an inability to complete tooling in a timely manner. The remaining 0.2 mpg decline is attributable to a number of minor factors, each affecting GM's CAFE by well under 0.1 mpg.

Between April 1986 and July 1986, GM lowered its MY 1987 projection by an additional 0.1 mpg, due to a number of reasons, each of which has only a small impact on CAFE.

For MY 1988, GM projected in December 1983 that it could achieve a CAFE of 29.3 mpg. While the agency does not have a November 1984 projection from GM for MY 1988 as it does for MY 1987, GM's February 1985 projection for MY 1988 was still as high as 29.2 mpg. Thus, as with GM's MY 1987 projection, the major decline in GM's projected MY 1988 CAFE occurred after February 1985.

Between February 1985 and April 1986, GM lowered its MY 1988 projection by 2.0 mpg. Relatively little of this change relates to mix effects. There is only a slight loss, 0.1 mpg, due to engine mix changes. A certain product plan change accounts for a 0.2 mpg decline in CAFE, minor changes in average test weights result in a 0.1 mpg decline, lower than expected gains related to transmissions result in a 0.1 mpg decline, lower than expected gains related to tires result in a 0.1 mpg decline, increased axle ratios result in a 0.2 mpg decline, deferring certain plans relating to technology due to, among other things, durability concerns, results in a 0.2 mpg decline, a slowdown in the application of a certain technology to avoid disrupting production capacity results in a 0.1 mpg decline, and miscellaneous technical changes result in a 0.1 mpg decline. The remaining 0.8 mpg decline appears to be due almost exclusively to engines achieving lower than anticipated fuel economy levels.

Between April 1986 and July 1986, GM lowered its MY 1988 projection by an additional 0.5 mpg. The most significant factors accounting for this reduction include mix changes, the inability to make certain product plan changes as fast as once thought possible, increased test weight for certain cars, and changes related to increasing performance.

Ford: For MY 1987, Ford projected in October 1983 that it could achieve a CAFE of 29.3 mpg. Between October 1983 and December 1984, Ford lowered its projection by 0.8 mpg, to 28.5 mpg. Only about 0.1 mpg of the drop is attributable to carline mix shifts. Failure to achieve anticipated gains from engine programs accounts for 0.4 mpg of the decline, and weight increases in certain planned carlines contribute 0.3 mpg to the decline. Net increases in average dynamometer power absorber settings account for a 0.1 mpg decline. Minor shifts in engine mix and applications offset 0.1 mpg of the decline.

In February 1985, Ford projected a MY 1987 CAFE of 28.6 mpg. While this projection was only slightly different from its December 1984 projection, 0.1 mpg higher, there were a number of major changes in Ford's product plan. One product plan change accounts for a 0.1 mpg gain, certain marketing actions account for a 0.3 mpg gain, miscellaneous reasons account for another 0.1 mpg gain, a deletion of technology in certain cars accounts for a 0.2 mpg loss, and a change related to model year timing results in a 0.2 mpg loss.

Between February 1985 and May 1986, Ford lowered its MY 1987 projection by 1.7 mpg, to 26.9 mpg. Mix shifts, including engine mix shifts, account for 0.6 mpg of the decline. Changes in dynamometer power absorber settings, attributable to both new test information and a draft EPA advisory circular concerning coastdown testing, account for an additional 0.5 mpg decline. A decision by Ford not to include the potential effects of extraordinary marketing and incentive programs in its basic projections accounts for 0.3 mpg of the decline. Newer assessments of fuel economy data account for another 0.3 mpg of the decline. A number of other minor changes, each having an impact of less than 0.1 mpg, offset each other. These include minor losses due to test weight increases, losses due to axle and transmission final drive ratio changes, and gains due to reductions in anticipated technical risks.

For MY 1988, Ford projected in October 1983 that it could achieve a CAFE of 29.0 mpg. Between October 1983 and December 1984, Ford lowered its projection by 1.5 mpg, to 27.5 mpg. The most significant reason for this decline, causing a 1.0 mpg decline, is a mix shift away from smaller cars toward larger cars. This is attributable to certain product plan changes and model year timing. Increased weight on certain planned carlines accounts for an additional 0.3 mpg decline. Increases in projected dynamometer power absorber settings cause a 0.2 mpg fuel economy decline. Lower than anticipated fuel economy gains on certain engines cause a 0.3 mpg decline. Minor engine mix shifts and changes in engine applications offset part of these declines, by 0.1 mpg. Also, a number of miscellaneous changes also partially offset the declines, adding 0.2 mpg to Ford's CAFE.

Between December 1984 and February 1985, Ford raised its MY 1988 projection by 0.1 mpg, to 27.6 mpg. A product plan change adds 0.1 mpg to Ford's CAFE, and certain marketing actions add 0.2 mpg. These gains are partially offset by a deletion of technology, which causes a 0.2 mpg decline.

Between February 1985 and May 1986, Ford lowered its MY 1988 projection by 1.4 mpg, to 26.2 mpg. Mix effects cause a 0.2 mpg decline, changes in dynamometer power absorber values account for a 0.4 mpg decline, Ford's decision not to include the potential effects of extraordinary marketing and incentive programs in its projections accounts for a 0.2 mpg decline, and newer assessments of fuel economy data account for a 0.3 mpg decline. An additional 0.1 mpg decline is attributable to slight increases in weight on certain vehicles. Minor changes in axle ratio and transmission final drive ratios cause a 0.1 mpg decline. The remaining 0.1 mpg CAFE decline is

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caused by a number of miscellaneous factors.

In evaluating the reasons for changes in GM's and Ford's MY 1987–88 CAFE projections since late 1983, it is apparent that both manufacturers are generally still planning to apply the same technologies to their fleets as planned in late 1983. The two major reasons for the decline in GM's CAFE projections have been net engine and model mix shifts, and engine and transmission improvement programs not yielding projected gains. The great majority of the factors reducing Ford's CAFE projections have been due to net shifts in projected sales for models and engines, engine efficiency improvements not yielding projected gains, and new models not meeting initial weight targets. Thus, the major reasons for the decline in both GM's and Ford's MY 1987–88 CAFE projections have largely been beyond those companies' control.

As indicated above, Chrysler alleged that GM and Ford chose corporate strategies that emphasized short term profit maximizations over a longer term strategy of meeting the law. That company cited past and current decisions by GM and Ford to continue selling what it termed "older technology rear wheel drive cars," and listed a number of technological improvements which it argued GM and Ford could have taken to meet the standards within the available time. Chrysler specifically cited, in part from the PRIA, refinement of the basic discrete ratio automatic transmission and its further penetration into the fleet, additional weight savings, material substitution, refinement of aerodynamic drag, engine modifications, and additional front-wheel drive. That commenter argued that the agency had not addressed "the reasons why GM and Ford failed to make the technological improvements identified as feasible by the agency," or clearly acknowledged that "the question is whether the changes were economically practicable if begun on a timely basis, not whether they are still practicable today." Chrysler also argued that its experience demonstrates that a 27.5 mpg standard is feasible, and that a prudent manufacturer would build a margin of error into its product plans for unforeseen circumstances.

Many of the issues raised by Chrysler were also raised by that company in the MY 1986 proceeding. Much of the agency's discussion of Chrysler's comments in that proceeding remains relevant.

First, the legislative history of the Cost Savings Act clearly indicates that NHTSA has the authority to reduce fuel economy standards. The determination of maximum feasible average fuel economy level is made as of the time of the amendment. The agency has emphasized, however, that it would not reduce a standard if a current inability to meet the standard simply resulted from manufacturers previously declining to take reasonable steps to improve their average fuel economy as required by the Act.

With respect to Chrysler's argument that its experience demonstrates that a 27.5 mpg standard is feasible, the primary reason that GM's and Ford's CAFE's are lower than Chrysler's is that Chrysler does not compete in all the market segments in which GM and Ford sell cars. Unlike GM and Ford, Chrysler does not offer any vehicles which are defined by EPA as "large cars" or "large station wagons." These vehicles, which account for 20 to 25 percent of Ford's and GM's sales, are generally less fuel-efficient than the size cars Chrysler sells. As discussed in the MY 1986 proceeding, Chrysler vehicles often have fewer fuel economy enhancing technologies than those of GM or Ford. While a particular manufacturer may choose to comply with fuel economy standards by various strategies, including not producing large cars, the agency would not consider standards which require full-line manufacturers to stop producing large cars to be consistent with the statutory criterion of economic practicability, since such standards would unduly restrict consumer choice.

In February 1985, both GM and Ford projected that they would meet or exceed a 27.5 mpg CAFE in MY 1987–88. Since that time, both manufacturers' CAFE projections have fallen, for reasons largely beyond their control. Given the timing, the manufacturers have had insufficient leadtime to make major technological changes in their product plans to offset the declines in their projected CAFE. For example, Chrysler's comment stated that "(i)t is important to recognize that the leadtime required to implement these improvements in engines, transmissions, aerodynamics and rolling resistance, is usually three to four years."

CFAS, as well as Chrysler, focused on decisions by GM and Ford to continue selling cars that they once planned to delete. As the agency stated in the MY 1986 proceeding, the fact that GM and Ford may at one time have considered deleting certain models does not commit those manufacturers to now do so. Manufacturers' product plans are constantly changing over time in response to market conditions. Given the dynamic nature of the market, what is economically practicable at one time may not be so at another.

While Chrysler argued that the changes in market conditions on which GM and Ford base their present CAFE difficulties were plainly in evidence as long ago as 1982, the record is clear, as discussed in the MY 1986 proceeding, that the drop in gasoline prices during the early 1980's was expected to be temporary. See 50 FR 40541–40542. For example, converting past gasoline price forecasts to constant 1985 dollars, Data Resources, Inc. (DRI) forecast in the spring of 1983 that gasoline would cost $1.35 in 1986, $1.41 in 1987 and $1.45 in 1988. In the winter of 1983–84, DRI was still forecasting that gasoline would cost as high as $1.33 in 1986 and 1987, and $1.38 in 1988. By comparison, DRI forecast in May of 1986 that gasoline would cost $0.91 in 1987 and $0.92 in 1988.

NHTSA has not concluded, however, that a decision by a manufacturer to continue selling certain cars indefinitely, without redesigning the cars to incorporate new technology, is reasonable under all circumstances. As a general matter, if application of fuel efficiency enhancing technology is required to meet fuel economy standards and is economically practicable and not inconsistent with the other factors of section 502(e), the manufacturers must make such changes.

The agency believes, however, that several factors are relevant to GM's and Ford's decisions to continue the sale of models that they once planned to delete. First, GM and Ford did not rely on the discontinuation of models to avoid making technological changes and then request that the CAFE standards be reduced in order to avoid having to carry out their plans. Rather, as is clear in the record, GM and Ford made their decisions in response to changes in consumer demand. Indeed, as noted in the preamble for the MY 1986 final rule, Chrysler has acknowledged doing the same type of thing.

Second, by the time GM and Ford made their decisions to continue the sale of certain models, there was insufficient time to design new replacement models or make significant technological improvements to the older models. In some instances, the manufacturers had nothing in their product plans to replace the vehicles. In other instances, the older vehicles offered a variety of attributes which significant numbers of consumers prefer to newer models which were once intended as replacement vehicles. GM commented, for example, that some of its customers prefer a 5 percent larger passenger compartment (comparing its "C" car to its "A" car) or a 30 percent larger trunk (comparing its "B" car to its "H" car).

Third, as discussed above, both GM and Ford have continued to make significant technological improvements in their fleets and have had reasonable plans to meet CAFE standards. In a situation where unforeseen events, including changes in consumer demand or changes in the competition's product offerings, overtake a manufacturer's reasonable product plan to comply with a standard, the agency does not consider it consistent with the Act to "hold" the manufacturer to carrying out a product plan that has become economically impracticable. GM noted that the cars that CFAS has argued should be discontinued accounted for more than 25 percent of its production last year, or 14.8 percent of total U.S. passenger car production.

On the other hand, as it becomes apparent that additional application of technology, such as further penetration of front-wheel drive or additional use of material substitution, is necessary to meet CAFE standards, manufacturers must initiate efforts to redesign and replace their older cars as necessary to meet such standards. Given the leadtime required to make significant technological improvements, however, it is not surprising that the dramatic change in consumer demand which has taken place has affected GM's and Ford's ability to comply with the 27.5 mpg standard for more than one model year.

With respect to Chrysler's comment that a prudent manufacturer would build a margin of error into its product plans for unforeseen circumstances, the agency notes that at the time GM and Ford planned their basic MY 1987–88 fleets, they reasonably projected CAFE's exceeding 27.5 mpg by a comfortable margin.

One other issue which is relevant to considering the sufficiency of manufacturer efforts to meet the 27.5 mpg standard relates to captive imports. DOE commented that one factor limiting GM's and Ford's ability to improve their CAFE is their "aggressive" captive import strategies. NHTSA notes first that such captive import strategies have no effect on energy conservation. While GM's and Ford's domestic CAFE levels are affected by whether a particular car they sell is an import or not, the country of origin of the car does not affect the amount of gasoline it consumes. Moreover, GM and Ford are pursuing their captive import strategies due to market conditions that have nothing to do with CAFE. Due to substantial cost advantages of producing small cars abroad, imports comprise a large portion of the small car fleet. GM's and Ford's captive import strategies are primarily in response to vigorous competition from abroad. Indeed, if GM and Ford did not import particular small cars, other manufacturers would likely import additional small cars. For all of these reasons, the agency does not believe that GM's and Ford's captive import strategies are unreasonable with respect to their efforts to meet CAFE standards for their domestically produced cars.

Other Federal Standards

EPA published a final rule in the **Federal Register** (50 FR 27172) on July 1, 1985, to provide CAFE adjustments for the effects of past test procedure changes. The final rule adopted a formula approach for calculating CAFE adjustments. As indicated above, the manufacturer projections discussed in this notice include the effect of the EPA adjustment credit, unless noted otherwise. Due to the formula approach, the specific value of the credit may vary for different model years and among manufacturers. A typical credit for the MY 1987–88 time period would be 0.1 or 0.2 mpg.

Another issue related to EPA's test procedure concerns dynamometer power absorber (DPA) values. Both GM and Ford commented that their CAFE projections have declined as a result of higher DPA values under a draft Advisory Circular (A/C 55C) issued by EPA. NHTSA contacted EPA concerning this issue. EPA indicated in a letter dated August 8, 1986, that, as a result of its increased oversight and enforcement concerning vehicle road-load horsepower specifications, manufacturers' projected CAFE levels could decline. EPA indicated that as part of reminding the manufacturers of what it believes their responsibility has been all along under the regulations it is considering revisions to its Advisory Circular No. 55B which deals with the general subject of road-load determination. That agency noted, however, that it expects to continue its increased enforcement whether or not it updates its advisory guidance. NHTSA has accounted for a CAFE decline due to revised road-load values in assessing manufacturers' capabilities. The latest projections provided by GM and Ford include the effects of the revised road-load values.

EPA has not announced any plans to modify its current exhaust emission control requirements, applicable to cars, for hydrocarbons, carbon monoxide, and oxides of nitrogen. Therefore, the agency has not considered any further impacts on fuel economy from control of these pollutants. The agency has previously analyzed the effects of the current requirements on fuel economy.

EPA added a requirement for control of particulate matter in MY 1985, which will be tightened in MY 1987. While this requirement applies to all vehicles, the only current production engine which will have difficulty meeting this requirement is the diesel. EPA has indicated that there is a 1 to 2 percent fuel economy penalty for diesel powered vehicles which require a particulate trap to comply with the standard. However, it is believed that only a very small fraction of diesel vehicles will need traps for compliance.

GM has discontinued production of its larger domestically produced diesels, which comprised less than 1 percent of its total MY 1985 sales, and Ford does not offer a domestically produced diesel. While both of these manufacturers offer cars with imported diesel engines, the sales of the vehicles are very small. Also, the engines are of small displacement and therefore will probably not require the use of a particulate trap for compliance. Therefore, the more stringent particulate standard is not expected to have any significant effect on their CAFE levels.

Mercedes Benz and BMW have argued that the particulate standard is affecting their CAFE capability. BMW stated that the 1988 California Air Resources Board standard for particulates prevented it from selling any diesel cars in California, a loss of approximately 30 percent of total California sales. Mercedes asserts that the California standard and the 1987 Federal standard would require the use of diesel engine trap technology in order to achieve compliance. Mercedes argued that Federal and state emissions regulations that became effective in the past several years and will become more stringent in MY 1987 and 1989 have forced technological changes that were and will be very detrimental to the fuel efficiency of the diesel engine. That company argued that the impact on fuel economy is much more significant than projected by EPA. According to Mercedes, there is a penalty of 3.9 mpg, which is a 13 percent penalty rather than the one to two percent penalty estimated by EPA. Mercedes did not provide any data in support of its position.

NHTSA notes that diesel sales have fallen drastically in recent years, declining from a peak of 6.0 percent of the total fleet in 1981 to 0.9 percent of the fleet in 1985. This decline has been primarily due to declining gasoline

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prices and a decline in the price advantage of diesel fuel as compared to unleaded gasoline. The decline in the popularity of diesels has little or nothing to do with emissions standards. However, the more stringent particulate standard does result in additional development and certification expenses for those manufacturers which choose to use diesels.

The agency is not aware of any plans on the part of EPA to promulgate noise regulations during the MY 1987–88 time period and therefore does not anticipate any attendant fuel economy penalties.

As discussed in the FRIA, several relatively recent changes in Federal safety and damageability requirements may affect CAFE. These include a May 1982 amendment to the Part 581 Bumper Standard reducing the standard's impact protection requirements and thereby permitting weight savings; several amendments to the agency's lighting standard, which permit greater aerodynamic efficiency; and the fact that the automatic restraint requirements of Standard No. 208, with attendant adverse weight and fuel economy penalties, are being phased in beginning in MY 1987.

The FRIA concludes that the potential weight savings associated with the Bumper Standard amendment could produce a gain of 0.2 to 0.5 mpg. However, both GM and Ford have indicated that market demand has led them to retain 5 mph bumper systems (generally Phase I) on most of their product lines. Consequently, relatively little weight has been removed from the GM and Ford fleets due to the change in the standard. The agency endorses the voluntary use of 5 mph bumper systems as consistent with congressional intent in enacting Title I of the Motor Vehicle Information and Cost Savings Act, Bumper Standards. Accordingly, the agency will not consider the possible 0.2 to 0.5 mpg gain associated with potentially lighter bumpers as part of its consideration of "technological feasibility."

With respect to the amendments to the agency's lighting standard, the FRIA concludes that the 2 to 3 percent improvement in aerodynamic drag associated with the new headlamp assemblies now permitted by the standard could produce a 0.4 to 0.9 percent improvement in fuel economy. For a 27.5 mpg fleet, this would equate to a 0.11 to 0.25 mpg improvement in CAFE if all vehicles in the fleet employed the new lamp designs. Several manufacturers are utilizing these headlamps. For MY 1986, Ford is using aero headlamps on its Taurus/Sable, Escort, Tempo, SVO Mustang and Lincoln Mark VII. Similarly, GM is also making extensive use of composite headlamps and Type LF/UF sealed beam headlamps for MY 1986. The fuel economy benefits from these new headlamp assemblies are factored into the manufacturers' CAFE projections.

The FRIA concludes that the weight penalty associated with the phase-in of the automatic restraint requirements is likely to be 2.2 to 3.0 pounds in MY 1987 and 5.5 to 7.5 pounds in MY 1988. This assumes that the principal means of compliance, at least initially, will be through the use of automatic belts. The estimated weight penalty is for illustration purposes, since the impact on an individual manufacturer will depend on the choice of occupant protection system, weight efficiency of the particular design, size of vehicle, and other factors. The weight penalty is expected to have only a very minor impact on CAFE.

Safety Considerations

CEI argued that NHTSA should set the MY 1987–88 standards at what it termed a "non-forcing level," perhaps 22 mpg, based on safety considerations. That commenter argued that a standard of 27.5 mpg, as compared to one of 26.0 mpg, would result in an increase of 300 to 400 fatalities per year. In making this argument, CEI assumed, among other things, that GM and Ford would need to reduce the weight of their cars by an average of 200 pounds, or 6.5 percent, to improve fuel economy from 26.0 to 27.5 mpg. CEI argued further that NHTSA should consider safety effects from a market-based baseline rather than from 26.0 mpg. That commenter suggested that 22.0 mpg would be a reasonable market-based baseline, citing an estimate by Robert H. Crandall of the Brookings Institution that CAFE did not begin to affect the market until MY 1981, when the standard was 22.0 mpg. According to CEI, a 27.5 mpg standard might entail considerably more than 1,000 additional fatalities per year as compared to a 22.0 mpg standard.

IIHS also commented on the relationship of CAFE standards and safety, arguing that CAFE standards can have a potentially adverse effect on vehicle safety because vehicle size is an important factor in safety. IIHS stated that occupants of smaller cars are at much greater risk of death and injury than occupants of larger cars, citing data from Maryland and the agency's Fatal Accident Reporting System.

Failure Analysis Associates also submitted a comment on safety, arguing, among other things, that downsizing has resulted in missed opportunities to avoid significant numbers of passenger car injuries and fatalities. That commenter stated that further "enforced" downsizing through more stringent CAFE standards would cause an additional toll in fatalities and injury compared to the alternative of maintaining the current size/weight sales picture.

NHTSA agrees that there is a relationship between safety and car size and weight, in a crash. The relationship is a very complex one, however. For example, while it is true that smaller cars are generally less crashworthy for their occupants than larger ones, everything else being equal, they are also less aggressive to occupants of other vehicles. Both effects must be considered in order to determine the effect on fatalities if the market share of smaller vehicles increases. Moreover, in analyzing accident data, it is extremely difficult to adequately separate out relevant factors other than car size and weight that affect safety. These include both vehicle differences, i.e., vehicle factors related to safety other than size and weight, and driver differences, e.g., age differences, etc.

While the agency recognizes the relationship between safety and vehicle size and weight, in a crash, it nonetheless concludes that CAFE standards in the range of 26.0 mpg to 27.5 mpg need not have a significant effect on safety. In the MY 1986 proceeding, NHTSA addressed the issue of safety as follows:

> The agency does not believe that there is any basis for concluding that a 26.0, or even a 27.5 mpg standard, would represent any significant increased risk of injury or death for passenger car occupants. It is true that in a crash between cars of different sizes, everything else being equal, the occupants of the smaller car are at greater risk of injury. However, as large cars are reduced in size, the mass differences between large and small cars diminish, along with the potential for injury. In addition, the agency is taking steps to ensure that smaller vehicles provide sufficient crash protection. Also, small cars may have crash-avoidance advantages compared to heavier vehicles. Passenger car occupant deaths have in fact dropped from 28,200 in 1978 to 23,500 in 1984, a 17 percent decline. This occurred during a time when the average new car's weight was reduced by 1000 pounds. 50 FR 40547 to 40548.

The agency notes first that CEI's argument that CAFE standards higher than 26.0 mpg will result in decreased safety is premised on the assumption that GM and Ford can achieve CAFE higher than 26.0 mpg only by "forcing" consumers to purchase a higher-than-preferred percentage of smaller cars. Similarly, IIHS's and Failure Analysis Associates' concern that CAFE standards may affect safety assumes that CAFE standards will require consumers to purchase smaller cars.

During the MY 1987–88 time period, GM and Ford are largely improving their fuel economy through technological improvements other than weight reduction. Between 1986 and 1988, GM's fleet is expected to be reduced in average weight by only 1.5 percent while Ford's is expected to increase in average weight by 3 percent.

There are a number of specific methodological shortcomings to CEI's analysis. First, CEI assumes that fuel economy is improved only by reducing weight, and thus does not account for improved technology. Thus, the weight differences between a 26.0 mpg fleet and a 27.5 mpg fleet are exaggerated. Second, CEI applies the weight differences, along with other factors, to the total of highway fatalities, including pedestrian fatalities, bicyclist deaths, single vehicle heavy truck accidents, etc. Clearly, a reduction in passenger car weight will not result in a greater likelihood of death for pedestrians, bicyclists, and occupants of tractor-trailers which run off the road. At most, CEI should have applied its factors to only passenger car occupant deaths, a number which is approximately one-half of that used by CEI. Third, the CEI estimate of 300 additional fatalities is predicated on a model used in a recent Brookings Institution publication, *Regulating the Automobile*. This model shows a statistically significant effect for a change in passenger car weight on pedestrian, bicyclist, and other non-passenger car occupant fatalities. However, the model shows that the effect on passenger car occupant fatalities is not statistically significant. In addition to being counterintuitive, the model argues against the very premise of CEI's claim, that vehicle weight will be a major determinant of highway fatalities.

Moreover, while manufacturers have used and are generally planning to continue to use weight reduction as a means of improving fuel efficiency, NHTSA believes that this weight reduction is largely related to consumer demand. CEI itself stated that in the absence of CAFE standards, "the general downsizing of the American passenger car fleet . . . accompanied by improved energy efficiency . . . for cars in all size categories would have occurred in any case." While it is true that consumers place less emphasis on fuel economy and more emphasis on such things as size and performance when gasoline prices are low, fuel efficiency remains an important factor in consumers' purchasing decisions. For example, GM commented that a recent market research program shows that even though stabilization of fuel prices had caused new car intenders to shift their preferences toward more acceleration performance, their preference toward expected fuel economy increases had also risen. Thus, even if there were no CAFE standards, there is no reason to assume that consumers would return to larger and heavier cars.

For all of these reasons, NHTSA concludes that there is no basis for the fatality estimates provided by CEI. While the agency has concluded that CAFE standards in the 26.0 mpg to 27.5 mpg range need not have a significant effect on safety, however, it recognizes that to the extent that manufacturers may, in the short run, be able to improve their CAFE only by product restrictions, individual consumers could be denied the opportunity to purchase the larger, safer cars that they may desire. Moreover, it is possible CAFE standards above 27.5 mpg could have a significant effect on safety, even in the longer run, to the extent that they might "force" consumers into significantly smaller and lighter cars. Thus, were NHTSA to consider setting standards above 27.5 mpg in the future, it agrees that the issue of safety would warrant further attention.

The Need To Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has undergone a great deal of change. In particular, oil markets have been deregulated and the Strategic Petroleum Reserve (SPR) has been established.

The United States imported 15 percent of its oil needs in 1955. By 1977, the import share was 46.4 percent and the value of imported crude oil and refined petroleum products was $67 billion (stated in 1984 dollars). While the import share of total petroleum demand declined after that year, the cost continued to rise to a 1980 peak level of $93.2 billion (1984 dollars). By 1985, the import share had declined to 28.7 percent at a cost of $48.3 billion (1984 dollars).

Through 1985, imports from OPEC sources declined, from a high of 6.2 million barrels per day and 70.3 percent of all imports in 1977 to 1.8 billion barrels per day and 36.2 percent of imports in 1985. As imports have shifted to non-OPEC sources, the United States' supply of petroleum has become less vulnerable to the political instabilities of some OPEC countries, as compared to the situation in the mid-1970's.

By 1985, the U.S. was much more energy independent than it was a decade ago, when Congress established the fuel economy standards program. From 1976 to 1984, energy efficiency in the U.S. economy improved by 21 percent (1984 Annual Energy Review, Energy Information Administration, U.S. Department of Energy, p. 41) and passenger car petroleum consumption was actually lower than it was in 1975, even though travel has increased 25 percent since then. Domestic oil production was higher in 1985 than it was in 1975, total imports have dropped 18 percent, and on a net import basis the value of the nation's imported oil bill fell nearly 50 percent from 1980 to 1985. The amount of imported oil from OPEC has dropped by 71 percent since the peak of 1977. As a percentage share of GNP, the net oil import bill fell from 2.8 percent in 1980 to 1.2 percent in 1985. In addition, the price of oil is now fully decontrolled, permitting the market to adjust quickly to changing conditions, and the SPR is well on its way to being filled. The 451 million barrels in the SPR at year-end 1984 were equal to 141 days or 38.6 percent of non-SPR crude oil imports that year. Thus, by any measure, the nation is currently in a stronger energy position than it was a decade ago.

According to Energy Information Administration (EIA) and Data Resources, Inc. (DRI), projections, however, domestic production is expected to decline from a stable level of 10.6 MMB/D to between 7.5 MMB/D (DRI) and 8.3 MMB/D (EIA) by 1995. Net imports are expected to rise from 4.2 MMB/D to between 7.7 MMB/D (EIA) and 9.9 MMB/D (DRI) by 1995. NHTSA thus recognizes that available projections indicate a general consensus that imports may approach or exceed 50 percent of U.S. petroleum use by 1995. Future projections about petroleum imports are, of course, subject to great uncertainty. Indeed, oil imports are very difficult to project beyond a year or two. For example, the EIA's 1977 Annual Report to Congress projected that net oil imports by the U.S. would, in the "reference case," reach 11 million barrels per day by 1985. Net imports in 1985 actually turned out to be 4.2 million barrels per day, less than half the level predicted in 1977.

Chrysler argued that long-term risks remain with respect to the nation's need to conserve energy and alleged that NHTSA is apparently prepared to act on the assumption that America no longer has an energy problem and no longer needs to worry about conservation. That commenter argued that abundant supplies and falling prices are killing all

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incentive for oil exploration and energy conservation, and quoted former Energy Secretary James R. Schlesinger as saying that "[t]he United States is now in the process of creating a substantially increased oil dependency for the 1990's. . . . We are sowing the seeds of the next oil crisis." Chrysler also argued that it is no answer that the nation can trust the market because oil prices have been decontrolled. That commenter stated that in 1975, when the Act was passed, Congress was concerned that artificially low prices would send the wrong signals about long-term conservation needs. Chrysler argued that oil prices are again artificially low—to a large extent because one major foreign supplier has decided to "swamp" the market with supply in an effort to discipline other producers, thereby hoping to restore the conditions that produced two previous oil crises.

The Center for Auto Safety argued that the recent drop in oil prices clearly increases the chance of yet another energy disruption and underscores the urgent necessity of maintaining the current fuel economy standards. That commenter also argued that the agency had overemphasized the added security provided by the current level of the SPR. CFAS quoted a report prepared by the National Academy of Sciences for the U.S. Department of Energy as indicating that given the demand and production rates projected for the 1990's, the SPR will provide only a 50 days supply instead of the current 100 days supply.

GM commented that the risk of increased imports does not imply any increased vulnerability to a new energy crisis. That commenter stated that it is not at all certain, or even likely, that the primary source of these increased imports would be Persian Gulf oil, noting that the potential exists for further increases in supply from non-OPEC countries such as Mexico, Norway, Colombia, India and others.

NHTSA agrees with GM that if imports do once again reach the 50 percent level, the nation will remain in a much stronger energy position than was the case in the mid-1970's. The nation's sources of oil imports are more diverse and less vulnerable to disruption, the nation's energy efficiency is much higher, there is greater ability to substitute alternative sources of energy, and the absence of price controls permits the market to more easily respond to changes in supply and demand.

As discussed below, the need to conserve energy is only one of four factors that NHTSA is required to consider in establishing fuel economy standards at the maximum feasible level. NHTSA rejects Chrysler's allegation, however, that the agency assumes that America no longer has an energy problem and no longer needs to worry about conservation. The prospect of increasing oil imports does raise concerns about national security and balance of payments difficulties. Moreover, quite apart from the issue of whether oil imports are likely to increase in the next decade, petroleum is a vital natural resource which is non-renewable.

While the agency agrees that the need to conserve energy is important, it also notes that Congress' goal of energy conservation by improved automotive fuel efficiency has largely been realized. In MY 1986, for the first time, the average fuel economy of the total fleet of new cars will in fact exceed 27.5 mpg. A major reason that GM and Ford are having difficulty achieving CAFE of 27.5 mpg, apart from the unexpected drop in gasoline prices since their MY 1987–88 product plans were developed, is that the smallest, most fuel-efficient GM and Ford cars are largely imports, which cannot be included in their domestic CAFE. The reason for producing small cars abroad relates to cost advantages, rather than anything having to do with CAFE. However, with respect to the need to conserve energy, it makes no difference whether a manufacturer produces a fuel-efficient car abroad or in the United States.

Amending the MY 1987–88 Standards

As discussed above, section 502(a)(4) provides that the 27.5 mpg standard can be amended if the agency determines that some other standard represents the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

A. Interpretation of "Feasible"

Based on dictionary definitions and judicial interpretations of similar language in other statutes, the agency has traditionally interpreted "feasible" to refer to whether something is capable of being done, taking into account the four statutory criteria: technology, economic practicability, the effect of other Federal standards, and the need of the nation to conserve energy. The statute does not elevate any one of these criteria above the others, nor does it provide guidance to the agency on weighing any of these criteria more heavily than any others. For example, the agency's determination of the "maximum feasible" standard cannot be that level which is merely the maximum technologically feasible without regard to the economic practicability of such a level. Also, as discussed elsewhere in this notice, the agency has traditionally included a small margin to account for technological and economic risks when establishing CAFE standards, and believes this is consistent with the statutory instruction to consider and balance all four criteria.

B. Industrywide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industrywide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the Conference Report to the 1975 Act, quoted below, provides guidance on the meaning of "maximum feasible average fuel economy level." In the recent case of *Center for Auto Safety* v. *NHTSA*, upholding the MY 1985–88 light truck fuel economy standards, the United States Court of Appeals (D.C. Circuit) indicated that this language is relevant to determining congressional intent concerning the setting of fuel economy standards. (D.C. Cir. No. 85–1231, June 20, 1986, slip op. at p. 34)

The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–5 (1975)), states:

> Such determination [of maximum feasible average fuel economy level] should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strein on any manufacturer. . . .

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer, regardless of market share. Rather, NHTSA must take industrywide considerations into account in determining maximum feasible average fuel economy level. On the other hand, the Conference Report indicates that the

circumstances of the domestic manufacturers are to be given appropriate weight in assessing "industrywide considerations."

C. The MY 1987–88 Standards—Overview

Based on the analysis discussed above, NHTSA has determined that GM can achieve a MY 1987 CAFE no higher than 26.3 mpg to 26.4 mpg, and Ford can achieve a MY 1988 CAFE no higher than 26.4 mpg. These figures are subject to a number of uncertainties not already accounted for. Ford's MY 1987 capability is somewhat higher than GM's, while GM's MY 1988 capability is somewhat higher than Ford's.

Chrysler, American Motors, Volkswagen, Hyundai, and the Japanese manufacturers are expected to achieve CAFE levels above 27.5 mpg, due to the mix of vehicles they sell. The European manufacturers, including Mercedes-Benz, Volvo, BMW, Peugeot, Saab, and Jaguar will generally achieve CAFE levels below those achievable by GM and Ford in MY 1987–88.

In proceeding from an analysis of manufacturer CAFE capabilities to the setting of standards, NHTSA notes that the setting of maximum feasible average fuel economy standards, based on the consideration of the four required factors of section 502(e), is not a mere mathematical exercise but is a matter of agency judgment that takes account of many considerations relevant to those factors, including uncertainties. NHTSA has concluded that 26.0 mpg is the maximum feasible average fuel economy level for the 1987–88 model years. This level balances the small potential petroleum savings associated with higher standards against the substantial difficulties of individual manufacturers, especially domestic manufacturers, facing potentially higher standards and the impacts of such standards on the automotive industry and the economy as a whole.

D. Economic Impacts of Not Amending the 27.5 mpg Standard

NHTSA's analysis indicates that the only actions available to GM and Ford in the near-term to achieve CAFE levels of 27.5 mpg, i.e., for MY 1987–88, would involve a combination of drastic product restrictions and foreign outsourcing of their larger cars. Such product restrictions would result in significant adverse economic impacts and restrict consumer choice to an unreasonable degree.

The unacceptability of the product mix that would result from GM and Ford achieving 27.5 mpg CAFE in MY 1987–88 from product restrictions would likely result in sales losses well into the hundreds of thousands of units and resultant job losses well into the tens of thousands. The agency considers these effects to be beyond the realm of economic practicability. To the extent that these economic impacts could be partially offset by the foreign outsourcing of larger cars, there would be absolutely no energy conservation benefits, but American workers would lose jobs.

Moreover, any combination of such product restrictions and foreign outsourcing would significantly increase an already serious U.S. balance of trade problem. The U.S. trade deficit reached $148.5 billion in 1985 and is running at an annualized rate of $175 billion for 1986. Through the first seven months of 1986 the imbalance in trade in passenger cars accounted for 22.5 percent of the total U.S. trade deficit. While foreign outsourcing would involve a direct transfer of U.S. jobs overseas, product restrictions would permit foreign manufacturers, which achieve higher CAFE due to their emphasis on smaller cars, to substantially increase their penetration of the larger car market at the expense of the domestic manufacturers.

E. Determining the Levels of the MY 1987–88 Standards

In setting the standard at 26.0 mpg for both model years, NHTSA has followed its traditional approach of setting standards at the level achievable by the least capable manufacturer with a substantial share of sales, and considering risks in determining that level. For MY 1987, GM is the least capable manufacturer, with a capability no higher than 26.3 mpg to 26.4 mpg. For MY 1988, Ford is the least capable manufacturer, with a capability no higher than 26.4 mpg.

1. Consideration of Risks

In determining the levels of the MY 1987–88 standards, NHTSA considered the appropriate margin, if any, to account for risks beyond the manufacturers' control. Standards set at 26.0 mpg provide a small margin, i.e., 0.3 mpg to 0.4 mpg, to account for risks. This is similar in magnitude to the risk factor adopted by NHTSA in setting the MY 1986 standard, and substantially smaller than the downward adjustments provided in 1977 for the MY 1981 standard. In light of differences in this record when compared to the MY 1986 rulemaking, the agency considered whether a smaller risk factor, or no risk factor at all, should be provided. While there was a significant risk in the MY 1986 rulemaking that gasoline prices would continue to fall, that risk is smaller now. Also, despite the unexpectedly large magnitude of the drop in gasoline prices that did occur during MY 1986, GM and Ford were able to achieve or exceed their projected CAFE levels. Another difference in the record is the risk of increased Japanese imports. That risk is lower now than in the MY 1986 rulemaking given the decline in the value of the dollar that has occurred, although, as discussed below, currency values could change again.

While NHTSA recognizes the differences in the record, it also recognizes the inherent difficulties in evaluating the potential impact of the uncertainties that do exist. It, therefore, concludes that a small, i.e., 0.3–0.4 mpg, risk factor should continue to be provided. NHTSA has traditionally provided a small margin for risks related to uncertainties and believes it is appropriate to continue to do so for MY 1987–88. In setting the MY 1981–84 standards, for example, NHTSA specifically provided an allowance for unforeseen contingencies. See 42 FR 33548, June 30, 1977. The agency noted then that this approach was consistent with that of the Senate Commerce Committee in establishing the 1980 average fuel economy standard. That committee concluded that a fuel economy goal of 21 mpg, representing a 50 percent improvement over 1974, was reasonable. In reaching this decision, the committee considered a report indicating that up to a 63 percent improvement was possible. The committee concluded, however, that calling for a 50 percent improvement would provide "ample cushion for unforeseen contingencies." See S. Rep. No. 94–179, 94th Cong., 1st Sess. 10 (1975).

It is true, of course, that in amending the MY 1987 standard just prior to the start of the model year and the MY 1988 standard approximately a year before the start of the model year, there is less technological uncertainty than when standards are set several years in advance. On the other hand, there is now little or no opportunity for the manufacturers to plan further technological changes as a margin of safety to rely on if unforeseen contingencies arise. Thus, if such events did occur, the manufacturers might only be able to achieve the levels of the standards by product restrictions.

Past experience clearly indicates that there is a significant risk that unexpected uncertainties may occur, which could lower expected CAFE values. A comparison of manufacturers'

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CAFE estimates as shown in their pre-model year reports, which are submitted in late December of the then-current model year (i.e., at a time when many vehicles are well into production), and their mid-model year reports, which are submitted in late July, near the end of the model year, illustrates the difficulties in predicting CAFE values even at the beginning of a particular model year. For example, GM's and Ford's MY 1982–83 CAFE levels declined by an average of 0.7 mpg between the pre-model year report and the mid-model year report. While GM's and Ford's CAFE levels have not declined between those two reports for the last two model years, past experience nonetheless indicates the risk that such declines may occur.

Similarly, manufacturers are unable to predict sales levels for particular carlines or for their overall fleets with precision, even at the start of the model year. For example, in Ford's MY 1986 fleet, Crown Victoria/Grand Marquis sales were 10 percent higher than expected, Mustang/Capri sales were 12 percent higher than expected, Thunderbird/Cougar sales were almost 16 percent higher than planned, and EXP sales were almost 18 percent below pre-model year report projections. In GM's MY 1985 fleet, G-special (e.g., Buick Regal) sales were nine percent higher than projected in the pre-model year report, and P-body (Pontiac Fiero) sales were lower than projected by more than 11 percent.

The primary risk affecting GM's and Ford's MY 1987–88 CAFE projections is that their car and engine mix assumptions could turn out to be incorrect. NHTSA's analysis indicates that potential mix shifts could reduce GM's MY 1987 CAFE to 26.0 mpg. As discussed below, such mix shifts could be triggered by events beyond GM's control. For example, 10 to 25 percent increases in sales of less fuel-efficient carlines and 10–20 percent decreases in sales of more fuel-efficient carlines, ranges consistent with those experienced recently, could result in a 26.0 mpg CAFE for GM's MY 1987 fleet. Such shifts are consistent with GM's capacity constraints. This scenario is based on the assumption that average fuel economy for each carline remains unchanged from GM's basic projection. If there were shifts toward less fuel-efficient engines within many of these carlines, a mix shift of even lesser magnitude could result in CAFE of 26.0 mpg for GM's MY 1987 fleet. Ford has provided data indicating that mix shifts could reduce its MY 1988 CAFE to below 26.0 mpg.

Outside events, beyond the manufacturers' control, could change consumer demand, resulting in the mix shifts toward larger cars and larger engines postulated above. Should gasoline prices fall below the values estimated by the manufacturers, there could be a downward effect on CAFE. While industry analysts are not currently projecting lower gasoline prices, these same analysts have been unable to accurately predict gasoline prices for the past several years. Moreover, while consumers have not responded as strongly as might have been expected to the fall in gasoline prices during 1986, there could be a lag in consumer response to a fall of that magnitude, e.g., consumers may have expected a compensating upward trend, which has not materialized, or they may hold off purchasing a less fuel-efficient car until they feel more certain fuel prices will stay relatively low. The agency notes that Ford's gasoline price projections are somewhat higher than those of GM. Thus, should GM's estimates prove correct, there will be a downward pressure on Ford's projected CAFE.

Another uncertainty related to consumer demand is how MY 1987–88 sales may be affected by the extremely low interest rates offered by the manufacturers toward the end of MY 1986. For example, some consumers who would have purchased MY 1987–88 cars may have made their purchases earlier as a result of the low financing, while other consumers might delay purchasing cars in the hope that such financing plans will be offered again.

Still another uncertainty is how car buyers may respond to expected changes in the tax code. Changes of particular relevance include the lower individual tax rates and repeal of deductions of sales taxes and interest on auto loans. It is very difficult to predict the impacts of these changes on consumer demand for cars. With respect to the overall impacts of the legislation, Senate Finance Committee Chairman Robert Packwood, the tax bill's chief Senate author, recently commented that he had rejected a proposal for extensive hearings on the bill, noting that "(y)ou could hold three or four weeks of hearings and have 15 economists in to testify and we still wouldn't know the effect of it." See *Washington Post*, September 14, 1986, p. K7. The tax bill does create economic uncertainties, however, which could affect consumer demand for cars and thus CAFE. For example, the lower tax rates for individuals could increase after-tax income and thereby stimulate consumer demand for more expensive, less fuel-efficient cars, resulting in lower CAFE. Or, the repeal of deductions on interest for car loans and sales taxes on car purchases could have a disproportionate impact on sales of economy cars, whose buyers may be more sensitive to the overall costs of purchasing and operating a car, and more expensive cars, whose buyers may be less sensitive to such costs. As with many of the other uncertainties, NHTSA is not attempting to predict any particular impact from the tax bill with respect to consumer demand for cars in general or CAFE in particular, but is instead pointing out the kinds of market uncertainties which could have an impact on CAFE. The agency also notes that, quite apart from how consumer demand may change in response to particular events, consumer demand is by its nature highly uncertain, since it is largely dependent on changing tastes and preferences that may defy precise analysis.

GM and Ford may also face greater than expected competition from foreign manufacturers of small cars, which could reduce the sales of the domestic manufacturers' more fuel efficient cars, thereby lowering their CAFE evels. While the yen has been rising in value against the dollar, currency values are always subject to fluctuation, and that trend could reverse. Also, the Japanese manufacturers may adjust to the currency changes and, in light of their still significant cost advantage, compete more aggressively in the U.S. market despite a higher yen. The agency notes that Toyota has recently called for the end of restraints on Japanese car exports and also suggested that by 1988 it could compete at an exchange rate of 140 yen to the dollar as compared to the current 155 rate. See *Washington Post*, August 28, 1986; *Wall Street Journal*, September 9, 1986. Finally, Korea could sell more cars than expected. Hyundai, which became the leading Canadian import within two years of introduction into that country, is selling well during its first year of sales in the U.S. While Hyundai was a late introduction for the 1986 model year, it has recently been selling cars at a rate of about 20,000 units per month. It was reported in the July 7, 1986 issue of *Automotive News*, p. 20, that, after just four months in the U.S., Hyundai sold the most cars sold by any importer in the first six months of operation. The same issue of *Automotive News*, at p. 20, reported the following with respect to total expected Korean vehicle production:

> The Korean government is predicting a 60 percent increase in capacity over 1985 to 600,000 units this year. Next year, capacity will increase by another 60 percent to nearly 1 million units, according to S. Kim Song, commodity manager of GM's Purchasing Activities Staff.
>
> In a presentation for the Sixth United States-Japan Auto Industry Conference at the University of Michigan, Song estimated that Hyundai would have capacity for 450,000 units, Daewoo, 300,000 and Kia, 200,000. Hyundai has since upped its estimate to 600,000 units.

In addition, quite apart from changes in the competitive environment, the manufacturers' CAFE projections are dependent on numerous assumptions relating to production of the cars they plan to sell. Even relatively minor difficulties, beyond the manufacturers' control, relating to such things as delays in start-up times for new plants or equipment, technical or labor difficulties of particular suppliers, etc., could adversely affect the manufacturers' CAFE.

NHTSA concludes that in choosing between standards incorporating a risk factor and not doing so, the potential harms of setting the standard too high are far outweighed by any risks of setting it too low. In reaching this conclusion, NHTSA recognizes that some uncertainties can go in both directions. However, if the agency changed its past practice and did not include a risk factor in setting the MY 1987–88 CAFE standards, the occurrence of even relatively minor uncertainties could place the manufacturers in a position of being able to achieve the levels of the standards only by product restrictions. On the other hand, the record indicates that GM and Ford are continuing to make reasonable efforts to achieve and, to the extent possible, exceed CAFE standards, particularly in light of their desire to earn credits. Thus, providing a small risk factor will not provide any incentive for GM and Ford to do anything other than achieve their highest possible CAFE levels.

2. Consideration of standards above GM's and/or Ford's capability

As part of taking industrywide considerations into account, NHTSA has considered whether a standard could or should be set at levels above the capabilities of GM and/or Ford. As indicated above, the Conference Report states that the "Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers," and that "(s)uch difficulties should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer."

With respect to light truck standards, NHTSA has consistently taken the position that it has a responsibility to set standards at a level that can be achieved by manufacturers of a substantial share of sales. See 49 FR 41251; October 22, 1984. The agency once set the MY 1982 light truck standards at a level which it recognized might be above the maximum feasible average fuel economy capability of Chrysler, based on the conclusion that the energy savings benefits associated with the higher standard would outweigh the harm to Chrysler. See 45 FR 20871, 20876; March 31, 1980. Although the House Committee on Interstate and Foreign Commerce later stated that it "generally agreed with DOT," (See House Report No. 96–1028; May 16, 1980; p. 17), the Congress swiftly enacted special provisions for adjusting the MY 1982 light truck fuel economy standards to provide greater flexibility in dealing with the kinds of potential problems then faced by Chrysler, in part responding to Chrysler's arguments that it should not be forced to choose between paying millions of dollars in fines for violating the law and closing plants in order to meet the law.

NHTSA believes its practice of setting standards at a level that can be achieved by manufacturers of a substantial share of sales is consistent with its obligation to take industrywide considerations into account. Since GM produces more than 40 percent, and Ford approximately 18 percent, of all cars sold in the U.S., the agency believes that CAFE standards set at the level of the least capable of these manufacturers represents an appropriate balancing of "the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers." Given GM's very large market share, the agency does not believe that a standard set above its level would be consistent with the requirement that industrywide considerations be taken into account. Moreover, given Ford's market share, which is larger than Chrysler's share of the light truck market in 1982, the agency believes that a standard set at a level above its capability would be inconsistent with that requirement.

Therefore, NHTSA concludes that any benefits of a higher standard would not outweigh the difficulties that would face GM and Ford. While NHTSA believes that energy conservation is important, it concludes that the possible small energy savings associated with maintaining the 27.5 mpg standard for MY 1987–88 (discussed below) do not justify the potential major economic hardships discussed above. Moreover, as indicated above, given GM's and Ford's desire to earn credits in the MY 1987–88 time period, setting the standard at 26.0 mpg versus some level slightly above 26.0 mpg does not create any incentive for GM and Ford to achieve other than their highest possible CAFE levels.

3. Economic Impacts of Standards Set at 26.0 mpg

As discussed above, the agency has concluded that GM and Ford can both meet the 26.0 mpg MY 1987–88 standards without engaging in harmful product restrictions and without any significant restrictions on consumer choice. Thus, no job losses will result from GM and Ford meeting these standards, and there will be no adverse economic impacts on automobile dealers, suppliers, or automotive employees, including minorities.

NHTSA recognizes that the 26.0 mpg standard for MY 1987–88 is above the capabilities of some European manufacturers. For Jaguar and Mercedes-Benz, the standard is several mpg above those companies' capabilities.

Some of the European companies may thus be limited to two options: paying the statutory penalties associated with failure to comply with fuel economy standards or drastic product actions which, in the case of some, could require radical changes in the mix of cars they import. While the agency appreciates these difficulties, it also concludes that amending the MY 1987–88 standards to levels below 26.0 mpg would be inconsistent with a determination of maximum feasibility that takes industrywide considerations into account. Both the individual market share of each European manufacturer and the combined market share of all the European manufacturers is very small. For example, for January to May 1986 sales, Mercedes-Benz accounted for only 0.8 percent of U.S. sales, and Volvo accounted for only 1.1 percent.

4. Potential Impacts on Energy Conservation

In analyzing the potential energy savings associated with standards within a range of 26.0 mpg to 27.5 mpg, the agency believes that it is appropriate to focus on GM and Ford. Since the Japanese manufacturers have CAFE levels well above 27.5 mpg, as a result of focusing on smaller cars, a reduction in the MY 1987–88 standards does not create an incentive for those companies

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to change their product plans. Similarly, given Chrysler's current CAFE projections and its MY 1986 experience, the agency has no reason to assume that company would change its product plans as a result of reduced standards. Finally, the agency does not have any reason to assume that the European manufacturers would change their product plans as a result of reduced standards. While some of those manufacturers project MY 1987–88 CAFE levels not only below 27.5 mpg but also below 26.0 mpg, they have not indicated any plans to attempt to achieve higher CAFE levels in order to meet the standards.

The precise magnitude of the energy savings, if any, which could result from maintaining the 27.5 mpg standard is uncertain, although a maximum bound can be calculated. As discussed above, GM and Ford could achieve CAFE of 27.5 mpg only by (1) restricting the sale of their larger cars and engines, and/or (2) transferring the production of large cars outside the United States.

To the extent that GM and Ford restricted the availability of their larger cars and engines, some consumers would likely keep their older, less fuel-efficient cars in service longer or purchase large pickup trucks and vans to obtain the room, power and load-carrying capacity they desire. Professor Leone presented an analysis in the MY 1986 proceeding demonstrating that if as a result of product restrictions one consumer in five purchased a light truck, specialty vehicle or van, or decided to keep driving an old 18 mpg vehicle, gasoline consumption for the fleet as a whole would remain the same or even increase.

As discussed above, to the extent that GM and Ford improved their CAFE by transferring the production of large cars or parts of large cars outside of the United States, there would be absolutely no energy conservation benefits associated with their higher domestic CAFE levels. Given the severe economic impacts associated with product restrictions, NHTSA believes that such outsourcing is the most likely first option manufacturers would take in an effort to comply with overly stringent CAFE standards, to the extent that there is available leadtime to take such action. As indicated above, Ford has indicated that it could take such action to improve its MY 1988 CAFE by 0.8 mpg.

The maximum hypothetical difference in gasoline consumption between GM and Ford achieving 26.0 mpg in MY 1987–88, as compared to those companies achieving 27.5 mpg, would be 3.28 billion gallons over the 20-year life of the MY 1987–88 fleets. This would represent 0.29 percent of projected national passenger car gasoline consumption over that time period. As indicated above, the agency cannot conclude that such savings would justify the potential sales losses and job losses associated with maintaining the 27.5 mpg standard for those two model years. Moreover, the agency concludes, for the reasons discussed above, that actual gasoline savings would be much lower than the above figures suggest, and possibly so low as to be negligible. The calculated maximum hypothetical difference in gasoline consumption assumes that GM and Ford would achieve CAFE levels of 27.5 mpg in MY 1987–88 by means whereby the higher domestic CAFE levels are fully translated into gasoline savings. As discussed above, however, this is not the case for product restrictions and outsourcing of larger cars and engines, the only two means by which GM and Ford could achieve a 27.5 mpg CAFE in those model years.

NHTSA has considered the potential energy savings of standards higher than 26.0 mpg but lower than 27.5 mpg. The agency does not believe that any such savings would justify the potential economic hardships. As indicated above, the record indicates that GM and Ford are continuing to make efforts to achieve and, to the extent possible, exceed CAFE standards, particularly in light of their desire to earn credits. Thus, setting standards at 26.0 mpg does not provide any incentive for GM and Ford to do anything other than achieve their highest possible CAFE levels.

5. Credits/Penalties

In determining the maximum feasible average fuel economy levels for MY 1987–88, and hence the standards, NHTSA has followed its consistent approach of analyzing the ability of manufacturers to meet the standards. It has not included as part of its calculation of standards the ability to pay penalties for not meeting the standards, or the availability of, or need for, credits.

An industrywide standard set at a level above the capabilities of the major manufacturers would by definition not be capable of being done and would thus not meet the requirement that standards be feasible. In the MY 1985–86 light truck fuel economy rulemaking, NHTSA rejected the suggestion that it set standards that would require the payment of penalties. The agency emphasized that in assessing economic practicability, it must consider the ability to meet a standard rather than the ability to pay the penalties for not meeting a standard. See 50 FR 11164, March 20, 1985. This approach was upheld by the U.S. Court of Appeals (D.C. Circuit) in *Center for Auto Safety v. NHTSA*, No. 85–1231, slip op. at 39–40 (June 20, 1986).

The agency does not, however, believe it should depart from its normal practice of accounting for uncertainties in an attempt to prevent the earning of credits. In establishing the credit provisions, Congress was necessarily aware of the tension between "maximum feasible" standards and manufacturers exceeding such standards in order to earn credits. A particular manufacturer may be able to exceed a "maximum feasible" industrywide standard for a particular model year because its CAFE is higher than that of the least capable manufacturer for that model year. For example, the agency recognizes that Ford may earn some credits in MY 1987 because its capability is higher than the standard, i.e., the level of least capable manufacturer with a substantial share of sales, GM. GM may do the same for MY 1988. It is also possible that a manufacturer may be able to exceed the "maximum feasible" level by taking certain actions that are not taken into account by the agency as part of "economic practicability," e.g., actions that may be so expensive in relation to CAFE benefit, or so uncertain, that the agency would not factor them into its determination of a manufacturer's CAFE capability. For example, in one of its comments to the docket, GM indicated that if the standards were set at 26.0 mpg, it might be able to generate enough credits to remain in compliance by taking measures it characterized as "very costly and contrary to expected consumer demand."

If GM is successful in its extraordinary efforts to offset its MY 1985 shortfall by exceeding MY 1987–88 standards, the credit provisions would have the effect intended by Congress of encouraging manufacturers to do more to improve fuel economy than they otherwise might. Moreover, NHTSA concludes that it would be particularly inappropriate to change its traditional method of setting standards at this time, for the purpose of somehow preventing particular manufacturers from earning credits. As discussed above and in the MY 1986 proceeding, GM and Ford failed to achieve a CAFE level of 27.5 mpg by MY 1985, and thus incurred the shortfalls, because their reasonable plans to meet the standard were overtaken by events beyond their control.

In this rulemaking, GM specifically argued that NHTSA should take into account the industry's need to earn carryback credits to offset MY 1984–85 shortfalls in determining the maximum feasible average fuel economy levels for MY 1987–88. As noted above, NHTSA published an SNPRM requesting comment on a tentative conclusion by the agency that GM's argument concerning credits should be rejected. However, since NHTSA is basing this decision to establish the MY 1987–88 standards at 26.0 mpg on other grounds, the arguments set forth by GM do not need to be addressed here. The agency notes that if it did include GM's desire to earn carryback credits to offset its MY 1985 shortfall as part of the calculation of the MY 1987–88 standards, the record would dictate standards below 26.0 mpg for both model years.

NHTSA also notes that both GM and Ford argued as part of their comments on the SNPRM that the agency has the authority to retroactively amend the MY 1984–85 CAFE standards to the maximum feasible level, and urged the agency to Consider doing so. The requests to retroactively amend the MY 1984–85 standards are not being addressed in this notice.

6. Other Issues

CFAS argued that NHTSA should consider the issue of job losses associated with GM and Ford exporting American small car jobs to foreign countries. According to that commenter, higher CAFE standards could prevent such job losses.

As discussed above, in enacting EPCA, Congress was concerned that the fuel economy program could have directly encouraged increased importation of small, fuel-efficient cars. The domestic manufacturers were already importing some fuel-efficient cars, and Congress was concerned that the manufacturers might decide to meet fuel economy standards largely by increasing such imports. Therefore, Congress included the provision in EPCA requiring manufacturers to meet fuel economy standards separately for their imported and domestically manufactured fleets. While Congress did not want the fuel economy program to encourage imports directly, however, it also did not intend that CAFE standards could or should be set artificially high as a means of direct protectionism.

Moreover, the record does not support CFAS's argument that maintaining the 27.5 mpg standard for MY 1987–88 would increase American jobs. The economic reality is that small car jobs have been lost due to competition from foreign manufacturers which enjoy large cost advantages. Higher CAFE standards would not bring those jobs back. The domestic manufacturers are importing or planning to import additional small cars in response to that competition. If GM and Ford did not import particular small cars, other import manufacturers would likely import additional such cars. It is generally recognized, for example, that as the Japanese manufacturers concentrated on larger cars as a response to export restraints, Korean manufacturers moved into the smaller car market. Far from increasing American jobs, the agency's analysis indicates, as discussed above, that the actions GM and Ford would need to take to achieve CAFE of 27.5 mpg in MY 1987–88 would result in enormous job losses. NHTSA notes that even if some particular small car jobs could somehow be saved by a 27.5 mpg standard, the number of such jobs would be outweighed many times over by the job losses associated with restricting sales of larger cars and transferring production of larger cars outside the United States.

CEI argued that NHTSA has failed to consider the fact that as energy costs drop, the value of energy conservation also declines. That commenter suggested that the agency should estimate the cost per gallon saved as a percentage of fuel costs to illustrate what it called the "increasing absurdity of mandated savings of an increasingly inexpensive commodity." While, as discussed in the MY 1986 and earlier proceedings, the agency does not believe that the statutory criteria necessarily require fuel economy standards to be cost-beneficial, it has traditionally considered costs and benefits. As gasoline prices decline, it is true that the cost effectiveness of improving fuel economy also declines. However, as illustrated by DOE's comments, virtually all the fuel-efficiency-enhancing technologies being used by the manufacturers to improve their fuel economy remain cost effective, or at least cost neutral, even with the current very low price of gasoline.

As in the MY 1986 proceeding, Chrysler argued that reducing the MY 1987–88 standards is anti-competitive to those companies which are able to meet the standards. NHTSA recognizes the equity issues involved in amending fuel economy standards and has considered this factor. However, the agency must consider the feasibility of the standards for the industry as a whole, as discussed above, in accordance with the statutory criteria. Indeed, since the Act specifically permits the amendment of its previously set fuel economy standards, it necessarily contemplates the possibility of differing impacts on different manufacturers. Any change in a standard will result in varying impacts, because different manufacturers will be at different stages along varying paths toward complying with the previous standard. As in the MY 1986 proceeding, NHTSA believes that any impacts on Chrysler are heavily outweighed by the possibility of serious adverse economic consequences to the industry and economy as a whole if the standards were not reduced. The agency notes that the MY 1981 light truck standard was lowered in response to a petition for rulemaking submitted by Chrysler. Thus, that company has requested and received the benefit from the same type of rulemaking action to which it now objects.

Impact Analyses

1. Economic Impacts

The agency considered the economic implications of the amendments to the fuel economy standards made by this rule and determined that the rule is major within the meaning of Executive Order 12291, and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a final regulatory impact analysis, copies of which are available from the Docket Section. The contents of that analysis are generally described above.

2. Environmental Impacts

The agency has considered the environmental implications of these amendments to the MY 1987–88 passenger automobile average fuel economy standards in accordance with the National Environmental Policy Act of 1969 and determined that the amendment will not significantly affect the human environment. An Environmental Assessment (EA) was prepared and placed in the public docket in connection with the NPRM. A Supplement to the Environmental Assessment has been prepared, which responds to the comments received concerning the EA. Based on the agency's review of the comments and all available information, the agency has determined that this rulemaking action will not have a significant effect upon the environment.

3. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking action will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a

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regulatory flexibility analysis is not required for this action. No passenger car manufacturer subject to the amended passenger automobile average fuel economy standards would be classified as a "small business" under the Regulatory Flexibility Act. In the case of small businesses, small organizations, and small governmental units which purchase passenger cars, the amendments will not affect the availability of fuel-efficient passenger cars or have a significant effect on the overall cost of purchasing and operating passenger cars.

Department of Energy Review

In accordance with section 502(j) of the Cost Savings Act, the agency submitted this final rule to the Department of Energy for review. There were no unaccommodated comments.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

PART 531—[AMENDED]

In consideration of the foregoing, 49 CFR Part 531 is amended as follows:

1. The authority citation for Part 531 is revised to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. The table in § 531.5(a) is revised to read as follows:

§ 531.5 Fuel economy standards.

(a) * * *

Model year	Average fuel economy standard (miles per gallon)
1978	18.0
1979	19.0
1980	20.0
1981	22.0
1982	24.0
1983	26.0
1984	27.0
1985	27.5
1986	26.0
1987	26.0
1988	26.0
1989 and thereafter	27.5

* * * * *

Issued on October 1, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-22818 Filed 10-2-86; 10:00 am]

BILLING CODE 4910-59-M

federal register

Monday
October 6, 1986

Part IV

Office of Management and Budget

Congressional Budget Office

Revised Sequestration Report for Fiscal Year 1987—A Joint Report to the Congress of the United States

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OFFICE OF MANAGEMENT AND BUDGET

CONGRESSIONAL BUDGET OFFICE

Revised Sequestration Report for Fiscal Year 1987—A Joint Report to the Congress of the United States

AGENCY: Office of Management and Budget, Congressional Budget Office.

ACTION: Report transmittal.

SUMMARY: This notice transmits the Revised Sequestration Report for Fiscal Year 1987 to the Congress of the United States in accordance with the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177.

BILLING CODE 3110-01-M

Congressional Budget Office
Congress of the United States

Office of Management and Budget
Executive Office of the President

October 6, 1986

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

In accordance with the alternative procedures of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177, the Director of the Office of Management and Budget and the Director of the Congressional Budget Office submit to you our revised Sequestration Report for Fiscal Year 1987.

The purpose of this report is to indicate whether and to what extent, as a result of laws enacted and regulations promulgated after the submission of our initial sequestration report, the excess deficit identified in our initial sequestration report of August 20 has been eliminated, reduced, or increased. The Balanced Budget Act requires the revised report to be based on the same economic and technical assumptions, employ the same methodologies, and utilize the same definition of the budget base and the same criteria and guidelines as those used for our initial sequestration report.

As of the close of business September 30, 1986, there have been no actions to change the budget estimates contained in our initial sequestration report. The average of our two deficit estimates for 1987 remains $163.4 billion, which is $19.4 billion greater than the maximum deficit amount of $144.0 billion specified by the Balanced Budget Act. Accordingly, the sequestration calculations required for our revised report, with certain exceptions, are identical to those contained in our initial report. These calculations were printed in the *Federal Register* of August 20, 1986 (Vol. 51, No. 161, Part VI, pages 29829-29899) and are submitted again by reference to this earlier report, with certain changes as set forth in Attachment A to this letter.

A number of legislative actions, however, are currently under way that, if enacted as expected, would reduce the estimated budget deficit for 1987 below $154 billion and avoid the need for a sequestration of budgetary resources.

With best wishes,

Sincerely yours,

Rudolph G. Penner
Director
Congressional Budget Office

James C. Miller III
Director
Office of Management and Budget

Enclosure

IDENTICAL LETTERS SENT TO HONORABLE THOMAS P. O'NEILL JR., HONORABLE PETE V. DOMENICI, HONORABLE WILLIAM H. GRAY III

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ATTACHMENT A
REVISIONS TO THE INITIAL SEQUESTRATION REPORT
FOR FISCAL YEAR 1987

The Insular Areas Regulation Act (P.L. 99-396) was signed into law on August 27. Section 19 of the act requires that Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands be paid the full amounts required under the laws establishing their relationships with the United States, notwithstanding the Balanced Budget Act. While the provision does not amend the instructions to the Directors in the Balanced Budget Act with regard to preparation of their joint report, the Directors assume that it has the effect of exempting these payments from sequestration. Listed below are the initial and revised sequestration calculations for the affected budget accounts.

	OMB	CBO	Average	Sequester
	(In thousands of dollars)			
Department of the Interior				
Office of Territorial Affairs				
Administration of territories (10-82-0412-X-1-806-A; 14-0412)				
Initial				
Budget Authority	76,459	76,459	76,459	5,811
Outlays	66,195	60,938	63,566	4,831
Revised				
Budget Authority	49,925	49,925	49,925	3,794
Outlays	39,661	35,840	37,750	2,869
Payments to the United States territories, fiscal assistance (10-82-0418-X-1-852-A; 14-0418)				
Initial				
401(c) authority	65,000	62,340	63,670	4,839
Outlays	65,000	62,340	63,670	4,839
Revised				
401(c) authority	0	0	0	0
Outlays	0	0	0	0
Department of the Treasury				
United States Customs Service				
Miscellaneous permanent appropriations (15-15-9922-X-2-852-A; 20-9922)				
Initial				
401(c) other	112,314	114,770	113,542	8,629
Outlays	99,283	107,425	103,354	7,855
Revised				
401(c) other	0	0	0	0
Outlays	0	0	0	0
Internal Revenue Service				
Internal revenue collections for Puerto Rico (15-45-5737-X-2-852-A; 20-5737)				
Initial				
401(c) other	255,535	255,535	255,535	19,421
Outlays	226,582	254,292	240,437	18,273
Revised				
401(c) other	0	0	0	0
Outlays	0	0	0	0

[FR Doc. 86-22773 Filed 10-3-86; 1:10 pm]
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H.R. 3358/Pub. L. 99-432

To reauthorize the Atlantic Striped Bass Conservation Act, and for other purposes. (Oct. 1, 1986; 100 Stat. 989; 3 pages) Price: $1.00

H.R. 3622/Pub. L. 99-433

Goldwater-Nichols Department of Defense Reorganization Act of 1986. (Oct. 1, 1986; 100 Stat. 992; 85 pages) Price: $2.50

H.J. Res. 743/Pub. L. 99-434

Making continuing appropriations for the fiscal year 1987, and for other purposes. (Oct. 1, 1986; 100 Stat. 1076; 4 pages) Price: $1.00

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[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

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Vol. 51 No. 194

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10-7-86
Vol. 51 No. 194
Pages 35625-35990

federal register

Tuesday
October 7, 1986

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Presidential Documents

Title 3—

The President

Proclamation 5536 of October 4, 1986

National Outreach to the Rural Disabled Day, 1986

By the President of the United States of America

A Proclamation

Of the approximately 35 million disabled persons living in the United States, some eight and one-half million are residents of rural areas.

The proportion of disabled persons in rural areas is much higher but less concentrated than in urban areas. This means that disabled persons residing in rural areas are often isolated and far from the types of services, programs, and assistance that are available to their urban counterparts.

To focus attention on the unique problems faced by rural disabled persons and their families, the Congress, by Senate Joint Resolution 406, has designated October 4, 1986, as "National Outreach to the Rural Disabled Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 4, 1986, as National Outreach to the Rural Disabled Day. I encourage all Americans to help bring attention to unmet needs of disabled persons in their communities and to underscore the potential of these disabled persons by observing the day with appropriate activities in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-22868
Filed 10-6-86; 10:52 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 86-327]

Ethylene Dibromide; Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on February 21, 1986, which amended the regulations captioned "Subpart—Fruits and Vegetables" by adding provisions to allow for the importation of mangoes into the United States from Central America, the West Indies, Brazil, and Mexico. This action is necessary in order to provide a mechanism for continuing to allow mangoes to be imported into the United States from the specified places.

EFFECTIVE DATE: October 7, 1986.

FOR FURTHER INFORMATION CONTACT: James Fons, Acting Senior Staff Officer, Technology Analysis and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 671, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8896.

SUPPLEMENTARY INFORMATION:

Background

In a document published in the **Federal Register** on February 14, 1986, the Environmental Protection Agency (EPA) changed its regulations to allow a tolerance of .03 ppm (in the edible pulp) for residues of EDB per se in or on mangoes if the fumigant was applied in foreign countries after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture (UDSA).

Subpart—Fruits and Vegetables quarantine and regulations (contained in 7 CFR 319.56 *et seq.* and referred to below as the regulations) regulate the importation of fruits and vegetables into the United States. On February 21, 1986, (51 FR 6213-6216) USDA published an interim rule in the **Federal Register** which amended § 319.56 by adding new §§ 319.56-2h and 319.56-2i which added provisions to allow for fumigation with ethylene dibromide (EDB) as a condition-of-entry treatment for the importation of mangoes into the United States from Central America, the West Indies, Brazil, and Mexico in order to provide a mechanism for continuing to allow mangoes to be imported into the United States from the specified places.

Comments were solicited for 60 days after publication of the interim rule. No comments were received in response to the interim rule. The factual situations which were set forth in the document of February 21, 1986, still provide a basis for the amendments made by the interim rule. Accordingly, it has been determined that the amendments should remain effective as published in the **Federal Register** on February 21, 1986.

Executive Order 12291 and Regulatory Flexibility Act

The interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "Major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As noted above, the provision concerning the fumigation of mangoes were removed solely because of action taken by EPA. Since EPA has changed its regulations to reestablish the previous provisions allowing residues of EDB in or on mangoes, this document reestablishes the provisions allowing fumigation with EDB as a condition-of-entry treatment for the importation of mangoes into the United States from Central America, the West Indies, Brazil, and Mexico. This action allows mangoes from the specified places to continue to be imported into the United States. The importation of mangoes under the interim rule would not be the primary business activity of any business in the United States.

Under the circumstances referred to above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Mangoes, Plant diseases, Plant pests, plants (agriculture), Quarantine, and transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, the interim rule published at 51 FR 6213-6216 on February 21, 1986, adding §§ 319.56-2h and 319.56-2i is adopted as a final rule without change.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167; 7 CFR 2.17, 2.51 and 37.2(c).

Done at Washington, DC, this 2nd day of October 1986.

William F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-22654 Filed 10-6-86; 8:45 am]
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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 332c

Establishment of Photographic Studios

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule extends the supervision of district directors over photographic studios operated by sponsoring organizations, without profit, in INS facilities. The rule authorizes district directors to provide space to sponsoring organizations to operate photographic services, fingerprinting services, or both. The rule change relates solely to the INS organization and management and has no impact upon the public.

EFFECTIVE DATE: October 7, 1986.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC, 20536, Telephone (202) 663-3048.

For Specific Information: E. B. Duarte, Jr., Director, Outreach Program Immigration and Naturalization Service, 425 I Street NW, Washington, DC, 20536, Telephone: (202) 633-4123.

SUPPLEMENTARY INFORMATION: This rule extends the supervision of district directors over photographic studios operated by sponsoring organizations, without profit, in INS facilities. The rule authorizes district directors to provide space to sponsoring organizations to operate photographic services, fingerprinting services, or both.

The rule is consistent with the intent of section 332(g) of the I&N Act, 8 U.S.C. 1443(g) which allows the establishment of facilities by sponsoring organizations for the benefit of persons seeking to comply with immigration and naturalization laws. A review by the INS General Counsel of the legislative history of section 332(g) does not show any specific intent to limit the use of facilities to photographic studios.

Since the rule was last amended in 1982, delegating oversight responsibility to the INS regional commissioners and operational supervision to the district directors, photographic and fingerprinting studios have been set up in five district offices. Meanwhile, the INS Outreach Program has received inquiries from other INS district offices and voluntary agencies asking whether fingerprinting services are also covered by the former rule. The change, therefore, clarifies the intent of the rule and enhances the INS supervision of the delivery to services to the public. The change is administrative and relates to INS organization and management.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is not necessary because the rule involves INS organization and has no adverse impact on the public.

In accordance with 5 U.S.C. 605(b) the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant impact on a substantial number of small entities since it is limited to the INS organization.

The rule is exempt from the requirements of E.O. 12291 as provided by section 1(a)(3) of the Executive Order because it relates solely to INS organization and management.

List of Subjects in 8 CFR Part 332c

Citizenship and naturalization.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 332c—PHOTOGRAPHIC STUDIOS

1. The authority citation for Part 332c continues to read as follows:

Authority: Secs. 103 and 332(g), Immigration and Nationality Act, as amended; 8 U.S.C. 1103 and 1443(g).

2. Section 332c.1 is revised to read as follows:

§ 332c.1 Establishment of photographic and fingerprinting studios.

District directors shall after investigation recommend to the appropriate regional commissioner the establishment and operation of studios providing photographic services, fingerprinting services or both. The studios shall be operated by sponsoring organizations on a nonprofit basis solely for the benefit of persons seeking to comply with the requirements of the immigration and naturalization laws. Such studios must be in a building occupied by the INS and be conducted under the supervision of the district director. Each sponsoring organization shall submit an annual accounting of the conduct of each studio to the regional commissioner through the district director.

Dated: October 1, 1986.

H.F. Sylvester,

Associate Commissioner, Management, Immigration and Naturalization Service.

[FR Doc. 86-22719 Filed 10-6-86; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Parts 341 and 343a

Certificates of Citizenship; Naturalization and Citizenship Papers Lost, Mutilated, or Destroyed; New Certificates in Changed Name; Certified Copy of Repatriation Proceedings

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule allows readily approvable applications for certificates of citizenship and for replacement of naturalization and citizenship papers to be processed without an interview. It permits the Service to process these cases at sites other than district offices and concentrate district resources on cases which are identified as requiring an intensive examination. In addition it allows for the delivery of new or returned certificates to applicants by certified or registered mail in those cases where the statute does not require a personal appearance for the purpose of taking the oath of allegiance. The changes benefit both the Service and the public by reducing Service backlogs and letting the field offices provide better service to the public.

EFFECTIVE DATE: November 6, 1986.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3048

For Specific Information: Raymond R. Jaroneski, Jr., Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-5014.

SUPPLEMENTARY INFORMATION: The change in 8 CFR Part 341 allows the Service to process without interview, at remote sites, applications for certificates of citizenship where the applicant lives in the United States and the application is accompanied by either Department of State Form FS 240 (Report of Birth Abroad of a Citizen of the United States); an unexpired United States passport issued initially for a full/ten-year period to the applicant as a United States citizen; or the applicant's parent(s)' naturalization certificate(s).

The change in 8 CFR Part 343a will allow readily approvable cases to be sent to a remote site for processing without an interview.

Notices of proposed rulemaking were published as two separate proposed rules in the **Federal Register** of July 15, 1985 at 50 FR 28586 and 28587, with a 60-day comment period ending September 13, 1985. The Service received eight comments, seven on proposed 8 CFR 341.2(a) and one on proposed 8 CFR 343a.1(c). All expressed support for the proposed rule changes. The two proposed rules have been combined and are being published as one final rule, with minor nonsubstantive language changes for clarity.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have significant economic impact on a substantial number of small entities.

This rule is not a major rule within the definition of section 1(b) of E.O. 12291.

Lists of Subjects

8 CFR Part 341

Administrative practice and procedure, Citizenship and naturalization.

8 CFR Part 343a

Citizenship and naturalization.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 341—CERTIFICATES OF CITIZENSHIP

1. The authority citation of Part 341 continues to read as follows:

Authority: Secs. 103, 309(c), 332, 333, 337, 341, 344, 66 Stat. 173, 238, 252, 254, 258, 263, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455.

2. Section 341.2 is amended by revising paragraph (a) to read as follows:

§ 341.2 Examination upon application.

(a) *Personal appearance of applicant and parent or guardian—(1) When testimony may be omitted.* An application received at a Service office having jurisdiction over the applicant's residence may be processed without interview if accompanied by one of the following:

(i) A Department of State Form FS-240 (Report of Birth Abroad of a Citizen of the United States);

(ii) An unexpired United States passport issued initially for a full five/ten-year period to the applicant as a citizen of the United States, or

(iii) The applicant's parent(s)' naturalization certificate(s).

(2) *Testimony required.* Each applicant, when notified to do so, shall appear in person before an officer for examination under oath or affirmation upon the application. A person under 18 years of age must have a parent or guardian apply, appear, and testify for the applicant, unless one is unavailable and the district director is satisfied that the applicant is old enough to provide reliable testimony. The same rule will apply for incompetent applicants. At the examination the applicant and the acting parent or guardian, if necessary, shall present testimony and evidence pertinent to the claim to citizenship and shall have the right to review and rebut any adverse evidence on file, and to cross-examine witnesses called by the Government.

* * * * *

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MULTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

1. The authority for 8 CFR Part 343a continues to read as follows:

Authority: Secs. 103, 324, 332, 343, 344, 405, 66 Stat. 173, 246, 247, 252, 263, 264, 265, 280; 8 U.S.C. 1101 note, 1103, 1435, 1443, 1454, 1455.

2. Section 343a.1 is amended by revising the heading and paragraph (c) to read as follows:

§ 343a.1 Application for replacement of or new papers relating to naturalization, citizenship, or repatriation.

* * * * *

(c) *Disposition.* The applicant shall only be required to appear in person before an officer for interview under oath or affirmation in specific cases. Those cases which necessitate an interview enabling an officer to properly adjudicate the application at the office having jurisdiction will be determined by a supervising officer. If an application for a new certificate of naturalization, citizenship, or repatriation or a new declaration of intention is approved, the new certificate or declaration shall be issued and delivered by personal service in accordance with § 103.5a(a)(2) of this chapter. If an application for a new certified copy of the proceedings under the Act of June 25, 1936, as amended, or under section 317(b) of the Nationality Act of 1940, or under section 324(c) of the Immigration and Nationality Act, or under the provisions of any private law is approved, a certified positive photocopy of the record of the proceedings filed with the Service shall be issued. If, subsequent to naturalization or repatriation, the applicant's name was changed by marriage, the certification of the positive photocopy shall show both the name in which the proceedings were conducted and the changed name. The new certified copy shall be personally delivered to the applicant upon his or her signed receipt therefor. If the application is denied, the applicant shall be notified of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

3. Section 343a.2 is revised to read as follows:

§ 343a.2 Return or replacement of surrendered certificate of naturalization or citizenship.

A certificate of naturalization or citizenship which is contained in a Service file, and which was surrendered on a finding that loss of nationality occurred directly or through a parent as a result of the application of any of the following sections of law may, upon request, be returned to the person to whom it was originally issued, notwithstanding the fact that he or she has since been naturalized or repatriated in the United States or abroad:

(a) Section 404 (b) or (c) of the Nationality Act of 1940;

(b) Section 352 of the Immigration and Nationality Act, which was invalidated by *Schneider* v. *Rusk*, 377 U.S. 163;

(c) Section 401(e) of the Nationality Act of 1940;

(d) Section 349(a)(5) of the Immigration and Nationality Act, which was invalidated by *Afroyim* v. *Rusk*, 387 U.S. 253;

(e) Section 301(b) of the Immigration and Nationality Act

(f) Section 301(c) of the Immigration and Nationality Act relative to persons born after May 24, 1934, which was invalidated by amendment to section 301(b) on October 27, 1972, Pub. L. 92-584.

If, after having been surrendered to the Department of State or to the Service, the certificate was lost, mutilated, or destroyed as a result of action by the Service or that Department, a replacement certificate may be issued in the name shown in the surrendered certificate without fee and without requiring the submission of Form N-565. A surrendered certificate shall not be regarded as mutilated and a replacement shall not be issued solely because of holes made in it to

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accommodate a fastener, unless the citizen declines to accept the return of the surrendered certificate in that condition and insists upon issuance of a replacement. When it is desired that the replacement certificate be furnished in a name other than the one shown in the surrendered certificate, the regular application procedure with payment of fee must be followed.

Dated: September 24, 1986

Harriet B. Marple,

Acting Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 86-22559 Filed 10-6-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 85-033F]

Alpha-Tocopherol as an N-nitrosamine Inhibitor in Pump-Cured Bacon

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat inspection regulations to permit the surface application of d- and dl-alpha-tocopherol in pump-cured bacon. The Food and Drug Administration (FDA) has determined that alpha-tocopherols are generally recognized as safe (GRAS) for use in or on pump-cured bacon, at levels not to exceed good manufacturing practice, as inhibitors of nitrosamine formation. FDA has further acknowledged that spraying and dipping methods of applying tocopherols to pump-cured bacon are acceptable provided their level of use does not exceed 500 ppm. Consequently, FSIS is now amending the Federal meat inspection regulations to include the application of d- and dl-alpha-tocopherol to pump-cured bacon by injection or surface application.

DATES: November 6, 1986. Comments will be accepted until November 6, 1986.

ADDRESS: Post-promulgation written comments may be mailed to the U.S. Department of Agriculture, Food Safety and Inspection Service, Attn: Policy Office, Room 3168-S, Washington, DC 20250. See "Comments" for Agency rational in issuing this rule without proposal for public comment.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a "major rule" within the scope of E.O. 12291. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule provides for the surface application of d- and dl-alpha-tocopherol as nitrosamine inhibitors on pump-cured bacon. Current Federal meat inspection regulations provide only for the use of tocopherols as nitrosamine inhibitors in pump-cured bacon when applied through the injection process. Industry will benefit from this action through the ability to incorporate d- and dl-alpha-tocopherol by alternate means into pump-cured bacon. No mandatory uses of tocopherol are specified by this rulemaking; application of this substance is wholly discretionary.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant impact upon a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612). This rulemaking will impose no new requirement on industry; rather, it will permit the meat industry to adopt a new application method for using d- or dl-alpha-tocopherol in pump cured-bacon. Use of the surface application method will be entirely voluntary.

Comments

This is a final rule issued without prior proposal for public comment under authority of § 318.7 of the Federal meat inspection regulations (9 CFR 318.7). Under that provision the Administrator may approve new substances, new uses, or new levels of substances in meat or meat products provided that (1) the substance has been previously approved by the Food and Drug Administration for use in meat or meat food products as a food additive, color additive, or as a substance generally recognized as safe, and is listed in 21 CFR Parts 73, 74, 81, 172, 179, 182, or 184, and (2) that its intended use would be in compliance with applicable FDA requirements. If these criteria are met, the Administrator may issue a final rule without prior proposal for public comment upon further finding that (1) the use of the substance will not render the product in which it is used adulterated, misbranded, or otherwise not in compliance with the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), and (2) that the substance is functional and suitable for the product and is permitted for use at the lowest level necessary to accomplish that stated technical effect.

The Administrator finds that the above criteria have been met in this instance and is therefore issuing a final rule which amends the chart of substances acceptable for use in the preparation of products. Notwithstanding this finding for the issuance of a final rule, the Agency will accept and consider public comments relevant to this rulemaking. Written comments may be forwarded pursuant to the "ADDRESS" section shown above; they should arrive within the 30 day period between publication of this rule and its effective date.

Background

On July 5, 1985, the Food Safety and Inspection Service Published a final rule in the **Federal Register** which amended the Federal meat inspection regulations to permit the use of d- and dl-alpha-tocopherol in pump-cured bacon when applied through the injection process (50 FR 27573). The petitioner, Hoffman-LaRoche, Inc., has also requested application of these substances by spraying, dipping, or brushing. However, at that time the Administrator determined that additional information was needed to support the efficacy of surface application methods. The final rule stated that surface applications of tocopherol would be the subject of further rulemaking after receipt and evaluation of additional data. Since publication of the final rule the petitioner has supplied the Agency with additional information which supports the efficacy of d- and dl-alpha-tocopherol as nitrosamine inhibitors when applied to pump-cured bacon. Data are available from the Standards and Labeling Division at the address given under "For Further Information Contact."

Alpha-tocopherols have been affirmed as GRAS by the FDA and are listed in 21 CFR 184.1890 as nitrosamine inhibitors in pump-cured bacon at levels not to exceed good manufacturing practice. Alpha-tocopherols are also listed in the Federal meat inspection regulations in 9 CFR 318.7(c)(4) as nitrosamine inhibitors in pump-cured bacon at levels not to exceed 500 ppm in the product formulation. That authority does not, however, presently include the surface application of these substances.

FDA has advised FSIS that it considers d- and dl-alpha-tocopherol GRAS at a level not to exceed 500 ppm, is spraying or dipping applications to pump-cured bacon.

The Administrator finds that information provided by the petitioner and other data available to the Agency indicate that (1) the proposed use of these substances as described above will be in compliance with applicable FDA requirements, (2) their use will be at the lowest level necessary to accomplish the intended technical effect, and (4) the application of these substances will not render the products in which they are used adulterated, misbranded, or otherwise not in accordance with the Federal Meat Inspection Act.

Therefore, the Department is now amending the table of approved substances in the Federal meat inspection regulations (9 CFR 318.7) to include the surface application d- and dl-alpha-tocopherol in pump-cured bacon as nitrosamine inhibitors at a level not to exceed 500 ppm.

List of Subjects in 9 CFR Part 318

Food Additives, Meat inspection.

For reasons explained in the preamble, Part 318, Subchapter A, Chapter III of Title 9, Code of Federal Regulations, is amended as set forth below.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

2. Section 318.7(c)(4) is amended by adding the following entry to the chart of substances:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Miscellaneous	d- and dl-alpha-tocopherol	To inhibit nitrosamine formation.	Pump-cured bacon.	500 ppm; by injection or surface application.

Dated: October 2, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-22658 Filed 10-6-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-14-AD; Amdt. 39-5435]

Airworthiness Directives; Piper Model PA-42-1000 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain serial numbered Piper Model PA-42-1000 airplanes which requires use of continuous ignition during landing. The FAA has received reports of engine flameouts when the power levers are retarded to ground idle during landing. These flameouts are believed to be caused by ice ingestion. The actions specified are necessary to preclude possible power interruptions due to flameouts by providing a source of ignition to quickly reestablish combustion.

EFFECTIVE DATE: November 13, 1986.

COMPLIANCE: Required within the next 10 hours time in service

ADDRESSES: Piper Service Bulletin No. 816A, dated January 24, 1986, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (305) 567-4361. A copy of the service bulletin is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Gil Carter, FAA, Atlanta Aircraft Certification Office, ACE-140A, 1075 Inner Loop Road, College Park, GA 30337; Telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring use of continuous ignition during landing on certain serial numbered Piper Model PA-42-1000 airplanes was published in the **Federal Register** on June 23, 1986 (51 FR 22824). The proposal resulted from reports of engine flameouts which occurred in the landing phases of flight during or after an icing encounter when the power levers were retarded to ground idle. If a flame-out occurs on landing rollout, reverse thrust operation could result in an asymmetric condition and loss of control. Although no accidents or incidents have resulted from these flameouts, AD action is considered necessary to preclude routinely subjecting pilots to emergency procedures (engine failure) on landing rollout, a critical phase of flight when conditions exist such as short runways, crosswinds, or contaminated runways with poor braking action.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. However, following publication of the proposal, the FAA determined that the actions required throughout paragraph (a) of the proposed AD could be accomplished by a pilot who owns or operates the airplane. This provision has been added to the AD. Accordingly, the proposal is adopted with the change noted above.

The FAA has determined that this regulation only involves approximately 28 airplanes at an approximate one time cost of $20 for each aircraft or a total one-time fleet cost of $560.

The cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

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Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Piper Aircraft Corporation

Applies to Model PA-42-1000 (S/N's 42-5527001 through 42-5527033) airplanes certificated in any category.

Compliance: Required within 10 hours time-in-service after the effective date of this AD, unless already accomplished.

To preclude engine flameout during landing, accomplish the following:

(a) Insert copies of this AD in the Pilots Operating Handbook and FAA approved Aircraft Flight Manual (POH/AFM) and operate as described herein:

(1) Insert the following in the Operating Limitations Section on pages 2-8: "USE OF CONTINUOUS IGNITION"—"Ignition must be turned ON prior to landing and remain ON until the landing is completed or until climb has been established following a balked landing."

(2) Insert the following in the Normal Procedures Section, pages 4-14, in the BEFORE LANDING CHECKLIST: "Ignition Switches . . . ON."

(3) Insert the following in the Normal Procedures Section, pages 4-15 in the BALKED LANDING checklist and pages 4-16 in the AFTER LANDING Checklist: "Ignition Switches . . . NORMAL."

Note.—Piper Service Bulletin 816A, dated January 24, 1986, applies to the subject of this AD.

(b) The requirements of paragraph (a) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by him. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 43.9 and FAR 91.173.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7628.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Piper Aircraft Corporation, Vero Beach, Florida, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 13, 1986.

Issued in Kansas City, Missouri, on September 29, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-22625 Filed 10-6-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Sterile Prednisolone Acetate Aqueous Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the regulation that reflected approval of a new animal drug application (NADA) sponsored by Schering Corp. providing for use of Meticortelone® Aqueous Suspension (sterile prednisolone acetate) as an anti-inflammatory agent in dogs, cats, and horses. In a notice published elsewhere in this issue of the **Federal Register**, the agency is withdrawing approval of the subject NADA at the request of the sponsor.

EFFECTIVE DATE: October 17, 1986.

FOR FURTHER INFORMATION CONTACT: John K. Augsburg, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, the agency is withdrawing approval of Schering Corp.'s NADA 10-312 which covers use of Meticortelone® Aqueous Suspension (sterile prednisolone acetate). This document removes the regulation that reflected approval of the NADA.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.1881 [Removed]

2. Section 522.1881 *Sterile prednisolone acetate aqueous suspension* is removed.

Dated: September 30, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-22637 Filed 10-6-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Approval of Permanent Program Amendments for the State of Iowa Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of an amendment to the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Iowa submitted the amendment to change its regulatory authority as a result of a statewide governmental reorganization.

EFFECTIVE DATE: October 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981. The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 **Federal Register** [46 FR 5885]. Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 915.11 and 915.15.

II. Discussion of Amendments

The amendment submitted by letter dated June 16, 1986, consists of proposed changes that reorganize Iowa's State government. The amendment would transfer all of the Department of Soil Conservation's functions, including surface coal mining regulation and abandoned mine lands, to the newly created Division of Soil Conservation in the Iowa Department of Agriculture and Land Stewardship.

On August 11, 1986, OSMRE published an announcement of the receipt of the amendment and invited public comment on the adequacy of the proposed amendment (51 FR 28729). The notice stated that a public hearing would be held only if requested. Since there were no requests for a hearing, a hearing was not held. The comment period closed on September 10, 1986. No comments were received.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Iowa on June 16, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII. Accordingly, the Director is approving this program amendment. The Federal rules at 30 CFR Part 915 which codify decisions on the Ohio program are being amended to implement this decision.

The final rule is being made effective upon publication to expedite the State program amendment process and to encourage the State to bring its program into conformity with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Iowa Code

The Act, Senate File 2175, which was signed by the Governor on May 1, 1986, reorganizes and restructures the Iowa State government. The Act transfers the statutory authority, Iowa Code Chapter 83, for the Iowa surface coal mining program to the newly created Division of Soil Conservation in the Iowa Department of Agriculture and Land Stewardship.

The authority for the administration and enforcement of the Iowa program remains the same even though the regulatory authority's title has changed. The State has assured OSMRE that the Division of Soil Conservation's budget and staffing level will be at least equal to those approved by the Secretary. Iowa submitted this amendment to OSMRE as required by 30 CFR 732.17.

The Director finds that the amendment to redesignate the Iowa regulatory authority is no less effective than the Federal provisions.

IV. Public Comments

No public comments were received.

V. Director's Decision

The Director, based on the above findings, is approving the amendments submitted to OSMRE on June 16, 1986. The Director is amending Part 915 of 30 CFR Chapter VII to reflect this decision.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 30, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 915—IOWA

30 CFR Part 915 is amended as follows:

1. The authority citation for Part 915 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et al.).

2. § 915.10 is amended by revising paragraphs (a) and (b) to read as follows:

§ 915.10 State regulatory program approval.

* * * * *

(a) Iowa Division of Soil Conservation, Wallace State Office Building, Des Moines, Iowa 50319.

(b) Office of Surface Mining Reclamation and Enforcement, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106.

3. § 915.15(e) is amended by revising paragraph (e) to read as follows:

§ 915.15 Approval of regulatory program amendments.

* * * * *

(e) The following amendment submitted to OSMRE on June 16, 1986, is approved effective October 7, 1986: Iowa Senate File 2175: State Government Reorganization Bill.

4. § 915.20 is revised to read as follows:

§ 915.20 Approval of Iowa abandoned mine plan.

The Iowa Abandoned Mine Plan, as submitted and revised, is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106.

Iowa Division of Soil Conservation, Wallace State Office Building, Des Moines, Iowa 50319.

[FR Doc. 86-22645 Filed 10-6-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment; USS LOUISVILLE

AGENCY: Department of the Navy DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at

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Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS LOUISVILLE (SSN 724) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 22, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS LOUISVILLE (SSN 724) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the locations of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified the above mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS LOUISVILLE (SSN 724) is a member of the SSN 688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS LOUISVILLE (SSN 724).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height, Section 2(a)(i), Annex I
USS LOUISVILLE	SSN 724	3.5

2. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights arc of visibility; Rule 21(a)	Side lights arc of visibility; Rule 21(b)	Stern lights, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; Section 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; Section 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters Section 2(k), Annex I
USS LOUISVILLE	SSN 724		112.5°	259°	4.2	6.1	3.5	1.7 below.

Dated: September 22, 1986.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 86-22622 Filed 10-6-86; 8:45 am]
BILLING CODE 3810-AE-M

Defense Logistics Agency

32 CFR Part 1285

[DLAR 5400.14]

Freedom of Information Act Program

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises the Defense Logistics Agency Freedom of Information Program which implements the Freedom of Information Act of 1974, as amended (5 U.S.C. 552) within the Agency. This revision supersedes a final rule (46 FR 20541) published on April 6, 1981, 32 CFR Part 1285—"Availability to the Public of Official Information."

EFFECTIVE DATE: October 7, 1986.

ADDRESS: Headquarters, Defense Logistics Agency, ATTN: DLA-XAM, Cameron Station, Alexandria, Virginia 22304-6130.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, (202) 274-6234.

SUPPLEMENTARY INFORMATION: This rule implements the provisions of DoD Directive 5400.7 DoD Freedom of Information Act Program as published (45 FR 80502) on December 5, 1980, 32 CFR Part 286—DoD Freedom of Information Act Program.

List of Subjects in 32 CFR Part 1285

Freedom of information.

Accordingly Title 32 is amended by revising Part 1285 to read as follows:

PART 1285—DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Sec.
1285.1 References.
1285.2 Purpose and scope.
1285.3 Policy.
1285.4 Definitions.
1285.5 Background.
1285.6 Significant changes.
1285.7 Responsibilities.
1285.8 Procedures.
1285.9 Forms and reports.

Appendix A—Fee Schedule
Appendix B—For Official Use Only (FOUO)
Appendix C—Judicial Actions
Appendix D—FOI Annual Report—CY

Authority: 5 U.S.C. 552, as amended by Pub. L. 93-502.

§ 1285.1 References.

(a) Title 5, U.S.C. 552, as amended by Pub. L. 93-502.
(b) Title 18, U.S.C. 798, Communication Intelligence.
(c) Title 18, U.S.C. 1905, Disclosure of Confidential Information Generally.
(d) Title 18, U.S.C. 3500, The Jencks Act.

(e) Title 35, U.S.C. 181-188, Secrecy of Certain Inventions and Filing Applications in Foreign Countries.
(f) Title 42, U.S.C. 2162, Classification and Declassification of Restricted Data Periodic Determinations.
(g) Title 44, U.S.C. 33, Disposal of Records.
(h) Pub. L. 86-36, National Security Information Exemption.
(i) Pub. L. 90-620, 44 U.S.C. 3301, Definition of Records.
(j) DoD Directive 5200.1-R, Information Security Program Regulation.
(k) DoD Directive 5200.20, Distribution Statements on Technical Documents.
(l) DoD Directive 5400.4, Provision of Information to Congress.
(m) DoD Directive 5400.7 DoD Freedom of Information Act Program.
(n) DoD Directive 5400.11, Personal Privacy and Rights of Individuals Regarding Their Personal Records.
(o) DoD Directive 7650.1, General Accounting Office Comprehensive Audits.

§ 1285.2 Purpose and scope.

To establish/provide policy, procedures, and uniformity within DLA for implementation of the DoD Freedom of Information Act (FOIA) Program, pursuant to the provisions of Title 5, U.S.C. 552, as amended by Pub. L. 93-502, and DoD Directive 5400.7. This Part 1285 is applicable to HQ DLA and all DLA field activities.

§ 1285.3 Policy.

(a) *General.* (1) It is the policy of DLA of promote public trust by making the maximum amount of information available to the public on the operation and activities of DLA. Records that are exempt from release to the public, and meet the exemption criteria spelled out in paragraph (g) of this section need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

(2) Information exempt from public disclosure, under provisions of paragraph (g) of this section, will be made available to the public when its disclosure is not inconsistent with statutory requirements or with DLA Supplement 1 to DoD 5200.1-R, Information Security Program Regulation,[1] and when officials determine that no governmental interest will be jeopardized by the release of the information. The determination of whether the governmental interest will be jeopardized by releasing the information is within the sole discretion of the DLA official authorized by this part to deny release.

(3) Records and other documents or related material may be withheld from the public only as authorized by this part.

(b) *Availability of records.* (1) DLA will conduct activities in an open manner, consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the FOIA shall, upon request, be made readily accessible to the public whether or not the FOIA is invoked.

(2) DLA will ensure that procedural matters do not unnecessarily impede a requester from obtaining records promptly. Assistance will be provided to requesters to help them understand and comply with procedures established by this part.

(3) When a member of the public complies with the procedures for obtaining DLA records, the request will receive prompt attention. A reply will be dispatched within 10 working days unless an extension is authorized. Requests by individuals for access to records about themselves will be processed under the Privacy Act procedures. Pursuant to DLAR 5400.12, Administration of Congressional Matters,[2] a request by a Member of Congress on behalf of a constituent should be considered as if the constituent had written directly to DLA.

(4) Records that may be withheld under the exemptions outlined in paragraph (g) of this regulation will be made available to the public when it is determined that no governmental interest will be jeopardized by the release of the record. Determination of jeopardy of Government interest is within the sole discretion of DLA, consistent with statutory requirements, security classification requirements, or other requirements of law.

(5) Nonexempt records released under the authority of this regulation are considered to be in the public domain. However, exempt records released pursuant to or other statutory or regulatory authority, may be considered to be in the public domain only when their release constitutes a waiver of FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(6) A record must exist and be in the possession and control of DLA at the time of the request to be considered subject to this regulation. Mere possession of a record does not presume control and such records, or identified portions thereof, should be referred to the originating agency for direct response to the requester. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. A new record may be compiled or created when so doing would result in a more useful response to the requester, or be less burdensome than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is less than the fee which would be charged for providing the existing record. Fee assessment for direct search and duplication associated with the request will be in accordance with the fees set forth in Appendix A.

(7) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record to enable location of the record with a reasonable amount of effort. When a request does not "reasonably describe" the record, the requester will be so advised.

(i) Generally, a record is not reasonably described unless the description contains sufficient information to permit the conduct of an organized, nonrandom search based on the DLA filing arrangements and existing retrieval systems, or unless the record contains sufficient information to permit inference of the elements needed to conduct such a search. Descriptive information about a record is divided into the following two categories:

(A) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(B) Category II is event-related and includes the circumstances that resulted in the record being created, or the date and circumstances surrounding the event the record covers.

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[1] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XP, Cameron Station, Alexandria, VA 22304-6130.

[2] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XP, Cameron Station, Alexandria, VA 22304-6130.

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(ii) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers only are provided in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(8) The above guidelines notwithstanding, the decision of DLA concerning reasonableness of description must be based on knowledge of the files. If the description enables DLA personnel to locate the record with reasonable effort, the description is adequate.

(9) A request received by a DLA activity having no records responsive to a request shall be referred routinely to another Department of Defense (DoD) Component, if the other Component confirms that it has the request record, and this belief can be confirmed by the other DoD Component. If the DoD Component that is consulted determines that the existence or nonexistence of any record of the DoD Component responsive to the request is in itself classified, the requester will be so notified. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DLA activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(10) Whenever a record or a portion of a record is referred to another DoD Component or to a Government agency outside DoD for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(11) A DLA activity will refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency, or if the classification is derivative. Telephonic coordination with the DoD Component or outside agency will be made prior to the referral.

(12) A DLA activity may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or Agency for which the record was created may have an equally valid interest in withholding the record as the DLA activity that created the record. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request will be referred to the appropriate contracting officer and the requester will be notified of the referral.

(13) Within DoD, a DLA activity will ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and concurrence from the Component. The requester should then be notified of such referral. DLA activities will not, in any case, release or deny such records without prior consultation with the other DoD Component.

(14) DLA activities that receive referred requests will answer them in accordance with the time limits established by the FOIA and this part. Those time limits will begin to run upon receipt of the referral by the official designated to respond.

(15) Referring requests to non-DoD agencies subject to FOIA:

(i) DLA may refer an FOIA request for any record that originated in an agency outside DoD, or that is based on information obtained from an outside agency, to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise DLA must respond to the request.

(ii) DLA will not honor any FOIA request for investigative, intelligence, or any other type of records that are on loan to DoD for a specific purpose, if the records are restricted from further release and so marked. Such requests will be referred to the agency that provided the record.

(iii) Notwithstanding anything to the contrary in paragraphs (b) (9) through (15) of this section, DLA shall forward a request for National Security Council (NSC) documents or White House files to the NSC for a direct response to the requester. DoD documents in which the NSC has a concurrent reviewing interest shall be forwarded to Director, Freedom of Information and Security Review (DFOISR), OASD (Public Affairs) which shall effect this coordination with the NSC, and return the documents to the originating agency after the NSC review and determination.

(c) *Inspection and copying of opinions, orders, and manuals.* (1) Subject to the exemptions set forth in paragraph (g) of this section, DLA will make the following materials available for public inspection and copying in an appropriate facility or facilities in accordance with the procedures in section 1285.8 below, unless such materials are published and copies offered for sale:

(i) All final opinions (including concurring and dissenting opinions) and orders in adjudication, as defined in 5 U.S.C. 551 (section 2 of the Administrative Procedures Act) that may be cited, used, or relied upon as precedents in future adjudication.

(ii) Statements of policy and interpretations of less than general applicability affecting the public but not published in the **Federal Register.**

(iii) Administrative staff manuals and instructions, or portions of such, which establish DLA policy or interpretation of policy that is determinative of the rights of members of the public. This provision does not apply to instructions for employees on the tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of DLA. Examples of manuals and instructions not normally made available are:

(A) Those issued for audit and inspection purposes.

(B) Those which prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(C) Operations and maintenance manuals and technical information concerning munitions, equipment, and systems, and foreign intelligence operations.

(2) The cost to the DLA activity of copying any such opinion, order, or statement of policy or interpretation shall be imposed on the person requesting the copy in accordance with Appendix A.

(3) When feasible, all material published in the **Federal Register** will be made available for inspection and copying, along with any available index of that published material, in the same facility or facilities provided for inspection and copying of opinions, orders, and manuals.

(4) Identifying details, which if revealed would create a clearly unwarranted invasion of personal privacy, may be deleted from any final opinion, order, statement of policy, interpretation, staff manual, or instruction made available for inspection and copying. In every such case, the justification for the deletion must be fully explained in writing.

(5) No order, opinion, statement of policy, interpretation, staff manual, or instruction issued, promulgated, or adopted after 4 July 1967, which is not indexed and either made available or published, may be relied upon, used, or cited as a precedent against any member of the public unless that person has actual and timely notice of terms. If the order, opinion, statement of policy, interpretation, staff manual, or instruction was issued, promulgated, or adopted before 4 July 1967, it need not be indexed but must be made available in accordance with paragraph (c)(1) of this section. In determining whether an order, opinion, statement of policy, interpretation, staff manual, or instruction is likely to be used or relied upon as precedent, the primary test will be whether it is intended to provide binding guidance for decisions or evaluations by subordinates, or for future decisions by the same authority in adjudications of cases affecting the public, where similar facts of issues are presented.

(d) *Fee assessment.* (1) Fees may not be used to discourage requests, and to this end FOIA fees are limited to standard charges for direct document search and duplication. Documents may be furnished without charge or at a reduced charge when the releasing authority determines that waiver or reduction of the fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Based on this guidance, the DoD has established a liberal fee schedule, outlined in Appendix A of this part.

(2) In order to be as responsive as possible to FOIA requests, while minimizing unwarranted costs to the taxpayer, DLA activities will adhere to the following procedures:

(i) If the requester declares an unwillingness to pay fees and does not substantiate a request for waiver, and if it appears that the direct search and reproduction costs associated with the request will exceed the automatic waiver threshold, the request need not be processed and the requester will be so informed.

(ii) If the requester declares a willingness to pay fees up to a specified amount and does not substantiate a request for waiver, then the specified amount or the automatic waiver threshold, whichever is greater, will not be exceeded without the consent of the requester.

(iii) If the requester makes no declaration concerning fees and does not substantiate a request for waiver, and if it appears that the direct search and reproduction fees to be assessed will exceed the automatic waiver threshold, the request will not be processed until the requester is advised of anticipated charges and agrees to pay them.

(iv) Activities may require payment of all or a portion of estimated fees before processing a request.

(v) Subsequent requests from persons who fail to discharge fee obligations need not be processed until previous obligations have been discharged or waived.

(e) *Records management.* FOIA records will be maintained and disposed of in accordance with DLAM 5015.1, Files Maintenance and Disposition.[3]

(f) *Jeopardy of Government interest.* An exempted record, other than those being withheld pursuant to exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing authority, no Government interest will be jeopardized by release. It is appropriate to use discretionary authority on a case-by-case basis in the release of given records. If it is determined that a record requested under the FOIA meets the exemption 4 withholding criteria set forth in this regulation, discretionary power to release shall not ordinarily be exercised, absent circumstances in which a compelling public interest will be served by release of that record.

(g) *FOIA exemptions.* The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law:

(1) Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1-R[4] and DLA Supplement 1 to DoD 5200.1-R[5]

(2) Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of DLA, if their release to the public would substantially hinder the effective performance of a significant function of DoD and they do not impose requirements directly on the general public. Examples include:

(i) Those rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners, that must remain privileged in order for DLA to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(3) Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(i) National Security Agency Information Exemption, Pub. L. 86–36, section 6.

(ii) Patent Secrecy, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(iii) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(iv) Communication Intelligence, 18 U.S.C. 798.

(4) Those containing trade secrets or commercial or financial information that DLA receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information, impair the Government's ability to obtain necessary information in the future, or jeopardize some other Government interest. Examples include records that contain:

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(iii) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

[3] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

[4] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

[5] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

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(iv) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within DoD.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(5) Except as provided in paragraphs (g)(5) (ii) through (v) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) (reference (a)) or within or among DoD Components.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of DLA by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DLA personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions.

(E) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(F) Records which are exchanged among Agency personnel or within and among elements of DoD and Federal Agencies preparing for anticipated legal proceedings before any Federal, State, or military court or before any regulatory body as well as records that qualify for the attorney client privilege.

(G) Those portions of official reports of inspection, reports of the Inspectors General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of DLA, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(ii) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with DLA, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of DLA in maintaining its confidentiality, then the record or document need not be made available under this part.

(iii) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decisionmaking process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(6) Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(i) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(A) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(B) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(ii) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration will be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(iii) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11.[6]

(iv) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical, or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

(7) Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

(i) However, this exemption applies only to the extent that release of a record or portion of a record would:

(A) Interfere with enforcement proceedings.

(B) Deprive a person of the right to a fair trial or to an impartial adjudication.

(C) Constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(D) Disclose the identity of a confidential source.

(E) Disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(F) Disclose investigative techniques and procedures not already in the public domain and requiring protection against public disclosure to ensure their continued effectiveness.

(G) Endanger the life, physical safety, or well-being of law enforcement personnel or their families.

(ii) Examples include:

(A) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings.

(B) The identity of firms or individuals being investigated for alleged irregularities involving contracting with DoD when no indictment has been obtained nor any civil action filed against them by the United States.

(C) Information obtained in confidence, expressed or implied in the course of a criminal investigation by a criminal law enforcement agency or office within a DLA activity, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DLA activity. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(iii) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(iv) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11.[7]

(8) Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) Those containing geological and geophysical information and data (including maps) concerning wells.

[6] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304-6130.

[7] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304-6130.

§ 1285.4 Definitions.

(a) *Administrative appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of DLA to reserve an Initial Denial Authority (IDA) decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

(b) *Appellate authority.* The Director, DLA or his designee.

(c) *FOIA request.* A written request for DLA records made by a member of the public who either explicitly or implicitly invokes the FOIA (5 U.S.C. 552).

(d) *Initial denial authority (IDA).* An official who has been granted authority by the Director, DLA to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

(e) *Record.* (1) The products of data compilation, regardless of physical form or characteristics, made or received by DLA in connection with the transaction of public business and preserved by DLA primarily as evidence of the organization, policies, functions, decisions, or procedures of DLA.

(2) The following are not included within the definition of the word "record":

(i) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(ii) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(iii) Commercially exploitable resources, including but not limited to formulae, designs, drawings, maps and charts, map compilation manuscripts and map research materials, research data, computer programs, and technical data packages that were not created and are not utilized as primary sources of information about organizations, policies, functions, decisions, or procedures of DLA.

(iv) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(v) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(vi) Personal notes of an individual not made available to other persons in an agency and filed with agency records.

(vii) Information stored within a computer for which there is no existing computer program or printout.

§ 1285.5 Background.

The FOIA describes the kinds of official records and information that must be made available to the public and the kinds of information that need not be made available to the public, requires facilities be made available to the public for the examination and copying of records, and provides procedures for the review of denials to release records and information to the public. Requests from Members of Congress are governed by DLAR 5400.12, Administration of Congressional Matters.[8]

§ 1285.6 Significant changes.

This revision eliminates triannual cost reporting. Cost reporting will be included in the annual report. Additional changes update names, zip codes and title of this publication.

§ 1285.7 Responsibilities.

(a) *HQ DLA*—(1) *The Staff Director, Administration, DLA (DLA–X)* will:

(i) Serve as the point of contact for referring members of the public, except the news media, desiring to examine and copy records to the appropriate staff element within HQ DLA, or within the DLA Administrative Support Center having custody of the records.

(ii) Maintain a copy of the material and documents referred to in paragraph (b)(3) of this section for examination and copying by the public.

(iii) Process requests for records received under provisions of § 1285.8(a).

(iv) Review DLA publications to assure that those which meet the criteria for publication in the **Federal Register** are prepared in proper form and transmitted promptly for publication in the **Federal Register**, as required by DLAR 5025.19, Publication of Material in the **Federal Register**.[9]

(v) Maintain a file of copies of all responses provided by PSEs and denials provided by PLFAs.

(2) *The Assistant for Public Affairs, Office of Legislative and Public Affairs, DLA (DLA–BP)* will serve as the central point of contact for the release of information to the news media.

(3) *The General Counsel, DLA (DLA–G)* will:

(i) Provide advice and assistance in determining releasability of records.

(ii) Process appeals to the Director, DLA of denials to provide records.

(iii) Coordinate denials of releases with Office of the General Counsel, DoD, and the Department of Justice, as appropriate.

(4) *The heads of DLA principal staff elements (PSEs)* will:

(i) Review all instructions for which they are the proponent to ensure that such instructions are not inconsistent with the provisions of this DLAR.

(ii) Ensure that the provisions of this DLAR are followed in processing

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[9] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304-6130.

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requests for records from members of the public.

(iii) Forward to the Chief, Resources Management Division, Office of Administration (DLA–XA) any FOIA request received directly in order that the request may be properly controlled.

(iv) Coordinate requests from the public for information with other HQ DLA staff elements, to the extent considered necessary.

(v) Arrange for the collection of fees prescribed in enclosure 1 associated with locating and providing copies of documentary material requested.

(vi) Furnish DLA–XA a copy of all responses to provide a record made under the provisions of § 1285.8(b)(13). Copies will be identified using the control number furnished by DLA–XA. Furnish DLA–XA a completed DD Form 2086, Record of Freedom of Information (FOI) Processing Costs, for every FOIA request to which the PSE responds.

(vii) Make initial determination to deny release after coordination with DLA–G.

(b) *The heads of DLA primary level field activities (PLFAs)* will:

(1) Ensure that the provisions of this DLAR are followed in processing requests for records from members of the public.

(2) Provide convenient facilities where members of the public may examine and copy documents to which they are entitled.

(3) Maintain for examination and copying by the public a copy of the following:

(i) All publications listed in paragraph I.

(ii) DLAH 5805.1, DLA Organization Directory,[10] which reflects the mailing addresses of all activities of DLA.

(iii) DLAH 5025.1, PT 1, Defense Logistics Agency Index of Publications,[11] which contains a topical index of the publications issued by HQ DLA.

(iv) DLAM 5015.1, Files Maintenance and Disposition,[12] which contains a functional description of all records and files generated by DLA. This manual also contains a topical index.

(v) A copy of such local indexes of opinions, orders, statements of policy, and publications that may exist, or that may be prepared in the future.

[10] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

[11] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

[12] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

(4) For each FOIA request processed, prepare and retain for feeder input a DD Form 2086 to ensure that all costs related to the request are properly documented.

(5) Arrange for the collection of fees associated with locating and providing copies of documentary material requested. Appendix A.

(6) Furnish DLA–XA a copy of all denials to provide a record made under provisions of § 1285.8(b)(13) of this part. Copies will be identified using activity office symbol, calendar year, and FOIA, and serially numbered, e.g., DCSC–80–FOIA–1.

(7) Prepare and submit reports in accordance with § 1285.9(b) of this part.

(8) Refer cases of significance to DLA–G for review and evaluation when the issues raised are unusual, precedent setting, matters of disagreement among components, or otherwise requiring special attention or guidance.

(9) Establish safeguards to ensure that the official records of the activity are properly safeguarded during the time they are made available for examination by a member of the public.

(10) Establish controls to ensure that internal operating procedures provide for prompt response to all requests for records.

(11) Establish a training program for those personnel who may be involved in responding to requests from the public for records.

§ 1285.8 Procedures.

(a) *Requests for records or for permission to examine records.* (1) Members of the public may make requests in writing for copies of records or for permission to examine or copy records directly to the Head of the PLFA having custody of the records, if the location of the document is known. If the location is not known, and it is reasonably certain that the document is in the custody of DLA, or if the record is in the possession of a PSE, the requester should submit the request to HQ DLA, ATTN: DLA–XAM, c/o Freedom of Information Officer, Cameron Station, Alexandria, Virginia 22304–6130.

(2) Requests must identify each record with sufficient particularity to enable the custodian to locate the record with a reasonable amount of effort. Information as to where the record originated, its subject, date, number, or other identification that would enable the custodian to locate the document should be provided by the requester when possible.

(3) Because certain information and documents are exempt from the imposition of fees under provisions of Appendix A, the requester need not submit payment for services with the initial written request. When it is anticipated that the cost of the record search and reproduction of the documents may exceed $30, the requester will be so advised and requested to submit payment prior to furnishing the records. In other instances, the requester will be advised of the charges involved at the time the record is found and prior to its release.

(4) Refusal to make a record available may be made only by the Heads of DLA PLFAs or the Heads of HQ DLA PSEs or their Deputies. The refusal may be appealed to the Director, DLA.

(b) *Processing requests for records or for permission to examine records.* (1) Upon receipt of a request for records or for permission to examine records, the DLA activity having custody of the records will collect the documents, determine whether they are releasable under provisions of this part, determine the fees to be charged, if any, and advise the requester accordingly.

(2) If the request is for permission to examine releasable records, the requester will be advised as to where and when during normal working hours he may appear for this purpose. Every reasonable effort will be made to accommodate individuals granted permission to examine records; however, overtime is not authorized for this purpose.

(3) The DLA official having custody and control of any DLA record requested by a member of the public is authorized to make such record available unless the record falls within one of the exemptions listed in § 1285.3(g). In such case, the request will be referred promptly to the Head of the PLFA or the Head of a HQ DLA PSE, or the Deputy as appropriate. The marking or absence of the marking "FOR OFFICIAL USE ONLY" does not relieve the official, who is authorized to release the record, from the responsibility of reviewing the requested record for the purpose of determining whether an exemption under § 1285.3(g) is applicable.

(4) The official designated by DLA to make initial determinations, if not a public affairs officer, should consult with the appropriate public affairs officer to determine if the subject matter is considered to be newsworthy. The Public Affairs Officer will be advised of all requests from news media representatives. In addition, public affairs officers will be informed in advance whenever a record containing potentially newsworthy material is to be released or to be withheld when it is likely that the withholding action will be publicly challenged.

(5) Initial determinations will normally be made within 10 working days of the date a request is received by the official designated to respond for the type of record sought, providing the requester indicates a willingness to reimburse the DLA activity for any search and duplication costs incurred in providing the record. If the willingness of the requester to reimburse the DLA activity for any required search and duplication costs is not expressed in the request, this issue must be resolved before the time for responding begins to run. The requester will be contacted as expeditiously as possible for assurance of his intent to reimburse the Government for these costs.

(6) When the request is received by someone other than the records custodian, it will be forwarded promptly to the records custodian with the period for response commencing upon his receipt.

(7) When a request is received for records which were obtained by DLA from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, and because of the source and the nature of the records or information, there is reason to believe that the source of the information or records may object to release and may have an enforceable right to prevent release, prompt notification of intended release shall be given to the source (also known as "the submitter" for matters pertaining to proprietary data under FOIA exemption (b)(4)). This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). Release will normally be withheld until the source has a reasonable time to comment on the proposed release. Comments received will be considered in determining the releasability of the document. The final decision to disclose information claimed to be exempt under (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When the source advises that it is seeking a restraining order or other court action to prevent release, release will normally not be made pending the outcome of the court action.

(8) When a decision is made to release a record, it will be forwarded promptly to the requester, upon receipt of any required payment for search and duplication.

(9) In all cases where the time for response may become an issue, the official responsible for replying will acknowledge to the requester the date of the receipt of the request, for purposes of determining time limits.

(10) If additional time is needed in unusual circumstances to respond to requests for records, the DLA activity will acknowledge the request in writing within the 10-day period, briefly cite one of the unusual circumstances requiring delay, and indicate the anticipated date for substantive response which may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(i) The requested records are located in whole or part at places other than the office processing the request.

(ii) The request requires the collection and coordination of a substantial number of records.

(iii) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter of the requested records to determine whether the records requested in whole or part are exempt from disclosure, in accordance with § 1285.3(g)(1), or should be released as a matter of discretion.

(11) The extension of time for responding to an initial request must be approved on a case-by-case basis by the Office of Counsel, DLA–G.

(12) Requests for records will be denied only by the Head of a DLA PLFA or the Head of a HQ DLA PSE or the Deputy upon a determination after consultation with the appropriate Office of Counsel that:

(i) The record is subject to one or more of the exemptions set forth in paragraph IIIG of this part and some governmental interest will be jeopardized by its release.

(ii) The record cannot be found because it has not been described with sufficient particularity to enable the DLA activity to locate it with a reasonable amount of effort.

(13) When a request for a record or records is denied in whole or in part, the designated official who has made the determination will specifically inform the requester of the exemption(s) on which the denial is based, in writing (with at least one additional copy). This determination will also inform the requester of his appeal rights to the Director, DLA and that such appeal should contain the basis for disagreement with the denials. Such appeal shall be made within 45 calendar days of receipt of such a response.

(i) Inability to process any part of the request within the specified time will be explained to the requester, with notification that delay may be treated as an initial denial with a right to appeal, or that he may agree to await a substantive response by an anticipated date. It will be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made.

(ii) The explanation of the substantive basis for a denial will include specific citation of the exemption applied under the authority of § 1285.3(g). Reference to the marking "FOR OFFICIAL USE ONLY" on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(iii) The name and title or position of the official responsible for the denial will be included in the written response to the requester.

(iv) When the initial denial is based in whole or in part on a security classification pursuant to § 1285.3(g)(2)(i), the explanation will include a summary of the paragraph or paragraphs contained in DLA Supplement 1 to DoD 5200.1–R [13], which set forth the criteria or rationale for the current classification of the requested record. In addition, it will advise the requester of his optional right under DoD 5200.1–R [14] and DLA Supplement 1 to DoD 5200.1–R [15] to seek declassification review of a record more than 10 years old.

(v) Copies of all initial denials will be maintained by each DLA activity in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(vi) When there is good reason to believe that the requester will appeal the denial, the record, the letter of denial, and such other information as will assist the Director, DLA will be promptly forwarded to DLA–G in order to permit timely response of the anticipated appeal.

(14) Final determination on appeals will normally be made within 20 working days of the receipt of the appeal by DLA–G. Misdirected appeals will be forwarded promptly to DLA–G with the period for response commencing upon their receipt, which should be acknowledged. If additional time is needed to decide the appeal because of unusual circumstances, as described in subparagraph 10 above, the final determination may be delayed for

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[14] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

[15] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

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the number of working days, not to exceed 10, which were not utilized as additional time for responding to the initial request.

(15) A final denial to provide a requested record will be made in writing by the Director, DLA. Such a denial will be made in accordance with appeal procedures prescribed in this part and will include, as a minimum, the following elements.

(i) The basis for the denial will be explained to the requester, in writing, with regard to the applicable exemption(s) under § 1285.3(g), particularly:

(A) When the final denial is based in whole or part on a security classification, pursuant to § 1285.3(g)(2)(i) the explanation will include a statement that the record meets the cited criteria and rationale of DLA Supplement 1 to DoD 5200.1–R [16] and that this determination is based on a declassification review. A brief explanation of why that review confirmed the continuing validity of the security classification will also be included.

(B) The requestor will be advised of his optional right to seek declassification of the record by the appropriate component Classification Review Committee established pursuant to DoD 5200.1–R [17].

(C) Appeals from a denial by the appropriate component Classification Review Committee may be made to the Interdepartmental Classification Review Committee, established pursuant to Executive Order 11652, March 8, 1972 [18], in lieu of immediate judicial review.

(D) The written final denial will include the name and title or position of the official responsible for the denial and of the provision for judicial review of the denial set forth in Appendix C.

(ii) No final denial will be made without prior consultation with the DoD Office of the General Counsel when there is reason to believe that the requester will file a complaint in a U.S. District Court to force release of the denied record.

(iii) Copies of all final denial letters will be maintained by DLA–G in a central repository. Whenever a complaint is filed in a U.S. District Court to force release of the record, a copy of the final denial letter from DLA will be forwarded to the General Counsel of DoD. DLA–G will also furnish to the General Counsel a copy of the requester's complaint and the DLA litigation report.

(iv) When the denial to provide the record is based in whole or in part on a security classification, pursuant to § 1285.3(g)(1) and § 1285.3(g)(3)(i) the litigation report will include an affidavit from the Director, DLA for this purpose, explaining in as much detail as national security interest permit the basis under applicable statute, executive order, and regulations for the current security classification of the requested record.

(16) The costs of searching for and duplicating a requested record must be paid or waived in accordance with Appendix A. The time limits for responding to requests will be computed from the date of receipt from the requester of clear evidence of willingness to pay any anticipated search and duplication costs under the schedule of fees set forth in Appendix A for providing the requested record. The record need not be forwarded until actual receipt of payment.

(c) *Release and authentication of copies of offical records.* (1) Records available to a person requesting them under § 1285.3(d) will be authenticated with an appropriate seal whenever necessary to fulfill an official governmental or other legal function.

(2) Records exempt from release to a person requesting them may, nevertheless, be authenticated on request, and released in accordance with this part to local, state, or other Federal Governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To the courts whenever ordered, as appropriate to the proper administration of justice.

(ii) To the Congress, in accordance with DLAR 5400.12 [19]

(iii) To local and State legislative bodies, in accordance with the determination of the Director, DLA.

(iv) To other Federal agencies, both executive and administrative as determined by the Director, DLA consistent with efficient administration and in accordance with law, including Pub. L. 93–579, 5 U.S.C. 552a, The Privacy Act of 1974.

(v) To local and state executive and administrative agencies as determined by the Director, DLA.

(d) *Reasons for not releasing a record.* There are six reasons provided by the FOIA for not complying with a request for a record. They are:

(1) The information requested is not a record within the meaning of the FOIA and this regulation.

(2) A record has not been described with sufficient particularity to enable DLA to locate it by conducting a reasonable search.

(3) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this regulation.

(4) DLA determines through knowledges of its filed and reasonable search efforts that it neither controls nor otherwise possesses the requested record. (A "no record" determination is not considered a denial; therefore, an appeal is not appropriate.)

(5) DLA determines that the request should be handled under the provisions of the Privacy Act.

(6) The request is denied in accordance wth procedures set forth in the FOIA and this regulation.

(e) *Denial tests.* To deny a requested record that is in the possession and control of DLA, it must be determined that the denial meets the following tests:

(1) The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in this regulation.

(2) The use of discretionary authority to release records exempt from mandatory disclosure is deemed unwarranted.

(f) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not possible to reasonably segregate meaningful portions of the record for release.

§ 1285.9 Forms and reports.

(a) An annual report will be prepared by DLA–XA from statistics furnished by HQ DLA Principle Staff Elements (PSEs) and Primary Level Field Activities (PLFAs) for the preceding calendar year on those items prescribed by ASD(PA) on or before 1 February. The responsibility for submission of the data for each item will be as indicated following each item (see Appendix D). The feeder reports for the subject annual report will be prepared by the Heads of DLA PLFAs for submission *in duplicate to DLA–XA on or before 15 January each year.* Negative reports are required. RCS DD–PA(TRA–A)1365 is assigned to this report.

Appendix A—Fee Schedule

Application, Assessment, Computation, Collection, and Fee Rates

1. *Application.* The fee rates listed below reflect direct search and duplication costs, collection of which are permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees.

2. *Fee assessment.*

a. Minimum fees shall not be charged.

b. When direct search and duplication costs for a single FOIA request total less than $30, fees should be waived automatically. DLA activities, however, may set aside the automatic waiver provision when, on the basis of good evidence, the activity can demonstrate that waiver of fees is not in the public interest. Multiple requests from a single requester or from those acting in behalf of a single requester in an effort to take advantage of the waiver may create a situation in which waiver should be denied by the activity.

c. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. However, the following circumstances describe the most common circumstances in which waiver or reduction of fees are most likely to be warranted.

(1) No record is located or all records are denied. However, fee charges are appropriate if the requester insists upon a search and agrees to such fees after being informed that the search is likely to be nonproductive or that the records are all likely to be exempt from release.

(2) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records including additional information not requested.

(3) The records are to be made available in response to a news media requester whose requests under this regulation are reasonable in scope and frequency.

(4) The record is for a nonprofit public interest group and the subject of the requested record is known to be of wide public interest, and furnishing the information can be considered as primarily benefiting the general public.

(5) A previous denial is reversed in whole or in part and the search and reproduction costs involved are not substantial.

3. *Computation fees.* The fee schedule contained herein is used to compute the search and duplication costs associated with processing a given FOIA request. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

4. *Collection of fees.* Collection of charges and fees need not be made in advance of rendering the service unless the costs are expected to exceed the fee waiver threshold and the requester has not indicated a willingness in writing to pay. It frequently is more pratical to collect charges and fees at the time of providing the service or property to the recipient when the requester specifically states that the cost involved shall be acceptable or acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement only when the requester has not agreed in writing to pay the anticipated fee or has not honored previous commitments to pay fees.

5. *Fee rates.*

a. *Search fees.*

(1) Manual search.

Type	Grade	Hourly rate ($)
Clerical	E9/GS–8 and below	11
Professional	01–06/GS–9 to GS–15	16
Executive	07/GS–16/ES1 and above	28

(2) Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

(3) Actual cost of transporting records or personnel to the search site may be included.

b. *Duplication Fees.*

Type	Cost per page (¢)
Printed material	01
Office copy	10
Microfiche	25

c. *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

d. *Other records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

Appendix B—For Official Use Only (FOUO)

Identification, Marking, Release, Safeguarding, Termination, and Disposal of FOUO Information

1. *Identification.*

a. Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9, shall be considered as being for official use only. *No other material shall be considered or marked "For Official Use Only"* (FOUO), and FOUO is not authorized as a lower form of classification to protect national security interests.

b. The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption(s) applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

2. *Marking of records.*

a. *When to mark.* Marking records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

b. *Location of markings.*

(1) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) FOUO material transmitted outside DoD requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information
EXEMPT FROM MANDATORY
DISCLOSURE
under the FOIA. Exemptions . . . apply.

3. *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

a. FOUO information may be disseminated within DLA and between officials of DLA and DoD contractors, consultants, and grantees to conduct official business for DoD. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

b. DLA holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a Government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that

[16] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

[17] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

[18] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

[19] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA–XP, Cameron Station, Alexandria, VA 22304–6130.

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the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

c. Release of FOUO information to members of Congress is governed by DoD Directive 5400.4 [20]. Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1. [21] Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

d. Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that other-wise qualify under postal regulations may be sent by fourth-class mail.

e. Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in Allied Communications Procedures (ACP-121) (US Supp 1)[22] for FOUO information.

4. *Safeguarding FOUO information.*

a. During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-Governmental personnel. The use of DLA Label 22, FOUO Cover Sheet,[23] is optional.

b. At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or Government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Pub. L. 86-36, National Security Information Exemption, shall meet the safeguards outlined in any system notice for that group of records.

5. *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

6. *Disposal.*

a. Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experiences indicate that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

b. Record copies of FOUO documents shall be disposed of in accordance with the methods in DLAM 5015.1.[24]

Appendix C—Judicial Actions

1. *General.* A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the Director, DLA or an appellate designee, or when DLA has failed to respond within the time limits prescribed by the FOIA and set forth in this regulation.

2. *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

3. *Burden of proof.* The burden of proof is on DLA to justify its refusal to provide a record. The court will evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

4. *Actions by the court.*

a. When DLA has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow DLA additional time to complete its review of the records.

b. If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

c. When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding of the records raise questions whether DLA personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit Systems Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. DLA is obligated to take the action recommended by the special counsel.

d. The court may punish the responsible official for contempt when DLA fails to comply with the court order to produce records that it determines have been withheld improperly.

5. *Non-United States Government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a non-Government source or records based on information obtained from a non-Government source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

6. *Litigation status sheet.* Freedom of Information managers in DLA will be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by DLA personnel. The Litigation Status Sheet attached provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense.

Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint will foward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Director for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs). A revised Litigation Status Sheet will be provided at each stage of the litigation.

Litigation Status Sheet

1. Case Number*
2. Requester
3. Document Title or Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number*
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
   a. Court's Finding
   b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
   a. Date Complaint Filed
   b. Court
   c. Case File Number*
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

*Number used by DLA for reference purposes.

Appendix D—FOI Annual Report—CY

Reporting Activity _____
Date Completed _____

Item 1. Total number of initial determinations. (All PLFAs.)

a. Number of completed public requests _____

b. Number of completed reportable requests _____

c. Number of instances where at least one of the nine statutory exemptions was cited _____

d. Number of instances where other reasons were cited _____

Note.—A reportable request is that portion of an FOIA request resulting in a single record or group of records pertaining to one general subject area being acted upon by one IDA who concludes that a single type of determination applies. Example: A single public request that requires the action of three IDAs in determining if a record under their jurisdiction is to be released would be counted as three reportable requests, but one public request. Records released by two IDAs in response to one public request would be counted as two reportable requests.

Item 2. Provide statistics on the specific authorities—statutory exemptions, statutes, and categories of other reasons used in the totals above. (All PLFAs.)

a. Exemptions invoked on initial determination:

Exemptions (552(b)) and Number of Times Invoked

(1) _____
(2) _____
(3) _____
(4) _____
(5) _____
(6) _____
(7) _____
(8) _____
(9) _____

b. *Statute*	*Number of Times Invoked*
_____	_____
_____	_____

c. Other reasons cited on initial determination and number of times each:

(1) Transferred Request (Appeal) _____
(2) Lack of Records _____
(3) Failure of Requester to Reasonably Describe Record _____
(4) Other Failures by Requesters to Comply with Published Rules and/or Directives _____
(5) Request (Appeal) Withdrawn by Requester _____

Item 3. Provide the name and title of person(s) cited as IDA followed thereafter in two subcolumns by the number of times each person cited exemptions or other authority categories (the vertical column or totals must match item 1). (All PLFAs)

Participation _____
Name _____
Title _____
Exemption _____
Other Authority _____

Item 4. Provide the number of appeals that, upon review, were granted, granted in part, or denied, followed by a total of those three numbers. (DLA-G only)

a. Granted _____
b. Granted in part _____
c. Denied _____
Total _____

Item 5. Repeat the three statistical requirements of item 2 for the appeals that were granted in part or denied. (DLA-G only.)

Item 6. Repeat Item 3 for appellate authorities including both subcolumn statistics. (DLA-G only.)

Item 7. When a court determines that DLA records were improperly withheld and issues a finding raising questions on the actions of DLA personnel, provide a copy of each such court opinion or order; a copy of the Office of Personnel Management finding and recommendation on each such proceeding; and a report of any disciplinary action taken against the person who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken. (PLFAs and DLA-G.)

Item 8. List changes or revisions of DLA rules or regulations affecting the implementation of FOIA followed by the **Federal Register** reference (number, date, and page) that announced the change or revision to the public. Append a copy of each such change or revised rule or regulation. (DLA-XA only.)

Item 9. The amount of fees collected from the public will be reported triannually to OASD(PA); thus, duplicate annual reporting by DoD Components is not required. (DLA-XA only.)

Item 10. Number of times unusual circumstances required an extension of normal processing time limits. (DLA-G and PLFAs.)

Item 11. List FOI instructional seminars, schools or courses attended during the period of this report. (DLA-G, DLA-K and all PLFAs.)

Cost Report

I. Cost of routine requests processed:
   No. of reportable requests x (cost factor per request). $_____
II. Personnel cost (civilian and military):
   A. Direct costs of personnel assigned FOI duties based upon estimated payroll man-hours by grade:
      Total man-hours _____
      Cost $_____
   B. Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:
      (1) Search time costs $_____
      (2) Classification review and excising action costs. $_____
      (3) Coordination and approval/denial decision costs. $_____
      (4) Corres. and form prep. costs. $_____
      (5) Other activity costs $_____
      Total man-hour costs $_____
   C. Application of overhead:
      (Subtotal A) + (Subtotal B) x (overhead rate). $_____
      Total of direct personnel costs and overhead. $_____
III. Other case related costs:
   A. Computer $_____
   B. Office copy reproduction $_____
   C. Microfiche reproduction $_____
   D. Cost of printed records $_____
      Total of other costs $_____
IV. Other operating costs:
   A. Reporting costs* $_____
      (1) Operational $_____
      (2) User $_____
      (3) Overhead (25 percent of (1) and (2)). $_____
      Total reporting costs $_____
   B. Other costs as directed or as can be reasonably ascertained. Itemize each expense category and cost $_____
      Total other operating costs $_____

*In the report for the last 4-month period (Sep–Dec) of each year include the costs attributable to the annual report. See DLAR 5000.12, Management and Control of DLA Information Requirement,[25] enclosure 5, for computing this cost.

V. Summary:
   A. Total costs of section I through IV above. $_____
   B. Amount collected from requesters this reporting period:
      Search $_____
      Copy $_____
      Total $_____
   C. No. of requests processed and completed during this calendar year:
      Reportable Requests $_____
      Appeals $_____
      Total $_____

[25] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XP, Cameron Station, Alexandria, VA 22304-6130.

For the Director.

Preston B. Speed,

Chief, Administrative Management Branch.

[FR Doc. 86-22577 Filed 10-6-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 30

Federal Claims Debt Collection

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education (Secretary) establishes final regulations governing the use of administrative offset to collect debts owed under a program or activity administered by the Secretary. The final regulations also establish procedures for requesting other Federal agencies to collect by offset debts owed under a program or activity administered by the Secretary and for the processing of requests for offset by the Secretary on behalf of other Federal agencies. Finally, the regulations establish procedures for referring debts to consumer reporting agencies.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register**, or later, if Congress

[20] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XP, Cameron Station, Alexandria, VA 22304-6130.

[21] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XP, Cameron Station, Alexandria, VA 22304-6130.

[22] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XP, Cameron Station, Alexandria, VA 22304-6130.

[23] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XP, Cameron Station, Alexandria, VA 22304-6130.

[24] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XP, Cameron Station, Alexandria, VA 22304-6130.

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takes certain adjournments. If you want to know the effective date of these regulations, call or write the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Frank Stidman, U.S. Department of Education, Financial Management Service, Room 3109, FOB #6, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 245–2964.

SUPPLEMENTARY INFORMATION: The Secretary amends Part 30 of Title 34 of the Code of Federal Regulations to establish rules governing the procedures used to collect debts by administrative offset. A notice of proposed rulemaking (NPRM) that proposed these general offset regulations was published in the Federal Register on July 1, 1986, at 51 FR 24092. In a companion document published on that same day at 51 FR 24095, the Secretary published a final regulation regarding IRS tax-refund offsets. The final regulations contained an invitation to comment. At that time, the Secretary indicated an intention to publish responses to the comments on both the NPRM and the final regulations in a single document. The Secretary received no comments in response to the NPRM during the established comment period but has received several comments in response to the final regulations. As a result, the Secretary sees no reason to delay publication of the final general offset regulations at this time while he reviews the comments received on the IRS tax-refund offset procedures. This review should be completed shortly, at which time the Secretary will publish the responses to the IRS tax-refund offset comments, together with any changes to those procedures adopted in light of the comments.

A change has been made to § 30.20 of the proposed general offset regulations. This section had indicated that offset might be taken under separate regulations only if the separate regulations were authorized under a statute other than 31 U.S.C. 3716. However, the Secretary has proposed separate regulations implementing salary offset authority in part under 31 U.S.C. 3716 to collect by salary offset overpayments of Federal pay and allowances (49 FR 35858, September 11, 1984). When these regulations are published in final form, they will be codified at 34 CFR Part 32. Also, the Secretary currently has regulations at 34 CFR Parts 218 and 222 that implement offset authority under the Impact Aid program (Title I—except Section 7—and Title IV of Pub. L. 81-874). Thus, § 30.20(b)(2) has been revised to clarify that the offset procedures in Part 30 do not apply in any case where separate regulations exist under the authority of 31 U.S.C. 3716, another statute authorizing offset, or the common law.

The Secretary has also made a series of changes to §§ 30.23, 30.24, and 30.27 of the proposed regulations to make the general offset regulations more consistent with the IRS tax-refund offset regulations and the guidance contained in the Federal Claims Collection Standards (4 CFR Parts 101 through 105). Under the revised regulations, the Secretary will determine the time by which a debtor must respond to a notice based on the date of the notice, rather than the date the debtor receives the notice. This will reduce the costs to the Department of collecting debts. In order to compensate for the time required to deliver the notice, the Secretary has also decided to extend by five days the time during which a debtor has to respond to a notice of offset—either by requesting an opportunity to inspect and copy records, to obtain a review of the debt, or to enter into a repayment agreement. The Secretary believes that this extra time more than compensates for the time for the notice to be delivered to the debtor after the date the notice is mailed.

Finally, three of the sections in the proposed regulations contained proposed information collection requirements. These requirements have been submitted to, and approved by the Office of Management and Budget as required by section 3504(h) of the Paperwork Reduction Act of 1980. The regulations are amended by this document to add the Paperwork Reduction Act clearance number for the three sections.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major regulations because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the notice or proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 30

Claims, Debt collection.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number: Not Applicable)

Dated: October 2, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 30 of Title 34 of the Code of Federal Regulations as follows.

PART 30—DEBT COLLECTION

1. The authority citation for Part 30 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 1226a–1, 31 U.S.C. 3716(b) and 3720A, unless otherwise noted.

2. The Secretary amends § 30.20 by redesignating paragraph (a)(3) as paragraph (a)(2), revising paragraph (b)(2)(iii), and removing paragraph (f), to read as follows:

§ 30.20 To what do §§ 30.20–30.31 apply?

* * * * *

(b) * * *

(2) * * *

(iii) Other regulations implementing an offset authority.

* * * * *

3. Sections 30.23 is amended by adding the Office of Management and Budget control number 1880–0515 after the authority citation for the section and by revising paragraph (a)(1) to read as follows:

§ 30.23 How must a debtor request an opportunity to inspect and copy records relating to a debt?

(a) * * *

(1) File a written request to inspect and copy the documents within 20 days after the date of the notice provided under § 30.22; and

* * * * *

(Approved by the Office of Management and Budget under control number 1880–0515)

4. Section 30.24 is amended by adding the Office of Management and Budget control number 1880–0515 after the authority citation for the section and by revising paragraphs (a)(1), and (d)(1)(iii)(A) to read as follows:

§ 30.24 What opportunities does the debtor receive to obtain a review of the existence or amount of a debt?

(a) * * *

(1) File a request for review within 20 days after the date of the notice provided under § 30.22; and

* * * * *

(d)(1) * * *

(iii) * * *

(A) 20 days after the date of the notice provided under § 30.22; or

* * * * *

(Approved by the Office of Management and Budget under control number 1880–0515)

5. Section 30.25 is amended by adding the Office of Management and Budget control number 1880–0515 after the authority citation for the section, to read as follows:

§ 30.25 How may a debtor obtain an oral hearing?

* * * * *

(Approved by the Office of Management and Budget under control number 1880–0515)

6. Section 30.27 is amended by revising paragraph (a)(1) to read as follows:

§ 30.27 When does the Secretary enter into a repayment agreement rather than offset?

(a) * * *

(1) File a request to enter into such agreement within 20 days after the date of the notice provided under § 30.22; and

* * * * *

[FR Doc. 86–22760 Filed 10–6–86; 8:45 am

BILLING CODE 4000–01–M

DEPARTMENT OF INTERIOR

National Park Service

36 CFR Part 7

Padre Island National Seashore, TX; Hunting Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule will amend the existing hunting regulations for Padre Island National Seashore to exclude from hunting the waters surrounding all posted rookery islands and define where and how duck blinds may be placed.

It is necessary in order to help protect rookery island habitat and the birds that nest there and to help prevent the erection and abandonment of permanent duck blinds.

The effect will be to keep hunters away from environmentally sensitive rookery habitat and give them guidance as to what types of duck blinds are acceptable.

EFFECTIVE DATE: November 6, 1986.

FOR FURTHER INFORMATION CONTACT: Max Hancock, Chief Ranger, Padre Island National Seashore, (512) 949–8173.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 1986 the NPS published in the **Federal Register** (51 FR 21389) a proposed rule modifying the hunting regulations for Padre Island National Seashore. Pub. L. 87–712, authorizing establishment of Padre Island National Seashore, retained the privilege of the public to hunt migratory waterfowl on the waters of the Laguna Madre. The first regulations promulgated to control this hunting excluded only the two islands then used by birds for rookery Islands. For a variety of reasons the birds have expended their nesting activity to several other islands. In order to protect these new rookeries it is necessary to post them to exclude people. This new rule will allow the necessary posting on a continuing basis and allow changes in the posting as the birds nesting habits change.

Omission in the original regulation of any mention of duck blinds resulted in the proliferation of abandoned permanently built blinds which were an eyesore and required considerable time on the part of the National Park Service to remove. The addition of the restriction allowing portable blinds only will eliminate this problem.

Summary of Comments

The proposed rule generated no public comments.

One internal comment suggested clarifying the term "waters immediately adjacent to", as it is used in §7.75(b)(1).

The NPS agrees with this comment and a change has been made accordingly.

Drafting Information

The principal author of this rulemaking is Max Hancock, Padre Island National Seashore, National Park Service, Corpus Christi, Texas.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.). The final rule will not have any significant economic effect because it only serves to readjust slightly the hunting patterns and methods currently used by hunters. There should be no additional expenditures involved as a result.

The Service has determined that this final rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Part 7 is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By revising § 7.75(b) to read as follows:

§ 7.75 Padre Island National Seashore.

* * * * *

(b) *Hunting.* (1) Hunting is prohibited, except that during the open season prescribed by State and Federal agencies, the hunting of waterfowl is allowed upon the waters of Laguna Madre wherever a floating vessel of any type is capable of being operated, at whatever tide level may exist. Provided, however, that the waters surrounding North and South Bird Islands and other designated rookery islands are closed to all hunting as posted. Hunting, where authorized, is allowed in accordance with all applicable Federal, State and local laws for the protection of wildlife.

(2) The erecting of a structure for use as a hunting blind is prohibited except that a temporary blind may be used

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when removed at the end of each hunting day.

* * * * *

Dated: September 16, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-22675 Filed 10-6-86; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 19

Appeals—General; Rules of Practice

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is amending its regulations dealing with tape recordings and written transcripts of personal hearings conducted before the Board of Veterans Appeals (BVA). The rule amends provisions of the existing regulations in 38 CFR 19.168 and 38 CFR 19.170. It has been determined that instead of providing appellants and their representatives with a written copy of hearing proceedings, it would be more convenient for them and more cost effective for the BVA to provide them with a copy of the tape recording of the hearing. Providing a copy would allow swift service when a record of a hearing proceeding held before a Section of the Board of Veterans Appeals is requested. The BVA would continue to provide written transcripts when the case is remanded and when good cause has been shown.

EFFECTIVE DATE: October 12, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Jan Donsbach, Special (Legal) Assistant to the Chairman, Board of Veterans Appeals, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202-233-2978).

SUPPLEMENTARY INFORMATION: Proposed amendments to 38 CFR Part 19 were published in the Federal Register of April 22, 1986, at page 15017. Interested persons were given 30 days in which to submit comments, suggestions or objections. The Veterans Administration received one comment. It was suggested that the use of the word "permanent" throughout the text of the proposed amendment was misleading because it implied that the tapes or transcripts were appraised and determined to have enduring value to warrant their preservation as archival records. The word "permanent" has been deleted in several places, and when necessary replaced with the word "official."

It was further recommended that the reference to destruction of transcribed tapes after a period of 12 months be deleted because the proposal to destroy the transcribed tapes has not been approved. The regulation has been changed to reflect that the transcribed tapes will be retained at the BVA for a period of 12 months following the date of the hearing.

The Administrator hereby certifies that these final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-602. Pursuant to 5 U.S.C. 605(b), these final rules therefore are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. They will have no significant direct impact on small entities (i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions).

The Agency has also determined that these regulations are nonmajor in accordance with Executive Order 12291, Federal Regulation. They will not result in any significant effect on the economy, they will not have any significant impact upon private or governmental costs, and they will not affect business enterprises or otherwise have any adverse effect on the economy.

There is no Catalog of Federal Domestic Assistance number.

The final rules, as amended, are hereby adopted and are set forth below.

Lists of Subjects in 38 CFR Part 19

Administrative practice and procedures, Claims, Veterans.

Approved: September 12, 1986.

Thomas K. Turnage,

Administrator.

PART 19—[AMENDED]

38 CFR Part 19, Board of Veterans Appeals, is amended as follows:

1. Section 19.168 is revised to read as follow:

§ 19.168 Rule 68; Recorded hearing.

(a) *Board of Veterans Appeals.* A hearing before Members of the Board will be recorded. A written transcript will be prepared and a copy of the completed transcript will be incorporated as a part of the claims folder if: (1) Testimony and argument has been presented at the hearing pertaining to an issue which is remanded to the agency or original jurisdiction for further development or (2) the appellant or representative has shown good cause why such a written transcript should be prepared. Requests that recordings of hearing proceedings by transcribed should be in writing and should explain why a transcription is necessary. They should be filed with: Chief, Hearing Section (014B), Board of Veterans Appeals, 810 Vermont Avenue NW, Washington DC 20420. In those instances where a complete written transcript is prepared, that transcript will be the official record of the hearing and the tape recording will be retained at the Board for a period of 12 months following the date of the hearing; otherwise, the tape recording shall be kept on file by the Board of Veterans Appeals as the official record of the hearing.

(b) *Field offices.* The hearing proceedings before field office personnel after the filing of a notice of disagreement shall be recorded and a copy of the complete written transcript incorporated as a part of the claims folder.

(c) *Copy of hearing tape recording of written transcript.* A copy of the tape recording of hearing proceedings before the Board of Veterans Appeals, or the written transcript of such proceedings when such a transcript has been prepared in accordance with the provisions of paragraph (a) of this section, and/or a copy of the written transcript of field office appellate hearing proceedings may be furnished without cost to the appellant or representative if a request is made at the time of or prior to the hearing; otherwise a charge may be made in accordance with § 1.577 of this title. (38 U.S.C. 4002)

2. Section 19.170 is revised to read as follows:

§ 19.170 Rule 70; Official transcript.

The tape recording on file at the Board of Veterans Appeals or a transcript prepared by the Board of Veterans Appeals in lieu thereof, is the only official record of hearings conducted before the Board. (38 U.S.C. 4002)

[FR Doc. 86-22679 Filed 10-6-86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-6-FRL-3091-4]

Designation of Areas for Air Quality Planning Purposes; California, North Central Coast Air Basin For Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: EPA withdraws the final rule published on August 4, 1986 (51 FR 27844) which approved the California request for redesignation of the North Central Coast Air Basin to attainment for ozone under section 107 of the Clean Air Act, as amended. EPA has received notice that a concerned citizen wishes to submit adverse comments on EPA's August 4, 1986 action. This withdrawal will allow EPA the opportunity to solicit and consider public comment on a proposal to be published separately. This withdrawal does not affect any other action.

EFFECTIVE DATE: This action is effective on October 3, 1986.

ADDRESSES: A copy of the letter which requested that EPA withdraw the final action and establish a public comment period is available for public inspection during normal business hours at: Environmental Protection Agency, Region 9, Air Management Division, Air Programs Branch, Technical Evaluation Section, 215 Fremont Street, 1st Floor, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Morris Goldberg, Technical Evaluation Section, Environmental Protection Agency, Region 9, Telephone: (415) 975-7651.

SUPPLEMENTARY INFORMATION: On August 4, 1986 EPA responded to a January 6, 1986 California Air Resources Board request for redesignation of the North Central Coast Air Basin of California (comprised of Monterey, Santa Cruz and San Benito Counties) from nonattainment to attainment for ozone. The request was based on measured air quality data showing no violation since 1981 and the implementation of federally enforceable regulations. The area also has an approved State Implementation Plan which predicts that attainment of the ozone standard would begin in 1982 through the implementation of the plan's federally enforceable rules. Because EPA believes that such a redesignation would not be controversial, the Agency published the August 4, 1986 action without prior notice.

On September 2, 1986 EPA Region 9 received notice that a citizen desired the opportunity to provide a comment on the redesignation. EPA, through this notice, is withdrawing the final rule which approved the request for redesignation. In terminating the effective date of the rule, EPA intends to provide the opportunity for the public to comment on a proposed action in the near future in a separate Federal Register notice.

EPA is withdrawing the August 4, 1986 (51 FR 27844) redesignation without providing prior notice and opportunity to comment because it finds there is good cause within the meaning of 5 U.S.C. 553(b) to do so. Notice and comment will be impractical on the termination of the effective date of the aforementioned action because EPA needs to withdraw its approval quickly in order to provide the opportunity for public comment through a separate notice. In addition, further notice is not necessary because EPA has already informed the public that it would follow this procedure if notice of the intent to provide adverse or critical comments was received by September 2, 1986. For the same reason EPA finds it has good cause under 5 U.S.C. 553(b) to make this withdrawal immediately effective.

EPA will address the concerns expressed in the letter received on September 2, 1986 in a Federal Register proposal notice to be published in the near future.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401-7642.

Dated: October 1, 1986.

Lee M. Thomas,

Administrator.

Therefore, the amendment to § 81.305 appearing on August 4, 1986 at 51 FR 27844, which was to become effective October 3, 1986, is withdrawn.

[FR Doc. 86-22682 Filed 10-6-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

Amendment of the Commission's Rules for Rural Cellular Service; Correction

AGENCY: Federal Communications Commission.

ACTION: First report and order; Correction.

SUMMARY: This document corrects typographical and clerical errors in amendments to §§ 22.902(b), 22.903(a) and 22.904(c) in the First Report and Order, 51 FR 26895, July 28, 1986.

FOR FURTHER INFORMATION CONTACT: Gerald Goldstein, Common Carrier Bureau, (202) 632-6450.

Erratum

In the matter of; amendment of the Commission's rules for rural Cellular service.

Released: September 26, 1986. [CC Docket No. 85-388; RM5167]

In the First Report and Order, (FCC 86-302) in the above-captioned matter, released July 18, 1986, certain rule changes were incorrectly described. Accordingly, the Rules section of the order containing revisions to 47 CFR Part 22 are being corrected. The corrections are to §§ 22.902(b), 22.903(a), and 22.904(c). In the interest of convenience and clarity, the corrected rules are set forth below in their entirety.

1. Section 22.902(b) is correctly revised to read as follows:

§ 22.902 Frequencies.

* * * * *

(b) For cellular systems the assignment of frequencies will be divided into two blocks. Assignments will be made from the frequencies listed for cellular Systems A and B. Common carriers not also engaged in the business of affording public landline message telephone service will be assigned frequencies from Cellular System A. Common carriers engaged directly or indirectly in the business of affording public landline message telephone service will be assigned frequencies from cellular System B in those areas in which they provide such landline service in some portion of the cellular market; except that, in the final cellular application phase for any initially unapplied for or unlicensed area, either within or without a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), a cellular applicant may apply for either frequency block and the applicant shall indicate in its application which it prefers to be assigned.

* * * * *

2. Section 22.903(a) is correctly revised to read as follows:

§ 22.903 Cellular System Service Areas.

(a) The Cellular Geographic Service Area (CGSA) of the cellular system shall be defined by the applicant as the area intended to be served. At the time of initial application filing, no CGSA or 39 dBu contour which includes area within a Metropolitan Statistical Area (MSA), or in New England, a New England County Metropolitan Area (NECMA), as modified in paragraph (e) of this section, may extend beyond the boundaries of the MSA or NECMA, except where any such extensions are *de minimis* and do not include area within another central

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MSA or NECMA. No CGSA or 39 dBu contour may extend beyond the boundaries of the Rural Service Area (RSA). For MSAs and NECMAs below the top 90 and for RSAs, the boundaries of the CGSA must include at least 75% of either the land area or population of the MSA, NECMA or RSA. The CGSA must be drawn on one or more U.S. Geological survey map(s) with a scale of 1:250,000. Within the CGSA the applicant must depict each base station site and its respective 39 dBu contour as determined by the methods described in paragraph (c) of this section. An applicant must state that the combined 39 dBu contours of all base stations will cover at least 75% of the total CGSA.

* * * * *

3. Section 22.904(c) is correctly added to read as follows:

§ 22.904 Power limitations.

* * * * *

(c) Stations serving Rural Service Areas will be required to operate at the effective radiated power listed in paragraph (a) of this section in the event the base station is located 100 miles or less from an adjacent MSA or NECMA. If interference is alleged to adjacent MSAs or NECMAs, the Rural Service Area stations will be required to reduce power immediately to the power limitations specified in § 22.905(a) until the Commission has authorized operation at an increased power.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-22564 Filed 10-6-86; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 51, No. 194
Tuesday, October 7, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 540

Performance Management and Recognition System

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations on the Performance Management and Recognition System (PMRS). These regulations would establish the minimum performance appraisal system requirements for employees and agencies subject to the PMRS but not covered by Chapter 43 of Title 5 of the United States Code. These new requirements would implement Title II of the Civil Service Retirement Spouse Equity Act of 1984.

DATES: To be considered, comments must be received no later than December 8, 1986.

ADDRESS: Send or deliver written comments to Barbara L. Fiss, Acting Assistant Director for Performance Management, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H30, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allen B. Levan, (202) 632-5653.

SUPPLEMENTARY INFORMATION: On August 30, 1985, at 50 FR 35488, OPM issued final regulations on the PMRS mandated by Title II of the Civil Service Retirement Spouse Equity Act of 1984.

The August 30th regulations provided (in § 540.104(d)) that agencies and employees subject to the PMRS, but not covered by Chapter 43 of Title 5 of the United States Code, must meet minimal performance appraisal requirements issued by OPM. These proposed regulations establish those requirements.

The performance appraisal systems established under these regulations would be equivalent to the performance appraisal systems established under 5 U.S.C. 4302a for recognizing and rewarding performance of covered supervisors and managers. (Section 4302a refers to performance appraisal for most employees under the Performance Management and Recognition System.)

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations wil only affect Government employees.

List of Subjects in 5 CFR Part 540

Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is proposing to amend 5 CFR Part 540 as follows:

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

1. The authority citation for Part 540 appearing at the end of the table of contents is removed.

§§ 540.101—540.112 [Designated as Subpart A]

2. The existing sections, §§ 540.101 through 540.112, are designated as subpart A. The heading for subpart A is added to read as follows:

Subpart A—Operation of the Performance Management and Recognition System

3. The authority citation for subpart A is added to read as follows:

Authority 5 U.S.C. Chapters 43 and 54.

4. Section 540.104(d) is revised to read as follows:

§ 540.104 Performance Management and Recognition System performance ratings.

* * * * *

(d) Agencies and employees subject to the Performance Management and Recognition System but not covered by Chapter 43 of Title 5 of the United States Code shall meet the minimal performance appraisal requirements in Subpart B of this part. Performance appraisal systems established under Subpart B shall, for purposes of this subpart, be equivalent to performance appraisal systems established under 5 U.S.C. 4302a.

4. A new Subpart B is added to read as follows:

Subpart B—Performance Appraisal for Agencies and Employees Subject to PMRS but Not Covered by 5 U.S.C. Chapter 43

Sec.

540.201 General.

540.202 Agency performance appraisal systems.

540.203 OPM review of performance appraisal system.

540.204 Performance appraisal plans.

540.205 Reports.

Subpart B—Performance Appraisal for Agencies and Employees Subject to PMRS but Not Covered by 5 U.S.C. Chapter 43

Authority: 5 U.S.C. chapter 54.

§ 540.201 General.

(a) This subpart contains the minimum performance appraisal requirements that agencies and employees exempt from Chapter 43 (Performance Appraisal) of Title 5 of the United States Code, must meet to comply with the Performance Management and Recognition System (PMRS).

(b) (1) Agencies will develop one or more performance appraisal systems, for their employees who are covered by the provisions of the PMRS, for providing periodic appraisals of job performance to be used in adjusting base pay, making awards determinations, and as a basis for other personnel actions.

(2) Any agency with one or more employees covered by the PMRS is required to develop a performance appraisal system that will permit a determination of that employee's eligibility for performance pay under Subpart A of this part.

§ 540.202 Agency performance appraisal systems.

(a) Each agency performance appraisal system under this subpart must provide for—

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(1) An annual appraisal period ending no later than September 30 of each year;

(2) A minimum appraisal period of 90 to 120 days;

(3) Identification of critical elements (or other terms that describe the major aspects of the job);

(4) Development of performance standards for the "Fully Successful" level through joint participation of employee and supervisor with authority for establishing standards resting with the supervising official;

(5) Higher level approval of the performance plan (i.e., critical elements and performance standards) at the beginning of the appraisal period;

(6) Communication of a written performance plan to employees at the beginning of each appraisal period;

(7) Progress review(s) to be held for each employee at least once during the appraisal period;

(8) Appraisal of the employee's performance on each element established for the appraisal period;

(9) Assignment of a rating based on the appraisal of each element;

(10) Higher level review of the rating prior to communication to the employee; and

(11) Communication of the rating to the employee.

(b) *Summary rating levels.* Each performance appraisal system must have five summary levels of performance with the middle level of performance termed the "Fully Successful" level. Agencies may designate the remaining levels of performance (two above "Fully Successful" and two below "Fully Successful") by any other adjectives.

(c) *Review of performance ratings.* Each employee must be provided the right to have his or her performance appraisal rating reviewed by a higher-level official within the organization than those participating in the original rating.

(d) *Performance Standards Review Boards.* Each agency must set up a Performance Standards Review Board to assist the agency head in assessing the appropriateness of performance standards and for determining possible group of unit performance awards. These boards may provide technical assistance to the agency head in establishing performance-based demonstration projects. Each board will consist of at least six members, all of whom shall be chosen by the agency head or his or her designee. At least one half of the board must be composed of employees covered by the PMRS and in the competitive service.

§ 540.203 OPM review of performance appraisal systems.

(a) OPM will review performance appraisal systems to determine conformance to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of this subpart, it will direct the agency to implement an appropriate system or to correct operations under the system. The agency will take any action so required.

§ 540.204 Performance appraisal plans.

(a) Agencies must submit proposed performance appraisal systems to OPM for approval as part of the performance management plans required by § 540.111.

(b) Agencies must submit to OPM, for approval, any changes to their performance appraisal plans that modify any element of the agency's system that is included in this subpart.

§ 540.205 Reports.

So that OPM can provide the Congress and others with information regarding the operation of the PMRS and performance management plans (including the performance appraisal systems), each agency will maintain such records and submit to OPM such reports as OPM may require.

[FR Doc. 86-22730 Filed 10-6-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-86-17]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (41 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawls of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before December 8, 1986.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. 25049, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3162.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on October 1, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
25049	Fairchild Aircraft Corporation	Petitioner requests that §§ 91.30 and 135.179 be amended to eliminate the need for a minimal equipment list when the FAA-approved flight manual contains approved data permiting takeoff with the specific item inoperable. Petitioner states that the wording of §§ 91.30 and 135.179 fails to recognize the fact that the FAA has a means, other than the minmum equipment list, of approving dispatch with inoperable instruments or equipment. Regulations Affected: 14CFR 91.30 and 135.179 Petitioner's Reason for Rule: Petitioner request amending §§ 91.30 and 135.179 to benefit all of its customers by eliminating delays and expense for the operator when the FAA-approved flight manual contains approved data permiting takeoff with the specific item inoperable.

[FR Doc. 86-22624 Filed 10-6-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33-6662; 34-23647; 35-24200; 39-2042; IC-15334; IA-1039; File No. S7-26-86]

Proposed Amendments to Rule 2(e)(7) of the Commission's Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment.

SUMMARY: The Securities and Exchange Commission is publishing for comment alternative amendments to Rule 2(e)(7) of its rules of practice, the provisions governing whether hearings in proceedings against professionals brought pursuant to Rule 2(e) shall be public or non-public. The proposed amendments would alter the current provision which provides that administrative proceedings pursuant to Rule 2(e) shall be non-public unless the Commission otherwise orders.

DATE: Comments should be received on or before January 5, 1987.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-26-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Roberta R.W. Kameda, (202) 272-2453, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-6, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The Securities and Exchange Commission is today seeking comments on alternative amendments to Rule 2(e)(7) of its rules of practice, 17 CFR 201.2(e)(7). Rule 2(e) of the Commission's rules of practice governs Commission administrative proceedings against professionals, such as attorneys and accountants, who practice before it.[1] Rule 2(e)(7) now provides that proceedings pursuant to that Rule "shall be non-public unless the Commission on its own motion or at the request of a party otherwise directs."

It appears that this may be an appropriate time to consider amending Rule 2(e). Since 1975 there have been a number of changes that may be relevant to this question. These changes reflect increased sensitivity to the benefits of public decision making.[2] Furthermore, present experience with public Commission proceedings indicates that there may be no reason for distinguishing administrative proceedings against professionals from administrative proceedings against broker-dealers, investment advisers, and other securities professionals.

The Commission perceives at least three possible approaches to amending Rule 2(e)(7). The Commission specifically seeks comments on the following three alternatives:

(1) amending the Rule to provide that Rule 2(e) hearings shall be public unless the Commission, at any time during the

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[1] The Commission may bring proceedings pursuant to either Rule 2(e)(1) or Rule 2(e)(3). Rule 2(e)(1) generally governs suspensions and bars from practice before the Commission, and provides that:

(1) The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice of and opportunity for a hearing in the matter (i) not to possess the requisite qualifications to represent others; or (ii) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct, or (iii) to have willfully violated, or willfully aided and abetted the violation of any provision of the federal securities laws (15 U.S.C. 77a to 80b-20), or the rules and regulations thereunder.

Rule 2(e)(3) governs temporary summary suspensions and provides that:

(3)(i) The Commission, with due regard for the public interest and without preliminary hearing, may by order temporarily suspend from appearing or practicing before it any attorney, accountant, engineer or other professional or expert who, on or after July 1, 1971, has been by name:

(a) Permanently enjoined by any court of competent jurisdiction by reason of his misconduct in an action brought by the Commission from violating or aiding and abetting the violation of any provision of the Federal Securities laws (15 U.S.C. 77a to 80b-20) or of the rules and regulations thereunder; or

(b) Found by any court of competent jurisdiction in an action brought by the Commissioin or found by this Commission in any administrative proceeding to which he is a party to have violated or aided and abetted the violation of any provision of the Federal Securities laws (15 U.S.C. 77a to 80b-20) or the rules and regulations thereunder (unless the violation was found not to have been willful)

* * *.

[2] In 1979, for example, the ABA adopted its Standards for Lawyers Discipline and Disability Proceedings (collectively, the "Standards"). Reports of the American Bar Association, Vol. 104 p. 373 (1979). With minor exceptions, the Standards urge that, upon the filing and service of formal charges, disciplinary proceedings should be public. Standard 8.25 of the ABA's Standards for Lawyers Discipline and Disability Proceedings; (ABA/BNA Lawyers Manual on Professional Conduct p. 01:533 (1985). The ABA's standards are, of course, intended to apply to state and bar association proceedings. The ABA has consistently *opposed* the Commission's exercise of disciplinary authority against attorneys under Rule 2(e). *See* Alternative Proposed Rules of Federal Agency Discipline Adopted by the House of Delegates of the ABA, August 11, 1982.

Also, with respect to accountants, a majority of state boards have provisions for public disciplinary proceedings. In addition, there has been increasing emphasis on the public responsibilities of accountants. *See generally U.S. v. Arthur Young & Co.*, 104 S. Ct. 1494, 1503 (1984).

Recent decisions have recognized that there is a common law and a constitutional presumption that the public will have access to certain civil and other proceedings. *See, e.g., Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1069 (3d Cir. 1984) (common law and first amendment make civil trials presumptively public); *In re Continental Illinois Securities Litigation*, 732 F.2d 1302, 1308-14 (7th Cir. 1984) (common law and first amendment support public access to civil proceedings and records); *In re Iowa Freedom of Information Council*, 724 F.2d 658, 661 (8th Cir. 1983) (contemp proceedings presumptively public under first amendment); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1178 (6th Cir. 1983), *cert denied*, 104 S. Ct. 1595 (1984) (policy reasons support granting public presumptive access to proceedings and evidence in civil cases); *Society of Professional Journalists v. Secretary of Labor*, 616 F. Supp. 569 (D. Utah 1985) (first amendment presumption of access to agency fact-finding proceedings); *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation*, 101 F.R.D. 34, 42-43 (C.D. Cal. 1984) (common law right of access to pretrial documents). *Cf. Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978) (common law right to inspect evidence in criminal trial); *Wilson v. American Motors Corp.*, 759 F.2d 1568, 1569-70 (11th Cir. 1985) (presumption of openness in civil proceedings); *Westmoreland v. Columbia Broadcasting System, Inc.*, 752 F.2d 16, 22-23 (2d Cir. 1984), *cert. denied sub nom. Cable News Network, Inc. v. U.S. District Court for the Southern District of New York*, 105 S. Ct. 3478 (1985) (first amendment right of access to civil proceedings). *Compare In re The Reporters Committee for Freedom of the Press*, 773 F.2d 1325 (D.C. Cir. Sept. 20, 1985) (first amendment right to post-judgment records in civil proceedings). *Also cf.* Section 2 of the Government in the Sunshine Act of 1976, Pub. L. No. 94-409, § 2, 90 Stat. 1241 (1976) ("the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government").

However, the U.S. Court of Appeals for the Third Circuit recently recognized the important privacy interest at stake in disciplinary proceedings before the Pennsylvania Judicial Inquiry and Review Board in sustaining a requirement that those proceedings remain non-public unless the Board recommends that the state Supreme Court impose sanctions on a judge. *See First Amendment Coalition v. Judicial Inquiry and Review Board*, 784 F.2d 467 (3d Cir. 1986) (en banc). In responding to arguments that the public had a right of access to the proceedings, the court recognized the "substantial interest in preserving limited confidentiality." The court found interest not only in protecting the reputation of a person who has been accused but not proven culpable, but also in protecting the judiciary as an institution and in the need for flexibility so that the Board could effectively accomplish its purpose.

The most recent Supreme Court discussion concerning the public's right of access arose in a criminal context. *See Press Enterprise Co. v. Superior Court of California*, 54 U.S.L.W. 4889 (June 30, 1986). In that case, the Court held that there exists a qualified constitutional right of access to preliminary criminal proceedings as they are conducted in California. The opinion describes many of the policies supporting public access. *See, e.g., id.* at 4871.

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proceedings, on its own motion or at the request of a party, otherwise directs;

(2) amending the Rule to provide that hearings in specified classes of proceedings shall be public; or

(3) amending the Rule to provide that the Commission will determine whether to hold public hearings on a case-by-case basis.

The Commission also seeks comments on any other approaches to the issue of making Rule 2(e) proceedings public, including comments on whether Rule 2(e)(7) should simply remain in its present form. The Commission does not seek comment on whether it has the authority to discipline professionals under Rule 2(e).

II. Practice under Rule 2(e)

Rule 2(e) was first adopted in 1935. That Rule now provides that the Commission may deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found not to possess the requisite qualifications to represent others, to be lacking in character or integrity, to have engaged in unethical or improper professional conduct, or to have willfully violated or aided and abetted violations of the federal securities laws.

Although the original version of Rule 2(e) did not indicate whether proceedings would be public or non-public, all proceedings brought under that version of the Rule were non-public. In 1971, the Commission amended several parts of Rule 2(e) and added paragraph (7) to the rule to provide that:

> All hearings held under this paragraph (e) shall be non-public unless the Commission on its own motion or the request of a party otherwise directs.[3]

In 1974, the Commission published for comment a proposed amendment to Rule 2(e)(7) which would have provided that Rule 2(e) proceedings would be public unless the Commission ordered otherwise. The Commission emphasized the public interest in the standards the Commission imposed on the professionals who practice before it, and stated that "when sufficient reason exists to institute such a proceeding, the public should be aware of that fact."[4] The proposing release indicated that if the amendment were adopted the Commission would reserve the right to order that a particular Rule 2(e) proceeding be non-public.

On March 4, 1975, the Commission withdrew its proposal to amend the rule.[5] The Commission stated, however, that

> it nevertheless wishe[d] to apprise members of the professions who practice before it that the Commission is not suggesting that all disciplinary proceedings under Rule 2(e) will be conducted on a private basis in the future. The Commission believes there are circumstances which warrant the institution of public proceedings in the interest of investors, and it believes that the provisions of existing Rule 2(e)(7) provide it with ample discretion to institute public disciplinary proceedings under Rule 2(e) when the Commission deems it to be in the public interest to do so.

The Commission also indicated that in the future it would publish any order of an administrative law judge finding "a basis for the imposition of a sanction against a professional."[6] In addition, the Commission warned that if a professional unreasonably delayed the conduct of a private proceeding the Commission would consider making the proceeding public. After the 1975 release, the Commission began to bring public Rule 2(e) proceedings. The first such proceeding was initiated in 1976.[7]

Concerns have been raised as to the potential impact of public Rule 2(e) proceedings. For example, a professional's reputation and career may be unjustly harmed as a result of the announment of allegations in public disciplinary proceedings that are not subsequently sustained. In addition, some fear that the public may tend to overemphasize the adverse implications of the commencement of disciplinary proceedings, even though the charges have not yet been sustained.

On the other hand, there are a number of arguments that have been raised in favor of public proceedings under Rule 2(e). For example, public proceedings may increase the public's and professionals' awareness of the standards the Commission imposes on professionals and the public responsibilities of professionals who practice before the Commission. They may also inform the public that the staff believes that corrective action is appropriate in a particular case.

The Commission also seeks comment on whether modification of the present provision concerning private proceedings would be consistent with the administrative practice of other federal and state regulatory agencies, and professional organizations.

III. Alternative Proposals

The Commission seeks comments on the following three approaches to amending Rule 2(e)(7), as well as on any other approach to the issue of making Rule 2(e) proceedings public including whether Rule 2(e)(7) should remain in its current form.

The first alternative would amend Rule 2(e)(7) to provide that all proceedings pursuant to Rule 2(e) would be public, unless the Commission on its own motion or after considering the request of a party otherwise directs. This amendment would make public the majority of Rule 2(e) proceedings, but would make clear that the Commission retained the authority to make a Rule 2(e) proceeding non-public under appropriate circumstances.

The second alternative would amend Rule 2(e)(7) to identify circumstances when a Rule 2(e) proceeding would be public. The rule would specify that proceedings would be public when facts or allegations related to the facts underlying the proceeding already are public. Related facts would encompass not only the precise facts that form the basis for a separate Commission enforcement action against the professional or another person, such as the professional's client. Thus, for example, if a Commission injunctive action against a company for fraudulent statements in the company's audited financial statements disclosed facts related to the actions of the accountants in auditing those statements, a later Rule 2(e) proceeding against the auditor would be public unless the Commission exercised its discretion to otherwise order.

In addition, under this alternative, the rule would specifically provide for public proceedings where the nonpublic nature of the proceeding may cause unresonable delay; the professional's conduct was such that it seems appropriate to inform the public of the immediate risk of harm; or the Commission on its own motion or after considering the request of the staff or the professional makes a determination that public hearings are in the public interest. The Commission also seeks comment as to whether the rule should specify other circumstances where the proceedings would be public.

The third approach is to amend Rule 2(e)(7) to provide that the Commission will determine on a case-by-case basis whether proceedings will be public or nonpublic. This would enable the Commission the maximum flexibility to determine whether to institute public or private proceedings.

[3] Securities Act Release No. 5147 (May 10, 1971).

[4] Securities Act Release No. 5477 (April 5, 1974), 4 SEC Docket 34, 35 (April 10, 1974).

[5] Securities Act Release No. 5572 (March 4, 1975), 6 SEC Docket 374 (March 18, 1975).

[6] *Id.* at 374.

[7] *In re Touche Ross & Co.*, File No. 3-5075 SEC (Sept. 1, 1976).

IV. Regulatory Flexibility Act Consideration

The Regulatory Flexibility Act [8] generally requires the Commission to undertake a regulatory flexibility analysis of the impact of a rule or amendment of "small entities," unless exempted under section 605(b) of the Act on the basis that the rule or rule amendments would not have a significant impact on a substantial number of small entities. Because the amendments, if adopted, would affect only matters of practice and procedure, the Commission believes that they are not rules subject to the Regulatory Flexibility Act. Moreover, regardless of whether Rule 2(e) proceedings are public or private, regulatory burdens will not be affected. Nonetheless, because the Commission is publishing the proposed amendment for notice and comment, the Chairman has certified that the Rule amendments, if promulgated, will not have a significant economic impact on any entity and thus should not have any such impact on a substantial number of small entities.

V. Statutory Basis and Text of Proposed Amendments Authority

The amendments to the Commission's rule are being proposed by the Commission pursuant to section 19(a) of the Securities Act of 1933, section 23(a) of the Securities Exchange Act of 1934, section 20(a) of the Public Utility Holding Company Act of 1935, section 319(a) of the Trust Indenture Act of 1939, section 211(a) of the Investment Advisers Act of 1940 and section 38(a) of the Investment Company Act of 1940.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Investigations, Securities.

Text of Proposal

In accordance with the foregoing, the Commission proposes to amend Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 201—RULES OF PRACTICE

1. The authority citation for Part 201 would be revised to read as follows:

> **Authority:** Sec. 19, 48 Stat. 85, as amended, 15 U.S.C. 77s; Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w; Sec. 20, 49 Stat. 833, 15 U.S.C. 79t; Sec. 211, 54 Stat. 855, as amended, 15 U.S.C. 80b–11; Sec. 38, 54 Stat. 841, 15 U.S.C. 80a–37.

2. By deleting present paragraph (e)(7) of § 201.2 and substituting one of the alternatives below:

[8] 5 U.S.C. 601 *et seq.*

§ 201.2 Appearance and practice before the Commission.

* * * * *

(e) * * *

Alternative A:

(7) All hearings held under this paragraph (e) shall be public unless the Commission, at any time, on its own motion or after considering the request of a party, otherwise directs.

* * * * *

Alternative B:

(7) All hearings held under this paragraph (e) shall be nonpubic unless the Commission at any time determines that:

(i) Facts of allegations related to those supporting the charges are already public or will become public prior to or concurrent with the institution of the hearing;

(ii) The nonpublic nature of the hearing may be a cause of unreasonable delay;

(iii) The professional's conduct was such that it seems appropriate to inform the public of the immediate risk of ham or

(iv) The Commission on its own motion or after considering the request of a party otherwise directs.

* * * * *

Alternative C:

(7) The Commission shall determine, on a case-by-case basis, whether hearings pursuant to this paragraph (e) shall be public or non-public.

* * * * *

By the Commission.

September 29, 1986.

Shirley E. Hollis,

Assistant Secretary.

Statement of Commissioner Fleischman

At this early stage I find no reason to disagree with General Counsel's most recent prior conclusion, reached less than three years ago, that a weighing of all relevant policy considerations fails to justify a proposal to change the present rule. I would not, therefore, authorize publication of the Release and the rule change it proposes. Public responses to the Commission's proposals will be instructive nevertheless.

Regulatory Flexibility Act Certification

I, John Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Rule 2(e)(7) of the Commission's rules of Practice set forth in Securities Act Release No. 6662, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments, if adopted, would affect only matters of practice and procedure. Regardless of whether 2(e) proceedings are public or private, regulatory burdens will not be affected.

John Shad,

Chairman.

September 29, 1986.

[FR Doc. 86-22720 Filed 10-6-86; 8:45 am]

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17 CFR Part 249

[Release No. 34-23646; File No. S7-25-86]

Broker-Dealer Registration Withdrawal; Proposed Revisions of Form BDW

AGENCY: Securities and Exchange Commission.

ACTION: Proposed form revisions.

SUMMARY: The Commission is publishing for comment proposed revisions of Form BDW, the form filed by a registered broker-dealer to withdraw from registration. The proposed revisions are intended to reduce the regulatory burden upon broker-dealers by simplifying the form and by clarifying the information that must be disclosed on the attachments to the form.

DATES: Comments should be submitted by November 6, 1986.

ADDRESSES: All comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549, and should refer to File No. S7–25–86. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lynne G. Masters, Esq. at (202) 272–2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC. 20549.

SUPPLEMENTARY INFORMATION: In November 1983, the Commission adopted a revised Form BD and revised Form BDW, resulting from the continuing efforts of the NASAA Special Committee to Revise Form BD.[1] The purpose of the revisions was to reduce the regulatory burden of multiple registration requirements for broker-dealers by allowing them to use a single form to register with the states and self-regulatory organizations, as well as the Commission. In addition, the revisions made Form BD and Form BDW

[1] Form BD is the form used to register a broker-dealer pursuant to 15(b) of the Securities Exchange Act of 1934 ("Act").

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compatible with the Central Registration Depository ("CRD") operated by the National Association of Securities Dealers, Inc. ("NASD"). The CRD provides a computer database that maintains current registration information for every broker-dealer that is a member of the NASD or registered with a state that participates in the CRD program. The CRD program allows a broker-dealer to file a single form with the CRD and a copy thereof with the Commission and participating states.

NASAA subsequently formed the Forms Committee to review Form U–4, the form used by the states and the self-regulatory organizations to register associated persons of broker-dealers.[2] The NASAA Forms Committee was advised by representatives of the NASD, the New York Stock Exchange, Inc., the American Stock Exchange, Inc., the Association of Registration Management, the Securities Industry Association, representatives from the insurance and commodities industries and the staff of the Commission. In the course of the Forms Committee's review of Form U–4, parallel improvements to Form BD were considered. The participants in the Forms Committee unanimously agreed to implement all of the Form BD changes. In September 1985, the Commission adopted the Form BD changes, effective January 1, 1986.[3]

As part of the continuing process of simplifying the forms used by broker-dealers, the Commission is proposing revisions to uniform Form BDW. These revisions are the result of further discussions with the NASAA Forms Revision Committee, and represent part of the Commission's ongoing efforts to improve our broker-dealer forms and to draft those forms in "plain English". As described more fully below, the changes are largely technical in nature and are intended to conform Form BDW to the recently enacted changes in Form BD.

The Commission believes that the proposed revisions will reduce the regulatory burden on broker-dealers by clarifying the information required by Form BDW. A summary of the revisions is set forth below:

1. Form BDW will be retitled "Uniform Request for Broker-Dealer Withdrawal". This will shorten the title and generally track the initials on the form.

2. The instructions to the form will be simplified, and the filing instructions clarified.

3. The direction to read the instructions and type the form will be removed and replaced with the language: "Warning: Intentional misstatements or omissions of fact may constitute criminal violations." This warning is the same as the one used on Form BD.

4. Items 1 through 5 will be reformatted to conform to Form BD. Form BD requests the name of a "contact employee" to answer questions concerning that form. For purposes of Form BDW, the person who executes the form will be responsible for answering questions.

5. Existing Item 6 will be split into three items. New Item 2 will specify whether the withdrawal is full or partial. If the withdrawal is partial, new Item 3 will specify the states and the self regulatory organizations where the withdrawal is occurring. New Item 4 will specify the dates on which the firm ceased business. New Item 3 has been reformatted to resemble Form BD.

6. Existing Item 7 will be changed to new Items 5A–D and 6C. Item 7 currently requests information concerning funds or securities owed to customers or other broker-dealers. Item 7(d) also requires a statement of financial condition to be filed with the form. The new items request a further clarification of the broker-dealer's remaining obligations. Specifically, a broker-dealer that seeks to withdraw from registration while still owing money or securities to customers or other broker-dealers must break down funds or securities owed between broker-dealers and customers. The firm must also indicate the number of customers owed funds or securities.

New Item 5(e) replaces the financial statements with the use of FOCUS reports as a standard accounting format. Since all broker-dealers (other than those registered only with state jurisdictions) have to file FOCUS reports, this change should simplify the financial information that must be submitted by requiring a standardization format. In addition, because very few BDWs filed each year indicate that the broker-dealer has any outstanding obligations to other firms or customers, the Commission believes that the additional detail required by new Items 5A–D and 6C will be a small reporting burden.[4]

7. Existing Item 8 will become Item 6 on the new form, and the language used will conform the information requested to that in Form BD. Item 6C is intended to solicit information concerning any outstanding contested claims.

8. Existing Item 9 will be renumbered as new Item 7.

9. Existing Item 10, the execution section, will become new Item 8. The language has been substantially simplified.

Costs and Benefits

The Commission believes that the proposed changes, if adopted, will not have a significant economic impact on broker-dealers. By simplifying the forms used, the proposed amendments to the form should benefit broker-dealers and the public. The amendments will result in comparability of terms used in Form BD and BDW. The amendments should facilitate the filing of the forms by standardizing the language and requiring disclosure of financial information in a format already familiar to broker-dealers. The additional information required by the form should enhance investor protection by enabling the regulatory authorities to determine if any further action is necessary. Costs may be incurred as a result of the new requirement that the withdrawing broker-dealer provide information concerning outstanding obligations to customers or other broker-dealers. Such information, however, should be readily available to the broker-dealers completing the form. While the Commission believes that the benefits of simplifying the form outweigh the costs for broker-dealers, the Commission solicits comments on the costs and benefits of the proposed amendments to Form BDW. The Commission is particularly interested in comments addressing the identification of other sources of costs and benefits and the quantification of costs and benefits to the proposed amendments.

Regulatory Flexibility Act Considerations

The Regulatory Flexibility Act establishes procedural requirements applicable to agency rulemaking that has a "significant economic impact on a substantial number of small entities."[5] The Chairman of the Commission has certified pursuant to the Act that the proposed revision to Form BDW, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendments may provide some cost savings to small broker-dealers in that they may update and provide a copy of the appropriate standardized FOCUS report that they currently file under the Act to meet the forum's financial reporting requirements. For the small number of broker-dealers that would have to provide additional information under the revisions because they owe money or securities to other firms or customers, the Commission believes that any additional burden would be minor and would not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

Statutory Authority

The proposed changes to Form BDW, referenced in § 249.501a of the CFR, would be adopted pursuant to sections 15(b), 17(a) and 23(a) of the Act thereof (15 U.S.C. 78o(b), 78q(a) and 78w(a).

Dated: September 26, 1986.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

Uniform Request for Broker-Dealer Withdrawal

OMB Approval:
OMB Number: 3235-0015
Expires: August 31, 1989

General Instructions

- Each copy of this Form must be *manually signed* by the proper individual.
- Type all information.
- Use only the Form BDW or a reproduction of it.
- *Filing Requirements:*

Full Withdrawal: File Form BDW with the SEC and with the CRD. Check with states where registered for additional filing requirements.

Partial Withdrawal: File Form BDW with the CRD; file with SEC only if withdrawing from SEC registration. Check with states where registered for additional filing requirements. Amend Form BD and file with the SEC and the CRD.

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[2] Form U–4 is no longer a Commission form because the elimination of the SECO program ended the need for any associated persons of a broker-dealer to register with the Commission.

[3] Securities Exchange Act Release No. 22468 (September 26, 1985), 50 FR 41667.

[4] Less than 5% of the Form BDWs filed indicate an affirmative answer to current Item 7, requiring a statement of financial condition and a response to the specific questions in that Item.

[5] Although section 601(b) of the Regulatory Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18452 (January 28, 1982). A broker or dealer generally is a "small business" or "small organization" if it had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d). *See* Rule 0–10(c).

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Form BDW | UNIFORM REQUEST FOR BROKER-DEALER WITHDRAWAL | Official Use:

Warning: Intentional misstatements or omissions of fact may constitute criminal violations.

1. (A) Full name of broker-dealer (If sole proprietor, give last, first, and middle name):

(B) IRS Emp. Ident No.:
(C) Name under which business is conducted, if different:

(D) Firm CRD No:
(E) Firm main address:

(F) Mailing address, if different:

(G) Area Code/Telephone No._____

2. Check one:

[ ] Full withdrawal (Skip item 3)

[ ] Partial withdrawal (Check boxes where withdrawing in item 3.)

3.

☐ SECURITIES & EXCHANGE COMMISSION

SEC: ☐ ARK ☐ BRK ☐ CRDC ☐ CEX ☐ MSRB ☐ NYSE ☐ PHLX ☐ PSE ☐ OTHER (Specify)

JURISDICTION: ☐ AL ☐ AK ☐ AZ ☐ AR ☐ CA ☐ CO ☐ CT ☐ DE ☐ DC ☐ FL ☐ GA ☐ HI ☐ ID ☐ IL ☐ IN ☐ IA ☐ KS ☐ KY ☐ LA ☐ ME ☐ MD ☐ MA ☐ MI ☐ MN ☐ MS ☐ MO ☐ MT ☐ NE ☐ NV ☐ NH ☐ NJ ☐ NM ☐ NY ☐ NC ☐ ND ☐ OH ☐ OK ☐ OR ☐ PA ☐ RI ☐ SC ☐ SD ☐ TN ☐ TX ☐ UT ☐ VT ☐ VA ☐ WA ☐ WV ☐ WI ☐ WY ☐ PR

4. Date firm ceased business:
(for partial withdrawals, give the date ceased business in the jurisdictions checked in item 3)

5. Does the broker-dealer owe any money or securities to any customer or broker-dealer ? [ ] Yes [ ] No

If "yes":
(A) Number of customers owed funds or securities_____

(B) Amount of money owed to:
customers $_____ broker-dealers $_____

(C) Market value of securities owed to:
customers $_____ broker-dealers $_____

(D) Arrangements made for payment:

(E) Attach a copy of FOCUS Report Part II (or Part IIA for non-carrying or non-clearing firms) "Statement of Financial Condition" and "Computation of Net Capital" sections. For firms that do not file FOCUS Reports, attach a financial condition statement giving the type and amount of the firm's assets and liabilities and net worth. This information must reflect the finances of the firm no earlier than 10 days before this Form BDW is filed.

6. Is broker-dealer now the subject of any:

(A) proceeding not reported on Form BD or any complaint or investigation? [ ] Yes [ ] No

(B) unsatisfied judgments or liens not reported on Form BD?
[ ] Yes [ ] No

(C) unsatisfied customer claims for funds or securities not reported under item 5? [ ] Yes [ ] No

Furnish full details for all "yes" answers on an attachment sheet. For any court or regulatory action, give: (1) the broker-dealer and individual's names, (2) the title and date of the action, (3) the court or body taking the action, and (4) a description of the action.

7. (A) Name, address, and phone number of the person who will have custody of books and records.

(B) Address where books and records will be located, if different.

8. EXECUTION: I swear or affirm that all of the information I am filing is correct, that I am authorized to execute this form for the broker-dealer, and that the broker-dealer's books and records will be preserved and available for inspection as required by law.

Date | Name | Area Code/Telephone No.

by: _____
Signature and title

Subscribed and sworn before me this ___ day of _____ 19__ by _____.

My commission expires _____ County of _____ State of_____.

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Regulatory Flexibility Certification

I, John Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Form BDW set forth in Securities Exchange Act Release No. 23646, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed amendments may provide some cost savings to small broker-dealers in that they may update and provide a copy of the appropriate standardized FOCUS report that they currently file under the Act to meet the Form's financial reporting requirements. For the small number of broker-dealers that would have to provide additional information under the revisions because they owe money or securities to other firms or customers, the Commission believes that any additional burdern would be minor and would not have a significant impact on a substantial number of small entities.

Dated: September 29, 1986.

John Shad,

Chairman.

[FR Doc. 86-22721 Filed 10-6-86; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-262-82]

Income Tax; Definition of S Corporation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations concerning the definition of the term "S corporation." Changes to the applicable tax law were made by the Subchapter S Revision Act of 1982 and the Tax Reform Act of 1984. The regulations would provide guidance on the qualifications of an S corporation.

DATES: Written comments and requests for a public hearing must be delivered or mailed by December 8, 1986. The amendments are proposed to be effective for taxable years beginning after December 31, 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-262-82), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert H. Ginsburgh of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone: 202-566-3297 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1361 of the Internal Revenue Code of 1954. These amendments are proposed to conform the Income Tax Regulations to section 2 and 6 of the Subchaper S Revision Act of 1982 (96 Stat. 1669) and to section 721 (c) and (f) of the Tax Reform Act of 1984 (98 Stat. 967).

In General

The propsed regulations provide that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 1362 (a) is in effect for the taxable year. In addition, the proposed regulations provide that the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not have: (1) More than 35 shareholders, (2) as a shareholder, a person (other than an estate and certain trusts) who is not an individual, (3) a nonresident alien as a shareholder, or (4) more than one class of stock.

Small Business Corporation Defined

Ineligible Corporation

Under the proposed regulations, an ineligible corporation is a corporation that is: (1) A member or an affiliated group (determined under section 1504 without regard to any exception contained in subsection (b) thereof), whether or not that affiliated group has ever filed a consolidated return, (2) a financial institution to which section 585 or 593 applies, whether or not that financial institution uses the reserve for bad debts method provided in section 166(c), (3) an insurance company subject to tax under Subchapter L, Chapter 1 of the Code, (4) a corporation to which an election under section 936 applies, or (5) a DISC or former DISC. Certain exceptions to these rules are provided in the proposed regulations, such as the exception for a qualified casualty insurance electing small business corporation.

Number of Shareholders

Under the Subchapter S Revision Act of 1982, the number of permissible shareholders of a small business corporation has been increased to thirty-five. For purposes of determining whether a corporation has more than thirty-five shareholders, the proposed regulations provide that stock owned by a husband and wife (or by either of or both of their estates) is treated as if owned by one shareholder, regardless of the form in which they own such stock.

Shareholders Must Be Individuals or Estates

In general, the proposed regulations provide that a corporation in which any shareholder is a corporation, partnership, or trust, or a corporation in which any shareholder's interest in the stock of the corporation is a legal life estate, usufruct interest, or an interest for a term of years, does not quailify as a small business corporation. However, a corporation having a shareholder who has an interest in the stock of the corporation that is a legal life estate or usufruct interest for life, which interest was created or came into existence before January 1, 1983, will not thereafter fail to qualify as a small business corporation by reason of that interest. Morever, a corporation having a shareholder who has an interest in the stock of the corporation that is a legal life estate or usufruct interest for life, which interest comes into existence after December 31, 1982 (excluding those interests that were created before January 1, 1983), will not thereafter fail to qualify as a small business corporation by reason of that interest if all of the following requirements are met: (1) That interest is owned by only one individual who is a citizen or resident of the United States, (2) the individual for whom that interest was created has not transferred that interest to any other person, and (3) that interest must terminate upon the death of the individual for whom that interest was created. If any requirement described in the preceding sentence ceases to be met, the corporation will cease to be a small business corporation.

Special Rules for Certain Trusts

A Subpart E trust, a voting trust, a certain type of testamentary trust, and a qualified Subchapter S trust that is treated as a Subpart E trust are permitted to be shareholders of a small business corporation. Under the proposed regulations, a Subpart E trust is a trust all of which (income and corpus) is treated (under Subpart E, Part I, Subchapter J, Chapter 1 of the Code) as owned by one individual (whether or not the grantor) who is a citizen or resident of the United States. Special rules apply in the case of a husband and wife. The deemed owner of a Subpart E trust (and not the trust) is treated as the shareholder for purposes of determining whether the corporation qualifies as a

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small business corporation. If the trust ceases to be a Subpart E trust upon the death of the deemed owner, the estate of the deemed owner (and not the trust) is treated as the shareholder for a certain period provided the trust continues in existence after the death of the deemed owner.

The proposed regulations provide that a voting trust is a trust created primarily to exercise the voting power of stock transferred to it. In order to qualify as a voting trust for purposes of section 1361, such a trust must: (1) Delegate to one or more trustees the right to vote, (2) require all distributions with respect to the stock of the corporation held by the trust to be paid to, or on behalf of, the beneficial owners of that stock, (3) require title and possession of that stock to be delivered to those beneficial owners upon termination of the trust, and (4) terminate, under its terms or by state law, on or before a specific date or event. For purposes of determining whether the corporation qualifies as a small business corporation, each beneficial owner of the stock held by the trust (and not the trust) is treated as a shareholder.

A qualified subchapter S trust, as defined in the proposed regulations, is a trust that satisfies all of the following requirements: (1) All the income of the trust is distributed (or is required to be distributed) currently to one individual who is a citizen or resident of the United States, and (2) the terms of the trust require that: (A) During the life of the current income beneficiary, there shall be only one income beneficiary of the trust, (B) any corpus distributed during the life of the current income beneficiary may be distributed only to that income beneficiary, (C) the current income beneficiary's income interest in the trust shall terminate on the earlier of that income beneficiary's death or the termination of the trust, and (D) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all its assets to that income beneficiary. If the current income beneficiary of a qualified Subchapter S trust makes the election under section 1361(d)(2), the trust is treated as a Subpart E trust. Accordingly, the current income beneficiary of the trust (and not the trust) is treated as the shareholder for purposes of determining whether the corporation qualifies as a small business corporation. If the trust ceases to be treated as a Subpart E trust upon the death of that income beneficiary, the estate of that income beneficiary (and not the trust) is treated as the shareholder for a certain period provided the trust continues in existence after the death of that income beneficiary.

Qualified Subchapter S Trust Election

In order to be an eligible shareholder of an S corporation, a qualified Subchapter S trust must have its beneficiary make the election provided in section 1361(d)(2), which permits a qualified Subchapter S trust to be treated as a Subpart E trust. The qualified Subchapter S trust election must be made separately with respect to each corporation whose stock is held by the trust. Generally, the qualified subchapter S trust election must be filed within the 16-day-and-2-month period beginning on the date on which the stock of the corporation is transferred to the trust or within the 16-day-and-2-month period beginning on the first day of the first taxable year for which the election to be an S corporation is effective, whichever period of time occurs later. However, if stock of the corporation has been transferred to the trust on or before the date on which the corporation makes the election to be an S corporation, and if that election and that transfer are made before the beginning of the first day of the first taxable year for which that election is effective, the qualified Subchapter S trust election must be filed within the 16-day-and-2-month period beginning on the date on which the corporation makes the election to be an S corporation. The qualified Subchapter S trust election may not be made by a beneficiary of a Subpart E trust (as described in section 1361(c)(2)(A)(i) without regard to section 1361(d)). In addition, the qualified subchapter S trust election may not be made by a beneficiary of a trust with respect to a corporation if a person (other than the beneficiary making that election or the spouse of that beneficiary) is treated under Subpart E, Part I, Subchapter J, Chapter 1 of the code as the owner as to any part of that portion of the trust which consists of the stock of that corporation.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be made available for public inspection and copying. A public hearing will be held upon written request of any person who has submitted written comments. If public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on those requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on those requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that a Regulatory Impact Analysis is not required because this proposed rule is not a major rule under Executive Order 12291.

The Commissioner of Internal Revenue has concluded that these proposed regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Robert H. Ginsburgh of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these proposed regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.1361–1—1.1388–1

Income taxes, Small business, S corporation, Electing small business corporation, Cooperatives.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * § 1.1361–1A (i) (3) and (4) also issued under 26 U.S.C. 1361(d)(2)(B)(iii).

Par. 2. Section 1.1361–1A is added immediately after § 1.1361–0A to read as follows:

§ 1.1361–1A S corporation defined.

(a) *In general.* For purposes of this title, the term "S corporation" means, with respect to any taxable year, a small business corporation (as defined in paragraph (b) of this section) for which an election under section 1362(a) is in effect for that taxable year. In addition, the term "C corporation" means, with respect to any taxable year, a corporation that is not an S corporation for that taxable year.

(b) *Small business corporation defined.* For purposes of Subchapter S, Chapter 1 of the Code and the regulations thereunder, the term "small business corporation" means a domestic corporation that is not an ineligible corporation (as defined in paragraph (d) of this section) and that does not have—

(1) More than 35 shareholders,

(2) As a shareholder, a person (other than an estate and other than certain trusts described in paragraph (h)(1) of this section) who is not an individual,

(3) A nonresident alien as a shareholder, or

(4) More than one class of stock.

The term "estate," for purposes of this paragraph, includes the estate of an individual in a case under Title 11 of the United States Code.

(c) *Domestic corporation.* For purposes of paragraph (b) of this section, the term "domestic corporation" means a corporation as defined in section 7701(a)(3) created or organized in the United States or under the law of the United States or of any State or Territory.

(d) *Ineligible corporation*—(1) *General rule.* (i) Except as otherwise provided in this paragraph, the term "ineligible corporation" means a corporation that is—

(A) A member of an affiliated group (determined under section 1504 without regard to any exception contained in subsection (b) thereof), whether or not that affiliated group has ever filed a consolidated return,

(B) A financial institution to which section 585 or 593 applies, whether or not that financial institution uses the reserve for bad debts method provided in section 166(c),

(C) An insurance company (other than a qualified casualty insurance electing small business corporation, as defined in paragraph (d)(1)(ii) of this section) subject to tax under Subchapter L, Chapter 1 of the code,

(D) A corporation to which an election under section 936 applies, or

(E) A DISC or former DISC.

(ii) The term "qualified casualty insurance electing small business corporation" means any corporation described in section 831(a) if—

(A) As of July 12, 1982, the corporation was an electing small business corporation (within the meaning of section 1371 (a) and (b), as in effect on July 1, 1982) and was described in section 831(a),

(B) The corporation was formed before April 1, 1982, and proposed (through a written private offering first circulated to investors before April 1, 1982) to elect to be taxed as an electing small business corporation (within the meaning of section 1371 (a) and (b), as in effect on July 1, 1982) and to be operated on an established insurance exchange, or

(C) The corporation is approved for membership on an established insurance exchange pursuant to a written agreement entered into before December 31, 1982, and the corporation is described in section 831(a) as of December 31, 1984.

However, this paragraph (d)(1)(ii) shall not apply unless, as of July 12, 1982, the corporation is actively seeking investors or otherwise shows a present intent to enter into the casualty insurance business. A corporation shall not be treated as a qualified casualty insurance electing small business corporation unless an election made under section 1372(a) (as in effect on July 1, 1982) is in effect for the first taxable year of the corporation beginning after December 31, 1984. The provisions of Subchapter S of Chapter 1 of the Code as in effect on July 1, 1982, shall apply in the case of a qualified casualty insurance electing small business corporation except as provided in paragraph (d)(1)(iii) of this section.

(iii) The provisions of paragraph (d)(1)(ii) of this section shall cease to apply with respect to any corporation after—

(A) Any termination of the election of the corporation made under section 1372(a) (as in effect on July 1, 1982),

(B) The first date on which more than 50 percent of the stock of the corporation is newly owned stock (within the meaning of section 1378 (c)(2) and (3) as in effect for any taxable year beginning after December 31, 1982, applied by substituting "December 31, 1984," for "December 31, 1982," each place it appears therein), or

(C) The corporation ceases to be described in section 831(a).

(2) *Inactive corporation exception.* (i) For purposes of paragraph (d)(1)(i)(A) of this section, a corporation (hereinafter in this subparagraph referred to as the parent corporation) shall not be considered during a period within its taxable year to be a member of an affiliated group solely by reason of the ownership of stock in another corporation (hereinafter in this subparagraph sometimes referred to as the subsidiary corporation) if the subsidiary corporation—

(A) Has not begun business at any time on or before the close of that period, and

(B) Does not have gross income for that period.

(ii) The determination under paragraph (d)(2)(i)(A) of this section of the date on which a subsidiary corporation begins business shall be made by taking into account all the facts and circumstances of the particular case. A corporation has not "begun business," however, merely because it is "in existence." Ordinarily, a corporation begins business when it starts the business operations for which it was organized. Mere organizational activities, such as the obtaining of the corporate charter, are not alone sufficient to show the beginning of business. An example of a corporation that has not begun business is a corporation incorporated for the sole purpose of reserving a corporate name in a State or States in which the parent corporation is not doing business. If the activities of a corporation have advanced to the extent necessary to establish the nature of its business operations, however, the corporation will be deemed to have begun business. For example, a corporation that acquires operating assets necessary for the type of business contemplated may be deemed to have begun business.

(iii) If a subsidiary corporation ceases to meet any of the requirements of paragraph (d)(2)(i) of this section, then the parent corporation's election under section 1362(a) shall terminate effective on and after the earlier of the first day that the subsidiary corporation begins business or the first day, determined under the subsidiary corporation's method of accounting, that the subsidiary corporation realizes gross income.

(iv) The application of this subparagraph may be illustrated by the following example:

Example. Corporation P, which uses the calendar year as its taxable year, in 1983 owns all the stock of Corporation S, which uses the calendar year as its taxable year. For purposes of paragraph (d)(1)(i)(A) of this section, P would not be considered at any time during 1983 to be a member of an affiliated group solely by reason of its ownership of S's stock if S has not begun

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business before January 1, 1984, and has no gross income for calendar year 1983. Thus, P could qualify as a small business corporation during 1983 if it meets the other requirements provided in section 1361(b). Assuming that P's ownership of S stock remains unchanged, P would cease to be a small business corporation on the day that S either begins business or realizes gross income (determined under S's method of accounting), whichever day occurs earlier.

(3) *Exception for foreign corporation or DISC.* (i) In the case of a corporation which on September 28, 1982, was an electing small business corporation (within the meaning of section 1371 (a) and (b), as in effect before enactment of the Subchapter S Revision Act of 1982), and which then owned at least 80 percent of the stock of a foreign corporation, a DISC, or a former DISC (within the meaning of section 1504 (b)(3) or (7)), the corporation shall not be treated as an ineligible corporation under paragraph (d)(1)(i)(A) of this section by reason of such ownership.

(ii) The provisions of paragraph (d)(3)(i) of this section shall cease to apply with respect to any S corporation after—

(A) Any termination of the election of the corporation made under section 1362(a),

(B) The first date on which more than 50 percent of the stock of the corporation is newly owned stock (within the meaning of section 1378 (c)(2) and (3)), or

(C) The first date after September 28, 1982, on which the corporation ceases to meet such 80 percent ownership requirement.

(e) *Number of shareholders*—(1) *General rule.* A corporation does not qualify as a small business corporation if it has more than 35 shareholders. Ordinarily, the persons who would have to include in gross income dividends distributed with respect to the stock of the corporation are considered to be the shareholders of the corporation. For example, if stock (owned other than by a husband and wife) is owned by tenants in common or joint tenants, each tenant in common or joint tenant is generally considered to be a shareholder of the corporation (For special rules relating to stock owned by husband and wife, see paragraph (e)(2) of this section.). Persons for whom stock of a corporation is held by a nominee, guardian, custodian, or an agent are generally considered to be shareholders of the corporation. But if stock is owned by a partnership, the partnership (and not its partners) is considered to be the shareholder and the corporation does not qualify as a small business corporation.

(2) *Special rules relating to stock owned by husband and wife.* For purposes of paragraph (e)(1) of this section, stock owned by a husband and wife (or by either or both of their estates) shall be treated as if owned by one shareholder, regardless of the form in which they own such stock. However, for purposes of paragraphs (f) and (g) of this section, each spouse (or his or her estate) shall be treated as a shareholder. The treatment described in this subparagraph shall cease upon dissolution of the marriage for any reason other than death.

(f) *Shareholders must be individuals or estates*—(1) *General rule.* Except as otherwise provided in this paragraph (f) and paragraph (h) of this section, a corporation in which any shareholder is a corporation, partnership, or trust, or a corporation in which any shareholder's interest in the stock of the corporation is a legal life estate, usufruct interest, or an interest for a term of years, does not qualify as a small business corporation.

(2) *Special rule for split interests created or coming into existence before January 1, 1983.* A corporation having a shareholder who has an interest in the stock of the corporation that is a legal life estate or usufruct interest for life, which interest was created or came into existence before January 1, 1983, will not thereafter fail to qualify as a small business corporation by reason of that interest. For purposes of this paragraph (f), an interest shall be considered to be created before January 1, 1983, if the interest is created under the terms of a will executed before that date, and if the decedent dies before January 1, 1986, without having republished the will after December 31, 1982, by codicil or otherwise. For special rules relating to certain trusts that are not considered to be shareholders, see paragraph (h) of this section.

(3) *Special rule for split interests coming into existence on or after January 1, 1983.* A corporation having a shareholder who has an interest in the stock of the corporation that is a legal life estate or usufruct interest for life, which interest comes into existence after December 31, 1982 (excluding those interests that were created before January 1, 1983), will not thereafter fail to qualify as a small business corporation by reason of that interest if all of the following requirements are met.

(i) That interest is owned by only one individual who is a citizen or resident of the United States,

(ii) The individual for whom that interest was created has not transferred that interest to any other person, and

(iii) That interest must terminate upon the death of the individual for whom that interest was created.

If any requirement in subdivision (i), (ii), or (iii) of this subparagraph ceases to be met, the provisions of this subparagraph shall cease to apply as of the first date on which that requirement ceases to be met.

(g) *No nonresident alien shareholder.* A corporation having a shareholder who is a nonresident alien does not qualify as a small business corporation.

(h) *Special rules relating to trusts—(1) General rule.* For purposes of paragraphs (e)(1), (f)(1), and (g) of this section, the following rules apply to determine who is treated as a shareholder if stock is held by a trust. Except as otherwise provided in this subparagraph, if stock is held by a trust, the trust is considered to be the shareholder. However, the trust is not considered to be the shareholder in the following cases:

(i) In the case where stock is held by a Subpart E trust (as defined in paragraph (h)(3)(i) of this section), the deemed owner of the trust (determined under Subpart E, Part I, Subchapter J, Chapter 1 of the Code) shall be treated as the shareholder. If the trust ceases to be a Subpart E trust upon the death of the deemed owner, the estate of the deemed owner shall be treated as the shareholder of stock held by the trust when the deemed owner dies, provided the trust continues in existence after the death of the deemed owner. The estate ordinarily shall cease to be treated as the shareholder of that stock upon the earlier of the transfer of that stock by the trust or the expiration of the 60-day period beginning on the date on which the deemed owner dies. However, if the entire corpus of the trust is includible in the gross estate of the deemed owner, the estate shall cease to be treated as the shareholder of that stock upon the earlier of the transfer of that stock by the trust or the expiration of the 2-year period beginning on the date on which the deemed owner dies. For the purpose of determining whether the entire trust corpus is includible in the gross estate of the deemed owner, any community property interest in the trust held by the deemed owner's spouse which arises by reason of applicable State law shall be disregarded.

(ii) In the case where stock is held by a voting trust (as defined in paragraph (h)(3)(ii) of this section), each beneficial owner of the stock shall be treated as a shareholder.

(iii) In the case where stock is transferred to a trust (other than a Subpart E trust, a voting trust, and a

qualified Subchapter S trust that is treated as a Subpart E trust) pursuant to the terms of a will, the estate of the testator shall be treated as the shareholder of that stock until the earlier of the disposition of that stock by the trust or the expiration of the 60-day period beginning on the date on which that stock is transferred to the trust.

(iv) In the case where stock is held by a qualified Subchapter S trust that is treated as a Subpart E trust, the income beneficiary who is treated (under section 678(a)) as the owner of the stock because of an election made under section 1361(d)(2) shall be treated as the shareholder. If the trust ceases to be treated as a Subpart E trust upon the death of that income beneficiary (*e.g.*, there is no successive income beneficiary nor is another person treated as the deemed owner of the trust as described in paragraph (h)(3)(i) of this section), the estate of that income beneficiary shall be treated as the shareholder of the stock with respect to which the income beneficiary made the election under section 1362(d)(2), provided the trust continues in existence after the death of that income beneficiary. The estate ordinarily shall cease to be treated as the shareholder of that stock upon the earlier of the transfer of that stock by the trust or the expiration of the 60-day period beginning on the date on which the deemed owner dies. However, if the entire corpus of the trust is includible in the gross estate of that income beneficiary, the estate shall cease to be treated as the shareholder of that stock upon the earlier of the transfer of that stock by the trust or the expiration of the 2-year period beginning on the date on which the deemed owner dies. For the purpose of determining whether the entire trust corpus is includible in the gross estate of the deemed owner, any community property interest in the trust held by the deemed owner's spouse which arises by reason of applicable State law shall be disregarded.

(2) *Foreign trusts.* For purposes of paragraph (h)(1) of this section, in any case where stock is held by a foreign trust, the trust is considered to be the shareholder. Thus, for example, if a foreign trust qualifies as a voting trust, any corporation in which the trust holds stock does not meet the qualifications of a small business corporation.

(3) *Certain trusts defined*—(i) *Subpart E. trust.* For purposes of this section, a subpart E trust is a trust all of which (income and corpus) is treated (under Subpart E, Part I, Subchapter J, Chapter 1 of the code) as owned by one individual (whether or not the grantor) who is a citizen or resident of the United States. For the purpose of determining whether the entire trust is treated as owned by one individual, a husband and wife who file a joint return, and each of whom is a citizen or resident of the United States, shall be treated as one individual.

(ii) *Voting trust.* A voting trust is a trust created primarily to exercise the voting power of stock transferred to it. In order to qualify as a voting trust for purposes of this section, such a trust must be represented by a written agreement, or written document (such as a will), that—

(A) Delegates to one or more trustees the right to vote,

(B) Requires all distributions with respect to the stock of the corporation held by the trust to be paid to, or on behalf of, the beneficial owners of that stock,

(C) Requires title and possession of that stock to be delivered to those beneficial owners upon termination of the trust, and

(D) Must terminate, under its terms or by state law, on or before a specific date or event.

(i) *Qualified Subchapter S trust*—(1) *Definition.* A qualified subchapter S trust is a trust (including a trust that is represented by a will) that satisfies all of the following requirements:

(i) All the income (within the meaning of § 1.643(b)–1 of the trust is distributed (or is required to be distributed) currently to one individual who is a citizen or resident of the United States, and

(ii) The terms of the trust meet all the requirements specified in paragaraph (i)(2) of this section.

If a qualified subchapter S trust for which an election under section 1361 (d)(2) has been made (as described in paragraph (i)(3) of this section) ceases to meet any requirement in paragraph (i)(2) of this section, the provisions of this paragraph (i) shall cease to apply as of the first day on which that requirement ceases to be met. If a qualified Subchapter S trust for which an election under section 1362(d)(2) has been made (as described in paragraph (i)(3) of this section) ceases to meet any requirement in paragraph (i)(1)(i) of this section but continues to meet all the requirements in paragraph (i)(2) of this section, the provisions of this paragraph (i) shall cease to apply as of the first day of the first taxable year beginning after the first taxable year for which it ceased to meet any requirement in paragraph (i)(1)(i) of this section. See §§ 1.651(a)–2(a) and 1.663(b)–1(a) for the rules relating to the determination of whether all income of a trust is distributed (or is required to be distributed) currently.

(2) *Terms of a qualified Subchapter S trust.* For purposes of paragraph (i)(1)(ii) of this section, the terms of the trust must require that—

(i) During the life of the current income beneficiary, there shall be only one income beneficiary of the trust,

(ii) Any corpus distributed during the life of the current income beneficiary may be distributed only to that income beneficiary,

(iii) The current income beneficiary's income interest in the trust shall terminate on the earlier of that income beneficiary's death or the termination of the trust, and

(iv) Upon termination of the trust during the life of the current income beneficiary, the trust shall distribute all its assets to that income beneficiary.

The determination of whether the terms of a trust meet all the aforementioned requirements depends upon the terms of the trust instrument and the applicable local law. For example, a trust whose governing instrument provides that A is the sole income beneficiary of the trust is considered to have two income beneficiaries if, under the applicable local law, A and B are considered to be the income beneficiaries of the trust. Except as otherwise provided in this subparagraph, if the terms of a trust do not preclude the possibility that any of the aforementioned requirements will not be met, the trust shall not qualify as a qualified Subchapter S trust. For example, if the terms of a trust are silent with respect to corpus distributions and distributions of corpus to a person other than the current income beneficiary are permitted under local law, the terms of the trust do not preclude the possibility that corpus will be distributed to a person other than the current income beneficiary. Any transferee of the current income beneficiary's income interest and any person treated as a beneficiary under § 1.643(c)–1 (a), (b), or (c) shall be treated as a current income beneficiary for purposes of this subparagraph. The fact that the terms of a trust do not preclude the current income beneficiary from transferring his or her interest in the trust or do not preclude a person other than the current income beneficiary named in the trust instrument from being treated as a beneficiary of the trust under § 1.643(c)–1 (a), (b), or (c) shall not preclude the trust from qualifying as a qualified Subchapter S. trust.

(3) *Qualified Subchapter S trust election.* This paragraph applies to the election provided in section 1361(d)(2) to treat a qualified Subchapter S trust (as

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defined in paragraph (i)(1) and (2) of this section) as a Subpart E trust, and thus a qualifying shareholder. This election shall be made separately with respect to each corporation whose stock is held by the trust. The current income beneficiary of the trust or the legal representative of the current income beneficiary (or a natural or an adoptive parent of the current income beneficiary in the case where a legal representative has not been appointed, but only if the current income beneficiary is a minor) shall make this election by signing and filing with the service center with which the corporation files its income tax return a statement that—

(i) Contains the name, address, and taxpayer identification number of the current income beneficiary, the trust, and the corporation,

(ii) Identifies the election as an election made under section 1361(d)(2),

(iii) Specifies the date on which the election is to become effective (not earlier than 15 days and two months before the date on which the election is filed),

(iv) Specifies the date (or dates) on which the stock of the corporation has been transferred to the trust, and

(v) Provides all information necessary to show that the trust meets all the requirements set forth in paragraphs (i)(1) and (2) of this section.

In general, the election under section 1361(d)(2) ("the QSST election") must be filed within the 16-day-and-2-month period beginning on the date on which the stock of the corporation is initially transferred to the trust or within the 16-day-and-2-month period beginning on the first day of the first taxable year for which the election under section 1362(a) ("the S election") is effective, whichever period of time occurs later. If stock of the corporation has been transferred to the trust on or before the date on which the corporation makes the S election, and if that election and that transfer are made before the beginning of the first day of the first taxable year for which the S election is effective, the QSST election must be filed within the 16-day-and-2-month period beginning on the date on which the corporation makes the S election. In the case of a trust (other than a qualified Subchapter S trust) which ceases to be a Subpart E trust (as defined in paragraph (h)(3)(i) of this section), the QSST election must be filed within the 16-day-and-2-month period beginning on the date on which the trust ceases to be a Subpart E trust or, if applicable, the date on which the estate of the deemed owner ceases to be treated as a shareholder under paragraph (h)(1)(i) of this section. The QSST election may not be made by a beneficiary of a Subpart E trust (as described in paragraph (h)(1)(i) of this section without regard to this paragraph (i)).

In addition, the QSST election may not be made by a beneficiary of a trust with respect to a corporation if a person (other than such beneficiary or his or her spouse) is treated under Subpart E, Part I, Subchapter J, Chapter 1 of the code as the owner as to any part of that portion of the trust which consists of the stock of that corporation. The QSST election does not itself constitute an election as to the status of the corporation; the corporation must make the S election to be treated as an S corporation.

(4) *Coordination with grantor trust rules.* For purposes of Subpart E, Part I, Subchapter J, Chapter 1 of the code, if a valid QSST election is made, the beneficiary shall be treated under section 678(a) as the owner of that portion of the trust which consists of the stock with respect to which such election was made, contrary provisions of section 678 notwithstanding.

(5) *Successive income beneficiary.* If a prior income beneficiary of a qualified subchapter S trust has made an election under section 1361(d)(2), a successive income beneficiary of that trust shall be treated as consenting to the election unless the successive income beneficiary affirmatively refuses to consent to the election. For this purposes, the term "successive income beneficiary" does not include any beneficiary of a separate trust that is newly created upon the death of the income beneficiary of the qualified Subchapter S trust. A successive income beneficiary of the trust shall make the affirmative refusal to consent by signing and filing with the service center with which the corporation files its income tax return a statement that—

(i) Contains the name, address, and taxpayer identification number of the successive income beneficiary, the trust, and the corporation,

(ii) Identifies the refusal as an affirmative refusal to consent made under section 1361(d)(2), and

(iii) Sets forth the date on which the successive income beneficiary became the income beneficiary.

The affirmative refusal to consent must be filed within 15 days and 2 months after the date on which the successive income beneficiary became the income beneficiary. The affirmative refusal to consent shall be effective as of the date on which the successive income beneficiary became the income beneficiary.

(6) *Revocation of election under section 1361(d)(2).* An election made under section 1361(d)(2) may be revoked only with the consent of the Commissioner. An application for consent to revoke the election must be signed by the current income beneficiary and shall—

(i) Contain the name, address, and taxpayer identification number of the current income beneficiary, and of the trust and the corporation identified in connection with the election,

(ii) Identify the election being revoked as an election made under section 1361(d)(2), and

(iii) Explain why the current income beneficiary seeks to revoke the election.

The application for consent to revoke the election must be submitted to: Commissioner of Internal Revenue, Attention: CC:IND, 1111 Constitution Avenue, NW, Washington, DC 20224.

(j) *Examples.* The provisions of paragraphs (h) and (i) of this section may be illustrated by the following examples:

Example (1). (i) A, an individual who is a United States citizen, transfers in 1983 to a trust her shares of stock of Corporation M, a calendar year corporation with ten shareholders. Under the terms of the trust, A has the power to revest the entire corpus and the income therefrom in herself and B is the sole beneficiary. Moreover, the trust will continue in existence after A's death. Corporation M makes an election to be an S corporation that is effective for calendar year 1983. The trust qualifies as a Subpart E trust described in section 1361(c)(2)(A)(i), and thus A (and not the trust) is treated as the shareholder for purposes of section 1361(b)(1).

(ii) Assume the same facts as in example (1)(i) except that A dies without having exercised her power, and that upon A's death the trust ceases to be a Subpart E trust because no individual is deemed to be the owner of the entire trust (income and corpus). Since the trust ceases to be a Subpart E trust upon A's death, A's estate (and not the trust) is treated as the shareholder for purposes of section 1361(b)(1). Under section 2038, the entire corpus of the trust is includible in A's gross estate. Accordingly, A's estate shall cease to be treated as the shareholder of that stock upon the earlier of the transfer of that stock by the trust (other than to A's estate) or the expiration of the 2-year period beginning on the date on which A died.

(iii) Assume the same facts as in Example (1)(ii) except that the terms of the trust also provide that, if A does not exercise her power before her death, B will have the power exercisable solely by himself to vest the entire corpus and the income therefrom in himself. Although A has died, the trust continues to qualify as a Subpart E trust because, upon A's death, B is deemed to be the owner of the entire trust (income and corpus). Since the trust does not cease to be a Subpart E trust upon A's death, B (and not the estate of A) is treated as the shareholder for purpose of section 1361(b)(1).

Example (2). C, the sole shareholder of an S corporation, established an irrevocable trust for the benefit of his son, D, and transfers shares of the corporation to the trust. The trust will terminate on the earlier of D's death or after 10 years and 1 day. Upon termination the trust corpus will revert to C and all accumulated but previously undistributed trust income will be distributed to D or his estate. During the term of the trust, D has a noncumulative power to withdraw all ordinary trust income, and all income allocable to trust corpus, earned during each taxable year. Under these facts, the trust does not qualify as a Subpart E trust under section 1361 because for purposes of that section the entire trust (corpus and income) is not treated as owned by one individual. Accordingly, the trust is an ineligible shareholder and the corporation ceases to be an S corporation as of the date of the stock transfer.

Example (3). F holds interests in two S corporations, Corporation O and Corporation P. F directly owns his shares of stock in Corporation P. F's shares of stock in Corporation O are held by a Subpart E trust with F as the deemed owner. F dies on July 1, 1983. The trust continues in existence after F's death but is no longer a Subpart E trust. The entire corpus of the trust is not includible in F's gross estate. On August 1, 1983, F's shares of stock in Corporation P are transferred to the trust pursuant to the terms of F's will. Under section 1361 (c)(2)(B)(iii), the last day on which F's estate could be treated as the shareholder of Corporation P would be September 29, 1983 (*i.e.*, the 59th day after the date of transfer). Since the stock of Corporation P was not held by the trust when F died, section 1361(c)(2)(B)(ii) does not apply with respect to that stock. With respect to the shares of stock in Corporation O held by the trust, section 1361(C)(2)(B)(ii) is applicable and the last day on which F's estate could be treated as a shareholder of Corporation P would be August 29, 1983 (*i.e.*, the 59th day after the date of death).

Example (4). (i) Corporation Q, a calendar year corporation with 15 shareholders, makes an election to be an S corporation that is effective for calendar year 1983. On July 1, 1983, G, a shareholder of Corporation Q, transfers his shares of Corporation Q stock to a trust with H as its current income beneficiary. The trust, which uses the calendar year as its taxable year, initially satisfies all the requirements to be a qualified Subchapter S trust, even though its terms do not require that all income of the trust be distributed currently. On August 1, 1984, H makes a qualified Subchapter S trust election (hereinafter in this paragraph referred to as QSST election) with respect to Corporation Q that becomes effective as of July 1, 1983. Accordingly, as of July 1, 1983, the trust is a qualified Subchapter S trust that is treated as a Subchapter E trust and H is treated as the shareholder for purposes of section 1361(b)(1).

(ii) Assume the same facts as in Example (4)(i), and further assume that, for the taxable year ending on December 31, 1983, the trust does not distribute all its income currently. As of January 1, 1984, the trust ceases to be a qualified Subchapter S trust and the trust is no longer treated as a Subpart E trust. Thus, the trust is considered to be the shareholder as of that date for purposes of Section 1361(C)(1), and Corporation Q ceases to be an S corporation as of that date because the trust is an ineligible shareholder.

(iii) Assume the same facts as in Example (4)(i) except that H dies on November 1, 1983, and that I and J become income beneficiaries of the trust after H's death. The trust ceases to be a qualified Subchapter S trust as of that date because it has more than one current income beneficiary. For the 60-day period beginning on November 1, 1983, H's estate (and not the trust) is considered to be the shareholder for purposes of Section 1361(b)(1) because the trust ceases to be treated as a Subpart E trust upon H's death. See section 1361(c)(2)(A)(ii).

Example (5). On January 1, 1983, stock of Corporation R, a calendar year S corporation, is transferred to a trust that satisfies all the requirements to be a qualified Subchapter S trust. The terms of the trust do not preclude the current income beneficiary, K, from assigning his income interest in the trust. K files in January 1983 a QSST election that is effective as of January 1, 1983. On July 1, 1983, K assigns his income interest in the trust to a person not named in the trust instrument. The assignee is treated as a current income beneficiary for purposes of determining whether the trust still qualifies as a qualified Subchapter S trust. Because the assignee's income interest will terminate on K's death (rather than the assignee's), the trust does not meet the requirement set forth in section 1361(d)(3)(A)(iii). Accordingly, the trust ceases as of the date of the assignment to be a qualified Subchapter S trust, and Corporation R ceases to be an S corporation as of the same date.

Example (6). Assume that the terms of a trust provide for termination of the trust only upon the death of the current income beneficiary. Although the terms of the trust fail to explicitly provide for the distribution of trust assets to the current income beneficiary upon termination of the trust during the life of the current income beneficiary, the requirement of a section 1361 (d)(3) (A) (A) is met because the trust agreement precludes the possibility that the trust will terminate during the life of the current income beneficiary.

Example (7). On January 10, 1983, C transfers to a trust his shares of stock in Corporation S, a C corporation. C is the holder of the remainder interest and D, who is 13 years old, is the sole income beneficiary of the trust. The trust instrument provides that they trust shall terminate when D is 21 years old. The terms of the trust satisfy all the requirements to be a qualified Subchapter S trust except the requirement of section 1361 (d) (3) (A) (iv) that, upon termination of the trust during the life of the current income beneficiary, the corpus must be distributed to that income beneficiary. On February 10, 1983, C makes a gift of his remainder interest to D. Accordingly, as of February 10, 1983, the terms of the trust satisfy the requirement specified in section 1361 (d) (3) (A) (iv) and the trust is a qualified Subchapter S trust.

Example (8). (i) On January 1, 1983, stock of Corporation T, a calendar year corporation with 10 shareholders, is transferred to a trust that satisfies all the requirements to be a qualified Subchapter S trust. On January 31, 1983, Corporation T files an election to be an S corporation that is to be effective for the taxable year beginning on January 1, 1983. In order for the election to be effective for that taxable year, the QSST election must be effective as of January 1, 1983, and must be filed within the period beginning on January 1, 1983, and ending on March 16, 1983 (*i.e.*, the 16-day-and-2-month period beginning on the first day of the first taxable year for which the election to be an S corporation is effective).

(ii) Assume the same facts as in example (9) (i) except that the election to be an S corporation is filed on April 1, 1983 (*i.e.*, it is filed after the 15th day of the 3rd month of the first taxable year for which its is to be effective but before the end of that taxable year). Although the election to be an S corporation is not timely filed for the 1983 taxable year, section 1362 (b) (3) provides that the election is to be treated as made for the taxable year beginning on January 1, 1984. In order for that election to be effective for the 1984 taxable year, it must be valid when made. Thus, the QSST election must be filed within the 16-day-and-2-month period beginning on April 1, 1983, and ending of June 16, 1983 (and the election must state that it is to be effective on April 1, 1983).

(iii) Assume the same facts as in example (9) (i) except that the QSST election is filed on April 15, 1983 (*i.e.*, the 15th day of the 3rd month after the date on which the corporation makes the election to be an S corporation). Because the QSST election is not effective as of the beginning of Corporation T's 1983 taxable year, the election to be an S corporation is not valid for 1983. In that case, section 1362 (b) (2) provides that the election to be an S corporation is to be treated as made for the taxable year beginning on January 1, 1984. Since the QSST election is filed within the 16-day-and-2-month period beginning on January 31, 1983, the date on which the corporation makes the election to be an S corporation, the election to be an S corporation is effective for the taxable year beginning on January 1, 1984 (provided the QSST election states that it is to be effective as of January 31, 1983, which is the date of the election to be an S corporation).

(k) *Application.* The rules contained in paragraphs (e) (2) and (h) (1) of this section apply solely for purposes of determining whether a corporation qualifies as a small business corporation. Thus, for example, the rule contained in paragraph (h) (1) of this section may not apply to determine who is a shareholder for purposes of section 1366 (*i.e.*, to whom the items of income, loss, deduction, or credit of the corporation are to be distributed).

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(l) *Single class of stock.* [Reserved]

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 86-22703 Filed 10-6-86; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Public Comment Period; Proposed Amendment to Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and public hearing on the substantive adequacy of a proposed program amendment submitted by Utah to modify the Utah permanent regulatory program (hereinafter referred to as the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerns the program definitions for "coal processing" and "coal processing plant." This notice sets forth the times and locations that the Utah program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures for the hearing, if requested.

DATES: Written comments from members of the public not received by 4:30 p.m. on November 6, 1986 will not necessarily be considered in the Director's decision on whether the proposed amendments satisfy the criteria for approval.

A public hearing on the proposed amendments has been scheduled for November 3, 1986. Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Hagen at the address and telephone number listed below by October 22, 1986. If no person has contacted Mr. Hagen by this date to express an interest in participating in this hearing, the hearing will not be held.

ADDRESSES: The public hearing will be held between 1:00 p.m. and 4:00 p.m. at 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah. Written comments and requests for an opportunity to speak at the public hearing should be sent to Mr. Robert Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque, New Mexico 87102.

Copies of the Utah program, the proposed modifications to the program and all written comments received in response to this notice will be available for public review at the OSMRE Field Office above and the OSMRE Headquarters office and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Albuquerque Field Office:

Utah Division of Oil Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180-1203, Telephone: (810) 538-5340

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5124, Washington, DC 20240, Telephone: (202) 343-5351.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240, Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program under SMCRA for the regulation of the surface coal mining operations in the State (46 FR 5890-5915).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981 **Federal Register** (46 FR 5899-5915). Subsequent actions concerning the Utah program are listed under 30 CFR 944.15 and 944.16.

Proposed Amendment

On September 3, 1986, Utah submitted a proposed amendment to modify the definitions for "coal processing" and "coal processing plant" under the State regulations at SMC/UMC 700.5. As a result of a ruling of the District Court for the District of Columbia on July 6, 1984, the requirement to obtain a mining permit was extended to include processing facilities which in any way leach, chemically process, or physically process coal, even if they do not separate coal from its impurities. The Utah rules, which were adopted by the Utah Board of Oil, Gas and Mining on July 31, 1986, are intended to bring these facilities under jurisdiction of the Utah program in accordance with the court's decision.

The Director, OSMRE, is seeking public comment on the adequacy of the proposed program amendment in satisfying the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary had determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 30, 1986.

James W. Workman,
Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-22846 Filed 10-6-86; 8:45 am]
BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 3

Evidence Other Than Evidence of Service; Acceptability of Photocopies

AGENCY: Veterans Administration.

ACTION: Proposed regulation amendment.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations to permit the acceptance of photocopies of documentary evidence in certain cases. This amendment is necessary to alleviate the burden and reduce the cost to claimants and beneficiaries who are required to submit documentary evidence to establish birth, death, marriage or relationship in connection with claims for veterans' benefits. The effect of this amendment will be to increase the sources of acceptable photocopied evidence while clarifying the categories of individuals who will be authorized to perform this function.

DATES: Comments must be received on or before November 5, 1986. This amendment is proposed to be effective November 6, 1986.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 14, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Current regulations on the evidence necessary to establish birth, death, marriage and relationship generally require the submission of original documents or certified copies of official documents issued by the custodian of public records. Photocopies of those documents can then be made by VA employees with the originals being returned to claimants. This procedure is cumbersome for the VA and burdensome to a number of claimants who, fearing the loss of important documents in the mail, elect to bring their original documents to the nearest VA office for reproduction. In some cases, large Western States for example, such trips can exceed 100 miles.

This burden can be alleviated by expanding the sources of acceptable certification of photocopied documents. To maintain program integrity, however, such an expansion should be limited to individuals who are familiar with the wide variety of programs administered by the VA and who deal with retired or former military personnel or their dependents on a regular basis. It is also desirable to limit the group to those against whom administrative sanctions, such as adverse personnel actions or derecognition of their status as claims representatives, can be readily invoked.

Based on the above criteria we have identified four groups of individuals from whom certified photocopies of documentary evidence to establish birth, death, marriage and relationship would be acceptable. First, VA employees who are authorized to administer oaths. Second, representatives of veterans' service organizations who are accredited by the VA under 38 CFR Part 14. Third, military personnel appointed on orders for this purpose by the commander of a military installation. Fourth, any official of an approved educational institution or rehabilitation facility who is authorized to certify enrollments when such documentary evidence is submitted in connection with a claim for benefits under 38 U.S.C. Chapters 30, 31, or 34.

Under this proposed amendment the documentary evidence of birth, death, marriage or relationship that is required by 38 CFR 3.205 through 3.215 would still have to be obtained by the claimant for presentation to one of the cited individuals who, if satisified with the authenticity of the documents, would then certify true and exact copies for use by the VA. This would allow claimants to retain the originals which may be required for other purposes while providing the VA with acceptable evidence for adjudicating claims. These additional sources of acceptable certification will also provide claimants who reside at some distance from the nearest VA regional office with a greater selection of more convenient locations where documents can be photocopied.

We propose to implement this extension of certification authority by appropriately amending 38 CFR 3.204(c). In addition, cross-references have been added to 38 CFR 3.205 through 3.215 to reinforce the applicability of this new provision. We also propose to amend 38 CFR 3.202(c) to provide that photocopies of evidence from foreign countries are acceptable if the documents meet the requirements of § 3.202 and the copies are certified in accordance with § 3.204(c) as proposed.

Language has been revised in 38 CFR 3.205 through 3.215 to make the regulations gender neutral.

The Administrator hereby certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 605(b), this proposed regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this regulation imposes no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that this proposed regulation is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.109, 64.110, 64.115, 64.117 and 64.125)

Approved: September 16, 1986.

By direction of the Administrator.

Thomas E. Harvey,
Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, ADJUDICATION, is proposed to be amended as follows:

1. In § 3.202 paragraph (c) is revised to read as follows:

§ 3.202 Evidence from foreign countries.

* * * * *

(c) Photocopies of original documents meeting the requirements of this section will be accepted if certified in accordance with § 3.204(c) of this part. (38 U.S.C. 210(c))

2. In § 3.204 paragraph (c) is revised to read as follows:

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§ 3.204 Evidence other than evidence of service.

* * * * *

(c) *Acceptability of photocopies.* (1) Photocopies of original documents necessary to establish birth, death, marriage or relationship under the provisions of §§ 3.205 through 3.215 of this part are acceptable as evidence if an individual described in paragraph (c)(2) of this section has viewed the original document to be copied, is satisfied as to the document's genuineness and freedom from alteration, and certifies that the photocopy submitted as evidence is a true and exact copy of the original document viewed.

(2) For purposes of this paragraph, individuals authorized to certify photocopies of original documents are limited to:

(i) Any VA employee who is authorized to administer oaths.

(ii) Any representative of a veterans' service organization who is accredited under the provisions of Part 14 of this title.

(iii) Military personnel appointed on orders for this purpose by the commander of a military installation.

(iv) Any official of an approved educational institution or rehabilitation facility who is authorized to certify enrollments when such documentary evidence is submitted in connection with a claim for benefits under 38 U.S.C. chapters 30, 31 or 34. (38 U.S.C. 210(c))

§§ 3.205, 3.208 and 3.214 [Amended]

3. In §§ 3.205(c), 3.208 and 3.214 remove the words "widow or widower," "widows," or "widow" wherever they appear and add, in their place, the words "surviving spouse".

§ 3.209 [Amended]

4. In § 3.209 remove the words "Secondary evidence" in the cross reference at the end of the section and add, in their place, the words "Evidence other than evidence of service."

5. In § 3.210 paragraph (c)(2) is revised to read as follows:

§ 3.210 Child's relationship.

* * * * *

(c) * * *

(2) As to a child adopted by the veteran's surviving spouse after the veteran's death, the statement of the adoptive parent or custodian of the child will be accepted in absence of information to the contrary, to show that the child was a member of the veteran's household at the date of the veteran's death and that recurring contributions were not being received for the child's maintenance sufficient to provide for the major portion of the child's support, from any person other than the veteran or surviving spouse or from any public or private welfare organizations which furnished services or assistance to children. (Pub. L. 86–195)

* * * * *

§ 3.212 [Amended]

6. In § 3.212(a) remove the word "his" wherever it appears and add, in its place, the words "his or her".

7. In § 3.213, paragraphs (a)(1), (a)(2) and (a)(3) are revised to read as follows:

§ 3.213 Change of status affecting entitlement.

(a) * * *

(1) *Veteran.* A statement by the veteran setting forth the month and year of death of a spouse, child, or dependent parent.

(2) *Surviving spouse.* A statement by the surviving spouse or remarried surviving spouse setting forth the month and year of remarriage and any change of name. (An award for a child or children who are otherwise entitled may be made to commerce the day following the date of discontinuance of any payments to the surviving spouse.)

(3) *Child.* A statement by the veteran or surviving spouse (where an additional allowance is being paid to the veteran or surviving spouse for a child), or fiduciary, setting forth the month and year of the child's death, marriage, or discontinuance of school attendance. A similar statement by a child who is receiving payments direct will be accepted to establish the child's marriage or the discontinuance of school attendance. Where appropriate, the month and year of discontinuance of school attendance will be required in addition to the month and year of death or marriage of a child. (38 U.S.C. 210(c))

* * * * *

(8) Section 3.215 is revised to read as follows:

§ 3.15 Termination of marital relationship or conduct.

On or after January 1, 1971, benefits may be resumed to an unmarried surviving spouse upon filing of an application and submission of satisfactory evidence that the surviving spouse has ceased living with another person and holding herself or himself out openly to the public as that person's spouse, or that the surviving spouse has terminated a relationship or conduct which had created an inference or presumption or remarriage of related to open or notorious adulterous cohabitation or similar conduct. Such evidence may consist of, but is not limited to, the surviving spouse's certified statement of the fact. (38 U.S.C. 103(d); sec. 5, Pub. L. 91–376)

§§ 3.205 through 3.208, and 3.210 through 3.215 [Amended]

9. In §§ 3.205, 3.206, 3.207, 3.208, 3.210, 3.211, 3.212, 3.213, 3.214, and 3.215 add the following cross reference after the section:

Cross Reference: Evidence other than evidence of service. See § 3.204.

[FR Doc. 86–22680 Filed 10–6–86; 8:45 am]
BILLING CODE 8320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Residency Training in the General Practice of Dentistry

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the regulations governing the program of "Grants for Residency Training in the General Practice of Dentistry" to include a definition of an "approved advanced educational program in the general practice of dentistry." The proposal would also revise the regulations to incorporate amendments made to section 786(b) of the Public Health Service Act (the Act) by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, enacted on October 22, 1985.

DATE: Comments on this proposed rule are invited. To be considered, comments must be received by December 8, 1986.

ADDRESSES: Respondents should address written comments to the Director, Bureau of Health Professions (BHPr), room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Richard G. Weaver, D.D.S., Chief, Dental Health Branch, Division of Associated and Dental Heath Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–15, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301–443–6837.

SUPPLEMENTARY INFORMATION: Section 786(b) of the Act authorizes the award of grants to public nonprofit private schools of dentistry or accredited postgraduate dental training institutions (e.g., hospital and medical centers) to plan, develop, and operate an approved residency training program in the general practice of dentistry and to provide financial assistance to residents participating in a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

Public Law 99–129 extends support under section 786(b) to include as an additional program an "approved advanced educational program in the general practice of dentistry." In accordance with the new provision, the Department is proposing to establish and include in the regulations a definition for an "approved advanced educational program in the general practice of dentistry," as follows: An "approved advanced educational program in the general practice of dentistry" means an advanced educational program in general dentistry which has received an accreditation by the Commission on Dental Accreditation. The proposed definition will assure that programs of advanced education in general dentistry receiving grant support under section 786(b) of the Act will meet guidelines recognized and established by dental educators for content, structure, operation, staff and resources that are essential to program quality and achievement of objectives. These program objectives are designed to better develop skilled general dentists to provide a broader range of clinical services and make fewer referrals to specialists.

The proposed definition also uses the same criteria which define an "approved residency training program" under the existing regulation. This will assure that all general dentistry grant awards made under section 786(b), whether for residency training or advanced education, will be consistent in purpose, scope and quality.

In addition to the proposed definition, the following clarifying and ministerial revisions are necessary for the existing regulations.

1. Revise the title of 42 CFR Part 57, Subpart L, from "Grants for Residency Training in the General Practice of Dentistry" to "Grants for Residency Training and Advanced Education in General Dentistry," and delete the word "resident(s)" and insert in lieu thereof the word "participant(s)" wherever it appears in the text.

2. Revise § 57.1102, "*Definitions.*", to reference the accrediting body by its new name and accreditation classifications, listed in two definitions within this section of the regulation, and add "Commonwealth of the" to the "Northern Mariana Islands" to the definition of "State."

3. Revise § 57.1104, *"How must an entity apply for a grant?"*, to substitute the word "stipend" for "salaries" in order to have consistency of terms in referencing the type of support of participants in the two types of programs which can now receive grant support.

4. Revise § 57.1107, *"How will grant awards be made?"*, to clarify that stipends for participants in an advanced educational program in general dentistry will be paid in accordance with Public Health Service postdoctoral stipend rates.

5. Revise the authority citation to correct a misprint in the *Code of Federal Regulations*, and add the statutory citation from Pub. L. 99–129.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which particiaption is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a signficant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

Section 57.1104 contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980. We have submitted a copy of these information collection requirements to OMB for approval.

Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency official designated for this purpose whose name appears in this preamble, and to theOffice of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20505, ATTN: Desk Officer of HHS.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant Programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Student aid.

(*Catalog of Federal Domestic Assistance*, No. 13.897, Grants for Residency Training in the General Practice of Dentistry)

Dated: July 28, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 22, 1986.

Otis R. Bowen,

Secretary

Accordingly, Subpart L of 42 CFR Part 57 is proposed to be revised as follows:

PART 57—[AMENDED]

1. The title of 42 CFR Part 57, Subpart L is revised to read as follows:

Subpart L—Grants for Residency Training and Advanced Education in Dentistry

2. The authority citation for Part 57, subpart L is revised

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 786(b) of the Public Health Service Act, 90 Stat. 2317, as amended by 99 Stat. 540–541 (42 U.S.C. 295g–6(b)).

3. Section 57.1101 is amended to read as follows:

§ 57.1101 To what projects do these regulations apply?

These regulations apply to the award of grants under section 786(b) of the Public Health Service Act to schools of dentistry and to accredited postgraduate dental training institutions to meet the cost of projects to: (a) Plan, develop and operate an approved residency training program in the general practice of dentistry or an approved advanced educational program in the general practice of dentistry; and (b) Provided financial assistance (in the form of traineeships and fellowships) to praticipants in such a program who are in need of financial assistance and who plan to practice general dentistry.

4. Section 57.1102 is amended by revising the following definitions:

§ 57.1102 Definitions.

* * * * *

"Accredited postgraduate dental training institution" means a public or private nonprofit institution which operates a postgraduate dental training program that has received an accreditation classification of "preliminary provisional approval," "accreditation eligible," "provisional approval," "conditional approval," or

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"approval" by the Commission on Dental Accreditation.

* * * * *

"Approved residency training program," "approved advanced educational program," or "program" means a general practice residency program or an advanced educational program in dentistry which has received an accreditation classification of "preliminary provisional approval," "accreditation eligible," "provisional approval," "conditional approval," or "approval" by the Commission on Dental Accreditation.

* * * * *

"State" means, in addition to the several States, the District of Columbia, Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

5. Section 57.1104 is amended by revising paragraph (c) to read as follows:

§ 57.1104 How must an entity apply for a grant?

* * * * *

(c) In addition to other pertinent information that the Secretary may require, an application for a grant under this subpart must contain: (1) A full and adequate description of the proposed project and of the manner in which the applicant intends to conduct the project and carry out the requirements of this subpart, in particular the requirements of § 57.1105, and (2) A budget justification for the funds requested. If the applicant requests funds for stipend support of participants, the applicant must provide evidence showing that income available from other sources, including income derived from services of the participants in the program, will be insufficient to pay their stipends and that grant funds will not be used to supplant other available funds.

6. Section 57.1105 is amended by revising paragraphs (a), (b), (e), and (f) to read as follows:

§ 57.1105 What requirements must a project meet?

* * * * *

(a) The project staff must plan, develop, and/or operate an approved residency or advanced educational program in the general practice of dentistry.

(b) Each project must have at least two participants enrolled in the training program.

* * * * *

(e) Each participant who receives stipend support must sign a statement of intent to work in the practice of general dentistry

(f) The training program, the performance of each participant, and the quality of patient care must be evaluated.

7. Section 57.1106 is amended by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 57.1106 What are the criteria for deciding which applications are to be funded?

* * * * *

(d) The qualifications of proposed staff and faculty;

(e) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

8. Section 57.1107 is amended by revising paragraph (b) to read as follows:

§ 57.1107 How will grant awards be made?

* * * * *

(b) *Determination of grant amount.* The Secretary will determine the amount of any award under this subpart on the basis of his or her estimate of the sum necessary for the direct costs of the project plus an additional amount for indirect costs, if any, which the Secretary will calculate either: (1) On the basis of his or her estimate of the actual indirect costs of the project, or (2) on the basis of a percentage of all, or a portion of the estimated direct costs of the project when there are reasonable assurances that the use of the precentage will not exceed the approximate actual indirect costs. This award may include an estimated provisional amount for indirect costs or for designated direct costs (such as fringe benefit rates) subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the Secretary has determined the amount properly expended by the grantee for provisional items. In addition, determining the amount of stipend support to be made available for the general practice residency program, the amount of any stipend must be limited to that portion of the annual amount normally paid to other residents by the applicant which the Secretary determines, on the basis of the documentation required in the application, cannot reasonably be paid from other available funds, including the incomes derived from the residents' services. For the Advanced educational program in general dentistry, stipends for participants (who are postdoctoral students) must be paid in accordance with established Public Health Service postdoctoral stipend rates.

[FR Doc. 86-22006 Filed 10-6-86; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Management Council will hold public hearings to review Amendment 2 to the Coastal Migratory Pelagic Resources (Mackerel) FMP. Copies of Amendment 2 are available through the South Atlantic Fishery Management Council.

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates and locations of the hearings. All hearings will begin at 7:00 p.m., and will adjourn at 10:00 p.m. Public comments are invited through October 27, 1986.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** for locations of the hearings. Written comments should be sent to the South Atlantic Fishery Management Council, 1 Southpark Circle, South park Building, Suite 306, Charleston, SC 29407.

FOR FURTHER INFORMATION CONTACT: Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, 803-571-4366.

SUPPLEMENTARY INFORMATION: The hearings are scheduled as follows:

October 6, 1986—Teen Center, 2465 South Roosevelt Boulevard, Key West, FL

October 7, 1986—Holiday Inn, Oceanfront, 2600 North A1A, Ft. Pierce, FL

October 8, 1986—Holiday Inn, Surfside, 2700 North Atlantic Avenue, Daytona Beach, FL

October 9, 1986—Hilton Head Island High School, The Chorus Room, 1983 School Road, Hilton Head Island, SC

October 10, 1986—The Beach Cove Inn, 4800 South Ocean Boulevard, North Myrtle Beach, SC

October 14, 1986—North Carolina Marine Resources Center, Ft. Fisher, Kure Beach, NC

October 15, 1986—North Carolina Marine Resources Center, Salter Path Road, Atlantic Beach, NC

October 16, 1986—North Carolina Marine Resources Center, Manteo, NC

October 27, 1986—King and Prince Hotel, St. Simons Island, GA

Dated: October 2, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-22274 Filed 10-2-86; 4:26 pm]
BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 51, No. 194
Tuesday, October 7, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Public hearing Regarding the Hazlehurst and Baxley, GA, Tobacco Markets

Notice is hereby given of a public hearing regarding the Hazlehurst and Baxley, Georgia, tobacco markets.

Date: October 28, 1986.

Time: 10 a.m., local time

Place: Appling County Courtroom, Appling County Courthouse, North Main street, Baxley, Georgia.

Purpose: To hear testimony and to receive other evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Hazlehurst and Baxley, Georgia. The application was made by Mr. Barnie O'Quinn, Jr., Mr. Larry Contos, Mr. Jimmie Ryles, Mr. Luther Taylor and Mr. Verle Thigpen of Hazlehurst, Georgia; Mr. Barnie O'Quinn, Sr., Mr. David Vowell, Mr. William Terry Turner, Mr. Russell Crosby, Mr. Lanier Browning and Mr. Valene Bennett of Baxley, Georgia. This public hearing will conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR § 29.1 through 29.3).

Dated: October 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection services.

[FR Doc. 86-22655 Filed 10-6-86; 8:45 am]

BILLING CODE 3410-02-M

Public Hearing Regarding the Williamston and Robersonville, NC, Tobacco Markets

Notice is hereby given of a public hearing regarding the Williamston and Robersonville, North Carolina, tobacco markets.

Date: October 30, 1986.

Time: 10 a.m., local time.

Place: District Courtroom, Martin County Governmental Center, East Main Street, Williamston, North Carolina.

Purpose: To hear testimony and to receive other evidence regarding an application for tobacco inspection and price support services to a new market, which would be consolidation of the currently designated markets of Williamston and Robersonville, North Carolina. The application was made by Mr. John M. Rogers and Mr. William C. Lilley of Williamston, North Carolina; Mr. J.A. Sharp and Mr. Edwin Lee, Robersonville, North Carolina. This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated market (7 CFR 29.1 through 29.3).

Dated: October 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86-22657 Filed 10-6-86; 8:45 am]

BILLING CODE 3410-02-M

Public Hearing Regarding the Darlington and Timmonsville, SC; Tobacco Markets

Notice is hereby given of a public hearing regarding the Darlington and Timmonsville, South Carolina, tobacco markets.

Date: October 29, 1986.

Time: 10 a.m., local time.

Place: District Courtroom, Darlington City Hall, Pearl Street (Highway 34 West), Darlington, South Carolina.

Purpose: To hear testimony and to receive other evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Darlington and Timmonsville, South Carolina. The application was made by Mr. George W. Abbott, Mr. James A. Galloway, Ms. Gail B. Metropol and Mr. J.E. Mozingo, Jr. of Darlington, South Carolina; Mr. Bishop Chilton and Mr. Willard Dorriety of Timmonsville, South Carolina. This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3).

Dated: October 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86-22656 Filed 10-6-86; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

Temporary Program to Encourage Use of Grain for Fuel Ethanol

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: On May 2, 1986, the Secretary of Agriculture, on behalf of the Commodity Credit Corporation (CCC), announced a temporary program to encourage the purchase and use of grain in the production of fuel ethanol. The program was undertaken to encourage grain-based ethanol producers to continue in operation, thereby removing surplus grain from the market and assisting in the maintenance of grain prices. The CCC published a notice with respect to this temporary program in the **Federal Register** on June 17, 1986 (51 FR 21940), and requested comments from interested parties.

In addition, ethanol producers using non-grain based feedstocks who sought participation in the temporary program filed an action in the United States District Court for the Western District of Louisiana (*Alpebo* v. *Lyng*, Case No. 86-1431 Section 0). Subsequently, a notice was published in the **Federal Register** on July 23, 1986 (51 FR 26452), and a public hearing was held on July 29, 1986 concerning the possible inclusion of non-grain based ethanol producers in the temporary program. In response, CCC received 28 comments. This notice sets out the decisions made after consideration of evidence presented at the informal hearing, additional materials submitted by parties of *Alpebo* v. *Lyng*, and comments received in response to the June 17 and July 23, 1986 notices.

The CCC has determined to expand its temporary program to include ethanol producers who use not only whole grains, but also dry milling and wet milling products and syrups derived from such grains. Ethanol producers using only feedstocks derived from surgarcane or sugar beets, or other commodities which are not in the inventory of the CCC, will still not be eligible to participate in the program.

FOR FURTHER INFORMATION CONTACT: Ronald K. Burgess, Deputy Director, Commodity Operations Division, Agricultural Stabilization and Conservation Service (ASCS), USDA, Washington, DC 20250 (202-447-4966).

SUPPLEMENTARY INFORMATION: The CCC established the temporary program at issue, which provides for the issuance of CCC commodity certificates to grain-based ethanol producers at the market value of one bushel of CCC-owned grain for every 2.5 bushels of grain removed from the market and converted to fuel ethanol by the producers under section 423(a) of the Agricultural Act of 1949 (the 1949 Act), as amended by section 1024 of the Food Security Act of 1985 (Pub. L. 99-198). Section 423(a) provides that the CCC may make its accumulated stocks of agricultural commodities available, at no cost or reduced cost, to encourage the purchase of such commodities for the production of liquid fuels and agricultural commodity by-products. Such a program must ensure, insofar as possible, that any agricultural commodities made available encourages increased use of those commodities and avoids displacing their usual marketing.

The CCC initiated its temporary program based upon the determination that financial difficulties faced by grain-based fuel ethanol producers threatened grain prices. Grain-based ethanol producers, who use some 275 million bushels of grain per year, were caught between rapidly falling gasoline prices and relatively stable grain prices. This financial situation endangered the existence of the grain-based ethanol industry. The failure of the industry would eliminate a significant market for grain, resulting in future grain price declines. This in turn would lead to the accumulation in CCC inventory of excessive stocks of grains acquired under CCC's price support programs. The current grain price stability results from the CCC price support program, which established a price support level of $2.55 per bushel for corn. On May 2, 1986, the day the temporary program was announced, the Chicago corn price was $2.4175—$2.4375. Corn prices are declining and lower corn prices are expected when the price support level falls to $1.92 per bushel under the 1986-87 farm program.

In response to the notice published on June 17, 1986 (51 FR 21940), the CCC received various oral and written comments concerning its program. These comments generally concerned the limitation of the program to grain-based ethanol producers, the length of the program and the amount of assistance provided to grain-based ethanol producers. These comments are substantially similar to the 28 comments received in response to the July 23, 1986 notice (51 FR 26452).

Fourteen of these 28 comments suggested that the program be expanded to include ethanol producers who use feedstocks other than grain. These commenters contend that the exclusion of non-grain based ethanol producers places grain-based ethanol producers at a competitive advantage. Six of these comments were from entities that use sugar or molasses in Louisiana ethanol plants. The remaining comments were from three sugar associations; a potato based ethanol producer; an ethanol producer that uses brewery wastes; an ethanol producer that uses organic wastes from food processing plants such as corn wet milling facilities and candy facilities; one entity with a processing facility suitable for using non-grain based feedstocks; and one producer who uses triticale as a feedstock.

The temporary program was intended to further the purposes of the Food Security Act of 1985 by encouraging the use of grain in ethanol production. Extending the program to sugar-based ethanol producers would obviously do nothing to encourage the use of grain in ethanol production and would not otherwise further the purposes of the Act to the same extent.

The CCC's temporary program was intended only to bridge the gap between grain prices in effect at its initiation and lower prices expected this fall, in order to insure the maintenance of grain demand until the new farm program, with its lower grain prices, takes effect. Thus, the temporary program will end on September 30, 1986. Although market prices for corn have declined from May prices, corn is not available at prices which will enable some ethanol producers using corn as feedstocks to remain in business. This condition exists due to the CCC price support programs which, in essence, "guarantee" eligible producers a price for their 1985 crop of corn of $2.55 per bushel. Therefore, producers will deliver corn to CCC at this price through purchases made by CCC or through the forfeiture of grain pledged as collateral for nonrecourse loans, instead of selling corn in the marketplace. Sugar prices, on the other hand, are not subject to the same factors. Although the 1986 crop sugar program has not been announced, section 201 of the 1949 Act provides that the 1986 crop price support level cannot be less than $0.18 per pound, raw value, for sugarcane, which is the support level established for the 1985 crop. Such a situation does not exist with respect to grains. The temporary program for grain-based ethanol producers was intended to provide relief from market dislocations resulting from the price support programs authorized by the Agriculture and Food Act of 1981 until new programs with reduced levels of price support take effect in accordance with the provisions of the Food Security Act of 1985.

Further, ethanol producers who use sugar-based feedstocks are able to purchase molasses, a residue of sugarcane processing, on the world market. The price of molasses is established competitively in the marketplace, unlike that of corn and other grains which are affected by the level of price support in effect for the commodity. Inclusion of sugar-based ethanol producers in the temporary program is not warranted because molasses feedstock costs are not affected by the CCC's program and will not be reduced by an imminent change in price support levels, as in the situation with grain.

CCC has carefully reviewed the assertions and comments made by the six sugar and molasses-based ethanol producers with production facilities located in Louisiana. These comments maintain, basically, that CCC should provide for the inclusion of such producers in the program because CCC maintains an inventory of sugar and that section 423 of the 1949 Act would therefore allow such an expansion of the program. These commenters maintain that their costs for feedstocks exceed those of grain-based ethanol producers. They submitted varying data on these costs. The data generally present a feedstock cost range for sugar and molasses-based plants of $1.08 to $1.18 per gallon and a feedstock cost range of $.49 to $.92 per gallon for corn based plants. Those commenters also maintain that a subsidy rate of $.30 to $.37 per gallon for grain-based ethanol producers exists as the result of CCC's temporary program. The commenters also maintain that 10 percent of Louisiana ethanol production is made from grain and that the one grain-based producer in Louisiana is able to compete at a significant advantage due to CCC's temporary program.

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There were no comments by sugar and molasses-based ethanol plants outside the State of Louisiana.

The data presented by one Louisiana commenter who appeared at the informal hearing is illustrative of the ethanol market in which these producers operate. This producer stated stated that "the average [feedstock] cost of ethanol per gallon equals $.7833" based upon a mixture of 20% blackstrap molasses at $90 per ton and sugar at $.04735 per pound. Current market prices for sugar, however, are approximately $.20 per pound and cost data from material submitted by other commenters state that the feedstock cost per gallon is $1.08 for molasses, based upon a molasses price of $73.75 per ton. Further, according to one commenter, in order to receive a state-supported subsidy of $1.60 per gallon ($1.40 per gallon effective September 1, 1986), an additional cost of $.40 per gallon is incurred through the statutorily required purchase of corn "at $1.00 over the current market price." The commenter further stated that based upon a corn market price of $2.00 per bushel less a $.765 "distillers dry grain credit" (i.e., the sale of by-products), the feedstock cost per gallon for a grain-based ethanol producer in $.494. The commenter also noted that based upon CCC assistance, the effective price to a corn-based ethanol producer for feedstocks was $.194 per gallon.

To date, CCC has received one request for assistance from a grain-based ethanol producer in Louisiana to participate in the program. Based on the above stated assumptions, a Louisiana non-grain based ethanol producer with a feedstock cost per gallon of ethanol of $1.1833 and a subsidy of $1.60 per gallon would have a net feedstock cost of −$.4166; and a Louisiana grain-based ethanol producer would have a feedstock cost per gallon of ethanol of $.194 and a subsidy of $1.60 gallon for a net feedstock cost of −$1.406. Based upon a $1.40 per gallon subsidy, such costs increase $.20 per gallon. CCC recognizes that, within Louisiana, grain-based ethanol producers, which comprise approximately 10 percent of Louisiana ethanol production, may have a feedstock price advantage due to the temporary program; however, a price advantage existed prior to this program and will continue to exist without such assistance. No substantial data was submitted which indicated that, as a result of this temporary program, existing grain-based ethanol plants in Louisiana threatened the long-term market share of non-grain based plants in Louisiana. Comments also were received stating that the CCC program will encourage the building of grain-based plants. Such plants, however, do not qualify for participation in the program, as noted in the June 17, 1986 notice, because only producers who produced fuel ethanol during March or April 1986 are eligible for participation in the program.

Based upon the assumption of a $1.18 feedstock cost per gallon for a non-grain based producer and a $.19 feedstock cost per gallon for a grain-based ethanol producer, due to the Louisiana State subsidy, non-Louisiana based producers who use grain as a feedstock and participate in the CCC program realize a feedstock price disadvantage for ethanol produced in Louisiana of approximately $.61 ($.41 after September 1, 1986) as compared to Louisiana non-grain ethanol producers.

One commenter also stated that sugar-based ethanol producers should be included in the temporary program because commodity certificates issued to grain-based ethanol producers may be exchanged for sugar owned by CCC. This is not correct. CCC has not made available, in accordance with 7 CFR 770.4(d), CCC-owned sugar for the exchange of commodity certificates under any program.

Accordingly, sugar and molasses are not eligible feedstocks under this program.

In addition to sugar, ethanol producers use a variety of feedstocks. Ethanol producers who use potatoes and triticale also have sought to participate in the program. There are no price support programs for triticale or potatoes, nor does CCC have stocks of triticale or potatoes. Therefore, providing assistance based on purchases of triticale or potatoes is not consistent with section 423(a) of the 1949 Act.

Other producers use corn starch or wheat flour as feedstocks. Previously, producers purchasing feedstocks other than whole grains have not qualified for assistance. This initial decision was made in order to comply with the statutory requirement that the temporary program "encourage the purchase of such commodities for the production of liquid fuels . . ." Consistent with this requirement, the temporary program is structured so that only producers who remove grain from the market for ethanol production are eligible for assistance.

After reviewing comments received from producers using such products, the CCC has determined that producers acquiring the products of wet and dry milling and syrups as ethanol feedstocks should qualify to receive assistance because such producers aid in the disposition of grain from the market. Purchasers of milling products and syrups will be eligible under the temporary program pursuant to existing program requirements only to the extent that producers can show that the products were derived from grain of a type which CCC has in inventory and can provide evidence of a number of bushels of grain which can be accounted for by the claimed quantity of milled products or syrup. The producer will receive a commodity certificate for the value of that fraction of bushel represented by the milled products or syrup converted to ethanol. Documentation required to fulfill this requirement will be detailed in the amended Announcement and Offer which may be requested from the Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, DC 20013. The ethanol producer purchasing and converting the products, not the miller or syrup manufacturer, may qualify for participation in this program.

Ethanol producers using brewery waste also sought to have their purchases of these commodities declared eligible for the temporary program. As outlined above, section 423 of the 1949 Act requires the temporary program to encourage the use of commodities for fuel ethanol production. Because, in the case of brewery waste, the grain has been removed from the market for the production of the primary product, and not ethanol production, there is no indication that increased use of such by-products production would result in an increase in purchases of grain. Therefore, the by-products from fermentation processes or other processing operations are excluded from the temporary program.

Eleven commenters stated that the program should not be expanded. These commenters consisted of the Federal Highway Administration, one oil company, two grain-based ethanol producers and highway user associations from seven states. One grain-based ethanol producer merely stated that participation should not be extended to non-grain based producers. The other grain based producer stated that there is no competition "between the producers of ethanol for fuel in Louisiana and ethanol produced and/or sold in other states" and that, therefore, there was no "competitive reason for including non-grain ethanol producers in Louisiana" in the program. The remainder of the comments stressed that due to the exemptions for ethanol from

State and Federal highway user taxes, significant losses are incurred in the revenue base used to maintain the Nation's highways. These comments suggested that CCC should not conduct this program until such exemptions are repealed.

As noted above, CCC has determined that a significant competitive advantage has not been created for grain-based ethanol producers at the expense of sugar and molasses-based ethanol producers in Louisiana. CCC is also cognizant of the impact on highway trust funds which exists due to Federal and State exemptions for ethanol. CCC, however, does not believe that the implementation of a program authorized by section 423 of the 1949 Act should be contingent upon repeal of other existing statutory authority. Because the current program is designed to permit participation of existing producers, and not to encourage increased building of new plants, the tax consequences are lessened.

Two commenters endorsed the program with one of these commenters suggesting that the program be targeted to ethanol manufacturers through agricultural producers. In order to assure that market displacements do not occur and that grain is removed from the market through the production of ethanol in accordance with section 423 of the 1949 Act, CCC has determined that, at the current time, the existing program is the most efficient and least disruptive means available to meet the objective of maintaining an established demand for grain until the provisions of the Food Security Act of 1985 become fully operative.

One comment from a State farm organization requested a change in the conversion rate in order to provide more grain to grain-based ethanol producers per bushel of grain removed from the market and converted to fuel ethanol. Based upon current projections of fall corn prices and the need to provide an orderly market for grain, such a change in the conversion rate is not needed. Therefore, the current conversion rate will be maintained until the termination of the program.

Conclusion

Based on the comments received, the CCC has determined that its temporary program to encourage the purchase and use of grain in the production of fuel ethanol pursuant to the notice published in the **Federal Register** on June 17, 1986 (51 FR 21940), will continue until September 30, 1986 under the terms and conditions previously announced, with one minor modification as noted previously. Therefore, producers of ethanol who use products derived from the wet or dry milling of grain and corn syrups will be included in the program. Such participation is limited to the extent that the ethanol producer can establish to the satisfaction of CCC the quantity of grain equivalent used to produce such ethanol.

Signed at Washington, DC, on September 27, 1986.

Richard F. Lyng,

Secretary of Agriculture.

[FR Doc. 86-22716 Filed 10-6-86; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collecitonof information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Seafood Inspector License Application
Form Number: Agency—NOAA–84–854; OMB—0648–0139
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 20 respondents; 10 reporting hours
Needs and Uses: This collection is used to obtain information about the education, work experience, fitness, and character of state food inspectors who wish to be licensed by the National Marine Fisheries Service to perform inspections of fishery products.
Affected Public: Individuals
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW. Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: September 30, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-22667 Filed 10-6-86; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1986 Company Organization Survey
Form number: Agency—NC–9910; OMB—0607–0507
Type of Request: Revision of a currently approved collection
Burden: 50,000 respondents; 8,333 reporting hours
Needs and Uses: The information obtained will be used to maintain Census' file of company and establishment records and will be used for the continuing updating of the Standard Statistical Establishment List.
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: September 30, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-22668 Filed 10-6-86; 8:45 am]

BILLING CODE 3510-07-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for

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collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Professional Skill Agriculture Demonstration Survey
Form Number: Agency—PS–AG; OMB—0607–0504
Type of Request: Revision of a currently approved collection
Burden: 5,200 respondents; 516 reporting hours
Needs and Uses: This survey will be used to train new employees in survey development forms design and enumeration skills. Data will be used internally to demonstrate the processing, development, analysis, and presentation of tables.
Affected Public: Individuals or households
Frequency: Four times a year
Respondents's Obligation: Voluntary
OMS Desk Officer: Timothy Sprehe 395–4814

Agency: Office of Procurement and Administrative Services
Title: Commerce Acquisition Regulation Amendment 85–2—Women-Owned Small Business Sources Clause
Form Number: Agency—NA; OMB—0600–0002
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 45 respondents; 540 reporting hours
Needs and Uses: This clause should increase opportunities for women-owned businesses by requiring contractors to provide information on opportunities to women-owned businesses and by requiring contractors to include women-owned businesses in their subcontracting plan where the contract cost is over $500,000.
Affected Public: Businesses or other for-profit institutions, non-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Office of Procurement and Administrative Services
Title: Commerce Acquisition Regulation Amendment 85–2—Preward Surveys for Ship Construction, Ship Alteration, and Ship Repair
Form Number: Agency—NA; OMB—0605–0018
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 12 respondents; 192 reporting hours
Needs and Uses: This regulation establishes procedures for surveying a prospective ship repair contractor when the contract is over $100,000 and the contracting officer is unable to make an affirmative determination of responsibility.
Affected Public: Businesses or other for-profit institutions, non-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Office of Procurement and Administrative Services
Title: Solicitation Request for Proposal or Invitation for Bids
Form Number: Agency—NA; OMB—0605–0010
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 14,000 respondents; 591,500 reporting hours
Needs and Uses: These solicitations are used to obtain proposals or bids from potential contractors.
Affected Public: Businesses or other for-profit institutions, non-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: September 30, 1986.

Edward Michals,

Department Clearance Office, Information Management Division, Mangement.

[FR Doc. 86–22669 Filed 10–6–86; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: NATO International Competitive Bidding Opportunities (ICB) Bidders List Application
Form Number: Agency—ITA–4023P; OMB–0625–0055
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 60 respondents; 60 reporting hours
Needs and Uses: NATO international competitive bidding opportunities for project contracts are only open to NATO countries' companies which have had their eligibility to bid certified by their respective governments. Commerce is the certifying agency for the U.S. Through the information collected Commerce determines the eligibility of a company on financial, technical, and security-clearance grounds.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a beneift
OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: September 30, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–22670 Filed 10–6–86; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

NOTICES

Certain Iron-Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain iron-metal castings from India. The review covers the period January 1, 1984 through December 31, 1984 and ten programs.

As a result of the review, the Department has preliminarily determined the net subsidy to be 6.99 percent *ad valorem* during the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 7, 1986.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 40943) the final results of its last administrative review of the countervailing duty order on certain iron-metal castings from India (October 16, 1980, 46 FR 16921). On October 15, 1985, the petitioner, Pinkerton Foundry, Inc., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation of the administrative review on November 12, 1985 (50 FR 46689). The Department has now conducted that administrative review in acordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. Such merchandise is currently classifiable under items 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1984 through December 31, 1984 and ten programs: (1) The International Price Reimbursement Scheme ("IPRS"); (2) A rebate upon export of indirect taxes under the Cash Compensatory Support program ("CCS"); (3) Pre-shipment export loans; (4) Income tax deductions; (5) Grants through the Market Development Assistance program; (6) The sale of Import Replenishment Licenses; (7) Extension of the free trade zones; (8) Supply of raw materials at preferential prices; (9) Preferential freight rates; and (10) Import duty exemptions available to 100 percent export-oriented units.

Analysis of Programs

(1) IPRS Program

On February 9, 1981, the Government of India introduced the International Price Reimbursement Scheme ("IPRS") for exporters of products with steel inputs. The purpose of the program is to rebate the difference between higher domestic and lower international prices of steel. On September 28, 1983, the Indian government extended the IPRS to include pig iron inputs. The funds for the rebate come from a levy on domestic steel and pig iron that is paid by all purchasers of those products. The Joint Plant Committee ("JPC"), a government-directed organization comprised largely of pig iron and steel producers, sets domestic pig iron and steel prices and determines that specific levy for each pig iron and steel product based on the anticipated need for each of those inputs in exported products. The rebate is based on the differential between domestic and international prices and a standard factor for the consumption of each of those inputs in the final product. Castings exporters obtained IPRS rebates for pig iron during the period of review.

We consider the entire rebate payment to be a countervailable benefit because it is available only to exporters. We allocated the total amount of rebate received by each company during the period of review over each company's total exports of the merchandise and weight-averaged the *ad valorem* benefit by each company's share of exports of the merchandise to the United States. On this basis, we preliminarily determine the net subsidy to be 6.34 percent *ad valorem* during the period of review.

(2) CCS Program

The Government of India introduced the CCS program in 1966 with the primary purpose of rebating upon exportation indirect taxes on merchandise. The rebates are paid as a percentage of the f.o.b. invoice price. In the final results of a previous administrative review, we found that the Indian government had satisfactorily demonstrated the requisite linkage between the tax incidence on the merchandise and the CCS payment.

Although the Indian government rebates upon export various indirect taxes through the CCS program, the Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (see Annex 1.1 of Part 355 of the Commerce Regulations); and (2) Indirect taxes at the final stage (see Annex 1.2 of Part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy.

Since our last review, we have allowed two additional indirect taxes paid by castings producers. These are the freight equalization levy of Rs. 320 per metric ton, which is levied on pig iron in order to equalize the difference in freight costs among castings producers located in different parts of the country, and the turnover tax of one percent, which is levied on all purchases of raw materials.

Because of these additional indirect taxes, the average indirect tax incidence on the merchandise for calendar year 1984 exceeded the 5 percent CCS payment. We preliminarily determine that there is no overrebate of indirect taxes to castings producers and therefore no benefit from this program.

(3) Pre-Shipment Export Loans

The Reserve Bank of India, through commercial banks, provides pre-shipment or "packing" credit to exporters, allowing them to purchase raw materials and packing materials based on presentation of a confirmed order or letter of credit. In general, the loans are granted for a period of 90 to 180 days, with penalty charges for late interest payments. During the review period, the rate of interest under this program was 12 percent for 90-day loans and 14.5 percent for 135-day loans. However, we verified that one firm received 135-day loans at 14 percent. The maximum comparable commercial interest rate during the 1984–1985 fiscal year was 18 percent, as quoted by the Reserve Bank of India in its bulletin entitled "Report on Trend and Progress of Banking in India" for fiscal year 1984–1985. The interest differential for these loans ranged from 4 to 6 percent during the period of review. We allocated the interest benefit for each company over the total value of the firm's exports of the subject merchandise to all markets. We then weight-averaged the resulting *ad valorem* benefits by each company's proportion of the value of Indian exports to the United States of this merchandise. On this basis, we preliminarily determine the net subsidy from this program to be 0.62 percent *ad valorem*.

(4) Income Tax Deductions

Under section 80HHC of the Finance Act of 1983, the Government of India allowed exporters to deduct 50 percent

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of taxes on export sales. During fiscal year 1984, the Indian government modified the program to allow exporters to deduct one percent of taxes paid on export sales during the fiscal year and five percent of taxes paid on the increment of export sales over the previous fiscal year. Because this tax deduction is contingent upon export performance and available only to exporters, we preliminarily determine that it is countervailable.

After reviewing the tax claims of the castings exporters during the period of review, we multiplied the income tax deductions claimed by each company by the corporate income tax rate and allocated the resulting benefit over the total value of that firm's exports to all markets during the period of review. We then weight-averaged the resulting *ad valorem* benefits by each company's proportion of the value of Indian castings exports to the United States. On this basis, we preliminarily determine the net subsidy from this program to be 0.02 percent *ad valorem.*

Under Article 35B of the Finance Act, the Government of India allowed exporters to deduct 133 percent of certain expenses related to market development. Effective April 1, 1983, no income tax benefits were available for expenditures incurred after March 1, 1983. One company claimed an Article 33B income tax deduction in its tax return covering fiscal year 1983 filed during 1984.

Because the Indian government allowed deductions for 100 percent for expenses relating to domestic sales, we focused on the remaining 33 percent. We allocated one-third of the deduction over total exports and weight-averaged the resulting *ad valorem* benefit by the company's share of total Indian exports of the merchandise to the United States. On this basis, we preliminarily determine the net subsidy to be 0.005 percent *ad valorem.*

(5) Other Programs

We also examined the following programs, which we preliminarily find exporters of certain iron-metal castings did not use during the review period;

A. Market Development Assistance grants;
B. Sale of Import Replenishment Licenses;
C. Extension of the Free Trade Zones;
D. Supply of raw materials at preferential prices;
E. Preferential freight rates; and
F. Import duty exemptions available to 100 percent export-oriented units.

Preliminary Results of Review

As a result of the review, we preliminarily determine the net subsidy to be 6.99 percent *ad valorem* for the period January 1, 1984 through December 31, 1984. The Department intends to instruct the Customs Service to assess countervailing duties of 6.99 percent of the f.o.b. invoice price on any shipments of this merchandise exported on or after January 1, 1984, and on or before December 31, 1984.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for by section 751(a)(1) of the Tariff Act, of 6.99 percent of the f.o.b. invoice price on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday afterward. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556; August 13, 1985).

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-22699 Filed 10-6-86; 8:45 am]

BILLING CODE 3510-DS-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held October 28 and 29, 1986, in the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. On October 28 the meeting will be held in Room 4830 from 9:30 a.m. to 5:00 p.m. and will be open to the public. The Executive session of the meeting will be held on October 29, 9:30 a.m. to 5:00 p.m. in Room 6029.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to electronics and related equipment and technology.

Agenda

General Session

October 28, 1986—Open EITAC Meeting 9:30 a.m. to 5:00 p.m.

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3 Industry presentation and discussion concerning controls on ECCN 1521A (broadband amplifiers).
4. Industry presentation and discussion concerning controls of ECCN 1548A (oscilloscopes).
5. Public comments are invited on the following entries on the Commodity Control List (CCL):

CCL 1522A Lasers and Laser Systems
CCL 1529A Electronic Test Equipment—particularly subitem b(5)
CCL 1531A Frequency Synthesizers
CCL 1541A Cathode Ray Tubes
CCL 1572A Recording and Reproducing Equipment.

Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security. The committee is also interested in proposals for revision to the People's Republic of China guidelines and GCOM regulations relating to these CCL numbers.

Exeutive Session

October 29, 9:30 a.m.—5:00 p.m.

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce. Telephone: 202-377-4217. For further information or copies of the minutes contact Betty A. Ferrell, 202/377-2583.

Dated: October 2, 1986.

Betty A. Ferrell,

Actig Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-22686 Filed 10-6-86; 8:45 am]

BILLING CODE 3510-DT-M

[C-507-601]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Roasted In-Shell Pistachios From Iran

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to growers, processor-roasters, or exporters in Iran of roasted in-shell pistachios. The estimated net bounty or grant is 317.89 percent *ad valorem.*

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of roasted in-shell pistachios from Iran that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of these products in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: October 7, 1986.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Gary Taverman, Office of Investigations, or Dick Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0188 (Letort), 377-0161 (Taverman), or 377-2786 (Moreland).

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to growers, processor-roasters, or exporters in Iran of in-shell pistachios which are roasted and imported into the United States. For purposes of this final determination, the following programs are found to confer bounties or grants:

- Foreign Exchange Benefits for Exporters.
- Price Supports and/or Guaranteed Purchase of All Production.
- Preferential Provision of Fertilizer and Machinery.
- Preferential Credit.
- Tax Exemptions.
- Provision of Water and Irrigation at Preferential Rates.
- Technical Support.

We determine the estimated net bounty or grant for roasted in-shell pistachios to be 317.89 percent *ad valorem.*

Case History

On June 24, 1986, we received a petition in proper form filed by the California Pistachio Commission, Keenan Farms Inc., Kern Pistachio Hulling and Drying Co-op, and T.M. Duche Nut Company, Inc. on behalf of growers and processor-roasters in the U.S. industry producing roasted in-shell pistachios. In compliance with the filing requirements of §355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that growers, processor-roasters, and exporters in Iran of roasted pistachios receive bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 30, 1986, we initiated such an investigation (51 FR 25084—July 10, 1986).

Since Iran is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, the petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product materially injure, or threaten material injury to, a U.S. industry.

On July 2, 1986, we presented a questionnaire to the government of Algeria in Washington, DC and requested that it forward the questionnaire to the Iranian authorities in its capacity as the protecting power for Iran in the United States. We requested a response to our questionnaire by August 1, 1986. We did not receive a response from either the government of Iran or the growers, processor-roasters, or exporters of the subject merchandise in Iran.

On August 15, 1986, we made our preliminary affirmative determination, based on the best information available, stating that benefits which constitute bounties or grants are being provided to growers, processor-roasters, or exporters in Iran of roasted in-shell pistachios (51 FR 29956—August 21, 1986).

Since no response has been received in this investigation, our final determination is based upon the best information available, as required by § 355.39 of the Department's regulations (19 CFR 355.39).

Scope of Investigation

The product covered by this investigation is all roasted in-shell pistachio nuts, whether roasted in Iran or elsewhere, from which the hull has been removed, leaving the inner hard shells and the edible meat, currently provided for under item 145.53 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the *Subsidies Appendix* attached to the notice of the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" (49 FR 18006—April 26, 1984).

Because we did not receive a response to our questionnaire, we are using the best information available as required under § 355.39 of our regulations (19 U.S.C. 355.39), adversely inferring receipt and countervailability of benefits based on the absence of a response.

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1985. Based upon our analysis of the petition and the best information available, we determine the following:

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Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to growers, processor-roasters, or exporters in Iran of in-shell pistachios which are roasted and imported into the United States under the following programs:

A. Foreign Exchange Benefits for Exporters

Petitioners allege that exporters of pistachios in Iran are entitled to exchange foreign currency earned from export sales at a premium of 11 percent above the official exchange rate and that this preferential rate is limited to exporters. According to information submitted in the petition, exporters of pistachios in Iran may retain this additional 11 percent as foreign exchange and then may benefit from this retained foreign currency in one of two ways.

First, an exporter can use the additional foreign currency to import goods for resale in Iran at whatever price the market will bear. According to the petition, the free market price of imported goods is often five to six times higher than the price set by the government of Iran. Second, a pistachio exporter may sell retained foreign currency at the free-market rate to any person in Iran with a need for foreign currency. During the period of investigation, the average official exchange rate was 89.248 rials/dollar, derived from International Monetary Fund statistics, and, according to petitioners, the average free-market exchange rate was approximately 650 rials/dollar. Petitioners estimate the net bounty or grant from the preferential exchange rate and foreign currency retention schemes to be 56.65 percent *ad valorem*.

Petitioners further allege that when Iranian exporters surrender their foreign exchange to the Iranian Central Bank, they receive a *wariznameh*, or a foreign exchange certificate. This certificate, given in addition to the rial value of the foreign currency surrendered, is an acknowledgement by the Central Bank of receipt of foreign exchange and authorizes the holder to receive foreign currency equal to the amount indicated on the *wariznameh* to use for the payment of imports. The *wariznameh* has a face value equal to the full value of the foreign currency earned from exports. The *wariznameh* is transferable to importers needing foreign currency to pay their bills and, according to petitioners, has a market value of 240–360 rials/dollar. Therefore, the *wariznameh* potentially confers a benefit on the exporters of 240–360 rials for each dollar earned from exports.

We have been unable to ascertain from available information whether the preferential exchange rate/currency retention schemes and the *wariznameh* program coexist in Iran or, as the petitioners suggest, the former program has been superseded by the latter. As best information available, we determine that exporters of Iranian pistachios benefit from the *wariznameh* program. This is the program for which the petition provides the most recent information and, of the two, has the highest rate.

To calculate the benefits, we assumed an average value for the *wariznameh* of 300 rials for each dollar delivered to the Central Bank. Using the official exchange rate for 1985 of 89.248 rials we calculated that the exporter received a benefit of $3.3614 of each dollar of exports, or 336.14 percent.

The petitioners allege that all roasted pistachios from Iran are exported as raw pistachios and are then roasted in a third country before importation into the United States. Therefore, we have adjusted the benefit from this program to reflect that any benefit earned in Iran is actually earned on the lower value of raw pistachios. We compared the average unit value of raw pistachios imported into the United States to the value of roasted pistachios imported into the United States. This comparison showed the value of raw pistachios imported into the United States to be 82.7 percent of the value of imported roasted pistachios. Therefore, we adjusted the benefit from this program using this 82.7 percent ratio and obtained an estimated net bounty or grant of 277.99 percent *ad valorem*.

B. Price Supports and/or Guaranteed Purchase of All Production

Petitioners allege that pistachio growers in Iran may benefit from a government policy of guaranteeing purchase of, and subsidizing prices for, certain major food commodities. Petitioners state that the government of Iran gave the Rafsanjan Cooperative, the country's principal pistachio cooperative, a $100 million loan on terms consistent with commercial considerations to purchase and stockpile pistachios.

Because we not receive a response to our questionnaire in this investigation, we are assuming, as best information available, that this type of financing is limited to a specific enterprise or industry, or group of enterprises or industries, and that the loan was extended on terms inconsistent with commercial considerations.

We treated the loan under this program as a long-term, cost-free loan and calculated the benefit consistent with the Department's methodology as outlined in the *Subsidies Appendix* for long-term loans. We have assumed that the loan was given in 1983, when, according to information supplied by the petitioners, the Iranian banks still operated under a system of charging interest on loans. To determine a benchmark interest rate for loans in Iran, we are relying on information contained in the *Middle East Economic Digest*. This publication indicates that interest rates on bank loans in 1983 ranged from 12 to 18 percent. To quantify the benefit from this loan, we assumed the loan was given interest free and used 18 percent as our commercial benchmark rate. Because information in the record of this investigation indicates that the Rafsanjan Pistachio Producers Cooperative is the only pistachio cooperative in Iran, we divided the benefit received during the review period by the total value of 1985 pistachio production. This benefit of 6.05 percent was then applied to the adjustment factor for roasted pistachios of 82.7 percent. On this basis, we determine an estimated net bounty or grant of 6.65 percent *ad valorem*.

C. Preferential Provision of Fertilizer and Machinery

Petitioners allege that agricultural cooperatives, such as the Rafsanjan Cooperative, can obtain fertilizer and machinery from the government at preferential prices. According to the petition, the extent of the benefit varies with the crop produced. Petitioners further allege that these cooperatives, in turn, provide both fertilizer and machinery to their members on terms inconsistent with commercial considerations.

Because the respondents did not provide a response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 6.65 percent *ad valorem*.

D. Preferential Credit

Petitioners allege that agricultural cooperatives in Iran make preferential credit available from funds provided by the government to their members. Petitioners argue that the Rafsanjan Cooperative is the principal cooperative for pistachios in Iran and that this organization may provide loans on terms inconsistent with commercial considerations to its members.

Because the respondents did not provide a response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 6.65 percent *ad valorem*.

E. Tax Exemptions

Petitioners allege that pistachio farmers may benefit from legislation exempting farmers and livestock breeders from paying taxes, provided they follow government agricultural guidelines.

Because the respondents did not provide a response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 6.65 percent *ad valorem*.

F. Provision of Water and Irrigation

Petitioners allege that pistachio growers in Iran may benefit from the construction of soil dams, flood barriers, canals, and other irrigation projects undertaken by the government to increase agricultural production.

Because the respondents did not provide a response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 6.65 percent *ad valorem*.

G. Technical Support

Petitioners allege that pistachio growers in Iran may receive technical support as part of the government's program to support agricultural development. Petitioners argue that technical support has included research projects to improve cultivation techniques, and assistance in harvesting, marketing, and use of fertilizer.

Because the respondents did not provide a response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 6.65 percent *ad valorem*.

Best Information Available

In accordance with section 776(b) of the Act, we used the best information available in making our final determination.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative determination shall remain in effect until further notice. The estimated net bounty or grant is 317.89 percent *ad valorem*. In accordance with section 706(a)(4) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of roasted in-shell pistachios from Iran which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

Administration Procedures

We afforded interested parties an opportunity to submit written views in accordance with § 355.34 of our regulations (19 CFR 355.34). We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing in accordance with § 355.35 of our regulations (19 CFR 355.35). No hearing was requested.

This determination is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Paul Freedenberg,

Assistant Secretary for Trade Administration.

October 1, 1986.

[FR Doc. 86–22700 Filed 10–6–86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Membership of General Performance Review Board

In a notice published in the **Federal Register** on February 7, 1986 (51 FR 4780–4781), the National Bureau of Standards (NBS) announced the membership, terms, and purpose of the General Performance Review Board (GPRB). This notice announces a change in the membership of the GPRB. Helen M. Wood; Chief, Information Systems Engineering Division, replaces Thomas N. Pyke, Jr. Ms. Wood's appointment is effective immediately and expires December 31, 1988.

Persons desiring further information about the GPRB or its membership may contact Mrs. Elizabeth W. Stroud, Personnel Officer, A123 Administration Building, National Bureau of Standards, Gaithersburg, Maryland, 20899, telephone (301) 921–3555.

Dated: October 1, 1986.

Ernest Ambler,

Director.

[FR Doc. 86–22640 Filed 10–6–86; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The dates for the joint public meeting as published in the **Federal Register** (September 26, 1986, page 34239), for the Gulf of Mexico Fishery Management Council's Red Drum Advisory Panel, its Scientific and Statistical and its Special Red Drum Committees, have been changed from September 29–30, 1986 to October 6–7, 1986. All other information remains unchanged. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: October 2, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–22665 Filed 10–6–86; 8:45 am]

BILLING CODE 3510-22-M

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Macau

October 1, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements, (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 1, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated December 10, 1985 (50 FR 50934) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including the aggregate, group and individual category limits for Categories 338, 339, 340, 341, 445/446 and 645/646, produced or manufactured in Macau and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1983 and January 9, 1984 between the Governments of the United States and Macau, the restraint limits for the foregoing aggregate, group and category limits are being increased, variously, by the application of swing, carryover and carryforward for the 1986 agreement year. In the letter which follows this notice the CITA Chairman directs the Commissioner of Customs to implement the adjusted limits. To the extent used, the carryforward applied will be deducted from the affected category limits in the 1987 agreement year.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 Fr 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

October 1, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 10, 1985 from the Chairman, Committee for the Implementation of Textile Agreements, which established restraint limits for certain cotton, wool, and man-made fiber textile products, produced or manufactured in Macau and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986.

Effective on October 1, 1986, the directive of December 10, 1985 is hereby further amended to adjust the previously established restraint limits for the following categories under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1983 and January 9, 1984, as amended:[1]

Category	Adjusted 12-mo. limit[1]
300–359, 400–459 and 600–659.	72,593,194 square yards equivalent.
300–359, 600–659	74,824,626 square yards equivalent.
400–459	1,816,394 square yards equivalent.
338	186,562 dozen.
339	515,569 dozen.
340	178,630 dozen.
341	115,269 dozen.
445/446	80,023 dozen.
645/646	169,430 dozen.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

[FR Doc. 86–22666 Filed 10–6–86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implemention of the agreement.

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange Proposed Amendment Relating to Extension of the Delivery Period for Crude Oil Futures Delivery Due to Force Majeure

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Mercantile Exchange ("NYMEX" or "Exchange") has submitted a proposal to amend NYMEX Rule 200.21, "*Force Majeure*, Late Performance, and Failure to Perform," regarding the amount of time the delivery period can be extended by the Petroleum Delivery Committee when crude oil futures delivery cannot be made due to *force majeure*. Under the proposed amendment, if the Petroleum Delivery Committee finds that crude oil delivery could not be made because of *force majeure*, the Petroleum Delivery Committee could extend the delivery period up to a maximum of two months. Currently, when crude oil cannot be delivered due to *force majeure*, the Petroleum Delivery Committee can extend the delivery period only up to a maximum of five days.

In accordance with section 5a(12) of the Commodity Exchange Act and acting purusant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be recieved on or before November 6, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to changes to NYMEX Rule 200.21.

FOR FURTHER INFORMATION CONTACT: Joseph B. Storer, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

Additional Information

According to the Exchange, the proposed amendments take into account the fact that extending the delivery period up to a maximum of five days, as currently provided in rules regarding *force majeure*, is impractical, since crude oil deliveries at Cushing, Oklahoma, the delivery point, are not measured in terms of days of delivery but in terms of daily product flows over the course of a month. Additionally, under current pipeline accounting procedures, a delivery in one month is not confined until the middle of the following month; therefore, the possibility exists that a delivery which has not been completed in the scheduled month because of *force majeure* may not be discovered by the parties involved and the Exchange until the month following the scheduled delivery month. In these circumstances, where *force majeure* has prevented a party from completing its future delivery obligations, a remedy under the Exchange's *force majeure* provisions would not be possible until the following month.

The NYMEX states that the proposed amendments will be made effective following Commission approval for both existing and newly listed contracts.

Other materials submitted by the NYMEX in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts, Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, Dc 20581 by November 6, 1986.

Issued in Washinton, DC, on October 2, 1986.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86–22677 Filed 10–6–86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Special Systems Subgroup, Pacific Command Air Defense; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Pacific Command Air Defense, Special Systems Subgroup will meet in closed session on December 10, 1986 in the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will examine systems related to defense capabilities for shore installations in the Pacific Command and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 2, 1986.

[FR Doc. 86–22742 Filed 10–6–86; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, Office of the Secretary, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 135. This bulletin lists changes in per diem prescribed for U.S Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 135 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: October 1, 1986.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

[Civilian Personnel Per Diem Bulletin Number 135]

To the Heads of the Executive Departments and Establishments

Subject: Maximum per diem rates and actual expense reimbursement ceilings for official travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and possessions of the United States by Federal Government civilian employees.

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702(a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealth of Puerto Rico, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletins Number 133 and 134 except for the cases identified by asterisks which rates are effective on the date of this Bulletin except where otherwise noted.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$15
Anaktuvuk Pass	140
Anchorage	122
Atqasuk	215
Barrow	144
Bethel	124
Cold Bay	120
Coldfoot	122
College	105
Cordova	113
Deadhorse	113
Dillingham	114
*Dutch Harbor-Unalaska	127
Eielson AFB	[illegible]
Elmendorf	122
Fairbanks	105
Ft. Richardson	122
Ft. Wainwright	105
Juneau	109
Kelmai National Park	148
Kenai	119
Ketchikan	113
King Salmon [2]	134
Kodiak	110

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Locality	Maximum rate
Kotzebue [3]	126
Murphy Dome [3]	105
Nostak	126
Nome	136
Noorvik	126
Petersburg	113
Point Hope	160
Point Lay	179
Prudhoe Bay	113
Sand Point	103
Shemya AFB [3]	30
Shungnak	126
Sitka-Mt. Edgecombe	113
Skagway	113
Spruce Cape	110
St. Mary's	100
Tanana	136
Valdez	136
Wainwright	165
Wrangell	113
Yakutat	100
All Other Localities [4]	91
American Samoa	81
Guam M.I.	93
Hawaii:	
Hawaii, Island of:	
Hilo	59
Other	84
Oahu	98
All Other Islands	84
Johnston Atoll [3]	23
Midway Islands [3]	13
Puerto Rico:	
Bayamon:	
12-16-5-15	132
5-16-12-15	105
Carolina:	
12-16-5-15	132
5-16-12-15	105
Fajardo (including Luquillo):	
12-16-5-15	132
5-16-12-15	105
Ft. Buchanan (incl GSA Service Center, Guaynabo):	
12-16-5-15	132
5-16-12-15	105
Ponce (incl. Ft. Allen NCS)	89
Roosevelt Roads:	
12-16-5-15	132
5-16-12-15	105
Sabana Seca:	
12-16-5-15	132
5-16-12-15	105
San Juan (including San Juan Coast Guard Units):	
12-16-5-15	132
5-16-12-15	105
All Other Localities	111
Virgin Islands of U.S.:	
12-1-4-30	126
5-1-11-30	112
Wake Island [3]	20
All Other Localities	20

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this locality.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. The per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 2, 1986.

[FR Doc. 86-22713 Filed 10-6-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 3, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee Reviewing B-1B Defenseive Electronics, will conduct a closed meeting at Ft. McNair, Washington, DC on October 22-23, and The Pentagon, Rm 5D-982 on October 24, from 8:00 am to 5:00 pm.

The purpose of the meeting will be to review B-1B Defensive Electronics.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-22756 Filed 10-6-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Board of Visitors; United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet 17 October 1986, at the Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 11:50 a.m., 17 October 1986, in Room 301, Rickover Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact: Captain John W. Renard, U.S. Navy, Retired, Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402-5017, (301) 267-4361.

Dated: October 1, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 86-22623 Filed 10-6-86; 8:45 am]

BILLING CODE 3810-01-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on U.S. Marine Corps Command and Control Systems Interoperability will meet on October 24, 1986, at Headquarters, U.S. Marine Corps, Room G503, Washington, DC. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on October 24, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review interservice command and control systems requirements for naval forces in the near and mid-term, and identify future communications and command and control systems architecture features with a view toward improving interoperability. The agenda will include technical briefings and discussions addressing warfighting and interoperability procedures. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: October 1, 1986.

Harold R. Stoller, Jr.,

Commander, JACC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-22620 Filed 10-6-86; 8:45 am]

BILLING CODE 3810-AE-M

Navy Resale Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Navy Resale System Advisory Committee will meet on November 8, 1986, in the White and Gold Suite, The Plaza Hotel, 5th Avenue at 59th Street, New York, New York 10019. The meeting will consist of two sessions: the first from 8:00 a.m. to 9:00 a.m.; and the second from 9:10 a.m. until 3:45 p.m. The purpose of the meeting is to examine policies, operations, and organization of the Navy Resale System and to submit recommendations to the Secretary of the Navy. The agenda will include discussions of the organization of the Resale System, planning, financial management, merchandising, field support, and industrial relations.

The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting be closed to the public because it will involve discussions of information pertaining solely to trade secrets and confidential commercial or financial information. These matters fall within the exemptions listed in subsections 552b(c)(2)(4), and (9)(B) of WR 18 April 86 Title 5, United States Code. Therefore, the second session will be closed to the public.

For further information concerning this meeting, contact: Commander R.F. Hendricks, SC, USN, Naval Supply Systems Command, NAVSUP 09B, Room 516, Crystal Mall, Building No. 3, Arlington, VA 22202. Telephone number: (202) 695-5457.

Dated: October 1, 1986.

H.L. Stoller,

Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 86-22621 Filed 10-6-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Coordinating Council on Bilingual Education; Meeting

AGENCY: National Advisory and Coordinating Council on Bilingual Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: October 20, 1986 and October 21, 1986 9:15 a.m. until 5:00 p.m.

ADDRESS: The meeting will be conducted at the Holiday Inn, 500 "C" Street SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue SW., Washington, DC 20202, (202) 245-2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3282). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public.

The proposed agenda includes the following:

October 20, 1986

I. Roll Call
II. Minutes of Last Meeting
III. Welcoming Remarks and Introduction of New Members, Carol Pendas Whitten, Director
IV. Update on OBEMLA Activities, Anna Maria Farias, Deputy Director
V. Site Visits—Interim Report—Dr. Porter
VI. Subcommittee Report—Dr. Anderson
VII. Intergovernmental Cooperation Report—Dr. Leo Lopez
VIII. Subcommittee Assignments

October 21, 1986

IX. Reconvene
X. Reports from Subcommittee
XI. Discussion of Annual Report—1987
Adjournment

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue SW., Washington, DC 20202, Monday through Friday from 9:00 a.m.—5:30 p.m.

Dated: September 30, 1986.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 86-22619 Filed 10-6-86; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Women's Educational Programs

AGENCY: National Advisory Council on Women's Educational Programs.

ACTION: Amendment of notice.

SUMMARY: This document is intended to notify the general public of a change to a notice of a meeting of the National Advisory Council on Women's Educational Programs as published on October 1, 1986 on page 35025, Vol. 51, #190 of the **Federal Register.** The time, location and agenda remain the same except that the Executive Committee will meet in closed session on October 15, 1986, from 6:00 a.m. to 9:30 p.m. The Executive Committee will meet in closed session to discuss personnel matters related to staff evaluations. These discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C. of the Government in the Sunchine Act.

The public is being given less than fifteen days notice of this closed meeting because it was discovered that staff evaluations had not been completed for fiscal year 1986.

A summary of the activities of the closed session and related matters which would be informative to the public consistent with the policy of section 552b(c) of Title 5 U.S.C. will be available to the public within 14 days of the meeting at the Council's office at 2000 "L" Street NW., Suite 568, Washington, DC 20036.

Signed at Washington, DC on October 1, 1986.

Patricia A. Weber,

Deputy Director.

[FR Doc. 86-22861 Filed 10-6-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings; Industry Advisory Board

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act [42 U.S.C. 6272(c)(1)(A)(i)], the following meeting notices are provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on October 14, 1986, at the offices of UNESCO, 9

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Place de Fontenoy, 75007, Paris, France, beginning at 10:00 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Approval of record note of IAB meeting of July 9, 1986.
3. Correspondence and communications with IEA and Reporting Companies.
4. Emergency preparedness.
A. Issues arising from the IEA's Fifth Allocation Systems Test (AST–5):
—Indigenous production increases in an emergency.
B. 1987 program of work:
—Conference on the Practical Issues of Oil Consumption Reduction Measures.
5. Stocks and other measures.
A. Overview on the current situation and policy development.
B. Procedures for consultations on stockdraw and other measures.
C. Member Countries' legislation/administrative procedures for stockdraw.
6. A. Status of U.S Plan of Action.
B. Extended Voluntary Offer Process.
7. Other topics.
A. End September Oil Market Report.
B. Base Period Final Consumption (3Q86–2Q86).
8. IAB organization, leadership and succession.
9. Date of next meeting and future business.

II. A meeting of the IAB will he held on October 15, 1986, at the offices of UNESCO, 9 Place de Fontenoy, 75007, Paris, France, beginning at 10:00 a.m. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the aforesaid location on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the agenda.
2. Summary record of the 53rd meeting.
3. Emergency preparedness.
A. Issues arising from AST–5:
i. Indigenous production increases in an emergency.
ii. Extended Voluntary Offer Process.
B. Review of Member Countries' emergency response programs:
i. Belgium.
ii. Ireland.
iii. New Zealand.,
iv. Spain.
C. 1987 program or work.
D. Next cycle of emergency response program reviews.
E. Conference on the Practical Issues of Oil Consumption Reduction Measures.
4. Stocks and other measures.
A. Overview on the current situation and policy development.
B. Procedures for consultations on coordinated stock draw and other measures.
C. Member Countries' legislation/administrative procedures for stockdraw.
5. Other topics.
A. End September Oil Market Report.
B. BPFC (3Q85–2Q86).
6. Any other business.
7. Date of next meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IAB meeting is open only to representatives of members of the IAB, their counsel, employees of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, employees of the DEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA. The SEQ meeting is open only to the aforesaid persons, representatives of members of the SEQ, and invitees of the SEQ.

Issued in Washington, DC, October 2, 1986.

J. Michael Farrell,
General Counsel.

[FR Doc. 86–22703 Filed 10–6–86; 8:45 am]
BILLING CODE 6450–01–M

Energy Information Administration

Coal Survey Forms; Cancellation of Public Hearing on Proposed Changes

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Cancellation of public hearing on October 15, 1986, concerning proposed changes to the coal survey forms.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy solicited comments concerning proposed changes to the coal survey forms in the **Federal Register** on September 12, 1986 (51 FR 32520) and announced plans for a public hearing on October 15, 1986.

No requests to speak at the public hearing were received by the due date of September 24, 1986. Therefore, the public hearing has been cancelled.

DATE: Written comments must be received on or before October 27, 1986.

ADDRESS: Send comments to: Ann M. Ducca, Coal Division, Energy Information Administration, EI–521, Department of Energy, Mail Stop 2G–090, 100 Independence Avenue SW., Washington, DC 20585, (202) 252–6868.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the proposed forms and instructions write or phone Harriet M. Tarver, Coal Divsion, Energy Information Administration, EI–521, Mail Stop 2G–090, 1000 Independence Avenue SW., Washington DC 20585 (202) 252–6868.

STATUTORY AUTHORITY

(Sec. 13(b), 5(b), 5(a), and 52, Pub. L. 93–275, 15 U.S.C. 772(a), 764(b), 764(a), and 790(a))

Issued in Washington, DC, on October 1, 1986.

Yvonne M. Bishop,
Director, Statistical Standards, Energy Information Administration.

[FR Doc. 86–22673 Filed 10–6–86; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP86–127–003]

Colorado Interstate Gas Co.; Proposed Change in FERC Gas Tariff

October 1, 1986.

Take notice that on September 25, 1986, Colorado Interstate Gas Company ("CIG") tendered for filing Second Substitute Original Sheet Nos. 61D1 and 61D2 in compliance with Ordering Paragraph A of the Commission's Order issued September 10, 1986, in Docket No. RP86–127–002.

The above-mentioned tariff sheets are intended to (1) provide for the waiver of CIG's rights to guaranteed pass-through of those actual costs exceeding 103 percent of the projected average cost of gas for the period; and (2) provide for notice of an interim adjustment to all affected customers and state commissions concurrent with the notice of such an adjustment to the Commission.

CIG respectfully requests the Commission to grant any waivers of the Commission's Regulations as may be necessary to accept this filing.

Copies of the filing have been served upon CIG's jurisdictional customers, other interested public bodies, and parties of record in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a proest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 9, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–22807 Filed 10–6–86; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. QF86–1048–000, etc.]

Paul D. Quinn et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

October 1, 1986.

Take notice that the following filings have been made with the Commission.

1. Paul D. Quinn

[Docket No. QF86–1048–000]

On September 8, 1986, Paul D. Quinn (Applicant), of 444 Washington Street, Woburn, Massachusetts 01801, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Peabody, Massachusetts. The facility will consist of (2) two combustion turbine generators and heat recovery steam generators and (1) one condensing steam turbine-generator. Steam recovered from the facility will be used for winter heating and summer cooling of condominiums and apartments. The electric power production of the facility will be 7,200 kilowatts. The primary energy source will be natural gas. Installation will begin in February, 1987.

2. Cogenic Energy Systems, Inc. (Orangewood Retirement Home)

[Docket No. QF86–1011–000]

On September 10, 1986, Cogenic Energy Systems, Inc. (Applicant), of 9924 Hibert Street, Suite A, San Diego, California 92131, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in San Diego, California. The facility will consists of (1) one internal combustion engine-generator equipped with necessary heat recovery system. Thermal energy recovered from both jacket water and exhaust gases, will be used for domestic hot water heating. The electric power production capacity will be 99 kilowatts. The primary energy source will be natural gas. Installation for the facility will begin October 1, 1986.

3. Cogenic Energy Systems, Inc. (Cal Lutheran Home/Alhambra)

[Docket No. QF86–1017–000]

On September 10, 1986, Cogenic Energy Systems, Inc. (Applicant), of 9924 Hibert Street, Suite A, San Diego, California 92131, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Alhambra, California. The facility will consists of (1) one internal combustion engine-generator equipped with necessary heat recovery system. Thermal energy recovered from both jacket water and exhaust gases, will be used for domestic hot water heating. The electric power production capacity will be 140 kilowatts. The primary energy source will be natural gas. Installation for the facility will begin October 1, 1986.

4. Cogenic Energy Systems, Inc. (Plaza International Hotel)

[Docket No. QF86–1018–000]

On September 10, 1986, Cogenic Energy Systems, Inc. (Applicant), of 9924 Hibert Street, Suite A, San Diego, California 92131, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Phoenix, Arizona. The facility will consists of (1) one internal combustion engine-generator equipped with necessary heat recovery system. Thermal energy recovered from both jacket water and exhaust gases, will be used for domestic hot water heating. The electric power production capacity will be 99 kilowatts. The primary energy source will be natural gas. Installation for the facility will begin November 1, 1986.

5. Cogentrix, Inc.

[Docket No. QF86–1039–000]

On September 2, 1986, Cogentrix, Inc. (Applicant), of 4828 Parkway Plaza Boulevard, Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Parlin, New Jersey and will consist of six steam generators and two extraction/condensing steam turbine generators. Steam from the facility will be used in plant operations for the production of industrial chemicals. The electric power production capacity of the facility will be 88,000 kW. The primary source of energy will be coal. The facility is expected to commence operation in December 1988.

6. Eagle Point Cogeneration Partnership

[Docket No. QF86–1061–000]

On September 12, 1986, Eagle Point Cogeneration Partnership (Applicant), c/o ANR Venture Management Company, 500 Renaissance Center, Detroit, Michigan 48243, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located inside the Coastal Eagle Point Oil Company's refinery in Westville, New Jersey. The facility will consist of four combustion turbine-generators, supplementary fired two levels heat recovery steam generators (HRSGs) and an extraction steam turbine-generator. The extracted steam together with the steam from HRSGs will be used at the Eagle Point Refinery for mechanical drives and for refinery process applications. The maximum net electric power production capacity of the facility will be 199.9 MW. The primary energy source will be natural gas and refinery fuel gas. The construction of the facility is expected to commence in the third quarter of 1987.

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7. Foster Wheeler Passaic, Inc.

[Docket No. QF86-1073-000]

On September 17, 1986, Foster Wheeler Passaic, Inc. (Applicant), of 110 South Orange Avenue, Livingston, New Jersey 07039 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Pasaic, New Jersey. The facility will consist of a waterwall steam generator and a single turbine generator. The net electric power production capacity will be 40 megawatts. The primary energy source will be biomass in the form of municipal solid waste. The use of natural gas and oil will be for purposes of ignition, start-up, testing, flame stabilization, control uses and other uses permitted under section 3(17)(B) of the Federal Power Act.

8. Landfill and Development Co.

[Docket No. QF86-1084-000]

On September 15, 1986, Landfill and Development Company (Applicant), of 3003 Butterfield Road, Oak Brook Illinois 60521, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Mt. Holly, New Jersey. The facility will consist of either a gas reciprocating engine-generator set or a gas turbine powered engine generator. The net electric power production capacity will be 4 megawatts. The primary energy source will be methane gas extracted from a sanitary landfill. There is no planned usage of natural gas, oil or coal.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22096 Filed 10-6-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Advanced Indentification of Disposal Areas (AIDA); Faulkner Lake Area Wetland Complex, Arkansas

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Advanced Indentification of Disposal Areas (AIDA), Faulkner Lake Area Wetland Complex, Arkansas.

SUMMARY: The advanced identification process is initiated under the 404(b)(1) Guidelines, section 404 of the Clean Water Act, 40 CFR 230.80. One of the initial processes of the study is to conduct a scoping meeting. This meeting will afford the public an opportunity to provide comments and input to the study effort. The meeting is open to anyone interested in the Faulkner Lake Area Wetland Complex. The geographical limits of the study have been suggested to include the Faulkner Lake Drainage District. However, at this time the study boundary is expandable. The suggested geographic area includes several oxbow lakes and bayous, such as Protho Swamp, Faulkner Lake, Stark Bend, Ashley Bayou, Hill Lake, Flag Pond and their associated drainages.

The main purposes of our meeting are to inform the public of the initiation of the study and to explain the advanced identification analysis. We hope to receive public and agency comments concerning the study boundary, proposed analyses, offers to gather or supply certain types of information or participation, future (contemplated) discharge pressures and their specific locations, and landowner concerns.

DATE: The public meeting wil be held on November 6, 1986, at 7:00 p.m., in the Northeast High School Auditorium at North Little Rock, Pulaski County, Arkansas.

ADDRESS: The Northeast High School is located at 3600 Jacksonville Boulevard near State Highway 67/167.

For further information and to be placed on the project mailing list contact: Environmental Protection Agency, Federal Activities Branch, Technical Assistance Section, Mr. Norm Thomas, 1201 Elm Street, Renaissance Tower, Dallas, Texas 75270, (214) 767-2716, or Mr. Louie Cockmon, Corps of Engineers, Regulatory Functions Branch, P.O. Box 867, Little Rock, Arkansas 72203, (501) 378-5296. Recipients of this notice are requested to pass on information to all interested parties.

SUPPLEMENTARY INFORMATION: The advanced identification is a joint undertaking by the Environmental Protection Agency and the U.S. Army Corps of Engineers in consultation with various Federal and State agencies. By merging the technical expertise of these agencies, areas that may be considered for deposit of dredged or fill materials will be identified. Most importantly environmentally sensitive areas are to be highlighted as areas of specific concern or areas which should not be made available for disposal site specification. Sites are generally categorized as areas of critical ecological concern, areas of environmental concern and nonsensitive areas. The specification of any given site as either suitable or unsuitable for discharges of dredged or fill material neither constitutes a permit nor prohibits application for a permit to discharge dredged or fill material at that site.

Dated: September 26, 1986.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 86-22685 Filed 10-6-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing East Las Vegas Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. East Las Vegas Broadcasting, Inc.; East Las Vegas, NV.	BPH-820525AK	86-363
B. Women's Coalition for Better Broadcasting; Las Vegas, NV.	BPH-820611AJ	
C. Theresa Terrell Zick d/b/a Terrell Broadcasting; Las Vegas, NV.	BPH-820902AO	
D. Marvin and Rosetta Logan, d/b/a Great Scott Music Enterprises; East Las Vegas, NV.	BPH-821020AO	
E. Martin Intermart, Inc.; Las Vegas, NV.	BPH-821020AP	
F. Gary E. Wilson; Paradise, Nevada.	BPH-821021AI	
G. Fremont Broadcasting Corporation; Las Vegas, Nevada.	BPH-821021AP	

Applicant and city/state	File No.	MM Docket No.
Summit Broadcasting, Inc.; Las Vegas, NV.	BPH-821021AS	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Main Studio, E
2. 307(b), All Applicants
3. Contingent Comparative, All Applicants
4. Ultimate, All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full test of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The compete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-22692 Filed 10-6-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Robert Lee Rabon et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant and city/state	File No.	MM Docket No.
A. Robert Lee Rabon, Aynor, SC.	BP-851015AB	86-366
B. David H. Moran, d/b/a Guilfoream Radio; Carolina Beach, NC.	BP-851223AD	
C. David H. Moran, d/b/a Timmonsville Radio; Timmonsville, SC.	BP-851223AE	
D. Michael B. Glinter; Atlantic Beach, SC.	BP-851223AG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

307(b), All applicants
Contingent Comparative, All applicants
Ultimate, All applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-22693 Filed 10-6-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Timothy Paul Woodward, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM docket No.
A. Timothy Paul Woodward; Medford, OR.	BPH-841015IA	86-369
B. Foundation for Human Understanding; Medford, OR.	BPH-841231MA	
C. Gina R. O'Quinn; Medford, OR.	BPH-841231MB	
D. Los Banos Broadcasting, a California limited partnership; Medford, OR.	BPH-841231ME	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard; A, B
2. Comparative; A, B, C, D
3. Ultimate; A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-22694 Filed 10-6-86; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1621]

FM Broadcast Stations, Perryville, MO; Applications for Review of Actions in Rulemaking Proceedings

September 26, 1986.

Applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these applications must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject

Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Perryville, Missouri) Number of applications received: 1

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-22691 Filed 10-6-86; 8:45 am]

BILLING CODE 6712-01-M

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[CC Docket 85-364]

Conestoga Telephone and Telegraph Co. et al.; Order Designating Applications for Hearing

AGENCY: Federal Communications Commission (FCC).

ACTION: Order designating applications for hearing.

SUMMARY: This order designates two applications in the Public Land Mobile Radio Service for comparative hearing pursuant to § 22.33(c)(i) of the Federal Communications Commission's Rules, 47 CFR 22.33(c)(i). Conestoga Telephone and Telegraph Company, File No. 22942-CD-P/L-1-85, proposes to construct an additional one-way facility for Station KWT850 to operate on frequency 158.10 MHz at Topton, Pennsylvania. Schuyekill Mobile Fone, Inc., File No. 21616-CD-P/L-1-85, proposes to construct a new one-way facility to operate on frequency 158.10 MHz at Park Place, Pennsylvania. The Commission finds that it is in the public interest to allow Conestoga Telephone and Telegraph Company the opportunity to prove that an additional location on its existing system will benefit the public more than will service proposed by Schuyekill Mobile Fone, Inc.

DATES: Within 20 days of the release date of this order, applicants must file a written notice of their intention to appear on the day of the hearing and to present evidence on the specified issues.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Abraham Leib, (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's designation order, pursuant to delegated authority; adopted September 5, 1986, and released September 26, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Kevin J. Kelley,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 86-22688 Filed 10-6-86; 8:45 am]

BILLING CODE 6712-01-M

Federal Advisory Committee for the 1987 ITU Administrative Radio Conference for the Mobile Services; Meeting

The tenth meeting of the Federal Advisory Committee for the 1987 Mobile World Administrative Radio Conference will be held on Wednesday, October 22, 1986, at 9:30 A.M. in the Commission Meeting Room 856, 1919 M Street, NW., Washington, DC

The meeting agenda is:

1. Approval of meeting agenda.
2. Approval of the summary record of the June 24, 1986, meeting.
3. Report on administrative matters from designated federal employee.
4. Consideration of response to Commission on recommendations for amending U.S. proposals for the 1987 WARC to reflect revised spectrum allocations for the L Band.

The Commission has been participating in two parallel processes to prepare proposals to be put forth by the Department of State at the 1987 Mobile WARC. One is the Commission's proceeding in Docket No. 84-607, in its capacity of regulating nongovernment radio users. The Federal Advisory Committee was established as part of that proceeding to develop comprehensive comments and recommendations. The Commission has also been participating in a parallel process under the auspices of the National Telecommunications and Information Administration ("NTIA"), which has responsibility for U.S. Government radio users and which will make recommended proposals from their viewpoint. There has been extensive coordination between the two processes.

On June 6, 1986, the Federal Advisory Committee filed Comments to the *Third Notice of Inquiry* in Docket No. 84-607 which were in the form of recommended proposals for most items on the Mobile WARC's agenda. However, it did not make any recommendations concerning spectrum which might be allocated to a new Mobile Satellite Service ("MSS") since the Commission had not at that time announced its decision in Docket No. 84-1234, which concerned this issue. On July 24 the Commission adopted a *Report and Order* in that proceeding which allocated frequencies—1545-1558.5 MHz and 1646.5-1660 MHz—in the "L Band" on a co-primary basis in 18 MHz of this spectrum and on a secondary basis in 9 MHz of this spectrum with the Aeronautical Mobile Satellite (R) Service. More recently, the NTIA has been considering a proposal for an MSS allocation in a wider frequency bank—1530-1559 MHz and 1626-1660.5 MHz. Because of these developments the Commission staff has invited the Federal Advisory Committee to make any recommendations it might have concerning the L Bank spectrum which should be allocated to an MSS.

5. Progress reports from Ad Hoc Group Chairman including future work plans.
6. Other business.
7. Selection of next meeting date.

Anyone desiring further information should contact Robert McIntyre, FCC/PRB at (202) 632-7175. These meetings are open to the public.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-22690 Filed 10-6-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Michigan; Amendment to Notice of a Major Disaster Declaration

[FEMA-774-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Michigan (FEMA-774-DR), dated September 18, 1986, and related determinations.

DATED: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Michigan, dated September 18, 1986, in hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 1986.

The Kent County municipalities of Cedar Springs City, Kent City Village, Rockford City, and Sparta Village for Public Assistance.
Lapeer County for Public Assistance.
Van Buren County for Individual Assistance.
Manistee, Shiawasee, and Lapeer Counties as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe D. Winkle,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-22674 Filed 10-6-86; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Information Collection
Title: State/Local Exercise Data

Abstract: The State and local Exercise Annex of the State Comprehensive Cooperative Agreement contains requirements for reporting certain field exercises as projected on the State Five Year Exercise Plan. This form serves to confirm the projected exercise activity and to document valuable evaluation data on each exercise to serve as an indicator to local, State and Federal Emergency Program Managers for remedial actions. The form will also indicate the country's state of national preparedness.

Type of Respondents: State or local governments
No. of Respondents: 52
Burden Hours: 936

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: September 26, 1986.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86-22667 Filed 10-6-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Tampa Terminal Agreement et. al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002810-001.
Title: Tampa Terminal Agreement.
Parties:
Tampa Port Authority
Harborside Refrigerated Services, Inc. (HRS)

Synopsis: The proposed amendment would permit HRS (formerly Uiterwyk Cold Storage Corp.) to exercise its option to extend the original lease agreement for an additional fifteen year period to expire on April 30, 2013.

Agreement No.: 203-010678-003.
Title: Med-U.S.A. Westbound Stabilization Agreement.
Parties:
Mediterranean-U.S.A. Freight Conference
A.P. Moller-Maersk Line
Trans Freight Lines

Synopsis: The proposed amendment would delete Puerto Rico from the scope of the agreement and would permit parties to withdraw on 30 days' notice. It would also change language regarding quorum requirements, neutral body policing and agreement expense allocation to reflect the current number of parties to the agreement and would reduce the notice period required for a party taking independent action to 48 hours.

Agreement No.: 206-010694-004.
Title: Trans-Atlantic Conferences Agreement.
Parties:
North Europe-U.S. Atlantic Conference
U.S. Atlantic-North Europe Conference

Synopsis: The proposed amendment would authorize joint activities regarding tariff and service contract subscription, publication and filing and the sharing of electronic data processing and communications facilities.

Dated: October 2, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-22695 Filed 10-6-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

October 1, 1986.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)
OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-6880)

Proposal to approve under OMB delegated authority the implementation of the following report:

1. *Report title:* Survey of Machinery Dealers
Agency form number: FR 3039
OMB Docket number: 7100-0222
Frequency: One-time
Reporters: Machine-dealers
Small businesses are affected.
General description of report:

This information collection is voluntary [12 CFR 225a, 263, 353 *et seq.*, and 461] and is given confidential treatment [5 U.S.C. 552(b)4].

Survey of machine dealers that collects general information on the market for used machine tools, the sources of used machinery, and estimates of useful lives of the equipment traded. Information on specific transactions, such as, the transaction price and transaction date, is also collected.

Board of Governors of the Federal Reserve System, October 1, 1986.

William W. Wiles,

Secretry of the Board.

[FR Doc. 86-22642 Filed 10-6-86; 8:45 am]

BILLING CODE 6210-01-M

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Alabama National Bancorp., et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an applicaton that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 28, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Alabama National Bancorporation,* Ashland, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First United Corporation, Ashland, Alabama, and thereby indirectly acquire The First National Bank, Ashland, Alabama; Headland Capital Corporation, Headland, Alabama, and thereby indirectly acquire Wiregrass Bank and Trust Co., Headland, Alabama; Tallapossa Capital Corporation, Dadeville, Alabama, and thereby indirectly acquire Bank of Dadeville, Dadeville, Alabama; Taylor Capital Corporation, Ashland, Alabama, and thereby indirectly acquire Camp Hill Bank, Camp Hill, Alabama; and Macon Capital Corporation, Ashland, Alabama, and thereby indirectly acquire Alabama Exchange Bank, Tuskegee, Alabama. Comments on this application must be received by October 24, 1986.

2. *First Alabama Banchshares, Inc.,* Montgomery, Alabama; to acquire 100 percent of the voting shares of The Choctaw Bank of Butler, Alabama. Comments on this application must be received by October 24, 1986.

3. *International City Bancorp, Inc.,* Warner Robins Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of International City Bank, Warner Robins, Georgia.

4. *Southeast Banking Corporation,* Miami, Florida; to acquire 100 percent of the voting shares of Florida State Bank, Destin, Florida.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Charter 17 Bancorp, Inc.,* Richmond, Indiana; to acquire at least 50 percent of the voting shares of First National Bancorp, New Castle, Indiana, and thereby indirectly acquire Security National Bank, New Castle, Indiana.

C. Federal Reserve Bank of St. Louis (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First City Bancshares, Incorporated of Springfield,* Springfield Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of First City National Bank, Springfield, Missouri. Comments on this application must be received by October 23, 1986.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Imperial Bancorp,* Inglewood, California; to acquire 100 percent of the voting shares of Naitonal Bank of Arizona, Scottsdale, Arizona. Comments on this application must be received by October 24, 1986.

2. *Southwest Bancorp,* Vista, California; to acquire 100 percent of the voting shares of Pacific Western National Bank, Pico Rivera, California.

Board of Governors of the Federal Reserve System, October 1, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–22643 Filed 10–6–86; 8:45 am]

BILLING CODE 6210–01–M

New Century Bank Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the board's Regulation Y (12 CFR 225.23(a)(1)) of the board's Regulations Y (12 CFR CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Reg ulation Y (12 CFR 225.21(a)) to commence or the engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *New Century Bank corporation,* Bay City, Michigan; to engage *de novo* in providing data processing services to First of America BanK-Mid Michigan, Gladwin Michigan pursuant to § 225.25()b)(7) of the Board's Regulation Y. These activities will be conducted in the state of Michigan.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens State Bankshares of Bald Knob, Inc.,* Bald Knob, Arkansas; to engage directly in providing credit related insurance policies or certificates on extension of credit by Citizens State Bank, Bald Knob, Arkansas, pursuant to § 225.25(b)(8)(i)(A) of the Board's Regulation Y. These activities will be conducted in the State of Arkansas.

Board of Governors of the Federal Reserve System, October 1, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–22644 Filed 10–6–86; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 75N–0184; DESI 597]

Oxyphencyclimine Hydrochloride With Phenobarbital Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

Correction

In FR Doc. 86–21783, beginning on page 34253, in the issue of Friday, September 26, 1986, in the third column, in the "Effective Date" caption, "October 27, 1987" should read "October 27, 1986".

BILLING CODE 1505–01–M

Meticortelone® Aqueous Suspension and Tablets; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) providing for use of Meticortelone® Aqueous Suspension and Tablets (prednisolone acetate) as anti-inflammatory agents in dogs, cats, and horses. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: October 17, 1986.

FOR FURTHER INFORMATION CONTACT: John K. Augsburg, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: Schering Corp., 1011 Morris Ave., Union, NJ 07083, is sponsor of NADA 10–312 providing for use of Meticortelone® Aqueous Suspension and Tablets (prednisolone acetate) as anti-inflammatory agents in dogs, cats,and horses. The NADA was originally approved March 14, 1956. The regulation reflecting approval of the aqueous suspension is codified in § 522.1881 (21 CFR 522.1881). However, approval of the tablet was never codified. In a letter dated May 18, 1984, the firm requested withdrawal of approval of the NADA because the drug products are no longer being marketed and waived an opportunity for hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 10–312 and all supplements thereto for Meticortelone® Aqueous Suspension and Tablets is hereby withdrawn, effective October 17, 1986.

In a final rule published elsewhere in this issue of the **Federal Register**, the regulation reflecting approval of the aqueous suspension is removed.

Dated: September 30, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–22636 Filed 10–6–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86F–0383]

The NutraSweet Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the NutraSweet Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aspartame as a sweetener in fruit spreads, toppings, and syrups where standards of identity do not preclude its use.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6A3983) has been filed by the NutraSweet Co., Box 1111, 4711 Golf Rd., Skokie, IL 60076, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in fruit spreads, toppings, and syrups where standards of identity do not preclude its use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 24, 1986

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–22836 Filed 10–6–86; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BDM–038–CN]

Changes to the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: This notice corrects technical errors that appeared in the notice published in the Federal Register on August 29, 1986 (51 FR 30914).

FOR FURTHER INFORMATION CONTACT: Janis Niessing, HCFA, (301) 594–8945.

SUPPLEMENTARY INFORMATION: In **Federal Register** Document 86–19586, on page 30915, make the following corrections:

1. In column 1, between the diagnoses codes "043.2" and "043.9", insert the diagnosis code "043.3 HTLV–III/LAV infection causing other specified conditions".

2. In column 3, under procedure code 96.6, the first word "External" should read "Enteral".

Dated: October 2, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86–22717 Filed 10–6–86; 8:45 am]

BILLING CODE 4120–03–M

[BERC–383–FN]

Medicare Program, Reasonable Charge Payment Limits for Anesthesia Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: In this notice, we are establishing special reasonable charge payment limits for anesthesia services furnished by physicians during cataract surgery and iridectomies. This policy is

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intended to prevent excessive payment for these services. In addition, in order to discourage physicians from supervising more than a maximum acceptable number of procedures, we are reducing the amount of payment made in those cases in which an anesthesiologist directs more than four concurrent anesthesia procedures.

EFFECTIVE DATE: The provisions of this notice are effective beginning with services furnished on or after January 1, 1987.

FOR FURTHER INFORMATION CONTACT: James Menas (301) 594-1154.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statute and Regulations

Section 1842(b)(3) of the Social Security Act (the Act) requires that all payments under Part B of the Medicare program (Supplementary Medical Insurance) must be reasonable. Reasonable charge determinations under Part B are generally based on customary and prevailing charges derived from historic charge data. The reasonable charge for a service is generally set at the lowest of the following three factors:

- The actual charge.
- The customary charge for similar services generally made by a physician or supplier furnishing the service.
- The prevailing charge in the locality for similar services. (The prevailing charge may not exceed the 75th percentile of the customary charges of physicians and suppliers in the locality.)

An economic index limits the annual increases in prevailing charges for physician services. The Medicare economic index measures changes that occur in general earnings levels of workers that are attributable to factors other than increases in their productivity and in expenses of the kind incurred by physicians in office practice.

This standard method of determining the reasonable charge for a service can, in some instances, result in payments that we believe may not be reasonable. This may occur, for example, when the marketplace is not competitive because of limited suppliers, when the Medicare program is the primary source of payment for a service, when there has been a change in technology or increased facility with that technology, or changes in acquisition or supplier costs.

In order to ensure that Medicare payments are reasonable, we published a final rule with comment period on August 11, 1986 in the **Federal Register** (51 FR 28710) that amended 42 CFR 405.502 to set forth factors to be considered and procedures to be followed in establishing special reasonable charge limits. The rule specifies that we may set a limit if we determine that the standard rules for calculating reasonable charges result in grossly deficient or excessive charges. The limits would be in the form of either a specific dollar amount or a special method to be used in determining maximum reasonable charges to be allowed for a particular service or category of service.

More specifically, § 405.502(g)(1)(i) provides the following examples of circumstances that may result in excessive charges:

- The marketplace is not competitive.
- Medicare is the primary source for payment.
- The charges involve the use of new technology for which an extensive charge history does not exist.
- The charges do not reflect changing technology, increased facility with that technology, or changes in acquisition or supplier costs.
- Prevailing charges in a locality are grossly in excess of prevailing charges in other localities.
- Charges are grossly in excess of acquisition or production costs.

The regulations specify, at § 405.502(g)(3), that we are to propose any limit in a notice to be published in the **Federal Register** and provide an opportunity for comment. When all timely comments have been fully considered, we are to publish in the **Federal Register** our final determination and our response to the comments. Section 405.502(g)(3) also provides that the proposed and final notices must set forth the criteria and circumstances, if any, under which a specific exceptions process to the special limit would be established.

B. Payment for Anesthesia Services

Under our current regulations (§§ 405.552 and 405.553), anesthesiology services personally furnished by a physician are paid on a reasonable charge basis. In addition, payment may also be made on a reasonable charge basis for the personal medical direction that a physician furnishes to a qualified anesthetist (for example, a certified registered nurse anesthetist (CRNA)).

As a condition for reasonable charge payment, the physician may not direct more than four concurrent anesthesia procedures at a time, must be physically present in the operating suite, and may not perform any other services during the same period of time. In addition to these requirements and prohibitions, the physician is required to perform several personal services to the patient before, during, and after the procedure such as examining the patient and personally participating in the most demanding parts of the procedure. If a physician does not fulfill these requirements or directs more than four procedures at one time, the concurrent anesthesia services are considered physician services furnished to the provider and, thus, are not paid as physician services on a reasonable charge basis.

Carriers calculate the reasonable charge for anesthesia services based on the following:

- Base value units assigned to the specific procedure performed that represent the value of all anesthesia services except the value of the actual time spent administering the anesthesia.
- Time units that represent the elasped period of time from when the anesthesiologist prepares the patient for induction and ending when the anesthesiologist is no longer in personal attendance to the patient. The carrier allows no more than one time unit for each 15 minute interval.
- The carrier may also use modifier units that take into account special factors such as the age or physical condition of the patient.

The sum of these units is multiplied by the lesser of the individual physician's customary charge conversion factor or the prevailing charge conversion factor and compared with the billed charge to arrive at the reasonable charge for the physician's anesthesia service. The individual physician's customary charge conversion factor is derived from the physician's billed charges and underlying base, time, and, if appropriate, modifier units. The prevailing charge conversion factor is computed by arraying the anesthesia customary charge conversion factors in ascending order and weighting each by the frequency of services on which it was based. An actual amount in the array that is high enough to include the customary charge conversion factors of the anesthesiologists who perform at least 75 percent of the cumulative services determines the prevailing charge conversion factor.

Anesthesia services may be personally performed by the anesthesiologist or the anesthesiologist may medically direct concurrent anesthesia services in which the anesthesia is administered by an anesthetist. The amount of reasonable charge payment differs depending on whether the anesthetist is or is not the employee of the anesthesiologist.

The reasonable charge for a physician's medical direction of no more than four concurrent services is determined on the same basis as that of the physician's personal services to a patient; that is, procedure-specific relative value base units plus time units. However, under § 405.553(c), if the anesthetist is not employed by the anesthesiologist, the carrier allows no more than one time unit for each 30 minute interval rather than one unit for each 15 minutes.

In cases in which a physician directs more than four concurrent procedures, all the reasonable and necessary preanesthesia services personally furnished by the physician up to and including induction of the patient qualify for reasonable charge payment. Those services furnished subsequent to induction of the patient are considered physician services to the provider and are payable to the provider on a prospective payment basis (if the services are furnished to an inpatient of a hospital that is subject to the prospective payment system) or on a reasonable cost basis. Section 8312.1G of the Medicare Carriers Manual (HFCA Pub. 14-3) further specifies that payment for these preanesthesia services is based on relative value base units plus one time unit for induction if the induction was personally performed by the physician. No further time units are recognized for any of the concurrent procedures.

C. Anesthesia Services Related to Cataract Surgery

In processing anesthesia claims, carriers have the authority to use an appropriate relative value guide. The principal relative value guides currently use by the carriers include the 1964 and the 1969 California Relative Value Studies (CRVS) and various versions of the American Society of Anesthesiologist's (ASA) Relative Value Guide. Some carriers use a combination of these guides or other guides, such as a State Relative Value Guide, to establish relative value units.

Anesthesia claims are processed using the HCFA common procedure coding system (HCPCS) surgical procedure code with an appropriate modifier for anesthesia services. The HCPCS surgical codes are based on the Current Procedural Terminology, Fourth Edition (CPT-4), which identifies codes and descriptions for services furnished, including physician services. The 1985 version of CPT-4 includes 12 procedure codes to describe cataract surgery. However, the CRVS and ASA Guides commonly used by the carrier to process claims do not contain the same number of codes. Generally, carriers are assigning a relative value of eight base units to the anesthesia services associated with cataract surgery procedures.

Cataract surgery is ordinarily performed under an eye-nerve block, such as a retrobulbar block, that is administered by an ophthalmologist. Before the administration of the block and during the surgical procedure, an anesthesiologist or other qualified individual (for example, a CRNA) who is under an anesthesiologist's medical direction usually administers a drug or combination of drugs intravenously to sedate the patient. In addition, the anesthesiologist or other qualified individual monitors the patient's condition during the surgical procedure.

Historically, cataract surgery was performed on an inpatient basis with the patient placed under general anesthesia and it involved an inpatient hospital stay of three to six days. This surgery is now frequently performed in ambulatory surgical centers (ASCs) and, in some cases, in physicians' offices. A number of factors have contributed to this trend. A major influence is the policy of the Utilization Quality Control Peer Review Organization that requires prior authorization for hospital stays associated with cataract surgery. Other factors contributing to the trend include the reduced risk associated with the surgical procedure, technological advances in the procedure, and the implementation of the Medicare inpatient hospital prospective payment system.

While a patient with severe coronary or pulmonary disease or other life threatening condition may need inpatient hospitalization, ophthalmologists agree that most cataract surgery can be safely performed in the outpatient department of a hospital or in an ASC. In fact, we estimate that at least 90 percent of all cataract surgery is now performed on an outpatient basis, either in a hospital outpatient department, an ASC, or a physician's office.

It should be noted that cataract surgery is the most common and rapidly growing surgical procedure covered by Medicare. The total number of cataract operations increased from 415,000 in 1980 to 1.1 million in 1985,[1] an increase of 165 percent. The procedure is primarily performed on the elderly and Medicare pays for about 80 percent of all cataract operations. Medicare payments under Part B for cataract surgery, including payments to anesthesiologists and surgeons, were over $1 billion in 1985.

[1] "Medicare Reimbursement for Cataract Surgery Hearing Before the Subcomm. on Health of the House Comm. on Ways and Means", 99th Cong., 1st Sess. 29 (1985).

Under the procedures described in § 405.502(g), on August 15, 1986, we published a proposed notice in the **Federal Register** (51 FR 29316) to establish limits on the amount of payment we make for certain physician anesthesia services, based on the fact that the current charges do not reflect changing technology.

II. Provisions of the Proposed Notice

We proposed to allow no more than four base units as well as appropriate time units and, if appropriate, modifier units for anesthesia services connected to cataract surgery. This proposal was based on the fact that almost all cataract surgery is now being performed on an ambulatory basis, and general anesthesia is not ordinarily used. Most surgery is done under an eye-nerve block administered by the ophthalmologist while the anesthesiologist is responsible for monitoring the patient's condition, including monitoring any intraveneous agent furnished to supplement the anesthetic block.

In addition, we proposed to allow no more than four base units as well as appropriate time and modifier units for anesthesia services connected to iridectomies. This procedure is no more complex than cataract surgery, and, therefore, it would be inconsistent, from the standpoint of relative values, to continue to recognize a greater number of base units for iridectomies than for cataract surgery.

Under any of the various commonly used relative value guides, the number of anesthesia base units assigned to most surgical procedures performed on an ambulatory basis is three units. We allowed an additional unit for cataract procedures and iridectomies on the premise that the service is complicated by the location of the surgery, which restricts access to the patient's airway and requires surgical field avoidance.

The proposed notice also stated that the Medicare carriers would continue to have the authority under § 405.502(a)(7) to initiate or continue policies that recognize fewer than four base units for anesthesia services associated with cataract surgery or iridectomies, if those policies are based on facts beyond those relied on in the proposal.

While we did not provide any special exceptions policy for our proposed reasonable charge limits, carriers do have the authority under § 405.506 to reimburse additional amounts if there are unusual circumstances or medical complications requiring additional time,

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effort, or expense that support an additional charge, and it is acceptable medical practice in the locality to make an extra charge in these cases.

In addition to the special limits, we proposed to change our practice of allowing the full number of base units associated with a procedure when an anesthesiologist supervises more than four concurrent procedures. We believe that, in these cases, the anesthesiologist is not available to perform the full scope of activities during the anesthesia administration interval that are encompassed by the base unit value. Therefore, it is not reasonable to recognize the full number of base units assigned to the procedure because of the anesthesiologist's limited involvement in each concurrent procedure. Thus, we propose to allow no more than three base units for each procedure if the physician is medically directing more than four concurrent procedures.

III. Discussion of Comments

In response to the August 15, 1986 proposed notice, we receive approximately 300 timely items of correspondence from surgeons, anesthesiologists, professional medical associations, health care consulting firms, law firms, and Medicare beneficiaries. We received a range of responses to our proposed reduction in base unit values for anesthesia associated with cataract surgery and iridectomies. A few commenters supported our proposal. However, a majority of commenters favored the retention of the current unit value and opposed any reduction. Several commenters agreed that the current base value should be adjusted downward because of technological advances, but they recommended a reduction from eight to six units rather than to four. We received only three comments on our proposal to allow no more than three base units for each procedure in those cases in which the anesthesiologist supervises more than four concurrent procedures. These comments and our responses are discussed below.

Comment: Several commenters believe that the reduction from eight base units to four base units for anesthesia services associated with cataract surgery and iridectomies is not warranted. Instead, these commenters recommend that the number of base units be reduced from eight to six. The commenters believe that six units appropriately reflects the relative complexity and risk of these procedures.

Response: We have not accepted this recommendation since the commenters did not furnish any evidence or data to support their position. As we noted above, we have determined that the majority of anesthesia services associated with surgical procedures performed in ASCs are assigned three units. Cataract surgery and iridectomies are included on the ASC procedure list. Three units are also the minimum number of base units assigned to an anesthesia procedure. We will allow an additional unit on the premise that, under the relative value systems commonly used by carriers, one additional modifier unit may be recognized for anesthesia procedures with a base value of three units that become complicated by requiring surgical field avoidance, as is the case in cataract and iridectomy surgery. Thus, we will allow four base units, in total, for anesthesia services associated with cataract and iridectomy surgery. This total unit value is consistent with the base unit value assigned to the majority of anesthesia services associated with ASC eye surgical procedures under the relative value systems commonly used by carriers.

To allow a higher number of overall base units (such as five or six base units) for the anesthesia services associated with these two surgeries would require us to recognize two or three modifier units in addition to the minimum base unit values. There is no support under the relative value systems commonly used by carriers for routinely recognizing two or three modifier units for basic surgical procedures that become complicated by requiring surgical field avoidance.

Comment: Some commenters indicated that the reduction in anesthesia base units for cataract surgery and iridectomies will lower the anesthesiologists' rates of participation and acceptance of assignment. This will result in beneficiaries incurring increased financial liability.

Response: As we discussed in the regulatory impact analysis presented in the proposed notice (51 FR 29320), the number of anesthesiologists who accept assignment or are "participating physicians" in the Medicare program may decrease as a result of our policy on payment for anesthesia services. (A "participating physician" agrees to accept the beneficiary's assignment of his or her Medicare claim in every case.) However, as we stated in the proposed notice, the decision on the part of each anesthesiologist to be a "participating physician" in the program or to accept assignment depends on a number of variables. For example, we believe that an estimation of the physician's income needs and a patient's perceived ability to pay is prominent in an anesthesiologist's deliberations. To the extent that our policy affects an anesthesiologist's income, this will become a factor in the decision to either participate in the program or accept assignment. Nevertheless, it is true that beneficiaries who receive services from physicians who do not accept assignment are exposed to greater financial liability than those who receive assigned services.

Comment: A few commenters stated that, in their practices, between 20 and 50 percent of all cataract surgeries are performed under general anesthesia. These commenters indicated that in those cases in which cataract surgery is performed under general anesthesia, the practice of allowing eight base units for the anesthesia service should be continued.

Some commenters, particularly anesthesiologists practicing at eye hospitals or eye centers, indicated that the reduction to four base units is too severe because they, not the surgeon, perform the retrobulbar block. One commenter recommended an increase of two units to the proposed four units if the anesthesiologist personally performs the anesthesia block.

Response: The system for coding and reporting anesthesia services does not differentiate between monitored anesthesia care and general anesthesia. Rather, the coding systems in place reflect varying relative values based on the surgical procedure furnished or the body system involved. Anesthesiologists have consistently disagreed with the Office of the Inspector General (OIG) recommendation that monitored anesthesia care is a reduced service in comparison with general anesthesia. (This recommendation is included in the study entitled "Medicare Reimbursement for Anesthesia Services" (OAI–85–2–010), which was discussed in detail in the proposed notice (51 FR 29318).) It would, therefore, be inconsistent for Medicare to allow higher amounts for general than for monitored anesthesia for cataract surgery and not to make a conforming change for other procedures in which monitored anesthesia care has been substituted for general anesthesia over time.

With respect to payment of an additional allowance for the administration of the retrobulbar block by the anesthesiologist, it is our understanding that the standard medical practice is for the surgeon to administer the block. Under these circumstances, the service may be included in the surgeon's global charge or may be separately identified. We understand that the usual practice is for the service to be included in the global charge.

We are not including any additional adjustment in the number of base value units in those cases in which the anesthesiologists administer the retrobulbar block. As we noted in the proposed notice, base value units assigned to the specific anesthesia procedure represent the value of all anesthesia services except the value of the actual time spent administering the anesthesia (51 FR 29317). The activities involved in the base unit, by their nature, include the preanesthetic examination, prescription of the anesthesia plan, the administration of the anesthetic agent, monitoring of the patient's vital signs, and the provision of indicated postanesthesia care. However, if it becomes the common practice of anesthesiologists to begin to perform the block, we will study the issue of additional payment to the anesthesiologist with a corresponding reduction in payment for the ophthalmologist's service.

Comment: Several commenters pointed out that the proposal to reduce payment for anesthesia services could result in poor quality care and could limit beneficiary access to anesthesia services.

Response: These commenters presented no evidence to demonstrate that a reduced payment level would result in poor quality care or reduced access to anesthesia services for Medicare beneficiaries. We believe that it is more likely that most physicians will continue to furnish anesthesia services to Medicare beneficiaries although some physicians may be less willing to accept assignment.

Comment: One anesthesiologist whose practice is to charge five base units for cataract anesthesia services believes that the reduction from eight to four units is too severe. The commenter recommended that a system of variable base units that depends on the number of concurrent anesthesia services be used. For example, if the anesthesiologist personally performed the cataract anesthesia service, five base units would be allowed. If two concurrent procedures were directed, the anesthesiologists would be allowed four base units for each procedure. Similarly, three base units would be allowed for each procedure for three concurrent procedures and two base units for each procedure when four concurrent procedures are directed.

Response: Our proposal to reduce base unit values pertains only to anesthesia services connected to cataract surgery and iridectomies. The implementation of the commenter's proposal would require a fundamental change in our payment policy for concurrent anesthesia procedures and revisions to our regulations (§§ 405.552 and 405.553). Therefore, we have not accepted the commenter's suggestion as beyond the scope of this proposal.

Comment: Several commenters were confused by our discussion in the proposed notice and believe that the proposed reduction in base units is from eight units to three units.

Response: We will allow four base units for anesthesia services connected with cataract surgery and iridectomies. As we stated in the proposed notice (51 FR 29319), we determined that the number of anesthesia base units assigned to most surgical procedures performed on an ambulatory basis is three units. We allowed one additional unit for cataract procedures and iridectomies on the premise that the service is complicated by the location of the surgery, which restricts access to the patient's airway and requires surgical field avoidance.

Comment: Two anesthesia groups recommended that the reduction in anesthesia base units be phased in over a three-year period comparable to the procedure that was presented in the proposed notice concerning the special reasonable charge payment limits for cataract extractions with intraocular lens implants (51 FR 29321, August 15, 1986).

Response: We do not believe that it is appropriate to provide a three-year transition period for cataract anesthesia limits as we did for the cataract surgery limits because the impact of the former limits on anesthesiologists' gross incomes is not of the same magnitude as the impact of the latter limits is on ophthalmologists' gross incomes. The impact analysis presented in the cataract surgery limits proposed notice indicated that the direct impact on ophthalmologists' median gross income is, on average, expected to be about 5.3 percent for Federal fiscal year (FY) 1987 (51 FR 29324). We conducted the same analysis for the anesthesiologists and estimate that the direct impact on anesthesiologists' median gross income is, on average, expected to be about 2.0 percent for FY 1987.

Comment: Some commenters believe that it is not appropriate to compare anesthesia services associated with cataract surgery with anesthesia services associated with other ASC surgical services for purposes of determining a base unit value of three units. These commenters pointed out that cataract surgery entails a risk not found in other ambulatory procedures, that is, the risk of blindness if the patient is not kept immobile and sedated although no data or evidence was presented to show that it is inappropriate to compare cataract anesthesia to anesthesia associated with other ASC surgical procedures.

Response: We did not accept this comment. We note the risk factor cited and while we did not make an adjustment specifically for this element, we did allow an extra base unit for the patient's position during the surgical procedure.

We reviewed the number of base units assigned to the ASC surgical procedures under two of the California Relative Value Schedules commonly used by carriers. We found that, in each case, more than 70 percent of ASC procedures are assigned the minimum base value of three units. We also note that a base unit value of four units for cataract anesthesia is consistent with the base unit value assigned to the majority of anesthesia services associated with ASC eye surgical procedures under the relative value systems commonly used by carriers.

Comment: One commenter indicated that we have no authority under the law to publish national limits and that only the carriers have the authority to adjust reasonable charge levels as warranted by local conditions.

Response: Section 9304(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) added section 1842(b)(8) to the Act to require that the Secretary describe in regulations the factors to be used in determining the cases in which the application of the usual reasonable charge rules results in the determination of a reasonable charge that is grossly excessive or grossly deficient and thereby inherently unreasonable. It also requires that the Secretary provide in regulations the factors to be considered in those cases in establishing a reasonable charge that is realistic and equitable. As noted above, we published a final rule with comment period on August 11, 1986 (51 FR 28710) that added a new § 405.502(g) to implement the requirements of section 1842(b)(8) of the Act. An explanation of our legal authority for national limits was included in the preamble to that rule (51 FR 28712). This exercise of authority was twice upheld by the Federal courts. (See *Schupak v. Califano*, 454 F. Supp. 105 (E.D.N.Y. 1979) and *Schupak v. Mathews*, No. 75–1109 (D.D.C. Sept. 17, 1976), *aff'd in unpublished order* D.C. Civ. 1977).)

If the provisions of section 1842(b)(8) of the Act are interpreted as invalidating our authority to make inherent

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reasonableness determinations, then HCFA is left powerless to address grossly excessive charges that require a national application of the factors used to determine realistic and equitable payment. There is nothing to indicate that Congress intended this result.

Comment: The proposed notice stated that Medicare carriers would continue to have the authority under § 405.502(a)(7) to initiate or continue policies that recognize fewer than four base units for anesthesia services associated with cataract surgery or iridectomies, if those policies are based on factors beyond those relied on in the proposal (51 FR 29319). Commenters were concerned that this policy does not sufficiently or appropriately restrain carrier discretion. They recommended that the reference to additional carrier discretion be deleted from the final notice.

Response: The August 11, 1986 final rule with comment period that set forth in regulations the requirements to be followed in establishing special reasonable charge limits stated that ". . . individual carriers retain their existing authority (under § 405.502(a)(7)) to make inherent reasonableness determinations so that they can control unreasonable payments peculiar to their service area." (51 FR 28714) That final rule further specified that the factors used in determining the cases in which the reasonable charge methodology may result in grossly excessive or deficient charges and the factors to be considered in establishing a limit are the same for HCFA and the carriers.

Our national limit for anesthesia services associated with cataract surgery and iridectomies is intended to be only an upper limit. We will permit carriers that have established and implemented policies prior to the effective date of this notice to allow fewer than four base units for these anesthesia services to continue these policies as long as the policies were established consistently with the requirements of the August 11, 1986 final rule, or can be conformed to those policies.

Comment: One commenter indicated that the proposed reasonable charge payment limits for anesthesia services should be a baseline and Medicare carriers should not be allowed to establish lower limits on the same services. The commenter pointed out that the procedure for generally applicable special reasonable charge limits is specifically identified as a new element in the August 11, 1986 final rule and, as such, is subject to public comment and possible modification.

Response: The August 11, 1986 final rule did indicate that we will accept comments on the provisions of the regulations relating to special reasonable charge limits set by carriers (§ 405.402(g)(4)) since these provisions were not subject to comment in the proposed rule (51 FR 5726, February 18, 1986). However, we believe that the August 11, 1986 final rule clearly indicates that the specific areas on which we are soliciting comments are the procedures carriers will follow in implementing special reasonable charge limits. These procedures relate to the factors to be used in determining cases in which the usual reasonable charge methodology may result in grossly excessive or deficient charges, the factors to be considered in establishing the limit, and the opportunity for the public to comment on the carrier's reasonable charge limit.

The carriers have always had the authority under § 405.502(a)(7) to make inherent reasonableness determination, and they retain this authority under the provisions of the August 11, 1986 final rule. Thus, the issue of whether or not the carrier has the authority to establish a limit that is lower than the limit set by HCFA is not the issue on which we are soliciting comments. Rather, it is only the procedures and factors the carrier uses to establish the limit for which we will consider additional comments and make changes to the rule if necessary. It is consistent with the provisions of the August 11, 1986 final rule for a carrier to implement a more restrictive limit as long as the carrier has established these limits consistently with the circumstances and factors described in § 405.502(g)(4).

Comment: One commenter was pleased that the proposed notice used the term "monitored anesthesia" rather than "standby anesthesia" in describing the activities that the anesthesiologist performs during cataract and other surgery. The commenter proposed a definition of monitored anesthesia care and recommended that both the final notice and Medicare program instructions include this definition.

Response: The proposed notice was concerned with anesthesia service connected with cataract surgery and iridectomy surgery. Thus, we have accepted, in substance, the definition of monitored anesthesia care offered by the commenter with regard to the services described in our notice. The definition is as follows:

> Monitored anesthesia care involves the intraoperative monitoring by a physician, or by a qualified individual under the medical direction of a physician, of the patient's vital physiological signs, in anticipation of the need for administration of general anesthesia or of the development of adverse physiological patient reaction to the surgical procedure. It also includes the performance of a preanesthetic examination and evaluation and prescription of the anesthesia care required, and provision of indicated postoperative anesthesia care.

We emphasize that monitored anesthesia services will be covered only if it is medically necessary for the anesthesiologist to furnish medical direction to a qualified individual. We will also include this definition in our Medicare program instructions.

Comment: Some commenters indicated that it is inappropriate to refer to the anesthesia administered to the cataract surgery patient as "local" anesthesia. The commenters pointed out that the facial and retrobulbar blocks are different from local anesthetics and carry a higher incidence of complication than do local anesthetics.

Response: We agree with the commenter and we have used the term eye-nerve blocks or retrobulbar block in this notice instead of the term local anesthetic.

Comment: One commenter favored our proposal to allow no more than three base units in those cases in which the physician directs more than four concurrent anesthesia procedures and noted that in his anesthesia practice no more than two concurrent procedures were medically directed. Another commenter indicated that it is inappropriate to adjust the base units of the concurrent medical procedures if more than four concurrent procedures are furnished. This commenter believes that the base units should remain unchanged based on the complexity and risk of the specific procedure.

Response: We did not accept the latter comment. As discussed in the proposed notice, anesthesia base units for various surgical procedures range from a low of three base units to a value of 25 units for certain complex cardiovascular procedures (51 FR 29319). (The proposed notice incorrectly indicated a value of 15 units for these complex cardiovascular procedures.) The significant difference in base unit values for anesthesia services across certain surgical procedures is related not just to the preanesthesia and postanesthesia services included in the base unit value but also the other anesthesia activities that the anesthesiologist may be called upon to perform during the surgical procedure itself.

We continue to believe that if the anesthesiologist medically supervises more than four concurrent procedures, the anesthesiologist is not furnishing a level of medical involvement that justifies the payment of time units nor is he or she available to perform the full scope of activities during the anesthesia administration interval that are encompassed by the base unit value. In these situations, it is reasonable to structure a reasonable charge payment only for the anesthesiologist's preanesthesia and postanesthesia services. It is not reasonable to recognize the full number of base units otherwise assigned to the procedure because of the anesthesiologist's limited involvement in each concurrent procedure.

Comment: One commenter pointed out that our proposal to limit to three the number of base units assigned to each procedure in those cases in which more than four concurrent procedures are supervised did not refer to the specific circumstances set forth in § 405.502(g)(1)(i) inder which the payment limit is proposed. The commenter recommended that this revision be accomplished through an amendment to the regulations and not through a proposed and final notice.

Response: The list of circumstances set forth in § 405.502(g)(1)(i) that result in a need to establish reasonable charge limits is not an all-inclusive but rather an illustrative list. We believe that the rationale presented in the proposed notice and reiterated in the previous response sufficiently describes the circumstances that have created the need for a special reasonable charge payment limit.

We agree that this revision could have been accomplished through a change to § 405.552(b) or § 405.553. We believe that a revision of the regulations would have been necessary if the current regulations required a different base unit payment policy than the one we proposed. However, the regulations are silent on the issue of base unit values in those cases in which more than four concurrent procedures are supervised. We chose to use the notice procedure to accomplish our objective because of the nature of the special payment rate in those cases in which more than four concurrent procedures are directed. This procedure differs from the usual procedure that applies in those cases in which the anesthesia services are personally furnished by the anesthesiologist or the anesthesiologist directs no more than four concurrent procedures. Although we are not amending the text of the regulations at this time, we have given the public the same opportunity to comment that we would have with respect to an amendment to the regulations. This is the procedure we established by regulations at § 405.502(g)(3).

IV. Provisions of the Final Notice

After consideration of the comments we received, we are making no changes to the proposed notice. However, although we did not receive a specific comment on this issue, we have identified a problem that results from reducing the number of base units for anesthesia services associated with cataract surgery and iridectomies from eight to four for all service areas. There are some isolated cases in which a carrier uses a relative value schedule that is a multiplier of the basic carrier relative value system. For example, in Mississippi, the carrier currently assigns 20–22 base units to cataract anesthesia. (Although this carrier's relative value units per procedure are significantly higher than other carriers relative value units, its prevailing charge conversion factor is correspondingly significantly lower.) A reduction to four units in this service area would have a much greater impact on the payment for these services than in other service areas. We believe that this result would not be equitable and cannot be justified. Therefore, in service areas in which the Medicare carrier currently recognizes more than eight base units for the anesthesia services affected by this notice, the carrier will be required to identify the average relative base units for the common ASC procedures that are ordinarily valued at three units in other service areas. This will approximate the minimum base unit value for an anesthesia procedure. This minimum number would be increased by the number of units that are equivalent to the ratio of average base units for the minimum anesthesia service to three base units. The total will then serve as the maximum number of base units allowed by that carrier.

V. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed notices that are likely to meet criteria for a "major rule". A major rule is one that would result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographical regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We also prepare and publish an initial regulatory flexibility analysis, consistently with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), for proposed notices unless the Secretary certifies that the notice would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all anesthesiologists to be small entities.

In the August 15, 1986 proposed notice, we wrote a combined regulatory impact analysis and regulatory flexibility analysis. We received no comments on that combined analysis. The following discussion, in combination with the rest of this notice, constitutes a final combined regulatory impact analysis and regulatory flexibility analysis meeting the requirements of E.O. 12291 and the RFA.

We estimate that, as a result of reducing payments to anesthesiologists for anesthesia services provided to patients undergoing cataract surgery, the Medicare program will eventually realize annual savings of $100 million or more. While the available data do not permit us to determine which anesthesiologists would be most affected by this notice, according to *Physician Characteristics and Distribution in the U.S., 1984 Edition*, published by the American Medical Association, there were 18,495 non-Federally employed anesthesiologists furnishing services to patients as of December 31, 1983. We believe that most, if not all, anesthesiologists provide services in connection with cataract surgery. Many anesthesiologists, therefore, could be affected by this notice. We are, therefore, providing an analysis that meets RFA criteria as well as E.O. 12991.

B. Savings

We have not been able to estimate the savings that will result from allowing no more than three base units when the anesthesiologist directs more than four concurrent procedures. We do not believe they will be substantial. However, we estimate that the decision to reduce the number of base units from eight to four for physician anesthesia services performed during cataract procedures will result in the following annual savings for the next five Federal fiscal years (FYs) assuming an effective date of January 1, 1987:

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Savings Estimates*

[In millions]

Fiscal year				
1987	1988	1989	1990	1991
$45	$75	$85	$95	$105

*Rounded to the nearest $5 million.

These savings estimates are based, in part, on data presented in "Update of Intraocular Lenses Implanted in the United States" by Walter J. Stark, M.D., et al. (*American Journal of Ophthalmology*, Vol. 98, No. 2, Aug. 15, 1984, pp. 236–239) and the report of the Select Committee on Aging, *Cataract Surgery: Fraud, Waste, and Abuse* (Comm. Pub. 99–506). On the basis of these data, we expect that in FY 1987 a total of 1.4 million cataract removal procedures (with and without intraocular lens implants) will be performed in the United States. We anticipate that approximately 80 percent, or 1.1 million, of these procedures will be covered under Medicare. The cost data used in developing our savings estimates were collected by the OIG in connection with the study cited earlier in this document and is contained in the report of that study.

The available data on iridectomies indicate that savings in FY 1987 resulting from lowering the number of base units to four will be under $1 million. Because of technological changes that permit less expensive procedures to be substituted for iridectomies, we doubt that the rate of iridectomies performed on Medicare beneficiaries will increase in coming years. Therefore, we do not anticipate a higher annual savings rate in later years.

C. Expected Impact

Our notice will primarily affect anesthesiologists by reducing their Medicare payments, as a group, by the amount of the estimated savings. The impact on an individual physician will depend on his or her practices in performing multiple concurrent procedures, and on the number of cataract procedures and iridectomies for which he or she provides anesthesia services. Those physicians who provide anesthesia services in a large number of cataract cases will be more heavily affected by our notice than would those who provide these services in only a few cases. We estimate that, on average, there will be less than a two percent reduction in anesthesiologists' gross incomes. Of course, certain anesthesiologists, such as those who work for eye ambulatory surgical centers and eye hospitals, may be severely affected. We believe relatively few anesthesiologists customarily perform more than four concurrent procedures.

We expect that, as a consequence of reducing payments for anesthesia services connected with cataract surgery and iridectomies, the number of anesthesiologists accepting assignment of a beneficiary's claim for Medicare payment or becoming a "participating physician" in the Medicare program may decrease. (A "participating physician" is one who agrees to accept assignment in every case. See section 1842(h) of the Act.) For FY 1986, approximately 22 percent of all anesthesiologists furnishing services to Medicare patients are "participating physicians". The assignment rate for anesthesiology claims in FY 1983 (the latest year for which data from all physicians are available) was approximately 45 percent.

Of course, the decision on the part of each anesthesiologist to become a "participating physician" in the program or to accept assignment depends on a number of variables. For example, as discussed earlier, we believe that an estimation of income needs and a patient's perceived ability to pay is prominent in an anesthesiologist's deliberations. To the extent that our notice affects an anesthesiologist's income, this will become a factor in the decision either to participate in the program or accept assignment.

However, our ability to determine these factors is severely limited both by the lack of data and the inability to create an adequate model of the decision making process. Therefore, we have no way of estimating how anesthesiologists will respond to the proposed change. Nevertheless, it is true that beneficiaries who receive services from physicians who do not accept assignment are exposed to greater financial liability than those who receive assigned services.

D. Alternatives Considered

In the proposed notice, we discussed the following two general alternatives:

- Reducing the number of anesthesia base units carriers would allow for *all* monitored anesthesia services.
- Reducing the number of anesthesia base units by an amount other than the amount we are proposing.

Several commenters addressed the issue of the number of anesthesia base units that should be allowed for cataract surgery and iridectomies.

We had considered reducing the number of anesthesia base units allowable for determining monitored anesthesia payments to zero for all procedures in which these services are provided and basing payments only on the amount of time the anesthesiologist was in attendance. The rationale for this alternative was the fact that the risk to patients and the need for the services of anesthesiologists are less when a nerve-block anesthetic is used rather than general anesthesia.

Upon consultation with industry representatives, however, we reexamined our data and concluded that the recommendations presented in the OIG report, discussed above in this preamble, and the alternatives noted required further changes. Therefore, we adopted the policy presented in the proposed notice.

We also considered reducing the number of base anesthesia units by as many as five. As explained elsewhere in this document, we examined the number of base units generally associated with other procedures performed in ASCs. Most of these procedures have an average of three units. We rejected the idea of allowing only three units because we believe that eye surgery is complicated by the location of the surgery, which restricts access to the patient's airway and requires surgical field avoidance. Yet it is also clear from the rapid increase in the number of cataract procedures being performed in ambulatory settings and the increased use of monitored anesthesia services in connection with both cataract procedures and iridectomies that a substantial reduction in anesthesia units from the present standard is warranted.

V. Paperwork Reduction Act

This notice does not impose any information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paper Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

(Sec. 1842(b)(3) and (b)(8) Social Security Act (42 U.S.C. 1395u(b)(3) and (b)(8); 42 CFR 405.502(g))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: October 2, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 2, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86–22750 Filed 10–3–86; 12:33 pm]

BILLING CODE 4120-01-M

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1854, January 11, 1974, as amended most recently in part by 48 FR 5601, February 7, 1983) is amended to reflect consolidation of two offices of the National Institute on Drug Abuse, ADAMHA. The reorganization accomplishes the following: (1) Abolishes the Office of Program Development and Implementation and the Office of Administration; (2) establishes the Office of Planning and Resource Management; and (3) modifies the functional statements of the Office of the Director and the Office of Science.

Section HM–B, Organization and Functions, is amended as follows:

(1) In the functional statement for the Office of the Director (HMH1) in the National Institute on Drug Abuse, delete item (3) and renumber item (4) as item (3) and item (5) as item (4).

(2) Under *Office of Science (HMH12)*, revise item (2) to read: "(2) provides science planning services, assessing current Institute research activities in relation to broad research goals and objectives, recommending changes to basic drug abuse research policy where needed;" change the semicolon at the end of item (5) to a comma and add the following: "and administers staff and liaison functions of the Executive Secretary of the National Advisory Council on Drug Abuse; (6) provides consultation on a variety of drug abuse medical issues to professional medical societies, organizations, medical schools, and other private groups; and"; and change the current item (6) to item (7).

(3) Delete the functional statements for the Office of Policy Development and Implementation (HMH13) and the Office of Administration (HMH15)

(4) Add the following functional statement:

Office of Planning and Resource Management (HMH19)

(1) Provides or coordinates the provision of administrative management support to the Institute in such areas as: (a) Financial planning, analysis, and management, (b) administrative services, (c) personnel management, (d) automated data processing and telecommunications, and (e) grants and contracts management; (2) develops, implements and monitors administrative management policies, procedures, and guidelines; (3) provides correspondence control services for the Institute; (4) develops and monitors the implementation of program policies and plans, and evaluate progress in meeting established Institute objectives; (5) develops data requirements pertinent to short and long range program planning and develops Institute's program evaluation policy; and (6) provides advice and guidance on legislation, statutes and regulations related to all aspects of drug abuse research and prevention, and provides liaison to the Congress on matters related to those areas.

Dated: September 23, 1986.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 86–22715 Filed 10–6–86; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–34171]

Realty Action; Sale of Public Land in St. Louis County, MN

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive sale ES–34171.

SUMMARY: The following public land has been examined and determined to be suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713):

Fourth Principal Meridian, Minnesota

T. 28N., R. 17W., Tract 38 (St. Louis #153).

Containing approximately 0.16 acres.

This land is being offered by direct sale of Sandra Bundy for not less than the appraised fair market value. This sale will allow BLM to resolve a long-term, inadvertent unauthorized use. The land has not been used, and is not needed for, any Federal purposes.

Publication of this notice will segregate and the land from all other appropriation, including the mining laws, for 270 days, or until issuance of patent, whichever occurs first.

There are no known mineral values on the land, therefore, the mineral estate will also be transferred. The buyer will be required to submit an additional $50.00 with the bid as a non-refundable filing fee for the conveyance of the minerals.

Detailed information concerning this sale is available at the Milwaukee District Office, Bureau of Land Management, 310 W. Wisconsin Ave., Suite 225, Milwaukee, Wisconsin 53203; or by calling Priscilla McLain at (414) 291–4429. Failure of the designated purchaser to meet the bidding requirements will result in cancellation of the sale. Interested parties may submit comments until December 15, 1986 to the Milwaukee District Manager at the above address.

Bert Rodgers,

District Manager.

[FR Doc. 86–22617 Filed 10–6–86; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Indian Affairs

Facilities Improvement and Repair Priority List of Fiscal Year 1987

October 2, 1986.

AGENCY: Bureau of Indian affairs, Interior.

ACTION: Notice of facilities improvement and repair priority list for fiscal year 1987.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8.

The Facility Improvement and Repair list has been prepared for fiscal year 1987 in accordance with House Report Number 98–886, page 52, "To avoid some of the problems experienced in the past, the Committee directs the Bureau to revise the FI&R Priority system by publishing in the **Federal Register** by October 1 of each fiscal year, the national list of projects expected to be accomplished that year within the available funds."

This notice for FY 1987 provides the approved list of FI&R projects. Construction of these projects is subject to the availability of funds. The list is based upon the Bureau's criteria for ranking projects as published in the **Federal Register** /Vol. 51, No. 30/ Thursday, February 13, 1986/page 5415:

The projects for FY 1987 are:

1. Bullhead day School
2. Eagle Butte Law and Order Facility
3. Mandaree Day School
4. Fort Yates Sewer System
5. Haskell Indian Junior College
6. Carter Seminary
7. Papago (3 sites)
8. Santa Fe Indian School
9. Tuba City Elementary School and Headquarters
10. Beclabito Day School
11. Crystal Boarding School

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12. Wingate Elementary School
13. Wide Ruins Boarding School
14. Low Mountain Boarding School
15. Shonto Boarding School
16. Nazlini Boarding School
17. Tuba City High School Roof
18. Warm Springs Agency (4 sites)
19. Cherokee Law and Order

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 86-22641 Filed 10-6-86; 8:45 am]

BILLING CODE 4310-02-M

Flathead Indian Irrigation Project, Montana Irrigation Operation and Maintenance Assessment Rates and Related Information

September 26, 1986.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth changes in the operation and maintenance assessment rates and related information applicable to presently assessable lands located within the Flathead Indian Irrigation Project, Montana. For the 1986 irrigation season, the operation and maintenance assessment rates for lands held in trust for Indians, and for lands not included in any irrigation district for the various divisions, are hereby fixed as follows.

Jocko Division—$4.26 per acre
Post/Pablo Division—$7.12 per acre
Mission Division—$8.31 per acre
Camas Division—$4.31 per acre

For the 1986 irrigation season, this notice does not change the per acre assessment rates for the district lands established by notice published in the **Federal Register** July 17, 1985 (50 FR 28993).

For the 1987 irrigation season, the operation and maintenance assessment rate is hereby fixed at $12.62 per acre for all classes of presently assessable lands, i.e., lands held in trust for Indians, district and non-district lands located within the Flathead Indian Irrigation Project.

EFFECTIVE DATE: The effective date of this notice is April 15, 1986.

FOR FURTHER INFORMATION CONTACT: D.F. Halvorson, Acting Project Engineer, Flathead Indian Irrigation Project, St. Ignatius, Montana 59865, telephone number (406) 745-2661.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to 25 CFR 171.1 under authority delegated to the Assistant Secretary—Indian Affairs and the Deputy Assistant Secretary—Indian Affairs by the Secretary of the Interior in 209 DM 8. This authority is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 385. The current operation and maintenance assessment rates were established by notice published in the Federal Register July 17, 1985 (50 FR 28993). On June 18, 1986, a Public Notice declaring the intent to change the operation and maintenance assessment rates was published in four local newspapers. Interested persons were given 30 days, from the date the Public Notice was published in the newspapers, to submit written comments regarding the proposed changes in the assessment rates. This 30 day period ended July 18, 1986. As of July 18, 1986, the Project office had one nondescript telephone comment. The Acting Project Engineer presented the need for changes in the operation and maintenance assessment rates at a meeting with the Joint Board of Control (Board) of the three irrigation districts on May 1, 1986. On May 15, 1986, the Board advised the Project they had no problems with the proposed changes. In the month of May 1986, the acting Project Engineer met with the Moiese, Camas and Jocko waterusers to discuss the proposed change in the operation and maintenance assessment rate and no objection was met. On June 13, 1986, the Bureau of Indian Affairs (BIA) Flathead Agency Superintendent and the tribal leadership of the Confederated Salish and Kootenai Tribes of Flathead were provided copies of the budgetary documents forming the basis for the proposed change in the assessment rates for review and comment. As of July 18, 1986, no comments had been received from the BIA and tribal leadership.

In accordance with the above, the annual operation and maintenance assessment rates for presently assessable lands held in trust for Indians and for lands not included in any irrigation district for the various divisions are hereby fixed as follows:

Jocko Division—$4.26 per acre
Post/Pablo Division—$7.12 per acre
Mission Division—$8.31 per acre
Camas Division—$4.31 per acre

For the 1987 irrigation season, the operation and maintenance assessment rate is hereby fixed at $12.62 per acre for all classes of presently assessable lands, i.e., lands held in trust for Indians, district and non-district lands located within the Flathead Indian Irrigation Project. Until further notice, the annual operation and maintenance assessment shall be due on April 1 of each year and payable on or before that date. To all charges assessed against lands in non-Indian ownership and Indian lands under lease to non-Indian lessees, which are not paid on or before July 1 of each year, following the due date, there shall be added a penalty of one-half of 1 percent per month or fraction thereof from the date, so long as the delinquency continues. No water shall be delivered until such charges have been paid; except that Indian waterusers who are financially unable to pay the assessment on the due date may be furnished water, provided the Superintendent of the reservation certifies to the Project Engineer or other official in charge of the project that such Indian is not financially able to pay the assessment or has made satisfactory arrangements to pay the assessment from proceeds of crops or from other sources. Penalty interest charges shall not be assessed against lands owned by an Indian wateruser, nor against Indian lands under lease to an Indian lessee.

Ronald L. Esquerra,

Deputy to the Assistant Secretary, Indian Affairs (Operations).

[FR Doc. 86-22633 Filed 10-6-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CA-010-06-4352-02]

Bakersfield District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that the Bakersfield District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally on November 7 and 8, 1986. The meeting will begin with a field tour on Friday, November 7, leaving at 8:30 a.m. from 873 North Main Street, Bishop, California. The Saturday meeting, November 8, will begin at 8 a.m. in the First Floor Conference Room at 873 North Main Street, Bishop.

SUPPLEMENTARY INFORMATION: The focus of the meeting will be the initiation of scoping for a utility corridor study in the Bishop Resource Area, involving lands from Owens Valley north to Mono Basin.

Opportunity for the public to address the District Advisory Council will be available at 1 p.m. on Saturday, November 8, in the First Floor Conference Room at 873 North Main Street in Bishop.

The entire meeting, including the Friday field tour, is open to public participants; however, members of the public must provide their own transportation and meals.

Summary minutes of the meeting will be maintained in the Bakersfield District Office at the address below and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Marta Witt, Public Affairs Officer, Bakersfield District, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, California, 93301; (805) 861-4191.

Dated: September 26, 1986.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 86-22631 Filed 10-6-86; 8:45 am]

BILLING CODE 4310-40-M

[CA-910-06-4211-07-NCBF; CA 19154]

Realty Action, Exchange of Public and Private Lands in Riverside County, CA

Correction

In **Federal Register**/Vo. 51 No. 92 Page 17550, published on Tuesday, May 13, 1986, make the following corrections:

1. Delete casefile serial number CA 18784 and add CA 19154.

2. Following "T. 3S., R. 6E.", "Sec. 14:", delete "NW¼", and add "Lots 1 and 2, S½ NW¼."

Dated: September 26, 1986.

H.W. Riecken,

Acting District Manager.

[FR Doc. 86-22628 Filed 10-6-86; 8:45 am]

BILLING CODE 4310-40-M

[ID-943-06-4220-11; I-013281, I-15254]

Idaho; Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that two withdrawals be continued for an additional 100 years, which is the estimated remaining life of the improvements with which they are associated. Under the proposal, the 88.60 acres involved would remain closed to surface entry and the mining laws, but the lands have been and would remain open to the mineral leasing laws.

DATE: Comments should be received on or before January 5, 1987.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208-334-1597.

The Bureau of Reclamation proposes that two land withdrawals made by the Secretarial Order of March 29, 1927, and Public Land Order No. 3077, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

T. 7 S., R. 31 E.,
Sec. 5, NW¼SE¼.
T. 10 S., R. 20 E.,
Sec. 13, E½NE¼NE¼.
T. 10 S., R. 21 E.,
Sec. 28, lot 5.

The area involved contains 88.60 acres, more or less, in Power, and Jerone Counties. The land consists of three scattered tracts located 20 miles west of Pocatello along and under the American Falls Reservoir, 10 miles west of Burley along the northern edge of Milner Lake and 12 miles west of Burley along the Milner-Gooding canal.

The purpose of the withdrawals is to protect the lands for reservoir and canal maintenance and flood control. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: September 26, 1986.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 86-22635 Filed 10-6-86; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Reclamation

CENDAK Unit, South Dakota Pumping Division, Pick-Sloan Missouri Basin Program, South Dakota

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of draft environmental statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft enrvironmental statement on the development of the CENDAK Unit which would provide irrigation and municipal and industrial water for central South Dakota.

Availability

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7423, Bureau of Reclamation, Washington, DC 20240, Telephone: (202) 343-4991

Bureau of Reclamation Library, Code 962, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, Telephone: (303) 236-6963

Regional Director, Bureau of Reclamation, Missouri Basin Region, P.O. Box 36900, Billings, MT 59107-6900, Telephone: (406) 657-6241.

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, or the Regional Director, at the above addresses. Copies also will be available for inspection in libraries in the vicinity of the project.

Dated: October 2, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 86-22696 Filed 10-6-86; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: Migratory Bird Hunting: Nontoxic Shot Approval Procedures, 50 CFR 20

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Abstract: Regulations require that the Service Director determine the nontoxic status of shot materials to be used for migratory bird hunting. Applicants proposing a candidate shot must provide documentation and agree to confirmatory tests that such shot meets the minimum criteria contained in the above regulations.
Frequency: On occasion
Description of Respondents: Metallurgical research laboratories and munitions manufacturers
Annual Response: 1
Annual Burden Hours: 500
Service Clearance Officer: James E. Pinkerton, 202–653–7999, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: September 24, 1986.

Walter O. Stieglitz,
Assistant Director, Refuges and Wildlife.

[FR Doc. 86–22632 Filed 10–6–86; 8:45 am]
BILLING CODE 4310-55-M

National Park Service

Lakeshore and Marina Development, Gary IN; Notice of Intent To Prepare an Environmental Impact Statement and Notice of Public and Agency Meetings

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: Notice is hereby given that the National Park Service and the city of Gary, Indiana, intend as joint lead agencies to prepare an environmental impact statement (EIS) for lakeshore and marina development in Gary, Indiana. Interested and affected Federal, State, and local agencies, interest groups, and individuals are invited to participate in determining the scope of the EIS and significant issues to be analyzed indepth in the EIS.

The city of Gary, Indiana, plans to develop a lakefront complex consisting of a marina (600–1,100 slips), supporting marina services, and residential and commercial development. This complex, which is consistent with the General Management Plan for Indiana Dunes National Lakeshore, is proposed to be located at one of four alternative sites on Lake Michigan between U.S. Steel Properties and Montgomery Street. Two of the four sites are within the boundary of Indiana Dunes National Lakeshore. In addition, the National Park Service, the Indiana Department of Natural Resources, and the U.S. Army Corps of Engineers are responsible for issuing special approvals and permits for the proposed lakefront development. The lakefront development will necessitate the issuance of permits for dredging, filling, and the placement of structures in navigable waters, and leases, easements, or rights of way for roads or development within the National Lakeshore's boundary. In addition to siting options, the EIS may consider alternatives for marina size, site access, and other significant aspects and issues of the development. The no action alternative will be considered also.

Notice is also given that the lead agencies will convene two meetings, one for agency representatives and one for the general public, to gather information related to the scope of the EIS. Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issue and data which the EIS should consider, and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a cooperating agency.

DATES: A meeting for agency representatives will be held on Wednesday, October 22, 1:00 p.m. C.D.T., at the Paul H. Douglas Center for Environmental Education, 3rd and Lake Streets, Gary, Indiana. A meeting for the general public will be held on Thursday, October 23, 7:00 p.m. C.D.T., in the Hoosier Room, Council Gary Genesis Convention Center, 4th and Broadway, Gary, Indiana. Although information will be accepted throughout the EIS development process, material must be received by November 7, 1986, to ensure full consideration during the determination of the scope of the EIS.
ADDRESS: Send written comments to: Mr. Taghi Arshami, Chief of Planning, City of Gary, 475 Broadway, Gary, Indiana 46402.
FOR FURTHER INFORMATION CONTACT ONE OF THE FOLLOWING:

Mr. Taghi Arshami, Chief of Planning, City of Gary, 475 Broadway, Gary, Indiana 46402
Mr. Dale Engquist, Superintendent, Indiana Dunes National Lakeshore, 1100 N. Mineral Springs, Porter, Indiana 46304
Dr. David N. Given, Chief, Planning and Environmental Quality, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102.

Dated: September 24, 1986.

Randall R. Pope,
Acting Regional Director, Midwest Region.

[FR Doc. 86–22676 Filed 10–6–86; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 27, 1986. Pursuant to § 60.13 of 36 CFR Part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 22, 1986

Carol D. Shull,
Chief of Registration, National Register.

ARKANSAS

Fulton County
Mammoth Spring, *St. Andrew's Episcopal Church*, AR 9

Independence County
Batesville, *Dickinson, Edward, House*, 672 E. Boswell St.

Monroe County
Brinkley, *Mount Zion Missionary Baptist Church*, 409 S. Main St.

Ouachita County
Stephens vicinity, *Holt-Poindexter Store Building*, Ouachita County Rd.

Phillips County
Helena, *Perry Street Historic District*, Perry St. between Pecan and Franklin and Pecan St. from Porter to Perry

Pulaski County
Little Rock, *Exchange Bank Building (Charles L. Thompson Design Collection TR)*, 423 Main St.
Little Rock, *Federal Reserve Bank Building (Charles L. Thompson Design Collection TR)*, 123 W. Third St.
Little Rock, *Moore Building (Charles L. Thompson Design Collection TR)*, 519–523 Center St.

Washington County
Brown Bluff—3WA10,

White County
Judsonia, *Henson, Alfred W.*, 111 Main St.

COLORADO

Huerfano County,
La Veta, *Francisco Plaza*, 312 S. Main St.

DELAWARE

New Castle County
Marshallton, *Marshallton United Methodist Church*, 1105 Stanton Rd.
Wilmington, *Dupont, P.S., High School*, 34th St. between N. Monroe and N. Franklin Sts.

Sussex County
Milford vicinity, *Mispillion Lighthouse and Beacon Tower*, NE end of County Rd. 203

DISTRICT OF COLUMBIA

Washington
Ingleside, 1818 Newton St., NW
M Street High School, 128 M St., NW
Masonic Temple, 801 13th St., NW
Riggs—Tompkins Building, 1403—1405, and 1413 Park Rd., NW, and 3300, 3306—3316, 3328, and 3336 14th St., NW
Thomas, Alma, House, 1530 15th St., NW
US Department of the Interior Building, 18th and C Sts., NW
Walsh Stable, 1511 (rear) 22nd St., NW

MASSACHUSETTS

Essex County
Haverhill, *Peabody School*, 170 Salem St.
Haverhill, *School Street School*, 40 School St.

Middlesex County
Winchester, *Winchester Center Historic District*, Roughly bounded by Mt. Vernon and Washington Sts., Waterfield Rd., Church and Main Sts.

Plymouth County
Plymouth, *Plymouth Post Office Building*, 5 Main St.

MINNESOTA

Cook County
Grand Marais, *Scott, Jim Fishhouse*, US 61 at Fifth Ave.

Mower County
Austin, *Paramount Theater*, 125 Fourth Ave., NE

Winona County
Elba vicinity, *Hemmelberg, William, House*, Cty. Hwy. 26 and 37

MONTANA

Carbon County
Red Lodge, *Calvary Episcopal Church*, 9 N. Villard Ave.

Gallatin County
West Yellowstone, *Eagle's Store (West Yellowstone MRA)*, *3 Canyon St.*

Lewis and Clark County
Lincoln, *Lincoln Lodge*, Stemple Pass Rd.

Madison County
Sheridan, *O'Brien, William, House*, 114 E. Poppleton

Missoula County
Missoula, *Paxson, Edgar, House*, 611 Stephens Ave.

Stillwater County
Absarokee, *Sandstone and Cobblestone Schools*, Main St.

NEW YORK

Essex County
Newcomb vicinity, *Camp Santanoni (Great Camps of the Adirondacks TR)*, N of NY 28N

Franklin County
Keese Hill vicinity, *Camp Topridge (Great Camps of the Adirondacks TR)*, S of Keese Mills Rd., Upper St. Regis Lake
Saranac Inn vicinity, *Eagle Island Camp (Great Camps of the Adirondacks TR)*, Eagle Island, Upper Saranac Lake
Saranac Inn vicinity, *Moss Ledge (Great Camps of the Adirondacks TR)*, Off NY 30, Upper Saranac Lake
Saranac Inn vicinity, *Prospect Point Camp (Great Camps of the Adirondacks TR)*, E of NY 30
Upper St. Regis vicinity, *Camp Wild Air (Great Camps of the Adirondacks TR)*, Upper St. Regis Lake

Hamilton County
Raquette Lake vicinity, *Camp Pine Knot (Great Camps of the Adirondacks TR), Long Point, Raquette Lake*
Raquette Lake vicinity, *Camp Uncas (Great Camps of the Adirondacks TR)*, Mohegan Lake
Raquette Lake vicinity, *Echo Camp (Great Camps of the Adirondacks TR)*, Long Point, Raquette Lake
Raquette Lake, *Sagamore Lodge (Boundary Increase) (Great Camps of the Adirondacks TR)*, Sagamore Rd.

OREGON

Coos County
Coos Bay, *Olsson, Captain Bror W., House*, 631 S. Tenth St.

Jackson County
Ashland, *Enders Building*, 250—300 E. Main St.
Medford, *Jackson County Courthouse*, S. Oakdale Ave. at Eighth St.
Phoenix vicinity, *Glenview Orchard Ensemble*, 1395 Carpenter Hill Rd.

Linn County
Scio, *Wesely, Joseph, House and Barn*, 38712 OR 226

Multnomah County
Portland, *Prince, Thomas, House*, 2903 NE Alameda St.

Umatilla County
Pendleton, *Ellis—Hampton House*, 711 SE Byers Ave.

Wasco County
The Dalles, *The Dalles Commercial Historic District*, Roughly bounded by Columbia River, Laughlin, Fifth, and Union Sts.

PENNSYLVANIA

Allegheny County
Pittsburgh, Fifth Avenue High School (Pittsburgh Public Schools TR), 1800 Fifth Ave.

TENNESSEE

Giles County
Wales vicinity, *Wilkerson Place*, Miller Hollow Rd.

Hamilton County
Chattanooga, *Wyatt Hall (Hunt, Reuben H., Buildings in Hamilton County TR)*, 865 E. Third St.

Knox County
Knoxville, *Gay Street Commercial Historic District*, Roughly along Gay St. from Summitt Hill Dr. to Church Ave.

Maury County
Columbia, *Union Station, Depot St.*
Mt. Pleasant vicinity, *Watkins, William, House*, Canaan Rd.

Sevier County
Sevierville, *Sevierville Commercial Historic District*, Sections of Bruce St., Court Ave., and Commerce St.

Shelby County
Germantown, *Nelson-Kirby Farm*, 6792 Poplar Pike

Williamson County
Brentwood, *Owen Chapel Church of Christ*, 1101 Franklin Rd.

TEXAS

Grayson County
Sherman, *Old Sherman Public Library*, 301 S. Walnut

VERMONT

Lamoille County
Cambridge, *Jeffersonville Historic District*, Church, Main, Maple, and School Sts., Carlton Ave., VT 108, and Brewster Ave.

WEST VIRGINIA

Kanawha County
Charleston, *Coyle and Richardson Building*, 200 Capitol St.

[FR Doc. 86–22678 Filed 10–6–86; 8:45 am]
BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The General Tire and Rubber Co.; Proposed Termination of Final Judgment

Notice is hereby given that the General Tire and Rubber Company ("General") (now known as GenCorp Inc.) has filed with the United States District Court for the Northern District of Ohio, Eastern Division, a motion to terminate the consent decree in *United States* v. *The General Tire and Rubber Company*, Civil Action No. 21329; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the decree, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on July 10, 1942) alleged that the defendant had tied the use of patented equipment to the sale of unpatented materials. The decree (entered on March 21, 1940) enjoins the defendant from: (1) Enforcing the tying clause in its licensing agreement with tire retreaders; and (2) making any licensing agreement tying the right to practice any invention

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under a United States patent to the purchase of unpatented materials.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the decree would serve the public interest. Copies of the complaint and consent decree, General's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 7233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (telephone 202–633–2481), and at the Office of the Clerk of the United States District Court for the Northern District of Ohio, United States Courthouse, Cleveland, Ohio, 44113. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of justice regulations.

Interestd persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the sixty day period established by court order, and will be filed with the court. Comments should be addressed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone 202–724–7966).

Dated: September 29, 1986.

Joseph H. Widmar,

Director Of Operations, Antitrust Division.

[FR Doc. 86–22722 Filed 10–6–86; 8:45 am]

BILLING CODE 4410–21–M

Pursuant to the National Cooperative Research Act of 1984; ADBAC QUAT Joint Venture

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98–462 ("the Act"), Huntington Laboratories, Inc. has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the ADBAC QUAT Joint Venture and (2) the nature and objectives of the ADBAC QUAT Joint Venture.

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstance. Pursuant to section 6(b) of the Act, the identities of the parties to the ADBAC QUAT Joint Venture and its general areas of planned activities are given below.

The parties to the ADBAC QUAT Joint Venture are as follows:

Chemical Specialties Manufacturers Association
Economics Laboratory, Inc.
Ethyl Corporation
Huntington Laboratories, Inc.
Jordan Chemical Division of PPG Industries, Inc.
Lonza, Inc.
Sherex Chemical Company, Inc.
Stepan Company

The objective of the ADBAC QUAT Joint Venture is to sponsor and conduct toxicological research on the pesticide ingredient, alkyl dimethyl benzyl ammonium chloride (ADBAC), a quaternary ammonium compound (QUAT), and to submit the results of the research to the U.S. Environmental Protection Agency ("EPA") in connection with the reregistration and data call-in of pesticides containing the compound as an active ingredient. This research on the compound, which is the active ingredient in certain commercially available pesticide products, will be conducted pursuant to the Reregistration Notice, including a requirement to submit data, issued by the EPA on March 10, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–22723 Filed 10–6–86; 8:45 am]

BILLING CODE 4410–21–M

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act Final Program Priorities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final program priorities for second year program under Missing Children's Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing its final program priorities for making grants and contracts under the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, for the second year of the Missing Children's Program. No new program priorities will be established in this Notice for the second year's program. All available FY 1986 funds will be used to fund the program priorities announced in the July 25, 1985 Notice of final program priorities for the first year of the program, and to fund those items mandated by Congress under section 404 of the Missing Children's Act.

FOR FURTHER INFORMATION CONTACT: Michelle Easton, Coordinator, Missing Children's Programs, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531 (202) 724–7655.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 406 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. As required by the Act, the Administration announced his proposed program priorities on July 30, 1986, an invited pubic comments on these priorties for sixty days. No comments were received. The proposed funding priorities were established as required by the Missing Children's Assistance Act in consultation with the Missing Children's Advisory Board appointed by the Attorney General. The Administrator is now announcing the establishment of the final funding priorities.

Listed below are programs under Section 406 of the Missing Children's Assistance Act which have been or we anticipate will be funded with FY 1986 funds. These programs were announced in the July 25, 1985 **Federal Register** Notice of Final Program Priorities. They are:

1. National Study of Law Enforcement Agencies' Policies and Practices Regarding Missing Children and Homeless Youth

This study will describe current law enforcement policies and practices and identify the most effective law enforcement methods for handling reports and investigating, identifying, and recovering children who may be missing or homeless and risk of exploitation. It will also provide better estimates of the number of cases of missing children reported to law enforcement agencies annually.

2. The Child Victim as Witness Research and Development Program

This study will design, implement and test new strategies to be used to improve court policies and practices for handing child victim witnesses.

3. Research on the Psychological Consequences of Abduction and Sexual Exploitation

The primary goal of this research is to increase our knowledge of and develop effective treatment alternatives for the psychological consequences of families with missing and exploited children.

4. Training/Public Awareness Program

This will be a campaign of education and awareness on the missing children's issue.

5. Assistance to State Clearinghouses for Missing and Exploited children

This program, run by the National Center for Missing and Exploited Children will solicit state applications for two-year awards that are intended to encourage states to develop clearinghouses and operate uniform data collection systems.

6. Assistance to Private Voluntary Organizations

This program run by the Institute for Non-Profit Organization Management, will award limited grants to expand the capacity of private voluntary organizations serving missing and exploited children.

Pursuant to section 404 (a) and (b), the following programs were awarded with FY 1986 Missing Children's funds:

1. The National center for Missing and Exploited Children to:

a. Provide the information derived from the national toll free telephone line to appropriate law enforcement entities and to enable individuals to report information regarding the location of any missing child or other child 13 years of age or younger whose whereabouts are unknown to such child's legal custodians, and request information pertaining to procedures necessary to reunite such child with such child's legal custodian. (section 404(a)(3), 404(b)(1))

b. Serve as a national resource center and clearinghouse. (404(b)(2))

2. Institute for Non-Profit Organization Management (INPOM) to: Serve as a national resource center and clearinghouse focusing on assistance to private voluntary organizations working on the issue of missing and exploited children. (section 404(b)(2))

3. National Incidence Study (Pilot Studies): Funding of the first National Incidence Study is anticipated in FY 1987. Several pilot studies have been awarded to determine the merits of the various strategies available for conducting the National Incidence Study. (section 404(b)(3).)

Dated: September 30, 1986.

Approved:

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 86–22718 Filed 10–6–86; 8:45 am]

BILLING CODE 4410–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–17,693]

Damson Oil Co.; Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 21, 1986 in response to a worker petition which was failed on behalf of workers at Damson Oil Company in Houston, Texas.

All workers were separated from the Houston, Texas facility of Damson Oil Company more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of September 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–22706 Filed 10–6–86; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–17,503]

Danskin Division of International Playtex, Inc., Plants Number 1, 2, 3, and 4, York, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 9, 1986 in response to a worker petition which was received on May 27, 1986 and filed on behalf of workers at Plants (Buildings) Number 1, 2, 3, and 4.

An active certification covering the petitioning group of workers remains in effect (TA–W–16,379). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of September 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–22707 Filed 10–6–86; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–17,694]

Dawn Mining Co., Ford, WA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 25, 1986 in response to a worker petition which was filed on behalf of workers at Dawn Mining Company, Ford, Washington.

All workers were separated from the Ford, Washington, facility of Dawn Mining Company more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, of this 22nd day of September 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–22708 Filed 10–6–86; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–17,607]

Roane Alloys Division; Samancor Metals and Minerals; Rockwood, TN; Cancelling Termination of Investigation

The Department on its own motion cancels its notice of termination of invesitgation for workers at the subject company. The termination notice was published in the **Federal Register** on September 26, 1986 (51 FR 34269).

Signed at Washington, DC, this 29th day of September 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–22709 Filed 10–6–86; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–16,527]

Ware Knitters, Inc., Ware, MA; Negative Determination Regarding Application for Reconsideration

After being granted a filing extension, an application was received from a petitioner with the support of a Congressman for administrative reconsideration of the Department of Labor's Notice of Negative Determination regarding eligibility to Apply for Worker Adjustment assistance in the case of workers and

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former workers at Ware Knitters, Inc., Ware Massachusetts. The denial notice was published in the Federal Register on July 16, 1986 (51 FR 25762).

Ware Knitters is a contractor. The Ware facility was a cutting and stitching operation for knitted pullover outerwear. The stitching operations were discontinued in March, 1985. Currently all cut garments are now sent to other domestic plants for stitching and finishing.

Findings in the investigation show that production of knitted outerwear (including warm-up suits) at Ware increased in 1984 compared to 1983. The Department's survey of manufacturers for whom Ware Knitters performed contract work showed that the manufacturers did not increase their purchases of imported outerware or warm-up suits in the first quarter of 1985 compared to the same quarter in 1984. A secondary survey showed that the major customer of one of Ware's manufacturers did not increase its imports of warm-up suits in 1985 compared to 1984.

Company officials indicated that the list of customers provided by the petitioners were either not active accounts during the period relevant to the investigation or only had incidental business in 1984 with Ware Knitters.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretaion of the law or the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of September 1986.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 86-22710 Filed 10-6-86; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-86-134-C]

U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Co., Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.1103 (automatic fire warning devices) to its Shawnee Mine (I.D. No. 46-05907) located in Wyoming County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that devices be installed on all belts which will give an automatic warning when a fire occurs on or near such belt.

2. In a separate petition (M-86-26-C), petitioner proposed to use the air from the belt entries to ventilate the active working places.

3. In lieu of point heat sensors, petitioner proposes to use a low-level carbon monoxide (CO) detection system installed and operated with specific safeguards and conditions outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 6, 1986. Copies of the petition are available for inspection at that address.

Dated: September 26, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-22711 Filed 10-6-86; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-338 and 50-339]

Virginia Electric & Power Co. and Old Dominion Electric Cooperative, North Anna Power Station, Units No. 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR 50 to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee), for the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia.

Environmental Assessment:

Identification of Proposed Action

The exemption would grant the following exemptions from the requirements of sections III.G and III.J of Appendix R to 10 CFR 50:

1. Auxiliary, Fuel, and Decontamination Buildings (Fire Area 11)

An exemption was requested from the specific requirement of section III.G.3 to the extent that full area fire detection and fixed suppression systems are not installed through the area.

2. Containment Incore Instrument Tunnel (Fire Areas 1-1 and 1-2).

An exemption was requested from the specific requirement of section III.G.2.d to the extent that intervening combustibles exist between redundant calbes and equipment.

3. Quench Spray Pump House (Fire Areas 15-1 and 15-2)

An exemption was requested from the specific requirement of section III.G.3 to the extent that authomatic fire suppression systems are not installed through the fire areas.

4. Main Steam Value House (Fire Areas 17-1 and 17-2)

An exemption was requested from the specific requirement of section III.G.3 to the extent that automatic fire suppression systems are not installed throughout each fire area.

5. Auxiliary Feedwater Pump House (Fire Areas 14B-1 and 14B-2)

An exemption was requested from the specific requirement of section III.G.3 to the extent that automatic fire suppression systems are not installed through the fire areas.

6. Charging Pump Cubicles (Elevation 244 Feet, 6 Inches)

An exemption was requested from the specific requirement of section III.G.2.a to the extent that nonrated removable concrete walls do not provide a 3-hour fire resistance rating.

7. Separation of Instrumentation Inside the Containment (Fire Areas 1-1 and 1-2)

An exemption was requested from the specific requirement of section III.G.2.d to the extent that intervening combustibles exist between redundant cables and equipment separated by 20 feet or by radiant energy shields.

8. Emergency Lighting in the Seal Water Filter Area, Main Control Room, and Exterior Access Routes

An exemption was requested from the specific requirement of section III.J to the extent that it requires 8-hour emergency lighting in all areas needed for operation of safe shutdown equipment; and in access and egress routes thereto.

9. Chiller Room (Elevation 254 Feet, O Inch of the Service Building)

An exemption was requested from the specific requirements of section III.G.2.a to the extent that ventilation penetrations through fire barriers are not provided with fire dampers.

In summary, the exemptions were requested from separating cables and associated nonsafety circuits of redundant trains by 3-hour rated fire barriers as required in section III.G.2.a of Appendix R, and from providing automatic fire suppression and detection systems as part of the protection requirements of sections III.G.2.b and III.G.3 of Appendix R. Additionally, exemptions from the intervening combustible requirements of section III.G.2.b and the emergency lighting requirements of section III.J were requested.

Equivalent levels of protection for the items specified above would be provided by the licensee.

The Need for the Proposed Action

The proposed exemption is needed in order to permit the licensee to use alternate fire protection configurations that achieve an equivalent level of safety compared to that attained by compliance with section III.G and section III.J of Appendix R.

Environmental Impact of the Proposed Action

The proposed Exemption would not degrade the level of safety attained by compliance with the rule and there would be no change in accident doses to the environment. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined; nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impact associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts associated with fire protection modifications and compliance with the rule would accrue unreasonable costs to the licensee without an increase in safety.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (as amended) for the North Anna Power Station, Units No. 1 and No. 2.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption from 10 CFR 50, Appendix R, sections III.G. and III.J of Appendix R dated May 1, 1984, as revised by letters dated October 31, 1984, August 21, 1985, and March 21, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 2nd day of October, 1986.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Acting Director, PWR Project Directorate #2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-22704 Filed 10-6-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care and Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of the Act of September 25, 1962 (76 Stat. 593: 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the following three sets of rates are established for use in connection with the recovery, as authorized by such Act, from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States (Part 43 of Chapter I of Title 28 of the Code of Federal Regulations) through three separate Federal agencies. These rates have been established in accordance with the requirements of OMB Circular A-25, requiring reimbursement of the full cost of all services provided. This has been determined as follows:

(a) For the Department of Defense—historical costs and workload data developed through the Medical Expense and Performance Reporting System (MEPR) provide an operating cost base to which are added systemwide costs and allowances for actual inflation and pay raises to obtain the estimates for the fiscal year under review. The costs added are those items required by OMB Circular A-25: (1) Retirement for civilian personnel—20.9% of the pay of the civilian personnel; and (2) An asset charge of 4% of the other costs in lieu of a specific depreciation cost of fixed assets.

(b) For the Veterans Administration—the actual costs and per diem rates by type of care for the previous year are added to the estimated costs for depreciation of buildings and equipment, administrative overhead, interest on capital investment, and Government employee retirement and disability charges. These computed rates are then adjusted by the budgeted percentage change to arrive at the

estimated rates for the fiscal year under review.

(c) For the Department of Health and Human Services—the sum of obligations for each cost center providing medical services is broken down into amounts attributable to inpatient care on the basis of the proportion of staff devoted to each. Total inpatient costs and outpatient costs thus determined are divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. In calculating the rates, the Department's unfunded retirement liability costs, and capital and equipment depreciation costs were incorporated to conform to requirements contained in OMB Circular A–25. In addition, cost centers' obligations include all costs from all accounts—such as Medicare and Medicaid collections, and Contract Health funds used to support direct operations. Inclusion of these funds yields a more accurate indication of the cost of care in HHS facilities.

These rates represent the reasonable cost of hospital, nursing home, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished:

(a) For such care and treatment furnished by the United States in Federal hospitals, nursing homes, and outpatient clinics, administered by any of the three Federal agencies—Department of Defense, Veterans Administration of Department of Health and Human Services.

(b) For such care and treatment furnished at Government expense in a facility not operated by the United States, the rates shall be amounts expended by the United States for such care and treatment.

	Effective Oct. 1, 1986 and thereafter		
	DOD	VA	HHS
Hospital care per inpatient day			
General medical care	$441	$436	$655
Surgical care		508	
Psychiatric care		323	269
Intermediate care		197	
Neurology		378	
Rehabilitation medicine		344	
Blind rehabilitation		485	
Alcohol and drug treatment		121	
Prescription		13	
Nursing home care		167	
Spinal cord injury care		501	
Burn Center, U.S. Army Institute of Surgical Research, Brooke Army Medical Center, For Sam Houston, Texas	1,635		
Outpatient medical and dental treatment:			
Outpatient visit	58	69	
Psychiatric outpatient visit			100
General medical outpatient visit			89

For the period beginning October 1, 1986, the rates prescribed herein supersede those established by the Director of the Office of Management and Budget on October 30, 1985 (50 FR 46373).

Dated: September 27, 1986.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 86–22634 Filed 10–6–86; 8:45 am]

BILLING CODE 3110–01–M

SMALL BUSINESS ADMINISTRATION

Region III Advisory Council; Meeting Cancellation

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area Richmond, Virginia, has cancelled the public meeting scheduled for 10:00 a.m., Wednesday, October 8, 1986, at the Hotel Roanoke, Roanoke, Virginia. The meeting well be rescheduled.

For further information, write or call Catherine S. Marschall, District Director, Small Business Administration, P.O. Box 10126, Federal Building, Richmond, Virginia, 23240—(804) 771–2741.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 26, 1986.

[FR Doc. 86–22652 Filed 10–6–86; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Philadelphia, Pennsylvania will hold a public meeting at 8:30 a.m. on Tuesday, October 28, 1986 at the Historic Strasburg Inn, Route 896, Strasburg (Lancaster County) Pennsylvania, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, One Bala Plaza, Suite 400-East Lobby, Bala Cynwyd, Pennsylvania 19004 (215) 596–5801.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 25, 1986.

[FR Doc. 86–22649 Filed 10–6–86; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Indianapolis, Indiana, will hold a public meeting at 11:00 a.m., EST, Wednesday, October 29, 1986, at the Tippecanoe Country Club, Monticello, Indiana, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Federal Building, Room 578, 575 North Pennsylvania Street, Indianapolis, Indiana 46204–1584—(317) 269–7275.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 26, 1986.

[FR Doc. 86–22650 Filed 10–6–86; 8:45 am]

BILLING CODE 8025–01–M

Region X Advisory Council; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Boise, Idaho, will hold a public meeting at 9:30 a.m., Wednesday, October 22, 1986, at the Owhyee Plaza "Regency Room", 1109 Main Street, Boise, Idaho, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Joseph G. Kaeppner, District Director, U.S. Small Business Administration, 1020 Main Street, Suite 290, Boise, Idaho—(208) 334–1096.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 26, 1986.

[FR Doc. 86–22648 Filed 10–6–86; 8:45 am]

BILLING CODE 8025–01–M

Advisory Committee on Veterans Business Affairs; Public Meeting

The U.S. Small Business Administration, Advisory Committee on Veterans Business Affairs is rescheduling its meeting from 10:00 a.m., Tuesday, September 30, 1986, to 10:00 a.m., Friday, October 31, 1986 at the U.S. Small Business Headquarters, 1441 L Street NW., 2nd Floor Conference Room, Washington, DC 20416, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Vincent B. Pagano, Director, Office of Veterans Affairs, U.S. Small Business Administration, 1441 L Street NW., Room 414, Washington, DC 20416—(202) 653–8220.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 30, 1986.

[FR Doc. 86–22651 Filed 10–6–86; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates; Quarterly Determinations

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is eight and one quarter (8¼) percent for the fiscal quarter beginning October 1, 1986.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October–December quarter of 1986, this rate will be seven and three eights (7⅜) percent.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 86–22653 Filed 10–6–86; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 86–8–36 set the currently effective two-month SFFL applicable through September 30, 1986.

In establishing the SFFL for the two-month period beginning October 1, 1986, we have projected nonfuel costs based on the year ended June 30, 1986 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 86–10–1 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic	0.9272
Latin America	1.0913
Pacific	1.2011
Canada	1.1453

For further information contact: Julien R. Schrenk (202) 366–2441.

Dated: October 1, 1986.

By the Department of Transportation.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–22714 Filed 10–6–86; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 151 Minimum Operational Performance Standards for Airborne MLS Area Navigational Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Minimum Operational Performance Standards for Airborne MLS Area Navigational Equipment to be held on October 29–31, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW, Sutie 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's introductory Remarks; (2) approval of the minutes of the thirteenth meeting; (3) review and discuss SC–137 and EUROCAE WG–27 activities; (4) technical presentations; (5) working group reports; (6) review of the eighth draft MOPS; (7) working group sessions; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW, Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 30, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86–22627 Filed 10–6–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Delegation of Authority; Delegation Order No. 220; Chief Counsel et al.

AGENCY: Internal Revenue Service.

ACTION: Delegation of authority.

SUMMARY: Delegation of Authority to Claim Executive Privilege in Matters before the United States Claims Court. The text of the delegation order appears below.

EFFECTIVE DATE: September 24, 1986.

FOR FURTHER INFORMATION CONTACT: Margo L. Stevens, CC:D, Room 3560, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 566–3074 (not a toll-free telephone number).

Peter V. Filpi,

Director, Disclosure Litigation Division.

Delegation Order No. 220

Effective Date: September 24, 1986.

Authority to Claim Executive Privilege in Matters Before the United States Claims Court

The authority vested in the Commissioner of Internal Revenue by Treasury Department Order 150–37 to claim executive privilege with respect to Internal Revenue Service records and information in matters before the United States Claims Court is hereby delegated, through the Chief Counsel and the Associate Chief Counsel (Litigation), to the Director, Disclosure Litigation Division. In the absence of or at the request of the Director, the Assistant Director, may exercise this authority in his/her name for the Director. This authority may not be redelegated.

The Claims Court only recognizes agency claims of executive privilege as the sole basis for protecting internal or inter-agency documents that reflect recommendations, advisory opinions, and deliberations, comprising the process by which governmental

decisions and policies and formulated. Executive privilege does not encompass those documents whose disclosure would harm our national security or the conduct of international relations. Theses documents fall within the government's states secrets privilege which is not delegated herein. With respect to these documents, the Commissioner of Internal Revenue will claim the states secrets privilege.

Executive privilege may be claimed only for those Internal Revenue Service records and information that are predecisional and deliberative, the disclosure of which would significantly impede or nullify IRS actions in carrying out a responsibility or function, or would constitute an unwarranted invasion of personal privacy. Prior to asserting the claim of executive privilege with respect to the documents described herein, coordination with the interested function(s) shall be effected.

Dated: September 24, 1986.
Approved:
Lawrence B. Gibbs,
Commissioner.
[FR Doc. 86-22701 Filed 10-6-86; 8:45 am]
BILLING CODE 4830-01-M

Delegation of Authority, Delegation Order No. 216; Director, Austin Compliance Center

AGENCY: Internal Revenue Service.
ACTION: Delegation of authority.

SUMMARY: All authorities delegated to Directors, Service Center that are required and necessary to administer and enforce the internal revenue laws with respect to the Collection, Criminal Investigation, and Examination programs and activities are delegated to the Director, Austin Compliance Center. This is a two year test which will expire on September 30, 1988. The text of the delegation order appears below.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Rhen O'Dell, OP:EX:TA, Room 2010, 1111 Constitution Ave, NW., Washington, DC, 20224, 202-566-3632 (not a toll-free telephone number).

Richard Valdez,
Chief, Tax Shelter Section, Office of Tax Avoidance.

Order No. 216

Effective Date: October 1, 1986.

Austin Compliance Center

1. Pursuant to the authority vested in the Commissioner of Internal Revenue by TDO 150-37, as revised, I hereby delegate to the Director, Austin Compliance Center, all authorities delegated to Directors, Service Centers, that are required and necessary to administer and enforce the internal revenue laws with respect to the Collection, Criminal Investigation and Examination programs and activities. This authority may be exercised and redelegated consistent with the authorities delegated to Directors, Service Centers. This authority shall expire on September 30, 1988.

2. As of the effective date of this Order, all personnel performing any previously delegated function prior to the effective date of this Order are hereby authorized to continue to perform such function until changed by appropriate authority.

Dated: September 26, 1986.
Approved:
James I. Owens,
Deputy Commissioner.
[FR Doc. 86-22702 Filed 10-6-86; 8:45 am]
BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that such a submission has been made. USIA is requesting approval of information collection activities associated with its "Radio Marti Program".

DATE: Comments must be received by October 17, 1986. If you intend to comment but cannot before the deadline, please advise the OMB Reviewer and the Agency Clearance Office promptly.

Copies: Copies of the request for clearance (SF-83), supporting statment, cover letters and questionnairs submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, John E. Davenport, United States Information Agency, M/ASP, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485-7505. And OMB review: Bruce McConell, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3785.

SUPPLEMENTARY INFORMATION:

Title

"Surveys, interviews and other audience research of the Research and Policy Department of Radio Marti".

Abstract

Radio Marti was created by Pub. L. 98-111, the Radio Broadcasting to Cuba Act, "to provide for the broadcasting of accurate information to the people of Cuba, and for other purposes". Radio Marti needs to conduct research among recent Cuban arrivals in the United States and abroad to determine audience reaction to its programming and gather information on conditions and events in today's Cuba. Information gathered will be used to improve Radio Marti transmissions in providing the Cuban people with news, information and other programming that is relevant, interesting, timely and appealing.

Dated: October 3, 1986.
Charles N. Canestro,
Federal Register Liaison.
[FR Doc. 86-22629 Filed 10-6-86; 8:45 am]
BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.
ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a revision and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Jill Cottine, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joe Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: October 2, 1986.
By direction of the Administrator:
David A. Cox,
Associate Deputy Administrator for Management.

Revision

1. Department of Veterans Benefits.
2. Uniform Residental Appraisal Report.
3. Fannie Mae Form 1004.
4. On occasion.
5. Individuals or households; Business or other for-profit; Small businesses or organizations.
6. 915,276 responses.
7. Not applicable.
8. Not applicable.

[FR Doc. 86-22661 Filed 10-6-86; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-07-4410-04]

California Desert District Advisory Council; Meeting

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 and 94-579 that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally Thursday, November 6 and Friday, November 7, 1986, 8 a.m. to 4 p.m. each day, in the San Jacinto Room of the Quality Inn, 1983 North Palm Canyon Drive, Palm Springs, California.

Agenda items will include a review of the Final Environmental Impact Statement for the 1985 amendments to the California Desert Plan; a presentation from a representative of the Southern California Association of Governments on siting of hazardous waste disposal facilities in the California Desert; a review of the recreation area management plans for the East Mojave National Scenic Area and the Imperial Sand Dunes; and, a discussion of Bureau funding in the budget for Fiscal Year 1987.

All formal Council meetings are open to the public, with time allocated for public comments, and time for comment made available by the Council Chairman during the presentation of various agenda items.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Dr. Loren Lutz, c/o Bureau of Land Management Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507. Written comments are also accepted at the time of the meeting and, if provided to the recorder, will be incorporated in the minutes of the meeting.

For further information and meeting confirmation: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507 (714) 351-6383.

Dated: October 2, 1986.
Gerald E. Hillier,
District Manager.
[FR Doc. 86-22685 Filed 10-6-86; 11:55 am]
BILLING CODE 4310-40-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 194
Tuesday, October 7, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 33690 Dated September 22, 1986.

PREVIOUSLY ANNOUNCEMENT TIME AND DATE OF MEETING: 9:30 a.m. (eastern time) Tuesday, October 7, 1986.

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634-6748.

Dated: October 2, 1986.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued October 2, 1986.

[FR Doc. 86-22757 Filed 10-3-86; 10:54 am]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, September 30, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter is a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(8), (c)(9)A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW, Washington, DC.

Dated: October 1, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-22727 Filed 10-2-86; 8:45 am]

BILLING CODE 6714-01-M

3

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-86-35]

TIME AND DATE: Tuesday, October 7, 1986 at 10:00 am

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Inv. No. 731-TA-347 and 348 (P) (Certain malleable cast-iron pipe fittings from Japan and Thailand)—briefing and vote.
5. FY 88 Budget.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Dated: September 29, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-22806 Filed 10-3-86; 3:53 pm]

BILLING CODE 7020-02-M

4

UNITED STATES PAROLE COMMISSION

Public Announcement

PLACE: Air World Center, 10920 Ambassador Drive, Suite 220, Kansas City, Missouri, 61453.

DATE AND TIME:

Tuesday, October 7, 1986—9:00 a.m. to 5:30 p.m.

Wednesday, October 8, 1986—9:00 a.m. to 5:30 p.m.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of open business meeting of July 22 through July 23, 1986.
2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Research, Case Operations, and the Administrative Section.
3. Presentation of the financial responsibility program and the collection of fines, restitution, and court assessments.
   a. Michael Quinlan, Deputy Director of the Bureau of Prisons.
   b. Judge Tim Murphy, Assistant Director, Debt Collection Staff, U.S. Department of Justice.
4. Proposed revisions to the rescission guidelines: Recalculating the salient factor score and raising the severity for distributing drugs in the institution.
5. Proposed guidelines for distribution or possession with intent to distribute "Crack" (freebased cocaine).
6. Proposed revision of the dollar thresholds for property offenses.
7. Proposed inclusion of the value of the truck in theft from interstate shipment offenses.
8. Discussion of monthly notification of regions of NAB decisions and reasons.
9. Proposed procedures relating to the Ethics Program.
10. Proposed penalty for refusal to provide a urine sample.
11. Proposed guideline modification concerning unlawful sexual conduct with minors.
12. Addition to general policy statement concerning refusal to cooperate with police and investigators as an aggravating factor.

Consent Agenda

The following items are placed on the Commission's Consent Agenda. A request to discuss a particular item must be received by September 30, 1986. Items for which no such request is received shall be deemed adopted by consent and will not be discussed at the meeting.

13. Distributing drugs near an elementary school to be made an aggravating factor.
14. Modification to the confidential page of the Preliminary Interview.
15. Modification of § 2.56-03(a) relating to routine uses.

CONTACT PERSON FOR MORE INFORMATION: James L. Beck, Director of Research, United States Parole Commission, (301) 492-5980.

Dated: October 2, 1986.

Patrick J. Glynn,

General Counsel, United States Parole Commission.

[FR Doc. 86-22774 Filed 10-3-86; 1:05 pm]

BILLING CODE 4410-01-M

5

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (51 FR 34312 9/26/86).

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW, Washington, DC

DATE PREVIOUSLY ANNOUNCED: Tuesday, September 23, 1986.

CHANGE IN THE MEETING: Additional item.

The following item will be considered at an open meeting to be held on Tuesday, October 2, 1986, at 10:00 a.m., in Room 1C30.

Consideration of whether to propose provision of the Government Securities Act of 1986 which would amend section 3(a)(8) of the Securities Act of 1933 to exempt from the registration requirements certain instruments guaranteed by certain classes of insurance policies.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald A. Schy at (202) 272-2468.

Dated: October 2, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22758 Filed 10-3-86; 11:39 am]

BILLING CODE 8010-01-M

6

SECURITY AND EXCHANGE COMMISSION

Agency Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 6, 1986:

A closed meeting will be held on Tuesday, October 7, 1986, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 7, 1986, at 10:00 a.m., will be:

Institution of injunctive action.

Settlement of administrative proceeding of an enforcement nature.

Regulatory matter regarding self regulatory organization.

Formal order of investigation.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272-3195.

Dated: October 1, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22759 Filed 10-3-86; 11:39 am]

BILLING CODE 8010-01-M

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register

Tuesday
October 7, 1986

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Test Procedures for Central Air Conditioners, Including Heat Pumps; Proposed Rule and Public Hearing

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-102]

Energy Conservation Program for Consumer Products; Proposed Rulemaking and Public Hearing Regarding Test Procedures for Central Air Conditioners, Including Heat Pumps

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Proposed rule and public hearing.

SUMMARY: The Department of Energy (DOE) hereby proposes to amend the test procedures for central air conditioners, including heat pumps. Test procedures are one part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act. Among other program elements, the legislation requires that standard methods of testing be prescribed for covered products.

The purpose of today's notice is threefold. First, to incorporate, by reference, three commercial standards into the test procedures. The standards are the American National Standards Institute (ANSI) and American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 116–1983, the Air-Conditioning and Refrigeration Institute (ARI) Standard 210/240–84, and the ANSI/ARI Standard 325–85. Second, to prescribe a rating procedure for estimating efficiency ratings for untested combinations of split-system central air conditioners in lieu of laboratory testing. Third, to expand the coverage of the test procedures to address innovative designs, including ground water-source heat pumps, earth-coupled heat pumps, split-type ductless systems and variable-speed central air conditioners.

DATES: Written comments (7 copies) in response to this notice must be received by December 8, 1986; requests to speak at the public hearing must be received by November 7, 1986; statements (7 copies) must be submitted by November 10, 1986; the public hearing will be held on November 12, 1986, at 9:30 a.m.

ADDRESSES: Written comments, requests to speak at the public hearing, and copies of statements of each speaker are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Central Air Conditioner Test Procedures, Docket No. CAS–RM–79–102, Room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9319.

The public hearing will be held at Room 1E–245, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Copies of the transcript of the public hearing, the technical support documents and the public comments received may be obtained at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–5969.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE–132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station, GC–12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9513

U.S. Department of Energy, Office of Hearings and Dockets, Forrestal Building, Room 6b–025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9319.

SUPPLEMENTARY INFORMATION:

I. Background

The energy conservation program for consumer products was established pursuant to Title III, Part B of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163). Subsequently, EPCA was amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619). Among other program elements, section 323 of the EPCA as amended requires that standard methods of testing be prescribed for covered products, including central air conditioners and heat pumps. Test procedures appear at 10 CFR Part 430, Subpart B.

Test procedures for evaluating the cooling performance of air-source central air conditioners were initially issued by DOE on November 21, 1977 (42 FR 60150, November 27, 1977). A correction notice amending this notice was issued by DOE on May 31, 1978 (43 FR 24268, June 5, 1978). Test procedures for evaluating the heating performance of air-source heat pumps as well as amending the test procedures for central air conditioners were issued by DOE on December 10, 1979 (44 FR 70700, December 27, 1979). On March 15, 1985, DOE issued a Notice of Inquiry to solicit comments concerning a rating method for determining efficiency ratings for untested combinations of split-system central air conditioners in lieu of laboratory testing of the units (50 FR 13042, April 2, 1985).

There are three purposes for today's notice. First, to incorporate three commercial standards into the central air conditioner test procedures. The standards are ANSI/ASHRAE Standard 116–1983, ARI Standard 210/240–84 and ANSI/ARI Standard 325–85. Second, to prescribe a rating method for estimating efficiency ratings for untested combinations of split-system central air conditioners in lieu of laboratory testing. Lastly, DOE is proposing to expand the coverage of the test procedures to address innovative designs, including ground water-source heat pumps, earth-coupled heat pumps, split-type ductless systems and variable-speed central air conditioners.

This third area includes variable-speed central air conditioners and addresses the 1981 exception from the central air conditioner test procedures granted by the DOE Office of Hearings and Appeals (OHA) to York Division Unitary Products (York) for its variable-speed heat pump. *Federal Energy Guidelines*, 7 DOE ¶ 81,209. In 1983, OHA extended the exception to Borg-Warner Central Environmental Systems (Borg-Warner), formerly York. *Federal Energy Guidelines*, 10 DOE ¶ 81,206. The two exceptions specify an alternative test procedure for evaluating variable-speed heat pumps. In 1986, the Carrier Corporation (Carrier) petitioned the Department for a test procedure waiver for its variable-speed heat pump (February 14, 1986, 51 FR 5587). Carrier, in its petition, proposed as alternative test procedure which was different from the Borg-Warner approach. Today's notice proposes alternative test procedures for variable-speed heat pumps based upon the exception granted to Borg-Warner and the waiver granted to Carrier.

II. Discussion

The central air conditioner is a consumer product which utilizes the mechanical refrigerator cycle to provide heating and/or cooling. The central air conditioner consists of a compressor(s), an indoor conditioning coil and refrigerant-to-outdoor-air heat exchanger. The current test procedure provides for a controlled laboratory environment for measuring energy consumption of air-source central air conditioners, including heat pumps. The current test method for cooling performance consists of two steady-state wet-coil tests, and two cyclic dry-coil tests for determining cyclic performance. The current test method for heating performance consists of four tests to evaluate: the steady-state efficiency, energy lost due to defrosting, the effect of cycling the unit and the efficiency at low temperatures. The cycling tests require simulating the cyclic behavior of central air conditioners. Because the cyclic tests are difficult to perform, the current test procedures provide for an assigned degradation coefficent, C_D, which may be used in lieu of conducting the cyclic tests. The assigned coefficient is 0.25 for both heating and cooling. Furthermore, the current test procedure provides for the use of computer simulation or engineering analysis of the efficiency of condensor-evaporator coil combinations other than the combination likely to have the highest sales volume of retail sales. *See* § 430.23(m). Manufacturers who chose to use computer simulation or engineering analysis must submit to DOE a written document describing the method used.

The current test procedure applies to air-source central air conditioners, and does not address ground water-source heat pumps, earth-coupled heat pumps, split-type ductless systems and variable-speed central air conditioners. At DOE's request, the National Bureau of Standards (NBS) evaluated existing test methods for measuring energy consumption of central air conditioners. Based upon NBS recommendations, DOE is proposing to add Appendix M1 to the test procedures for central air conditioners. The new Appendix is based on ANSI/ASHRAE Standard 116–1983 and ARI Standard 210/240–84. A rating method for estimating efficiency ratings for untested combinations of split-system central air conditioners is included in section 4.6.1 of Appendix M1 of today's proposal. Appendix M will remain in effect for 2 years allowing currently tested units to continue to be rated without having to retest.

Under today's notice, central air conditioners could be tested during a transition period of 24 months by using either Appendix M or Appendix M1. After that period, only Appendix M1 would be used for testing central air conditioners. Further details of the transition period are discussed in paragraph h of today's notice.

Ratings for untested combinations of split-system central air conditioners would be determined by the standardized rating method in section 4.6.1 of Appendix M1 of today's notice. No other method would be used unless a manufacturer received DOE's approval to use an alternative rating method under § 430.23 (m)(5). Further details concerning alternative rating methods are discussed later in this notice.

The test procedures proposed today incorporate in part, three commercial standards to measure the efficiency and capacity of central air conditioners. The three commercial standards are: ANSI/ASHRAE Standard 116–1983, ARI Standard 210/240–84 and ANSI/ARI Standard 325–83.

Pursuant to section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE is required to comply with section 32 of the Federal Energy Administration Act of 1974 (FEA Act) (Pub. L. 93–275), as amended by section 9 of the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70).

Sections 32 (a), (b), and (c) of the FEA Act provide that:

(a) If any proposed rule by the Secretary contains any commercial standards, or specifically authorizes or requires the use of any such standards, then any general notice of the proposed rulemaking shall—

(1) Identify, by name, the organization which promulgated such standards; and

(2) State whether or not, in the judgment of the Secretary, such organization complied with the requirements of subsection (b) in the promulgation of such standards.

(b) An organization complied with the requirements of this subsection in promulgating any commercial standards if—

(1) It gives interested persons adequate notice of the proposed promulgation of the standards and an opportunity to participate in the promulgation process through the presentation of their views in hearing or meetings which are open to the public;

(2) The membership of the organization at the time of the promulgation of the standards is sufficiently balanced so as to allow for the effective representation of all interested persons;

(3) Before promulgating such standard, it makes available to the public any records or proceedings of the organization, and any documents, letters, memorandums, and materials relating to such standards; and

(A) Obtain a reconsideration of any action taken by the organization relating to the promulgation of such standards, and

(B) Obtain a review of the standards (including a review of the basis or adequacy of such standards).

(c) The Secretary shall not incorporate within any rule, nor prescribe any rule specifically authorizing or requiring the use of, any commercial standards unless he has consulted with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of such standards on competition and neither such individual recommends against such incorporation or use.

The findings required of DOE by section 32 of the FEA Act serve to alert the public and DOE regarding the use and background of commercial standards in a proposal and, through the rulemaking process, allow interested persons to make known their views regarding the appropriateness of the use of any particular commercial standard in a proposed rulemaking.

DOE has evaluated ANSI/ASHRAE Standard 116–1983, ARI Standard 210/240–84 and ANSI/ARI Standard 325–83 with regard to compliance with section 32(b). It is the judgment of DOE that these three standards do not fully comply with the requirements of section 32(b), in that these standards were not developed in a manner which fully provided for public participation, comment and review

Furthermore, as required by section 32(c) of the FEA Act, DOE will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these standards on competition, prior to prescribing final test procedures.

a. ANSI/ASHRAE Standard 116–1983, ARI Standard 210/240–84 and ANSI/ARI Standard 325–83

Subsequent to DOE's 1979 final rule, manufacturers identified a number of problems with the test procedure. As a result, ASHRAE established a Standard Project Committee (SPC) for the purpose of developing an industry consensus test method which addressed these problems. The most significant change was to revise the test method for measuring the degradation effect caused by cycling of the unit.

The DOE test procedure prescribes a damper method, while the ASHRAE procedure prescribes a continuous air method. The continuous air method is a more repeatable test because the test initiates each cycle with no temperature differential across the indoor coil. *See* "Seasonal Performance of Air Conditioners—Experimental Analysis of the DOE Test Procedures Set Up Measurement Errors for Unitary Air Conditioners and Heat Pumps", HL 82–2T, Purdue University, May 1982. The damper method results in a temperature differential across the indoor coil that can vary from cycle to cycle, which

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results in greater variability in test results. For these reasons, NBS recommended using the continuous air method. DOE has reviewed these recommendations and agrees that the continuous air method is a more repeatable test and results in less variability in ratings. There are additional advantages in the continuous air method, including a simpler test set-up since no damper arrangement is required and less chance of having testing conditions drift over time due to cracks and openings in the damper. Consequently, DOE is proposing that the continuous air method, as prescribed in ANSI/ASHRAE Standard 116–1983 be used in conducting Test D.

One issue in proposing the continuous air method is to determine appropriate times for measuring the output capacity and input power during the cyclic tests. As with the existing DOE procedures, the ARI Standard 210/240–84 specifies that these tests be conducted by cyclying the unit 6 minutes on and 24 minutes off. According to the ARI standard, the power shall be measured for six minutes while the capacity shall be measured for eight minutes. DOE believes that the ARI method of measuring power and capacity of different time periods does not accurately describe the performance observed in the field. Consequently, DOE is proposing that both power and capacity should be measured for six minutes. *See* 3.1.1 of Appendix M1 of today's notice.

Also, ANSI/ASHRAE Standard 116–1983 uses a bin method for determining the SEER for single-speed units. The DOE test procedure specifies a simpler but less accurate approach, consisting of a single equation for determining the SEER for single-speed units. The simpler approach was prescribed by DOE to reduce testing burden. The current DOE test procedure specifies a bin method for all other types of central air conditioners, including two speed units. DOE believes that results from the bin approach are more accurate, and are not burdensome. Therefore, DOE is proposing that the SEER for single-speed units should be determined by the bin methods prescribed in ASHRAE Standard 116–1983.

Finally, the ANSI/ASHRAE Standard 116–1983 differs from the existing procedures by not including enhancement credit for "demand defrost" control systems. Where the existing procedures assign a fixed credit for units with this type of control system no such credit is available in the ANSI/ASHRAE Standard 116–1983 procedures. The existing procedures assigned this credit to compensate for improved performance not measured in the Frost Accumulation Test. Specfically, the system capacity measured during the Frost Accumulation Test is increased by seven percent to account for the seasonal performance improvement. The introduction of this enhancement factor improves HSPF by approximately four percent which agreed with the available field data at the time the procedures were prescribed.

DOE believes it appropriate to continue enhancement credit for "demand defrost" control systems and is therefore, including such a credit in today's proposal. However, today's proposed credit differs from that in the existing procedures, where in lieu of a single seven percent capacity enhancement credit, today's proposal would include an HSPF enhancement credit which is prorated linearly based on the number of defrost cycles saved by the control. This improved method would result in the same enhancement for units that were the basis of the existing procedures (e.g., single speed, poor frosting performance, etc.); however, higher efficiency units (e.g. variable speed, improved frosting performance, etc.) would receive less enhancement. DOE believes this adjustment is appropriate since much of the improved performance due to demand defrost controls on high efficiency units is measured in the Frost Accumulation Test. In fact, if the unit does not defrost during laboratory testing, the maximum improvement for defrost controls is reflected in the test procedures and no further enhancement is deserved. In such a case, today's proposal would assign an enhancement factor of unity (i.e. no additional credit for demand defrost controls).

b. Degradation Coefficient

The test procedure included tests for measuring the degradation effect caused by cycling of the unit (cyclic tests). In order to reduce the burden of testing on manufacturers with limited capability for testing, an assigned degradation coefficient, C_D, may be used in lieu of conducting the cyclic tests.

For cooling, the DOE test procedures permits manufacturers to conduct cycling tests (Tests C and D) to determine the actual value of the C_D or to use an assigned value of 0.25. In the 1979 final rule, DOE stated that setting the assigned value for C_D at 0.25 gives manufacturers incentive to test units with improved cycling performance; while at the same time, not severely penalizing manufacturers that elects to use the assigned value.

When DOE prescribed test procedures for heat pumps in 1979, the assigned value for the degradation coefficient for heating was also set at 0.25. This value was selected because little information was known concerning the heating degradation coefficient and it was generally believed that the assigned values for cooling and heating degradation coefficient should be the same.

Since 1979, DOE has become aware of information indicating that many heat pumps are rated using the assigned value for the degradation coefficient because the assigned value typically was lower (i. e. better) than the tested value. Using the assigned value instead of the actual value results in an unfair advantage in HSPF, when the assigned value is lower than the actual value. Purdue reported that the actual value averaged about 0.24. *See* "Analysis of Heat Pump Test Data and Industry's Response", HL81–37, Purdue University, February 1982. This implies that about one-half of all heat pumps could obtain an unfair advantage in HSPF by using the assigned value of 0.25. DOE proposes to correct this problem by changing the assigned value for C_D for heating to 0.35. Setting the assigned value for C_D at 0.35 would give manufacturers incentive to develop units with improved cycling performance, while not providing an unfair advantage to manufacturers that elect to use the assigned value. This philosophy is constant with the rationale used in the 1979 final rule. *See* 3.1.1 of Appendix M1 of today's rule.

c. Part-Load Factors

The DOE test procedures specify that SEER and HSPF shall be determined based on several variables, one of which is the part-load factor. The part-load factor is an expression of the degradation of a central air conditioner operating at various heating or cooling loads. The DOE test procedures assume that the degradation coefficient is linear about a single cyclic test point. In reality, the degradation is non-linear and a series of cyclic tests at various load conditions should be conducted. However, in order to reduce testing burden, the DOE test procedure specifies the cyclic tests at one load condition and assumes linearity for other loadings.

Recent studies have shown that the part-load factor can be expressed more accurately as an exponential function of the cooling or heating load factor. *See* "Field Performance of Three Residential Heat Pumps in the Cooling Mode", NBSIR 85–3107, March 1985 and "Field-Measured Cycling, Frosting, and Defrosting Losses for a High Efficiency Air-Source Heat Pump", ASHRAE Transactions 1985, Volume 91, Part 2. DOE has reviewed these studies to determine that the part-load factor can be expressed more accurately by an exponential equation consisting of the cooling or heating load factor and the degradation determined by a single cyclic test in each mode (i.e. heating and cooling). This method involves no additional testing and is based on results from the already prescribed cycling tests. Since the exponential approach requires no additional testing and should potentially result in more accurate ratings, DOE is today proposing that the part-load factors be determined by the exponential method. *See* § 4.1.1 and 4.2.1 of Appendix M1 of today's notice.

d. Rating Procedure for Untested Combinations of Split-System Central Air Conditioners

The December 1979 final rule stated that laboratory testing of every combination of a split-system central air conditioner (i.e., a separate condensing unit and evaporator coil combination) would unduly burden test procedures users. Coil manufacturers stressed the impossibility of laboratory testing all combinations that they offer for sale. Condensing unit manufacturers favored an alternative to laboratory testing as long as it resulted in equal accuracy for their combinations. Consequently, in the December 1979 final rule, the Department allowed the use of computer simulation or engineering analysis to predict the energy performance of untested combinations provided that, at a minimum, laboratory testing was done on the combination representing the largest sales volume, and the simulation technique demonstrated an acceptable level of repeatable accuracy. *See* § 430.23(m)(5).

Since 1979, test procedures users have reported a high degree of variability resulting from the allowance of using simulation techniques. For example, some utilities with rebate programs for the purchase of high efficiency central air conditioners have reported receiving significantly different ratings for the same condenser-evaporator-coil combination.

In response to these issues, DOE directed NBS to evaluate various simulation techniques to determine the level of accuracy and repeatability. Concurrent with the NBS research, ARI contracted with ETL Testing Laboratories, Inc. (ETL), a private testing laboratory, to conduct a testing program which would compare results of simulation techniques in use with actual test results. These efforts indicated that although some simulation techniques appear to have reasonable accuracy, other techniques demonstrated significant variability of results. In the interest of improving this situation, NBS, working in conjunction with ARI, ETL, condensing unit manufacturers, coil manufacturers and consulting engineers, has developed a standardized rating method for untested combinations of split-systems. DOE published the standardized rating method as a Notice of Inquiry (NOI) on March 15, 1985, to receive comments and data concerning the accuracy and workability of the method. 50 FR 13042, April 2, 1985. DOE and NBS have reviewed the 24 comments received regarding the standardized rating method. *See* "Rating Procedure for Mixed Air Source Unitary Air Conditioners and Heat Pumps Operating in the Cooling Mode". NBSIR 86–3301, February 1986.

The standardized rating procedure for untested combinations that was published in the NOI was developed by NBS. The NOI procedure required knowledge of the following factors: (1) Capacity of the matched system; (2) indoor fan power of the mixed and matched systems; (3) coil capacity of the mixed and matched coils; (4) the type of expansion device on the mixed and matched systems; and the physical geometry of the expansion device on the mixed and matched systems. With these data the user could calculate the energy performance of an untested central air conditioner using the NOI rating procedure. Below is a discussion of the comments that DOE received on the NOI rating procedure.

1. Comments Supporting the Standardized Rating Method

DOE received five comments supporting using the standardized rating method for all untested combinations of central air conditioners. Georgia Power Company commented that a standardized rating method is superior to allowing multiple procedures and would simplify the rating process. (Georgia Power Company, No. 1, at 1.)[1] Texas Utilities Electric Company commented that even though laboratory testing is the best approach for rating central air conditioners, they recommended using a standardized rating method for all untested combinations of central air conditioners. (Texas Utilities Electric Company, No. 12, at 4.) Tennessee Valley Authority (TVA) commented that the standardized rating method should be adopted since it appears to conservatively estimate energy efficiency ratings without much risk of overstating system performance and since the input parameters are readily available. (TVA, No. 20, at 1.) Magna Flow Industries, Inc. (Magna Flow) supported using a single rating method which would allow real and meaningful comparisons in the marketplace. (Magna Flow, No. 21, at 2.) Airmax, Inc. (Airmax) agreed with using a standardized rating method that would eliminate the disparity between ratings done by different coil manufacturers on the same condensing unit and similar coils. (Airmax, No. 22, at 1.)

2. Comments Opposing a Standardized Rating Method

Seven commenters opposed adoption of a standardized rating method. ETL commented that actual laboratory testing should be the only acceptable approach for rating central air conditioners. (ETL, No. 8, at 1.). Six coil manufacturers, Red T Coil (a division of the Coleman Co., Inc.), Superior Coils, Inc, International Environmental Corporation, First Company, Magic Aire Division of United Electric Co., and Texas Coil Company, all opposed using a standardized rating method because it would result in lower ratings and would require proprietary information. (Red T Coil, No. 10, at 1; Superior Coils, Inc., No. 13, at 1; International Environmental Corporation, No. 14, at 2; First Company, No. 16, at 2–5; Magic Aire, No. 17, at 1; and Texas Coil Company, No. 19, at 1.)

The NOI stated that the standardized rating method could result in lower (conservative) ratings. According to research by NBS and others, the ratings from today's proposed standardized rating method, which includes some improvements in precision discussed below, appear to be closer to the ratings determined by laboratory testing and typically exhibit less scatter than ratings from the rating procedures NBS examined. Consequently, DOE believes that using the standardized rating method would result in more accurate ratings than other rating methods and would not necessarily result in lower (conservative) ratings.

The six coil manufacturers cited above also commented that the standardized rating method uses proprietary information from condensing unit manufacturers and that this information is not readily available. One objective that NBS had in developing

[1] Comments on the NOI were given docket numbers in which the citations provide the name of the organization, the docket number assigned to the comment, and the page in which the comment is found in the commenter's submittal.

the standardized rating method was that it did not require proprietary data. However, in its research, NBS determined that to achieve an acceptable level of accuracy in the ratings, certain types of information are required and that this information typically is not reported as accurately as the information required for the standardized rating method. Consequently, NBS discovered, at times, that the standardized rating method could result in unacceptable high variations in ratings unless certain precautions were taken to ensure that the input information was precise. Therefore, NBS recommended that the power of the indoor fan, the refrigerant flow rate through the refrigerant expansion device, and the coil capacity for both the matched system and the mixed system should be determined precisely.

In the interest of reducing testing burden and to assist manufacturers in obtaining this information, DOE has directed NBS to develop a computer program for accurately determining coil capacities and to develop a test method for measuring the refrigerant flow rate through a refrigerant expansion device. DOE intends to incorporate the coil capacity computer program and the refrigerant flow rate test method into the test procedures once NBS completes development of these procedures. During the interim period before they are available, manufacturers can use industry-wide, currently acceptable means for determining coil capacities and refrigerant flow rates (i.e., coil capacity catalog data and physically measuring expansion devices for determining refrigerant flow rates).

3. Voluntary Certification and Enforcement Programs

Seven commenters recommended that central air conditioners subject to the ARI certification program for unitary air-conditioning and air-source heat pump equipment should not be required to use the standardized rating procedure for rating untested combinations. In the ARI certification program, participating manufacturers must file certification data with ARI on all models subject to the program. Participating manufacturers include ARI members and is open to non-ARI members. The data are carefully reviewed by ARI and laboratory tests are conducted by an independent testing laboratory to verify the data when the data is questionable. In addition, ARI conducts random testing of all models and participating manufacturers may request additional testing of competitor's models if the participating manufacturer questions the competitor's ratings. Consequently, the commenters contend that rating certified by ARI cannot exhibit the high degree of variability mentioned previously in today's notice. These commenters further contend that manufacturers subject to the ARI certification program should not be required to use the standardized rating method since the rating methods used in the ARI program could, potentially, be more accurate than the standardized rating method. These commenters also recommended that the standardized rating procedure should be required for untested systems not covered by the ARI certification program. (Bard, No. 2, at 1; ARI, No. 3, at 2; Aspen, No. 4, at 1; Rheem, No. 5, at 1; Trane, No. 7, at 2; Borg-Warner, No. 15, at 2; and Snyder General, No. 18, page 1.)

DOE agrees that if a manufacturer has an alternative rating method which is more accurate than the standardized rating method, the manufacturer should be allowed to use the alternative rating method. However, before a manufacturer can use the alternative method, he must obtain approval by DOE in accordance with § 430.23(m)(5) of the proposal. The Department believes that all alternative rating methods must be reviewed in order to maintain integrity in the ratings. Consequently, manufacturers who have previously received approval by DOE to use an alternative method must resubmit that method to DOE before it can continue to use the alternative method for rating central air conditioners. The process for obtaining approval is more structured than the current process, primarily to maintain more control over manufacturers who elect to use alternative methods and to better ensure that the alternative methods result in fair ratings.

One critical part of the approval process is that the manufacturer must submit sufficient information in its request in order for DOE to be able to make a determination concerning whether the alternative method is more accurate than the standardized method. At a minimum, this would require that the rating procedure is traceable to actual test data, a complete documentation of the alternative method, including the computer code when a computer model is used; ratings for two complete lines of coil families for two different condensing units; and complete test data, product information and related information to allow DOE to verify the ratings submitted by the manufacturer.

The rating information submitted by the manufacturer for the mixed system would include ratings determined by testing, by the standardized rating method and by the alternative rating method. This would allow DOE to compare ratings determined by the rating methods to ratings from actual testing in order to determine whether the alternative method is more accurate than the standardized method. Another provision is that ratings are required for two complete lines of coil families for two different condensing units and that the capacities of the matched system using the two condensing units must vary by at least a factor of two. DOE is proposing these provisions which require ratings for different coil lines and condensing units to determine whether the alternative method can be widely used for rating all types, sizes and combinations of condensing units and coils. DOE believes that the information requested must be provided in order to make a valid determination.

Furthermore, DOE is proposing that manufacturers who elect to use an alternative rating method must have their ratings verified by either an independent testing program or an independent state registered professional engineer. In addition, today's proposal would require that whenever rated values do not agree within two percent of the values as determined by testing, the actual test data shall be used for energy efficiency representation.

4. Rating Procedure Requires Accurate Information

Aspen commented that even with a near-perfect standardized rating method, results could be meaningless if the input information is inaccurate or if restrictions specified in the DOE procedures are ignored. (Aspen, No. 4, at 2.) DOE is aware that the rating method could result in unacceptably high variations in ratings if no precautions were taken to ensure that the input information was precise. For this reason, today's notice includes additional requirements concerning determining the power of the indoor fan, the refrigerant flow rate through the refrigerant flow device, and the coil capacity for both the matched and mixed systems. Regarding the comment by Aspen that restrictions in the DOE test procedures were ignored, DOE proposes changes to the rating method to better ensure that these restrictions are followed.

5. Credit for TXV Valves

Aspen and Texas Utilities Electric Company both recommended that the standardized rating method allow a credit for mixed systems equipped with thermal expansion valves (TXV) when the matched system does not have a TXV. (Aspen, No. 4, Appendix A, at 1 and Texas Utilities Electric Company, No. 12 at 2.) Both companies presented test data in which the SEER was 9.0 for a matched system and 9.45 mixed system. In the example, the matched system did not have a TXV while the mixed system did have a TXV. By using the rating method published in the NOI, the SEER was calculated to be 8.77. However, the calculated SEER was 9.22 with a credit for the TXV. Since the rating was closer to the tested value when a credit was allowed (the difference between the rated value and the tested value was 2.4 percent when a credit is allowed and 7.2 percent without a credit), both Aspen and Texas Utilities Electric Company recommended a credit for TXV's.

According to NBS, a TXV generally is a superior expansion device that should increase the SEER. However, not all systems would expect the same increase in efficiency by using TXV's. For example, based on research conducted by NBS, the improvement in SEER is expected to be 2.5 percent for TXV's with "bleeding" and 5 percent for TXV's with "no bleeding" TXV's, where bleeding refers to the characteristic of a TXV to relieve pressure differences by leaking refrigerant across the device during the off-period. TXV's with no bleeding which prevent off-cycle migration of the refrigerant, generally are superior to TXV's with bleeding, which allow off-cycle refrigerant migration.

In consideration of the comments by Aspen and Texas Utilities Electric Company and of the research conducted by NBS, DOE is proposing to include a thermostat expansion value factor in the standardized rating method for mixed systems with TXV's. This factor is based on the 2.5 percent improvement for TXV's with bleeding and 5 percent improvement for non-bleeding TXV's recommended by NBS. *See* Appendix M1 to Subpart 430 section 4.1.6.2.

6. Adjustment for Fan Power

Aspen recommended that the ratio of the power of the mixed system to the matched system at 82 °F $(P_X/P_M)_{82}$ be adjusted for differences in indoor fan power between the matched and mixed systems. (Aspen, No. 4, Appendix B, at 1–2.) This ratio is one of the factors used in determining the SEER for the mixed systems. This adjustment would take into account the effect different units would have on system efficiency.

NBS has reviewed the approach recommended by Aspen for adjusting $(P_X/P_M)_{82}$ to determine that the rating method would result in more accurate ratings when differences in indoor fan power are properly considered. In its review, NBS developed a slightly different method for correcting for indoor fan power that the Aspen method. Today's proposal adjusts $(P_X/P_M)_{82}$ for differences in indoor fan power and is based on the NBS recommended method. *See* Appendix M1 to Subpart 430, sections 4.1.6.3 and 4.1.6.4.

7. Adjustment for Degradation Coefficient

Four commenters, Rheem, Addison, Trane and Lennox, stated that the standardized rating method does not properly account for changes in cycling losses by adjusting the degradation coefficient, C_D. (Rheem, No. 5, at 2; Addison, No. 6, at 1; Trane, No. 7, at 2; and Lennox, No. 9 at 2.) In investigating whether adjusting for changes in the degradation coefficient between the matched and the mixed systems would improve the accuracy of ratings, NBS determined that there is a relatively large allowed experimental tolerance in determining the value of the degradation coefficient. This was due to allowed experimental tolerances in test procedure set-up, testing equipment and test procedures. NBS also determined that the change in the degradation coefficient between the matched and mixed systems would generally be much less than the allowed experimental tolerance from testing. This implies that most of the difference in the degradation coefficients reported by laboratory testing between the matched and mixed systems would be attributed to the testing itself and would not properly reflect for differences in cycling losses. Consequently, DOE has not changed the rating method to account for differences in degradation coefficients.

8. Expansion Device Scaling Factor

Rheem noted that in the equation for the ratio of the capacities of the mixed system to the matched system at 82 °F $(Q_X/Q_M)_{82}$, the exponent for the expansion device scaling factor was 0.44 for capillary tubes and TXV's and was 0.35 for orifices. Rheem commented that the exponent should be the same and not dependent on the type of expansion device used. (Rheem, No. 5, at 3.) This ratio is one of the factors used in determining the SEER for the mixed system. The expansion device scaling factor (F_e) is the ratio of the refrigerant mass flow rates through the mixed and matched expansion devices at the same operating conditions.

NBS reviewed Rheem's comment and agreed that the exponent should be a constant and recommended 0.35 as the value to be used. Today's notice specifies 0.35 as the exponent for the expansion device scaling factor in the equation for determining $(Q_X/Q_M)_{82}$.

In addition, Rheem commented that a lower limit of 0.8 and an upper limit of 1.2 should be placed on the expansion device scaling factor because as the difference between the refrigerant mass flow rates through the mixed and matched expansion devices increases, the accuracy decreases. (Rheem, No. 5, at 3.)

In the NOI, a lower limit of 0.85 was placed on the expansion device scaling factor. At that time, no upper limit was made because it was not considered to be necessary. In consideration of Rheem's comment, NBS reviewed data for the expansion device scaling factor to determine that the method can be used if the factor is between 0.85 and 1.35.

Today's notice specifies that the standardized rating method can be used if the expansion device scaling factor is between 0.85 and 1.35. DOE believes that these values represent the extreme of typical scaling factors and the Department does not have data on units with scaling factors outside this range to determine if the standardized rating method yield accurate results. For mixed systems with expansion device scaling factor outside this range, the standardized rating meeting can not be used for rating purposes. For these systems, ratings can only be determined by testing.

9. Accountability

Rheem commented that manufacturers participating in the ARI certification program are held accountable for their ratings, implying that manufacturers who will use the standardized rating method are not held accountable for their ratings. (Rheem, No. 5, at 3.) Manufacturers, whether using the DOE test procedures, computer simulation or engineering analysis, have always been held accountable for their ratings. Section 430.23(m)(3) of the DOE test procedures states that whenever measures of energy consumption determined by computer simulation or by engineering analysis do not agree with measures of energy consumption determined by actual testing, the values determined by actual testing shall be used. To continue to ensure that manufacturers using the rating method are held accountable for their ratings, DOE has proposed a similar provision in today's notice. *See* § 430.23(m)(3).

10. Coil Capacity

Addison commented that the rating method relies on determining coil capacities from coil manufacturers catalogs. Addison further commented that these catalogs cannot always be used for determining the capacities for both the matched and mixed system coils because the matched or mixed coil design can be of a unique design which is not included in the catalogs. (Addison, No. 6, at 2.) DOE agrees with Addison that there are certain limitations with using coil catalogues for determining coil capacity; however, DOE believes these catalogues can be used in the majority of cases. As mentioned above, DOE had directed NBS to develop a computer program to assist manufacturers in determining coil capacities. Once a coil capacity computer program has been developed it will be incorporated into the test procedures.

11. Double Orifice Flow Devices

Lennox commented that the standardized rating method does not address a system using two orifice flow devices in series and that this device is used extensively. (Lennox, No. 9, at 1.) DOE is aware that the rating method does not address systems that use combinations of expansion devices, which is one reason why DOE directed NBS to develop a refrigerant flow test method that would address combinations of expansion flow devices, including the double orifice flow device mentioned by Lennox. Until such test method is incorporated into the standardized rating method, these designs can be rated by actual tests or by a DOE approved rating method.

12. Coil Circuitry

Lennox commented that coil capacity can be determined by computer simulation only if the simulation method properly addresses coil circuitry. (Lennox No. 9, at 1.) The coil simulation program, which NBS is presently developing, will address coil circuitry to result in more accurate ratings for mixed systems. Until such a test method is incorporated into the standardized rating method, these designs can be rated by actual tests or by a DOE approved rating method.

13. Validation of the Rating Procedures

Texas Utilities Electric Company recommended that the rating method should be validated against actual laboratory test results. (Texas Utilities Electric Company, No. 12, at 4.) The rating method was initially validated by NBS for 22 different systems when DOE published the NOI.

In response to the NOI, DOE received additional comparisons between results from the proposed rating method and actual testing from Rheem, Trane and Borg-Warner, manufacturers of matched systems. (Rheem, No. 5, at 5–8; Trane, No. 7, at 3; and Borg-Warner, No. 15, at 3.) Based on this information, the proposed rating method was revised for indoor fan power, a credit for TXV's, and different limits for the coil capacity ratio. NBS also had a consulting engineer compare the revised procedures against actual test results as an independent check of the rating procedure. DOE believes that today's standardized rating method will produce ratings that are comparable with results from testing and no further validation is necessary.

14. Expand Rating Procedures for Heating

TVA recommended that DOE should develop a similar standardized rating method for the heating function of heat pumps. (TVA, No. 20, Page 1.) DOE has directed NBS to develop a rating method for the heating function of heat pumps and is evaluating the procedures other organizations, e.g. ARI, are developing. Until such a test method is incorporated into the standardized rating method, these designs can be rated by actual tests or by a DOE approved rating method.

e. Ground Water-Source Heat Pumps and Earth-Coupled Heat Pumps

Today, DOE is proposing test procedures for two types of water-source heat pumps, ground water-source heat pumps and earth-coupled heat pumps. A ground water-source heat pump utilizes a refrigerant-to-water heat exchanger(s) in which ground water is circulated to and from the heat exchanger(s) in an open loop. An earth-coupled heat pump utilizes a refrigerant-to-water heat exchanger(s) in which water to and from the heat exchanger(s) is circulated through the ground in a closed loop. DOE is proposing test procedures only for these designs of water-source heat pumps because they typically are used in residential applications, whereas, all other types of water-source heat pumps are generally used solely for commercial applications.

In 1979, DOE proposed test procedures for water-source heat pumps based upon recommended procedures from NBS. However, test procedures for water-source heat pumps were not included in the 1979 final rule because commenters stated that the proposed procedures for water-source heat pumps were not consistent with the ones for air-source heat pumps. These commenters contended that the inconsistencies could give erroneous cost information, and encourage sales of one product over another. In view of these comments, DOE directed NBS to develop and recommend appropriate test procedures for water-source heat pumps.

Today's notice specifies the same test procedures for both ground water-source heat pumps and earth-coupled heat pumps and are based on ARI Standard 325–85 and on research conducted by NBS. *See* "Laboratory Tests of a Residential Unitary Water-Source Heat Pump", NBSIR 81–2287, November 1982 and "Method of Testing, Rating and Estimating the Seasonal Performance of Ground -Water Source Heat Pumps", NBSIR 81–2434, November 1982. The NBS Method is based on four steady-state tests: a high temperature cooling test (70 °F), a low temperature cooling test (50 °F), a high temperature heating test (70 °F) and a low temperature heating test (50 °F).

DOE, is today proposing that SEER and HSPF are calculated using a seasonal part-load factor of 0.90 for SEER and 0.85 for HSPF, if the water-source heat pump does not require any supplemental resistance heat. For units that require supplemental resistance heat DOE is proposing a bin method of calculating SEER and HSPF similar to the existing heat pump calculation procedure.

f. Split-Type Ductless Systems

A split-type ductless system is a relatively new product design that has recently been marketed in the United States that is not covered by the current test procedure. A split-type ductless system is a central air conditioner with a remote condenser or remote condensing unit and one or more ductless indoor fan-coil units. One feature that distinguishes these systems from other types of central air conditioners and heat pumps is that the split-type ductless system with multiple indoor units can operate in a multiple zone control mode in which each indoor unit is a separate zone and that each indoor unit will operate only upon demand.

DOE believes that the special design characteristics of split-type ductless systems will result in materially inaccurate and unrepresentative data for these systems if they are tested by the existing DOE test procedures. The DOE test procedures specify that the unit must be connected to ductwork whereas split-type ductless systems are

installed without ductwork. Specifying a testing condition for ductwork for split-type ductless systems would result in an abnormally high pressure drop across the indoor unit, resulting in unwarranted reductions in both capacity and efficiency. Consequently, DOE directed NBS to develop a test procedure for split-type ductless systems.

NBS developed a test procedure for split-type ductless systems based, wherever possible, on ANSI/ASHRAE Standard 116–83 and ARI Standard 210/240–84. *See* "Procedure for Testing, Rating and Estimating the Seasonal Performance of Multiple-Indoor-Coil Residential Air Conditioners and Heat Pump", NBS letter report, April 8, 1985. DOE has reviewed the NBS testing approach and believes that it can be used for testing split-type ductless systems. Today's notice specifies that for split-type ductless systems with multiple indoor units, the outdoor unit would be tested separately for each combination of indoor units. DOE believes that this provision is necessary to provide complete information to consumers because as the split-type ductless system operates with fewer indoor units it tends to become less efficient. DOE believes that this information is important, especially if consumers operate the split-type ductless system with several indoor units turned off.

Section 8.2.2.1b of ANSI/ASHRAE Standard 116–1983 specifies that the indoor supply duct shall be blocked during the defrost cycles in the Frost Accumulation test. DOE considers this to be an unrealistic operating condition for split-type ductless systems because these systems do not operate in this manner. Consequently, today's notice specifies that the indoor supply would not be blocked during the test.

Today's notice specifies that during cyclic testing of multiple indoor units, a single control circuit would be substituted for multiple thermostats in order to maintain a uniform cycling rate. Today's notice also specifies that the thermostats for the indoor units would be shunted during the steady-state tests. These testing provisions, which are in addition to the test procedures in ANSI/ASHRAE Standard 116–1983 and the ARI Standard 210/240–84, are considered necessary to complete the test procedures for split-type ductless systems.

g. Variable-Speed Heat Pumps

In 1981, OHA granted an exception to York for its variable-speed heat pump. *Federal Energy Guidelines*, 7 DOE section 81,209. In 1983, OHA extended the exception to Borg-Warner, formerly York. *Federal Energy Guidelines*, 10 DOE section 81,306. These two exceptions specified an alternative test procedure for testing and rating variable-speed heat pumps.

In 1986, Carrier petitioned DOE for a test procedure waiver for its variable-speed heat pump. February 14, 1986. 51 FR 5587. Carrier petition specified an alternative test procedure different from the York approach.

ARI Standard 210/240–84 also specifies an alternative test procedure for evaluating variable-speed heat pumps. *See* ARI Standard 210/240–84, Appendix B, Rating Equipment with Variable-Speed Compressors.

Today's notice would extend coverage of the test procedures for variable-speed heat pumps to all firms manufacturing variable-speed central air conditioners and heat pumps. As such, the final rule would terminate the exception relief granted by OHA to both York and Borg-Warner for their models of variable-speed heat pumps and the test procedure waiver granted to Carrier for its models of variable-speed heat pumps.

DOE has reviewed the three methods for determining ratings for variable-speed heat pumps developed by Borg-Warner, ARI and Carrier. All three methods are similar in determining SEER and all require a steady-state cooling test at an intermediate compressor speed to accurately reflect the performance of the unit while it is operating between the minimum and maximum compressor speeds. Consequently, DOE believes that all three methods should result in similarly accurate and comparable ratings for SEER.

The ARI method does not include a steady-state heating test at an intermediate compressor speed; the Borg-Warner and Carrier methods do include such a test. For this reason, DOE believes that both the Borg-Warner and Carrier methods could, potentially, result in more accurate ratings for HSPF than the ARI method. Consequently, the ARI method has not been adopted for today's proposal.

There is one key difference between the Borg-Warner and Carrier methods. The Borg-Warner method uses an optional separate steady-state heating test at the intermediate compressor speed for each design heating requirement to accurately describe the performance of the heat pump operating between the minimum and maximum compressor speeds. The Carrier method requires a single steady-state heating test at one intermediate compressor speed and then determines analytically the performance of the heat pump operating between the minimum and maximum compressor speeds for each design heating requirement. DOE believes that both methods should result in similarly accurate and comparable ratings for HSPF. Since the Carrier method is less burdensome by requiring only one additional test, DOE has based the method for determining HSPF for variable-speed heat pumps on the Carrier method.

h. Transition Period

Today's notice would replace, in its entirety, the existing test method for central air conditioners. In order to reduce the burden of retesting existing models, today's notice would provide for testing by either method during a two-year transition period following the publication date of the final rule. Specifically, the existing test method remains as Appendix M while the proposed test method is Appendix M1. After the two-year transition period, only Appendix M1 would be allowed. The present test method (Appendix M) would no longer be allowed and would be deleted, from the DOE test procedures.

In addition, ratings for untested combinations of split-system central air conditioners would be determined in accordance with new § 430.23(m)(5). There would be no transition period for rating untested combinations of split-system units.

New basic models of central air conditioners and heat pumps manufactured after the effective date of the final rule shall be tested only by the test procedures specified in Appendix M1. Appendix M cannot be used for testing new basic models. DOE believes that this transition period will minimize any retesting burden.

III. Comment Procedures

a. Written Comments

Interested persons are invited to participate in the rulemaking by submitting data, views, or arguments with respect to the proposed amendments set forth in this notice to the address indicated at the beginning of the notice.

Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Central Air Conditioner Test Procedures, Docket No. CAS–RM–79–102". Seven (7) copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and all other relevant information will be considered by DOE before final action is taken on the

proposed regulation. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 6 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

b. Public Hearing

1. *Procedures for Submitting Requests to Speak*

The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in today's proposed rule, or who is a representative of a group or class of persons that has an interest in the proposed amendments, to make a request for an opportunity to make an oral presentation. Such requests should be directed to the address indicated at the beginning of this notice and must be received by the time specified at the beginning of this notice. Requests may be hand delivered to such address between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Requests should be labeled "Central Air Conditioner Test Procedures, Docket No. CAS–RM–79–102" both on the document and on the envelope.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that have such an interest, and give a telephone number where he or she may be contacted.

Each person to be heard is requested to submit seven (7) copies of his or her statement to the address and by the date given at the beginning of this notice. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearing and Dockets in advance of the hearing by so indicating in the letter requesting to make an oral presentation.

2. *Conduct of Hearing*

DOE reserves the right to select the persons to be heard at this hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation shall be limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 336 of the Act. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the official statements were made and will be subject to time limitations.

Any interested person who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer to be asked of any person making a statement at the hearing. The presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E–152, Forrestal building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday. For information concerning the availability of records at the Freedom of Information Reading Room, call (202) 252–5869. In addition, any person may purchase a copy of the transcript from the reporter.

IV. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment.

Since test procedures under the energy conservation program for consumer products will be used only to standardize the measurement of energy usage, and will not affect the quality of distribution of energy usage, prescribing test procedures will not result in any environmental impacts. DOE, therefore has determined that prescribing test procedures under the energy conservation program for consumer products clearly is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environment Policy Act of 1969. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the proposed rule.

V. Review Under Executive Order 12291

The proposed rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules". The Executive Order defines "major rule" as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would amend already-existing test procedures for central air conditioners and heat pumps. DOE has determined that any burden imposed on any person, industry, or government entity by the amendment of extent procedures, based in part on commercial standards, is not sufficient to being the proposed rules within the definition of "major rule".

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96–345 (5 U.S.C. 601–612), requires that an agency prepare an initial regulatory flexibility analyses to be published at the time the proposed rule is published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The proposed rule affects manufacturers of central air conditioners and heat pumps. As previously discussed, the proposed changes would not have significant economic impacts, but rather would simply improve the test procedures. Therefore, DOE certifies that the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

VII. Technical Support Documents

The following is a list of the technical support documents cited in today's proposed rule. These documents are listed in order of appearance in the notice.

1. ANSI/ASHRAE Standard 116–81, "Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment".

2. ARI Standard 210/240–84, "Standard for Unitary Air-Conditioning and Air-Source Heat Pump Equipment".

3. ANSI/ARI Standard 325–85, "Standard for Ground Water-Source Heat Pumps".

4. "Seasonal Performance of Air-Conditioners—Experimental Analysis of the DOE Test Procedures Set Up Measurement Errors for Unitary Air-Conditioners and Heat Pumps", HL 82–2T, Purdue University, May 1982.

5. "Seasonal Performance Characteristics of Air-Conditioners—Analysis of the DOE Test Procedures", HL 81–11, Purdue University, 1981.

6. "Trends of Residential Air-Conditioning Cyclic Tests", ASHRAE Transactions 1982, Volume 88, Part 2.

7. "Analysis of Heat Pump Data and Industry's Response", HL 81–37, Purdue University, February 1982.

8. "Field Performance of Three Residential Heat Pumps in the Cooling Mode", NBSIR 85–3107, National Bureau of Standards, March 1985.

9. "Field-Measured Cycling, Frosting, and Defrosting Losses for a High Efficiency Air-Source Heat Pump", ASHRAE Transactions 1985, Volume 91, Part 2.

10. "Rating Procedure for Mixed Air Source Unitary Air Conditioners and Heat Pumps Operating in the Cooling Mode", NBSIR 86–3301, National Bureau of Standards, February 1986.

11. "Laboratory Tests of a Residential Unitary Water-Source Heat Pump", NBSIR 81–2287, National Bureau of Standards, November 1982.

12. "Method of Testing, Rating and Estimating the Seasonal Performance of Ground-Water Source Heat Pumps, NBSIR 81–2434, National Bureau of Standards, November 1982.

13. "Procedure for Testing, Rating and Estimating and Seasonal Performance of Multiple-Indoor-Coil Residential Air Conditioners and Heat Pumps", NBS letter report, National Bureau of Standards, April 8, 1985.

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, September 16, 1986.

John R. Berg,

Principal, Deputy Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, (42 U.S.C. 6291–6309).

1. Section 430.2 is amended by removing the definitions of "Air-source heat pump", "Cooling only unit", "Heat pump", and "Water-source heat pump" and by revising the definition of "Central air conditioner" to read as follows:

§ 430.2 Definitions.

* * * * *

"Central air conditioner" means an appliance which consists of one or more factory-made assemblies that normally includes an indoor conditioning coil(s), compressor(s) and outdoor coil(s) to provide either air cooling for cooling-only units or air heating and optionally, air cooling, for heat pumps; which may also provide air-circulating, air-cleaning, dehumidifying or humidifying; which is rated below 65,000 Btu per hour and is not contained within the same cabinet as a furnace whose rated capacity is above 225,000 Btu per hour; which is powered by single phase electric current; which is not equipped with a desuperheater/water heater device; and which includes the following products:

(a) "Air-source heat pump" means a central air conditioner which utilizes a refrigerant-to-outdoor-air heat exchanger and which provides air heating and optionally, air cooling.

(b) "Cooling-only unit" means a central air conditioner which consists of an outdoor air-cooled condensing unit and an indoor evaporator coil and which provides air cooling.

(c) "Earth-coupled heat pump" means a central air conditioner which utilizes a refrigerant-to-water heat exchanger(s) in which the water from the heat exchanger(s) is circulated through the ground in a closed loop and which provides air heating and optionally, air cooling.

(d) "Ground water-source heat pump" means a central air conditioner which utilizes a refrigerant-to-water heat exchanger(s) in which the water from the heat exchanger(s) is circulated through the ground in an open loop and which provides air heating and optionally, air cooling.

2. Section 430.22 is amended by revising paragraph (m) to read as follows:

§ 430.22 Test procedures for measures of energy consumption.

* * * * *

(m) *Central air conditioners.* (1) The estimated annual operating cost for cooling-only units and air-source heat pumps shall be one of the following:

(i) For cooling-only units or the cooling portion of the estimated annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the cooling capacity, its But's per hour, determined from the steady-state wet-coil test (Test A) measured at the highest compressor speed, as described in section 3.1 of Appendix M or section 3.1 of Appendix M1 to this subpart, divided by the seasonal energy efficiency ratio, in Btu's per watt-hour, determined from section 5.1 of Appendix M or section 4.1 of Appendix M1 to this subpart; (B) the representative average use cycle for cooling of 1,000 hours per year; (C) a conversion factor of 0.001 kilowatts per watt; and (D) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year;

(ii) For air-source heat pumps which provide only heating or the heating portion of the estimated annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the standardized design heating requirement, in Btu's per hour, nearest to the capacity measured in the high temperature test, determined in sections 5.2 and 6.2.6 of Appendix M or section 3.1 of Appendix M1 to this subpart, divided by the heating seasonal performance factor, in Btu's per watt-hour, calculated for heating region IV corresponding to the above mentioned

standardized design heating requirement determined from section 5.2 of Appendix M or section 4.2 of Appendix M1 to this subpart; (B) the representative average use cycle for heating of 2,080 hours per year; (C) the adjustment factor of 0.77 which serves to adjust the calcualted design heating requirement and heating load hours to the actual load experienced by a heating system; (D) a conversion factor of 0.001 kilowatts per watt; and (E) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year; or

(iii) For air-source heat pumps which provide both heating and cooling, the estimated annual operating cost is the sum of the quantity determined in paragraph (m)(1)(i) of this section added to the quantity determined in paragraph (m)(1)(ii) of this section.

(2) The estimated annual operating cost for earth-coupled heat pumps and ground water-source heat pumps shall be one of the following:

(i) The cooling portion of the estimated annual operating cost, is determined from section 4.7 of Appendix M1 of this subpart for the maximum design cooling requirement at region IV, as determined from section 4.5.2 of Appendix M1 to this subpart, being rounded off to the nearest dollar per year;

(ii) The heating portion of the estimated annual operating cost is determined from section 4.7 of Appendix M1 of this subpart for the maximum design heating requirement at region IV, as determined from section 4.5.2 of Appendix M1 to this subpart, being rounded off to the nearest dollar per year; or

(iii) For earth-coupled heat pumps or ground water-source heat pumps which provide both heating and cooling, the sum of the quantity determined in paragraph (m)(2)(i) of this section added to the quantity determined in paragraph (m)(2)(ii) of this section.

(3) The estimated regional annual operating cost for cooling-only units and for air-source heat pumps shall be one of the following:

(i) For cooling-only units or the cooling portion of the estimated regional annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the cooling capacity, in Btu's per hour, determined from the steady-state wet-coil test (Test A) measured at the highest compressor speed, as described in section 3.1 of Appendix M or section 3.1 of Appendix M1 to this subpart, divided by the seasonal energy efficiency ratio, in Btu's per watt-hour, determined from section 5.1 of Appendix M or section 4.1 of Appendix M1 to this subpart; (B) the estimated number of regional cooling load hours per year determined from section 6.1.3 of Appendix M or Figure 1 of Appendix M2 to this subpart; (C) a conversion factor of 0.001 kilowatts per watt; and (D) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the nearest dollar per year;

(ii) For air-source heat pumps which provide only heating or the heating portion of the estimated regional annual operating cost for air-source heat pumps which provide both heating and cooling, the product of: (A) The quotient of the standardized design heating requirement, in Btu's per hour, nearest to the capacity measured in the high temperature test (Test A), determined in sections 5.2 and 6.2.6 of Appendix M or section 3.2 of Appendix M1 to this subpart, divided by the heating seasonal performance factor, in Btu's per watt-hour, calculated for the appropriate region of interest and corresponding to the above mentioned standardized design heating requirement determined from section 5.2 of Appendix M or section 4.2 of Appendix M1 to this subpart; (B) the estimated number of regional heating load hours per year determined from section 6.2.5 of Appendix M or Figure 2 of Appendix M1 to this subpart; (C) the adjustment factor of 0.77 which serves to adjust the calculated design heating requirement and heating load hours to the actual load experienced by a heating system; (D) a conversion factor of 0.001 kilowatts per watt; and (E) the representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act, the resulting product then being rounded off to the the nearest dollar per year; or

(iii) For air-source heat pumps which provide both heating and cooling, the estimated regional annual operating cost is the sum of the quantity determined in paragraph (m)(3)(i) of this section added to the quantity determined in paragraph (m)(3)(ii) of this section.

(4) The estimated regional annual operating cost for earth-coupled heat pumps and ground water-source heat pumps shall be one of the following:

(i) The cooling portion of the estimated annual operating cost is determined from section 4.7 of Appendix M1 of this subpart for the appropriate standardized design cooling requirement at the region of interest, as determined from section 4.5.2 of Appendix M1 to this subpart, being rounded off to the nearest dollar per year;

(ii) The heating portion of the estimated annual operating cost is determined from section 4.7 of Appendix M1 to this subpart for the appropriate standardized design heating requirement at the region of interest, being rounded off to the nearest dollar per year; or

(iii) For earth-coupled heat pumps or ground water-source heat pumps which provide both heating and cooling, the sum of the quantity determined in paragraph (m)(4)(i) of this section added to the quantity determined in paragraph (m)(4)(ii) of this section.

(5) The measure(s) of efficiency for cooling-only units and air-source heat pumps shall be one or more of the following:

(i) The seasonal energy efficiency ratio for cooling-only units and air-source heat pumps which provide cooling shall be the seasonal energy efficiency ratio, in Btu's per watt-hour, determined according to section 5.1 of Appendix M or section 4.1 of Appendix M1 to this subpart, rounded off to the nearest 0.05.

(ii) The heating seasonal performance factors for air-source heat pumps shall be the heating seasonal performance factors, in Btu's per watt-hour, determined according to section 5.2 of Appendix M or section 4.2 of Appendix M1 to this subpart for each applicable standardized design heating requirement within each climatic region, rounded off to the nearest 0.05.

(iii) The annual performance factors for air-source heat pumps which provide heating and cooling, shall be the annual performance factors, in Btu's per watt-hour, determined according to section 5.3 of Appendix M or section 4.3 of Appendix M1 to this subpart for each standardized design heating requirement within each climatic region, rounded off to the nearest 0.05.

(6) The measure(s) of efficiency for earth-coupled heat pumps and ground water-source heat pumps shall be one or more of the following:

(i) The seasonal energy efficiency ratio for earth-coupled heat pumps and ground water-source heat pumps which provide cooling shall be the seasonal energy efficiency ratio, in Btu's per watt-hour, determined according to section 4.4 of Appendix M1 to this subpart, rounded off to the nearest 0.05.

(ii) The heating seasonal performance factors for earth-coupled heat pumps and ground water-source heat pumps which provide heating shall be the heating seasonal performance factors, in Btu's per watt-hours, determined according to section 4.5 of Appendix M1 to this subpart for each applicable standardized design heating requirement within each climatic region, rounded off to the nearest 0.05.

(iii) The annual performance factors for earth-coupled heat pumps and ground water-source heat pumps which provide heating and cooling, shall be the annual performance factors, in Btu's per watt-hour, determined according to section 4.6 of Appendix M1 to this subpart for each standardized design heating requirement within each climatic region, rounded off to the nearest 0.05.

(7) Other useful measures of energy consumption for central air conditioners shall be those measures of energy consumption which the Secretary of Energy determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendices M and M1 to this subpart.

(8) For a transition period of 24 months from the effective date of this amendment, all measures of energy consumption shall be determined either by the uniform test method for measuring energy consumption of central air conditioners, as set forth in Appendix M of this subpart or by the amended test method for measuring energy consumption of central air conditioners, as set forth in Appendix M1 of this subpart. After the transition period, all measures of energy consumption shall be determined only by the amended test method as set forth in Appendix M1 of this subpart; the uniform test method, as set forth in Appendix M of this subpart shall no longer be used.

* * * * *

3. Section 430.23 is amended by revising paragraph (m) to read as follows:

§ 430.23 Units to be tested.

* * * * *

(m)(1) For central air conditioners, each condensing unit shall have a condenser-evaporator coil combination selected and a sample of sufficient size tested in accordance with applicable provisions of this subpart such that—

(i) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of the condenser-evaporator coil combination for which consumers would favor lower values shall be no less than the higher of (A) the mean of the sample or (B) the upper 90 percent confidence limit of the true mean divided by 1.05, and

(ii) Any represented value of energy efficiency or other measure of energy consumption of the condenser-evaporator coil combination for which consumers would favor higher values shall be no greater than the lower of (A) the mean of the sample or (B) the lower 90 percent confidence limit of the true mean divided by 0.95.

(2) The condenser-evaporator coil combination selected for tests pursuant to paragraph (m)(1) of this section shall be that combination manufactured by the condensing unit manufacturer likely to have the largest volume of retail sales. Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provisions of paragraphs (m)(l)(i) and (ii). For every other condenser-evaporator coil combination manufactured by the same manufacturer or in part by a component manufacturer using that same condensing unit, either—

(i) A sample of sufficient size, comprised of production units or representing production units, shall be tested to insure that the requirements of paragraphs (m)(l) (i) and (ii) are met for such other condenser-evaporator coil combinations; or

(ii) The representative values of the measures of energy consumption shall be based on the standardized rating method in section 4.1.6 of Appendix M1 to this subpart; or

(iii) The representative values of the measures of energy consumption shall be based by an alternative rating method that has been approved by DOE in accordance with the provisions of paragraphs (m) (4) and (5) of this section.

(3) Whenever the representative values of the measures of energy consumption, as determined by the provisions of paragraphs (m)(2) (ii) and (iii) of this subpart, do not agree within 2 percent of the representative values of the measures of energy consumption as determined by actual testing, the representative values determined by actual testing shall be used to comply with section 323(c) the Act, or to comply with rules prescribed under section 324 of the Act.

(4) The basis of the alternative rating method referred to in paragraph (m)(2)(iii) of this section shall be a representation of the mechanical vapor compression refrigeration cycle. The major components in the refrigeration cycle shall be modeled as "fits" to manufacturer performance data or by graphic or tabular performance data. Heat transfer characteristics of coils may be modeled as a function of face area, number of rows, fins per inch, refrigerant circuitry, air flow rate and entering air enthalpy. Additional performance-related characteristics to be considered may include type of expansion device, refrigerant flow rate through the expansion device, power of the indoor fan and degradation coefficient.

(5) Manufacturers who elect to use an alternative rating method for determining measures of energy consumption under paragraphs (m)(2)(iii) and (4) of this section must submit a request to DOE for revising the alternative rating method to the Assistant Secretary of Conservation and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, and receive approval to use alternative method by the Assistant Secretary before the alternative method can be used for rating central air conditioners.

(6) Each request to DOE for reviewing an alternative rating method shall include:

(i) The name, address and telephone number of the official representing the manufacturer.

(ii) Complete documentation of the alternative rating procedure, including the computer code when a computer model is used.

(iii) Ratings for two complete lines of coil families for two different condensing units. The tested capacities for the matched systems for the two condensing units shall differ by a factor of two. Rating information for the mixed systems shall include the ratings from testing, from the standardized rating method and from the alternative rating method.

(iv) Complete test data, product information, and related information to allow DOE to verify the rating information submitted by the manufacturer.

(7) Manufacturers who elect to use an alternative rating method for determining measures of energy consumption under paragraphs (m)(2)(iii) and (4) of this section must either subject a sample of their units to independent testing on a regular basis (e.g., voluntary certification program) or have the representations reviewed and certified by an independent State registered professional engineer who is not an employee of the manufacturer. The registered professional engineer is to certify that the results of the alternative rating procedure accurately represent the energy consumption of the unit(s) and are more representative of the unit's performance than the standard rating procedure in § 430.23(m)(2)(ii). The manufacturer is to keep the registered professional engineer's

certifications on file for review by DOE for as long as said combination made available for sale by the manufacturer.

(8) For new basic models of central air conditioners and heat pumps manufactured after the effective date of the final rule, the models shall be tested according to the provisions in Appendix M1 of this subpart.

4. Subpart B of Part 430 is amended by adding Appendix M1 as follows:

Appendix M1 To Subpart B—Amended Test Method for Measuring the Energy Consumption of Central Air Conditioners

1.0 *Definitions.* Definitions shall include the definitions specified in Section 3.0 of ARI Standard 210/240–84, Section 3.0 of ANSI/ARI Standard 325–85, Section 3.0 of ANSI/ASHRAE Standard 116–1983 and the following additional definitions.

1.1 "Annual performance factor" means the total heating and cooling done by a heat pump in a particular region in one year divided by the total electric power used in one year.

1.2 "ANSI" means the American National Standards Institute.

1.3 "ANSI/ARI Standard 325–85" means the test standard published in 1985 jointly by ANSI and ARI and titled "Standard for Ground Water-Source Heat Pumps".

1.4 "ANSI/ASHRAE Standard 37–1978" means the test standard published in 1978 jointly by ANSI and ASHRAE and titled "Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment".

1.5 "ANSI/ASHRAE Standard 116–1983" means the test standard published in 1983 jointly by ANSI and ASHRAE and titled "Methods of Testing for Seasonal Efficiency of Unitary Air-Conditioners and Heat Pumps".

1.6 "ARI" means the Air-Conditioning and Refrigeration Institute.

1.7 "ARI Standard 210/240–84" means the test standard published in 1984 by ARI and titled "Standard for Unitary Air-Conditioning and Air-Source Heat Pump Equipment".

1.8 "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

1.9 "Continuously recorded" means a method of recording measurements in intervals no greater than 5 seconds.

1.10 "Cyclic test" means a test where the indoor and outdoor conditions are held constant, but the unit is manually turned "on" and "off" for specific time periods to simulate part-load operation.

1.11 "Demand-defrost control system" means a system which is designed to perform the defrost function on the outdoor coil of the heat pump only when a predetermined degradation of performance is measured.

1.12 "Design cooling requirement (DCR)" means the amount of cooling required to maintain a given indoor temperature at a particular outdoor design temperature.

1.13 "Design heating requirement (DHR)" means the amount of heating required to maintain a given indoor temperature at a particular outdoor design temperature.

1.14 "Dry-coil test" means a test conducted at a wet-bulb temperature and a dry-bulb temperature such that moisture will not condense on the evaporator coil of the unit.

1.15 "Latent cooling" means the total amount of cooling in Btu's necessary to remove water vapor from the air passing over the indoor coil by condensation during a period of time.

1.16 "Matched system" means a tested combination of a split-system central air conditioner.

1.17 "Mixed system" means an untested combination of a split-system central air conditioner in which the ratings are determined by 4.1.6 of this appendix.

1.18 "Part-load factor (PLF)" means the ratio of the cyclic energy efficiency ratio to the steady-state energy efficiency ratio at identical ambient conditions.

1.19 "Sensible cooling" means the total amount of cooling in Btu's performed by a unit over a period of time, excluding latent cooling.

1.20 "Single package unit" means a central air conditioner in which the compressor, condenser, evaporator and fan are enclosed in a single assembly.

1.21 "Split system" means a central air conditioner with a remote condenser or remote condensing unit.

1.22 "Split-type ductless system" means a central air conditioner with a remote condenser or remote condensing unit and one or more ductless indoor fan-coil units.

1.23 "Steady-state test" means a test in which all the indoor and outdoor conditions are held constant and the unit is in a nonchanging operating mode.

1.24 "Temperature bin" means a 5 °F increment over a dry-bulb temperature range of 65 °F through 104 °F for the cooling cycle and −25 °F through 64 °F for the heating cycle.

1.25 "Time-temperature defrost control system" means a system which automatically provides the defrost function at a predetermined time interval whenever the outdoor temperature drops below a level where frosting will occur.

1.26 "Test condition tolerance" means the maximum permissible variation of the average of the test observations from the standard or desired test conditions as provided in Table III–A or ANSI/ASHRAE Standard 116–1983 for air-source units and in Table 5 of this Appendix for water-source units.

1.27 "Test operating tolerance" means the maximum permissible difference between the maximum and the minimum instrument observation during a test as provided in Tables III–B and III–C of ANSI/ASHRAE Standard 116–1983 for air-source units and in Table 5 of this Appendix for water-source units.

1.28 "Wet-coil test" means a test conducted at a wet-bulb temperature and a dry-bulb temperature such that moisture will condense on the test unit evaporator coil.

2.0 *Testing conditions.*

2.1 *Testing conditions for cooling-only units and air-source heat pumps.* For cooling-only units and air-source heat pumps, testing conditions shall be as specified in section 5.0 of ARI Standard 210/240–84, with the inclusion of the following conditions.

2.1.1 *Split-type ductless systems.* The following paragraph is in addition to the requirements specified in section 5.1.3.5 of ARI 210/240–84:

For split-type ductless systems, all standard rating tests shall be performed with a minimum length of 25 feet of interconnecting tubing between each indoor fan-coil unit and the common outdoor unit.

2.1.2 *Additional testing conditions for split-type ductless systems.* For split-type ductless systems, a single control circuit shall be substituted for any multiple thermostats in order to maintain a uniform cycling rate during test D and the high temperature heating cyclic test. During the steady-state tests, all thermostats shall be shunted resulting in all indoor fan-coil units being in operation.

2.1.3 *Additional testing conditions for cooling-only units and air-source heat pumps with variable-speed compressors.* For cooling-only units and air-source heat pumps with variable-speed compressors, the air flow rate at fan speeds less than the maximum fan speed shall be determined by using the fan laws for a fixed resistance system. The air flow rate is then given by the ratio of the actual fan speed to the maximum fan speed multiplied by the air flow rate at the maximum fan speed. Minimum static pressure requirements only apply when the fan is running at the maximum speed.

2.2 *Testing conditions for earth-coupled heat pumps and ground water-source heat pumps.* For earth-coupled heat pumps and ground water-source heat pumps, testing conditions shall be as specified in section 5.0 of ANSI/ARI Standard 325–1985.

3.0 *Test procedures.*

3.1 *Test procedures for cooling-only units and air-source heat pumps.* For cooling-only units and air-source heat pumps, test procedures shall be as specified in section 5.0 of ARI Standard 210/240–84 and in section 8.0 ANSI/ASHRAE Standard 116–1983, with the inclusion of the following conditions.

3.1.1 *Cyclic test.* The following paragraphs are in place of section 5.1.3.1 of ARI Standard 210/240–84.

5.1.3.1 *Cyclic tests.* For units other than variable-speed units, heating and cooling cyclic tests shall be conducted by cycling the compressor(s) 6 minutes "on" and 24 minutes "off". The capacity and all electrical energy shall be measured for the integration time (θ_1) of six (6) minutes. All off-cycle electrical energy shall be measured for the total integration time (θ_{CYC}) of 30 minutes. Off-cycle electrical energy does not include the fan power.

For variable-speed units, heating and cooling cyclic tests shall be conducted by cycling the compressor 12 minutes "on" and 48 minutes "off". The capacity and all electrical energy shall be measured for the integration time (θ), of 12 minutes. All off-cycle electrical energy shall be measured for the total integration time (θ_{cyc}) of 60 minutes. Off-cycle electrical energy does not include the fan power.

In lieu of conducting C and D tests, and assigned value of 0.25 shall be used for the degradation coefficient for cooling, C_D. In lieu of conducting the high temperature heating cyclic test, and assigned value of 0.35 shall be used for the degradation coefficient for heating, C_D. For units with the two compressor speeds, two compressors or cylinder unloading, if the assigned degradation coefficient is used for one cooling mode, it must be used for both cooling modes. If the assigned degradation coefficient is used for one heating mode, it must be used for both heating modes.

3.1.2 *Air-source units with variable-speed compressors.* The following provisions are in place of the provisions in Appendix B of ARI Standard 210/240–84 for the intermediate cooling steady-state test.

For air-source units with variable-speed compressors, an intermediate cooling steady-state test shall be conducted in which the unit shall be operated at a constant, intermediate compressor speed ($K=V_c$) in which the dry-bulb and wet-bulb temperatures of the air entering the indoor coil and the outdoor coil selected for the intermediate cooling steady-state test are at the temperatures specified for the intermediate cooling steady-state test in Table B1 of ARI Standard 210/240–84. The tolerances for the dry-bulb and wet-bulb temperatures of the air entering the indoor and outdoor coils shall be the test operating tolerance and test condition tolerance specified in Table III–A of ANSI/ASHRAE Standard 116–1983. The intermediate compressor speed shall be within 10 percent of the average of the maximum and minimum compressor speeds.

For air-source units with variable-speed compressors, the frost accumulation test shall be conducted in which the unit shall be operated at a constant, intermediate compressor speed ($K=V_h$). The intermediate compressor speed shall be within 10 percent of the average of the maximum and minimum compressor speeds.

3.1.3 *Split-type ductless systems.* The following paragraph is in addition to the requirements specified in section 8.2.2.1.b of ANSI/ASHRAE Standard 116–1983.

For split-type ductless systems which turn the indoor fan off during defrost, the indoor supply duct shall not be blocked.

3.2 *Test procedures for earth-coupled heat pumps and ground water-source heat pumps.* For earth-coupled heat pumps and ground water-source heat pumps, test procedures shall be as specified in section 5.0 of ANSI/ARI Standard 325–85, section 8.0 of ANSI/ASHRAE Standard 37–78 and section 8.0 of ANSI/ASHRAE Standard 116–1983.

4.0 *Calculations.* Calculations shall be as specified in 10 of ANSI/ASHRAE Standard 116–1983, subject to the following additional provisions. The equation for determining the flow rate of standard air (Q_s), as determined in 6.7.3 of ANSI/ASHRAE Standard 116–1983, is replaced by the following equation:

$$Q_s = \frac{Q_{mi}}{0.075\ V_n}$$

where:

Q_{mi} = measured indoor air flow rate, ft^3/min

0.075 = density of standard air, lb/ft^3

V_n = specific volume of air at nozzle, ft^3/lb of air-water mixture

4.1 *Seasonal energy efficiency ratio for air-source units.* The seasonal energy efficiency ratio (SEER) shall be expressed in Btu per watt-hour.

4.1.1 *Seasonal energy efficiency ratio for air-source units with single-speed compressors.* For air-source units with single-speed compressors, SEER shall be defined as the cooling seasonal energy efficiency ratio (SEER) as specified in 10.1.2 of ANSI/ASHRAE Standard 116–1983, with the following added provisions. One, the number of hours in the jth temperature bin (n_j) in the equations for the capacity ($q(t_j)$) and for the power input ($E(t_j)$) is defined in Table 1 of this Appendix. Two, the part-load factor (PLF) in the equation for the power input ($E(t_j)$) is defined as:

$$PLF = \begin{cases} 1 - \exp\left(-E_F(CLF^{0.4})\right), & \text{for } CLF \leq 0.70 \\ 1 - \dfrac{(1 - CLF)(1 - PLF(0.70))}{0.30}, & \text{for } CLF > 0.70 \end{cases}$$

where:

E_F = exponential factor and is defined as:

$E_F = \dfrac{1.9 \ln 125}{C_D}$

CLF = cooling load factor, as defined in 10.1.2 of ANSI/ASHRAE Standard 116–1983

PLF (0.70) = part-load factor at a cooling load factor of 0.70, as determined above

C_D = degradation factor, as defined in 9.2.2 of ANSI/ASHRAE Standard 116–1983 or is assigned the value of 0.25.

4.1.2 *Seasonal energy efficiency ratio for air-source units with two-speed compressors or two compressors.* For air-source units with two-speed compressors or two compressors, SEER shall be defined as the cooling seasonal energy efficiency ratio (SEER) as specified in 10.1.3 of ANSI/ASHRAE Standard 116–1983 in which the number of hours in the jth temperature bin (n_j) in the equations for the cooling capacity ($q(t_j)$) and for the power input ($E(t_j)$) is defined in Table 1 of this Appendix and in which the part-load factor [PLF] in the equation for the power input ($E(t_j)$) is defined in 4.1.1 of this Appendix.

4.1.3 *Seasonal energy efficiency ratio for air-source units with triple-capacity compressors.* [Reserved]

4.1.4 *Seasonal energy efficiency ratio for air-source units with variable-speed compressors.* For air-source units with variable-speed compressor, SEER shall be defined as the seasonal energy efficiency ratio (SEER) as specified in 2.1 of Appendix B of ARI Standard 210/240–84 in which the number of hours in the jth temperature bin (n_j) in the equations for the capacity ($q(t_j)$) and for the power input ($E(t_j)$) is defined in Table 1 of the appendix and in which the part-load factor (PLF) in the equation for the power input ($E(t_j)$) is defined in 4.1.1 of this appendix.

The SEER shall be determined by the method for two speed or two compressor units, as specified in ANSI/ASHRAE Standard 116–1983 and ARI Standard 210/240–84, and in accordance with the following changes. The capacity for the unit modulating at the intermediate compressor speed (k=v) at any temperature (t_j) is determined by:

$$q^{k=v}(t_j) = q^{k=v}(87) + M_q\,(t_j - 87)$$

Where: $q^{k=v}(87)$ = the capacity of the unit at 87°F determined by the intermediate cooling steady-state test

M_q = slope of the capacity curve for the intermediate compressor speed (k=v)

$$M_q = \frac{Q_{ss}^{k=1}(82) - Q_{ss}^{k=1}(67)}{82 - 67} * (1 - N_q) + N_q * \frac{Q_{ss}^{k=2}(95) - Q_{ss}^{k=2}(82)}{95 - 82}$$

$$N_q = \frac{Q_{ss}^{k=v}(87) - Q_{ss}^{k=1}(87)}{Q_{ss}^{k=2}(87) - Q_{ss}^{k=1}(87)}$$

Once the equation for $q^{k=v}(t_j)$ has been determined, the temperature where $q^{k=v}(t_j) = BL(t_j)$ can be found. This temperature is designated as (t_{vc}) and replaces 87 °F in the equations for Case II in Appendix B of ARI Standard 210/240–84.

The electrical power input for the unit operating at the intermediate compressor speed (k=v) and the temperature (t_{vc}) is determined by:

$$E_{ss}^{k=v}(t_{vc}) = E_{ss}^{k=v}(87) + M_E\,(t_{vc} - 87)$$

where: $E_{ss}^{k=v}(87)$ = the electrical power input of the unit at 87°F determined by the intermediate cooling steady-state test

M_E = slope of the electrical power input curve for the intermediate compressor speed (k=v)

$$M_E = \frac{E_{ss}^{k=1}(82) - E_{ss}^{k=1}(67)}{82 - 67} * (1 - N_E) + N_E \frac{E_{ss}^{k=2}(95) - E_{ss}^{k=2}(82)}{95 - 82}$$

$$N_E = \frac{E_{ss}^{k=v}(87) - E_{ss}^{k=1}(87)}{E_{ss}^{k=2}(87) - E_{ss}^{k=1}(87)}$$

Once $E_{ss}^{k=v}(t_{vc})$ has been determined, it replaces $E_{ss}^{k=v}(87)$ in the equations for Case II in Appendix B of ARI Standard 210/240–84.

4.1.5 *Seasonal energy efficiency ratio for split-type ductless systems.* For split-type ductless systems, SEER shall be defined as specified in 4.1.1 of this appendix for each combination of indoor coils to be used with a common outdoor unit.

4.1.6 *Seasonal energy efficiency ratio and capacity for untested combinations of split-system central air conditioners.*

For untested combinations of split-system central air conditioners, the capacity at 95 °F (Q_x) and the seasonal energy efficiency ratio ($SEER_x$) are determined by the following equations:

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$$Q_x = [Q_m + 3.413 * P_{F,m}] * F_c^{0.37} * F_e^a - 3.413 * P_{F,x}$$

$$SEER_x = SEER_m \left(\frac{Q_x}{Q_m}\right)_{82} \left(\frac{P_x}{P_m}\right)_{82}^{-1} F_{TXV}$$

where:

$$\left(\frac{Q_x}{Q_m}\right)_{82} = \left[1 + \frac{3.25 * P_{F,m}}{Q_m}\right] * F_c^{0.35} * F_e^a - 3.25\,\frac{P_{F,x}}{Q_m}$$

$$\left(\frac{P_x}{P_m}\right)_{82} = 0.8 * F_c^{0.14} * F_e^b + 0.1\,\frac{P_{F,x}}{P_{F,m}} + 0.1$$

$$a = \begin{cases} -0.15 & \text{for } F_e \geq 1 \\ 0 & \text{for } F_e < 1 \end{cases}$$

$$b = \begin{cases} 0 & \text{for } F_e \geq 1 \\ -0.2 & \text{for } F_e < 1 \end{cases}$$

F_c = indoor coil scaling factor, as determined in 4.1.6.1 of this Appendix

F_e = expansion device scaling factor, as determined in Table 6 of this Appendix

F_{TXV} = thermostatic expansion valve factor, as determined in Table 6 of this Appendix

$P_{F,m}$ = power input to the indoor fan of the matched system, as determined in 4.1.6.3 of this Appendix

$P_{F,x}$ = power input to the indoor fan of the mixed system, as determined in 4.1.6.4 of this Appendix

Q_m = capacity at 95°F of the matched system, as reported in the current ARI Directory of Certified Unitary Air-Conditioners and Unitary Air-Source Heat Pumps

$\left(\frac{Q_x}{Q_m}\right)_{82}$ = ratio of the capacities of the mixed system to the matched system at 82°F

$\left(\frac{P_x}{P_m}\right)_{82}$ = ratio of the power of the mixed system to the matched system at 82°F

$SEER_m$ = seasonal energy efficiency ratio of the matched system, as reported in the current ARI Directory of Certified Unitary Air-Conditioners and Unitary Air-Source Heat Pumps

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4.1.6.1 *Indoor coil scaling factor.* The indoor coil scaling factor (f_c) determined by the following equation:

$$F_c = \frac{Q_{c.x}}{Q_{c.m}}$$

where:

$Q_{c.x}$ = cooling capacity of the mixed coil at the air mass flow rate specified for the matched system

$Q_{c.m}$ = cooling capacity of the matched coil at the indoor-air volumetric flow rate (CFM_m) at which the matched system capacity (Q_m) was measured. If CFM_m is not known, it can be determined by:

$$CFM_m = \frac{425 * Q_m}{12{,}000}$$

Capacities of the matched and mixed coils shall be determined by the same method and at the following conditions: Inlet air conditions of 80 °F dry bulb and 67 °F wet bulb; 45 °F refrigerant saturation temperature; and the same refrigerant superheat at the evaporator outlet. If coil capacities are obtained by means of a catalog or computer simulation, the same catalog or computer simulation shall be used for both coils. Coil material and geometry (e.g., inside tube diameter, tube staggering, fin spacing, fin thickness, fin shape, and number of tube depth rows) shall be accounted for by the method used. That is, the methodology used must have these parameters as independent variables. This rating procedure cannot be used if F_c is smaller than 0.8. If the ratio of $Q_{c.x}/Q_{c.m}$ is greater than 1.3, then F_c shall be defined as 1.3. If the rating is calculated for a heat pump system able to operate in the heating mode, two additional conditions have to be satisfied:

(1) The internal volume of the mixed indoor coil assembly shall be within 100–120 percent of the internal volume of the matched coil assembly; or shall not exceed the volume of the matched coil assembly; or shall not exceed the volume of the largest coil certified with a given condensing unit by the condensing unit manufacturer, which ever is largest.

(2) Condensing capacity of the mixed coil shall be within 100–120 percent of capacity of the matched coil; or shall not exceed the capacity of the largest certified coil, whichever is largest.

4.1.6.2 *Expansion device scaling factor.* The expansion device scaling factor (F_e) is the ratio of refrigerant mass flow rates through the mixed and matched expansion devices at the same operating conditions and depends on the types of matched and mixed expansion devices used. Values for F_e are reported in Table 6 of this appendix. The rating procedure shall not be used if:

—The mixed system has a combination of capillary tubes or orifices connected in series;

—The matched system has a combination of capillary tubes or orifices connected in series unless the mixed system has a TXV;

—The matched system has a TXV and the mixed system has either a capillary tube or an orifice, unless the condensing unit manufacturers certifies also a system which a TXV is replaced by a capillary tube or orifice type expansion device. In such a case this system may be considered as a matched system and its performance data may be used for calculation of performance of the mixed system;

—The expansion device scaling factor, F_e, is outside the range 0.95–1.35 for systems operating in the cooling mode only;

—The expansion device scaling factor, F_e, is outside the range 1.00–1.25 for systems operating in both the heating and cooling mode.

For Cases I to IV, F_e shall be determined below, where subscripts $_i$ and $_j$ correspond to the number of capillary tubes or orifices connected in parallel in the mixed and matched expansion devices, respectively. D denotes the inner diameter. L denotes the length of a capillary tube or an orifice in inches. The inner diameter and length are to be measured to an accuracy of ±1.5%. Subscripts $_x$ and $_m$ refer to the mixed and matched expansion devices, respectively.

Case I

For a matched system and a mixed system, both consisting of capillary tubes, Fe shall be defined as:

$$F_e = \frac{\Sigma\ \Phi_{x.i}}{\Sigma\ \Phi_{m.j}}$$

The flow factors $\Phi_{x.i}$ and $\Phi_{m.j}$ for capillary tubes in the mixed and matched systems are determined by their geometry and by the 1983 ASHRAE Handbook, Equipment Volume, Chapter 20, Figure 38.

Case II

For a matched system consisting of capillary tubes and a mixed system consisting of orifices, F_e shall be defined as:

$$F_e = \frac{\Sigma\ \Phi_{x.i}}{109.6\ n_j}$$

where:

$$\Phi_{x.i} = \frac{72200\ D^2_{x.i}}{[0.58 + 0.008\ (L_{x.i}/D_{x.i})]^{4.5}}$$

$\Phi_{m.j}$ = as defined above in Case I

Case III

For a matched system consisting of orifices and a mixed system consisting of capillary tubes, F_e shall be defined as:

$$F_e = \frac{109.6\ \Sigma\ \Phi_{x.i}}{\Sigma\ \Phi_{m.j}}$$

where:

$\Phi_{x.i}$ = as defined above in Case I

$$\Phi_{m.j} = \frac{72200\ D^2_{m.j}}{[0.58 + 0.008\ (L_{m.j}/D_{m.j})]^{4.5}}$$

Case IV

For a matched system and a mixed system, both consisting of orifices, F_e shall be defined as:

$$F_e = \frac{\Sigma\ \Phi_{x.i}}{\Sigma\ \Phi_{m.j}}$$

where:

$\Phi_{x.i}$ = as defined in Case II

$\Phi_{m.j}$ = as defined in Case III

4.1.6.3 *Power input to the indoor fan of the matched system.*

For matched systems equiped with indoor fans, the power input to the indoor fan ($P_{f.m}$) shall be measured in accordance with ARI Standard 210/240–84 and at the same indoor air volumetric flow rate (CFM_m) at which the capacity of the matched system (Q_m) was measured. If CFM_m is not known, it shall be defined as:

$$CFM_m = \frac{425 Q_m}{12{,}000}$$

For matched systems not equipped with indoor fans, $P_{f.M}$ shall be defined as:

$P_{f.M} = 0.365\ CFM_m$

4.1.6.4 *Power input to the indoor fan of the mixed system.*

For mixed systems equipped with indoor fans, the power input to the indoor fan ($P_{f.x}$) shall be measured in accordance with ARI Standard 210/240–84 and at the same indoor air volumetric flow rate (CFM_x) at which the capacity of the mixed system (Q_x) was measured. For mixed systems not equipped with indoor fans, $P_{f.x}$ shall be defined as:

$P_{f.x} = 0.365\ CFM_x$

4.2 *Heating seasonal performance factor for air-source units.* The heating seasonal performance factor (HSPF) shall be expressed in Btu per watt-hour. For each of the six regions specified in Table 2 of this appendix, a separate HSPF shall be determined for the standardized maximum DHR, the standardized minimum DHR and for all other standardized DHR's (See Table 3 of this Appendix) between the maximum and minimum values.

For air-source units that are equipped with "demand defrost control systems", the value for HSPF, as determined above shall be multiplied by an enhancement factor, F_{def}, to compensate for improved performance not measured in the Frost Accumulation Test.

The factor, F_{def} depends on the number of defrost cycles in a 12-hour period (n) and should be calculated as follows:

$$F_{def} = 1 + 0.04\ \frac{N-1}{7}$$

Where:

n = 720/t, or 8, whichever is smaller

t = length of the defrost accumulation test period in minutes

4.2.1 *Heating seasonal performance factor for air-source units with single-speed compressors.* For air-source units with single-speed compressors, HSPF shall be defined as the heating seasonal performance factor (HSPF) as specified in 10.2.2 of ANSI/ASHRAE Standard 116–1983 multiplied by 3.413 Btu/watt-hour, with the following added provisions. One, the number of hours in the jth temperature bin (n_j) in the equations for HSPF and for the supplementary resistance heat term (RH (t_j)) is defined in Table 2 of this appendix: Two, the part-load factor (PLF) in all the equations HSPF is defined as:

$$PLF = \begin{cases} 1 - \exp\ (-E_F(HLF^{0.4})), & \text{for HLF} \leq 0.70 \\ 1 - \dfrac{(1 - HLF)\,(1 - PLF(0.70))}{0.30}, & \text{for HLF} > 0.70 \end{cases}$$

where:

E_F = exponential factor and is defined as:

$$E_F = 1.9\ \ln \frac{1.25}{C_D}$$

HLF = heating load factor, as defined in 10.1.2 of ANSI/ASHRAE Standard 116–1983

PLF(0.70) = part-load factor at a heating load factor of 0.70, as determined above

C_D = degradation factor, as defined in 9.2.2 of ANSI/ASHRAE Standard 116–1983 or is assigned the value of 0.35

4.2.2 *Heating seasonal performance factor for air-source units with two-speed compressors or two compressors.* For air-source units with two-speed compressors or two compressors, HSPF shall be defined as the heating seasonal performance factor (HSPF) as specified in 10.2.3 of ANSI/ASHRAE Standard 116–1983 multiplied by 3.413 Btu/watt-hour in which the number of hours in the jth temperature bin (n_j) in the equations for HSPF and for the supplementary resistance heat term (RH (t_j)) is defined in Table 2 of this appendix and in which the part-load factor (PLF) in the equation for the power input (E (t_j)) is defined in 4.1.2 of this appendix.

4.2.3 *Heating seasonal performance factor for air-source units with trible-capacity compressors.* [Reserved]

4.2.4 *Heating seasonal performance factor for air-source units with variable-speed compressors.* For air-source units with variable-speed compressors, HSPF shall be defined as the heating seasonal performance factor (HSPF) as specified in 2.2 of Appendix B of ARI Standard 210/240–84 multiplied by 3.413 Btu/hr in which the number of hours in the jth temperature bin (n_j) in the equations for HSPF and for supplementary resistance heat term (RH (t_j)) is defined in Table 2 of this Appendix and in which the part-load factor (PLF) in the equation for the power input (E(t_j)) is defined in 4.2.1 of this appendix.

The HSPF shall be determined by the method for two speed or two compressor units, as specified in ANSI/ASHRAE Standard 116–1983 and ARI Standard 210/240–84, and in accordance with the following changes. The capacity for the unit modulating at the intermediate compressor speed (k = V) at any temperature (t_j) is determined by:

$$q^{k=v}(t_j) = q^{k=v}\ (35) + M_q\ (t_j - 35)$$

where: $q^{k=v}(35)$ = the capacity of the unit at 35°F determined at the intermediate compressor speed (k=v) in the frost accumulation test

M_q = slope of the capacity curve for the intermediate compressor speed (k=v)

$$M_q = \frac{Q_{ss}^{k=1}\ (62) - Q_{ss}^{k=1}\ (47)}{62 - 47} * (1 - N_q) + N_q\ \frac{Q_{ss}^{k=2}\ (47) - Q_{ss}^{k=2}\ (17)}{47 - 17}$$

$$N_q = \frac{Q_{ss}^{k=v}\ (35) - Q_{ss}^{k=1}\ (35)}{Q_{ss}^{k=2}\ (35) - Q_{ss}^{k=1}\ (35)}$$

Once the equation for $q^{k=v}(t_j)$ has been determined, the temperature where $q^{k=v}(t_j) = BL(t_j)$ can be found. This temperature is designated as t_{VH}. A separate t_{VH} shall be determined for each design heating requirement.

The electrical power input for the unit operating at the intermediate compressor speed (k=v) and at the temperature (t_{VH}) is determined by:

$$E_{ss}^{k=v}(t_{VH}) = E_{ss}^{k=v}(35) + M_E(t_{VH}$$

where: $E_{ss}^{k=v}(35)$ = the electrical power input of the unit at 35°F determined at the intermediate compressor speed (k=v) in the frost accumulation test

M_E = slope of the electrical power input curve for the intermediate compressor speed (k=v)

$$M_E = \frac{E_{ss}^{k=1}(62) - E_{ss}^{k=1}(47)}{62 - 47} * (1 - N_E) + N_E \frac{E_{ss}^{k=2}(47) - E_{ss}^{k=2}(17)}{47 - 17}$$

$$N_E = \frac{E_{ss}^{k=v}(35) - E_{ss}^{k=1}(35)}{E_{ss}^{k=2}(35) - E_{ss}^{k=1}(35)}$$

The following section replaces Case II in section 2.2 of ARI 210/240-84.

Case II

When the compressor speed varies between the maximum speed (k=2) and minimum speed (k=1) such that k=v to satisfy the building load at temperature t_j evaluate the following equations:

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$$q_{ss}^{k=v}(t_j) = BL(t_j)$$

where: $q_{ss}^{k=v}(t_j)$ = steady-state capacity delivered by the unit at any speed between the minimum and maximum compressor speeds at temperature t_j

when $t_j \geq t_{VH}$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(t_{VH}) + \frac{E_{ss}^{k=1}(t_3) - E_{ss}^{k=v}(t_{VH})}{t_3 - t_{VH}} * (t_j - t_{VH})$$

where: $E_{ss}^{k=v}(t_j)$ = the electrical power input required by the unit at temperature t_j and at a variable compressor speed between the minimum and maximum compressor speeds

$E_{ss}^{k=v}(t_{VH})$ = the electrical power input required by the unit at temperature t_{VH} and at the intermediate compressor speed (k=v), as determined above

$E_{ss}^{k=1}(t_3)$ = the electrical power input required by the unit at temperature t_3 and at the minimum compressor speed

t_3 = temperature at which $q_{ss}^{k=1}(t_j) = BL(t_j)$

when $t_j < t_{VH}$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(t_{VH}) + \frac{E_{ss}^{k=2}(t_4) - E_{ss}^{k=v}(t_{VH})}{t_{VH} - t_4} * (t_{VH} - t_j)$$

where: $E_{ss}^{k=2}(t_4)$ = the electrical power input required by the unit at temperature t_4 and at the maximum compressor speed

t_4 = temperature at which $q_{ss}^{k=2}(t_j) = BL(t_j)$

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For air-source units with variable-speed compressors that are equipped with "demand defrost control systems", the value for HSPF, as determined above, shall be multiplied by an enhancement factor of 1.04 to compensate for improved performance not measured in the Frost Accumulation Test.

4.2.5 *Heating seasonal performance factor for split-type ductless systems.* For split-type ductless systems, HSPF shall be defined as specified in section 4.2.1 of this appendix. Separate values of HSPF shall be determined for each combination of indoor coils to be used with a common outdoor coil.

4.2.6 *Heating seasonal performance factor for untested combinations of split-system central air conditioners.* [Reserved]

4.3 *Annual performance factor for air-source units.* The annual performance factor (APF) shall be expressed in Btu per watt-hour. For each of the six regions in Table 2 of this appendix, a separate APF shall be determined for the standardized maximum DHR, the standardized minimum DHR and for all other standardized DHR's (See Table 3 of this appendix) between the maximum and minimum values. APF shall be defined as:

$$APF = \frac{[CLH * Q_{ss}(95)] + [HLH * DHR * C]}{\frac{CLH * Q_{ss}(95)}{SEER} + \frac{HLH * DHR * C}{HSPF}}$$

where:

CLH = cooling load hours for a specific location as reported in Figure 1 of this appendix

$Q_{ss}(95)$ = Steady state capacity as measured in Test A

HLH = heating load hours for a specific location as reported in Figure 2 of this appendix

DHR = standardized design heating requirement

C = adjustment factor which serves to adjust the calculated design heating load hours to the actual heating load hours experienced by a heating system and is 0.77

SEER = seasonal energy efficiency ratio as determined by 4.1 of this appendix

HSPF = heating seasonal performance factor as determined by 4.2 of this appendix

4.4 *Seasonal energy efficiency ratio for earth-coupled heat pumps and ground water-source heat pumps.* The seasonal energy efficiency ratio (SEER) shall be expressed in Btu per watt-hour. For each of six regions specified in Table 4 of this Appendix, SEER shall be determined by:

$$SEER = SEER(70) - \frac{70 - T_w}{70 - 50} * [SEER(70) - SEER(50)]$$

where:

SEER(70) = SPLF * EER(70)

SEER(50) = SPLF * EER(50)

T_w = ground water temperature for the respective region and is reported in Table 4 of this Appendix

EER(70) = energy efficiency ratio at a ground water temperature of 70 °F, as determined by 5.1.4.1c of ANSI/ARI Standard 325–85

EER(50) = energy efficiency ratio at a ground water temperature of 50 °F, as determined by section 5.1.4.1b of ANSI/ARI Standard 325–85

SPLF = seasonal part-load factor, and is assigned the value of 0.90

4.5 *Heating seasonal performance factor for earth-coupled heat pumps and ground water-source heat pumps.* The heating seasonal performance factor (HSPF) shall be expressed in Btu per watt-hour. For each of the six regions specified in Table 4 of this appendix, a separate HSPF shall be determined for the standardized maximum DHR, the standardized minimum DHR and all other standardized DHR's (See Table 3 of this appendix) between the maximum and minimum values.

$$HSPF = HSPF(70) - \frac{70 - T_w}{70 - 50} * [HSPF(70) - HSPF(50)]$$

Where:

HSPF (70) = SPLF * 3.412 * COP (70)

HSPF (50) = SPLF * 3.412 * COP (50)

T_w = ground water temperature for the respective region and is reported in Table 4 of this Appendix

SPLF = seasonal part-load factor, and is assigned the value of 0.85

4.5.1 *Heating seasonal performance factor for units without supplementary resistance heat.* For units without supplementary resistance heat, HSPF shall be defined as:

COP(70) = coefficient of performance at a ground water temperature of 70 °F, as determined by section 5.1.4.1c of ANSI/ARI Standard 325–85

COP(50) = coefficient of performance at a ground water temperature of 50 °F, as determined by section 5.1.5.1d of ANSI/ARI Standard 325–85

3.412 = conversion factor of 3.412 Btu per watt-hour

4.5.2 *Heating seasonal performance factor for units with supplementary resistance heat.* For units with supplementary resistance heat, HSPF shall be defined as specified in section 10.2.2 of ANSI/ASHRAE Standard 116–1983, with the following added provisions. One, the number of hours in the jth temperature bin (n_j) in the equations for HSPF and for supplementary resistance heat term ($RH(t_j)$) shall be defined in 4.2.1 of this appendix. Two, the heat pump low temperature cut-out factor shall be assigned the value of 1.0. Three, the part-load factor (PLF) shall be assigned the value of 0.85. Four, the total power input ($E(t_j)$) shall be equal to the steady-state power input at a constant ground water temperature ($E_{ss}(T_w)$), which shall be defined as:

$$E_{ss\text{-}H}(T_w) = E_{ss\text{-}H}(50) + [E_{ss\text{-}H}(70) - E_{ss\text{-}H}(50)] * \frac{T_w - 50}{70 - 50}$$

Where:

$E_{ss\text{-}H}(50)$ = steady-state power input during heating at a ground water temperature of 50 °F, as determined by section 5.1.4.1c of ANSI/ARI Standard 325–85

$E_{ss\text{-}H}(70)$ = steady-state power input during heating at a ground water temperature of 70 °F, as determined by section 5.1.4.1d of ANSI/ARI Standard 325–85

T_w = ground water temperature for the respective region and is reported in Table 4 of this Appendix

For regions I, II, III, IV and VI, the maximum DHR, the standardized DHR reported in Table 4 of this appendix, nearest to the greater of either $Q_{ss\text{-}H}(T_w)$ or:

$$DHR_{MAX} = 2\ Q_{ss\text{-}C}(T_w) * (65 - T_{OD})$$

where:

$$Q_{ss\text{-}H}(T_w) = Q_{ss\text{-}H}(50) + [Q_{ss\text{-}H}(70) - Q_{ss\text{-}H}(50)] * \frac{T_w - 50}{70 - 50}$$

$$Q_{ss\text{-}C}(T_w) = Q_{ss\text{-}C}(50) + [Q_{ss\text{-}C}(70) - Q_{ss\text{-}C}(50)] * \frac{T_w - 50}{70 - 50}$$

T_{OD} = outdoor design temperature, as reported in Table 4 of this Appendix

$Q_{ss.H}(50)$ = steady-state heating capacity at a ground water temperature of 50 °F, as determined according to the testing requirements of 5.1, 5.1.3 and 5.1.4.1d of ANSI/ARI Standard 325–85

$Q_{ss.H}(70)$ = steady-state heating capacity at a ground water temperature of 70 °F, as determined according to the testing requirements of 5.1, 5.1.3 and 5.1.4.1c of ANSI/ARI Standard 325–85

$Q_{ss.C}(50)$ = steady-state cooling capacity at a ground water temperature of 50 °F, as determined according to the testing requirements of 5.1, 5.1.3 and 5.1.4.1b of ANSI/ARI Standard 325–85

$Q_{ss.C}(70)$ = steady-state cooling capacity at a ground water temperature of 70 °F, as determined according to the testing requirements of 5.1, 5.1.3 and 5.1.4.1a of ANSI/ARI Standard 325–85

For Regions I, II, III, IV and VI, the minimum DHR, which is rounded off to the nearest standardized DHR reported in Table 4 of this appendix, is the lesser of either $Q_{ss.H}(T_W)$ or:

$$DHR_{MIN} = Q_{ss.C}(T_W) * [65-T_{OD}]$$

For Region V, the maximum DHR is the greater of either $Q_{ss.H}(T_W)$ or 2.2 times $Q_{ss.C}(T_W)$ and the minimum DHR is the lessor of either $Q_{ss.H}(T_W)$ or $Q_{ss.C}(T_W)$. Both the maximum and minimum values of DHR are rounded off to the nearest standardized DHR reported in Table 4 of this appendix.

4.6 *Annual performance factor for earth-coupled heat pumps and ground water-source heat pumps.* The annual performance factor (APF) shall be expressed in Btu per watt-hour. For each of the six regions specified in Table 4 of this appendix, a separate APF shall be determined for each combination of DCR's and DHR's between and including the maximum and minimum values. APF is defined as:

$$APF = \frac{[CLH * DCR] + [HLH * DHR * C]}{\frac{CLH * DCR}{SEER} + \frac{HLH * DHR * C}{HSPF}}$$

where:

CLH = cooling load hours for a specific location as reported in Table 4 of this Appendix

HLH = heating load hours for a specific location as reported in Table 4 of this Appendix

DHR = standardized design heating requirement

C = adjustment factor which serves to adjust the calculated design heating load hours to the actual heating load hours experienced by a heating system and is 0.77

SEER = seasonal energy efficiency ratio as determined by 4.4 of this Appendix

HSPF = heating seasonal performance factor as determined by 4.5 of this Appendix

For all regions, the maximum DCR is rounded off to the standardized DCR reported in Table 4 of this appendix nearest to $Q_{ss.C}(T_W)$. For region IV, the minimum DCR is the lesser of either $Q_{ss.C}(T_W)$ or $Q_{ss.H}(T_W)$ divided by 2.2. For Regions I, II, III, IV and VI, the minimum DCR is the lesser of either $Q_{ss.H}(T_W)$ or:

$$DCR_{MIN} = \frac{2\ Q_{ss.C}(T_W)}{60} * [65-T_{OD}]$$

4.7 *Estimated annual operating cost for earth-coupled heat pumps and ground water-source heat pumps.* For earth-coupled heat pumps and ground water-source heat pumps, the cooling portion of the estimated annual operating cost (A_C) at each design cooling requirement (DCR) for each region is:

$$A_C = \frac{CLH * DCR}{SEER} 0.001 * P$$

where:

CLH = representative average use cycle for cooling and is 1,000 hours

DCR = as defined in 4.6 of this Appendix

SEER = as defined in 4.4 of this Appendix

0.001 = conversion factor of 0.001 kilowatt per watt

P = representative average unit cost of electricity in dollars per kilowatt-hour, as provided pursuant to 323(b)(2) of the Act

For earth-coupled heat pumps and ground water-source heat pumps, the heating portion of the estimated annual operating cost (A_H) at each design heating requirement (DHR) for each region is:

$$A_H = \frac{HLH * DHR * C}{HSPF} * 0.001 * P$$

where:

HLH = representative average use cycle for heating and is 2,080 hours

DHR = as defined in 4.6.1 of this Appendix

C = as defined in 4.6.1 of this Appendix

HSPF = as defined in 4.5 of this Appendix

0.001 = conversion factor of 0.001 kilowatt per watt

P = representative average unit cost of electricity in dollars per kilowatt-hour, as provided pursuant to 323(b)(2) of the Act

4.8 *Estimated regional annual operating cost for earth-coupled heat pumps and ground water-source heat pumps.* For earth-coupled heat pumps and ground water-source heat pumps, a separate estimated regional annual operating cost shall be determined for each combination of standardized design cooling and heating requirements between the maximum and minimum values. The estimated regional annual operating cost shall be determined by the method in 4.7 of this Appendix in which Tables 1, 2 and 3 of this appendix are used to determine the cooling load hours (CLH), heating load hours (HLH) and ground water temperature (T_W). Further, the seasonal energy efficiency ratio (SEER) and seasonal heating performance factor (HSPF) are adjusted for the respective value of T_W in each region.

Table 1.—Distribution of Temperature Bin Hours for Cooling

Bin No. (i)	Representative Bin temperature (Ti)	Temperature Bin Hours
1	67	214
2	72	231
3	77	216
4	82	161
5	87	104
6	92	52
7	97	18
8	102	4

Table 2.—Distribution of Temperature Bin Hours for Cooling

Bin No. (i)	Representative Bin temperature (Ti)	Temperature Bin Hours for each region					
		I	II	III	IV	V	VI
1	62	218	288	266	297	291	311
2	57	179	236	248	250	253	566
3	52	145	204	241	232	236	591
4	47	97	179	240	209	209	561
5	42	61	140	236	225	214	388
6	37	31	110	206	245	239	209
7	32	14	70	161	263	260	64
8	27	4	30	82	196	258	22
9	22	1	10	37	124	204	8
10	17	0	3	15	81	151	0
11	12	0	0	9	58	129	0
12	7	0	0	4	29	105	0
13	2	0	0	2	14	80	0
14	−3	0	0	0	5	50	0
15	−8	0	0	0	2	29	0
16	−13	0	0	0	0	14	0
17	−18	0	0	0	0	6	0
18	−23	0	0	0	0	3	0

Table 3.—Standardized Design Cooling and Heating Requirements (Btu/hr)

5,000	25,000	50,000	90,000
10,000	30,000	60,000	100,000
15,000	35,000	70,000	110,000
20,000	40,000	80,000	130,000

TABLE 4.—REGIONAL COOLING LOAD HOURS (CLH), HEATING LOAD HOURS (HLH), OUTDOOR DESIGN TEMPERATURE (T_{OD}) AND MEAN GROUND-WATER TEMPERATURE (T_W)

Region	CLH	HLH	T_{OD}	T_W
I	2,400	750	97	72
II	1,800	1,250	27	68
III	1,200	1,750	17	62
IV	800	2,250	5	53
V	400	2,750	−10	45
VI	200	2,750	30	55

TABLE 5.—TEST TOLERANCES FOR STEADY-STATE PERFORMANCE TESTS FOR EARTH-COUPLED AND GROUND WATER-SOURCE HEAT PUMPS

	Test operating tolerance [1]	Test condition tolerance [2]
Indoor dry-bulb, °F:		
Entering	2.0	0.5
Leaving	2.0	
Indoor wet-bulb, °F:		
Entering	1.0	0.3
Leaving	1.0	
Outdoor water, bulb, °F:		
Entering	0.5	0.2
Leaving	0.5	
Water flow, percent	2	
External resistance to air flow, inches of water	0.05	0.02
Electrical voltage, percent	2.0	

[1] Test Operating Tolerance is the maximum permissible variation of any measurement. When expressed as a percentage, the maximum allowable variation is the specified percentage of the average value.

[2] Test Condition Tolerance is the maximum permissible variation of the average value of the measurement from the standard or desired test condition.

TABLE 6.—EXPANSION DEVICE SCALING FACTOR, (F_s) and Thermostatic Expansion Value Factor (F_{TXV}) for Matched Systems

Expansion device		F_s	F_{TXV}
Matched system	Mixed system		
TXV, no bleed	TXV, no bleed [1]	1.0	1.000
TXV, no bleed	TXV, w/bleed [1]	1.0	0.575
TXV, w/bleed	TXV, no bleed [1]	1.0	1.025
TXV, w/bleed	TXV, w/bleed [1]	1.0	1.000
Capillary or orifice	TXV, no bleed [2]	1.0	1.050
Capillary or orifice	TXV, w/bleed [2]	1.0	1.025
Capillary	Capillary	Case I	1.000
Capillary	Orifice	Case II	1.000
Orifice	Capillary	Case III	1.000
Orifice	Orifice	Case IV	1.000

[1] The mixed TXV shall have equivalent capacity and same superheat setting as the matched TXV.

[2] The mixed TXV shall have equivalent capacity as the matched expansion device.

[FR Doc. 86-22486 Filed 10-6-86; 8:45 am]

BILLING CODE 6450-01-M

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federal register

Tuesday
October 7, 1986

Part III

Environmental Protection Agency

40 CFR Part 704
Proposed Comprehensive Assessment Information Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS-82013A; FRL 3037-7]

Proposed Comprehensive Assessment Information Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a standard approach to gathering information on the manufacture, importation, and processing of chemical substances and mixtures under section 8(a) of the Toxic Substances Control Act (TSCA). This model rulemaking, titled the Comprehensive Assessment Information Rule (CAIR), would establish uniform reporting and recordkeeping requirements and a list of questions from which specific information requests would be assembled on a chemical-by-chemical basis. This rule will be used to obtain information needed by EPA and other Federal agencies to support the assessment and regulation of chemical substances and mixtures. EPA is proposing specific reporting requirements for 47 chemicals at this time. Since EPA expects to add other chemicals to the rule in the future, any chemical manufacturer, importer, or processor is potentially subject to this proposed rule.

DATE: Comments on this proposed rule must be received no later than January 5, 1987.

ADDRESS: Written comments must bear the docket control number OPTS-82013A. An original and two copies should be sent to: TSCA Public Information Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

All written comments on this proposed rule will be available for public inspection in Rm. NE-G004 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Telephone Number: (202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes the Administrator of EPA to promulgate rules which require manufacturers, importers, and processors of chemical substances and mixtures (referred to hereafter as substances or chemicals) to maintain records and submit information on such substances. Failure to comply fully with any provision of a section 8(a) rule is a violation of section 15 of TSCA and would subject the violator to penalties under TSCA sections 16 and 17.

EPA proposes in this rulemaking to establish a standard approach to gathering information on the manufacture, importation, and processing of substances. This standard approach or model rule is called the Comprehensive Assessment Information Rule (CAIR). It would establish uniform reporting and recordkeeping requirements and a standardized reporting form that can be adapted to specific substances.

II. Background

A. Description of Rule

The CAIR is a model rule; that is, a rule with generic reporting and recordkeeping requirements, and a standard list of questions. The main objectives of the CAIR are resource savings by EPA and industry. These objectives will be met by: (1) Reducing duplicative reporting by industry, (2) reducing familiarization time for industry responding to information requests, and (3) reducing Agency resources needed to develop information-gathering rules and to process the data reported.

It is EPA's intention to amend the CAIR from time to time solely for purposes of adding chemicals to the rule. Unless absolutely necessary, no other changes will be made to the regulatory text. Amendments will identify the substances for which there is an information need, the information requested, and the categories of persons who must provide the information. Only those questions and reporting requirements listed in the amendments must be complied with. For example, EPA may require manufacturers and processors of chemical "X" to respond to all of the questions in section 1 plus questions 2.3, 3.9, and 4.5 in the reporting form, while manufacturers and processors of chemical "Y" might be required to answer all of the questions in Section 1 plus questions 2.3, 5.9, 7.3, and 7.8.

Hereafter, when discussing amendments to the CAIR, the Agency is referring to amendments which will add chemicals to the rule but not alter any other parts of the regulatory text.

B. Intent of Rule

As stated earlier, the main objectives of the CAIR are to save EPA's and industry's resources when collecting information needed to support chemical risk assessment/management strategies.

EPA is proposing the CAIR as an improved method for gathering and maintaining information on substances. Generally, regulatory agencies gather information to support the assessment and management of chemical risk through a lengthy and costly process. First, an agency determines that a particular chemical under certain circumstances may present a risk to health or the environment. The agency then gathers readily available information about that chemical to determine courses of action. This information may support a determination that regulatory action may be appropriate, but precise information is usually needed to determine whether and to what degree regulation is required. Since this information is held by chemical manufacturers, importers, and processors and is not publicly available, the agency uses its statutory authority to gather the information.

This requires the agency to draft and publish a proposed rule, review public comments, draft and publish a final rule, and establish and maintain a database on the reported information. During this time the agency must either delay taking risk management action or take action without complete information. Because each information-gathering rule usually has unique reporting requirements, the agency also has to respond to numerous questions following the rule's promulgation.

Information-gathering rules may also be costly to the companies submitting the information. For each proposed rule, potential respondents review the requirements and, if necessary, submit comments. Following promulgation, the companies familiarize themselves with the final reporting requirements, locate the information in company files, complete the reporting forms, and submit them to the agency.

EPA's experience with model rules has shown that model rules offer several advantages for both EPA and respondents. For EPA, the advantages are: (1) The time to promulgate an amendment that adds chemicals to a model rule is one-quarter to one-third the time needed to publish a chemical-specific rule; (2) Since reporting and recordkeeping requirements are standardized, Agency review concentrates on the need for information and the information request; (3) The handling and review of completed forms is standardized; and (4) Only one database is used and needed to store submitted information.

For respondents, model rules offer the advantage of certainty. No matter the substance, many of a respondent's reporting and recordkeeping obligations are standarized—including the use of the same reporting form. This reduces familiarization time and reporting costs. Also, EPA's experience with a model rule has shown that as respondents repeatedly use a form, correct errors, and resubmit the form, significantly fewer errors occur. This also ensures that the Agency can access a complete and accurate database quicker, rather than wait for corrections to be made. Thus, with model rules the cost of resubmitting reporting forms is reduced. Moreover, a respondent's start-up costs, which are incurred in reporting for the first time on any rule, are reduced or eliminated for subsequent reporting under a model rule.

C. CAIR and Other Section 8(a) Model Rules

EPA designed this rule by building on its experience with two existing section 8(a) regulations: the TSCA Inventory Update rule (51 FR 21438; June 12, 1986) and the Preliminary Assessment Information Rule (PAIR) (40 CFR 712; 47 FR 26992; June 22, 1982). The TSCA Inventory Update Rule requires manufacturers and importers of certain chemical substances to provide EPA with basic identification, production, and site limited status information every 4 years. These same questions have been added to Section 1 of the CAIR reporting form which would be answered by each person subject to the CAIR. To ensure that a company reporting for the CAIR would not have to report for the Update rule, EPA has included an exemption in the Update rule. This exemption allows persons who would report for the CAIR to refrain from submitting subsequent Inventory Update reports so long as the CAIR reporting occurred no more than 1 year prior to the period for which Inventory Update reporting is required.

The Agency also designed the CAIR reporting form to include, at a minimum, questions similar to those in the PAIR. There are three basic differences between the PAIR and the proposed CAIR: (1) Only manufacturers and importers are subject to the PAIR, whereas manufacturers, importers, and processors would be potentially subject to the CAIR; (2) under the PAIR, respondents are required to answer every question in a one-page form (EPA form 7710-35), whereas the CAIR would list the specific questions from the entire form which must be answered; and (3) the PAIR form contains only basic questions on production, use, and exposure which can support preliminary assessments of chemicals, whereas the CAIR would require more detailed information because it is designed to support all stages of assessments.

At the present time, a chemical is added to the PAIR by: (1) Notice and comment rulemaking; or (2) adding a chemical to the rule automatically without notice and comment and requiring reporting within 90 days. Only chemicals listed by the Interagency Testing Committee (ITC) are added automatically.

Once the CAIR is promulgated, any office requesting basic PAIR-type information on a substance would use the CAIR to gather this information. Such additions of chemicals would be made through normal notice and comment rulemaking. The Agency is planning to amend the CAIR, at some future date, to add the ITC automatic reporting provisions. EPA will at that time withdraw the PAIR. However, until that time, ITC listed chemicals will continue to be added to the PAIR.

III. The Proposed Rule

A. An Overview

Recognizing the need for consistency between other TSCA section 8(a) rules and the CAIR, EPA has consolidated and incorporated many requirements found in other parts of the CFR into Part 704. Part 704 would provide the framework for all section 8(a) rules and would be amended as follows: The current general provisions for all TSCA section 8(a) rules, would apply to all section 8(a) chemical-specific rules, and unless otherwise stated, to the CAIR. Subpart A contains the general reporting and recordkeeping provisions for Part 704. Subpart B lists chemical specific section 8(a) rules. The regulatory text that specifies the general provisions of the CAIR would be located in Subpart C, and Subpart D would contain tables that list the substances for which there is an information need, the information requested for each substance, and the persons who must provide the information. Subpart E would contain the CAIR reporting form and instructions.

B. Who Must Report

Whenever EPA adds a substance to the CAIR, the Agency will state who is required to report on that substance (manufacturers, importers, and/or processors) and whether reporting is needed on past, current, or future activities. Persons who are required to report must answer the CAIR reporting form questions for each activity that they engage in at a plant site. For instance, if EPA were to require manufacturers of a substance to report, then a person who both manufactures and processes the substance would answer the CAIR questions for both the manufacturing and processing activities.

For some of these substances EPA is requiring processors to report. However, since many manufacturers, importers, and processors market the listed substances under names other than a systematic or easily recognizable chemical name; i.e., the chemicals are sold under tradenames, people who buy and process the chemical under a tradename may not realize that the chemical is listed on CAIR and that they are required to report. As the CAIR is currently drafted EPA has two choices. EPA may choose to require processors of a listed substance to report and EPA would expect to receive reports from only those persons who know or can reasonably ascertain that they are processing the listed substance. EPA may also choose to use a special mechanism that would provide notification to processors of their reporting obligations or would require persons to report for their customers that process the listed substance.

This proposed reporting/notification mechanism is in § 704.208 and would require the people who manufacture, import, or process a listed substance and distribute the substance under a tradename to do one of three things: Report for their customers who process the listed substance; notify their customers that the tradename substance is listed by EPA and that the customers must meet EPA reporting requirements; or provide EPA with the tradename.

People may report for their customers only if they can supply the requested information. All reporting requirements that normally apply to a processor would then apply to a person submitting on behalf of the customer. Anyone who sells a listed chemical under a tradename and who is either unable to report for their customers or who chooses not to do so, would be required to comply with one of the other options.

People may choose to notify, in writing, their customers who would be subject to reporting and inform them of the specific section in Subpart D which identifies the substance and the processor reporting requirements. The customers would be required to be notified by certified mail no later than 10 days after the effective date of the

listing of the substance. The customers would then report to EPA within 60 days of the receipt of the notification.

Each person who does not wish to report for their customers or to notify them of their reporting obligations would, within 30 days of the publication of the amendment, submit their tradenames to EPA. EPA would then publish a technical amendment adding the tradenames to the final rule. This amendment would probably appear within 1 to 2 weeks after the rule has become effective, and the processors would then have 60 days to report. Persons who do not submit tradenames or who submit them late would be required to notify their customers or report for their customers.

Persons submitting tradenames for their products could claim the link between themselves and the tradename as confidential. However, the link between the tradename and the chemical substance it represents could not be claimed as confidential since the tradename will be published in the Federal Register and its link could be determined from the earlier amendment listing the chemical substance.

The Agency requests comments on: (1) The best way to minimize the release of confidential business information; (2) ways to obtain reporting from processors of tradename substances without the assistance of manufacturers, importers, and other processors; (3) whether there is another approach to processor reporting which will be less burdensome and more efficient; and (4) whether EPA should publish all known tradenames for each substance it proposes to add to the list in Subpart D.

C. Exemptions From Reporting

All persons who manufacture, import, or process a listed substance would be subject to this rule unless they meet one or more of the standard exemptions set forth in § 704.5 or 704.210. The following persons would be exempt, unless such exemption is removed on a chemical-by-chemical basis: (1) Small manufacturers (annual sales less than 40 million dollars and annual production less than 100,000 pounds, or sales less than 4 million dollars); (2) processors and importers of articles; (3) manufacturers, importers and processors of chemicals that are manufactured, imported, or processed solely as impurities or byproducts; and (4) manufacturers and processors of research and development chemicals or nonisolated intermediates. Whenever EPA intends to remove any or all of these exemptions for reporting on a particular substance, the Agency would provide notice and comment rulemaking and the removal of the exemption would be noted in Subpart D. One new exemption, which is discussed below, would be added to § 704.210.

Since EPA is proposing to require processors to report in some instances under the CAIR, EPA is also proposing to exempt small processors. The exemption will meet the TSCA statutory mandate to prescribe a small processor exemption. A processor would be exempt: (1) If total annual parent company sales are less than 40 million dollars and the company processes less than 100,000 pounds of a listed substance at a plant site; or (2) if a processor has total annual parent company sales of less than 4 million dollars. These sales and volume limits are the same limits EPA uses to define small manufacturers. Like the small manufacturer exemption, EPA intends to revise the sales figures based on the Producer Price Index for Chemicals and Allied Products.

The small processor exemption was set with the same size limitations as the small manufacturer exemption because: (1) In the aggregate, the sales and quantities produced or processed are approximately the same for manufacturers and processors, and (2) many manufacturers are also processors and therefore are potentially subject to CAIR reporting for either or both activities. Consistent standards for both will result in an insignificant difference in information loss and will minimize confusion for the reporting industry. EPA decided not to base its exemption on the quantity produced, as the TSCA Inventory Update rule does, because this exemption would lead to an excessive loss of information.

D. Reporting Frequency and Schedule

Reporting by current manufacturers, importers, or processors will probably be the most common type of reporting for chemicals added to Subpart D. "Current manufacturers, importers, and processors" are those who have manufactured, imported, or processed a listed substance during the initial reporting period, that is, the complete fiscal year that immediately precedes the effective date of a CAIR amendment.

EPA intends to monitor certain substances more closely than others, and, therefore, for these substances will require subsequent reporting. EPA will require subsequent reporting at the time it adds a chemical to the rule, if a clear need for the reporting has been identified. Although EPA considered linking subsequent reporting to triggering events, such as increases in production, the Agency decided that subsequent reporting should be tied to specific anniversary dates—yearly intervals which follow the effective date. A subsequent reporting period would be the complete corporate fiscal year that immediately precedes a specified anniversary date of a CAIR amendment. These anniversary dates would be listed in Subpart D under the column "Time period on which to report." The time period, along with the designation of who must report, determines from whom reporting is required and the time interval on which to report. Section 704.214 defines the symbols used in Subpart D. The time period and frequency of subsequent reporting along with the end of the subsequent reporting period, if one is established, will be identified on a chemical-by-chemical basis. No generic sunset provision applies for subsequent reporting, however, for some chemicals specific provisions may be applied. The Agency solicits comments on this approach.

EPA may also require reporting from people who manufactured, imported, or processed a chemical substance prior to the initial reporting period. Since EPA does not know in which corporate fiscal year a person had most recently manufactured, imported, or processed a list substance, EPA will specify in Subpart D a range of years, not to exceed 5 years, prior to the effective date for which EPA would require reporting. If a person had manufactured, imported, or processed a listed substance in the time listed, they would be required to report on their most recently concluded corporate fiscal year in which the activity occurred.

Except for persons for whom reporting is tied to an anniversary date as specified in Subpart D, under § 704.215 all persons subject to the rule would report no later than 60 days after the effective date of the amendment listing the substance. Processors who are notified of their reporting obligation by their chemical suppliers would report within 60 days of the notice. Any person who is subject to a subsequent reporting requirement would submit a report no later than 60 days after the anniversary date specified in Subpart D.

Persons who cannot meet a reporting deadline could request a reasonable extension. These requests must be received by EPA within: 30 days after the effective date listing the substance, or, 30 days after receiving notice from a chemical supplier of the processor reporting obligations.

The Agency has considered determining the reporting period on a substance-by-substance basis, rather than a fixed 60-day period. Although a 60-day response period appears to make reporting difficult for some companies, the reporting period would actually be 104 days (44 days until the rule is effective and 60 days more to report). Further, keeping a constant reporting period for all chemicals added to the rule, is much less confusing. The Agency, however, requests comments on whether to have one constant response period or to vary the response period depending on the number of questions which must be answered.

E. Levels of Effort

Persons who are required to report would be required to respond to each part of each question of an information request. There are three permissible answers. A person may: (1) Answer the question; (2) state that it does not apply to their plant site operations; or, in certain cases, (3) state that the answer is unknown.

Under § 704.12 a person would be required to answer a required question using the level of effort associated with the question. EPA's intention for using these effort levels is to give the respondent some guidance as to what EPA expects the respondent to do in order to answer a question. These levels of effort do not go beyond the known to or reasonably ascertainable standard. Instead, they are an attempt to determine on a question-by-question basis what information is known to and reasonably ascertainable by a respondent.

There are four levels of effort. Effort level 1 restates the statutory standard—respondents must answer the question to the extent that the information is known to or reasonably ascertainable by them. If the information is known, the respondent must report it. If the information is not known, this standard allows the respondent to decide for themselves what is reasonably ascertainable. The respondent may consider it reasonable, to determine the answer by conducting a test, or through estimation. Further, if the answer is not known or reasonably ascertainable, the respondent must report "unknown." Effort level 1 is the most general level and unless otherwise stated in the question, this level would always be required.

When EPA wants to be more specific about the type of answer required, EPA would specify Effort level 2 or 3. In level 2 questions, EPA has determined that the answers are known or reasonably ascertainable. That is, if the information is known, the respondent must report it. If the information is not known, this level tells the respondent that the information is reasonably ascertainable through estimation. Respondents cannot report "unknown" for level 2 questions. Likewise, level 3 questions do not permit respondents to report "unknown." If the information is known, then the respondent must report it. If the information is not known, this standard tells the respondent that the information is reasonably ascertainable, that the respondent must ascertain the information, and that the respondent may determine the means for ascertaining the information. However, the respondent may not estimate an answer.

For level 4 questions, if respondents know the answer they must report it, if they do not know the answer, they must report "unknown"; that is, even if respondents do not know the exact answer but can estimate it, they are to report "unknown."

F. Recordkeeping

Under § 704.11, those persons subject to the requirements of the rule would retain: a copy of each report submitted, the supporting materials used to complete each report, and a copy of all notices sent to customers who are required to report along with return receipt cards. The report submitted to EPA and its supporting material would be retained for a period of between 2 and 5 years from the date of the submission of the report. The exact recordkeeping period will be established in the final rule. Notices submitted to customers, including return receipt cards, would be retained for between 2 and 5 years from the date they were sent to the customers.

G. Confidentiality

Section 14(a) of TSCA allows a person who submits information to EPA to assert a claim of confidentiality, if release of the information would reveal trade secrets or confidential commerical or financial information. Under the proposed CAIR, claims of confidentiality could be asserted only at the time information is submitted and only in the manner specified in § 704.219. Detailed instructions for asserting and substantiating confidentiality claims under this rule are contained in § 704.219. EPA's procedures for processing and reviewing confidentiality claims are set forth at 40 CFR Part 2.

Any submitter who claims information as confidential would be required to provide two copies of its submission: a complete copy of the form including all information claimed as confidential and a "sanitized" copy from which all confidential information has been deleted and replaced with generic, nonconfidential information. EPA will place the submitter's sanitized copy in the public file.

Submitters would also be required, at the time of submission, to provide substantiation for each category of information claimed as confidential. EPA intends to require substantiation on a general category basis (e.g., production volume and chemical identity) rather than on a reporting item-by-reporting item basis. The substantiation questions that submitters would have to respond to outline the analytic process the submitters should go through before asserting a claim of confidentiality and therefore will help the submitter to focus on relevant issues. EPA is committed to publicly disclose as much nonconfidential information collected under the rule as possible and therefore is proposing to require upfront substantiation of confidentiality claims and will continue to closely scrutinize claims.

In addition to providing substantiation for claims of confidentiality, submitters would also be required to provide generic information for disclosure to the public for categories of information claimed as confidential. For example, if submitter identity is claimed as confidential, the submitter must provide on its sanitized copy of its reporting form, generic information relating to its geographic location and annual sales volume. If production volume is claimed as confidential, production must be characterized on the submitter's sanitized version of its reporting. Examples of ranges include:

I. 0–100,000 kg.
II. over 100,000—1 million kg.
III. over 1 million—50 million kg.
IV. over 50 million—250 million kg.
V. over 250 million—1 billion kg.
VI. over 1 billion kg.

If use information is claimed as confidential, a generic use statement must be provided with the sanitized reporting form.

If a company fails to submit a sanitized copy of its submission to substantiate its confidentiality claims, and fails to provide required generic information, EPA would notify the company by certified mail. The respondent would have 30 days from the date of their receipt of the notice letter to submit the required second copy or substantiate its claims. If EPA does not receive the requested sanitized version, substantiation responses, or generic information, EPA would place the confidential copy of the submission in the pubic file on the 31st day after the submitter's receipt of EPA's letter. If no claim of confidentiality accompanies a

document at the time it is submitted to EPA, the document would be placed in the public file without further notice to the respondent.

EPA will attempt to provide the public with sufficient and informative access to information collected under this rule while protecting submitters' valid proprietary interests. This will be accomplished by: (1) Disclosing to the public all reported information that is not claimed as confidential; (2) disclosing submitter provided generic information in lieu of confidential information; and (3) releasing aggregates of confidential information when possible.

The Agency solicits suggestions for mechanisms for asserting confidentiality claims on the form and for submitting substantiation. EPA also requests comments on whether substantiation and generic information should be required by category, as proposed above, or on an item-by-item basis.

Commenters on an earlier public draft of this proposed rule expressed concern over the potential for releasing confidential business information (CBI) when sharing information obtained under the CAIR within EPA and with other Federal agencies. EPA feels that present and proposed security procedures will protect against any inadvertent release of confidential material. All confidential data collected under the rule would be subject to the requirements of the *TSCA Confidential Business Information Security Manual.* EPA is presently working with the participating agencies to ensure that proper physical and procedural security plans are in place to protect confidential information collected under the rule. EPA plans to store the data in a dedicated computer and to limit its use to authorized personnel.

H. The CAIR Reporting Form

EPA has compiled a comprehensive list of questions in the CAIR reporting form that provides TSCA section 8(a)(2)-type information. Since many kinds of information will be needed to support the variety of chemical risk identification, assessments, and control actions, these questions vary in type of information elements and comprehensiveness. For each listed chemical, EPA will ask only those questions that are pertinent to the risk identification, assessment, or control action. Persons subject to the CAIR would only have to answer the questions listed for the chemical in Subpart D of the rule.

The reporting form is divided into 10 sections and within each section is a list of specific questions. Altogether the form covers: plant site information; chemical identification; production, processing, and importation volumes; physical/chemical properties; environmental fate data; economic and financial information; manufacturing and processing information; waste generation and management; worker exposure; and environmental release.

Section 704.247 of the proposed rule contains instructions for the reporting form. There are instructions for all of the questions on the form, tables for converting responses to metric units, a glossary which defines key terms, and examples of completed questions.

Section 1 of the form would be completed by all respondents; the remaining parts would be completed only if specified in Subpart D. Questions in Section 1 ask for basic information for purposes of identification (e.g., plant site classification, respondent identification, and substance identification). Section 1 also contains questions for persons who sell tradename products and a certification statement for persons who had already submitted information requested in Subpart D.

Companies who voluntarily submit information to EPA or other Federal agencies are encouraged to use the CAIR form. If the chemical they are reporting on is later added to the CAIR, that company may be exempt from resubmitting the previously reported information. The company would still be required to complete and submit Section 1 of the CAIR reporting form. However, the company will be exempt from reporting any other data that were previously submitted, provided: that the previously submitted data are no more than 3 years old as of the effective data of the chemical's addition to the rule and the data are still complete and accurate. Persons who use this exemption would sign the statement in section 1 that certifies that the previously reported data meets the requirements set forth in the exemption.

As with persons who previously voluntarily reported to EPA on a chemical which later was added to the CAIR, any company which previously reported information to EPA, whether it was required or not, may be exempt from CAIR reporting provided they meet the guidelines stated above.

IV. Chemicals Listed in This Proposed Rule

After thoroughly reviewing the candidates for this rule, EPA is proposing to include 47 substances in the initial listing for the CAIR. The substances are listed in Subpart D, § 704.225, of the proposed regulatory text. The substances were nominated by two program offices in EPA and three other Federal agencies. The chemicals are substances for which: (1) The agencies know or suspect adverse health or environmental effects yet lack current exposure data; (2) The agencies believe data gaps are significant; and (3) The agencies place a priority on the need for the requested information to complete assessments of the chemicals. The substances and the Offices that nominated them are listed in the Table in this preamble. Additional background information on the chemicals is in the public record for this proposed rule.

Literature searches have been undertaken for the information requested by the offices that nominated chemicals for this rule; however, these searches did not provide the information needed to meet each requesting office's needs. A listing of the chemicals, along with the information requests, was sent for review to each office in EPA and other Federal agencies participating in the CAIR development. These offices searched their records for information on the chemicals; however, the searches proved unsuccessful. Therefore, the information needs still exist.

The following offices and agencies nominated chemicals for addition to this rule: EPA's Office of Air and Radiation, EPA's Office of Toxic Substances, the Consumer Production Safety Commission (CPSC), the Occupational Safety and Health Administration (OSHA), and the National Institute of Occupational Safety and Health (NIOSH). A total of 59 chemical nominations were made by these Offices; however, since 12 of these nominations were multiple nominations (i.e., substances nominated by 2 or more Offices), only 47 substances are listed in today's rule. The chemicals nominated by these Offices are displayed in the table in this preamble. A summary of the concerns for these chemicals and how the requested information will be used follows. More detailed discussions of each chemical are in the public record to this rulemaking.

CPSC has nominated 8 chemicals for the CAIR. These chemicals are used either in or as intermediates in the production of consumer products. Present information shows that these chemicals present health problems such as cancer, gastrointestinal necrosis, and renal toxicity. CPSC hopes that the CAIR will close the present data gap by providing information to help determine the levels of these chemicals in consumer products and consumer exposure and use.

OSHA has requested information on 7 of the chemicals listed in the proposed

CAIR. These chemicals represent a potential health hazard to a large number of workers involved in their manufacture and processing. Therefore, OSHA has requested detailed production and processing information. The CAIR information will significantly aid OSHA's assessment of the risks these chemicals pose to workers, and the actions that may be necessary to protect worker safety and health. OSHA is in the prerulemaking, information-gathering stage of its determinations.

NIOSH has requested information on one of the chemicals listed in the proposed CAIR—4,4' Methylenebis (2-chloroaniline) (MBOCA). MBOCA is a known animal carcinogen whose health effects in humans have not been adequately investigated. Potential for occupational exposure exists because there is no Federal exposure standard. OTS/EPA has promulgated a chemical specific 8(a) rule on MBOCA; however, that rule will provide information from manufacturers only. Through CAIR, NIOSH hopes to get information from processors on populations exposed and the levels of exposure to MBOCA. NIOSH hopes that the responses to the CAIR questions will assist them in identifying populations for epidemiologic study to determine the health effects of MBOCA. Given the potential for continued worker exposure in processing of MBOCA, NIOSH believes that an ongoing and comprehensive assessment of MBOCA is warranted.

The Office of Air Quality Planning and Standards (OAQPS) of the Office of Air and Radiation (OAR) has requested information on 8 of the chemicals listed in the proposed CAIR. These chemicals present potential health threats and have large production volumes. All of the chemicals nominated are volatile or emitted in particulate form to the atmosphere and can be absorbed through the respiratory tract. Human effects which result from exposure to these chemicals can include potential carcinogenic, teratogenic, or mutagenic responses; extreme eye, lung and mucous membrance irritation; or neurotoxic effects. The toxicity of these chemicals and their high level of production, has raised concerns about the potential for human health effects from ambient air exposure. OAQPS needs detailed production and exposure information to determine whether these chemicals present an actual threat to human health.

OAQPS concluded that these chemicals are undergoing, will undergo, or have undergone regulatory assessment as potentially toxic air pollutants under the Clean Air Act. OAQPS is aware of the time it will take to acquire the information under the CAIR and has planned accordingly. If the data are received after the decisions on the need to regulate are published, the data will be available by the time regulations, if necessary, are being prepared, and will therefore aid in creating the proper standards for these chemicals.

The Office of Toxic Substances (OTS) has requested information on 36 of the chemicals listed in the proposed CAIR. The chemicals have been nominated by two different Divisions of OTS and each Division's chemicals are discussed separately.

The Exposure Evaluation Division (EED) has nominated 17 of the 36 chemicals. All of these chemicals have been discovered in groundwater and may present the potential for exposure to the public. The chemicals are in two different classes: one group includes volatile organic compounds, and the other group consists of fertilizers and their co–products. All of these chemicals are being studied as part of the TSCA Groundwater Protection Strategy on which EED is working with EPA's Office of Water. The CAIR information will aid EPA in determining the sources of groundwater contamination. EED also needs information to help determine the rate of groundwater contamination. EED and the Office of Water believe that this information will help in developing regulatory strategies to identify the scope of the problem and ways to control it.

In addition, dichloromethane, tetrachloroethylene, trichloroethylene, 1,1,1-trichloroethane, CFC–113 and carbon tetrachloride are subjects of an integrated risk analysis and risk reduction project. OTS, other EPA offices, and other agencies will assess the risks associated with exposures to these chemicals, singly and in combination, and will estimate risks to workers, consumers, and the general population. EED is working with the Economics and Technology Division of OTS on this review, and some data pertaining to environmental releases have been obtained from OAR. However, there are many information gaps, and the additional data gathered by the CAIR will be of great value.

The Existing Chemical Assessment Division (ECAD) of OTS has nominated 19 of the 36 OTS chemicals. The first group of chemicals includes acid orange 7, acetamide, and Broenner's acid. Acid orange 7 is known to cause chromosome abnormalities in animals, acetamide is a known animal carcinogen, and Broenner's acid may contain the impurity beta-napthylamine a known human carcinogen. Human and environmental risk is largely unknown due to lack of available exposure data. It is for this reason that EPA has requested such a broad range of information on these chemicals. Should subsequent assessments of these chemicals indicate potential risks, OTS will consider regulations to reduce identified risks where necessary.

The second group of chemicals includes 4 chemicals that have been found in human adipose tissue. The potentially widespread exposure implied by this discovery, has prompted EPA to investigate these chemicals to find possible sources of contamination. The data received through the CAIR will be used to estimate the extent of the risk to human health and the possibility of reducing the potential for further exposures.

The third group of chemicals consists of 4 chemicals: hydroxylamine and three of its salts. The hydroxylamines are undergoing a preliminary risk assessment. The risk assessment is delayed by the lack of data on the uses of and exposures to hydroxylamines. The suspected developmental and hematological toxicity of these substances has raised EPA's concerns about these substances.

Preliminary risk assessments are being conducted by ECAD on semicarbazide, semicarbazide hydrochloride, and tetrabromoethane. These chemicals present carcinogenic, acute and chronic health concerns. OTS needs to gather current production, use, and exposure data to aid in deciding what regulatory action, if any, may be appropriate.

Risk assessments are planned for the four isomers of toluene diisocyanate (TDI). Exposure to these chemicals can cause acute and chronic adverse health effects in many physiologic systems. Of particular concern are immune and nonimmune mediated respiratory effects. Exposure scenarios of concern include: occupational exposure; exposure to persons in molding, coating and sealing trades; exposure to the general population residing in the vicinity of production, processing, and use facilities; and exposure to consumers using products containing TDI.

V. CAIR and Information Management

EPA is developing a database to store all of the reported CAIR information in a manner that: allows EPA to easily determine whether the data have already been collected under CAIR,

consolidates reports into standard formats, and protects proprietary information. The database is essential to the success of the CAIR. Offices considering the development of information-gathering rules will be able to check with the CAIR database before requesting the information from industry. This procedure will help reduce duplicative requests for information. Further, by providing the reported data to the users quickly and in the proper format, the Agency will not need to expend valuable resources to manually review each reported form.

VI. CAIR and Other Information-Gathering Mechanisms

The comprehensive nature of the CAIR and the reporting form would allow EPA in many instances to gather information for offices in EPA, and other Federal agencies; however, the CAIR is not being developed as a replacement for all other information-gathering regulations, nor has any other office delegated its information-gathering authority to the CAIR. The CAIR will be used only when it is appropriate and is the most efficient means to gather information. Other agencies or EPA offices will use their own authority under circumstances such as: (1) The chemical of interest cannot be regulated under TSCA (e.g., the chemical is not a "chemical substance" or "mixture" as defined in section 3 of TSCA); (2) the information being sought could be gathered more efficiently using another authority; or (3) the information being sought is more specific and detailed than would be elicited by the questions in the CAIR reporting form. Therefore, while other offices within EPA and other agencies would consider utilizing the CAIR for information-gathering, EPA does not expect the CAIR to be a replacement for all data-gathering regulations.

VII. Implementation of the Rule

A. The Need for Information

Prior to listing the 47 chemicals in this proposed rule, EPA searched for the requested information to determine if the information was already available. Each office and agency involved in developing the CAIR searched for this information in their data bases and the public literature; they were, however, unable to locate the requested information listed in Subpart D.

EPA intends to continue to search for requested information prior to adding chemicals to the rule. EPA has established a formal process whereby each office or agency which wants to add a chemical to the CAIR, must submit a detailed nomination sheet to the Office of Toxic Substances (OTS). The nomination sheet specifies: (1) Where the office has looked for the information it is requesting, (2) why the information is needed, and (3) what the office's concerns are about the chemical. OTS would determine whether the chemical is a potential candidate for the CAIR. Chemicals which pass OTS' initial screen are submitted to a workgroup for review. As was done for the chemicals in today's proposed rule, the workgroup (made up of representatives from program offices in EPA and other agencies) reviews the list of chemicals and information requests. If needed information is available, the requesting office is notified and the chemical withdrawn from the list of potential candidates for addition to the CAIR.

B. Budgeting for Burden

EPA has prepared an information collection request that estimates the reporting burden that the CAIR would impose. The Paperwork Reduction Act requires EPA to collect information from the public in the least burdensome way and to summarize, for the Office of Management and Budget's (OMB) review, information collection activities and their associated burden. From this process, an Information Collection Budget (ICB) is developed that specifies the total number of hours the Agency will impose on the public during a fiscal year.

The CAIR will be part of this budget process. During the summer of each year, each program office which anticipates using the CAIR, will prepare a budget item for EPA's Office of Policy Program and Evaluation (OPPE) to review. OPPE will consolidate the requests and prepare the overall Agency budget for submission to OMB. Once the budget is approved, it acts as a ceiling for information collection requests for that fiscal year. Making each office accountable for burden they impose through the CAIR will ensure that they judiciously use the rule.

C. Assistance for Submitters

Given the comprehensive nature of some questions in the CAIR reporting form, EPA is committed to providing technical assistance to companies reporting for the CAIR. Besides the instruction document that accompanies the reporting form, companies will be able to contact EPA, or its contractor for assistance. The availability of this program will be advertised once the rule is promulgated. The Agency also intends to assist respondents by providing technical support documents. Once this rule is promulgated EPA will develop sample "Questions and Answers" and supplemental instruction documents for distribution.

D. Evaluation

To ensure that the CAIR meets its objectives of providing timely, reliable, useful, and non-duplicative data while imposing a minimum burden on industry, EPA will evaluate the CAIR. The Agency will conduct follow-up studies of the listed chemicals to determine the quality of the reported data, the reporting burden (based on interviews with some of the companies that reported), EPA form processing procedures, and data usage.

VIII. Public Participation

EPA believes that the public review which occurred during the development of this rule was important. The Agency actively sought public input early in the development stages of the rule and met with any organization requesting a meeting.

Two general public meetings were held in July 1985 to discuss an early draft of the rule and reporting form. Constructive comments helped EPA refine the rule to make it more understandable and effective. After further revisions, the CAIR reporting form was circulated again for public review during the second week in December 1985. Again, more constructive comments were made and adopted.

On January 24, 1986 (51 FR 3251), EPA issued a notice asking for participation in a pretest of the reporting form. The purpose of the pretest is two-fold: (1) to test whether the questions are easily understood, and (2) to estimate the reporting burden associated with answering questions. The Agency had hoped many volunteers would participate. However, fewer applied than were expected. Therefore, the Agency will not view the results of this pretest as representative of the entire industry. The pretest will, however, provide extremely valuable "hands-on" data which will be used in making changes to the form and for determining the economic impact of this rule.

The Agency appreciates all of the comments that have been made, and this proposed rule reflects EPA's initial consideration of these comments. EPA continues to encourage manufacturers, importers, and processors to comment on this proposal, whether or not they would be subject to the reporting requirements for the substances listed in this proposed rule. Manufacturers, importers, and processors not subject to the proposed reporting requirements for today's listed substances may become subject to the CAIR as additional substances are added.

IX. Alternatives Considered

Before deciding to develop the CAIR, the Agency considered three major alternative approaches for meeting its information-gathering objectives: (1) Chemical-specific TSCA section 8(a) rules, (2) issuing the CAIR list of questions as guidelines for incorporation in chemical-specific rules, and (3) using CAIR only for detailed information requests. After review of these approaches, the Agency decided to develop the CAIR.

Chemical-specific rules, unlike the CAIR, can be tailored to meet very specific needs. However, as discussed above, these rules are costly for EPA to establish and implement, and for industry to respond to. Further, if specific information is needed that is beyond the scope of CAIR, the Agency always has the option of issuing a chemical-specific rule for that chemical.

A variation of the chemical-specific option would be the issuance of the CAIR list of questions as guidelines. Whenever an information need arose, questions from the guidelines could be chosen and incorporated into a chemical-specific rule. The advantage of this option is that the guidelines could be modified as necessary without notice and comment.

The Agency has determined that such an option would be counterproductive because the efficiencies of issuing a model rule would be lost. Issuing chemical-specific rules, based on guidelines, would require the Agency to state, in full, the questions for which reporting would be required; compared to the CAIR under which EPA need only specify the question by number. In addition, since use of the guidelines would not be required, there would be no incentive for offices needing information from industry to use the questions in the guidelines. This removes much of the certainty that CAIR provides. With CAIR, there is an incentive to use the questions, as is, rather than amending the rule to make minor changes.

Furthermore, there is no need to issue CAIR questions as guidelines. The questions have been tested and will be tested again between proposed and final rules. Many of the questions were taken from existing forms which have been used to collect information from industry. There has also been much cooperation with industry representatives on the form. EPA does not anticipate that any further refinement of the questions will be necessary after promulgation of a final rule. Moreover, should the need arise, EPA can propose the addition of a chemical to the CAIR, and promulgate a final TSCA section 8(a) chemical-specific rule with questions tailored to the unique characteristics of the respondents.

The last option that the Agency has considered for gathering information is "staged reporting." That is, initially request under a specific rule basic information such as that found in the PAIR on a chemical substance. If, following analysis of the reported data, the Agency finds that additional information is needed, the Agency can issue another rule with more detailed questions, or finally, if needed, add the chemical to the CAIR.

EPA does not believe "staged reporting" is needed once CAIR is in place. The CAIR contains questions providing preliminary data (e.g., PAIR questions) and more detailed questions for later stages of assessment. Since all of the questions are in the same rule and the Agency will ask only for needed information, there usually will be no need to use rules other than CAIR.

EPA has decided that the CAIR approach is the most effective way of meeting Agency objectives. The Agency, however, requests comments on the options discussed above, on the Agency's rationale for choosing the CAIR, or on any other alternatives which would meet the objectives of the rule.

BILLING CODE 6560-50-M

X. CHEMICAL LIST

CPSC = Consumer Product Safety Commission
EPA/OAR = Environmental Protection Agency - Office of Air and Radition
EPA/OTS = Environmental Protection Agency - Office of Toxic Substances
NIOSH = National Institute of Occupational Health and Safety
OSHA = Occupational Safety and Health Administration

Federal Agencies Requesting Information	Who must Report and for what Year	Information Collection Requirement
		Methane, tetrachloro- (CAS No. 56-23-5)
EPA/OTS:	(M,X/P,I,P:-1)	1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
EPA/OTS:	(M,X/P,I,P:-5)	1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
OSHA:	(M,X/P,I,P:-1,5)	1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18
		Urea (CAS No. 57-13-6)
EPA/OTS:	(M,I: -1)	1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
EPA/OTS:	(M,I: -5)	1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

Hydrazinecarboxamide (CAS No. 57-56-7)

EPA/OTS:	(M,X/P,I,P: -1)	1, 2.7, 2.8, 2.14, 2.15, 9.2, 9.3, 9.7

Acetamide (CAS No. 60-35-5)

EPA/OTS:	(M,I: -1)	1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 3.1, 3.4 thru 3.7, 4.9, 4.10, 5.1 thru 5.4, 6.8, 6.9, 7.1, 9.2, 9.5 thru 9.9, 9.14, 9.15, 9.24, 10.1, 10.5, 10.6

Methane, trichloro- (CAS No. 67-66-3)

EPA/OTS:	(M,X/P,I,P: -1)	1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
EPA/OTS:	(M,X/P,I,P: -5)	1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
OSHA:	(M,X/P,I,P: -1,5)	1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18

Benzene (CAS No. 71-43-2)

EPA/OTS:	(M,I: -1)	1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
EPA/OTS:	(M,I: -5)	1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

Ethane, 1,1,1-trichloro- (CAS No. 71-55-6)

EPA/OTS:	(M,I: -1)	1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
EPA/OTS:	(M,I: -5)	1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
OSHA:	(M,I: -1,5)	1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18

Methane, dichloro- (CAS No. 75-09-2)

EPA/OTS:	(M,I: -1)	1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
EPA/OTS:	(M,I: -5)	1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
OSHA:	(M,I: -1,5)	1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18
CPSC:	(M,I: -1)	1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7

Ethene, 1,1-dichloro- (CAS No. 75-35-4)

EPA/OTS:	(M,I: -1)	1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
EPA/OTS:	(M,I: -5)	1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

Oxirane, methyl- (CAS No. 75-56-9)

EPA/OAR: (M,X/P,I,P: -1) 1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f), 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23

Ethane, 1,1,2-trichloro-1,2,2-trifluoro- (CAS No. 76-13-1)

EPA/OTS: (M,X/P,I,P: -1) 1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

EPA/OTS: (M,X/P,I,P: -5) 1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

OSHA: (M,X/P,I,P: -1,5) 1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18

Ethene, trichloro- (CAS No. 79-01-6)

EPA/OTS: (M,X/P,I,P: -1) 1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

EPA/OTS: (M,X/P,I,P: -5) 1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

OSHA: (M,X/P,I,P: -1,5) 1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18

Ethane, 1,1,2,2-tetrabromo- (CAS No. 79-27-6)

EPA/OTS: (M,X/P,I,P: -1,1,2,3) 1, 2.7, 2.8, 2.14, 2.15,

Phenanthrene (CAS No. 85-01-8)

EPA/OTS: (M,X/P,I,P: -1) 1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6

Benzene, 1,3-diisocyanato-2-methyl- (CAS No. 91-08-7)

EPA/OAR: (M,X/P,I,P: -1) 1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f), 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23

EPA/OTS: (M,X/P,I,P: -1) 1, 2.4 thru 2.8, 2.10 thru 2.12, 2.14 thru 2.18, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.4, 7.5, 8.1, 8.4, 8.5, 8.22, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.23

EPA/OTS: (M,X/P,I,P: 1,2,3) 1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7 thru 10.16, 10.23

2-Naphthalenesulfonic acid, 6-amino- (CAS No. 93-00-5)

EPA/OTS: (M,I: -1) 1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 3.1, 3.4 thru 3.7, 4,1, 4.9, 4.10, 6.8, 6.9, 7.2 thru 7.5, 9.2, 9.5 thru 9.9, 9.14, 9.15, 9.24, 10.1, 10.5, 10.6

1,3-Benzenediamine, 4-methyl- (CAS No. 95-80-7)

CPSC: (M,I: -1) 1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7

Phenol, 2,2'-thiosbis[4,6-dichloro- (CAS No. 97-18-7)

CPSC: (M,I: -1) 1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7

Phenol, 2,2'-methylenebis[4-chloro-] (CAS No. 97-23-4)

CPSC: (M,I: -1) 1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7

Benzene, ethenyl- (CAS No. 100-42-5)

EPA/OAR: (M,X/P,I,P: -1) 1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3,3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f), 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23

Benzenamine, 4,4'methylenebis[2-chloro- (CAS No. 101-14-4)

NIOSH: (X/P,P: -1) 1, 9.1, 9.3, 9.4, 9.7, 9.10, 9.14, 9.18

Urea, N-(4-chlorophenyl-N'-(3,4-dichlorophenyl)- (CAS No. 101-20-2)

CPSC: (M,X/P,I,P: -1) 1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7

Benzene, 1,4-dichloro- (CAS No. 106-46-7)

CPSC: (M,I: -1) 1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7

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Benzene, methyl- (CAS No. 108-88-3)

EPA/OTS:	(M,I: -1)	1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
EPA/OTS:	(M,I: -5)	1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

Ethanol, 2-chloro-, phosphate (3:1) (CAS No. 115-96-8)

EPA/OTS:	(M,I: -1)	1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6

1,4-Dioxane (CAS No. 123-91-1)

EPA/OTS:	(M,I: -1)	1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
EPA/OTS:	(M,I: -5)	1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

Ethylene, tetrachloro- (CAS No. 127-18-4)

EPA/OTS:	(M,X/P,I,P: -1)	1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
EPA/OTS:	(M,X/P,I,P: -5)	1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23
OSHA:	(M,X/P,I,P: -1,5)	1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18

Pyrene (CAS No. 129-00-0)

EPA/OTS: (M,I: -1) 1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6

Cyanamide, calcium salt (CAS No. 156-62-7)

EPA/OTS: (M,I: -1) 1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

EPA/OTS: (M,I: -5) 1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

Hydrazinecarboxamide, monohydrochloride (CAS No. 563-41-7)

EPA/OTS: (M,X/P,I,P: -1) 1, 2.7, 2.8, 2.14, 2.15, 9.2, 9.3, 9.7

Benzene, 2,4-diisocyanato-1-methyl- (CAS No. 584-84-9)

EPA/OAR: (M,X/P,I,P: -1) 1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f), 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23

EPA/OTS: (M,X/P,I,P: -1) 1, 2.4 thru 2.8, 2.10 thru 2.12, 2.14 thru 2.18, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.4, 7.5, 8.1, 8.4, 8.5, 8.22, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.23

EPA/OTS: (M,X/P,I,P: 1,2,3) 1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7 thru 10.16, 10.23

Disulfide, dimethyl (CAS No. 624-92-0)

EPA/OTS: (M,I: -1) 1, 2.1 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6

Benzenesulfonic acid, 4-[2-hydroxy-1-naphthalenyl)azo]-, monosodium salt (CAS No. 633-96-5)

EPA/OTS: (M,I: -1) 1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 3.1, 3.4, 3.5 4.9, 4.10, 5.1 thru 5.4, 6.8, 6.9, 7.1, 9.2, 9.5 thru 9.9, 9.14, 9.15, 9.24, 10.1, 10.5, 10.6

1,3-Dioxan-4-ol, 2,6-dimethyl-, acetate (CAS No. 828-00-2)

CPSC: (M,I: -1) 1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7

Benzene, diisocyanatomethyl- (CAS No. 1321-38-6)

EPA/OAR: (M,X/P,I,P: -1) 1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f), 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23

EPA/OTS: (M,X/P,I,P: -1) 1, 2.4 thru 2.8, 2.10 thru 2.12, 2.14 thru 2.18, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.4, 7.5, 8.1, 8.4, 8.5, 8.22, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.23

EPA/OTS: (M,X/P,I,P: 1,2,3) 1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7 thru 10.16, 10.23

Hydroxylamine, hydrochloride (CAS No. 5470-11-1)

EPA/OTS: (M,X/P,I,P: -1) 1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6.7, 6.8, 9.1

Nitric acid ammonium salt (CAS No. 6484-52-2)

EPA/OTS: (M,I: -1) 1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

EPA/OTS: (M,I: -5) 1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

Nitric acid sodium salt (CAS No. 7631-99-4)

EPA/OTS: (M,I: -1) 1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

EPA/OTS: (M,I: -5) 1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

Ammonia (CAS No. 7664-41-7)

EPA/OAR: (M,X/P,I,P: -1) 1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f), 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23

Chlorine (CAS No. 7782-50-5)

EPA/OAR: (M,I: -1) 1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f), 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23

Hydroxylamine (CAS No. 7803-49-8)

EPA/OTS: (M,X/P,I,P: -1) 1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6.7, 6.8, 9.1

Hydroxylamine, sulfate (2:1) (CAS No. 10039-54-0)

EPA/OTS: (M,X/P,I,P: -1) 1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6.7, 6.8, 9.1

Hydroxylamine, sulfate (1:1) (CAS No. 10046-00-1)

EPA/OTS: (M,X/P,I,P: -1) 1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6.7, 6.8, 9.1

Nitric acid, calcium salt (CAS No. 10124-37-5)

EPA/OTS: (M,I: -1) 1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

EPA/OTS: (M,I: -5) 1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

Ammonium chloride (CAS No. 12125-02-9)

EPA/OTS: (M,I: -1) 1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

EPA/OTS: (M,I: -5) 1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23

Benzene, 1,3-diisocyanatomethyl- (CAS No. 26471-62-5)

EPA/OAR:	(M,X/P,I,P: -1)	1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f), 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23
EPA/OTS:	(M,X/P,I,P: -1)	1, 2.4 thru 2.8, 2.10 thru 2.12, 2.14 thru 2.18, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.4, 7.5, 8.1, 8.4, 8.5, 8.22, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.23
EPA/OTS:	(M,X/P,I,P: 1,2,3)	1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7 thru 10.16, 10.23

3(2H)-Isothiazolone, 2-octyl- (CAS No. 26530-20-1)

CPSC:	(M,I: -1)	1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7

BILLING CODE 6560-50-C

The 47 substances listed in this proposed rule include 18 hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). CERCLA requires persons, who are in charge of vessels or facilities, to immediately notify the National Response Center ((800) 424–8802 or (202) 426–2675) when hazardous substances are released in quantities that are equal to or greater than the reportable quantities (RQs). (See CERCLA Section 103 and 40 CFR Part 302; 50 FR 13456, April 4, 1985.) CERCLA hazardous substances are listed in Table 302.4—List of Hazardous Substances and Reportable Quantities (50 FR 13475).

XI. Economic Analysis

EPA has conducted a study to estimate the amount of secretarial, technical, and managerial time needed to respond to each question in the reporting form. This study is located in the public record for this rulemaking. The response times were derived from three sources. One source was the knowledge and experience of Federal personnel who were responsible for preparing questionnaires that contained similar questions to those in the reporting form. Another source was Federal agency documents that described, reviewed, or analyzed questionnaires that contained similar questions to those in the reporting form. The last source for response time was persons in private organizations who performed surveys with questionnaires similar to those in the CAIR. These persons were able to provide estimates of the time required to respond to certain parts of the reporting form. The Agency also intends to use the pretest to determine how much time it takes to complete questions on the reporting form.

Once the burden hours were estimated, the Agency calculated the cost per type of respondent per chemical (i.e., the reporting burden for a manufacturer who must respond to the specific questions required for a listed chemical). These figures were further multiplied by the estimated number of respondents (manufacturers, importers, and processors) for each substance to determine the total economic burden for the chemicals listed in Subpart D.

In order to identify the manufacturing plant sites for the proposed chemicals, EPA reviewed the following sources: *Chemical Economics Handbook, Directory of Chemical Producers, Importers of Benzenoid Chemicals and Products, Synthetic Organic Chemicals, Chemical Product Synopsis, Million Dollar Directory,* and *Market Identifiers,* along with articles from recent trade magazines and journals. To identify the plants that process the chemical, data were collected on the downstream uses of each listed substance for which processor reporting is proposed. Each identified use was examined to determine the identity of those uses that involved processing the listed substances.

The estimated cost of complying with the proposed reporting requirements for the substances listed today will be between $2.5 million to $3.0 million. These figures were calculated by multiplying the average cost per respondent for each chemical times the estimated number of respondents per chemical minus those companies that would not report because of the small manufacturer and processor exemptions.

Based on the information collection requirements in this rule, EPA expects respondents to spend:

Per report:

51 hours to gather and report the requested information—$1,404
8 hours to substantiate CBI claims—$216
2 hours to file the records that support a report—$25

Per site:

32 hours for rule and form familiarization—$804
22 hours to set up a recordkeeping system—$479

EPA assumes that these per site costs will be incurred one time only. Such that a respondent who must submit 2 reports for one site, or who must report in a following year, will incur only the per report costs for the second report.

The Agency solicits comments on the methodology used in calculating the reporting burden for the form and estimating the total number of persons that would be subject to reporting.

XII. Rulemaking Record

The following documents constitute the public record for this proposed rule (docket control number OPTS–82013A). All documents, including the index to this public record, are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Rm. NE–G004, 401 M St. SW., Washington, DC 20460. The public record includes the following information:

1. **Federal Register** Notices: (April 4, 1985; 50 FR 13391), (June 17, 1985; 50 FR 25095), and (January 24, 1986; 51 FR 3251).
2. Transcript of public meeting held on July 17, 1985.
3. Transcript of public meeting held on July 30, 1985.
4. Minutes of meetings held with the Chemical Manufacturers Association, the Synthetic Organic Chemical Manufacturers Association and the American Petroleum Institute.
5. Copy of memorandum and CAIR reporting form circulated to the public for review on December 9, 1985.
6. CAIR reporting form response times and labor costs analysis, Centaur Associates, April 21, 1986.
7. Economic analysis of the CAIR.
8. Comments received on earlier drafts of the CAIR preamble and reporting form.
9. Background information on chemicals appearing in this proposed rule.

EPA will identify the complete rulemaking record on or before the date of promulgation, and will accept additional material for inclusion in the record between the date of this document and that designation.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not "major" because it does not have an effect of $100 million or more on the economy. EPA also anticipates that this proposed rule will not have a significant effect on competition, costs, or prices. This regulation was submitted to the OMB for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not have a significant impact on a substantial number of small businesses. Small businesses are defined in this proposed rule and are exempt from reporting except under certain circumstances defined in TSCA.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted for approval to the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 704

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements.

Dated: August 22, 1986.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR Part 704 be amended as follows:

1. The authority citation for Part 704 would continue to read as follows:

Authority: 15 U.S.C. 2607(a).

PART 704—REPORTING AND RECORDKEEPING REQUIREMENTS

2. By revising the Part heading to read as set forth above.

Subpart A—General Reporting and Recordkeeping Provisions for Section 8(a) Information Gathering Rules

3. By revising the Subpart A heading to read as set forth above.

4. By revising §§ 704.1, 704.3, and 704.5 to read as follows:

§ 704.1 Scope.

(a) This Part 704 specifies reporting and recordkeeping procedures under section 8(a) of the Toxic Substances Control Act (TSCA) for manufacturers, importers, and processors of chemical substances and mixtures (hereinafter collectively referred to as substances) that are identified in Subpart B or D of this Part. The reporting and recordkeeping provisions in Subpart A of this Part apply throughout this Part 704 unless revised in any other subpart.

(b) Subpart B of this part sets out chemical-specific reporting and recordkeeping requirements under section 8(a) of TSCA. These chemical-specific rules rely heavily on Subpart A of this part. They typically do not require the submission of a reporting form, and they do not have uniform information collection requirements, or reporting periods.

(c) Subpart C of this part sets out the general reporting provisions for the Comprehensive Assessment Information Rule (CAIR). CAIR standardizes certain section 8(a) rules by: providing a set of uniform questions for EPA and other agencies to use in assembling specific information collection requirements; requiring the submission of information on a standard reporting form; and establishing uniform reporting and recordkeeping provisions that supplement the reporting and recordkeeping provisions in Subpart A of this part. CAIR provisions apply only to those persons who manufacture, import, or process a substance identified in Subpart D of this part.

(d) Subpart D of this part uses a matrix to identify the substances for which there is an information need, the persons who must provide the information to EPA, the information that must be provided, and the time period on which the respondents must report.

(e) Subpart E of this part sets forth the CAIR reporting form, which identifies the set of uniform questions from which EPA may assemble an information collection requirement.

§ 704.3 Definitions.

All definitions as set forth in section 3 of TSCA apply in this part. In addition, the following definitions are provided for the purposes of this part.

"Annual" means the corporate fiscal year.

"Article" means a manufactured item which is formed to a specific shape or design during manufacture, which has end use function(s) dependent in whole or in part upon its shape or design during end use, and which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.

"Byproduct" means a chemical substance produced without a separate commercial intent during the production, processing, use, or disposal of another chemical substance(s) or mixture(s), and, following its production, separated from that other chemical substance or mixture.

"CAS Number" means Chemical Abstracts Service Registry Number.

"Coproduct" means a chemical substance produced for a commercial purpose during the production, processing, use, or disposal of another chemical substance(s) or mixture(s).

"Customer" means any person to whom a manufacturer, importer, or processor directly distributes any quantity of a chemical substance, mixture, mixture containing the substance or mixture, or article containing the substance or mixture, whether or not a sale is involved.

"Domestic" means within the geographical boundaries of the 50 United States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

"Enclosed process" means a manufacturing or processing process that is designed and operated so that there is no intentional release into the environment of any substance present in the process. A process with fugitive, inadvertent, or emergency pressure relief releases remains an enclosed process so long as measures are taken to prevent worker exposure to and environmental contamination from the releases.

"EPA" means the United States Environmental Protection Agency.

"Import" means to import for commercial purposes.

"Import for commercial purposes" means to import with the purpose of obtaining an immediate or eventual commercial advantage for the importer, and includes the importation of any amount of a chemical substance or mixture. If a chemical substance or mixture containing impurities is imported for commercial purposes, then those impurities also are imported for commercial purposes.

"Import in bulk form" means to import a chemical substance (other than as part of a mixture or article) in any quantity, in cans, bottles, drums, barrels, packages, tanks, bags, or other containers, if the chemical substance is intended to be removed from the container and the substance has an end use or commercial purpose separate from the container.

"Importer" means (1) any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the United States, and includes:

(i) The person primarily liable for the payment of any duties on the merchandise, or

(ii) An authorized agent acting on his behalf (as defined in 19 CFR 1.11).

(2) Importer also includes, as appropriate:

(i) The consignee.

(ii) The importer of record.

(iii) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(iv) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144. For the purposes of this definition, the customs territory of the United States consists of the 50 States, Puerto Rico, and the District of Columbia.

"Impurity" means a chemical substance which is unintentionally present with another chemical substance.

"Intermediate" means any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of other chemical substances or mixtures, or that is intentionally present for the purpose of altering the rates of such chemical reactions.

"Known to or reasonably ascertainable by" means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

"Manufacture" means to manufacture for commercial purposes.

"Manufacture for commercial purposes" means: (1) To produce, with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes among other things such "manufacture" of any amount of a chemical substance or mixture:

(i) For commercial distribution, including for test marketing.

(ii) For use by the manufacturer, including use for product research and development, or as an intermediate.

(2) Manufacture for commercial purposes also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including byproducts and impurities. Such byproducts and impurities may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

"Manufacturer" means a person who produces or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substances is a manufacturer of that component chemical substance.

"Non-isolated intermediate" means an intermediate that is used in an enclosed process, not stored after its manufacture, or intentionally removed from the equipment in which it was manufactured. The manufacturing equipment includes the reaction vessel in which the intermediate was manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process.

"Own or control" means ownership of 50 percent or more of a company's voting stock or other equity rights, or the power to control the management and policies of that company. A company may own or control one or more sites. A company may be owned or controlled by a foreign or domestic parent company.

"Parent company" is a company that owns or controls another company.

"Person" includes any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.

"Possession or control" means in the possession or control of the designated respondent, or of any subsidiary, partnership in which the designated respondent is a general partner, parent company, or any company or partnership which the parent company owns or controls, if the subsidiary, parent company, or other company or partnership is associated with the designated respondent in the research, development, test marketing, or commercial marketing of the substance in question. Information is included within this definition if it is:

(1) In the designated respondent's own files including files maintained by employees in the course of their employment.

(2) In commercially available data bases to which the designated respondent has purchased access.

(3) Maintained in the files in the course of employment by other agents of the designated respondent who are associated with research, development, test marketing, or commercial marketing of the chemical substance in question.

"Process" means to process for commercial purposes.

"Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or (2) as part of a mixture or article containing the chemical substance or mixture. Processing of any amount of a chemical substance or mixture is included. If a chemical substance or mixture containing impurities is processed for commercial purposes, then those impurities also are processed for commercial purposes.

"Production volume" means the quantity of a substance which is produced by a manufacturer, as measured in kilograms or pounds.

"Propose to manufacture, import, or process" means that a person has made a firm management decision to commit financial resources for the manufacture, import, or processing of a specified chemical substance or mixture.

"Site" means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. There may be more than one plant on a single site. The site for a person who imports a substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction. The site of importation may in some cases be the organization's United States headquarters office.

"Small manufacturer or importer" means a manufacturer or importer that meets either of the standards set forth below. Small manufacturers and importers should read the introductory paragraph and paragraph (f) of § 704.5 to obtain complete information on the TSCA section 8(a) small business exemption.

(1) *First standard.* A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $40 million. However, if the annual production or importation volume of a particular substance at any individual site owned or controlled by the manufacturer or importer is greater than 45,400 kilograms (100,000 pounds), the manufacturer or importer shall not qualify as small for purposes of reporting on that substance at that site, unless the manufacturer or importer qualifies as small under paragraph (2) of this definition.

(2) *Second standard.* A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of substances produced or imported by that manufacturer or importer.

(3) *Inflation index.* EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor Statistics, for purposes of determining the need to adjust the total annual sales values and for determining new sales when adjustments are made. EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide

Federal Register notification when changing the total annual sales values.

"Substance" means either a chemical substance or mixture unless otherwise indicated.

"Test marketing" means distributing in commerce a limited amount of a chemical substance or mixture, or article containing such substance or mixture, to a defined number of customers, during a predetermined testing period, to explore market capability prior to broader distribution in commerce.

"Total annual sales" means the total annual revenue (in dollars) generated by the sale of all products of a company. Total annual sales must include the total annual sales revenue of all sites owned or controlled by that company, and the total annual sales revenue of that company's subsidiaries and foreign or domestic parent company, if any.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.

§ 704.5 Exemptions.

A person who is subject to reporting and recordkeeping requirements for a substance identified in this Part 704 is exempt from those requirements to the extent that the person and that person's use of the substance is described in this section. However, this section is superseded by any section 8(a) rule that adds to, removes, or revises the exemptions described in this section. Any manufacturer, importer, or processor who is subject to reporting and recordkeeping requirements in this Part should examine those requirements to determine whether the exemptions contained in this section apply. Additionally, paragraph (f) of this section contains a specific exception to the small manufacturer and importer exemption.

(a) *Articles.* A person who imports, processes, or proposes to import or process a substance identified in this Part 704 solely as part of an article is exempt from the reporting and recordkeeping requirements of this Part 704.

(b) *Byproducts.* A person who manufactures, imports, or proposes to manufacture or import a substance identified in this Part 704 solely as a byproduct is exempt from the reporting and recordkeeping requirements of this Part 704.

(c) *Impurities.* A person who manufactures, imports, processes, or proposes to manufacture, import, or process a substance identified in this Part 704 solely as an impurity is exempt from the reporting and recordkeeping requirements of this Part 704.

(d) *Non-isolated intermediate.* A person who manufactures, processes, or proposes to manufacture or process a substance identified in this Part 704 solely as a non-isolated intermediate is exempt from the reporting and recordkeeping requirements of this Part 704.

(e) *Research and development.* A person who manufactures, imports, processes or proposes to manufacture, import, or process a substance identified in this Part 704 only in small quantities solely for research and development is exempt from the reporting and recordkeeping requirements of this Part 704. Small quantities solely for research and development (i.e., for purposes of scientific experimentation, analysis, or chemical research on, or analysis of, such substance or another substance, including research or analysis for the development of a product) means quantities of a substance that are not greater than reasonably necessary for such purposes.

(f) *Small manufacturers, importers, or processors.* A person who qualifies as a small manufacturer, importer, or processor as these terms are defined in § 704.3 and § 704.210 is exempt from the reporting and recordkeeping requirements of this Part 704. Notwithstanding this exemption, the Administrator may, for any rule promulgated under section 8(a), require reporting or recordkeeping from any small manufacturer, importer, or processor of a substance that is the subject of a rule, proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or is the subject of an order in effect under TSCA section 5(e), or is the subject of relief granted under a civil action brought under TSCA section 5 or 7.

5. By revising the heading for § 704.7 to read as follows:

§ 704.7 Confidential business information claims.

* * * * *

6. By adding §§ 704.9, 704.11, and 704.13 to read as follows:

§ 704.9 Where to send reports.

Reports must be submitted by certified mail to the United States Environmental Protection Agency, Document Processing Center, P.O. Box 2080, Rockville, MD 20852. ATTN: (Insert the name of the substance for which you are submitting a report).

§ 704.11 Recordkeeping.

Each person who is subject to the reporting requirements of this part must retain the following records for a period of (2 to 5 years, the exact recordkeeping period to be established in the final rule) following the creation or compilation of the record.

(a) A copy of each report submitted by the person in response to the requirements of this part.

(b) All supporting materials and documentation used by the person to complete each report.

(c) A copy of each notice sent by the person, return receipt requested, to that person's customers for the purpose of notifying their customers of the customer's reporting obligations under this part.

(d) All return receipts signed by the person's customers who received the notice described in paragraph (c) of this section.

§ 704.13 Compliance and enforcement.

Violators of the requirements of this part may be subject to the civil penalties or criminal prosecution, as provided in sections 15 and 16 of TSCA. In addition, under section 17, the Government may seek judicial relief to compel submission of required information.

Subpart B—Chemical-Specific Reporting and Recordkeeping Rules

7. By amending Subpart B as follows:

a. By adding the heading for Subpart B to read as set forth above.

§§ 704.83, 704.85, and 704.195 [Redesignated]

b. By redesignating existing §§ 704.83, 704.85, 704.142 under Subpart B as §§ 704.43, 704.45, 704.102 respectively.

§§ 704.195 and 704.205 [Removed]

c. By removing §§ 704.195 and 704.205.

8. By adding Subpart C to read as follows:

Subpart C—CAIR: Comprehensive Assessment Information Rule—General Reporting and Recordkeeping Provisions

Sec.

704.200 Overview of CAIR provisions—Subparts C, D, and E.
704.203 CAIR: definitions. [Reserved].
704.205 CAIR: identifying substances for which reporting is required.
704.207 CAIR: persons who must report.
704.208 CAIR: special reporting/notification requirements.
704.210 CAIR: exemptions.
704.212 CAIR: information collection requirements.
704.214 CAIR: designated time periods for which information must be reported.
704.215 CAIR: when to submit reports.
704.216 CAIR: how to obtain a CAIR reporting form.
704.217 CAIR: how to submit completed CAIR reporting forms.
704.219 CAIR: confidential business information (CBI) claims.

Subpart C—CAIR: Comprehensive Assessment Information Rule—General Reporting and Recordkeeping Provisions

§ 704.200 Overview of CAIR provisions—Subparts C, D, and E.

Although the provisions in Subpart A of this part apply to all of Part 704, EPA may in Subparts C, D, and E of this part add to, revise, or remove the Subpart A provisions of this part for the purposes of requiring reporting and recordkeeping provisions on specified substances. In the event of a conflict between the provisions of Subparts A and C of this Part, the provisions of Subpart C of this part shall govern. Subpart C of this part explains the reporting and recordkeeping provisions for persons who manufacture, import, or process the substances identified in Subpart D of this part. Subpart D of this part identifies: The substances for which EPA requires the reporting of information under CAIR; the persons who are required to submit the information; the questions from the CAIR reporting form that must be answered; and the time period on which to report. The text of Subpart D of this part is set out in a matrix format and uses symbols to identify reporting requirements. These symbols are explained in §§ 704.207 and 704.214. Subpart E of this part sets out the CAIR reporting form.

§ 704.203 CAIR: definitions. [Reserved]

§ 704.205 CAIR: identifying substances for which reporting is required.

To the extent described below, the following qualifications apply to the reporting and recordkeeping requirements of Subpart D of this part.

(a) *Report on TSCA-regulable quantities.* A person must report on only the quantity of a substance that is defined as a chemical substance under TSCA section 3(2).

(b) *Chemical substances from natural sources.* A manufacturer of a chemical substance which is extracted from minerals, ores, petroleum, natural gas, quarried non-metallic minerals (including extraction of salts from seawater or brines), coal or atmospheric gases, or from any other natural source must report only about the manufacturing steps from, and the uses of, that chemical, and not about production of the natural source material or other crude precursors derived from the natural source material.

(c) *Substances as marketed or used.* A person must report only on a substance as the substance is marketed or used in practice. The following preparations of a substance must be reported as the substance itself, not as a mixture, since these preparations are regarded as the substance in practice:

(1) The substance in an aqueous solution.

(2) The substance containing an additive (such as a stabilizer or other chemical) to maintain the integrity or physical form of the substance.

(3) The chemical substance in any grade of purity.

§ 704.207 CAIR: persons who must report.

(a) *General requirements.* Manufacturers, importers, and processors must report on each substance identified in Subpart D of this part if: (1) they are designated in Subpart D as a person who must report on the substance, and (2) they manufactured, imported, or processed the substance during the time period for which reporting is required. Persons who are required to report on a substance identified in Subpart D of this Part should review §§ 704.5 and 704.210 of this part to determine if any exemptions apply to their circumstances.

(b) *Symbols for designating persons who must report.* EPA will designate who must report on each substance identified in Subpart D of this Part by using the following symbols:

(1) "M" means each person who manufactured the substance for commercial purposes.

(2) "I" means each person who imported the substance for commercial purposes.

(3) "P" means each person who processed the substance for commercial purposes.

(4) "X/P" means each person who manufactured, imported, or processed the substance for commercial purposes and distributed the substance under a tradename. For additional information see § 704.208.

(c) *Special provisions for importers.*

(1) When two or more persons are involved in a particular import transaction of a substance identified in Subpart D of this Part, and two or more of these persons meet the definition of "importer" for this transaction, they may determine among themselves who should complies with the CAIR reporting and recordkeeping requirements for the substance. If none of these persons comply with the CAIR reporting and recordkeeping requirements for that substance, then EPA will hold each of these persons liable for failure to comply.

(2) The site for a person who imports a listed substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction. The site of importation may in some cases be the organization's United States headquarters office.

(d) *Dual designations.* If a person is engaged in more than one activity at the same site (i.e., manufacture and processing), then that person must answer the information collection requirement for both activities (i.e., using one form, answer both the manufacturer and processor information collection requirements).

§ 704.208 CAIR: special reporting/notification requirements.

(a) The X/P designation requires each person who manufactured, imported, or processed the listed substance for commercial purposes and who distributed the substance under a tradename to do one of the following.

(1) *Tradename list.* Submit to EPA a list of all tradenames under which the person distributes the substance. EPA will publish all submitted tradenames in a **Federal Register** notice in order to notify all processors of their CAIR reporting and recordkeeping obligations.

(2) *Customer reporting.* Submit to EPA a CAIR reporting form that answers the processor's information collection requirement for each customer who would be required to report if the customer knew they were processing the substance.

(3) *Customer notification.* Notify each customer, who would be required to report if the customer knew they were processing the substance, of the specific section in Subpart D of this part which identifies the substance and the processor reporting requirements. The customer notification must be in writing and sent return receipt requested.

(b) *Initial reports.*

(1) *Tradename list.* A person who chooses to submit a list of tradenames, must submit the list within 30 days of the **Federal Register** publication that lists, by final rule, the substance in Subpart D of this part.

(2) *Customer reporting.* A person who chooses to report for their customers that process the listed substance, must submit the completed CAIR forms no later than 60 days after the effective date of the rule that listed the substance in Subpart D of this part.

(3) *Customer notification.* A person who chooses to notify their customers that process the listed substance, must send the notice within 10 days of the effective date of the rule that listed the substance in Subpart D of this part.

(c) *Subsequent reports.*

(1) *Tradename list.* A person who chooses to submit a list of tradenames, must submit the list no later than 30 days after the anniversary date of the effective date of the rule that listed the substance in Subpart D of this part.

(2) *Customer reporting.* A person who chooses to report for their customers that process the listed substance, must submit the completed CAIR forms no later than 60 days after the anniversary date of the effective date of the rule that listed the substance in Subpart D of this part.

(3) *Customer notification.* A person who chooses to notify their customers that process the listed substance, must send the notice within 10 days after the anniversary date of the effective date of the rule that listed the substance in Subpart D of this part.

§ 704.210 CAIR: exemptions.

The reporting and recordkeeping exemptions set out in § 704.5 apply to all CAIR reporting and recordkeeping requirements. This section contains additional exemptions that only apply to CAIR reporting and recordkeeping requirements. EPA may remove or add an exemption for any information collection requirement by specifying its removal or addition in Subpart D of this part.

(a) *Small processors.* Means a processor that meets either of the standards set forth below. Small processors should read the introductory paragraph and paragraph (f) of § 704.5 to obtain complete information on the TSCA section 8(a) small business exemption.

(1) *First standard.* A processor of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $40 million. However, if the annual processing volume of a particular substance at any individual site owned or controlled by the processor is greater than 45,400 kilograms (100,000 pounds), the processor shall not qualify as small for purposes of reporting on that substance at that site, unless the processor qualifies as small under paragraph (a)(2) of this section.

(2) *Second standard.* A processor of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of substances processed by that processor.

(3) *Inflation index.* EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor Statistics, for purposes of determining the need to adjust the total annual sales values and for determining new sales when adjustments are made. EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide **Federal Register** notification when changing the total annual sales values.

(b) *Previous submission of data.* A person may, in response to a specified information collection requirement on a substance identified in Subpart D of this part, submit only a completed section 1 of the CAIR reporting form. To use this exemption the person must sign the certification set out in section 1 of the CAIR reporting form that pertains to the use of this exemption and have done the following.

(1) They have previously and voluntarily provided EPA with the information on a CAIR reporting form for that site.

(2) The report covered a complete corporate fiscal year that ended no more than 3 years prior to the effective date of the listing of the substance.

(3) The answers to the previously submitted CAIR form are current, accurate, and complete for the time period specified in Subpart D of this part.

§ 704.212 CAIR: information collection requirements.

(a) *The information collection requirement.* Each person who is required to report on a substance identified in Subpart D of this part must answer each question within the information collection requirement for that substance. The information collection requirement for each substance will consist of CAIR reporting form questions. The CAIR reporting form questions are set out in Subpart E of this part.

(b) *Specifying the information collection requirement.*

(1) The information collection requirement will always include section 1 of the CAIR reporting form.

(2) The information collection requirement will be specified by section or question number (i.e., 3 all or 3.1 and 3.2).

(i) Whenever the information collection requirement specifies a section of the CAIR reporting form, each person who is required to report on the identified substance must answer all parts of each question within the section.

(ii) Whenever the information collection requirement specifies a question of the CAIR reporting form, each person who is required to report on the identified substance must answer all parts of the question.

(c) *One report per site.* Each person who is required to report on a substance identified in Subpart D of this part must report the required information separately for each site at which they manufactured, imported, or processed the substance.

(d) *Activities on which to report.* Each person who is required to report on a substance identified in Subpart D of this part must report the required information for each activity which occurs at the site. For example, if a person is a manufacturer of a listed substance and is required to answer certain questions, and this person both manufactures and processes the substance at the same site, then the person must answer the questions for both the manufacturing and processing activities.

(e) *Level of effort.* Each person who is required to report on a substance identified in Subpart D of this part must: report the required information using the level of effort specified for each question; or indicate, by using the symbol (NA), that the question is not applicable to their site operations. There are four effort levels. Respondents must comply with effort level 1 unless a specific question states otherwise. The effort levels are as follows:

(1) Level 1 requires a respondent to answer a question to the extent that the information is known to or reasonably ascertainable by that person. If the answer is not known and is not reasonably ascertainable, then the respondent must state that the answer is unknown.

(2) Level 2 requires a respondent to answer the question if the answer to the question is known to the person. If the answer is unknown, then the respondent must use professional judgment to make a reasonable estimate of the answer and report this information.

(3) Level 3 requires a respondent to answer a question if the answer to the question is known to the person. If the answer is unknown, then the respondent must ascertain the answer, by means other than estimation, and report this information.

(4) Level 4 requires a person to answer the question if the answer to the question is known to the person. If the answer is unknown to the person, then the person must state that the answer is unknown.

§ 704.214 CAIR: designated time periods on which information must be reported.

(a) Each person who is required to report on a substance identified in Subpart D of this part must answer the information collection requirement for the corporate fiscal years designated in the Subpart D matrix. If a person did not operate a site for the complete corporate fiscal year on which they are required to report, then they must report for only that part of the year in which they operated the site.

(b) *Symbols for designating the time periods on which information must be reported.* EPA will specify for each information collection requirement the time periods on which the information must be reported. Each time period will encompass one complete corporate fiscal year. EPA will specify which corporate fiscal year by using the symbols set out in this paragraph:

The symbol "-5" means of the 5 complete corporate fiscal years that precede the effective date of a rule that lists a substance in Subpart D of this part, report on the most recently concluded corporate fiscal year in which the substance was manufactured, imported, or processed.

The symbol "-4" means of the 4 complete corporate fiscal years that precede the effective date of a rule that lists a substance in Subpart D of this part, report on the most recently concluded corporate fiscal year in which the substance was manufactured, imported, or processed.

The symbol "-3" means of the 3 complete corporate fiscal years that precede the effective date of a rule that lists a substance in Subpart D of this part, report on the most recently concluded corporate fiscal year in which the substance was manufactured, imported, or processed.

The symbol "-2" means of the 2 complete corporate fiscal years that precede the effective date of a rule that lists a substance in Subpart D of this part, report on the most recently concluded corporate fiscal year in which the substance was manufactured, imported, or processed.

The symbol "-1" means report on the most recently concluded corporate fiscal year that precedes the effective date of a rule that lists the substance in Subpart D of this part.

A person who is required to report on a substance identified in Subpart D of this part for a past time period (i.e., -3) and time period (-1) for the same activity (i.e., manufacturing), and who has engaged in the activity during both time periods, must report for only the -1 time period.

The symbol "1" means report on the most recently concluded corporate fiscal year that precedes the first anniversary date of the rule. The first anniversary date is one year after the effective date of a rule that lists a substance in Subpart D of this part.

The symbol "2" means report on the most recently concluded corporate fiscal year that precedes the second anniversary date of the rule. The second anniversary date is two years after the effective date of a rule that lists a substance in Subpart D of this part.

The symbol "3" means report on the most recently concluded corporate fiscal year that precedes the third anniversary date of the rule. The third anniversary date is three years after the effective date of a rule that lists a substance in Subpart D of this part.

The symbol "4" means report on the most recently concluded corporate fiscal year that precedes the fourth anniversary date of the rule. The fourth anniversary date is four years after the effective date of a rule that lists a substance in Subpart D of this part.

The symbol "CM" means report on the corporate fiscal year, which follows the effective date of the rule that lists a substance in Subpart D of this part, and in which the manufacture of the substance was commenced.

The symbol "CI" means report on the corporate fiscal year, which follows the effective date of the rule that lists a substance in Subpart D of this part, and in which the importation of the substance was commenced.

The symbol "CP" means report on the corporate fiscal year, which follows the effective date of the rule that lists a substance in Subpart D of this part, and in which the processing of the substance was commenced.

§ 704.215 CAIR: when to submit reports.

(a) *Initial reporting.* Each person who is required to report on a substance identified in Subpart D of this part for a negative numbered time period must submit their completed CAIR forms no later than 60 days after the effective date of the rule that listed the substance in Subpart D of this part.

(b) *Subsequent or recurring reporting.* Each person who is required to report on a substance listed in Subpart D of this part for a positive numbered time period must submit their completed CAIR forms no later than 60 days following the anniversary date of the effective date of the rule that listed the substance in Subpart D of this part.

(c) *Reporting by processors who were notified of their reporting obligations.* A processor who is notified, in writing, of their reporting obligations on a substance identified in Subpart D of this part must submit their completed CAIR forms no later than 60 days following the receipt of the notification.

(d) *Reporting extensions.* Any person who cannot submit their reports by their deadline specified in this section may apply for a reasonable extension of time. Requests for extensions must be made in writing and addressed to: Director, Office of Toxic Substances (TS-792), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, ATTN: CAIR reporting extension. Extension requests must be postmarked on or before 40 days after the effective date of the listing of a substance or mixture in Subpart D of this part. The Director of the Office of Toxic Substances will grant or deny extension requests.

§ 704.216 CAIR: how to obtain a CAIR reporting form.

CAIR forms and instructions may be obtained by telephoning or writing the TSCA Assistance Office. Telephone Number: 202-554-1404. Address: TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

§ 704.217 CAIR: how to submit completed CAIR reporting forms.

(a) Each person who is required to report on a substance listed in Subpart D of this part may submit their reports from the individual sites or through company headquarters as they chose. However, a separate report must be submitted for each substance for each site at which they engage in one or more of the activities for which EPA is requesting information.

(b) Respondents must send their completed forms to: Document Control Officer, Office of Pesticides and Toxic Substances, Environmental Protection Agency, P.O. Box 2060, Rockville, MD 20852. ATTN: CAIR reporting.

§ 704.219 CAIR: confidential business information (CBI) claims.

(a) Respondents may assert a CBI claim for information submitted to EPA only if: the claim is asserted in accordance with this section; and release of the information would reveal trade secrets or confidential commercial or financial information, as provided in section 14(a) of TSCA. EPA may place all information not claimed as confidential in the public file without further notice to the respondent.

(b) Respondents who assert a CBI claim for submitted information must provide EPA with 2 copies of their submission. The first copy must be complete and contain all information being claimed as confidential. The second copy must contain only information not claimed as confidential and all generic information required by paragraph (c) of this section. EPA may place the second copy of the submission in the public file. Failure to submit the second copy of the form at the time the respondent submits the reporting form containing confidential information may result in a waiver of the respondent's claims of confidentiality.

(c) Respondents who claim information on a reporting form as confidential must submit to EPA generic information for the categories of information claimed as confidential. The categories for which generic information must be submitted are those listed in paragraph (f) of this section. The generic information must be provided on the second or nonconfidential copy of the submission required by paragraph (b) of this section. Failure to submit generic information may result in a waiver of the respondent's claims of confidentiality.

(d) Respondents who assert CBI claims must certify that the following statements truthfully and accurately apply to all of the confidentiality claims asserted in the report:

(1) My company has taken measures to protect the confidentiality of the information, and it will continue to take these measures;

(2) The information is not, and has not been, reasonably ascertainable by other persons (other than governmental bodies) by using legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding) without my company's consent;

(3) The information is not publicly available elsewhere; and

(4) Disclosure of the information would cause substantial harm to my company's competitive position.

(e) Respondents may assert CBI claims only at the time a completed CAIR form is submitted and only in the specified manner.

(1) Respondents must clearly mark all information claimed as confidential. Respondents can claim information submitted on a reporting form as confidential only by placing in the CBI box, which is adjacent to the question, the letter or letters that describe the confidential nature of the information. These letters correspond to paragraphs (h) through (m) of this section. If a question does not contain a CBI box, respondents cannot claim their answer to that question as confidential information. Respondents can claim information submitted on supplemental pages to the form as confidential only: if the information answers a question that contains a CBI box; and if the top of the page on which the information appears is marked "CONFIDENTIAL," and the confidential information is bracketed.

(2) Except as noted in this section, respondents must substantiate all claims of confidentiality at the time the respondent asserts the claim (i.e., when the reporting form is submitted). Failure to provide adequate substantiation of a claim at the time the respondent submits the reporting form may result in a waiver of the confidentiality claim.

(3) Respondents who assert any CBI claims must answer the following questions:

(i) For what period do you assert a claim of confidentiality? If a claim is to extend until a certain event or point in time, please indicate that event or time period. If the period indicated is longer than 2 calendar years, please explain why. If different periods of protection are required for different categories of information, please so indicate.

(ii) Has the information that you are claiming as confidential been or will it be disclosed to individuals outside your company? If so, what, if any, restrictions apply to use or further disclosure of the information?

(iii) Please briefly describe the physical and procedural restrictions, if any, within your company on the use and storage of the information you are claiming as confidential. What other steps have you taken to prevent the undesired disclosure of the information by others?

(iv) Does the information you are claiming as confidential appear or is it referred to in advertising, promotional, or safety materials for the substance or an end-product containing the substance? Does it appear or is it referred to in professional or trade publications? If so, indicate why the information should nonetheless be considered confidential.

(v) If the information you wish to claim as confidential were to be disclosed to the public by EPA, how much difficulty would a new competitor have in entering the market for this substance, considering such constraints as capital and marketing cost, specialized technical expertise, or unusual production processes? Provide the Chemical Abstract Service Registry Number for the substance, if known.

(vi) Has EPA, another Federal agency, or a Federal court made any pertinent confidentiality determinations for information regarding this substance? If so, provide EPA with copies of such determinations.

(f) EPA has identified six information categories as those which will encompass most claims of confidentiality:

Submitter identity = h,
Substance identity = i,
Volume manufactured, imported, or processed = j,
Use information = k,
Process information = l, and
Other information = m.

Respondents who assert a CBI claim on the reporting form must mark the letter or letters [h—m] that represent(s) the appropriate category(ies) of confidentiality for the information in the box adjacent to the question. For example, if a respondent answers an occupational exposure question that contains a CBI box and the respondent wants to assert that the information is confidential to protect production volume or process information, then the respondent must place the letter j or l, respectively, in the CBI box. If the respondent wanted to claim both production volume and process information as CBI, then the respondent must place both letters j and l in the CBI box. Confidentiality claims for information in supplemental pages are asserted by placing the appropriate letter(s) in the margin by the confidential information.

(g) Respondents who assert CBI claims must provide detailed responses to the questions provided for each information category. The respondent must answer the questions only once for each information category [h—m] claimed as confidential on an individual submission. For example, if a respondent claimed answers to three questions as CBI in order to protect production volume information, then the respondent must answer the questions in paragraph (j) of this section. The respondent must answer these questions only once for that reporting form.

(h) *Submitter identity.* Respondents who assert CBI claims for submitter identity must answer the following questions:

(1) Approximately how many competitors do you have in the market for this substance or the end-product from this substance?

(2) If you have asserted a claim of confidentiality for substance identity, what harm, if any, would you be caused if your company's identity were publicly disclosed by EPA if the substance identity were to remain as confidential?

(3) What harm, if any, would result from EPA's disclosure of the submitter identity? Please provide detailed descriptions of both the probable harm from disclosure and the causal relationship between disclosure and harm.

(i) *Substance identity.* Specific substance identity can be claimed as confidential only if that substance identity is confidential for purposes of the TSCA Chemical Substances Inventory. Respondents who assert CBI claims for substance identity must answer the following questions:

(1) Has the substance been patented or disclosed in a patent in the U.S. or elsewhere? If so, indicate the relevant patent(s) and the reasons why the

substance identity should nonetheless be considered confidential. Exactly what information which does not appear in the patent would be disclosed to competitors by releasing the specific substance identity? Explain in detail how competitors could use this information. Since the patent provides protection for the substance, why are you asserting confidentiality?

(2) In what form (i.e. product, effluent, emission, etc.) does this substance leave your site? What measures have you taken to guard against the discovery of the substance identity by others? If the substance is formulated with other chemicals, list them, and state the concentration of the claimed substance in the mixture.

(3) If the substance leaves the site in a product that is available to the public or your competitors, can the substance be identified by analysis of the product?

(4) Is the market for the substance or the end product containing the substance competitive? Is it likely that a competitor has attempted or will attempt to chemically analyze the substance? How long would it take before competitors would find it attractive to analyze the substance? Would the cost and difficulty of such analysis be great or small? Why?

(5) What harm, if any, would result from EPA's public disclosure of this substance name? Please provide detailed descriptions of both the probable harm to your company from disclosure and the causal relationship between release and harm.

(6) Would public disclosure of the specific substance identity reveal to your competitors the use of the substance or the process by which this substance is manufactured?

(j) *Volume manufactured, imported, or processed.* Respondents who assert CBI claims for volume manufactured, imported, or processed must answer the following questions:

(1) If you have claimed submitter's identity as confidential and EPA keeps confidential the link between your company identity and the volume manufactured, imported, or processed, your identity will not be associated in any way with that volume. In this case, what harm to your company's competitive position would result from disclosing that volume? How could a competitor use this information? What is the causal relationship between the disclosure and the harm?

(2) If you have claimed substance identity as confidential so that the substance identity is not associated in any way with the volume manufactured, imported, or processed, what harm to your competitive position would result from disclosing that volume? How could a competitor use this information? What is the causal relationship between the disclosure and the harm?

(3) If you have claimed neither submitter nor substance identity as confidential, what harm, if any, would result from release of your volume manufactured, imported, or processed? Please provide a detailed description of both the harm and the causal relationship between disclosure and harm.

(k) *Use information.* Respondents who assert CBI claims for use information must answer the following questions:

(1) If you have claimed submitter identity as confidential and EPA keeps confidential the link between your company identity and the use data, your identity will not be associated in any way with the use data. In this case, what harm to your competitive position would result from disclosing the use data? How could a competitor use this information? What is the causal relationship between the disclosure and the harm?

(2) If you have claimed substance identity as confidential so that the substance identity is not associated in any way with the use data, what harm to your company's competitive position would result from disclosing the use data? How could a competitor use this information? What is the causal relationship between the disclosure and the harm?

(3) If you have claimed neither submitter nor substance identity as confidential, what harm, if any, would result from release of your use information? Please provide a detailed description of both the harm and the causal relationship between disclosure and harm.

(l) *Process information.* Respondents who assert CBI claims for process information must answer the following questions:

(1) If you have claimed submitter identity as confidential and EPA keeps confidential the link between your company identity and process information, your identity will not be associated in any way with this information. In this case, what harm to your competitive position would result from disclosing the process information? What is the causal relationship between the disclosure and the harmful effects?

(2) If you have claimed neither submitter nor substance identity as confidential, what harm, if any, would result from release of your process information? Please provide a detailed description of both the harm and the causal relationship between disclosure and harm.

(m) *Other information.* Respondents who assert CBI claims using the other information category, must answer the following questions each time the respondent uses this category. Responses to these questions can be claimed as confidential in their own right by marking the first page.

(1) Is the item confidential in and of itself? If so, what is revealed by its disclosure?

(2) Is the item confidential because it will reveal some other confidential information, whether or not that other information is reported on this form? If so, what is the information that will be revealed?

(3) Is the item confidential because it will reveal other confidential information when the item is disclosed in association with some other item(s) submitted on this form? If so, what are those item(s)?

(4) If the answer to 1, 2, or 3 of this paragraph is yes, what harm to your company's competitive position would result from disclosing the information? How would disclosure lead to this harm?

(5) If you have claimed submitter identity as confidential and EPA maintains the confidentiality of the link between your company identity and this information, your identity will not be associated in any way with the item claimed. In this case, what harm to your competitive position would result from disclosing the item? How could a competitor use this information? What is the causal relationship between the disclosure and the harm?

(6) If you have claimed substance identity as confidential so that the substance identity (other than category name) is not associated in any way with the item claimed, what harm to your company's competitive position would result from disclosing the item? How could a competitor use this information? What is the causal relationship between the disclosure and the harm?

9. Subpart D is added to read as follows:

Subpart D—CAIR: Chemical-Specific Reporting Rules

Sec.
704.220 CAIR: matrices.
704.225 Chemical substance matrix in CAS registry number and alphabetical order.

§ 704.220 CAIR: matrices.

Subpart D of this part contains four matrices. These matrices all operate in the same fashion but are separated by the type of substance for which reporting is required. For each substance listed in a matrix, EPA has identified the persons who must report on that substance. These designated respondents must respond to all of the matrix's requirements.

They must answer the information collection requirement for the specified time period that is adjacent to their designation. A person who engaged in more than one activity at a site (i.e., manufacturing and processing) must answer the information request for both activities at that site in one CAIR form.

All of the symbols and CAIR reporting and recordkeeping requirements are explained in Subpart C of this part. Persons who are required to report must comply with Subpart C of this part.

§ 704.225 Chemical substance matrix in CAS registry number and alphabetical order.

(a) CAS registry number order.

CAS No.	Chemical name	Who must report	Exemptions	Information collection requirement	Time period on which to report	Effective Date
56-23-5	Methane, tetrachloro-(Carbon tetrachloride).	M,X/P,I,P		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,X/P,I,P		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
57-13-6	Urea (Carbamide)	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
57-56-7	Hydrazinecarboxamide (Semicarbazide).	M,X/P,I,P		1, 2.7, 2.8, 2.14, 2.15, 9.2, 9.3, 9.7	-1	
60-35-5	Acetamide (Ethanamide)	M,I,		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 3.1, 3.4 thru 3.7, 4.9, 4.10, 5.1 thru 5.4, 6.8, 6.9, 7.1, 9.2, 9.5 thru 9.9, 9.14, 9.15, 9.24, 10.1, 10.5, 10.6.	-1	
67-66-3	Methane, trichloro-(Chloroform).	M,X/P,I,P		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,X/P,I,P		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
71-43-2	Benzene	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
71-55-6	Ethane, 1, 1, 1-trichloro-(Methyl chloroform).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,I		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
75-09-2	Methane, dichloro-(methylene chloride).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.2, 2.4, 2.8, 2.12 thru 2.16, 2.18, 3.4 thru 3.6, 5 all, 6.1, 6.2, 6.7, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,I		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	

CAS No.	Chemical name	Who must report	Exemptions	Information collection requirement	Time period on which to report	Effective Date
75-35-4	Ethene, 1,1,-dichloro-(Vinylidene chloride).	M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
75-56-9	Oxirane, methyl-(1,2-Propylene oxide).	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1(a,b,d,e,f) 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
76-13-1	Ethane, 1,1,2-trichloro-1,2,2-trifluoro-(CFC 113).	M,X/P,I,P		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,X/P,I,P		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
79-01-6	Ethene, trichloro-(1,1,2-Trichloroethylene).	M,X/P,I,P		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,X/P,I,P		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
79-27-6	Ethane, 1,1,2,2-tetrabromo-(Acetylene tetrabromide).	M,X/P,I,P		1, 2.7, 2.8, 2.14, 2.15	-1,1,2,3	
85-01-8	Phenanthrene	M,X/P,I,P		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6	-1	
91-08-7	Benzene, 1,3-diisocyanato-2-methyl-(2,6-Toluene diisocyanate).	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10 thru 2.19, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
		M,X/P,I,P		1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7 thru 10.16, 10.23.	1, 2, 3	
93-00-5	2-Naphthalenesulfonic acid, 6-amino-(Broenner's acid).	M,I		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 3.1 thru 3.5, 3.4 thru 3.7, 4.1, 4.9, 4.10, 6.8, 6.9, 7.2 thru 7.5, 9.2, 9.5 thru 9.9, 9.14, 9.15, 9.24, 10.1, 10.5 10.6.	-1	
95-80-7	1,3-Benzenediamine, 4-methyl-(4-Methyl-*para*-phenylene-diamine).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	
97-18-7	Phenol, 2,2'-thiobis-[4,6-dichloro-(Bithionol).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	
97-23-4	Phenol, 2,2'-methylenebis-[4-chloro-(Dichlorophene).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	
100-42-5	Benzene, ethenyl-(Styrene)	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1 thru 3.5, 3.7, 3.4, 3.6, 4.1, 5.1(a,b,d,e,f) 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
101-14-4	Benzenamine, 4,4'-methylenebis[2-chloro-(4,4'-Methylenebis[2-chloroaniline]) (MBOCA).	X/P,P		1, 9.1, 9.3, 9.4, 9.7, 9.10, 9.14, 9.18	-1	
101-20-2	Urea, *N*-(4-chlorophenyl)-*N'*-(3,4-dichlorophenyl)-(Trichlorocarbanilide).	M,X/P,I,P		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	

CAS No.	Chemical name	Who must report	Exemptions	Information collection requirement	Time period on which to report	Effective Date
106-46-7	Benzene, 1,4-dichloro-(*para*-Dichlorobenzene).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	
108-88-3	Benzene, methyl-(Toluene)	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
115-96-8	Ethanol, 2-chloro-, phosphate (3:1) (Tris(2-chloroethyl) phosphate).	M,I		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6	-1	
123-91-1	1,4-Dioxane (Glycol ethylene ether).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
127-18-4	Ethene, tetrachloro- (Perchloroethylene) (PERC).	M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,X/P,I,P		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
129-00-0	Pyrene (Benzo[def]phenanthrene).	M,I		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6	-1	
156-62-7	Cyanamide, calcium salt (Calcium cyanamide).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
563-41-7	Hydrazinecarboxamide, monohydrochloride, (Semicarbazide hydrochloride).	M,X/P,I,P		1, 2.7, 2.8, 2.14, 2.15, 9.2, 9.3, 9.7	-1	
584-84-9	Benzene, 2,4-diisocyanato-1-methyl-(2,4-Toluene diisocyanate).	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10 thru 2.19, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
		M,X/P,I,P		1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7 thru 10.16, 10.23,	1, 2, 3	
624-92-0	Disulfide, dimethyl (Dimethyl disulfide).	M,I		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6	-1	
633-96-5	Benzenesulfonic acid, 4-[(2-hydroxy-1-naphthalenyl)azo]-, monosodium salt (Acid Orange 7).	M,I		1, 2.1, 2.4, thru 2.9, 2.12 thru 2.19, 3.1, 3.4, 3.5, 4.9, 4.10, 5.1 thru 5.4, 6.8, 6.9, 7.1, 9.2, 9.5 thru 9.9, 9.14, 9.15, 9.24, 10.1, 10.5, 10.6.	-1	
828-00-2	1,3 Dioxan-4-ol, 2,6-dimethyl-, acetate (Dimethoxane).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	
1321-38-6	Benzene, diisocyanatomethyl- (Unspecified toluene diisocyanate).	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10 thru 2.19, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	

CAS No.	Chemical name	Who must report	Exemptions	Information collection requirement	Time period on which to report	Effective Date
		M,X/P,I,P		1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7 thru 10.16, 10.23.	1, 2, 3	
5470-11-1	Hydroxylamine hydrochloride (Hydroxylammonium chloride).	M,X/P,I,P		1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6,7, 6.8, 9.1.	-1	
6484-52-2	Nitric acid ammonium salt (Ammonium nitrate).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
7631-99-4	Nitric acid sodium salt (Sodium nitrate).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
7664-41-7	Ammonia	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f) 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
7782-50-5	Chlorine	M,I		1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f) 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
7803-49-8	Hydroxylamine (Oxammonium).	M,X/P,I,P		1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6.7, 6.8, 9.1.	-1	
10039-54-0	Hydroxylamine, sulfate (2:1) (Hydroxylammonium sulfate).	M,X/P,I,P		1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6.7, 6.8, 9.1.	-1	
10046-00-1	Hydroxylamine, sulfate (1:1) (Hydroxylamine acid sulfate).	M,X/P,I,P		1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6.7, 6.8, 9.1.	-1	
10124-37-5	Nitric acid, calcium salt (Calcium nitrate).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
12125-02-9	Ammonium chloride (Sal ammoniac).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
26471-62-5	Benzene, 1,3-diisocyanatomethyl-(2,4- and 2,6-(80:20) Toluene diisocyanate).	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10 thru 2.19, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
		M,X/P,I,P		1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7 thru 10.16, 10.23.	1, 2, 3	
26530-20-1	3(2*H*)-Isothiazolone, 2-octyl-(2-(*n*-Octyl)-4-isothiazolin-3-one).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	

(b) Alphabetical order.

CAS No.	Chemical name	Who must report	Exemptions	Information collection requirement	Time period on which to report	Effective date
60-35-5	Acetamide (Ethanamide)	M,I		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 3.1, 3.4 thru 3.7, 4.9, 4.10, 5.1 thru 5.4, 6.8, 6.9, 7.1, 9.2, 9.5 thru 9.9, 9.14, 9.15, 9.24, 10.1, 10.5, 10.6.	-1	
7664-41-7	Ammonia	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f) 5.2., 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
12125-02-9	Ammonium chloride (Sal ammoniac).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1,2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
101-14-4	Benzenamine, 4,4'-methylene[2-chloro-(4,4'-methylenebis [2-chloroaniline]) (MBOCA).	X/P,P		1, 9.1, 9.3, 9.4, 9.7, 9.10, 9.14, 9.18	-1	
71-43-2	Benzene	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
106-46-7	Benezne, 1,4-dichloro-(*para*-Dichlorobenzene).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	
1321-38-6	Benzene, diisocyanatomethyl-(Unspecified toluene diisocyanate).	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10 thru 2.19, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
		M,X/P,I,P		1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7 thru 10.16, 10.23.	1, 2, 3	
26471-62-5	Benzene, 1,3-diisocyanatomethyl-(2,4- and 2,6-(80:20) Toluene diisocyanate).	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10 thru 2.19, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
		M,X/P,I,P		1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7 thru 10.16, 10.23.	1, 2, 3	
91-08-7	Benzene, 1,3-diisocyanato-2-methyl- (2,6-Toluene diisocyanate).	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10 thru 2.19, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
		M,X/P,I,P		1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7, thru 10.16, 10.23.	1, 2, 3	
584-84-9	Benzene, 2,4-diisocyanato-1-methyl-(2,4-Toluene diisocyanate).	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10 thru 2.19, 3 all, 4.1, 4.2, 4.9, 4.10, 4.12, 4.17, 4.21, 5 all, 6.2, 6.7, 6.8, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 9.1 thru 9.18, 9.21, 9.23 thru 9.25, 9.27 thru 9.29, 10.1, 10.2, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
		M,X/P,I,P		1, 2.14, 6.8, 9.3, 9.7, 9.9, 9.14, 9.16, 9.23, 10.1, 10.7 thru 10.16, 10.23.	1, 2, 3	
100-42-5	Benzene, ethenyl-(Styrene)	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f) 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
108-88-3	Benzene, methyl-(Toluene)	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	

BEST COPY AVAILABLE

CAS No.	Chemical name	Who must report	Exemptions	Information collection requirement	Time period on which to report	Effective date
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
95-80-7	1,3-Benzenediamine, 4-methyl-(4-Methyl-*meta*-phenylenediamine).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	
633-96-5	Benzenesulfonic acid, 4-[(2-hydroxy-1-naphthalenyl)azo]-, monosodium salt (Acid Orange 7).	M,I		1, 2.1, 2.4, thru 2.9, 2.12 thru 2.19, 3.1, 3.4, 3.5, 4.9, 4.10, 5.1 thru 5.4, 6.8, 6.9, 7.1, 9.2, 9.5 thru 9.9, 9.14, 9.15, 9.24, 10.1 10.5, 10.6.	-1	
7782-50-5	Chlorine	M,I		1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f) 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
156-62-7	Cyanamide, calcium salt (Calcium cyanamide).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
123-91-1	1,4-Dioxane (Glycol ethylene ether).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
828-00-2	1,3-Dioxan-2-ol, 2,6-dimethyl-, acetate (Dimethoxane).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	
624-92-0	Disulfide, dimethyl (Dimethyl disulfide).	M,I		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6	-1	
79-27-6	Ethane, 1,1,2,2-tetrabromo-(Acetylene tetrabromide).	M,X/P,I,P		1, 2.7, 2.8, 2.14, 2.15	-1,1,2,3	
71-55-6	Ethane, 1,1,1-trichloro-(Methyl chloroform).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,I		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
76-13-1	Ethane, 1,1,2-trichloro-1,2,2,-trifluoro-(CFC 113).	M,X/P,I,P		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,X/P,I,P		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
115-96-8	Ethanol, 2-chloro-, phosphate (3:1) (Tris(2-chloroethyl) phosphate).	M,I		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6	-1	
75-35-4	Ethene, 1,1-dichloro-(Vinylidene chloride).	M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	

CAS No.	Chemical name	Who must report	Exemptions	Information collection requirement	Time period on which to report	Effective date
127-18-4	Ethene, tetrachloro-(Perchloroethylene) (PERC).	M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4, thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,X/P,I,P		1, 9.3, 9.6, 9.7. 9.9, 9.10, 9.14 thru 9.18	5	
79-01-6	Ethene, trichloro-(1,1,2-Trichloroethylene).	M,X/P,I,P		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,X/P,I,P		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
57-56-7	Hydrazinecarboxamide (Semicarbazide).	M,X/P,I,P		1, 2.7, 2.8, 2.14, 2.15, 9.2, 9.3, 9.7	-1	
563-41-7	Hydrazinecarboxamide, monohydrochloride (Semicarbazide hydrochloride).	M,X/P,I,P		1, 2.7, 2.8, 2.14, 2.15, 9.2, 9.3, 9.7	-1	
7803-49-8	Hydroxylamine (Oxammonium).	M,X/P,I,P		1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6.7, 6.8, 9.1.	-1	
5470-11-1	Hydroxylamine, hydrochloride (Hydroxylammonium chloride).	M,X/P,I,P		1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6.7, 6.8, 9.1.	-1	
10046-00-1	Hydroxylamine, sulfate (1:1) (Hydroxylamine acid sulfate).	M,X/P,I,P		1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6.7, 6.8, 9.1.	-1	
10039-54-0	Hydroxylamine, sulfate (2:1) (Hydroxylammonium sulfate).	M,X/P,I,P		1, 2.7, 2.14 thru 2.16, 2.18, 3.4, 3.6 thru 3.8, 6.7, 6.8, 9.1.	-1	
26530-20-1	3(2*H*)-Isothiazolone, 2-octyl-(2-(*n*-Octyl)-4-isothiazolin-3-one).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	
75-09-2	Methane, dichloro-(Methylene chloride).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.2, 2.4, 2.8, 2.12 thru 2.16, 2.18, 3.4 thru 3.6, 5 all, 6.1, 6.2, 6.7, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,I		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
56-23-5	Methane, tetrachloro-(Carbon tetrachloride).	M,X/P,I,P		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
		M,X/P,I,P		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
67-66-3	Methane, trichloro-(Chloroform).	M,X/P,I,P		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,X/P,I,P		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18, 10.1 thru 10.6, 10.17 thru 10.23.	-1	

CAS No.	Chemical name	Who must report	Exemptions	Information collection requirement	Time period on which to report	Effective date
		M,X/P,I,P		1, 9.3, 9.6, 9.7, 9.9, 9.10, 9.14 thru 9.18	5	
93-00-5	2-Naphthalenesulfonic acid, 6-amino- (Broenner's acid).	M,I		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 3.1, 3.4 thru 3.7, 4.1, 4.9, 4.10, 6.8, 6.9, 7.2 thru 7.5, 9.2, 9.5 thru 9.9, 9.14, 9.15, 9.24, 10.1, 10.5, 10.6.	-1	
6484-52-2	Nitric acid ammonium salt (Ammonium nitrate).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
10124-37-5	Nitric acid, calcium salt (Calcium nitrate).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
7631-99-4	Nitric acid sodium salt (Sodium nitrate).	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 5 all, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8, 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
75-56-9	Oxirane, methyl-(1,2-Propylene oxide).	M,X/P,I,P		1, 2.1, 2.4 thru 2.8, 2.10, 2.12 thru 2.19, 3.1, 3.3, 3.4, 3.6, 4.1, 5.1 (a,b,d,e,f) 5.2, 6.2, 7.1, 7.3 thru 7.5, 8.2 thru 8.5, 8.10 thru 8.19, 8.22 thru 8.31, 10.1, 10.5 thru 10.16, 10.18, 10.19, 10.23.	-1	
85-01-8	Phenanthrene	M,X/P,I,P		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6	-1	
97-23-4	Phenol,2,2'-methylenebis-[4-chloro- (Dichlorophene).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	
97-18-7	Phenol,2,2'-thiobis-[4,6-dichloro-(Bithionol).	M,I		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	
129-00-0	Pyrene (Benzo[def]phenanthrene).	M,I		1, 2.1, 2.4 thru 2.9, 2.12 thru 2.19, 9.2, 10.1, 10.5, 10.6	-1	
57-13-6	Urea (Carbamide)	M,I		1, 2.1, 2.4, 2.12 thru 2.14, 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-5	
		M,I		1, 2.1, 2.4, 2.8 2.12 thru 2.16, 3.4 thru 3.6, 6.2, 8.1, 8.3 thru 8.5, 8.7, 8.10 thru 8.14, 8.25 thru 8.31, 10.1 thru 10.6, 10.17 thru 10.23.	-1	
01-20-2	Urea,*N*-(4-chlorophenyl)-*N'*-(3,4-dichlorophenyl)-(Trichlorocarbanilide).	M,X/P,I,P		1, 2.2, 2.12 thru 2.16, 2.18, 3.4, 3.5, 6.1, 6.2, 6.7	-1	

10. Subpart E is added to read as follows:

Subpart E—CAIR: Reporting Form and Instructions

Sec.
704.245 The CAIR reporting form.
704.247 Instructions and glossary of terms.

BILLING CODE 6560-50-M

Subpart E—CAIR: Reporting Form and Instructions

§ 704.245 The CAIR reporting form.

EPA

United States Environmental Protection Agency
Washington, DC 20460
Comprehensive Assessment Information
Rule Reporting Form

Form Approved
OMB No. xxxx-xxxx
Approval Expires xx-xx-xx

For Agency Use Only

When completed, send this form to:

Document Control Officer
Office of Toxic Substances, TS-793
U.S. Environmental Protection Agency
401 M. Street, SW
Washington, DC 20460

Date of Receipt

Document Control Number

Docket Number

Before completing any portion of this form, you should read the instruction booklet. The booklet contains general instructions on complying with the requirements of the rule, supplemental instructions for and examples of questions involving complex answers, and a glossary containing definitions of selected terms. If you cannot determine your reporting obligations, you should call toll-free to the TSCA Assistance Office, U.S. EPA, at (800) 424-9065, or if in the Washington, D.C., Metropolitan area, at 554-1404. If outside the USA, call the operator at (202) 554-1404. *Please note: all respondents must complete section 1 in its entirety.*

This form is intended to gather information on a specific listed substance that is manufactured, imported, or processed at one plant site. If you are required to report on more than one listed substance, you must submit a separate form for each substance. Similarly, if you manufacture, import, or process a listed substance at more than one plant site, you must submit a separate form for each plant site.

For each question that you are required to answer, you must respond by either providing the data, stating not applicable "NA," or if the question permits, stating unknown "UK." All reports with incomplete responses will be assessed as invalid and may be returned to you for completion.

Terms that appear in italics throughout the form are defined in the glossary provided in the instruction booklet. Refer to the glossary whenever a term appears in italics, and interpret these terms according to the definitions provided.

If you need additional space to report the required data, you should attach additional copies of the specific part of this form and/or a separate sheet of paper. Provide a list of attachments in the appendix as described in the instruction booklet.

EPA Form 7710-52

SECTION 1 GENERAL MANUFACTURER, IMPORTER, AND PROCESSOR INFORMATION

PART A GENERAL REPORTING INFORMATION

1.1 This Comprehensive Assessment Information Rule (CAIR) Reporting Form has been completed in response to the Federal Register Notice of _____, 19__ for _____ (state name of substance as listed in the Federal Register Notice).

1.2 If the above-listed Federal Register Notice contained the "x/p" designation, respond to the statement below:

a. Mark (X) this box [ ] if you manufacture, import, or process the listed substance and distribute it under a trade name different than that listed above (in question 1.1); and if you have chosen to report on behalf of your customers who process the listed substance rather than:

1) notify them of their reporting obligations; or
2) submit to EPA within 30 days of this Federal Register Notice names under which you distribute the listed substance.

1.3 Mark (X) the box corresponding to each section containing questions that you are required to submit.

SECTIONS SUBMITTED		SECTION TITLES	
[ ]	1	General Manufacturer, Importer, and Processor Information (always complete this section)	Page 2
[ ]	2	Manufacturer, Importer, and Processor Volume and Use	Page 8
[ ]	3	Processor Raw Material Identification	Page 17
[ ]	4	Physical/Chemical Properties	Page 21
[ ]	5	Environmental Fate	Page 27
[ ]	6	Economic and Financial Information	Page 30
[ ]	7	Manufacturing and Processing Information	Page 34
[ ]	8	Residual Treatment, Generation, Characterization, Management, and Transportation	Page 40
[ ]	9	Worker Exposure	Page 65
[ ]	10	Environmental Release	Page 81
[ ]	Appendix	List of Continuation Sheets	Page 101

[ ] Mark (X) this box if you attach a continuation sheet.

CBI

[ ] 1.4 Certification -- The person who is responsible for the completion of this form must sign the certification statement below: "I hereby certify that, to the best of my knowledge and belief, all information entered on this form is complete and accurate. I agree to permit access to, and the copying of records by, a duly authorized representative of the EPA Administrator to document any reported information.

NAME _____ SIGNATURE _____ DATE SIGNED _____

TITLE _____ (___) ___ - ____ TELEPHONE NO.

[ ] 1.5 Exemptions from reporting -- If you voluntarily have provided EPA with the required information on a CAIR report for the listed substance within the past 3 years, and this information is current, accurate, and complete for the time period specified in the rule, then sign the certification below. You are required to complete section 1 of this CAIR form and any information now required but not previously submitted.

"I hereby certify that, to the best of my knowledge and belief, all required information which I have not included in this CAIR Reporting Form has been submitted to EPA within the past 3 years and is current, accurate, and complete for the time period specified in the rule."

NAME _____ SIGNATURE _____ DATE SIGNED _____

TITLE _____ (___) ___ - ____ TELEPHONE NO.

[ ] Mark (X) this box if you attach a continuation sheet.

PART B CORPORATE DATA

1.6 Plant Identification

CBI

☐ Name of Plant _____

Address _____

City _____

State _____ Zip _____

EPA ID No. _____

Employer ID No. ____-____-____

Standard Industrial Classification (SIC) Code _____

Dun & Bradstreet No. _____

Location: Latitude ° ' "

Longitude ° ' "

Year Operations Began _____

1.7 Company Identification

CBI

☐ Name of Company _____

Address _____

City _____

State _____ Zip _____

EPA ID. No. _____

Employer ID No. ____-____-____

Dun & Bradstreet No. _____

1.8 Parent Company

CBI

☐ Name of Parent Company _____

Address _____

City _____

State _____ Zip _____

Dun & Bradstreet No. _____

1.9 Technical Contact

CBI

☐ Name _____

Title _____

Telephone Number _____

Address _____

City _____

State _____ Zip _____

☐ Mark (X) this box if you attach a continuation sheet.

1.10 This *reporting year* is from _____ (month) 19__ to _____ (month) 19__.

1.11 Plant Site Acquired -- If plant site was acquired during the *reporting year*, provide the following information:

CBI

☐ Name of Former Owner or Operator

Address _____

City _____

State _____ Zip _____

Employer ID No. ____-____-____

☐ Date of Acquisition

1.12 Plant Site Sold -- If plant site was sold to another company during the *reporting year*, provide the following information:

CBI

☐ Name of Former Owner or Operator

Address _____

City _____

State _____ Zip _____

Employer ID No. ____-____-____

☐ Date of Sale

1.13 Plant Site Leased -- If plant site was leased to another company during the *reporting year*, provide the following information:

CBI

☐ Name of Lessee

Address _____

City _____

State _____ Zip _____

Employer ID No. ____-____-____

☐ Date of Lease

☐ Term of Lease

1.14 Plant Site Leased -- If plant site was leased from another company during the *reporting year*, provide the following information:

CBI

☐ Name of Lessor

Address _____

City _____

State _____ Zip _____

Employer ID No. ____-____-____

☐ Date of Lease

☐ Term of Lease

☐ Mark (X) this box if you attach a continuation sheet.

1.15 Specify each of the following classifications that describe the activities that occur at this plant site. For each classification, state the quantity of the listed substance that was manufactured, imported, or processed at this plant site in the *reporting year*.

CBI			Quantity (kg/yr)
☐	a.	Manufacturer for Commercial Purposes	
☐		1) For use by the manufacturer	_____
☐		2) Coincidental production	_____
☐		3) For commercial distribution	_____
	b.	Importer for Commercial Purposes	
☐		1) For use by the importer	_____
☐		2) For commercial distribution	_____
	c.	Processor for Commercial Purposes	
☐		1) Repackager	_____
☐		2) Chemical producer	_____
☐		3) Mixture producer	_____
☐		4) Article producer	_____

CBI

☐ 1.16 Is the listed substance distributed for a *commercial* purpose outside the boundaries of this plant site?

☐ YES ☐ NO

☐ Mark (X) this box if you attach a continuation sheet.

PART C TRADE NAMES AND SUBSTANCE IDENTIFICATION

CBI

☐ 1.17 Market Names -- List the trade name(s) under which you distribute the listed substance.

_____ _____
_____ _____
_____ _____

1.18 (Level of Effort 2) If you are reporting on a chemical that is within a category listed in 40 CFR 704.235, enter the CAS number and chemical name (do not report on more than one chemical per form).

CBI

☐ CAS No. ☐☐☐☐☐☐-☐☐-☐

☐ Chemical Name ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
(first 15 characters)

CBI

☐ 1.19 If the listed substance on which you are required to report is a *mixture* listed in 40 CFR 704.240, provide the following information: (Do not report on more than one *mixture* per form.)

Component or Trade Name and Manufacturer	Average % Composition by Weight (specify precision, e.g., 45% ± .5%)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
	Total 100%

☐ Mark (X) this box if you attach a continuation sheet.

SECTION 2 MANUFACTURER, IMPORTER, AND PROCESSOR VOLUME AND USE

CBI

☐ 2.1 State the number of years your plant has manufactured, imported, or processed the listed substance.

Manufactured	Imported	Processed
____ years	____ years	____ years

CBI

☐ 2.2 State the quantity of the listed substance your plant manufactured, imported, or processed during the *reporting year* and the prior year.

Year Ending	Quantity Manufactured (kg)	Quantity Imported (kg)	Quantity Processed (kg)
_____ (month) 19__			
_____ 19__			

2.3 State the quantity of the listed substance your plant manufactured, imported, or processed during the reporting year and the 3 fiscal years preceding the *reporting year* (in descending order).

CBI	Year Ending	Quantity Manufactured (kg)	Quantity Imported (kg)	Quantity Processed (kg)
☐	_____ (month) 19__			
☐	_____ 19__			
☐	_____ 19__			
☐	_____ 19__			

☐ Mark (X) this box if you attach a continuation sheet.

2.4 State the quantity of the listed substance your plant manufactured, imported, or processed during the reporting year and the 5 fiscal years preceding the *reporting year* (in descending order).

CBI	Year Ending	Quantity Manufactured (kg)	Quantity Imported (kg)	Quantity Processed (kg)
☐	_____ (month) 19__			
☐	_____ 19__			
☐	_____ 19__			
☐	_____ 19__			
☐	_____ 19__			
☐	_____ 19__			

CBI

☐ 2.5 Specify the manner in which you manufacture the listed substance.

☐ Continuous process ☐ *Semicontinuous process* ☐ Batch process

CBI

☐ 2.6 Specify the manner in which you process the listed substance.

☐ Continuous process ☐ *Semicontinuous process* ☐ Batch process

CBI

☐ 2.7 (Level of Effort 2) State your plant's current manufacturing, importing, or processing *capacity* for the listed substance. If you are a batch manufacturer, do not answer this question.

Manufacture	Import	Process
_____ kg/yr	_____ kg/yr	_____ kg/yr

☐ Mark (X) this box if you attach a continuation sheet.

2.8 If you *intend to increase or decrease* the quantity of the listed substance manufactured, imported, or processed during the current corporate fiscal year, complete the following table.

CBI		Manufacturing Quantity (kg)	Importing Quantity (kg)	Processing Quantity (kg)
☐	Amount of increase			
☐	Amount of decrease			

2.9 For each month during which you manufactured, imported, or processed the listed substance during the *reporting year*, indicate whether you manufactured (M), imported (I), or processed (P) the listed substance.

CBI		M,I,P	CBI		M,I,P	CBI		M,I,P
☐	January		☐	May		☐	September	
☐	February		☐	June		☐	October	
☐	March		☐	July		☐	November	
☐	April		☐	August		☐	December	

2.10 (Level of Effort 2) Specify the duration for which manufacturing or processing the listed substance was conducted in the *reporting year*.

CBI	Manufacturing		CBI	Processing	
☐	Days per year		☐	Days per year	
☐	Average hours per day		☐	Average hours per day	

2.11 (Level of Effort 2) State the maximum and minimum daily quantities, and average monthly quantities of the listed substance that were stored on site during the *reporting year*.

CBI			
☐	Maximum daily quantity		kg
☐	Minimum daily quantity		kg
☐	Average monthly quantity		kg

☐ Mark (X) this box if you attach a continuation sheet.

2.12 (Level of Effort 2) Related Substances -- List any *byproducts*, *coproducts*, or *impurities* present with the listed substance in concentrations greater than 0.1 percent as it is manufactured or imported.

CBI	CAS No. and Name	Byproduct (B) Coproduct (C) or Impurity (I)	Concentration (%) (specify ± % precision)	Source of Impurities
☐				
☐				
☐				
☐				
☐				
☐				

2.13 *Additives* -- List all substances that you add to the listed substance as it is manufactured, imported, or processed. Include the *additive*'s chemical name (or trade name if chemical name is not known), CAS number, function in the listed substance, and maximum concentration in the listed substance.

CBI	Additive (by Name and CAS No.)	Function	Maximum Concentration (%) (specify ± % precision)
☐			
☐			
☐			

☐ Mark (X) this box if you attach a continuation sheet.

2.14 In the table below, list the categories of existing uses for which you manufacture, import, or process the listed substance.

CBI	a. Categories of Existing Use(s)	b. Percent of Quantity Manufactured, Imported, or Processed	c. Percent of Quantity Used Captively On Site
☐			
☐			
☐			
☐			
☐			
	Non-TSCA Uses (specify)		
☐			
☐			
☐			
	Total percent of quantity manufactured, imported, or processed:	100 %	

☐ Mark (X) this box if you attach a continuation sheet.

2.15 Identify all *uses* of the substance that you expect will occur during the next year. For each *use*, specify the quantity you expect to manufacture, import, or process as a percentage of your current production volume (refer to question 1.15).

CBI	a. Use(s)	b. Percent of Quantity Manufactured, Imported, or Processed	c. Percent of Quantity Used Captively On Site
☐			
☐			
☐			
☐			
☐			
	Non-TSCA Uses (specify)		
☐			
☐			
☐			

☐ Mark (X) this box if you attach a continuation sheet.

2.16 *Final Product* (Level of Effort 2)

a. For each *final product* produced at your site that contains the listed substance, complete the following table.

CBI	Product Name	Physical Form[1]	Container Size (kg)	Container Type[2]	Quantity of Listed Substance Per Container	Type of End Users (I, CM, CS)[3]	Unit Price	Total Number of Containers
☐								
☐								
☐								
☐								
☐								

b. If you incorporate the listed substance into an *article*, list the product name and describe the *article*.

CBI	Product Names	Description of Article
☐		
☐		

1. A = Gas; B = Liquid; C = Aqueous solution; D = Paste; E = Slurry; F = Solid: F1 = Powder, F2 = Crystalline solid, F3 = Granules, F4 = Other solid; G = Gel; H = Other (specify) _____.

2. A = Aerosol or mist dispenser; B = Pressurized package; C = Nonaerosol package; D = Single-unit *container* (e.g., bottle, box, bag); E = Multiunit *container* (e.g., box of tablets); F = *Article*; G = Other (specify) _____.

3. I = *Industrial*; CM = *Commercial*; CS = *Consumer*.

☐ Mark (X) this box if you attach a continuation sheet.

2.17 For each type of packaging specified below, check the method of transportation used in delivering your product to off-site customers.

Type of Packaging	Truck	Railcar	Barge, Vessel	Pipeline	Plane	Other (specify)
Bulk	☐	☐	☐	☐	☐	☐
Nonbulk	☐	☐	☐	☐	☐	☐

2.18 (Level of Effort 2) Customer Use -- For each category of end use (i-iv) that applies to the listed substance, estimate the quantity of the listed substance that your customers use or prepare.

CBI

☐ i. Industrial Products

Chemical or mixture _____ (kg/yr)

Article _____ (kg/yr)

☐ ii. Commercial Products

Chemical or mixture _____ (kg/yr)

Article _____ (kg/yr)

☐ iii. Consumer Products

Chemical or mixture _____ (kg/yr)

Article _____ (kg/yr)

☐ iv. Other

Distribution (excluding export) _____ (kg/yr)

Export _____ (kg/yr)

Quantity of substance consumed as reactant _____ (kg/yr)

Unknown customer uses _____ (kg/yr)

☐ Mark (X) this box if you attach a continuation sheet.

CBI

☐ 2.19 State the quantity of the listed substance that you exported in the *reporting year*.

_____ kg/yr in bulk _____ kg/yr as a *mixture* _____ kg/yr in *articles*

☐ Mark (X) this box if you attach a continuation sheet.

SECTION 3 PROCESSOR RAW MATERIAL IDENTIFICATION

PART A GENERAL DATA

3.1 Identify your source for obtaining the listed substance and specify, where appropriate, the quantity obtained and the price paid.

CBI		Quantity (kg)	Cost ($/kg)
☐	The listed substance was purchased directly from the manufacturer.	_____	_____
☐	The listed substance was purchased from a distributor or repackager.	_____	_____
☐	The listed substance was purchased from a mixture producer.	_____	_____
☐	The listed substance was manufactured on site.	_____	_____
☐	The listed substance was transferred from a different company site.	_____	_____

3.2 State the mode of transportation used to deliver the listed substance to your plant site.

_____

3.3 a. Indicate the type of equipment used to transport the listed substance to your plant site.

☐ Bags ☐ Boxes ☐ Tank cylinders ☐ Tank rail cars

☐ Tank trucks ☐ Drums ☐ Pipes

☐ Other (specify) _____

b. If the listed substance is transported in pressurized tank cylinders, tank rail cars, or tank trucks, state the pressure of the tanks.

Tank cylinders	Tank rail cars	Tank trucks
_____ mm Hg	_____ mm Hg	_____ mm Hg

☐ Mark (X) this box if you attach a continuation sheet.

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PART B RAW MATERIAL IN THE FORM OF A MIXTURE

CBI 3.4 If you process the listed substance in the form of a *mixture*:

☐ a. How much of the mixture did you process? _____kg/yr.

b. (Level of Effort 4) List the known components of the mixture by CAS number, chemical name, or trade name.

CBI	Component	% Composition by Weight
☐		
☐		
☐		
☐		
☐		

3.5 (Level of Effort 2) If more than 50 percent (by weight) of the *mixture's* components are unknown, list the trade name of the *mixture*, the name of its manufacturer, and an estimate of the percent composition by weight of the listed substance in the *mixture*.

CBI	Trade Name	Manufacturer	% Composition by Weight (specify ± % precision)
☐			
☐			

☐ Mark (X) this box if you attach a continuation sheet.

PART C RAW MATERIAL VOLUME

3.6 List all of the products that you produce using the listed substance as a feedstock.

CBI	Product	% Total Capacity	CBI	Product	% Total Capacity
☐			☐		
☐			☐		
☐			☐		
☐			☐		
☐			☐		

State the total *capacity* of plant: _____

3.7 (Level of Effort 2) State the quantity of the listed substance that you use as a feedstock in the form of a *class I chemical*.

CBI	Total Mass	% Composition by Weight (specify ± % precision)
☐	_____ kg	
☐	_____ kg	

3.8 (Precision Level 2) State the quantity of the listed substance that you use as a feedstock in the form of a *class II chemical*.

CBI	Total Mass	% Composition by Weight (specify ± % precision)
☐	_____ kg	
☐	_____ kg	

☐ Mark (X) this box if you attach a continuation sheet.

3.9 (Level of Effort 2) State the quantity of the listed substance that you use as a feedstock in the form of a *polymer*.

CBI	Total Mass	% Composition by Weight (specify ± % precision)
☐	_____ kg	_____
☐	_____ kg	_____
☐	_____ kg	_____

☐ Mark (X) this box if you attach a continuation sheet.

SECTION 4 PHYSICAL/CHEMICAL PROPERTIES

PART A PHYSICAL/CHEMICAL DATA SUMMARY

4.1 (Level of Effort 3) Specify the technical grade(s) of the listed substance as it is manufactured, imported, or processed.

	Manufacture	Import	Process
Technical grade #1	_____% purity	_____% purity	_____% purity
Technical grade #2	_____% purity	_____% purity	_____% purity
Technical grade #3	_____% purity	_____% purity	_____% purity

4.2 (Level of Effort 3) Report the information required in a-i for one of the technical grades of the listed substance identified in question 4.1. Specify the technical grade in the space provided and list the accuracy of each response. If you have completed a Material Safety Data Sheet (MSDS) for one of the identified technical grades of the listed substance, you may submit the MSDS in lieu of answering this question. If you submit an MSDS, you must check the box below and identify the technical grade on the MSDS.

Technical grade # _____ Precision (± %)

MSDS submitted in lieu of response ☐

a. Boiling point @ 760 mm Hg _____°C _____

@ other pressure (specify): _____ mm Hg _____°C _____

b. Melting point @ 760 mm Hg _____°C _____

c. Sublimation point _____°C _____

@ _____ mm Hg _____

d. Latent heat of vaporization @ 760 mm Hg _____ Btu/lb _____

e. Vapor pressure _____ mm Hg at _____°C _____

f. Color (describe) _____

4.2 continued below

☐ Mark (X) this box if you attach a continuation sheet.

4.2 (continued)

g. Odor (describe) _____

	Precision (± %)
h. Odor threshold _____ ppm	_____
i. Vapor density (Air=1) _____ @ _____ °C	_____

4.3 (Level of Effort 3) State the density of the listed substance at the technical grade as specified in question 4.2 and indicate the accuracy of your response.

Density _____ g/cm^3 ± _____ %

4.4 (Level of Effort 3) State the specific gravity of the listed substance at the technical grade as specified in question 4.2 and indicate the accuracy of your response.

Specific gravity _____ ± _____ %

4.5 (Level of Effort 3) State the pH of the listed substance at the technical grade specified in question 4.2. Specify the temperature and concentration of the listed substance in water and indicate the accuracy of your response.

Temperature	Concentration in Water	pH
± _____ %	± _____ %	± _____ %

4.6 (Level of Effort 3) Specify the viscosity of the listed substance at the technical grade specified in question 4.2. Indicate the accuracy of your response.

_____ Centipoise ± _____ % @ _____ °C

4.7 (Level of Effort 3) Express the solubility of the listed substance in each of the specified media, and other media if known, for the technical grade specified in question 4.2.

	Other Media (if known)
_____ mg/l in Acetone at _____ °C	_____ mg/l in _____ at _____ °C
_____ mg/l in Benzene at _____ °C	_____ mg/l in _____ at _____ °C
_____ mg/l in Ethanol at _____ °C	_____ mg/l in _____ at _____ °C
_____ mg/l in Ethyl Ether at _____ °C	_____ mg/l in _____ at _____ °C
_____ mg/l in Water at _____ °C	_____ mg/l in _____ at _____ °C

☐ Mark (X) this box if you attach a continuation sheet.

4.8 Spectra -- Indicate characteristic/distinctive absorption for the listed substance.

Ultraviolet	Visible	Infrared
_____ ± _____ %	_____ ± _____ %	_____ ± _____ %

4.9 Physical State -- Indicate the physical state of the listed substance as you engage in the following activities:

Physical State	Manufacture	Import	Process	Store	Dispose	Transport
Solid	_____	_____	_____	_____	_____	_____
Slurry	_____	_____	_____	_____	_____	_____
Liquid (including in solution)	_____	_____	_____	_____	_____	_____
Liquified compressed gas	_____	_____	_____	_____	_____	_____
Gas	_____	_____	_____	_____	_____	_____

☐ Mark (X) this box if you attach a continuation sheet.

If you have completed a MSDS or have prepared any hazard warning statement, label, or other notice that addresses the information requested in questions 4.10-4.15, you may submit a copy or reasonable facsimile in lieu of answering these questions. If you do attach this information, check the box below:

Hazard information submitted in lieu of response ☐

4.10 (Level of Effort 2) Particle Size -- If the listed substance exists in particulate or gas form during any of the following activities, indicate for each applicable physical state the size[1] and distribution of the listed substance.

Physical State	Manufacture	Import	Process	Store	Dispose	Transport	Total
Dust							
Powder							
Fiber							
Aerosol							
Gas							
Other (specify)							

1. Size Range: A = < 1 micron; B = 1 to < 5 microns; C = 5 to < 30 microns

PART B FIRE, EXPLOSION, AND OTHER HAZARD DATA

4.11 State the flashpoint of the listed substance, specify the corresponding physical state, and identify the test method used.

Flashpoint ____ °C Physical state _____ Test method _____

Flashpoint ____ °C Physical state _____ Test method _____

4.12 Indicate temperature at which the listed substance undergoes *autopolymerization* or *autodecomposition*.

Autopolymerizes at _____ °C

Autodecomposes at _____ °C

☐ Mark (X) this box if you attach a continuation sheet.

4.13 Flammable Limits in Air (% by volume) at standard temperature and pressure.

Lower limit: _____ Upper limit: _____

4.14 (Level of Effort 4) Extinguishing Media -- Indicate all known methods for extinguishing flames (e.g., CO_2, foam, water).

4.15 Special Firefighting Procedures (e.g., "Do not use water").

4.16 List all chemicals or materials that are *incompatible* with the listed substance.

CAS No.	Name	Reaction (specify)

4.17 Provide a copy or reasonable facsimile of any hazard information that is provided to your customers/users regarding the listed substance and check the box below.

☐ Hazard information attached.

4.18 Self-oxidation -- Is the listed substance capable of self-oxidation?

☐ Yes ☐ No ☐ Unknown

4.19 Autoignition temperature ____ °C Test method _____

☐ Mark (X) this box if you attach a continuation sheet.

4.20 Vapor in Cargo Tanks -- If storing the listed substance in a cargo tank causes vapor problems, such as peroxide formation, reaction with moisture, and/or combustion, specify the problem and necessary control or restrictions using the following table

Vapor Problem	Control/Restrictions
Peroxide formation	
Reaction with moisture	
Combustion	
Other (specify)	

4.21 Shipment Procedures -- If you use an inhibitor (I) or stabilizer (S) when shipping the listed substance, specify its name, whether it inhibits or stabilizes the listed substance, the amount normally added, and the duration of its effectiveness.

CBI	Name of Additive	Inhibitor (I) or Stabilizer (S)	Amount Normally Added (mg/kg)	Duration of Effectiveness
☐				
☐				
☐				
☐				

☐ Mark (X) this box if you attach a continuation sheet.

SECTION 5 ENVIRONMENTAL FATE

PART A RATE CONSTANTS AND TRANSFORMATION PRODUCTS

5.1 (Level of Effort 4) Indicate the rate constants for the following transformation processes.

a. Photolysis:

Absorption spectrum (peak) _____

Reaction quantum yield, ϕ _____ at _____ nm

Direct photolysis rate constant, k_p, at _____ latitude _____ 1/hr

b. Oxidation constants at 25°C:

For $^1O_2$ (singlet oxygen), k_{ox} _____ 1/M hr

For RO_2 (peroxy radical), k_{ox} _____ 1/M hr

c. Five day biochemical oxygen demand, BOD_5 _____

d. Biotransformation rate constant:

For bacterial transformation in water, k_b _____ hr^{-1}

Specify culture _____

e. Hydrolysis rate constants:

For base-promoted process, k_B _____ 1/M hr

For acid-promoted process, k_A _____ 1/M hr

For neutral process, k_N _____ 1/M hr

f. Chemical reduction rate (specify)

_____

_____

g. Other (such as spontaneous degradation)

_____

_____

☐ Mark (Y) this box if you attach a continuation sheet.

PART B PARTITION COEFFICIENTS -- (Level of Effort 4) Provide the following partition coefficients in the specified units.

5.2 a. (Level of Effort 4) Specify the half-life of the listed substance.

Half-life	Media
_____	in groundwater
_____	in atmosphere
_____	in surface water
_____	in soil

b. (Level of Effort 4) Identify the listed substance's known *transformation products* that have a half-life greater than 24 hours.

CAS No.	Name	Half-life (specify units)	Media
_____	_____	_____	in _____
_____	_____	_____	in _____
_____	_____	_____	in _____
_____	_____	_____	in _____

5.3 Octanol-water partition coefficient, K_{OW} = _____ at 25°C

Method of calculation _____

5.4 Soil-water partition coefficient, K_d = _____ at 25°C

Soil type _____

5.5 Organic carbon-water partition coefficient, K_{OC} = _____ at 25°C

5.6 Henry's Law Constant, H = _____ atm-m^3/mole

☐ Mark (X) this box if you attach a continuation sheet.

5.7 Bioconcentration factor, BCF = _____ for _____ (species) _____ test[1]

= _____ for _____ _____

= _____ for _____ _____

[1] static (s) or flowthrough (f)

☐ Mark (X) this box if you attach a continuation sheet.

SECTION 6 ECONOMIC AND FINANCIAL INFORMATION

6.1 Company Type -- Specify which of the following terms most appropriately describes your company.

☐ Corporation ☐ Partnership

☐ Sole proprietorship ☐ Other (specify) _____

6.2 SIC Codes -- Provide your plant's 4-digit Standard Industrial Classification (SIC) Code(s) and describe the type of industry.

SIC Code	Industry Type
_____	_____
_____	_____
_____	_____
_____	_____

6.3 a. State the year your plant was built. _____ Year

b. State the year, if any, in which the plant experienced a major reconstruction/remodification. _____ Year

6.4 (Level of Effort 2) State the current estimated replacement value of your plant.
$_____

6.5 (Level of Effort 2) Provide the remaining life expectancy of your plant.
_____ No. of years

6.6 At the end of the *reporting year*, were you constructing additional facilities for manufacturing, importing, or processing the listed substance at this site?

☐ Yes ☐ No

☐ Mark (X) this box if you attach a continuation sheet.

6.7 (Level of Effort 2) If you sell or transfer the listed substance, specify the quantity and sales value of the listed substance for each applicable market.

CBI	Market	Quantity Sold or Transferred (kg/yr)	Total Sales Value ($/yr)
☐	Retail sales	_____	_____
☐	Distribution -- Wholesalers	_____	_____
☐	Distribution -- Retailers	_____	_____
☐	Intra-company transfer	_____	_____
☐	Repackaging	_____	_____
☐	Mixture production	_____	_____
☐	Article production	_____	_____
☐	Other chemical manufacturers or processors	_____	_____
☐	Export	_____	_____
☐	Other (specify) _____	_____	_____

6.8 (Level of Effort 2) Substitutes -- List all known commercially available substitutes for the listed substance and state the costs of the substitutes.

CBI	Substitute	Cost ($/kg)
☐	_____	_____
☐	_____	_____
☐	_____	_____

☐ Mark (X) this box if you attach a continuation sheet.

6.9 State your total and variable costs of manufacturing, importing, or processing the listed substance. Refer to the instructions for explanations of these costs.

CBI	Costs	Manufacturing	Importing	Processing
☐	Total	_____ $/kg	_____ $/kg	_____ $/kg
☐	Variable	_____ $/kg	_____ $/kg	_____ $/kg

6.10 State your purchase price of the listed substance. $ _____/kg

6.11 State your company's total sales and sales of the listed substance for the *reporting year* and the year preceeding the reporting year.

Year Ending	Company's Total Sales ($ million)	Sales of the Listed Substance ($ million)
_____ (month) 19__		
_____ 19__		

6.12 State your company's total sales and sales of the listed substance for the 3 years preceding the *reporting year* (and for the *reporting year*).

Year Ending	Company's Total Sales ($ million)	Sales of the Listed Substance ($ million)
_____ (month) 19__		
_____ 19__		
_____ 19__		
_____ 19__		

☐ Mark (X) this box if you attach a continuation sheet.

6.13 State your company's total sales and sales of the listed substance for the 5 years preceding the *reporting year* (and for the *reporting year*).

Year Ending	Company's Total Sales ($ million)	Sales From Sale of the Listed Substance ($ million)
_____ 19__		
_____ 19__		
_____ 19__		
_____ 19__		
_____ 19__		
_____ 19__		

☐ Mark (X) this box if you attach a continuation sheet.

SECTION 7 MANUFACTURING AND PROCESSING INFORMATION

PART A PROCESS DESCRIPTION

CBI

☐ 7.1 (Level of Effort 2) In accordance with the instructions, provide your process block flow diagram, identifying all input and output streams that contain the listed substance.

Product/process _____

☐ Mark (X) this box if you attach a continuation sheet.

CBI

☐ 7.2 (Level of Effort 2) In accordance with the instructions, provide your process block flow diagram, identifying all input and output streams.

Product/process _____

☐ Mark (X) this box if you attach a continuation sheet.

7.3 (Level of Effort 2) List the equipment identified in the process block flow diagram.

CBI

☐ Product/process _____

	Equipment ID Number	Equipment Type	Operating Temperature Range (°C)	Operating Pressure Range (mm Hg)	Vessel Composition
☐					
☐					
☐					
☐					
☐					
☐					
☐					
☐					
☐					
☐					

☐ Mark (X) this box if you attach a continuation sheet.

7.4 (Level of Effort 2) Describe the input and output streams identified in the process block flow diagram.

CBI

☐ Product/process _____

	Process Stream ID Letter	Process Stream Description	Physical State[1]	Stream Flow (kg/yr)
☐				
☐				
☐				
☐				
☐				
☐				
☐				
☐				

1. Describe the physical state for each output stream:

GC = Gas (condensible at ambient temperature and pressure)
GU = Gas (uncondensible at ambient temperature and pressure)
SO = Solid
SY = Sludge or slurry
AL = Aqueous liquid
OL = Organic liquid
IL = Immiscible liquid (specify phases, e.g., 90% water, 10% toluene)

☐ Mark (X) this box if you attach a continuation sheet.

BEST COPY AVAILABLE

7.5 Characterize those input and output streams identified in the process block flow diagram.

CBI

☐ Product/process _____

	Process Stream ID Letter	Known Compounds	Concentrations (% or ppm)	Expected Compounds	Estimated Concentrations (% or ppm)[1]
☐	_____	_____	_____	_____	_____
		_____	_____	_____	_____
		_____	_____	_____	_____
		_____	_____	_____	_____
☐	_____	_____	_____	_____	_____
		_____	_____	_____	_____
		_____	_____	_____	_____
		_____	_____	_____	_____
		_____	_____	_____	_____
☐	_____	_____	_____	_____	_____
		_____	_____	_____	_____
		_____	_____	_____	_____
		_____	_____	_____	_____
☐	_____	_____	_____	_____	_____
		_____	_____	_____	_____
		_____	_____	_____	_____
		_____	_____	_____	_____
☐	_____	_____	_____	_____	_____
		_____	_____	_____	_____
		_____	_____	_____	_____
		_____	_____	_____	_____

[1]Specify "A" (actual) or "E" (estimate).

☐ Mark (X) this box if you attach a continuation sheet.

BEST COPY AVAILABLE

7.6 Identify the media (atmosphere, land, groundwater, surface water) to which the listed substance is released via each process stream. Specify the control technology that is used to limit release of the substance to the environment. Identify destination of releases to water.

CBI

☐ Product/process _____

	Process Stream ID Letter	Media Affected[1]	Control Technology Used
☐	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
☐	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
☐	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

☐ [1]For releases to water, mark (X) the destinations of releases

- ☐ Publicly owned treatment works
- ☐ Navigable waterway
- ☐ Other (specify) _____

☐ Mark (X) this box if you attach a continuation sheet.

SECTION 8 RESIDUAL TREATMENT GENERATION, CHARACTERIZATION, TRANSPORTATION, AND MANAGEMENT

PART A RESIDUAL TREATMENT PROCESS AND EQUIPMENT

8.1 (Level of Effort 2) According to the instructions, provide your *residual* treatment block flow diagram, identifying all inputs and outputs containing the listed substance.

CBI

☐ Product/process _____

☐ Mark (X) this box if you attach a continuation sheet.

8.2 (Level of Effort 2) According to the instructions, provide your *residual* treatment block flow diagram, identifying all inputs and outputs.

CBI

☐ Product/process _____

☐ Mark (X) this box if you attach a continuation sheet.

8.3 List the equipment identified in the *residual* treatment block flow diagram.

CBI

☐ Product/process _____

	Equipment ID Number	Equipment Type
☐		
☐		
☐		
☐		
☐		
☐		
☐		
☐		
☐		
☐		

☐ Mark (X) this box if you attach a continuation sheet.

PART B RESIDUAL GENERATION AND CHARACTERIZATION

8.4 (Level of Effort 2) In accordance with the instructions, complete the following table.

CBI

☐ Product/process _____

	A. Stream ID Letter[1]	B. Residual ID Number	C. RCRA ID (I,C,R,E, T, or H) or RCRA Waste No.[2]	D. Properties of Residual	E. Known Compounds	F. Concentrations (% or ppm)[3,4]	G. Other Expected Compounds
☐							
☐							
☐							

1. Includes Process Stream Identification Letters and Residual Treatment Stream Identification Letters.
2. RCRA Hazardous Waste Identification Number.
3. Specify "A" (actual) or "E" (estimate)
4. Using the table below, specify the test method by assigning a code to each test method used. List the appropriate code in column F.

8.4 continued below

☐ Mark (X) this box if you attach a continuation sheet.

8.4 (continued)

4(continued). Analytical test methods used

CBI

☐ Code	Method	Detection Limit (± ug/l)
____	_____	____
____	_____	____
____	_____	____
____	_____	____
____	_____	____
____	_____	____

☐ Mark (X) this box if you attach a continuation sheet.

8.5 In accordance with the instructions, complete the following table.

CBI

☐ Product/process _____

	A. Residual ID Number	B. Residual Category Code[1]	C. Management Method Code[2]	D. Residual Quantities (kg)	E. Management of Residual: On Site	E. Management of Residual: Off Site	F. Costs for Off-site Management (per kg)	G. Changes in Management Methods
☐	____	____	_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____
☐	____	____	_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____
☐	____	____	_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____
☐	____	____	_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____
			_____	_____	____	____	_____	_____

☐ Mark (X) this box if you attach a continuation sheet.

1. Specify residual category in accordance with the codes provided.

Code	Categories of Residuals	Code	Categories of Residuals
C1.	Precipitates or filtration *residuals*	C10.	Containers, liners, cleaning rags, gloves, etc.
C2.	Decantates or filtrates	C11.	Off-specification products and feedstock
C3.	Sludges a) biological; b) other (specify)	C12.	Other (specify) _____.
C4.	Spent activated carbon or other absorber	C13.	*Byproduct*
C5.	Spent catalyst	C14.	Light ends: a) condensable; b) noncondensable
C6.	Heavy ends: a) distillation residues; b) miscellaneous heavy ends	C15.	Miscellaneous wastewaters: a) equipment washdown; b) steam jet condensate; c) other nonprocess wastewater (specify)
C7.	Spent solvents	C16.	Spent scrubber liquid: a) aqueous; b) organic
C8.	Untreated process wastewater: a) acid (pH ≤ 2); b) caustic (pH ≥ 12); c) neutral	C17.	Treated organics
		C18.	Treatment solids
C9.	Treated wastewater discharge		

2. Specify management methods in accordance with the codes provided. If a *residual* is subject to a sequence of methods (e.g., storage in a tank, incineration), list the methods in sequence. If a *residual* is handled alternately by more than one method (e.g., incinerated or burned in a *boiler*), identify the alternate methods. If treatment is performed (M2, M3, M5, or M8), specify the treatment method using the handling codes listed in Exhibit 8-1.

Code	Management Methods	Code	Management Methods
M1.	Storage in: a) *tank*; b) *container*; c) pile; d) *surface impoundment*	M8.	On-site wastewater treatment: a) *tank*; b) *surface impoundment*
M2.	Treatment of organics in: a) *tank*; b) *container*; c) *surface impoundment*	M9.	Discharge to publicly owned wastewater treatment works
M3.	Burning in a *boiler*	M10.	Discharge to surface water under NPDES
M4.	Recovery/reclamation: a) recovery; b) reuse same process; c) reuse different process; d) sales	M11.	Discharge to off-site, privately owned wastewater treatment works
		M12.	Other (specify)_____.
		M13.	Scrubber: a) caustic; b) water; c) other
M5.	Incineration	M14.	Land farm/land application
M6.	Landfill	M15.	Vent to: a) atmosphere; b) flare; c) other (specify)
M7.	Underground injection		

☐ Mark (X) this box if you attach a continuation sheet.

Exhibit 8-1.

Title 40—Protection of Environment

Chapter I—Environmental Protection Agency

TABLE 2—HANDLING CODES FOR TREATMENT, STORAGE, AND DISPOSAL METHODS

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

1. Storage
- S01 Container (barrel, drum, etc.)
- S02 Tank
- S03 Waste pile
- S04 Surface impoundment
- S09 Other (specify)

2. Treatment
- (a) Thermal Treatment
  - T06 Liquid injection incinerator
  - T07 Rotary kiln incinerator
  - T08 Fluidized bed incinerator
  - T09 Multiple hearth incinerator
  - T10 Infrared furnace incinerator
  - T11 Molten salt destructor
  - T12 Pyrolysis
  - T13 Wet Air oxidation
  - T14 Calcination
  - T15 Microwave discharge
  - T16 Cement kiln
  - T17 Lime kiln
  - T18 Other (specify)
- (b) Chemical Treatment
  - T19 Absorption mound
  - T20 Absorption field
  - T21 Chemical fixation
  - T22 Chemical oxidation
  - T23 Chemical precipitation
  - T24 Chemical reduction
  - T25 Chlorination
  - T26 Chlorinolysis
  - T27 Cyanide destruction
  - T28 Degradation
  - T29 Detoxification
  - T30 Ion exchange
  - T31 Neutralization
  - T32 Ozonation
  - T33 Photolysis
  - T34 Other (specify)
- (c) Physical Treatment
  - (1) Separation of components
    - T35 Centrifugation
    - T36 Clarification
    - T37 Coagulation
    - T38 Decanting
    - T39 Encapsulation
    - T40 Filtration
    - T41 Flocculation
    - T42 Flotation
    - T43 Foaming
    - T44 Sedimentation
    - T45 Thickening
    - T46 Ultrafiltration
    - T47 Other (specify)
  - (2) Removal of Specific Components
    - T48 Absorption-molecular sieve
    - T49 Activated carbon
    - T50 Blending
    - T51 Catalysis
    - T52 Crystallization
    - T53 Dialysis
    - T54 Distillation
    - T55 Electrodialysis
    - T56 Electrolysis
    - T57 Evaporation
    - T58 High gradient magnetic separation
    - T59 Leaching
    - T60 Liquid ion exchange
    - T61 Liquid-liquid extraction
    - T62 Reverse osmosis
    - T63 Solvent recovery
    - T64 Stripping
    - T65 Sand filter
    - T66 Other (specify)
- (d) Biological Treatment
  - T67 Activated sludge
  - T68 Aerobic lagoon
  - T69 Aerobic tank
  - T70 Anaerobic lagoon
  - T71 Composting
  - T72 Septic tank
  - T73 Spray irrigation
  - T74 Trickling filter
  - T75 Waste stabilization pond
  - T77 Other (specify)
  - T76-79 [Reserved]

3. Disposal
- D80 Underground injection
- D81 Landfill
- D83 Land treatment
- D83 Ocean disposal
- D84 Surface impoundment (to be closed as a landfill)
- D85 Other (specify)

PART C TRANSPORTATION

If you have completed a Uniform Hazardous Waste Manifest that addresses the information requested in questions 8.6 and 8.7, you may submit a copy or reasonable facsimile in lieu of answering the questions.

Hazard information submitted in lieu of response. ☐

8.6 If some or all *residuals* are transported by another company, complete the table below. If *residuals* are combined before they are transported, list those *Residual* Identification Numbers on the same line.

CBI	Residual ID Number	Transportation Method (T,R,B,P,O)[1]	Transporter Company Name	Transporter Phone Number	RCRA Transporter ID Number[2]	Distance Transported (miles)
☐				( )_____		
☐				( )_____		
☐				( )_____		
☐				( )_____		
☐				( )_____		
☐				( )_____		
☐				( )_____		

1. T = Truck; R = Railcar; B = Barge; P = Pipeline; O = Other (specify) _____.
2. If not a RCRA Hazardous Waste Transporter, provide State Identification Number.

8.7 List the number of *containers* and the total quantity of the listed waste transported annually. If *residuals* are combined before they are transported, list those *Residual* Identification Numbers on the same line.

CBI	Residual ID Number	Number of Containers	Container Type[1]	Weight/Volume per Container[2]
☐				
☐				
☐				
☐				

☐ Mark (X) this box if you attach a continuation sheet.

1. Types of containers: DM = Metal drums, barrels, kegs
DW = Wooden drums, barrels, kegs
DF = Fiberboard or plastic drums, barrels, kegs
TP = Portable tanks
TT = Cargo tanks (tank trucks)
TC = Tank cars
DT = Dump truck
CY = Cylinders
CM = Metal boxes, cartons, cases (including roll-offs)
CW = Wooden boxes, cartons, cases
CF = Fiber or plastic boxes, cartons, cases
BA = Burlap, cloth, paper, or plastic bags

2. Weight or volume units: l = Liters (liquids only)
kg = Kilograms
m^3 = Cubic meters

8.8 (Level of Effort 4) For those *residuals* that have special handling instructions, identify the *residual* by its Residual Identification Number and specify the special handling instructions. If *residuals* are combined before they are handled, list those *Residual* Identification Numbers on the same line.

CBI	Residual ID Number	Special Handling Instructions
☐		
☐		
☐		

8.9 (Level of Effort 4) List those construction materials that could cause a dangerous reaction or significant corrosion if they were used in a containment system to transport *residuals*. If *residuals* are combined before they are transported, list those *Residual* Identification Numbers on the same line.

CBI	Residual ID Number	Construction Materials
☐		
☐		
☐		

☐ Mark (X) this box if you attach a continuation sheet.

8.10 For each *residual*, identify each off-site *facility* (including POTWs) that manages your *residuals*. Attach additional pages as necessary.

CBI	Residual ID Number	Annual Quantity
☐		
☐		
☐		

☐ Name of Facility _____

Facility Mailing Address:

☐ Street or P.O. Box _____

City or Town _____

State _____ Zip _____

☐ Dun & Bradstreet No.

☐☐-☐☐☐-☐☐☐☐

Facility Location (if different from above):

☐ Street Address _____

City or Town _____

State _____ Zip _____

☐ EPA Identification Number (if any)

Latitude ____ ° ____ ' ____ "
Longitude ____ ° ____ ' ____ "

CBI	Residual ID Number	Annual Quantity
☐		
☐		
☐		

☐ Name of Facility _____

Facility Mailing Address:

☐ Street or P.O. Box _____

City or Town _____

State _____ Zip _____

☐ Dun & Bradstreet No.

☐☐-☐☐☐-☐☐☐☐

Facility Location (if different from above):

☐ Street Address _____

City or Town _____

State _____ Zip _____

☐ EPA Identification Number (if any)

Latitude ____ ° ____ ' ____ "
Longitude ____ ° ____ ' ____ "

☐ Mark (X) this box if you attach a continuation sheet.

PART D ON-SITE RESIDUALS MANAGEMENT INFORMATION

8.11 Identification Permit Numbers -- List any applicable identification or permit numbers for your plant.

a. EPA National Pollutant Discharge Elimination System (NPDES) Permit No.(s) _____
(discharges to surface water) _____

b. EPA Underground Injection Well (UIC) Permit No.(s) _____
(underground injection of fluids) _____

c. EPA Point Source Discharge (PSD) Permit No.(s) _____
(air emissions from proposed sources) _____

d. EPA Hazardous Waste Management Facility Permit No.(s) _____

8.12 (Level of Effort 2) On-site Pile Information -- Complete this table for those *residuals* identified on your process or *residual* treatment flow diagram that were stored or treated in on-site piles during the *reporting year*.

CBI	Residual ID Number	Pile Name or ID Number	Quantity Managed per Year (cubic meters)	Under Roofed Structure (Y/N)	Containment Provided (Y/N)[1]	Synthetic Liner Base (Y/N)[2]	Frequency of Transfer and/or Handling Operations[3]
☐							
☐							
☐							
☐							
☐							

8.12 continued below

☐ Mark (X) this box if you attach a continuation sheet.

Footnotes for 8.12

1. Containment is provided when the pile is designed, operated, and maintained to contain leachate and runoff.

2. Is a synthetic liner installed in the pile base? Waste may lie directly on the synthetic liner or the liner may be covered with a clay layer.

3. A = Daily; B = Weekly; C = Monthly; D = Other (specify) _____

☐ Mark (X) this box if you attach a continuation sheet.

8.13 (Level of Effort 2) Storage or Treatment in *Tanks* -- Identify those *residuals* included on your process or *residual* treatment flow diagram that were stored or treated in on-site *tanks* during the *reporting year* and complete the following table for those *tanks*.

CBI	Residual ID Number	Tank ID Number	Design Capacity (liters)	Quantity per Year (kg)	Treatment Types[1]	Average Length of Storage (days)	Part of Wastewater Treatment Train (Y/N)[2]	Tank Covered (Y/N)	Containment Provided (Y/N)[3]
☐									
☐									
☐									
☐									

1. Indicate "S" for storage and use the following codes to designate treatment types:

   A = Neutralization
   B = Settling (clarification)
   C = Aeration
   D = Equalization
   E = Mixing
   F = Evaporation
   G = Other (specify)_____

2. Treatment train from which wastewater is discharged under a NPDES permit or through a sewer system to a publicly owned treatment works.

3. Secondary containment is provided when the *tank* is located inside a diked area where the volume of liquid that the diked area can contain is at least equivalent to the capacity of the largest *tank*.

☐ Mark (X) this box if you attach a continuation sheet.

8.14 (Level of Effort 2) Storage or Treatment in *Containers* -- Complete the following table for those *residuals* identified on your process or *residual* treatment flow diagram that were stored or treated on site in *containers* during the *reporting year*.

CBI	Residual ID Number	Container ID Number	Design Capacity (liters)	Quantity per Year (kg)	Treatment Types[1]	Average Length of Storage (days)	Quantity Stored-Typical Amount (liters)	Quantity Stored-Maximum Amount (liters)	Storage Base Material[2]
☐									
☐									
☐									
☐									

1. Indicate "S" for storage and use the following codes to designate treatment types:

A = Neutralization
B = Settling (clarification)
C = Aeration
D = Equalization
E = Mixing
F = Evaporation
G = Other (specify) _____

If residual is stored, indicate whether the storage area is designed and operated to collect and contain surface runoff (Y/N).

2. Use the following codes to identify base materials:

A = Concrete
B = Asphalt
C = Soil
D = Other (specify) _____

☐ Mark (X) this box if you attach a continuation sheet.

8.15 (Level of Effort 2) Complete this table for those *residuals* identified on your process or *residual* treatment flow diagram that were burned in an on-site *boiler* during the *reporting year*.

CBI	Residual ID Number	Boiler Type Fire Tube (F) or Water Tube (W)	Boiler ID Number	Average Boiler Load[1]	Average Fuel Replacement Ratio[2]
☐					
☐					
☐					
☐					
☐					

1. Designate the average *boiler* load when firing residual (percent of capacity).

2. Designate the average fuel replacement ratio as a percentage (heat-input basis).

8.16 Complete the following table for those on-site *boilers* that were used during the *reporting year* to burn *residuals* identified on your process or *residual* treatment flow diagram.

CBI	Boiler ID Number	Boiler Capacity (heat input in million J/hr)	Primary Boiler Fuel[1]
☐			
☐			
☐			
☐			
☐			

1. Use the following codes to designate primary *boiler* fuel:
   O = Oil
   G = Gas
   C = Coal
   W = Wood
   Other (specify letter designation and fuel)
   _____ = _____

☐ Mark (X) this box if you attach a continuation sheet.

8.17 Provide the following information for each *residual* identified on your process or *residual* treatment flow diagram that was burned in on-site *boilers* during the *reporting year*.

CBI

☐ Residual Identification Number _____

	Residual as Fired (or residual mixture, if residuals are blended)	Boiler Fuel, as Fired (residual(s) plus primary fuel)
☐ Btu content (J/kg) Average	_____	_____
☐ Minimum	_____	_____
☐ Total metals content (% by wt.) Average	_____	_____
☐ Maximum	_____	_____
☐ Total halogen content (% by wt.) Average	_____	_____
☐ Maximum	_____	_____
☐ Concentration of listed substance	_____	_____

8.18 Answer the following questions for those on-site *boilers* that were used during the *reporting year* to burn *residuals* that were identified on your process or *residual* treatment flow diagram.

CBI

☐ a. Boiler identification _____

☐ b. Specify the type(s) of air pollution control device:

☐ Scrubber ☐ Electrostatic precipitator

☐ Other (specify) _____

8.18 continued below

☐ Mark (X) this box if you attach a continuation sheet.

8.18 (continued)

CBI Provide the following information on stack parameters:

☐ c. Stack height _____ m

☐ d. Stack diameter _____ m

☐ e. Gas flow rate _____ m/sec

☐ f. Exhaust temperature _____ °C

☐ g. Vertical or horizontal stack _____ (V or H)

☐ h. Annual emissions for the listed substance _____ kg/yr

☐ i. Building cross-sectional area _____ m^2

☐ j. Maximum emission rate _____ g/sec

☐ k. Duration of maximum emission rate _____ min

☐ l. Frequency of maximum emission rate _____ times/year

8.19 (Level of Effort 2) Complete this table for those *residuals* that were identified on your process or *residual* treatment flow diagram and were incinerated on site during the *reporting year*.

CBI	Residual ID Number	Incinerator Type[1]	Incinerator ID Number	Typical Auxiliary Fuel	Percentage of Auxiliary Fuel[2]
☐	_____	_____	_____	_____	_____
☐	_____	_____	_____	_____	_____
☐	_____	_____	_____	_____	_____
☐	_____	_____	_____	_____	_____
☐	_____	_____	_____	_____	_____

1. Use the following codes to designate the incinerator type:
   A = Liquid injection
   B = Rotary kiln
   C = Hearth
   D = Other (specify) _____

2. Designate the percentage of auxiliary fuel required on a heat-input basis.

☐ Mark (X) this box if you attach a continuation sheet.

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8.20 (Level of Effort 2) Complete the following table for those on-site incinerators that were used during the *reporting year* to burn *residuals* identified on your process or *residual* treatment flow diagrams.

CBI	Incinerator ID Number	Incinerator Capacity (heat input in million J/hr)	Feed Type[1]
☐			
☐			
☐			
☐			
☐			

1. Use the following codes to designate feed type:
   A = Liquid nozzle type (specify) _____
   B = Atomizing pressure (specify) _____
   C = Solid-batch charge
   D = Solid-continuous charge

8.21 For each on-site incinerator that was used during the *reporting year* to burn *residuals* identified on your process or *residual* treatment flow diagram, describe the combustion chamber design parameters.

CBI

☐ Incinerator Identification Number _____

	Primary Chamber	Secondary Chamber
☐ Combustion chamber temperature (°C)		
☐ Location of temperature monitor		
☐ Residence time in combustion chamber (seconds)		

☐ Mark (X) this box if you attach a continuation sheet.

8.22 Answer the following questions for those on-site incinerators that were used during the *reporting year* to burn *residuals* identified on your process or *residual* treatment flow diagram.

CBI

☐ a. Incinerator Identification Number _____

☐ b. Specify the type(s) of air pollution control device(s) used:

☐ Scrubber ☐ Electrostatic precipitator

☐ Other (specify) _____

Provide the following information on stack parameters:

☐ c. Stack height _____ m

☐ d. Stack diameter _____ m

☐ e. Gas flow rate _____ m/sec

☐ f. Exhaust temperature _____ °C

☐ g. Vertical or horizontal stack _____ (V or H)

☐ h. Annual emissions for the listed substance _____ kg/yr

☐ i. Building cross-sectional area _____ m^2

☐ j. Maximum emission rate _____ g/sec

☐ k. Duration of maximum emission rate _____ min

☐ l. Frequency of maximum emission rate _____ times/year

☐ Mark (X) this box if you attach a continuation sheet.

8.23 Provide the following information on the incinerator feed for incinerators used during the *reporting year* to burn *residuals* identified on your process or *residual* treatment block flow diagram.

CBI		Corresponding Feed Rate (kg or liters/hour, specify)
☐	Incinerator Identification Number _____	
	Btu content (J/kg)	
☐	Average _____	_____
☐	Minimum _____	_____
	Total metals content (% by wt.)	
☐	Average _____	_____
☐	Maximum _____	_____
	Total halogen content (% by wt.)	
☐	Average _____	_____
☐	Maximum _____	_____
☐	Total concentration of listed substance in feed	_____

8.24 (Level of Effort 2) Provide the following information for each *residual* that was identified on your process or *residual* treatment flow diagram and that was burned in an incinerator during the *reporting year*:

CBI	Residual ID Number	Average Joule Feed Rate (kg/hour x J/kg)	Average Total Ash Content (% by wt.)	Average Total Halogen Content (% by wt.)	Total Water Content (% by wt.)
☐	_____	_____	_____	_____	_____
☐	_____	_____	_____	_____	_____

☐ Mark (X) this box if you attach a continuation sheet.

8.25 Complete the following table for those *residuals* identified in your process or *residual* treatment flow diagram that were managed in an on-site land treatment operation during the *reporting year*.

CBI	Residual ID Number	Land Treatment ID Number	Year Land Treatment Initiated	Methods Used to Apply Residuals[1]	Application Rate[2]	Average Slope of Site (degree incline)	Surface Water Runoff Management[3]
☐	_____	_____	_____	_____	_____	_____	_____
☐	_____	_____	_____	_____	_____	_____	_____
☐	_____	_____	_____	_____	_____	_____	_____
☐	_____	_____	_____	_____	_____	_____	_____

1. Use the following codes to describe the method(s) used to apply *residuals* to the land treatment site.

   A = Surface spreading or spray irrigation without plow or disc incorporation.
   B = Surface spreading or spray irrigation with plow or disc incorporation to a depth of _____ cm.
   C = Subsurface injection to a depth of _____ cm.

   Other methods (specify)

   D = _____

   E = _____

2. A = Daily; B = Weekly; C = Monthly; D, E = Specify number of times per year and amount of time between applications _____.

3. Use the following codes to describe the management practices for surface water runoff: A = Collection prior to treatment; B = Reapplication to the site; C = Canalization prior to treatment; Other methods (specify), D = _____; E = _____

8.26 (Level of Effort 2) State the total area actively used for land treatment during the *reporting year*. _____ km^2

☐ Mark (X) this box if you attach a continuation sheet.

8.27 (Level of Effort 2) Identify by the *Residuals* Identification Numbers assigned in question 8.1 each *residual* in question 8.4 that was stored, treated, or disposed in an on-site *surface impoundment* during the *reporting year*. (If you were not required to complete question 8.4, refer to the instructions for question 8.4). Assign a number to each impoundment and enter the number in the appropriate column. Provide the information requested using the codes or units indicated.

If a *residual* is subject to a sequence of treatment methods (e.g., settling, equalization, and evaporation), list the methods in sequence.

If a *residual* is treated alternately by more than one method (e.g., neutralization or equalization), identify the alternate methods.

CBI	Residual ID Number	Impoundment ID Number	Total Capacity (gallons)	Specify Storage or Treatment Type if Applicable[1]	Average Residency Time (days)	SYNTHETIC LINER		CLAY LINER		LEACHATE COLLECTION SYSTEM	
						Thickness (cm)	No. of Liners	Thickness (cm)	No. of Liners	Installed (Y/N)	Leachate Generated (Y/N)
☐											
☐											
☐											
☐											
☐											

1. Indicate "S" for storage or use the following codes to specify treatment type:
   A = Neutralization
   B = Settling/Clarification
   C = Aeration (specify horsepower [hp] of aerator)
   D = Equalization
   E = Mixing
   F = Evaporation
   G = Other (specify) _____

☐ Mark (X) this box if you attach a continuation sheet.

8.28 Identify by *Residual* Identification Number each *Residual* that was landfilled on site at any time during the *reporting year*. Refer to the instructions for question 8.4 for *Residual* Identification Numbers. Assign a number to identify each cell and provide the requested information on drainage layer, clay liner, and synthetic liner.

			DRAINAGE LAYER			CLAY LINER		SYNTHETIC LINER		
CBI	Residual ID Number	Landfill Cell ID Number	Quantity per year (Kg)	Installed (Y/N)	Thickness (cm)	Installed (Y/N)	Thickness (cm)	No. of Liners Installed	Material	Thickness (cm)
☐										
☐										
☐										
☐										
☐										

☐ Mark (X) this box if you attach a continuation sheet.

8.29 (Level of Effort 2) State the total area actively used for landfill during the *reporting year*. _____ km^2

8.30 (Level of Effort 2) Complete the following table for each landfill cell that contains *residuals* identified on your process or *residual* treatment flow diagram.

CBI	Landfill Cell ID Number	WORKING COVER Use (times/month)	WORKING COVER Thickness (cm)	CAP DESIGN CLAY LAYER Installed (Y/N)	CAP DESIGN CLAY LAYER Thickness (cm)	LEACHATE COLLECTION SYSTEM Installed (Y/N)	LEACHATE COLLECTION SYSTEM Leachate Generated (Y/N)
☐							
☐							
☐							
☐							
☐							

8.31 (Level of Effort 2) Complete this table for those *residuals* identified on your process or *residual* treatment flow diagram that were disposed via deep well injection on site during the *reporting year*.

CBI	*Residual* ID Number	Well ID Number	Disposal Quantity (liters)	Well Type (A,B,C)[1]
☐				
☐				
☐				
☐				

1. State the type of well for each well identification number according to the following codes:
   A = Wells that dispose below deepest groundwater with < 10,000 mg/l of total dissolved solids.
   B = Wells that dispose into a formation containing groundwater with < 10,000 mg/l of total dissolved solids.
   C = Wells that dispose above all groundwater.

☐ Mark (X) this box if you attach a continuation sheet.

SECTION 9 WORKER EXPOSURE

PART A EMPLOYMENT AND POTENTIAL EXPOSURE PROFILE

9.1 Mark (X) the appropriate column to indicate whether your company maintains records on the following data elements for hourly and salaried *workers*. Specify for each data element the year in which you began maintaining records and the number of years the records for that data element are maintained.

CBI	Data Element	Data are Maintained for: Hourly Workers	Data are Maintained for: Salaried Workers	Year in Which Data Collection Began	Number of Years Records Are Maintained
☐	Date of hire				
☐	Age at hire				
☐	Work history of individual before employment at your facility				
☐	Sex				
☐	Race				
☐	Job titles				
☐	Start date for each job title				
☐	End date for each job title				
☐	Work area industrial hygiene monitoring data				
☐	Personal employee monitoring data				
☐	Employee medical history				
☐	Employee smoking history				
☐	Accident history				
☐	Retirement date				
☐	Termination date				
☐	Vital status of retirees				
☐	Cause of death data				

☐ Mark (X) this box if you attach a continuation sheet.

9.2 (Level of Effort 2) Complete the following table for each activity in which you engage.

CBI	Activity	Process Category	Quantity (kg)	Total Workers	Total Worker Hours
☐	a. Manufacture of the listed substance	1. Enclosed 2. Controlled Release 3. Open			
☐	b. On-site use as reactant	1. Enclosed 2. Controlled Release 3. Open			
☐	c. On-site use as nonreactant	1. Enclosed 2. Controlled Release 3. Open			
☐	d. On-site preparation of products	1. Enclosed 2. Controlled Release 3. Open			

9.3 List the labor categories at your plant site that encompass persons who are exposed to the listed substance and provide a descriptive job title for each category.

CBI	Labor Category	Descriptive Job Title
☐	I	
☐	II	
☐	III	
☐	IV	
☐	V	
☐	VI	
☐	VII	
☐	VIII	
☐	IX	
☐	X	

☐ Mark (X) this box if you attach a continuation sheet.

9.4 For each labor category identified in question 9.3, specify the number of employees by sex, age range, average age, and average number of years on the job.

CBI	Labor Category	Number of Employees		Employee Age (years)				Employee Average Years on Job	
				Male		Female			
		Male	Female	Range	Average	Range	Average	Male	Female
☐	I								
☐	II								
☐	III								
☐	IV								
☐	V								
☐	VI								
☐	VII								
☐	VIII								
☐	IX								
☐	X								
☐	TOTALS								

☐ Mark (X) this box if you attach a continuation sheet.

9.5 (Level of Effort 2) In accordance with the instructions, provide your process block flow diagram and indicate associated *work areas*.

CBI

☐ Product/process _____

☐ Mark (X) this box if you attach a continuation sheet.

9 6 List and describe the various *work areas* where employees may come in contact with or be exposed to the listed substance. Add any additional areas not shown in the block flow diagram.

CBI

☐ Product/process _____

	Work Area ID	Description of Worker Activities
☐	_____	_____
☐	_____	_____
☐	_____	_____
☐	_____	_____
☐	_____	_____
☐	_____	_____
☐	_____	_____
☐	_____	_____
☐	_____	_____
☐	_____	_____

☐ Mark (X) this box if you attach a continuation sheet.

9.7 (Level of Effort 2) For employees who are *exposed* to the listed substance, designate the number of employees exposed, the mode of exposure, the levels of exposure, and the length of time exposed by labor category. Specify units of measurement in the exposure level column; e.g., ppm, mg/m^3, mg/cm^2, etc.

CBI

☐ Product/process _____

☐ Work area _____

	Labor Category	Number of Employees Exposed	Mode of Exposure (e.g., direct skin contact)	Physical State of Listed Substance[1]	Average Length of Exposure[2] (A,B,C,D,E,F)	Number of Days per Year Exposed
☐	I					
☐	II					
☐	III					
☐	IV					
☐	V					
☐	VI					
☐	VII					
☐	VIII					
☐	IX					
☐	X					

1. Physical state:
GC = Gas (condensible at ambient temperature and pressure)
GU = Gas (uncondensible at ambient temperature and pressure)
SO = Solid
SY = Sludge or slurry
AL = Aqueous liquid
OL = Organic liquid
IL = Immiscible liquid (specify phases, e.g., 90% water, 10% toluene)

2. Use the following codes to designate average length of exposure:

A = 15 minutes or less.
B = Greater than 15 minutes, but not exceeding 1 hour.
C = Greater than one hour, but not exceeding 2 hours.
D = Greater than 2 hours, but not exceeding 4 hours.
E = Greater than 4 hours, but not exceeding 8 hours.
F = Greater than 8 hours.

☐ Mark (X) this box if you attach a continuation sheet.

9.8 (Level of Effort 3) For employees with a single exposure time of 15 minutes or less (as identified in question 9.7) indicate the number of employees whose daily total number of exposures is described best by the the daily exposure frequencies provided.

CBI

☐ Product/process _____

☐ Work area _____

☐

Total Number of Daily Exposures	Number of Employees
1	
2	
3-4	
5-8	
9 or more	

9.9 (Level of Effort 2) For each labor category represented in question 9.7, indicate the 8-hour Time Weighted Average (TWA) exposure levels and 15-minute peak exposure levels in the appropriate units.

CBI

☐ Product/process _____

☐ Work area _____

	Labor Category	8-hour TWA Exposure Level (ppm, mg/m^3, other-specify)	15-Minute Peak Exposure Level (ppm, mg/m^3, other-specify)
☐	I		
☐	II		
☐	III		
☐	IV		
☐	V		
☐	VI		
☐	VII		
☐	VIII		
☐	IX		
☐	X		

☐ Mark (X) this box if you attach a continuation sheet.

PART B WORK PLACE MONITORING PROGRAM

9.10 If you monitor your *workers'* exposure to the listed substance, complete the following table.

CBI	Sample/Test	Work Area(s)	Frequency (per year)	Number of Samples	Analyzed Who Samples[1]	In-house (Y/N)	Number of Years Records Maintained
☐	Personal breathing zone						
☐	General work area (air)						
☐	Wipe samples						
☐	Adhesive patches						
☐	Blood samples						
☐	Urine samples						
☐	Respiratory samples						
☐	Allergy tests						
☐	Other _____						
☐	Other _____						
☐	Other _____						

1. Specify who takes the monitoring samples.

A = Plant Industrial Hygienist
B = Insurance Carrier
C = OSHA Consultant
D = Other (specify) _____

☐ Mark (X) this box if you attach a continuation sheet.

9.11 For each sample type, describe the methodology used to analyze the sample.

Sample Type	Methodology

9.12 If you conduct air monitoring for the listed substance, specify the type of equipment used.

CBI	Equipment Type	Manufacturer	Model Number
☐			
☐			
☐			
☐			
☐			
☐			

9.13 If you conduct routine medical tests for monitoring the health effects of exposure to the listed substance, specify the type and frequency of tests.

CBI

☐

Test Description	Frequency

☐ Mark (X) this box if you attach a continuation sheet.

PART C ENGINEERING CONTROLS

9.14 For each product/process and each *work area*, describe all of the engineering controls that you use to reduce or eliminate *worker* exposure to the listed substance.

CBI

☐ Product/process _____

☐ Work area _____

9.15 For each product/process and each *work area* affected, describe the equipment or process modifications you have made within the last 5 years that have resulted in a reduction of *worker* exposure to the listed substance. For each equipment or process modification described, state the reduction in exposure that resulted.

CBI

☐ Product/process _____

☐ Work area _____

☐ Mark (X) this box if you attach a continuation sheet.

PART D PERSONAL PROTECTIVE AND SAFETY EQUIPMENT

9.16 For each *work area*, describe all of the personal protective and safety equipment that you require your *workers* to wear or use in order to reduce or eliminate their exposure to the listed substance. Indicate whether or not your company provides the equipment to the *workers*.

CBI

☐ Product/process _____

☐ Work area _____

9.17 For each *work area*, describe all of the personal protective and safety equipment that you recommend, but do not require your *workers* to wear or use in order to reduce or eliminate their exposure to the listed substance. Indicate whether or not your company provides the equipment to the *workers*.

CBI

☐ Product/process _____

☐ Work area _____

☐ Mark (X) this box if you attach a continuation sheet.

9.18 If you require *workers* to use respirators when working with the listed substance, specify for each product/process the *work areas* where the respirators are used, the type of respirator used, and the type and frequency of fit tests.

CBI

☐ Product/process _____

	Work Area	Type Respirator	Fit Tested (Y/N)	Qualitative (QL) or Quantitative (QT) Tests	Frequency of Fit Tests (per year)
☐	___	_____	___	_____	_____
☐	___	_____	___	_____	_____
☐	___	_____	___	_____	_____
☐	___	_____	___	_____	_____

9.19 Describe your respirator maintenance program.

9.20 Describe your respirator training program.

☐ Mark (X) this box if you attach a continuation sheet.

9.21 (Level of Effort 2) If you require *workers* to use protective clothing when working with the listed substance, answer the following questions:

a. Who launders reusable clothing items?

☐ On-site facility ☐ Commercial laundry ☐ Worker ☐ Not laundered

☐ Other (specify) _____

b. How often are the clothing items laundered?

☐ Daily ☐ Twice a week ☐ Once a week ☐ Twice a month

☐ Once a month ☐ Other (specify) _____

c. Do you make rooms available to *workers* for changing their clothes?

☐ Yes ☐ No

d. Do *workers* change out of dirty clothes in one room and into clean clothes in a different room?

☐ Yes ☐ No

e. Is the use of these rooms voluntary or mandatory?

☐ Voluntary ☐ Mandatory

f. If the use of these rooms is voluntary, approximately what percentage of *workers* use these rooms? _____ %

9.22 List the types of personal protective clothing and safety equipment for which permeation tests have been conducted.

_____	_____
_____	_____
_____	_____

☐ Mark (X) this box if you attach a continuation sheet.

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PART E WORK PRACTICES

9.23 For each product/process and *work area*, describe all of the work practices that you use to reduce or eliminate *worker* exposure to the listed substance (e.g., restrict entrance to only authorized *workers* or mark areas with warning signs).

CBI

☐ Product/process _____

☐ Work area _____

9.24 Describe your *hazard communication program* for informing *workers* who are exposed directly to the listed substance.

9.25 How do you assess the *workers'* knowledge of the information presented in the *hazard communication program*? (Specify frequency of assessment, type of test if applicable, and identify the person/company making the assessment.)

Frequency	Type of Test	Person Making Assessment

☐ Mark (X) this box if you attach a continuation sheet.

9.26 Do you have a written medical action plan for responding to exposure to the listed substance?

☐ Yes ☐ No

If yes, where are copies of the plan maintained? _____

9.27 Do you have a written leak and spill cleanup plan that addresses the listed substance?

☐ Yes ☐ No

If yes, where are copies of the plan maintained? _____

Has this plan been coordinated with state or local government response organizations?

☐ Yes ☐ No

9.28 Indicate (X) which housekeeping tasks you use to clean up the listed substance and how often you perform each task.

Housekeeping Tasks	Less Than Once Per Day	1-2 Times Per Day	3-4 Times Per Day	More Than 4 Times Per Day
Sweeping				
Vacuuming				
Water flushing of floors				
Other (specify) _____				

☐ Mark (X) this box if you attach a continuation sheet.

9.29 How often were the *work areas* identified in question 9.5 formally inspected for safety violations?

Product/Process	Work Area	Frequency of Inspection (per year)	Inspection Conducted by	Written Results (Y/N)	Results Available (Y/N)

9.30 Who is responsible for monitoring worker safety in your *facility*?

☐ Plant safety specialist ☐ Insurance carrier ☐ OSHA consultant

☐ Other (specify) _____

9.31 Who is responsible for safety and health training in your *facility*?

☐ Plant safety specialist ☐ Insurance carrier ☐ OSHA consultant

☐ Other (specify) _____

9.32 Who is responsible for your medical program?

☐ Plant physician ☐ Plant nurse

☐ Consulting physician ☐ Consulting nurse

☐ Other (specify) _____

☐ Mark (X) this box if you attach a continuation sheet.

SECTION 10 ENVIRONMENTAL RELEASE

PART A GENERAL INFORMATION

CBI

☐ 10.1 Describe the area where your plant site is located by checking all appropriate boxes.

☐ Industrial area ☐ Urban area ☐ Residential area

☐ Agricultural area ☐ Rural area

☐ Adjacent to a park or recreational area

☐ Within 1 mile of a navigable waterway

☐ Within 1 mile of a school, university, or hospital

☐ Within 1 mile of a non-navigable waterway

10.2 If you monitor meteorological conditions in the vicinity of your plant site, provide the following information:

a. Average annual precipitation _____ inches/year

b. Predominant wind direction _____

10.3 Depth to groundwater below the plant site _____ meters

10.4 Describe the *aquifer* types underlying the plant site

a. ☐ Confined ☐ Unconfined ☐ Other

b. Rock type: ☐ Igneous ☐ Metamorphic ☐ Sandstone ☐ Limestone ☐ Shale ☐ Other

☐ Mark (X) this box if you attach a continuation sheet.

10.5 For each on-site activity, indicate (by checking the appropriate column(s)) all routine releases of the listed substance to the environment.

CBI	On-site Activity	Environmental Release Air	Water	Land
☐	Manufacturing	___	___	___
☐	Importing	___	___	___
☐	Processing	___	___	___
☐	Product storage	___	___	___
☐	Disposal	___	___	___
☐	Transportation	___	___	___
☐	Consumer use	___	___	___

10.6 Provide the following information for the listed substance and specify the level of precision for items b-d.

CBI

☐ a. Quantity lost during manufacture _____ kg/yr

☐ b. Quantity lost to the environment _____ kg/yr ± ___ %

☐ c. Quantity remaining in treated wastes _____ kg ± ___ %

☐ d. Quantity remaining in untreated wastes _____ kg ± ___ %

☐ Mark (X) this box if you attach a continuation sheet.

PART B RELEASE TO AIR

10.7 Based on your process block flow and *residual* treatment block flow diagrams (questions 7.1 or 7.2, and 8.1 or 8.2), identify all emission point sources and provide a description of each source. Do not include raw material and product storage vents or fugitive emission sources (e.g., equipment leaks).

Emission Point Source	Product/Process	Stream ID Number[1]	Description of Emission Point Source (e.g., process vent, equipment opening discharge, pressure release devices)
I	_____	_____	_____
II	_____	_____	_____
III	_____	_____	_____
IV	_____	_____	_____
V	_____	_____	_____
VI	_____	_____	_____
VII	_____	_____	_____
VIII	_____	_____	_____
IX	_____	_____	_____
X	_____	_____	_____

1. This identification number includes both the Process Stream Identification Letter and any applicable *Residual* Treatment Stream Identification Numbers as assigned in question 8.4.

☐ Mark (X) this box if you attach a continuation sheet.

10.8 (Level of Effort 2) Emission Characteristics -- Characterize the emissions from each emission point source identified in question 10.7 by completing the following table.

CBI	Emission Point	Physical State[1]	Average Emissions (kg/day)	Frequency[2] (days/yr)	Duration[3] (min/day)	Maximum Emission Factor[4]	Maximum Emission Rate (g/sec)	Maximum Emission Rate Frequency (events/yr)	Maximum Emission Rate Duration (min/event)
☐	I								
☐	II								
☐	III								
☐	IV								
☐	V								
☐	VI								
☐	VII								
☐	VIII								
☐	IX								
☐	X								

1. Use the following codes to designate physical state at the point of release: G = Gas; V = Vapor; P = Particulate; A = Aerosol; O = Other (specify) _____
2. Frequency of emission at any level.
3. Duration of emission at any level.
4. Maximum Emission Factor -- Provide estimated (± 25 percent) emission factor (kg of emission per kg of production of processing unit).

☐ Mark (X) this box if you attach a continuation sheet.

10.9 Control Equipment -- For those emission points identified in question 10.7 that have control equipment, describe the control equipment and state its percent efficiency.

CBI	Emission Point Source	Control Equipment	Efficiency (%)
☐	I		
☐	II		
☐	III		
☐	IV		
☐	V		
☐	VI		
☐	VII		
☐	VIII		
☐	IX		
☐	X		

10.10 Emission Rates -- For those emission point sources identified in question 10.7, state the concentration of the listed substance in emissions after controls are applied. Use appropriate units of measure (e.g., mg/m^3 for gases).

CBI	Emission Point Source	Concentration of Listed Substance in Emission
☐	I	
☐	II	
☐	III	
☐	IV	
☐	V	
☐	VI	
☐	VII	
☐	VIII	
☐	IX	
☐	X	

☐ Mark (X) this box if you attach a continuation sheet.

10.11 Emission Parameters -- Specify the following emission parameters for each emission point described in question 10.7.

CBI	Emission Point Source	Height[1]	Diameter[2]	Temperature[3]	Velocity[4]	Building Height[5]	Building Width[6]	Vent Type[7]
☐	I							
☐	II							
☐	III							
☐	IV							
☐	V							
☐	VI							
☐	VII							
☐	VIII							
☐	IX							
☐	X							

1. Height of release above ground (m).
2. Inside diameter of stack or vent (m).
3. Effluent temperature (°C).
4. Effluent exit velocity (m/sec).
5. Height of attached or adjacent building (m).
6. Width of attached or adjacent building (m).
7. Vent type: H = horizontal, V = vertical.

☐ Mark (X) this box if you attach a continuation sheet.

10.12 If the listed substance is emitted in particulate form, indicate particle size distribution for each emission point source identified in question 10.7.

CBI

☐ Emission Point Source _____

☐

Size Range (microns)	Mass Fraction (%)
< 1	
≥ 1 to < 10	
≥ 10 to < 30	
≥ 30 to < 50	
≥ 50 to < 100	
≥ 100 to < 500	
≥ 500	
	Total = 100%

☐ Mark (X) this box if you attach a continuation sheet.

CBI ☐ 10.13 Equipment Leaks -- Provide the number of process components in service by completing the following table. Do not include components having no exposure to the listed substance. If this is a batch or intermittently operated process, give an overall percentage of time per year that these process components are exposed to the listed substance.

Product/process _____

Percentage of time per year that the listed substance exists within these process components: _____%

Equipment Type	Number of Components in Service by Weight Percent of Listed Substance					
	Less than 5%	5-10%	11-25%	26-75%	76-99%	Greater than 99%
Pump seals[1]						
Packed						
Mechanical						
Double mechanical[2]						
Compressor seals[1]						
Flanges						
Valves						
Gas[3]						
Liquid						
Pressure relief devices[4]						
Sample connections						
Gas						
Liquid						
Open-ended lines[5]						
(e.g., purge, vent)						
Gas						
Liquid						

1. List the number of pump and compressor seals, rather than the number of pumps or compressors.
2. If double mechanical seals are operated with the barrier (B) fluid at a pressure greater than the pump stuffing box pressure and/or equipped with a sensor (S) that will detect failure of the seal system, the barrier fluid system, or both, indicate with a "B" and/or an "S," respectively.
3. Conditions existing in the valve during normal operation.
4. Report all pressure relief devices in service, including those equipped with control devices.
5. Lines closed during normal operation that would be used during maintenance operations.

☐ Mark (X) this box if you attach a continuation sheet.

10.14 Pressure Relief Devices with Controls -- Complete the following table to indicate which pressure relief devices in service are controlled.

Number of Pressure Relief Devices	Percent Chemical in Vessel	Control Device	Estimated Control Efficiency[1]

1. The EPA assigns a control efficiency of 100 percent for rupture discs and O-rings, and 98 percent for a flare.

☐ Mark (X) this box if you attach a continuation sheet.

CBI ☐ 10.15 Equipment Leak Emissions -- If a formal leak detection and repair program is in place, complete the following table regarding leak detection and repair procedures.

Product/process _____

Equipment Type	Leak Detection: Concentration (ppm or mg/m^3)	Leak Detection: Measured at ___ Inches from Source	Leak Detection: Detection Device[1]	Frequency of Leak Detection (per year)	Repairs Initiated (days after detection)	Repairs Completed (days after initiated)
Pump seals						
Packed						
Mechanical						
Double mechanical						
Compressor seals						
Flanges						
Valves						
Gas						
Liquid						
Pressure relief devices (gas only)						
Sample connections						
Gas						
Liquid						
Open-ended lines						
Gas						
Liquid						

1. Portable organic vapor analyzer (POVA); fixed point monitoring (FPM); other (O) (specify) _____.

☐ Mark (X) this box if you attach a continuation sheet.

CBI 10.16 Raw Material and Product Storage Emissions -- Provide information on each raw material, intermediate, and product storage tank or vessel containing the listed substance by filling in the table below.

☐

Tank Type[1]	Floating Roof Seals[2]	Composition of Stored Materials[3]	Throughput (10^6 gallons per year)	Tank Filling Rate (gpm)	Tank Filling Duration (min)	Tank Diameter (ft)	Tank Height (ft)	Rated Tank Volume (gal)	Tank Emission Controls[4]	Design Flow Rate[5]	Estimated Vent Diameter (inches)	Control Efficiency (%)	Basis for Estimat

1. F = Fixed roof
   CIF = Contact internal floating roof
   NCIF = Noncontact internal floating roof
   EFR = External floating roof
   P = Pressure vessel (indicate pressure rating)
   H = Horizontal
   U = Underground

2. MS1 = Mechanical shoe, primary
   MS2 = Shoe-mounted secondary
   MS2R = Rim-mounted, secondary
   LM1 = Liquid-mounted resilient filled seal, primary
   LM2 = Rim-mounted shield
   LMW = Weather shield
   VM1 = Vapor mounted resilient filled seal, primary
   VM2 = Rim-mounted secondary
   VMW = Weather shield

3. Indicate weight percent of the listed substance and total volatile organic content.
4. Other than floating roofs.
5. Gas/vapor flow rate the control device was designed to handle. Also note flow rate units.
6. C = Calculations; S = Sampling.

☐ Mark (X) this box if you attach a continuation sheet.

PART C RELEASE TO WATER

10.17 NPDES Discharges

Specify if discharge is to a moving (e.g., river) or standing (e.g., lake) body of water, and estimate the flow or volumes of each during the *reporting year* in part a below.

CBI

☐ a. ☐ Moving body of water _____ Estimated base flow (10^6l/day)

☐ ☐ Standing body of water _____ Estimated average volume (10^6l/day)

b. Quantities:

☐ Average discharge _____ 10^6l/day Maximum discharge _____ 10^6l/day

☐ _____ days/year _____ days/year

c. Concentration of listed substance:

☐ Average concentration _____ mg/l or ppm

Maximum concentration _____ mg/l or ppm

10.18 Publicly Owned Treatment Works (POTW)

CBI a. Quantities:

☐ Average discharge _____ 10^6l/day Maximum discharge _____ 10^6l/day

☐ _____ days/year _____ days/year

b. Concentrations of listed substance:

☐ Average concentration _____ mg/l or ppm

Maximum concentration _____ mg/l or ppm

☐ Mark (X) this box if you attach a continuation sheet.

10.19 Nonpoint Sources

CBI Specify if discharge is to a moving (e.g., river) or standing (e.g., lake) body of water, and estimate the flow or volumes of each for the *reporting year* in part a below.

☐ a. ☐ Moving body of water _____ Estimated base flow (10^6l/day)

☐ ☐ Standing body of water _____ Estimated average volume (10^6l/day)

b. Quantities:

☐ Average discharge _____ 10^6l/day Maximum discharge _____ 10^6l/day

☐ _____ days/year _____ days/year

c. Concentration of listed substance:

☐ Average concentration _____ mg/l or ppm

Maximum concentration _____ mg/l or ppm

10.20 Releases to Soils, Groundwater, and Drinking Water -- Estimate the following information for at least three random soil core samples that were taken at your plant site during the reporting year. State the precision of your concentration value.

CBI	Sample	Concentration (ug/kg) of Listed Substance (± % precision)	Distance from Plant (m)	Soil Texture[1]	Sample Depth (cm)
☐	1				
☐	2				
☐	3				
☐	___				

1. Soil Texture:
A = Sand
B = Loamy sand
C = Sandy loam
D = Loam
E = Silty loam
F = Silt
G = Sandy clay loam
H = Clay loam
I = Silty clay loam
J = Sandy clay
K = Silty clay
L = Clay

(Refer to glossary for definitions of soil texture.)

☐ Mark (X) this box if you attach a continuation sheet.

10.21 Estimate the following information for at least three random samples of groundwater from monitoring wells that were taken at your plant site during the reporting year. State the precision of your concentration values.

Sample	Monitoring Well	Distance from Plant (m)	Depth of Well (m)	Average Concentration (mg/l) (± % precision)	Maximum Concentration (mg/l) (± % precision)
A					
B					
C					

10.22 Report the following information for drinking water wells monitored by your plant during the reporting year.

Well	Well Depth (m)	Distance from Plant (m)	On Site (OS) or Off Site (OF)	Average Concentration (mg/l)	Maximum Concentration (mg/l)
D1					
D2					
D3					
D4					

☐ Mark (X) this box if you attach a continuation sheet.

PART D NON-ROUTINE RELEASES

Complete this section for each non-routine release involving the listed substance that occurred during the reporting year. Report on only those releases that are greater than the listed substance's reportable quantity value. Reportable quantities are codified in 40 CFR Part 302. If a listed substance does not have a reportable quantity value, then report on those releases that exceeded 5,000 lbs. Assign a number to each release and use this number throughout this section to identify the release.

10.23 State the date and time when the release occurred and when the release ceased or was stopped. If there were more than three releases, attach a continuation sheet and list all releases.

Release	Date Started	Time (am/pm)	Date Stopped	Time (am/pm)
1				
2				
3				

10.24 Specify the weather conditions at the time of each release

Release	Wind Speed (mi/hr)	Wind direction	Humidity (%)	Temperature (^{0}F)	Precipitation (Y/N)
1					
2					
3					

For questions 10.25 - 10.37 (except 10.34) specify the release by recording the release number in the space provided. If more than one release occurred, photocopy these questions and complete them for each release.

☐ Mark (X) this box if you attach a continuation sheet.

10.25 (Level of Effort 2) State the quantity of material containing the listed substance that was released to each of the following media. Specify the method used to estimate the quantity released. Specify whether or not the release migrated beyond facility boundaries.

Release No. _____

Media	Quantity (kg)	Method	Migration Beyond Boundaries (Y/N)
Land	_____	_____	_____
Air	_____	_____	_____
Groundwater	_____	_____	_____
Surface water	_____	_____	_____

10.26 (Level of Effort 2) Specify the concentration and physical state of the listed substance at the time of release.

Release No. _____

Physical State	Concentration (%)
_____	_____

10.27 (Level of Effort 2) Describe the cause and the effects of the release by checking the appropriate responses.

Release No. _____

Cause of Release

____ Equipment failure
____ Operator error
____ Bypass condition
____ Upset condition
____ Fire
____ Other (please specify)
_____
_____

Effects of Release

____ Spill
____ Vapor release
____ Explosion
____ Fire
____ Other (please specify)
_____
_____

☐ Mark (X) this box if you attach a continuation sheet.

10.28 Specify which authorities were notified of the release.

Release No. _____

Authority	Agency/Office	Contact Person and Telephone No. (if known)	Date and Time Notified
Federal	_____	_____	_____
State	_____	_____	_____
Local	_____	_____	_____

No authorities notified (explain).

_____
_____
_____
_____

10.29 For each of the proximities defined below, specify by checking the applicable column(s) whether the population living within that proximity was notified of, alerted to, or evacuated because of the release. Specify who notified the population.

Release No. _____

Proximity to the Release	Notification (agency/phone no.)	Evacuation (Y/N)
1/4 mile	_____	_____
1/2 mile	_____	_____
1 mile	_____	_____
Other (specify) _____	_____	_____

10.30 Specify the number of personal injuries or casualties resulting from the release.

Release No. _____

Number of injuries to facility employees	_____
Number of injuries to general population	_____
Number of deaths to facility employees	_____
Number of deaths to general population	_____

☐ Mark (X) this box if you attach a continuation sheet.

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10.31 Describe all property damage resulting from the release.

Release No. _____

10.32 Describe the terrain in the pathway of the release.

Release No. _____

10.33 (Level of Effort 2) State who conducted cleanup activities and estimate the level of cleanup that was obtained. Specify what method was used to estimate the level of cleanup.

Release No. _____

Name _____

Address _____

Level of Cleanup	% removal	Method Used to Measure Level of Cleanup
Land	_____	_____
Surface water	_____	_____
Groundwater	_____	_____

☐ Mark (X) this box if you attach a continuation sheet.

10.34 Briefly describe release prevention practices and policies (backup systems and containment systems) used by the facility.

10.35 Indicate which of the prevention practices and policies listed in question 10.34 were ineffective in preventing the release from reaching the environment.

Release No. _____

10.36 Describe all repairs and/or replacements made to equipment as a result of the release.

Release No. _____

☐ Mark (X) this box if you attach a continuation sheet.

10.37 Describe additional preventative measures that will be taken to minimize the possibilities of recurrence.

Release No. _____

Measures Planned	Timetable for Completion	Cost of Preventive Measures
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____

10.38 If you have a facility contingency plan for future releases, has the plan ever been tested?

☐ Yes ☐ No

If yes, what was learned from the test?

_____

_____

_____

☐ We do not have a facility contingency plan.

10.39 Have community relations activities been initiated to keep nearby residents informed of the likelihood of releases?

☐ Yes ☐ No

If yes, describe these activities.

_____

_____

_____

☐ Mark (X) this box if you attach a continuation sheet.

APPENDIX LIST OF CONTINUATION SHEETS

Attach continuation sheets for sections of this form and optional information after this page. In column 1, clearly identify the attachment by listing the question number to which it relates. In column 2, enter the inclusive page numbers of each attachment. Refer to section 704.219 (c)(1) for instructions on claiming confidentiality.

Question Number (1)	Attachment Page Numbers (2)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

☐ Mark (X) this box if you attach a continuation sheet.

§ 704.247 Instructions and glossary of terms.

EPA

GENERAL INSTRUCTIONS
EPA FORM 7710-52, COMPREHENSIVE ASSESSMENT INFORMATION RULE REPORTING FORM

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Part I Introduction

These instructions are for persons who manufacture, import, or process a substance listed in 40 CFR Part 704, Subpart D, and are required to submit EPA Form 7710-52, also listed in 40 CFR Part 704, Subpart E.

1. *Appropriate Number of Forms.* This form is intended to gather information on a specific listed substance that is manufactured, imported, or processed at one plant site. If you are required to report on more than one listed substance, you must submit a separate form for each substance. Similarly, if you manufacture, import, or process a listed substance at more than one plant site, you must submit a separate form for each plant site.

2. *Activities to Report.* Report on all manufacturing, importing, and processing activities in which you engaged. For instance, if EPA requests information on manufacturing, then a manufacturer who also processes the listed substance at a single site must report the manufacturing and processing activities on the same form. Similarly, if EPA requests information on processing, then a processor who also imports the listed substance to a single site must report both the processing and importing activities on the same form.

3. *Information to Report.* EPA will specify an information requirement for each substance identified in Subpart D. EPA will assemble the information requirement from the questions set out in Subpart E, and will specify the information requirement by stating each question's number. Whenever EPA specifies in the information requirement individual

questions, the designated respondents must answer only the questions specified. EPA will always include section 1 in the questions specified. Whenever EPA specifies in the information requirement a section of the CAIR form, those persons who are required to report must answer all of the questions within the section. EPA will always include section 1 of the CAIR form as part of the information requirement.

4. *Reporting Level of Effort.* For each question that you are required to answer, report the required information to the level of effort specified for each question; or indicate, by using the symbol (NA), that the question is not applicable to your site operations. There are four levels of effort. Respondents must comply with level of effort 1 unless a specific question states otherwise. The levels of effort are as follows:

(1) Level 1 requires a person to answer a question to the extent that the information is known to or reasonably ascertainable by that person.

(2) Level 2 requires a person to answer the question if the answer to the question is known to the person. If the answer is unknown, the person must use professional judgment to make a reasonable estimate of the answer and report this information.

(3) Level 3 requires a person to answer a question if the answer to the question is known to the person. If the answer is unknown, the person must ascertain the answer, by means other than estimation, and report this information.

(4) Level 4 requires a person to answer the question if the answer to the question is known to the person. If the answer is unknown to the person, the person must state that the answer is unknown.

5. *Reporting Year.* Provide the requested information for the specified reporting year and only for the extent of the reporting year in which you operated the plant site. Each reporting year encompasses a complete corporate fiscal year. EPA has specified the corporate fiscal year in the Federal Register Notice, which listed the chemical on which you are reporting. For example, if the time period on which you are required to report is specified in the Federal Register as "-1," and the effective date of the rule is listed as July 1, 1987, then the applicable reporting period is the most recent corporate fiscal year that was completed prior to July 1, 1987. If your company's fiscal year begins on August 1st of each year and ends on July 31st of the following year, then the applicable reporting year in the example given above would be August 1, 1985, to July 31, 1986.

6. *Completeness.* EPA will check all forms for completeness. Incomplete forms may be returned for completion. If only a few items are incomplete EPA may call the designated technical contact to determine the correct answer rather than return the form.

7. *Relevant Definitions.* Reporting requirements are determined by the company's manufacturing, importing, and/or processing activities involving the listed substance. Definitions for reporting activities and other terms used in this form are contained in Part IV, Glossary. Terms that appear in italics throughout the form are defined in the glossary. Refer to the glossary whenever a term appears in italics, and interpret these terms in the context of the definitions provided. Terms that appear in italics in this instruction booklet are used for emphasis or as sample answers to CAIR form questions.

8. *Confidential Business Information (CBI) Claims.* You may claim your answers as CBI by using the CBI boxes provided. To use the CBI boxes properly, you must place a substantiation code within the box. Refer to 40 CFR Part 704.219 for descriptions of substantiation codes.

9. *Additional Space.* If additional space is needed to report all required information, responses can be entered on a reproduction of the pertinent portion of the form and/or on a separate sheet of paper. The continuation should be identified by question number on the list of attachments in the Appendix.

Part II Specific Instructions

Throughout the CAIR Reporting Form and Instructions, the chemical or mixture on which you are required to report is referred to as "the listed substance." In the instructions below, the "Question" column refers to the corresponding section, part, and question in the CAIR Reporting Form.

Question	Instructions

SECTION 1 GENERAL MANUFACTURER, IMPORTER, AND PROCESSOR INFORMATION

All respondents must complete section 1 in its entirety.

PART A GENERAL REPORTING INFORMATION

1.1 Record the date of the Federal Register Notice and the name of the listed substance on which you are reporting.

1.2 Check the boxes corresponding to each section containing questions that you are required to submit.

PART B CORPORATE DATA

1.6-1.7 The Employer Identification Number refers to item 1A on the 1982 Census of Manufacturers Form MC-2810.

1.15 Plant Site Classification -- Designate the classifications that describe the activities at all of your plant sites that involve the listed substance. Check more than one box if more than one classification applies. Examples of each classification are presented below.

MANUFACTURER FOR COMMERCIAL PURPOSES

A plant site that produces or manufactures the listed substance (including refining a listed substance to a greater level of purity) for the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer and includes, among other things, the "manufacture" of any amount of the listed substance for:

1) Commercial distribution (including for test marketing).

2) Use by the manufacturer (including use for product research and development or as an intermediate).

3) Coincidental production of the listed substance with the manufacture, processing, use, or disposal of another substance or mixture (including byproducts and coproducts that are separated from the other substance or mixture and impurities that remain in the other substance or mixture).

IMPORTER FOR COMMERCIAL PURPOSES

A plant site that imports the substance as part of a mixture or an article or any product containing or composed of the listed substance into the customs territory of the United States.

For commercial distribution. Ex.: Company A imports chemical X from Germany and processes it by repackaging the listed substance. For this example, report the quantity imported in Part B2, and report the quantity repackaged in Part C.

Question	Instructions

PROCESSOR FOR COMMERCIAL PURPOSES:

A plant site that prepares the listed substance for distribution as part of a mixture, an article, or any product containing or composed of the listed substance. Processors also include plant sites that use the listed substance as a reactant or intermediate to produce another chemical substance.

1) Repackager. Processes by transferring the listed substance from one container to another. Ex.: Company A buys chemical X, removes chemical from the original glass packaging, and repackages the chemical in a plastic container.

2) Chemical producer. Uses the listed substance as a raw material or as an intermediate in the manufacture of other chemical substances or mixtures during which the original substance is chemically altered or otherwise consumed. Ex.: Company A buys chemical X, which is reacted with chemical Y to make chemical Z.

3) Mixture producer. Mixes the listed substance with another substance or mixture to form a mixture that is subsequently distributed in commerce or used on site. The original substance or mixture is not consumed or chemically altered in this process. Ex.: Company A buys chemical Y, which is a pigment, and adds it to a paint base to color the paint.

4) Article producer. Mixes or causes a reaction of the listed substance to form an article for subsequent distribution in commerce or for use on site. The listed substance may or may not be chemically altered or otherwise consumed. Ex.: Company A purchases chemical Y, a plastic additive, and mixes it with molten plastic to form plastic parts.

PART C TRADE NAMES AND SUBSTANCE IDENTIFICATION

1.19 Mixtures -- If the listed substance on which you are required to report is a mixture, identify each component chemical. Specify percent composition by weight and specify the precision of each answer. If identity of components is unknown, provide trade names of the mixture and the name of the manufacturer. The total of all composition values should equal 100 percent.

SAMPLE ANSWER TO QUESTION 1.18

Component or Trade Name and Manufacturer	Average % Composition by Weight (specify precision) (e.g., 45% ± 5%)
Benzene	*50% ± .1%*
Toluene	*50% ± .1%*
Total	100%

Question	Instructions

SECTION 2 MANUFACTURER, IMPORTER, AND PROCESSOR VOLUME AND USE

2.2 List the reporting year and the corporate fiscal year preceding the reporting year, and record the quantity of the listed substance your plant manufactured, imported, or processed during that year.

SAMPLE ANSWER TO QUESTION 2.2

Year Ending	Quantity Manufactured (Kg)	Quantity Imported (Kg)	Quantity Processed (Kg)
December 1984	*1.0 million*	*NA*	*NA*
December 1983	*1.0 million*	*NA*	*NA*

2.3 List the reporting year and the 3 corporate fiscal years preceding the reporting year in descending order, and for each year listed, record the quantity of the listed substance your plant manufactured, imported, or processed during that year.

SAMPLE ANSWER TO QUESTION 2.3

Year Ending	Quantity Manufactured (Kg)	Quantity Imported (Kg)	Quantity Processed (Kg)
December 1984	*1.0 million*	*NA*	*NA*
December 1983	*0.9 million*	*NA*	*NA*
December 1982	*Not manufactured*	*NA*	*NA*
December 1981	*Not manufactured*	*NA*	*NA*

2.4 List the reporting year and the 5 corporate fiscal years preceding the reporting year in descending order, and for each year listed, record the quantity of the listed substance your plant manufactured, imported, or processed.

SAMPLE ANSWER TO QUESTION 2.4

Year Ending	Quantity Manufactured (Kg)	Quantity Imported (Kg)	Quantity Processed (Kg)
December 1984	*1.0 million*	*NA*	*NA*
December 1983	*0.9 million*	*NA*	*NA*
December 1982	*Not manufactured*	*NA*	*NA*
December 1981	*Not manufactured*	*NA*	*NA*
December 1980	*Not manufactured*	*NA*	*NA*
December 1979	*Not manufactured*	*NA*	*NA*

Question	Instructions

2.8 If you intend to increase or decrease the quantity of the listed substance you manufacture, import, or process during the current corporate fiscal year, enter the expected amount of increase or decrease in kg/yr in the spaces provided. If your response to this question is no, enter NA.

SAMPLE ANSWER TO QUESTION 2.8

	Manufacturing Quantity (Kg)	Importing Quantity (Kg)	Processing Quantity (Kg)
Amount of increase	*1x10^5 kg*	*NA*	*NA*
Amount of decrease	*NA*	*NA*	*NA*

2.9 For each month during which you manufactured, imported, or processed the listed substance during the reporting year, use the codes provided to indicate whether you manufactured (M), imported (I), or processed (P) the listed substance.

SAMPLE ANSWER TO QUESTION 2.9

	M,I,P		M,I,P		M,I,P
January	*M*	May	*M*	September	*P*
February	*M*	June	*M*	October	*P*
March	*M*	July	*M,P*	November	*P*
April	*M*	August	*M,P*	December	*NA*

2.10 Specify the schedule for manufacturing or processing the listed substance during the reporting year.

SAMPLE ANSWER TO QUESTION 2.10

Manufacturing	Processing
Days per year *160*	Days per year *100*
Average hours per day *12*	Average hours per day *12*

2.12 Specify any byproducts, coproducts, or impurities present with the listed substance in concentrations of 0.1 percent or greater as it is manufactured or imported. Identify the source of impurities.

Question	Instructions

SAMPLE ANSWER TO QUESTION 2.12

CAS No. and Name	Byproduct (B) Coproduct (C) or Impurity (I)	Concentration (%) (specify ±% precision)	Source of Impurities
1330-20-7 Xylene	*I*	*± .2%*	*Inefficient distillation*

2.13 Additives -- List each additive by its CAS number and chemical name (or trade name if chemical name is not known). List the additive's function in the substance and estimate the maximum concentration of each additive in the listed substance.

SAMPLE ANSWER TO QUESTION 2.13

Additive (by name and CAS No.)	Function	Maximum Concentration (%) (specify ± % precision)
Acid Red 14; 3567-69-9	*Pigment*	*1.5 ± 0.1%*

2.14 In column a, list the category(ies) of existing use(s) of the listed substance on which you have based your quantity estimates in question 1.10 (e.g., solvent used in automotive paint). List partial information if complete information is not known (e.g., solvent). Estimate the percent of total production for the reporting year devoted to each category of use. Indicate a combined percent for all non-TSCA uses, but list each use separately. (Non-TSCA uses apply to chemicals used exclusively in pesticides, food additives, drugs, and cosmetics.) Column b should contain the percent of the total quantity of the listed substance that you manufacture, import, or process for each listed existing use. The percentages entered in this column should total 100 percent. Column c should contain the percentage of each listed use that you use captively on site.

For example, (1) You produce 1,000 kg/yr of chemical X, and 85 percent of that quantity is used as a degreasing solvent. You sell the remaining 15 percent to a paint manufacturer. Of the 85 percent used as a degreasing solvent, 5 percent is used captively on site. The following table illustrates how you would complete question 2.14.

Question	Instructions

SAMPLE ANSWER TO QUESTION 2.14

a. Categories of Existing Use(s)	b. Percent of Quantity Manufactured, Imported, or Processed	c. Percent of Quantity Used Captively On Site
Solvent used in degreasing	*85%*	*5%*
Solvent used in automotive paint	*15%*	*0*
Non-TSCA uses (specify)		
None	*0*	*0*
Total percent of quantity manufactured, imported, or processed:	*100%*	

2.15 In column a, list the category(ies) of use(s) on which you have based your projected quantity estimates (e.g., solvent used in automotive paint). List partial information if complete information is not known (e.g., solvent). Estimate the total quantity to be manufactured, imported, or processed during the next year devoted to each category of use as a percentage of your current production, importing, or processing volumes. Include quantities for non-TSCA uses. Column b should contain the percent of the total quantity of the listed substance that you expect to manufacture, import, or process for each use. Column c should contain the percentage of each listed use that you expect to use captively on site. You do not need to account for 100 percent of current production quantity.

SAMPLE ANSWER TO QUESTION 2.15

a. Use(s)	b. Percent of Quantity Manufactured, Imported, or Processed	c. Percent of Quantity Used Captively On Site
Solvent used in oil paint	*10%*	*0*
Solvent used in degreasing	*7%*	*8*
Solvent used in automotive paint	*5%*	*0*
Non-TSCA uses (specify)		
None	*0*	*0*

2.16 Final Product -- The following question applies to all final products produced at your site that contain the listed substance as an intentional component.

Question	Instructions

2.16a The figure to be reported for the "Quantity of Listed Substance per Container" is the percent of the chemical composition in the final product times the unit size. Each container is one unit.

For example, the listed substance comprises 75 percent of a final product and that product is packaged in a 50-kg container. The answer is: 0.75 x 50 kg = 37.5 kg.

SAMPLE ANSWER TO QUESTION 2.16a

Product Name	Physical Form	Container Size (kg)	Container Type	Quantity of Listed Substance per Container	Type of End Users (I, CM, CS)	Total Unit Price	Number of Containers
Chemsolve	*B*	*50*	*C*	*37.5 kg*	*I*	*$3.00*	*25,000*
Food Wrap	*F4*	*0.5*	*F*	*0.5 kg*	*CS*	*$0.89*	*50,000*

2.16b List all products that are in the form of articles and describe each article. Describe all articles that you produce that contain the listed substance. For each article, specify the associated end users.

SAMPLE ANSWER TO QUESTION 2.16b

Product Names	Description of Article
Accutemp	*Thermometer containing liquid mercury*
Soapy	*Soap pad containing solidified detergent*

2.18 For each end-use category that applies to the listed substance, estimate the quantity of the listed substance that is used by your customers in each category.

Question	Instructions

SAMPLE ANSWER TO QUESTION 2.18

i. Industrial Products

Chemical or mixture *850,000* (kg/yr)
Article *NA* (kg/yr)

ii. Commercial Products

Chemical or mixture *NA* (kg/yr)
Article *NA* (kg/yr)

iii. Consumer Products

Chemical or mixture *NA* (kg/yr)
Article *NA* (kg/yr)

iv. Other

Distribution (excluding export) *NA* (kg/yr)
Export *NA* (kg/yr)
Quantity of substance consumed as reactant *150,000* (kg/yr)
Unknown customer uses *NA* (kg/yr)

Question	Instructions

SECTION 3 PROCESSOR RAW MATERIAL IDENTIFICATION

PART A GENERAL DATA

3.1 For each source identified below, specify the quantity of the listed substance that you purchased and the price you paid and/or the cost incurred.

SAMPLE ANSWER TO QUESTION 3.1

	Quantity (kg)	Cost ($/kg)
The listed substance was purchased directly from the manufacturer.	*NA*	*NA*
The listed substance was purchased from a distributor or repackager.	*NA*	*NA*
The listed substance was purchased from a mixture producer.	*NA*	*NA*
The listed substance was manufactured on site.	*100,000*	*$0.50*
The listed substance was transferred from a different company site.	*50,000*	*$0.58*

3.2 Indicate the type of carrier used to deliver the listed substance to your site. For example: by truck, by rail, etc.

PART B RAW MATERIAL IN THE FORM OF A MIXTURE

Part B applies only if you use the listed substance as a feedstock in the form of a mixture. Answer NA if you do not use the listed substance as a feedstock in the form of a mixture.

3.4 State the quantities of the mixture you process and identify each known component of the mixture by its CAS number, chemical name, or trade name, and its percent composition by weight. Include the listed substance as a component.

SAMPLE ANSWER TO QUESTION 3.4

Component	% Composition by Weight
119-90-4	*20%*
128-58-5	*20%*

3.5 If 50 percent of the components of the mixture by weight are unknown, provide the trade name of the mixture, the name of the manufacturer, and an estimate of the percent composition by weight of the listed substance in the mixture.

Question	Instructions

SAMPLE ANSWER TO QUESTION 3.5

Trade Name	Manufacturer	% Composition by Weight (specify ± % precision)
Aspirin	*Merck*	*20% ± .5%*

PART C RAW MATERIAL VOLUME

3.6 Report the percent of total plant capacity at which you operate for the reporting year to produce products using the listed substance as a feedstock. List all products that are made using the substance. State the total capacity of the plant for all products. If you are a batch processor, you do not have to provide capacity estimates.

SAMPLE ANSWER TO QUESTION 3.6

Product	% Total Capacity	Product	% Total Capacity
Oil based primer	*40%*	*Oil based flat paint*	*25%*
Oil based semi-gloss paint	*30%*	*Oil based topcoat*	*5%*

State the total capacity of the plant: *3.5×10^6 liters/year*

3.7 Report the total mass and weight percent of the listed substance used as a feedstock in the form of a class I chemical. Express the percentage of the listed substance as compared to the total weight of the class I chemical.

SAMPLE ANSWER TO QUESTION 3.7

Total Mass	% Composition by Weight (specify ± % precision)
25,000 kg	*55% ± .5%*

3.8 Report the total mass and weight percent of the listed substance used as a feedstock in the form of a class II chemical. Express the percentage of the listed substance as compared to the total weight of the class II chemical.

SAMPLE ANSWER TO QUESTION 3.8

Total Mass	% Composition by Weight (specify ± % precision)
33,000 kg	*60% ± .5%*

3.9 Report the total mass and percent purity of the listed substance used as a feedstock in the form of a polymer. To calculate weight percent, use the percentage of the listed substance monomer in the feedstock polymer.

Question	Instructions

SAMPLE ANSWER TO QUESTION 3.9

Total Mass	% Composition by Weight (specify ± % precision)
10,000 kg	*15% ± .5%*

Question	Instructions

SECTION 4 PHYSICAL/CHEMICAL PROPERTIES

PART A PHYSICAL/CHEMICAL DATA SUMMARY

If the listed substance is a mixture as defined in the glossary, reply to questions in section 4 that are inappropriate to mixtures by stating "NA -- mixture."

4.2-4.7 For questions 4.2-4.7, report values in the specified units. Use the conversion factors provided in table III-3 in the Conversion Factors Section (Part III of this Instruction Booklet).

4.7 For the technical grade listed in question 4.2, state the solubility of the listed substance in each of the following media, and state its solubility in other media, if known.

SAMPLE ANSWER TO QUESTION 4.7

		Other Media (if known)		
25.1 mg/l in Acetone	at *25°C*	*156.7* mg/l in *H_2SO_4*	at *25°C*
10.1 mg/l in Benzene	at *25°C*	*UK* mg/l in _____	at ___°C
15.7 mg/l in Ethanol	at *25°C*	*UK* mg/l in _____	at ___°C
5.5 mg/l in Ethyl Ether	at *25°C*	*UK* mg/l in _____	at ___°C
.24 mg/l in Water	at *25°C*	*UK* mg/l in _____	at ___°C

4.8 State the most characteristic or most distinctive absorption for the listed substance.

SAMPLE ANSWER TO QUESTION 4.8

Ultraviolet	Visible	Infrared
NA ± %	*330 nm* ± *2%*	*NA* ± %

4.9 Report the physical state of the listed substance as you manufacture, import, process, store, dispose, and/or transport it. Report transportation conditions only when transported to and from your plant site.

Question	Instructions

SAMPLE ANSWER TO QUESTION 4.9

Physical State	Manufacture	Import	Process	Store	Dispose	Transport
Solid	*NA*	*NA*	*NA*	*X*	*X*	*X*
Slurry	*NA*	*NA*	*X*	*NA*	*NA*	*NA*
Liquid (incl. in solution)	*X*	*NA*	*NA*	*NA*	*NA*	*NA*
Liquified compressed gas	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*
Gas	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*

4.10 For each applicable physical state, specify the particle size of the listed substance during each of the specified activities and estimate the percentage distribution of each particle type in each activity. Do not include particles ≤ 30 microns in diameter.

SAMPLE ANSWER TO QUESTION 4.10

Physical State	Manufacture	Import	Process	Store	Dispose	Transport	Total
Dust	*B/70%*	*NA*	*B/30%*	*NA*	*NA*	*NA*	*100%*
Powder	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*
Fiber	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*
Aerosol	*C/50%*	*NA*	*C/20%*	*NA*	*NA*	*C/30%*	*100%*
Gas	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*
Other (specify)	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*

PART B FIRE, EXPLOSION, AND OTHER HAZARD DATA

4.11 Indicate the flashpoint of the listed substance, specify the corresponding physical state, and identify the test method used.

SAMPLE ANSWERS TO QUESTION 4.11

Flashpoint *80.2* °C Physical state *Liquid* Test method *Open cup*

Flashpoint *96.0* °C Physical state *Liquid* Test method *Closed cup*

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Question	Instructions
4.16	Incompatibility -- State those chemicals, materials, or categories of chemicals or materials that are incompatible with the listed substance. Include unusual fire and explosion hazards, such as "substance explodes upon contact with water." List only the most hazardous reactions and include common materials, such as metals, coatings, linings, plastics, etc.

SAMPLE ANSWER TO QUESTION 4.16

CAS No.	Name	Reaction (specify)
107-18-6	*Allyl alcohol*	*Mixture bursts into flame*

Question	Instructions
4.20	For each problem associated with vapor in cargo tanks, specify how the controls or restrictions will be used to remedy the problem.

SAMPLE ANSWER TO QUESTION 4.20

Vapor Problem	Control/Restrictions
Peroxide formation	*Vented*
Reaction with moisture	*Pressurized*
Combustion	*Temperature controlled*
Other (specify)	
Explosion	*Pressure controlled*

Question	Instructions

SECTION 5 ENVIRONMENTAL FATE

PART A RATE CONSTANTS AND TRANSFORMATION PRODUCTS

5.2 a. Specify the half-life of the listed substance and the medium/media in which it was measured.

SAMPLE ANSWER TO QUESTION 5.2a

a. Half-life	Media
250 weeks	in groundwater
0.1 weeks	in atmosphere
1 week	in surface water
20 weeks	in soil

b. If the listed substance forms transformation products that have half-lives greater than 24 hours, specify these products, their half-lives (in weeks), and the test media in the table provided.

CAS No.	Name	Half-life (specify units)	Media
127-18-4	*Tetrachloroethylene*	*35 weeks*	*In surface water*

PART B PARTITION COEFFICIENTS

Provide the partition coefficients in the specified units when known. If unknown, respond "UK."

Question	Instructions

SECTION 6 ECONOMIC AND FINANCIAL INFORMATION

6.2 SIC codes are listed in the Standard Industrial Classification Manual, U.S. Department of Commerce.

SAMPLE ANSWER TO QUESTION 6.2

SIC Code	Industry Type
2851	*Paints and allied products*
2890	*Chemical preparations*

6.6 If there were any plants for manufacturing, importing, or processing the listed substance under construction at this site, but not in operation at the end of the reporting year, answer this question "YES." This question refers only to plants at this site that, upon completion, will handle the listed substance.

6.7 Identify the specified markets in which your product is sold or transferred by reporting the quantity of the listed substance (with units) produced for each market and state the total sales value for that quantity.

SAMPLE ANSWER TO QUESTION 6.7

Market	Quantity Sold or Transferred (kg/yr)	Total Sales Value ($/yr)
Retail sales	*NA*	*NA*
Distribution -- Wholesalers	*250,000 kg/yr*	*$550,000.00/yr*
Distribution -- Retailers	*NA*	*NA*
Intra-company transfer	*NA*	*NA*
Repackaging	*NA*	*NA*
Mixture production	*NA*	*NA*
Article production	*NA*	*NA*
Other chemical manufacturers or processors	*750,000 kg/yr*	*$525,000.00/yr*
Export	*NA*	*NA*
Other (specify) _____	*NA*	*NA*

Question	Instructions

6.8 For each of your products that contain the listed substance and each of your processes that utilize the listed substance, identify all known commercially available substances that can be substituted for the listed substance, and specify the cost of each substitute ($/kg).

SAMPLE ANSWER TO QUESTION 6.8

Substitute	Cost ($/kg)
Acid Red #14	*$9.50*
Red 3G Base	*$8.75*

6.9 Report the total and variable costs to your company to manufacture, import, or process the listed substance in the reporting year. Total cost includes raw materials, annualized capital costs, depreciation, labor costs, energy/utilities, and overhead. Variable costs = total costs minus capital cost, depreciation, and overhead.

SAMPLE ANSWER TO QUESTION 6.9

Costs	Manufacturing	Importing	Processing
Total	*0.968* $/kg	*NA* $/kg	*NA* $/kg
Variable	*± .04* $/kg	*NA* $/kg	*NA* $/kg

6.10 If you purchased the listed substance from another company as a raw material, report the average price in $/kg you paid during the reporting year.

6.11 Provide sales data for your company as a whole and for the listed substance for both the reporting year and for the year preceding the reporting year.

Year Ending	Company's Total Sales ($ million)	Sales of the Listed Substance ($ million)
December 1985 (month)	*1.534*	*0.6*
December 1984	*1.500*	*0.5*

Question	Instructions

6.12 Provide sales data for your company as a whole and for the listed substance for the reporting year and for the 3 years preceding the reporting year.

Year Ending		Company's Total Sales ($ million)	Sales of the Listed Substance ($ million)
December (month)	1985	1.534	0.6
December	1984	1.500	0.5
December	1983	1.470	0.4
December	1982	1.430	0.4

6.13 Provide sales data for your company as a whole and for the listed substance for the reporting year and for the 5 years preceding the reporting year.

Year Ending		Company's Total Sales ($ million)	Sales of the Listed Substance ($ million)
December (month)	1985	1.534	0.6
December	1984	1.500	0.5
December	1983	1.470	0.4
December	1982	1.430	0.4
December	1981	1.390	0.3
December	1980	1.370	0.3

Question	Instructions

SECTION 7 MANUFACTURING AND PROCESSING INFORMATION

PART A PROCESS DESCRIPTION

7.1 or 7.2 The Federal Register Notice, which announces the requirements for completion of the CAIR form for a substance, will specify whether the respondents must complete the flow diagram for question 7.1 or question 7.2. Those respondents required to answer question 7.1 should provide a flow diagram identifying (by assigning letters A-Z, AA-ZZ, etc.) only those input and output streams that contain the listed substance. Input and output streams include continuous streams and those wastes that result from periodic cleaning and/or rep'acement of tanks, filters, and other equipment (e.g., spent carbon from semiannual disposal and replacement of filters). Also, respondents to question 7.1 should number only the unit operations directly in contact with the listed substance.

Those respondents required to answer question 7.2 should provide a flow diagram identifying and labeling (A-Z, AA-ZZ, etc.) all input and output streams, regardless of whether the listed substance is a component of these streams. Likewise, all equipment used in the process should be identified and numbered.

For each manufacturing and processing operation in which the listed substance is produced and/or processed, photocopy your process block flow diagram. If the diagram is not available for photocopying, draw the process flow diagram in the space provided, using the example for 7.1 as a prototype. Identify on the diagram each product/process for which you provide a diagram (i.e., Polyvinyl Chloride Dispersion Polymerization Process). Identify input and output streams associated with the listed substance, such as specific raw materials, solvents, products, coproducts, byproducts, intermediates, emissions, waste residuals, etc., on the block flow diagram. Provide a block for each unit operation (e.g., reactor, washer, filter press, mixer, condenser, etc.) in the production process.

Do not include the waste treatment facility in your block flow diagram if it is separate from the process or if wastes from other processes are fed to the treatment system.

In each of the following questions, identify the product/process from which the information is extracted.

7.3 Identify the equipment (unit operations) shown on your flow diagram. Specify typical operating temperatures and pressures (use ranges if applicable) and vessel construction material.

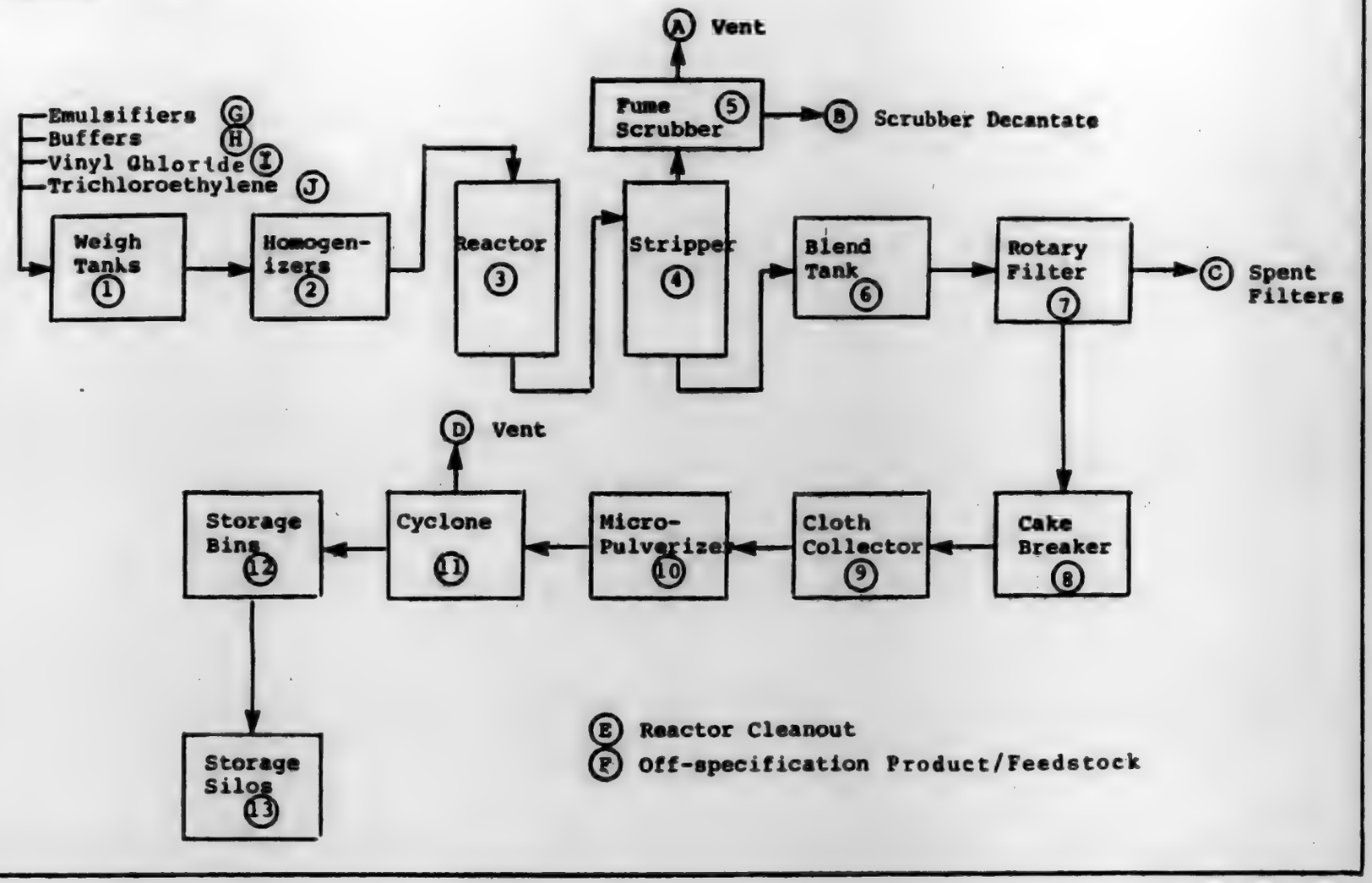
SAMPLE ANSWER TO QUESTION 7.1

PROCESS BLOCK FLOW DIAGRAM

☐ CBI

Product/Process Polyvinyl Chloride Dispersion Polymerization Process

Intermediates None



Question	Instructions

SAMPLE ANSWER TO QUESTION 7.3

Product/process *Polyvinyl Chloride Dispersion Polymerization Process*

Equipment ID Number	Equipment Type	Operating Temperature Range (°C)	Operating Pressure Range (mm Hg)	Vessel Composition
1	*Weigh tanks*	*Ambient*	*Atmospheric*	*Stainless steel*
2	*Homogenizers*	*Ambient*	*Atmospheric*	*Stainless steel*

7.4 Characterize each stream identified on the block flow diagram by providing a brief description of the stream, its physical state when leaving the process, and the flow in kg/yr. See the example for 7.4.

SAMPLE ANSWER TO QUESTION 7.4

Process Stream ID Letter	Process Stream Description	Physical State	Stream Flow (kg/yr)
A.	*Stripper vent*	*GU*	*850,000*
B.	*Aqueous scrubber decantate*	*AL*	*75,000*
C.	*Spent filter*	*SO*	*50,000*

7.5 Stream Identification Letter -- For each process stream identified on your flow diagram, record the Process Stream Identification Letter in the first column of question 7.5.

Known Compounds -- Identify the constituents that make up each stream and specify concentrations as known from chemical analysis. If analytical results are not available, use chemical engineering judgment to estimate concentrations. Specify after the concentration whether analytical results (A) or engineering judgment (E) were used. See the example for 7.5.

Expected Compounds -- Identify the constituents that are not known, but are expected to make up each stream. Use chemical engineering judgment to estimate concentrations. See the example for 7.5.

Question	Instructions

SAMPLE ANSWER TO QUESTION 7.5

Product/process *Polyvinyl Chloride Dispersion Polymerization Process*

Process Stream ID Letter	Known Compounds	Concentrations (% or ppm)	Expected Compounds	Estimated Concentrations (% or ppm)
A	*Air*	*99.98% (A)*	*trichloroethylene*	*1 ppm*
	Vinyl Chloride	*5 ppm (A)*		
B	*Water*	*90% (E)*		
	Vinyl Chloride	*5-50 ppm (A)*		
	Polyvinyl Chloride	*1-5% (E)*		
	Polyvinyl Chloride	*5 ppm (A)*		
C	*Filter cloth*	*90% (E)*		
	Polyvinyl chloride	*5% (E)*		
	Vinyl Chloride	*10 ppm (A)*		

7.6 For each process stream containing the listed substance, list all media (e.g., atmosphere, land, groundwater, surface water) to which the listed substance is released. If the listed substance is released to water, designate the destination of release by marking (X) the applicable box below the table. Briefly describe the control technology used to limit release of the listed substance to the environment.

SAMPLE ANSWER TO QUESTION 7.6

Product/Process *Polyvinyl Chloride Dispersion Polymerization Process*

Process Stream ID Letter	Media Affected[1]	Control Technology Used
A	*Atmosphere*	*None - This vent has already undergone fume scrubbing*
B	*Surface Water*	*Treated in tank and settled in lagoon prior to discharge to surface water*

Question	Instructions

7.6 (continued)

1. For release to water, mark (X) the destination of releases.

[ ] Publicly owned treatment works

[X] Navigable waterway

[ ] Other (specify) _____

Question	Instructions

SECTION 8 RESIDUAL TREATMENT, GENERATION, CHARACTERIZATION, TRANSPORTATION, AND MANAGEMENT

The hypothetical partial examples provided in this section are intended to illustrate the types of responses anticipated. The examples do not represent any actual product/process or waste management scheme.

PART A RESIDUAL TREATMENT PROCESS AND EQUIPMENT

8.1 or 8.2 The Federal Register Notice, which announces requirements for completion of the CAIR form for a substance, will specify whether the respondents must complete the flow diagram for question 8.1 or 8.2. Those respondents required to answer question 8.1 should provide a residual treatment flow diagram identifying (by assigning letters A-Z, AA-ZZ, etc.) only those input and output streams that contain the listed substance. Respondents to question 8.1 should number only the unit operations directly in contact with the listed substance.

Those respondents required to answer question 8.2 should provide a flow diagram identifying and labeling (A-Z, AA-ZZ, etc.) all input and output streams, regardless of whether the listed substance is a component of these streams. Likewise, all equipment used in the process should be identified and numbered.

If you were required to complete question 7.1 or 7.2, include in your residual treatment block flow diagram each residual stream identified on your process block flow diagram from section 7 that receives treatment. If you have a flow diagram available to be copied, provide a copy; otherwise, draw the diagram in the space provided. In the space provided, identify the product/process from which the residual stream originates. Refer to sample answer 7.1.

If you were not required to complete question 7.1 or 7.2, provide a residual treatment block flow diagram for each residual that is produced from a manufacturing process to produce the listed substance. If you have a residual treatment block flow diagram available to be copied, provide a copy; otherwise, draw the diagram in the space provided. Identify the product/process from which the residual stream originates. Refer to sample answer 8.1.

Identify treatment streams and the product/process from which they originate on the block flow diagram. If applicable, identify inputs to the treatment scheme according to their input/output identification letters as assigned in question 7.1 or 7.2. If not applicable, or if you did not complete question 7.1 or 7.2, assign new identification letters. (Do not repeat any of the letters used in question 7.1 or 7.2. If there are more than 26 individual streams in the two diagrams, use double letters, e.g., AA, AB, AC, etc.) Use arrows to indicate the points of introduction generation.

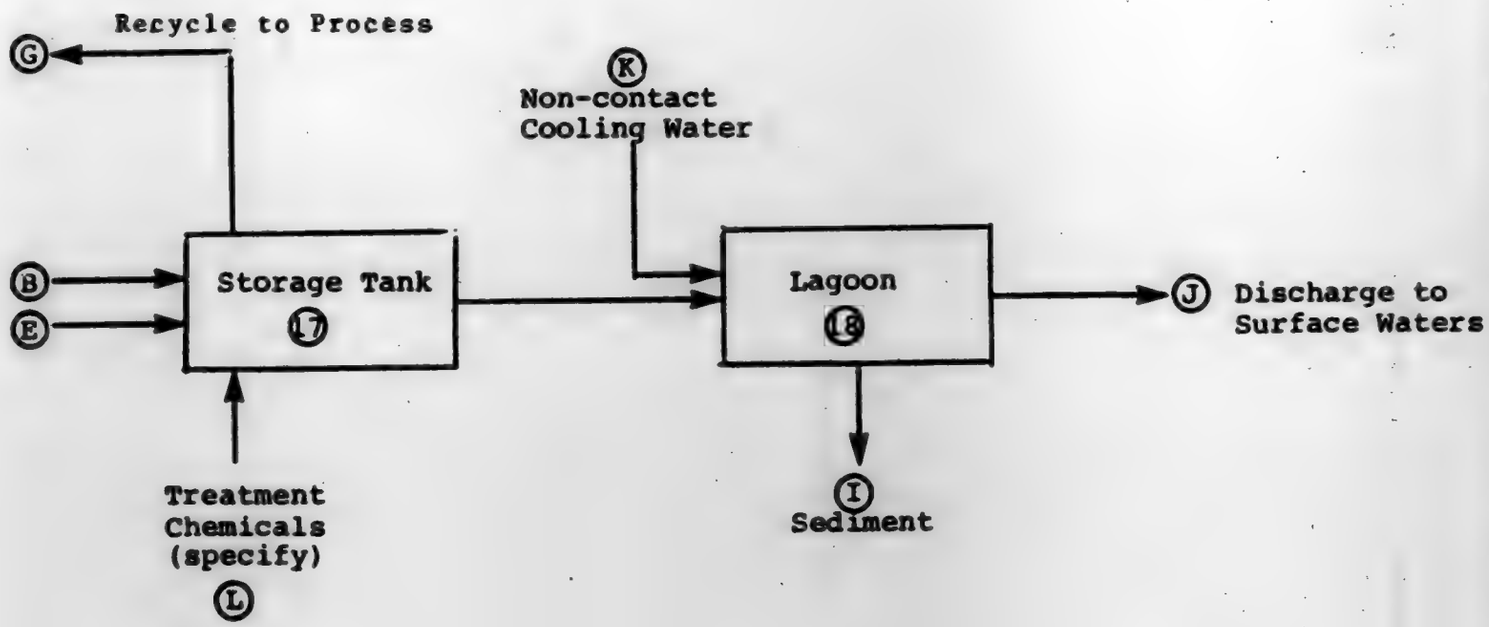
On the residual treatment block flow diagram, provide a block for each unit operation involved in processing residuals from streams containing the listed substance (e.g., oil separator, stripper, neutralization tank, etc.). Number each operation. You may repeat numbers used in question 7.1 or 7.2.

SAMPLE ANSWER TO QUESTION 8.1

RESIDUAL TREATMENT BLOCK FLOW DIAGRAM

☐ CBI

Product/Process Polyvinyl Chloride Dispersion Polymerization Process



Question	Instructions
8.3	If you have already identified the equipment by name on your waste treatment block flow diagram, you do not have to answer this question. If you have not already identified the equipment, list the equipment identified in question 8.1 or 8.2 by number and give a brief description in the space provided.

SAMPLE ANSWER TO QUESTION 8.3

Product/Process *Polyvinyl Chloride Dispersion Polymerization Process*

Equipment ID Number	Equipment Type
17	*Storage tank*
18	*Lagoon tank*

PART B RESIDUAL GENERATION AND CHARACTERIZATION

Question	Instructions
8.4	For each production process that is used to manufacture and/or process the listed substance, provide the specified information.
8.4A	For each process operation used to manufacture and/or process the listed substance, use column A to list all residuals by their Process Stream Identification Letters and Residual Treatment Stream Identification Letters.
8.4B	In column B, assign a unique Residual Identification Number to each residual. If you are reporting on more than one process, use sequential numbers in each process in order to avoid using the same number more than once.
8.4C	If you identified the residual in a facility RCRA notification, indicate whether it was identified as ignitable (I), corrosive (C), reactive (R), EP Toxic (E), toxic (T), or acutely hazardous (H), or provide the RCRA waste identification number, e.g., K001.
8.4D	For each residual, describe all of the following properties that apply: physical state (e.g., liquid [specify whether aqueous or organic], solid, slurry [indicate solids content], gas), pH, flash point, viscosity, and toxicity.
8.4E,F	List the compounds that are known to be present in the residual and specify, as known, the analytically determined concentration. If chemical analyses are not available, provide estimates based on best engineering judgment. Indicate beside the concentration whether an analytical result (A) or an engineering judgment (E) was used. If an analytical result was used, specify the method used to measure the concentration and the detection limit. Assign a code to each analytical result in column F and record this code in the table in footnote 3.

Question	Instructions
8.4G	List any other compounds that are expected to be present in the residual and expected concentrations based on chemical engineering principles. See the example to 8.4A-G.

SAMPLE ANSWER TO QUESTION 8.4A-G

Product/Process *Bulk Polystyrene/Bulk Solvent Polystyrene Process*

A. Stream ID Letter[1]	B. Residual ID Number	C. RCRA ID (I,C,R,E,T,or H) or RCRA Waste No.[2]	D. Properties of Residual	E. Known Compounds	F. Concentrations[4] (% or ppm)	G. Other Expected Compounds
L	*7*	*I*	*Solid*	*Styrene*	*1.7% (A)(1)*	*None*
				Ethylbenzene	*3.5% (A)(2)*	
				Rubber	*5% (E)*	
				Cartridges	*90% (E)*	

4. For footnote #4, specify analytical test methods used by assigning a code to each test method in the table below.

Code	Method	Detection Limit (± ug/l)
1	*Gas Chromatography/Mass Spectrometer*	*9.1 ug/l*
2	*Gas Chromatography/Mass Spectrometer*	*7.4 ug/l*

Question	Instructions
8.5 A-G	Columns A-G of question 8.5 are designed to characterize the management methods used for residuals described in question 8.4. Refer to the example to 8.5A-G for a sample answer to columns A-G. Repeat the Residual Identification Number in column A of the table.

SAMPLE ANSWER TO QUESTION 8.5A-G

Product/Process *Bulk Polystyrene/Bulk Solvent Polystyrene Process*

A. Residual ID Number	B. Residual Category Code	C. Management Method Code	D. Residual Quantities (kg)	E. Management of Residual On Site	E. Management of Residual Off Site	F. Costs for Off-site Management (per kg)	G. Changes in Management Methods
7	*C1*	*M1a,M2c/T45*	*3.2×10^6 kg*	*70%*	*30%*	*$.55*	*None*
7	*C2*	*M1a,M2c/T36*	*6.5×10^6 kg*	*70%*	*30%*	*$.54*	*None*

Question	Instructions

8.5B Specify residual category in accordance with codes provided.

Code	Categories of Residuals	Code	Categories of Residuals
C.1	Precipitates or filtration residues	C.10	Containers, liners, cleaning rags, gloves, ect
C.2	Decantates or filtrates		
C.3	Sludges a) biological; b) other (specify) _____	C.11	Off-specification products and feedstock
		C.12	Other (specify)_____
C.4	Spent activated carbon or other absorber	C.13	Byproduct
		C.14	Light ends: a) condensable b) noncondensable
C.5	Spent catalyst		
C.6	Heavy ends: a) distillation residues; b) miscellaneous heavy ends	C.15	Miscellaneous wastewaters: a) equipment washdown; b) steam jet condensate; c) other nonprocess wastewater (specify)
C.7	Spend solvents		
C.8	Untreated process wastewater: a) acid (pH < 2); b) caustic (pH > 12) c) neutral	C.16	Spent scrubber liquid: a) aqueous; b) organic
		C.17	Treated organics
C.9	Treated wastewater discharge	C.18	Treatment solids

8.5C Specify management methods in accordance with codes provided. If a residual is subject to a sequence of methods (e.g., storage in a tank, incineration), list the methods in sequence. If a residual is handled alternately by more than one method (e.g., incinerated or burned in a boiler), identify the alternate methods. If treatment is performed (M2, M3, M5, or M8), specify the treatment method using the handling codes listed in exhibit 8-1. Refer to the sample answer to question 8.5A-6.

Code	Management Methods	Code	Management Methods
M1.	Storage in: a) tank; b) container; c) pile; d) surface impoundment	M9.	Discharge to publicly owned wastewater treatment works
M2.	Treatment of organics in: a) tank; b) container; c) surface impoundment	M10.	Discharge to surface water under NPDES permit
M3.	Burning in a boiler	M11.	Discharge to off-site privately owned wastewater treatment works
M4.	Recovery/reclamation: a) recovery; b) reuse same process; c) reuse different process; d) sales	M12.	Other (specify)
		M13.	Scrubber: a) caustic; b) water; c) other (specify)
M5.	Incineration	M14.	Land farm/land application
M6.	Landfill	M15.	Vent to: a) atmosphere; b) flare; c) other (specify)
M7.	Underground injection		
M8.	On-site wastewater treatment: a) tank; b) surface impoundment		

8.5D Indicate the amount (kg) of each residual managed by each method in the reporting year.

Exhibit 8-1.

Title 40—Protection of Environment

Chapter I—Environmental Protection Agency

TABLE 3—HANDLING CODES FOR TREATMENT, STORAGE, AND DISPOSAL METHODS

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

1. Storage
- S01 Container (barrel, drum, etc.)
- S02 Tank
- S03 Waste pile
- S04 Surface impoundment
- S05 Other (specify)

2. Treatment
- (a) Thermal Treatment
  - T06 Liquid injection incinerator
  - T07 Rotary kiln incinerator
  - T08 Fluidized bed incinerator
  - T09 Multiple hearth incinerator
  - T10 Infrared furnace incinerator
  - T11 Molten salt destructor
  - T12 Pyrolysis
  - T13 Wet air oxidation
  - T14 Calcination
  - T15 Microwave discharge
  - T16 Cement kiln
  - T17 Lime kiln
  - T18 Other (specify)
- (b) Chemical Treatment
  - T19 Absorption mound
  - T20 Absorption field
  - T21 Chemical fixation
  - T22 Chemical oxidation
  - T23 Chemical precipitation
  - T24 Chemical reduction
  - T25 Chlorination
  - T26 Chlorinolysis
  - T27 Cyanide destruction
  - T28 Degradation
  - T29 Detoxification
  - T30 Ion exchange
  - T31 Neutralization
  - T32 Ozonation
  - T33 Photolysis
  - T34 Other (specify)
- (c) Physical Treatment
  - (1) Separation of components
    - T35 Centrifugation
    - T36 Clarification
    - T37 Coagulation
    - T38 Decanting
    - T39 Encapsulation
    - T40 Filtration
    - T41 Flocculation
    - T42 Flotation
    - T43 Foaming
    - T44 Sedimentation
    - T45 Thickening
    - T46 Ultrafiltration
    - T47 Other (specify)
  - (2) Removal of Specific Components
    - T48 Absorption-molecular sieve
    - T49 Activated carbon
    - T50 Blending
    - T51 Catalysis
    - T52 Crystallization
    - T53 Dialysis
    - T54 Distillation
    - T55 Electrodialysis
    - T56 Electrolysis
    - T57 Evaporation
    - T58 High gradient magnetic separation
    - T59 Leaching
    - T60 Liquid ion exchange
    - T61 Liquid-liquid extraction
    - T62 Reverse osmosis
    - T63 Solvent recovery
    - T64 Stripping
    - T65 Sand filter
    - T66 Other (specify)
- (d) Biological Treatment
  - T67 Activated sludge
  - T68 Aerobic lagoon
  - T69 Aerobic tank
  - T70 Anaerobic lagoon
  - T71 Composting
  - T72 Septic tank
  - T73 Spray irrigation
  - T74 Thickening filter
  - T75 Trickling filter
  - T76 Waste stabilization pond
  - T77 Other (specify)
  - T78-79 [Reserved]

3. Disposal
- D80 Underground injection
- D81 Landfill
- D82 Land treatment
- D83 Ocean disposal
- D84 Surface impoundment (to be closed as a landfill)
- D85 Other (specify)

Question	Instructions
8.5E	Indicate whether the residual is managed on site or off site. If 100 percent of the residual is managed either on site or off site, place a check in the space provided. If the residual is managed both on site and off site, provide the percentage managed in each category in the space provided.
8.5F	For residuals managed off site, indicate the average management cost per unit quantity (kg) of residual in the reporting year.
8.5G	Indicate planned changes in residual management methods by specifying the codes for the new management methods (use codes defined in question 8.4B), and indicate the anticipated date of change.

PART C TRANSPORTATION

8.6 For all residuals identified in Section 8 that are transported by an outside service, state the transportation method and identify the transporter by company name, phone number, and identification number.

SAMPLE ANSWER TO QUESTION 8.6

Residual ID Number	Transportation Method (T,R,B,P,O)	Transporter Company Name	Transporter Phone Number	RCRA Transporter ID Number	Distance Transported (miles)
4	*T*	*Southampton Sanitary*	*(617) 523-1906*	*MAD991288549*	*50*

8.7 Identify each residual by its Residual Identification Number as provided in question 8.4. If you were not required to complete question 8.4, refer to the instructions for question 8.4.

Identify the number of containers and the total quantity of the residual transported per container annually. Use the codes provided to describe both the type of container and the quantity each container holds.

SAMPLE ANSWER TO QUESTION 8.7

Residual ID Number	Number of Containers	Container Type	Weight or Volume per Container
4	*20*	*DM*	*50,000(l)*

8.8 Identify those residuals that require special handling and describe the handling instructions in the table provided.

SAMPLE ANSWER TO QUESTION 8.8

Residual ID Number	Special Handling Instructions
8	*Must be stored in air-tight containers*

Question	Instructions
8.9	Identify those construction materials that could cause an undesirable reaction or significant corrosion if used to transport specific residuals.

SAMPLE ANSWER TO QUESTION 8.9

Residual ID Number	Construction Materials
9	*Plastic containers will dissolve*

8.10 Identify each residual that is managed by an off-site facility and the quantity (kg) of each residual treated by an off-site facility. This includes any discharges to POTWs. Identify each residual by its Residual Identification Number (refer to instructions for question 8.4 for detailed instructions). Identify the off-site facility by name, mailing address, Dun and Bradstreet Number, location (if different from mailing address), and 12-digit EPA ID Number. If more than two facilities treat waste from your plant site, attach additional pages as necessary.

SAMPLE ANSWER TO QUESTION 8.10

Residual ID Number	Annual Quantity	Residual ID Number	Annual Quantity
7	*2.9×10^6 kg*	*9*	*1.5×10^6 kg*

Name of Facility *Southampton Sanitary*

Facility Mailing Address:

Street or P.O. Box *168 County Road*

City or Town *Southampton*

State *MA* Zip *01073*

Dun & Bradstreet No.: *99-128-8549*

Facility Location (if different from above):

Street Address *Same as above*

City or Town

State Zip

Name of Facility *Solvents Recovery Service of New England*

Facility Mailing Address:

Street or P.O. Box *#95*

City or Town *Southington*

State *CT* Zip *06489*

Dun & Bradstreet No.: *00-971-7604*

Facility Location (if different from above):

Street Address *32 Lazy Lane*

City or Town *Same as above*

State Zip

Question	Instructions

EPA Identification Number (if any) CTD009717604
Latitude 210° 40' 21"
Longitude 170° 23' 39"

EPA Identification Number (if any) MAD991288549
Latitude 200° 45' 30"
Longitude 150° 59' 28"

PART D ON-SITE RESIDUALS MANAGEMENT INFORMATION

8.12 If you store or treat residuals in piles, complete question 8.12 for the five largest piles. See example 8-12.

SAMPLE ANSWER TO QUESTION 8.12

Residual ID Number	Pile Name or ID Number	Quantity Managed per year (cubic meters)	Under Roofed Structure (Y/N)	Containment Provided (Y/N)	Synthetic Liner Base (Y/N)	Frequency of Transfer and/or Handling Operations
8	2	10,000	Y	N	N	C

8.13 List those residuals identified on your process or residual treatment flow diagram that were stored or treated in on-site tanks during the reporting year, and complete the following table for those tanks. Assign an identification number to each tank, but do not repeat any of the numbers used on your flow diagram. The Residual Identification Number refers to the letter assigned to residuals listed in question 8.4. If you were not required to complete question 8.4, refer to the instructions to question 8.4.

SAMPLE ANSWER TO QUESTION 8.13

Residual ID Number	Tank ID Number	Design Capacity (liters)	Quantity per Year (kg)	Treatment Types	Average Length of Storage (days)	Part of Wastewater Treatment Train (Y/N)	Tank Covered (Y/N)	Containment Provided (Y/N)
7	1	15,000	14,000	S, E	60 days	N	Y	N

8.14 Provide the information requested for containers used to store or treat residuals at your plant site. If your plant site has several container storage areas, provide information only on the primary container storage area. Refer to the instructions for question 8.4 for details on the Residual Identification Number.

Question	Instructions

SAMPLE ANSWER TO QUESTION 8.14

Residual ID Number	Container ID Number	Design Capacity (liters)	Quantity per Year (kg)	Average Treatment Types	Quantity Stored-Length of Storage (days)	Quantity Stored-Typical Amount (liters)	Maximum Amount (liters)	Storage Base Material
8	5	120,000	85,000	S	60	90,000	110,000	D=Compact stone dust
8	6	160,000	90,000	S	60	110,000	140,000	D=Compact stone dust

8.15 Identify the inputs to the boiler by their Residual Identification Numbers. Refer to the instructions for question 8.4 for details on the Residual Identification Number.

Identify the boiler as a Fire Tube (F) or Water Tube (W) type. Assign a number to each boiler and enter this number in the "Boiler Identification Number" column. Do not repeat any of the numbers used on your flow diagrams. Specify the average boiler load and typical fuel replacement ratio as percentages.

SAMPLE ANSWER TO QUESTION 8.15

Residual ID Number	Boiler Type Fire Tube (F) or Water Tube (W)	Boiler ID Number	Average Boiler Load	Average Fuel Replacement Ratio
4	W	200	90%	60%

8.16 Identify the boiler according to the boiler identification assigned in question 8.15 and provide information requested on boiler capacity and primary boiler fuel according to the codes provided.

SAMPLE ANSWER TO QUESTION 8.16

Boiler ID Number	Boiler Capacity (heat input in million J/hr)	Primary Boiler Fuel
200	10	G

8.17 Complete the table for each identified residual that is burned in a boiler. Identify the residual according to its Residual Identification Number. Refer to the instructions for question 8.4 for details on the Residual Identification Number.

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Question	Instructions

SAMPLE ANSWER TO QUESTION 8.17

Residual Identification Number *20*

	Residual, as Fired (or residual mixture, if residuals are blended)	Boiler Fuel, as Fired (residual[s] plus primary fuel)
Btu content (J/kg)		
Average	*79,000*	*$34.8x10^6$*
Minimum	*50,000*	*$20x10^6$*
Total metals content (% by wt.)		
Average	*0*	*0*
Maximum	*0*	*0*
Total halogen content (% by wt.)		
Average	*0*	*0*
Maximum	*0*	*0*
Concentration of listed substance	*10%*	*2%*

8.18 Identify the boiler according to the number assigned in question 8.15 and specify the type of air pollution control device used, if any, with the identified boiler (place a check in the box preceding each type).

If you identify a type of air pollution control device for this boiler, provide the information requested on stack parameters.

8.19 Identify incinerated residuals by their Residual Identification Numbers. The Residual Identification Number corresponds to the input/output stream letter assigned in question 8.4. If you were not required to complete question 8.4, refer to the instructions for question 8.4. Provide the requested information on incinerator type according to the codes provided and assign a number to each incinerator (enter this number in the "Incinerator Identification Number" column, but do not repeat any of the numbers used on your flow diagram). Identify the typical auxiliary fuel and use the codes provided to specify the percentage of auxiliary fuel required.

SAMPLE ANSWER TO QUESTION 8.19

Residual ID Number	Incinerator Type	Incinerator ID Number	Typical Auxiliary Fuel	Percentage of Auxiliary Fuel
1	*Chamber*	*100*	*Gas*	*90%*

Question	Instructions

8.20 Enter the numbers assigned to each incinerator in question 8.19 in the first column of the table and designate the incinerator capacity and feed type using the codes provided.

SAMPLE ANSWER TO QUESTION 8.20

Incinerator ID Number	Incinerator Capacity (heat input in million J/hr)	Feed Type
100	*10*	*B*

8.21 Complete this table separately for each incinerator used to burn residuals identified in question 8.4. Identify the incinerator according to the number assigned in question 8.18 and provide the requested information on both the primary and secondary combustion chambers.

SAMPLE ANSWER TO QUESTION 8.21

Incinerator Identification Number *100*

	Primary Chamber	Secondary Chamber
Combustion chamber temperature (^oC)	*440-660^oC*	*NA*
Location of temperature monitor	*In chamber*	*NA*
Residence time in combustion chamber (seconds)	*4-6 sec*	*NA*

8.22 Identify the incinerator according to the number assigned in question 8.18 and specify which type of pollution control device is used (check the box preceding the type). If you identify a type of air pollution control device for this boiler, provide the requested information on stack parameters.

8.23 For each incinerator identified in question 8.19, provide the information requested on the incinerator feed. Use the Incinerator Identification Number assigned in question 8.19 to identify each incinerator.

Question	Instructions

SAMPLE ANSWER TO QUESTION 8.23

Incinerator Identification Number: *100*

		Corresponding Feed Rate (kg or liters/hr, specify)
Btu content (J/kg)		
Average	*79,000*	*280 kg/hr*
Minimum	*50,000*	*NA*
Total metals content (% by wt.)		
Average	*0*	*0*
Maximum	*0*	*0*
Total halogen content (% by wt.)		
Average	*0*	*0*
Maximum	*0*	*0*
Total concentration of listed substance in feed		*10%*

8.24 Use the Residual Identification Number assigned in question 8.4 to identify each residual that was burned in an incinerator during the reporting year. (If you were not required to complete question 8.4, refer to the instructions for question 8.4.) Provide the information requested on each identified residual. Attach additional pages as necessary.

SAMPLE ANSWER TO QUESTION 8.24

Residual ID Number	Average Joule Feed Rate (kg/hour x J/kg)	Average Total Ash Content (% by wt.)	Average Total Halogen Content (% by wt.)	Total Water Content (% by wt.)
1	*22.1×10^6*	*0*	*0*	*9.2%*

Question	Instructions

8.25 Identify each residual that was managed in an on-site land treatment operation by the Residual Identification Numbers assigned in question 8.4. (If you were not required to complete question 8.4, refer to the instructions for question 8.4.) Specify the year that land treatment of each identified residual was initiated and use the codes provided to describe the method(s) used to apply the residuals to the land treatment site. Assign a number to each land treatment facility and enter the number in the appropriate column. (Do not repeat any of the numbers used on your flow diagram.) Refer to the footnote for question 8.25 on the Reporting Form to specify the methods used to apply residuals, the application rate, and the method of surface water runoff management. If you use methods other than those methods listed in the footnotes, specify what methods you use in the blanks provided in each footnote.

SAMPLE ANSWER TO QUESTION 8.25

Residual ID Number	Land Treatment ID Number	Year Land Treatment Initiated	Methods Used to Apply Residuals	Application Rate	Average Slope of Site (degree incline)	Surface Water Runoff Management
B	*300*	*1975*	*A*	*C*	*10*	*B*

Instructions for questions 8.27 and 8.28 are on the following page.

8.30 Enter the Cell Identification Number as assigned in question 8.28 in the first column and provide the requested information on cap design and leachate collection system(s).

SAMPLE ANSWER TO QUESTION 8.30

	WORKING COVER		CAP DESIGN CLAY LAYER		LEACHATE COLLECTION SYSTEM	
Landfill Cell ID Number	Use (times/ month)	Thickness (cm)	Installed (Y/N)	Thickness (cm)	Installed (Y/N)	Leachate Generated (Y/N)
500	*4*	*5*	*N*	*NA*	*N*	*N*

8.31 Identify by the Residual Identification Numbers assigned in question 8.4 each residual containing the listed substance that was disposed via deep well injection on site during the reporting year. (If you were not required to complete question 8.1, refer to the instructions for question 8.4.) Assign a letter or other identifier to each injection well and enter the identifier in the appropriate column. (Do not repeat any of the numbers used on your flow diagram.) Provide the disposal quantity and well type using the units or codes indicated.

SAMPLE ANSWER TO QUESTION 8.31

Residual ID Number	Well ID Number	Disposal Quantity (liters)	Well Type (A,B,C)
13	*600*	*4.0×10^6*	*A*

8.27 Identify by the Residual Identification Numbers assigned in question 8.1 each residual in question 8.4 that was stored, treated, or disposed in an on-site surface impoundment during the reporting year. (If you were not required to complete question 8.4, refer to the instructions for question 8.4.) Assign a number to each impoundment and enter the number in the appropriate column. (Do not repeat any of the numbers used on your flow diagram.) Provide the information requested using the codes or units indicated.

If a residual is subject to a sequence of treatment methods (e.g., settling, equalization, and evaporation), list the methods in sequence.

If a residual is treated alternately by more than one method (e.g., neutralization or equalization), identify the alternate methods.

SAMPLE ANSWER TO QUESTION 8.27

Residual ID Number	Impoundment ID Number	Total Capacity (gallons)	Specify Storage or Treatment Type if Applicable	Average Residency Time (days)	SYNTHETIC LINER		CLAY LINER		LEACHATE COLLECTION SYSTEM	
					Thickness (cm)	No. of Liners	Thickness (cm)	No. of Liners	Installed (Y/N)	Leachate Generated (Y/N)
3	1	55,000	B, D	15	NA	0	20	1	N	N

8.28 Identify by the Residual Identification Number each residual that was landfilled on site at any time during the reporting year. Refer to the instructions for question 8.4 for Residual Identification Numbers. Assign a number to identify each cell and provide the requested information on drainage layer, clay liner, and synthetic liner.

SAMPLE ANSWER TO QUESTION 8.28

Residual ID Number	Landfill Cell ID Number	Quantity per Year (kg)	DRAINAGE LAYER			CLAY LINER		SYNTHETIC LINER		
			Installed (Y/N)	Material	Thickness (cm)	Installed (Y/N)	Thickness (cm)	No. of Liners Installed	Material	Thickness (cm)
12	1	4400	Yes	Gravel	45	Yes	20	0	NA	NA

Question	Instructions

SECTION 9 WORKER EXPOSURE

All of the hypothetical examples provided in this section relate to a specific product.

PART A EMPLOYMENT AND POTENTIAL EXPOSURE PROFILE

Questions 9.1-9.6 apply to all workers at your plant site.

9.1 The data elements you provide in this table are used in determining worker exposure histories for your workers. Indicate (by placing an "X" in the space provided) whether or not your company maintains records on the listed data elements for hourly and/or salaried workers. Specify the year in which you began maintaining records on each element and the number of years you preserve the records for each worker. If the years are different for hourly versus salaried workers, separate the years with a slash and enter the years for hourly workers first. See the example to question 9.1.

SAMPLE ANSWER TO QUESTION 9.1

Data Element	Data are Maintained for: Hourly Workers	Data are Maintained for: Salaried Workers	Year in Which Data Collection Began	Number of Years Records are Maintained
Date of hire	X	X	1950	10
Age at hire	X	X	1950	10
Work history of individual before employment at your facility	NA	X	1960	10
Sex	X	X	1950	10
Race	X	X	1970	10
Job titles	NA	X	1950	10
Start date for each job title	NA	X	1950	10
End date for each job title	NA	X	1950	10
Work area industrial hygiene monitoring data	NA	NA	NA	NA
Personal employee monitoring data	NA	NA	NA	NA
Employee medical history	X	X	1972	20
Employee smoking history	NA	NA	NA	NA
Accident history	NA	NA	NA	NA
Retirement date	X	X	1950	10
Termination date	X	X	1950	10
Vital status of retirees	NA	NA	NA	NA
Cause of death data	NA	NA	NA	NA

Question	Instructions
	The following items require you to describe the manufacturing and/or processing process and your use of the listed substance in terms of the number of workers and quantity of the listed substance associated with three process categories. The three process categories are described in the glossary. Instructions are provided below for calculating quantities, number of workers, and hours worked.
9.2	For each identified activity engaged in at this plant site, provide the information requested according to the following instructions. The activities identified in this question are defined as follows: Manufacture of the listed substance -- This item applies to the manufacture of the listed substance and includes all steps to ready the listed substance for distribution, processing, or use. On-site use as reactant -- This item applies to the use of the listed substance at your plant site as a reactant in the manufacture of another substance, where the molecular structure of the listed substance is altered by breaking chemical bonds or making new chemical bonds between the original substance and some other substance. Report on all processing up to and including the actual reaction step and any ancillary steps that recycle unreacted chemicals back to the reactor vessel. Do not report on subsequent activities in this question. On-site use as a nonreactant -- This item applies to the use of the listed substance at your plant site that does not involve the alteration of the molecular structure of the listed substance or the formation of new chemical bonds. On-site preparation of products -- This item applies to preparation of products, such as repackaging or reformulating. Quantities -- Enter the largest quantity that is processed in each process category for each applicable activity. If there is more than one process stream, calculate each stream separately and then add the values for each process category. If a quantity of the substance passes in series through an enclosed process and then passes through an open process, the same quantity would be reported twice, once under each process category. (The sum of these quantities may be greater than 100 percent of the total quantity manufactured.)

Question	Instructions
	Total Workers -- In reporting the number of workers for each process category count the total number of persons directly involved in manufacturing, processing, and handling the substance during the reporting period. Include each worker who was involved with the listed substance during the year, regardless of the length of employment or duration of exposure to the listed substance (e.g., if a worker was replaced after 1 month by a worker who remained for the next 11 months, both workers are counted). Count maintenance or inspection workers only if they work with the process on a routine basis. Do not count administrative staff. Total Worker Hours -- Worker hours may be calculated for a given process category by multiplying the average number of full-time employees needed for the operation by the number of hours of annual operation. Alternatively, worker-hour information may be taken from pre-existing information sources, such as resource planning or budget figures. Three process categories are described in the form: enclosed, controlled release, and open. Workers should be counted as working only with one process category. If they operate several process types, count them under the one with which they spend the most time. If they spend an equal amount of time with several processes, count them under the most open process. See the example to question 9.2. SAMPLE ANSWER TO QUESTION 9.2 A company manufactured 1,000,000 kg of a substance in 1980. It manufactured the substance in 4 batches during all 12 months of the year and did so in four steps: 250,000 kg Open ⇨ 250,000 kg Enclosed ⇨ 250,000 kg Open ⇨ 175,000 kg Enclosed The company would report: Enclosed — *1,000,000 kg* Controlled release — *0* Open — *1,000,000 kg* In order to run the production line, six workers were present working 40-hour weeks; thus, over the course of the year, 12,480 worker-hours were used to run the production line. Over the course of the year, 12 different workers worked on the production of the substance. All 12 workers spent an equal amount of time operating controlled release and open processes. The form then would be filled out as follows:

Question	Instructions

Process Category	Quantity (kg)	Total Workers	Total Worker Hours
Enclosed	*1,000,000 kg*	*0*	0
Controlled release	*0*	*0*	0
Open	*1,000,000 kg*	*12*	12,480

9.3 The remaining items in this section apply only to those processes and employees involved in producing or processing the listed substance.

List the labor categories at the plant site that encompass persons who are directly or indirectly exposed to the listed substance, and briefly describe responsibilities or assignments. You are encouraged to use the U.S. Department of Labor Dictionary of Occupational Titles. If there are more than 10 labor categories, attach an additional sheet and include these categories.

SAMPLE ANSWER TO QUESTION 9.3

Labor Category	Descriptive Job Title
I	*Foreman*
II	*Charging station operator*
III	*Reactor operator*
IV	*Pulverizer operator and bagger operator*

9.4 For each labor category defined in question 9.3, state the number of male and female employees, their ages (specify range and average), and their average length of employment.

SAMPLE ANSWER TO QUESTION 9.4

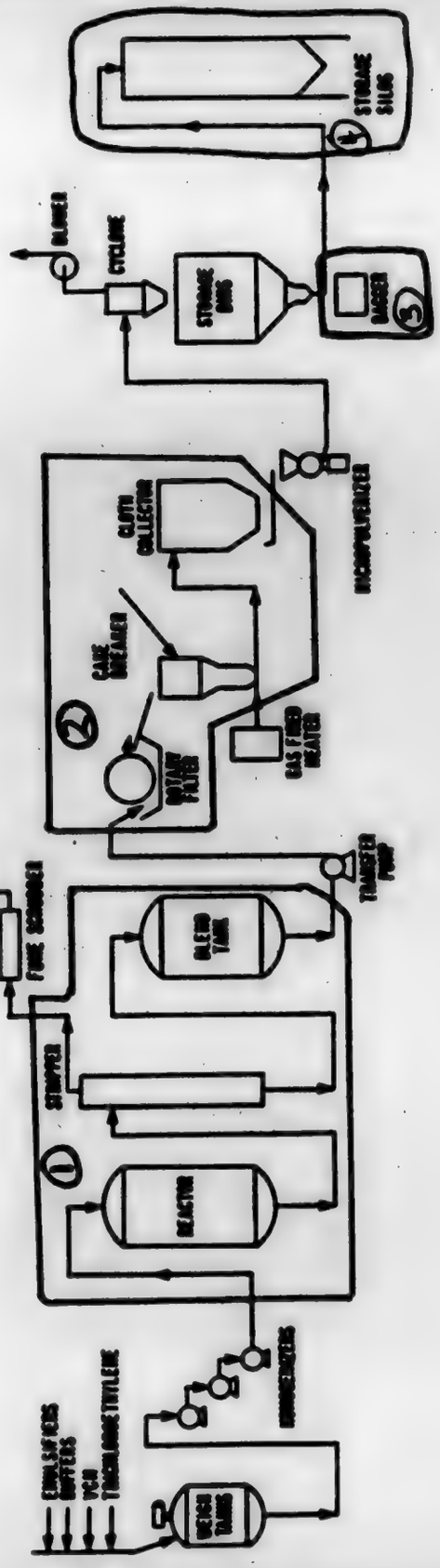
Labor Category	Number of Employees		Employee Age (years)				Employee Average Years on Job	
			Male		Female			
	Male	Female	Range	Average	Range	Average	Male	Female
I	*2*	*0*	*30-36*	*33*	*NA*	*NA*	*10*	*NA*
II	*5*	*0*	*22-33*	*27*	*NA*	*NA*	*3*	*NA*

9.5 If you were required to complete question 7.1 or 7.2, provide an additional copy of the process flow diagram from that question; otherwise, provide a photocopy of your process flow diagram for each unit operation in which the substance is manufactured or processed. If the process flow diagram(s) is/are not available for photocopying, draw a diagram of the process(es) in the space provided. Refer to the sample answer to question 9.5 on the next page for a prototype.

SAMPLE ANSWER TO QUESTION 9.5
PROCESS BLOCK FLOW DIAGRAM

Product/Process PVC Dispersion Polymerization process

☐ CBI



Question	Instructions

9.5 continued

On the block flow diagram, circle those work areas where employees may potentially be in contact with, or exposed to the substance, and assign a number to each work area.

9.6 List and describe briefly the various work areas where employees potentially may come in contact with or be exposed to the listed substance. Add any additional exposure areas not shown in the block flow diagram.

SAMPLE ANSWER TO QUESTION 9.6

Product/process *PVC Dispersion Polymerization Process*

Work Area ID	Description of Worker Activities
1	*Reactor area, stripper, and blend tank (Workers monitor temperature and pressure gauges)*
2	*Rotary filter, cake breaker, and cloth collector (Workers operate machinery)*
3	*Bagger (Workers operate bagging machinery)*
4	*Storage silo (Workers operate lifts)*
5	*Changing area (Workers change into and out of protective clothing)*

9.7 For each product/process, designate the number of employees in each work area exposed to the listed substance in any one working day. Describe the mode of exposure, exposure level, and average length of exposure. Specify units of measurement for exposure levels, e.g., ppm, mg/m^3, mg/cm^2, etc.

SAMPLE ANSWER TO QUESTION 9.7

Product/process *PVC Dispersion Polymerization Process*

Work area *1*

Labor Category	Number of Employees Exposed	Mode of Exposure (e.g., direct skin contact)	Physical State of Listed Substance	Average Length of Exposure (A,B,C,D,E,F)	Number of Days Per Year Exposed
I	*2*	*Direct skin contact*	*AL*	*B*	*260*
II	*4*	*Inhalation*	*GU*	*E*	*260*

Question	Instructions

9.8 For those employees whose single exposure time is less than or equal to 15 minutes, indicate the number of employees whose daily total number of exposures is best described by the daily exposure frequencies provided.

SAMPLE ANSWER TO QUESTION 9.8

Product/process *PVC Dispersion Polymerization Process*

Work area *1*

Total Number of Daily Exposures	Number of Employees
1	*0*
2	*0*
3-4	*6*
5-8	*0*
9 or more	*0*

9.9 Using the labor categories defined in question 9.3, indicate the 8-hour Time Weighted Average (TWA) exposure levels and 15-minute peak exposure levels for each labor category. This table must be completed separately for each work area designated in question 9.6.

SAMPLE ANSWER TO QUESTION 9.9

Product/process PVC Dispersion Polymerization Process

Work area *1*

Labor Category	8-Hour TWA Exposure Level (ppm, mg/m^3, other-specify)	15-Minute Peak Exposure Level (ppm, mg/m^3, other-specify)
I	*1.4 ppm*	*NA*
II	*0.9 ppm*	*4.8 ppm*
III	*1.7 ppm*	*3.0 ppm*
IV	*0.8 ppm*	*NA*

PART B WORK PLACE MONITORING PROGRAM

9.10 If monitoring of worker exposure is conducted, specify the types of samples taken and/or tests conducted; the work area(s) in which monitoring is conducted; the organization or individual conducting the monitoring; and the frequency, location, and duration of monitoring.

Question	Instructions

SAMPLE ANSWER TO QUESTION 9.10

	Work Area(s)	Frequency (per year)	Number of Samples	Who Samples	Analyzed In-house (Y/N)	Number of Years Records Maintained
Personal breathing zone	*I-IV*	*6*	*10*	*A*	*Y*	*30*
General work area (air)	*II*	*1*	*3*	*A*	*Y*	*30*
Wipe samples	*NA*					
Adhesive patches	*NA*					
Blood samples	*NA*					
Urine samples	*NA*					
Respiratory samples	*NA*					
Allergy tests	*NA*					
Other _____	*NA*					
Other _____	*NA*					
Other _____	*NA*					

9.11 Specify the type of methodology used to analyze each type of sample.

SAMPLE ANSWER TO QUESTION 9.11

Sample Type	Methodology
Personal breathing zone	*Stacked charcoal tube sampling with gas chromatography analysis*
General work area (air)	*Stacked charcoal tube sampling with gas chromatography analysis*

9.12 Specify the type, manufacturer, and model of air monitoring equipment used for the listed substance.

SAMPLE ANSWER FOR QUESTION 9.12

Equipment Type	Manufacturer	Model Number
Personal sampling pump	*E.I. duPont deNemours*	*P-2000*

Question	Instructions

PART C ENGINEERING CONTROLS

9.14 Describe, by product/process and work area, all engineering controls used to reduce or eliminate worker exposure to the listed substance.

SAMPLE ANSWER TO QUESTION 9.14

Product/process *PVC Dispersion Polymerization Reactor*

Work area *1*

Reactor vessel is negatively pressured with effluent to stripper. Process is closed and building is open to ambient air. Air sampling is direct vapor phase chromatography equipped with a flame ionization detector. Warning lights directing employees to don respirators flash when concentration of vinyl chloride exceeds 1.0 ppm.

9.15 For each product/process and each work area affected, describe modifications that have been made to equipment or processes in the last 5 years that have reduced worker exposure to the listed substance. For each modification described, state the reduction to exposure that resulted.

SAMPLE ANSWER TO QUESTION 9.15

Product/process *PVC Dispersion Polymerization Process*

Work area *1*

All open processes have been converted to controlled release processes and have been supplemented with backup vents and tanks. The associated air quality has shown significant improvement, with a 40 percent reduction in vapor concentration.

PART D PERSONAL PROTECTIVE AND SAFETY EQUIPMENT .

9.16 Describe all personal protective and safety equipment that employees are required to wear. Indicate whether or not your company supplies the equipment. List equipment separately for each product/process and each work area.

SAMPLE ANSWER TO QUESTION 9.16

Product/process *PVC Dispersion Polymerization Process Reactor*

Work area *1*

Question	Instructions

9.16 continued

Employees are required to wear the following personal protective and safety equipment:

1. Rubber boots.
2. Positive pressure demand supplied respirators.
3. Chemical workers' splash goggles with safety lenses.
(Company supplies all of the above.)

9.17 Describe all personal protective and safety equipment that employees are recommended, but not required, to wear. Indicate whether or not your company supplies the equipment. List equipment separately for each product/process and each work area.

SAMPLE ANSWER TO QUESTION 9.17

Product/process *PVC Dispersion Polymerization Process Reactor*

Work area *1*

Our company does not recommend any equipment other than what we require.

9.18 Specify the types of respirators workers are required to wear, the work areas in which each type of respirator is required, whether or not the respirators are fit tested, and the type and frequency of fit tests, if applicable.

SAMPLE ANSWER TO QUESTION 9.18

Product/process *PVC Dispersion Polymerization Process Reactor*

Work Area	Type Respirator	Fit Tested (Y/N)	Qualitative (QL) or Quantitative (QT) Tests	Frequency of Fit Tests (per year)
1	*Supplied air pos. press. demand*	*Y*	*QT*	*4*
3	*Disposable neg. press. particulate*	*Y*	*QL*	*2*
5	*Supplied air pos. press. demand*	*Y*	*QT*	*4*

Note: All respirators are NIOSH/MSHA approved.

9.19 Describe your respirator maintenance program.

Question	Instructions

SAMPLE ANSWER TO QUESTION 9.19

Our respirator maintenance program complies with 29 CFR 1910.134 and includes:

1. Daily inspection of all respirators for defects and leaks.
2. Daily cleanings of all respirators.
3. Individually issued respirators.

In the case of disposable respirators, we have a quality assurance/quality control program that inspects a statistically representative number of respirators from each lot number purchased.

9.20 Describe your respirator training program.

SAMPLE ANSWER TO QUESTION 9.20

Our respirator training program fully complies with 29 CFR 1910.134. In addition, our respirator training program includes:

1. Qualitative fit testing using NaCl chamber for air line.
2. Qualitative fit testing for disposables.
3. Apprenticeship program in work area utilizing the buddy concept.
4. Quarterly videotape lectures on respiratory system and respirators.

PART E WORK PRACTICES

9.23 For each product/process and each work area, describe the work practices used to reduce or eliminate worker exposure to the substance.

SAMPLE ANSWER TO QUESTION 9.23

Product/process *PVC Dispersion Polymerization Process*

Work area *2 and 5*

The work practices used to control polyvinyl chloride include:

1. Automatic exposure monitoring.
2. Respirator protection.
3. Placarding.
4. Limited access.
5. Training program.

Product/process *PVC Dispersion Polymerization Process*

Work area *2, 3, and 4*

The work practices used to control polyvinyl chloride include:

1. Disposable respirators for particulates.
2. Emergency procedures utilizing confined space entry type operation for silo entry.
3. Training.

Question	Instructions
9.24	Describe the hazard communication program used to inform workers who have the potential to be directly exposed to the listed substance.

SAMPLE ANSWER TO QUESTION 9.24

Our hazard communication program fully complies with 29 CFR 1910.1200. In addition, our hazard communication program includes:

1. Respirator training/fit testing.
2. Medical briefing.
3. Warning placards.
4. Quarterly training for specific hazards.

9.25 Specify how often you assess workers' knowledge of information presented in the hazard communication program. Include the types of tests conducted, if applicable, and identify the person or company making the assessments.

SAMPLE ANSWER TO QUESTION 9.25

Frequency	Type of Test	Person Making Assessment
Quarterly	*Oral*	*Company industrial hygienist*

9.29 Indicate how often work areas are inspected for safety violations as defined by your company and by OSHA. Indicate the product/process located in each work area, the frequency of inspection, who conducts the inspection, and whether or not results are written and available to workers. If a work area contains more than one product/process, list each product/process and its inspection information separately.

SAMPLE ANSWER TO QUESTION 9.29

Product/Process	Work Area	Frequency of Inspection (per year)	Inspection Conducted by	Written Results (Y/N)	Results Available (Y/N)
PVC Dispersion Polym.	*1*	*Daily*	*Company saftey and health inspector and supervisor*	*Y*	*Y*
PVC Dispersion Polym.	*2*	*Daily*	"	*Y*	*Y*
PVC Dispersion Polym.	*3*	*Daily*	"	*Y*	*Y*
PVC Dispersion Polym.	*5*	*Daily*	"	*Y*	*Y*

The corporate group conducts semiannual inspections. Additionally, the plant manager conducts quarterly inspections.

Question	Instructions

SECTION 10 ENVIRONMENTAL RELEASE

PART A GENERAL INFORMATION

10.1 A navigable waterway includes any stream, river, lake, or ocean that is large enough to be navigated by boats carrying passengers. A non-navigable body of surface water includes any stream or pond that is too small to be navigated by boats carrying passengers.

10.5 Indicate all routine releases of the listed substance to the air, water, and land for each applicable activity.

SAMPLE ANSWER TO QUESTION 10.5

On-site Activity	Environmental Release Air	Water	Land
Manufacturing	*X*	*NA*	*NA*
Importation	*NA*	*NA*	*NA*
Processing	*NA*	*X*	*NA*
Product storage	*X*	*NA*	*NA*
Disposal	*X*	*NA*	*X*
Transportation	*X*	*NA*	*NA*
Consumer use	*NA*	*X*	*NA*

10.6 Items 10.6a-10.6d -- In 10.6a, report the total quantity lost to the environment, waste treatment, or disposal in the manufacturing and processing of the listed substance during the reporting period. Report only routine losses. Do not report unusual spills or accidents. In calculating estimates of quantities not recovered, you may: (1) use measured losses, if available, or emission factors and other calculated releases from individual sources; or, (2) if these are not available, or they only account for a portion of the total loss, you may make a simple mass balance estimate of expected yield minus actual yield. The quantity in 10.6a should then be broken down into the three categories below (i.e., 10.6b + 10.6c + 10.6d = 10.6a). Specify the precision with which you report for 10.6b, 10.6c, and 10.6d, e.g., 1,000 kg ± 20%.

10.6b. Quantity lost to the environment. This covers fugitive and/or process emissions to the atmosphere and other losses not described in 10.6c and 10.6d.

10.6c. Quantity remaining in treated wastes. This includes any quantity that still remains in the wastes after treatment and, therefore, is stored or disposed.

Question	Instructions

10.6d. Quantity remaining in untreated wastes. This includes, for example, any quantity disposed in any landfill, surface impoundment, municipal sewage, or storage facility.

The quantities in 10.6b, 10.6c, and 10.6d must equal 10.6a.

PART B RELEASE TO AIR

Respond to questions 10.7-10.11 on the release of the listed substance to air via stacks or vents from all sources (process stream, waste, storage, and handling). Reference the incinerator, stack, vent, or air pollution control device by the Roman numeral assigned in question 10.7.

10.7 Identify all emission point sources involving the listed substance and describe each source. If you completed questions 7.1 or 7.2 and 8.1 or 8.2, use the process block flow diagram in section 7 and the waste treatment block flow diagram in section 8 to identify point sources by Stream Identification Number. If you did not complete questions 7.2 and 8.2, provide a process block flow diagram and a residual treatment block flow diagram, following the instructions to questions 7.2 and 8.2. Do not include raw material storage vents, product storage vents, or fugitive emission sources (equipment leaks) in this question. Do not report unusual or accidental releases.

SAMPLE ANSWER TO QUESTION 10.7

Emission Point Source	Product/Process	Stream ID Number	Description of Emission Point Source (e.g., process vent, equipment opening discharge, pressure release devices)
I	*Emulsion polymerization of vinyl chloride*	*2*	*Polymerization reactor scrubber vent*
II	*Emulsion polymerization of vinyl chloride*	*3*	*Monomer purification scrubber vent*

10.8 Provide emission characteristics for each emission point source identified in question 10.7. Boilers and incinerators that already have been described in questions 8.15 and 8.19 do not have to be described again.

Question	Instructions

SAMPLE ANSWER TO QUESTION 10.8

Emission Point	Physical State	Average Emissions (kg/day)	Frequency (days/yr)	Duration (min/day)	Maximum Emission Factor	Maximum Emission Rate (g/sec)	Maximum Emission Rate Frequency (events/yr)	Maximum Emission Rate Duration (min/event)
I	*G*	*0.5*	*300*	*100*	*0.001*	*0.14*	*5*	*30*
II	*G*	*0.8*	*300*	*90*	*0.005*	*0.30*	*5*	*20*
III	*G*	*13.4*	*350*	*1440*	*NA*	*0.7*	*Continuous*	*Continuous*

10.9 For each emission point source identified in question 10.7, describe the control equipment used to control emission of the listed substance and specify the overall percent efficiency of the control equipment in removing the listed substance.

SAMPLE ANSWER TO QUESTION 10.9

Emission Point Source	Control Equipment	Efficiency (%)
I	*Water scrubber*	*85%*
II	*Water scrubber*	*90%*

10.10 For the emission point sources identified in question 10.7, state the concentration of the listed substance in emissions following the application of controls. Use appropriate units of measure (e.g., mg/m^3 for gases).

SAMPLE ANSWER TO QUESTION 10.10

Emission Point Source	Concentration of Listed Substance in Emission
I	*5 mg/m^3 vinyl chloride*
II	*8 mg/m^3 vinyl chloride*

10.11 Specify the dimensions of each emission point source identified in question 10.7 according to the example below.

SAMPLE ANSWER TO QUESTION 10.11

Emission Point Source	Height	Diameter	Temperature	Velocity	Building Height	Building Width	Vent Type
I	*30 m*	*0.1 m*	*25°C*	*6 m/s*	*7m*	*40m*	*V*
II	*30 m*	*0.1 m*	*25°C*	*6 m/s*	*7m*	*40m*	*V*

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Question	Instructions

10.12 If the Tisted substance is emitted in particle form, characterize the particulate matter according to the mass fraction (%) by particle size for each emission point source identified in question 10.7.

SAMPLE ANSWER TO QUESTION 10.12

Emission Point Source *II*

Size Range (microns)	Mass Fraction (%)
< 1	*0*
≥1 to <10	*80%*
≥10 to <30	*20%*
≥30 to <50	*0*
≥50 to <100	*0*
≥100 to <500	*0*
≥ 500	*0*
Total =	*100%*

10.13 For each manufacturing and processing operation in which the listed substance is produced and/or processed, state the number of process components that are in service. Record the number of process components according to the specified weight percent of the listed substance. If the process is a batch process or is operated intermittently, specify the annual percentage of time that these process components are exposed to the listed substance.

SAMPLE ANSWER TO QUESTION 10.13

Product/process *Emulsion Polymerization of Vinyl Chloride*

Percentage of time per year that the listed substance exists within these process components: *50* %.

Number of Components in Service by Weight Percent of Listed Substance

Equipment Type	Less than 5%	5-10%	11-25%	26-75%	76-99%	Greater than 99%
Pump Seals Packed	*2*	*NA*	*2*	*NA*	*16*	*NA*
Mechanical	*NA*	*NA*	*NA*	*NA*	*NA*	*NA*

Question	Instructions

10.14 Specify the number of pressure relief devices that are controlled (i.e., protected by rupture discs or O-rings, or vented to a flare) by a particular control device. Of the substances that are serviced by these devices, specify the weight percent of the listed substance in the "Percent Service" column for each control category. Estimate the overall control efficiency (%) of the control device.

SAMPLE ANSWER TO QUESTION 10.14

Number of Pressure Relief Devices	Percent Chemical in Vessel	Control Device	Estimated Control Efficiency
5	*100*	*Rupture disc*	*100%*

10.15 For each product/process listed in question 10.13, provide the specified characteristics of your leak detection and repair program. Specify the distance at which leaks are measured from the source.

SAMPLE ANSWER TO QUESTION 10.15

Product/process *PVC Dispersion Polymerization*

Equipment Type	Leak Detection: Concentration (ppm or mg/m³)	Leak Detection: Measured at 6 Inches From Source	Detection Device	Frequency of Leak Detection (per year)	Repairs Initiated (days after detection)	Repairs Completed (days after initiated)
Pump seals packed	*NA*					
Mechanical	*1*	*2*	*FPM*	*Daily*	*1*	*3*
Double mechanical	*NA*					

The instruction to question 10.16 is on the following page.

PART C RELEASE TO WATER

10.17 Report the average base flow or volume of the water body and the average and maximum quantities and concentrations of wastes containing the listed substance that are discharged under NPDES permits from this plant site.

10.18 Report the average and maximum quantities and concentrations of wastes containing the listed substance discharged to a POTW from this plant site.

10.16 For each tank or vessel used to store the listed substance or a mixture containing the listed substance as a raw material, intermediate, or product, state the dimensions and characteristics of the tank, as shown in the following example.

SAMPLE ANSWER TO QUESTION 10.16

Tank Type	Floating Roof Seals	Composition of Stored Materials	Throughput (10^6 gallons per year)	Tank Filling Rate (gpm)	Tank Filling Duration (min)	Tank Diameter (ft)	Tank Height (ft)	Rated Tank Volume (gal)	Tank Emission Controls	Design Flow Rate	Estimated Vent Diameter (inches)	Control Efficiency (%)	Basis for Estimate
P(100 psi)	*NA*	*95%*	*2.9*	*83*	*120*	*8*	*25*	*10,000*	pressure control device *furnace*	*NA*	*2*	*97*	*C*

Question	Instructions
10.19	Report the average base flow or volume of the water body and the average and maximum quantities for each nonpoint source (e.g., stormwater runoff, waste pile runoff, and runoff from product or raw material storage areas or other sources that contain the listed substance and may be discharged to surface water) excluding NPDES or POTW discharges.
10.20	Report the concentrations of the listed substance determined by soil core monitoring studies/tests. Specify the distance from the plant site that soil cores were taken. Specify the soil type and sample depth using the codes provided. Refer to the glossary for definitions of soil types.
10.21	Describe at least three random samples of groundwater from monitoring wells. The concentrations refer to the listed substance. The samples must have been taken at your plant site during the reporting year.

SAMPLE ANSWER TO QUESTION 10.21

Sample	Monitoring Well	Distance from Plant (m)	Depth of Well (m)	Average Concentration (mg/l)	Maximum Concentration (mg/l)
a	1	50	10	2.0	2.8
b	2	100	10	1.9	2.1
c	3	200	10	0.2	0.5
d	4	200	10	0.1	0.3
e	5	225	10	0.08	0.2

10.22 Describe drinking water wells monitored by your plant during the reporting year.

SAMPLE ANSWER TO QUESTION 10.22

Well	Well Depth (m)	Distance from Plant (m)	On Site (OS) or Off Site (OF)	Average Concentration (mg/l)	Maximum Concentration (mg/l)
D1	20	60	OS	0.02	0.04
D2	20	110	OS	0.01	0.02
D3	20	220	OS	0.007	0.01
D4	20	240	OS	0.006	0.01

Question	Instructions

PART D NON-ROUTINE RELEASES

Complete Part D for each non-routine release involving the listed substance during the reporting year. Report only those releases that are greater than the listed substance's reportable quantity value. Reportable quantities are codified in 40 CFR Part 302. If a listed substance does not have a reportable quantity value, then report on those releases that exceed 5,000 lbs. If more than one release occurred, photocopy questions 10.25-10.37 (except 10.34) and complete it separately for each release. Specify the release in the spaces provided.

10.23 Specify the date and time each release started and stopped.

SAMPLE ANSWER TO QUESTION 10.23

Release	Date Started	Time (am/pm)	Date Stopped	Time (am/pm)
1	*2/15/86*	*10:21 am*	*2/15/86*	*11:10 am*
2	*3/10/86*	*9:35 pm*	*3/11/86*	*8:05 am*
3	*NA*			

10.24 Specify the weather conditions at the time of each release.

SAMPLE ANSWER TO QUESTION 10.24

Release	Wind Speed (mi/hr)	Wind Direction	Humidity (%)	Temperature (^{o}F)	Precipitation (Y/N)
1	*36*	*N/NE*	*5*	*16*	*No*
2	*25*	*N/NW*	*15*	*35*	*Yes*
3	*NA*				

Question	Instructions

10.25 For each affected media, state the quantity of the released material and the method used to measure that quantity.

SAMPLE ANSWER TO QUESTION 10.25

Release No. 1

Media	Quantity (kg)	Method	Migration Beyond Boundaries (Y/N)
Land	*85*	*Soil tests performed following release*	*No*
Air	NA		
Groundwater	*10*	*Well monitoring conducted following release*	*Yes*
Surface water	NA		

10.26 List the physical state and concentration of the listed substance at the time of release.

SAMPLE ANSWER TO QUESTION 10.26

Release No. *1*

Physical State	Concentration (%)
Gas	*0.05%*

10.29 Specify which nearby areas were notified of the release and which areas were evacuated. State which agency notified the population.

SAMPLE ANSWER TO QUESTION 10.29

Release No. *1*

Proximity to the Release	Notification (Agency/Phone No.)	Evacuation (Y/N)
1/4 mile	*Region I EPA (617) 555-1111*	*No*
1/2 mile	*Region I EPA (617) 555-1111*	*No*
1 mile		
Other (specify)		

Question	Instructions

10.33 Specify who conducted cleanup activities and estimate the level of cleanup that was obtained. Specify the method used to estimate the level of cleanup.

SAMPLE ANSWER TO QUESTION 10.33

Release No. 1

Name *Smith Spill Response Company*

Address *10 Smith Road*

Smithtown, NJ 07477

Level of cleanup	% removal	Method used to measure level of cleanup
Land	*95%*	*Soil tested before and after cleanup*
Surface water	*NA*	
Groundwater	*50%*	*Well monitoring before and after cleanup*

10.37 Describe additional preventative measures that were taken to minimize the possibility of recurrence.

SAMPLE ANSWER TO QUESTION 10.37

Release No. *1*

Measures Planned	Timetable for Completion	Cost of Preventative Measures
Areas around tanks will	*December 1987*	*$8,000*
be lined and diked with		
concrete		

PART III Conversion Factors Used In The CAIR Reporting Form

Metric units should be used exclusively in the CAIR Reporting Form. A specific unit has been selected for each unit of measure (e.g., mass, length, area) to standardize the reported information. These standard units of measure are provided in table III-1.

Tables III-2 and III-3 provide equivalent values among metric and English units, and example conversions from English-to-metric and metric-to-metric.

TABLE III-1
STANDARD METRIC UNITS OF MEASURE FOR ANSWERING QUESTIONS

Measure	Standard Metric Unit
Mass	1 kg
Length	1 m
Area	1 km^2
Volume	1 m^3
Energy	1 J
Pressure	1 mm Hg @ 0° C
Temperature	T ^{o}C
Concentration	1%

TABLE III-2
ABBREVIATIONS USED FOR UNITS OF MEASURE

Abbreviation	Unit of Measure
A	Angstrom
atm	atmosphere
Btu	British thermal unit
^{o}C	degrees Celsius
cal	calorie
cfs	cubic feet per second
cm	centimeter
cm^3	cubic centimeter
ft^3	cubic feet
^{o}F	degrees Fahrenheit
ft	feet
g	gram
gal	gallon
in	inch
J	joule
^{o}K	degrees Kelvin
kg	kilogram
kmg	metric ton
km^2	square kilometer
kw·hr	kilowatt hour
10^6l	millions of liters
l	liter
10^6l/day	millions of liters per day
lb	pound
lb/in^2 or psi	pound per square inch
m	meter
M	mile
m^3	cubic meter
mg	milligram
mgd	millions of gallons per day
mi	mile
mi^2	square mile
ml	milliliter
mm	millimeter
mm Hg @ $0^{o}C$	millimeters mercury
u	micron
ug	microgram
ng	nanogram
nm	nanometer
oz	ounce
ppm	part per million
Pa	Pascal

TABLE III-3
EXAMPLE CONVERSIONS TO STANDARD METRIC UNITS

To Convert From:	To:	Multiply By:	Example:
Mass			
g	kg	0.001 kg/g	(2 g)(0.001 kg/g) = 0.002 kg
kkg	kg	1000 kg/kkg	(5 kkg)(1000 kg/kkg) = 5,000 kg
lb	kg	0.453593 kg/lb	(10 lbs)(0.453593 kg/lb) = 4.536 kg
oz	kg	0.02835 kg/oz	(50 oz)(0.02835 kg/oz) = 1.417 kg
tons	kg	907.186 kg/ton	(5 tons)(907.186 kg/ton) = 4,535.930 kg
Length			
cm	m	0.01 m/cm	(200 cm)(0.001 m/cm) = 2 m
mm	m	0.001 m/mm	(3000 mm)(0.001 m/mm) = 3 m
u	m	10^{-6} m/u	($3x10^4$ u)(10^{-6} m/u) = 0.03 m
nm	m	10^{-9} m/nm	($7x10^8$ nm)(10^{-9} m/nm) = 0.7 m
A	m	10^{-10} m/A	($4x10^9$ A)(10^{-10} m/A) = 0.4 m
in	m	0.0254 m/in	(30 in)(0.0254 m/in) = 0.762 m
ft	m	0.305 m/ft	(10 ft)(0.305 m/ft) = 3.05 m
mi	m	1,609.3 m/mi	(0.25 mi)(1,609.3 m/mi) - 402.3 m
Area			
acres	km^2	0.004047 km^2/acre	(12 acres)(0.004047 km^2/acre) = 0.049 km^2
mi^2	km^2	2.590 km^2/m^2	($2 mi^2$)(2.590 km^2/m^2) = 5.180 km^2
Volume			
cm^3	m^3	$10^{-6}m^3/cm^3$	(10,000 cm^3)(10^{-6} m^3/cm^3) = 0.01 m^3
ml	m^3	$10^{-6}m^3/ml^3$	(10,000 ml)(10^{-6} m^3/ml) = 0.01 m^3
l	m^3	$10^{-3}m^3$/l	(500 l)(10^{-3} m^3/l) = 0.50 m^3
ft^3	m^3	$0.028m^3/ft^3$	(1,000 ft^3)(0.028 m^3/ft^3) = 28.0 m^3
gal	m^3	3.7854 x 10^3m^3/gal	(1,000 gal)(3.7854 x 10^3 m^3/gal) = 3.7854 m^3

TABLE III-3
EXAMPLE CONVERSIONS TO STANDARD METRIC UNITS (Continued)

To Convert From:	To:	Multiply By:	Example:
Flow			
mgd	mld	3.7854	(100 mgd)(3.7854 mld/mgd) = 378.5 mld
cfs	mld	2.4465	(50 cfs)(2.4465 mld/cfs) = 122.3 mld
Energy			
Btu	J	1.0542×10^3 J/Btu	(1,000 Btus)(1.0542×10^3 J/Btu) = 1.0542×10^6 J
calories	J	4.184 J/cal	(1,000 cal)(4.184 J/cal) = 4,184 J
kw·hr	J	3.6×10^6 J/kw·hr	(100 kw·hr)(3.6×10^6 J/kw·hr) = 3.6×10^8 J
Pressure			
lb/in^2 or psi	mm Hg@0°C	51.756 mm Hg/lb/in^2 or psi	($100\ lb/in^2$)(51.766 mm Hg/lb/in^2) = 5.1766×10^3 mm Hg
torr	mm Hg@0°C	1 mm Hg/torr	(100 torr)(1mm Hg/torr) = 100 mm Hg
atm	mm Hg@0°C	760 mm Hg/atm	(110 atm)(760 mm Hg/atm) = 7.60×10^3 mm Hg
$dynes/cm^2$	mm Hg@0°C	750.1 mm Hg/bar	($10,000\ dynes/cm^2$) (7.501×10^{-4} mm Hg/$dynes/cm^2$) = 7.50 mm Hg
bars	mm Hg@0°C	750.1 mm Hg/bar	(100 bars)(750.1 mm Hg/bar) = 7.501×10^4 mm Hg
pascals	mm Hg@0°C	750.2 mm Hg/Pa	(10 Pa) (750.2 mm Hg/Pa) = 7.502×10^3 mm Hg
Temperature			
^oF	^oC	Subtract 32°, then divide by 1.8	(70^oF - 32)/1.8 = 21.1^oC
^oK	^oC	Subtract 273.15°	300^oK - 273.15° = 26.85^oC
Concentration			
ppm	%	10^{-4}%/ppm	(60,000 ppm)(10^{-4}%/ppm) = 6.0%
mg/l*	%	10^{-4}%/ppm	(50,000 mg/1)(10^{-4}%/ppm) = 5.0%
mg/kg	%	10^{-4}%/ppm	(40,000 kg)(10^{-4}%/ppm) = 4.0%

*Based on a density of 1 g/ml

PART IV Glossary

Additive: Any substance incorporated into a base material, usually in low concentrations, to perform a specific function (e.g., antioxidants, stabilizers, colorants, inhibitors, etc.).

Aquifer: A saturated permeable geologic unit that can transmit significant quantities of water under ordinary hydraulic gradients.

Article producer: A processor who mixes or reacts the listed chemical substance or mixture into an article for subsequent distribution into commerce. The substance or mixture may or may not be chemically altered or otherwise consumed.

Autopolymerization: The action by which molecules spontaneously combine to form a macromolecule under normal conditions, such as atmospheric pressure and room temperature.

Autodecomposition: The process in which substances spontaneously break down into simpler substances under normal conditions and without added catalysts.

Boiler: An enclosed device using controlled flame combustion and having the following characteristics: (1) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and (2) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed.

Byproduct: Any chemical substance or mixture produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance or mixture.

Capacity: The level at which a facility would be operating at maximum production, processing, or output for the listed substance.

Chemical producer: A processor that uses the listed substance as a raw material or intermediate in the manufacture of other chemical substances or mixtures, during which the listed substance is chemically altered or otherwise consumed.

Chemical substance: Any organic or inorganic substance of a particular molecular identity, including: (1) any combination of such substances that occur as a result of a chemical reaction and/or occur in nature; and (2) any element or uncombined radical. This does not include: (3) any mixtures; (4) pesticides manufactured, processed, or distributed in commerce for use as a pesticide; (5) tobacco or any tobacco products; (6) source materials, special nuclear materials, or byproduct materials; or (7) articles, the sales of which are subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954; and (8) foods, food additives, drugs, cosmetics, or devices manufactured, processed, or distributed in commerce for use as foods, food additives, drugs, cosmetics, or devices.

Class I chemical: A substance with a composition that, except for impurities, can be represented by a definite chemical structural diagram (e.g., 1,3-butadiene, benzene, sodium chloride).

Class II chemical: A substance with a composition that cannot be represented easily by a definite chemical structural diagram. These substances generally are derived from natural sources or complex reactions. Examples include polychlorinated biphenyls, the glycerol monoester of hydrogenated cottonseed oils, or a reaction product of specified reactants.

Coincidental production: Generation of byproducts, coproducts, and impurities simultaneously during the manufacture of an intended product.

Commerce: Trade, traffic, transportation, or other commerce: (1) between a place in a State and any place outside of such State; or (2) that affects trade, traffic, transportation, or commerce described in clause (1).

Commercial use: The use of the listed substance or product containing the listed substance by a commercial or trade enterprise providing a service (e.g., a commercial dry cleaning establishment, painting contractors, etc.).

Commercial distribution: The sale of a substance, mixture, or article in commerce; the introduction or delivery of the substance, mixture, or article into commerce; or the holding of a substance, mixture, or article after its introduction into commerce. This term includes test marketing of the substance, mixture, or article.

Coproduct: A substance having its own commercial value that is produced during the manufacture of a product chemical.

Consumer: A private individual who uses the listed substance or a product containing the listed substance in or around a residence, or during recreation, or for any other personal use (e.g., automotive polish, dyed wearing apparel, household cleaners, etc.).

Container: Any free-standing device in which substances are stored, treated, or otherwise handled; not to be confused with a tank (see definition for tank).

Controlled release: A process operated in a controlled manner to minimize chemical process release into the workplace (e.g., venting the chemical emissions to the outside). Releases are generally within prescribed limits, as dictated by Government regulations or by company guidelines. This does not include general space ventilation fans.

Enclosed process: A process designed and operated so that there is no intentional chemical release. In an enclosed process, only fugitive or inadvertent releases occur and equipment such as scrubbers are used to prevent worker exposure and environmental release. Equipment with emergency pressure relief venting would be allowed in this category; routine venting would not. Workers who handle closed packages containing the material would be considered to be part of an "enclosed process." Workers who package or transfer the unpackaged chemical would be part of a "controlled release process" or "open process."

End users: An individual or organization that uses or consumes a chemical substance, mixture, or article with no further intentions of manufacturing or processing the substance, mixture, or article. Includes consumers and commercial, industrial, and retail users.

Facility: (1) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or (2) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

Final product: A chemical substance or mixture manufactured, imported, or processed that is ready for commercial distribution.

Hazard communication: A program that describes the hazards associated with exposure to the listed substance and specifies work practices to reduce or eliminate exposure to the substance.

Impurity: A chemical substance present in a chemical substance or mixture that does not contribute to the intended properties of the substance or mixture.

Incinerator: Any enclosed device using controlled flame combustion that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace. An industrial furnace is any one of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy: (1) cement kilns; (2) lime kilns; (3) aggregate kilns; (4) phosphate kilns; (5) coke ovens; (6) blast furnaces; (7) smelting, melting, and refining furances; (8) titanium dioxide chloride process oxidation reactors; (9) methane reforming furnaces; (10) pulping liquor recovery furnaces; (11) combustion devices used to recover sulfur values from spent sulfuric acid; (12) other devices the Administrator may add to this list as published in 40 CFR Section 260.10.

Incompatible materials: A substance that, because of its chemical properties (e.g., ignitability, corrosivity, reactivity), should not be in contact with or contacted with the listed substance because of the likelihood of fire, explosion, or release, etc.

Industrial use: The use of the listed substance or a product containing the substance at the site of other manufacturers or processors (e.g., textile dyeing, paint formulation, etc.).

Intend to increase or decrease: A management decision to commit financial resources toward increasing or decreasing the rate of manufacture, import, or processing of a chemical substance or mixture (e.g., in the case of "increase in manufacture," hiring additional personnel, purchasing additional production equipment, or contracting for additional raw materials).

Intermediate: Any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of other chemical substances or mixtures.

Manufacturer for commercial purpose: A person that imports, produces, or manufactures with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer; this includes, among other things, such "manufacture" of any amount of a chemical substance or mixture for commercial distribution, for use by the manufacturer, or produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture.

Mixture: Any combination of two or more chemical substances that does not occur in nature and is not, in whole or in part, the result of a chemical reaction, except as defined below: Mixtures include (1) any combination that occurs, in whole or in part, as a result of a chemical reaction if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined, and if all of the chemical substances comprising the combination are included in the EPA TSCA Chemical Substance Inventory after the effective date of the premanufacture notification requirement under 40 CFR Part 720; and (2) hydrates of a chemical substance or hydrated ions formed by association of a chemical substance with water.

Mixture producer: A processor who mixes the listed chemical substance into a mixture for subsequent distribution in commerce. The listed chemical substance is not consumed or chemically altered in this process.

Non-TSCA uses: Use of chemicals exclusively in pesticides; tobacco or tobacco products; source material, special nuclear material, or byproduct material; pistol, firearm, revolver, shells, or cartridges; food, food additives, drugs, and cosmetics.

Open process: A process in which the listed chemical is routinely in direct contact with the atmosphere (workplace or outside the plant) and no measures are taken to prevent release (e.g., open vat reaction vessels, open containers used for transportation or storage, and chemicals freely vented into the workplace atmosphere).

Polymer: High-molecular weight materials composed of the regular or irregular repetition of one or more types of monomeric units.

Processor: A person that prepares the listed substance after its manufacture for distribution as part of a mixture, an article, or any product containing or composed of the listed substance. Processors include persons that use the listed chemical as a reactant or intermediate to produce another chemical substance and persons that prepare the listed chemical in the same form or physical state as that in which it was received by the manufacturer.

Propose to manufacture or import: A management decision to commit financial resources toward manufacturing or importing a chemical substance or mixture (e.g., hiring additional personnel, commissioning a construction engineer plan, purchasing land to construct manufacturing or importing facilities, purchasing production equipment, or contracting for raw materials).

Raw material: A chemical substance, mixture, or article used as an input to a processing or manufacturing operation.

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excluding: (1) any release that results in exposure to persons solely within a workplace, with respect to a claim that such persons may assert against the employer of such persons; (2) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; (3) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act, or for the purposes of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and (4) the normal application of fertilizer.

Repackager: A processor who transfers the listed substance from one container to another.

Reporting year: A complete corporate fiscal year for which a company is required to report. This period is listed with the chemical substance in 40 CFR 704 Subpart D.

Residual: Any process stream, including byproducts, that is generated during a manufacturing or processing process that is not used as a raw material or principally sold as a commercial product or coproduct. Residuals also include wastes generated from treating process residuals. Residuals may be solids (e.g., filter solids); liquids (e.g., wastewater); confined gases (e.g., gases that are containerized to facilitate disposal); and unconfined gases generated by the management of solid or liquid residuals (e.g., incinerator stack emissions) or unconfined gases containing condensible gases (e.g., vented light ends).

Semicontinuous: A chemical process having characteristics of both batch and continuous operations.

Soil texture: See figure 1, attached.

Surface impoundment: A holding, storage, settling, and aeration pit, pond, or lagoon formed primarily of earthen materials.

Tank: A stationary device designed to contain an accumulation of residuals and constructed primarily on nonearthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

Transformation product: A substance that is produced as a result of biodegradation, hydrolysis, biotransformation, or other environmental fate process.

Unit operation: A distinct equipment unit used to accomplish a specific reaction, phase change, or separation in a chemical manufacturing or processing operation (e.g., distillation, chemical reaction, evaporation, or filtration).

Use by the manufacturer: Includes use for product research and development or as an intermediate.

Work area (indoors): The geographical area defined by the physical boundaries (walls and ceiling) of the facility immediately housing the unit process(es)/operation(s) being employed in the manufacturing/processing of the listed substance. A region with less than three and one-half walls would not be considered a complete indoor work area. More than one work area can exist for a given series of unit processes and operations comprising the entire process through which the designated chemical must proceed (e.g., drying may take place in a building that is separate but adjacent to the building that houses the evaporation unit operation. Bagging may occur in yet another building). In this example, there would be at least three distinct work areas.

Work area (outdoors): Those sites where unit process/operation equipment is located for which there are less than three and one-half walls and a ceiling surrounding the equipment.

Worker: An employee who is physically located in an area of the plant site where the listed substance is present. This definition excludes administrative, managerial, and other employees who never enter the areas where the listed substance is located.

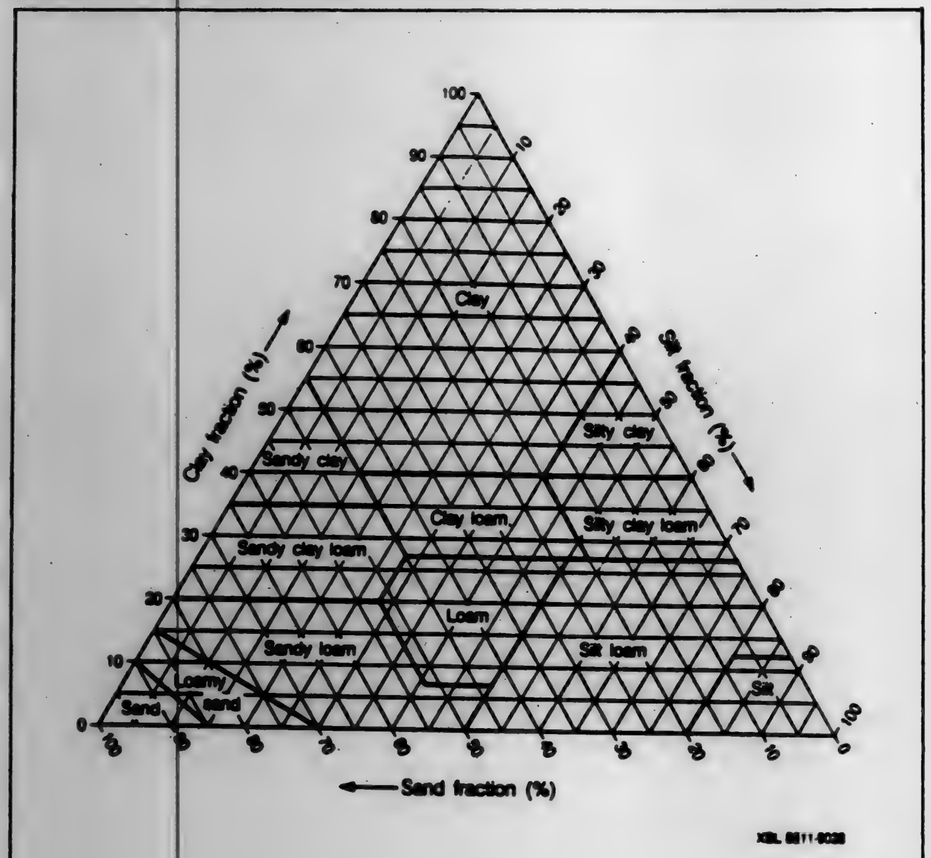


Figure 1. Soil texture categories used by the USDA. The chart shows the fraction of each of the three main grain-size classes: clay (< 2 μm), silt (2-50 μm), and sand (51-2000 μm) for each texture class.

Question	Instructions
APPENDIX LIST OF CONTINUATION SHEETS	
	Attach any continuation sheets for sections of the form and any optional information after the last page of the form. Clearly identify the attachment by listing the section number to which it relates. Number the pages of the attachments consecutively. In column 2, list the page numbers identifying each attachment. Refer to section 704.219(c)(1) of the instructions on claiming confidentiality.

[FR Doc. 86-19619 Filed 10-6-86; 8:45 am]
BILLING CODE 6560-50-C

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Federal Register

Tuesday
October 7 1986

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

BEST COPY AVAILABLE

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report 21 new deferrals of budget authority totaling $1,835,613,015.

The deferrals affect accounts in Funds Appropriated to the President, the Departments of Agriculture, Defense-Military, Defense-Civil, Energy, Health and Human Services, Justice, State, Transportation, and Treasury, the Commission on the Ukraine Famine, the Office of the Federal Inspector for the Alaska Gas Pipeline, and the Pennsylvania Avenue Development Corporation.

The details of these deferrals are contained in the attached report.

Ronald Reagan.

The White House,
September 26, 1986.

BILLING CODE 3119-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D87-1	Economic support fund	95,000
	Department of Agriculture:	
	Forest Service:	
D87-2	Expenses, brush disposal	111,202
D87-3	Timber salvage sales	29,731
D87-4	Cooperative work	526,938
D87-5	Gifts, donations and bequests for forest and rangeland research	200
	Department of Defense - Military:	
	Military Construction:	
D87-6	Military construction, Defense	2,350
	Family Housing:	
D87-7	Family housing, Defense	76,943
	Department of Defense - Civil:	
	Wildlife Conservation, Military Reservations:	
D87-8	Wildlife conservation, Defense	1,065
	Department of Energy:	
	Power Marketing Administration:	
D87-9	Alaska Power Administration, Operation and maintenance	165
D87-10	Southwestern Power Administration, Operation and maintenance	7,554
	Department of Health and Human Services:	
	Office of Assistant Secretary for Health:	
D87-11	Scientific activities overseas (special foreign currency program)	2,900
	Social Security Administration:	
D87-12	Limitation on administrative expenses (construction)	7,073
	Department of Justice:	
	Office of Justice Programs:	
D87-13	Crime victims fund	70,000
	Department of State:	
	Bureau for Refugee Programs:	
D87-14	United States emergency refugee and migration assistance fund	6,100
	Other:	
D87-15	Assistance for implementation of a Contadora agreement	2,000
	Department of Transportation:	
	Federal Aviation Administration:	
D87-16	Facilities and equipment (Airport and airway trust fund)	803,877
	Department of the Treasury:	
	Office of Revenue Sharing:	
D87-17	Local government fiscal assistance trust fund	74,149
D87-21	Local government fiscal assistance trust fund	5,981
	Other Independent Agencies:	
	Commission on the Ukraine Famine:	
D87-18	Salaries and expenses	100
	Federal Inspector for the Alaska Gas Pipeline:	
D87-19	Permitting and enforcement	411
	Pennsylvania Avenue Development Corporation:	
D87-20	Land acquisition and development fund	11,873
	Total, deferrals	1,835,613

SUMMARY OF SPECIAL MESSAGES FOR FY 1987
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
First special message:		
New items	---	1,835,613
Revisions to previous special messages	---	---
Effects of first special message	---	1,835,613
Amounts from previous special messages that are changed by this message (changes noted above)	---	---
Subtotal, rescissions and deferrals	---	1,835,613
Amounts from previous special messages that are not changed by this message	---	---
Total amount proposed to date in all special messages	---	1,835,613

Deferral No: D87-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President

Bureau:
International Security Assistance

Appropriation title and symbol:
Economic support fund 1/
115/71037 11X1037 116/71037

OMB Identification code:
11-1037-0-1-152

Grant program:
[X] Yes [ ] No

Type of account or fund:
[ ] Annual
[X] Multiple-year 9/30/87 (expiration date)
[X] No-Year

New budget authority..... $
(P.L.)
Other budgetary resources 95,000,000
Total budgetary resources $ 95,000,000

Amount to be deferred:
Part of year $ 95,000,000
Entire year

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Coverage: 1/

Appropriation	Symbol	Identification Code	Amount Deferred
Economic Support Fund...	115/71037	11-1037-0-1-152	90,000,000
Economic Support Fund...	11X1037	11-1037-0-1-152	5,000,000
Economic Support Fund...	116/71037	11-1037-0-1-152	---
			95,000,000

Justification: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State. This will insure that each approved program is consistent with the foreign, national security and financial policies of the U.S. and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-24A).

Deferral No: D87-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture

Bureau:
Forest Service

Appropriation title and symbol:
Expenses, brush disposal 1/
12X5206

OMB Identification code:
12-8932-0-2-302

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority..... $ 45,936,000
(16 U.S.C. 490)
Other budgetary resources 111,201,838
Total budgetary resources 157,137,838

Amount to be deferred:
Part of year $
Entire year 111,201,838

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: Purchasers of National Forest timber are required to deposit the estimated cost to the Forest Service for disposing of brush and other debris resulting from timber cutting operations pursuant to 16 U.S.C. 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose. Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year-to-year program which will require $46.0 million in 1987. The current fiscal year reserve of $111.2 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-2A).

Deferral No: D87-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture

Bureau:
Forest Service

Appropriation title and symbol:
Timber salvage sales 1/
12X5704

OMB identification code:
12-9922-0-2-302

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... (P.L. 94-588; 16 U.S.C. 472a(5))	$ 20,372,000
Other budgetary resources	29,730,869
Total budgetary resources	50,102,869
Amount to be deferred:	
Part of year	$ _____
Entire year	29,730,869

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: The Timber salvage sales fund was established under the provisions of the National Forest Management Act of 1976 to enable immediate harvesting of dead and dying trees when required by market conditions or catastrophes. Purchasers of dead, damaged, insect-infested or downed timber are required to make monetary deposits into this fund to cover the costs associated with this activity. A contingency reserve is established under the provisions of the Antideficiency Act (31 U.S.C. 1512) because of the time lag between the deposit of receipts in one year and the expenditure of funds for sales operations in subsequent years.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-3).

Deferral No: D87-4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture

Bureau:
Forest Service

Appropriation title and symbol:
Cooperative work 1/
12X8028

OMB identification code:
12-9973-0-7-999

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... (16 U.S.C. 576b)	$193,473,000
Other budgetary resources	539,459,342
Total budgetary resources	732,932,342
Amount to be deferred:	
Part of year	$ _____
Entire year	526,938,342

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work consists of protection and improvement of the National Forest System and it benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where the timber operators have not completed all of the contract obligations during the year funds are deposited. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This amount was the subject of a similar deferral in 1986 (D86-6).

Deferral No: D87-5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 90,000 (16 U.S.C. 498)
Bureau: Forest Service	Other budgetary resources 283,230
Appropriation title and symbol: Gifts, donations, and bequests for Forest and Rangeland Research 12X8034	Total budgetary resources $ 373,230
	Amount to be deferred: Part of year $ ____
	Entire year $ 200,000
OMB identification code: 12-9973-0-7-999	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multiple-year ____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other ____

Justifications: Funds are received as gifts, donations, or bequests from State and other public agencies, individuals, associations, and others. These funds are expended by the Forest Service, as authorized by law, for forestry research of mutual interest and benefit. Much of the work for which funds are donated cannot be done, or is not planned to be done, during the same year that the collections are being realized. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D87-6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense - Military	New budget authority..... $ ____ (P.L. ____)
Bureau: Military Construction	Other budgetary resources 1,163,950,000
Appropriation title and symbol: See Coverage Section below 2/	Total budgetary resources 1,163,950,000 1/
	Amount to be deferred: Part of year ____
	Entire year 2,350,000
OMB identification code: See Coverage Section below 2/	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[X] Multiple-year Sept. 30, 1987 Sept. 30, 1988 (expiration date)	[ ] Contract authority
[X] No-Year Sept. 30, 1989 Sept. 30, 1990	[ ] Other ____

Coverage: 2/

Appropriation	Symbol	OMB Identification Code	Deferred
Military construction, Army.....	216/02050	21-2050-0-1-051	---
Military construction, Army.....	215/92050	21-2050-0-1-051	---
Military construction, Army.....	214/82050	21-2050-0-1-051	---
Military construction, Army.....	213/72050	21-2050-0-1-051	---
Military construction, Navy.....	176/01205	17-1205-0-1-051	---
Military construction, Navy.....	175/91205	17-1205-0-1-051	---
Military construction, Navy.....	174/81205	17-1205-0-1-051	---
Military construction, Navy.....	173/71205	17-1205-0-1-051	---
Military construction, Air Force.	576/03300	57-3300-0-1-051	---
Military construction, Air Force.	575/93300	57-3300-0-1-051	---
Military construction, Air Force.	574/83300	57-3300-0-1-051	---
Military construction, Air Force.	573/73300	57-3300-0-1-051	---

DB7-6

Appropriation	Symbol	OMB Identification Code	Deferred
Military construction, Defense Agencies	976/00500	97-0500-0-1-051	---
Military construction, Defense Agencies	975/90500	97-0500-0-1-051	---
Military construction, Defense Agencies	974/80500	97-0500-0-1-051	2,350,000
Defense Agencies	973/70500	97-0500-0-1-051	---
Military construction, Army National Guard	216/02085	21-2085-0-1-051	---
Military construction, Army National Guard	215/02085	21-2085-0-1-051	---
Military construction, Army National Guard	214/82085	21-2085-0-1-051	---
Military construction, Army National Guard	213/72085	21-2085-0-1-051	---
Military construction, Air National Guard	576/03830	57-3830-0-1-051	---
Military construction, Air National Guard	575/93830	57-3830-0-1-051	---
Military construction, Air National Guard	574/83830	57-3830-0-1-051	---
Military construction, Air National Guard	573/73830	57-3830-0-1-051	---
Military construction, Army Reserve	216/02086	21-2086-0-1-051	---
Military construction, Army Reserve	215/02086	21-2086-0-1-051	---
Military construction, Army Reserve	214/82086	21-2086-0-1-051	---
Military construction, Army Reserve	213/72086	21-2086-0-1-051	---
Military construction, Naval Reserve	176/01235	17-1235-0-1-051	---
Military construction, Naval Reserve	175/91235	17-1235-0-1-051	---
Military construction, Naval Reserve	174/81235	17-1235-0-1-051	---
Military construction, Naval Reserve	173/71235	17-1235-0-1-051	---
Military construction, Air Force Reserve	576/03730	57-3730-0-1-051	---
Military construction, Air Force Reserve	575/93730	57-3730-0-1-051	---
Military construction, Air Force Reserve	574/83730	57-3730-0-1-051	---
Military construction, Air Force Reserve	573/73730	57-3730-0-1-051	---
North Atlantic Treaty Organization Infrastructure	97X0804	97-0804-0-1-051	---
Total			$ 2,350,000

Justification: These funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ Includes all accounts included under this appropriation title.

2/ These accounts were the subject of a similar deferral in 1986 (DB6-4A).

Deferral No: D87-7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency:
Department of Defense - Military

Bureau:
Family Housing, Defense

Appropriation title and symbol:
See Coverage Section below 1/

OMB identification code:
See Coverage Section below 1/

Grant program: | | Yes | X | No

Type of account or fund:
	Annual	9/30/87 9/30/88
X	Multiple-year	9/30/89 (Expiration date)
	No-Year	9/30/90

New budget authority..... $
(P.L.)
Other budgetary resources 407,761,000
Total budgetary resources 407,761,000 2/

Amount to be deferred:
Part of year $ 76,943,000
Entire year

Legal authority (in addition to sec. 1013):
X	Antideficiency Act
	Other

Type of budget authority:
X	Appropriation
	Contract authority
	Other

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Deferred
Family housing, Navy	176/00703	17-0703-0-1-051	---
Family housing, Army	216/00702	21-0702-0-1-051	---
Family housing, Air Force	576/00704	57-0704-0-1-051	$65,143,000
Family housing, Air Force	575/90704	57-0704-0-1-051	11,800,000
Family housing, Air Force	574/80704	57-0704-0-1-051	---
Family housing, Air Force	573/70704	57-0704-0-1-051	---
			$76,943,000

Justification: These funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-27A).

2/ Includes all accounts included under this appropriation title.

Deferral No: D87-8

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency:
Department of Defense - Civil

Bureau: Wildlife Conservation, Military Reservations

Appropriation title and symbol:
Wildlife Conservation, Army - 21X5095
Wildlife Conservation, Navy - 17X5095
Wildlife Conservation, Air Force - 57X5095

OMB identification code:
97-5095-0-2-303

Grant program: | | Yes | X | No

Type of account or fund:
	Annual	
	Multiple-year	(Expiration date)
X	No-Year	

New budget authority..... $2,050,000
(P.L. 16 U.S.C. 670f)
Other budgetary resources 1,355,200
Total budgetary resources 3,405,200

Amount to be deferred:
Part of year $
Entire year 1,065,200

Legal authority (in addition to sec. 1013):
X	Antideficiency Act
	Other

Type of budget authority:
X	Appropriation
	Contract authority
	Other

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Amount Deferred
Wildlife Conservation, Army	21X5095	21-5095-0-2-303	$ 719,200
Wildlife Conservation, Navy	17X5095	17-5095-0-2-303	140,000
Wildlife Conservation, Air Force	57X5095	57-5095-0-2-303	206,000
			$1,065,200

Justification: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law--to carry out a program of natural resource conservation. These funds are being deferred because: (1) installations may be accumulating funds over a period of time to fund a major project, (2) the installation may be designing and obtaining approval for the project, and (3) there is a seasonal relationship between the collection of fees and their subsequent expenditure. Most of the fees are collected during the winter and spring months, while most of the program work is performed during the summer and fall months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned if program requirements are identified. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ These accounts were the subject of a similar deferral in 1986 (D86-5A).

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... $ (P.L.)
Bureau: Power Marketing Administration	Other budgetary resources 770,000
Appropriation title and symbol: Alaska Power Administration, Operation and maintenance 1/ 89X0304	Total budgetary resources 770,000
	Amount to be deferred: Part of year $
	Entire year 165,000
OMB identification code: 89-0304-0-1-271	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other

Justification: This account funds the activities of the Alaska Power Administration (APA), an agency which operates and sells power from two hydroelectric projects located in Alaska. In 1986, appropriated funds were in excess of the levels needed for procurements because contract costs were lower than anticipated. Consequently, the level of unobligated funds carried into 1987 was higher than previously planned. There currently is no plan to use these funds in 1987, although the funds will be released later this year if a critical need arises. If a critical need does not arise, however, the funds will be deferred until 1988. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-6A).

Deferral No: D87-10

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy

Bureau:
Power Marketing Administration

Appropriation title and symbol:
Southwestern Power Administration, Operation and maintenance 1/
89X0303

OMB identification code:
89-0303-0-1-271

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ _____
(P.L. _____)

Other budgetary resources 21,097,000

Total budgetary resources 21,097,000

Amount to be deferred:
Part of year $ _____
Entire year $ 7,554,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: This account funds the activities of the Southwestern Power Administration (SWPA), an agency that markets wholesale hydroelectric power produced at Corps of Engineers dams in six southwestern States. SWPA activities also include construction, operation and maintenance of approximately 1,440 miles of transmission lines over which power is distributed to customers. In 1986, funds were in excess of amounts required to purchase power and pay non-Federal utilities to deliver it. The level of unobligated funds carried into 1987 for purchasing power was higher than previously assumed. There currently is no plan to use these funds in 1987, although the funds will be released later this year if a critical need arises. If a critical need does not arise, however, the funds will be deferred until 1988. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-13A).

Deferral No. D87-11

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Health and Human Services

Bureau: Office of Assistant Secretary for Health

Appropriation title and symbol:
Scientific Activities Overseas (special foreign currency prog.) 1/
75X1102

OMB identification code:
75-1102-0-1-552

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ _____
(P.L. _____)

Other budgetary resources 5,900,000

Total budgetary resources 5,900,000

Amount to be deferred:
Part of year $ _____
Entire year 2,900,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: The Scientific activities overseas program is funded with appropriations of excess foreign currencies owned by the United States. The currencies of Burma, Guinea, Pakistan and Poland held by the Treasury have been designated as excess to normal U.S. needs in 1986 and are expected to be excess in 1986. Funds for this program, which remain available until expended, are used for scientific research projects in those countries.

The amount of funds to be obligated during 1987 and the amount to be deferred for the entire year were determined after a careful review of the scientific merit of project proposals in the countries for which excess currency is available. The research projects in those countries that will contribute toward meeting U.S. scientific needs have been selected for funding in 1987. The amount being deferred is excess to current program requirements and is being reserved for contingencies under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-16).

Deferral No: DA87-12

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Health and Human Svcs

Bureau:
Social Security Administration

Appropriation title and symbol:
Limitation on Administrative Expenses (Construction) 1/
75X8704

OMB identification code:
75-8704-0-7-601

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ _____
(P.L. _____)
Other budgetary resources 7,109,456
Total budgetary resources 7,109,456

Amount to be deferred:
Part of year $ _____
Entire year 7,073,456

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office buildings. Obligational authority in the amount of this deferral is not needed at the present time. Should new requirements arise, subsequent apportionment requests will include revisions to this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (DA86-28A).

Deferral No: DA87-13

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Justice

Bureau:
Office of Justice Programs

Appropriation title and symbol:
Crime Victims Fund
15X5041

OMB identification code:
15-5041-0-2-754

Grant program:
[X] Yes [ ] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 70,000,000
(P.L. 98-473)
Other budgetary resources 63,395,535
Total budgetary resources $ 133,395,535

Amount to be deferred:
Part of year $ _____
Entire year 70,000,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: This appropriation is a special fund which is credited with Federal criminal fines, forfeited appearance bonds, and penalties not to exceed $100,000,000 each fiscal year. It is used to provide grants to states for crime victim compensation and assistance programs. Since 1986 funds will be obligated in 1987, $70,000,000, which is estimated to be collected during 1987, is deferred until the early part of 1988. This allows the Office of Justice Assistance to know precisely how much money is available for award and avoid over- or under-obligation of fund collections. This action is taken pursuant to the Antideficiency Act of (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (DA86-18).

Deferral No: D87-14

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State Bureau: Bureau for Refugee Programs	New budget authority..... $ ____ (P.L. ____) Other budgetary resources 6,100,000 Total budgetary resources 6,100,000
Appropriation title and symbol: United States Emergency Refugee and Migration Assistance Fund, Executive 1/ 11X0040	Amount to be deferred: Part of year $ 6,100,000 Entire year ____
OMB identification code: 11-0040-0-1-151	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94-141) and Section 414 (b) (1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2 (c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund not to exceed $50,000,000 to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

The Emergency Fund contains an estimated $6,100,000 in unobligated balances from prior-year authority. These funds have been deferred pending Presidential decisions required by Executive Order No. 11922 and to achieve the most economical use of appropriations. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-19).

Deferral No: D87-15

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of State

Bureau:
Other

Appropriation title and symbol:
Assistance for Implementation of a Contadora Agreement 1/

19X0526

OMB Identification code:
19-0526-0-1-153

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $_____
(P.L. _____)

Other budgetary resources 2,000,000

Total budgetary resources 2,000,000

Amount to be deferred:
Part of year $ 2,000,000
Entire year _____

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: The 1985 Second Supplemental Appropriations Act (P.L. 99-88) provided $2,000,000 for payment by the Secretary of State for the expenses arising from implementation by the Contadora nations (Mexico, Panama, Colombia, and Venezuela) of an agreement among the countries of Central America based on the Contadora Document of Objectives of September 9, 1983. These funds have been deferred until such time as the required agreement has been made and funds are needed for peacekeeping, verification, and monitoring systems. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-20).

Deferral No: D87-16

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Transportation

Bureau:
Federal Aviation Administration

Appropriation title and symbol:
Facilities and equipment (Airport and airway trust fund) 1/

69X8107 693/78107 695/98107
694/88107 696/08107

OMB Identification code:
69-8107-0-7-402

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual 693/78107 9/30/87
694/88107 9/30/88
[X] Multiple-year 695/98107 9/30/89
(expiration date)
[X] No-Year 696/08107 9/30/90

New budget authority..... $_____
(P.L. _____)

Other budgetary resources 1,224,150,564

Total budgetary resources $1,224,150,564

Amount to be deferred:
Part of year $_____
Entire year $ 803,877,039

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: Funds from this account are used to continue to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings, the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system, and expansion/improvement of navigational and landing aid systems. These activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress for the year in which requested. Due to the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This action is consistent with FAA's full funding approach and Congressional intent to provide multi-year funding for the total costs of projects. This action is taken under provisions of the Antideficiency Act (31 U.S.C. 1512), which authorizes the establishment of reserves for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-29A).

Deferral No: D87-17

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency:
Department of the Treasury

Bureau:
Office of Revenue Sharing

Appropriation title and symbol:
Local government fiscal assistance trust fund 1/
20X8111

OMB identification code:
20-8111-0-7-851

Grant program:
[X] Yes [ ] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $_____
(P.L.)
Other budgetary resources 80,130,000
Total budgetary resources 80,130,000

Amount to be deferred:
Part of year $ 74,149,000
Entire year _____

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[X] Other 31 U.S.C. 6701-6724, particularly 31 U.S.C. 6702(d)

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: The Secretary of the Treasury must hold in reserve an amount sufficient enough to meet valid claims from local governments that past revenue sharing payments have been too small. Because the total amount appropriated for all governments is fixed, the alternative to such a reserve is recurring recomputations of the entitlements of the over 39,000 governments for prior entitlement periods. This cumulative unobligated reserve from entitlement periods 1-17 is available to the Secretary of the Treasury to satisfy legitimate claims against the Trust Fund for any prior entitlement periods.

Estimated Program Effect: None

Outlay Effect: None

1/ This account is subject to another deferral (D87-21) and was the subject of a similar deferral in 1986 (D86-21A).

Deferral No: D87-18

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency:
Commission on the Ukraine Famine

Bureau:

Appropriation title and symbol:
Salaries and expenses 1/
48X0050

OMB identification code:
48-0050-0-1-153

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $_____
(P.L.)
Other budgetary resources 300,000
Total budgetary resources 100,000

Amount to be deferred:
Part of year $_____
Entire year 100,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: This appropriation funds the expenses of the Commission on the Ukraine Famine established pursuant to Public Law 99-180. P.L. 99-180 specifies that the Commission shall submit a report concerning the Ukraine Famine of 1932-1933 to the Congress no later than two years after holding its first organizational meeting. The Commission shall terminate sixty days after submitting the report. The Commission held its first meeting early in 1986, and its work is expected to continue into the next fiscal year. These funds are being deferred to ensure that sufficient resources will be available in the fiscal year 1988 to carry out the Commission's responsibilities. This action is taken under the provision of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-54).

Deferral No: D87-19

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency:
Department of Energy

Bureau:
Energy Programs

Appropriation title and symbol:
Office of the Federal Inspector for the Alaska Natural Gas Transportation System, Salaries and expenses
52X0100

OMB identification code:
89-0213-0-1-271

Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $_____
(P.L. _____)
Other budgetary resources 411,000

Total budgetary resources 411,000

Amount to be deferred:
Part of year $_____
Entire year 411,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: This accounts funds activities related to the Office of the Federal Inspector for the Alaska Natural Gas Pipeline System. This agency oversees the work of private companies building the Alaska natural gas pipeline, and coordinates government approvals required before the pipeline can be built. The deferral represents funds that are not required for current operations due to a phase down of activities resulting from delays in building the pipeline. Work was delayed because the private sponsors were unable to obtain financing for construction. This action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D87-20

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency:
Pennsylvania Avenue Development Corp.

Bureau:

Appropriation title and symbol:
Land Acquisition and Development Fund 1/
42X4084

OMB identification code:
42-4084-0-3-451

Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $_____
(P.L. _____)
Other budgetary resources 23,746,543

Total budgetary resources 23,746,543

Amount to be deferred:
Part of year $_____
Entire year 11,873,271

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[ ] Appropriation
[ ] Contract authority
[X] Other Borrowing Authority

Justification: This account provides borrowing authority to acquire private property for redevelopment in the Pennsylvania Avenue project area. The 1974 Pennsylvania Avenue Development Corporation (PADC) land use plan for the eastern sector of the project area was reviewed and updated in light of real estate trends and market conditions. Of available balances, $11,873,271 is deferred pursuant to the Antideficiency Act (31 U.S.C. 1512) to establish a reserve for use in specified cases where private sector resources must be supplemented to ensure that new development will be consistent with the updated eastern sector plan. PADC does not plan significant new Federally-financed land acquisition activity in the PADC corridor. However, the deferred borrowing authority for land acquisition will be released on a case-by-case basis to solve problems when development is delayed by owners declining to sell property at a fair price, title difficulties, or other causes. In most cases, PADC would purchase the property for later resale to the private sector.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1986 (D86-22).

Deferral No: D87-21

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of the Treasury **Bureau:** Office of Revenue Sharing **Appropriation title and symbol:** Local government fiscal assistance trust fund 1/ 20X8111 **OMB identification code:** 20-8111-0-7-851 **Grant program:** [X] Yes [ ] No	**New budget authority..... $** ____ (P.L. ____) **Other budgetary resources** 80,130,000 **Total budgetary resources** 80,130,000 **Amount to be deferred:** Part of year $ 5,981,000 2/ Entire year ____ **Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [X] Other 31 U.S.C. 6701-6724, particularly 31 U.S.C. 6704(c)
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: The Local government fiscal assistance trust fund is the vehicle for disbursement of General Revenue Sharing funds. This deferral represents payments withheld from various governments involved in annexations or disincorporations and for reasons of non-compliance with the requirements of the Local Government Fiscal Assistance Amendments of 1983. The release of these funds is contingent upon adherence by the various governments to the compliance regulations, and determinations as to which higher level of government is eligible to receive those funds withheld because of annexations and disincorporations.

Estimated Program Effect: None

Outlay Effect: None

1/ This account is subject to another deferral (D87-17) and was the subject of a similar deferral in 1986 (D86-308).

2/ Deferral of outlays only.

[FR Doc. 86-22860 Filed 10-6-86; 8:45 am]
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S. 2703/Pub. L. 99-435
Air Carrier Access Act of 1986. (Oct. 2, 1986; 100 Stat. 1080; 1 page) Price: $1.00

S.J. Res. 207/Pub. L. 99-436
To designate November 15, 1986, as "National Philanthropy Day." (Oct. 2, 1986; 100 Stat. 1081; 1 page) Price: $1.00

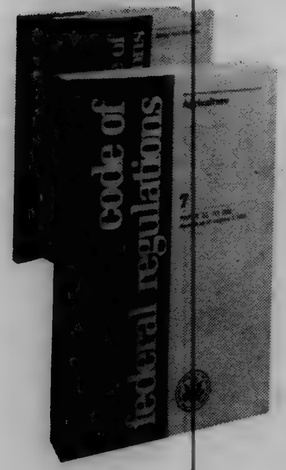
S.J. Res. 263/Pub. L. 99-437
To designate September 1986 as "National Independent Retail Grocer Month." (Oct. 2, 1986; 100 Stat. 1082; 1 page) Price: $1.00

S.J. Res. 402/Pub. L. 99-438
Designating July 2 and 3, 1987, as the "United States-Canada Days of Peace and Friendship." (Oct. 2, 1986; 100 Stat. 1083; 2 pages) Price: $1.00

S. 2759/Pub. L. 99-439
Relating to telephone services for Senators. (Oct. 2, 1986; 100 Stat. 1085; 1 page) Price: $1.00

H.R. 4868/Pub. L. 99-440
Comprehensive Anti-Apartheid Act of 1986. (Passed over veto, Oct. 2, 1986; 100 Stat. 1086; 31 pages) Price: $1.00

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Pages 35981-36200

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Presidential Documents

Title 3—

The President

Proclamation 5537 of October 6, 1986

National Drug Abuse Education and Prevention Week and National Drug Abuse Education Day, 1986

By the President of the United States of America

A Proclamation

Drug abuse is a veritable plague that enslaves its victims, saps their health, turns their dreams to dust, and endangers their lives and the lives of others. Unchecked, it poses a threat to our Nation. But Americans are fighting back against this insidious evil. More and more young people are choosing to "Just Say No" to drugs. This heartening development is due to the tireless efforts of concerned parents, private sector organizations, schools, and State and Federal government.

We cannot afford to slacken in our efforts when nearly two-thirds of all American teenagers have used an illicit drug at least once before they finish high school. Especially disturbing is the level of cocaine use among teenagers and young adults in our country.

Cocaine is especially dangerous because people tend to underestimate its harmful effects. Cocaine must be recognized for what it is: a dangerous, addictive drug. Cocaine can kill: deaths from respiratory and cardiac arrest from cocaine overdose are increasing among all age groups. Recently there has been a frightening upsurge in the use of "crack," a form of cocaine that is smoked. "Crack" reaches the brain within seconds, producing a sudden and intense high and a fierce craving to use it again and again, a phenomenon that has been called "instant addiction."

The most effective weapon we have against drug abuse is to dry up demand by spreading knowledge about its ruinous effects. Across the country, individuals and organizations have discovered the power of united action. The "peer pressure" that so often has been used to snare the unwary into "experimenting" with drugs is now being used to build resistance. Youth-led groups are in the forefront of our national crusade to rid our country of this evil. The vigorous action of parents, religious and community leaders, teachers, doctors, counselors, and young people themselves with their commitment of time, energy, and love, has been an inspiration to all of us. Public education media campaigns have also been effective in motivating people to "Just Say No." A major portion of the Federal drug abuse prevention effort is directed toward continued research into the deleterious effects of drugs and getting this information out to those who can use it most effectively.

Our society at every level must develop an absolute intolerance for illegal drugs. Everyone has a part to play in this crusade: parents, teachers, health care professionals, youth workers, and celebrities in entertainment, sports, and other fields. All America must speak with one voice. We must teach our young people to say "no" to the degradation of drugs and "yes" to the bright promise of a drug-free America. This is a battle for liberty from the enslavement of drug addiction. We can win. We must win. With God's help and a united people, we shall win.

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The Congress, by Senate Joint Resolutions 354 and 386, has designated the week of October 5 through October 11, 1986, as "National Drug Abuse Education and Prevention Week," and October 6, 1986, as "National Drug Abuse Education Day," and authorized and requested the President to issue a proclamation in observance of these events.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 5 through October 11, 1986, as National Drug Abuse Education and Prevention Week, and October 6, 1986, as National Drug Abuse Education Day. I call upon the people of the United States to participate in drug abuse education and prevention programs in their communities. I encourage parents and children to talk and work together to prevent drug abuse in the family and to dedicate themselves to the goal of a drug-free America.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of Oct., in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-22955
Filed 10-6-86; 4:16 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks about National Drug Abuse Education and Prevention Week, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 41).

Presidential Documents

Memorandum of October 6, 1986

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined that the Government of Brazil has engaged in acts, policies, and practices with respect to informatics products that are unreasonable and burden or restrict United States commerce. With a view toward eliminating the harmful effects of the Government of Brazil's acts, policies, and practices, I am directing you as the United States Trade Representative to continue negotiations to address U.S. concerns regarding barriers to U.S. trade and investment and the lack of adequate and effective intellectual property protection. To allow further time for negotiations and for monitoring of commitments already made by the Government of Brazil, I will defer a final decision as to the appropriate U.S. response to the Brazilian acts, policies, and practices until December 31, 1986. In the interim, however, I am directing the United States Trade Representative to notify the GATT of our intent under GATT Article XVIII(21) to suspend the application of U.S. tariff concessions to imports from Brazil to compensate for the annual loss in U.S. sales opportunities in Brazil due to the informatics policy and to implement such suspension when appropriate.

Reasons for Determination

At my direction, the United States Trade Representative self-initiated a Section 301 investigation on September 16, 1985, of a Brazilian law and policies that have restricted U.S. trade and investment in the informatics sector and have withheld adequate and effective intellectual property protection for U.S. computer software and other informatics products.

The Section 301 investigation has focused on Law No. 7.232 of October 19, 1984 ("Informatics Law"). This law codified and strengthened the Government of Brazil's authority to regulate informatics trade and investment. Pursuant to the authority granted by this law, the Government of Brazil or its instrumentalities have engaged in acts, policies, and practices designed to restrict foreign competition and to promote the development of a "national" informatics industry.

Pursuant to Article 9 of the Informatics Law, the Government of Brazil's Special Secretariat for Informatics ("SEI") has restricted the importation of informatics products covered by the "market reserve" policy, including a number of U.S. computer and computer-related products. In addition, SEI has used its authority under the so-called "Law of Similars" to restrict the importation of a broad range of U.S. products that incorporate digital technology.

The Government of Brazil prohibits subsidiaries of U.S. firms from manufacturing in Brazil informatics products covered by the market reserve policy. In addition, SEI has used its authority under the Informatics Law to restrict the activities of U.S. firms with investments in Brazil and to impose severe local content and export performance requirements. In certain cases, SEI has used its authority to regulate foreign investment to force out U.S. informatics firms with operations in Brazil.

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Finally, the Government of Brazil currently withholds full copyright protection to computer software. As a result, U.S. firm have suffered heavy losses from software piracy.

The Government of Brazil's acts, policies, and practices have resulted in a rapid and unchecked proliferation of restrictions on U.S. informatics and related products. These policies have resulted in extensive lost sales to U.S. companies in the hardware and software sectors and burden or restrict U.S. commerce within the meaning of Section 301.

While I have determined that the Government of Brazil's informatics law and policies are unreasonable under Section 301, I would strongly prefer that the Government of Brazil agree to moderate or eliminate the effects of its barriers to trade and investment and establish adequate and effective protection for intellectual property rights. Our goal under Section 301 is to open foreign markets to U.S. trade and investment, not to close our own market to imports. Accordingly, I have directed the United States Trade Representative to redouble our efforts to reach an expeditious, negotiated resolution of this issue.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, October 6, 1986.

[FR Doc. 86-22977
Filed 10-7-86; 11:48 am]
Billing code 3195-01-M

Presidential Documents

Memorandum of October 6, 1986

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined that the agreement between the Governments of Japan and the United States of America is an appropriate and feasible response to the policies and practices of the Government of Japan with respect to the manufacture, importation and sale of tobacco products in Japan. These policies and practices have been investigated by the United States Trade Representative in response to his initiation of an investigation on September 16, 1985, at my direction.

I direct you as the United States Trade Representative to notify the Government of Japan of my approval of the agreement and to take any actions necessary to implement and monitor it. Since the Government of Japan must take steps to implement the agreement, I direct that the Section 301 proceeding on Japan's practices with respect to manufactured tobacco products be suspended until the agreement is fully implemented, at which time I direct you to terminate the proceeding.

Reasons for Determination

For years the United States Government has expressed concern about the Government of Japan's trade barriers that have unfairly restricted American cigarette producers' access to the Japanese market. Despite some improvements, the market share of U.S. cigarette exporters in Japan remains less than three percent despite their competitiveness. Looked at as a whole, the Japanese Government's laws, policies and practices insulate an inefficient monopoly from competition and shift to imports and Japanese consumers the costs of maintaining a highly uncompetitive domestic tobacco leaf industry. The specific unfair Japanese Government practices include: (1) the combination of a significant trade barrier (a 20 percent tariff and a high, largely *ad valorem*, excise tax) and an unreasonable, absolute investment barrier (a manufacturing monopoly), (2) the current discriminatory deferral of excise tax payment favoring the Japanese tobacco monopoly, (3) a price approval system that protects the Japanese tobacco monopoly against foreign competition, and (4) discriminatory or unreasonable practices by the government-controlled distribution instrumentality. All of these unfair practices burden or restrict U.S. commerce.

Representatives of the Governments of Japan and the United States held a series of consultations concerning increased access to the Japanese cigarette market. As a result of these consultations, we reached an agreement regarding actions that Japan will take to improve our firms' access. The Government of Japan will suspend the tariff, reducing it to zero. It also will end the discriminatory deferral of excise tax payment by its tobacco monopoly by April 1, 1987, and modify its price approval system to shorten the application period

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significantly and to make the process transparent and virtually automatic. In addition, the government-controlled distribution instrumentality has statisfactorily addressed the major existing distribution problems. When implemented, these measures should accomplish our goal of obtaining increased access for U.S. firms to Japan's cigarette market.

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 6, 1986.

[FR Doc. 86-22978
Filed 10-7-86; 11:49 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 195
Wednesday, October 8, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 0, 1, 9, 10, 14, 51, and 110

Nomenclature Changes To Implement Consolidation of OGC and OELD

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reflect the changes resulting from the Commission decision to consolidate the Office of the Executive Legal Director into the Office of the General Counsel. These amendments are necessary to inform the public of these administrative changes to NRC regulations.

EFFECTIVE DATE: October 8, 1986.

FOR FURTHER INFORMATION CONTACT: Barry Pineles, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7688.

SUPPLEMENTARY INFORMATION: On July 1, 1986, the Nuclear Regulatory Commission decided to consolidate its two legal offices, the Office of the Executive Legal Director and the Office of General Counsel, into one legal office—the Office of the General Counsel.

The Nuclear Regulatory Commission is amending portions of its regulations to substitute references to the Office of the General Counsel in lieu of the Office of the Executive Legal Director. In addition, the Nuclear Regulatory Commission is amending portions of its regulations to delete references to the Office of the Executive Legal Director. The amendments also will describe the new structure of the Office of the General Counsel and its subsidiary divisions.

Because these are amendments dealing with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with a matter of agency conduct, the consolidation of two legal offices into one office.

Environmental Impact—Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Existing requirements were approved by the Office of Management and Budget approval numbers 3150-0043 (Part 9), 3150-0021 (Part 51), and 3150-0036 (Part 110).

List of Subjects

10 CFR Part 0

Conflict of interest, Penalty.

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 10

Administrative practice and procedure, Classified information, Government employees, Security measures.

10 CFR Part 14

Administrative practice and procedures, Tort claims.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 110

Administrative practice and procedure, Classified information, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is publishing the following amendments to 10 CFR Parts 0, 1, 9, 10, 14, 51, and 110.

PART 0—CONDUCT OF EMPLOYEES

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 0.735-28, paragraph (a)(2), is revised to read as follows:

§ 0.735-28 Confidential statements of employment and financial interests.

(a) * * *

(2) All contracting officers in the Office of Administration, and all attorneys in the Office of the General Counsel (including those employees being paid below the GG-13 level).

* * * * * *

PART 1—ORGANIZATION

3. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

4. In the Table of Contents in Part 1, remove § 1.42.

5. Section 1.32 is revised to read as follows:

§ 1.32 Office of the General Counsel.

(a) The Office of the General Counsel directs matters of law and legal policy, providing opinions, advice and assistance to the NRC with respect to all of its activities; reviews and prepares appropriate draft Commission decisions on Atomic Safety and Licensing Appeal Board decisions and rulings, public

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petitions seeking direct Commission action, and rulemaking proceedings involving hearings; provides interpretation of laws, regulations, and other sources of authority; reviews the legal form and content of proposed official actions; prepares or concurs in all contractual documents, interagency agreements, delegations of authority, regulations, orders, licenses, and other legal documents and prepares legal interpretations thereof; reviews and directs intellectual property work; represents and protects the interests of the NRC in legal matters and in court proceedings, and in relation to other government agencies, administrative bodies, committees of Congress, foreign governments, and members of the public.

(b) The Office of the General Counsel is directed and supervised by the General Counsel who is the chief legal officer and legal advisor to the NRC. The General Counsel is assisted in carrying out the functions of the office by the Deputy General Counsel and by the following:

(1) The Solicitor assists the General Counsel in all aspects of his or her role as the chief legal officer and legal advisor to the NRC with primary responsibility in matters involving the supervision of litigation in courts of law; represents the NRC in litigation before the Federal courts of appeals and, in conjunction with the Justice Department, in other Federal courts; provides counsel to NRC employees called to testify concerning official duties in cases to which the NRC is not a party; and advises the Commission on litigation implications of proposed actions.

(2) The Associate General Counsel for Licensing and Regulation advises the General Counsel and the Commission on all aspects of domestic licensing and regulation with particular emphasis on adjudication, legislation, rulemaking and fuel cycle matters; and provides advice on employee conduct and administrative law issues; and on the implementation of atomic energy and environmental laws.

(3) The Associate General Counsel for Hearings and Enforcement advises the General Counsel and the Deputy General Counsel, as appropriate, on all licensing, inspection and enforcement activities, with particular emphasis on the conduct of adjudicatory hearings and the implementation of the Commission's enforcement program; and assists the General Counsel and the Deputy General Counsel, as appropriate, in providing legal advise on interagency and international agreements, procurement, intellectual property, security, personnel, and administrative functions.

(4) The Assistant General Counsel for Adjudications and Opinions assists the General Counsel in providing legal advice and assistance to the Commission in the review of adjudicatory decisions and on the implementation of employee conduct regulations; and provides legal advice and assistance to the Office of Investigations.

(5) The Assistant General Counsel for Rulemaking and Fuel Cycle assists the General Counsel in developing and reviewing NRC regulations and guides pertinent to the licensing and construction of nuclear facilities and the use of nuclear materials; represents the NRC staff in public rulemaking hearings; interprets regulations and statutes relevant to NRC activities; provides legal analyses of authorities affecting the NRC.

(6)(i) The Assistant General Counsel for Hearings assists the Deputy General Counsel in the development of legal policy; represents the NRC staff in public hearings conducted in conjunction with the licensing of nuclear users and facilities and assists in the development of legal policy associated with such licensing; and provides advice and consultation to the staff on health and safety and environmental issues arising from the licensing process.

(ii) The Assistant General Counsel for Hearings also represents the NRC staff in public administrative proceedings before the Commission, Atomic Safety and Licensing Appeals Boards, Atomic Safety and Licensing Boards, and administrative law judges in matters relating to antitrust aspects of applications for nuclear facility licenses; provides legal advice regarding NRC antitrust responsibilities; and for operating license antitrust reviews, together with the Antitrust and Economic Analysis Branch of the Office of Nuclear Reactor Regulation, recommends to the appropriate Office Director (Nuclear Reactor Regulation or Nuclear Material Safety and Safeguards) whether or not a finding of significant changes should be made.

(7) The Assistant General Counsel for Enforcement assists the General Counsel and the Deputy General Counsel, as appropriate, in providing legal advice and assistance to the Commission, all Regional Offices, and the Offices of Inspection and Enforcement, Nuclear Material Safety and Safeguards, and Nuclear Reactor Regulation on inspection and enforcement matters; and assist the Deputy General Counsel in advising and representing NRC offices in enforcement proceedings against licensees involving imposition of civil penalties, modifications, suspension or revocation of licenses.

(8) The Assistant General Counsel for Administration assists the General Counsel and the Deputy General Counsel, as appropriate, in providing legal advice and assistance to NRC offices involved in interagency and international agreements, procurement, intellectual property, budget, security, and administrative functions; represents NRC in administrative hearings involving procurement, personnel, personnel security, labor relations, and equal employment opportunity matters.

6. Section 1.40 is amended by removing the words "the Office of the Executive Legal Director," in paragraph (b) and by revising paragraph (n) to read as follows:

§ 1.40 Office of the Executive Director for Operations.

* * * * *

(n) Exercises final determination on appeals under the Freedom of Information Act except for those pertaining to advisory committees, boards, panels, and offices reporting to the Commission.

* * * * *

§ 1.42 [Removed]

7. Section 1.42 is removed and reserved.

§ 1.61 [Amended]

8. In § 1.61, paragraph (e), remove the words "Office of the Executive Legal Director" and add, in their place, the words "Office of the General Counsel".

PART 9—PUBLIC RECORDS

9. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

10. In § 9.3a, paragraph (a) is revised to read as follows:

§ 9.3a Definitions.

As used in this subpart:

(a) "Office", unless otherwise indicated, means all offices and divisions of the NRC reporting to or through the Executive Director for Operations.

* * * * *

§ 9.8 [Amended]

In § 9.8, paragraph (e) introductory text, remove the words "Executive Legal Director" and add, in their place, the words "General Counsel".

§ 9.9 [Amended]

12. In § 9.9, paragraphs (a) and (b), remove the words "Executive Legal Director" and add, in their place, the words "General Counsel".

§ 9.15 [Amended]

13. In § 9.15, paragraph (a), remove the words "and the Office of the Executive Legal Director".

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

14. The authority citation for Part 10 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10450, 3 CFR Parts 1949-1953 COMP., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 COMP., p. 398, as amended; 3 CFR Table 4.

§ 10.5 [Amended]

15. In § 10.5, paragraph (c), remove the words "Executive Legal Director" and add, in their place, the words "General Counsel".

§ 10.22 [Amended]

16. In the introductory paragraph of § 10.22, remove the words "Office of the Executive Legal Director" and add, in their place, the words "Office of General Counsel".

§ 10.24 [Amended]

17. In § 10.24, paragraph (a), remove the words "Executive Legal Director" and add, in their place, the words "the General Counsel".

PART 14—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

18. The authority citation for Part 14 continues to read as follows:

Authority: Sec. 1, 80 Stat. 306 (28 U.S.C. 2672); sec. 2679, 62 Stat. 984, as amended (28 U.S.C. 2679); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); 28 CFR 14.11.

§ 14.15 [Amended]

19. In § 14.15, remove the words "Office of the Executive Legal Director" and add, in their place, the words "Office of the General Counsel".

20. Section 14.33 is revised to read as follows:

§ 14.33 Officials authorized to act.

The General Counsel or the General Counsel's designee shall exercise the authority to adjust, determine, compromise and settle a claim under the provisions of 28 U.S.C. 2672.

§ 14.35 [Amended]

21. In § 14.35, paragraph (b) introductory text, remove the words "Office of the Executive Legal Director" and add, in their place, the words "Office of the General Counsel".

§ 14.51 [Amended]

22. In § 14.51, paragraphs (a) and (b), remove the words "Executive Legal Director" and add, in their place, the words "General Counsel"; and remove paragraph (c).

23. Section 14.53, is revised to read as follows:

§ 14.53 Scope of employment report.

A report containing all data bearing upon the question whether the employee was acting within the scope of his or her office or employment will be furnished by the General Counsel or designee to the United States Attorney for the district encompassing the place where the civil action or proceeding is brought. A copy of the report also will be furnished to the Director of the Torts Branch, Civil Division, Department of Justice, at the earliest possible date, or within the time specified by the United States Attorney.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

24. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

25. In § 51.4, the definition of "NRC Staff director," is revised to read as follows:

§ 51.4 Definitions.

As used in this part:

* * * * *

"NRC Staff Director" means:

Executive Director for Operations;
Director, Office of Nuclear Reactor Regulation;
Director, Office of Nuclear Material Safety and Safeguards;
Director, Office of Nuclear Regulatory Research;
Director, Office of Inspection and Enforcement;
Director, Office of State Programs; and
The designee of any NRC staff director.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

26. The authority citation for Part 110 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 110.89 [Amended]

27. In § 110.89, paragraph (b), remove the words "Executive Legal Director" and add, in their place, the words "General Counsel".

Dated at Bethesda, Maryland, this 29th day of September, 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86-22838 Filed 10-7-86; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Parts 30, 40, and 70

Regional Nuclear Materials Licensing for the United States Air Force

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The NRC is amending its regulation concerning the domestic licensing of source, byproduct, and special nuclear material (collectively referred to as nuclear materials) to provide for further decentralization of the NRC licensing process. This amendment extends to the Region IV Office the same authority for the United States Air Force license as they now possess for nearly all other Federal activities.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, Chief, Material Licensing Branch, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427-4002.

SUPPLEMENTARY INFORMATION: Each year since 1982 (May 27, 1982; 47 CFR 23138) (April 14, 1983; 48 FR 16030) (May 9, 1984; 49 FR 19630) (April 15, 1985; 50 FR 14892), the Nuclear Regulatory Commission (NRC) published rules decentralizing most licensing of nuclear materials. The NRC is amending its regulations to include the United States Air Force license in its decentralization program.

The NRC recently consolidated approximately 70 individual United

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States Air Force licenses into one "master" license with many individual permits. During the consolidation and for a short time after it, Headquarters retained the regulatory authority for the Air Force licensing effort to maintain continuity. NRC Headquarters is now prepared to transfer this authority to the appropriate Regional Office, consistent with a similar delegation which affected nearly all other Federal licenses in 1985.

With respect to licenses issued pursuant to 10 CFR Part 30 through 35, 40, and 70, revisions to 10 CFR 30.6, 40.5 and 70.5 would require the Air Force to contact the appropriate Regional office, rather than NRC Headquarters offices, for license applications, renewals, and revisions. This action now incorporates the U.S. Air Force license into the NRC Regional materials licensing program.

The only Federal licensee not included in the decentralization program is the United States Navy. Navy submittals under Parts 30 through 35, 40 and 70 will continue to be sent to the Office of Nuclear Material Safety and Safeguards (NMSS). These licenses have not been included because the Navy is currently in the process of submitting a proposal for a "master" materials license with the NRC, which would, if approved, consolidate over one hundred individual licenses into one license. Following this consolidation, it is intended that the licensing authority for the Navy also will be delegated to the appropriate Region.

Delegations of authority to the Regional Administrator are contained in NRC Manual Chapter 0128. The changes to §§ 30.6, 40.5, and 70.5 are nonsubstantive amendments. The revised sections indicate the type of licensing authority delegated to the Regional Administrator.

Because these are amendments dealing with Agency practice, procedure, and organization, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective October 1, 1986. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with a matter of Agency practice that for administrative convenience should begin with a new fiscal year.

Environmental Impact—Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(i). Accordingly, pursuant to 10 CFR 51.22(b), neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C.3501 et seq.). existing requirements were approved by the Office of Management and Budget approval numbers 3150–0017 for Part 30, 3150–0016 for Part 31, 3150–0001 for Part 32, 3150–0015 for Part 33, 3150–0007 for Part 34, 3150–0010 for Part 35, 3150–0020 for Part 40, and 3150–0009 for Part 70.

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, and Uranium.

10 CFR Part 70

Hazardous materials-transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Parts 30, 40, and 70 are published as a document subject to codification.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.34 (b) and (c), 30.41 (a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.36, 30.51, 30.52, 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.6, paragraphs (b)(2) (i), (ii), (iii), (iv), and (v) are amended by changing the phrase, "With the exception of the United States Air Force and Navy . . . ." to read "With the exception of the United States Navy . . ." Also, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 30.6 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR Parts 30 through 35, 40, and 70 to all persons except the United States Navy for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extracting of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) Distribution of products containing radioactive material to persons exempt pursuant 10 CFR 32.11 through 32.26.

(v) New uses or techniques for use of byproduct, source, or special nuclear material.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35(a)–(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.5, 40.25 (c), (d) (3), and (4), 40.28(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.5, paragraphs (b)(2) (i), (ii), (iii), (iv), and (v) are amended by changing the phrase, "With the exception of the United States Air Force and Navy . . . ." to read "With the exception of the United States Navy . . . ." Also, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 40.5 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR Parts 30 through 35, 40, and 70 to all persons except the United States Navy for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extracting of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) distribution of products containing radioactive material to persons exempt pursuant 10 CFR 32.11 through 32.26.

(v) New uses or techniques for use of byproduct, source, or special nuclear material.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. The authority citation for Part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32 (a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended 42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), and 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k), and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 70.5, paragraphs (b)(2) (i), (ii), (iii), (iv), and (v) are amended by changing the phrase, "With the exception of the United States Air Force and Navy . . . ." to read "With the exception of the United States Navy . . . ." Also, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 70.5 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR Parts 30 through 35, 40, and 70 to all persons except the United States Navy for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extracting of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) Distribution of products containing radioactive material to persons exempt pursuant 10 CFR 32.11 through 32.26.

(v) New uses or techniques for use of byproduct, source, or special nuclear material.

* * * * *

Dated at Bethesda, MD, this 26th day of September, 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86–22840 Filed 10–7–86; 8:45 am]

BILLING CODE 7590–01–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-114-AD; Amdt. 39-5439]

Airworthiness Directives; Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Boeing Model 707/720 airplanes. The existing AD requires inspection and repair, as necessary of Significant Structural Details (SSD) as described in the manufacturer's Supplemental Structral Inspection Document (SSID). Since the issuance of the AD, the manufacturer has revised the 707/720 Supplemental Structural Inspection Document to expand the sample size and revise certain inspection thresholds; this amendment incorporates those revisions. This action is necessary to improve the information provided by the SSID program for identification and evaluation of unsafe conditions.

EFFECTIVE DATE: November 14, 1986.

ADDRESSES: The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Perrella Airframe Branch ANM-120S; telephone (206) 431-1922. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend AD 85-12-01, which requires inspection and repair, as necessary, of Significant Structural Details (SSD), as specified in the manufacturer's Supplemental Structural Inspection Document (SSID) D6-44860, Revision M, was published in the **Federal Register** on June 4, 1986 (51 FR 20304). The comment period of the proposal closed on July 28, 1986.

Interested parties have been afforded an opportunity to participate in the making of this AD. Due consideration has been given to the one comment received, which supported the proposal.

After careful review of the available data, including the one comment previously mentioned, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 18 airplanes of U.S. registry and 9 U.S. operators will be affected by this AD, that approximately 100 manhours will be required to incorporate these revisions into a typical operator's maintenance program, and that the average labor charge will be $40 per manhour. Based on these figures, the costs impact of this AD to U.S. operators is estimated to be $36,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 707/720 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

2. By amending Airworthiness Directive 85-12-01, Amendment 39-5073 (50 FR 26690; May 20, 1985), by revising paragraphs A., B., and C. to read as follows:

A. Within 180 days after the effective date of the amendment, incorporate a revision into the FAA-approved maintenance inspection program which requires accomplishment of the inspection and repairs, as necessary, of each Significant Structural Detail (SSD) as listed in Boeing Document D6-44860, Supplemental Structural Inspection Document (SSID), Revision M, or later FAA-approved revision. The revision to the maintenance program must include procedures to notify the manufacturer when SSD's are found cracked. The inspection thresholds, repetitive inspection intervals, inspection techniques, and terminating action for each SSD are listed in the SSID. Incorporate this revision to the maintenance program in accordance with paragraphs B., C., and D., below.

B. The increase of inspection intervals in accordance with Section 5.2 of Boeing Document D6-44860, Revision M, is not permitted, except as provided in paragraphs F. and G., below.

C. Inspect each Significant Structural Detail (SSD) which has exceeded the initial threshold specified in Boeing Document D6-44860, Revision M, within 180 days after the effective date of this amendment. Significant Structural Details which are below the inspection thresholds specified in Boeing Document D6-44860, Revision M, must have an initial inspection within 180 days after the effective date of this amendment or prior to reaching the threshold, whichever is later. Accomplish these inspections in accordance with Boeing Document D6-44860, Revision M, or later FAA-approved revisions.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 14, 1986.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22739 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-138-AD; Amdt. 39-5437]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which supersedes an existing AD that requires inspection and replacement, as necessary, of the nacelle strut midspar fuse pins, on certain Boeing Model 747 series airplanes. This action is prompted by a recent investigation which revealed that the inspection techniques required by the existing AD are inadequate to find cracking on a consistent basis. This action is necessary since a pin failure, if not corrected, could result in separation of the engine from the airplane.

EFFECTIVE DATES: November 14, 1986.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for, and subsequent repair of, cracked nacelle strut midspar fuse pins was published in the **Federal Register** on July 1, 1986 (51 FR 23786). The comment period for the proposal closed on August 22, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment which was received.

The Air Transport Association (ATA) of America, on behalf of its members, stated that, while the proposed inspection may take only 12 to 16 manhours per airplane to accomplish, an operator cannot schedule this inspection on the assumption that all fuse pins will be found to be crack free. Pin replacement requires that the engine be removed and the pylon shored. Therefore, operators are scheduling this inspection only at their main bases, where the proper ground support and equipment is available. The ATA has requested that the compliance time be changed from 10 to 30 days so that operators will have an adequate time-1 frame to which to schedule their airplanes for the inspection at main bases. The FAA has considered this information and has determined that safety would not be compromised if the initial compliance time is changed from 10 to 30 days. The final rule has been revised to reflect this.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 155 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $49,600.

For the reason discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291, or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, certificated in any category, listed in Boeing Service Bulletin 747-54-2063, Revision 4, dated June 6, 1986.

To prevent failure of nacelle strut midspar fuse pins, accomplish the following, unless previously accomplished:

A. Prior to the accumulation of 12,000 flight hours, or within 30 days after the effective date of this AD, whichever occurs, later, perform an ultrasonic or eddy current inspection for cracks in the fuse pins in accordance with Boeing Service Bulletin 747-54-2063, Revision 4, dated June 6, 1986, or later FAA-approved revisions.

B. Repeat the inspections required by paragraph A., above, thereafter at intervals not to exceed 2,500 flight hours until terminating action in accordance with paragraph E., below, is accomplished.

C. Replace cracked fuse pins prior to further flight in accordance with Boeing Service Bulletin 747-54-2063, Revision 4, dated June 6, 1986, or later FAA-approved revisions.

D. Coat inside surface of the pins with organic corrosion-preventive compound (BMS 3-23), or equal, after each inspection. If corrosion exists, remove in accordance with the Boeing Corrosion Prevention Manual, Document D6-41910, Part III, 747 Corrosion Control, 54-10-47.

E. Installation of the new fuse pin design configuration in accordance with Boeing Service Bulletin 747-54-2063, Revision 1, dated August 13, 1981, or later FAA-approved revision, constitutes terminating action for the requirements of this AD.

F. An alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This supersedes AD 79-17-04, Amendment 39-3528, as amended by Amendments 39-4335 and 39-4973.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 14, 1986.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22736 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-193-AD, Amdt. 39-5440]

Airworthiness Directives; DeHavilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends an existing airworthiness directive, applicable to DeHavilland DHC-8-101 series airplanes, which requires flight manual limitations to prohibit takeoff, landing, and climb in the vicinity of lighting and thunderstorms, and also

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requires use of continuous ignition. This action is prompted by reports of ignitor failures, which have been determined to be caused by the continuous ignition requirements of the existing AD. This condition, if not corrected, could detrimentally affect inflight engine restart capability. This amendment requires the use of continuous ignition only when operating under certain conditions. This amendment also revises the applicability of the existing AD to include all Model DHC-8-100 series airplanes.

EFFECTIVE DATE: October 27, 1986.

ADDRESS: The applicable service information may be obtained upon request to The DeHavilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Murry Schoenberger, FAA, New England Region, New York Aircraft Certification Office, Propulsion Branch (ANE-174), 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: On July 18, 1985, FAA issued telegraphic AD 85-14-51, Amendment 39-5185 (50 FR 51236; December 26, 1985), to impose flight manual limitations to restrict operation of DeHavilland Model DHC-8-101 series airplanes in the vicinity of lightning or thunderstorms, and to require continuous ignition operation during every takeoff, takeoff climb to 1500 feet above ground level (AGL), final approach, and landing. Transport Canada, which is the civil airworthiness authority for Canada, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist in DeHavilland Model DHC-8-100 series airplanes. There have been reports of numerous ignitor failures due to continuous usage required by AD 85-14-51. Since each engine has two ignitors, failure of both ignitors would result in the inability to restart the engine following an inflight flame-out.

Transport Canada has revised its Airworthiness Directive CF-85-06, which corresponds to U.S. AD 85-14-51, to require the use of continuous ignition only when operating below 1500 feet AGL in the vicinity of any storm cloud formations. Transport Canada has determined that the critical area relating to lightning is the vicinity of the takeoff climb path, rather than the entire vicinity of the airport, and has also revised its AD to prohibit takeoff when thunderstorms or lightning are in the vicinity of the takeoff climb path of the airplane.

Subsequent to the issuance of AD 85-14-51, the DeHavilland Model DHC-8-102, a new variant of the DHC-8-100 series, was type certificated. The unsafe conditions addressed in the original AD also exist with respect to this new model.

Since this condition is likely to exist or develop on airplanes of the same type design registered in the United States, this action amends AD 85-14-51 to expand the applicability to include all DHC-8-100 series airplanes; to prohibit takeoff when thunderstorms or lightning, or any weather conditions what might result in lightning or static discharge, are within 5 nautical miles of the takeoff climb path of the airplane; and to require that continuous ignition be used when operating below 1500 feet AGL within 5 nautical miles of any thunderstorms or lightning, or any weather conditions that might result in lightning or static discharge.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 85-14-51, Amendment 39-5185 (50 FR 51236; December 26, 1985), as follows:

A. Revise the company name and applicability as follows:

The DeHavilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.: Applies to all Model DHC-8-100 series airplanes, certificated in any category.

1. Revise subparagraphs A.1. and A.2. as follows:

1. To preclude unacceptable loss of power during critical phases of flight, takeoff is prohibited when lightning or thunderstorms are observed or reported within 5 nautical miles of the takeoff climb path of the airplane, or when existing weather conditions may reasonably be expected to result in a lightning strike or static discharge.

2. Operating with engine ignition selected to manual is required when operating below 1500 feet AGL within 5 nautical miles of any observed or reported lightning or thunderstorms, or any weather condition that may reasonably be expected to result in a lightning strike or static discharge.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to The DeHavilland Aircraft Company of Canada, a Division of Boeing Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective October 27, 1986.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22740 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-123-AD; Amdt. 39-5438]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -30, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, that requires radiographic (X-ray) inspections of the auxiliary emergency exit door shear pin fitting assemblies. This amendment is necessary to revise the existing applicability statement to limit the AD's applicability, and provide a modification that constitutes terminating action for the repetitive inspection requirements of the AD.

DATES: Effective November 14, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6321.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend Airworthiness Directive (AD) 80-02-16 to revise the applicability and provide a terminating modification, was published in the **Federal Register** on June 3, 1986 (51 FR 21565). The comment period for the proposal closed August 4, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter supported the AD, but suggested that, as a practical matter, the optional terminating action is not likely to be accomplished because of the high cost of door replacement. FAA agrees; however, it does provide operators an alternative means of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adoption of the rule as proposed.

It is estimated that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD to U.S. operators is estimated to be $16,680.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 80-02-16, Amendment 39-3674 (45 FR 5669; January 24, 1980), as follows:

A. Revise the applicability statement to read:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -30 and C-9 (Military) series airplanes, Fuselage Numbers 1 through 735, certificated in any category, equipped with the aft pressure bulkhead auxiliary emergency exit door (P/N 5910367).

B. Re-identify paragraphs D. through F. as E. through G., respectively. Add a new paragraph D. to read as follows:

D. Accomplishment of modification in accordance with McDonnell Douglas DC-9 Service Bulletin 52-117, R1, dated October 8, 1982, or later FAA-approved revisions, constitutes terminating action for the repetitive inspection requirements of this AD.

All persons affected by this directive who have not already received the appropriate documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach California.

This Amendment becomes effective November 14, 1986.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22736 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-29-AD; Amdt. 39-5436]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes, Fuselage Numbers 1218 through 1249

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires the removal and replacement of four horizontal stablizer actuator mounting bolts on McDonnell Douglas Model DC-9-80 series airplanes. This AD is prompted by reports of over-torqued horizontal stabilizer actuator mounting bolts. The failure of these bolts could result in the loss of horizontal stabilizer trim effectiveness and control.

DATES: Effective November 14, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South,

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Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require the removal and replacement of four horizontal stabilizer actuator mounting bolts on certain McDonnell Douglas DC-9-80 series airplanes was published in the Federal Register on May 12, 1986 (51 FR 17362). The comment period for the proposal closed June 30, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter suggested that the compliance time for the final rule should be changed to read, "prior to 30 January 1987," in lieu of "1,400 hours time in service, or within 6 months, whichever occurs earlier," as stated in the proposed compliance time referenced in the NPRM. The commenter further advises that any other action would be "unnecessarily restrictive." The FAA disagrees, and considers the compliance time appropriate. This is based upon the acticipated effective date of this rule, and a survey of operators which indicates that the proposed compliance schedule can be reasonably accommodated within existing inspection time frames. The commenter also suggested that several editorial changes be made to clarify portions of the applicability statement and economic impact analysis. The comments do not significantly affect the intent of the proposed rule. Therefore, the FAA concurs and the suggested changes have been incorporated in this AD, as appropriate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted.

It is estimated that 22 airplanes (4 units per airplane) of U.S. registry will be affected by this AD, that it will take approximately 11 manhours per airplane to accomplish the required action, and the average labor cost will be $40 per manhour. Based on these figures, the toal cost impact of the AD on U.S. operators is estimated to be $9,680.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11033; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9-80 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-80 series airplanes, Fuselage Numbers 1218 through 1249, certificated in any category. Compliance required as indicated unless previously accomplished.

To prevent potential stress corrosion failure of the horizontal stabilizer actuator mounting bolts and subsequent damage to adjacent structure, within 1,400 hours time in service, or within 6 months, whichever occurs earlier, after the effective date of this AD, accomplish the following, unless already accomplished:

A. Remove and replace horizontal stabilizer actuator mounting bolts, left and right sides, in accordance with Paragraph 2, Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 27-278, dated April 3, 1986.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to a base to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective November 14, 1986.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22737 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-64]

Staff Accounting Bulletin No. 64

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This Staff Accounting Bulletin expresses the staff's views regarding: (a) Applicability of guidance contained in Staff Accounting Bulletins, (b) reporting of income or loss applicable to common stock, (c) accounting for redeemable preferred stock (amending Topic 3.C.), and (d) issuances of shares prior to an initial public offering (amending Topic 4.D.).

DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Wayne G. Pentrack, Office of the Chief Accountant (202-272-2130) or Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering

the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

October 2, 1986.

Staff Accounting Bulletin No. 64

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 64 to the Table found in Subpart B.

The staff hereby adds the following to the Staff Accounting Bulletin Series:

(a) Topic 6.B.1., regarding the reporting of income or loss applicable to common stock; and

(b) Topic 6.C.1., regarding applicability of guidance contained in Staff Accounting Bulletins.[1]

Also, the staff hereby amends the following in the Staff Accounting Bulletin Series:

(a) Topic 3.C., regarding accounting for redeemable preferred stock; and

(b) Topic 4.D., regarding issuances of shares prior to an initial public offering.

Topic 3: Senior Securities

* * * * *

C. Redeemable Preferred Stock

Facts: Rule 5-02.28 of Regulation S-X states that redeemable preferred stocks are not to be included in amounts reported as stockholders' equity, and that their redemption amounts are to be shown on the face of the balance sheet. However, the Commission's rules and regulations do not address the carrying amount at which redeemable preferred stock should be reported, or how changes in its carrying amount should be treated in calculations of earnings per share and the ratio of earnings to combined fixed charges and preferred stock dividends.

Question 1: How should the carrying amount of redeemable preferred stock be determined?

Interpretive Response: The initial carrying amount of redeemable preferred stock should be its fair value at date of issue. Where fair value at date of issue is less than the mandatory redemption amount, the carrying amount shall be increased by periodic accretions, using the interest method, so that the carrying amount will equal the mandatory redemption amount at the mandatory redemption date. The carrying amount shall be further periodically increased by amounts representing dividends not currently declared or paid, but which will be payable under the manadatory redemption features, or for which ultimate payment is not solely within the control of the registrant (e.g., dividends that will be payable out of future earnings). Each type of increase in carrying amount shall be effected by charges against retained earnings or, in the absence of retained earnings, by charges against paid-in capital.

The accounting described in the preceding paragraph would apply irrespective of whether the redeemable preferred stock may be voluntarily redeemed by the issuer prior to the mandatory redemption date, or whether it may be converted into another class of securities by the holder.

Question 2: How should periodic increases in the carrying amount or redeemable preferred stock be treated in calculations of earnings per share and ratios of earnings to combined fixed charges and preferred stock dividends?

Interpretive Response: Each type of increase in carrying amount described in the Interpretive Response to Question 1 should be treated in the same manner as dividends on nonredeemable preferred stock.

Topic 4: Equity Accounts

* * * * *

D. Cheap Stock

Facts: A registration statement is filed in connection with an initial public offering ("IPO") of common stock. During the periods covered by income statements that are included in the registration statement, the registrant had issued common stock at prices substantially below the IPO price (referred to as "cheap stock"), and had issued common stock warrants, options, and other potentially dilutive instruments with exercise prices substantially below the IPO price (referred to collectively as "cheap warrants").

Question: In computing earnings per share, what treatment is appropriate for cheap stock and cheap warrants?

Interpretive Response: Except as discussed in the following paragraph, cheap stock and cheap warrants should be treated as outstanding for the entirety of all reported periods, in the same manner as shares issued in a stock split or a recapitalization effected contemporaneously with an IPO. The staff believes that this departure from the computational guidelines of APB Opinion No. 15 (i.e., use of weighted average shares outstanding) is necessary because of the relatively small consideration typically received for cheap stock and cheap warrants.

However, the staff will not normally insist on treating these instruments as outstanding prior to their issuance if: (a) The registrant can demonstrate that the instruments were issued for their estimated fair value on the dates issued (or, regarding shares issued upon exercise of warrants, that the respective warrants had been issued for their estimated fair value on the dates they were issued), and (b) the instruments were not issued in contemplation of a public offering. Regarding criterion (b), the staff will generally presume that stock and warrants issued within one year of an IPO were issued in contemplation of the IPO.

For example, the staff did not object to computation of earnings per share on the basis of the weighted average shares outstanding in a case where shares were issued in a private placement eighteen months prior to an IPO, at which time the issuer was not contemplating a public offering. Although those shares were sold at a price approximately 25% below the subsequent IPO price, the sales price had been estimated with the assistance of two independent investment bankers to be the fair value of the shares at that time, in consideration of their limited marketability. If, however, those shares had been issued in contemplation of an IPO, the staff would have insisted upon treating the shares as outstanding for all reported periods because the fair value of the shares would have been expected to increase upon development of a market for the shares.

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Topic 6: Interpretations of Accounting Series Releases

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B. Accounting Series Release No. 280—General Revision of Regulation S-X

1. Income or loss applicable to common stock.

Facts: A registrant has various classes of preferred stock. Dividends on those preferred stocks and accretions of their carrying amounts cause income applicable to common stock to be less than reported net income.

Question: In ASR No. 280, the Commission stated that although it has determined not to mandate presentation of income or loss applicable to common stock in all cases, it believes that disclosure of that amount is of value in certain situations. In what situations should the amount be reported, where

[1] Previous staff publications (most recently, SAB No. 40) have expressed the staff's intent regarding applicability of guidance contained in SABs, although not within the codification of SAB topics. The staff is hereby adding Topic 6.C.1. to emphasize this intent.

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should it be reported, and how should it be computed?

Interpretive Response: Income or loss applicable to common stock should be reported on the face of the income statement when it is materially different in quantitative terms from reported net income or loss [2] or when it is indicative of significant trends or other qualitative considerations. The amount to be reported should be computed for each period as net income or loss less: (a) dividends on preferred stock, including undeclared or unpaid dividends if cumulative; and (b) periodic increases in the carrying amounts of instruments reported as redeemable preferred stock (as discussed in Topic 3.C.).

C. Accounting Series Release No. 180—Institution of Staff Accounting Bulletins (SABs)

1. Applicability of Guidance Contained in SABs.

Facts: The series of SABs was instituted to achieve wide dissemination of administrative interpretations and practices of the Commission's staff. In illustration of certain interpretations and practices, SABs may be written narrowly to describe the circumstances of particular matters which resulted in expression of the staff's views on those particular matters.

Question: How does the staff intend SABs to be applied in circumstances analogous to those addressed in SABs?

Interpretive Response: The staff's purpose in issuing SABs is to disseminate guidance for application not only in the narrowly described circumstances, but also, unless authoritative accounting literature calls for different treatment, in other circumstances where events and transactions have similar accounting and/or disclosure implications.

Registrants and independent accountants are encouraged to consult with the staff if they believe that particular circumstances call for accounting and/or disclosure different from that which would result from application of a SAB addressing those same or analogous circumstances.

[FR Doc. 86-22763 Filed 10-7-86; 8:45 am]
BILLING CODE 8010-01-M

[2] The assessment of materiality is the responsibility of each registrant. However, absent concerns about trends or other qualitative considerations, the staff generally will not insist on the reporting of income or loss applicable to common stock if the amount differs from net income or loss by less than ten percent.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 2]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Adjunctive Dental Benefit

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule will revise DoD 6010.8-R (32 CFR Part 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The rule will allow for payment of dental care when perfomed in preparation for medical treatment of a disease or disorder or required as the result of iatrogenic dental trauma or complications caused by medically necessary treatment of an injury or a disease.

EFFECTIVE DATE: This amendment will be effective October 8, 1986.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Policy Branch, OCHAMPUS, Aurora, Colorado 80045, Telephone (303) 361-8608.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of the title. 32 CFR Part 199 (DoD 6010.8-R) was reissued on July 11, 1986 (51 FR 24008).

In FR Doc. 86-4329 appearing in the **Federal Register** on February 28, 1986, (51 FR 7089), the Office of the Secretary of Defense published for public comments a proposed amendment allowing for payment of dental care performed in preparation for or as a result of trauma caused by the treatment of an otherwise covered medical condition. As a result of the publication, only one comment was received.

This commentor felt that genetic or developmental anomalies of the face, jaws and teeth requiring dental treatment for correction should be covered under this amendment. Genetic or congenital anomalies of the teeth and their supporting structures are strictly dental in nature and as such could not be covered under the revised benefit interpretation. This amendment only expands the adjunctive dental benefit to allow for care required in preparation for or as a result of dental trauma caused by the treatment of an otherwise covered medical (not dental) condition. Paragraph (e)(10)(i)(*c*) of § 199.10 allows the program flexibility for incorporating rare or unusual conditions identified as meeting this interpretation. The list of conditions are only used to further define the general implementing provisions of the adjunctive dental care benefit. Coverage is still limited by the benefit definition and general exclusions.

Our previous interpretation of the regulatory implementation of section 1079(1) of Chapter 55, Title 10, United States Code limited payment to the dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition, and is essential to the control of the primary medical condition. This specifically excluded restoration of teeth and their supporting structures when injured or affected during the medical or surgical management of the medical condition.

In a final appeal decision the Assistant Secretary of Defense (Health Affairs) determined that this interpretation had unduly narrowed the intent of the adjunctive dental care benefit and that CHAMPUS should include cost sharing of medically necessary adjunctive care when performed in preparation for or as a result of trauma caused by the medically necessary treatment of an injury or disease. Dental care undertaken solely for the purpose of mitigating the consequences of the damage which may be caused by necessary medical treatment of an injury or a disease should be considered an integral part of the treatment of the medical condition rather than simply a preventative measure. Preventative care is defined as that care usually consisting of relatively benign measures which have a neutral or beneficial effect on the general health of the patient.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulation which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation will not have a significant economic impact on a substantial number of small businesses, organizations or government jurisdictions.

We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended to read as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.2 is amended by adding definitions for "adjunctive dental care" and "dental care" in the proper alphabetical order to paragraph (b) as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Adjunctive dental care. Dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition and is essential to the control of the primary medical condition; or, is required in preparation for or as the result of dental trauma which may be or is caused by medically necessary treatment of an injury or disease (iatrogenic).

* * * * *

Dental care. Services relating to the teeth and their supporting structures.

* * * * *

3. Section 199.4 is amended by revising paragraphs (e)(10)(i), (e)(10)(ii) and the Note following paragraph (e)(10)(iv)(H) to read as follows:

§ 199.4 [Amended]

* * * * *

(e) * * *

(10) * * *

(i) *Adjunctive dental care: Limited.* Adjunctive dental care is limited to those services and supplies provided under the following conditions:

(A) Dental care which is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition and is essential to the control of the primary medical condition. The following is a list of conditions for which CHAMPUS benefits are payable under this provision:

(*1*) Intraoral abscesses which extend beyond the dental alveolus.

(*2*) Extraoral abscesses.

(*3*) Cellulitis and osteitis which is clearly exacerbating and directly affecting a medical condition currently under treatment.

(*4*) Removal of teeth and tooth fragments in order to treat and repair facial trauma resulting from an accidental injury.

(*5*) Myofacial Pain Dysfunction Syndrome.

(*6*) Total or complete ankyloglossia.

(*7*) Adjunctive dental and orthodontic support for cleft palate.

(*8*) The prosthetic replacement of either the maxilla or the mandible due to the reduction of body tissues associated with traumatic injury (e.g., impact, gun shot wound), in addition to services related to treating neoplasms or iatrogenic dental trauma.

Note.—The test of whether dental trauma is covered is whether the trauma is solely dental trauma. Dental trauma, in order to be covered, must be related to, and an integral part of medical trauma; or a result of medically necessary treatment of an injury or disease.

(B) Dental care required in preparation for medical treatment of a disease or disorder or required as the result of dental trauma caused by the medically necessary treatment of an injury or disease (iatrogenic).

(*1*) Necessary dental care including prophylaxis and extractions when performed in preparation for or as a result of in-line radiation therapy for oral or facial cancer.

(*2*) Treatment of gingival hyperplasia, with or without periodontal disease, as a direct result of prolonged therapy with Dilantin (diphenylhydantoin) or related compounds.

(C) Dental care is limited to the above and similar conditions specifically prescribed by the Director, OCHAMPUS, as meeting the requirements for coverage under the provisions of this section.

(ii) *General Exclusions.*

(A) Dental care which is routine, preventative, restorative, prosthodontic, periodontic or emergency does not qualify as adjunctive dental care for the purposes of CHAMPUS except when performed in preparation for or as a result of dental trauma caused by medically necessary treatment of an injury or disease.

(B) The adding or modifying of bridgework and dentures.

(C) Orthodontia, except when directly related to and an integral part of the medical or surgical correction of a cleft palate or when required in preparation for, or as a result of, trauma to the teeth and supporting structures caused by medically necessary treatment of an injury or disease.

* * * * *

Note.—Extraction of unerupted or partially erupted, malposed or impacted teeth, with or without the attached follicular or development tissues, is not a covered oral surgery procedure except when the care is indicated in preparation for medical treatment of a disease or disorder or required as a result of dental trauma caused by the necessary medical treatment of an injury or illness. Surgical preparation of the mouth for dentures is not covered by CHAMPUS.

* * * * *

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
October 3, 1986.

[FR Doc. 86-22770 Filed 10-7-86; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Charleston S.C. Regulation 86-01]

Safety Zone Regulations; Charleston Harbor, SC

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a moving safety zone consisting of an area 500 yards from an operation involving a flying Navy helicopter and a surface or subsurface barge towed up to 400 yards astern the helicopter. The zone is needed to protect civilian craft from the safety hazards associated with winds and collision potential generated by the towing operation. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 8 October 1986. It terminates on 17 October 1986 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Mark Johnson at (803) 724-4128.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NRPM and delaying its effective date would be contrary to the public interest since immediate action is

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needed to respond to the hazards to civilian craft from this towing operation.

Drafting Information

The drafters of this regulation are LT Mark Johnson, project officer for the Captain of the Port, and LCDR Stan Fuger, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The events requiring this regulation will occur intermittantly between 6 October 1986 and 17 October 1986. These operations involve large Navy helicopters at flight altitudes of 100 feet or less, towing surface and subsurface devices at speeds up to 25 knots. Helicopters may be identified by a rotating amber position light on centerline on main hull flashing 90 times per minute. An area of hurricane force winds exists within a 250 foot radius around these helicopters, sufficient to capsize small craft. The towed devices may be completely submerged and include large cables on or just below the surface streaming up to 1,200 feet behind the aircraft. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all or Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225, 1231; 50 U.S.C. 191; 49 CDR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0745 is added to read as follows:

§ 165.T0745 Safety Zone: Charleston Habor, Charleston, South Carolina

(a) *Location.* The following area is a safety zone: that area 500 yards in all directions from an operation involving a flying Navy helicopter and a surface or subsurface barge towed up to 400 yards astern the helicopter.

(b) *Effective date.* This regulation becomes effective on 6 October 1986. It terminates on 17 October 1986 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) Vessels found in violation of the safety zone will be hailed by authorized patrol craft. Once hailed a vessel will follow the instructions given by the hailing craft.

(3) Operations will occur intermittently.

Dated: 1 October, 1986.

CDR J.R. Townley, Jr.,

MSD Charleston.

[FR Doc. 86–22790 Filed 10–7–86; 8:45 am]

BILLING CODE 4910–14–M

PANAMA CANAL COMMISSION

35 CFR Part 105

Pilotage; Status and Function of Transit Advisors

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission is amending its regulations in Title 35, Code of Federal Regulations, Part 105, Pilotage, by adding a new paragraph concerning the status and function of transit advisors in the Panama Canal. This change makes it clear that the Canal Commission's liability for damages to small vessels under the guidance of a transit advisor is limited to $50,000, in accordance with section 2 of the Panama Canal Admendments Act of 1985, Pub. L. 99–209, 99 Stat. 1716, which amended section 1411 of the Panama Canal Act of 1979, Pub. L. 96–70, 93 Stat. 452 (22 U.S.C. 3771).

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone: (202) 634–6441, or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011–507–52–7511.

SUPPLEMENTARY INFORMATION: On June 24, 1986, a notice of proposed rulemaking was published in the **Federal Register** (51 FR 22947) setting forth proposed regulations covering the status and function of transit advisors in the Panama Canal. Interested parties were given the opportunity to submit comments by July 24, 1986. The only comment received concerned the liability for damage to small vessels. The matter of damage awards in these cases is fixed by statute and, consequently, it was determined that the proposal—which is directed solely to the question of defining transit advisors and their responsibilities—will remain unchanged at this time.

By way of background, on December 23, 1985, President Reagan signed into law the Panama Canal Amendments Act of 1985, Pub. L. 99–209, 99 Stat. 1716, which amended the Panama Canal Act of 1979, Pub. L. 96–70. 93 Stat. 452. In particular, a subsection (b) was added to section 1411 of the 1979 Act (22 U.S.C. 3771) concerning those vessels whose navigation and movement in the locks are not under the control of a Panama Canal pilot. As amended, section 1411 limits the Commission's liability for damage to these vessels to $50,000.

Accordingly, the Canal Commission is now defining the status and function of Canal Commission transit advisors, who are assigned to act in an advisory capacity aboard vessels in lieu of a Panama Canal pilot, by adding a new § 105.7, to Part 105. In addition, § 105.1(a), "Pilots Required", is revised to refer to § 105.7. Section 105.1 requires all vessels, with certain exceptions, to use a Canal Commission pilot. The reference to § 105.7 will except from this requirement vessels carrying transit advisors.

The Canal Commission currently uses transit advisors on certain small vessels, and this provision is not intended to change that procedure. Transit advisors are not licensed pilots, and this amendment is intended to emphasize the distinction between pilots and transit advisors and define, for the first time, the function of the latter.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented would not have an annual effect on the economy of $100 million or more per year, and secondly, that the rule would not result in a major increase in costs or prices for consumers, individual industries, local governmental agencies or geographic regions. Further, the agency has determined that implementation of the rule will have no adverse effect on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, the Commission has determined that this rule is not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Part 105

Panama Canal, Vessels, Navigation.

PART 105—PILOTAGE

1. The authority citation for Part 105 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3811, E.O. 12215, 45 FR 36043.

2. Section 105.1 is amended by revising paragraph (a) to read as follows:

§ 105.1 Pilots required.

(a) Except as provided by §§ 105.2, 105.3, and 105.7 or by paragraph (c) of this section, no vessel shall pass through, enter or leave the Canal, or maneuver in the Canal or waters adjacent thereto, including the ports of Cristobal and Balboa, without having a Panama Canal pilot on board.

* * * * *

3. Part 105 is amended by adding § 105.7 to read as follows:

§ 105.7 Status and function of transit advisor.

Vessels less than 20 meters in length, except those described in § 105.2 (a) and (b), will be assigned a Panama Canal Commission transit advisor in lieu of a Panama Canal pilot. The transit advisor will function as an advisor, whose presence is necessary to provide comprehensive local knowledge of the Canal operating area and procedures for an efficient and safe transit.

Dated: September 15, 1986.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 86–22741 Filed 10–7–86; 8:45 am]

BILLING CODE 3640–04–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 36

Fish and Wildlife Service

50 CFR Part 36

National Park Service

36 CFR Part 13

Bureau of Land Management

Transportation and Utility Systems In and Across, and Access Into, Conservation System Units in Alaska; Correction

AGENCY: Department of the Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects a technical error which appeared in the **Federal Register** on September 4, 1986 (51 FR 31619). The following correction is being made.

1. The first sentence in the third full paragraph in this first column on page 31625 which reads, "Upon consideration of these comments, Interior has determined that the proposed regulation will be changed in the final rule." is revised to read as follows:

Upon consideration of these comments, Interior has determined that the proposed regulation will be unchanged in the final rule."

FOR FURTHER INFORMATION CONTACT: Nancy Marx, Division of Refuges, FWS, at (202) 343–3922.

Dated: October 2, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–22780 Filed 10–7–86; 8:45 am]

BILLING CODE 4310–55–M

Office of the Secretary

43 CFR Part 36

Fish and Wildlife Service

50 CFR Part 36

National Park Service

36 CFR Part 13

Bureau of Land Management

Transportation and Utility Systems In and Across, and Access Into, Conservation System Units in Alaska

Correction

In FR Doc. 86–19734 beginning on page 31619 in the issue of Thursday, September 4, 1986, make the following corrections:

1. On page 31628, in the first column, in the first complete paragraph, in the fourteenth line, after "laws" insert "into".

§ 36.11 [Corrected]

2. On page 31633, in § 36.11, in the third column, the paragraph designated "(9)" is correctly designated "(g)".

3. On page 31634, in § 36.11(h)(4)(i), in the tenth line, "or" should read "on".

§ 36.13 [Corrected]

4. On page 31635, in § 36.13(c)(3), in the first column, in the last line, "§ 36.36" should read "§ 36.6".

BILLING CODE 1505–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–7–FRL–3091–8]

Approval and Promulgation of State Implementation Plans; Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice advises the public that EPA is approving an amendment to the Missouri Air Pollution Control Regulations as a revision to the Missouri State Implementation Plan (SIP). The purpose of this revision is to reduce volatile organic compound (VOC) emissions from the refueling of motor vehicles. The reduction of VOC emissions is required under the Clean Air Act to reduce ozone levels in the St. Louis ozone nonattainment area.

EFFECTIVE DATE: This action will be effective November 7, 1986.

ADDRESSES: Copies of the state submission, public comments, and EPA's technical evaluation are available at the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Missouri Department of Natural Resources, Air Pollution Control Program, 101 Jefferson Street, Jefferson City, Missouri 65101. A copy of the state's submission is also available at the Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC, and the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Deann K. Hecht (913) 236–2893, FTS 757–2893.

SUPPLEMENTARY INFORMATION: On June 17, 1986 (51 FR 21932), EPA proposed to approve an amendment to state Rule 10 CSR 10–5.220 for the St. Louis Metropolitan Area entitled, "Control of Petroleum Liquid Storage, Loading, and Transfer." This amendment requires the control of VOC emissions from the refueling of motor vehicles. This is known as Stage II vapor recovery. Stage I vapor recovery, controlling emissions from loading gasoline into underground tanks, has been required since 1978. The intended effect is to reduce ozone levels in the St. Louis nonattainment area by reducing the emissions of the VOCs that react in the atmosphere to form ozone. Stage II is one of the major control

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measures contained in the state's demonstration that the NAAQS for ozone will be attained in the St. Louis ozone nonattainment area by December 31, 1987, as required by the Clean Air Act. For a further discussion of the attainment demonstration, please refer to the proposed approval published January 28, 1986 (51 FR 3475).

The proposal to approve the revised 10 CSR 10-5.220 was based on a draft state submission, using the parallel processing procedure. On June 18, 1986, the state submitted the final Stage II vapor recovery rule. The state did not make any changes to the final action on this regulation.

In the proposed rulemaking, EPA stated that prior to final action, Missouri would be required to submit assurances of adequate resources and inspection to implement the regulation. The state submitted a letter dated July 10, 1986, meeting these requirements.

EPA has reviewed the regulation and found that it will effectively achieve the desired VOC reductions and is consistent with the California Stage II vapor recovery regulations which EPA used as a benchmark for evaluation. California has the best working Stage II program and there is no federal guideline for Stage II programs; therefore, EPA used the California regulation as a basis for reviewing the Missouri regulation. A more detailed description of EPA's review of the state's regulation can be found in the proposal. Four public comments were received on the June 17, 1986, proposal of this rule. All of the commentors favored the approval of the Missouri Stage II vapor recovery rule.

In the final rulemaking on the St. Louis attainment demonstration, EPA made approval contingent on final approval of the Stage II regulation. Today's final approval removes the contingency stipulation from the attainment demonstration.

Final Action

EPA is taking final action to approve Missouri's Stage II vapor recovery rule for the St. Louis Metropolitan Area.

This state submission constitutes a revision to the Missouri SIP. The Administrator's decision to approve this revision is based on the comments received and on a determination that the revision meets the requirements of sections 110 and 172 of the Clean Air Act, of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans, and of the 1982 SIP policy (46 FR 7164, January 22, 1981).

The Office of Management and Budget has exempted this rule from the requirements on section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from today. This action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 19, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulation is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1320 is amended by adding a new paragraph (c)(61) as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(61) On June 9, 1986, the state of Missouri submitted an amendment to Rule 10 CSR 10–5.220, Control of Petroleum Liquid Storage, Loading, and Transfer. This amendment requires the control of volatile organic compound emissions from the refueling of motor vehicles in the St. Louis Metropolitan Area.

(i) Incorporation by reference.

(A) 10 CSR 10–5.220, Control of Petroleum Liquid Storage, Loading, and Transfer, revised paragraphs 4, 5, 6, 7, 8, and 9, published in the Missouri Register on May 1, 1986.

§ 52.1323 [Amended]

3. Section 52.1323 paragraph (b) is removed.

[FR Doc. 86–22829 Filed 10–7–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 4F3114/R850; FRL–3081–8]

Pesticide Tolerance for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide permethrin and its metabolites in or on the commodity artichokes. This regulation, to establish maximum permissible level for the combined residues of permethrin on artichokes, was requested in a petition by ICI Americas, Inc.

EFFECTIVE DATE: Effective on October 8, 1986.

ADDRESS: Written objections, identified by the document control number [PP 4F3114/R850], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3706, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

George T. LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and telephone number: Room 200, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 24, 1984 (49 FR 42787), which announced that ICI Americas, Inc., Agricultural Chemicals Division, Concord Pike and New Murphy Road, Wilmington, DE 19897, had submitted pesticide petition 4F3114 to EPA proposing to establish a tolerance for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl(±)-*cis,trans*-3-(2,2-dichloroethenyl)2,2-dimethlycyclopropanecarboxylate] and its metabolites (±)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid (DCVA) and (3-phenoxy-phenyl)methanol (3-PBA) in or on the raw agricultural commodity artichokes at 10 parts per million (ppm).

There were no comments received in response to the notice of filing.

The data submitted and relevant material have been evaluated. The toxicological data considered in support of tolerances for the combined residues of the insecticide permethrin were previously published in the **Federal Register** of October 13, 1982 (47 FR 45008).

Granting this tolerance on artichokes at 10.0 ppm will increase the theoretical maximum residue contribution from 1.3559 to 1.3604 mg/day. This increase is slight and, thus, the discussion of the toxicological concerns applies without revision to the newly listed commodity. The percentage of the acceptable daily intake used will increase from 45.20 to 45.35 percent.

The metabolism of permethrin is adequately understood and an adequate analytical method, gas-liquid chromatography with an electron capture detector, is available for enforcement purposes in Volume II of the Food and Drug Analytical Manual. No actions are pending against continued registration of permethrin, nor are any other considerations involved in established the tolerance.

The tolerance established by amending 40 CFR 180.378 will be adequate to cover residues in artichokes. There are no feed items associated with artichokes and a label restriction precludes the grazing of livestocks in treated orchards. There is no reasonable expectation of secondary residues in meat, milk, poultry, and eggs as a result of this use.

Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 25, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.378(b) is amended by adding and alphabetically inserting the commodity artichokes to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Artichokes	10.0
* * * * *	

[FR Doc. 86–22583 Filed 10–7–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[FRL 3042–7]

State Hazardous Waste Program Requirements

Correction

In FR Doc. 86–21250 beginning on page 33712 in the issue of Monday, September 22, 1986, make the following corrections: On page 33721, in Table 2, in the last column, entitled "FEDERAL REGISTER reference", remove the "Do." in the tenth, ninth, and sixth through first lines from the bottom of the column.

BILLING CODE 1505–01–M

40 CFR Part 716

[OPTS–84014A; FRL–3053–9]

Health and Safety Data Reporting; Submission of Lists and Copies

Correction

In FR Doc. 86–20437 beginning on page 32720 in the issue of Monday, September 15, 1986, make the following corrections:

1. On page 32732 in the fourth column, the twenty-fourth entry should read "01/13/82".

2. On pages 32732 and 32733, items 5344–82–1 through 69000–60–1 were duplicated. The duplicated entries appearing on page 32733 should be deleted.

3. On page 32734, first column of the table, twenty-fourth line, "hexachlro-" should read "hexachloro-", and in the thirty-seventh line, insert ")" after "propenyl".

4. On page 32735, first column of the table, twenty-fifth line, remove "1,1-difluoro-" and insert it on the twenty-sixth line after "Ethene,".

5. On page 32738, second column of the table, the fifteenth entry should read "3530–19–6".

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 83–737]

Frequency Coordination in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its private land mobile radio rules as a result of petitions for reconsideration filed in this proceeding concerning frequency coordination.

EFFECTIVE DATE: October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 83–737 adopted September 18, 1986, and released September 26, 1986. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street NW., Washington, DC 20037, telephone (202) 857–3800.

Summary of Memorandum Opinion and Order

1. On April 15, 1986, the FCC released a Report and Order, 51 FR 14993 (April 22, 1986), that adopted rules and policies

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revising frequency coordination procedures in the private land mobile radio services. Nine petitions for reconsideration were filed asking that certain decisions be changed.

2. The FCC, in this Memorandum Opinion and Order, denies those petitions regarding the Special Emergency Radio Service. No new arguments were presented that warranted changing the decision to certify the joint venture of the International Municipal Signal Association, the International Association of Fire Chiefs, and the National Association of Business and Educational Radio as the certified frequency coordinator for the Special Emergency Radio Service. Requests to set aside the effective date of the adopted rules and initiate a separate proceeding concerning the Special Emergency Radio Service were denied since the benefits to both the public and the Commission of the decisions in this proceeding warrant prompt implementation of the adopted rules.

3. It denies the petition of Teletech, Inc. which urges the Commission either to reinstate the field study as an alternative to obtaining a recommendation from a frequency coordinator, or to certify multiple coordinators in each radio service. The ruling states that nothing was submitted that would rebut the FCC's poor experience with field studies, and that Teletech's arguments concerning multiple coordinators for each radio service were legally unsound. It also denies the petition of the Associated Public-Safety Communication Officers, Inc., which asked to be named the frequency coordinator for all shared public safety frequencies. The Commission stated that its present inter-service coordination procedures for shared frequencies have proven to be adequate. It also denies APCO's petition to require frequency coordination for all control stations regardless of antenna height, stating that interference problems were not widespread, that control stations are authorized on a non-interference basis, and that the present coordination requirements for control stations have worked well for many years without complaints from licensees or coordinators.

4. It grants the petition of the Manufacturers Radio Frequency Advisory Committee requesting that an increase or decrease of 50 or more paging units require a modification to a station license, stating that this action will improve the coordinator's data base. It also grants a joint petition of the Manufacturers Radio Frequency Advisory Committee and Forest Industries Telecommunications urging retention of interservice frequency coordination for ten low-power mobile frequencies in the 72–76 MHz band, indicating that this was overlooked in the Report and Order.

5. It denies those portions of the petition of the National Association of Business and Educational Radio, Inc. (NABER) to require coordination for add-on users to multiple licensed systems on exclusive 470–512 and 800 MHz assignments and coordination and licensing for member/users of private carrier and non-profit cooperative systems operating below 800 MHz. These decisions were made in the interest of providing the coordinator with the necessary information to maintain an accurate data base, but yet not impose an unnecessary economic burden upon system users. It grants NABER's request to clarify the coordination procedures for the 150 MHz narrowband frequencies.

6. The Memorandum Opinion and Order also clarifies the coordinator's speed-of-service requirement when a concurrence is required from another coordinator for the use of an adjacent channel frequency.

List of Subjects in 47 CFR Part 90

Frequency coordination, Special emergency radio service, Private land mobile radio services, Radio.

William J. Tricarico,
Secretary.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Part 90 of Title 47 of the CFR is amended as follows:

The authority citation for Part 90 continues to read:

Authority: Secs. 4, 303, 48 Stat. as amended, 1066, 1082; 47 U.S.C. 154, 303 unless otherwise noted.

1. Section 90.79 is amended by revising paragraph (d)(4) to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(d) * * *

(4) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, and Railroad Radio Services and interservice coordination is required. All communications must be within the boundaries or confines of plants, mills, yards, or other manufacturing areas. All operations on this frequency are subject to the provisions of § 90.257(b).

* * * * *

2. Section 90.135 is amended by adding a new paragraph (a)(8) to read as follows:

§ 90.135 Modification of license.

(a) * * *

* * * * *

(8) Change by 50 or more units in the number of paging receivers.

* * * * *

3. Section 90.175 is amended by revising paragraph (f)(3) and adding paragraph (f)(13) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(f) * * *

(3) Applications for frequencies in the 72–76 MHz band except for mobile frequencies listed in §§ 90.67(c)(34), 90.73(d)(7), 90.79(d)(4), and 90.91(c)(2).

* * * * *

(13) Applications for frequencies in the 216–220 and 1427–1435 MHz bands.

4. Section 90.179 is amended by revising paragraph (e) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(e) Applicants for stations governed under this section shall submit with their application the names and addresses, telephone numbers, nature of business or activity establishing eligiblity, and contact person for all systems users or members, together with the number of mobiles and control stations each user will initially put into operation. Eight months after grant, annually thereafter, and also whenever the system's total mobile and control station count decreases by 20 percent from the licensee's current authorization, the licensee shall submit to the applicable coordinator an updated listed containing the above information, including the number of mobiles and control stations each user or member employs.

* * * * *

[FR Doc. 86–22689 Filed 10–7–86; 8:45 am]
BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 51, No. 195
Wednesday, October 8, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–183–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 727 airplanes, which currently requires repetitive inspections for cracks and repair, if necessary, of the wing rear spar terminal fitting, and identifies terminating action. This action is prompted by a reevaluation of the terminating action described in the AD. This assessment has determined that the terminating action is inappropriate and that it is necessary to periodically inspect the modified or repaired wing rear spar terminal fittings for cracks. Failure to detect cracks prior to reaching critical length may severely reduce the load carrying capability of the wing.

DATE: Comments must be received on or before December 1, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–183–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM–120S; telephone (206) 431–1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrative before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice or Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn. ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–183–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168.

Discussion

Airworthiness Directive (AD) 83–04–01, Amendment 39–4570 (48 FR 7721; February 24, 1983), was issued February 14, 1983, to require inspection of the wing rear spar terminal fitting for cracks. Since issuing the AD, a determination has been made that the repair and modifications described in Boeing Service Bulletin 727–57–103 and specified as terminating action for the repetitive inspections required by AD 83–04–01 are insufficient to eliminate the possibility of future cracking. Failure to detect cracking prior to reaching critical length may severely reduce the load carrying capability of the wing.

Since these conditions are likely to exist or develop on other airplanes of this model, the FAA is proposing to supersede AD 83–04–01 with a new AD that would delete the terminating action and require periodic inspections of the wing rear spar terminal fittings that have been repaired or modified in accordance with Boeing Service Bulletin 727–57–103.

It is estimated that 120 airplanes would be affected by this AD, that it would take approximately 336 manhours per airplane to accomplish the additional required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the increased cost would be $1,612,800.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 83–04–01, Amendment 39–4570 (48 FR 7721;

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February 24, 1983), with the following airworthiness directive:

Boeing: Applies to Model 727 series airplanes listed in Boeing Service Bulletin 727-57-103, Revision 3, dated June 19, 1981, certificated in any category.

Compliance is required within the next 6,000 landings after March 31, 1983; or prior to accumulating 30,000 landings; or 30,000 landings after repair or modification in accordance with Service Bulletin 727-57-103; whichever occurs latest, unless already accomplished.

To ensure the structural integrity of the wing rear spar terminal fitting accomplish the following:

A. Inspect the wing rear spar terminal fittings for cracks, using x-ray, eddy current and close visual techniques, in accordance with the procedures listed in Table I of the Addendum, Flight Safety Section, Boeing Service Bulletin 727-57-103, Revision 3, dated June 19, 1981, or later FAA-approved revisions. Repeat the inspection at intervals not to exceed 20,000 landings.

Note.—Terminal fittings listed in the above referenced service bulletin as not requiring modification need not be inspected in accordance with the requirements of this AD.

B. Cracked structure must be repaired before further flight in accordance with Service Bulletin 727-57-103, original issue, or later FAA-approved revisions.

C. For the purpose of this AD, and when approved by an FAA maintenance inspector, the number of landings may be computed by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the aircraft type.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This supersedes AD 83-04-01, Amendment 39-4570.

All persons affected by this proposal who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22733 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-195-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to all Boeing Model 727 airplanes, that would require the periodic replacement of the sealed needle bearings in the downlock outer link of the side strut upper segment of the main landing gear assembly. This action is necessary because of reports of deterioration of the bearings by corrosion, which, if not corrected, can prevent the proper extension of the landing gear.

DATE: Comments must be received on or before December 1, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-195-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-195-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several reported incidents involving corrosion of the sealed needle bearings in the downlock outer link in the side strut upper segment of the main landing gear assembly. In one incident, the corrosion was so severe that the flight crew was unable to fully extend the landing gear, which resulted in a wheels-up landing and extensive damage to the airplane.

Since this condition may exist or develop on other airplanes of this same type design, the FAA is proposing an AD that would require replacement of the bearings and inspection and replacement, as necessary of the associated retainer bolt.

It is estimated that 1,188 Boeing Model 727 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Replacement bearings cost is estimated to be $10 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $962,280.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category.

Prior to the accumulation of 10,000 landings or 6 years from date of manufacture or prior replacement, or within 6 months after the effective date of this AD, whichever occurs latest, accomplish the following:

A. Replace the sealed needle bearings in the downlock outer link of the side strut upper segment of the left and right main landing gear assemblies, part number BACB10B107] or BACB10CC10E, in accordance with the Boeing 727 Overhaul Manual, Subject 32-13-01, with new bearings with the same part number. Inspect retainer bolt for damage or corrosion. If damage or corrosion is detected, replace the bolt with a new bolt, part number NAS1110-100DW or BACB30LT10D-100. Lubricate washer face, bolt shank, and threads with MIL-C-21164 grease, or equivalent, before installation.

B. Repeat the requirements of paragraph A. of this AD at intervals not to exceed 6 years or 10,000 landings, whichever occurs first.

C. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22735 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-186-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes equipped with General Electric CF6 engines, which would require repetitive inspections of the pylon skin aft of the precooler exhaust vent for cracks on the inboard and outboard pylons, and repair, if necessary. This proposal would also provide for an optional modification of the pylons which, if incorporated, would terminate the proposed repetitive inspection requirement. This action is prompted by a recent report of extensive damage to 7 pylons on 4 airplanes. This action is necessary since overheating and subsequent cracking, if not corrected, could result in failure of the pylon and separation of the engine from the airplane.

DATE: Comments must be received on or before December 1, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-186-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-186-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There has been a recent report of extensive overheating and subsequent cracking of 7 pylons on 4 airplanes. Heat damage has been observed on airplanes with 2,800 to 28,000 flight hours. The overheating and subsequent annealing of the pylon skin is caused by the high temperature precooler exhaust.

The annealed structure is subject to premature fatigue cracking. Continued operation with extensive heat damage could result in loss of structural integrity of the pylon and subsequent separation of the engine from the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747-54-2091, Revision 1, dated October 22, 1984, which described the specific procedures to be used to inspect for heat discoloration, wrinkles, or cracks on the engine pylons. The service bulletin also includes an optional modification that, if incorporated, would terminate the need for further inspections. The optional modification includes the addition of stainless steel doublers to the skin and reinforcement of the frame.

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Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive is being proposed which would require inspection of the pylon adjacent to the precooler exhaust vent for cracking of the skin; repair, if necessary; and optional modification; in accordance with Boeing Service Bulletin 747–54–2091.

It is estimated that 7 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $560 for the initial inspection cycle.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes equipped with General Electric CF6 engines, listed in Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984, certificated in any category.

To prevent separation of an engine due to overheating and subsequent cracking of the engine pylon, accomplish the following, unless already accomplished:

A. Prior to accumulation of 10,000 flight hours, or within the next 7½ months after the effective date of this AD, whichever occurs later, perform a visual inspection of the pylon skin aft of the precooler exhaust vent for cracks on the inboard and outboard pylons of Group 1 airplanes, and on the outboard pylons only of Group 2 airplanes, as defined in the service bulletin, in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984.

B. If no cracks are found, reinspect at intervals not to exceed 15 months until terminating action, defined in paragraph D. of this AD, is accomplished.

C. If cracks are found, repair prior to further flight in accordance with FAA-approved data and continue to reinspect at intervals not to exceed 15 months; or install the terminating modification defined in paragraph D. of this AD.

D. Terminating action for the inspections required by this AD is the installation of the frame stiffeners and skin doublers in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984.

E. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certificate Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–22734 Filed 10–7–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–163–AD]

Airworthiness Directive; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas DC–8 series airplanes, that would require structural inspections and repair or replacement, as necessary, to assure continued airworthiness. Some McDonnell Douglas DC–8 series airplanes are approaching or have exceeded the manufacturer's original fatigue design life. This AD is prompted by a structural reevaluation which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life goal. Fatigue cracks in these areas, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes.

DATE: Comments must be received no later than December 1, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–163–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6321.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for

examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–163–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

A significant number of transport category airplanes are approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidence of fatigue cracking on these airplanes is expected to increase as airplanes reach and exceed this goal. In order to evaluate the impact of increased fatigue cracking with respect to maintaining the fail-safe design and damage tolerance of the McDonnell Douglas DC–8 airplane structure, the manufacturer has conducted a structural reassessment of these airplanes using damage tolerance evaluation techniques. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," and federal Aviation Regulations (FAR) Section 25.571 (Amdt. 25–45).

In response to AC 91–56, McDonnell Douglas initiated the development of a Supplemental Inspection Document (SID) for the DC–8 aircraft. McDonnell Douglase and the operators established an Industry Steering Committee (ISC) for McDonnell Douglas airplanes. At the onset, it was decided to make maximum use of service experience and existing maintenance programs. DC–8 operators, FAA Engineering personnel, and FAA Flight Standards Inspectors, together with the manufacturer, have participated in generating the DC–8 SID. Advisory Circular 91–56 promotes the preparation and approval of a criteria document for such a program. McDonnell Douglas developed criteria and guidelines for: (a) selecting the major areas of the structure, identified as Principal Structural Elements (PSE), which are candidates for supplemental inspection by using the latest durability and damage tolerance analysis techniques; and (b) generating a sampling inspection program. This supplemental inspection program evaluates the adequacy of current normal maintenance inspection programs to detect fatigue damage, and provides detailed non-destructive inspection programs, as necessary. The program was established on the basis of damage tolerance evaluation of each PSE selected. A PSE is defined as "that structure whose failure, if it remained undected, could lead to the loss of the aircraft." Selection of a PSE is influenced by the susceptibility of a structural area, part, or element to fatigue, corrosion, stress corrosion, or accidental damage.

The DC–8 Supplemental Inspection Document, Report No. L26–011, addresses five basic issues: (a) Identification of the selected PSE's, (b) when to accomplish inspection (including the fatigue life threshold), (c) frequency of inspection, (d) number of inspections required, and (e) non-destructive inspection (NDI) procedures for detecting cracks.

The SID inspection program is based on DC–8 current usage; durability-fatigue and damage tolerance assessment of the structure using current analysis techniques and tests; and selection of the current non-destructive inspection methods. In order to implement the SID inspection program, each operator must compare its current structural maintenance program to the SID requirements for each PSE. If the current inspections equal or exceed the SID requirements for a given PSE, no supplemental inspections would be required for that PSE under the SID program. However, if the opposite is true, supplemental inspections in the form of more frequent inspections or more sensitive NDI methods, or both, would be necessary in addition to the operator's normal maintenance program.

Since the emphasis of the SID program is an aging aircraft, the inspection program is a sampling program with emphasis on the high time aircraft of each PSE population.

The population for a given PSE (and aircraft type) consists of all those airplanes in which the PSE has the same or similar material fatigue life, loading, damage tolerance, and inspection characteristics. Thus, a PSE population may consist of all aircraft in the fleet or it may be divided into several populations because of sufficient differences in structural configuration, material, damage tolerance, or non-destructive inspection characteristics.

Under the sampling program, each PSE would be inspected independently of other PSE's. Symmetrical structure results in two samples per airplane, left and right. For sampling purposes, one or both sides of the aircraft may be inspected. It is important to note that each PSE always stands by itself; that is, inspection thresholds, inspection intervals, etc., are generally different for each PSE.

All configurations of each PSE are included in the SID program, e.g., material changes, structural modifications and replacements, etc. Since McDonnell Douglas Corporation (MDC) Service Bulletins (SB) are not mandatory, supplemental inspection procedures are provided in the SID for both pre-SB and post-SB configurations of each applicable PSE. Airworthiness directives (AD) are mandatory. Therefore, a PSE currently under an AD is placed in a separate section in the SID. When the closing action to a structural modification AD has been performed, the PSE is moved into the population which reflects the modified structural configuration. The date and flight hours (or landings) at which modification or replacement of a PSE is made, would be required to be reported by the operator the MDC for each applicable airplane by fuselage number and/or factory serial number and PSE number. That particular configuration is then evaluated by McDonnell Douglas. The inspection threshold and interval will be established and published in the next revision of the SID.

Sampling Program

Airplanes with the highest number of flight cycles are the most likely to experience initial fatigue damage in the fleet. Therefore, this program is based on the supplemental inspection of a "sample" of the high time PSE's in the fleet. Supplemental inspection of a statistically significant number of samples of a PSE, coupled with reporting of the results of these inspections, and, where necessary, follow up activity will maintain the continued airworthiness of the entire fleet. If no fatigue cracks are found in the sample population, and the size of sampling population is such that it gives statistically meaningful data, the fatigue life threshold may be advanced in accordance with the SID for that PSE. The expected fatigue life of each PSE is determined by a demonstrated life, either by test or service experience, or by analysis. The time when the supplemental inspections are to begin or be completed is determined from the expected fatigue life and crack propagation characteristics of each PSE. All sample inspections are to be accomplished before the high time sample exceeds the fatigue life threshold. Irrespective of the sample

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size required, the 10 high time samples in the population for each PSE must be inspected. However, if the number of samples in a PSE population is 10 or less, each PSE must be inspected once before the fatigue life threshold is reached and repeatedly inspected when the threshold is exceeded. The inspection interval is determined by the damage tolerance characteristics of the PSE.

The results of the supplemental inspections are to be reported to the manufacturer on a form provided in Volume III of the SID. This information will be presented in the periodic revision of Volume III.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511) and have been assigned OMB Control Number 2120-0056.

Effect on Existing Maintenance Programs

In developing the SID, the working group reviewed the operation and maintenance practices of existing maintenance programs with respect to the basic requirements of the SID program. As a result, the McDonnell Douglas DC-8 SID allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate this supplemental program for their affected airplanes.

Economic Impact

Approximately 211 airplanes of U.S. registry and 54 U.S. operators would be affected by the proposed AD. It is estimated that incorporation of the Supplemental Inspection program for a typical operator would take approximately 500 manhours. The average labor charge would be $40 per manhour. Based on these figures, the cost to incorporate the SID program on U.S. operators is estimated to be $1,080,000.

The recurring inspection cost to the affected operators are estimated to be 245 manhours per airplane per year, at an average labor cost of $40 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to be approximately $2,087,800.

Based on the above figures, the total cost impact of this AD is estimated to be approximately $3,147,800 for the first year, and $2,087,800 for each year thereafter.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-8 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by Reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8 series airplanes, certificated in any category. Compliance required as indicated in the body of the AD.

To ensure the continuing structural integrity of these airplanes accomplish the following, unless already accomplished:

A. Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE) defined in Section 2 of Volume I of McDonnell Douglas Report No. L26-011, DC-8 Supplemental Inspection Document (SID), dated December 1985, or later FAA-approved revisions, in accordance with Section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III of the SID.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired before further flight in accordance with an FAA-approved method.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

The FAA has requested Federal Register approval to incorporate by reference the manufacturer's Supplemental Inspection Document identified and described in this directive.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22732 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASO-11]

Proposed Alteration of Federal Airways, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter six Federal airways in the vicinity of Whitesburg, KY. These airways are presently aligned with the very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) at Whitesburg which is being relocated approximately 22 miles to the northwest and renamed Hazard, KY.

DATES: Comments must be received on or before November 24, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 86-ASO-11, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASO-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarinzing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to align VOR Federal Airways V-53, V-115, V-140, V-331, V-339 and V-517 with the planned relocated and renamed Whitesburg, KY, VORTAC. Whitesburg, KY, VORTAC is remotely located and subject to continuous vandalism. A project is underway to relocate the facility to a site on the Eastern Kentucky Regional Airport which is approximately 22 miles to the northwest. When relocated and commissioned the facility will be renamed Hazard, KY, VORTAC. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the critieria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal airways.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-53, V-115, V-140, V-331, and V-339 [Amended]

By removing the words "Whitesburg, KY" and by substituting the words "Hazard, KY".

V-517 [Amended]

By removing "013°" and by substituting "019°T(022°M)".

Issued in Washington, DC, on October 1, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-22731 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing Federal Housing—Commissioner

24 CFR Parts 207 and 255

[Docket No. R-86-1300; FR-2224]

Section 223(f) Mortgage Insurance; Inspection Fees for Repairs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule revises current regulations of the section 223(f) mortgage insurance programs to authorize the charging of an inspection fee where the application for mortgage insurance (of coinsurance) covering an existing multifamily project involves the carrying out of repairs and improvements.

DATE: Comment due date: December 8, 1986.

ADDRESS: Communications concerning this rule should be identified by the above docket number and title and comments should be filed with the Rules Docket Clerk, Office of the General Counsel, Room, 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Copies of written views or comments will be available for public inspection and copying regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The current regulation for the full insurance

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of existing multifamily projects pursuant to section 223 (f) expressly states that "No inspection fee will be required" in connection with the transaction (*see* 24 CFR 207.32a(a)(4)). Under similar Part 255 coinsurance, there is a provision in the current regulation authorizing the coinsuring lender to collect an inspection fee "if applicable" (*see* 24 CFR 255.206(a)). To date, HUD has limited the charging of inspection fees in coinsurance to cases where the project is also receiving assistance under the Rental Rehabilitation (24 CFR Part 511) or Housing Development Grant (24 CFR Part 850) Program. This rule would revise both §§ 207.32a(a)(4) and 255.206(a) to permit, in cases where an application provides for completion of repairs and improvements, an inspection fee to be charged by the FHA Commissioner (or, in the case of the coinsurance rule, by the lender). A fee of $30 per unit may be charged where the project involves repairs of $3000 or less per unit. The fee for projects involving repairs in excess of $3000 per unit may not exceed one percent of the cost of repairs.

This revision is need if the Section 223(f) programs are to be effectively administered. Under both full insurance and the coinsurance program, allowable repairs are for up to $6500 per unit (adjusted by any high-cost factor for the area), and if the project is assisted under the Part 511 Rental Rehabilitation or the Part 850 Housing Development Grant Program, allowable costs may go up to $25,000 per dwelling unit. Program experience has demonstrated that most section 223(f) projects involve repairs and improvements and that a uniform procedure for inspection of these repairs is essential. This rule provides for a two-tier fee structure to cover inspection costs, with repair costs of $3000 serving as the dividing point. The Department believes a higher fee should be chargeable where the per-unit repair cost is over $3000 since, where repairs are extensive, inspection visits will need to be more frequent and more complex repair items (such as replacement of a major building component) are usually involved at this upper cost range.

The Department invites public comment on the reasonableness of the specific inspection fee structure set forth in this rule.

In accordance with 5 U.S.C. 605(b) (the Regulatory Felxibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the inspection fee is not onerous and is chargeable equally to small and large entities. Similar fees are charged in other FHA multifamily programs.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14038) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The catalog of Federal Domestic Assistance program numbers are 14.135 and 14.173.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing.

24 CFR Part 255

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, 24 CFR Parts 207 and 255 are proposed to be amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for Part 207 would continue to read as follows:

Authority: Secs. 207, 211, National Housing Act, (12 U.S.C. 1713, 1715b); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)].

2. Section 207.32a(a)(4) would be revised to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(a) * * *

(4) *Inspection fee.* Where an application provides for the completion of repairs and improvements, an inspection fee may be charged by the Commissioner. A fee of $30 per dwelling unit will be charged where the project involves repairs of $3000 or less per unit. The fee for projects involving repairs in excess of $3000 per dwelling unit may not exceed one percent of the cost of the repairs.

* * * * *

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OR FINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

3. The authority citation for Part 255 would continue to read as follows:

Authority: Secs. 211, 244, National Housing Act, 12 U.S.C 1715b, 1715z(b); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. Paragraph (a) of § 255.206 would be revised to read as follows:

§ 255.206 Lender's fees and premium.

(a) The lender may collect from the Mortgagor, and include in the Mortgage, an application fee, financing fee, permanent placement fee, and where an application provides for the completion of repairs and improvements, an inspection fee. These fees may not exceed maximums approved by the Commissioner. In the case of inspection fees, a fee of up to $30 per dwelling unit may be charged where the project involves repairs of $3000 or less per unit. The inspection fee for projects involving repairs in excess of $3000 per dwelling unit may not exceed one percent of the cost of repairs. The lender may collect other reasonable fees approved by the Commissioner that are paid from sources other than Mortgage proceeds and are disclosed at endorsement. In no event will the fees allowed under this paragraph be permitted to excess comparable fees followed in the full insurance program under § 207.32a of this chapter.

* * * * *

Dated: August 13, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant, Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-22827 Filed 10-7-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[DoD Instruction 6010.XX]

Coordination of Benefits

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This part is to comply with Pub. L. 99-272. It also informs the public that the Department of Defense shall collect from third-party payers the reasonable inpatient hospital care costs incurred on behalf of retirees and dependents. Section 2001 of Pub. L. 99-272, April 7, 1986, Consolidated Omnibus Budget Reconciliation Act of 1985, amended Chapter 55 of title 10, United States Code by adding a new section, 10 U.S.C. 1095, "Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents."

DATES: Written comments must be received on or before November 7, 1986. The provision of this law apply to inpatient care provided after September 30, 1986.

ADDRESS: Interested persons are invited to submit written comments to: Office of the Assistant Secretary of Defense (HA), Room 3E321, Pentagon, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: John Maddy, Pentagon, Room 3E321, (202) 694-3242.

SUPPLEMENTARY INFORMATION: Although cost recoveries from all third-party carriers are expected to be in excess of $100 million per year in future years, since these are cost recoveries, the impact on the economy as a whole will not be in excess of the E.O. 12291 criterion for a major rule. The Instructions issued by the Assistant Secretary of Defense (Health Affairs), as distinguished from the law which required the Instructions, will result in no significant increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. They will have no adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. They also will impose no regulatory, paperwork, or administrative burdens on small entities.

List of Subjects in 32 CFR Part 220

Claims, Health insurance, Medical records.

Accordingly, it is proposed to amend Title 32 by adding Part 220 to read as follows:

PART 220—COORDINATION OF BENEFITS

Sec.
220.1 Purpose.
220.2 Applicability.
220.3 Definitions.
220.4 Policy.
220.5 Procedures.
220.6 Responsibilities.

Authority: Pub. L. 99-272, Section 2001; 10 U.S.C. Chapter 55.

§ 220.1 Purpose.

This part establishes policy under Pub. L. 99-272 and Title 10, Chapter 55 and assigns responsibility for implementing the authority for collection by the United States of inpatient hospital costs incurred on behalf of retirees and dependents.

§ 220.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD) and the Military Departments.

§ 220.3 Definitions.

(a) *Third-party payer.* An entity that provides an insurance, medical service, or health plan by contract or agreement. Also includes both insurance underwriters and private employees who offer self-insured or partially self-insured/partially underwritten health insurance plans.

(b) *Inpatient hospital care.* Treatment provided to an individual, other than a transient patient, who is admitted (placed under treatment or observation) to a bed in a medical treatment facility which has authorized or designated beds for inpatient medical or dental care.

§ 220.4 Policy.

(a) Under 10 U.S.C. 1095, in the case of a person who is covered by section 1074(b), 1076(a), or 1076(b) of 10 U.S.C. 1095, the United States has the right to collect from a third-party payer the reasonable costs of inpatient hospital care incurred by the United States on behalf of such person through a facility of the uniformed services to the extent that the person would be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such costs on the person's own behalf. If the insurance, medical service or health plan of that payer includes a requirements for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is the reasonable cost of the care provided less the appropriate deductible or copayment amount.

(b) a person covered by section 1074(b), 1076(a), or 1076(b) of title 10 U.S.C. may not be required to pay an additional amount to the United States for inpatient hospital care by reason of this section.

§ 220.5 Procedures.

(a) Authority to collect applies to an insurance, medical service, or health plan agreement entered into, amended or renewed on or after April 7, 1986 for inpatient hospital care provided after September 30, 1986. An amendment includes, but is not limited to any change of rates.

(b) The Military Medical Treatment Facility (MTF) will prepare bills to the third-party insurance carriers for medical care and services rendered to dependents and retirees using the Uniform Bill, UB-82. The MTFs will complete those data elements and codes identified by the National Uniform Billing Committee as required entries for submission of bills to commercial third-party carriers.

(c) A per diem charge equal to the inpatient full reimbursement rate will be used to bill third-party payers in accordance with the medical and subsistence charges established and published by OASD(C) for each fiscal year. For purposes of billing third-party payers, the rates for FY87 and thereafter will be subdivided by OASD(C)— into three categories: (1) Hospital charges, (2) physician charges, and (3) ancilliary charges.

(d) Medical services and subsistence charges for dependents and retirees are considered separate rates and are an integral part of the current automated systems. The Services will continue to bill and collect these charges using current methods. Collections and billings for third-party payers will be accounted for separately. An example of this would be the processing of third-party liability cases under the Federal Medical care Recovery Act (42 U.S.C. 2651-53). In these cases the dependent rate and subsistence charges are collected locally and the per diem rate is collected through legal channels from third-party payers.

(e) Funds collected for the first year will be deposited to the Treasury in the Miscellaneous Receipts Account. Each Service will continue to use procedures currently in effect for collections. Accounting records shall be established

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to be able to report (1) total amount billed to third-party payers, (2) amount collected, and (3) amount not collected for various reasons.

(f) Military Medical Treatment Facilities will, when requested, make the health care records of individuals for whose care the United States is seeking recovery of costs available for inspection and review by representatives of the third-party carrier covering the individual's medical care, solely for the purposes of permitting the carrier to verify that (1) the care for which recovery of costs is sought by the MTF was furnished, and (2) the provision of such care to the individual meets criteria generally applicable under the health plan contract involved.

(g) A nine digit facility code and a patient ID number are required. For the facility code use zeros in front of the MTF code and the patients's SSAN as the patient ID number.

(h) Each Military Department will submit a quarterly report to ASD(HA). Reports will be due on the 20th of January, April, July and October. A Reports Control Symbol (RCS) Number will be provided by OASD/HA. The following information will be required in the report:

(1) Number of UB Forms 82 submitted to third-party payers;

(2) Total amount billed to third-party payers (accounts receivable);

(3) Total collected; and

(4) Total not collected. The report will provide a dollar amount for each of the categories below for which payment was not received:

(i) Amount of coverage (e.g., policy only pays 80%);

(ii) Payment reduced due to pre-admission review, concurrent review, discharge planning and second surgical opinion;

(iii) Care provided not covered under the provisons of the policy (covered by a prepaid plan that only covers emergency care outside the plan, pre-existing conditions, cosmetic exclusions and dental care);

(iv) Policy expired, Non-existent or patient not a named beneficiary on the policy;

(v) Policy not entered into, renewed or modified subsequent to April 7, 1986; and

(vi) Other reasons (specify).

(i) This part does not authorize collections in the case of a plan administered under Title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 et seq.)

(j) The Secretary of the Military Department that provided care covered by this part, or the Secretary's designee may compromise, settle or waiver a claim of the Department of Defense under 10 U.S.C. 1095 and this part.

(k) The Secretary of the Military Department that provided care covered by this part, or the Secretary's designee, shall normally request the Department of Justice to institute and prosecute legal proceedings to collect amounts due under this part when administrative efforts to collect such amounts are unsuccessful.

§ 220.6 Responsibilities.

The Military Departments shall be responsible for developing procedures to implement this Coordination of Benefits Program.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 3, 1986.

[FR Doc. 86-22792 Filed 10-7-86; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3093-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denials

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to deny the petitions submitted by three petitioners to exclude their solid wastes from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to deny the exclusion of certain wastes generated at three facilities from listing as hazardous wastes under 40 CFR Part 261, and revoke the temporary exclusions of certain wastes generated at these three facilities. Thus, the petitioned wastes at the three facilities proposed to be denied would then be considered hazardous.

The Agency has previously evaluated all three of the petitions which are discussed in today's notice. Based on our review at that time, all of these petitioner were granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as all other factors and toxicants which might reasonably cause the wastes to be hazardous.

DATES: EPA will accept public comments on the proposed denials until October 23, 1986. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on these proposed decisions by filing a request with Bruce Weddle, whose address appears below, by October 23, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Communications should identify the regulatory docket number: "F-86-ANEP-FFFFF".

The public docket for this proposed rule is at the U.S. Environmental Protection Agency, 401 M Street SW. (Sub-basement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of

hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the list description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 3260.22(a) and the background document for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to waste listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3(c) and (d)(2).) again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) That the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the domonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or if, present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balanced arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on repesentative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetic receptor wells—the "compliance point" (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule

Continued

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This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to deny the exclusion petitions for the wastes from three petitioners.

It should be noted that EPA has not verified the submitted test data. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, the Agency will not make a final decision on the petitions proposed to be denied today until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed denials published today are for the following petitioners:

American Nickeloid Co., Lima, Illinois;
AT&T Technology Systems, Richmond, Virginia;
John Deere Des Moines Works, Des Moines, Iowa.

I. American Nickeloid Company

A. Petition for Exclusion

American Nickeloid Company (Nickeloid) manufactures pre-plated metal sheet and coil and pre-finished vinyl/metal laminates at its Lima, Illinois facility. Nickeloid has petitioned the Agency to exclude wastewater treatment sludges impounded in three surface impoundments at this facility. These sludges are listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) Tin plating on carbon steel; (3) Zinc plating (segregated basis) on carbon steel; (4) Aluminum or zinc-aluminum plating on carbon steel; (5) Cleaning/stripping associated with tin, zinc or aluminum plating on carbon steel; and (6) Chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. F006 wastes are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Nickeloid originally submitted their petition on July 30, 1981. Based on the Agency's review (at that time), a temporary exclusion was granted on December 16, 1981 for the F006 and K062 wastes impounded in the drying lagoon at this facility (see 46 FR 61277).[3] The basis for this decision was that the constituents of concern, although present in the waste, were present in essentially an immobile form. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed originally if the Agency has a reasonable basis to believe that such constituents could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 691(f).) In anticipation of these changes, and as a result of new requirements, the Agency requested additional information from Nickeloid. This information was submitted by Nickeloid on November 6, 1985. The Agency, therefore, has re-evaluated Nickeloid's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria, and (2) evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. This notice presents the results of the Agency's re-evaluation of this petition.

Nickeloid has submitted descriptions of its manufacturing and waste treatment processes; total constituent and EP toxicity test results for cadmium, total chromium, and nickel; total oil and grease analyses; test results for total, reactive and free cyanide; and results from a distilled water leaching test for cyanide. Nickeloid has also submitted total constituent and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and a list of raw materials used in the processes at this facility. The Agency requested most of this information, as noted above, to determine whether constituents other than those for which the waste was listed are present in the waste at levels of regulatory concern.

Nickeloid produces a variety of pre-finished and pre-plated metals and vinyl-to-metal laminates. The metal sheets and coils are cleaned with caustic, electrocleaned, brightened with an acid dip, and phosphated. A chromate conversion coating is applied to the metal before brass and cooper are electroplated onto the metal. The plated metal is then polished and coated with a baked protective finish. The lamination process involves the use of high temperatue adhesives to join vinyl films to metal substrates. Nickeloid claims that all paints, lacquers, adhesives, and solvents are segregated from the petitioned waste stream, and are therefore not expected to be present in the waste.

Rinse and blowdown waters from the aluminum conversion coating processes are collected in treatment tanks, where hexavalent chromium is reduced to trivalent chromium with sodium bisulfite. When indicator test show the reaction to be complete, the pH is adjusted to 9.0 to precipitate hydroxide sludges. The sludges are routed to a vertical leaf filter for solids removal and off-site disposal, and the effluent is discharged to the impoundment system (Lower Lagoon).

Cooper and brass plating wastes (from fume scrubbers and carbonate contral equipment) are alternately retained in two concrete tanks and treated with chlorine. The pH is held constant at 8.5–9.5 until cyanide oxidation is complete; pH is then adjusted to 8.0 and additional chlorine is added to ensure the complete destruction of cyanide. A final pH adjustment to 11.5 is made and the waste is routed to the Upper Lagoon, which allows cooper and zinc hydroxides to precipitate.

Nickel-bearing, acidic finishing wastes are collected in a treatment tank, and sodium sulfide is added by hand to precipitate insoluble nickel sulfide. The waste is then routed to an acid neutralization tank, where it is combined with acid wastes from sheet and lacquer lines. Here the wastes are treated with lime to adjust pH to a range of 9.0–10.0, which precipitates iron and nickel hydroxides. The waste is discharged to the Upper Lagoon to allow the solids settle.

The lagoon system is comprised of three lagoons, the Upper and Lower Lagoons, and the Drying Lagoon. Acid neutralization wastes and cyanide treatment wastes are discharged to the Upper Lagoon, and effluent from the Upper Lagoon flows into the Lower Lagoon for polishing before discharge under an NPDES permit to the Illinois River. The Lower Lagoon also receives treated chromium-bearing wastes from conversion coating processes, as well as non-hazardous process wastes (including cleaner rinsewater, polish rinsewater, air scrubber discharge, and boiler blowdown). An anionic polymer is added to the non-hazardous waste stream to aid in flocculation of solids in the lagoons. The water levels in the Upper and Lower Lagoons are lowered once each year to allow the sludges to be pumped to the Drying Lagoon. Drying Lagoon sludges are allowed to dry for several months before disposal at a permitted disposal facility.

Nickeloid's original demonstration was based on samples taken from the Drying Lagoon on June 23, 1981. For purposes of further testing, Nickeloid collected additional samples from all three lagoons during May and July 1985. Sludge samples were collected by dividing each lagoon into 4 quadrants, then taking five complete-depth core samples from each quadrant. The Upper and Lower Lagoons were sampled with a Coliwasa (liquid waste sampler), while the dried Drying Lagoon sludges were sampled with a shovel. These samples were then composited into a single sample for each quadrant.

Nickeloid claims that the composite samples are representative of the waste due to the consistent nature of the production and treatment processes. Nickeloid further claims that raw materials used in the process do not change over time, and that the samples taken adequately characterize the impounded wastes. Nickeloid also claims that the sampling performed was sufficient to evaluate the entire depth of the impoundment.

The total constituent and EP toxicity leachate analyses for the listed constitutents in the sampled sludges resulted in the maximum concentrations shown in Table 1. The total constituent and EP toxicity analyses for the non-listed constituents and EP toxicity analyses for the non-listed constitutents produced the maximum concentrations given in Table 2.

TABLE 1.—MAXIMUM CONCENTRATIONS (PPM)[1]

Constituents	Upper lagoon		Lower lagoon		Drying lagoon	
	Total	EP	Total	EP	Total	EP
Cd	6	<0.01	3	<0.01	8	0.02
Cr(total)[2]	820	0.06	3894	0.03	2245	0.03
Ni	7560	18.90	3147	8.14	3030	5.5
CN⁻(total)	526.97	2.4	76.1	0.3	662	2.57
CN⁻(free)	2.18	(3)	8.96		109	
CN⁻(reactive)	0.7		3.7		31.1	

[1] Cyanide EP extractions performed by distilled water leachate test.
[2] The Agency also considers total chromium in the EP analysis, although hexavalent chromium is the listed constituent of concern. Since the concentration of total chromium in the EP leachate must exceed that of hexavalent chromium, characterization of hexavalent chromium in the sludges was not necessary.
[3] Free and reactive cyanide tests are not applicable to analysis of EP leachate.

TABLE 2.—MAXIMUM CONCENTRATIONS (PPM)

Constituents	Upper lagoon		Lower lagoon		Drying lagoon	
	Total	EP	Total	EP	Total	EP
As	<0.5	<0.002	<0.5	<0.5	<2	<0.004
Ba	480	0.72	170	0.29	55	<0.1
Pb	107	<0.1	72	<0.1	74	0.15
Hg	0.4	<0.001	0.68	0.001	0.5	<0.001
Se	17	<0.005	<0.6	<0.06	<3.2	<0.001
Ag	15	0.05	5	<0.03	11	0.002

Maximum oil and grease content of any of the lagooned sludges was 8770 ppm. None of the samples tested demonstrated the characteristics of hazardous waste (*i.e.*, ignitability, corrosivity, reactivity, or EP toxicity). Examination of the material safety data sheets for compounds used in the manufacturing process indicated that only one additional Appendix VIII hazardous constituent, hydrofluoric acid, would be contributed to the waste in significant quantities by the feedstocks used in Nickeloid's processes. This compound is present (5.3 percent) in a replenishing chemical used in the conversion coating process. The wastewater treatment system, which uses an alkaline pH to precipitate insoluble metallic hydroxides, also precipitates fluoride ions as sodium fluoride. This salt is removed by flocculation and clarification, along with other salts, in the treated waste; hydrofluoric acid, therefore, is not expected to be present in significant quantities in the waste. Nickeloid estimates that the Upper Lagoon, Lower Lagoon, and Drying Lagoon presently contain 200 cubic yards, 500 cubic yards, and 400 cubic yards of sludge, respectively. Nickeloid has indicated that it could generate a maximum volume of 3,200 total cubic yards of sludges annually.

B. Agency Analysis and Action

Nickeloid has not demonstrated to the Agency that the sludges residing in the three impoundments at its Lima facility are non-hazardous. The Agency believes that the composited samples, claimed to represent the complete depths of the impoundments, have adequately characterized any vertical or horizontal variation in constituent concentration of the impounded sludges in the upper and lower lagoons. The Agency also believes that the compositing performed by Nickeloid has not concealed variations in constituent concentrations, and that the processes contributing to the formation of these wastes are reasonably consistent over time. The Agency believes that the samples presented for the upper and lower lagoons are representative of the waste generated by Nickeloid. The Agency is concerned, however, that the sampling method used in the drying lagoon may not have been sufficient to characterize any stratification since complete depth cores were not collected.

The Agency has evaluated the

(see 51 FR 1602, January 14, 1986). The Agency, however, has not completed its evaluation of the comments on this proposal. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis at that time.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

[3] The waste is no longer classified as a K062 waste. See 51 FR 19320, May 28, 1986, for a clarification of the K062 hazardous waste listing.

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mobility of the inorganic constituents of Nickeloid's waste using the vertical and horizontal spread (VHS) model.[4, 5] The Agency's evaluation of Nickeloid's 1100 cubic yards of impounded wastes[6] and the maximum EP extract levels for the listed constituents reported in the petition has produced the compliance point concentrations shown in Table 3. The Agency's evaluation of the non-listed constituents of the impounded waste generated the compliance point concentrations shown in Table 4.

TABLE 3.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituents	VHS model: impounded sludges	Regulatory standards
Cd	0.0014	0.01
Cr	0.0041	0.05
Ni	1.30	0.35
CN	0.18	0.2

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituents	VHS model: impounded sludges	Regulatory standards
As	<0.0034	0.05
Ba	0.049	1.0
Pb	0.010	0.05
Hg	0.000095	0.002
Se	0.0041	0.01
Ag	0.0034	0.05

Cadmium and chromium levels at the compliance point were not found to exceed the National Interim Primary Drinking Water Standards for these metals. Leachable cyanide levels are below the U.S. Public Health Service's suggested drinking water standard.[7] Nickel values, however, were found to exceed the Agency's interim criterion and are, therefore, of regulatory concern.[8,9]

The Agency's evaluation of cyanide in the waste indicates that cyanide may be an additional reason of concern. High concentrations of total cyanide (682 ppm), free cyanide (109 ppm) and reactive cyanide (31.1 ppm) have been documented in the impounded sludges. The Agency believes that these cyanide concentrations may indicate a potential problem in the waste treatment system, since the treatment system on-line as Nickeloid's facility contains a cyanide destruction sequence that is intended to oxidize cyanides. Nickeloid had claimed the cyanide destruction capacity of this sequence to be 99.99 percent efficient; the data collected by Nickeloid does not support this claim. The large amounts of total (and leachable) cyanides present in this waste (probably ferrocyanides) are of concern to the Agency, although the VHS analysis indicates that cyanide may be predicted to cause groundwater contamination at levels slighty less than the Agency's regulatory maximum.[10]

None of the other non-listed constituents were found to exceed their respective regulatory standards. The Agency believes that the low compliance point concentrations of these metals indicates that these metals are not of regulatory concern.

In addition, the Agency has concluded, based on a review of material safety data sheets and a list of raw materials used by Nickeloid in its manufacturing process, that no other hazardous constitutents (except as described earlier) are present in the impounded sludges.

The Agency believes that the wastes generated from the manufacturing processes at Nickeloid's facility and impounded at this same facility are not rendered non-hazardous by the waste treatment system currently in use. The analysis of the sludge using the VHS model indicates the potential of the sludge to leach nickel and contaminate ground water. The Agency, therefore, proposes to deny this petition for exclusion of the wastewater treatment sludges impounded at American Nickeloid Company's facility in Lima, Illinois. The Agency also proposes to revoke the temporary exclusion held by American Nickeloid for the Drying Lagoon sludges.[11]

II. AT&T Technology Systems

A. Petition for Exclusion

AT&T Technology Systems (AT&T), located in Richmond, Virginia, is involved in electroless copper plating, and copper, nickel, gold, and solder electrolytic plating of printed circuit boards. AT&T has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) Tin plating on carbon steel; (3) Zinc plating (segregated basis) on carbon steel; (4) Aluminum or zinc-aluminum plating on carbon steel; (5) Cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) Chemical etching and milling of aluminum. The listed constituents of concern for this waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed). AT&T has petitioned to exclude its wastewater treatment sludge because it does not meet the criteria for which it was listed.

Based upon the Agency's review of their petition, AT&T was granted a temporary exclusion for their filtered sludge on November 22, 1982 (see 47 FR 52673). The basis for granting the exclusion, at that time, was the low concentration of chromium, cyanide, and nickel, and the absence of cadmium in the waste. Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

[4] See 50 *FR* 7882, Appendix I, February 26, 1985 for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 *FR* 48899, Appendix, November 27, 1985.

[5] Since the Agency has not yet proposed the application of the VHS model to surface impoundments, this evaluation is based upon the landfill application of the model. If the surface impoundment application is proposed prior to the publication of the Agency's final decision on Nickeloid's waste, this petition will be subject to re-evaluation and, if warranted, re-proposal.

[6] This volume represents the total sludge volume presently in Nickeloid's lagoons, which is less than the annual maximum volume of sludge that may be generated by Nickeloid. Where a facility has more than one on-site impoundment in close proximity to each other, the Agency has concluded that their impact on any underlying aquifer will be considered collectively as a single contaminating source. The VHS analysis therefore is performed using the combined total sludge volume of all of the impoundments.

[7] See Drinking Water Standards, U.S. Public Health Service, Publication 956 (1962).

[8] Pending the completion of current EPA studies on the health effects of nickel, the Agency is using 350 ppb for the purpose of evaluating delisting petitions. The basis for this standard is explained at 50 *FR* 20239–48, May 15, 1985. Also the Agency has collected enough statistically defensible data from its ongoing nickel toxicity study to indicate that the interim standard of 0.35 ppm will decrease.

[9] The upper limit to the 95 percent confidence interval for the nickel extract concentrations from the lagooned wastes was also used in the VHS model. The calculated compliance point concentration of 0.56 mg/l also exceeded the Agency's standard.

[10] The Agency has also made a separate evaluation of the Drying Lagoon sludges, because the sludges in both the Upper and Lower Lagoons will be placed in the Drying Lagoon for further dewatering prior to off-site disposal. The Agency has used the EP leachate concentrations of the Drying Lagoon sludges (rather than the analytical maximum for the impoundment as a unit) in conjunction with the volume of sludge stored on-site (1,100 cubic yards) in the VHS model. The evaluation indicates that nickel will still be expected at the compliance point at levels greater than the Agency's interim standard (0.38 mg/l vs. 0.35 mg/l). Additional drying of these lagooned wastes, then, would be expected to produce a dried waste which would still leach nickel and produce ground-water contamination in excess of the Agency's standards.

[11] American Nickeloid was notified, in a letter dated April 30, 1986, that the Characterization and Assessment Division would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Nickeloid's petition be denied due to the potential of the impounded sludges to leach nickel and contaminate ground water. Nickeloid was given the option of withdrawing its petition, but did not exercise this option.

(See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from AT&T. This information was submitted on April 15, 1985; November 16, 1985; January 6, 1986; April 17, 1986; and July 2, 1986. As a result, the Agency has re-evaluated AT&T's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) Determine if the waste is non-hazardous with respect to factors and toxicants other than the original listing criteria. Today's notice is the Agency's re-evaluation of AT&T's petition.

AT&T submitted a detailed description of its electroplating and wastewater treatment processes (including schematic diagrams); total constituent analyses and EP toxicity test results for the EP toxic metals; and total oil and grease analyses of representative waste samples.[12] In addition, AT&T submitted a list of raw materials used in the manufacturing process. As noted above, the Agency requested this information to determine if toxicants, other than the original listing criteria, are present in the waste at levels of regulatory concern.

AT&T's manufacturing process includes electroless copper plating, and copper, nickel, gold, and solder electrolytic plating. AT&T's waste treatment system involves chromium reduction through the addition of bisulfite; neutralization; polymer flocculation; clarification; and vacuum filtration. Dewatered sludge then is discharged to a large dumpster prior to disposal.

AT&T claims that its wastewater treatment process generates a non-hazardous sludge because cadmium is not used in the process; only small quantities of cyanide are present in their gold plating operation, thus, no cyanide treatment is necessary due to very low influent concentrations; and that nickel is plated under gold in only small quantities. Furthermore, AT&T claims although chromium and nickel are present in the waste, they are essentially in an immobile form. AT&T also claims that this waste is not hazardous for any other reason.

AT&T collected 1-gallon samples of the sludge as it exited the rotary drum vacuum filter. The petitioner claims that the vacuum filter sludge source is a 66,000-gallon holding tank that is well-mixed and ensures a homogeneous and representative sample. Eight samples were collected weekly from October 3, 1985 to December 6, 1985 (excluding the week of November 25, 1985) and analyzed for total and leachable concentrations of the EP toxic metals.[13] AT&T later questioned the analytical accuracy of these eight samples and provided split sample results for leachable lead obtained by their in-house wastewater treatment laboratory. Split sample results were not provided for the other EP toxic metals. AT&T collected an additional eight samples in April and May 1986 and analyzed these samples for leachable barium, chromium, lead, mercury, and nickel. In addition, the EPA sampling team conducted a spot check sampling visit in November 1983. Two composite samples were collected from a dumpster containing sludge from one or possibly two press operations, and analyzed for total and leachable concentrations of the EP toxic metals and nickel, and the priority pollutants.[14]

AT&T claims that the samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. The petitioner has verified that all of the plating lines were in operation during the sampling period. The petitioner claims that the sampling period was long enough to cover any scheduled changes in the product line, and therefore, all raw materials used in the process are represented by the samples collected.

Total constituent and EP toxicity analyses of the filter sludge for the listed and non-listed constituents as reported by AT&T revealed the maximum concentrations reported in Tables 1 and 2, respectively. Total constituent analysis results reported are for the eight samples collected in 1985; the eight 1986 samples were not analyzed for total concentrations. Since analytical accuracy of the EP leachate tests for the 1985 samples was questionable, maximum leachable concentrations reported in Tables 1 and 2 are for the split samples analyzed for leachable lead levels and the 1986 samples.

TABLE 1.—MAXIMUM CONCENTRATIONS (PPM)

Listed constituents	Total constituent analyses	EP leachate analyses
Cadmium	(1)	
Chromium (total)	240	<0.05
Nickel	723	8.66
Cyanide		

[1] AT&T did not provide cadmium or cyanide data for samples collected in 1985 and 1986.

TABLE 2.—MAXIMUM CONCENTRATIONS (PPM)

Listed constituents	Total constituent analyses	EP leachate analyses
Arsenic	(1)	
Barium	25	0.160
Lead	3,820	1.85
Mercury		0.012
Selenium		
Silver		

[1] AT&T did not provide arsenic, selenium, silver, and total mercury data for samples collected in 1985 and 1986.

Total constituent and EP toxicity analyses of the filter press sludge for the listed and non-listed constituents from samples collected during EPA's visit are reported in Tables 3 and 4, respectively.

TABLE 3.—MAXIMUM CONCENTRATIONS (PPM)

Listed constituents	Total constituent analyses	EP leachate analyses
Cadmium	<5	<0.025
Chromium (total)[1]	1,600	<0.20
Nickel	890	8.1
Cyanide	3.5	[2] 0.18

[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

[2] Leachable cyanide was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solid diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

TABLE 4.—MAXIMUM CONCENTRATIONS (PPM)

Non-listed constituents	Total constituent analyses	EP leachate analyses
Arsenic	<10	<0.02
Barium	150	2.0
Lead	5,800	1.4
Mercury	2.8	<0.001
Selenium	<10	<0.05
Silver	7.1	<0.02

The maximum total oil and grease content reported was 0.12 percent. AT&T also submitted a list of all raw materials used in their manufacturing

[12] AT&T's process has undergone changes since the original petition of March 20, 1981, including the reduction of lead and nickel mobility and the elimination of coagulants in the wastewater treatment process. New test results were requested in October 1985, for EP toxic metals, percent solids, and oil and grease. The Agency presently is evaluating AT&T's petition to determine whether these process changes affect the status of AT&T's temporary exclusion. The Agency also is preparing general guidance for defining process changes and their effect on temporary and final exclusions.

[13] Other data were provided in the original petition and in response to subsequent EPA requests. EP data for all the EP toxic metals are available for 2 samples taken on February 27, 1979 and October 7, 1980; EP data for total chromium for 4 samples in 1981; and EP data for nickel for 18 samples from January to March 1982. Due to process changes in 1984 and 1985, AT&T requested that the Agency evaluate only the 16 samples taken in 1985 and 1986, since the contaminant levels have decreased since 1979.

[14] Although the spot check visit was conducted prior to process changes, the Agency believes that the vacuum filter sludge composition has not changed significantly, and therefore, the samples obtained from this spot check visit are representative of AT&T's waste.

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and wastewater treatment processes. This list indicated that thiourea and formic acid (Appendix VIII constituents) are used in the process. AT&T submitted information that can be used to show that thiourea and formic acid are each less than 0.001 percent of wastewaters annually sent to the treatment process. AT&T, however, did not submit analytical data quantifying levels of thiourea and formic acid in the sludge. Methylene chloride and 1,1,1-trichloroethane also are used at the facility, but AT&T claims that these compounds are not discharged to the wastewater treatment process, but are sent through a solvent recovery system. Organics analysis conducted by EPA identified chloroform and 1,1,1-trichloroethane in the sludge. Maximum concentrations for these constituents in the sludge are reported in Table 5.

TABLE 5.—MAXIMUM CONCENTRATIONS OF ORGANICS PRESENT IN THE FILTER PRESS SLUDGE (PPM)

Constituents	Total constituent analyses
Chloroform	0.590
1,1,1-Trichloroethane	2.8

AT&T also provided information indicating that the vacuum filter sludge is not ignitable, corrosive, or reactive. AT&T claims that it generates a maximum of 900 tons of waste annually from its vacuum filter.

B. Agency Analysis and Action

AT&T has not demonstrated that the waste treatment sludge generated from its vacuum filter is non-hazardous. The Agency believes that the 16 grab samples that were taken from the filter press in 1985 and 1986 and the additional samples collected during EPA's spot check sampling visit were non-biased and adequately represent any variations that may occur in the waste petitioned for exclusion. The key factor that could vary toxicant concentrations in this waste would be in the use of different raw materials due to changes in the product line being manufactured. Variations in the raw materials can be expected either when the facility performs as a job shop or when the product line changes seasonally. Since AT&T is not a job shop, nor does it have seasonal product changes, the Agency believes that AT&T's sampling period was long enough to cover any scheduled changes in the product line. The Agency believes, therefore, that the samples collected by AT&T are representative of their waste.

The Agency has evaluated the mobility of the listed constituents from AT&T's waste using the vertical and horizontal spread (VHS) model.[15] The VHS model generated compliance point values using the 960 tons per year maximum generation rate and the maximum extract levels reported by AT&T and EPA as input parameters. These predicted compliance point concentrations are exhibited in Table 6. (When leachate concentrations were below the detection limits, the value of the detection limit was used.)

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	<0.0015	0.01
Chromium (total)	<0.012	0.05
Nickel	8.52	1.35
Cyanide	0.61	0.2

The vacuum filter sludge exhibited cadmium and chromium levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards, and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[16] The cyanide content (3.5 ppm) also is low enough to not be of regulatory concern from an air contamination route since it is below the 10 ppm workplace air standard set by the American Conference of Governmental Hygienists.[17] (The capability of a cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) These constituents, therefore, are not of regulatory concern. The predicted maximum nickel level, however, exceeds the Agency's interim health advisory.[18]

In addition, the Agency calculated the upper limit of a 95 percent confidence interval for the EP leachate nickel data reported by AT&T and EPA.[19] This value (*i.e.*, 5.92 ppm) when used as an input to the VHS model also generated a compliance point concentration that exceeded the regulatory standard for nickel. Nickel levels in the vacuum filter sludge, therefore, are of regulatory concern.

Compliance point values also were calculated for the non-listed EP toxic metals and are displayed in Table 7.

TABLE 7—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	<0.001	0.05
Barium	0.12	1.0
Lead	0.11	0.05
Mercury	0.0007	0.002
Selenium	<0.003	0.01
Silver	<0.0012	0.05

The vacuum filter sludge exhibited arsenic, barium, mercury, selenium, and silver levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards. These constituents, therefore, are not of regulatory concern. The predicted maximum lead level, however, exceeds the National Interim Primary Drinking Water Standard for lead. The Agency also determined the mean and upper limit of a 95 percent confidence interval for lead using the data submitted by AT&T and EPA, and used these concentrations (*i.e.*, 0.87 and 1.09 ppm, respectively) as VHS model inputs. The calculated compliance point concentrations (*i.e.*, 0.052 and 0.068 ppm, respectively) also exceeded the regulatory standard for lead. Lead levels, therefore, are of regulatory concern.

The Agency also reviewed AT&T's raw material list and material safety data sheets for each component in the raw material list. The Agency has concluded that thiourea and formic acid are not the only Appendix VII hazardous constituents used in AT&T's process. AT&T did not provide analytical data quantifying levels of thiourea and formic acid in the sludge. In addition, AT&T did not explain the presence of chloroform and 1,1,1-trichlorethane in the sludge. The Agency also has evaluated the mobility of the organic constituents reported for the samples collected during the spot check sampling visit using the VHS model. The VHS model generated compliance point values using the 960 tons per year maximum generation rate and the maximum concentrations of organics predicteds by the Agency's organic leachate model.[20] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 8.

[15] See footnote 4.

[16] See footnote 7.

[17] See American Conference of Governmental Hygienists: *Documentation of the Threshold Limit Values for Substances in Workroom Air*, third edition, 1971, Cincinnati, Ohio.

[18] See footnote 8.

[19] For a discussion of the Agency's use of the upper limit of a 95 percent confidence interval, see 50 *FR* 48017, November 27, 1985.

TABLE 8—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituents	Predicted leachate concentrations (Basic)	Predicted leachate concentrations (95%)	Compliance point concentrations (Basic)	Compliance point concentrations (95%)	Regulatory standards
Chloroform	0.042	0.059	0.0025	0.0035	0.0006
1,1,1-Tri-chloroethane	0.062	0.079	0.004	0.004	1.2

The calculated compliance point concentration for chloroform exceeded the regulatory standard of 0.0005 ppm.[21] The calculated concentration of 1,1,1-trichloroethane was below the corresponding standard.

The Agency believes that AT&T's treatment process generates a hazardous waste that should not be excluded from hazardous waste control. The prediction of maximum nickel and lead levels (at the compliance point) using the VHS model reveals concentrations that exceed the regulatory standards and indicates a potential for the vacuum filter sludge to leach nickel and lead and contaminate ground water. Chloroform levels (at the compliance point) predicted using the VHS model also exceed the regulatory standard and indicate a potential for harming human health and the environment. Finally, the Agency also is proposing to deny the petition on the basis that it is incomplete (*e.g.*, AT&T did not substantiate whether or not thiourea and formic acid are present in the waste at levels of regulatory concern nor did they explain the presence of chloroform and 1,1,1-trichloroethane in the sludge). The Agency, therefore, proposes to deny this petition for exclusion of the dewatered wastewater treatment sludges generated by AT&T Technology Systems (AT&T) at its Richmond, Virginia facility.

III. John Deere Des Moines Works

A. Petition for Exclusion

John Deere Des Moines Works (John Deere), located in Ankeny, Iowa, is involved in the manufacture of farm equipment and machinery. John Deere has petitioned the Agency to exclude its dewatered waste-water treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wasterwater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) Tin plating on carbon steel; (3) Zinc plating (segregated basis) on carbon steel; (4) Aluminum or zinc-aluminum plating on carbon steel; (5) Cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) Chemical etching and milling of aluminum. The listed constituents of concern for this waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed). John Deere has petitioned to exclude its wastewater treatment sludge because they claim it does not meet the criteria for which it was listed.

Based upon the Agency's review of their petition, John Deere was granted a temporary exclusion on November 25, 1980 (see 45 fR 78550). The basis for granting the exclusion, at that time, was the immobile nature of cadimum and chromium and the low levels of nickel and cyanide in the sludge. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agnecy has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from John Deere. This information is available in the public

[20] See 50 FR 48953–48966, November 27, 1985 for an explanation of the procedures used to estimate the concentration of organic compounds in the leachate. See also 51 FR 27081, July 29, 1986, for an explanation of the Agency's newly proposed OLM.

[21] Chloroform was detected in both samples collected by EPA. Using the VHS model, both calculated compliance point concentrations exceeded the regulatory standard.

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docket. As a result, the Agency has re-evaluated John Deere's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) Evaluate the waste for factors (other than those for which the waste was originally listed) to determine whether the waste is non-hazardous. Today's notice is the Agency's re-evaluation of John Deere's petition.

In support of its petition, John Deere submitted a detailed description of the manufacturing and wastewater treatment processes (including schematic diagrams); a list of raw materials used in the manufacturing processes; and material safety data sheets for all raw materials used in the manufacturing and treatment processes.[22] John Deere also submitted total constituent analyses and Oily Waste EP toxicity test results for the EP toxic metals and nickel and analytical results for total and reactive cyanides, reactive sulfides, total oil and grease, and total phenol on representative waste samples. Furthermore, John Deere submitted results of analyses for the 129 priority pollutants, 17 organic constituents listed from paint formulating, and Appendix VIII hazardous constitutents identified as raw materials used in John Deere's manufacturing process that might be present in John Deere's wastewater treatment sludge. The Agency requested much of this information, as noted above, to determine if toxicants, other than the original listing criteria, are present in the waste at levels of regulatory concern.

John Deere's manufacturing processes include metal machining and heat treating, iron and zinc phosphate coating, metal cleaning, metal painting, and chrome and zinc electroplating. The industrial wastewater that is generated from the various manufacturing processes is collected and treated in John Deere's wastewater treatment facility. Treatment of the wastewater involves equalization, free floating oil removal, chrome reduction using sulfuric acid and sodium metabisulfite, lime and acid neutralization, polymer flocculation, filtration, and clarification. The wastewater treatment sludge is pumped into a mixing chamber, and then into a rotary vacuum filter tank, where it receives additional mixing and is dewatered. The homogeneous mixture of dewatered sludge is released to a conveyor belt and is stored in a collection hopper prior to disposal.

John Deere combines several waste streams into their treatment system. These include wastewaters from the manufacturing processes and miscellaneous utilities such as noncontact process cooling and boiler blowdown. Approximately half of the wastewater is generated from electroplating operations. These combined streams generate a maximum of 1,050 tons of sludge annually. The average solids content of the sluge is 37.6 percent.

John Deere claims that the wastewater treatment process generates a non-hazardous sludge because cadmium, chromium, and nickel are present in an essentially immobile form. In addition, John Deere claims that nickel and cyanide are not used in the plating processes. The only source of cyanide is in a complexed form in a ferriferrocyanide pigment from metal painting operations; however, John Deere claims that the ferriferrocyanide pigment present in the paint formulation is stable and does not readily break down to hydrogen cyanide which is of major concern due to its toxicity. John Deere further claims that the wastewater treatment sludge is not hazardous for any other reason.

John Deere's demonstration originally was based on 11 samples of the sludge collected from the conveyor belt discharge point following vacuum filtration at random times over a 1-month period. These 11 samples were analyzed for cadmium, chromium, lead, zinc, nickel, barium, total phenol, and total and amenable cyanide. Historical test results using the Iowa Department of Environmental Quality Leachate Test also were submitted in the original demonstration.[23] For the purposes of further testing, John Deere collected four additional core samples of dewatered sludge over a 2-week period from the vacuum filter collection hopper. As requested by the Agency, John Deere used the Oily Waste EP Test procedure to analyze the vacuum filter sludge for leachable levels of the EP toxic metals and nickel because the oil and grease content of the sludge exceeded one percent. (The original 11 samples were not subjected to the Oily Waste EP Test.) These additional four samples, therefore, are the samples used to re-evaluate the petition. John Deere claims the samples are representative of any variation of constituents in the waste because the sludge was well-mixed and sampling was random. In addition, the petitioner claims that the facility was in normal, day-to-day operation during sampling.

Total constituent and Oily Waste EP toxicity analyses of the vacuum filter sludge for the listed constituents revealed the maximum concentrations reported in Table 1. The Oily Waste EP procedure was used because the sludge's oil and grease content was reported at values up to 59 percent.

The total constituent and Oily Waste EP toxicity analyses of the vacuum filter sludge for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 1.—MAXIMUM CONCENTRATIONS

[Parts per million]

Listed constituents	Total constituent analyses	Oily waste EP leachate analyses
Cadmium	23	<0.1
Chromium (total) [1]	19,000	<0.5
Nickel	1,800	22
Cyanide	6.0	[2] 0.3

[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the Oily Waste EP leachate concentration is low enough to make a determination of hexavalent chromium unnecessary.

[2] John Deere did not analyze the vacuum filter sludge for leachable cyanide. The maximum leachable cyanide concentration was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

<Denotes concentrations below the detection limit.

TABLE 2.—MAXIMUM CONCENTRATIONS

[Parts per million]

Non-listed constituents	Total constituent analyses	Oily waste EP leachate analyses
Arsenic	<19	<0.5
Barium	1,300	<1.0
Lead	3,700	0.60
Mercury	<1	<0.06
Selenium	<19	<0.1
Silver	5.7	<0.5

<Denotes concentrations below the detection limit.

John Deere also analyzed the vacuum filter sludge for reactive sulfides; the maximum concentration in the sludge was 600 ppm. John Deere also analyzed the vacuum filter sludge for the 129 priority pollutants, 17 organic constitutents listed from paint formulating, and the Appendix VIII constituents identified as raw materials used in the manufacturing processes that might be present in the vacuum filter sludge. The maximum concentrations of those organic pollutants detected in the vacuum filter sludge are presented in Table 3.

[22] John Deere has claimed the raw materials list and the material safety data sheets as confidential business information (CBI). This information, therefore, is not available in the public docket.

[23] John Deere claims that the Iowa Department of Environmental Quality Leachate Test conforms to SW-846 requirements.

TABLE 3.—MAXIMUM CONCENTRATIONS OF ORGANICS PRESENT IN THE VACUUM FILTER SLUDGE (PPM)

Compound	Total constituent analyses
Benzo(a)pyrene	28
Bis(2-ethylhexyl)phthalate	39
Butyl benzyl phthalate	20
Chlorobenzene	0.021
Chloroform	0.023
Di-n-butyl phthalate	3.7
Diethyl phthalate	5.9
Methyl ethyl ketone	0.24
Methylene chloride [1]	0.013
Naphthalene	5.4
Tetrachloroethane	0.032
Toluene	0.064
1,1,1-Trichloroethane	0.018
Trichloroethene	0.047

[1] Methylene chloride detected in field blank at 0.012 ppm.

John Deere also provided test data indicating that the vacuum filter sludge is not ignitable or corrosive.

B. Agency Analysis and Action

John Deere has not demonstrated to the Agency that the vacuum filter sludge produced by the wastewater treatment system is non-hazardous. The Agency believes that the vacuum filter sludge samples taken from John Deere's treatment system were non-biased and adequately characterize any variation that may occur in the waste petitioned for exclusion. Both the production and treatment processes are consistent over time. The facility does not act as a job shop nor does it have seasonal product changes; therefore, the waste is uniform from week to week and the samples taken from the vacuum filter hopper are representative of the waste as disposed. The Agency, therefore, believes that the samples collected by John Deere are representative of their waste.

The Agency has evaluated the mobility of the listed constituents from John Deere's waste using the vertical and horizontal spread (VHS) model.[24] The VHS model generated compliance point values using the 1,050 tons per year maximum generation rate and the maximum reported extract levels as input parameters.[25] These compliance point concentrations are exhibited in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	<0.007	0.01
Chromium (total)	<0.03	0.05
Nickel	1.45	0.35
Cyanide	0.02	0.2

The vacuum filter sludge exhibited cadmium and chromium levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards; and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[26] The waste's maximum cyanide content (6.0 mg/kg) also is low enough so as not to be of regulatory concern from an air contamination route. That is, the Agency believes cyanide levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[27] (The capability of a cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) These constituents, therefore, are not of regulatory concern. The waste's maximum sulfide level (600 mg/kg), however, is of regulatory concern with respect to hydrogen sulfide gas generation. The waste is considered reactive due to its high content of reactive sulfide.[28] The sludge, in addition, exhibits nickel levels in excess of the Agency's interim health advisory, and this constituent also is, therefore, of regulatory concern.[29]

The Agency also concluded, through using the VHS model, that no other EP toxic metals, with the exception of mercury, are present in the vacuum filter sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 5. The detection limit used for mercury analysis was not sufficient to prove that levels of mercury pass the VHS model evaluation. In the event that John Deere makes significant process changes and submits a new petition, mercury analysis would have to be conducted using a lower detection limit.

TABLE 5.—VHS MODEL: PREDICTED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	<0.03	0.05
Barium	<0.07	1.0
Lead	0.03	0.05
Mercury	<0.004	0.002
Selenium	<0.007	0.01
Silver	<0.03	0.05

The Agency has also evaluated the mobility of organic constituents detected in the vacuum filter sludge using the VHS model. The VHS model generated compliance point values using the 1,050 tons per year maximum generation rate and the maximum reported concentration of organics predicted by the Agency's organic leachate model.[30] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 6.

TABLE 6.—VHS MODEL: PREDICTED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	Baseline	95 percent	Baseline	95 percent	
Benzo(a)pyrene	0.0016	0.0025	0.0001	0.0002	3×10^{-6}
Bis(2-ethylhexyl)-phthalate	0.0180	0.0233	0.0012	0.0015	0.70
Butyl benzyl phthalate	0.0237	0.0294	0.0016	0.0019	NS
Chlorobenzene	0.0014	0.0022	9.2×10^{-5}	0.0001	1.1
Chloroform	0.0044	0.0058	0.0003	0.0004	5×10^{-4}
Di-n-butyl phthalate	0.0132	0.0165	0.0009	0.0011	3.5
Diethyl phthalate	0.0885	0.1164	0.0058	0.0073	350
Methyl ethyl ketone	0.0845	0.1307	0.0056	0.0086	1.8
Methylene chloride	0.0043	0.0069	0.0003	0.0004	0.056
Naphthalene	0.0240	0.0295	0.0016	0.0019	NS

[24] See footnote 4.

[25] The Agency requests that OWEP analyses be run on wastes which have oil and grease levels greater than 1 percent. The Agency has used OWEP data provided by John Deere in the VHS model evaluation.

[26] See footnote 7.

[27] This conclusion is based upon the results of air dispersion calculations. A copy of these calculations is available in the public docket for this notice.

[28] See internal Agency memorandum dated July 12, 1985 entitled "Interim Thresholds for Toxic Gas Generation Reactivity." (In RCRA public docket.) Wastes with a reactive sulfide content in excess of 500 ppm may be considered hazardous by the reactivity characteristic.

[29] See footnote 8. In addition, the Agency determined the upper limit of a 95 percent confidence interval for the nickel data submitted by John Deere. This value (21.3 ppm) resulted in a compliance point concentration which also exceeded the regulatory standard for nickel.

[30] See footnote 20.

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TABLE 6.—VHS MODEL: PREDICTED COMPLIANCE POINT CONCENTRATIONS (PPM)/VACUUM FILTER SLUDGE—Continued

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	Baseline	95 percent	Baseline	95 percent	
Tetrachloroethene	0.0013	0.0015	8.6×10^{-5}	0.0001	6.9×10^{-4}
Toluene	0.0034	0.0046	0.0002	0.0003	10.5
1,1,1-Trichloroethane	0.002	0.0031	0.0001	0.0002	1.2
Trichloroethene	0.0036	0.0053	0.0002	0.0003	0.0032

NS = No regulatory standard available for comparions.

With the exception of benzo(a)pyrene, the predicted compliance point for thee compounds are below their respective regulatory standards. The presence of these compounds at the reported concentrations, therefore, is not of regulatory concern. The calculated compliance point concentration for benzo(a)pyrene, however, exceeded the regulatory standard.[31]

The Agency believes that the waste generated by the manufacturing processes at John Deere Des Moines Works is not rendered non-hazardous by the waste treatment process currently in use. The prediction of nickel levels (at the compliance point) using the VHS model reveals a concentration that exceeds the Agncy's Interim Health Advisory and indicates a potential for the vacuum filter sludge to leach nickel and contaminate ground water. In addition, benzo(a)pyrene levels (at the compliance point) predicted using the VHS model exceed the regulatory standard and indicate a potential for harming human health and the environment. The Agency, therefore, proposes to deny this petition for exclusion of the wastewater treatment sludge generated by John Deere Des Moines Works at its Ankeny, Iowa facility.

IV. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the three petitioners included in this notice who may have their temporary exclusions revoked and final exclusions denied. They would have to revert back to handling their wastes as they did before being granted these exclusions (*i.e.*, they must handle their wastes as hazardous). These petitioners would need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions and denials would be six months after publication of the final rule in the **Federal Register.**

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal, which would revoke temporary exclusions and deny petitions from four facilities is not major. The effect of this proposal would increase the overall costs for the facilities which currently have temporary exclusions that are being revoked and denied. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these four facilities that currently have temporary exclusions and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $1.6 million, well under the $100 million level constituting a major regulation. In addition, some of these companies are large and, therefore, the impact of this rule will be relatively small. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. This amendment will have the effect of increasing overall waste disposal costs. This rule only affects three facilities across different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

The regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: October 2, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–22828 Filed 10–7–86; 8:45 am]

BILLING CODE 6560–50–M

[31] The Agency also determined the upper limit of a 95 percent confidence interval for the benzo(a)pyrene data submitted by John Deere. This value, 29.5 ppm, was then used as an input to the Agency's Organic Leachate Model. The predicted leachate concentration, when subjected to the VHS model evaluation, also generated a compliance point concentration which exceeded the regulatory standard.

FEDERAL MARITIME COMMISSION

46 CFR Part 568

[Docket No. 86–26]

Self-Policing Requirements for Agreements Under the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to revoke its self-policing regulations for steamship conferences in the domestic offshore trades. Congress' recent decision not to require netural body policing in our foreign commerce, coupled with an absence of problems requiring neutral body policing in the domestic offshore trades appears to have eliminated the need for these regulations.

DATE: Comments due on or before November 7, 1986.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Wm. Jarrel Smith, Jr., Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5787.

SUPPLEMENTARY INFORMATION: Section 15 of the Shipping Act, 1916 requires, in part, that "[t]he Commission shall disapprove any such agreement after notice and hearing, on a finding of inadequate policing of the obligations under it . . .", 46 U.S.C. App. 814. To implement this mandate, the Commission promulgated regulations, 46 CFR Part 568, which require that all ratemaking agreements, except those between two parties, contain provisions describing the methods and standards used by independent policing authorities to investigate and adjudicate breaches of an agreement by any of the membership, and to assess appropriate penalties. These provisions, which include the mandatory filing of semiannual self-policing reports, were designed to provide the Commission with reliable information concerning the nature and performance of self-policing systems and curtail rebating and other malpractices by ocean carriers. They originally applied to conference agreements in foreign trades where rebating had historically been a problem and where the Commission's investigators often could not obtain access to records of foreign carriers.

The Shipping Act of 1984, 46 U.S.C. App. 801–820, deleted the requirement that agreements among ocean common carriers in U.S. foreign commerce be adequately policed, and replaced it with a requirement that conference agreements must be policed fully by an independent neutral body only if a member requests it. The passage of the 1984 Act has resulted in an anomalous situation in that the Commission's existing rules governing self-policing, which had been promulgated to apply primarily to foreign commerce under the 1916 Act, now apply solely to the domestic offshore trades.

It appears, however, that full compliance with the requirements of Part 568 could prove to be prohibitively expensive for carriers serving the domestic offshore traders, while serving no useful regulatory purpose.[1] Moreover, there is little historical evidence that what few agreements have existed in these trades have suffered from inadequate policing. Given these facts, it would appear that the adequacy of policing of a particular agreement could be better addressed on an *ad hoc* basis, rather than by the detailed and cumbersome procedures of the existing self-policing rules.

The Commission, therefore, invites comments on a proposal to revoke the self-policing regulations contained in Part 568.

The Federal Maritime Commission has determined that the proposed rule, if adopted, is not a "major rule" as defined in Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 46 CFR Part 568

Antitrust, Contracts, Maritime carriers, Reporting and recordkeeping requirements, Rates.

Therefore, pursuant to 5 U.S.C. 553 and sections 14, 15, 16, 17, 18(a), 21, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. App. 812, 814, 815, 816, 817(a), 820, 833(a) and 841(a), the Federal Maritime Commission proposes to remove Part 568 of Title 46, Code of Federal Regulations.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86–22775 Filed 10–7–86; 8:45 am]

BILLING CODE 6730–01–M

[1] Presently only two ratemaking agreements are subject to these regulations: Agreement No. 102–006454, the Guam Rate Agreement, and Agreement No. 102–010693, the Pacific Coast/American Samoa Rate Agreement.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 60617–6188]

Fishery Conservation and Management; Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). The rule (1) establishes a total allowable directed harvest of red drum from the fishery conservation zone (FCZ) of zero for 1987, (2) provides for a resource assessment program, (3) establishes a framework procedure for specifying commercial quotas in the FCZ on an annual basis, (4) establishes a catch limit for the incidental havest of red drum in non-directed fisheries and provides for prohibiting retention, landing, sale, barter or trade of any incidental harvest of red drum when the catch limit is reached, (5) prohibits the transfer or attempted transfer or red drum at sea, (6) requires permits for selected vessels with catches of red drum and (7) specifies reporting requirements for owners or operators of permitted vessels and dealers receiving incidentally-caught red drum. The intended effect of this rule is to prevent overfishing while achieving optimum yield on a continuing basis.

DATE: Comments on the proposed rule must be received or or before November 6, 1986.

ADDRESSES: Comments on the proposed rule and requests for copies of the initial regulatory impact review/initial regulatory flexibility analysis should be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Comments on the collection of information requirement subject to the Paperwork Reduction Act should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA. Persons interested in the Council's position on the FMP this rule would implement should contact Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609 (Telephone: 813–228–2815).

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce (Secretary) has prepared the FMP under Section 304(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP was submitted to the Council on August 26, 1986. At its meeting on September 10, 1986, the Council provided extensive comments that will be addressed together with comments from the general public when final action is taken.

The Secretary promulgated an emergency rule (51 FR 23551, June 30, 1986) that limited the directed net harvest of red drum from the FCZ to one million pounds during its 90-day effective period (June 25 to September 23, 1986); it also limited nondirected fisheries to five percent of red drum by weight of the total catch aboard a vessel. The directed fishery was closed

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on July 20, 1986 (51 FR 26554, July 24, 1986; corrected at 51 FR 27413, July 13, 1986). The Secretary extended the emergency regulations for a second 90-day period, in December 22, 1986, at which time this FMP would be implemented.

Red drum, *Sciaenops ocellatus*, commonly referred to as redfish, is one of the most important fishery resources in the Gulf of Mexico. Juvenile and subadult red drum inhabit estuaries and nearshore State waters while the larger, adult fish which comprise the spawning stock are generally found offshore in the FCZ. Recreational fishing occurs primarily in State waters. Red drum is the second most popular game fish species in the Gulf of Mexico.

Red drum landings in State waters averaged 10.0 million pounds per year from 1978 to 1985, ranging from a low of 6.8 million pounds in 1981 to a high of 13.4 million pounds in 1982. In 1985 landings were 9.3 million pounds. Recreational landings from 1979 to 1985 were three times the level of commercial landings from State waters.

Red drum landings from the FCZ averaged 0.98 million pounds from 1979 to 1985. These landings generally increased from a low of 0.14 million pounds in 1979 to 3.7 million pounds in 1985. From January 1 to June 25, 1986, 6.95 million pounds of red drum were harvested by purse seines alone. In 1984 and 1985, commercial landings from the FCZ were aproximately 10 times greater than recreational landings from the FCZ. Thus, a very noticeable shift from recreational to commercial fishing has occurred in the FCZ. Total landings (recreational and commercial) in State waters from 1979 to 1983 were 27 times the catch in the FCZ. In 1984 to 1985, the ratio dropped to 3.5 to 1, and if commercial fishing in the FCZ had not been curtailed by the emergency rule, landings, in the FCZ in 1986 would have been almost twice the landings in State waters.

The demand for "blackened redfish" increased commercial fishing on the spawning stock of red drum in the FCZ because the demand exceeded the capacity of the commercial fishery in State waters. Red drum school near the surface and are particularly susceptible to purse seine gear. Purse seines, when deployed under the direction of spotter aircraft, have proved extremely efficient with catches ranging upwards of 50,000 pounds per set; some of the larger vessels are capable of taking 150,000 pounds per set. At a hearing before the House of Representatives Subcommittee on Fisheries and Wildlife and the Environment in New Orleans, Louisiana, on June 2, 1986, testimony was presented that two vessels alone had harvested 3.4 million pounds from the FCZ during the first five months of 1986 and "would have harvested 20 million pounds if markets had existed." All five Gulf States have prohibited the use of purse seines for taking red drum in State waters and three States have prohibited their landing or sale. The remaining two States are expected to take similar action.

Although scientists have not determined the impacts resulting from the increased effort, the unregulated harvest of these long-lived brood fish is a major concern. A profile of the red drum fishery prepared by the Gulf of Mexico Fishery Management Council and Gulf States Marine Fisheries Commission indicated that growth overfishing was occurring in the estuarine areas of Texas and west central Florida.

The major problem regarding management of the red drum fishery is limited data on the size and condition of the resource. A major research program was initiated during the first 90-day emergency period and continued through a second 90-day period. Further, the major thrust during the first year of management is directed at determining stock abundance and the level of harvest that can be accommodated without damaging the biological integrity of the stock.

The fishery involves five species of schooling fishes in the Gulf of Mexico FCZ. Catches of one species often result in incidental catches of the others. The species include red drum (*Sciaenops ocellatus*), black drum (*Pogonias cromis*), crevalle jack (*Caranx hippos*), blue runner (*Caranx crysos*), and ladyfish (*Elops saurus*).

The management unit for which measures are proposed includes only the population of red drum occurring in the U.S. Gulf of Mexico. Only data collection and research are proposed for the other species in the fishery so as to expand the base of scientific information in the event conditions warrant the need to manage those species.

The principal objective is to manage the fishery as a unit throughout the U.S. Gulf of Mexico in a manner that will (1) ensure adequate recruitment from the adult spawning population in the FCZ to maintain catches in State waters near historic levels (10.0 million pounds), and (2) to encourage and support State efforts to ensure that enough juveniles survive fishing pressure in State waters to enter the FCZ spawning population, so that the spawning stock biomass can be maintained above critical levels. A biologically healthy population of red drum can provide commercial and recreational fishermen and consumers long-term benefits. To achieve this objective, it is recognized that the two levels of government must rely on one another to perpetuate the fishery at optimum harvest levels within their respective jurisdictions.

Optimum yield is defined as the following:

(1) All the recreationally-caught red drum harvested in State and Federal waters and landed consistent with State laws and regulations;

(2) All commercially-caught red drum harvested in State waters that are landed under State laws and regulations; and

(3) All commercially-harvested red drum in the FCZ that are caught in a directed or non-directed fishery under an annual allowable catch procedure.

Management measures provide for the following:

(1) A fishing year of January 1 to December 31;

(2) A procedure for determining the allowable commercial catch in the FCZ on an annual basis;

(3) A zero allowable catch for the directed fishery during the first year;

(4) A resource assessment program (RAP);

(5) An allowable incidental catch of red drum for non-directed fisheries limited to five percent of red drum by weight of the total catch (established at 300,000 pounds for the first year);

(6) A prohibition against retaining red drum when the non-directed fishery quota is taken (intent is to prevent expansion of the incidental harvest of the resource without adversely affecting traditionally fisheries);

(7) Permits for all vessels fishing with entanglement gear in the FCZ taking or landing red drum (fees to cover administrative costs associated with the permit programs may be required later);

(8) The maintenance of logbooks by owners or operators of permitted vessels and, in the future, by spotter aircraft pilots if selected to report by NMFS; and

(9) The prohibition of the transfer or attempted transfer of red drum at sea.

The procedure mentioned in (2) above requires that NMFS scientists assess the status of the stocks, assess and update (if appropriate) MSY, assess the range of acceptable biological catch (ABC) in the FCZ, and report such findings to the Regional Director on or before October 1.

Upon receipt of the scientific findings, the Regional Director will assess the specification of MSY and the economic, social, and biological impacts of various commercial harvest levels in the FCZ within the ABC range and recommend (1) adjustment of the specification of MSY (if appropriate) and (2) the commercial harvest in the FCZ that most adequately accommodates the management objectives of this FMP.

In determining the annual commercial quota in the FCZ, the first priority must be given to the red drum incidental catch requirements of non-directed fisheries prior to assigning any directed fishery quota. If the ABC can only accommodate an incidental catch, a limit on the incidental harvest of red drum in non-directed fisheries will be proposed, with prohibition of retention of red drum should that limit be exceeded. If the ABC is zero, the retention of red drum must be prohibited. The commercial harvest, whether directed or non-directed, must not exceed ABC.

These determinations will be made by the Secretary and published in the **Federal Register** with 30 days' opportunity for public review and comment. The final amounts will be announced before the beginning of each fishing year.

The RAP mentioned in (4) above will be designed to assess the spawning stock biomass, calculate the amount of fish that will be required to maintain historic catches in State waters, and determine what level of commercial harvest can be safely taken in the FCZ. The program may authorize, under terms and conditions specified by the Regional Director, the participation of selected commercial fishing vessels which may be allowed to harvest and sell commercial quantities of red drum. At a minimum, the vessels so employed must accept and accommodate an observer on board, embark and disembark at locations specified, and fish in the place and time required for scientific purposes. The total harvest of red drum during 1987 under the RAP must not exceed one (1) million pounds.

Fish lawfully harvested under these regulations may be landed in any State of the United States. This action does not extend Federal management to red drum caught recreationally in the FCZ which will continue to be regulated by laws and regulations of the State in which the fish are landed.

Classification

Section 304(c)(2)(A)(iii) of the Magnuson Act, as amended by Pub. L. 97-453, requires the Secretary of Commerce (Secretary) to publish proposed regulations for an FMP prepared by the Secretary. The Secretary has preliminarily determined that the FMP these regulations would implement is consistent with the national standards, other provisions of the Magnuson Act, including section 304(c)(1)(A), and other applicable law. The Secretary, in making a final determination, will take into account the data, views, and comments received during the comment period. The Secretary prepared a draft environmental impact statement for this FMP; a notice of availability was published on August 29, 1986, at 51 30885.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The regulations are designed to prevent overfishing of red drum in the FCZ. The Secretary incorporated a regulatory impact review (RIR) into the FMP. The major benefit is the restoration and maintenance of the red drum fishery in State waters at historic levels. The initial regulatory flexibility analysis (IRFA), which was prepared as a part of the RIR, concludes that this proposed rule, if adopted, would have significant effects on small business entities. A summary of the effects is included in the RIR. A copy of the FMP, containing the RIR and the IRFA, may be obtained from the Southeast Region, NMFS (see **ADDRESSES**).

This proposed rule is exempt from the procedures of Executive Order 12291 under Section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97-453, require the Secretary to publish this proposed rule 30 days after its submission for Council review. This proposed rule is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

This rule contains a collection of information requirements subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the PRA. Comments on this requirement may be sent to OMB (see **ADDRESSES**).

The Secretary determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

The U.S. Coast Guard has been provided with a copy of the proposed FMP and the proposed regulations for their review and comment.

NOAA initiated a Section 7 consultation in accordance with the Endangered Species Act, and a biological assessment was prepared, submitted, and reviewed. It was concluded that the proposed management measures would not affect any endangered or threatened species.

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 3, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 653 is proposed to be revised to read as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

Subpart A—General Provisions

Sec.

653.1 Purpose.
653.2 Definitions.
653.3 Relation to other laws.
653.4 Permits and fees.
653.5 Reporting requirements.
653.6 Vessel identification. [Reserved]
653.7 Prohibitions.
653.8 Enforcement.
653.9 Penalties.

Subpart B—Management Measures

653.20 Seasons.
653.21 Quotas.
653.22 Harvest limitations.
653.23 Closures.
653.24 Stock assessment procedures.
653.25 Specifically authorized activities.
Appendix—Figure 1

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 653.1 Purpose.

The purpose of this part is to implement the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico prepared by the Secretary of Commerce.

§ 653.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Acceptable biological catch (ABC) means a range of harvest levels which can be taken from a stock while maintaining the stock at or near maximum sustainable yield and ensuring that recruitment overfishing does not occur. ABC may vary due to

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fluctuating requirement, abundance, and intensity of fishing effort.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Center Director means the Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149; telephone 305–361–5761, or a designee.

Commercial quota means the maximum permissible level of annual commercial harvest of red drum in the FCZ specified after consideration of biological, social, and economic factors within the range of ABC.

Dealer means the person who first receives fish by way of purchase, trade, or barter from a fisherman.

Directed red drum fishery means any commercial fishing activity in which the amount of red drum landed exceeds five percent by weight of the total catch on board.

Fishery conservation zone (FCZ) means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific vessel, which involves

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft including aircraft which is used or equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

NMFS means the National Marine Fisheries Service.

Non-directed fishery means any commercial fishing activity in which the amount of red drum landed does not exceed five percent by weight of the total catch on board.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage; or

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function or operation of the vessel; and

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Processor means a person who processes fish or fish products for commercial use or consumption.

Red drum means *Sciaenops ocellatus*, also called redfish.

Regional Director means the Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, FL telephone 813–893–3141, or a designee.

Resource assessment program means the resource assessment program as described at section 12.6.3 of the Secretarial Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico.

Secretary means the Secretary of Commerce or a designee.

Trip means a fishing trip, regardless of duration, which begins with departure from a dock, berth, beach, seawall, or ramp and which terminates with return to a dock, berth, beach, seawall, or ramp.

Vessel of the United States means—

(a) Any vessel documented under Chapter 121 of Title 46, United States Code; or

(b) Any vessel numbered under Chapter 123 of Title 46, United States Code, and measuring less than five tons;

(c) Any vessel numbered under Chapter 123 of Title 46, United States Code, and used exclusively for pleasure; and

(d) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

§ 653.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

(c) These regulations apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico.

§ 653.4 Permits and fees.

(a) *Applicability.* Permits are required for all vessels fishing in the FCZ using entanglement gear (i.e. gill nets, trammel nets, and purse seines) and taking or landing red drum. An application for a permit must be applied for by the owner or operator of such vessel on forms provided by the Regional Director. The owners and operators of vessels issued such permits must comply with the terms and conditions stated thereon.

(b) *Fees.* There is no fee for a permit issued for a vessel in the non-directed fishery under this section.

(c) *Display.* A permit issued under this section must be carried aboard the vessel at all times. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(d) *Transfer.* A permit issued under this section is not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(e) *Sanctions.* Permits are subject to sanction and denial pursuant to the procedures found at Subpart D of 15 CFR Part 904.

§ 653.5 Reporting requirements.

(a) *Directed red drum fishery.* [Reserved]

(b) *Non-directed red drum fishery.* Onwers or operators of vessels permitted under § 653.4 must maintain logbooks containing the following information. Logbooks must be submitted to the Center Director monthly or more frequently if requested.

(1) Name and address of owner or operator;

(2) Name and official number of vessel and vessel's home port;

(3) Port and time of departure and arrival;

(4) Pounds of total catch by species;

(5) Pounds of red drum landed;

(6) Location of catch either by latitude and longitude, loran, or by grid zone (Appendix—Figure 1) as specified on logbook form;

(7) Gear used;

(8) Depth of water fished;

(9) Number of time of sets; and

(10) To whom the red drum catch was sold.

(c) *Dealers and processors.* Any person who receives red drum or parts thereof by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for, or lands said fish, or parts thereof in the Gulf of Mexico FCZ or in adjoining State waters, and who is selected to report, must provide the following information to the Center Director at monthly intervals, or more frequently if requested, and on forms provided by the Center Director:

(1) Dealer's or processor's name and address;

(2) County where red drum were landed;

(3) Total poundage of red drum received during that month, or other requested interval;

(4) Total poundage of red drum from adjoining State waters by each gear type; and

(5) Total poundage of red drum landed from the FCZ by each gear type.

(d) *Spotter aircraft pilots.* [Reserved]

(e) *Inspection.* Any owner or operator of commercial, charter, or recreational vessels, and dealers or processors may be required upon request to make red drum or parts thereof available for inspection by the Center Director of his designee for the collection of additional information or for inspection by an authorized officer.

(f) *Observers.* [Reserved]

§ 653.6 Vessel identification. [Reserved]

§ 653.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fail to display the permit aboard a permitted vessel as required by § 653.4(c);

(2) Fail to comply with a term or condition stated on a permit issued under § 653.4;

(3) Falsify or fail to report information required to be submitted by § 653.4 and § 653.5;

(4) Fail to make fish available for inspection as required by § 653.5(d);

(5) Fail to comply immediately with enforcement and boarding specified in § 653.8;

(6) Transfer or attempt to transfer red drum in the FCZ as specified in § 653.22;

(7) Retain on board a vessel, land, sell, trade, or barter red drum taken in the FCZ after any closure as specified in § 653.23 has been invoked;

(8) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any fish or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(9) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purpose of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(10) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (a)(9) of this section;

(11) Resist a lawful arrest for any act prohibited by this part;

(12) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person had committed any act prohibited by this part;

(13) Transfer directly or indirectly, or attempt to so transfer, any U.S. harvested red drum to any foreign fishing vessel, while such vessel is in the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S. harvested red drum;

(14) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part; or

(15) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken red drum or the final disposition of such red drum through the sale of the red drum.

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 653.8 Enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method of communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF–FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications

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by loudhailer or radiotelephone. Knowledge of these signals and appropriate action by a vessel operator is not required. However, knowledge of these signals by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.— .—) [1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.—. — — — —.—. — .— —) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... — —.— ..— —) means "you should stop or heave to: I am going to board you."

(4) "L" (.—..) means "you should stop your vessel instantly."

§ 653.9 Penalties.

Any person or fishing vessel found to be in violation of this part is subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, to 15 CFR Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 653.20 Seasons.

The fishing season for red drum is from 0001 hours (local time) January 1 to 2400 hours (local time) December 31.

[1] Period (.) means a short flash of light; dash (—) means a long flash of light.

§ 653.21 Quotas.

(a) The total allowable harvest or commercial quota of red drum for the directed red drum fishery in the FCZ is zero.

(b) The total allowable harvest of red drum for the non-directed red drum fishery in the FCZ is 300,000 pounds.

§ 653.22 Harvest limitations.

Transfer at sea. Fishing vessels may not transfer or attempt to transfer red drum in the FCZ from one fishing vessel to another.

§ 653.23 Closures.

(a) The Secretary, by publication of a notice in the **Federal Register**, shall close the directed red drum fishery when the quota as specified in § 653.21(a) is reached or is projected to be reached.

(b) The Secretary, by publication of a notice in the **Federal Register**, shall close the non-directed red drum fishery when the quota for such fishery as specified in § 653.21(b) is reached or is projected to be reached.

(c) The directed red drum fishery is closed from the effective date of this rule through the 1987 fishing season, except as authorized under the resource assessment program.

§ 653.24 Stock assessment procedures.

(a) NMFS Southeast Fisheries Center will assess the condition of the red drum stock on an annual basis. The Center Director will provide the Regional Director with an assessment report by October 1 which includes a recalculation of maximum sustainable yield (MSY), if necessary, and a range of ABC for the FCZ for the upcoming fishing year along with a description of the biological consequences of levels of harvest within the ABC range.

(b) The Regional Director will consider economic, social, and biological impacts of levels of commercial harvest within the ABC range and will recommend commercial quotas in the FCZ for the next fishing year that are consistent with the objectives of the FMP. If changes are needed in MSY or the commercial quotas from the previous year NMFS will advise the Secretary of any recommendations.

(c) The Secretary will review NMFS' recommendations, supporting rationale, and other relevant information. After consulting with the Gulf of Mexico Fishery Management Council, if the Secretary concurs that NMFS' recommendations are consistent with the objectives of the FMP, the national standards, and other applicable law, he will publish a notice in the **Federal Register** of any preliminary changes prior to the appropriate fishing year. A 30-day period for public comment will be afforded. After consideration of public comments, the Secretary may publish a notice in the **Federal Register** of any final changes for that fishing year.

(d) Appropriate preseason adjustments which may be implemented by the Secretary by notice in the **Federal Register** follow:

(1) Adjustment of the estimate of MSY for red drum.

(2) Implementing or modifying commercial quotas, including a specification of an allowable harvest of red drum for the non-directed fishery as necessary to limit incidental harvest. A directed harvest will be allowed if the quota supports it, only after a reasonable allowance has been made to meet non-directed fishery requirements for red drum harvest.

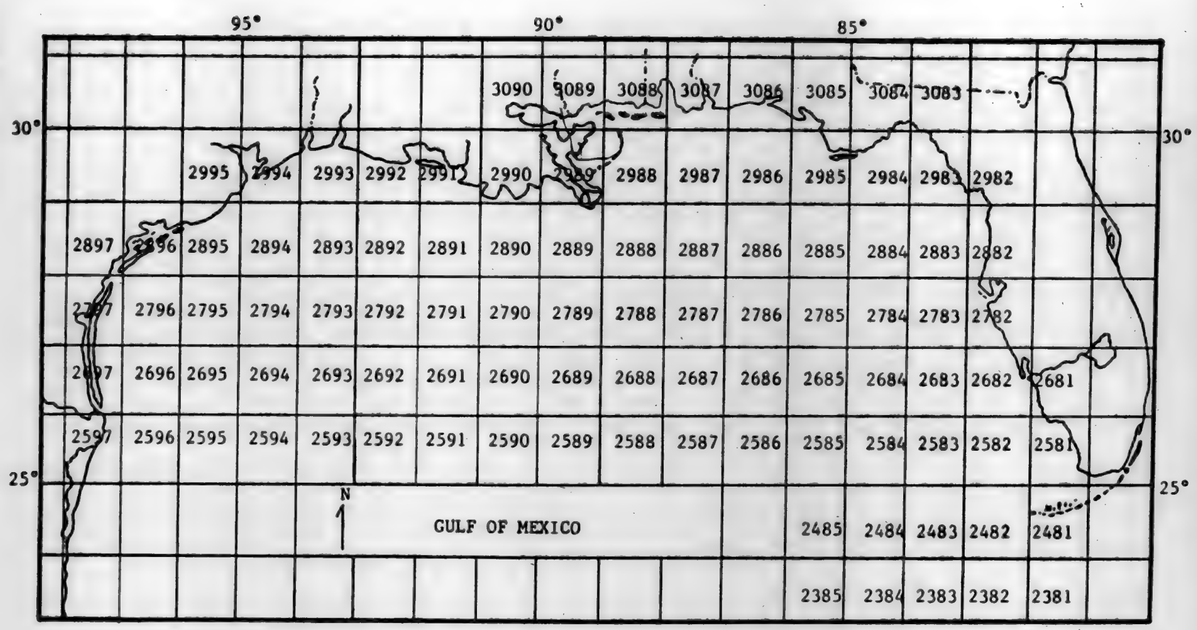
§ 653.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

BILLING CODE 3510-22-M

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FIGURE 1 - STATISTICAL GRIDS FOR REPORTING THE HARVEST OF RED DRUM



[FR Doc. 86-22821 Filed 10-7-86; 8:45 am]
BILLING CODE 3510-22-C

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Notices

Federal Register
Vol. 51, No. 195
Wednesday, October 8, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States, to be held at 9:30 a.m. on Friday, Oct. 17, 1986, in the Secretary's Conference Room, Room 5859, at the Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC.

The Committee will meet to discuss the following projects:

(a) A proposed recommendation on agency use of case management and related methods for improving agency adjudication, based on a project by Professor Richard B. Cappalli; and

(b) A discussion of Conference activities and projects involving federal agencies' use of alternative means of dispute resolution.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance of the meeting. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC (Telephone: 202-254-7065.) Minutes of the meeting will be available on request.

October 1, 1986.

Richard K. Berg,
General Counsel.

[FR Doc. 86-22749 Filed 10-7-86; 8:45 am]
BILLING CODE 6110-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunities

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Ecuador as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families in Ecuador. The Government of Ecuador has authorized A.I.D. to request proposals from eligible investors. The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Ecuador

Project: 518-HR-006-$15,000,000—Attention: Econ. Jaime Zeas, Vice-Ministro de Finanzas Y Credito Publico, Quito, Ecuador, Telephone: 545845 or 523471, Telex: 2449 MIN FIN ED

Interested investors should telegram their bids to the Borrower's representative on October 14, 1986 but no later than 5:00 p.m. New York Time. Bids should be opene at least 48 hours. Copies of all bids should be simultaneously sent to the following addresses:

Mr. Lindsay Elmendorf, Housing Officer, Av. Colombia 1573, Queseras del Medio, Quito, Ecuador, Telex: 02-2329 USICAQ ED, Telephone: 521-100 or 544-355

Michael G. Kitay, Agency for International Development, GC/PRE, Room 3208 N.S., Washington, DC 20523, Telex No.: 892703 AID WSA, Telefax No. 202/647-1805

The proposal should consider the following terms:

(a) *Amount:* U.S. $15 million.

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years.

(d) *Interest Rate:* Proposals will be made on the basis of fixed or variable rate.

(e) *Draw Down:* Net proceeds from borrowing should be disbursed to Borrower upon signing.

(f) *Repayment:* Semi-annually.

(g) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower.

(h) *Fees:* Payable at closing from proceeds of loan.

(i) *Additional Financing:* The successful bidder may have the opportunity to negotiate with the borrower for the placement of an additional financing of up to $1 million of short-term debt of Ecuador for a term of approximately Five (5) years. Details of this opportunity will be provided upon acceptance of the successful bid.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be aligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The maximum rate of interest shall be a rate which in A.I.D.'s opinion is similar to current borrowing rates for Housing and Urban Development housing mortgage loans.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 6212 N.S., Washington, DC 20523, Telephone: 202/647-9082

Any questions may be directed to Michael G. Kitay 202/647-8235 or Herbert T. McDevitt, 202/647-9506.

Dated: October 6, 1986.

Francis Conway,
Acting Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 86-22966 Filed 10-7-86; 9:38 am]
BILLING CODE 6116-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 26, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection: (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, ORIM, Room 404-W. Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA. If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Economic Research Service
  Farm Real Estate Tax Survey
  Annually

  State or local governments; 3,265 responses; 1,250 hours; not applicable under 3504(h).

  Ronald A. Jeremias, (202) 768-1888
- Forest Service

  Application for Permit Non-Federal Commercial Use of Roads Restricted by Order.

  FS-7700-40

  State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 2,000 responses; 500 hours; not applicable under 3504(h).

  J. Knaebel, (703) 235-9846

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 86-22801 Filed 10-7-86; 8:45 am]
BILLING CODE 3410-01-M

Forms Under Review by Office of Management and Budget

October 3, 1986.

The Department of Agriculture has submitted to OMB for review fhe following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hour's needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the ageny contact person.

Question about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA. If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Reinstatement

- National Agricultural Statistics Service
- Honey Survey
- Annually

  Farms; 15,200 responses; 2,523 hours; not applicable under 3504(h).
- Lee Sandberg (202) 475-3237

Revision

- National Agricultural Statistics Service
- Supplemental Acreage Survey
- On occasion

  Farms; 275,680 responses; 79,586 hours; not applicable under 3504(h).
- Lee Sandberg, (202) 475-3237

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 86-22800 Filed 10-7-86; 8:45 am]
BILLING CODE 3410-01-M

Food and Nutrition Service

Food Stamp Program; Thrifty Food Plan and Deductions.

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department is updating (1) the Thrifty Food Plan which determines the maximum amount of food stamps which participating households receive, (2) the amount of the standard deduction which is available to all households, and (3) the maximum amounts for the excess shelter and dependent care deductions available to certain households. These adjustments, required by law, take into account changes in the cost of living.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, State Management Section, Administration and Design Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3385. Copies of the Regulatory Impact Analysis, which is summarized in this preamble, are also available from Mr. O'Connor.

BEST COPY AVAILABLE

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SUPPLEMENTARY INFORMATION:

Publication

State agencies must implement this action on October 1, 1986, and need advance notice of the new amounts to meet the implementation deadline. Based on regulations published at 47 FR 46485–46487 (October 19, 1982) annual statutory adjustments to the Thrifty Food Plan and deductions are issued by General Notices published in the Federal Register and not through rulemaking proceedings.

Classification

Executive Order 12291. This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1. The Department considers it a major action because it will increase the Food Stamp Program's cost by more than $100 million. It will not result in a major increase in costs or prices except to the Federal Government, nor will it affect competition, productivity, employment, investment, or innovation.

Executive Order 12372. The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR 3015, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act. Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act. This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Regulatory Impact Analysis

Need for Action. This action is required by sections 3(o) and 5(e) of the Food Stamp Act of 1977, as amended. Section 3(o) requires that the October 1, 1986 change in food stamp allotments be based upon the June 1986 cost of the Thrifty Food Plan for a family of four persons consisting of a man and woman ages 20–50 and children 6–8 and 9–11. Adjustments are made to take into account household size, economies of scale, and a requirement to round the final results down to the nearest dollar increments. Section 5(e) requires that the standard deduction and excess shelter and dependent care deductions be adjusted on October 1, 1986 to the nearest lower dollar increments to reflect certain changes for the twelve months ending June 30, 1986.

Benefits. This action increases maximum food stamp allotments and deductions based on the rising cost of living.

Costs. It is estimated that this action will increase the cost of the Food Stamp Program by approximately $201 million in Fiscal Year 1987.

Background

Thrifty Food Plan (TFP)

The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. the plan suggests amounts of food for men, women, and children of different ages, and it meets all dietary standards. The cost of the TFP is adjusted annually to reflect changes in the costs of the food groups.

The TFP also constitutes the basis for allotments for food stamp households. As such, the cost of the TFP is the maximum benefit level payable to a household of a particular size. The maximum benefit is paid to households which have no net income. For households which have some income, their allotment is determined by reducing the TFP for their household size by 30 percent of the household's net income. As prescribed by the statute, these maximum benefit amounts are based on the TFP for a particular four-person household, and adjusted to take into account household size, economies of scale, and rounding.

The cost of the TFP is adjusted periodically to reflect changes in cost levels. Section 3(o) of the Food Stamp Act of 1977, as amended, provides that the next adjustment will take place on October 1, 1986, based upon June 1986 TFP costs for a family of four persons consisting of a man and woman ages 20–50 and children 6–8 and 9–11. In June 1986, these TFP values were $271.90 in the 48 States and DC; $363.50, in Alaska; $426.80 in Hawaii; $400.80 in Guam; and $349.60 in the Virgin Islands.

To obtain the maximum food stamp benefit for each household size, the TFP costs for the four-person household in each area were divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar. Maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and DC. In Alaska, where the TFP is based on Anchorage prices, the urban allotment is the higher of the allotment that was in effect in urban areas on October 1, 1985 or 1.0079 percent higher than the Anchorage TFP. The allotment for rural I areas is the higher of the allotment that was in effect in each area on October 1, 1985, or 28.52 percent higher than the Anchorage TFP. (Thus, the allotment for Nenana will be at the previous level for rural Alaska.) The rural II allotment is 56.42 percent higher than the Anchorage TFP. For further information concerning the allotments for urban Alaska, rural I Alaska, Nenana, and rural II Alaska see 50 FR 13759–13761.

The following table shows the new allotments for the 48 States and DC, urban Alaska, rural I Alaska, Nenana, rural II Alaska, Hawaii, Guam, and the Virgin Islands.

THRIFTY FOOD PLAN AMOUNTS—OCTOBER 1986, AS ADJUSTED

Household size	48 States and District of Columbia	Urban Alaska[1]	Rural I Alaska[2]	Rural II Alaska[3]	Nenana[4]	Hawaii	Guam[5]	Virgin Islands[6]
1	$81	$111	$140	$170	$156	$128	$120	$104
2	149	204	256	312	290	234	220	192
3	214	293	367	447	416	336	315	275
4	271	372	467	568	527	426	400	349
5	322	442	554	675	626	506	475	415
6	387	530	665	810	752	608	571	498
7	428	586	735	895	831	672	631	550
8	489	670	840	1,023	949	768	721	629
Each additional member	+61	+84	+105	+128	+119	+96	+90	+79

[1] Adjusted to reflect the cost of food in June, adjustments for each household size economies of scale, and rounding.
[2] These levels were in effect in Urban Alaska on October 1, 1985. They are higher than 1.0079 times the Anchorage TFP.
[3] These levels are 28.52 percent times the Anchorage TFP. With the exception of Nenana, all rural 1 areas formerly received the allotment for urban Alaska.
[4] These levels were in effect in Nenana on October 1, 1985. They are higher than the allotment for rural I Alaska.
[5] These levels are 56.42 percent higher than the Anchorage TFP.
[6] Adjusted to reflect changes in the cost of food in the 48 States and DC, which correlate with price changes in these areas. TFP costs in these areas cannot exceed costs in rural II Alaska.

Deductions

Food stamp benefits are calculated on the basis of an individual household's net income. Deductions serve to lower household net income. The standard deduction is available to all households. The excess shelter expense deduction is available to those with extremely high shelter costs. There is a maximum amount for the excess shelter deduction for households with no elderly members. There is also a maximum amount for the dependent care deduction for households with elderly members.

Adjustment of the Standard Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, provides that in computing household income, households in the 48 States and DC shall be allowed a standard deduction of $85. The standard deductions specified for Alaska, Hawaii, Guam, and the Virgin Islands are $145, $120, $170, and $75, respectively. The law also provides for periodic adjustments in the level of the standard deduction to take into account changes in the CPI–U published by the BLS, for items other than food and the homeowner's costs and maintenance and repair component of shelter costs. These deductions were last adjusted effective October 1, 1985 (see table). The adjustments are, by law, rounded to the nearest lower dollar. (See table).

STANDARD DEDUCTIONS FOR ALL HOUSEHOLDS

	Previous deductions (effective 10–1–85)	New unrounded numbers (10–1–86)	Deductions effective 10/1/86
48 States and DC	$85	$89.25	$89
Alaska	168	169.37	169
Hawaii	139	140.18	140
Guam	197	198.57	198
Virgin Islands	86	87.50	87

Adjustment of the Shelter Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, also provides that in computing household income, households shall be allowed a deduction for certain excess shelter expenses. There is a maximum amount for the excess shelter deduction, unless the household has an elderly or disabled member, in which case there is no maximum. The maximum amount for the excess shelter deduction for households without an elderly or disabled member is adjusted annually. The annual adjustment in the level of the excess shelter deduction takes into account changes in the shelter (exclusive of homeowners' costs and maintenance and repair component of shelter costs), fuel, and utilities components of housing costs in the CPI–U published by the BLS.

The amount specified in the Food Stamp Act for the maximum excess shelter deduction for the 48 States and DC is $147. The maximum excess shelter and dependent care deductions specified for Alaska, Hawaii, Guam, and the Virgin Islands are $256, $210, $179, and $109, respectively. These amounts went into effect May 1, 1986 (see table). The next adjustments provided for in the law are to take effect October 1, 1986 to reflect changes for the twelve month period ending June 30, 1986 (also shown in the table). The adjustments are, by law, rounded to the nearest lower dollar.

SHELTER DEDUCTIONS FOR HOUSEHOLDS WITHOUT ELDERLY OR DISABLED MEMBERS

	Previous deductions (effective 5/1/86)	New unrounded numbers (10/1/86)	Shelter deductions effective 10/1/86
48 States and DC	$147	$149.75	$149
Alaska	256	260.79	260
Hawaii	210	213.93	213
Guam	179	182.35	182
Virgin Islands	109	111.04	111

Adjustment of the Dependent Care Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, also provides that in computing household income, households shall be allowed a deduction for certain dependent care expenses. The maximum amount for the dependent care deduction for households without an elderly or disabled member is $160 a month. This amount is not adjusted to take into account changes in the cost of living so it will not be affected by this action. The maximum amount for the dependent care deduction for households with elderly or disabled members *is* adjusted annually because this amount is the same as the maximum excess shelter deduction for households without an elderly or disabled member.

Since the maximum amount for the excess shelter deduction is increasing, the maximum amount for the dependent care deduciton for households with an elderly or disabled member is also increasing. These new amounts are shown below:

Dependent Care Deductions For Households with Elderly or Disabled Members

[Effective 10/1/86]

48 States and DC	$149
Alaska	260
Hawaii	213
Guam	182
Virgin Islands	111

(91 Stat. 958 (7 U.S.C. 2011, et seq))

Dated: October 2, 1986.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 86–22799 Filed 10–7–86; 8:45 am]

BILLING CODE 3410–30–M

Soil Conservation Service

Bundick Creek Watershed, LA

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bundick Creek Watershed, Allen, Beauregard and Vernon Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Horace J. Austin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include financial assistance and accelerated technical assistance for installation of land treatment on 13,300 acres of critically

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eroding cropland and 135 acres of critically eroding forestland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Horace J. Austin.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 29, 1986.

Horace J. Austin,

State Conservationist.

[FR Doc. 86-22742 Filed 10-7-86; 8:45 am]

BILLING CODE 3410-16-M

Fairfield Critical Area Treatment RC&D Measure, ID; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334-1601.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Fairfield Critical Area Treatment RC&D Measure, Camas County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Fairfield Critical Area Treatment RC&D Measure will provide treatment to four actively eroding sections of Soldier Creek near the town of Fairfield, Camas County, Idaho. Planned treatments to control the severe erosion and sedimentation problem on 4 sites includes approximately 750 feet of either rock riprap, woven wire revetment, plank and post revetment or vegetative armor on the eroding banks.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.910—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: September 30, 1986.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 86-22815 Filed 10-7-86; 8:45 am]

BILLING CODE 3410-16-M

Mariah Creek Watershed, IN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mariah Creek Watershed, Knox and Sullivan Counties, Indiana.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, Suite 2200, 5610 Crawfordsville Rd., Indianapolis, Indiana 46224, telephone 317/248-4350.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical assistance and financial assistance for land treatment.

The notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Eddleman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: September 29, 1986.

Robert L. Eddleman,

State Conservationist.

[FR Doc. 86-22743 Filed 10-7-86; 8:45 am]

BILLING CODE 3410-16-M

Tammany Creek Watershed, ID; Environmental Impact Statement

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tammany Creek Watershed, Nez Perce County, Idaho.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345 Boise, Idaho 83702, telephone (208) 334-1601.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federal assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparatation and review of an environmental impact statement are not needed for this project.

The project concerns land treatment measures to be applied on critically eroding cropland to control sheet, rill and gully erosion and the subsequent off-site sedimentation problems.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: September 29, 1986.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 86-22817 Filed 10-7-86; 8:45 am]

BILLING CODE 3410-16-M

Twin Bridges Critical Area Treatment RC&D Measure, ID; Environmental Impact Statement

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334-1601.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Twin Bridges Critical Area Treatment RC&D Measure, Madison County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Twin Bridges Critical Area Treatment RC&D Measure will provide treatment to an actively eroding section of the North bank of the North Fork of the Snake River. Planned treatment to control the severe erosion and sedimentation problem includes 450 feet of rock armor on the eroding bank.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this pubication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.910—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: September 29, 1986.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 86-22816 Filed 10-7-86; 8:45 am]

BILLING CODE 3410-16-M

ARMS CONTROL AND DISARMAMENT AGENCY

Visiting Scholars Program, 1987-1988 School Year

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition for selection of visiting scholars to participate in ACDA's activities during the 1987-88 school year.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568) provides that "A program for visiting scholars in the field of arms control and disarmament shall be established by the Director [of the U.S. Arms Control and Disarmament Agency] in order to obtain the services of scholars from the faculities of recognized institutions of higher learning."

The law states that "The purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer. * * * Fellows shall be chosen by a board consisting of the Director, who shall be the chairperson, and all former Directors of the Agency." In honor of the first Director of ACDA, William C. Foster, who served from the inception of ACDA in 1961 to 1969 and died on October 15, 1984, scholars are known as William C. Foster Fellows.

ACDA initially implemented this program by competitively selecting six visiting scholars for the 1984-1985 school year to perform specific activities at ACDA for which their services had been identified as being needed. This process was repeated for the 1985-1986 and 1986-1987 school years and it is intended that the process will be used again this year with one-year assignments beginning at a mutually agreeable time during the period from July 1987 to mid September 1988 for the positions in ACDA's four bureaus described in the Appendix to this announcement. Note that the emphasis is on the expertise and service which the visiting scholars can provide rather than on general interest in arms control and the pursuit of the scholars' own research.

It is planned that the visiting scholars will be assigned by detail and compensated in accordance with the Intergovernmental Personnel Act. In addition to pay based on their regular salary rates, the visiting scholars will receive travel to and from the Washington, DC area for their one-year assignment and either per diem allowance during the one-year assignment or relocation costs.

Visiting scholars must be citizens or nationals of the United States and on the faculty of a recognized institution of higher learning. Prior to appointment they will be subject to full-field background security and loyalty investigation for a top secret security clearance including access to Restricted Data, as required by section 45 of the Arms Control and Disarmament Act.

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Visiting scholars also will be subject to applicable Federal conflict of interest laws and standards of conduct.

Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap which does not interfere with performance of duties, and all qualified persons are encouraged to apply. Applications should be in the form of a letter indicating the position(s) in which the applicant is interested and the perspective and expertise which the applicant offers. The letter should be accompanied by a curriculum vitae, and any other materials such as letters of reference and samples of published articles which the applicant believes should be considered in the selection process. (If published materials are submitted, it is requested that they be provided in twelve copies, if possible.)

Applications, and any requests for additional information, should be sent to: Visiting Scholars Program, Attention: Personnel Officer, Room 5722, U.S. Arms Control and Disarmament Agency, Washington, DC 20451. The application deadline for assignments for the 1987–88 school year is January 31, 1987, subject to extension at ACDA's option. Announcement of selection, subject to security clearance procedures, is expected early spring 1987.

William J. Montgomery,
Administrative Director.

Appendix

A. Visiting Scholar Assignments to the Bureau of Multilateral Affairs of ACDA

1. Description of the Bureau of Multilateral Affairs

The Bureau of Multilateral Affairs (MA) has primary responsibility within ACDA for arms control issues dealt with in multilateral fora. The Conference on Disarmament, the Mutual and Balanced Force Reduction negotiations, the Conference on Security and Cooperation in Europe, and the United Nations General Assembly are the most important examples. MA provides both technical backstopping and diplomatic support to these substantive activities as well as to other negotiations which seek to reduce forces in Central Europe, to build confidence, to ban radiological weapons, to study negative security assurances, to limit military ependitures, to research nuclear weapons free zones, and to eliminate chemical and biological weapons.

2. Nature of Assignment (MA/ISP)

The International Security Program Division of the Bureau of Multilateral Affairs (MA/ISP) has responsibility for the Conference on Disarmament (CD) which started life in 1979 as a multilateral arms control negotiating forum in Geneva, although its ancestry dates back to the Ten Nation Disarmament Committee of the late 1950's. The DC now consists of 40 members, including most members of the Warsaw Pact and NATO as well as 21 non-aligned nations. Its annual session is divided into two parts, February-April and June-August. Active items on its agenda include chemical weapons (the U.S. submitted a draft convention to ban all chemical weapons in 1984), radiological weapons, outer space and nuclear testing.

The First Committee of the United Nations General Assembly is the other major forum for which MA/ISP has responsibility. The U.S. delegation coordinates the US position on disarmament resolutions with other Western and non-aligned delegations, as appropriate, and participates in the general debate. The General Assembly has no direct authority over the CD, but the CD transmits annual reports on its work to the United Nations, and the First Committee may pass resolutions recommending courses of action to the CD.

A visiting scholar assigned to MA/ISP would study the CD and General Assembly forums, in part through the daily responsibilities of interagency coordination and delegation work. The Visiting Scholar would study selected issues on the CD agenda to assess negotiating possibilities for the U.S.

3. Candidate Qualifications (MA/ISP)

The candidate should have a general familiarity with the United Nations system or other multilateral organizaitons. Also valuable would be previous experience with specific arms control issues, particularly nuclear testing and chemical weapons.

4. Nature of Assignment (MA/ESN)

The Conference on Security and Cooperation in Europe (CSCE) will be in session in Vienna during this period, considering, among other things, the outcome of the Conference on Confidence and Security Building Measures and Disarmament in Europe (CDE) which has recently concluded in stockholm. The future of the CDE will be decided by its parent CSCE conference, with a key issue being whether the CDE should move on to discuss disarmament measures.

Closely tied to the disarmament in Europe issue is the status of the Mutual and Balanced Force Reduction talks (MBFR), also taking place in Vienna, Austria. These negotiations have been ongoing since 1973 without notable progress. The occurrence of the two conferences, MBFR and CSCE, at the same time and place raises questions about how the question of conventional arms control in Europe might best be addressed.

A visiting scholar assigned to the European Securities Negotiations Division of the Bureau of Multilateral Affairs (MA/ENS) would analyze the interrelationships of these various negotiations for the purpose of assessing their future roles within the larger framework of U.S. national security policies. In addition, the scholar would study the problems and the possibilities of conventional arms control in Europe.

5. Candidate Qualifications (MA/ESN)

Specific useful background for a candidate would include knowledge of European political and military issues and familiarity with NATO defense doctrine. Previous experience and research on arms control and national security issues would be valuable.

B. Visiting Scholar Assignments to the Bureau of Verification and Intelligence of ACDA

1. Description of the Bureau of Verification and Intelligence

The Bureau of Verification and Intelligence (VI) has responsibility for ACDA's work in verification, compliance, intelligence, operations analysis, and computer support. VI provides the support in these subject areas for the strategic and theater nuclear arms control negotiations; the Standing Consultative Commission; the Anti-Ballistic Missile, SALT I and SALT II Treaties, the Limited Test Ban Treaty and Threshold Test Ban Treaty and the agreements on chemical and biological weapons.

2. Nature of the Assignment

VI develops verification requirements for arms control agreements being negotiated; reviews compliance with existing arms control agreements; conducts operations analysis of relevant arms control issues and Soviet views thereof; and evaluates the potential of various collection technologies for monitoring compliance with provisions of arms control agreements. A Visiting Scholar would be expected to participate in one or more of these activities by performing studies, drafting policy papers, and/or performing analyses both for use within ACDA and for coordination with other agencies. In some cases, the Visiting Scholar would represent ACDA on interagency working groups and would be called upon to exercise a relatively high degree of individual judgment.

Subject areas where a Visiting Scholar might contribute include: Verification of a treaty on chemical weapons, verification of limits on space-based weapons and weapons which can attack space-based military assets, compliance with existing—and verification of proposed—treaty limitations on ballistic missiles and nuclear testing, or analysis of Soviet views on stability and their impact on verification.

3. Candidate Qualifications

Because of the complex technical and analytical content in these areas, VI seeks a physical scientist, operations analyst, or expert in Soviet strategy and doctrine with a broad background. Specific useful background for a candidate would include: Knowledge of basic physics, chemistry, aerospace systems, operations research, or Soviet strategic studies. The Visiting Scholar should have facility in analytical writing and general communication and a proven ability to innovate. Specific background in the areas of VI responsibility would be a value, but is not a requirement.

C. Visiting Scholar Assignments to the Bureau of Strategic Programs of ACDA

1. Description of the Bureau of Strategic Programs

The Bureau of Strategic Programs (SP) has responsibility for support of the Director of ACDA on arms control matters concerning limitations on U.S. and Soviet strategic and theater nuclear offensive forces. This includes providing technical and policy guidance to the Director in these areas and participating in the policy deliberation of Interagency Groups responsible for these areas. SP also has responsibility for ACDA's participation in the Nuclear and Space Talks (NST) in Geneva, other bilateral U.S.-USSR arms control negotiations, and other defense related matters including ACDA participation in U.S. decisions regarding research on ballistic missile defenses. NST includes strategic and theater nuclear arms control and defense and space issues. Other bilateral discussions include meetings of the Standing Consultative Commission (SCC) and preparation for the periodic Anti-Ballistic Missile (ABM) Treaty reviews. SP also has interagency responsibility for backstopping of the NST negotiations, the SCC, and ABM Treaty reviews. SP has two divisions: Strategic Affairs and Theater Affairs.

2. Nature of the Assignment

A visiting scholar assigned to SP would assist in policy formation in one or more of the areas cited above. Because of the high technical content in these areas, SP seeks a physical scientist with a broad theoretical or applied background.

The visiting scholar's responsibilities would include drafting position papers, background studies, and policy analyses, both for use within ACDA and for coordination with other agencies such as the Central Intelligence Agency, the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Department of State, and Interagency Groups. In some cases, the individual would represent ACDA on interagency working groups. The visiting scholar would be called upon to exercise a relatively high degree of individual judgment in developing policy recommendations. There may be an opportunity to volunteer to serve on the staff of U.S. delegations to arms control negotiations. The most likely area of concentration for the visiting scholar would be strategic arms reduction policy, but this could vary according to the scholar's background and the needs of ACDA/SP.

3. Candidate Qualifications

Specific useful background for a candidate would include: Knowledge of basic physics, facility in concise writing, general communication skills, and proven ability to innovate. Background in areas of SP responsibility would be of value but is not a requirement.

D. Visiting Scholar Assignment to the Bureau of Nuclear and Weapons Control of ACDA

1. Description of the Bureau of Nuclear and Weapons Control

The Bureu of Nuclear and Weapons Control (NWC) has responsibility for nuclear non-proliferation issues, including the review of nuclear exports, support of the international safeguards system, and the promotion of the Nuclear Non-Proliferation Treaty and the Treaty of Tlateloco. NWC also assesses the arms control implications of proposed arms transfers and technology transfers, and prepares Arms Control Impact Statements on U.S. programs and guides them through the interagency review process. In addition, NWC is responsible for ACDA's economic analysis work and coordinates publication of *World Military Expenditures and Arms Transfers.*

2. Nature of the Assignment

A visiting scholar assigned to NWC would work on selected topics within that Bureau's responsibility, with emphasis on issues raised by the interrelationships among U.S. policies on nuclear non-proliferation, the transfer of conventional arms, and the export of missile technology. The visiting scholar's responsibilities would include the preparation of analyses of these issue and recommendations on their implications for arms control.

The position would involve close coordination with officials in the Departments of State and Defense and other concerned agencies. In carrying out assigned duties, the individual would need to exercise initiative and function effectively with minimum direct guidance and supervision.

3. Candidate Qualifications

Desirable attributes for a candidate would include an understanding of the role of arms control in national security planning, familiarity with weapons charcteristics and capabilities, knowledge of political-military conditons in developing regions, a highly-developed analytical ability, and facility in written and oral communications. Because of the complex political-military issues involved, the individual should have a strong background in national security studies or international relations.

[FR Doc. 86–22813 Filed 10–7–86; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Sea World, Inc. (P20)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Name: Sea World, Inc.
   b. Address: 1720 South Shores Road, San Diego, California 92109
2. Type of Permit: Public Display
3. Name and Number of Marine Mammals: Pacific white-sided dolphins (Lagenorhynchus obliquidens)—8
4. Type of Take: Capture/maintain in captivity

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5. Location of Activity: Waters off California
6. Period of Activity: 5 Years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 1, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-22820 Filed 10-7-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Limit for Certain Cotton and Man-Made Fiber Apparel Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

October 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 9, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive of December 20, 1985 (50 FR 52824) established a limit for certain cotton and man-made fiber textile products in Category 340/640 (men's and boys' shirts), produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. Under the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of October 21 and November 12, 1985, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, and at the request of the Government of the Socialist Federal Republic of Yugoslavia, the limit for Category 340/640 is being increased by the application of swing, increasing it to 360,400 dozen for goods exported during the current agreement year.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

October 3, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 20, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on October 9, 1986, the directive of December 20, 1985 is hereby amended to increase the restraint limit established for cotton and man-made fiber textile products in Category 340/640 to 360,400 dozen,[1] pursuant to the bilateral agreement of October 9 and November 12, 1985 between the Governments of the United States and the Socialist Federal Republic of Yugoslavia.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-22797 Filed 10-7-86; 8:45 am]

BILLING CODE 3510-DR-M

Amending Export Visa Requirement for Certain Wool Textile Products Produced or Manufactured in the Republic of Korea

October 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 9, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, the Governments of the United States and the Republic of Korea have agreed to further amend the existing export visa requirement to permit the use on visas of Category 459-W (woven woolen headwear in TSUSA numbers 702.7500 and 702.8000). This amendment will apply to wool headwear in Category 459, produced or manufactured in the Republic of Korea and exported to the United States during the twelve-month period which began on January 1, 1986 and until further notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

October 3, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of May 19, 1972, as amended, which established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Republic of Korea.

Effective on October 9, 1986 and until further notice, the existing export visa requirement is hereby further amended to permit entry for consumption, or withdrawal from warehouse for consumption, in the United States of wool textile products in Category 459, which have been visaed as Category 459-W [1].

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-22796 Filed 10-7-86; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

October 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 8, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 30, 1985 and January 27, 1986 notices were published in the **Federal Register** (50 FR 53182 and 51 FR 3392), which announced import restraint limits for man-made fiber and cotton textile products in Categories 645/646 (man-made fiber knit sweaters) and 359-V (cotton vests—only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0646, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422), among others, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. The limit for Category 645/646 has been filled.

In accordance with the terms of the Bilateral, Cotton, Wool and Man-Made Fiber Textile Agreement of December 19, 1983, as amended, and at the request of the People's Republic of China, swing is being applied to the restraint limit previously established for man-made fiber textile products in Category 645/646, increasing it from 656,729 dozen to 689,565 dozen, for the current agreement year. The limit for Category 359-V is being reduced from 1,397,250 pounds to 1,134,558 pounds to account for the increase applied to Category 645/646. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for Categories 645/646 and 359-V.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

October 3, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives issued to you on December 24, 1985 and January 22, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1986.

Effective on October 8, 1986, the directives of December 24, 1985 and January 22, 1986 are hereby further amended to adjust the previously established limits for man-made fiber and cotton textile products in Categories 645/646 and 359-V,[1] as provided under the terms of the bilateral agreement of August 19, 1983, as amended:[2]

Category	Adjusted 1986 limit [3]
645/646	689,565 dozen.
359-V	1,134,558 pounds.

[3] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-22781 Filed 10-7-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS) Meeting

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist and advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATE: October 26-30, 1986 (Detailed agenda follows).

ADDRESS: Williamsburg Hilton Hotel and National Conference Center, Williamsburg, Virginia, unless otherwise noted in detailed agenda.

AGENDA: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meetings and discussions:

[1] In Category 359, only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0646, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

[2] The Agreement provides, in part, that: (1) With the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[1] The restraint limit has not been adjusted to reflect any imports exported after December 31, 1985.

[2] The bilateral agreement provides, among other things, that (1) within the group limit the specific limit may be exceeded by certain designated percentages in any agreement period; and (2) the group limit may be exceeded for carryover and carryforward not to exceed 11 percent of the applicable limit.

[1] In Category 459, only TSUSA numbers 702.7500 and 702.8000.

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Sunday, 26 October 1986

11:00 a.m.–4:00 p.m. Registration
12:00 noon–1:00 p.m. Executive Committee Meeting
1:00 p.m.–2:30 p.m. Get Acquainted Luncheon (Current DACOWITS Members Only) MilRep and Liaison Officers Luncheon
2:30 p.m.–3:00 p.m. Chairman's Procedural Session for DACOWITS Members
3:00 p.m.–4:00 p.m. *Guest Speaker:* Honorable John Lehman, Secretary of the Navy
4:00 pm–6:00 p.m. Subcommittee Meetings (Evaluation and Disposition of Service Responses)
Subcommittee No. 1
Subcommittee No. 2
Subcommittee No. 3
Briefings: Sexual Harassment Program (Subcommittee #3)
Defense Equal Opportunity Council (Subcommittee #3)
7:00 p.m.–8:30 p.m. No-Host Social Buffet

Monday, 27 October 1986

8:00 a.m.–8:30 a.m. OSD Official Coffee
8:30 a.m.–9:00 a.m. Official Opening
Presiding: Dr. Jacquelyn Davis, DACOWITS Chairman
Invocation: Chaplain (Cdr) George B. Hummer, USN, Chaplain, Coast Guard Reserve Training Center (RTC) Yorktown
Welcome: Maj Gen. Anthony Lukeman, USMC, Deputy Assistant Secretary of Defense for Military Manpower and Personnel Policy
Keynote Speaker: VAdm Donald C. Thompson, USCG, Commander, Altantic Area U.S. Coast Guard
9:15–10:00 a.m. Briefing: Army Medical Department Study
10:00 a.m.–11:45 a.m. Briefing: 1980 and 1981 Male and Female Service Academy Graduates
12:00 noon–1:30 p.m. OSD Luncheon (By Invitation Only)
Hosted by: Honorable Chapman B. Cox, Assistant Secretary of Defense for Force Management and Personnel
Invocation: Chaplain (Cdr) Geroge B. Hummer, USN
Guest Speaker: To be announced.
1:45 p.m.–2:15 p.m. *Briefing:* Update on Direct Combat Probability Coding
2:15 p.m.–3:15 p.m. *Briefing:* Congressional Concerns
2:30 p.m.–5:30 p.m. Subcommittee Meetings (Evaluation of Briefings and Sunday Resolutions)
Subcommittee No. 1
Subcommittee No. 2
Subcommittee No. 3
7:00 p.m.–10:30 p.m. OSD Reception and Dinner (By Invitation Only)
Hosted by: Honorable Chapman B. Cox
Invocation: Chaplain (Lt) Martha M. Ewing, USN
Guest Speaker: To be announced

Tuesday, 28 October 1986

Field trip hosted by the U.S. Coast Guard to Reserve Training Center (RTC) Yorktown. (Limited to DACOWITS Members, Former Members, Official Military Representatives, DACOWITS Liaison Officers, and special guests.)

Wednesday, 29, October 1986

9:00 a.m.–9:30 a.m. Presentations by Members of the Public
9:30 a.m.–11:45 a.m. Subcommittee Meetings
Subcommittee No. 1
Subcommittee No. 2
Subcommittee No. 3
12:00 noon–2:00 p.m. Installation Visit Luncheon
2:00 p.m.–5:00 p.m. Executive Committee Mark-up

Thursday, 30 October 1986

8:00 a.m.–11:00 a.m. General Business Session

Adjourn

11:00 a.m. 12:00 noon Executive Committee Meeting.

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the meeting:

(1) Members of the public will not be permitted to attend the official Department of Defense luncheon or dinner.

(2) All business sessions, to include the Executive Committee Meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the meeting.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 10, 1986.

(5) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(6) Oral presentations by member of the public will be permitted only from 9:00 a.m. to 9:30 a.m. on Wednesday, October 30, 1986, before the full Committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS office with a copy of the presentation or 60 copies of the statement by October 17, 1986.

(8) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(9) Other items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chairman or Director, DACOWITS and Military Women Matters, to consider.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chairman and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee Meetings, or the Business Session on Thursday, October 30, 1986.

Patricia H. Means,
OSD Federal Register, Liaison Officer, Department of Defense.
October 3, 1986.
[FR Doc. 86–22771 Filed 10–7–86; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Exxon Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Exxon Corporation (Exxon) shall be made final as proposed. The Consent Order resolves, with certain exceptions, matters relating to Exxon's compliance with the Federal price and allocation regulations for the period January 1, 1973 to January 28, 1981. To resolve those matters, Exxon will pay the DOE approximately $36.9 million, plus interest from the date the proposed Consent Order was executed by DOE. Persons claiming to have been harmed by Exxon's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA).

In addition to settling Exxon's possible liability for violations arising out of the company's sales of petroleum products, this Consent Order incorporates a resolution of Exxon's deficiency in the Injection Well Litigation Escrow Account (Escrow Account) maintained by the court in *In Re: the Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (Stripper Well).

After the entry of the Agreed Judgment and Order attached to the Consent Order as Exhibit A, Exxon will deposit approximately $106.1 million, plus interest from June 15, 1986, into the Escrow Account to be disposed of pursuant to the Stripper Well Final Settlement Agreement (final Settlement Agreement) which was approved by the Kansas district court on July 7, 1986.

Thus, Exxon will pay a total of $143 million plus interest. The decision to make the Exxon Consent Order final was made after a full review of written comments from the public and oral testimony received in a public hearing.

FOR FURTHER INFORMATION CONTACT: Emily R. Sommers, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 252–6727.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

I. Introduction

On July 25, 1986, ERA issued a notice announcing a proposed Consent Order beween DOE and Exxon which, with certain exceptions, would resolve matters relating to Exxon's compliance with Federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. 51 FR 26734 (July 25, 1986). The proposed Consent Order, which requires Exxon to pay DOE approximately $36.9 million,[1] is for the settlement of Exxon's potential regulatory liability for $47.8 million in alleged overcharges including attributable interest. The July 25 notice provided in detail the basis for ERA's preliminary view that the settlement was favorable to the government and in the public interest.

The Consent Order also references the resolution of a dispute between DOE and Exxon regarding alleged deficiencies in Exxon's payments into the Escrow Account in the Stripper Well litigation. The issue of Exxon's deficiency in that litigation will be resolved by the submission of an Agreed Judgment and Order to the Kansas district court for approval within 30 days after finalization of the Consent Order.[2] The Federal Register notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement and whether the settlement should be made final. The notice also announced a public hearing for the purpose of receiving oral presentations on the settlement. That hearing was held on August 26, 1986.

[1] The $36.9 million, plus interest accrued from the date the proposed Consent Order was executed by DOE, will be disbursed to DOE within 30 days of publication of this notice.

[2] Exxon will deposit $106.1 million, plus interest accrued from June 15, 1986, in the Escrow Account within five business days of the entry of the Agreed Judgment.

II. Comments Received

ERA received five written comments. No requests to make oral presentations were received. The August 26, 1986 hearing was convened and one speaker, representing the Controller of the State of California, requested and was given the opportunity to make an oral presentation. All written and oral comments were considered in making the decision as to whether the proposed Consent Order should be made final.

The written comments received from the five commenters addressed a number of subject categories. The comment submitted by the Attorney General of the Commonwealth of Pennsylvania solely addressed the Office of Hearings and Appeals' disposition of the Exxon settlement funds. The comment received from the Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah and West Virginia addressed the use of OHA Subpart V procedures to distribute the settlement monies, along with suggestions concerning the specific disposition of the Consent Order monies. The comment provided by Sun Exploration and Production Company noted an apparent typographical error in an exhibit attached to the Agreed Judgment. One comment fully supporting the proposed Consent Order was submitted by the following agricultural cooperatives: Agway Petroleum Corporation; Countrymark, Inc.; Delta Purchasing Federation; Farmers Petroleum Cooperative; Farmers Union Central Exchange; Farmland Industries, Inc.; FCX, Inc.; Gold Kist, Inc.; Growmark, Inc.; Indiana Farm Bureau Cooperative; Land O'Lakes, Inc.; Landmark, Inc.; MFA Oil Company; MFC Services; National Cooperative Refinery Association; Southern Farmers Association; Southern States Cooperative, Inc.; and Tennessee Farmers Cooperative. The final written comment, submitted by the Controller of the State of California, addressed the adequacy of the amount DOE received for settlement of the regulatory issues; the participation of interested parties in the settlement of Exxon's deficiency in the Escrow Account; and the effect of the Final Settlement Agreement on the wording of the Agreed Judgment and on OHA's distribution of monies attributable to crude oil violations.

III. Analysis of Comments

The July 25 notice solicited written comments and provided for a public hearing to enable the ERA to receive information from the public relevant to the decision whether the proposed Consent Order should be finalized as proposed, modified or rejected. To ensure public understanding of the basis for the proposed settlement, the July 25 notice provided detailed information regarding Exxon's overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

The Commonwealth of Pennsylvania's comments relating to OHA's distribution of the overcharge funds if the Exxon Consent Order is finalized were not germane to the basis or adequacy of the settlement. The distribution of the settlement funds attributable to refined product violations will be the subject of a separate administrative proceeding conducted by the Office of Hearings and Appeals, to be initiated shortly after publication of this notice. That portion of the $37 million settlement attributable to crude oil violations will be distributed by OHA in accordance with the OHA's July 28, 1986 Order Implementing Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 29689 (August 20, 1986), which was issued pursuant to the July 7, 1986 Final Settlement Agreement.[3] Comments on the actual disbursement of the monies by OHA will not be addressed here, but will be referred to OHA for consideration in the Exxon Consent Order claims proceeding.

The other group of states, along with expressing their views on the distribution of the funds attributable to refined products (which DOE will refer to OHA), objected to the provision in the Consent Order that requires the

[3] The July 28 OHA Order specifies that in all pending and future crude oil refund proceedings, 20 percent of crude oil overcharges monies will be set aside to satisfy claims for restitution and the remaining 80 percent will be disbursed equally to the state and federal governments for indirect restitution.

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DOE's Office of Special Counsel (OSC) to petition the OHA to implement special refund procedures under Subpart V [10 CFR Part 205] to distribute the settlement fund. These states expressed the view that use of the Subpart V procedures was unnecessary and that the Consent Order itself should direct refunds to the States when it is impossible to identify the victims of overcharges. The ERA believes as a general policy that the Subpart V procedures are best suited for cases such as Exxon, where ERA could not readily identify the injured parties or their relative amount of economic harm. This commenter may most appropriately present its claim for monies from the Consent Order fund in that forum.

The third commenter, Sun Exploration and Production Company, submitted a statement noting that one of its properties, the Northwest Dower Unit, was apparently omitted from Exhibit 3 of the Agreed Judgment. DOE had included the Northwest Dower Unit in Exhibit 3, although the property was improperly listed as the Northwest Dover Unit Because of a typographical error.

The fourth comment, submitted by a number of agricultural cooperatives, expressed full support of the proposed Consent Order.

The final commenter, the Controller of the State of California, was the only one which addressed the adequacy of the settlement amount. California questioned the appropriateness of considering Exxon's banks in calculating the overcharge liability resulting from the alleged violations and incorporated the comments the Controller had filed previously in the Mobil Oil Corporation Consent Order proceeding.

As DOE has previously explained in greater detail in, *inter alia*, the Mobil Federal Register notice, 49 FR 30354 (July 30, 1984), in response to the same statement made by the Controller of California, there is a difference between the DOE's method of assessing potential overcharge liability resulting from a firm's excessive cost or bank claims and the analysis sometimes used by OHA in Subpart V proceedings for determining the extent to which overcharges were absorbed by the first purchaser. California seems to assume that these two analytical processes are the same; they are not, and, in fact, must be different because they serve different purposes.

Subpart V proceedings are designed to determine the amount of economic injury which potentially overcharged customers may have absorbed in order to assure that first purchasers who are not end-users do not benefit from settlements at the expense of other persons who were economically injured further along in the distribution chain. Accordingly, in the context of OHA's equitable refund proceeding, when a company claims that its banks provide conclusive evidence that it absorbed overcharges, it may be appropriate for OHA to examine the nature of the cost increases in the company's banks.[4] Such an examination may be necessary because if the mere existence of banks were proof that overcharges had been absorbed, and to what extent, each firm in the distribution chain that had banks could each assert that it had absorbed the same overcharges.

In contrast, the liability phase of the enforcement process, whether through litigation or settlement, assesses potential overcharge, liability in the context of the refiner pricing regulations. The principal liability question in an enforcement proceeding (or a settlement of such issue) is the degree to which the seller's sales prices exceeded its valid costs, not the distribution of the harm caused throughout the purchasing distribution chain, as is the case in Subpart V proceedings.

California also questioned ERA's treatment of one administrative case, the "octane reduction" case,[5] as a bank adjustment rather than as a direct refund.[6] As ERA explained in the July 25 notice, ERA valued the octane reduction case consistent with the April 4, 1986 Order of the Federal Energy Regulatory Commission (FERC). While ERA moved for reconsideration of the FERC Order on May 9, 1986, that motion sought reconsideration only on the question of whether the reduction [7] of octane constituted a violation and not on the manner of determining the monetary liability.

While not disagreeing with the amounts, California also stated its belief that ERA should have provided additional information concerning the source of the number used to settle one judicial action, the "credit card" [8] and the methodology used to calculate interest on the total potentially recoverable amount for alleged regulatory violations.

ERA calculated the amount of the recovery adjustment in the credit card case using the methodology required by the April 26, 1979 Remedial Order (RO) issued to Exxon.[9] The RO required the company to reduce its maximum permissible selling prices of gasoline and other covered products by an amount reflecting the costs per gallon which were attributable to Exxon's credit card arrangements in August 1974, the last full month in which Exxon maintained the use of the bank cards.

California also questioned the interest rates ERA used, and whether interest was separately calculated for each alleged violation from the date of occurrence of each violation or whether one interest figure beginning on one date was used to calculate the entire amount. In calculating interest on the entire potentially recoverable amount of overcharges, ERA assessed interest on each violation from the date the violation first occurred at the interest rates set forth in DOE's Interest Rates on Violations, Notice of Policy, published in 46 FR 21412 (April 10, 1981).

With respect to the settlement of Exxon's deficiency in the Stripper Well Escrow Account, the Controller of California commented that DOE should obtain the agreement of the states and other interested persons who were parties to the underlying Stripper Well litigation, either before submitting the Agreed Judgment and Order to the court or by submission of the Agreed Judgment to the court in the form of a motion so that it would be subject to responses and the court's ruling. ERA does not believe it appropriate or necessary to secure the states' agreement to an Agreed Judgment which resolves claims initiated pursuant to section 209 of the Economic Stabilization Act, and the Final Settlement Agreement contains no provision for state agreement to such a resolution.[10] Furthermore, submission of

[4] In a number of such cases, OHA has found that lawful cost increases and alleged overcharges incurred by a purchaser were commingled and lost their identity, and accordingly concluded that the firm's overcharge absorption could only be attributed in the proportion of overcharges incurred to all cost increases incurred.

[5] OHA Case No. BRO-1459; FERC Case No. RO85-5-000.

[6] The Controller of California's oral presentation consisted solely of a brief summary of its written position on this matter.

[7] The FERC procedural regulations do not provide for the filing of a motion for reconsideration and FERC has never granted such a motion filed by ERA. Under the FERC rules, FERC's failure to grant a motion within 30 days operates as a denial, and FERC did not respond to ERA's motion within that time.

[8] *Exxon Corp. v. DOE*, C.A. No. 3-78-1302-G (N.D. Texas).

[9] The RO, issued by the Federal Energy Administration's Region 6, was upheld on appeal by OHA 2 DOE ¶ 80,150 (Oct. 2, 1978), which specified the precise adjustment to be made.

[10] Indeed, the Final Settlement Agreement provides that "it remains solely in the DOE's discretion to determine whether an enforcement proceeding should be initiated, settled, pursued on particular terms or terminated." *Id.* Section IV.A. at 13.

the Agreed Judgment to the district court for the appproval and agreement of the court concerning form and substance allows the court to consider any information it deems necessary before entry of the Agreed Judgment.[11] Therefore, ERA believes that the Agreed Judgment in its present form satisfactorily addresses the concerns of all interested persons.[12]

Finally, the Controller asserted that in the final Federal Register notice, ERA should explain that the funds attributable to the crude oil violations other than those at issue in the Stripper Well litigation are to be distributed by OHA subject to the terms of the Final Settlement Agreement. ERA has addressed that matter earlier in this notice in response to a comment filed by the Commonwealth of Pennsylvania.

In the July 25 Federal Register notice, ERA sought to provide the maximum amount of information possible, and to address Exxon's actual financial liability resolved by the proposed Consent Order. A review of scope of the disclosure in the July 25 notice and the fact that only one commenter in any way addressed the adequacy of the settlement amount has resulted in ERA's belief that the July 25 notice provided the public with sufficient information to assess its adequacy. Therefore, the ERA will not repeat its explanation concerning the basis for the settlement, but will refer any member of the public who is interested in that matter to the July 25 Federal Register notice, which contains a thorough discussion.

The review and analysis of all the written and oral comments did not provide any information that would support the modification or rejection of the proposed Consent Order with Exxon. Accordingly, ERA concludes that the Consent Order is the public interest and should be made final.

[11] Only one commenter other than the State California addressed the resolution of Exxon's deficiency in the Stripper Well Escrow Account said that commenter praised the result. California itself did not object to any of the substantive provisions of the Agreed Judgment and stated in its comment that it did not anticipate any of the states would seek changes in the Agreed Judgment.

[12] California also suggests that the language in paragraph 7 of the Agreed Judgment, which states that the Agreed Judgment does not resolve the issue of distribution of the monies deposited in the Escrow Account, should now reflect the fact that the Final Settlement Agreement governs disposition of the escrowed funds. ERA believes that no change to the Agreed Judgment is necessary since that document is clearly governed by the Final Settlement Agreement and presents no legal inconsistencies with the Final Settlement Agreement.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Exxon and DOE executed by DOE on June 16, 1986 is made a final order of the Department of Energy, effective the date of publication of this notice in the Federal Register.

Issued in Washington, DC, on October 2, 1986.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 86-22769 Filed 10-7-86; 8:45 am]

BILLING CODE 6450-01-M

[50653-2490-01, 02-82 and 50653-2500-01, 02-82]

Acceptance of Petition Withdrawing Certification for Ravenswood 30N and 30S and Arthur Kill 20 and 30 Powerplants; Consolidated Edison Co. of New York

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On July 31, 1986, Consolidated Edison Company of New York, Inc. ("Con Edison" or "the Company") notified the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) of the Company's withdrawal of its certification of coal capability for its Ravenswood 30 North and South and Arthur Kill 20 and 30 powerplants. Pursuant to section 301(a) of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) as amended by section 1021 of the Omnibus Budget Reconciliation Act of 1981 (OBRA), the Company filed certifications with ERA on December 29, 1981, which addressed the technical capability and financial feasibility of these powerplants to use an alternate fuel, coal, as a primary energy source. In accordance with procedural requirements of FUA and 10 CFR 501.52(b)(2) ERA published its Notice of Acceptance of Certification and Issuance of Proposed Prohibition Orders to Consolidated Edison Company of New York, Inc. for Arthur Kill and Ravenswood in the Federal Register on February 4, 1982 (47 FR 5290-5292). Because of significant changes in the circumstances of these units since the submission and acceptance of said certifications, the Company has amended their certification pursuant to 10 CFR 501.52(d) and 504.5(c). The amendments make clear that it is no longer financially feasible to convert these units to coal. Therefore, pursuant to 10 CFR 501.52(b)(5), ERA hereby terminates the prohibition order proceedings for the Ravenswood and Arthur Kill powerplants. In accordance with the requirements of 10 CFR 501.52(b)(5) concerning such action, ERA is issuing this notice. A review of the withdrawal notification is provided in the **SUPPLEMENTARY INFORMATION** section below.

The public file containing a copy of this notice and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office fo Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-093, Washington, DC 20585, Telephone (202) 252-4523.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6A-113, Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Con Edison's certifications were based on its belief that both New York State and New York City would approve the Company's request for permission to convert Ravenswood 30 and Arthur Kill 20 and 30 powerplants to coal burning without requiring the use of flue gas desulfurization (FGD) equipment. This expectation was founded on the Company's belief that the use of low sulfur coal at these powerplants without FGD systems would not cause violations of air quality standards, would not interfere with regional growth, would not contribute significantly to acid deposition and would result in very substantial fuel cost savings for Con Edison's customers. The issuance of prohibition orders would have negated the possibility of new source performance standards (NSPS) being applied to the Company's coal conversions.

In April 1982, ERA issued draft environmental impact statements pursuant to the National Environmental Policy Act of 1969 (NEPA) reviewing the environmental impact of coal burning at the powerplants. Legislative hearings to consider the adequacy of ERA's draft impact statements were conducted jointly with the New York State Department of Environmental Conservation (DEC) in New York City on May 18, 25 and 27, 1982.

In order to obtain coal burning approval from New York State, the

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Company filed a petition with DEC on February 2, 1981, invoking its authority to permit the use of 1.0 percent sulfur coal at the Ravenswood and Arthur Kill powerplants without FGD systems. DEC issued a decision which concluded that "The Company should be granted authority to burn coal at both its Arthur Kill and Ravenswood plants in each instance upon the express condition that the Company install and use FGD equipment." DEC indicated that in making its decision it was governed by the State Environmental Quality Review Act which requires an agency to balance the benefits of a proposed project against its unavoidable environmental risks and to approve the alternative which, to the extent practicable, minimizes or avoids adverse environmental effects. DEC found that the use of FGD equipment "minimizes or avoids significant adverse environmental impacts to the maximum extent practicable."

The Company has stated that DEC's requirements, that FGD systems be installed, has precluded Con Edison from implementing its coal conversion program based on the economics envisioned in the Company's voluntary certification petition. In October 1985, the Company advised the New York State Public Service Commission (PSD) of its decision not to pursue the Ravenswood 30N and Arthur Kill 20 and 30 coal conversions. In conjunction with this decision, the Company has withdrawn its section 301 certifications of coal capability for the Ravenswood 30N and 30S and Arthur Kill 20 and 30 powerplants.

Pursuant to 10 CFR 501.52(b)(5), because of the withdrawal of Con Edison's certification, ERA hereby terminates the prohibition order proceedings for the Ravenswood and Arthur Kill powerplants.

Issued in Washington, DC, September 30, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-22795 Filed 10-7-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Forms EIA-820, "Annual Refinery Report" and EIA-810, "Monthly Refinery Report"

Correction

In FR Doc. 86-22352 beginning on page 35285 in the issue of Thursday, October 2, 1986, make the following correction: On page 35286, in the second column, in the second line, "food imports" should read "feed inputs".

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-723-000 et al.]

Natural Gas Certificate Filings; Mountain Fuel Resources, Inc., et al.

October 2, 1986.

Take notice that the following filings have been made with the Commission:

1. Mountain Fuel Resources, Inc.

[Docket No. CP86-723-000]

Take notice that on September 16, 1986, Mountain Fuel Resources, Inc. (MFR), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP86-723-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for authorization to abandon a 4-inch meter run and to replace it with a 2-inch meter set and a 6-inch meter set under the certificate issued in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MFR proposes to replace one 4-inch orifice meter run at its existing Exxon Company, U.S.A. (Exxon), Dry Piney delivery point to Mountain Fuel Supply Company (MFS) with one 2-inch positive displacement meter set and one 6-inch turbin meter set. It is stated that the installation of the new meter sets would allow MFR to more accurately measure gas delivered to MFS to serve the varying requirements of Exxon at its Dry Piney gas dehydration plant (Dry Piney plant).

MFR estimates the cost of new facilities to be $72,000, which would be reimbursed by MFS. It is explained that the existing 4-inch meter run can measure the volumes required by Exxon to fuel normal plant operations; however, MFR states, the existing metering facility cannot measure the low-flow volumes needed by Exxon for pilot gas and space heating nor the emergency flare gas volumes that Exxon requires during unanticipated and sporadic 4 to 5-hour periods when emergency shutdown conditions warrant immediate flaring of unprocessed raw gas laden with carbon dioxide and hydrogen sulfide. MRF further explains that the proposed 2-inch positive displacement meter set would typically measure the low-flow volumes to be used by Exxon for pilot gas and space heating during those occasions when the Dry Piney plant is shut down, while the proposed 6-inch meter set would measure volumes required by Exxon for normal plant operations and emergency flaring.

MFR states that natural gas would be delivered to MFS at MFR's Exxon Dry Piney delivery point pursuant to MFR's sale-for-resale and transportation Rate Schedules CD-1 and X-33 of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 3, respectively, and transportation Rate Schedule T-2 of its FERC Gas Tariff, Original Volume No. 1-A, under which MFR would provide new transportation service under Section 311 of the Natural Gas Policy Act of 1978 (NGPA).

MFR explains that the low-flow volumes required by Exxon for pilot gas and space heating, all volumes needed by Exxon to fuel normal plant operations, and a portion of Exxon's flare gas requirement would be delivered to MFS by MFR, for redelivery to Exxon, in accordance with MFR's Rate Schedules CD-1 and X-33. The majority of Exxon's flare gas requirement, it is further explained, would be transported by MFR on behalf of MFS pursuant to NGPA section 311 and MFR's Rate Schedule T-2. MFR asserts that most of the flare gas volumes would be purchased by Exxon from Northwest Pipeline Corporation (Northwest) and transported by MFR for Exxon on behalf of MFS from a pipeline interconnection between MFR's jurisdiction lateral No. 17 and Northwest's 30-inch Big Piney lateral in Sublette County, Wyoming, to MFR's Exxon Dry Piney delivery point for redelivery to MFS.

Comment date: November 17, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP86-713-000]

Take notice that on September 5, 1986, Northern Natural Gas Company, Division of Enron Corp., (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-713-000, an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the transportation of natural gas by Applicant for the account of Shell Gas Trading Company (SGTC). Applicant states that it shall provide firm transportation service for SGTC's account of up to 60,000 MMBtu equivalent of natural gas per day attributable to SGTC's purchases from Shell Offshore Inc., in Matagorda Island

area Block 681, offshore Texas (MAT 681).

Applicant states that SGTC will cause the MAT 681 production to be delivered to Applicant at the Matagorda Offshore Pipeline System's (MOPS) compression platform located in MAT 686. Applicant will transport and redeliver thermally equivalent volumes to Houston Pipe line Company and as Channel Industries for SGT's account near Tivoli, Texas, at the interconnection of MOPS and Channel Industries' A-S pipleine for ultimate redelivery to Shell California Production, Inc. (SCPI) in California for use in SCPI's enhanced oil recovery operations. However, SGTC may desire to sell certain quantities of its MAT 681 supplies to "spot market" purchasers when economic conditions are appropriate.

Applicant also requests pregranted certificate authority to increase SGTC's firm service by 20,000 MMBtu per day during the first 120 days of service and pregranted abandonment authorization to decrease SGTC's firm service by 20,000 MMBtu per day during that same time frame, subject to notification to Applicant by SGTC. Additionally, Applicant requests authority to provide, on an interruptible basis, overrun transportation service for the natural gas volumes SGTC delivers to Northern in excess of the daily contract quantity.

For the services proposed herein Applicant proposes to charge SGTC the effective maximum MOP rate of 7.4 cents per million Btu for both the firm and interruptible transportation service. Such rate is outlined in Applicant's Stipulation and Agreement of Settlement in Docket No. RP85-206-000.

Comment date: October 23, 1986, in accordance with Standard paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Company, Trunkline Gas Company

[Docket No. CP82-43-012]

Take notice that on September 16, 1986, Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Petitioners), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP82-43-012 pursuant to Section 7 of the Natural Gas Act a petition to amend their certification of public convenience and necessity issued by the order of February 25, 1982, in Docket No. CP82-43-000, as amended, so as to authorize partial abandonment of transportation service by reducing the amount of natural gas transported by Petitioners on behalf of United Gas Pipe Line Company (United), transportation of gas owned by third parties and pregranted abandonment of service to United on November 1, 1988, all as more fully set forth in the petition to amend which is on file with Commission and open for public inspection.

It is stated that Petitioners request Commission authorization to implement an amendment dated September 12, 1986, to their transportation agreement dated October 13, 1981, between Petitioners and United authorizing reduction and partial abandonment of service provided by Petitioners to United, transportation of gas owned by third parties gas within United's revised transportation quantity, and also pregranted abandonment of service under the agreement on November 1, 1988, along with cancellation of Panhandle's Rate Schedule T-48 and Trunkline's Rate Schedule T-72 at that time.

It is further stated that pursuant to the Amendment to their transportation agreement, Petitioners propose to reduce the quantity of gas transported on behalf of United by fifty percent (50%), fom 100,000 Mcf of gas per day to 50,000 Mcf of gas per day, and to reduce the total monthly charge United pays Petitioners from $823,000 to $411,500 to be effective as of November 1, 1988, and until November 1, 1988, when the agreement will terminate. It is also alleged that Panhandle provides service to United pursuant to Rate Schedule T-48 of its FERC Gas Tariff, Original Volume No. 2, and Trunkline provides service to United pursuant to Rate Schedule T-72 of its FERC Gas Tariff, Original Volume No. 2.

Comment date: October 23, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-747-000]

Take notice that on September 30, 1986, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-747-000 an application pursuant to section 7 of the Natural Gas Act, as amended, for a limited-term certificate of public convenience and necessity, with pregranted abandonment authority, authorizing Applicant to transport natural gas to its distribution customer Union Gas Company (Union) for the account of The New Jersey Zinc Company, Inc. (New Jersey Zinc), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant is requesting authorization to transport to Union on behalf of New Jersey Zinc, quantities of natural gas up to the dt equivalent of 4,000 Mcf of natural gas per day pursuant to a transportation agreement among Transco, New Jersey Zinc, and Union.

It is explained that New Jersey Zinc would purchase the gas to be transported hereunder from Transco Energy Marketing Company (TEMCO) and/or other sources which can deliver gas to Applicant. Applicant states that it would receive the gas at the existing points of interconnection between Applicant and the TEMCO producer-sellers and/or other suppliers' delivery points, and would deliver equivalent quantities (less quantities retained for compressor fuel and line loss make-up) at the existing point of delivery to Union at Palmerton near Wind Gap, Monroe County, Pennsylvania, and that Union would in turn deliver such gas to New Jersey Zinc's plant in Palmerton, Pennsylvania (Palmerton Plant).

Applicant states that its Compressor Station No. 65, located on its main line at the Louisiana-Mississippi border, represents the terminus of its gas production area and the beginning of the market area. Transco indicates that the proposed transportation from Station No. 65, north to Union would be on a firm basis and that transportation south of Station No. 65, in the production area, would be on an interruptible basis.

Transco states that for the firm transportation downstream of Station No. 65, Applicant proposes to charge New Jersey Zinc the rates and charges set forth in Rate Schedule FT which is currently pending Commission approval pursuant to the stipulation and agreement filed May 13, 1986, in Docket Nos. TA85-1-29-000, *et al.* It is indicated that all transportation upstream of Station No. 65, which is interruptible, would be based upon the rates and charges contained in Applicant's Rate Schedule IT which is also contained in the aforementioned stipulation and agreement. Applicant states that it would retain initially 6.6 percent of the transportation quantities for compressor fuel and line loss make-up.

Applicant also requests flexible authority to add or delete sources of gas and/or receipt points acceptable to Applicant on behalf of New Jersey Zinc. With respect to such flexible authority, Apllicant states that it would file by May 1 of each year appropriate tariff sheet revisions with the Commission reflecting any additions or deletions of any gas suppliers and/or receipt points during the preceding 12-month period. Applicant submits that any changes made pursuant to such flexible authority would be on behalf of the same end

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user, New Jersey Zinc, for use at the same end-use location and would remain within the daily maximum transportation volume proposed in the subject application.

Transco also indicates that as a safety measure, New Jersey Zinc would deliver or cause to be delivered to Transco downstream of Station 85, at one of five specified points of interconnection in Mississippi for transportation north on a firm basis, a quantity equal to the dt equivalent of 1,000 Mcf of natural gas per day for plant protection and maintenance requirements at the Palmerton Plant.

It is averred that the transportation agreement is for a limited term expiring on November 15, 1990, and Applicant requests pregranted authority to abandon the transportation service on such date. However, if during the term New Jersey Zinc should discontinue any of the processes at the Palmerton Plant and its gas requirements be reduced accordingly, Applicant requests pregranted authority to then abandon the service to the extent of such reduction. And, if during the term New Jersey Zinc's Palmerton Plant should cease operation, Applicant requests pregranted authority to abandon the service as of the date of such cessation of operation.

Transco states that no additional facilities are required to render the proposed firm transportation service. Transco indicates that pending in Applicant's Docket No. CP86-406-000, is an application under section 7(b) of the Natural Gas Act for an order permitting and approving partial abandonment of service to Union, which application would, when granted, reduce Union's firm Rate Schedule CD-3 allocation from 19,560 dt equivalent of natural gas per day to 10,350 dt equivalent of natural gas per day, effective January 1, 1986. It is indicated that such reduction, requested by Union, furnishes more than adequate capacity to accommodate the maximum 4,000 dt equivalent of natural gas per day transportation service proposed herein.

Applicant further states that by filing the subject application, it is not electing "non-discriminatory access" as such term is described and defined in §§ 284.8(b) and 284.9(b) of the Commission's Regulations.

Comment date: October 16, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Trunkline Gas Company, United Gas Pipe Line Company

[Docket No. CP86-725-000]

Take notice that on September 16, 1986, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251, jointly referred to as Applicants, filed in Docket No. CP86-725-000 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants request authorization to exchange up to 150,000 Mcf of natural gas per day on an interruptible basis pursuant to the terms of a September 12, 1986, Gas Exchange Agreement (Exchange Agreement). It is stated that Trunkline would deliver natural gas to United for exchange at an existing point of interconnection between the facilities of United and Delhi Gas Pipeline Company in Polk County, Texas, and the existing point of interconnection between United and Trunkline near Centerville, St. Mary Parish, Louisiana. The maximum volume delivered to United in Polk County would be limited to 40,000 Mcf of gas per day, it is explained. It is further explained that United would deliver natural gas to Trunkline at a point near Olla, LaSalle Parish, Louisiana.

Applicants state that no new or additional facilities are required to implement the exchange. Applicants further state that since the exchange arrangement would be mutually beneficial there would be no charges between Applicants. It is further stated the Exchange Agreement provides for a primary term of three years and continuation for successive one year periods until cancelled by either party.

Comment date: October 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP86-730-000]

Take notice that on September 16, 1986, United Gas Pipe line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86-730-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the interruptible transportation of up to 7,000 Mcf of natural gas per day for Nicor Exploration (Nicor), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It is stated that pursuant to a gas transportation agreement between the Applicant and Nicor dated June 1, 1986, Applicant proposes to transport up to 7,000 Mcf per day for Nicor from points of delivery in Oklahoma and offshore Louisiana.

Applicant would transport up to 5,000 Mcf per day delivered to it for the account of Nicor by Reliance Pipeline Company (Reliance), an affiliate of Nicor's in Caddo County, Oklahoma. It is stated that Reliance would deliver the subject gas to Natural Gas Pipeline Company of America (Natural) who would redeliver the volumes to the Applicant at the existing interconnect between Applicant and Natural at or near Earth, Vermilian Parish, Louisiana for subsequent redelivery by Applicant to Mississippi River Transmission Corporation (MRT) at Perryville, Ouachita Parish, Louisiana for Nicor's account. Applicant avers that it would utilize its reserved capacity (authorized in Docket No. CP82-50-000) in the Oklahoma system of Natural to transport gas for Nicor.

Applicant further states that it would transport up to 2,000 Mcf per day of Nicor's offshore production to MRI, receiving such volumes at a point on the pipeline system of Stingray Pipeline Company (Stingray) located in West Cameron block 538, offshore Louisiana. Applicant would transport such volumes, utilizing its reserved capacity in Stingray pursuant to Commission authorization in Docket No. CP81-346-000 and redeliver the volumes into the system of Natural onshore at Holly Beach, Cameron Parish, Louisiana.

Applicant would utilize its reserved capacity in Natural's system pursuant to Commission authorization in Docket No. CP73-219, receiving such volumes at Earth, Louisiana, for subsequent redelivery in its own system to MRT at Perryville, Louisiana for Nicro's account.

Applicant would charge Nicro its applicable Type III mileage based transportation rate of 40.34 cents contained in its IT rate schedule. The rate excludes the GRI funding unit, and includes an allowance for fuel and company-used gas.

Comment date: October 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP86-727-000]

Take notice that on September 17, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 filed in Docket No. CP86-727-000, a request pursuant to (Sections 157.205 and 157.211) for authorization to construct and operate a sales tap to provide gas to Entex, Inc. (Entex), for resale to the residence of Richard Freed in Dallas County, Texas, under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the proposed 1-inch sales tap would supply Entex, a local distributor, with an estimated average 1 Mcf of natural gas per day for residential use under United's Rate Schedule DG-N.

The proposed sales tap would be located on United's 18-inch Latex-Ft. Worth line located in Dallas County, it is asserted. Entex would remburse United for all costs resulting from the installation of the tap, it is explained.

United also states that the new sales tap for Entex would not result in an increase in Entex's aggregate base requirements or contractual daily quantity of gas, and that the proposed service would not diminish any service to United's existing customers.

Comment date: November 17, 1986, in accordance with Standard Paragraph G at the end of this notice.

8. Western Transmission Corporation

[Docket No. CP86-717-000]

Take notice that on September 11, 1986, Western Transmission Corporation (Applicant), First City Center, 1700 Pacific Avenue, Dallas, Texas 75201, filed in Docket No. CP86-717-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that it intends to transport natural gas on behalf of all shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85-1-000. Applicant states that it accepts and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations. Applicant proposes to charge a maximum rate of 12.6 cents per Mcf and a minimum rate of 1.0 cents per Mcf of gas tendered to

and received by Applicant for transportation under its Rate Schedule OAT-1 for firm service and OAT-2 for interruptible service in compliance with the provisions of § 284.7 of the Commission's Regulations.

Comment date: October 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Williston Basin Interstate Pipeline Company

[Docket No. CP86-719-000]

Take notice that on September 12, 1986, Williston Basin Interstate Pipeline Company (Williston), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP86-719-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain gas compression facilities used and associated with the delivery of natural gas from its Madden Compressor Station located in Fremont County, Wyoming, to Colorado Interstate Gas Company (CIG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston states that it has filed in Docket No. CP86-430-000 for partial abandonment of its service to CIG under Rate Schedule X-5, specifically, abandonment of any direct sales to CIG. Williston avers that it was authorized to install and operate a leased compressor unit (Madden Compressor Station) in order to deliver an additional 12,000 Mcf of per day of sales of natural gas to CIG under Rate Schedule X-5 (16 FERC ¶ 61,146). Williston asserts that the capacity made available by the Madden Compressor is unnecessary to render service to CIG and, further, the additional capacity is unnecessary to provide service under Williston's Rate Schedules S-2 and T-3 because it is not presently being used in providing these services, the services are interruptible and the delivery point would still be usable after the abandonment.

Williston states that the compressor unit is leased and upon discontinuation of lease it must be returned to the lessor. The cost to remove the compressor unit is estimated to be $12,500. All other facilities would be retired in place and removal would therefore have no impact on the environment.

Comment date: October 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22762 Filed 10-7-86; 8:45 am]

BILLING CODE 6717-01-M

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ENVIRONMENTAL PROTECTION AGENCY

[PP 6G3386/T531; FRL-3092-8]

E.I. du Pont de Nemours & Co.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residue of the herbicide metsulfuron methyl, methyl 2[[[[(4-methoxy-6-methyl-1,3,5-triazin 2-yl]amino]carbonyl]amino] sulfonyl]benzoate, in or on certain raw agricultural commodities. These temporary tolerances were requested by E.I. du Pont de Nemours and Co.

DATE: These temporary tolerances expire August 27, 1987.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1800).

SUPPLEMENTARY INFORMATION: E.I. du Pont de Nemours and Co., Agricultural Products Co., Walkers Mill Building, Barley Mill Plaza, Wilmington, DE 19898, has requested in pesticide petition PP 6G3386 the establishment of temporary tolerances for residues of the herbicide metsulfuron methyl, methyl 2[[[[(4-methoxy-6-methyl-1,3,5-triazin 2-yl]amino]carbonyl]amino] sulfonyl]benzoate, in or on the raw agricultural commodities grass forage and fodder at 15 parts per million (ppm); grass hay at 60 ppm; milk at 0.2 ppm; and kidney of cattle, goats, hogs, horses, and sheep at 0.5 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 352–EUP–136, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. E.I. du Pont de Nemours and Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire August 27, 1987. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: October 1, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–22837 Filed 10–7–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180702; FRL–3092–7]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 12 States listed below and one quarantine exemption to the California Department of Food and Agriculture. Also listed are crisis exemptions initiated by four States. Also included is the denial of a request for a specific exemption from the Kentucky Department of Agriculture. The exemptions, issued during the month of July, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, quarantine, and crisis, exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific exemption for the name of the contact person. The following information applies to all contact people:

By mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Consumer Services for the use of fluazifop-p-butyl on peanuts to control annual grasses; July 29, 1986 to July 31, 1986. Alabama had initiated a crisis exemption for this use. (Jim Tompkins)

2. California Department of Food and Agriculture for the use of carbaryl on pomegranates to control filbert moths; July 30, 1986 to October 23, 1986. (Jim Tompkins)

3. California Department of Food and Agriculture for the use of sethoxydim on alfalfa to control green and yellow foxtail; July 15, 1986 to September 15, 1986. (Libby Pemberton)

4. Colorado Department of Agriculture for the use of methidathion on field corn to control Banks grass mites; July 25, 1986 to August 31, 1986. (Gene Asbury)

5. Colorado Department of Agriculture for the use of cypermethrin on onions to control thrips; July 17, 1986 to September 15, 1986. (Stan Austin)

6. Florida Department of Agriculture and Consumer Services for the use of fluazifop-p-butyl on peanuts to control Texas panicum and crabgrass; July 29, 1986 to July 31, 1986. Florida had initiated a crisis exemption for this use. (Jim Tompkins)

7. Georgia Department of Agriculture for the use of fluazifop-p-butyl on peanuts to control Texas panicum; July 29, 1986 to August 1, 1986. Georgia had initiated a crisis exemption for this use. (Jim Tompkins)

8. Kansas State Board of Agriculture for the use of methidathion on field corn to control Banks grass mites and two-spotted spider mites; July 11, 1986 to September 30, 1986. (Gene Asbury)

9. Massachusetts Department of Food and Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; July 14, 1986 to September 30, 1986. (Jim Tompkins)

10. Nebraska Department of Agriculture for the use of methidathion on field corn to control Banks grass mites and two-spotted spider mites; July 25, 1986 to September 15, 1986. (Gene Asbury)

11. North Carolina Department of Agriculture for the use of sethoxydim on peanuts to control annual grasses; July 29, 1986 to August 15, 1986. North Carolina had initiated a crisis exemption for this use. (Jim Tompkins)

12. North Carolina Department of Agriculture for the use of fluazifop-p-butyl on peanuts to control annual grasses; July 29, 1986 to August 15, 1986. North Carolina has initiated a crisis exemption for this use. (Jim Tompkins)

13. North Dakota Department of Agriculture for the use of sodium chlorate on dry edible beans as a harvest aid; July 30, 1986 to October 1, 1986. (Jim Tompkins)

14. Virginia Department of Agriculture and Consumer Services for the use of sethoxydim on peanuts to control annual grasses; July 29, 1986 to August 15, 1986. Virginia had initiated a crisis exemption for this use. (Jim Tompkins)

15. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sodium chlorate on dry edible beans as a harvest aid; July 30, 1986 to October 31, 1986. (Jim Tompkins)

16. EPA issued a quarantine exemption to the California Department of Food and Agriculture for the use of carbaryl on home garden crops to control gypsy moths and Japanese beetles; July 31, 1986 to July 31, 1989. (Libby Pemberton)

Crisis exemptions were initiated by the: 1. Louisiana Department of Agriculture on July 14, 1986, for the use of sethoxydim on sweet potatoes to control Johnson grass, Bermuda grass, and annual grasses. The need for this program has ended. (Libby Pemberton)

2. Nebraska Department of Agriculture on July 8, 1986, for the use of sethoxydim on potatoes to control wild proso millet and volunteer corn. The need for this program has ended. (Libby Pemberton)

3. Oklahoma Department of Agriculture on July 17, 1986, for the use of methidathion on field corn to control Banks grass mites and two-spotted spider mites. The need for this program has ended. (Gene Asbury)

4. Texas Department of Agriculture on July 22, 1986, for the use of fluazifop-p-butyl on peanuts to control weeds that escaped control by preemergent herbicides. Since it was anticipated that that program would be needed for more than 15 days, Texas requested a specific exemption to continue it. The need for this program is expected to last until October 1, 1986. (Jim Tompkins)

EPA has denied a request for a specific exemption from the Kentucky Department of Agriculture for the use of B-(4-chloro-phenoxy)-a-(1,1-dimethylethyl)-1*H*1,2,4-triazole-1-ethanol on barley seed to control loose smut disease. A notice of receipt of this request was published in the **Federal Register** of July 30, 1986 (51 FR 27252). The Agency has denied this request because of unresolved questions concerning the potential chronic effects of this active ingredient. (Libby Pemberton)

Authority: 7 U.S.C. 136.

Dated: October 1, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86–22835 Filed 10–7–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180705; FRL–3092–6]

Receipt of Application for an Emergency Exemption From Montana To Use Strychnine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: EPA has received a public health exemption request from the Montana State Department of Livestock (hereafter referred to as "Applicant") to use strychnine alkaloid (CAS 57–24–0) in egg baits for control of rabid skunks. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemption.

DATE: Comments must be received on or before October 23, 1986.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180705" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of the information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No., 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jim Tompkins, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a public health exemption for the use of strychnine in eggs to control rabid skunks. Montana has been authorized emergency exemptions for this use for the past 12 years.

In 1972, EPA cancelled the registrations of strychnine products used for predator control, including the use of strychnine to control skunks (37 FR 5718). This public health exemption request is therefore subject to EPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for a registration or a pesticide use that has been cancelled shall be considered a petition for reconsideration of the prior cancellation order. The Administrator

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will determine that reconsideration is warranted if he finds that:

(1) The Applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination; and

(2) Such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order. (40 CFR 164.131(a).)

Ordinarily, if the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the cancellation order is justified (40 CFR 164.131(c)).

The Administrator has previously determined that substantial new evidence does exist in connection with the registration request and last year's emergency exemption request, as published in the Federal Register of June 13, 1986 (51 FR 21617). Accordingly, a hearing to reconsider whether to modify the prior cancellation order to permit the use of strychnine for controlling skunks to suppress rabies in areas where rabid animals have been found will be held on October 7, 1986, as announced in the Federal Register of August 8, 1986 (51 FR 28623).

The Agency would consider issuing another emergency exemption for this use of strychnine if by the expiration date of the current emergency exemption (November 6, 1986), strychnine has not been registered for this use, the criteria in § 164.133 are met, an emergency condition is determined to exist, and the States have met their commitment to generate section 3 data in a timely fashion (51 FR 21622).

The Applicant has applied, under section 3 of FIFRA, for registration of strychnine in egg baits to control rabid skunks. The Applicant in conjunction with the State of Wyoming is currently generating the data necessary to support the registration of this use of strychnine.

The Applicant has requested the use of strychnine for the purpose of suppressing local population of skunks, the main carrier of rabies, thereby reducing the opportunity for exposure of humans, domestic animals, and susceptible wild species to rabies. The Applicant considers the incidence of rabies to be at a level which poses an unacceptable threat to public health.

The proposed control program involves use of strychnine egg baits which contain 0.035 gram of actual strychnine alkaloid.

Placement of strychnine treated eggs is limited to land within a 5-mile radius of a site where a laboratory-confirmed rabid skunk has been found. The number of strychnine egg baits may not exceed: 1,200 eggs in any treatment area, 150 eggs per any square mile, or two eggs per site. Strychnine egg baits will be placed in such skunk habitats as follows: Skunk dens, holes, garbage dumps, road culverts, junk piles, and under non-occupied buildings. All strychnine egg baits will be stamped with the word "poison" in three locations and will contain green food coloring to warn people of their toxic nature. Baits will be covered at all times and checked no less than once a week. Warning signs will be posted at all points commonly used for access to the treatment area. Strychnine egg baits will be placed only on lands where written permission has been obtained from the landowner. Placement or removal of strychnine egg baits will be under the direct supervision of certified commercial applicators of restricted use pesticides.

The regulations governing section 18 require publication of a notice in the Federal Register of receipt of an application that proposes use of a pesticide if such pesticide was the subject of a notice under section 6(b) of FIFRA and was subsequently cancelled and is intended for a use that poses a risk similar to the risk posed by the pesticide which was the subject of the notice. The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this public health exemption.

Dated: October 1, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-22836 Filed 10-7-86; 8:45 am]

BILLING CODE 4560-50-M

[OPP-180703; FRL-3091-3]

Naled and Methyl Eugenol; Notification of Issuance of a Quarantine Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt and issuance.

SUMMARY: EPA has received a quarantine exemption request from the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (hereafter referred to as "Applicant") to use lure baits containing naled (CAS 300-76-5) and methyl eugenol (CAS 93-15-2) for an eradication treatment for the guava fruit fly (*Docus correctus* Bezzi) in Orange County, California. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemption. Due to the critical nature of the emergency situation, there was insufficient time to solict public comment. The Agency has granted a quarantine exemption for this use of lure baits containing naled and methyl eugenol.

FOR FURTHER INFORMATION CONTACT:

By mail: Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a Federal agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a quarantine exemption for the use of lure baits to eradicate the guava fruit fly from Orange County, California. The Agency was advised on August 12, 1986, that the Applicant had initiated a crisis exemption for this use.

Information in accordance with 40 CFR Part 166 wa submitted as part of this request. Naled is a non-systemic, insecticide-acaricide registered for use on field, vegetable, and orchard crops; livestock and poultry; and agricultural, domestic, medical, and commercial establishments. Methyl eugenol is used as an attractant in the lure bait.

The guava fruit fly is an exotic insect which is widely distributed in Southern Asia occurring from Pakistan eastward through India to Thailand. In India, this fly is a serious pest of a variety of tree fruits. Imported California crops which probably would be infested include stone and pome fruits, especially peaches, and various citrus fruit. Damage occurs when adult female flies lay eggs in the fruit. These eggs hatch into larvae of maggots which tunnel through the flesh of the fruit making it unfit for consumption.

The first record of the occurrence of the guava fruit fly in the Western Hemisphere was the collection in Garden Grove, Orange County, California, on August 6, 1986. Two additional flies were trapped on August 9, in the surrounding area.

The Applicant has requested the use of two different naled baits to be applied to inanimate objects. The baits will contain 1.75 ounces of naled with either 11.7 ounces or 12.7 ounces of methyl eugenol. The mixture of naled and methyl eugenol will be added to Min-U-Gel to obtain the desired consistency. Baits will be applied by hand equipment to such surfaces as trunks of host trees, telephone poles, etc.

All lure baits will be placed out of normal reach of children and pets. Treatments will consist of a minimum of 800 bait spots per square mile around each fly-find. Treatments will be made on a biweekly to monthly basis. The total quantity of naled required for each treatment is approximately 2 gallons of technical material.

The Applicant claims that there is currently no pesticide registered or available for use against this pest in California.

The regulations governing section 18 require publication of a notice in the Federal Register of receipt of an application for a specific exemption proposing use of a new chemical, i.e., an active ingredient not contained in any currently registered pesticide. Methyl eugenol is not currently contained in a registered product. The regulations also provide for the opportunity for public comment on the application; however, this comment period can be eliminated if the time available for a decision on the application requires it.

The Agency decided to issue the quarantine exemption on September 5, 1986, after determining that an emergency situation existed, and that this action would not cause unreasonable adverse effects on the environment. The finding of an emergency situation has three bases: (1) This is the first occurrence of the guava fruit fly in the Western Hemisphere; (2) The lack of an effective pesticide or other means to control the guava fruit fly; and (3) Without the proposed use of lure baits containing naled and methyl eugenol, substantial economic losses could be expected if the guava fruit fly becomes established in California. This quarantine exemption expires September 4, 1988.

Dated: September 26, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-22556 Filed 10-7-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-467; FRL-3092-6]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing tolerances for residues of certain pesticide chemicals in or on certain agricultural commodities and withdrawal of petitions previously filed and published in the Federal Register.

ADDRESS: By mail, submit comments identified by the document control number [PF-467] and the petition number, attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in the petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone number	Address
Richard Mountfort, PM-21	Rm. 202, CM#2, 703-557-1800	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
Robert Taylor, PM-25	Rm. 245, CM#2, 703-557-1800	Do.

SUPPLEMENTARY INFORMATION: EPA has: (1) Received the following pesticide petitions (PP) proposing the establishment of tolerances for residues or combined residues of certain pesticide chemicals in or on certain agricultural commodities and (2) requests to withdraw petitions previously filed and published in the Federal Register.

1. *PP 6F3444.* Elanco Products Co., Lilly Corporate Center, Indianapolis, IN 46285. Proposes amending 40 CFR 180.420 by establishing a tolerance for the combined residues of the herbicide fluridone (1-methyl-3-phenyl-5-[3-(trifluoro-methyl)phenyl]-4-(1*H*)-pyridone) and its metabolite (1-methyl-3-(4-hydroxy phenyl)-5-[3-(trifluoro-methyl)-phenyl]-4-(1*H*)-pyridone) in or on the commodity edible crayfish at 0.5 part per million (ppm). The proposed analytical method for determining residues is gas chromatography. (PM-23).

2. *PP 6F3431.* E. I. du Pont de Nemours & Co., Walkers Mill Barley Mill Plaza, Wilmington, DE 19898. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-aminojcarbonyl]amino]sulfonyl]-2-thiophenecarboxylate in or on the commodities barley grain and wheat grain at 0.05 ppm. The proposed analytical method for determining residues is liquid chromatography with a photoconductivity detector. (PM-25).

3. In the Federal Register of April 17, 1985 (50 FR 15219), EPA issued a notice which announced that Monsanto Company, 1101 17th St. NW., Washington, DC 20036 filed the following petitions:

a. *PP 5F3157*—proposed tolerances for the combined residues of the herbicide glyphosate (*N*-(phosphonomethyl) glycine and its metabolite aminomethylphosphonic acid resulting from application of the isopropylamine

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salt of glyphosate in or on peanuts and peanuts hulls at 2.0 and 2.5 ppm respectively. (PM–25).

b. *FAP 5H5446*—proposed a regulation to permit the combined residues of glyphosate in the animal feed peanut meal at 3.0 ppm.

Monsanto has withdrawn the petitions without prejudice to future filing in accordance with 40 CFR 180.8. (PM–25).

Authority: 21 U.S.C. 346a and 21 U.S.C. 348.

Dated: October 1, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–22832 Filed 10–7–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00230; FRL–3094–2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review studies submitted with respect to the pesticide dinoseb.

DATE: Wednesday, October 29, 1986, from 9 a.m. to 3 p.m.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–769C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and phone number: Rm. 1121, Crystal Mall, Building No. 2, Arlington, VA, (703–557–7695).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

1. Review of studies submitted to the Agency regarding adverse effects of the pesticide dinoseb (2-sec-butyl-4,6-dinitrophenol) and its salts, the Agency's analyses of those studies, and regulatory actions to be taken by the Agency in reliance on those studies and analyses.

2. Completion of any unfinished business from previous Panel meetings.

3. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to item 1 above may be obtained by contacting: Michael W. McDavit, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1006, Crystal Mall, Building No. 2, Arlington, VA, (703–557–7400).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone number listed above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements wil be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral/written statements should notify the Executive Secretary and submit 10 copies of written comments or the written text of oral testimony no later than October 22, 1986, in order to ensure appropriate consideration by the Panel.

Dated: October 3, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–22961 Filed 10–7–86; 9:15 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 024–011013.
Title: Tampa Terminal Agreement.
Parties:
Tampa Port Authority (Port)
Standard Gypsum Corporation (SGC)
Synopsis: The proposed agreement would permit the Port to lease approximately 4.62 acres of land at the Holland Terminal Area in the Port of Tampa to SGC, an assignee of Trans Atlantic Bulk, Inc., for the handling of gypsum and other bulk products.

Agreement No.: 224–011014.
Title: Long Beach Terminal Agreement.
Parties:
Long Beach Container Terminal, Inc. (LBCT)
Zim American Israeli Shipping Co., Inc. (Zim)
Synopsis: The proposed agreement would permit LBCT to provide terminal and stevedoring services to Zim at the Port of Long Beach.

Agreement No.: 224–011015.
Title: New Orleans Terminal Agreement.
Parties:
Board of Commissioners of the Port of New Orleans (Port)
Coastal Cargo Company (CGC)
Synopsis: The proposed agreement would permit the Port to lease sections 64 through 109 of the shed only of the Galvez Street Wharf, situated on the Inner Harbor-Navigation Canal, City of New Orleans, to CGC for an initial period of one year.

Agreement No.: 224–011016.
Title: Tampa Terminal Agreement.
Parties:
Tampa Port Authority (Port)
Bermuda Star Line, Inc. (BSL)
Synopsis: The proposed agreement would permit the Port to lease to BSL approximately 1,800 square feet of space in Building 901 for a period of two years.

Agreement No.: 224–011017.
Title: North Carolina State Ports Terminal Agreement (Ports Authority).
Parties:
North Carolina State Ports Authority
Morehead City Ship and Cargo Agency, Inc. (Grantee)
Synopsis: The proposed agreement provides 50 thousand ton annual guarantee of cargo with reduction of wharfage charge on tonnage in excess of 50 thousand tons, in return, the Ports Authority shall grant to Grantee preferential berthing and use of one gantry crane with seventy-two hours notice. The term of the agreement is for one year from the effective date with option to extend the term of the agreement for two additional periods of one year each.

By order of the Federal Maritime Commission.

Dated: October 3, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86–22794 Filed 10–7–86; 8:45 am]

BILLING CODE 6730–01–M

Filing and Effective Date of Agreement; West Gulf Maritime Assn.

The Federal Maritime Commission hereby gives notice, that on September 26, 1986, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201–000083–009.
Title: West Gulf Maritime Association Assessment Agreement.
Parties:
West Gulf Maritime Association (WGMA)
International Longshoremen's Association—AFL-CIO (ILA)

Synopsis: The amendment provides for the indefinite suspension of the cargo assessment provided for in the WGMA resolution of December 6, 1985. The suspension is to be effective beginning October 1, 1986.

By Order of the Federal Maritime Commission.

Dated: October 3, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86–22776 Filed 10–7–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Lehigh Corp.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 28, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Lehigh Corporation,* Walnutport, Pennsylvania; to engage *de novo* through its subsidiary, Global Leasing Company, Walnutport, Pennsylvania, in the leasing of personal property in accordance with § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted primarily in Pennsylvania, New Jersey, New York, Delaware, and Maryland.

Board of Governors of the Federal Reserve System, October 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–22753 Filed 10–7–86; 8:45 am]

BILLING CODE 6210–01–M

Itasca Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Itasca Bancorp, Inc.,* Itasca, Illinois; to acquire B.I.P. Inc., Bloomingdale, Illinois, and thereby engage in data processing activities and courier services pursuant to §225.25(b)(7) and (10) of the Board's Regulation Y through a joint venture.

Board of Governors of the Federal Reserve System, October 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–22754 Filed 10–7–86; 8:45 am]

BILLING CODE 6210–01–M

Northern of Tennessee Corp., et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and

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§ 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications as set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must included a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 29, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Northern of Tennessee Corp.*, Clarksville, Tennessee; to acquire 100 percent of the voting shares of Bedford County Bank, Shelbyville, Tennessee.

2. *Sardis Banchares, Inc.*, Sardis, Georgia, to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Sardis, Sardis, Georgia.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Franklin Capital Corporation*, Morton Grove, Illinois; to acquire 100 percent of the voting shares of First State Bank and Trust Company of Franklin Park, Franklin Park, Illinois.,

Board of Governors of the Federal Reserve System, October 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22755 Filed 10-7-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Advisory Council on Health Care Technology Assessment; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory Council scheduled to meet during the month of October 1986:

Name: National Advisory Council on Health Care Technology Assistant.

Date and Time: October 30-31, 1986, 3:00 pm.

Place: Sheraton Grand Hotel, Grand Ballroom Center, 525 New Jersey Avenue, NW, Washington, DC 20001. Closed October 31, 11:15 am to 12:00 Noon. Open for remainder of meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center of Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of the health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The agenda for the open session will center on public policy aspects of medical coverage issues involving health care technology. During the closed session, the Council will be reviewing research grant applications relating to health care technology. These applications contain research protocols, design, raw research data, technical information, and preliminary research reports. The meeting involves discussion of salaries and the professional competence of applicants, information of a personal nature, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Ms. Nancy Blustein, National Center for Health Services Research and Health Care Technology Assessment, Stop 330, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443-5652.

Agenda items are subject to change as priorities dictate.

Dated: September 23, 1986.

John E. Marshall,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86-22777 Filed 10-7-86; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

Public Workshop; Determination of Aluminum in Parenteral Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public workshop to discuss determination of aluminum in parenteral products.

DATE: The workshop will be held on November 6, 1986, 9 a.m. to 5 p.m.

ADDRESS: The workshop will be held at the Lister Hill Auditorium, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: A.T. Gregoire, Center for Drugs and Biologics (HFN-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1869.

SUPPLEMENTARY INFORMATION: FDA's Center for Drugs and Biologics, Division of Metabolism and Endocrine Drug Products will hold a workshop entitled "Aluminum Content of Parenteral Products." The participants and panels will review and consider the current knowledge of aluminum toxicity in clinical medicine, existent aluminum monitoring, the origin and clinical effects of aluminum loading and methodology for quantitative aluminum determination in parenteral products.

Requests for additional information or to participate in these discussions should be directed to A.T. Gregoire (address above).

Dated: September 30, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-22752 Filed 10-7-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-401-N]

Medicare Program; Payment to Hospices

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces an updated payment cap for hospice care under the Medicare program. The revised cap amount applies to payments made to a hospice during the period November 1, 1985 through October 31, 1986. In addition, this notice announces the increase in the daily rates of payment for hospice care that is specified in section 1814(i)(1) of the Social Security Act as amended by section 9123 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

EFFECTIVE DATE: The payment cap is effective for the period November 1, 1985 through October 31, 1986. The revised rates are effective for hospice care furnished on or after April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Randal Ricktor, (301) 597-1806.

SUPPLEMENTARY INFORMATION: Section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248), which was enacted on September 3, 1982, expanded the scope of Medicare benefits by authorizing coverage for hospice care for terminally ill beneficiaries. The principal changes made by section 122 are contained in sections 1812 (a)(4) and (d), 1813(a)(4), 1814 (a)(7) and (i), 1816(e)(5) and 1861(dd) of the Social Security Act (the Act). Section 1814(i) of the Act was further amended on August 29, 1983 by section 1(a) of Pub. L. 98-90 and on November 8, 1984 by section 1(a) of Pub. L. 98-617. Our regulations implementing the hospice program under Medicare were published in the **Federal Register** on December 16, 1983 (48 FR 56008) and are set forth at 42 CFR Part 418.

Under the authority of section 1814(i) of the Act, hospices are paid on the basis of one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of the hospice. The four categories of payment rates are routine home care, continuous home care, inpatient respite care, and general inpatient care, as described in § 418.302.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) was enacted. Section 9123(b) of Pub. L. 99-272 amended section 1814(i)(1) of the Act to provide for an increase in the rates for the four categories of payment for hospice care. As amended, section 1814(i)(1) of the Act specifies that, for hospice care furnished on or after April 1, 1986, the daily rate of payment per day for routine home care is $83.17 and the daily rate of payment for the other three services is increased by $10. Set forth below are the four categories of services and the rates that were in effect before the enactment of Pub. L. 99-272 and the rates that went into effect for care furnished on or after April 1, 1986.

Category of payment	Rates	
	Before April 1, 1986	On or after April 1, 1986
Routine home care	$83.17	$83.17
Continuous home care	358.67	368.67
Inpatient respite	55.33	65.33
General inpatient	271.00	281.00

The provisions of section 9123(b) of Pub. L. 99-272 are self-implementing and we have been making payment for hospice care under the new rates since the law was enacted.

Section 1814(i)(2) of the Act specifies that Medicare payment to a hospice for care furnished over the period of a year is limited by a payment cap. The payment cap is described in regulations at § 418.309. Section 1814(i)(2)(B) of the Act and § 418.309 of the regulations set the initial hospice cap amount for the period November 1, 1983 to October 31, 1984 at $6,500. Each hospice's cap by amount is calculated by multiplying the yearly cap by the number of Medicare beneficiaries who elected to receive and did receive hospice care from the hospice during the cap period (November 1 through October 31).

Section 1814(i)(2)(B) of the Act and § 418.309(a) specify the manner in which the cap amount is adjusted for accounting years that end after October 1, 1984. The initial cap amount of $6,500 is adjusted for inflation or deflation for cap years that end after October 1, 1984 by using the percentage change in the medical care expenditure category of the Consumer Price Index (CPI) for urban consumers, which is published by the Bureau of Labor Statistics (BLS). This adjustment is made using the change in the CPI from March 1984 to the fifth month of the cap year. For purposes of the cap year that runs from November 1, 1985 through October 31, 1986, an index is needed to measure inflation (or deflation) from March 1984 to March 1986 (the fifth month of the accounting year). Since this calculation is not made until after the month of March in each cap year, we cannot, as a practical matter, publish the hospice cap amount before the beginning of the period to which the cap applies.

BLS has recently released figures that indicate a March 1986 price level in the medical care expenditure category of the CPI of 425.8 (1967 = 100.0). This figure is divided by the March 1984 price level of 374.5 to yield an index of 1.137.

Therefore, the new hospice cap is the product of $6,500 and 1.137; that is, $7,391. This cap applies to hospices for care furnished from November 1, 1985 to October 31, 1986.

This notice merely announces amounts required by legislation and by § 418.309. It is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) and 42 CFR 418.309)
(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 12, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86-22772 Filed 10-7-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Interior Desk Officer, at (202) 395-7340.

Title: 25 CFR, Part 125, Payment of Sioux Benefits

Abstract: Prescribes the eligibility criteria and application procedures governing payment of "Sioux Benefits" under the 1889 Sioux Allotment Act, as amended, the 1928 Sioux Benefits Act; and section 14 of the 1934 Indian Reorganization Act (25 U.S.C. 474). The data on this form is used by the BIA to determine the applicant's eligibility for Sioux Benefits.

Note: This is not a new program or a new information collection by BIA.

Bureau Form Number: BIA-4210.

Frequency: Nonrecurring.

Description of Respondents: Eligible Cheyenne River Sioux Indians of the Cheyenne River Reservation, South Dakota.

Annual Responses: 260.

Annual Burden Hours: 130.

Bureau Clearance Office: Ann Bolton (202) 343-3577.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-22812 Filed 10-7-86; 8:45 am]

BILLING CODE 4310-02-M

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Bureau of Land Management

[WY-040-06-4212-14]

Realty Action Land Sale Appraisal Update for Lands in Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Land sale appraisal update for lands in Crook and Weston Counties, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent withe FLPMA or other applicable laws.

These parcels are continuing to be reoffered for sale under competitive procedures as per Federal Register Notices which appeared as follows:

Crook County: 49 FR 43803-43803 (October 31, 1984), 49 FR 11583–11584 (March 22, 1985).

Weston County: 50 FR 11568 (March 22, 1985).

The planning document, environmental assessment/land report, and memorandums and letters of Federal, state, and local contacts concerning the sale are available for review at the Bureau of Land Management, Newcastle Resource Area Office. All bids and requests for information should be sent to BLM, Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701 (phone (307) 746–4453).

Serial No.	Legal description	Acreage	Appraised value
Crook County:			
W-56202	T. 54 N., R. 62 W., 6th P.M., Section 28: SW¼NE¼.	40.00	$5,000.00
W-56211	T. 55 N., R. 64 W., 6th P.M., Section 6: Lot 18.	42.48	7,000.00
Weston County:			
W-56630	T. 47 N., R. 61 W., 6th P.M., Section 28: SW¼NW¼.	40.00	8,400.00

Dated: September 30, 1986.

James W. Monroe,

District Manager.

[FR Doc. 86-22810 Filed 10-7-86; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Golden Gate National Recreation Area; Public Hearing

Section 460bb–2(i) of the legislation establishing the Golden Gate National Recreation Area ("GGNRA"), 16 U.S.C. 460bb–2(i), prescribes limitations on new construction or development at the Presidio of San Francisco, which is located entirely with the boundaries of the GGNRA. The legislation also requires that a public hearing conducted by the Secretary of the Interior or his designated representative be held in connection with any proposed new construction or development.

Accordingly, notice is hereby given that a public hearing will be conducted by the Superintendent of the GGNRA on Thursday, November 6, 1986, in order to present to the public and solicit its views on a new one-story commissary facility at the Presidio of San Francisco. The hearing will commence at 7:30 p.m. (PST) at Building 201, Fort Mason, San Francisco, California.

The new building will be one-story, 44 feet tall, and will consolidate all commissary retail and warehousing operations and administration offices under one roof. New construction will be 87,309 square feet. The new building will incorporate an existing storage building (#653) which is 5931 square feet in size. Total space in the new commissary will be 93,240 square feet versus 94,334 square feet in the present commisary.

A fact sheet on the commissary construction project and an environmental document are available by request from the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123, telephone (415) 556–4484.

The hearing will also include a Superintendent's Report from Golden Gate National Recreation Area General Superintendent Brian O'Neill.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the afforementioned public hearing. The not wishing to appear in person may submit written statements to the General Superintendent of the Golden Gate National Recreation Area on this construction project. Statements will be accepted until November 21, 1986.

This meeting will be recorded for documentation and transcribed for dissemination.

Dated: October 2, 1986.

W. Lowell White,

Acting for Regional Director, Western Region.

[FR Doc. 86-22791 Filed 10-7-86; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

[CA-010-06-4322-02]

Bakersfield District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given that the Bakersfield District Grazing Advisory Board to the Bureau of Land Management, U.S. Department of the Interior, will meet formally on Thursday, November 13, 1986 in Room 335 of the Federal Building, 800 Truxtun Avenue, Bakersfield, California. The meeting will begin at 9 a.m. and last until approximately 4 p.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include election of a chairman and discussion of FY86 project accomplishments, FY87 planned project, and grazing fee collection fee procedures.

The meeting is open to the public. Interested persons may make oral statements to the Board, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify, in writing, the Bakersfield District Manager (Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301) by November 11, 1986.

Summary minutes of the meeting will be maintained in the Bakersfield District Office and will be available for inspection and reproduction during regular business hours, within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Marta L. Witt, Public Affairs Officer, Bureau of Land Management, Bakersfield District, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 861–4191.

Dated: September 29, 1986.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 86-22744 Filed 10-7-86; 8:45 am]

BILLING CODE 4310-40-M

[AZ-940-06-4220-10; A-19077-A]

Notice of Conveyance of Public Lands in Coconino County, AZ

September 29, 1986.

In an exchange of lands made under the provisions of the General Exchange Act of March 20, 1922 (42 Stat. 465), as amended by the Act of February 28, 1925 (43 Stat. 1090), and the Federal Land Policy and Management Act of October 21, 1976 (Pub. L. 94–579; 90 Stat. 2743), the following lands have been conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 21 N., R. 1 E.,
Sec. 22, E½E½NW¼NE¼.

The area described aggregates 10.00 acres in Coconino County, according to the official plats of surveys of said land, on file in the Bureau of Land Management.

The real estate value of both the selected and offered lands in the exchange were appraised at approximately equal value.

Upon acceptance of title to the land, they became part of the Kaibab National Forest and are subject to all the laws, rules, and regulations applicable thereto.

Inquiries concerning the land should be addressed to the Forest Supervisor, Kaibab National Forest, 800 S. 6th Street, Williams, Arizona 86046.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[Doc. 86-22745 Filed 10-7-86; 8:45 am]

BILLING CODE 4310-32-M

(AZ-940-06-4220-10; A19123)

Notice of Conveyance of Public Mineral Estate; Reconveyed Mineral Estate Opened to Entry in Mohave County, AZ.

September 29, 1986.

Notice is hereby given that the mineral estate in the following described land has been transferred out of Federal ownership pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 in exchange for State-owned minerals. The exchange was made based on approximately equal values.

The mineral estate transferred to the State underlies the following described State-owned surface:

Gila and Salt River Meridian, Arizona,

T. 1 N., R. 16 E.,
Sec. 19, lots 1 thru 4, incl., W½
T. 6 N., R. 7 W.,
Sec. 3, lot 4, SW¼NW¼; W½SW¼; sec. 4, lots 1 thru 4, incl., S½N½, S½.
T. 7 N., R. 5 W.,
Sec. 7, lots 3, 4, E½SW¼, SE¼;
Sec. 8, SW¼, S½SE¼;
Sec. 14, W½E½, W½;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 27, N½N½;
Sec. 34, all;
Sec. 35, NW¼.
T. 7 N., R. 6 W.,
Sec. 1, lots 3, 4, S½NW¼, SW¼;
Sec. 3, lots 1 thru 4, incl., S½N½, S½;
Sec. 8, SE¼;
Sec. 10, all;
Sec. 13, N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 14, all;
Sec. 19, lots 1, 2, E½NW¼, W½NE¼, NW¼SE¼;
Sec. 20, E½;
Sec. 21, all;
Sec. 28, N½, W½SW¼, NE¼SE¼;
Sec. 29, SE¼;
Sec. 30, lots 1 thru 4, incl., W½NE¼; NE¼NW¼, E½SW¼;
Sec. 31, lots 1 thru 4, incl., E½W½, E½;
Sec. 33, S½NE¼, SE¼.
T. 7 N., R. 8 W.,
Sec. 9, S½;
Sec. 10, S½;
Sec. 11, W½SW¼;
Sec. 15, N½.
T. 7 N., R. 9 W.,
Sec. 13, N½;
Sec. 19, lots 1 thru 4, incl., E½W½, NE¼;
Sec. 20, N½;
Sec. 29, all;
Sec. 30, lots 1 thru 4, incl., E½W½, E½;
Sec. 33, W½.
T. 7 N., R. 10 W.,
Sec. 1, lots 1 thru 4, incl., S½N½, SW¼;
Sec. 3, lots 1 thru 4, incl., S½N½, S½;
Sec. 4, lots 1 thru 4, incl., S½N½, S½;
Sec. 9, N½, SW¼;
Sec. 10, N½;
Sec. 11, N½;
Sec. 12, NW¼;
Sec. 17, N½;
Sec. 20, S½N½, S½;
Sec. 21, S½N½, S½;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, E½, NW¼, E½SW¼, E½SW¼;
Sec. 26, all;
Sec. 27, all;
Sec. 28, N½, SW¼, S½SE¼, NW¼SE¼;
Sec. 29, all;
Sec. 35, all.
T. 8 N., R. 6 W.,
Sec. 35, all.
T. 8 N., R. 7 W.,
Sec. 4, lots 1 thru 4, incl., S½;
Sec. 7, lots 3, 4, E½SW¼, SE¼;
Sec. 8, NE¼, S½;
Sec. 9, all;
Sec. 31, lots 1 thru 4, incl., E½W½, S½NE¼, SE¼.
T. 8 N., R. 8 W.,
Sec. 9, NW¼, S½;
Sec. 35, all.
T. 8 N., R. 10 W.,
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.
T. 6 S., R. 10 E.,
Sec. 13, E½, NW¼;
Sec. 20, N½;
Sec. 21, N½;
Sec. 22, S½;
Sec. 23, S½;
Sec. 24, NE¼, S½;
Sec. 25, all;
Sec. 26, all;
Sec. 27, E½, NE¼NW¼, S½NW½, SW¼;
Sec. 28, all;
Sec. 29, all;
Sec. 34, all;
Sec. 35, all.
T. 6 S., R. 11 E.,
Sec. 17, all;
Sec. 18, lot 4, E½E½;
Sec. 19, lots 1 thru 4, incl. E½, W½, E½;
Sec. 22, N½, E½SW¼, SE¼.
T. 6 S., R. 12 E.,
Sec. 4, SW¼NW¼, SE¼SE;
Sec. 9, all;
Sec. 10, E½NE¼, NW¼NW¼, S½NW¼, SW¼, S½SE¼;
Sec. 11, N½, SE¼;
Sec. 12, all;
Sec. 14, N½, S½S½;
Sec. 15, E½NE¼;
Sec. 17, all;
Sec. 18, lots 1 thru 8, incl., E½W½, E½;
Sec. 19, lots 1 thru 8, incl., E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 23, N½, N½SW¼, SE¼SW¼, W½SE¼;
Sec. 27, W½NW¼, SW¼;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 thru 6 incl., E½W½, E½;
Sec. 31, lots 1 thru 6 incl., E¼W¼, E½;
Sec. 33, N½, N½S½.
T. 6 S., R. 13 E.,
Sec. 3, lots 1 thru 4, incl., S½N½, S½;
Sec. 4, lots 1 thru 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, S½;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 22, all;
Sec. 23, all;
Sec. 26, all;
Sec. 27, all;
Sec. 33, S½;
Sec. 34, N½, N½SW¼;
Sec. 35, all.
T. 6 S., R. 14 E.,
Sec. 7, lots 1 thru 4, incl., E½W½, E½;
Sec. 9, all;
Sec. 13, all;
Sec. 17, all;
Sec. 18, lots 1 thru 4, incl., E½W½, E½;
Sec. 23, S½;
Sec. 26, N½;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 thru 4, incl., NE¼, E½W½, N½SE¼, SW¼SE¼;
Sec. 33, N½, N½SW¼;
Sec. 34, E½, N½NW¼, S½SW¼;
Sec. 35, all.
T. 9 S., R. 9 E.,
Sec. 26, N½;
Sec. 27, N½.
T. 10 S., R. 6 E.,
Sec. 15, SW¼;
Sec. 17, all;
Sec. 18, lots 1 thru 4, incl., E½W½, E½;

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Sec. 19, lots 1 thru 4, incl., E½W½, E½;
Sec. 20, all;
Sec. 21, S½;
Sec. 22, W½;
Sec. 23, S½;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, W½, SE¼;
Sec. 28, all;
Sec. 29, E½;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.
T. 10 S., R. 7 E.,
Sec. 4, S½;
Sec. 9, N½, SW¼;
Sec. 10, W½;
Sec. 14, S½;
Sec. 15, all;
Sec. 17, all;
Sec. 18, all;
Sec. 20, W½NE¼, SE¼NE¼, NE¼, S½;
Sec. 21, NE¼, S½NW¼, S½;
Sec. 22, all;
Sec. 23, all;
Sec. 24, lots 1 thru 4, incl., 9 thru 16, incl., 21 thru 24 incl., S½SW¼;
Sec. 25, lots 1 thru 4, incl., 9 thru 24 incl., SW¼;
Sec. 26, NE¼, S½;
Sec. 28, all;
Sec. 29, all;
Sec. 35, all.
T. 10 S., R. 8 E.,
Sec. 1, lots 2 thru 4, incl., S½N½, N½S½;
Sec. 14, S½;
Sec. 15, all;
Sec. 18, lots 1 thru 4, incl., E½W½, E½;
Sec. 19, lots 1 thru 4, incl., E½W½, E½;
Sec. 21, all;
Sec. 23, all;
Sec. 24, N½;
Sec. 26, N½;
Sec. 27, N½.
T. 10 S., R. 9 E.,
Sec. 27, NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 28, E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 33, N½, W½SW¼.
T. 11 S., R. 6 E.,
Sec. 1, lots 1 thru 4, incl., S½N½, S½;
Sec. 3, lots 3, 4, S½NW¼;
Sec. 4, lots 1 thru 4, incl., S½N½, S½;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 18, lots 1 thru 4, incl.;
Sec. 19, lots 1 thru 4, incl., E½W½, E½;
Sec. 20, NE¼, W½SW¼, E½SE¼;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 28, all;
Sec. 29, E½NE¼, W½NW¼, SW¼;
Sec. 30, lots 1 thru 4, incl., E½W½, E½;
Sec. 31, lots 1 thru 4, incl., E½W½, E½;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.

Comprising 105,900.35 acres in Gila, Maricopa, Pima, Pinal, and Yavapai Counties.

The mineral estate reconveyed to the United States underlies the following described Federally-owned surface:

Gila and Salt River Meridian, Arizona,

T. 11 N., R. 15 W.,
Sec. 2, lots 1 thru 4 incl., S½N½, S½;
Sec. 16, SE¼;
Sec. 32, all.
T. 11 N., R. 16 W.,
Sec. 2, SW¼;
Sec. 16, N½, N½SW¼, N½SE¼, SE¼SE¼.
T. 12 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½;
Sec. 32, NE¼.
T. 12 N., R. 15 W.,
Sec. 32, all;
Sec. 36, all.
T. 12 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl. S½;
Sec. 16, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 32, all;
Sec. 36, all.
T. 12 N., R. 17 W.,
Sec. 2, lots 1 thru 4, incl., SW¼, NW¼SE¼, S½SE¼;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 12 N., R. 18 W.,
Sec. 2, S½;
Sec. 36, SW¼SW¼.
T. 13 N., R. 13 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½.
T. 13 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½.
T. 13 N., R. 15 W.,
Sec. 2, lots 1 thru 4, incl. S½N½, S½.
T. 13 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all.
T. 13 N., R. 17 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 36, all.
T. 13 N., R. 18 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 36, all.
T. 13 N., R. 19 W.,
Sec. 2, lots 1 thru 4, incl. S½N½, S½.
T. 14 N., R. 12 W.,
Sec. 32, all.
T. 14 N., R. 13 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, SW¼;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 14 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 14 N., R. 15 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 10, all;
Sec. 16, all;
Sec. 24, all;
Sec. 32, all;
Sec. 36, all.
T. 14 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 14 N., R. 17 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, N½, NW¼SW¼, S½SW¼, W½SE¼;
Sec. 32, all;
Sec. 36, all.
T. 15 N., R. 12 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all.
T. 15 N., R. 13 W.,
Sec. 36, all.
T. 15 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 6, lots 1 thru 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 10, all;
Sec. 16, all;
Sec. 18, lots 1 thru 4, incl., E½NW¼, E½;
Sec. 20, all;
Sec. 22, all;
Sec. 24, all;
Sec. 26, all;
Sec. 28, all;
Sec. 30, lots 3, 4, E½W½, E½;
Sec. 32, all;
Sec. 34, all;
Sec. 36, all.
T. 15 N., R. 15 W.,
Sec. 10, all;
Sec. 12, all;
Sec. 14, N½, SW¼;
Sec. 16, all;
Sec. 22, all;
Sec. 24, all;
Sec. 26, all;
Sec. 32, all;
Sec. 36, all.
T. 15 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 15 N., R. 17 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 32, all;
Sec. 36, all.
T. 15 N., R. 18 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½.
T. 16 N., R. 13 W.,
Sec. 16, all;
Sec. 36, NE¼, S½NW¼, E½NE¼NW¼, N½SE¼, SW¼SE¼, W½SE¼SE¼.
T. 16 N., R. 14 W.,
Sec. 16, N½, N½NW¼SE¼, E½SE¼;
Sec. 18, lots 1 thru 4, incl., E½W½, E½;
Sec. 28, all;
Sec. 32, W½;
Sec. 34, all;
Sec. 36, all.
T. 16 N., R. 15 W.,
Sec. 2, lots 1 thru 4, incl. S½N½, S½;
Sec. 14, N½, SE¼;
Sec. 16, all;
Sec. 20, all;
Sec. 24, all;
Sec. 28, W½NE¼, NW¼S½;
Sec. 32, all;
Sec. 34, all.
T. 16 N., R. 16 W.,
Sec. 16, all;
Sec. 32, all;
Sec. 36, SE¼NW¼, E½SW¼.
T. 16 N., R. 17 W.,
Sec. 2, S½NW¼, SW¼;
Sec. 16, all;
Sec. 32, E½;
Sec. 36, SW¼NE¼, W½, S½SE¼.
T. 16 N., R. 18 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;

Sec. 16, all;
Sec. 36, W½.
T. 16 N., R. 19 W.,
Sec. 16, all;
Sec. 32, all.
T. 16 N. R. 20 W.,
Sec. 36, all.
T. 16½ N., R. 13 W.,
Sec. 36, all.
T. 16½ N., R. 14 W.,
Sec. 32, all.
T. 16½ N., R. 15 W.,
Sec. 32, all.
T. 16½ N., R. 16 W.,
Sec. 32, N½, N½SE¼, SE¼SE¼;
Sec. 36, NE¼, E½NW¼, S½.
T. 16½ N., R. 17 W.,
Sec. 36, all.
T. 16½ N. R. 19 W.,
Sec. 36, all.
T. 17 N., R. 13 W.,
Sec. 36, lots 1 thru 4, incl., N½S½, N½.
T. 17 N., R. 14 W.,
Sec. 16, all;
Sec. 36, E½.
T. 17 N., R. 15 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all.
T. 17 N., R. 16 W.,
Sec. 16, all;
Sec. 36, all.
T. 17 N., R. 18 W.,
Sec. 36, all.
T. 18 N., R. 17 W.,
Sec. 16, all.
T. 19 N., R. 15 W.,
Sec. 32, all;
Sec. 36, all.
T. 22 N., R. 19 W.,
Sec. 16, all.
T. 23 N., R. 14 W.,
Sec. 16, N½, SW¼, NW¼SE¼;
Sec. 32, all.
T. 23 N., R. 18 W.,
Sec. 16, all.
T. 23, N., R. 19 W.,
Sec. 36, lots 1 thru 4, incl. W½E½, W½.
T. 24 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 36, lots 1 thru 4, incl. W½W½.
T. 24, N., R. 17 W.,
Sec. 2, lots 1, 2, 4, S½.
T. 25 N., R. 14 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, E½ N½NW¼,SW¼;
Sec. 36, all.
T. 25 N., R. 15 W.,
Sec. 2, lots 1 thru 3, incl., S½N¼,S½.
T. 25 N., R. 16 W.,
Sec. 32, E½, NE¼, NW¼, SW¼;
Sec. 36 all.
T. 25 N., R. 17 W.,
Sec. 36 all.
T. 25 N., R. 20 W.,
Sec. 36, all.
T. 26 N., R. 14 W.,
Sec. 16, lot 1, NW¼NE¼, S½NE¼, NW¼, S½;
Sec. 32, all.
T. 26 N., R. 15 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 36, all.
T. 26 N., R. 16 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½;
Sec. 36, N½, SW¼, NW¼SE¼.
T. 26 N., R. 17 W.,
Sec. 32, N½, N½S½.
T. 26 N., R. 19 W.,
Sec. 32, all.

Comprising 106,368.24 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public mineral interests and acquisition of the State-owned mineral interests by the Federal Government.

At 9 a.m. on October 30, 1986, the reconveyed mineral estate described above will be open to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 9 a.m. on October 30, 1986, the reconveyed land described above will be open to applications and offers under the mineral leasing laws, subject to existing State-issued leases and permits. All applications and offers received prior to 9 a.m. on October 30, 1986 will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2-3, if necessary. Those applications and offers received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-22746 Filed 10-7-86; 8:45 am]
BILLING CODE 4310-32-M

[NV-030-06-4212-13; N-42266]

Realty Action Exchange of Public Lands in Washoe County, NV

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, NV

T. 20 N., R. 22 E.,
Sec. 28, N½, N½S½;
Sec. 30, E½SE¼, E½W½SE¼.

The area described above aggregates 600 acres.

In exchange for these lands, the Federal Government will acquire non-federal lands in Washoe County from Tracy Company, c/o SEA, Incorporated, 980 Industrial Way, Sparx, Nevada 89431, described as follows:

Mount Diablo Meridian, NV

T. 20 N., R. 21 E.,
Sec. 13, All;
Sec. 23, All;
Sec. 25, All.
T. 20 N., R. 22 E.,
Sec. 19, Lots 1-4, E½, E½W½.

The area described above aggregates 2562.4 acres.

The purpose of this exchange is to achieve more efficient management of the public lands through consolidation of ownership and to acquire land with wildlife habitat value. The exchange is consistent with Bureau planning and is supported by the Washoe County Department of Comprehensive Planning. The public interest will be well served by making the exchange.

The exact acreage of non-federal lands to be acquired through exchange will be dependent upon final appraisal. The surface and mineral estates of both the non-federal and public lands will be exchanged, subject to valid existing rights.

In accordance with regulations contained in 43 CFR 2201.1(b), publication of this notice will segregate the affected public lands from

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appropriation under the public land laws including the mining laws. This segregation shall terminate upon issuance of patent to the above-described public lands, upon publication in the Federal Register of a termination of the segregation, or upon expiration of 2 years from the date of this publication, whichever occurs first.

Patent to lands to be transferred from Federal ownership will contain the following reservation:

A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

The patent will be issued subject to:

1. Those rights for telephone line purposes which have been granted to Nevada Bell, its successors or assigns, by right-of-way grants CC–020776 and CC–021089, under the Act of March 4, 1911, 36 Stat. 1253, 43 U.S.C. 961.

2. Those rights for electric powerline purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by right-of-way grants Nev–056838, Nev–058691, N–5933, and N–7639, under the Act of March 4, 1911, 36 Stat. 1253; 43 U.S.C. 961.

3. Those rights for electric powerline purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by right-of-way grants CC–025152, N–24394 and N–30613, under the Act of October 21, 1976, 90 Stat. 2793, 43 U.S.C. 1761–1771.

4. Those rights for highway purposes which have been granted to Nevada State Department of Transportation, its successors or assigns, by right-of-way grant Nev–044040 under the Act of November 9, 1921, 142 Stat. 212–216; 23 U.S.C. 18.

5. Those rights for gas pipeline purposes which have been granted to Southwest Gas Corporation, its successors or assigns, by right-of-way grant Nev–059799 under the Act of February 25, 1920, as amended, 41 Stat. 449; 30 U.S.C. 185.

Detailed information concerning the exchange, including the environmental assessment, is available for review at the Carson City District Office.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701.

Dated this 30th day of September, 1986.

Norman L. Murray,

District Manager.

[FR Doc. 86–22747 Filed 10–7–86; 8:45 am]

BILLING CODE 4310–HC–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–183]

Indomethacin; Commission Decision to Review Portions of Initial Determination; Schedules for Filing of Written Submissions on Certain Issues Under Review, and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: The U.S. International Trade Commission has determined to review portions of an initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The portions of the ID that will be reviewed are the presiding administrative law judge's (ALJ's) determination regarding (1) the finding of a statutory deadline, (2) the expiration of U.S. Letters Patent 3,619,284, (3) patent infringement, (4) domestic industry, (5) efficient and economic operation of the domestic industry, (6) substantial injury, and (7) tendency to substantially injure. The parties to the investigation and interested government agencies are requested to file written submissions on the issues under review as indicated below and on remedy, the public interest, and bonding. Comments from other interested persons will also be accepted on the issues of remedy, the public interest, and bond.

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20426, telephone 202–523–0480.

SUMMARY: On August 13, 1986, the presiding ALJ issued an ID finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Complainant Merck & Co., Ltd. (Merck) filed a petition for review of the ID pursuant to § 210.54(a) of the Commission's rules (19 CFR 210.54(a)). No responses to the petition for review were filed and no comments were received from other Government agencies.

Having examined the record, including the petition for review, the Commission has determined to review all of the ID except for that portion of the ID relating to the validity of the patent in controversy. U.S. Letters Patent 3,619,284.

The Commission requests that the parties file briefs on review limited to the following issues:

1. Assuming that the law of some state of the United States is controlling in the interpretation of the assignment agreement and the agreement executed by Merck and Sumitomo Chemical Co., Ltd., on December 27, 1983, which state law is that?

2. What is the law of the controlling state relevant to the interpretation of the assignment agreement and agreement between Merck and Sumitomo?

The Commission does not wish the receive briefs on any other review issues.

SUPPLEMENTARY INFORMATION: If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred, and contemplates that some form of relief is appropriate, it must consider the effect that such relief would have upon: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) the U.S. production of articles which are like or indirectly competitive with those which are the subject of the investigation, and (4) U.S. Consumers. The Commission is, therefore, interested in receiving written submissions concerning the effect, if any, that granting a remedy would have on the enumerated public interest factors.

If the Commission finds that a violation of section 337 has occurred and orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is, therefore, interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

The parties to the investigation and interested Government agencies are requested to file written submissions addressing the two issues as indicated above and on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed remedial order for the Commission's consideration. Written submissions on the above-noted review issues and on remedy, the public interest, and bonding must be filed no later than the close of business on October 15, 1986. Reply submissions on the above-noted review issues and on remedy, the public interest, and bonding must be filed not later than October 22, 1986. Persons other than the parties and government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on October 22, 1986. No further submissions will be permitted.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with the final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the administrative law judge. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of The Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission Rule 210.55 (19 CFR 210.55).

Notice of this investigation was published in the Federal Register of February 23, 1984 (49 FR 6810–11).

Copies of the nonconfidential version of the administrative law judge's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: September 29, 1986

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–22807 Filed 10–7–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–246]

Certain Xenon Lamp Dissolver Slide Projectors; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Steven Schwartz, Esq. and Dr. Cheri Taylor, Esq. of the Office of Unfair Import Investigations will be the Commission investigative attorneys in the above-cited investigation instead of Steven H. Schwartz, Esq. and Gary Rinkerman, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: October 2, 1986.

Lynn Levine,

Acting Director, Office of Unfair Import Investigations, U.S. International Trade Commission.

[FR Doc. 86–22808 Filed 10–7–86; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–19 (Sub-No. 114)]

The Baltimore and Ohio Railroad Co.; Discontinuance of Services; in Washington County, MD; Findings

The Commission has found that the public convenience and necessity permit The Baltimore and Ohio Railroad Company to discontinue service over a 12.09-mile line of railroad of the Western Maryland Railroad Company between Station 5380+89 (milepost 104.90) at or near Big Pool, MD, and Station 6019+20 (milepost 116.90) at or near Hancock, MD, in Washington County, MD.

A certificate will be issued authorizing discontinuance unless within 5 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the Appliant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Noreta R. McGee,

Secretary.

[FR Doc. 86–22877 Filed 10–7–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; Cleveland Steel Container Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 29, 1986 a proposed consent decree in *United States* v. *Cleveland Steel Container Corporation,* Civil Action No. 85–2382 was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree concerns control of air pollution at Cleveland Steel's manufacturing plant in Niles, Ohio. The proposed consent decree requires the defendant to install air pollution control equipment and pay a civil penalty of $50,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cleveland Steel Container Corporation,* D.J. Ref. 90–5–2–1–736.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114 and at the Region V Office of the Environmental Protection Agency, 16th Floor, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction cost)

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payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-22802 Filed 10-7-86; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Toxic Substances Control Act; Commonwealth Edison Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Commonwealth Edison Company*, Civil Action No. 84 C 1597, was lodged with the United States District Court for the Northern District of Illinois. The complaint filed by the United States alledged that defendant Commonwealth Edison Company ("Edison") had violated section 17 of the Toxic Substances Control Act ("TSCA") by failing adequately to clean up polychlorinated biphenyls ("PCBs") released from Edison's pole mounted electrical equipment at numerous locations throughout Edison's northern Illinois service area. The complaint also alleged that PCB contamination from Edison's electrical equipment posed an unreasonable risk to health and the environment within the meaning of section 7 of TSCA.

The proposed Decree establishes requirements for cleanup of PCBs released from pole mounted capacitors owned and operated by Edison. Edison has identified approximately 300 past spills that would be governed by the proposed Decree. The Decree also addresses all PCB capacitor releases that may occur in the future.

The proposed Decree establishes standards of decontamination for "High Contact" areas, such as residential properties, work areas or playgrounds, and separate standards of decontamination for other areas, referred to as "Reduced Contact" areas. In addition, for both "High Contact" and "Reduced Contact" areas, the proposed Decree establishes separate limits for residual contamination on hard surfaces (expressed in micrograms per 100 square centimeters, or "$\mu g/100cm^2$") and for contamination in soil, vegetation or other media (expressed in parts per million, or "ppm").

The decontamination standards in the proposed Decree limit the mean concentration of PCBs within the area contaminated as a result of each release (the "Affected Area"). Thus, under the proposed Decree, at each spill site in a "High Contact" area, Edison must reduce mean PCB concentrations throughout the Affected Area to 20 $\mu g/100cm^2$ on hard surfaces and 5 ppm in soil or other media. At spill sites in "Reduced Contact" areas, Edison must reduce the mean PCB concentration in the Affected Area to 50 $\mu g/100cm^2$ on hard surfaces and to 10 ppm in soil and other media.

After achieving applicable standards of decontamination, Edison must address any remaining contamination "hot spots" by performing additional cleanup within a five foot radius of any sample location where PCBs are detected in excess of specified "peak" concentrations (50 $\mu g/100cm^2$ or 15 ppm at "High Contact" sites; and 100 $\mu g/100cm^2$ or 15 ppm at "Reduced Contact" sites).

Under the proposed Decree, Edison is required to replace, rather than clean, "intimate contact" items such as household or garden furniture and playground equipment. However, Edison is not required automatically to replace contaminated interior surfaces of homes or automobiles, if Edison either reduces PCB levels on such items to 1 $\mu g/100cm^2$ or demonstrates that further cleanup is not feasible and that residual PCB levels do not pose a risk to health or the environment.

The proposed Decree sets forth extensive sampling and analytical requirements which Edison must follow to document PCB contamination levels at all spill sites governed by the Decree. In addition, the proposed Decree sets forth a detailed description of spill response procedures, including requirements for restricting access to contaminated areas, providing notice to owners of affected properties, and minimizing runoff and other routes of migration of PCBs to uncontaminated areas.

In addition to the PCB spill cleanup requirements, the proposed Decree requires Edison to complete a phase-out of pole-mounted PCB capacitors by January 1, 1987.

The proposed Decree prescribes stipulated penalties for failure to attain applicable standards of decontamination or to comply with capacitor phase-out requirements or other provisions of the Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a thirty (30) day period from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Commonwealth Edison Company*, with the applicable D.J. Reference No. 90-5-1-1-2078 (N.D. Illinois).

The proposed Consent Decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois 60604 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $14.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-22804 Filed 10-7-86; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Action To Enjoin Discharge of Water Pollutants; Crest Products, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent judgment in *United States* v. *Crest Products, Inc.*, Civil Action No. 85-5739 (HAA), was lodged with the United States District Court for the District of New Jersey on September 24, 1986. The consent decree provides for civil penalties for past noncompliance. The plant in question has ceased operations.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Crest Products, Inc.*, D.J. Ref. No. 90-5-1-1-2474.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, 970 Broad Street, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-22803 Filed 10-7-86; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Action To Enjoin Discharge of Water Pollutants; General Electric Co.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *General Electric Company*, Civil Action No. 84-CV-681, was lodged with the United States District Court for the Northern District of New York on September 19, 1986. The consent decree establishes a compliance program for the Waterford, New York, plant owned and operated by General Electric Company, to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its National Pollutant Discharge Elimination System ("NPDES") Permit and requires payment of a civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *General Electric Company*, D.J. Ref. No. 90-5-1-1-2162.

The consent decree may be examined at the office of the United States Attorney, Northern District of New York, 369 Federal Building, 100 South Clinton Street, Syracuse, New York 13260; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-22805 Filed 10-7-86; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Accident Reports, Safety Recommendations and Responses to Safety Recommendations

Report No.	NTIS No.	Date	Subject
NTSB/AAR-86/05	PB86-910406	8/15/86	Aircraft Accident Report: Delta Air Lines, Inc., Lockheed L-1011-385-1, N726DA, Dallas/Fort Worth—International Airport, Texas, August 2, 1985.
NTSB/AAR-86/01, Summary	PB86-910404	6/30/86	Aircraft Accident/Incident Summary Reports (Soldotna, Alaska—2/4/85; San Juan, Puerto Rico—8/27/85
NTSB/RAR-86/03	PB86-916304	8/5/86	Railroad Accident Report: Rear end Collision of Metro-Dade Transportation Administration Trains Nos. 172-171 and 141-142, Miami, Florida, June 26, 1985.
NTSB/HAR-86/02	PB86-916202	85/86	Highway Accident Report: Multiple Vehicle Collision and Fire, U.S. 13 Near Snow Hill, North Caroline, May 31, 1985.

Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports, call 703-487-4650 and to order subscriptions to report, call 703-487-4630.

SAFETY RECOMMENDATIONS

Recommendation No.	Respondent	Date	Subject
H-86/65	Bureau of Motor Carrier Safety	9/16/86	Amend Part 391 of the Federal Motor Carrier Safety Regulations to provide for declaring out-of-service at the time and place of a driver/vehicle roadside inspection.
H-86/66	...do	...do	Study the feasibility of implementing a point system for safety inspection violations.
H-86/67	...do	...do	Oversee and monitor the States which participate in the Motor Carrier Safety Assistance Program.
H-86/68	FHA	9/16/86	Modify the Manual on Uniform Traffic Control Devices to include language that requires contractors to maintain highway regulatory signs during construction.
H-86/69	...do	...do	Evaluate techniques used by States to prohibit commercial vehicles from routes.
H-86/70	Arkansas State Highway and Trans. Dept..	9/16/86	Provide language in work permit specifications that require contractors to maintain highway regulatory signing along roadsides while construction activities are going on.
H-86/71	Governors: Alaska, Florida, New Mexico, Texas.	9/16/86	Participate in the Bureau of Motor Carrier Safety's Motor Carrier Safety Assistance Program.

Single copies of the recommendation letters are available on written request to: Public Inquires Section, National Transportation Safety Board, Washington, DC 20594. Please include addressee's name, date of the letter, and the recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

RESPONSES TO SAFETY RECOMMENDATIONS

Recommendation No.	Respondent	Date	Subject
H-86-38—40	Univ. of New York	8/29/86	School bus passenger seats equipped with safety belts.
H-85-22	Colorado Governor	9/2/86	States should adopt certain accident reporting criteria regarding child occupants.
H-85-49	Alabama Governor	9/2/86	Require alcohol testing of all drivers involved in fatal highway crashes.
H-85-50	...do	...do	A reporting system to give direct access to the BAC file.

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RESPONSES TO SAFETY RECOMMENDATIONS—Continued

Recommendation No.	Respondent	Date	Subject
H-85-49	Colorado Governor	9/4/86	Require alcohol testing of all drivers involved in fatal highway crashes.
H-85-50	do	do	A reporting system to give direct access to the BAC file.
H-85-22	Dept. of CA Highway Patrol	9/5/86	Collection of child restraint use in traffic collision reports.
H-86-44	National Assoc. of State Medical Service Directors.	9/6/86	Encourage manufacturers of passenger vehicles to provide retrofit assemblies to convert lap-only belt systems to lap/shoulder belt systems.
H-86-47	do	do	Determine the feasibility of requiring that 3-point lap/shoulder belts be provided at every seating position in newly manufactured passenger vehicles manufactured for sale in the U.S.
H-85-48	Arkansas Highway Safety Program	9/8/86	Require alcohol testing of all drivers involved in fatal highway crashes.
H-85-50	do	do	A reporting system to give direct access to the BAC file.
H-86-58	Coop. Ext. Service	9/10/86	Accidents with farm equipment on public roads.
H-85-49	Conn. Governor	9/17/86	Require alcohol testing of all drivers involved in fatal highway crashes.
H-85-50	do	do	A reporting system to give direct access to the BAC file.
H-82-38	NHTSA	9/17/86	Examine the crash performance of vans in rollovers to determine if there is a tendency for doors to jam.
H-79-3—4	Wash. Dept. of Transp.	9/12/86	Railroad grade crossings improvements.
H-85-22	Arizona Governor	9/22/86	Collection of child restraint use in traffic collision reports.
A-86-1	FAA	9/12/86	Issue an AD to require an inspection of Boeing 747 airplanes having a minimum number of operating cycles to verify that all bolts are torqued adequately.
A-86-2	do	do	Determine appropriate interval for checking the bolt torque.
A-86-3	do	do	Notify foreign governments with operators of Boeing 747 airplanes of the circumstances of the accident involving the British Airways Boeing 747-136 on December 15, 1985 in Boston, MA.
A-84-129	FAA	9/12/86	Issue instructions to air carrier POIs responsible for F-27 airplanes to require air carriers to install a means to prevent the hinge pins from coming free.
A-86-54	FAA	9/16/86	Conduct a review of the fuel system installed in 1967-1972 Bellanca Viking and Super Viking airplanes.
A-86-55	do	do	Require the Bellanca Aircraft Corporation to revise the airplane flight manuals of 1967-1972 Bellanca Viking and Super Viking airplanes.
A-86-56	do	do	Require the Bellanca Aircraft Corporation to disseminate to all owners and operators of 1967-1972 Bellanca Viking and Super Viking models a Safety Advisory.
A-86-57	do	do	Revise AD 76-23-03 to require inspection of the exhaust system on these airplanes for cracks and for freedom of movement.
A-86-58	do	do	Publish in the FAA Advisory Circular No. 43-16, details of accidents in which Bellanca Viking airplanes have experienced engine power loss.
A-86-59	do	do	Issue and AD to require the installation of fuel quick-drain valves in the wing fuel tanks of Bellanca Vikings and Super Viking airplanes.
A-86-60	do	do	Issue an AD to require an inspection of the wing fuel filler well drain to ascertain that it is open.
A-84-87	FAA	9/19/86	Conduct a DSI of Mooney Model M-20 and M-20A airplanes to ascertain the degree of undetected structural deterioration.
A-84-89	do	do	Issue an AD requiring that owners and operators of Mooney M-20 and M-20A airplanes shelter the airplanes from the environment when parked.
A-86-94	National Fire Protection Association	9/22/86	Advice Technical Committee of the circumstances of the emergency response to the accident at Dallas/Fort Worth International Airport, Texas on August 2, 1985.
A-82-118	FAA	9/26/86	Amend FAA-approved flight manuals to prescribe minimum airspeeds and flight precautions during flight in icing conditions.
R-75-6	Metro-North Commuter RR	9/29/86	Equip all rail lines with a system that will control the speed of the train in compliance with signals when an engineer fails to do so.
R-75-7	do	do	Establish procedures to require trains to stop at stop-and-proceed signals.
R-76-43	do	do	Change the emergency release mechanism for the side doors on the type of cars involved in this accident.
R-76-49	do	do	Provide means for emergency aid personnel to open the doors from the outside when electrical power is lost.
M-86-101	National Assoc. of State Boating Law Admin.	9/9/86	Expedite the revision of the Boating Accident Report Form and include entries that assess PFD performance.
P-86-15	RSPA	9/18/86	Amend Final Order CPF No. 3541-H to Williams Pipe Line Company.
P-76-10	RSPA	9/22/86	Amend CFR 192 to define more realistically an operator's responsibility for gas piping inside buildings.

Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include addressee's name, date of the letter, and the recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Monica Revelle,

Alternate Federal Register Officer.

October 1, 1986.

[FR Doc. 86-22748 Filed 10-7-86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements Under Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission—new, revision, or extension: New.

2. The title of the information collection: Simulation Facility Certification.

3. The form number if applicable: NRC Form 474.

4. How often the collection is required: One time only. (A "recertification" on the same form will be required only in the event that certification has been lost.).

5. Who will be required or asked to report: Licensed power facilities.

6. An estimate of the number of responses: 16 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 1920 annually.

8. Section 3504(h), Pub. L. 96-511 does not apply.

9. Abstract: Submittal of NRC Form 474 will be mandatory for all licensed power facilities which propose the use of a simulation facility consisting solely of a plant-referenced simulator for the conduct of NRC licensing operating tests.

ADDRESS: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION: Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 396-7340.

NRC Clearance Office is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 2nd day of October 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86-22842 Filed 10-7-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 9-11, 1986, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on September 25, 1986. The meeting schedule description is revised to reflect a possible closed session during a portion of the meeting on Saturday.

Saturday, October 11, 1986

1:30 P.M.-3:00 P.M.: ACRS Subcommittee Activities (Open/Closed).

The members will hear and discuss reports of cognizant ACRS subcommittees regarding activities related to safety matters including proposed IDCO methodology for evaluation of individual nuclear power plants, Westinghouse Electric Corporation Advanced PWR, safety-related changes in the Paluel Nuclear Plant, containment performance design objectives, and scram system reliability.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the Westinghouse Advanced PWR.

Dated: October 2, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86-22843 Filed 10-7-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275, 50-323]

Pacific Gas & Electric Co.; (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Issuance of a Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Registration, has issued a decision concerning a Petition dated July 27, 1984 filed by Mr. Thomas Devine of the Government Accountability Project on behalf of Messrs. Timothy J. O'Neil and James L. McDermott. Further documents in support of the Petition were dated July 29, July 30, and July 31, 1984. The Petition was amended on November 16, 1984 and supplemented on March 14, 1985. The Petitioner requested the Commission to defer further licensing decisions on the Diablo Canyon Nuclear Power Plant, Units 1 and 2 until certain actions had been taken, related to alleged harassment at the plant site, organizational freedom for quality assurance inspectors, and retraining of all project personnel on quality assistance and employee protection requirements. The request was referred by the Commission to the Director, Office of Nuclear Reactor Regulation for treatment pursuant to 10 CFR 2.206 of the Commission's regulations and an Interim Director's Decision (DD-84-19) was issued on August 20, 1984 by the Director denying certain aspects of the Petition's request. A Final Directior's Decision has been issued on September 30, 1986 by the Director denying the Petitioner's request in its entirety. The reasons for this denial are explained in the "Director's Decision Under 10 CFR 2.206" (DD-86-12), which is available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Local Public Document Room at the Robert F. Kennedy Library, California Polytechnic State University, San Luis Obispo, California 93407.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As approved in 10 CFR 2.206(c), the decision will become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, takes review of the decision within that time.

Dated at Bethesda, Maryland, this 30th day of September 1986.

For The Nuclear Regulatory Commission.

Richard H. Vollmer,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86-22841 Filed 10-7-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station); Exemption

I

The Yankee Atomic Electric Company (YAEC, the licensee) is the holder of Facility Operating License No. DPR-3 which authorizes operation of the Yankee Nuclear Power Station (the facility) at a steady-state power level not in excess of 600 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Rowe, Massachusetts. This license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specified requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.G, is the subject of the licensee's exemption requests. Portions of III.G applicable to these requests are presented below.

Subsection III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

c. Enclosure of cables and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

Inside noninerted containments one of the fire protection means specified above or one of the following fire protection means shall be provided:

d. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no

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intervening combustibles or fire hazards.

Subsection III.G.3 of Appendix R requires that for areas where alternative or dedicated shutdown is provided, fire detection and a fixed fire suppression system also shall be installed in the area, room, or zone under consideration.

III

By letter dated December 28, 1984, the licensee requested thirteen exemptions from section III.G of Appendix R in six areas of the plant. By letter dated April 30, 1985, the licensee withdrew exemption requests 1, 2, 3, and 6 and added exemption requests 14 through 17. By letter dated November 7, 1985, the licensee withdrew exemption requests, 4, 5, 11, 15, 16, and 17, leaving seven requests in four plant areas (exemption requests 7, 8, 9, 10, 12, 13, 14).

By letter dated August 22, 1986, the licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR 50.12(a) (See 50 FR 50764). The licensee stated that the existing fire protection features and the modifications that have been implemented at the Yankee Nuclear Power Station accomplish the underlying purpose of the rule. For each requested exemption, the licensee discussed why compliance with either section III.G.2 or III.G.3 of Appendix R in the particular circumstances is not necessary to achieve the underlying purpose of the rule. For example, when less than 20 feet separation between redundant trains exists, the licensee notes that the combustible loading in the vicinity is too small to cause damage to both trains. Similarly, for locations without fixed fire detection and suppression throughout the building, the licensee states that no significant combustibles or hot shutdown equipment are present in those areas so a fire cannot spread and cause damage. Thus, implementing further modifications to provide additional fire suppression, fire detection and fire barriers or greater horizonal separation would require the expenditure of engineering and construction resources as well as the associated capital costs which would represent an unwarranted burden on the licensee's resources. The staff, therefore, conclude that "special circumstances" exist for the licensee's requested exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. See 10 CFR 50.12(a)(2)(ii).

The acceptability of each exemption request is addressed below. Further details are contained in the staff's related Safety Evaluation. NRR and contractor fire protection engineers visited the site to walk down the fire protection modifications made by the licensee to comply with Appendix R and review the above areas where exemptions from Appendix R had been requested.

Exemption Requested for Primary Auxiliary Building (Section III.G.3)

An exemption was requested from section III.G.3 to the extent that it requires installation of fire detection and fixed fire suppression throughout an area requiring alternative shutdown capability.

Evaluation

The primary auxiliary building (PAB) is an L-shaped building located south of the vapor container and the safety injection accumulator room and east of the diesel generator building (DGB) and the gas storage building. The walls between the PAB and the DGB (including the door) and the accumulator room wall that abuts the PAB provide a 3-hour barrier between the PAB and the DGB.

Safe shutdown systems in the PAB include the two motor-driven emergency feedwater pumps; the three charging pumps; and the associated valves for each. Both motor-driven emergency feedwater pumps are located on the west side of the PAB, along with the component cooling water pumps and several other systems. A steam-driven emergency feedwater pump which is located in the turbine building provides the redundant train for the motor-driven pumps. Each charging pump is located in a separate cubicle on the east side of the PAB. The safety injection pumps in the DGB provide a redundant shutdown train for the charging pumps.

The concern was that without fire detection and suppression in the PAB, a fire might spread to the DGB and affect the alternate shutdown capability.

Because of the light fuel load in adjacent portions of the PAB and DGB, the staff does not expect a fire of significant magnitude or duration to occur. The limited intervening combustibles in the PAB do not provide a path for the spread of fire between redundant charging pumps because the cables are either mineral-insulated or routed in conduit, and because the pumps are in pits in separate cubicles.

Should a fire occur in one of the charging pump cubicles, it should not spread because the pumps are in pits. A fire would be detected by installed fire detectors which will alert the plant fire brigade. Upon arrival, the fire brigade will extinguish the fire. Should the fire continue, it will not spread to the safety injection pumps in the DGB because the fire ratings of barriers and of doors between the PAB and DGB (including the safety injection accumulator room) exceed the estimated fire severity.

Because of the light fuel load in the PAB, there is reasonable assurance that a fire in the PAB will not result in the loss of safe shutdown capability. Therefore, the staff finds installation of fixed fire suppression and fire detection throughout the PAB would not significantly improve the level of fire protection.

Conclusion

Based on the above evaluation, the staff concludes that the existing fire protection provides a level of protection equivalent to the technical requirements of Appendix R. Therefore, the exemption is hereby granted.

Exemption Requested for the Diesel Generator Building (Section III.G.2.c)

An exemption was requested from section III.G.2.c to the extent that it requires enclosure of cables and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating.

Evaluation

The diesel generator building (DGB) is an L-shaped building located south of the vapor container and attached to the PAB. The three diesel generator rooms in the DGB are separated from each other and from the rest of the DGB by 8-inch concrete block walls (estimated 3-hour fire resistance). Doorways between diesel generator rooms are protected with 3-hour fire rated doors; doorways between the diesel generator rooms and the rest of the building are protected by 1½-hour fire rated doors. The south portion of the DGB is not subdivided except that below grade Manhole No. 3, which is located in the southeast portion of the DGB, is provided with a ½-inch thick steel plate at floor level and a ⅜-inch thick steel manhole cover approximately one foot below floor level.

Safe shutdown equipment in the DGB includes three diesel generators, the high and low pressure safety injection pumps (three of each), associated cables and switchgear including containment isolation system (CIS) Train A power and control cables, and CIS Train B power cables (which are routed through Manhole No. 3 to the PAB).

Dedicated shutdown capability is provided for the safe shutdown equipment in the DGB and Manhole No. 3 by the safe shutdown system (SSS)

located in other plant areas, except for CIS Train B power cables in Manhole No. 3 (CIS Train A is in the DGB). The requirement to have a 1-hour barrier between redundant trains in Manhole No. 3 and in the DGB is the subject of this exemption request.

A concern existed in that the lack of 1-hour fire rated barrier between Manhole No. 3 and the remainder of the DGB would provide a path for the spread of fire between associated circuits. The CIS is needed to isolate the solenoid-controlled air-operated valve in the bleed line. The concern was that a fire affecting both trains of the CIS might cause this valve to inadvertently reopen.

The diesel generator rooms are separated from the best of the DGB by rated fire barriers, and are provided with automatic detection and manual fixed fire suppression systems. The fire detection systems would alert the plant fire brigade to a fire in one of these rooms. Upon arrival, the fire brigade will extinguish the fire. Should the fire continue, it is not expected to spread beyond the fire rated barriers of the diesel generator room in which it starts. In the unlikely event that it does spread into the DGB, the CIS Train B Power cables in Manhole No. 3 should be adequately protected by their location and by the barriers between the manhole and the room. Because of the light fuel load in the south portion of the DGB, the staff does not expect a fire of significant duration or magnitude to occur. The generally limited combustible contents of this zone do not provide a path for the spread of fire to or from Manhole No. 3; there are no intervening combustibles.

Should a fire start outside Manhole No. 3, it will be detected by the installed fire detectors which will alert the plant fire brigade. Upon arrival, the fire brigade will extinguish the fire. Should the fire continue, it will not spread to Manhole No. 3 because of the latter's location below the fire and because the two steel plates separated by over one foot provide an effective fire barrier in this situation. Diesel fuel oil will not spread to the manhole because a spill will be confined by the splash shield and curb.

Should a fire start in Manhole No. 3, it will be detected by installed fire detectors which will alert the plant fire bridge and actuate the total flooding carbon dioxide extinguishing system. If the extinguishing system fails to operate properly, the fire brigade will extinguish the fire. The fire is not expected to continue because of the limited combustible loading in the manhole and the ease with which a fire in such a confined space can be extinguished.

Dedicated shutdown capability is provided in the event of a fire in the DGB or in Manhole No. 3. The associated circuit valve of concern requires air to reopen; thus, removal of the supply of air is a backup to the redundant trains of CIS. One of the immediate operator actions as part of using the SSS is to bleed off the air system in the turbine building. This would be accomplished within 30 minutes. The staff believes at least 30 minutes would be available to complete this action, considering the fire detection and suppression capabilities in the DGB and in Manhole No. 3 as discussed above.

Despite the presence of a non-standard fire barrier between Manhole No. 3 and the remainder of the DGB, a fire in either location will not result in the loss of safe shutdown capability. Therefore, the staff finds that providing a 1-hour rated fire barrier over the access cover to Manhole No. 3 would not significantly increase the level of fire protection in this fire area.

Conclusion

Based on the above evaluation, the staff concludes that the existing fire protection provides a level of protection equivalent to the technical requirements of Appendix R. Therefore, the exemption is hereby granted.

Exemptions Requested for the Vapor Container (Section III.G.2.d)

Exemptions were requested from section III.G.2.d to the extent that it requires the separation of cables and equipment and associated non-safety circuits of redundant trains in containment by a horizontal distance of more than 20 feet of intervening combustibles for fire hazards. Exemptions were requested for:

1. The separation between the electrical blisters containing the power cables to the pressurizer solenoid-operated relief valve PR-SOV-90 and its motor-operated block valve PR-MOV-512.

2. The separation between the electrical cables and the actuators for valves PR-SOV-90 and PR-MOV-512 in the pressurizer cubicle.

3. The separation between the electrical cables and transmitters for both pressurizer level instrumentation channels in the pressurizer cubicle.

Evaluation

The vapor container (VC) surrounds the reactor vessel, steam generators, and associated equipment, and encloses all pressurized parts of the main coolant system. It is a freestanding structure, which abuts no other building and is connected by a concrete pipe tunnel to the PAB and by the spend fuel chute to the spent fuel building.

A concern existed in that the lack of 20 feet of separation free of intervening combustibles between redundant circuits of the pressurizer valves and of the pressurizer level transmitters could provide a path for the spread of fire which could result in a loss of safe shutdown capability.

PR-SOV-90 is normally closed and fails closed on loss of power. A hot short to the power cable for its solenoid actuator could, however, cause the valve to open. The block valve, PR-MOV-512 is in series in the piping with PR-SOV-90. This valve is manually closed to isolate the line should PR-SOV-90 fail open. A hot short of the solenoid for PR-SOV-90 causing the valve to open and damage to the cable for the block valve would result in a small loss-of-coolant accident. A fire in the VC would not present successful operation of the emergency core cooling systems relied upon to mitigate this event.

The power cables to PR-SOV-90 and PR-MOV-512 enter the VC through blisters. The cables to these two valves enter containment through separate blisters separated by a horizontal distance of approximately 12 feet. The 12-foot horizontal area between these two blisters is completely empty.

From the blisters, the conduit are routed away from each other so that adequate separation is maintained until the conduit approaches the pressurizer cubicle. The licensee has rerouted the conduit containing the PR-SOV-90 power cable to provide this separation. Inside the top of the pressurizer cubicle, the two valves are in the same pipe line where 20-foot separation is not possible.

Two channels of pressurizer level indication are provided. If both channels of level indication were damaged by a single fire, the operators would control primary water addition based on primary pressure indication. Multiple channels of primary pressure indication are available and would not be affected by a fire in the pressurizer cubicle.

The pressurizer level transmitters (PR-LT-705 and PR-LT-8) and cables are separated by approximately 4 feet in the bottom of the pressurizer cubicle. The conduit routing provides up to 10 feet of separation inside this area. The only combustible materials in this area are the signal cable to each of these level transmitters, and the power cables to the pressurizer motor-operated drain valve. All of this cable is in conduit and

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is, therefore, not considered to be an invervening combustible, with the exception of the last few feet at the transmitters and motor operator. This area is accessible only from a 40-foot ladder from the top of the pressurizer cubicle, or a 10-foot ladder from the bottom of the loop area. Thus, transient combustible materials are not likely to be brought into this area.

Because of the light combustible load in the VC, the staff does not expect a fire of significant duration or magnitude to occur. The only significant intervening combustibles are the control rod drive and position indication cables which are routed in a cable tray from the top of the reactor head up and out of the reactor cavity onto the charging floor. This cable tray runs above the neutron source range detector signal cables and is not near any other safe shutdown system of concern. Should a fire occur in the cable tray, it will be detected by the installed linear thermal detector which will alert the plant fire brigade. Upon arrival, the fire brigade will extinguish the fire. In the staff's judgment, at no time will redundant safe shutdown systems be damaged by this fire.

Should a fire occur elsewhere in the VC, it is not expected to cause any damage to the redundant safe shutdown systems because of the light combustible load in their locations. The cables are run in conduit or are mineral insulated and, therefore, present an insignificant fire hazard to their redundant countereparts. Horizontal separation distances between redundant cables are generally ten feet or more, and instrumentation is seperated by at least four feet.

In spite of the separation distances of as little as four feet, a fire in any location in the VC will not result in the loss of safe shutdown capability because of the absence of intervening combustibles.

Therefore, the staff finds that providing a 20-foot separation free of intervening combustibles would not significantly improve the level of fire protection in the VC.

Conclusion

Based on the above evaluation, the staff concludes that the existing fire protection combined with the modifications made by the licensee provide a level of fire protection equivalent to the technical requirements of Appexdix R. Therefore, the exemptions are hereby granted.

Exemption Requested for the Turbine Building (Section III.G.3)

An exemption was requested from section III.G.3 to the extent that it requires the installation of fire detection and fixed fire suppression systems in an area for which an alternative or dedicated shutdown capability is provided.

Evaluation

The turbine building is a rectangular structure with three operating levels. It abuts the Service Building on the east wall and an office on the northwest corner. The ground level includes the heating boiler room, lube oil room and water treatment room. The mezzanine level is comprised of the enclosed switchgear room, the ventilating fan room and an open area. The operating floor level consists of the enclosed control room an open area.

Safe shutdown systems in the turbine building include power, control, and instrument indication for the emergency power system, charging and emergency feedwater systems, and secondary systems. Portions of these and other safe shutdown systems are also located in the main control room, switchgear room, and cable spreading room. No safe shutdown systems are located in the water treatment room or on the operating level of the turbine building.

A concern existed in which the lack of fire detection and fixed fire suppression systems in the water treatment room and on the operating level of the turbine building could permit a fire to cause the loss of safe shutdown capability.

The water treatment room has a light combustible load and is separated from the rest of the turbine building by a minimum 8-inch concrete block wall and nonrated doors. In addition, there is no safe shutdown equipment in this room. Because of the light fuel load here, the staff does not expect a fire of significant duration or magnitude to occur. Should a fire occur, it will be detected by plant personnel or by fire detectors or waterflow devices in adjacent areas, which will alert the plant fire brigade. Upon arrival, the fire brigade will extinguish the fire. Should the fire continue, it will cause the loss of safe shutdown capability because dedicated shutdown capability is provided independent of the turbine building.

Because of the light fuel load on the operating level of the turbine building, the staff does not expect a fire of significant duration or magnitude to occur there. Should the fire occur, it will be detected by operating equipment monitors which will alert the plant fire brigade. Upon arrival, the fire brigade will extinguish the fire. Should a fire continue, it will not cause the loss of safe shutdown capability because there is none on this level. The fire is not expected to affect the main control room because it is separated from the operating level by concrete walls and metal doors.

Despite the lack of fire detection and fixed suppression systems in these locations, a fire will not result in the loss of safe shutdown capability. Therefore, the staff finds that providing fire detection and fixed fire suppression systems in these locations would not significantly increase the level of fire protection.

Conclusion

Based on the above evaluation, the staff concludes that the existing fire protection provides a level of protection equivalent to the technical requirements of Appendix R. Therefore, the exemption is hereby granted.

Exemption Requested for the Diesel Generator Building (Section III.G.3)

An exemption was requested from the section III.G.3 to the extent that it requires installation of a fixed suppression system in an area, room, or zone for which an alternative or dedicated shutdown system is provided.

Evaluation

The fire protection in the DGB does not comply with the technical requirements of section III.G.3 of Appendix R because a fixed fire suppression system is not installed in an area for which dedicated shutdown capability is provided.

A concern existed in that the lack of a fixed fire suppression system in the DGB could permit a fire to cause the loss of safe shutdown capability.

The diesel generator rooms are separated from the rest of the DGB by rated fire barriers, and are provided with automatic detection and manual fixed fire suppression systems. The fire detection systems would alert the plant fire brigade to a fire in one of these rooms. Upon arrival the fire brigade will extinguish the fire. Should the fire continue, it is not expected to spread beyond the fire-rated barriers of the diesel generator room in which it starts. In the unlikely event that it does spread, the CIS Train B power cables in Manhole No. 3 should be adequately protected by their location and by the barriers between the manhole and the room as discussed previously.

Thus, despite the lack of a fixed fire suppression system in the south portion of the DGB, a fire in this building will not result in the loss of safe shutdown capability. Therefore, the staff finds that providing a fixed fire suppression system would not significantly increase the level of fire protection in this fire area.

Conclusion

Based on the above evaluation, the staff concludes that the existing fire protection provides a level of protection equivalent to the technical requirements of Appendix R. Therefore, the exemption is hereby granted.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), the requested exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. In addition, the Commission has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances are present for those exemption requests in that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the exemptions from the requirements of section III.G of Appendix R to 10 CFR Part 50 to the extent discussed in section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (January 29, 1986, 51 FR 3708).

The Safety Evaluation dated October 20, 1986, related to this action and the above referenced submittals by the licensee are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Greenfield Community College Library, 1 College Drive, Greenfield, Massachusetts 01301.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, October 2, 1986.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-22839 Filed 10-7-86; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekley Notice; Application and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on September 24, 1986 (51 FR 33938), through September 29, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By November 7, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A

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petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendments request: August 25, 1986.

Description of amendments request: The amendment would revise Technical Specifications (TS) Figure 2.1–1, Reactor Core Safety Limit Three Loops in Operation, which assumes a 5% steam generator (SG) tube plugging limit to a 10% tube plugging limit. Also, TS 3.2.2, Equation for Heat Flux Hot Channel Factor, $F_Q(Z)$, Limiting Condition for Operation, would contain new $_Q$ values of 2.32 vice 2.31 and 4.64 vice 4.62. The changes would be consistent with reanalyses performed in accordance with the Westinghouse 1981 ECCS Large Break Evaluation Model with BART and a generic assessment of model changes described in WCAP–9561–P–A, Addendum 3. To date the licensee reports 2.9% of SG tubes plugged on Unit 1 and 3.7% on Unit 2. This action is taken to add margin to the existing 5% SG tube plugging limit without risking any possible startup delays should more SG tubes require plugging during the October 1986 outage on Unit 1.

Basis for proposed no significant hazards consideration determination: To support the requested changes, the licensee provided an evaluation of the significant hazards consideration per 10 CFR 50.92. The licensee's analysis is restated as follows:

(1) The proposed changes will not increase the probability or consequences of an accident previously evaluated because the revised ECCS analysis provided in Attachment 3, which was performed to support these changes, has demonstrated that the acceptance criteria for 10 CFR 50.46 have been met. The proposed changes have also been demonstrated to have no impact on the non-LOCA DNB transients or RCS structural integrity. Therefore, the probability or consequences of an accident previously evaluated will not be increased.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated because both changes consist of changes to assumptions in previously evaluated accidents. Additionally, the increase in steam generator tube plugging has been evaluated for impact on RCS average temperature, thermal design flow and secondary side pressure and determined to have no impact on current plant operating limits for these parameters. Furthermore, the increase in the steam generator tube plugging limit will have no effect on RCS structural integrity. Thus, these proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes will not involve a reduction in a margin of safety because RCS structural integrity is maintained and the revised ECCS analysis has demonstrated the requirements of 10 CFR 50.46 are met. Additionally, the calculated peak clad temperature from this revised analysis is even less than the existing analysis and provides additional margin to the limit of 2200°F. Therefore, these proposed changes will not involve a reduction in a margin of safety.

On the basis of the NRC staff's preliminary review of the licensee's analysis, we agree that the action is a no significant hazards consideration. The Commission examples (51 FR 7751) of actions not likely to involve a significant hazards consideration include example "(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method," which seems to fit this proposed change. The proposed change includes an analysis assuming the new 10% SG tube plugging limit. The analysis indicates that peak clad fuel temperatures would remain within the allowable limits for the large break LOCA analysis of 10 CFR Part 50, Appendix K. Further, the accident analysis indicates that the Standard Review Plan criteria of section 15.6.5 would be met. The non-LOCA transients will have no impact on DNB since the 10% SG tube plugging will not decrease the coolant flow below the thermal design flow. The safety margin remains within peak clad temperature limits and is probably reduced due to the use of the BART code methodology. It is expected that the NRC staff safety evaluation will agree with the licensee's conclusions. Therefore, we propose to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: Ernest L. Blake, Esquire, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein.

Arkansas Power and Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 10, 1986.

Description of amendment request: The amendment would:

(a) permit operation of Arkansas Nuclear One, Unit 1 (ANO–1) for Cycle 8 in accordance with the licensee's application for amendment dated September 10, 1986. The design cycle length would be 425 effective full power days (EFPD). The amendment would change Figure 3.2–1 to provide acceptable boron concentration levels slightly greater than current levels in order to assure cold shutdown capability required for Cycle 8 operation, change Figure 3.5.2–5 to provide acceptable maximum linear heat rates such that the maximum cladding temperature will not exceed 10 CFR 50, Appendix K Final Acceptance Criteria for Cycle 8 operation, change Figures 3.5.2–1(A–D), 3.5.2–2(A–D), and 3.5.2–3(A–D) to provide acceptable rod positions versus power level to ensure shutdown margin requirements of Specification 3.5.2.1 and power peaking criteria are met for Cycle 8 operation, change Figures 3.5.2–6(A–D) to provide acceptable Axial Power Shaping Rod (APSR) positions at any given power level for Cycle 8 operation, change Figures 3.5.2–4(A–D) to provide acceptable operational power imbalance setpoints at any given power level for Cycle 8 operation, and change Specifications 3.5.2.4 and 3.5.2.5 to remove the 92% full power hold requirement for equilibrium xenon.

(b) change Specification 4.7.1.1 to revise the acceptable insertion time for a tripped control rod from 1.46 seconds to the original 1.66 seconds. A penalty of 0.20 seconds was added to the tripped control rod acceptable insertion time criteria to offset a potential rod bow effect from irradiation growth of the fuel rods because bowing of the fuel rods may interfere with the insertion rate of a tripped control rod. The tripped control rod insertion time is measured during a refueling outage prior to restart, and the penalty was added to insure that even if rod bowing occurred during the operating cycle, the control rods would still insert quickly enough to maintain the departure from nucleate boiling ratio (DNBR) safety margins. In support of the increase in the acceptable control rod trip insertion time, the licensee referenced the Babcock and Wilcox (B&W) Topical Report BAW–10147P, "Fuel Rod Bowing in Babcock & Wilcox Fuel Designs", dated April, 1981. The NRC Safety Evaluation of BAW–10147P is dated February 15, 1983.

Basis for proposed no significant hazards consideration determination: The proposed changes have been reviewed against each of the criteria in 10 CFR 50.92, namely that the proposed changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

With regard to (1) above for Item (b), 1.66 seconds is the amount of time assumed for a tripped control rod to insert in the analyses of the Final Safety Analysis Report (FSAR). Thus, the FSAR analyses remain applicable. Therefore, increasing the allowable tripped control rod insertion time from 1.46 seconds to the original 1.66 seconds does not increase the probability or consequences of an accident previously evaluated.

With regard to (2) above for Item (b), there are no changes to the configuration or operability of the control rods or control rod drive system. Also, the function of the control rods will not change. Therefore, increasing the allowable tripped control rod insertion time from 1.46 seconds to the original 1.66 seconds does not create the possibility of a new or different kind of accident from any accident previously evaluated.

With regard to (3) above for Item (b), the NRC Safety Evaluation of BAW–10147P concludes that rod bow due to irradiation growth is not a concern in the B&W fuel assemblies utilized by the licensee, thus a rod bow penalty is not necessary. Therefore, increasing the allowable tripped control rod insertion time from 1.46 seconds to the original 1.66 seconds does not reduce a margin of safety.

For Item (a), the Commission has provided guidance concerning the application of the criteria in 10 CFR 50.92 by providing certain Examples (51 FR 7750). One of the examples (iii) of actions involving no significant hazards considerations is for a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

The licensee has stated that the proposed amendment would permit operation for Cycle 8 with fuel that is not significantly different from that used in previous cycles. The mechanical design of the fuel assemblies in Cycle 8 is unchanged from Cycle 7. There are no significant changes in the nuclear design of Cycle 8. The thermal-hydraulic design evaluation remains bounded by the FSAR, and the thermal performance of the core during accidents and transients for the Cycle 8 reload remains within the bounds of previously accepted analyses. Also, there have been no significant changes in the acceptance criteria for the Technical Specifications.

On these bases, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Suite 700, Washington, DC 20036.

NRC Project Director: John F. Stolz.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: December 23, 1985, as revised September 15, 1986.

Description of amendment request: By letter dated December 23, 1985, the

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licensee proposed an amendment to change the Technical Specifications relative to the licensee's Nuclear Safety Review and Audit Committee (NSRAC). The proposed amendment was previously noticed on February 12, 1986 (51 FR 5271). The original request has now been revised by substituting the title "Chief Operating Officer" for "Senior Vice-President, Nuclear." This change is being made to recognize that the position of Senior Vice-President, Nuclear has been eliminated and its authority and responsibilities have been transferred to a new position of higher authority, the Chief Operating Officer.

Basis for proposed no significant hazards consideration determination: This additional change to the Technical Specifications is administrative and does not physically affect plant related systems. Therefore, this change would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Based on this finding, the staff has made an initial determination that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: John A. Zwolinski.

Carolina Power & Light Company, Dockets Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 29, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2. The proposed change to TS Section 4.6.3.2 would permit the operability of primary containment isolation valves listed in TS Table 3.6.3–1 to be verified while the reactor is in operational conditions other than cold shutdown or refueling.

Technical Specification 4.6.3.2 requires that each primary containment isolation valve listed in TS Table 3.6.3–1 be demonstrated operable during COLD SHUTDOWN or REFUELING at least once every 18 months. This operability test should verify that the valve actuates to the appropriate position upon receipt of a test signal. This requirement limits the operational flexibility of the plant for those valves capable of being tested during power operation. The Brunswick Updated Final Safety Analysis Report (FSAR), paragraph 7.3.1.1.9, states the following:

> The primary containment isolation and NSSS Shutoff System is testable during reactor operation. Isolation valves can be tested to assure that they are capable of closing by operating manual switches in the Control Room and observing the position lights and any associated process effects.

The proposed revision to the Brunswick Technical Specifications would delete the phrase "during COLD SHUTDOWN or REFUELING" from Surveillance Requirement 4.6.3.2. This revision would allow primary containment isolation valves to be tested and demonstrated operable where such testing is feasible during power operation. The testing will normally be done in conjunction with logic system functional tests for the instrumentation associated with a given isolation valve.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. As noted in the Brunswick Updated FSAR, the Brunswick primary containment isolation system (including isolation valves) was designed to be testable during reactor operation. Therefore, the level of assurance of valve operability is not affected by conducting the testing during plant operation.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not affect the design of any safety systems. In addition, the performance of any safety functions is not affected since the surveillance testing is intended to actuate the containment isolation valves to their appropriate isolation position. Because the isolation valves are designed to be testable during plant operation, no new plant transients will be introduced by the proposed change.

3. The proposed amendment does not involve a significant decrease in a margin of safety. The testing of containment isolation valves with the unit in operation would allow the test conditions to more closely reflect the operating conditions under which the isolation valves are expected to perform their safety function. This can be especially important where thermal expansion and system pressures can affect valve performance. Therefore, the margin of safety may actually be increased if certain containment isolation valves are tested with the unit in operation.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Thomas A. Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Commonwealth Edison Company, Docket No. STN–50–454, Byron Station, Unit 1, Ogle County, Illinois

Date of amendment request: August 13, 1986.

Description of amendment request: The amendment would revise Technical Specification Section 3/4.7.5 on pages 3/4 7–13 and 3/4 7–14 to replace "86% of total volume" with "50%" for the water level in the ultimate heat sink (UHS) cooling tower basis.

The minimum water volume in the basin is not being changed by this amendment. The licensee intends to replace the existing instrument with an instrument with greater range; therefore, 86% on the old instrument corresponds exactly with 50% on the new instrument. The licensee wants to use an instrument with greater range so that the physical water level in the basin can be increased and still be read on the instrument. The increased water level, which is above the 100% reading of the existing instrument, is desirable because it provides more margin to the level at which the essential service water diesel driven pumps receive an auto start signal.

It is the staff's intention to apply this amendment to Byron Station, Unit 2, when it receives its operating license if the amendment is found acceptable for Byron Station, Unit 1.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. In accordance with the criteria of 10 CFR 50.92(c), the proposed amendment does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendment does not alter the actual minimum water level of the Ultimate Heat Sink (UHS) cooling tower basin. The amendment merely revises the instrument indication in the control room for 873.75 feet Mean Sea Level (MSL) to read 50%. Changing the instrument indication to a different reference point does not increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

(a) the proposed amendment does not allow any new equipment or modes of operation which could initiate a new or different kind of accident from any previously evaluated because the actual minimum volume of water in the UHS cooling towers is not being changed. The change pertains only to instrumentation indication; therefore the possibility is unaltered.

(b) this is an administrative change which would merely change the control room indication for the UHS cooling towers to 50% when at 873.75 feet MSL. This change will allow operation above the minimum level without a constant high level alarm.

(3) Involve a significant reduction in the margin of safety, because there are no hardware changes associated with this proposed license amendment, nor in the manner that the UHS cooling towers are being operated. For these reasons, there is no reduction in the margin of safety as a result of the proposed license amendment.

Based on the preceding assessment, the staff proposes to determine that this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney for licensee: Michael Miller, Isham, Lincoln and Beal, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Project Director: Vincent S. Noonan.

Commonwealth Edison Company, Docket No. STN–50–454, Byron Station, Unit 1, Ogle County, Illinois

Date of amendment request: August 27, 1986.

Description of amendment request: The amendment would revise Technical Specification section 3/4.8.2.1 on page 3/4 8–10; section 3/4.8.2.2 on page 3/4 8–13; and add a new section, section 3/4.8.2.1.3 on a new page, page 3/4 8–11a. These changes address operation of the D.C. crossties between Units 1 and 2 at Byron Station for two situations: (1) With both units operating and one battery charger failed, and (2) with one operating and the other unit shutdown with a battery and its associated battery charges out of service.

The staff intends to apply this amendment to Byron Station, Unit 2, when it receives its operating license if the amendment is found acceptable for Byron Station, Unit 1.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

This proposed amendment controls the use of the D.C. crosstie between opposite unit D.C. buses. Accidents previously evaluated assume a certain load profile on a D.C. bus. The D.C. bus loading, when using the crosstie, will be restricted so the capacity of the operating unit's battery will not be exceeded in the event of a single failure and simultaneous accident and loss of offsite power conditions. A single failure and simultaneous accident and loss of offsite power are the conditions assumed for a D.C. bus in previously evaluated accidents. As a result, the probability or consequences of accidents previously evaluated are not changed by this proposed amendment.

The only new or different kind of accident which could be created by this proposed amendment would involve an interaction between the two D.C. buses which are crosstied. However, a breaker exists on either side of the crosstie which would isolate any potential short circuit from either unit. These breakers are coordinated with the D.C. bus main breaker to assure the crosstie will isolate from the affected D.C. bus before the battery would be isolated. All of these breakers are class 1E. For these reasons, a new or different kind of accident will not be created from this proposed amendment.

This proposed amendment will allow use of some margin in the capacity of the batteries which was allocated for future D.C. loads. However, no design margin in the batteries (i.e., aging or temperature correction factors) has been affected by this proposed amendment. Accordingly, no margin of safety has been reduced.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney for licensee: Michael Miller, Isham, Lincoln & Beal, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Project Director: Vincent S. Noonan.

Commonwealth Edison Company, Docket No. STN 50–454, Bryon Station, Unit 1 Ogle County, Illinois

Date of application for amendment: September 10, 1986.

Description of amendment request: The amendment would revise several areas of Section 6.0, Administrative Controls, of the Technical Specifications. The changes have been requested to reflect a recent reorganization of the Byron Station management.

The staff intends to apply this amendment to Byron Station, Unit 2, when it receives its operating license if the amendment is found acceptable for Byron Station, Unit 1.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. In accordance with the

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criteria set forth in 10 CFR 50.92(c), the proposed amendment does not:

(1) Involve a significant increase in the probability of consequences of an accident previously evaluated because the proposed amendment merely revises the Commonwealth Edison on-site and off-site organizational structure as found in the Byron Station Technical Specifications. This has no impact on plant design or operations; hence, the probability or consequences of previously evaluated accidents are unaltered.

(2) Create the possibility of a new or different kind of accident previously evaluated because the proposed amendment does not introduce any new equipment or modes of operation in Byron Station that could create the possibility of a new or different kind of accident from that which was previously evaluated.

(3) Involve a significant reduction in the margin of safety, because these changes are considered to be administrative. There are no changes being made to hardware or in the manner that plant systems are being operated as a result of this license amendment. Therefore, the margin of safety is not being compromised or changed.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room Location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney for licensee: Michael Miller, Isham, Lincoln and Beal, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Project Director: Vincent S. Noonan.

Commonwealth Edison Company, Docket Nos. 50–237/249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of amendment request: January 20, 1986 as supplemented by a letter dated July 29, 1986.

Description of amendment request: The amendments proposed in the January 20, 1986 submittal primarily involved typographical errors, changes in nomenclature, sentence structure and references with the exception of a change for Dresden Unit 3 to allow post-maintenance testing of control rod drives in the refuel mode with low pressure cooling systems inoperable. This latter provision was approved for Dresden Unit 2 in Amendment 6 to DPR–19.

The July 29, 1986 submittal proposes additional changes of a similar nature including revisions to certain tables to reflect the results of minor appropriate plant modifications recently implemented.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards consideration in its submittals as follows:

Commonwealth Edison has evaluated the proposed Technical Specification amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of Dresden Units 2 and 3 in accordance with the proposed amendments will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) The miscellaneous editorial, grammatical, reference changes are administrative in nature and do not allow any new operating practices or changes in equipment which could impact the probability or consequences of an accident.

(b) The provision to allow control rod drive testing with Low Pressure Cooling Systems inoperable includes restrictions that the reactor be in the REFUEL mode (following achievement of cold shutdown) and specifically prohibit any simultaneous work which has the potential to drain the reactor vessel. The latter provision ensures that the probability of a loss of coolant accident is not increased by this amendment. In addition, REFUEL mode interlocks prevent the withdrawal of more than one control rod thereby protecting against the possibility of making the reactor critical.

(c) The changes regarding the CRD return line valves reflect actions taken by Commonwealth Edison in response to NRC recommendations in NUREG–0619. As a result [of] thermal stress cracking in these lines, these lines had previously been isolated and on Unit 3, the line was recently removed. The proposed changes modify the Technical Specifications to reflect the current plant configuration. The CRD return lines have either been permanently isolated (Unit 3) or have the isolation valves closed (Unit 2) to ensure primary containment integrity.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because

(a) The administrative changes do not allow any new equipment or operating procedures which could initiate or impact the scenario of an accident or operational event.

(b) Post maintenance testing of control rod drives is not a new activity and therefore does not introduce any new concerns regarding the initiation or progression of a transient event. This provision does not involve any new equipment, changes to equipment, or significant changes to operating procedures and therefore cannot initiate any new events beyond those previously evaluated.

(c) The changes regarding the CRD line valves are conservative in that they reflect the removal or isolation of this line in response to NRC requirements.

(3) Involve a significant reduction in the margin of safety because the changes are either administrative and have no direct affect on operating limits or equipment availability or contain specific provisions to assure the margin of safety is not compromised as in the case of the control rod drive testing provision and the CRD return line valves (where removal/isolation of these lines provides additional protection against the thermal stress cracking concern).

In consideration of the above, Commonwealth Edison has determined that the proposed amendments do not represent a significant hazards consideration and request their approval under the provisions of 10 CFR 50.91(a)(4).

The staff has reviewed the licensee's no significant hazards consideration determination and the content of the licensee's submittals and agrees with the licensee's analysis. Therefore, based on this review, the staff has made a proposed determination that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Mr. Michael I. Miller; Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: September 4, 1986.

Description of amendment request: The proposed license amendment would amend Section 4.10.C of the technical specifications to incorporate inservice inspection surveillance requirements for the reactor coolant pump (RCP) flywheels consistent with the guidance found in Regulatory Guide 1.14, Revision 1. In particular, this proposed amendment would increase the frequency of pump flywheel inspections and ensure the examination of each RCP flywheel on a regular interval (approximately 3 years). The present inspection frequency requires only one RCP flywheel inservice inspection every second outage.

Basis for proposed no significant hazards consideration determination: The present technical specification requires that only one RCP flywheel be inspected every second refueling outage. At this frequency, it would take six (6) refueling outages (approximately 7 years) to complete the inspection of all 4 RCP flywheels and any individual RCP flywheel would be inspected every eight (8) refueling outages (approximately 9 years).

The proposed license amendment increases the inspection frequency such that each RCP flywheel will be inspected during an interval not to exceed three (3) years. In addition, the proposed change would require each RCP flywheel to receive an ultrasonic volumetric examination of the higher stress areas, i.e., bore and keyway areas, in lieu of the present requirement to do a visual and volumetric examination of only one flywheel every other outage.

The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7750, March 6, 1986) of license changes involving no significant hazards consideration. The staff has reviewed the proposed change and concludes that it falls within the envelope of example (ii) in that the change would constitute an additional limitation, restriction or control not included in the current technical specifications. As described above, the proposed non-destructive testing requirements are in accordance with existing regulatory criteria not now required by the plant technical specifications.

Based on the above, the staff proposes to find that the requested license amendment involves no significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 18, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications to include provisions for automatic actuation of the reactor trip breakers shunt trip attachment consistent with Item 4.3 of Generic Letter 83–28 concerning the generic implication of the Salem Anticipated Transient Without Scram (ATWS) event. The proposed changes are responsive to Generic Letter 85–09, entitled "Technical Specifications for Generic Letter 83–28, Item 4.3" and the June 22, 1984 Safety Evaluation for a modification to Indian Point Unit 2 to provide automatic actuation of the reactor trip breakers shunt trip attachment consistent with Item 4.3 of Generic Letter 83–28. The proposed amendment would also correct two typographical errors contained in the current Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing certain examples (51 FR 7155). One of these examples (ii) of actions not likely to involve a significant hazards consideration relates to additional restrictions or controls not presently included in the Technical Specifications. Consistent with this example, the proposed changes with respect to reactor trip breakers provide new explicit LCO's and testing requirements consistent with the modified shunt trip, design, not previously included in the Technical Specifications.

The proposed changes correcting the typographical error are consistent with example (i) of the Commission's guidance. Example (i) relates to a purely administrative change to the technical specifications; for example a change to achieve consistency throughout the technical specifications; correction of an error, or a change in nomenclature. Based on the above the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Steven A. Varga.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 15, 1985 as supplemented August 7, 1985, November 8, 1985, March 7, 1986, April 14, 1986 and September 18, 1986.

Description of amendment request: The proposed amendments would revise: (1) Surveillance Requirement 4.6.5.3.Ib. to reduce the surveillance frequency for testing the ice condensor lower inlet doors from at least once per 3 months during the first year after the ice bed is initially fully-loaded and at least once per 6 months thereafter to at least once per 18 months; (2) Surveillance Requirements 4.6.5.3.Ib.3) and 4.6.5.3.Ib.4) to increase the inlet doors test sample to a least 50% of the doors in lieu of 25% and to ensure that all doors are tested at least once during two test intervals in lieu of four test intervals.

The testing and surveillance required to demonstrate operability of the ice condensor lower inlet doors are time consuming and require a unit shutdown. The licensee stated that scheduling a unit shutdown solely to carry out the testing and surveillance required is not considered appropriate because this surveillance has a limited safety significance due to the high reliability of the doors.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the reduction in the surveillance frequency of the ice condensor lower inlet doors, the increase of the test sample and the change in test intervals would not significantly affect the operability of the doors. The surveillance records at Catawba show that the doors are highly reliable because a design change made to the door seals to prevent the doors from freezing was implemented at Catawba Units 1 and 2 prior to the issuance of their fuel loading licenses. Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the changes would not affect the design and would not introduce new modes of operation of the facility. Finally, it would not (3) involve a significant reduction in a margin of safety because the surveillance records show that the ice condensor lower inlet doors are highly reliable as stated in item (1).

Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

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Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 9, 1986, as supplemented September 12, 1986.

Description of amendment request: The amendments would permit an exception to the experience requirements for two additional candidates for senior reactor operator (SRO) licenses. The exception is from the requirements stated in Section A.1.a of Enclosure 1 to the Denton letter, dated March 28, 1980, referenced in Technical Specification Section 6.0, "Administrative Controls." The Commission has previously approved a similar exception for six candidates (51 FR 5282). The licensee's letter of September 12, 1986, provided additional information in response to NRC staff letter issued about August 25, 1986, undated.

Basis for proposed no significant hazards consideration determination: The Technical Specifications Section 6.3 "Unit Staff Qualifications" and Section 6.4 "Training" require, among other things, that the licensee's unit operating staff meet or exceed the requirements in Sections A and C of Enclosure 1 to the Denton letter dated March 28, 1980. Section A of Enclosure 1 requires that an applicant for SRO license shall have a minimum of 4 years of experience as a control room operator (fossil or nuclear). This experience requirement is a prerequisite for taking the SRO examination. However, the principal requirement is that the SRO candidates pass the NRC license examination.

Section A of the Denton letter allows exceptions to the experience requirements for SRO applicants for plants that are not yet licensed because there is no opportunity to obtain such experience on their plants. The proposed change to Technical Specification 6.3.1 is requested for a similar reason in that Catawba Unit 1, which received a fuel loading and precriticality testing license in July 1984, a low power license in December 1984, and a full power license in January 1985, has not been in operation long enough to provide an opportunity for reactor operators to have 4 years of control room operating experience. Likewise, Catawba Unit 2 received a low power license in February 1986 and a full power license in May 1986.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration by application of the standards in 10 CFR 50.92. The Commission's staff has determined that should this request be implemented, it would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the two SRO candidates are highly trained at Catawba, each has held a reactor operator license for approximately 2 years and each would be required to pass the SRO license examination; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the SRO candidates are experienced, licensed operators and the amendment does not change the manner in which the plant is to be operated; or (3) involve a significant reduction in a margin of safety because, in addition to the requirement that each candidate pass the NRC examination for an SRO license, each has greater than 8 years of experience on-site at Catawba, during which each has been actively involved in preoperational testing and checkout, startup testing, and operator training. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Esq., Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: March 19, 1986.

Description of amendment request: Existing Technical Specification (TS) 3.11.1.1 and its referenced Figure 5.1-4, "Site Boundary for Liquid Effluents" define the authorized discharge point for radioactive material released in liquid effluents to unrestricted areas as being only to Lake Norman, an upstream impoundment of the Catawba River. The proposed amendments would modify Figure 5.1-4 to add an additional discharge point from the Conventional Wastewater Basin (CWWB) into the Catawba River. The change would affect only the discharge location, and would not increase existing TS requirements regarding: (1) The quantity of radioactive material which may be contained in or released from the pond, (2) allowable doses to the public from releases to unrestricted areas, and would not decrease existing TS requirements regarding liquid discharge monitoring.

The change would be accomplished by deleting from TS Figure 5.1-4 an existing, obsolete footnote which authorized a one-time discharge from the CWWB to the Catawba River on June 20, 1986, but retaining the existing arrow at the river and its label, "Liquid Waste Discharge Point." (The existing arrow, label, and footnote were added in response to a separate application by the licensee submitted subsequent to the March 19, 1986 request.)

Basis for proposed no significant hazards consideration determination: Chemical wastes from the McGuire Station (e.g., turbine building drains, water treatment system filter backwashes, demineralizer regeneration wastes), which are normally non-radioactive, are routed through the Conventional Waste Water Treatment System (CWWTS) and subjected to physicochemical treatment. The CWWTS includes a Basin of two parallel stream settling ponds with a capacity of about 2 million gallons each. Upon completion of treatment, the discharges from this system are released to the Catawba River downstream of Cowans Ford Dam. Waste containing radioactive material is normally routed to separate Liquid Radwaste Systems (see FSAR Section 11.2) for recycling, processing and discharge to Lake Norman. During operation with primary-to-secondary leakage in steam generators, the waste in the turbine building sumps will become contaminated; long-term operation with such leakage can create large volumes of liquid waste in the turbine building sumps in excess of the processing capacity of the Liquid Radwaste System. If the level of contamination is within limits, the sump contents are routed to the CWWTS.

The quantity of radioactive material contained in each chemical treatment pond, and in each batch of slurry (used power resins) to be transferred to the chemical treatment ponds, is limited consistent with 10 CFR Part 20, Appendix B, Table II by existing TS 3/4.11.1.5. The concentration of radioactive material released in liquid effluents to unrestricted areas is limited consistent with 10 CFR Part 20, Appendix B, Table II by existing TS 3/4.11.1.1. The dose or dose commitment to a member of the public from radioactive materials in liquid effluents released from each McGuire unit is limited consistent with 10 CFR 50, Appendix I by existing TS 3/4.11.1.2. These TSs (3/4.11.1.1, 3/4.11.1.2, and 3/4.11.1.5) would apply to both the CWWTS and the Lake Norman discharge points. The change would also not decrease the existing monitoring requirements (TS 3.3.3.8 and referenced TS Table 3.3-12) which assure that instantaneous radioactive release rates remain within 10 CFR Part 20, Appendix B limits, and that radioactive liquid effluent monitoring instrumentation remains operable or appropriate compensatory action taken. Rather, the change provides for consistency of TS Figure 5.1-4 with these other existing TSs which assure that such discharges, concentrations and doses are consistent with the Commission's regulations. Therefore, as noted in the licensee's submittal, the change more accurately reflects station design and practice when operating with a primary-to-secondary leak in steam generators.

The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. One of the examples (i) relates to amendments for a purely administrative change to Technical Specifications. Removal of the obsolete footnote has no safety implication and matches this example. The remainder of the change, which designates the river as a liquid waste discharge point, does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and has determined that should this portion of the change be implemented, it would not involve: (1) A significant increase in the consequences of an accident previously evaluated or (2) a significant reduction in a margin of safety. The change does not increase the radioactive waste produced by or released from the station. The concentrations of radioactivity in the CWWB are maintained low in accordance with existing TS requirements and the potential accidental radioactive releases from the CWWB are bounded by the releases from the postulated design-basis liquid tank failures evaluated by the Commission in the McGuire Safety Evaluation Report, Section 15.3.10, and found to result in acceptable radionuclide concentrations in the Catawba River. This part of the change also would not (3) increase the probability of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated. Because the change does not involve any new or novel changes in equipment, design, operating procedures and limits, setpoints, or limiting conditions for operation, it has no effect on accident causal mechanisms.

On the above bases, the Commission proposes to determine that these proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: August 27, 1986, as supplemented with additional information on September 29, 1986.

Description of amendment request: The proposed amendments would revise the Station's common Technical Specifications (TSs) to add operability requirements of monitors and surveillance items required by the addition of the radwaste facility at the Oconee Nuclear Stations (ONS). The proposed amendments would also delete certain outdated footnotes with the gaseous process and effluent monitoring instrumentation.

In a letter dated June 10, 1985, and supplements, the licensee requested approval under 10 CFR Part 20, § 20.305, to treat or dispose of licensed material by incineration. The incinerator is one major integral component of the new volume reduction radwaste facility.

The licensee will monitor the process exhaust from the volume reduction system as it is mixed with normal facility heat, ventilation and air condition (HVAC) exhaust before release. An isokinetic sampling system is provided to obtain representative exhaust duct air samples for radiological monitoring and analyses. A continuous noble gas activity monitor and sample cartridge for continuous collection of iodine and particulate samples are provided.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7750). Example (i) of the types of amendments not likely to involve significant hazards considerations is an amendment considered to be a purely administrative change to the TSs; for example, a change to achieve consistency throughout the TSs, correction of an error, or a change in nomenclature.

One of the proposed changes to the TSs has been determined to contain only administrative changes. The requested changes are required so that the TSs are updated and no longer note obsolete footnotes. Also, some typing format changes have been proposed.

For the other proposed revision to the TSs, i.e., to add operability requirements of monitors and surveillance items required by the addition of the radwaste facility, the Commission has provided guidance concerning the determination of significant hazards considerations by providing certain standards (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

These requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee states that the amendments constitute operability requirements of monitors and surveillance requirements for the incinerator. Appropriate accident analyses for the incinerator were provided in the June 10, 1985 submittal. The activity release by nuclide and the dose estimated for each of the accident cases analyzed are provided in the June 10, 1985 submittal. The doses calculated were derived with conservative assumptions and were found to be below 10 CFR Part 20 annual dose limits. Therefore, the consequences of these accidents analyzed will not be significantly increased. The proposed changes include additional operability requirements of monitors and surveillance requirements associated with the incinerator. As such, this change is not considered to be an initiator of the accidents analyzed. We agree with the licensee's analysis.

The proposed amendments do not create the possibility of a new or

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different kind of accident from any accident previously evaluated because the proposed changes do not involve any physical changes to the plant. These amendments result from the addition of the radwaste facility at ONS. No new or different kind of accident can be created since these amendments only add additional sampling points for surveillance and define the operability requirements for the radwaste facility monitors.

The proposed amendments do not involve a significant reduction in a margin of safety. Operation of the radwaste facility including the incinerator will still be within Appendix I to 10 CFR Part 50 numerical guides for the three unit site, and accordingly the margin of safety is unchanged.

Based on the above, the Commission's staff proposes to determine that these proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Bishop, Lieberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: February 17, 1986.

Description of amendment request: The proposed amendment would change the expiration date for Facility Operating License No. DPR–72 from September 25, 2008, to December 3, 2016, 40 years from the issuance of the operating license.

Basis for proposed no significant hazards consideration determination: The currently licensed term for the Crystal River Unit No. 3 Nuclear Generating Plant is 40 years commencing with issuance of the Construction Permit (September 25, 1968). Accounting for the time required for plant construction, this represents an effective operating license term of 31 years and 10 months. The licensee's application requests a 40-year operating license term.

The licensee's request for extension of the operating license is in accordance with 10 CFR 50.51 and is based on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated to maximize the inspectability of structures, systems, and equipment. Surveillance and maintenance practices which have been implemented in accordance with the ASME code and the facility Technical Specifications provide assurance that any unexpected degradation in plant equipment will be identified and corrected.

The design of the reactor vessel and its internals considered the effects of a 40-year design life (32 Effective Full Power Years), and a comprehensive vessel material surveillance program is maintained in accordance with 10 CFR Part 50, Appendix H. Analyses showing compliance with the NRC pressurized thermal shock screening criteria have demonstrated that the expected neutron fluence will not be a limiting consideration. In addition to these calculations, surveillance capsules placed inside the reactor vessel provide a means of monitoring the cumulative effects of power operation.

Aging analyses have been performed for all safety-related electrical equipment in accordance with 10 CFR 50.49, "Environmental qualification of electrical equipment important to safety for nuclear power plants," identifying qualified lifetimes for this equipment. These lifetimes will be incorporated into plant equipment maintenance and replacement practices to ensure that all safety-related electrical equipment remain qualified and available to perform all safety functions regardless of the overall age of the plant.

The licensee has reviewed the Final Environmental Statement (FES) to determine if its calculations will be materially affected by the proposed extension and has determined that there will be no significant increase in annual risk to the public and that assurances to protect the environment will continue throughout the proposed plant operating life. The ALARA program is expected to offset any tendency for increased occupational exposure due to plant age. In addition, considerable financial benefits to the local population and to the utility's customers would continue to accrue from continued operation of the facility.

The licensee has concluded, and we agree, that the proposed extension will not modify any operating parameters and restrictions except to allow continued operation for a longer period of time. This is consistent with current regulatory practice under the requirements of 10 CFR 50.51. Based on the above, this amendment will not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated. No operational restrictions are modified by changing the duration of the license.

(2) Create the possibility of a new or different kind of accident previously evaluated. The proposed change introduces no new mode of plant operation nor does it require physical modification to the plant.

(3) Involve a significant reduction in the margin of safety. Any reduction in the margin of safety will be maintained within acceptable bounds by continued implementation of the referenced ongoing programs (Qualification Maintenance Program, Reactor Vessel Materials Surveillance Program, environmental monitoring, etc.). These programs are designed to assure there would be no significant reduction in the associated margin(s) of safety.

Based upon the above, the Commission proposes to determine that the proposed amendment, which provides for a 40-year operating life for the Crystal River Unit No. 3 Nuclear Generating Plant, involves no significant hazards considerations.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida – 33733.

NRC Project Director: John F. Stolz.

General Public Utilities Nuclear Corporation Docket No. 50–320, Three Mile Nuclear Station Unit No. 2, Londonderry Township Dauphin County, Pennsylvania

Date of amendments request: August 15, 1986.

Description of amendments request: The proposed change would revise Section 6.3.2 of the Appendix A Technical Specifications by changing the title of the Radiological Controls Director at Three Mile Island Nuclear Generating Station, Unit 2. Section 6.3.2 specifies the qualifications for radiological controls personnel. The change is a change in title only, and there is no change in the required qualifications of the individual filling the position. The change is requested by the licensee to achieve consistency with the corporate organizational structure.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751)

of amendments that are considered not likely to involve significant hazards consideration. Example (i) relates to purely administrative changes to the technical specifications and specifically identifies changes in nomenclature. Since the change requested by the licensee's August 15, 1986 submittal fits the example provided and satisfies the criteria of 50.92, it is concluded that: (1) The proposed changes do not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed changes; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the March 1981 Final Programmatic Environmental Impact Statement.

Local Public Document Room Location: State Library, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17105.

Attorney for licensee: George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: William D. Travers.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County Georgia

Date of amendment request: July 18, 1986.

Description of amendment request: The amendment would modify the Technical Specifications (TS) to: (1) Delete four primary containment isolation valves (PCIVs) from and add 15 PCIVs to Table 3.6.3–1; (2) add or correct part numbers (valve identification numbers) for 16 valves listed in Table 3.6.3–1; (3) move eight valves from Section B (Manual Isolation Valves) of Table 3.6.3–1 to Section A (Automatic Isolation Valves); (4) move the RPV head spray valve from Section A (Automatic Isolation Valves) of Table 3.6.3–1 to Section C (Other Isolation Valves), and (5) change the valves listed in Table 3.6.3–1 as the inboard and outboard isolation barriers for the fission product monitoring system sample line.

The changes are proposed to: (1) Reflect past design changes in the system and design changes that are proposed to be made during the refueling outage scheduled to begin in September 1986; (2) correct the valve listing to include all PCIVs and to correct previous errors in identification number; and (3) correctly identify the valves as "automatic", "manual" and "other".

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves nn significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The changes expand and correct the listing of valves in Table 3.6.3–1. They will better assure that all the valves that are required to be tested for operability and leak tightness are identified and tested. This should insure the margin of safety provided by the isolation system. These changes are not expected to: (1) Increase the probability or consequnces of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On the basis of the above, the Commission has determinied that the requested amendment meets the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 16, 1986.

Description of amendment request: The proposed amendment changes the order of preference of instrumentation used to monitor reactor power quadrant tilt. The current Technical Specifications require measuring quadrant tilt using the full incore detector system (FIT). If FIT is not available, then the minimum incore detector system (MIT) is used. If neither FIT or MIT is available, then the out of core detector system (OCT) is to be used. Since the OCT is more accurate than the MIT, the proposed amendment reverses the order of preference of the MIT and the OCT. Thus, under the proposed amendment, if the FIT is not available, the OCT would be used next; and if FIT and OCT were both not available, then MIT would be used.

The proposed amendment also includes changes to allow the withdrawal of axial power shaping rods under end of cycle core conditions. These changes were noticed separately on July 30, 1986 (51 FR 27284) and were approved by Amendment No. 120 issued September 2, 1986.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if it meets three standards as described in 10 CFR 50.92. Each standard is discussed in turn.

Standard 1—The proposed amendment should not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment simply revises the order of preference for selecting the system that shall be used to determine quadrant tilt. It does not change any set point or required system accuracy or surveillance interval. Thus, it does not increase the probability or consequences of any accident previously evaluated.

Standard 2—The proposed amendment should not create the possibility of a new or different kind of accident from any accident previously evaluated. As discussed in Standard 1, the proposed amendment only revises the order of preference for selecting the equipment used to measure quandrant tilt. It changes no limits. Thus, it does not create the possibility of a new or different kind of accident.

Standard 3—The proposed amendment should not involve a significant reduction in a margin of safety. The proposed amendment changes no limits and thus has no effect on existing margins of safety.

Accordingly, based on the above discussions, the Commission proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

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Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Kansas Gas and Electric Company, Kansas City Power and Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of Amendment request: September 10, 1986.

Description of amendment request: The proposed amendment proposes to change the title "Manager Nuclear Safety" to "Manager Analyses Service" and changes the reporting responsibility of the Independent Safety Engineering Group from the Manager Nuclear Safety to the Chairman of the Nuclear Safety Review Committee.

Basis for proposed no significant hazards consideration determination: The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes involve organizational modifications and enhancements and as such, have no effect on plant equipment or the technical qualifications of plant personnel.

The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated. These changes do not affect the overall number or qualifications of personnel who operate Wolf Creek Generating Station, nor do they involve any change to installed plant systems or the overall operating philosophy of Wolf Creek Generating Station.

The proposed revisions do not involve a significant reduction in a margin of safety. These changes do not involve any changes in overall organizational commitments or individual job responsibilities. Organizational modifications alone do not reduce any margin of safety.

Based on the above analysis the licensee has concluded that the proposed revisions to the Wolf Creek Generating Station Technical Specifications involve no significant hazards considerations. The NRC staff has reviewed the licensee's significant hazards consideration determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia Kansas, 66801 and Washburn University School of Law Library, Topeka, Kansas.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: June 24, 1986.

Description of amendment request: The licensee plans to implement a station modification at the Waterford 3 Steam Electric Station during the first refueling outage to provide the plant operators with the capability of bypassing the high steam generator level reactor trip. The proposed change to Technical Specification 3.3.1 will allow the operations staff to bypass the trip while in Modes 1 and 2. As currently noted in Section 2.2.1 of the Technical Specification Bases, the Steam Generator Level—High trip is provided to protect the turbine from excessive moisture carry-over. Because the turbine is automatically tripped when the reactor is tripped, the Steam Generator Level-High trip provides a reliable means for providing protection to the turbine from excessive moisture carry-over. The trip's set point does not correspond to a Technical Specification Safety Limit and no credit is taken in the safety analyses for operation of this trip. Its functional capability at the specified trip setting enhances the overall reliability of the Reactor Protection System.

Additionally, the high steam generator level trip is described in Section 7.2.1.1.1.10 of the Waterford 3 FSAR. It is an equipment protective trip only and, therefore, does not fall within the scope of IEEE 279–1971, "Criteria for Protection Systems for Nuclear Generating Stations". However, in order to enhance the overall reliability of the Reactor Protection System (RPS) and, as stated in the FSAR, "to preserve uniformity of function and design, the high steam generator level trip function meets the design bases" for other RPS components, including IEEE 279–71.

The proposed change will not affect the design or testing of the non-safety related high steam generator level trip function but will only provide the option to bypass the function in Modes 1 and 2.

Basis for Proposed No Significant Hazards Considerations Determination: The NRC staff proposes that this specific change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(a) The proposed change allows bypassing the non-safety related steam generator high level trip. This trip is not credited in the Waterford 3 safety analyses nor does the trip setpoint correspond to a Technical Specification Safety Limit. The design, testing and reliability of the RPS is unaffected by the proposed change. Therefore the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(b) The most adverse consequence of bypassing the high steam generator level trip is the potential for moisture carry over to the turbine and subsequent damage. This, however, is not a safety concern. The main steam line piping to the main steam isolation valves is designed to carry a water loading. Even should the main steam line piping be postulated to rupture due to the water loading, the resulting event is bounded by the main steam line break event analyzed in the FSAR. No new systems, modes of operation, failure modes or other plant perturbations are introduced; therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

(c) As previously stated, the high steam generator level trip is not credited in any safety evaluation. By definition, bypassing the trip cannot provide any reduction in the margin of safety that presently exists in the accident analysis and in the plant design.

As the change requested by the licensee's June 24, 1986 submittal satisfies the criteria of 50.92, it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 15, 1986.

Description of amendment request: The proposed change would revise Technical Specification 3.10.2, "Moderator Temperature Coefficient, Group Height, Insertion, and Power Distribution Limits", along with the associated surveillance requirements in 4.10.2. The proposed change will allow suspension of certain limits specified in the specification to accomodate physics tests following startup after refueling. The associated Bases is also revised to reflect technical terminology utilized at Waterford 3.

In order to perform certain startup tests for Cycle 2 such as the verification of radial peaking factors at high power levels, it is necessary to insert the Part Length Control Element Assemblies (PLCEAs) and CEAs beyond the limits specified in Technical Specifications 3.1.3.6 and 3.1.3.7. Technical Specification 3.10.2 currently allows suspension of the insertion limits for full length CEAs specified in Technical Specification 3.1.3.6. Technical Specification 3.1.3.7 imposes similar limits on the insertion of PLCEAs; it is, therefore, necessary to also suspend these limits to perform physics tests.

Basis for Proposed No Significant Hazards Consideration Determination: The NRC staff proposes that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this finding is given below.

(a) Suspending the limits on PLCEA insertion allows for measurement of data necessary to verify proper operation of the Core Protection Calculators (CPCs) following a refueling of the reactor core. Because the tests which rely on the SPECIAL TEST EXCEPTIONS in Specification 3.10.2 are relatively short in duration, core parameters related to the safety analyses are not adversely affected. Therefore, this change does not significantly increase the probability or consequences of any accident previously evaluated.

(b) Insertion of the PLCEAs beyond the limits specified in the proposed change to Technical Specification 3.1.3.7 is required to verify certain assumptions necessary to complete the Cycle 2 safety analyses. These tests are required to verify the safety analyses assumptions and are relatively short in duration. Core parameters related to the safety analysis are not adversely affected. No new systems, failure modes or plant perturbations from any previously analyzed are introduced. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(c) The limits imposed on PLCEA insertion, which are more restrictive than those currently allowed, are used as inputs to the Cycle 2 safety analyses. All safety analyses assumptions are still valid when this special test exception is invoked because the surveillance requirements associated with this specification confirm that the core parameters related to safety are not adversely affected. Therefore, this change does not involve a significant reduction in the margin of safety.

As the change requested by the licensee's June 24, 1986 submittal satisfies the criteria of § 50.92, it is concluded that: (1) The proposed changes do not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

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Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 15, 1986.

Description of amendment request: Technical Specification 3.1.3.7 imposes limits on the allowable position of the Part Length Control Element Assembly (PLCEA) groups and on the allowable burnup span during which the PLCEA may remain within a given position range during Modes 1 and 2. Technical Specification 3.1.3.7 currently states that the PLCEA groups shall be restricted in position between 0"—17" withdrawn (i.e. between fully inserted and 11% withdrawn) for a maximum period of seven Effective Full Power Days (EFPD) out of any 30 EFPD period. The proposed change would replace the entire current technical specification and would add a Figure 3.1–3 which: (1) allows a maximum PLCEA insertion to 75% withdrawal (112.5 inches) during long term steady state operation above 20% thermal power, (2) allows any PLCEA insertion below 20% thermal power (i.e. PLCEA insertion below 20% power has negligible effect on unexpected reactivity additions, axial flux perturbations, and axial peaking), and (3) allows a maximum transient PLCEA insertion to 15% withdrawal (22.5 inches) between 50% and 20% thermal power for a specified limited burnup duration. The more restrictive PLCEA insertion limits provided by the proposed changes to the Technical Specification, including Figure 3.1–3, will be used in the Cycle 2 Safety Analysis.

Surveillance Requirement 4.1.3.7 currently requires determination of the PLCEA group positions at least once per 12 hours. The proposed change would replace the entire current surveillance requirement with an equivalent requirement to determine that the PLCEA groups are within the transient insertion range once each 12 hours.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes that this change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed finding is given below.

(a) There are two reasons for changing the technical specification. First, the proposed change, by imposing more restrictive insertion limits, will provide an improvement in the potential consequences of a PLCEA drop or slip

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which initiates from an allowable inserted position. Second, the proposed change adds a more explicit Limiting Condition for Operation to clarify the allowable duration for the PLCEA to remain within defined ranges of axial position. Therefore, this proposed change will provide additional assurance that adverse axial shapes and rapid local power changes which affect radial power peaking factors and DNB considerations do not occur as a result of the part length CEA group being positioned in the same axial segment of fuel assemblies for an extended period of time during operation. Because the proposed change will impose more restrictive limits along with surveillance requirements to ensure adherence with the insertion limits, this proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(b) For the same reasons given in (a), this proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

(c) For the same reasons given in (a), the proposed change does not involve a significant reduction in the margin of safety.

Moreover, adherence to this proposed technical specification will: (1) Eliminate the potential for unexpected reactivity addition which otherwise might occur should a PLCEA drop or move from a less to a more reactive axial position, (2) prevent undesirable perturbations on the axial distribution of core burnup due to PLCEA insertion, and (3) prevent unacceptably high axial peaking upon subsequent movement of the PLCEA groups.

As the change requested by the licensee's July 15, 1986 submittal satisfies the criteria of 50.92, it is concluded that: (1) The proposed changes do not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

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Attorney for Licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St. NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 29, 1986.

Description of amendment request: The proposed change would revise ACTION statements "c" and "d" to Technical Specification 3.1.3.1, "Movable Control Assemblies, CEA Position". The reason for this change is to impose new requirements on power reduction during the period from 15 minutes to one hour following a full or part length CEA misalignment. This change would reduce the inward CEA deviation penalty factors currently provided by the CEA Calculators (CEACs) to the CPCs to a value of 1.0. The reduction of these penalty factors will reduce the sensitivity of the CPCs to CEA drops and to electronic noise which can be interpreted in the logic as a major CEA deviation and will therefore eliminate some unnecessary reactor trips.

The margins on DNBR and Linear Heat Rate (LHR) which now exist will be maintained after the reduction in the penalty factors. Currently, if an inward CEA deviation event occurs, the CPC algorithm applies two penalty factors to the DNBR and LHR calculations. The first, a static penalty factor is applied upon detection of the CEA deviation event. The second, a xenon redistribution penalty, is applied linearly as a function of time over a one-hour period following the detection of the deviation.

In the proposed change, the margin reserved by the DNBR Limiting Condition for Operation (LCO) is based on the maximum inward CEA deviation (i.e., the CEA Drop) and therefore accommodates changes in the static power distribution. This margin also accommodates the first 15 minutes of xenon redistribution effects for the limiting CEA drop. Thereafter, for up to one hour after the deviation event, the proposed change to this specification imposes a core power reduction to accommodate xenon redistribution effects occurring beyond the first 15 minutes. Therefore, the combination of the margin reserved by the DNBR LCO and the required core power reduction starting 15 minutes after the deviation is sufficient to maintain the required margins to DNB and LHR for the first hour after detection of the event. Thereafter, the current action statements in the Technical Specification apply.

Basis for proposed no significant hazards considerations determination: The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) Reducing the static penalty factor generated by the CEACs to a value of 1.0 is accounted for by setting aside the margin in the DNBR LCO. This ensures that the Specified Acceptable Fuel Design Limits (SAFDLs) on both DNBR and LHR can be maintained for up to 15 minutes following the limiting CEA drop event without any reduction in core power. Similarly, reducing the xenon redistribution penalty factor to a value of 1.0 is accounted for by imposing new requirements for core power reduction starting 15 minutes after the postulated CEA drop and continuing for an additional 45 minutes. Thereafter, all other ACTION statements in the Technical Specifications are applicable. Adhering to the proposed power reduction requirements ensures that the power peaking resulting from xenon redistribution will not result in a violation of the SAFDLs. Therefore, since the consequences of the limiting CEA drop event are still acceptable, the proposed change will not significantly increase the probability or consequences of any accident previously evaluated.

(2) The proposed change does not affect the logic used by the CPCs to mitigate the consequences of any Anticipated Operational Occurrence (AOO). Since the proposed change will not affect the ability of the CPCs to perform their design function of protecting the core against a violation of the SAFDLs (during an AOO), it will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) In the proposed change, credit is taken for available margin in the DNBR LCO. By staying within this LCO, there is margin to accommodate the first 15 minutes of the most limiting CEA drop. Thereafter, the proposed change requires a core power reduction to accommodate the increased power peaking associated with xenon redistribution in the core. Therefore, the combination of additional margin reserved in the DNBR LCO and the required power reduction ensures that the proposed change will not involve a significant reduction in the margin of safety.

As the change requested by the licensee's August 29, 1986 submittal satisfies the criteria of 10 CFR 50.92(c), it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

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Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW. Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 10, 1986.

Description of amendment request: Item 6.2.2.d of the Administrative Controls section of the Waterford 3 Technical Specifications defines responsibilities to be observed during any core alterations. The intent of this specification is to require one licensed Senior Reactor Operator (SRO) to supervise/observe the core alterations. When core alterations are being performed by a licensed operator, the present Technical Specification allows the supervising SRO to be remote from the core alteration activities (with the understanding that direct communications are maintained). When non-licensed personnel are performing the core alterations, the intent of the present Technical Specification is to require the supervising SRO to be present during the alterations to also perform a direct observation function. However, the wording in the present Technical Specification could be misconstrued to require two SRO's (one to observe and one to supervise) for the case of non-licensed personnel performing the core alterations. The proposed change will resolve any ambiguity in SRO requirements for core alterations.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration. As required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is as follows.

(1) The existing Technical Specification is ambiguous. This change is intended solely for clarification and as such, makes no changes in the operation of the facility. Therefore, this proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) As stated above, no change in operation will result from this change. In addition, no new systems, modes of operation, failure modes or plant perturbations are created with this change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) In providing clarification of responsibilities during core alterations, the actual activity of performing the alterations remains unchanged. Therefore, the proposed change will not involve a reduction in a margin of safety.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change to the Technical Specification: for example, a change to achieve consistency throughout that Technical Specifications, correction of an error, or a change in nomenclature.

In this case, the proposed change is similar to Example (i) in that the change is intended only for purposes of clarifying potentially ambiguous wording and will impose no change on current or future operations of the Waterford facility.

As the change requested by the licensee's June 24, 1986 submittal satisfies the criteria of 50.92, it is concluded that: (1) the proposed changes does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

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Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 12, 1986 and September 29, 1986.

Description of amendment request: The proposed change would revise ACTION Statement "c" of Technical Specification 3.3.3.8, "Fire Detection Instrumentation" and the associated Table 3.3–11. The proposed change to Table 3.3–11 will divide the present annulus fire zone RCB 1–1 into two distinct fire zones RCB 1–1 and RCB 1–2, with each zone containing approximately half of the smoke detectors presently assigned to RCB 1–1 This change is reflected in a new ACTION STATEMENT "c" in Technical Specification 3.3.3.8 which will require that with less than one annulus zone of smoke detectors operable, one zone must be restored to operable status within one hour or an eight-hour fire watch must be implemented except during the period when the shield building ventilation system surveillance testing is in progress.

Basis for proposed no significant hazards considerations determination: The annulus is an open area, approximately four feet wide, located between the primary containment steel wall and the secondary containment concrete wall of the Reactor Containment Building (RCB). Its function is to prevent the escape of contaminents by providing a space which can be maintained at a negative pressure around the primary reactor area.

Equipment within the annulus consists of the smoke detection system, communication and lighting fixtures, and the piping and ventilation ducts of

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the annulus negative pressure system. All of the electrical cables for these systems are routed in conduit. Other components within the annulus are those which pass through from an adjoining building into the primary containment area. Such components include the fuel transfer canal from the Fuel Handling Building, personnel accessways from the Auxiliary Building and piping from the main steam, feedwater and purge systems. Electrical components, including power, instrumentation and control cables, are enclosed within metal sleeves.

The only insitu combustibles within the annulus are the smoke detectors themselves which represent a negligible combustible loading. All cable in the annulus is routed in conduit or metal sleeves. All cabling meets noncombustible test requirements of IEEE Standard 383, "IEEE Standard of Type Test of Class 1E Electrical Cables, Field Splices and Connections for Nuclear Power Generating Stations." All insulation and jacketing material for piping penetration assemblies passing through the annulus is non-combustible. Transient combustibles during repair or maintenance operations are strictly controlled by administrative procedure.

The annulus is void of heat and/or electrical spark generating equipment, i.e., potential ignition sources are absent. Maintenance and/or repairs which involve hot work are strictly controlled in accordance with administrative procedures.

An ionization smoke detection system is provided within the annulus. The system consists of 23 detectors encircling the −4' elevation, 23 detectors encircling the +21' elevation and 23 detectors encircling the +46' elevation. Detection alarm and trouble annunciation are provided in the Control Room on a local panel and the Master Remote Control Panel. The proposed change will divide the detection zone listed in Table 3.3–11 into two fire zones. One zone will consists of the upper (+46') string of detectors and half of the middle (+21') string. The second zone will comprise the lower (−4') string of detectors and half of the middle (+21') string.

The annulus smoke detectors, particularly the upper string, have had a tendency to spuriously alarm. This problem may be caused by dust accumulating on the detectors. Due to the high radiation environment at the upper string during power operation, the actual cause and resolution of the spurious alarms cannot be determined except during an outage.

The proposed change is requested for two reasons. First, during plant operation the environment within the annulus is not recommended for personnel entry. Temperatures range from 100 °F to 120 °F, radiation dose levels can be in excess of 100 mrem/hr., airborne contamination exists and oxygen levels are reduced to a level requiring SCBAs to be worn. ALARA (As Low As Reasonably Achievable) and other personnel safety concerns outweigh the need for an eight-hour fire watch in an area with no combustible loading or ignition sources when half the smoke detectors are operable.

Second, the requirement for an eight-hour watch conflicts with other Technical Specification surveillance requirements that could ultimately force the plant to shut down due to a spurious fire alarm. Specifically, Surveillance Requirement 4.6.6.1 requires that the shield building ventilation system be demonstrated operable. This surveillance, to be performed once every 31 days, requires the containment building to remain closed for ten continuous hours. Should the annulus fire detectors spuriously alarm near the end of such a 31-day period (and cannot be repaired due to the high radiation environment), the eight-hour fire watch will not allow a continuous 10-hour period for the shield building ventilation system test, thus mandating a plant shutdown, as required by Technical Specification 3.6.6.1.

The NRC staff has determined that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed change will still require that approximately half of the annulus smoke detectors remain operable in the absence of an eight-hour fire watch. The annulus region contains no combustibles (with the exception of the smoke detectors, themselves), nor does it contain potential ignition sources. The proposed change will not significantly increase the probability or consequences of an annulus fire. Therefore, the proposed change will not significantly increase the probability or consequences of any accident previously evaluated.

(2) The proposed change maintains fire detection capability within the annulus when a fire watch is not required. No combustible or ignition sources are introduced by the change, nor are new components or modes of operation introduced. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change preserves the capability to detect annulus fires. It does not change the total number of smoke detectors; it divides the fire zone into two fire zones. Therefore, coupled with the absence of combustible and ignition sources, the proposed change will not involve a significant reduction in the margin of safety.

As the change requested by the licensee's submittals dated September 12 and September 29, 1986 satisfy the criteria of 10 CFR 50.92(c), it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92(c); (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

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NRC Project Director: George W. Knighton.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 26, 1986.

Description of amendment request: The amendment would delete Technical Specification 3/4.3.3.7.8 "Chlorine Detection System" and associated Bases.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed Amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its June 26, 1986 request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on March 6, 1986 (51 FR 7744). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration (vi) is a change which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the component system specified in the Standard Review plan (NUREG–0800). The proposed change would delete the requirements for chlorine detectors in the outside air intake duct of the control room heating, ventilating and air conditioning system. These chlorine detectors automatically close a damper in the air intake duct if chlorine concentration exceeds the trip setpoint of the detectors. The licensee has estimated the probability of occurrence of an offsite chlorine accident from barge traffic on the Mississippi River to be approximately 10^{-7} per year, which meets the acceptance criterion given in the Standard Review Plan (SRP) Section 2.2.3 "Evaluation of Potential Accidents". The SRP states that such offsite hazards do not need to be considered as design basis events if their expected rate of occurrence is less than 10^{-6} per year. Onsite liquid chlorine is stored in 150-pound cylinders at four different locations. The location closest to the reactor control building is approximately 225 meters away from the building. This complies with Regulatory Guide 1.95, Position 1 (referenced in Standard Review Plant Section 6.4, "Control Room Habitability System") which recommends that liquid chlorine in quantities greater than 20 pounds be stored at least 100 meters away from the reactor control building. The control room is provided with the capability for manual isolation thus complying with the guidance in Regulatory Guide 1.95, Position 2, which recommends such capability for 150-pound cylinders stored on site. Using methodology in NUREG–0570, "Toxic Vapor Concentrations in the Control Room Following a Postulated Accidental Release", and diffusion calculations from Regulatory Guide 1.78 (Referenced in SRP 6.4), the licensee calculated the consequences of a postulated failure of a chlorine cylinder, and found that the chlorine concentration inside the control room would be well below the toxicity guidelines of Regulatory Guide 1.78. Because the results of the deletion of chlorine detectors from the design are clearly within all the applicable acceptance criteria in the Standard Review Plan, the proposed change is found to be similar to example (vi) in the Commission guidance (51 FR 7744).

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

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NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 12, 1986.

Description of amendment request: This amendment would add maintenance and surveillance requirements for the Transamerica Delaval, Inc. (TDI) emergency diesel generators as an attachment to the Operating License. In addition, License Condition 2.C.(25)(b) would be changed to reference the new requirements. License Condition 2.C.(25)(b) now requires that recommendations from the TDI Owners Group Program applicable to GGNS Unit 1 and MP&L's actions in response to this program be submitted for review and approval prior to startup following the first refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on March 6, 1986 (51 FR 7744). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration, (ii), is a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. The proposed amendment is similar to this example. The revised License Condition 2.C.(25)(b) and the referenced attachment would constitute controls on maintenance and surveillance requirements for the TDI emergency diesel generators in addition to those presently included in the Technical Specifications. The present License Condition 2.C.(25)(b) has been fulfilled by the licensee's June 7 and August 13, 1986 submittals regarding Design Review/Quality Revalidation (DR/QR) inspections recommended by the TDI Owners Group and by the July 18 and September 12, 1986 submittals regarding maintenance and surveillance requirements recommended by the TDI Owners Group. Because the present License Condition 2.C.(25)(b) has been fulfilled and the proposed amendment would add new controls or surveillance and maintenance for the TDI emergency diesel generators, the changes in this

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proposed amendment are similar to example ii of the Commission's examples (51 FR 7744).

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 15, 1986.

Description of amendment request: This amendment would change the Technical Specifications by adding three containment isolation valves to Table 3.6.4-1; one inboard valve in the post accident sampling system connection to Penetration No. 71B, and one inboard and one outboard valve in the test line to Penetration No. 71B.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the Federal Register on March 6, 1986 (51 FR 7744). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration, (ii), is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed change is similar to this example because the addition of the three isolation valves in Table 3.6.4-1 results in additional limiting conditions for operation of the plant. Technical Specification 3.6.4 requires that valves listed in Table 3.6.4-1 must be operable when the plant is in hot shutdown, startup or power operational conditions.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Lieberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC. 20036.

NRC Project Director: Walter R. Butler.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 5, 1986.

Description of amendment request: The amendment would modify the Technical Specification (TS) to reflect the removal of the reactor vessel head spray system. The spray nozzle within the reactor vessel, the head spray piping between the reactor vessel and the refueling bulkhead, and the containment isolation valves (RHR-MOV-32 and RHR-MOV-33) will be removed. Blind flanges will be installed on the vessel head and bulkhead penetration flanges. The outboard isolation valve (RHR-MOV-33) will be replaced by a welded cap. The proposed changes to the Technical Specifications would (1) delete the operability and surveillance requirements for containment isolation valves RHR-MOV-32 and RHR-MOV-33, (2) delete the aforementioned valves from Table 3.7.1 which identifies the primary containment isolation valves, (3) delete the aforementioned valves from Table 3.7.4 which identifies the testable containment penetrations associated with the isolation valves, and (4) delete the head spray function from the listing of containment isolation groups in Table 3.2.A.

Basis for proposed no significant hazards consideration determination: The reactor vessel head spray system is part of the Residual Heat Removal (RHR) System. It was provided for the purpose of facilitating plant shutdown by aiding reactor vessel head cooldown. At Cooper Nuclear Station and other similar facilities, head spray has proven unnecessary. Removal of the head spray system will decrease maintenance requirements and reduce personnel radiation exposure.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of the proposed amendment with respect to the Commission standards:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change will decrease the probability of a leak from the reactor coolant system and reduce the potential for a small break loss of coolant accident. Also, since blind flanges and welded-in pipe caps are less subject to leakage and not subject to failure-to-close, as are motor-operated valves, primary containment integrity is enhanced. Since no credit is given to reactor head spray in the facility safety design basis for accident mitigation, the modification does not impact the consequences of a previously evaluated accident.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The capped-off piping outside the drywell will not be physically or functionally connected to any system, component, or equipment in a manner which could create a new or different kind of accident. Due to the welded-in cap, the remaining piping will be dead-ended to flow. Primary containment integrity will be insured by performance of 10 CFR 50 Appendix J leakage tests.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The head spray piping penetration will continue to be testable as a spare penetration and subject to local leak rate test requirements. The head spray nozzle and piping have no safety function and their removal will not affect the capability of the remainder of the RHR system to perform its safety function. The proposed modification will, in fact, improve safety by slightly reducing LOCA potential and improving containment integrity. Therefore, the proposed amendment involves no significant reduction in a margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Daniel R. Muller.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 17, 1986.

Description of amendment request: The amendment would modify the Technical Specifications to (1) indicate that barrier fuel is now included in the reactor design, (2) revise Minimum Critical Power Ratio (MCPR) limits, and (3) specify a MAPHLGR reduction factor of 0.77 for single-loop operation with barrier fuel. The affected sections of the Technical Specifications are (1) Section 5.2.A "Major Design Features-Reactor", (2) Section 3.11.C "Minimum Critical Power Ratio" and (3) Section 3.11.A "Average Planar Linear Heat Generation Rate".

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include:

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

In the staff Safety Evaluation for Amendment 93, supporting the Cycle 10 reload, the use of barrier fuel was approved. The staff Safety Evaluation stated that use of barrier fuel has been previously approved and no further review of the fuel design is required. Although Amendment 93 approved the use of barrier fuel for future cycles, it did not actually amend the Cooper Technical Specifications to indicate actual installation of barrier fuel, as barrier fuel was not included in the Cycle 10 core design. The proposed amendment would specify the actual installation of barrier fuel in the upcoming Cycle 11 and future core designs.

In Amendment 94, single-loop operation was approved for the current and future cycles with the condition that the MAPHLGR be reduced by various factors depending on the types of fuel installed. A reduction factor for barrier fuel was not included in Amendment 94 since barrier fuel was not installed at the time. The proposed amendment would add a reduction factor of 0.77 for single-loop operation with barrier fuel. The barrier fuel MAPHLGR reduction factor is the same as for similar non-barrier fuel.

The revised MCPR figure would reflect the Cycle 11 reload transient analysis.

These changes are within the scope of criterion (iii). Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Daniel R. Muller.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: August 22, 1986.

Description of amendment request: The proposed amendment would add surveillance requirements to Technical Specification (TS) Section 4.4.5 as requested by the NRC staff in the Safety Evaluation transmitted with TS Amendment 73. Currently, the TS do not require a test to verify that the control room air treatment system can provide a positive pressure in the control room. The control room air treatment system is designed to provide a positive pressure in the control room during accident conditions. By maintaining the control room pressure positive compared to adjacent areas in order to assure that all leakage is out-leakage, control room habitability during accident conditions is assured.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards consideration as follows:

10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of this surveillance test to the technical specifications will verify the capability of the control room air treatment system to meet its intended design of providing a positive pressure in the control room under accident conditions. Therefore, adding this test to the technical specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1 in accordance with this proposed amendment will essentially remain the same. Additional testing of the control room air treatment system will not create the possibility of a new or different kind of accident from any accident previously evaluated. The test consists of simply reading pressure gauges at the control room boundary and will not

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interfere with operations or the function of safety systems.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

This additional testing will not decrease the margin of safety at Nine Mile Point Unit 1. Since similar testing was not previously required by our Technical Specifications, this addition to the surveillance requirements of our Technical Specifications will increase our ability to assess the functional operation of our control room air treatment system. According to our current Technical Specification Bases, the Control Room Ventilation System can maintain a "positive pressure" in the Control Room. This proposal changes the bases to indicate that the Control Room Ventilation System can maintain "one-sixteenth of an inch positive pressure" within the control room. Therefore, the margin of safety will not decrease.

Therefore, based on the above considerations, it has been determined that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW, Washington, DC 20006.

NRC Project Director: John A. Zwolinski.

Northeast Nuclear Energy Company, Docket No. 50-423, Millstone Nuclear Power Station, Unit 3 New London County, Connecticut

Date of application for amendment: September 5, 1986.

Description of amendment request: The amendment would revise Technical Specifications Sections 4.6.6.1, 4.7.7, 4.7.9 and 4.9.12 by replacing the 31-day requirement to use certified fan curves to verify building filtration system flow rates with a direct flowrate measurement and, deleting the 18 month requirement to verify the fan curves based on observed flow rates and pressure drops.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

This proposed amendment requires the filtration system flowrates to be verified within a range of a specific value. Presently the technical specifications require use of fan curves to verify system flowrates against the system pressure drop with no specific value given. Therefore, the proposed surveillance requirements are more stringent than those currently in the technical specifications.

Since the proposed amendment does not modify the surveillance frequency, the changes will not affect system reliability. Direct flow measurements will increase the accuracy of the flow verification. This will improve the surveillance test verification that system flow rates are within unit design parameters.

Based on this information, the frequency of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report is not increased.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Vincent S. Noonan.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: May 5, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to include the changes as a result of a detailed review of the TS that occurred following the 1985 refueling and recirculation piping replacement outage. Several of these changes are administrative in nature or are to clarify the interpretation of existing TS. Specifically, the changes are as follows:

(1) In Section 1.0.A, clarify the definition of "Alteration of the Reactor Core" by adding words, "with the vessel head removed and fuel in the vessel," to the end of the first sentence.

(2) In Section 2.3, page 17, delete the partial sentence in the first line of the first paragraph. These words should have been deleted with a previous license amendment request but were left through an oversight.

(3) In Table 3.1.1, "Reactor Protection System Instrument Requirements," move the reference to Note 4 from "Refuel" column to the "Trip Function" column and add the following note to the table on page 30: 9. High reactor pressure and main steam line high radiation are not required to be operable when the reactor vessel head is unbolted. Add a reference to Note 9 to the table entries for high reactor pressure and main steam line high radiation on pages 28 and 29.

(4) Delete Note 1 of Table 4.1.1 on page 33 and Note 1 of Table 4.2.1 on page 63a. Delete Figure 4.1.1 and correct the List of Figures to reflect deletion of this Figure. Delete all references to Note 1 on both tables and replace with a requirement for monthly surveillance. Delete those portions of the 4.1 and 4.2 Bases on pages 41-45 and 72-76 which refer to variable surveillance frequencies. These changes eliminate the options of extending the surveillance intervals to a maximum of 3 months by application of Figure 4.1.1.

(5) Add a Note 9 to Table 4.2.1 on page 63a to state "Testing of SRM Not-Full-In rod block is not required if the SRM detectors are secured in the full-in position." Also add a reference to Note 9 on page 61 under item 8 of Rod Blocks. Change the item to read, "SRM Detector Not-Full-In Position instead of, ". . . Note in Start-Up Position." Change the sensor check requirement from "Note 2" to "None."

(6) In Table 4.2.1, expand the headings for main steam, HPCI, and RCIC isolation by adding a reference to the containment isolation group and add a new category for Group 2 and Group 3 containment isolation. Delete Note 7 and all reference to Note 7 in the Table. Add a new Note 10 to state, "Uses contacts from scram system. Tested and calibrated in accordance with Table 4.1.1 and 4.1.2." Add a reference to Note 10 for containment isolation Group 2 reactor low water level and drywell high pressure surveillance.

(7) Revise the Bases section to explain the surveillance testing requirements in Section 4.0 of the TS and add information to assist in understanding and interpreting this section.

(8) In Table 3.2.5, "ATWS Instrumentation Requirements" revise Note 1 to read: "When one of the two trip systems is made or found to be inoperable, restore the inoperable trip system to operable status within 14 days or place the plant in the specified required condition within the next eight hours. When both trip systems are inoperable, place the plant in the specified required condition within eight hours unless at least one trip system is sooner made operable."

(9) Revise Section 3.3.D, " Control Rod Accumulators," to clarify the operability requirements for control rod accumulators. Delete the last paragraph of Specification 3.3.D and redesignate items 1 and 2 under 3.3.D as items 3.3.D.1 (a) and (b). Reword the opening paragraph to state, "Control rod accumulators shall be operable in the Startup, Run, or Refuel modes except as provided below." Add Specification 3.3.D.2 as follows:

In the Refuel Mode, a rod accumulator may be inoperable provided:

(a) All fuel is removed from the cell containing the associated control rod, or

(b) The one-rod-out refuel interlock for the associated rod drive is operable.

(10) Revise Sections 3.5.D.1, "High Pressure Coolant Injection (HPCI) System," Section 3.5.E.1, "Automatic Pressure Relief System (APRS)," and Section 3.5.F.1, "Reactor Core Isolation (RCIC) System," so that the operability of these systems is not required above 150 psig during reactor coolant system leakage and hydrostatic tests.

(11) In Section 3.7.A.1, "Primary Containment," reword the first paragraph to allow draining of the suppression chamber when irradiated fuel is not in the reactor vessel as follows, "When irradiated fuel is in the reactor vessel and either the reactor coolant temperature is greater than 212° F or work is being done which has the potential to drain the vessel, the following requirements shall be met except as permitted by Specifications 3.5.G.4. . . ."

(12) In Section 3.7.C.2.b, delete the phrase ". . . and the reactor coolant system is vented," since the requirements for the reactor to be vented as a condition for not requiring secondary containment integrity conflicts with normal and reasonable activities during outages.

(13) In Section 3.10.E, "Extended Core and CRD Maintenance", delete Specification 3.10.E.2 and redesignate Specification 3.10.E.1 and 3.10.E. Reword the first portion of the Specification to read, "More than one control rod may be withdrawn from the reactor core during outages provided that, except for momentary switching to the startup mode for interlock testing, the reactor mode switch is locked in the refuel position. The refueling interlock. . . ." Change "withdrawn control rod" to "control rod" in two locations. Existing TS 3.10.E.2 is totally redundant to TS 3.10.B and therefore unnecessary and this change also clears the conflict between existing TS 3.10.E.1 which requires the mode switch to be locked "Refuel," and TS 4.10.A, which requires weekly check of the refueling interlockes requiring switching momentarily to the "startup" mode.

(14) In Section 3.14," Accident Monitoring Instrumentation," clarify the operability requirements by revising the words "Whenever the reactor is in the startup or run mode," to "Whenever irradiated fuel is in the reactor vessel and reactor coolant water temperature is greater than 212° F." The revised wording allows testing and other normal operations during outages and is consistent with other accident mitigation system operability requirements (i.e., above 212° F) and NRC Standard TS. In addition, revise the notes to Table 3.14.1 to require placing the plant in the cold shutdown condition within 24 hours when required conditions of instrument operability are not satisfied.

(15) In Tables 3.14.1 and 4.14.1, add the operability and surveillance requirements for the suppression pool temperature monitoring instrumentation as required by the Mark I Containment Long-Term Improvement Program to accurately monitor suppression pool average temperature.

(16) In Table 4.14.1, "Minimum Test and Calibration Frequency for Accident Monitoring Instrumentation," provide additional notes to clarify sensor check requirements for reactor water level, SRV valve position pressure switches, and SRV valve position thermocouples as follows: (2) Once/month sensor check will consist of verifying that the pressure switches are not tripped. (3) Once/month sensor check will consist of verifying fuel zone level indicates off scale high. (4) Following every Safety Relief Valve actuation it will be verified that recorder traces or computer logs indicate sensor responses. Add a reference to Note 2 for SRV position pressure switches. Add a reference to Note 3 for reactor vessel fuel zone water level, and add a reference to Note 4 for SRV position pressure switches and thermocouples.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazard determiniation exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis using the standards in 10 CFR 50.92, about the issue of no significant hazards considerations. Therefore, in accordance with 10 CFR 50.92, the following analysis has been performed by the licensee.

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment would (1) clarify the definition of Core Alteration, (2) correct a typographical error in the Section 2.3 Bases, (3) correct and clarify the Startup Mode operability requirements for high drywell pressure, high reactor pressure, and main steam line high radiation, (4) delete the obsolete provisions of the Technical Specifications which allow surveillance intervals to be extended, (5) correct conflicts with the SRM-Not-Full-In rod block interlock and CRD maintenance, (6) correct and clarify the surveillance requirements for containment isolation instrumentation, (7) provide an additional section to the Bases related to general surveillance requirements, (8) correct the action statements for ATWS instrumentation to correspond with the as-installed logic, (9) clarify CRD accumulator operability requirements, (10) correct the HPCI, RCIC, and APRS operability requirements to permit reactor coolant system leakage and hydrostatic testing, (11) clarify the requirements for containment integrity when no fuel is in the reactor, (12) correct and clarify the relationship between secondary containment requirements and reactor venting, (13) clarify the requirements for extended CRD maintenance, (14) correct and clarify the operability conditions for accident monitoring instrumentation, (15) add Technical Specifications limiting conditions for operation and surveillance requirements for suppression pool temperature monitoring instrumentation, and (16) clarify the meaning of sensor checks for safety/relief valve positon pressure switches and reactor fuel zone water level instrumentation.

With the exception of item 2, which corrects a typographical error, and item 15, which adds Technical Specification requirements for a new instrumentation system, all of these changes have the intent of eliminating conflicts and interpretation problems in the Technical Specifications.

These items were identified during a detailed review of the Technical

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Specifications by senior SRO licensed members of the Monticello technical staff. This review was made to fulfill a commitment made to NRC Region III and NRC NRR management following the discovery during the last refueling and maintenance outage of a number of conflicts in the Technical Specifications.

With the exception of items 2 and 15, these changes improve the clarity and logic of the wording in the Technical Specifications. While some relief from impossible or unreasonable restrictions is granted in several instances (e.g. HPCI will no longer be required operable during hydrostatic tests—but because the vessel is filled solid with subcooled water during these tests it is an impossible condition to impose), the requested changes will not, in any significant way, change the way the plant is operated or maintained.

Item 2 is a purely administrative change. Item 15 adds new requirements for an instrumentation system installed to meet the requirements of the NRC approved Mark I Containment Long Term Program and NRC Regulatory Guide 1.97, Revision 2. It is a new instrumentation system which will enhance the information available to plant operators during normal and postulated accident conditions.

Since the requested changes will not, in any significant way, affect any aspect of plant operation or maintenance or relax, in any significant way, valid limitations placed on systems and equipment, they will not increase the probability of [or] consequences of any previously evaluated accident.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, item 2 is an administrative change which corrects a typographical error. Item 15 adds additional requirements to the Technical Specifications for a new instrumentation system. The remainder of the requested changes make desirable clarifications and remove conflicts from the Technical Specifications. Since the requested changes will not, in any significant way, affect any aspect of plant operation or maintenance or relax, in any significant way, valid limitations placed on systems and equipment, they will not create the possibility of a new or different kind of accident from any accident previously analyzed.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

As discussed above, the proposed changes involve the corrections of a typographical error, adding limiting conditions for operation and surveillance requirements for a new monitoring instrument, clarifications, changes which remove conflicts between various sections of the Technical Specifications, and a number of changes which eliminate impossible or unreasonable limitations on plant systems and components. This latter group of changes may be considered relief from restrictions imposed by the Technical Specifications, but in every case the proposed change will not in any significant way, change any aspect of plant operation and maintenance or relax, in any significant way, valid limitations placed on systems and equipment. Therefore no proposed change significantly reduces any margin of safety as described in the Technical Specifications or Updated Safety Analysis Report.

The Commission has provided guidance concerning the application of the Standards for determining whether a significant hazards consideration exists by providing certain examples of amendments that are considered not likely to involve significant hazards considerations. These examples were published in the Federal Register on March 6, 1986.

Item 2 of this application is representative of a purely administrative change presented as NRC example (i). Items 4 and 15 of this application are similar to NRC example (ii) since they consist of additional limitations, restrictions, or controls not presently in the Technical Specifications. The remaining items are similar to NRC example (i) since they can be described as corrections of errors, correction of nomenclature, and changes necessary to achieve consistency.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, based on this review, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 11, 1986.

Description of amendment request: The proposed amendment to the Technical Specifications (TS) revises Section 6.3 and Figure 6.2-1 to note the use of dual-role Senior Reactor Operator/Shift Technical Advisors (SRO/STA) in the operating shift organization. Provisions are maintained for optional use of a separate STA position and are also maintained for STA qualification of thirteen SRO's who have already completed the FitzPatrick Advanced Technical Training Program.

The proposed changes reflect the guidance contained in Generic Letter 86-04, "Policy Statement on Engineering Expertise on Shift," which specifies the qualifications of personnel eligible to fulfill the duty of STA and encourages licensees to utilize the dual-role position. In addition, several editorial changes have been proposed to reflect the above revisions.

Basis for proposed no significant hazards consideration determination. In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination, the staff must establish that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed TS revisions do not involve a physical modification to the plant, a change in operating procedures, or a change in limiting conditions of operation. Additionally, the proposed revisions will not result in a decrease in expertise on shift or a change in the minimum shift complement, and are consistent with the guidance provided in Generic Letter 86-04. On these bases, plant operation in accordance with the proposed amendment would satisfy the three criteria stated above.

Based on the foregoing, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Daniel R. Muller.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: July 22, 1985.

Description of amendment request: The licensee provided the following description:

A. Proposed Changes to Figure 6.2-1.

The proposed changes to figure 6.2-1 of the Indian Point 3 Technical Specifications illustrate the following changes in responsibility and management reorganization:

1. The Department of Quality Assurance and Reliability has been changed to the Department of Appraisal & Compliance Services. In addition, the title of the Vice President of Quality Assurance and Reliability has been changed to Senior Vice President—Appraisal and Compliance Services.

2. The Director of Safety and Fire Protection who previously reported to the Vice President—Quality Assurance and Reliability, now reports to the new position of Director of Security, Safety, and Fire Protection.

3. The Executive Vice President & Chief Engineer—Engineering and Design (formerly Executive Vice President—Chief Engineer) reports to the First Executive Vice President—Operations (formerly the First Executive Vice President and Chief Operations Officer). The position of First Executive Vice President and Chief Development Officer has been eliminated.

B. Proposed Changes to Figure 6.2-2.

The proposed changes to figure 6.2-2 reflect the change in title of the Senior Vice President—Quality Assurance & Reliability. In addition, a new position has been added. The Director—QA will report to the Senior Vice President—Appraisal and Compliance Services. Consequently, the QA Superintendent & Staff will now report to the Director—QA.

C. Proposed Changes to Subsection 6.5.2.2.

The proposed changes to subsection 6.5.2.2 of the Technical Specifications consists of the following changes:

1. The title of Vice President Nuclear Support—BWR has been changed to Vice President—Nuclear Operations;

2. The title of Vice President Nuclear Support—PWR has been changed to Vice President—Nuclear Engineering;

3. The title of Vice President—Generic Nuclear Support has been changed to Vice President—Nuclear Support.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of these changes:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The proposed changes described and evaluated above do not involve a significant increase in the probability or the consequences of an accident previously evaluated since the reorganization of the Authority is purely an administrative change and does not involve a hardware or procedural change to the facility. The chain of command from the President and Chief Operating Officer to the facility Resident Manager does not change in length or in personnel or SRC function. All personnel affected by the reorganization continue to meet the educational and experience levels described in the FSAR for positions previously having these responsibilities. This change will not adversely impact previously evaluated accidents.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

These changes do not create the possibility of a new or different kind of accident previously evaluated since the reorganization is designed to enhance the management and efficiency of the Authority. This cannot create the possibility of a new or different kind of accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response

The proposed changes do not involve a reduction in a margin of safety since all individuals affected by the reorganization described in this application continue to meet the educational and experience levels described in the FSAR for positions previously having these responsibilities.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Steven A. Varga.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: July 22, 1986.

Description of amendment request: The proposed amendment updates the Technical Specifications description of the Nuclear Operations organization for Public Service Company of Colorado. These changes do not directly affect plant operation.

Basis for proposed no significant hazards consideration determination: Since the proposed changes to Section 7.1 of the Fort St. Vrain Technical Specifications are administrative in nature, no significant safety hazards considerations are involved. Operation of Fort St. Vrain in accordance with the proposed changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. This change can be considered to come under example (i) of the examples provided by the Commission (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201-0840.

NRC Project Director: Herbert N. Berkow.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: October 14, 1985, as revised February 13, 1986. (This request completely supersedes an application dated June 27, 1984, as amended on December 24, 1984 which was noticed on February 27, 1985 [50 FR 8005].)

Description of amendment request: The proposed amendment would delete from the Rancho Seco Technical Specifications (TSs) all references to

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reactor vessel material surveillance. More specifically, TS Section 4.2.1 and Table 4.2-1 related to reactor vessel material surveillance and reporting requirements would be deleted, including the associated paragraph on supporting bases.

In addition, the proposed amendment requests withdrawal of the exemption from 10 CFR Part 50, Appendix H, contingent upon Commission approval of the Integrated Reactor Vessel Material Surveillance Program (IRVSP) documented in BAW-1543A, Revision 2, for Rancho Seco.

Basis for proposed no significant hazards consideration determination: In letters dated March 13 and May 3, 1985, the Commission concluded that the Babcock & Wilcox Owners Group (B&WOG) Materials Committee Report, BAW-1543, Revision 2, for an IRVSP was acceptable for reference in licensing applications.

Furthermore, in another letter to B&WOG dated May 8, 1985, the Commission stated any applicable licensee may formally request specific approval of the IRVSP in accordance with Section II.C of Appendix H, 10 CFR Part 50; and with such a request, each licensee may also submit a license amendment to remove the current reactor vessel material surveillance requirements from their TSs.

Following the guidance established by the aforementioned letters, the licensee has requested approval of the B&WOG IRVSP for Rancho Seco and has submitted a license amendment to delete the associated TS requirements. Additionally, the licensee has requested withdrawal of the exemption from 10 CFR Part 50, Appendix H, upon Commission approval of IRVSP for Rancho Seco.

In the proposed license amendment, the licensee maintains that operation of Rancho Seco in accordance with the proposed TS changes, to delete all references to the current reactor vessel material surveillance requirements, does not involve significant hazards considerations. This conclusion was based upon a licensee evaluation of the criteria for no significant hazards considerations prescribed by 10 CFR 50.92(c), which requires that a proposed amendment:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated, or

(2) Would not create the possibility of a new or different kind of accident from any accident previously evaluated, or

(3) Would not involve a significant reduction in a margin of safety.

The Commission's staff has reviewed this proposed amendment and concurs with the licensee's conclusion of no significant hazards considerations. Removing reactor vessel material surveillance requirements from the TSs does not involve a change in system(s) configuration or operation of Rancho Seco. As such, it does not increase the probability or consequences of an accident, nor does it introduce the possibility of a new or different kind of accident. The Rancho Seco reactor vessel material surveillance program will be conducted in compliance with 10 CFR Part 50, Appendix H. Development of TS pressurization, heatup and cooldown limitations are based upon reactor vessel surveillance capsule analysis. There will be no significant reduction in the margin of safety because capsule analysis and the methodology for developing TS limitations are not appreciably changed by this amendment. Therefore, the Commission's staff proposes to determine that this application for amendment does not involve significant hazards considerations.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: John F. Stolz.

Southern California Edison Company, et al, Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: June 13, 1986 (PCN-217).

Description of amendment request: The fuel handling building isolation system (FHIS) is designed to prevent the release of radioactivity from the fuel handling building (FHB) in the event of a fuel handling accident. The FHIS is actuated by high radiation level in the FHB, as detected by an airborne radiation monitor that measures noble gas activity. The current setpoint (130 cpm above normal background) has on several occasions been exceeded due to normal fuel handling activities in the FHB.

The proposed change would modify Table 3.3-4 of Technical Specification 3/4.3.2, "Engineered Safety Features Actuation System (ESFAS) Instrumentation", which provides a listing of trip values for various ESFAS instrumentation. Specifically, the change would revise the allowable noble gas alarm setpoint in Table 3.3-4 for the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 fuel handling buildings. The proposed change would require that the trip setpoint be set "sufficiently high to prevent spurious alarms/trips, yet sufficiently low to assure an alarm/trip if a fuel handling accident should occur." A specific value for the setpoint was not proposed, because the background radiation level in the FHB will change with time as fuel is moved into and out of the FHB. The proposed wording will allow the licensee to select the appropriate setpoint for a given background level.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed setpoint change would not involve a significant increase in the probability or consequences of the fuel handling accident previously evaluated. This proposed change will impose a new administratively controlled alarm setpoint high enough to prevent any spurious alarms resulting from normal fuel handling activities and yet sufficiently low to assure that the fuel handling isolation system (FHIS) will properly actuate in the event of a fuel handling accident. This requirement is similar to that used for the containment purge isolation system.

A study has been performed by the licensee to justify the proposed setpoint change. The study shows that the monitor response resulting from a design basis fuel handling accident of sixty (60) broken fuel rods is of the order of 497,000,000 cpm. A less severe accident involving only sixteen (16) failed fuel rods will give rise to 126,000,000 cpm. Thus, a conservative value for the setpoint can be determined which is greater than the highest ambient background level but well below the calculated monitor response to a fuel handling accident. This value would ensure early activation of the FHIS in the event of a fuel handling accident and would also eliminate nuisance alarms from either noise spikes or fuel handling operations. Thus, the revised setpoint

will not result in a reduction in the monitoring and isolation capability of the FHIS.

(2) No change to operating procedures for SONGS 2 and 3 is involved. Operations pertinent to fuel movement and reconstitution activities still fall within the scope of the existing fuel handling accident analysis. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed setpoint change would not involve a significant reduction in margin of safety even though it would increase the allowable technical specification alarm setpoint. The licensee's analysis of the monitor response to a fuel handling accident shows that the noble gas contamination levels under various accident circumstances far exceed ambient background levels at SONGS 2 and 3. A fuel handling accident will be detected by the FHB gaseous monitor with essentially the same level of confidence under the proposed change, because the revised setpoint will be maintained well below the radiation level that would result from a fuel handling accident.

As the change requested by the licensee's June 13, 1986 submittal satisfies the criteria of 10 CFR 50.92(c), it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assure that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impacts of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362z San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: August 22, 1986.

Description of amendment request: The proposed change would modify Technical Specification 3/4.9.6, "Refueling Machine." Specifically, the proposed change would revise the existing Limiting Conditions for Operation (LCOs) to reflect an increase of 200 pounds to the load limit for the refueling machine to accomodate the installation of a removable TV camera unit rather than a fixed TV camera on the refueling machine hoist box. The change would redefine the minimum capacity of the refueling machine from 3000 pounds to 3200 pounds. The overload cut off limit would also be changed to 3550 pounds instead of 3350 pounds.

Basis for proposed no significant hazards determination: The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The probability or consequences of an accident are not increased by the proposed change since the removable TV camera unit meets the design criteria for Control Element Assemblies (CEA) and fuel assembly handling equipment specified in the Final Safety Analysis Report (FSAR) for SONGS Units 2 and 3.

(2) The increase in load limits will accommodate the installation of the removable TV camera unit. Since the overload limit is active only when the fuel assembly is enclosed in the hoist box, no fuel damage is credible with respect to the proposed setpoint change. Also, the added weight of the removable TV camera does not exceed the capacity of the refueling machine hoist mechanism. Thus, the operation of the facility in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan; therefore, there is no reduction in the margin of safety previously established, since the operation of the refueling machine under the proposed LCOs will not present any increased potential for damage to CEAs or fuel assemblies, nor will it affect the existing safety analyses and design criteria.

As the change requested by the licensee's August 22, 1986 submittal satisfies the criteria of 10 CFR 50.92(c), it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: August 5, 1986.

Description of amendment request: The amendment would correct a clerical error, which has been incorporated into Amendment No. 93 to the Davis-Besse Technical Specifications (TSs), by inserting the word "or" after the words "within 7 days," in action statement "a" of Section 3.7.9.1.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7750). One of the examples (i) of actions involving no significant hazards considerations relates to amendments of a purely administrative change to TSs; for example, a change to achieve consistency throughout the TSs, correction of an error, or a change in nomenclature. The proposed revision would make the reporting requirements of Section 3.7.9.1 consistent with the reporting requirements of fire protection TS Sections 3.3.3.8.b, 3.7.9.2.a, and 3.7.10.a, and correct an error, which would match this example of an

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administrative change to TSs. The change would also make the reporting requirements consistent with requirements of the B&W Standard TSs.

On this basis, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Project Director: John F. Stolz.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendments request: August 29, 1986.

Description of amendments request: The proposed change would revise the NA-1&2 Technical Specifications (TS), Section 6 (Administrative Controls). Specifically, the proposed change would modify Section 6 as follows: (1) reflect a recent company reorganization in which the Quality Assurance (QA) organization will now report to the Senior Vice President—Engineering and Construction, instead of the Senior Vice President—Power Operations, (2) change the title of the QC Supervisors reporting to the Manager, QA from "Supervisors—Quality Control—Q.A. Activities" to "Supervisors Quality," (3) change the title of "Supervisor Health Physics" to "Superintendent—Health Physics," (4) change the title of "Director—Emergency Planning" to "Supervisor—Corporate Emergency Planning," and (5) change the facility organization chart to reflect the recent administrative title changes. Since the major emphasis of the company's nuclear program is on operations rather than construction, it is appropriate that the QA organization be realigned with construction to enhance the independence of the QA Organization. The remaining changes are purely administrative in nature involving changes in nomenclature as well as a change to achieve consistency with the NRC approved VEPCO QA Topical Report.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards by providing certain examples which were published in the Federal Register on March 6, 1986 (51 FR 7751). Example (i) states: "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, corrections of an error, or a change in nomenclature." The proposed change is enveloped by example (i) above, since the proposed change reflects the current reorganization of the Quality Assurance Organization to provide more emphasis on construction rather than operations and, also, to achieve consistency with the NRC approved VEPCO Quality Assurance Topical Report. It is noted that this change will enhance the independence of the licensee's Quality Assurance Organization. The other changes will provide consistency with the licensee's NRC approved Quality Assurance Topical Report and make administrative title changes to corporate and station organizations.

Accordingly, the Commission proposes to determine this change involves no significant hazards consideration.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Lester S. Rubenstein.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 12, 1986.

Description of amendment request: The proposed changes would revise the NA-1&2 Technical Specifications (TS) in order to allow the tie-in, startup, and operation of a replacement spray system for the existing Service Water Spray System (SWSS) and its related components. The replacement spray system now being installed has been designed to the original code requirements of the NA-1&2 SWS. Per the repair and replacement rules of ASME Boiler and Pressure Vessel Code, Section XI, the system will meet the requirements of the Nuclear Power Piping Code, ANSI (formerly USAS) B 31.7—1969 Edition with addenda through 1970.

The operating and design bases for the replacement system are consistent with the original spray system. Increased operating flexibility has been provided by utilizing eight individual arrays (as opposed to the four existing) which cover a larger area of the reservoir. Operating experience with the existing system has led to the incorporation of a winter bypass feature to improve operability during extreme winter weather. The replacement spray system design provides additional margin between design heat rejection capability and required heat rejection capability through improvements in piping layout. The materials of construction and arrangement of the piping and support system minimize and facilitate routine maintenance. Easy access to the piping and associated supports is provided to facilitate periodic inspection and surveillance activities.

The proposed changes to the NA-1&2 would modify several component and structure tabulations to allow operation and surveillance of a replacement SW spray array system. The need to revise the TS arises primarily from the addition of equipment (i.e. replacement of motor-operated valves, piping, instrumentation) and the SW valve house and tie-in vault.

TS 3/4.3.3 addresses various types of monitoring instrumentation. Section 3/4.3.3.7 discusses Fire Detection Instrumentation. Table 3.3-11 requires revision to include fire detection instrumentation in the new SW valve house. This instrumentation consists of temperature detectors of the rate-compensated, electric-contact type similar to those used throughout the plant in areas such as the normal switchgear room, cable-tray-spreading room, primary cable vault and tunnels, etc. The minimum number of operable heat detectors required in the valve house is four: two in the west room and one in each of the east rooms. A total of seven heat detectors will be installed which includes three in the west room and two in each of the east rooms. The heat detection system for the SW valve house has been designed in accordance with applicable NFPA Standards and is consistent with the requirements outlined in the NA-1&2 UFSAR Section 9.5.1 in terms of spacing and location.

TS 3/4.7.12 addresses settlement of Class 1 structures. The new SW valve house and tie-in vault need to be included in the Settlement Monitoring program. Table 3.7-5 requires revision to include these two structures. In addition to the Limiting Condition for Operation (LCO) listed in Table 3.7-5, the Bases section of 3/4.7.12 also requires revision to include the valve house and tie-in vault monitoring points and their associated limiting items.

Four settlement markers will be added to the valve house and tie-in vault.

Baseline elevations will be established for the points prior to final system tie-in. At intervals defined in the TS, the elevations of these points will be measured by accurate survey. The baseline elevations will be periodically compared to current values; if the change exceeds prescribed limits, appropriate action is taken. The settlement monitoring points, limiting values and monitoring frequencies for the SW valve house and tie-in vault are consistent with the requirements for other Class I structures and satisfy the requirements outlined in the bases of TS and the NA-1&2 UFSAR Section 3.8.4.

TS 3/4.7.13 addresses the groundwater level in the SW reservoir. Table 3.7-6 requires revision to show the location of Piezometer No. 18 at the new SW valve house. This location is currently monitored as part of 3/4.7.13. The change proposed here is to change the designation of this point from "SWPH, (Units 3 and 4)" to "SWVH, (Units 1 and 2)."

TS 3/4.3.1 "A.C. Sources" addresses the A.C. electrical power sources. Table 4.8-1 provides a listing of load sequencing timers and this table requires revision to include new timers for the SW reservoir discharge Motor Operated Valves (MOV's). This change incorporates a 15 second time delay between the occurrence of a Safety Injection (SI) signal and the actuation of the replacement spray array MOVs. All bypass MOVs will receive SI signals to "close" and all spray array MOVs will receive SI signals to "open." However, in order to reduce the negative starting effects these MOVs would have on the emergency electrical distribution system, a time delay to start has been incorporated into the design. Delaying the operation of the spray array and bypass MOV's 15 seconds would not detrimentally affect the SW system for the following reasons:

(1) The additional heat dissipation requirement (above normal heat load) on the SW system during the first 15 seconds following a SI signal is negligible with the delayed MOV starting.

(2) The most significant heat load generated from the accident unit and removed by SW originates from the Recirculation Spray (RS) coolers. The RS system does not function until t = 195 seconds after the accident when the inside recirculation spray pumps start, provided a Containment Depressurization Signal (CDA) is present.

TS do not specify engineered safety feature response times for the SW system, therefore, delaying the operation of the SW spray array and bypass MOV's for 15 seconds is justifiable in accordance with the above. Delaying the operation of these valves will have a positive effect on the station's electrical distribution system during accident scenarios (i.e., GCD-17 voltage profiles).

TS 3/4.8.2 "Onsite Power Distribution System" addresses the onsite power distribution system which must be operable. Table 3.8-2 identifies MOVs with thermal overload protectors and/or bypass devices. This table will be revised to reflect the addition of new MOVs. The table will also show that there are no bypass devices for these MOVs. In addition, since these valves are replacing the existing spray array motor-operated valves, the entries in the table for the existing MOV-SW200 A&B are being deleted.

The new valves meet or exceed the original design requirements of the existing valves and their design, including the motor thermal overload protection, and is consistent with the design basis of the SW system as outlined in the NA-1&2 UFSAR Section 9.2.1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed TS changes do not involve a significant hazards consideration because operation of NA-1&2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The replacement design and equipment (specifically, the fire detection instrumentation—Section 3/4.3.3.7, settlement markers and limits—Section 3/4.7.12, load sequence timers—Section 3/4.3.1 and motor operated valves with thermal overload protectors—Section 3/4.8.2) meet or exceed the original safety-related requirements of the existing SWS as noted above. Also, the change to TS 3/4.7.13 only involves a change in nomenclature;

(2) create the possibility of a new or different kind of accident from any accident previously identified. It has been determined that a new or different kind of accident will not be possible due to these changes. The design and operating bases of the SW replacement spray system are consistent with and meet or exceed the requirements of the existing system. No new accidents are introduced by the new design; or

(3) involve a significant reduction in a margin of safety. The margin of safety is not reduced since the replacement system serves the same purpose as the existing spray array system and the replacement design and equipment meet or exceed the original safety-related requirements of the existing SW system. The Limiting Condition for Operation and Surveillance Requirements of the TS sections 3/4.7.4 Service Water System and 3/4.7.5 Ultimate Heat Sink remain unchanged by the proposed modifications.

Therefore, the proposed changes meet the criteria specified in 10 CFR 50.92(c) and, thus, the NRC staff proposes to determine that the proposed changes involve no significant hazards considerations, and that operation of the facility in accordance with the proposed changes would not involve a significant hazards consideration.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Lester S. Rubenstein.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: August 22, 1986.

Description of amendment requests: The proposed changes would extend the duration of the Operating Licenses (DPR-32 and DPR-37) to 40 years from the date of issuance of the Operating Licenses. This request would allow for 40 full years of operation by changing the license expiration dates to May 25, 2012, for Unit 1 (DPR-32) and to January 29, 2013, for Unit 2 (DPR-37).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for

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determining whether a proposed license amendment involves significant hazards considerations. The licensee has reviewed its amendment request and determined that the proposed amendments would not:

1. . . . involve a significant increase in the probability or consequences of any accident previously evaluated since no changes are required to the design or operation of the station. This [sic] amendment[s] do not involve new or revised safety analyses, physical plant modifications, procedure changes, [Updated Final Safety Analysis Report] UFSAR Revisions or Technical Specification revisions. The proposed license extensions are within the original design considerations for the station[;] and the current surveillance, inspection, testing and maintenance practices provide assurance that degradation in plant equipment will be identified and corrected throughout the lifetime of the facility.

2. . . . create the possibility of a new or different kind of accident from any accident previously evaluated since no changes are required to the design or operation of the station.

3. . . . involve a significant reduction in a margin of safety since no changes are required to the design or operation of the station and since the amendment[s] do not involve new or revised safety analyses, procedure changes, UFSAR revisions or Technical Specification revisions. The current surveillance, inspection, testing and maintenance practices provide assurance that degradation in plant equipment will be identified and corrected throughout the lifetime of the facility.

Based on the above considerations, the licensee concluded that there is no significant hazards consideration associated with the proposed revision to Surry Operating Licenses. The staff has reviewed the licensee's no significant hazard determination and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested amendments involve no significant hazard considerations.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Lester S. Rubenstein.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301 Point Beach Nuclear Plants, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: August 26, 1986.

Description of amendments request: The proposed changes to the Technical Specifications would revise the surveillance requirements for main steam stop valves, main steam safety valves, and pressurizer safety valves. The periodicity for testing main steam safety valves and pressurizer safety valves would be changed from once each refueling to once every five years. The test conditions for main steam stop valves closure times would be changed from no-flow conditions to low-flow conditions based upon the minimal steam flow that may exist under the proposed hot initial test condition.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that the Commission may make a determination that a proposed amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has stated in support of the requested amendments that changing the main steam and pressurizer safety valve testing periodicity does not significantly increase the probability or consequences of an accident previously evaluated in that the periodicity requested is in compliance with the guidelines of a nationally accepted standard. The licensee also stated that the changing of the test conditions for main steam stop valve surveillance does not alter the initial conditions or consequences of the analyzed main steam line rupture accident as contained in the FSAR.

Regarding the second criterion, the licensee has stated that the changes are revisions to surveillance requirements and conditions. Thus, no new or different accident can be created as no changes or modification to the physical plant have occurred.

Regarding the third criterion, the licensee has stated that the changes would not involve a significant reduction in a margin of safety because the changes relative to main steam and pressurizer safety valve testing are a request for adherence to the guidelines of the ASME Code Section XI for inservice testing of safety valves. The purpose of this section of the Code is to ensure a sufficient margin of safety exists relative to the proper functioning of these components, verifiable through a specified testing periodicity. Also, no reduction in the margin of safety will occur with the new test conditions for main steam stop valve surveillance. Since the applicable accident analysis remains unchanged, the margin of safety remains unaffected.

On the basis of the above analysis, the licensee has determined that the proposed amendments would not involve a significant hazards consideration. The staff has reviewed the licensee's determination that the proposed amendments would not involve a significant hazards consideration. The staff feels that the licensee has correctly addressed the three criteria contained in 10 CFR 50.92 and, therefore, proposes to determine that the amendments would involve no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: George E. Lear.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301 Point Beach Nuclear Plants, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: August 29, 1986.

Description of amendments request: The proposed changes to the Technical Specifications (TS) would modify the limiting conditions for operation (LCO) of the component cooling water (CCW) system to correspond to changes in the system configuration in which another shared heat exchanger was added to the system. Specifically, the current TS require that a unit not be made critical unless both CCW heat exchangers which can be aligned to a unit are operable. This proposed change would allow one of three heat exchangers which can be aligned to a unit to be inoperable prior to startup.

A second change involves the number of heat exchangers which may be inoperable during power operation of either one or two units. The current TS allows one CCW heat exchanger to be out of service for 48 hours during power operation. The proposed change would allow two of the three heat exchangers which may be aligned to a unit to be inoperable for up to 48 hours.

A third change involves removing the limiting condition for operation based on one passive component other than a heat exchanger being out of service.

Basis for proposed no significant hazards consideration determination: The number of operable CCW heat exchangers per unit which would be required by the proposed TS is not different than would be required by the current TS if the system had not been modified to add an additional shared heat exchanger. Therefore, the proposed amendments would not involve an increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident than any accident previously evaluated, or involve a significant reduction in a margin of safety. On this basis, the staff proposes to determine that the proposed amendments would not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: June 30, 1986, as superseded September 2, 1986.

Brief description of amendment: The proposed amendments would revise the Station's common Technical Specifications (TSs) to support the operation of Oconee Unit 2 at full rated power during the upcoming Cycle 9. The proposed amendment request changes the following areas:

1. Core Protection Safety Limits (TS 2.1);
2. Protective System Maximum Allowable Setpoints (TS 2.3);
3. Rod Position Limits (TS 3.5.2); and
4. Power Imbalance Limits (TS 3.5.2).

To support the license amendment request for operation of Oconee Unit 2, Cycle 9, the licensee submitted, as an attachment to the application, a Duke Power Company (DPC) Report, DPC-RD-2007, "Oconee Unit 2, Cycle 9 Reload Report," dated June 1986. A summary of the Cycle 9 operating parameters is included in the report, along with safety analyses.

During the refueling outage, 117 fuel assemblies will be reinserted similar to those previously used, and 60 fuel assemblies will be discharged and replaced with new, but substantially similar, assemblies of the Mark BZ type. As in the previous cycle, Cycle 9 will utilize gray (less-absorbing) axial power shaping rods (APSRs) instead of the previously used black (highly-absorbing) APSRs. The use of the Mark BZ fuel assemblies and the gray APSRs was approved by the Commission's staff for use at Oconee Unit 1 during Cycle 9, in amendments dated November 23, 1984.

Date of publication of individual notice in **Federal Register:** September 11, 1986 (51 FR 32383).

Expiration date of individual notice: October 14, 1986.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: August 14, 1986.

Brief description of amendment: The proposed amendment would extend the surveillance interval from once per 18 months to once per fuel cycle, permanently for reactor vessel internals vent valves (RVVVs) and for Cycle 6 only for high pressure injection (HPI) and low pressure injection (LPI) pumps and valves.

Date of publication of individual notice in **Federal Register:** September 19, 1986 (51 FR 33322).

Expiration date of individual notice: October 20, 1986.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

GPU Nuclear Corporation and Jersey Central Power and Light Company, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment requests: September 5 and 9, 1986 (TSCR 153 and 147).

Brief description of amendment: The first proposed amendment would revise the footnote marked with an asterisk "*" to Table 3.1.1, Protective Instrumentation Requirements, of the Appendix A Technical Specifications (TS). When it is necessary to conduct tests and calibrations of the protective instrumentative channels in accordance with the TS, the licensee proposes that one channel may be made inoperable for up to 2 hours without tripping the channel's trip system. This is instead of the existing requirement which allows that channel to be inoperable without tripping the trip system for only up to 1 hour per month. This first amendment is in accordance with the licensee's application dated September 5, 1986, for Technical Specification Change Request (TSCR) No. 153.

The second proposed amendment would (1) increase the high drywell pressure trip setpoint from not greater than 2.4 psig to not greater than 3.5 psig and (2) add a bypass to the high flow trip of the "B" Isolation Condenser when initiating the alternate shutdown panel. The licensee is proposing to increase the value of the high drywell pressure trip setting in Table 3.1.1 of the TS. This applies to reactor scram, core spray initiation, containment spray initiation, containment isolation, automatic reactor vessel depressurization, Reactor Building isolation and the Bases in Section 3.1 of the TS for the table. For the bypass, the licensee is proposing to add a footnote "hh" stating that the trip function is bypassed upon initiation of the alternate shutdown panel to prevent a spurious trip of the "B" Isolation Condenser in the event of fire induced circuit damage. This second amendment is in accordance with the licensee's application for amendment dated September 9, 1986, for TSCR 147.

Date of publication of individual notice in **Federal Register:** September 17, 1986 (51 FR 32980).

Expiration date of individual notice: October 17, 1986.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 24, 1986, and supplemental letters dated August 4, 1986 and September 2, 1986.

Brief description of amendment: Technical Specification change to authorize an increase in the fuel enrichment limit.

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Date of publication of individual notice in **Federal Register:** September 11, 1986 (51 FR 32383).

Expiration Date of Individual Notice: October 14, 1986.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: February 7, 1986.

Brief description of amendments: Technical Specification (TS) 3.4.1.2 is revised to require all three reactor coolant loops to be operating in Mode 3 (Hot Standby) or that the rod control system be disabled. The existing Technical Specifications require only one coolant loop to be operating in Mode 3.

Date of issuance: September 9, 1986.

Effective date: September 9, 1986.

Amendment Nos.: 65 and 58.

Facilities Operating License Nos. NPF-2 and NPF-8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12223).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: January 24, 1986.

Brief description of amendment: The amendment revised the Technical Specifications to delete the tabular listing of shock suppressors (snubbers) in accordance with the Commission's guidance contained in Generic Letter 84-13.

Date of issuance: September 19, 1986.

Effective date: September 19, 1986.

Amendment No.: 100.

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 26, 1986 (51 FR 10453).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: May 21, 1986.

Brief description of amendment: The amendment revised the Technical Specification minimum level requirement for emergency feedwater (EFW) condensate storage tank T41B due to the substitution of the new seismically qualified, partially tornado protected EFW condensate storage tank T41B for the original non-seismic, non-tornado protected condensate storage tank as the primary EFW system water source.

Date of issuance: September 26, 1986.

Effective date: September 26, 1986.

Amendment No.: 101.

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27278).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Carolina Power and Light Company, Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: November 6, 1985.

Brief description of amendment: The amendment revises the Technical Specifications by eliminating the requirement for shutting down the ventilation system in the fuel handling building on a high radiation signal, reduces the waste gas decay tank radioactivity limit, and corrects the bases for the control of explosive gas mixtures in the waste gas decay tanks. The amendment also involves changes of an editorial nature.

Date of issuance: September 18, 1986.

Effective date: September 18, 1986.

Amendment No. 103.

Facility Operating License No. DPR-23. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1986 (51 FR 18680).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1986.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 6, 1986.

Brief description of amendment: The license amendment formalizes a requirement to perform a quadrant power tilt surveillance at least once per seven days. This surveillance test has been performed by administrative procedure at the above frequency since 1983, and is being formalized to satisfy a staff request made during the review of the Cycle 14 reload application. The surveillance requirement provides further assurance that the input assumptions of the transient analyses are valid.

Date of issuance: September 18, 1986.

Effective date: September 18, 1986.

Amendment No. 84.

Facility Operating License No. DPR-61. Amendment revised the technical specifications.

Date of initial notice in **Federal Register:** July 2, 1986 (51 FR 24252).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: August 6, 1986.

Brief description of amendment: Technical Specification 6.9.1(d) required the licensee to forward Monthly Operating Reports to the Director, Office of Management Information and Program Control within the Nuclear Regulatory Commission (NRC). As a result of NRC reorganizations, the addressee presently identified in the technical specifications is no longer applicable. This license amendment revises the current addressee to be consistent with the guidance found in the Standard Technical Specifications for this area.

Date of issuance: September 29, 1986.

Effective date: September 29, 1986.

Amendment No. 85.

Facility Operating License No. DPR-61. Amendment revised the technical specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30563).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 24, 1986, as supplemented June 30 and July 28, 1986.

Brief description of amendments: The amendments modify testing requirements for the diesel generators and the diesel generators' fuel oil storage requirements.

Date of issuance: September 15, 1986.

Effective date: September 15, 1986.

Amendment Nos.: 10 and 3.

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1986 (51 FR 22233).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: June 6, 1986.

Brief description of amendments: The amendments modify Technical Specifications to reflect the upgrade of the Reactor Coolant System Power Operated Relief Valves to safety grade for Catawba Unit 1.

Date of issuance: September 16, 1986.

Effective date: September 16, 1986.

Amendment Nos.: 11 and 4.

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 28996).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: June 6, 1986.

Brief description of amendment: The amendment permits an extension of time for the submittal of the steam generator tube rupture analysis.

Date of issuance: September 18, 1986.

Effective date: September 18, 1986.

Amendment No.: 12.

Facility Operating License No. NPF-35. Amendment revised the Operating License.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 28996).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Dates of applications for amendment: August 30, 1985, as supplemented December 13, 1985; July 22, 1985, as supplemented June 12, 1986; and January 10, 1986, as supplemented May 12, 1986.

Brief description of amendments: The amendments change the Technical Specifications to authorize use of the "Turbine Overspeed Reliability Assurance Program" for demonstrating operability of the turbine overspeed protection system, to increase the time during which an inoperable turbine stop valve instrument channel may be maintained in an untripped condition, and to increase the number of reactor coolant loops required to periodically be verified in operation in the hot standby mode.

Date of issuance: September 17, 1986.

Effective date: September 17, 1986.

Amendment Nos.: 62 and 43.

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Dates of initial notices in **Federal Register:** December 18, 1985 (50 FR

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51622); July 30, 1986 (51 FR 27283); June 18, 1986 (51 FR 22234).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: April 23, 1984.

Brief description of amendment: This amendment permits the operation of certain containment isolation valves when they would normally be required to be isolated, provided that a dedicated operator is posted to isolate the valve if necessary. A portion of the amendment request has been denied by the Commission. A Notice of Denial is being published separately in the **Federal Register.**

Date of issuance: September 16, 1986.

Effective date: September 16, 1986.

Amendment No.: 91.

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 21, 1984 (49 FR 45948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of application for amendments: April 15, 1986.

Brief description of amendments: The amendment updates TS Tables 3.7-1 and 3.7-4 to reflect the current plant design with respect to primary containment isolation valves (PCIVs). It also revises Section 3.7.D.1 to require that all PCIVs be operable.

Date of issuance: September 25, 1986.

Effective date: September 25, 1986.

Amendment No.: 129.

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27283).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: October 12, 1984.

Brief Description of amendment: The amendment revises the DAEC Technical Specifications to incorporate changes reflecting the elimination of the differential pressure system between the drywell and the wetwell of the DAEC Containment.

Date of issuance: September 19, 1986.

Effective date: September 19, 1986.

Amendment No.: 137.

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 31, 1984 (49 FR 50806).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: April 14 and May 12, 1986.

Brief description of amendment: License amendment changes Technical Specifications to add transfer switch to remote shutdown system controls, identify the plant exclusion area and gaseous effluents release points for Unit 1, revise the setpoint and instrumentation actuation values for the reactor core isolation cooling steam line high flow trip based on plant specific parameters, and makes administrative changes to correct errors.

Date of issuance: September 23, 1986.

Effective date: Changes on Technical Specification Pages 3/4 3-16, 3/4 3-88, B 3/4 3-2, 5-2, and 5-6 are effective upon issuance of the amendment. Changes on Technical Specification Page 3/4 3-71 are effective when equipment necessitating the changes on that page is installed and operable.

Amendment No. 19.

Facility Operating License No. NPF-29. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1986 (51 FR 18685) and June 4, 1986 (51 FR 20371).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1986

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 24, 1986.

Brief description of amendment: The amendment changes the Administrative Controls section of the Technical Specifications to clarify requirements relating to procedures.

Date of issuance: September 9, 1986.

Effective date: September 9, 1986.

Amendment No.: 101.

Facility Operating License No. DPR-62: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29004).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1986.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 28, 1985 as supplemented May 24, 1985, June 14, 1985, and July 3, 1986.

Brief description of amendment: The amendment changes the Technical Specifications in the following areas: (1) Standby Gas Treatment and Control Room Ventilation Systems, (2) Sample line isolation setpoint change (3)

Refueling interlocks (4) Typographical errors (5) Environmental Qualification deadline, and (6) Table of Contents correction.

Date of issuance: September 25, 1986.

Effective date: September 25, 1986.

Amendment No.: 102.

Facility Operating License No. DPR-62: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 31, 1985 (50 FR 31068).

The May 24, 1985 submittal was published as May 5, 1985. The July 3, 1986 submittal provided additional clarifying information and did not change the finding of the initial **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1986.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: February 21, 1986.

Brief description of amendments: The proposed changes would extend the expiration date for the Unit 1 Facility Operating License, DPR-42, from June 25, 2008 to August 9, 2013, and change the expiration date for the Unit 2 Facility Operating License, DPR-60, from June 25, 2008, to October 29, 2014.

Date of issuance: September 23, 1986.

Effective date: September 23, 1986.

Amendment Nos.: 79 and 72.

Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1986 (51 FR 18688).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

NRC Project Director: George E. Lear, Director.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 23, 1986, as revised on July 17, and August 29, 1986.

Brief description of amendments: These amendments revise the testing requirements for the required emergency diesel generators in accordance with Generic Letter 84-15. Additionally, plant specific Surveillance Requirements have been revised to more accurately consider unique plant systems.

Date of issuance: September 19, 1986.

Effective date: September 19, 1986.

Amendment Nos.: 60 and 30.

Facility Operating License Nos. NPF-14 and NPF-22: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29006).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1986.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 23, 1985, as supplemented January 31, 1986.

Brief description of amendments: The amendments change the Technical Specifications to increase the hydrogen concentration limit downstream of the off-gas recombiners to 4 percent (volume) and decreases the number of hydrogen analyzers required to be operational during power operation to one from the currently required two. In addition a revised definition for "Alteration of the Reactor Core" is approved.

Date of issuance: September 12, 1986.

Effective date: September 12, 1986.

Amendments Nos.: 121 and 125.

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 20, 1985 (50 FR 47868). The January 31, 1986 submittal provided additional clarifying information. It did not change the initial determination published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 9, 1985.

Brief description of amendment: The amendment deletes the requirement from the Technical Specifications for operation of the Auxiliary Building ventilation and charcoal filter adsorber system when the fuel being moved or stored in the spent fuel storage pool had decayed at least 60 days since irradiation.

Date of issuance: September 16, 1986.

Effective date: September 16, 1986.

Amendment No.: 19.

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12238)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

NRC Project Director: George E. Lear, Director.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 20, 1986.

Brief description of amendments: The amendments delete the maximum fuel rod weight limit of 1,766 grams of uranium from the Design Features Section of the Technical Specifications.

Date of issuance: September 15, 1986.

Effective date: September 15, 1986.

Amendment Nos.: 45 and 37.

Facility Operating License Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

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Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29014).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County, Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 25, 1986.

Brief description of amendments: The Technical Specifications (T.S.) were changed to include the reactor vessel level instrumentation system in the Accident Monitoring T.S.

Date of issuance: September 16, 1986.

Effective date: September 16, 1986.

Amendment Nos.: 46 and 38.

Facility Operating License Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 26, 1984 (49 FR 38410).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 23, 1986.

Brief description of amendments: The amendments extend surveillance frequencies and out of service times for the Reactor Trip System.

Date of issuance: September 17, 1986.

Effective date: September 17, 1986.

Amendment Nos.: 47 and 39.

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 2, 1986 (51 FR 24284).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County, Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: February 7, 1986.

Brief description of amendments: These amendments change Section 6.1.C.2 of Technical Specifications for Surry Unit Nos. 1 and 2 to specifically identify the Independent/Operational Event Review (IOER) Section of the Safety Evaluation and Control (SEC) group under the Vice President-Nuclear Operations as the organizational unit which would be responsible for providing the independent review of the activities designated. Prior to these amendments the Technical Specifications stated that the SEC group would have this responsibility.

Date of issuance: September 9, 1986.

Effective date: September 9, 1986.

Amendment Nos. 109 and 109.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12241).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1986.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: September 30, 1985 as modified August 22, 1986, wherein part of the proposed change was deleted.

Brief description of amendment: The amendment modifies portions of the Radiological Effluent Technical Specifications to make them consistent with current NRC guidance.

Date of issuance: September 23, 1986.

Effective date: September 23, 1986.

Amendment No.: 99.

Facility Operating License No. DPR-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 7, 1986 (51 FR 16935).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By November 7, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

Baltimore Gas & Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 19, 1986, supplemented September 22, 1986.

Brief description of amendments: The amendments temporarily change Technical Specification (TS) 3/4.8.1, "A.C. Sources," to permit, for one time

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only, continued at-power dual-unit operation of up to 240 hours with the swing diesel generator (No. 12) out of service. This extension of the allowed period of diesel generator inoperability has been made contingent in the Action Statements of T.S. 3/4.8.1 upon the continued operability of each unit's dedicated diesel generator, the 1000 kW portable diesel generator, and of all three offsite A.C. power supplies. The amendments shall be used only to determine and correct the cause of the carbon monoxide leakage into the No. 12 diesel generator jacket water coolant system. This extension shall expire upon completion of repairs, post-maintenance testing, and restoration to operability of the No. 12 diesel generator.

These amendments complete the Commission action initiated in our letter of September 19, 1986, "Waiver of Compliance with Technical Specification 3/4.8.1, 'A.C. Sources' " in response to the Baltimore Gas and Electric Company application of September 19, 1986.

Date of issuance: September 23, 1986.

Effective date: The license amendments are temporary and are to be used only once. These amendments became effective at 6:00 a.m. E.d.t on September 20, 1986. Upon completion of the repairs, post-maintenance testing and restoration to operability of the No. 12 diesel generator, these amendments are cancelled.

Amendment Nos.: 122 and 104.

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation is contained in a Safety Evaluation dated September 23, 1986.

No significant hazards consideration comments received: No.

Attorney for licensee: D.A. Brune, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland this 2nd day of October 1986.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Acting Director, Division of BWR Licensing.

[FR Doc. 86-22705 Filed 10-7-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Information Collection Activities Under OMB Review

Agency Clearance Officer—Kenneth Fogash (202) 272-2142.

Upon Written request copy available from: Securities and Exchange Commission Office of Consumer Affairs and Information Services Washington, DC 20549

Extension

Form SE, File No. 270-289
Form ID, File No. 270-291
Form ET, File No. 270-290
Form 15, File No. 270-279
Form S-18, File No. 270-119

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for approval a request for extension of the following forms:

Form SE—Form for Exhibits under Edgar
Form ID—Uniform Application for Identification Numbers and Passwords
Form ET—Transmittal Form for Electronic Format Documents under Edgar
Form 15—Certification of termination of registration of a class of security under Section 12(g) or notice of suspension of duty to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934
Form S-18—Securities Act of 1933 Registration Form

Submit comments to OMB Desk Officer: Sheri Fox (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

October 2, 1986.

[FR Doc. 85-22823 Filed 10-7-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15339; (File No. 812-6472)]

Bascom Hill Balanced Fund, Inc. Application for an Order Pursuant to Section 6(c) of the Act

October 1, 1986.

Notice is hereby given that Bascom Hill Balanced Fund, Inc. (the "Fund"), 402 Gammon Place, Madison, Wisconsin 53719, filed an application ("Application") on September 5, 1986, and an amendment thereto on September 26, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting the Fund from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c-1 and 22d-1 thereunder, to the extent necessary to permit the Fund to assess a contingent deferred sales charge on certain redemptions of its shares, as described herein, and to permit the Fund to waive or apply credits against such contingent deferred sales charges under certain conditions, as described herein. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable statutory provisions.

According to the application, the Fund, registered under the Act as a diversified, open-end, management investment company, was organized under the laws of the State of Wisconsin on August 19, 1986, but has not issued any shares to the public. The Fund's shares, when issued, will represent undivided beneficial interests in the Fund's initial portfolio of assets. The application further states that the Fund is managed by its investment adviser Madison Investment Advisors, Inc. ("MIA"), a Wisconsin corporation.

MIA also acts as principal distributor of the shares of the Fund.

The Fund proposes (1) to offer its shares subject to a contingent deferred sales charge ("Charge") and (2) to institute a plan of distribution in accordance with Rule 12b-1 under the Act ("Plan"). Under the Fund's proposal, its shares would be offered and sold without the deduction of a sales load at the time of purchase. Certain redemptions of shares, however, would be subject to the charge. The proceeds of the Charge will be payable to MIA, as distributor, and will be used by MIA to defray in whole or in part costs incurred in connection with the sale and distribution of the Fund's shares.

The application represents that the Charge will be imposed only if a shareholder's redemption causes the current value of that shareholder's holdings in the Fund to fall below the total dollar amount of such shareholder's purchases of the Fund's shares within the preceding five years. No Charge will be imposed for redemptions whose amounts represent (1) appreciation in the net asset value of a shareholder's holdings ("Net Appreciation Value"), (2) increases in the value of a shareholder's holdings representing reinvestment of dividend and capital gain distributions ("Reinvestment Value") or (3) purchase payments made more than five years prior to the redemption date ("Old Capital").

To calculate the Charge due, if any, upon a redemption, the Fund will first deduct from the dollar amount of the redemption request those amounts, if any, representing Net Appreciation Value, Reinvestment Value and Old Capital. The balance, if any, will be subject to the Charge. The amount of the Charge imposed on a shareholder would depend on the number of years that have elapsed since the shareholder made the purchase from which an amount is being redeemed, declining from 5% to 0% over a five year period. Such Charge would be 5% in the first year and decrease by 1% per year, no Charge being imposed after the fifth year. In addition, according to the application, the Fund will, in performing this calculation, assume that the purchase payments, if any, being redeemed will be from the earliest possible purchase payment.

In addition, the Fund will pay MIA, as compensation for its services, a distribution fee, approved pursuant to the provisions of Rule 12b-1 under the Act, equal to .65% on an annual basis of the value of the Fund's average daily net assets. The Fund states that this distribution fee by itself is insufficient to permit the distributor to recoup the costs of distribution of shares that are redeemed earlier than anticipated. Therefore, in their periodic review of the Fund's distribution plan under Rule 12b-1, the Fund's Directors will consider the use by the distributor of revenues raised by the Charge. As a result, in their annual review of the Plan, the Directors shall consider the interrelationship of the Charge and the distribution fee and then make whatever revision in either as they deem appropriate.

Moreover, the Fund's Directors have determined that it is in the shareholders' best interest to (1) close the Fund to new investors after five years, (2) remove the Charge for new share purchases by existing shareholders after the fifth year and (3) terminate the Plan after five years of Fund operations, all to assure that, when compared to many other funds that intend to continue distribution plans beyond their fifth year of operations, early investors will not be burdened with substantial distribution expenses related to later investors.

Under the Fund's proposal, the Charge would be waived on the following redemptions: (1) Any partial or complete redemption in connection with certain mandatory distributions from Individual Retirement Accounts ("IRAs") or other qualified retirement plans; (2) Redemptions of shares originally purchased directly through MIA effected by (a) officers, directors, and employees of MIA and the Fund, (b) IRAs, Keogh Plans, and employee benefit plans for those officers, directors and employees, and (c) spouses, children and grandchildren of those officers, directors and employees; (3) Redemptions effected by accounts managed by the Fund Adviser; and (4) Redemptions effected by the directors of the Fund. The Fund also propose to institute a reinstatement privilege whereby a shareholder, who redeems shares of the Fund and reinvests the proceeds of that redemption in the Fund within fifteen days will receive a credit against the charge, if any, paid upon the redemption. The percentage of the Charge credited to the shareholder would be the same as the percentage of the redemption proceeds reinvested. A redeemed shareholder may exercise this privilege only once.

The Fund has submitted in its Application that all of the elements of its proposal are in the interests of Fund's shareholders and are consistent with the policies underlying the Act. Nonetheless, the Fund states that it recognizes that a contingent deferred sales charge may not comply with certain of the provisions of the Act. To avoid any possibility that questions might be raised as to the potential applicability of these provisions to the Fund, the Fund is seeking an order exempting the Fund from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c-1 and 22d-1 promulgated thereunder to the extent necessary to permit the Fund to institute the Charge in the manner described above.

The Fund submits that the operation of the Charge will enable the Fund's shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of shares than would be the case if shares were sold subject to a traditional front-end sales load. The Application asserts further that the Charge is fair to shareholders because it applies only to redemptions of amounts representing purchase payments for shares and does not apply to either increases in the value of a shareholder's account through capital appreciation or to increases representing reinvestment of dividends on distributions.

With respect to the proposed waivers of and credits against the Charge, the Fund has submitted that each wavier or credit is justified on the ground that imposing a charge in the circumstances contemplated would either be (1) unfair due to the mandatory nature of the redemption, (2) unnecessary because the funds being redeemed are being reinvested in the Funds, (3) unnecessary because the original sale of shares was effected at little or no cost to the Fund, or (4) inconsistent with the public policy granting favored tax-status to accumulations under IRAs and other qualified retirement plans.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 24, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Fund at the address stated above. Proof of service (by affidavit or, the the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22824 Filed 10-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC- 15337; (File No. 812-6358)]

Continental Mutual Funds Trust et al.; Notice of Application

October 1, 1986.

Notice is hereby given that Continental Mutual Funds Trust ("Option Fund I"), Continental Option Income Plus Fund II ("Option Fund II" (together, "Funds"), Continental Equities Corporation of America ("Continental Equities") and CIAC Asset Management Corporation ("CICAM") (collectively, "Applicants"), 180 Maiden Lane, New York, New York 10038, filed an application on April 25, 1986, and an amendemnt thereto on September 17, 1986, for an order of the Commission, pursuant to section 17(b) of the Investment Company Act of 1940 ("Act"), exempting from the provisions of section 17(a) of the Act the merger of Option Fund I and Option Fund II by means of the transaction proposed in the application and, pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, permitting certain joint transactions between the Funds and affiliated persons incidental to the proposed merger. All interested persons

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are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the complete text of the applicable provisions.

Applicants state that the Funds are registered, diversified, open-end, series, management investment companies, which have been organized as business trusts under the laws of the Commonwealth of Massachusetts. Each Fund's shares are currently currently classified in a single series. Applicants also state that the Funds pursue an identical investment objective which seeks high current income while minimizing the risk of captial loss resulting from market fluctuations by investing primarily in dividened-paying common stock, preferred stock convertible into common stock and exchange-traded options on common stock or stock indices, and by writing covered options. In addition, the Funds may, for hedging purposes only, invest in stock index futures and options thereon. As a secondary objective, each Fund may invest a portion of its assets pursuant to an aggressive strategy, including the use of options, to produce short-term growth and income enhancement. Applicants further state that the Funds observe the same investment policies and restrictions.

The application indicates that CICAM and Continental Equities are both New York corporations. CICAM is a wholly-owned indirect subsidiary of the Continental Corporation ("Continental"), a New York corporation. Continental Equities is also a wholly-owned indirect subsidiary of Continental, and a direct subsidiary of Commercial Life Insurance Company ("Commercial Life"), a Wisconsin insurance company and another wholly-owned direct subsidiary of Continental. Applicants state that, as of July 31, 1986, CICAM owned 11,466.846 shares or 0.79% of the outstanding shares of Option Fund I, and Commercial Life owned 10,256.410 shares or 64.19% of the outstanding shares of Option Fund II.

According to the application, CICAM acts as investment adviser and also provides the necessary office space, supplies and other facilities to Option Fund I. With respect to Option Fund II, Continental Equities has overall responsibility for managing that Fund's affairs while CICAM provides its investment advice.

Applicants indicate that Continental Equities acts as principal underwriter and distributor for both Funds; however, the Funds have different distribution arrangements. Shares of both Funds are sold through various broker-dealers with whom Continental Equities has entered into sales agreements but shares of Option Fund I are sold subject to a maximum sales laoad of 8.5% (9.29 of the amount invested), of which a certain percentage goes to Continental Equities and a certain percentage goes to the selling brokerdealer in accordance with the terms of their sales agreement. In contrast, shares of Option Fund II are sold subject to a sales load of only 2.5% (2.56% of the amount invested), the entire amount of which is payable to the selling broker-dealer. Continental Equities receives a distribution fee equal to 0.80% of Option Fund II's average daily net asset value, pursuant to a distribution plan under Rule 12b–1 of the Act, as compensation for its services in distributing and selling shares of Option Fund I. Applicants represent that Option Fund II shares are also issued subject to a contingent deferred sales charge, which applies (at a maximum rate of 4% in the first year declining to zero in the fifth year) on any redemption of shares which causes the current value of a shareholder's investment in the Continental Asset Management Funds to fall below the total dollar amount of purchase payments made by that shareholder within the preceding four years.

Applicants propose that Option Fund I, upon the satisfaction of certain terms and conditions pursuant to an Agreement and Plan of Acquisition ("Agreement"), transfer all of its assets to Option Fund II in exchange for Option Fund II's assumption of all of the liabilities of Option Fund I (with certain exceptions) and for share of Option Fund II equal in value to the value of the net assets transferred. Upon completion of this exchange Option Fund I will, in complete liquidation, distribute the Option Fund II shares it receives to its shareholders *pro rata*, thus making them shareholders of Option Fund II. Immediately prior to the effective date of that transaction, Option Fund I will declare and pay a dividend to its shareholders of all of its undistributed net investment income and net realized capital gains, net of loss carry forwards, if any.

Immediately after the effective date of the transaction, the application states that Continental Equities will, as an adjustment of the initial purchase price paid by Option Fund I shareholders, purchase for the account of each record holder of Option Fund I shares who paid a sales load for those shares Option Fund II shares having an aggregate net asset value equal to 6 percent of the price paid by each shareholder on their initial and subsequent purchases of Option Fund I shares ("Rebate"). The Rebate will only apply to Option Fund I shares held by the shareholder as of the effective time of the transaction, and does not apply to shares obtained through reinvestment of dividends. Applicants represent that this will have the effect of placing those share holders who paid the 8.5 percent sales load in substantially the same position as they would have been in if they had invested in Option Fund II initially. Option Fund II shares held by former shareholders of Option Fund I (whether acquired in exchange for Option Fund I shares or from Continental Equities) will be subject to the contingent deferred sales charge, calculated as though Option Fund II share had been purchased on the date of the transaction. The distribution fee will be payable on Option Fund II share held by former Option Fund I shareholders.

For the purposes of the transaction, the application states that the net asset value of Option Fund I and the net asset value of the Option Fund II shares will in effect be determined as of the next regular calculation of net asset value for each Fund as of the close of trading on the New York Stock Exchange and as reported to the National Association of Securities Dealers, Inc. after the effective time of the transaction in accordance with the provisions of the then effective prospectus of each Fund. The application also states that Continental Equities will pay all the expenses relating to the transaction.

According to the application, the Agreement is conditional, among other things, upon the approval of a majority (as defined by section 2(a)(42) of the Act) of Option Fund I's outstanding shares at a special shareholders' meeting. The Agreement is also conditional upon the receipt by both Funds of an opinion of the Funds' counsel, to the effect that the transfer by Option Fund I of substantially all of its assets and liabilities to Option Fund II in exchange of shares of Option Fund II,and the distribution of those Option Fund II shares to the shareholders of Option Fund I in complete liquidation of Option Fund I will constitute a tax-free reorganization within the meaning of section 368(a)(1) of the Internal Revenue code of 1954, as amended, and will not result in the recognition of gain or loss by either the Funds or the shareholders thereof. Not withstanding the approval of either Funds' shareholders, Applicants state that the Agreement may be terminated by the trustees of either Fund if circumstances should develop which, in the trustees' judgment, would make the proposed transacation inadvisable.

According to the application, as investment companies which have the same investment adviser and principal underwriter, the Funds may be deemed to be affiliated persons under the Act. In addition, both Continental Equities and CICAM may be deemed affiliated persons of the Funds by virture of their positions as principal underwriter and investment adviser, respectively, of the Funds, and by virtue of their affiliation with Commercial Life, which as of July 31, 1986 owned 64.19% of Option Fund II. Further, Continental Equities and CICAM may be deemed to be affilated persons of each other by virtue of their being under the common control of Continental. Because of the foregoing relationships, the application represents that the proposed Agreement may be deemed to violate the provisions of section 17(a) of the Act. In addition, the Agreement may be deemed to involve a joint enterprise for the purposes of section 17(d) of the Act and Rule 17d–1 thereunder.

In support of their application, Applicants submit that the statutory standards of sections 17(b) and 17(d) of the Act and Rule 17d–1 thereunder are satisfied by the terms of the transaction. Applicants assert that the transaction is fair, reasonable and mutually beneficial to both Funds. Option Fund I shareholders will have the opportuntity to invest in a Fund with lower sales charges and what is believed to be a more effective distribution arrangement, and the Option Fund II shareholders will obtain a portfolio of assets without having to pay brokerage commissions or transaction costs. Applicants also assert that the proposed consideration is fair and reasonable because the exchange of Option Fund II shares for Option I assets will be done on the basis of the net asset value of each Fund. Applicants submit that the Rebate also represents fair consideration to the Option Fund I shareholders in that it is substantially equivalent in value to at least the amount of sales load they paid in excess of the 2.5 precent sales load they would have paid had they invested in Option Fund II initially. The Rebate is also fair to Option Fund III shareholders because Continental Equities is purchasing the shares it is using for the Rebate in cash and at net asset value.

Applicants represent that the transaction is consistent with the general purposes of the Act. Applicants state that the exemption provided in the Rule 17a–8 would have been available to Applicants were it not for the fact that Commercial Life owns more than 5% of the outstanding shares Option Fund II. Applicant note that the consent of the Option Fund I is required by the Agreement, and that the interests of all interested parties are aligned with the best interests of the shareholders.

Notice is further given that any interested persons wishing to request a hearing on the application may, not later than October 24, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of this interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, Pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–22767 Filed 10–7–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15336; File No. 812–6383]

Application and Opportunity for Hearing; Indianapolis Life Insurance Company, et al.

September 30, 1986.

Notice is hereby given that Indianapolis Life Insurance Company ("ILICO"), Indianapolis Life Variable Account A ("Separate Account A"), and Indianapolis Life Financial Planning Corporation (collectively, "Applicants"), at 2960 Meridian Street, P.O. Box 1230, Indianapolis, Indiana 46206, filed an application on May 19, 1986, and an amendment thereto on August 18, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13), 6e–3(T)(c)(2), and 22c–1 thereunder, in connection with the issuance by ILICO of certain flexible premium variable life insurance contracts ("Contracts"). All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the complete text of those provisions that are relevent to the application.

According to the application, Separate Account A, a registered unit investment trust under the Act, will receive and invest the net premiums paid under the Contracts. The application states that a Contractowner has considerable flexibility to alter the amount, frequency, and time period over which premiums for the Contract and paid. The duration of the Contract depends upon the Contract's cash value. Subject to certain exceptions during the first two years after issuance, the Contract will lapse any time the net cash surrender value is insufficient to pay certain monthly charges and a grace period expires without a sufficient payment.

Applicants state that a premium expense charge will be deducted from each premium prior to the amount remaining being allocated to Separate Account A. The premium expense charge consists of a sales charge and a 2.25% charge to cover state premium taxes. The maximun sales charge during the first policy year is 30% of premiums paid up to the amount specified in the policy schedule ("Target Premium") and 7.5% of premiums paid in excesss of the Target Premium. The sales charge deducted from all other premiums paid in any year in 7.5% if there is no increase in face amount and no addition of a rider. Applicants state that there is a monthly deduction from cash value consisting of the cost of insurance charge, the cost of any additional benefits provided by rider, and a monthly Contract charge for administrative expenses of $4.75 per month.

Applicants further state that a Surrender Charge of up to $5.00 per $1,000 of face amount is imposed upon a complete surrender or lapse, but only in the first nine Contract years or the first nine Contract years following an increase in face amount. The Surrender Charge is based on the Contract year of the surrender or lapse (or the number of years since the increase in face amount) and the insured's age at issue (or attained age at the time of the increase). If an increase in the face amount is requested and approved, separate additional Surrender Charges will apply to the increased face amount.

According to the application, a partial Surrender Charge is imposed upon a partial withdrawal. The charge is in proportion to the Surrender Charge that would be imposed upon a complete

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surrender in the same ratio as the amount withdrawn bears to the cash value. When a partial withdrawal is made, future Surrender Charges are reduced in the same proportion. However, the minimum charge for partial withdrawals is the smaller of 2% of the amount withdrawn or $25.00. When this minimum charge applies, the additional amount partially compensates for the cost of processing the withdrawal. Applicants represent that such a charge is cost-based without any anticipated element of profit to ILICO.

Applicants note that the Surrender Charge is deducted to cover the costs of processing applications, conducting medical examinations, determining insurability and the insured's risk class, and establishing records relating to the Contracts. Applicants point out, however, that this charge will not be assessed upon issuance of the Contract, nor will it ever be deducted from any death benefit payable under the Contracts. As noted above, it will be deducted only if the Contract is surrendered or lapses in the first nine Contract years or in the nine Contract years following an increase in face amount and upon partial withdrawals.

Applicants submit that imposition of the administrative charge for issuance expenses in the form of a contingent deferred charge is more favorable than a charge that is deducted entirely from premiums or from cash value in the first Contract year, which are more conventional ways of imposing this charge. First, Applicants argue that the amount of the Contractowner's investment in the separate account is not reduced as it is when this charge is taken in full in the first Contract year. Second, Applicants represent that the total amount charged to any Contractowner is no greater than if this charge is taken in full in the first Contract year. There is no charge for Contractowners who do not lapse or surrender during the first nine Contract years, and for Contractowners who lapse or surrender in Contract years six through nine the charge is reduced. Third, even Contractowners who lapse or surrender within the first five years are advantaged because the cost of insurance charges deducted monthly from the amounts credited to them in the separate account will be lower than they would have been had this administrative charge for issuance expenses been deducted in full during the first year. Furthermore, every Contractowner receives insurance protection without incurring this administrative charge prior to surrender or lapse.

ILICO represents that the amount of the charge is the same as it would have been if it was designed as a front-end or periodic charge. In particular, ILICO represents that this charge does not take into account the time value of money (which would increase the charge to factor in the investment cost of ILICO of deferring the charge) or the fact that not all Contractowners will surrender or lapse their Contracts in the first nine Contract years (which would increase the charge for those surrendering or lapsing in those years to cover the costs attributable to Contractowners who do not surrender or lapse in those years). ILICO also submits that granting exemptive relief for the Surrender Charge for the reasons described above is supported by relevant Commission precedent which is cited in the application.

Accordingly, Applicants request an exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d) and Rules 6e-3(T)(b)(12), 6e-3(T)(b)(13), and 22c-2 to the extent necessary to permit the administrative charge to be deducted upon surrender or lapse of the Contract, in the manner described above.

Applicants state that the waiver of monthly deductions rider ("Rider") provides that the monthly deductions will not be made against the Contract's cash value if the insured becomes totally disabled and the disability continues for four months. The disability must start after the insured's fifth birthday and before the Contract anniversary nearest the insured's 65th birthday. If the disability begins on or after the Contract anniversary nearest the insured's 60th birthday, the monthly deductions will be waived only up to the policy anniversary nearest the insured's 70th birthday.

Applicants state that the Rider may be deemed not to meet the definition of "incidental insurance benefits," as defined in Rule 6e-3(T)(c)(2). The application states that Rule 6e-3(T)(c)(2) defines "incidental insurance benefits," in pertinent part, as insurance benefits "which do not vary in amount in accordance with the investment experience of the separate account" and that Rule 6e-3(T)(c)(4)(vii) defines "sales load" to exclude any "additional charge assessed specifically for any incidental insurance benefits." Therefore, according to the application, if the waiver of monthly deduction benefit falls within the meaning of "incidental insurance benefits" as defined in Rule 6e-3(T)(c)(2), the charge for the Rider falls outside the definition of sales load in Rule 6e-3(T)(c)(4)(vii). On the other hand, if the Rider falls outside the definition of "incidental insurance benefits" in Rule 6e-3(T)(c)(2), the charge for the Rider may be deemed to be "sales load."

Applicants argue that the Rider's benefit, *i.e.*, the waiver of the monthly deduction, is fixed benefit in its most significant respects. Applicants state that the part of the monthly deduction that is waived, *i.e.*, the monthly Contract charge, is fixed in amount; the application argues that the benefit waives the entire monthly deduction, and therefore the benefit to the Contractowner is fixed to the extent that the Contractowner pays no charges, regardless of how much the cash value and the net amount at risk vary. Applicants submit that this represents a fixed benefit so far as the Contractowner is concerned. Applicants also state that the Rider possesses no cash value of its own, *i.e.*, no cash value separate and distinguishable from the cash value for the Contract as a whole.

Applicants submit that Rule 6e-3(T)(c)(2) provides that incidental insurance benefits "include, but are not limited to, . . . disability income benefits." Applicants state that the Rider's benefit operates to keep a Contract in force under circumstances where total and permanent disability could jeopardize the continued payment of premiums, and, indirectly, payment of the monthly charges, required to keep the Contract from lapsing. It follows, according to the application, that, in economic reality, the Rider's benefit is a type of disability income benefit specified as an incidental insurance benefit by Rule 6e-3(T)(c)(2).

Applicants also submit that it is not reasonable to assume that the commission, in adopting Rule 6e-3(T), intended that the charge for the type of rider at issue here be deemed to be "sales load." In this regard, Applicants assert that the benefit of weiver of charges upon disability serves a bona fide insurance objective that is integrally related to, and an incidental part of, the insurance aspects of a flexible premium variable life insurance contract, and that an issuing insurance company must impose a charge for the benefit provided and risks assumed by the insurer, and that such a charge clearly is not for sales or promotional expenses.

Applicants also argue that under Rule 6e-2, charges imposed under scheduled premium contracts for the type of rider at issue here have been deducted from gross premiums prior to calculation of the sales load and allocation to a separate account, and that, therefore, such charges have not been construed to constitute "sales load" within the meaning of Rule 6e-2(c)(4). Applicants submit that deducting charges for such a rider from premium payments under a flexible premium contract is impractical because premium payments are not required to be made on a regular basis. Finally, Applicants note that the Commission has issued several orders granting the identical relief requested herein (some of which are cited in the application).

On the basis of the foregoing, Applicants request an exemption from the definition of "incidental insurance benefits" in Rule 6e-3(T)(c)(2) to the extent necessary to permit the charge for the Rider not to be deemed to be "sales load."

Applicants respectfully submit, for all the reasons stated herein, that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and therefore their exemptive requests meet the standards set out in Section 6(c) of the Act and should be granted.

Applicants represent in connection with the relief requested that, if Rule 6e-3(T) is amended or Rule 6e-3 adopted, they either will comply with the rule as amended or adopted or seek additional appropriate exemptive relief.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 24, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22708 Filed 10-7-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-15523]

LTV Corp.; Application and Opportunity for Hearing

September 30, 1986.

Notice is hereby given that LTV Corporation (the "Applicant") has filed an application pursunt to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the successor trusteeship of The Connecticut National Bank ("CNB") under three indentures of the Applicant heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee under any of such indentures.

Section 310(b) of the Act provides, in pertinent part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, that with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of said subsection (1), there shall be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that: 1. The Applicant has outstanding its 7-½% Subordinated Debentures due 1993 and 1994 (the "1969 7-½% Debentures") issued under an indenture dated as of May 15, 1969 (the "1969 Indenture"), between the Applicant, as successor by merger to Lykes Corporation (formerly Lykes-Youngstown Corporation, hereinafter "Lykes") and Morgan Guaranty Trust Company of New York ("Morgan"), as successor trustee to Marine Midland Bank (formerly Marine Midland Grace Trust Company of New York, hereinafter "Marine Midland"), as Trustee, which was theretofore qualified under the Act. The 1969 7-½% debentures were registered under the Securities Act of 1933.

2. The Applicant has outstanding 7-½% Subordinated Debentures due June 1, 1993 and June 1, 1994 (the "1970 7-½% Debentrues") issued under an indenture dated as of July 15, 1970 (the "1970 Indenture"), between the Applicant as successor by merger to Lykes, and Morgan, as successor trustee to Marine Midland, as Trustee, which was heretofore qualified under the Act. The 1970 7-½% Debentures were registered under the Securities Act of 1933.

3. The Applicant has outstanding 11% Subordinated Debentures due in the year 2000 (the "11% Debentures") issued under an indenture dated as of December 15, 1974 (the "1974 Indenture"), between the Applicant, as successor by merger to Lykes, and Morgan, as successor trustee to Chemical Bank, as Trustee, which was heretofore qualified under the Act. The 11% Debentures were registered under the Securities Act of 1933.

4. On June 13, 1986, CNB was appointed as successor trustee to Morgan under the 1969 Indenture, the 1970 Indenture and the 1974 Indenture (collectively the "Indentures").

5. The Applicant is in default under each of the indentures by virtue of having filed on July 17, 1986, a petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.

6. The Applicant's obligations under the Indentures and the 1969 7½% Debentures, the 1970 7½% Debentures and the 11% Debentures (collectively the "Debentures") issued thereunder are wholly unsecured and rank *pari passu inter se.*

7. In the opinion of the Applicant, the provisions of the Indentures are not so likely to involve a material conflict of interest so as to make it necessary in the public interest or for the protection of any holder of any of the Debentures issued under the Indentures to disqualify CNB from acting as successor trustee under any of the Indentures.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by its application, and all rights to specify procedures under the Rules of Practice of the Commission with the respect to its application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said Application File No. 22-15523, which is a public document on file in the offices of the Commission at the Public Reference

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Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice if further given that any interested person may, not later than October 28, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for Application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the Application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-22825 Filed 10-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15338 (File No. 812-6345)]

Ryan Mortgage Acceptance Corporation IV; Notice of Application

October 1, 1986.

Notice is hereby given that Ryan Mortgage Acceptance Corporation IV ("Applicant"), 111 Ryan Court, Pittsburgh, Pennsylvania 15230, filed an application on April 15, 1986 and an amendment thereto on July 16, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting if from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the relevant provisions thereof.

According to the application, Applicant, a wholly-owned limited purpose finance subsidiary of Ryan Financial Services, Inc., ("Company"), which is, in turn, a wholly-owned mortgage banking subsidiary of Ryan Homes, Inc., was organized for the purpose of providing a structure through which homebuilders and financial institutions can obtain a source of funds for the financing of long-term residential mortgages. Applicant states that it may issue additional equity securities, but represents that such equity securities would be issued only to and retained by its parent. Applicant further represents that the only debt securities it will issue will be Mortgage-Collaterzlized Bonds issued in series from having the following characteristics:

1. Each Series of Bonds will be registered under the Securities Act of 1933 ("Securities Act"), unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the mortgage-related collateral (collectively, "Mortgage Collateral") securing the Bonds will be limited to: (i) Mortgages constituting first liens on single (one-to-four) family residences ("Mortgate Loans") and (ii) mortgage certificates guaranteed by the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") (collectively, "Mortgage Certificates").[1]

3. The Applicant will have a right to substitute other Mortgage Collateral for the initial Mortgage Collateral securing a series of Bonds only if the substituted Mortgage Collatral: (i) Is of equal or better quality than the Mortgage Collateral replaced; (ii) has similar payment terms and cash flows as the Mortgage Collateral replaced; (iii) is insured or guaranteed at least to the same extent as the Mortgage Collateral replaced; and (iv) meets the conditions set forth in paragraphs 2, 4 and 6. Substitution for Mortgage Loans is further limited as follows: Eligible Mortgage Certificates may be substituted for Mortgage Loans, but new Mortgage Loans may be substituted for Mortgage Loans initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the Mortgage Collateral being replaced. In addition, new Mortgage Collateral may not be substituted for more than 20% of the agreegate face amount of the Mortgage Loans initially pledged as Mortgage Collateral or for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

[1] Some of the Mortgage Collateral will be Mortgage Collateral pledged to the Applicant as security to secure notes ("Notes") of other homebuilders or financial institutions. Such Mortgage Collateral is in turn pledged by the Applicant to secure a series of Bonds. In addition to Mortgage Collateral, a series of Bonds may also be secured by cash, eligible investments satisfactory to the rating agency rating such series or letters of credit held in reserve funds intended to compensate for certain interest shortfalls.

Notes may be substituted for the initial Notes securing a series of Bonds only if the substitution of the Mortgage Collateral securing such Notes would be permitted under the above conditions, including the conditions as to the aggregate amount of Mortgage Collateral for which substitution may be made.

4. All Mortgage Collateral, reserve funds, accounts or other collateral securing a series of Bonds ("Bond Collateral") will be held by the trustee or on behalf of the trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Securities Act Rule 405, 17 CFR 230.405) of the Applicant, or of any master servicer or originating leader of any Mortgage Loan that is pledged as Bond Collateral. (If there is no master servicer, the custodian may not be an affiliate of any servicer). The trustee will be granted a first priority perfected security interest in, or lien on, all Bond Collateral.

5. Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the Act.

6. The master servicer of Mortgae Loans pledged to secure a series of Bonds will not be an affiliate of the trustee. If there is no master servicer for Mortgage Loans pledged to secure a series of Bonds, no servicer of those Mortgage Loans will be an affiliate of the trusee. In addition, any master servicer and servicer of a Mortgage Loan will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of Mortgage Loans will obligate the servicer to provide substantially the same services with respect to the Mortgage Loans as it is then currently required to provide in connection with the servicing of mortgage loans insured by the Federal Housing Administration, guaranteed by the Veterans' Administration or eligible for purchase by FNMA or FHLMC.

7. At least annually, an independent public accountant will audit the books and records of the Applicant and will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the trustee.

Applicant contends that it is not the type of entity that the Act was intended to regulate and that its limited activities do not require the protection of the Act. According to the application, since the Bonds will have fixed interest rates, will not be convertible into other obligations, will not be redeemable by bondholders, and will not otherwise grant bondholders an equity interest in the Mortgage Collateral, the Bonds do not raise problems of inequitable pricing, excessive or hidden sales loads or churning of accounts. Applicant argues that the interests of investors will be adequately protected by the disclosure and regulatory provisions of the securities laws and by the self-amortizing nature of the Bonds without the additional safeguards of the Act. Also, action by the Applicant after issuance of a series cannot affect the timely payment of the Bonds of that series, since (i) the Mortgage Collateral will be in the trustee's possession, (ii) the indenture pursuant to which the bonds are issued permits only extermely limited investment decisions by the Applicant or the trustee, (iii) substitution of Mortgage Collateral is limited, as set forth above, in such a manner that a substitution would not affect timely payment of the Bonds, and (iv) distributions received on the Mortgage Collateral will be paid directly to the trustee and will generate sufficient income to meet Applicant's obligations to the bondholders. Applicant further submits that there are strong public policy reasons for granting an exemptive order in that its activities will supply capital to the real estate and mortgage markets and thereby facilitate the financing of housing, which activities are consistent with public policy expressed by Congress in enacting the Secondary Mortgage Market Enhancement Act of 1984.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 23, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22768 Filed 10-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23670; File No. SR-CBOE-86-29]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Order Size Eligibility for a Retail Automatic System

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Commission on August 19, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to revise the definition of orders eligible for its Retail Automatic Execution System ("RAES") in the Standard and Poor's 500 Index option class ("SPX"). The rule proposal was published for comment in Securities Exchange Act Release No. 23545 [August 21, 1986], 51 FR 30802. No comments were received.

RAES is a program which permits firms participating in the Exchange's Order Routing System to route customer orders of a certain size to the Exchange for automatic execution at the best bid or offer displayed in the System at the time of order entry. RAES is currently operating in SPX on a six-month pilot basis.[1] All incoming RAES orders are executed automatically against participating market maker who are assigned a RAES transaction in rotation. If a RAES transaction occurs at the price of an order on the limit order book the market maker on the contra side of the RAES transaction will be required to trade with the booked limit order up to the number of contracts assigned to him on RAES.[2] As initially proposed, only market orders up to 10 contracts in SPX series selected for inclusion in the system are eligible for RAES execution. The CBOE first expanded SPX order eligibility to include in the RAES pilot marketable limit orders up to 10 contracts to conform the RAES SPX pilot with the RAES programs for other options classes.[3]

The CBOE now proposes to permit market or marketable limit orders up to ninety-nine contracts in SPX options series on the System to be eligible for a RAES execution. The Exchange proposes to retain the discretion to determine the size and type of orders eligible for RAES and the particular options series which will be included on the System. Changes in options order eligibility criteria will be announced as they occur. Also, announcements about the particular options series selected for inclusion in the System will be made daily.[4]

The CBOE states in its proposal that increasing order size eligibility will permit the Exchange to experiment with the System's operational capabilities and to assess its impact on trading and order routing patterns in SPX. The CBOE also maintains that increased order size will be attractive to SPX customers because of the substantial institutional participation in the market. The CBOE represents that this proposal is consistent with the Act because RAES will improve trading and operational efficiencies in SPX.

Permitting experimentation with the automatic execution of larger SPX orders for the duration of the RAES SPX pilot seems appropriate particularly in view of the CBOE's representations about the institutional nature of the SPX market. Accordingly, the Commission finds that the proposal is consistent with the Act because it makes available to larger orders the execution efficiences of automatic execution, and provides the opportunity to assess the market impact

[1] The Commission approved the RAES SPX pilot in Securities Exchange Act Release No. 23560 (September 4, 1986), 51 FR 32709 (File Nos. SR-CBOE-86-14, 86-28 and 86-29) ("RAES SPX Approval Order"). The pilot commenced on September 5, 1986. The Commission also approved CBOE proposals to operate RAES in the Standard and Poor's 100 index option class ("OEX") on a permanent basis and to pilot RAES in six equity options classes for as six-month period. *See* Securities Exchange Act Release No. 23460 (August 1, 1986), 51 FR 28788 (File Nos. SR-CBOE-85-32 and 85-16). RAES in OEX operates as an exception to the Exchange priority rules, whereas the RAES equity pilot is designed to protect limit order priority, except in one of the pilot options classes, IBM, and in unusual market conditions.

[2] The Exchange may suspend book participation in RAES in the event that the Exchange's Vice Chairman and President (or their designees) determine it is impossible to maintain normal trading operations and protect book priority. The RAES SPX pilot operates in the same manner as the RAES equity pilot (with the exception of IBM) with respect to book priority protection. *See supra* note 1.

[3] The CBOE proposed to include marketable limit orders in the SPX pilot in SR-CBOE-86-29. The Commission granted accelerated approval of this aspect of the filing. *See* RAES SPX Approval Order, *supra* note 1.

[4] If the System is not in operation, all eligible orders will be executed as they are currently in order options classes.

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of including additional volume in an automatic execution system.[5]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 1, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22764 Filed 10-7-86; 8:45 am]

BILLING CODE 8010-01-M

[5] The Commission expects that the CBOE will provide it with appropriate notice of any RAES SPX order size eligibility changes for the duration of the RAES SPX pilot. Also, in the event this proposal is approved on a permanent basis, all changes in RAES SPX order size eligibility up to ninety-nine contracts should be filed with the Commission as a proposed rule change under section 19(b)(3)(A) of the Act.

[Release No. 35-24295]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 2, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 27, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidvit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company (70-7286)

Consolidated Natural Gas Company ("CNG"), a registered holding company, Four Gateway Center, Pittsburg, Pennsylvania 15222, has filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

CNG proposes to purchase on the open market up to four million shares, or approximately 5% of its outstanding common stock, $2.75 par value, by December 31, 1988, subject to extension. Funds for the purchase of the common stock will be obtained from internally generated cash and from financing authorized by the Commission. The repurchased shares will be held as treasury stock. Consolidated also seeks authorization to reissue the treasury stock for general corporate purposes and in connection with various employee benefit plans, through December 31, 1988, subject to extension.

Consolidated Electric Cooperative Association, Inc. et al. (70-7301)

Consolidated Electric Cooperative Association, Inc. ("Cooperative"), P.O. Box 540, Mexico, Missouri 65265, has filed an application for exemption pursuant to section 3(a)(1) of the Act.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a non-profit rural electric cooperative which services approximately 6,200 retail customers. It operations are confined to Audrain, Monroe, Montgomery, Pike, Ralls and Callaway counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 36 AUDRAIN. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from Central Electric Power Cooperative, Jefferson City, Missouri. It owns 100% of the stock of Consolidated Electric Service Company ("Service"), a Missouri corporation which is an "electric utility company" under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations of less than 1500 persons. Cooperative constructed electric facilities in areas of Audrain, Monroe, Montgomery, Pike, Ralls and Callaway countries in Missouri which were annexed by municipalities with populations exceeding 1500. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members in these annexed areas. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the areas annexed by municipalities. Service will generate no power. Cooperative will be its sole power supplier. All of its scales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a "holding company". Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect for their own members those persons who serve on the Board of Directors of Cooperative. This Board elects, in turn, the persons who serve on the Board of Directors of Service. The election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

Boone Electric Cooperative, et al. (70-7302)

Boone Electric Cooperative ("Boone"), P.O. Box 797, Columbia Missouri 65205, has filed an application for exemption pursuant to Section 3(a)(1) of the Act.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a non-profit rural electric cooperative which serves approximately 18,000 retail customers. Its operations are confined to Boone, Audrain, Monroe, Randolph and Callaway counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 19 BOONE. It sells electric energy to its consumer members. Cooperative generates no power of is own, purchasing power from Central Electric Power Cooperative, Jefferson City, Missouri. It owns 100% of the stock of Boone Electric Service Company ("Service"), a Missouri corporation, which is an "electric utility company" under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations of less than 1500 persons. Cooperative constructed electric facilities in areas of Boone, Audrain, Monroe, Randolph and Callaway counties in Missouri which were annexed by municipalities with populations exceeding 1500. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members in these areas. Cooperative intends,

subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will generate no power. Cooperative will be the sole power supplier of Service, which will make all of its sales to consumers with the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a "holding company". Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the Board of Directors of Cooperative. This Board elects in turn the persons who serve on the Board of Directors of Service. The election of directors and the management of the affairs of both Cooperative and Service and effectively audited and regulated by the REA.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22826 Filed 10-7-86; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information collections under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the proposed information collections and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: Regular Submission

Title of Information Collection: Visitor Use Estimation Survey

Frequency of Use: On Occasion

Type if Affected Public: Individuals Small Businesses or Organizations

Affected: No

Federal Budget Functional Category Code: 452

Estimated Number of Annual Responses: 30,000

Estimated Total Annual Burden Hours: 990

Need For and Use of Information: The data collected in this survey will be combined with traffic counter calibration information for economic impact analysis relating to the Public Area Recreational Visitors Survey (PARVS) data by Land Between the Lakes staff for program, maintenance, and development decisions.

Type of Request: Renewal of previously approved information collection

Title of Information Collection: TVA Fishing Census

Frequency of Use: On Occasion

Type Affected Public: Individuals Small Businesses or Organizations

Affected: No

Federal Budget Functional Category Code: 452

Estimated Number of Annual Responses: 24,000

Estimated Total Annual Burden Hours: 2,400

Need For and Use of Information: Creel surveys are conducted to provide benchmark information for better aquatic resource managment, and assessment of benefits and impacts on the aquatic resources which result from reservoir operations and shoreline development activities.

Dated: October 1, 1986.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 86-22811 Filed 10-7-86; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 38883]

Pan American World Airways Employee Protection Program Investigation; Hearing

Notice is hereby given that the hearing in the above-entitled proceeding will commence on October 20, 1986, at 10:00 a.m. (local time), Hearing Room 2 (lower level), 2120 L Street, NW, Washington, DC, before the undersigned administrative law judge.

Dated at Washington, DC, October 2, 1986.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 86-22787 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 44380]

Seattle/Portland-Japan Service Review Case; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366-2142.

Dated Washington, DC, October 3, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-22788 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

[Docket No. IRA-38]

Citizens Against Nuclear Trucking; Application for Inconsistency Ruling

Correction

In FR Doc. 86-21934 beginning on page 34524 in the issue of Monday, September 29, 1986, make the following correction: On page 34524, in the second column, in the third line, after "preempted" insert "under section 112(a) of the HMTA. The Connecticut statute and those regulations"

BILLING CODE 1505-01-M

[Inconsistency Ruling No. IR-17; Docket No. IRA-34]

Illinois Fee on Transportation of Spent Nuclear Fuel; Invitation To Comment on Appeal of IR-17

Correction

In FR Doc. 86-21935 beginning on page 34527 in the issue of Monday, September 29, 1986, make the following corrections:

1. On page 34527, in the first column, in the Summary, in the eighteenth line, "IB-17 Docket No. IRA-34)" should read "IR-17 (Docket No. IRA-34)".

2. On page 34528, in the second column, in the sixth line, "duplicate" should read "duplicative".

BILLING CODE 1505-01-M

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Urban Mass Transportation Administration

Buy American Requirements; Permanent Waiver

AGENCY: Urban Mass Transportation Administration, DOT.

SUMMARY: This notice makes a waiver for microcomputers from the Buy America requirements of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424) permanent. Previously, the Urban Mass Transportation Administration (UMTA) granted the waiver on a temporary basis, and sought comments as to whether a permanent waiver should be granted.

DATE: The permanent waiver is in effect upon publication of this notice. The temporary waiver, granted by UMTA on May 2, 1985, continues until that time.

FOR FUTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9228, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4063.

SUPPLEMENTARY INFORMATION: On January 9, 1985, in response to a request from the American Association of State Highway and Transportation Officials (AASHTO) indicating that several UMTA grantees were experiencing difficulty in purchasing domestically produced microcomputer equipment appropriate to their needs, UMTA solicited comments from interested parties. (50 FR 1156). Section 165(b)(2) of the STAA provides that a waiver may be granted if materials and products being procured are not produced in the United States in sufficient and reasonable quantities and of satisfactory quality. Under UMTA regulations, the item being procured is presumed to be unavailable if no responsive bid is received which will provide a domestically produced product.

Based upon its review and analysis of the 22 comments received, UMTA granted the requested waiver for a one year period. (50 FR 18760, May 2, 1985). When the period expired, UMTA extended the waiver temporarily, again soliciting comments to see if the domestic market for microcomputers had changed. (51 FR 19653, May 30, 1986). In response to this latest solicitation, UMTA received three comments from transit agencies and one from a foreign supplier. All four commenters cited several reasons why they were in favor of making the waiver permanent. First, although new technology had increased the availability of hardware and software components, many product component (microchips) are still made and assembled abroad. Furthermore, it is difficult to estimate when, if ever, microcomputer component manufacturing will be relocated to the United States, since the computer industry is becoming increasingly multinational in nature.

Based on this knowledge gained from commenters who have practical experience in the field and other sources, UMTA has decided to make the waiver for microcomputers permanent.

UMTA, of course, reserves the right to reassess the need for a permanent waiver if, for instance, international market conditions change.

As an example, there was a recent agreement between the United States and Japan on several semiconductor trade disputes. On July 31, 1986, Japan and the United States entered into a five year agreement to, among other things, help prevent the dumping of semiconductors by Japanese manufacturers to below-cost prices in the U.S. and other countries. Additionally, the Japanese Government is to establish an organization to aid foreign semiconductor producers (such as those in the United States) to increase sales in the Japanese market. While this agreement should go far in enhancing fair trade in the semiconductor (and thus microchip) industry, UMTA realizes that domestic availabilty of microchips will not be immediately increased; therefore, a need for a waiver from the Buy America requirements still exists.

Issued on: October 3, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 22786 Filed 10-7-86; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 2, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW, Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB No. 1512-0142
Form No. ATF F 2734 (5100.25)
Type of Review: Extension
Title: Specific Export Bond-Distilled Spirits or Wine
OMB No. 1512-0198
Form No. ATF REC 5110/03—ATF F 5110.25
Type of Review: Revision
Title: Distilled Spirits Plant (DSP) Processing Records and Report

Clearance Officer: Robert G. Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-22761 Filed 10-7-85; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 2, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW, Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB No. 1512-0059
Form No. ATF F 5120.29 (698 supplemental)
Type of Review: Extension
Title: Bond Wineries-Formular and Process for Wine and General Applications, Letterhead Applications Notices Relating to Operations
OMB No. 1512-0482
Form No. AFT Reporting Requirement 5100/1
Type of Review: Revision

Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act

Clearance Officer: Robert G. Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Financial Management Service

OMB No. 1510-0050
Form No. None
Type of Review: Extension
Title: Financial Institution and Vendor Account Identification Data

Clearance Officer: Douglas C. Lewis, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB No. 1545-0086
Form No. IRS Form 1040C
Type of Review: Revision
Title: U.S. Departing Alien Income Tax Return
OMB No. 1545-0087
Form No. IRS Forms 1040-ES, 1040-ES (NR), 1040-ES (Espanol), and 1040-ES (NMI)
Type of Review: Revision
Title: Estimated Tax for Individuals (4 forms); (1) U.S. Citizens and Residents, (2) for Nonresident Aliens, (3) for Use in Puerto Rico (in Spanish), and (4) for Use in Northern Mariana Islands
OMB No. 1545-0142
Form No. IRS Form 2220
Type of Review: Revision
Title: Underpayment of Estimated Tax by Corporation
OMB No. 1545-0231
Form No. IRS Form 6478
Type of Review: Revision
Title: Credit for Alcohol Used as Fuel
OMB No. 1545-0795
Form No. IRS Form 8233
Type of Review: Revision
Title: Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual
OMB No. 1545-0823
Form No. None
Type of Review: Extension
Title: LR-221-83 Final, Indian Tribal Governments Treated as States for Certain Purposes
OMB No. 1545-0895
Form No. IRS Form 3800
Type of Review: Revision
Title: General business Credit

Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 85-22762 Filed 10-7-85; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Voluntary Service National Advisory Committee; Meeting

The Veterans Administration gives notice that the annual meeting of the Veterans Administration Voluntary Service National Advisory Committee, comprised of 54 national voluntary organizations, will be held at the Sheraton Washington Hotel, Washington, DC, on November 20 through November 23, 1986.

Registration of the Conferees and orientation of new Committee members will be held beginning at 2:00 p.m. on November 20, 1986. The Committee will officially convene with the Opening Session at 9:00 a.m., November 21, 1986, and will conclude at 12 noon, November 23, 1986.

The purposes of the meeting are to instruct Committee members and organization officials of the obligations they have accepted for volunteer recruitment, communications and program interpretation, and to seek the advice of the Committee in further developing volunteer participation in the care and treatment of veteran patients throughout the agency's nationwide medical program. In addition, the Committee will be celebrating its 40th anniversary.

For further information contact Mr. Edward F. Rose, Director, Voluntary Service (135), Veterans Administration, 810 Vermont Avenue, NW Washington, DC 20420, Telephone (202) 653-2165.

Dated: September 30, 1986.

By the direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-22778 Filed 10-7-86; 8:45 am]

BILLING CODE 8320-01-M

VOL 51 ISS 195 OCT 8 1986 UMI

Sunshine Act Meetings

Federal Register
Vol. 51, No. 195
Wednesday, October 8, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:56 p.m. on Thursday, October 2, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Missouri Farmers Bank, Maitland, Missouri, Mound City, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Thursday, October 2, 1986; (2) accept the bid for the transaction submitted by United Missouri Bank of St. Joseph, St. Joseph, Missouri an insured State nonmember bank; (3) approve the application of United Missouri Bank of St. Joseph, St. Joseph, Missouri, for consent to purchase certain assets of and assume the liability to pay deposits made in Missouri Farmers Bank, Maitland, Missouri, Mound City, Missouri, and for consent to establish the two offices of Missouri Farmers Bank, Maitland, Missouri, as facilities of United Missouri Bank of St. Joseph; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B) adopt: (1) A resolution (a) making funds available for the payment of insured deposits made in Century National Bank, Harris County (P.O. Houston), Texas, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, October 2, 1986; (b) accepting the bid of Sterling Bank—Willowbrook, Houston, Texas, a newly-chartered State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank; and (c) designating Sterling Bank—Willowbrook, Houston, Texas, as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank; and (2) an Order approving the applications of Sterling Bank—Willowbrook, Houston, Texas, for Federal deposit insurance, and for consent to purchase certain assets of and assume the liability to pay deposits made in Century National Bank, Harris County (P.O. Houston), Texas.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 6:05 p.m. and at 8:01 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Frontier National Bank, Vista, California, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, October 2, 1986; (2) accepted the bid for the transaction submitted by Rancho Vista National Bank, Vista, California; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In reconvening the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 3, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-22812 Filed 10-6-86; 2:56 pm]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, October 14, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding the Board's internal audit function.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22818 Filed 10-3-86; 4:06 pm]

BILLING CODE 6210-01-M

3

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, October 28 from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee will be held on Tuesday, October 28 from 9:00 a.m. to 5:30 p.m., on Wednesday, October 29 from 9:00 a.m. to 5:30 p.m., and on Thursday, October 30 from 8:00 a.m. to 4:40 p.m.

PLACE: Anchorage Hilton, 500 West Third Avenue, Anchorage, Alaska 99510.

STATUS: The executive session will be closed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss and consider a broad range of issues bearing on marine mammals in Alaska, the International Whaling Commission, net entanglement, permits, the coordination of research and collection activities, the tuna-porpoise issue, and the West Indian manatee.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW., Washington, DC 20006, 202/653-6237.

Dated: October 3, 1986.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 86-22846 Filed 10-6-86; 9:07 am]

BILLING CODE 6820-31-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 6, 13, 20 and 27, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 6

Thursday, October 9

10:00 a.m.
Briefing on Advanced Reactor Designs (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Review of ALAB-840 (In the Matter of Philadelphia Electric Company)—Limerick (Tentative)
b. Proposed Orders Establishing Informal Hearings *re* Denials of Materials License Applications of Perf-Master, Inc. and Radiology Ultrasound Nuclear Consultants, P.A. (Tentative)

Week of October 13

Tentative

Thursday, October 16

1:00 p.m.
Discussion/Possible Vote on Kerr-McGee Sequoyah Facility (Public Meeting)

3:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, October 17

10:00 a.m.
Briefing on Status of Fort St. Vrain (Public Meeting)

Week of October 20

Tentative

Thursday, October 23

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 27

Tentative

Wednesday, October 29

2:30 p.m.
Briefing on Near Term Operating Licenses (NTOLs) (Public Meeting)

Thursday, October 30

2:00 p.m.
Meeting with Members of INPO Plant Managers Course (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Withdrawal of Final Rule—Effects of Earthquakes on Emergency Planning" (Public Meeting) was held on October 2.

To verify the status of meetings call (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker, (202) 634-1410.

Robert B. McOsker,

Office of the Secretary.

October 2, 1986.

[FR Doc. 85-22844 Filed 10-3-85; 4:45 am]

BILLING CODE 7590-01-M

5

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. The Council will also hold an executive session to discuss civil litigation and personnel matters.

TIME AND DATE: October 15-16, 1986, 10:00 a.m.

PLACE: University Inn, Moscow, Idaho.

MATTERS TO BE CONSIDERED:

1. Public Comment and Council Deliberation on a Draft Position on a Process and Criterion for Determining Consistency under the Resource Acquisition Provisions of the Northwest Power Act (section 6(c)).
2. Public Comment and Council Action on Issue Paper on Alternatives Available for Responding to the Petition of Senator Al Williams to Conduct a Reassessment of the Preservation of WNP-1 and 3.
3. Council Action on Umatilla Steelhead Hatchery Preliminary Design.
4. Presentation and Public Comment on Bonneville Power Administration Cost-Effectiveness Analysis regarding the Model Conservation Standards.
5. Discussion of Petitions To Enter Rulemaking To Amend Model Conservation Standards. (Copies of petitions filed by the Northwest Conservation Act Coalition and CASE are available upon request by calling Judy Allender at the number listed below.
6. Council Business.
7. Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-22888 Filed 10-6-86; 12:02 pm]

BILLING CODE 0000-00-M

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federal register

Wednesday
October 8, 1986

Part II

Small Business Administration

13 CFR Part 124
Minority Small Business and Capital Ownership Development Assistance; Final Rule

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

Minority Small Business and Capital Ownership Development Assistance

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is hereby amending its regulations covering the section 8(a) and 7(j) programs. These programs were established by virtue of sections 8(a) and 7(j) of the Small Business Act, 15 U.S.C. 637(a) and 636(j). Taken as a whole, these regulations implement the Minority Small Business and Capital Ownership Development Program of SBA, a program which is intended to provide contractual and management assistance to concerns owned and controlled by socially and economically disadvantaged persons. In some instances, these regulations alter existing regulations covering the section 8(a) program. In other instances, these regulations add additional provisions to the existing regulations. Finally, in certain other instances the existing regulations would not be either altered or added to by these regulations. It should be noted that the regulations follow a numbering scheme different than that of the existing regulations. SBA believes that this scheme is easier to follow than in the existing regulations. The renumbering of the regulations has not resulted in the elimination of any significant provisions of the existing regulations.

DATES: These regulations are effective November 24, 1986.

ADDRESS: Written comments should be addressed to Docket Clerk, Office of General Counsel, Room 700, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Edward C. Neal, (202) 653–6524.

SUPPLEMENTARY INFORMATION:

General Overview

The Small Business Administration (SBA) is hereby amending its regulations covering the section 8(a) and 7(j) programs. These programs were established by virtue of sections 8(a) and 7(j) of the Small Business Act, 15 U.S.C. 637(a) and 636(j). Taken as a whole, these regulations implement the Minority Small Business and Capital Ownership Development Program of SBA. On December 22, 1983, at 48 FR 56686, SBA published proposed regulations governing the Minority Small Business and Capital Ownership Development Program. The public was afforded 60 days to comment on that proposal, and SBA extended that comment period by an additional 30 days thereafter (see 49 FR 6103). SBA received 322 public comments in response to that publication. In addition, SBA consulted with members and staff persons of the Senate and House of Representatives Small Business Committees regarding that proposal, and conducted numerous discussions with representatives of the minority business community relative to that proposal. A detailed analysis of the nature and substance of this public participation has been made a part of this Supplementary Material.

SBA has now evaluated all of the public participation, and these regulations represent the results of that evaluation. In some instances, these regulations alter existing regulations covering the section 8(a) program. In other instances these regulations add additional provisions to the existing regulations. Finally, in certain other instances the previously existent regulations are not either altered or added to by these regulations. This section of explanatory information will highlight instances where significant changes are made or where the present regulatory scheme is unaltered. In addition, it will explain how SBA has chosen to deal with sections of the proposed regulations on which significant public comment was received. It should be noted that these regulations follow a numbering scheme different than that of the preexistent regulations. SBA believes that this scheme is easier to follow than that presently existent in its regulations. The renumbering of the regulations has not resulted in the elimination of any of the significant provisions of the existent regulations.

Sections 124.1 through 124.3 of these regulations set forth general statements as to the purpose and administration of the two programs. These statements do not vary significantly from the present regulations. However, it should be noted that § 124.1 makes clear that these regulations are effective as to all concerns participating in the section 8(a) program and all applicants for admission upon their effective date, i.e., 45 days after publication in the **Federal Register**. (See § 124.100 of a special provision regarding conforming business plans of current program participants.) Further, § 124.2 makes clear that the Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB/COD) is responsible for management of the programs under the supervision of and responsible to the Administrator of the SBA. Clarification of this relationship is necessitated by statutory admendments which occurred subsequent to the last publication of regulations governing these programs. Section 124.3 of these regulations makes clear that previous willful violation of any of SBA's regulations may result in the denial of admission to the section 8(a) or 7(j) program. This clarification has been made as a result of the public comment SBA received in the proposal. In the proposal, it should be noted, the term *willful* did not appear.

Section 124.100 establishes a series of administrative definitions relevant to the section 8(a) progam of terms which are used throughout these regulations. These definitions appeared in the proposed regulations at § 124.301(b). The substance of the provisions which appeared in the proposal has not been altered from the manner in which it was presented at that time. However, several new definitions have been added. These include terms relative to eligibility of applicants for admission to the programs which are used to define types of eligible businesses. In addition, the concept of selfmarketing is also defined in this section. All of these new terms had previously been alluded to in the preexistent regulations, but heretofore had not been defined.

Section 124.100(m), a new provision, makes clear that present participants in the section 8(a) program will be notified by SBA of the approved Standard Industrial Classification (SIC) Code desingations contained in their business plans. In order to avoid any inequitable effect of the application of §§ 124.102 and 124.207, each present participant will be allowed to make a written request that SBA make one or more changes in its approved SIC Code designations to conform its business plan to these regulations.

Sections 124.101 through 124.109 set forth the eligibility criteria for the section 8(a) program. Section 124.101(a) provides that applicants for participation in the section 8(a) program must meet all eligibility criteria set forth in these regulations, and that determinations of eligibility shall be made in writing by the AA/MSB–COD, whose decision shall be final. Section 124.101(b) sets forth a procedure for reviewing eligibility determinations where members of the public submit evidence that a determination was based on fraudulent information, or that SBA did not follow the requirements of these regulations in rendering the determination. SBA will consider

comments regarding this new requirement for an additional thirty day period.

Section 124.102 prescribes the applicable size standard to be used in determining the eligibility of each participant in the program. This section provides a partial departure from the existent regulations. In this regard an applicant for admission to the section 8(a) program must establish that it is small as set forth in 13 CFR 121.4 At the time of admission, the size standard to be applied will be that of the primary industry classification of the concern as expressed in its business plan. As the concern continues to participate in the section 8(a) program, however, it will be required to certify to SBA that it is small for the purpose of performing each section 8(a) subcontract which it is awarded. This is a new requirement. In addition, a firm will only be permitted to perform contracts under section 8(a) which are classified according to the Standard Industrial Classification Code numbers which appear in its business plan as established pursuant to § 124.207 of these regulations.

Section 124.103 describes ownership criteria to be applied to applicants for the program. In this regard, subsections 124.103 (c), (d), and (e) set forth criteria involving part ownership of an applicant for the section 8(a) program by nondisadvantaged individuals, concerns in the same similar lines of business, and participation in the program by a section 8(a) business concern following a change of ownership, which have not heretofore been included in SBA's regulations. The intent of these provisions is to make more clear SBA's concern that program participation be focused directly upon socially and economically disadvantaged individuals as the statute intends.

Sections 124.103(f) and 124.103(g) make it clear that concerns owned and controlled by Indian Tribes and Native Alaska Regional and Village Corporations are eligible for participation in the section 8(a) program under prescribed conditions.

Section 124.104 sets forth the statutory requirement that participants in the section 8(a) program must be controlled and managed by individuals who are socially and economically disadvantaged. The regulation makes clear for the first time that individuals who are not socially and economically disadvantaged may not exercise actual control or have the power to control the operations of an applicant or participant in the program, and the socially and economically disadvantaged ownership interest in a participant must be in excess of the ownership interest of individuals or entities which are not socially and economically disadvantaged.

Section 124.105 sets forth definitional standards for the concept of social disadvantage and remains unchanged from the rule existing prior to the publication of the proposed rule. These standards remain under review and changes to this section, if any, will be undertaken at a later date.

Section 124.106 sets forth the statutory requirement that economically disadvantaged individuals be socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business and competitive markets area who are not socially disadvantaged. It then sets forth factors to be considered in determining whether an individual is economically disadvantaged. These factors differ somewhat from those previously expressed in SBA's regulations. They represent an effort on SBA's part to more fully spell out the meaning of economic disadvantage as it is expressed in the statutory provisions and the legislative history thereof.

Section 124.107 sets forth two other statutorily required conditions for eligibility in the program, i.e., that SBA make a determination that participants will, with the assistance of the program, have reasonable prospects for success in competing in the private sector, and that sufficient assistance is available from SBA and other sources to see to it that the concern's participation in the program is useful.

Section 124.108 sets forth a number of eligibility requirements which have heretofore not been expressed in SBA's regulations, but which have previously been utilized as a matter of standard procedure in evaluating applications for participation in the program. These criteria are self-explanatory.

Section 124.109 sets forth several types of businesses which are ineligible for participation in the section 8(a) program.

Section 124.110 sets forth the standards by which a fixed program participation term and an extension thereof will be established for each participant in the section 8(a) program. In this regard, the public's attention is directed to 46 FR 57266 (November 23, 1981), at which citation the fixed program participation regulations were first published in final form. These regulations do not deviate markedly from those regulations. Since fixed program participation terms have been established for all concerns presently in the program, this section speaks only in terms of firms which will enter the program and extensions of terms for those firms already in the program. Otherwise, criteria by which the terms are to be established are for the most part the same as those already existent in SBA's regulations.

In addition, a firm may be deemed to have completed participation in the section 8(a) program prior to expiration of its FPPT pursuant to the provisions of §124.110(k). This subsection provides the criteria upon which completion will be determined, and the mechanism by which SBA will implement such a determination. It should be noted that section 8(a)(9) of the Small Business Act requires that such a determination is subject to full Administrative Procedure Act hearings, and these regulations provide for such due process as that statutory provision requires before a concern may be determined to have completed its participation in the section 8(a) program prior to expiration of its FPPT.

Section 124.111 sets forth the mechanics for obtaining extension of a fixed program participation term. These mechanics have existed in SBA's standard operating procedures prior to this time, and it is felt that by now including them in the regulations participants in the program will have a better understanding of how the extension process functions.

Section 124.112 sets forth the grounds upon which a participant may be terminated from the section 8(a) program and the procedural mechanism by which such termination will take place. These regulations vary only slightly from the preexistent regulatory scheme. In this regard, several of the criteria upon which termination may be based have been clarified. These clarifications have been adopted as a result of our experience in implementing and proceeding under the present standards, and as a result of the public comment received on the proposed regulations.

Section 124.113 sets forth a procedural framework upon which SBA may suspend contractual and other forms of assistance to section 8(a) business concerns upon an issuance of an order to show cause why such a concern should not be terminated from the program. Such suspension would continue from the time of notification of the firm, which would be simultaneous with the issue of the order to show cause, until such time as SBA deems it appropriate to lift the suspension. In most cases, this period would encompass the period of time necessary

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to reach a formal conclusion of the termination proceeding. However, in some instances a suspension could last for a shorter period of time. In no circumstances would the suspension exceed the time necessary to conclude a termination proceeding in which the 8(a) business concern prevailed.

SBA has adopted these regulations based upon its desire to utilize limited program resources in the most efficient and economical manner and to protect the Government's interests. Furthermore, based upon certain recent adjudications SBA has no doubt that such a manner of proceeding is legally correct, if not mandated. The suspension procedures provided for are similar to those utilized by other contracting agencies of the Government, and are designed to afford maximum due process of law to program participants.

Sections 124.201 through 124.206 set forth the basis upon which applications for admission to the section 8(a) program will be received and processed by SBA. These sections are new to the regulations, but they express procedures which have been part of SBA standard operating procedures governing the 8(A) program for some time. They are included in the regulations to make clearer to the public SBA's procedures for admitting concerns to the program.

Section 124.207 describes the process by which the business activity of a concern admitted to the section 8(a) program is established in its business plan. A concern's primary business industry classification and related Standard Industrial Classification Code designations will be stated in its business plan upon entry into the program. Thereafter, a concern will only be eligible to receive subcontracts in the section 8(a) program which are consistent with those Standard Industrial Classification Code designations. However, under certain prescribed circumstances a participating concern will be able to amend the Standard Industrial Classification Code designation with prior SBA approval. Those circumstances are delineated in the regulation.

Section 124.301 is a new provision which describes the mechanisms by which requirements (contractual) support is made available to participants in the section 8(a) program. This section contains material which has heretofore been part of the standard operating procedure of the program, but which we feel is of sufficient value to the public to be included in the regulations. Of note are the provisions which describe the selection of specific contracts for the program and the conditions under which they are made available to participants. Section 124.301(c)(2) has been amended to state that SBA will verify the appropriateness of the SIC Code designation assigned to each requirement offered for the section 8(a) program by the procuring agency. SBA's assumption of this responsibility precludes challenges of SIC Code designations to SBA's Office of Hearings and Appeals by section 8(a) program participants or other business concerns.

Section 124.302 sets forth provisions regarding the administration of contracts and subcontracts under the section 8(a) program. This part of the regulation would add a new section to the regulations which would incorporate provisions of SBA standard operating procedures into the regulations for the first time. The important provisions in this section are subsection (a) which sets forth percentages of work required to be performed directly by 8(a) business concerns on various types of contracts and subsection (c) which describes the Certification of Competency aspect of the 8(a) program. These provisions are self-explanatory. Otherwise, as mentioned above, the remainder of this section describes procedures which have long been standard in SBA's administration of the 8(a) program but have not been specifically included in SBA's regulations.

Section 124.401 and 124.402 set forth the purposes for, and terms and conditions upon which, advance payments and business development expense will be made available to participants in the section 8(a) program. These sections are basically unchanged from the preexistent regulations governing these topics. However, the discussion of the review of public comments below does indicate the changes which were made in these two sections. Section 124.403 sets forth the criteria upon which the line of credit method of making advance payments available to a section 8(a) concern will be used. This section is the same as the preexistent provision, with the exception that it is renumbered.

Sections 124.501 and 124.502 are the renumbered sections concerning the Development Assistance Program (the "7(j) program") and the Small Business Capital Ownership Development Program (the "7(j)(10) program"). With the exception of the renumbering, no changes have been made in the present regulations governing these two programs.

Finally, § 124.1000 which contained the rules of practice governing adjudicatory proceedings governing termination of section 8(a) program participants from the program, has been deleted. These procedural rules have been replaced by Part 134 of this Title which provides for procedural rules governing all adjudicatory proceedings conducted in SBA. These procedures will be administered by SBA's Office of Hearings and Appeals under the direction of SBA's Chief Administrative Law Judge.

Review of Public Comments

During the 90 days which SBA afforded the public to comment on the proposed section 8(a) regulations, 322 written comments were received. SBA has carefully reviewed all of these comments. Where appropriate, SBA has made changes to the regulations to take into account the comments received. Where SBA has not agreed with the comments regarding a particular provision of the regulations, an explanation for such disagreement is given.

There were no substantive comments concerning §§ 124.1 and 124.2. As such, they remain basically the same as in the proposed regulations. However, § 124.1(a)(i) was amended to make clear that these regulations apply to firms which are currently participating in the section 8(a) program.

Many commenters felt that § 124.3 was vague as written in the proposal. Consequently, SBA has rewritten the section to clarify that an applicant for admission to the section 8(a) program will not automatically be denied admission to the program for violating any of SBA's regulations. Such violation must be willful. In addition, the nature and severity of any such violation will be taken into account in making a determination on the admission of an applicant to the program.

A new § 124.100 has been added to the final version of the regulations. It is a definitional section, and it has been added to clarify several terms which many commenters indicated needed explanation. In addition, the definitions which appeared in § 124.301(b) of the proposed regulations have been incorporated into § 124.100 of these final regulations. The definitions of the terms "business plan," "certification of SBA's competency," "commitment," "local buy item," "manufacturer," "national buy item," "negative control," "open requirement," "primary industry classification," "regular dealer," "requirement support," and "self-marketing" are contained in § 124.100. Many comments were received on the proposed definition of "business plan," which was found at § 124.301(b)(5) of the proposed rule. Commenters suggested that the term "business plan" should mean documents as submitted by a firm which will be presumed to be approved unless disapproved within 30 days. Such language would be in lieu of the language limiting "business plan" to those documents submitted by an 8(a) firm and approved by SBA. SBA rejects this recommendation. In order to effectively administer the operation of the 8(a) program, SBA must be able to approve or disapprove certain provisions of an applicant's proposed business plan. By restricting SBA to a 30-day review process, a firm's proposed business plan may not be afforded the proper consideration that it deserves. This could well lead to firms having business plans which are unworkable within the confines of the 8(a) program. Moreover, inadequate business plans would hinder a section 8(a) firm's development, contrary to the goals of the 8(a) program.

In addition, § 124.100(m) explains the applicability of these final rules to firms which are currently participating in the section 8(a) program. This subsection was added in response to concerns and confusion raised by current 8(a) firms' comments. SBA will review the business plan of each participating section 8(a) concern and will send a notice to each concern, within 120 days of the publication of this final rule, informing such concern of the SIC Code designations for which it has been approved to receive 8(a) contract awards. A currently participating section 8(a) firm will have 30 days from the mailing of such notice to request changes in SIC Code designations so that the firm's approved business plan conforms with these regulations (i.e., so that its primary industry classification and related SIC Code designations are stated in its business plan). A requested correction will be effective only after SBA gives its written approval.

Many commenters believed that the term "primary industry classification," in proposed § 124.102(a), should be clarified. Commenters stated that the term was confusing since no size standard is based on such a classification. The definition of this term was added in the final rules at § 124.100(i).

Numerous commenters objected to the proposed requirement for certification and verification of each contract, as required by § 124.102(b), and believed that such a requirement would cause delays in processing 8(a) contracts. SBA has not changed the certification and verification requirements of § 124.102(b) in these final regulations. Verification of the size of an 8(a) firm by SBA for each contract will serve a necessary purpose. It will eliminate challenges to the size certification by other section 8(a) concerns in connection with a particular 8(a) contract and will assure SBA that small businesses are receiving the benefit of the section 8(a) program. The verification will be conducted by the SBA contracting officer or designee by using the Business Development Specialist Review form, the business plan of the certifying concern, financial statements and other pertinent information.

Section 124.102(c) was heavily commented on. The commenters strenuously opposed the language which appeared to limit a firm to having only one SIC Code designation in its business plan. There was a typographical error in this proposed subsection which appeared to so limit an 8(a) firm. This error has been corrected to reflect that a section 8(a) concern can have more than one SIC Code designation in its business plan. There is no maximum number of SIC Codes which may appear in a firm's business plan. However, the business plan itself is a limiting factor. All SIC Codes in the business plan must reasonably relate to the development of the 8(a) concern in accordance with the business plan (see § 124.207).

Commenters were also concerned that a section 8(a) concern was limited, by § 124.102(c), to performing only 8(a) contracts. Such a notion is directly in conflict with the purpose of the section 8(a) program. SBA encourages 8(a) firms to pursue commercial and competitive Government contracts. Consequently, the language of this subsection has been changed to clarify that an 8(a) firm can perform any non-8(a) contract, and is limited only when performing 8(a) contracts to the SIC Codes specified in its business plan.

A number of commenters objected to the provision of proposed § 124.103 prohibiting part ownership in an 8(a) applicant concern by nondisadvantaged individuals, their spouses or immediate family members, who were former employers of the disadvantaged owner(s) of the applicant concern. A need for such nondisadvantaged individuals as a source of capital was stressed by many commenters. SBA's concern regarding this paragraph is a concern for the possibility of 8(a) firms acting as fronts for nondisadvantaged individuals. The 8(a) program has had a history of many abuses in this area where the real owner/manager was a nondisadvantaged individual and the disadvantaged "owner(s)" was (were) simply acting out the will of the nondisadvantaged individual. Because of this concern, SBA feels that this paragraph cannot be entirely eliminated. However, SBA agrees that in some instances such nondisadvantaged former employers of the disadvantaged owner(s) should be permitted to be part owners of an 8(a) concern and will allow such part-ownership where the applicant concern obtains prior approval from SBA.

Commenters also suggested that the term "negative control" in this section be defined. Such term is adequately defined in SBA's size regulations. The only change with respect to such term in these final rules is an updating of the definitional citation.

Section 124.104 sets forth the statutory requirement that participants in the section 8(a) program must be controlled and managed by individuals who are socially and economically disadvantaged. It clarifies, for the first time, that individuals who are not socially and economically disadvantaged may not exercise actual control or have the power to control the operations of an applicant or participant in the program.

Several commenters felt that the lead-in paragraph of § 124.104 was confusing and that it could be read to preclude equal minority owners. SBA does not agree that this language can be so read. Equal minority (disadvantaged) owners are permitted so long as the ownership portion of the disadvantaged managers is a greater percentage of the business entity than any other owners (i.e., the total percentage of ownership of all the disadvantaged managers combined must be at least 51 percent). Therefore, three disadvantaged individuals each owning 17 percent of the business entity and who are involved in the applicant concern's management and daily business would meet the requirements of § 124.104. However, if only two of the disadvantaged owners are involved in the management and daily business operations of the firm, such concern would not qualify under § 124.104 for the 8(a) program. The 8(a) program is designed to aid disadvantaged entrepreneurs, not investors who happen to be disadvantaged. The language of § 124.104(b) has been slightly amended to clarify that multiple disadvantaged managers is permissible.

Section 124.105 sets forth definitional standards for the concept of social disadvantage. In its proposed form, this section would have provided that members of certain designated groups "are considered socially disadvantaged," but that this presumption of social disadvantage would be subject to rebuttal if it did not

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appear that the individual has maintained identification with the group to the extent that he or she was "commonly recognized" as a group member. If that showing were not made, the individual would have been required to demonstrate his or her social disadvantage according to the standards set forth for nonmembers of designated groups. The vast majority of comments received opposed this requirement because it would be impractical or inappropriate for the SBA to judge the extent of an individual's public "identification" with a group.

Many comments also opposed the language of proposed § 124.105(b)(3) which stated that "the attainment of a qualify education or job will not absolutely disqualify the individual from being found socially disadvantaged if sufficient other evidence of social disadvantage is presented to SBA." The commenters felt that the use of the word "absolutely" implied that circumstances existed where a qualify education or job could disqualify one from being termed socially disadvantaged. In order to avoid ambiguity, the final regulation (§ 124.105(c)(2)) make it clear that one's education or occupation, while of relevance, is not along dispositive of one's status as being socially disadvantaged or not.

As mentioned earlier, this section is therefore unchanged from its pre-notice of proposed rulemaking content. Changes to § 124.105 remain under review and may occur pursuant to appropriate rulemaking procedures.

Those commenting on proposed § 124.106 felt that different economic factors, relative to industry, should be considered in determining whether or not an individual is economically disadvantaged. It is, and has been, SBA's intention to consider different factors for different types of businesses in any such determination, and the regulations have been changed to reflect that view. Commenters also objected to the language of § 124.106(b)(1) concerning an individual's primary residence. It was felt that either a private residence is an irrelevant criterion in determining economic disadvantage, or that the value of the primary residence should be reduced by liens, mortgage obligations and other encumbrances in any such determination. The final rules have been changed so that only the equity value of an individual's primary residence is considered in determining economic disadvantage. In addition, commenters believed that whether an applicant firm is economically disadvantaged should be determined by comparison between the applicant concern and other concerns in the same business area who are not socially disadvantaged. The final regulations have been changed to reflect this comment.

Section 124.107 sets forth two other statutorily required conditions for eligibility in the program, i.e., that SBA make a determination that participants will, with the assistance of the program, have reasonable prospects for success in competing in the private sector, and that sufficient assistance is available from SBA and other sources to see to it that the concern's participation is useful.

Many commenters thought that the time period during which a firm must have a reasonable prospect for success in order to be eligible for the 8(a) program should be specified. The final rules have been clarified so that an applicant concern must have a reasonable potential for success within the maximum amount of time that a concern may be in the 8(a) program (up to seven years). Several commenters also requested that the term "reasonable prospect for success" be defined. Such a term is not subject to simple definition. The factors to be examined vary with each particular type of business concern. In addition, the circumstances that any one firm finds itself in are, for the most part, unique. These factors and circumstances must be analyzed together to make any determination concerning reasonable prospect for success. Consequently, any attempted definition may not take into account a unique factor or circumstance that would otherwise give an individual applicant concern a reasonable potential for success. SBA does not define such term so that a particular firm can show unique circumstances that should qualify it for the 8(a) program. If there is a doubt about a reasonable propsect for success, it will be resolved in favor of the applicant concern.

Section 124.108 sets forth a number of eligibility requirements which have heretofore not been expressed in SBA's regulations, but which have previously been utilized as a matter of standard procedure in evaluating applications for participation in the program. Two of the four proposed additional eligibility requirements of § 124.108 have been changed, in response to comments received, from their version in the proposed rules. The first was entitled "Good Character" in the proposed rules. Commenters recommended either deletion of the term "good character" or definition of such term to avoid subjective interpretation and arbitrary abuse. SBA has rewritten this subsection, calling it "Individual Character Review," and has more clearly described what will be considered under this eligibility requirement. Basically, if SBA receives information from a credible source or from the section 8(a) program application itself that an individual applicant has engaged in criminal conduct within the preceding five years, the application process will stop until SBA's Inspector General has reviewed and evaluated such charge(s).

The eligibility requirement entitled "Individual Eligibility Limitations" has also been amended from its proposed form. The comments suggested a second exemption allowing re-entry, where a firm is terminated due to SBA's failure to provide contract support. This entire subsection has been rewritten. A former 8(a) concern may now be reinstated into the 8(a) program for that amount of time which remained in its Fixed Program Participation Term at the time it withdrew from the program. A new FPPT will not be established upon reinstatement. However, there are now three situations, instead of one as in the proposed rules, in which such a firm may be reinstated, including where there are circumstances beyond the control of the 8(a) concern which inequitably interrupted the continued participation of the concern in the 8(a) program. The situation that the commenters recommended be a second exception to re-entry will now fall within this third category allowing reinstatment. However, in order for there to be reinstatement under any one of the three provisions, the 8(a) concern must have voluntarily withdrawn from the 8(a) program and the concern must have totally ceased its business operations.

Section 124.109 sets forth several types of businesses which are ineligible for participation in the section 8(a) program. This section was very lightly commented on. Those commenting believed that a definition should be provided for the terms "Brokers" and "Packagers." Both of these terms are used in connection with the implementation of the Walsh-Healey Public Contracts Act. "Packagers" are distinguished from "assemblers" in determining whether or not a firm is a manufacturer [see 48 CFR 22.606–1(d)]. "Brokers" are intermediaries who bid low to obtain a contract and then subcontract it out to another business concern. Brokers are distinguished from "agents," who are permitted under the Walsh-Healey Public Contracts Act, since the agency relationship is one that is disclosed up front [see 48 CFR 22.607].

These terms are better defined by the Walsh-Healey Public Contracts Act. As such, they are not defined in these final regulations.

Section 124.110 of the proposed regulations set forth the standards by which a fixed program participation term (FPPT) and, where appropriate, an extension thereof, will be established for each participant in the section 8(a) program. Section 124.111 delineates the mechanics of applying for an extension of one's FPPT. Some commenters questioned the advisability of fixed progam participation terms and voiced a preference for program completion only upon a firm's achievement of competitiveness.

In response to these comments, SBA refers the public to 46 FR 57266 (November 23, 1981), at which citation the final regulations governing fixed program participation terms were published. SBA introduced fixed program participation terms into the section 8(a) program in its implementation of Pub. L. 96–481. As stated in the preamble to that final regulation, Pub. L. 95–507, 92 Stat. 1760 (October 24, 1978), clearly states that the purposes of the section 7(j) and 8(a) programs are to foster business ownership, to promote competitive viability, and to clarify and expand the SBA's minority enterprise program. The implication of the terms "foster" and "promote" is that the SBA is direted to take actions to improve and advance the economic well-being of firms participating in the section 8(a) program. It is, however, beyond the intent of the statute and the ability of the SBA to guarantee or attempt to insure the success of participating firms. Neither Pub. L. 96–481, its implementing regulations or these revised regulations change the philosophy established by Pub. L. 95–507. Furthermore, Pub. L. 96–481 requires that the terms of program participation be fixed for each firm at the time it is approved for participation in the section 8(a) program.

Some commenters were concerned that the criteria which SBA uses as guidelines in deciding an appropriate FPPT for a given firm are not specified in the regulations. It is SBA's intention that, in addition to the criteria stated in the regulations, actual notice of any additional criteria will be providing each firm upon its application to the program. SBA's District Offices will make such information available in conjunction with the application forms.

Some commenters questioned the effect of the expiration of a firm's FPPT on its ability to execute options or modifications related to a contract received under the section 8(a) program. It has always been SBA's position that no new section 8(a) contract can be entered after a firm's FPPT has expired, but that options or modifications, related to contracts awarded during the FPPT, are permissible provided that, in the case of modifications, they are not so extensive that under ordinary circumstances a new contract would be executed.

The comments reflected an uncertainty as to the meaning of "the progressively increasing importance of contract support, other than section 8(a) contract support," as used in § 124.110 (g)(3). In negotiating an FPPT or an extension of an FPPT, SBA will look favorably on a firm which anticipates an increasingly greater percentage of its total contract dollars to be made up of non-8(a) contracts for each year over the course of its FPPT. Since one of the purposes of the section 8(a) program is to develop self-sufficient businesses, an applicant with little or no prospect of receiving non-8(a) contracts or of increasing its reliance on such contracts would not be an appropriate participant in the section 8(a) program.

Similarly, SBA looks to a firm's decreasing dependence on Advance Payments and Business Development Expense funds as indicators of a firm's business development in deciding whether to grant it an extension of its FPPT.

Some commenters stated that SBA should permit administrative appeals of determinations concerning the length of an FPPT. Since by statute such terms are mutually agreed upon by the applicant and SBA, such an appeal is unnecessary. Section 7(j)(10) of the Small Business Act, 15 U.S.C. 636(j)(10), also provides 8(a) concerns with an opportunity to request an extension of their FPPT's and, without mention of further input from the section 8(a) concern, authorizes SBA to grant or deny a firm's request. Therefore, appeals concerning requests for extensions of FPPT's are not in keeping with the authorizing legislation.

Some commenters objected to the deletion of a regulatory subsection covering program completion which would occur after a hearing confirming that a firm has satisfied its business development goals as stated in its business plan. While SBA believes that well-developed business plans and appropriate FPPT's will obviate the need for such a subsection in the vast majority of cases, SBA recognizes the appropriateness or retaining such a section. Therefore, SBA has included a subsection governing program completion which appears as subsection 124.110(k) in this final regulation. The language of this new subsection is substantially the same as that previously included in Part 124 of these regulations at § 124.1–1(d).

Section 124.112 of the proposed rule, Program Termination, set forth the grounds for which SBA could institute termination proceedings against an 8(a) program participant. Generally, the public comments voiced concern that some of the grounds were too vaguely worded and subject to contradictory interpretation. As a result of these comments, SBA has made the following changes to this section.

SBA has clarified that a firm's failure to maintain its status as a small business under the Small Business Act and its implementing regulations for *each* of the Standard Industrial Classification Code designations contained in its business plan is a separate ground for termination from the program [see § 124.112(a)(2)]. If, however, a firm becomes large for one or more, but not all, of its SIC Codes, it can continue to participate in the 8(a) program under the SIC Code designation(s) for which it has maintained its status as a small business.

In the interest of fairness, SBA's inability to provide contract support (previous ground number 6) has been deleted, upon consideration of the comments received, as a ground for termination.

The time limit for the return of requested audited financial statements (current number 6, previous number 7) has been extended to 180 days in recognition of the lengthy delays sometimes associated with obtaining audited financial statements.

Former ground number 11 (current number 10) has been amended to delete a time restriction on a firm's achieving its business goals as one reason for which termination proceedings could be instituted.

Former ground number 13 which would have authorized termination for inadequate management performance by the concern's management has been deleted. Generally, this ground is very difficult to demonstrate unless it occurs in conjunction with one or more other grounds for termination. Therefore, SBA views this ground to be duplicative and unnecessary to proper program administration.

In response to public concern that insignificant financial debts to any Government entity could be construed to be a ground for termination under former number 15 (current number 13), SBA has added the words "significant" and "Federal" to that provision.

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SBA has also clarified that any joint venture agreement referred to in previous number 19 (current number 17) must relate to the performance of the section 8(a) subcontract.

Several commenters were concerned that former number 22 (current number 20) could result in an unfair termination of an 8(a) concern from the program for false submissions made by an employee of the firm without the principal(s) of the firm having knowledge of such submission. Therefore, SBA has amended this reason for termination to include the requirement that the principal(s) of the firm have or should have knowledge of the false submission(s).

Many public comments indicated a concern that a firm's violation of even the most unimportant SBA regulation could result in its termination from the program. SBA has clarified that, in order to be a ground for program termination, the violation must be of a significant SBA rule or regulation.

Subsection 124.112(b) has been amended to correct the reference to the hearing procedures which appear in Part 134 of this title.

Several commenters objected to the inclusion of § 124.113, which deals with suspension of program assistance, in situations where termination proceedings would be instituted and where SBA has determined that the Government's interests would be jeopardized by SBA's continuing to make assistance available to the suspended firm. SBA has clarified that *only* upon issuance of an order to show cause why such an 8(a) concern should not be terminated from the program may the Administrator or the AA/MSB–COD suspend contract support to the section 8(a) participant. SBA has also amended the regulation to make clear that a suspension would only occur in those situations where immediate action is necessary to protect the Government's interest. It is contemplated that in such a situation involving an indicated section 8(a) concern or its principal(s) where conviction for the indicted offense would be grounds for termination from the program SBA may suspend the indicted firm pending the resolution of the indictment. The final regulation also states that, where requested, a hearing on the suspension will commence as soon as possible, but in no case more than 20 calendar days from the Administrative Law Judge's ruling, if the request is granted.

No comments were received concerning §§ 124.201, 124.202, 124.203 and 124.205. As such, these procedural sections remain the same in these final regulations as they were in their proposed form.

Several commenters suggested that § 124.204 be revised to establish a definite and objective order or priority for award of contracts to responsible 8(a) concerns. SBA believes that such a provision would be inappropriate in this section. Pursuant to this section, SBA must make a determination that there is a reasonable likelihood that 8(a) requirements are available to support the applicant concern. Such a determination must be based upon the circumstances and needs, at the time of application, of the area and industry in which the applicant concern wishes to conduct its business. Any order of priority in these regulations would be inflexible to the unique situation of a particular 8(a) applicant.

Section 124.207 was heavily commented on. However, the comments were all basically the same. The primary objection raised was to the provision prohibiting change in SIC Codes in a firm's business plan after entry into the 8(a) program. In response to these comments, § 124.207(b) has been added in the final regulations. This subsection authorizes three instances where a firm's business plan may be amended. These three situations are designed to be limited in their application. A participating 8(a) concern will not be able to change or amend its business plan simply because it has gotten too large to qualify for contracts under a particular SIC Code designation and now wishes to add another SIC Code designation with a different size standard. In order to be deemed "unable to achieve reasonable section 8(a) development," under § 124.207(b)(2), an 8(a) concern's previously assigned SIC Code designations must be inadequate to enable the section 8(a) firm to achieve at least 40 percent of its approved section 8(a) contract support level. In addition, it is intended that, pursuant to § 124.207(b)(2), a firm not be permitted to add an SIC Code designation in a Division Classification, as expressed in the SIC Code manual, which was not already in its approved business plan. For example, if an 8(a) firm had several SIC Code designations in its business plan under the Division Classification of Manufacturing and is determined to be unable to achieve reasonable 8(a) development, it could add another SIC Code under the Manufacturing Division Classification, but could not add an SIC Code under the Division Classification of Retail Trade or of Construction, etc.

Commenters also objected to the use of the term "principal business activity" in the proposed rules. This term has been replaced by the term "primary industry classification," which is defined in § 124.100(i), in these final regulations.

Section 124.301 of the proposed rule was also heavily commented on. In these final regulations, the definitional provisions which appeared in § 124.301(b) in the proposed rule are located in a new § 124.100. Sections 124.301(c) and 124.301(d) of the proposed rule have been redesignated §§ 124.301(b) and 124.301(c) accordingly.

Many commenters objected to the definition of "business plan" in proposed § 124.301(b)(5). Such definition appears in § 124.100 of these final regulations. The comments regarding such definition and SBA's response thereto are found in the explanatory material of § 124.100.

Many commenters also objected to proposed § 124.301(c)(8) [now § 124.301(b)(8)]. These comments centered around the adverse impact language of proposed § 124.301(c)(8)(iv) [now § 124.301(b)(8)(iv)]. In response to these comments, this subparagraph has been rewritten to clarify that all relevant factors will be considered in determining whether another small business would be adversely affected by SBA's acceptance of a proposed procurement for section 8(a) award. Two factors which will be considered, if applicable, are listed in § 124.301(b)(8)(iv)(A). The situation in which adverse impact will be presumed has also been clarified.

Section 124.301(c)(5) [formerly § 124.301(d)(5)] has also been clarified in response to comments received. It specifies that SBA will provide a Certification of SBA's Competency after it has determined the capability of its 8(a) subcontractor, bu prior to the award of the actual contract. Such certification occurs after successful contract negotiations result in a proposed award to the 8(a) concern.

Several commenters objected to the proposed percentages of work required to be performed directly by 8(a) concerns in § 124.302(b). However, no persuasive reasons were set forth for changing these percentages. Therefore, they remain as they were in the proposed rule.

The comments concerning § 124.401, Advance Payments, centered on two main points. First, many commenters were concerned that § 124.401(b) was too restrictive in its prohibition of advance payments where financing is available on reasonable terms, where "reasonable terms" includes financing at the current market rate. SBA agrees with this concern and has deleted that portion of the subsection which made reasonable terms synonymous with current market rate.

Second, some commenters misinterpreted § 124.401(b) to allow only one advance payment at a time. SBA wishes to clarify that an 8(a) concern may have several advance payments outstanding on on-going contracts. This subsection merely precludes an 8(a) concern from receiving additional advance payments if it has not repaid its obligation from a prior contract which it has completed, on which it has defaulted or which the Government has terminated. Other commenters advocated allowing an exception to this requirement where an 8(a) concern has successfully completed its contract and has an outstanding payment due on its advance payment merely because the contracting agency has delayed in making final payment on the contract. SBA believes that in this situation strict application of this subsection would unfairly penalize the concern. Therefore, SBA has included this suggested exception in this subsection.

SBA received a comment which objected to the requirement of a demand note for the amount of the advance payment. SBA believes that a note would be helpful additional evidence of the obligation in a situation where expedited collection of the advance payment is necessary. However, SBA agrees that it need not be a demand note, and has amended this subsection accordingly.

SBA has already added a sentence to § 124.401(d)(4) which clarifies that amounts remaining in the special bank account over and above those funds needed to meet the advance payment liquidation schedule may be disbursed to the section 8(a) concern provided that the unpaid balance on the section 8(a) subcontract is sufficient to meet the remainder of the liquidation schedule.

Some commenters expressed concern that § 124.401(e)(2) was too restrictive in its requirement that all previous advance payments become immediately due and payable upon the cancellation of one advance payment. SBA has considered these comments and has amended this subsection to allow the concern until its receipt of the final contract payment on the subcontract to which the cancelled advance payment relates to repay all outstanding advance payments.

Some commenters of § 124.402, Business Development Expense (BDE), were opposed to SBA's proposal of more restrictive rules governing this business development tool. Some believed that allowing BDE only where financing was not available at the current market rate was too restrictive. SBA has considered these comments and agrees that if financing is not available at a reasonable rate for a particular firm, then BDE may be made available.

Several commenters suggested that BDE be made available for purchasing capital equipment whenever such acquisition could not be made by other financial means without adversely affecting the concern's financial condition. SBA believes that this suggestion would result in no standard at all because, for any purchase of capital equipment, the argument could be made that the financial condition of the company is adversely affected.

Some commenters objected to SBA's imposition of protections for the agency's investment in the 8(a) concern through BDE awards. SBA believes that these protections are necessary during the course of the subcontract, but upon successful completion of the subcontract to which the BDE relates, the protections would no longer apply.

In response to public comment, SBA has revised § 124.402 to clarify that BDE will be awarded only after SBA conducts a complete analysis of the firm's written request and determines that an award of BDE will promote the long-term business development objectives of the section 8(a) concern. Further, SBA has amended this section to list the potential uses of BDE awards in order of priority. It is the policy of SBA that BDE will be used for capital equipment first, then for other capital improvements and finally for price differential. SBA will only grant BDE for price differential once for any one type of contract requirement and only if SBA's analysis of the BDE request demonstrates that the concern will be able to produce the item or service competitively in the future. These requirements for the award of BDE for price differential are included in order to carry out SBA's policy that BDE be used in connection with a given subcontract to promote the long-term business development objectives of the section 8(a) concern.

SBA has added a new subsection (d) to this section which relates to participatory BDE. SBA believes that in order to most efficiently use the BDE funds it has available, firms should be encouraged to cost share on capital equipment or capital improvements purchased with BDE funds. Former subsections (d) and (e) have been renumbered as subsection (e) and (f), respectively.

Further Opportunity to Comment

SBA is issuing these regulations as a coherent whole but, in order to accommodate those who wish to comment on this publication, SBA will continue to receive comments on the record and evaluate any such comments as part of its ongoing review of these regulations. Written comments should be addressed to Docket Clerk, Office of General Counsel, 1441 L Street, NW., Room 700, Washington, DC 20416.

Compliance with Executive Order 12291 and the Regulatory Flexibility Act

SBA considers that this revision of regulations taken as a whole constitutes both a major rule for the purposes of Executive Order 12291 and a rule which will have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act. Therefore, we offer the following Regulatory Impact Analysis/Regulatory Flexibility Analysis for the purpose of compliance with the pertinent requirements of those two measures.

Since this revision is made up of a number of different individual rules, these measures in some instances will require analysis of the individual rules and in some instances the entire revision. In instances in which the Executive Order or the Act require explanation of specific sections, this analysis will so state. Otherwise, for the purposes of this analysis, the revision will be treated as if it were one rule.

1. *Description of potential benefits of the rule:* This revision taken as a whole will provide both SBA and participants in its Minority Small Business Capital Ownership Development Program with clearer guidance as to the process by which participation in the program is achieved, and once that participation is achieved, how the participants and SBA are to conduct their mutual roles in the administration of the program. It is our belief that SBA will benefit by the revision since its purpose is to clarify the regulatory framework governing the program and thus provide for more efficient administration. In addition, program applicant and participants should benefit from the revision because it should clarify for them the procedure by which entry into the program is attained and participation in the program is governed.

2. *Description of potential costs of the rule:* There should be no costs inherent in the revision which are not presently involved in the administration of the Minority Small Business Capital Ownership Development Program. This revision merely establishes the regulatory framework upon which the program is administered, it does not by itself impose monetary or other types of costs upon SBA or program participants.

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3. *Description of the net benefits of the rule:* This revision, taken as a whole, should provide for more efficient program management.

4. *Description of reasons why this action is being considered:* This action is being considered as part of normal periodic Agency revisions of its regulations. As such, the revision is based upon general experience with administration of the regulations as they presently exist. In addition, certain aspects of the revision, specifically the provisions dealing with size of program participants (§ 124.102), ownership of program participants by Indian Tribes (§ 124.103(f)), Advance Payments and Business Development Expense (§§ 124.401, 402, 403) result from specific instances of adverse experience with the present regulations covering those topics. Other aspects of the revision such as the provisions governing Fixed Program Participation (§ 124.100, 111), the relationship of SBA's Administrator to the Associate Administrator for Minority Small Business and Capital Ownership Development (§ 124.2), the definition of economic disadvantage (§§ 124.105 and 106), and the inclusion of Asian Americans and Asian Pacific Americans among the "designated minority groups" (§ 124.105(a)) reflect regulatory changes mandated by statutory changes and receipt and evaluation of information by the Agency from outside sources, all occurring since the initial publication of regulations to govern the program. It was determined by the Agency to incorporate these provisions into one all encompassing revision rather than a series of piecemeal changes for administrative convenience and for easier public consumption.

5. *Statement of objectives and legal basis for the final rule:* The purpose of this regulation is to provide a general revision of the regulations governing the Minority Small Business and Capital Ownership Development Program which reflects statutory changes occurring since the initial program regulations were promulgated and administrative applications of those regulations. The legal bases for the final rule are sections 7(j) and 8(a) of the Small Business Act, 15 U.S.C. 636(j) and 637(a).

6. *Description of entities to which the final rule will apply:* This revision will apply to all small business which wish to apply for admission to, and upon which admission do avail themselves of the benefits of participation in the Minority Small Business and Capital Ownership Development Program.

7. *Description of the reporting, recordkeeping and compliance requirements of the proposed rule:* The following provisions of the final rule impose significant reporting requirements:

a. Sections 124.105 and 124.106 require submission of information to SBA by applicants for admission to the program in order to prove social and economic disadvantage. These are statutory requirements.

b. Section 124.110 requires submission of information to SBA by applicants for program participation in order to establish a fixed program participation term. The type of data to be submitted is clearly indicated in the proposal.

c. Sections 124.401, 124.402 and 124.403 dealing with Advance Payments, Business Development Expense and Letter of Credit all impose reporting requirements upon participants in the program who receive these forms of benefits. The reporting involves maintenance of appropriate accounting mechanisms for the receipt and use of the benefits.

d. Section 124.501 dealing with the development assistance program involves the imposition of reporting requirements upon those concerns which receive assistance under that provision.

The same provisions as indicated above with respect to reporting requirements require concomitant recordkeeping requirements in order to accomplish the required reports. All program participants which avail themselves of the various forms of assistance indicated in the identified provisions are subject to the reporting and recordkeeping requirements indicated. The skills necessary for preparation of the reports and records are those general business recordkeeping and form preparation which normally confront applicants for government benefits. In some instances the small business may utilize professional accounting or legal services in order to prepare the required submissions.

In addition to the requirements indicated above, it should be noted that SBA requires applicants for admission to the section 8(a) program to submit audited financial statements as part of the application process, and quarterly financial statements which must be prepared by professional accountants are required of program participants.

8. *Federal Rules:* There are no relevant Federal rules which duplicate or overlap the revision.

9. *Analysis of Public Participation:* A detailed analysis of the public comments received in response to the proposal and SBA's efforts to conform this final rule to that commentary has been provided above. Obviously, in a program as detailed and complex as that covered by these rules, the participants will have different views of the rules by which their participation is to be regulated than will the regulations.

SBA submits that it has rejected no significant alternative to this revision which would minimize any significant economic impact of the proposed rule upon small entities. In this regard, the vast majority of comments on the proposal related to regulatory provisions which do not in and of themselves impose economic impact. In preparing these rules, we have sought to adhere closely to the statutory framework in establishing the eligibility and participation requirements for the Minority Small Business and Capital Ownership Development Program. While many suggestions have been made as to alternative approaches to the accomplishment of this objective in the case of individual sections of the revision, we feel that no alternatives which might in some way minimize economic impact on applicants or participants accomplish the stated objectives of the applicable statutes in a manner more consistent than that provided in the revision.

Compliance With the Paperwork Reduction Act of 1980

In compliance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35) and its implementing regulations, the recordkeeping or reporting requirements and forms appearing in the following sections of this final rule have been approved by the Office of Management and Budget (OMB) under number 3245–0015: §§ 124.105(b), 124.106(b)(1), 124.106(b)(2), 124.106(b)(3), 124.202, 124.204, 124.205, 124.403(b)(4), 124.502(a)(1), and 124.502(a)(6).

The recordkeeping or reporting requirements and forms appearing in the following sections of this final rule have also been approved by OMB:

§ 124.103(c) [OMB Approval No. 3245–0145]; § 124.103(e) [OMB Approval No. 3245–0145]; § 124.111(c) [OMB Approval No. 3245–0147]; § 124.112(a)(7) [OMB Approval No. 3245–0205]; § 124.112(a)(17) [OMB Approval No. 3245–0146]; § 124.205 [OMB Approval No. 3245–0015]; § 124.206 [OMB Approval No. 3245–0143]; §§ 124.401(c)(1)(i), 124.401(c)(1)(iii) and 124.403(b)(3) [OMB Approval No. 3245–0148]; § 124.402(e) [OMB Approval No. 3245–0149]; and §§ 124.112(a)(6) 124.205 and 124.502(a)(4) [OMB Approval No. 3245–0151].

Section 124.104(b) contains a reporting requirement that is not subject to the Paperwork Reduction Act because it will affect fewer than ten individuals annually.

List of Subjects in 13 CFR Part 124

Government procurement, Minority business, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, pursuant to the authority set forth in sections 7(j) and 8(a) of the Small Business Act, 15 U.S.C. 636(j) and 637(a), SBA hereby revises Part 124 of Title 13 of the Code of Federal Regulations to read as follows:

PART 124—MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT

Sec.

124.1 The section 8(a) and 7(j) programs.
124.2 Program management.
124.3 Violations.
124.100 Definitions and applicability of these regulations.
124.101 The section 8(a) program: General eligibility.
124.102 Small business concern.
124.103 Ownership.
124.104 Control and management.
124.105 Social disadvantage.
124.106 Economic disadvantage.
124.107 Potential for success.
124.108 Additional eligibility requirements.
124.109 Ineligible businesses.
124.110 Fixed program participation term.
124.111 Mechanics for extension of a fixed program participation term.
124.112 Program termination.
124.113 Suspension of program assistance.
124.201 Processing applications.
124.202 Place of filing.
124.203 Applicant representatives.
124.204 Requirement support determination.
124.205 Forms and documents required.
124.206 Applicant and declination of applications for eligibility.
124.207 Business activity.
124.301 The provision of requirements support for 8(a) firms.
124.302 8(a) Contracts and subcontracts.
124.401 Advance payments.
124.402 Business development expense.
124.403 Letter of credit.
124.501 Development assistance program.
124.502 Small Business and Capital Ownership Development Program.
124.503 Compliance with the Paperwork Reduction Act of 1980.

Authority: 15 U.S.C. 637(a).

§ 124.1 The Section 8(a) and 7(j) Programs.

(a) *General.* (1) These regulations implement sections 8(a) and 7(j) of the Small Business Act (15 U.S.C. 637(a) and 636 (j)) which establish the Minority Small Business and Capital Ownership Development Program (program). These regulations apply to all section 8(a) concerns participating in the program as of the effective date of these regulations and all concerns applying for admission to the program subsequent to that date.

(2) Section 8(a) authorizes SBA to enter into all types of contracts (including, but not limited to, supply, services, construction, research and development) with other Government departments and agencies, and to negotiate subcontracts for the performance thereof with small business concerns owned and controlled by socially and economically disadvantaged individual(s).

(3) Section 7(j) authorizes SBA to provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or small business concerns eligible for assistance under sections 7(a)(11), 7(j)(10), and 8(a) of the Small Business Act.

(b) *Purposes.* (1) It is the purpose of the Section 8(a) program to:

(i) Foster business ownership by individuals who are both socially and economically disadvantaged; (ii) promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary; and (iii) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

(2) It is the purpose of the Section 7(j) program to: (i) Foster business ownership by individuals in groups that own and control little productive capital; and (ii) promote the competitive viability of such firms by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.

§ 124.2 Program Management.

The Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB–COD) is responsible for the formulation and execution of the policies and programs under sections 7(j) and 8(a) of the Small Business Act under the supervision of, and responsible to the Administrator of SBA.

§ 124.3 Violations.

Willful violation by an applicant for admission to the section 8(a) program or an applicant for participation in the section 7(j) program of any of SBA's regulations governing its other programs may result in the applicant's denial of admission to the program. Any such violation will be considered by the AA/MSB–COD in making a determination on the admission of an applicant to the program, and such consideration will include the nature and severity of any such violation.

§ 124.100 Definitions and applicability of these regulations.

(a) "Business plan" means the business plan documents as submitted by the applicant section 8(a) concern and approved by SBA which include the objectives, goals, and business projections of a section 8(a) concern, and all written amendments or modifications which have also been approved by SBA.

(b) "Certification of SBA's competency" means a certification by SBA that it is competent to perform the requirement as stated in the contract, and is based upon an assessment of a section 8(a) concern's competency to perform. The assessment does not require a special investigation or the issuance of a Certificate of Competency (COC) as provided for elsewhere in these regulations under the authority of section 8(b)(7) (A), (B), and (C) of the Small Business Act.

(c) "Commitment" means the commitment made by a procuring activity to SBA that the procuring activity will negotiate to place a contract with SBA or subcontract with a section 8(a) concern, provided there is no material change in requirements, availability of funds, or other pertinent factors. A commitment does not mean that an award of a particular contract to SBA and a section 8(a) concern will or must be made.

(d) "Local buy item" means a supply or service purchased to meet the specific needs of one user. Examples include the purchase of nonprofessional services, such as custodial or trash hauling, and construction work.

(e) "Manufacturer" means a concern which owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment described by the business plan. In order to qualify as a manufacturer, a concern must be able to show (1) that it is an established manufacturer of particular goods or goods of general character which may be sought by the Government, or (2) if it is newly entering into such manufacturing activity, that it has made all necessary prior arrangements for space, equipment, and personnel to perform manufacturing operations. A new firm which has made such definite commitments in order to enter a manufacturing business which will later qualify it, shall not be barred from 8(a)

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approval because it has not yet done any manufacturing; however, this interpretation is not intended to qualify a firm whose arrangements to use space, equipment, or personnel are contingent upon 8(a) approval. This definition is based upon the Walsh-Healy Public Contracts Act, 41 U.S.C. 35–45.

(f) "National buy item" means an item or service purchased to meet the needs of a system where supply control, inventory management, and procurement responsibility have been assigned to a central procuring activity to support the needs of two or more users of the item. Examples include military clothing purchased by the Defense Personnel Support Center of the Department of Defense, paint or hand tools purchased by the Federal Supply Service of the General Services Administration, medical supplies purchased by the Veterans Administration, or studies, evaluations, consulting services or similar services purchased by the headquarters office of a department or agency.

(g) "Negative control," as used in this part is defined in § 121.3(a)(i), formerly § 121.3–2(a)(i), of these regulations which is entitled "Nature of Control."

(h) "Open requirement" means a requirement submitted to SBA by a procuring activity for possible 8(a) award without a particular 8(a) concern identified as a candidate for the award. Open requirements can be for local buy items or national buy items.

(i) "Primary industry classification" means the four digit Standard Industrial Classification (SIC) Code designation which, for an on-going applicant concern, best describes the industry representing the largest proportion of its business revenues for the previous year or, in the case of a start-up applicant concern, that SIC Code designation which best describes the industry in which it intends to do the most business.

(j) "Regular dealer" means a person who owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles, or equipment of the general character described in the business plan are bought for the account of such person, kept in stock and sold to the public in the usual course of business. In order to qualify as a regular dealer, the concern must be able to show:

(1) That he has an establishment or leased or assigned space in which he regularly maintains a stock of goods in which he claims to be a dealer; if the space is in a public warehouse, it must be maintained on a continuing, and not on a demand basis;

(2) That the stock maintained is a true inventory from which sales are made; the requirement is not satisfied by a stock of sample or display goods, or by a stock consisting of surplus goods remaining from prior orders, or by a stock unrelated to the supplies which are the subject of the business plan, or by a stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made;

(3) That the goods stocked are of the same general character as the goods in which he claimed to be a dealer; to be of the same general character the items to be supplied must be either identical with those in stock or be goods for which dealers in the same line of business would be an obvious source;

(4) That sales are made regularly from stock on a recurring basis; they cannot be only occasional and constitute an exception to the usual operations of the business; the proportion of sales from stock that will satisfy the requirements will depend upon the character of the business;

(5) That sales are made regularly in the usual course of business to the public, i.e., to purchasers other than Federal, State, or local government agencies; this requirement is not satisfied if the applicant concern merely seeks to sell to the public but has not yet made such sales; if government agencies are the sole purchasers, the applicant concern will not qualify as a regular dealer; the number and amount of sales which must be made to the public will necessarily vary with the amount of total sales and the nature of the business; and

(6) That his business is an established and going concern; it is not sufficient to show that arrangements have been made to set up such a business.

This definition is based upon the Walsh-Healy Public Contracts Act.

(k) "Requirement support" means contract opportunities from Federal procuring agencies to acquire articles, equipment, supplies, services, materials or construction work which a section 8(a) business concern could perform.

(l) "Self-marketing" of an item occurs when a section 8(a) marketing firm identifies a requirement that has not been committed to the section 8(a) program and through its marketing efforts causes the procuring activity to offer that specific requirement to the 8(a) program on its behalf.

(m) *Applicability to participating section 8(a) concerns.* Business plans for all participating section 8(a) concerns shall reflect Standard Industrial Classification Code designations consistent with the requirements of § 124.207 of these regulations. Within 120 calendar days of publication of this final rule, the appropriate SBA field office will review the business plan and related documents of each participating section 8(a) concern and within the same 120-day period will notify each concern by certified mail to its address of record of the SIC Code designations for which it has been approved to receive section 8(a) program contract awards. Within 30 calendar days from the date on which the notice is mailed, a participating concern may request in writing that SBA make a correction in the approved SIC Code designations in its presently approved business plan in order to conform the approved business plan to these regulations. Written approval or disapproval of any such request will be provided by SBA within 60 calendar days of the receipt of the request. Any correction of one or more SIC Code designations will be effective only when SBA gives written approval of such request. After the process is completed as to all concerns participating in the section 8(a) program on the effective date of these regulations, any subsequent changes in SIC Code designations appearing in their business plans must be accomplished pursuant to § 124.207(b).

§ 124.101 The section 8(a) program: General eligibility.

(a) In order to be eligible to participate in the section 8(a) program, an individual or an applicant concern must meet all of the eligibility criteria set forth in § 124.102 through § 124.110 hereunder. All determinations made pursuant to §§ 124.102, 124.103, 124.104, 124.105, 124.106, and 124.107 shall be in writing, setting forth the grounds and relevant facts upon which the determination is based, by the AA/MSB–COD, whose decision shall be final.

(b) It is the intent of the Small Business Administration to limit participation in the section 8(a) program to eligible individuals and concerns, and to process applications for participation in a fair and consistent manner. Toward that end, the Small Business Administration invites the participation of the public in preventing fraud and assuring the integrity of the section 8(a) program. The AA/MSB–COD shall review any determination that an individual or applicant concern is eligible to participate in the section 8(a) program whenever a member of the public submits credible evidence that such determination was based on fraudulent information, or that SBA did not follow the requirements of these regulations in rendering the determination. The AA/MSB–COD shall

determine whether the facts developed during any such review warrant further action; provided that any review of potential misconduct by SBA shall be concluded with a detailed report of the findings to the member of the public whose information gave rise to the review.

§ 124.102 Small business concern.

(a) In order to be eligible to participate in the section 8(a) program, an applicant concern must qualify as a small business concern as defined in § 124.4 of the SBA Rules and Regulations (13 CFR 121.4). The particular size standard to be applied will be based on the primary industry classification of the applicant concern.

(b) In order to continue to participate in the section 8(a) program once a concern is admitted to the program, the concern must certify to SBA that it is a small business pursuant to the provisions of § 121.4 for the purpose of performing each individual contract which it is awarded. SBA, in turn, will verify such certifications.

(c) Once admitted to the section 8(a) program, a concern will only be permitted to perform 8(a) contracts which are classified according to the standard industrial classification code numbers which appear in its business plan as established pursuant to § 124.207 of these regulations. A participating section 8(a) business concern is free to pursue *any non-section 8(a) contract* regardless of its Standard Industrial Classification Code number which it is capable and competent to perform.

§ 124.103 Ownership.

In order to be eligible to participate in the section 8(a) program, an applicant concern must be one which is at least 51 percent owned by an individual(s) who is a citizen of the United States (specifically excluding resident alien(s)) and who is determined to be socially and economically disadvantaged by SBA.

(a) In the case of an applicant concern which is a partnership, 51 percent of the partnership interest must be owned by an individual(s) determined to be socially and economically disadvantaged.

(b) In the case of an applicant concern which is a corporation, 51 percent of all classes of voting stock must be owned by an individual(s) determined to be socially and economically disadvantaged.

(c) Part ownership in an applicant concern by nondisadvantaged individual(s) is permitted and may be necessary to insure adequate capital and management for the concern's development. However, any property, equipment, supplies, services and/or financial assistance other than personal services which are sold, rented or donated to the 8(a) concern by such nondisadvantaged individual(s) must be reported to SBA on an annual basis. Such nondisadvantaged individual(s), their spouses or immediate family members may not:

(1) Be former employers of the disadvantaged owner(s) of the applicant concern without prior approval of SBA;

(2) Be affiliated with another business in the same or similar type of business as the applicant concern;

(3) Hold ownership interest in any other 8(a) concern in an amount deemed excessive by SBA;

(4) Exercise negative control over the applicant concern as defined in 13 CFR 121.3(a)(i) (formerly 13 CFR 121.3–2(a)(i)); or

(5) Receive compensation for personal services from the applicant concern as directors or employees which is deemed to be excessive by SBA

(d) Non-section 8(a) concerns in the same or similar line of business are prohibited from having an ownership interest in an applicant concern which is deemed by SBA to cause negative control over the applicant concern, as defined in 13 CFR 121.3(a)(i) (formerly 13 CFR 121.3–2(a)(i)).

(e) A section 8(a) business concern may continue participation in the program subsequent to a change in its ownership. However, any change of ownership of an 8(a) business concern requires the prior written approval of SBA. Continued participation of the 8(a) concern under new ownership requires compliance with all individual and business eligibility requirements of these regulations by the concern and the new owners. Failure of either an individual owner or the concern to maintain compliance constitutes a ground for program termination.

(f) Applicant concerns owned and controlled by an Indian Tribe are eligible for participation in the section 8(a) program if the individuals who manage and control the concern are found to be socially and economically disadvantaged by SBA, and the Tribe is found to be economically disadvantaged by SBA.

(g) Applicant concerns owned and controlled by a Regional Corporation or a Village Corporation as defined in 43 U.S.C. 1602 (Alaska Native Claims Settlement Act, Pub. L. 92–203, December 18, 1971) are eligible for participation in the section 8(a) program if the individuals who manage and control the concern are found to be socially and economically disadvantaged by SBA, and the Regional or Village Corporation is found to be economically disadvantaged by SBA.

§ 124.104 Control and management.

Except in the case of applicant concerns owned and controlled by an Indian tribe or a Regional Corporation or Village Corporation (*see* § 124.103(g)), an applicant concern's management and daily business operations must be controlled by an owner(s) of the applicant concern who has been (have been) determined to be socially and economically disadvantaged, and such owner(s) must own a greater percentage of the business entity than any nondisadvantaged owner, or in the case of a corporation, more voting stock than any nondisadvantaged stockholder.

(a) Individuals who are not socially and economically disadvantaged may be involved in the management of an applicant concern, and may be stockholders, officers, directors, or employees of such concern. However, such individuals shall not exercise actual control or have the power to control the operations of the applicant or section 8(a) business concern. The existence of control or the power to control shall be determined by the facts of each case.

(b) An applicant concern must be managed on a full-time basis by one or more persons who have been found by SBA to be socially and economically disadvantaged, and such person(s) must possess requisite management capabilities as determined by SBA. This precludes outside employment or other business interests by the individual which conflict with the management of the firm or prevent it from achieving the objectives of its business development plan. Any disadvantaged person upon whom section 8(a) eligibility is based, who is engaged in the management and daily business operations of the section 8(a) concern and who wishes to engage in regular outside employment must notify SBA of the nature and anticipated duration of the outside employment prior to engaging in such employment. SBA will review such notification for compliance with the requirement of day-to-day management and control of the 8(a) concern.

§ 124.105 Social disadvantage.

(a) General. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because their identity as a member of a group without regard to their individual qualities. The social disadvantage of individuals must stem

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from circumstances beyond their control.

(b) *Members of designated groups.* In the absence of evidence to the contrary, the following individuals are considered socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan); Subcontinent Asian Americans; and members of other groups designated from time to time by SBA according to procedures set forth at § 124.105(d) of this part.

(c) *Individuals not members of designated groups.*

(1) Individuals who are not members of the above-named groups must establish their social disadvantage on the basis of clear and convincing evidence. A clear and convincing case of social disadvantage must include the following elements:

(i) The individual's social disadvantage must stem from his or her color; national origin; gender; physical handicap; long-term residence in an environment isolated from the mainstream of American society; or other similar cause not common to small business persons who are not socially disadvantaged.

(ii) The individual must demonstrate that he or she has personally suffered social disadvantage, not merely claim membership in a non-designated group which could be considered socially disadvantaged.

(iii) The individual's social disadvantage must be rooted in treatment which he or she has experienced in American society, not in other countries.

(iv) The individual's social disadvantage must be chronic, longstanding, and substantial, not fleeting or insignificant.

(v) The individual's social disadvantage must have negatively impacted on his or her entry into, and/or advancement in, the business world. SBA will entertain any relevant evidence in assessing this element of an applicant's case. SBA will particularly consider and place emphasis on the following experiences of the individual, where relevant: education, employment, and business history.

(A) *Education.* SBA shall consider, as evidence of an individual's social disadvantage, denial of equal access to business or professional schools; denial of equal access to curricula; exclusion from social and professional association with students and teachers; denial of educational honors; social patterns or pressures which have discouraged the individual from pursuing a professional or business education; and other similar factors.

(B) *Employment.* SBA shall consider, as evidence of an individual's social disadvantage, discrimination in hiring; discrimination in promotions and other aspects of professional advancement; discrimination in pay and fringe benefits; discrimination in other terms and conditions of employment; retaliatory behavior by a employer; social patterns or pressures which have channelled the individual into non-professional or non-business fields; and other similar factors.

(C) *Business history.* SBA shall consider, as evidence of an individual's social disadvantage, unequal access to credit or capital; acquisition of credit or capital under unfavorable circumstances; discrimination in receipt (award and/or bid) of government contracts; discrimination by potential clients; exclusion from business or professional organizations; and other similar factors which have retarded the individual's business development.

(d) *Minority group inclusion*—(1) *General.* Upon an adequate showing to SBA by representatives of a minority group that the group has suffered chronic racial or ethnic prejudice or cultural bias, and upon the request of the representatives of the group that SBA do so, SBA shall publish in the **Federal Register** a notice of its receipt of a request that it consider a minority group not specifically named in section 201 of Pub. L. 95–507 to have members which are socially disadvantaged because of their identification as members of the group for the purpose of eligibility for the section 8(a) program. The notice shall adequately identify the minority group making the request, and if a hearing is requested on the matter, the time, date and location at which such hearing is to be held. All information submitted to support a request should be addressed to the AAMSB–COD.

(2) *Standards to be applied.* In determining whether a minority group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, SBA shall determine: (i) If the group has suffered the effects of discriminatory practices or similar invidious circumstances over which its members have no control, (ii) if the group has generally suffered from prejudice or bias, (iii) if such conditions have resulted in economic deprivation for the group of the type which Congress has found exists for the groups named in Pub. L. 95–507, and (iv) if such conditions have produced impediments in the business world for members of the group over which they have no control which are not common to all small business people. If it is demonstrated to SBA by a particular group that it satisfies the above criteria, SBA will publish a notice under this regulation.

(3) *Procedure.* Once a notice is published under this regulation, SBA shall adduce further information on the record of the proceeding which tends to support or refute the group's request. Such information may be submitted by any member of the public, including Government representatives and any member of the private sector. Information may be submitted in written form, or orally at such hearings as SBA may hold on the matter.

(4) *Decision.* Once SBA has published a notice under this regulation, it shall afford a reasonable comment period of not more than thirty (30) days for public comment upon a request. It shall complete the reception of comments, including the holding of hearings within such comment period. Thereafter, SBA shall consider the comments received as expeditiously as possible, and shall render its final decision within 30 days of the close of receipt of information on the matter. Such decision shall take the form of a notice in the **Federal Register**, and SBA shall also inform the subject group representatives who have appeared in the proceeding of such decision in writing at the time it is made.

§ 124.106 Economic disadvantage.

(a) *General.* For purposes of the section 8(a) program, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged.

(b) *Factors to be considered.* In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, consideration will be given to both the disadvantaged individual and the applicant concern with which he or she is affiliated. Factors to be analyzed depend upon the particular industry in which the applicant concern is involved. Such factors may include, but are not limited to, the following:

(1) *Personal financial condition of the disadvantaged individual.* This criterion is designed to assess the relative degree of economic disadvantage of the individual in comparison to other individuals, as well as the potential to capitalize or otherwise provide financial support to the business. The specific factors considered are: personal income for at least the past two years; total fair market value of all assets (except that the *equity* value of the individual's primary residence will be considered); and the net worth of all holdings of the individual.

(2) *Business financial condition.* This criterion is designed to evaluate liquidity, leverage, operating efficiency and profitability of the applicant concern using commonly accepted financial ratios and percentages. This evaluation will be used to provide a financial picture of a firm at a specific point in time in comparision to other concerns in the same business area who are not socially disadvantaged. These factors are considered as indicators of a firm's economic disadvantage relative to businesses owned by non-socially disadvantaged individuals. Factors to be considered are business assets, net worth, income and profit. Also, factors to be compared include, but are not limited to: Current ratios, quick ratios, inventory turnover; accounts receivable turnover; sales to working capital; returns on assets; debt to net worth ratio; percentage return on investment; percentage gross profit margin; and percentage return on sales.

(3) *Access to credit and capital.* This criterion will be used to evaluate the ability of the applicant concern to obtain the external support necessary to operate a competitive business enterprise. The factors to be considered are: Access to long-term financing; access to working capital financing; equipment trade credit; access to raw materials and/or supplier trade credit; bonding capability.

(4) *Additional considerations.* A comparison will be made of the applicant concern's business and financial profile with profiles of businesses in the same or similar line of business and competitive market area. It is not the intent of the section 8(a) program to allow program participation to concerns owned and controlled by socially disadvantaged individuals who have accumulated substantial wealth, have unlimited growth potential and have not experienced or have overcome impediments to obtaining access to financing, markets and resources.

§ 124.107 Potential for success.

To be eligible to participate in the section 8(a) program, an otherwise eligible applicant concern must be determined to be one that with contract,

financial, technical and management support will be able to successfully perform subcontracts awarded under the section 8(a) program, and further, with such support, will have a reasonable prospect for success in competition in the private sector within the maximum amount of time that a concern may be in the section 8(a) program (up to seven years). In addition, the AA/MSB–COD must make a determination that the procurement, financial, technical and management support necessary to enable the applicant concern to successfully complete the section 8(a) program is available from SBA or other identified and acceptable sources before the applicant concern may be admitted to the section 8(a) program.

§ 124.108 Additional eligibility requirements.

(a) *Individual character review.* If, during the processing of an application, adverse information is obtained from the section 8(a) program application or a credible source regarding criminal conduct by an individual applicant, no further action will be taken on the application until the adverse information has been forwarded through appropriate channels to the SBA's Inspector General for evaluation and that evaluation has been completed. The Inspector General will advise the AA/MSB–COD of his or her findings and the AA/MSB–COD will consider those findings as part of the process of evaluation of a particular application.

(b) *Standard of conduct.* The SBA Standards of Conduct regulations, 13 CFR 105, *et seq.*, apply to eligibility questions involving SBA employees and their relatives.

(c) *Individual eligibility limitations.* An individual's or business concern's eligibility may be used only once in qualifying for section 8(a) program participation.

(1) The AA/MSB–COD may reinstate a former section 8(a) program participant if:

(i) The section 8(a) concern has totally ceased its business operations; and

(ii) The section 8(a) concern voluntarily withdrew from the section 8(a) program due to—

(A) The health of a disadvantaged owner;

(B) Acts of God which destroyed or severely disrupted the operation of such concern; or

(C) Such other circumstances beyond the control of the section 8(a) concern which inequitably interrupted the continued participation of the concern in the section 8(a) program.

(2) Where a section 8(a) concern is reinstated pursuant to paragraph (c)(1) of this section, it will continue in the section 8(a) program for that amount of time which remained in its Fixed Program Participation Term at the time it withdrew from the program. A new Fixed Program Participation Term shall not be established for such concern.

(d) *Manufacturers and regular dealers.* Each applicant concern which intends to manufacture or furnish materials, supplies, articles and equipment in the performance of section 8(a) subcontracts must be determined to be a manufacturer or regular dealer as defined in the Walsh-Healey Public Contracts Act Regulations found at 48 CFR Subpart 22.6.

§ 124.109 Ineligible businesses.

(a) *Brokers and Packagers.* Brokers and packagers are ineligible to participate in the section 8(a) program. These types of businesses do not satisfy the definition of a manufacturer or regular dealer, as stated in § 124.100 of this part.

(b) *Debarred or Suspended Person or Concern.* Individuals or concerns who are debarred, suspended, or are found to be an ineligible bidder by any contracting agency of the Federal Government pursuant to 48 CFR Chapter 1, Subpart 9.4 are ineligible for admission into the section 8(a) program during the period of debarment, suspension, or status as an ineligible bidder. Prior to approval of any applicant concern, the applicant concern will certify that the applicant concern and the disadvantaged individual(s) upon whom eligibility is based is not at that time debarred, suspended or otherwise an ineligible bidder.

§ 124.110 Fixed program participation term.

(a) Every section 8(a) program participant is subject to a Fixed Program Participation Term. A Fixed Program Participation Term and any extension thereof establishes the ultimate time period during which a concern may remain in the section 8(a) program and the conditions of participation, regardless of whether competitiveness is reached by the concern.

(b) The Fixed Program Participation Term must be negotiated between SBA and each small concern which has applied for participation in the program and must be established by mutual agreement prior to the concern's admission to the program.

(c) The provisions of the Fixed Program Participation Term, including the time limitation thereof, will be set

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forth in the SBA approved business plan of the section 8(a) concern which must be established prior to the applicant concern's admission to the program.

(d) For concerns applying for entry into the program, the Fixed Program Participation Term will begin on the date of award of the concern's first section 8(a) subcontract.

(e) The maximum Fixed Program Participation Term for any concern is five years.

(f) Not less than one year prior to the expiration of the Fixed Program Participation Term, a concern may request SBA to review and extend its Fixed Program Participation Term for a period not to exceed the difference between the Fixed Program Participation Term established in the business plan and the maximum Fixed Program Participation Term of five years, plus two years. For business concerns which have a Fixed Program Participating Term of one year, a request for extension shall be deemed to be timely if postmarked no later than 10 days subsequent to the receipt by the concern of notification of award of the concern's first section 8(a) subcontract. There may be no further extensions.

(g) The criteria which SBA will use in negotiating a Fixed Program Participation Term or in considering a request for an extension thereof are as follows:

(1) The factors referenced in § 124.106 of these regulations for determining economic disadvantage.

(2)(i) The number and dollar amount, and the progressively decreasing importance, of section 8(a) contract support that it is anticipated will be necessary to achieve competitiveness. In order to maximize limited program resources, SBA will emphasize business plans anticipating lesser amounts of section 8(a) contract support to reach competitiveness.

(ii) In considering whether to grant an extension of a Fixed Program Participation Term, the section 8(a) contract support previously received by the concern will be a factor. An SBA determination that such previous contract support has failed to appreciably contribute toward a timely achievement of competitiveness will be a significant factor in consideration of the request for extension.

(3) (i) The number and dollar amount and the progressively increasing importance of contract support, other than section 8(a) contract support, that it is anticipated will be necessary to achieve competitiveness. SBA will emphasize business plans having greater reliance on this non-section 8(a) contract support to reach competitiveness.

(ii) In considering a Fixed Program Participation Term extension request, the non-section 8(a) contract support previously received by the firm will be a factor. An SBA determination that the concern has failed to progressively increase the importance of such non-section 8(a) contract support during its previous participation in the program will be a significant factor in SBA's consideration of the request for extension.

(4) (i) The length of time that it is anticipated will be necessary to achieve competitiveness. In order to maximize limited program resources, SBA will emphasize program participation for those concerns closer to achieving competitiveness.

(ii) In considering requests for Fixed Program Participation Term extensions, the length of time during which the concern has previously participated in the program will be a factor.

(5) (i) The degree to which it is anticipated that Advance Payments and Business Development Expense will be necessary to enable a concern to successfully complete section 8(a) contracts and the extent to which reliance upon such proceeds will progressively decrease in importance. In order to maximize limited SBA resources and to increase exposure to regular competitive procedures, SBA will emphasize maximum use of conventional governmental and private resources in performing such contracts.

(ii) In considering requests for a Fixed Program Participation Term extension, the previous Advance Payments and Business Development Expense already received by the concern will be a factor. An SBA determination that such Advance Payments and Business Development Expense support has failed to progressively decrease in importance during the concern's previous participation in the program will be a factor toward limiting or denying extension of the Fixed Program Participation Term and the conditions thereof.

(6) (i) The rate at which it is anticipated that a concern will decrease its reliance upon all forms of program support, especially section 8(a) contracts support, in reaching competitiveness at the end of the Fixed Program Participation Term.

(ii) In considering Fixed Program Participation Term extensions, a factor will be the previous rate at which the concern has decreased its reliance upon program support and correspondingly increased its reliance upon conventional governmental and private contract support and the rate of business reliance in this manner will be a factor toward limiting or denying the Fixed Program Participation Term extension and the conditions thereof.

(h) No section 8(a) contracts may be awarded to any section 8(a) concern unless it has received and is operating under an SBA approved Fixed Program Participation Term.

(i) Nothing in this section shall be construed to limit SBA from initiating termination, completion or suspension actions, pursuant to §§ 124.112, 124.110(k), or 124.113, respectively, during any Fixed Program Participation Term granted hereunder.

(j) Upon the conclusion of its Fixed Program Participation Term, including any extension thereof, a concern will cease to be a program participant. This cessation of program participation will occur without the necessity of any additional action by SBA. It will not give rise to any rights, claims or prerogatives on behalf of the concern. Cessation of program participation at the conclusion of the Fixed Program Participation Term is not subject to the requirements of section 8(a)(9) of the Small Business Act (15 U.S.C. 637(a)(9)), or any of SBA's implementing rules and regulations.

(k) *Program completion.* (1) When a section 8(a) business concern has substantially achieved the goals and objectives set forth in its business plan prior to the expiration of its Fixed Program Participation Term, and has demonstrated the ability to compete in the marketplace without assistance under the section 8(a) program, its participation within the program shall be determined by SBA to be completed.

(2) In determining whether a concern has substantially achieved the goals and objectives of its business plan and has attained the ability to compete in the marketplace without section 8(a) program assistance, the following factors, among others, shall be considered by SBA.

(i) Positive overall financial trends, including but not limited to:

(A) Profitability;

(B) Sales, including improved ratio of non-section 8(a) sales;

(C) Net worth, financial ratios, working capital, capitalization, access to credit and capital;

(D) Ability to obtain bonding;

(E) A positive comparison of the section 8(a) business concern's business and financial profile with profiles of non-section 8(a) businesses in the same area or similar business category; and

(F) Good management capacity and capability.

(3) Upon determination by SBA that a section 8(a) business concern's participation in the section 8(a) program has been completed pursuant to paragraph (k)(1) of this section, SBA shall so advise the firm and shall issue it an order to show cause why its participation in the section 8(a) program should not be deemed to be completed. The section 8(a) business concern shall be afforded an opportunity for a hearing on the record in accordance with chapter 5 of Title 5 of the United States Code, at which hearing it may contest such determination. Such a hearing will be held pursuant to the procedures of SBA's Office of Hearings and Appeals set forth at Part 134 of these regulations.

(4) Subsequent to the completion of such hearing, based upon the record established therein, and after consideration of the initial decision of the Administrative Law Judge who has conducted the hearing, the AA/MSB–COD shall render a final decision regarding the completion of the section 8(a) business concern's participation in the program. Prior to a final decision, the subject section 8(a) business concern may have full rights of participation in the section 8(a) program.

§ 124.111 Mechanics for extension of a fixed program participation term.

As stated in § 124.110(f), a section 8(a) concern's Fixed Program Participation Term (FPPT) may be extended only once, and only if the application for such an extension is made not less than one year prior to the expiration of the firm's original Fixed Program Participation Term.

(a) *The request.* The section 8(a) concern must make a request for extension in writing by certified mail, return receipt requested, or by registered mail, to the SBA field office servicing its account, not less than one year prior to the expiration of the FPPT, specifically requesting an extension of its FPPT.

(b) *SBA response.* Upon receipt of a timely request, the appropriate SBA field office will forward to the section 8(a) concern all forms needed to process the request. All required forms must be completed and returned to SBA within 45 days of receipt along with a persuasive narrative rationale to establish the basis for justifying the requested extension.

(C) *Narrative rationale.* The narrative rationale submitted by the section 8(a) concern must detail the following:

(1) The firm's progress since admission into the 8(a) program;

(2) Areas where the firm has failed to make progress anticipated when the original FPPT was set;

(3) Reasons for lack of progress;

(4) Benefits to be derived from an extension, other than increase in contract support;

(5) Any extenuating circumstances unique to the firm which cause an extension to be necessary and appropriate;

(6) Any other facts which the firm believes support its request.

(d) *Non waiver of time limits.* Neither the requirement of § 124.110(f) to make a request for an extension of a concern's FPPT not less than one year prior to the expiration of a concern's original FPPT, nor the requirement of § 124.111(b) to return all forms and documentation completed along with the supporting narrative within 45 days may be waived. Failure to meet either time limit will result in denial of an extension of an FPPT.

(e) *Approval authority.* Unless otherwise delegated by the Administrator, the AA/MSB–COD has final authority to approve the concern's request for an extension, and may in his discretion approve an extension less than that requested, set terms and conditions for any extension granted, or deny any extension. The concern will be advised in writing of the Agency's final decision.

§ 124.112 Program termination.

(a) Participation of a section 8(a) business concern in the section 8(a) program may be terminated by SBA prior to the expiration of the concern's fixed program participation term or extension thereof, if any, for good cause. The term good cause as used in the regulation means conduct violative of applicable State and Federal law or regulations or the pursuit of business practices detrimental to business development of an 8(a) concern. Examples of good cause include, but are not limited to, the following:

(1) Failure to continue to meet any one of the standards of program eligibility set forth in these regulations.

(2) Failure by the concern to maintain status as a small business under the Small Business Act, as amended, and the regulations promulgated thereunder for each of the Standard Industrial Code designations contained in the participating concern's business plan.

(3) Failure by the concern for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership and control by the persons(s) who has (have) been determined to be socially and economically disadvantaged pursuant to these regulations.

(4) Failure by the concern to obtain written approval from SBA prior to any changes in ownership and management control.

(5) Failure by the concern to disclose to SBA the extent to which nondisadvantaged persons or firms participate in the management of the section 8(a) business concern.

(6) Failure by the concern to provide SBA with required quarterly or annual financial statements within ninety days of the close of the reporting period, or required audited financial statements within 180 days of the close of the reporting period. Failure to provide SBA with requested tax returns, reports, or other available data within 30 days of the date of request.

(7) Failure by the concern to submit an updated business plan within 30 days of receipt of request, without an extension of time which has been approved by SBA.

(8) Failure by the concern to provide documents or otherwise respond to requests for information relating to the section 8(a) program from SBA or other authorized government officials.

(9) Cessation of business operations by the concern.

(10) Failure by the concern to achieve the goals cited in its original or modified business plan as a result of repeated refusals to accept or utilize SBA assistance.

(11) Failure by the concern to pursue competitive and commercial business in accordance with the business plan, or failure to make reasonable efforts to achieve competitive status.

(12) Inadequate performance of awarded section 8(a) procurement subscontracts by the concern.

(13) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(14) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters.

(15) Diversion of funds from the section 8(a) business concern to any other individual, subsidiary, firm, or enterprise which is detrimental to the achievement of the section 8(a) business concern's business plan.

(16) Unauthorized use of business development expense funds and/or advance payment funds. Violation of an advance payment or business development expense agreement.

(17) Failure by the concern to obtain prior SBA approval of any management agreement or joint venture agreement relative to the performance of a section 8(a) subcontract. Violation of any

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requirements of a management or joint venture agreement approved by SBA by either the section 8(a) concern or one of the joint venturers.

(18) Failure by the concern to obtain approval from SBA before subcontracting under a section 8(a) subcontract, or failure by the concern to abide by any conditions imposed by SBA upon such approval.

(19) Violation by the concern of a section 8(a) subcontract provision which prohibits contingent fees and gratuities; or failure to disclose to SBA fees paid or to be paid, or costs incurred or committed to third parties, directly or indirectly, in the process of obtaining section 8(a) contracts or subcontracts.

(20) Knowing submission of false information to SBA on behalf of a section 8(a) business concern by its principals, officers, or agents, or by its employees, where the principal(s) of the section 8(a) concern knows or should have known such submission to be false.

(21) Debarment or suspension of the concern by the Comptroller General, the Secretary of Labor, Director of the Office of Federal Contract Compliance, or any contracting agency pursuant to FAR subpart 9.4, 48 CFR Ch. 1.

(22) Conviction of a section 8(a) business concern or a principal of a section 8(a) business concern for any of the following:

(i) Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;

(ii) Violation of the Organized Crime Control Act of 1970;

(iii) Embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a government contractor;

(iv) Violation of any Federal Antitrust Statute; or

(v) Commission of any felony not specifically listed above by the concern or any of its principals.

(23) Willful failure on behalf of a section 8(a) business concern to comply with applicable labor standards obligations.

(24) Violation of any terms and conditions of the 8(a) program Participation Agreement.

(25) Violation by a section 8(a) business concern, or any of its principals, of any of SBA's significant rules and regulations.

(b) Upon determination by the SBA that a section 8(a) business concern's participation in the section 8(a) program should be terminated for good cause, the section 8(a) business concern shall be afforded an opportunity for a hearing on the record in accordance with chapter 5 of Title 5 of the United States Code, at which hearing it may contest such determination. Such a hearing will be held pursuant to the procedures established for SBA's Office of Hearings and Appeals set forth at Part 134 of this title.

(c) Subsequent to the completion of such hearing, upon the record established therein, and after consideration of the initial decision of the Administrative Law Judge who has conducted the hearing, pursuant to §§ 134.32 and 134.34 of these regulations, the AA/MSB-COD shall render a final decision regarding the termination, for good cause, of the 8(a) business concern's participation in the program.

(d) After the effective date of a program termination as provided for herein, a section 8(a) business concern is no longer eligible to receive any section 8(a) program assistance. Such concern is obligated to complete previously awarded section 8(a) subcontracts.

§ 124.112 Suspension of program assistance.

(a) Only upon the issuance of an order to show cause why a section 8(a) business concern should not be terminated from the program, the Administrator of SBA or the AA/MSB-COD may suspend contract support and other forms of 8(a) program assistance to that concern for a period of time not to exceed the time necessary to resolve the issue of the concern's termination from the program under the procedures set forth in Part 134 of these regulations. The institution of such a suspension will not occur in conjunction with each proposed termination, but will only occur when the SBA Administrator or AA/MSB-COD determines that the Government's interests are jeopardized by continuing to make assistance available to a section 8(a) business concern and immediate action to protect those interests is necessary.

(b) Immediately upon SBA's determination to suspend a section 8(a) concern, SBA will furnish that concern with a notice of the supension by certified mail, return receipt requested, to the last known address of the concern. If no receipt is returned within ten calendar days from the mailing of the notice, notice will be presumed to have occurred as of that time. The notice of suspension will provide the following information:

(1) The reason for the suspension which will be the grounds upon which the order to show cause has been issued;

(2) That the suspension will continue pending the completion of further investigation or the termination proceeding or some other specified period of time;

(3) That awards of section 8(a) subcontracts, including those which have been "self-marketed" by an 8(a) concern, will not be made during the pendency of the suspension unless it is determined by the head of the relevant procuring agency or his or her authorized representative to be in the best interest of the Government to do so, and the SBA Administrator or the AA/MSB-COD adopts that determination;

(4) That the concern is obligated to complete previously awarded section 8(a) subcontracts;

(5) That the suspension is effective nationally throughout the SBA;

(6) That a request for a hearing on the suspension will be considered by the Administrative Law Judge hearing the termination proceeding and granted or denied as a matter of his or her discretion. It is contemplated that in most cases a hearing on the issue of the suspension will be afforded if the participant requests one. However, no such hearing may be granted if the suspension is based upon advice from either the Department of Justice or the Department of Labor that such a hearing would prejudice substantial interests of the Government. A hearing on the suspension will commence as soon as possible following the decision of the Administrative Law Judge to grant a request; but in no case more than 20 calendar days after the Administrative Law Judge's ruling if the request is granted. At the close of such suspension hearing, the Administrative Law Judge will make a recommended decision on the matter to the AA/MSB-COD who will then issue a final decision upholding or lifting the suspension.

(c) Any suspension which occurs in accord with these regulations will continue in effect until such time as the SBA lifts it or the section 8(a) business concern's participation in the program is fully terminated. If all program assistance to a section 8(a) business concern has been suspended under these regulations, and that concern's participation in the program is not terminated, an amount of time equal to the duration of the suspension will be added to the concern's fixed program participation term.

§ 124.201 Processing applications.

It is SBA's policy that an individual or business has the right to apply for section 8(a) assistance, whether or not there is an appearance of eligibility.

§ 124.202 Place of filing.

An application for admission is to be filed, and approved cases are to be serviced in the SBA field office serving the territory in which the principal place of business of the applicant concern is located. Principal place of business means the location at which the business records of the applicant concern are maintained.

§ 124.203 Applicant representatives.

An applicant concern may employ at its option outside representatives in connection with an application for section 8(a) program participation. If the applicant chooses to employ outside representation such as an attorney, accountant, or others, the requirements of 13 CFR 103 dealing with the appearance and compensation of persons appearing before SBA are applicable to the conduct of the representative.

§ 124.204 Requirement support determination.

SBA shall first make a determination that there is a reasonable likelihood of section 8(a) requirements available to support the applicant concern. If the necessary requirement support is not available, the applicant concern shall be informed in writing that no further action can be taken on its application for participation in the section 8(a) program. If the necessary requirements support is determined to be available, the applicant concern may continue to submit the required application forms.

§ 124.205 Forms and documents required.

Each 8(a) applicant concern must submit the forms and attachments thereto required by SBA when making application for admission to the section 8(a) program including but not limited to financial statements and Federal personal and business tax returns.

§ 124.206 Approval and declination of applications for eligibility.

The AA/MSB-COD has final authority over approval or declination of applications for admission to the section 8(a) program. If the AA/MSB-COD declines an application, he or she will notify the applicant in writing giving detailed reasons for the decline and informing the applicant of the right to request a reconsideration within 30 days of receipt of the decline letter. The AA/MSB-COD will also inform the applicant to submit in writing to the field office any subsequent information and documentation pertinent to rebutting the reason(s) for decline. If the application is declined by the AA/MSB-COD on reconsideration, no new application will be accepted within one year of the reconsideration decision.

§ 124.207 Business activity.

(a) Eligible concerns will be approved for section 8(a) program participation according to their primary industry classification, as defined in § 124.100 of this part. The primary industry classification relevant to a given concern and related Standard Industrial Classification Code designations will be stated in a participating concern's business plan upon the concern's entry into the section 8(a) program and will be subject to change thereafter only if a condition of subsection (b) is met. A participating section 8(a) business concern will be eligible to receive only Government contracts pursuant to the section 8(a) program which are classified under the Standard Industrial Classification Codes stated in its business plan. (*See* definition of "business plan," § 124.100(a).) A participating section 8(a) business concern may, however, receive Government contracts classified in other Standard Industrial Classification Codes through other Government procurement procedures. As 8(a) concerns develop, it is essential that they pursue commercial and competitive Government contracts to supplement section 8(a) sales and to achieve logical business progression or diversification.

(b) Requests for changes in Standard Industrial Classification Code designations stated in a business plan will be considered by the relevant SBA Regional Administrator only under the circumstances indicated below.

(1) Such Regional Administrator may approve an amendment to the Standard Industrial Classification Code designations in a section 8(a) concern's business plan if:

(i) The new Standard Industrial Classification Code designation relates to a unique procedure or product that the section 8(a) concern has developed; or

(ii) SBA determines that an additional Standard Industrial Classification Code designation is needed to correct significant limitations in section 8(a) contract support which result from administrative or regulatory actions by a contracting agency, which are beyond the control of the section 8(a) concern, and which were not contemplated by the original business plan.

(2) The Administrator or his designee may approve an amendment to the Standard Industrial Classification Code designations in a section 8(a) concern's business plan if the Administrator or his designee determines that absent a Standard Industrial Classification Code designation change, the section 8(a) concern would be unable to achieve reasonable section 8(a) development.

§ 124.301 The provision of requirements support for 8(a) firms.

(a) These regulations govern the mechanics of the provision of requirements (contract) support to section 8(a) business concerns. They are to be read in conjunction with § 124.302 below.

(b) Basic Principles of Requirements Support.

(1) An 8(a) subcontract will be provided to a section 8(a) concern only when consistent with that concern's business development needs.

(2) An 8(a) concern will be provided a section 8(a) contract only when the procurement is consistent with the concern's capabilities as identified in its business plan by means of Standard Industrial Classification (SIC) codes.

(3) The aggregate dollar amount of 8(a) contracts to an 8(a) concern for any Federal fiscal year may not exceed by more than 25 percent the applicable annual 8(a) contract support level approved by SBA as reflected in the concern's business plan. This shall not preclude an 8(a) concern from requesting an increase in its approved 8(a) contract support level on other than an annual basis. Such request must be supported by a revised business plan and evidence that the firm has the capability to perform at the increased level.

(4) SBA does not guarantee any particular level of contract support to a section 8(a) business concern by the approval of its business plan.

(5) SBA is not required to make an award of any particular contract, and should it make an award, SBA is not required to award a contract to a particular 8(a) concern. Nonetheless, SBA will usually reserve a procurement for possible 8(a) award in favor of an 8(a) concern which initially self-marketed the procurement, provided the firm needs the requirement to satisfy its business plan projections without exceeding them.

(6) In cases in which SBA must select an 8(a) concern for possible award from among more than one concern which appear to be qualified to perform the contract, the selection will be based upon consideration of relevant factors, including the following:

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(i) Technical capability, including the ability to perform the contract, the concern's organizational structure, the experience and technical knowledge of its key employees, and technical equipment and facilities.

(ii) Financial capacity, including the availability of adequate financial resources or the ability to obtain such resources as required.

(iii) Ability to comply with the required delivery or performance schedules.

(iv) Ability to obtain any necessary bonding.

(v) Any applicable geographic limitations.

(vi) The concern's need for the specific contract to further the development objectives of the concern's business plan, in light of any other potential contracts under consideration.

(vii) The overall likelihood of successful performance of the proposed requirement.

(viii) Past amount of 8(a) contract support received by the concern and the performance record on past 8(a) contracts.

(ix) Current contracts in process, and progress toward timely delivery of those contracts.

(x) Length of time in the 8(a) program and the proximity of the FPPT date. (xi) Amount of BDE and advance payment support received since entering the 8(a) program and required to perform the present requirement. (xii) Which 8(a) concern initially indentified the procurement, if any.

(7) In cases in which SBA must select an 8(a) concern for possible award of a professional service contract (except CPA audit services) SBA may, in its discretion, arrange for the evalution of technical capabilities of several concerns, which appear to be most qualified, by the procuring agency itself. In such cases, SBA will request a written report of the evaluation including the criteria used, the results found, and an overall evaluation of each concern as technically or not technically acceptable for their particular procurement. SBA will make the final selection.

(8) SBA will not accept for 8(a) award proposed procurements not previously in the section 8(a) program if any of the following circumstances exist:

(i) Public solicitation has already been issued for the procurement as a small business set-aside in the form of an Invitation for Bid (IFB), Request for Proposal (RFP) or a Request for Quotation (RFQ). Providence of a general intent to set aside, such as Procurement Information Notices (PIN's), annual procurement forecasts or past procurements by set aside, is insufficient reasons to preclude the procurement from 8(a) consideration.

(ii) The procuring agency will award the contract by noncompetitive means to a small disadvantaged concern whether or not it is presently in the 8(a) program.

(iii) There is a reasonable probability that a small disadvantaged concern, whether or not a section 8(a) concern, can successfully compete for the contract under conventional competitive procedures.

(iv) SAB has made a written determination that acceptance of the procurement for an 8(a) award would have an adverse impact on other small business programs or individual small business, whether or not the affected small business, is in the section 8(a) program.

(A) In determining whether or not adverse impact exists, SBA will consider relevant factors, including but not limited to:

(*1*) Whether or not SBA's acceptance of a proposed *National* buy requirement is likely to result in SBA's taking an inordinate portion of total procurements in subject industry to the detriment of the small business set-aside program, or

(*2*) Whether or not SBA's acceptance of a proposed *local* buy requirement is likely to result in SBA taking an inordinate portion of total procurements, in subject industry within a given SBA region to the detriment of the small business set-aside program.

(B) SBA presumes adverse impact to exist when a small business concern has been the recipient of two or more consecutive awards of the item or service within the last 24 months, and the estimated dollar value of the award would be 25 percent or more of its most recent annual gross sales (including those of its affiliates).

(c) Procedures for Obtaining Requirements Support

(1) SBA procurement center representatives (PCR's) will screen proposed procurements for possible 8(a) contracts, in accordance with 13 CFR Part 125.6.

(2) A requirement for possible award may be identified by SBA, a particular 8(a) concern, or the procuring activity itself. Once identified by whatever means, SBA shall verify the appropriateness of the SIC Code designation assigned to the requirement and shall select and nominate to the procuring agency an 8(a) concern for possible award. The selection will be made pursuant to these regulations and will be based on the business plan and such supplemental materials as SBA may request. If the 8(a) concern fails to provide SBA with the supplemental materials requested within any particular time specified by SBA, SBA will make its selection based solely on information contained in the concern's business plan.

(3) SBA's nomination of a section 8(a) concern to perform an indentified procurement shall be communicated to the procuring activity in writing with notice to the 8(a) concern.

(4) If the procuring activity responds to SBA's nomination, or request for commitment, by making a commitment to SBA, SBA will then match the specific needs of the procurement with the specific capabilities of the selected 8(a) concern, relying upon the business plan and such supplemental or updated material as SBA in its discretion shall require. To facilitate matching, and to the extent reasonably available, SBA will obtain from the procuring activity the complete procurement package, which contains plants, specifications, delivery schedules, labor rates and so forth, along with the following:

(i) The title or name or work to be performed or items to be delivered.

(ii) The estimated period of performance.

(iii) The SIC code of the item or service.

(iv) The PSC number used by the Federal Procurement Data Center.

(v) The procuring agency dollar estimate of the requirement (current government estimate).

(vi) Any special requirement restrictions or geographical limitations.

(vii) Any special capabilities or disciplines needed for contract performance.

(viii) The type of contract to be awarded, such as firm fixed price, cost reimbursement, or time and materials.

(ix) A list of contractors who have performed on this specific procurement during the previous 36 months.

(x) A statement that public solicitation for the specific procurement has not been issued for small business set aside.

(xi) A statement that the procurement cannot reasonably be expected to be won by a disadvantaged concern under normal competition.

(xii) The nomination of any particular 8(a) concern designated for consideration, including a brief justification, such as one of the following:

(A) The requirement is a result of an unsolicited proposal and the buying activity is unable to justify a sole-source award.

(B) The 8(a) concern through its own efforts, marketed the requirement and

caused it to be reserved for the 8(a) program.

(C) The procuring agency has determined that the recommended concern has unusual technical qualifications to perform.

(5) Within ten working days of a commitment from a procuring activity identifying a particular 8(a) concern, SBA will determine whether a proper match exists, and will contract the procuring activity to arrange for initiation of contact negotiations. A letter accepting the commitment should normally be sent to the procuring activity at this time. Should contract negotiations be successful and result in a proposed award to the 8(a) concern, SBA will provide a Certification of SBA's Competency as a contract provision pursuant to § 124.302(c) of these regulations. Should SBA determine that a proper match does not exist, it will so advise the affected 8(a) concern, and may then select and nominate an alternative 8(a) concern to the procuring activity which, in the opinion of SBA, does match with the procurement, if any such concern exists.

(6) Should a procuring activity offer a contract to SBA as an open requirement, SBA will select and nominate in accordance with these regulations an 8(a) concern which appears to be qualified, subject to the following additional procedures:

(i) If the contract is a local buy item, the portfolio of 8(a) concerns maintained by the SBA district office where all or most of the work is to be performed or the items delivered will be examined initially for selection of a qualified 8(a) concern. If none are found to be qualified, the requirement may be considered for other 8(a) concerns located within the appropriate SBA region, or the requirement may be considered for 8(a) concerns located in immediately adjacent regions.

(ii) If the procurement is a national buy item, it shall be referred to SBA's Central Office. Central Office will allocate national buy requirements to the regional offices on an equitable basis, and regional offices will allocate national buy requirements to the districts on an equitable basis.

§ 124.302 8(a) Contracts and subcontracts.

(a) *General.* It is the policy of SBA to enter into contracts with other government agencies and subcontract the performance of such contract to concerns admitted to the section 8(a) program pursuant to section 8(a)(1)(C) of the Small Business Act, at prices which will enable a company to perform the contract and earn a reasonable profit.

(b) *Performance of work by the 8(a) subcontractor.* To assure the accomplishment of the purposes of the program, each 8(a) subcontractor shall be required to perform work equivalent to the following percentages of the total dollar amount of each subcontract, exclusive of material costs, with its own labor force:

(1) Manufacturing—50 percent.

(2) Construction:

(i) General Construction—15 percent.

(ii) Special Trades, Such as Electrical, Plumbing, Mechanical, etc.—25 percent.

(3) Professional Services—55 percent.

(4) Nonprofessional Services—75 percent.

The 8(a) concern is required to include in its proposal to perform a given contract a statement that it agrees to perform the required percentage of the work with its own labor force. Refusal of the concern to provide such a statement will result in the contract not being awarded.

(c) *Certification of SBA's competency.* (1) SBA will not certify as to its competency, as provided by section 8(a)(1)(A) of the Small Business Act, without first determining that the section 8(a) concern it intends to subcontract to is responsible to perform the contract in question. If SBA determines that the concern lacks the capability, competency, capacity, credit, integrity, perseverance, and tenacity to perform on a specific 8(a) subcontract, the contract will not be awarded. In addition, SBA will also certify that an 8(a) concern is eligible under the Walsh-Healey Public Contracts Act, 41 U.S.C. 35(a) for each individual 8(a) subcontract. An 8(a) concern which has not submitted required financial statements to SBA will be deemed not responsible to receive 8(a) subcontracts.

(2) SBA's determination not to award an 8(a) subcontractor a specific 8(a) subcontract because the concern lacks an element of responsibility, or is ineligible under the Walsh-Healey Public Contracts Act, does not constitute a denial of total section 8(a) program participation for the purposes of section 8(a)(9) of the Small Business Act.

(d) *Contract administration.* SBA may delegate its authority to administer section 8(a) subcontracts to the procuring agency or any Federal agency designated by it. This is done through the use of special clauses in the contract between SBA and the procuring agency, or by letter, as appropriate.

(e) *Contract termination.* (1) A decision to terminate a specific section 8(a) subcontract for default is made by the procuring activity contracting officer in cooperation with SBA. The contracting officer will advise SBA in advance of his/her intent to terminate for default the 8(a) subcontract. SBA may provide whatever program benefits as are reasonably available to the 8(a) concern in order to prevent termination for default of the contract. The contracting officer will be made aware of this effort. If, despite the efforts of SBA, in the opinion of the procuring activity contracting officer grounds for termination continue to exist, he/she may terminate the 8(a) subcontract for default.

(2) In cooperation with SBA, the procuring activity contracting officer may terminate a section 8(a) subcontract for convenience at any time it is determined in the best interest of the government to do so.

(f) *Disputes and appeals.* (1) SBA is not subject to the Disputes Clause of a specific contract, and SBA is not a party to and does not appear at or participate in appeals brought under such a clause in its own behalf or on behalf of an 8(a) concern.

(2) If a dispute between an 8(a) subcontractor and the procuring activity contracting officer arises under the subcontract, it will be decided unilaterally by the procuring activity contracting officer. The 8(a) subcontractor has the right to appeal the decision of the procuring activity contracting officer under the Contract Disputes Act of 1978.

§ 124.401 Advance payments.

(a) *General.* (1) Advance payments are disbursements of money made by SBA to a section 8(a) business concern prior to the completion of performance of a specific section 8(a) subcontract. Advance payments are made for the purposes of assisting the section 8(a) business concern in meeting financial requirements pertinent to the performance of the subcontract. The gross amount of advance payments must be determined by SBA prior to commencement of performance of the contract. Any subsequent change in the gross amount of advance payments must be justified in writing by SBA as to amount and purpose. Advance payments are to be awarded only after all other forms of financing have been considered by SBA and rejected as unacceptable to support performance of the subcontract. Advance payments must be liquidated from proceeds derived from the performance of the specific section 8(a) subcontract to which they pertain. However, this does not preclude repayment of such advance payments from other revenues of the business, except from other advance

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payments and business development expenses (as defined hereinafter in these regulations); provided such repayment must occur according to the liquidation schedule established by the subcontract under which the advance payments were made. The proceeds derived from the performance of the specific section 8(a) subcontract must be deposited by the procuring agency in a special bank account established exclusively for the purpose of administering the advance payments. These proceeds will be used to liquidate the advance payments. No withdrawals of such subcontract proceeds from the special bank account may be made by the section 8(a) business concern which are inconsistent with the disbursement schedule established by the subcontract under which the advance payments were made.

(2) Advance payments shall not be made to a section 8(a) business concern in any case in which the section 8(a) business concern has assigned its rights to receive any payment under the specific section 8(a) subcontract to any person or entity, unless such assignment shall be made to SBA or to a Federal agency in regard to the receipt by the section 8(a) business concern of a progress payment for any specific section 8(a) subcontract.

(3) In no event shall the total amount of advance payments for a section 8(a) business concern exceed 90 percent of the outstanding unpaid proceeds of the section 8(a) subcontract to which the advance payments relate.

(4) SBA shall not charge interest on advance payments disbursed pursuant to these regulations.

(b) *Requirements.* (1) Advance payments may be approved for a section 8(a) business concern when all of the following conditions are found by SBA to exist:

(i) A section 8(a) business concern does not have adequate working capital to perform a specific section 8(a) contract.

(ii) Adequate and timely financing is not available on reasonable terms to provide necessary capital.

(iii) The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of advance payment funds. These records must be made available upon request for review and copying by SBA and other appropriate Federal officials.

(iv) A company may receive an advance payment on a section 8(a) subcontract only in instances in which that company has no unliquidated advance payments outstanding on another section 8(a) subcontract which is completed, terminated or in default, unless such unliquidated advance payment is due *only* to the contracting agency's delay in making final payment to the section 8(a) concern which has successfully completed the subcontract.

(c) *Procedure.* To be eligible to receive advance payments, a section 8(a) business concern must meet the conditions set forth above and must comply with the following procedure.

(1) A section 8(a) business concern desiring to receive an advance payment in connection with any section 8(a) subcontract shall:

(i) Submit a written request for advance payment to the appropriate SBA Regional Administrator or his designee. Such request must include detailed documentation requested by SBA as evidence to support the need for such funds and proof that working capital financing cannot be found upon terms acceptable pursuant to § 124.401(b)(ii) above, from financing institutions.

(ii) The section 8(a) business concern must select a commercial bank which is a member of the Federal Reserve System in which it must establish a special non-interest bearing bank account for the deposit of payments made to it by the procuring agency pursuant to the performance of the subcontract(s). This special account must be a demand deposit account. The appropriate SBA Regional Administrator shall designate at least two SBA employees to serve as countersignatories on the special bank account.

(A) Disbursements from the account will be made only upon the authorized signatures of the section 8(a) concern and one of the designated SBA employees.

(B) Under no circumstances shall the requirement for an SBA employee countersignature be waived.

(C) At the time that SBA disburses advance payment funds into the special bank account, SBA shall obtain the most superior lien possible upon the special bank account, any property contracted for, supplies material and other property acquired with the advance payment funds.

(iii) The section 8(a) subcontractor must support each request for disbursement of advance payments by submitting to SBA the following:

(A) The original vendor invoice or original payroll record;

(B) A certified statement, dated and signed by the concern's Chief Financial Officer, attesting to the truth and accuracy of the vendor invoice, and/or the payroll records for the requested advance payment including records of direct payroll expenditures, and payroll expenditures for general and adminstrative expenses and overhead;

(C) Certification by the concern that all Federal taxes and FICA payments are current, or a copy of any agreement with the IRS providing for payment of delinquent taxes;

(D) Documentation of overhead and general and administrative rates using projected indirect costs applied to a valid base, which have been properly allocated to direct material, labor, or other direct costs.

(iv) The section 8(a) concern must, as required by IRS regulations, select a Federal Depository into which the Federal withholding and FICA payment will be made. There shall be no change of Federal Depository without obtaining the prior written consent of the SBA. A check shall be prepared for Federal taxes, concurrent with the SBA advance, based on the submitted payroll, in the name of the tax collecting agency or the Federal Depository and signed by SBA and the contractor. If the amount of a check payable to IRS is less than 25 percent of the gross payroll for that period, the concern's Chief Financial Officer shall prepare a statement certifying that the amount designated as payable to IRS or the Federal Depository is true and correct.

(2) Upon a review of all the circumstances, the Regional Administrator of SBA shall have the obligation to decide whether to approve or deny a request for advance payment and the amount thereof. This right of approval may be delegated to appropriate SBA officials within the discretion of the Administrator. The section 8(a) business concern, the bank selected pursuant to above and SBA must execute and Advance Payment Agreement prior to the disbursement of any advance payment which shall provide for advance payments, set forth a liquidation schedule for the advance payments as well as other terms and conditions governing advance payments. Under no circumstances may a liquidation schedule be waived. However, the appropriate Regional Administrator is authorized to modify liquidation schedules. The section 8(a) concern must execute a note evidencing the full amount of the advance payment and a security agreement and/or personal guarantee by one or more of the principals of the concern as collateral for the advance payment.

(d) *Use of advance payment funds.* (1) Except for repayment to SBA in appropriate circumstances, advance payment funds many only be withdrawn from the special bank account by a section 8(a) business concern exclusively for the purpose of purchasing materials, labor, general and administrative expenses and overhead, and paying progress payments to the subcontractors of the section 8(c) concern for the performance of a specific section of the section 8(a) subcontract at issue.

(2) Under no circumstances may advance payment funds be deposited in interest-bearing accounts, certificates of deposit or other securities.

(3) Advance payment funds shall be disbursed by SBA for deposit into the special account only in such amounts necessary to pay for the immediate needs of a section 8(a) subcontract. Such disbursements shall be made as expeditiously as possible. Such immediate needs shall be documented by the small business concern and verified by SBA prior to disbursement.

(4) All payments to the section 8(a) business concern for work performed or services rendered pursuant to the subject section 8(a) subcontract shall be paid into the special bank account by the procuring agency, and shall be applied by SBA first against the balance of advance payments according to the liquidation schedule. Any amounts remaining in the special bank account may be disbursed to the section 8(a) concern, *provided, however,* that the unpaid balance on the section 8(a) subcontract is sufficient to allow the 8(a) concern to comply with its advance payment liquidation schedule.

(e) *Cancellation.* (1) SBA may determine that advance payments should be cancelled under the following circumstances:

(i) The terms and conditions of the advance payment agreement have not been adhered to by a section 8(a) small business concern.

(ii) The section 8(a) business concern's participation in the section 8(a) program has ended by expiration of the Fixed Program Participation Term and any extension, or has been suspended pursuant to § 124.113 of these regulations or has been terminated by administrative action under section 8(a)(9) of the Small Business Act, 15 U.S.C. 637(a)(9).

(2) In the event of cancellation of advance payments to a section 8(a) business concern, all previous advance payments made to that section 8(a) business concern shall become due and payable to SBA prior to the receipt of final contract payment.

§ 124.402 Business development expense.

(a) *Purpose.* Business Development Expense (BDE) funds are made available by SBA at the time of the execution of a specific section 8(a) subcontract for the purpose of assisting a section 8(a) business concern with the performance of that subcontract. The authority to approve the uses and amount of BDE rests with the Adminstrator who has the power to delegate the authority. An award of BDE is justified only if, prior to the execution of the related section 8(a) subcontract, SBA conducts a complete analysis of the written request and determines that the proposed BDE will promote the long term development objectives of the section 8(a) concern as described in the business plan.

(b) At the discretion of SBA, BDE funds may be added to the section 8(a) subcontract price and may be used for the following purposes and in the following order of priority.

(1) *Capital equipment.* For the purchase of capital equipment which has been determined by SBA to be essential to the section 8(a) business concern's performance of a specific section 8(a) subcontract at a fair market price and for which acquisition cannot reasonably be made by other financing means.

(2) *Other capital improvements.* To assist in the acquisition of other necessary production/technical assets or to subsidize the cost of other capital improvements directly related to reduction of production costs, or to increase productivity and/or production capacity in connection with a specific section 8(a) subcontract. This category includes, but is not limited to, such items as quality control systems, inventory control systems, and other business systems.

(3) *Price differential.* To make up the difference between Government's established fair market price and the price required by the section 8(a) contractor to provide the product or service in connection with a specific section 8(a) subcontract. This type of BDE should be granted to a firm only one time for any specific type of requirement and only if the analysis demonstrates that the firm will be able to produce the item/service competitively in the future.

(c) BDE shall not be provided to satisfy:

(1) Price differentials for professional and nonprofessional service firms;

(2) Any contingency arising subsequent to execution of the section 8(a) subcontract for which the BDE is proposed;

(3) Cost overruns;

(4) Entertainment expenses;

(5) The cost of capital equipment and other capital improvements when one of the following conditions exists:

(i) Funds are available from outside sources to the concern, including SBA financing and the personal resources of the principal(s); or

(ii) Adequate and timely financing from outside sources is available at a reasonable rate.

(6) Costs of interest expenses to be borne by the section 8(a) concern.

(d) *Participatory BDE.* Where appropriate and feasible, section 8(a) concerns will participate to the fullest extent possible in funding the acquisition of assets acquired with BDE funds.

(e) *Requirements.* To be eligible for business development expense funds, a section 8(a) business concern must submit a written request to the appropriate SBA Regional Administrator or his designee. The request must include detailed documentation to support the need for funds, proof that adequate financing is not available at current market rates, and such additional information as required by SBA to adequately consider the request.

(f) When BDE, including participating BDE, will be used to purchase capital equipment, the section 8(a) concern shall comply with the following requirements. The section 8(a) concern shall:

(1) Execute and record a lien on the equipment in favor of SBA. SBA will remove the lien on the assets acquired with BDE funds upon successful completion of the section 8(a) subcontract, except in the case of the firm which has outstanding obligations owed to SBA. Upon full repayment of such outstanding obligations, SBA shall release the lien.

(2) Execute a BDE agreement with SBA which among other things convenants that:

(i) The concern will use the funds exclusively for the purposes stated in the BDE approval;

(ii) The concern shall maintain records to substantiate the uses for which BDE funds have been expended; and

(iii) In the event of default on the contract to which the BDE relates, the section 8(a) concern shall be liable for repayment of the full amount of the BDE.

§ 124.403 Letter of credit.

(a) *General policy.* The letter of credit method of payment will be utilized under certain circumstances to disburse advance payments to section 8(a) business concerns performing subcontracts under the section 8(a) program when SBA has made a decision approving the use of advance payments pursuant to the requirements and

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conditions provided for in these regulations.

(b) *Eligibility requirements.* SBA may disburse advance payments through the letter of credit method of payment through the Federal Reserve Bank System to a section 8(a) business concern when all of the following conditions are found by SBA to exist:

(1) SBA determines that the section 8(a) business concern may be awarded more than one section 8(a) subcontract during a period of at least one year.

(2) The aggregate amount of letter of credit advance payment funds made to one section 8(a) business concern will exceed $120,000 annually.

(3) The section 8(a) business concern has submitted a schedule of its projected monthly advance requirements for section 8(a) subcontract disbursements, SBA has reviewed it, and SBA has found it to be reasonable.

(4) The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of program funds. These records must be made available upon request for review and audit by SBA and the General Accounting Office.

(c) *Procedures.* The procedures for the utilization of the letter of credit method of payment shall be in accord with 48 CFR § 32.406.

§ 124.501 Development assistance program.

(a) *General.* Section 7(j)(1) of the Small Business Act provides for financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(a)(11), 7(j)(10), and 8(a) of the Small Business Act. The AA/MSB–COD is responsible for coordinating and formulating policies relating to the dissemination of this assistance to small business concerns eligible for assistance under sections 7(a)(11), 7(j)(10) and 8(a) of the Small Business Act.

(b) *Services.* (1) Section 7(j)(1–2) of the Small Business Act empowers the SBA to provide through public and private organizations the management and technical assistance enumerated below to those individuals or concerns who meet the eligibility criteria contained in section 7(a)(1) and 8(a) of the Small Business Act.

(2) The SBA shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to participate in the section 8(a) program.

(3) This assistance may include any or all of the following:

(i) Planning and research, including feasibility studies and market research;

(ii) The identification and development of new business opportunities;

(iii) The furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(a)(11), 7(j)(10) and 8(a) of the Small Business Act;

(iv) The establishment and strengthening of business service agencies, including trade associations and cooperatives;

(v) The furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(4) Sections 7(j)(3) and 7(j)(9) of the Small Business Act authorize SBA to:

(i) Encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. SBA may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(a)(11), 7(j), and 8(a) of the Small Business Act, and

(ii) Coordinate and cooperate with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such a way as to further the purposes of sections 7(a)(11), 7(j), and 8(a) of the Small Business Act.

(c) *Eligibility.* (1) Eligibility for the assistance enumerated under § 124.501(b) above shall include, but not be limited to:

(i) Businesses which qualify as small within the meaning of size standards prescribed in 13 CFR Part 121, and which are located in urban or rural areas with a high proportion of unemployed or low-income individuals, or which are owned by such low-income individuals; and

(ii) Businesses eligible to receive contracts pursuant to section 8(a) of the Small Business Act.

(d) *Delivery of services.* (1) The financial assistance authorized for projects under paragraph (b) of this section includes assistance advanced by grant, cooperative agreement, or contract.

(2) To the extent feasible, services available under paragraph (b) of this section shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(e) *Coordination and cooperation with other government agencies.* (1) The AA/MSB–COD may utilize the resources of other agencies and departments whenever practicable which can directly or indirectly support or augment the purposes of sections 7(a)(11), 7(j) and 8(a) of the Small Business Act.

(2) The AA/MSB–COD shall enter into agreements with Federal agencies and departments to further effective sections 7(a)(11), 7(j) and 8(a) of the Small Business Act.

(3) The AA/MSB–COD shall encourage the placement of deposits made by the Federal Government, or by programs aided with Federal funds, in such a way as to further the purposes of section 7(a)(11), 7(j) and 8(a) of the Small Business Act.

§ 124.502 Small Business and Capital Ownership Development program.

(a) *General.* Section 7(j)(10) of the Small Business Act establishes a Small Business and Capital Ownership Development program which shall provide additional assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. The management of the Capital Ownership Development program is vested in the AA/MSB–COD who is responsible for the oversight of the program and activities set forth in this part of these regulations. The development assistance described below shall be provided exclusively to those small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. Such small business concerns shall be participants in the Small Business Capital Ownership Development program. This program shall:

(1) Assist shall business concerns participating in the program to develop comprehensive business plans with specific business targets, objects, and goals;

(2) Provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the program, including but not limited to (i) loan packaging, (ii) financial counseling, (iii) accounting and bookkeeping assistance, (iv) marketing assistance, and (v) management asssistance;

(3) Assist small business concerns participating in the program to obtain equity and debt financing;

(4) Establish regular performance monitoring and reporting systems for small business concerns participating in the program to assure compliance with their business plans;

(5) Analyze and report the causes of success and failure of small business concerns participating in the program; and

(6) Provide assistance necessary to help small business concerns participating in the program to procure surety bonds. Such assistance shall include, but not be limited to, (i) the preparation of surety bond participation forms; (ii) special management and technical assistance designed to meet the specific needs of small business concerns participating in the program and which have received or are applying to receive a surety bond, and (iii) preparation of all forms necessary to receive a surety bond guarantee form the SBA pursuant to Title IV, Part B of the Small Business Investment Act of 1958.

§ 124.503 Compliance with the Paperwork Reduction Act of 1980.

(a) In compliance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35) and its implementing regulations, the recordkeeping or reporting requirements and forms appearing in the following sections of this part have been approved by the Office of Management and Budget (OMB) under number 3245–0015: §§ 124.105(b), 124.106(b), 124.106(b)(1) 124.106(b)(2), 124.106(b)(3), 124.202, 124.204, 124.205, 124.403(b)(4), 124.502(a)(1) and 124.502(a)(6).

(b) The recordkeeping or reporting requirements and forms appearing in the following sections of this final rule have also been approved by OMB:

§ 124.103(c) [OMB Approval No. 3245–0145]; § 124.103(e) [OMB Approval No. 3245–0145]; § 124.111(c) [OMB Approval No. 3245–0147]; § 124.112(a)(7) [OMB Approval No. 3245–0206]; § 124.112(a)(17) [OMB Approval No. 3245–0146]; § 124.205 [OMB Approval No. 3245–0015]; § 124.206 [OMB Approval No. 3245–0143]; §§ 124.401(c)(1)(i), 124.401(c)(1)(iii) and 124.403(b)(3) [OMB Approval No. 3245–0148]; § 124.402(e) [OMB Approval No. 3245–0149]; and §§ 124.112(a)(6) 124.205 (financial statements) and 124.502(a)(4) [OMB Approval No. 3245–0151]

Dated: September 15, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86–22659 Filed 10–7–86; 8:45 am]

BILLING CODE 8025–01–M

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federal register

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Part III

Department of Education

Office of Postsecondary Education

Availability of the 1986–87 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits; Notice

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DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Availability of the 1986–87 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits

AGENCY: Department of Education.

ACTION: Notice of availability of the 1986–87 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits.

SUMMARY: Institutions and borrowers participating in the National Defense and Direct Student Loan (NDSL) Programs and other interested persons are advised that they may obtain information regarding the *1986–87 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Cancellation Benefits (Directory).* Under each program, borrowers may receive cancellation for full-time teaching in a school having a high concentration of students from low-income families. The Secretary has designated the schools for the 1986–87 academic year and they are listed in the *Directory.*

DATE: The *Directory* is available on or before October 8, 1986.

ADDRESS: Information concerning specific schools listed in the *Directory* may be obtained from Ronald W. Allen, Campus-Based Programs Branch, Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4651, ROB–3), Washington, DC 20202, Telephone (202) 732–3730.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the NDSL Program; (2) each of the fifty-seven (57) State and Trust Territory Departments of Education; and (3) each of the ten (10) regional offices of the U.S. Department of Education (see Appendix to this notice for the addresses of the regional offices).

SUPPLEMENTARY INFORMATION: The procedures for selecting schools for cancellation benefits are described in 34 CFR 674.53 and 674.54 of the NDSL program regulations. The Secretary has determined that for the 1986–87 academic year, full-time teaching in the schools set forth in the *Directory* qualifies for cancellation.

The Secretary is providing the *Directory* to each institution participating in the National Defense and Direct Student Loan Programs. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, regional offices of the Department of Education, or the Office of Student Financial Assistance of the Department of Education concerning the identity of qualifying schools for the 1986–87 academic year.

The Office of Student Financial Assistance will retain, on a permanent basis, copies of past, current, and future *Directories.*

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct Student Loan Cancellations)

Dated: October 3, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

Appendix to Notice of Availability of 1986–87 National Defense and Direct Student Loan Programs Directory of Designated Low Income Schools for Teacher Cancellation Benefits

U.S. Department of Education, Regional Offices

Region I: OSFA/ED, J.W. McCormack Post Office and Courthouse Building, 5 Post Office Square, Room 510, Boston, Massachusetts 02109, (617) 223–9333, FTS: 223–9333

Region II: OSFA/ED, 26 Federal Plaza, Room 3954, New York, New York 10278, (212) 264–4426, FTS: 264–4426

Region III: OSFA/ED, P.O. Box 13716 (3535 Market Street), Philadelphia, Pennsylvania 19104, (215) 596–0247, FTS: 596–0247

Region IV: OSFA/ED, 101 Marietta Tower, Suite 423, Atlanta, Georgia 30323, (404) 331–4106, FTS: 242–4106

Region V: OSFA/ED, 300 South Wacker Drive, 12th Floor, Chicago, Illinois 60606, (312) 353–8103, FTS: 353–8103

Region VI: OSFA/ED, 1200 Main Tower Building, Room 2150, Dallas, Texas 75202, (214) 729–3811, FTS: 729–3811

Region VII: OSFA/ED, Executive Hills North, 7th Floor, 10220 North Executive Hills Blvd., Kansas City, Missouri 64153, (816) 891–8055

Region VIII: OSFA/ED, 1961 Stout Street, Room 308, Denver, Colorado 80294, (303) 844–3678, FTS: 564–3678

Region IX: OSFA/ED, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–0137, FTS: 556–0137

Region X: OSFA/ED, Third and Broad Building, Mail Stop 102, 2901 Third Avenue, Seattle, Washington 98121, (206) 442–4027, FTS: 399–0493.

[FR Doc. 86–22765 Filed 10–7–86; 8:45 am]

BILLING CODE 4000–01–M

federal register

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Part IV

Environmental Protection Agency

1,3-Dichloropropene; Initiation of Special Review; Availability of Registration Standard; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/51; FRL-3092-4]

1,3-Dichloropropene; Initiation of Special Review; Availability of Registration Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of initiation of special review of pesticide products containing 1,3-dichloropropene; Notice of availability of registration standard.

SUMMARY: This Notice announces that EPA is initiating a Special Review of all pesticide products containing the active ingredient 1,3-dichloropropene, Shaughnessey Code No. 029001. The pesticide 1,3-dichloropropene (also called "Telone") has been shown to be an oncogen in mice and rats. The results of oncogenicity studies in mice and rats indicate that increasing doses of 1,3-dichloropropene are associated with increasing tumor rates in both sexes of both species. EPA has determined that 1,3-dichloropropene may pose an oncogenic risk to humans and concludes that it meets or exceeds the criteria for initiation of Special Review set forth in 40 CFR 154.7(a)(2). Accordingly, a Special Review of products containing 1,3-dichloropropene is appropriate to determine whether additional regulatory actions are required. During the Special Review, EPA will carefully examine the risks and benefits of using products which contain 1,3-dichloropropene and will determine whether the terms and conditions of registration should be revised. A Registration Standard describing EPA's detailed assessment of currently available information on 1,3-dichloropropene and prescribing certain interim risk reduction measures is available to the public. The Registration Standard and accompanying scientific reviews constitute the technical documents in support of this action.

DATE: Comments, evidence to rebut the presumptions in this Notice, and other relevant information must be received on or before December 8, 1986.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP-30000/51," by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Sreet SW., Washington, DC 20460

In person, bring comments to: Rm. 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. The 1,3-dichloropropene public docket, which contains all non-CBI written comments, will be available for public inspection in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Bruce Kapner, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Sreet, SW., Washington, DC 20460

Office location and telephone number: Room 711, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7452).

For a copy of the Registration Standard or scientific reviews, to request information concerning the Special Review and Registration Standard public dockets, or to request indices to the Special Review and Registration Standard public dockets, contact Frances Mann (703-557-2805) no later than November 7, 1986, to allow sufficient time for the requestor to receive the material before the close of the comment period.

For information or questions concerning the use and benefits information solicited in Unit III.B. of this Notice, contact Roger C. Holtorf (703-557-7335) concerning economic data, and Janet L. Andersen (703-557-3533) concerning biological information.

SUPPLEMENTARY INFORMATION: This Notice is organized in the following units. Unit I is a description of the Agency's Special Review process. Unit II describes the basis of the Agency's decision to initiate Special Review on 1,3-dichloropropene. Unit III provides a use profile for 1,3-dichloropropene and solicits benefits information from the public. Unit IV sets forth the duty to submit information on adverse effects. Unit V describes the public comment opportunity and the procedures for submission of public comments to the Agency. Unit VI describes the contents of the public docket for this Notice.

I. Background

A. Legal Requirements

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard, the Administrator may cancel this registration under section 6 of FIFRA.

The special review process provides a mechanism to permit public participation in EPA's deliberations prior to issuance of any Notice of Final Determination describing the regulatory action which the Administrator has selected. The Special Review process is described in 40 CFR Part 154, published in the **Federal Register** of November 27, 1985 (50 FR 49015). During the Special Review process the Agency: (1) Announces and describes the basis for the Agency's finding that use of the pesticide meets one or more of the risk criteria set forth in § 154.7; (2) establishes a public docket; (3) solicits comments from the public, and under certain circumstances, from the Secretary of Agriculture and the Scientific Advisory Panel regarding the Agency's analysis and proposed regulatory decisions; (4) reviews and responds to all significant comments timely submitted; and (5) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use. Issuance of this Notice means that potential adverse effects associated with the use of pesticide products containing 1,3-dichloropropene have been identified and will be examined further to determine their extent and whether, when considered together with the benefits of 1,3-dichloropropene, such risks are unreasonable.

A document entitled "Guidance for the Reregistration of Pesticide Products Containing 1,3-Dichloropropene as the Active Ingredient" (Registration Standard) has been issued and is

available to the public, as noted in the unit of this Notice entitled **FOR FURTHER INFORMATION CONTACT.** The Registration Standard provides a detailed explanation of the basis for EPA's decision to start this Special Review and also contains references, background information, data requirements, and other information pertinent to the reregistration of pesticide products containing 1,3-dichloropropene. The Registration Standard also discusses interim risk reduction and label modifications.

B. Preliminary Notification

Registrants of 1,3-dichloropropene products were notified by letter on August 8, 1986, under 40 CFR 154.21(a), that the Agency was considering initiation of Special Review on 1,3-dichloropropene. Comments received in response to that notification are addressed in Unit II.C. of this Notice.

II. Determination To Initiate a Special Review

EPA has determined that all uses of pesticide products containing 1,3-dichloropropene have met the criteria for initiation of Special Review set forth at 40 CFR 154.7(a)(2) in that they "may pose a risk of inducing in humans an oncogenic effect. . . ."

A. Oncogenicity

Two oncogenicity studies, one in B6C3F1 mice and the other in F344/N rats, in which the animals were dosed with technical grade 1,3-dichloropropene, were conducted by the National Toxicology Program. Both studies were positive for oncogenicity. Results of the studies indicate that increasing doses of 1,3-dichloropropene are associated with increasing tumor rates at multiple sites in both sexes of both species. Based on these studies, male rats are the most sensitive to oncogenic effects from 1,3-dichloropropene and therefore, results from the rat study were used to determine the chemical's oncogenic potency. To determine the oncogenic potency of a chemical, EPA uses the laboratory data to calculate an equation which expresses the mathematical relationship between dose and oncogenic effect. Based on this equation, EPA determines a number (Q_1^*) which is then used as a multiplier of the estimated exposure (in units of mg/kg/day) to obtain the estimated 95 percent upper bound on oncogenic risk. For 1,3-dichloropropene, the Q_1^* in male rats is 3.3×10^{-2} (mg/kg/day)$^{-1}$. This potency estimate is equivalent to 1.75×10^{-1} (mg/kg/day)$^{-1}$ for humans. A detailed discussion on the oncogenic response for each species and sex and a determination of the oncogenic potency can be found in the Registration Standard under Unit III.B.

Other available data which add to the weight-of-evidence for the oncogenic potential of 1,3-dichloropropene include:

(1) A 77-week subcutaneous injection study in mice showing an increased incidence of fibrosarcomas at the site of injection;

(2) Several tests using prokaryotic cells showing 1,3-dichloropropene to be a direct-acting mutagen; and (3) 1,3-dichloropropene's structural similarity to vinyl chloride and ethylene dibromide, known oncogens. Based on the above, 1,3-dichloropropene has been classified as a probable human carcinogen.

The Agency has assessed exposure to workers involved in applying, handling or storing 1,3-dichloropropene. Ten studies were evaluated and exposure was estimated for the inhalation route. Sampling was carried out in California and Florida.

The risk assessment considered exposure through inhalation and did not take into account use of a respirator. Risks associated with individual occupational exposures are given below. High and low risk estimates are based on a range of exposures from different work activities or different results from the studies reviewed. A detailed discussion on exposure data reviewed and resulting exposure levels is presented in the Registration Standard under Unit III.B.

Activity	Oncogenicity risk estimates	
	Low	High
Bulk transfer	10^{-5}	10^{-3}
Storage areas	10^{-5}	10^{-3}
Loading	10^{-5}	10^{-2}
Highway transport	10^{-5}	10^{-5}
Private applicator	10^{-4}	10^{-3}
Post treatment	10^{-4}	10^{-1}
24 hours	0	0
36 hours	0	0
72 hours	0	0
Downwind	10^{-5}	10^{-4}

Dermal exposure is also possible, but data are not available at this time to quantify these exposure levels. In addition, the magnitude of exposure to commercial applicators, through inhalation, has not been established at this time.

The Agency is unable to assess potential risks from dietary exposure because it lacks sufficient data on the magnitude of residues of 1,3-dichloropropene, its metabolites, and impurities in raw agricultural commodities.

The Agency has requested, through the Registration Standard and a data call-in, data concerning dermal, inhalation, and dietary exposure to 1,3-dichloropropene. Because of the time element necessary to carry out some of the studies the Agency does not expect to complete its risk/benefit analysis of 1,3-dichloropropene until late in 1988.

B. Additional Grounds for Concern

Technical 1,3-dichloropropene consists mostly of 1,3-dichloropropene but also contains small amounts of 1,2-dichloropropane and other chlorinated materials. Due to the high application rates associated with the use of 1,3-dichloropropene, all components of the technical chemical are of concern with respect to ground water contamination.

Available data suggest that 1,3-dichloropropene and 1,2-dichloropropane have the potential to reach ground water. Information from the California State Water Resource Control Board shows that 1,2-dichloropropane is being found in both shallow and deep wells throughout the State. Monitoring data from Maryland, Massachusetts, New York, and Washington also show findings of 1,2-dichloropropane in ground water. Monitoring data from New York have also shown positive results for 1,3-dichloropropene in ground water.

Only limited data are available on the chemical properties and environmental fate of 1,3-dichloropropene. Also, only limited monitoring information concerning the other components or degradates of 1,3-dichloropropene is available.

C. Interim Risk Reduction Measures

Because of the Agency's concerns, the Agency has set forth its determination in the Registration Standard that registrants should change product labeling. These changes include:

1. "Restricted Use" classification.
2. A Cancer Hazard Warning.
3. Additional precautionary statements.
4. Protective clothing/equipment requirements.
5. A 72-hour field reentry interval.

The exact labeling language on 1,3-dichloropropene labeling is presented under Unit V.B of the Registration Standard. These label precautions should appear on labeling of all products in channels of trade by October 30, 1988.

D. Comments in Response To 40 CFR 154.21 Notification

The Agency received nine responses to the notification which was sent to all

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registrants in accordance with 40 CFR 154.21. The comments and responses are discussed below:

1. *Comment.* The oncogenicity studies cited are not persuasive because the product tested is not remotely comparable to the product currently being produced. The amount of 1,2-dichloropropane, an impurity, has been reduced and the stabilizer, epichlorohydrin, has been replaced with another substance not believed to be oncogenic.

Agency response. The Agency is aware of the differences between the formulation tested in the NTP oncogenicity studies and the formulation currently being produced. Both 1,2-dichloropropane and epichlorohydrin have been shown to be oncogenic. The Agency's rationale as to why the oncogenic response seen in the NTP studies was a result of 1,3-dichloropropene and not epichlorohydrin has been thoroughly addressed in Unit III.B of the Registration Standard. The impurity, 1,2-dichloropropane, produced liver tumors in mice and was marginally positive for mammary tumors in female rats. The oncogenicity studies on 1,3-dichoropropene showed that the chemical produced tumors at multiple sites in both sexes of the rat and mouse. The Agency believes that the oncogenic response was caused by 1,3-dichloropropene and not by either the impurity 1,2-dichloropropane or epichlorohydrin.

2. *Comment.* The relevance of the NTP studies in rats and mice to humans is questioned because the major route of human exposure appears to be through inhalation. The oncogenic study in rats and mice involved oral intubation at doses significantly exceeding concentrations of 1,3-dichloropropene in air that could potentially be encountered by unprotected humans.

Agency response. The Agency would prefer to use data from a chronic inhalation study because the exposure route is through inhalation. However, since a chronic inhalation study is not available, the Agency has chosen to use the results from the oral chronic oncogenic studies. Upon receipt of chronic inhalation data the Agency will reevaluate the oncogenic potential for 1,3-dichloropropene. The Agency recognizes the differing routes of exposure for the test animals and humans and has taken this difference into account in its exposure estimates. (See Unit III.A of the Registration Standard.)

3. *Comment.* Several comments questioned the relevance of certain evidence cited by EPA to support its assessment of the oncogenic potential of 1,3-dichloropropene.

a. While agreeing that a 77-week subcutaneous injection study in mice showed an increased incidence of fibrosarcomas at the site of injection, a comment points out the absence of oncogenic effects in a study where the same test substance was applied dermally.

b. Concerning tests using bacteri which showed 1,3-dichloropropene to be a direct-acting mutagen, a comment argued that available data suggest that the mutagenic compound is a contaminant or degradation product of 1,3-dichloropropene, rather than 1,3-dichloropropene itself. The comment further stated that data also clearly demonstrate that bacteria are protected from the mutagenic properties of 1,3-dichloropropene by glutathione, a protective molecule that is found in much higher concentrations in mammaliam cells than in bacterial cells.

c. A comment points out that while there is some structural similarity between 1,3-dichloropropene and vinyl chloride, a known human oncogen, the metabolic and excretory pathways of the chemicals are markedly different.

Agency response. The Special Review is being initiated because of the oncogenic effects demonstrated in the NTP mouse and rat chronic oncogenicity studies. Although EPA thinks that certain additional data—the subcutaneous injection study, the bacterial mutagenicity assays, and the structural similarities of the 1,3-dichloropropene and vinyl chloride—add weight to the Agency's conclusions on oncogenicity, these other studies are not necessary to establish that 1,3-dichloropropene is an oncogen. Therefore, the Agency does not feel it necessary to delay initiation of the Special Review in order to conduct a detailed evaluation of these comments. The Agency is currently reviewing data submitted in support of the above comments and will address them during the Special Review.

4. *Comment.* The in-life portion of a chronic inhalation study in both the rat and mouse, as well as gross necropsies, has been completed. Based on observations, no oncogenicity in either species has been noted.

Agency response. Without the histopathological examination of the animals treated in the chronic inhalation study, the gross necropsies offer little scientific evidence concerning 1,3-dichloropropene's oncogenic potential through inhalation. The results of this study will clearly be relevant to the Special Review but there is currently insufficient information available from this study at this time to consider it in the Agency's decision whether to initiate a special review.

5. *Comment.* A comment suggests the Agency's estimated risk to workers of contracting cancer from a lifetime of exposure to 1,3-dichloropropene appears to be premised, in part, on product misuse.

Agency response. The exposure estimates used by the Agency were based on actual exposure studies conducted with 1,3-dichloropropene. There is no evidence that product misuse took place although the upper ranges of exposure could be due to mishandling or poor use practices. It should be noted, however, that all exposure levels were found to be unacceptable.

6. *Comment.* The oncogenic risk depends on the level of exposure. Because there are no detectable residues of 1,3-dichloropropene in treated raw agricultural commodities, and the total number of workers exposed to 1,3-dichloropropene is very small, the potential risk is not sufficient to justify a Special Review.

Agency response. Further data will show whether there is a significant risk from dietary exposure. EPA currrently lacks adequate data to characterize the level of dietary exposure. When initially registered, all uses of 1,3-dichloropropene were considered nonfood uses because residues of 1,3-dichloropropene were not expected to be present in food crops. The Agency, however, no longer considers these uses of 1,3-dichloropropene on fields in which food crops will be planted to be nonfood uses. Available residue data are inadequate to make a determination if residues of 1,3-dichloropropene, its metabolites, or formulation impurities will be present on raw agricultural commodities as a result of use of 1,3-dichloropropene. The Agency considers the fact that the total number of workers who handle 1,3-dichloropropene is very small is not relevant to the initiation of the Special Reviewbut will be taken into consideration during the risk/benefit analysis and regulatory options phases of the Special Review.

7. *Comment.* As an alternative to initiation of a Special Review, a comment suggested several additional label precautions to further safeguard workers.

Agency response. The Agency encourages registrants to propose risk reduction measures at any time during a Special Review. The Agency's preliminary evaluation of the comment's proposals is that they are insufficient to cause the Agency not to initiate a Special Review. Therefore, the Agency considers it prudent to initiate the Special Review, obtain public comment, and consider the proposed risk reduction measures while the Special Review is underway.

8. *Comment.* One comment claimed that the Agency must differentiate between ground water and drinking water and that there is no evidence that 1,3-dichloropropene would contaminate drinking water from agricultural uses. There are ample data showing that 1,3-dichloropropene is broken down very quickly to non-toxic degradates. The comment argued that residues of 1,2-dichloropropane in ground water are a result of use of pesticide products which contained large amounts of this chemical. Because these products are no longer used and levels of the impurity 1,2-dichloropropane in 1,3-dichloropropene continue to be reduced, the data showing residues of 1,2-dichloropropane in ground water are not relevant.

Agency response. Although EPA recognizes that not all ground water is currently being used as a source of drinking water the movement of a pesticide in a ground water aquifer cannot be accurately predicted at this time. Therefore, there is a possibility that a pesticide which has contaminated ground water today may be found in drinking water tomorrow.

The Agency has reviewed all available data in its files concerning the environmental fate of 1,3-dichloropropene and remains concerned about contamination of ground water by 1,3-dichloropropene, its impurities and degradates. While the Agency is currently reviewing data submitted in support of the above comment, the contamination of ground water was not a criterion for initiating a Special Review but rather an additional concern of the Agency. The Agency does not think it necessary to delay initiation of the Special Review while reviewing these studies.

9. *Comment.* Several comments discussed the benefits aspects of 1,3-dichloropropene.

Agency response. The Agency is aware there are benefits from the use of 1,3-dichloropropene. However, benefits are not a basis for initiation of a Special Review. Upon initiation of the Special Review, the Agency will review and evaluate the benefits of 1,3-dichloropropene in its risk/benefit analysis.

III. Uso and Benefits Information

A. Use Profile

1,3-Dichloropropene is a broad spectrum soil fumigant capable of controlling many plant parasitic nematodes and some pathogens, insects, and weeds. It is federally registered for use on over 190 sites. Usage is in the range of 34 to 40 million pounds active ingredient per year. The major use of 1,3-dichloropropene is for nematode control on crops grown in sandy soils of the Eastern, Southern, and Western United States. Use sites include field crops, floral crops, grasses and turf, small fruits, vegetables, ornamentals, and various fruit and nut trees.

B. Benefits Information

EPA believes that cancellation of 1,3-dichloropropene could have significant effects on at least the following 10 major uses, which comprise over 90 percent of annual usage. Ranked in order of usage, they are potatoes, tomatoes, carrots, tobacco, pineapples, crucifers, sugar beets, cotton, citrus, and nursery stock. During the course of this Special Review, the Agency will focus its benefits analysis on the major uses identified above and any other uses on which the Agency has benefits information. For those uses on which the Agency lacks benefits information, the Agency will consider the benefits as marginal unless additional information is received during the public comment period indicating otherwise.

The user community, registrants, applicants, other government agencies, and the interested public are encouraged to submit data to support any benefits claims on any of the registered uses. Persons who desire to submit benefits information should submit the following information for each crop addressed, along with any other relevant information they desire to submit.

1. Comparative Efficacy Reports

Field trial results comparing 1,3-dichloropropene with chemical and nonchemical alternatives at recommended dosage rates and methods of application or implementation may be submitted. Field trials should include controlled plots where no nematode control is conducted. Field trials should be conducted in accordance with good agricultural practices such as those described by the Society of Nematology. Results should include:

a. All growing conditions and other pertinent factors having an impact on field trial results (i.e., soil types and conditions, location, and pest presence).

b. Data relating to the degree or percent of pest control and/or reduction in damage achieved, plus comparative yield and quality data using acceptable agricultural practices, plot designs, and statistical analyses comparing 1,3-dichloropropene with possible alternatives tested.

c. Data on nontarget organisms affected (e.g., predators, parasites, pathogens and other introduced or endemic species) by 1,3-dichloropropene and the other pesticides or pest management programs tested (e.g., Integrated Pest Management (IPM)).

d. Data on the development of resistance to 1,3-dichloropropene or its alternatives by target pests.

2. Pesticide Profile Information

a. Copies of the most recent State recommendations for the crop(s) in question, listing 1,3-dichloropropene and any alternative pesticides and/or other nonchemical pest management programs.

b. Data on pesticide or pest management program characteristics that determine the choice of pesticides or other control strategies including their restrictions, limitations, and benefits.

c. Pest spectrum (species or groups) controlled by each pesticide or pest control strategy.

d. Pest management programs currently used by growers and any advanced research programs which could modify pest management practices within the next two or three growing seasons.

e. Information on how the crop is grown (crop management) and crop development (phenology) in relation to pest biology and population dynamics.

3. Economic Data

a. For each crop addressed, usage of 1,3-dichloropropene and any alternatives (preferably by target pest(s)) in terms of acres treated, number of applications per season, and pounds of active ingredient (quantities expressed by State or region are preferable to national totals). Non-chemical approaches should also be addressed.

b. Actual application rate(s) (individual amount or a range where appropriate) in terms of active ingredient per acre or similar unit.

c. Retail price of 1,3-dichloropropene and alternatives in terms of dollars per pound of active ingredient.

d. Cost of application in terms of dollars per acre or similar unit. When custom applied, submit rates charged. When grower applied, use rates as specified in crop production budgets.

e. Economic profile of current users of 1,3-dichloropropene and of

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"downstream" processors potentially affected by price or supply shifts of the crop in question (e.g., pineapple processors).

f. Enterprise budget data (costs and returns) for typical users.

g. Price elasticity of demand (raw commodity and at retail level) for the crop in question.

IV. Duty To Submit Information on Adverse Effects

Registrants are required by section 6(a)(2) of FIFRA to submit any additional information regarding unreasonable adverse effects on man or the environment which comes to their attention at any time. For further information on this requirement consult the Agency's enforcement policy for section 6(a)(2), published in the Federal Register of July 12, 1979 (44 FR 40716). The registrants of 1,3-dichloropropene products must submit immediately published or unpublished information, studies, reports, analyses, or reanalyses regarding adverse effects associated with 1,3-dichloropropene, its impurities, metabolites and degradation products in humans or animal species, and claimed or verified accidents to humans, domestic animals, or wildlife which have not been previously submitted to EPA. These data should be submitted with a cover letter specifically identifying the information as being submitted under section 6(a)(2) of FIFRA. In light of this Special Review and the requirements of FIFRA section 6(a)(2), the registrants should notify EPA of the results of any studies on 1,3-dichloropropene currently in progress to the extent specified in the section 6(a)(2) enforcement policy cited above. Specifically, information on any adverse toxicological effects of 1,3-dichloropropene, its impurities, metabolites, and degradation products must be submitted.

V. Public Comment Opportunity

All registrants and applicants for registration are being notified by certified mail of the Special Review being initiated on their products containing 1,3-dichloropropene. The Agency is providing a 60-day period to comment on this Notice. Comments must be submitted by December 8, 1986. The Agency is particularly soliciting comments on the subjects listed in Units III and IV and on the 1,3-dichloropropene Registration Standard. All comments and information should be submitted in triplicate to the address given in this Notice under ADDRESS to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation OPP-30000/51.

During the comment period, interested members of the public or registrants may request a meeting to discuss factual information available to the Agency, to present any factual information, to respond to presentations by other persons, or to discuss what regulatory actions should be taken regarding 1,3-dichloropropene. Persons interested in arranging such meetings should contact the Review Manager listed in this Notice under FOR FURTHER INFORMATION CONTACT.

VI. Public Docket

The Agency has established a public docket (OPP-30000/51) for the 1,3-dichloropropene Special Review. This public docket will include: (1) this Notice; (2) any other notices pertinent to the 1,3-dichloropropene Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to the pre-Special Review registrant notification, this Notice, and any other Notice regarding 1,3-dichloropropene submitted at any time during the Special Review process by any person outside government; (4) a transcript of all public meetings held by the Agency for the purpose of gathering information on 1,3-dichloropropene; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government; and (6) a current index of materials in the public docket.

Dated: September 30, 1986.

John A. Moore,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 86-22834 Filed 10-7-86; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
October 8, 1986

Part V

Environmental Protection Agency

Notice of Preliminary Determination To Cancel Registrations of Alachlor Products Unless the Terms and Conditions are Modified; Availability of Technical Support Document and Draft Intent To Cancel

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/44B; FRL-3092-5]

Preliminary Determination To Cancel Registrations of Alachlor Products Unless the Terms and Conditions Are Modified; Availability of Technical Support Document and Draft Intent To Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preliminary determination; notice of availability.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticide products containing alachlor and discusses the Agency's assessment of the risks and benefits associated with the pesticidal uses of alachlor. EPA issued a Notice of Initiation of Special Review of Registrations of Pesticide Products Containing Alachlor as published in the Federal Register of January 9, 1985 (50 FR 1115). This Notice announces the Agency's preliminary determination to allow continued use of registered alachlor products under modified terms and conditions. In addition, this Notice announces the availability of the Alachlor Technical Support Document (TSD) for this action and the draft Notice of Intent to Cancel.

DATE: Written comments must be received on or before December 8, 1986.

ADDRESSES: Submit three copies of written comments, bearing the document control number "OPP-30000/44B" by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter. The alachlor public docket, which contains all non-CBI written comments and the corresponding index, will be available for public inspection and copying in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: David E. Giamporcaro, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0481)

Copies of the Alachlor Technical Support Document and draft Notice of Intent to Cancel are available from the contact person at the address given above.

SUPPLEMENTARY INFORMATION:

I. Background and Regulatory History

Pesticide products containing the active ingredient alachlor (2-chloro-2',6'-diethyl-N-(methoxymethyl) acetanilide) have been registered in the United States since 1969 by Monsanto Chemical Company. EPA records indicate that there are nine federally registered products containing alachlor.

Alachlor is a selective herbicide used for control of many preemergent broadleaf weeds and grasses. Registered uses include selective weed control in cultivated agricultural land and woody ornamentals. In the United States, usage of alachlor is estimated at 80 to 84 million pounds active ingredient per year. Approximately 94 percent of alachlor use is on three sites: corn (63 percent), soybeans (28 percent), and peanuts (3 percent).

EPA issued a Notice of Initiation of Special Review of Registrations of Pesticide Products Containing Alachlor, hereafter referred to as Special Review, which was published in the Federal Register of January 9, 1985 (50 FR 1115). That Notice also announced the availability of the Alachlor Position Document 1 (PD-1). The Special Review was initiated because pesticide products containing alachlor met or exceeded EPA's then applicable oncogenicity risk criterion under 40 CFR 162.11(a)(3). Specifically, EPA determined that exposure to pesticide products containing alachlor resulted in increased incidences of tumors at multiple sites in two species of laboratory animals. Subsequently, the risk criteria in 40 CFR 162.11 were superseded by new criteria set forth in 40 CFR 154.7(a)(2). For the reasons set out in Unit III of this Notice, the Agency has determined that alachlor exceeds the new criterion for oncogenicity as well.

The basis of EPA's decision to initiate the Special Review on alachlor is further detailed in a document entitled "Guidance for the Interim Registration of Pesticide Products Containing Alachlor as an Active Ingredient" (Registration Standard) which was issued in November, 1984 and in the PD-1. In the PD-1, EPA solicited comments on the risks and benefits associated with all the uses of alachlor.

Based on information received in public comments, as well as on additional analyses performed since the Special Review process began, EPA has made a preliminary determination to cancel the registrations of products containing alachlor unless certain modifications to the terms and conditions of registration are made by the registrants. EPA's position and a summary of the rationale underlying that position are set forth in this Notice. The basis for EPA's actions is explained more fully in the Alachlor TSD. The TSD also contains references, background information, and other information pertinent to the reregistration of pesticide products containing alachlor. Copies of the TSD are available to the public upon request from the contact person listed at the beginning of this Notice.

In addition, copies of a draft Notice of Intent to Cancel Registrations of Alachlor Products are also available from the contact person listed above. Preparation of the draft Notice of Intent to Cancel is required by 40 CFR 154.31(b)(1). The draft Notice of Intent to Cancel contains the provisions regarding disposition of existing stocks, compliance by intrastate producers, procedures for requesting a cancellation or denial hearing, and for amending registrations.

In accordance with sections 6 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136, et seq.), EPA is sending copies of this Notice, the TSD, and the draft Notice of Intent to Cancel to the Secretary of Agriculture and the Scientific Advisory Panel for the required 30-day review. The same documents will be sent to all registrants and applicants for registration of alachlor products. EPA is also providing a 60-day public comment period on these documents. After reviewing any comments received within the applicable time limits, EPA will determine what final regulatory position and actions are appropriate.

II. Legal Background

A. The Statute

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under FIFRA. Before a product can be registered it must be shown that it can be used without causing "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel this registration under section 6 of FIFRA.

B. The Special Review Process

The Special Review process, formerly called the Rebuttable Presumption Against Registration (RPAR), is a mechanism by which the Agency collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects on human health or the environment. The Special Review process is governed by 40 CFR Part 154.

Through the Special Review process the Agency (1) announces and describes the Agency's risk concerns regarding pesticidal use based on certain risk criteria; (2) establishes a public docket; (3) proposes a regulatory decision based on evaluation of the pesticide's risks and benefits; (4) solicits comments from the public on the proposed decision and issues concerning the Special Review; (5) responds to significant comments from the Secretary of Agriculture and the Scientific Advisory Panel; and (6) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

Issuance of this Notice means that potential adverse effects and benefits associated with the use of pesticide products containing alachlor have been assessed and that the Agency has preliminarily determined that, unless the terms and conditions of registration are modified as proposed in this Notice, the risks from exposure to alachlor outweigh the benefits of its use.

III. Summary of Risk and Benefit Determinations and Proposed Regulatory Actions

EPA has considered information relating to the risks of continued use of alachlor as well as the benefits to the agricultural economy derived from use of the chemical.

In response to the Notice of Initiation of Special Review and the Alachlor PD 1, the Agency received new data on worker, dietary and ground and surface water exposure. While these data have certain limitations, which have prompted the Agency to require additional data, useful information can be derived from them. These data, their limitations, and additional data requirements are summarized below and discussed at length in the Alachlor TSD.

Based on an assessment of the data currently available, the Agency believes that the risks to farm workers, and from dietary and ground and surface water exposure, are less than were estimated in the Alachlor PD 1. Nonetheless, the Agency believes that the risks to users of alachlor remain substantial, and that these risks can be reduced to reasonable levels by the measures proposed in this Notice. The following discussion summarizes the information contained in the Alachlor TSD.

A. Oncogenicity Studies

The Special Review on alachlor products was initiated in 1985 because laboratory animal feeding studies demonstrated oncogenic effects in two species. One study (Daly, 1981a) was conducted in mice. It showed a statistically significant increase in lung tumors in female mice at the highest dose. Three chronic feeding studies (Daly, 1981b; Stout, 1983a; Stout, 1983b) were conducted in the Long-Evans strain of rat. These studies showed statistically significant increases in stomach, thyroid, and nasal tumors in both sexes. On the basis of this information, EPA classified alachlor as a Group B2 carcinogen, probable human carcinogen, under EPA's Carcinogen Risk Assessment Guidelines (EPA, 1986).

No new oncogenicity data were submitted in response to the Alachlor PD 1. The registrant submitted comments which questioned the determination that alachlor was oncogenic in mice, based principally on the high spontaneous rate of lung tumors in the CD-1 strain of mice.

The literature references cited by the registrant do not, however, support its contention. One of the cited references showed a marked increase in lung tumors in female CD-1 mice between 18 and 22 months. The alachlor study was an 18-month study, and the marked late increase in lung tumors observed in the cited study may have limited relevance to its interpretation. Furthermore, the incidence of lung tumors in the female mice exposed to the high alachlor dose was above the average incidence rate from the historical control data for this strain of mouse, and was barely within the high end of the historical control 12 range.

The comments submitted in response to the Notice of Initiation of Special Review and the Alachlor PD-1 have not provided a basis for the Agency to change its determination that alachlor is a demonstrated animal oncogen with the potential to be a human oncogen. The Agency is therefore proceeding with the Special Review of alachlor products.

B. Exposure and Risk Determination

1. Applicator Exposure and Risk

The Agency's estimation in the Alachlor PD-1 of the risk to ground and aerial applicators and to mixer/loaders from exposure to alachlor was based on exposure data submitted by the registrant which measured worker exposure during aerial and ground applications of the emulsifiable concentrate, microencapsulated, and granular formulations. Dermal exposure was assessed by measuring residue deposits on gloves or gauze pads attached to the workers' clothing (patch data). (Inhalation exposure was considered to be insignificant compared to dermal exposure). It was further assumed that protective clothing such as coveralls and rubber gloves would reduce exposure by 80 percent. The exposure estimates assumed a 50 percent dermal absorption rate for the emulsifiable concentrate, and 12 percent for the microencapsulated and granular formulations. The Agency also estimated the number of days per year that an applicator would be exposed. These ranged from 1 to 6 days for private farmers and up to 30 days for commercial applicators. Based on these data and assumptions, the Agency calculated the 95 percent upper bound risk estimate for various categories of users, including private farmers, commercial applicators, aerial applicators, and flaggers. These estimates showed that commercial ground applicators exposed for 30 days per year could face a lifetime risk of 1×10^{-3}. The risk to most classes of farm users ranged from 10^{-3} to 10^{-4}.

In response to the Notice of Initiation of Special Review and the Alachlor PD 1, the registrant submitted biomonitoring

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data for applicators, a monkey metabolism study, and a dermal absorption study. Based on these data, as discussed below, the Agency has determined that exposure and, consequently, risk to users of alachlor products is less than was previously estimated in the PD–1.

Several factors derived from the new studies were important to the Agency's revised exposure assessment. EPA believes that biomonitoring data, if supported by adequate and appropriate metabolism studies, generally provide a better measure of actual dosage received in the body than patch data. In this instance, the monkey metabolism study submitted by the registrant supported the use of the biomonitoring data. EPA used the biomonitoring data together with the patch data previously submitted by the registrant and surrogate patch data compiled from open literature studies to calculate a range of exposures that the Agency believes more accurately reflects applicator exposure than the estimates included in the PD–1. The dermal absorption study showed a 24 percent dermal absorption rate for the emulsifiable concentrate formulation as compared with the 50 percent estimated in the PD–1. In addition, the estimate of the number of days per year that commercial applicators apply alachlor has been revised downward, from 30 days to 15 days, based on data submitted by the registrant.

Based on these new data, EPA has reestimated the range of risks for alachlor users. The lifetime risk estimates assume 40 years of exposure and a 70-year lifespan. The following risk estimates are applicable to mixing/loading and ground boom application.

User category	Number of days exposed per year	Risk estimates
Private farmers	1	4×10^{-3} to 4×10^{-4}
Private farmers	3	1×10^{-3} to 1×10^{-4}
Commercial applicators	15	8×10^{-3} to 8×10^{-4}

The Agency is also proposing to allow aerial application of alachlor to be reinstated on the label. The registrant voluntarily removed aerial application from the label prior to the issuance of the Alachlor PD–1. Exposure data subsequently received from the registrant and available in the published literature show that aerial application results in less exposure than ground boom application. The Agency has estimated, however, that human flaggers receive high exposure due to the nature of aerial application. EPA is therefore proposing to prohibit the use of human flaggers and to allow aerial application to be performed using mechanical flaggers only.

2. Dietary Exposure and Risk

In the Alachlor PD–1, dietary exposure was calculated for alachlor and one class of its metabolites, 2,6-diethylaniline (DEA). The total dietary exposure to the U.S. population was estimated two ways: (1) By assuming all crops contain alachlor residues at the tolerance levels, and (2) based on actual residue data assuming 100 percent of the crop is treated. Exposure was estimated to be 6×10^{-4} mg/kg/day using the first method, and 4×10^{-4} mg/kg/day using the second method. These estimates were believed to underestimate actual exposure because analytical methods available at the time could detect only one of the classes of alachlor metabolites, diethylaniline (DEA). The Agency required the development of an analytical method capable of detecting the other major class of metabolites, hydroxyethylethyl aniline (HEEA).

Based on these exposure estimates, the Agency calculated that the upper 95 percent bound on risk from dietary exposure to alachlor ranged from 1×10^{-4} to 1×10^{-5}.

In response to the Alachlor Registration Standard and Notice of Initiation of Special Review, the registrant submitted residue data for alachlor and two major classes of metabolites, DEA and HEEA, on the following crops and food sources: Corn, eggs, meat, milk, peanuts, poultry, and soybeans. For the remaining crops for which residue data had been required in the Alachlor Registration Standard (i.e., beans, cottonseed, peas, sorghum, and sunflower seeds), data were submitted for alachlor and the DEA metabolites.

These data showed that exposure from alachlor residues in meat, milk, poultry, and eggs had been overestimated in the PD 1. Instead of accounting for 50 percent of total dietary exposure estimated in the PD–1, these sources were found to account for only 4.2 percent of total exposure based on the actual percentage of these items treated with alachlor.

The new residue data submitted to the Agency also showed that total dietary exposure had been overestimated in the Alachlor PD–1. EPA recalculated alachlor residue levels, and corresponding dietary risk, assuming 100 percent of the crop treated, and on the basis of a best estimate of the actual percentage of the crop treated. The dietary risk ranged from 2×10^{-5} to 2×10^{-6}, respectively.

Generally, the Agency believes these risks to be reasonable in light of the benefits of alachlor. However, the Agency has requested additional residue data from the registrant on processed and cooked peas, processed dry beans, and processed lima beans. If these data indicate potential risks inconsistent with the Agency's current estimates, the Agency may reevaluate its regulatory position concerning these crops.

3. Ground and Surface Water Exposure and Risk

In the Alachlor PD–1, EPA indicated its concern about ground and surface water contamination based on monitoring data from three States and Ontario, Canada. These data showed that levels of alachlor in ground water most likely attributable to normal use of the herbicide ranged from 0.01 to 16.6 ppb. Levels in surface water ranged from 2 to 5 ppb.

Additional ground water monitoring data were received in response to the Alachlor PD–1. Data were submitted by the registrant, as well as by the United States Geological Survey (USGS), and the Association of County and State Agencies. The registrant submitted the results of a ground water sampling study of 243 wells. The study found detectable levels of alachlor in only 2 percent of the wells (6 out of 243 wells). The concentrations in these wells ranged from 0.2 to 6.0 ppb. The remaining 237 wells contained no detectable levels of alachlor (<0.2 ppb).

The data submitted by the USGS and the Association of County and State Agencies found alachlor contamination in ground water in nine States sampled. The concentration of alachlor found ranged from 0.1 to 16.6 ppb with a typical range of 0.2 to 2.0 ppb.

These ground water monitoring data are not sufficient to assess properly the extent of alachlor contamination nationwide. The available studies do not provide a statistically representative data base, particularly in light of the large volume of the herbicide used in the United States, and the number of regions in which it is used. Several additional monitoring studies are currently underway. The Agency will continue to assess the extent of exposure to alachlor in ground water and the degree of risk from such exposure during this Special Review.

The Agency has also assessed additional surface water monitoring data submitted in response to the PD–1, including data from over 60 sites across the country. These data show that the levels of alachlor in drinking water sources supplied by surface water are low.

The registrant also submitted new surface water monitoring data. Raw and finished water at 24 community water supplies (CWS) was monitored. Alachlor was detected in weekly composite samples in 42 percent of the CWS's (14 of 24). The highest alachlor concentration detected in the composite samples was 10.9 ppb. The highest annualized mean concentration of alachlor in finished water was recorded in Columbus, Ohio, and ranged from 1.3 to 1.4 ppb.

Existing data on alachlor residues in surface water indicate that the risk from drinking water sources supplied by surface water will generally not exceed a range of 2×10^{-6} to 4×10^{-6}. The Agency believes this level of risk is reasonable given the benefits of continued use of alachlor products, and not proposing regulatory action under FIFRA on alachlor residues in surface water.

The Agency plans to propose a Maximum Contaminant Level (MCL) for alachlor under the Safe Drinking Water Act in the near future. These regulations would require the treatment of drinking water which contains alachlor residues in excess of the MCL, thereby maintaining the level of risk from exposure at reasonable levels.

Some of the measured annualized mean concentrations may continue to be of concern to the Agency, however. The levels recorded in Columbus, Ohio, for example, may be higher than the levels the Agency will consider acceptable.

The Agency is therefore soliciting comments on other measures which might be taken under FIFRA to reduce or prevent contamination of surface water by alachlor. Some measures, such as soil incorporation, have been examined by the Agency, but are not being proposed at this time because the Agency believes these measures may compound the problem of ground water contamination.

Additional measures which might be considered under FIFRA include additional label restrictions on use, site specific or localized measures which might be imposed if the levels of alachlor exceed the MCL or reach some action level, and monitoring requirements. The Agency is interested in receiving comments on the effectiveness and impact upon agricultural practices of these and other measures, their potential impact on ground water contamination, and the societal costs and benefits of imposing these measures upon the agricultural community as opposed to requiring CWS to treat drinking water containing alachlor levels above the MCL.

C. Determination of Benefits

EPA has conducted an analysis to assess the benefits associated with the continued use of alachlor. The methodology and results of this analysis are described in more detail in the Alachlor Technical Support Document.

1. Methodology

EPA has evaluated the economic impacts of the cancellation of alachlor and the resulting user shift to alternative weed control programs. The suitability of alternatives to alachlor was determined on the basis of effectiveness, cost, and market availability. Only currently registered pesticides that would control similar weed species were considered to be available as alternatives.

The analysis of economic impacts contained in the TSD resulting from modifying the terms and conditions of the registration is based on changes in production costs and crop yields, as well as possible grower shifts to other enterprises. Impacts were estimated for the grower/user level, commodity markets and the consumer.

2. Summary of Results of Analysis

The benefits of alachlor were assessed in terms of economic impacts which would result if the chemical were cancelled. Such an assessment provides a baseline estimate of the value of alachlor, as currently registered and used, to the agricultural community. It also provides a worst case assessment of the economic impact if all alachlor users were to switch to alternative pest control measures as a result of the Agency's proposed regulatory action, an outcome the Agency believes is extremely remote. On the contrary, as indicated in the discussion below, the Agency believes that its proposed regulatory action will have minimal impacts on the use and value of alachlor, and that the loss to the agricultural community would be significantly less than if alachlor were unavailable.

Cancellation of all uses of alachlor is estimated to result in first year losses at the farm level of $510 to $750 million, which represents both increased costs of weed control and decreased value of production. It is projected that the burden of the loss of alachlor would be largely borne by the farmer, with about one-third of the burden shifted to the consumer. In addition, a cancellation could result in decreased exports of agricultural products. The overall benefits' loss to society could range from about $302 to $508 million the first year. Overall losses to consumers of food products affected are expected to be nominal.

A brief summary of the estimated economic impact for cancellation of each use is provided below. A more detailed discussion of the economic impacts is found in the TSD.

a. *Corn.* The largest use of alachlor is on corn, which represents 69 percent of the total annual usage. Alachlor is used on approximately 23 million acres of corn, or 35 percent of the U.S. corn crop. The primary alternative to alachlor is metolachlor. Metolachlor is not as effective as alachlor; thus, it may have to be used with other herbicides, such as triazines. Average weed control costs could increase by $1.50 per acre for alachlor users. Yield losses of 3.9 to 7.3 bushels per acre with an average loss of 4.8 bushels per acre could occur initially. These yield losses are expected to decrease to approximately one bushel per acre after about 10 years. If alachlor is cancelled for use on corn, the initial annual loss to users would be approximately $318 to $552 million. User losses could decrease to $125 to $136 million after metolachlor-tolerant corn fully penetrated the market over 10 years. These losses, in aggregate, represent about 1 percent of the expected value of overall corn production. These impacts could be large enough to force a shift of a portion of corn acres out of corn production and into other uses of the land. The estimated losses are based on increased production costs, value of production losses, and decreased deficiency payments.

b. *Soybeans.* The second largest use of alachlor is on soybeans, which represent 28 percent of the total annual usage. Alachlor is used on about 13.5 million acres of soybeans, or about 21 percent of the U.S. soybean crop. Metolachlor is the primary alternative to alachlor in soybeans with additional herbicides and/or cultivations used under some conditions. The use of alternatives could increase average weed control costs by about $8.00 per acre for alachlor users. Yield reductions of 3.5 to 5 bushels per acre could occur on about 18 percent of those acres currently treated with alachlor. The cancellation of alachlor use on soybeans could result in annual losses to users of $153.5 to $158.5 million (U.S. EPA, 1986). This represents increased production costs of $113 million and decreased value of production of $40.5 to $45.5 million. These losses, in aggregate, represent less than 2 percent of the expected value of soybean production and about $1,150 to the typical soybean producer. If alachlor is cancelled, projections are

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that domestic soybean production will not be profitable for several years until markets adjust.

c. *Peanuts.* Over 90 percent of the alachlor use on peanuts is applied as a cracking stage treatment. Metolachlor is the only herbicide that could be used as a substitute. Alachlor is a more effective product in that it gives better control of broadleaf weeds and does not retard peanut yields. With the introduction of metolachlor, peanut yield losses of 14 to 17 percent could occur in the Southeastern region. The cancellation of alachlor could result in user losses of about $35 million (U.S. EPA, 1986). It is estimated that consumers could have losses of about $37 million.

d. *Dry beans.* Dry beans represent less than 1 percent of total alachlor usage. If alachlor is cancelled, equally effective alternatives exist for some regions of the country, and less effective alternatives exist for others. The loss of alachlor could result in annual losses of $0.4 million to $1.5 million. These losses include increased production costs of $12.74/acre to alachlor users.

e. *Grain sorghum.* Alachlor is used on about 1.4 million acres of grain sorghum which represent about 8 percent of U.S. planted acres. It is estimated that the cancellation of alachlor use on grain sorghum would have little if any impact to users. Metolachlor, the currently registered alternative, appears to be the preferred herbicide for use on grain sorghum.

f. *Sweet corn or popcorn.* Current information indicates that about 300,000 acres of sweet corn and popcorn, which represent about 25 percent of the total acreage for these crops, are treated with alachlor. Partial budgeting was used to estimate the impacts of a loss of alachlor on sweet corn and popcorn. The cancellation of alachlor could result in losses of $3 to $10 million to alachlor users. Weed control costs could increase about $300,000 with value of production losses of $2.6 to $9.6 million. On a per acre basis, this could represent losses for farmers of about $9.00 to $32.00. Available information indicates that the losses could be borne largely by the farmer with little passed on to the consumer.

g. *Sunflowers.* Less than 1 percent of the sunflower crop is treated with alachlor for weed control. It is estimated that the loss of alachlor could result in minor annual losses. Alternatives to alachlor include trifluralin, EPTC, and pendimethalin.

h. *Cotton.* Alachlor is currently used on about 30,000 acres of cotton which represent less than one percent of the U.S. planted acres. The cancellation of alachlor use on cotton could result in losses of about $160,000 to users.

i. *Green peas.* Limited quantities of alachlor are used on green peas. Metolachlor has comparable grass control, while alachlor and propachlor have an added advantage in that they can be used on soils with a higher organic content.

j. *Lima beans.* Alachlor is currently used on about 6,000 to 9,000 acres of lima beans, or about 10 to 14 percent of U.S. planted acres. The cancellation of alachlor use would result in little if any efficiency losses to society.

k. *Ornamentals.* Alachlor is registered for use on selected woody ornamentals. The Agency was unable to find any indications of use of alachlor on ornamentals.

D. Determination of Regulatory Position

1. Proposed Regulatory Actions

Based on the information summarized above and discussed in greater detail in the Alachlor TSD, the Agency has determined that use of alachlor as currently registered poses unreasonable adverse effects on human health or the environment, and that certain modifications to the terms and conditions of registration for alachlor products are required to bring these products into compliance with the statutory standard for registration. Based on the risk/benefit assessment summarized in Unit III.D.2 below, the Agency has determined that with these modifications to the terms and conditions of registration, the use of alachlor would not be expected to cause unreasonable adverse effects on human health or the environment. Therefore, in order to avoid cancellation, registrations for alachlor products must be modified to include the following terms and conditions:

a. *Label changes.* The following language must appear on the label of all alachlor products:

i. *Restricted use.*

• Restricted Use due to oncogenicity. For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicators' certification.

ii. *Health warning.*

• The use of this product may be hazardous to your health. This product contains alachlor which has been determined to cause tumors in laboratory animals.

iii. *Restriction on application.*

• The use of a closed mixing/loading system is required to be used by all mixer/loaders and/or applicators who treat 300 acres or more annually.

b. *Aerial application.* Aerial application may be reinstated on the alachlor label with the following additional label restriction:

• Human flaggers prohibited. Aerial application may be performed using mechanical flaggers ONLY.

The Agency is continuing to review risks related to exposure to alachlor residues in ground water and certain foods, and may propose additional regulatory measures to mitigate these exposures after receipt and review of additional data currently being developed.

2. Basis for Proposed Regulatory Actions

a. *Restricted use classification.* Classification of alachlor as a restricted use pesticide will increase the level of protection afforded to users of the product. Certified applicators are trained in safe methods of using pesticides. Untrained users are less likely to be aware of the hazards, both to humans and to the environment, of using alachlor.

The impact of this requirement would be minimal. Approximately 65 percent of all commercial and private farmers who use alachlor are already certified under State certification programs, according to data provided by the registrant.

Private farmers would comprise the majority of the remaining uncertified group. The cost to each farmer of obtaining certification would be minimal; some States do not charge a fee to private farmers for certification. The costs of additional certification and training attributable to this proposed measure would be largely borne by the States. The incremental cost to the States of providing certification and training pursuant to this requirement would be minimal.

Commercial applicators who use alachlor are most likely already certified due to their usage of other restricted use pesticides, and would incur no additional costs under this proposal.

The Agency has determined, therefore, that the reduction in risk which would be achieved by this requirement outweighs the costs.

b. *Restriction on application.* Studies have demonstrated that the use of closed mixing/loading systems can substantially reduce exposure to some pesticides. EPA expects that use of a closed mixing/loading system will reduce exposure to alachlor by fortyfold. This estimate is based on the registrant's experience with the use of its shuttle system, a type of closed mixing/loading system which was developed by the registrant in 1985.

Approximately 40 percent of the farms using alachlor apply it to 300 or more acres annually. The Agency assumes that most of these large farms already use closed mixing/loading systems, and therefore expects this requirement to have minimal impact.

c. *Prohibition of human flaggers.* Human flaggers face a substantial risk, either directly or through drift, of being exposed to alachlor because of the nature of aerial application and changing wind conditions. The Agency has determined that the reduction in risk to human flaggers outweighs the cost of requiring the use of mechanical flaggers during aerial application.

IV. Procedural Matters

A. Referral to the Secretary of Agriculture and the Scientific Advisory Panel

As required by FIFRA sections 6(b) and 25(d), and 40 CFR 154.31(b), EPA will transmit copies of this Notice, a draft Notice of Intent to Cancel and the support documents, to the Secretary of Agriculture and the Scientific Advisory Panel for comment. If either the Secretary or the Panel comments in writing on EPA's proposed action within 30 days of receipt of the proposal, the Agency may not issue the Notice of Final Determination sooner than 60 days after sending the documents to the Secretary and the Panel. In addition, EPA must publish any comments received from the Secretary or the Panel, and EPA's responses, in the Notice of Final Determination. If neither the Secretary nor the Panel comments within 30 days, EPA may issue the Notice of Final Determination at the end of that period without awaiting the expiration of the 60-day period.

B. Intrastate Products

Pursuant to 40 CFR 162.17, EPA hereby notifies producers of all alachlor products registered solely for intrastate sale and distribution that they are required to submit a complete application for Federal registration. These applications must be submitted within 60 days of the date on which this Notice is published in the **Federal Register** or the date on which the intrastate producer receives a copy of this Notice, whichever is later. If an intrastate producer fails to submit a timely application, EPA will consider his Notice of Intent to Apply as an application for Federal registration for purposes of the review described below.

EPA will review all applications submitted. If EPA decides, in light of comments received in response to this Notice, to continue in its decision to issue a final notice allowing continued use of alachlor products under certain circumstances, EPA will notify intrastate producers of that decision and allow them at least 30 days in which to make changes that would allow EPA to approve the application for Federal registration. If the application has not been corrected in the prescribed manner within the period allowed, the application may be denied. On the other hand, if EPA issues a final notice cancelling the registrations of alachlor products, that notice will also include a final notice of denial for all applications for Federal registration of intrastate pesticide products containing alachlor for uses subject to that notice.

Under FIFRA section 3(c)(6), the issuance of a denial notice entitles an applicant, or other interested person with the concurrence of the applicant, to request an adjudicatory hearing to challenge the denial decision. The procedures for requesting a hearing and the consequences of not filing a request are discussed below in Unit IV.C.1.

C. Procedures for Responding to Notice of Final Determination

1. Hearing Request

Registrants, applicants, and other interested parties who would be adversely affected by any decision to cancel or deny applications for the registration of alachlor products would be entitled to request a hearing in which to contest EPA's final decision to cancel registrations and deny applications for failure to comply with the requirements listed in Unit III.D of this notice. Under FIFRA, such persons must submit their requests for a hearing within 30 days either of receipt of the final Notice of Intent to Cancel or Notice of Denial or of its publication in the **Federal Register**, whichever is later. As EPA will explain in detail in any final Notice of Intent to Cancel or Notice of Denial, a hearing request must contain information concerning the basis of the request. If a timely, properly formulated hearing request is submitted and a hearing is initiated, the product registrations which are the subject of the request will remain in effect during the cancellation hearing. Similarly, applications for registration with respect to which valid and timely hearing requests have been filed remain pending unless and until they are denied or granted by order of the Administrator at the conclusion of the hearing.

If a proper and timely hearing request is not submitted for a product, registration of that product would be cancelled, or in the case of intrastate products, the application would be finally denied by operation of law 30 days after the final Notice was issued. A final cancellation or denial would have the effect of prohibiting further sale and distribution, except as specified in any existing stocks provision included in the final notice.

2. Amendment of Registration or Application

Registrants who would be affected by any final decision to cancel the registrations of alachlor products unless the terms and conditions of the registrations are modified may avoid cancellation, without requesting a hearing, by filing an application for an amended registration that contains the label modifications detailed in the Notice of Final Determination. This application must be filed within 30 days of receipt of the final notice, or within 30 days of publication of the final notice, whichever occurs later. Similarly, applicants for a registration that would be subject to the final notice would have to file an amended application for registration within the applicable 30-day period to avoid denial of the application.

It should be noted that registrants (and applicants) are not required to request a hearing or to amend their registrations (or applications) at this time in order to be allowed to to continue to sell and distribute their products within this period.

V. Public Comment Opportunity

The Agency is providing a 60-day period to comment on this Notice and on the Alachlor TSD. The Agency is particularly soliciting comments on the issues discussed in Unit III above. Comments must be submitted by December 8, 1986. All comments and information should be submitted in triplicate to the address given in this Notice under **ADDRESS**, to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation OPP–30000/44B. All comments, information, and analyses which come to the attention of EPA may serve as a basis for final determination of regulatory action during the Special Review.

During the comment period, interested members of the public or registrants may request a meeting to discuss factual information available to the Agency, to present any factual information, to respond to presentations by other persons, or to discuss what regulatory actions should be taken regarding alachlor. Persons interested in arranging such meetings should contact the Review Manager listed in this Notice

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under FOR FURTHER INFORMATION CONTACT.

VI. Public Docket

Pursuant to 40 CFR 154.15, the Agency has established a public docket (OPP-30000/44B) for the Alachlor Special Review. This public docket includes (1) this Notice; (2) any other notices pertinent to the Alachlor Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to this Notice, and any other Notice regarding alachlor submitted at any time during the Special Review process by any person outside government; (4) a transcript of any public meeting held by the Agency for the purpose of gathering information on alachlor; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government; and (6) a current index of materials in the public docket.

On a monthly basis, the Agency will distribute a compendium of indices for newly received comments and documents that have been placed in the public docket for this Special Review. This compendium will be distributed by mail to those members of the public who have specifically requested such material for this Special Review, pursuant to 40 CFR 154.15(f)(3).

Dated: September 30, 1986.

John Moore,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 86-22833 Filed 10-6-86; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
October 8, 1986

Part VI

Office of Personnel Management

5 CFR Parts 110 and 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations; Interim Rule

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 110 and 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations; Combined Federal Campaign (CFC)

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing interim regulations governing solicitation of Federal civilian and uniformed services personnel for contributions to private voluntary organizations under the authority of Executive Order 12353 (March 23, 1982), Charitable Fund-Raising, 47 FR 12785 (March 23, 1982), and Executive Order 12404 (February 10, 1983), Charitable Fund-Raising, 48 FR 6685 (February 15, 1983). These regulations are intended to be consistent with the restrictions placed on OPM by section 204 of Title II of H.R. 4515, the Urgent Supplemental Appropriations Act, 1986 ("the Act"). They will provide a system for administering the fall 1986 charitable solicitation campaign to be conducted by Federal personnel in their Government workplaces and set forth groundrules under which charitable organizations may receive contributions from Federal personnel through the Combined Federal Campaign. These regulations by their terms apply to subsequent solicitations as well, but no decision has been made as to the arrangements that will be made for the fall 1987 campaign and beyond. These regulations are issued on an emergency basis so that the fall 1986 CFC can proceed as expeditiously as possible, and yet still comply with the terms of the Act. OPM issues this interim rule without prejudice to its right or duty further to modify or revise the rules in the event of supervening direction from the President, a court, or the Congress.

OPM is also amending 5 CFR 110.201(b) to add the Office of Management and Budget assigned control number for information collection requirements in 5 CFR Part 950.

DATES: Interim rules effective on October 6, 1986. Comments must be received on or before November 7, 1986.

ADDRESS: Send or deliver comments to Mark Barnes, Acting General Counsel, Office of General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jerry Barrett, (202) 632–5564.

SUPPLEMENTARY INFORMATION:

NAACP III

Over 2 years ago, on Friday, April 13, 1984, OPM published a notice in the Federal Register, 49 FR 14752, of proposed revision to the regulations that govern the CFC. These revisions were proposed in order to comply with the decision of the United States District Court for the District of Columbia in *NAACP Legal Defense and Education Fund, Inc. v. Devine*, 567 F. Supp. 401 (D.D.C. 1983), *affirmed*, 727 F.2d 1247 (D.C. Cir. 1984), *rev'd sub nom. Cornelius v. NAACP Legal Defense and Educational Fund, Inc.* — U.S. —, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985) (*NAACP III*). That decision invalidated, as unconstitutional, those provisions of Executive Order 12404, 48 FR 6685 (Feb. 9, 1983) that sought to establish the Combined Federal Campaign as a means to provide financial support for traditional human health and welfare charities and to end its subsidization of legal defense and political advocacy organizations, among other organizations. On appeal to the United States Court of Appeals for the District of Columbia Circuit, the Court of Appeals affirmed the District Court's judgment. The United States Supreme Court, in 1985, reversed the decision of the United States Court of Appeals for the District of Columbia Circuit. The Supreme Court decided that Executive Order 12404 was valid on its face, i.e., that the President could constitutionally exclude nontraditional charities from participating in the CFC for the reasons stated in the Order. The Court also observed that the question of whether the President could issue the Executive Order if he in fact had reasons for doing so, other than the ones set out in the Order, had not been briefed or argued before the Court, and that it was not deciding this question. It did, however, indicate that the plaintiffs were free to pursue this issue on remand, if they so chose.

NAACP IV

In September of 1985, after *NAACP III* had been remanded to the district court by the Supreme Court, the original plaintiffs in *NAACP III* filed an amended complaint in the District Court seeking to litigate this issue of alleged "impermissible motive" on the part of the President. *NAACP Legal Defense and Educational Fund, Inc. v. Horner*, No. 83–0928 (D.D.C. filed September, 1985) *(NAACP IV)*. *NAACP IV* asserted the following causes of action:

- E.O. 12404 "was adopted in order to provide a basis to suppress the communication of plaintiffs' views because the defendants and other government officials disagree with those views, in violation of the First Amendment"
- E.O. 12404 "vests unrestrained, standardless discretion in the government officials supervising the conduct of the Campaign which permits its arbitrary and capricious application by those officials."
- E.O. 12404 has been applied in an arbitrary manner "by defendants and their agents" in order to exclude plaintiffs from the CFC although organizations that engage in "closely similar activities, which seek to affect public policy and government actions in the same manner as defendants have claimed is forbidden by the Executive Order, or which do not in fact provide direct health and welfare services, are admitted to and allowed to remain in the Combined Federal Campaign."

In addition to this lawsuit, a new civil action was filed at the suggestion of the District Court. *Planned Parenthood Federation of America v. Horner*, No. 86–1367 (D.D.C. filed May 19, 1983).

District Court injunction

As the *NAACP IV* and the *Planned Parenthood* litigation are closely related, the two cases were consolidated for purposes of discovery and the preliminary injunction discussed below. Discovery began, but as it proceeded and the start of the Campaign drew near, plaintiffs in *NAACP IV*, joined by Planned Parenthood, moved for an injunction that would permit them to participate in the CFC for the fall of 1986. This motion was granted with respect to the *NAACP IV* plaintiffs, and on May 30, 1986, Judge Joyce Hens Green of the United States District Court for the District of Columbia issued a preliminary injunction and ordered, among other things, that—

> defendant Constance J. Horner, the Office of Personnel Management, and her agents, including the local Federal Coordinating Committees, be and they hereby are enjoined from excluding plaintiffs . . . from participation in the Combined Federal Campaign on the basis of section (2)(b)(1)–(3) of Executive Order No. 12,353, as amended by section 1(b) of Executive Order No. 12,404, or section §50.30[3](b)(1)(i), (iv)–(v), and §50.303(b)(2)–(3) of the regulations implementing those Orders, 51 Fed. Reg. 11,668 (April 4, 1986)(to be codified at 5 C.F.R. Part 950), pending a determination by this Court, pursuant to the remand of the United States Supreme Court and the Court of Appeals for this Circuit, whether such provisions are the product of unconstitutional discrimination

The Government successfully argued for an expedited appeal of Judge Green's ruling. A hearing on this appeal was had on July 17, 1986.

The 1986 appropriations Act.

Before this hearing took place, on July 2, 1986, the President signed into law the Urgent Supplemental Appropriations Act, Fiscal Year 1986. Section 204 of the Act is an amendment offered by Representative Steny Hoyer. Section 204 reads as follows:

> None of the funds appropriated by this Act or any other Act shall be used for preparing, promulgating or implementing new regulations dealing with organization participation in the 1986 Combined Federal Campaign other than repromulgating and implementing the 1984 and 1985 Combined Federal Campaign regulations, unless such regulations provide that any charitable organization which participated in any prior campaign shall be allowed to participate in the 1986 campaign.

As a result of this legislation, the United States Court of Appeals for the District of Columbia Circuit requested that the parties to the appeal from the entry of the injunction referred to above, also consider and brief the issue of whether the appeal had been rendered moot by the enactment of the Act.

Recent court action

After receiving the briefs requested and after oral argument on July 17, 1986, the Court of Appeals, on July 22, 1986, dismissed the Government's appeal from Judge Green's injunction, vacated the injunction, and remanded the case with instructions to dismiss.

Decision to republish the 1984 CFC regulations

Faced with this situation, the Administration determined that the Government had few options with respect to this year's CFC. Notwithstanding OPM's publication of CFC regulations far in advance of the beginning of the fall Campaign, the fast approaching deadline for the beginning of the Campaign necessitated that an interim solution once again be sought. It is important that long-term planning for the future shape of the CFC not delay the necessary preparations for this fall's Campaign. The relief of the needy should be everyone's foremost concern at this point and the decision to repromulgate the 1984 CFC regulations guarantees that this fall's Campaign will be run as smoothly and efficiently as possible, in light of recent legislative and judicial developments.

Differences between these rules and the 1984 rules

These interim rules are virtually identical to the 1984 CFC rules, with the exception of minor technical changes. The 1984 requirement that voluntary agencies adopt the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* has not been retained. One of the salutary changes made in our April 4, 1986, CFR regulations was to permit the use of generally accepted accounting principles and this welcome improvement has been incorporated in these interim rules.

Justification for interim rules

Under 5 U.S.C. 553(b)(3)(B), OPM finds that good cause exists for waiving the general notice of proposed rulemaking:

- Time is short. It would be impossible to undertake the notice-and-comment rulemaking previously engaged in given the deadlines that are upon us. For that reason, and in light of the legislative and judicial developments outlined above, an emergency situation exists.
- We published virtually identical rules in 1984 after complying then with the rulemakng requirements of the Administrative Procedure Act. Approximately 3,000 comments were received in response to the notice of proposed rulemaking published on April 13, 1984, and these were carefully analyzed and responded to in 1984, all as set out in the regulatory record of that time.
- The issues raised by these rules and the origin of these rules are already well known to virtually all of the interested parties in and out of the Government.
- Unless otherwise directed by the President or the Congress, OPM does not plan to use these rules in future Campaigns.

Scope

This part governs all fundraising by private voluntary charitable agencies among Federal employees and members of the uniformed services of the United States at their places of work or duty. Thus, it is applicable to civilian and uniformed personnel in all Executive departments and agencies throughout the world.

E.O. 12291, Federal Regulation

After a careful review of the proposed rulemaking, including the analysis set forth below for purposes of the Regulatory Flexibility Act, OPM has determined that this is not a major rule for purposes of Executive Order 12291, Federal Regulation, because it will not result in—

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

(1) Reasons Why Action by Agency is Being Considered

These regulations are being published in response to the necessity to prescribe rules for the CFC that conform to recent legislative and judicial developments, in particular the passage of the Act, described above.

(2) Objectives of and Legal Basis for Rule

These regulations are issued under Executive Order 12353 and 12404. The objective of these regulations is to provide for a system of administering the annual charitable solicitation drives among Federal civilian and military employees in a Combined Federal Campaign, and to set forth ground rules under which charitable organizations receive gifts through the CFR, in the light of recent legislative and judicial developments.

(3) Number of Small Entities Covered Under Rule

The rule applies to all organizations in the United States qualified under 26 U.S.C. 501(c)(3).

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The interim rules would significantly decrease reporting, recordkeeping, and other requirements as compared to the existing rule. Under the principle of self-certification, each affected entity would determine itself whether it meets the requirements set forth in the rule. This would significantly decrease—indeed practically eliminate—any regulatory or paperwork burden, especially as compared with former requirements. Charitable organizations will also not need to present detailed documentary evidence and register with the Government to receive funds, so that charities will be subject to no additional requirements by the Government. The interim rules will make it optional for local Federal Coordinating Committees to dispense with publication of official lists of qualified charities.

In place of the Government-subsidized listing of charitable agencies and descriptions of their purpose, charities may then undertake the cost of their own advertising, which results in income to themselves. It is neither unjust nor a departure from present

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practice in charitable campaigns outside the Federal workplace to have the beneficiaries of fundraising bear all or some of its costs. It cannot be argued that by removing a Government subsidy the Government is adversely affecting any small entities, as it is merely restoring the *status quo ante* for some organizations—those who were previously beneficiaries—and minimizing the Government's regulatory burden on all charitable entities in return.

In doing this, the rule complies and conforms with the purposes of the Regulatory Flexibility Act to minimize the regulatory burden on small entities.

To facilitate the presentation of charitable organizations' messages to Federal employees, the Government again opens its internal U.S. mail system to these charitable agencies. By permitting direct mail communication, cheap unit cost advertising is made available. Moreover, the regulations specifically allow for joint appeals and brochures, by federations of charitable organizations, or other combinations of charitable organizations, to allow efficient cost-sharing by small entities that could result in greater volumes of contributions. The interim rule merely removes the Government from the regulatory process to the maximum extent possible—removing its subsidy and providing an efficient means by which entities may appeal to Federal employees for contributions to their charities. The decision as to which charities shall receive funds is left wholly in the hands of the Federal employee, where it belongs. The rules assure the free choice of the employee, rather than guarantee any entity a right to a subsidized special appeal to the employee. Certainly, the Government has no obligation to subsidize what it need not regulate, nor to guarantee monetary gain; but it merely must allow access to compete for the employee's donation. This is provided by the rule. As a result, a regulatory burden is lifted, and a means is substituted that gives all entities, small and large, cost-efficient and unregulated access to the audience of Federal employees.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting with the Rule

By using the definition of the Internal Revenue Code under 26 USC 501(c)(3), existing rules, familiar to all because of the pervasive influence of the tax laws, are utilized to avoid unnecessary duplication, overlap, and conflict with other Government regulations.

(6) Differing Compliance or Reporting Requirements

At the present time, the only appropriate alternative to the interim rule is the formerly existing one, now proscribed by the Hoyer Amendment. Obviously, that rule can no longer be used. To do so, and still comply with the Hoyer Amendment, would be to create an unnecessarily confusing amalgam of new regulations. This would be confusing and disruptive. Descriptions of each charity previously provided are impractical since there simply are too many 501(c)(3) organizations in the United States to list them all with verbal descriptions. In addition, the new regulations place many fewer reporting requirements and give more flexibility in setting timetables for local Campaigns. In all, the new rules allow more equal competition between small and large entities.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As has been noted, the new rules would simplify compliance and reporting requirements for small entities as compared with existing rules.

(8) Use of Other Standards

Appropriate alternative standards are not available that would impose less burdensome regulations.

(9) Exemption of Small Entities From Coverage

Exemptions from coverage for small entities is not practical, since few restrictions exist for either large or small entities. As a result of the above Regulatory Flexibility Analysis, I have determined that the rule will not have any significant detrimental economic impact on a substantial number of small entities. Indeed, the new regulations greatly advance the purposes of the Regulatory Flexibility Act by significantly reducing regulatory burdens on the public.

List of Subjects

5 CFR Part 110

Government employees, Reporting and recordkeeping requirements.

5 CFR Part 950

Charitable contributions, Government employees, Nonprofit organizations.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Parts 110 and 950 of Title 5 of the Code of Federal Regulations as follows:

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 110 is added to read as set forth below and the authority following all the sections in Part 110 are removed:

Authority: 5 U.S.C. 1103; Section 110.201 is also issued under 5 U.S.C. 1104, 5 CFR Part 5.2(c) and (d); 44 U.S.C. 3507(f); 5 CFR Part 1320.

2. Section 110.201(b) is amended to numerically add the applicable OMB control number for Part 950 to read as follows:

§ 110.201 OMB control numbers.

* * * * *

(b) * * *

5 CFR citation	OMB control number
* * * * *	*
Part 950	3206-0131

3. Part 950 is revised to read as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A—Administration and General Provisions

Sec.

950.101 Definitions.
950.103 Summary description of the program.
950.105 Federal policy on civic activity.
950.107 Preventing coercive activity.

Subpart B—Organization and Functional Responsibilities

950.201 Development of policy and procedures.
950.203 Program administration.
950.205 Program coordination.
950.207 Local voluntary agency representatives.
950.209 Local Federal agency heads.
950.211 Local Federal Coordinating Committees.
950.213 Avoidance of conflicts of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

950.301 Types of voluntary agencies.
950.303 Types of fundraising methods.
950.305 Considerations in making Federal arrangements.
950.307 Defintion of terms used in Federal arrangements.
950.309 Federated and overseas campaigns.
950.311 Off-the-job solicitation at places of employment.

Subpart D—Requirements for National Voluntary Agencies

950.401 Purpose.
950.403 General requirements for national agencies.
950.405 Specific requirements for national agencies.

Subpart E—The Local Combined Federal Campaign

950.501 Local voluntary agencies.
950.503 Participation in Federal campaigns by local unaffiliated agencies.
950.505 Responsibility of local Federal Coordinating Committees.
950.507 Local CFC plan.
950.509 Organizing the local campaign: The Principal Combined Fund Organization.
950.511 Basic local CFC groundrules.
950.513 Contributions.
950.515 Dollar goals.
950.517 Suggested giving guides and voluntary giving.
950.519 Receipt and accounting for contributions.
950.521 Campaign and publicity materials.
950.523 Payroll withholding.
950.525 National coordination and reporting.

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982), 3 CFR, 1982 Comp., p. 139, and E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983).

Subpart A—Administration and General Provisions

§ 950.101 Definitions.

(a) The terms "voluntary agency," "voluntary health and welfare agency, "voluntary charitable agency," and "voluntary charitable health and welfare agency" mean an organization that is organized and operated for the purpose of rendering, or of materially or financially supporting the rendering of, one or more of the following services directly to, and for the direct benefit of, human beings.

(1) Delivery of health care to ill or infirm individuals;

(2) Education and training of personnel for the delivery of health care to ill or infirm individuals;

(3) Health research for the benefit of ill or infirm individuals;

(4) Delivery of education, training, and care to physically and mentally handicapped individuals;

(5) Treatment, care, rehabilitation, and counseling of juvenile delinquents, criminals, released convicts, persons who abuse drugs or alcohol, persons who are victims of intra-family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(6) Relief of victims of crime, war, casualty, famine, natural disasters, and other catastrophes and emergencies;

(7) Neighborhood and community-wide services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, the preparation and delivery of meals, educational opportunities, and job training;

(8) Legal aid services that are provided to needy, poor, and indigent individuals solely because of their inability to afford legal counsel and without a policy or practice of discrimination for or against the kind of cause, claim, or defense of the individual;

(9) Protection of families that, on account of need, poverty, indigence, of emergency, are in long-term or short-term need of family, child-care, and maternity services; child and marriage counseling; foster care; and guidance or assistance in the management and maintenance of the home and household;

(10) Relief of needy, poor, and indigent infants and children, and of orphans, including the provision of adoption services;

(11) Relief of needy, poor, and indigent adults and of the elderly;

(12) Assistance, consistent with the mission of the Department of Defense, to members of the armed forces and their families;

(13) Assistance, consistent with the mission of the Federal agency or facility involved, to members of its staff or service who, by reason of geographic isolation, emergency conditions, injury in the line of duty, or other extraordinary circumstances, have exceptional health or welfare needs;

(14) Lessening of the burdens of government with respect to the provision of any of the foregoing services; or

(15) Any other health and welfare service rendered by a charitable health and welfare entity organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3).

(b) Campaign terms:

(1) "Director" shall mean the Director of the United States Office of Personnel Management, or her delegate;

(2) "Employee" shall mean any person employed by the Government of the United States of any branch, unit, or instrumentality thereof, including persons in the civil service and in the uniformed services;

(3) "Combined Federal Campaign" or "Campaign" or "CFC" shall mean the fundraising program established and administered by the Director pursuant to Executive Order 12353, as amended by Executive Order 12404, and any subsidiary units of such program.

(4) "Community" shall mean a community that is defined either by generally recognized bounds or by its relationship to an isolated Government installation;

(5) "Direct contributions" shall mean gifts, in cash or in donated in-kind material given by individuals and/or non-governmental sources directly to the spending health and welfare organization.

(6) "Indirect contributions" shall mean gifts, in cash or in donated in-kind material, given to the spending health and welfare organizations by another health and welfare organization, but not transfers, dues or other funds from affiliated organizations or government, which are not to be considered as public "contributions."

(c) The term "Principal Combined Fund Organization" or "PCFO" means the organization in a local Combined Federal Campaign that has been selected and charged pursuant to §950.509 to manage and administer the local Combined Federal Campaign, subject to the direction and control of the local Federal Coordinating Committee and the Director. All of its Campaign duties shall be conducted under the title "Principal Combined Fund Organization for _____ (local CFC)" and not under the corporate title of the qualifying federation.

§ 950.103 Summary description of the program.

(a) *Assigned campaign periods.* In the United States, Combined Federal Campaigns are held when set by the Director, usually in the fall; the DOD Overseas Combined Federal Campaign is also usually held during the fall. The solicitation period for a Combined Federal Campaign is normally limited to 6 weeks, but may be extended for good cause by the local Federal Coordinating Committee.

(b) *Combined Federal Campaign.* At locations where there are 200 or more Federal personnel, all campaigns must be consolidated into a single, annual drive, known as the Combined Federal Campaign. The campaign is managed by the organization designated as the Principal Combined Fund Organization, in accord with § 950.509, under the supervision of the local Federal Coordinating Committee and the Director. Such campaigns are conducted under administrative arrangements that provide for allocation of contributions in accordance with specific designations by donors. Solicitations are conducted exclusively by Federal personnel and only Federal personnel are solicited.

(c) *Decentralized operations.* The federalism principle shall guide

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Campaign organization. Following designation of a Principal Combined Fund Organization, local representatives of that organization initiate campaigns in their local community by direct contact with the heads of Federal offices and installations. Each Federal agency conducts its own solicitation among its employees, using campaign materials, supplies, and speakers furnished by or through the Principal Combined Fund Organization, under the direction of the local Federal Coordinating Committee and the Director.

(d) *Solicitation methods.* Employee solicitations are conducted during duty hours using methods that permit true voluntary giving and reserve to the individual the option of disclosing any gift or keeping it confidential.

(e) Off-the-job solicitation. Many worthy voluntary agencies do not participate in the on-the-job program because they do not wish to join in its coordinated arrangements or because they cannot meet the requirements for eligibility. Such voluntary agencies may solicit Federal employees at their homes as they do other citizens of the community, or appeal to them through union, veteran, civic, professional, political, legal defense, or other private organizations. In addition, limited arrangements may be made for off-the-job solicitations on military installations and at entrances to Federal buildings.

(f) Prohibited discrimination. The Campaign is a means for promoting true voluntary charity among members of the Federal community. Because of the participation of the Government in organizing and carrying out the Campaign, all kinds of discrimination prohibited by law to the Government must be proscribed in the Campaign. Accordingly, discrimination for or against any individual or group on account of race, color, religion, sex, national origin of citizens, age, handicap, or political affiliation is prohibited in all aspects of management and execution of the Campaign. Nothing herein denies eligibility to any voluntary agency, which is otherwise eligible under this part to participate in the Campaign, merely because such voluntary agency is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

§ 950.105 Federal policy on civic activity.

Federal personnel are encouraged to participate actively in the work of voluntary agencies—as members of policy boards or committees, heads of local campaign units, or volunteer workers—to the extent consistent with Federal agency policy and prudent use of official time. They are encouraged also to devote private time to such volunteer work.

§ 950.107 Preventing coercive activity.

True voluntary giving is basic to Federal fundraising activities. Actions that do not allow free choices or even create the appearance that employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fundraising policy. The following activities are not in accord with the intent of Federal fundraising policy and, in the interest of preventing coercive activities in Federal fundraising, are not permitted in Federal fundraising campaigns:

(a) Supervisory solicitation of employees supervised;

(b) Setting 100 percent participation goals;

(c) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and installment pledges;

(d) Establishing personal dollar goals and quotas; and

(e) Developing and using lists of noncontributors.

Subpart B—Organization and Functional Responsibilities

§ 950.201 Development of policy and procedures.

Director, U.S. Office of Personnel Management. Under Executive Order 12353 (March 23, 1982), Charitable Fund-Raising, and Executive Order 12404 (February 10, 1983), Charitable Fund-Raising, the Director is responsible for establishing charitable fundraising policies and procedures in the Executive branch. With the advice of appropriate interested persons and organizations and of the Executive departments and agencies concerned, she makes all basic policy, procedural, and eligibility decisions for the program. The Director may authorize the conduct of demonstration projects in one or more CFC locations to test alternative arrangements differing from those specified in this part for the conduct of fundraising activities in Federal agencies.

§ 950.203 Program administration.

(a) Federal agency heads. The head of each Federal Executive department and agency is responsible for:

(1) Seeing that voluntary fundraising within the Federal department or agency is conducted in accordance with the policies and procedures prescribed by this part;

(2) Designating a top-level representative as Fund-Raising Program Coordinator to work with the Director as necessary in the administration of the fundraising program with the Federal agency;

(3) Assuring full participation and cooperation in local fundraising campaigns by all installations of the Federal agency;

(4) Assuring that the policy of voluntary giving and clear employee choice is upheld during the fundraising campaign; and

(5) Providing a mechanism to look into employee complaints of undue pressure and coercion in Federal fundraising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper organization channels for pursuing such complaints.

(b) Fundraising Program Coordinators. The responsibilities of Federal agency Fundraising Program Coordinators are to:

(1) Cooperate with the Director, the local Federal Coordinating Committee, and the Principal Combined Fund Organization in the development and operation of the program;

(2) Maintain direct liaison with the Office of the Director in the administration of the program;

(3) Publicize program requirements throughout the Federal department or agency;

(4) Answer inquiries about the program from officials and employees and from external sources; and

(5) Investigate and arrange for any necessary corrective action on complaints that allege violation of fundraising program requirements within the Federal agency.

§ 950.205 Program coordination.

The Director coordinates the Federal agencies' administration of the fundraising program and maintains liaison with voluntary agencies.

§ 950.207 Local voluntary agency representatives.

Federated and national voluntary agencies provide their state and local representatives with policy and procedural guidance on the Federal program. The local representatives are responsible for furnishing educational materials, speakers, and campaign supplies as may be required and appropriate to the Federal program.

§ 950.209 Local Federal agency heads.

The head of the Federal department or agency provides the heads of the local Federal offices and installations with copies of the Federal fundraising regulations. The local Federal agency heads are responsible for:

(a) Cooperating with representatives of the local Federal Coordinating Committee, the Principal Combined Fund Organization, and local Federal officials in organizing local Federal campaigns;

(b) Undertaking official campaigns within their offices or installations and providing active and vigorous support with equal emphasis for each authorized campaign;

(c) Assuring that personal solicitations on the job are organized and conducted in accordance with the procedures set in these regulations; and

(d) Assuring that authorized campaigns are kept within reasonable administrative limits of official time and expense.

§ 950.211 Local Federal Coordinating Committees.

(a) Summary of duties and powers. When there are a number of Federal agency offices and installations in the same local area, some interagency coordination is necessary in order to achieve effective community-wide campaigns and to improve general understanding and compliance with the fundraising program. The Director assigns the responsibility for local coordination to existing organizations of Federal agency heads whenever possible and to special committees where needed. The local Federal Coordinating Committee is authorized to make all decisions within the provisions and policies established in this part on all aspects of the local campaign, including eligibility and the supervision of the local community campaign and the Principal Combined Fund Organization. Such decisions may be appealed, however, to the Director.

(b) Authorized local Federal Coordinating Committee. Coordinating responsibility is assigned by the Director to one of the following organizations:

(1) Federal Executive Boards. The boards exist in principal cities of the United States for the purpose of improving interagency coordination. They are composed of local Federal agency heads who have been designated as Board members by the heads of their departments and agencies under Presidential authority.

(2) Federal Executive Associations and Federal Business Associations, self-organized associations of local Federal officials, and the Department of Defense National Policy Coordinating Committee.

(3) Fundraising Program Coordinating Committee. These committees are established in communities where there is no Federal Coordinating Committee in existence. Leadership in organizing such a committee is the responsibility of the head of the local Federal installation that has the largest number of civilian and uniformed services personnel. Local Federal agency heads or their designated representatives serve on the committee and determine all organizational arrangements.

(c) Employee union representation. In order to ensure employee participation in the planning and conduct of the CFC, employee representatives from the principal employee unions of local Federal installations should be invited to serve in whatever organization exercises local coordinating responsibilities.

(d) Fundraising responsibilities. Within the limits of the policies, procedures, and arrangements made nationally, the fundraising responsibilities of local Federal Coordinating Committees are to:

(1) Facilitate local campaign arrangements. The Federal Coordinating Committee

(i) Names a high-level chairman for the authorized Federal campaigns;

(ii) Provides lists of Federal activities and their personnel strength;

(iii) Cooperates on interagency briefing sessions and kick-off meetings; and

(iv) Supports appropriate publicity measures needed to assure campaign success.

(2) Administer program requirements. The Federal Coordinating Committee is responsible for organizing the local Combined Federal Campaign, supervising the activities of the Principal Combined Fund Organization, and acting upon any problems relating to a voluntary agency's noncompliance with the policies and procedures of the Federal fundraising program.

(3) Develop understanding of campaign program policies and procedures and voluntary agency programs. The local Federal Coordinating Committee serves as the central medium for communicating programs, policies and procedures of the Campaign and for understanding the organizations employees are being asked to support and how employees can obtain services they may need from these organizations.

(e) Principal Combined Fund Organization. The local Federal Coordinating Committee will supervise a local Principal Combined Fund Organization. The Principal Combined Fund Organization will receive money from Federal employees and administer the local campaign, under the direction of the local Federal Coordinating Committee.

(f) Communication and resolution procedures through the Director, Office of Personnel Management. Each local Federal agency head will receive fundraising directions through his Federal agency channels and will raise questions that pertain to fundraising activities within his Federal agency by the same means. However, the local Federal Coordinating Committee refers unresolved local fundraising questions or problems that are common to several Federal agencies directly to the Director. The Director communicates directly with the chairman of the local Federal Coordinating Committee for information about the local fundraising situation.

(g) Integrity of local Federal Coordinating Committee. A local Federal Coordinating Committee may not serve as a Principal Combined Fund Organization.

(h) Universal eligibility. All health and welfare charities organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3) are eligible to receive designations in any local CFC. The local Federal Coordinating Committee shall permit all such agencies to have an opportunity, as provided in the rules of the Campaign, to receive contributions from Federal employees.

(i) Local lists. At its option, a local Federal Coordinating Committee may publish a list of health and welfare charities eligible to receive contributions through the local CFC. Any such list shall consist of all entities qualifying under section 950.101(a) that meet the provisions of section 950.211(m), that certify that they meet all applicable provisions of Subparts D and E of this part, and that make timely application for inclusion on the local list.

(j) Notice of local list; open meeting. Where the local Federal Coordinating Committee elects to publish a list, it shall make a public announcement to that effect not later than 60 days prior to the commencement of the local campaign. The announcement shall invite applications from all qualified entities for inclusion on the local list and shall specify a date by which applications must be submitted to the local Federal Coordinating Committee. If such a process is provided, then local eligibility decisions shall be made at an open meeting of the local Federal

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Coordinating Committee upon giving reasonable notice to interested parties.

(k) Notice of LFCC decisions. The local Federal Coordinating Committee shall give applicants reasonable notice, in accordance with local CFC practice, of the dispositions made of their applications.

(l) Appeals. Applicants denied listing may petition the local Federal Coordinating Committee to reconsider its denial. Such petition for reconsideration may be dismissed as untimely unless it is received by the local Federal Coordinating Committee within 10 days after the petitioning party has received actual or constructive notice of the decision of which reconsideration is sought. A petition for reconsideration shall be supported by facts justifying reversal of the original decision. If the local Federal Coordinating Committee unanimously refuses to reconsider its decision, or reconsiders its decision and unanimously affirms the denial of admission, then its decision shall be final. If at least one member of the local Federal Coordinating Committee believes that the decision merits further review, or if the local Federal Coordinating Committee, having received a petition for reconsideration, fails to act thereon within 10 days of its actual receipt thereof, then the matter may be appealed, pursuant to the provisions of section 950.525(e), to the Director, whose decision shall be final.

(m) Standards of eligibility for local listing. Any entity qualifying under § 950.101(a), notwithstanding its location or geographic area of service, may receive a gift designate to it in writing on a prescribed CFC pledge card by an individual donor. To be manageable, however, the optional local list, if any, as permitted under § 950.211(i), must be limited to charities that actively render their services in the local CFC area. Accordingly, any local list will include only entities that have a direct and substantial presence in the local campaign community, meaning that Federal employees and their families are able to receive, within a reasonable distance from their duty stations or homes, services that are directly provided by the voluntary agency or that demonstrably depend upon, or derive from, the specific research, educational, support, or similar activities of the particular voluntary agency. Demonstration of direct and substantial presence in the local campaign community, including adequate documentation thereof, shall at all times, and for all purposes, be the burden of the voluntary agency. Such direct and substantial presence shall be determined in the light of the totality of the circumstances in each case, including, but not necessarily limited to, consideration of the following factors:

(1) The availability of services, such as examinations, treatments, inoculations, preventative care, counseling, training, scholarship assistance, transportation, feeding, institutionalization, shelter, and clothing, to persons working or residing in the local campaign community.

(2) The presence within the local campaign community, or within reasonable commuting distance thereof, of a facility at which services are rendered or through which they may be obtained, such as an office, clinic, mobile unit, field agency, or direct provider; or specific demonstrable effects of research, such as personnel or facilities engaged therein or specific local applications thereof.

(3) The availability to persons working or residing in the local campaign community of communication with the voluntary charitable agency by means of home visits, transportation, or telephone calls, provided by the voluntary agency at no charge to the recipient or beneficiary of the service.

(4) Awareness within the local Federal community of the existence, activities, and services of the voluntary charitable agency. Provided, that voluntary charitable health and welfare agencies whose services are rendered exclusively or in substantial preponderance overseas, and that meet all the criteria set forth in this part except for the requirement of direct and substantial presence in the local campaign community, shall be eligible for inclusion on the local list in each local campaign area of the Combined Federal Campaign.

§ 950.213 Avoidance of conflicts of interest.

Any Federal employee who serves on the Eligibility Committee, a local Federal Coordinating Committee, or as a Federal agency fundraising program coordinator, must not participate in any decision situations where, because of membership on the board or other affiliation with a voluntary agency, there could be or appear to be a conflict of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

§ 950.301 Types of voluntary agencies.

Voluntary agencies are private, nonprofit, self-governing organizations financed primarily by contributions from the public. Some are national in scope, with a national organization that provides services at localities through state of local chapters or affiliates. Others are primarily local, both in form of organization and extent of services.

§ 950.303 Types of fundraising methods.

(*a*) The methods used by voluntary agencies in public fundraising shall be either federated or independent. A national federated group shall meet the same eligibility criteria as a voluntary agency, and have at least 10 local voluntary agency presences in each of at least 300 local combined campaigns. In federated campaigns, local voluntary agency representatives join contractually into a single organization for fundraising purposes. A local United Way, united fund, community chest, or other local federated group may be considered and supported as a single agency. Local chapters or affiliates of national agencies may form local federations or be admitted as additional participating members of national federated groups.

(*b*) An independent campaign is one conducted by a local unit of a national voluntary agency through its own fundraising organization, or by a local nonaffiliated agency which otherwise meets established eligibility criteria. Voluntary agencies may conduct independent campaigns or participate in a federation.

§ 950.305 Considerations in making Federal arrangements.

(a) On-the-job solicitation. In order to have only one on-the-job solicitation by Federal personnel and of Federal personnel, i.e., a Combined Federal Campaign, individual appeals must be combined into a single joint campaign on behalf of charitable purposes in conformance with the policies and procedures prescribed in this part.

(b) Campaign arrangements established nationally. Basic campaign arrangements are established by the Director. Local Federal agency heads and Coordinating Committees are not authorized to vary from the established arrangements except to the extent that local variations are expressly provided for in this part.

(c) Number of solicitations. Not more than one on-the-job solicitation of Federal personnel on behalf of charitable purposes will be made in any year at any location, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) Responsible conduct.—In the event a voluntary agency fails to adhere to the requirements or to the policies and procedures of the Federal program, its privilege to receive gifts through the Combined Federal Campaign may be withdrawn by the Director at any time after due notice of the voluntary agency and opportunity for consultation.

§ 950.307 Definition of terms used in Federal arrangements.

(a) *Domestic area.* The 50 United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *Overseas area.* All other points in the world where Federal employees or members of the uniformed services are stationed.

(c) *Federated community.* A federated community is a geographical location within the domestic area where a federated fundraising program exists. In a federated community, recognized national voluntary agencies may join a federated campaign group or participate individually. However, voluntary agencies "supported primarily through United Ways, united funds, and community chests" shall be recognized for participation in a federated community only as participating members of the local United Way, fund, or chest.

(d) *Local non-affiliated voluntary health and welfare agency.* Local voluntary agencies that provide health and welfare services in the local area, and otherwise meet the criteria of this part, may be non-affiliated.

§ 950.309 Federated and overseas campaigns.

(a) *Authorized federated groups.* (1) United Way of America and any local United Way, united fund, community chest, or other local federated group that is a member in good standing of, or is recognized by, United Way of America and that meets the requirements in these regulations shall be recognized in its local campaign area as the federated group consisting of, and representing, its member voluntary agencies that also meet these requirements. Certifications as to the requirements on behalf of local United Ways, united funds, and community chests and each member voluntary agency will be made by United Way of America.

(2) The American Red Cross, the National Health Agencies, the International Service Agencies, the National Service Agencies, and such other federated groups which shall meet the standards under this part, shall be recognized as the federated group consisting of, and representing, their respective member voluntary agencies that also meet all requirements of this part.

(3) Member agencies of federated groups are responsible for furnishing to their respective federated groups adequate evidence of their compliance with all requirements of this part, and federated groups are responsible for ensuring that such adequate evidence is properly furnished and, as needed, revised, in accordance with the principles set forth at § 950.401. In a local campaign where an optional official list of voluntary agencies is published, pursuant to § 950.521(e)(2), then federated groups and unaffiliated voluntary agencies applying for local listing shall seasonably furnish to the local Federal Coordinating Committee their respective written certificates of compliance with all requirements of this part. In all other cases, such certificate shall be required as provided in § 950.521(e)(2)(v).

(b) *Local federated agencies.* To be eligible for participation in the Federal fund-raising program, the local federated group must be broadly representative in its board and committee membership of the community and must be making bona fide efforts to meet community needs. Requirements for participation in a local federated group must be in writing, available to the public, reasonable, and applied fairly and uniformly to all local voluntary agencies requesting participation. Procedures must be provided by the federated group for at least one review of any decision denying participation requested by a local voluntary agency. The review must be conducted by a committee or other body within the federated group that did not participate in the original decision. A written statement of the reasons for denial must be provided to the applicant voluntary agency.

(c) *"Causes."* Solicitation for a health or other "cause," e.g., for "Mental Health" or "Heart Disease," without identification of the specific voluntary agency for which the funds are sought, is prohibited. All funds collected from Federal personnel must be allocated only to specific voluntary agencies.

(d) *Designation of federated area.* The recognition of a local Federal Coordinating Committee by the Director designates the community served by that Committee as a recognized local campaign site. Two or more authorized local Federal Coordinating Committees are authorized to develop coordinated solicitations best suited to the needs of their localities.

(e) Overseas campaign. —*(1) DOD Overseas Combined Federal Campaign.* (i) A Combined Federal Campaign is authorized for all Department of Defense activities in the overseas areas during a 6 week period in the fall. Any national voluntary agency that the local Federal Coordinating Committee for the DOD Overseas CFC determines, in its discretion, most likely meets the definitions and standards set forth in this part for the Principal Combined Fund Organizations shall be eligible to be designated as the Principal Combined Fund Organization for the DOD Overseas CFC. The American Red Cross, the International Service Agencies-Overseas, the National Health Agencies, the United Service Organization, and such other federated groups that meet the standards under this part shall be authorized privileges on behalf of their member voluntary agencies that also meet all requirements of this part. The local Federal Coordinating Committee for the DOD Overseas CFC shall designate the Principal Combined Fund Organization for the Overseas Campaign, which may be the National Voluntary Organizations Campaign Committee.

(ii) Contributors to the DOD Overseas Combined Federal Campaign designate their gifts to one or more agencies or the Principal Combined Fund Organization. The Principal Combined Fund Organization for the overseas campaign shall pay the amounts collected directly to the designated voluntary agencies, less "shrinkage" and the processing percentage, if any, that is approved in advance of the campaign by the Federal official in the overseas area responsible for the local campaign arrangements.

(2) *Local voluntary agency campaigns.* The heads of overseas offices and installations may, at their discretion, permit their military and civilian personnel to solicit each other on behalf of local voluntary agencies. Such campaigns will be conducted in accordance with the basic policies and procedures of the Federal program and at times which do not conflict with the DOD overseas Combined Federal Campaign period. The standards in this part will be used as guidelines. Federal leadership in organizing such campaigns will be assumed by the head of the overseas Federal establishment that has the largest number of Government personnel in the campaign area.

(3) *Optional participation by certain civilian agencies.* Federal civilian departments and agencies that have traditionally considered their overseas personnel as members of the National Capital Area for fund-raising purposes may continue this practice.

(4) *On-base health and welfare activities.* On-base morale, welfare and recreational activities may be supported from CFC funds.

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§ 950.311 Off-the-job solicitation at places of employment.

Voluntary agencies may be authorized off-the-job solicitation privileges at places of Federal employment under such reasonable conditions as may be specified by the local head of the Federal installation involved, provided that such conditions are not inconsistent with this part. Dual solicitation conflicts with the objective of a combined campaign and is not authorized. Accordingly, this privilege shall be extended only under the following circumstances:

(a) *Family quarters on military installations.* Voluntary agencies may be permitted to solicit at private residences or at similar on-post family public quarters in unrestricted areas of military installations at the descretion of the local commander. However, such solicitation may not be conducted by military or civilian personnel in their official capacity during duty or non-duty hours, nor may such solicitation be conducted as an official command-sponsored project. This restriction is not intended to prohibit or to discourage military and civilian personnel from participating as private citizens in voluntary agency activities during their off-duty hours.

(b) *Public entrances of federal buildings and installations.* Voluntary agencies that engage in limited or specialized methods of solicitation—for example, the use of "poppies" or other similar tokens by veterans organizations—may be permitted to solicit at entrances or in concourses or lobbies of Federal buildings or installations normally open to the general public. Solicitation privileges will be governed by the rules issued by the General Services Administration pursuant to the Public Buildings Cooperative Use Act of 1976, as amended, or other applicable Government legal authority.

Subpart D—Requirements for National Voluntary Agencies

§ 950.401 Purpose.

These requirements are established to ensure that the funds contributed by Federal personnel will be used for the stated purposes of the recipient voluntary agencies. The Office of Personnel Management acknowledges that voluntary agencies are regulated, as to the integrity of their operations and finances, by State and local governments, by the federated groups of which they may be members, and by the discipline of the marketplace. OPM and local Federal Coordinating Committees will therefore be guided by the principle of self-certification and will accord a presumption of validity to the written representations of voluntary agencies and federated groups that the requirements of this part are satisfied.

§ 950.403 General requirements for national agencies.

(a) *Type of agency.* Only nonprofit, tax-exempt, charitable organizations, supported by voluntary contributions from the general public and providing direct and substantial health and welfare services through their national organization, affiliates or representatives are eligible for approval. All such services must be consistent with the policies of the United States Government.

(b) *Integrity of operations.* Funds contributed to such organizations by Federal personnel must be effectively used for the announced purposed of the voluntary agency.

(c) *National scope.* A national voluntary agency is one that:

(1) Is organized on a national scale with a national board of directors that represents its constituent parts, and exercises close supervision over the operations and fund-raising policies of any local chapters or affiliates;

(2) Has earned goodwill and acceptability throughout the United States, particulary in cities or communities within which or near which are Federal offices or installations with large numbers of personnel; and

(3) Has national scope, that is, scale, goodwill, and acceptability, which may be demonstrated as follows:

(i) By a voluntary agency's provision of a service in many (c. one quarter) States, or in several foreign countries, or in several parts of one large foreign nation;

(ii) By derivation of contributor support from many parts of the Nation;

(iii) By the extent of public support and the number and the geographical spread of contributors; and

(iv) By the national character of any public campaign, which may be shown by an applicant having at least 200 local chapters, affiliates, or representatives that promote its campaign.

(d) *Type of campaign.* Approval will be granted only for fundraising campaigns in support of current operations. Capital fund campaigns are not authorized.

§ 950.405 Specific requirements for national agencies.

(a) *Corporate and tax status.* A voluntary agency must be one:

(1) That is a voluntary charitable health and welfare agency as defined in section 950.101;

(2) That is voluntary and broadly supported by the public, meaning

(i) That it is organized as a not-for-profit corporation or association under the laws of the United States, a state, a territory, or the District of Columbia;

(ii) That it is classified as tax-exempt under 26 U.S.C. 501(c)(3), and is eligible to receive tax deductible contributions under 26 U.S.C. 170; and

(iii) That, with exception of voluntary agencies whose revenues are affected by unusual or emergency circumstances, as determined by the Director, it has received at least 50 percent of its revenues from sources other than the Federal Government or at least 20 percent of its revenues from direct and/or indirect contributions in the year immediately preceding any year in which it seeks to participate in the Combined Federal Campaign;

(3) That is directed by an active board of directors, a majority of whose members serve without compensation;

(4) That it adopts and employs generally accepted accounting principles and was audited by a certified public accountant in the year immediately preceding any year in which it applies for admission to, or certifies its eligibility to receive donations from, the Combined Federal Campaign;

(5) That can demonstrate, if its fundraising and administrative expenses is in excess of 25 percent of total support and revenue, that its actual expense for those purposes is reasonable under all the circumstances in its case;

(6) That ensures that its publicity and promotional activities are based upon its actual program and operations, are truthful and nondeceptive, and include all material facts.

(b) *Fundraising practice.* The voluntary agency's publicity and promotional activities must assure protection against unauthorized use of its contributors lists; must permit no payment of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fundraising; and must permit no general telephone solicitation of the public.

(c) *Reports (1) Annual report.* The voluntary agency must prepare an annual report to the general public that includes a full description of the voluntary agency's activities and accomplishments and the names of chief administrative personnel.

(2) *Combined reports.* Voluntary agencies that represent more than one subunit must prepare a combined annual financial report to the general public in accordance with generally accepted accounting principles. The combined report shall include all income and expenditures for the national operations and all chapters, committees, affiliates, or satellites.

(d) *Reporting by American Red Cross.* For purposes of this part, the American Red Cross and its chapters are recognized as operating an accounting and financial system in substantial compliance with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations and certification to this effect by local chapters is not required.

Subpart E—The Local Combined Federal Campaign

§ 950.501 Local voluntary agencies.

(a) A local voluntary agency shall meet the same criteria as a national voluntary agency, except national scope. Each voluntary agency shall certify to its compliance with these criteria, or shall have such certification submitted on its behalf by the federated group, if any, of which it is a member, in accordance with the principles of internal integrity set forth in § 950.401.

(b) An on-base morale, welfare and recreational activity authorized by a military base commander may be supported from CFC funds.

§ 950.503 Participation in Federal campaigns by local unaffiliated agencies.

Arrangments shall be made by the Central Receipt and Accounting Point to distribute contributions to local unaffiliated voluntary agencies, after appropriate adjustments are made for "shrinkage" and approved administrative costs.

§ 950.505 Responsibility of local Federal Coordinating Committees.

Each local Federal Coordinating Committee is required to organize a Combined Federal Campaign in the local area for which it has fund-raising responsibility. The heads of Federal departments and agencies will request their local officials to cooperate fully with the decisions of the Federal Coordinating Committee in all aspects of CFC arrangements. The local Federal Coordinating Committee makes all final decisions on the local campaign, subject to appeal to the Director.

§ 950.507 Local CFC plan.

(a) *CFR as uniform fundraising method.* The Combined Federal Campaign is the only authorized fundraising method in all areas in the United States in which 200 or more Federal employees are located. All voluntary agencies wishing to participate in fundraising within the Federal service must do so within the framework of a local Combined Federal Campaign.

(b) *Non-participation.* In the event that any voluntary agency does not follow these provisions of this part for participation in a local CFC, fundraising privileges in local Federal establishments are forfeited during that fiscal year.

(c) *Red Cross participation.* In local communities where the American Red Cross is not a participating member of the local United Way, it will be regarded as a separate campaign organization in the combined campaign. American Red Cross chapters have independent authority with respect to fund-raising policy, so responsibility for deciding on participation in the CFC rests with the local chapter board of directors. As with the other national organizations, in the event local American Red Cross chapters choose not to participate in the CFC, they are not authorized to have a separate campaign in Federal offices or installations during the fiscal year involved, except in the case of an emergency of disaster appeal for which specific prior approval has been granted by the Director.

(d) *Exceptions in areas of fewer than 200 Federal employees.* Where there are fewer than 200 Federal employees in the local campaign area, it may not be practicable to hold a Combined Federal Campaign. Therefore, in such areas local Federal officials are not required to arrange for a Combined Federal Campaign. However, if they believe that it would be desirable from the standpoint of the local community or the Federal Government to have such a campaign, they may contact the Director to arrange a Combined Federal Campaign regardless of the number of employees involved. Where a CFC is not conducted because of lack of sufficient Federal employees, the local united fund is authorized to solicit within the Federal establishment during the fall of the year and other federated groups are authorized to conduct a separate spring campaign. Where the American Red Cross is not a member of the local united fund and the area will not have a CFC, then the Red Cross may conduct an independent campaign during the month of March. However, payroll deductions for charitable contributions are only authorized in conjunction with Combined Federal Campaigns.

§ 950.509 Organizing the local campaign: The Principal Combined Fund Organization.

The local Federal Coordinating Committee shall organize the local community campaign. It will appoint a campaign chairman who will carry out campaign duties in conformance with the policies and procedures prescribed in this part. From among the federations with national scope, the local Federal Coordinating Committee shall select a Principal Combined Fund Organization to manage the campaign and serve as fiscal agent. In doing so the Federal Coordinating Committee shall select whichever applicant organization it finds to be the local federated group in the CFC geographic area that provides through one specific, annual public solicitation for funds the greatest support for charitable agencies that depends on public subscriptions for support; and that, in the judgment of the Federal Coordinating Committee, can most effectively provide the necessary campaign services and administrative support for the successful campaign.

(a) *Qualifications of PCFO.* In deciding whether an organization is the Principal Combined Fund Organization in the CFC geographic area, the Federal Coordinating Committee will consider:

(1) The number of local charitable voluntary agencies or affiliates in the CFC geographic area that rely on the applicant organization for financial support and that meet the prescribed eligibility criteria for participation in the CFC;

(2) The number of dollars raised by the applicant organization in the CFC geographic area during its last completed annual public solicitation for funds;

(3) The percentage of such dollars disbursed to the charitable voluntary agencies;

(4) The local capacity of the applicant organization to provide the necessary campaign services and administrative support (including operation of the Central Receipt and Accounting Point) to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this part; and

(5) Whether the organization meets the requirements specified in sections 950.401, 950.403, and 950.405.

(b) *Obligations of PCFO.* An organization seeking to be designated the Principal Combined Fund Organization in a CFC area shall submit its application for such designation to the local Federal Coordinating Committee for approval. All such applicants must pledge to manage the campaign fairly and equitably; to conduct organization operations separate from other voluntary agency operations; to consider advice from, be responsible to reasonable requests for information from, and to consult with other agencies; and to be subject to the

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decisions and supervision of the local Federal Coordinating Committee and the Director. Upon submission of a complaint by a local Federal Coordinating Committee or a federated or national voluntary agency, the Director may revoke the designation as a Principal Combined Fund Organization if in her discretion she finds these pledges are not fulfilled.

(c) *Contents of PCFO application.* Applications shall include the following:

(1) The names of the voluntary agencies in the area that rely on the applicant organization for financial support and that meet the eligibility criteria set in this part;

(2) The boundaries of the area covered by the public donation solicitation of the applicant organization;

(3) The number of dollars raised in the CFC geographic area by the applicant during its last completed annual public solicitation for funds;

(4) The percentage of such dollars disbursed to the charitable agencies;

(5) Agreement to transmit contributions, as designated by Federal employees, to charitable organizations in the local CFC (minus only "shrinkage"—that is, uncollectible pledges and gifts—and the approved percentage for administrative cost reimbursement);

(6) Certification that it, and its participating member organizations, are in compliance with all applicable requirements specified in this part;

(7) Percentage, if any, proposed to be charged by the applicant organization for reimbursement for administrative costs; and

(8) Statement that the applicant organization is organized to provide the necessary campaign services and support to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this part.

(d) *Right to receive donations.* Federated groups, member agencies of federations, and other voluntary agencies shall be eligible to receive designations.

(e) *Reimbursement of PCFO.* The Principal Combined Fund Organization shall provide a form for the contributor to indicate any amounts he may wish to designate to affiliated and unaffiliated beneficiaries. The Principal Combined Fund Organization shall pay the amount collected to the employee-designated beneficiary agency less "shrinkages" and the amount necessary to reimburse the Principal Combined Fund Organization for administrative expenses.

(f) *Approval of PCFO.* The percentage, if any, charged for administrative cost reimbursement must be approved in advance by the local Federal Coordinating Committee and published in the campaign literature.

(g) *Deemed designated donations.* All contributions not designated to specific voluntary agencies or specific federated groups shall be deemed to have been designated to the Principal Combined Fund Organization. A statement of that fact shall be clearly printed in a distinctive typeface in ink of a distinctive color on the face of each pledge card, which shall also state the name of the federated group that is the Principal Combined Fund Organization in that local Campaign.

(h) *PCFO report.* The Principal Combined Fund Organization shall issue a report to the local Federal Coordinating Committee and other interested parties within a reasonable time following the campaign setting forth the following information:

(1) Amounts contributed and pledged;

(2) Number of contributors;

(3) Amounts designated to each participating federated group and voluntary agency;

(4) Amount designated to the Principal Combined Fund Organization;

(5) Amounts of gifts and pledges cancelled and returned; and

(6) Costs of administering the campaign, including the Receipt and Accounting Point.

(i) *CFC Committee.* Where necessary, the local Federal Coordinating Committee may designate a committee from among its principal members, called the CFC Committee, to give top leadership and direction to the planning, conduct and evaluation of the local combined campaign. The Federal Coordinating Committee, however, may not redelegate any final authority for the campaign to the CFC Committee. The Chairman of the Campaign need not be the Chairman of the organization designated as the local Federal Coordinating Committee.

(j) *Action steps by the local Federal Coordinating Committee.* The Chairman of the local Federal Coordinating Committee is not authorized to establish a Local Joint Work Group of Federal representatives and representatives of the Principal Combined Fund Organization. The Chairman shall direct the Principal Combined Fund Organization to assemble necessary information and data, and to submit a plan detailing materials and a timetable for campaign arrangements. This shall include the dates for preparation, printing and distribution of materials, kick-offs, training sessions, report meetings and award ceremonies. All of these, including the specific materials to be used, shall be submitted to the full local Federal Coordinating Committee for approval on a day to be announced broadly to participating voluntary agencies and federated groups and to the Director. An adequate opportunity shall be provided for participating federated groups and voluntary agencies to review and comment on all proposals.

(k) *Loaned Executive Program.* One or more loaned Federal executives may be used in a Combined Federal Campaign. The Loaned Executive Program was authorized by President Nixon in a memorandum to heads of departments and agencies dated March 3, 1971. A Loaned Executive may be detailed from his agency on a full- or part-time basis, for a specific period of time, to conduct or assist in the operation of a Combined Federal Campaign. The employing agency will decide who will serve as a Loaned Executive, if anyone, and the length of the detail. Executives may not be loaned or assigned to any specific voluntary organization but only to the official Combined Federal Campaign group. When assigned to the CFC, the executive shall be placed on administrative leave.

§ 950.511 Basic local CFC groundrules.

(a) The arrangements outlined in §§ 950.511 through 950.525 constitute basic groundrules for the local Combined Federal Campaign. Certain local variations are permissible if specifically authorized in this subpart. However, any modification of groundrules in specific instances must be requested by Federal Coordinating Committees from the Director. Modifications will be granted only in the most exceptional circumstances.

(b) The local Federal Coordinating Committee will approve the:

(1) Campaign name. The name will include the words "Combined Federal Campaign;" the year for which contributions are solicited; and approximate identification of the locality; as for example: "1984 San Antonio Area Combined Federal Campaign."

(2) Campaign period. The solicitation period may be any time between September 1 and November 30.

(3) Campaign area. The exact geographical area to be covered by a local campaign will be determined by the Director, taking into account past practice and the feasible scope for a single, coordinated campaign. The jurisdiction of the organization named as the local Federal Coordinating Committee will set the basic area of the Campaign, based upon past practices. Any changes in campaign area must be approved by the Director.

§ 950.513 Contributions.

(a) *Contributor's information leaflet.* The contributor's information leaflet will clearly state that the Federal employee is encouraged to direct his gift to specific voluntary agencies. A single form of pledge card and leaflet-brochure will be produced under standards set in this part, and approved by the Director. The leaflet will explain that when such gifts are earmarked to a specific recipient, the Principal Combined Fund Organization will remit such funds, less approved administrative costs, in accordance with the donor's wishes as those funds are collected. The leaflet will also clearly state that when the Federal employee decides not to designate, the gift will be deemed designated to the Principal Combined Fund Organization for distribution by it. The leaflet should contain no text stating or implying that any Government official will determine the distribution of any gifts deemed designated to the Principal Combined Fund Organization.

(b) *Pledge form.* Several boxes will be provided on the pledge form so that donors may indicate their choices, if any, to contribute to one or more voluntary agencies or federations. A minimum of three boxes, each no less than 1½ inches in length and no less than ⅛th of an inch in height, will be printed on the face, and on all copies, of the pledge form. Separate designation slips are not authorized under any circumstances. The pledge form must be arranged so that each Federal employee receives the pertinent CFC information and the pledge card as a single package (as examples, inserted in a slot, or a pocket in the contributor's information leaflet). In addition to the statement required by § 950.509(g), a statement in bold and distinctive type will be printed to read: "Any health and welfare charity recognized as tax-exempt by the Internal Revenue Service under 26 U.S.C. 501(c)(3) may be designated in the box provided on this card." In the event that a donor attempts to contribute to an entity that is not a voluntary agency within the meaning of § 950.101(a), that is not tax-exempt under 26 U.S.C. 501(c)(3), or that cannot, with minimal reasonable effort, be identified or located, then the donation shall be cancelled and the funds collected, if any, shall be promptly returned to the donor.

§ 950.515 Dollar goals.

(a) A dollar goal for the overall local combined campaign is recommended. Generally, it provides a focus for group spirit and unity of purpose that contributes materially to success. By apportioning the goal equitably among the Federal offices and installations, each Federal agency shares responsibility in the team effort and has a mark by which to gauge its progress.

(b) In developing the proposed goal, the local Federal Coordinating Committee should take into account past giving experience in local Federal campaigns, the needs and reasonable expectations of the voluntary agencies in the current campaign situation, and the probability of a substantial increase in the level of giving due to the single campaign and payroll payment plan. The objective should be to set a goal that is attainable, which can be exceeded in an enthusiastic and purposeful campaign.

(c) Dollar goals are not required. An alternative approach is to rely on "suggested giving" as the principal incentive. For example, the "goal" could be 75 percent participation at the suggested giving level.

§ 950.517 Suggested giving guides and voluntary giving.

(a) Suggested giving guides for contributions are authorized for local campaigns. Guides for cash giving or direct-payment pledges may be included in terms of percent of annual income, number of hours pay, or suggested size of gift in relation to various income levels. Guides may be printed in the contributor's leaflet or on the pledge form. They will be accompanied by a statement explaining that the guide is provided because employees often ask for one, but that the decision to give and the amount is up to each employee.

(b) Federal agencies are not authorized to furnish individual employee suggested giving guides based upon the employee's specific pay or grade; a guide of this kind is comparable to an individual quota or assessment, which is prohibited.

(c) The contributor's leaflet or the pledge form must include the express statement that the employee has the right to make his gift confidentially in a sealed envelope which will be delivered unopened to the Combined Federal Campaign headquarters.

§ 950.519 Receipt and accounting for contributions.

(a) The Principal Combined Fund Organization shall provide and administer the Receipt and Accounting Point or it may arrange for an appropriate financial institution to provide such service on its behalf, under the direction of the local Federal Coordinating Committee. Any charges by such institution to provide the necessary services are the responsibility of the principal Combined Fund Organization and should be included in the latter organization's administrative costs factor.

(b) The Receipt and Accounting Point will tabulate all contributions designated to specified agencies on the pledge cards and then tabulate the contributions designated to the Principal Combined Fund Organization. The amounts payable to the specified voluntary agencies are subject to deduction of "shrinkage" and of the approved percentage, if any, for reimbursement of administrative costs to the Principal Combined Fund Organization.

(c) Provision must be made by the Principal Combined Fund Organization for the audit of CFC funds. If the CFC is over $100,000, an audit must be performed by a certified public accountant. Copies of the audits must be submitted to appropriate local Federal officials and made available for inspection by any voluntary agency or federation participating in the CFC.

(d) In addition to the usual method of cash contribution and direct payment of pledges, the use of voluntary payroll withholding is authorized for members of the uniformed services and civilian personnel at CFC locations. Local voluntary agencies may decide whether or not to provide for direct payment of pledges; however, cash contributions must be permitted. Keyworker collection of installment pledges is prohibited.

§ 950.521 Campaign and publicity materials.

(a) Campaign and publicity materials will be developed in the local area under direction of the local Federal Coordinating Committee, and will be printed and supplied by the Principal Combined Fund Organization. All disputes over materials will be resolved by the local Federal Coordinating Committee, except that failure to conform to this part or to any other directive of the Director may be appealed to the Director. All publicity materials must have the approval of the local Federal Coordinating Committee before being used.

(b) Distribution of any bona fide education material of the voluntary agencies or provision of other services to employees at Federal establishments must be handled through Federal agency personnel, or occupational health, or other appropriate units, and not the CFC coordinators. Voluntary agencies are encouraged to publicize their activities

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outside Federal facilities, to broadcast messages aimed at Federal employees in an attempt to solicit their contributions, through media and other outlets, and to communicate with Federal personnel in writing through the United States Mail addressed to them at their Federal workplaces, as long as these do not interfere with Federal Government activities. Federated groups participating in a local campaign are authorized and encouraged to publish informational brochures accurately describing the organizations and activities of their respective member voluntary agencies, and to send such brochures through the United States Mail to Federal personnel at Federal workplaces. Local Federal Coordinating Committees are futher authorized to permit the distribution by voluntary agencies of brochures to Federal personnel in public areas at or near Federal workplaces in connection with the local CFC, provided that the manner of distribution accords equal treatment to all voluntary agencies furnishing such brochures for local use, and further provided that no such distribution shall utilize Federal personnel or interfere with Federal Government activities. Nothing herein shall be construed to require a local Federal Coordinating Committee to distribute or arrange for the distribution of any material other than the contributor leaflet and pledge form required by this part.

(c) A single Contributor's Information Leaflet, and a single, joint Pledge Form and Payroll Withholding Authorization (the latter preferably to be placed in an insert slot or otherwise assembled in the former) are to be distributed by keyworkers to each potential contributor. The Pledge Form and Payroll Withholding Authorization must be one form. All CFC literature, keyworker solicitors, and materials releasd as a part of the campaign must inform employees of their right to make a choice. Employees will be informed that while the Federal Government encourages its employees to make a choice, it does not mandate that they choose.

(d) Campaign materials must constitute a simple and attractive package that has fundraising appeal and essential working information. Treatment should focus on the combined campaign and homogeneous appeal without undue use of voluntary agency symbols or other distractions that compete for the contributor's attention. Extraneous instructions concerning the routing of forms, tallying of contributors, etc., which are primarily for keyworkers, must be avoided.

(e) Specific campaign and publicity materials.

(1) *Contributor's leaflet.* (i) This leaflet will be the only informational material distributed to individual contributors. It will describe the CFC arrangement, explain the payroll deduction privilege, and will include the information required by § 950.513. The leaflet should be constructed to contain a pocket or a slot to hold the CFC pledge form.

(ii) The leaflet will provide instructions about how an employee may obtain more specific information about voluntary agencies participating in the campaign, their programs, and their finances. It will also inform employees of their right to pursue complaints of undue pressure or coercion in Federal fundraising activities. The leaflet will advise civilian employees to consult with their personnel offices and military personnel with their commanding officers to identify the organization handling such complaints in their respective Federal agency.

(iii) A Privacy Act notice must be printed on the leaflet.

(iv) Every leaflet shall also contain the following statement: "All contributions not designated to specific voluntary agencies, or specific federated groups, shall be deemed to have been designated to the Principal Combined Fund Organization, which shall, through its eligibility committee of local citizens, choose charities to receive these funds based upon its best perception of community, national and international needs."

(v) The contributor information leaflet must also state that any health or welfare agency organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3), is eligible for a contribution; that the contributor must clearly identify the beneficiaries and amounts of his gifts; that his gifts are tax deductible; that he has the right not to be influenced improperly in making his decisions regarding the making or withholding of contributions in the CFC; and that he must make his gifts, if any, using the prescribed CFC pledge form. Other than the name of the Principal Combined Fund Organization, which must be stated in the contributor information leaflet in he same limited manner required by § 950.509(g) with respect to the pledge form, and shall not otherwise be stated, the contributor information leaflet shall not contain the name of any voluntary charity nor shall it otherwise contain any material that might influence the donor's choice of particular beneficiaries. The leaflet may contain general words of encouragement of the support of private charity, including quotations of the President of the United States, the Director, other Federal officials, and prominent personalities, provided that no personality who is not a Federal official shall be featured in the leaflet if he would be, under all the circumstances, reasonably associated by a donor with any particular voluntary agency.

(2) *Optional local list (LFCC list).* At its option, the local Federal Coordinating Committee may include a list of voluntary agencies. This will strictly be at its own option if, in its view, it would facilitate donor understanding. If this option is chosen, the following rules apply:

(i) The leaflet will list the voluntary agencies approved by the local Federal Coordinating Committee, with only the title of the organization printed and without any statement about, or on behalf of, any agency. Opposite the name of each voluntary agency, a number will be provided beginning with the number 101 so that contributors desiring to indicate a choice of an agency or agencies to which they wish their gift to be directed may insert such number or numbers in the designation boxes provided for that purpose on the pledge form. Each voluntary agency that is a member of a federated group shall be entitled, at its local option, to have that group's initial noted in parantheses following the name of the voluntary agency.

(ii) The listing of voluntary agencies shall be exclusively in strict alphabetical order, beginning with the letter "A," by name of voluntary agency.

(iii) Federated groups shall be listed, in an order set by lot each year, at the end of the list of voluntary agencies, under the title "campaign groups," with their respective identification numbers. The federated group that is the Principal Combined Fund Organization shall be so identified.

(iv) The following statement shall be printed, following the list of federated groups, in bold letters and distinctive type: "The above list is not an exhaustive list of the voluntary health and welfare charities to which you may designate all or part of your contribution. The list is illustrative only. Any health or welfare charity recognized as tax-exempt by the Internal Revenue Service under 26 U.S.C. 501(c)(3) may be designated on the blank space provided on the pledge card. You must write the full and correct name of the charity that you designate as the recipient of your gift. Please be sure that your writing is legible. If you write in the name of an unqualified organization or of an organization that cannot be located, or if your writing cannot be read, then your pledge or gift will be cancelled and returned to you."

(v) The Principal Combined Fund Organization upon receiving pledge forms containing designations to specified agencies whose names are written-in by contributors shall request each agency so designated to certify in writing that it is a charitable health and welfare entity organized, qualified, and recognized by the Internal Revenue Service, under 26 U.S.C. 501(c)(3) and that it complies with all standards of integrity of operations and reporting required by this part. Such certification by an employee-designated beneficiary agency shall be sufficient basis for the Principal Combined Fund Organization to proceed with the payment process. This process of self-certification comports with the principles set forth at § 950.401.

(3) *PCFO report in lieu of optional local list*—(i) *Contents.* In the event, and only in such event, that the local Federal Coordinating Committee elects not to provide an optional local list as permitted by § 950.521(e)(2), the Principal Combined Fund Organization shall provide a report of all organizations that were designated by donors or by the Principal Combined Fund Organization to receive funds from the local campaign held in the preceding year. Such report shall consist of a roster of the beneficiary organizations, grouped by category of service, listed within each category in strict alphabetical order, and accompanied by a description (not to exceed 25 words and figures) of each organization's charitable programs; an organization may, at its election, note in parentheses after its name the initials of the participating federated group, if any, to which it belongs. Such report shall clearly state that it is a list of the recipients of all valid donations made in the immediately preceding campaign; that it is not an exhaustive list of organizations eligible to receive gifts through the CFC; and that the presence or absence of the name of any organization implies neither governmental approval nor governmental disapproval of any group or program. Such report shall conform, in all respects not inconsistent with the express provisions of this subsection, with the requirements of fairness and the safeguards against coercion and undue influence that are set forth in § 950.521(e)(1).

(ii) *Transmittal or communication of report.* The Principal Combined Fund Organization shall endeavor to transmit a copy of such report individually to each Federal employee in the local campaign area; in the event, however, that such form of distribution would not be cost effective or timely or would be impracticable, then the Principal Combined Fund Organization shall provide such report to Federal employees in the local campaign area by, at a minimum, publishing such report at least once within the 10 days immediately preceding the commencement of the local campaign in a newspaper of general circulation within the local Federal community; making such report available to each key-worker to assist individual donees; and maintaining copies of the report available for public inspection during reasonable business hours at every office of the Principal Combined Fund Organization in the local campaign area.

(iii) *LFCC approval.* The Principal Combined Fund Organization shall submit the report to the local Federal Coordinating Committee for its review and approval prior to any publication or issuance thereof.

(4) *Pledge form and payroll withholding authorization.* (i) A copy of the pledge form shall be used to inform the Receipt and Accounting Point for the local area of the designation decisions. The format for the pledge card is prescribed by the Director and is available from the Office of Personnel Management.

(ii) One copy of this form will be used as the Payroll Withholding Authorization. When completed, this copy will go to the contributor's payroll office. Since there are some 1,400 separate payroll offices serving Federal personnel, the withholding authorization must be in a standard format and bear adequate identification of the local campaign.

(iii) The name and mailing address of the local CFC Receipt and Accounting Point will be printed at the top of the form. The name must be the same as that for the campaign and include the year: for example, "1984 San Antonio Area Combined Federal Campaign."

(iv) The box entitled "Identification No." will be used for the contributor's social security number, except in the case of Federal agencies that have a separate payroll identification numbering system. There is no requirement to use this space and it should only be used when it aids in accounting or campaign management.

(f) *Other campaign materials.* Other campaign materials that are authorized include:

(1) *Chairman's guide.* For use of campaign chairmen in individual Federal installations;

(2) *Keyworker's guide.* Instructions for keyworkers about CFC arrangements, solicitation methods, and forwarding procedures;

(3) *Keyworker's report envelope.* With tally sheets (which may be printed on the envelope) on which the keyworker will list the names of contributors or the number of confidential envelopes enclosed;

(4) *Miscellaneous campaign items.* Contributor's receipts, window stickers, posters, progress charts, awards, etc;

(5) *Publicity items.* News stories and fillers for the local press and house organs, employee letters, speeches of campaign leaders, division chairmen, films, television and radio material supporting the campaign; and

(6) *Awards.* To recognize campaign achievements by Federal agencies, Federal agency chairmen, etc. Awards should be identified as "Combined Federal Campaign" awards. The presentation of awards and plaques by individual voluntary agencies or categories of voluntary agencies for CFC accomplishments is not permitted.

(g) *National materials.* National materials provided and made available for use by local CFCs will be developed by an organization named by the Director. The Director will provide opportunity for comment on such materials by interested parties prior to approval. She must approve all material prior to use.

§ 950.523 Payroll withholding.

The following policies and procedures are authorized for payroll withholding operations in accordance with Office of Personnel Management Pay Administration regulations in Part 550 of this chapter.

(a) *Applicability.* Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local Combined Federal Campaign organizations.

(b) *Allotters.* The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a Combined Federal Campaign when an appropriate official of the employing Federal agency determines the employee will continue his employment for a period sufficient to justify an allotment.

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(This includes part-time and intermittent employees who are regularly employed.)

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than 3 months). (The Department of Defense has modified its military pay allotment regulations to authorize allotments for CFC charitable contributions by uniformed service members.)

(c) *Authorization.* (1) Allotments will be wholly voluntary and will be based upon contributors' individual written authorizations.

(2) Authorization forms in standard format will be printed by the Principal Combined Fund Organization at each location. The forms and other campaign materials will be distributed to employees when charitable contributions are solicited.

(3) Completed payroll withholding authorization forms should be transmitted to the contributors' servicing payroll offices as promptly as possible, preferably by December 15. However, if forms are received after that date they should be accepted and processed by payroll offices.

(d) *Duration.* Authorizations will be in the form of a term allotment for one full year—26, 24 or 12 pay periods depending upon the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. (The standardization of beginning and ending dates, except for individual discontinuances, is intended to simplify payroll operations and minimize costs.) However, the fact that an employee or military member will not be on duty for the full year should not preclude acceptance of a payroll allotment if he has sufficient time in service remaining to make the allotment practicable. Three months or more would be considered a reasonable period of time for which to accept an allotment.

(e) *Amount.* (1) Allotters will make a single allotment that is apportioned into equal amounts for deductions each pay period during the year.

(2) The minimum amount for allotment will be determined by the local Federal Coordinating Committee but will be not less than $1 bi-weekly, with no restriction on size of increment above that minimum.

(3) No change of amount will be authorized during the term of an allotment.

(4) For the purpose of simplicity and economy in payroll operations, no deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustment will be made in subsequent periods to make up for deductions missed.

(f) *Remittance.* (1) One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Receipt and Accounting Point at each location for which the payroll office has received allotment authorizations.

(2) The check will be accompanied by a statement identifying the agency and the number of employee deductions. There will be no listing of allotters included or of allotter discontinuances.

(g) *Discontinuance.* (1) Allotments will be discontinued automatically:

(i) On expiration of the 1-year withholding period; or

(ii) On death, retirement, or separation of allotter from the Federal service, whichever is earlier.

(2) The allotter may revoke his authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment will not be reinstated.

(h) *Transfer.* (1) When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different department or agency, his allotment authorization will be transferred to the new payroll office.

(2) When there is a delay in receiving the transferred authorization in the new payroll office, or when the allotter moves to a location covered by another CFC, the allotter should be permitted to complete a new authorization for the remainder of the 1-year withholding period, which will supersede and revoke his previous authorization.

(3) When the allotter moves to a location not covered by a CFC, the allotment will automatically be terminated unless expressly continued by the individual.

(i) *Accounting.* (1) Federal payroll offices will oversee establishment of individual allotment accounts, deductions each pay period, and reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The Principal Combined Fund Organization is responsible for the accuracy of transmittal of contributions. It shall transmit at least monthly for campaigns of $100,000 or more or quarterly if less than that amount, minus only the shrinkage factor and approved percentage for administrative cost reimbursement. It shall remit contributions, less approved administrative costs and shrinkage, to each agency or to the federated group, if any, of which the agency is a member if all member agencies of that federated group, participating in the local campaign, agree. It shall notify the federated groups, as soon as practicable after the completion of the campaign (but in no case more than 60 days thereafter), of the amounts, if any, designated to them and their member agencies and of the amounts of deemed-designated contributions, if any, allocated to them and their member agencies.

(3) Federated and national voluntary agencies, or their designated agents, will accept responsibility for:

(i) The accuracy of distribution among the voluntary agencies of remittances from the Principal Combined Fund Organization; and

(ii) Arrangements for independent audit agreed upon by the participating voluntary agencies.

§ 950.525 National coordination and reporting.

(a) The Office for Regional Operations, U.S. Office of Personnel Management, is responsible under the Director for CFR arrangements.

(b) Each local Federal Coordinating Committee shall notify the Office for Regional Operations of OPM of its campaign areas, chairman's name, address, and telephone number, and the address of its Receipt and Accounting Point.

(c) All chairman of local Federal Coordinating Committees shall furnish reports of campaign results to the Office of Regional Operations of OPM no later than January 15 of each year. OPM will furnish a reporting format to local Federal Coordinating Committees prior to that date requesting information on the results of the campaign, including the following:

(1) Basic data (number solicited, number of contributors);

(2) Payroll deductions (number authorizing, total pledged);

(3) Designations;

(4) Returned or cancelled gifts or pledges;

(5) Amount of undesignated receipts received by Principal Combined Fund Organization;

(6) Campaign costs; and

(7) Narrative summary evaluation of CFC arrangement based upon campaign experience. Copies of the report will be furnished to the local Federal Coordinating Committee, the Principal Combined Fund Organization, and participating federated groups. A copy will be made available for inspection by participating voluntary agencies and Federal employees.

(d) All local activites will be coordinated with the national campaign under guidance and procedures issued by the Director through the Federal Personnel Manual system and a handbook of instructions (or other appropriate issuance) for use by participating voluntary organizations.

(e) *Appeals.*

(1) *Substantial question; burden.* Any decision of a local Federal Coordinating Committee that is appealed to the Director by any charitable agency or charitable federated group shall be given due weight by the Director. Any such appeal shall be looked upon with disfavor unless it raises a substantial question of fairness, construction of these regulations, or application of the policies, procedures, directives, and guidance of the Director. Unless the Director orders otherwise, all burdens of proof, of persuasion and of going forward shall be borne by the appellant.

(2) *Time.* An appeal may be dismissed as untimely unless it is received by the Director within the 10 days next following after the appellant has received actual or constructive notice of the decision from which the appeal is taken.

(3) *Contents.* Every appeal shall be submitted in writing; shall set forth a concise statement of the decision from which the appeal is taken, the grounds for the appeal, and the relief sought by the appellant; and shall be accompanied by written proof that copies thereof have been served upon the local Federal Coordinating Committee and any other proper party in interest whose participation in the appeal may be appropriate for the just disposition thereof. Except in extraordinary circumstances, the Director shall not consider any evidence or argument that was not first presented to the local Federal Coordinating Committee.

(4) *LFCC, other response.* The local Federal Coordinating Committee and any other proper party in interest may respond to the appeal. Every response, to be timely, shall be received by the Director within the 5 days next following after the respondent has received actual or constructive notice of the appeal. Every response shall be submitted in writing; shall set forth a concise statement of the facts and arguments that the respondent believes are material; and shall be accompanied by written proof that copies thereof have been served upon the appellant and any other proper party in interest.

(5) *Director's authority.* The Director may, for good cause, extend or shorten the time limits herein set forth and waive requirements for written submissions and proofs of service. The Director may, in her sole discretion, and on her own motion, review any decision of a local Federal Coordinating Committee and stay any decision of a local Federal Coordinating Committee pending her review thereof. All decisions of the Director shall be final, and shall be executed forthwith by the local Federal Coordinating Committee or by such other person or entity as the Director may direct to do so, in the manner and within the time directed by the Director.

[FR Doc. 86-22845 Filed 10-7-86; 8:45 am]
BILLING CODE 6325-01-M

VOL
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ISS
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1986
UMI

federal register

Wednesday
October 8, 1986

Part VII

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Ground Control at Metal and Nonmetal Mines; Final Rule

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Ground Control at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule updates and clarifies the Mine Safety and Health Administration's (MSHA) safety standards for ground control at metal and nonmetal mines. These revisions upgrade provisions consistent with advances in mining technology, eliminate duplicative and unnecessary standards, provide alternative methods of compliance, and reduce recordkeeping requirements.

EFFECTIVE DATE: December 8, 1986, except 30 CFR 57.3461 which contains information collection requirements which are under review at OMB.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, or Yvonne Johnson, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

This final rule is part of MSHA's comprehensive review of its metal and nonmetal safety and health standards. MSHA announced the availability of a preproposal draft on March 11, 1983 (48 FR 10593), and published a proposed rule in the Federal Register on March 6, 1984 (49 FR 8368). Three public hearings were held in June 1984. After studying the comments received, MSHA has prepared this final rule. It is codified in 30 CFR Parts 56 and 57. Part 56 contains the requirements for surface metal and nonmetal mines. Part 57 contains the requirements for both underground and surface areas of underground metal and nonmetal mines.

The final rule arranges the standards in Subpart B of Parts 56 and 57 into related groups: Part 56, (1) Mining Methods; (2) Scaling and Support; and (3) Precautions; and Part 57, (1) Scaling and Support; and (2) Precautions. Definitions pertaining to Subpart B precede the standards. In the following discussion, the designation "56/57" indicates that the standard applies to both Parts 56 and 57.

To aid in comparing the existing standards with the new standards, this document includes a derivation table and a redesignation table which cross-reference the old numbers with new numbers.

II. Discussion and Summary of the Final Rule

A. General Discussion.

Fall of ground has historically been a leading cause of injuries and deaths in metal and nonmetal mines. From 1978 through 1984 there were 639 fatalities in metal and nonmetal mines. Of these, 66, or approximately 10% were caused by falls of roof, face, rib, side or highwall. Of all injuries occurring in metal and nonmetal mines, almost 3% or 384 injuries per year, were caused by fall of ground. Control of ground is made uniquely difficult because of the variety of conditions encountered and the changing nature of the forces affecting ground stability at any given operation. Nonetheless, technological advances are helping to reduce the hazards associated with unsecure ground.

In developing the final rule, the agency considered several approaches including the requirement for a general ground control plan standard. Instead of a general plan standard approach, the agency has developed specific performance requirements which more appropriately address the hazards related to ground control and provide for the safety of persons working in metal and nonmetal mines. The standards are performance-oriented, but are sufficiently specific to provide the mine operator with the necessary guidance.

Previously there were 16 standards in Part 56 and 23 standards in Part 57. Under this final rule, there are 9 standards in Part 56 and 10 standards in Part 57. Changes made to the existing standards are discussed fully below. The final rule continues to provide an essential level of safety and protection for workers at metal and nonmetal mines.

A comprehensive rock bolt standard was developed for the final rule. The standard addresses the quality of rock fixtures and installation, allows new technology to be introduced in a safe manner, and reduces recordkeeping requirements. Six existing standards on this subject were revised and combined.

In developing this final rule, MSHA has been responsive, to the extent possible, to the many comments received from the mining public. The agency has also clarified existing requirements and, where possible, included alternative compliance provisions.

Two new definitions and one revised definition are included. Five existing definitions are deleted.

B. Deletions

The final rule deletes five standards dealing with rock bolting sequence, shaft support, torquing tools and as applicable to underground mines, wall, bank or slope stability. Existing standard 57.3058, rock bolting sequence, requires that rock bolts be installed as soon as practical after an area is exposed. This standard was revised and proposed as § 58.3301. However, the standard is no longer necessary and is deleted since standard 56/57.3200 provides that ground conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area.

One commenter suggested deleting existing standard 57.3029, proposed as § 58.3160, shaft support. The existing standard required that pillars and other support systems have sufficient strength to support operating shafts. Should any situation arise where a shaft is improperly supported, it would be covered by § 56/57.3200 of the final rule. MSHA has determined that existing standard 57.3029 is unnecessary for that reason, and has deleted it from the final rule.

The proposed rule included standard 58.3362, torquing tools, which modified existing standard 57.3033, addressing the availability of calibrated torque meters or wrenches. The requirement that calibrated torque meters or wrenches be available is deleted in the final rule because section 56/57.3300 requires that the tension of rock bolts be accurately measured by torque tests. Since calibrated torquing tools must be available in order to accurately check the torque, safety is not diminished by deletion of the previously existing standard, 57.3033. At the same time, possible introduction of new technology is facilitated by not specifying the type of tool that must be used.

The proposed rule divided existing standard 57.3022, examination of ground conditions and ground control practices into three standards: 58.3401, examination of ground conditions; 58.3402, examination of ground control practices; and 58.3200, correction of hazardous conditions. Commenters recommended that the portions of this standard proposed as 58.3402 be deleted because of redundancy with other standards. MSHA agrees. Section 56/57.3401 in the final rule appropriately addresses the needed ground examinations. The final rule must be flexible enough to accommodate the variety of situations which may arise while assuring the safety of persons working in the mine. Circumstances may occasionally require the attention of a supervisor at a particular area of the mine, preventing a visit to a work place during a shift. Requiring inspection during each visit by a supervisor, as was proposed by MSHA in 58.3402 could actually discourage supervisory visits.

The final rule revises and combines existing standards 56.3001, wall, bank and slope stability; and 56.3003, bench width and height, because both relate to wall, bank or slope stability. The scope of these standards has been limited to surface mines and covered in § 56.3130 (wall, bank, and slope stability). Section 56/57.3200 (correction of hazardous conditions), would apply should similar hazards exist at surface areas of underground mines. Therefore, §§ 57.3001 and 57.3003 relating to underground mines have been deleted.

C. Definitions

The final rule adds definitions for "rock fixture" and "rock burst", revises the definition of "travelway", and deletes the definitions of "scaling", "active workings", "barricaded", "shaft", and "working place". The terms "rock fixture" and "travelway" are defined in 56/57.3600. "Rock burst" is defined in § 57.3000.

Several commenters requested that MSHA add a definition for "rock bolt". MSHA defined the term in the proposed rule. However, other commenters suggested use of the term "rock fixture" instead of rock bolt, stating that a broad definition for "rock bolt" could lead to confusion. MSHA believes the term rock fixture is appropriate for the wide variety of rock support or strengthening systems now in use, as well as those which may be developed in the future. The final rule defines the term rock fixture. Rock fixture encompasses all devices, whether threaded or unthreaded, used to support the ground. It is MSHA's intent to include all types of rock bolts and rock stabilizing devices in the scope of the definition of "rock fixture".

The final rule contains a new definition for "rock burst." A definition is necessary for clarification and to distinguish rock burst from the term "outburst", a mining phenomenon associated with high pressure gas in some metal and nonmetal mines. For purposes of this subpart, the agency is restricting the application of "rock burst" to bursts resulting from stress build-up within the rock structure, as distinguished from bursts resulting from pressurized mine gases. In response to commenters who suggested further clarification, MSHA has added the sentence, "Rock burst does not include a burst resulting from pressurized mine gases." Further, MSHA has included the words "violent" and "large" to distinguish a rock burst from "popping," a phenomenon mentioned by commenters which is generally considered insignificant and may not be related to hazard-producing conditions.

"Scaling" is defined in the existing definitions as removal of insecure material from a face or highwall. MSHA's final rule deletes the definition of scaling since it is commonly understood in the mining community.

The existing standards define "active workings" for underground mines only (Part 57). One commenter stated that the term active workings, which appeared in the proposal for surface and underground mines (Parts 56 and 57), was inappropriate to surface mining. MSHA has determined that a definition for active workings is not necessary in the final rule since it has revised relevant standards to include specific language relating to "places where persons work or travel in performing their assigned tasks." The definitions for "barricaded", "shaft", and "working place" are deleted since the terms no longer appear in Subpart B.

D. Section-by-section discussion

The following section-by-section analysis discusses the final rule and its effect on existing standards.

Mining Methods

Section 56.3130 Wall, bank, and slope stability. This final rule provision combines and revises existing standards 56.3001 and 56.3003 because both relate to wall, bank or slope stability. The scope of this standard is limited to surface mines, since the specific hazard addressed would be expected only at surface mines. The underground standard, § 57.3200, would be applicable should a similar hazard exist at surface areas of underground mines. Therefore, §§ 57.3001 and 57.3003 relating specifically to underground mines have been deleted.

Several commenters objected to the phrase "assure wall, bank, and slope stability" used in the proposal, stating that it implied that an operator would be required to guarantee that a fall of ground would not occur. One commenter suggested the use of the term "maintain" rather than "assure". MSHA has adopted the suggestion and has used "maintain" in the final rule.

A commenter stated that the proposed standard appears to be directed toward things rather than persons. MSHA has retained the standard, since it is designed to address the hazard presented to persons from a failure of wall, bank, or slope. The scope of the standard, however, is limited to places where persons work or travel in performing their assigned tasks.

Another commenter felt that the proposed standard could be enforced only after an accident occurred. Methods of detecting instability are available and can be the basis for preventing the occurrence of injuries. The final rule states the intent of the standard in performance-oriented language and identifies the hazard by using the word "stability". Several commenters suggested that the language should be more specific. MSHA believes that the language must be broad enough to apply to the wide variety of conditions encountered.

When benches are included in the "mining method," there must also be a maintenance system selected to prevent the deterioration of the ground from creating a fall of ground hazard. When required, the benches must be able to serve as catch benches. MSHA agrees with the commenter who stated that may factors contribute to the determination of bench width and height. The standard provides a performance-oriented approach without restrictions on width and height of benches, other than those necessitated by the equipment selected for the maintenance function.

Section 56.3131 Pit or quarry wall perimeter. The final rule revises existing standard 56/57.3002. The scope of this standard is limited to surface mines, since the specific hazard addressed would be expected only at surface mines. Other standards such as 56/57.3200 would be applicable should a similar hazard exist at surface areas of underground mines.

The fall of materials from the perimeter of a pit or quarry wall, often caused by weather or nearby mining activity, can present a serious hazard to workers. The existing standard requires that loose, unconsolidated material be stripped at least 10 feet from the top of pit or quarry walls and that the material be sloped to the angle of repose. Commenters objected, stating that in certain cases where unconsolidated ore is mined, stripping would be impractical and would add to the cost of mining without producing an increase in safety. MSHA agrees. The final rule allows the option of either stripping or sloping to correct the hazard. When stripping is used, the area must be stripped back for a minimum of 10 feet from the perimeter. This distance would provide protection from falling material for miners working in the pit or quarry.

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In addition, the rule requires that other perimeter fall hazards besides loose, unconsolidated material be corrected. For example, when a large boulder or over-hanging tree on the perimeter poses a hazard, it would have to be removed. The particular method of correcting or eliminating the hazard would be left to the discretion of the operator, thereby providing flexibility for compliance. The perimeter must be checked at the frequency specified for in 56.3401 (examination of ground conditions) to make certain it is free of other fall of ground hazards.

Scaling and Support

Section 56/57.3200 Correction of hazardous conditions. This provision combines and revises portions of existing standards 56/57.3004, 56/57.3005, and the third sentence of 57.3022. The standard restricts work or travel where a fall of ground hazard exists. The standard has broad application and would apply wherever such a hazard is present. Safe means for scaling are addressed in standards 56/57.3201 and 56/57.3202. Examination of ground is addressed in standard 56/57.3401.

Several commenters felt that the existing language which requires a barricade where hazardous ground conditions exist was not appropriate under all circumstances. MSHA agrees and adopts a "barrier" concept as suggested by one commenter. These barriers have openings to allow access for persons who are correcting the hazardous conditions. Examples of barriers would be piles of muck, piles of large boulders or a timber barricade. Reflective hazard warning tape would not be a sufficient barrier to impede passage. The proposed standard used the phrase "conspicuous obstruction" to describe the barrier. In response, several commenters suggested that the phrase "conspicuous obstruction" was not clear, and that the term "barrier" be used. For clarity, MSHA adopts the term "barrier" in the final rule.

A commenter suggested that a barrier was not necessary while work was being performed to correct the hazard. MSHA agrees and requires the posting of warnings only when the area is unattended. MSHA has revised the standard to require that the area be restricted from inadvertent travel by posting and a barrier be installed to impede unauthorized entry when the area is left unattended. The agency believes it is necessary to require signs and barriers since they serve complimentary functions. Signs provide a warning of the hazardous condition and identify the nature of the hazard. The barrier impedes entry in the event the signs are not heeded. Barriers in these situations are often built of mined material which may not immediately be recognized as a restriction to entry. The signs will clarify the purpose of the barrier.

Section 56/57.3201 Location for performing scaling. This section revises existing standard 56/57.3006, which covers safe locations for scaling, and specifies that persons shall "approach from above" areas to be scaled. The final rule provides for the use of alternative techniques which may provide a safer approach than those strictly performed from "above". The new language also clarifies that a "safe" location is one which will not expose persons to injury from falling material.

It is important to have the person scale from a location which takes into account exposure to injury from falling material. The standard requires that either scaling be performed from a location that does not expose persons to this hazard, or other protection from falling material be provided.

Some commenters suggested that scaling includes an inherent risk of injury when performed in certain areas, such as in raises. In confined areas, such as raises, where long scaling bars cannot be used, the final rule allows for other appropriate protective measures to be taken.

Section 56/57.3202 Scaling tools. This section revises existing standard 56/57.3051. The final rule addresses hazards covered by the use of improper scaling tools.

A commenter suggeste deletion of proposed rule language which prohibited use of picks or other short tools under circumstances where their use places the person in danger from falling material. The performance-oriented language of the final rule incorporates this suggestion without lessening the effectiveness of the standard. In developing the final rule, MSHA has recognized two distinct hazards related to the scaling process: injury from falling materials; and injury from use of an improperly designed bar. The final rule addresses these hazards by requiring that a scaling bar be of a length and design that will allow the removal of loose material and will not expose the person performing this work to injury. Bars designed with two sharp ends to prolong useful life have caused severe lacerations and other more serious injuries when the bar has been struck by falling material. The new provision of the standard would preclude this type of design. The standard would allow a scaling bar that is blunt on the end held by the user.

Section 56/57.3203 Rock fixtures. This section revises and combines existing standards 56/57.3053, 56/57.3054, 56/57.3055, 56/57.3056, 56/57.3057. It adds language which addresses the quality of rock fixtures and their installation, allowing for the introduction of new support systems.

Several commenters objected to the application of this standard to surface operations. It is appropriate for the standard to apply to both surface and underground mines because rock fixtures are being used for support in both types of mines. MSHA recognizes that not all mines use rock fixtures. Where they are not used, this standard would not apply.

The proposed rule incorporated by reference the American Society for Testing and Materials' publication, "Standard Specification for Roof and Rock Bolts and Accessories" (ASTM F432–83). Several commenters objected to the incorporation by reference, stating that it would unnecessarily lock-in technology. Commenters also expressed concern that the mine operator would be required to have the same knowledge of design criteria as the bolt manufacturer. In response to these concern MSHA has revised the final rule.

The final rule requires that a mine operator obtain a certification from the manufacturer that rock bolts and accessories were manufactured and tested in accordance with ASTM F432–83. This is in accord with established industry practice in which manufacturers routinely furnish such information to the mine operator when requested to do so in a contract or purchase order. ASTM F432–83 is a widely recognized technical standard which, in addition to specifying exacting manufacturing criteria, provides for such a certification. The certification must be made available upon request to the Secretary or an authorized representative. Detailed knowledge of manufacturing criteria is not necessary for compliance; a showing of the certification document will be sufficient. The ASTM F432–83 document may be obtained from the publishers: The American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. It may also be examined at any Metal and Nonmetal Mine Safety and Health District or Subdistrict Office.

The final rule permits use of rock fixtures and accessories not addressed in ASTM F432–83 provided they are effective. Paragraph (b)(1) allows for the use of rock fixtures that are currently being used successfully under similar conditions.

It is essential that the quality of rock fixtures be maintained at an effective level. As technology evolves, new techniques and materials must assure this level of reliability and effectiveness. For this reason, the agency believes that untested or inadequate fixtures should not be used in metal and nonmetal mines. The final rule provides this assurance while maintaining maximum flexibility for the operator. Paragraph (b)(2) allows the use of any type of rock fixture that is shown to be effective through testing in the mine. The testing would be conducted in an area with similar conditions to those where the fixtures are expected to be used. Until testing demonstrates the effectiveness of these fixtures, access to the area must be controlled to permit entry only by those persons necessary for the testing process.

The final rule provides that a plus or minus 0.030 inch tolerance be permitted in the size of finishing bits. Some commenters stated that the minus tolerance need not be addressed. Hole diameter at the anchorage zone is critical. An ovresized hole can decrease anchorage capacity by allowing expansion of the anchorage component beyond its intended configuration. An undersized hole can prevent proper setting of an expansion shell. In addition, the pressure generated by rock bolting machines can force a rock fixture into an undersized hole leading to possible damage of the fixture.

In addition to clarifying existing language relating to installing and testing rock bolts tensioned by torguing, the standard require torque tests on the first, the last, and every tenth bolt installed in each work area, rather than on every fourth bolt as currently required. This is more appropriate for the variety of conditions which exist in metal and nonmetal mines and provides the needed safety.

The final rule specifies the requirements for testing rock fixtures to determine proper installation. Under this section, mine operators would no longer be required to keep a record of tests, but instead would certify that tests have been conducted. The final rule also addresses the use of bearing plates and grouted material.

Certain language contained in the proposed standard has been deleted or revised where redundant. An example is the requirement to test torque "with a calibrated torque meter or torque wrench". It is unnecessary to specify the type of equipment since there is a requirement that the torque be accurately determined immediately after installation. Proper torquing is inherently dependent on the use of properly functioning tools. The proposed standard also required that the operator make the manufacturers' specification and installation instructions for rock bolts available to MSHA. This language is not necessary since these instructions are being furnished to MSHA when requested.

Section 57.3360 Ground support use. This provision revises and combines existing underground standards 57.3020, which deals with ground support use and 57.3026 which addresses hazards associated with timbering.

The circumstances which necessitate ground support have been clarified. Under the final rule, ground conditions and mining experience are the criteria for determining if support is required. The standard does not specify the type of ground support system to be used, only that it control the ground. When rock fixtures are used for support, stanard 56/57.3203, rock fixtures, would also apply.

The final rule requires that the support system be designed, installed, and maintained to control the ground and that damaged, loosened, or dislodged timbers used for ground support be repaired or replaced prior to any work or travel in the affected area of an underground mine. Under the final rule, changes to support systems would have to meet this performance requirement, making it unnecessary to require a demonstration of effectiveness.

Precautions

Section 56/57.3400 Secondary breakage. This provision revises existing standard 56/57.3050. It deals with the hazards associated with secondary breakage. It is important that the material be properly secured before starting breakage operations, and that the breakage be performed from a location that would not expose persons to danger.

Section 56/57.3401 Examination of ground conditions. This provision combines existing standards 56/57.3006, 56/57.3009, and 57.3022. The third sentence of existing standard 57.3022 is included in standard 56/57.3200. The final rule addresses examination of ground conditions by supervisors or designated persons and consolidates proposed standard 58.3401 (examination of ground conditions) and 58.3402 (examination of ground practices) into one standard.

MSHA's preproposal draft required supervisors to examine ground conditions during each visit of an "active working". Active workings were defined as "areas at, in or around a mine or plant where men work or travel." For each visit, even if on a daily basis, the supervisor would have been required to inspect the ground. Most commenters objected to this language as being too broad. Several indicated it might actually impede necessary supervisory visits to work places. The supervisors may be unprepared or have inadequate time to conduct an inspection of ground conditions along haulageways, travelways, or at the work place during such a visit. One commenter stated that ground conditions at production faces must be examined by supervisors on a daily basis.

In response to these commenters, the agency limited the application of this standard in the proposed rule to "working places", which was defined as "any area where work is being performed". Another commenter felt this language required "firebossing", or examining the mine each day for all types of hazards. The language of the final rule clarifies the agency's intent with respect to the nature of the examination. The final rule requires examination for loose ground in areas where work is to be performed prior to commencing work, after blasting, and as ground conditions warrant. Because ground conditions along haulageways and travelways do not change as rapidly as in areas where work is being performed, the final rule establishes at least weekly examinations, an appropriate timeframe for traveled areas.

Existing underground standard 57.3022 requires periodic examination of haulageways and travelways. Between February 1978 and December 1984, thirteen fatalities occurred in haulageway and travelway areas where ground fell on miners and the vehicles they were operating. Eleven of these fatalities occurred at surface mines, and two at underground mines. The frequency of periodic inspection of haulageways and travelways is clarified in the final rule as weekly or more often if changing ground conditions warrant.

Infiltration of water, air slaking, and vibration from blasting are principal causes of ground deterioration along underground haulageways and travelways. At surface operations, highwalls or banks adjoining travel routes could present ground fall hazards commonly caused by vibration from blasting and climatic conditions such as rain, snow, freeze, and thaw. The standard is broadened to also require examination of these areas on a weekly basis or more often if changing ground conditions warrant. Although all of the

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forces which cause deteriorating ground conditions do not occur continually, their combined effect requires that a frequency of examination be established. Supervisors and other designated examiners commonly travel these routes on a daily basis. The weekly examination requirement will impose no unnecessary burden on mine operators but will provide the desired measure of safety for miners. More frequent examinations would be required only if conditions were such that safety could not be achieved by the weekly schedule.

Examinations may be done by appropriate supervisors or other designated persons experienced in examining and testing for loose ground who have been designated by the mine operator to perform the task. Since the qualifications for such persons are set out in the standard, the more general term "competent person", which appeared in existing 56/57.3006, is deleted from the final rule.

Section 56/57.3430 Activity between machinery or equipment and the highwall or bank. This section revises existing standard 56/57.3012. The scope of this standard has been limited to surface mines and surface areas of underground mines since the specific hazard addressed would occur only at surface areas. It addresses the need for clear paths of escape from fall of ground. Between 1978 and 1984, 11 surface fatalities occurred when miners were struck by falling ground while working between equipment and the highwall and bank.

MSHA adopts the suggestion of several commenters to allow travel where equipment breakdown requires the equipment operator to exit between the equipment and the pit wall or bank. In addition, the final rule changes the word "equipment" to "machinery or equipment" to clarify its intent.

Section 57.3460 Maintenance between machinery or equipment and ribs. This new provision addresses the seriousness of accidents which have occurred underground from falling material pinning maintenance personnel against the machinery or equipment. Maintenance workers may be called into an active mining area to repair equipment. While working between the equipment and the rib, fatalities have occurred when falling material pinned the employees against the equipment and restricted their escape route. Several commenters suggested that maintenance should be allowed if the area was checked and scaled as necessary prior to work. MSHA agrees with this suggestion and the final rule permits maintenance where the area has been tested and has been secured when necessary to assure safety. The word "equipment" has been changed to "machinery or equipment" to clarify the intent of the standard. Other editorial changes were also made for clarity.

Section 57.3461 Rock bursts. This provision revises existing standard 57.3035. It addresses reporting, detection, and control of rock bursts in mines where rock bursts have occurred. Although the rock burst phenomena has occurred primarily in the Coeur d'Alene district of Idaho, a burst carries a potential for disaster because it may strike in any area, and a large number of miners may be present. This standard requires that a rock burst be reported to MSHA within 24 hours so that the information may be immediately disseminated to other mine operators who have similar problems. This reporting requirement differs from the immediate reporting required in 30 CFR Part 50, in that it recognizes that rock bursts are distinguishable from outbursts, a term applicable to gassy mines. The final rule requires that rock bursts be reported upon the occurrence of any one of four conditions: withdrawals of miners, disruption of mining activity, impairment of ventilation, or impedance of passage. The standard also requires that a rock burst control plan be implemented and reviewed as conditions warrant. This plan is necessary to provide systematic evaluation and monitoring of critical conditions within the mine so that occurrences of rock bursts can be reduced. It is MSHA's intent that this information be used for the benefit of all mines subject to rock bursts. Editorial changes are also made to the existing standard.

The final rule replaces the requirement for a comprehensive rock burst detection plan with a requirement for a rock burst control plan. MSHA agrees with the comment that this change would provide for an overall plan to limit the effect of rock bursts, of which a detection plan may be only one aspect. Procedures such as mine planning, detecting, monitoring, and destressing may be included in the overall control plan.

MSHA recognizes that while current technology cannot eliminate rock bursts, they must be appropriately controlled. The final rule reflects this approach by requiring that the plan include measures to minimize exposure of persons to burst-prone areas. The final rule also contains a provision requiring that the plan be implemented within ninety days after a rock burst has occurred. Ninety days is sufficient time to evaluate the possible causes of the rock burst and develop a control plan for the future. The requirement that the plan be available to a representative of miners is consistent with the statutory intent that miners be aware of unique hazards, such as those associated with rock bursts, and actions to be taken in the event of such an occurrence.

The proposed rule specified updating of rock burst plans every 12 months, or more often as conditions or available technology warrant. The need for plan revisions is based upon the changing ground conditions as mining progresses without regard to specific time spans. The twelve-month requirement has therefore been deleted from the final rule.

E. Derivation Table.

The following derivation table lists the number of each standard in the final rule (New No.), the number of the standard in the proposed rule (Proposed No.), and the number of the old standard (Old No.).

DERIVATION TABLE

New No.	Proposed No.	Old No.
56/57.3000	58.3000	56/57.2.
56.3130	58.3130 (S)	56.3001 and .3003.
Removed	Removed	57.3001 and .3003.
56.3131	58.3131 (S)	56/57.3002.
Removed	58.3160 (U)	57.3629.
56/57.3200	58.3200 (G)	56/57.3004, .3005 and .3022.
56/57.3201	58.3201 (G)	56/57.3006.
56/57.3202	58.3202 (G)	56/57.3051.
56/57.3203	58.3300 (G)	56/57.3053 through 56/57.3057.
Removed	58.3300 (G)	57.3056.
57.3360	58.3360 (G), and 58.3361 (U).	57.3020, and .3026.
Removed	58.3362 (U)	57.3033.
56/57.3400	58.3400 (G)	56/57.3050.
56/57.3401	58.3401 (G), and 58.3301 (G).	56/57.3008, .3009 and .3022.
56/57.3401	58.3402 (G)	57.3022.
56/57.3430	58.3430 (S)	56/57.3012.
57.3460	58.3460 (U)	None.
57.3461	58.3161	57.3035.

F. Redesignation Table

For the convenience of the readers, the following redesignation table cross-references the existing standard numbers (Old No.) with the standard numbers used in the final rule (New No.).

REDESIGNATION TABLE

Old No.	New No.
56/57.2	56/57.3000.
56.3001	56.3130.
57.3001	Removed.
56/57.3002	56.3131.
56.3003	56.3130
57.3003	Removed.
56/57.3004	56/57.3200.
56/57.3005	56/57.3200.
56/57.3006	56/57.3201.
56/57.3008	56/57.3401.
56/57.3009	56/57.3401.
56/57.3012	56/57.3430.

REDESIGNATION TABLE—Continued

Old No.	New No.
57.3020	57.3360.
57.3022	56/57.3200 and .3401.
57.3026	57.3356.
57.3029	Removed.
57.3033	Removed.
57.3035	57.3461.
56/57.3050	56/57.3400.
56/57.3051	56/57.3202.
56/57.3053	56/57.3203.
56/57.3054	56/57.3203.
56/57.3055	56/57.3203.
56/57.3056	56/57.3203.
56/57.3057	56/57.3203.
57.3058	Removed.
None	57.3460.

III. Executive Order 12291 and Regulatory Flexibility Act

Under Executive Order 12291, MSHA has prepared an analysis to identify potential costs and benefits associated with the changes to its ground control standards for metal and nonmetal mines. The Agency has incorporated this analysis into the Final Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, summarized below, MSHA has determined that the final rule will neither result in major cost increases nor have an effect of $100,000,000 or more on the economy. Because the final rule does not meet the criteria for a major rule, a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate and include, wherever possible, compliance alternatives which minimize any adverse impact on small businesses. The final rule contains many alternatives to the existing regulations, some of which will especially benefit small mining operations. In addition, the final rule clarifies compliance responsibilities, adopts performance-oriented criteria, and reduces recordkeeping provisions.

In the following summary of the Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the final rule with the costs of the existing requirements. A copy of the full analysis is available upon request.

MSHA estimates that the total initial cost associated with the existing requirements amounts to approximately $90.6 million, compared to approximately $79.9 million for the final rule. Annual recurring costs associated with the existing standards are $90.3 million, compared to $79.8 million for the final rule. The initial and recurring costs associated with the elimination of hazards at the top of pit or quarry wall perimeters, the control of fall of ground hazards, and the examination of ground conditions constitute about 96% of the cost of the final rule.

The final rule represents an initial and an annual recurring cost reduction of 12% when compared to the existing standards. Small mines would receive an estimated 14% cost reduction. Small mines represent 88% of those mines affected by the final rule and incur about 51% of the cost of the final rule.

For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees. The final rule will not present a significant economic impact on a substantial number of small businesses under the criteria of the Regulatory Flexibility Act.

In developing cost estimates, MSHA has taken into consideration industry-wide safety practices. Current compliance costs are related to the following requirements: labor, equipment purchase and maintenance, and recordkeeping. In calculating the costs of the final rule, the agency has also projected capital expenditures and recurring costs.

The primary benefit of the final rule is the improved protection for miners who are endangered by hazards related to falls of roof, face, rib, side, and highwall in metal and nonmetal mines. The final rule will reduce costs to the mining industry through alternative compliance methods without diminishing the safety of persons who work at the Nation's mines. For example, the final standard requiring that the top of the pit or quarry wall perimeters be stripped or sloped back, rather than stripped and sloped as required by the existing standard, reduces annual compliance costs by almost $7 million.

IV. Paperwork Reduction Act

The recordkeeping provisions in the existing standard concerning anchorage tests has been eliminated. The final rule requires the mine operator to certify that tests were conducted. The rock fixture standard includes certification of manufacturing parameters and imposes no recordkeeping burden on the mine operator. It would, however, be incumbent upon the fixture manufacturer to supply this certification to the purchaser upon request. However, since this certification is already a practice routinely followed by manufacturers who have adopted the relevant industry consensus standard, ASTM F432–83, the additional burden hours imposed by the final rule would be nominal. The existing standards require a "comprehensive" rock burst detection plan, whereas the final rule delineates requirements for a rock burst control plan. Since these provisions would affect fewer than ten mines, impact would also be minimal.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 1219–0097.

V. List of Subjects in 30 CFR Parts 56 and 57

Mine safety and health, Metal and nonmetal mining, Ground control.

Dated: October 1, 1986.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

Part 56, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations, is amended as follows:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

1. Subpart B of Part 56 is revised to read as follows:

Subpart B—Ground Control

Sec.

56.3000 Definitions.

Mining Methods

56.3130 Wall, bank, and slope stability.
56.3131 Pit or quarry wall perimeter.

Scaling and Support.

56.3200 Correction of hazardous conditions.
56.3201 Location for performing scaling.
56.3202 Scaling tools.
56.3203 Rock fixtures.

Precautions

56.3400 Secondary breakage.
56.3401 Examination of ground conditions.
56.3430 Activity between machinery or equipment and the high wall or bank.

Subpart B—Ground Control

Authority: 30 U.S.C. 811

§ 56.3000 Definitions.

The following definitions apply in this subpart.

Rock fixture. Any tensioned or nontensioned device or material inserted into the ground to strengthen or support the ground.

Travelway. A passage, walk, or way regularly used or designated for persons to go from one place to another.

Mining Methods

§ 56.3130 Wall, bank, and slope stability.

Mining methods shall be used that will maintain wall, bank, and slope stability in places where persons work or travel in performing their assigned

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tasks. When benching is necessary, the width and height shall be based on the type of equipment used for cleaning of benches or for scaling of walls, banks, and slopes.

§ 56.3131 Pit or quarry wall perimeter.

In places where persons work or travel in performing their assigned tasks, loose or unconsolidated material shall be sloped to the angle of repose or stripped back for at least 10 feet from the top of the pit or quarry wall. Other conditions at or near the perimeter of the pit or quarry wall which create a fall-of-material hazard to persons shall be corrected.

Scaling and Support

§ 56.3200 Correction of hazardous conditions.

Ground conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area. Until corrective work is completed, the area shall be posted with a warning against entry and, when left unattended, a barrier shall be installed to impede unauthorized entry.

§ 56.3201 Location for performing scaling.

Scaling shall be performed from a location which will not expose persons to injury from falling material, or other protection from falling material shall be provided.

§ 56.3202 Scaling tools.

Where manual scaling is performed, a scaling bar shall be provided. This bar shall be of a length and design that will allow the removal of loose material without exposing the person performing this work to injury.

§ 56.3203 Rock fixtures.

(a) When rock bolts and accessories addressed in ASTM F432–83, "Standard Specification for Roof and Rock Bolts and Accessories", are used for ground support the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactued and tested in accordance with the specifications of ASTM F432–83; and,

(2) Make this certification available to an authorized representative of the Secretary.

(b) Fixtures and accessories not addressed in ASTM F432–83 may be used for ground support provided they—

(1) Have been successful in supporting the ground in an area with similar strata, opening dimensions and ground stresses in any mine; or

(2) Have been tested and shown to be effective in supporting ground in an area of the affected mine which has similar strata, opening dimensions, and ground stresses as the area where the fixtures are expected to be used. During the test process, access to the test area shall be limited to persons necessary to conduct the test.

(c) Bearing plates shall be used with fixtures when necessary for effective ground support.

(d) The diameter of finishing bits shall be within a tolerance of plus or minus 0.030 inch of the required diameter for the anchor used. When separate finishing bits are used, they shall be distinguishable from other bits.

(e) Damaged or deteriorated cartridges of grouting material shall not be used.

(f) When rock bolts tensioned by torquing are used as a means of ground support,

(1) Selected tension level shall be—

(i) At least 50 percent of either the yield point of the bolt or anchorage capacity of the rock, whichever is less; and

(ii) No greater than the yield point of the bolt or anchorage capacity of the rock.

(2) The torque of the first bolt, every tenth bolt, and the last bolt installed in each work area during the shift shall be accurately determined immediately after installation. If the torque of any fixture tested does not fall within the installation torque range, corrective action shall be taken.

(g) When grouted fixtures can be tested by applying torque, the first fixture installed in each work place shall be tested to withstand 150 foot-pounds of torque. Should it rotate in the hole, a second fixture shall be tested in the same manner. If the second fixture also turns, corrective action shall be taken.

(h) When other tensioned and nontensioned fixtures are used, test methods shall be established to verify their effectiveness.

(i) The mine operator shall certify that tests were conducted and make the certification available to an authorized representative of the Secretary.

Precautions

§ 56.3400 Secondary breakage.

Prior to secondary breakage operations, material to be broken, other than hanging material, shall be positioned or blocked to prevent movement which would endanger persons in the work area. Secondary breakage shall be performed from a location which would not expose persons to danger.

§ 56.3401 Examination of ground conditions.

Persons experienced in examining and testing for loose ground shall be designated by the mine operator. Appropriate supervisors or other designated persons shall examine and, where applicable, test ground conditions in areas where work is to be performed prior to work commencing, after blasting, and as ground conditions warrant during the work shift. Highwalls and banks adjoining travelways shall be examined weekly or more often if changing ground conditions warrant.

§ 56.3430 Activity between machinery or equipment and the highwall or bank.

Persons shall not work or travel between machinery or equipment and the highwall or bank where the machinery or equipment may hinder escape from falls or slides of the highwall or bank. Travel is permitted when necessary for persons to dismount.

Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations, is amended as follows:

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

1. Subpart B of Part 57 is revised to read as follows:

Subpart B—Ground Control

Sec.

57.3000 Definitions.

Scaling and Support—Surface and Underground

57.3200 Correction of hazardous conditions.
57.3201 Location for performing scaling.
57.3202 Scaling tools.
57.3203 Rock fixtures.

Scaling and Support—Underground Only

57.3360 Ground support use.

Precautions—Surface and Underground

57.3400 Secondary breakage.
57.3401 Examination of ground conditions.

Precautions—Surface Only

57.3430 Activity between machinery or equipment and the highwall or bank.

Precautions—Underground Only

57.3460 Maintenance between machinery or equipment and ribs.
57.3461 Rock bursts.

Subpart B—Ground Control

Authority: 30 U.S.C. 811.

§ 57.3000 Definitions.

The following definitions apply in this subpart.

Rock burst. A sudden and violent failure of overstressed rock resulting in the instantaneous release of large amounts of accumulated energy. Rock burst does not include a burst resulting from pressurized mine gases.

Rock fixture. Any tensioned or nontensioned device or material inserted into the ground to strengthen or support the ground.

Travelway. A passage, walk, or haulageway regularly used or designated for persons to go from one place to another.

Scaling and Support—Surface and Underground

§ 57.3200 Correction of hazardous conditions.

Ground conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area. Until corrective work is completed, the area shall be posted with a warning against entry and, when left unattended, a barrier shall be installed to impede unauthorized entry.

§ 57.3201 Location for performing scaling.

Scaling shall be performed from a location which will not expose persons to injury from falling material, or other protection from falling material shall be provided.

§ 57.3202 Scaling tools.

Where manual scaling is performed, a scaling bar shall be provided. This bar shall be of a length and design that will allow the removal of loose material without exposing the person performing the work to injury.

§ 57.3203 Rock fixtures.

(a) When rock bolts and accessories addressed in ASTM F432–83, "Standard Specification for Roof and Rock Bolts and Accessories", are used for ground support, the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–83; and,

(2) Make this certification available to an authorized representative of the Secretary.

(b) Fixtures and accessories not addressed in ASTM F432–83 may be used for ground support provided they—

(1) Have been successful in supporting the ground in an area with similar strata, opening dimensions and ground stresses in any mine; or

(2) Have been tested and shown to be effective in supporting ground in an area of the affected mine which has similar strata, opening dimensions, and ground stresses as the area where the fixtures are expected to be used. During the test process, access to the test area shall be limited to persons necessary to conduct the test.

(c) Bearing plates shall be used with fixtures when necessary for effective ground support.

(d) The diameter of finishing bits shall be within a tolerance of plus or minus 0.030 inch of the required diameter for the anchor used. When separate finishing bits are used, they shall be distinguishable from other bits.

(e) Damaged or deteriorated cartridges of grouting material shall not be used.

(f) When rock bolts tensioned by torquing are used as a means of ground support,

(1) Selected tension level shall be—

(i) At least 50 percent of either the yield point of the bolt or anchorage capacity of the rock, whichever is less; and

(ii) No greater than the yield point of the bolt or anchorage capacity of the rock.

(2) The torque of the first bolt, every tenth bolt, and the last bolt installed in each work area during the shift shall be accurately determined immediately after installation. If the torque of any fixture tested does not fall within the installation torque range, corrective action shall be taken.

(g) When grouted fixtures can be tested by applying torque, the first fixture installed in each work place shall be tested to withstand 150 foot-pounds of torque. Should it rotate in the hole, a second fixture shall be tested in the same manner. If the second fixture also turns, corrective action shall be taken.

(h) When other tensioned and nontensioned fixtures are used, test methods shall be established and used to verify their effectiveness.

(i) The mine operator shall certify that tests were conducted and make the certification available to an authorized representative of the Secretary.

Scaling and Support—Underground Only

§ 57.3360 Ground support use.

Ground support shall be used where ground conditions, or mining experience in similar ground conditions in the mine, indicate that it is necessary. When ground support is necessary, the support system shall be designed, installed, and maintained to control the ground in places where persons work or travel in performing their assigned tasks. Damaged, loosened, or dislodged timber use for ground support which creates a hazard to persons shall be repaired or replaced prior to any work or travel in the affected area.

Precautions—Surface and Underground

§ 57.3400 Secondary breakage.

Prior to secondary breakage operations, the material to be broken, other than hanging material, shall be positioned or blocked to prevent movement which would endanger persons in the work area. Secondary breakage shall be performed from a location which would not expose persons to danger.

§ 57.3401 Examination of ground conditions.

Persons experienced in examining and testing for loose ground shall be designated by the mine operator. Appropriate supervisors or other designated persons shall examine and, where applicable, test ground conditions in areas where work is to be performed, prior to work commencing, after blasting, and as ground conditions warrant during the work shift. Underground haulageways and travelways and surface area highwalls and banks adjoining travelways shall be examined weekly or more often if changing ground conditions warrant.

Precautions—Surface Only

§ 57.3430 Activity between machinery or equipment and the highwall or bank.

Persons shall not work or travel between machinery or equipment and the highwall or bank where the machinery or equipment may hinder escape from falls or slides of the highwall or bank. Travel is permitted when necessary for persons to dismount.

Precautions—Underground Only

§ 57.3460 Maintenance between machinery or equipment and ribs.

Persons shall not perform maintenance work between machinery or equipment and ribs unless the area has been tested and, when necessary, secured.

§ 57.3461 Rock bursts.

(a) Operators of mines which have experienced a rock burst shall—

(1) Within twenty four hours report to the nearest MSHA office each rock burst which:

(i) Causes persons to be withdrawn;

(ii) Impairs ventilation;

(iii) Impedes passage; or

(iv) Disrupts mining activity for more than one hour.

(2) Develop and implement a rock burst control plan within 90 days after a rock burst has been experienced.

(b) The plan shall include—

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(1) Mining and operating procedures designed to reduce the occurrence of rock bursts;

(2) Monitoring procedures where detection methods are used; and

(3) Other measures to minimize exposure of persons to areas which are prone to rock bursts.

(c) The plan shall be updated as conditions warrant.

(d) The plan shall be available to an authorized representative of the Secretary and to miners or their representatives.

[FR Doc. 86-22779 Filed 10-7-86; 8:45 am]
BILLING CODE 4510-43-M

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Federal Register
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Wednesday, October 8, 1986

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Defense Production Act Amendments of 1986. (Oct. 3, 1986; 100 Stat. 1117; 2 pages) Price: $1.00

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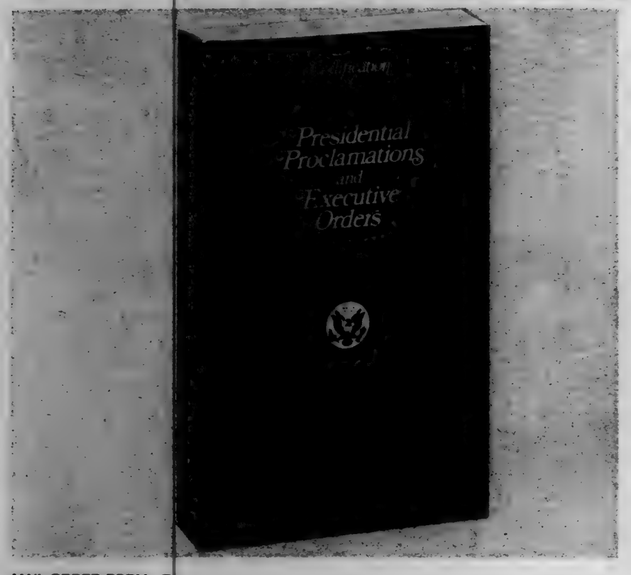
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federal register

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10-9-86
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket Nos. R–0491 and R–0511]

Bank Holding Companies and Change in Bank Control; Permissible Insurance Activities For Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rulemaking.

SUMMARY: The Board has adopted, with some modifications, a proposed revision of its Regulation Y dealing with permissible insurance activities, 12 CFR 225.25(b)(8). The Board proposed this revision (49 FR 9215, March 12, 1984) in order to reflect amendments to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("the BHC Act") contained in Title VI of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320 601; 96 Stat. 1469, 1536–38 (1982)) ("the Garn-St Germain Act"). This regulation seeks to clarify the scope of insurance activities the Board finds to be closely related to banking and permissible for bank holding companies under the Garn-St Germain Act. This revised regulation will replace in a single revised § 225.25(b)(8) (12 CFR 225.25(b)(8)), the current provisions of 225.25(b)(8) dealing with permissible insurance agency activities, and 225.25(b)(9) dealing with insurance underwriting activities.

In addition, on November 18, 1983 (48 FR 53125), the Board invited public comment on a proposal to eliminate the condition contained in note 7 to § 225.25(b)(9) of Regulation Y (12 CFR 225.25(b)(9), n. 7) requiring a showing of positive public benefits, generally in the form of rate reductions, by those bank holding companies applying to engage in the underwriting of credit life, credit accident and health, and involuntary unemployment insurance. The Board in adopting the amended insurance regulation has decided to eliminate this rate reduction requirement.

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Sidney M. Sussan, Assistant Director, Division of Banking Supervision and Regulation (202/452–2838), James E. Scott, Senior Counsel, Legal Division (202/452–3513) or Michael J. O'Rourke, Senior Attorney, Legal Division (202/452–3288), or for users of Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson, (202/452–3244), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In the Garn-St Germain Act amending section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)(A)–(G)), Congress has determined that insurance agency and underwriting activities are not closely related to banking and thus not generally permissible for bank holding companies under section 4(c)(8) of the BHC Act, except as contained in exemptions A through G of the statute. Moreover, the language of section 4(c)(8) lists the exemptions A through G as exceptions to the "closely related to banking" test, but not to the "proper incident" or public benefits test. *See,* for example, the Conference Report accompanying the Garn Act, S. Rep. No. 641, 97th Cong., 2d Sess. 91 (1982), which states ". . . thus [the Garn-St Germain Act] establishes that the sale of insurance does not, except for the activities subject to the exceptions, meet the 'closely related' test of section 4(c)(8) of the Bank Holding Company Act." The Board must still decide the public benefits issues, however, on a case-by-case basis. The Board has consistently interpreted the insurance exemptions in section 4(c)(8) as defining certain insurance activities for which bank holding companies may apply and which the Board may approve on a case-by-case basis. *See, e.g.,* dissenting views of Representative Patterson, H.R. Rep. No. 84, 98th Cong., 2d Sess. 15–16 (1980).

The Board's revised insurance regulation, § 225.25(b)(8) of Regulation Y, 12 CFR 225.25(b)(8), contains subsections (i) through (vii) which correspond to exemptions (A) through (G) of section 4(c)(8). Since certain of these exemptions deal with underwriting as well as agency activities, the Board has decided, for the purpose of clarity, to define both types of permissible activities in a single insurance provision, 12 CFR 225.25(b)(8). The present §§ 225.25 (b)(8) and (b)(9) will be deleted.

The following commentary is intended to describe and clarify the insurance activities permissible for bank holding companies under each provision of the amended regulation.

1. Activities Permissible Under Exemption A of the Garn Act

In paragraph (b)(8)(i) of § 225.25, the Board has determined that the following activities are permissible for bank holding companies:

(i) *Credit Insurance.* Acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is: (A) directly related to an extension of credit by the bank holding company or any of its subsidiaries; and (B) limited to assuring the repayment of the outstanding balance due on the extension of credit [7] in the event of the death, disability, or involuntary unemployment of the debtor.

[7] "Extension of credit" includes direct loans to borrowers, loans purchased from other lenders, and leases of real or personal property so long as the leases are nonoperating and full payout leases that meet the requirements of paragraph (b)(5) of this section.

Defining an Extension of Credit

The Board has permitted insurance activities by a bank holding company only with respect to its own extensions of credit and those of its subsidiaries, rather than extensions of credit by unaffiliated bank holding companies. Although some commenters argued that exemption A permits insurance activities with respect to extensions of credit by any bank holding company, the Board believes Congress intended to continue the Board's practice of permitting the sale and underwriting of insurance by a particular bank holding company only with respect to extensions of credit by that company. To decide otherwise would permit bank holding companies to engage in insurance activities in conjunction with extensions of credit by unaffiliated banks only if they are subsidiaries of a holding company rather than independent institutions.

Paragraph (i) of the revised regulation defines an "extension of credit" to

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include direct loans to borrowers, the purchase of loans from other lenders, and the lease of real or personal property so long as the leases meet all the criteria contained in § 225.25(b)(5) of Regulation Y (12 CFR 225.25(b)(5)), which defines leases that are "the functional equivalent of an extension of credit." This list is not intended to be exhaustive and the Board will decide on a case-by-case basis whether there are additional instruments that may qualify as extensions of credit for purposes of the sale and underwriting of insurance.

Defining an "Outstanding Balance Due"

Paragraph (i) limits the insurance coverage to the "outstanding balance due" on an extension of credit. As used in the regulation, the term "outstanding balance due" includes principal and interest and reasonable administrative fees outstanding on a loan as well as the balance of payments due in a lease transaction. It does not include the residual value of the leased item since the lessor owns the leased item and the lessee is not obligated to purchase the item by paying the residual value.

A bank holding company may sell or underwrite various kinds of life, disability, and unemployment insurance related to an extension of credit, provided the face amounts of such policies do not exceed the "balance due" on the underlying loans or leases. The insurance may provide for total repayment of the extension of credit upon the death of the borrower or for periodic payments on the extension of credit when the borrower is temporarily disabled or unemployed. Such single or periodic payments may not exceed the balance on the loan and thus provide for additional general life or accident coverage.

While ordinarily such credit-related insurance coverage would be declining term as payments reduce the balance due on an extension of credit, a bank holding company may write or sell a level term policy on non-amortizing loans. Policies written or sold pursuant to this paragraph, moreover, may be individual rather than group policies, and the premiums on such policies may be age-related. The language of exemption A requires only that the insurance guarantee repayment of the outstanding balance due on an extension of credit and not that it be limited to traditional group credit life insurance. While recognizing that the types of insurance permitted under exemption A are "generally underwritten as group policies covering certain classes of borrowers," the Senate Report on Title VI of the Garn Act (S. Rep. No. 536, 97th Cong., 2d Sess. 38 (1982)) (hereinafter "the Senate Report") does not indicate that such a requirement is mandatory.

The Board will continue to require that insurance policies sold or written to cover the "outstanding balance due" insure only named borrowers or lessees of a particular bank holding company. Accordingly, such policies could cover both spouses jointly only if both spouses were actual borrowers or lessees under the terms of the agreement with the bank holding company. The Board limited permissible insurance activities to actual debtors even prior to passage of the Garn-St Germain Act. *Irwin Union Corp.*, 80 Fed. Res. Bull. 138 (1974); *First Bancorp*, 39 FR 7493 (1974). *See also Federal Reserve Regulatory Service*, 4–337 and 4–590.

Paragraph (i) of the amended regulation contains three significant interpretations of the term "extension of credit" in exemption A of Garn-St Germain Act. It permits the sale and underwriting of credit-related life, accident and health, and involuntary unemployment insurance: (1) With respect to lease transactions where such lease transactions are the equivalent of loans, (2) in connection with loans secured by residential first mortgages, and (3) in connection with the servicing of loans originated or purchased by the applicant bank holding company and subsequently sold.

Leases as an Extension of Credit

The amended regulation explicitly permits the sale of life, disability, and involuntary unemployment insurance with respect to a lease transaction, provided the lease is the type of non-operating, full payout lease described as permissible for bank holding companies in § 225.25(b)(5) of Regulation Y (12 CFR 225.25(b)(5). Since the Board has determined that such leases are the "functional equivalent of an extension of credit," it believes that this type of lease is encompassed in the term "extension of credit" as it is used in exemption A of the Garn-St Germain Act. The Board also notes that it has previously authorized the sale of credit-related life and accident and health insurance in connection with leases, and it finds no evidence that Congress intended to overturn the Board's ruling.

The Board's conclusion is supported by a number of commenters who suggest that in practice a lease and a loan are functionally and operationally equivalent. The bank holding company makes the same sort of credit analysis in each case. The bank holding company then uses this credit analysis, the prevailing interest rates, the term of the transaction, and consideration of available financing alternatives in preparing the lease or loan package. In each case the bank holding company is protected by an interest in particular property. The lease and loan both place the bank holding company's funds at risk, require a monthly payment, and generally have a diminishing outstanding balance to complete the transaction. The loan has a down payment and the lease a residual value amount.

The customers of the bank holding company often consider loans and leases as alternative forms of financing. Moreover, the lease and the loan customers of the bank holding company have similar interests they may choose to insure. In both cases, the bank holding company customer or his beneficiary retains the use of a particular piece of property under the terms of a contract without need to make additional payments under the contract at the disability or death of the customer.

The Board does not believe, as some commenters urge, that a bank holding company may engage in the sale of property and casualty insurance on the leased item. This provision of the amended regulation permits only the sale of credit related life, disability and voluntary unemployment insurance on the lease transaction.

Underwriting Credit-Related Home Mortgage Insurance

The second interpretation in paragraph (i) of the amended regulation involving the definition of "extension of credit" is the permissibility of underwriting home mortgage insurance, which insures the repayment of the unpaid balance of a residential first mortgage loan in the event of the death or disability of the mortgagor. As noted above, exemption A of the Garn-St Germain Act permits the sale and underwriting of any type of life, disability, and involuntary unemployment insurance related to an extension of credit by a bank holding company as long as the face value of the insurance policy does not exceed the "outstanding balance due" on the extension of credit. The Garn-St Germain Act does not impose any additional restrictions or limits on the type of life, disability, or involuntary unemployment insurance that may be underwritten or sold.

The Board had previously held that the underwriting of home mortgage insurance is not closely related to banking, in part because it is more like general life insurance than credit life insurance and in part because banks have not generally underwritten such insurance. *BankAmerica Corporation*, 66 Fed. Res. Bull. 660 (1980); *Seafirst Corporation*, 68 Fed. Res. Bull. 318 (1982). Recently, however, the Board has permitted bank holding companies to underwrite such insurance. *Citicorp/Family Guardian*, 72 Fed. Res. Bull. 339 (1986); *Security Pacific Corporation*, 72 Fed. Res. Bull. 671 (1986). In permitting this activity by order the Board made detailed findings that the underwriting of home mortgage redemption insurance is permitted by exemption A of the Garn-St Germain Act, is closely related to banking, and does not present the possibility of such significant adverse effects that it should not be added to the list of activities permissible for bank holding companies. The Board relied on comments that the differences between home mortgage insurance and credit life insurance have diminished because traditional group credit life insurance sold by bank holding companies on second mortgages has become similar in face amount and actual (rather than contractual) term to home mortgage insurance. In addition, the Board determined that home mortgage redemption insurance is closely related to banking because it supports the lending function. The Board believes, for the reasons set forth more fully in its Citicorp order, that the underwriting of home mortgage redemption insurance is permissible for bank holding companies.

In adopting this position, the Board considered the comments of those that opposed bank holding company underwriting of home mortgage insurance, particularly the argument that Congress intended to codify in exemption A the scope of credit life and disability insurance activities permitted by the Board prior to 1982, when the Board declined to permit the underwriting of home mortgage insurance. The Board has determined that the language of exemption A of the Garn-St Germain Act, however, does not by its terms seek to codify prior Board practice, particularly a limited Board practice articulated in two individual orders.

Since home mortgage insurance underwriting involves a new type of insurance activity that may raise public benefits issues, the Board will require an application or notice from any bank holding company seeking to engage in the activity and will not presume that all companies heretofore engaged in the underwriting of credit life insurance may automatically extend those activities to include the underwriting of home mortgage insurance.

The Board notes that in approving this activity by order the Board has relied on commitments by applicants to inform in writing borrowers who are prospective purchasers of such insurance that home mortgage redemption insurance is not required and that, if desired, it may be purchased from other sources. The Board has also relied on a commitment for written notice to borrowers that the insurance contract may be rescinded at any time after the loan commitment is made and prior to closing. In processing applications to engage in the underwriting of home mortgage redemption insurance pursuant to this amended regulation, the Board, and the Reserve Banks acting pursuant to delegated authority, will continue to require such notices be provided to borrowers. In addition, it will continue to rely on the fact that premiums for such insurance are payable periodically during the term of the extension of credit, so as to increase the borrowers' ability to rescind the insurance and to limit premium financing as an incentive to sell and underwrite such insurance.

Insurance in Connection With Serviced Loans

A third significant interpretation of the term "extension of credit" found in exemption A of the Garn-St Germain Act involves the sale and underwriting of insurance in connection with the servicing of loans. As the Board noted in its proposed rulemaking, the Garn-St Germain Act limits the sale of insurance by bank holding companies in general to insurance related to an extension of credit. The Board may no longer permit the sale of insurance related to the provision of the general financial services offered by a bank, including, for example, insurance on the contents of safe deposit boxes or savings completion insurance on certificates of deposit, Christmas club accounts, individual retirement accounts, or tuition completion plans. Insurance with respect to loan servicing by a bank holding company was the primary type of such insurance previously permitted by the Board as related to financial services.

The Board believes that the term "extension of credit" is used in exemption A to describe transactions in which the funds of the bank holding company or its subsidiaries have been placed at risk, including direct loans or leases or loans that have been purchased. Loans that are merely being serviced by the bank holding company generally would not be covered by this definition. The Board has been persuaded, however, by the comments received to permit bank holding companies to sell credit-related life, accident and health, and involuntary unemployment insurance where a bank holding company has previously placed funds at risk by originating or purchasing loans and thereafter has sold the loans and retained the servicing rights. Of course, the bank holding company must continue to limit its insurance coverage to the outstanding balance due on the extension of credit by the borrower.

The Board notes that to require a bank holding company to cancel insurance that it has sold or underwritten on a loan origination or purchase immediately upon sale of the loan would cause substantial inconvenience for the borrower, the bank holding company, and the purchasers of the loan. It may also result in gaps in insurance coverage and greater cost to the borrower. Such cancellation requirement would also restrict the ability of bank holding companies to compete in the sale and underwriting of any credit-related insurance because the purchaser of the policy would have no control of whether and when it could be cancelled. The Board believes that in conferring the right to sell such insurance Congress must have intended that bank holding companies be able to compete effectively. Therefore, a bank holding company that offers credit insurance for a fixed term should not be forced to alter that contract by reason of the subsequent sale of the loan, particularly the sale in the secondary market where the servicing entity has traditionally been obligated to see that proper insurance coverage is maintained.

The sale and underwriting of insurance on loans being serviced is necessary only where the term of the insurance was originally shorter than that of the loan. The bank holding company selling and underwriting insurance on the loan that it originated and is servicing is, in effect, only extending the term of its original insurance policy to be coterminus with the duration of the loan. It is providing insurance that it could have provided previously. The Board does not believe that Congress intended to prevent a bank holding company lender from renewing insurance coverage on loans it sells but continues to service.

Although a bank holding company may not sell or underwrite insurance in the case where it is merely servicing a loan and it has never placed its funds at risk either by originating or purchasing the loan, the bank holding company is permitted to collect and transmit insurance premiums, act as intermediary

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in renewing existing policies or adjusting coverages, and engage in other activities which are incidental to the servicing of loans. The bank holding company may collect a fee for such services, providing that the fee is based upon the provision of the service and is not a premium for insurance sold or underwritten. In that case, the bank holding company is engaging in loan servicing rather than insurance activities.

The Public Benefits Requirement of Credit Life Underwriting

The Board has decided to eliminate its requirement that those bank holding companies applying to engage in the underwriting of traditional group credit life, disability, and involuntary unemployment insurance show a public benefit in the form of a reduction in the premium cost of such insurance below the maximum or prima-facie rate established by the state and/or charged by credit insurance underwriters in the state. The Board imposed the requirement of demonstrating explicit public benefits in 1972 when it added credit life underwriting to the list of nonbanking activities permissible for bank holding companies. The Board imposed this requirement because of its concern that the underwriting of such insurance by bank holding companies presented the potential for certain adverse effects. Moreover, the Board in viewing the rate structure of credit life insurance was not convinced that the underwriting of such insurance on a *de novo* basis by bank holding companies would result in the same positive competitive effects normally associated with *de novo* entry.

During the past 14 years the underwriting of credit life insurance has remained the only permissible nonbanking activity for which the Board has imposed a requirement or condition that effectively determines the fee structure for the activity. This is a matter of concern to the Board because, under authorization of a federal statute, credit insurance rate ceilings are set by the individual states. Moreover, the rate reduction requirement can give the appearance that only lower rates than those permitted by the states are in the public interest or create a public benefit. This may be inappropriate at a time when the states have become increasingly active in reviewing and setting credit life insurance rate ceilings. These policy considerations weigh in favor of eliminating the required rate reduction.

In addition, the requirement appears to have been motivated in 1972 by concerns that are now less significant. With respect to the Board's concern in 1972 about the price structure for credit life insurance, the Board notes that since 1972 a substantial number of states have lowered their rates and have provided for more systematic review and adjustment of such rates based on premiums-to-payout ratios or similar considerations. The Board also had a concern in 1972 that bank holding companies acting as credit life insurance underwriters might unduly pressure consumers to purchase such insurance. Since pressure on the consumer to purchase insurance is more likely to be exerted by an agent at the point of sale rather than by an underwriter, the Board believes that this concern is more properly addressed in connection with the rules regarding agency activities than in the underwriting rules. In this regard, there are appropriate safeguards in place to deal with adverse effects arising out of the sale of insurance, including the anti-tying provision of the BHC Act, 12 U.S.C. 1972(b), and the disclosure requirements of the Board's Regulation Z, 12 CFR 226.4(a)(b)(6) and 226.4(d).[1] The rate reduction requirement, in any case, does not directly address the concerns that motivated the Board in 1972, either by making the price structure for credit life insurance more competitive or by alleviating any basis that might exist for pressure on borrowers to purchase such insurance.

Finally, the general rate reduction requirement falls on all bank holding companies, and only bank holding companies, regardless of how low the rate ceiling might be in the state where the holding company operates. Although there has been no showing that transactions by bank holding company lenders are more likely to result in adverse effects than transactions involving other lenders, bank holding companies are the only lenders that must comply with the rate reduction requirement.

The Board believes that these considerations are adequate to support elimination of the rate reduction requirement. Accordingly, as of the effective date of this regulation, those bank holding companies that currently engage in the underwriting of credit life insurance may charge premiums as permitted by the states without notice of adjustment to the Board.

The Board has been requested to impose a more stringent public benefits requirement by requiring bank holding companies that sell credit life insurance through unaffiliated underwriters to notify and reenroll all borrower/policyholders when changing underwriters. The Board believes that the policyholder's contract rights under state law provide adequate protection and that such a requirement is an unnecessary burden on bank holding companies not required under the "proper incident" standard of section 4(c)(8) of the Act.

2. Activities Permissible Under Exemption B of the Garn Act

In paragraph (b)(8)(ii), the Board has determined that the following insurance activities are permissible for bank holding companies:

(ii) *Finance company subsidiary.* Acting as agent or broker for insurance directly related to an extension of credit by a finance company [2] that is a subsidiary of a bank holding company, if:

(A) The insurance is limited to assuring repayment of the outstanding balance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and

(B) The extension of credit is not more than $10,000, or $25,000 if it is to finance the purchase of, a residential manufactured home [3] and the credit is secured by the home; and

(C) The applicant commits to notify borrowers in writing that: (1) they are not required to purchase such insurance from the applicant; (2) such insurance does not insure any interest of the borrower in the collateral; and (3) the applicant will accept more comprehensive property insurance in place of such single interest insurance.

[2] "Finance company" includes all nondeposit-taking financial institutions that engage in a significant degree of consumer lending (excluding lending secured by first mortgages) and all financial institutions specifically defined by individual States as finance companies and that engage in a significant degree of consumer lending.

[3] These limitations increase at the end of each calendar year, beginning with 1982, by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

Definition of Finance Company

The Board's amended regulation differs from the proposed regulation in that it specifically defines a "finance company" to be an entity that does not take deposits and that engages to a significant degree in consumer lending, other than lending secured by first mortgages, as well as any financial institution a state defines as a finance company, provided such an entity engages to a significant degree in consumer lending. Under this provision, therefore, finance companies would include those entities that may be authorized to accept limited types of time or savings deposits under state law but which a state has defined to be a finance company. Since exemption B appears to focus on consumer loans, the regulation requires a qualifying company be engaged in that type of lending to a significant degree as measured by either number of loans, percentage of loans, percentage of loan amounts outstanding or some similar measure. The Board will evaluate the amount of the consumer lending on a case-by-case basis.

The Board has been persuaded by those who commented that Congress in using the term "finance company" was referring to a specific type of entity rather than to all financial institutions that are not banks. The Board believes that finance companies generally are understood to be financial institutions that engage primarily in consumer lending and that ordinarily do not accept deposits. As such, these entities are distinguished from industrial banks, mortgage companies, credit unions, savings banks and other types of financial institutions. If Congress had intended to cover these other institutions, it could have used a broader term, such as "lending subsidiary" or "financial institution." Furthermore, the limitations contained in exemption B as to the size and types of loans with respect to which insurance may be sold is evidence of the intent of Congress to limit the scope of the exemption to traditional finance companies where such loans constitute the primary type of lending.

Type of Insurance a Finance Company May Sell Under Exemption B

An issue under this provision that was raised only by the five insurance agents associations and the Association of Bank Holding Companies involves the type of property insurance a finance company may sell. The Board's proposed regulation suggested that finance companies be permitted under exemption B to sell property and casualty insurance on property that serves as collateral for a loan. This insurance, most commonly sold in automobile or homeowner insurance packages, was authorized by the Board as permissible for bank holding companies and their lending subsidiaries prior to the passage of the Garn-St Germain Act in 1982. A closer reading of exemption B reveals a much more limited scope of permissible insurance activity. Accordingly, this provision of the amended regulation permits finance company subsidiaries of bank holding companies to engage in the sale of single interest property insurance that insures against damage or loss only to the lender's interest in the property that serves as collateral for a loan.

The language of exemption B limits the permissible insurance coverage to "the outstanding balance due on an extension of credit." It does not contemplate general property insurance that covers the entire value of the property, including the balance due the lender and the equity interest of the borrower/owner. The language parallels the "outstanding balance" requirement of exemption A which, as noted above, requires that the insurance not exceed the unpaid amount of the loan. Generally such insurance is declining balance and the only interest in the collateral property that may be insured is that of the lender.

The failure of exemption B to mention casualty insurance provides additional support for this view. Traditional property insurance, such as automobile or homeowners, is virtually always sold in a package with casualty or liability insurance. The absence of any authorization to sell such casualty insurance in exemption B or in the Senate Report (p. 38) is an indication that Congress views the insurance to be sold as limited to declining balance property insurance that protects the lender's interest in the property. The legislative history of exemption B also lends support to the view that exemption B was intended to permit insurance activity only where the insurance was limited to protecting the single interest of the lender.[2]

The Board has also considered whether general public benefits factors are consistent with the sale of single interest insurance by bank holding companies. While lending institutions may require such insurance on loan collateral as a condition of granting a loan to marginal borrowers or to those who are not otherwise insured, concern has been expressed that lenders may unnecessarily require such insurance of otherwise qualified or insured borrowers. Moreover, unsophisticated borrowers may purchase this limited insurance believing it to be comprehensive coverage of their interest in the loan collateral, or they may purchase this coverage despite the fact that it is largely duplicative of previously purchased property insurance.[3]

Congress was aware of these concerns, however, and was persuaded to permit the sale of such insurance by the finance company subsidiaries of bank holding companies. There was testimony before Congress that the sale of such insurance, not generally sold by independent agents, assists marginal borrowers to obtain credit. Property insurance is provided at standard group rates to those living in areas where insurance coverage is difficult to obtain or where the cost on an individual policy would be prohibitive. Such insurance serves as an alternative coverage for risks not covered by "mainstream" insurance companies, such as inventory and floor plan insurance to small businesses in high risk areas. The testimony indicated the ability to offer such insurance is necessary for bank holding company subsidiaries to compete effectively with independent finance companies on the basis of convenience.[4] Exclusion of the sale of single interest insurance would also render exemption B a nullity, since no other insurance is permissible under that exemption.

The amended regulation permits the sale of such insurance, provided that the bank holding company finance company subsidiary does not require such insurance of borrowers who have adequate property insurance on the loan collateral. In addition, the finance company subsidiary would be required to disclose in writing that such insurance, if required, need not be purchased from the lender [5] and that

[1] A 1985 consumer survey conducted by the Board at the request of the Board's Consumer Advisory Council suggests that most borrowers who purchase credit insurance would be willing to do so again in the future and that the vast majority of borrowers believed that their decision with respect to such insurance had no effect on the creditor's decision to grant a loan. University of Michigan, Survey Research Center, *Survey of Consumer Attitudes* (December 1985).

[2] *Financial Institutions Restructuring and Services Act of 1981: Hearings on S. 1686, S. 1703, S. 1720, S. 1721 Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 97th Cong., 1st Sess. 155 (1981) (statement of Robert B. Evans, Senior Vice President, National Consumer Finance Association). *Competition and Conditions in the Financial System, Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs*, 97th Cong., 1st Sess., 481 (1981) (statement of The Consumer Credit Insurance Association). *See also* the statement of Robert Reynolds, President, Independent Insurance Agents of America, *id*, 330.

[3] See, for example, *Financial Institutions Restructuring and Services Act of 1981, Hearings on S. 1686, S. 1703, S. 1720 and S. 1721 Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 97th Cong. 1st Sess., 154 (1981) (statement of the National Consumer Finance Association).

[4] *See*, for example, the testimony of Frederick L. Boehm, Senior Vice President, American Bankers Insurance Company of Florida and James M. Browne, Executive Committee, National Consumer Finance Association. *Bank Holding Company Legislation and Related Issues, Hearings on H.R. 2255, H.R. 2747, H.R. 2856; H.R. 4004 Before the Subcomm. on Financial Institutions Supervision of the House Comm. on Banking, Finance and Urban Affairs*, 96th Cong. 1st Sess., 304–309 (1979).

[5] The requirement is already imposed by Regulation Z, § 226.4(d)(2) if the premium is excluded from the finance charge.

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such insurance does not cover the borrower's interest in the property. With these conditions, the public benefits considerations on a general basis would be consistent with approval.

Property Insurance Underwriting Under Exemption B

The final issue raised by some commenters on this provision of the regulation is whether underwriting of single interest property insurance is contemplated in exemption B. Exemption B makes no distinction between acting as agent or acting as principal as is the case in exemptions C, D and F and more obliquely in G. The Board notes, however, that the Senate Report states explicitly (at p. 38) that "the exemption is not intended to permit a finance company subsidiary to underwrite such property insurance." The Board does not believe that the language of exemption B demonstrates clear intent by Congress to permit a change from the Board's past practice of declining to permit bank holding companies to underwrite property insurance.

3. Activities Permissible Under Exemption C of the Garn Act

In paragraph (b)(8)(iii) the Board has determined that the following insurance activities are permissible for bank holding companies:

(iii) *Insurance in small towns.* Engaging in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that: (A) has a population not exceeding 5,000 (as shown in the preceding decennial census); or (B) has inadequate insurance agency facilities, as determined by the Board, after notice and opportunity for hearing.

"Principal Place of Banking Business" Requirement

The primary issue addressed by the parties commenting on this provision of the regulation is whether the Board should require a bank holding company that seeks to engage in the sale of insurance in a place with a population not exceeding 5,000 to have its principal place of banking business in such a place. The terms of exemption C do not impose such a condition. Indeed, by its terms, exemption C gives the Board the discretion to determine that any insurance agency activity conducted in a place with 5,000 or less in population is permissible for a bank holding company, even if the holding company does not maintain any office in that place. The Board, however, declines to adopt under the closely related to banking standard such a broad authorization since it would be contrary to the general purpose Congress had in mind when enacting exemption C.

The Senate Report (p. 38) does indicate, however, a general intention to conform exemption C both to the Board's existing insurance regulation and to the National Bank Act (12 U.S.C. 92), which permits a national bank to conduct insurance activities in a town of less than 5,000. The Board's current regulation (as interpreted and applied) imposed three requirements on the sale of insurance in a small town. First, the insurance could be sold only in the small town in order to avoid the channeling of business from subsidiaries located elsewhere. Second, the bank holding company must have a subsidiary serving the public operating in the town in order to provide a nexus to the town and to avoid remote operation of an insurance agency. In applying this requirement, the Board has generally approved small town insurance agency activities if the holding company has a subsidiary bank or nonbanking subsidiary engaged in lending operations located in the small town. Finally, the bank holding company must have its banking headquarters or "principal place of banking business" in a small town to limit the size of the bank holding company qualifying to engage in such insurance. 12 CFR 225.25(b)(8) and BHC Letter 201, July 14, 1980.

The Board included this third or "principal place of banking business" requirement to the Board's insurance regulation[6] in response to the decision in *Alabama Association of Insurance Agents* v. *Board of Governors,*[7] which directed the Board, before implementing its existing regulation with respect to insurance sales in towns of 5,000 to make findings "whether the present wording of the regulation would permit remote insurance agency activity . . ." 558 F.2d at 729. The court was concerned that the proposals under review contemplated the sale of insurance in small towns in Alabama and Georgia from central locations in Birmingham and Atlanta.[8]

The National Bank Act, however, imposes slightly different requirements on insurance activities in small towns. While the national bank must have an office in the small town, there is no requirement in the National Bank Act that the national bank be headquartered in a town of 5,000. Thus, both the Board's existing regulations and the National Bank Act require that an institution providing general insurance agency activities in a small town have at a minimum some office in that town, although the office need not be the institution's head office.

Accordingly, the amended regulation explicitly retains the requirement that in order to provide insurance agency activities in a town with a population not exceeding 5,000 the bank holding company must have an office that serves the public in the small town. The amended regulation specifically requires that the office be a lending office in order to provide the bank holding company with a link to the town, to avoid remote operation from a central location of a network of small town insurance agencies, and generally to maintain insurance as a fee generating activity to help sustain a small town lending office as an independent, viable profit center. This is consistent with the purpose of the National Bank Act that insurance agency activities serve as a supplemental source of income for a bank or branch of a bank located in a small town.

The Board also notes that it has traditionally required that a bank holding company engaging in insurance agency activities in a town not exceeding 5,000 limit its solicitation or sales of insurance to the small town and to other areas of less than 5,000 adjacent to the town, in part to preclude the referral or channeling of business from affiliates. *See* BHC 201, *Federal Reserve Regulatory Service* 4–844 (July 14, 1980). This requirement would not preclude the bank holding company insurance agency from selling insurance to those residing outside the community who initiate the transaction at the agency's place of business in the town of less than 5,000, nor would it prohibit advertising in the community newspaper or a telephone book that may serve an area larger than the community of 5,000.

The Board believes that under these limitations, bank holding companies may continue to conduct insurance activities in small towns in a manner consistent with prior Board requirements and with the purposes of the Garn-St Germain Act and the National Bank Act.

The Board does not believe it is necessary to continue to limit bank holding company insurance agency activities in small towns only to those bank holding companies that are headquartered in a small town. While

[6] 44 Fed. Reg. 6505 (Nov. 9, 1979).

[7] 533 F.2d 224 (5th Cir. 1976), modified on rehearing, 558 F.2d 729 (1977), *cert denied,* 435 U.S. 904 (1978).

[8] The court was also concerned that larger bank holding companies might not need the benefit of the revenue from insurance sales in a small town and the Board ought to consider some limitation on the size of the bank holding company eligible to sell such insurance.

the Board's existing regulation has such a requirement, nothing in the legislative history expressly states that *all* of the specific limitations in the Board's regulation must be incorporated into exemption C on a wholesale basis. This is made clear by the fact that the legislative history provides that exemption C was also intended to conform to the provisions of the National Bank Act. As explained above, the National Bank Act, as interpreted by the Comptroller of the Currency, has no similar requirement that a national bank providing insurance agency services through an office in a small town itself be headquartered in a small town.

The Board believes the "principal place of banking business" requirement does not further the purposes of the small town exemption in current law, that is to provide insurance alternatives in a small town and to provide an additional income source for lending operations serving the small town. Moreover, the Board does not believe it appropriate or consistent with the Act to require a bank holding company located in a small town to divest its insurance agency business simply because it is acquired by a bank holding company in a slightly larger town. The ability to provide an effective insurance alternative may depend on having a presence in and knowledge of a small town, but it does not depend on being headquartered there.

Exemption C is not, by its terms, limited to those holding companies of a limited size or those with a lead bank located in a small town. This is in contrast to exemption F in which Congress explicitly provided for general insurance agency powers (except for the sale of life insurance) for small bank holding companies (those under $50 million in total assets). Focusing on the size of the town rather than the size or nature of the bank holding company engaging in the insurance activity is more in accord with the accepted principle that public policy favors the promotion of competition and not the protection of particular competitors.

Since the restrictions imposed in the amended regulation adequately preserve the limited scope of insurance agency activities permitted under exemption C, the Board has declined to impose the "principal place of banking business test," particularly in the absence of any basis for such a requirement in statutory language.

Definition of Place

The amended regulation parallels exemption C in permitting general insurance activities in a "place" with a population not exceeding 5,000. The Board has not defined the term "place," preferring to permit bank holding companies to demonstrate on a case-by-case basis that a particular location qualifies. The reference to the decennial census in exemption C implies that the "place" must be a cognizable political subdivision such as a village, town, municipality, or township for which population figures are available. A bank holding company could engage in the sale of insurance from a single office in a small town and in surrounding larger political subdivisions, provided the total population of all such "places" served by the lending office does not exceed 5,000. A bank holding company must cease its otherwise impermissible insurance agency operations if the "place" is found in a subsequent decennial census to have grown to a population exceeding 5,000.

4. Activities Permissible Under Exemption D of the Garn Act

In paragraph (b)(8)(iv) the Board has determined that the following insurance activities are permissible for bank holding companies:

(iv) *Insurance agency activities conducted on May 1, 1982.* Engaging in any specific insurance agency activity [10] if the bank holding company, or subsidiary conducting the specific activity, conducted such activity on May 1, 1982, or received Board approval to conduct such activity on or before May 1, 1982.[11] A bank holding company or subsidiary engaging in a specific insurance agency activity under this clause may:

(A) Engage in such specific insurance agency activity only at locations:

(I) In the State in which the bank holding company has its principal place of business (as defined in 12 U.S.C. 1842(d));

(II) In any State or States immediately adjacent to such State; and

(III) In any State in which the specific insurance agency activity was conducted (or was approved to be conducted) by such bank holding company or subsidiary thereof or by any other subsidiary of such bank holding company on May 1, 1982; and

(B) Provide other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the types of risks as (or are otherwise functionally equivalent to) coverages sold or approved to be sold on May 1, 1982 by such bank holding company or subsidiary.

[10] Nothing contained in this provision shall preclude a bank holding company subsidiary that is authorized to engage in a specific insurance agency activity under this clause from continuing to engage in the particular activity after merger with an affiliate, if the merger is for legitimate business purposes and prior notice has been provided to the Board.

[11] For purposes of this paragraph, activities engaged in on May 1, 1982, include activities carried on subsequently as the result of an application to engage in such activities pending before the Board on May 1, 1982, and approved subsequently by the Board or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

This provision of the regulation parallels exemption D of the Garn-St Germain Act and grandfathers those insurance agency activities in which individual bank holding companies were engaged on May 1, 1982. Under this provision, therefore, a bank holding company or subsidiary thereof may continue to engage in particular types of insurance agency activities that were permissible prior to the passage of the Garn-St Germain Act but which are now prohibited by that Act. A qualifying bank holding company may engage, for example, in the sale of property and casualty insurance on property serving as collateral for loans made by a lending subsidiary of the holding company.

Limitations on Expansion of Grandfather Rights

Exemption D also provides for limited expansion of grandfathered insurance agency activities in order to permit qualifying bank holding companies to remain effective insurance agent competitors. As the Senate Report states (at p. 39): "Without providing such companies with a broadened ability to expand and grow, they would not long survive in a competitive environment." Exemption D suggests certain types of geographic and product line expansion that should be considered permissible for grandfathered insurance agency subsidiaries of qualifying bank holding companies.

Several commenters urged the Board to permit expansion of grandfathered insurance agency activities without restriction. They argued that the language in exemption D that purports to place limits on the expansion of grandfathered activities is merely advisory and not mandatory. They based this view on the language of exemption D and particularly upon the use of the word "including" to introduce the limitations or restrictions on the expansion of grandfathered activities. These commenters argued that the word "including" means that the proposed types of expansion listed in exemption D are not exhaustive but merely suggest possible forms of expansion that the Board might include in its regulation.

The use of the word "including" to introduce lengthy and detailed limitations on grandfathered activities is ambiguous. The legislative history, however, makes it clear that the limits imposed on exemption D with respect to grandfathered activities are to be mandatory rather than advisory. The

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legislative history of exemption D as contained in the Senate Report (pp. 39–41) is more detailed than that of any other provision and describes at length the types of expansion that the Board may approve under the terms of the exemption. The detail of the statutory provision and the legislative history indicates that the conditions are not merely advisory, and the Board believes that it may permit only those specific types of expansion of grandfathered activities listed in exemption D.

Expansion of grandfathered activities pursuant to exemption D presents three issues that the Board has resolved in paragraph (iv) of this regulation. Those issues include (1) defining which subsidiaries of a bank holding company may engage in otherwise impermissible insurance agency activities under exemption D, (2) the scope of permissible geographic expansion, and (3) the scope of product line expansion.

Specific Subsidiaries That May Engage in Grandfathered Activities. Exemption D specifically states that a bank holding company may continue to engage in the sale of specific types of insurance sold on May 1, 1982, at existing or new locations only through "the same bank holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982 . . . ." Thus, grandfather rights do not inure to the benefit of the entire holding company system by virtue of the fact that a particular subsidiary was engaged in insurance agency activities prior to May 1, 1982. Only the subsidiary of the bank holding company that was engaged in insurance activities on May 1, 1982, or received Board approval to engage in insurance activities prior to May 1, 1982, has grandfather status. The legislative history supports this reading of exemption D. The Senate Report states:

> "The authority to engage in activities under the grandfather amendment only extends to the entity, be that the holding company itself or a subsidiary or subsidiaries thereof, which qualifies for grandfathered activity status. This limitation is intended to prevent a bank holding company from transferring any grandfather rights among the companies within the holding company system . . . ." Senate Report, p. 40.

Some commenters suggested that a "grandfathered subsidiary" is limited solely to the types of insurance (or equivalent types) which it sold prior to May 1, 1982. Other commenters argued that the language of the statute should be read to permit a subsidiary that was engaged in *any* insurance agency activity prior to May 1, 1982 to be grandfathered with respect to all insurance agency activities engaged in by any company in the holding company system prior to that date.

The Board believes that the emphasis in the legislative history on the transfer of grandfather rights shows the intent of Congress to prohibit not only the transfer of such rights from "grandfathered" subsidiaries to those affiliates wholly without grandfather rights, but also to prohibit the transfer of grandfather rights with respect to particular kinds of insurance from one "grandfathered" subsidiary to another. Thus, a subsidiary that sold only credit life insurance prior to the grandfather date should not acquire grandfather rights to sell property and casualty insurance solely because an affiliate sold property and casualty insurance prior to the grandfather date. The grandfather rights of a particular subsidiary are limited to the precise activities (or their functional equivalent) engaged in prior to May 1, 1982. As discussed in more detail below, this requirement does not preclude the transfer of grandfather rights in the case of a bona fide merger. *Citicorp*, 69 Fed. Res. Bull. 554, 555 (1983).

A question has been raised whether a subsidiary bank of a bank holding company, or a nonbank subsidiary of such a subsidiary bank, that was engaged in insurance activities on May 1, 1982, pursuant to the provisions of state law may take advantage of the grandfather provisions of exemption D and, if so, whether such an entity must terminate its grandfathered insurance agency activities if it is acquired by a bank holding company without grandfather rights under section 4(c)(8).

The Board notes that resolution of this issue depends in the first instance on the fundamental question of the scope of coverage of the nonbanking prohibitions of section 4 of the Act to subsidiary banks of bank holding companies, an issue which the Board has under review in a separate rulemaking proceeding regarding § 225.22(d) of Regulation Y, (12 CFR 225.22(d) (*See* 48 FR 23520 (May 25, 1983) and 49 FR 794 (January 5, 1984)), and also in connection with the Board's request for comment on what, if any, action it should take in the case of real estate investment and development powers of holding company banks authorized pursuant to state law. (50 FR 4519 (January 31, 1985)). The Board did not seek comment on this issue or those raised by a commenter in the course of this rulemaking.

This rulemaking is limited in scope and is intended only to clarify the extent to which insurance activity is permitted under exemptions A through G of Title VI of the Garn-St Germain Act. In other words, this regulation is intended only to specify what insurance activities are permissible for entities subject to the nonbanking provisions of section 4 of the Act. It is not intended to specify which entities are subject to these provisions, an issue that, as noted, is the subject of separate rulemaking proceedings. Accordingly, the Board has reserved judgment on the issues raised by this comment for consideration in connection with the Board's rulemaking proceedings on § 225.22(d) of Regulation Y and the proceeding on real estate development powers of holding company banks. The issue of whether an entity with grandfather rights under exemption D must terminate those activities if it is acquired by another bank holding company is currently under consideration in the context of a pending application. *See Sovran Financial Corp./Suburan Bancorp*, 72 Federal Reserve Bulletin 276 (1986).

Finally, the Board notes that this rulemaking, which is only intended to clarify the exemptions in Title VI of the Garn-St Germain Act, does not authorize any bank holding company to commence any insurance activity, or to acquire a company with insurance activities, without compliance with the notice and application requirements of section 4(c)(8) of the Act.

Geographic Expansion by a Grandfathered Subsidiary of a Bank Holding Company. A variety of alternatives for geographic expansion were suggested by those commenting on this paragraph of the proposed regulation. Some commenters suggested that the Board should permit a grandfathered subsidiary of a bank holding company (or the holding company itself if it engaged in the insurance activities directly) to expand its grandfathered insurance activities into any new state without restriction. Such a position treats the specific limitations on geographic expansion in exemption D as nonbinding, a position the Board has considered and rejected.

All other commenters agreed that the explicit language of exemption D permits the grandfathered subsidiary of a bank holding company to engage in the sale of insurance in the bank holding company's home state and states adjacent thereto. There was substantial disagreement, however, concerning the scope of additional expansion.

Some commenters argued a grandfathered subsidiary of a bank holding company could expand the specific insurance agency activities in which it engaged prior to May 1, 1982, into any state where any affiliate was engaged in *any* type of insurance activity prior to the grandfather date.

Under this view, a bank holding company subsidiary engaged in the sale of property and casualty insurance on the grandfather date could sell such insurance in any state where an affiliate sold credit life insurance prior to the grandfather date.

Other commenters suggested expansion be permitted only into those states where the grandfathered subsidiary *or an affiliate* sold the specific type of insurance on the grandfather date. Thus, for example, a subsidiary engaged in the sale of property insurance on the grandfather date would expand its activities into any state where an affiliate also sold property insurance on the grandfather date.

Finally, some commenters argued for no geographic expansion, restricting the grandfathered subsidiary to those states where it sold insurance on the grandfather date. The amended regulation adopts the middle position of permitting a grandfathered subsidiary to expand into those states where an affiliate sold the same type of insurance on the grandfather date.

The Board believes unlimited expansion into any state where *any* insurance was sold on the grandfather date is not supported by the language or legislative history of exemption D or by the limited nature of the grandfather provision. The language and legislative history of exemption D emphasize that it is the specific subsidiary that is grandfathered with respect to the insurance activities it conducted prior to May 1, 1982, and not the entire holding company system. Exemption D allows the sale of insurance at new locations of "the *same* bank holding company *or* the *same* subsidiary . . ." (emphasis added). As noted above, the Senate Report is clear in limiting grandfather status to the specific subsidiary that engaged in the activity on the grandfather date (p. 40). If the focus of exemption D is the individual subsidiary and the specific types of insurance sold by that subsidiary on the grandfather date, it is inconsistent to read exemption D as permitting the transfer of the right to engage in insurance activities in a given state to an affiliate that sells only a completely different kind of insurance.

The Senate Report describes exemption D as permitting expansion of a bank holding company's insurance business "within reasonable limits." The exemption "does restrict the locations and scope of grandfathered insurance activities" without restricting the volume of insurance sales. (Senate Report, p. 39). The Board believes it is not consistent with the limited nature of this grandfather provision to permit, for example, a bank holding company subsidiary engaged in the sale of property insurance in one state to expand into the 49 other states where an affiliate may sell credit life insurance. In fact, the legislative history appears to presume that only companies engaged in the sale of property and casualty insurance need be grandfathered, since the sale of credit life insurance is still permitted under exemption A. There appears to be no intention to permit a grandfathered property and casualty insurance subsidiary to expand its locations on the basis of the location of credit life agency subsidiaries.

Accordingly, the Board's final regulation provides that a bank holding company may sell a particular kind of insurance from new or expanded locations only in its home state, states adjacent thereto, and states in which it, or an affiliate, sold that kind of insurance (or insurance that is functionally equivalent) prior to May 1, 1982. The language of exemption D, while limiting the grandfathered activities to those agency activities conducted by the specific grandfathered subsidiary, does allow expansion into states where such specific types of agency activities "were conducted by the bank holding company or any of its subsidiaries on May 1, 1982 . . ." If a bank holding company subsidiary is selling a particular type of insurance in a given state, the Board does not believe there is any regulatory or business purpose served by restricting another grandfathered subsidiary from engaging in the same activity in the same location.

Product Line Expansion. The Board's amended regulation also provides for product line expansion. A grandfathered subsidiary of a bank holding company may seek approval from the Board to engage in the sale of new types of insurance that protect against the same types of risks as, or are otherwise functionally equivalent to, insurance sold on the grandfather date. Although the Board's proposed regulation requested comment upon the issue of whether property and casualty insurance on leased items is the functional equivalent of property and casualty insurance on collateral for a loan, the Board believes that this issue and the other issues of "functionally equivalent" coverage would be more properly addressed on a case-by-case basis in the course of individual applications.

Transfer of Grandfather Rights Among Subsidiaries

The amended regulation specifically provides that a grandfathered subsidiary of a bank holding company (or its successor) may retain its grandfather rights after merger with an affiliate, if such merger is based on legitimate business concerns, e.g., centralized management or increased efficiency, rather than as a means of extending insurance powers. The Senate Report contains language that indicates an intent on the part of Congress to limit the possibility of expansion of grandfather rights simply by means of transferring those rights from one grandfathered subsidiary to the entire holding company system, but the subsequent Conference Report (S. Rep. No. 641, 97th Cong., 2d Sess. 91 (1982)) provides a limited exception to that general rule when it states that "nothing in this title is intended to prevent the transferring of grandfathered insurance activities of the bank holding company to the parent company or to any of its subsidiaries if the transferral is brought about for management or efficiency purposes." The regulation provides that bank holding companies must advise the Board prior to any such merger for legitimate business purposes in order to confirm the transfer of grandfather rights.

Retention of Grandfather Rights Upon Acquisition By Another Bank Holding Company. Prior to adoption of this regulation, the Board had, in limited circumstances, allowed a bank holding company qualifying for certain grandfather rights under exemption D (specifically related to the sale of credit-related property and casualty insurance that was directly linked and limited to extensions of credit by the grandfathered bank holding company and its subsidiaries) to retain those rights and continue to engage in the grandfathered activities after its acquisition by another bank holding company that did not have grandfather rights. The acquiring bank holding company did not, however, gain any grandfather rights with respect to its own subsidiaries. *See BankAmerica Corporation*, 69 Fed. Res. Bull. 568 (1983); *Fuji Bank*, 70 Fed. Res. Bull. 50 (1984).

5. Activities Permissible Under Exemption E of the Garn Act

In paragraph (8)(b)(v) the Board has determined that the following insurance activities are permissible for bank holding companies:

(v) *Supervision of retail insurance agents.* Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell: (A) fidelity insurance and property and casualty insurance on the real and personal property used in the operations

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of the bank holding company or its subsidiaries; and (B) group insurance that protects the employees of the bank holding company or its subsidiaries.

This provision, which merely restates exemption E of the Garn Act, is of limited applicability. The legislative history indicates an intent on the part of Congress to avoid preempting certain practices permissible under Texas law. Senate Report, at p. 41. The Board received no substantive comments on this provision.

6. Activities Permissible Under Exemption F of the Garn Act

In paragraph (b)(8)(vi) the Board has determined that the following insurance activities are permissible for bank holding companies:

(vi) *Small bank holding companies.* Engaging in any insurance agency activity if the bank holding company has total consolidated assets of $50 million or less. A bank holding company performing insurance agency activities under this paragraph may not engage in the sale of life insurance or annuities except as provided in paragraphs (i) and (iii) of this section, and it may not continue to engage in insurance agency activities pursuant to this provision more than 90 days after the end of the quarterly reporting period in which total assets of the holding company and its subsidiaries exceed $50 million.

This provision permits bank holding companies with total consolidated assets not exceeding $50 million to engage in general insurance agency activities, except that they may not engage in the sale of life insurance or annuities unless otherwise authorized to do so under subsections (i) and (iii) of this regulation. (These subsections generally permit the sale of credit life insurance or any type of insurance in a town with a population not exceeding 5,000.) The Senate Report (at p. 42) makes it clear that exemption F ceases to apply "if the value of a bank holding company's system assets exceed $50 million." The assets of the entire holding company system rather than those of its bank subsidiaries or its insurance agency subsidiary are determinative for meeting the $50 million limit of this provision.

The regulation requires a bank holding company to cease general insurance agency activities pursuant to this provision within 90 days after the end of the quarterly reporting period in which the bank holding company's total assets exceed $50 million. Since a small bank holding company may not have complete and accurate financial figures until it prepares its quarterly report and since quarterly reports are generally completed several weeks after the end of a quarterly reporting period, the Board believes this 90-day requirement provides a reasonable, minimum time to alter the structure of the bank holding company's insurance activities. Thereafter, the bank holding company may continue to engage in the sale of insurance pursuant to other exemptions.

7. Activities Permissible Under Exemption G of the Garn Act

In paragraph (b)(8)(vii) the Board has determined that the following insurance activities are permissible for bank holding companies consistent with exemption G of the Garn-St Germain Act:

(vii) *Insurance agency activities conducted before 1971.* Engaging in any insurance agency activity performed at any location in the United States directly or indirectly by a bank holding company that was engaged in insurance agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971.

Agency Activities

In this provision the Board has adopted a position, already articulated in several orders on individual applications, permitting any qualifying bank holding company to engage in general insurance agency activities without restriction as to location or to type of insurance sold. *See First Wisconsin Corporation,* 71 Fed. Res. Bull. 171 (1985); *Norwest Corporation,* 70 Fed. Res. Bull. 235 and 470 (1984). A company qualifies under this provision if it was engaged in insurance agency activities as a consequence of Board approval prior to January 1, 1971. A very limited number of active bank holding companies received such Board approval in the period from passage of the BHC Act in 1956 until January 1, 1971.

The regulation does not limit the insurance agency activities of a qualifying company by requiring that the company engage only in the sale of such types of insurance as it sold prior to 1971 from such locations as it conducted insurance agency activities prior to 1971. As the Board has already stated in the above-cited orders, it does not find any indication in the language of exemption G that Congress intended to limit the insurance agency activities of qualifying companies in any fashion.

To limit the sale of insurance to the types sold prior to 1971 would render exemption G more restrictive than exemption D, which grandfathers those insurance agency activities engaged in prior to 1982. By definition, any pre-1971 insurance agency activities would also qualify under exemption D as pre-1982 activities. Such a limited reading of exemption G, therefore, would render it superfluous for purposes of grandfathering permissible types of insurance agency activity.

Prior to 1971 the Board did not examine individual types of insurance to determine whether the sale of such insurance would be "closely related to banking." Section 4(c)(8) of the Bank Holding Company Act of 1956, the operative nonbanking provision, used the standard of "closely related to the business of banking." *See* Pub. L 84–511, section 4(c)(8); 70 Stat. 137 (1956). Under this "business of banking" standard, the Board considered only whether the entire insurance agency business of a particular bank holding company was conducted in such a manner that it was closely related to the banking business of the applicant bank holding company. As a consequence, the Board did not scrutinize each type of insurance an applicant proposed to sell, and in several cases prior to 1971 the Board approved general insurance agency activities for bank holding companies. *See First Bankstock Corp.,* 45 Fed. Res. Bull. 917 (1959); *Northwest Bancorporation,* 45 Fed. Res. Bull. 963 (1959).

For the reasons set out in its previous order, the Board's regulation permits the limited number of qualifying companies to engage in general insurance agency activities pursuant to exemption G regardless of their precise insurance agency activities prior to 1971. *First Wisconsin Corporation,* 71 Fed. Res. Bull. 171 (1985); *Norwest Corporation,* 70 Fed. Res. Bull. 470 (1984).

Underwriting Activities

Several commenting bank holding companies argued that exemption G also permits qualifying companies to engage in general insurance underwriting activities without restriction. These companies argued that the language of the statute merely speaks of insurance activities rather than insurance *agency* activities as in exemption C, D, and F. The Board has not proposed nor has it adopted a regulation that would permit qualifying exemption G companies to engage in general underwriting activities.

The language of exemption G provides that a company qualifies for grandfather rights only by reason of receiving Board approval to engage in *agency* activities prior to January 1, 1971. The Board believes, therefore, that exemption G is intended to deal only with agency activities. The Board also believes that Congress intended to permit bank holding companies to engage in only the general kinds of activities the Board permitted prior to 1971. While the Board did permit general insurance agency activities prior to 1971, it permitted only very limited credit-related underwriting activities.

The Board does not believe that Congress intended in a limited grandfather provision to confer on a few qualifying companies broad new powers never before permitted to any bank holding company. The Board had declined prior to 1971 to permit bank holding companies to engage in life insurance underwriting activities (*Transamerica Corp.,* 43 Fed. Res. Bull. 1014 (1957)). In the Board's view, a limited grandfather provision such as exemption G should not be read to permit bank holding companies, which qualify for grandfather rights because they received Board approval prior to 1971 to engage in insurance agency activities, to expand those activities to include general insurance underwriting—an activity the Board has consistently refused to permit under section 4(c)(8).

In any event, even assuming *arguendo* that general insurance underwriting would be exempt from the general insurance prohibition of the Garn-St Germain Act, this does not mean that such an activity would be "so closely related to banking as to be a proper incident thereto" under section 4(c)(8) of the Act, and, as noted, the Board has previously determined that such general insurance underwriting does not qualify under this standard. *NCNB Corporation,* 64 Fed. Res. Bull. 506 (1978).

Applications Required

Several bank holding companies have also suggested that qualifying exemption G companies need not make specific applications to engage in any insurance agency activities. These commenters claim that exemption G removes any qualifying company from the requirement of meeting either the "closely related" or "public benefits" tests of section 4(c)(8) of the BHC Act. As the Board has previously stated, the exemptions contained in section 4(c)(8) are not intended to be dispositive of the public benefits issues raised in particular applications. For the reasons set forth in these orders, the Board will continue to require applications from exemption G companies.

Regulatory Flexibility Analysis—Paperwork Reduction Act. The Board has certified that adoption of this amended regulation dealing with permissible insurance activities for bank holding companies is not expected to have a significant economic impact on small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Board is required by section 4(c)(8) of the BHC Act, 12 U.S.C. 1843(c)(8), to determine whether nonbanking activities are closely related to banking and thus are permissible for bank holding companies. The Board is clarifying the scope of insurance activities it considers to be closely related to banking and permissible for bank holding companies, with Board approval. The amended regulation does not impose different or more burdensome requirements than the prior regulation for applications to the Board to engage in such activities, nor does it restrict permissible activities for bank holding companies except in conformance with the requirements established by Congress in the Garn-St Germain Depository Institutions Act of 1982, codified at 12 U.S.C. 1843(c)(8)(A)–(G). To the extent that it eliminates the mandatory rate reduction requirement for bank holding companies applying to engage in credit life underwriting activities, the amended regulation provides for additional flexibility. Similarly, by clarifying the scope of permissible activities, the amended regulation will permit certain additional applications to qualify for more expeditious processing in the regional Federal Reserve Banks under authority delegated by the Board, 12 CFR 225.23.

The amended insurance regulation imposes no additional information collection requirements and imposes no substantial change in the requirements for applications to engage in insurance activities.

List of Subjects in 12 CFR Part 225

Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

For reasons set out in this notice, the Board is consolidating §§ 225.25 (b)(8) and (b)(9) of the Board's Regulation Y (12 CFR 225.25 (b)(8) and (b)(9)), dealing with permissible insurance agency and underwriting activities for bank holding companies, into a single§ 225.25(b)(8). Accordingly, the Board revises §§ 225.1(a) and 225.25(b)(8); and removes §§ 225.25(b)(9) and 225.128 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for Part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907 and 3909.

2. Section 225.25(b)(8) is revised to read as follows:

§ 225.25 List of permissible nonbanking activities.

* * * * * * *

(b) * * *

(8) *Insurance agency and underwriting.* (i) *Credit Insurance.* Acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is:

(A) Directly related to an extension of credit by the bank holding company or any of its subsidiaries; and

(B) Limited to assuring the repayment of the outstanding balance due on the extension of credit [7] in the event of the death, disability, or involuntary unemployment of the debtor.

(ii) *Finance company subsidiary.* Acting as agent or broker for insurance directly related to an extension of credit by a finance company [8] that is a subsidiary of a bank holding company, if:

(A) The insurance is limited to assuring repayment of the outstanding balance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and

(B) The extension of credit is not more than $10,000, or $25,000 if it is to finance the purchase of a residential manufactured home [9] and the credit is secured by the home; and

(C) The applicant commits to notify borrowers in writing that: (*1*) they are not required to purchase such insurance from the applicant; (*2*) such insurance does not insure any interest of the borrower in the collateral; and (*3*) the applicant will accept more comprehensive property insurance in place of such single interest insurance.

(iii) *Insurance in small towns.* Engaging in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that: (A) has a population not exceeding 5,000 (as shown in the preceding decennial census); or (B) has inadequate insurance agency facilities,

[7] "Extension of credit" includes direct loans to borrowers, loans purchased from other lenders, and leases of real or personal property so long as the leases are nonoperating and full payout leases that meet the requirements of paragraph (b)(5) of this section.

[8] "Finance company" includes all nondeposit-taking financial institutions that engage in a significant degree of consumer lending (excluding lending secured by first mortgages) and all financial institutions specifically defined by individual States as finance companies and that engage in a significant degree of consumer lending.

[9] These limitations increase at the end of each calendar year, beginning with 1982, by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

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as determined by the Board, after notice and opportunity for hearing.

(iv) *Insurance agency activities conducted on May 1, 1982.* Engaging in any specific insurance agency activity [10] if the bank holding company, or subsidiary conducting the specific activity, conducted such activity on May 1, 1982, or received Board approval to conduct such activity on or before May 1, 1982.[11] A bank holding company or subsidiary engaging in a specific insurance agency activity under this clause may:

(A) Engage in such specific insurance agency activity only at locations:

(*1*) In the State in which the bank holding company has its principal place of business (as defined in 12 U.S.C. 1842(d));

(*2*) In any State or States immediately adjacent to such State; and

(*3*) In any State in which the specific insurance agency activity was conducted (or was approved to be conducted) by such bank holding company or subsidiary thereof or by any other subsidiary of such bank holding company on May 1, 1982; and

(B) Provide other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the types of risks as (or are otherwise functionally equivalent to) coverages sold or approved to be sold on May 1, 1982 by such bank holding company or subsidiary.

(v) *Supervision of retail insurance agents.* Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell: (A) Fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or its subsidiaries; and (B) group insurance that protects the employees of the bank holding company or its subsidiaries.

(vi) *Small bank holding companies.* Engaging in any insurance agency activity if the bank holding company has total consolidated assets of $50 million or less. A bank holding company performing insurance agency activities under this paragraph may not engage in the sale of life insurance or annuities except as provided in paragraphs (b)(8)(i) and (iii) of this section, and it may not continue to engage in insurance agency activities pursuant to this provision more than 90 days after the end of the quarterly reporting period in which total assets of the holding company and its subsidiaries exceed $50 million.

(vii) *Insurance agency activities conducted before 1971.* Engaging in any insurance agency activity performed at any location in the United States directly or indirectly by a bank holding company that was engaged in insurance agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971.

§ 225.25 [Amended]

3. Section 225.25(b)(9) is removed and reserved.

4. Section 225.25 (b)(10) and (b)(11) footnotes numbered 8, 9 and 10 are redesignated 12, 13 and 14, respectively.

§ 225.128 [Removed]

5. Section 225.128 is removed.

§ 225.135 [Removed]

6. Section 225.135 is removed.

Board of Governors of the Federal Reserve System, October 3, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-22867 Filed 10-8-86; 8:45 am]

BILLING CODE 6210-01-M

[10] Nothing contained in this provision shall preclude a bank holding company subsidiary that is authorized to engage in a specific insurance agency activity under this clause from continuing to engage in the particular activity after merger with an affiliate, if the merger is for legitimate business purposes and prior notice has been provided to the Board.

[11] For purposes of this paragraph, activities engaged in on May 1, 1982, include activities carried on subsequently as the result of an application to engage in such activities pending before the Board on May 1, 1982, and approved subsequently by the Board or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379 and 399

[Docket No. 60823-6123]

Revisions to the Commodity Control List Based on COCOM Review

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends several List entries in the categories of Electrical and Power-Generating Equipment, General Industrial Equipment, Transportation Equipment, and Electronic and Precision Instruments. These amendments have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to potential adversaries. With the concurrence of the Department of Defense, the Department of Commerce has determined that these revisions to the CCL are necessary to protect U.S. national security interests.

Amended entries on the Commodity Control List include:

1203A, with a more detailed description of those "vacuum induction furnaces" controlled for export;

1312A, with a more specific definition of isostatic presses likely to be approved for export to certain countries;

1353A, which now includes models of small waterplane area twin-hull (SWATH) vessels for use in watertunnels;

1364A, which now includes specially designed equipment for the production of SWATH vessels, certain hub assemblies and water-screw propeller systems, as well as specially designed equipment for the production, dynamic balancing and automatic testing of AC-AC synchronous and AC-DC systems;

1416A, which is expanded to include, among other items, SWATH vessels; and

1418A, which now includes a specific list of vehicle components controlled by that ECCN.

In addition, two new entries are added:

1417A, controlling certain submersible systems even when incorporated in a submersible vehicle; and

2418A, manned submersible vehicles that may be discretely operated with an autonomy equal to or greater than 10 hours.

This rule also adds a new Supplement No. 4 to Part 379. This Supplement contains clarifying information on certain technical data and "software" listed in § 379.4(d). Included in the Supplement are software and technical data for automatically controlled industrial systems to produce assemblies and discrete parts, as well as technical data for metalworking manufacturing processes and specially designed software therefor, which was previously contained in § 379.4(d)(16).

EFFECTIVE DATE: This rule is effective October 9, 1986.

FOR FURTHER INFORMATION CONTACT: John Black or Patti Muldonian, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440.

For questions of a technical nature regarding general industrial equipment and transportation equipment, call Bruce Webb, Capital Goods and Production Materials Technology Center, Export Administration, Telephone: (202) 377-3442.

SUPPLEMENTARY INFORMATION:

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before October 23, 1986 may be exported under the general license provisions up to and including November 6, 1986. Any such items not actually exported before midnight November 6, 1986 require a validated export license.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 53 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, like other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 15 CFR Parts 379 and 399

Exports, Science and technology.

Accordingly, Parts 379 and 399 of the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

1. The authority citation for Parts 379 and 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986).

PART 379—[AMENDED]

2. Section 379.4 is amended by adding a new paragraph (c) (11), reading as follows:

§ 379.4 General license GTDR; technical data under restriction.

* * * * *

(c) * * *

(11) Moisture and particulate separator systems covered by ECCN 1416A(g), as follows:

(i) Technical data for preventing water leakage around the filter stages; *and*

(ii) Technical data for integrating the components of such a system.

* * * * * *

3. Section 379.4 is amended by adding at the end of the introductory text of (d)(16) the parenthetical phrase "(see Supplement No. 4 to Part 379)" and removing paragraphs (d)(16) (i) and (ii); and by revising paragraphs (d) (13) and (17) to read as follows:

* * * * * *

(d) * * *

(13) Technical data for floating drydocks, limited to the following:

(i) That portion of the design of a floating dock covered by ECCN 1425A(a) that relates to the incorporation of the three types of facilities described in the NOTE to ECCN 1425A(a); and

(ii) Design, production and use of on-board floating dock facilities covered by ECCN 1425A(b) that permit the operation, maintenance and repair of nuclear reactors;

* * * * * *

(17) "Software" and technical data for "automatically controlled industrial systems" to produce assemblies or discrete parts (see Supplement No. 4 to Part 379);

* * * * * *

4. A Supplement No. 4 is added to Part 379, reading as follows:

Supplement No. 4—Additional Specifications for Certain Technical Data Requiring a Validated License to All Destinations Except Canada

(1) Technical data for metal-working manufacturing processes and specially designed software therefor (§ 379.4(d)(16)):

(i) The following are definitions of terms used in § 379.4(d)(16)):

(A) "Hot die forging" is a deformation process where die temperatures are at the same nominal temperature as the workpiece and exceed 850 K (577 °C, 1,070 °F);

(B) "Superplastic forming" is a deformation process using heat for metals that are normally characterized by low values of elongation (less that 20%) at the breaking point as determined at room temperature by conventional tensile strength testing, in order to achieve elongations during processing that are at least 2 times those values;

(C) "Diffusion bonding" is a solid-state molecular joining of at least two separate metals into a single piece with a joint strength equivalent to that of the weakest material;

(D) "Metal powder compaction" is a process capable of yielding parts having a density of 98% or more of the theoretical maximum density;

(E) "Direct-acting hydraulic pressing" is a deformation process that uses a fluid-filled flexible bladder in direct contact with the workpiece;

(F) "Hot isostatic densification" is a process of pressurizing a casting at temperatures exceeding 375 K (102 °C, 215.6 °F) in a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal force in all directions to reduce or eliminate internal voids in the casting;

(G) "Vacuum hot pressing" is a process that uses a press with heated dies to consolidate metal powder under reduced atmospheric pressure into a part;

(H) "High pressure extrusion" is a process yielding a single-pass reduction ratio of 4 to 1 or greater in a cross sectional area of the resulting part;

(I) "Isostatic pressing" is a process that uses a pressurizing medium (gas, liquid, solid particles, etc.) in a closed cavity to create equal force in all directions upon a metal powder-filled container for consolidating the powder into a part.

(ii) Technical data covered by paragraph (d)(16) of § 379.4 is as follows:

(A) Technical data for the design of tools, dies and fixtures specially designed for the following processes:

(1) "Hot die forging";

(2) "Superplastic forming";

(3) "Diffusion bonding";

(4) "Metal powder compaction" using:

(i) "Vacuum hot pressing";

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(ii) "High-pressure extrusion"; or
(iii) "Isostatic pressing";
(5) "Direct-acting hydraulic pressing";
(B) Technical data consisting of process parameters as listed below used to control:
(1) "Hot die forging":
(i) Temperature;
(ii) Strain rate;
(2) "Superplastic forming" of aluminum alloys, titanium alloys and superalloys:
(i) Surface preparation;
(ii) Strain rate;
(iii) Temperature;
(iv) Pressure;
(3) "Diffusion bonding" of superalloys and titanium alloys:
(i) Surface preparation;
(ii) Temperature;
(iii) Pressure;
(4) "Metal powder compaction" using:
(i) "Vacuum hot pressing":
(a) Temperature;
(b) Pressure;
(c) Cycle time;
(ii) "High-pressure extrusion":
(a) Temperature;
(b) Pressure;
(c) Cycle time;
(iii) "Isostatic pressing":
(a) Temperature;
(b) Pressure;
(c) Cycle time;
(5) "Direct-acting hydraulic pressing" of aluminum alloys and titanium alloys:
(i) Pressure;
(ii) Cycle time;
(6) "Hot isostatic densification" of titanium alloys, aluminum alloys and superalloys:
(i) Temperature;
(ii) Pressure;
(iii) Cycle time.
(2) "Software" and technical data for "automatically controlled industrial systems" to produce assemblies or discrete parts (§ 379.4(d)(17)):
(a) "Software" with all the following characteristics:
(1) Specially designed for "automatically controlled industrial systems" that include at least eight pieces of the equipment enumerated in Technical Note (b)(1) to (9) below;

Notes: 1. The "digital computers" of the "automatically controlled industrial system" do not share a common "main storage" but exchange information by transmitting messages through a "local area network".

2. This sub-paragraph (a)(1) does not release from export control "software" in source code.

(2) Integrating, in a hierarchical manner, while having access to data that may be stored outside the supervisory "digital computer", the manufacturing processes with:
(i) Design functions; *or*
(ii) Planning and scheduling functions; *and*
(3)(i) Automatically generating and verifying the manufacturing data and instructions, including selection of equipment and sequences of manufacturing operations, for the manufacturing process from design and manufacturing data; *or*
(ii) Automatically reconfiguring the "automatically controlled industrial system" through reselecting equipment and sequences of manufacturing operation by "real-time processing" of data pertaining to anticipated but unscheduled events; *and*

Note.—This sub-paragraph (3)(ii) does not control "software" that only provides rescheduling of functionally identical equipment within "flexible manufacturing units" using prestored "part" programs and a prestored strategy for the distribution of the "part" programs.

(b) Technical data for the design of "automatically controlled industrial systems" that will be used with the "software" controlled for export by sub-paragraph (a) above, regardless of whether the conditions of sub-paragraph (a)(1) are met.

Technical Note: For the purposes of paragraph (d)(17) of § 379.4:
(a) An "automatically controlled industrial system" is a combination of:
(1) One or more "flexible manufacturing units"; *and*
(2) A supervisory "digital computer" for coordination of the independent sequences of computers instructions to, from, and within the "flexible manufacturing units";
(b) A "flexible manufacturing unit" is an entity that comprises a combination of a "digital computer" including its own "main storage" and its own "related equipment", and at least one of the following:
(1) A machine tool or a dimensional inspection machine covered by ECCNs 1091A or 1370A;
(2) A "robot" covered by ECCN 1391A;
(3) A digitally controlled spin-forming or flow-forming machine covered by ECCN 1075A;
(4) Digitally controlled equipment covered by ECCNs 1080A, 1081A, 1086A or 1088A;
(5) Digitally controlled electric arc device covered by ECCN 1206A;
(6) Digitally controlled equipment covered by ECCN 1354A or by paragraph (b) of ECCN 1355A;
(7) Digitally controlled equipment covered by ECCN 1357A;
(8) Digitally controlled electronic equipment covered by ECCN 1529A; *or*
(9) A digitally controlled measuring system covered by ECCN 1532A.

Note.—For the definitions of other terms in quotation marks, see ECCNs 1391A or 1565A or Supplement No. 3 to Part 379.

Note.—Sub-paragraph (a) above does not control "software" (in "machine executable form" only) for industrial sectors other than nuclear, aerospace, shipbuilding, heavy vehicles, machine building, microelectronics and electronics. This NOTE does not release from export control design technology specified in sub-paragraph (b) above.

PART 399—[AMENDED]

Supplement No. 1—[Amended]

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 1203A is amended by revising paragraph (c) of the List of Equipment Controlled by ECCN 1203A, reading as follows:

1203A Electric vacuum furnances, specially designed components and controls therefor.

* * * * *

(c) "Vacuum induction furnances" with either of the following characteristics:
(1) Incorporating susceptors that:
(i) Are designed to operate at temperature in excess of 2,273K (2,000 °C); *and*
(ii) Have a working diameter greater than 127 mm (5 inches); *or*
(2) Allowing the molten metal to be poured into a mold within the vacuum chamber without breaking the vacuum, and having all of the following characteristics:
(i) A capacity in excess of 2,273 kg (5,000 lbs);
(ii) Designed to operate at pressure lower than 6.67 Pa (0.67 mbar); *and*
(iii) Designed to operate at temperatures in excess of 1,375K (1,100 °C, 2,012 °F);

* * * * *

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1312A is amended by adding a paragraph (a)(3) under the Advisory Note, reading as follows:

1312A Isostatic presses; specially designed dies and molds (except those used in isostatic presses operating at ambient temperatures), components, accessories and controls therefor.

* * * * *

Advisory Note * * *
(a) * * *
(3) Having no facility for hydrocarbon impregnation and removal of resultant gaseous degradation products;

* * * * *

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1363A is amended by revising paragraph (c)(3) of the "List of Equipment Controlled by ECCN 1363A" to read as follows:

1363A Specially designed water tunnel equipment, components and accessories for the design and development of vessels.

* * * * *

(c) * * *
(3) Models of hydrofoil vessels, surface-effect vehicles, SWATH vessels and specially designed equipment and components controlled by ECCN 1416A (a), (b), (c), (e), (f), (g) and (h) for use in water tunnels.

* * * * *

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment),

ECCN 1364A is amended by revising the heading; revising paragraphs (a), (c) and (f); and revising Technical Note 1, to read as follows:

1364A Machinery and equipment for the manufacture of hydrofoil vessel, surface-effect vehicle and SWATH vessel structures and components, and specially designed components and accessories therefor.

* * * * *

List of Machinery and Equipment Controlled by ECCN 1364A

(a) Specially designed equipment for manufacturing anisotropic, orthotropic or sandwich structures controlled by ECCN 1416A(h)(3);

Technical Notes: 1. Anisotropic construction is the use of fiber reinforcing members aligned so that the load-carrying ability of the structure can be primarily orientated in the direction of expected stress.

2. * * *
3. * * *
(b) * * *
(c) Specially designed equipment for the production of water-screw propellers and hub assemblies and water-screw propeller systems controlled by ECCN 1416A(e) and (f);
(d) * * *
(e) * * *
(f) Specially designed equipment for the production, dynamic balancing and automatic testing of AC–AC synchronous and AC–DC systems, sectored disc and concentric-drum rotors for DC homopolar machines.

* * * * *

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1391A is amended by adding a sentence after paragraph (c)(4), reading as follows:

1391A "Robots", "robot" controllers and "robot" end-effectors, and specially designed components therefor.

* * * * *

List of Equipment and "Specially Designed Software" Controlled by ECCN 1391A

* * * * *

(c) * * *
(4) * * *
(For other underwater manipulator mechanisms, see ECCN 1417A.)

* * * * *

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1416A is amended by revising the heading, removing the phrase "(oriented at other than right angles)" from Technical Note 1; by revising paragraphs (c) through (e) of the "List of Equipment Controlled by ECCN 1416A"; by adding paragraphs (f) through (h); and by inserting the Technical Notes 1 through 3 after paragraph (h) (3), reading as follows: 1416A Vessels, surface-effect vehicles, water-screw propellers and hub assemblies, water-screw propeller systems, moisture and particulate separator systems and specially designed components.

* * * * *

List of Equipment Controlled by ECCN 1416A

(a) * * *
(b) * * *
(c) Small waterplane area twin-hull (SWATH) vessels having underwater hulls whose cross-sectional area varies along the longitudinal axis between points two major diameters from the bow and two major diameters from the stern;

Technical Note.—SWATH vessels are those that maintain buoyancy by means of submerged hulls using slender struts to support the deck and superstructure of the vessel above the waterline.

(d) Vessels incorporating:
(1) Equipment covered by any Item on the U.S. Department of State Munitions List (See Supp. No. 2 to Part 370) or by ECCNs 1485A, 1501A, 1502A or 1510A;
(2) Degaussing facilities; *or*
(3) Closed ventilation systems designed into the vessel that are designed to maintain air purity and positive pressure regardless of the conditions external to the vessel except where those closed ventilation systems are specially designed for and incorporated in the vessel's medical facilities only;

Note.—Sub-paragraph (1) above does not apply to vessels containing equipment included in Advisory Notes to ECCNs 1485A, 1501A, 1502A or 1510A.

(e) Water-screw propellers and hub assemblies, as follows:
(1) Supercavitating propellers rated at greater than 10,000 hp;
(2) Controllable-pitch propellers and hub assemblies rated at greater than 20,000 hp;
(f) Water-screw propeller systems, as follows:
(1) Contrarotating propeller systems rated at greater than 20,000 hp;
(2) Ventilated, base-ventilated and super-ventilated propeller systems;
(3) Systems employing pre-swirl and post-swirl techniques for smoothing the flow into a propeller so as to improve the propulsive efficiency of:
(i) SWATH vessels, hydrofoil vessels and surface-effect vehicles; *or*
(ii) Other vessels whose propeller rotational speed is above 200 rpm, or having propellers with a rating exceeding 50,000 hp per shaft;
(g) Moisture and particulate separator systems capable of removing 99.9% of particles larger than 2 micrometers in diameter with a maximum pressure loss of 1.6 kPa (16 millibar) for gas turbine engine air inlets.
(h) Specially designed components for vessels covered by sub-paragraphs (a), (b) and (c) of this List, as follows:
(1) Advanced hull forms that incorporate any of the following:
(i) Stepped hulls for hyrofoil vessels;
(ii) Hulls for air cushion vehicles with trapezoidal planforms;
(iii) Hulls for surface-effect vehicles with catamaran-like sidewalls;
(iv) Hulls for wing-in-ground effect vehicles;
(v) Underwater hulls and struts for SWATH vessels;
(2) Fully submerged subcavitating or supercavitating hydrofoils;
(3) Light structural components for SWATH vessels, hydrofoil vessels and surface-effect vehicles, constructed using anisotropic, orthotropic or sandwich construction methods;

Technical Notes: 1.* * *
2. * * *
3. * * *

(4) Flexible skirts, seals and fingers for surface-effect vehicles;
(5) Systems for automatically controlling the stability of SWATH vessels, hydrofoil vessels or surface-effect vehicles;
(6) Power transmission shaft systems that incorporate composite material components for SWATH vessels, hydrofoil vessels and surface-effect vehicles;
(7) Lightweight, high capacity (K factor greater than 150) gearing (planetary, cross-connect and multiple input/output gears and bearings) for SWATH vessels, hydrofoil vessels and surface-effect vehicles;

Technical Note.—For the K factor, see AGMA tables of K factor values (based on tooth profile, pinion and gear materials and surface endurance limits).

(8) Water-cooled electrical propulsion machinery (motor and generator), including AC–AC synchronous and AC–DC systems, sectored-disc and concentric-drum rotors for DC homopolar machines for SWATH vessels, hydrofoil vessels and surface-effect vehicles;
(9) Superconducting electrical propulsion machinery for SWATH vessels, hydrofoil vessels and surface-effect vehicles;
(10) Lift fans for surface-effect vehicles, rated at greater than 400 hp;
(11) Waterjet propulsor systems rated at 3,000 input hp or greater for hydrofoil vessels and surface-effect vehicles.

(See also Categories VI and VIII on the U.S. Department of State Munitions List, Supp. No. 2 to Part 370.)

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(For marine gas turbine engines, see also ECCN 1431A.)

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), new entries 1417A and 2418A are added (in numerical order, disregarding the first digit), reading as follows:

1417A Submersible systems, even when incorporated in a submersible vehicle.

Controls for ECCN 1417A.

Unit: Report in "number".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $2,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE

Reason for Control: National Security.

Special Licenses Available: See Part 373.

List of Equipment Controlled by ECCN 1417A

Submersible systems, as follows, even when incorporated in a submersible vehicle:

(a) Automatically-controlled atmosphere-regeneration systems specially designed for submersible vehicles that, in a single chemical-reaction cycle, ensure carbon dioxide removal and oxygen renewal;

(b) Systems specially designed for the automated control of the motion of a submersible vehicle using navigation data and having closed-loop servo-control(s) so as to:

(1) Enable the vehicle to move within ten meters of a predetermined point in the water column;

(2) Maintain the position of the vehicle within ten meters of a predetermined point in the water column; or

(3) Maintain the position of the vehicle within ten meters while following a cable on or under the sea bed;

(c) Underwater vision systems, as follows:

(1) Television systems (comprising camera, lights, monitor and signal transmission equipment) specially designed for remote operation with a submersible vehicle, having a "limiting resolution", when measured in the air, greater than 500 lines, using IEEE Standard 208/1960 or any equivalent standard;

Technical Note.—"Limiting resolution" in television is a measure of resolution usually expressed in terms of the maximum number of lines per picture height discriminated on a test chart.

(2) Systems specially designed for remote operation with a submersible vehicle employing techniques to minimize the effects of back-scatter, such as range-gated illuminators;

(d) Remotely controlled articulated manipulators specially designed for use with submersible vehicles and having any of the following characteristics:

(1) Systems that control the manipulator using information from sensors that measure force or torque applied to an external object, distance from an external object, or tactile sense between the manipulator and an external object;

(2) Controlled by proportional master-slave techniques or by using a dedicated stored-program computer; *or*

(3) Capable of exerting a force of 250 Newtons or more or a torque of 250 Newton-meters or more and using titanium based alloys or fibrous and filamentary composite materials in their structural members.

(For underwater "robots", see ECCN 1391A.)

Notes: 1. Sub-paragraph (a) controls equipment using light metal peroxides such as KO_2 without controlling the shipment of KO_2 itself.

2. Sub-paragraph (b) does not control automated control systems incorporated in underwater bulldozers of trench-cutters not capable of operating at depths greater than 100 meters and possessing only negative buoyancy.

3. Sub-paragraph (c) does not control television cameras used merely through a porthole.

4. Sub-paragraph (d)(1) does not control systems where force or torque are only measured and then displayed to the operator.

* * * * *

2418A Manned submersible vehicles that may be discretely operated with an autonomy equal to or greater than 10 hours.

Controls for ECCN 2418A.

Unit: Report vehicles in "number"; parts and accessories in "$ value."

Validated Licensed Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $2,000 for Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security.

Special Licenses Available: See Part 373.

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1418A is amended by revising the heading and by adding at the end of the entry a "List of Equipment Controlled by ECCN 1418A", reading as follows:

1418A Deep submergence vehicles, manned or unmanned, tethered or untethered, capable of operating at depths exceeding 1,000 meters, and specially designed associated systems, equipment, components and materials therefor, including but not limited to equipment described in the list below.

Controls for ECCN 1418A

* * * * *

List of Equipment Controlled by ECCN 1418A

Deep submergence vehicles, manned or unmanned, tethered or untethered, capable of operating at depths exceeding 1,000 meters, and specially designed associated systems, equipment, components and materials therefor, including but not limited to the following:

(a) Pressure housings or pressure hulls;

(b) Propulsion motors and thrusters;

(c) Hull penetrators or connectors.

(For syntactic foam, see ECCN 1759A.)

(For hull penetrators for military use, see Category VI on the U.S. Department of State Munitions List, Supp. No. 2 to Part 370.)

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1510A is amended by revising the heading; by revising paragraphs (a)(1) (i) and (ii) introductory text by adding a paragraph (a)(1)(iv); by revising the phrase "hydrophones and/or transducers" in paragraph (a)(2) introductory text to read "hydrophones or transducers"; redesignating the old Note 5 as "6", redesignating (Advisory) Note 6 as "7", and redesignating (Advisory) Note 7 as "8" and by adding a new Note 5, reading as follows:

1510A Marine or terrestrial acoustic or ultrasonic systems or equipment specially designed for positioning surface vessels or underwater vehicles, or for detecting or locating underwater or subterranean objects or features, and specially designed components of such systems or equipment, including but not limited to hydrophones, transducers, beacons, towed hydrophone arrays, beamformers and geophones (except moving coil or moving magnet electro-magnetic geophones), except those systems or equipment listed below.

* * * * *

List of Systems and Equipment Controlled by ECCN 1510A

(a) * * *

(1) * * *

(i) Depth sounders used solely for measuring the depth of water or the distance of submerged or buried objects vertically below the apparatus;

(ii) Horizontally-operated object detection or location systems, having all of the following characteristics:

* * * * *

(iv) Acoustic systems or equipment for positioning surface vessels or underwater vehicles, provided that:

(A) Their control capability is limited to release and basic transponder capabilities;

(B) They are not capable of processing responses from more than four beacons in the calculation of a single point and have neither devices nor software for correcting automatically velocity-of-propagation errors for point calculation, nor any coherent signal processing means;

(C) They are capable only of operating within a range of less than 1,000 meters or, if capable of operating beyond a range of more than 1,000 meters, are not capable of achieving positional accuracy of better (less) than 20 meters when measured at a range of 1,000 meters;

(D) Transducers, acoustic modules or hydrophones therefor are not designed to withstand pressure during normal operation at depths greater than 1,000 meters; *and*

(E) Beacons therefor are not designed to withstand pressure during normal operation at depths greater than 1,000 meters, do not have oscillators with a stability greater than 10^{-5} over periods of 24 hours, and do not use complex codes or beamformers that have shaded or formed beams;

(2) * * *

* * * * *

Note.—5. Acoustic systems or equipment controlled for export by this ECCN for use in positioning surface vessels or underwater vehicles are systems or equipment using acoustic travel time differences between beacons operating as responders, transponders or independent transmitters and one or more hydrophones carried by a surface vessel or underwater vehicle.

* * * * *

Dated: October 6, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-22871 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 399

[Docket No. 60621-6121]

Removal of Unilateral Controls; ECCNs 5565D and 4590B.

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which contains those items controlled for export by the Department of Commerce. On December 31, 1984, Export Administration published a final rule (49 FR 50608) revising Entry 1565A of the CCL, which controls certain electronic computers and related equipment. That revision superseded export controls in effect under Entries 5565D and 4590B. This rule removes those two redundant entries.

EFFECTIVE DATE: This rule is effective October 9, 1986.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and (604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

PART 399—[AMENDED]

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCNs 5565D and 4590B are removed.

Dated: October 6, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 22872 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket Nos. RM83-8-001 through RM83-8-010; Order No. 440-A]

Ratemaking Treatment of Investment Tax Credits for Natural Gas Pipeline Companies, Order Denying Rehearing

Issued: October 2, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 440, which revoked the Commission's Statement of Policy in Order No. 448 where the Commission had set forth its determination that the supply of natural gas is sufficient to meet the current and

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future needs of the economy. The Commission denies rehearing because it believes its prior determination that the supply of natural gas is sufficient to meet the current and future needs of the economy is correct.

FOR FURTHER INFORMATION CONTACT: Miriam Swydan Pedersen, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC, (202) 357-5417.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 440.[1] The Commission issued Order No. 440, a final rule on the ratemaking treatment of investment tax credits for natural gas pipeline companies on November 27, 1985. That order revoked the Commission's Statement of Policy in Order No. 448,[2] where the Commission had set forth its determination that a supply shortage of natural gas exists, and repealed section 2.57a of the Commission's regulations.[3] Order No. 440 also required natural gas pipelines to treat investment tax credits earned on or after January 1, 1986, in accordance with Part 201 of the Commission's regulations.[4] Prior to the issuance of Order No. 440, the short supply determination permitted natural gas pipelines to retain the benefits of the investment tax credits. Order No. 440's revocation of the short supply determination permits gas ratepayers to share in the benefits of investment tax credits earned on or after January 1, 1986.

Ten requests for rehearing of Order No. 440 were filed on December 26 and 27, 1985.[5] For the reasons discussed below, the Commission denies these requests for rehearing.

II. Background

In 1971, Congress passed the Revenue Act of 1971 which reinstated the availability of investment tax credits and established specific accounting and ratemaking guidelines for those credits generated by public utilities. The Congressional intent in enacting the investment tax credit program was to assist companies in raising capital necessary for modernization and expansion.

Section 46(f) of the Internal Revenue Code[6] (Code) provides four ratemaking options for companies to follow when accounting for investment tax credits. Only three of these options, Option 1, Option 1a, and Option 2 are at issue here. Options 1[7] and 2[8] generally provide for a fair and equitable sharing of the benefits of investment tax credits between the ratepayers and the company shareholders. Option 1a is the exception, and permits companies to retain all the benefits of any investment tax credits earned.[9]

Option 1a is only available to companies where the regulatory body with jurisdiction over those companies makes the determination that the natural domestic supply of the product is insufficient to meet the present and future needs of the domestic economy.[10] The Federal Power Commission (FPC), the Commission's predecessor, issued a Statement of Policy in Order No. 448, where it specifically found that the domestic supply of natural gas was insufficient at that time to meet the present and future requirements of the domestic economy for the purposes of investment tax credits.[11] Therefore, this determination allowed natural gas companies to retain the full benefits of the investment tax credits. Most of the natural gas pipeline companies elected Option 1 in order to qualify for Option 1a treatment.

In Order No. 440, the Commission determined that the supply of natural gas was sufficient to meet both the present and future requirements of the domestic economy, and thus revoked the short supply determination of Order No. 448.[12] With respect to the current gas supply, the Commission found that there exists a current substantial surplus of gas. This decision was based on responses to notices of inquiry concerning the Commission's attempt to develop comprehensive regulation of natural gas in Docket No. RM85-1, which has resulted in Order No. 436 *et seq.*,[13] and on company requests to implement special marketing programs to enable pipelines to sell and transport excess gas supplies. The Commission also noted that this current excess gas supply has been recognized by the courts.[14] Regarding future gas supply, certain commenters asserted that even if a sufficient supply exists for the present, it will not last longer than a few years. The Commission rejected these arguments on the grounds that the gas supply has continued to improve steadily during the 1980s due to effective energy legislation, increased wellhead prices, and consumer conservation. In particular, the Commission cited the documented effects of deregulation, increased prices under the Natural Gas Policy Act of 1978 (NGPA), and recent take-or-pay exposure incurred by pipelines. The Commission stated that the maintenance of a short supply determination in the face of the current excess would not be in the public interest because it requires ratepayers to pay for gas as if it were in short supply when the reality is just the opposite.

[1] 50 FR 48879 (Dec. 4, 1985); 33 FERC ¶ 61,285 (1985); FERC Stats. & Regs., Reg. Preambles 1982-85, ¶ 30,674 (1985).

[2] 37 FR 2502 (Feb. 2, 1972); 37 F.P.C. 141 (1972).

[3] 18 CFR 2.57a (1985), "Policy with respect to the natural gas shortage as it relates to the Revenue Act of 1971."

[4] 18 CFR Part 201 (1985).

[5] The Interstate Natural Gas Association of America (INGAA); Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company; Transcontinental Gas Pipeline Corporation; Algonquin Gas Transmission Company; ANR Pipeline Company; Natural Gas Pipeline Company of America; Texas Gas Transmission Corporation; Northwest Alaskan Pipeline Company; Northern Natural Gas Company, Division of InterNorth, Inc.; and Panhandle Eastern Pipe Line Company and Trunkline Gas Company.

[6] I.R.C. Section 46(f).

[7] Under Option 1, the company adopts a rate base method in which it subtracts the actual amount of credit retained by the company from rate base and then adds the amortized investment tax credit amount back into rate base annually over the life of the asset. I.R.C. Section 46(f)(1).

[8] Under Option 2, the company employs a cost-of-service normalization process. The tax expense reflected in the cost of service is reduced by a proportional amount of the investment tax credit and no reduction is made to the rate base. I.R.C. Section 46(f)(2).

[9] Once a short supply determination has been made, a short supply company is no longer allowed to adjust its rate base or cost-of-service for ratemaking purposes to reflect the investment tax credit.

[10] I.R.C. Section 46(f)(1).

[11] 47 F.P.C. 141 (1972).

[12] The Commission issued a Notice of Proposed Rulemaking (NOPR) on February 22, 1985 (50 FR 8136 (Feb. 28, 1985)), in which it proposed to revoke the short supply determination of Order No. 448, on the basis that the current gas supply situation had changed since that of the 1970's. The Commission noted that the election of Option 1 by most of the pipelines might place them in a less favored tax position relative to other regulated companies that elected Option 2. Thus, the Commission requested comments on whether any changes needed to be made in the Commission's accounting or ratemaking practices so that natural gas pipelines received regulatory treatment comparable to that of electric utilities. In the NOPR, the Commission also stated its intention that the application of the proposed rule would be prospective. (*Id.* at 8140)

[13] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408, (Oct. 18, 1985) (Order No. 436), *modified*, 50 FR 52217, (Dec. 23, 1985) (Order No. 436-A) *pet. for review filed sub nom.*, Associated Gas Distributors v. FERC, No. 85-1811 (D.C. Cir., filed Dec. 12, 1985).

[14] 50 FR at 49861 (Dec. 4, 1985); FERC Stats. & Regs., Reg. Preambles 1982-85, ¶ 30,674 at 31,634, *citing* Maryland People's Counsel v. FERC, 761 F.2d 768, 771 (D.C. Cir., 1985); Maryland People's Counsel v. FERC, 761 F.2d 780, 781 (D.C. Cir., 1985).

The Commission noted in Order No. 440 that most pipelines elected Option 1 in order to qualify for Option 1a treatment. The Commission noted that such companies will remain Option 1 companies subsequent to the revocation of the short supply determination, because pursuant to section 105 of the Code,[15] the election is a one-time choice.

With respect to the difference in the benefits received by companies under Option 1 and Option 2, the Commission declined to modify its accounting regulations to equalize those benefits. The Commission noted that the Option 1a pipelines were fully aware that the short supply determination could be revoked, leaving the pipelines in the Option 1 category. The Commission also noted that the option 1a pipelines retained all the benefits of any investment tax credits earned while the short supply determination was in force, while the companies who elected Option 2 did not receive any such benefits. In addition, the Commission found that the effort involved in developing a general model or formula would be disproportionate to the dollars involved in the difference in the benefits. Thus, in the interests of administrative efficiency, the Commission decided to have Option 1 companies account for their investment tax credits according to the methodology already established in the Code.

Regarding the application of the rule, the Commission held that it should become effective on January 1, 1986, consistent with its intention as stated in the NOPR. The Commission found that it would be inappropriate to apply the rule retroactively to pipelines that relied on ratemaking treatment effective before the issuance of Order No. 440 to make investments and to calculate their rates.

III. Discussion

The Commission received ten requests for rehearing. The requests for rehearing raise several arguments. First, petitioners allege that the Commission's revocation of the short supply determination is not supported by substantial evidence and that the Commission's failure to consider studies submitted by INGAA constitutes arbitrary and capricious decisionmaking. Moreover, petitioners assert that the Commission did not accurately focus on the future adequacy of the domestic supply. Second, petitioners allege that according to section 46(f)(1) of the Code, the Commission lacks the authority to revoke the short supply determination. Third, petitioners assert that the Commission erred by not considering the proposed alternative to permit pipelines to retain the full benefit of investment tax credits on investments for supply related facilities. Fourth, petitioners claim that the Commission should have equalized the benefits of Option 1 and Option 2, or permitted the pipelines to do so on a case-by-case basis. Fifth, petitioners argue that the rule should apply on a prospective basis only to facilities certificated after January 1, 1986, or, if facilities were constructed under blanket authority, where construction commenced after January 1, 1986. Finally, Northwest Alaskan Pipeline Company (Northwest Alaskan), in addition to raising similar gas supply related issues to those noted above, raises certain issues with respect to the treatment of investment tax credits related to the Alaska Natural Gas Transportation System (ANGTS).

A. Substantial Evidence Supports Order No. 440

INGAA, and the other petitioners, have submitted arguments and data against the revocation of the short supply determination identical to those included in their comments to the NOPR. The only argument that has not been previously considered and rejected by the Commission is INGAA's assertion that Order No. 440 was not based on substantial evidence because it neglected to consider the data submitted by INGAA. INGAA, in its initial comments to the NOPR and request for rehearing, supports its contention that the current surplus of natural gas will cease to exist in the near future with reports published by the Department of Energy (DOE) and the Energy Information Agency (EIA). Contrary to INGAA's assertion, the Commission fully addressed the concerns of INGAA in Order No. 440. Although it did not refer to the DOE and EIA studies by name, the Commission did address the substance of INGAA's comments.[16] In response to INGAA and other commenters, the Commission relied upon documented evidence that the combined effects of deregulation under the NGPA, increased wellhead prices, and consumer conservation will result in a sufficient supply in the future.

It has been recognized repeatedly by the Commission and the courts that the industry is faced with a significant gas supply excess, such that pipelines have incurred take-or-pay exposure. It is this widely acknowledged surplus which led the Commission to initiate special marketing programs to permit pipelines to develop spot markets for surplus gas. In an order authorizing such a program,[17] the Commission stated that its decision was grounded on the fact that there was a surplus in the market, a fact which the Commission noted was undisputed by the parties to the proceeding. In *Maryland Peoples Council v. FERC*,[18] the court stated that "[F]actors ranging from the increased wellhead prices and impending total decontrol, to greater energy conservation, have turned the natural gas shortages of the 1970's into a natural gas surplus."[19] In a companion case, the Court also recognized the existence of a surplus, and cited the very DOE and EIA studies relied upon by INGAA.[20] In short, the Commission fully addressed the concerns of INGAA in Order No. 440, and there is no need to repeat that discussion here. In the face of this widely acknowledged surplus, it would be against the public interest to continue the short supply determination. INGAA has not shown that the trends which resulted in the current gas supply excess will not continue into the future, and its request for rehearing on this point is denied.

B. Commission Authority To Revoke the Short Supply Determination

Petitioners allege that the Internal Revenue Code precludes the pipelines from sharing the benefits of the investment tax credits with ratepayers. INGAA states that the Commission does not have the authority to revoke the short supply determination because the Code does not expressly permit such an action. Thus, INGAA proposes to keep the benefits of the investment tax credits even if the Commission finds there is an adequate supply of natural gas.

Petitioners' arguments are seriously deficient on several grounds. The Code expressly granted regulatory agencies the authority to institute a short supply determination if they so wished. The decision as to whether to make such a determination was left to the Commission's authority and its expertise. Implicitly, this includes the power not to make such a determination, or, relying on its expertise, to revoke it. Therefore, it is unnecessary for the Code to include language expressly permitting the revocation of a short supply

[15] I.R.C. Section 105.

[16] 50 FR at 49861 (Dec. 4, 1985); FERC Stats. & Regs. ¶ 30,674 at 31,624.

[17] Tenneco Oil Co., *et al.*, 26 FERC ¶ 61,030 (1984).

[18] 761 F.2d 768 (D.C. Cir., 1985).

[19] Id. at 771.

[20] 761 F.2d 780, 781 (D.C. Cir., 1985).

determination. In addition, the provisions of the Code do not include language which expressly prohibits the Commission from revoking a short supply determination. More importantly, INGAA's suggestion that it retain the benefits of the investment tax credits despite the existence of a gas surplus is clearly without merit. Option 1a, which permitted the pipelines to keep the benefits of the investment tax credits in the past was expressly conditioned upon the Commission finding of a short supply determination.

C. Application of the Exemption for Supply Facilities

Petitioners' assertions that the Commission should consider its alternative of permitting pipelines to retain the benefit of investment tax credits for supply related facilities is without merit. INGAA states that this position would be in keeping with Congress' intent in enacting the short supply exemption as an incentive to encourage expansion or maintenance of the supply. The Commission has determined, in Order No. 440 and in this order, that there is a current excess supply of gas and a sufficient supply of gas for the future domestic needs of the economy. Therefore, the argument on this point is denied for all of the reasons set forth above.

D. Accounting Treatment Equalizing Option 1 and Option 2

Petitioners state that the Commission acted in an arbitrary and unreasonable manner in Order No. 440 when it decided not to allow pipelines to seek the equivalent of Option 2 treatment. The Commission had held in Order No. 440 that in the interest of administrative efficiency, it would not modify its accounting regulations to equalize the benefits received under Option 1 and Option 2. The Commission's decision was based on the conclusion that the pipelines knew the short supply determination could be revoked while their election of Option 1 could not be. In addition, INGAA states that this conclusion is erroneous because the language of the Code does not expressly grant the Commission authority to revoke the short supply determination, and so the pipelines were unaware of that possibility. This latter argument has already been considered and rejected in this order.

INGAA also repeats the contention made in its comments to the NOPR that a refusal to equalize the benefits received by companies under Option 1 and Option 2 would have the effect of penalizing pipelines who elected Option 1a. The Commission fails to see the merits of this argument. As we stated in Order No. 440, the companies who chose Option 1a treatment retained the benefits of investment tax credits under that option for several years, while Option 2 companies did not. Equalizing benefits under Options 1 and 2 upon the revocation of the short supply determination would not recognize the advantage that Option 1a companies had previously over the companies that elected Option 2.

INGAA contends that as an alternative, the pipelines who elected Option 1a should be able to develop ratemaking methods equivalent to Option 2 on a case-by-case basis. The Commission decided against this in Order No. 440 on the basis that use of the established Option 1 methodology served the interests of administrative efficiency. Petitioners have not raised any new arguments that would lead us to change the Commission's previous conclusion.

E. Prospective Application of the Rule

Petitioners request that the Commission clarify the prospective applications of the rule so that it would not apply to facilities certificated prior to the effective date of the rule, January 1, 1986. If facilities are constructed pursuant to a blanket certificate, INGAA suggests the rule would not apply to projects where construction began prior to January 1, 1986. Petitioners' request for clarification is denied. In Order No. 440 the Commission decided against retroactive application of the rule because the pipelines relied upon ratemaking treatment effective before January 1, 1986, to make investments and calculate their rates. It is the policy of this Commission as stated in Order No. 440 to have the pipelines share the benefits of the investment tax credits with the ratepayers as soon as possible, but not to penalize the companies who generated investment tax credits in a prior designated shortage period.

Investment tax credits are generally considered earned at the time the property is constructed. [21] The pipelines can flow through the credits to the shareholders during a period of short supply determination as construction progresses. Petitioners' suggestion would mean that the short supply status would be applied to projects certificated before January 1, 1986, but constructed and completed after that date. This would result in companies earning and retaining the benefits of investment tax credits even after the Commission has determined that there is a sufficient supply of natural gas. Therefore, the application of the rule must coincide with the revocation of the short supply determination.

The prospective application of the rule as of January 1, 1986, will apply to any investment tax credits generated after the revocation of the short supply determination.

For the reasons discussed above, the requests for rehearing of Order No. 440 are denied.

F. Northwest Alaskan Pipeline Company

Northwest Alaskan argues that the Commission erred by revoking the short supply determination in Order No. 440.[22] Further, Northwest Alaskan asserts that the Commission erred by not exempting Northwest Alaskan from the impact of Order No. 440, once the short supply determination was revoked. In this regard, Northwest Alaskan contends that the change in rate treatment of investment tax credits mandated by Order No. 440 will undermine assumptions upon which ANGTS was founded and could have an impact on prospects for successful private financing of the project. If the Commission does not exempt Northwest Alaskan from Order No. 440, Northwest Alaskan seeks clarification that the current rate and accounting treatment for income taxes related to the ANGTS will remain unchanged after the effective date of Order No. 440.

Northwest Alaskan's arguments regarding the adequacy of gas supply are essentially similar to those made by other commenters in this case which have been fully addressed in Order No. 440 and in this order. However, with regard to Northwest Alaskan's request for an exemption or clarification, the Commission believes that clarification is necessary.

[21] I.R.C. Section 46(d).

[22] Although Northwest Alaskan was not listed as a commenter in the appendix to Order No. 440, this was an administrative oversight. The Commission, however, did consider its comments regarding the adequacy of gas supply which were similar to those of other commenters considered and addressed in Order No. 440.

Northwest Alaskan argues that Order No. 440 will change its current rate and accounting methods for investment tax credits which will adversely affect the financing of ANGTS and contravene prior Commission and court orders regarding that rate and accounting treatment. In particular, Northwest Alaskan cites *Northern Border Pipeline Company*,[23] which approved Northwest Alaskan's current rate and accounting treatment, Order No. 380–A,[24] which concerned the treatment of pipeline minimum bills and *Wisconsin Gas Co. v. FERC*,[25] which affirmed Order No. 380–A. Order No. 380–A, as affirmed by *Wisconsin Gas*, stated that any action which could adversely affect the financing of ANGTS would constitute a breach of the assurances regarding the project made by the President and the United States Congress to the Canadian government. Northwest Alaskan asserts that Order No. 440 overturns its current accounting and rate method approved in *Northern Border* contrary to the assurances given to the ANGTS project as noted in Order No. 380–A and *Wisconsin Gas*. Northwest Alaskan therefore requests an exemption from Order No. 440, or clarification that its approved rate and accounting treatment will be preserved.

In response to Northwest Alaskan's assertions, the Commission clarifies that nothing in Order No. 440 changes the treatment of investment tax credits as approved in *Northern Border*. Thus, nothing in Order No. 440 changes the assurances provided in Order No. 380–A and *Wisconsin Gas* regarding the financing of ANGTS.

By the Commission. Acting Chairman Sousa dissented.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86–22915 Filed 10–8–86; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 111, 171, and 178

[T.D. 86–161]

Customs Regulations Amendments Relating to Customs Brokers; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 86–19256, published as T.D. 86–161 on August 26, 1986 (51 FR 30336), Parts 111, 171 and 178, Customs Regulations (19 CFR Parts 111, 171, 178), were extensively revised to implement the statutory changes made by the Trade and Tariff Act of 1984, relating to customs brokers. Corrections were made to T.D. 86–161 on September 5, 1986, in 51 FR 31760 and on September 10, 1986, in 51 FR 32208. It has come to our attention that another correction is necessary. On page 30342 of T.D. 86–161, § 111.23(e)(2)(v), Customs Regulations, provides that a written request for authorization to maintain financial records on a centralized systems basis shall include an agreement that all financial records pertaining to customs transactions will be made available to Customs for complete inspection in accordance with §§ 111.25 and 162.1(d), Customs Regulations (19 CFR 111.25, 162.1(d)) after reasonable notice in writing has been provided. One of the purposes of amending the brokers' regulations was to ensure uniformity with the record-keeping provisions of § 162.1(d). Section 162.1(d)(2), Customs Regulations (§ 162.1(d)(2)), provides that reasonable notice for examination of records may be provided either orally or in writing. To allow for the same treatment for brokers as is given to other segments of the importing community, # 111.23(e)(2)(v) should also have stated that reasonable notice for examination of records may be provided either orally or in writing.

EFFECTIVE DATE: September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter or Fred Burns O'Brien, Entry, Licensing and Restricted Merchandise Branch (202–566–5765).

Correction to the Regulations

In FR Doc 86–19256 beginning on page 30336 in the issue of Tuesday, August 26, 1986, make the following correction.

§ 111.23 [Corrected]

On page 30342, second column, in § 111.23(e)(2)(v), sixth line, the words "orally or" should be inserted between the words "notice" and "in".

Dated: October 2, 1986.

Elizabeth B. Anderson,
Commissioner of Customs (Acting).

[FR Doc. 86–22909 Filed 10–8–86; 8:45 am]
BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Exclusion of Underpayments From Resources

Correction

In FR Doc. 86–21978 beginning on page 34462 in the issue of Monday, September 29, 1986, make the following corrections:

1. On page 34462, in the SUPPLEMENTARY INFORMATION, third column, fourth complete paragraph, twelfth line, the first word should read "only";

2. On page 34463, first column, last paragraph, third and fourth lines, "under payments" should read "underpayments"; and

3. On page 34463, third column, fourth paragraph, tenth line, "is" should read "in".

BILLING CODE 1505–01–M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Melengestrol Acetate With Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. that provides for use of a medicated liquid feed supplement containing 0.125 to 0.8 milligram melengestrol acetate per pound and 25 to 600 milligrams monensin per pound. The medicated liquid feed supplement is used in making Type C medicated feeds for use in heifers being fed in confinement for slaughter, for increased rate of weight gain, improved feed efficiency, and suppression of estrus.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: John Markus, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1788.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed a supplement to NADA 125–476 to provide for a medicated liquid feed supplement containing 0.125 to 0.8 milligram melengestrol acetate per pound in combination with 25 to 600 milligrams monensin per pound. The

[23] 23 FERC ¶ 61,218 (1983).
[24] FERC Stat. & Reg., Reg. Preambles ¶ 30,584 at 31,052.
[25] 770 F.2d 1144 (D.C. Cir. 1985).

liquid feed supplement is to be mixed into Type C medicated feeds to provide a rate of 0.25 to 0.4 milligram melengestrol acetate and 50 to 360 milligrams monensin per head per day for increased rate of weight gain, improved feed efficiency, and suppression of estrus in heifers fed in confinement for slaughter. The supplemental NADA is approved and the regulations are amended to reflect the approval. The regulations are also amended by correcting an error and by making editorial revisions consistent with a final rule titled "New Animal Drugs for Use in Animal Feeds; Definitions and General Considerations; Revised Procedures Re Medicated Feed Applications" that was published in the **Federal Register** on March 3, 1986 (51 FR 7382).

This supplement provides for mixing melengestrol acetate and monensin in a liquid supplement. Approval of this supplement did not require generation of new safety or effectiveness data because the agency has previously approved adding liquid melengesterol acetate to monensin medicated feed, and mixing melengestrol acetate and monensin Type A medicated articles in feed. Therefore, a freedom of information summary is not required for this action.

The agency has determined pursuant to 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.342 is amended by revising paragraph (c)(2)(ii), to read as follows:

§ 558.342 Melengestrol acetate.

* * * * *

(c) * * *

(2) * * *

(ii) *Limitations.* Heifers being fed in confinement for slaughter: Administer melengestrol acetate and monensin by (*a*) adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound to Type C medicated feeds containing monensin at 5 to 30 grams per ton, (*b*) adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound and monensin from a separate supplement containing 50 to 1,200 grams per ton to Type C medicated feeds, (*c*) adding melengestrol acetate and monensin which are contained in the same dry supplement at the ranges in paragraph (c)(2)(ii) (*a*) and (*b*) of this section to Type C medicated feeds, or (*d*) using a liquid feed supplement containing 0.125 to 0.8 milligram melengestrol acetate per pound and 25 to 600 milligrams monensin per pound (50 to 1,200 grams per ton) to make Type C medicated feeds. Type C medicated feeds in paragraph (c)(2)(ii) (*a*) and (*b*) of this section may be manufactured from monensin liquid feed supplements in accordance with paragraph (f)(3)(i)(*b*) of § 558.355. Withdraw melengestrol acetate 48 hours prior to slaughter.

3. Section 558.355 is amended by revising paragraph (f)(3)(iv)(*b*), to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(iv) * * *

(*b*) *Limitations.* Heifers being fed in confinement for slaughter: Administer melengestrol acetate and monensin by: (*1*) Adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound to Type C medicated feeds containing monensin at 5 to 30 grams per ton, (*2*) adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound and monensin from a separate supplement containing 50 to 1,200 grams per ton to Type C medicated feeds, (*3*) adding melengestrol acetate and monensin which are contained in the same dry supplement at the ranges in paragraph (f)(3)(iv)(*b*) (*1*) and (*2*) of this section to Type C medicated feeds, or (*4*) using a liquid feed supplement containing 0.125 to 0.8 milligram melengestrol acetate per pound and 25 to 600 milligrams monensin per pound (50 to 1,200 grams per ton) to make Type C medicated feeds. Type C medicated feeds in paragraph (f)(3)(iv)(*b*) (*1*) and (*2*) of this section may be manufactured from monensin liquid feed supplements in accordance with paragraph (f)(3)(i)(*b*) of this section. Withdraw melengestrol acetate 48 hours prior to slaughter.

* * * * *

Dated: October 2, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-22864 Filed 10-8-86; 8:45am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. N-86-1631; FR-2284]

State and Local Fair Housing Laws; Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final notice.

SUMMARY: Title 24, Part 115 of the Code of Federal Regulations describes the procedure for recognizing State and local fair housing laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19). This notice: A. Announces the Department's decision to recognize three additional jurisdictions in accordance with § 115.6(c); and B. Announces the entry into an agreement for interim referrals with five jurisdictions in accordance with § 115.11.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas J. Jankowski, Director, Office of Fair Housing Enforcement and Section 3 Compliance, 451 Seventh Street, SW., Washington, DC 20410, (202) 755–5673. (This is not a toll-fee number.)

SUPPLEMENTARY INFORMATION: A. On August 2, 1985 (50 FR 31394), January 7, 1986 (51 FR 595), and July 9, 1986 (51 FR 24852), the Department published notices seeking public comment on the laws for Boston, Massachusetts; for Arlington County, Virginia; and for the State of Oklahoma, respectively. The notices invited comments on the Department's determination that the fair housing law of each jurisdiction "on its face" provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided under the Federal Fair Housing Act (the Act). Comment was also invited on the present and past performance of the agencies administering the law. No public comments were received with respect to the State of Oklahoma or Arlington County, Virginia.

With respect to Boston, only the Massachusetts Commission Against Discrimination (MCAD) submitted comments. MCAD supported Boston's request for substantial equivalency recognition, but raised the potential problem of overlapping jurisdiction involving MCAD and the Boston Fair Housing Commission. The comment concluded:

> MCAD strongly believes that the most effective mechanism for addressing these issues and problems is the execution of a tripartite Memorandum of Agreement involving HUD, MCAD and the BFHC. Until now, the execution of such an MOA was not possible because the BFHC had not been recognized as a substantially equivalent agency. With substantial equivalency recognition for the BFHC, the three agencies will have the capacity to create a comprehensive, formalized working relationship by means of an MOA. MCAD believes that the execution of a tripartite MOA would be significantly more effective than the execution of separate MOA's between HUD and each of the deferral agencies. A tripartite MOA will enable MCAD and the BFHC to work out dual-filing and other case processing arrangements with each other as well as with HUD. Furthermore, the existence of a single MOA will eliminate the potential for conflict and confusion resulting from the existence of two separate agreements.

HUD regulations (24 CFR 115.6(c)) require that the Department enter into a written agreement with Boston before substantial equivalency recognition can be granted. That has been accomplished. The three agencies may now work toward a tripartite agreement of the kind that MCAD has suggested.

This publication gives notice of the recognition of the State of Oklahoma; Boston, Massachusetts; and Arlington County, Virginia, in accordance with §115.6(c).

B. The Assistant Secretary has determined, after application of the criteria set forth in §115.3, that the fair housing laws for Danville, Illinois; Marion, Indiana; Boston, Massachusetts; St. Joseph, Missouri; and Rockland County, New York, on their face, provide rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Federal Fair Housing Act. However, the statutes in these jurisdictions (including Boston, at the time the determination was made) have not been in effect for a sufficient time to permit the enforcement agencies to demonstrate that they meet the performance standards described in §115.4.

This publication gives notice of HUD's entry into an agreement for interim referrals with Danville, Illinois; Marion, Indiana; Boston, Massachusetts; St. Joseph, Missouri; and Rockland County, New York, in accordance with § 115.11. The provisions of § 115.11 require that the agreements for interim referral with the State of Oklahoma and Boston, Massachusetts be terminated on the publication of recognition in accordance with § 115.6(c), as provided in paragraph A, above. [Announcement of the agreement for interim referrals with the State of Oklahoma was made on April 4, 1986 (51 FR 11577).]

Dated: October 3, 1986.

William E. Wynn,

Acting General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 86-22897 Filed 10-8-86; 8:45 am]

BILLING CODE 4210-28-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules Implementing the Equal Access to Justice Act

AGENCY: National Labor Relations Board.

ACTION: Final rules.

SUMMARY: On 15 May 1986, the National Labor Relations Board published revisions to its rules and regulations that were required by amendments to the Equal Access to Justice Act. These further revisions to the Board's rules and regulations state the new effective date of the Equal Access to Justice Act to cases before the Board and clarify one provision of the rules.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 6 of the National Labor Relations Act, as amended (29 U.S.C. 156), and in accordance with the requirements of section 504(c)(1) of the Equal Access to Justice Act (5 U.S.C. 504(c)(1)), the National Labor Relations Board is revising its rules implementing the Equal Access to Justice Act governing the award of fees and other expenses to eligible parties who prevail in litigation before the Agency. In 1985, the Equal Access to Justice Act was amended with the changes in the Act made applicable to any case commenced after 1 October 1984. On 15 May 1986, the Board published in the **Federal Register** (51 FR 17732) revisions to its rules and regulations that were required by the amendments to the Equal Access to Justice Act and, in one instance, to conform language in the Board's rules to the statutory language.

As stated in the notice of proposed rulemaking (51 FR 30864), in issuing the 15 May 1986 revisions, the Board omitted changing the paragraph of its rules that sets forth the effective date of the Equal Access to Justice Act and retained the 30 September 1984 expiration date of the statute as originally enacted. In addition, one paragraph of the rules, which provides for the content of the application for an award, contains a less precise definition of the employee information required than is necessary to avoid any confusion with other provisions of the rules.

Following the publication of the Board's proposed revisions to its rules, no comments were submitted to the Board. In promulgating these rules, the Board has given due consideration to the model rules of the Administrative Conference of the United States (50 FR 46250) where appropriate.

Section 102.143(a) presently provides that the Board's rules implementing the Equal Access to Justice Act apply to cases pending before the Board between 1 October 1981 and 30 September 1984, the former expiration date of the Equal Access to Justice Act. The provision is revised to have the Board's rules applicable to all cases pending before the Board after 1 October 1984.

Section 102.147(a) presently states the requirements for the application for an award under the Equal Access to Justice Act. In setting forth the employee information that is required, paragraph (a) does not specify that the employee information is that of the applicant and its affiliates. Therefore, in order to conform this paragraph to § 102.143(g), which sets forth the eligibility of an applicant, § 102.147(a) is revised to include the specification that the employee information from the applicant's affiliates, as well as the applicant, must be included in the application.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Equal access to justice.

Accordingly, 29 CFR Part 102 is amended as follows:

PART 102—[AMENDED]

1. The authority citation for 29 CFR Part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.143 is amended by revising paragraph (a) to read as follows:

§ 102.143 "Adversary adjudication" defined; entitlement to award; eligibility for award.

(a) The term "adversary adjudication," as used in this subpart, means unfair labor practice proceedings pending before the Board on complaint and backpay proceedings under §§ 102.52 to 102.59 of these rules pending before the Board on notice of hearing at any time after October 1, 1984.

* * * * *

3. Section 102.147 is amended by revising paragraph (a) to read as follows:

§ 102.147 Contents of application; net worth exhibit; documentation of fees and expenses.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adversary adjudication for which an award is sought. The application shall state the particulars in which the applicant has prevailed and identify the positions of the General Counsel in that proceeding that the applicant alleges were not substantially justified. Unless the applicant is an individual, the application shall also state the number, category, and work location of employees of the applicant and its affiliates and describe briefly the type and purpose of its organization or business.

* * * * *

Dated: Washington, DC October 3, 1986.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 86-22874 Filed 10-8-86; 8:45 a.m.]

BILLING CODE 7545-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-86-04]

Drawbridge Operation Regulations; Milhomme Bayou, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the St. Martin Parish Policy Jury, the Coast Guard is changing the regulation governing the operation of the pontoon bridge over Milhomme Bayou, mile 12.0, at Stephensville, St. Martin Parish, Louisiana, to require that at least two hours advance notice be given for an opening during the hours from 10 p.m. to 6 a.m. and that the draw continue to open on signal from 6 a.m. to 10 p.m. Presently, the draw is required to open on signal at all times.

This change is being made because of infrequent requests to open the draw during the prescribed advance notice period. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge between 10 p.m. and 6 a.m., while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (505) 589-2965.

SUPPLEMENTARY INFORMATION: On 4 August 1986, the Coast Guard published a proposed rule (51 FR 27877) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 11 August 1986. In each notice interested persons were given until 18 September 1986 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

One letter was received in response to the notice, offering no objections to the proposal.

Economic Assessment and Certification

This regulation is considered to be non-major under executive order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this finding is the continuing decrease in navigation, with few vessels now passing this bridge during the advance notice period of 10 p.m. to 6 a.m. The few vessels involved can reasonably give advance notice by placing a collect call to the Stephensville Bridge between 6 a.m. and 10 p.m., telephone (504) 385-0350, or to the St. Martin Parish Sheriff's office at St. Martinville, Louisiana, between 10 p.m. and 6 a.m., telephone (318) 394-3071. From afloat, this contact may be made by radiotelephone through a public coast station. The mariners requiring the bridge openings are mainly repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the advance notice period will involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.461 [Redesignated as § 117.462]

2. Section 117.461 (Nezpique Bayou) is redesignated as § 117.462 and a new § 117.461 is added to read as follows:

§ 117.461 Milhomme Bayou.

The draw of the St. Martin Parish bridge, mile 12.0 (Landside Route) at Stephensville, shall open on signal; except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least two hours notice is given. During the advance notice period, the draw shall open on less than two hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: September 25, 1986.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 86-22908 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 430 and 433

45 CFR Part 201

[BPO-041-F]

Medicaid Program; Adjustment of Federal Share for Uncashed or Cancelled (Voided) Checks

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These final regulations require that a State agency refund to the Federal Government the Federal share of Medicaid checks issued by the State or its fiscal agent that remain uncashed 180 days after the date of issuance. In addition, we are requiring that the Federal share of cancelled (voided) Medicaid checks be refunded quarterly since there has been no expenditure by the State.

These regulations implement, in part, a 1981 General Accounting Office recommendation that procedures be established for States to credit the Federal Government for the Federal portion of uncashed Medicaid checks issued by the State or its fiscal agent.

EFFECTIVE DATE: These regulations are effective November 10, 1986.

FOR FURTHER INFORMATION CONTACT: David D. McNally, 301-597-1398.

SUPPLEMENTARY INFORMATION:

I. Background

On May 31, 1985, we published in the **Federal Register**, at 50 FR 23147, a Notice of Proposed Rulemaking (NPRM) to solicit comments on proposed changes to the regulations requiring that a State agency refund to the Federal government the Federal share of Medicaid checks issued by the State or its fiscal agent that remain uncashed 180 days after the date of issuance, and the Federal share of any interest earned on those funds. The proposed regulations also required that a State agency refund the Federal share of cancelled (voided) checks, plus the Federal share of any interest earned on those funds.

These revisions were proposed as a result of a 1981 General Accounting Office (GAO) study and recommendations included in a report entitled, *Improving Medicaid Cash Management Will Reduce Federal Interest Costs*, HRD-81-04. The study found that, in some cases, States held Federal Medicaid funds for unnecessarily long periods, enabling States to earn interest on funds that the Federal government had borrowed. In this report, GAO recommended that the Medicaid program establish uniform requirements for States to credit the Federal government for its portion of uncashed Medicaid checks.

On September 17, 1985, the Social Security Administration (SSA) published a final regulation (50 FR 37659) to incorporate revisions SSA proposed on February 22, 1983 (48 FR 7479). In order to not further amend SSA's regulations at 45 CFR 201.67 solely to add Medicaid provisions, and to keep our regulations on State fiscal administration in one location, we are placing our final rule at 42 CFR 433.40. We are making only necessary editorial changes and those resulting from comments, discussed below.

II. Response to Public Comments

In response to our request for public comments on the May 31, 1985 publication, we received nine letters from State agencies and one letter from an individual.

1. *Comment:* Three States opposed the requirement in the proposed regulations that States must refund the Federal share of any interest earned on uncashed or cancelled (voided) checks. The commenters believe that this requirement is contrary to the provisions and intent of section 203 of the Intergovernmental Cooperation Act (ICA), Pub. L. 90-577, which permits States to retain any interest earned on Federal funds pending disbursement for program purposes. A fourth State suggested that we use a specific, uniform method for computing interest.

Response: We agree with the commenters that section 203 of the ICA permits States to retain interest earned on Federal funds pending disbursement for program purposes. However, for Medicaid program purposes, a disbursement occurs when a State agency *issues* a check and Federal funds are claimed with respect to it. States now accrue interest on that amount until the check is cashed or voided. Therefore, once a check is issued by a State and Federal funds are claimed, we consider the funds to have been disbursed, and the Federal share of any interest earned during that period to be refundable to the Federal government in accordance with the regulations at 45 CFR 74.47(a).

Nevertheless, we are not requiring in the final rule that States return the Federal share of any interest earned on uncashed or cancelled (voided) checks because we have decided that this is an issue that is more appropriately addressed in the context of government-wide reform. The joint State-Federal Task Force on Cash Management, under the direction of the U.S. Treasury, is examining a variety of cash management policies that would govern all exchanges of funds between Federal and State governments, including a variety of requirements concerning interest payments on cash transfers. It would be inconsistent with the goals of the Task Force to implement these specific Medicaid requirements at this time.

2. *Comment:* One State recommended that uncashed checks be subject to the State's abandoned property statute because it would be easier to implement and administer than the method proposed in the regulations. Under their current claims processing system, the State is unable to link a payment check to the specific services furnished by a provider or the specific claim documentation. This makes it difficult to return the Federal share of an uncashed check or to issue replacement checks. Also, under the State's current claiming procedures, issuing replacement checks has no effect on the State's claim of Federal financial participation (FFP). Treating uncashed checks as abandoned property would: (1) Preclude the State from exchanging an uncashed check for a new check after expiration of the time period in the abandoned property statute, and (2) make the process of returning the Federal share easier to administer. Once the State reacquires a legal interest in the check under the abandoned property statute, the Federal funds can be returned outside the State's claims processing system.

Response: Although the system offered by the State would be easier for it to implement, it cannot be accommodated because it will allow the State to hold Federal Medicaid funds for unnecessarily long periods of time. As we stated in the preamble to the proposed rule, the purpose of our changes was to correct situations where States held Federal Medicaid funds for unnecessarily long periods of time, allowing States to earn interest on funds the Federal Government had borrowed. To improve our cash management practices, and to implement GAO recommendations, we proposed to

establish uniform requirements for States to credit the Federal Government for our share of uncashed Medicaid checks.

(2), we are not instituting the proposed requirement that a State must refund the Federal share of any interest earned on cancelled (voided) checks.

6. In 45 CFR 201.5(a)(3), we are adding

checks issued to providers often remain uncashed for prolonged periods of time, in some cases as long as 7 years. This rule will set an outside limit on the

45 CFR Part 201

Aid to families with dependent children, Grant programs—social programs, Guam, Public assistance

establish uniform requirements for States to credit the Federal Government for our share of uncashed Medicaid checks.

3. *Comment:* One commenter was concerned that if a replacement check is issued 2 years after the original check was issued that HCFA will deny FFP on the grounds that the claim was not timely filed.

Response: The 2-year time limitation will not apply to the claim for FFP in a replacement check. The claim for FFP in a replacement check will be treated as an adjustment to the costs for the quarter in which the expenditure was originally claimed. The claim will be paid if otherwise allowable under the Act and the regulations.

4. *Comment:* Several States indicated that implementing the regulations as proposed would require them to adopt procedures that are contrary to their State laws. One State commented that refunding the Federal share of warrants without cancelling them would be a violation of the State's law against issuing warrants with insufficient funds. In order to comply with both this regulation and State law, the State would have to incur the additional administrative expense of cancelling all outstanding warrants. Four States opposed the regulation because it would require them to change their existing procedures for returning the Federal share of uncashed checks and warrants. Those procedures are dictated by State laws which allow uncashed checks and warrants to remain valid (i.e., outstanding) for longer periods of time than permitted under these regulations. One State recommended that we modify the regulation to allow uncashed checks to remain valid for 2 years rather than 6 months before requiring that the State return the Federal share. The commenter suggested that 2 years is a more reasonable time period, and would reduce States' administrative expenses.

Response: As we stated in the preamble to the proposed rule, States are not required to cancel checks and warrants under these regulations. Therefore, they may remain outstanding for as long as State laws permit.

We believe that 180 days is a reasonable period for a provider to cash a check and is based on accepted banking practice. We are not requiring that States cancel or void checks that are not cashed 180 days after the date of issuance.

The purpose of this regulation is merely to ensure that Federal funds are not held for unnecessarily long periods in the event that a provider does not promptly cash a Medicaid check or warrant. Federal funds left outstanding for prolonged periods of time, as noted by GAO in their 1981 report, cost the Federal Government the interest it pays on borrowed funds.

5. *Comment:* One commenter reported that the State-Federal Task Force on Cash Management, chaired by the U.S. Department of Treasury, is studying equitable intergovernmental cash management issues. The commenter suggested that we not publish a final regulation until recommendations are made by this task force.

Response: The State-Federal Task Force on Cash Management studied alternative methods of advancing funds to States from their letters of credit. With the exception of the interest assessment issue, discussed in the response to comment 1, we see no conflict between these regulations and the work of the task force.

6. *Comment:* Eight States opposed the regulation as too costly and administratively burdensome for them to implement. Some expressed the opinion that the benefits derived from the regulation would be minimal considering the time, effort and expense of implementation.

Response: As discussed in the response to an earlier comment, we have removed from the final regulation the requirement that States return the Federal share of any interest earned on uncashed or cancelled (voided) checks. We believe that this will simplify implementation of these procedures by the States since they will not be required to calculate and track interest on individual checks.

7. *Comment:* One State argued that these regulations are unnecessary because there already are ample Federal regulations that promote efficient cash management.

Response: We do not agree. We proposed our regulations because there are no other regulations on which we can rely to enforce compliance with this aspect of cash management.

8. *Comment:* One individual suggested that the funds from uncashed or cancelled Medicaid checks that are returned to HCFA by the State under these regulations be used to establish a dental program for adults. Additional funding for the dental program, it was suggested, could come from the portion of the Federal Insurance Contributions Act (FICA) tax deducted from the salaries of Federal employees.

Response: There is no special separate Federal account into which funds from uncashed or cancelled State Medicaid checks could be deposited for the purpose suggested. The amount of an uncashed or cancelled check will be entered as a decreasing adjustment on a State's Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form HCFA–64). The adjustment is applied against the State's Medicaid program expenditures claimed for reimbursement and, in effect, reduces the amount of Federal funds available to the State. Use of Federal Medicaid funds to establish a dental program is not authorized under Title XIX of the Social Security Act. Medicaid program funds may only be used to assist States in paying for administrative expenses and covered medical services furnished to eligible Medicaid recipients. Similarly, the FICA tax funds deducted from the salaries of Federal employees are credited to the Hospital Insurance Trust Fund and, by law, may only be used to finance administrative expenses and health insurance benefits under the Medicare program to eligible beneficiaries.

III. Revisions to the Regulations

After we published our proposed rule on May 31, 1985 (50 FR 23147), 45 CFR Part 201 was revised on September 17, 1985 (50 FR 37659) to incorporate changes proposed by SSA on February 22, 1983 (48 FR 7479). Medicaid regulations applying to uncashed or cancelled (voided) checks differ slightly from the regulations for other grant programs specified in 45 CFR 201.67. In order to not further amend SSA's regulations at 45 CFR 201.67 solely to add Medicaid provisions, and to keep our regulations on State fiscal administration in one location, we are placing our final rule at 42 CFR 433.40.

We are adopting as final the proposed rule published on May 31, 1985 with these modifications:

1. We are placing the content of proposed 45 CFR 201.67 in a new section, 42 CFR 433.40, and revising the title to read Treatment of uncashed or cancelled (voided) Medicaid checks.

2. In proposed 45 CFR 201.67(b), now 42 CFR 433.40(b), we removed the portions of the definitions of "cancelled check" and "uncashed check" that apply only to grant programs administered by SSA.

3. In proposed 45 CFR 201.67(c)(1) and (2), revised as 42 CFR 433.40(c)(1) and (2), we are not instituting the proposed requirement that a State must refund the Federal share of any interest earned on checks that remain uncashed 180 days after issuance by the State.

4. In new section 42 CFR 433.40(c)(2) and (d)(2), we are removing the third sentence in each paragraph, as this is unnecessary.

5. In proposed 45 CFR 201.67(d)(1) and (2), revised as 42 CFR 433.40(d)(1) and (2), we are not instituting the proposed requirement that a State must refund the Federal share of any interest earned on cancelled (voided) checks.

6. In 45 CFR 201.5(a)(3), we are adding an additional reference to a new section 42 CFR 433.40.

IV. Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires that, for any major rule, a regulatory impact analysis be performed and made available to the public. A "major rule" is defined as a regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets. We have determined that this final rule is not a "major rule" under Executive Order 12291; therefore, a regulatory impact analysis is not required.

These regulations require a State agency to refund to the Federal Government the Federal share of checks issued by the State or its fiscal agent that remain uncashed 180 days after the date of issuance. In addition, they require that the Federal share of cancelled (voided) Medicaid checks be refunded quarterly since there has been no State expenditure. This regulation allows us to recoup the Federal share of uncashed and cancelled (voided) checks in a timely manner.

Actual recoupments will depend on the volume of uncashed or cancelled (voided) checks in the States reviewed and the accounting practices used by these States to report those expenditures. A preliminary analysis of the Regional Office financial management reviews conducted in fiscal years 1984 and 1985 identified several States in which savings would result from recovery of the Federal portion of the uncashed or cancelled (voided) checks. This regulation will, by establishing clear policy, enable us to issue a disallowance, if necessary, to recover any funds due the Federal Government. Previously, a lack of regulations has prevented us from taking a disallowance and recovering the Federal share of uncashed checks.

We anticipate some savings from not borrowing and paying interest on funds to cover the Federal share of checks that remain uncashed. Some State Medicaid checks issued to providers often remain uncashed for prolonged periods of time, in some cases as long as 7 years. This rule will set an outside limit on the length of time we will permit the Federal share of uncashed or cancelled (voided) checks to remain outstanding. Exact interest savings would be a function of the amount of identified recoupments and the current interest rate on borrowed funds.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we do not consider States to be small entities. As defined by the Regulatory Flexibility Act, a "small entity" includes the term "small governmental jurisdiction," which means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." No States meet this definition.

Therefore, we have determined, and the Secretary certifies, that these regulations will not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required.

V. Paperwork Reduction Act

Sections 45 CFR 201.5, 42 CFR 433.40(c)(2) and 433.40(d)(2) of this final rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980. A notice will be published in the **Federal Register** when OMB approval is obtained. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, Attention: Desk Officer for HCFA.

States currently comply with this information collection by reporting the required data on the Quarterly Statement of Expenditures, form HCFA–64. This form is approved under OMB number 0938–0067.

List of Subjects

42 CFR Part 430

Grant programs—health, Medicaid.

45 CFR Part 201

Aid to families with dependent children, Grant programs—social programs, Guam, Public assistance programs, Puerto Rico, Virgin Islands, Medicaid.

TITLE 42—PUBLIC HEALTH

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

A. 42 CFR Chapter IV is amended as set forth below:

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

1. The authority citation for Part 430 continues to read as follows:

Authority: Sec. 1102, Social Security Act; 42 U.S.C. 1302.

2. Section 430.0(b)(3) is revised to read as follows:

Subpart A—Introduction; Definitions

§ 430.0 Introduction to Subchapter C.

* * * * *

(b) Federal Regulations. * * *

(3) Regulations in 45 CFR Parts 201, 204, 205, and 213 also apply to the Medicaid program, to the extent specified.

PART 433—STATE FISCAL ADMINISTRATION

Subpart B—General Administrative Requirements

3. The authority citation for 42 CFR Part 433 Subpart B is revised to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1903(a)(1), 1903(d)(2), 1903(d)(3), 1903(o), 1903(p), 1912 and 1917 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396b(a)(1), 1396b(d)(2), 1396b(d)(3), 1396b(o), 1396b(p), 1396k and 1396p), unless otherwise noted.

4. The table of contents for Part 433 is amended by adding the heading for new § 433.40 under Subpart B, to read as follows:

Subpart B—General Administrative Requirements

Sec.

* * * * *

433.40 Treatment of uncashed or cancelled (voided) Medicaid checks.

5. A new § 433.40 is added to read:

§ 433.40 Treatment of uncashed or cancelled (voided) Medicaid checks.

(a) *Purpose.* This section provides the rules to ensure that States refund the

Federal portion of uncashed or cancelled (voided) checks under title XIX.

(b) *Definitions.* As used in this section—"Cancelled (voided) check" means a Medicaid check issued by a State or fiscal agent which prior to its being cashed is cancelled (voided) by the State or fiscal agent, thus preventing disbursement of funds.

"Check" means a check or warrant that a State or local agency uses to make a payment.

"Fiscal agent" means an entity that processes or pays vendor claims for the Medicaid State agency.

"Uncashed check" means a Medicaid check issued by a State or fiscal agent which has not been cashed by the payee.

"Warrant" means an order by which the State agency or local agency without the authority to issue checks recognizes a claim. Presentation of a warrant by the payee to a State officer with authority to issue checks will result in release of funds due.

(c) *Refund of Federal financial participation (FFP) for uncashed checks.*—(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was issued; i.e., the date of the check, it will no longer be regarded as an allowable program expenditure. If the State has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State must identify those checks which remain uncashed beyond a period of 180 days after issuance. The State agency must refund all FFP that it received for uncashed checks by adjusting the Quarterly Statement of Expenditures for that quarter. If an uncashed check is cashed after the refund is made, the State may file a claim. The claim will be considered to be an adjustment to the costs for the quarter in which the check was originally claimed. This claim will be paid if otherwise allowed by the Act and the regulations issued pursuant to the Act.

(3) If the State does not refund the appropriate amount as specified in paragraph (c)(2) of this section, the amount will be disallowed.

(d) *Refund of FFP for cancelled (voided) checks.*—(1) *General provision.* If the State has claimed and received FFP for the amount of a cancelled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which were cancelled (voided). The State must refund all FFP that it received for cancelled (voided) checks by adjusting the Quarterly Statement of Expenditures for that quarter.

(3) If the State does not refund the appropriate amount as specified in paragraph (d)(2) of this section, the amount will be disallowed.

TITLE 45—PUBLIC WELFARE

CHAPTER II—OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH AND HUMAN SERVICES

B. Title 45, Part 201 of the Code of Federal Regulations is amended as set forth below:

PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

1. The Authority citation for 45 CFR Part 201 continues to read as follows:

Authority: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

2. Section 201.5(a)(3) is revised to include a reference in the last sentence to 42 CFR 433.40 as follows:

§ 201.5 Grants.

* * * * *

(a) Form and manner of submittal.

* * * * *

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, of expenditures claimed in any prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency, including the share of the Federal Government for uncashed or cancelled (voided) checks as described in § 201.67 of this part, and 42 CFR 433.40 for Medicaid purposes, or which have been revealed in the course of an audit

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: February 4, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: June 11, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-22906 Filed 10-8-86; 8:45 am]

BILLING CODE 4120-01-M

Proposed Rules

Federal Register
Vol. 51, No. 196
Thursday, October 9, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-41-AD]

Airworthiness Directives; de Havilland Model DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to de Havilland Model DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 airplanes, which would require initial and repetitive inspections of both wing support strut assemblies, P/N C6W1005-7 and C6W1005-8, for corrosion and, if necessary, replacement before further flight. The proposed AD is prompted by a report of a DHC-6 airplane that had both wing struts affected by corrosion in the beam flanges. Severely corroded wing struts could fail in flight, resulting in wing collapse. The inspections required by the proposed AD will detect any corrosion before it can lead to failure of the wing struts.

DATES: Comments must be received on or before December 15, 1986.

ADDRESSES: de Havilland Service Bulletin (S/B) No. 6/474, Revision A, dated March 28, 1986, applicable to this AD may be obtained from The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada Limited, Garrett Boulevard, Downsview, Ontario, Canada M3K 1Y5; Telephone (416) 633-7310, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-41-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-CE-41-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

de Havilland Aircraft Company of Canada received a report that one Canadian DHC-6 airplane had corrosion in both wing support strut beam flanges enclosed by the strut skins. As a result, de Havilland has issued Service Bulletin (S/B) No. 6/474, "Wings—Wing Struts Special Inspection for Internal Beam Corrosion", dated June 14, 1985, and Revision A, dated March 28, 1986. This service bulletin recommends initial and repetitive inspections of the wing struts for corrosion, both internally and externally. An area of particular concern where corrosion could develop is 20 inches from either end of the strut. Any corrosion in this area, or moderate or severe corrosion anywhere on the wing support strut, necessitates replacement of the struts before further flight.

Transport Canada, which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has classified S/B No. 6/474 and the actions recommended therein by the manufacturer as mandatory by issuing AD CF-85-14, effective November 25, 1985, to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of Transport Canada combined with the FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of S/B No. 6/474 and the mandatory classification of this service bulletin by Transport Canada. Based on the foregoing, the FAA believes that the condition addressed by S/B No. 6/474 is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require initial and repetitive inspections for corrosion of the internal and external areas of the wing struts and, if necessary, replacement before further flight.

The FAA has determined there are approximately 194 de Havilland DHC-6 series airplanes in the United States registry affected by the proposed AD. The cost of removing, inspecting, and reinstalling the struts on these airplanes in accordance with the proposed AD is estimated to be $640 per airplane. The total cost for each inspection of the fleet is estimated to be $124,160 to the private sector.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a

significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulation evaluation has been prepared for this section and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

De Havilland: Applies to Model DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, after the effective date of this AD, unless already accomplished.

To prevent failure of the wing support struts due to corrosion, accomplish the following:

(a) Visually inspect each wing support strut for corrosion in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" in de Havilland Service Bulletin (S/B) No. 6/474, dated June 14, 1985, Revision A, dated March 28, 1986, as follows:

(1) For aircraft that have accumulated 5,000 or more hours time-in-service (TIS) or are four and one half or more years old on the effective date of this AD, accomplish the inspection within the next 1,000 hours TIS or six months, whichever occurs first, after the effective date of this AD.

(2) For aircraft that have accumulated less than 5,000 hours TIS and are less than four and one half years old on the effective date of this AD, accomplish the inspection before the accumulation of 6,000 hours TIS or five years, whichever occurs first.

(3) For all airplanes, reinspect at intervals not to exceed 6,000 hours TIS or five years, whichever occurs first, following the previous inspection accomplished in accordance with this AD.

(b) If the inspections specified in paragraph (a) of this AD show moderate or severe corrosion, or any corrosion within 20 inches from either end of the wing support struts, replace the affected support strut prior to further flight.

(c) If the inspections specified in paragraph (a) of this AD show light corrosion in areas other than 20 inches from either end of the struts, remove the corrosion within 30 days.

Note.—Advisory Circular (AC) 43-4, discusses corrosion evaluation, degree of damage, and rework procedures.

(d) An alternate method of compliance, which provides an equivalent level of safety, may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) Upon submission of substantiating data by an owner or operator, through an FAA Maintenance Inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the compliance times in this AD.

All persons affected by this directive may obtain copies of the document referred to herein upon request to The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada Limited, Garrett Boulevard, Downsview, Ontario, Canada M3K 1Y5; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 30, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-22848 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-194-AD]

Airworthiness Directives; Fairchild Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to Fairchild Model F-27 series airplanes, which requires a daily inspection of the wing-to-fuselage fairing, both left and right, for evidence of cracks or looseness around screws and grommets. This action would provide for a modification, which, if incorporated, would constitute terminating action for the daily inspection requirements. This action would also limit the applicability of the existing AD to those airplanes which have not had the modification incorporated in production.

DATE: Comments must be received no later than December 1, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Dockets No. 86-NM-194-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. The applicable service information may be obtained from Fairchild Republic Company, Showalter Road, Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Donald E. Gonder, Technical and Administrative Support Staff, (ANM-103), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2128; or Charles Birkenholz, Airframe Branch (ANE-172), FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581 telephone (516) 791-6620.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administration before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-194-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Discussion: In 1958, the FAA issued Airworthiness Directive (AD) 58-25-03, applicable to Fairchild Model F-27 series airplanes, which requires a daily inspection of the wing-to-fuselage fairing, both left and right, for evidence of cracks or looseness around screws and grommets. This action was prompted by reports of the inflight loss of the wing-to-fuselage fairing, Part Numbers (P/N) 27-100102-1 and 27-100103-1. The required inspections were intended to continue, pending investigation and development of a permanent solution.

Fairchild subsequently issued Service Bulletin F27-53-9, Revision 1, dated May 13, 1959, which describes modification of the fairings by replacing the existing stiffeners with improved stiffeners, and adding reinforcing strips in the area of the attachment points. The FAA is herein proposing an AD which would provide terminating action for the repetitive inspections required by AD 58-25-03 by incorporation of this modification in accordance with the Fairchild service bulletin.

In addition, the modifications described in the Fairchild service bulletin have been incorporated in the production on certain F-27 airplanes, Manufacturer's Serial Numbers 40, 49, and subsequent. For this reason, the FAA is proposing to limit the applicability of the daily inspections required by the AD to only those airplanes, Manufacturer's Serial Numbers 1 through 39, and 41 through 48, which are equipped with wing-to-fuselage fairings, P/N's 27-100102-1 or -2, and 27-100103-1, -2, -31, or -32.

Since this proposal would only add an optional modification which would constitute terminating actions for the daily inspection requirement of AD 58-25-03, and would reduce the number of airplanes affected by the requirements of the AD, it would impose no additional economic burden on any operator.

For these reasons, the FAA has determined that this document: (1) Involves a proposed reglation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few if any of these aircraft are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By supperseding Airworthiness Directive (AD) 58-25-03 with the following new airworthiness directive:

Fairchild Republic Company: Applies to Model F-27 series airplanes, Manufacturer's Serial Numbers 1 through 39, and 41 through 48; equipped with wing-to-fuselage fairing, Part Numbers (P/N) 27-100102-1 or -2, and 27-100103-1, -2, -31, or -32; certificated in any category. Compliance required as indicated, unless previously accomplished.

To precent the inflight loss of the wing-to-fuselage fairning, accomplish the following:

A. Conduct a daily visual inspection of wing-to-fuselage fairing, both right and left, for cracks or looseness around screws and grommets. If cracks or losseness is found, before further flight install washer P/N AN970-3, and use washer head screw P/N AN525-10R9 in place of P/N AN509-10R9. Daily inspections are to continue until the modification of the fairings, described in paragraph B., below, ius accomplished. NOTE: Caution should be used not to overtighten screws, as cracks may develop.

B. Modification of the wing-to-fuselage fairings in accordance with Fairchild Service Bulletin F27-53-9, Revision 1, dated May 13, 1959, or later FAA-approved revisions, constitutes terminating action for the daily inspection requirement of paragraph A., above.

C. Alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fairchild Republic Company, Showalter Road, Hagerstown, Maryland 21740. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on October 1, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22847 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Permanent State Regulatory Program of Colorado

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of proposed program amendments to the Colorado Permanent Regulatory Program (hereinafter referred to as the Colorado program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments submitted by the State on August 18, 1986, are intended to address program deficiencies the Director required the State to correct as set forth under 30 CFR 906.16(b)-(h).

This notice sets forth the times and locations that the Colorado program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and information pertinent to the public hearing.

DATE: Written comments relating to Colorado's proposed modifications of its program not received on or before 4:00 p.m. November 10, 1986, will not necessarily be considered in the Director's decision to approve or disapprove the proposed program modifications.

If requested, a public hearing will be held on November 3, 1986, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

Persons wishing to comment at the public hearing should contact the person

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listed under "FOR FURTHER INFORMATION CONTACT" by the close of business October 23, 1986.

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

If a public hearing is held, its location will be at: OSMRE Western Technical Center, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, N.W., Albuquerque, New Mexico; Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Colorado program, the proposed amendments, and a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 "L" Street, NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

Colorado Mined Land Reclamation Division, Department of Natural Resources, Centennial Building, Room 423, 1313 Sherman Street, Denver, Colorado 80203.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Albuquerque, New Mexico, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT". If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Colorado Program

Information regarding the general background on the Colorado State Program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980 Federal Register (45 FR 82173–82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15, and 906.16.

III. Discussion of the Proposed Amendments

On August 18, 1986, Colorado submitted to OSMRE pursuant to 30 CFR 732.17 proposed State program amendments for approval.

The amendments were submitted to address program deficiencies which the Director required the State to correct as set forth under 30 CFR 906.16(b)–(h).

These provisions specify the following:

(b) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 2.02.2(2)(g) or otherwise propose to amend its program to require that the notice filed by any person intending to conduct coal exploration involving the removal of 250 or fewer tons of coal include a complete description of the methods of exploration to be used and the practices that will be followed to reclaim the area following completion of exploration, and to clarify that specifying the maximum number of holes to be drilled will not fully satisfy this requirement.

(c) By February 5, 1987, Colorado shall submit a revised form of 2 CCR 407–2, 4.21.4(1) replacing the cross reference to 2.05.6(2)(b) with one to 2.05.6(2)(a)(iii), or otherwise propose to amend the coal exploration provisions of its program to protect critical habitats of endangered or threatened species and habitats of unusually high value for fish, wildlife or related environmental values.

(d) By February 5, 1987, Colorado shall submit revisions to 3 CCR 407–2, 406.1(2) or otherwise propose to amend its program to provide that topsoil storage practices other than stockpiling may be used only when (1) stockpiling would be detrimental to the quantity or quality of the stored materials, (2) all stored materials are moved to an approved site within the permit area, (3) the alternative practice would not permanently diminish the capability of the soil of the host site, and (4) the alternative practice would maintain the stored materials in a condition more suitable for future redistribution than would stockpiling.

(e) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 406.2(2)(a) or otherwise propose to amend its program to establish definitive criteria governing the granting of topsoil removal variances, criteria which must be not less effective than those contained in the Federal regulations at 30 CFR 816.22(a)(3) and 817.22(a)(3).

(f) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 406.1(4)(a)(iii) or otherwise propose to amend its program to require that, before the State approves topsoil substitutes or supplements, the operator must demonstrate that the proposed final soil medium would be the best available within the permit area to support the vegetation.

(g) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 2.10.1(1) or otherwise propose to amend its program to require that all areas upon which roads or support facilities, other than isolated monitoring stations involving little or no surface disturbance, are to be sited be mapped at a scale of 1:6,000 or larger.

(h) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 2.04.12(1) or otherwise propose to amend its program to require that prime farmland investigations be conducted on all lands upon which roads or support facilities are to be sited.

Colorado submitted proposed changes to the following State regulations to satisfy the above requirements:

2.02.2(2)(g)
2.04.12(1)
2.10.1(1)
4.06.1(2)
4.06.2(2)(e)
4.06.2(4)(a)
4.21.4(1)

In addition, Colorado submitted a memorandum on the Division's interpretation of Rule 4.06.1(2).

OSMRE is seeking comment on the adequacy of the amendments in satisfying the requirements set forth under 906.16(b)–(h), and on whether the amendments are consistent with SMCRA and no less effective than its implementing regulations.

IV. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need to prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption for sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this is rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: October 2, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86–22784 Filed 10–8–86; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151 and 158

[CGD 85–010]

Control of Residues and Mixtures Containing Oil or Noxious Liquid Substances

Correction

In FR Doc. 86–21591 beginning on page 34332 in the issue of Friday, September 26, 1986, make the following correction:

§ 151.01–1 [Corrected]

On page 34357, in the third column, § 151.01–1(b), in the first line, "are" should read "are not".

BILLING CODE 1505–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH–FRL–3091–9]

Mining Waste Exclusion; Withdrawal of Proposed Provision

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of proposed rule; final action.

SUMMARY: Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA) excludes "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation under Subtitle C of RCRA (which regulates hazardous waste), pending completion of certain studies by EPA. The Agency interpreted this exclusion to encompass "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals." 45 FR 76619, November 19, 1980. On October 2, 1985, EPA proposed to narrow the scope of the exclusion as it applies to processing wastes. 50 FR 40292. EPA also proposed to relist six individual waste streams which would no longer have been deemed to be processing (*i.e.*, excluded) wastes. EPA is withdrawing this proposed rule by today's action. The effect of this action is to retain the existing regulation (40 CFR 261.4(b)(7)) along with the Agency's existing interpretation of its scope.

DATE: This proposed rule is withdrawn effective September 30, 1986.

ADDRESS: The address for the EPA RCRA docket is: United States Environmental Protection Agency, EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC 20460, (202) 475–9327.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424–9346 or (202) 382–3000 or Dan Derkics at (202) 382–2791.

SUPPLEMENTARY INFORMATION:

I. History of Mining Waste Under RCRA

In section 8002(f) of the Resource Conservation and Recovery Act (RCRA), enacted on October 21, 1976, Congress instructed the Administrator to conduct, in consultation with the Secretary of the Interior, "a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources."

On December 18, 1978 (43 FR 58,946), EPA proposed regulations for hazardous waste management under Subtitle C of RCRA. These proposed regulations, among other things, had fewer requirements for a universe of so-called "special wastes" that are generated in large volumes, were thought to pose less of a hazard than other hazardous wastes, and were not thought to be amenable to the control techniques proposed for hazardous waste treatment, storage and disposal facilities. EPA identified waste materials from the "extraction, beneficiation, and processing of ores and minerals," *i.e.*, mining waste, as one such "special waste" under the proposed regulations.

On May 19, 1980, EPA promulgated the final hazardous waste management regulations which applied to, among other things, mining waste. On May 19, 1980 and July 16, 1980, EPA also listed as hazardous eight waste streams from primary metal smelters.

On October 21, 1980, Congress enacted Pub. L. 96–482 which included various amendments to RCRA. Section 8002 was amended to include subsection (p), which required the Administrator to study the adverse effects on human health and the environment, if any, of waste from the disposal and utilization of "solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore," and submit a Report to Congress on its findings by October 21, 1983. Section 7 of these amendments (the "Bevill Amendment") amended section 3001 of RCRA to exclude these wastes from regulation under Subtitle C of RCRA pending completion of the

studies called for in sections 8002(f) and (p).

On November 19, 1980, EPA published an interim final amendment to its hazardous waste regulations to reflect the mining waste exclusion. The regulatory language incorporating the exclusion is identical to the statutory language (except the phrase "including coal" was added). In the preamble to the amended regulation, however, EPA interpreted the exclusion to include "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals." 45 FR 76118, 76619. For consistency with this interpretation in the November 19, 1980 amendment, the Agency also amended 40 CFR Part 261 to suspend the listings of the eight waste streams associated with smelting as hazardous wastes. 46 FR 4614, January 16, 1981 and 46 FR 27473, May 20, 1981.

In the November 19, 1980 notice, EPA indicated that it intended to reconsider its interpretation of the exclusion, particularly as it applied to smelting and refining wastes. The notice also indicated that any subsequent action to narrow the scope of the exclusion would be a formal rulemaking.

On September 28, 1984, Concerned Citizens of Adamstown, Carroll Manor Civil Association, and the Environmental Defense Fund sued EPA for failure to complete the mining waste studies and Report to Congress required by RCRA sections 8002 (f) and (p). *Concerned Citizens of Adamstown* v. *EPA*, No. 84-3041, D.C. District Court. EPA explained to the Court that it planned to proposed to "reinterpret" the scope of the mining waste exclusion so it encompassed fewer wastes. Therefore, EPA proposed two schedules to the court: one for completing the section 8002 mining waste studies and submitting the Report to Congress, and one for proposing and taking final action on the reinterpretation. On August 21, 1985, the District Court ordered EPA to meet these two schedules.

In compliance with the court order, on December 31, 1985, EPA completed the section 8002 mining waste studies and submitted its Report to Congress on "Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale." Six months later, as required by RCRA section 3001(b)(3)(C) and by the court order, EPA published its "regulatory determination" regarding the wastes covered by the Report to Congress. In this notice, EPA concluded that regulation of the wastes included in the Report under RCRA Subtitle C is not warranted at this time. 51 FR 24496, July 3, 1986.

In the meantime, EPA proposed to narrow the scope of the mining waste exclusion (and to relist six wastes as hazardous), according to the schedule in the District Court's order. 50 FR 40292, October 2, 1985. In preparing the proposed mining waste reinterpretation, EPA consulted various sources, but was unable to find any standard, accepted definitions, *i.e.*, "plain meanings," for the terms of the mining waste exclusion, particularly "processing." *Id.* at 40293. Therefore, EPA next looked to the legislative history for this provision. Our review of the legislative history indicated that the exclusion was intended to cover the category of wastes designated as "special wastes," including "solid waste from the extraction, beneficiation, and processing of ore minerals," in EPA's 1978 proposed hazardous waste regulations at 43 FR 58946, December 18, 1978. As mentioned earlier, "special wastes" were thought to be generated in large volumes and to pose less of a hazard than other hazardous wastes. EPA adopted this "high volume, low hazard" concept as the basis for the October 2, 1985 proposed mining waste interpretation. *Id.* at 40924. Specifically, EPA proposed to reinterpret the exclusion so that red and brown bauxite refining muds, phosphogypsum, slag from phosphorus reduction, and slag from primary metal melters would be the only processing wastes covered by the mining waste exclusion because EPA believed these were the only processing wastes which met the high volume, low hazard criteria. *Id.* In the proposal, EPA requested that commenters identify any other processing wastes that met the "special waste" criteria and therefore should remain within the mining waste exclusion.

II. Basis for Withdrawal of the Proposed Rule

In response to the proposal, many commenters "nominated" wastes which they believed fit the "special waste," *i.e.*, high volume, low hazard criteria, and therefore should remain excluded from Subtitle C regulation as "processing wastes." Since EPA did not specifically quantify the terms "high volume" or "low hazard" in the proposal, the Agency was unable to determine the status of these additional wastes. As explained in more detail below, EPA tried to infer definitions for these terms from the four wastes listed in the proposal as meeting these two criteria. At that point, it became clear that the selection of a high volume cutoff, and the definition of "low hazard," raised several major issues. In particular, a volume cutoff only makes sense if the wastes are arrayed in defined, consistent groups, and the data for each group comparable, *e.g.*, they are for the same year, they represent the same type of waste (solid or hazardous), they measure the same thing (per facility or per industry). Since the proposed mining waste reinterpretation did not define "high volume" or "low hazard," nor did it discuss any of the issues associated with these definitions, the public could not discern whether a given waste might quality for continued exclusion as a high volume, low hazard waste, much less comment on the validity of those criteria. Therefore, the Agency believes it cannot promulgate a final mining waste reinterpretation based on its October 2, 1985 proposal. These various issues raised by the proposal are discussed in more detail below.

A. Grouping

To determine whether a given waste is a high volume waste, it is essential to have rational "groupings" of waste, either by type of industry (*e.g.*, all copper wastes, all lead wastes), by type of waste (*e.g.* all smelter slags, all emission controls dusts and sludges), or both (*e.g.*, copper slag, emission control dusts and sludges from ferro-chromium production). EPA did not set out any grouping scheme in the proposal. In fact, the wastes EPA believed would remain excluded under the reinterpretation arguably are grouped inconsistently, since phosphorus reduction slag was listed separately, while all the primary metal slags (including copper, lead, and zinc) were lumped together. Obviously the groupings are very significant; once a high volume cutoff is selected, whether a given waste is high volume or not depends on what other wastes, if any, it is grouped with. EPA believes the lack of consistent groupings is the most significant gap in its proposed reinterpretation.

B. Solid Waste v. Hazardous Waste

The proposal considered solid waste (which includes hazardous waste) generation data to determine whether it was high volume. However, EPA could have relied on hazardous waste volumes only. This issue was not discussed in the proposal.

C. Data Base

The mining industry has experienced decline in certain sectors over the past few years. To the extent production is down, the Agency assumes that waste generation is decreased as well. Likewise, as lower grade ores are mined, more waste per unit of product is generated. At the same time, production methods are improving such that waste generation rates have decreased in some processes. Clearly, it is necessary to select a baseline (either a single year, or an average over some period of years to reflect fluctuating production levels in the mining industry) for comparing volumes of waste generated. No such baseline was specified in the proposal.

D. Per-Facility v. Industry-Wide Data

In some operations, a single waste may constitute a very large percentage of the total waste generated at that facility, and in that sense, be "high volume" for a given facility. Likewise, a waste may be generated in relatively low volumes at each facility, but there might be numerous facilities producing that waste, so the industry-wide total would be high. However, in the proposal, EPA did not specify whether it would look at data for individual facilities, or only industry-wide data, to determine whether a waste was high volume.

E. Definition of High Volume

The proposed mining waste reinterpretation did not define "high volume," *i.e.*, no volume cutoff was specified. The proposal did list the volume of each of the four wastes that it believed would remain excluded as follows:

Waste	Volume (million metric tons)
Phosphogypsum	47
Primary metal smelter slags	4
Phosphorus reduction slag	3
Bauxite refining muds (red and brown)	2

From this list, one could infer that the lowest volume, *i.e.* 2 million, was the high volume cutoff. However, EPA has since determined that bauxite refining muds are actually a beneficiation waste, not a processing waste. Therefore, EPA next looked to the two slag wastes for an appropriate cutoff. However, as mentioned above, phosphorus reduction slag was listed separately, while all the primary metal slags (including cooper, lead, and zinc) were lumped together. If EPA had listed the primary metal slags separately, the volume for the smallest, and in turn the implied cutoff, might have been substantially lower.

F. Definition of Low Hazard

In the proposed mining waste reinterpretation, EPA did not actually define "low hazard." It was not clear whether EPA was relying on the four hazardous waste characteristics, which appear in 40 CFR Part 261, Subpart, C, or some other definition. Also, the proposal did not explain whether EPA was looking at the hazard associated with a given waste stream, or the proportion of hazardous waste in a group of wastes generated in the same process.

III. Conclusion

By court order, EPA is obliged to take final action by September 30, 1986. At this time, the comments as well as the Agency's own analyses, have convinced us that the proposed reinterpretation cannot be finalized because it did not set out practically-applicable criteria for distinguishing processing from non-processing wastes. Moreover, we are unsure whether such criteria could be developed, given the complexity of these issues. Therefore, the Agency is withdrawing the proposal. As a consequence, EPA's current interpretation of the mining waste exclusion, as set out in the November 19, 1980 rulemaking notice, remains in place. EPA believes this to be a permissible, though by no means the sole permissible, interpretation of the ambiguous statutory phrase "processing of ores and minerals." A second consequence of this action is that the Agency also is withdrawing the proposed relistings of the six individuals waste streams. These wastes, under the current interpretation, are deemed to be derived from processing of ores and minerals and so are excluded from regulation under Subtitle C until the requisite section 8002 studies are completed.

Although we are withdrawing the proposed regulation at this time, the Agency is continuing to grapple with the problem of formulating "ground rules" which define the wastes that are covered by the mining waste exclusion, which in turn defines the section 8002 study obligation. In the course of completing its obligation under Section 8002, EPA will attempt to further clarify the scope of the mining waste exclusion. EPA may utilize aspects of this proposal in doing so, and certinly is not stating that the high volume, low hazard principle is inherently unsound. In a more quantified from, this principle could become the basis of such ground rules. The Agency is considerign other ground rules as well. In the meantime, the Agency will proceed with additional section 8002 studies addressing processing wastes. The Agency intends to include the six wastes we proposed to relist in the first of these additional section 8002 studies. EPA will not lose any further time in determining the appropriate regulatory regime for these particular wastes, even though we plan to study further the feasibility of ground rules.

Dated: September 30, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-22831 Filed 10-8-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3083-9]

Hazardous Waste Management System; Proposed Exclusion from Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at one facility from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at one particular facility from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated the petition which is discussed in today's notice. Based on our review at that time, this petitioner was granted a temporary exclusion. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition for which we propose to grant an exclusion has been evaluated both for the factors for which the wastes were originally listed, as well as all other factors and toxicants which might reasonably cause the wastes to be hazardous.

DATES: EPA will accept public comments on this proposed exclusion until October 24, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request hearing on this proposed exclusion by filing a request with Bruce R. Weddle, whose

BEST COPY AVAILABLE

address appears below, by October 20, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Requests for a hearing should be addressed to Bruce R. Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20560. Communications should identify the regulatory docket number: "F–86–MTPE–FFFFF".

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement) Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identifed in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) That the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).). Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetical receptor wells—the compliance point (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating wastes proposed for exclusion in today's publication. As a result of this evaluation, the Agency is proposing to grant the petition discussed in this notice.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a final exclusion. Thus, a final exclusion will not be granted for the petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed exclusion published today involves the following petitioner:

Michelin Tire Corporation, Sandy Springs, South Carolina.

I. Michelin Tire Corporation

A. Petition for Exclusion

Michelin Tire Corporation (Michelin), located in Sandy Springs, South Carolina, manufactures rubber slabs, textile cords and wire cables for tires. Michelin has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations, except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) Tin plating on carbon steel; (3) Zinc plating (segregated basis) on carbon steel; (4) Aluminum or zinc aluminum plating on carbon steel;)5) Cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) Chemical etching and milling of aluminum. Michelin claims that this waste should be excluded because it does not meet the criteria for which it was listed.

Based upon the Agency's review of the petition, Michelin was granted a temporary exclusion in March of 1981 (see 46 *FR* 17196). The Agency's basis for granting the temporary exclusion was the low migration potential of the constituents of concern, namely cadmium, hexavalent chromium, cyanide (complexed), and nickel. Since that time, the Hazardous Waste and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) The Agency, therefore, has re-evaluated Michelin's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) Evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. This notice presents the results of the Agency's re-evaluation of this petition.

Michelin has submitted a detailed description of its manufacturing and treatment processes, including schematic diagrams; results from total constituent and Oily Waste EP toxicity analyses of the waste for all the EP toxic metals, cyanide, and nickel; results from tests of the total oil and grease content of the waste, and ignitability, corrosivity, and reactivity data.

Michelin elected not to submit a list of the raw materials and feedstocks used in their manufacturing process. The Agency normally requests this information, as noted above, to determine whether constituents other than those for which the waste was listed are present in the waste at levels of regulatory concern. Michelin was therefore requested to demonstrate that the petitioned waste contained no appendix VIII hazardous constituents

[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 FR 1602, January 14, 1986). The Agency, however, has not completed its evaluation of the comments on this proposal. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis at that time.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

in concentrations exceeding regulatory concern. Michelin reviewed their raw materials to identify any materials which contained an Appendix VIII hazardous constituent or which, during processing could possibly form an Appendix VIII hazardous constituent reaction product or by-product. Michelin identified 182 Appendix VIII hazardous constituents which could be expected to be present or released during the facility's operation, and provided total constituent analyses for these Appendix VIII hazardous constituents.

Michelin manufactures rubber slabs, textile cords and wire cables used in the manufacturing of tires. Natural and synthetic rubber bales are chipped and mixed with rubber compounding ingredients. The rubber mixture is then milled, sized, cut, water cooled and pallatized. The resulting rubber slabs are sent to the textile tissue facility located on-site. At the textile tissue facility, glue is manufactured by mixing latex and other chemicals and applied to textile cords. The coated textile cords then travel through a drying tunnel to the calendar. The rubber slabs are again melted, mixed, and milled, and then fed to the calendar in strips. At the calendar, glue-coated textile cords and rubber strips are combined as sheets. The sheets of rubber and textile cords are wound on rolls and sent to other Michelin facilities. At the wire treatment facility, located on-site, coils of steel wire are annealed and coated with borax in order to facilitate drawing. The reduced diameter steel wire is again annealed and then electroplated with brass. The brass-plated wire is coated with borax and drawn for further diameter reduction. The brass-plated wire is twisted with other strands of brass-plated wire to produce a wire cable. The cable is wound up and sent to other Michelin plants.

Michelin's waste treatment plant treats all process wastes generated on-site, including: (1) Sanitary sewage; (2) Latex and glue waste; (3) Rubber chemical process waste; (4) Wash water from the rubber compounding sewer; (5) Boiler blowdown; (6) Cooling tower blowdown; (7) Wire treatment process wastes; (8) Wire treatment waste soap wastes; (9) Waste coolants/surface tanks; and (10) Washwater from the rubber chemical process sewer.

Sanitary waste is treated in a Diapac unit which uses aeration and seeding with activated sludge to biologically break down the sanitary wastes. The solids, after digestion, are sent to the sludge storage tank, and the effluent is sent to a rapid mixer. The rubber compounding process sewer wastes are separated. The sludge goes to the sludge storage tank, the skimmed oil is disposed of as hazardous waste, and the effluent is sent to the mixing tank. The latex and glue wastes, rubber chemicals process wastes, and the rubber compounding process sewer effluent are combined in a mixing tank for neutralization and flocculation. The solids settle out in an air flotation unit and are sent to the sludge storage tank, and the effluent is sent to the mixing tank.

The waste water from the wire treatment facility, waste coolant/surfactant, and washwater from the rubber chemical process sewer are combined and neutralized with lime. The combined wastewaters are then flocculated and clarified. The sludge is pumped to the sludge storage tanks and the treated effluent flows to the mixing tank. At the mixing tank, all of the resulting wastewaters are combined and rapidly mixed with lime, coagulants and polyelectrolytes. The mixture is flocculated and clarified. The effluent is sent to an aeration lagoon and the solids are sent to the sludge storage tank. The effluent from the aeration lagoon is chlorinated and discharged. All sludges are combined in the sludge storage tank. The pH of the combined sludges is corrected and the sludge is pumped to the flocpress for de-watering. The supernatant is pumped to a process sump and then to the rapid mix tank, and the filter press sludge is collected in a hopper. The hopper, when full, is emptied into the dumpster and transported to a landfill for disposal.

Michelin collected a total of four composite samples on December 23, 1985, January 15, 17, and 21, 1986.[3] Each composite sample was generated by dividing the 3.33 (feet) x 7.25 (feet) x 21.5 (feet) dumpster into eight zones and collecting eight full-depth trier core samples. Michelin, using the above methology also collected four samples on December 2, 15, 20, and 21, 1983; however, two samples were damaged during travel to the laboratory and were re-collected on January 12 and 13, 1984.

Michelin claims that the eight samples collected were representative of any variation of the listed and non-listed consitituent concentrations in the waste, and that their manufacturing and waste treatment process are uniform.

Total constituent and Oily Waste EP toxicity analysis for the listed constituents of concern and the non-listed constituents of concern revealed the maximum concentrations reported in Table 1 and 2, respectively.

TABLE 1.—MAXIMUM CONCENTRATIONS OF THE LISTED CONSTITUENTS FILTER CAKE

Constituents	Total constituent analyses (mg/kg)	OWEP/ mobile metal concentrations (mg/l)
Cadmium	<0.2	<0.01
Chromium	15	<0.05
Nickel	64	0.26
Cyanide	<0.06	NA

NA = Not Analyzed.

TABLE 2.—MAXIMUM CONCENTRATIONS OF THE NON-LISTED CONSTITUENTS FILTER CAKE

Constituents	Total constituent analyses (mg/kg)	OWEP/ mobile metal concentrations (mg/l)
Arsenic	<0.099	<0.0001
Barium	31	0.3
Lead	5.9	0.2
Mercury	<0.06	<0.004
Selenium	<0.06	<0.003
Silver	0.6	<0.01

Table 3 presents the maximum total constituent concentration for 182 of the Appendix VIII hazardous constituents which possibly could be constituents of Michelin's waste. Michelin claims that the remaining Appendix VIII hazardous constituents are not expect to be present in their processes, and that the formation of any of these compounds is highly unlikely.[4] Michelin generates a maximum of 400,000 gallons (approximately 2,000 cubic yards) of waste filter cake per year.

Michelin's filter cake had a maximum oil and grease content of 5 percent and did not exhibit the characteristics of ignitability, corrosivity, or reactivity.

TABLE 3.—Analysis of Appendix VIII Constituents

Constituents of concern	Maximum total concentration analyses (ppm)
Acrylonitrile	<1
Allyl alcohol	<5
4-Aminobiphenyl	<1
Aniline	<1
Benzenethiol	<5
Benzidine	<5
P-Benzoquinone	<5
Benzotrichloride	<1
Bis-2-(ethylhexyl)phthalate	<1

[3] Michelin's initial demonstration was based on seven regular EP analysis conducted on samples collected over 13 months. Since the waste's oil and grease content exceeds one percent, Oily Waste EP analyses should be used. The EP sample results were not considered in our re-evaluation.

[4] Michelin submitted a rationale for eliminating the need to test for any additional Appendix VIII hazardous constituents. This rationale includes elimination of unstable compounds or those reactive in water; and those for which there are no approved analytical methods.

TABLE 3.—Analysis of Appendix VIII Constituents—Continued

Constituents of concern	Maximum total concentration analyses (ppm)
Butyl benzyl phthalate	<1
2-sec-Butyl-4,6-dinitrophenol	<5
P-Chloroaniline	<1
P-Chloro-m-cresol	<1
2-Chlorophenol	<1
Dibenz(a,h)acridine	<5
Dibenza(a,j)acridine	<5
Di-n-butyl phthalate	<1
2,4-Dichlorophenol	<1
2,6-Dichlorophenol	<1
Diethyl phthalate	<1
7,12-Dimethylbenzanthracene	<1
2,4-Dimethyl phenol	<1
Dimethyl phthalate	<1
2,4-Dinitrophenol	<5
Di-n-octyl phthalate	<1
Diphenylamine	<1
Ethyl methacrylate	<5
Methacrylonitrile	<1
Methyl methacrylate	<1
4-Nitrophenol	<5
N-Nitroso-di-n-butylamine	<1
N-Nitroso-dimethylamine	<5
Pentachlorophenol	<1
Phenylenediamine	<5
2-Picoline	<1
Pronamide	<1
Pyridine	<1
Resorcinol	<1
Tetraethyldipyrophosphate[1]	<5
2,3-Toluenediamine	<1
3,4-Toluenediamine	<1
2,6-Toluenediamine	<1
Chloroform	<0.010
1,2-Dichloroethane	<0.010
1,1-Dichloroethylene	<0.010
Benzene	<0.010
Naphthalene	<0.030
Anthracene	<0.030
Toluene	0.3
Dibenz Pyrene	<0.160
Indeno (1,2,3-cd) pyrene	<0.160
Phenol	<0.100
o-Cresol	<0.100
m-Cresol	<0.100
p-Cresol	<0.100
Acenaphthene	<0.030
Fluorene	<0.030
Phenanthrene	<0.052
Dibenz (a,h) anthracene	<0.160
Pyrene	<0.040
Fluoranthene	<0.040
Benz (a) anthracene	<0.040
Chrysene	<0.040
Benezo (d) pyrene	<0.040
Benzo (b) fluoranthene	<0.040
Thiuram	14
Maleic Anhydride	80
Ethyl benzene	0.6
Styrene	31.0
Acetonitrile	<0.3
Acetyl chloride	<0.3
Acrolein	<0.5
Acrylamide	<0.5
Arsenic and compounds, NOS* as As[2]	<0.5
Arsenic acid as As	<0.5
Arsenic pentoxide as As	<0.5
Arsenic trioxide as As	<0.5
Barium and compounds, NOS* as Ba[2]	31
Barium cyanide as CN	<0.06
Benzenearsonic acid	<0.5
Benzene, dichloromenthyl	<0.3
Beryllium and compounds, NOS* as Be	<1
Bis(2-chloroethoxy) methane	<0.3
Bis(2-chloroethyl) ether	<0.3
Bis(2-chloroisopropryl) ether	<0.3
Bis(chloromethyl) ether	<0.3
Bromacetone	<0.3
Bromomethane	<0.3
Cadmium and compounds, NOS* as Cd[2]	<1
Calcium chromate as Cr[2]	<13
Calcium cyanide as CN[2]	<0.06
Carbon disulfide	<0.3
Carbon oxyfluoride as F	<0.7
Chloral	<0.3
Chlorinated benzenes, NOS*	<0.3

TABLE 3.—Analysis of Appendix VIII Constituents—Continued

Constituents of concern	Maximum total concentration analyses (ppm)
Chlorinated fluorocarbons, NOS*	<0.3
Chlorinated naphthalene, NOS*	<0.3
Chlorinated phenol, NOS*	<0.3
Chloroalkyl ethers NOS*	<0.3
Chlorobenzene	<0.3
1-Chloro-2,3-epoxypropene	<0.3
2-Chloroethyl vinyl ether	<0.3
Chloromethane	<0.3
Chloromethyl methyl ether	<0.3
Chromium and compounds, NOS* as Cr[2]	15
Copper cyanide as CN	<0.06
Cyanides (soluble salts and complexes) NOS*	<0.06
Cyanogen	<0.06
Cyanogen bromide	<0.06
Cyanogen chloride	<0.06
1,2-Dibromo-3-chloropropane	<0.3
1,2-Dibromoethane	<0.3
Dibromomethane	<0.3
1,4-Dichloro-2-butene	<0.3
Dichlorodifluoromethane	<0.3
1,1-Dichloroethane	<0.3
trans-1,2-Dichloroethene	<0.3
Dichloroethylene, NOS*	<0.3
Dichloromethane	<0.3
Dichlorophenylarsine	<0.5
Dichloropropane, NOS*	<0.3
1,2-Dichloropropene	<0.3
Dichloropropanol, NOS*	<0.3
Dichloropropene, NOS*	<0.3
Diethylarsine as As[2]	0.3
Diisopropylfluorophosphate as F	<0.7
1,4-Dioxane	<0.3
Ethyl cyanide	<0.06
Ethylene oxide	<0.3
Fluorine as F	<0.7
2-Fluoroacetamide	<0.7
Fluoroacetic acid, sodium salt	<0.7
Formaldehyde	<3
Formic acid	<4
Halomethane, NOS*	<0.3
Hexachlorophene	<0.3
Hexachloropropene	<0.3
Hydrocyanic acid as CN	<0.06
Hydrofluoric acid	<0.7
Hydroxydimethylarsine oxide as As	<0.5
Iodomethane	<0.3
Isobutyl alcohol	<0.3
Lead and compounds, NOS* as Pb[2]	<10
Lead acetate as Pb	<10
Lead phosphate as Pb	<10
Lead subacetate	<10
Maleic hydrazide	<5
Mercury and compounds, NOS* as Hg[2]	<0.05
Mercury fulminate	<0.05
Methanethiol	<0.3
Methyl ethyl ketone	<0.3
Nickel and compounds, NOS* as Ni[2]	64
Nickel carbonyl as Ni	<10
Nickel cyanide as CN	<0.06
Pentachloroethane	<0.3
Phenylmercury acetate as Hg	<0.05
Potassium cyanide as CN	<0.06
Potassium silver cyanide as CN	<0.06
Selenious acid	<0.5
Selenium and compounds, NOS*[2]	<0.5
Selenium sulfide	<0.5
Selenorurea	<0.5
Silver and compounds, NOS* as Ag[2]	<3
Silver cyanide as CN[2]	<0.06
Sodium cyanide as CN[2]	<0.06
Strontium sulfide as Sr	8
Tetrachloroethane, NOS*	<0.3
1,1,1,2-Tetrachloroethane	<0.3
1,1,2,2-Tetrachloroethane	<0.3
Tetrachloromethane	<0.3
1,1,1-Trichloroethane	<0.3
1,1,2-Trichloroethane	<0.3
Trichloroethene	<0.3
Trichloropropane, NOS*	<0.3
1,2,3-Trichloropropene	<0.3
Vanadic acid, ammonium salt as V	<11
Vanadium pentaoxide as V	<11
Vinyl chloride	<0.3

[1] An analytical standard was not available, therefore the detection limit is an estimate.

[2] These constituents were evaluated using the Oily Waste EP procedure.

< = Denotes detection limit.

B. Agency Analysis and Action

Michelin has demonstrated that the filter cake generated at their Sandy Springs, South Carolina facility is non-hazardous. The Agency believes that the samples analyzed reflect the day to day variation in manufacturing and treatment processes. The manufacturing and treatment processes are believed to be uniform and consistent since the facility does not perform as a job shop or have seasonal product variations. Thus, the Agency considers the sampling procedures used by Michelin to be adequate, and that the reported analytical data are representative of the waste filter cake.

The Agency has evaluated the mobility of the inorganic constituents from Michelin's waste using the vertical and horizontal spread (VHS) model.[5] The Agency's evaluation, using Michelin's annual volume of 2,000 cubic yards of filter cake and the maximum mobile metal concentration for the listed constituents of concern in the VHS model has generated the compliance point concentrations shown in Table 4. (Where concentrations were below the detection limits, the detection limit was used in the VHS model calculations).

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (MG/L)

Constituents	Compliance point concentrations	Regulatory standards
Cadmium	<0.001	0.01
Chromium	<0.006	0.05
Nickel	0.078	0.35
Cyanide	[1] <0.007	0.2

[1] Calculated using the maximum total cyanide concentration with no assumed dilution (worst-case analysis).

The filter cake exhibited cadmium and chromium levels (at the compliance point) below the National Primary Interim Drinking Water Standards, and a nickel concentration below the Agency's interim standard.[6] Cyanide levels are significantly below the U.S. Public Health Service's suggested Drinking Water Standard of 0.2 mg/l,[7] and reactive cyanide levels, are below the Agency's interim standard of 250 ppm.[8]

[5] See 50 FR 7882, Appendix I, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

[6] 50 FR 20247 (May 15, 1985) for a complete description of the development of the Agency's interim regulatory standard for nickel (0.350 ppm).

[7] Drinking Water Standards, U.S Public Health Service, Publication No. 956, 1962 (0.2 ppm).

[8] See internal Agency memorandum dated July 12, 1985, regarding "Interim Agency Threshold for Toxic Gas Generation" (in the RCRA public docket).

The Agency has also evaluated the mobility of the non-listed EP toxic metals in Michelin's filter cake using the VHS model. The model generated compliance point concentrations for each of these metals as shown in Table 5.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (MG/L)

Constituents	Compliance point concentrations	Regulatory standards
Arsenic	<0.001	0.501
Barium	0.033	1.0
Lead	0.022	0.05
Mercury	<0.001	0.002
Selenium	<0.001	0.01
Silver	<0.001	0.05

The calculated compliance concentrations of arsenic, barium, lead, mercury, selenium, and silver are all below the level of regulatory concern.

The Agency also calculated the mobile portion of the total constituent concentrations for the organic constituents listed in Table 3 using the Agency's Organic Leachate Model (see 51 FR 27981–27984, July 29, 1986). The leachable content of each constituent was then evaluated using the VHS model.

As indicated in Table 3, most of the constituents analyzed were detected using the detection limits specified; therefore, each constituent was analyzed using the reported detection limit. Table 6 presents the results of the OLM/VHS analysis for those constituents actually detected. Table 7 presents the results of the OLM/VHS analysis for the constituents which exhibited failing compliance point concentrations when using the detection limit as the maximum total constituent concentration.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS [1] (MG/L)

Constituents	Compliance point concentrations		Regulatory standards [2]
	Base-line	95% confidence	
Ethyl benzene	0.0089	0.0012	3.5
Maleic anhydride	0.29	0.44	[3] NA
Theruem	0.0014	0.0018	[3] NA
Toluene	0.1811	0.0014	10.5
Styrene	0.029	0.024	7.0

[1] Since the OLM has not yet been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized only one of these two versions will apply.

[2] An explanation of the derivation of these regulatory standards are available in the RCRA public docket.

[3] A regulatory standard does not currently exist; however, due to the sufficiently low compliance point concentration, the Agency is not concerned with this material.

TABLE 7.—CONSTITUENTS WHICH FAIL THE OLM/VHS ANALYSIS WHEN USING THE REPORTED DETECTION LIMITS, AS THE MAXIMUM TOTAL CONSTITUENT CONCENTRATION (PPM)

Constituents	Compliance point concentrations		Regulatory standards [1]
	Base-line	95 percent confidence	
Acrylonitrile	0.0157	0.0228	1.5x10-4
Benzidine	0.006	0.008	1.5x10-7
2-Chlorophenol	0.01	0.015	5.0x10-5
Bis (2-chloroethyl)ether	0.003	0.004	3.1x10-5
Bis(chloromethyl)ether	0.004	0.006	3.0x10-9
trans-1,2-Dichloroethane	0.003	0.004	2.8x10-4
1,1,2,2-Tetrachloroethane	0.002	0.0026	0.0018
Vinyl chloride	0.0015	0.0029	0.002
1,2-Dichloroethene	0.0003	0.004	3.8x10-4
Benz(a)anthracene	3.8x10-6	6.5x10-6	3.0x10-8

[1] Since the OLM has not been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline), are calculated.

[2] An explanation of the derivation of these regulatory standards are available in the RCRA public docket.

The detection limits used to calculate the compliance points were achieved using the recommended extraction and analytical procedures from Test Methods for Evaluating Solid Waste (SW–846). These methods cannot achieve low enough detection limits to pass the OLM/VHS analysis for these constituents. Where hazardous constituents in a waste are determined to be not detected using appropriate analytical methods, the Agency will, as a matter of policy, not use those constituents as a basis to regulate the waste as hazardous. The consituents in Table 7, therefore, are not conaidered to be of regulatory concern. The Agency is not indicating that these detection limits are appropriate minimum limits for all petitioners. These will be determined on a case-by-case basis and will depend on the waste matrix.[9]

The Agency was unable to generate a compliance point concentration for 124 constituents since either a solubility and/or a regulatory standard for each constituent is not currently available. When the Agency cannot determine either the compliance point concentration or a regulatory standard, that constituent would not be grounds for the Agency to continue to regulate the waste as hazardous.

The Agency notes that the remaining 48 constituents passed the OLM/VHS analysis, and therefore, are not of concern to the Agency. Based on the Agency's review of Michelin's process and discussions with Michelin regarding the possibility of other Appendix VIII hazardous constituents being used or being formed in the waste, we conclude that no other Appendix VIII hazardous constituents are likely to be present, or formed as reaction or by-products in Michelin's waste.

The Agency, therefore, concludes that Michelin's waste, generated at their Sandy Springs, South Carolina facility does not present a significant hazard to either human health or the environment. The Agency believes that the waste should continue to be considered non-hazardous. The Agency, therefore, proposes to grant Michelin's petition for exclusion of its wastewater treatment sludges, listed as EPA Hazardous Waste No. F006. (The Agency notes that the inclusion remains in effect unless the waste varies from that originally described in the petition [*e.g.*, the waste is altered as a result of changes in the manufacturing or treatment process].[10] In addition, Michelin is still obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

II. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather that increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's list of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 USC 6921.

Dated: October 3, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

[9] Detection limits required for a liquid waste may be orders of magnitude lower due to the technical ability to read lower detection limits on "clean" liquid wastes. The Agency further notes that, as the recommended clean-up procedures and analytical tests improve, the required detection limits will decrease for petitioners submitting petitions at that time.

[10] The current exclusion applies only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. Should such a change occur, the facility must treat its waste as hazardous however, until a new exclusion is granted.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Michelin Tire Corporation.	Sandy Springs, SC	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of final rule's publication].

[FR Doc. 86–22940 Filed 10–8–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[SW-FRL-3093-8]

Hazardous Waste Management System; Proposed Exclusions from Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at four facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and § 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at four particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated both of the petitions which are discussed in today's notice. Based on our review at that time, these petitioners were granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors which reasonably could cause the wastes to be hazardous.

DATES: EPA will accept public comments on the proposed exclusions until October 24, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on these proposed decisions by filing a request with Bruce Weddle, whose address appears below, by October 20, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSP/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–86–CPPE–FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRC regulation docket for this proposed rule is located at U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the factors for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the factors for which the waste was originally listed), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the factors for which the waste was listed, it then will evaluate the waste with respect to other factors or contaminants, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating the volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2 and (a)(3. Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetical receptor wells—the "compliance point" (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. For wastes that are managed in a landfill, the mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to delist the waste from four petitioners.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984 were enacted, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a exclusion. All four of the exclusions proposed today will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those from requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Capitol Products Corporation, Kentland, Indiana;
Lincoln Plating Company, Lincoln, Nebraska;
Maytag Company, Newton, Iowa;
Windsor Plastics, Inc., Evansville, Indiana.

I. Capitol Products Corporation

A. Petition for Exclusion

The Capitol Products Corporation (Capitol), a subsidiary of Ethyl Corporation, located in Kentland, Indiana, has petitioned the Agency to exclude their wastewater treatment sludge. The facility manufacturers aluminum extrusions of various forms, sizes, and finishes for end uses primarily in the building materials trade. The sludge presently is listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. The listed constituents of concern for this waste are hexavalent chromium and cyanide (complexed). Capitol has petitioned to exclude its wastewater treatment sludge because it does not meet the criteria for which the waste originally was listed.

Based upon the Agency's review of their petition, Capitol was granted a temporary exclusion on March 18, 1981 (see 46 FR 17199). The basis for granting the exclusion (at that time) was negligible concentrations of cyanide, and the low migration potential of chromium in the waste. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See Section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Capitol. As a result of HSWA, the Agency has re-evaluated Capitol's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine if the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Capitol's petition.

In support of their petition, Capitol has submitted a detailed description of its manufacturing and treatment processes (including schematic diagrams);[3] total constituent analyses and EP toxicity test results of the sludge for total chromium; and analytical results for total cyanide. Capitol also submitted total constituent analyses and EP toxicity test results for arsenic, barium, cadmium, lead, mercury, selenium, silver, and nickel; results for total sulfide analyses; and results for total oil and grease analyses on representative waste samples. Capitol further submitted a list of raw materials used in the manufacturing process. As noted above, the Agency requested this information to determine if toxicants, other than those for which the waste originally was listed, are present in the waste at levels of regulatory concern.

Capitol uses a manufacturing process that involves the cleaning and conversion coating of aluminum extrusions to prepare the surfaces for finishing and painting. The pre-paint treatment process uses a five-stage series of cleaning and rinsing tanks. Capitol claims that cyanide is not used in their process. The chromium-bearing wastewater originating from this manufacturing process is treated by a continuous reduction/neutralization process that is controlled by automatic oxidation-reduction potential instruments. The wastwater treatment process involves pH adjustment with sulfuric acid, reduction of hexavalent chromium to a trivalent state with sulfur dioxide, and pH adjustment and chromium precipitation with lime.

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[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 FR 1602, January 14, 1986). The Agency, however, has not yet completed its evaluation of the comments on this proposal. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

[3] Capitol has claimed their raw materials list and process descriptions as confidential business information (CBI). This information, therefore, is not available in the public docket.

Flocculants are added to enhance sludge settling. The clarified sludge is dewatered using a vacuum filter and subsequently hauled away for off-site land disposal. Capitol petitioned the Agency to exclude this dewatered wastewater treatment sludge. Capitol claims that this wastewater treatment sludge is non-hazardous due to the immobile nature of chromium and negligible levels of cyanide in the sludge. In addition, Capitol claims that paints and solvents used at the facility cannot contact the chromium-bearing wastewater stream, and thus cannot contribute toxicants to the wastewater treatment sludge. Capitol, therefore, believes that the dewatered sludge is not hazardous for any other reason.

Capitol's initial petition was based upon one grab sample collected from the vacuum filter in 1980. Following the Agency's request for additional data, four grab samples were collected in November of 1983, four composite samples were collected in April of 1985, and six composite samples were collected in October of 1985. The Agency requested additional sampling and analyses which more precisely quantified the leachable levels of mercury, silver, and selenium. Following the Agency's request, Capitol collected and analyzed twelve composite samples in May and June of 1986. The 1985 and 1986 composite samples were composed of grab samples collected hourly from the vacuum filter while it was operating over an 8-hour work shift. Overall, a total of 27 samples were collected and analyzed for various parameters. Capitol claims that all of the samples collected, except one, are representative of any variation of the listed and non-listed constituent concentrations in the waste because the manufacturing processes used at the facility are uniform and the use of raw materials does not vary substantially over time. Capitol also claims that there is no significant seasonal variation in the amount of waste generated. Capitol claims, however, that a November 1983 sample is not representative because their sulfonator was malfunctioning. As a result, the hexavalent chromium was not sufficiently reduced. This sample generated increased chromium extracts levels due to the presence of higher concentrations of the more mobile hexavalent chromium in the waste.

Total constituent and EP toxicity analyses of the dewatered sludge for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1—MAXIMUM CONCENTRATIONS (ppm)

Listed constituents	Total constituent analyses	EP leachate analyses
Chromium (total)	5,400	[1] 1.5
Cyanide	<0.25	[2] <0.012

<: Denotes concentrations below the detection limit.

[1] Capitol claims that the reported maximum extract value of 1.9 ppm is not representative due to process equipment malfunction. The next highest reported maximum extract value was 1.5 ppm.

[2] Free and leachable cyanide tests were not required, since cyanide is not used in the process and the total cyanide content was low. Leachable cyanide was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total consituent concentration of cyanide.

Total constituent and EP toxicity analyses of the dewatered sludge for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2—MAXIMUM CONCENTRATIONS (ppm)

Non-listed constituents	Total constituent analyses	EP leachate analyses
Arsenic	<8	<0.1
Barium	35	<0.01
Cadmium	<1	<0.05
Lead	<6	<0.1
Mercury	1	0.00097
Nickel	13	<0.1
Selenium	<6	0.037
Silver	1	0.005

<: Denotes concentrations below the detection limit.

The maximum total oil and grease value reported was 0.08 percent. Capitol also analyzed their dewatered sludge for total sulfides; the maximum concentration was reported to be 0.10 ppm. Capitol also submitted a list of all raw materials used in their manufacturing and chromium-bearing wastewater treatment processes. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Capitol also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Capitol claims to generate approximately 120 cubic yards of sludge per year.

B. Agency Analysis and Action

Capitol has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that 26 of the 27 samples collected by Capitol from the vacuum filter were non-biased and adequately represent any variations that may occur in the waste stream petitioned for exclusion. The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Variation in raw materials can be expected either when the facility performs as a job shop or when the production line changes seasonally. The Agency believes that the sampling period used by Capitol was long enough to cover any scheduled changes in the product line, since the petitioner has verified that there is no significant seasonal variation in the process and the raw materials used do not vary. Accordingly, the samples are representative of the waste generated by Capitol at its Kentland, Indiana facility. The Agency accepts Capitol's claim regarding the non-representative nature of the November 1983 sample.

The Agency has evaluated the mobility of the listed constituents from Capitol's waste using the vertical and horizontal spread (VHS) model.[4] The VHS model generated compliance point values using the reported maximum annual waste generation rate of 120 cubic yards year and the maximum reported extract levels as input parameters. The calculated compliance point concentrations for the listed constituents are reported in Table 3. (When leachate concentrations were below the detection limits, the value of the detection limit was used.)

TABLE 3 —VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS/DEWATERED SLUDGE (PPM)

Listed constituents	Compliance point concentrations	Regulatory standards
Chromium (total)	0.046	0.05
Cyanide	<0.0004	0.2

The dewatered sludge exhibited chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standard. Chromium levels in the sludge, therefore, are not of regulatory concern. The sludge exhibited cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[5] The waste's maximum sulfide and cyanide contents (0.01 and <0.25 ppm, respectively) also are low enough to not be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases. (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactive characteristic.) These constituents, therefore, are not of regulatory concern.

[4] See 50 FR 7882, Appendix I, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

[5] Drinking Water Stanadards, U.S. Public Health Services, Publication 946, 1962 (0.2 ppm).

The Agency also concluded, through using the VHS model, that the other EP toxic metals and nickel are not present in the dewatered sludge at levels of regulatory concern. The compliance point values generated from these extract levels are displayed in Table 4.

TABLE 4—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS DEWATERED SLUDGE (PPM)

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	<0.003	0.5
Barium	<0.0008	1.0
Cadmium	<0.002	0.01
Lead	<0.0003	0.05
Mercury	0.00003	0.002
Nickel	<0.009	0.35
Selenium	0.001	0.01
Silver	0.0002	0.05

Capitol also has demonstrated that the sludge does not demonstrate the characteristics of ignitability and corrosivity. The Agency also reviewed Capitol's raw material list and material safety data sheets for each component in the raw materials list. The Agency has concluded from this review that no other Appendix VIII harzardous constitutents, other than those tested for, are present in the waste.

The Agency believes, based on the constituents and factors evaluated, that Capitol has demonstrated that the dewatered sludge is non-hazardous. The Agency, therefore, proposes to grant an exclusion to Ethyl Corporation's Capitol Products for its wastewater treatment sludge generated at its Kentland, Indiana facility, as described in its petition. The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the manufacturing or treatment processes).[6] In addition, as a generator of a solid waste, the petitioner is still obligated to periodically determine whether the waste exhibits any of the hazardous waste characteristics.

II. Lincoln Plating Company

A. Petition for Exclusion

Lincoln Plating Company (Lincoln), located in Lincoln, Nebraska, is involved in a wide variety of electroplating, anodizing, and metal finishing processes for other industrial companies. Lincoln has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations, except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical-etching and milling on aluminum. The listed constituents of concern for this waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, Lincoln was granted a temporary exclusion on November 22, 1982 (See 47 FR 52668). EPA granted the exclusion (at that time) since the cadmium and total chromium concentrations were well below the maximum EP toxicity limits; nickel and cyanide concentrations were also not of regulatory concern. The low leachate levels indicated that the constituents of concern were present in essentially an immobile form. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. As a result, the Agency has re-evaluated Lincoln's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) determine if the waste is non-hazardous with respect to factors and toxicants other than the original listing criteria. Today's notice is EPA's re-evaluation of Lincoln's petition.

In support of their petition, Lincoln has submitted a detailed description of their manufacturing and treatment processes (including schematic diagrams); results from total constituent and EP toxicity analysis for cadmium, total chromium, and nickel; and total constituent and distilled water leachate test results for cyanide. Lincoln also submitted total constituent analyses and EP toxicity results for arsenic, barium, lead, mercury, selenium, and silver; multiple extraction analyses results; and total oil and grease analyses on representative waste samples. Lincoln further submitted a list of raw materials used in the manufacturing process. As noted above, the Agency requested this information to determine if toxicants other than those for which the waste was listed are present in the waste at levels of regulatory concern.

Lincoln is a job shop plater and supplies various finishes to meet the needs of local manufacturers. Lincoln groups the manufacturing processes into 13 different production lines. The variety of plating processes include: anodizing, dye anodizing, and chromate conversion coating on aluminum; hardcoat anodizing of aluminum and solder plating (tin and lead); chloride zinc plating on steel; alkaline zinc, nickel, tin, and cadmium plating; copper, silver, and iron manganese phosphate coating; electroless nickel, sulfamate nickel, nickel chrome, and fluoride chrome plating; hard chromium plating on steel; blackk oxide coating on steel; and pickling and etching. There is some painting done at the facility; however, Lincoln claims these wastes are entirely segregated from the petitioned wastestream.

The waste treatment facility is generally a continuous operation, although batch treatment of cyanide and chrome wastes does occur. Wastewater from each line is piped directly to the wastewater treatment facility. Sodium hydrosulfide is used to treat hexavalent chrome on a batch basis in the alkaline cleaners on the chromium plating lines. Cyanide solutions from the processing tanks are also batch treated with calcium hypochlorite (for pH adjustment) and sodium hypochlorite solution. Wastewaters from the processing lines are collected in sumps based on whether they are chromium, acid, or alkaline. The chromium-bearing wastewaters are pretreated by reduction using sulfur dioxide before mixing with the other streams. The acid and alkaline wastewaters serve to provide pH adjustment as needed. A lime slurry (calcium oxide) is also used to adjust pH. The combined waste streams undergo polymer flocculation, clarification, and pressure filtration for sludge dewatering. After dewatering, portland cement is added to the sludge. Lincoln claims that its treated wastewater treatment sludge is non-hazardous because it does not meet any of the criteria for which it was listed and is not hazardous for any other reason.

Six composite samples were collected from the sludge bucket after the dewatered filter cake had been mixed with the portland cement.[7] An

[6] The current exclusion applies only to the processes covered by the original demonstration. A facility may file a new petition if it alters its process. Should such a change occur, the facility must treat its waste as hazardous until a new exclusion is granted.

[7] Lincoln submitted (in August and December, 1985) analytical results from 15 composite samples taken over a 1 and 1/2 year period. It was determined, however, that due to the wastewater treatment process changes at Lincoln (addition of cement), the EP toxicity test should be run on samples ground to 100 mesh, and that additional samples should be subjected to the Multiple Extraction Procedure (MEP). Only these six samples, therefore, are considered in the evaluation of the petition.

accumulation of approximately 12 hours of generated sludge is dumped from the filter into the mixer; each composite sample was composed of grab samples collected from seven random locations within the sludge bucket. The grab samples were collected at random times over a 5 week period. Lincoln claims that, although the facility could be considered a job shop, all of the manufacturing processes used at the facility are in full operation during an average day. In addition, Lincoln claims that the use of raw materials does not vary substantially over time. Consequently, they believe that the samples collected and analyzed fully characterize their waste.

Total constituent and EP toxicity analyses (100 mesh) of the sludge for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1—MAXIMUM CONCENTRATIONS (PPM)

Constituent	Total constituent analyses	EP leachate analyses
Cd	4,000	0.04
Cr (total)	11,200	[illegible]0.25
Ni	14,200	0.15

TABLE 1—MAXIMUM CONCENTRATIONS (PPM)—Continued

Constituent	Total constituent analyses	EP leachate analyses
CN	<3.6	0.32

[1] The EP leachate value and maximum constituent analyses reported in Table 1 represent the maximum levels reported for the particular metal and do not necessarily represent the same sample.
[2] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

Total constituent and EP toxicity analyses of the sludge for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS (PPM)

Constituent	Total constituent analyses	EP leachate analyses
AS	8.8	0.15
Be	1,350	1.3
Pb	2,000	0.19
Hg	<0.1	0.00009
Se	0.13	<0.03
Ag	16.0	<0.01

Multiple Extraction test date for both the listed and non-listed EP toxic metals revealed the concentrations reported in Table 3.

TABLE 3.—MULTIPLE EXTRACTION CONCENTRATIONS (ppm)

Extraction Number	Metal								
	1	2	3	5	5	6	7	8	9
As	0.01	<0.001	0.004	<0.001	0.19	0.004	0.011	0.009	0.009
Be	0.19	0.06	0.18	0.10	<0.10	<0.01	<0.01	<0.001	<0.001
Cd	<0.03	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Cr	0.1	<0.05	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Pb	<0.05	<0.05	<0.05	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Hg	0.0008	<0.00001	<0.0001	<0.0001	<0.0001	<0.0001	<0.0001	<0.0001	<0.0002
Ni	<0.04	<0.05	<0.04	<0.02	<0.02	<0.02	<0.02	<0.02	<0.02
Se	<0.03	<0.003	<0.003	<0.003	<0.003	<0.003	<0.003	<0.003	<0.002
Ag	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01

The maximum total oil and grease value reported was 0.22 percent. Lincoln also submitted a list of all raw materials used in their manufacturing and wastewater treatment processes. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process, and that formation of any of these constituents is highly unlikely. Lincoln also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Lincoln claims that the maximum annual generation rate of the sludge is 204 cubic yards.

B. Agency Analysis and Action

Lincoln has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the composite samples collected from the sludge over the 5 week period were non-biased and adequately represent any variations that may occur in the waste stream petitioned for exclusion. The Agency also believes, based on the petitioner's process description, that the portland cement and filter cake are uniformly mixed. The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Although Lincoln operates as a job shop, the manufacturing processes used at the facility are uniform and the use of raw materials does not vary substantially over time. The Agency believes that enough to cover any scheduled changes in the product line, since the petitioner has verified that all of the plating lines were in operation during the sampling period. The Agency, therefore, believes that the samples are representative of the petitioned waste.

The Agency has evaluated the mobility of the listed constituents from Lincoln's waste using the vertical and horizontal spread (VHS) model.[8] VHS model compliance point values were calculated using the maximum reported waste generation rate of 204 cubic yards per year and the maximum reported extract levels as input parameters. These compliance point concentrations are exhibited in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituent	Compliance point concentrations	Regulatory standards
Cd	0.001	0.01
Cr (Total)	0.008	0.05
Ni	0.005	0.35

The sludge exhibited cadmium and chromium levels (at the compliance point) below the National Interim Primary Drinking Water standards; cyanide levels below the U.S. Public Health Service's suggested drinking water standard;[9] and nickel levels below the Agency's Interim Health Advisory.[10] The total cyanide levels in the waste are also below the air threshold limit set by the American Conference of Governmental Hygienists.[11] Cyanide, therefore, is not of regulatory concern.

The Agency also concluded, through the use of the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 5. In addition, the MEP data reported in Table 3 indicates that the sludge exhibits long-term stability by leaching non-hazardous levels of the metals after multiple synthetic acid rain extractions.

[8] See footnote 4.
[9] See footnote 5.
[10] Pending the completion of current EPA studies on health effects of nickel, the Agency's interim health advisory for nickel is 350 ppm for the purpose of delisting petitions. This standard is explained at 50 FR 20239–46, May 15, 1985. Also see 51 FR 33639, September 22, 1986.
[11] See Documentation of Threshold Limit Values for Substances in Workroom Air. American Conference of Governmental Industrial Hygienists, third edition, 1971 Cincinnati, Ohio.

The compliance point values generated from these extract levels are displayed in Table 5. In addition, the MEP data reported in Table 3 indicates that the sludge exhibits long-term stability by leaching non-hazardous levels of the metals after multiple synthetic acid rain extractions.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituent	Compliance point concentrations	Regulatory standards
As	0.005	0.05
Be	0.04	1
Pb	0.006	0.05
Hg	<0.0001	0.002
Se	0.0009	0.01
Ag	0.0002	0.05

The Agency also reviewed Lincoln's raw materials lists and Material Safety Data Sheets for each component in the raw material lists. The Agency has concluded from this review that no other Appendix VIII toxicants could enter the waste treatment system.

The Agency believes that Lincoln's treatment process generates a non-hazardous waste. The Agency, therefore, proposes to grant an exclusion to Lincoln Plating Company, Lincoln, Nebraska, for its wastewater treatment sludge, as described in its petition. The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the treatment process).[12] In addition, as a generator of a solid waste, the petition is still obligated to periodically determine whether the waste exhibits the hazardous waste characteristics.

III. Maytag Company

A. Petition for Exclusion

The Maytag Company (Maytag), located in Newton, Iowa, is involved in the manufacture of washing machines. In November 1980, Maytag petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern in EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, Maytag was granted a temporary exclusion in August 1981 (see 46 FR 40159–40160). The Agency's basis for granting the temporary exclusion was the low migration potential of the constituents of concern, namely cadmium, hexavalent chromium, cyanide (complexed), and nickel. Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste were listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Maytag. This information was submitted on November 6, 12, and 14, 1985, March 10, 1986, and September 16, 1986. As a result, the Agency has re-evaluated Maytag's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) evaluate the wastes for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous.[13]

Maytag has submitted a detailed description of its production and wastewater treatment processes, including a schematic diagram; total constituent analyses and EP toxicity test results of the sludge from cadmium, total chromium, nickel, and lead; and total constituent analyses and distilled water leach test results for cyanide. Maytag also submitted results from total constituent analyses and EP toxicity tests for arsenic, barium lead, mercury, selenium, and silver; and total oil and grease analysis on representative waste samples collected from each of three sludge settling tanks. In addition, Maytag submitted a list of raw materials used in the manufacturing process. The additional information was submitted, as indicated above, to determine whether any hazardous constituents other than those for which the waste was originally listed could be present in the waste at levels of regulatory concern.

Maytag manufactures clothes washing machines. In the production process, the washing machine components are pickled, electroplated, coated, or painted. Chromium wastes are segregated and reduced by sulfur dioxide prior to mixture with the remaining process wastewater. Equalization, lime neutralization, aluminum sulfate and polymer flocculation, and primary clarification follow.[14] Each day's wastewater treatment sludge is pumped to one of three (one day capacity) sludge settling tanks. After settling, the supernatant liquid is decanted, and lime slurry is added. The sludge is then dewatered on a batch basis by vacuum filtration, and placed in dumpsters for disposal.

The Agency also reviewed the material safety data sheets submitted by Maytag, identifying the following eight Appendix VIII hazardous constituents: formic acid, formaldehyde, isobutyl alcohol, hydrazine, tetrachloroethylene, 1,1,1-trichloroethane, toluene, and methyl ethyl ketone, and the following three classes: aliphatic ketones, aromatic hydrocarbons, and petroleum emulsions as components of raw materials used in the manufacturing process that could possibly be expected to be present in the waste. EPA, therefore, requested that Maytag supply total constituent analyses for the eight Appendix VIII hazardous constituents and the chemicals contained in the three classes of materials. The total constituent analyses for the resulting 30 Appendix VIII hazardous constituents are presented in Table 1.

TABLE 1.—ANALYSIS OF APPENDIX VIII HAZARDOUS CONSTITUENTS

Constituent	Maximum total concentration (mg/kg)
Toluene	0.008
1,1,1-Trichloroethane	0.003
Tetrachloroethylene	0.02
Dichloromethane	0.012
Chloroform	0.003
Methyl ethyl ketone	<0.01

[12] See footnote 6.
[13] On November 6, 1985, Maytag expanded its petition to include EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. Maytag had previously considered conversion coating as an electroplating operation and had assumed the wastewater treatment sludges from this operation were described by EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations. In fact, all of the constituents of concern in Waste No. F019 are included in the constituents of concern in Waste No. F006. In addition, none of the wastewater treatment sludges from any of the Maytag's production and wastewater treatment processes are segregated.
[14] Clarified water (except for overflow to the publicly owned treatment works) in filtered, softened and recycled to the plant. Excess filtered water is directly discharged to a stream under a NPDES permit.

TABLE 1.—ANALYSIS OF APPENDIX VIII HAZARDOUS CONSTITUENTS—Continued

Constituent	Maximum total concentration (mg/kg)
Methyl isobutyl ketone	(1)
Di-n-butyl-phthalate	<7
Bis (2-ethyl hexyl) phthalate	<7
Butyl benzyl phthalate	<4
2-Chlorophenol	<0.66
2,4-Dichlorophenol	<6
Diethyl phthalate	<6
Dimethyl phthalate	<4
Phenol	<4
2,4,6-Trichlorophenol	<0.66
Chlorobenzene	<0.001
Naphthalene	<5
Fluoranthene	<3
Benzo(b)fluoranthene	<0.66
Benzo(k)fluoranthene	<0.66
Chrysene	<2
Benzo(a)anthracene	<0.66
Dibenzo(a,h)anthracene	<0.66
Benzo(a)pyrene	<0.66
Di-n-octyl phthalate	<10
Hydrazine [2]	<3.2x10^{-3}
Formaldehyde	<1
Formic acid	(1)
Isobutyl alcohol	(1)

< Denotes concentrations below detection limit.
[1] Not analyzed.
[2] Concentration determined by mass-balance demonstration using the Nernst equation. The Nernst equation is used to determine the rate of consumption (in moles) of the reactants and formation products (in moles) under a given set of chemical conditions.

Twenty-two of the Appendix VIII hazardous constituents were not found in the sludge at detectable levels and analyses for formic acid, isobutyl alcohol, and methyl isobutyl ketone were not performed. Maytag claims that the three Appendix VIII hazardous constituents not tested for, formic acid, methyl isobutyl ketone and isobutyl alcohol (listed for corrosivity and ignitability, respectively), are not present in their wastewater treatment sludge in concentrations of regulatory concern since the waste is neither corrosive nor ignitable. Maytag further claims, through a mass-balance demonstration, that the maximum concentration of formic acid in the wastewater is 30 mg/l.

To characterize the wastewater treatment sludge and adequately show its variability, 21 samples were collected over a two-month period, including a two-hour period, including a two-week period when samples were collected on five consecutive days each week. Maytag collected five grab samples at roughly two-hour intervals, and composited all five grab samples each sampling day. An additional four samples wre collected on August 5, 6, 7, and 11, 1986, using the above procedure, and analyzed for total constituent concentration. (These analyses were required to demonstrate a lower detection limit necessary for several organic constituents.)

The total constituent analyses and EP toxicity analyses of the sludge for the listed constituents and the non-listed metals found the maximum concentrations presented in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Constituents	Maximum total concentration analyses (ppm)	Maximum EP leachate concentration analyses (ppm)
Cd	<0.5	<0.01
Cr (total)	2,920.0	0.27
Ni	1,200.0	0.73
CN (total)	1.28	[1] <0.01
As	4.5	<0.005
Be	1,470.0	5.7
Pb	57.8	0.021
Hg	<0.5	<0.001
Se	<0.2	<0.005
Ag	<1.0	0.01

[1] From distilled water leach test. Distilled water is used rather than the normal acidic EP extraction medium to avoid the destruction of cyanide during the extraction procedure.

As three of the 21 samples had an oil and grease content of between 1.0 and 1.2 percent by weight (wet basis), an Oily Waste EP toxicity analysis was also performed on these three samples for both the listed constituents and for the non-listed metals. The maximum values of the mobile metal concentrations of these three samples are presented in Table 3. The remaining samples had a maximum oil and grease content of 0.9 percent with a mean content of 0.8 percent.

TABLE 3.—OILY WASTE EP LEACHATE ANALYSIS

Constituents	Maximum mobile metal concentration (ppm)
Cd	<0.01
CN	(1)
Cr (total)	0.25
Ni	0.70
As	<0.007
Be	0.8
Pb	0.014
Hg	<0.002
Se	<0.007
Ag	<0.01

[1] An analysis for cyanide was not performed since the total concentration of cyanide was sufficiently low, and it was, therefore, unnecessary.

In addition to these analytical tests, Maytag submitted a signed statement which indicated that their wastewater treatment sludge does not meet any of the hazardous waste characteristics. Maytag also submitted a mass-balance demonstration for hydrazine to show its absence from the sludge. Maytag estimates that their maximum annual waste generation rate is 3,600 tons.

B. Agency Analysis and Action

Maytag has sufficiently demonstrated that the filter cake generated at their Newton, Iowa facility is non-hazardous. The Agency considers the sampling procedure used by Maytag to be adequate. By collecting five subsamples, at two-hour intervals, and compositing them into one sample each sampling day, Maytag ensured that each sample was representative of the sludge generated that day. Also, the duration of the sampling period was long enough to detect any variation in sludge composition from their three sludge settling tanks. In addition, there are no seasonal changes in the manufacturing process or raw materials, and Maytag does no piece-work. The Agency, therefore, concludes that the wastes samples analyzed by Maytag are representatives of their wastewater treatment sludge.

The Agency has elevated the mobility of the constituents of Maytag's wastewater treatment sludge, using the vertical and horizontal spread (VHS) model.[15] The Agency's evaluation of Maytag's 3,600 tons of sludge using the maximum extract levels from both the Oily Waste EP and EP Toxicity tests for listed constituents of concern and the non-listed EP toxic metals, generated the compliance point concentrations presented in Table 4.

TABLE 4.—VHS MODEL: COMPLIANCE POINT CONCENTRATIONS

Constituents	VHS model: calculated compliance point concentrations (ppm)	Regulatory standards (ppm)
Cd	0.001	0.01
Cr (total)	0.040	0.05
Ni	a 104	0.350
CN (total)	0.001	0.20
As	0.001	0.05
Be	0.848	1.0
Pb	0.008	0.05
Hg	<0.0002	0.002
Se	0.001	0.01
Ag	0.001	0.05

The VHS model predicts that the compliance point concentrations of arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver were all below the National Interim Primary Drinking Water Standards, and nickel levels [16] were below the Agency's interim level of concern. Compliance point concentrations of cyanide also did not exceed the U.S. Public Health Service's suggested drinking water standard.[17] In addition, the total constituent concentration of cyanide (and reactive cyanide) is below the Agency's interim level of 250 ppm.[18]

the organic consitutents used in the manufacturing process (listed in Table 1) were evaluated by first estimating the leachate concentration (using the

[15] See footnote 4.
[16] See footnote 10.
[17] See footnote 5.
[18] See footnote 11.

proposed Organic Leachate Model) and then calculating the compliance point concentrations with the VHS model.[19] This procedure resulted in the compliance point concentrations presented in Table 5. Table 5 also presents the regulatory standard to which the calculated compliance point concentration is compared.

As indicated in Table 5, the calculated compliance point concentrations (using both the best-fit equation and the 95 percent confidence equation) for 15 of the 30 constituents, are below their respective regulatory standards. The five constituents, butyl benzyl phthalate, diethyl phthalate, dimethyl phthalate, naphthalene, and hydrazine were not analyzed using the OLM/VHS model, since the total constituent concentration of each constituent was significantly lower than its respective regulatory standard.

TABLE 5.—VHS MODEL: COMPLIANCE POINT CONCENTRATIONS [5] (PPM)

Constituents	Baseline concentration	95 percent confidence concentration	Regulatory standard [1]
Toluene	1.0x10^{-4}	2.0x10^{-4}	10.5
1,1,1-Trichloroethane	9.0x10^{-5}	1.6x10^{-4}	1.2
Tetrachloroethylene	1.4x10^{-4}	2.0x10^{-4}	6.9x10^{-4}
Dichloromethane	6.0x10^{-4}	4.7x10^{-3}	0.056
Chloroform	1.7x10^{-4}	2.9x10^{-4}	5x10^{-4}
Methyl ethyl ketone	1.4x10^{-2}	2.5x10^{-3}	1.8
Methyl isobutyl ketone	(2)	(2)	2.0
Di-n-butyl phthalate	3.0x10^{-2}	3.7x10^{-3}	3.5
Bis (2-ethyl hexyl) phthalate	8.0x10^{-4}	1.0x10^{-3}	0.7
Butyl benzyl phthalate	(4)	(4)	8.75
2-Chlorophenol	1.1x10^{-3}	1.5x10^{-3}	5x10^{-4}
2,4-Dichlorophenol	2.0x10^{-3}	3.1x10^{-3}	0.11
Diethyl phthalate	(4)	(4)	350
Dimethyl phthalate	(4)	(4)	350
Phenol	5.0x10^{-3}	6.0x10^{-3}	3.5
2,4,6-Trichlorophenol	2.8x10^{-3}	3.7x10^{-3}	1.8x10^{-3}
Chlorobenzene	2.0x10^{-5}	4.4x10^{-5}	1.1
Naphthalene	(4)	(4)	9
Fluoranthene	7.0x10^{-4}	9.0x10^{-4}	0.2
Benzo (b) fluoranthene	4.6x10^{-5}	7.2x10^{-5}	2x10^{-3}
Benzo (k) fluoranthene	3.1x10^{-5}	4.9x10^{-5}	4.0x10^{-3}
Chrysene	4.0x10^{-5}	7.6x10^{-5}	2.0x10^{-4}
Benzo(a)anthracene	3.4x10^{-5}	5.5x10^{-5}	1.0x10^{-5}
Dibenzo(a,h)anthracene	1.4x10^{-5}	2.16x10^{-5}	7.0x10^{-7}
Benzo(a)pyrene	1.9x10^{-5}	3.2x10^{-4}	3.0x10^{-6}
Di-n-octyl phthalate	2.0x10^{-3}	2.8x10^{-3}	0.6
Hydrazine	(4)	(4)	8.0x10^{-6}
Formaldehyde	3.9x10^{-3}	5.0x10^{-3}	7.0x10^{-3}
Formic Acid	(2)	(2)	70
Isobutyl alcohol	(3)	(3)	NA [3]

[1] An explanation of the derivation of these regulatory standards is available in the public docket.
[2] A regulatory standard is not currently available.
[3] Not calculated since a total constituent analysis was not performed.
[4] Not calculated since a solubility value was not available, however, the total constituent concentration is less than the regulatory standard (i.e., assuming 100 percent leaching, the concentration of the constituent is still below the regulatory standard).
[5] The proposed OLM presented two possible equations, the baseline and a 95 percent confidence interval applied to the baseline equation. Both are presented here. Only one version will apply once the OLM is made final.

The three constituents, methyl isobutyl ketone, isobutyl alcohol, and formic acid were not evaluated with the OLM/VHS model since a total constituent analysis was not performed. The Agency agrees with the petitioner, that methyl isobutyl ketone and isobutyl alcohol are not present in the waste at concentrations of regulatory concern since the waste is not ignitable. The Agency determined that a formic acid concentration of 38,000 ppm would be necessary to fail the OLM/VHS model analysis. The Agency has reviewed Maytag's mass-balance demonstration and agrees that the concentration of formic acid present in the sludge is significantly less than 3.8 percent.

Seven of the 30 constituents, 2-chlorophenol, 2,4,6-trichlorophenol, benzo(b)fluoranthene, benzo(a)anthracene, dibenzo(a,h)anthracene, benzo(a)pyrene, and formaldehyde fail the VHS/OLM model analysis using the constituent's detection limit concentration and both the best-fit and 95 percent confidence equations. The Agency believes, however, that in Maytag's case it is not possible to achieve a low enough detection limit to pass the VHS model analysis for these constituents. Where hazardous constituents in a waste are determined to be non-detectable using appropriate analytical methods the Agency will, as a matter of policy, not regulate the waste as hazardous. The Agency believes that formaldehyde, 2-chlorophenol, 2,4,6-trichlorophenol, benzo(b)fluoranthene, dibenzo(a,h)anthracene, benzo(a)pyrene, and benzo(a)anthracene are not present at levels of regulatory concern. The Agency has arrived at this conclusion since the recommended extraction and analytical procedures from Test Methods for Evaluating Solid Waste (SW–846) cannot achieve low enough detection limits to pass the OLM/VHS analysis for these seven constituents. The Agency further notes that it is not indicating that a detection limit of 1 ppm for formaldehyde and 0.66 ppm for the other six constituents are appropriate limits for all petitioners. The acceptability of a particular detection limit is decided on a case-by-case and will depend on the waste matrix. Additionally, as the recommended clean-up procedures and analytical tests improve, the required detection limits will decrease for those petitioners submitting petitions at that time.

The Agency has also concluded that there are no other hazardous organic constituents present in the waste, based on an examination of Maytag's raw materials, knowledge of the process, and the analytical test results provided by Maytag. The Agency also reviewed each of the chemical components in each raw material, as supplied by Maytag's raw materials list and material safety data sheets and has concluded from this review, that no other Appendix VIII hazardous constituents are present in the petitioned waste and that the formation of Appendix VIII hazardous constituents in the waste is unlikely.

The Agency, therefore, concludes that Maytag's waste, generated at their Newton, Iowa facility, does not present a significant hazard to either human health or the environment. The Agency believes that the waste should continue to be considered non-hazardous. The Agency, therefore, proposes to grant Maytag's application for final exclusion for its wastewater treatment sludges, listed as EPA Hazardous Waste No. F006. The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the manufacturing or treatment process).[20] As a generator of a solid waste, Maytag is still obligated to periodically determine whether the wastes exhibit any of the hazardous waste characteristics.

IV. Windsor Plastics, Inc.

A. Petition for Exclusion

Windsor Plastics, Inc. (Windsor), located in Evansville, Indiana, is involved in the production of injection molded plastic parts. Windsor has petitioned the Agency to exclude its still bottom wastes presently listed as EPA Hazardous Waste No. F003—Spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanal; all spent solvent mixtures/blends containing before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing before use one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of those spent solvents and spent solvent mixtures. Ignitability is the basis for which the waste is listed as hazardous.

Based upon the Agency's review of the petition, Windsor was granted a temporary exclusion on November 22, 1982 (see 47 FR 225). The Agency's basis for granting the temporary exclusion, at that time, was Windsor's demonstration that its acetone recovery process combined with a steam-stripping treatment produced a non-ignitable waste. Since that time, the Hazardous

[19] For a discussion of the Agency's proposed Organic Leachate Model (OLM), see 50 FR 48657, November 27, 1985. See 51 FR 27081, July 29, 1986, Notice of Data Availability for the revised OLM.

[20] See footnote 8.

and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Windsor's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine whether the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Windsor's petition.

In support of their petition, Windsor has submitted a detailed description of its solvent handling and treatment processes, including schematic diagrams, and ignitability test results of the still bottoms from solvent recovery. Windsor also submitted analytical results for leachable and total cyanide and total sulfide; EP toxicity test results for arsenic, barium, cadmium, chromium, lead, mercury, nickel, selenium, and silver; and results of total oil and grease analyses on representative waste samples. Windsor further submitted a list of raw materials used in the manufacturing process and total constituent test results for the priority pollutants. As noted above, the Agency requested much of this information to determine whether factors other than those for which the waste was originally listed, are present and could cause the waste to be hazardous.

Windsor's manufacturing process includes the injection molding of thermoplastics, the primary materials being acrylonitrile-butadiene-styrene (ABS), styrene, polycarbonate, polymethacrylate, and polyphenylene oxide. These molded parts subsequently are finished via silk screening, spray painting, hot stamping, vacuum metallization, and electroplating. During the spray paint process, permanent masks formed from different metals are used to block off specific areas of the plastic parts during the painting process. These permanent masks then must be cleaned between uses to prevent paint buildup. The masks are washed in an acetone spray washer, and the acetone from these washers becomes spent solvent.

The spent acetone solvent is distilled from the paint residues in an on-site distillation system for reclamation and reuse. Following distillation, the waste is treated with steam at a pressure of 10 p.s.i. for 24 hours to remove any remaining volatile solvents. Any condensed steam remaining in the drums of still bottoms is decanted off. The remaining dry cake (*i.e.*, steam-stripped still bottoms) is the subject of this delisting petition.

Windsor claims that its treated still bottoms are non-hazardous because the treatment process renders the waste non-ignitable. Windsor further claims that the distillation process recovers 95 percent of the spent acetone. Windsor also believes that the waste is not hazardous for any other reason.

Windsor, in support of their original delisting petition, submitted the results of EP analyses on 17 separate samples, collected over the course of two years. Ignitability, corrosivity, and oil and grease analyses were also submitted. In response to the Agency's November 26, 1984 request for additional information, Windsor undertook an additional sampling and analysis program. EP analyses were run on 6 composite samples for the EP metals. Ignitability, total cyanide and sulfide, and total oil and grease test results were also submitted. Windsor also submitted a detailed diagram with schematics of their process and material safety data sheets (MSDS) on all of the paints which are used in their process. After review of the data, the Agency questioned whether Windsor's sampling plan involving the collection of "random" samples was truly representative. Based upon the review of MSDS, the Agency also requested analysis for methylene chloride, toluene, methyl ethyl ketone, 1,1,1-trichloroethane, and benzene.

In response to the Agency's request, Windsor decided to re-sample their waste in order to address the Agency's concerns. Samples were collected in February of 1986. Windsor divided twenty 55-gallon drums, collected over the course of two weeks of operation into four composite groups, each composed of five drums. Each drum was opened and multiple grab samples were collected from each drum. The multiple grab samples from each five-drum set were combined to form one composite sample. The following analyses were performed on the four samples: ignitability, corrosivity (pH), oil and grease, EP toxicity tests for the EP metals and nickel, gas chromatographic/mass spectral (GC/MS) analyses for all the listed RCRA solvents, and total reactive cyanide and sulfide.

Results of the EP toxicity analysis of the steam-stripped still bottoms (the samples which were collected during February 1986), [21] for the EP metals and nickel revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS (PPM)

Non-listed constituents	EP leachate analyses
Arsenic	<0.01
Barium	1.3
Cadmium	0.05
Chromium	0.14
Lead	0.5
Mercury	<0.005
Nickel	2.9
Selenium	<0.01
Silver	<0.01

The maximum reported oil and grease content was 0.42 percent. Windsor also provided test results which indicated that the steam-stripped still bottoms are not corrosive, reactive, or ignitable. The maximum concentration of total sulfide was reported to be <1 ppm; the maximum concentration of total cyanide was reported as <0.1 ppm. Windsor also provided GC/MS test results on several organic constituents that might be present in the waste. The total constituent concentrations for these compounds are presented in Table 2. Testing for ethyl acetate, ethyl ether, methyl ketone, n-butyl alcohol, cyclohexanone, and methanol (the other listed constituents of F003 wastes) was not required since the Agency's evaluation indicated that these constituents are not used by Windsor and are, therefore, not expected to be present in the waste.

TABLE 2.—TOTAL CONSTITUENT ANALYSES FOR ORGANICS

Constituents [1]	Total constituent analyses (ppm)
Acetone	<6.7
Benzene	<5.2
Ethyl benzene	56
Methylene chloride	320
Methyl ethyl ketone	<6.7
Toluene	<6.7
1,1,1-Trichloroethane	100
Trichloroethene	34
Xylene	270

[1] Acetone, ethyl benzene, and xylene are spent non-halogenated solvents (F003) listed solely for ignitability. They are not on Appendix VIII; therefore, they will only be evaluated in terms of their ignitability.

Windsor claims that the samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. Windsor further claims that the facility could be considered a job shop; the manufacturing processes used at the facility are uniform, but the use of raw materials, including different paint

[21] Results of the previous EP analyses were not included because the sampling protocol was not included and it was unclear as to wether the samples taken were representative. Furthermore, no quality assurance/quality control (QA/QC) data were provided on the earlier samples.

finishes, may vary over time. Windsor claims, however, that the sampling period was long enough to cover any scheduled changes in the product. Windsor claims to generate a maximum of 83 tons of steam-stripped still bottoms per year.

B. Agency Analysis and Action

Windsor has demonstrated that its treatment system produces a non-hazardous waste. The Agency believes that the four composite samples collected from the disposal drums over the two week period were non-biased and accurately represented any variations that may occur in the waste petitioned for exclusion. The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Variation in the raw materials can be expected either when the facility performs as a job shop or when the product line changes seasonally. The Agency is concerned that the two week sampling period used by Windsor to collect the organics data may not be long enough to cover any scheduled changes in the product line. The Agency is also concerned about the potential variability of the waste because Windsor operates as a job shop. In order to address these concerns, the Agency has reviewed Windsor's raw materials lists, and material safety data sheets for each component in the raw materials lists. The Agency concluded from this review that no other Appendix VIII constituents, other than those tested for and previously identified, are present in the waste. The Agency also believes that the potential variability of the organic constituents in the waste is low. The solvents are combined in the distillation process, and the still bottoms are expected to be relatively homogeneous after steam-stripping. Also, the wastes collected during the February 1986 sampling represented the total waste volume generated by Windsor over the preceding two weeks of plant operation, so no still bottoms produced by Windsor during that time were excluded from the evaluation. In order to more fully address the Agency's concerns over long-term variability, Windsor will collect additional waste samples to verify that organic constituent concentrations do not vary significantly over time, and will, therefore, not be of regulatory concern.

The Agency has evaluated the mobility of the EP toxic metals, nickel, and cyanide from Windsor's waste using the vertical and horizontal spread (VHS) model.[22] The VHS model generated compliance-point values using the annual generation rate of 83 tons per year and the maximum reported extract levels as input parameters. These compliance-point concentrations are exhibited in Table 3.

TABLE 3.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS/STEAM STRIPPED STILL BOTTOMS (PPM)

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.0005	0.005
Barium	0.04	1.0
Cadmium	0.002	0.01
Chromium	0.004	0.05
Lead	0.01	0.05
Mercury	0.0002	0.002
Nickel	0.07	0.35
Selenium	0.0003	0.01
Silver	0.0003	0.05

The steam-stripped still bottoms exhibited EP metal concentrations (at the compliance point) below their respective National Interim Primary Drinking Water Standards; cyanide levels below the U.S. Public Health Service's drinking water standard; [23] and nickel levels below the Agency's Interim Health Advisory.[24] The waste's maxium sulfide and cyanide levels (<1.0 and <0.1 ppm, respectively) also are low enough to not be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[25] (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reality characteristic.) These constituents, therefore, are not of regulatory concern.

The Agency evaluated the mobility of those organics that may be present in the steam-stripped still bottoms using the VHS model. The VHS model generated compliance-point values using the maximum reported waste generation rate and the maximum reported concentration of organics predicted by the Agency's organic leachate model.[26] The predicted leachate concentrations, compliance-point concentrations, and regulatory standards are shown in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM)

Constituents	Best-fit model		95% Confidence		Regulatory standards
	Predicted leachate	Compliance point	Predicted leachate	Compliance point	
Benzene	<0.11	8.3×10^{-3}	<0.13	9.8×10^{-3}	1×10^{-3}
Methylene chloride	4.2	1.3×10^{-1}	5.8	1.8×10^{-1}	0.05
Methyl ethyl ketone	<0.81	2.5×10^{-2}	<1.2	3.7×10^{-2}	2.0
Toluene	11.05	2.5×10^{-2}	0.10	3.1×10^{-4}	10.5
1,1,1-Tri-chloroethane	0.73	2.3×10^{-2}	0.88	2.8×10^{-2}	1.0
Trichloroethene	0.31	9.7×10^{-3}	1.0	3.0×10^{-2}	3×10^{-3}

Acetone, the listed solvent of concern (for ignitability) was not detected in any of the samples at a detection limit of 5 ppm. The steam-stripped still bottoms from recovery of acetone exhibited methyl ethyl ketone, toluene, and 1,1,1-trichloroethane concentrations below their regulatory standards. Methylene chloride, benzene, and trichloroethene, however, produced compliance-point concentrations above their respective regulatory standards.

For the following reasons, the Agency does not believe that the concentrations of these three constituents in the waste are of regulatory concern. Methylene chloride is a common laboratory contaminant. Windsor's four samples were first analyzed by the method of direct injection, as a screening procedure, with a detection limit of 50 ppm. Methylene chloride was not detected in any sample at the 50 ppm detection limit. All the samples were re-analyzed using the extraction and purge and trap method, with a lower detection limit of 5.0 to 6.7 ppm. This method involved diluting the sample 5,000 to 1; the direct analytical instrument readings must be multiplied by 5,000 to reach the original constituent concentrations. Methylene chloride was reported by the extraction and purge and trap method up to 320 ppm. These concentrations of methylene chloride should have been, but were not, detected by the direct injection procedure. The Agency, therefore, believes that the methylene chloride was a laboratory contaminant, as the contaminant appeared in the extracted waste but not in the still bottom. The application of the correction factor of 5,000 served to magnify the error and so was inappropriated.

Benzene was not detected in the waste above its detection limit of <5.2 ppm, however, using the detection limit value as the input in the OLM/VHS

[22] See footnote 4.

[23] See footnote 10.

[24] See footnote 11.

[25] See footnote 12.

[26] See footnote 5.

evaluation, the compliance-point value for this compound exceeds its regulatory standard. Benzene is assumed by the Agency not to be present in Windsor's waste at levels of regulatory concern. This assumption is made since the recommended extraction and analytical procedures described in SW–846, Test Methods for Evaluating Solid Waste, cannot achieve detection limits low enough to pass the VHS analysis for some constituents. The Agency is not indicating that a 5 ppm detection limit for benzene is an appropriate minimum limit for all petitioners. These will be determined on a case-by-case basis and will depend on the waste matrix. Detection limits required for a liquid waste may be orders of magnitude lower due to the technical ability to reach lower detection limits on "clean" liquid wastes. The Agency further notes that, as the recommended clean-up and analytical tests improve, the required detection limits will decrease for those petitioners submitting petitions at that point in time.

Trichloroethene was detected in a single sample out of four, but the Agency's examination of the raw materials used by Windsor did not indicate that this compound is used by Windsor. The Agency does not believe that these constituents are of regulatory concern for the following reasons. Trichloroethene and benzene would not be expected to be present in significant concentrations on the metal masks, even if they were present as paint solvents. After the masks are cleaned with the acetone solvent, the concentrations of these would be minimal due to futher dilution. After distillation, the still bottom residues are steam-stripped. Due to their physical and chemical properties, trichloroethene and benzene can be effectively steam-stripped and thus removed from the waste, while acetone cannot.[27] Acetone was not detected in the waste.

For these reasons, the Agency does not believe that it is reasonable for trichloroethene and benzene to be present in the waste at concentrations greater than acetone. It is reasonable to assume that, if these constituents were present in the waste, they would be expected to be present at significantly lower levels then the detection limits.

In order to verify the Agency's preliminary determination of the low concentrations of trichloroethene, benzene, and methylene chloride in the waste, the Agency has decided that Windsor must collect additional samples of waste and test these samples for the three organics mentioned above. The Agency will evaluate this data to verify whether these constituents are consistently below levels of regulatory concern in the waste. If Windsor fails to submit this information, or if the new data does not confirm the Agency's preliminary conclusion that these constituents are not of regulatory concern, the Agency will make a new proposal to either condition an exclusion upon continued waste testing, or to deny the petition.[28]

The Agency believes that the treatment process used by Windsor generates a non-hazardous waste. Subject to the conditions stated above, therefore, the Agency proposes to grant an exclusion to Windsor Plastics, Inc., located in Evansville, Indiana, for its steam-stripped still bottoms as described in the petition. The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the manufacturing or treatment process).[29] As a generator of solid waste, Windsor is still obligated to periodically determine whether the wastes exhibit any of the hazardous waste characteristics.

V. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendents of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated communty does not need the six-month period to come into compliance. That is the case for the four petitioners being granted exclusions since the rule reduces rather than increases the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of Section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The granting of the four exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have no effect of increasing overall waste disposal costs. For the four facilities that may be excluded, this amendment will reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.
Dated: October 3, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended [42 U.S.C. 6905, 6912(a), 6921,and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
Capitol Products Corp.	Kentland, IN	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after [insert date of final rule's publication].
Lincoln Plating Co.	Lincoln, NE	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of publication].
Maytag Co.	Newton, IA	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations and wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum [insert date of final rule's publication].
Windsor Plastics, Inc.	Evansville, IN	Spent non-halogenated solvents and still bottoms (EPA Hazardous Waste No. F003) generated from the recovery of acetone after [insert date of final publication].

[FR Doc. 86–22939 Filed 10–8–86; 8:45 am]
BILLING CODE 4560–50–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

46 CFR Part 202

[OST Docket No. 44399; Notice No. 86–11]

Actions of the Maritime Subsidy Board; Procedures for Formal Review by the Secretary of Transportation

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise the procedures for Secretarial review of decisions by the Maritime Subsidy Board (Board) of the Maritime Administration (MarAd). Formal procedures for review of Board decisions on the Secretary's own motion would be eliminated. Board decisions would be final as issued and subject to judicial review unless a petition for Secretarial review has been filed and granted. Parties that desire a formal Secretarial review of Board decisions would be required to submit a petition and supporting brief on the merits within fifteen days of service of the Board's actions.

DATE: Comments on the proposed rule must be received on or before November 10, 1986.

ADDRESS: Comments should be directed to the Docket Clerk (C–55), Docket 44399, Room 4107, Office of the General Counsel, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gwyneth Radloff, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9305, or Michael Jennison, Office of the Assistant General Counsel for International Law (202) 366–5621, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTAL INFORMATION:

Background

The Maritime Subsidy Board is an establishment within the Maritime Administration originally created in 1961 by delegation of the Secretary of Commerce to exercise certain functions transferred by reorganization plan from the Chairman of the Federal Maritime Board to the Secretary of Commerce. Those functions, transferred to DOT pursuant to section 2 of the Maritime Act of 1981, 46 U.S.C. app. 1601, primarily consist of making, amending, and terminating subsidy contracts under the Construction-Differential Subsidy and Operating-Differential Subsidy programs and making certain related determinations. The current delegation of authority from the Secretary of Transportation can be found at 49 CFR 1.67. After extensive experience with the review of Board decisions, the Department is proposing amended procedures to revise the process of review on request of interested parties. The proposed regulations also make clear that there is no prohibition on internal communications between MarAd and the Office of the Secretary on matters pending before the Secretary. Internal communications on matters pending before the Board will also be discussed below.

Discussion—Procedural Changes

For a number of years, the inherent authority of the Secretary of Commerce to review decisions taken by the Board was exercised under formal procedures provided in part under Department of Commerce Order 177–A, 31 FR 8067, 15331 (1966), section 6 of which is reprinted in pertinent part with other procedural regulations at 46 CFR Part 202. When the Maritime Administration was transferred to the Department of Transportation these and other MarAd regulations were generally retained with minor editorial changes to reflect the transfer.

The Department has now determined that the current regulations, Part 202 of Title 46, CFR, imposed burdensome procedural requirements on parties requesting and opposing Secretarial review in nonhearing cases. In these cases, parties must move rapidly to obtain review. A request for review must currently be filed within ten days of the Board's *action* (often several days elapse before it is served or otherwise distributed). A counter-request that review now be undertaken is due within fifteen days of the action. Order 177–A, section 6.02, 47 CFR 202.1. Thus, because these request deadlines are based on the date on which the Board takes action rather than the date on which the action is made public, parties on either side of a case can lose some of their preparation time before they learn of a Board decision. Moreover, there is a different set of deadlines for petitions for review of hearing cases.

To remedy these problems (and to conform the review schedule for hearing and nonhearing cases), the proposed regulations provide for parties to hearing cases (and persons affected by a decision in a nonhearing proceeding) to file a petition for review and supporting brief, and to serve any other parties of record, within fifteen days of the service of a Board action. Responding briefs must be filed within ten days of the filing of petitioner's petition. The Secretary would normally decide whether to review an action within ten days after the filing of the responding briefs, although she may extend or shorten the time in which to consider a particular case. A Board action would become final thirty-five days after the date of its service, unless: (1) There has been no petition for review (in which case the action is final after fifteen days), (2) the Secretary has extended the time to consider an action or has decided to review an action, or (3) the Secretary has expressly declined to grant review before the thirty-five days have elapsed (in which case the action is final on the date specified by the Secretary).

In order to streamline the review process further, it is contemplated that the Secretary's functions under Part 202 will be delegated to the General Counsel, except for the final decision issued pursuant to § 202.7 of the proposed rules. That delegation will be published separately in the Federal Register with the Department's final action on this rulemaking.

Secretarial Involvement in Departmental Decisionmaking

In section 2(b)(1) of the Department of Transportation Act, 49 U.S.C. 1651(b)(1), the Congress found "that the establishment of a Department of Transportation is necessary in the public interest and to ensure the

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[27] See 51 FR 1719 (January 14, 1986).

[28] The Agency notes that Windsor has already been notified of the need for this additional test data. Windsor has already begun sampling and testing and intends to submit this data during the comment period.

[29] See footnote 6.

coordinated, effective administration of the transportation programs of the Federal Government . . . . " From the time the office was created, the Secretary of transportation has been actively involved in decisions otherwise delegated to the administrators of the agencies within the Department. Indeed, the Departmental delegations begin (at 49 CFR 1.42) with a general caveat that delegates may not exercise their delegated functions to the exclusion of Secretarial involvement. Such involvement—intended principally to ensure that decisions are consistent with departmental and national transportation and economic policy—usually takes place informally. When a matter will have significant policy consequences or substantial budgetary impact, the responsible decisionmaker will ensure Secretarial involvement before the decision is reached. With the exception of special areas, such as the Contract Appeals Board, the Department of Transportation does not normally extend formal quasi-judicial procedures to the review of decisions of subordinate officers.

The Department believes it important to clarify to the public its longstanding interpretation that neither existing nor proposed § 202.11 (governing ex parte communications during Secretarial review) nor § 201.183 of Title 46, CFR (governing ex parte communications when certain matters are before the Board or the Maritime Administrator) applies to communications between MarAd and the Office of the Secretary. The Department rejects any interpretation of those sections that would bar such communication as inconsistent with both its practice and statutory mandate. An amendment clarifying § 201.183, the MarAd ex parte communications regulation, will be published in the **Federal Register** with the Department's final action on this rulemaking. These regulations would make clear (together with the clarifying amendment to § 201.183) that MarAd and the Office of the Secretary of Transportation may consult with each other on all matters they deem appropriate and that such communication is not a prohibited ex parte contact. This internal coordination process makes it unnecessary to have formal procedures for review of Board actions on the Secretary's own motion. The Secretary retains, of course, authority to substitute her decision for the Board's action, in effect revoking her delegation of authority. *See, e.g.*, 49 CFR 1.42 and 1.43(a). The proposed regulations are not intended to divest the Secretary of that authority.

The Department recognizes that parties may seek to present their arguments directly to the Secretary in important cases. These proposed regulations therefore retain a formal review process for that purpose. Parties are reminded that the Secretary as an appellate decisionmaker is not insulated from contact with MarAd before or after a Board decision. Further, the decision to grant Secretarial review of a Board action would remain a discretionary matter.

Executive Order No. 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

These proposed regulations are not significant within the definition in the Department's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because they do not involve any change in important Department policies. Their economic impact should be minimal, and further regulatory evaluation is not required. Moreover, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

These proposed regulations do not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

Finally, the proposed action contains no collection of information requirements. Accordingly, review by the Office of Information and Regulatory Affairs of the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 is not required.

Comments Invited

The public is invited to comment on this proposed rule by filing written comment to the docket. The rule may be changed in the light of comments received. Comments should be submitted in duplicate and should identify the regulatory docket number. All comments submitted will be available in the rules docket for examination by the public, both before and after the closing date for comments, on weekdays, except federal holidays, between 9:00 a.m. and 5:00 p.m. A report summarizing each substantive public contact with DOT personnel concerned with the rulemaking will be filed in the docket. Commenters who want receipt of their comments acknowledged must submit with those comments a selfaddressed, stamped postcard marked: "Comments on Docket No. 44399." The postcard will be dated, time stamped, and returned.

Availability of Proposed Rule

Any person may obtain a copy of this proposed rule by submitting a request to the Docket Clerk (C–55), Room 4107, Office of the General Counsel, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, identified under "ADDRESS" above, or by calling (202) 366–9323. Communications should identify the docket number.

List of Subjects in 46 CFR Part 202

Administrative practice and procedure.

Accordingly, it is proposed that Part 202 of Title 46, Code of Federal Regulations, be revised to read as follows:

Subchapter A—Policy, Practice and Procedure

* * * * *

PART 202—PROCEDURES FOR FORMAL REVIEW BY THE SECRETARY OF ACTIONS OF THE MARITIME SUBSIDY BOARD

Sec.

202.1 Applicability of rules.
202.2 Definitions.
202.3 Petitions for review by the Secretary.
202.4 Contents of briefs.
202.5 Form and service of documents filed with the Secretary; service; filing; number of copies.
202.6 Decision to review.
202.7 Decision of the Secretary.
202.8 Effective dates of Board actions.
202.9 Computation of time.
202.10 Waiver or modification of review provisions.
202.11 Ex parte communications.
202.12 Public availability of documents.

Authority: 46 U.S.C. app. § 1114; 46 U.S.C. app. 1601–1602; 49 U.S.C. 1657(e); Reorganization Plan No. 7 of 1961, section 201, 26 FR 2315 (1961); and Reorganization Plan No. 21 of 1950, section 204, 15 FR 3178 (1950).

§ 202.1 Applicability of rules.

This part prescribed procedures for formal review by the Secretary of Transportation of any final action of the Maritime Subsidy Board, pursuant to the reservation of authority at 49 CFR 1.44(q).

§ 202.2 Definitions.

As used in this part:

(a) "Action" means any decision, report, order, or other public action of the Board.

(b) "Board" means the Maritime Subsidy Board established under 49 CFR 1.67.

(c) "Department of Transportation" or "Department" means all establishments and employees of the United States Department of Transportation, including the Office of the Secretary of Transportation and the Maritime Administration.

(d) "Secretary" means the Secretary of Transportation or his or her delegate under 49 CFR 1.57.

§ 202.3 Petitions for review by the Secretary.

(a) A party to a proceeding before the Board subject to hearing under the rules in Part 201 of this Title, or a person affected by a proceeding not subject to hearing, may petition the Secretary to review an action of the Board taken in that proceeding.

(b) A petition for review by the Secretary and supporting brief must be filed with the Secretary and served on all parties of record in the proceeding before the Board within fifteen (15) days from the date of service of the action of the Board. Responses and supporting briefs shall be filed and served within ten (10) days after the filing of the petition for review.

§ 202.4 Contents of briefs.

(a) *Contents of petitioner's brief.* Petitioner's brief shall contain under appropriate headings and in the order here indicated:

(1) A table of contents and a table of authorities relied upon, with page references.

(2) The issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition by the Board below. There shall follow a clear statement of the facts relevant to the issues presented for review.

(4) Argument. The argument shall contain petitioner's contentions with respect to the issues presented, and the reasons therefor, with citations to the authorities and portions of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) *Contents of briefs of other parties.* Briefs of other parties shall conform to the requirements of subparagraphs (a)(1)–(4) of this section, except that a statement of the issues or of the case need not be made unless a responding party is dissatisfied with petitioner's statement.

(c) *Supplemental briefs.* After granting a petition, the Secretary may request further briefs in cases where they are deemed appropriate and desirable.

(d) *Length of briefs.* Except by permission of the Secretary, the statement of the case and the argument together shall not exceed forty (40) double-spaced, 8½ by 11 inch pages.

§ 202.5 Form and service of documents filed with the Secretary; service; filing; number of copies.

(a) *Form and service of documents.* All documents filed with the Secretary, other than records, shall bear on the first page the name of the action and its Board docket number (if any), the name of the party or parties, the title of the document, and the name, address, and telephone number of the attorney or authorized representative (if any) for the party concerned and be accompanied by a certificate of service. One copy of each document shall be signed by the party filing it or its attorney. A party not represented by an attorney shall state its address and telephone number. Unless otherwise ordered by the Secreatary, service shall be made on all parties of record before the Board and any other party that has filed a petition or response with the Secretary. The signature of an attorney constitutes a certificate that the signer has read the document; that to the best of the signer's knowledge, information, or belief there is good ground to support it; and that it is not interposed for delay.

(b) *Service.* As required by this part, service shall be by delivery of a copy of the document to be served or by mail to a party, first class mail, at the last known address or, if no address is known, by leaving it with the Secretary in accordance with paragraph (c) of this section.

(c) *Filing.* As required by this part, filing with the Secretary shall be accomplished by filing with the Assistant General Counsel for Environmental, Civil Rights, and General Law (C–10), Room 10102, Office of the General Counsel, and the Secretary of the Board (MAR–120). Room 7300, 400 Seventh Street, SW., Washington, DC, 20590. Documents delivered elsewhere in the Department will be considered filed only when they are actually received at the Office of General Counsel.

(d) *Number of copies.* Unless otherwise specified by these rules or by order of the Secretary, one (1) original and ten (10) copies of the document shall be filed.

§ 202.6 Decision to review.

(a) The decision to review an action of the Board is at the discretion of the Secretary.

(b) Petitions for review will not be granted unless significant questions of policy requiring the Secretary's attention are involved or there appears to be significant legal or factual error in the Board's action.

(c) *Order stating decision to review; service of order.* After reaching a decision to grant review, the Secretary will enter an order so stating, serve a copy on all parties, and file a copy with the Board.

(d) *Orders necessary or appropriate.* The Secretary may extend the effective date of a Board action or shorten the review period established by this part, and may issue any orders necessary or appropriate to disposition of the issues.

(e) *Oral argument.* Generally, oral argument will not be necessary. The Secretary reserves the right to require it, however, when deemed desirable.

(f) *Certification of record.* Promptly upon the filing of a petition and brief for review, the Board shall certify to the Secretary the complete record of the proceeding leading to the action of the Board that is the subject of the petition. A copy of the certified record will be available for public inspection at the Board.

§ 202.7 Decision of the Secretary.

Upon the determination of a case taken under review by the Secretary, a written opinion and order stating the Secretary's conclusions and an explanation of them will be issued.

§ 202.8 Effective dates of Board actions.

(a) *If no petition for review is filed.* A Board action becomes effective fifteen (15) days from the date of its service, unless (i) a timely petition for review is filed or (ii) otherwise provided by the Secretary.

(b) *If petition for review is filed.* If the Secretary does not grant review (either expressly or by allowing the time for review to expire) of an action with respect to which a timely petition for review has been filed, it becomes effective thirty-five (35) days from the date of its service, unless otherwise provided by the Secretary.

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§ 202.9 Computation of time.

In computing any period of time under these rules, the time begins with the day following the event and includes the last day of the period, unless it is a Saturday, Sunday, or federal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday or federal holiday.

§ 202.10 Waiver or modification of review provisions.

The Secretary may, for good cause or in order to prevent undue hardship in any particular case, waive or modify any procedural provision of this part by written order.

§ 202.11 Ex parte communications.

(a) *Communications with the Department.* Oral or written communications relevant to the merits of a matter subject to Secretarial review under this part between any DOT employee who is involved in that matter and any interested person outside DOT, unless otherwise permitted by law, shall be deemed prohibited ex parte communications. Such determinations shall not be made part of the record and shall not be considered in making any recommendation, decision, or action. Written communications in violation of this paragraph shall be put into the correspondence or other appropriate file of the proceeding, which shall be available for inspection and copying during business hours at the Board. Oral communications in violation of this paragraph shall be summarized by the DOT employee involved—one copy shall be put into the public file described above; another shall be mailed to the communicator. The provisions of this paragraph shall not apply to informal communications between legal counsel (including discussions of stipulations and other communications considered proper in federal court proceedings), settlement discussions and mediation efforts, status and procedural inquiries, and requests for expedition of proceedings.

(b) *Communications within the Department.* Notwithstanding any other rule or provision, the Secretary and staff and members of the Board and its staff, may, at their discretion, consult with one another on any issue concerning any matter subject to this part that they deem appropriate.

§ 202.12 Public availability of documents.

All documents filed with the Secretary are available for inspection and copying at the office of the Maritime Subsidy Board, Room 7300, Maritime Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on October 2, 1986.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 86-22789 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-81-M

Notices

Federal Register
Vol. 51, No. 196
Thursday, October 9, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Amendment to Certification of Central Filing System

The Statewide central filing system of Idaho has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Pete T. Cenarrusa, Secretary of State, for farm products produced in that State (51 FR 34236, September 26, 1986).

The same system is hereby certified on the basis of information submitted by Pete T. Cenarrusa, Secretary of State, for additional farm proudcts produced in that State as follows:

Buckwheat
Garbanzos (chick peas)
Carrots
Turnips
Asparagus
Spinach and collards
Pumpkins and squash
Fox and pelts
Cattle semen
Horse semen

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: October 6, 1986.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Aministration.

[FR Doc. 86-22938 Filed 10-8-86; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-401]

Bicycle Tires and Tubes From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two manufacturers/exporters, the Department of Commerce has conducted an administrative review of the antidumping duty order on bicycle tires and tubes from Taiwan. The review covers two manufacturers and/or exporters of this merchandise to the United States covered by the order and the period June 1, 1983 through May 31, 1985. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 24157) the antidumping duty order on bicycle tires and tubes from Taiwan. We began the current review of the order under our old regulations. After the promulgation of our new regulations, two manufacturers/exporters requeated in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of antidumping duty administrative review on November 27, 1985 (50 FR 48825).

Scope of the Review

Imports covered by the review are shipments of pneumatic bicycle tires and tubes of rubber or plastic, whether sold together as units or separately, currently classifiable under items 772.4800 and 772.5700 of the Tariff Schedules of the United States Annotated.

The review covers Kenda Rubber Industrial Co., Ltd. and Li Hsin Rubber Industrial Co., Ltd., two manufacturers and/or exporters of Taiwanese bicycle tires and tubes to the United States covered by the order, and the period June 1, 1983 through May 31, 1985. Li Hsin did not provide an adequate response to our antidumping questionnaire. For this firm we used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available was the rate published in the order.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the packed f.o.b. or c.i.f. price to unrelated purchasers in the United States. Where applicable, we made adjustments for foreign inland freight, ocean freight, marine insurance, a stamp tax paid upon export, and rebated import duties on imported raw materials used to produce subsequently exported merchandise. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market for comprison purposes. Home market price was based on the packed delivered price to unrelated purchasers in the home market with adjustments, where applicable, for inland freight, a stamp tax, commissions to unrelated parties, other selling expnses when a commission was paid in one market and not the other, differences in credit and packing costs, and differences in the physical characteristics of the merchandise. We disallowed a claim for home market advertising because the advertising was

not directly related to the sales made during the review period. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Kenda Rubber Industrial Co., Ltd.	June 1, 1985–May 31, 1986	0.02
Li Hsin Rubber Industrial Co., Ltd.	June 1, 1985–May 31, 1986	2.65

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margin for Kenda is less than .5 percent and therefore *de minimis* for cash deposit purposes, the Department waives the deposit requirement for that firm. For any future shipments from the remaining manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the antidumping duty order (49 FR 24157, June 12, 1984) for each of those firms: For any future entries of this merchandise from a new exporter, not covered by this review, whose first shipments occurred after May 31, 1985 and who is unrelated to any reviewed firm, the Department waives the cash deposit requirement. These deposit requirements and waiver are effective for all shipments of Taiwanese bicycle tires and tubes entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §353.53a of the Commerce Regulations (19 CFR 353.54a); 50 FR 32556, August 13, 1985.]

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration

[FR Doc. 86–22900 Filed 10–8–86; 8:45 am]

BILLING CODE 3510-DS-M

[A–428–013]

Certain Stainless Steel Sheet and Strip From the Federal Republic of Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain stainless steel sheet and strip from the Federal Republic of Germany. The review covers one of the three known manufacturers and/or exporters of this merchandise to the United States currently covered by the order and the period December 17, 1982 to May 31, 1983. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

On August 11, 1986, the Department published in the **Federal Register** (61 FR 28738) the revocation of the order, effective March 1, 1986. Therefore no cash deposits of estimated antidumping duties are required on this merchandise exported on or after March 1, 1986.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Katherine Glover or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On June 23, 1983, the Department of Commerce ("the Department") published in the **Federal Register** an antidumping duty order on certain stainless steel sheet and strip from the Federal Republic of Germany (48 FR 28680, June 23, 1983). The Department published the revocation of the order on August 11, 1986 (51 FR 28738), effective March 1, 1986. On November 27, 1985, we initiated the first administrative review of this order (50 FR 48826). Two of the three companies on which we initiated (Krupp Stahl and Thyssen) have withdrawn their requests for review. Thus, we conducted an analysis on Vereinigte Deutsche Metallwerke (VDM) only.

Scope of the Review

The certain stainless steel sheet and strip products covered by this review are hot- or cold-rolled stainless steel sheet or strip, excluding hot- or cold-rolled stainless steel strip not over .01 inches in thickness, as currently classifiable under item numbers 607.7610, 607.9010, 607.9020, 608.4300, and 608.6700 of the Tariff Schedules of the United States Annotated.

The review covers one of the three known manufacturers/exporters of German stainless steel sheet and strip and the period December 17, 1982 to May 31, 1983.

United States Price

In calculating United States price, the Department used purchase price as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the packed c.i.f. price to unrelated purchasers in the United States. We deducted, where applicable, ocean freight, U.S. and foreign inland freight, marine insurance, brokerage/handling charges and U.S. customs duties. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, to provide a basis of comparison for VDM since sufficient quantities of such or similar merchandise were sold in the home market during the period of review.

Home market price was passed on the packed, delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, credit expenses, and differences in the physical characteristics of the merchandise. We disallowed technical and laboratory

service expenses, sales expenses, and warranty costs because they were not proven to be directly related to sales. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
VDM	Dec. 17, 1982–June 31, 1983	2.0

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

On August 11, 1986, the Department published in the **Federal Register** (51 FR 28738) a notice of the revocation of the order, effective March 1, 1986. This administrative review covering the period December 17, 1982 to May 31, 1983, does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate all entries of this merchandise exported on or after March 1, 1986 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556 August 13, 1985).

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–22901 Filed 10–8–86; 8:45 am]

BILLING CODE 3510-DS-M

[C–791–004]

Carbon Steel Wire Rod From South Africa; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: In response to a request from the petitioners, the Department of Commerce has conducted an administrative review of the countervailing duty order on carbon steel wire rod from South Africa. The review covers the period January 1, 1983 through September 30, 1984 and eight programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant to be 0.43 percent *ad valorem* for the period January 1, 1983 through June 30, 1983, 0.39 percent *ad valorem* for the period July 1, 1983 through June 30, 1984, and 0.35 percent *ad valorem* for the period July 1, 1984 through September 30, 1984. We consider any rate less than 0.50 percent to be *de minimis*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 32931) the final results of its last administrative review of the countervailing duty order on carbon steel wire rod from South Africa (47 FR 42396, September 27, 1982). On October 10, 1985, the petitioners, Continental Steel Company, Georgetown Steel Corporation, Raritan River Steel Company, North Star Steel Texas, Inc., and Atlantic Steel Company, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). On October 7, 1985, we revoked the order effective October 1, 1984 (50 FR 40888).

Scope of the Review

Imports covered by the review are shipments of South African wire rod. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1983 through September 30, 1984 and eight programs: (1) Export Incentive Program—Categories A, B and D; (2) Government assumption of finance charges; (3) Government equity participation; (4) Loans from the General Levy and Import Subsidy Scheme; (5) Industrial Development Corporation loans; (6) Preferential rail rates; (7) Government loan guarantees; and (8) a homeland development/ regional decentralization program. During the period of review, the South African Iron and Steel Corporation ("ISCOR") was the only known exporter of South African wire rod to the United States.

Analysis of Programs

(1) Export Incentive Program: In 1980, the South African Department of Industries, Commerce and Tourism expanded and restructured its Export Incentive Program.

Category A is a tax credit equal to 50 percent of the value of import duties on raw materials that are re-exported after further processing. Category B is a tax credit equal to 10 percent of the value-added component of merchandise a company exports if there is a South African import duty on competing imported merchandise. There is an import duty on wire rod. ISCOR was not eligible to claim either of these tax credits during the period of review.

Category D consists of a deduction from taxable income of up to 200 percent of export market development expenses. ISCOR had no taxable income during the period of review. Therefore, we preliminarily determine that there was no benefit from this program during the period of review.

(2) Government Assumption of Financing Charges: In 1978, the Government of South Africa assumed 70 million rand of financing charges facing ISCOR. To calculate the subsidy attributable to this program, we followed the grant methodology outlined in the Subsidies Appendix to the notice of "Final Affirmative Countervailing Duty Determination and Order" on cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006, April 26, 1984). We allocated the grant over 15 years, the average useful life of assets in

the steel industry, according to the U.S. Internal Revenue Service Class Life Asset Depreciation Range System. For a discount rate, we used ISCOR's 1978 weighted cost of capital. On this basis, we preliminarily determine the benefit for this program to be 0.43 percent *ad valorem* for the period January 1, 1983 through June 30, 1983, 0.39 percent *ad valorem* for the period July 1, 1983 through June 30, 1984 and 0.35 percent *ad valorem* for the period July 1, 1984 through September 30, 1984.

(3) Government Equity Participation: The South African government made no new investments in ISCOR during the review period. Therefore, we preliminarily determine that there was no benefit from this program during the period of review.

(4) Other Programs: We also examined the following programs and preliminarily find that ISCOR did not use them during the period of review:

a. Loans from the General Levy and Import Subsidy Scheme;

b. Industrial Development Corporation loans;

c. Preferential rail rates;

d. Government loan guarantees; and

e. Home development/regional decentralization program.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.43 percent *ad valorem* for the period January 1, 1983 through June 30, 1983, 0.39 percent *ad valorem* for the period July 1, 1983 through June 30, 1984, and 0.35 percent *ad valorem* for the period July 1, 1984 through September 30, 1984. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department intends to instruct the Customs Service not to assess countervailing duties on any shipments of this merchandise exported on or after January 1, 1983 and exported on or before September 30, 1984.

Because the Department revoked this order effective October 1, 1984, we do not intend to instruct the Customs Service to collect cash deposits of estimated countervailing duties on this merchandise.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing with 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-22902 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-565-001]

Canned Tuna From the Philippines; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on canned tuna from the Philippines. The review covers the period January 1, 1984 through December 31, 1984 and 19 programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant to be 1.16 percent *ad valorem* for the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 50134) a countervailing duty order on canned tuna from the Philippines. On October 31, 1985, the Government of the Philippines, a group of importers, the Tuna Group of the Association of Food Industries, and a group of exporters, the Tuna Canners Association of the Philippines, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation of the administrative review on November 12, 1985 (50 FR 46889). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Philippine tuna packed and preserved in any manner, not in oil, in airtight containers. Such merchandise is currently classifiable under items 112.3020, 112.3040 and 112.3400 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1984 through December 31, 1984 and 19 programs: (1) Exporting packing credits; (2) An income tax deduction for labor and raw materials; (3) Equity investment by insurance companies; (4) Foreign equity investment; (5) Preferential access to foreign exchange; (6) An exemption from import taxes; (7) An income tax deduction for overseas offices; (8) An income tax deduction for new brand names; (9) An income tax deduction for export traders; (10) An income tax deduction for financial assistance; (11) Government bank loans; (12) Private bank loans; (13) Employee equity investment; (14) A tax credit for net local content; (15) A tax credit for net local value; (16) Preferential loan guarantees; (17) Government equity investment; (18) Various financial services by the Export Credit Insurance and Guarantee Corporation; and (19) Various financial and marketing assistance by the Institute for Export Development.

Analysis of Programs

(1) Export Packing Credits

The Central Bank of the Philippines offers a rediscounting program through commercial banks. Upon receipt of a letter of credit from a foreign purchaser, an exporter may negotiate with a commercial bank an "export packing credit," which is a pre-export loan, based on the letter of credit. The commercial bank may then rediscount the packing credit with the central bank. On November 22, 1983, Circular 961 set the maximum interest rate at the 90-day Manila Reference Rate minus two points and the maximum loan amount at 80 percent of the value of the letter of credit. Effective March 9, 1984, Circular 984 raised the maximum loan amount to 90 percent of the value of the letter of credit. If the commercial banks do not rediscount the loans, they may charge a commercial rate of interest. We preliminarily determine that these loans are countervailable to the extent that they are given at preferential rates.

For our benchmark interest rate, we took the weighted annual average interest rate for secured loans for one year or less, as reported by the central bank. To find the benefit for each loan, we took the difference between the actual interest paid and the interest the firm would have paid using our benchwork interest rate. We then weight-averaged each firm's benefit by its share of total exports of the merchandise to the United States. On this basis, we preliminary determine the total benefit under this program to be 1.11 percent *ad valorem*.

(2) Income Tax Deduction for Labor and Raw Materials (Article 48(b))

Article 48(b) of the Omnibus Investment Code ("the Code"), which provides a variety of investment incentives to registered enterprises, allows a Philippine-owned and registered exporter an income tax deduction for direct labor and local raw material costs for up to five years following registration. We preliminarily determine that this program is countervailable because it is available only to exporters. To calculate the benefit, we multiplied the amount of the deduction claimed in 1984 by the normal corporate tax rate and divided the result by the firm's total 1984 exports to all markets. We then weight-averaged the benefit by each firm's share of total exports of the merchandise to the United States. We preliminarily determine the benefit from this program to be 0.05 percent *ad valorem*.

(3) Equity Investments by Insurance Companies (Article 52)

Article 52 of the Code authorizes the Insurance Commissioner to allow insurance companies to invest in registered enterprises. The Philippine government does not provide funds or incentives to the insurance companies.

Insurance companies purchased equity in two of the exporting companies during the review period. Because the insurance companies acted without any direction, funds, or incentives from the Philippine government, we preliminarily determine that these equity purchases are not countervailable.

(4) Foreign Equity Investment

Presidential Decree 1892 suspended, for a one-year period beginning on December 4, 1983, the 60-percent Philippine ownership requirement for enterprises registered under Article 34(1) of the Code. Although this decree allows increased foreign equity in registered enterprises, the Philippine government does not provide funds or incentives to foreign investors.

On December 31, 1983 a foreign company purchased equity in one of the exporting companies. Because the foreign company acted without any government direction, funds, or incentives, we preliminarily determine that this foreign equity investment is not countervailable.

(5) Preferential Access to Foreign Exchange

Because of the financial crisis and severe foreign exchange shortage in 1983 and 1984, the Philippine government established an interim system that would allocate scarce foreign exchange to those sectors that would lead the country towards economic recovery. A domestic producer, Starkist, alleges that tuna exporters receive priority access to foreign exchange.

All companies must deposit their foreign exchange holdings in commercial banks. Under central bank Circular 970, commercial banks are required to sell to the central bank all foreign exchange receipts from exports of merchandise and services. Over the course of 1984, this requirement was modified to allow the banks to retain an increasing portion of their foreign exchange receipts to use as they wished. Circular 970 set the following priorities for distribution of foreign exchange: (1) Oil imports, (2) debt servicing, and (3) exporters in need of imported raw materials. On October 15, 1984, this program was terminated by Circular 1030.

Exporters need to prove that they need imported raw materials in order to qualify. For each industry, the central bank establishes an import coefficient that represents the maximum amount of foreign currency it will allow a firm in that industry. This coefficient is based on the historical proportion of imports to total production cost in that industry. The government allows exporters to repurchase an amount equal to the import coefficient for the industry. One firm used this program during the period of review.

Although the law states that exporters and certain priority industries have preferential access to foreign exchange, we found that foreign currency is also available to producers for the domestic market at a fixed rate of exchange. Since the exchange rate in the Philippines is fixed, producers for both the domestic and export markets purchase foreign exchange at the same rate. Domestic producers can purchase foreign exchange from commercial banks and may open import letters of credit using foreign exchange.

Furthermore, most of the foreign currency collected by the central bank is generated by exporters. Producers selling domestically do not earn foreign currency because they do not export. Since exporters earn most of the foreign currency that the government then redistributes, the exporters are in effect subsidizing the foreign exchange requirements of the rest of the economy. Rather than acting to the benefit of certain exporters, restricted access to foreign exchange acts to their detriment. In permitting certain exporters to retain or buy back a certain percentage of their foreign exchange earnings, the government is only allowing those exporters to have a portion of their own money.

For these reasons, we preliminarily determine that this program is not countervailable.

(6) Other Programs

We also examined the following programs and preliminarily find that exporters of canned tuna did not use them during the review period:

(A) An exemption from import taxes (Article 48(f) of the Code);

(B) An income tax deduction for overseas offices (Article 49(f) of the Code);

(C) An income tax deduction for new brand names (Article 48(e) & 49(g) of the Code);

(D) An income tax deduction for export traders (Article 49(d) of the Code);

(E) An income tax deduction for financial assistance (Article 49(e) of the Code);

(F) Government bank loans (Article 51 of the Code);

(G) Private bank loans (Article 52 of the Code);

(H) Employee equity investment (Article 53 of the Code);

(I) A tax credit for net local content;

(J) A tax credit for net local value;

(K) Preferential loan guarantees;

(L) Government equity investment;

(M) Various financial services by the Export Credit Insurance and Guarantee Corp.; and

(N) Various financial and marketing assistance by the Institute for Export Development.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 1.16 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess

countervailing duties of 1.16 percent of the f.o.b. invoice price on any shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 1.16 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-22905 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-029]

Certain Castor Oil Products From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain castor oil products from Brazil. The review covers the period January 1, 1984 through December 31, 1984 and 15 programs.

As a result of the review, the Department has preliminarily determined the net subsidy for the period of review to be 2.66 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Richard C. Henderson or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202-377-2786).

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 9921) the final results of its last administrative review of the countervailing duty order on certain castor oil products from Brazil (41 FR 8634; March 16, 1976). We began this review of the order under our old regulations. On September 30, 1985, after the promulgation of our new regulations, the petitioner, the American Manufacturers of Castor Oil Products, requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of the order. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Brazilian hydrogenated castor oil and 12-hydroxystearic acid. Such merchandise is currently classifiable under items 178.2000, 490.2650, and 490.2670 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1984 through December 31, 1984 and 15 programs: (1) CACEX export financing; (2) An income tax exemption for export earnings; (3) The export credit premium for the IPA; (4) CIC–CREGE 14–11 financing; (5) Incentives for trading companies (Resolution 643); (6) Accelerated depreciation for Brazilian-made capital goods; (7) BEFIEX; (8) CEX; (9) FINEX; (10) Duty-free treatment and tax exemption on equipment used in export production ("CDI"); (11) FUNPAR; (12) Exemption from state-administered value-added taxes on domestic sales ("ICM"); (13) PROEX; (14) PROSIM; and (15) Financing for the storage of merchandise destined for export (Resolution 330).

Analysis of Programs

(1) CACEX Export Financing

Under this program, the Department of Foreign Commerce ("CACEX") of the Banco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a duration of up to one year. During the period of review, producers of certain castor oil products could obtain CACEX financing for up to 20 percent of the value of their previous year's exports.

Resolution 674, which became effective on June 11, 1983, set a maximum interest rate of 60 percent and required two interest payments, one 180 days after the loan was granted and the other at maturity. Resolution 882, which became effective on January 2, 1984, required the full interest payment at maturity. It also set the maximum interest rate at monetary correction (calculated by the change in the value of readjustable treasury bonds, "ORTN") plus 3 percentage points.

To find the interest differential, we compared two effective rates. For our benchmark, we took the national average rate for thirty-day discounts of accounts receivable, as reported in *Analise/Business Trends*. This rate includes the 1.5 percent tax on financial transactions ("IOF"), from which preferential loans are exempt. We then compounded this rate to find the effective annual commercial benchmark.

We consider the benefit, or the cash flow effect, from loans to occur when the borrower makes the interest payments. For Resolution 674 and 882 loans on which interest was paid during the period of review, we compared the preferential interest rate with the benchmark rate and multiplied the interest differential by the loan principal. We allocated the benefit over each firm's total exports and then weight-averaged each company's benefit by its share of total exports of this merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 1.29 percent *ad valorem*.

On August 21, 1984, Resolution 950 superseded Resolution 882 and changed the short-term export financing program substantially. Resolution 950, which was made effective retroactively to January 2, 1984, made working capital financing available through commercial banks at prevailing market rates, with interest due upon maturity.

It authorized the Banco do Brasil to pay the lending institution an "equalization fee," or rebate, of up to 10 percentage points over the commercial interest rate, which the lending institution can pass on to the borrower.

On May 2, 1985, Resolution 1009 increased the equalization fee to 15 percentage points. Because of the extensive changes in CACEX export financing made by Resolutions 950 and 1009, we do not have an adequate basis on which to calculate a use rate for each firm. Therefore, to calculate the current benefit from this program, we assumed that exporters borrow the maximum amount of financing available, which is 20 percent of the value of exports. We multiplied this amount by the new interest differential, which is the maximum equalization fee of 15 percent plus the 1.5 percent IOF, or 16.5 percent. On this basis, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the current benefit from this program to be 3.30 percent *ad valorem*.

(2) Income Tax Exemption for Export Earnings.

Under this program, exporters of certain castor oil products are eligible for an exemption from income tax on a portion of their profits attributable to exports. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. Two firms took advantage of this program in 1983. We calculated the benefit by multiplying the amount of tax-exempt profit by the corporate tax rate and allocating the result over total exports.

The nominal corporate tax rate in Brazil is 35 percent. However, Brazilian tax law permits companies to reduce their income taxes by investing up to 26 percent of their tax liability in specified companies and funds. This tax credit effectively reduces the nominal 35 percent corporate tax rate.

At verification, one firm did not provide proof that it had made any investments in the specified companies and funds. Therefore, we calculated the benefit for this firm using the nominal 35 percent corporate income tax rate. The second firm presented proof that it had made an investment in the specified companies and funds. Therefore, we calculated the benefit using the effective tax rate. We calculated an effective tax rate of 27.86 percent for this company by dividing its net tax liability by its taxable profit. We then weight-averaged each company's benefit by its share of total exports of the merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.41 percent *ad valorem*.

(3) The Export Credit Premium for the IPI

Exporters of certain castor oil products are eligible for the maximum export credit premium for the IPI. The Brazilian government pays in cash a percentage of the f.o.b. price of the exported merchandise to exporters through the bank involved in the export transaction.

The Brazilian government eliminated the IPI export credit premium on December 7, 1979 but reinstated it on April 1, 1981. Effective June 26, 1981, the Brazilian government imposed an export tax to offset the benefit of the premium on exports to the United States. During verification, we confirmed that the Government of Brazil appropriately collected the export tax on shipments of certain castor oil products to the United States. We preliminarily determine that exporters of this merchandise received no benefits from this program during the period of review.

On May 1, 1985, the Brazilian government eliminated this program for exporters of certain castor oil products. Therefore, for purposes of cash deposits of estimated countervailing duties, we preliminarily determine that exporters of this merchandise continue to receive no benefits from this program.

(4) CIC–CREGE 14–11 Financing

Under its CIC–CREGE 14–11 circular, the Banco do Brasil provides preferential financing to exporters on the condition that they maintain on deposit a minimum level of foreign exchange. Exporters of certain castor oil products participated in this program during the period of review.

There is no maximum interest rate for this program. Interest payments by the exporters of castor oil are normally made quarterly or semiannually, with the full principal to be repaid at maturity. We calculated the benefit based on the interest payment date in a manner similar to that used for CACEX export financing, using the same benchmark rate. We preliminarily determine the benefit from this program to be 0.11 percent *ad valorem*.

(5) Incentives for Trading Companies (Resolution 643)

Under this program, CACEX declares trading companies eligible to receive loans at preferential rates. Eligible firms have access to a line of credit that can be drawn down to purchase goods for export. The trading companies use the loans as advance payment for the goods purchased. These loans are subject to the same interest constraints as Resolution 674 loans. Normally, the term of the loan does not exceed 180 days, but the actual length varies, running from the date of receipt of the loan to the date of shipment of the goods. The interest is paid in full at maturity.

During the period of review, one firm received benefits under this program for the purchase of certain castor oil products for export. Since we were not able to tie each loan to a specific shipment, we calculated the benefit in a manner similar to CACEX export financing, based on the interest payment date. We allocated the benefit over the firm's total exports and weight-averaged the result by the firm's share of total exports of this merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.85 percent *ad valorem*.

(6) Accelerated Depreciation for Brazilian-made Capital Goods

Firms may depreciate Brazilian-made capital equipment at twice the normal rate allowed under Brazilian tax laws if they obtain approval from the Industrial Development Council ("CDI") for a plant expansion project. One firm benefited from this program in 1983.

To calculate the benefit, we multiplied the amount of accelerated depreciation declared on the income tax return filed in the review period by the corporate income tax rate and divided the result by the firm's total sales in 1984. Since this firm reduced its nominal corporate income tax rate by directed investments, we used the effective tax rate of 27.86 percent to calculate the benefit. We then weight-averaged the benefit by the firm's share of total exports of this merchandise to the United States. On this basis, we preliminarily determine the benefit to be 0.004 percent *ad valorem*.

(7) Other Programs

We also examined the following programs and preliminarily find that exporters of certain castor oil products did not use them during the review period:

a. Fiscal Benefits for Special Export Programs ("BEFIEX");

b. Tax Reductions on Equipment used in Export Production ("CIEX")

c. Export Financing under Resolution 68 ("FINEX")

d. Duty-free treatment and tax exemptions on equipment used in export production ("CDI");

e. Export financing under Fundo Nacional de Participadoes ("FUNPAR");

f. Exemption from state-administered value-added taxes ("ICM") on domestic sales;

g. Export Promotion Financing ("PROEX");

h. Benefits from Import Substitution ("PROSIM"); and

i. Financing for the storage of merchandise destined for export ("Resolution 330").

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 2.66 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 2.66 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1984 and on or before December 31, 1984.

The change in the CACEX export financing program increases the total estimated duty deposit rate to 4.67 percent *ad valorem*. Therefore, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 4.67 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-22903 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-052]

Non-Rubber Footwear From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 8, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on non-rubber footwear from Argentina. The review covers the period January 1, 1983 through December 31, 1983 and three programs.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Sylvia Chadwick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 39889) the final results of its last administrative review of the countervailing duty order on non-rubber footwear from Argentina (44 FR 3474, January 17, 1979). We began this review of the order under our old regulations. On October 15, 1985, after the promulgation of our new regulations, the petitioner, Footwear Industries of America, Inc., requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of the order. We published the new initiation on November 27, 1985 (50 FR 48825) and the preliminary results of administrative review on August 8, 1986 (51 FR 28613). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Argentine non-rubber footwear described in Part 1A of Schedule 7 of the Tariff Schedules of the United States Annotated, excluding items 700.5100 through 700.5400, 700.5700 through 700.7100 and 700.9000.

The review covers the period January 1, 1983 through December 31, 1983 and three programs: (1) The reembolso, a cash rebate of taxes; (2) Pre-export financing; and (3) Post-export financing.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, we determine the total bounty or grant to be 0.02 percent *ad valorem* for the period of review. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department therefore will instruct the Customs Service not to assess countervailing duties on any shipments of non-rubber footwear exported on or after January 1, 1983 and on or before December 31, 1983.

Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of non-rubber footwear from Argentina entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-22904 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Roberts Laboratories, Inc.

The National Technical Information Services (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories, Inc. having a place of business in Red Bank, NJ an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "(N-Phosphonacetyl-L-Aspartate) (1,2-diaminocyclchexane) Platinum (II) or Alkali Metal Salt U.S. Patent 4,284,579. The patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 200 and 37 CFR 404.9. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-22881 Filed 10-8-86; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

New

DoD FAR Supplements Part 30, Cost Accounting Standards, DD Forms 1861-1 and 1861-2.

Information principally concerns certain data required to control and account for government furnished property furnished contractors.

Reporting is required for accountability purposes.

Businesses or other for profit/small businesses or organizations.

Responses: 75.

Burden hours: 750.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from LT COL Richard J. Wall, A&L(P)CPF, Room 3C800, Pentagon, Washington, DC 20301-6000, telephone (202) 697-6710. This is a revision of an existing collection.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 3, 1986.

[FR Doc. 86-22892 Filed 10-8-86; 8:45 am]

BILLING CODE 3810-01-M

Establishment of the Advisory Committee on Integrated Long-Term Strategy

Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act," notice is hereby given that the Advisory Committee on Integrated Long-Term Strategy has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

The Advisory Committee on Integrated Long-Term Strategy will serve the public interest by reviewing certain studies and providing the Secretary of Defense and the President's National Security Advisor with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense and theater warfare, including conventional war.

Membership will consist of government officials with responsibilities for long-range defense policy and private sector individuals with distinguished backgrounds in national security affairs. Total membership shall not exceed fifteen (15). From time to time, associated members may be appointed to the Committee to participate in an assessment of a particular issue. They shall number no more than five (5) at any one time.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 3, 1986.

[FR Doc. 86-22891 Filed 10-8-86; 8:45 am]

BILLING CODE 3810-01-M

Ada Board Technology and Standards Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Technology and Standards Panel will be held Wednesday, 12 November 1986 from 10:30 a.m. to 5:00 p.m. at SofTech in Waltham, MA.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald Fisher, Room HO-22, IBM Research, P.O. Box 218, Yorktown Heights, New York, 10598 (914) 789-7653.

Patricia H. Means,

Office of the Secretary of Defense Federal Register Liaison Office, Department of Defense.

October 3, 1986.

[FR Doc. 86-22890 Filed 10-8-86; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Liverpool, Fulton County, IL, Flood Control Project

AGENCY: U.S. Army Corps of Engineers, Department of Defense .

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

Summary

1. *Description of Proposed Action.* The proposed project is intended to provide flood protection to the town of Liverpool, Fulton County, Illinois, which is located along the Illinois River, approximately 30 miles southwest of Peoria, Illinois.

2. *Alternatives for the Proposed Action.* A variety of structural and nonstructural measures were investigated during early planning phases. Evaluation of these measures on environmental, economic, and technical criteria resulted in identification of several alternatives which will be studied further. These are as follows:

a. The construction of a levee, built to the 50-year flood protection level, that would encircle the riverward side of

Liverpool, connecting it to an existing agricultural levee currently built at the 50-year level.

b. The construction of a levee, built to the 100-year flood protection level, that would encircle the riverward side of Liverpool, and connect to the above-mentioned agricultural levee which would be also raised up to the 100-year protection level.

c. Permanent relocation of residents to outside of the floodplain.

d. No Federal Action alternative.

3. *Public Involvement.* Various meeting have been held with local, State, and Federal officials to discuss the planning aspects, including alternatives of this project. Coordination will be maintained with interested agencies and individuals throughout this study. A public meeting, if requested, would be held after the distribution of the DEIS.

4. *Significant Issues to be Addressed.* Significant issues to be discussed in the DEIS are impacts to cultural sites found within the level alignment and borrow areas for levee material.

5. *Public Availability.* The Draft Environmental Impact Statement is expected to be available for public review in April 1987.

Additional information concerning the proposed project may be requested from: Neil A. Smart, Colonel, Corps of Engineers, District Engineer, U.S. Army Engineer District, Rock Island, Clock Tower Building—P.O. Box 2004, Rock Island, Illinois 61204-2004.

Dated: October 6, 1986.

Neil A. Smart,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86-22876 Filed 10-8-86; 8:45 am]

BILLING CODE 3710-HY-M

DEPARTMENT OF ENERGY

Intent To Grant Partially Exclusive Patent Licenses to Eidolonics of Oak Ridge, TN, and Bio-Imaging Systems, Inc., of Winchester, MA

Notice is hereby given of an intent to grant Eidolonics, of Oak Ridge, Tennessee, and Bio-Imaging Systems, Inc., of Winchester, Massachusetts, partially exclusive licenses to practice in the United States the invention described in U.S. Patent No. 4,389,670, entitled "Electronic Method for Autofluorography of Macromolecules on Two-dimensional Matrices". The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed licenses will be partially exclusive, i.e., licenses will be granted to Eidolonics and Bio-Imaging Systems, but no further licenses will be granted on the patent for the duration of the licenses. The proposed partially exclusive licenses will be subject to a license and other rights retained by the U.S. Government. DOE intends to grant the licenses, upon a final determination in accordance with 35 U.S.C. § 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed licenses; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the licenses if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the licenses are in the public interest.

Issued in Washington, DC, on October 2, 1986.

J. Michael Farrell,

General Counsel.

[FR Doc. 86-22855 Filed 10-8-86; 8:45 am]

BILLING CODE 6450-01-M

Intent To Grant Exclusive Patent License to Mr. Donald E. Hull and Mr. Thomas E. Bieniewski; Los Alamos, NM

Notice is hereby given of an intent to grant to Mr. Donald E. Hull and Mr. Thomas M. Bieniewski, of Los Alamos, New Mexico, an exclusive license to practicein the United States the invention described in U.S. Patent No. 4,431,901, entitled "Induction Plasma Tube". The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written response to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on October 2, 1986

J. Michael Farrell,

General Counsel.

[FR Doc. 86-22873 Filed 10-8-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-273-003 et al.]

Electric Rate and Corporate Regulation Filings; Kansas City Power & Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Kansas City Power & Light Company

[Docket No. ER86-273-003]

October 6, 1986.

Take notice that on September 29, 1986, Kansas City Power & Light Company (KCPL) tendered for filing a compliance report stating that no revenues have been collected from KPL's municipal wholesale customers in excess of revenues under the "settlement rates" established by the Offer of Settlement.

The company states that a refund check was mailed to Kansas Electric Power Cooperative Inc. on August 28, 1986.

A copy of this filing was sent to all customers named in Docket Nos. ER86-273-001, ER86-273-002 and to each state commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

Comment date: October 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Central Power and Light Company

[Docket No. ER86-721-000]

October 6, 1986.

Take notice that on September 30, 1986, Central Power and Light Company ("CPL") tendered for filing proposed changes in rates applicable to five non-generating wholesale cooperative customers served under CPL's FERC Electric Tariff Original Volume No. 1 and proposed changes in rates applicable to two partial-requirements municipal customers, the Public Utility Board of Brownsville, Texas and the City of Robstown, Texas. CPL has proposed a phased rate increase. The Level B rates, proposed to be effective on December 1, 1986, would increase revenues from jurisdictional sales by $4,893,036, based on calendar year 1987. The Level A rates, proposed to be effective on November 30, 1986, would increase revenues from jurisdictional sales by $2,600,809, based on calendar year 1987. CPL also proposes to modify its fuel adjustment clause (FAC). CPL also seeks a waiver of the Commission's FAC regulations so that test energy from a prospective nuclear facility will be treated differently than it otherwise would be under the FAC.

CPL states that copies of its filing have been served on its customers affected by the filing and upon the Public Utility Commission of Texas.

Comment date: October 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

[Docket No. ER86-702-000]

October 6, 1986.

Take notice that on September 25, 1986, Puget Sound Power and Light Company (Puget) tendered for filing a Distribution Plan Worksheet showing the calculation of the Monthly Cost of Puget's Distribution Plant.

Comment date: October 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation, Citizens Utilities Company, Green Mountain Power Corporation

[Docket No. EC86-30-000]

October, 3, 1986.

Take notice that on October 2, 1986, Central Vermont Public Service Company, on behalf of itself and the other two above-named utilities, submitted a supplement to their earlier application in this docket. In this supplement the filing utilities state that errors have been discovered in their earlier application concerning the basis on which each of the three utilities was to purchase the stock that was the subject of the application. The applicants intened that stock be purchased by each of the three on the basis of actual kWh sales in 1984 to ultimate consumers in Vermont. The applicants have accordingly amended their application.

The applicants state that a copy of the amended application has been mailed to the Vermont Public Service Board.

Comment date: October 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Southeastern Power Administration

[Docket No. EF86-3041-000]

October 6, 1986.

Take notice that on September 22, 1986, the Under Secretary of the Department of Energy confirmed and approved, on an interim basis effective midnight September 30, 1986, Rate Schedules KP-1-C, JHK-2-A, JHK-3-A and PH-1-A for power from Southeastern Power Administration's (SEPA) Kerr-Philpott Projects. The approval extends through September 30, 1991. The Under Secretary states that the Commission, by order issued July 6, 1983, in Docket No. EF-3041, confirmed and approved Rate Schedules KP-1-E and JHK-1-E through September 30, 1986.

SEPA proposes in the instant filing to extend Rate Schedule KP-1-C, to replace JHK-1-E with JHK-2-A and JHK-3-A and establish a new Rate Schedule Ph-1-A for new preference customers in the Appalachian Power Company area. The rate adjustment will extent present rates. The increased operation and maintenance costs and replacement costs are offset by delays in replacements. The rate schedules are submitted for confirmation and approval on a final basis pursuant to authority vested in the Commission by Delegation Order No. 0204-108. Approval is requested for a period ending September 30, 1991.

Comment date: October 15, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22917 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3194-003]

Joseph M. Keating; Availability of Environmental Assessment and Request for Comments

October 2, 1986.

In accordance with the National Environmental Policy Act of 1969 and the Regulations of the Council on Environmental Quality, the Ofice of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for major license for the proposed Foottrail Hydroelectric Project on the Silver Fork of the American River in El Dorado County, California, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has determined the potential adverse impacts of the proposed project. The staff is now requesting comments on the EA and any additional information on the expected impacts of the project.

Interested persons and agencies are invited to identify and submit substantive evidence regarding the results of studies, natural resource management policies, and reports from state and local resource agencies. The evidence should be limited to the Foottrail Hydroelectric Project and its expected environmental effects.

After evaluating the comments, the staff will determine if preparation of an Environmental Impact Statement is necessary.

Copies of the EA are available for review in the Public Reference Section, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Comments should be filed by the close of business, November 20, 1986, and should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 3194-003 to all comments.

For further information please contact Brad Bortner, Environmental Assessment Coordinator, at (202) 376-1763.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22918 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-824-003, et al.]

Natural Gas Certificate Filings; Colorado Interstate Gas Co., et al.

October 3, 1986.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP85-824-003]

Take notice that on September 12, 1986, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-824-003 a petition to amend the the order issued October 11, 1985, in Docket No. CP85-824-000, 33 FERC ¶ 62,057, pursuant to section 7(c) of the Natural Gas Act so as to authorize the addition of various receipt and delivery points, the deletion of various receipt points, the authorization not to restrict CIG to any specified natural gas supplier for its first deliveries to the City of Colorado Springs (CCS), the extension of the term of the transportation service to no later than January 19, 1988, and pre-granted abandonment authority, all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

CIG states that by the order issued October 11, 1985, the Commission authorized CIG to transport, on an interruptible basis, up to 27,000 Mcf of natural gas per day for CCS, pursuant to a transportation service agreement dated August 15, 1985. Such gas is purchased by CCS from Western Natural Gas and Transmission Corporation (Western). The gas is received by CIG from Williston Basin Interstate Pipeline Company (Williston) at existing interconnections in Park and Freemont Counties, Wyoming. CIG delivers thermally equivalent volumes to CCS at two existing interconnections between CIG and CCS in El Paso County, Colorado. CIG states that the order issued October 11, 1985, provides for transportation service from the receipt points specified in the agreement between Western and CCS, dated June 26, 1985. Transportation service commenced pursuant to the agreement on October 31, 1985.

CIG states that it has also transported natural gas for CCS from the Coronado-Oregon Basin receipt point located in Park County, Wyoming, and from the Wilburton Gas located in Morton County, Kansas, to the delivery points stated hereinabove. Such transportation service is provided pursuant to section 311 of the Natural Gas Policy Act and the required reports were filed in Docket No. ST86-930-000.

CIG requests authorization to add the Coronado-Oregon Basin and Wilburton Gas Plant receipt points and to add the Drennan Road, McClintock and Security delivery points. CIG further requests that the transportation authority requested not be restricted to any specified natural gas supplier and allow for the addition and deletion of receipt points to and from its transmission system. CIG states that it would file on or about January 31 of each year tariff revisions, as necessary, to keep the Commission informed of any receipt point changes.

Finally, CIG requests authority to extend the term of the transportation service for a period no later than January 19, 1988, and for pregranted abandonment authority.

Comment date: October 24, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP86-728-000]

Take notice that on September 17, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-728-000 an application pursuant to section 7(7) of the Natural Gas Act for authorization to transport up to a maximum of 250 billion Btu equivalent per day of natural gas on an interruptible basis for Cities Service Oil and Gas Corporation (Cities Service), and the construction and operation of facilities required to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authority to provide an interruptible transportation service for Cities Service for a period of two years from the first delivery and month to month thereafter. Natural would provide such service pursuant to the terms and conditions contained in a gas transportation agreement (Agreement) between Natural and Cities Service dated May 27, 1986, it is stated.

Natural states that it has been informed by Cities Service that the gas transported by Natural is being sold to UER Marketing Company, who in turn proposes to resell such gas to various end users, local distribution companies and intrastate pipelines.

Natural proposes to receive natural gas for the account of Cities Service at the following points of receipt: (1) A proposed point of interconnection between the facilities of Natural and the Matagorda Offshore Pipeline System located in the James Power and James Hewitson Survey A-53, Refugio County, Texas; (2) and existing point of interconnection between the measurement facilities of Natural and the facilities of Transcontinental Gas Pipe Line Corporation (Transco) located in H.&T.C.R.R. Survey A-186, Wharton County, Texas; (3) an existing point of interconnection between the measurement facilities of Natural and the facilities of Liberty Natural Gas Company (Liberty) located in the Juan J. Acosta Survey A-65, Nacoghoches County, Texas; (4) an existing point of interconnection between the measurement facilities of Natural and the facilities of Houston Pipeline Company (Houston) located in the Jose Vincente Lopex De Herrfera Grant, A-145, Nueces County, Texas; and (5) and existing point of interconnection between the measurement facilities of Natural and the facilities of ONG Transmission Company located in Section 7, Township 4 North, Range 7 West, Grady County, Oklahoma.

Natural proposes to transport on a fully interruptible basis and would redeliver volumes of gas for the account of Cities Service to the following points of delivery: (1) An existing point of interconnection between the facilities of Natural and United Gas Pipe Line Company (United) located at the outlet of Texaco's Henry Gas Plant in Section 21, Township 13 South, Range 4 East, Vermilion Parish, Louisiana; (2) an existing point of interconnection between the measurement facilities of Natural and United located in the A. Viesca Survey A-77, Polk County, Texas; and (3) the existing points of interconnection between the facilities of Natural, or its designee, and the measurement facilities of United, or its designee located at various points in the vicinity of the High Island Offshore System, Offshore Texas, as listed below:

a. High Island Block A-273
b. High Island Block A-317
c. High Island Block A-327/A-332
d. High Island Block A-330
e. High Island Block A-474
f. High Island Block A-489
g. High Island Block A-511.

Natural proposes to charge Cities Service the following transportation rates:

Point of receipt	Transportation rate (per billion Btu) (cents)
Refugio Co., TX:	
Polk Co., TX	0.063
Vermilion Parish, LA	.122
HIOS-Offshore TX	.122
Wharton Co., TX:	
Polk Co., TX	.056
Vermilion Parish, LA	.095
HIOS-Offshore TX	.095
Nacogdoches Co., TX:	
Polk Co., TX	.030
Vermilion Parish, LA	.100
HIOS-Offshore TX	.100
Nueces Co., TX:	
Polk Co., TX	.083
Vermilion Parish, LA	.122
HIOS-Offshore TX	.122
Grady Co., OK:	
Polk Co., TX	.120
Vermilion Parish, LA	.158
HIOS-Offshore TX	.158

In addition, Natural proposes to redeliver gas to Cities Service less certain percentage reductions for fuel consumed and lost and unaccounted-for gas or would charge Cities Service for fuel consumed and lost and unaccounted-for gas as provided for under the Agreement.

Natural requests authorization to add or delete additional receipt points in the future that may be necessary to support this service.

Natural proposes to construct two 12-inch taps on its #1 and #2 mainlines in Refugio County, Texas. It is stated that the estimated cost of these taps is $80,000. Northern Natural Gas Company (Northern) would install the measurement facilities and reimburse Natural for the actual cost of the proposed taps, it is stated.

Comment date: October 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Pacific Gas Transmission Company

[Docket No. CP86-738-000]

Take notice that on September 23, 1986, Pacific Gas Transmission Company PGT), 160 Spear Street, San Francisco, California 94105-1570, filed an application under section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the interruptible transportation of natural gas in interstate commerce; and (2) pregranted abandonment authorization upon termination of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the transportation would be accomplished by means of a delivery to PGT at Kingsgate, British Columbia, of up to 18,000 Mcf of natural gas per day for the account of Kerr-McGee Chemical Corporation (Kerr-McGee) and the redelivery of such natural gas to Kerr-McGee at a point of interconnection between the pipeline systems of PGT and Pacific Gas and Electric Company at Malin, Oregon. PGT states that the interruptible transportation service would be accomplished through the utilization of existing capacity available on PGT's system. It is alleged that the term of the agreement would be for a primary term of ninety days, not to exceed one year.

PGT further requests pregranted abandonment authorization to terminate service upon termination of the transportation agreement.

Comment date: October 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP84-49-001]

Take notice that on September 18, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-49-001 a petition to amend the order issued February 2, 1984, in Docket No. CP84-490-000, 26 FERC ¶ 61,114, pursuant to section 7(c) of the Natural Gas Act so as to reflect changes in the interruptible transportation of natural gas for Grantie State Gas Transmission, Inc. (Grante State), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by the order issued February 2, 1984, it was authorized to transport, on an interruptible basis, up to 9,814 Mcf of natural gas per day for Granite State. The gas transported is a portion of the domestic gas volumes purchased by Granite State from Consolidated Gas Supply Corporation (Consolidated).

Petitioner seeks authorization to transport up to 20,000 dt equivalent of natural gas per day on an interruptible basis. It is stated that the transportation service would be on a dekatherm equivalent basis with Petitioner delivering equivalent dekatherms less quantities for Petitioner's applicable fuel and use requirements.

Petitioner also requests an additional receipt point for Granite State's account at the existing interconnection between Petitioner and Algonquin Gas Transmission Company (Algonquin) at the Mahwah exchange meter station in Bergen County, New Jersey, at Petitioner's Valve 328-1 plus 4.22 miles. It is stated that the gas received at the Mahwah receipt point would be delivered to the existing East Longmeadow delivery point and/or to Mendon sales meter station, the existing receipt point at the interconnection of Petitioner and Algonquin in Worcester County, Massachusetts, at Petitioner's Valve 286A-112.

Petitioner also proposes to eliminate the limitation that gas transported by Petitioner must be gas purchased by Granite State for Consolidated.

For this revised transportation service, Petitioner states that it would charge the following rates and applicable fuel and use requirements:

Receipt point	Delivery point(s)	Rate per Dekatherm	Percent of fuel
Mendon	East Longmeadow	8.01	0.5
Mahwah	East Longmeadow	9.39	1.07
	Mendon	11.90	1.31

Comment date: October 24, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP84-441-019]

Take notice that on September 18, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-441-019 a petition to amend the order issued June 14, 1985, in Docket No. CP84-441-000, *et al.*, 31 FERC ¶61,306, pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Connecticut Natural Gas Corporation (CNG), at additional receipt and delivery points and to provide the transportation on a dekatherm equivalent basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Petitioner seeks to amend the certificate of public convenience and necessity granted in Docket No. CP84-441-000, *et al.*, which authorized Petitioner, *inter alia*, to transport, on a firm basis, up to 15,000 Mcf of natural gas per day for CNG to enable CNG to receive firm delivery of volumes attributable to natural gas services rendered by Consolidated Gas Transmission Corporation (Consolidated). Petitioner states that it was authorized to receive transportation volumes of gas for CNG's account from Consolidated at the interconnection of the pipelines of Petitioner and Consolidated at the Ellisburg sales meter station located in Potter County, Pennsylvania, at Petitioner's valve

313G–102, and to deliver the gas to CNG at the Bloomfield sales meter station (Bloomfield) located in Hartford County, Connecticut, at Petitioner's valve 347–1 plus 9.38 miles. This service is currently rendered under Petitioner's Rate Schedule T–149.

Petitioner proposes to amend the certificate issued in Docket No. CP84–441–0001 *et al.*, to provide additional receipt and delivery points for the transportation quantities of gas and to provide the transportation on a dekatherm equivalent basis. Petitioner states that by a replacement contract dated August 28, 1986, which would supersede the transportation agreement between Petitioner and CNG which is on file as Rate Schedule T–149 to Petitioner's FERC Gas Tariff, Petitioner and CNG have agreed to the following changes:

(1) To transport up to 15,390 dt equivalent of natural gas per day on a firm basis for the account of CNG. The transportation service would be on a dekatherm equivalent basis. Petitioner would deliver equivalent dekatherms less quantities for Petitioner's applicable fuel and use requirements;

(2) To add the following points of receipt:

(a) National Fuel Gas Supply Corporation, Rose Lake sales in Potter County, Pennsylvania, at MLV 313G–121;

(b) Columbia Gas Transportation Corporation, Milford sales in Pike County, Pennsylvania, at MLV 323–1 plus 18.01 miles (Milford);

(c) Transcontinental Gas Pipe Line Corporation, Rivervale sales in Bergen County, New Jersey, at MLV 330–1 plus 1.43 miles (Rivervale); and

(d) Algonquin Gas Transmission Company, Mahwah interconnection in Bergen County, New Jersey, at MLV 328–1 plus 4.22 miles (Mahwah).

Petitioner states that its receipt of gas for CNG's account at Milford, Rivervale, and Mahwah would be subject to operating conditions as determined in Petitioner's sole opinion; and

(3) To add the following points of delivery and maximum quantity limits:

Points of delivery	Dt Equivalent of gas daily quantity limit
(a) North Bloomfield sales in Hartford County, Connecticut, at MLV 346–1 plus 3.82 miles (North Bloomfield); and	10,290
(b) Putnam Lake sales in Fairfield County Connecticut, at MLV 337–1 plus 0.12 miles (Putnam Lake)	10,290

Petitioner states that the dt equivalent of gas daily quantity limit at the existing Bloomfield point would be 15,390 dt equivalent.

Petitioner states that the sum of its deliveries to CNG under Rate Schedule T–149 at all of the delivery points would not at any time exceed the proposed total transportation quantity of 15,390 dt equivalent of natural gas per day. Petitioner further states that it would not be obligated to deliver the full daily quantity limit of gas at North Bloomfield and Putnam Lake on any day that CNG requests deliveries of sale gas at those points due to capacity limits at the meter stations.

Petitioner proposes to charge the effective T–149 rates for this revised transportation services.

Comment date: October 24, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86–732–000]

Take notice that on September 18, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86–732–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing new delivery points for its customer, Granite State Gas Transmission, Inc. (Granite State), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to Granite State's request, Tennessee has agreed to establish two interruptible delivery points for Granite State at (1) Tennessee's existing Sales Meter Station in Mahwah, New Jersey (Mahwah), and (2) Tennessee's existing Sales Meter Station in Mendon, Massachusetts (Mendon). It is stated that both Mahwah and Mendon are existing points of interconnection with Algonquin Gas Transmission Company (Algonquin). It is further stated that deliveries at these two new delivery points would be interruptible and shall not exceed 20,000 dt equivalent of natural gas per day at either delivery point.

Tennessee states that deliveries to the proposed Mahwah delivery point are in the zone to which Tennessee's CD–5 rates would otherwise be applicable. Tennessee requests a waiver of its CD Rate Schedule to permit Tennessee to charge Granite State the CD–6 rate for deliveries to the proposed Mahwah delivery point. Tennessee further states that absent the proposed interruptible deliveries in Zone 5, all gas would be delivered in Zone 6; therefore, Tennessee submits that the waiver is necessary to prevent a potential under-recovery of costs and the exposure to Tennessee's other customers of increased costs. Granite State has agreed to pay the CD–6 rates for deliveries to Mahwah.

Tennessee also states that Algonquin would file a related application in the near future.

Comment date: October 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 22919 Filed 10–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CS87–45, et al.]

Applications for Small Producer Certificates;[1] Bill J. Graham Oil and Gas (Bill J. Graham) et al.

October 2, 1986.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before October 20, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS87–45	[1] 9–24–86	Bill J. Graham Oil and Gas, (Bill J. Graham), P.O. Box 7037, Midland, Texas 79708.
CS71–1006	[2] 9–18–86	Santa Fe Braun Inc., (C.F. Braun and Co.), 9131 Turtle Creek Blvd., Dallas, Texas 75219–5478.
CS86–93–000	9–29–86	Matrix Partners, P.O. Box 17424, San Antonio, Texas 78217.
CS86–94–000	9–8–86	PAN–OK Production Company, Inc., P.O. Box 30431, Lafayette, Louisiana 70506.
CS86–95–000	9–12–86	Conn Energy, Inc., 935 Gravier Street, Suite 1900, Box D–5, New Orleans, Louisiana 70112.
CS86–96–000	9–15–86	Wayne Bernard Eggemeyer, 5413 Beverly Drive, San Angelo, Texas 76904.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS86–97–000	9–18–86	Plumb Oil Company, Inc., Plumb Offshore, Inc. and Plumb Operating Company, Inc., 3260 One Allen Center, 500 Dallas, Houston, Texas 77002–4792.
CS86–98–000	9–22–86	Worth Minerals Company, P.O. Box 1710, Fort Worth, Texas 76101.

[1] Letter dated September 15, 1986, requesting redesignation of small producer certificate.

[2] Letter dated September 15, 1986, advising that by Certificate of Amendment of Certification of Incorporation effective February 1, 1986, C.F. Braun and Co. changed its name to Santa Fe Braun Inc.

[FR Doc. 86–22920 Filed 10–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–1–48–000,001]

ANR Pipeline Co; PGA Rate Change Filing

October 6, 1986.

Take notice that on September 30, 1986, ANR Pipeline Company ("ANR"), pursuant to section 15 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets:

Sixth Revised Tariff Sheet No. 18
Fourth Revised Tariff Sheet No. 19

Sixth revised Tariff Sheet No. 18 reflects a 3.65¢a per dekatherm ("dth") decrease in the gas cost component of the commodity rate of ANR's CD–1 and MC–1 Rate Schedules, an increase of $0.035 in the monthly demand rate of CD–1 and MC–1 Rate Schedules and a decrease in ANR's one-part rates applicable to Rate Schedules SGS–1 and LVS–1 of 3.24¢ and 3.48¢ respectively, per dth.

ANR states that the change in rates set forth above is a result of the following factors which are outlined below:

A. Factors resulting in cost reductions.

1. Commodity Costs—a. Substantial reductions in the cost of Canadian gas that have been achieved through the operation of price adjustment mechanisms contained in gas purchase contracts.

b. Reductions in the cost of gas from domestic producers by reduction in the market-out price where permitted by contract and through renegotiation of a number of gas purchase contracts.

c. A reduction for the combination of two surcharges associated with decreases in the carrying charges on ANR's take-or-pay balances and charges associated with one-time payments and other reimbursement arrangements negotiated with suppliers in lieu of take-or-pay payments. (See Article IX, B of the Stipulation and Agreement at *ANR Pipeline Company*, Docket Nos. RP82–80, *et. al.*).

B. Factors resulting offsetting cost increases.

1. Commodity Cost—a Producer price increases for regulated supply sources as authorized by the Natural Gas Policy Act of 1978.

b. An increase in the surcharge for deferred gas costs from a positive 6.32¢ per dth to a positive 12.72¢ per dth.

2. Demand Costs—Increases in demand charges in effect for Texas Gas Transmission Corporation and Northern Natural Gas Company.

Fourth revised Tariff Sheet No. 19 reflects that since there were zero MSAC's reported by ANR's customers, there is no PGA reduction.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–22921 Filed 10–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–169–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that on September 30, 1986, ANR Pipeline Company (ANR) tendered for filing, proposed changes in its FERC Gas Tariff, Original Volume No. 1. Original Volume No. 1–A and Original Volume No. 2, to become effective November 1, 1986. ANR's filing states that the filing effectuates a rate decrease which is designed to recover ANR's overall costs of service, developed by utilizing a base period for the twelve months ended May 31, 1986, adjusted for known and measurable

changes through the end of the test period, February 28, 1987. The filed cost of service is approximately $64 million, or 8%, lower than the non-gas cost of service which underlies ANR's present rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22922 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI86-737-000 and CI86-738-000]

Arkla Energy Resources, a Division of Arkla, Inc.; Applications for Limited-Term Blanket Abandonment and Limited-Term Blanket Sales Certificates With Pre-Granted Abandonment

October 6, 1986.

Take notice that on September 19, and September 22, 1986, as supplemented on September 29, 1986, Arkla Energy Resources, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed applications in Docket Nos. CI86-737-000 and CI86-738-000. In Docket No. CI86-738-000, Applicant, on behalf of its producer-suppliers, requests limited-term blanket abandonment of certain sales to Applicant of natural gas by Applicant's eligible producer-suppliers for resale in interstate commerce. In Docket No. CI86-737-000, Applicant requests, on behalf of its producer-suppliers limited-term blanket certificates of public convenience and necessity with pre-granted abandonment authorizing the sale of such gas by the eligible producer-suppliers for resale in interstate commerce. Applicant also requests on behalf of its eligible producer-suppliers a waiver of certain Commission regulations, including certain of those in Part 154 thereof, 18 CFR Part 154 (1986).

Applicant requests such authorizations for a term of one-year.

Applicant states that it seeks permission for eligible producer-suppliers that wish to participate in the opportunity to sell to other purchasers gas that Applicant temporarily releases from its contracts with those producer-suppliers. Applicant states that these third-party sales would enable eligible producer-suppliers to maintain their production instead of having it curtailed for lack of markets. Applicant states that the release and opportunity for those sales would also afford Applicant relief from its take-or-pay obligations. Moreover, according to Applicant all quantities so released and sold would enter the marketplace at market-responsive prices, thereby providing consumers with lower-priced gas and helping to maintain throughput levels on Applicant's pipeline system. Applicant states that the Commission's granting of the approvals sought herein would therefore serve the public interest and the public convenience and necessity.

Applicant states that the authorizations are requested to cover its affiliates, the Exploration & Production Division of Arkla (Arkla E&P) and Arkla Exploration Company (AEC). Applicant states that Arkla E&P produces certain gas supplies which are delivered directly into Applicant's facilities for use as part of Applicant's system supply. Applicant states that AEC is an affiliated producer that conducts exploration and production activities.

Applicant states that Commission approval of its requests would constitute issuance to Applicant's eligible producer-suppliers of all requisite limited-term blanket abandonment authorization (coextensive with the extent of the release executed by Applicant and an eligible producer-supplier on mutually agreeable terms and conditions) and limited-term blanket sales certificate authorization with pre-granted abandonment, and any other authorizations that may be necessary to permit eligible producer-suppliers to market the gas released by mutual agreement with Applicant. Applicant states that producer-suppliers will qualify for the authorizations requested herein upon execution of a written temporary release from their contracts with Applicant, such release to contain terms acceptable to both parties.

Applicant states that the requests herein are a reflection of Applicant's existing policy and past practice regarding the release of certificated gas to producer-suppliers who wish to sell their gas temporarily in the spot market. Applicant states it has heretofore executed mutually agreeable, limited-term releases with non-affiliated producer-suppliers as well as with its affiliate producer-supplier. Primarily to benefit its non-affiliate producer-suppliers, each of whom would otherwise have to file individual applications similar to this one and pay the requisite filing fee, Applicant states it seeks to put in place a vehicle whereby all producer-suppliers can quickly get their gas to market once they locate a willing purchaser. Applicant states it stands ready to negotiate mutually agreeable releases with any producer-supplier in furtherance of this objective, consistent with sound business practices and the prudent management of Applicant's long-term system gas supply.

Applicant states it will file with the Commission and serve on its customers and interested state commissions within forty-five days following the close of each calendar quarter, reports identifying each producer-supplier that has availed itself of the authorizations granted by the approval it requests herein. With its quarterly reports, Applicant states it will also file or cause to be filed the following information with respect to all eligible quantities released by Applicant, which information must be provided to Applicant by the producer-supplier as an additional condition of eligibility for the authorizations obtained hereby:

(1) The FERC Gas Rate Schedule Number for the underlying certificated sale to Applicant;

(2) The corresponding producing field(s);

(3) The NGPA price category(s) covered under each Rate Schedule;

(4) The contract price to Applicant under each Rate Schedule ($/MMBtu);

(5) The quantities (MMBtu), by NGPA price category, of gas released under the abandonment authorization;

(6) The quantities (MMBtu), by NGPA price category, of gas delivered to each new purchaser or its designee;

(7) The amount of take-or-pay relief credited to Applicant for each third-party sale by Rate Schedule and NGPA price category.

Applicant states that all or any part of the gas that is currently committed to Applicant under contracts with producer-suppliers and that remains subject to the Commission's Natural Gas Act jurisdiction, including gas qualifying under sections 102(d), 104, 106, 108, and 109 of the Natural Gas Policy Act of 1978 ("NGPA"), would be covered by the limited-term abandonment and sales authorizations sought herein, to the extent that Applicant and a producer-supplier agree to the release of the gas.

Applicant requests that the Commission waive those provisions of Part 154 of its regulations, 18 CFR Part 154 (1986), that would otherwise require Applicant's eligible producer-suppliers to establish and maintain rate schedules with respect to the third-party sales. Applicant states that the limited-term blanket sales certificate issued to an eligible producer-supplier as a result of the Commission's approval of this application would be conditioned so that the rates charged in the authorized third-party sales could not exceed the applicable maximum lawful prices prescribed by the NGPA for the gas in question, including any rate that the producer-supplier has established its right to collect pursuant to Parts 273, 274, or 275 of the Commission's regulations, 18 CFR. Parts 273-275 (1986).

In addition, Applicant requests that the Commission waive the provision of 18 CFR 154.94(h) that would otherwise require Applicant's eligible producer-suppliers to file blanker affidavits covering the third-party sales to permit the automatic collection of appropriate monthly inflation adjustments. Applicant further requests that, to the extent the eligible producer-suppliers already qualify for collection of any applicable allowances under section 110 of the NGPA, the Commission waive the provision of 18 CFR 154.94(k) that would otherwise require them to file blanket affidavits covering the third-party sales in order to collect the section 100 allowances.

Finally, Applicant requests the waiver of any and all otherwise applicable orders, rules, regulations, and reporting requirements, now effective or hereafter promulgated or issued by the Commission, to the extent they are inconsistent with the authorizations granted by the Commission's approval of its applications.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before October 20, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become party to the proceeding herein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22923 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-8-004, 005]

Canyon Creek Compression Co.; Change in FERC Gas Tariff

October 3, 1986.

Take notice that on September 25, 1986, Canyon Creek Compression Company (Canyon) tendered for filing Third Revised Sheet No. 4 to be a part of its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1986. Canyon states that the filing is submitted in compliance with Article IV of Canyon's Stipulation and Agreement in Docket No. RP85-5-000 (Agreement). The revised rate levels reflect the effect of reducing the amount of AFUDC reflected on Canyon's books by $142,716. The $142,716 reduction in AFUDC was the result of the final outcome of Canyon's audit proceeding.

However, in its September 25, 1986, filing, Canyon failed to make the necessary adjustments to reflect the proper amount for the Amortization of Permanent Book and Tax Differences. Therefore, on October 1, 1986, Canyon submitted Substitute Third Revised Sheet No. 4 to be accepted for filing in lieu of the Third Revised Sheet No. 4 previously submitted on September 25, 1986.

Canyon requests waiver of the Commission's regulations and the Agreement to the extent necessary to permit the Substitute third Revised Sheet No. 4 to become effective on October 1, 1986.

Copies of these filings have been mailed to Canyon's jurisdictional customers, interested state regulatory agencies, and all parties set forth on the official service list at Docket No. RP85-8-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22924 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-167-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that on September 30, 1986, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2 to become effective on November 1, 1986.

Columbia Gulf states that the purpose of the filing is to provide for the level of rates and changes required to recover its costs. When compared to the settlement rates currently in effect at Docket No. RP84-74, the proposed change in rates shows a revenue decrease of approximately $37.1 million.

In addition to reflecting the variations in costs, the proposed rates reflect the effect of a Modified Fixed-Variable rate design, and a projected level of transportation volumes and revenues.

Also included are tariff sheets to implement zone rates, a provision to allow Columbia Gulf the option to provide the gas requirements for gas used and unaccounted for and maximum and minimum rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22926 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC86-30-000]

Central Vermont Public Service Corp. et al.; Filing

October 3, 1986.

Take notice that on September 25, 1986, Central Vermont Public Service Corporation, on behalf of itself and Citizens Utilities Company and Green Mountain Power Corporation, tendered for filing an application under section 203 of the Federal Power Act for authority to acquire securities of Vermont Electric Power Company, Inc.

The filing company states that a copy of the application has been mailed to the Vermont Public Service Board.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22925 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-22-002]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on September 30, 1986, filed Substitute Eleventh Revised Sheet No. 31, to its FERC Gas Tariff, Original Volume No. 1, to comply with the Commisson's August 29, 1986, suspension order in this proceeding. The substitute tariff sheet reduces Consolidated's August 1 filed sales commodity rates by 3.89¢/Dt to reflect reduced rates from pipeline suppliers as required by Ordering Paragraph (D) of the referenced order.

Copies of the filing were served upon Consolidated's jurisdictional customers, interested state commissions and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22927 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-46-000, 001]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

October 6, 1986.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on September 30, 1986, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective November 1, 1986.

Fifth Revised Sheet No. 24
Original Sheet No. 24A
Thirty-Seventh Revised Sheet No. 27
Twenty-First Revised Sheet No. 24A

Kentucky West states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in Section 18, General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

The current purchase gas adjustment is a decrease of 7.46¢ per dekatherm (dth). The deferred gas cost adjustment is a reduction of 3.10¢ per dth. These changes result in a total net jurisdiction purchase gas cost charge of 1.9003¢ per dth, to become effective November 1, 1986.

Kentucky West further states that the Tariff sheet filed herewith does not reflect the Market Incentive Purchase Gas Cost Charge which the Commission rejected at its meeting on March 26, 1986, and is filed without prejudice to any further pleadings or tariff filings, which Kentucky West may make in light of that rejection.

Kentucky West states that this PGA filing has been prepared in full compliance with the Commission's order of September 18, 1986. Said order summarized the results of an informal technical conference on June 2, 1986 concerning Kentucky West's purchase gas adjustment filing in Docket No. TA86-4-46-000.

Kentucky West is proposing a new § 18.1(b) to its PGA clause to permit Kentucky West, in addition to the required semi-annual PGA filing, to adjust its gas rates on one day's notice to reflect anticipated known and measurable changes in its markets or purchase gas costs.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party on the service list of Docket No. RP86-52.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such notions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22928 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-5-000, 001]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

October 6, 1986.

Take notice that on September 30, 1986, Midwestern Gas Transmission Company (Midwestern) tendered for filing ten copies of Twenty-second Revised Sheet No. 6 and Twelfth Revised Sheet No. 8 to Original Volume No. 1 of its FERC Gas Tariff, to be effective November 1, 1986. Midwestern States that this filing implements a Current Purchased Gas Cost Adjustment pursuant to Article XVIII of the General Terms and Conditions (the Northern System PGA clause) in order to reflect in the rates Midwestern's Northern System Rate Schedules CR-2, CRL-2, SR-2 and I-2 the effective gas charges from TransCanada PipeLines Ltd. (TransCanada), the sole supplier of gas to Midwestern's Northern System. Midwestern also states that this filing does not change the present Northern System Gas Surcharge.

Midwestern states that the Current Purchased Gas Cost Adjustment reflection on Twenty-second Revised Sheet No. 6 consists of Unit Demand Rate Changes of $.91 per Dkt for Rate Schedules CR-2 and CRL-2, $.0748 per Dkt for Rate Schedule SR-2, and $.0299 per Dkt for Rate Schedule I-2, and a Unit Gas Rate Change of 15.31 cents per Dkt. Midwestern states further that the unit rate changes are based upon the demand and commodity gas rates under Midwestern's gas contracts with TransCanada, and Midwestern's estimated sales billing units and system fuel requirements for the November 1986-March 1987 PGA period.

Midwestern states that Twelfth Revised Sheet No. 8 reflects zero Estimated Incremental Pricing Surcharges for Midwestern's customers under Rate Schedules CR-2, CRL-2, SR-2 and I-2 in accord with Article XXIII of the General Terms and Conditions.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22929 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-170-000]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that on September 30, 1986 Mississippi River Transmission Corporation (Mississippi) filed pursuant to Section 4 of the Natural Gas Act and the regulations of the Federal Energy Regulatory Commission (Commission) thereunder proposed changes in its FERC Gas Tariff. Mississippi states the purpose of the filing is to reflect increases in rates for service rendered under its FERC Gas Tariff. The changes in rate level requested by Mississippi reflect an increase in jurisdictional sales revenues of $30.2 million annually when compared to rates currently in effect.

Mississippi states the proposed rate change is necessary to recover increases in its jurisdictional cost of service, except gas costs which are reflected in the proposed filing on the basis of the average unit cost of purchased gas contained in Mississippi's PGA rate change effective September 17, 1986 at Docket No. TF86-1-25. Mississippi states that the principal causes of the rate increases are (1) increases in operating and maintenance expenses; (2) an increase in rate base due primarily to installation of new facilities; (3) an increase in the overall rate of return and related income taxes; and (4) a reduction in projected sales.

Copies of the filing have been served upon Mississippi's jurisdictional customers, and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest Mississippi's filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR Sections 385.211, 385.214 (1986). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Mississippi's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22930 Filed 10-08-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-206-006 and TA86-3-59-006]

Northern Natural Gas Co., Division of Enron Corp.; Change in Rates and Tariff Revisions

October 6, 1986.

Take notice that on September 30, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Commission to be effective October 1, 1986 the following tariff sheets to be included in Northern's FERC Gas Tariff:

Third Revised Volume No. 1

Forty-Second Revised Sheet No. 4a
Thirty-Sixth Revised Sheet No. 4b
Fifth Revised Sheet No. 4b.1

Original Volume No. 2

Forty-Fourth Revised Sheet No. 1c

Reason for Filing

Northern in its Renewal of Motion for Expedited Consideration of Petition for a Limited Waiver of the Commission's Regulations (Renewal of Motion) filed August 18, 1986 stated that when the waiver was granted and Northern opened its system, Northern would voluntarily lower its sales rates to the Docket No. RP85-206 settlement level and would implement the settlement rate design. The Commission granted the waiver in its Order dated September 26, 1986. Northern is opening its system on October 1, 1986. This filing is made to fulfill Northern's commitment to lower its sales rates to the RP85-206 level and implement the settlement rate design. In addition, Northern requests that the demand portion of Northern's Canadian gas costs be reflected in the D-2 component of Northern's rates.

Northern requests waiver of all Commission rules and regulations as necessary to permit tariff sheets to be effective beginning of the gas day on October 1, 1986.

Copies of the filing were served on all of Northern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22931 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

BEST COPY AVAILABLE

[Docket No. RP86-171-000]

Northwest Alaskan Pipeline Co.; Tariff Changes

October 6, 1986.

Take notice that on September 30, 1986, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84108-0900, tendered for filing in Docket No. RP86-171-000 the following tariff sheets to its FERC Gas Tariff Original Volume No. 2:

Third Revised Sheet No. 100
Third Revised Sheet No. 101
Second Revised Sheet No. 109
Third Revised Sheet No. 110
Original Revised Sheet No. 110A
Second Revised Sheet No. 114B
Second Revised Sheet No. 114C
Second Revised Sheet No. 114D
Second Revised Sheet No. 114E
Second Revised Sheet No. 114F
Second Revised Sheet No. 114G
First Revised Sheet No. 114H
First Revised Sheet No. 114I
Third Revised Sheet No. 123
Third Revised Sheet No. 150
Second Revised Sheet No. 158
Second Revised Sheet No. 159
Original Revised Sheet No. 159A
Third Revised Sheet No. 160
Third Revised Sheet No. 173
First Revised Sheet No. 173A
First Revised Sheet No. 173B
Second Revised Sheet No. 186A
Third Revised Sheet No. 200
Second Revised Sheet No. 201
Third Revised Sheet No. 207
Third Revised Sheet No. 208
Second Revised Sheet No. 209
Second Revised Sheet No. 213B
Second Revised Sheet No. 213C
Second Revised Sheet No. 213D
Second Revised Sheet No. 213E
Second Revised Sheet No. 213F
Second Revised Sheet No. 213G
First Revised Sheet No. 213H
First Revised Sheet No. 213I
Third Revised Sheet No. 221
Second Revised Sheet No. 250
Third Revised Sheet No. 258
Third Revised Sheet No. 259
Second Revised Sheet No. 272E
First Revised Sheet No. 272F
Second Revised Sheet No. 273
Third Revised Sheet No. 286

Northwest Alaskan states that it is submitting these sheets to reflect changes in the commodity charges and minimum volume requirements for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to Northern Natural Gas Company ("Northern") under Rate Schedule X-1 and Panhandle Eastern Pipe Line Company ("Panhandle") under Rate Schedule X-2.

Northwest Alaskan states that it is submitting the above tariff sheets pursuant to the provisions of the amended purchase agreements dated November 1, 1986, between Northwest Alaskan and Northern, and Northwest Alaskan and Panhandle.

Northwest Alaskan states that these tariff changes are beneficial to Northern and Panhandle in that the commodity charges for gas purchased will be reduced. Northern will also have greater flexibility in scheduling its daily minimum purchases during the months April-October. Panhandle will be able to nominate more Tier I gas daily.

Northwest Alaskan requests that the above sheets become effective November 1, 1986.

Northwest Alaskan states that a copy of this filing is being served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishng to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-22932 Filed 10-8-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER86-557-000]

San Diego Gas & Electric Co.; Amendment to Filing

October 3, 1986.

Take notice that on August 11, 1986, San Diego Gas & Electric Company (SDG&E) tendered for filing in this docket revised cost information regarding SDG&E's San Onofre Nuclear Station (SONGS) Auxiliary Power Exchange Agreement between SDG&E and Southern California Edison Company (SCE). The filing provides clarification of the current rate/12 kv auxiliary distribution at SONGS and further information on the 12kv auxiliary distribution at SONGS, the exchange rate and the installed cost of facilities used in the SONGS 12 kv auxiliary service.

SDG&E states that copies of its filing have been mailed to SCE and to the California Public Utilities Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before October 9, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-22933 Filed 10-8-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI86-676-000, et al.]

Silverridge Corp., Inc., et al.; Applications for Abandonment

October 2, 1986.

Take notice that each of the Applicants listed herein have filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI86-676-000, B, Aug. 15, 1986 [1]	Silverridge Corp., Inc., 8101 N.W. 10th, Oklahoma City, Ok 73127.	Arkla Energy Resources, a division of Arkla, Inc. Kinta Field, Haskell County, Oklahoma.	(2)	
CI86-714-000 (CI85-1363), B, Sept. 5, 1986 [3]	Exxon Corp., P.O. Box 2180, Houston, TX, 77252-2180.	Natural Gas Pipeline Co. of America, Tomball Field, Harris County, Texas.	(4)	
CI86-732-000, B, Sept. 17, 1986	Vernon E. Faulconer, P.O. Box 7995, Tyler, TX 75711.	United Gas Pipe Line Co., Sibley Field, Webster Parish, Louisiana.	(5)	
CI86-684-000, B, Aug. 18, 1986 [6]	Mewbourne Oil Co., *et al.* [7], P.O. Box 7698, Tyler, TX 75711.	Natural Gas Pipeline Co. Of America, Sombrero Field, Lea County, New Mexico.	(6)	

[1] Additional information received September 8, 1986.

[2] Applicant, a small producer certificate holder in Docket No. CS85-91-000, requests authorization to permanently abandon a sale of gas to Arkla. Applicant states that Arkla has agreed to release the subject well and surrounding acreage (Brooks-Hall Hightower Well #1, section 24, T8N, R21E, Haskell County, Oklahoma) since the well pressure cannot meet the line pressure in Arkla's transmission system. The line pressure varies from 480 psi to 570 psi. The well can deliver 150 Mcf/d at 480 psi but when the line pressure exceeds 550 psi the well will not deliver into the line in measureable quantities. Applicant states that Arkla does not desire the install compression since Arkla has determined to it be uneconomical. Applicant states that Arkla is not paying for gas not taken under their January 9, 1970, contract. The last effective rate was the NGPA section 104-minimum rate. On a vent test against a back pressure of 85 psi, the well stabilized at 787 Mcf/d. Applicant states that it proposes to sell the gas in the spot market, potentially to Vesta, Inc., or Arkla Release Gas, Inc.

[3] Additional information received September 12 and 18, 1986.

[4] Applicant requests authorization to permanently abandon a sale of gas to Natural covered under a gas purchase contract dated May 15, 1963, which expired December 1, 1985. The contract is on file with the Commission as Applicant's FERC Gs Rate Schedule No. 377 certificated in Docket No. CI65-1383. Applicant states it is subject to substantionally reduced takes without payment. By letter dated August 6, 1986, Natural informed Applicant that effective August 31, 1986, deliveries to Natural would cease and any deliveries on or after September 1, 1986, would be deemed to be Applicant's acceptance of the NGPA section 104 minimum rate for Applicant's gas. Applicant states that the classification and the deliverability of the wells are as follows:

NGPA section 104 classification	Deliverability
Flowing gas	1.4 MMcf/d
Replacement & recompletion gas	2.9
1973-74 biennium gas	0.7
Post 1974 gas	0.1
	5.1 MMcf/d

Applicant states that it currently has no alternate dispositions for this gas.

[5] Applicant, a small producer certificate holder in Docket No. CS74-147, requests authorization to permanently abandon a sale of gas to United. Applicant states that United has ceased taking gas under their contract dated June 14, 1962, which is due to expire on July 1, 1990, and that United is not paying for gas not taken. Applicant states that the Grace B. Cook Gas Unit No. 1 qualifies for the NGPA section 108(a) rate, and that the total deliverability from the well is approximately 50 Mcf/day. Applicant states that it plans to perform production enhancement work on the well and to seek other meaningful markets for the gas.

[6] Additional information received September 24, 1986.

[7] *Et al* parties are: Aaron Giebel, Kaiser-Francis Oil Company, Bluesky Oil & Gas, Inc., and Petromark Minerals, Inc.

[8] Applicant, a small producer certificate holder in Docket No. CS76-858, requests authorization to permanently abandon a sale of gas to Natural. Applicant states that the contract dated June 1, 1977, which had a primary term which expired August 23, 1982, continued in effect until Natural exercised the right, by letter dated September 19, 1985, to terminate the contract effective October 31, 1985. Applicant states that Natural has conersed purchases of gas from the State "E" Com. Well No. 1 and has paid prices as implemented by the "market-out" and force majeure letters in effect from time to time. Applicant states that Natural recently advised Applicant that Natural could not commit to take, or pay for in lieu of taking, any gas from the well. Applicant states that the well is capable of a deliverability of approximately 300 Mcf per day, that the well is classified as NGPA section 104-Post 1974, and that Natural is not paying for gas not taken. Applicant states it anticipates entering into a new contract with Phillips 66 Natural Gas Company for sale of gas produced from the well.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-2293 Filed 10-8-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-63-005]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that Southern Natural Gas Company (Southern) on September 30, 1986, tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Volume No. 2 and First Revised Volume No. 2A. Southern states that on March 31, 1986 it filed a general rate increase in Docket No. RP86-63-000 to become effective on May 1, 1986. By its order issued April 30, 1986, the Commission accepted the proposed tariff sheets for filing and suspended their effectiveness until October 1, 1986, subject to certain conditions. In compliance with the Commission's April 30, 1986 order, Southern's filing reflects (1) the elimination of all costs associated with facilities that will not be in service as of September 30, 1986 and (2) elimination of the Block II rate in Rate Schedules OCD and OCDL.

The filing also reflects the current level of purchased gas costs as included in Southern's Purchased Gas Adjustment (PGA) filing of August 29, 1986.

Southern requests that the proposed tariff sheets be allowed to be substituted for the tariff sheets previously suspended by the Commission's order of April 30, 1986, in Docket No. RP86-63-000 and June 30, 1986, in Docket No. RP86-114-000. Since the proposed tariff sheets contain the same costs included in Docket No. RP86-63-000, modified in accordance with the Commission's April 30, 1986 order in that docket, Southern requests the Commission to grant such waivers as may be necessary to allow the proposed tariff sheets to become effective October 1, 1986.

Copies of this filing were served upon Southern's jurisidictional customers, interested state public commissions and all parties of record.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-22935 Filed 10-8-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA87-1-50-000, 001]

Valley Gas Transmission, Inc.; Change in Rates Pursuant to Purchased Gas Adjustment

October 6, 1986.

Take notice that on September 30, 1986, Valley Gas Transmission, Inc. ("Valley") tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tariff:

Thirty-fourth Revised Sheet No. 2A
to Original Volume No. 1
Seventh Revised Sheet No. 10
to Original Volume No. 2

Valley states that these tariff sheets, which are proposed to become effective on November 1, 1986 are being filed pursuant to the purchased gas cost adjustment provisions of its tariff. Valley further states that these proposed

changes reflect adjustments to its current surcharge adjustment and current gas cost adjustment, and that its filing has been served on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22936 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-49-000, 001]

Williston Basin Interstate Pipeline Co., Purchased Gas Cost Adjustment Filing

October 6, 1986.

Williston Basin Interstate Pipeline Company (Williston Basin), on September 30, 1986, submitted for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1
First Revised Sheet Nos. 10–11
Alternate First Revised Sheet No. 10
Original Volume No. 1–A
Second Revised Sheet No. 275
First Revised Sheet No. 275A–275B
Second Revised Sheet Nos. 276–277
Original Volume No. 2
Fourth Revised Sheet Nos. 10–11
Alternate Fourth Revised Sheet Nos. 10–11

The proposed effective date of the tariff sheets is November 1, 1986.

Williston Basin states that the filing consists of two separate computations. First Revised Sheet Nos. 10 and 11 (First Revised Volume No. 1) and Fourth Revised Sheet Nos. 10 and 11 (Original Volume No. 2) and the schedules in support thereof were computed in adherence to Williston Basin's PGA clause and the Commission's Rules and Regulations, except that "proxy" price levels are reflected in the current gas cost adjustment for those gas supply sources where contract amendments are being negotiated but are not yet signed. The use of such "proxy" pricing was allowed in Docket Nos. TA85–3–49–000, TA85–3–49–001, TA86–1–49–000, TA86–1–49–001 and TA86–2–49–000. the changes herein reflect a cumulative gas cost adjustment for Rate Schedules G–1, SGS–1, I–1 and X–1 of a negative 16.264 cents per dkt. The surcharge adjustment for Rate Schedules G–1, SGS–1 and I–1, which also reflects "proxy" pricing as allowed in the last PGA, is a negative 11.805 cents per dkt. These changes represent a net decrease in rates for Rate Schedules G–1, SGS–1 and I–1 of 25.090 cents per dkt and a net decrease of 7.115 cents per dkt for Rate Schedule X–1, from currently effective rates. Rate Schedule X–5 reflects a cumulative gas cost adjustment of a negative 16.501 cents per dkt, an increase of 3.889 cents per dkt.

Alternate First Revised Sheet No. 10 (First Revised Volume No. 1) and Alternate Fourth Revised Sheet Nos. 10 and 11 (Original Volume No. 2) and supporting alternate schedules represent the results of calculations, pursuant to special and significant facts and circumstances, and the therefore warrant special Commission consideration. As such, Williston Basin has requested waivers to vary from normal PGA procedures. It is these alternate tariff sheets, along with First Revised Sheet No. 11 (First Revised Volume No. 1) which Williston Basin respectfully requests the Commission to accept as part of its FERC Gas Tariff. The changes contained herein reflect a cumulative gas cost adjustment for Rate Schedules G–1, SGS–1, I–1 and X–1 of a negative 24.290 cents per dkt. The surcharge is a negative 11.805 cents per dkt to Rate Schedules G–1, SGS–1 and I–1. These changes represent a net decrease in rates to Rate Schedules G–1, SGS–1 and I–1 of 33.116 cents per dkt, and a net reduction for Rate Schedule X–1 of 15.141 cents per dkt, from currently effective rates. Rate Schedule X–5 reflects a cumulative gas cost adjustment of a negative 35.955 cents per dkt, a decrease of 15.565 cents per dkt.

Williston Basin has also included, pursuant to § 154.41, Second Revised Sheet No. 275, First Revised Sheet Nos. 275A–275B and Second Revised Sheet Nos. 276–277, Original Volume No. 1–A, to update its "Index of Purchasers."

Any person desiring to heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22937 Filed 10-8-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Notice of Cases Filed for the Week of September 5 Through September 12, 1986

During the Week of September 5 through September 12, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

September 25, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 5 through Sept. 12, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 21, 1986	Joseph A. Impersito, Washington, D.C.	KRZ-0044	Interlocutory. If granted: Joseph J. Impersito would be dismissed as a party in the Proposed Remedial Order proceeding involving Houston Oil & Refining, Inc. (Case No. HRO-0245).
Sept. 8, 1986	Barnhill Bolt Company, Albuquerque, NM	KFA-0052	Appeal of an information request denial. If granted: The August 28, 1986, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Barnhill Bolt Company would receive access to the quoted prices of the awardee (Brasco Fastening Service Center) on Contract No. 80-0085.
Do.	Exxon Company, U.S.A., Washington, D.C.	KFA-0053	Appeal of an information request denial. If granted: The August 7, 1986, Freedom of Information Request Denial issued by the Office of Management and Information System of the Economic Regulatory Administration would be rescinded and Exxon Company, U.S.A. would receive access to information associated with Ruling 1975–2, concerning application of the term "Class of Purchaser" under the former Petroleum Price Regulations.
Do.	Breen Oil Company, Inc., Bristol, CT	KEE-0070	Exception to the reporting requirements. If granted: Breen Oil Co., Inc. would no longer be required to file form EIA-782B "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Sept. 9, 1986	Dodd's Wholesalers, Inc., Cut Bank, MT	KEE-0071	Exception to the reporting requirements. If granted: Dodd's Wholesalers, Inc. would no longer be required to file form EIA-782B "Reseller/Retailer's Monthly Petroleum Product Sales Report."
Do.	Ronald Couch, Belen, NM	KFA-0054	Appeal of an information request denial. If granted: The July 31, 1986, Freedom of Information Request Denial issued by the Office of Safeguards and Security, Defense Programs, would be rescinded and Ronald Couch would receive access to information regarding the First Super Computer, Princeton, New Jersey, 1938.
Sept. 10, 1986	Coline, Pennzoil, Perry Gas/New York, Albany, NY	RM2-36, RM10-37, RM183-38	Request for modification/rescission in the Coline, Pennzoil and Perry Gas Refund Proceedings. If granted: The June 6, 1986 Decision and Order (Case Nos. RQ2-283, RO10-283 & RO183-280) issued to New York would be modified regarding the state's application for refund submitted in the Coline, Pennzoil and Perry Gas refund proceedings.
Do.	Penberthy Electromelt International, Seattle, WA	KFA-0055	Appeal of an information request denial. If granted: The August 7, 1986, Freedom of Information Request Denial would be rescinded and the Penberthy Electromelt International would receive access to certain DOE information.
Sept. 12, 1986	Beacon Oil Company Hanford, CA	KFX-0022	Supplemental order. If granted: The February 7, 1986 Decision and Order (Case No. HEF-0303) implementing refund procedures in the Beacon Oil Company refund proceeding would be modified regarding the volumetric factor applied in the refund proceeding.

Date received	Name of refund proceeding/ name of refund applicant	Case No.
9/11/86	The Koger Co.	RF270-20
9/11/86	Eastern N.J./Walter Frylberg	RF232-421
9/10/86	Dorchester/Petroleum Trading & Transport Co.	RF253-4
9/10/86	Dorchester/Air Space Oil Co	RF253-5
9/10/86	Dorchester/Savage Gas Co. Inc	RF253-6
9/3/86	Dorchester/Phillips Petroleum Co.	RF253-3
9/8/86	Marine/Kerr-McGee Corp	RF257-8
9/11/86	Santa Maria Valley Railroad Company	RF271-4
9/12/86	Blu-Gas Service, Inc.	RF270-27
9/12/86	Northeast/E.R. Warren Co. Inc.	RF214-3
9/8/86–9/12/86	Marathon Refund Applications	RF250-1255–RF250-1316
9/8/86–9/12/86	Mobil Refund Applications	RF225–10210–RF225-10237
9/8/86–9/12/86	Gulf Refund Applications	RF40-3362–RF40-3383
9/9/86	Crystal/Jack Chancellor	RF235-42
9/8/86	C.C. Dillon/Bethar Hill Texaco	RF145-8
9/8/86	Chattanooga Area Regional Transportation Authority	RF272-2
9/8/86	Amoco/Southern Bell Tel. & Tel. Co.	RF21-12625
9/8/86	Lee Cartage Co.	RF270-19
9/10/86	Gulf/Benavidas Gulf	RF40-3375
9/10/86	Gulf/Sadieville Gulf	RF40-3374
9/10/86	Gulf/Hastings Gulf	RF40-3373
9/10/86	Gulf/Falkik Gulf	RF40-3372
9/10/86	Gulf/Ninth Street Gulf Service	RF40-3376
9/10/86	Gulf/Keels Service	RF40-3378
9/10/86	Gulf/Callese Gulf	RF40-3377
9/10/86	Oceana/Kimberly-Clark	RF243-3
9/11/86	Lester Fellowe Co.	RF270-26
9/11/86	Lattevo Brothers, Inc.	RF270-35
9/11/86	H.J. Caller, Inc.	RF270-24
9/11/86	Yale Transportation Co	RF270-23
9/11/86	Munson Transportation	RF270-22
9/11/86	Inland Moving & Storage Co.	RF270-21
9/12/86	Conoco/Hunter Coal & Oil Co.	RF220-397
9/12/86	Conoco/Essex Oil Company	RF220-398
9/12/86	Tenneco/Essex Oil Company	RF7-142
9/12/86	Apalachicola Northern Railroad Co.	RF271-5

Date received	Name of refund proceeding/ name of refund applicant	Case No.
9/12/86	International Transportation Service.	RF270-28
9/12/86	Dorchester/Mobil Oil Corp.	RF253-8
9/12/86	Dorchester/Chevron USA, Inc.	RF253-7
9/8/86	Gulf/Guffman's Gulf Service	RF40-3382
9/8/86	Tenneco/Riverside Oil Co	RF7-140
9/4/86	Tenneco/Blackburn Service Co.	RF7-141
9/8/86	Northeast/Newport Electric Corp.	RF214-2
9/8/86	Delco/Redigas, Inc.	RF246-4
9/10/86	Eastern N.J./Mechamsnean Towers.	RF232-420
9/10/86	Amoco/Oglala Sioux Tribe	RQ21-325 RQ251-326
9/9/86	Gulf/Speer Oil Company	RF256-3
9/5/86	St. Marys Railroad Company	RF271-2
9/5/86	Beech Transportation Company	RF270-6
9/5/86	Forbes Refrigerated Transport, Inc.	RF270-7
9/5/86	Gulf/Rabbit Coal & Oil Company.	RF40-3361
9/8/86	Gulf/Alps Tire Service	RF40-3371
9/8/86	Gulf/Holiday Gulf Service	RF40-3361
9/8/86	Gulf/Cadiraus Gulf Service	RF40-3371
9/8/86	Gulf/Richville Fuel Co	RF40-3370
9/8/86	Gulf/Adams Fuel Co	RF40-3368
9/8/86	Gulf/Wilcox Grove Lumber & Coal Co.	RF40-3369
9/8/86	Gulf/Seabord Service	RF40-3365
9/8/86	Gulf/Agger Oil Co.	RF40-3364

[FR Doc. 86-22856 Filed 10-8-86; 8:45 am]

BILLING CODE 6450-01-M

Notice of Issuance of Decisions and Orders for the Week of August 4 Through August 8, 1986

During the week of August 4 through August 8, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 30, 1986.

Appeals

Richard L. Brewer, 8/4/86; KFA–0044

Richard L. Brewer filed an Appeal from a denial by the Director, Classification and Information Division, Albuquerque Operations Office, of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In that determination, the Director withheld an advance report of a security investigation of Brewer pursuant to Exemptions 5 and 7 of the FOIA (5 U.S.C. 552(b) (5) and (7)) because the investigation was incomplete. In considering the Appeal, the DOE found that

the premise cited for withholding the advance report, *i.e.*, that the investigation was ongoing, no longer existed. The DOE therefore remanded the matter to the Director with directions to release the report or issue a determination which justifies the withholding of the report pursuant to an FOIA exemption. Accordingly, the Appeal was granted in part.

National Resources Defense Council, 8/4/86; KFA–0045

The National Resources Defense Council filed an Appeal from a denial by the Freedom of Information Authorizing Official of the Office of Procurement Operations of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the documents were properly withheld under Exemption 4 of the FOIA because they were part of proposals for cooperative agreements and no final awards had been made. Accordingly, the Appeal was denied.

Remedial Orders

Sabine Refining and Trading Company, Inc., Stuart Van Eman, Clyde Wilson, 8/6/86; HRO–0130

Sabine Refining and Trading Co., Inc., Stuart Van Eman and Clyde Wilson (Sabine) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration issued to the firm and its officers on February 1, 1983. In the PRO, the ERA found that, during the period from May through August 1980 (the audit period), Sabine violated § 212.186 of the DOE regulations by reselling crude oil at a markup without providing any service or other function traditionally and historically associated with the resale of crude oil. The ERA further concluded that this conduct also violated §§ 210.62(c) and 205.202 of the DOE regulations. Pursuant to this theory of liability, the ERA concluded that Sabine's overcharges totalled $3,834,341.26. As an alternative theory of liability, the ERA alleged that during the audit period, Sabine's prices exceeded those permitted pursuant to §§ 212.182 and 212.183. The DOE concluded that the PRO should be issued in final form. The important issues discussed in the Decision and Order include (i) the procedural and substantive validity of § 212.186, (ii) whether Sabine provided traditional and historical services or functions in its crude oil sales, and (iii) whether Wilson and Van Eman could be held personally liable for the overcharges set forth in the PRO.

Texaco Inc./Economic Regulatory Administration, 8/1/86; DRO–0198, HRZ–0233

Texaco Inc. (Texaco) filed a Statement of Objections to a Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued to the firm on May 1, 1979. In the PRO, ERA alleged that during the period September 1973 through December 1976, and thereafter until the issuance of the PRO, Texaco charged prices in excess of lawful price levels of domestically produced crude oil, as determined under the DOE regulations set forth at 6 CFR Part 150, Subpart L and 10 CFR Part 212, Subpart D. In considering Texaco's objections to the PRO, DOE principally determined that (i) Texaco's general objections to DOE adjudication of the PRO should be denied; (ii) certain of Texaco's "property" determinations on its crude oil producing premises should be sustained on the basis of the original property definition and the severance tax accountability exception to the property definition; (iii) the stripper well property violations and other miscellaneous price violations alleged in the PRO should be sustained; and (iv) Texaco failed to show that the firm was entitled to any offsets of undercharges, or that the firm should not, as operator of the crude oil producing premises at issue in the PRO, be held liable for the full amount of overcharges. Accordingly, Texaco's Statement of Objections was granted in part and a final Remedial Order was issued to the firm in the amount of $235,484,738.37 plus interest. In addition, DOE denied a Motion to Accord No Weight filed by ERA in the proceeding, relating to certain evidence submitted by Texaco in support of its defenses to the PRO.

Thriftway Company, 8/7/86; HRO–0303

Thriftway Company (Thriftway) objected to a Proposed Remedial Order issued by the Economic Regulatory Administration alleging that during 1976 and 1977 the firm claimed small refiner bias (SRB) entitlements benefits for crude oil processed by another refiner pursuant to a processing agreement with Thriftway, thereby violating 10 CFR 211.67(e)(2). That regulation prohibits a small refiner from claiming SRB entitlements based on runs to stills where the crude oil was purchased from, and the resulting refined products were sold, directly or indirectly, to the processing refiner. DOE found that Thriftway directly or indirectly purchased the crude oil from, and sold the resulting refined product to, the processing refiner. Accordingly, the Proposed Remedial Order was issued as a final Remedial Order and Thriftway was directed to remit $670,923 plus interest to the DOE to compensate for its excess SRB entitlement benefits.

Motion for Discovery

Aweco, Inc./Billy K. Hargis, 8/5/86; HRD–0213

AWECO, Inc. and Billy K. Hargis (Respondents) filed a Motion for Discovery in connection with a Proposed Remedial Order (PRO) issued to the Respondents on June 7, 1983. In the PRO, the ERA alleges that AWECO, Inc. and Mr. Hargis miscertified crude oil in certain transactions in violation of the provisions of 10 CFR 212.131, 210.62(c) and 205.202. The ERA also charges in the PRO that the Respondents violated the "anti-layering" provisions of 10 CFR Part 212, Subpart L, in various transactions. Finally, the ERA alleges that during a period prior to the effective date of 10 CFR Part 212, Subpart L, the Respondents engaged in a practice of inserting themselves between two other resellers and selling the crude oil at a substantial mark-up to their customers while performing no role in the production, distribution, or refining of the crude oil it purchased and sold. This activity, it is alleged, violated 10 CFR 205.202 and 210.62(c).

In their Motion for Discovery, the Respondents sought information regarding (1) the audit of AWECO, Inc., (2) the manner in which the DOE computed interest charges in the PRO, and (3) the DOE's contemporaneous construction of the layering and certification regulations. In considering the request, the DOE found that after the initiation of the proceeding, the ERA had provided the Respondents with the audit workpapers to which they are entitled under OHA precedent. The DOE further concluded that the ERA had provided the Respondents with more than sufficient information to enable them to fully understand the ERA's contentions regarding the computations of interest as set forth in the PRO. Finally, the DOE determined that the Respondents did not even attempt to substantiate their allegations that the layering and certification regulations were ambiguous or applied inconsistently by the agency. Accordingly, the DOE found no basis for granting contemporaneous construction discovery to the Respondents. For the above reasons, the DOE denied the Respondents' Motion for Discovery.

Implementation of Special Refund Procedures

Gull Industries, Inc., 8/4/86; HEF–0064, HEF–0065, HEF–0066

The DOE issued a Decision and Order implementing a plan for the distribution of $1,101,123.19 received as a result of two consent orders and one letter of agreement entered into between the DOE and Gull Industries, Inc. The DOE determined that each escrow account should be handled separately and therefore established three procedures whereby purchasers of Gull petroleum products may apply for refunds. In Case Nos. HEF–0064 and HEF–0066 the DOE identified the specific Gull customers and the amounts by which they were allegedly overcharged during those consent order periods. The specified refund amounts will be granted to those identified customers who establish that they were injured by Gull's alleged pricing practices. In Case No. HEF–0065 the escrow fund will be distributed to Gull customers who did not already receive a refund from Gull as restitution for the alleged overcharges in that proceeding. Refunds will be calculated by using a per gallon volumetric amount for gallon of petrolem product purchased during the consent order period. In all three proceedings, end-users or firms whose refund claims are below $5,000 will not be required to provide a detailed showing of injury. The Decision outlines the specific information to be included in each application.

Ramos Oil Company, Inc. and Farstad Oil Company, 8/7/86; HEF–0159, HEF–0667

The DOE issued a Decision and Order implementing a plan for the distribution of $21,818.84 and $67,623.34 received as a result of consent orders which the DOE entered into with Ramos Oil Company, Inc. (Ramos) and Farstad Oil Company (Farstad), respectively. The DOE determined that the respective settlement funds should be distributed to customers that purchased Ramos covered products during the period, August 20, 1973 through January 27, 1981, and Farstad

covered products November 1, 1973 and April 30, 1974. The specific information to be included in Applications for Refund is set forth in the Decision.

Supplemental Order

Stripper Well Exemption Litigation, 8/4/86; KCX–0020

Pursuant to the Settlement Agreement approved by the United States District Court for the District of Kansas, the Office of Hearings and Appeals ordered $104 million of alleged crude oil overcharges disbursed from the DOE Deposit Fund Escrow Account. Fifty-one million dollars were disbursed to state governments and $53 million were deposited to the account of the federal government.

Refund Applications

Belridge Oil Company/Chevron U.S.A., INC., 8/6/86; RF124–0001

The DOE issued a Decision and Order concerning an Application for Refund filed by Chevron U.S.A., Inc. in the Belridge Oil Company special refund proceeding. Chevron had submitted a claim based on purchases of 929,772 gallons of product purchased from Belridge Oil Company, and its allocable share of the consent order funds was calculated to be $21,531. Chevron attempted to demonstrate injury by showing that Belridge's natural gasoline prices were higher than *Platt's* "low" prices adjusted downwards by 1.5¢. The DOE, however, could find no basis to assume that there had been a 1.5¢ differential between Belridge's propane and natural gasoline prices, particularly since *Platt's* "low" prices did not represent market average prices.

Instead, the DOE employed a three-step competitive disadvantage methodology that had been used in prior proceedings, and Chevron's the three measures of Chevron's range of competitive disadvantage were found to be $7,281 (the net excess cost), $7,713 (the gross excess cost), and $20,531 (the above market price volumetric share). Since two of the measures of Chevron's disadvantage were significantly lower than the others, the DOE found it appropriate to limit the firm's refund to $7,713, plus interest of $7,428.

Central Oil Company/Norton Center Garage, 8/8/86; RF209–3

The DOE issued a Decision and Order concerning an Application for Refund in the Central Oil Company special refund proceeding. The applicant, Norton Center Garage, was a reseller whose purchases of Central motor gasoline rendered it eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the applications under the standards specified in *Bayside Fuel Oil Depot Corp.*, 13 DOE ¶ 85,139 (1985). The refund granted totals $7,643, representing $4,932 in principal and $2,711 in interest.

Conoco Inc./Yoder Oil Co., Inc. Et Al. 8/5/86; RF220–29 et al.

The DOE issued a Decision and Order concerning twenty-three Applications for Refund filed by Yoder Oil Co., Inc., *et al.* Each of the applicants had purchased refined petroleum products from Conoco Inc., and each sought a portion of the settlement fund obtained by the DOE through a consent order with Conoco. All of the twenty-three firms applied for refunds based upon the procedures for filing small claims outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the applications, the DOE concluded that each of the twenty-five firms should receive a refund, based on its volumetric per gallon refund amount, as described in the Appendix to the Decision. The total amount of refunds granted was $28,614.

Crystal Oil Company/Hi-Test Gas Station et al., 8/7/86; RF233–001 Et Al.

The DOE issued a Decision and Order granting 19 Applications for Refund from the Crystal Oil Company escrow account filed by 15 resellers and 4 end-users of Crystal refined petroleum products. All of the applicants elected to apply based on the presumptions of injury regarding small claims (under $5,000) set forth in *Crystal Oil Co.*, 13 DOE ¶ 85,361 (1985). The amount of refunds granted was $144,611, representing $83,006 in principal and $61,603 in interest.

Good Hope Refineries/Ashland Petroleum Company and Allied Oil Company, 8/8/86; RF189–19, RF189–20

The DOE issued a Decision and Order concerning two Applications for Refund filed by Ashland Petroleum Company and Allied Oil Company, a division of Ashland, on the basis of procedures outlined in *Good Hope Refineries*, 13 DOE ¶ 85,105 (1985). The DOE initially determined that Ashland was a spot purchaser of Good Hope product and, under the spot purchases presumption, should be presumed not to have been injured by alleged overcharges. Although Ashland attempted to rebut this presumption, it did not claim that its purchases from Good Hope were resold at a loss. Since over 90% of Ashland's purchases occurred in months when its current banks of unrecouped costs were negative, it appeared as if the firm actually passed through more costs than it incurred. The DOE also determined that Allied Oil Company had failed to show that it was either a regular customer, or that any spot purchases made were not to the firm's own advantage. Both Ashland and Allied thus failed to prove injury, and their applications were therefore denied.

Good Hope Refineries/Ship Service Corporation, 8/8/86; RF189–9

The DOE issued a Decision and Order concerning an Application for Refund filed by Ship Service Corporation. The firm had applied for a refund based on the procedures outlined in *Good Hope Refineries*, 13 DOE ¶85,105 (1985). Although Ship Service Corporation was a spot purchaser of middle distillates from Good Hope, it did not prove that its purchases were resold at a loss or that the purchases were for any other reason disadvantageous. The firm's additional claim that the purchases were made in order to gain a long-term contract from Good Hope was found to be irrelevant, because the firm did not claim to have suffered any loss due to those purchases. The DOE, therefore, denied Ship Service Corporation's application.

Marathon Petroleum Company/Green's Marathon, Et Al., 8/6/86; RF250–151 et al.

The DOE issued a Decision and Order concerning 37 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The total amount of the refunds granted in this Decision is $28,564, representing $27,643 in principal and $921 in interest.

Mobil Oil Corporation/Arndt Oil Company Et Al., 8/4/86; RF225–1042

The DOE issued a Decision granting 79 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985). The DOE granted refunds totalling $20,193, representing $17,134 in principal and $3,059 interest.

Mobil Oil Corporation/Carolina Freight Carriers Corporation Et Al., 8/9/86; RF225–913 et al.

The Office of Hearings and Appeals granted 46 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applications were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. The total amount of the refunds granted was $8,077, representing $6,853 in principal and $1,224 interest.

Mobil Oil Corporation/Herbert W. Seiberg Et Al., 8/4/86; RF225–2336 Et Al.

The Department of Energy issued a Decision and Order granting refunds fromthe Mobil Oil Corporation deposit fund escrow account to 52 purchasers of Mobil motor gasoline. All of the refund applicants are retailers of motor gasoline who elected to apply for refunds under the applicable level-of-distribution presumption of injury outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,399 (1985). The total amount of refunds granted was $21,312 including accrued interests.

Mobil Oil Corporation/Jurgill's Service Station Et Al., 8/4/86; RF225–2792 et al.

The DOE issued a Decision granting 42 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.* 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $16,406, representing $13,916 in principal and $2,491 in interest.

Mobil Oil Corporation/Pelham Heights Service Station Et Al., 8/4/86; FR 225–39 et al.

The DOE issued a Decision granting 48 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers of Mobil motor gasoline. Each applicant elected to apply for a refund based upon the

presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $20,159 including accrued interest.

Mobil Oil Corporation/Robert L. Rhodes Et Al., 8/5/86; RF225-3312 et al.

The DOE issued a Decision and Order granting refunds from the Mobil Oil Corporation deposit fund escrow account to 48 purchasers of Mobil motor gasoline. All of the refund applicants are retailers of motor gasoline who elected to apply for refunds under the applicable level-of-distribution presumption outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,399 (1985). The total amount of refunds granted is $19,496, representing $16,510 in principal and $2,956 in interest.

Mobil Oil Corporation/Southbridge Tire Company Et Al., 8/7/86; RF225-5136 et al.

The Department of Energy issued a Decision and Order granting refunds from the Mobil Oil Corporation deposit fund escrow account to 50 purchasers of Mobil motor gasoline. All of the refund applicants are retailers of motor gasoline who elected to apply for refunds under the applicable level-of-distribution presumption outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,399 (1985). The total amount of refunds granted is $19,148, representing $16,240 in principal and $2,908 in interest.

Mobil Oil Corporation/Thomas Bell Jr., Et Al., 8/22/86; RF225-3858 et al.

The Department of Energy issued a Decision and Order granting refunds from the Mobil Oil Corporation deposit fund escrow account to 45 purchasers of Mobil motor gasoline. All of the refund applicants are retailers of motor gasoline who elected to apply for refunds under the applicable level-of-distribution percentage outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,399 (1985). The total amount of refunds granted is $19,450, representing $16,561 in principal and $2,889 in interest.

National Helium Corporation/District of Columbia and Standard Oil Company (Indiana)/District of Columbia, 8/5/86; RQ3-312, RQ251-313

The District of Columbia filed a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Orders establishing procedures for the disbursement of funds obtained under Consent Orders with National Helium Corp. and Standard Oil Co. (Indiana). The District proposed to use the refund to supplement funds already approved for a Residential Conservation Service Program. This program will promote on-site home energy audits. The District also plans to supplement funds already approved for a Commercial Apartment and Conservation Service Program which will reduce energy use in apartments and small commercial buildings. The OHA concluded that the District's restitutionary plan would benefit consumers of motor gasoline. Accordingly, a refund of $110,243 was approved.

Northwest Pipeline Corporation Enterprise Products Company, 8/4/86; RF116-3

Enterprise Products Company (EPC) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Northwest Pipeline Corporation (Northwest). The DOE found that EPC had purchased commercial butane, normal butane and propane from Northwest during the consent order period and that EPC was injured by those purchases. Using a three-step competitive disadvantage methodology, the DOE calculated a range of EPC's competitive disadvantage. A refund of $73,770.74 was found to equitably compensate EPC for any injury experienced as a result of Northwest's alleged overcharges. In addition, the firm received accrued interest of $34,272.39, for a total refund of $108,044.13.

Pride Refining, Inc./L&L, Inc. Et Al., 8/5/86; RF235-1 et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed in the Pride Refining, Inc. special refund proceeding. Of the ten applicants, five were resellers and five were end-users of Pride product. Three of the five reseller-applicants claimed purchase volumes which entitled them to a refund below the $5,000 small claims threshold. The two other reseller-applicants were eligible to receive refunds of greater than $5,000 but elected to limit their claims to the threshold amount in lieu of making a detailed showing of injury. In addition, several of the applicants claimed refunds for volumes of product purchased after the decontrol date for the product. These claims were adjusted accordingly. In its Decision, the DOE granted the Applications under the standards specified in *Pride Refining, Inc.*, 13 DOE ¶ 85,367 (1986). The refunds granted total $70,729, representing $55,360 in principal and $15,099 in interest.

Pride Refining, Inc./McCormick & Sons Oil Co., Inc., Menard, Inc. and Gypsum Transport, Inc., 8/7/86; RF235-10, RF235-122, RF235-15,

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Pride Refining, Inc. special refund proceeding. One of the applicants was a reseller of Pride petroleum products who was below the $5,000 small claims threshold, and two of the applicants were end-users. In each case, the applicants claimed a refund for Pride products purchased after the decontrol date for the product. These claims were adjusted accordingly. In its Decision, the DOE granted the Applications under the standards specified in *Pride Refining, Inc.*, 13 DOE ¶ 85,367 (1986). The refunds granted total $1,105, representing $865 in principal and $240 in interest.

Quaker State Oil Refining Corporation/DAHL Oil Company, Inc., Et Al., 8/5/86; RF213-0015 et al.

The DOE issued a Decision and Order concerning 33 Applications for Refund filed by resellers of Quaker State Oil Refining Corp. refined petroleum products. Each applicant presented evidence that it purchased refined petroleum products from Quaker State during the consent order period and claimed a refund at or below the $5,000 small claims threshold level. According to the methodology set forth in *Quaker State Oil Refining Corp.*, 13 DOE ¶ 85,211 (1985), each applicant was found to be eligible for a refund from the Quaker State consent order fund based on the volume of its purchases times the volumetric refund amount. The refunds approved totalled $76,439.

Standard Oil Company (Indiana)/Wyoming, Belridge Oil Company/Wyoming and Palo Pinto Oil and Gas/Wyoming, 8/8/86; RQ21-295, RQ8-296, RQ5-296

The State of Wyoming filed a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Orders establishing procedures for the disbursement of funds obtained under consent orders with Standard Oil Co. (Indiana) (Amoco), Belridge Oil Co. and Palo Pinto Oil and Gas. Wyoming proposed to use the refunds to fund traffic light synchronization in major Wyoming cities and fleet maintenance operations for public and private vehicle fleets. The OHA approved the fleet maintenance project for private fleets only and fully approved the traffic light synchronization project. The OHA concluded that Wyoming's proposed restitutionary plan would benefit consumers of motor gasoline who were injured by the alleged overcharges settled by the aforementioned consent orders. Accordingly, a refund of $127,977 was approved.

Wallace & Wallace Fuel Oil Company/Carib Oil Company, Inc., 8/5/86; RF09-3

The DOE issued a Decision and Order concerning an Application for Refund filed by Carib Oil Company, Inc., on the basis of procedures outlined in *Wallace and Wallace Fuel Oil Co.*, 12 DOE ¶ 85,122 (1984). Following a request by Carib, the DOE relied on evidence of volume purchases found in the Wallace audit file and determined that Carib's submission was sufficient. A refund of $7,763, representing $4,191 in principal and $3,572 interest, was therefore granted. However, Carib's predecessor, East 51st Street People's Fuel Oil, owed corporate taxes for the year 1961, and the IRS had filed a Notice of Lien claiming the refund. As outlined in Chapter 64 of the Internal Revenue Code, the refund amount due to Carib was therefore directed to the IRS in partial satisfaction of that lien.

Dismissals

The following submissions were dismissed:

Company Name	Case No.
Central Filling Station	RF225-3435, RF225-3436, and RF225-3437
Hoffman Oil Company	DRF40-3223
Keystone Amoco, Inc.	DRF21-12801
Lenawee Fuels, Inc.	DKEE-0058
Magness Mobil Service	DRF225-3642
Stallings Oil Company	DRF213-23
Sunflower Electric Cooperative, Inc.	DRF235-3
System Fuels, Inc.	DRF225-5
Vanguard Petroleum	DRF192-15

[FR Doc. 86-22857 Filed 10-8-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for refunding to adversely affected parties $108,500 obtained as a result of consent orders which the DOE entered into with the following firms:

Ferrell Companies, Inc. of Liberty, Missouri.
Lakes Gas Company, Inc. of Forest Lakes, Minnesota.

The funds are being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of either the Ferrell or the Lakes consent order fund must be filed in duplicate within 90 days of publication of this notice in the Federal Register. Applications should refer to the appropriate case number, HEF-0567 for Ferrell, and HEF-0112 for Lakes. Address applications to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Jacqueline A. MacDonald, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision explains the procedures that the DOE has formulated to distribute to adversely affected parties the $108,500, plus accrued interest, that the DOE obtained under the terms of consent orders entered into with Ferrell Companies, Inc. and Lakes Gas Company, Inc. Ferrell and Lakes provided these funds to settle all claims and disputes with the DOE regarding the manner in which each firm applied the federal price regulations to its sales of propane. The Ferrell consent order covered the firm's propane sales between October 1, 1973, and January 27, 1981; the Lakes consent order covered the firm's propane sales between November 1, 1973, and February 29, 1980. Firms or individuals that purchased propane from Ferrell or Lakes during these time periods may be eligible to receive a portion of the consent order funds.

The DOE solicited comments concerning distribution of the consent order funds in two Proposed Decision and Orders, one for the Lakes case issued on February 7, 1986, and one for the Ferrell case issued on March 7, 1986. 51 FR 5,800 (February 18, 1986). 51 FR 9,255 (March 18, 1986). Following this, the DOE determined the final refund application procedures. As the Decision explains, the DOE audit of Lakes identified one individual who may be eligible for a refund. To receive a refund, this individual must submit either a schedule of its monthly purchases from Lakes, or a statement verifying that it purchased propane from Lakes and is willing to rely on the data in the audit files. The Decision also describes the process by which purchasers not identified in the DOE audits may apply for refunds. These unidentified purchasers must submit monthly schedules of their propane purchases from Ferrell or Lakes, and proof that they were injured by Ferrell's or Lakes' alleged pricing violations. Applicants claiming $5,000 or less need only document their purchase volumes.

The specific information required in an Application for Refund is set forth in the Decision and Order. Applications will be reviewed provided they are filed within 90 days of the publication of this Decision and Order in the Federal Register.

Dated: September 30, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 30, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Ferrell Companies, Inc., Lakes Gas Company, Inc.
Dates of Filing: June 4, 1986, October 13, 1986.
Case Numbers: HEF-0567, HEF-0112.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Lakes Gas Company, Inc. (Lakes); on June 4, 1986, ERA filed a similar Petition regarding a consent order entered into with Ferrell Companies, Inc. (Ferrell).[1] This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to those consent orders.

I. Background

Ferrell is a "reseller-retailer" of covered products and Lakes is a "retailer" of propane as these terms were defined in 10 CFR 212.31. Ferrell is located in Liberty, Missouri; Lakes is located in Forest Lake, Minnesota. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a consent order with DOE.[2] The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. In addition, each consent order states that the subject firm does not admit that it committed any such violations. A brief discussion of other pertinent matters covered by each consent order follows.

In the Ferrell proceeding, the DOE audit alleged that between October 1, 1973 and January 27, 1981, the firm committed pricing violations in its sales of propane. (The audit involved only two of the corporation's subsidiaries: Ferrellgas, Inc. and Propane Industrial, Inc.) The Ferrell consent order, executed on December 12, 1984, settled all claims and disputes between Ferrell and the DOE regarding the firm's propane sales during the period covered by the audit. Under the terms of the consent order, Ferrell was required to deposit $100,000 into an interest-bearing escrow account for ultimate distribution by the DOE. Ferrell remitted this sum on December 12, 1984.[3]

Likewise, the DOE audit of Lakes alleged that between November 1, 1973 and February 29, 1980, Lakes committed pricing violations in its sales of propane. The Lakes consent order, executed on April 17, 1980, settled all claims and disputes between Lakes and the DOE regarding the firm's propane sales during the period covered by the audit. The consent order required Lakes to refund $50,000 plus accrued interest to its customers. Through a series of price reductions, Lakes refunded all but $9,925. At that point, Lakes and the DOE negotiated a final settlement in which Lakes agreed to deposit $8,500 into an interest-bearing escrow account for ultimate distribution by the DOE. Lakes remitted this sum of June 11, 1981.[4]

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[1] The subsidiaries of Ferrell Companies, Inc., a Kansas corporation, are: Ferrell Companies, Inc., a Delaware corporation; Sentry Underground Storage Company; Indian Wells Oil Company; FCI, Inc.; Propane Industrial, Inc.; Ferrell Leasing Corporation; Indian Wells Production Company; Ferrell Securities, Inc.; One Liberty Plaza, Inc.; One Liberty Plaza Real Estate, Inc.; and Ferrellgas, Inc. For purposes of this proceeding, any reference to Ferrell includes its subsidiaries.

[2] The Ferrell consent order does not resolve the claims pending in Indian Wells Oil Company, Case No. HRO-0075, nor does it eliminate any liability Ferrell may have in that case based on any ownership interest which Ferrell may hold in Indian Wells.

[3] As of August 31, 1986, the total value of the Ferrell escrow account was $113,859, representing $100,000 in principal and $13,859 in accrued interest.

[4] As of August 31, 1986, the total value of the Lakes escrow account was $10,898, representing $8,500 in principal and $4,398 in accrued interest.

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which OHA may use to formulate and implement a plan to distribute funds received as the result of an enforcement proceeding are set forth in 10 CFR Part 205, Subpart V. The Subpart V procedures may be used in situations where the DOE is unable either to readily identify those persons who might have been injured by any alleged overcharges or to ascertain the amount of such injuries. For a more detailed discussion of Subpart V and the authority to fashion refund procedures, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶82,597 (1981).

OHA issued Proposed Decisions and Orders (PD&Os) in the Lakes and Ferrell proceedings on February 7, 1986 and March 7, 1986, respectively. 51 FR 4,800 (February 18, 1986); 51 FR 9,255 (March 18, 1986). The PD&Os outline tentative plans for distributing refunds to parties that show that they were injured by the alleged overcharges in the firms' propane sales during the respective consent order periods. The PD&Os state that the basic purpose of a special refund proceeding is to make restitution for injuries experienced as a result of actual or alleged violations of the DOE regulations.

In order to notify all potentially affected parties, copies of the Proposed Decisions were published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, copies of the PD&Os were sent to purchasers identified in the ERA audits and various petroleum dealers' associations. No comments were received regarding the Lakes case. However, comments were submitted in the Federal proceeding collectively on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia concerning the distribution of any funds remaining after refunds have been made to injured parties. At this time, we will not address comments regarding such second-stage refunds. Procedures for apportioning remaining monies will depend upon the size of the fund. *See Office of Enforcement*, 9 DOE at 85,055. Since we received no comments concerning the first stage procedures in either case, we will adopt them as proposed.

III. Refunds to Identifiable Purchasers

In the first stage of the Ferrell and Lakes refund proceedings, we will distribute the funds in the escrow accounts to claimants that demonstrate that they were injured by the alleged overcharges.[4] To be eligible to receive a refund, a purchaser must file an application and, with the three exceptions discussed below, show the extent to which injury resulted from the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the monies in the appropriate consent order fund.[5]

As in previous special refund cases, we will adopt two rebuttable presumptions and two findings regarding injury. First, we will presume that purchasers of Ferrell or Lakes propane that are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. In the absence of compelling material, we will also presume that spot purchasers were not injured. In addition, we find that end-users or ultimate consumers of Ferrell or Lakes propane whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Finally, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Ferrell or Lakes propane and passed the alleged overcharges associated with that product through to their end-user members. These presumptions and findings permit claimants to apply for refunds without incurring prohibitively high expenses. Prior OHA decisions explain additional reasons for adopting these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶ 85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the PD&Os. 51 FR 9,255 at 9,256–57 (March 18, 1986); 51 FR 5,800 at 5,801–02 (February 18, 1986).

Since all of Lakes' customers are end-users or ultimate consumers, and since the Lakes escrow amount is small, Lakes' customers need not include detailed proof of injury in their refund applications.

In the Ferrell case, however, a reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury.[7] While there are a variety of methods for making such a showing a claimant is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, and (ii) that market conditions did not permit it to pass on the increased costs to its customers in the form of higher prices.

IV. Calculation of Refund Amounts

In both the Ferrell and Lakes proceedings we will use a volumetric method to compute the refunds to eligible applicants. This method presumes that the alleged overcharges in each case were spread equally over all the gallons of propane covered by the respective consent orders. Under the volumetric method, a claimant will be eligible for a refund equal to the number of gallons of Ferrell or Lakes propane that it purchased during the consent order period times the appropriate volumetric factor. Successful claimants will also receive a proportionate share of the interest that has accrued on the appropriate escrow account. The volumetric factor, or average per gallon refund, equals $0.000153 in the Ferrell case and $0.00141 in the Lakes proceeding.[8] A claimant may not receive a refund based upon volumes for which Ferrell or Lakes has already made restitution, whether through price rollbacks or direct payments.

We recognize that a particular purchaser could have absorbed a disproportionate share of the alleged overcharges. Any purchaser which can make such a showing may file a refund application based on such a claim.

As in previous cases, we will process only claims for at least $15. We have found in the past that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims in either of the two proceedings exceed the funds available in the particular escrow account, all refunds in that proceeding will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

V. Applications for Refund

Through the procedures described above, we will be able to distribute the Ferrell and Lakes consent order funds as equitably and efficiently as possible. Accordingly, we will now accept Applications for Refund from individuals and firms that purchased Ferrell propane during the period October 1, 1973, through January 27, 1981, or Lakes propane between November 1, 1973, and February 29, 1980. Eligible applicants include subsequent repurchasers as well as first purchasers.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of Ferrell or Lakes propane during the appropriate consent order period along with any relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the propane was originally sold by Ferrell or Lakes;

(2) whether the applicant has previously received a refund, directly or through price rollbacks, with respect to the alleged overcharges identified in the ERA audit underlying the proceeding in which it is claiming a refund;

(3) whether there has been a change in ownership of the firm since the consent order period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating the they do not claim a refund;

(4) whether the applicant is or has been involved as a party in any DOE enforcement proceedings of private actions filed under 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) the name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to the appropriate case number (HEF–0587 for Ferrell or HEF–0112 for Lakes) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585.

It is Therefore Ordered That:

(1) Applications for Refund from the funds submitted to Department of Energy by Ferrell Companies, Inc. pursuant to the Consent Order executed on December 12, 1984, may now be filed.

(2) Applications for Refund from the funds remitted to Department of Energy by Lakes Gas Company, Inc. pursuant to the Consent Order executed on April 17, 1980, may now be filed.

(3) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

George B. Breznay,

Director, Office Hearings and Appeals.

Dated: September 30, 1986.

[FR Doc. 86–22858 Filed 10–8–86; 8:45 am]

BILLING CODE 6450–01–M

[4] In its audit of Lakes, the DOE identified one allegedly overcharged first purchaser—Mr. Thurnbeck of Forest Lake, Minnesota. Based on the information contained in the audit files, he is entitled to 1.955 percent of the settlement, which equals $127, plus accrued interest.

[5] On December 26, 1974, Ferrell signed and Accord and Satisfaction with the FEA regarding alleged overcharges on Ferrell's propane sales to Lyons Diecasting, a wholesale customer of Ferrellgas, Inc. Ferrell remitted $12,500 to the FEA to settle this dispute. Lyons Diecasting will therefore be precluded from receiving a refund in this proceeding.

[7] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,398. *See also* Office of Enforcement, 10 DOE ¶85,029 at 88,122 (1982) (Ada).

[8] The Ferrell volumetric is computed by dividing the $100,000 escrow principal amount, plus the $12,500 already refunded to Lyons Diecasting, by the 733,366,000 gallons of propane that Ferrell sold during the consent order period. The Lakes volumetric is calculated by dividing the $50,000 original consent order settlement by the estimated 35,500,000 gallons of propane that Lakes sold during the consent order period.

In both calculations, the dollar value of the dividend includes Ferrell's and Lakes' direct and price rollback refunds, as well as the appropriate escrow amounts. This modified method of calculating the volumetrics is appropriate since volumes for which refunds were already paid may not form the basis for a refund in this proceeding. *See* Beacon Oil Company, 14 DOE ¶_____, No. KFX–0022 (September 26, 1986).

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a total of $100,000 (plus accrued interest) in consent order funds to members of the public. The funds are being held in escrow pursuant to a consent order involving Amber Refining Inc. (formerly Winston Refining Company), a refiner located in Forth Worth, Texas.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Number HEF–0589.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by Winston Refining Company (Winston) of Forth Worth, Texas, which settled possible pricing violations in the firm's sales of covered petroleum products during the period August 19, 1973 through January 27, 1981.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute funds remitted by Winston and being held in escrow. The DOE has tentatively decided that the funds should be distributed in two stages in the manner utilized with respect to other consent order funds.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth in the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: October 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

October 2, 1986.

Name of Firm: Winston Refining Company.

Date of Filing: July 19, 1985.

Case Number: HEF–0589.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) of the DOE may petition the Office of Hearings and Appeals (OHA) to formulate and implement special refund procedures in order to remedy the effect of alleged violations of the DOE price and allocation regulations. See 10 CFR Part 205, Subpart V. The ERA filed such a petition on July 19, 1985 requesting that OHA establish special refund procedures for the distribution of monies received pursuant to a consent order entered into by the DOE and Winston Refining Co. (Winston) of Fort Worth, Texas.[1]

I. Background

Winston is a "refiner" of crude oil as that term was defined in 10 CFR 212.31. During the relevant time period, Winston was subject to the Mandatory Petroleum Price Regulations, and specifically to the refiner price rule provisions of 10 CFR Part 212, Subpart E. An ERA audit of Winston's business records uncovered probable violations of the price regulations with respect to Winston's sales of refined petroleum products during the period from August 19, 1973 through January 27, 1981 (the audit period). In order to settle all claims and disputes between Winston and the DOE regarding Winston's compliance with DOE price regulations in sales of covered products during the audit period (hereinafter referred to as the consent order period), the DOE and Winston entered into a consent order, effective December 30, 1983, in which Winston agreed to pay $100,000 to the DOE.[2]

[1] References in this proceeding to Winston Refining Company also refer to Amber Refining, Inc. and Fort Worth Refining Co. (Winston's successor and predecessor firms, respectively).

[2] The consent order does not apply to Winston's compliance with the DOE allocation regulations, including the Crude Oil Entitlements Program.

According to the ERA's July 19 Petition, Winston has complied with the terms of the consent order. The $100,000 paid by Winston is currently being held by the U.S. Treasury in an interest-bearing escrow account pending distribution by the DOE.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds where appropriate. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶82,553 (1982); *Office of Enforcement*, 9 DOE ¶82,508 (1981); *Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Winston consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

We propose to establish a claims procedure whereby claimants who demonstrate that they were injured as a result of Winston's pricing practices during the consent order period will be eligible to receive a refund.[5]

A. *Showing of Injury.* We propose that claimants who resold petroleum products purchased from Winston be required to demonstrate that they did not pass on to their customers the price increases implemented by Winston. Accordingly, in order to qualify for a refund, a reseller claimant (including retailers and refiners) must show that it would have maintained its prices for the product purchased from Winston at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased covered products from Winston, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶85,168 (1985); *Texaco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶85,009 (1982). In addition, a reseller will be required to show that it had "banks" of unrecovered increased product costs in order to demonstrate that it did not recover the increased costs associated with the alleged overcharges by increasing its prices.[6] The maintenance of banks will not, however, automatically establish injury. *See, e.g., Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶85,014 (1982).

B. *Applicants Claiming a Refund of $5,000 or Less.* In the present case, we propose to adopt a presumption of injury which has been used in many previous special refund cases. We will presume the reseller applicants who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of petroleum products from Winston. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs or to show that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶85,116 (1984); *Marion Corp.*, 12 DOE ¶85,114 (1984); (Marion). We propose to adopt such a procedure in this case. Therefore, any applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.[8]

C. Spot Purchasers

We further propose that resellers who made spot purchases from Winston be ineligible to receive a refund, even a refund at or below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser tends to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of Winston petroleum products at increased prices unless it was able to pass through the full amount of the alleged overcharges to its own customers. *See Vickers*, 8 DOE at 85,396–97. Accordingly, a firm which made only spot purchases from Winston will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured as a result of its spot purchase(s) from Winston. *See, e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶85,170 (1986).

D. End-users

We will not require end-users or ultimate consumers whose businesses are unrelated to the petroleum industry to make a detailed showing of injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶85,069 at 86,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Id.* We have therefore concluded that end-users of Winston's covered products need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased Winston's covered products for consumption as fuel will not be considered end-users for the purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶85,188 (1985).

E. Calculation of Refund Amounts

We propose to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all of the gallons of the consent order product(s) sold by a consent order firm. *See, e.g., Vickers.* The per gallon volumetric factor is equal to the consent order amount divided by the total volume of covered products which Winston sold during the consent order period.[9] In this case, the volumetric factor equals $0.00013 ($100,000 divided by 769,031,886 gallons). Refunds will be calculated by multiplying the volumetric factor by the total volume of the covered products purchased by the applicant during the consent order period deemed eligible for refunds. The interest that has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

As in previous cases, we propose to establish a minimum refund amount of $15 for first step claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1985).

Refund applications in the Winston proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Winston Consent Order, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

In the event that money remains after all first stage claims have been processed, undistributed funds could be disbursed in a number of different ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by Winston Refining Company pursuant to the Consent Order executed on December 30, 1983, will be distributed in accordance with the foregoing Decision.

Appendix

Alvarado Oil Company
Advance Petroleum Dist. Co.
Alkek Oil Corporation
Astro Gas & Oil, Inc.
D. W. Ball Oil Company
B & B Petroleum Products
Bob-O-Link Oil Company
Bolivar Oil Company
J.H. Briscoe Oil Company
James Browder Oil Company
Marvin Browder Oil Company
R.E. Buckley Oil Co., Inc.
Carroll & Perkins Oil Co.
Christopher Oil Company
Caruthers Oil Co.
Cleburne Oil Co.
County Line Service Station
Dee and Dee Oil Co.
East Texas Petroleum, Inc.
Dixie Petroleum Company
Enderby Gas Company
Erwin Oil Company
Enterprise Products Inc.
Felts Distributing Company
Foremost Petroleum Co. Inc.
Forth Worth Butane Gas Co.
General Fuel Oil Co.
W.L. Gipson
Guthrie Oil Company
Gas House Company
Stratoflex Inc.
Hampton Molasses Company
Hampton Oil Co.
H–M–M Distributing Corp.
Bob Hams Oil Company
Coastal Transport Co., Inc.
Home Petroleum Corporation
Hi-Low Corporation
Tauber Oil Company
Barney Holland Oil Co.
Hollis Distributing Company
Independent Oil Company
Industrial Fuels, Inc.
J-Mc Oil Company
Krum Oil Company
Kemp Oil Company
Lone Star Gas Company
Paul Little Distributing
M&A Petroleum Company
Jack Long
Magic City Petroleum Co., Inc.
Marco Distributors
Michener Oil Co.
M & M Oil Co.
Nu-Way Oil Company
Oils Unlimited
Petroleum Industries, Inc.
Petroleum Products Dist.
Pioneer Oil Company
Powell Grain & Gin Co.
Quality Oil Company
Ed Prather
Red Hat Oil Company
C.B. Rogers, Jr.
Paul Rogers
Sanger Oil Company
Sello Petroleum Co.
Southwest Oil & Gas Co.
Solvent Specialty Co.
Spindor Bros. Tire Co.
Supreme Oil Dist. Co.
Teague Oil Company
Thomes Oil Distributing Company
Thrift Oil Company
Thrift Mart, Inc.
Thunderbird Petroleum Company
United Petroleum Company
Union Texas Petroleum
Western Commercial Transport
Astro, Inc.
Permian Corporation
V.A. Hospital (Dallas)
General Fuel Oil Company
Southern Asphalt Company
Texas Creosote Company
Dallas Power & Light Co.
Texas Electric Service Company
Wright Asphalt Company
Trumbull Asphalt Co.
H.L. Gage
L.P.G., Inc.
Pride Refining, Inc.
Longview Refining Company
Crystal Oil Co.
Wood County Refining Co.
Tenneco Oil Co.
Triangle Refineries, Inc.
Vickers Petroleum Company
Sun Oil Company
Humble Oil and Refining Co.
Mobil Oil Corporation
M.K.T. Railroad
C.R.I.&P. Railroad
A.T.&S.F. Railroad
Fort Worth Petroleum Prod. Corp.
Carswell A.F.B.
Exxon Corporation
General Dynamics
Naval Air Station (Grand Prairie)
Continental Oil Company
Grand Forks A.F.B.
Southwest Airmotive
Bell Oil & Gas Co.
Barksdale A.F.B.
H.T. Dodson
Fort Hood
Fort Walters
Sheppard A.F.B.
Biggs Field
Vance A.F.B.
Bob Harris Oil Co.

[FR Doc. 86–22859 Filed 10–8–86; 8:45 am]

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[5] Information in the Winston audit file indicates that three Winston customers, McLean Trucking Company, E-Z Serve Inc., and Energy Specialist, Inc., are firms which had corporate affiliations with Winston. On the basis of this information, we believe it is appropriate to establish a rebuttable presumption that these firms were not injured by Winston's alleged overcharges and therefore should receive no refund in this proceeding. *See Warren Holding Co./Puritan Oil Co.*, 13 DOE ¶85,337 (1985). Similarly, we also propose that Basin Products, Inc., a firm which served as Winston's sales agent during portions of the consent order period, should be excluded from participation in this proceeding. A list of other Winston customers identified in the audit file is attached as an Appendix.

[6] Some of the motor gasoline sales covered by the Consent Order occurred subsequent to the amendments of the reseller/retailer price rule that eliminated the bank requirement for retailers and most resellers. *See* 10 CFR 212.93(a)(2), 44 FR. 42542 (July 19, 1979) (effective July 15, 1979); 45 FR. 20640 (May 2, 1980) (effective May 1, 1980). Accordingly, retailers and most resellers will not be required to submit bank information concerning any purchases of motor gasoline they may have made after July 15, 1979 and May 1, 1980, respectively.

[8] As in prior refund cases, resellers whose calculated refund exceeds the threshold amount may elect to apply for a refund of $5,000 without being required to make a detailed demonstration of injury.

[9] The volumetric method, which attributes injury on a uniform basis to each gallon of covered product sold, recognizes that the computation of specific overcharges in individual transactions is extremely difficult. In any event the consent order was intended to resolve the DOE allegations by means of a negotiated settlement. A continuation of the attempt to establish specific overcharge amounts would therefore be contrary to the purposes of the consent order. Since the volumetric method places all refund claimants on an equal footing and is relatively easy to administer, previous special refund Decisions have concluded that it is equitable, efficient, and the best general method of distributing refund monies. *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,198–99 (1982).

Continued

Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $450,000.00 (plus accrued interest) obtained as the result of a consent order between the DOE and UPG, Inc. (formerly known as P&O Falco, Inc.) The funds will be distributed to refund applicants who purchased products other than crude oil from Falco during the settlement period (August 1, 1973 through January 27, 1981).

DATE AND ADDRESS: Applications for refund must be filed in duplicate by February 1, 1987 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should display a conspicous reference to Case Number KEF–0028.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney Office of Hearings and Appeals, 1000 Independence Avenue SW, Washington, DC 20585 (202) 252–2390 (Wieker) or (202) 252–2400 (Bleiweiss).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the

Decision and Order set out below. The Decision and Order sets forth the procedures and standards that the DOE has formulated to distribute monies obtained from UPG, Inc. (UPG) formerly known as P&O Falco, Inc. (Falco). UPG entered into a Consent Order to settle disputes regarding Falco's compliance with the federal petroleum price and allocation regulations during the period August 1, 1973 through January 27, 1981. Under the terms of the Consent Order, UPG remitted $450,000.00 which is being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has decided that the UPG-Falco settlement fund will be distributed through a two-stage refund proceeding. The first stage will refund monies to customers who purchased Falco products Falco products during the settlement period. The specific requirements which an applicant must meet in order to receive a refund vary depending on a number of factors (e.g., the size of the refund amount which the applicant is claiming and the applicant's position in the supply chain). These specific requirements are set out in section II of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons which they purchased from Falco. After meritorious claims are paid in the first stage, second stage refund procedures may become necessary to distribute any remaining funds.

Applications for refund may now be filed. Applications will be accepted provided they are filed at the address set forth at the beginning of this notice no later than February 1, 1987. Additional information is provided in the Decision and Order.

Dated: October 1, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 1, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Case: UPG, Inc. (Formerly Known as P&O Falco, Inc.)

Date of Filing: April 3, 1986

Case Number: KEF-0026

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations. On April 3, 1986 the ERA requested that the OHA formulate and implement procedures to distribute $450,000 which it received pursuant to a settlement with UPG, Inc. (UPG), formerly known as P&O Falco, Inc. (Falco).

This decision contains the OHA's plan for distributing the UPG/Falco settlement fund. Of special interest to potential refund applicants is Section II which explains the proposed requirements for refund eligibility. Since the specific requirements which an applicant must meet will vary depending on a number of factors (e.g., the size of the refund amount which the applicant is claiming and the applicant's position in the supply chain), we have set out the specific requirements applicable to each type of applicant in Section II (A). A claimant should take note of those requirements applicable to its particular circumstances. These specific requirements are followed in Section II (B) by a discussion of general requirements applicable to all UPG refund applicants.

I. Background

UPG, a Delaware corporation, is the corporate successor of Falco, a company whose operations were centered in Louisiana. During the period covered by the settlement (August 1, 1973 through January 27, 1981), Falco refined crude oil and resold crude oil and covered products. Therefore, Falco was subject to the federal petroleum price and allocation regulations.

The ERA and UPG entered into a Consent Order on December 21, 1985, resolving all pending and potential disputes concerning Falco's compliance with the applicable DOE regulations. Pursuant to the Consent Order UPG has paid $450,000 to the DOE. These monies have been deposited in an interest-bearing escrow account pending ultimate disposition by the DOE.

On July 3, 1986 the OHA issued a Proposed Decision and Order setting forth a tentative plan for distributing the UPG/Falco settlement fund. 51 FR 25397 (July 14, 1986). The Proposed Decision noted that although, on its face, the UPG Consent Order purports to settle disputes regarding Falco's sales of both crude oil and refined products, the DOE audit files support a finding that the entire Consent Order amount is attributable to Falco's sales of refined products only.[1]

[1] The DOE audit file indicates that the $450,000 refund amount obtained from the UPG settlement negotiations resulted from Falco's alleged overcharges for refined products and not from Falco's crude oil activities. Telephone conversation between Irene Bleiweiss, Staff Attorney, Office of Hearings and Appeals and Terry Pate, ERA Houston (June 19, 1986). Memorandum to Settlement File from Sandra K. Webb, Director, ERA Houston (December 20, 1985).

When consent orders cover both crude oil and refined products we generally divide the settlement amount into separate crude oil and non-crude oil refund pools. *E.g., True Oil Co.*, 13 DOE ¶85,178 (1985). However, in light of the facts above we believe it is appropriate to allocate the entire settlement amount to a single non-crude oil refund pool.

Therefore, we proposed to treat the entire settlement amount as monies obtained to settle non-crude oil overcharges.

To distribute these settlement monies, we proposed to use a two-stage process. During the first stage we proposed to distribute funds to identifiable purchasers of Falco products who could demonstrate that they were injured by the firm's pricing practices during the settlement period. We stated that if funds remain after the first stage is completed, a second-stage refund procedure may become necessary.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the Federal Register and comments to the proposed refund procedures were solicited. Comments were filed on behalf of the States of Arkansas, Delaware, Iowa, North Dakota, Rhode Island, Utah, West Virginia, and Pennsylvania concerning the distribution of any funds remaining after refunds have been made to identifiable parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the UPG/Falco refund proceeding. The procedure used to distribute any monies remaining after this first stage will necessarily depend on the size of the fund. Therefore, it would be premature for us to address the States' comments at this time. Since no comments were received concerning the first-stage procedures, they will be adopted as proposed.

II. Refund Procedures

This Section of our Decision will outline the presumptions which we are adopting and the showing which each type of refund applicant must make in order to receive a refund. The general presumptions we are adopting are set out in Subsection (A). The filing requirements specific to each type of applicant appear in Subsection (B). The general requirements of all applicants are contained in Subsection (C).

(A) Presumptions. In this refund proceeding, we will adopt certain presumptions which will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider the refund applications in the most efficient manner possible. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Falco's sales of refined products during the consent order period and that refunds should therefore be made on a pro-rata or volumetric basis. In the absence of better information, such a volumetric refund assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. *American Pacific International*, 14 DOE ¶ 85,158 at 88,293 (1986).

Under the volumetric refund approach we are adopting, a claimant will be eligible to receive a refund amount, plus accrued interest. In the present case, we have set the per gallon refund amount at $0.0027 per gallon. We derived this figure by dividing the settlement amount ($450,000) by an estimate of the number of gallons of refined products which Falco sold during the settlement period (164,290,822.77) However, we also recognize that the impact on an individual purchaser might have been greater, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon and Gasoline Co.*, 12 DOE ¶ 85,054 at 88,184 (1984).

We also will adopt a number of presumptions concerning injury. These presumptions will excuse certain categories of refund applicants from providing that they were injured by Falco's pricing practices, thus enabling certain applicants to simplify their refund applications. We will discuss these presumptions and the showing which each type of applicant must make in Section II(B) below.

(B) Specitic Application Requirements for Each Category of Refund Applicant. From our experience with Subpart V proceedings, we believe that potential claimants will fall into the following categories: (1) end-users, e.g., trucking companies that purchased diesel fuel for their own use; (2) regulated non-petroleum entities which used Falco products in their businesses (e.g., public utilities or cooperatives which sold Falco products to their members); and (3) refiners, resellers, or retailers who resold Falco products. The Appendix to this Decision lists customers who purchased diesel fuel, fuel oil, motor gasoline and kerosene from Falco during the settlement period. It is possible that there are additional potential refund applicants.

(1) Refund Applications of End-Users. We will adopt a finding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by Falco's pricing practices. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Therefore end-users of Falco products need only document that they were ultimate consumers of a specific amount of Falco products to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications of Cooperatives and Regulated Firms. We also will not require firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement to demonstrate injury in this case. Although such firms, *e.g.*, public utilities and agricultural cooperatives, generally would pass overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a full explanation of how they plan to accomplish this restitution, and to explain how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We note, however, that a cooperative's sales of Falco products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications of Resellers, Retailers and Refiners—a. Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less. We will adopt a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by Falco's pricing practices. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,224–25 (1982). With small claims, the cost to the firm of gathering evidence of injury to support a refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Falco products it purchased during the settlement period. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984).

b. Refiners, Resellers and Retailers Seeking Refunds Greater Than $5,000. Unlike small-claims applicants, a firm which claims a refund in excess of $5,000 will be required to provide a detailed demonstration of its injury in addition to providing purchase volume information. It will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, a claimant must show that market conditions would not permit it to pass through those incressed costs. *See Panhandle Eastern Pipeline Co./I.V. Cole Petroleum Co.*, 10 DOE ¶ 85,051 at 88,285 (1983). For periods in which the DOE regulations did not require retailers to compute cost banks, a retailer will only be required to show that market conditions prevented it from recovering increased costs. Such a showing might be made through a demonstration of lowered profit margins, decreased market share, or depressed sales volume during the period of purchases from Falco.

(C) General Refund Application Requirements. In addition to the specific requirements outlined above, all applicants must meet a number of general requirements in order to receive a refund. Every applicant must file a written application for refund, signed by the applicant. The application must make reference to the UPG/Falco Special Refund Proceeding (Case No. KEF–0026). Each applicant must submit a monthly purchase schedule for each product purchased from Falco during the settlement period (August 1, 1973 through January 27, 1981).

Firms which made indirect purchases of Falco products may also apply for refunds. If an applicant did not purchase directly from Falco but believes that products it purchased from another firm originated with Falco, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of Falco products passed through Falco's alleged overcharges to its own customers.

We will establish a rebuttable presumption that claimants who made only spot purchases from Falco were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases and generally would not have made spot market purchases from Falco at increased prices unless they were able to pass through the full amount of the selling price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Therefore, a firm which made only spot purchases from Falco will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured as a result of its spot purchases from Falco.

Each refund applicant should furnish us with the name, position or title, and telephone number of a person whom we may contact for additional information. If the applicant is affiliated or associated with Falco or UPG in any manner, it must so indicate and provide information explaining the nature of its relationship with the firm. If the applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved. If the applicant is a firm which did not actually purchase from Falco, but is a successor to a Falco customer, the applicant must provide evidence establishing that it, rather than Falco's former customer, is entitled to a refund. Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief."

All applications must be filed in duplicate and must be filed by February 1, 1987. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must indicate this belief and submit two additional copies of its application from which the information has been deleted. Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by UPG, Inc. (formerly known as P&O Falco, Inc.) pursuant to the Consent Order executed on December 21, 1985 may now be filed.

(2) All applications must be filed no later than February 1, 1987.

Dated: October 1, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Identified Customers of P & O Falco

Diesel and Gasoline Customers

A. L. Moore
A. L. Moore, Jr.
Abney Oil Co.

Arkla Chemical
Bailey's Parade Service Station
Berwick Bay Transportation Co.
Bird & Son, Inc.
C. C. Pate
C. J. Thibodeaux
Cager Distributors, Inc.
Central Oil & Supply Co.
Champlin Petroleum Co.
City of Minden
Continental Dredging Co.
Crowson Farms
Curtis Allen
Curtis D. Allen Exxon Dist.
E.H. Gleason
E. Z. Mart Stores
Eager Distributors
Eager Oil Co.
Emerson Oil Co. Inc.
Engineered Property Management
Geroge Bailey
Gleason Oil Co.
H&H Oil Co.
Haynes Exxon Dist.
Herbert Gleason
Hicks Post Co.
Hubert Gleason
J.L. Guice
James A. Crowson
Kellogg/Moore Oil Co.
Kelly's Truck Stop
Kelly's Truck Terminal
Kwik Serv
LeBeouf Bros. Towing Co.
Lone Star Steel Co.
M.P.M. Oil, Inc.
Maller Oil Co.
Matthews Oil Co.
McCartney Oil Co., Inc.
Melton Truck Lines
Monroe Phillips 66 Oil Co.
Moore Farms
Moran Fuels Corp.
N.E. La. Wholesale Oil & Gas
Oil Well Service Co.
Pate Oil Co.
Pellets, Inc.
Pierremont, Inc.
Pineville Kraft Corp.
Randall Breaux Tire Co.
Richard Ayers
Rose Oil
Sledge Oil Co.
So. La. Production Co., Inc.
Southern Marketing
Southwestern Electric Power Co.
St. Joe Oil Co.
Sunco, Inc.
Swepco
Systems Fuels, Inc.
Tensas Oil Co.
Thibodeaux Co.
Triangle Refineries, Inc.
Trident Petroleum Co.
Universal Oil Products
Waterproof Products, Inc.
Waymon Hornbeck
Webster Transportation
West Port TruckStop
Wurster Oil Co., Inc.

Fuel Oil/Kerosene Customers

Arkansas Power & Light
Arkla Chemical Corp.
Atlas Processing Co.
Champlin Pet. Co.
Exxon Co. U.S.A.
International Paper
J&W Refining
Lone Star Steel
Nikoosa Edwards Paper Co.
Triangle

[FR Doc. 86-22660 Filed 10-8-86; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of funds obtained as a result of a Consent Order which the DOE entered into with Cloyce K. Box.

DATE AND ADDRESS: Applications for refund of a portion of the Box consent order fund must be filed within 90 days of publication of this notice in the Federal Register and should be addressed to: Cloyce K. Box Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Number HEF-0041.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by Cloyce K. Box which settled possible pricing violations in sales of OKC Corporation motor gasoline made on behalf of Box by J.R. Adams Oil Company of Guymon, Oklahoma, during the period April 2, 1974 through July 30, 1974, or by Ritco, Inc. of Waco, Texas, between March 21, 1974 and June 13, 1974.

A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Box consent order funds was issued on June 9, 1986. 51 FR 22338 (June 19, 1986).

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by parties which purchased OKC Corporation motor gasoline from Adams and/or Ritco during the relevant time periods. Applications will be accepted provided they are filed no later than 90 days after publication of this Decision and Order in the Federal Register. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: October 1, 1986.

George B. Breznay,
Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

October 1, 1986.

Name of Firm: Cloyce K. Box.

Date of Filing: October 13, 1983.

Case Number: HEF-0041.

The Economic Regulatory Administration (ERA) filed a petition on October 13, 1983, requesting that the Office of Hearings and Appeals (OHA) implement a special refund proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Cloyce K. Box (Box), formerly President of OKC Corporation (OKC). This Consent Order is independent of a separate Consent Order with OKC itself which has been the subject of a separate Subpart V proceeding. *See Office of Enforcement: In the Matter of OKC Corp.*, 9 DOE ¶ 82,551 (1982) (*OKC*).

I. Background

According to the record in this proceeding and the related *OKC* proceeding (Case No. BEF-0032), during the period of federal petroleum price controls, Box entered into business arrangements with a number of independent brokers (the so-called "friendly brokers") under which Box arranged for the brokers to purchase refined petroleum products from OKC. The friendly brokers then resold the products at excessive prices in violation of the DOE price regulations, and split the profits with Box. Box Consent Order ¶¶ 1-3; *OKC*, 9 DOE at 85,270. In order to settle all claims and disputes between Box and the DOE regarding these transactions in 1974, Box and the DOE entered into a Consent Order on July 17, 1980, in which Box agreed to remit $505,000 to the DOE, of which $500,000 was for the purpose of restitution to injured parties and $5,000 was a civil penalty. On the same date, Box entered into a Memorandum of Understanding which resolved all DOE-related criminal allegations against Box in return for his pleading guilty to a 23-count information charging him with aiding and abetting violations of 10 CFR 210.62(c), in violation of section 5(a) of the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 754(a)(3)(B)(ii).[1] The Consent Order states that it does not constitute an admission by Box of any civil or criminal liability, or of any wrongdoing or illegal act. ¶ 7. In accordance with the terms of the Consent Order, Box remitted to the DOE $500,000, which is currently being held in an interest-bearing escrow account pending distribution by the DOE. The civil penalty of $5,000 was deposited into the miscellaneous receipts account of the United States Treasury.

On June 9, 1986, we issued a Proposed Decision and Order in which we determined that it was appropriate to establish a special refund proceeding with respect to the Box consent order fund. In that Proposed Decision, we tentatively set forth procedures to distribute refunds to parties which could demonstrate that they were injured by the pricing practices of two firms which sold motor gasoline on Box's behalf during specific time periods. Specifically, we proposed to disburse funds in the first stage of the proceeding to claimants who purchased motor gasoline from J.R. Adams of Guymon, Oklahoma, d/b/a J.R. Adams Oil Company (Adams), during the period from April 2, 1974 through July 30, 1974, and from Edwin W. Gummelt, jr., and Robert A. Whitley, of Waco, Texas, together d/b/a Ritco, Inc. (Ritco), during the period March 21, 1974 through June 13, 1974. We also stated that funds remaining after payment of refunds to eligible claimants in the first stage would be distributed during a second stage process and we pointed out that the ultimate disposition of those second-stage funds would not be determined until after completion of the first stage. The Proposed Decision was published in the Federal Register on June 19, 1986 (51 FR 22338), and comments on the proposed refund mechanism were due to be submitted within 30 days of that date. Comments were received from the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah and West Virginia. These comments requested that any monies remaining in the Box settlement fund after refunds are made to Box customers which filed meritorious claims be distributed to these states for use in energy-related projects. No comments were received which addressed the proposed mechanics of the first-stage refund process itself.

The purpose of this Decision and Order is to establish procedures to be used for filing and processing claims in the first stage of the Box refund proceeding. This Decision sets forth the information that a purchaser of motor gasoline sold by Ritco and/or Adams during the specified time periods should submit in order to establish eligibility for a portion of the consent order funds. We will not, however, determine procedures for the second stage of the refund proceeding in this Decision. This determination will necessarily depend on the size of the residual fund, among other factors. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981).

II. *Jurisdiction and Authority*

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

III. *Refund Procedures*

A. *Refund Claimants.* In the first stage, refund monies shall be distributed to those firms who were injured as a result of the 23 transactions specified in the criminal information that was settled by the Memorandum of Understanding. Twenty of these transactions involved sales arranged by Box of OKC motor gasoline to Adams during the period from April 2, 1974 through July 30, 1974. The remaining three transactions involved Box-arranged sales of OKC motor gasoline to Ritco during the period March 21, 1974, through June 13, 1974. While transactions similar to those specified in the information occurred during a much longer period and with other firms, the Box Consent Order, both on its own terms and when read together with the Memorandum of Understanding, makes it clear that these are the only transactions covered by the civil settlement agreement. Consent Order Introduction and ¶¶ 1, 2, Memorandum of Understanding ¶¶ 1, 3, 6. The persons injured as a result of these transactions were the customers who purchased the OKC motor gasoline from Adams or Ritco at allegedly illegal prices. The record clearly indicates that Adams and Ritco not only were not injured in any way by the transactions but were directly involved with Box in committing the alleged violations.[2]

Accordingly, potential claimants are resellers (including retailers and refiners) and end-users who purchased OKC motor gasoline from either Adams or Ritco during the Box consent order period,[3] and who satisfactorily demonstrate that they were injured by the alleged overcharges.[4] *See, e.g., Vickers.* We shall adopt this requirement in the present proceeding.[5] Accordingly, in order to qualify for a refund, resellers must show that market conditions required them to absorb the alleged overcharges. A reseller must also show that it had a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[6] The maintenance of a bank will not, however, automatically establish injury. *See, Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982). *See also Atlantic Richfield Corp. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985).

As in many prior special refund cases, we shall also adopt a presumption of injury with respect to small claims by resellers. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984). In cases where firms purchased small volumes of product, the cost of gathering evidence of injury could exceed the expected refund. Consequently, without simplified procedures, some injured resellers would be effectively denied an opportunity to obtain a refund. Under the small claims presumption we are adopting, a reseller claimant will not be required to submit any evidence of injury beyond documenting claimed purchase volumes if its refund claim is $5,000 or less.

Resellers who made only spot purchases will be presumed to have suffered no injury. They shall therefore be ineligible for any refund, even a refund at or below the small claims threshold level. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of OKC product from Adams or Ritco at increased prices unless they were able to pass through the full amount of the quoted selling price to their own customers. *See Vickers*, 8 DOE at 85,396-97; *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured as a result of the spot purchase(s).

2. End-Users. As we indicated in the Proposed Decision, we shall establish a presumption that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled by the Box Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which

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[1] *United States* v. *Cloyce K. Box*, Cr. No. 80-107W (W.D. Okla. July 17, 1980). Box paid a fine of $5,000 per count or a total fine of $115,000. Box's guilty plea was entered pursuant to the standards of *North Carolina* v. *Alford*, 400 U.S. 25 (1970), which permit a court to accept a guilty plea from a person accused of a crime despite that person's unwillingness to admit to participation in the acts constituting the crime.

[2] Adams' and Ritco's owners pled guilty to charges of selling petroleum products at higher prices than permitted under the price regulations in the same transactions that were specified in the Box criminal information. *United States v. John R. Adams*, CR. No. 78-165-T (W.D. Okla. December 14, 1978) ($100,000 fine), *United States v. Whitley and Gummelt*, CR No. 79-165-T (W.D. Okla. December 17, 1979) ($15,000 fine for each defendant).

[3] The Box consent order period for firms that purchased OKC motor gasoline from Adams is April 2, 1974 through July 30, 1974. For firms that purchased OKC motor gasoline from Ritco, the Box consent order period is March 21, 1974 through June 13, 1974.

[4] Any of the other "friendly brokers" who may have purchased from Adams and Ritco are also ineligible for a refund on the grounds of "unclean hands." *See OKC*, 9 DOE at 85,270; *see also Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984). These other brokers are: Boyce Box d/b/a Quality Oil; Robert Vail d/b/a Robert Vail, Inc.; Consolidated Materials, Inc., a consolidation of Stonewalk Corporation and CLB Corporation, owned primarily by Donald G. Baxter; and Metro Energy, owned by Phil and Jean Parker. *See SEC v. Cloyce K. Box and OKC*, CA-3-86-1217D, (N.D. Tex.) (First Supplemental Complaint for Permanent Injunction).

[5] We recognize, of course, that in the present case the price increases were imposed not by the person who entered into the consent order, i.e., Box, but by Adams and Ritco.

[6] Banks must be shown from the month of purchase until the date the bank requirement for motor gasoline was eliminated—July 15, 1979 for retailers, May 1, 1980 for most resellers and retailer-resellers, and January 28, 1981 for refiners and the 52 resellers and retailer-resellers listed at 46 FR 81255 (December 10, 1980), Fed. Energy Guidelines, Petroleum Regulations 1974-1981, ¶ 15,497C.

justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Therefore, an end-user of OKC refined products purchased from Adams or Ritco need only document that it was an ultimate consumer of a specific amount of OKC motor gasoline to make a sufficient showing that it was injured by the alleged overcharges.

B. Calculation of Refund Amounts. In the Proposed Decision, we indicated our intention to adopt a presumption that the alleged overcharges were dispersed equally in the sales of OKC motor gasoline by Adams and Ritco in the 23 transactions specified in the criminal information. We received no adverse comments on this proposal, and since it remains the most practical option, we shall adopt it. In order to calculate a per gallon refund amount under the volumetric method, we shall divide the principal amount of the Box consent order fund, $500,000, by the 9,700,280 gallons of OKC motor gasoline which was purchased and resold by Adams and Ritco during the Box consent order period (March 21, 1974 through July 30, 1974). This yields a refund amount of $0.051545 per gallon.[7]

Finally, as we indicated in the Proposed Decision, we shall establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b).

C. Application for Refund Procedures. Applications for refund will now be accepted from parties who purchased OKC motor gasoline from Adams and Ritco during the relevant time periods, and who believe they have been injured by the pricing practices of Box in conjunction with those firms. Applications must be filed within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.283(b). An application must be in writing, signed by the applicant, and specify that it pertains to the Box Consent Order Fund, Case No. HEF-0041.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application must indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying Box enforcement proceeding. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Cloyce K. Box Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the Box consent order funds, the following subjects should be covered in each application:

A. Each applicant shall certify that it purchased OKC motor gasoline from Adams and/or Ritco during the relevant time period. Each applicant should also provide monthly purchase volume data for those volumes which form the basis of its refund claim.

B. Each applicant should specify how it used the Adams and/or Ritco motor gasoline—i.e., whether it was a reseller or ultimate consumer.

C. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also

(i) state whether it maintained banks of unrecouped product cost increases from the date(s) of purchase through the termination of banking requirements and furnish OHA with quarterly bank calculations.

(ii) state whether it or any of its affiliates have filed any other applications for refund in which they have referred to their banks to demonstrate injury.

(iii) submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

D. The applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is pending. *See* 10 CFR 205.9(d).

It Is Therefore Ordered That:

(1) Applications for refund from the funds remitted to the Department of Energy by Cloyce K. Box pursuant to the Consent Order executed on July 17, 1980 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: October 1, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-22861 Filed 10-8-86; 8:45 am]

BILLING CODE 6450-01-M

[7] Like the other presumptions we are establishing in this proceeding, the volumetric presumption is rebuttable. The volumetric method of computing refunds represents a simple and equitable alternative available to firms which are not able to perform the difficult task of substantiating a particular level of alleged overcharge and injury. Any claimant may attempt to establish that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Quaker State Oil Refining Corp.*, 13 DOE § 85,211 at 88,552 (1985).

Supplemental Order

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of revision of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces a revision of the February 7, 1986 Decision and Order that established procedures for disbursement of $2,404,055 obtained as a result of a Consent Order which the DOE entered into with Beacon Oil Company. *Beacon Oil Company*, Case No. HEF-0203, 51 F.R. 5786 (February 18, 1986). Specifically, the volumetric factor in the Beacon Oil Company Special Refund Proceeding has been raised to $0.015277 per gallon. The reason for this modification is set forth in the accompanying Supplemental Order.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

Dated: September 26, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 26, 1986.

Decision and Order of the Department of Energy

Supplemental Order

Name of Firm: Beacon Oil Company
Date of Filing: September 12, 1986
Case Number: KFX-0022

This proceeding involves $2,404,055 plus accrued interest which the Beacon Oil Company (Beacon) remitted to the Department of Energy (DOE) pursuant to a 1979 consent order. Under the terms of the Consent Order, Beacon agreed to refund a total of $6,800,000, including the payments to the DOE, in settlement of the firm's potential liability for alleged regulatory violations during the period August 19, 1973, through March 31, 1975 (consent order period).

On February 7, 1986, the Office of Hearings and Appeals (OHA) of the DOE instituted refund procedures for the distribution of the funds remitted by Beacon. *Beacon Oil Company*, 14 DOE ¶ 85,011 (1986) (*Beacon*). In *Beacon* we established specific requirements under which purchasers of Beacon covered products may file Applications for Refund. To date we have received 74 such applications. Pursuant to *Beacon*, potential refunds for most of these claimants were to be calculated by multiplying purchase volumes by a volumetric factor of $0.005383 per gallon.[1] However, one of the claimants has argued that an adjustment of this figure is warranted.

The volumetric factor in *Beacon* was computed by dividing the $2,404,055 which Beacon remitted to the DOE by the 446,571,042 gallons of regulated products estimated to have been sold by Beacon during the consent order period. However, in addition to the funds deposited with the DOE, Beacon made direct refunds totaling $4,395,945 (64.6 percent of the total consent order amount) to its customers. The volumes for which these direct refunds were paid may not form the basis for a refund in this Beacon proceeding. Since direct refunds have been made for volumes of refined products produced and sold by Beacon and since these volumes cannot be used to gain a refund in this proceeding, the computation of the Beacon volumetric should not have included the direct refund volumes.[2]

Ideally, we should reduce Beacon's total sales of refined products during the consent order period by the volume of product sales associated with the direct refunds. The resulting volume would then be divided into the portion of the amount consent order that Beacon deposited with the DOE, *i.e.*, $2,404,055, to arrive at a revised volumetric factor. However, we lack the type of detailed sales volume data which would allow us to perform this calculation. Nevertheless, a reasonable approximation of this computation may be achieved if we assume—as we do in the calculation of all volumetric factors—that the total amount specified to be refunded in the Beacon Consent Order was spread equally over all gallons of regulated products sold by Beacon during the consent order period. Dividing that total consent order amount ($6,800,000) by the total volume of Beacon's sales of regulated products (446,571,042) products a volumetric factor of $0.015277 per gallon.

It Is Therefore Ordered That:

(1) Decision and Order issued by the Department of Energy on February 7, 1986, *Beacon Oil Company*, 14 DOE ¶ 85,011 (1986), is hereby revised as set forth in Paragraph (2) below.

[1] A few applicants are claiming refunds based upon amounts of unpaid motor gasoline credit. As stated in Beacon, the volumetric factor will not be used in calculating these claimants' refunds. As a result, this supplemental order has no bearing on these applications.

[2] We have on occasion amended the calculation of a volumetric factor. *See* Earth Resources Company/Lubricants, Incorporated et al., 14 DOE ¶ 85,203 (1986); Little America Refining Company, Inc./The M. H. Cook Pipeline Construction Co., 13 DOE ¶ 85,284 (1985).

(2) The volumetric factor in the Beacon Oil Company Special Refund Proceeding is hereby modified to equal $0.015277 per gallon.

(3) This is a final order of the Department of Energy.

Dated: September 26, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-22862 Filed 10-8-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SB-FRL-3093-3]

Science Advisory Board, Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Engineering Committee of the Science Advisory Board will be held at the Environmental Protection Agency, Conference Room #4, South Conference Center, 401 M Street SW., Washington, DC on October 27-28, 1986. The meeting will begin at 8:30 a.m. each day and last until 5:30 p.m. on October 27, and until 4:00 p.m. on October 28.

The primary purpose of the meeting will be to continue review of technical documents supporting Agency regulations for the reuse and disposal of municipal treatment plant sludge under section 405(d) of the Clean Water Act, and proposed revisions to the Agency's Ocean Dumping Regulations (40 CFR Parts 220 through 229). The committee will also discuss possible topics for future reviews.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Mr. Eric Males, Executive Secretary at (202) 382-2552. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make oral or written comments must contact Mr. Males prior to October 20, 1986 in order to be placed on the agenda. Any member of the public wishing to attend should contact Mrs. Brenda Browne at (202) 382-2552.

Dated: October 2, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-22945 Filed 10-8-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00231; FRL-3093-7]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting of Working Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD) of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATES: Monday, October 27, and Tuesday, October 28, 1986, beginning at 8:30 a.m. each day and concluding by 4:30 p.m., Tuesday, October 28.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (207-236-4325).

FOR FURTHER INFORMATION CONTACT: By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7096).

SUPPLEMENTARY INFORMATION: This will be the fourth meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD). The purpose of the WC/GPD is to consider pesticide-related aspects of ground water protection and disposal of pesticide waste, excess pesticides, and used pesticide containers, and to make recommendations through the full SFIREG regarding Agency policies in these key areas. The meeting of the Working Committee will be concerned with the following topics:

1. Status of response to resolutions passed at February 1986 meeting.

2. Update of Office of Groundwater Protection activities relating to pesticides, including wellhead protection program and workshop on environmental indicators.

3. Update on Office of Drinking Water-Office of Pesticide Programs (ODW-OPP) National Survey of Pesticides in Drinking Water Wells, including county selection, analytical methods, health advisory levels, and State advisory body.

4 Agricultural chemicals in ground water strategy: update after Coolfont.

5. Status of educational efforts to protect ground water.

6. Status report on OPP regulatory actions concerning ground water protection, with specific reference to aldicarb.

7. FIFRA–RCRA interface, including status of OPP action plan for implementation of OPP–Office of Solid Waste agreement to work together on questions of pesticide disposal.

8. Discussion of hazardous waste mixtures rule.

9. Federal and State policies on secondary containment of pesticides and pesticide and pesticide waste.

Illinois studies on rinse water and storm water runoff sampling.

11. Future educational efforts relating to pesticide waste disposal.

12. Other topics as appropriate.

Dated: October 2, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86–22941 Filed 10–8–86; 8:45 am]

BILLING CODE 6560–50–M

[PF–466; FRL–3087–1]

Pesticide Tolerance Petitions, Rhone-Poulenc, Inc., et al.

Correction

In FR Doc. 86–21622 beginning on page 35033 in the issue of Wednesday, October 1, 1986, make the following corrections:

1. On page 35034, in the first column, in paragraph 1., in the sixth and seventh lines, the space should be removed between "dichlorophen" and "yl".

2. Also on page 35034, in the first column, in paragraph 5., in the ninth and tenth lines, remove the space between "chlorophen" and "yl"; and in the tenth line, remove ">".

BILLING CODE 1505–01–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–521]

Final Action Approval of Conversion Application; First Federal Saving and Loan Association of Panama City, Panama City, FL

Dated: October 1, 1986.

Notice is hereby given that on September 11, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Panama City, Panama City, Florida for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20522, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board,

Jeff Sconyers,

Secretary.

[FR Doc. 86–22867 Filed 10–8–86; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–522]

Final Action Approval of Conversion Application; Home Unity Savings and Loan Association, Lafayette Hill, PA

Dated: October 1, 1986.

Notice is hereby given that on September 15, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Unity Savings and Loan Association, Lafayette Hill, Pennsylvania for permission to convert to the stock of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Pittsburgh, 11 Stanwix Street, 4th Floor, Gateway Center, Pittsburgh, Pennsylvania 15222.

By the Federal Home Loan Bank Board,

Jeff Sconyers,

Secretary.

[FR Doc. 86–22868 Filed 10–8–86; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: October 27–28, 1986.

Place: Wolverine Room, Hyatt Regency Hotel, 151 West Fifth Street, Cincinnati, Ohio 45202.

Time and Type of Meeting: Open 9 a.m. to 5 p.m.—October 27; 9 a.m. to 12 noon—October 28.

Contact Person: Robert E. Glenn, Executive Secretary, MHRAC, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291–4474, FTS: 923–4474.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of previous meeting and future meeting dates; discussion of issues related to the x-ray surveillance program for underground coal miners; the study of pneumoconiosis among anthracite surface miners; and a discussion of noise-induced hearing loss among miners.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: October 3, 1986.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86–22869 Filed 10–8–86; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 86M–0390]

Paco Pharmaceutical Services, Inc.; Premarket Approval of Charter Labs Sterile lens Lubricant for Sensitive Eyes

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Paco Pharmaceutical Services, Inc., Lakewood, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the CHARTER LABS STERILE LENS LUBRICANT for SENSITIVE EYES. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by November 10, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On October 8, 1985, Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, submitted to CDRH an application for premarket approval of the CHARTER LABS STERILE LENS LUBRICANT for SENSITIVE EYES for use to moisten lenses, to reduce friction against the cornea, to relieve minor irritation, discomfort, or blurring which may occur while wearing soft (hydrophilic) contact lenses.

On July 18, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 29, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the CHARTER LABS STERILE LENS LUBRICANT for SENSITIVE EYES states that the solution is indicated for use to moisten lenses, to reduce friction against the cornea, to relieve minor irritation, discomfort, or blurring which may occur while wearing soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contract lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 10, 1986 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 1, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–22866 Filed 10–8–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86N–0400]

Smith Kline and French Laboratories et al.; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of 42 new drug applications (NDA's) based on the written request of the applicants.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drugs and Biologics (HFN–46), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4320.

SUPPLEMENTARY INFORMATION: The holders of the NDA's listed below have informed FDA that these drug products are no longer marketed. They have requested that FDA withdraw approval of the NDA's and have waived their opportunity for hearing.

NDA	Drug name	Applicant's name and address
0-004	Paredine Jelly & Topical Solution (only those portions of NDA 0-004 that pertain to these products).	Smith Kline and French Laboratories, 1500 Spring Garden St., P.O. Box 7929, Philadelphia, PA 19101.
1-918	B-Que	O'Neal, Jones & Feldman Pharmaceuticals, 2510 Metro Blvd., Maryland Heights, MO 63043.
2-805	Pragmatar Ointment	Merley & James Laboratories, One Franklin Plaza, P.O. Box 8082, Philadelphia, PA 19101.
2-855	Cepacol Mouth/Gargle	Merrell Dow Pharmaceuticals, Inc., 2110 E. Galbraith Rd., Cincinnati, OH 45215.
5-172	Tuamine Sulfate Solution	Eli Lilly, 307 E. McCarthy St., Indianapolis, IN 46285.
5-474	Lorophyn Vaginal Jelly	Norwich Eaton Pharmaceuticals, Inc., 13-27 Eaton Ave., Norwich, NY 13815.
5-478	Penicillin	Bristol Laboratories, P.O. Box 4755, Syracuse, NY 13221.
5-721	Penicillin Calcium	Do.
5-950	Cetothyl Tablets	Parke-Davis, Division of Warner-Lambert, 201 Tabor Rd., Morris Plains, NJ 07950.
6-332	Thephorin Syrup	Hoffmann-LaRoche, Inc., Nutley, NJ 07110.
6-714	Aldase Injection	Searle, Division of G. D. Searle & Co., 4901 Searle Pkwy., Skokie, IL 60077.

BEST COPY AVAILABLE

NDA	Drug name	Applicant's name and address
7-026	Thephorin AC Tablets	Hoffmann-LaRoche, Inc.
7-029	Perandren Propionate Injection	Ciba-Geigy, Summit, NJ 07901.
7-057	Inmision Tablets	Plough, Inc., P.O. Box 377, Memphis, TN 38151.
7-762	Bristamin Tablets	Bristol Laboratories.
7-861	Quotane Ointment	Menley & James Laboratories.
7-937	Nacheteramine HCl Cream	Parke-Davis.
7-943	Quotane Lotion	Menley & James Laboratories.
8-113	Bristalin Cough Syrup	Bristol Laboratories.
8-390	Rimifon Tablets	Hoffmann-LaRoche, Inc.
8-862	Diphenylpyraline HCl	Diamond Shamrock Chemicals Co., 350 Mt. Kemble Ave., Morristown, NJ 07960.
8-886	Provell Malesite Tablets	Eli Lilly Co.
9-224	Ildar Ampules	Hnffmann-LaRoche, Inc.
9-314	Romilar Tablets	Do.
9-349	Perandren Phenylacetate	Ciba-Geigy.
9-569	F-Cortef Acetate Lotion	The Upjohn Co., Kalamazoo, MI 49001.
9-744	Toclase Syrup	Pfizer Pharmaceuticals, Pfizer, Inc., 235 E. 42nd St., New York, NY 10017.
10-418	Xylocaine Solution	Astra Pharmaceutical Products, Inc., 50 Otis St., Westboro, MA 01581.
10-755	Delta-Cortef Acetate Lotion	The Upjohn Co.
10-904	Cyanocon	O'Neal, Jones, & Feldman Pharmaceuticals.
11-244	Romilar CF Capsules	Hoffmann-LaRoche, Inc.
12-377	C.O.S. Capsules	Riker Laboratories, Inc., 270-3A 3M Center, St. Paul, MN 55144.
12-394	Diaphrol Tablets	Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07003.
14-124	Tickle Tactile Inhalant	Menley & James Laboratories.
14-125	"C3" Capsules	Do.
14-174	Nebair Aerosol Inhaler	Parke-Davis.
14-188	Vapo-N-Iso Moturmatic Aerosol Inhaler	USV Laboratories, 303 S. Broadway, Tarrytown, NY 10591.
14-545	Bristaron Tablets	Bristol Laboratories.
14-764	Robinul Injection	A.H. Robins Co., Inc., 1407 Cummings Dr., Richmond, VA 23220.
17-023	Methotrexate Parenteral	Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NY 10965.
17-035	Heparin Sodium Injection	Cord Laboratories, 2555 W. Midway Blvd., Broomfield, CO 80020.
17-721	Heparin Sodium Injection	Sterilab Corp., 500 Oakdale Rd., Ontario, Canada M3N1W6.

The agency has determined that, in accordance with 21 CFR 25.24(c)(3) (published in the **Federal Register** of April 26, 1985 (50 FR 16636)), this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 76 Stat. 782 as amended (21 U.S.C. 355(e)) and under authority delegated to the Deputy Director of the Center for Drugs and Biologics (21 CFR 5.82), approval of the new drug applications listed above or pertinent parts thereof, and supplements thereto, is hereby withdrawn.

This order becomes effective on November 10, 1986.

Dated: September 30, 1986.

Paul Parkman,

Deputy Director, Center for Drugs and Biologics.

[FR Doc. 86-22865 Filed 10-8-86; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

International Classification of Diseases, Ninth Revision, Clinical Modification; Addition

Notice is hereby given that new diagnostic codes for HTLV-III/LAV Infections are being added to the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) effective October 1, 1986.

AGENCY: National Center for Health Statistics (NCHS), Public Health Service.

SUMMARY: This notice announces the complete tabular listing and index terms applicable to the new ICD-9-CM codes for HTLV-III/LAV Infections.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related HHS programs. The addendum for Volumes 1 and 2 announced here are new disease codes for HTLV-III/LAV Infections, including complete tabular listing and index terms. Previous announcements made in the **Federal Register** August 29, 1986 and September 3, 1986 were limited to titles of the codes only.

The following announcement is a duplication of the published addendum to the ICD-9-CM available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Meads, National Center for Health Statistics, Center Building, Room 2-19, 3700 East-West Highway, Hyattsville, Maryland 20782; telephone (301) 436-7019.

Dated: September 11, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

BILLING CODE 4160-17-M

ADDENDUM FOR VOLUMES 1 AND 2, *ICD-9-CM* 1

Human T-Cell Lymphotropic Virus-III/Lymphadenopathy-Associated Virus (HTLV-III/LAV) Infection Classification

Background

In December 1985, Dr. Walter R. Dowdle, then Director of the Center for Infectious Disease of the Centers for Disease Control sent a memorandum to Robert A. Israel, Head, World Health Organization Collaborating Center for Classification of Diseases for North America, located at the National Center for Health Statistics, in which he stated:

> The increasing importance of HTLV-III/LAV infection has created a demand for more specific disease codes that would allow public health officials, clinical researchers, and agencies that finance medical care to accurately monitor diagnoses of AIDS and other manifestations of HTLV-III/LAV infection as they are coded on death certificates and medical records. The next revision of the ICD (ICD-10) will not become available for another 8 or 9 years. The urgency of responding to the epidemic of HTLV-III/LAV is too great to delay that long.
>
> We propose that new codes be created for the ICD-9-CM that will be specific for HTLV-III/LAV infection. Newly created ICD-9-CM codes should be specific enough to distinguish between HTLV-III/LAV infections causing AIDS (as defined by the Centers for Disease Control), those causing clinical manifestations other than AIDS, and those causing subclinical illness.

While it is, in general, undesirable to create new disease codes between revisions, it is felt that the creating of new codes for HTLV-III/LAV infection for the ICD-9-CM is justified.

A working party was established consisting of representatives from the Centers for Disease Control; National Center for Health Statistics; and the World Health Organization Collaborating Center for Classification of Diseases for North America. This classification is the result of months of deliberation by this working party.

Structure of the Classification

The classification consists of three 3-digit rubrics with 4-digit subdivisions utilizing the now vacant ICD-9-CM codes 042,043,044 in Chapter I, Infectious and Parasitic Diseases. This allows for the placement of HTLV-III/LAV infections at the beginning of viral diseases. Following the advice of the Centers for Disease Control, the categories are defined primarily by the manifestations of the disease. Clear identification of the manifestations is required for the selection of the correct code. Multiple coding of all listed manifestations of HTLV-III/LAV infections is required. Further, it is also necessary that certain of the manifestations be listed in a "due to" or other causal relationship in order to select the appropriate code. Other manifestations need only to be listed on the record with the HTLV-III/LAV infection to assume a "with" relationship. Recognizing the difficulties inherent in this method of arriving at the correct code, an alphabetical table has been developed which lists manifestations in the "with" and "due to" relationship with HTLV-III/LAV infections and the appropriate code. Coders are instructed to always use the table first as they would the index of ICD-9-CM.

Definitions

This classification is not intended for purposes of staging or for determinations of severity of illness. Rather, it is based on well-defined groupings of disease manifestations most compatible with the manner in which patients with HTLV-III/LAV infection are currently categorized by providers of health care services, clinical investigators, researchers, and public health officials. Thus, the spectrum of HTLV-III/LAV infection can be reasonably divided into three categories:

1. HTLV-III/LAV infection with specified secondary infections and malignant neoplasms (042).
2. HTLV-III/LAV infection with other specified manifestations in the absence of specified secondary infections and malignant neoplasms (043).
3. Other HTLV-III/LAV infection not classifiable above (044).

The terms listed below are descriptive of the three categories of HTLV-III/LAV infection.

042 AIDS: Acquired immune deficiency syndrome
Acquired immunodeficiency syndrome

043 AIDS-like disease (illness) (syndrome)
AIDS-like syndrome
AIDS-related complex
AIDS-related conditions
ARC
Pre-AIDS
Prodromal-AIDS

044 HTLV-III/LAV infection
AAV (disease) (illness) (infection)
AIDS-associated retrovirus (disease) (illness) (infection)
AIDS-associated virus (disease) (illness) (infection)
AIDS-related virus (ARV) (disease) (illness) (infection)
AIDS virus (disease) (illness) (infection)
Human T-cell lymphotropic virus (disease) (illness) (infection)
LAV (disease) (illness) (infection)
Lymphadenopathy-associated virus (LAV) (disease) (illness) (infection)

Terminology

The use of unacceptable terminology and abbreviations should be discouraged. Acquired immunodeficiency syndrome (AIDS) is neither synonymous with HTLV-III/LAV infection nor with terms such as pre-AIDS and AIDS-related complex or syndromes.

Records which report "Possible", "Probable", or "Questionable" AIDS, not confirmed, without manifestations listed should be returned to the physician for clarification.

How to Use This Classification

In order to correctly use these codes, the physician must provide complete information and state the relationship between HTLV-III/LAV infections and other conditions. It will not be unusual for a patient suffering from HTLV-III/LAV infection to be admitted for an unrelated condition.

The classification requires that the relationship between the HTLV-III/LAV infection, the manifestations, and other listed conditions be identified. The term "with" implies that the condition or manifestation of HTLV-III/LAV infection need only be listed on the record. Terms such as "and" and "in association with" will be considered in the same manner as "with".

The term "due to" is used in this classification to denote a causal relationship. The broad definition of "due to" is implied here as it is used in the *International Classification of Diseases, 9th Revision.*

> The words "due to (or as a consequences of)" which appear on the form of medical certificate include not only etiological or pathological sequences, but also sequences where there is no such direct causation but where an antecedent condition is believed to have prepared the way for the direct cause by damage to tissues or impairment of function even after a long interval. (ICD-9, Volume I, page 700)

All manifestations of HTLV-III/LAV infections must be coded. The alphabetical table will assist the coder in selection of the most appropriate code for the HTLV-III/LAV infection in association with the most common manifestations. Other manifestations not found on the table may be reported. The selection of the appropriate 042-044 code is determined solely by the terminology used for the HTLV-III/LAV infection. Codes 042, 043, and 044 are mutually exclusive and they can never be listed together on the same record. Priority is given to 042 over 043 and 044; 043 is given priority over 044.

Only *one* code from the 042-044 series should be used. For instance, a patient with candidiasis of the lung (112.4), Kaposi's sarcoma (173), and HTLV-III/LAV infection described as AIDS, would be assigned only one 042 code. Select a single HTLV-III/LAV infection code based on a discussion with the attending physician as to the most descriptive code for the admission. This code may change during subsequent admissions.

The principal diagnosis should be selected based on the individual discharged. The HTLV-III/LAV infection codes can be used as either principal or a secondary diagnosis. The notes "with" and "due to HTLV-III/LAV infection" do not imply sequencing.

This classification is intended as an interim system, to be used while additional scientific information on the pathogenesis and natural history of HTLV-III/LAV infection is accumulated. Following 1 year of use, this classification will be reviewed for its appropriateness and ease in use.

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS (HTLV-III/LAV) INFECTION (042-044)

Note: In this classification, the following terms are used to define and to represent other terms which are referable to these categories 042-044.

1. AIDS: Acquired immune deficiency syndrome
Acquired immunodeficiency syndrome

2. AIDS-like syndrome:
AIDS-related complex
AIDS-related conditions
ARC Pre-AIDS
AIDS-like disease (illness) (syndrome)
Prodromal-AIDS

3. HTLV-III/LAV infection:
Human T-cell lymphotropic virus (disease) (illness) (infection)
Lymphadenopathy-associated virus (disease) (illness) (infection)
LAV (disease) (illness) (infection)
AIDS-associated virus (disease) (illness) (infection)
AAV (disease) (illness) (infection)
AIDS-associated retrovirus (disease) (illness) (infection)
ARV (disease) (illness) (infection)
AIDS virus (disease) (illness) (infection)
Human immunodeficiency virus (disease) (illness) (infection)
HIV (disease) (illness) (infection)

042 Human T-Cell Lymphotropic Virus-III/Lymphadenopathy-Associated Virus (HTLV-III/LAV) infection with specified conditions.

Includes: Acquired Immunodeficiency Syndrome
AIDS

042.0 With specified infections

Includes only:
candidiasis of lung (112.4)
coccidiosis (007.2)
cryptococcosis (117.5)
cryptosporidiosis (007.2)
pneumocystosis (136.3)
progressive multifocal leukoencephalopathy (046.3)
toxoplasmosis (130)

} With HTLV-III/LAV Infection

042.1 Causing other specified infections

Includes only:
- candidiasis
  - disseminated (112.5)
  - of: mouth (112.0)
    - skin and nails (112.3)
    - other and unspecified sites (112.8, 112.9) (excludes: 112.1, 112.2, 112.4)
- coccidioidomycosis (114)
- cytomegalic inclusion disease (078.5)
- herpes simplex (054)
- herpes zoster (053)
- histoplasmosis (115)
- mycobacteriosis, other and unspecified (031.8, 031.9) (excludes: 031.0, 031.1)
- Nocardia infection (039)
- opportunistic mycoses (118)
- pneumonia:
  - NOS (486)
  - viral NOS (480.9)
- Salmonella infections (003.1-003.9) (except gastroenteritis 003.0)
- septicemia (038)
- strongyloidiasis (127.2)
- tuberculosis (010-018)

Due to HTLV-III/LAV Infection

042.2 With specified malignant neoplasms

Includes only:
- Burkitts's tumor (200.2)
- Kaposi's sarcoma (173)
- immunoblastic sarcoma (202.8)
- primary lymphoma of the brain (202.8)
- reticulosarcoma (200.0)

With HTLV-III/LAV Infection

042.9 Acquired immunodeficiency syndrome with or without other conditions

043 Human T-Cell Lymphotropic Virus-III/Lymphadenopathy-Associated Virus (HTLV-III/LAV) infection causing other specified conditions

Includes: AIDS-like syndrome
ARC

Excludes: AIDS (042)
Other conditions classifiable in 042

043.0 Causing lymphadenopathy (785.6)

043.1 Causing specified diseases of the central nervous system

Includes only:
- central nervous system:
  - demyelinating disease NOS (341.9)
  - disorders NOS (348.9,349.9)
  - non-arthropod-borne viral diseases, other and unspecified (049.8,049.9)
  - slow virus infection, other and unspecified (046.8,046.9)
- dementia:
  - NOS (298.9)
  - organic (294.9)
  - presenile (290.1)
- encephalitis (323.9)
- encephalomyelitis (323.9)
- encephalopathy (348.3)
- myelitis (323.9)
- myelopathy (336.9)
- organic brain syndrome NOS (nonpsychotic) (310.9) psychotic (294.9)

Due to HTLV-III/LAV Infection

043.2 Causing other disorders involving the immune mechanism (279)

043.3 Causing other specified conditions

Includes only:
- abnormal weight loss (783.2)
- abnormality, respiratory (786.0)
- agranulocytosis (288.0)
- anemia:
  - NOS (285.9)
  - aplastic, other and unspecified (284.8,284.9)
  - deficiency (280-281)
  - hemolytic, acquired (283)
- arthritis, infective (711.0,711.9)
- blindness or low vision (369)
- blood and blood-forming organs, unspecified disease (289.9)
- cachexia (799.4)
- dermatomycosis (111)
- dermatophytosis (110)
- disease or disorder NOS:
  - blood and blood-forming organs (289.9)
  - salivary gland (527.9)
  - skin and subcutaneous tissue (709.9)
- dyspnea (786.0)
- fatigue (780.7)
- fever (780.6)
- gastroenteritis (infectious 009), (noninfectious 558)
- hepatomegaly (789.1)
- hyperhidrosis (780.8)
- hypersplenism (289.4)
- infection:
  - intestinal, ill-defined (009)
- lack of expected physiological development in infant (783.4)
- leukoplakia of oral mucosa (tongue) (528.6)
- malabsorption, intestinal (579.9)
- malaise (780.7)
- neuralgia NOS (729.2)
- neuritis NOS (729.2)
- nutritional deficiencies (260-269)
- polyneuropathy (357.0,357.8,357.9)
- pyrexia (780.6)
- radiculitis NOS (729.2)
- rash NOS (782.1)
- retinal vascular changes (362.1)
- retinopathy, background (362.1)
- splenomegaly (789.2)
- thrombocytopenia, secondary and unspecified (287.4,287.5)
- volume depletion (276.5)

} Due to HTLV-III/LAV Infection

043.9 Acquired immunodeficiency syndrome-related complex with or without other conditions

044 Other Human T-Cell Lymphotropic Virus-III/Lymphadenopathy-Associated Virus Infection

Excludes: AIDS (042)
AIDS-related complex (ARC) (043)

044.0 Causing specified acute infections

Includes only:
- acute lymphadenitis (683)
- aseptic meningitis (047.9)
- viral infection ("infectious mononucleosis-like syndrome") (079.9)

} Due to HTLV-III/LAV Infection

044.9 HTLV-III/LAV Not otherwise specified (with or without other conditions not classifiable to 042, 043, 044.0)

795.8 Positive serological or viral culture findings for Human T-Cell Lymphotropic Virus-III/Lymphadenopathy-Associated Virus (HTLV-III/LAV)

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Abnormal, abnormality						
respiratory (786.0)	044.9	043.3	043.9	043.3	042.9	042.9
weight loss (783.2)	044.9	043.3	043.9	043.3	042.9	042.9
Agranulocytosis (288.0)	044.9	043.3	043.9	043.3	042.9	042.9
AIDS (042.9)	042.9	042.9	042.9	042.9	042.9	042.9
AIDS-like disease (043.9)	043.9	043.9	043.9	043.9	042.9	042.9
Anemia (285.9)	044.9	043.3	043.9	043.3	042.9	042.9
aplastic (284.9)	044.9	043.3	043.9	043.3	042.9	042.9
specified NEC (284.8)	044.9	043.3	043.9	043.3	042.9	042.9
deficiency (280-281)	044.9	043.3	043.9	043.3	042.9	042.9
hemolytic, acquired (283)	044.9	043.3	043.9	043.3	042.9	042.9
Arthritis (716.9)	044.9	043.3	043.9	043.3	042.9	042.9
infective (711.9)	044.9	043.3	043.9	043.3	042.9	042.9
pyogenic (711.0)	044.9	043.3	043.9	043.3	042.9	042.9
Blindness (369)	044.9	043.3	043.9	043.3	042.9	042.9
Burkitt's tumor (200.2)	042.2	042.2	042.2	042.2	042.2	042.2
Cachexia (799.4)	044.9	043.3	043.9	043.3	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Candidiasis (112.9)	044.9	042.1	043.9	042.1	042.9	042.1
disseminated (112.5)	044.9	042.1	043.9	042.1	042.9	042.1
lung (112.4)	042.0	042.0	042.0	042.0	042.0	042.0
mouth (112.0)	044.9	042.1	043.9	042.1	042.9	042.1
nails (112.3)	044.9	042.1	043.9	042.1	042.9	042.1
skin (112.3)	044.9	042.1	043.9	042.1	042.9	042.1
specified NEC (112.8)	044.9	042.1	043.9	042.1	042.9	042.1
Changes, retinal vascular (362.1)	044.9	043.3	043.9	043.3	042.9	042.9
Coccidioidomycosis (114)	044.9	042.1	043.9	042.1	042.9	042.1
Coccidiosis (007.2)	042.0	042.0	042.0	042.0	042.0	042.0
Cryptococcosis (117.5)	042.0	042.0	042.0	042.0	042.0	042.0
Cryptosporidiosis (007.2)	042.0	042.0	042.0	042.0	042.0	042.0
Cytomegalic inclusion disease (078.5)	044.9	042.1	043.9	042.1	042.9	042.1
Deficiency:						
nutritional (260-269)	044.9	043.3	043.9	043.3	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Dementia (290.9)	044.9	043.1	043.9	043.1	042.9	042.9
organic (294.9)	044.9	043.1	043.9	043.1	042.9	042.9
presenile (290.1)	044.9	043.1	043.9	043.1	042.9	042.9
Depletion of (fluid) volume (276.5)	044.9	043.3	043.9	043.3	042.9	042.9
Dermatomycosis (111)	044.9	043.3	043.9	043.3	042.9	042.9
Dermatophytosis (110)	044.9	043.3	043.9	043.3	042.9	042.9
Disease — see also Disorder						
AIDS (042.9)	042.9	042.9	042.9	042.9	042.9	042.9
AIDS-like (043.9)	043.9	043.9	043.9	043.9	042.9	042.9
blood and blood-forming organs (289.9)	044.9	043.3	043.9	043.3	042.9	042.9
brain (348.9)	044.9	043.1	043.9	043.1	042.9	042.9
central nervous system (349.9)	044.9	043.1	043.9	043.1	042.9	042.9
demyelinating (341.9)	044.9	043.1	043.9	043.1	042.9	042.9
non-arthropod-borne viral (049.9)	044.9	043.1	043.9	043.1	042.9	042.9
specified NEC (049.8)	044.9	043.1	043.9	043.1	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Disease -- see also Disorder, cont.						
central nervous system, cont.						
slow virus infection (046.9).....	044.9	043.1	043.9	043.1	042.9	042.9
specified NEC (046.8).....	044.9	043.1	043.9	043.1	042.9	042.9
HTLV-III/LAV (044.9).....	044.9	044.9	043.9	043.9	042.9	042.9
salivary gland (527.9).....	044.9	043.3	043.9	043.3	042.9	042.9
skin (709.9).....	044.9	043.3	043.9	043.3	042.9	042.9
subcutaneous tissue (709.9).....	044.9	043.3	043.9	043.3	042.9	042.9
Disorder -- see also Disease						
immune mechanism, other (279).....	044.9	043.2	043.9	043.2	042.9	042.9
Dyspnea (786.0).....	044.9	043.3	043.9	043.3	042.9	042.9
Encephalitis (323.9).....	044.9	043.1	043.9	043.1	042.9	042.9
Encephalomyelitis (323.9).....	044.9	043.1	043.9	043.1	042.9	042.9
Encephalopathy (348.3).....	044.9	043.1	043.9	043.1	042.9	042.9
Fatigue (780.7).....	044.9	043.2	043.9	043.3	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Fever (780.6).....	044.9	043.3	043.9	043.3	042.9	042.9
Gastroenteritis (non-infectious) (558).....	044.9	043.3	043.9	043.3	042.9	042.9
infectious (009).....	044.9	043.3	043.9	043.3	042.9	042.9
Hepatomegaly (789.1).....	044.9	043.3	043.9	043.3	042.9	042.9
Herpes						
simplex (054).....	044.9	042.1	043.9	042.1	042.9	042.1
zoster (053).....	044.9	042.1	043.9	042.1	042.9	042.1
Histoplasmosis (115).....	044.9	043.3	043.9	043.3	042.9	042.9
HTLV-3 (044.9).....	044.9	044.9	043.9	043.9	042.9	042.9
HTLV-III (044.9).....	044.9	044.9	043.9	043.9	042.9	042.9
Hypercalciuria (275.9).....	044.9	043.3	043.9	043.3	042.9	042.9
Hypergammaglobulinemia (279.0).....	044.9	043.3	043.9	043.3	042.9	042.9
Infection, infectious						
AIDS virus (044.9).....	044.9	044.9	043.9	043.9	042.9	042.9
arthritis (711.9).....	044.9	043.3	043.9	043.3	042.9	042.9
pyogenic (711.0).....	044.9	043.3	043.9	043.3	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Infection, infective, continued						
HTLV-3 (044.9)	044.9	044.9	043.9	043.9	042.9	042.9
HTLV-III (044.9)	044.9	044.9	043.9	043.9	042.9	042.9
intestinal NEC (009)	044.9	043.3	043.9	043.3	042.9	042.9
Nocardia (039)	044.9	042.1	043.9	042.1	042.9	042.1
Salmonella (003.9)	044.9	042.1	043.9	042.1	042.9	042.1
localized (003.2)	044.9	042.1	043.9	042.1	042.9	042.1
septicemia (003.1)	044.9	042.1	043.9	042.1	042.9	042.1
specified NEC (003.8)	044.9	042.1	043.9	042.1	042.9	042.1
slow virus (046.9)	044.9	043.1	043.9	043.1	042.9	042.9
specified NEC (046.8)	044.9	043.1	043.9	043.1	042.9	042.9
viral (079.9)	044.9	044.0	043.9	043.9	042.9	042.9
[illegible] (171)	042.2	042.2	042.2	042.2	042.2	042.2
Lack of [illegible], [illegible]						
in infant (783.4)	044.9	043.3	043.9	043.3	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
[illegible]						
(progressive) (046.3).....	042.0	042.0	042.0	042.0	042.0	042.0
[illegible]						
gingiva (528.6).....	044.9	043.3	043.9	043.3	042.9	042.9
lip (528.6).....	044.9	043.3	043.9	043.3	042.9	042.9
mouth (528.6).....	044.9	043.3	043.9	043.3	042.9	042.9
oral, including tongue (mucosa) (soft tissue) (528.6).....	044.9	043.3	043.9	043.3	042.9	042.9
[illegible]						
[illegible]						
[illegible]						
(LAV)(044.9).....	044.9	044.9	043.9	043.9	042.9	042.9
[illegible]						
of the brain (202.8).....	042.2	042.2	042.2	042.2	042.2	042.2
[illegible]						
[illegible]						
[illegible]						

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
specified (031.8)	044.9	042.1	043.9	042.1	042.9	042.1
viral (480.9)	044.9	042.1	043.9	042.1	042.9	042.1

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
acute (357.0)	044.9	043.3	043.9	043.3	042.9	042.9
infective (357.0)	044.9	043.3	043.9	043.3	042.9	042.9
specified NEC (357.8)	044.9	043.3	043.9	043.3	042.9	042.9
[illegible]						
organic brain syndrome (294.9)	044.9	043.1	043.9	043.1	042.9	042.9
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
localized (003.2)	044.9	042.1	043.9	042.1	042.9	042.1
septicemia (003.1)	044.9	042.1	043.9	042.1	042.9	042.1
specified NEC (003.8)	044.9	042.1	043.9	042.1	042.9	042.1

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASSOCIATED VIRUS WITH ASSOCIATED CONDITIONS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Sarcoma						
immunoblastic (202.8)	042.2	042.2	042.2	042.2	042.2	042.2
Kaposi's (173)	042.2	042.2	042.2	042.2	042.2	042.2
Septicemia (038)	044.9	042.1	043.9	042.1	042.9	042.1
Splenomegaly (789.2)	044.9	043.3	043.9	043.3	042.9	042.9
Strongyloidiasis (127.2)	044.9	042.1	043.9	042.1	042.9	042.1
Syndrome						
acquired immune deficiency (042.9)	042.9	042.9	042.9	042.9	042.9	042.9
AIDS-like disease (043.9)	043.9	043.9	043.9	043.9	042.9	042.9
brain (organic) (nonpsychotic) (310.9)	044.9	043.1	043.9	043.1	042.9	042.9
psychotic (294.9)	044.9	043.1	043.9	043.1	042.9	042.9
infectious mononucleosis-like (079.9)	044.9	044.0	043.9	043.9	042.9	042.9

HUMAN T-CELL LYMPHOTROPIC VIRUS-III/LYMPHADENOPATHY-ASS

ASSOCIATED CONDITIONS	WITH HTLV-III/LAV	DUE TO HTLV-III/LAV	WITH AIDS-LIKE DISEASE	DUE TO AIDS-LIKE DISEASE	WITH AIDS	DUE TO AIDS
Thrombocytopenia (287.5)	044.9				042.9	
secondary (287.4)	044.9	043.3	043.9	043.3	042.9	042.9
[illegible]						
Tuberculosis (010-018)	044.9					
Lupus [illegible]	044.9					

Carrier (of)
- AIDS virus V02.9
- HTLV-III/LAV V02.9

Contact (with)
- AIDS virus V01.8
- HTLV-III/LAV V01.8

Exposure (to)
- AIDS virus V01.8
- HTLV-III/LAV V01.8

Positive
- culture (for)
  - AIDS virus 795.8
  - HTLV-III/LAV 795.8
- serology (for)
  - AIDS virus 795.8
  - HTLV-III/LAV 795.8

[FR Doc. 86-22065 Filed 10-6-86; 8:45 am]
BILLING CODE 4160-17-C

BEST COPY AVAILABLE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-86-1642]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to:

Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) The office of the agency to collect the information; (3) The agency form number, if applicable; (4) How frequently information submissions will be required; (5) What members of the public will be affected by the proposal; (6) An estimate of the total number of hours needed to prepare the information submission; (7) Whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal: Summary of Guaranty Agreeemnt (to include recordkeeping requirements contained in the Guaranty Agreements)
Office: Government National Mortgage Association
Form No. HUD-11716, 11727, 11733, 1723, and 1730
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 11,800
Status: Extension
Contact: Patricia Gifford, HUD, (202) 755-5550; Robert Fishman, OMB, (202) 395-6880

Dated: September 30, 1986.

Proposal: PHA-Owned or Leased Projects; Maintenance and Operation; Tenant Allowances for Utilities
Office: Public and Indian Housing
Form No.: None
Frequency of submission: Annually
Affected public: Individuals or Households and Non-Profit Institutions
Estimated burden hours: 8,000
Status: Extension
Contact: Charles Ashmore, HUD, (202) 755-6640; Robert Fishman, OMB, (202) 395-6880

Dated: September 30, 1986.

Proposal: Audit Guide for Audits for GNMA Approved Issuers of Mortgage-Backed Securities for Use by Independent Public Accountants
Office: Government National Mortgage Association
Form No.: None
Frequency of submission: Annually
Affected public: Businesses or Other For-Profit
Estimated burden hours: 4,800
Status: Extension
Contact: Patricia Gifford, HUD, (202) 755-5550; Robert Fishman, OMB, (202) 395-6880

Dated: September 30, 1986.

Proposal: Second Request for a Private Sector Organization to Develop and Maintain Model Standards for Use, by Reference, as Federal Manufactured Home Construction and Safety Standards (FMHCSS)
Office: Housing
Form No.: None
Frequency of submission: Single-Time
Affected public: Non-Profit Institutions
Estimated burden hours: 240
Status: New
Contact: Mark Holman, HUD, (202) 755-6590; Robert Fishman, OMB, (202) 395-6880

Dated: October 1, 1986.

Proposal: Public Housing Development Cost Containment
Office: Public and Indian Housing
Form No.: None
Frequency of submission: On Occasion
Affected public: State or Local Governments and Non-Profit Institutions
Estimated burden hours: 48
Status: New
Contact: Ray Hamilton, HUD, (202) 426-0938; Robert Fishman, OMB, (202) 395-6880

Dated: October 1, 1986.

Proposal: Report of Additional Classification and Wage Rate Pursuant to a Davis-Bacon Wage Determination
Office: Labor Relations
Form No.: HUD-4230A
Frequency of submission: On Occasion
Affected public: State or Local Governments and Businesses or Other For-Profit
Estimated burden hours: 1,167
Status: New
Contact: Ralph I. Stinson, HUD, (303) 844-5674; Robert Fishman, OMB, (202) 395-6880

Dated: October 1, 1986.

Proposal: Unreserved Pool of Hours for Various Information Collection Requests for use in OIG Audits and Activities
Office: Office of Inspector General
Form No.: None
Frequency of submission: On Occasion
Affected public: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions
Estimated burden hours: 1,000
Status: New
Contact: Dennis A. Raschka, HUD, (202) 426-6493; Robert Fishman, OMB, (202) 395-6880

Dated: October 1, 1986.

Proposal: (1) Schedule of Subscribers and GNMA II Contractual Agreement (to include recordkeeping requirements in the GNMA II MBS Guide (5500.2)); and (2) Schedule of Subscribers Addendum for Construction Loan Certification
Office: Government National Mortgage Association
Form No.: HUD-11705 and 1735
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 8,600
Status: Extension
Contact: Patricia Gifford, HUD, (202) 755-5550; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: October 1, 1986.

Donald C. Demitros,

Acting Director, Office of Information Policies and Systems.

[FR Doc. 86-22898 Filed 10-8-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N-16650; N-16657; NV-020-07-4212-21]

Notice of Termination of Airport Lease Applications N-16650 and N-16657, Involving Lands in Humboldt County, NV

SUMMARY: This notice supersedes the Federal Register Documents 77-12286 published on April 29, 1977 (42 FR 21857), and 77-14661 amended on May 25, 1977 (42 FR 26701).

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attn: Harold S. Green, Realty Specialist, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623-3676.

SUPPLEMENTARY INFORMATION: Termination of land segregation.

Notice is hereby given that airport lease applications N-16650 and N-16657, by John L. Williams of Agricultural Aviation Services, involving the following-described lands, have been rejected:

Mount Diablo Meridian, Nevada

N-16650

T. 39 N., R. 39 E., Sec. 20
W½W½W¼, 80 acres.

N-16657

T. 38 N., R. 38 E., Sec. 12
E½E½E½, NW¼NE¼NE¼, N½NW¼NE¼, N½N½NW¼, 150 acres.

The segregative effect of the airport lease applicaiton is hereby removed upon publication of this notice in the Federal Register.

Dated: October 2, 1986.

Frank C. Shields,

District Manager, Winnemucca.

[FR Doc. 86-22967 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-HC-M

[MT-070-07-4351-02]

Road Closure, Headwaters Resource Area, Butte District, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Road closure on public lands.

SUMMARY: The BLM has closed a portion of the Nez Perce Ridge Road to motor vehicle travel in order to secure access across private land to reach the upper Sawmill Gulch area.

The closed section of road is the last one-eighth mile of the Nez Perce Ridge road before it crosses the Beaverhead National Forest boundary. It is located in the SW¼ of the SE¼, T. 1 S., R. 10 W., PMM, about three miles west of Divide, Montana. This section of road is closed to all motorized vehicles from October 15 to November 30 annually effective immediately. The closure will remain in effect until further notice.

The authority for the closure is 43 CFR 8342.2.

FOR FURTHER INFORMATION CONTACT: Gary Leppart, Headwaters Resource, Area Manager, Box 3388, Butte, Montana 59702; Telephone 406/494-5059 (FTS) 585-8265.

James A. Moorhouse,

District Manager.

[FR Doc. 86-22947 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-DN-M

[MT-020-06-4121-14]

Coal Lease Offering; Peabody Coal Co.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency coal lease offering by sealed bid—M 63202—Peabody Coal Company.

SUMMARY: Notice is hereby given that the coal resource in the lands described below in Rosebud County, Montana, will be offered for competitive lease by sealed bid. This offering is being made as a result of an emergency application filed by Peabody Coal Company, in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), as amended.

An environmental assessment of the proposed coal development and related requirements for consultation, public involvement and hearing have been completed in accordance with 43 CFR Part 3425. The results of these activities were a finding of no significant environmental impact.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered consists of all recoverable reserves in the following described lands located approximately 4.5 miles south of the town of Colstrip and adjacent to Peabody Coal Company's Big Sky Mine and are described as follows:

T. 1 N., R. 41 E., P.M.M.

Sec. 24: W½NW¼NE¼, NW¼SW¼NE¼, NE¼NW¼, N¼NW¼NW¼, SE¼NW¼NW¼, and NE¼SE¼NW¼

Containing 110.00 acres, Rosebud County, Montana.

The tract contains an estimated 1.66 million tons of recoverable subbituminous coal. Two economically minable beds, the Rosebud and McKay are found in this tract. The upper Rosebud seam averages 25 feet in thickness and the lower McKay seam averages 9 feet in thickness. The recoverable coal averages (as-received) 8,651 BTU/lb., with 25.6 moisture, 0.74 percent sulfur, 8.0 percent ash, 38.3 percent fixed carbon, and 28.2 percent volatile matter.

Rental and Royalty: The lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

DATE: Lease Sale—The lease sale will be held at 10:00 a.m., Wednesday, November 5, 1986, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Bids—Sealed bids must be submitted on or before 9:00 a.m., Wednesday, November 5, 1986, to the Cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107. The bids should be sent by certified mail, return receipt; or be hand-delivered. The Cashier, will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

SUPPLEMENTARY INFORMATION: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile

documents are also available for public inspection at the Montana State Office.

Dean Stepanek,

State Director.

[FR Doc. 86-22959 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-DN-M

[UT-050-4410-08]

Availability of Final Environmental Impact Statement; Warm Springs Resource Area Proposed Resource Management Plan, UT

AGENCY: Bureau of Land Managment, Department of Interior.

ACTION: Notice of availability of final environmental impact statement (EIS) for the Warm Springs Resource Area (WSRA) proposed resource managment plan (RMP) inlcuding proposed areas of critical environmental concern (ACECs).

SUMMARY: This proposed RMP/final EIS defines the proposed plan for management of resources on the 2.2 million acres of public lands in the WSRA in Millard County, Utah. The proposed plan was, with minor changes, additions, or corrections and further definintion of actions, the preferred alternative in the WSRA Draft RMP/EIS which was distributed for public review and comment in April 1986.

The proposed RMP/final EIS includes the comments received on the Draft RMP/EIS and responses to those comments.

The plan proposes levels of grazing for livestock, big game wildlife, and wild horses. Overall management prescriptions for the multiple-use managment of all resources are proposed, as are management designations including special management areas (including ACECs), recreation areas, off-road vehicles use designations, fluid mineral leasing categories, and proposed mineral withdrawals.

Areas proposed for ACEC designation are: Pavant Butte (2,500 acres). An inactive volcanic crater, also known as Sugarloaf Mountains is a historic peregrine falcon (an endangered species) eyrie and planned reintroduction site. It has landform features that are outstanding for interpretation and study. It would be withdrawn from mineral entry, placed in Category 3 for fluid mineral leasing, closed to vehicular traffic, retained in Federal ownership, and be a right-of-way avoidance area. State section 32 would be acquired by exchange if possible.

Tabernacle Hill Lave Field (3,567 acres) contains a combination geologic/volcanic features probably unique in the Western U.S. It would be withdrawn from mineral entry, placed in Category 3 for fluid mineral leasing, and be a right-of-way avoidance area. Recreation facilities would be developed, ORV use limited to existing roads, State Section 16 acquired by exchange if possible, and rockhounding and shooting prohibited.

Any person who participated in the planning process and has an interest which may be adversely affected by approval of the proposed plan may protest approval. A protest may raise only those issues which were submitted for the record during the planning process. Protests must be in writing and filed with the Director at the following address: Director, Bureau of Land Management, 18th and C Streets NW, Washington, DC 20240.

The protest must be filed within 30 days of the Environmental Protection Agency's Federal Register publication of the Notice of Availability of the Final EIS. A protest must contain:

The name, mailing address, telephone number, and interest of the person filing the protest.

A statement of the issue(s) being protested.

A statement of the part(s) of the plan being protected.

A copy of all documents addressing the issue(s) that were submitted during the planning process by the protesting individual, or an indication of the date the issue(s) were discussed for the record.

A concise statement explaining why the State Director's proposed decision is believed to be wrong.

Supplementary Information: Copies of the Proposed RMP/Final EIS may be obtained at the following BLM offices: Richfield District Office, 150 East 900 North, Richfield, Utah 84701; Bureau of Land Management, Washington Office, 18th and C Streets NW., Washington, DC 20240; or Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, UT 84111-2303.

Any comments and requests for further information on the proposed RMP/Final EIS received will be considered in the decision-making process, which will follow the Governor's consistency review and the comment/protest period. Comments should be addressed to: Wayne T. Kammerer Bureau of Land Management Richfield, UT 84701.

Donald L. Pendleton,

District Manager.

September 29, 1986.

[FR Doc. 86-22849 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-DQ-M

Carson City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting, Carson City District Advisory Council.

DATE: November 18, 1986; 9:00 a.m.

ADDRESS: Palomino Valley Wild Horse and Burro Placement Center, 17800 Pyramid Highway, 18 miles north of Sparks, Nevada.

SUPPLEMENTARY INFORMATION: The agenda will include a tour and discussion of operations at Palomino Valley and discussion of the Carson City District's wild horse and burro management program. The public is welcome to attend and address the Council at 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Steve Weiss, Public Affairs Officer, BLM, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701, (702) 882-1631.

October 3, 1986.

Norman L. Murray,

District Manager.

[FR Doc. 86-22954 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-HC-M

[CO-010-86-4131-01]

Meeting of the Craig, CO, Advisory Council

In accordance of Pub. L. 94-579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on November 12, 1986, at 10 a.m. at the Craig District Office, 455 Emerson St., Craig, CO.

Agenda items will include:

1. An update on the Wolf Ridge Corporation EIS.

2. Effects of oil shale mining claims on grazing leases in Piceance Basin.

The meeting will be open to the public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Dated: October 2, 1986.

William J. Pulford,

District Manager.

[FR Doc. 86-22950 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-JB-M

[OR-050-4322-01;GP7-2]

Oregon; Prineville District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 of a meeting of the Prineville District Grazing Advisory Board to be held November 6, 1986.

The meeting will begin at 10:00 AM in the conference room of the Bureau of Land Management Office located at 185 East 4th Street, Prineville, Oregon 97754.

The agenda will include the following items:

1. Election of officers
2. Brothers Planning Area Rangeland Program Summary
3. Brothers/LaPine Resource Management Plan Grazing Issues
4. Expenditure of Range Betterment (8100) funds
5. Coordinated Riparian Management Demonstration Area

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the Board is requested to contact the District Manager at the above address, prior to November 1.

Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

Dated: October 1, 1986.

Donald L. Smith,

Acting District Manager.

[FR Doc. 86-22850 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-33-M

[CA-050-4410-04]

Advisory Council Meeting; Ukiah, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Pub. L. 94-579 and 43 CFR Part 1780, the Ukiah District Advisory Council will meet to discuss the Draft Arcata Resource Management Plan which involves public lands in northwestern California.

DATES: The meeting will begin at 1:00 p.m. Thursday, 13, November 1986 and will adjourn at Noon Friday, November 14, 1986.

ADDRESS: The meeting will be held at the BLM Arcata Resource Area Office, 1125 16th Street, Arcata, California.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462-3873.

SUPPLEMENTARY INFORMATION: Public lands included in the Arcata Resource Management Plan are located primarily in Mendocino and Humboldt counties (excluding the King Range National Conservation Area), with small tracts in Del Norte, Trinity, and Sonoma counties.

The meeting is open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 10:00 a.m. Friday, November 14. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: October 3, 1986.

Van W. Manning,

District Manager.

[FR Doc. 86-22949 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-JB-M

[CA-010-06-7122-10-1018; CA 18882]

Exchange of Public and Private Lands, Imperial and Riverside Counties, CA

Correction

In FR Doc. 86-16139, beginning on page 25952 in the issue of Thursday, July 17, 1986, make the following correction:

On page 25953, first column, in the land description for San Bernardino Meridian, CA, second line, "W ¼" should read "SW¼".

BILLING CODE 1505-01-M

[UT-060-06-4212-14; U-54739]

Sale of Public Land in Carbon County, UT

September 30, 1986.

AGENCY: Bureau of Land management, Interior.

ACTION: Notice of realty action, U-54739, sale of public land in Carbon County, Utah.

SUMMARY: The following described parcel of public land has been examined, and through the development of land-use planning decisions based upon public input, resource considerations, regulations, and Bureau policies, has been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1712) using direct sale procedures (43 CFR 2711.3-3(a)(4). Sale will be at no less than the appraised fair market value of $2,000.

Salt Lake Meridian, Utah

T. 12 S., R. 11 E.,
Sec. 35: SE¼SW¼.

The described land aggregates 40 acres.

The land is being offered as a direct sale to Mr. Funnon Shimmin, Price, Utah, an adjoining private land owner in accordance with 43 CFR 2711.3-3(a)(4). There is no legal or physical access to the public land parcel. The land will not be offered for sale until at least sixty (60) days after publication of this notice.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

The terms and conditions applicable to the sale are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the lands will be subject to all valid existing rights and reservations of record. Existing rights and privileges of record include, but are not limited to, Federal oil and gas lease U-50361.

Sale Procedures: If the identified parcel is not sold it will remain available for sale over the counter until sold or withdrawn from the market. Sealed bids will be accepted at the Price River Resource Area office during regular business hours, 7:45 a.m. to 4:30 p.m. MST. Sealed bids will be opened the second and last Tuesday of each month at 11:00 a.m.

Bidder Qualifications: Bidders must be U.S. citizens, 18 years of age or more; a State or State instrumentality authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Bid Standards: The BLM reserves the right to accept or reject any and all offers, or withdraw the land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with Section 203(g) of FLPMA or other applicable laws.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will

become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the land and the terms and conditions of the sale may be obtained from Mark A. Mackiewicz, Area Realty Specialist, Price River Resource Area Office, 900 North 700 East, P.O. Drawer AB, Price, Utah 84501, (801) 637-4584, or from Brad Groesbeck, District Realty Specialist, 82 East Dogwood, Moab District Office, P.O. Box 970, Moab, Utah 84532, (801) 259-6111..

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 86-22851 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-06-4212-14; U-52806, U-52807]

Sale of Public Land in Emery County, UT

September 30, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, U-52806, U-52807, sale of public land in Emery County, Utah

SUMMARY: The following described parcels of public land have been examined, and through the development of land-use planning decisions based upon public input, resource considerations, regulations, and Bureau policies, have been found suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using the direct sale procedures (43 CFR 2711.3-3) for U-52807 and competitive bidding procedures (43 CFR 2711.3-1) for U-52806. Sale will be at no less than the appraised fair market value. Bids at less than such value will be rejected as required by FLPMA.

Parcel	Legal description	Acreage	Value
Salt Lake Meridian, Utah. U-52806	T. 19 S., R. 8 E., Sec. 3, [illegible]	40	$8,000
Salt Lake Meridian, Utah. U-52807	T. 19 S., R. 8 E., Sec. 11, SE¼SE¼, Sec. 12, SW¼SW¼.	80	8,000

Parcel U-52807 is being offered as a direct sale to Mrs. Neve Jensen, Castle Dale, Utah, sole adjoining private land owner in accordance with 43 CFR 2711.3-3(a)(4). There is no physical access to the public land parcel. The land will not be offered for sale until at least sixty (60) days after publication of this notice.

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

The terms and conditions applicable to the sale here:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the lands will be subject to all valid existing rights and reservations of record. Existing rights of record include, but are not limited to, Federal oil and gas lease U-43787 and Emery County Road 4-21 claimed under R.S. 2477.

Sale Procedures: Sealed bids for Parcel U-52806 will be accepted at the San Rafael Resource Area Office, PO Drawer AB, 900 North 7th East, Price, Utah 84501, until 11:00 a.m. on January 20, 1987, at which time the bids will be opened. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental oral bidding. The oral bidding, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying bid shall then be publicly declared. If not sold, the parcel will remain available for sale over the counter on a first come basis until June 19, 1987.

Bid Standards: The BLM reserves the right to accept or reject any and all offers, or withdrew any land or interest in land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

DATES: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the land, terms and conditions of sale and bidding instructions may be obtained from Laurelle Hughes Area Realty Specialist, San Rafael Resource Area Office, 900 North 700 East, P.O. Drawer AB, Price, Utah 84501, (801) 637-4584, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532 (801) 259-6111.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 86-22852 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-942-07-4520-12]

Survey Plat Filing; Arizona

October 2, 1986.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, P.O. Box 16563, Phoenix, Arizona, on the dates indicated:

A plat (in 5 sheets) representing a dependent resurvey of portions of the north boundary, east and south boundaries, and portions of the subdivisional lines, and a survey of subdivisions in certain sections and metes-and-bounds surveys in sections 28, 32, and 35, Township 12 North, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted August 22, 1986, and was officially filed August 28, 1986.

This plat was prepared at the request of the U.S. Forest Service, Apache-Sitgreaves National Forest Office.

A plat representing a dependent resurvey of the north boundary, a portion of the east boundary, a portion of the west boundary, and a portion of the subdivisional lines of Township 12 North, Range 20 East, Gila and Salt River Meridian, Arizona, was accepted August 22, 1986, and was officially filed August 28, 1986.

A supplemental plat showing a subdivision of original lot 2, section 18, Township 16 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted September 22, 1986, and was officially filed September 25, 1986.

These plats were prepared at the request of the U.S. Forest Service, Region 3.

A supplemental plat showing amended lottings in sections 4 and 9, Township 13 North, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted September 10, 1986, and was officially filed September 15, 1986.

A supplemental plat showing amended lottings created by the segregation of Mineral Survey No. 3917 in sections 12, 13, and 14, Township 13 North, Range 1½ East, Gila and Salt River Meridian, Arizona, was accepted September 10, 1986, and was officially filed September 15, 1986.

A supplemental plat showing amended lottings in section 31, Township 14 North, Range 1 West, Gila and Salt River Meridian, Arizona, was accepted September 10, 1986, and was officially filed September 15, 1986.

A supplemental plat showing amended lottings in sections 7 and 18, Township 15 North, Range 7 West, Gila and Salt River Meridian, Arizona, was accepted August 13, 1986, and was officially filed August 18, 1986.

A supplemental plat showing amended lottings in sections 12, 13, and 14, Township 15 North, Range 8 West, Gila and Salt River Meridian, Arizona, was accepted August 13, 1986, and was officially filed August 18, 1986.

A supplemental plat showing amended lottings created by the segregation of Mineral Survey Nos. 3741 and 3742, in section 21, Township 15 North, Range 9 West, Gila and Salt River Meridian, Arizona, was accepted August 13, 1986, and was officially filed August 18, 1986.

These plats were prepared at the request of the Bureau of Land Management, Phoenix District Office.

A supplemental plat showing amended lottings in section 22, Township 20 South, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted September 22, 1986, and was officially filed September 25, 1986.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office, Lands and Mineral Operations.

2. These plats will immediately become the basic records for describing the land for authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-22943 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-32-M

Survey Plat Filing; Nevada

October 2, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey and order providing for opening of land.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

DATES: Filings were effective as listed below in notice.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 784-5484.

SUPPLEMENTARY INFORMATION: The Plat of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on November 24, 1986.

Mount Diablo Meridian, Nevada

T. 40 N., R. 20 E.

The land ranges from about 5,000 to 6,300 ft. above sea level, and is gently rolling to mountainous. The soil varies from sandy clay to rocky. The vegetation consists of sagebrush, greasewood, rabbitbrush and native grass. There is scattered juniper in the southwest portion of the township.

Boulder Reservoir is located in section 33, and Boulder Creek, flows northwesterly from there through the township.

A power line runs north northwesterly through the east two tiers of sections, entering the township on the east boundary of sec. 36 and leaving on the north boundary of sec. 2.

Prinicipal users of the area are cattlemen and access into the township is provided by Nevada State Route No. 34, and numerous other improved and unimproved desert trail roads.

No mineral formations of consequence were noted during the survey.

Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described above are hereby open to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m., on November 24, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing. The lands described above have been open and continue to be open to the mining and mineral leasing laws.

The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on September 26, 1986.

T. 39 N., R. 61 E.
Supplemental Plat.

These surveys were executed to meet certain administrative needs of this Bureau.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86-22948 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-HC-M

Survey Plat Filing; New Mexico

October 2, 1986.

The plat of survey, in three sheets, described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on October 2, 1986.

A survey representing the dependent resurvey of portions of the north and south boundaries of the Santa Cruz Grant, a portion of the Fifth Standard Paralled North, portions of the subdivisional lines, portions of the subdivision of section lines, certain small holding claim boundaries, and certain lot boundaries, and the survey of certain lots in sections 1, 4, 5, 8, and 18, Township 20 North, Range 9 East, New Mexico Principal Meridian, New Mexico, under Group 781.

This survey was requested by the Albuquerque District Manager, Albuquerque, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-22951 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-FB-M

Survey Plat Filing; New Mexico

October 2, 1986.

The plat of survey, in three sheets, described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on October 2, 1986.

A survey representing the survey of the north and west boundaries and the subdivisional lines of Township 22 North, Range 17 West, New Mexico

Principal Meridian, New Mexico, under Group 633.

This survey was requested by the Bureau of Indian Affairs, Navajo Area Office, Window Rock, Arizona.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,
Chief, Branch of Cadastral Survey.

[FR Doc. 86-22952 Filed 10-8-86; 8:45 am]
BILLING CODE 4310-FB-M

Survey Plat Filing; New Mexico

October 1, 1986.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on October 1, 1986.

The supplemental plat showing lot 93 in section 2, Township 2 South, Range 1 West, of the New Mexico Principal Merician, New Mexico, was approved September 5, 1986, under Group 768.

The survey was requested by the District Manager, Las Cruces, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,
Chief, Branch of Cadastral Survey.

[FR Doc. 86-22953 Filed 10-8-86; 8:45 am]
BILLING CODE 4310-FB-M

Fish and Wildlife Service

Record of Decision to Adopt the Hawaiian Islands National Wildlife Refuge Master Plan Environmental Impact Statement (FES 86/11)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Record of decision (ROD).

SUMMARY: The U.S. Fish and Wildlife Service (FWS) has decided to adopt a comprehensive management plan for the Hawaiian Islands National Wildlife Refuge (HINWR). This plan will guide future management, development and use to the refuge for the next 10 to 20 years. The Preferred Alternative (PA) of the Final Master Plan/Environmental Impact Statement (EIS) Federal Register Notice of Availability of Final EIS, July 8, 1986) has been selected for implementation upon signature of this ROD.

Adoption and implementation of any of the considered alternatives would promote conservation of the six species of endangered or threatened wildlife addressed in this Master Plan/EIS. Furthermore, the National Marine Fisheries Service (NMFS) conducted a separate biological consultation under section 7 of the Endangered Species Act and concluded that implementation of the PA is not likely to jeopardize the continued existence of the Hawaiian monk seal or the Hawaiian green sea turtle.

The FWS has concluded that the PA is superior to any other alternative considered and is the best course of action to manage the Hawaiian Islands National Wildlife Refuge for the next 10–20 years.

The Preferred Alternative (PA) places strong emphasis on protecting and enhancing fish and wildlife values of the HINWR. Continuing efforts would go into research and management efforts intended to recover endangered and threatened species. Monitoring of wildlife populations and their habitats would continue to receive high priority. Seabirds would be the primary focus of attention, but endemic marine and terrestrial species would not be ignored, as changes in distribution and abundance of these species are key biological indicators of ecosystem changes.

While access to the refuge would continue to be restricted through a permit system, human activity levels on and around the refuge would likely increase beyond current levels. The continuing high priority efforts devoted to wildlife research and monitoring activities would mean the influx of greater numbers of researchers and agency staff personnel to Tern Island. Archaeologists and historians would be included in this influx, but their activities would be directed at studying the cultural resources on Nihoa and Necker Islands. Public use on the refuge would also likely see increases over the next 10–20 years, as demand for directly experiencing the unique resources of the refuge increases. While the Preferred Alternative would seek to enhance public awareness of refuge resources primarily through off-site activities, limited, supervised and strictly controlled on-site opportunities would also be provided to accommodate wildlife photographers, wildlife journalists and wildlife enthusiasts interested in nature tours.

The PA would support the State's current proposal to moor a mothership at French Frigate Shoals, just outside the refuge boundary. The mothership would provide a support base for a fleet of catcher vessels which would fish for several commercially important fish and shellfish species. Under the PA, the FWS would continue to provide emergency logistical support to the multi-species fishery. Related to the support for the commercial fishing industry, the PA includes a number of strategies designed to monitor support activities to ensure they remain compatible with refuge objectives over time.

With the increases in levels of human activity in and around the HINWR, the risks to wildlife resources would also increase. To reduce those risks to an acceptable level, the FWS would place increased emphasis on ensuring that all research and staff personnel take adequate precautions to ensure they are not unwitting carriers of exotic organisms which could devastate native floral and faunal communities. Increased efforts would also be directed toward regulating and monitoring nearshore vessel traffic to minimize the risks of accidental groundings, oil spills or spills of hazardous materials. Finally, the PA calls for the FWS to develop procedures for carefully monitoring research activities, the commerical fishing industry, nature tours and other human activities that would be permitted under the PA, for possible adverse effects on wildlife. The basic concept would involve the development of monitoring systems sufficiently sensitive to detect at an early stage any harmful disruptions to the ecosystem. Corrective actions would be implemented quickly if the full cooperation of federal and state government agencies and private parties, could be secured. The PA would seek to create the level of public and private sector cooperation that would be required to successfully implement this alternative.

Implementation of the PA will not be realized without a significant price tag. It is estimated that annual operation and maintenance (O&M) costs of the PA would double current O&M costs of $305,000 and development costs could range from $2 to $4 million. The O&M cost increase reflects primarily the increased research and eduction initiatives contained in the PA. Development costs are primarily related to rehabilitation of the deteriorated sheet pile sea wall that protects tern Island. Cost-sharing arrangements for the operation of the Tern Island facility could reduce FWS costs, as could the role of mothership-supported fishing vessels willing to facilitate refuge

research projects. National budget concerns with deficits will require ongoing re-evaluations of the PA and associated costs. Funding constraints may well curtail implementation of the PA.

FOR FURTHER INFORMATION CONTACT:
Richard C. Wass, Refuge Manager, Hawaiian Islands National Wildlife Refuge, 300 Ala Moana Boulevard, Room 5302, P.O. Box 50167, Honolulu, HI 96850, 808–546–5606.

SUPPLEMENTARY INFORMATION:

Alternatives Considered

In developing management alternatives for the HINWR, the FWS considered a broad range of demands for human utilization of the natural and cultural resources of the HINWR while planning for the protection and preservation of those resources. The result of this effort is an array of management alternatives that varies in emphasis toward resource preservation or resource utilization. In all, five different management alternatives were considered for the HINWR. The following is a brief discussion of each alternative.

1. No Action Alternative

The No Action Alternative (NAA) is essentially management of the refuge as it presently exists. ("No Action" refers to "no change" from current management direction or intensity.) The description of the "present course of action" is needed to provide a reference point from which to compare and evaluate environmental effects of other alternatives under consideration. The NAA includes a number of strategies intended to enhance populations of threatened, endangered, and sensitive species as well as other fish and wildlife species such as seabirds. Research and monitoring would continue under the NAA. Limited off-refuge environmental education and interpretation would be provided, as would limited logistical support for commercial fishery operations (radio support, use of emergency mooring buoy, medical assistance, etc.). In documenting the NAA, it became apparent that current management falls short of accomplishing all refuge objectives at a minimally acceptable level. This is primarily due to insufficient human and financial resources. The primary areas where the NAA (present management) fails to meet objectives is in securing additional layers of protection for refuge resources and in environmental education and interpretation.

2. Baseline Alternative

The Baseline Alternative (BA) includes management strategies needed to address each of the refuge objectives at a minimally acceptable level. As the BA addresses the full range of refuge objectives, it is clearly a multiple-use alternative. It seeks to create a balance between resource preservation and resource utilization needs. The BA builds on the NAA, adding various management strategies to minimally satisfy refuge objectives.

3. Resource Preservation Alternative

This alternative includes additional strategies beyond those included in the Baseline Alternative, which would further address refuge objectives. Just as the strategies in the Baseline Alternative could be considered "must do" strategies to minimally satisfy refuge objectives, it was possible to portray "enhancement" alternatives that emphasize either resource preservation or resource utilization. The Resource Preservation Alternative (RPA) is one such enhancement alternative that contains strategies directed toward an even greater degree of fish and wildlife preservation.

4. Resource Utilization Alternative

The Resource Utilization Alternative (RUA) is another enhancement alternative that goes beyond the NAA and BA and directs greater emphasis toward achieving education, recreational, and other public and economic use objectives.

5. Preferred Alternative

The Preferred Alternative (PA) is a hybrid alternative, drawing strategies from both the RPA and RUA. The Preferred Alternative represents the FWS' recommended action for the management of the HINWR.

Strategies contained in the BA, RPA, PA, and RUA satisfy refuge objectives to at least a minimally acceptable level. All of the alternatives are environmentally preferable.

Decision Factors

The five management alternatives for the HINWR were evaluated and commpared to each other using specific evaluation criteria. The source of these evaluation criteria were: (1) Comments and input obtained through extensive public involvement efforts; (2) Public and agency comment received on previous FWS comprehensive land use planning efforts; and (3) The knowledge and experience of the FWS' research and wildlife management personnel and that of other participating scientific agencies and organizations. The following evaluation criteria are among the most critical to this planning effort:

1. Ability to satisfy wildlife resource and public use objectives for the refuge—per six major categories:
   a. Vulnerable Species (threatened, endangered, sensitive and candidate species).
   b. Cultural Resources.
   c. Seabirds.
   d. Other Terrestrial/Marine Species.
   e. Education/Interpretation.
   f. Other Compatible Public Uses.
2. Cost to Implement Refuge Programs.
3. Degree of Risk to Wildlife Resources.
4. Administrative Practicality.
5. Responsiveness to Authorities, Mandates and Policies that Govern the Activities of the FWS (i.e. Treaties, Executive Orders, Federal Laws, State Laws, FWS Goals, etc.)
6. Public Comments.

The FWS' decision to adopt the PA is based on a comprehensive review of the FWS' Final Master Plan/EIS for the HINWR, as well as all other information and research associated with this subject. A Draft Master Plan/EIS was prepared in August 1984 and distributed to concerned citizens, agencies and organizations for review and comment. Local and regional libraries were provided copies of the document for public inspection. Public meetings were held to gather input from interested parties and to present the alternatives. Notice of Availability of the Draft Master Plan/EIS was published in the Federal Register on September 7, 1984. A Final Master Plan/EIS was prepared based on the draft document and comments received from citizens, agencies and organizations. Copies of the Final Master Plan/EIS have been distributed to the interested public. Additional copies are available through the Refuge Manger.

Mitigation

While access to the Refuge would continue to be restricted through a permit system, human activity levels on and around the Refuge would likely increase beyond current levels. The continuing high priority efforts devoted to wildlife research and monitoring activities will mean the influx of greater numbers of researchers and agency staff personnel to Tern Island. Archaeologists and historians will be included in this influx, but their activities will be directed at studying the cultural resources on Nihoa and Necker Islands. Public use on the Refuge will also likely see increases over the next 10–20 years,

as demand increases for directly experiencing the unique resources of the Refuge. While the Preferred Alternative would seek to enhance public awareness of Refuge resources primarily through off-site activities, limited, supervised on-site opportunities would also be provided as feasible to accommodate wildlife photographers, wildlife journalists, or wildlife enthusiasts interested in nature tours.

With the increases in levels of human activity in and around the HINWR, the risks to wildlife resources will also increase. To reduce those risks to an acceptable level, the FWS will place increased emphasis on ensuring that all research and staff personnel take adequate precautions to ensure they are not unwitting carriers of exotic organisms which could devastate native floral and faunal communities. Increased efforts will also be directed toward regulating and monitoring nearshore vessel traffic to minimize the risks of accidental groundings, oil spills, or spills of hazardous materials. Finally, the PA calls for the FWS to develop procedures for carefully monitoring research activities, the commercial fishing industry, nature tours, and other human activities for possible adverse effects on wildlife.

Copies of this ROD are being sent to agencies, organizations, and individuals who were sent copies of the EIS.

Dated: September 10, 1986.

Rolf L. Wallinstrom,

Regional Director, U.S. Department of the Interior, Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, OR 97232.

[FR Doc. 86-22942 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits; San Diego Zoological Society, San Diego CA, et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 711275

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import 1 male and 2 female Sumatran tigers *(Panthera tigris sumatrae)* from Kebun Kinatang Ragunan Zoological and Botanical Gardens, Jakarta, Indonesia for propagation purposes. These tigers will be included in a long term breeding program of the captive population to further increase propagation of this species in North America.

PRT 712139

Applicant: Hallett S. Ward, Waynesville, NC

The applicant requests a permit to import a trophy from a bontebok *(Damaliscus dorcas dorcas)* which was a member of a captive herd maintained by Mr. L.U.D DeBruijn, Somerset East, Cape Province, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT 712236

Applicant: Caldwell Schools, Inc., Tyler, TX

The applicant requests a permit to import six captive-born African hunting dogs *Lycaon pictus)* from the National Zoological Gardens of South Africa for breeding and exhibition.

PRT 711053

Applicant: Plants by Peg—Peg Spaete, Boring, OR

The applicant requests a permit to sell in interstate commerce artificially propagated specimens of the following cactus species: *Ancistrocactus tobuschii* (Tobusch fishhook), *Echinocereus fendleri* var. *kuenzleri* (Kuenzler hedgehog), and *E. viridiflorus* var. *davisii* (Davis green pitaya). This will serve to encourage artificial propagation and decrease the need for take of these species from the wild.

PRT 712295

Applicant: Gladys Porter Zoo, Brownsville, TX

The applicant requests a permit to import one male captive born Mueller's gibbon *(Hylobates mulleri)* from the Scottish National Zoological Park, Edinburgh, Scotland, for the purpose of captive breeding.

PRT 707228

Applicant: Robert H. Hanson, Greenwich, CT

The Applicant requests a permit to import a trophy from a bontebok *(Damaliscus dorcas dorcas)* which was a member of a captive herd maintained by F.W.M. Bowker, Jr., Grahamatown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT 707224

Applicant: Arlene P. Hanson, Greenwich, CT

The Applicant requests a permit to import a trophy from a bontebok *(Damaliscus dorcas dorcas)* which was a member of a captive herd maintained by F.W.M Bowker, Jr., Grahamstown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enahance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT 712286

Applicant: International Animal Exchange, Ferndale, MI

The Applicant requests a permit to purchase in foreign commerce two female cheetahs *(Acinonyx jubatus)* from Mr. Helga Delfs, Windhoek, Namibia (Southwest Africa) to sell in foreign commerce and ship to the Taipei Municipal Zoo in Taipei, Taiwan. The applicant contends that these cheetahs will be used for captive breeding and unspecified conservation education activities, thereby enhancing the survival of the species. Taiwan is not a party to the "Convention on International Trade in Endangered Species of Wild Fauna and Flora" (CITES).

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: October 6, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-22960 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6140, Block A-101, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on September 30, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: October 1, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-22853 Filed 10-8-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-0723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Revenues, Expense & Statistics
OMB Form No.: 3120-0022
Agency Form No.: QPA
Frequency: Quarterly—Annually
Respondents: Class I Motor Carrier of Passengers
No. of Respondents: 60
Total Burden Hrs.: 1,440

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Condensed Balance Sheet
OMB Form No.: 3120-0063
Agency Form No.: CBS
Frequency: Quarterly—Annually
Respondents: Class I Railroads
No. of Respondents: 25
Total Burden Hrs.: 600.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22879 Filed 10-8-86; 8:45 am]

BILLING CODE 7035-01-M

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-0723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension
Bureau/Office: Office of Compliance & Consumer Assistance
Title of Form: Designation of Agents—Motor Carriers & Brokers
OMB Form No.: 3120-0006
Agency Form No.: BOC-3
Frequency: On occasion
Respondents: Motor Carrier & Brokers
No. of Respondents: 6,000
Total Burden Hrs.: 1,500

Type of Clearance: Extension
Bureau/Office: Office of Compliance & Consumer Assistance
Title of Form: Motor Carrier Bodily Injury & Property Damage Liability Certificate of Insurance
OMB Form No.: 3120-0103
Agency Form No.: BMC-91X
Frequency: On occasion
Respondents: Regulated transportation companies
No. of Respondents: 25,000
Total Burdens Hrs.: 6,250

Type of Clearance: Extension
Bureau/Office: Office of Public Assistance
Title of Form: Profile of Minority & Female-owned Motor Carrier and Identification of Minority & Female-owned Motor Carriers
OMB Form No.: 3120-0050
Agency Form No.: OPA 81-1 & OPA 81-2
Frequency: Annual/Biennially
Respondents: Minority & Female Owned Motor Carriers
No. of Respondents: 36
Total Burden Hrs.: 9.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22880 Filed 10-8-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30908]

Carolina Rail Services, Inc.; Exemption for Acquisition and Operations and Trackage Rights

Carolina Rail Services, Inc., has filed a notice of exemption to acquire the terminal switching operations and certain trackage rights over a line of the North Carolina Ports Railway Commission, an agency of the State of North Carolina, between the former Atlantic & East Carolina mileposts 94.1 (Western boundary) and 94.5 (Eastern boundary.) Any comments must be filed with the Commission and served on Mr. Michael A. Nemeroff at Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 26, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22882 Filed 10-8-86; 8:45 a m]

BILLING CODE 7035-01-M

[Finance Docket No. 30916]

Washington Central Railroad Co., Inc.; Exemption for Acquisition and Operation.

Washington Central Railroad Company, Inc. (WRC) has filed a notice of exemption to acquire and operate 433 miles of rail line of the Burlington Northern Railroad Company (BN) as follows: From Milepost 1.70 at SP&S Junction, to Milepost 102.6 at East Auburn; from Milepost 186.9 at Connell, to Milepost 1976.0 at Warden; from Milepost 0.0 at Warden, to Milepost 1969.0 at Othello; from Milepost 1978.0 at Warden, to Milepost 0.0 at Basset Junction; from Milepost 0.0 at Basset Junction, to Milepost 12.5 at Schrag; from Milepost 0.0 at Basset Junction, to Milepost 20.0 at Moses Lake; from Milepost 0.0 at Wheeler, to Milepost 20.0 at Moses Lake; from Milepost 13.9 at Kennewick, to Milepost 5.5 at Hanford Works; from Milepost 34.3 at Gibbon, to Milepost 62.6 at Granger; from Milepost 0.0 at Toppenish, to Milepost 18.9 at White Swan; from Milepost 0.0 at Yakima, to Milepost 8.7 at Moxee City; from Milepost 0.0 at Yakima, to Milepost 13.1 at Naches; and from Milepost 0.0 at Palmer Junction, to Milepost 13.1 at Veazey, all in the State of Washington. Any comments must be filed with the Commission and served on: R. Lawrence McCaffrey, Jr., Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC, 20005-4797, (202) 628-2000 and Lawrence Stroik, Assistant General Solicitor, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102, (817) 878-2373. This transaction will also involve the issuance of securities by WRC which will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1 (51 FR 4928 (February 10, 1986)).

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 29, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22863 Filed 10-8-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30910]

Wilmington Terminal Railroad, Inc.; Operation Exemption

Wilmington Terminal Railroad, Inc. has filed a notice of exemption to operate approximately 3 miles of railroad line in the Wilmington, NC port terminal area, pursuant to a lease agreement with the North Carolina Ports Railway Commission. Any comments must be filed with the Commission and served on Donald G. Avery or Kelvin J. Dowd, 1224 17th Street, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 25, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22884 Filed 10-8-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Depatment issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, telephone (202) 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Application for BLS Occupational Safety and Health Statistics Grants
1220-0067; BLS 424A, BLS 424B, BLS 424C, BLS 424D. SF-424 is a GSA burden.
Annually
State or local governments
48 responses; 384 hours; 4 forms

The BLS Occupational Safety and Health Statistical Grant Program makes grants to the States to assist them in developing and administering programs dealing with occupational safety and health statistics and to arrange through these grants for research to further the objectives of the Occupational Safety and Health Act.

Pension and Welfare Benefits Administration

Employee Benefit Plan Annual Report (Form 5500 Series) 1210-0016.
Annually

Businesses or other for-profit; Non-profit institutions; Small businesses or organization
900,000 responses; 714,561 hours, 3 forms

Section 104(a)(1)(A) of ERISA requires plan administrators to file an annual report containing the information described in section 103 of ERISA. The Form 5500 Series provides a standard format for fulfilling that requirement.

Extension

Bureau of Labor Statistics

Permanent Mass Layoff and Plant Closing Program
Reports 1-3 and Supplemental Employer Information Report 1220-0090, BLS 428
Quarterly
State or local governments: businesses or other for-profit; Federal agencies or employees; non-profit institutions
15,504 responses; 168,055 hours; 4 forms

Section 462(e) of the Job Training Partnership Act states that the Secretary of Labor develop and maintain statistical data on permanent mass layoffs and plant closings, and publish a report annually. These data will be used to study the cases and effects of worker dislocations.

Employment Standards Administration

Operator Controversion; Operator Response
1215-0058; CM-970 and CM-970a
On occasion
Businesses or other for-profit; small businesses or organizations
10,000 responses; 2,500 hrs.; 2 forms

The forms are used by most operators to controvert an initial finding or to agree or disagree with potential liability for payment of black lung benefits under the Act.

OWCP Representative Fee Request
1215-0078; CA-38; CM-972
As needed
Businesses or other for-profit; small businesses or organizations
15,600 responses; 10,672 hrs.; 1 form
Request for approval of a fee for services provided OWCP claimant/beneficiaries submitted by attorney/representative.
Bona Fide Thrift or Savings Plan (20 CFR Part 547)
1215-0119
Recordkeeping
Businesses or other for profit; small businesses or organizations
468,000 recordkeepers; 3 hours

The Wage and Hour Division requires enterprises engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or otherwise working on goods that have been moved in or produced in such commerce by any person, to maintain documentation establishing a bona fide savings or thrift plan.

Bona Fide Profit-Sharing Plan or Trust (20 CFR Part 549; Disclosure Requirement (29 CFR 549.1(d) (2))
1215-0122
Recordkeeping
Businesses or other for-profit; Small businesses or organizations
548,000 recordkeepers; 3 hours

Wage and Hour Division requires enterprises having workers engaged in interstate commerce, production goods for sale in interstate commerce, or handling, selling, or otherwise working on goods that have been moved in or produced for such commerce by any person, to maintain documentation establishing "bona fide" nature of plan.

1215-0124; CM-200
Recordkeeping requirement
Businesses or other for-profit
185 recordkeepers; 1 hour

CFR 725.531 required self-insured operators or insurance carriers who make benefit payments to black lung beneficiaries to maintain receipts for those payments for five years. Cancelled checks will suffice.

Rehabilitation Maintainance Certificate
1215-0161; OWCP-17
On occasion
Individuals or households; Federal agencies or employees; Small businesses or organizations
4,200 responses; 700 hours; 1 form

The form will serve as a bill submitted by the injured worker to OWCP requesting reimbursement of expenses incurred as a result of participation in an approved rehabilitation effort for the preceeding four week period.

Employment and Training Administration

Request for Additional UI Contingency Staffyears for the Quarter
1205-0169; ETA 2103
Quarterly
State or local governments
53 respondents; 212 hours; 1 form

Used by States to request additional funds for processing UI contingency workloads above the base.

Annual State WIN Plans
1205-0214; ETA 8480,8484, 8485, 8479
Annually
State or local governments
28 respondents; 2,156 burden hours; 4 forms

The State WIN Plan is the basic planning and management tool utilized by the national and regional offices to ensure State compliance with legislation, regulations and national office goals. It is the vehicle for providing allocation levels to State agencies. Respondents are State staff.

Grantee Planning and Reporting Forms for the Job Training Partnership Act, Title IV, sections 401 and 402
1205-0215; ETA 8600, 8602, 8604, 8596, 8598, 8601, 8603, 8595, 8599
Quarterly; Annually
State or local governments
3,716 respondents; 37,996 hours; 9 forms

These forms are used to manage the national programs authorized under sections 401 and 402 of the Job Training Partnership Act. These documents are the principal sources of programs plans and performance data. They form the basis for the award of funds, Federal oversight and reports to Congress.

Mine Safety and Health Administration
Notification of Legal Identity
1219-0008; MSHA Form 2000-7
On occasion
Businesses and other for profit; small businesses or organizations
10,000 respondents; 10,000 hours

Requires mine operators to file with MSHA the name and address of the mine and the name and address of the persons who control and operate the mine, and any revisions of such names and addresses. The information is used to identify persons chargeable with violations of safety and health standards, in the assessment of civil penalties, and in the service of legal documents.

Operations Under Water
1219-0020
On occasion
Businesses or other for profit; small businesses or organizations
30 respondents; 480 hours

Requires coal mine operators to obtain a permit to mine under a body of water, if in the judgement of the Secretary of Labor, it is sufficiently large enough to constitute a hazard to miners.

Application for Use of Nonpermissible Explosives and Nonpermissible Shot-Firing Units
1219-0025
On occasion
Businesses and other for profit; small businesses or organizations
50 respondents; 50 hours

Contains provisions by which a coal mine operator may apply for and be granted a permit to use nonpermissible explosives and nonpermissible shot-firing units.

Weekly Air Flow Measurements (30 CFR 57 21035)
1219-0031
Weekly
Businesses or other for profit

10 responses; 6,400 hours

The adequacy of the ventilation system for a gassy mine must be checked weekly to maintain a safe working environment. Quantitative measurements help assure dilution of gases and preclude the pressure of explosive atmosphere.

Fire Extinguishing and Abandonment Plans for Refuse Piles and Impoundments

1219-0074

On occasion

Businesses and other for profit; small businesses or organizations

35 respondents; 220 hours

Requires coal mine operators to submit to MSHA for approval fire extinguishing plans and abandonment plans for refuse piles and impounding structures.

Occupational Safety and Health Administration

Crane or Derrick Annual Inspection Record-Construction

1218-0113; OSHA 229

Recordkeeping

Businesses or other for profit; small businesses or organization

113,000 respondents; 218,000 hours; 0 forms

Construction employers are required to keep a record of the thorough annual inspection of hoisting machinery and each piece of equipment in order to assure timely replacement and service necessary for the safe use of the machinery.

Collection of Information in Current Rules

Occupational Safety and Health Administration

Asbestos (General Industry), OSHA 246

On Occasion

Businesses or other for profit; small businesses or organizations

286,607 responses; 227,427 hours; no forms

This regulation requires employers to train employees about the hazards of asbestos, to monitor employee exposure, to provide medical surveillance and to establish and maintain accurate records of employee exposure to asbestos. The standard applies to employers in general industry and maritime industries.

Signed at Washington, DC, this 3rd day of October, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86-22875 Filed 10-8-86; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (86-74)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Task Force on International Relations in Space.

DATE AND TIME: October 27, 1986, 9 a.m. to 5 p.m.; October 28, 1986, 9 a.m. to 2 p.m..

ADDRESS: NASA Headquarters, Conference Room 7002, 400 Maryland Ave., SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn F.H. Cline, Code LID, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8452).

SUPPLEMENTARY INFORMATION: The Task Force on International Relations in Space of the NASA Advisory Council was established to provide advice and counsel to NASA on international cooperation and competition in space activities.

This meeting will be closed to the public from 1 p.m. to 2 p.m. on October 28, 1986 for a discussion of the qualifications of candidates for participation in the proposed study of international relations in space, such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552(b)(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 60 persons, including Task Force members and other participants).

Type of Meeting: Open—except for a closed session as noted in the preceding paragraph and in the agenda below.

Agenda

October 27, 1986

9 a.m.—Welcome and Introduction.

9:30 a.m.—Status and International Aspects of the U.S. Space Program.

1 p.m.—Status and International Aspects of Other National Programs:

ESA and European National Programs.

Japan.

Soviet Union.

China.

Developing Countries.

3 p.m.—Other Considerations:

National Security.

Interplay and Impact of Export Controls.

NASA/DOD Relationship.

Commercialization/Private Sector Role.

October 28, 1986

9 a.m.—NASA's Approach to International Cooperation and New Trends in Foreign Capabilities/Alliances.

10 a.m.—U.S. Objectives in International Relations in Space.

10:30 a.m.—Initial Selection of Issues Task Force Should Address:

Discussion of Leadership.

Approach to International competition.

1 p.m.—Task Force Membership and Initial Organization of the Study (Closed Session).

2 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

October 2, 1986.

[FR Doc. 86-22863 Filed 10-8-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by October 27, 1986.

ADDRESSES: Send comments to Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5464).

FOR FURTHER INFORMATION CONTACT: Ms Marianna Dunn, National Endowment for the Arts, Administrative Services, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the approval of a current collection which has been revised. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) the OMB number, if applicable; (3) how often the required information must be reported; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to prepare the form. These entries are not subject to 44 U.S.C. 3504(h).

Title: Final Description Report Form for State and Regional Arts Agencies.

OMB Number: 3135-0034.

Purpose: Program evaluation, program planning or management.

Frequency of Collection: Annually

Respondents: State or local governments, non-profit institutions.

Use: Reported informtaion is needed and used for: 1) monitoring state and regional arts agency program activities; 2) planning for coordination of Endowment programs and activities with those of state and regional arts agencies; and 3) reporting to the Congress and the public on the use of funds awarded to the states and regions.

Estimated Number of Respondents: 63.

Estimated Hours for Respondents to Provide Information: 252.

Murray R. Welsh,

Director, Administrative Service Division, National Endowment for the Arts.

[FR Doc. 86-22798 Filed 10-8-86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new revision or extension; Extension.

2. The title of the information collection: Report of Proposed Activities in Non-Agreement States.

3. The form number if applicable: NRC Form 241.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Agreement State Licensees.

6. An estimate of the number of responses: 200.

7. An estimate of the total number of hours needed to complete the requirement of request: 50.

8. An indication of whether section 350(h), Pub. L. 96-511 applies: Not applicable.

9. ABSTRACT: NRC Form 241 informs NRC of locations and dates of activities conducted in non-Agreement States by Agreement State licensees under the general license of 10 CFR Part 150.20.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street NW., Washington, DC. 20555

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this third day of October 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86-22894 Filed 10-8-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-500]

Environmental Assessment and Finding of No Significant Impact; Carolina Power and Light Co., North Carolina Eastern Municipal Power Agency

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J, Section III.D.2(b) to 10 CFR Part 50 to Carolina Power and Light Company, and North Carolina Eastern Municipal Power Agency (the applicants), for the Shearon Harris Nuclear Power Plant, Unit No. 1, located in Wake and Chatham Counties, North Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption from 10 CFR Part 50, Appendix J, Paragraph III.D.2(b) would allow the applicant to use an alternate method of testing the containment air locks in order to verify that containment integrity is maintained. The alternate method of testing proposed by the applicant is endorsed by the NRC in the Standard Technical Specifications for Westinghouse Pressurized Water Reactors (NUREG-0452). This proposed action is responsive to the applicants' request for an exemption dated June 2, 1986.

The Need for the Proposed Action

The underlying purpose of Paragraph III.D.2(b) of Appendix J to 10 CFR Part 50 is to verify that containment integrity is maintained. This regulation details three explicit air lock testing requirements which are also required to be in the Technical Specifications. With one exception, Technical Specification 4.6.1.3.a, b.1 and b.2 correspond to the Appendix J requirements.

Technical Specification 4.6.1.3.b.1 requires that the containment air locks be domonstrated operable by conducting a leakage test every six months, when containment integrity is required, by pressurizing the interior of the air lock to P_a (the calculated peak containment internal pressure under design basis accident conditions, 41 psig for the Shearon Harris Nuclear Power Plant) and verifying that the leakage rate is within the limit specified in the Technical Specifications. This is in compliance with 10 CFR Part 50, Appendix J, Paragraph III.D.2(b)(i).

Paragraph III.D.2(b)(iii) of Appendix J to 10 CFR Part 50 requires air locks to be tested within three days after being opened (or at least once every three days when the air lock is being used and more frequent for multiple entries every three days) and specifies that air lock seal tests satisfy the three day test requirements. Technical Specification 4.6.1.3.a corresponds to and complies with this requirement of Appendix J.

Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 requires that "Air locks opened during periods when containment integrity is not required by the plant's Technical Specification shall be tested at the end of such periods at not less than P_a." In lieu of this requirement, Technical Specification 4.6.1.3.b.2 requires that an overall air lock leakage test be conducted at P_a when maintenance has been performed on the air lock that could affect the air lock sealing capability. The Standard Technical Specifications contain a footnote stating that this requirement is an exemption to Appendix J of 10 CFR Part 50.

The periodic six month test of paragraph III.D.2(b)(i) of Appendix J to 10 CFR Part 50 and the three day test

requirement of paragraph III.D.2(b)(iii) of Appendix J to 10 CFR Part 50 provide assurance that the air lock is properly engaged and sealed. When no maintenance has been performed on the air lock that could affect its sealing capability, and the air lock is properly sealed, there should be no reason to expect the air lock to leak excessively just because it has been opened during cold shutdowns and refueling outages. Whenever maintenance that could affect the sealing capability has been performed, the test will still be required. Therefore, the potential for leakage would not change nor increase if the test is only performed after maintenance has been performed on the air lock that could affect its sealing capability. An exemption from paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 is requested since the present Technical Specifications provide equivalent protection of containment integrity. The Commission has granted this exemption on other plants with designs similar to the Shearon Harris Nuclear Power Plant and it is consistent with current regulatory practice and policy.

Environmental Impacts of the Proposed Action

The proposed exemption would permit the substitution of an air lock seal leakage test (Paragraph III.D.2(b)(iii) of Appendix J, 10 CFR Part 50) for the full pressure air lock test otherwise required by Paragraph III.D.2(b)(ii) when the air lock is opened while the reactor is in a cold shutdown or refueling mode. If the tests required by Paragraph III.D.2(b) (ii) and (iii) are current, with no maintenance having been performed on the air lock and with it properly sealed, this exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

The principal alternative to the proposed action would be to deny the requested exemption. Such an action would require the applicant to use a cumbersome and unwarranted test method, or a major design change would be required in order to permit the inner door to withstand full containment pressure in the test direction without strong backs. If design changes were warranted, a corresponding delay in commercial operation of the Shearon Harris Nuclear Power Plant would be required, and this delay would cause the cost of the unit to increase by a significant amount.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Shearon Harris Nuclear Power Plant, dated October 1983.

Agencies and Persons Consulted

The NRC staff did not consult with any other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application for exemption dated June 2, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Wake County Public Library, 104 Fayetteville Street, Raleigh, North Carolina 27601.

Dated at Bethesda, Maryland, this 6th day of October 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-22885 Filed 10-8-86; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

Correction

In FR Doc. 86-21528 beginning on page 33938 in the issue of Wednesday, September 24, 1986, make the following correction:

On page 33965, in the first column, the amendment for South Carolina Electric and Gas Company was omitted and should be inserted between the amendments for Omaha Public Power District and Southern California Edison Company, et al., as follows:

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: February 7, 1986.

Brief description of amendment: The amendment revises Technical Specification 3/4.4.9, "Pressure Temperature Limits—Reactor Coolant System" and its Bases and changes the withdrawal order and schedule for the reactor vessel specimen capsules, as well as the plant heatup and cooldown rates.

Date of issuance: September 9, 1986.

Effective date: September 9, 1986.

Amendment No. 53.

Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 9, 1986 (51 FR 12239). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

BILLING CODE 1505-01-M

POSTAL SERVICE

Implementation of Change in The Domestic Mail Classification Schedule Provision Regarding Bulk Third-Class Five-Digit Presort Mail

AGENCY: Postal Service.

ACTION: Notice of implementation of a change in the domestic mail classification schedule provision regarding bulk third-class five-digit presort mail.

SUMMARY: This gives notice that effective 12:01 a.m. October 9, 1986, the Postal Service will implement a change in the Domestic Mail Classification Schedule that will eliminate the requirement that bulk third-class five-digit presort mail be prepared "so as to avoid handling of individual pieces or packages until they reach the five-digit ZIP Code delivery unit" and substitute the requirement that such mail be prepared "so as to avoid handling of individual pieces prior to incoming secondary distribution."

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: William T. Alvis, (202) 268-2982.

SUPPLEMENTARY INFORMATION: On December 20, 1985, the United States Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on amending section 300.6231 of the Domestic Mail Classification Schedule. The Postal Service proposed that the requirement that bulk third-class five-digit presort mail be prepared "so as to avoid handling individual pieces or packages until they reach the five-digit ZIP Code delivery unit" be deleted from section 300.6231. As amended, the section would read as follows:

Five-digit presort level mailings must contain at least 200 pieces or 50 pounds of five-digit presort mail prepared in accordance with USPS regulations.

Notice of the Postal Service's Request and its proposal was published by the Postal Rate Commission in the Federal Register on January 8, 1986 [51 FR 795]. The Postal Service's proposal was implemented on a temporary basis on April 20, 1986. 51 FR 12409 (1986). The temporary change expires on October 9, 1986, as provided in 39 U.S.C. 3641(e).

On September 9, 1986, the Postal Rate Commission issued its Recommended Decision on the Request. The Commission recommended that section 300.6231 be amended by substituting the words "so as to avoid handling of individual pieces prior to incoming secondary distribution" for the words "so as to avoid handling individual pieces or packages until they reach the five-digit ZIP Code delivery unit" so that the section would read as follows:

Five-digit presort level mailings must contain at least 200 pieces or 50 pounds of five-digit presorted mail prepared in accordance with USPS regulations so as to avoid handling of individual pieces prior to incoming secondary distribution.

On October 7, 1986, the Governors of the Postal Service, pursuant to 39 U.S.C. 3625(b), approved the Commission's Recommended Decision and ordered it into effect. By a separate resolution adopted the same day, the Board of Governors of the Postal Service, pursuant to 39 U.S.C. 3625(f), set the effective date of the change at 12:01 a.m. October 9, 1986. Resolution No. 86-17 (October 7, 1986). Accordingly, the change in section 300.6231 of the Domestic Mail Classification Schedule set forth above shall take effect at 12:01 a.m. on October 9, 1986.

(39 U.S.C. 3625)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-22916 Filed 10-8-86; 8:45 am]

BILLING CODE 7710-12-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan #2251; Amdt. 1]

Disaster Loan Areas; Michigan

The above-numbered Declaration (51 FR 34517), issued in accordance with the President's declaration of September 16, 1986, is hereby amended in accordance with an amendment from the Federal Emergency Management Agency, dated September 30, 1986, to include Van Buren County and the adjacent Counties of Manistee, Shiawassee and Lapeer due to severe storms and flooding beginning on or about September 19, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close or business on November 17, 1986, and for economic injury until the close of business on June 18, 1987.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: October 3, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-22911 Filed 10-8-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1012]

Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 30, 1986 at 9:30 a.m. in Conference Room 5841, Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Study Group 1 deals with matters relating to efficient use of the radio frequency spectrum, and in particular, with problems of frequency sharing, taking into account the attainable characteristics of radio equipment and systems; principles for classifying emissions; and the measurement of emission characteristics and spectrum occupancy. The purpose of the meeting is to continue the plan of work for the Study Group during the 1986-1989 period.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20520; telephone (202) 647-2592.

Dated: September 28, 1986.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 86-22913 Filed 10-8-86; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1011]

National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, October 30, 1986 in Room 1105, Department of State, 2201 C Street NW., Washington, DC. The meeting will begin at 1:30 p.m.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of the meeting is to:

a. Discuss and adopt U.S. positions to upcoming CCITT Study Group PC-WATTC-88;

b. Formulate an Ad Hoc Group to examine general policy issues relating to international telecommunications matters.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In the regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647-0760. All attendees must use the C Steet entrance to the building.

Dated: September 29, 1986.

Earl S. Barbely,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-22914 Filed 10-8-86; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1010]

Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, October 23, 1986 at 9:30 a.m. in Room 1408, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meeting is final preparations for the upcoming meeting of PC–WATTC, to be held in Geneva, December 1986.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, D.C.; telephone (202) 647–6700. All attendees must use the C Street entrance to the building.

Dated: September 17, 1986.

Earl S. Barbely,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-22869 Filed 10-8-86;

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Order 86–10–8]

Applications of MBA Airlines, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (Order 86–10–8) Dockets 43570 and 43572.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders granting MBA Airlines, Inc., certificates to engage in domestic all-cargo air service, and foreign scheduled air transportation of property and mail.

DATE: Persons wishing to file objections should do so no later than October 24, 1986.

ADDRESS: Responses should be filed in Dockets 43570 and 43572 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Special Authorities Division (P–47, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 (202) 366–2342.

Dated: October 3, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-22899 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Hayward, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in the City of Hayward, Alameda County, California.

FOR FURTHER INFORMATION CONTACT: D.L. Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and the City of Hayward will prepare an Environmental Impact Statement (EIS) on a proposal to construct a section of Route 238 on a new alignment from near Industrial Parkway to Interstate 580 in the City of Hayward. The limits of the project are P.M. 9.3 to 14.7. The new facility will alleviate traffic congestion in the central business district of Hayward. A number of alternatives are under consideration to accomplish the goals of the proposed action. These alternatives include a six lane expressway, a six lane access controlled grade separated facility, a combination expressway/freeway, a Transportation System Management (TSM) option, and the "do nothing" alternative.

Route 238 has been reduced in scope from a full eight-lane freeway to the current limited alternatives by a lack of funding and the involvement of the public and several agencies. In 1978 the Metropolitan Transportation Commission (MTC) reviewed its Regional Transportaion Plan to delete proposals for the project portion south of Hayward and to consider using previously purchased unneeded right of way to finance an expressway instead of a freeway. The California Transportation Commission gave MTC and the City of Hayward two years to prepare a financial plan to fund the project. A local alternative transportation improvement program was completed in 1984 that established a partnership between Caltrans and the City of Hayward to develop the Route 238 proposal.

In February, 1986 Caltrans and the City of Hayward held a public information meeting to announce the commencement of studies and the scoping of the project for the Route 238 corridor. Written comments are also currently being solicited through additional written notices to public agencies to provide further input to the scoping process. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified comments and suggestions are invited from all interested parties. Comments or suggestions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

D.L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 86-22950 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Monterey County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Monterey County, CA.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, CA 95809 Telephone: (916) 551–1310.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an Environmental Impact Statement (EIS) on a proposal to rehabilitate the existing highway and widen for paved shoulders on Route 1 from 0.2 mile north to 1.5 miles north of the Juan Higuera Creek Bridge in Big Sur, Monterey County. The project is necessary to maintain the existing roadway and provide paved shoulders to improve safety. Five trees, which are immediately adjacent to the existing roadway, would be removed as part of the proposed project. Three of the trees show the scars of vehicular collisions.

Alternatives under consideration: (1) Rehabilitate the roadway and provide paved shoulders for a roadway width of 28 feet; (2) No Build-project would be limited to the rehabilitation of only the existing roadway.

Alternatives considered but rejected: Federal Standard Alternative—Federal standards for rehabilitation projects on Route 1 in this area call for a minimum roadway width of 36 feet. This alternative was considered but rejected because it would require the removal of a significant number of trees along the existing Route 1, a designated State Scenic Highway.

Route Concept Study Alternative—The Route Concept Study, prepared by the California Department of Transportation for this section of Route 1, calls for a roadway width of 32 feet, where feasible. This alternative was considered but rejected because it would require the removal of a significant number of trees along the existing Route 1, a designated State Scenic Highway.

This project was initially proposed as a Categorical Exclusion to the National Environmental Policy Act. The project was approved by the Federal Highway Administration and the California Coastal Commission approved a coastal permit for the proposed project at a public hearing in September, 1985. Public controversy developed over the proposed removal of trees, and the Federal Highway Administration agreed to prepare an EIS for the proposed project. A public informational meeting is scheduled for 4:00 P.M. on Thursday, October 2, 1986, at the Grange Hall in Big Sur.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

Issued on October 1, 1986.

J.R. Schultz,

Acting District Engineer, Sacramento, California.

[FR Doc. 86-22854 Filed 10-8-86; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Petitions for Exemptions from the Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition of exemption.

SUMMARY: This notice grants the petition by BMW of North America, Inc., for an exemption from the marking requirements of the vehicle theft prevention standard for the BMW Carline 7 passenger car line for model year 1988, pursuant to section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device which the petitioner intends to install on these lines as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements of the standard. This determination is not premised on the existence of the double-lock aspect of the central locking system since that aspect is the subject of BMW's outstanding request for interpretation of Federal Motor Vehicle Safety Standard No. 206, *Door Locks and Door Retention Components*, and since the BMW antitheft device meets the criteria of section 605 and Part 543 without taking that aspect into consideration. The exemption will become effective beginning with the 1988 model year.

SUPPLEMENTARY INFORMATION: On June 6, 1986, this agency received a petition from BMW of North America, Inc., (BMW) for an exemption from the parts marking requirements of the vehicle theft prevention standard (49 CFR Part 541), pursuant to the requirements of 49 CFR Part 543, *Petitions for Exemption from the Vehicle Theft Prevention Standard*. On January 7, 1986 (51 FR 715), NHTSA had published a notice of proposed rulemaking for the procedures to be followed by manufacturers in preparing and submitting petitions for model year 1988 and thereafter. These proposed procedures were identical to those adopted in the interim final rule (January 6, 1986, 51 FR 706) establishing the Part 543 requirements to be followed by manufacturers in preparing and submitting petitions for exemption during model year 1987. Section 605 of Title VI requires manufacturers to submit petitions not later than eight months before commencement of production of the vehicle line or lines for which exemption is sought. Therefore, BMW submitted its petition before publication of the final rule for the 1988 and subsequent model years.

In its petition, BMW requested an exemption for the Carline 7 passenger car line. The agency reviewed the material submitted by BMW and concluded that BMW met the requirements for petitions in Part 543.5, as of June 6, the date on which the BMW petition was received by the agency. Accordingly, the 120-day period for processing BMW's petition began on that date since, as provided by section 543.7, the processing of a petition is complete.

In its petition, BMW described an antitheft device which is activated by removing the key from the ignition, locking the driver's door and removing the key. These steps double lock the doors and activate the ignition/steering lock systems and a motion sensor, as well as the fuel and starter interrupt functions. They also arm an audible and visual alarm which is triggered by sensors in the doors, engine hood, trunk, and other locations.

The agency grants BMW's petition for exemption without regard to the existence of the double-locking aspect of the BMW system since that aspect is subject to BMW's outstanding request for interpretation regarding compliance with Federal Motor Vehicle Safety Standard No. 206, *Door Locks and Door Retention Components*. BMW's request for interpretation will be considered separately under the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381, *et seq.*). This exemption will become effective beginning with the 1988 model year.

The agency has determined, based on substantial evidence, that installation of BMW's device in the Carline 7 line is likely to be as effective as these lines' compliance with the parts marking requirements of Part 541 in reducing and deterring vehicle theft. This determination is based on the information submitted by BMW with its

petition and on other available information. It is not, however, based upon consideration of the double-locking aspects of BMW's device for the reason explained above. The agency believes that the device will provide the types of performance listed in § 543.6(a)(2), i.e., promote activation, attract attention to unauthorized entries, prevent defeating of circumventing of the device by unauthorized persons, prevent operation of the vehicle by unauthorized entrants, and ensure the reliability and durability of the device.

As required by section 605(b) of the statute and Part 543.6(b), the agency also finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce the deter theft. This conclusion is based on the information provided by BMW on its device. The agency notes that the methods of encouraging activation and preventing defeat in the BMW antitheft device are similar to the methods in other devices which the agency has considered effective. BMW stated in its petition that its antitheft device contains additional protective features, which BMW believes will result in its device reducing and deterring theft to at least the same extent as compliance with Part 541.

As an aside, the agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs make it difficult at this early stage of the theft standard's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly requires such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(c) provides that an exemption granted under Part 543 applies only to vehicles which are equipped with the antitheft device on which the exemption of the line including those vehicles was based. Further, section 543.9(b)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(b)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if BMW contemplates making any changes whose effects might be so characterized, it consult with the agency before undertaking to prepare and submit a modification petition.

Authority: 15 U.S.C. 2025, delegation of authority at 49 CFR 1.50.

Issued on: October 3, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-22883 Filed 10-6-86; 1:01 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 3, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be otained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0005
Form Number: ATF F 3210.1
Type of Review: Extension
Title: Application for Restoration of Firearms and/or Explosives Provileges

OMB Number: 1512-0037
Form Number: ATF F 5020.21
Type of Review: Extension
Title: Form Letter: Request for Arrest Record Check

OMB Number: 1512-0144
Form Number: ATF F 5100.12 (2736)
Type of Review: Extension
Title: Specific Transportation Bond-Distilled Spirits or Wines Withdrawn for Transportation or Manufacturing Bonded Warehouse Class Six

OMB Number: 1512-0177
Form Number: ATF F 5100.29 (4440)
Type of Review: Extension
Title: Catering Locations

OMB Number: 1512-0221
Form Number: ATF F 5640.1
Type of Review: Extension
Title: Offer in Compromise of Liability Incurred Under the Internal Revenue Code

OMB Number: 1512-0222
Form Number: ATF F 5400.6
Type of Review: Extension
Title: Offer in Compromise of Liability Incurred Under the Federal Alcohol Administration (FAA) Act

Clearance Officer: Robert G. Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: New
Form Number: IRS Forms 1120-W (Fiscal) and 1120-W (Calendar)
Type of Review: New
Title: Fiscal Year Coporation Estimated Tax

OMB Number: 1545-0010
Form Number: IRS Form W-4
Type of Review: Revision
Title: Employee's Withholding Allowance Certificate

OMB Number: 1545-0138
Form Number: IRS Form 2063
Type of Review: Extension
Title: U.S. Deporting Alien Income Tax Statement

OMB Number: 1545-0938
Form Number: IRS Form 1120-IC-DISC, Schedule K and Schedule P
Type of Review: Extension
Title: Interest Charge Domestic International Sales Corporation Return—1986, and its Related Schedules K and P

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-22870 Filed 10-8-86; 8:45 am]

BILLING CODE 4810-35-M

Customs Service

[T.D. 86-179]

Approval of Transcan Marine Consultants & Surveyors To Gauge Imported Petroleum and Petroleum Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval.

SUMMARY: Pursuant to § 151.43(b), Customs Regulations (19 CFR 151.43(b)), Transcan Marine Consultants & Surveyors, 2500 Central Parkway, Suite V2, Houston, Texas 77092, has applied to Customs for approval to guage imported petroleum and petroleum products. It has been determined that Transcan meets all of the requirements to be a Customs approved public gauger.

Accordingly, the application of Transcan Marine Consultants & Surveyors to guage imported petroleum and petroleum products in all Customs districts is approved.

EFFECTIVE DATE: September 29, 1986.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Technical Services Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: September 29, 1986.

Roger J. Crain,

Chief, Technical Section, Technical Services Division.

[FR Doc. 86-22910 Filed 10-8-86; 8:45 am]

BILLING CODE 4820-02-M

Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries Before the Internal Revenue Service

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: On January 22, 1986, a final rule was published in the **Federal Register** (51 FR 2675) amending the regulations governing practice before the Internal Revenue Service. The amendment requires that those who are enrolled to practice before the Internal Revenue Service (enrolled agents) renew their enrollment on a periodic basis. A condition of eligibility for renewal of enrollment is the satisfaction of continuing professional education requirements set forth in the amendments.

Pursuant to § 10.6(g)(5) of the amendment, this notice contains a listing of those who, through the filing of sponsors agreements, have been approved by the Director of Practice as having programs qualified for continuing professional education for enrolled agents. Also listed are professional organization and/or society sponsors who have sought and received approval by the Director of Practice as having programs recognized for continuing professional education under the regulations.

DATE: This list of sponsor agreements and qualified professional organization or society sponsors are those approved as of October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Director of Practice, Internal Revenue Service, Washington, DC 20224, (202) 535-6787.

SUPPLEMENTARY INFORMATION: The administration of the program relating to practice before the Internal Revenue Service is the responsibility of the Office of Director of Practice. Regulations governing such practice are contained in 31 CFR Part 10, reprinted as Treasury Department Circular No. 230 (Circular 230). An amendment to Circular 230 was published as final rule on January 22, 1986. The amendment requires that those enrolled to practice before the Internal Revenue Service renew their enrollment on a periodic basis. A condition of eligibility for renewal is the satisfaction of the continuing professional education requirements delineated in the regulations.

Section 10.6(g)(2) of Circular 230 provides the a qualified program sponsor:

(1) Be an accredited education institution; or

(2) Be recognized for continuing education purposes by the licensing body of any State, possession, territory, Commonwealth, or the District of Columbia responsible for the issuance of a license in the field of accounting of law; or

(3) Be recognized by the Director of Practice as a professional organization or society whose programs include offering continuing professional education opportunities in subject matter withing the scope of the regulations; or

(4) File a sponsor agreement with the Director of Practice to obtain approval of the program as a qualified continuing education program.

As indicated, only those who wish to qualify under (3) or (4) above are required to submit a request to be a qualified sponsor. However, the program of all sponsors must satisfy the requirements of the regulations.

Section 10.6(g)(5) of Circular 230 requires that a listing of those whose sponsor agreemtns have been approved and those qualified professional organization or society sponsors approved by the Director of Practice be published on a periodic basis. The following listing constitutes such publication of those approved as of the date of this notice. It is anticipated that others will be added to the listing in subsequent publications. The listing is valid through January 31, 1990.

Listing of Approved Sponsors for CPE

Prepared by the Office of Director of Practice

Accountants Association of Iowa; Martha L. Wilkinson, 414-415 S.G.S. Bldg., 1222nd Street, SE., Cedar Rapids, IA 52401
Accountants Society of Virginia, Inc., Robert Grille, 803 W. Broad Street, Suite 111, Falls Church, VA 22046
Accounting Publications, Inc., Irvin N. Gleim, Post Office Box 12848, University Station, Gainesville, FL 32604
Acct. Service Bureau of Long Island, Dr. William Stevenson, 34 Merrick Avenue, Merrick, NY 11566
Active Professionals, Edna R. Olson, 3517 Marconi Avenue, Suite 101, Sacramento, CA 95821
Aikane Tax Service, Inc., Mr. C. William Scharff, 700 Richards Street, #2005, Honolulu, HI 96813
Alabama Association of Public Acct., H.A. Gumpf, P.O. Box 1908, Montgomery, AL 36103
Alaska Society of Independent Acct., Grace Buckbee, 9300 Spruce Knoll Circle, Anchorage, AK 99516
Alpha Tax Services, Inc., Glenn Grote, 7866 North Oracle Road, Tucson, AZ 85704
Amador County Tax Practitioner's Assoc., Robert C. Devlin, P.O. Box 44, Volcano, CA 95689
American Academy of Actuaries, Stephen G. Kellison, 1720 "I" Street, NW., 7th Floor, Washington, DC 20006
American Society of Professional Acct., Rose B. Wolf, 20750 Ventura Blvd. #200, Woodland Hills, CA 91364
Andrews Business Corp., William Maledy, 22108 Harper, St. Clair Shores, MI 48080
Arizona Soc. of Practicing Accountant, David J. Gordon, 211 E. Osborn, Phoenix, AZ 85012
Arkansas Society of Public Accountants, Laverne Long, P.O. Box 758, 908 Highway 67 N, Newport, AR 72112
Beaver Lake Prof. Tax and Consultation Ser., Henry C. Baurley III, 175 Weavervill Highway, Asheville, NC 28804
Becker CPA Review Course, Keri Strain, 15760 Ventura Blvd., Suite 1101, Encino, CA 91436
Black and Skaggs Associates, Frederick W. Devall, 1109 Comerica Building, P.O. Box 1130, Battle Creek, MI 49016
Bolle Managements Consultants, Lou Bolle, 9085 E. Mineral Circle, Suite 260, Englewood, CO 80112
Boston Tax Institute, Ltd., Lucien P. Gauthier, 201 Old Farm Road, Milton, MA 02186
Brass Tax Presentations, Robert Kosters, 12211 Front Street, P.O. Box T, Norwalk, CA 90650

BEST COPY AVAILABLE

Broward Chapter of the Florida Society of Enrolled Agents, Mike San Miguel, 120 South University Drive, Plantation, FL 33324
Bucks County Community College, Thomas E. Zaher, Founders Hall Room #224, Swamp Road, Newton, PA 18940
Burleigh, Dunger, Cochran, Sorsby and Farrimo, Terry W. Dunger, 5100 Poplar, Suite 2408, Memphis, TN 38137
California Society of Enrolled Agents, William G. Sprague, P.O. Box 60617, Sacramento, CA 95860
Central Arizona Chapter of Association of Enrolled Agents, Nancy E. Peternel, c/o 3613 N. Kachina Lane, Scottsdale, AZ 85251
Cherry, Bekaert and Holland, CPAS, George E. Tornwall, One Plaza Place, NE, Suite 1200, St. Petersburg, FL 33701
Clayton L. Scroggins Associations, Inc., Judith Murray, 200 Northland Blvd., Cincinnati, OH 45246
CND/TIME, Ray Harless, P.O. Box 27234, San Francisco, CA 94127
Cobb Chapter, Georgia Association of Public Accountants—Alan Burnham, 6065 Roswell Road, NE., Suite 612, Sandy Springs, GA 30328
Colorado Society of Enrolled Agents, Mildred A. Cassai, 1823 W. 30th Avenue, Denver, CO 80211
Commerce Clearing House, Joseph Gornick, 4025 W. Peterson Avenue, Chicago, IL 60646
Compensation Systems Co., John Carey, 2300 Financial Center, Seattle, WA 98161
Comptrol, Inc., Lionel Chan, 605 Market Street, San Francisco, CA 94105
Connecticut Society of Enrolled Agents, Herbert O. Burton, P.O. Box 506, Gales Ferry, CT 06335
Corbel and Co., Brenda E. Chatham, 6620 Southpoint Drive, S., Jacksonville, FL 32216
Crawford Income Tax Service, Eloise Crawford, P.O. Box 1035, Springfield, OR 97478
DC Institute of CPAS, Ann F. Cavan, 2100 Pennsylvania Ave., NW #240, Washington, DC 20037
Empire State Assoc. of Public Acct., Arthur D. Cole, 37–08 30th Avenue, Long Island City, NY 11103
Farm Credit Banks of Springfield, William E. Chewing, P.O. Box 141, Springfield, MA 01102
Fawcett, Marlene, Marlene Fawcett, 341 West 2nd Street, Suite 4, San Bernardino, CA 92401
Fl. Assoc. of Indpt. Acct./Suncoast Chpt., Betty Rochnowski, 1929–D So. Tamiami Trail, Venice, FL 33595
Florida Assoc. of Independent Acct., Robert Rinehart, Jr., P.O. Box 13089, Tallahassee, FL 32317
Florida Assoc. of Indpnt. Acct. Central Florida Chapter—James Valentine, c/o Valentine and Company, 8022 Office Court, Orlando, FL 32809
Florida Soc. of E.A.-Naples/Ft. Myers, Irene M. Lichtefeld, 2840 Shoreview Drive, Naples, FL 33962
Florida Society of Enrolled Agents, Palm Beach Chapter—Robert Wallis, 3959 Lake Worth Road, Lake Worth, FL 33461
Florida Society of Enrolled Agents/Capital City Chapter—William E. Jones, P.O. Box 3867, Tallahassee, FL 32315
Foundation for Continuing Education Inc., Richard Soland, P.O. Box 458, Welham, MA 01984
Gasman, Inc., Millie Ferguson, 1920 E. Northland Avenue, Appleton, MI 54915
General Business Services, Inc., Andrea S. Rains, 51 Monroe Street, Rockville, MD 20850
Georgia Association of Public Acct., MS. Zennie Shearouse-Miller, 6555 Abercorn Street, Suite 101, Savannah, GA 31405
Goldberg and Finmann, P.C., Seymour Goldberg, 666 Old Country Road, Suite 306, Garden City, NY 11530
Guarantee Financial Service Trust Div., James O'Brien, 2670 W. Shaw Lane, Fresno, CA 93711
H and R Block, Inc., Judy C. Keisling, 4410 Main Street, Kansas City, MO 64111
Hawaii Assoc. of Public Accountants, Gilbert J. Matsumoto, P.O. Box 132, Honolulu, HI 96810
Hawaii Society of Enrolled Agents, Inc., Henry C. Klein, 737 Bishop Street, Suite 2700, Honolulu, HI 96813
Idaho Assoc. of Public Accountants, Ginger Purdy, 4090 W. State Street, Boise, ID 83703
Income Tax School, Inc., Sam H. Boyett, P.O. Box 1894, Lake Charles, LA 70602
Independent Acct. Assoc. of Illinois, Mr. Irwin A. Magad, 251–F Lawrencewood, Niles, IL 60648
Independent Acct. Assoc. of Illinois, Southern Chapt. 11—Phillip Green, 5312 West Main—Suite A, Belleville, IL 62223
Independent Acct. Assoc. of Illinois, Southeastern Chpt. #10—Patricia Gathe, 632 S. 6th Street, Vandalia, IL 62471
Independent Acct. Assoc. of Illinois, NW. Suburb—Mr. Irwin Magad, 5225 Old Orchard Road, Suite B, Skokie, IL 60077
Independent Acct. Assoc. of Michigan, Jim Hayes, P.O. Box 18038, 320 N. Butler Blvd., Lansing, MI 48901
Independent Acct. Society of Missouri, Lester Curless, 1161 North Highway 67, Florissant, MO 63031
Independent Preparer Services, Glendola K. Chafin, 3441 Ocean View Blvd., Glendale, CA 91208
Indiana Society of Enrolled Agents, Violet R. White, P.O. Box 1307, Muncie, IN 47305
Indiana Society of Public Accountants, James E. Tilford, 825 East 64th Street, Indianapolis, IN 46220
Inland Soc. of Tax Consultants, Inc., Brian E. Berkley, 2140 W. Chapman Ave., Suite 103, Orange, CA 92668
Int'l. Foundation of Employee Plans, Nel Daniels, 18700 West Bluemound Road, P.O. Box 69, Brookfield, WI 53005
Intern'l. Assoc. for Financial Planning, Sally W. Petrucci, 2 Concourse Parkway, Suite 800, Atlanta, GA 30328
JM Financial Services, Michael Paul Karll, 11777 Bernardo Plaza Ct. #109, San Diego, CA 92128
Kansas State University, John R. Schlender, Extension Agricultural Economics, Waters Hall 305, Manhattan, KS 66506
Kentucky Association of Accountants, Mark B. Chandler, P.O. Box 86, Campbellsville, KY 42718
Kentucky Society of Enrolled Agents, Albert N. Miller, 1865 Dixie Highway, Ft. Wright, KY 41011
Lambers CPA Review, Phyllis A. Webster, P.O. Box 5701, Greensboro, NC 27435
Louisiana Soc. of Independent Acct./New Orleans Metro Chpt.—Leonard Alphonso, 700 Papworth Avenue, Metairie, LA 70005
Louisiana Society of Independent Acct., Leonard Alphonso, P.O. Box 1229, Metairie, LA 70004
Maine Association of Professional Acct., John P. O'Brien, 449 Forest Avenue, Portland, ME 04101
Manasota Chapter Florida Soc. of E.A., Patricia Longo, 4525 A. Bee Ridge Road, Sarasota, FL 33582
Martin and Associates, Norman Lee Plotkin, Suite 448, 200 Galleria Parkway NW., Atlanta, GA 30339
Massachusetts Society of CPA's, Marianne Brush, Three Center Plaza, Boston, MA 02108
Minnesota Association of Public Acct., Susan Heurung, 2325 North Rice Street, Suite 220, Roseville, MN 55113
Mississippi Association of Public Acct., Jo M. Allen, Rt. 7, Box 15–A, Carthage, MS 39051
Mississippi Chapter National Assoc. of Enrolled Agents—Roy D. Caves, 322 North Mart Plaza, Suite B, Jackson, MS 39206
Mohr's Income Tax, Michael E. Mohr, 431 N. Western Avenue, Peoria, IL 61606
Montana Society of Public Accountants, Mr. C.A. Chadbourne, Rt. 85, Box 4250, Livingston, MT 59047
National Assoc. of Income Tax Preparers, Steven I. Feiertag, 14 Louise Drive, West Nyack, NY 10994
National Assoc. of Income Tax Preparers, Carla Helms, 60 Revere Drive, Suite 500, Northbrook, IL 60062
National Assoc. of Tax Practitioner, Laverne Forster, 1015 W. Wisconsin Avenue, Kaukauna, WI 54130
National Association of Enrolled Agents, Larry N. Fink, 6000 Executive Blvd., Suite 205, Rockville, MD 20852
National Society of Accountants for Cooperatives—Kimberly Smith, 6320 Augusta Drive, Suite 802–C, Springfield, VA 22150
National Society of Public Accountants, Bernice D. Born, 1010 N. Fairfax Street, Alexandria, VA 22314
Nelson, Wayne A., P.A., Wayne A. Nelson, 84 Western Avenue, Augusta, ME 04330
New Hampshire Association of P.A., Marcel Amrol, 4 Park Street, Concord, NH 03301
New Jersey Society of C.P.A., Janet Fallacaro, 65 Livingston Avenue, Roseland, NJ 07068
New Mexico Soc. of Public Accountants, Michael E. Jones, P.O. Box 1868, Clovis, NM 88101
New York Assoc. of CPA's in the IRS, Gennero Irace, P.O. Box 3100, Church Street Station, New York, NY 10277
New York Association of Enrolled Agents, Larry M. Liptscher, 49 North Central Park Avenue, Hartsdale, NY 10530
New York Society of Independent Acct., Edward R. Turner, Sr., 17 Elk Street, Albany, NY 12207
North Carolina Society of Accountants, W. Franklin Brown, 1007 Broad Street, Durham, NC 27705
North Carolina State University, Alice S. Warren, Box 7401, Raleigh, NC 27695

North Dakota Society of Public Acct., Curtis E. Brekke, 1609–14th Street South, Fargo, ND 58103
Nuts and Bolts Tax Seminars, Cathy McGee, 1519 East Chapman Avenue, Fullerton, CA 92631
Ohio Society of Enrolled Agents, Donald W. Rode, 941 Chatham Lane, Suite 200, Columbus, OH 43221
Oregon Assoc. of Public Accountants, Richard L. Garlock, 1804 N.E. 43rd Avenue, Portland, OR 97213
Pennsylvania Society of Public Acct., Bernard A. Deverson, 232 State Street, Harrisburg, PA 17101
PFA Farm Management Services, Donald R. Hummel, P.O. Box 736, Camp Hill, PA 17011
Portfolio's, Inc., Fred Hessinger, 1601 N. Carmen Drive, Suite 211, Camarillo, CA 93010
Practical Tax Preparer's Clinic, Edward Dunn, 13575 Calais Drive, Del Mar, CA 92014
Prof. Services for Tax Preparers, Inc., Paul B. Shumaker, 2007 W. Hedding Street, Suite 209, San Jose, CA 95128
Professional Tax Institutes, Inc., Jack O. Williamson, P.O. Box 3854, Longwood, FL 32779
Professional Tax Seminars, Kay F. Addington, 1037 South Glenstone, Springfield, MO 65804
Public Accountant Association of Kansas, Inc.—Patricia M. Parker, P.O. Box 125, Mulvane, KS 67110
Public Accountants Society of Colorado, R.L. Hanson, 666 Sherman Street, Denver, CO 80203
Public Accountants Society of Ohio, Edward E. Fanning, Jr., 6525 Busch Blvd., Suite 104, Columbus, OH 43229
Purdue University, George F. Patrick, Krannert Building, West Lafayette, IN 47907
Ray Drew Co. DBA Drew-Jarrell, Dave Drew, 4840 N. Blackstone, Fresno, CA 93726
Raymond and Dillon, P.C., John J. Raymond, 450 Australian Avenue South, Suite 400, West Palm Beach, FL 33401
Real Estate and Professional Ed. Co., Albert J. Ayella, 98 North Broad Street, Woodbury, NJ 08096
Seminole Community College, Mack Blythe, Mack Blythe, Sanford, FL 32771
South Carolina Assoc. of Public Acct./Capitol Chapter—Ms. Marceline Kerr, 6983 St. Andrews Road, Columbia, SC 29210
South Carolina Association of P.A., Ms. Marceline Kerr, P.O. Box 1136, Taylors, SC 29687
South Carolina Association of P.A., Piedmont Chapter—Ms. Elsie Brown, P.O. Box 1138, Taylors, SC 29687
South Carolina Tax Council, Ruth T. Nagy, P.O. Box 50482, Columbia, SC 29250
Standard Federal Savings and Loan Assoc., Annette Pruitt, 1339 Main Street, P.O. Box 2826, Columbia, SC 29202
Tax Executives Institute, Inc., Thomas P. Kerester, 1300 North 17th Street, Suite 1300, Arlington, VA 22209
Tax Institute of Long Island Univ., Seymour Goldberg, 666 Old Country Road, Suite 306, Garden City, NY 11530
Tax Institute of Long Island University, Brooklyn Campus—Dr. Myrna L. Fischman, University Plaza, Room 8700, Brooklyn, NY 11201
Tax Practitioner Services, Michael D. Barnes, 101 South Rock Street, Viroqua, WI 54665
Tax Seminars Associates, Victor H. Golletz, 19021 Martin Lane, Country Club Hills, IL 60477
Tax Seminars, Inc., Theresia Wolf-McKenzie, 5151 N. Harlem, Suite 311, Chicago, IL 60656
Tax Seminars, Inc., Wayne Merritt, Box 304, Ratliff City, OK 73081
Tax Training Institute, Inc., V. J. Johnson, 9200 W. Cross Drive, #200, Littleton, CO 80123
The Sobelsohn School, Richard J. Sobelsohn, 1540 Broadway, New York, NY 10036
Triple Check Income Tax Service, Inc., Mr. J.A. Ryan, 727 S. Main Street, Burbank, CA 91506
Univ. of Missouri-Columbia Sch. of Law, Patricia H. Epps, Office of Continuing Legal Ed., 114 Tate Hall, Columbia, MO 65211
University of Arizona, Winifred A. Porcelli, Babcock Bldg., Suite 1201, 1717 E. Speedway Blvd., Tucson, AZ 85719
University of California Extension, Janice V. Corriden, Carriage House, Santa Cruz, CA 95064
University of Missouri, Ralph F. Wehrmann, 701 South Brentwood Blvd., Clayton, MO 63105
University of Missouri—Kansas City, Michael Baker, 5100 Rockhill Road, Kansas City, MO 64110
University of Nebraska—Lincoln, Robert A. Mortenson, 33rd and Holdrege Streets, Lincoln, NE 68583
University of Wisconsin, Jacquelyn Gendersen, Agricultural Conference Office, Jorns Hall, 650 Babcock Drive, Madison, WI 53706
Valley Chapter of Texas Assoc. of P.A., Rio Grande—Bill Fulcher, 2390 Central Boulevard, Brownsville, TX 78520
Vermont Tax Practitioners' Association, Arline Pat Hunt, 28 South Avenue, Newport, VT 05672
Virginia Society of Enrolled Agents, Bess B. Messmer, 904 Park Avenue, Colonial Heights, VA 23834
Warren, Gorham and Lamont, Inc., Laurie Bennett, 1633 Broadway, New York, NY 10019
Wash. State Tax Consit./Kitsap Chapter, Vivian Harris, 5163 SE. Brasch Road, Port Orchard, WA 98366
Washington Association of Accountants, Merrilee Raplee, 15245 Pacific Highway South, Seattle, WA 98168
Washington State Bar Association, John M. Redenbaugh, 505 Madison Street, Seattle, WA 98104
Washington State Chapter of E.A., Patricia Schmick, 801 C. Street SW., Auburn, WA 98001
Washington State Tax Consultants, Larry E. Armour, P.O. Box 4097, Bremerton, WA 98312
Weinick, Sanders and Co., Elliot L. Hendler, 1515 Broadway, New York, NY 10036
West Virginia Public Accountant Assoc., Floyd M. Sayree, Jr., P.O. Box 284, Charleston, WV 25322
Wilen and Associates, Joy Wilen, 205 E. Mcloughlin Blvd., Vancouver, WA 98663
Wisconsin Association of Accountants, John Aboya, P.O. Box 92361, 1219 North Cass Street, Milwaukee, WI 53202
Wisconsin Society of Enrolled Agents, Michael Barnes, 101 South Rock Street, Viroqua, WI 54665
Wyoming Association of Public Acct., Jarvis Windom, 1084 Gilchrist Street, Wheatland, WY 82201

Dated: October 6, 1986.

Leslie S. Shapiro,

Director of Practice.

[FR Doc. 86–22898 Filed 10–8–86; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

English Teaching Advisory Panel; Meeting

The first meeting of the English Teaching Advisory Panel will be held on November 13 and 14, 1986.

The first session of the two day meeting will commence at 9:00 a.m. on November 13, 1986. Topics to be discussed by the Panel members are as follows:

a. The background, scope, and mission of the Advisory Panel;

b. The role of the English Language Programs Division in USIA, i.e., the program office; the materials office; and, the English Teaching Forum;

c. English Language Teaching by Broadcast—the Macmillan project;

d. other Agency elements involved in English teaching;

e. Any other subjects introduced by Panel members before the dates of the meeting.

The public is invited to attend this meeting. Any member of the public wishing to file a written statement with the Panel may do so before or after the meeting.

The location of the meeting is 301 Fourth Street SW., Washington, DC, Room 840.

Members of the public desiring more specific information may contact the English Teaching staff of USIA at (202) 475–2877.

Dated: October 3, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–22958 Filed 10–8–86; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 196
Thursday, October 9, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, 10:00 a.m., Thursday, October 9, 1986.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS: Open to the Public

MATTERS TO BE CONSIDERED:

1. Industrial Safety Handbook

The Commission will consider the proposal forwarded by the American National Standards Institute/CPSC Coordinating Committee for the Commission to lead in the development of a publication to be used by manufacturers of consumer products. The publication would assist in the manufacture of safer products.

2. Building Consolidation

The staff will brief the Commission on consolidation and implications of work space planning.

3. Management Review: Field Operations Reorganization

The staff will brief the Commission on issues related to reorganization options for field operations.

The Commission by majority vote decided that agency business required scheduling this meeting without normal advance notice.

For a recorded message containing the latest agenda information, call:

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207, 301-492-6800.

October 7, 1986.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 86-22980 Filed 10-7-86; 1:19 pm]
BILLING CODE 6355-01-M

2

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, October 15, 1986.

PLACE: 1776 G Street NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Central Liquidity Facility Reserving Policy for FY 1987.
5. Central Liquidity Facility Agent Commitment Fees.
6. Insurance Fund Report.
7. National Credit Union Share Insurance Fund Dividend and Insurance Premium.
8. Corporate Federal Credit Union Report.
9. Report on Progress of Supervisory Committee Guide.
10. Final Rule: Parts 740, 741 and 745, Share Insurance Rules: Advertising, Termination, Account Coverage.
11. National Credit Union Share Insurance Fund Overhead Transfer Rate.
12. Charter Amendment: Expansion of Field of Membership for Sidney FCU, #8011, Sidney, N.Y.

RECESS: 11:00 a.m.

TIME AND DATE: 11:15 a.m., Wednesday, October 15, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Central Liquidity Facility Lines of Credit. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Appeal of Field of Membership Overlap approved by Regional Director. Closed pursuant to exemption (8).
4. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Special Assistance under section 208 of the Federal Credit Union Act. Closed pursuant to exemption (8).
6. PC Pilot Program. Closed pursuant to exemption (2).
7. Board Briefings. Closed pursuant to exemptions (2), (8) and (9)(A)(ii).
8. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,
Secretary of the Board.

[FR Doc. 86-22972 Filed 10-7-86; 11:32 am]
BILLING CODE 7535-01-M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold an open meeting as soon as possible following the signing of the Tax Reform Act of 1986:

To consider whether to authorize the issuance of an interpretive release concerning the disclosure of the effects of the Tax Reform Act of 1986. The Commission may discuss the disclosure by registrants of the effects of the Tax Reform Act; and whether it should object to the presentation of disclosures which quantify the effects of the Tax Reform Act by the pro forma application of the provision of the Financial Accounting Standards Board's Exposure Draft, "Proposed Statement of Financial Accounting Standards—Accounting for Income Taxes." For further information, please contact John A. Heyman at (202) 272-2130.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272-3195.

Jonathan Katz,
Secretary.
October 3, 1986.

[FR Doc. 86-22964 Filed 10-7-86; 12:48 pm]
BILLING CODE 8010-01-M

4

STATE JUSTICE INSTITUTE

(Board of Directors)

Pursuant to the Government in the Sunshine Act (Pub. L. 94-409 (5 USC 552b)

DATE AND TIME: Thursday, October 9, 1986—11:00 a.m. to 5:00 p.m.

PLACE: District of Columbia Courthouse, 500 Indiana Avenue NW, Room 2500 Washington, DC.

STATUS: Open.

MATTER TO BE CONSIDERED: The Board will consider matters concerning the organization, budget, staffing, and program of the State Justice Institute.

CONTACT PERSON FOR MORE INFORMATION: Richard Van Duizend, (703) 841-0200.

Dated: October 6, 1986.

Larry P. Polansky,
Member, State Justice Institute Board of Directors.

FR Doc. 86-23017 Filed 10-7-86; 3:23 pm]
BILLING CODE 6355-20-M

VOL
51
ISS
196
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federal register

Thursday
October 9, 1986

Part II

Environmental Protection Agency

40 CFR Parts 262, 265, and 271
Hazardous Waste Management System; Hazardous Waste Accumulation Tank System Standards for Generators of 100 to 1,000 Kilograms Per Month; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 265, and 271

[SWH-FRL-3029-9]

Hazardous Waste Management System; Hazardous Waste Accumulation Tank System Standards for Generators of 100 to 1,000 Kilograms Per Month

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to subject generators of 100 to 1,000 kilograms of hazardous waste per month who accumulate hazardous waste in tank systems prior to off-site shipment to new standards. These are the same tank system rules promulgated on July 14, 1986 (51 FR 25422) for larger generators under the Resource Conservation and Recovery Act (RCRA). The proposed regulatory amendments would require that 100–1,000 kilograms per month generators perform periodic leak assessments of their hazardous waste accumulation tank systems and provide secondary containment for all new and leaking tank systems. They also would require all existing tank systems to be provided with secondary containment by the time they reach 15 years of age. EPA is also soliciting comments and information on a number of alternative regulatory options that are being considered for these generators.

DATES: Comments must be received on or before January 7, 1987.

The proposed Parts 262, 265, and 271 standards applicable to 100–1,000 kg/mo generators would take effect six months after the date of publication in the **Federal Register** of the final rules.

ADDRESSES: The public must send an original and two copies of their comments to: EPA RCRA Docket (S–212) (WH–562), 401 M Street SW., Washington, DC 20460.

Place the docket # F–86–RTSQ–FFFFF on your comments. For additional details about the OSW docket see the "Supporting Documents" section in "Supplementary Information."

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, (800) 424–9346, (in Washington, DC, call 382–3000), the Small Business Hotline, (800) 368–5888, or William J. Kline, (202) 382–7917, Office of Solid Waste (WH–565A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed below:

I. Authority
II. Background
A. May 19, 1980 Regulations
B. Hazardous and Solid Waste Amendments of 1984
C. June 26, 1985 Proposed Rules for Tank Systems
D. August 1, 1985 Proposed Rules for Generators of 100–1,000 kg/mo
E. March 24, 1986 Final Rules for Generators of 100–1,000 kg/mo
F. July 14, 1986 Final Rules for Hazardous Waste Storage and Treatment Tank Systems
G. Summary of This Proposed Rule and Request for Comments
III. Proposed Strategy to Regulate Accumulation Tank Systems of 100–1,000 kg/mo Generators
A. Summary of Approach Adopted in the July 14, 1986 Final Tank System Rules
B. Approach to Regulating Accumulation Tank Systems of 100–1,000 kg/mo Generators
C. Basis for Proposal and Alternative Regulatory Approaches; Request for Comments
1. Request for Comment on Alternative Approaches
2. Risk Analysis
3. Economic Analysis
4. Effective Dates
5. Request for Comments
D. Regulation of Underground Product Storage Tanks under Subtitle I (the UST Program)
E. Relationship of Proposed Regulation to Section 3014 of RCRA (Used Oil)
F. Explanation of Proposed Regulatory Language
IV. Impact on Authorized States
A. Applicability in Authorized States
B. Effect on State Authorizations
V. Regulatory Impact Analysis
VI. Paperwork Reduction Act
VII. Regulatory Flexibility Analysis
VIII. Supporting Documents
IX. List of Subjects
Appendix A—Economic Analysis—Summary

I. Authority

These regulations are being proposed under authority of sections 2002, 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6921, 6922, 6924, and 6926).

II. Background

In the following discussion on the statutory and regulatory requirements applicable to 100–1,000 kg/mo generators, it may be useful to distinguish among three classes of regulated persons. The first class consists of 100–1,000 kg/mo generators who accumulate up to 6,000 kg of hazardous wastes on-site for 180 days or less (or 270 days if the waste must be shipped more than 200 miles). These generators are the subject of today's proposal, and are the only class for which the Agency is today requesting comment on possible tank system requirements. The second class consists of 100–1,000 kg/mo generators who store hazardous waste on-site for more than 180 (or 270) days. These generators, as of March 1987, are subject to full Parts 264 and 265 requirements, including the new Subpart J tank system requirements promulgated on July 14, 1986. The third class consists of off-site treatment, storage or disposal (TSD) facilities who accept hazardous waste from 100–1,000 kg/mo generators. These facilities must comply with full Parts 264 and 265 requirements, as of September 22, 1986, and with the new Subpart J requirements, as of January 12, 1987.

A. May 19, 1980 Regulations

On May 19, 1980, EPA promulgated hazardous waste management regulations applicable to generators and transporters of hazardous waste and to interim status facilities that treat, store, or dispose of hazardous waste (see 45 FR 33066). As part of these regulations, EPA adopted special requirements in 40 CFR 262.34 which, if met by generators of hazardous waste, would allow them to accumulate hazardous waste on-site for 90 days in tanks or containers without having to obtain a RCRA permit as a storage or treatment facility. If the waste is placed in tanks, the generator must comply with Subpart J of 40 CFR Part 265. 40 CFR 262.34(a)(1).

Under 40 CFR 261.5 of the 1980 regulations, generators of less than 1,000 kilograms per month of non-acutely hazardous waste were conditionally exempt from most of the requirements of Subtitle C of RCRA. Therefore, the requirements of 40 CFR Subpart J, for storage and treatment of hazardous waste in tanks did not apply to these small quantity generators who met the conditions for exemption.

B. Hazardous and Solid Waste Amendments of 1984

The Hazardous and Solid Waste Amendments (HSWA) of 1984 added a new section 3001(d) to RCRA, which modified this regulatory exemption for small quantity generators. New section 3001(d) directs EPA to promulgate, no later than March 31, 1986, standards applicable to generators of between 100 and 1,000 kilograms per month of hazardous waste ("100–1,000 kg/mo generators").

Section 3001(d) standards must require that all treatment, storage, or disposal of hazardous waste generated by 100–1,000 kg/mo generators occur at facilities with interim status or a permit. However, the standards must allow generators of 100–1,000 kg/mo to store hazardous waste for 180 days without the need for interim status or a RCRA permit (or for 270 days if the waste is shipped or hauled over 200 miles for off-site storage, treatment, or disposal). No more than a total of 6,000 kilograms of hazardous waste may be stored on site at any one time.

Section 3001(d) requires that EPA promulgate standards, sufficient to protect human health and the environment, for the management of hazardous waste from generators of 100–1,000 kg/mo. Such standards would include those applicable to accumulation of hazardous waste in tank systems for 180 (or 270) days. During the last twelve months, EPA has addressed the subject of requirements for accumulation of hazardous waste from 100–1,000 kg/mo generators in four notices of rulemaking, discussed chronologically below.

C. June 26, 1985 Proposed Rules for Tank Systems

On June 26, 1985, EPA proposed regulations applicable to the storage and treatment of hazardous waste in tank systems (see 50 FR 26444). These proposed amendments to the existing standards were designed to meet the mandates of HSWA sections 3004(o)(4) and 3004(w), and to modify certain existing tank standards that have proved unworkable or ineffective. Specifically, EPA proposed in part that all tank systems subject to the 90-day accumulator provisions of 40 CFR 262.34 have full secondary containment.

At the time of the proposal, generators of less than 1,000 kg/mo of hazardous waste were conditionally exempt from RCRA regulations, in accordance with 40 CFR 261.5. Thus, such conditionally exempt small quantity generators were not specifically addressed with regard to the proposed requirements for secondary containment for hazardous waste treatment and storage tank systems or the proposed requirements for tank system integrity assessments or associated administrative requirements. Instead, the June 26 proposal stated that the Agency would decide on appropriate 40 CFR Subpart J tank system requirements to apply to small quantity generators in the proposed rulemaking for 100–1,000 kg/mo generators under section 3001(d). In addition, the Agency solicited comments on options for regulating the storage of hazardous waste in tank systems by small quantity generators and the impact of the proposed tank system regulations upon such generators (see 50 FR 28488).

D. August 1, 1985 Proposed Rules for Generators of 100–1,000 Kg/Mo

On August 1, 1985, EPA proposed regulations applicable to the generation, transportation, and treatment, storage, and disposal of non-acutely hazardous waste from 100–1,000 kg/mo generators (see 50 FR 31278). Among the proposed requirements, which the Agency believed necessary to protect human health and the environment, were rules applicable to generators who accumulate hazardous waste in tanks for 180 days (or 270 days where the waste was to be shipped or hauled a distance greater than 200 miles) for amounts less than 6,000 kilograms. In essence, the proposed regulations for on-site accumulation by 100–1,000 kg/mo generators were the same as then existing requirements under § 262.34 for generators of greater than 1,000 kg/mo who accumulate hazardous wastes in tanks for 90 days. However, in recognition of the small business nature of 100–1,000 kg/mo generators, the Agency did propose to simplify some administrative aspects of the requirements, such as requiring less formal and paper-work intensive contingency plans and employee training.

With regard to the specific requirements for accumulation of hazardous waste in tanks, the Agency proposed that the then existing 40 CFR Subpart J requirements would apply to 100–1,000 kg/mo generators. In so doing, the Agency did not propose that 100–1,000 kg/mo generators who accumulate in tanks become subject to the revised tank system standards proposed on June 26, 1985. The August 1, 1985 proposal incorporated by reference the June 26, 1985 proposed amendments to the Subpart J tank system requirements for generators of 100–1,000 kg/mo who store hazardous waste in tank systems for longer than 180 (or 270) days. These tank systems were proposed to be subject to full regulation under Parts 264 and 265 of the hazardous waste regulations as a hazardous waste facility, since the Agency saw no basis for distinguishing these tank systems from other hazardous waste facilities.

However, the preamble explained that the Agency had not yet determined whether the proposed amendments to Subpart J of Part 265 requiring secondary containment for short-term accumulation tank systems should also be applied to generators of 100–1,000 kg/mo since the Agency had not yet completed an assessment of the potential risks which such accumulation tank systems may pose.

E. March 24, 1986 Final Rules for Generators of 100–1,000 Kg/Mo

On March 24, 1986, the Agency issued final regulations applicable to the generation, transportation and treatment, storage, and disposal of non-acutely hazardous waste from 100–1,000 kg/mo generators (see 51 FR 10146). As was proposed, the Agency applied, under § 262.34, the existing (as of March 24, 1986) 40 CFR Part 265, Subpart J requirements to 100–1,000 kg/mo generators who accumulated hazardous waste in tanks. Thus, generators of 100–1,000 kg/mo of hazardous waste who accumulate hazardous waste in tanks for 180 (or 270) days would not automatically become subject to the amendments to Subpart J. Of course, generators of 100–1,000 kg/mo of hazardous waste who store their waste in tanks for periods of time *greater* than 180 (or 270) days or who are otherwise required to obtain interim status or a permit would become subject to the new Subpart J requirements, consistent with the Agency's August 1, 1985 proposal.

F. July 14, 1986 Final Rules for Hazardous Waste Storage and Treatment Tank Systems

On July 14, 1986, the Agency issued final amendments to the regulations applicable to the accumulation, storage or treatment of hazardous waste in tank systems (see 51 FR 25422). These amended regulations, which will become effective on January 12, 1987, will apply to all hazardous waste generators and owners or operators of hazardous waste treatment, storage and disposal facilities except for handlers of hazardous waste which is conditionally exempt from regulation pursuant to § 261.5, and except for 100–1,000 kg/mo generators who accumulate hazardous waste in tanks in accordance with § 262.34(d).

These final amendments are discussed in detail in section III.A. of this preamble. In brief, the final regulations require that secondary containment with leak detection be provided for all new and existing tank systems that are used for the accumulation, storage, or treatment of hazardous waste. The rules include technical standards for the design, installation, and operation of hazardous waste tank systems. The rules also impose administrative requirements for tank system integrity assessments, leak testing, recordkeeping, and reporting. An opportunity for a variance from the secondary containment requirements of

the final rules is provided based upon a showing of equivalent protection of human health and the environment as that provided by secondary containment through the use of an alternative tank system design and operating conditions and/or hydrogeologic setting. A variance may also be granted by the Regional Administrator following a showing that a tank system would pose no substantial present or potential hazard to human health or the environment, even in the event of a release of its contents to ground water or surface water.

The rules provide for a phase-in of the secondary containment and leak detection requirements for existing tank systems. Non-leaking existing tank systems must be replaced or retrofitted with secondary containment and leak detection by the time the tank system reaches 15 years of age.

As explained in the remainder of this preamble, tank systems utilized by 100–1,000 kg/mo generators who accumulate hazardous waste in tank systems prior to off-site shipment *do not* as a result of the July 14, 1986 final rules become subject to the secondary containment and leak detection requirements. Instead, today, the Agency is *proposing* to subject these generators to the final tank system rules and is inviting comments and supporting information on alternative regulatory strategies.

The Agency strongly encourages all readers to become familiar with the July 14, 1986 final rule and accompanying preamble (51 FR 25422), to assist the reader in understanding today's proposed rulemaking.

G. Summary of This Proposed Rule and Request for Comments

At the time of the March 24, 1986 rulemaking, the Agency had not judged whether protection of human health and the environment required imposing requirements beyond those contained in the then existing Subpart J for 100–1,000 kg/mo generators accumulating hazardous waste in tanks for 180 (or 270) days. Since that time, the Agency has completed its risk analysis, which includes an assessment of the risks posed by small accumulation tanks. The Agency has also evaluated the economic impact that these proposed tank system regulations would impose on 100–1,000 kg/mo generators. Based on this information, the Agency is today proposing that 100–1,000 kg/mo generators who accumulate hazardous waste in tank systems for 180 (or 270) days be made subject to those portions of the new Subpart J requirements, promulgated in the July 14, 1986 Federal Register (51 FR 25422), that apply to generators of greater than 1,000 kg/mo who accumulate hazardous waste in tank systems. The Agency's risk analysis demonstrates that even small release volumes of the waste streams associated with 100–1,000 kg/mo generators may pose a risk to human health and the environment. In addition, the risk analysis indicates that secondary containment is the most effective and reliable method for reducing the risk posed by such tank systems.

The Agency has determined, based on data and information currently available, that secondary containment is the preferred option for protecting against the risks posed by 100–1,000 kg/mo generator accumulation tank systems. Other strategies for protecting against leaking tank systems have been suggested and considered by EPA, but available data show them to be less protective than the approach taken by the Agency in the final tank system regulations.

While the Agency has determined from its economic assessment that the secondary containment requirements would not have severe economic impacts on 100–1,000 kg/mo generators, it will consider varying the requirements if they are shown to be unduly burdensome. The economic burden of the requirements on 100–1,000 kg/mo generators is of special concern to EPA because, for those generators, EPA must give weight to economic impacts where alternatives exist which provide comparable protection of human health and the environment. Similar considerations also apply in the cases of regulation of underground product storage tanks and used oil tanks. As explained in later sections of this preamble, EPA does not believe that regulations for each of these three types of tank systems must necessarily be the same as the regulations for other hazardous waste tank systems. The Agency will consider alternative regulatory approaches if they adequately protect against the risks posed by these tanks. A number of potential options are discussed below.

Although EPA has previously received comments suggesting that these generators' tank systems present lower risks than other hazardous waste tank systems and comments suggesting alternatives to secondary containment, these comments have not been sufficiently supported by data or information. Section III.C.2. below contains a more detailed discussion of comments received. If more complete verifiable data and information are submitted to show that the entire population or subsets of these tank systems do present lower risks than other hazardous waste tank systems or that alternatives to secondary containment would be adequately protective, the Agency will consider adopting alternative technical requirements as well as reducing any associated administrative requirements.

EPA does not believe that accumulation tank system regulations for 100–1,000 kg/mo generators must necessarily be the same as those adopted for other generators, especially in view of the economic impacts that might result. However, in the absence of data showing that risks from these tank systems can be adequately addressed by alternative measures, the Agency has chosen to propose the same approach adopted for other hazardous waste tank systems. Therefore, it is important that commenters provide additional information to supplement the limited data that the Agency has available to it.

The Agency seeks information on all aspects of accumulation of hazardous wastes in tank systems by 100–1,000 kg/mo generators. Specifically, the Agency is interested in receiving information on: Hazardous waste characterization (i.e., types of hazardous waste and constituents and constituent concentrations); the prevalence of accumulation of hazardous waste in tank systems by production process and industrial sector; current accumulation tank system design and operating practices, differentiated by new versus existing tank systems (e.g., above ground versus underground, indoor versus out of doors, and proximity to drinking water supplies and sources); and historic information on tank system leakage and resultant human health and environmental impacts.

The Agency invites comments and information that both support and refute currently available information that is discussed throughout this preamble.

While no one commenter or even a group of commenters is likely to have access to all of the information the Agency is seeking, all interested parties are encouraged to provide whatever information they have available. After reviewing all the information submitted in response to this proposed rulemaking, the Agency will be in a much better position to pursue any remaining data gaps.

III. Proposed Strategy To Regulate Accumulation Tank Systems of 100–1,000 kg/mo Generators

A. Summary of Approach Adopted in the July 14, 1986 Final Tank System Rules

As explained in detail in the preamble to the July 14, 1986 final tank system rules (51 FR 25422), the Agency's overall strategy for accomplishing the statutory goal of protecting human health and the environment from the risks posed by hazardous waste storage and treatment facilities is to prevent the migration of hazardous waste constituents to ground and surface waters where such releases may present a risk to human health and the environment. A key element of the overall strategy is the need to detect releases in a timely manner so that an appropriate response can be made.

The Agency's overall risk management strategy has evolved from the following considerations. First, there is a need to address further regulation of hazardous waste tank systems because the current situation most likely presents significant risks. A number of studies have shown that tank systems are likely to be leaking or are likely to leak in the future. Releases from tank systems are likely to contaminate ground water, posing risks to human health and the environment.

Second, based on EPA's review of the technical options, as well as the rationale expressed in the preamble to the January 12, 1981 hazardous waste tank regulations, the Agency has concluded that a regulatory approach that emphasizes secondary containment with leak detection both satisfies the statutory objective and is consistent with the function of tank systems as storage, rather than disposal, units.

The regulatory strategy promulgated on July 14, 1986 is applicable to tank systems, not only to the tanks themselves, as had been the case previously. The Agency has received new information showing that there is a high potential for release not just from tanks themselves, but also from ancillary equipment such as piping, fittings and valves.

While the focus of these regulations is on secondary containment, the Agency recognizes that secondary containment is not always necessary to achieve the statutory objectives.

Accordingly, the Agency has included in the regulations the opportunity to obtain variances from the secondary containment requirements. The variance opportunity is discussed in detail in the preamble to the July 14, 1986 final rules (51 FR 25451–25453).

The variance opportunity is available to 90-day accumulators and interim status as well as permitted hazardous waste management facilities. A variance may be granted by the Regional Administrator following submission of information that demonstrates that (1) alternative design and operating practices, together with location characteristics, will be as effective as secondary containment in preventing migration of hazardous waste or constituents into ground water or surface water, or (2) no substantial present or potential hazard would be posed to human health or the environment even in the event of a release from the tank system. Only the first variance basis (i.e., equivalent design, operation, and location) is available to new underground tank systems utilized by interim status facilities or 90-day accumulators because section 3004(o)(4) of RCRA requires that all new underground tanks have leak detection systems that detect leaks at the "earliest practicable time."

The principal reliance on secondary containment does not mean that all existing tank systems must be equipped with secondary containment immediately. The regulations provide for an orderly phase-in of secondary containment for existing tank systems.

The major features of the Agency's risk management strategy for hazardous waste tank systems, as expressed in the final hazardous waste tank system rules, are summarized below.

The first is the maintenance of the integrity of the primary containment structure. For both new and existing tank systems, the final rule requires that the primary tank system be designed properly and that it is compatible with the wastes that are stored or treated. For existing tank systems not fitted with a secondary containment system, a tank integrity test must be conducted by the owner/operator within 12 months of the effective date of the final rules (i.e., January 12, 1988) to identify leaks from the primary tank system. To ensure the integrity of metal tank systems, all new metal tank systems in which all or part of the system is or will be in contact with the soil or with water are required to be evaluated for corrosion potential by a corrosion expert. As a protective measure for cathodic corrosion protection devices, the rule requires regular inspection/testing of sacrificial anode potential and impressed current sources.

The second feature of the Agency's overall regulatory approach of effective containment of wastes is proper installation of new tank systems. The final rules require an independent, qualified installation inspector or professional engineer to certify that the tank system is structurally sound before installation and that proper handling procedures are adhered to during installation. Tank systems must be tested for tightness prior to use. Tanks and piping must be supported properly, and corrosion protection must be installed if needed. The design and installation requirements are intended to prevent tank system failure and leaks due to improper design and installation practices, which are known to be major causes of tank system failures. These requirements can also lead to long-term prevention of leaks due to structural failure and/or corrosion.

The third feature of the Agency's containment approach is secondary containment with leak detection to collect and detect leaks from the primary containment vessel. Despite the provisions for new tank systems requiring proper design, installation, and operation of the primary containment system, available data show that leaks are still likely to occur. The function of the secondary containment and leak detection system is to ensure that leaks are detected before they migrate beyond the zone of engineering control (i.e., an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous constituents to ground water or surface waters). The secondary containment system collects and contains releases from the primary containment vessel so that releases can be detected before they migrate to the environment. The leak detection system allows prompt detection of any release from the primary system to the secondary containment system. The rule provides design standards for vaults, exterior liners, and double-walled tank secondary containment systems.

The final rules require secondary containment for new tank systems and existing tank systems that are found to be leaking before they are placed or returned into service. In addition, owners and operators of existing tank systems are required to install secondary containment within two years of the date of promulgation of the final rule if storing or treating certain listed dioxin-containing wastes or, in the case of other hazardous wastes, within two years or by the time the tank system reaches 15 years of age, whichever comes later. In the event that the age of the tank system is unknown, EPA will assume, based on its study of the age distribution of hazardous waste tanks, that the tank system is seven years old,

the median age of all hazardous waste tanks, unless the facility at which the tank system is located is known to be older than seven years of age. In the latter instance, secondary containment would be required within two years, or by the time the facility reaches 15 years of age, whichever comes later. Tanks systems without full secondary containment are subject to periodic integrity assessments. Variances from the secondary containment requirements may be granted to permitted, interim status, and accumulation tank systems if the owner or operator demonstrates that hazardous wastes or constituents will not migrate into the ground water or surface water or that, in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment.

The final feature of EPA's regulatory approach incorporates provisions for adequate responses to releases of hazardous waste to the environment. The final rules require that all significant releases be reported, either to the Regional Administrator under RCRA or to the National Response Center under CERCLA regulations. In addition, immediate action must be taken to identify and stop the release, including, if necessary, emptying that part of the tank system found to be leaking until the leak has been stopped. The final rule requires that a qualified, registered professional engineer certify that major repairs have been properly made before a leaking tank system is returned to service. The final rule also requires that secondary containment with leak detection be provided for any component (i.e., tank or ancillary equipment) of the repaired tank system that is underground. In addition, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection, the entire component must be provided with secondary containment with leak detection prior to being returned to service. EPA is also requiring owners or operators of tank systems to provide adequate closure, and, if necessary, post-closure care. All wastes and all contaminated components, soils, structure, and equipment must be removed from the site at closure, or the site must be provided with post-closure care similar to that required for landfills.

EPA concluded in the final rule that since there is no significant difference with respect to the risks posed by 90-day accumulation tank systems and the general hazardous waste tank system population, these tank systems should be managed in the same way, to the extent possible, as any hazardous waste tank system.

EPA also concluded that 90-day accumulation tank systems should be able to qualify for variances from secondary containment. Thus, the final rule requires that owners/operators of 90-day accumulation tank systems comply with many requirements of the final Part 265, Subpart J, including:

- A one-time assessment of the tank system, as discussed above, including the results of an integrity test;
- Installation standards;
- Design standards including an assessment of corrosion potential;
- Secondary containment phase-in provisions;
- Periodic leak testing if the tank system does not have secondary containment; and
- Additional response requirements to a leak, including a report to the Regional Administrator of the extent of the release and requirements for repair or replacement of leaking tanks.

Variance provisions that had been provided in the proposal only for permitted and interim status tank systems are available to 90-day accumulation tank systems.

The final rule does not require that owners/operators of 90-day accumulation tank systems comply with the final Part 265, Subpart J requirements for preparation of closure and post-closure plans, contingent closure and post-closure plans, financial responsibility requirements, and waste analysis and trial tests. Unlike off-site commercial hazardous waste storage and treatment facilities where a wide variety of hazardous wastes are managed, generators generally produce and would thus store or treat wastes that are relatively consistent in terms of their physical/chemical properties. Thus, EPA does not believe that waste analysis and trial tests must be conducted by generators of hazardous waste because of their familiarity with the wastes that they generate. In addition, EPA is conducting a review of the requirements that are imposed on owners/operators of accumulation tank systems and will address the issues of closure and post-closure, contingent closure and post-closure, and financial assurance requirements for accumulation tank systems as part of this review. An Advance Notice of Proposed Rulemaking that was published on July 14, 1986 (51 FR 25487) requested public comments with respect to imposing these requirements at accumulation tank systems and otherwise discussed modifying the existing exemption for accumulation tank systems from permitting.

B. Approach to Regulating Accumulation Tank Systems of 100–1,000 Kg/Mo Generators

As discussed in the proposed and final rules for 100–1,000 kg/mo generators (50 FR 31278, 51 FR 10146), EPA is authorized under section 3001(d)(2) of RCRA to vary standards for these generators. While Congress intended EPA to take into account impacts on 100–1,000 kg/mo generators in developing standards, it also directed that these standards be adequate to protect against the risks associated with hazardous waste management activities.

EPA's approach in the March 24, 1986 rule regulating accumulation of hazardous wastes by these generators was to relieve them from administrative impacts rather than technical requirements. This approach was based on a careful balancing of the two goals of avoiding unreasonable burdens on these generators and protecting human health and the environment. Clearly, the technical requirements under Subtitle C are more essential than administrative requirements to the goal of protecting human health and the environment because they are directly concerned with controlling releases to the environment. The Agency concluded that protection of human health and the environment overrode the potential economic impacts that the Subtitle C technical standards may cause.

In considering whether the Subpart J tank system amendments should be varied for 100–1,000 kg/mo generators, the Agency has conducted a similar analysis by balancing the risks associated with accumulation of hazardous wastes by these generators against the impacts from requiring compliance with the July 14, 1986 final hazardous waste tank system standards, including secondary containment. The Agency has considered whether the impacts, in light of the risks posed, would justify reducing or eliminating any technical or administrative aspects of the tank system standards.

The Agency has concluded, based on its economic analysis (see Appendix A), that imposing the full set of tank system standards would not have a significant economic impact on most 100–1,000 kg/mo generators. It has also decided, based upon current information and in particular its risk analysis, that given the risks posed by these tank systems, application of the full tank system requirements to these generators is the preferred regulatory approach. While it is arguable that smaller generators' tank systems pose lesser relative risks for a given waste due to the smaller release volumes that would be associated with these generators' tank systems (assuming that smaller generators have smaller tanks), EPA's risk analysis indicates that even small releases could pose substantial risks over time. Thus, the same concerns that led the Agency to adopt secondary containment requirements for larger generators, such as the record of inevitable leaks from primary tank systems over time, appear to be equally applicable to 100–1,000 kg/mo generators.

However, in deciding whether the impacts of requiring the full tank system standards could be reduced for these generators without compromising protection of health and environment, the Agency considered whether any technical requirements or reporting, recordkeeping, and other administrative requirements that are associated with the technical standards could be reduced or eliminated. The Agency's economic analysis showed that varying one particular standard—the annual integrity assessment requirement—would have a relatively significant effect on the costs imposed by the regulation. Decreasing the frequency of the assessments would significantly reduce the costs of compliance. However, the Agency believes at this time that doing so could severely compromise the tank system standards because the assessments are the principal means for detecting releases up to such time as secondary containment is provided. Requiring integrity assessments every three or five years, for example, for underground tank systems without secondary containment would allow releases to remain undetected for longer periods of time. Similarly, leak inspections provide an essential element to the regulatory strategy for detecting releases from accumulation tank systems.

While the Agency believes at this time that, in order to protect human health and the environment, imposing not only secondary containment, but also the associated assessment and inspection requirements, on 100–1,000 kg/mo generators is preferable, it will consider reducing the frequency of such assessments and inspections. As discussed in greater detail in section III.C.1.i. below, if information is submitted to show that integrity assessments and leak inspections may be conducted less frequently for these tank systems while providing comparable protection to human health and the environment, the Agency will consider varying the regulatory requirement. The Agency also requests comments and information on other technical requirements that should be reconsidered for 100–1,000 kg/mo generators.

With regard to administrative requirements, the Agency's analysis showed that the costs associated with such requirements as certification of tank structural integrity, proper installation and recording of inspections for phased-in secondary containment are negligible. Similarly, reports to EPA or the National Response Center when releases are detected would not add significantly to the costs of compliance. These requirements are also an important part of the technical standards themselves, and reducing or eliminating them could significantly affect the overall effectiveness of those standards. Thus, the Agency is not proposing to exempt these generators from any administrative requirements at this time.

On the other hand, there may be ways to reduce the administrative burdens on these generators without reducing the effectiveness of the technical standards, and the Agency requests comments and information on this issue. For example, the Agency will consider modifying the requirement that records of inspection be made daily if information is submitted to show that this would be unduly burdensome to generators of 100–1,000 kg/mo.

Thus, the Agency is requesting comment on whether there are alternative regulatory approaches or administrative requirements that would reduce undue economic or administrative burdens on these generators without reducing the protectiveness of the tank system standards. A number of specific options are presented below to focus consideration of the issues by commenters.

C. Basis for Proposal and Alternative Regulatory Approaches; Request for Comments

EPA has considered alternative regulatory strategies for 100–1,000 kg/mo generators who accumulate hazardous wastes under § 262.34. First, EPA presented several alternative approaches in the August 1, 1985 proposal designed to reduce the regulatory burden on these generators and requested comment on the alternatives. Second, EPA's risk analysis for Hazardous Waste Tanks assessed five possible regulatory strategies for all hazardous waste tank systems, and comments were requested on the analysis. (51 FR 9072, March 17, 1986). Third, EPA's economic analysis assessed the impact of various regulatory approaches on 100–1,000 kg/mo generators. EPA has concluded that, based on the current analyses and comments received to date, the preferred option for 100–1,000 kg/mo generators that would be sufficiently protective of human health and the environment is requiring secondary containment and other standards that have been adopted for other generators. However, the Agency is requesting interested persons to submit comments and information on the analyses and on the specific regulatory alternatives discussed below, in light of today's proposal. If new information is submitted that affects the Agency's conclusions, EPA will reevaluate its regulatory approach in light of the new information. EPA will also reconsider any comments previously submitted on the risk analysis and regulatory options, as appropriate.

1. Request for Comment on Alternative Approaches

While EPA is today proposing to apply to 100–1,000 kg/mo generators essentially the same requirements that, as a result of the final hazardous waste tank system standards promulgated on July 14, 1986, will apply to generators of greater than 1,000 kg/mo of hazardous waste who accumulate in tank systems, the Agency is specifically requesting comment on a number of alternative regulatory approaches. The Agency has tentatively rejected each of these approaches to regulating hazardous waste accumulation tanks systems utilized by 100–1,000 kg/mo generators but is seeking additional information and data that would assist it in determining the appropriate final standards for hazardous waste tank systems utilized by these 100–1,000 kg/mo generators.

The Agency encourages commenters, when addressing the alternative regulatory strategies listed below, to explain their comments and information as they apply to new versus existing tank systems. Commenters should also explain whether their comments relate: To the entire 100–1,000 kg/mo accumulation tank system population; to only specified segments of the population; or to specific types of accumulation tank systems. Where a specific tank system design or operating practice is the basis for comments, information on the current prevalence of that design or practice should also be submitted.

The alternative regulatory strategies listed below are not presented in an

order that should be construed as indicative of the Agency's preferences.

a. *Retain Existing Subpart J Requirements.* The Agency will consider retaining the existing Subpart J requirements (i.e., § 265.201) for one or more subsets of 100–1,000 kg/mo generator accumulation tank systems that are shown to pose a low risk to human health and the environment. For example, certain tank systems may pose low risks because any releases from them may be easily detected and corrected and may be of small volume. Of course, in accordance with section 3004(o)(4) of RCRA, new underground tank systems will need to utilize a leak detection system that is capable of detecting leaks of hazardous constituents at the earliest practicable time. The Agency requests comment and information on whether 100–1,000 kg/mo generator accumulation tank systems merit the existing less stringent regulation due to the relatively low risks involved.

b. *Class Variances.* In the August 1, 1985 proposal, EPA requested comment on providing for a conditional exemption from secondary containment for 100–1,000 kg/mo generators who store relatively small amounts of waste for short periods. While several commenters supported this option, they did not submit information to specify the criteria to be applied. For example, some tank systems utilized by 100–1,000 kg/mo generators may be used to accumulate relatively less hazardous wastes or wastes in small volumes or low concentrations. These conditions of accumulation may not warrant full secondary containment. Similarly, indoor tank systems may pose low risks because of ease of inspection and detection of releases and the small volume of any possible releases to the environment. While today's proposal does adopt the site-specific variance opportunity and procedure (see § 265.193 (g) and (h)), EPA requests comment on the possibility of class variances from secondary containment for specific groups of tank systems of 100–1,000 kg/mo generators that, because of specific hazardous wastes, volumes, or constituent concentrations, present a low risk of harm to human health and the environment. More specifically, the Agency is seeking information on particular combinations of hazardous waste types and constituents, environmental settings, and system designs and operating practices that pose a sufficiently low risk to human health and the environment such that existing tank system requirements (i.e., § 265.201) applicable to 100–1,000 kg/mo generators who accumulate in tanks are protective of human health and the environment.

c. *Inventory Monitoring.* EPA requests comment regarding the possibility that inventory monitoring may be an acceptable alternative to secondary containment for specific groups of tank systems of 100–1,000 kg/mo generators. If releases from such tank systems could be readily detected by monitoring, it may serve as a viable regulatory alternative to secondary containment. Such an alternative would rely on accurate monitoring and recordkeeping to demonstrate that no significant release had occurred. EPA requests comment on what such inventory monitoring requirements should be. For example, the Agency seeks information that demonstrates that the use of simple volumetric measuring devices, such as dip sticks or gravity flow meters, can achieve a high degree of accuracy and reliability in detecting releases from some or all tank systems utilized by 100–1,000 kg/mo generators, which would enable prompt corrective measures and thereby reduce or prevent significant impacts on human health or the environment.

d. *Unsaturated Zone Monitoring.* As discussed in the preamble to the July 14, 1986 final hazardous waste tank system rulemaking, unsaturated zone monitoring could be utilized in lieu of secondary containment and leak detection only through a successful variance demonstration in accordance with § 265.193 (g) and (h). The Agency is aware that unsaturated zone monitoring may be effective in early detection of releases from a tank system in certain situations where a combination of volatile hazardous waste, porous-backfill material, and proper installation techniques are particularly well suited to unsaturated zone monitoring technologies. The Agency solicits information on whether there are classes of tanks containing specific hazardous wastes that are amenable to unsaturated zone monitoring to provide prompt detection of leaks, even in the absence of secondary containment. The Agency is also seeking information on whether there are hazardous wastes generated and accumulated in tank systems by 100–1,000 kg/mo generators that are sufficiently volatile or exhibit other physical or chemical properties such that existing unsaturated zone monitoring technology has been demonstrated to be effective (i.e., capable of detecting in specific or most environmental settings, quickly enough to enable corrective measures which would prevent significant impacts on human health or the environment).

e. *Conditional Insurance Variance.* The Agency recognizes that the insurance industry exercises some degree of regulation when it establishes conditions and rates for providing environmental impairment and corrective measure coverages. EPA seeks comments on the ability of 100–1,000 kg/mo tank system accumulators to obtain such insurance at affordable rates, even in the absence of federal secondary containment requirements, and on whether the conditions for such coverage would assure the Agency that no significant risk to human health and the environment would be posed by 100–1,000 kg/mo generators who obtained and maintained insurance coverage. Do some or all 100–1,000 kg/mo accumulation tank systems pose small enough risks that the insurance industry would be willing to provide coverage at affordable rates? What amount of coverage might be available, affordable, and sufficient to serve as an alternative to secondary containment? Is the viability of this alternative different for new tank systems than it is for existing tank systems?

f. *Alternative Variance Mechanisms and Submission Deadlines.* In accordance with today's proposal, 100–1,000 kg/mo generators who accumulate hazardous waste in tank systems could seek a variance from the secondary containment requirements by submitting to the Regional Administrator either a demonstration that an alternative tank system design and operation would provide protection equivalent to that provided by secondary containment or a demonstration that no substantial present or potential risk would be posed by a release from the generator's tank system (see § 265.193 (g) and (h)). However, the no substantial present or potential risk opportunity for a variance does not apply to new underground tank systems because of the leak detection requirement contained in section 3004(o)(4) of RCRA.

While the Agency has been unable to identify any additional justifiable bases for granting 100–1,000 kg/mo generators a variance from the secondary containment requirements, the Agency seeks comments on the appropriateness of the equivalent technology and the no substantial risk bases with regard to 100–1,000 kg/mo accumulators. Comments and information on additional bases for supporting such variances are also requested.

Furthermore, EPA invites comment on its assumption that most 100–1,000 kg/mo generators will not choose to seek a variance from the secondary containment requirements in accordance with § 265.193 (g) and (h). Is there information that would counter this assumption? Could these generators file a sufficient number of notices of intent to seek a variance and submit actual variance requests that would overwhelm EPA's and the States' ability to process them in a timely fashion? Would different submission deadlines avoid such a possibility?

g. *Delayed Effective Dates.* Another option presented in the August 1, 1985 proposal was to delay the effective date of secondary containment requirements for these generators. As discussed in section III.C.4. below ("Effective Dates"), the Agency is proposing to apply the same phase-in requirements to 100–1,000 kg/mo generators as it is applying to other generators. The Agency requests comment on the specific circumstances applicable to 100–1,000 kg/mo generators that may warrant a delay in effective dates. EPA also requests comment on its assumption that there is an adequate supply of reasonably priced technical professionals able to assist 100–1,000 kg/mo generators in complying with these proposed rules. Specifically, EPA would like to know whether the demand for these professionals will overwhelm the supply as a result of the large number of 100–1,000 kg/mo generators that would be brought under the tank system regulations, even though generators would be subject to a later implementation schedule.

h. *Site-Specific Effective Dates.* The Agency also requests comment on whether it should provide site-by-site effective dates for installing secondary containment. EPA recognizes that some 100–1,000 kg/mo generators are likely to have tank systems not subject to Subpart J, some of which may be used to accumulate used oil and others which may be used to store substances subject to regulation under RCRA Subtitle I. Are multiple tank systems for hazardous wastes, waste oil, and regulated substances at the same facility more common for 100.1,000 kg/mo generators than for larger quantity hazardous waste generators? Will any unreasonably high implementation costs arise if the hazardous waste tank system rules go into effect before rules governing waste oil and regulated substances go into effect (e.g., costs of piping and controls for all tank systems located in the same excavation trench)? Should the fact that regulatory strategies, other than secondary containment, may well be adopted by the Agency for generators of recycled used oil or regulated substances under Subtitle I of RCRA cause the Agency to defer promulgating standards applicable to 100–1,000 kg/mo generators who accumulate hazardous waste in tank systems until such time as it can promulgate a full set of standards regarding accumulation or storage of RCRA regulated materials by these generators?

i. *Inspection and Assessment Frequencies.* If, based upon information available to the Agency including comments and information submitted in response to this proposal, the Agency determines that secondary containment of tank systems for accumulation of hazardous waste by 100–1,000 kg/mo generators is necessary for protection of human health and the environment, there may still be specific associated requirements that could be relaxed for these hazardous waste generators. The Agency invites comment and information that would support requirements for less frequent inspections or assessments that must be conducted on all existing tanks. For example, the Agency would consider requiring less frequent than annual tank system integrity assessments. Information should be submitted to show that reducing the frequency would not result in significant risk from undetected releases. EPA will also consider less frequent than daily inspections of tank system for leaks. The Agency also invites comment on its current estimates of the economic burden imposed as a result of today's proposed requirements regarding integrity assessments and leak inspections.

j. *Reduced Administrative Requirements.* There are a number of recordkeeping and reporting requirements that accompany the proposed technical standards and that the Agency would consider modifying if shown to be unduly burdensome or unnecessary for proper implementation of the technical requirements. For example, the Agency would consider waiving or modifying the requirement that generators maintain an operating log of all assessments and leak inspections.

2. Risk Analysis

This proposed rule for generators of 100–1,000 kg/mo hazardous waste tank systems is supported by a risk analysis of a variety of hazardous waste storage tank systems that was published by EPA on March 17, 1986 (51 FR 9072). The analysis compared five regulatory strategies for mitigating health threats from leaking hazardous waste storage tank systems. The analysis indicates that secondary containment with leak detection appears to be the most effective method for reducing risks associated with hazardous waste tank systems, including the 180- (or 270-) day accumulation tank systems of generators of 100–1,000 kg/mo. Based on the risk analysis results for all appropriate hazardous waste tank systems, waste streams, and hydrogeologic setting combinations, the possible regulatory strategies are ranked in descending order of protectiveness: (1) Secondary containment with leak detection; (2) partial secondary containment and groundwater monitoring; (3) leak testing and groundwater monitoring; (4) corrosion protection without leak detection; and (5) existing regulation, which serves as a baseline.

The analysis of all five regulatory scenarios allowed comparison between the range of risks posed by hazardous waste tank systems as they are currently being managed and under technical requirements set forth in the proposed regulations. The estimated relative risks posed by 100–1,000 kg/mo hazardous waste accumulation tank systems were lower than from other types of tank systems considered in the Hazardous Waste Tanks Risk Analysis. Nevertheless, the analysis indicated that short-term accumulation tank systems of generators of 100–1,000 kg/mo did pose some risk.

In addition, the Agency conducted a supplementary analysis to examine the effectiveness of unsaturated zone monitoring for hazardous waste tanks. In evaluating the reliability of unsaturated zone monitoring, the Agency assumed: (1) That the tank is a carbon steel underground tank containing the highly volatile waste stream dichloromethane; (2) that the tank is located in a homogeneous backfill of known permeability; (3) that the ground water table is deep enough to allow detection of the leak prior to ground water contamination; (4) that the composition of the waste stored in the tank does not vary over the time that unsaturated zone monitoring is used; (5) that the monitoring well is located two feet from the tank; and (6) that the tank owner/operator can afford periodic clean up and repair or replacement of the tank. Overall, these assumptions result in an evaluation of unsaturated zone monitoring in ideal situations which include proper installation and operating conditions.

Given assumptions such as these, the supplementary analysis indicates that unsaturated zone monitoring is nearly as effective as secondary containment in appropriate situations. However,

because its effectiveness is limited to the specific conditions mentioned above, EPA believes it would have been inappropriate to assess its use for the general range of conditions under which the other regulatory options were evaluated. As a result, the Agency has not included unsaturated zone monitoring in the overall risk reduction ranking scheme with the other regulatory alternatives.

The tank system risk analysis model that supports this proposed rule requires a large number of variables as inputs to the model. These variables include waste stream characterization, tank management, and hydrogeologic conditions.

Typical waste streams for generators of 100–1,000 kg/mo were identified from a survey of 100–1,000 kg/mo generators conducted by EPA.[1] Waste streams with similar toxicities and concentrations were consolidated to simplify the risk analysis. The waste streams modeled were: (1) Spent solvents, ignitable wastes, and ignitable paint wastes; (2) waste pesticides, pesticide washing, and rinsing solutions; (3) heavy metal wastewater sludges, cyanide wastes, spent plating wastes, and other reactive wastes; (4) photographic wastes, solutions, and sludges with photo silver; (5) waste ink with solvents or heavy metals, and ink sludges with chromium or lead; (6) strong acid or alkaline wastes; (7) filtration residues from dry cleaning; and (8) wood preservative wastewaters. The waste streams were identified from the Agency's survey of 100–1,000 kg/mo generators.[2] The exact constituents and relative concentrations were obtained, for the most part, from information contained in the OSW docket report, *Economic Analysis of Resource Conservation and Recovery Act Regulations for Small Quantity Generators*, which was supported by the RCRA Risk-Cost Analysis Waste Stream Data Base (July 1984) (commonly referred to as the W-E-T Model Data Base) and the TRW Analysis.[3] [4]

The survey of 100–1,000 kg/mo generators identified a large number of generators of 100–1,000 kg/mo who utilize hazardous waste tank systems. Auto repair, services, and garages accounted for 33 percent of the 100–1,000 kg/mo generators storing hazardous wastes. Auto dealers and gasoline service stations accounted for an additional 32 percent of those establishments.

No other two digit SIC (Standard Industrial Code) industry groups accounted for more than 5 percent of the generators of 100–1,000 kg/mo using tank systems to store hazardous waste. Approximately 4 percent of the generators of 100–1,000 kg/mo using tank systems to store hazardous waste were in the painting, paperhanging, and decorating industry, 3 percent were in the primary metals industry, and about 2 percent each were in photofinishing, trucking, and printing and publishing. These data indirectly affect the risk analysis results by determining the waste streams and constituents that were modeled. The Agency is requesting comment on the validity of these data and their effects on the risk analysis for 100–1,000 kg/mo generators of hazardous waste.

While the industries generating 100–1,000 kg/mo of hazardous waste were identified by the Agency's small quantity generator survey, the exact characteristics of these establishments were not always identified. The number of generators of 100–1,000 kg/mo using tank systems was estimated to be 11,388 with 4,745 facilities having tank systems above ground, 4,935 having tanks underground, and 1,708 having tanks both above and below ground. Each establishment was assumed to have two tank systems for a total tank system population of approximately 23,000. All tank systems were assumed to be operated for short-term accumulation.

A variety of materials may be used to construct tanks (e.g., carbon steel, fiberglass-reinforced plastic, concrete) and tanks may be located in a variety of locations (e.g., above ground on cradles or ongrade, completely underground, partially underground). For the risk analysis, the accumulation tank systems of generators of 100–1,000 kg/mo were assumed to be constructed of carbon steel, located either above ground on cradles or completely below ground. The tanks were assumed to be small capacity tanks holding 200 gallons and to contain wastes stored for 180 days, the maximum time allowed in the proposed and final regulations for these generators without requiring interim status or a storage permit.

Releases were assumed to result from any of five generic release types: (1) Catastrophic events, (2) rupture of tank components, (3) corrosion of system components, (4) overflows during tank filling, and (5) spills over a 20-year time horizon. For underground tanks of 100–1,000 kg/mo generators, 80 percent of the modeled scenarios experienced tank corrosion failure, 60 percent of the scenarios experienced weld or gasket failure, and 30 percent of the scenarios experienced loose hose connections. For above-ground tank systems of generators of 100 to 1,000 kg/mo, 74 percent of the scenarios experienced weld or gasket failures of piping, 48 percent experienced overfilling, 44 percent of the scenarios experienced tank corrosion, and 34 percent experienced loose hose connections.

In the risk analysis for tank systems of 100–1,000 kg/mo generators, approximately 48 percent of the risk estimates for above-ground tanks, assuming the baseline case (i.e., current rules), are associated with estimable risk (i.e., some risk to human health is likely). This contrasts with approximately 13 percent nonzero risk estimates for the same tank systems assuming secondary containment with leak detection. Results for underground tank systems are similar to above-ground tank systems with the baseline case having nonzero risk associated with 56 percent of the risk estimates. Secondary containment, on the other hand, was associated with nonzero risk estimates for approximately 5 percent of the risk estimates.

These risk estimates should not be interpreted as absolute risks because there were few data to confirm or refute certain assumptions made in the analysis. Some of the more significant areas of uncertainty are the following: (1) The failure model release estimates; (2) the use of nine generic ground water settings with representative parameters; (3) waste constituent quantities and concentrations; (4) the use of a single exposure distance of 60 meters from a hazardous waste tank; and (5) the assumption that the exposed individual uses the same source of ground water over a 70-year lifetime.

Although the risk results should not be interpreted as absolute, the analyses are useful for comparisons between regulatory alternatives and their associated magnitudes of risk. In this manner, the risk analysis provides an indication of whether risks are likely to be significant (a substantial proportion of risk estimates are non-zero), and which regulatory alternative is most effective at reducing risk.

EPA invites comment on the general accuracy and completeness of the analysis for hazardous waste tank systems of 100–1,000 kg/mo generators and invites comment on the nature of

[1] National Small Quantity Hazardous Waste Generator Survey. Abt Associates, Cambridge, Mass. February 28, 1986.

[2] Ibid.

[3] ICF Incorporated, Development Planning and Research Associates, Inc., and Pope-Reid Associates [June 1985].

[4] TRW Environmental Engineering Division, *Technical Environmental Impacts of Various Approaches for Regulating Small Volume Hazardous Waste Generators*, Vol. II, December 1979.

hazardous waste tank systems of 100–1,000 kg/mo generators that would affect the Agency's interpretation of the risk analysis results. Specifically, EPA is requesting comment concerning the assumptions about: (1) Number of tank systems of 100–1,000 kg/mo generators by industry; (2) waste types and concentration stored in these tank systems; (3) the size of these tank systems; (4) the location of these tank systems (e.g., above ground, underground); (5) their proximity to drinking water wells (e.g., 200 feet downgradient of the tank system); (6) tank system age, design, and operating practices; and (7) tank system failure causes and rates.

EPA has already received comments on the Hazardous Waste Tanks Risk Analysis, which are addressed in a background document to the final tank system rule promulgated on July 14, 1986. Some commenters suggested new data or new tools for conducting such a risk analysis. This section provides a brief discussion of the information provided by commenters and the Agency's current views on the adequacy and relevance of the information in this rulemaking. The Agency will carefully consider these comments along with others received in response to today's proposal.

a. *EPRI Model.* One of the commenters suggested that the Electric Power Research Institute (EPRI) Underground Tank Risk Management System model be used to replace or supplement the Hazardous Waste Tank Risk Analysis. The Office of Solid Waste and the Office of Underground Storage Tanks have reviewed this model in terms of applicability to the hazardous waste tank system and underground product storage tank programs. This model only examines the costs associated with managing an underground tank system and does not consider risk to human health and the environment. Thus, while the EPRI model may be well-suited for specific facility management decisions, it has not been adopted by the Agency. In addition to the model's failure to consider health and environmental risk, the model: (1) Does not provide new performance data on tank systems or safety technologies; (2) examines only cost impacts of underground carbon steel petroleum tanks leaking due to corrosion (there are many other tank types and failure mechanisms); and (3) faces the same difficulties the Hazardous Waste Tank Risk Analysis Model faced in trying to examine the population of hazardous waste tank conditions (i.e., aggregation requires simplifying assumptions with respect to hydrogeologic setting, tank characteristics, and waste characteristics).

The "Risk" portion of the model's title refers to the risk of incurring tank management *costs*, not to the risk of posing adverse human health and environmental impacts. The EPRI model's specific purpose is to aid a facility with an underground storage tank in minimizing the cost of using that tank over the *facility's* planning horizon. For example, the EPRI model can compare the cost of immediately replacing a tank with a double-walled tank to the cost of replacing that tank sometime in the future plus the cost of necessary corrective action that may result during the period prior to replacement. The model does not assess risks to human health and the environment prior to completion of corrective action, and it is not reasonable to assume that there are no risks to human health and the environment regardless of the length of time required to correct a contamination event. Thus, the model is not suitable for the Agency's determination of whether and how hazardous waste tanks pose risk to human health and the environment or what technologies are available that adequately protect human health and the environment.

b. *Generator Spent Solvent Waste Stream Characterization.* One commenter disagreed with EPA's characterization of 100–1,000 kg/mo generator spent solvent wastes. The commenter asserted that the Agency did not use readily available data sources such as EPA's WET model. This assertion is apparently based on a misunderstanding of the Agency's methodology for characterizing waste streams associated with 100–1,000 kg/mo generator accumulation tank facilities.

In order to characterize 100–1,000 kg/mo generator waste streams, EPA used the National Small Quantity Generator Survey to determine the industries that have 100–1,000 kg/mo generators with tanks. To determine the waste streams associated with generators in these industries, EPA used the study, *Technical Environmental Impacts of Various Approaches for Regulating Small Volume Hazardous Waste Generators.*[5] The appendices for this study provide waste characterization data for 100–1,000 kg/mo generators by industry. With this information and a supplementary literature search, EPA identified 40 solvent constituents associated with 100–1,000 kg/mo generators within the SICs identified in the Small Quantity Generator survey.

Of these 40 solvent constituents, 14 were identified as RCRA-listed wastes and were associated with from 2 to 10 SICs identified by the Small Quantity Generator survey. EPA then characterized the physical properties (e.g., constituent mass fraction) of these 100–1,000 kg/mo generator related RCRA-listed solvents based on the existing WET model data base.

The information available to EPA on the constituents of waste solvents is limited in scope and may not be a representative sample of the solvent wastes produced by the whole spectrum of 100–1,000 kg/mo generators. However, it is specific data obtained from some generators of waste solvents and, therefore, gives an indication of constituents likely to be present in solvent wastes. EPA believes that the waste characterizations used in the risk analysis for 100–1,000 kg/mo generators are appropriate. However, EPA requests additional data to improve its waste characterizations for these generators.

In contrast to the mostly anecdotal data and information provided by commenters on the risk analysis, the Agency encourages commenters to be as specific as possible, including, when available, actual constituent analyses of solvent waste streams generated by 100–1,000 kg/mo generators.

c. *Use of 60 Meter Exposure Distance.* Numerous commenters disagreed with the Agency's use in the risk analysis of a standard distance of 60 meters (200 feet) between the drinking water well and the hazardous waste tank system. In order to estimate risk from hazardous waste tank systems, EPA used an existing land disposal risk model that provides three standard exposure distances (60 m, 600 m, and 1500 m). EPA examined available data sources to estimate more appropriate well distances for hazardous waste tank systems. In particular, EPA examined the Federal Reporting Data System (FRDS) maintained by EPA's Office of Water.

From this examination, EPA determined that the FRDS cannot be used to provide feasible estimates of potentially exposed populations because: (1) The well and water intake locations specified as the centroid of the mailing address zip codes are not reliable estimates of exposure locations; (2) FRDS does not contain information on the location and drinking water population associated with private wells; and (3) the reported drinking water population represents the total population drinking either surface or ground water obtained directly, or

[5] Ibid.

purchased from elsewhere, by the water supply system.

In addition to the inability to estimate the location of water supply systems and ground water sources used for drinking water, EPA has no readily available data on the specific locations of the approximate 5,500 storage, 2,000 treatment, 6,400 accumulation, and 11,388 100–1,000 kg/mo generator tank facilities. While the Office of Solid Waste Mail Survey contains the street address and zip codes of a sample of storage, treatment and accumulation tank facilities, there are no similar data for the 100–1,000 kg/mo generator tank facility population.

Thus, as a result of data limitations and time constraints, EPA made the conservative assumption that the exposure distance is 60 meters. While this assumption is conservative, the model does not account for the damage that results from contamination of a valuable ground water resource. In addition, the model underestimates potential ground water contamination impacts since it does not examine tanks located in the ground water or multiple tanks above the same aquifer.

It is important to note that while longer well distances may reduce health risk estimates, the longer the well distance, the more extensive the ground water contamination prior to eventual detection at the drinking water well. Once contamination reaches the ground water, regardless of the extent of the contamination plume, the corrective action costs of ground water treatment are likely to be excessive.

3. Economic Analysis

The results of the economic impact analysis that the Agency has relied upon in today's proposal (see Appendix A) indicate that most 100–1,000 kg/mo generators will not be significantly affected by the proposed tank system requirements. The Agency evaluated the impact of eleven different regulatory scenarios on model firms generating 100–1,000 kg/mo of hazardous waste. The scenarios varied in terms of phase-in requirements (15 and 20 years), administrative requirements, and frequency of integrity assessments. The overall results showed that, at most, 6 out of 84 model firms would be significantly impacted by the proposal or any one alternative regulatory scenario. However, as discussed earlier, varying the frequency of integrity assessments would reduce impacts significantly, while reducing administrative requirements would have a negligible effect. The Agency requests comment on whether it would be appropriate to vary either of these requirements, and requests information to support the comments. Specifically, the Agency requests comments and information on whether promulgating the rules as proposed would have severe economic impacts on particular segments of 100–1,000 kg/mo generators, and whether reducing the frequency of integrity assessments would reduce such impacts. In addition, the Agency requests comment on whether any administrative requirements are overly burdensome in terms of cost or paperwork required, and if they can be reduced or eliminated without severely compromising the protectiveness of the technical standards.

The Agency based its analysis on certain assumptions and information available to it, as described more fully in Appendix A. Comment is invited on the validity of these assumptions and the information used, and commenters are requested to submit specific information to support any different conclusions they may have.

4. Effective Dates

The final rule published in the July 14, 1986 Federal Register establishing new standards for hazardous waste tank systems will take effect on January 12, 1987, 180 days after the publication date. For one of the major requirements of the final rule, secondary containment for hazardous waste tank systems, EPA has adopted a phased implementation approach. For existing tank systems without secondary containment that meet the rule's requirements, an assessment of the tank system's integrity is required by January 12, 1988. The final rule requires that leaking tanks be repaired or replaced and, if underground or not subject to visual inspection, provided with secondary containment before being brought back into service. Other existing tank systems are required to have secondary containment within two years of the date of promulgation of the final rule if storing or treating dioxin-containing wastes or, in the case of other hazardous wastes, within two years or by the time the tank system reaches 15 years of age, whichever comes later. In the event that the age of the tank system is unknown, EPA will assume, based on its study of the age distribution of hazardous waste tanks, that the tank is seven years old, the median age of all hazardous waste tanks, unless the facility is known to be older than seven years of age. In the latter instance, secondary containment would be required within two years, or by the time the facility reaches 15 years of age, whichever comes later.

Generators of 100–1,000 kg/mo of hazardous waste subject to the rules proposed today will likely need at least as long as other tank system owners and operators to comply with the rules; therefore, the Agency proposes that the phased implementation for these generators be based on the future date of final tank system rules governing accumulation tanks of generators of 100 to 1,000 kg/mo. Under the terms of today's proposal, therefore, 100–1,000 kg/mo generators who utilize tank systems for accumulation of their hazardous wastes will be provided the same number of months after promulgation of this proposal as a final rule as those hazardous waste generators subject to the July 14, 1986 final tank system rules are afforded.

5. Request for Comments

EPA is concerned about the limited amount of data available on accumulation tanks of 100–1,000 kg/mo generators. As noted above in several locations in this preamble, EPA requests additional data to improve its information base. To the extent possible, data and information provided to EPA should distinguish between new and existing accumulation tank systems. In addition, EPA seeks information on the current prevalence of secondary containment for 100–1,000 kg/mo generator accumulation tank systems, categorized by hazardous waste type and production process. If these data alter EPA's basic conclusions regarding secondary containment, EPA will carefully consider promulgating regulations that embody one or more of the options discussed above.

D. Regulation of Underground Product Storage Tanks Under Subtitle I (The UST Program)

EPA has received a number of comments expressing concern that the final hazardous waste tank system rules would establish a precedent for the UST rules when they are promulgated. The same concern may apply to this proposed rule, which would subject generators of 100–1,000 kg/mo to the same requirements imposed on 90-day accumulators by the final rule. Many 100–1,000 kg/mo generators who have hazardous waste tank systems also have underground storage tanks that will be subject to RCRA Subtitle I rules (e.g., gasoline service stations).

In the preamble to the June 28, 1985 proposed rule, EPA cautioned against concluding that the proposed rules would establish precedents for the Agency's effort to regulate, under Subtitle I of RCRA, underground storage tanks containing "regulated substances." EPA explained that, in fact, "the requirements proposed today [i.e., June 28, 1985], as they apply to underground hazardous storage tanks, may be significantly different in many ways from the standards that will be developed in the future for underground tanks storing regulated substances." (50 FR 28490; June 28, 1985.) Regulations governing underground storage tanks are being developed separately from the hazardous waste tank regulations.

Differences in statutory language, the number of tanks to be regulated, the regulatory framework, and forthcoming information about technical options and their reliability may cause regulations for underground storage tanks to differ from those for hazardous waste tank systems. For example, whereas the development of regulations for Subtitle C tank systems is based solely on the criterion of protection of human health and the environment, Subtitle I specifically authorizes EPA to distinguish between different types of tanks and to consider other factors such as current industry practices, national consensus codes, the technical capability of tank owners and operators, and small business considerations (RCRA Section 9003(b)). The underground storage tank regulations will apply to over 1,000,000 tank systems, a vastly greater universe than the hazardous waste tank systems universe. In addition, Subtitle I does not require implementation of a permit system, a difference which may lead to a different regulatory approach. Currently, the Agency is actively studying methods of detecting leaks from tank systems. Results from these studies may indicate that leak detection methods whose reliability is not yet established (e.g., soil gas monitoring in the unsaturated or excavation zone) may be found to be reliable before the underground storage tank regulations are issued. Finally, the Agency may take a different approach to regulating product storage if EPA determines that particular products, because of their value, are managed more reliably than hazardous wastes.

E. Relationship of Proposed Regulation to Section 3014 of RCRA (Used Oil)

The Congress, in passing the Used Oil Recycling Act of 1980 (Pub. L. 96–463) and the Hazardous and Solid Waste Amendments of 1984, supplemented the basic requirements for regulation of hazardous waste with certain special requirements for recycled oil. These requirements are found in RCRA section 3014. Section 3014(a) retains the language of section 7(b) of the Used Oil Recycling Act:

> [T]he Administrator shall promulgate regulations . . . as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil.

Section 242 of the 1984 Amendments also added the following phrase to the end of the above paragraph, "consistent with the protection of human health and the environment" to make it clear that such protection is of prime concern under section 3014, and that certain recycling practices may indeed be discouraged by regulation if necessary to ensure an adequate level of protection. (See H.R. Conf. Rep. No. 1133, 98th Cong. 2d Sess. 114 (1984).)

Section 3014(b) requires the Administrator to propose whether to list or identify used crankcase oil and other used oil as a hazardous waste under section 3001 of RCRA. EPA has proposed to list all used oil as a hazardous waste (50 FR 49258–49270, November 29, 1985) and has also proposed management standards for used oil generators, transporters, and recycling facilities (50 FR 49250–49258, November 29, 1985).

In proposing to list used oil as a hazardous waste and in developing management standards associated with the recycling of hazardous waste, EPA has attempted to take into account the effects such listing and standards will have on the ultimate disposition of used oil. The objective of the proposed regulations was to establish standards for the recycling of used oil that are most protective of the environment while not creating significant disincentives or barriers to the practice.

In keeping with the stated objective of section 3014 of RCRA to not discourage recycling, while ensuring protection of human health and the environment, EPA proposed a special, reduced set of storage standards for recycled oil generators to minimize adverse small business and recycling impacts. EPA also proposed different and less stringent standards for small quantity recycled oil generators who may generate up to 1,000 kg/month of used oil and do not accumulate used oil in quantities exceeding 1,000 kg. In the preamble to the proposed used oil management standards, EPA explained that such reduced standards for small quantity recycled oil generators would offer the following benefits: (1) Reduce economic impacts on small businesses; (2) facilitate recycling; and (3) encourage small quantity recycled oil generators to recycle used oil rather than dispose it in a manner that may threaten human health and the environment.

Although the proposed regulation would generally reduce standards for storage of recycled oil, if promulgated as proposed, it would require that full secondary containment apply to tank systems at non-generating facilities storing such used oil. At this time, however, the rules are still in proposed form and EPA is in the process of evaluating comments submitted during the public comment period. The comments received were extensive, and have caused EPA to consider alternatives to the proposed regulation. In particular, EPA issued an extension to the public comment period in the March 10, 1986 Federal Register (51 FR 8206). In that notice, EPA solicited additional comment on a regulatory approach suggested by several commenters: list used oil as a hazardous waste only if it is disposed rather than recycled. EPA is in the process of evaluating the additional comments received from this notice. EPA is particularly concerned about the impact on used oil recycling that would occur as a result of the proposed management standards and the proposed listing of used oil as a hazardous waste. EPA is also concerned about the impact of a used oil listing on insurance costs, as it would affect used oil recycling, as well as the effect of the proposed management standards and listing on the overall risks to human health and the environment posed by used oil recycling and/or disposal practices.

Today's proposed rule does not address storage or treatment of used oil; rather, used oil management standards will be included in the used oil regulations scheduled to be issued later. That regulatory package will address all applicable tank system standards for the storage of recycled used oil.

F. Explanation of Proposed Regulatory Language

The regulatory amendments proposed today would subject 100–1,000 kg/mo generators to the same requirements imposed on 90-day accumulators in the July 14, 1986 final tank system rules. The Agency offers below a detailed explanation of the proposed regulatory language.

As part of the final regulations promulgated on March 24, 1986, for 100–1,000 kg/mo generators (51 FR 10146), the Agency required compliance with existing 40 CFR Part 265, Subpart J by

generators who accumulate hazardous waste in tanks for 180 (or 270) days (see 40 CFR 262.34(d)). Such generators would have become subject to the following sections on the September 22, 1986 effective date: 40 CFR 265.190, 265.192, 265.194, 265.197, 265.198, and 265.199. As a result of the July 14, 1986 final amendments to 40 CFR Part 265, Subpart J, these listed sections no longer contain the same regulatory requirements as they did on March 24, 1986. For this reason, the newly promulgated Subpart J amendments include a new § 265.201, designated as Special Requirements for Generators of between 100 and 1,000 kg/mo that accumulate in tanks. This new section contains all those above listed sections of Subpart J (i.e., §§ 265.190, 265.192, 265.194, 265.197, 265.198, and 265.199) as they existed on March 24, 1986.

In effect, the July 14, 1986 final amendments to § 262.34 and Part 265, Subpart J continue to subject 100–1,000 kg/mo generators who accumulate hazardous waste in tanks for 180 (or 270) days to the same regulatory requirements as were imposed by the March 24, 1986 regulations, even though the requirements have now been recodified.

The amendments discussed in today's proposal would amend the regulatory language of § 262.34(d)(3) to parallel the language of § 262.34(a)(1), which subjects 90-day accumulation facilities to most 40 CFR Part 265, Subpart J standards. The amended subsection would also provide that generators of 100–1,000 kg/mo must comply with the requirements for tank system integrity testing (§ 265.191) and secondary containment (§ 265.193) based on the date of final promulgation of this proposed rule for 180- (or 270-) day accumulation tank systems. In addition, new § 265.201 is proposed to be deleted, because it would no longer be needed once today's proposed rules become final.

IV. Impact on Authorized States

A. Applicability in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their own hazardous waste programs pursuant to Subtitle C (see 40 CFR Part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any hazardous waste management facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames; however, the new Federal requirements did not take effect in an authorized State until the requirements were adopted as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions, including the issuance of permits, in authorized States until the State is granted authorization to do so. While States must still adopt HSWA provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

EPA is issuing today's proposed regulations pursuant to section 3001(d) of RCRA, a provision added by HSWA. Therefore, if promulgated as a final rule, it would be added to Table 1 in 40 CFR 271.1, which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final status for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA would implement the standards in authorized States until they revise their programs to adopt these rules and the revisions are approved by EPA. Because this rule would be promulgated pursuant to HSWA, a State submitting a program modification would be able to apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent to EPA's. The procedures and schedule for State adoption of these regulations under section 3006(b) are described in 40 CFR 271.21 (49 FR 21678, May 22, 1984). The same procedures should be followed for section 3006(g)(2).

Applying 40 CFR 271.21(e)(2), States that have final authorization must modify their programs within one year from the date of promulgation of EPA's regulations if only regulatory changes are all that are necessary, or within two years if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations could be approved without including standards equivalent to those promulgated. Once authorized, however, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time period discussed above.

V. Regulatory Impact Analysis

The Agency undertook an analysis of the proposed hazardous waste tank system regulatory requirements as they apply to generators of 100–1,000 kg/mo with new or existing accumulation tank systems to determine the extent of associated cost and economic impacts on the regulated community. These analyses also provided the Agency with the necessary information for determining whether the revisions will constitute a major rule under Executive Order 12291 or have significant impacts on a substantial number of small businesses as the Agency is required to consider under the Regulatory Flexibility Act.

The discussion in Appendix A summarizes the methodology and results of the analyses supporting these findings. Further detail of the cost and economic analyses for the proposed 100–1,000 kg/mo generator accumulation regulations for hazardous waste tank systems can be found in the docket report, *Cost and Economic Impact Analysis of Proposed RCRA Hazardous Waste Accumulation Tank Regulations for 100–1,000 kg/mo Generators.*

The results of EPA's regulatory impact analysis for this proposed rule indicate that overall output, employment, and price-level effects from the regulations should be insignificant, although adverse effects may be felt by some individual firms. Based on the analyses, the Agency does not anticipate that requiring secondary containment for new or existing accumulation tank systems utilized by 100–1,000 kg/mo generators will result in significant financial impacts. At most, the results indicate that 8 out of 84 model firms may be significantly affected. The results of the analysis (Appendix A) indicate that these revisions to the rule do not constitute a major rule under Executive Order 12291.

VI. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs at OMB, marked "Attention: Desk Officer for EPA." The Agency will respond to any OMB or public comments on the information collection requirements prior to promulgation of the final rule.

VII. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small business, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

EPA has conducted an analysis of the impacts of today's proposed tank system rules on small businesses, which is included in the Economic Impact Analysis Report (EIAR) and discussed in section V of this preamble. The EIAR is available for public viewing in the docket for today's rulemaking. On the basis of the analysis conducted, EPA has determined that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

VIII. Supporting Documents

In preparing this proposed regulation, the Agency has used many sources of information, including those used in preparing the final Hazardous Waste Tank System Rule, published in the Federal Register on July 14, 1986. Of these, the most significant for this proposed regulation are listed below. They have been placed in the rulemaking docket at U.S. Environmental Protection Agency, EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

In addition to sources of information used in preparing the final Hazardous Waste Tank System Rule, the following sources of information are also available for viewing only at the EPA RCRA Docket:

1. National Small Quantity Hazardous Waste Generator Survey, Abt Associates, Cambridge, Mass. February 28, 1985.
2. National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981, Office of Solid Waste, April 1984.
3. Economic Analysis of Resource Conservation and Recovery Act Regulations for Small Quantity Generators, ICF Incorporated, Development Planning and Research Associates, Inc., and Pope-Reid Associates (June 1985).
4. Cost and Economic Impact Analysis of Proposed RCRA Hazardous Waste Accumulation Tank Regulations for 100–1,000 kg/mo Generators, ICF Incorporated and Development Planning and Research Assoc., Inc. (August 1986).
5. Technical Environmental Impacts of Various Approaches for Regulating Small Volume Hazardous Waste Generators, Vol. II, TRW Environmental Engineering Division, December 1979.

List of Subjects

40 CFR Part 262

Intergovernmental relations, Hazardous materials, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 265

Intergovernmental relations, Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 271

Intergovernmental relations, Hazardous materials, Indians-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Penalties, Confidental business information.

Dated: September 30, 1986.

Lee M. Thomas,

Administrator

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations, as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

40 CFR Part 262 is amended as follows:

1. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002, 3001, 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6921, 6922, 6923, 6924, 6925, and 6936).

2. In § 262.34 paragraph (d)(3) is revised to read as follows:

§ 262.34 Accumulation time.

* * * * *

(d) * * *

(3) The generator complies with Subpart J of 40 CFR Part 265, except § 265.197 (c), (d), and (e) and § 265.200 and except that § 265.191 shall be effective (insert date that is 12 months after the effective date of these revisions to the regulations) and that the January 12, 1987 date for the provision of secondary containment under § 265.193(a) (2), (3), (4) and (5) shall be replaced by (insert effective date of these revisions to the regulations).

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 265 is amended as follows:

3. The Authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905 6912(a), 6924, 6925, and 6936).

§ 265.201 [Removed]

4. 40 CFR Part 265 is amended by removing § 265.201.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

5. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

6. In § 271.1, paragraph (j) is amended by adding the following entry to Table 1

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in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation	Federal Register reference
•	•	•
Oct. 9, 1986	Hazardous Waste Accumulation Tank System Standards—§ 262.34(j)(1).	51 FR [Insert page citation].
•	•	•

Appendix A.—Economic Analysis—Summary

1. Cost and Economic Impact Methodology

The analyses in the docket report, *Cost and Economic Impact Analysis of Proposed RCRA Hazardous Waste Tank Regulations for 100–1,000 kg/mo Generators*, are based on the cost estimates for facilities sampled in the Office of Solid Waste Small Quantity Generator (OSW SQG) survey.[6] From the survey data, the Agency estimated the number of 100–1,000 kg/mo generators with tanks, the number of above- or below-ground tanks, the tank sizes, and the number of tanks per establishment. Using these survey results including both primary and secondary SICs, EPA estimated that there are about 11,400 generators of 100–1,000 kg/mo with hazardous waste tank systems.

This total number of 100–1,000 kg/mo tank establishments represents 4,745 establishments with above-ground tank systems, 4,935 establishments with below-ground tanks, and 1,708 establishments with above-ground and below-ground tanks.

Although the SQG survey was not structured to be statistically reliable when only examining establishments with tank systems, the data are useful for assessing general trends. According to survey data aggregated at the two digit SIC level, approximately 33% of 100–1,000 kg/mo tank establishments are Auto Repair, Services, and Garages and approximately 32% are Automotive Dealers and Service Stations. No other two digit SIC level activity accounts, individually, for greater than 5% of 100–1,000 kg/mo tank establishments.

The survey data do not provide information on the number of tank systems per establishment. Therefore, considering the small number of hazardous waste streams and low quantities of hazardous waste generated by generators of 100–1,000 kg/mo, EPA assumed that there would be a maximum of two tank systems per establishment. The survey data also do not provide direct information on tank sizes used by generators of 100–1,000 kg/mo. The Agency estimated tank sizes as the product of the average quantity of waste generated at the establishment per month in 1982 to the average length of time (in months) the waste was reported to be stored in the tank for each 100–1,000 kg/mo tank establishment in the survey. As a result, the Agency estimated a typical minimum tank size of 200 gallons. Because EPA assumed two tank systems per establishment, the estimated typical tank capacity is 400 gallons per establishment.

[6] National Small Quantity Hazardous Waste Generator Survey.

The survey data do not provide detailed tank system characteristic information; thus, the Agency based many characteristics for tanks used by 100–1,000 kg/mo generators on the Office of Solid Waste Regulatory Impact Analysis Tank Survey (OSW RIA Tank Survey) storage tank data and on best engineering judgment in order to estimate compliance costs.[7] As a result, the Agency assumed that all 100–1,000 kg/mo generator tanks are carbon steel, all above-ground tanks are cradled, all below-ground tanks are completely buried, and there is 15 feet of piping per tank.

Tank age is a crucial factor in estimating the net present value compliance costs of the proposal. EPA assumed that all tanks used by 100–1,000 kg/mo generators have a typical age of six years for above-ground tanks and seven years for below-ground tanks. This typical age is based on the median ages for the above-ground and underground storage tanks reported in the OSW RIA Tank Survey data base.

EPA estimate incremental compliance costs assuming that all existing 100–1,000 kg/mo generator tank establishments will operate their tank systems as accumulation tank systems to comply with today's proposed rule for 100–1,000 kg/mo generators accumulating hazardous wastes in tanks. Thus, EPA estimated the net present value cost of retrofitting full secondary containment at the time of the appropriate phase-in age (see 40 CFR 265.193(a)) for each tank in the survey sample. During the interim period prior to phase-in of full secondary containment, EPA applied the cost of an annual tank system integrity assessment. For example, 100–1,000 kg/mo generator below-ground tanks are assumed to be 7 years old; thus, the Agency applied the cost of a periodic integrity assessment for 8 years prior to retrofitting with full secondary containment at age 15.

In addition, EPA applied the cost of providing corrosion protection for all replacement steel tanks in contact with the soil. Other regulatory costs include daily inspections of above-ground portions of tanks and recordkeeping of such inspections and periodic integrity assessments. The Agency also estimated the incremental costs of installing a new tank system with full secondary containment.

To examine the impacts on the population of 100–1,000 kg/mo generators, the Agency compared the range of potential compliance costs to model firm financial characteristics. The Agency used model firms for 100–1,000 kg/mo generators because actual financial data for the 100–1,000 kg/mo generators survey sample were unavailable. Financial characteristics were developed for model firms using financial data bases which represented the affected industries. These model firms differ in terms of the types and quantities of wastes generated and in their financial characteristics. Two size categories of model firms were used to represent 42 industries: Establishments with 1–9 employees and those with 10–49 employees.

[7] National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981, Office of Solid Waste, April 1984.

2. Costs and Economic Impacts

EPA estimated total national compliance costs for the proposal in three categories. The first category of compliance costs are the capital costs. Tank facilities may incur these costs in the first year or periodically over the life of the tank. Capital costs are depreciable costs, and an example of such a cost is the secondary containment requirement. Second, EPA estimated operating and maintenance (O&M) compliance costs. O&M costs are incurred by tank facilities periodically during the year. These compliance costs would include periodic inspections of tank system equipment. Finally, EPA estimated annualized costs. Annualized costs represent the capital costs on a yearly basis over the assumed life (20 years) of the tank, plus the O&M costs on an annual basis.

The estimated total capital costs of the proposal for 100–1,000 kg/mo generator tank facilities are about $36.1 million, and the total annualized O&M costs are about $13.5 million. To compare the cost impacts of the proposed requirements to the regulatory alternatives, the Agency annualized total capital and O&M before-tax facility compliance costs by the appropriate industry real cost of capital. The O&M costs are also annualized because such costs vary depending on when secondary containment is phased in. The annualized national before-tax costs equal the sum of the weighted facility annualized total costs. Thus, EPA estimated the total before-tax annualized cost of the proposed requirements for the approximately 11,400 100–1,000 kg/mo generator tank facilities to be about $18.4 million.

Table I presents the facility costs of the proposal for each representative 100–1,000 kg/mo facility type. This table includes the annualized O&M costs, and both before-tax and after-tax annualized total costs. Total after-tax annualized costs are compared against model plant net income data to estimate economic impacts for 100–1,000 kg/mo generator tank facilities. Table II presents the population of 100–1,000 kg/mo generators represented by each facility type and the resulting national cost estimates for the proposal. In addition, the Agency estimated the costs for the 11 regulatory alternatives presented in Table III. Table IV presents the total annualized after-tax costs of these 11 regulatory alternatives.

The costs presented in Table IV indicate that the costs are significantly reduced when lower frequency or no periodic integrity assessments are required. However, the results are mixed if the proposed integrity assessment frequency is retained, but the phase-in age is extended to 20 years old instead of 15 years. Under this scenario, the annualized costs for the facility with one above-ground tank and one underground tank increase slightly. This is a result of the lower capital cost of a longer phase-in not compensating for the increased O&M cost of having to conduct integrity tests on the one underground tank for an additional five years.

This is in contrast to the results for the facility with two underground tanks that benefits from economies of scale for leak testing multiple underground tanks and larger savings for delaying the installation of secondary containment. Thus, the annualized cost for the two underground tank facility is slightly reduced for the longer phase-in and same integrity assessment frequency as the proposal. Finally, the results in Table IV suggest that administrative costs, such as recordkeeping of daily inspection results, do not substantially contribute to the cost of the proposal.

Table V displays the incremental costs that facilities installing new hazardous waste accumulation tank systems may face under this proposed rule. In addition to the 200 gallon tank that the Agency assumed for the existing tank economic analysis, Table V provides the cost for 550 gallon above-ground and below-ground tanks. The Agency has provided the 550 gallon tank costs to represent those 100–1,000 kg/mo tank facilities that may have only one larger tank, instead of two smaller tanks. These costs represent installing new tanks that comply with the secondary containment requirement.

Because EPA assumes that underground tanks are retrofit with secondary containment by replacement with a double-walled steel tank and double-walled piping, the Agency has included the cost of corrosion protection. EPA assumes that above-ground tanks are mounted on cradles or legs; therefore, the tank is not in contact with the soil and does not require corrosion protection.

The financial effects of the proposed hazardous waste tank system regulations on potentially affected generators of 100–1,000 kg/mo will vary widely from facility to facility depending upon financial strength, quantity of waste, number and type of tank systems, current waste management practices, and changes required to comply with the regulations. Certain generators of 100–1,000 kg/mo, given the variability of their financial strength and potential lack of waste management alternatives, may incur significant adverse financial effects. Because of data limitations, however, it is not possible to determine the frequency of these situations.

In order to examine the potential impacts of the proposed tank system requirements for existing 100–1,000 kg/mo generator tank systems, the Agency developed cost estimates for 11 regulatory scenarios, each of which was subsequently rejected on environmental protection bases, to compare with the proposal. These scenarios vary between phase-in ages of 15 and 20 years old, by whether administrative requirements are imposed, and by the frequency of integrity assessments. Table VI presents the number of model facilities significantly affected for each of the 11 regulatory strategy alternatives.

For each of these scenarios, the Agency estimated annualized after-tax costs for comparison with the model financial characteristics representing small and medium 100–1,000 kg/mo facility sizes in 42 affected industries. The results of this analysis indicate that there is little reason for the Agency to expect significant adverse financial effects for a substantial number of 100–1,000 kg/mo generator tank facilities as a result of the proposal or the alternatives. At most, the results indicate that six out of 84 model firms may be significantly affected.

For the proposal, the annualized compliance costs for the two underground tank facility result in five significantly affected model firms. However, the proposed regulatory costs for the facility with two above-ground tanks did not result in any significantly affected facilities. Finally, the annualized compliance costs for the facility with one above-ground and one underground tank resulted in significant effects on six different types of firms.

For all of the 11 different types of regulatory alternatives, there were no significant impacts for the costs associated with the model facility with two above-ground tanks. This indicates that facilities with cradled tanks can retrofit secondary containment without replacing the tank system and can conduct integrity assessments without incurring major adverse financial impacts.

In addition, no significantly impacted firms were estimated for the regulatory alternatives where integrity assessments for underground tanks are either not required, or required only every three or five years, rather than every year as proposed. Depending upon the combination of tanks at the facility, the length of the phase-in period will either increase or decrease the associated annualized cost. However, this change is slight and does not result in a significant change in the number of model firms that experience economic impacts. This indicates that the integrity assessment frequency may be a relatively significant cost; and, as a result, there is not a significant cost savings by allowing 100–1,000 kg/mo accumulation tank systems a longer phase-in age of 20 years.

The economic impacts for scenarios including such administrative costs as installation certification and recording of inspections do not vary significantly from the regulatory scenarios exempting these administrative costs, regardless of the phase-in age. These results indicate that such administrative costs are negligible with respect to causing adverse economic impacts.

As a result of this impact analysis, the Agency expects that the phased-in secondary containment requirement alone will not result in any significantly affected generators of 100–1,000 kg/mo, even if the phase-in age were 20 years. If the Agency could have justified a proposed requirement for less frequent underground tank integrity assessments than is proposed, EPA would not have anticipated any significant impacts on firms in general. On the other hand, since the Agency is proposing annual underground tank integrity assessments, whether the phase-in age is 15 or 20 years, EPA expects a few firms to incur significant impacts. However, the Agency does not expect a substantial number of small businesses to incur significant impacts and, therefore, EPA proposes to regulate the 100–1,000 kg/mo generator accumulators the same as currently regulated accumulation tank system facilities.

EPA does not expect any 100–1,000 kg/mo generator plant closures as a result of the hazardous waste tank system regulations. The small model firms (fewer than 10 employees) with net income below $10,000 that may incur significant adverse effects do not do so necessarily because of the magnitude of estimated compliance costs, but because of their relatively low net income or sales in the year analyzed (1983 inflated to 1984). In addition, it is not known how much flexibility these generators of 100–1,000 kg/mo have regarding their hazardous waste management practices (for example, their ability to shift to alternative hazardous waste storage and treatment technologies and the costs of any such alternatives). Actual 100–1,000 kg/mo facilities may have alternatives available to them that are less costly than complying with the hazardous waste accumulation tank regulations in the manner that the Agency has assumed.

The effects of the hazardous waste tank system regulations on 100–1,000 kg/mo generator model plants in the medium employee size category (10 to 49 employees) are not expected to be significant. No model plants in this size category incurred compliance costs that were more than 20 percent of their estimated net income or more than one percent of their estimated sales. The effects of the hazardous waste tank system regulations on any industry with generators of 100–1,000 kg/mo as a whole are also expected to be insignificant for the following reasons:

—Only 10 to 15 percent of generators of 100–1,000 kg/mo across all industries have hazardous waste tank systems;
—Two-thirds of generators of 100–1,000 kg/mo with hazardous waste tank systems have more than 10 employees and, according to our methodology, are less likely to experience adverse financial effects;
—Generators of 100–1,000 kg/mo, particularly those with tank systems, generally represent small portions of industry output and employment; and
—100–1,000 kg/mo generator costs are worst-case scenarios and many firms' hazardous waste management practices, such as off-site recycling and disposal to POTWs, are in compliance or exempt from the hazardous waste tank system regulations.

Thus, overall output, employment, and price-level effects from the regulations should be insignificant, although adverse effects may be felt by some individual firms.

Finally, EPA does not anticipate that requiring secondary containment for new tank systems will result in significant financial impacts. The incremental costs of providing secondary containment for new tank systems, as shown in Table V, are less than the compliance costs for existing tank systems. Thus, EPA expects even fewer impacts for facilities installing new tank systems than the Agency found for facilities with existing accumulation tank systems.

For example, EPA compared the incremental annualized cost for installing new tank systems in compliance with the proposed requirements to the model financial data for 100–1,000 kg/mo generator facilities to assess the potential impacts. The results indicate that, at most, two model firms, compared to six, may experience significant financial impacts as a result of complying with the new tank system requirements.

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TABLE I

Table I: Before-Tax Facility Cost Estimates of the Proposal for Small Quantity Generators with Hazardous Waste Accumulation Tanks

Facility Type	Estimated Facility Compliance Costs				
	capital	O&M (year cost incurred)	Annualized O&M	annualized capital plus O&M (before-tax)	(after-tax)
Two below ground tanks	$5,828	$1,600 (yr 1-7) 640 (yr 8-20)	$1,214	$1,959	$1,693
Two above ground tanks	565	900 (yr 1-8) 1,200 (yr 9-20)	1,004	1,076	918
One above ground and one below ground tank	3,882	2,050 (yr 1-7) 770 (yr 8) 920 (yr 9-20)	1,587	2,083	1,789

TABLE II

Table II: Before-Tax National Cost Estimates of the Proposal for Small Quantity Generators with Hazardous Waste Accumulation Tanks

Facility Type	Number of Facilities	Estimated National Compliance Costs				
		Capital	O&M (year cost incurred)	Annualized O&M	annualized capital (before-tax)	plus O&M (after-tax)
		($ million)				
Two below ground tanks	4,935	$28.8	$7.9 (yr 1-7) 3.2 (yr 8-20)	$ 6.0	$ 9.7	$ 8.4
Two above ground tanks	4,745	2.7	4.3 (yr 1-8) 5.7 (yr 9-20)	4.7	5.1	4.4
One above ground and one below ground tank	1,708	6.6	3.5 (yr 1-7) 1.3 (yr 8) 1.6 (yr 9-20)	2.7	3.6	3.1
National Total	11,388	38.1	NA	13.5	18.4	15.9

TABLE III

Table III: Description of Small Quantity Generator Regulatory Alternatives for Proposal

Regulatory Scenario	Phase-In Age (years)	Daily Aboveground Tank Inspections	Recording Inspections	Aboveground Tank Integrity Assessments	Underground Tank and Piping Integrity Assessments	Corrosion Protection
(1) Proposal	15	yes	yes	annually	annually	yes
(2)	15	yes	no	no	no	no
(3)	15	yes	no	every 3 years	annually	no
(4)	15	yes	no	every 3 years	every 3 years	no
(5)	15	yes	no	every 5 years	every 5 years	no
(6)	15	yes	no	annually	annually	no
(7)	20	yes	yes	annually	annually	yes
(8)	20	yes	no	no	no	no
(9)	20	yes	no	every 3 years	annually	no
(10)	20	yes	no	every 3 years	every 3 years	no
(11)	20	yes	no	every 5 years	every 5 years	no
(12)	20	yes	no	annually	annually	no

TABLE IV

Table IV: Annualized Facility Cost Estimates of 11 Regulatory Alternatives Compared to the Annualized Facility Cost Estimate for the Proposal

	Regulatory Scenario Description	Estimated Total After-Tax Annualized Facility Cost 2 below ground tanks	2 above-ground tanks	1 above ground and 1 below ground tank
(1)	Proposal: phase-in secondary containment at tank age 15, daily inspections of above ground tanks, recording of daily inspections, annual integrity assessment of all underground tanks and piping and above ground tanks, and corrosion protection of steel tanks in contact with the soil.	$1,693	$918	$1,789
(2)	Phase-in secondary containment at tank age of 15 years old, daily inspections of above ground tanks.	810	492	729
(3)	Phase-in secondary containment at tank age of 15 years old, daily inspections of above ground tanks, initial and periodic (annually for underground tanks and piping and every 3 years for above ground tanks) integrity assessments.	1,622	529	1,560
(4)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (every 3 years) integrity assessments for under ground tanks and piping and above ground tanks.	1,081	529	1,018
(5)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (every 5 years) integrity assessments for underground tanks and piping and above ground tanks.	972	514	882
(6)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (annual) integrity assessments for underground tanks and piping and above ground tanks.	1,622	603	1,585
(7)	Phase-in secondary containment at tank age of 20 years old, daily inspections of above ground tanks, recording of daily inspections, annual integrity assessment of all underground tanks and piping and above ground tanks, and corrosion protection of steel tanks in contact with the soil.	1,573	838	1,805
(8)	Phase-in secondary containment at tank age of 20 years old, daily inspections above ground tanks.	425	386	448
(9)	Phase-in secondary containment at tank age of 20 years old, daily inspections of above ground tanks, initial and periodic (annually for underground tanks and piping and every 3 years for aboveground tanks) integrity assessments.	1,539	434	1,586

TABLE IV (continued)

Table IV: Annualized Facility Cost Estimates of 11 Regulatory Alternatives Compared to the Annualized Facility Cost Estimate for the Proposal (continued)

Regulatory Scenario Description	Estimated Total After-Tax Annualized Facility Cost		
	2 below ground tanks	2 above-ground tanks	1 above ground and 1 below ground tank
(10) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (every 3 years) integrity assessments for underground tanks and piping and above-ground tanks.	796	434	843
(11) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (every 5 years) integrity assessments for underground tanks and piping and aboveground tanks.	647	415	657
(12) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (annual) integrity assessments for underground tanks and piping and aboveground tanks.	1,539	531	1,628

TABLE V

Table V: Before-Tax Installed Costs for New Carbon Steel Underground (UG) and Above Ground (AG) Tanks with Full Secondary Containment

Number and Type of Tanks(s)	Size of Tanks (gallons)	Cost of Tank Systems Without Secondary Containment			Cost of Tank Systems With Secondary Containment			Incremental Cost of Secondary Containment		
		initial	O&M	annualized	initial	O&M	annualized	initial	O&M	annualized
1 UG	200	$1,660	$000	$210	$7,310	$250	$1,190	$5,650	$250	$ 970
1 UG	550	2,170	000	280	9,140	250	1,420	6,970	250	1,140
1 AG	200	690	000	90	1,260	250	410	570	250	320
1 AG	550	1,480	000	190	2,160	250	530	680	250	340

NOTE: Costs for 200 gallon above ground and underground tanks are assumed to be the same as those for a 285 gallon above ground tank and a 275 gallon underground tank because such single-walled tanks are currently the smallest "off-the-shelf" tank sizes produced. Thus, the Agency expects such tanks to be more commonly used by the regulated SQG community than the calculated minimum 200 gallon tank size.

TABLE VI

Table VI: Economic Impacts for Small Quantity Generator Model Tank Facilities Under Alternative Regulatory Scenarios

	Regulatory Scenario Description	Number of Significantly Affected Model Facilities 1/ 2 below ground tanks	2 above-ground tanks	1 above ground and 1 below ground tank
(1)	Proposal: phase-in secondary containment at tank age 15, daily inspections of above ground tanks, recording of daily inspections, annual integrity assessment of all underground tanks and piping and above ground tanks, and corrosion protection of steel tanks in contact with the soil.	5	0	6
(2)	Phase-in secondary containment at tank age of 15 years old, daily inspections of above ground tanks.	0	0	0
(3)	Phase-in secondary containment at tank age of 15 years old, daily inspections of above ground tanks, initial and periodic (annually for underground tanks and piping and every 3 years for above ground tanks) integrity assessments.	5	0	5
(4)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (every 3 years) integrity assessments for under ground tanks and piping and above ground tanks.	1	0	0
(5)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (every 5 years) integrity assessments for underground tanks and piping and above ground tanks.	0	0	0
(6)	Phase-in secondary containment at tank age of 15 years old, daily inspections for above ground tanks, initial and periodic (annual) integrity assessments for underground tanks and piping and above ground tanks.	5	0	5
(7)	Phase-in secondary containment at tank age of 20 years old, daily inspections of above ground tanks, recording of daily inspections, annual integrity assessment of all underground tanks and piping and above ground tanks, and corrosion protection of steel tanks in contact with the soil.	5	0	6
(8)	Phase-in secondary containment at tank age of 20 years old, daily inspections above ground tanks.	0	0	0
(9)	Phase-in secondary containment at tank age of 20 years old, daily inspections of above ground tanks, initial and periodic (annually for underground tanks and piping and every 3 years for aboveground tanks) integrity assessments.	5	0	5

1/ We examined 84 model firms representing medium and small firm sizes in 42 industries.

TABLE VI (continued)

Table VI: Economic Impacts for Small Quantity Generator Model Tank Facilities Under Alternative Regulatory Scenarios (continued)

Regulatory Scenario Description	Number of Significantly Affected Model Facilities 1/ 2 below ground tanks	2 above-ground tanks	1 above ground and 1 below ground tank
(10) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (every 3 years) integrity assessments for underground tanks and piping and above-ground tanks.	0	0	0
(11) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (every 5 years) integrity assessments for underground tanks and piping and aboveground tanks.	0	0	0
(12) Phase-in secondary containment at tank age of 20 years old, daily inspections for above ground tanks, initial and periodic (annual) integrity assessments for underground tanks and piping and aboveground tanks.	5	0	5

[FR Doc. 86-22684 Filed 10-8-86; 8:45 am]
BILLING CODE 6560-50-C

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federal register

Thursday
October 9, 1986

Part III

Environmental Protection Agency

40 CFR Part 403
General Pretreatment Regulations for Existing and New Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL-3068-6]

General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending 40 CFR Part 403 Appendix D, which lists wastestreams that are considered to be dilute for purposes of using the combined wastestream formula in § 403.6(e). The Agency is promulgating these final revisions after considering comments received in response to the proposal published in the Federal Register on May 9, 1985 (50 FR 19664). Today's revision of the list is the first revision since the initial publication of Appendix D in the Federal Register on January 28, 1981 (46 FR 9404).

Pursuant to section 307(b) of the Clean Water Act ("CWA"), EPA has promulgated pretreatment standards regulating the introduction of pollutants into publicly owned treatment works (POTWs). These standards include sets of categorical standards that regulate specific process wastewater streams discharged by particular industrial categories. EPA has also promulgated the combined wastestream formula to apply these pretreatment standards to facilities that combine regulated process wastestreams with each other or with other wastestreams that are not covered by categorical pretreatment standards prior to treatment. To use the formula, wastestreams must be classified as either dilute, regulated or unregulated. The wastestreams that are to be considered dilute include those that are listed in 40 CFR Part 403, Appendix D.

DATES: In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on October 23, 1986. This regulation shall become effective on November 24, 1986.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: The supporting information and all comments on the earlier proposed rule are available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear) (EPA Library), 401 M Street SW., Washington, DC 20460. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Joseph S. Vitalis, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: Part 403, Appendix D. (202) 382-7172.

SUPPLEMENTARY INFORMATION: On June 26, 1978, EPA promulgated the General Pretreatment Regulations (40 CFR Part 403), establishing mechanisms and procedures for controlling the introduction of wastes from industry and other non-domestic sources into publicly owned treatment works (POTWs) (43 FR 27736). EPA amended these regulations on January 28, 1981 (46 FR 9404), May 17, 1984 (49 FR 21024) and several other occasions not relevant to today's rulemaking.

Included among these regulations is the "combined wastestream formula", 40 CFR 403.6(e). This formula is used to apply categorical pretreatment standards to facilities that combine process wastestreams covered by categorical pretreatment standards with each other or with other wastestreams not covered by categorical pretreatment standards prior to treatment. These other wastestreams are divided into two groups, "dilute" and "unregulated", and are handled differently by the formula.

Dilute wastestreams are those generally considered to have no more than trace or non-detectable amounts of pollutants of concern, as discussed below. These waste streams include boiler blowdown, non-contact cooling water, sanitary wastewater, and process wastestreams that EPA has exempted or could have exempted from categorical pretreatment standards based upon a finding that these wastestreams do not contain more than trace or nondetectable amounts of pollutants of concern (Appendix D).

In some cases, wastestreams from boiler blowdown and non-contact cooling water system discharges may be considered unregulated process streams. A determination on whether the wastestream is regulated or dilute is to be made by the appropriate control authorities using factors discussed in the preamble published on May 17, 1984 (49 FR 21024).

Unregulated wastestreams are wastestreams that are neither covered by categorical pretreatment standards nor are dilute wastestreams. These are presumed, for purposes of applying the combined wastestream formula, to contain pollutants of concern at a significant level. "Unregulated" wastestreams include wastestreams for which a categorical pretreatment standard has been promulgated but for which the final compliance date has not yet been reached; those currently not subject to a categorical pretreatment standard (whether or not they will be in the future); or those that are not regulated for the pollutant in question even if they are regulated for others.

For more information on the use of the combined wastestream formula and the basis of its derivation, see the preamble discussions in 46 FR 9419-9423 (January 26, 1981) and 49 FR 21024-21038 (May 17, 1984). For sample applications of the formula, refer to the "Guidance Manual for Electroplating and Metal Finishing Pretreatment Standards" published by the Agency in February, 1984 and the "Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula" published by the Agency in September, 1985.

To assist industrial facilities and their control authorities in determining which particular process wastestreams not covered by categorical pretreatment standards are "dilute" streams, EPA included in 40 CFR Part 403 Appendix D the list of industrial subcategories that have been or could have been exempted from regulation under the categorical pretreatment standards based on any of four criteria specified in Paragraph 8 of the Settlement Agreement in *Natural Resources Defense Council, Inc., et al.* v. *Costle*, 12 ERC 1833 (D.D.C. 1979), as modified. The specified criteria were:

(1) The pollutants of concern are not detectable (paragraph 8(a)(iii));

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph 8(a) (iii));

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); and

(4) The wastestream contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)).

There are three additional criteria for excluding categories or subcategories under paragraph 8. These are:

(5) When equal or more stringent protection is already provided by a pretreatment standard promulgated by EPA (paragraph 8(a)(i));

(6) When the amount and toxicity of each pollutant in the discharge of a category or subcategory does not justify developing national regulations in accordance with the consent decree schedule (paragraph 8(a)(iv)); and

(7) When the toxicity and amount of incompatible pollutants introduced to a publicly-owned treatment works (POTW) is so insignificant as not to justify developing a pretreatment regulation in accordance with the consent decree schedule (paragraph 8(b)(ii)).

Because exclusions based on criteria (5), (6) and (7) above are not based upon determinations that these wastestreams are dilute, these criteria have not been used to develop the list in Appendix D.

Some wastestreams that were excluded from regulation based on criteria (5)-(7) are listed in Appendix D because the wastestreams also meet one or more of criteria (1)-(4) above and could have been excluded based on those criteria as well. EPA included such subcategories in Appendix D only after determining that one or more of criteria (1)-(4) above could also have been used as a basis for excluding the subcategory. See 46 FR at 9459 (January 28, 1981).

Today's revision of Appendix D serves two purposes. First, EPA is updating the list. In addition, EPA is correcting errors in the list. In implementing the pretreatment standards, the Agency has found that some subcategories had been placed on the list erroneously and others had been omitted by error. For example, in some cases, the Agency found that the basis for the Paragraph 8 exclusion was not one of the four criteria listed above. Rather, exclusion from regulation was based on one of the additional three criteria set forth in Paragraph 8 (e.g., the caustic and/or water wash subcategory of the Paint Formulating point source category had been excluded under paragraph 8(a)(iv) [criteria (5), above] because the amount and toxicity of the pollutants of concern do not justify developing national regulations on the schedule contained in the Decree). In such cases, the subcategory in issue has been deleted from Appendix D. In addition, further technical studies conducted by the Agency reorganized some industry categories and subcategories. Some of the newly designated subcategories do not qualify for the revised Appendix D list (e.g., Paint Formulating (40 CFR Part 446) and Ink Formulating (40 CFR Part 447) industries). Other changes that have been introduced are category or subcategory name changes. The change of *Foundries Industry to Metal Molding and Casting* is an example of this.

In still other cases, the Agency has, in fact, promulgated categorical pretreatment standards for certain subcategories (or operations) that have been erroneously listed on Appendix D. For example, chemical machining, immersion plating, pickling, bright dipping, iridite dipping, alkaline cleaning and galvanizing are regulated by the Electroplating and/or Metal Finishing standards (40 CFR Parts 413 and 433). Thus EPA is deleting them from this final Appendix D list.

The final Appendix D does not list the luminescent materials, sodium bicarbonate, sodium bisulfite, sodium sulfite and titanium dioxide subcategories. No PSES were promulgated for these subcategories because there were few or no existing dischargers. However, PSNS have been promulgated for these subcategories, based on our knowledge of direct dischargers. This reflects the fact that the wastestreams, when they do exist, do contain more than insignificant amounts of pollutants and would not have been exempted for any of the four specified criteria used to designate a "dilute" wastewater stream.

Finally, some subcategories should have been included and were not, such as groundwood-chemi-mechanical subcategory of the Pulp, Paper and Paperboard Point Source Category (40 CFR Part 430). Subcategories like the groundwood-chemi-mechanical subcategory are included on the final list because they could have been excluded under paragraph 8(a)(iii) (the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator).

Subcategories for the *Auto and Other Laundries* (40 CFR Part 444), shown in the proposed Appendix D list in 50 FR 19664 (May 9, 1985), have been modified to correspond more closely with the nine segments studied in 1981 and identified in the draft guidance document for this industry. The proposed car wash subcategory has been renamed Commercial Car Wash Establishments subcategory to narrow the coverage. Car washing of new cars at auto assembly plant facilities were not studied as part of the 1981-1982 project and were not intended to be included in this point source category. If new car washing at assembly plants is associated with the fabrication of car parts, these activities could be covered under the *Metal Finishing* (40 CFR Part 433) regulations. It should be noted that regulations for the Metal Finishing Category cover wastewater discharges from 46 unit operations, the six operations previously addressed by the Electroplating regulation, plus an additional 40 operations. If any of the six electroplating operations (electroplating, electroless plating, anodizing, coatings, etching & chemical milling and printed circuit board manufacturing) are present, then the Metal Finishing pretreatment regulations apply to wastewaters from any of the 46 listed metal finishing operations. Because the Car Wash Establishments subcategory was excluded from regulation under paragraph 8(a)(iv) and 8(b)(ii) by affidavit executed on December 7, 1981, the Car Wash Establishments subcategory is not included on the final Appendix D today. (See response to Comment 3.)

Several footnotes have been added to the final Appendix D list to clarify the applicability of certain listed items. Two point source categories, *Electrical and Electronic Components* (40 CFR Part 469) and *Rubber Manufacturing Category* (40 CFR Part 428) are handled this way. When electrical and electronic components manufacturing have operations that appropriately fit into the Electroplating (40 CFR Part 413) and/or Metal Finishing (40 CFR Part 433) pretreatment regulations, then these latter regulations apply. In the case of rubber manufacturing, wastewater streams from five subcategories are not considered dilute when certain types of production activity are present which generate measurable quantities of three toxic pollutants: Lead, chromium and zinc. Although there are no pretreatment standards for existing sources for rubber manufacturing, there are pretreatment standards for new sources for these five subcategories. Because new sources in these rubber manufacturing subcategories are regulated for three toxic pollutants, they should not be considered dilute for purposes of the combined wastestream formula. Furthermore, because it is unlikely that new sources would have a higher pollutant loading than existing sources, these same five rubber subcategories which are footnoted should be considered unregulated for existing sources rather than dilute in situations where the combined wastestream formula is applied.

Readers should note that Appendix D is to be used only for the purpose of applying the combined wastestream formula. It is not to be used by industrial users or regulatory authorities for the purpose of determining whether a particular industrial user is subject to, or exempt from, a particular categorical

pretreatment standard. To make such a determination, one should refer to the primary sources: the pretreatment standard, its preamble and development document, and other material in the rulemaking record for the standard. When substantial doubt arises after reviewing these materials, EPA's category determination procedures should be used. See 40 CFR 403.6(a), 46 FR 9404 (January 28, 1981).

Summary of Public Participation

At the time of publication of the proposed revision of Appendix D at 50 FR 19664 (May 9, 1985), the Agency solicited comments from all interested parties. The following parties submitted comments:

American Paper Institute (API)
National Forest Products Association (NFPA)
American Textile Manufacturers Institute, Inc.
Counsel for Laundry Cleaning Council
County of Onondaga, NY
Diamond Shamrock Corporation
Ford Motor Corporation
General Motors Corporation
Metropolitan Sanitary District of Chicago
Municipality of Metropolitan Seattle
Society of the Plastics Industry, Inc.

The major issues raised by commenters are addressed in this section. A summary of all comments received is included in the public record for this regulation. The Agency responses to all substantive comments are addressed in this preamble.

1. *Comment:* One commenter suggested that EPA further clarify the intent and scope of Appendix D. The commenter urged EPA "... to expand its discussion that removal from the Appendix D list *in no way* changes the subcategory exclusion as described in Paragraph 8."

In addition, the commenter questions why the proposal includes four subcategories on the Appendix D list and asks that they be omitted in the final list. The commenter points to 47 FR 52005 (November 18, 1982) Subpart L, the final rule for Pulp, Paper and Paperboard and Builder's Paper and Board Mills subcategories (40 CFR Parts 430 and 431) and notes that in the final rule, both existing and new source Groundwood-Chemi-Mechanical facilities are exempted under Paragraph 8(a)(iv) because "the amount and the toxicity of each pollutant in the discharge does not justify developing national regulations . . ." The commenter claims that EPA has erroneously proposed to include the Groundwood-Chemi-Mechanical subcategory of the Pulp, Paper, Paperboard and Converted Paper Industry category (40 CFR Part 430) on the dilute list, Appendix D.

For the other three subcategories: Barking Process, Finishing Processes and Hardboard—Dry Process subcategories under the Timber Products Point Source Category, the commenter argues that these process subcategories are excluded from further regulation under Paragraph 8(a)(i) as a result of the existing zero discharge BAT regulation and so should not be included in Appendix D.

Response: The purposes of this rulemaking, as correctly noted by the commenter, are to eliminate errors, both of inclusion and exclusion, and to update Appendix D. As noted above in this preamble, Appendix D of 40 CFR Part 403 represents a list of process wastestreams considered to be dilute only for the purpose of applying the combined wastestream formula. EPA has strived to compile this list to reflect accurately decisions that were made or could have been made under the four provisions of paragraph 8 of the Settlement Agreement. The list does not, however, alter any decision made under paragraph 8 and, moreover, is not the primary source for determing what those decisions were, as discussed above.

The Agency originally excluded the Ground-Chemi-Mechanical subcategory under Paragraph 8(a)(iii), stating, "Toxic pollutants that were detected in discharges from mills in this subcategory were detected in amounts too small to be effectively reduced by technologies known to the Administrator." See proposed rules for this industry in 46 FR 1446 (January 6, 1981). A later statement in 47 FR 52005 (November 18, 1982) that this subcategory is excluded from regulation under paragraph 8(a)(iv) is not in conflict with the earlier paragraph 8 exclusion. It is simply an additional reason to exclude subpart L. Therefore, the Agency will retain the Ground-Chemi-Mechanical subcategory on the Appendix D list.

The Agency has reviewed its proposal to retain three subcategories (Barking Process, Finishing Processes, and Hardboard-Dry Process) from the Timber Products Processing category (40 CFR Part 429) on the final Appendix D list. These three subcategories were originally excluded using paragraph 8(a)(iii) as well as 8(a)(i) in an affidavit signed by Assistant Administrator, Tom Jorling on May 10, 1979. With regard to the 8(a)(iii) rationale, the Jorling affidavit stated that the few pollutants present are in trace amounts and are not likely to cause toxic effects, and are present in amounts too small to be effectively reduced. Therefore, the Agency has decided to keep these three subcategories on the final Appendix D list issued today. Other subcategories (log washing, particle board, planing mills, saw mills, veneer, wet storage and wood preserving (inorganics process) placed on the 1981 Appendix D were based on paragraph 8(a)(i), 8(b)(ii) and 8(a)(iv); these subcategories are not included on the final Appendix D list. This means that only three subcategories from Timber Products Processing Category originally placed on the Appendix D list in 1981 will be retained.

2. *Comment:* One commenter took the position that the Industrial Laundries subcategory of the Auto and other Laundries Industry category (40 CFR Part 444) should not be on Appendix D because industrial laundries wastestreams do not meet any of the four reasons cited for exclusion used to define a dilute wastestreams. In addition, they stated that the large number of toxic pollutants discharged by this particular industry and the high concentration of many of these pollutants provides sufficient justification for including the industrial laundries subcategory in the EPA Categorical Pretreatment Program.

Response: The Agency excluded from regulation by categorical pretreatment standards all the subcategories in the Auto and Other Laundries Category including the industrial laundry subcategory. (The criteria used for these exclusions varied with the subcategories.) The industrial laundry subcategory was excluded from national regulation under the provisions of paragraph 8(b)(i) in an affidavit executed in December, 1981. Because paragraph 8(b)(i) is one of the criteria cited to identify dilute wastestreams and develop the Appendix D list, the May 1985 proposed revision to the list included the industrial laundries subcategory. The Agency has collected additional data on this industrial subcategory and is currently reexamining its decision not to promulgate categorical pretreatment standards for this subcategory. However, until a final regulatory decision has been made, the Agency will retain the industrial laundries subcategory on the Appendix D list, as proposed.

3. *Comment:* One commenter supported the Agency's proposal to add additional subcategories from the Auto and Other Laundries Category to the Appendix D list. The commenter claimed that while the volume of wastewater from subcategories in the Auto and Other Laundries Industry is substantial, the wastewaters from these subcategories, with few exceptions, do not contain significant amounts of any priority pollutants. The commenter remarked that in those rare cases where wastewater from such a source has contributed significantly to discharge of a priority pollutant from a POTW, the discharge can be addressed effectively through the general pretreatment regulation and POTW pretreatment programs.

Response: See response to comment 2. We have determined that in three subcategories (power laundries, family and commercial; coin-operated laundries and dry cleaning; and carpet and upholstery cleaning), the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects. Although these three subcategories were originally excluded from categorical pretreatment regulation under paragraph 8(a)(iv), additional information indicates that the three subcategories could have been excluded from regulation under paragraph 8(a)(iii) because the pollutants of concern are present only in trace amounts and are either not causing or likely to cause toxic effects or are present in amounts too small to be effectively reduced by technologies known to the Administrator. The Agency, therefore, has retained them on the Appendix D list.

In addition, two other subcategories, diaper service and dry cleaners (which were on the 1981 Appendix D list and the proposed 1985 Appendix D list) are retained because these subcategories could have been excluded from regulation under paragraph 8(a)(iii) based on the same criteria used for the three subcategories above.

Two subcategories, linen supply and industrial laundries, both were on the 1985 proposed Appendix D list and are retained on today's final list. They were excluded from regulation pursuant to paragraph 8(b)(i).

The remaining subcategory, commercial car wash establishments, was excluded under paragraphs 8(a)(iv) and 8(b)(ii) and is not on the final Appendix D list today because these are not appropriate criteria for placement of this subcategory on the Appendix D list.

4. *Comment:* One commenter stated that EPA erred in failing to include all nine subcategories in the Textile Mills Category (40 CFR Part 410) on the Appendix D list. They cited Paragraph 6 of an affidavit the Agency executed on January 5, 1983 stating that the textile mills point source category was excluded from regulation because the toxicity and amount of incompatible pollutants discharged into POTWs was so insignificant as not to justify developing a pretreatment regulation pursuant to Paragraph 8(b)(ii).

Response: The Agency has not included six of the nine subcategories on the Appendix D list because process wastestreams from dischargers in these six subcategories contain above treatable levels of metals and are not dilute wastestreams. Moreover, Paragraph 8(b)(ii) is not one of the criteria used to determine dilute wastestreams for Appendix D. As discussed in the Preamble, Appendix D is a list of industrial subcategories that have been excluded, or could have been excluded from regulation by categorical pretreatment standards based on four specific criteria. None of the six textile wastestreams meets any of the four criteria cited.

The three subcategories that have been retained on the Appendix D list (apparel manufacturing; cordage and twine; and padding and upholstery filling) were excluded from regulation by categorical pretreatment regulation under paragraph 8(a)(iv). Because all three are dry processes and had zero discharges, they could have been exempted under paragraph 8(a)(iii) and, therefore, are still on Appendix D.

On the other hand, the low water use processing (Greige Mills) subcategory which was originally excluded from further categorical regulation development under paragraph 8(a)(iv) in the May 10, 1979 affidavit by Jorling and placed on the Appendix D list in January 1981 has been removed from the final Appendix D list today based on the Eidness affidavit executed on January 1, 1983. This affidavit states "... the Agency has decided that further regulation of the low water use processing subcategory is necessary and appropriate. The subcategory, therefore, is no longer being excluded from further regulation. The Agency has created a new water jet weaving subdivision in the low water use processing subcategory and has established BPT and BAT limitations and new source performance standards for this new water jet weaving subdivision."

5. *Comment:* One commenter requested EPA to discuss the coverage for carwash wastewaters included in the proposed changes for Appendix D and the applicability of the term "carwash."

Response: The data base assembled by the Agency for the "carwash" subcategory of the Auto & Other Laundries category (40 CFR Part 444) includes only sampling of commercial carwash facilities. Carwash facilities found in final line production facilities at automotive assembly plants were not sampled and it is not the Agency's intention to define or regulate assembly plant production carwash wastewaters as dilute. No "carwash" wastewaters are currently contained on Appendix D list.

Local control authorities are advised that assembly plant production carwash wastewaters may be regulated under categorical pretreatment standards for Metal Finishing (40 CFR Part 433), depending on the other types of production activity present at an automobile production facility.

6. *Comment:* One commenter questioned the listing on Appendix D of the subcategory "Insulating Devices—Plastic & Plastic Laminates" from the Electrical and Electronic category (40 CFR Part 406). They requested information on the industrial processes used, surveys and data which lead to the listing on Appendix D.

Response: In response, the Agency has reconsidered this listing and has as a result removed this subcategory from Appendix D. This subcategory is in fact not excluded under the Electrical and Electronics category but rather is covered by the Plastics Molding and Forming Point Source Category regulations (40 CFR Part 463). See 40 CFR 463.01), 49 FR 48028 (December 17, 1984) (regulating direct dischargers). At present, EPA is preparing regulations for the control of phthalates in indirect discharges in this category. To date, EPA has not excluded the subcategory, or determined that it could exclude the subcategory, for any of the four reasons used to establish the Appendix D listing.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This amendment does not impose any regulatory requirements. It merely provides information as to the nature of wastestreams to assist regulatory agencies and the regulated community in applying the combined wastestream formula. Consequently, this amendment does not satisfy any of the criteria specified in section (b) of the Executive Order and, as such, does not constitute a major rulemaking.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to prepare an initial regulatory flexibility analysis for all rules that have a significant impact on a substantial number of small entities. I hereby certify that this final rule will not have significant economic impact on a

subtantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: October 2, 1986.

Lee M. Thomas,

Administrator.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

For the reason set out in the preamble, 40 CFR Part 403 is amended as follows:

1. The authority citation for Part 403 continues to read as follows:

Authority: Secs. 301; 304 (b), (c), (e), and (g); 306 (b) and (c); 307; 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972), as amended by the Clean Water Act of (1977), (the "Act"); 33 U.S.C. 1311; 1314 (b), (c), (e), and (g); 1316 (b) and (c); 1317; 1318; and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567; Pub. L. 95–217.

2. Part 403 is amended by revising Appendix D to read as follows:

Appendix D—Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula

The following industrial subcategories are considered to have dilute wastestreams for purposes of the combined wastestream formula. They either were or could have been excluded from categorical pretreatment standards pursuant to paragraph 6 of the Natural Resources Defense Council, Inc., et al. v. Costle Consent Decree for one or more of the following four reasons: (1) The pollutants of concern are not detectable in the effluent from the industrial user (paragraph 8(a)(iii)); (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph 8(a)(iii)); (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); or (4) the wastestream contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)). In some instances, different rationales were given for exclusion under paragraph 8. However, EPA has reviewed these subcategories and has determined that exclusion could have occurred due to one of the four reasons listed above.

This list is complete as of October 9, 1986. It will be updated periodically for the convenience of the reader.

Auto and Other Laundries (40 CFR Part 444)
- Carpet and Upholstery Cleaning
- Coin-Operated Laundries and Dry Cleaning
- Diaper Services
- Dry Cleaning Plants except Rug Cleaning
- Industrial Laundries
- Laundry and Garment Services, Not Elsewhere Classified
- Linen Supply
- Power Laundries, Family and Commercial

Electrical and Electronic Components [1] (40 CFR Part 469)
- Capacitors (Fluid Fill)
- Carbon and Graphite Products
- Dry Transformers
- Ferrite Electronic Devices
- Fixed Capacitors
- Fluorescent Lamps
- Fuel Cells
- Incandescent Lamps
- Magnetic Coatings
- Mica Paper Dielectric
- Motors, Generators, Alternators
- Receiving and Transmitting Tubes
- Resistance Heaters
- Resistors
- Switchgear
- Transformer (Fluid Fill)

Metal Molding and Casting (40 CFR Part 464)
- Nickel Casting
- Tin Casting
- Titanium Casting

Gum and Wood Chemicals (40 CFR Part 454)
- Char and Charcoal Briquets

Inorganic Chemicals Manufacturing (40 CFR Part 415)
- Ammonium Chloride
- Ammonium Hydroxide
- Barium Carbonate
- Calcium Carbonate
- Carbon Dioxide
- Carbon Monoxide and Byproduct Hydrogen
- Hydrochloric Acid
- Hydrogen Peroxide (Organic Process)
- Nitric Acid
- Oxygen and Nitrogen
- Potassium Iodide
- Sodium Chloride (Brine Mining Process)
- Sodium Hydrosulfide
- Sodium Hydrosulfite
- Sodium Metal
- Sodium Silicate
- Sodium Thiosulfate
- Sulfur Dioxide
- Sulfuric Acid

Leather (40 CFR Part 425)
- Gloves
- Luggage

Paving and Roofing (40 CFR Part 443)
- Asphalt Concrete
- Asphalt Emulsion
- Linoleum
- Printed Asphalt Felt
- Roofing

Pulp, Paper, and Paperboard, and Builders' Paper and Board Mills (40 CFR Parts 430 and 431)
- Groundwood-Chemi-Mechanical

Rubber Manufacturing (40 CFR Part 428)
- Tire and Inner Tube Plants
- Emulsion Crumb Rubber
- Solution Crumb Rubber
- Latex Rubber
- Small-sized General Molded, Extruded and Fabricated Rubber Plants,[2]
- Medium-sided General Molded, Extruded and Fabricated Rubber Plants [2]
- Large-sized General Molded, Extruded and Fabricated Rubber Plants [2]
- Wet Digestion Reclaimed Rubber
- Pan, Dry Digestion, and Mechanical Reclaimed Rubber
- Latex Dipped, Latex-Extruded, and Latex-Molded Rubber [3]
- Latex Foam [4]

Soap and Detergent Manufacturing (40 CFR Part 417)
- Soap Manufacture by Batch Kettle
- Fatty Acid Manufacture by Fat Splitting
- Soap Manufacture by Fatty Acid Neutralization
- Glycerine Concentration
- Glycerine Distillation
- Manufacture of Soap Flakes and Powders
- Manufacture of Bar Soaps
- Manufacture of Liquid Soaps
- Manufacture of Spray Dried Detergents
- Manufacture of Liquid Detergents
- Manufacture of Dry Blended Detergents
- Manufacture of Drum Dried Detergents
- Manufacture of Detergent Bars and Cakes

Textile Mills (40 CFR Part 410)
- Apparel manufacturing
- Cordage and Twine
- Padding and Upholstery Filling

Timber Products Processing (40 CFR Part 429)
- Barking Process
- Finishing Processes
- Hardboard—Dry Process

[FR Doc. 86–22944 Filed 10–8–86; 8:45 am]

BILLING CODE 6560–50–M

[1] The Paragraph 8 exemption for the manufacture of products in the Electrical and Electronic Components Category is for operations not covered by Electroplating/Metal Finishing pretreatment regulations (40 CFR Parts 413/433).

[2] Footnote: Except for production attributed to leadsbeathed hose manufacturing operations.

[3] Footnote: Except for production attributed to chromic acid form-cleaning operations.

[4] Footnote: Except for production that generates zinc as a pollutant in discharge.

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H.R. 4250/Pub. L. 99–443

To provide the Small Business Administration continuing authority to administer a program for small innovative firms, and for other purposes. (Oct. 6, 1986; 100 Stat. 1120; 1 page) Price: $1.00

H.J. Res. 710/Pub. L. 99–444

To designate the week beginning October 12, 1986, as "National Children's Television Awareness Week." (Oct. 6, 1986; 100 Stat. 1121; 1 page) Price: $1.00

S. 1542/Pub. L. 99–445

To amend the National Trails System Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System. (Oct. 6, 1986; 100 Stat. 1122; 2 pages) Price: $1.00

S.J. Res. 354/Pub. L. 99–446

To designate the week of October 5, 1986, through October 11, 1986, as "National Drug Abuse Education and Prevention Week." (Oct. 6, 1986; 100 Stat. 1124; 1 page) Price: $1.00

S.J. Res. 362/Pub. L. 99–447

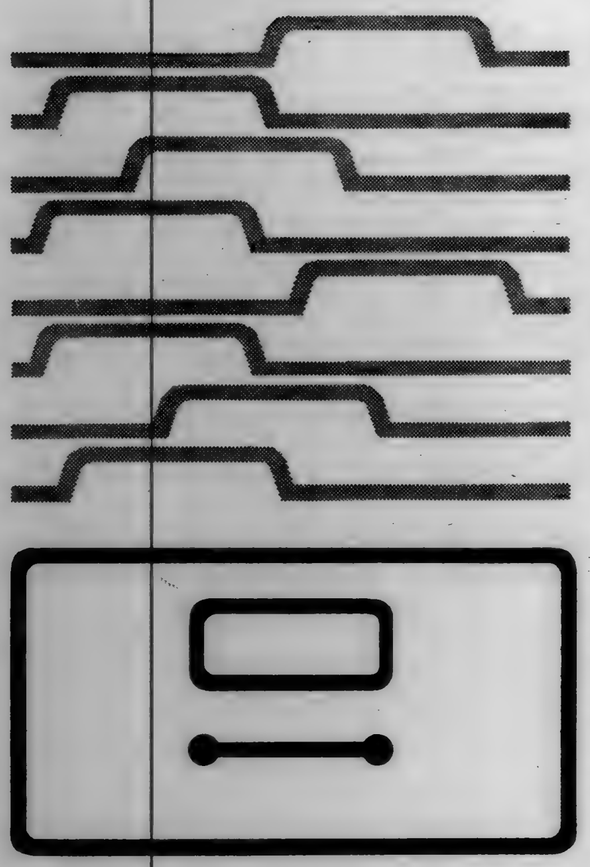
To designate the week of December 14, 1986, through December 20, 1986, as "National Drunk and Drugged Driving Awareness Week." (Oct. 6, 1986; 100 Stat. 1125; 2 pages) Price: $1.00

S.J. Res. 405/Pub. L. 99–448

To designate September 11, 1987, as "9–1–1 Emergency Number Day." (Oct. 6, 1986; 100 Stat. 1127; 1 page) Price: $1.00

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Presidential Documents

Title 3—

The President

Proclamation 5538 of October 8, 1986

Mental Illness Awareness Week, 1986

By the President of the United States of America

A Proclamation

Because of the fear and ignorance of some Americans, the mentally ill often are reluctant to seek the treatments that could alleviate their physical symptoms and emotional pain. Many who are being deprived of a happy and productive future because their mental disorders go unrecognized or ignored could be helped with appropriate mental health treatment. Our Nation can no longer afford the price of the stigma against the mentally ill.

The emotional and physical price paid by the mentally ill and their families is incalculable. It is time to bring about change. We must understand that mental illnesses are real—not imaginary or self-inflicted—and that some are caused by biochemical or brain dysfunctions that require medical attention in addition to supportive services.

We must also become more aware that appropriate treatment can lift depression, ameliorate hallucinations and delusions, relieve panic and anxiety, and overcome dysfunctional behavior and thinking patterns. We must also realize that treatment of mental illness restores productivity to the treated, reduces their use of other health services, and increases their social independence.

Research has prompted unparalleled growth in scientific knowledge about mental illness. New technologies have permitted study of the living brain and elucidated its linkages to normal and abnormal behaviors. Such research has profound implications for all of us because it offers hope for those with the most devastating and resistant disorders and because it provides clues to the bases of human behavior.

In recognition of the urgent need to educate the American public about mental illnesses and their treatments, the Congress, by Public Law 99-404, has designated the week of October 5 through October 11, 1986, as "Mental Illness Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 5 through October 11, 1986, as Mental Illness Awareness Week. I call upon all people of the United States to observe such week with ceremonies and activities designed to exchange fear of mental illness for knowledge of its causes and treatments and to replace stigma against the mentally ill with understanding of their needs and suffering.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23206
Filed 10-9-86; 11:36 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5539 of October 8, 1986

National Fire Fighters Day, 1986

By the President of the United States of America

A Proclamation

Our Nation's fire fighters protect our lives, our families, and the economic life of our communities from the threat of fire. Many valiant fire fighters have given their lives, and all daily risk death or injury, to preserve the lives of others and to protect our property and resources from destruction.

Our more than 2 million professional and volunteer fire fighters make countless contributions and sacrifices for their fellow citizens. In 1984, these fire fighters responded to more than 2 million fires and more than 8 million non-fire emergencies. These brave Americans well deserve our gratitude and public recognition.

The Congress, by Public Law 99-343, has designated October 8, 1986, as "National Fire Fighters Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Wednesday, October 8, 1986, as National Fire Fighters Day, and I urge all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23207
Filed 10-9-86; 11:39 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5540 of October 8, 1986

General Pulaski Memorial Day, 1986

By the President of the United States of America

A Proclamation

On October 11, the United States celebrates General Pulaski Memorial Day, an opportunity for all Americans to reflect on Casimir Pulaski's achievements as a leader and a soldier in our country's struggle for freedom in the Revolutionary War.

General Pulaski died on October 11, 1779, from wounds suffered while he led a cavalry charge during the siege of Savannah. Forced to flee his homeland of Poland after struggling for his country's independence, he generously put his skills as a soldier and military tactician at the service of our fledgling Nation.

General Pulaski asked to be buried at sea, that the waves might carry him back to his native Poland. Polish Americans recognize and revere his abiding ties to a Poland where faith, sacrifice, and selfless toil for liberty are the bedrock of the nation's proud traditions. General Pulaski's heroism is an inspiration as well to all Americans. He recognized no barriers of culture, language, or history in humanity's universal search for individual rights and for political and religious liberty.

General Pulaski's spirit survives today—in our hearts and in the rights enshrined in our Constitution. We can enjoy our freedoms because of the enduring vision for which Casimir Pulaski fought and died. We stand for these rights in our dialogue with other nations, where each released political prisoner, every gain for a free press or freedom of worship, or any progress toward freedom of speech and assembly is a new victory in the struggle General Pulaski undertook more than 200 years ago.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Saturday, October 11, 1986, as General Pulaski Memorial Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on that day. In addition, I encourage the people of the United States to commemorate this occasion as appropriate throughout the land.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23208
Filed 10-9-86; 11:40 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5541 of October 8, 1986

Columbus Day, 1986

By the President of the United States of America

A Proclamation

Each year, we are privileged to honor Christopher Columbus, whose epic voyages of discovery shaped the development of the Western Hemisphere. This great explorer won a place in history and in the hearts of all Americans because he challenged the unknown and thereby found a New World.

Columbus remains loved today. With his faith, vision, and courage, he could navigate beyond his world's horizons. He left a wide wake for all those to follow who would dream as he dreamed, who would defy the naysayers and dare to strive for new goals. Follow him they did; and may they ever do so, those who would make the New World ever new with all the ingenuity, energy, and boldness they have.

Americans of Italian descent are proud to say that Columbus, a son of Genoa, was the first of many Italians to come to America and a powerful reason the United States and Italy share the unique friendship they do. Those of Spanish descent likewise point out that Spain made Columbus's voyages possible and that he is the first link in the friendship of the United States and Spain. All Americans share in this just pride.

We are nearing the year 1992, when the world will celebrate the 500th anniversary of Columbus's first voyage to the Americas. The Christopher Columbus Quincentenary Jubilee Commission, a distinguished group of Americans aided by representatives from Spain and Italy, held its initial working sessions in Chicago, Miami, and San Juan, cities that are planning major commemorative events in 1992. It also began a report to the Congress, to be delivered in September 1987, that will make recommendations about our Nation's observance of the celebration.

The passage of time—nearly half a millennium—has not dimmed the glory of the Admiral of the Ocean Seas, nor could it ever.

In tribute to Christopher Columbus, the Congress, by joint resolution approved April 30, 1934 (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Monday, October 13, 1986, as Columbus Day. I invite the people of this Nation to observe that day with appropriate ceremonies in honor of this great explorer. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

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IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23209
Filed 10-9-86; 11:41 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 197
Friday, October 10, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 530; Lemon Regulation 529, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 255,000 cartons during the period October 12 through October 18, 1986, and increases the quantity of lemons that may be shipped during the period October 5 through October 11, 1986, to 247,961 cartons. Such action is needed to balance the supply of fresh lemons with demand for such periods, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: Regulation 530 (§ 910.830) is effective for the period October 12 through October 18, 1986, and the amendment (§ 910.829) is effective for the period October 5 through October 11, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1986-87. The committee voted by telephone on October 6, 1986, and met publicly on October 7, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good on large fancy sizes and expect demand to improve on small-size fruit. The increase in the allotment was recommended due to the improvement in the lemon market and the current allotment is inadequate to meet lemon demand.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, or postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. Handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.830 is added to read as follows:

§ 910.830 Lemon regulation 530.

The quantity of lemons grown in California and Arizona which may be handled during the period October 12, 1986, through October 18, 1986, is established at 255,000 cartons.

3. Section 910.829 is revised to read as follows:

§ 910.829 Lemon Regulation 529

The quantity of lemons grown in California and Arizona which may be handled during the period October 5, 1986 through October 11, 1986, is established at 247,961 cartons.

Dated: October 7, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-23083 Filed 10-9-86; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This action terminates the Federal marketing order for cherries grown in eight States effective April 30, 1987, because the Secretary of Agriculture has determined that the order no longer tends to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended. Termination of the order was favored by a majority of producers in

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the regulated States who voted in a continuance referendum held March 10–20, 1986.

EFFECTIVE DATE: April 30, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "act"

Marketing Order No. 930 regulates the handling of cherries grown in eight States and has been in effect continuously since 1971. The order regulates the handling of cherries grown in Michigan, New York Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland. The order provides for the establishment of reserve pools of cherries in years when production exceeds market needs. Such cherries are returned to the market in periods when production falls short of normal market requirements.

Section 930.73 of the order requires that a referendum be conducted by the Secretary every fifth year to ascertain whether continuation of the order is favored by producers and handlers. When the results of the referendum indicate that: (1) More than 50 percent of the producers by number or volume of production represented in the referendum or (2) more than 50 percent of the handlers, who during the current fiscal period handled more than 50 percent of the total volume of cherries processed in the production area by those handlers voting in the referendum favor termination of the order, the Secretary shall give consideration to terminating the order.

Continuance referenda at 5-year intervals afford producers and handlers an opportunity to express themselves at regular intervals as to whether or not the program should continue in effect. Based upon record evidence at the public hearing which preceded issuance of the order including § 930.73, it was concluded that if the percentage of producers or handlers expressing themselves as favoring termination exceeded the levels specified in the order, it would be reasonable to assume that the program is not measuring up to their expectations. It was noted that under such circumstances, it may be difficult to administer the order. Therefore, the Secretary should terminate the program in accordance with the act.

Pursuant to section 930.73 of the order, the Department published a referendum order in the Federal Register on March 5, 1986 (51 FR 7578) which directed that a continuance referendum be conducted among producers and handlers. In the referendum conducted March 10–20, 1986, 64 percent of all cherry producers voted and 83 percent of all cherry handlers voted. Of those voting, 51 percent of the producers and 56 percent of the handlers favored termination of the cherry marketing order. Voting producers who favored termination represented 45 percent of the volume of production represented in the referendum. Voting handlers who favored termination represented 40 percent of the processed volume represented in the referendum.

Given the high level of producer and handler participation, these results are a reliable indicator of their sentiment, and clearly demonstrate that a significant portion of the producers and handlers do not favor continuation of the cherry order. In the absence of substantial industry support, marketing order operations tend to be less effective. Experience in similar circumstances indicates that it often becomes difficult for a marketing order committee to obtain the requisite majority of votes necessary to approve recommendations for implementing order authorities. Moreover, a committee may experience difficulty in obtaining compliance with order requirements from all handlers in such a circumstance. Given the demonstrated lack of producer and handler support for the cherry order, it is determined that it no longer fulfills the objectives of the act.

Therefore, based on the foregoing considerations, pursuant to section 8c(16)(A) of the act and § 930.73 of the order, it is found that Marketing Order No. 930, regulating the handling of Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland, issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) and all rules and regulations and supplementary orders issued thereunder and now effective do not tend to effectuate the declared policy of the act and are hereby terminated. The Food Security Act of 1985 requires the Secretary to notify Congress 60 days in advance of the termination of any Federal marketing order pursuant to section 8c(16)(A) of the act. Congress was so notified on April 19, 1986.

To avoid undue disruption within the cherry industry, maintain continuity throughout the end of the 1986–87 fiscal period, and in accordance with order requirements, this termination of order No. 930, and all rules, regulations and supplementary orders thereunder, shall become effective on April 30, 1987. The time remaining before the termination date is an adequate period of time for the Cherry Administrative Board, the agency responsible for local administration of the order, to dispose of all currently held reserve pool cherries and return the proceeds from sales of such cherries to equity holders.

List of Subjects in 7 CFR Part 930

Marketing orders, Cherries.

1. The authority citation for 7 CFR Part 930 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

PART 930—[REMOVED]

2. Accordingly, 7 CFR Part 930 is removed.

Dated: October 6, 1986.

Peter C. Myers,

Deputy Secretary.

[FR Doc. 86–22974 Filed 10–9–86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 981

Handling of Almonds Grown in California; Quality Control

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the quality control provisions of the administrative rules and regulations established under the Federal marketing order for California almonds to increase the tolerance for inedible almonds from zero percent to three percent. This change will allow more almonds to be shipped in view of a projected short almond crop while maintaining acceptable quality standards.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This action will increase the grade defect tolerance for almonds from zero percent to three percent. Almonds with grade defects in excess of three percent will be classified as inedible. This action relaxes current regulations and will allow more almonds to be shipped in view of a projected short almond crop while maintaining acceptable quality standards.

It is estimated that 70 handlers of California almonds under the marketing order for almonds grown in California will be subject to regulation during the course of the current season and that the great majority of these firms may be classified as small entities. It is anticipated that this action will not impose additional costs on affected handlers. However, any such additional costs, if present at all, would not be significant.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) in that: (1) It is intended that the regulation apply to 1986 crop almonds which handlers now are receiving, processing, and marketing in volume; (2) the regulation relaxes restrictions on handlers, and handlers should have the opportunity to utilize this increased flexibility as soon as possible; (3) handlers are aware of this action and need no additional time to comply; and (4) no useful purpose would be served by delaying the effective date of this action.

Notice of the action was published in the Federal Register on September 9, 1986 (51 FR 32103). Written comments were invited from interested persons until September 19, 1986. No comments were received.

This action revises § 981.442 of Subpart—Administrative Rules and Regulations issued pursuant to the marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." Section 981.442 is issued pursuant to § 981.42(a) of the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based on a recommendation of the Almond Board of California, hereinafter referred to as the "Board," which works with USDA in administering the order, and other information.

Section 981.42(a) of the almond order provides that each handler shall cause to be determined through the inspection agency and at handler expense the percent of inedible kernels in each variety received and shall report the determination to the Board. Section 981.442(a)(4) of the administrative rules and regulations currently provides that the weight of inedible kernels reported to the Board in excess of zero percent for each variety shall constitute a handler's disposition obligation. This weight must be accumulated by the handler during processing and delivered to the Board or Board-accepted crushers, feed manufacturers, feeders, or dealers in nut wastes.

This action revises § 981.442(a)(4) so that the quantity of inedible kernels in each variety in excess of three percent, instead of the current zero percent, constitutes a handler's disposition obligation. The Board believes that this change will maintain acceptable quality standards while allowing more almonds to be shipped in view of a projected short almond crop.

After consideration of all relevant matter presented, including the Board's recommendation and other available information, it is further found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds.

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. In § 981.442, the first sentence of paragraph (a)(4) is revised to read as follows:

§ 981.442 Quality control.

(a) * * *

(4) The weight of inedible kernels in excess of three percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation.

* * * * *

Dated: October 6, 1986.

Joseph A. Gribble,

Director, Fruit and Vegetable Division.

[FR Doc. 86–23050 Filed 10–9–86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: AMS is correcting the heading of the table listing the assessment amounts for imported pork and pork products which appeared in the September 5, 1986, Federal Register (51 FR 31888) to read "dollars per pound" rather than "cents per pound."

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch (202) 447–2650.

The following correction is made in FR Doc. 86–20073, the Pork Promotion, Research, and Consumer Information Order (7 CFR Part 1230) published in the September 5, 1986, Federal Register (51 FR 31888):

1. In §1230.71, paragraph (e) the first column on page 31908, change the heading of the table from "Assessment (cents per pound)" to "Assessment (dollars per pound)."

Done at Washington, DC, on: October 6, 1986.

James C. Hardley,

Administrator, Agricultural Marketing Service.

[FR Doc. 86–22971 Filed 10–9–86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 86–087]

Tuberculosis in Cattle; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of tuberculosis by raising the designation of Georgia and Missouri from modified accredited areas to accredited-free

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States. It has been determined that Georgia and Missouri meet the criteria for designation as accredited-free States.

The regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from either accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers prefer to buy cattle from accredited-free States.

DATES: Interim rule effective October 10, 1986; comments must be received on or before December 9, 1986.

ADDRESSES: Written comments should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-087. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Domestic Programs Support Staff, VS, APHIS, USDA, Room 815, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8438.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis in Cattle" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle not known to be affected with or exposed to tuberculosis are based on whether the cattle are moved from jurisdictions designated as accredited-free States, modified accredited areas, or nonmodified accredited areas. The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) or portions of States are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations by incorporation by reference. Generally the status of States or portions of States is determined based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

Sections 77.7 and 77.8 of the regulations provide the following with respect to the interstate movement of cattle not known to be affected with or exposed to tuberculosis:

§ 77.7 Movement from accredited-free States and modified accredited areas.

Cattle not known to be affected with or exposed to tuberculosis, originating in an accredited-free State or a modified accredited area, may be moved interstate without restriction.

§ 77.8 Movement from nonmodified accredited areas.

Cattle not known to be affected with or exposed to tuberculosis, originating in a nonmodified accredited area, shall only be moved interstate if:

(a) Such cattle are accompanied by a certificate stating that such cattle have been classified negative to an official tuberculin test, which was conducted within 30 days prior to the date of movement. All cattle not individually identified by a registration name and number shall be individually identified by a Veterinary Services approved metal eartag or tattoo; or

(b) Such cattle are from an accredited herd and they are accompanied by a certificate showing the cattle to be from such a herd; or

(c) Such cattle are moved interstate directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter.

Prior to the effective date of this document, Georgia and Missouri, among other States, were designated under § 77.5 of the regulations as modified accredited areas. The Deputy Administrator has determined that Georgia and Missouri meet the criteria for designation as accredited-free States. Therefore, this document amends the regulations by adding Georgia and Missouri to the list of accredited-free States in § 77.4.

As noted above, the regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers often prefer to buy cattle from accredited-free States.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the States of Georgia and Missouri will not cause a significant effect on marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. It is necessary to change the regulations immediately so that they accurately reflect the current tuberculosis status of Georgia and Missouri, and thereby provide prospective cattle buyers with accurate and up-to-date information which may affect the marketability of cattle.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register.**

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, 9 CFR Part 77 is amended as follows:

1. The authority citation for Part 77 continues to read as set forth below:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 77.4, paragraph (b) is revised to read as follows:

§ 77.4 Accredited-free States.

* * * * *

(b) The following States are hereby designated accredited-free States: Alaska, Arizona, Colorado, Connecticut, Delaware, Georgia, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Wisconsin, Wyoming, and the Virgin Islands of the United States.

Done at Washington, DC, this 7th day of October 1986.

B.G. Johnson,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-22975 Filed 10-9-86; 8:45 am]

BILLING CODE 3410-34-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6663; File No. S7-13-86]

Form D and Regulation D

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission, with acknowledgement of the cooperation of the North American Securities Administrators Association, Inc. ("NASAA"),[1] announces the adoption of various revisions to Form D and Regulation D under the Securities Act of 1933 (the "Securities Act") designed to make the Form a uniform notification form that can be filed with the Commission and with the States. Certain revisions to the Form which are being adopted affect various items of disclosure which have previously been required in the filing. In addition, the provisions requiring the Form to be updated every six months until the offering is completed, and requiring a final filing within thirty days of the final sale or the completion of the offering, have been eliminated.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Karen O'Brien, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On June 5, 1986, the Commission with the cooperation of NASAA published for comment [2] several proposed amendments to Form D and the description of Form D,[3] the notification Form required to be filed by issuers relying on the exemptions from the registration provisions of the Securities Act provided by Regulation D [4] thereunder and Section 4(6) of the Securities Act.[5]

The proposed revisions to the Form allow for a uniform notification form that can be filed with the Commission and with the States. Other revisions revise or eliminate certain item requirements from the Form and eliminate the Federal requirements to update the Form every six months and to file a final form upon the completion of the offering. These proposals mark a continuation of the Commission's efforts to reduce the costs of capital formation for small issuers and to promote uniformity between Federal and State securities regulation. Having considered the comments received from the public, the Commission is adopting the revisions substantially as proposed.

I. Revisions to Form D

Form D is required to be filed whenever any of the Regulation D exemptions or section 4(6) exemption from the registration requirements of the Securities Act is relied upon. Due to the relationship between Regulation D and the Uniform Limited Offering Exemption ("ULOE") which has been adopted by more than half of the States, there has been substantial uniformity for certain exempt securities transactions at both the Federal and State levels. The proposed revisions to Form D were designed in part to encourage more States to adopt ULOE. The revisions also will be beneficial to the States which have already adopted ULOE. As amended, the Form provides for special instructions for the Federal and State filing, including a separate appendix keyed to specific items of the form on a state-by-state basis. There is also a separate Federal and State signature page. Thus, it will now be possible for an issuer to fill in and sign a single Form D and then duplicate the appropriate number of copies for filing with the Commission and the States.

Substantively, the Form no longer requires certain disclosures about the issuer, such as gross revenues, total assets and numbers of shareholders. Information about the use of proceeds and expenses of the offering have been made parallel to those requirements in Form SR [6] and Item 504 of Regulation S-K.[7] In the area of disclosure about affiliates, Form D now only requires identification of an issuer's executive officers, directors, general partners, promoters and persons beneficially owning 10 percent or more of a class of equity securities, rather than all affiliates.

Certain technical, format changes have been made in the layout and organization of the Form, which make no substantive changes to the Form D proposed for comment but are intended to make the Form clearer and easier to fill out.

II. Revisions to the Filing Requirements

The Commission also has revised the Instructions to Form D and Rule 503 to eliminate the requirements to file with the Commission six month updates and the final notification on Form D. The initial notice is still required to be filed with the Commission within 15 days of the first sale of securities in an offering under Regulation D or section 4(6). Issuers must determine the filing requirements of each State where the Form can be used.

[1] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and several of the Canadian provinces.

[2] Release No. 33-6650 (June 5, 1986) [51 FR 21378].

[3] 17 CFR 239.500.

[4] 17 CFR 230.501-230.506.

[5] 15 U.S.C. 77d(6).

[6] 17 CFR 239.61. The Commission has under consideration several proposals which could change the information requirements in Form SR. If such form is changed in this regard, it is currently projected that parallel changes would also be made to Form D.

[7] 17 CFR 229.504.

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III. Public Comments Regarding the Proposals

The Commission received 13 comment letters regarding the proposals, all of which supported the basic revisions to the Form D and the concept of having a single notification form available for both Federal and State filing purposes.[6] A number of the commentators recommended the inclusion of certain additional or clarifying information in the Form which the Commission has considered and adopted in certain instances. For example, the issuer as well as the offering is now identified on the cover page of the Form. It was also noted that the State of Washington was omitted from the appendix and that Column 4 of such appendix was incorrectly constituted. These matters have been rectified. Generally, however, the scope of the information sought by Form D has remained as proposed for comment.

Three commentators, representing the State securities regulators in Alabama, Texas and Washington, opposed elimination of the final filing requirement. These commentators are concerned that their monitoring activities may be impaired without the information contained in the last filing, which in turn may hurt their efforts to enforce compliance with Regulation D. With regard to the elimination of the final filing requirement, the Commission gave careful consideration to the concerns of the commentators, in balance with the needs of investors and the costs imposed upon affected persons. The information contained in the original notification has proved sufficient for the Commission's enforcement surveillance for compliance with the requirements of Regulation D. No significant administrative or enforcement proceedings have resulted from final Form D filings made with the Commission. Thus, in view of the tremendous volume of final filings (7,414 in 1985, or over 27% of all filings that year), even at a nominal expense to both the preparing party and the Commission, it is apparent that significant cost savings may be had with negligible consequence to investors through elimination of the final filing requirement.

Two State securities regulators, representing Alabama and Washington, were also concerned about the revision of the required identification of affiliates item. These commentators believe the information is useful in their enforcement efforts, particularly in the area of disqualified parties involved in the offering of securities. The Commission believes that the revised item continues to encompass the major affiliates of an issuer. No specific examples of affiliates who are material that would be left undisclosed were cited in these or other commentators' letters.

IV. NASAA Cooperation

In connection with its publication of the proposed revisions to Form D, the Commission acknowledged the cooperation of NASAA and particularly its Small Business Financing Committee. The Commission understands that following its adoption of the revisions to Form D, the NASAA Committee will recommend adoption by NASAA of appropriate modifications to ULOE to provide for the uniform form. With respect to the elimination of the final reporting requirement, the Committee has taken no position and will not recommend either for or against this provision. The Commission appreciates the cooperation of NASAA and the members of its Committee in connection with the revisions to Form D. The Commission looks forward to continued cooperation between NASAA's members and the Commission to achieve greater uniformity between the Federal and State systems of securities regulation, and thus to promote efficient capital formation consistent with the protection of investors.

V. Availability of Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act regarding the amendments has been prepared. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the proposing release. Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Karen O'Brien as specified above.

VI. Cost-Benefit Analysis

While no specific data was provided on the Commission's request for costs and benefits of the proposals, many of the commentators suggested that there would be some cost savings from the proposed revisions including elimination of the six month updates and final filing requirements. It is worth noting again that had these provisions not been in effect during 1985, approximately 37% of the Form D filings that year would have been avoided. The Commission believes that the benefits from the required initial filing and the information contained therein will be sufficient for purposes of investor protection.

VII. Statutory Basis and Text of the Amendments

The amendments to the Commission's Forms and rule are being adopted pursuant to sections 3(b), 4(2), 19(a) and 19(c)(3) of the Securities Act.

List of Subjects in 17 CFR Parts 230 and 239

Reporting and recordkeeping requirements, Securities.

Text of Amendments

Accordingly, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part as follows:

Authority: Sections 230.100 to 230.174 issued under sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s * * *

2. Section 230.503 is revised to read as follows:

§ 230.503 Filing of notice of sales.

(a) The issuer shall file with the Commission five copies of a notice on Form D (17 CFR 239.500) no later than 15 days after the first sale of securities in an offering under Regulation D.

(b) One copy of every notice on Form D shall be manually signed by a person duly authorized by the issuer.

(c) If sales are made under § 230.505, the notice shall contain an undertaking by the issuer to furnish to the Commission, upon the written request of its staff, the information furnished by the issuer under § 230.502(b)(2) to any purchaser that is not an accredited investor.

(d) Amendments to notices filed under paragraph (a) of this section need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.

(e) A notice on Form D shall be considered filed with the Commission under paragraph (a) of this section.

(1) As of the date on which it is received at the Commission's principal office in Washington, DC; or

(2) As of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's principal office in Washington, DC, if the notice is delivered to such office after the date on which it is required to be filed.

[6] The comment letters and a summary of comments (File No. S7-13-86) are available for public inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.* * * *

§ 239.500 [Amended]

4. By revising Form D described in § 239.500 as follows.

Note.—Form D does not appear in the Code of Federal Regulations.

By the Commission.

Jonathan G. Katz,

Secretary.

October 2, 1986.

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FORM D

OMB APPROVAL
OMB Number: 3235-0076
Expires: January 31, 1988

SEC USE ONLY
Prefix | Serial
DATE RECEIVED

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

NOTICE OF SALE OF SECURITIES PURSUANT TO REGULATION D, SECTION 4(6), AND/OR UNIFORM LIMITED OFFERING EXEMPTION

Name of Offering (☐ check if this is an amendment and name has changed, and indicate change.)

Filing Under (Check box(es) that apply): ☐ Rule 504 ☐ Rule 505 ☐ Rule 506 ☐ Section 4(6) ☐ ULOE

Type of Filing: ☐ New Filing ☐ Amendment

A. BASIC IDENTIFICATION DATA

1. Enter the information requested about the issuer

Name of Issuer (☐ check if this is an amendment and name has changed, and indicate change.)

Address of Executive Offices (Number and Street, City, State, Zip Code)	Telephone Number (Including Area Code)
Address of Principal Business Operations (Number and Street, City, State, Zip Code) (if different from Executive Offices)	Telephone Number (Including Area Code)

Brief Description of Business

Type of Business Organization
☐ corporation ☐ limited partnership, already formed ☐ other (please specify):
☐ business trust ☐ limited partnership, to be formed

Actual or Estimated Date of Incorporation or Organization: Month ☐☐ Year ☐☐ ☐ Actual ☐ Estimated

Jurisdiction of Incorporation or Organization: (Enter two-letter U.S. Postal Service abbreviation for State: CN for Canada; FN for other foreign jurisdiction) ☐☐

GENERAL INSTRUCTIONS

Federal:

Who Must File: All issuers making an offering of securities in reliance on an exemption under Regulation D or Section 4(6), 17 CFR 230.501 et seq. or 15 U.S.C. 77d(6).

When To File: A notice must be filed no later than 15 days after the first sale of securities in the offering. A notice is deemed filed with the U.S. Securities and Exchange Commission (SEC) on the earlier of the date it is received by the SEC at the address given below or, if received at that address after the date on which it is due, on the date it was mailed by United States registered or certified mail to that address.

Where to File: U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Copies Required: Five (5) copies of this notice must be filed with the SEC, one of which must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

Information Required: A new filing must contain all information requested. Amendments need only report the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B. Part E and the Appendix need not be filed with the SEC.

Filing Fee: There is no federal filing fee.

State:

This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix to the notice constitutes a part of this notice and must be completed.

ATTENTION

Failure to file notice in the appropriate states will not result in a loss of the federal exemption. Conversely, failure to file the appropriate federal notice will not result in a loss of an available state exemption unless such exemption is predicated on the filing of a federal notice.

SEC 1972 (10-86)

A. BASIC IDENTIFICATION DATA

2. Enter the information requested for the following:
- Each promoter of the issuer, if the issuer has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer;
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partner of partnership issuers.

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

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B. INFORMATION ABOUT OFFERING

	Yes	No
1. Has the issuer sold, or does the issuer intend to sell, to non-accredited investors in this offering? Answer also in Appendix, Column 2, if filing under ULOE.	☐	☐
2. What is the minimum investment that will be accepted from any individual?	$____	
3. Does the offering permit joint ownership of a single unit?	☐	☐

4. Enter the information requested for each person who has been or will be paid or given, directly or indirectly, any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in the offering. If a person to be listed is an associated person or agent of a broker or dealer registered with the SEC and/or with a state or states, list the name of the broker or dealer. If more than five (5) persons to be listed are associated persons of such a broker or dealer, you may set forth the information for that broker or dealer only.

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) ☐ All States

[AL]	[AK]	[AZ]	[AR]	[CA]	[CO]	[CT]	[DE]	[DC]	[FL]	[GA]	[HI]	[ID]
[IL]	[IN]	[IA]	[KS]	[KY]	[LA]	[ME]	[MD]	[MA]	[MI]	[MN]	[MS]	[MO]
[MT]	[NE]	[NV]	[NH]	[NJ]	[NM]	[NY]	[NC]	[ND]	[OH]	[OK]	[OR]	[PA]
[RI]	[SC]	[SD]	[TN]	[TX]	[UT]	[VT]	[VA]	[WA]	[WV]	[WI]	[WY]	[PR]

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) ☐ All States

[AL]	[AK]	[AZ]	[AR]	[CA]	[CO]	[CT]	[DE]	[DC]	[FL]	[GA]	[HI]	[ID]
[IL]	[IN]	[IA]	[KS]	[KY]	[LA]	[ME]	[MD]	[MA]	[MI]	[MN]	[MS]	[MO]
[MT]	[NE]	[NV]	[NH]	[NJ]	[NM]	[NY]	[NC]	[ND]	[OH]	[OK]	[OR]	[PA]
[RI]	[SC]	[SD]	[TN]	[TX]	[UT]	[VT]	[VA]	[WA]	[WV]	[WI]	[WY]	[PR]

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) ☐ All States

[AL]	[AK]	[AZ]	[AR]	[CA]	[CO]	[CT]	[DE]	[DC]	[FL]	[GA]	[HI]	[ID]
[IL]	[IN]	[IA]	[KS]	[KY]	[LA]	[ME]	[MD]	[MA]	[MI]	[MN]	[MS]	[MO]
[MT]	[NE]	[NV]	[NH]	[NJ]	[NM]	[NY]	[NC]	[ND]	[OH]	[OK]	[OR]	[PA]
[RI]	[SC]	[SD]	[TN]	[TX]	[UT]	[VT]	[VA]	[WA]	[WV]	[WI]	[WY]	[PR]

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

1. Enter the aggregate offering price of securities included in this offering and the total amount already sold. Enter "0" if answer is "none" or "zero." If the transaction is an exchange offering, check this box ☐ and indicate in the columns below the amounts of the securities offered for exchange and already exchanged.

Type of Security	Aggregate Offering Price	Amount Already Sold
Debt	$____	$____
Equity	$____	$____
☐ Common ☐ Preferred		
Convertible Securities (including warrants)	$____	$____
Partnership Interests	$____	$____
Other (Specify _____)	$____	$____
Total	$____	$____

Answer also in Appendix, Column 3, if filing under ULOE.

2. Enter the number of accredited and non-accredited investors who have purchased securities in this offering and the aggregate dollar amounts of their purchases. For offerings under Rule 504, indicate the number of persons who have purchased securities and the aggregate dollar amount of their purchases on the total lines. Enter "0" if answer is "none" or "zero."

	Number Investors	Aggregate Dollar Amount of Purchases
Accredited Investors	____	$____
Non-accredited Investors	____	$____
Total (for filings under Rule 504 only)	____	$____

Answer also in Appendix, Column 4, if filing under ULOE.

3. If this filing is for an offering under Rule 504 or 505, enter the information requested for all securities sold by the issuer, to date, in offerings of the types indicated, in the twelve (12) months prior to the first sale of securities in this offering. Classify securities by type listed in Part C - Question 1.

Type of offering	Type of Security	Dollar Amount Sold
Rule 505	____	$____
Regulation A	____	$____
Rule 504	____	$____
Total	____	$____

4. a. Furnish a statement of all expenses in connection with the issuance and distribution of the securities in this offering. Exclude amounts relating solely to organization expenses of the issuer. The information may be given as subject to future contingencies. If the amount of an expenditure is not known, furnish an estimate and check the box to the left of the estimate.

Transfer Agent's Fees	☐	$____
Printing and Engraving Costs	☐	$____
Legal Fees	☐	$____
Accounting Fees	☐	$____
Engineering Fees	☐	$____
Sales Commissions (specify finders' fees separately)	☐	$____
Other Expenses (identify) _____	☐	$____
Total	☐	$____

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C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

b. Enter the difference between the aggregate offering price given in response to Part C - Question 1 and total expenses furnished in response to Part C - Question 4.a. This difference is the "adjusted gross proceeds to the issuer." ..... $_____

5. Indicate below the amount of the adjusted gross proceeds to the issuer used or proposed to be used for each of the purposes shown. If the amount for any purpose is not known, furnish an estimate and check the box to the left of the estimate. The total of the payments listed must equal the adjusted gross proceeds to the issuer set forth in response to Part C - Question 4.b above.

	Payments to Officers, Directors, & Affiliates	Payments To Others
Salaries and fees	☐ $_____	☐ $_____
Purchase of real estate	☐ $_____	☐ $_____
Purchase, rental or leasing and installation of machinery and equipment	☐ $_____	☐ $_____
Construction or leasing of plant buildings and facilities	☐ $_____	☐ $_____
Acquisition of other businesses (including the value of securities involved in this offering that may be used in exchange for the assets or securities of another issuer pursuant to a merger)	☐ $_____	☐ $_____
Repayment of indebtedness	☐ $_____	☐ $_____
Working capital	☐ $_____	☐ $_____
Other (specify): _____	☐ $_____	☐ $_____
_____	☐ $_____	☐ $_____
Column Totals	☐ $_____	☐ $_____
Total Payments Listed (column totals added)	☐ $_____	

D. FEDERAL SIGNATURE

The issuer has duly caused this notice to be signed by the undersigned duly authorized person. If this notice is filed under Rule 505, the following signature constitutes an undertaking by the issuer to furnish to the U.S. Securities and Exchange Commission, upon written request of its staff, the information furnished by the issuer to any non-accredited investor pursuant to paragraph (b)(2) of Rule 502.

Issuer (Print or Type)	Signature	Date
Name of Signer (Print or Type)	Title of Signer (Print or Type)	

ATTENTION

Intentional misstatements or omissions of fact constitute federal criminal violations. (See 18 U.S.C. 1001.)

E. STATE SIGNATURE

1. Is any party described in 17 CFR 230.252(c), (d), (e) or (f) presently subject to any of the disqualification provisions of such rule? ..... Yes ☐ No ☐

See Appendix, Column 5, for state response.

2. The undersigned issuer hereby undertakes to furnish to any state administrator of any state in which this notice is filed, a notice on Form D (17 CFR 239.500) at such times as required by state law.

3. The undersigned issuer hereby undertakes to furnish to the state administrators, upon written request, information furnished by the issuer to offerees.

4. The undersigned issuer represents that the issuer is familiar with the conditions that must be satisfied to be entitled to the Uniform limited Offering Exemption (ULOE) of the state in which this notice is filed and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied.

The issuer has read this notification and knows the contents to be true and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

Issuer (Print or Type)	Signature	Date
Name (Print or Type)	Title (Print or Type)	

Instruction:
Print the name and title of the signing representative under his signature for the state portion of this form. One copy of every notice on Form D must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

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APPENDIX

1	2		3	4				5	
	Intend to sell to non-accredited investors in State (Part B-item 1)		Type of security and aggregate offering price offered in state (Part C-item1)	Type of investor and amount purchased in State (Part C-item 2)				Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-item1)	
State	Yes	No		Number of Accredited Investors	Amount	Number of Non-Accredited Investors	Amount	Yes	No
AL									
AK									
AZ									
AR									
CA									
CO									
CT									
DE									
DC									
FL									
GA									
HI									
ID									
IL									
IN									
IA									
KS									
KY									
LA									
ME									
MD									
MA									
MI									
MN									
MS									
MO									

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APPENDIX

1	2		3	4				5	
	Intend to sell to non-accredited investors in State (Part B-item 1)		Type of security and aggregate offering price offered in state (Part C-item1)	Type of investor and amount purchased in State (Part C-item 2)				Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-item1)	
State	Yes	No		Number of Accredited Investors	Amount	Number of Non-Accredited Investors	Amount	Yes	No
MT									
NE									
NV									
NH									
NJ									
NM									
NY									
NC									
ND									
OH									
OK									
OR									
PA									
RI									
SC									
SD									
TN									
TX									
UT									
VT									
VA									
WA									
WV									
WI									
WY									
PR									

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[FR Doc. 86-22822 Filed 10-9-86; 8:45 am]
BILLING CODE 8010-01-C

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin, Bacitracin Methylene Disalicylate, Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of Elanco's new animal drug application (NADA) for combining individually approved monensin, bacitracin methylene disalicylate, and roxarsone Type A articles to make Type C broiler feeds to identify a second approved source of roxarsone, Salsbury Labs.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, is the sponsor of NADA 48–464 approved July 28, 1978 (43 FR 32750). The NADA provides for combining previously approved monensin, bacitracin methylene disalicylate, and roxarsone Type A articles to prepare a Type C broiler feed. The regulation failed to indicate that Salsbury Labs. was also a source of roxarsone used to make the Type C feed. The regulations are amended to provide for the additional approved drug source.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended in paragraph (f)(1)(xii)(*b*) by revising the phrase "as roxarsone provided by No. 011801 in § 510.600 of this chapter." to read "as roxarsone provided by Nos. 011801 or 017210 in § 510.600 of this chapter."

Dated: October 6, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86–23001 Filed 10–9–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 46 and 602

[T.D. 8102]

Excise Tax Imposed on the Issuer of Registration-Required Obligation Not in Registered Form

Correction

In FR Doc. 86–21442, beginning on page 33593, in the issue of Monday, September 22, 1986, make the following corrections:

On page 33594, in the first column, eleventh line, the first word should read. "or", and

§ 46.4701–1 [Corrected]

On the same page, in the third column, in § 46.4701–1, paragraph (b)(6)(ii), in the third line, after "the" insert the words "date the".

BILLING CODE 1505–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 19

[T.D. ATF–237; Re: Notice No. 580]

Labeling of Distilled Spirits in Percent-Alcohol-by-Volume

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: On January 24, 1986, the Bureau of Alcohol, Tobacco and Firearms (ATF) proposed (at 51 FR 3208) to amend regulations in 27 CFR Parts 5 and 19 to provide for labeling and advertising the alcohol content of distilled spirits products in percent-alcohol-by-volume rather than in proof. The notice of proposed rulemaking, Notice No. 580, was based on a petition submitted by Joseph E. Seagram and Sons, Inc. This final rule adopts the proposed rule with minor modifications and with a transition period of two years.

EFFECTIVE DATE: Amendatory paragraphs 2A, 3A, 7A and 8A are effective November 10, 1986. Amendatory paragraphs 2B, 3B, 4, 6, 7B, 8B and 9 are effective October 10, 1988.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine, and Beer Branch, (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

The alcohol content is specifically required to be shown on labels and in advertisements of distilled spirits products under 27 U.S.C 205 (e) and (f). The purpose of this requirement, stated in this section, is to ". . . provide the consumer with adequate information as to the identity and quality of the products, [including] the alcoholic content thereof . . .". The alcohol content is also required to be shown on labels of distilled spirits products under the authority conferred by 26 U.S.C 5301(a). This section reads, in part, "Whenever in his judgment such action is necessary to protect the revenue, the Secretary is authorized, by the regulations prescribed by him . . . to regulate the kind, size, branding, marking, . . . of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits . . .".

Since the repeal of Prohibition, ATF and its predecessor agencies have regulated the labeling and advertising of the alcohol content of distilled spirits products by requiring a statement expressed in degrees of proof. (Degrees of proof are equal to the percent-alcohol-by-volume multiplied by two). This requirement, unchanged for 50 years, was also the conventional method of labeling and advertising the alcohol content of distilled spirits products before Prohibition. Branding and marking requirements are expressed in proof on labels of distilled spirits because the tax is imposed on the basis of proof.

The previous regulations, 27 CFR 5.37, 5.63, and 19.643, required proof statements on labels and in advertisements of distilled spirits, except that the alcohol content could be stated in percent-alcohol-by-volume on labels for liqueurs, cordials, bitters, cocktails, highballs, or other such specialties.

Petition

Joseph E. Seagram & Son, Inc. petitioned ATF to amend 27 CFR 5.37, relating to the alcohol content statement on labels of distilled spirits. Seagram petitioned for a statement of percent-alcohol-by-volume to replace the use of proof statements on labels of distilled spirits. ATF proposed this change in Notice No. 580, published in the Federal Register of January 24, 1986, at 51 FR 3208. ATF also proposed to amend the similar labeling requirement in 27 CFR 19.643, and the mandatory advertising statement of alcohol content in 27 CFR 5.63.

Discussion

In the November 1980 Report to the President and the Congress on *Health Hazards Associated with Alcohol and Methods to Inform the General Public of these Hazards*, submitted by the Treasury Department and the Department of Health and Human Services, the Treasury Department was in favor of labeling distilled spirits in percent-alcohol-by-volume.

In the ATF Quarterly Bulletin, A.T.F.Q.B. 1985–2, Page 71, ATF announced that statements of percent alcohol-by-volume may now appear on labels of all distilled spirits products, as *additional*, truthful information. This announcement reversed a long-standing label approval policy, and partially implemented the Seagram's petition and the November 1980 Report to the President and the Congress, mentioned above.

Other Requirements to Label Proof. In Notice No. 580, ATF specifically did not consider the amendment of regulations on marking requirements for cases, bulk containers (including barrels used for aging spirits), or bottles of industrial alcohol used by hospitals, universities, or manufacturers of food products or medicinal preparations. These regulations require that some containers of distilled spirits be marked to show the proof of the product. In general, these are the containers on which taxes are determined. Since taxes are imposed on the basis of proof, as previously discussed, these requirements are oriented toward protection of the revenue.

Moreover, these marking requirements have little or no impact on consumers. Although whole cases of distilled spirits are sometimes purchased by consumers, ATF does not generally consider a case to be a consumer container. Therefore, ATF did not propose to amend the marking requirements for these containers.

Public Comments

In response to Notice No. 580, ATF received 23 comments, as follows: 17 in favor, 5 opposed, 1 no preference. Demographically, the commenters were: 8 bottlers of distilled spirits products, 6 consumers, 5 trade associations, 3 government agencies, and 1 importer of distilled spirits products. Based on this response, and based on the Treasury Department's previous report to the President and the Congress in favor of making this change, ATF is adopting the proposed rule, modified as discussed below.

Four commenters, R.E. Welch, State of Idaho Liquor Dispensary, Washington State Liquor Control Board, and Scotch Whisky Association, suggested that there should be a transition period during which the alcohol content is expressed in both forms, to educate consumers. In drafting Notice No. 580, ATF considered but rejected this idea, since it would require two label changes. Also, as previously discussed, importers and bottlers are already allowed to show the alcohol content in both forms, if desired. At a later date, importers and bottlers may choose to drop the proof statement which is being made optional in this final rule.

In Notice No. 580, ATF requested comments on the following question: If percentage statements replace proof statements, how long should the transition period be? Seven commenters addressed this question, including four bottlers of distilled spirits who are directly affected by this aspect of the proposed change. Their comments are as follows: R.E. Welch and Consolidated Distilled Products, Inc. were in favor of a five-year transition. Consolidated stated that some small bottlers frequently purchase label stocks of up to a five to ten year supply. The Washington State Liquor Control Board was in favor of a two-year transition period during which the alcohol content is expressed in both forms, to help educate the consumer. Brown-Forman Corp. was in favor of an 18-month transition period, if an open-ended transition period could not be allowed. Scotch Whisky Association was in favor of a 12- to 18-month transition period. Ed Phillips & Sons was in favor of a transition period of one year. ISC Wines of California was in favor of a transition period which is "long enough that suppliers are able to use up existing labels."

Implementation

Transition period. ATF has decided to implement the new requirement in two years. ATF believes that this period is long enough for industry members to make the conversion with little or no waste of obsolete labels. A two-year period will also minimize the confusion caused by having two styles of labels on retail shelves.

Use of Both Forms in Direct Conjunction. The proposed rule allowed the alcohol content to be expressed in both forms. The final rule adopts this proposal with the additional requirement that both forms, if shown, must be in direct conjunction with each other. Without this requirement, a consumer could be confused if he/she found "80° proof" on one part of the label and "40 percent-alcohol-by-volume" elsewhere on the same label. The requirement for direct conjunction dispels possible consumer confusion, and shows the consumer that the two expressions of alcohol content mean the same thing. To emphasize the fact that both expressions of alcohol content mean the same thing, the optional statement in degrees of proof must be placed in parentheses, in brackets, or otherwise distinguished from the mandatory percent-alcohol-by-volume statement.

Revision of 27 CFR 19.643. Notice No. 580 proposed to amend 27 CFR 19.643 by replacing the first sentence with two sentences. Based on the modifications of the proposed rule discussed above, ATF is completely revising this section for clarity by adding designated paragraphs to separate the several label statements required by the section.

Amendment of §§ 19.388, 19.395, and 19.750. Notice No. 580 did not propose to amend §§ 19.388, 19.395, or 19.750. These sections relate to labels for spirits bottled for export and bottling line tests of alcohol content. ATF believes that these sections should also be amended to remove references to measurement of alcohol content in proof.

Incorporation of Revenue Ruling 55–494. Amendment of all regulations on labeling alcohol content enables ATF to incorporate Revenue Ruling 55–494, which requires a special label statement of alcohol content for "Rock and Rye" and similar products. These products contain a significant amount of fruit or other solid material in the bottle. As a result, the alcohol content of the liquid portion reduces over time. Therefore, this ruling was issued to require that the label show the alcohol content at the time the product is bottled, as follows: "Bottled at —— proof." The substance of this ruling is incorporated in each section which requires the labeling alcohol content. Revenue Ruling 55–494, I.R.C.B. 1955–2, 738, is hereby declared obsolete on the effective date of this final rule.

New Label Approval Not Required. Labels may be changed to implement this final rule without submission of the revised labels for approval by ATF. The same mandatory requirements of 27 CFR 5.33 (size, color contrast, etc.) shall apply to labels revised with the new alcohol content statement expressed in percent-alcohol-by-volume.

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Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to display information on labels of distilled spirits, proposed in this notice, were submitted to the Office of Management and Budget for review under sec. 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. The Office of Management and Budget had previously assigned control number 1512-0482 to the collection of information which included labeling and advertising requirements. That collection of information is hereby modified by this final rule.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine, and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 5—[AMENDED]

27 CFR Part 5—Labeling and Advertising of Distilled Spirits is amended as follows:

1. The authority citation for Part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

2A. Section 5.37 is amended by revising paragraph (a) to read as follows:

§ 5.37 Alcoholic content.

(a) *Statement.* The alcohol content for distilled spirits shall be stated in proof or in percent-alcohol-by-volume. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at _____ percent-alcohol-by-volume" or "Bottled at _____ proof".

* * * * *

2B. Effective on October 10, 1988, § 5.37 is revised to read as follows:

§ 5.37 Alcohol content.

(a) *Statements.* (1) *Mandatory statement.* The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. Products such as "Rock and Rye. or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at _____ percent-alcohol-by-volume."

(2) *Optional statement.* In addition, the label may also state the alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

(b) *Tolerances.* The following tolerances shall be allowed (without affecting the labeled statement of alcohol content) for losses of alcohol content occurring during bottling:

(1) Not to exceed 0.25 percent-alcohol-by-volume for spirits containing solids in excess of 600 mg per 100 ml; or

(2) Not to exceed 0.15 percent-alcohol-by-volume for all other spirits.

(Approved by the Office of Management and Budget under Control Number 1512-0482)

Authority: Sec. 201, Pub. L. 85-859, 72 Stat. 1394, as amended (26 U.S.C. 5301(a)); 49 Stat. 917, as amended (27 U.S.C. 205(e)).

3A. Paragraph (c) of § 5.63 is revised to read as follows:

§ 5.63 Mandatory statements.

* * * * *

(c) *Alcoholic content.* The alcohol content for distilled spirits shall be stated in proof or in percent-alcohol-by-volume. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at _____ percent-alcohol-by-volume" or "Bottled at _____ proof".

* * * * *

3B. Effective on October 10, 1988, paragraph (c) of § 5.63 is revised to read as follows:

§ 5.63 Mandatory statements.

* * * * *

(c) *Alcohol content.* (1) *Mandatory statement.* The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at _____ percent-alcohol-by-volume."

(2) *Optional statement.* In addition, the advertisement may also state the alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

* * * * *

PART 19—[AMENDED]

27 CFR Part 19—Distilled Spirits Plants is amended as follows:

4. Effective on October 10, 1988, the table of sections for Part 19 is amended by revising the headings of §§ 19.386 and 19.750 to read as follows:

Sec.

* * * * *

19.386 Alcohol content and fill.

* * * * *

19.750 Records of alcohol content and fill tests.

* * * * *

5. The authority citation for Part 19 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5006-5008, 5008, 5041, 5051, 5052, 5056, 5101, 5111-5113, 5171-5173, 5175, 5176, 5178-5181, 5201-5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271, 5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065 6109, 6302, 6311, 6676, 7510; 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

6. Effective on October 10, 1988, § 19.386 is revised to read as follows:

§ 19.386 Alcohol content and fill.

(a) *General.* (1) Proprietors shall test and examine at representative intervals spirits bottled during bottling operations to determine whether the bottled spirits agree in alcohol content and quantity (fill) with that stated on the label or bottle.

(2) If the regional director (compliance) finds that a proprietor's test procedures do not protect the revenue and ensure label accuracy of the bottled product, he or she may require corrective measures.

(b) *Variations in alcohol content and fill.* The proprietor shall rebottle, recondition or relabel spirits if the bottle contents do not agree with the respective data on the label or bottle as to:

(1) Quantity (fill), except for such variation as may occur in filling conducted in compliance with good commercial practice with an overall objective of maintaining 100 percent fill for spirits bottled; and/or

(2) Alcohol content, subject to a normal drop in alcohol content occurring during bottling operations not to exceed 0.25 percent-alcohol-by-volume for products containing solids in excess of 600 mg per 100 ml, or 0.15 percent-alcohol-by-volume for all other spirits. For example, a product with a solids content of less than 600 mg per 100 ml, labeled as containing 40 percent-alcohol-by-volume, would be acceptable if the test for alcohol content found that it contained 39.85 percent-alcohol-by-volume.

(c) *Records.* Proprietors shall record the results of all tests of alcohol content and quantity (fill) in the record required by § 19.750.

Authority: Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended, 1394, as amended (26 U.S.C. 5201, 5301).

7A. Paragraph (b) of § 19.395 is revised to read as follows:

§ 19.395 Labels for export spirits.

* * * * *

(b) Proof or percent-alcohol-by-volume of the spirits;

* * * * *

7B. Effective on October 10, 1988, paragraph (b) of § 19.395 is revised to read as follows:

§ 19.395 Labels for export spirits.

* * * * *

(b) Percent-alcohol-by-volume of the spirits;

* * * * *

8A. The first sentence of § 19.643 is replaced by the following two sentences which read as follows:

§ 19.643 Brand name, kind, alcohol content, and State of distillation.

The brand name, kind as set out in 27 CFR Part 5, and alcohol content, expressed in proof or in percent-alcohol-by-volume, shall be shown on the label. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at _____ percent-alcohol-by-volume" or "Bottled at _____ proof. * * *"

8B. Effective on October 10, 1988, § 19.643 is revised to read as follows:

§ 19.643 Brand name, kind, alcohol content, and State of distillation.

(a) *Brand name and kind.* The label of distilled spirits shall state the brand name and kind, as set out in 27 CFR Part 5.

(b) *Alcohol content.* (1) *Mandatory statement.* The label of distilled spirits shall state the alcohol content in percent-alcohol-by-volume. Products such as "Rock and Rye" or similar products containing a significant amount of solid material shall state the alcohol content at the time of bottling as follows: "Bottled at _____ percent-alcohol-by-volume."

(2) *Optional statement.* In addition, the label may also state the alcohol content in degrees of proof if this information appears in direct conjunction (i.e. with no intervening material) with the statement expressed in percent-alcohol-by-volume. If both forms of alcohol content are shown, the optional statement in degrees of proof shall be placed in parentheses, in brackets, or otherwise distinguished from the mandatory statement in percent-alcohol-by-volume to emphasize the fact that both expressions of alcohol content mean the same thing.

(c) *State of distillation.* (1) *Mandatory statement.* If a whisky produced in the United States was not produced in the State shown on the label, the label shall show the State of distillation, except as provided by paragraph (c)(2) or (c)(3) of this section. The Director may, however, require the State of distillation to be shown on the label or permit such other labeling as may be necessary to preclude any misleading or deceptive impression which might otherwise be created as to the actual State of distillation.

(2) *Exceptions.* The State of distillation is not required to be shown on labels of "blended whisky", "a blend of straight whiskies", "spirit whisky", "light whisky", or "blended light whisky". The State of distillation may be prohibited on certain labels of "light whisky" or "blended light whisky", in accordance with paragraph (c)(3) of this section.

(3) *Prohibited statement.* The State of distillation may not be shown, except as part of the name and address required by 27 CFR 5.36(a), on labels of "light whisky" or "blended light whisky" produced in a State which the Director finds to be associated by consumers with an American type whisky.

Authority: Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5271).

9. Effective on October 10, 1988, § 19.750 is revised to read as follows:

§ 19.750 Records of alcohol content and fill tests.

(a) Proprietors shall record the results of all tests of alcohol content and quantity (fill) conducted.

(b) The record shall be maintained in a manner and provide information that will enable ATF officers to determine whether the proprietor has complied with the provisions of § 19.386 by:

(1) Monitoring operations by conducting alcohol content and fill tests; and

(2) Employing procedures to correct variations in alcohol content and fill.

(c) Alcohol content and fill test records shall contain, at a minimum, the following information:

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(1) Date and time of test;
(2) Bottling tank number;
(3) Serial number of bottling record;
(4) Bottling line designation;
(5) Size of bottle;
(6) Number of bottles tested;
(7) Labeled alcohol content;
(8) Alcohol content found by the test;
(9) Percentage of variation from 100 percent fill; and
(10) Corrective action taken, if any.

Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5555); Sec. 807(a), Pub. L. 99–39 (26 U.S.C. 5207).

Signed:
W.T. Drake,
Acting Director.
September 8, 1986.
Approved:
Francis A. Keating II,
Assistant Secretary (Enforcement).
September 26, 1986.
[FR Doc. 86–22888 Filed 10–6–86; 8:45 am]
BILLING CODE 4810–31–M

27 CFR Part 9

[T.D. ATF–240 Fin: Notice No. 585]

North Fork of Long Island Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule establishes a viticultural area known as the North Fork of Long Island, located in Suffolk County in eastern Long Island, New York. The viticultural area includes all of the land areas in the Townships of Riverhead, Shelter Island and Southold. The petition was submitted by a group of Long Island grape growers and bonded winery owners located within the boundaries of the viticultural area. ATF feels that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. It will also allow wineries to better designate the specific grape-growing area where their wines come from.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT:
Edward A. Reisman, ATF Specialist, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations also allow the name and location of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1) Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF was petitioned for the North Fork of Long Island viticultural area by the Long Island Grape Growers Association located in Riverhead, New York. Just across the bay (south) from the North Fork of Long Island viticultural area is The Hamptons, Long Island viticultural area. The area includes all of the land in the (South Fork) Townships of Southampton and East Hampton.

The North Fork of Long Island viticultural area consists of the Townships of Riverhead, Shelter Island and Southold (including all mainland and island areas). The total area of this viticultural area consists of 158.5 square miles or 101,440 acres of land. There are 5 bonded wineries operating within the viticultural area.

The basis for approval of this viticultural area was supported by the following evidence that was submitted by the petitioner:

Evidence of Name

The name North Fork is locally used to describe the land area on the North Shore of Long Island beginning at Riverhead Township and extending east for approximately 40 miles to Orient Point. This description is supported by many publications, businesses, and landmarks which use the name North Fork to distinguish this region from the rest of Long Island.

Evidence of Boundaries

The geographic area of the North Fork, although attached to a larger island, is a peninsula. This is due to the fact that three of its boundaries are surrounded by water; the Long Island Sound to the north, the Peconic Bay to the south, and the Atlantic Ocean to the east. The western boundary is the 6.5 mile long boundary, line separating Brookhaven and Riverhead Townships. The North Fork is 6 miles wide at its widest point and less than .5 mile wide at its narrowest point. The townships of Riverhead (78 square miles), Shelter Island (11.5 square miles) and Southold (69 square miles) make up the total area of the viticultural area. Shelter Island, although a separate land area from the mainland of Long Island, was included in the boundaries of the North Fork of Long Island viticultural area because of its immediate proximity to the mainland. Also, another reason for its inclusion in the viticultural area is because it is composed of soil associations and climate conditions similar to those on the North Fork of Long Island.

The boundaries of the "North Fork of Long Island" viticultural area may be found on five U.S.G.S. maps. Having verified the boundaries, ATF agrees that they meet the requirements for approval of the "North Fork of Long Island" as an American viticultural area.

Area History

The petitioner provided documentation that grape growing and limited wine production on the North Fork dates back to the settlement of the area. But more noteworthy, it was not until recent years that there have been commercial vineyards on the North Fork of Long Island, some of which are vinifera bearing. The total grape acreage on the North Fork is approximately 1000 acres, with more plantings scheduled for the future.

Evidence of Geographical Characteristics

Climate

The major distinct geographical characteristic of the North Fork when comparing it with the surrounding area is its climate. More specifically, it is the sea that surrounds the North Fork which makes it a distinct grape growing area. The surrounding waters render the viticultural area more temperate than many other places in the same latitude in the interior. The viticultural area is regularly fanned by a breeze coming off the surrounding waters. The air modulates the heat in the summer and the cold in the winter.

The climate classification of the North Fork is "humid continental." The North Fork climate is greatly influenced by the Atlantic Ocean. The ocean breezes over the viticultural area extend the period of freeze-free temperatures, reduce the range of daily and annual temperatures, and increase the amount of winter precipitation relative to summer.

Although the North and South Forks of Long Island are relatively close together, there are many climatic differences which exist between these two areas. These differences are due to the unique topography of the eastern end of Long Island and the relationship of the two forks to the Atlantic Ocean and the Long Island Sound.

The single most important difference between the North Fork and South Fork is the number of days between the spring and fall frosts. In data taken from local weather stations, for the period 1973–1983, the growing season averages 195 days at Riverhead (North Fork), 201 days at Greenport (North Fork) and 188 days at Bridgehampton (South Fork). In 7 out of 11 years recorded, there was anywhere from 1 to over 3 weeks longer growing season on the North Fork as compared to the South Fork.

The climate on the rest of Long Island is also significantly different from the climate of the North Fork. The following data shows the differences in growing seasons that can occur from eastern Long Island to New York City.

Days of Growing Season 1973–1982 Averages

Riverhead (North Fork)	194
Bridgehampton (South Fork)	184
Brookhaven Lab (10 miles west of North Fork)	182
Patchogue (20 miles southwest of North Fork)	177
Mineola (50 miles west of North Fork)	208
Central Park NYC (60 miles west of North Fork)	222

The Long Island Sound, Atlantic Ocean, and bay areas are the main reasons for the North Fork's buffered climate. As the forks merge into the main body of Long Island, the effect of these waters is greatly diminished, especially with southwest winds prevailing. This is evident in the previous data for both Brookhaven and Patchogue. Brookhaven, located 10 miles west of the North Fork, can have as much as 50 days less growing season than Riverhead. Patchogue (located on the south shore about 20 miles from the North Fork) can also be seen to be as much as 45 days less, with most seasons being around 1–2 weeks less than Riverhead. The data given for Mineola (a large suburban area in Nassau County about 50 miles west) and Central Park-New York City (located 60 miles west), show the increasing effect of the buffering ocean winds as the western end of the island begins to narrow once again. A great deal of the effect as well, is due to the great amount of industrial warmth supplied from what is mostly an urban area.

Soils

The second distinctive characteristic of the North Fork is its soils. The North Fork has distinctly different soil types than the South Fork (The Hamptons). The difference in soil types begins north of the Peconic River and continues eastward toward Orient Point. The major soil types are found on the North Fork as follows:

1. *Carver-Plymouth-Riverhead Association.*
2. *Haven-Riverhead Association.*
3. *Montauk-Haven-Riverhead Association.*

The soils of the South Fork (The Hamptons), on the other hand, are somewhat different, and many more associations are present:

1. *Plymouth-Carver Association.*
2. *Bridgehampton-Haven Association.*
3. *Montauk-Montauk, Sandy Variant-Bridgehampton Association.*
4. *Montauk, Sandy Variant-Plymouth Association.*
5. *Montauk-Haven-Riverhead Association.*

The remainder of the soils on the South Fork consist of the Dune Land-Tidal Marsh-Beach Association, which make up the beach and marshland areas. At the Town of Brookhaven/Riverhead boundary line where the forks meet, there is still some slight separation of the different soils associations. Westward from here and into New York City, the soil associations become even more foreign to those found on the eastern end of Long Island. While various soil types found in western Long Island may be similar to those found on the North Fork, the encroachment of suburban development and industry on Long Island has made commercial agriculture and land available for it, almost nonexistant in the townships west of Brookhaven.

In general, the soils of the North Fork contain a smaller percentage of silt and loam than the soils found on the South Fork (The Hamptons). This accounts for the fact that South Fork soils have a greater water-holding capacity than North Fork soils and they require less irrigation. The soils of the North Fork are also generally slightly higher in natural fertility than the soils of the South Fork.

Based on the previous evidence, ATF agrees that one of the major geographical features of the North Fork is its distinct soils, which are different from soils of the surrounding area.

Discussion of Comments

On March 21, 1986, Notice No. 585 was published in the Federal Register with a 45-day comment period. In that notice ATF invited comments from all interested parties regarding the proposal to establish "The North Fork of Long Island" viticultural area. No comments were received from the public during the comment period.

Conclusion

To summarize, it is important that the specific grape growing areas of Long Island be recognized and set apart from one another in order to maintain individuality and also to inform the consumer. The evidence presented in the petition and the notice of proposed rulemaking supports the fact that the North Fork of Long Island region has within its boundaries distinct and unique grape growing conditions which entitle it to be a separate American viticultural area.

On the basis of the evidence provided by the petitioner, ATF finds "The North Fork of Long Island" viticultural area to be a delimited grape growing region distinguishable by geographical features.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the proposal is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance

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burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact or impose compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this final rule is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR. Part 1320, do not apply to this final rule because no requirement to collect information is proposed.

Miscellaneous

ATF does not wish to give the impression by approving "The North Fork of Long Island" as a viticultural area that it is approving or endorsing the quality of the wine derived from this area. ATF is approving this area as being distinct and not better than other areas. By approving this area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from "The North Fork of Long Island."

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Viticultural areas, Consumer protection, Wine.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.113 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.113 North Fork of Long Island.

Par. 3. Subpart C, is amended by adding § 9.113 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.113 North Fork of Long Island.

(a) *Name.* The name of the viticultural area described in this section is "North Fork of Long Island."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the "North Fork of Long Island" viticultural area are 5 U.S.G.S. maps. They are entitled:

(1) Wading River, N.Y., 7.5 minute series, scaled at 1:24,000 edition of 1967.

(2) Riverhead, N.Y., 7.5 minute series, scaled at 1:24,000, edition of 1956.

(3) New York, N.Y.; N.J.; Conn., U.S., 1:250,000 series, scaled at 1:250,000, edition of 1960, revised 1979.

(4) Providence, R.I.; Mass.; Conn., N.Y., U.S., 1:250,000 series, scaled at 1:250,000, edition of 1947, revised 1969.

(5) Hartford, Conn.; N.Y.; N.J.; Mass., U.S., 1:250,000 series, scaled at 1,250,000, edition of 1962, revised 1975.

(c) *Boundaries.* The boundaries of the proposed viticultural area are as follows: The North Fork of Long Island viticultural area is located entirely within eastern Suffolk County, Long Island, New York. The viticultural area boundaries consist of all of the land areas of the North Fork of Long Island, New York, including all of the mainland, shorelines and islands in the Townships of Riverhead, Shelter Island, and Southold.

(1) The point of beginning is on the Wading River, N.Y., 7.5 minute series, U.S.G.S. map at the northern boundary of the Brookhaven/Riverhead Township line on the Long Island Sound (approximately 500 feet east of the mouth of the Wading River);

(2) The boundary goes south on the Brookhaven/Riverhead Town line for approximately 6.5 miles until it meets the Peconic River approximately 1 mile east of U.S. Reservation Brookhaven National Laboratory;

(3) Then the boundary travels east on the Peconic River (Brookhaven/Riverhead Town line) for 2.7 miles until it meets the Riverhead/Southampton Township line on the Riverhead, N.Y., U.S.G.S. map;

(4) It then goes east on the Riverhead/Southampton Township line for 4.2 miles until it reaches an area where the Peconic River widens north of Flanders;

(5) Then the boundary proceeds east to Orient Point then west along the shoreline, beaches, islands, and mainland areas of the North Fork of Long Island, described on the "New York," "Providence," and "Hartford" U.S.G.S. maps until it reaches the Brookhaven/Riverhead Township line at the point of beginning. These boundaries consist of all the land (and isolated islands including without limitation, Wicopesset Island, Robins Island, Fishers Island, Great Gull Island, Plum Island, and Shelter Island) in the Townships of Riverhead, Shelter Island, and Southold.

Signed: September 10, 1986.

Stephen E. Higgins,

Director.

Approved: September 23, 1986.

Michael H. Lane,

Deputy Assistant Secretary, Regulatory, Trade and Tariff Enforcement.

[FR Doc. 86-22986 Filed 10-9-86; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[T.D. ATF-238; Ref. Notice No. 593]

Bell Mountain Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has decided to establish a viticultural area in Texas to be known as "Bell Mountain." This decision is the result of a petition submitted by Mr. Robert P. Oberhelman, a grape grower in the area. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

ATF received a petition from Mr. Robert P. Oberhelman, president of Oberhellmann Vineyards, proposing an area in Gillespie County, Texas, as a viticultural area to be known as "Bell Mountain." The area contains about 5 square miles and is located along the southern and southwestern slopes of Bell Mountain, about 15 miles north of Fredericksburg, Texas. The area's winegrape acreage consists of about 45 acres on two vineyards. There is one bonded winery operating within the area.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 593, in the Federal Register on Tuesday, June 3, 1986 (51 FR 19854). That notice proposed establishment of the "Bell Mountain" viticultural area and solicited public comment concerning the proposal.

No comments have been received. Therefore, this document establishes the "Bell Mountain" viticultural area without change from the proposal in Notice No. 593.

Name of the Area

The following evidence, submitted by the petitioner, establishes that the new viticultural area is known by the name of "Bell Mountain":

(a) The mountain on which the viticultural area is located was first given the name "Bell Mountain" by early settlers of the area in the mid nineteenth century.

(b) The mountain has been labeled with this name on maps of the U.S. Geological Service since 1885, when the first such map was published for the area. At an elevation of 1,956 feet, Bell Mountain is the highest point in the local area.

Geography of the Area

The following evidence shows that the new viticultural area is distinguished geographically from the surrounding areas:

(a) To the north and northeast, the area is distinguished by the steepness of the mountain slopes outside the boundaries of the area. Further, soil conditions outside the area preclude viticulture on those other slopes of Bell Mountain. The petition states: "The granite protrudes through the ground surface profusely on the Peak's northern slope, therefore making tillage impossible. For this reason, only the slopes to the south and southwest are included in the boundary of the proposed Viticultural Area."

(b) In other directions, the viticultural area is distinguished by soil types and by the topographical limits of the slopes of Bell Mountain. With respect to soil, the petition states as follows:

The soils within the boundaries of the proposed Viticultural Area are identified on the map as "pp-Pedernales-Pontotoc Association". The description reads "Non-Calcareous, sandy, loam soils, with light sandy clay subsoil. Udic Palenstalfs; Typic Rhodustalfs". These soils are unique in the general area referred to as the "Hill Country" or the Edwards Plateau in that they are slightly acid, whereas most of the soils are calcareous, or lime-bearing.

In support of this statement, the petitioner submitted a copy of a soil map from the book, *Eastern Hill Country Resource Conservation & Development Project*, published by the U.S. Department of Agriculture in 1966. This map shows that the proposed viticultural area boundaries correspond approximately to the limits of the area with soils of the Pedernales-Pontotoc Association. This is the only occurrence of these soils shown anywhere on that map.

(c) In addition, the petition states that "The area is drier than the Pedernales valley to its south and the Llano valley to its north. It is also cooler due to its elevation, and constant breezes."

Boundaries of the Area

The boundaries of the "Bell Mountain" viticultural area may be found on one U.S.G.S. map of the 7.5 minute series, titled Willow City Quadrangle. The boundaries are described in new § 9.55, as added by this Treasury decision.

Miscellaneous

ATF does not want to give the impression by approving "Bell Mountain" as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct but not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "Bell Mountain" wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this final rule is not a major rule, since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule, because no

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requirement to collect information is imposed.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is Mr. Steve Simon of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.55, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.55 Bell Mountain.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.55, which reads as follows:

§ 9.55 Bell Mountain.

(a) *Name.* The name of the viticultural area described in this section is "Bell Mountain."

(b) *Approved map.* The appropriate map for determining the boundaries of the Bell Mountain viticultural area is one U.S.G.S. map, titled: Willow City Quadrangle, 7.5 minute series, 1967.

(c) *Boundary*—(1) *General.* The Bell Mountain viticultural area is located in Gillespie County, Texas. The starting point of the following boundary description is the summit of Bell Mountain (1,956 feet).

(2) *Boundary Description*—(i) From the starting point, the boundary proceeds due southward for exactly one half mile;

(ii) Then southeastward in a straight line to the intersection of Willow City Loop Road with an unnamed unimproved road, where marked with an elevation of 1,773 feet;

(iii) Then generally southward along Willow City Loop Road (a light-duty road) to Willow City.

(iv) Then continuing southward and westward along the same light-duty road to the intersection having an elevation of 1,684 feet;

(v) Then continuing westward along the light-duty road to the intersection having an elevation of 1,702 feet;

(vi) Then turning southward along the light-duty road to the intersection having an elevation of 1,736 feet;

(vii) Then turning westward along the light-duty road to the intersection having an elevation of 1,784 feet;

(viii) Then turning southward and then westward, following the light-duty road to its intersection with Texas Highway 16, where marked with an elevation of 1,792 feet;

(ix) Then due westward to the longitude line 98° 45';

(x) Then northward along that longitude line to a point due west of an unnamed peak with an elevation of 1,784 feet;

(xi) Then due eastward to the summit of that unnamed peak;

(xii) Then in a straight line eastward to the intersection of an unnamed unimproved road with Texas Highway 16, where marked with an elevation of 1,822 feet;

(xiii) Then following that unnamed road, taking the right-hand fork at an intersection, to a point due west of the summit of Bell Mountain;

(xiv) Then due eastward to the summit of Bell Mountain.

Signed: September 11, 1986.

Stephen E. Higgins,

Director.

Approved: September 23, 1986.

Michael H. Lane,

Deputy Assistant Secretary, Regulatory, Trade, and Tariff Enforcement.

[FR Doc 86-22967 Filed 10-9-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS CAYUGA (LST 1186) and USS BOULDER (LST 1190) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval tank landing ships. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 26, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS CAYUGA (LST 1186) and USS BOULDER (LST 1190) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with their special function as Navy ships. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following Navy ships to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec.2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(ii)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than one-half ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS CAYUGA	LST 1186	N/A	N/A	N/A	N/A	N/A	N/A	X	89
USS BOULDER	LST 1190	N/A	N/A	N/A	N/A	N/A	N/A	X	89

Dated: September 26, 1986.

John Lehman,

Secretary of the Navy.

[FR Doc. 86-23000 Filed 10-9-86; 8:45 am]

BILLING CODE 3810-AE-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-231]

Radio Broadcasting; Availability of FM Broadcast Assignments

AGENCY: Federal Communications Commission.

ACTION: Disposition of petitions for reconsideration.

SUMMARY: This action disposes of 23 of 28 petitions for reconsideration and/or applications for review directed against the *Memorandum Opinion and Order*, published on November 18, 1985 (50 FR 47391) in MM Docket No. 84-231 (the omnibus proceeding). In that *Memorandum Opinion and Order*, the Commission stated that petitions for rule making proposing substitute channels for the omnibus allotments would not be favorably entertained in the absence of a showing of compelling need or Commission error. The petitioners contend that the compelling need requirement is inconsistent with section 307(b) of the Act and was adopted in contravention of the Administrative Procedure Act. In addition, this action addresses several individual petitions concerning such things as "community" status of Semora, North Carolina and petitions by Station KTLE, Tooele, Utah and by Station WGGQ, Waupun, Wisconsin alleging compelling need for a change in channels.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 84-231, adopted August 25, 1986, and released September 10, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Memorandum Opinion and Order

1. October 28, 1985, the Commission adopted the *Memorandum Opinion and Order* (50 FR 47391; November 18, 1985) concerning 57 separate petitions for reconsideration directed against the *First Report and Order* (50 FR 3514, January 25, 1985) in MM Docket No. 84-231. The majority of pleadings in the present proceeding concerned the compelling need standard set forth in that *Memorandum Opinion and Order* and the fact that an upgrade in station class would not constitute a compelling need.

2. The compelling need standard, in effect, will require some petitioners to postpone the filing of their petitions for rule making. It is a procedural rather than a substantive requirement. As such, the Commission is not required to provide the notice and opportunity for public comment under the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(A). The Commission also stated that its desire for an efficient and expeditious implementation of the new FM technical standards in Docket 80-90 cannot overide section 307(b) of the Act. In this connection, the Commission observed that the omnibus proceeding was designed to further section 307(b) objectives and that a postponement of the filing of certain petitions for rule making does not contravene section 307(b). Finally, the Commission determined its objections to the routine substitution of channels allocated in this proceeding would no longer apply with respect to those channels for which the filing window is closed as long as the new channel to be substituted meets the site proposed in all pending applications for the existing channel.

3. The Commission also upheld the allotment at Semora, North Carolina finding that it has sufficient governmental, social and business indicia to qualify as a "community" for allocation purposes. Finally, the Commission determined that the availability of other broadcast services obviates a finding of compelling need for channel upgrades at Station KTLE, Tooele, Utah and Station WGGQ, Waupun, Wisconsin. These findings are set forth in Appendix B along with other miscellaneous rulings. Appendix A sets forth those parties filing pleadings treated as reconsiderations. Five pleadings not mentioned in Appendix A will be treated in a *Second Further Notice of Proposed Rule Making* in this Docket concerning Pensacola, Florida. Note: Appendices A and B are not published herein but are included in the full text of the *Memorandum Opinion and Order*.

4. Accordingly, it is ordered that the petitions directed against the *Memorandum Opinion and Order* are granted to the extent indicated above and in the Appendices and denied in all other respects.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-23005 Filed 10-9-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 635

Public Hearing Requirements for Service Changes and Fare Changes

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule; interpretative amendment.

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SUMMARY: The Urban Mass Transportation Administration is amending its rule on Public Hearing Requirements for Service Changes and Fare Changes to clarify the public hearing requirements of section 5(i)(3) of the Urban Mass Transportation Act of 1964, as amended. These requirements will no longer apply whenever the recipient of funds under the Act has certified it will comply with section 9(e)(3)(H) of the Act or where the recipient is in an area that is no longer an urbanized area.

DATE: This Notice is effective on October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Jocelyn Karp, Office of Chief Counsel, (202) 366–1936.

SUPPLEMENTARY INFORMATION: The phasing out of the section 5 urban formula grant program will be completed on September 30, 1986. As recipients of Federal assistance under the Urban Mass Transportation Act of 1964, as amended, have prepared for the completion of this phaseout, questions have arisen about the continued applicability of the requirements of section 5(i)(3) of the Act. To resolve these questions, the Urban Mass Transportation Administration is clarifying the application of the requirements of section 5(i)(3) of the Act.

Legislative History

Section 5 of the Urban Mass Transportation Act of 1964, as amended (UMT Act), authorizes the Secretary of Transportation to make grants for construction of mass transportation projects or for operating assistance to mass transportation systems in urbanized areas. Funds are made available under section 5 pursuant to a legislative formula. Subsection (i) requires that the Governor or the designated recipient of funding under section 5 certify to the Secretary that he or it has conducted public hearings, or afforded the opportunity for such hearings, and that the hearings included or were scheduled to include consideration of issues specified under the subsection. The Secretary's authority under the UMT Act has been delegated to the Administrator of the Urban Mass Transportation Administration.

Paragraph (3) of subsection 5(i) was added to the UMT Act by an amendment to the Surface Transportation Assistance Act of 1978, Pub. L. 95–599. The provision requires that any section 5 applicant submit, along with its public hearing certification:

> . . . assurances satisfactory to the Secretary that any public mass transportation system receiving financial assistance under such project will not change any fare and will not substantially change any service except (A) after having held public hearings or having afforded an adequate opportunity for such hearings, after adequate public notice, (B) after having given proper consideration to views and comments expressed in such hearings, and (C) after having given consideration to the effect on energy conservation, and the economic, environmental, and social impact of the change in such fare or such service.

The provision applied to any "mass transit system funded under section 5 of the UMT Act for which a general fare increase or substantial change in service [was] made after [the effective date of the legislation]." 44 FR 41272 (July 16, 1979). It applied to any recipient of section 5 assistance, capital or operating. 45 FR 28298 (April 17, 1980).

In its reauthorizing proposals in 1981 and 1982, the Administration proposed to amend section 5(i)(3) to read as follows:

> (3) Assurances satisfactory to the Secretary that any public mass transportation system receiving operating assistance under this section has a locally developed process to solicit and consider public comment prior to raising fares or reducing transit service.

This amendment would have continued the requirement of a public comment process, but that public comment process could have been locally determined. The amended section would only have been a condition of assistance for operating assistance grants. Neither the Administration's 1981 nor its 1982 authorizing proposal was accepted.

The core of the Administration's proposed fare and service change provision, without its limitation to operating assistance, was included in the conference agreement on the Surface Transportation Assistance Act of 1982 as part of the new section 9 urban formula assistance program. Thus, section 9(e)(3)(H) of the UMT Act requires that a recipient, as a condition of receiving funds under section 9, certify that it "has a locally developed process to solicit and consider public comment prior to raising fares or implementing a major reduction of transit service."

Discussion of Applicability of Section 5(i)(3)

The original intent of section 5(i)(3) was that by accepting section 5 funds, the recipient promised to abide by section 5(i)(3) in the future. The enactment of the section 9 program militates against the continued application of section 5(i)(3) requirements as originally intended. It is clear from the legislative history that section 9 was intended to supersede section 5. Moreover, the legislative history of section 9(e)(3)(H), which specifically relates to public comment on fare and service changes, establishes that this provision is the successor to section 5(i)(3). In other words, the requirements of section 9(e)(3)(H) were intended to take the place of the section 5(i)(3) requirements.

Therefore, once a recipient has certified that it will meet the requirements of section 9(e)(3)(H), it need not meet the requirements of section 5(i)(3). Otherwise, the section 5 fare and service change requirements would conflict with those of section 9. It should be noted that since section 9(e)(3)(H) allows the recipient to develop a process locally to receive and consider comments on fare changes and major service reductions, a recipient is free to hold hearings as contemplated by section 5(i)(3) should it choose to do so.

Because section 5(i)(3) applied to the urban formula grant program, it would be extending the reach of the provision and would be inconsistent with section 18, which authorizes the nonurbanized area formula assistance program, to apply the section 5(i)(3) requirements to a recipient that is in an area that no longer is an urbanized area. Therefore, where the recipient received section 5 funds after the enactment of section 5(i)(3), but is in an area that no longer is an urbanized area (and thus has not made the section 9 certification), the section 5(i)(3) requirements do not apply.

Notice and Comment

This amendment is interpretative; it merely clarifies the application of section 5(i)(3) to the UMTA grant program. Under section 553(b) of the Administrative Procedure Act, notice and comment are not necessary.

Effective Date

As noted above, before the enactment of the Surface Transportation Assistance Act of 1982, certification under section 5(i)(3) was interpreted as a promise to comply with those hearing requirements during the life of the project. However, the 5(i)(3) hearing requirements are different from those of section 9(e)(3)(H), the section that superseded section 5(i)(3). It is imperative that recipients be clear on which hearing requirements they must follow for fare and service changes. This amendment will clarify when recipients are no longer required to follow section 5(i)(3) requirements. Therefore, there is good cause under section 553(d) of the Administrative Procedure Act to make this amendment effective immediately upon publication.

Regulatory Impacts

The Administrator of UMTA has determined that this amendment does not constitute a major rule as defined by Executive Order 12291, nor is it a significant rulemaking action under the Department of Transportation regulatory policies and procedures.

Paperwork Reduction Act

The amendment does not impose any information collection requirements beyond those already in place for section 9. The section 9 information collection requirements have already been approved (OMB control number 2132–0502) under the Paperwork Reduction Act (Pub. L. 96–511, 94 Stat. 2812). Therefore, this amendment is not subject to section 2(a) of the Paperwork Reduction Act.

List of Subjects in 49 CFR Part 635

Grant programs—transportation, Public hearings, Mass transportation.

PART 49—[AMENDED]

In consideration of the foregoing, Chapter VI of Title 49, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 635 continues to read as follows:

> **Authority:** 49 U.S.C. 1604(i)(3); sec. 5(i)(3) of the Mass Transportation Act of 1964, as amended; 49 CFR 1.51.

2. Section 635.3 is amended by revising paragraph (c) to read as follows:

§ 635.3 Assurances.

* * * * *

(c) Each recipient must abide by the terms and conditions stated in the assurance, until the recipient either submits a certification under section 9(e)(3)(H) of the Act or is in an area that no longer is an urbanized area.

(Catalog of Federal Domestic Assistance Program Numbers: 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants; 20.509, Public Transportation for Rural and Small Urban Areas).

Issued on: October 3, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 86–22785 Filed 10–9–86; 8:45 am]

BILLING CODE 4910–57–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1011

Delegation of Authority to the Revocation Board

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; Notice of enforcement policy.

SUMMARY: The Commission intends to exercise its authority under 49 U.S.C. 10925 (b)(1), (c)(1) and (c)(3) to revoke the certificate, permit or license of a motor carrier, broker or freight forwarder (after due notification) for failure to pay the proper application fee, as required by 49 CFR 1160.9(a). Allowing such carriers to reap the benefits of continued operation without having paid the required fees is not only unfair to those carriers and brokers who have paid the required fee, it is also in violation of our regulation under 49 CFR 1160.9(a) which requires the filing of such applications "with the proper application fee." The Commission has determined that uncontested proceedings involving filing fees can best be processed by the Revocation Board and, pursuant to 49 U.S.C. 10305, is delegating that responsibility to the Board. Appropriate revisions in the Code of Federal Regulations will be made to reflect the delegation.

EFFECTIVE DATE: This decision is effective on November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Heber P. Hardy, (202) 275–7148 or John W. Fristoe, (202) 275–7844

SUPPLEMENTARY INFORMATION: Since 1981, about $40,000 has been lost to the U.S. Treasury because numerous motor carriers and brokers paid the application filing fee for their operating authority (or a portion thereof) with a check that was not honored by the bank, when presented for payment. Subsequent efforts at collection have not been successful.

Allowing such carriers to reap the benefits of continued operation without having paid the required fees is not only unfair to those carriers and brokers who have paid the required fee, it is also in violation of our regulation under 49 CFR 1160.9(a) which requires the filing of such applications "with the proper application fee."

The Commission has the authority under 49 U.S.C. 10925 to suspend, amend, or revoke the operating authority of carriers (subject to the due process requirements specified there) for failure to comply with the Act, a regulation or order of the Commission, or a condition of its certificate or permit, or license. The Commission hereby announces that it intends to exercise that authority to revoke or suspend certificates when carriers willfully fail to comply with our orders to pay the fees.

We have determined that uncontested proceedings involving filing fees can be processed most efficiently by the Office of Compliance and Consumer Assistance, Revocation Board. If carriers or brokers do not respond to an order requiring payment of the fees, the Revocation Board will be authorized to suspend or revoke the certificate, permit or license. Under 49 U.S.C. 10305, we delegate that responsibility to the Board and revise the regulations at 49 CFR 1011.6(b)(4), as set forth in the Appendix, to reflect this action. Because the rule revisions only affect internal Commission procedures they are issued here in final form. Public comment is not required. 5 U.S.C. 553(b)(A).

This action does not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure.

Dated: October 1, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

Part 1011 of Title 49 of the CFR is amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for Part 1011 continues to read as follows:

> **Authority:** 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Paragraph (b)(4) of § 1011.6 is revised to read as follows:

§ 1011.6 Employee Boards and Division of the Commission.

* * * * *

(b) * * *

(4) Entry of show cause orders under sections 11701 and 10925 (b)(1), (c)(1), and (c)(3) directed to motor carriers, brokers, water carriers, and freight forwarders who have failed to submit the proper application fee or to file required annual reports; determination of uncontested motor carrier, broker,

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water carrier, and freight forwarder, suspension, change or revocation proceeding under section 49 U.S.C. 10925 of the Act, which have not involved taking testimony at a public hearing.

* * * * *

[FR Doc. 86-23060 Filed 10-9-86; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 60597-6097]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closures.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish optimum yield (OY) allocated to trawl gear in the Western Regulatory Area and the OY for Pacific ocean perch (POP) in the Eastern Regulatory Area of the Gulf of Alaska have been achieved. Closures of the fisheries to retention of these species are necessary to limit the trawl harvest of sablefish in the Western Regulatory Area and the harvest of POP in the Eastern Regulatory Areas, respectively, to the amounts that are permissible under Federal regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). These closures are management measures intended to allocate the sablefish resource between hook-and-line, trawl, and pot gear in the Western Regulatory Area, and to conserve the POP resource in the Eastern Regulatory Area.

DATES: Effective at noon (1200 hours), Alaska Daylight Time (ADT), October 7, 1986, until midnight (2400 hours), AST, December 31, 1986. Public comments are invited on this closure until October 22, 1986.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act) provides for inseason adjustments of fishing seasons and areas. Regulations at § 672.22(a) specify that these adjustments will be made by the Secretary of Commerce under procedures set out in that section.

Section 672.2 defines three regulatory areas in the Gulf of Alaska. Fishing in these regulatory areas for each of the groundfish species that are managed under the FMP is conducted until closed. The trawl fishery for sablefish in the Western Regulatory Area and the fishery for POP in the Eastern Regulatory Area are being closed under this notice.

Closure of the Sablefish Trawl Fishery

The OY for sablefish in the Western Regulatory Area is 2,850 metric tons (mt). Section 672.24(b)(2) of the regulations restricts the take of sablefish in this area by trawl gear to 20 percent of the OY, or 570 mt.

Although the fishing season began on January 1, 1986, actual fishing did not take place until the first week of March. Eight different trawl vessels have landed about 500 mt of sablefish through the third week of September. About 100 mt was caught during the second and third weeks of September. Two trawl vessels were still fishing through the last week of September. Based on current catch rates, an estimated 570 mt has been harvested. Therefore, since the quota has been reached, further retention of sablefish by vessels fishing with trawl gear after noon on October 7, 1986, is prohibited.

Closure of the POP Fishery

The OY for POP in the Eastern Regulatory Area is 875 mt. Section 672.20(f)(1) of the regulations requires the Secretary to prohibit retention of a species in a regulatory area when the Regional Director determines that the OY for that species has been or will be reached. Although the fishing season for POP began on January 1, 1986, actual fishing did not take place until the first week of May. Seven different trawl vessels have landed about 862 mt of POP through the third week of September. Two trawl vessels were still fishing through the last week of September. Based on current catch rates, an estimated 875 mt has been harvested. Since the OY has been reached, further retention of POP after noon on October 7, 1986, is prohibited.

Under § 672.20(f)(3), the Regional Director is allowing fishing for other groundfish species to continue, except sablefish for which fishing is closed throughout the Eastern Regulatory Area. In allowing other fisheries to continue, the Regional Director considered

(1) The risk of biological harm to POP stocks;

(2) The risk of socioeconomic harm to authorized users of POP; and

(3) The impact that a continued closure might have on the socioeconomic wellbeing of other domestic fisheries.

The Regional Director made these findings:

(1) No risk of biological harm to POP will result if additional fish are caught incidentally in other groundfish fisheries, because the additional amount of POP that would be caught is far short of the 4,400-mt midpoint in the equilibrium yield for POP in the Eastern Regulatory Area;

(2) No risk of socioeconomic harm to authorized users of the POP resource will result, because the amount of POP harvested is a small part of their catch and other groundfish species, including rockfish, are still available should the authorized users pursue them; and

(3) A continued closure will have no impact on the socioeconomic wellbeing of other domestic fisheries, since other species of fish, including shellfish, that are important in the domestic fisheries will not be significantly affected.

These closures will be effective when this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game under § 672.22(a). Public comments on this notice of closure may be submitted to the Regional Director at the address above for 15 days following its effective date. If comments are received, the necessity of this action will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this closure's continued effect, modifying it, or rescinding it.

Other Matters

Allocation of the sablefish resource between hook-and-line, trawl, and pot gear in the Western Regulatory Area as required by the FMP, and the continued health of both the sablefish and the POP resource will be jeopardized unless this closure takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and that its effective date should not be delayed.

This action is taken under the authority of §§ 672.20, 672.22, and 672.24 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: (16 U.S.C. 1801 *et seq.*)

Dated: October 7, 1986.

Carmen J. Blondin,
Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-23055 Filed 10-7-86; 4:30 pm]
BILLING CODE 3510-22-M

BEST COPY AVAILABLE

Proposed Rules

It is hereby agreed by and between [illegible] main information [illegible]

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Proposed Rules

Federal Register
Vol. 51, No. 197
Friday, October 10, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Docket No. R-0578]

Electronic Fund Transfers; Service-Provider Periodic Statements; Extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 8, 1986, the Board published proposed amendments to Regulation E—Electronic Fund Transfers (51 FR 28589). The comment period was scheduled to end October 10, 1986. In response to requests it has received, the Board has extended the comment period to December 12, 1986.

DATES: Comments must be received on or before December 12, 1986.

ADDRESS: Comments may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the guard station at the courtyard entrance to the Eccles Building (Attention: Mail Services), on 20th Street between Constitution Avenue an C Street, NW., Washington, DC between 8:45 a.m. and 5:15 p.m. weekdays. All material submitted should refer to Docket No. R-0578.

FOR FURTHER INFORMATION CONTACT: Gerald P. Hurst or John C. Wood, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667 or (202) 452–2412. For Telecommunications Device for the Deaf (TDD) users, contact: Earnestine Hill or Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION: On August 8, 1986, the Board published for comment proposed amendments to Regulation E (51 FR 28589). The proposed amendments relate to service-providing institutions, such as retailers, that offer electronic fund transfer (EFT) services by issuing to consumers debit cards, or other devices, for accessing checking or other deposit accounts. The proposal would amend Regulation E to:

(1) Eliminate the current requirement that service providers send periodic statements to consumers showing the EFTs made with the access devices;

(2) Require instead that service providers furnish the necessary information to the financial institutions holding the consumers' accounts for inclusion on the account-holding institutions' periodic statements; and

(3) Make other changes to ensure consumer protections and clarify the responsibilities of service providers and account-holding institutions.

Comment was requested on the proposal by October 10, 1986.

The Board has been asked to extend the comment period to provide interested parties time to present their views. In response to these requests, the Board is extending the comment period through December 12, 1986.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Elecronic fund transfers, Federal Reserve System, Penalties.

By order of the Board of Governors, acting through its Secretary under delegated authority, October 6, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–23063 Filed 10–9–86; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852 3158]

Viobin Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Monticello, Ill. manufacturer and seller of wheat germ oil products, as well as its Richmond, Va. parent company, from misrepresenting that their wheat germ oil products can help consumers improve endurance, stamina, vigor, or any aspect of athletic fitness, or that octacosanol, the active ingredient in its products, is in any way related to body reaction time, oxygen debt, or athletic performance. Additionally, respondents would be required to run corrective advertising for a specified period of time.

DATE: Comments will be received until December 9, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B–407, Brinley H. Williams, Washington, DC 20580. (202) 376–8720.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Wheat germ oil products, Trade practices .

Before Federal Trade Commission

In the Matter of Viobin Corp., a corporation.

[File No. 852 3158]

Agreement Containing consent order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Viobin Corporation, and it now appearing that Viobin Corporation, a corporation, and its parent corporation, A.H. Robins Company, Incorporated, hereinafter sometimes referred to as the companies, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated;

It is hereby agreed by and between Viobin Corporation and A.H. Robins Company, Incorporated, by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Viobin Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 226 Livingston Street, Monticello, Illinois.

A.H. Robins Company, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business at 1407 Cummings Drive, Richmond, Virginia.

2. The companies admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. The companies waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the companies, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the companies that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of §2.34 of the Commission's Rules, the Commission may, without further notice to the companies: (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the companies' addresses as stated in this agreement shall constitute service. The companies waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The companies have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be bound by its provisions and, specifically, required to file one or more compliance reports showing that they have fully complied with the order. The companies further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is Ordered that respondent Viobin Corporation, a corporation, its parent corporation, A.H. Robins Company, Incorporated, and all the other subsidiaries of A.H. Robins Company, Incorporated, their successors and assigns (hereinafter collectively "the companies"), and the companies' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Viobin Wheat Germ Oil, Prometabs, Prometol, or any other product of substantially similar composition or possessing substantially similar properties, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the product can help consumers improve endurance, stamina, vigor, reaction time, or any aspect of athletic fitness or performance.

B. Representing, directly or by implication, that octacosanol is related in any way to body reaction time, oxygen uptake, oxygen debt, or athletic fitness or performance.

II

It is further ordered, (1) That respondent Viobin Corporation, its successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, and (2) that A.H. Robins Company, Incorporated, its successors and assigns, and their officers, agents, representatives, and employees directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any wheat germ oil product or any product advertised as containing octacosanol, triacontanol, tetracosanol, or hexacosanol, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research or article, or any other scientific opinion or data.

III

A. It is further ordered that the companies and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, concerning any benefit to be derived from using any such product with respect to athletic performance, capability or endurance unless, at the time of such representation, the companies possess and rely upon reliable and competent evidence that substantiates each such representation of the type and quantum appropriate for the representation.

B. For the purpose of Part III A to the extent evidence consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant

any product advertised as containing

the agreement and proposed order or to

November 17, 1986, an outline of oral

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area, such evidence shall be "reliable and competent" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

IV

It is further ordered that respondent Viobin Corporation, its successors and assigns, and their officers, agents, representatives and employees:

A. Clearly and prominently disclose the following statement in each advertisement for Viobin Wheat Germ Oil, Prometabs and Prometol appearing in any magazine, any newspaper, or on any radio or television broadcast within one year of the date of service of this Order:

Our earlier studies of the effects of wheat germ oil and octacosanol on endurance, stamina and vigor, while following techniques accepted at the time, do not meet the criteria of modern testing and therefore we no longer claim that the use of wheat germ oil or octacosanol will improve endurance, stamina or vigor, or any aspect of athletic fitness or performance.

B. Shall within six (6) months of the date of service of this Order place in each of the print publications in which any advertisement for Viobin Wheat Germ Oil appeared during calendar year 1985 at least one advertisement, not less than 5" x 7-1/2" in size, that clearly and prominently discloses the statement set forth in Paragraph IV A.

V

It is further ordered that, for three years after the last date of dissemination of the representation, the companies and their officers, agents, representatives and employees, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies:

1. OF all materials that were relied upon in disseminating any representation covered by this Order.

2. Of all test reports, studies, surveys, or demonstrations in their possession or control or of which they have knowledge that contradict any representation made that is covered by this Order.

VI

It is further ordered that respondent Viobin Corporation notify the Commission at least thirty (30) days prior to any proposed change in respondent or its parent corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

VII

It is further ordered that the companies shall forthwith distribute a copy of this Order to each of their operating divisions and to all distributors of Viobin Wheat Germ Oil, Prometabs, Prometol or any other products of substantially similar composition.

VIII

It Is Further Ordered that respondent Viobin Corporation shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form of compliance with this Order.

IX

It Is Furthered Ordered that no provision of this Order shall be interpreted as precluding respondent from making statements or disclosures on its labels or labeling where those statements or disclosures are required by regulations promulgated by the Food and Drug Administration (FDA) or with statutes the FDA enforces.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted subject to final approval an agreement to a proposed consent order from Viobin Corporation (Viobin).

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertisements for Viobin's nutritional supplements that are wheat germ oil products which contain octacosanol as an active ingredient. Specifically, these products consist of cold-processed wheat germ oil in different forms, including Viobin Wheat Germ Oil (liquid), Prometol (capsules), and Prometabs (tablets).

The Commission's complaint in this matter charges Viobin with disseminating advertisements containing false and unsubstantiated representations regarding the effect of Viobin's wheat germ oil products on consumers' athletic fitness or performance. According to the complaint, advertisements for Viobin wheat germ oil products falsely claimed that the use of the products and the octacosanol contained in these products will improve consumers' endurance, stamina, total body reaction time, ability to overcome fatigue and overall athletic fitness or performance. The complaint alleges that the claims are, in fact, false and that Viobin wheat germ oil products and the ingredient octacosanol are not effective in improving athletic fitness or performance.

The complaint also alleges that the advertisements contained false representations that Viobin had a reasonable basis for the claims that its wheat germ oil products could improve various aspects of human physical performance or fitness when, in fact, Viobin had no reasonable basis for these representations.

The consent order contains provisions designed to remedy the advertising violations charged as well as to prevent both respondent and its parent corporation, A.H. Robins Company, Incorporated, from engaging in similar acts and practices in the future.

Part I of the consent order prohibits the respondent and its parent corporation from representing directly or indirectly that Viobin Wheat Germ Oil, Prometabs, Prometol or any other product of substantially similar composition can help consumers improve endurance, stamina, vigor, reaction time or any aspect of athletic fitness or that octacosanol is in any way related to body reaction time, oxygen uptake, oxygen debt or athletic fitness or performance.

Part II of the consent order requires the respondent and its parent corporation to cease misrepresenting the purpose, content, sample, reliability, results or conclusions of any scientific test, research, or article, or any other scientific opinion or data. The products covered under the terms of Part II with respect to Viobin are different from those covered with respect to its parent corporation. Part II(1) applies to respondent Viobin and product coverage extends to any product for personal or household use. Part II(2) applies to the parent corporation and coverage is limited to any wheat germ oil product or any product advertised as containing octacosanol or its related ingredients.

Part III of the consent order requires the respondent and its parent corporation to cease making any representations for any product for personal or household use concerning the benefits of such product with respect to athletic performance, capability or endurance to be derived from using such products unless the respondents possess and rely upon reliable and competent evidence that substantiates each such representation.

Part IV of the order is a corrective advertising provision under which Viobin must inform consumers that the benefits claimed for wheat germ oil products with respect to physical fitness are not supported by scientific evidence. Under its terms, respondent must include, in any advertising disseminated within one year of the date of service of this order, a statement that the earlier studies of the effects of wheat germ oil and octacosanol on endurance, stamina and vigor do not meet the criteria of modern testing and therefore Viobin no longer claims that such products will improve endurance, stamina and vigor. Furthermore, Part IV requires that, within six months of the date of service of this order, the respondent place at least one advertisement, containing the prescribed statement, in each publication in which Viobin Wheat Germ Oil advertisements appeared during the 1985 calendar year.

The order contains the standard provisions requiring retention of records supporting any advertising claims covered by this order (Part V) and notification to the Commission of changes in its corporate structure (Part VI). These standard provisions also require the dissemination of copies of the consent order, including dissemination to all distributors of Viobin Wheat Germ Oil, Prometabs and Prometol (Part VII), and the submission of a report to the Commission on compliance with the terms of the order (Part VIII).

Part IX of the order provides that the respondent is not precluded from making statements or disclosures on labels when such disclosures are required by Food and Drug Administration regulations.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-22985 Filed 10-9-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-3-86 or INTL-610-86]

Transfers of Property by U.S. Persons to Foreign Corporations; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposesd regulations relating to transfers of property by U.S. persons to foreign corporations.

DATES: The public hearing will be held on Monday, December 1, 1986, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Monday, November 17, 1986.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-3-86 or INTL-610-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 367 and 6038B of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Friday, May 16, 1986 (51 FR 17990).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Monday, November 17, 1986, an outline of oral statements to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

D. Kevin Dolan,

Associate Chief Counsel (International).

[FR Doc. 86-23024 Filed 10-9-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Bighorn Canyon National Recreation Area, Montana and Wyoming; Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule pertains to a special regulation concerning fishing within Bighorn Canyon National Recreation Area, Montana and Wyoming. The proposed special regulation will allow fishing methods which are authorized under applicable state law. A National Park Service General Regulation, effective April, 1984, prohibits fishing in fresh water in any manner other than by hook and line, with the rod or line being closely attended. That regulation is in conflict with Montana and Wyoming fishing regulations, which have been in effect since before Bighorn Canyon National Recreation Area was authorized in 1966. Therefore, the National Park Service is proposing a special regulation having the effect of relaxing the general regulation to allow certain fishing activities to continue at Bighorn Canyon National Recreation Area.

DATES: Written comments will be accepted through November 10, 1986.

ADDRESS: Comments should be addressed to: Superintendent, Bighorn

Canyon NRA, P.O. Box 458, Fort Smith,

Public Participation

List of Subjects in 36 CFR Part 7

ADDRESSES: Ten copies of written

design in which the design cannot exist

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Canyon NRA, P.O. Box 458, Fort Smith, Montana 59035.

FOR FURTHER INFORMATION CONTACT:
Richard L. Lake, Chief Ranger, Bighorn Canyon NRA, P.O. Box 458, Fort Smith, Montana 59035
or
Richard W. Hougham, District Ranger, Bighorn Canyon NRA, P.O. Box 487, Lovell, Wyoming 82431

SUPPLEMENTARY INFORMATION:

Background

National Park Service General Regulations (36 CFR 2.3(d)(1)), which became effective on April 30, 1984, prohibit "Fishing in fresh water in any manner other than by hook and line, with the rod or line being closely attended".

This regulation is in conflict with Montana and Wyoming fishing regulations which have been in effect since before Bighorn Canyon National Recreation Area was authorized in 1966, and for many years prior to its authorization.

Examples of conflicts include:

1. Montana law states, "All waters open to bow and arrow hunting and snagging of non-game fish. Non-game fish and turbot may be taken with rubber or spring propelled spears by persons swimming or submerged in all waters open to fishing".

2. Wyoming law states, "It is legal to take non-game fish by bow and arrow and by crossbow without a license or permit". "No person shall use a spear gun to take fish underwater without obtaining the proper fishing license and an underwater fishing license".

Congress's stated interest in the enabling legislation for Bighorn Canyon National Recreation Area was for the National Park Service to permit hunting and fishing on lands and waters within the recreation area in accordance with the appropriate laws of the United States and of the states of Montana and Wyoming.

The National Park Service has determined that allowing fishing at Bighorn Canyon National Recreation Area in accordance with methods permitted by the states of Montana and Wyoming would benefit the visitor and simplify fishing regulations and enforcement. This regulation is necessary to allow recreational taking of rough or non-game fish by traditional methods other than hook and line, i.e., underwater spear fishing and bow and arrow fishing. The National Park Service anticipates that this change will have a positive effect on the fishery exerting some control of increasing numbers of non-game fish.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

Drafting Information

The principal author of the rulemaking is Richard W. Hougham, Bighorn Canyon National Recreation Area, Lovell, Wyoming 82431.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Compliance with Other Laws

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291, and certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will contribute in some part to the tourism of communities in the vicinity of the recreation area by assuring the continued availability of the range of recreational activities that have been available to area users in the past.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. In section 7.92, by adding a new paragraph (c) to read as follows:

§ 7.92 Bighorn Canyon National Recreation Area.

* * * * *

(c) *Fishing.* Unless otherwise designated, fishing in any manner authorized under applicable state law is allowed.

Dated: September 19, 1986.

Susan Recce,
Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-23051 Filed 10-9-86; 8:45 am]
BILLING CODE 4310-70-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM86-4]

Notice of Inquiry; Copyrightability of Digitized Typefaces

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The Copyright Office of the Library of Congress has received applications to register claims to copyright in digitized information or material that represents typeface designs and is used to print texts. These claims present unique legal and policy issues regarding the nature of the alleged "works" and of the "authorship", if any, that is present in the typical digitized typeface. The Copyright Office seeks public comment about the copyrightability of digitized typeface apart from the uncopyrightable typeface design to assist the Office in establishing general registration practices or issuing regulations governing such registrations.

DATE: Comments should be received on or before December 9, 1986.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Under section 410(a) of the Copyright Act, title 17 of the United States Code, the Register of Copyrights determines whether the material submitted for registration "constitutes copyrightable subject matter and that the other legal and formal requirements" have been met before issuing a certificate of registration.

To be copyrightable, a work must constitute an "original work of authorship." 17 U.S.C. 102. The degree of original, creative effort required does not rise to the level of novelty, but neither does the copyright law protect merely trivial variations of public domain material. The courts have defined the necessary quantum of authorship using terms such as "a modicum," "a minimum," or "an appreciable amount" of original, creative expression.

The Copyright Office has received applications to register claims to copyright in material variously described as "data," "database", "computer program," "compilation of data," and typefont data set." The claims seek registration of elements comprising digitized versions of typeface designs. The regulations of the Copyright Office provide that "mere variations of typographic ornamentation [or] lettering" are not copyrightable. 37 CFR 202.1(a). *In Eltra Corp. v. Ringer*, 579 F.2d 294 (4th Cir. 1978), the Fourth Circuit upheld the Copyright Office's refusal to register a claim to copyright in typeface design on the ground of 37 CFR 202.10(c) (1978) [now codified in the Copyright Act in the definition of "pictorial, graphic, or sculptural works"]. That regulation prohibited, and the current Copyright Act now prohibits, copyright in useful articles, except to the extent the articles contain artistic features that are capable of existing separately and independently of the overall utilitarian shape. In the *Eltra* case the court held the regulation valid and correctly applied to deny copyright registration for typeface designs: "it is patent that typeface is an industrial design in which the design cannot exist independently and separately as a work of art." 579 F.2d at 298.

A typeface was defined in the 1976 House Report accompanying the Copyright Bill later enacted as—

> A set of letters, numbers, or other symbolic characters, whose forms are related by repeating design elements consistently applied in a notational system and are intended to be embodied in articles, whose intrinsic utilitarian function is for use in composing text or other cognizable combinations of characters. H.REP. 1476, 94th Cong., 2d Sess. 55 (1976).

The Report continued that the "Committee does not regard the design of typeface, as thus defined, to be a copyrightable 'pictorial, graphic, or sculptural work' within the meaning of this Bill . . . ." *Ibid.*

In the present set of applications, registration is purportedly sought for the encoded "information," if any, underlying digital typeface design—whether it is data, instructions, or a combination of both—which, it has been argued, is distinct from the noncopyrightable typeface. *See Eltra Corp.* v. Ringer, 579 F.2d 294 (4th Cir. 1978).

Digital typography, or the designing of typeface by a digitized process, has become a revolution in the printing industry. "The advantages of digital typography are substantial: Once letterforms are represented as discrete elements they can be efficiently encoded as discrete and distinguishable physical properties in any convenient medium, processed as bits of "data" or "instructions" by a computer, transmitted over great distances as pulses of current and decoded to reconstitute the letterforms for the person receiving the message. Indeed, once type is digitized it is effectively encoded in the binary language of the computer, and so the size, shape and subtler characteristics of letters can be readily modified by a computer program." Bigelow and Day, *Digital Typography*, Vol. 249 Sci. Am. p. 106 (Aug. 1983). This process of digitizing an analogue letterform and its subsequent decoding results in an approximation of the analogue letterform. The typeface "is made up of discrete elements. These elements can be line strokes, pixels, colors, shades of gray or any other graphic unit from which a letterform can be constructed." *Id.*

It is entirely unclear, however, where the human authorship, if any, lies in the creation of these underlying "data" or "instructions." Is it a literary work, a compilation, a computer program, or some hybrid of one or more of the above? Or, is the "database" devoid of any authorship, apart from the computer program used to create the typeface? The Copyright Act of 1976, 17 U.S.C. 101 *et seq.* (1976), defines a literary work as one "other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, films, tapes, disks, or words, in which they are embodied. 17 U.S.C. 101. A compilation, in turn, is "a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship." *Id.* Finally, a computer program "is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." *Id.*

The Copyright Office requests public comment on the general questions of the nature and extent of any copyrightable authorship in digitized typography, apart from the typeface design itself. Specifically, we seek comment on the following questions:

Questions

1. *Idea/Expression:*

(a) Is it possible to express in a variety of ways any instructions utilized in creating or reproducing the same digital typeface design? If so, discuss the nature and kind of technical or creative judgments that result in different instructions?

2. *Copyrightable Elements:*

(a) Apart from the uncopyrightable design of the typeface characters, what other elements of a digitized typeface comprise the "original work of authorship", if any, in which copyright could be claimed?

(b) What are the process(es) involved in the creation of the "original work of authorship," if any?

3. *Nature and Extent of Claim:*

(a) Where the copyright claim is described as a "computer program" or "typefont program:" Where and how does the "information" or "instructions" or "data" alleged to be represented by digitized typefaces fit into this frame of reference? Are they "computer programs" within the meaning of the section 101 definition? Do the instructions satisfy the copyright law standard and qualify as "original works of authorship," or are the instructions minimal and routine?

(b) Where the copyright claim is described as a "compilation of data," a "typefont database" or a "typefont data set":

(1) What are the elements of human

ADDRESS: Written comments should be

organizations themselves need this input

Department of Health and Human Services, with the approval of the

medicine and home health care would

Paperwork Reduction Act of 1980

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(1) What are the elements of human selection and/or arrangement, if any?

(2) Are the data predetermined by the ultimate shape of the typefont character or letter? If not, how significant is any subjective judgment involved in the choice of coordinates or other data?

4. If registration were made for the "data" or "instructions" used to form digitized typefaces, what form of deposit would be most appropriate to represent the alleged authorship?

5. *Terminology:*

(a) What do the following terms mean: "bitmap", "bytemap", "bit/bytemapping technique", "bit/bytemapping code?" Do these terms have similar meanings when they are used by the digital printing and microcomputer software industries?

[17 U.S.C. 410, 702]

List of Subjects in 37 CFR Part 202

Copyright Registration.

Dated: September 30, 1986.

Ralph Oman,

Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 86-22973 Filed 10-9-86; 8:45 am]

BILLING CODE 1410-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 36

Indian Health Services; Eligibility, Extension of Comment Period

AGENCY: Public Health Service, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Department of Health and Human Services (HHS) is extending the comment period on a proposal to revise the regulations governing who may receive health services from the Indian Health Service (IHS). The extension is being made because of great interest expressed in this proposal by affected individuals, Tribal governments and the Congress, and in response to a number of specific requests for additional time in order to accommodate previously scheduled meetings of tribes and Indian organizations. It is our desire that all interested parties have ample time to express their views on this proposal.

DATE: In order to assure consideration in the development of any final rule, written comments must be received on or before November 7, 1986.

ADDRESS: Written comments should be sent to Richard J. McCloskey, Indian Health Service, Room 6A–20, 5600 Fishers Lane, Rockville, Maryland, 20857. Comments received may be seen in the above office between 9:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, Indian Health Service, Room 6A–20, 5600 Fishers Lane, Rockville, Maryland, 20857, Telephone (301) 443–1116 (This is not a toll free number).

SUPPLEMENTARY INFORMATION: In the Federal Register of June 10, 1986 (51 FR 21118), HHS proposed to revise the regulations in 42 CFR Subparts A, B, and C which govern who may receive health services from IHS Under that proposal an eligible person would have to be: (1) A member of, or eligible for membership in, a Federally recognized tribe, (2) of one-quarter (¼) or more Indian or Alaska Native ancestry, and (3) reside within a designated health service delivery area. If the person is not a member of, or eligible for membership in, a federally recognized Indian tribe, then the person would have to be of one-half (½) or more Indian or Alaska Native ancestry, and reside within a designated health service delivery area.

Interested persons were given until October 8, 1986 to comment on the proposed rule. In addition, during this 120 day comment period, the IHS was to hold public meetings at selected locations throughout the country to receive comments on the proposal. Over 90 such meetings have been held.

A large number of public comments have been received and most meetings have been well attended. In addition, comments have been received from members of Congress, Congressional Committees, as well as State and local officials. All these are indicative of both intense interest and the controversial nature of portions of the proposal. Eligibility criteria for governmental programs are, by their nature, sensitive. This proposal is also complex in that it attempts to deal with conditions that vary widely across the country and proposes changes in regulations most of which have been in effect for almost 30 years. In addition, we have received a number of specific requests from Indian tribes and organizations that the comment period be extended to cover the time of meetings which had been scheduled long before the publication of the proposal. The Indian tribes and organizations have not only expressed their concern that their members have this opportunity to express their views but also that the Indian tribes or organizations themselves need this input to formulate their comments.

Therefore, interested persons may, on or before November 7, 1986, submit written comments on the proposed rule to the above address. Comments may be submitted after this date but, though we shall make every effort to consider such comments before any final determinations are made, no assurance can be given that they will be processed in time to be acted upon.

Approved: October 8, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Otis R. Bowen,

Secretary.

[FR Doc. 86-23086 Filed 10-8-86; 1:10 pm]

BILLING CODE 4160-15-M

42 CFR Part 57

Programs for the Training of Physician Assistants and Grants for Physician Assistant Training Programs

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would: (1) Amend the current regulatory definition of programs for the training of physician assistants in accordance with section 701(8) of the Public Health Service Act (the Act) (42 CFR Part 57, Subpart I), as amended by Pub. L. 99–129; and (2) amend the existing regulations governing the Grants for Physician Assistant Training Programs, authorized by section 783 of the Act (42 CFR Part 57, Subpart H) to add provisions to encourage efforts to attract, maintain and graduate minority and disadvantaged students.

DATE: Comments must be received no later than November 10, 1986.

ADDRESS: Written comments may be addressed to Thomas D. Hatch, Director, Bureau of Health Professions, Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Shirley L. Johnson, Deputy Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C25, 5600 Fishers Lane, Rockville, Maryland 20857; telephone 301 443–6190.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health,

Department of Health and Human Services, with the approval of the Secretary, proposes to amend Subpart I of 42 CFR Part 57 to implement changes in section 701(8) of the Act. The Health Professions Training Assistance Act of 1985, Pub. L. 99–129, amended section 701(8) by (a) substituting the term "primary health" for "health" to describe the type of care that graduates of physician assistant training programs must be capable of providing under the supervision of a physician, and (b) adding a requirement that physician assistant programs train students in primary care, disease prevention, health promotion, geriatric medicine, and home health care. The statute further directs the Secretary to consult with appropriate organizations and then promulgate regulations to implement the amendments. The American Medical Association, American Academy of Physician Assistants and the Association of Physician Assistant Programs provided comments to the Public Health Service in the development of the proposed new definitions.

The Department also proposes to amend the existing regulations governing the Grants for Physician Assistant Training Programs authorized under section 783 of the Act and codified at 42 CFR Part 57, Subpart H. This amendment is necessary to provide an added emphasis on the national need to train more minority and disadvantaged students. A discussion of the proposed regulatory amendments follows.

Subpart I.

Paragraph (a)(1) of § 57.803, "*Requirements.*", would be revised to specify that a program must be accredited as an Educational Program for the Physician Assistant. This is in response to the statutory amendment changing the term "health" care to "primary health" care in the definition of a program for the training of physician assistants. A program for the training of physician assistants must now have primary care as its training objective. Accreditation as an Educational Program for the Physician Assistant would require a program to provide training specifically in primary care activities. This accreditation requirement would eliminate other types of programs, such as surgeon's assistant training programs, which can presently receive grants for physician assistant training programs.

The statutory requirement for physician assistant programs to train students in primary care, disease prevention, health promotion, geriatric medicine and home health care would also be incorporated as a new requirement in § 57.803(f). Definitions for disease prevention, geriatric medicine, health promotion and home health care are proposed in § 57.802. Physician assistant programs provide training experiences in a number of different ways depending on factors such as: the type of clinical training sites available, State laws governing physician assistant education and practice, and the availability of faculty resources. Therefore, the Department proposes to define these terms broadly so that all eligible programs will have an opportunity to meet the new requirements.

It is proposed that the reference to the statute in § 57.801 and the authority citation be changed from "section 701(7)(B)" to "section 701(8)(B)." This is to conform to the appropriate citation required by Pub. L. 97–35.

Subpart H.

In § 57.706, "*Evaluation of Applications.*", paragraph (a) would be revised to include a new subparagraph (8) which will require the Secretary to assess each applicant's strategy to attract and graduate minority and disadvantaged students when determining whether to approve or disapprove competitive applications. A related change is proposed as a new subparagraph (2) in § 57.706(b). It is proposed that each applicant's efforts in attracting and graduating minority and disadvantaged students be used as a factor in determining priority in funding of applications. The current § 57.706(b)(2) would be renumbered § 57.706(b)(3).

These changes are being proposed in view of a continuing shortage of minority and disadvantaged primary health care providers.

Regulatory Flexibility Act and Executive Order 12291

These regulations governs financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a "major rule" under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

There are no information collection requirements in this regulation.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study program, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, 42 CFR Part 57, Subparts I and H are proposed to be revised as follows:

(Catalog of Federal Domestic Assistance, No 13.886, Grants for Physician Assistant Training Programs)

Dated: July 22, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 12, 1986.

Otis R. Bowen,

Secretary.

Subpart I—Programs for the Training of Physician Assistants

1. The authority citation for Part 57, Subpart I is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 701(8)(B), 90 Stat. 2247, as amended by 95 Stat. 913, 99 Stat. 525–526 (U.S.C. 292a(8)).

2. Section 57.801 is amended by revising paragraph (a) to read as follows:

§ 57.801 Purpose and scope.

(a) Section 701(8)(B) of the Public Health Act (42 U.S.C. 292a(8)(B)) requires the Secretary to develop regulations for programs for the training of physician assistants. The purpose of this subpart is to comply with this requirement.

* * * * *

3. Section 57.802 is amended by adding the following new definitions in alphabetical order:

§ 58.802 Definitions.

* * * * *

"Disease Prevention" is the health strategy which emphasizes the development of individual and community measures to protect against disease or environmental hazards and their harmful consequence.

* * * * *

"Geriatric Medicine" is the prevention, diagnosis, care and

treatment of illness and disability as required by the distinct needs of the

project based on the factors in paragraph (a) of this section;

promptly." A time limit of 30 days would be consistent with the existing provision

II. Future Rulemaking Actions

Subpart E—Special Rules Applicable

DATES: Comments are due November 17,

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treatment of illness and disability as required by the distinct needs of the elderly.

* * * * *

"Health Promotion" is the health strategy which emphasizes individual responsibility for one's health, and community efforts to maintain and enhance well-being through lifestyle changes.

"Home Health Care" is the provision of medical and other health care services to maintain or restore the health of an ill or disabled person in their place of residence.

* * * * *

"Primary Care" means primary care, as defined in 42 CFR § 57.702.

* * * * *

4. Section 57.803 is amended by revising paragraph (a)(1), redesignating paragraphs (f), (g), and (h) as (g), (h), and (i), and adding a new paragraph (f) to read as follows:

§ 57.803 Requirements.

* * * * *

(a)(1) Be accredited as an Educational Program for the Physician Assistant by the American Medical Association's Committee on Allied Health Education and Accreditation; or

* * * * *

(f) Provide training to students in the areas of primary care, health promotion, disease prevention, geriatric medicine and home health care;

* * * * *

Subpart H—Grants for Physician Assistants Training Programs

1. The authority for Part 57, Subpart H is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 783(a)(1), Public Health Service Act, 90 Stat. 2314, and 99 Stat. 524 (42 U.S.C. 295g–3(a)(1)).

2. Section 57.706 is amended by revising paragraphs (a)(7) and (b)(1); redesignating paragraph (b)(2) as (b)(3); and adding new paragraphs (a)(8) and (b)(2) to read as follows:

§ 57.706 Evaluation of applications.

(a) * * *

(7) The potential of the project to continue in a self-sustaining basis after the period of grant support; and

(8) The adequacy of the project's plan to develop and use methods designed to attract, maintain minority and disadvantaged students to train as physician assistants.

(b) * * *

(1) The relative merit of the proposed project based on the factors in paragraph (a) of this section;

(2) The extent to which the applicant develops and uses methods designed to attract, maintain and graduate minority and disadvantaged students; and

* * * * *

[FR Doc. 86–23013 Filed 10–9–86; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Public Land Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Hearings and Appeals (OHA) in the Department of the Interior (DOI) proposes to revise its rules at 43 CFR Part 4, Subpart E, by adding a provision to establish a 30-day limit on the filing of requests for reconsideration of decisions in public land appeals and to make clear that action on such a request does not affect the effectiveness or finality of the decision for which reconsideration is sought.

DATE: Written comments on the proposed rule must be received by November, 10, 1986.

ADDRESS: Written comments on this proposed rulemaking should be mailed or hand-delivered to the Director, Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: James R. Kleiler, Attorney-Adviser, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203; Telephone: (703) 235–3750.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Amendments

At present, reconsideration of certain OHA decisions such as those issued by the Interior Board of Land Appeals (IBLA) is governed by the general provisions of 43 CFR 4.21(c). While these provisions specify that a request for reconsideration must be "filed promptly," there is no more precise standard to inform a party when a request will no longer be considered to be timely. As a result, IBLA must evaluate each request not only as to the merits of the arguments in support of reconsideration but also as to the timeliness of the request under the nebulous criterion that it be "filed promptly." A time limit of 30 days would be consistent with the existing provision in 43 CFR 4.1276 applicable to reconsideration by IBLA of its final decisions issued under the authority of SMCRA. *See also* 43 CFR 4.126 (applicable to requests for reconsideration by the Board of Contract Appeals) and 43 CFR 4315 (applicable to requests for reconsideration by the Board of Indian Appeals).

It is also necessary to clarify the Department's intent that the filing and disposition of a request for reconsideration does not affect the finality of the decision for which reconsideration is sought. This is particularly important in actions for which Congress has enacted a statute limiting the time in which a suit for judicial review may be filed, such as 30 U.S.C. 226–2 (1982) which provides: "No action contesting a decision of the Secretary involving any oil or gas lease shall be maintained unless such action is commenced or taken within ninety days after the final decision of the Secretary relating to such matters." With respect to this issue, 43 CFR 4.21(c) provides: "The filing and pendency of a request for reconsideration shall not operate to stay the effectiveness of the decision involved unless so ordered by the Director or an Appeals Board. A request for reconsideration need not be filed to exhaust administrative remedies." Although one may fairly infer from this language that a request for reconsideration does not toll the time in which a party may seek judicial review of a final decision, Federal courts have differed in their interpretations of the language. *Compare Geosearch, Inc.* v. *Andrus*, 494 F. Supp. 978 (D. Wyo. 1980), *with Lowey* v. *Andrus*, No. 79–3314 (D.D.C. July 28, 1980). The U.S. District Court in *Geosearch, Inc.*, interpreted the quoted language as was intended by the Department: "The clear and imperative language of the regulation states that an IBLA decision is final for the purpose of beginning the . . . appeal period for judicial review unless a stay has been ordered by the Director or the Appeals Board." 494 F. Supp. at 979. Mindful, however, of the contrary opinion expressed in *Lowey* v. *Andrus*, we seek to make it clear that the date of issuance of the decision for which reconsideration is sought is the effective date of final agency action, so that neither the filing of a request for reconsideration nor its denial would toll the time during which a party may seek judicial review of a final decision.

To accomplish the above purposes, OHA proposes to add a new rule at 43 CFR 4.403.

II. Future Rulemaking Actions

Issuance of these proposed rules is not intended to preclude further examination of OHA's rules at 43 CFR Subpart E.

III. Procedural Matters

Federal Paperwork Reduction Act

The proposed rules do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The DOI has examined these proposed rules according to the criteria of Executive Order 12291 [Feb. 17, 1981] and has determined that they are not major and do not require a regulatory impact analysis because the rules only concern the reconsideration and finality of OHA decisions.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules will not have a significant economic effect on a substantial number of small entities because the rules simply concern the reconsideration and finality of OHA decisions.

National Environmental Policy Act

The Office of Hearings and Appeals has determined, on the basis of the categorical exclusion of regulations of a procedural nature set forth at 516 DM 2 Appendix 1, section 1.10, that the proposed rules will not significantly affect the quality of the human environment.

Drafting

The proposed rule was drafted by James R. Kleiler, an attorney-adviser with the Interior Board of Land Appeals in OHA.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure.

Dated: September 3, 1986.

Paul T. Baird,

Director, Office of Hearings and Appeals.

Accordingly, it is proposed to revise 43 CFR Part 4, Subpart E, as follows:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. The authority citation for Part 4 continues to read as follows:

Authority: R.S. 2478, *as amended*, 43 U.S.C. 1201, unless otherwise noted.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

2. Section 4.403 is added to 43 CFR Part 4, Subpart E, immediately after § 4.402 to read as follows:

§ 4.403 Finality of decision; reconsideration.

A decision of the Board shall constitute final agency action and be effective upon the date of issuance, unless the decision itself provides otherwise. The Board may reconsider a decision in extraordinary circumstances for sufficient reason. A petition for reconsideration must be filed within 30 days after the date of a decision. The petition must state with particularity the error claimed and include all arguments and supporting documents. The filing, pendency, or denial of a request for reconsideration shall not operate to stay the effectiveness or affect the finality of the decision involved unless so ordered by the Board. A request for reconsideration need not be filed to exhaust administrative remedies.

[FR Doc. 86–23015 Filed 10–9–86; 8:45 am]

BILLING CODE 4310–10–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Gen. Docket No. 86–367; FCC 86–400]

Private Sector Preparation and Administration of Commission Commercial Radio Operator Examinations

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission is considering proposing enabling legislation to Congress. The legislation would amend the Communications Act. It would authorize the Commission to delegate to a private organization responsibility for preparing and administering all of the Commission's commercial radio operator examinations. The organization, which would be selected through a competitive bidding process, could collect fees from examinees. This proposal is being considered to improve the quality and availability of commercial examinations. The Commission is attempting to restore commercial examination stature and services which have diminished following certain budget reductions.

DATES: Comments are due November 17, 1986. Reply comments are due December 2, 1986.

ADDRESS: Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon Martin, Public Service Division, Field Operations Bureau, (202) 632–7240.

SUPPLEMENTARY INFORMATION:

This is a summary of the Commission's Notice of Inquiry, General Docket 86–367, Adopted September 18, 1986, and Released September 24, 1986.

The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services (202) 837–3800, 2100 M Street, Northwest, suite 140, Washington, DC 20037.

Summary of Notice of Inquiry

1. The Commission is considering proposing enabling legislation to Congress that would amend section 4(f) of the Communications Act. The amendment would allow the Commission to delegate the responsibility for preparing and administering its commercial radio operator examinations (commercial exams). These functions would be delegated to a single, professional private sector organization (private examiner).

2. We seek comments about whether permitting a private organization to devise and administer Commission examinations would violate any domestic or international laws or regulations. Both Communications Act and international provisions require that we *license* certain radio operators. However, we are not aware of any domestic or international laws or regulations which require that Commission employees prepare or administer commercial exams. Private examiner personnel would not be considered government employees for any purpose.

3. We are considering this proposal to improve the quality and availability of our commercial exams. Congress and the Commission have both expressed concern about how seldom the exams are updated. However, the Commission no longer employs anyone specifically to draft and revise commercial exams. In fact, all funding for administering the commercial exam program has been

issue of whether to propose enabling

DATES: Comments must be filed on or before November 24, 1986, and reply

For information regarding proper filing procedures for comments, See 47 CFR

1735 New York Ave., NW., Washington,

Reddy, Begley and Martin

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commercial exam program has been eliminated from the Commission's budget as part of overall government fiscal reductions. The program itself has dwindled to a vestigial, part-time assignment for a few staff members. They spend a minimum amount of time conducting and grading existing exams and issuing licenses. As a result, exams are available at far fewer times and places. Funds are no longer available for travel or dedicated examination space to conduct tests. Commercial exams, which were once available weekly without any appointment, are now only offered quarterly, and then only at FCC offices. They usually require an appointment. The discontinuation of all remote examinations (which were administered outside Commission offices) has forced some applicants to travel hundreds of miles to a city with a Commission office.

4. We seek comments on what factors to consider should a private examiner be used. The private examiner would be selected through a competitive bidding process based on performance specifications. A contract would be awarded to whichever bidding organization could provide specified services most economically. The organization would be responsible for drafting and administering all of the Commission's commercial exams. The various commercial radio operator licenses issued by the Commission are described in FO Bulletin #4, dated February, 1986. The Bulletin is available from the Commission's Office of Congressional and Public Affairs.

5. We contemplate that the private examiner will be permitted to collect reasonable exam fees from applicants. Fees would be used to offset the costs of generating, printing, distributing, administering and evaluating commercial exams. Unlike our amateur volunteer examination coordinator program, a private examiner would be employing professionals to develop and administer commercial exams. Thus, examinees for the Commission's commercial licenses would pay examinations fees. Such fees are required for many other professional licenses, including legal and medical practitioners. The Commission would continue to bear license issuance and renewal costs, and other responsibilities as part of its program oversight. We invite public comment on whether the private examiner should be allowed to collect examination fees. If not, how else might they recoup administrative expenses?

6. Of course, we seek comments on general matters, including the ultimate issue of whether to propose enabling legislation. However, we are especially interested in comments concerning the following issues: how best to select and structure a private examiner organization; whether examination fees should be permitted; and whether domestic or international laws address the delegation that we are considering.

7. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act, Pub. L. 93–354, does not apply.

8. Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 17, 1986, and reply comments on or before December 2, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

9. This is an non-restricted notice and comment proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

10. It is Ordered, That the Secretary shall cause this summary of the Notice of Inquiry to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–23006 Filed 10–9–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–372, RM–5348]

Radio Broadcasting Services; Winona, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by L.F. Baechler, proposing the allotment of FM Channel 288A to Winona, Minnesota. This allotment could provide a second FM broadcast service for the community.

DATES: Comments must be filed on or before November 24, 1986, and reply comments on or before December 9, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Harry C. Martin
Reddy, Begley and Martin
2033 "M" Street, NW., Suite 500,
Washington, DC 20036, (counsel to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–372, adopted September 19, 1986, and released October 2, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–23007 Filed 10–9–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–370, RM–5309]

Radio Broadcasting Services; Versailles, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 236A to Versailles, Missouri, in response to a petition filed by Mid-Mo Broadcasting Company, Inc. This allotment could provide a first FM broadcast service for the community.

DATES: Comments must be filed on or before November 24, 1986, and reply comments on or before December 9, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Mid-Mo Broadcasting Company, Inc.
Mr. Kenneth W. Raines, Sr.
R.R. #4, Box 86,
Eldon, Missouri 65026,
(petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–370, adopted September 17, 1986, and released October 2, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–23008 Filed 10–9–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–371]

Radio Broadcasting Services; Georgetown, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to substitute Channel 293C2 for Channel 292A at Georgetown, South Carolina, and modify the license of Station WAZX(FM) to specify operation on the higher powered channel at the request of Seacoast Broadcasting Corp. The channel can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.

DATES: Comments must be filed on or before November 24, 1986, and reply comments on or before December 9, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Earl R. Stanley, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Ave., NW., Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–371, adopted September 17, 1986, and released October 2, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–23009 Filed 10–9–86; 8:45 am]

BILLING CODE 6712–01–M

Notices

statement is not being prepared for the Bradford Critical Area Treatment

investigation, who accounts for a

postponement, in accordance with

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Notices

Federal Register
Vol. 51, No. 197
Friday, October 10, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of two meetings of the Committee on Governmental Processes of the Administrative Conference of the United States, to be held at 9:30 a.m. on Friday, October 17, and at 9:30 a.m. on Thursday, October 23, 1986 at the office of Covington and Burling, 1201 Pennsylvania Avenue, NW. (11th floor), Washington, DC.

The Committee will meet to discuss the Administrative Conference's project on use by federal agencies of private attorneys. The subject has been studied for the Conference by Mark L. Alderman and David E. Landau, Esqs., of the firm of Wolf, Block, Schorr and Solis-Cohen of Philadelphia, Pennsylvania, and by Professor Ronald D. Rotunda of the University of Illinois College of Law.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting.

For further information concerning this meeting, contact David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC (Telephone: 202–254–7065.) Minutes of the meetings will be available on request.

October 6, 1986.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 86–23087 Filed 10–9–86; 8:45 am]
BILLING CODE 6110–01–M

Resolution of Appeal From Agency Freedom of Information Act Decisions; Availability of Draft Report; Public Meeting

AGENCY: Administrative Conference of the United States, Committee on Judicial Review.

ACTION: Notice of Public Meeting; Availability of Draft Report.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States. The committee has scheduled this meeting to consider pending projects, including a draft report and recommendation prepared by Professor Mark H. Grunewald (Washington and Lee University, School of Law) on alternative methods of resolving appeals from agency denials of Freedom of Information Act requests for information.

DATES: Monday, October 27, 1986, at 1:30 p.m.

Location: Gelman Building, 2120 L Street, NW., Lower Level, Hearing Room No. 3, Washington, DC.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC. 20037. Telephone: (202) 254–7065. Single copies of Professor Grunewald's draft report may be obtained free of charge by calling or writing the Office of the Chairman.

SUPPLEMENTARY INFORMATION: The Committee on Judicial Review previously considered a version of Professor Grunewald's report that focused solely on the desirability of establishing an administrative tribunal to resolve Freedom of Information Act disputes, as an alternative to federal district court actions. Though ultimately rejecting this alternative, the committee sought information and views on various other alternatives, including creation of an ombudsman-like entity to help resolve FOIA disputes. *See* ACUS Request for Public Comments, *Handling of Appeals from Agency Decisions in Freedom of Information Act Disputes*, 51 FR 10213 (Mar. 25, 1986). In his revised report, Professor Grunewald evaluates the ombudsman alternative and concludes that such an entity should be established on a limited, experimental basis.

List of Subjects—Administrative practice and procedure, Freedom of Information appeals.

Dated: October 6, 1986.

Stephen L. Babcock,
Executive Director.

[FR Doc. 86–23141 Filed 10–9–86; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF OF AGRICULTURE

Soil Conservation Service

Broadford Critical Area, Treatment RC&D Measure, Idaho; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Broadford Critical Area Treatment RC&D Measure, Blaine County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Broadford Critical Area Treatment RC&D Measure will provide treatment to an actively eroding section of the west bank of the Big Wood River. Planned treatment to control the severe erosion and sedimentation problem includes 450 feet of rock and vegetative armor on the eroding bank.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: September 29, 1986.

Stanley N. Hobson,
State Conservationist.

[FR Doc. 86–22814 Filed 10–9–86; 8:45 am]
BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–60]

Postponement of Final Antidumping Duty Determination: Brass Sheet and Strip From Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from one of the respondents in this investigation, who accounts for a significant proportion of the exports of the merchandise under investigation, to postpone the final determination as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final determination as to whether sales of brass sheet and strip from Canada have occurred at less than fair value until not later than December 3, 1986.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION: Steven Lim or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washigton, DC 20230; telephone: (202) 377–5332 or 377–5288.

SUPPLEMENTARY INFORMATION: On April 7, 1986, we published a notice in the **Federal Register** (51 FR 11711 April 7, 1986) that we were initiating, under section 732(c) of the Act, (19 U.S.C. 1673a(c)), an antidumping duty investigation to detemine whether brass sheet and strip from Canada were being, or were likely to be, sold at less than fair value. On April 24, 1986, the International Trade Commission determined that there is a reasonable indication that imports of brass sheet and strip are materially injuring a U.S. industry. On August 22, 1986, we published a preliminary determination of sales at less than fair value with respect to this merchenise (51 FR 30003 August 22, 1986). The notice stated that if the investigation proceeded normally, we would make our final determination by November 3, 1986.

Pursuant to section 735(a)(2)(A) of the Act, one of the respondents in this investigation requested an extension of the final determination date. The respondent is qualified to make such a request because it accounts for a significant proportion of exports of the merchandise to the United States. If an exporter who accounts for a significant proportion of exports of the merchandise under investigation properly requests an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are granting the request and postponing our final determination until not later than December 3, 1986.

This notice is published pursuant to section 735(d) of the Act.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import Administration.

October 6, 1986.

[FR Doc. 86–23027 Filed 10–9–86; 8:45 am]
BILLING CODE 3510–DS–M

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that porcelain-on-steel cooking ware from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value. We have also determined that critical circumstances do not exist with respect to imports of this merchandise from the PRC. We have notified the U.S. International Trade Commission (ITC) of our determination. The ITC will determine within 45 days of publication of this notice whether these imports are materially injuring, or threatening material injury to, a United States industry. We have also directed the U.S. Customs Service to continue to suspend liquidation on all entries of porcelain-on-steel cooking ware from the PRC that are entered, or withdrawn from warehouse, for consumption on or after May 20, 1986, the date of publication of the preliminary determination in the **Federal Register**, and to require a cash deposit or bond on entries of these products in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3174 or 377–2438.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that porcelain-on-steel cooking ware from the PRC is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff

Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The ITC has notified us that factors of production information be

August 4 and 13 responses, in addition

are the only ones which export the subject merchandise to the United

United States price is appropriately based solely on the exporter's sales

at the most comparable stages of economic development to the PRC, and

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Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The weighted-average margin is shown in the "Suspension of Liquidation" section of this notice. We have also determined that critical circumstances do not exist with respect to imports of this merchandise from the PRC.

Case History

On December 4, 1985, we received a petition from the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation, on behalf of the domestic manufacturers of porcelain-on-steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of porcelain-on-steel cooking ware from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports materially injure, or threaten material injury to, a U.S. industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on December 24, 1985 (50 FR 53352, December 31, 1985). On January 20, 1986, the ITC determined that there is a reasonable indication that imports of porcelain-on-steel cooking ware from the PRC are materially injuring a U.S. industry (51 FR 3862, January 30, 1986).

On January 27, 1986, we presented an antidumping duty questionnaire to China National Light Industrial Products Import and Export Corporation (CNLIP). Respondent was requested to answer the questionnaire in 30 days. On March 5, 1986, we amended our questionnaire and, at the request of the respondent, granted an extension of time for CNLIP to submit its response. Subsequently, an additional extension was granted, also at the respondent's request. We received a questionnaire response from CNLIP and its related partner in the United States, Excel United Corporation, on April 7, 1986. (Excel United is a joint venture between Excel Importing Corporation and the China Union Trading Corporation (CUTC). CUTC is wholly-owned by the government of the PRC.)

On May 8, 1986, we requested additional information, as well as a reformulation of certain types of production information, from the companies under investigation. Supplemental information was received on May 12, 1986. Also on May 8, 1986, we presented a questionnaire requesting that factors of production information be submitted by May 27, 1986.

On May 13, 1986, we made an affirmative preliminary determination that porcelain-on-steel cooking ware from the PRC is being, or is likely to be, sold in the United States at less than fair value (51 FR 18469, May 20, 1986). The notice stated that we would issue our final determination by July 28, 1986. On May 21, 1986, respondent requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. The respondent was qualified to make this request because CNLIP accounts for a significant proportion of exports to the United States of the merchandise under investigation. Accordingly, we extended the date of the final determination until not later than October 2, 1986 (51 FR 20662, June 9, 1986).

On May 23, 1986, petitioners amended the December 4, 1985, petition to allege that critical circumstances exist in the antidumping duty investigation of porcelain-on-steel cooking ware from the PRC, pursuant to section 733(e) of the Act. On June 3, 1986, we informed petitioners that we needed additional evidence to support their allegation that critical circumstances exist. On June 4, 1986, petitioners submitted further information to support their allegation, and the Department subsequently decided to investigate the allegation.

On July 3, 1986, we made a preliminary determination that critical circumstances did not exist with respect to imports of porcelain-on-steel cooking ware from the PRC (51 FR 25229, July 11, 1986).

On May 30 and June 26, 1986, respectively, Sino Development Corporation and Amerport H.K., Ltd. entered appearances in this investigation as interested parties. Sino Development Corporation, a joint venture of CNLIP and Amerex Trading Corp. (U.S.A.), is a U.S. brokerage firm which handles the importation of the subject merchandise from the PRC. Amerport H.K. Ltd. is a Hong Kong-based exporter of porcelain-on-steel cooking ware from the PRC.

On June 12, 1986, we verified the questionnaire responses as they related to the exporter's sales price expenses claimed by Excel United and also the prices charged to unrelated purchasers.

On August 4 and 13, 1986 we received responses to our factors of production questionnaire.

From August 11 through August 28, 1986, we attempted to verify the April 8, August 4 and 13 responses, in addition to gathering cost information for the PRC's factors of production in Thailand.

We conducted a public hearing on September 8, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedules of the United States Annotated* (TSUSA). Kitchenware, currently reported under item 654.0828 of the TSUSA, is not subject to this investigation. We investigated sales made in the period July 1 through December 31, 1985.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value.

United States Price

In accordance with section 776(b) of the Act, we used the best information available to represent the United States price. In this case, the best information available to us was the weighted-average price of the subject merchandise imported during the review period as shown in the Department's import statistics and verified price information submitted by Excel United.

When we received the initial response to our questionnaires on April 7, 1986, we were aware that the volume of U.S. sales during the review period reported by CNLIP was significantly less than the volume of imports recorded in U.S. government statistics. Because of the substantial disparity between the U.S. sales reported by respondent and our import statistics, we made several efforts to obtain further information regarding the means by which the subject merchandise is sold to the United States.

On May 1, 1986, we wrote to the Embassy of the People's Republic of China and requested that the government attempt to identify all PRC-based exporters of the subject merchandise to the United States during the review period. We also asked if the government kept any records which would indicate the final destination of goods exported from the PRC. On May 27, the Embassy responded that the Shanghai and Tianjin branches of CNLIP are the only ones which export the subject merchandise to the United States and that only the Shanghai branch had export sales to the United States during the review period. The Embassay also stated that the government did not keep statistics which would identify the destination of the products under investigation.

On May 30, 1986, we wrote to the respondent asking for an amplification of the information in the record regarding CNLIP's U.S. sales. We asked for an explanation of the means, if any, by which CNLIP would learn, during the course of sales negotiations with Hong Kong trading companies, of the final destination of the merchandise. We never received a response to our May 30 letter.

Because of the discrepancy between the volume of sales reported and the U.S. import statistics, the question of whether CNLIP had reported all its U.S. sales became a major verification issue. In our verification outline, we informed CNLIP that we would "want to discuss at length the circumstances and details regarding the terms on which CNLIP sells the subject merchandise to buyers other than Excel, including Hong Kong trading companies."

At verification in the PRC, we were told that much of the information we requested to see was unavailable because neither the branches nor the headquarters of CNLIP organized their records in such a way as to document the statements in the response that all U.S. sales during the review period were reported, and accounted for, by CNLIP's Shanghai branch. We did examine documents pertaining to CNLIP's sales through Excel United and the Shanghai branch's sales to Amerport.

Section 776(b) of the Act states that the Department "shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available." The inability of the respondent to produce information which would provide the basis for a full and complete verification of the statements in the response that CNLIP Tianjin did not make any U.S. sales during the review period, and that CNLIP reported all its U.S. sales during the review period, justifies the use of best information to determine United States price.

Because we were unable to develop information in the record of this investigation which would explain the disparity between U.S. government import statistics and the volume of sales reported by CNLIP Shanghai in the April 7, 1986, response, we do not believe that United States price is appropriately based solely on the exporter's sales price transactions reported by Excel United and CNLIP Shanghai. Because we were able to verify all Excel United's sales during the review period and their associated expenses, and because we are satisfied that the Excel United figures were not selectively submitted, we are including these sales, proportionate to the amount of entries of the subject merchandise during the review period, in our calculation of United States price.

For Excel United's exporter's sales price transactions, we deducted ocean freight and insurance, U.S. customs broker handling fees, U.S. import duty, U.S. inland freight and insurance expenses, U.S. advertising expenses, U.S. warehousing costs, and other miscellaneous U.S. selling expenses.

For imports not included in the reported sales through Excel United, we calculated United States price as the FOB value of imports of porcelain-on-steel cooking ware from the PRC as reported in the Department's IM-146 data.

Foreign Market Value

We calculated foreign market value in accordance with section 773(c) of the Act (19 U.S.C. 1677b(c)).

Petitioners alleged that the economy of the PRC is state-controlled, and, therefore, that home market sales of the subject merchandise may not be considered as a basis on which to determine foreign market value pursuant to section 773(a) of the Act (19 U.S.C. 1677b(a)). Upon analysis of available information, including briefs submitted by the petitioners and respondent, we have concluded that the economy of the PRC is state-controlled for purposes of this investigation because prices and production levels of porcelain-on-steel cooking ware, as well as prices of factors of production, are government controlled.

As a result, section 773(c) of the Act (19 U.S.C. 1677b(c)) requires us to use either the prices or constructed value of such or similar merchandise in a non-state-controlled-economy country. Section 353.8 of our regulations establishes a preference for foreign market value based upon sales prices. It further stipulates that, to the extent possible, we should determine sales prices on the basis of prices in a non-state-controlled-economy country at a stage of economic development comparable to that of the state-controlled-economy country.

We determined that Egypt, India, Indonesia, Morocco, Pakistan, the Philippines and Thailand are countries at the most comparable stages of economic development to the PRC, and it would, therefore, be appropriate to base foreign market value on their prices. We sent questionnaires to known manufacturers of porcelain-on-steel cooking ware in those countries who were identified by us in a timely manner (see the "Comment" section of this notice). None of the manufacturers we contacted replied to our questionnaire or provided any information.

On May 7, 1986, we sent a questionnaire to CNLIP asking for detailed factors of production information from all PRC manufacturers of the subject merchandise. We did so in order that we might base foreign market value on constructed value based on verified PRC factors of production valued in a non-state-controlled-economy country at a comparable level of economic development in accordance with § 353.8(c) of our regulations. We received a response to our May 7 questionnaire on August 4, 1986.

On August 8, 1986, we sent a deficiency letter to CNLIP requesting amplification of the information in the August 4 submission. On August 13 we received supplemental factors of production information, and on August 14, 15 and 20 we attempted to verify the factor of production information. We were unable, however, to verify satisfactorily the factors of production information submitted by CNLIP. Therefore, we were unable to calculate constructed value on the basis of costs in another country.

Lacking home market prices from non-state-controlled-economy countries at a comparable level of economic development and lacking information needed to calculate constructed value, we have based foreign market value on average prices of imports of the same class or kind of merchandise into the United States from Japan, Canada, Switzerland, the Federal Republic of Germany, the Netherlands and France.

According to the Department's IM-146 import statistics, 24 countries exported the subject merchandise to the United States during the review period. Import prices from countries currently the subject of porcelain-on-steel cooking ware antidumping and/or countervailing duty investigations by the Department were not considered as part of our foreign market value determination. We also eliminated imports from countries with known export subsidies and from non market-economy countries.

Negative Determination of Critical

Comment 2: Petitioners argue that the

DOC Response: We determined that

factors of production responses submitted by CNLIP

average import prices into the United

our response to Petitioners' comment 3, above.

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Negative Determination of Critical Circumstances

Petitioners alleged that imports of porcelain-on-steel cooking ware from the PRC present "critical circumstances." Under section 735(a)(3) of the Act, "critical circumstances" exist if we determine that:

(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(iii) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

We generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

For purposes of this finding, we analyzed recent trade statistics on import levels for porcelain-on-steel cooking ware from the PRC for equal periods immediately preceding and following the filing of the petition. We also took into consideration seasonal factors and the share of domestic consumption accounted for by imports from the PRC. Based on our analysis of recent import statistics, we find that imports of the subject merchandise from the PRC have not been massive over a relatively short period.

Since we do not find there have been massive imports, we do not need to consider whether there is a history of dumping or whether importers of this product knew or should have know that it was being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of porcelain-on-steel cooking ware from the PRC.

Verification

As provided in section 776(a) of the Act, we verified the date pertaining to sales through Excel United which we used in making our final determination.

Petitioners' Comments

Comment 1: Petitioners allege that critical circumstances exist with regard to imports of porcelain-on-steel cooking ware from the PRC.

DOC Response: We disagree. See our discussion above in the "Negative Determination of Critical Circumstances" section of this notice.

Comment 2: Petitioners argue that the PRC is a state-controlled economy as defined in secton 773(c) of the Act and that sales of the subject merchandise in that country do not permit a determination of foreign market value.

DOC Response: We agree. See our discussion above in the "Foreign Market Value" section of this notice.

Comment 3: Petitioners argue the April 7, 1986, questionnaire response should be rejected because CNLIP did not report all its exports to the United States during the review period. Petitioners state that CNLIP reported only sales of individual cookware items to one importer, Excel United, while the majority of these imports are sold in seven-piece sets. Petitioners allege that CNLIP had knowledge of U.S. sales during the review period, but self-selected only those to Excel in an effort to focus the Department's analysis on only one importer, whose sales are not representative of the overall market for this merchandise.

DOC Response: We were unable to verify that CNLIP had reported all sales during the review period which it knew on the date of sale were destined for the United States. Therefore, we used a weighted-average of import prices from the PRC and Excel United's verified and adjusted prices as United States price, as discussed in the "United States Price" section of this notice.

Comment 4: Petitioners argue that the reported sales of Excel United are not exporter's sales price transactions because the sales are not "for the account of" CNLIP. Petitioners also argue that Excel United's sales to supermarkets should not be compared to foreign market value based on sales to suppliers of other levels of trade, such as department and discount stores.

DOC Response: We disagree. We treated Excel United's U.S. sales as exporter's sale price transactions because CNLIP and CUTC are both owned by the government of the PRC and CUTC has an ownership position in Excel United. With regard to whether Excel United's prices to supermarkets should be compared to foreign market value based on sales to different kinds of retailers, our decision to base foreign market value on import statistics makes it impossible to adjust for level of trade differences. Nor do we have the information to adjust those prices, even if it were appropriate for differences in level of trade.

Comment 5: Petitioners argue that United States price should be determined from the average import values, on a per-pound basis, as indicated in the Department's import data, as the best information available.

DOC Response: We determined that prices per piece of PRC imports of the subject merchandise calculated from the Department's import data and Excel United's adjusted prices were the appropriate bases for United States price in this investigation. Sales of the subject merchandise are valued on a per piece basis. Therefore, our price comparisons were made on the same terms.

Comment 6: Petitioners argue that the Department should not use surrogate producer prices for foreign market value in this investigation because: (a) Appropriate surrogate information is not available, (b) information submitted by respondents and interested parties is untimely and unverified, and (c) information from surrogates selected by respondent and/or interested parties would be biased.

DOC Response: Despite the Department's efforts to identify surrogate producers of porcelain-on-steel cooking ware in countries at a level of economic development comparable to that of the PRC, we were unsuccessful in locating any producers willing to answer our questionnaires.

Surrogate producers suggested by other parties to this investigation were identified very late in this investigation. (In one case, a Philippine surrogate was suggested to the Department while our verification of questionnaire responses was underway in the PRC.) There was a question raised as to the relationship between another suggested surrogate and an interested party in this investigation. It also would have been impossible to verify any information submitted by those suggested surrogate producers so near the date of our final determination. Because we were unable to obtain responses from surrogate producers of porcelain-on-steel cooking ware in countries at a level of economic development comparable to that of the PRC, we based foreign market value on the prices of certain imports, as described above.

Comment 7: Petitioners aruge that CNLIP's factors of production questionnaire responses should be rejected as untimely, deficient and unverified.

DOC Response: At verification, little of the data submitted in the factors of production responses could be corroborated. Company officials were unable to provide documentation which would support the input data submitted. Pursuant to section 776(a) of the Act, the Department must verify all information used in our final determination. Accordingly, we are unable to use the factors of production responses submitted by CNLIP.

Comment 8: Petitioners argue that foreign market value should be based on the sales prices of General Housewares Corporation in the U.S. market or, alternatively, on import values from a basket of countries.

DOC Response: We have determined that import prices, as described above in the "Foreign Market Value" section of this notice, are the appropriate basis for determining foreign market value. Section 353.8 of our regulations states that prices or constructed value in the United States will be used only if prices or costs of another non-state-controlled-economy country producer cannot be identified.

Comment 9: Petitioners argue that CNLIP prevented the Department's verification of Shanghai and other CNLIP branch U.S. sales, as well as sales to Excell United.

DOC Response: We were unable to verify satisfactorily the response submitted by CNLIP as it related to all its U.S. sales during the review period. Therefore, we did not accept the sales reported in the response as representing the universe of CNLIP's U.S. sales during the review period. We did include, however, Excel United's sales information in our calculation of United States price because we verified that information. See the "United States Price" section of this notice.

Comment 10: Petitioners argue that the Department's best information rule is also a "rule of adverse inference."

DOC Response: We disagree that any reliance or use by use of best information available under the Act and our regulations automatically requires us to draw inferences adverse to the respondent in this investigation. Best information is not necessarily that information most prejudicial to the respondent. Instead, it may be that information in which the Department has reasonable and justified confidence and which is reasonably accessible given the time constraints of antidumping investigations.

Respondent's Comments

Comment 1: Respondent argues that the Department's preliminary determination of foreign market value was not based on best information available as required by the Act because we did not use surrogate prices or constructed value.

DOC Response: We disagree. The Department sought surrogate information but was unable to obtain any such information before the preliminary determination. Our preliminary determination, based on average import prices into the United States, complied with the requirements of section 773(c)(1)(B) of the Act.

Comment 2: Respondent argues that the Department improperly used import data from a basket of countries as foreign market value in the preliminary determination because the countries chosen do not have economies comparable to the PRC and because the import data lacks necessary detail.

DOC Response: When the Department is unable to find a surrogate willing to provide price and/or cost data, we often rely on the prices of imports into the United States. In considering which countries' imports to use in calculating foreign market value, we generally disregard imports from countries that are also under investigation, non-market-economy exporters and countries believed to maintain export subsidies. In excluding these countries, we may be forced to use imports from countries that are not at a level of economic development comparable to that of the PRC.

In this proceeding, we have chosen the price of imports from six countries as the basis for foreign market value. This is because, of the countries not excluded for the reasons noted above, we cannot determine that one or the other of these six countries is more appropriate.

Comment 3: Respondent aruges that the Department's preliminary determination of sales at less than fair value is not supported by substantial evidence and that the Department failed to seek diligently surrogate producer price information.

DOC Response: We disagree. See the "Case History" and "Foreign Market Value" sections of this notice and our response to Respondent's comment 2.

Comment 4: Respondent argues that its sales questionnaire response completely reported all sales of the subject merchandise which it knew were destined for the United States.

DOC Response: As discussed in the "United States Price" section of this notice, the Department considered that there is a significant coverage problem in this investigation. We attempted to obtain further information, and a clarification of information in the record, from the respondent both before and during the verification. Because we were unable to verify the CNLIP had reported all sales during the review period which it knew were destined for the United States, we used the data in the response that was specific to Excel United, in combination with data from the Department's import statistics, to calculate United States price. See also our response to Petitioners' comment 3, above.

Comment 5: Respondent argues that sales by Excel United to unrelated U.S. purchasers are exporter's sales price transactions which the Department properly used as United States price at the preliminary determination and should use at our final determination.

DOC Response: See our response to Petitioners' comment 4, above.

Comment 6: Respondent argues that the Department unjustifiably failed to use surrogate producer information in calculating foreign market value. Respondent particularly cited Sri Lanka, the Philippines, Thailand, Mexico and Hong Kong as appropriate surrogates.

DOC Response: See our response to Interested Parties' comment 5 concerning Sri Lanka and the Philippines. We do not consider Mexico and Hong Kong to be at a level of economic development comparable to that of the PRC and, therefore, would not normally use prices in those countries for calculating foreign market value. We sent questionnaires to producers in Thailand and we did not receive any responses.

Comment 7: Respondent argues that, if the Department shoud calculate a dumping margin based on PRC sales of the subject merchandise in addition to those through Excel United, separate margins should be determined for Excel United and all others.

DOC Response: We disagree. To the best of our knowledge the various branches of CNLIP account for all the exports of porcelain-on-steel cooking ware from the PRC. We do not believe it is appropriate to calculate one rate for certain of CNLIP's sales and another rate for other of CNLIP's sales. We have, however, included the margins of CNLIP's sales through Excel United in calculating the weighted-average margin.

Comments of Interested Parties

Comment 1: Amerport H.K., Ltd. and Sino Development Corporation, interested parties in this investigation (hereinafter "Amerport") argue that critical circumstances do not exist in this case because there is no history of dumping, importers did not know that the merchandise was being sold at less than fair value, and there have not been massive imports in a recent period.

DOC Response: We agree that critical circumstances do not exist. See the "Negative Determination of Critical Circumstances" section of this notice.

Comment 2: Amerport objects to the Department's rejection in advance of a voluntary sales response which would

have listed its sales of the subject

DOC Response: As explained in the

from Hong Kong and Korea. Amerport

will be terminated, and all securities

being, or is likely to be, sold in the

1986 (Tou Tien), and April 14, 1986 (Li-

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have listed its sales of the subject merchandise during the review period.

DOC Response: It is the Department's policy to require that submissions reporting sales be filed before the preliminary determination. The Department, upon receiving a response to an antidumping duty questionnaire, must analyse it and allow interested parties an opportunity to comment. In addition, a thorough verification must be conducted in the respondent's home country. Because of these time constraints, the Department is unable to consider voluntary responses submitted after the preliminary determination. (See, "Fabric Expanded Neoprene Laminate from Japan: Final Determination of Sales at Less than Fair Value," 50 FR 23488, June 4, 1985.)

Comment 3: Amerport argues that CNLIP properly reported, in the April 7, 1986, response, all U.S. sales as defined in the Department's questionnaire. Amerport states that the verification showed that CNLIP does not know the destination of sales made to Amerport at the "date of sale."

DOC Response: As explained in the "United States Price" section of this notice, we were unable to verify whether CNLIP reported all U.S. sales made by all branches of CNLIP that export the subject merchandise to the United States. At verification we attempted, at length and in several different ways, to establish CNLIP's total sales and shipments of all CNLIP branches and those of CNLIP Shanghai during the review period. Because we were unable to verify whether the sales to Excel United represented all sales during the review period which CNLIP knew were destined for the United States, we could not calculate United States price solely on the basis of these sales. See the "United States Price" section of this notice.

Comment 4: Amerport argues that because CNLIP owns stock in CUTC, which in turn is part-owner of Excel United, the Department correctly determined United States price using the exporter's sales price method in the preliminary determination and should do so in the final determination.

DOC Response: See our response to Petitioners' comment 4.

Comment 5: Amerport argues that the Department should use the home market prices in a surrogate country to calculate foreign market value. Amerport further argues that, since the Department was unable to locate any surrogate producers, foreign market value should be based on price information from producers in Sri Lanka or the Philippines, as suggested to the Department.

DOC Response: As explained in the "Foreign Market Value" section of this notice, the Department sought information on surrogate producers in countries identified as being at a comparable level of economic development to the PRC. We did not receive any information in response to our inquiries. We rejected the Sri Lankan and Philippine producers suggested by Amerport because the question of a business relationship between Amerport and the Sri Lankan company was raised, and the identities of both producers were submitted too late in the investigation for us send questionnaires and verify any responses.

Comment 6: Amerport argues that the Department shoud not use Thailand as the surrogate in this investigation because the protected Thai market for porcelain-on-steel cooking ware permits Thai producers to maintain artificially high prices for the product in the home market, because the home market is very small, and in addition there is no surrogate producer of the subject merchandise available to provide the necessary information. Amerport further suggests that, if the Department does use information from Thailand to establish foreign market value, export, not domestic, prices should be used.

DOC Response: Because we did not find a surrogate producer in Thailand, and because we were unable to verify satisfactorily the factors of production information obtained in the PRC, the issue of whether Thailand is an apopropriate surrogate country in which to establish foreign market value for the subject merchandise is moot.

Comment 7: Amerport argues that, if the Department should calculate foreign market value using constructed value, we should use the input cost of porcelain-on-steel cooking ware in either Sri Lanka or the Philippines.

DOC Response: See our response to Interested Parties' comment 6, above.

Comment 8: Amerport argues that the Department should not reduce U.S. price for differences in the level of trade because the April 7, 1986 response already includes deductions specific to the nature of Excel United's sales to supermarkets.

DOC Response: We adjusted Excel United's sales prices as described in the United States price section of this notice without any adjustment for level of trade.

Comment 9: Amerport argues that, if the Department calculates foreign market value of the basis of the best information available pursuant to section 776 of the Act, we should use the import prices of the subject merchandise from Hong Kong and Korea. Amerport argues that the three countries suggested by petitioners (Japan, the Federal Republic of Germany and France), are not at the same level of economic development as the PRC and the procelain-on-steel cooking ware they produce is not similar to that exported to the United Stats from the PRC.

DOC Response: We disagree. See the Foreign Market Value section of this notice and our response to Respondent's comment 2, above.

Continuation of Suspension of Liquidation

In accordance with section 735 of the Act (19 U.S.C. 1673d (d)), we are directing the U.S. Customes Service to continue to suspend liquidation of all entries of procelain-on-steel cooking ware from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of our preliminary determination notice in this investigation in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacturers/producers/exporters	Margin percentage
China National Light Industrial Products Import and Export Corporation	66.65
All others	66.65

ITC Notification

In accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on porcelain-on-steel cooking ware from the PRC which was entered, or withdrawn from warehouse, for consumption, on or after the date of suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is being published pursuant to Section 735(d) of the Act (19 U.S.C. 1673 (d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

October 2, 1986.

[FR Doc. 86-23036 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-508]

Porcelain-On-Steel Cooking Ware From Taiwan; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that porcelain-on-steel cooking ware from Taiwan is being, or is likely to be, sold in the United States at less than fair value. We have also determined that critical circumstances do not exist with respect to imports of this merchandise from Taiwan. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue with the suspension of liquidation of all entries of porcelain-on-steel cooking ware from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after May 20, 1986, and to require a cash deposit for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Loc Nguyen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0189 or 377-0157.

Final Determination

We have determined that porcelain-on-steel cooking ware from Taiwan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, July 1 through December 31, 1985. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We have also determined that critical circumstances do not exist with respect to imports of this merchandise from Taiwan.

Case History

On December 4, 1985, we received a petition from the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation, on behalf of the domestic manufacturers of porcelain-on-steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports materially injure, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on December 24, 1985 (50 FR 53353, December 31, 1985). On January 26, 1986, the ITC preliminarily determined that there is reasonable indication that imports of porcelain-on-steel cooking ware from Taiwan are materially injuring a U.S. industry (51 FR 3862, January 30, 1986).

On February 6, 1986, we presented antidumping duty questionnaires to First Enamel Industrial Corp. (First Enamel), Tian Shine Enterprise Co., Ltd. (Tian Shine), Tou Tien Metal (Taiwan) Co., Ltd. (Tou Tien), Li-Fong Industrial Co., Ltd. (Li-Fong), Li-Mow Enamelling Co., Ltd. (Li-Mow), and Receive Will Industry Co. (Receive Will). Respondents were requested to answer the questionnaires within 30 days. On March 7, 1986, we amended our questionnaire and, at the request of the companies, granted a two-week extension of time for response submissions. Subsequently, a second two-week extension was granted, also at the companies' request. The companies submitted responses on March 28, 1986 (Tian Shine), April 11, 1986 (Tou Tien), and April 14, 1986 (Li-Fong, Li-Mow and First Enamel). Receive Will submitted a response on May 9, 1986, which was deemed not timely for consideration in our preliminary determination.

The department sent out supplemental questionnaires to Tian Shine on April 15, 1986, and to Tou Tien, Li-Fong, Li-Mow and First Enamel on April 28, 1986. We received additional information from Tian Shine on April 14, 1986, and from Li-Fong and Li-Mow on April 21, 1986. Tian Shine responded to our supplemental questionnaire on April 22, 1986.

On May 13, 1986, we made our preliminary affirmative antidumping (51 FR 18472, May 20, 1986). We stated in our notice that we expected to issue a final determination by July 28, 1986.

On May 16, 1986, respondents requested that the deadline for the final antidumping duty determination be extended to 135 days after the publication date of the preliminary determination in the **Federal Register**. We granted an extension on June 3, 1986 (51 FR 20662, June 9, 1986), and stated that we expected to issue a final determination no later than October 2, 1986. On May 23, 1986, petitioners alleged that respondents are selling porcelain-on-steel cooking ware in the home market, or where applicable, in third country markets, at prices which are below the cost of production. They further alleged that "critical circumstances" exist with respect to imports of porcelain-on-steel cooking ware from Taiwan.

On July 3, 1986, the Department issued a preliminary negative determination on the existence of critical circumstances (51 FR 25229, July 11, 1986).

From June 30 through July 24, 1986, we verified the information provided by the respondents at First Enamel, Tian Shine, Li-Fong, Tou Tien, Li-Mow, and Receive Will. On August 27, 1986, we held a hearing to provide all interested parties with an opportunity to comment on the preliminary determination.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0615, 654.0624, and 654.0627 of the Tariff Schedules of the United States Annotated (TSUSA). Kitchenware, currently reported under item 654.0628 of the TSUSA, is not

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subject to this investigation. This

3. In calculating general expenses,

Li-Mow Enamelling Company, Ltd.

detrimental to respondents and not

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subject to this investigation. This investigation covers the period from July 1, 1985, through December 31, 1985.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value for First Enamel, Tian Shine, Li-Fong, Tou Tien, Li-Mow and Receive Will, using data provided in the responses. For purposes of this final determination, we used the United States, home market and third-country sales data, and constructed value information provided in the responses, except where otherwise noted.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was sold to unrelated U.S. purchasers prior to importation. We calculated purchase price based on the packed, FOB, C&F, or CIF, duty-paid price to unrelated purchasers in the United States, as appropriate. We made deductions, where applicable, for foreign inland freight, ocean freight, insurance and brokerage charges, U.S. duties, bank charges, and U.S. inland freight. We also made an addition for duty drawback, where applicable.

For First Enamel, we made deductions for discounts and an addition for uncollected business and stamp tax. First Enamel also had a small quantity of exporter's sales price sales, which we disregarded.

For Tou Tien and Li-Fong, we made an addition for uncollected business stamp tax.

For Li-Mow and Receive Will, we made deductions for a stamp tax paid.

For Recieve Will, we added duty drawback on those sales for which duty drawback was verified. For sales on which duty drawback was not verified, the adjustment was not allowed.

Foreign Market Value

The petitioner alleged that sales in the home market by all the respondents were at prices below the cost of producing the merchandise. We calculated the cost of production for each product on a company-by-company basis, based on material and fabrication costs plus general expenses. We then applied our cost viability test to each category of such or similar merchandise on a company-by-company basis.

In accordance with section 773(a) of the Act, we used home market prices, third-country prices or constructed value to determine the foreign market value of the imported merchandise.

For First Enamel, Tou Tien and Li-Fong, we found a viable home market and sufficient sales in categories of such or similar merchandise above the cost of production to allow the use of home market prices to determine foreign market value in accordance with section 773(a)(1)(A) of the Act.

When comparing similar merchandise, we made adjustments for differences in physical characteristics based on differences in costs of production in accordance with § 353.16 of our regulations. We calculated the home market price on the basis of the packed FOB price to unrelated purchasers. We made deductions for foreign inland freight. We made an adjustment for differences in circumstances of sale for credit terms, in accordance with § 353.15 of our regulations. We deducted home market packing costs and added U.S. packing costs to the home market prices.

For First Enamel, we made a deduction for rebates. We offset commissions paid on U.S. sales with indirect selling expenses in the home market in accordance with § 353.15(c) of our regulations. For Tou Tien, we made adjustments for differences in circumstances of sale for credit and advertising expenses in accordance with § 353.15(b) of our regulations. We also made adjustments for commissions paid in both markets.

Since there was an insufficient volume of sales in the home market for Tian Shine, Li-Mow and Receive Will, we used third country sales to determine foreign market value for comparison to categories of such and similar merchandise that were above cost, in accordance with section 773(a)(1)(B) of the Act. When comparing similar merchandise, we made adjustments for differences in physical characteristics based on differences in costs of production in accordance with § 353.16 of our regulations. We calculated the third country price on the basis of the packed FOB duty-paid price to unrelated purchasers. We made deductions for foreign inland freight, brokerage and handling and an addition for duty drawback. We deducted third country packing costs and added U.S. packing costs to the third country prices.

For Tian Shine, we offset commissions paid on sales to the U.S. with indirect selling expenses incurred in the third country market in accordance with § 353.15(c) of our regulations. We also made deductions for bank charges incurred in the third country market. For Li-Mow and Receive Will, we deducted stamp tax paid and made adjustments for differences in circumstances of sale for credit terms in the U.S. and third country markets.

We used constructed value as the basis for calculating foreign market value when there were insufficient sales of such or similar merchandise above cost in the home market or third country. For Receive Will, we used the best information available for constructed value.

Cost of Production/Constructed Value

In determining the cost of production for the respondents, the Department relied on the submissions, when verified and appropriately valued, and adjusted such data when certain costs necessary for the production of porcelain-on-steel cooking ware were not included, verified, appropriately quantified or valued.

The Department determined that consumer packaging was part of the product under investigation. Since such packaging is part of the product sold to the purchaser, the materials, labor and factory overhead expenses related to this packaging was included in the cost of manufacturing.

In accordance with section 773(e) of the Act, in determining constructed value, we calculated the costs of materials, fabrication, general expense, profit and the cost of packing. The amounts added for general expenses were calculated from data provided in the responses, when verified. For those companies whose general expenses were less than the statutory minimum, we used the statutory minimum of 10 percent of the sum of material and fabrication costs. Where general expenses were greater than this minimum, we used the actual general expenses of the company.

For profit, the Department used the actual profit for the market being compared to the United States prices when such data was provided by the respondents, verified, and exceeded the eight percent statutory minimum. Since the companies manufactured predominantly porcelain-on-steel cookware, the Department used the average corporate profit or the eight percent statutory minimum, whichever was higher, when market-specific data were not provided.

First Enamel Industrial Corporation

The following adjustments were made to the cost of manufacturing:

1. Labor for rimming and assembly, submitted as packing labor, were included in the cost of manufacturing;
2. Amount of duty was included as part of the material costs.
3. In calculating general expenses, certain expenses, such as the annual company party, were included and expenses related to shipment, such as freight, brokerage, custom fees and commissions, were excluded;
4. The general expenses were reallocated over the cost of goods sold rather than by units sold.

For Tian Shine Enterprise Co., Ltd.

The following adjustments were made to the cost of manufacturing:

1. The cost of frit was adjusted to reflect more detailed information obtained during the verification;
2. Direct labor costs were increased to include the annual bonus;
3. Certain depreciation expenses were reclassified from SG&A to factory overhead;
4. Direct labor costs were decreased by the amount of packing labor;
5. General costs were allocated based on the costs of goods sold instead of on a labor amount.

Tou Tien Metal (Taiwan) Co., Ltd.

For Tou Tien, the cost of manufacturing was adjusted:

1. To recalculate the enamel costs to reflect more detailed information obtained during verification and to include duty and freight;
2. To include duty paid, where the costs of steel did not include such amounts;
3. To include materials inventory loss;
4. To include production and annual bonus and to allocate such amount on a time-in-process basis. Direct labor for packing was deducted;
5. To reallocate factory overhead on the basis of labor rate;
6. To reallocate general expenses on the basis of cost of goods sold and selling expenses, as verified, in the home market.

Li-Fong Industrial Company

The following adjustments were made to the cost of manufacturing:

1. Plant management, reclassified by the respondent as SG&A, was included in the costs of manufacturing;
2. The amount of duty was included as part of the material costs;
3. For general expenses, certain omitted expenses were included. Certain other expenses, such as inland freight and export brokerage, were excluded;
4. Imputed interest expenses related to interest-free loans to the company from its owners were included in the general expenses;
5. General expenses were allocated based on costs of goods sold rather than on the direct labor costs.

Li-Mow Enamelling Company, Ltd.

The following adjustments were made to the cost of manufacturing:

1. Direct labor related to packing was excluded;
2. Imputed interest expenses related to interest-free loans to the company from its owners were included in the general expenses;
3. Certain expenses, such as office equipment depreciation, were included;
4. The general expenses were allocated over cost of goods sold rather than over the production volume;
5. Direct labor related to packing was included in packing.

Receive Will Industry Company Ltd.

The Department attempted to verify the cost-of-production data submitted by Receive Will in its response. However, there was lack of sufficient supporting documentation for the data presented in the response to the extent that virtually none of the cost-of-production totals nor cost components could be verified. Additionally, throughout the verification, the respondent submitted numerous revisions to the data submitted in the response.

Therefore, since the Department could not rely on the cost data presented by Receive Will in its submission, the Department used best information available based on certain company records which were determined to be credible and estimates derived from other respondents' information.

Currency Conversion

In calculating foreign market value, we made currency conversions from New Taiwan dollars to United States dollars in accordance with § 353.56(a)(1) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Verification

We verified all information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures, which included examination of relevant sales and financial records of the company.

Petitioners' Comments

Comment 1: Petitioners argue that the best information rule of adverse inference should be applied where respondents have made incomplete, inconsistent, untimely, or unverifiable submissions. Petitioners further argue that with respect to new information provided at verification, and with respect to inconsistent information provided in later responses, DOC should only use that information which is detrimental to respondents and not information which is beneficial, thereby rewarding respondents for making untimely, incomplete, or inconsistent submissions.

DOC Position: We disagree that any reliance or use by us of best information available under the Act and our regulations requires us automatically to draw inferences adverse to the respondent in this investigation. Best information is not necessarily that information most prejudicial to the respondent. Instead, it may be that information in which the Department has reasonable and justified confidence, and which is reasonably accessible given the time constraints of an antidumping investigation.

Comment 2: Petitioners state that respondents have made sales in the home market and in third country markets at prices which represent less than the cost of producing the merchandise and that these sales have been, (1) made over an extended period of time and in substantial quantities; and (2) are not at prices which permit recovery of all costs within a reasonable period of time. Therefore, they argue that the Department should disregard these sales when calculating foreign market value.

DOC Position: The Department has applied its standard cost viability test to determine which sales, if any, should be disregarded in the calculation of foreign market value. The test involves comparing home market or third-country prices of the merchandise under investigation to the cost of producing that merchandise during the period of investigation. If we find a significant portion of sales were at prices below the cost of production, we disregard these sales in our comparisons.

Comment 3: Petitioners argue that duty drawback should not be added to the United States price because respondents have failed to provide sufficient documentation for the allowance.

DOC Position: We disagree. We believe that respondents have provided us with sufficient documentation to justify the allowance of a duty drawback, except where otherwise noted. Moreover, in a situation involving similar facts, the Court of International Trade has upheld the Department's position on the appropriate level of documentation necessary to justify the allowance of duty drawback. See *Huffy Corp.* v. *United States*, Slip Op. 86-36, 11 CIT ____, March 27, 1986.

Comment 4: Petitioners agree with DOC's requirement that expenses related to consumer packaging be

charges, which were altered from the

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separated from packing. However, petitioners argue that since respondents, Tian Shine, First Enamel, Li-Mow, and Li-Fong failed to separate these costs, and that since Receive Will separated material, but not labor costs, the Department should use the best information available to impute costs associated with consumer packaging to the cost of production.

DOC Position. The Department agrees that consumer packaging should be included in the cost of production. The Department used actual costs for consumer packaging. When such data was not separated from shipment packing, the Department allocated a portion of the total packing costs to consumer packaging based on information produced by other producers as the best information available.

Comment 5. Petitioners argue that fair value comparisons should be based on precise and complete product descriptions, and that, since consumer packaging is part of the product, the type of packaging should also be considered in selecting appropriate fair value comparisons.

DOC Position: We disagree with petitioners' contention that differences in consumer packaging that have not been accounted for in selecting appropriate fair value comparisons make these comparisons imprecise. We would, however, consider making an adjustment for differences in physical characteristics of the merchandise based on the difference in costs of consumer packaging in the two markets. In this case, we believe that the differences in cost between consumer packaging on products sold to the United States and products sold in the home market or in a third country market are too insignificant to merit consideration in accordance with § 353.23(a) of our regulations.

Comment 6: Petitioners contend that respondents did not provide precise and complete product descriptions. Petitioners argue that, since it is too late in the investigation to obtain verifiable supplemental information, the Department should draw inferences adverse to respondents where respondents have failed to provide precise and complete descriptions.

DOC Position. The Department regards the product description for First Enamel, Tian Shine, Tou Tien, Li-Fong and Li-Mow to be precise and complete. Review Will did not submit product descriptions accounting for all of its sales to the United States or to third countries. We used best information available for that company when such information was not provided.

Comment 7: Petitioners argue that the Department's grouping guidelines for such or similar merchandise are too broad and should be narrowed to allow for more utility and specialty differences in cookware items.

DOC Position: The Department's grouping guidelines for such or similar merchandise meet the criteria of section 771(16) (A) and (B) of the Act. Furthermore, while the grouping guidelines define the outer limits of what products may be compared to each other in making fair value determinations, actual comparisons are based on the most similar merchandise within the individual grouping.

Comment 8: Petitioners argue that factory overhead has been understated by (1) Tian Shine, Tou Tien, Li-Fong, and Receive Will who improperly classified certain expenses as corporate and general expenses rather than as factory overhead, and (2) Tian Shine and Receive Will who used unreasonably long useful lives to calculate depreciation expenses.

DOC Position: The Department did review and analyze the nature of the costs included in the categories of SG&A and the factory overhead to determine if these had been appropriately classified. When the Department noted misclassification such as plant management salaries, the costs were reclassified.

The Department also reviewed the "useful life" of the assets which were used as the bases to determine the depreciation.

When such life was within a reasonable range for the asset or a change in the life would have a *de minimis* effect on the costs, no adjustments were made. For Tian Shine no adjustment was determined to be necessary. Receive Will's costs of production were based on the "best information available."

Comment 9: Petitioners argue that critical circumstances do exist and request that the Department reconsider its preliminary negative determination by (1) using more current import statistics, and (2) comparing imports from Taiwan with domestic shipments in deciding whether there have been massive imports of the subject merchandise over a relatively short period of time, and not merchanically applying the Department's "15 percent rule," in making this determination.

DOC Position: We have examined current import statistics in evaluating whether critical circumstances exist. As stated in the "critical circumstances" section of this notice, we find that critical circumstances do not exist.

Comment 10: Petitioners argue that since several respondents have improperly reported products shipped or exported during the period of investigation, rather than products *sold* during that period, the Department may be required to reject these sales in favor of best information.

DOC Position: We verified sales based on the date the terms of sale were fixed by the contracting parties. Terms of sale may be established on the date of contract or on the date of shipment, therefore, the fact that respondents reported the data of sale as the date of shipment does not require that we reject these sales in favor of the best information available.

Comment 11: Petitioners state that, according to the verification reports, First Enamel, Li-Fong, and Li-Mow, failed to report actual profits on home market or third country sales of comparable merchandise, used in calculating constructed value. Therefore, petitioners argue, the Department should apply the best information rule of adverse inference and infer profits in excess of the eight percent statutory minimum.

DOC Position: The companies did not provide profit data by market. Since the companies are predominantly manufacturers of porcelain on steel cooking ware, the average corporate profit was used. When such amount did not exceed eight percent, the statutory minimum was used.

Comment 12: Petitioners argue that, as revealed in the verification reports, Li-Mow and Li-Fong received interest-free loans from their firms during the period of investigation, and, therefore, interest should be imputed to these companies in order to reflect the real cost of production.

DOC Position: The Department reviews transactions between the company and its related parties to determine if such transactions reflect a fair value. In this case, the loans to the company by its owners were interest-free. Such terms do not reflect an "arms-length price" for loans. Therefore, the Department imputed an interest expense, based on the amount of these loans, as part of the cost of production.

Comment 13: Petitioners argue that bonuses and any other fringe benefits should be included within direct labor in calculating cost of production and constructed value.

DOC Position: The Department agrees. All cost related to labor, bonus and fringe benefits are considered to be part of the labor expense.

Comment 14: With regard to Tian Shine, petitioners state that packing

charges, which were altered from the March 28 submission to the June 13 submission resulting in lower unpacked third country sales and higher unpacked United States prices, have not been explained.

DOC Position: Packing charges as reported in Tian Shine's June 13 sales response, which aggregated consumer and export packing, were verified. However, in comparing United States price to foreign market value, the Department adjusted foreign market value based on the verified export packing figures obtained in the Department's cost-of-production analysis.

Comment 15: With regard to Tian Shine, petitioners argue that duties and taxes should be included in all material costs and should be imputed, if not reported, in calculating constructed value.

DOC Position: Duties rebated upon exportation were included in the cost of production. When they are not included in the submitted costs, we adjusted these costs to reflect such duties. However, indirect taxes were not included in material costs pursuant to section 773(e)(1)(a).

Comment 16: With regard to Tian Shine, petitioners contend that spout costs for teakettles were not reported and, therefore, should be imputed in calculating costs of production and constructed values of teakettles.

DOC Position: Review of the total costs of Tian Shine reveals that the cost of spouts had been captured through the costs of scrap and labor costs. Therefore, no additional costs were added to the cost of production.

Comment 17: With regard to Tian Shine, petitioners argue that based on the sales verification report, the Department should deduct commissions paid in the United States market from United States price when calculating its dumping margin.

DOC Position: We disagree. Commissions are treated as circumstances of sale adjustments in our Regulations. Therefore, the adjustment is made to foreign market value.

Comment 18: With regard to Tian Shine, petitioners argue that respondent failed to specify products which have a third coat of enamel and that, therefore, the Department should add this cost to any products that may have received a third coat.

DOC Position: Although the response did not specify which products required a third coat of enamel, such information was subsequently provided to the Department. Therefore, the cost used for the final determination included the third coat of enamel for the appropriate products.

Comment 19: With regard to Tian Shine, petitioners argue that the response failed to reflect a year-end bonus, which should be included in the cost of manufacture.

DOC Position: We agree and have added such costs.

Comment 20: With respect to Tian Shine, petitioners argue that the Department should factor in year-end inventory adjustments in determining respondent's factory overhead in the final determination.

DOC Position: Since the year-end inventory adjustment is made to reflect appropriately the amount of materials used during the year, the adjustment was considered in the Department's calculation of costs.

Comment 21: With regard to Tou Tien, petitioners state that the Department correctly refused to deduct commissions from home market sales based on Tou Tien's April 11, 1986, response, which stated that commission is paid to employees of the firm. Petitioners argue that the Department should rely on this submission and continue to deny the claimed commissions, and not allow the June 13, 1986, response to be the basis for the final determination, wherein Tou Tien claimed that commissions on home market sales were paid to unrelated parties.

DOC Position: The Department verified that commissions paid in the home market were made to unrelated parties. Therefore, adjustments were made with regard to commissions in the home market.

Comment 22: With regard to Tou Tien, petitioners argue that direct selling expenses on home market sales were overstated in the revised June 13, 1986, response, where a six-fold increase in direct selling expenses was reported without an explanation. While petitioners suggest that the newly reported direct selling expenses may reflect advertising expenses in the home market, they argue that Tou Tien has overstated these costs to the extent it includes advertising for products not subject to the investigation.

DOC Position: We disagree. The Department tested the revised information in the submission. When such information could be appropriately supported and reconciled with the company's records, the data were used.

Comment 23: With regard to Tou Tien, petitioners argue that sales newly reported as export samples should not be deleted without explanation.

DOC Position: The Department verified that such sales were, in fact, export samples.

Comment 24: With regard to Tou Tien, petitioners argue that "technical service expenses," reported for the first time in the June 13, 1986, response, should not be allowed as an adjustment to foreign market value without explanation.

DOC Position: The Department verified that the items reported as "technical service expenses" were not, in fact, such, and did not allow them as an adjustment to foreign market value.

Comment 25: With regard to Tou Tien, petitioners argue that indirect selling expenses should not be deducted from foreign market value. Petitioners base this on Tou Tien's revised Home Market Sales Price Charts where these deductions were no longer made.

DOC Position: Indirect selling expenses are not deducted from foreign market value but are used to offset commissions paid in the United States market.

Comment 26: With respect to Tou Tien, petitioners argue that changes in reported cost of production: materials, direct labor, and factory overhead, should be rejected when no explanation is given.

DOC Position: The Department used information which it considered to be verified. Adequate explanation was required as part of this process.

Comment 27: With regard to Tou Tien, petitioners argue that the weighting methodology suggested by Tou Tien for allocating labor and overhead to individual products under investigation, should be rejected, since it has not been adequately explained.

DOC Position: The Department tested the quantity of labor apportioned to each product to the ratio of time in processing. There were no significant differences resulting in the labor apportioned to the products.

Comment 28: With regard to Tou Tien, petitioners argue that inventory write-downs, involving products subject to this investigation discovered during the Department's verification, should be included within the cost of materials.

DOC Position: Inventory write-downs are part of the costs incurred by the company to produce the merchandise. Therefore, such costs, when related to the product under investigation, were included in the cost of production.

Comment 29: With regard to Tou Tien, petitioners argue that duties and freight costs should be included within material costs and should be imputed if not otherwise reported.

DOC Position: The Department included such amounts in its calculations.

Comment 30: With regard to Tou Tien, petitioners argue that costs for

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producing teakettle spouts were not reported and should be added (imputed if necessary) to the cost of producing teakettles.

DOC Response: We agree that the cost of spouts should be included in the cost of production. The costs to produce these spouts by the company were captured in the material, labor and factory overhead reported by the company. Therefore, no additional costs were added.

Comment 31: With regard to Tou Tien, petitioners argue that respondent reported average prices, rather than actual prices, on several United States and third country sales, and that actual prices must be used in the final determination.

DOC Position: We agree and used verified, actual prices in our final determination.

Comment 32: With regard to Tou Tien, petitioners note that for home market credit expense, it does not appear that the Department verified the number of days payment was outstanding on home market sales. Respondent suggests that it would have the Department use its standard payment terms to calculate credit expense. Petitioners argue that this approach is not in accordance with law and that Tou Tien's claimed adjustment for home market credit expense should be rejected.

DOC Position: We verified credit expenses as reported.

Comment 33: With regard to Tou Tien, petitioners state that it does not appear that the Department verified Tou Tien's allocation of indirect selling expenses in the home market. Respondent would have the Department assume that such selling expenses are identical for P–O–S cookware, stainless steel kitchen cupboards, and gas burners. Petitioners argue that this assumption does not appear to have been verified and accordingly, Tou Tien's allocation based on that assumption must be rejected.

DOC Position: Allocation of indirect selling expenses were not verified, but selling expenses, in total, were verified for constructed value.

Comment 34: With regard to Tou Tien, petitioners argue that the verification report indicates that respondent failed to deduct bank charges on United States sales, and that these, therefore, should be deducted in the final determination.

DOC Position: We agree and have deducted these bank charges from U.S. price in our final determination.

Comment 35: With regard to Tou Tien, petitioners argue that enamel frit costs were underreported by using an average cost for cover coat and ground coat costs, and that actual costs should be used in the final determination.

DOC Position: The Department agrees that average cost for cover coat and ground coat enamel did not adequately reflect the actual cost. Therefore, these costs were adjusted for the final determination.

Comment 36: With regard to Tou Tien, petitioners contend that the reported revenue derived from scrap sales was apparently based on "Materials Returned to Warehouse" slips. Petitioners argue that these slips do not indicate the revenue generated from scrap sales and accordingly, the claimed deduction for scrap sales should be rejected.

DOC Position: The Department verified the amount of scrap resulting from the production of cookware and included an appropriate amount of revenues for scrap sales.

Comment 37: With regard to Tou Tien, petitioners argue that since respondent's selling expenses in the home market could not be verified, they should be rejected in favor of the best information available.

DOC Position: The Department verified Tou Tien's direct selling expenses and used them for the final determination.

Comment 38: With regard to First Enamel, petitioners argue that commissions paid on United States sales should be deducted; but home market indirect selling expenses should be disallowed as an offset because they are greatly overstated.

DOC Position: We disagree. We verified home market indirect selling expenses. Section 353.15 of the Commerce Regulations specifies that reasonable allowance for selling expenses will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration. Therefore, in calculating foreign market value, we allowed indirect selling expenses in the home market to offset commissions paid in the United States market.

Comment 39: With regard to First Enamel, petitioners argue that, according to the verification report, a substantial number of United States sales were made to a related distributor in the United States and that these sales should be treated as ESP transactions with the related party's selling expenses being deducted in the calculation of United States price.

DOC Position: We disagree. Section 772 (b) of the Act requires that these sales be characterized as purchase price sales since the merchandise was purchased by an unrelated purchaser prior to the date of importation. See *Final Results of Administrative Review of Antidumping Duty Order: Certain Electric Motors from Japan* (48 FR 14719; April 5, 1983).

Comment 40: With regard to First Enamel, petitioners argue that its cost of production was understated by, (1) failing to allocate general and administrative expenses on the basis of cost of goods sold, (2) subtracting duty drawback from cost of production, and (3) failing to allocate the expense of the annual employee party to factory overhead and/or general expenses.

DOC Position: We agree and have made the appropriate adjustments.

Comment 41: With regard to Li-Mow, petitioners argue that its SG&A expenses were understated by (1) excluding certain SG&A expenses from its response, (2) allocating SG&A to unsold inventory, instead of allocating SG&A on a cost of goods sold basis, and (3) failing to impute interest on interest-free loans received from officers and owners of the company

DOC Position: We agree that expenses such as office equipment depreciation, public relations, stationery and travel are considered general expenses and have included them in the costs. Since the general and administrative costs are incurred for a specific period of time, these costs were allocated to the products sold during that time based on the costs to manufacture those goods. Interest expense on the interest-free loans made by the owners was included.

Comment 42: With regard to Li-Fong, petitioners argue that Li-Fong's submissions are "unacceptably obfuscatory" in that it is impossible to match products described in United States sales charts, home market sales charts, and cost of production charts.

DOC Position: We disagree. This response was verified.

Comment 43: With regard to Li-Fong, petitioners argue that the home market sales disclosed five weeks after the preliminary determination, were reported in an untimely fashion and should not be used unless their use is adverse to respondent.

DOC Position: We disagree. These sales were verified as reported and used as the basis for foreign market value.

Comment 44: With regard to Li-Fong, petitioners argue that its cost of production was understated by (1) failing to allocate certain plant management labor to factory overhead, (2) failing to include losses on sales of certain fixed assets within factory overhead and/or general expenses, (3) subtracting duty drawback, and (4) failing to input interest on interest-free loans received from officers and owners of the company.

DOC Position: The Department agrees that the plant management labor should have been included in factory overhead, that the duty drawback should be part of the materials costs and that interest expenses should be in the cost of production.

Comment 45: With regard to Receive Will, petitioners contend that significant changes in duty drawback and packing adjustments were made in Receive Will's post-verification submission of August 9, 1986, and have not been explained. To the extent any of these changes have not been verified, the Department should only utilize new information that is adverse to Receive Will.

DOC Position: The Department did not use any of the unverified information presented in that submission.

Comment 46: With regard to Receive Will, petitioners argue that certain expenses should be reclassified from SG&A to factory overhead expenses.

DOC Position: The Department used best information for Receive Will and, therefore, this comment is not applicable. See the Foreign Market Value Section of this notice.

Comment 47: With regard to Receive Will, petitioners argue that the Department should substitute a five-year useful life for equipment, instead of that assigned by Receive Will, in calculating depreciation expense.

DOC Position: See DOC position on Petitioners' Comment 8.

Comment 48: With regard to Receive Will, petitioners argue that duty drawback which could not be substantiated at verification, should be disallowed on United States sales and should be imputed to third country sales.

DOC Position: With regard to Receive Will, duty drawback that could not be substantiated was not allowed on either United States or third-country sales.

Comment 49: With regard to Receive Will, petitioners argue that in calculating cost of production and constructed value, the Department should allocate costs over finished and first quality goods only, and treat semi-finished goods and seconds as by-products, since these were not reported. Petitioners further argue that only *verified* revenue generated from sales of semi-finished goods and seconds may then be used to adjust costs.

DOC Position: This comment is not applicable. See Foreign Market Value Section.

Comment 50: With regard to Receive Will, petitioners argue that benefits should be added to direct labor in computing cost of production and constructed value.

DOC Position: This comment is not applicable. See Foreign Market Value Section.

Comment 51: With regard to Receive Will, petitioners argue that the cost of production response is fundamentally flawed and deficient and could not be verified, and that the Department has no choice but to reject the response and use the best information as contained in the petition.

DOC Position: The Department attempted to verify the response submitted by Receive Will. However, the data presented in the response did not reconcile with the company's records. Therefore, the Department used "best information" for the cost of production of Receive Will.

Comment 52: With regard to Receive Will, petitioners argue that the sales verification report demonstrates that brokerage and handling fees on third country sales could not be substantiated.

DOC Position: We agree. Therefore, when comparing purchase price to foreign market value, we used the best information available for third-country brokerage and handling fees. In this case, the best information available was the highest per-unit brokerage and handling fees reported, and verified, on sales of identical or similar merchandise in the United States market.

Respondents' Comments

Comment 1: First Enamel, Tian Shine, Tou Tien, Li-Fong, Li-Mow and Receive Will argue that duty drawback is an appropriate adjustement to United States price and that the Department has verified the amount of duty drawback claimed in their responses.

DOC Position: See DOC Position to Petitioners' Comment 3.

Comment 2: First Enamel, Tian Shine, Tou Tien, Li-Fong, and Li-Mow contend that DOC verified their responses and determined that they were complete and consistent. Respondents argue that while there were corrections and adjustments to the responses, they were not too numerous or fundamental in terms of calculations or methodology as to require the DOC make its determination on the basis of best information. Respondents further argue that DOC should use *verified* information, whatever its relationship to prior information.

DOC Position: We agree. Omissions and errors in responses are frequently discovered on verification. Respondents' omissions and errors are not of a type or magnitude that would cause the Department to use petitioners' information or any other information as the best information otherwise available. However, the Department will only rely on information it has verified in making its final determination.

Comment 3: First Enamel, Tian Shine, Tou Tien, Li-Fong, and Li-Mow argue that section 773(e)(C) of the Act requires the Department to treat all packing, including consumer packaging, as one unit in the calculation of constructed value. Consumer packaging should not, therefore, be separated from export packing, and included with in the cost of production of porcelain-on-steel cookware.

DOC Position: We disagree. Section 773(e)(C) of the Act requires that the cost of all containers and coverings of whatever nature, and all other expenses *incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States* be added to the cost of manufacturing and profit in the calculation of constructed value. Since consumer packaging is not a cost incidental to shipment to the United States, it does not fall within section 773(e)(C) of the Act.

Comment 4: First Enamel, Tian Shine, Tou Tien, Li-Fong and Li-Mow argue that bank charges incurred on sales to the United States should not be deducted from the United States price because the Department has previously found such charges not to be costs "incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States."

DOC Position: We disagree. The Department has found that the bank charges incurred by the respondents on their United States Sales, are incident to bringing the merchandise to the place of delivery in the United States. Therefore, these charges constitute an appropriate deduction to the United States price under § 353.10(d)(2)(i) of the Department's regulations.

Comment 5: First Enamel, Tian Shine, Tou Tien, Li-Fong, and Li-Mow argue that a cost of production analysis is unwarranted since the petitioners have not alleged, and have offered no evidence, that there have been below-cost sales over an extended period of time in substantial quantities at prices not permitting the recovery of all costs within a reasonable period of time.

DOC Position: We disagree. Petitioners need not allege and provide evidence that below-cost sale have occurred over an extended period of time at prices not permitting the recovery of all costs within a reasonable

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time, in order for the Department to accept an allegation of sales below cost. Section 773(b) of the Act requires only that the Department have reasonable grounds to believe or suspect that sales have been made at "prices which represent less than the cost of producing the merchandise" in order to accept an allegation. The Department must then conduct a cost of production investigation and disregard any home market or third country sales which meet the criteria respondents have enumerated.

Comment 6: First Enamel, Tian Shine, Tou Tien, Li-Fong, and Li-Mow argue that, if there were below-cost sales, DOC should treat all sales of the subject merchandise as a group, as opposed to individual product categories, in order to determine whether these sales amount to substantial quantities at prices not permitting recovery of costs.

DOC Position: We disagree. Section 773(a) of the Act requires that the determination of foreign market value be based on sales, or in the absence of sales, offers for sales of "such or similar" merchandise in the home market, if "such or similar" merchandise is sold or offered for sale in the market. Section 773(a)(1)(B) of the Act limits the use of home market sales as a basis for the determination of foreign market value to those situations in which the quantity of sales or offers for sales of "such or similar" merchandise in the home market is adequate. This test for the adequacy of home market sales is commonly called the home market viability test. Pursuant to § 353.4 of the Commerce Regulations, we grouped together all merchandise sold in the home market which is either "such or similar" to the merchandise sold to the United States, and then determined whether the quantity of this merchandise was adequate. Consistent with this statutory scheme, we then performed our test for sales at less than the cost of production on each of the "such or similar" product groupings. In this case, we consistently applied the home market viability test and the sales at less than the cost of production test to each category of "such or similar" merchandise.

Comment 7: Tian Shine and Li-Fong contend that the useful lives of equipment were verified and are in accordance with generally accepted accounting principles in Taiwan and with the law in Taiwan, and, therefore, should be accepted by the Department for its final determination.

DOC Position: The useful life periods used by the companies were reasonable and therefore, no adjustments were made.

Comment 8: Li-Fong and Li-mow argue against the imputation of interest on interest-free loans received from the owners and officers of the firms, as suggested by petitioners. Respondents argue that these loans are for all practical purposes a form of equity financing, a contribution to capital, with no expense to the companies, and, therefore, no expense should be imputed.

DOC Position: The Department disagrees and finds no reason why this debt should be considered equity since repayment of the principal was part of the terms for these loans. Therefore, the Department treats these loans as described in our response to Petitioners' Comment 13.

Comment 9: Tou Tien contends that costs of material and labor for the spouts for teakettles were accounted for and verified by DOC.

DOC Position: The cost to produce these spouts by the company were captured in the material, labor, and factory overhead as reported. Therefore, no additional costs were added.

Comment 10: Tou Tien argues that the valuation of steel scrap sales should be taken as an offset to material costs, and that both the quantity of scrap and its valuation were verified by DOC.

DOC Position: See Petitioners' Comment 36.

Comment 11: Tou Tien states that the weighting methodology devised to calculate labor costs was based on differences in labor processing time, which hence reflects the differences in labor usage.

DOC Position: The Department tested the quantity of labor apportioned to each product to the ratio of time in processing. There were no material differences resulting in the labor apportioned to the products.

Comment 12: Tou Tien states that the enamel frit costs provided in the response were weighted-average costs for both cover and ground coats. Respondent argues that the Department has been given information showing the costs of these two coats separately, and has been supplied with the duty and freight costs for the enamel frit vouchers, therefore, adjustments may be made if necessary.

DOC Position: The Department agrees that average costs for cover and ground coat enamel did not adequately reflect the costs. Therefore, these costs were adjusted for the final determination.

Comment 13: Tou Tien argues that small component parts were fully accounted for in the response under factory overhead, not under direct material costs, due to the way in which Tou Tien keeps its books. However, respondent was able to break out these small components parts' costs as they relate to specific products being produced, and the Department was able to verify this information. Thus, if such costs are to be assigned directly to the products being produced, a subtraction should be made from factory overhead to avoid double counting of costs.

DOC Position: The Department included such amounts in the factory overhead and did not attribute components to specific products.

Comment 14: Tou Tien states that direct labor costs in the response did not include some small production bonuses paid during the year, which were verified by the Department, but did include the annual spring bonus.

DOC Position: The Department made appropriate adjustments for the bonus which was not included.

Comment 15: Tou Tien argues that for those items which could not be directly assigned to a specific cost center, power and square footage were used to allocate certain overhead items. This allocation method was chosen because it would give an accurate reflection of the amount of factory overhead likely to be involved in the particular production centers for those items.

DOC Position: Most of the factory overhead could be specifically identified with the products. The balance of these costs was allocated based on labor since the Department believed this basis to reflect usage more appropriately.

Comment 16: Tou Tien argues that, with regard to SG&A expenses, the revised allocation method presented at verification, and verified by the Department, represents a reasonable basis of allocation, as it is based on a combination of factors which determine the actual distribution of SG&A expenses between both porcelain-on-steel and non-porcelain-on-steel products, as well as between export and home markets.

DOC Position: The Department used the selling expenses provided by Tou Tien and reallocated the general and administrative expenses on the cost of goods sold basis.

Comment 17: Receive Will argues that teakettle margins should be calculated and reported separately from cookware margins in a manner coincidental with the ITC's, which found that there were two separate like products in the preliminary phase of this investigation (ITC Pub. No. 1800, 1986). Respondent further argues that, although the ITC found contrary to this in porcelain-on-steel cooking ware from Spain (ITC Pub. No. 1883, 1986), it should not change the result here.

DOC Position: We disagree. Section 731 of the Act requires the imposition of antidumping duties on the basis of the Department's finding that "a class or kind" of foreign merchandise is being, or is likely to be sold, at less than fair value. The ITC's "like product" determination is based on wholly different concerns and has little bearing on the Department's determination of what products constitute a single "class or kind" or merchandise for purposes of establishing a dumping margin.

Comment 18: Receive Will argues that in making product matches, the Department should compare teakettles to teakettles (as a class) and, separately, cookware to cookware (as a class). Respondent argues that the categories should be narrowed even further to the level of model names so that matches are made between identical merchandise.

DOC Position: When comparing purchase price to foreign market value, we followed the criteria for comparing such or similar merchandise set forth in section 771(16) of the Act. As stated in Respondents' Comment 17, we do not consider "teakettles" or "cookware" as separate classes or kinds of merchandise.

Comment 19: Receive Will argues that the DOC should use Receive Will's cost of production submissions to determine whether goods have been sold in the United States at less than the cost of production, and to determine constructed value.

DOC Position: The Department attempted to verify the cost of production submission. However, since the company's records did not confirm the data in the submission, the Department used the "best information" which was available. See the Foreign Market Value Section of this notice.

Comment 20: Receive Will argues that its cost of production submission, based on sales rather than production, was appropriate and should be accepted by DOC. Respondent contends that since the company produces only to order and not for inventory, sales data are a very close surrogate, and more useful for DOC purposes, that would be production data.

DOC Position: The Department could not verify the sales information used to determine the cost of production nor did such data reconcile with certain production information obtained during verification. Therefore, the theorical basis used is not a relevant consideration.

Comment 21: Receive Will states that, because it based its response on shipment date rather than contract date, cost of production for a new product, Kammy IV, was omitted. Respondent argues that for Kammy IV, the Department should use the cost of production for other teakettles bearing the same item number.

DOC Position: The company had sufficient time prior to and during verification to provide such data. Additionally the fact that a product has the same item number as another product would not be a basis to assume that the two products have the same costs.

Comment 22: Receive Will argues that it was correct to combine the cost of production data for the Copco and Monte Carlo style teakettles. Respondent states that the Copco and Monte Carlo teakettles use the same size raw material blank, have the same item number, and that visual inspection establishes that the teakettles are close in size, shape, and appearance.

DOC Position: Cost for each product must be provided. Combined costs for products would not serve to determine adequately if the individual products are being sold above their costs.

Comment 23: Receive Will argues that omission of the cost-of-production data for the Floral teakettle does not make the response incomplete, since this type of teakettle comprised only a small percentage of the quantity of Receive Will's United States teakettle sales.

DOC Position: The respondent had sufficient time prior to and during verification to provide such data. Omission of the cost-of-production data for a number of teakettles was another indication of the insufficiency of the response.

Comment 24: Receive Will states that it did not provide separate data on yields and material losses because it factored into its cost of production submission a percentage loss rate for raw material utilization. Receive Will argues that this percentage loss rate for raw material utilization should be used for the yields factor, if not as a direct measure, then as best information of that measure.

DOC Position: The Department relied upon certain credible material costs of the respondent in its calculation and, therefore, included the percentage loss rate provided by the respondent.

Comment 25: Receive Will argues that the failure to include semifinished and second-grade goods is not sufficiently substantial to require the use of best information for the cost of production. Respondent offers two alternatives for dealing with this issue, (1) DOC should modify the cost tables by factoring in the necessary data, which has been verified; or (2) DOC should simply not take into account the semifinished and second-grade material, the effect of which would raise Receive Will's cost of production.

DOC Position: It is not the Department's responsibility to develop the cost of production for the respondent. The Department is responsible for verifying the data submitted by the respondent. The fact that the costs which were developed by the respondent did not adequately account for semifinished and second-grade goods is another indication of the insufficiency of the response.

Comment 26: Receive Will argues that its methodology for calculating raw material costs, ascertaining the amount of steel in the finished product and multiplying that by the unit cost of steel, rather than beginning with raw material and factoring out waste and scrap, is appropriate and in accordance with the instructions in the questionnaire. Receive Will further argues, therefore, that although usage rates for steel do not correspond to internal company specifications for material usage, there is no deficiency in their response.

DOC Position: Materials costs must include the costs of scrap. The respondent's methodology did not appropriately account for this loss.

Comment 27: Receive Will argues that while the firm was not able to reconstruct perfectly its depreciation calculation at verification, it did arrive at figures very close to those submitted to the Department in the response and therefore, those submitted to the Department in the response and therefore, those figures should be used as the best information available.

DOC Position: The depreciation expense could not be reconciled to the company's records. Therefore, the Department could not determine the magnitude of the discrepancy.

Comment 28: Respondent states that the useful lives used to calculate depreciation expense were reported in the response and are correct, corresponding fully to those claimed on its tax returns and on it books of account.

DOC Position: See Respondents' Comment 27.

Comment 29: Receive Will argues that its methodology for determining per unit frit costs was correct and that, although these costs were not supported the response, both the methodology and the cost were verified. Respondent further argues that the difference between the DOC methodology in determining frit usage and Receive Will's own methodology should not case doubt on

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the accuracy of its response, and that if the Department rejects this methodology in favor of its own, the data verified by DOC should be used as best information available.

DOC Position: The Department could not verify either the methodology or the costs.

Comment 30: Receive Will states that direct labor as reported in the response only included base pay and overtime. Fringe benefits were not included. Respondent argues that it reported direct labor in conformity with Taiwan's Generally Accepted Accounting Principles, and that if the Department believes it is necessary to reallocate among accounts, then all the necessary data are within the verification exhibits and the reallocation can be done.

DOC Position: The Department's questionnaire specifically requested that direct labor and all benefits be included in labor. It is not the Department's responsibility to develop the respondent's submission.

Comment 31: Receive Will argues that its August 9, 1986, submission, recasting information obtained during verification, and submitting it at the request of the Department, is accurate and should be used in its final determination.

DOC Position: We disagree. We did not verify Receive Will's August 9, 1986, submission which was submitted after verification, and we use only verified information on the record in making our final determination.

Comment 32: Tian Shine argues that for price-to-price comparisons, it is appropriate to compare products sold in the United States to the identical or most similar product sold in any third country market in which substantial sale of that product occur. Tian Shine notes that in the preliminary determination, product 2001 sold in the U.S. market was compared to a similar product sold in Canada when substantial sales of 2001 occured in France. Tian Shine therefore argues, that more appropriate third country product comparisons appear available than were used in the preliminary determination.

DOC Position: We disagree. Section 353.5 sets forth the criteria by which third country comparisons are to be made. The regulation establishes a preference for the selection of a single third country when adequate quantities of similar products are sold in that country. If, however, no single country can accommodate all of the categories of such or similar merchandise, third countries may be aggregated to provide the appropriate fair valve comparisons. This does not mean that if *identical* product matches can be found by making comparisons with numerous third countries, the department should deviate from the regulatory preference to use a few third countries as possible.

Comment 33: Tian Shine argues that the Department should use the verified, revised packing costs set forth in the June 3, 1986, submission, since at that time respondent was able to calculate more precisely its actual packing costs for each individual product, based upon actual materials and labor used for those products, as opposed to cost provided earlier on less precise and a less product specific basis.

DOC Position: We agree and have used the most recent verified amount.

Comment 34: Tian Shine argues that although it did not subtract the sales of scrap in calculating the cost of production in its questionnaire response, the ITA verified the scrap amount and should subtract if from material cost in determining cost of production of the final determination.

DOC Position: The scrap amount was not verified. Therefore, no adjustment was made.

Comment 35: Tian Shine argues that in its questionnaire response, the company incorrectly calculated the cost of the enamel cover cost by including the cost of a beige cover coat over both the inside and outside of a tea kettle. Tian Shine argues that since tea kettles have a cover coat on the outside only, the reported cost for the cover coat is overstated and an adjustment should be made to reduce the reported cost.

DOC Position: The Department use Tian Shine's enamel cost obtained as a result of the verification.

Comment 36: Tian Shine argues that duties and taxes were verified and were include in calculating material costs in virtually all cases. Respondent further argues that, although it inadvertently failed to include some duties and taxes with respect to a few purchases of color oxide, any change in costs as a result of this omission is immaterial and should be ignored.

DOC Position: The Department used the material costs as verified which included duties.

Comment 37: Tian Shine contends that spout costs in producing tea kettles were fully accounted for in the material and direct labor costs and were verified by the Department.

DOC Position: The spout costs were included as part of the scrap costs and part of the total labor amount.

Comment 38: Tian Sine states that labor costs were verified as were two end-of-year bonus payments, one of which was paid during the period under investigation and included in its response. Respondent argues that if the Department includes in labor costs the bonus payment made in 1986 for services in 1985, the bonus payment included in the response which was made in 1985 for services in 1984 should not be included in the labor costs, in order to be consistent in the treatment of bonuses.

DOC Position: The Department included the bonus payments applicable to the period of investigation.

Comment 39: Tian Shine states that standard costs for raw materials were provided in the response without specific allocation for variance, but with allowance for waste. The Department has verified actual usage and determined that any variances to figures reported were small. Respondent argues, therefore, that if the Department determines it necessary to make adjustments, they should be made for both positive and negative variances.

DOC Position: The Department considered all variances and made adjustments when appropriate

Comment 40: Tian Shine states that SG&A and interest costs were allocated using a labor ratio, which can be precisely calculated based on records kept by Tian Shine. Respondent argues that this is an appropriate method of allocation since labor usage proportions generally will reflect material usage, as well as factory overhead proportions for a particular product. Therefore, there was no understating of SG&A or interest costs in the response as such costs were fully allocated.

DOC Position: The Department allocated the SG&A and interest costs on the basis of cost of manufacturing.

Comment 41: Tian Shine contends that the entire cost of stainless steel rims was fully accounted for in the cost of materials and in direct labor costs.

DOC Position: We agree.

Comment 42: Tian Shine argues that the small positive variance in actual kilograms of steel used, which was verified by the Department, should be taken into account and the cost of production adjusted accordinly.

DOC Position: All variances were considered and adjustments were made when appropriate.

Comment 43: Tian Shine argues that the reconciliation of all products' packing expenses in 1985 showed a positive variance with the 1985 financial statements as adjusted for inventory, and that this should be taken into account when calculating the cost of production.

DOC Position: All variances were considered and adjustments were made when appropriate.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of porcelain-on-steel cooking ware from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after May 20, 1986, the date of publication of our notice of preliminary determination in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The cash deposit rate established in the preliminary determination shall remain in effect with respect to entries or withdrawals made prior to the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
First Enamel Industrial Corp	9.04
Tian Shine Enterprise Co., Ltd	1.99
Tou Tian Metal (Taiwan) Co., Ltd	2.67
Li-Fong Industrial Corp	2.53
Li-Mow Enamelling Co., Ltd	6.46
Receive Will Industry Co., Ltd	23.12
All Others	6.82

Critical Circumstances

Petitioner alleged that imports of the subject merchandise from Taiwan present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we determine that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of recent import statistics, we find that imports of the subject merchandise from Taiwan have been massive over a short period. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies n this case. Therefore, we determine that critical circumstances do not exist with respect to imports of porcelain-on-steel cooking ware from Taiwan. We have notified the ITC of this determination.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC, however, determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on porcelain-on-steel cooking ware from Taiwan which were entered or withdrawn from warehouse for consumption on or after May 20, 1986, the publication date of the preliminary determination in the **Federal Register**, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

October 2, 1986.

[FR Doc. 86-23037 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-504]

Final Determination of Sales at Less Than Fair Value: Porcelain-On-Steel Cooking Ware From Mexico

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that porcelain-on-steel cooking ware from Mexico is being, or is likely to be, sold in the United States at less than fair value. We have also determined that critical circumstances exist with respect to imports of this merchandise by Troqueles y Esmaltes, S.A. and All Others. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption. This suspension of liquidation is ordered retroactively to February 19, 1986, for Troqueles y Esmaltes, S.A. all All Others, and the security amount established in our preliminary determination is no longer in effect. With respect to Cinsa, S.A., we have directed the U.S. Customs Service to continue with the suspension of liquidation of all entries of porcelain-on-steel cooking ware from Mexico that are entered, or withdrawn from warehouse, for consumption, on or after May 20, 1986, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Karen Busler, Office of Investigations, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Tel: (202) 377-0167 or (202) 377-4198.

Final Determination

We have determined that porcelain-on-steel cooking ware from Mexico is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, July 1 through December 31, 1985. The weighted-average margins are shown in

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the "Suspension of Liquidation" section of this notice. We have also determined that critical circumstances exist with respect to imports of this merchandise by Troqueles y Esmaltes, S.A. and All Others.

Case History

On December 4, 1985, we received a petition from the Porcelain-On-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation, on behalf of the domestic manufacturers of porcelain-on-steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of porcelain-on-steel cooking ware from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on December 24, 1985 (50 FR 53352, December 31, 1985). On January 28, 1986, the ITC determined that there is reasonable indication that imports of porcelain-on-steel cooking ware from Mexico are materially injuring a U.S. industry (51 FR 3862, January 28, 1986).

On January 27, 1986, we presented antidumping duty questionnaires to Cinsa, S.A. (Cinsa) and Troqueles y Esmaltes, S.A. (TRES). Respondents were requested to answer the questionnaire in 30 days. On February 18, 1986, the Embassy of Mexico and the Mexican exporters requested an extension for response submissions. We orally granted the respondents a two-week extension. On March 7, 1986, we amended our questionnaire and, at the request of the companies and of the Embassy of Mexico, granted a second two-week extension of time (from March 7) for response submissions. Subsequently, a third two-week extension was granted, also at the respondents' request. The companies submitted responses on March 31 (Cinsa) and April 2 (TRES), 1986. The Department sent out supplemental questionnaires to Cinsa on April 12, and to TRES on April 14, 1986. We received additional information from both companies on April 21, 1986. On May 9, 1986, a letter requesting correction of deficient information as well as a reformulation of certain types of information was presented to the companies under investigation. We requested that the responses to our deficiency letter be submitted prior to verification. On June 11 and 16, 1986, the Department received the second supplemental responses of Cinsa and TRES, respectively.

On May 13, 1986, the Department preliminarily determined that porcelain-on-steel cooking ware from Mexico is being, or is likely to be, sold in the United States at less than fair value (51 FR 18470, May 20, 1986). The notice stated that we would issue our final determination by July 28, 1986. On May 16, 1986, respondents requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. The respondents were qualified to make this request because they were exporters who accounted for a significant proportion of exports to the United States of the merchandise under investigation. Accordingly, the period for the final determination was extended until no later than October 2, 1986 (51 FR 20882, June 9, 1986).

On May 23, 1986, petitioners amended the December 4, 1985, petition to allege that critical circumstances exist in the antidumping duty investigation of procelain-on-steel cooking ware from Mexico, pursuant to section 733(e) of the Act. During a telephone conversation on June 3, 1986, we informed petitioners that we needed evidence to support their allegation that critical circumstances exist. On June 4, 1986, petitioners submitted additional information to support their allegation, and the Department subsequently decided to investigate the allegation. On July 7, 1986, the Department preliminarily determined that critical circumstances do not exist in the antidumping duty investigation on porcelain-on-steel cooking ware from Mexico (51 FR 25228, July 11, 1986).

From July 10 through July 19, 1986, we verified the information provided by the respondents at TRES and Cinsa. In lieu of a hearing, petitioners and respondents simultaneously submitted initial briefs on August 26, 1986, and rebuttal briefs on September 4, 1986. We have taken these written views into consideration in this determination.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedules of the United States Annotated* (TSUSA). Kitchenware, currently reported under item 654.0828 of the TSUSA, is not subject to this investigation. This investigation covers the period from July 1, 1985, through December 31, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise were made at less than fair value, we compared the United States price to the foreign market value for the companies under investigation, using data provided in their responses. Foreign market value was based on home market prices, except for sales of roasters by Cinsa, where we used third country (Canadian) sales.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States prices, since the merchandise was sold to unrelated U.S. purchasers prior to importation. We calculated purchase price based on the packed, F.O.B., or ex-factory, prices of first quality merchandise to unrelated purchasers in the United States, as appropriate. We have not made fair value comparisons of any second quality (*i.e.*, defective) merchandise, because these sales account for an insignificant portion of the sales to the United States. We verified that second quality merchandise was not sold at customary prices in the home market and that a wide variety of defects occurred during production. Hence, any comparisons of this merchandise would be unreliable and arbitrary.

To determine Cinsa's purchase price, we deducted insurance, foreign inland freight, brokerage, and discounts, and added duty drawback.

To determine TRES' purchase price, we made deductions for insurance, foreign inland freight, U.S. freight, and U.S. and Mexican brokerage charges.

Foreign Market Value

In accordance with section 773(a)(1) of the Act, we used home market prices to determine foreign market value, with the exception of roaster sales by Cinsa, for which we used third country prices, because there were insignificant sales of this merchandise in the home market.

Because we examined only sales of first quality merchandise to the United States, we used the home market prices of first quality merchandise in our comparisons. Also, we limited our comparisons to home market sales made at quantities comparable to U.S. sales.

Finally, we excluded sales made by the companies under investigation to the Mexican government and government agencies because they are outside the ordinary course of trade, due to special pricing policies, payment terms, and shipping arrangements.

To determine Cinsa's foreign market value, we made deductions for inland freight, insurance, quantity and prompt payment discounts, volume rebates, and advertising. We made difference in merchandise adjustments for similar items, in accordance with § 353.16 of our regulations. We also made a circumstances of sale adjustment for differences in credit expenses, according to § 353.15 of our regulations. We made no adjustments for commissions paid to related agents. Since commissions to unrelated agents were paid only on sales to government agencies, and we are not including sales to the government in our fair value comparisons, we did not make an adjustment for these commission expenses.

Because Cinsa had insignificant home market sales of first quality roasters, we based foreign market value for this item on sales to Canada, as the merchandise sold to Canada was the most similar to that sold in the United States. To determine foreign market value, we deducted inland freight, insurance, and brokerage, and added duty drawback. We also made a circumstances of sale adjustment for differences in credit expenses, according to § 353.15 of our regulations.

To determine TRES' foreign market value, we made deductions for discounts, freight and insurance, and rebates. We made difference in merchandise adjustments for similar items, in accordance with § 353.15 of our regulations. We also made a circumstances of sale adjustment for differences in credit expenses, according § 353.15 of our regulations. We disallowed an adjustment for fixed credit expense (which included such things as the salary and administrative expenses of the credit department), because we consider it to be an indirect expense and not directly related to the sales under consideration, as required by § 353.15(a) of the Commerce regulations. We disallowed an adjustment for commissions paid to related agents, and we did not make an adjustment for commissions paid to unrelated agents, all of whom sell solely to government agencies.

Currency Conversion

In calculating foreign market value, we made currency conversions from Mexican pesos to United States dollars in accordance with § 353.56(a)(1) of our regulations, using the daily official Mexican exchange rates certified by the Federal Reserve.

Verification

We verified all information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures, which included examination of relevant sales and financial records of each company.

Critical Circumstances

Petitioners allege that imports of the subject merchandise from Mexico present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we determine that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of porcelain-on-steel cooking ware from Mexico in the United States or elsewhere, we reviewed past antidumping findings of the Department of Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries and found no past antidumping determinations on porcelain-on-steel cooking ware from Mexico.

We then considered whether the person by whom, or for whose account, this product was imported knew or should have known that the exporter was selling this product at less than its fair value. It is the Department's position that this test is met where margins calculated on the basis of responses to the Department's questionnaire are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below home market sales prices. In this case, the margins calculated on the basis of the response to the Department's questionnaire are sufficiently large for TRES and All Others that the importer knew or should have known that the merchandise was being sold in the United States at less than fair value. Therefore, we determine that this test is met.

We generally consider the following concerning massive imports: (1) Recent trends in import penetration levels, (2) Whether imports have surged recently, (3) Whether the recent imports are significantly above the average calculated over the last three years; and (4) Whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we have analyzed recent trade statistics on imports from Mexico. We find that imports have been massive over a short period of time, and, therefore, for the reasons described above, we determine that critical circumstances exist with respect to porcelain-on-steel cooking ware from Mexico.

We have notified the ITC of this determination.

Petitioners' Comments

Comment 1: Petitioners argue that respondents' claimed adjustment for level of trade differences should be ignored because there is no consistent correlation between the prices charged or quantities sold by the respondents and the type of customer, because the companies have failed to show that they incur consistently different costs in selling to different types of customers in the home market, and because wholesaler customers of both companies frequently paid higher net unit prices than did other customers.

DOC Position: In making fair value comparisons, we compared sales in the United States to sales made by Cinsa and TRES to wholesalers and wholesalers of sets in the home market. This decision was based on an analysis of the average quantity per invoice of each home market customer category, wherein we found that sales to wholesalers in the home market are made at quantities comparable to U.S. sales, pursuant to § 353.14 of Commerce regulations.

Moreover, we verified that, in the ordinary course of trade, Cinsa and TRES granted sale-by-sale discounts on each home market sale. Therefore, to reach the price actually charged in the home market, we have included these discounts in our foreign market value.

Due to special pricing policies, payment terms, and shipping arrangements, we found sales by Cinsa to Mexican government agencies to be outside the ordinary course of trade.

Comment 2: Petitioners contend that commissions paid to respondents' employees for sales are in the nature of salaries and that the Department should not grant adjustments for such general expenses of doing business.

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DOC Position: We agree. In general, the Department has not permitted adjustments for commission payments to related parties (*e.g.*, employees). The principle behind denying adjustments for payments to related parties is that such payments are merely intracompany transfers of funds. As such, these payments are considered to be part of the general expenses of the company, and not costs directly related to particular sales, as required by 19 CFR 353.15.

However, in *Egg Filler Flats from Canada* (50 FR 24009, June 7, 1985), *Iron Construction Castings from India* (51 FR 2412, January 16, 1986), and *Drycleaning Machinery from West Germany* (50 FR 32154, August 8, 1985), we determined that the salesmen in question operated the same as unrelated agents would. In particular, we determined that the salesmen in question were paid no salaries and that they paid for all their sales-related expenses.

In this case, we have not made an adjustment for commissions paid by the companies under investigation to related agents, because we were unable to verify that the salesmen in question paid for all their sales-related expenses. Furthermore, we verified that TRES' related agents did receive salaries in addition to commissions. Thus, these commissions are not directly related to the sales under investigation.

Comment 3: Petitioners argue that respondents' claimed adjustment to foreign market value for commissions should be denied because commissions are based on sales of products in addition to those subject to investigation, such as enameled tableware.

DOC Position: As previously stated, we have denied an adjustment for commissions paid to related agents. We verified that commissions to unrelated agents are paid only on sales to government agencies. Since we have excluded these sales from our fair value comparisons, this point is moot.

Comment 4: Petitioners argue that the Department should deny any adjustments to United States price and foreign market value claimed for proceeds from respondents' post-sale investments in the United States. Mexico's foreign currency control laws allow exporting companies to hold dollars earned on export sales in the United States for up to 90 days before returning the dollars to Mexico and converting them to pesos. Respondents have argued that this conversion delay yielded a profit because the continued, predictable devaluation of the peso allowed respondents to offer a lower sales price for the goods. Petitioners argue that the Act and the Department's regulations preclude such an adjustment, and that, even if such an adjustment is not precluded by law, it is inappropriate to make such an adjustment in this case.

DOC Position: While respondents may have received more pesos for their dollar earnings by waiting 90 days to repatriate those dollars, the purchasing power of those pesos would have been diminished by inflation that occurred in Mexico during that 90 day period. Therefore, if we were to allow these foreign exchange gains, without any adjustment for the diminishing purchasing power of the pesos, we would be overstating the return to the Mexican producers. Because changes in inflation and devaluation rates would, in general, be parallel, we would not anticipate the effect of the 90 day delay to be significant. Moveover, we verified that the change in the exchange rate was not predictable.

Comment 5: Petitioners argue that the Department cannot use the "free" rate of exchange for currency conversions because Mexican law precludes the use of the free rate for foreign trade and most business transactions, and because the Department verified that both companies under investigation conducted all their import and export business at the official rate of exchange.

DOC Position: We made currency conversions from Mexican pesos to United States dollars in accordance with § 353.56(a)(1) of our regulations, using the daily official Mexican exchange rates certified by the Federal Reserve.

Comment 6: Petitioners argue that, despite respondents' claims, adjustment to home market price for expenses associated with maintaining in-stock inventory (*i.e.*, warehousing) of the subject merchandise for home market sales should be denied, because their "home market contracts [do] not explicitly require [them] to store merchandise before or after the date of sale."

DOC Position: We agree. We determined that these expenses are not directly related to the sales under consideration and, therefore, are not an allowable adjustment.

Comment 7: Petitioners argue that respondents have failed to provide sufficient information explaining cost of production estimates and comparisons of similar merchandise, and urge the Department to use best information available.

DOC Position: We disagree. During verification, we carefully examined both companies' lists of similar product groupings and found them to be appropriate for price comparisons.

Comment 8: Petitioners argue that should adjustments to some products be appropriate for differences in dimensions or decoration, those adjustments should be limited to the specific differences, *e.g.*, the cost of applying decals if comparing decorated and undecorated products of the same type.

DOC Position: We disagree. It is our policy, in cases of comparison between similar merchandise, to take into account the actual cost of producing the products being compared, not simply the costs of applying decals, etc.

Comment 9: Citing *Certain Stainless Steel Cooking Ware from Taiwan* (Preliminary Determination), (51 FR 24566, July 7, 1986), petitioners contend that with respect to those items where constructed value may be appropriate, the cost of consumer packaging must be included in the cost of materials and fabrication pursuant to section 773(e)(1)(A) of the Act.

DOC Position: Since we are not using constructed value for comparison purposes, this point is moot.

Comment 10: Petitioners argue that, despite respondents' claims to the contrary, Cinsa and TRES had sufficient home market sales of roasters to permit the Department to use home market prices as foreign market value, instead of constructed value or third country sales.

DOC Position: We partially agree. While we found TRES to have sufficient home market sales of first quality roasters, we did not find this to be the case for Cinsa. Therefore, we are using Cinsa's third country sales of first quality roasters to Canadian purchasers as foreign market value for purposes of our comparisons.

Comment 11: Petitioners argue that the Department should deny respondents' claimed exclusion of second quality roasters for purposes of determining home market viability. Petitioners contend that the Department should compare second quality roaster sales in both the home and U.S. markets because both respondents have substantial sales or second quality roasters in both markets.

DOC Position: We were able to examine at least 80 percent of the dollar value of exports to the United States of the merchandise subject to this investigation. Transactions of second quality merchandise, though, would be subject to any antidumping order which might be issued and, in the course of a review under section 751 of the Act, information may be developed which would permit a proper comparison of this merchandise.

Comment 12: Petitioners question respondents' claims that they incurred greater credit expenses in the home market than in the United States. Specifically, petitioners argue that respondents would be unable to borrow in the United States at the prime rate and allege that respondents failed to adjust their home market expense for finance charges and late payment penalty charges received on home market sales.

DOC Position: Because Cinsa did not have a company specific short-term borrowing rate during the review period, we used the short-term benchmark established in the corresponding countervailing duty investigation of porcelain-on-steel cooking ware from Mexico, which equals the average cost of funds to Mexican banks plus a spread. Credit expenses in both markets were calculated using this benchmark and the verified monthly average number of days payment was outstanding. We have also taken into account the verified penalty charges Cinsa collected during the review period. To determine TRES' credit expense, we utilized the company's verified monthly short-term borrowing rate for the review period. Credit calculations were based on the terms listed on the invoices.

Comment 13: Petitioners question respondents' claimed adjustments for quantity discounts. Citing *Certain Valves, Couplings, Nozzles, and Connections of Brass from Italy* (49 FR 47008, November 30, 1984), petitioners contend that such discounts, if granted, may not be provided consistently "on all sales of comparable quantities" as required.

DOC Position: We made no adjustment for price discounts based on quantitative differences but did adjust for the verified discounts granted on each home market sale.

Comment 14: Petitioners contend that data not available at the time of the Department's negative preliminary critical circumstances determination show that critical circumstances exist with respect to imports of Mexican porcelain-on-steel cooking ware.

DOC Position: We determine that critical circumstances exist with respect to imports of the subject merchandise by TRES and All Others.

Comment 15: Petitioners argue that only those sales to the respondents' parent corporations should be considered excluded as sales to related parties (19 CFR 353.33(b). Respondents' sales to "sister" corporations (those with a common parent) should not be disregarded because the "sister" corporations have no ownership interest in the respondents and because the sales prices were comparable with those to unrelated parties.

DOC Position: We are disregarding sales made to "sister" corporations, because we found that such sales were not made in quantities comparable to U.S. sales.

Comment 16: Petitioners argue that the Department should calculate a single dumping margin for all porcelain-on-steel cooking ware subject to investigation. Petitioners contend that respondents' request for separate margins for various product subgroups is contrary to Department practice and impractical for the Customs Service to implement.

DOC Position: We agree that we should calculate a single weighted-average margin for all products. We have based our determination on the fact that cooking ware and roasters are imported under the same TSUS numbers, have the same usage, and are produced from the same materials using the same procedures. We made fair value comparisons on sales of the class or kind or merchandise and have calculated a single dumping margin for all porcelain-on-steel cooking ware subject to investigation from Mexico.

Petitioners' Comments Pertaining to Cinsa

Comment 17: Petitioners oppose Cinsa's claimed adjustment for differences in steel input costs. Cinsa claims that Mexico steel used in producing porcelain-on-steel cooking ware sold in the home market is more expensive than inported steel used to manufacture porcelain-on-steel cooking ware for export to the United States. Petitioners contend that the Department should not make adjustments for different production costs where there is no discernible difference between the cooking ware sold in the home market and that exported to the United States.

DOC Position: We agree. In this case, however, we have made adjustment for Mexican customs duty exemptions granted on imported steel used for export production, pursuant to section 772(d)(1)(B) of the Act.

Comment 18: Citing *Rectangular Welded Carbon Steel Pipes and Tubes from Korea* (49 FR 9930, March 16, 1984), petitioners argue that the Department should average Cinsa's steel costs (domestic and imported) when calculating the cost of using different amounts of steel in finished products in order to "prevent" Cinsa from obtaining a "difference in merchandise" adjustment for steel, to which Cinsa is not entitled.

DOC Position: For purposes of comparisons of similar merchandise in this case, steel costs were based on the domestic price of steel for both export and domestic products, which, in effect, precludes a "difference in merchandise" adjustment.

Comment 19: Petitioners argue that the Department cannot grant a drawback adjustment to Cinsa's United States price to account for import duty exemptions on imported steel used to produce export products because the Department has not verified sufficient information.

DOC Position: We verified that Cinsa did not pay customs duties on imported steel used in the manufacture of exported merchandise. We further verified that Mexico granted this exemption only on goods that were used to produce exports. Finally, we verified that the imported steel was exported as cooking ware. Therefore, we have verified sufficient information to calculate a drawback adjustment.

Comment 20: Petitioners argue that the Department should use Cinsa's actual short-term borrowing rates as reported in its questionnaire response to compute any credit adjustment and not the higher CPP rate (Costo Porcentual Promedio, or the average cost of funds to Mexican banks) as Cinsa requests.

DOC Position: Because we were unable to verify the interest rates provided in Cinsa's June 11, 1986, supplemental questionnaire response, we utilized the short-term benchmark established in the corresponding countervailing duty investigation of porcelain-on-steel cooking ware from Mexico as best information available.

Comment 21: Petitioners argue that Cinsa's revenues from late payment penalties assessed against home market customers should be subtracted from its home market credit expense before such expense is allocated over home market sales.

DOC Position: We agree and have calculated Cinsa's home market credit expense accordingly.

Comment 22: Petitioners urge the Department to reject Cinsa's constructed value estimates because (a) Cinsa purchases some inputs from related parties, and (b) Cinsa did not average its imported and domestic steel costs.

DOC Position: Since we have not used constructed value for any comparisons, this point is moot.

Petitioners' Comments Pertaining to TRES

Comment 23: Petitioners argue that TRES' commissions to its related company in Mexico City are not

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commissions, but intra-company transfers of funds which do not qualify for a circumstances of sale adjustment.

DOC Position: We agree and have not made an adjustment for such commissions.

Comment 24: Petitioners argue that if TRES is entitled to any commission adjustment for home market sales, such commissions must be offset by indirect selling expenses in the United States, because TRES incurred no commission expense on U.S. sales.

DOC Position: Since we did not make any adjustment for commissions, this point is moot.

Comment 25: Petitioners argue that the Department should deny TRES' claimed adjustment for volume rebates extended to home market customers because such rebates are based largely on sales outside the review period or on sales of merchandise not under investigation.

DOC Position: We disagree. We verified that TRES granted volume rebates on sales of enamelware, the majority of which were sales of cooking ware. We also verified that these volume rebates were given based on monthly and/or yearly sales, and that the terms of the yearly volume rebates were set in the beginning of 1985. Therefore, we have allowed an adjustment for volume rebates and have adjusted TRES' home market prices accordingly.

Comment 26: Petitioners argue that TRES' claimed adjustment for "fixed" credit expenses should be denied because they are general operating expenses and are not directly related to sales under consideration.

DOC Position: We agree and have not granted a "fixed" credit expense adjustment.

Comment 27: Petitioners argue that the Department must reduce United States price by all costs incurred by TRES in delivering the merchandise under investigation to the United States.

DOC Position: We agree and have made adjustments to purchase price for insurance, U.S. and Mexican freight, and U.S. and Mexican brokerage charges.

Respondents' Comments

Comment 1: Respondents argue that to comply with the statute, ITA regulations, and ITA precedent, the Department must base price comparisons only on sales in the home market to wholesalers, because these home market sales are at the level of trade and at quantities comparable to United States sales.

DOC Position: We agree that sales to wholesalers in the home market are at quantities comparable to U.S. sales and have calculated foreign market value on the basis of those sales only. Please see the Department's response to petitioners' Comment 1 *supra.*

Comment 2: Respondents argue that if the Department fails to limit comparisons of home market sales to sales made at the same level of trade as United States sales, the Department must exclude all home market sales made to related parties and employees because: (1) Such sales were made at prices consistently higher than the prices paid by unrelated purchasers; and (2) Sales to employees are not made in the ordinary course of trade or in normal commercial quantities.

DOC Position: Since we have compared sales in comparable quantities only, this point is effectively moot.

Comment 3: Respondents argue that if the Department considers sales made at different levels of trade, the Department must adjust those prices by the quantified amount of additional discount the purchaser would be entitled to if it were a wholesaler.

DOC Position: Since we have limited fair value comparisons to sales made to home market wholesalers, this point is moot.

Comment 4: Citing the Department's decision in *Egg Filler Flats from Canada* (50 FR 24009, June 7, 1985), respondents argue that the Department must make adjustments to home market sales to reflect differences in circumstances of sale with respect to commissions paid to related and unrelated agents, and related company agents.

DOC Position: Our analysis of this comment is similar to that in petitioners' Comment 2 *supra.* Although Cinsa and TRES paid commissions to related agents for home market sales, we were unable to verify that the salesmen in question paid for all their sales related expenses. Furthermore, we verified that TRES' related agents received salaries in addition to commissions.

Both companies paid commissions to unrelated agents only on sales to government agencies. Since we are limiting our fair value comparisons to wholesalers, this point is moot.

Comment 5: Respondents argue that because commission expenses were not incurred in the U.S. market, the adjustment for indirect selling expenses for U.S. sales must be limited, by regulation and administrative practice, to the commission expense incurred in the home market.

DOC Position: Since we did not make any adjustments for commissions in the home market, this point is moot.

Comment 6: Respondents argue that the Department should use the "free" exchange rate, which was certified by the Federal Reserve Board during the review period, for currency conversions, to avoid margins based solely on exchange fluctuations.

DOC Position: Firms must convert their foreign exchange to Mexican pesos at the official exchange rate. Therefore, we converted at the certified official rate in effect on the date of sale.

Comment 7: In the event that the Department refuses to use the certified "free" rate of exchange, respondents argue that ITA regulations allow for adjustments in its fair value calculations to avoid dumping margins attributable solely to currency fluctuations. The Department must make an adjustment to fair value to reflect the actual rate of exchange realized by respondents either by increasing the U.S. price by the amount of the foreign exchange earnings made on each sale, or by deducting from foreign market value an amount equal to the amount each item would have earned, had it been sold in the United States and benefitted from foreign exchange earnings.

DOC Position: We disagree. Please see the Department's response to petitioners' Comment 4 *supra.*

Comment 8: Respondents argue that in making fair value comparisons, the Department must compare items sold in the United States to items sold in the home market of the same size configuration, number of enamel coatings, and type of decoration. In cases where there are no home market sales of identical products, the Department must compare products sold in the United States with the most similar home market items, with appropriate adjustments to account for the differences in the cost of producing the different articles, not simply the differences in the cost of applying decals, etc.

DOC Position: We agree and have done so.

Comment 9: Respondents argue that because the companies under investigation did not have any short-term dollar denominated loans during the review period, the proper rate to use in calculating U.S. credit expenses is the average monthly prime interest rate for short term loans as determined by the Federal Reserve Bank. Since the sales are determined in U.S. dollars, the financing of those sales are incurred in U.S. dollars.

DOC Position: We are using the home market borrowing rates. Since we are concerned with credit extended to U.S. importers by Cinsa and TRES, and we have no evidence that Cinsa and TRES would borrow in the U.S. market, Mexican borrowing rates are the appropriate rates for credit adjustments.

Comment 10: Respondents argue that discounts provided to home market customers at the time of sale, automatic "level of trade" discounts, prompt payment discounts, and rebates, whose terms are governed by contractual commitments undertaken at the time of the sale, were granted on a sale-by-sale basis and should be considered adjustments to price.

DOC Position: We agree and have made adjustments accordingly.

Comment 11: Respondents argue that a final negative determination of critical circumstances is warranted because: (1) There is neither a history of dumping nor imputed or actual knowledge of dumping on the part of the importers; (2) Imports of the subject merchandise have not been massive over a relatively short period of time; (3) Petitioners have failed to provide further information in support of their critical circumstances allegation since the Department's July 11, 1986, preliminary negative critical circumstances determination; and (4) the final critical circumstances determination requires a higher evidentiary threshold than the preliminary finding.

DOC Position: We disagree and determine that critical circumstances exist with respect to imports of the subject merchandise by TRES and All Others.

Comment 12: Respondents argue that the Department should disregard sales of second quality merchandise in both the United States and the home market because these comparisons would distort fair value comparison.

DOC Position: We have not included sales of second quality merchandise in either market. Please see the Department's response to petitioners' Comment 11 *supra.*

Comment 13: Respondents argue that the Department must make adjustments to United States price for inland freight, insurance, and brokerage using the revised information provided during verification.

DOC Position: We agree and have done so.

Comment 14: Respondents argue that home market sales must be adjusted to account for inland freight charges incurred on all government sales as well as on sales to the private sector from both companies' warehouses in Guadalajara and Mexico City.

DOC Position: We verified that both companies incurred inland freight charges in sales to the private sector from warehouses in Guadalajara and Mexico City, and we have taken these expenses into account. Since we have excluded government sales from fair value comparisons, the point concerning freight charges on such sales is moot.

Comment 15: Respondents argue that for purposes of the final determination, the Department must create two separate margins—one for utility cooking ware and one for specialty products such as roasters—due to the differences in the products themselves and the great disparity in the estimated dumping margins for each type of product. Respondent argues that the Department is required to tailor the estimated LTFV margins to actual margins and has the authority to bifurcate its margins when necessary, in order to avoid subjecting products with negative margins to dumping duty deposit rates, which is contrary to the remedial nature of the statute and our international obligations under GATT.

DOC Position: We disagree. We believe roasters and other cooking ware products constitute one product group and one class or kind of merchandise. Hence, consistent with our past Department practice, we are not publishing separate dumping margins for the merchandise under investigation.

Comment 16: Respondent argues that, pursuant to statutory directive, the Department must adjust the United States price by adding the amount of any countervailing duty that may be imposed on the subject merchandise in the parallel countervailing duty investigation.

DOC Position: We disagree. We will instruct Customs to subtract the amount of any countervailing duty due to export subsidies from the antidumping duty when and if final orders are published.

Respondents' Comments Pertaining to Cinsa

Comment 17: Cinsa argues that fair value must be adjusted to reflect the different physical characteristics of the imported steel used for export production and domestic steel used for home market production, because both the physical differences and the quantification of the differences in manufacturing costs have been verified.

DOC Position: We disagree. We were unable to verify that differences in the physical characteristics of the merchandise as end products existed within the meaning of 19 CFR 353.16.

Comment 18: Cinsa argues that if the Department does not grant Cinsa an adjustment to fair value for differences in the physical characteristics of steel, Cinsa is then entitled to an adjustment to United States price for import duties rebated or not collected by reason of exportation.

DOC Position: We agree and have granted Cinsa an adjustment for these duties, pursuant to section 772(d)(1)(B) of the Act.

Comment 19: Cinsa contends that since there were no sales of first quality roasters to wholesale customers in home market during the review period, and since roasters are not "like" other products which were sold to wholesale customers, the Department should calculate fair value for roasters on the basis of roaster sales to third countries (Canada) or constructed value.

DOC Position: We agree and have calculated fair value based on sales of first quality roasters to Canada.

Comment 20: Respondents argue that the Department should make an adjustment to Cinsa's home market sales prices to reflect differences in circumstances of sale with respect to home market credit expenses, because Cinsa computed its credit cost based on the imputed average methodology approved by the Department. Further, because Cinsa did not have any commercial short-term loans during the review period, this adjustment must utilize the revised factor calculated by Cinsa incorporating verified data and CPP interest rates.

DOC Position: We have made a circumstances of sale adjustment for differences in credit expenses using the benchmark established in the corresponding countervailing duty investigation of porcelain-on-steel cooking ware form Mexico. Please see the Department's response to petitioners' Comment 12 *supra.*

Comment 21: Cinsa argues that the application of late penalty payments is rare and inconsistent, that the resulting factor is insignificant, and that this factor should be disregarded by the Department in computing Cinsa's credit expense.

DOC Position: We disagree. Late penalty payments are a factor in the firm's credit expenses; therefore, we have included these verified payments in Cinsa's credit adjustment.

Comment 22: Cinsa argues that the Department should make an adjustment to Cinsa's home market sales prices to reflect differences in circumstances of sale with respect to advertising conducted solely in the home market and directed at the consumer market.

DOC Position: We agree. We verified that advertising conducted by Cinsa in the home market was directed at the consumer market and, therefore, is an allowable adjustment.

Comment 23: Respondents argue that the Department erred in its preliminary determination by applying a letter of

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credit discount to all of Cinsa's U.S. sales and an additional discount to all sales of Convex line products. Because neither of these discounts are granted across the board, the Department must adjust only those U.S. sales actually receiving discounts.

DOC Position: We agree. We verified that only certain sales received discounts, and we have adjusted those specific sales accordingly.

Comment 24: Cinsa contends that the verified constructed value information provided to the Department must be used to make fair value comparisons for lasagna pans, which are sold only in the United States, because no such or similar cooking ware item is sold in the home market or any third country.

DOC Position: We did not include Cinsa's U.S. sales of lasagna pans in our fair value comparisons because they account for an extremely small percentage of total U.S. sales value.

Respondents' Comments Pertaining to TRES

Comment 25: TES argues that in calculating home market credit expense, the Department must use the company-specific, verified, daily interest rates and the payment terms listed on each home market sales invoice.

DOC Position: We agree. We verified TRES' company-specific monthly short-term interest rates and have calculated TRES' home market credit expense accordingly.

Comment 26: TRES argues that it is entitled to an adjustment to reflect differences in the cost of production for articles of the same size and configuration, but with a different number of enamel coatings.

DOC Position: We agree and have granted a difference in merchandise adjustment, when applicable, to account for differences in the number of enamel coatings between articles sold in the home market and those sold in the United States, pursuant to section 773(a)(4)(C) of the Act.

Comment 27: TRES contends that because there are insufficient sales in the home market of roasters and canners, and there is no item sold in the home market that can be considered a similar product, the ITA must base its fair value comparisons for canners and roasters on constructed value information.

DOC Position: We disagree. We did not find TRES' home market roaster sales to be insignificant and have used such sales for fair value comparisons. With respect to canners, we have used the verified information provided to the Department by TRES in its June 16, 1986, questionnaire response for price comparisons.

Suspension of Liquidation

In accordance with section 733(d) of the Act, on May 20, 1986, we directed the U.S. Customs Service to suspend liquidation of all entries of porcelain-on-steel cooking ware from Mexico. As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption will continue to be suspended, and is ordered retroactively to February 19, 1986, for TRES and All Others. The U.S. Customs Service will continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average margin. The security amount established in our preliminary determination of May 20, 1986 is no longer in effect. The suspension of liquidation will remain in effect until further notice.

With respect to Cinsa, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of porcelain-on-steel cooking ware from Mexico that are entered, or withdrawn from warehouse, for consumption, on or after may 20, 1986, the date of publication of our notice of preliminary determination in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The cash deposit rate established in the preliminary determination shall remain in effect with respect to entries or withdrawals made prior to the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturers/producer/exporter	Margin percentage
Cinsa, S.A.	17.47
Troqueles y Esmaltes, S.A.	58.73
All others	29.52

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC, however, determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on porcelain-on-steel cooking ware from Mexico, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

October 2, 1986.

[FR Doc. 86-23035 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-601; A-508-602]

Postponement of Final Countervailing and Antidumping Duty Determinations; Oil Country Tubular Goods from Israel

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in these investigations that the final antidumpting duty determination be postponed for 135 days from publication of our antidumpting duty preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have postponed our final determinations as to whether sales of oil country tubular goods (OCTG) from Israel are subject to countervailing duties and have occurred at less than fair value until not later than January 7, 1987. In addition, we are rescheduling the public hearing in the antidumping duty investigation.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION: Charles E. Wilson (Antidumping) or Gary Taverman (Countervailing Duty), Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washigton, DC 20230; telephone: (202) 377-5228 (Wilson) or 377-0161(Taverman).

Case History

On March 12, 1986, we received antidumping and countervailing duty petitions filed by Lone Star Steel Company and CF&I Steel Corporation on OCTG from Israel. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petition alleged that imports of OCTG from Israel are being, or are likely to be, sold in the United States at less than fair value within the meaning of seciton 731 of the Tariff Act of 1930, as amended (the Act) and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation; and on April 1, 1986, we initiated such an investigation (51 FR 11963, 4-8-86). The preliminary affirmative determination in this antidumping investigation was made on August 19, 1986.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Israel of OCTG directly or indirectly receive benefits which constitute subsidies within the meaning of section of 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 1, 1986, we initiated such an investigation (51 FR 11965, 4-8-86). On April 29, 1986, the ITC preliminarily determined that there is a reasonable indication that imports of OCTG cause material injury to a U.S. industry (51 FR 16907, 5-7-86). On June 5, 1986, we issued a preliminary affirmative determination in the countervailing duty investigation (51 FR 21201, 6-11-86).

On June 12, 1986, petitioners filed a request for extension of the deadline date for the final determination in the countervaling duty investigation to correspond with the date of the final determination in the antidumping duty investigation.

Section 705(a)(1) of the Tariff Act of 1930, as amended by seciton 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping investigation (19 U.S.C.1671d(a)(1)). Pursuant to this provision, we granted an extension of the deadline date for the final determination in the countervailing duty investigation of OCTG from Israel to November 3, 1986, the deadline for the final determination in the antidumping duty investigation. To comply with the requirements of Article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation on October 9, 1986, which is 120 days from the date of publication of the preliminary determination in this case. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters after October 9, 1986. The suspension of liquidation will not be resumed unless and until the Department publsihes a countervaling duty order in this case. We will also direct the U.S. Customs Service to hold any entries suspended prior to October 9, 1986, until the conclusion of this investigation.

On September 11, 1986 counsel for respondent requested that the Department extend the period for the final determination in the countervailing and antidumping duty investigations to 135 days from the publication date of our preliminary antidumpting duty determination in accordance with section 735(a)(2)(A) of the Act.

Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if exporters who account for a significant portion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination.

The respondent is qualified to make such a request since it accounts for all exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue final determinations in these cases not later than January 7, 1987.

The public hearing in the antidumping duty investigation is also being postponed until 10:00 a.m. on October 16, 1986, at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by October 6, 1986. Oral presentations will be limited to issues raised in the briefs. Posthearing briefs are due no later than 10 days after transcripts of the hearing are made available. All written views should be filed in accordance with 19 CFR Part 46, no later than 30 days before the final determination is due, at the above address in at least 10 copies.

This notice is published pursuant to section 745(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-23036 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-001]

Leather Wearing Apparel From Colombia; Preliminary Results of Countervailing Duty Administrative Review and Proposed Revised Suspension Agreement

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review and proposed revised suspension agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on leather wearing apparel from Colombia. The review covers the period July 1, 1983 through June 30, 1984 and three programs.

As a result of the review, the Department has preliminarily determined that Confecciones Amazonas Orinoco, the signatory to the suspension agreement, did not account for over 85 percent of leather wearing apparel imports to the United States from Colombia during the period of review. Confecciones Amazonas Orinoco is out of business and no longer exports to the United States. Accordingly, we are proposing a revised suspension agreement that substitutes Astrakhan, Ltda. for Confecciones Amazonas Orinoco, because Astrakhan, Ltda. now accounts for over 85 percent of all imports of leather wearing apparel to the United States from Colombia. Interested parties are invited to

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comment on these preliminary results and proposed revised suspension agreement.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 18588) the final results of its last administrative review of the suspension agreement on leather wearing apparel from Colombia (46 FR 19983, April 2, 1981). On September 27, 1985, a domestic interested party, the Amalgamated Clothing and Textile Workers Union, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the suspension agreement. We published the initiation of the review on November 27, 1985 (50 FR 48825). The Department has now conducted that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Colombian men's, boys', women's, girls' and infants' leather coats and jackets, and other leather wearing apparel (such as vests, pants and shorts), as well as parts and pieces thereof. Such merchandise is currently classifiable under items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983 through June 30, 1984 and three programs: (1) CAT/CERT; (2) Resolution 59; and (3) Decree 2366.

Analysis of Programs

(1) CAT/CERT

The Government of Colombia provided payments to exporters of leather wearing apparel in the form of negotiable Tax Credit Certificates ("CATs") that could be used for the payment of various taxes or sold on the stock exchange at a discount. Rebates were calculated as a percentage of (1) the value of the exported product attributable to the domestic value-added content, and (2) imported inputs on which duties have been paid. We preliminarily determine that Colombian leather wearing apparel exporters did not receive CAT payments on exports of leather wearing apparel to the United States during the period of review.

On April 1, 1984, the Colombian government established in Law 48/83 the Tax Rebate Certificate ("CERT"), which replaces the CAT. The CERT is intended to rebate all or part of the indirect taxes paid by exporters. Like the CAT, the CERT is freely negotiable on the stock market and can be used for paying a variety of taxes.

Decree No. 637, which also became effective on April 1, 1984, established a CERT rate of 15 percent on leather wearing apparel exports to the United States and Puerto Rico. The Banco de la Republica, Colombia's central bank, certified to the Department on September 27, 1984 that it withheld CERT payments to leather wearing apparel exporters on shipments to the United States and Puerto Rico. Therefore, we preliminarily determine that exporters did not receive CERT payments on shipments of leather wearing apparel to the United States during the period of review.

(2) Resolution 59

Resolution 59, which was passed by the Monetary Board of Colombia on August 30, 1972, provides working capital financing at preferential rates to firms that manufacture, store, or sell products destined for export. All industries are eligible, except producers of coffee, petroleum, and petroleum by-products. Resolution 59 loans are administered by the Export Promotion Fund ("PROEXPO"), an agency of the Colombian government. The loans are for 180 days and the interest is paid quarterly, in advance. In February 1986, the maximum annual interest rate was 19 percent. Colombian exporters of leather wearing apparel received working capital loans under Resolution 59 during the period of review.

We found in the suspension of contervailing duty investigation on certain textile mill products and apparel from Colombia (50 FR 9863, March 12, 1985) ("the textiles suspension of investigation") that the predominant alternative source of non-preferential financing in Colombia is a negotiated package make up of the privately-raised resources of the commercial banking system and certain government credit lines that are available to broad sectors of the economy. To calculate the short-term benchmark, we used central bank data to estimate the amount of capital lent through non-targeted government credit lines and the amount of privately-raised resources of the commercial banking system lent at unregulated rates. We then weight-averaged the statutory interest rates on the non-targeted government funds and the average interest rate charged on the privately raised resources. We found that the short-term benchmark interest rate was 27.80 percent in February 1986, the most recent information available. On this basis, we preliminarily determine the current interest rate differential to be 8.80 percent.

Since we found this program countervailable in the textiles suspension of investigation, we have included it in the revised suspension agreement.

(3) Decree 2366

Under Decree 2366, PROEXPO provides exporters with long-term financing for capital investment at preferential rates. We preliminarily determine that leather wearing apparel exporters did not use this program during the period of review. Because we found this program countervailable in the textiles suspension of investigation, we have included it in the revised suspension agreement.

Preliminary Results of Review

As a result of our review, we preliminarily determine tht CAO did not account for 85 percent of Colombian leather wearing apparel exports to the United States during the review period. The agreement can remain in force only so long as shipments covered by the agreement account for at least 85 percent of exports of such merchandise to the United States. The Colombian government notified the Department that CAO went out of business and certified that CAO stopped exporting to the United States on October 1, 1984. Astrakhan, Ltda., now accounts for over 85 percent of Colombian leather wearing apparel exports to the United States. On September 15, 1986, Astrakhan agreed to the provisions of the proposed revised suspension agreement. Accordingly, we propose revising the suspension agreement to substitute Astrakhan for CAO.

The proposed revised suspension agreement includes programs investigated in the textiles suspension of investigation. These programs are: (1) Resolution 14, which provides long-term financing at preferential rates for capital investment; (2) duty and tax exemptions for capital equipment under the Plan Vallejo; (3) Export Credit Insurance, which provides guarantees on loans at preferential rates; and (4) countertrade, which permits companies to engage in barter arrangements if such trade creates new markets.

Interested parties may submit written comments on these preliminary results and proposed revision within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made not later than 5 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of any issues raised in any such written comments or at a hearing.

This administrative review, proposed revised suspension agreement, and notice are in accordance with sections 704 and 751(a)(1) of the Tariff Act (19 U.S.C. 6171c and 1675(a)(1)) and sections 35.10 (50 FR 32556, August 13, 1985), 355.31, and 355.32 (19 CFR 355.31 and 355.32) of the Commerce Regulations.

Dated: October 6, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

Revised Suspension Agreement

Pursuant to the provisions of section 704 of the Tariff Act of 1930 ("the Act") and § 355.31 of the Department of Commerce Regulations, the Department of Commerce ("the Department") and Astrakhan Ltda. (hereinafter "Astrakhan"), enter into the following revised Suspension Agreement ("the Agreement"). Astrakhan now accounts for over 85 percent of all imports of leather wearing apparel to the United States. Astrakhan replaces Confecciones Amazonas Orinoco ("CAO") as the signatory since CAO no longer exports to the United States. In consideration of this Agreement, the Central Bank of Colombia, PROEXPO, and any other relevant administering authorities agree voluntarily to take such steps necessary to ensure that the renunciation of benefit by Astrakhan is implemented and monitored, and that the Department is informed of any other companies that are exporting, or begin exporting to the United States, leather wearing apparel as defined by paragraph I below. On the basis of the foregoing, the Department revises the suspension Agreement that became effective on April 2, 1981 (46 FR 19963) with respect to leather wearing apparel from Colombia to replace CAO with Astrakhan as the signatory to the Agreement and to include additional programs in accordance with the terms and conditions set forth below.

I. Scope of the Agreement

The Agreement applies to leather wearing apparel from Colombia ("the subject products"). The subject products cover men's, boys', women's, girls' and infants' leather coats and jackets, and other leather apparel (such as vests, pants and skirts), as well as parts, and pieces thereof as currently provided for in items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated.

II. Basis of the Agreement

Astrakhan, accounting for more than eighty-five (85) percent of the total exports of leather wearing apparel from Colombia to the United States, agrees to the following:

a. Astrakhan will not apply for, or receive, tax certificates or other rebates, remissions or exemptions under the Tax Reimbursement Certificate program (CAT/CERT) or any other provision of law that constitute, as determined by the Department, an overrebate of indirect taxes on shipments of the subject products exported, directly or indirectly, from Colombia to the United States.

b. Astrakhan will not apply for, or receive, any short-term export financing provided by the Export Promotion Fund, PROEXPO (e.g., Resolution 59 and Resolution 42 loans) and under any special government credit line for leather wearing apparel on or after the effective date of the Agreement, other than those offered at non-preferential terms and at or above the most recent short-term benchmark interest rate determined by the Department in this proceeding. Astrakhan shall repay, or begin negotiating the refinancing of, any such financing outstanding as of the effective date of this Agreement, on non-preferential terms and at the most recent short-term benchmark interest rate determined by the Department in this proceeding by the thirtieth day from the effective date of this Agreement. Repayment or refinancing shall be completed no later than ninety days after the effective date of the Agreement.

c. Astrakhan will not apply for, or receive, any long-term financing provided by the Export Promotion Fund, PROEXPO (e.g., Resolution 2366 loans and Resolution 14 loans), and under any special government credit line for leather wearing apparel, other than those offered on non-preferential terms at or above the most recent long-term benchmark interest rate determined by the Department in this proceeding. Any such financing outstanding as of the effective date of this Agreement shall be repaid, or refinanced on non-preferential terms and at the most recent long-term benchmark interest rate determined by the Department in this proceeding, by the original due date of the loan, or by the sixtieth day from the effective date of this Agreement, whichever comes first. Any such repayment must be consistent with Colombian bankruptcy laws and procedures.

d. Astrakhan will not apply for, or receive, any benefits from duty and tax exemptions for capital equipment under the Plan Vallejo.

e. Astrakhan shall notify the Department in writing prior to applying for approval for any countertrade transaction, and prior to applying for any benefits from the Export Credit Insurance Program with respect to exports of the subject products exported, directly or indirectly, to the United States.

f. Astrakhan agrees that it will not apply for, or receive, any bounties or grants on shipments of the subject products exported, directly or indirectly, from Colombia to the United States which are countervailable under the Act. Bounties or grants on exports of the subject products to the United States include any which have been found or are likely to be found countervailable in any investigation or review under section 751 of the Act, involving any product from Colombia, including bounties or grants which the Department determines may apply to other products or exports to other destinations that cannot be segregated as applying solely to such other products or exports.

g. Astrakhan shall notify the Department in writing at least thirty days prior to applying for or accepting any new benefit which is, or is likely to be, a countervailable bounty or grant on shipments of the subject products exported from Colombia.

h. If any program under which benefits have been received in the past, and which is included in this Agreement, is found not to constitute a bounty or grant under the Act in the final determination or the final results of an administrative review of this Agreement under section 751 of the Act in this proceeding, then the renunciation of the benefits under that program will no longer be required.

III. Monitoring of the Agreement

1. Astrakhan agrees to supply any information and documentation which the Department deems necessary to demonstrate that there is full compliance with the terms of this Agreement.

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2. Astrakhan will notify the Department if it:

a. Transships the subject products through third countries to the United States;

b. Alters its position with respect to any terms of the Agreement; or

c. Applies for, or receives, directly or indirectly, the benefits of the programs described in Section II for the manufacture or export of the subject products exported, directly or indirectly, from Colombia.

3. The Department will request information and may perform verifications periodically pursuant to administrative reviews conducted under section 751 of the Act, in addition to exercising its rights under paragraphs III.1 and 2, above.

4. Astrakhan agrees to permit such verification and data collection as deemed necessary by the Department in order to monitor this Agreement.

5. Astrakhan agrees to notify the Department of the volume and value of exports of the subject products to the United States within 45 days from the end of each calendar quarter.

6. Astrakhan agrees to provide to the Department a periodic certification that it continues to be in compliance with the terms of the Agreement. A certification will be provided within 45 days from the end of each calendar quarter.

IV. General Provisions

1. In entering into this Agreement, Astrakhan does not admit that any of the programs investigated constitute countervailable benefits within the meaning of the Act or the GATT Subsidies Code.

2. The provisions of section 704(i) shall apply if:

a. Astrakhan withdraws from this Agreement; or

b. The Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 704 of the Act.

3. If the Department learns of any new producers or exporters to the United States of the subject products, it may attempt to negotiate an agreement with the additional producers or exporters.

4. Additionally, should exports to the United States by Astrakhan account for less than 85 percent of the leather wearing apparel imported, directly or indirectly, into the United States from Colombia, the Department may attempt to negotiate an agreement with additional producers or exporters or may terminate this Agreement and reopen the investigation or issue a countervailing duty order as appropriate under § 355.32 of the Commerce Regulations. If reopened, the investigation will be resumed for all producers and exporters of the subject products as if the affirmative preliminary determination were made on the date that the Department terminates this Agreement.

V. Effective Date

The effective date of this Agreement will be the date of publication of the final results of the current administrative review in the **Federal Register**. The provisions of paragraphs IIa–h apply with respect to exports of the subject products on or after the effective date. No applications may be made after the effective date of this Agreement for the benefits described in Section II on the subject products exported from Colombia before the effective date.

Signed on this ____ day of _____, 1986.

Alberto Ortiz Gonzalez,
Astrakhan Ltda.

I have determined pursuant to section 704(b) of the Act that the provisions of Section II completely eliminate the benefits that the Government of Colombia is providing with respect to leather wearing apparel, exported, directly or indirectly, from Colombia to the Untied States. Furthermore, I have determined that this revised suspension agreement is in the public interest, that the provisions of Sections III and the attached undertaking of the Government of Colombia ensure that the Agreement can be monitored effectively, and that this Agreement and attached undertaking meet the requirements of section 704(d) of the Act.

United States Department of Commerce.
Gilbert B. Kaplan,
Deputy Assistant Secretary Import Administration.

Mr. Gilbert B. Kaplan,
Deputy Assistant Secretary, Import Administration, U.S. Department of Commerce, Room 3099, 14th and Constitution Avenue NW., Washington, DC 20230

Re: Administrative Review of Suspension Agreement on Leather from Wearing Apparel from Colombia

Dear Mr. Kaplan: In consideration of the Suspension Agreement between Astrakhan, Ltda. ("Astrakhan") and the Department of Commerce, the Central Bank of Colombia, PROEXPO and any other administering authority voluntarily agree to take such steps as are necessary to ensure that the renunciation of benefits by Astrakhan in this Agreement is effectively implemented and monitored, including:

1. Notifying the relevant authorities of the Government of Colombia of the terms of this Agreement in order to ensure action by those agencies consistent with the terms of this paragraph;

2. Supplying any information and documentation that the Department deems necessary to demonstrate full compliance by Astrakhan with the terms of this Agreement;

3. Permitting such verification and data collection as deemed necessary by the Department in order to monitor this Agreement;

4. Notifying the Department if it becomes aware that Astrakhan is transshipping the subject products through third countries to the United States;

5. Notifying the Department if it alters its position with respect to any of the terms of this Agreement;

6. Notifying the Department if it changes the tax rebate rate under the CERT program, indirect tax rates, or import duty rates for the subject products;

7. Notifying the Department if Astrakhan applies for, or receives, directly or indirectly, the benefits of the programs described in paragraphs IIa–f for the manufacture or export of the subject products exported from Colombia;

8. Notifying the Department if Astrakhan becomes eligible for, applies for or receives any new or substitute benefits on the subject products exported from Colombia in contravention of paragraph IIg of the Agreement; and

9. Notifying the Department of any new firms that it learns are exporting the subject products to the United States.

The Central Bank PROEXPO, and any other administering authority also voluntarily agree to provide to the Department within 45 days of the end of each calendar quarter all relevant information deemed by the Department to be necessary to maintain this Agreement. The information shall include, but not be limited to:

1. A certification (provided after consultation with each agency responsible for administering the programs in Section II) that Astrakhan has not applied for or received any benefits described in Section II on shipments of the subject products exported from Colombia;

2. A certification that Astrakhan continues to account for 85 percent of total exports of leather wearing apparel exported, directly or indirectly, from Colombia to the United States; and

3. A certification that Astrakhan continues to be in full compliance with the Agreement.

The Central Bank, PROEXPO and any other administering authority's voluntary undertaking is not an admission that any of the programs investigated or included in the revised Suspension Agreement constitute countervailable benefits under the Act or the Subsidies Code.

The Central Bank, PROEXPO and any other administering authority recognize that this undertaking is essential to the continuation of the Agreement.

Sincerely yours,

Andres Lloreda,
Commercial Attache.

[FR Doc. 86–23039 Filed 10–8–86; 8:45 am]
BILLING CODE 3510-DS-M

[C-201-505]

Final Affirmative Countervailing Duty Determination; Porcelain-on-Steel Cooking Ware From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in Mexico of porcelain-on-steel cooking ware. The estimated net subsidy is 1.97 percent *ad valorem*. However, we are taking into account a program-wide change which occurred prior to the preliminary determination, and we are adjusting the duty deposit rate accordingly.

We have notified the United States International Trade Commission (ITC) of our determination. If the ITC's final injury determination is affirmative, we will direct the U.S. Customs Service to suspend liquidation of all entries of porcelain-on-steel cooking ware from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order, and to require a cash deposit or bond on entries of these products in an amount equal to 1.90 percent *ad valorem*.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Karen Busler, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0167 or (202) 377–4198.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware. For purposes of this investigation, the following programs are found to confer subsidies:

- Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX)
- Fund for Industrial Development (FONEI)

We determine the estimated net subsidy to be 1.97 percent *ad valorem* for all manufacturers, producers, or exporters of procelain-on-steel cooking ware in Mexico. However, we are adjusting the duty deposit rate to reflect a program-wide change that occurred prior to our preliminary determination. Thus, the cash deposit rate on entries of this product will be 1.90 percent *ad valorem*.

Case History

On December 4, 1985, we received a petition in proper form filed by the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters of porcelain-on-steel cooking ware in Mexico receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on December 24, 1985, we initiated the investigation (50 FR 53355, December 31, 1985). We stated that we expected to issue a preliminary determination by February 27, 1986.

Since Mexico is a "country under the Agreement," within the meaning of section 701(b)(2) of the Act, the ITC is required to determine whether imports of the subject merchandise from Mexico materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On January 16, 1986, the ITC determined that there is a reasonable indication that imports of porcelain-on-steel cooking ware from Mexico materially injure a U.S. industry (51 FR 3862, January 30, 1986).

On January 3, 1986, we presented questionnaires concerning the petitioners' allegations to the Government of Mexico in Washington, D.C. The Government of Mexico, Cinsa, S.A. (Cinsa) and Troqueles y Esmaltes, S.A. (TRES) provided responses to our questionnaires on February 3, 1986. We found the questionnaire responses to be lacking necessary information, and, on February 7, 1986, we presented deficiency letters to the Government of Mexico and the responding companies. We received supplemental responses from TRES on February 20, 1986, from the Government of Mexico on February 21, 1986, and from Cinsa on February 20, and February 25, 1986. On February 27, 1986, we issued our preliminary determination in this investigation (51 FR 7978, March 7, 1986). We preliminarily determined that benefits constituting subsidies within the meaning of the Act are being provided to manufacturers, producers, or exporters in Mexico of the subject merchandise.

From March 3 through March 13, 1986, we conducted a verification in Mexico. During verification, we discovered that Cinsa orginally provided the Department with an estimate of the total value of exports to the United States of porcelain-on-steel cooking ware. Therefore, on April 21, 1986, we sent a letter to the Government of Mexico and Cinsa requesting that the company provide actual information on the exports to the United States of the subject merchandise. We received a response on May 12, 1986.

On April 30, 1986, we sent a supplemental questionnaire to the Government of Mexico requesting information on an additional FOMEX program discovered at verification. We received responses to this questionnaire on May 19, 1986. On July 19, 1986, we verified the supplemental response and certain other information submitted by Cinsa.

On March 10, 1986, petitioners filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping investigation.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573), provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation * * * which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination in the antidumping investigation" (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, the Department granted an extension of the deadline for the final determination in the countervailing duty investigation of porcelain-on-steel cooking ware from Mexico to July 28, 1986, the original deadline for the final determination in the antidumping investigation.

On May 16, 1986, respondents in the antidumping duty investigation of porcelain-on-steel cooking ware from Mexico requested that the Department postpone the final determination until not later than 135 days after the preliminary determination in accordance with section 735(a)(2) of the

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Act. We granted this request and postponed our final antidumping duty determination until not later than October 2, 1986. Pursuant to section 705(a)(1) of the Tariff Act of 1930 as amended by section 606 of the Trade and Tariff Act of 1984, the deadline for the final countervailing duty determination on porcelain-on-steel cooking ware from Mexico was also postponed until October 2, 1986, to coincide with the revised date of the final antidumping duty determination (51 FR 10249, March 25, 1986).

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We conducted a hearing on May 13, 1986. We received written views from interested parties and have taken them into consideration in this determination.

Scope of the Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0824 and 654.0827 of the *Tariff Schedules of the United States Annotated* (TSUSA). Kitchen ware, currently reported under item 654.0828 of the TSUSA, is not subject to this investigation.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of this investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 25, 1984 issue of the Federal Register (49 FR 18006, April 25, 1984).

For purposes of this final determination, the period for which we are measuring subsidies (the review period), is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaires, our verification, hearing, and comments filed by petitioners and respondents, we determine the following:

I. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware under the following programs:

A. *FOMEX.* FOMEX is a trust of the Ministry of the Treasury to promote the manufacture and sale of exported products, with the National Bank of Foreign Trade (Bancomext) acting as the trustee. On July 27, 1983, FOMEX was formally incorporated in the National Bank for Foreign Trade, which administers the financing of FOMEX pre-export and export loans through financial institutions that establish contracts for lines of credit with manufacturers and exporters.

During the review period, exporters could obtain FOMEX pre-export loans denominated in pesos with a maximum nominal annual interest rate of 39.6 percent, or export loans denominated in dollars with a maximum annual interest rate of 6.9 percent. During the review period, both companies under investigation received pre-export peso-denominated FOMEX loans to finance exports to the United States. In addition, TRES benefitted from FOMEX export loans, as well as loans to U.S. importers of the subject merchandise.

Because the FOMEX pre-export financing program provides loans for export-related purposes at interest rates lower than those for comparable commercially available loans, we determine that this program confers a subsidy upon the exportation of porcelain-on-steel cooking ware.

In prior Mexican countervailing duty cases, we chose as our benchmark the average of the nominal rates published monthly by the Banco de Mexico in the *Indicadores Economicos* (the "IE" rate), which was the weighted average of the rates charged by commercial banks on peso loans. However, as of January 1985, the Banco de Mexico no longer publishes these rates. Therefore, we consider the most appropriate benchmark to be the Banco de Mexico's Costo Porcentual Promedio ("CPP"), the average cost of funds to Mexican banks, plus a spread equal to the average differential between the CPP and the nominal IE rate from 1981 to 1984, the only period for which we have nominal IE rates. Using this information, we have calculated a comparable peso-denominated average nominal interest rate of 60.86 percent for the review period.

With respect to FOMEX export loans, because exporters may obtain dollar-denominated loans for export-related purposes at interest rates lower than those for comparable commercially available loans, we determine that this program confers a subsidy upon the exportation of the products under investigation. In the past, to calculate the benefit from the short-term dollar-denominated FOMEX export loans, we used as the benchmark the weighted average of the interest rates for commercial and industrial loans of less than one million dollars from table 1.34 of the *Federal Reserve Bulletin*. The Federal Reserve no longer publishes this table, but includes similar information in Table 4.23. The main difference, for our purposes, is that Table 4.23 differentiates between fixed-rate and floating-rate loans. Since FOMEX loans carry fixed rates, we have considered only the fixed-rate section of the commercial and industrial loans reported in Table 4.23. We continue to exclude loans of greater than one million dollars. Using that information, we conclude that comparable dollar-denominated loans were available commercially at an avergae rate of 12.78 percent during the review period.

Because U.S. importers may obtain dollar-denominated FOMEX loans at interest rates lower than those for comparable commercially available loans, we determine that this program confers a subsidy upon the exportation of the subject merchandise. Since these loans are dollar-denominated, we used as the benchmark the weighted average of the interest rates for commercial and industrial loans of less than one million dollars, as described *supra*.

We calculated the amount of the benefit from these pre-export, export, and U.S. importer loans based on the interest rate differentials between the FOMEX financing rates and the applicable benchmarks. Because TRES' loans are export-related and have been tied to exports of the subject merchandise to the United States, we allocated the benefits over total exports of the products under investigation to the United States during the review period. Cinsa questioned the proportion of pre-export loans allocated to exports of cooking ware to the United States by the Government of Mexico. In addition, while at the company, we were unable to verify the precise portion of pre-export loans granted for exports of the subject merchandise to the United States. Therefore, we have allocated Cinsa's total pre-export loan benefit over total exports of all products to all markets during the review period. On this basis, we calculated an estimated net subsidy of 1.69 precent *ad valorem* for the review period.

On January 1, 1986, prior to our preliminary determination, Bancomext raised the interest rates for FOMEX pre-export, and export, and U.S. importer financing to 44.8 percent, 7.4 percent, and 7.4 percent, respectively. To calculate the estimated duty deposit rate, we compared these rates to the appropriate commercial benchmarks for the same period. Using the same calculation methodology described *supra*, we determine the estimated net subsidy for the pre-export, export, and U.S. importer loan programs to be 1.62 percent *ad valorem* for cash deposit purposes.

B. *Fund for Industrial Development (FONEI).* FONEI is a specialized financial development fund administered by the Banco de Mexico, which grants long-term credit at below-market rates for the creation, expansion, or modernization of enterprises in order to foster industrial decentralization and promote the efficient production of goods capable of competition in the international market. FONEI loans are available under various programs having different eligibility requirements.

During the review period, TRES received FONEI loans for investment in equipment. FONEI loans for investment in equipment are only available to companies located outside of Zone IIIA (Mexico City and environs). Because such loans are limited to companies in particular geographic regions and are made on terms inconsistent with commercial considerations, we determine that FONEI loans for investment in equipment confer a subsidy upon the subject merchandise.

FONEI Loans have variable interest rates. The companies under investigation did not have variable-rate, long-term loans to use for benchmark purposes.Therefore, we treated FONEI loans as a series of short-term loans and compared them to the same benchmark used to evaluate FOMEX pre-export loans.

To calculate the benefit, we computed the total interest that would be paid on the benchmark loan and subtracted from that the total interest that was paid on the FONEI loans. The difference was divided by the total sales of all products of the companies under investigation during the review period. In this manner, we calculated an estimated net subsidy of 0.28 percent *ad valorem*.

II. Programs Determined Not To Be Countervailable

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware under the following programs.

A. *Foreign Currency Financing of Imports (PROFIDE).* PROFIDE is a program which channels World Bank resources to BANCOMEXT, which manages these funds as trustee, in accordance with World Bank guidelines. The purpose of PROFIDE is to aid companies in meeting the reasonable foreign currency costs of imported inputs.

PROFIDE loans must be used to finance the purchase of inputs or spare parts (from World Bank member countries) for the production of products for export, or in the case of spare parts, in equipment used to produce exports. PROFIDE loans may also be used for domestic production; however, the recipient company must be an exporting company. The World Bank must approve each PROFIDE loan before PROFIDE money can be disbursed.

Since we verified that PROFIDE is funded exclusively by the World Bank and because World Bank funds are not countervailable [*see* "Initiation of Countervailing Duty Investigation; Certain Textiles and Textile Products from the Philippines" (49 FR 34381, August 30, 1984) and "Final Affirmative Countervailing Duty Determination; Fuel Ethanol from Brazil" (55 FR 3361, January 27, 1986)], we determine that this program is not countervailable.

B. *FOMEX Frontier Program.* The FOMEX Frontier program is administered by Bancomext and finances the production, inventory, purchase and sale of consumer goods manufactured in border zones as well as consumer products produced elsewhere and sold in border zones. These loans are only granted for sales within the border zones. The amount of FOMEX Frontier financing a company may receive depends on the degree of domestic content, according to the direct cost of production of the item involved. Loans may be extended for up to 100 percent of the cost of production or for up to 70 percent of the f.o.b. factory price, at the applicant's choice. The interest rates on these loans equal CPP plus two percentage points.

The Government of Mexico defines border zones as the region of land 20 kilometers wide parallel to the U.S.-Mexican border line, and the free zones which are: The Baja California peninsula, the northern part of Sonora, the state of Quintana Roo, and the city of Tapachula, Chiapas. The objective of the FOMEX Frontier program is to increase sources of employment nationwide and to substitute Mexican products for imports of capital goods, durable consumer goods and services in the border zones.

Although TRES received FOMEX Frontier loans during the review period, we verified that these loans were tied to specific sales of products within Mexico. Because these loans are specifically tied to domestic sales, and because they do not benefit the production or exportation of the subject merchandise to the United States, we determine that the FOMEX Frontier loans received by TRES are not countervailable.

C. *New Exchange Risks Trust Program (FICORCA II).* Ficorca II, established on February 15, 1984, is a trust fund set up by the Mexican government and the Bank of Mexico operating through the country's credit institutions. This program is similar to Ficorca I (which was terminated on December 20, 1982). All Mexican firms with registered debt in foreign currency and payable abroad to Mexican credit institutions or foreign financial entities may purchase, at a controlled rate, the amount in dollars necessary to pay principal on these loans. All loans which are covered by the program must be long-term or must have been restructured on a long-term basis. Ficorca II also allows companies to receive credit in pesos equal to the amount of dollars obtained (to pay the principal on their foreign currency loans).

Since we verified that FICORCA II is available to all Mexican firms with foreign indebtedness and, thus, is neither targeted to, nor benefitting a specific enterprise or industry, or group of enterprises or industries, we determine that this program is not countervailable.

D. *The FOGAIN Discount Program.* During verification, the Government of Mexico explained that Cinsa had participated in a special FOGAIN discount program available to small and medium-sized companies selling to the following three government agencies: CONASUPO (a marketing company which sells basic staples to low-income families); PEMEX (the national oil company); and ISSTE (the social security program for government employees). Under this program, small and medium-sized companies may receive discounts of accounts receivable from one of these three government institutions for a period of up to three months.

We verified that Cinsa participated in this program based upon its sale of lower-quality enamelware (*i.e.*, tableware and cooking ware) to CONASUPO during five months of the review period. We also verified that Cinsa no longer participates in this program, since it is not a small or medium-sized firm.

This program is not limited to a specific enterprise or industry, or group of enterprises or industries, but is generally available to all small and medium-sized companies. Further, loans under this program are limited and tied to specific domestic sales to CONASUPO, PEMEX, and ISSTE.

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Therefore, we determine that this program is not countervailable.

E. The Regular and Special Temporary Importation Schemes (TIS). The Regular Temporary Importation Scheme was established by the General Customs Law and is available to any company which temporarily imports products for production, fairs, exhibits and research purposes. The TIS exempts such products from regular import duties for a specified period of time. For inputs used in the production process, the limit is two years; for machinery, the limit is three years. Items imported under the Temporary Importation Scheme may remain permanently in Mexico. However, if this occurs, the company must pay the full import duty on the item. To participate in TIS, a company must apply for and obtain a renewable six-month permit.

In addition to the regular TIS program, on May 9, 1985, the Government of Mexico established a special TIS program. This program is available to all companies making use of the TIS program on a regular basis and which export at least 30 percent of their sales if they import machinery, or 10 percent of their sales if they import physically incorporated inputs. Participation in the special TIS program expedites certain customs procedures by allowing companies to bypass certain bonding and permit renewal requirements. It does not, however, grant the companies any additional import duty reductions or exemptions beyond the regular TIS program.

We verified that the regular TIS program was used by one company under investigation to import steel, which was physically incorporated in its export products. Neither company under investigation used this program to import non-physically incorporated inputs, nor did they apply to participate in the special TIS program. Because the exemption of import duties on physically incorporated inputs is not a countervailable subsidy under the U.S. law, we determine that the regular TIS program is not countervailable to the extent that it allows a duty exemption on physically incorporated items.

We reserve our determination, however, with respect to the regular TIS program as it applies to non-physically incorporated inputs, and with respect to the special TIS program.

III. Programs Determined Not To Be Used

We determine that the following programs have not been used by the companies that manufacture, produce, or export porcelain-on-steel cooking ware in Mexico.

A. Export Credit Insurance. Petitioners allege that under this program, exporters may be granted insurance credit against expropriations, defaults, and other political risks, that the premiums charged are inadequate to cover the long-term operating costs of the program, and that the program confers a subsidy to exporters. Since neither company under investigation received export credit insurance from the Government of Mexico during the review period, we determine that this program was not used.

B. Nacional Financiera, S.A. Loans (NAFINSA). Petitioners allege that companies in priority areas may receive certain loans at preferential interest rates through NAFINSA. During the review period, neither company under investigation received NAFINSA loans.

C. Energy Subsidies. On December 29, 1978, the Mexican government published a decree establishing a program through which PEMEX could grant energy discounts on natural gas and fuel oil. The program will exist through 1988, but is limited to those companies which applied to participate prior to November 1982. Since neither company under investigation applied for or received energy discounts, we determine that this program was not used.

D. Import Duty Reductions and Exemptions. Under this program, companies which have basic input and/or machinery and equipment shortages may receive import duty reductions and exemptions of up to 100 percent. The types of companies and products eligible to benefit from these reductions and exemptions are published annually in the *Diario Official.* Since neither company under investigation participated in this program during the review period, we determine that this program was not used.

E. The National Bank of Foreign Trade (Bancomext). Petitioners allege that Bancomext provides government financing for capital investment, production costs, and importation of raw materials for the manufacture of exports. We verified that Bancomext provided no funds to the companies under investigation.

F. Preferential State Investment Incentives. Certain Mexican states may offer Mexican industries partial or total exemption from state taxes, free or low cost land, or certain local infrastructure improvements as incentives for establishing or expanding industrial facilities, or as incentives for exporting. During the review period neither company under investigation benefited from state investment incentives.

G. Fondo Nacional de Fomento Industrial (FOMIN). FOMIN operates as a trust fund, providing funding to certain small and medium-sized companies by either buying stock or providing loans on terms inconsistent with commercial considerations. Since neither of the companies qualify as small or medium-sized firms, and we verified that they did not benefit from this program, we determine that this program was not used.

H. Guarantee and Development Fund for Medium and Small Industries (FOGAIN). FOGAIN is a program which provides financing at interest rates below prevailing commercial rates to all small and medium-sized firms in Mexico. Interest rates vary depending upon whether a small or medium-sized business has been granted priority status, and whether a business is located in a zone targeted for industrial. We verified that neither company received loans under FOGAIN, except as discussed in Section II, Part B, of this notice.

I. Preferential Federal Tax Credits (CEPROFIs). CEPROFIs are tax credits used to promote National Development Plan (NDP) goals, which include increased employment, encouragement of regional decentralization and industrial development, particularly of small and medium-sized firms. CEPROFI tax credits are also granted for investments in plants and equipment and for certain payments relating to increased employment and wages. We verified that neither company under investigation received CEPROFIs during the review period.

J. Trust for Industrial Parks, Cities and Commercial Centers (FIDEIN). Companies may receive low-interest loans or other benefits from FIDEIN, a program aimed at developing industrial parks and cities. Since neither company under investigation is located in an industrial park or received benefits from FIDEIN, we determine that this program was not used.

K. Port Facilities. The Mexican porcelain-on-steel cooking ware manufacturers, producers and/or exporters are alleged to benefit from preferential rebates at Mexican port facilities. We verified that the companies under investigation shipped all of their exports of the subject merchandise to the United States by land. Thus, we determine that this program was not used.

L. Preferential Vessel, Freight, Terminal, and Insurance Benefits. Certain Mexican companies allegedly benefit from rebates or other discounts provided by the Government of Mexico, or by companies it owns, on

transportation, storage and insurance expenses involved in exporting products to the United States. We verified tht neither company under investigation received such discounts or rebates during the review period.

M. Drawback Adjusted for Changes in Exchange Rates. A decree published in the *Diario Official* on April 24, 1985, provides that the drawback of import duties may be adjusted by the changing relationship of the peso to the dollar, thus rebating import duties in pesos, but in terms of constant dollars. None of the companies under investigation received drawbacks of import duties for physically incorporated inputs or other imports during the review period.

N. Article 94 and Article 15 Loans. On January 1, 1985, the New Organic Law of the Banco de Mexico went into effect, changing the legal reserve requirements of credit institutions and replacing Article 94 with Article 15.

Under Article 15, a certain percentage of a bank's funds must be deposited with the Banco de Mexico. The new law also stipulates that a certain percentage of loans must be disbursed to several priority sectors and sets maximum interest rates for these sectors. We verified that during the review period neither company received Article 94 or Article 15 loans.

O. Government-Financed Technology Development. Under the Industrial Development Plan 1979–1982–1990, certain Mexican companies may receive grants to purchase technological services for new plants. We verified that neither company under investigation received grants for technological development during the review period.

P. Accelerated Depreciation. We verified that all companies in Mexico, as of tax year 1984, may benefit from accelerated depreciation under Mexico's General Income Tax Law. Because neither of the companies subject to this investigation claimed accelerated depreciation on the tax return filed the review period, we determine that this program was not used.

IV. Programs Determined Not To Exist

A. The Mexican Institute of Foreign Trade (IMCE). On December 27, 1985, the government of Mexico published a decree in the *Diario Official* abolishing IMCE. Final payments on all IMCE accounts reportedly were made in March. We also verified that neither of the companies under investigation received IMCE benefits during 1985; therefore we determine that this program was not used. Further, we determine that this program no longer exists.

Petitioners' Comments

Comment 1. Petitioners contend that since respondents reported only FOMEX loan data for exports of porcelain-on-steel cooking ware to the United States, the benefit from these loans should be allocated over respondents' exports of porcelain-on-steel cooking ware to the United States.

DOC Position. Where we were able to tie the loans to exports of the subject merchandise to the United States, we did allocate the benefits as the petitioners suggest. However, where we were unable to tie the loans, we allocated total loan benefits to total exports. See Section I, Part A.

Comment 2. Petitioners argue that Cinsa's desire to change the allocation of its reported pre-export FOMEX loan receipts to exports to the United States of the products under investigation in its March 18, 1986, submission must be denied because the newly submitted information is unverified. In addition, Cinsa should not be permitted to have FOMEX loan data recorded one way for Mexican banking records and recorded in a different, more favorable way, for purposes of this countervailing duty investigation.

DOC Position. For purposes of this determination, we have allocated Cinsa's total pre-export loan benefit over total exports of all products to all markets during the review period. The Act requires us to base a final determination upon verified information. This is the only method of calculation that is based upon verified information, through no fault of the company. The inaccurate allocation was presented to the Government of Mexico by Cinsa's bank. See Section I, Part A.

Comment 3. Petitioners argue that TRES' FOMEX pre-export loans received in November and December 1984 must be prorated to countervail benefits received in 1985.

DOC Position. Consistent with our policy of attributing loan benefits to the point in time that the cash flow effect occurs, the Department countervails preferential short-term loans when the interest payment is made. Since the interest on FOMEX pre-export loans as well as the principal are paid at the end of a loan's term, any FOMEX pre-export loan benefit would be attributed, in its entirety, to the date of these payments. Therefore, we have not prorated TRES' November and December 1984 pre-export loans, but instead we have attributed the benefit to 1985.

Comment 4. Petitioners contend that since short-term loans were scarce during the review period, the benchmark interest rate for FOMEX per-export loans would have to be increased to reflect the true cost of respondents' alternative financing options.

DOC Position. We disagree. The actual interest rates charged for short-term loans would reflect the scarcity of such financing. Therefore, the short-term benchmark utilized by the Department incorporates this factor.

Comment 5. Petitioners argue that the Department should utilize a weighted average of monthly CPP rates based on comparisons of respondents' monthly pre-export FOMEX borrowing in 1985.

DOC Position. We disagree. We have used the average CPP rate plus the differential, as described in Section I.A., as our national average short-term benchmark. We have calculated the national average commercial short-term benchmark rate in such a way that it can be used as a benchmark throughout the period of investigation, because the loans we are examining were taken out throughout the period.

Comment 6. Petitioners argue that the Department should disregard Cinsa's March 18 and May 12, 1986, submissions on FOMEX pre-export loans, since this new information pertains only to the last half of 1985, the review period for the antidumping duty investigation, and it would be improper for the Department to extrapolate from this half-year data in order to calculate the benefit from this program.

DOC Position. We agree.

Comment 7. Petitioners argue that the benefits Cinsa received in 1985 under the FOGAIN program are countervailable even if the company may no longer participate in this program.

DOC Position. Since we have found this program to be non-countervailable on other grounds, it is inconsequential that Cinsa no longer participates. Please see Section II, Part B.

Comment 8. Petitioners contend that if the Department cannot verify that the interest was paid on FOMEX export loans to U.S. importers, then those loans should be considered to be interest-free and the countervailable benefit should be calculated accordingly.

DOC Position. We disagree. Due to the time limits imposed by the statute, the Department cannot, and does not attempt to, verify every item of information submitted during the course of a proceeding. Instead, the Department selects particular items of information to verify in order to gauge the accuracy of a submission as a whole. In this investigation, we did not select repayment of FOMEX loans by U.S. importers as an item for verification. However, because we were able to

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verify those items of information which we did select, and because we have no reason to believe that U.S. importers did not repay the FOMEX loans in question, we are assuming the U.S. importers repaid these loans on time and in full, and we have calculated the benefit from the FOMEX program accordingly.

Comment 9. Petitioners contend that the Department should not use 1986 FOMEX loan rates in calculating FOMEX subsidy margins because a program-wide change implemented by government statute or regulation was not in effect prior to the date of the preliminary determination.

DOC Position. We disagree. In accordance with the Understanding Between the United States and Mexico, FOMEX pre-export and export interest rates have been steadily increasing. In addition, the Government of the United States is regularly informed of those rate changes. Although the changes are not implemented by statute or regulation, we were able to verify that they have, in fact, been carried out. Thus, for purposes of this determination, we have used the FOMEX export loan rates which went into effect prior to our preliminary determination for cash deposit purposes.

Comment 10. Petitioners argue that the Department should not use 1986 FOMEX loan rates in calculating FOMEX subsidy margins because the subsidy element of FOMEX pre-export loans was neither reduced during the review period nor after January 1, 1986, despite the U.S.-Mexico "Under standing" signed in April 1985.

DOC Position. For purposes of this determination, we have used the FOMEX interest rates established on January 1, 1986. See our response to Petitioner's Comment 9 for further details.

Comment 11. Petitioners argue that if the Department substitutes the January or February 1986 FOMEX interest rates in calculating FOMEX subsidy margins, the Department should use as a benchmark a rate equivalent to the cost of an unsubsidized short-term loan from the same time period.

DOC Position. We have compared these rates to benchmarks selected from the same time period. Therefore, in all instances, "apples were compared to apples" and any increase or decrease in the interest rate differentials between our benchmarks and the FOMEX rates is reflected in the *ad valorem* duty deposit rate.

Comment 12. Petitioners argue that benefits received under the PROFIDE program are countervailable because Department officials were unable to verify that the program is operated by the World Bank.

DOC Position. We disagree. We were able to inspect confidential documents during verfication at the offices of the Government of Mexico, which demonstrate that PROFIDE is exclusively funded by, and under the direction of, the World Bank. The World Bank actually approves all loan applications; Bancomext merely acts as a trustee of the program.

Comment 13. Petitioners contend that benefits received under the PROFIDE program are countervailable because the program is run under the auspices of FOMAX, is administered by FOMEX personnel, provides financing at below market rates and is available only to exporters.

DOC Position. We disagree. We verified that PROFIDE funds are only for lending purposes and are not used to maintain Bancomext offices or to pay its staff. Because the PROFIDE program is financed solely by the World Bank, and because these funds must be used as stipulated by the World Bank, this program is not countervailable.

Comment 14. Petitioners argue that the FOMEX Frontier Program benefits a limited group of industries in Mexico—those industries with production, inventories, and sales activities located within 20 miles of the U.S.-Mexican border and in the free zones. Companies that have no manufacturing or sales activities in these regions are not eligible to recieve benefits under this program and, thus, this program is countervailable.

DOC Position. Since we found that the loans in question are specifically and exclusively tied to sales within Mexico and do not benefit the production or exportation of merchandise imported into the United States, the point is moot.

Respondents' Comments

Comment 1. Respondents maintain that FOMEX loans are not countervailable since the subsidy element will be eliminated entirely under the terms of the U.S.-Mexico "Understanding."

DOC Position. We disagree. Whether the subsidy element will be eliminated at a future point in time is irrelevant to this determination. For purposes of final determinations in countervailing duty investigations, we only take into account program-wide changes which occur prior to the preliminary determination and which are verified. To take into account projected, unverifiable changes in subsidy programs would be contrary to section 776(a) of the Act.

Comment 2. Respondents also argue that if FOMEX loans are countervailed, the duty deposit rate should reflect the current subsidy element (*i.e.*, interest rate).

DOC Position. The duty deposit rate does reflect the "subsidy element" through the date of the preliminary determination. Since this is the most recent verifiable data available in this case, this is as current as the deposit rate can be.

Comment 3. Respondents maintain that the Department should use Cinsa's March 18 and May 12, 1986, submissions on FOMEX pre-export loans, as Cinsa is now able to calculate a figure for loans granted on exports of the products under investigation to the United States. This figure was determined by applying Cinsa's calculated percentage of exports to the United States of cooking ware to the company's total FOMEX pre-export loans.

DOC Position. We disagree. Please see Petitioners' Comment 2 and the Department's corresponding response.

Comment 4. Respondents contend that a loan program, such as the FOMEX Frontier program that is available to any company in any region of Mexico is not countervailable, even if the funds are used for a product that is consumed in one area.

DOC Position. Since we determined that TRES' loans under this program were not countervailable for other reasons, this point is moot.

Comment 5: Respondents argue that there are two Temporary Importation Schemes, the regular and special one. The regular TIS, as used by one respondent, is not countervailable because it was only used to import steel, a physically incorporated input used in export products.

DOC Position: We found the benefit received to be non-countervailable. Please see Section II, Part E.

Comment 6. Respondents contend that the Department used an incorrect methodology in calculating TRES' FONEI loan benefits. For the three-year loan, the outstanding balance at the end of each quarter should be utilized in calculating any benefits, not the fixed principal amount of the loan. With respect to the five-year FONEI loan, the original amount of the loan should be used to calculate any benefit, not the outstanding balance, which reflects principal plus rolled-over interest payments.

DOC Position: With respect to the three-year loan, we have used the outstanding balance at the end of each quarter for calculating the benefit. For the preliminary determination, quarterly principal payments were not taken into account because TRES' response stated that principal payments did not begin until mid-1988 and it was not until verification that we learned that principal payments actually began in 1985. With respect to the five-year loan, we have added unpaid interest at the end of each quarter to the loan's principal and treated this sum as the outstanding balance for our next quarterly calculation. This is because the firm is liable for interest on this amount.

Comment 7: Respondents argue that PROFIDE is not countervailable because: (1) PROFIDE funds come from the World Bank rather that the Mexican government; (2) the program is not linked solely to exportation; and (3) PROFIDE loan rates are linked to the New York City bankers acceptance rate and thus are not below prevailing rates for dollar-denominated loans.

DOC Position: We agree that PROFIDE financing is not countervailable because funding for the program is provided by the World Bank.

Comment 8: Respondents contend that the FOGAIN discount program which is different from FOGAIN's normal programs is not countervailable since it benefits certain government institutions such as CONASUPO and not the company which sells to the government insitutions.

DOC Position: Since we found Cinsa's participation in this program non-countervailable for other reasons, this point is moot.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. We conducted the verification in Mexico from March 3 through March 13, 1986, and on July 19, 1986. During verification, we followed normal verification procedures, including meeting with government officials and inspection of documents, as well as on-site inspection of the companies producing and exporting the merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). We conducted a hearing on May 13, 1986. Written and oral views have been received and were considered in reaching this final determination.

Suspension of Liquidation

In accordance with our preliminary countervailing duty determination published on March 7, 1986, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require that a cash deposit or bond be posted equal to the estimated net subsidy. However, on March 25, 1986, the countervailing duty final determination was extended to coincide with the final antidumping duty determination, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). Under Article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days. Thus, we could not impose a suspension of liquidation on the subject merchandise for more than 120 days without final determinations of subsidization and injury. Therefore, on June 25, 1986, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after July 5, 1986.

We will reinstate suspension of liquidation if the ITC issues a final affirmative determination. If we issue a final countervailing duty order, we will instruct Customs Officers to collect a cash deposit of 1.90 percent *ad valorem*.

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available the the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 45 days after the date of publication of this notice. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that injury exists, we will issue a countervailing duty order, directing Customs officers to suspend liquidation and collect cash deposits on porcelain-on-steel cooking ware from Mexico entered, or withdrawn from warehouse, for consumption as described in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

Assistant Secretary for trade Administration.

October 1, 1986.

[FR Doc. 86-23034 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-509]

Final Negative Countervailing Duty Determination: Porcelain-on-Steel Cooking Ware From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Taiwan of porcelain-on-steel cooking ware. The estimated net subsidy is 0.17 percent *ad valorem*. This rate is *de minimis*, and, therefore, this determination is negative. We have notified the United States International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Loc Nguyen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NE., Washington, DC 20230; Telephone: (202) 377-0189 (LaCivita) or (202) 377-0167 (Nguyen).

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Taiwan of porcelain-on-steel cooking ware. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential Export Financing
- Income Tax Ceiling of 25 Percent for Big Trading Companies

We determine the estimated net countervailable benefits for porcelain-on-steel cooking ware to be 0.17 percent *ad valorem*. Although we have determined these programs to be

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countervailable, the respondent received *de minimis* benefits during the review period. Therefore, we determine that no benefits which constitute subsidies within the meaning of Section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters of porcelain-on-steel cooking ware in Taiwan.

Case History

On December 4, 1985, we received a petition in proper form filed by the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.25), the petition alleged that manufacturers, producers, or exporters of porcelain-on-steel cooking ware in Taiwan receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and on December 24, 1985, we initiated an investigation (50 FR 53354, December 31, 1985). We stated that we expected to issue a preliminary determination by February 27, 1986.

Since Taiwan is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our intention. On January 16, 1986, the ITC determined that there is a reasonable indication that imports of porcelain-on-steel cooking ware from Taiwan materially injure a U.S. industry (51 FR 3862, January 30, 1986).

On January 3, 1986, we presented questionnaires concerning the petitioners' allegations to the American Institute in Taiwan in Washington, DC. The authorities on Taiwan, First Enamel Industrial Corporation (First Enamel), Tou Tien Metal (Taiwan) Co., Ltd. (Tou Tien), Tian Shine Enterprise Co., Ltd. (Tian Shine), Lin-Fong Industrial Co. Ltd. (Li-Fong), and Four Star International Trading Company (Four Star) responded to the questionnaire on February 6, 1986. Li-Mow Enamelling Co., Ltd., responded on February 18, 1986, and Tou Tien amended its original response on that date.

We received a timely request for exclusion from any countervailing duty order from Four Star, an exporter of porcelain-on-steel cooking ware from Taiwan, who indicated that they receive no benefits under the countervailing duty law. On February 14, 1986, the Department requested that the authorities on Taiwan certify whether Four Star received any benefits from the programs under investigation.

On February 27, 1986, we issued our preliminary negative determination (51 FR 7982, March 7, 1986).

Verification was conducted in Taiwan from March 4 to March 26, 1986.

On March 14, 1986, Collins Co., Ltd., D&J Industrial Co., Ltd., Grand Unique Trading Co., Ltd., Sanyei Corporation (Taiwan) Ltd., Trans-World Prosperity Corporation and Trans-World Associates, Inc., which were previously unknown to petitioners or to the Department as manufacturers, producers or exporters of the products under investigation, filed responses to the Department's questionnaire.

On March 10, 1986, petitioners filed a request to extend the deadline date for a final determination in the countervailing duty investigation to correspond to the date of the final determination in the antidumping investigation.

Section 705(a)(1) of the Tariff Act of 1930, as amended by Section 606 of the Trade and Tariff Act of 1984, (Pub. L. 98–573, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports or the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination (in the countervailing duty investigation) to the date of the final determination in the antidumping investigation (19 U.S.C. 1671d(a)(1))." Pursuant to this provision, the Department granted an extension of the deadline for the final determination in the countervailing duty investigation of porcelain-on-steel cooking ware from Taiwan to July 28, 1986, the original deadline for the final determination in the antidumping investigation.

On May 16, 1986, counsel for respondents in the antidumping duty investigation of porcelain-on-steel cooking ware from Taiwan requested that the Department postpone the final determination until not later than 135 days after the preliminary determination in accordance with section 735(a)(2) of the Act. We granted this request and postponed our final antidumping duty determination until not later than October 2, 1986. Pursuant to section 705(a)(1) of the Tariff Act of 1930 as amended by section 606 of the Trade and Tariff Act of 1984, the deadline for the final countervailing duty determination on porcelain-on-steel cooking ware from Taiwan was also postponed until October 2, 1986, to coincide with the revised date of the final antidumping duty determination (51 FR 15519, April 24, 1986).

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. A hearing was not held because no interested party requestred one in this case.

On August 27, 1986, petitioners requested the Department to examine whether the authorities on Taiwan conferred a subsidy on the manufacturers, producers, or exporters of porcelain-on-steel cooking ware by the excessive remission of duty drawback on the steel used in the production of the merchandise under investigation. On September 12, 1986, respondents replied to petitioners' August 27, 1986, comments.

This allegation was first filed five months after verification and one month prior to the final determination. Section 355.39 of the Commerce Regulations specifies that all information used in making a final determination shall be verified. Because this information was submitted too late to be investigated and verified, the Department considers this allegation to be untimely and did not consider it in making its final determination.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedules of the United States Annotated* (TSUSA). Kitchenware, currently provided for under item 654.0828 of the TSUS, is not subject to this investigation.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of this investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 24, 1984, issue of the **Federal Register** (49 FR 18006).

For purposes of this final determination, the period for which was are measuring subsidies (the review period) is calendar year 1984.

Based upon our analysis of the petition, the responses to our questionnaires, the verification, and the amended responses submitted after verification, we determine the following:

I. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Taiwan of porcelain-on-steel cooking ware under the following programs:

A. Preferential Export Financing

The Export Loan Discount Regulations of the Central Bank of China permit registered exporters in possession of a letter of credit to apply for low-cost export loans covering up to 85 percent of the value of the export transaction. Export loans are arranged through authorized foreign-currency banks, which may apply for an interest-rate reduction from the Central Bank. Exporters settle the loan with foreign exchange within 180 days or pay an interest-rate penalty on the full amount of the loan.

The Central Bank sets the maximum and minimum interest rates for commercial lending in Taiwan. Export loans were set at rates equal to or below the minimum rates established for commercial lending during the review period. Because the rates given by commercial banks are near the maximum interest rate set by the Central Bank and because no further information is available regarding average commercial lending rates in Taiwan, we used the maximum lending rates set by the Central Bank as our short-term commercial benchmark.

Collins Company, Ltd., obtained export loans to finance exports of the products under investigation to the United States. Because these loans are contingent upon export performance and provide funds to borrowers at interest rates lower than those available for other purposes, we determine that this program confers a benefit which constitutes an export subsidy.

To calculate the benefit, we compared the Central Bank's export-loan rate with its maximum short-term loan rate. We then multiplied the difference by the principal amount and allocated the benefit over the value of Collins' 1984 exports to the United States of the products under investigation. The estimated net subsidy is 0.0073 percent *ad valorem*.

B. Preferential Income Tax Ceiling of 25 Percent for Big Trading Companies

Article 15 of the SEI permits productive enterprises and big trading companies to pay no more than 25 percent corporate income tax on income exceeding NT$500,000, rather than the 35 percent required by Taiwan's graduated corporate income tax law.

In previous cases, we grouped the tax benefits granted to big trading companies under this program with the income tax ceiling granted to productive enterprises. We determined that the 25-percent income tax ceiling granted to productive enterprises did not provide countervailable benefits because benefits were not limited to a specific enterprise or industry, or group of enterprises or industries. However, at verification, we learned that big-trading-company status is granted to companies which meet the following criteria established by the Ministry of Economic Affairs:

1. Earn annual export income according to the following schedule:
1983—20 million US dollars,
1984—20 million US dollars,
1985—50 million US dollars,
1986—100 million US dollars,
1987—to be established;

2. Maintain outstanding capital in excess of NT$200 million;

3. Operate only an export-import business;

4. Maintain overseas subsidiaries in more than three countries.

Six trading companies in Taiwan met this criteria in 1983, four in 1984 and 1985, and three in 1986.

The criteria established by the Ministry of Economic Affairs clearly indicates that the preferential tax treatment extended to big trading companies is based on export performance. Therefore, we determine that this program confers a benefit which constitutes an export subsidy.

Collins Company, Ltd., calculated its tax payable at the 25-percent rate. To calculate the subsidy, we allocated the tax savings resulting from the difference in the 25- and 35-percent rates over the value Collins' export sales. The estimated net subsidy is 0.1610 percent *ad valorem*.

II. Programs Determined Not To Be Used

We determine that the following programs have not been used by the companies that manufacture, produce, or export porcelain-on-steel cooking ware in Taiwan:

A. Export Loss Reserves

Article 31 of the Statute for Encouragement of Investment (SEI) permits exporters to establish an export loss reserve of up to one percent of the previous year's export exchange settlement to be used exclusively to compensate for export losses. Companies treat the export loss reserve as a business expense and deduct it from taxable income in one year, then settle the account and carry the reserve funds forward as taxable income for the next year.

Because this program is contingent upon export sales, we determined this program to be countervailable in the preliminary determination. We calculated a rate based on information provided by Tian Shine for the wrong year. However, at verification, we found that neither Tian Shine nor any of the other respondents received benefits from the export loss reserve program in calendar year 1984.

Therefore, we determine that this program was not used during the period of investigation.

B. Preferential Income Tax Ceiling of 22 Percent

Article 15 of the SEI also permits capital-intensive and/or technology-intensive enterprises engaged in the basic metal production industry, heavy machinery industry, or petrochemical industry to use a marginal tax rate of no more than 22 percent. We verified that none of the companies under investigation used the 22-percent tax ceiling during the period of investigation.

C. Accelerated Depreciation and Tax Holiday

Article 6 of the SEI permits newly-established productive enterprises either to use accelerated depreciation on fixed assets machinery and equipment or to select a five-year holiday on corporate income taxes. In addition, expanding enterprises may participate in a four-year tax-holiday on increased profits from expansion or a rapid depreciation of newly purchased buildings or equipment. We verified that none of the companies under investigation either claimed accelerated depreciation or took a tax holiday during the period of investigation.

D. Duty Exemptions and Deferrals on Imported Equipment

Article 21 of the SEI allows productive enterprises to pay import duties on selected machinery and equipment in a series of installments beginning one year from the date of importation. In addition, qualified enterprises are exempt from import duties on selected machinery and equipment used for the establishment or expansion of an approved project or for research and development. We verified that none of

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the companies under investigation received duty exemptions or deferrals during the period of investigation.

E. Preferential Long-Term Loans

Article 84 of th SEI permits the Executive Yuan to establish and administer a special development fund to promote investments of interest to national economic development. We verified that none of the companies under investigation received Article 84 financing with respect to U.S. sales of the products under investigation.

Verification

In accordance with 776(a) of the Act, we verified the data used in making our final determination. We conducted verification in Taiwan from March 4 through March 26, 1986. During verification, we followed normal verification procedures, including meeting with government officials and inspection of documents, as well as on-site inspection of the companies producing and exporting the merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). None of the interested parties requested a hearing. Therefore, a hearing was not held in this investigation.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since this determination is negative, the investigation will be terminated upon the publication of this notice in the **Federal Register**. Hence, the ITC is not required to make a final injury determination.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

October 2, 1986.

[FR Doc. 86-23033 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

Brookdale Hospital Medical Center; a Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 86-090R. Applicant: Brookdale Hospital Medical Center, Brooklyn, NY 11212. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of February 20, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides magnification to 250 000 and a lattice resolution to 0.344 nanometers. The National Institutes of Health advises in its memorandum dated September 3, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientif value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff

[FR Doc. 86-23019 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

Columbia University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86-166. Applicant: Columbia University, New York, NY 10032. Instrument: Heterodyne Interferometer. Manufacturer: University of Neuchatel, Switzerland. Intended Use: See notice at 51 FR 15820.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) noninvasive measurements of vibrations in the inner ear with a minimum amplitude of 2.0×10^{-15} meters and (2) a spot size of 10.0 micrometers. The National of Institutes Health advises in its memorandum dated September 3, 1986 that (1) these capabilities are pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23020 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

Johns Hopkins University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86-118. Applicant: Johns Hopkins University, Baltimore, MD 21205. Instrument: NMR Spectrometer, Model AM 360 WB. Manufacturer: Bruker Instruments, West Germany. Intended Use: See notice at 51 FR 6576.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value of the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (April 9, 1985).

Reasons: The foreign instrument provides: (1) Gradient power supplies, waveform memories, and image processors for NMR imaging and microscopy, (2) field drift compensation, and (3) wide bore probes. The National Institutes of Health advises in its memorandum dated August 25, 1986 that (1) the capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23021 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

The Mount Sinai School of Medicine; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86-168. Applicant: The Mount Sinai School of Medicine, New York, NY 10029. Instrument: Electronic Circuit Board (High Speed Framestone). Manufacturer: Joyce Electronics Limited, United Kingdom. Intended Use: See notice at 51 FR 13275.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated September 3, 1986 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23022 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Illinois, Urbana-Champaign Campus; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 86-074. Applicant: University of Illinois, Urbana-Champaign Campus, Urbana, IL 61801. Instrument: Dye Laser, Model FL 2002. Manufacturer: Lambda Physik, West Germany. Intended Use: See notice at 51 FR 5752.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is to be used as an accessory to an existing instrument previously imported for the use of the applicant. The article provides a 0.2 cm^{-1} bandwidth, an average power of 3W and a ASE-background of 5×10^{-3} in the wavelength range 350-500nm. The article is manufactured by the same manufacturer as the existing instrument. We know of no comparable accessory scientifically equivalent to the foreign article for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23023 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Reflected Light Microscopes; University of Wisconsin et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86-174. Applicant: University of Wisconsin-Madison, Madison, WI 53706. Intended Use: See notice at 51 FR 13275.

Docket Number: 86-176. Applicant: University of Pennsylvania, Pennsylvania Muscle Institute, Philadelphia, PA 19104-6083. Intended Use: See notice at 51 FR 15820.

Article: Tandem Scanning Reflected Light Microscope. Manufacturer: Sluzba Vyzkumn, Czechoslovakia. Advice Submitted By: National Institutes of Health: September 3, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: The foreign instruments provide confocal stereoscopic viewing of subsurface layers and computer reconstructed three-dimensional images. The National Institutes of Health advises in its respectively cited memoranda that (1) this capability is pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of eqivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23028 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting and Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a separate public meeting and separate hearing at the Harbor House, Nantucket, MA, as follows:

Public Meeting—On October 21, 1986, at 1 p.m. the Council will discuss reports of the foreign fishing, lobster and demersal finfish oversight, large pelagics and sea scallops committees; reports on the Atlantic States Marine Fisheries Commission and Mid-Atlantic Council meetings, as well as to discuss other fishery management and administrative matters. The meeting will adjourn on October 22 at approximately noon.

Public Hearing—October 22, from approximately 10:30 a.m. to 11:30 a.m., the Council will discuss and consider recommendations of the Northeast Regional Director will respect to the status of the resource and any possible changes to the specification of the meat count management standard in the fishery management plan. For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: October 7, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-22991 Filed 10-9-86; 8:45 am]

BILLING CODE 3510-22-M

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Marine Mammals; Application for Permit; National Marine Fisheries Service, Northwest and Alaska Fisheries Center (P77#20)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. *Applicant:*

a. *Name:* National Marine Fisheries Service, Northwest and Alaska Fisheries Center, National Marine Mammal Laboratory.

b. *Address:* 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:*

Gray whale (*Eschrichtius robustus*), 150
Humpback whale (*Megaptera novaeangliae*), 150

4. *Type of Take:* Thirty of each species will be radio tagged per year.

5. *Location of Activity:* Worldwide.

6. *Period of Activity:* 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service (NMFS), U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following office(s):

Protected Species Division, Office of Protected Species and Habitat Conservation, NMFS, 1825 Connecticut Avenue NW, Room 805, Washington, DC;

Director, Alaska Region, NMFS, 709 West 9th Street, Federal Bldg., Juneau, AK 99802;

Director, Northeast Region, NMFS, 14 Elm Street, Federal Bldg., Gloucester, MA 01930;

Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115;

Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702; and

Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

Dated: October 3, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–22992 Filed 10–9–86; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permit Modification; NMFS, Southeast Fisheries Center

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 528 issued to NMFS, Southeast Fisheries Center, Mississippi Laboratories, Pascagoula Facility, Post Office Drawer 1207, Pascagoula, Mississippi 39568–1207, on October 22, 1985 (50 FR 43760) is modified as follows:

Section A is modified by substituting the following:

A. "The following animals may be taken incidental to scientific sampling with bottom trawls, midwater trawls, or purse seines each year."

This modification became effective October 3, 1986.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue, Room 805 NW., Washington, DC and;

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: October 3, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–22993 Filed 10–9–86; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Withdrawal of Application: Web of Life Outdoor Center (P380)

On April 21, 1986, notice was published in the **Federal Register** (51 FR 13548) that an application had been filed by Web of Life Outdoor Education Center, P.O. Box 530, Carver, Massachusetts 02543, for a permit to harass twenty five (25) humpback whales (Megaptera novaeangliae) at Southern Stellwagen Bank Massachusetts.

Notice is hereby given that this application was withdrawn and the withdrawal request has been acknowledged and accepted without prejudice by the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW, Room 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: October 3, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–22994 Filed 10–9–86; 8:45 am]

BILLING CODE 3510–22–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information Toy Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission (CPSC) has submitted to the Office of Management and Budget a request for approval, through October 1, 1989, of a proposed collection of information in the form of required reporting by firms that distribute toy caps emitting sound in the 138–158 decibel range.

In 1970 the Food and Drug Administration (FDA), to protect children from potential hearing loss, banned toy caps that produced peak sound pressure levels at or above 138 decibels when tested in a prescribed way. In 1971 the FDA refined the test procedure and exempted some caps from the ban. In 1973 the CPSC republished and began enforcing the requirements.

The exemption provisions permit the marketing of toy caps emitting sound at levels between 138 and 158 decibels, so long as: (1) The packages and accompanying literature bear specified warning labels; (2) firms notify the CPSC of their intention to distribute; (3) firms participate in programs to develop caps that produce sound levels of not more than 138 decibels; and (4) firms submit progress reports, at least every three months, concerning the status of their programs.

The CPSC requires 138–158 decibel toy caps to bear the specified warning labels, but has not, since 1973, taken any steps to enforce exemption provisions (2), (3), and (4) above. Because of this lack of enforcement, the CPSC had not sought OMB approval under the Paperwork Reduction Act for the reporting required by the exemption. In July 1986, however, the CPSC reconsidered its policy of non-enforcement and decided to seek such approval.

The information will be used by the CPSC's compliance staff to ascertain what firms currently manufacture or import 138–158 decibel toy caps. If the exemption provisions are enforced, the information will permit the staff to determine which firms are complying with them. In addition, the information concerning the toy cap firms' programs to reduce the decibel levels could be used to devise a strategy for encouraging—or even requiring—firms to reduce the sound levels of caps below 138 decibels.

Additional details about the proposed collection of information:

Agency address: Consumer Product Safety Commission, 1111 18th Street NW., Washington, DC 20207.

Title of information collection: Distribution of toy caps producing peak sound pressure levels greater than 138 decibel but less than 158 decibels.

Type of request: New plan.

Frequency of collection: One-time only reporting for distribution notification and quarterly reporting for program reports.

General description of respondents: Firms that manufacture or distribute toy caps.

Estimated number of respondents: 45.

Total estimated number of hours for all respondents: 180.

Comments: Comments on this request for approval of a proposed collection of information should be addressed to Marina Gatti, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of the request for approval of the proposed collection of information are available from Francine Shacter, Office of Program Management and Budget, Washington, DC 20207; telephone (301) 492–6529.

This is not a proposal to which 44 U.S. 3504(h) is applicable.

Dated: October 7, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86–23056 Filed 10–9–86; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of the Fort Drum Outpatient Care Demonstration Project.

SUMMARY: Chapter 55, Title 10 U.S.C. 1092(a) authorizes OCHAMPUS to establish demonstrations of alternative approaches to reimbursement for administrative charges for health care plans. OCHAMPUS has determined that a potential exists to enhance beneficiary satisfaction and contain DoD costs through a preferred provider approach, wherein OCHAMPUS agrees to pay the CHAMPUS beneficiary cost-share and providers agree to always accept assignment and be paid less than the current allowable charge for all DoD beneficiaries. This will be tested in an area where there are large concentrations of active duty personnel, no military inpatient facility and empanelment of all active duty family members in an Army family practice. This notice sets forth the general parameters of the demonstration.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT:

Project Officer: LTC(P) Robert T. Moore, MSC, USA, Office of Demonstrations, OCHAMPUS, Washington, DC 20301–1600 [202–297–8975].

Commander, Wilcox Army Health Clinic: COL James R. Schwab, MC, USA, Commander, Wilcox Army Health Clinic, Fort Drum, NY 13602–5004 [215–772–4046]

Claims Processing and Provider Agreements: George Schobel, Vice President, Blue Cross and Blue Shield of Rhode Island, Inc., One Waybosset Hill, Providence, RI 02903 [401–272–8500]

SUPPLEMENTARY INFORMATION:

OCHAMPUS has a demonstration project referred to as the Fort Drum Outpatient Care Demonstration Project, in a three county area centered around Fort Drum, New York. The CHAMPUS fiscal intermediary for the area, Blue Cross and Blue Shield of Rhode Island (BCBSRI), Inc., a recognized health care plan manager in the State of New York, is responsible for executing agreements of participation with any provider who wishes to participate in this demonstration and for reimbursing all CHAMPUS claims, participating and non-participating, for authorized health care services delivered to CHAMPUS beneficiaries as identified in the CHAMPUS regulations, DoD 6010.8–R, CHAMPUS Policy Manual, CHAMPUS Operations Manual-Fiscal Intermediary-Medical and in final decisions of appeals cases issued by the Assistant Secretary of Defense (Health Affairs). The Uniformed Services are responsible for paying for all authorized care provided to active duty Service Members and members on Active Duty for Training (ADT). It should be noted that CHAMPVA beneficiaries are not eligible for the outpatient services described in this demonstration and the associated change in cost-share. Those CHAMPUS authorized providers whose practice is conducted in the following Zip codes are eligible to execute Agreements of Participation with BCBSRI and the US Army and to be regarded as participating providers in this demonstration subject to the conditions and limitations described herein and in the above references:

13083 13114 13131 13142 13144 13145 13302
13312 13327 13343 13345 13367 13404 13412
13437 13601 13602 13605 13606 13607 13608
13609 13610 13611 13612 13615 13616 13618
13619 13620 13622 13623 13624 13626 13627
13628 13629 13632 13634 13636 13638 13640
13641 13642 13643 13645 13646 13648 13650
13651 13653 13656 13657 13659 13661 13665
13671 13673 13675 13679 13682 13685 13687
13692 13693 13698

CHAMPUS services included in the demonstration which are not subject to the beneficiary cost-share are all authorized outpatient medical services except those associated with adjunctive dental care, the Program for the Handicapped and outpatient mental health care. Authorization and cost-share requirements associated with adjunctive dental care and the Program for the Handicapped are not waived under this demonstration. Outpatient mental health care is subject to the following cost-share limitations:

Patients referred for outpatient mental health care by a member of the provider staff of Wilcox Army Health Clinic and who choose to receive that care from a provider participating in this demonstration, will be subject to a $4.00 per visit copayment, to be collected by the participating provider;

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Patients who seek outpatient mental health care without a referral by a member of the provider staff of Wilcox Army Health Clinic will be subject to the full CHAMPUS cost-share; Patients who are referred for outpatient mental health care by a member of the Wilcox Army Health Clinic and who choose to receive care from a provider who is not participating in this demonstration are subject to the full CHAMPUS cost-share requirements.

CHAMPUS services excluded from this demonstration project are all inpatient care, adjunctive dental care, Program for the Handicapped and services provided under the Home Health Care Demonstration Project. These authorized services remain available in the demonstration area but are subject to the prescribed cost-share on the part of the beneficiary.

Beneficiaries who receive medical outpatient services covered under this demonstration from a provider participating in this demonstration will have no cost-share responsibilities for such services. Beneficiaries who receive any outpatient services from any provider who is not participating in this demonstration must pay the current CHAMPUS coninsurance requirement. For example, an active duty family member goes to a provider participating in this demonstration for an extensive consultation, (Current Procedural Terminology Version 4 (CPT–4), Code 90610). The provider's charge for this service is $100.00. Since this is a participating provider, the beneficiary pays nothing in coinsurance and CHAMPUS would pay the provider $100.00, since the charge is at or below the negotiated fee limit for that CPT–4 Code.

However, if that same beneficiary went to a non-participating CHAMPUS approved provider whose charge was $170.00, the beneficiary would pay (assuming that the annual deductible requirement had been met) twenty percent of the CHAMPUS allowable charge for that procedure plus any amount above the allowable charge. Since the current CHAMPUS allowable charge for that procedure in New York State is $125.00, the beneficiary would pay 20% of $125.00, or $25.00, plus the difference between the providers charge of $170 and the CHAMPUS allowable charge of $125.00, or $45.00 for a total amount paid by the beneficiary of $70.00. CHAMPUS would pay the non-participating provider eighty percent of the allowable charge of $125.00, or $100.00. Of course, if the beneficiary is responsible for all charges.

CHAMPUS approved providers with practices in the demonstration area who choose not to participate in this demonstration project are still eligible to participate in CHAMPUS under the current limits of allowable charges for authorized benefits and with the current CHAMPUS cost-share paid by the beneficiary. These providers should submit their claims for care provided to CHAMPUS beneficiaries to: CHAMPUS/CHAMPVA, P.O. Box 786, Providence, RI 02901. Any claims that such providers have for providing authorized emergency care to an active duty or Active Duty for Training Service Member should be sent to the Central Billing Office, c/o Wilcox US Army Health Clinic, Fort Drum, NY 13602–5004.

CHAMPUS approved providers with practices in the demonstration area who choose to participate in this demonstration project will submit their claims for any care provided to either a CHAMPUS beneficiary or an active duty or Active Duty for Training Service Member to Central Billing Office, c/o Wilcox US Army Health Clinic, Fort Drum, NY 13602–5004.

The demonstration is scheduled to run from October 1, 1986 through September 30, 1989.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 30, 1986.

[FR Doc. 86–22427 Filed 10–9–86; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, November 4, 1986; Tuesday, November 11, 1986; Tuesday, November 18, 1986; and Tuesday, November 25, 1986; at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 7, 1986.

[FR Doc. 86–23018 Filed 10–9–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 7, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Air Base Performance will meet at 155 Tactical Reconnaisance Group, Lincoln MAP ANG NE; HQ Stragetic Air Command, Offutt AFB NE; Ellsworth AFB SD; HQ Military Airlift Command and HQ Air Force Communications Command, Scott AFB IL during the period of October 27–29, 1986.

The purpose of these meetings is to receive briefings on and to observe factors affecting air base development, performance, and survivability, threats to air bases, basing posture, and logistics.

These meetings will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–23142 Filed 10–9–86; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

Correction

In FR Doc. 86–22661, appearing on page 35685 in the issue of Tuesday, October 7, 1986, third column, in the SUMMARY, in the eleventh line, "8:00 a.m." should read "8:00 p.m.".

BILLING CODE 1505–01–M

DEPARTMENT OF ENERGY

National Petroleum Council; Future Supply/Demand Factors Task Group;

Notice is hereby given that the Future Supply/Demand Factors Task Group will meet in October 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Future Supply/Demand Factors Task Group's activities will be to identify the major factors that will affect the U.S.'s future supply and demand of oil and gas and to evaluate the influence such factors could have on the vulnerability of the U.S. to future energy crises.

The Future Supply/Demand Factors Task Group will hold its sixth meeting on Thursday, October 23, 1986, starting at 9:00 a.m., in Room 300–302 of the Chevron Corporation, 575 Market Street, San Francisco, California.

The tentative agenda for the Future Supply/Demand Factors Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review progress of Task Group study assignments.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Future Supply/Demand Factors Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Future Supply/Demand Factors Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Advanced Fuels, Technology, Extraction and Environmental Controls, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 3, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–23062 Filed 10–9–86; 8:45am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA-C&E-86-47; OFP Case No. 61062-9323-20, 21-34]

Order Granting the Continental Cogeneration Corporation Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting Exemption.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") to Continental Cogeneration Corporation, general partner of Continental Energy Associates, Ltd. (CCC or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a facility up to 125 MW (net, approximate) combined cycle cogeneration facility as defined in 10 CFR 500.2, with a heat input rate of up to 1,050 MMBTU/hr and designed to produce electricity and process steam at the Humboldt Industrial Park (HIP), Hazleton, Pennsylvania. The final exemption order and detailed information on the proceeding are provided in the SUPPLEMENTARY INFORMATION section, below.

DATES: The order shall take effect on December 8, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–093, Washington, DC 20585, Telephone (202) 252–1774

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: On June 13, 1986, CCC petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a 125 MW (net, approximate) combined cycle cogeneration facility (consisting of gas turbine generators, waste heat recovery steam generators, a steam extraction turbine generator and ancillary equipment). As more than 50 percent of the net annual generation of electric power from the unit will be sold to Pennsylvania Power and Light (PP&L), the unit is, by definition, an electric powerplant under 10 CFR 500.2. The facility will produce steam for sale to supply HIP's needs.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including CCC's demonstration to ERA, in accordance with 10 CFR 503.37(a)(2), that:

1. It is in the public interest to grant an exemption to the cogeneration facility because of special circumstances in accordance with 10 CFR 503.37(a)(2)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility, will not be technically feasible, in accordance with 10 CFR 503.37(a)(2)(ii).

Procedural Requirements

In accordance with the procedural

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requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the Federal Register on July 29, 1985 (51 FR 27074), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on September 12, 1986; no hearing was requested. The Community Area New Development Organization submitted comments one day out of time. The comments, which supported the project, were accepted.

PP&L made comments to the effect that CCC's petition for exemption was unclear in several areas and requested that ERA investigate these to insure CCC satisfied the FUA requirements. ERA, after a discussion with the petitioner and a careful review of the petitioner's original petition and supplemental comments has concluded that any misunderstandings regarding these issues have been clarified and that CCC's facility is a cogeneration facility and meets the requirements of the Fuel Use Act.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that the construction and operation of this facility is in the public interest and that CCC has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37 and 503.13. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to CCC to permit the use of natural gas as the primary energy source for its cogeneration facility at the Humboldt Industrial Park, Hazleton, Pennsylvania.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on October 1, 1986.

Robert L. Davies,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 86-22997 Filed 10-9-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-56-NG]

Border-to-Border Pipeline Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on September 18, 1986, of an application from Border-to-Border Pipeline Company (Border-to-Border) for blanket authorization to import Canadian natural gas for short-term and spot market sales to customers in the United States or to act as an agent for such sales. Authorization is requested to import up to 400,000 McF per day of Canadian natural gas for a two-year term beginning on the date of first delivery of the import. Border-to-Border proposes to purchase natural gas from Bonanza Resources, Ltd. (Bonanza), through its affiliate, Canusa Energy (Canusa) for delivery of up to 200,000 Mcf per day, and to purchase the remaining 200,000 Mcf per day from various other unidentified Canadian suppliers. Border-to-Border intends to utilize existing pipeline facilities for the transportation of the volumes imported. Border-to-Border proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than November 10, 1986.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9590

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. They must be filed no later than 4:30 p.m. e.s.t., November 10, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate

why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Border-to-Border's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 6th, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-22998 Filed 10-9-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-523-000 and CP86-524-000]

Iroquois Gas Transmission System; Iroquois Pipeline Project; Notification of Schedule for Public Scoping Meetings

October 8, 1986.

In response to numerous public comments, the Federal Energy Regulatory Commission (FERC or Commission) hereby announces a public scoping meeting to be held in Torrington, Connecticut. The meeting will be conducted to identify the scope and significance of environmental impact associated with the Iroquois Gas Transmission System (Iroquois) proposal to import natural gas from Canada. The meeting will be held: Tuesday—October 28, 1986, 9:00 a.m. to 1:00 p.m., Torrington Civic Center, 101 Litchfield Street, Torrington, Connecticut 06790.

The Commission's Chairman, Martha Hesse, will preside at the meeting, accompanied by the Commission's environmental staff.

On September 3, 1986, the FERC staff issued a "Notice of Intent to Prepare A Draft Environmental Impact Statement And Request For Comments On Its Scope" for the project. The notice contained a brief description of the action proposed, a general location map, a tentative outline of issues, and information on comment procedures. The deadline for filing scoping comments was originally October 6, 1986. However, upon consideration of a request by the Attorney General for the State of Connecticut for an extension of the deadline, the Secretary of the Commission granted a 45-day extension of that deadline. Therefore, comments are now due on or before 5:00 p.m. on November 20, 1986.

The public scoping meeting is intended to give local interested parties an opportunity to provide information and assistance directly to the Commission. This information will be used to define the range of environmental issues and concerns that need to be addressed in the environmental impact analysis. Concerns involving individual right-of-way negotiations will not be discussed or resolved in this forum.

Public Comment Procedure

Due to the numerous comments which are expected and the limited time available, persons representing groups or towns will be given priority for speaking. This will allow the broadest possible range of comments to be provided to the Commission. To allow as many speakers as possible, initial statements will be limited to 5 minutes.

Requests to speak should be submitted in writing to the Commission's Secretary, Kenneth Plumb, no later than October 22, 1986. Requests should identify the names of the speaker and the town or group represented, and should be sent to the following address: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.

Comments may also be submitted in writing. Written comments should reference Docket No. CP86-523-000 and should be sent to the above address. As noted above, the deadline for written comments is November 20, 1986.

Comments or interventions previously filed with the Commission need not be refiled in response to this notice.

Further information concerning the public scoping meeting or about the Iroquois proposal is available from Secretary Plumb, telephone (202) 357-8400.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23166 Filed 10-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3581-001]

Keating Associates; Intent To Prepare Environmental Impact Statement, Scoping Session, and Public Hearings

October 8, 1986.

Keating Associates filed on February 28, 1984, an application for license for the El Portal Hydroelectric Project, FERC Project No. 3581. The project would be located on the Merced River at El Portal, Mariposa County, California.

Public notice of the application was issued by the Commission on May 15, 1985. The application has been mailed to interested agencies for their review and comments. The Commission's staff has determined that issuance of a license for the proposed hydroelectric project would constitute a major federal action significantly affecting the quality of the human environment. The staff, therefore intends to prepare an invironmental impact statement (EIS) in accordance with the National Environmental Policy Act. Possible alternatives to the proposed action will be addressed.

Scoping Session

Interested persons and agencies are invited to participate in a scoping meeting to discuss the environmental impact issues associated with the proposed El Portal Hydroelectric Project. The scoping session will be held on Thursday, November 13, 1986, commencing at 1:00 p.m., and will be held at the Federal Building at 801 I Street, Room 210, Sacramento, California 25814 (across from City Hall). Scoping sessions are utilized by the Commission's staff to: (1) Present environmental issues, preliminarily identified for coverage in the EIS, to the public and experts familar with the El Portal project; (2) receive input from the public and experts on the issues presented; (3) clarify the significance of issues; (4) identify additional issues for EIS treatment; and (5) identify issues that do not merit EIS treament. Agencies and individuals with environmental expertise and concerns are encouraged to atttend the meetings and assist FERC staff in determining the issues to be addressed in the EIS.

Public Hearings

Interested officials and members of the public are invited to express their views about the project in public hearings. The public hearings will be held on Wednesday, November 12, 1986, commencing at 7:30 p.m., at the Mariposa High School Auditorium, 5074 Old Highway North (8th and Old Highway North), Mariposa, California

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95338, and on Thursday, November 13, 1986, commencing at 8:00 p.m., at the University of California at Davis, 198 Young Hall (on A Street), Davis, California 95616. The public hearings will be conducted by the Commission's staff.

At the public hearings, persons may give their statements orally or in writing. The hearings will be recorded by a stenographer, and all statements (oral and written) will be come part of the public hearing records. In addition, the public hearing records will remain open until January 13, 1987, and anybody may submit written comments on the project until that time. Comments should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should clearly show the project name and number (Project No. 3581–001) on the first page.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–23031 Filed 10–9–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8303–001 et al.]

Hydroelectric Applications, (The Power Authority of the State of New York et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Transfer of License.

b. Project No.: 8303–001.

c. Date Filed: September 5, 1986.

d. Applicants: The Power Authority of the State of New York and the City of Rome, New York.

e. Name of Project: Delta.

f. Location: On the Mohawk River in Oneida County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Charles M. Pratt, Senior Vice President and General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019, (212) 397–6200.

Carl J. Eilenberg, Mayor, City of Rome, City Hall, Rome, New York 13440, (315) 336–6000.

i. Comment Date: October 21, 1986.

j. Description of Project: On March 17, 1986, the Commission issued an "Order Issuing License and Denying Competing Application For License". The license was issued to the Power Authority of the State of New York (PASNY) and the competing application filed by the City of Rome, New York (Rome) was denied.

On September 5, 1986, both of the above mentioned parties filed a joint application to transfer the license from PASNY to Rome. PASNY has decided not to proceed with construction of the project. Rome is willing and desires to proceed with construction of the project, and therefore, transfer of the license would facilitate development of the hydropower resource.

k. This notice also consists of the following standard paragraphs: B and C.

2 a. Type of Application: Transfer of License.

b. Project No.: 2600–007.

c. Date Filed: August 12, 1986.

d. Applicant: Bangor Hydro-Electric Company and Bangor Pacific Hydro Associates.

e. Name of Project: West Enfield.

f. Location: On the Penobscot River in Penobscot County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–(825(r).

h. Contact Person: Carroll R. Lee, Vice President, Bangor Hydro-Electric Company, 33 State Street, Bangor, ME 04401, (207) 945–5621.

i. Comment Date: October 24, 1986.

j. Description of Transfer: The license for this project was issued to Bangor Hydro-Electric Company on June 26, 1984. It is proposed to transfer the license to Bangor Hydro-Electric Company and Bangor-Pacific Hydro Associates. Bangor-Pacific Hydro Associates is a general partnership organized under the laws of the State of Maine, comprised solely by Bangor Hydro-Electric Company and Pacific Lighting Energy Systems. The transfer is necessary to facilitate financing and construction of the project.

k. This notice also consists of the following standard paragraphs: B and C.

3 a. Type of Application: Amendment of License.

b. Project No: 2744–004.

c. Date Files: March 5, 1986 and supplemented August 8, 1986.

d. Applicant: Menominee Company.

e. Name of Project: Menominee and Park Mill Hydro Project.

f. Location: On the Menominee River in Marinette County, Wisconsin and Menominee County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ronald E. Walk, Facilities Manager, Scott Paper Company, 3210 Riverside Avenue, Marinette, WI 54143, (715) 735–6644.

i. Comment Date: November 5, 1986.

j. Description of Project: The Menominee and Park Mill Hydro Project No. 2744 as licensed consists of:

A. The Menominee Development—(1) A concrete gravity dam structure approximately 26 feet high and 456 feet long with a normal operating head of 12 feet; (2) a reservoir with normal elevation of 594 feet m.s.l. and surface area of approximately 143 acres; (3) a spillway section consisting of twelve 20-foot-wide by 11-foot-high Taintor gates and a 150-foot-long overflow spillway; (4) a 13-foot-long concrete gravity closed dam and a 20-foot-long earth embankment with concrete core wall at the south end of the spillway; (5) a concrete powerhouse housing two 458-kW generators and two 662–kW generators for a total installed capacity of 2,240 kW; (6) three 500–kVA single-phase 480/4, 160–V step-up transformers; (7) generator leads; (8) a 1-mile-long 4.16–kV transmission line connected to the Park Mill Powerhouse; and (9) appurtenant facilities.

B. The Park Mill Development—(1) A concrete gravity dam structure appoximately 22 feet high and 538 feet long with a normal operating head of 16 feet; (2) a reservoir with a normal elevation of 610 feet m.s.l. and a surface area of approximately 539 acres; (3) an intake headrace canal approximately 2,400 feet long; (4) a spillway section consisting of seven 20-foot wide by 11-foot-high Taintor gates and 350 feet of overflow spillway with flashboards; (5) a brick and concrete powerhouse housing one 225–kW generator, two 420–kW generators, and two 430–kW generators for a total installed capacity of 1,925 kW; (6) four three-phase 1–MVA 480/4, 160–V step-up transformers; (7) generator leads; and (8) appurtenant facilities.

The Applicant proposes to amend its license by: (1) Increasing the total installed capacity by 450–kW with the installation of one generator at an existing flume at the Park Mill site; and (2) increasing the annual generation by 2,818 MWh. The Applicant states that the new facilities would be in the same general project area, and that no adverse impacts would be expected other than those addressed in the original licensing process. The project would be operated as already licensed with no other charges.

k. Purpose of Project: All of the power generated by the Applicant both at its Park Mill and Menominee developments is consumed in the Application's paper operations.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

4 a. Type of Application: Surrender of License.

b. Project No.: 9103–002

c. Date Files: August 19, 1986.

d. Applicant: Emil G. Sitkei

e. Name of Project: Cherry Creek.

f. Location: On Cherry Creek, tributary to the Marys River, in Benton County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Emil G. Sitkei, 25204 Cherry Creek Road, Monroe, OR 97456, (503) 847–5448.

i. Comment Date: November 5, 1986.

j. Description of Project: On July 21, 1986, a license was issued to Emil G. Sitkei to construct, operate, and maintain the Cherry Creek Project No. 9103 to be located on Cherry Creek, a tributary to the Marys River, in Benton County, Oregon. The project would consist of a dam, an intake structure, a pipeline, a penstock, a powerhouse containing a generating unit with a capacity of 15 kW, a tailrace, a transmission line, and appurtenant facilities.

Licensee states that, after careful and intensive study of the provisions of the license, the decision has been made to surrender the license becaue expenses, as required by the license, are beyond what licensee had estimated.

k. Anyone desiring to be heard or to make any protest about this action should file a motion to intervene or a protest with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214 (1985). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 385.211 for protests. To become a party, or to participate in any hearing that might be held, a person must file a motion to intervene in accordance with the Commission's Rules. The Commission's address is: 825 North Capitol Street, NE., Washington, DC 20426.

5 a. Type of Application: Major License.

b. Project No: 8763–000.

c. Date Filed: May 9, 1986.

d. Applicant: Power Mining, Inc.

e. Name of Project: Woods Falls.

f. Location: On the Black River in Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contract Person: Mr. David R. Bristol, Power Mining, Inc., One Lincoln Center, Suite 1225, Syracuse, NY 13202, (315) 471–2881.

i. Comment Date: November 28, 1986.

j. Description of Project: The proposed project would consist of: (1) A new 13-foot-high, 355-foot-long concrete gravity dam; (2) a new reservoir with a normal water surface area of 35 acres, negligible storage capacity, and a water surface elevation of 372 feet USGS; with (3) 4-foot-high flashboards; (4) three new stoplog bays; (5) three new sluice gates; (6) a new excavated intake channel; (7) a new concrete powerhouse containing two generating units with a capacity of 2,700 kW each for a total installed capacity of 5,400 kW; (8) a new excavated tailrace; (9) the 4.16-kV generator leads; (10) the 4.16/23-kV, 6-MVA transformer; (11) the 650-foot-long, 23-kV transmission line; and (12) appurtenant facilities. The applicant estimates that the average annual generation would be 26,000,000 kWh.

k. Purpose of Project: Project power would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

6 a. Type of Application: Preliminary Permit.

b. Project No: 10031–000.

c. Date Filed: July 7, 1986.

d. Applicant: Santaquin City Corporation.

e. Name of Project: Summit Creek.

f. Location: Summit Creek, near Santaquin City, in Utah County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contract Person: Honorable Herb Lloyd, P.O. Box 277, Santaquin, UT 84655, (801) 754–2211.

i. Comment Date: November 21, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) An 8-foot-high, 40-foot-long, concrete diversion dam across Summit Creek; (2) a 20-inch-diameter, 15,048-foot-long penstock; (3) a powerhouse containing one turbine generator unit with a rated capacity of 800 kW, operating under a head of 690 feet and a hydraulic capacity of 14 cfs, and producing an estimated annual generation of 3,470,988 kWh; and (4) a 300-foot-long, 12.5-kV transmission line interconnecting the project to an existing Utah Power and Light Company line. The proposed project would partially be located in Uinta National Forest. The proposed project would be located in sections 13 and 24, Township 10 South, Range 1 East, SLB&M, and sections 19 and 30, Township 10 South, Range 2 East, SLB&M, Utah County, Utah.

k. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

7 a. Type of Application: Minor License.

b. Project No: 9907–000.

c. Date Filed: February 10, 1986.

d. Applicant: A. W. Brown Co., Inc.

e. Name of Project: Sunshine Power.

f. Location: On Lake Creek on Lot 8 of Block 9 in the First Addition to Lake Creek Subdivision No. 1, T19N, R21E, near Salmon in Lemhi County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contract Person: Albert W. Brown, 3418 Via Lido, Suite F, Newport Beach, CA 92663, (714) 673–6119.

i. Comment Date: November 20, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing earthfill 10-foot-high Lake Creek diversion dam; (2) an existing 15-inch diameter, 2,300-foot-long PVC penstock; (3) a proposed powerhouse containing one generating unit with a rated capacity of 110 kW and an estimated average annual generation of 567,394 kwh; (4) a 200-foot-long, 34.5-kV transmission line to be connected to Idaho Power Company lines; and (5) appurtenant facilities The estimated cost of the project is $75,000.

k. Purpose of Project: The power produced will be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, B, C and D1.

8 a. Type of Application: Major License (more then 5MW).

b. Project No.: 3239–001.

c. Date Filed: June 1, 1982.

d. Applicant: Puget Sound Power & Light Company and McMaster and Schroder.

e. Name of Project: Koma Kulshan.

f. Location: On Rocky, Sulphur and Sandy Creeks within Mt. Baker—Snoqualmie National Forest in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(a).

h. Contact Person: Mr. W.J. Finnegan, Vice President, Engineering, Puget Sound Power & Light Company, Puget Power Building, Bellevue, WA 98009, (206) 454–6363.

i. Comment Date: October 30, 1986.

j. Description of Project: The proposed project consist of: (1) An 18-foot-high, 32-foot-long diversion structure with a crest elevation of 2,770 feet msl on Rocky Creek; (2) a 48-inch-diameter, 5,100-foot-long pipeline connecting to a common forebay; (3) a 15-foot-high, 37-foot-long diversion structure with a crest elevation of 2,755 feet msl on Sulpher Creek; (4) a 48-inch-diameter, 350-foot-long pipeline connecting to a common forebay; (5) a 15-foot-diameter, 29-foot-high common concrete forebay; (6) a 45 to 48-inch-diameter, 18,810-foot-long penstock; (7) a powerhouse containing a

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generating unit with a rated capacity of 12,000 kW; and (8) a 34.5-kV, 4.5-mile-long transmission line tying into the switchyard at the Upper Baker River Development. The applicant estimates a 56 GWh average annual energy production.

The proposed project is the result of a settlement agreement filed by the applicant on June 25, 1986, and approved in part by the Commission on September 17, 1986, 36 FERC § 61299 (1986).

k. Purpose of Project: Power produced by the project would be utilized by Puget Sound Power & Light Company.

l. This notice also consists of the following standard paragraphs: B & C.

9 a. Type of Application: Declaration of Intention.

b. Project No.: EL86-32-000.

c. Date Filed: April 11, 1986.

d. Applicant: Eastern Band of Cherokee Indians and Big Cove Community Club.

e. Name of Project: Cherokee Micohydro Project Calamore Branch Site.

f. Location: On the Calamore Branch, at Big Crove Community on the Cherokee Indian Reservation, in Swain County, North Carolina.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person:

Robert S. Youngdeer, Principle Chief, The Eastern Band of Cherokee Indians, P.O. Box 455, Cherokee , NC 28719, (704) 497-2771.

Mr. Mike French, Chairman, Big Cove Community Club, Star Route, Cherokee , NC 28719, (704) 497-4771.

i. Comment Date: November 10, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 4-foot-long and 2.5-foot-high rock diversion dam; (2) a concrete intake structure, 12 feet long and 8 feet wide, containing an overflow weir, 4 feet long; (3) a 6-inch-diameter, 2500-foot-long penstock; (4) a powerhouse containing a 12 kW turbine-generator unit; (5) a short tailrace; and (6) appurtenant facilities. Applicant estimates the average annual generation to be 89,809 kWh. Project energy will be utilized entirely on site at the Cherokee Indian Reservation.

The Applicant rquests that the Commission investigate and determine if there is, pursuant to the Federal Power Act, section 23(b), federal jurisdiction for the project. The Applicant asserts that the Commission lacks jurisdiction for the following reasons: (1) Section 23(b) of the Federal Power Act does not include Indian tribes among the listed entities that are prohibited from developing water power projects without a license; and (2) the Federal Energy Regulatory Commission lacks jurisdiction over a water power project within an Indian reservation when the project is developed by the Tribe itself, and when the project is so small in scale that it is not interconnected with the interstate power grid and thus does not affect the interests of interstate commerce.

k. This notice also consists of the following standard paragraphs: B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10040-000.

c. Date Filed: July 16, 1986.

d. Applicant: R & S Power.

e. Name of Project: Dry Creek.

f. Location: In Cache National Forest on Dry Creek in Franklin County, Idaho. Township 13S and Range 41E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Robert N. Fackrell, 119 South 2nd East, Preston, ID 83263, (208) 852-1320.

i. Comment Date: December 8, 1986.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high diversion structure at elevation 7300 feet; (2) a 15,000-foot-long, 54-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 14.0 MW and an average annual generation of 20.5 GWh; and (4) a 0.5-mile-long transmission line. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $45,000.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

11 a. Type of Application: Amendment of License (New Capacity).

b. Project No.: 2576-005.

c. Date Filed: December 27, 1985.

d. Applicant: Connecticut Light and Power Company.

e. Name of Project: Housatonic River.

f. Location: On the Housatonic River, in the towns of Kent and New Milford, Litchfield County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. J.F. Opeka, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270, (203) 665-5000.

i. Comment Date: November 10, 1986.

j. Description of Project: The project as licensed consists of four developments: Bulls Bridge, Rocky River, Shepaug, and Stevenson, all located on the Housatonic River. The existing Bulls Bridge development consists of: (1) A 120-acre reservoir impounded by two dams; (2) a canal intake structure; (3) a 2-mile-long power canal; (4) two steel penstocks, one 13-foot-diameter, 420-foot-long and the other 8-foot-diameter, 420-foot-long; and (5) a powerhouse containing six turbine-generator units with a total installed capacity of 8.3 MW.

The applicant proposes to amend the license by installing a new 11.9 MW generating unit at the Bulls Bridge development. The proposed amendment would consist of: (1) An intake structure located on the existing canal forebay; (2) a 270-foot-long, 12-foot-diameter penstock; (3) a powerhouse, located 600 feet upstream of the existing powerhouse, containing an 11.9 MW turbine-generator unit; and (4) a 600-foot-long overhead transmission line connecting to an existing switchyard.

k. Purpose of Project: The project power would be utilized by the applicant and sold to its customers.

l. This notice also consists of the following standard paragraphs: B and C.

12 a. Type of Application: Declaration of Intention.

b. Project No.: EL86-39-000.

c. Date Filed: April 25, 1986.

d. Applicant: Phillips Lake at Okaga.

e. Name of Project: Windy Creek Project.

f. Location: On Windy Creek at Okaga Lake (Phillips Lake) in Lincoln County, Montana.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person:

Clint Mills, Manager, Phillips Lake at Okaga, Route 1 (Yaak), Troy, Montana 59935, (406) 295-4003.

Mr. James E. Davis, 3960 Ortega Boulevard, Jacksonville, Florida 32210, (904) 389-3031.

i. Comment Date: November 14, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Okaga Lake Dam, an earthen dam 35 feet high and 240 feet long; (2) the existing reservoir with a surface area of 103 acres and storage capacity of 2163 acre-feet at surface elevation 3292 feet m.s.l.; and new project facilities to include: (3) A concrete intake structure and forebay; (4) a 12-inch-diameter, 1530-foot-long penstock; (5) a powerhouse containing a 25 kW turbine-generator; (6) a 240 volt, 1700-foot-long transmission line; and (6) appurtenant facilities. Applicant estimates annual generation would be 110,000 kWh.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

k. Purpose of Project: Project energy will be utilized for private consumption at the ranch/resort on private property near the project site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 10021-000.

c. Date Filed: June 20, 1986.

d. Applicant: Beaver City Corporation.

e. Name of Project: Beaver Water Power Project.

f. Location: On Beaver River in Beaver County, Utah: Sections 23, 24, 26, 27, 28, Township 29S, Range 6W, SLB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Honorable Robert H. Lee, Mayor, P.O. Box 271, Beaver, UT 84713.

i. Comment Date: December 1, 1986.

j. Description of Project: The proposed project would be located within the Fishlake National Forest and would consist of: (1) An intake structure in the river bank; (2) a pipeline/penstock, 24 inches in diameter and 14,000 feet long; (3) a powerhouse containing a turbine-generator unit rated at 550 kW and operating under a 419-foot head; (4) a tailrace returning flow to the river; (5) a 12.47-kV transmission line, 12,500 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 3,300,000 kWh. The Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

k. Purpose of Project: Project energy would be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

14 a. Type of Application: Minor License.

b. Project No.: 9753-000.

c. Date Filed: December 30, 1985.

d. Applicant: G. Thomas Giraud, Jr.

e. Name of Project: Prym.

f. Location: On the Five Mile River in Windham County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Persons:

Mr. G. Thomas Giruad, Jr., 48 Burlington Street, Providence, RI 02906, (401) 831-4088.

Mr. Duncan S. Broatch, Summit Hydropower, P.O. Box 122, Putnam, CT 06260, (203) 928-2002.

i. Comment Date: December 1, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete-faced earth diversion dam approximately 100 feet long by 5 feet high; (2) a series of earthfill dikes totaling approximately 2,000 feet in length and heights up to 14 feet; (3) two spillways; (4) mill pond check gates; (5) four ponds designated as A, B, C, and D, with a surface area of 30 acres and a gross storage capacity of 120 acre-feet; (6) a 15-foot-high by 22.5-foot-long by 16.5-foot-wide brick powerhouse housing one rehabilitated turbine-generator unit rated at 99 kW; (7) a new 400-foot-long, 3-phase, 600 volt transmission line; and (8) appurtenant facilities. The applicant estimates an average annual generation of 511,170 kWh. The existing dam is owned by Mr. Willian Prym, Dayville, Connecticut.

k. Purpose of Project: Project power would be sold to Northeast Utilities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

15 a. Type of Application: Minor License.

b. Project No.: 9186-000.

c. Date Filed: May 10, 1985.

d. Applicant: Big Bear Regional Wastewater Agency.

e. Name of Project: Lucerne Valley.

f. Location: In an existing treated wastewater effluent outfall pipeline in section 11, T3N, R1E, and section 27, T4N, R1E near Lucerne Valley in San Bernardino County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Persons: Mr. Richard T. Anderson, P.O. Box 1028, Riverside, CA 92502, (714) 686-1450.

i. Comment Date: December 8, 1986.

j. Description of Project: The proposed project would utilize an existing treatment wastewater effluent outfall pipeline extending from applicant's wastewater treatment plant in the Big Bear Valley to applicant's reclaimed water disposal area 12 miles away in Lucerne Valley. The project would consist of a 650 kW generating unit at the lower end of an existing 16-inch section of outfall pipeline (Kaiser Station) and a 650 kW generating unit at the lower end of a new 16-inch diameter pipeline at the disposal area of applicant's outfall pipeline (Lucerne Station). The estimated average annual generation of 4,700 MWh would be sold to Southern California Edison Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

16 a. Type of Application: Surrender of License.

b. Project No.: 6758-004.

c. Date Filed: August 26, 1986.

d. Applicant: Holden Village, Inc.

e. Name of Project: Railroad Creek.

f. Location: On Railroad Creek, tributary to Lake Chelan, in Chelan County, Washington, within the Wenatchee National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Roger D. Ockfen, Holden Village, Chelan, WA 98816.

i. Comment Date: November 17, 1986.

j. Description of Project: On March 28, 1986, a license was issued to Holden Village, Inc. to construct, operate, and maintain the Railroad Creek Project No. 6758 to be located on Railroad Creek, a taributary to Lake Chelan, in Chelan County, Washington, occupying lands of the United States within the Wenatchee National Forest. The project would consist of a diversion weir, a reservoir, a fishladder, a penstock, a powerhouse containing a generating unit rated at 325 kW, a transmission line, an access road, and appurtenant facilities.

Licensee states that it has decided to surrender the license due to the high construction costs involved.

k. Any one desiring to be heard or to make any protest about this action should file a motion to intervene or a protest with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure 18 CFR 385.211, 385.214 (1985). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in 385.211 for protests. To become a party, or to participate in any hearing that might be held, a person must file a motion to intervene in accordance with the Commission'r Rules. The Commission's address is: 825 North Capital Street NE, Washington, DC 20426.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 10027-000.

c. Date Filed: July 1, 1986.

d. Applicant: Broughton Lumber Company.

e. Name of Project: Broughton.

f. Location: Partially on land administered by the U.S. Fish and Wildlife Service, on the Little White

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Salmon River in Skamania County, Washington. Township 3N and Range 9E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Persons: Rees A. Stevenson, Broughton Lumber Company, Underwood, OR 98651, (509) 493–2733.

i. Comment Date: December 8, 1986.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high rock masonry dam at elevation 1275 feet; (2) A 5¼-mile long, 42-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 4,500 kW and an average annual generation of 37.9 GWh; and (4) a 1½-mile-long transmission line. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

k. Purpose of Project: The project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

18. a. Type of Application: Amendment of License.

b. Project No: 6240–004.

c. Date Filed: April 3, 1986.

d. Applicant: Watson Associates.

e. Name of Project: Watson Dam Project.

f. Location: On the Cocheco River in Strafford County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John N. Webster, Watson Associates, P.O. Box 1073, Dover, NH 03820, (207) 384–5334.

i. Comment Date: November 14, 1986.

j. Description of Project: The project as licensed consists of: (1) A concrete gravity dam, varying in height from 6 feet to 10 feet and 290 feet long; (2) a reservior having a storage capacity of 236 acre-feet, a surface area of 54 acres, and a normal water surface elevation of 119 feet m.s.l.; (3) a powerhouse containing two generating units having a total capacity of 182 kW; (4) a tailrace; (5) generator leads; and (6) appurtenant facilities. Project energy would be sold to the Public Service Company of New Hampshire.

The applicant proposes to amend the license by increasing the total licensed capacity from 182 kW to 265 kW by installing a larger unit. The applicant also proposes to install 2-foot-high flashboards.

k. This notice also consists of the following standard paragraphs: B, C, and D1.

19. a. Type of Application: Preliminary Permit.

b. Project No.: 10042-000.

c. Date Filed: July 21, 1986.

d. Applicant: Santaquin Hydro Associates.

e. Name of Project: Santaquin Hydro Associates Hydropower Project.

f. Location: Summit Creek, near Santaquin City, in Utah County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan Walker, Santaquin Hydro Associates, 484 East 300 North, Manti, UT 84642, (801) 835–0202.

i. Comment Date: November 14, 1986.

j. Competing Application: Project No. 10031–000, Filed: July 7, 1986.

k. Description of Project: The proposed run-of-the-river project would consist of: (1) A 5-foot-high concrete diversion dam across Summit Creek; (2) an 18-inch-diameter, 8,750-foot-long penstock; (3) a powerhouse containing two turbine-generator units with a combined rated capacity of 1,575 kW, operating under a gross head of 750 feet and a hydraulic capacity of 40 cfs, and producing an estimated annual generation of 8,136,000 kWh; and (4) a 3,000-foot-long, 12.5-kV transmission line interconnecting the project to an existing Utah Power and Light Company line. The proposed project would be located partially in the Uinta National Forest. The proposed project would be located in Sections 19 and 30, Township 10 South, Range 2 East, SLB&M, and sections 13 and 24, Township 10 South, Range 1 East, SLB&M, Utah County, Utah.

l. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, D2.

20. a. Type of Application: Exemption (5MW or less).

b. Project No: 10012–000.

c. Date Filed: June 6, 1986.

d. Applicant: Hudson Light and Power Department.

e. Name of Project: Washington Street Hydroelectric.

f. Location: Assabet River, near Hudson, in Middlesex County, Massachusetts.

g. Filed Pursuant to: Energy Security Act of 1980 section 408 (16 U.S.C. 2705 and 2708).

h. Contract Person: Mr. Horat Huehmer, Hudson Light and Power Department, 49 Forest Avenue, Hudson, MA 01743, (617) 568–5736.

i. Comment Date: November 14, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 9-foot-high, 63-foot-long dam with 1-foot-high flashboards, owned by the applicant; (2) an existing reservoir with a water surface elevation of 208 feet msl, a surface area of 16 acres and a gross storage capacity of 96 acre-feet; (3) a proposed powerhouse at the dam containing a generating unit with a rated capacity of 100 kW; and (4) a short length of transmission line tying into the applicant's existing system. The applicant estimates a 370,000 kWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D3a.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 10079–000.

c. Date Filed: September 8, 1986.

d. Applicants: Adirondack Hydro Development Corporation.

e. Name of Project: Brasher Falls Hydro.

f. Location: St. Regis River, near Town of Brasher, in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Malcolm M. Preston, President, Adirondack Hydro Development Corporation, SeaComm Plaza, Market Street, Potsdam New York 13676, (315) 265–8090.

i. Comment Date: December 5, 1986.

j. Description of Project: The proposed project would consist of: (1) A new 5-foot-high, 250-foot-long concrete dam located at Flat Rock, creating a reservoir with negligible capacity; (2) a 13-foot-diameter, 1500-foot-long steel penstock; (3) a concrete powerhouse containing two generating units with a combined rated capacity of 1500 kW at a head of 20 feet; (4) a 100-foot-long tailrace discharging back into the St. Regis River; and (5) a 500-foot-long transmission line connecting to the existing Niagara Mohawk Power Corporation line.

The estimated average annual energy production is 9.5 million kWh. The project power would be sold to Niagara Mohawk Power Corporation. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $105,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

Standard Paragraphs

A3. *Development application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. *Development application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. *Preliminary permit*—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed scope of studies under permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, protests, or motions to intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and service of responsive documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representatives.

D2. *Agency comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be

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included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 7, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23029 Filed 10-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-166-000 and TC86-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 30, 1986, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 2. Certain changes proposed to be effective October 8, 1986, would adjust Columbia's current sales rates to reflect the impact of the reductions in Contract Demand levels by certain wholesale customers which will become effective October 8, 1986. The affected tariff sheets are identified on Appendix A hereto. Columbia states that since the subject reductions were not contemplated at the time the settlement embodied in the Stipulation and Agreement in Docket No. TA82-1-21-000, *et al.* (PGA Settlement) was reached, and since the proposed adjustment reflects no overall increase in revenues to be recovered by Columbia, the Commission should grant the necessary waivers to permit the tariff sheets to become effective as proposed. Failure to do so will upset the delicate balance achieved by the PGA Settlement.

The other tariff sheets submitted with the filing, identified in Appendix B hereto, bear a proposed effective date of November 1, 1986 in order that they may become effective April 1, 1987, after the notice and suspension periods, in accordance with the provisions of the PGA Settlement. These tariff sheets reflect the following primary changes:

(1) Revised non-gas cost sales and transportation rates based upon a cost of service for the twelve months ended May 31, 1986, adjusted for known and measurable changes anticipated to occur on or before February 28, 1987;

(2) A change in cost classification and rate design methodology from the Seaboard formula to the modified fixed-variable method;

(3) The implementation of a mechanism to adjust rates at such time as either Columbia or its wholesale customers elect to adjust their firm sales entitlements pursuant to § 284.10 of the Commission's regulations;

(4) The reflection of Columbia's option to charge for or retain company-use and unaccounted-for quantities from transportation customers;

(5) The establishment of Seasonal Entitlements for customers under the CDS and G Rate Schedules;

(6) The establishment of supply-related curtailment procedures;

(7) The addition of provisions governing increases, reductions and conversions of contract entitlements; and

(8) The elimination of the Standby Sales Service under the CDS, G and SGS Rate Schedules which Columbia agreed to continue through March 31, 1987.

Columbia states that it does not foresee the need to impose curtailment on its system. Since Columbia does not currently have a seasonal curtailment plan, and due to the logical connection between seasonal curtailment and Seasonal Entitlements, Columbia has proposed a curtailment plan in the instant filing. It is indicated that Columbia's wholesale customers will have the benefit of knowing the potential effects of their decisions regarding Seasonal Entitlement levels. Further, Columbia states that it filed a curtailment plan at this time because consideration can be given to appropriate terms and conditions without the distractions created by the exigencies of imminent curtailment.

The curtailment plan, set out in Sheet Nos. 62 through 62E, covers both daily and seasonal curtailments for wholesale customers under the CDS and G Rate Schedules. It is indicated that SGS Rate Schedule customers are exempted from curtailment because they account for less than 1 percent of the annual sales on Columbia's system. Further, it is indicated that the curtailment plan also contains provisions covering emergencies, exemptions from curtailment, distribution of penalties, and limitations of Columbia's obligation to serve.

Columbia states that, while the filing reflects an increase in non-gas rates of approximately $71 million annually, Columbia anticipates a significant overall reduction in its sales commodity rate from the currently effective level of approximately $3.57 per Dth to approximately $2.77 per Dth as of April 1, 1977, based upon present estimates of the purchased gas cost levels to become effective April 1, 1987. Columbia also notes that, of the $71 million, $15 million is attributable to costs absorbed on an annual basis pursuant to the PGA Settlement which Columbia is permitted by the settlement to recover in its rates as of April 1, 1987 upon the filing of an abbreviated cost and revenue study. Thus, after the restoration of this amount, the instant filing reflects an increase in Columbia's non-gas rates of approximately $56 million. Based upon the nongas rates being filed and Columbia's present estimate of its PGA to be effective April 1, 1987, which Columbia will file on or before February 28, 1987, Columbia states that it projects an overall reduction in test year revenues of approximately $504.5 million below those which would result from its existing rates, assuming such rates were to be adjusted as of April 1, 1987 to recover the aforesaid $15 million.

Columbia also states that the filing is being made in order to reflect the expiration of certain provisions of the PGA Settlement; to reflect its status as an open-access transporter under Order No. 436, *et seq.*; and to improve its ability to compete with alternate fuels and other gas suppliers in the current highly competitive energy markets.

Copies of the filing were served upon Columbia's wholesale customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix A—Proposed Effective Date of October 8, 1986

Original Volume No. 1

One hundred and tenth Revised Sheet No. 16
Forty-fifth Revised Sheet No. 64

Appendix B—Proposed Effective Date of November 1, 1986

Original Volume No. 1

Fourteenth Revised Sheet No. 1
Fourth Revised Sheet No. 1A
First Revised Sheet No. 6
One hundred and eleventh Revised Sheet No. 16
Fifth Revised Sheet No. 16A2
Sixth Revised Sheet No. 17
Ninth Revised Sheet No. 18
Eleventh Revised Sheet No. 19
Seventh Revised Sheet No. 20
Original Sheet No. 20A
First Revised Sheet No. 22
First Revised Sheet Nos. 22A–22V
Original Sheet No. 22W
Fourth Revised Sheet No. 26
Fifty Revised Sheet No. 27
Eighth Revised Sheet No. 28
Eighth Revised Sheet No. 29
First Revised Sheet No. 29A
Eleventh Revised Sheet No. 30
Eighth Revised Sheet No. 31
Fourth Revised Sheet No. 39
Second Revised Sheet No. 40
Fourth Revised Sheet No. 46
Original Sheet Nos. 46A–46D
Tenth Revised Sheet No. 47
Original Sheet No. 47A1
Original Sheet No. 47A2
Third Revised Sheet No. 52
First Revised Sheet No. 53
First Revised Sheet No. 54
Original Sheet No. 54A
Original Sheet No. 54B
Third Revised Sheet No. 55
Original Sheet No. 55A
Second Revised Sheet No. 56
Third Revised Sheet No. 57
Third Revised Sheet No. 58
Original Sheet No. 58A
Third Revised Sheet No. 60
Third Revised Sheet No. 61
Tenth Revised Sheet No. 62
First Revised Sheet No. 62A
Original Sheet Nos. 62B–62E
Sixth Revised Sheet No. 63
Third Revised Sheet No. 63A
Original Sheet No. 63B
Original Sheet No. 63C
Third Revised Sheet No. 66
Original Sheet No. 66A
Third Revised Sheet No. 69
Original Sheet Nos. 69A–69C
Fourth Revised Sheet No. 70
Original Sheet No. 70A
First Revised Sheet Nos. 72J–72Q
Original Sheet Nos. 89–89F

Original Volume No. 2

Ninth Revised Sheet No. 693

[FR Doc. 86-23030 Filed 10-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-29-000, 001]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1986.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on October 1, 1986, the following proposed tariff sheets to Second Revised Volume No. 1 of its FERC gas tariff:

Second Revised Volume No. 1

Forty-Fourth Revised Sheet No. 12
Forty-Second Revised Sheet No. 15
Fourth Revised Sheet No. 15–A

The proposed tariff sheets reflect an overall rate increase of 66.4¢ per dt in the commodity charge under the CD, PS, ACQ and S–2 Rate Schedules, an increase of 66.8¢ per dt in the commodity charge under the G, OG and E Rate Schedules, and an increase of 12¢ per dt in the demand charge under the CD Rate Schedule.

The increase of 66.4¢ per dt in commodity charges under the CD, PS, ACQ and S–2 Rate Schedules is comprised of 63.1¢ per dt increase related to the current gas cost portion of commodity rates, and a 3.3¢ per dt increase in the Deferred Adjustment. The increase in the G, OG and E commodity rates of 66.8¢ per dt is comprised of the aforementioned increases related to current and deferred gas cost plus 0.4¢ per dt representing the effect of the 12¢ per dt demand cost increase converted at 100% load factor. The increase in the CD demand charge in the result of restoring the full demand cost associated with the pass through on an as-billed basis of demand charges of a Canadian supplier, Sulpetro Limited, which demand costs had been reduced to 75% of the as-billed demand costs in Transco's rates as of May 1, 1986 by filing dated May 14, 1986 in Docket No. TA86-5-29-003.

A. Summary of Filing

Transco states that the instance PGA filing represents an undertaking on Transco's part to continue—as it has for the 1986 summer period—its merchant function activities consistent with the spirit and intent of the Offer of Settlement pending Commission action in Docket Nos. TA85-1-29-000, *et al.* To do so, however, requires an accommodation between the current gas cost rate of $2.90 per dt projected in the filing which would result from system gas purchases needed to serve only a relatively low level of projected customer purchases, and the lower PGA rate (a ceiling of $2.30 per dt) which Transco is committed to implement under the pending settlement in consideration for, among other things, best efforts purchase commitments on the customers' part during the settlement's nine-month transition period ending March 31, 1987. To effectuate this accommodation, Transco proposes to place into effect rates based upon the $2.90 per dt gas cost supported in the manner required by the PGA regulations, and to further request that the Commission waive the regulations with respect to Account No. 191, Unrecovered Purchased Gas Costs, in order to permit Transco to flow through to customers (via a credit to its commodity billings) specific gas cost savings attributable to increments of purchases by customers in excess of the approximately 45% load factor level of system sales upon which the $2.90 per dt PGA rate is based. Accordingly, for example, under this crediting mechanism a customer which purchased at a 75% load factor would achieve a resulting gas cost component of $2.30 per dt, and thus would have the opportunity, based on its own

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purchasing decisions, to secure the bargain struck in the pending settlement.

II. Pertinent Background and Description of Gas Cost Savings Crediting Mechanism

Transco states that it began its efforts to resolve on a long-term basis the contract obligations with its producers on a market-responsive basis at approximately the same time (late 1985 and early 1986) that Order No. 436 settlement negotiations commenced with its customer community, interested parties, and the Commission's Staff. These two sets of negotiations have proceeded along roughly parallel tracks since that time; settlements have been executed or agreed to in principle with producers covering a large majority of the deliverability on Transco's system, while during the same period the comprehensive Order No. 436 settlement agreement with the customer community, interested parties and Staff was filed on May 13, 1986. The agreements with Transco's producers provide for, among other things, market responsive pricing provisions and reasonable take-or-pay levels coupled with reasonable maximum deliverability limits. During the current transition period, these pricing provisions generally provide for an obligation by Transco to assure the producer a specific annual revenue stream. These transition period revenue commitments were, in turn, predicated upon agreed upon levels of customer best efforts purchase commitments as set forth in the Order No. 436 settlement agreement. Under this basic approach, the annual revenue commitment to producers is fixed, such that the unit gas price necessary to achieve such level will vary in inverse relationship to the level of takes which can be achieved. These parallel settlements with producers and customers were intended to operate in tandem and thus provide the balance between market-responsive pricing and minimum take commitments both by the pipeline and its customers. The Order No. 436 settlement is yet to be approved by the Commission; nevertheless, as a demonstration of good faith during the intervening months, Transco has voluntarily accepted the risk of under-collection of its gas costs by including in its rates the $2.30 per dt gas cost provided in the pending Order No. 436 settlement.

Transco states that in the absence of Commission action on the pending Order No. 436 settlement, the gas cost savings crediting mechanism proposed will meet the objectives of the settlements both with Transco's producers and with its customers. The mechanism described is intended to return the marginal benefits under the producer settlements to those customers which enable Transco to realize such gas cost savings. Transco submits that this crediting mechanism will provide, in the absence of an approved Order No. 436 settlement, that which the customers bargained for—namely, supplies during the first year at $2.30 per dt, and that which the settling producers bargained for—a predetermined annual cash flow during the transition period.

1. Operation of the Crediting Mechanism

• The crediting mechanism is designed to *guarantee* customer gas cost savings credits for purchases at load factors in excess of threshold levels. Transco accepts the risk that such gas cost savings may in fact not be achieved on a system-wide basis, and therefore will accept a condition that it not include any underrecoveries of such guaranteed credits in its Account No. 191.

• The threshold load factor for CD customers is based upon the anticipated system sales level in the absence of "best efforts" purchase commitments, namely, 45% load factor. G and OG customers' thresholds are based on a percentage, also 45%, of last winter's sales and transportation quantities.

• Guaranteed credits in increasing amounts at various 5% purchase increments over the threshold are provided. Each month a customer will receive a credit, shown as a "gas cost savings credit" on the monthly commodity billing invoice, to the extent that purchases exceed the threshold level.

• This procedure will be repeated each month on a cumulative basis; for example, if a customer purchased at 75% load factor in November (and received credits down to the $2.30 per dt level for that month) and then purchased at only 55% load factor in December—and thus at 65% load factor for the two month period—such customer's December billing credit would be based upon the credit due for the two months at 65% load factor *less* the credit already reflected for November's billing. Conversely, if this customer's December load factor increased to 95%, its December billing credit would be computed on an 85% load factor for the two months *less* the credit already reflected on November's billing.

2. Accounting Procedures

• A separate subaccount of Account No. 191 (Unrecovered Purchased Gas Costs) pertaining to the period will be maintained in the normal manner with deferrals computed on the $2.90 per dt Commodity Base Purchased Cost of Gas. Prior period adjustments attributable to periods before November (normally rolled in with current gas costs) will be kept separate in the deferred account for recovery in a subsequent PGA filing.

• Such account will be debited with actual "gas cost savings credits" made for each refund month. As noted above, these amounts will appear as a credit to the commodity billing invoice.

• A final accounting for this PGA period will be made no later than July 31, 1987. At such time any remaining actual gas cost savings in excess of "gas cost savings credits" would be directly refunded to all customers ratably on the basis of total sales for the period. To the extent such "gas cost savings credits" exceed the actual amounts of gas cost savings such excess will be debited to other gas supply excesses, *i.e.*, Transco will be "at risk" and thus its shareholders will absorb any such amounts.

C. Sulpetro Issue

In its order of October 31, 1984 in Docket No. TA85–1–29, *et al.*, the Commission set for hearing the issue of the manner in which costs of Transco's import purchases from Sulpetro Limited are flowed through in Transco's rates. In its three subsequent PGA filings in Docket No. TA85–3–29, Docket No. TA86–1–29 and Docket No. TA86–5–29 and in the instant filing, Transco has reflected such costs in the same manner as in the TA85–1–29 proceeding, *i.e.*, on an as-billed basis. On September 3, 1985 an Initial Decision was issued in Docket No. TA85–1–29 concerning the flow-through of Canadian costs and the matter is pending before the Commission on exceptions. Additionally, the pending offer of settlement in Docket Nos. TA85–1–29–000, *et al.*, if approved, would provide for resolution of this issue as of the effective date of any order therein. Transco states that it agrees to be bound in the instant proceeding by the final resolution of the Sulpetro issue, whether by the pending litigation or the pending settlement.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested state commissions, in accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426; in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–23032 Filed 10–9–86; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed; Week of September 12, 1986 Through September 19, 1986

During the Week of September 12, 1986 through September 19, 1986, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 2, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 12, 1986 through September 19, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 15, 1986	Idaho Petroleum, Inc., Lewiston, ID	KEE-0072	Exception to the reporting requirements. If granted: Idaho Petroleum, Inc. would no longer be required to file form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Do	Reinauer Petroleum Co., Washington, DC	KRZ-0045	Interlocutory. If granted: The Office of Hearings and Appeals would issue a final determination to Reinauer Petroleum Company. This decision would be based on information submitted by the Economic Regulatory Administration pursuant to our September 4, 1984 Decision and Order remanding the Proposed Remedial Order (Case No. HRO-0105) to the Economic Regulatory Administration.
Sept. 18, 1986	Colins, National Helium, Palo Pinto, Belridge, Perry Gas, Hartford, CT.	RM2–39, RM3–40, RM5–41, RM8–42, RM183–43	Request for modification/rescission in the Colins, National Helium, Palo Pinto, Belridge and Perry Gas Second Stage Refund Proceedings. If granted: The February 20, 1986, Decision and Order (Case Nos. RQ2–239, RQ3–240, RQ5–241, RQ8–242, RQ183–243) issued to Connecticut would be modified regarding the state's application for refund submitted in the Colins, National Helium, Palo Pinto, Belridge & Perry Gas refund proceedings.
Do	E.E. Tullos, Groveton, TX	KEE-0073	Exception to the reporting requirements. If granted: E.E. Tullos would no longer be required to file form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Sept. 19, 1986	City of Long Beach, California, Washington, DC	KEF-0076	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V in connection with the June 6, 1983 Decision and Order (Case No. BXE–0341) issued to City of Long Beach, California.
DO	Liberty Trading Co., Washington, DC	KEF-0079	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the July 22, 1986, Consent Order entered into with Liberty Trading Company.

REFUND APPLICATIONS RECEIVED

[Week of Sept. 12, 1986 to Sept. 19, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
9/15/86	Quaker State/Harbron Oil Co., Inc.	RF213–214
9/15/86	Conoco/BTV Energy Corp	RF220–600
9/15/86	Petrolane/BTV Energy Corp	RF209–8
9/15/86	U.S.A./Lyman Oil Co., Inc	RF252–9
9/15/86	Camas Prairie Railroad Co	RF270–33
9/15/86	Francis Jay McMillin, Inc	RF270–32
9/15/86	Hunsaker Truck Lease, Inc	RF270–31
9/15/86	Metropolitan Transit Commission.	RF270–30
9/15/86	Camas Prairie Railroad Company.	RF271–7
9/15/86	Amoco/Florida	RF251–327
9/15/86	Aminoil/Progas, Inc	RF139–158
9/15/86	U.S.A./NGL Supply, Inc	RF252–8
9/15/86	Pride/NGL Supply, Inc	RF255–30
9/15/86	Conoco/NGL Supply, Inc	RF220–399
9/15/86	Petroleum/NGL Supply, Inc	RF208–7
9/15/86	Sabor/NGL Supply, Inc	RF192–21
9/15/86	NAPCO/NGL Supply, Inc	RF105–20
9/15/86	J.M. Huber/Supply, Inc	RF54–3
9/15/86	Gulf/Greenville County, S.C	RF40–3385
9/15/86	Gulf/NGL Supply, Inc	RF40–3384
9/15/86	Marion/NGL Supply, Inc	RF37–18

REFUND APPLICATIONS RECEIVED—Continued

[Week of Sept. 12, 1986 to Sept. 19, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
9/15/86	Sid Richardson/NGL Supply, Inc.	RF25–52
9/15/86	Tennoco/NGL Supply, Inc	RF7–143
9/16/86	Ligon Specialized Hauler, Inc	RF270–34
9/16/86	White Star Sue Line	RF270–35
9/16/86	Green Field Transport Co., Inc	RF270–36
9/17/86	Metz Baking Company	RF270–45
9/17/86	Wayne Daniel Truck, Inc	RF270–45
9/19/86	Tom Ottery Transit, Inc	RF270–44
9/19/86	Morgan Trucking Co., Inc	RF270–43
9/19/86	Ken Lystad	RF281–3
9/16/86	Gibbs/Harold's Service Station, Inc.	RF252–1
9/17/86	Gulf/M M Fowler, Inc	RF40–3390
9/17/86	Gulf/JLC Gulf	RF40–3388
9/17/86	Gulf/MacCallum Gulf	RF40–3386
9/17/86	Gulf/Roo's	RF40–3387
9/17/86	Conoco/Dallas Oil Co	RF220–404
9/16/86	Conoco/Combling-Miller Co	RF220–403
9/16/86	Lake Oasis Truck Stop	RF220–401
		RF220–402
9/18/86	Meier's Bakery	RF270–42
9/18/86	Sonic Trucking and Sales, Inc	RF270–41
9/18/86	Malone Freight Lines, Inc	RF270–40

REFUND APPLICATIONS RECEIVED—Continued

[Week of Sept. 12, 1986 to Sept. 19, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
9/18/86	Fort Wayne Public Transportation Corporation.	RF272–4
9/17/86	Gulf/city of Mobile, Alabama	RF40–3391
9/19/86	Quaker State/Sellers Oil Company, Inc.	RF213–215
9/15/86	Parr Trucking Service, Inc	RF270–29
9/15/86	Oglebay Norton Company	RF271–6
9/17/86	Butter Krust Bakery	RF270–37
9/17/86	Hargrave Distributing Co., Inc	RF270–38
9/17/86	Melrollins Express, Inc	RF270–39
9/17/86	Gulf/Richard and Vivian Russell	RF258–4
9/17/86	Wellen/Fran Beckman	RF247–2
9/17/86	Eastern NJ/Dwight Manor Apartments, Inc.	RF232–422
9/17/86	Sid Richardson/Grayerson, Inc	RF26–53
9/16/86	Gulf/T.A.M. Car Wash, Inc	RF40–3389
9/15/86 to 9/19/86	Marathon Refund Applications	RF250–1317 to RF250–1367
9/15/86 to 9/19/86	Mobil Refund Applications	RF225–10238 to RF225–10253

[FR Doc. 86–22998 Filed 10–9–86; 8:45 am]

BILLING CODE 6450–01–M

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Order; Week of September 15 Through September 22, 1986

During the week of September 15 through September 19, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 2, 1986.

Reserve Petroleum Company, Pittsburgh, Pennsylvania, Kee–0043, Reporting Requirements

Reserve Petroleum Company filed an Application for Exception from the provisions of the Form EIA–782B, Form EIA–194, Form EIA–811, and Form EIA–821 reporting requirements. The exception request, if granted, would exempt Reserve Petroleum Company from filing Form EIA–782B, EIA–194, and EIA–811 on a monthly basis and from filing Form EIA–821 on an annual basis. On September 18, 1986, the Department of Energy issued a Proposed Decision and Order

[FR Doc. 86–22899 Filed 10–9–86; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3083–4]

Environmental Impact statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed September 29, 1986 Through October 3, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860403, Draft, COE, WY, Deer Creek Dam and Reservoir Municipal Water Supply Project, Permit, North Platte River, Natrona and Converse Counties, Due: November 24, 1986, Contact: Steven West, (402) 221–3900.

EIS No. 860404, Final, BLM, NM, Carlsbad Resource Area, Resource Management Plan, Due: November 10, 1986, Contact: Charles Dahlen, (505) 887–6544.

EIS No. 860405, Final, AFS, AZ, Canyon Uranium Mining Development, Kaibab National Forest, Approval, Coconino County, Due: November 10, 1986, Contact: Dennis Lund, (602) 635–2681.

EIS No. 860406, Final, FAA, CO, Stapleton International Airport Runway Expansion, Approval, Denver County, Due: November 10, 1986, Contact: Robert Bielek (303) 340–5546.

EIS No. 860407, Final, BLM, NM, Southern Rio Grande Plan, State Land Exchange and Dona Ana County Land Tenure Adjustments, Dona Ana County, Due: November 10, 1986, Contact: Marvin James (505) 525–8228.

EIS No. 860408, Report, COE, KY, WV, Tug Fork Valley Flood Damage Reduction Plan, West Williamson Structural Project, Modifications and/or Refinements, Tug Fork River, Contact: John Wright (513) 684–3077.

EIS No. 860409, Draft, FHW, AL, Corridor "X" Highway Construction, Walker/Jefferson County Line to US 31, Birmingham Metropolitan Area, Jefferson County, Due: November 24, 1986, Contact: Joe Wilkerson (205) 832–7370.

EIS No. 860410, Draft, COE, IL, MO, Mississippi River Locks and Dam 26 Replacement, Second Lock Construction, Upper Mississippi and Illinois Rivers, Due: November 24, 1986, Contact: Daniel Ragland (314) 263–5711.

Creek Watershed Protection and Flood Prevention Plan, Lincoln County, Due: November 10, 1986, Contact: Roland Willis (405) 624–4360.

EIS No. 860412, Final, SCS, LA, Upper Vermilion Bayou Watershed Protection, Flood Prevention and Drainage Plan, Due: November 10, 1986, Contact: Horace Austin (318) 473–7751.

Amended Notice

EIS No. 860298, Draft, SCS, PA, West Branch Brandywine Creek Watershed Protection and Flood Prevention Plan, Chester and Lancaster Counties, Due: October 17, 1986, Published FR 8–1–86—Review period extended.

Dated: October 7, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–23070 Filed 10–9–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3083–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 22, 1986 through September 26, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clear Air Act and setion 102(2)(c) of the National Enviornmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated February 7, 1986 (51 FR 4804).

Drafts EISs

ERP No. DS–AFS–K65072–CA, Rating E02, Pacific Southwest Region Nat'l Forests, Mgmt. of Vegettaion for Reforestation, CA. Summary: EPA expressed environmental objections because the supplemental draft EIS did not: (1) Adequately address cumulative impacts to water quality and beneficial uses that could result from vegettion management with herbicides; and (2) clearly identify the relationship of the vegetation management program to individual Forest Planning EISs or the process used to determine when, and how, specific sites would be treated with herbicides. EPA expressed its willingness to meet with Forest Service officials to discuss its objections on the EIS Supplement.

ERP No. D–BLM–J67006–CO, Rating EC2, Wolf Ridge Nahcolite Solution

indirectly acquire Metropolitan National Bank, Little Rock, Arkansas.

2. *State Bancorp, Inc.*, Washington, Indiana; to acquire 100 percent of the voting shares of The Bank of Mitchell, Mitchell, Indiana.

F. Federal Reserve Bank of Kansas

under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to

American Fletcher Mortgage Company, Inc., Indianapolis, Indiana, and thereby engage in mortgage lending, equity financing, and related real estate financing activities, and also in mortgage servicing for unaffiliated

and proposals from offerors, to award contracts, and to make purchases of goods and services in support of FDIC's mission. It is also used for contract monitoring. It is estimated that this collection of information creates a total annual burden of 2250 hours on the

Caribbean Transport, Inc. and the addition of Crowley Caribbean Transport, Inc. as parties to the agreement.

Agreement No.: 204–010066–010.

Title: United States Atlantic & Pacific/Colombia Equal Access Agreement

Liberty Street, New York, New York 10045:

1. *Atlanta National Corporation*, Atlanta, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Atlanta National Bank, Atlanta, New York.

[ER–FRL–3083–3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed September 22, 1986 Through September 26, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860396, Draft, AFS, CA, Mammoth Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860397, Draft, AFS, CA, Mammoth Lakes Recreation Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860398, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860399, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860400, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860401, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860402, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860411, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860413, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860414, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860415, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860416, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860417, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860418, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860419, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860420, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860421, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860424, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860425, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860426, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860427, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860428, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860429, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860430, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860431, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860432, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860433, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860434, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860435, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860436, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860437, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860438, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860439, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860440, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860441, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860444, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860445, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860446, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860460, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860461, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860464, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860466, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860467, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860468, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860470, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860471, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860475, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860476, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860486, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860488, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860490, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860501, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860512, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860513, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

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EIS No. 860521, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860522, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860523, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860524, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860525, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860526, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860527, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860528, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860529, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860530, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860531, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860532, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860533, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860534, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860535, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860536, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860537, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November 24, 1986, Contact: Jeff Bailey (619) 934–2505.

EIS No. 860538, Draft, AFS, CA, Mammoth Mountain Ski Area Improvements, Special Use Permit, Inyo National Forest, Mono County, Due: November

and proposals from offerors, to award contracts, and to make purchases of goods and services in support of FDIC's mission. It is also used for contract monitoring. It is estimated that this collection of information creates a total annual burden of 2250 hours on the respondents collectively.

Dated: October 3, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-22970 Filed 10-9-86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-010050-006.

Title: U.S. Flag-Far East Discussion Agreement.

Parties:

American President Lines, Ltd.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
United States Lines, Inc.
Waterman Steamship Corporation

Synopsis: The proposed amendment would expand the scope of the agreement to include countries in Southwest Asia from the Suez Canal to Burma, inclusive, Sri Lanka and Africa on the Red Sea and Gulf of Aden.

Agreement No.: 204-010084-011.

Title: U.S. Gulf/Colombia Equal Access Agreement.

Parties:

Flota Mercante Grancolombiana, S.A.
Lykes Bros. Steamship Co., Inc.
Crowley Caribbean Transport, Inc.
CTMT, Inc.
New York Navigation Company, Inc.
O S & L of Louisiana, Inc.

Synopsis: The proposed amendment reflects the deletion of Coordinated Caribbean Transport, Inc. and the addition of Crowley Caribbean Transport, Inc. as parties to the agreement.

Agreement No.: 204-010066-010.

Title: United States Atlantic & Pacific/Colombia Equal Access Agreement.

Parties:

Flota Mercante Grancolombiana, S.A.
United States Lines (S.A.) Inc.
Crowley Caribbean Transport, Inc.
CTMT, Inc.

Synopsis: The proposed amendment reflects the deletion of Coordinated Caribbean Transport, Inc. and the addition of Crowley Caribbean Transport, Inc. as parties to the agreement.

Dated: October 7, 1986.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86-23048 Filed 10-09-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Atlanta National Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 31, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Atlanta National Corporation,* Atlanta, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Atlanta National Bank, Atlanta, New York.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banco Harlan, Inc.,* Harlan, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Harlan, Harlan, Kentucky.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Parish National Corporation of St. Tammany, Inc.,* Bogalusa, Louisiana; to become a bank holding company by acquiring Parish National Bank of St. Tammany, Slidell, Louisiana.

D. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Northbrook Bancorp., Inc.,* Northbrook, Illinois; to merge with First Cary-Grove, Corp., Cary, Illinois, and thereby indirectly acquiring First Security Bank of Cary-Grove, Cary, Illinois.

2. *Gary-Wheaton Corporation,* Wheaton, Illinois; to acquire 80 percent of the voting shares of Ogden-Saratoga Corporation, Downers Grove, Illinois, thereby indirectly acquiring First Security Bank of Downers Grove, Downers Grove, Illinois.

3. *Longview Capital Corporation,* Newman, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Ogden, Ogden, Illinois.

4. *St. Joseph Bancorporation, Inc.,* South Bend, Indiana; to merge with Starke County Bancorp, Inc., Knox, Indiana, and thereby indirectly acquiring Farmers Bank and Trust Company, Knox, Indiana.

5. *Summcorp,* Fort Wayne, Indiana; to acquire 100 percent of the voting shares of American State Bancorp, Sheridan, Indiana, and thereby indirectly acquiring American State Bank of Sheridan, Sheridan, Indiana.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Rogers Bancshares, Inc.,* Little Rock, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Metropolitan National Bancshares, Inc., Little Rock, Arkansas, and thereby indirectly acquire Metropolitan National Bank, Little Rock, Arkansas.

2. *State Bancorp, Inc.,* Washington, Indiana; to acquire 100 percent of the voting shares of The Bank of Mitchell, Mitchell, Indiana.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Midstate Bancorp,* Hinton, Oklahoma; to become a bank holding company by acquiring 82 percent of the voting shares of First State Bank, Hinton, Oklahoma.

G. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Western Bancshares of Clovis, Inc., Clovis, New Mexico; to become a bank holding company by acquiring 80 percent of the voting shares of Western Bank of Clovis, Clovis, New Mexico.

2. *Crokett County National Bankshares, Inc.,* Ozona, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Crockett County National Bank, Ozona, Texas.

H. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Baker Boyer Bancorp,* Walla Walla, Washington; to become a bank holding company be acquiring 100 percent of the voting shares of The Baker-Boyer National Bank of Walla Walla, Walla Walla, Washington, and Bank of Commerce, Milton-Freewater, Oregon.

2. *Maui Bancshares, Inc.,* Tacoma, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Maui, National Association, Kahului, Maui, Hawaii.

Board of Governors of the Federal Reserve System, October 7, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-23064 Filed 10-9-86; 8:45 am]

BILLING CODE 6201-01-M

Banc One Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted througout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 28, 1986.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation,* Columbus, Ohio; to acquire 100 percent of the voting shares of American Fletcher Corporation, Indianapolis, Indiana, and thereby indirectly acquire American Fletcher National Bank and Trust Company, Indianapolis, Indiana; Union Bank and Trust Company, Franklin, Indiana; Carmel Bank and Trust Company, Carmel, Indiana; First American National Bancorp, Plainfield, Indiana, and thereby acquire First American National Bank, Plainfield, Indiana; and Citizens Northern Company, Elkhart, Indiana, and thereby indirectly acquire Citizens Northern Bank of Elkhart, Elkhart, Indiana.

In connection with this application, Applicant also proposes to acquire American Fletcher Mortgage Company, Inc., Indianapolis, Indiana, and thereby engage in mortgage lending, equity financing, and related real estate financing activities, and also in mortgage servicing for unaffiliated parties pursuant to §§ 225.25(b)(1) and 225(14) of the Board's Regulation Y; American Fletcher Financial Services, Inc., Marion, Indiana, and thereby engage in consumer lending as well as in the sale of credit-related insurance in connection with its extensions of credit pursuant to § 225.25(b)(1) and (8) of the Board's Regulation Y; Tecumseh Insurance Agency, Marion, Indiana, and thereby engage in credit reinsurance underwriting pursuant to § 225.25(b)(9) of the Board's Regulation Y; Guardian Insurance Agency, Marion, Indiana, and thereby engage in the sale certain credit-related insurance in connection with extensions of credit by American Fletcher Financial Services, Inc., the sale of fidelity insurance to American Fletcher Financial Services, Inc., and the sale of credit-related casualty insurance pursuant to section 4(c)(8)(D) of the BHC Act; and also American Fletcher Financial Corporation, Indianapolis, Indiana, an inactive subsidiary of American Corporation.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation,* Kalamazoo, Michigan; to acquire 100 percent of the voting shares of First of America Bancorporation-Illinois, Inc., Kalamazoo, Michigan. First of America Bancorporation-Illinois, Inc., Kalamazoo, Michigan, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Premier Bancorporation, Inc., Libertyville, Illinois, and thereby indirectly acquire Grayslake National Bank, Grayslake, Illinois; Libertyville National Bank, Libertyville, Illinois; First National Bank of Mundelein, Mundelein, Illinois; Golf Mill State Bank, Niles, Illinois; Premier Bank of Vernon Hills, Vernon Hills, Illinois; and Zion State Bank & Trust Company, Zion, Illinois.

In connection with this application, Applicants also propose to acquire Premier Life Insurance Company, Libertyville, Illinois, and thereby engage in underwriting credit life, accident and health insurance that is directly related to extensions of credit pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Northern Cook and Lake counties in Illinois.

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Board of Governors of the Federal Reserve System, October 7, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86-23065 Filed 10-9-86; 8:45 am]
BILLING CODE 6210-01-M

First Illinois Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Illinois Corporation*, Evanston, Illinois; to engage *de novo* through its subsidiary, First Illinois Mortgage Corporation, Evanston, Illinois, in mortgage banking activities, pursuant to section 22525. (b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City Missouri 64198:

1. *J.R. Montgomery Bancorporation*, Lawton, Oklahoma; to engage *de novo* through its subsidiary, Express Life Insurance Company, Lawton, Oklahoma, in originating and purchasing mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. Applicant, through company will engage in underwriting credit life and accident and health insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 7, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86-23066 Filed 10-9-86; 8:45 am]
BILLING CODE 6210-01-M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Change in Meeting Site

There is a change in the meeting site for the first day of the Depository Library Council to the Public Printer. The October 15 session will be held in the Lewis and Clark Ballroom of the Holiday Inn-Capitol, 6th and C Streets SW., Washington, DC, instead of meeting at the Government Printing Office, Harding Hall.

This pertains only to the October 15 session. The October 16-17 meetings will be held in the Mumford Room, Madison Building, Library of Congress as scheduled.

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Ralph E. Kennickell, Jr.,
Public Printer.
[FR Doc. 86-23068 Filed 10-9-86; 8:45 am]
BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 3, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

Food and Drug Administration

Subject: Foreign Language Disclosure Labeling—Existing Collection
Respondents: Businesses or other for-profit
Subject: Declaration of Net Quantity—Existing Collection
Respondents: Businesses or other for-profit

Health Resources Service Administration

Subject: Health Profession Student Loan Program—Loan Information Disclosure Requirements—NEW—
Respondents: Non-profit institutions
OMB Desk Officer: Bruce Artim

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of package)
Subject: Acknowledgement of Receipt of Public Service announcement—NEW—
Respondents: Businesses or other for-profit
OMB Desk Officer: Judy A. McIntosh

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)
Subject: Negative Case Action review Schedule/Action Summary Tables (Medicaid Eligibility Quality Control)—Revision—(0938-0300) HCFA-6401
Respondents: State or local governments
Subject: Medicare—Pro Reporting Forms—NEW—
Respondents: Businesses or other for-profit
OMB Desk Officer: Fay S. Iudicello

Office of Human Development Services

Subject: Head Start Program Performance Standards Plans—Reinstatement—(0960-0128)
Respondents: Non-profit institutions
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch New Executive Office Building, Room 3208 Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Dated: October 6, 1986.
Harry A. Hadd,
Acting Deputy Assistant Secretary for Management, Analysis and Systems.
[FR Doc. 86-22976 Filed 10-9-86; 8:45 am]
BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 86F-3064]

Pfizer Central Research, Pfizer, Inc.; Filing of Food Additive Petition

Correction

In FR Doc. 86-21880, appearing on page 34503, in the issue of Monday, September 29, 1986, make the following correction:

On page 34503, under **SUPPLEMENTARY INFORMATION**, in the third column, in the eleventh line, the third "2," should be removed.

BILLING CODE 1505-01-M

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting, Board of Scientific Counselors, Division of Cancer Treatment

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, October 16-17, 1986, Building 31, 6th Floor, "C" Wing, Conference Room 6, Bethesda, Maryland 20892, which was published in the **Federal Register** on September 16 (51 FR 32848).

The Board was to have been open to the public from 8:30 a.m., October 16, through 12:45 p.m., October 17. It is now necessary to close a portion of this meeting for the review of the site visit regarding our protocol review procedures.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 16, 1986, from 6:00 p.m. to 6:30 p.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: September 30, 1986.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 86-22962 Filed 10-9-86; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 5, 1986, in Building 31, Room 2A52. This meeting will be open to the public from 9:00 a.m. to 12 noon on December 5, for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 5 from 1:00 p.m. to 4:30 p.m. for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NICHD, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C06, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of Board members. Dr. Arthur Levine, Scientific Director, NICHD, Building 31, Room 2A50, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-2133, will furnish substantive program information.

Dated: September 29, 1986.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 86-22963 Filed 10-9-86; 8:45 am]
BILLING CODE 4140-01-M

National Library of Medicine; Meeting of Board of Scientific Counselors, NLM

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, November 17 and 18, 1986, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 4:00 p.m. on November 17, 1986, and from 9:00 a.m. to approximately 12:00 Noon November 18, 1986, for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with the provision set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 17, from approximately 4:00 p.m. to 5:00 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496-4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: September 29, 1986.
Betty J. Beveridge,
NIH Committee Management Officer.
[FR Doc. 86-22964 Filed 10-9-86; 8:5 am]
BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Chemicals (8) Nominated for Toxicological Studies; Request for Comments

SUMMARY: On September 16, 1986, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review eight chemicals nominated for toxicology studies and to recommend the types of studies to be performed. With this notice, the NTP solicits public comments on the eight chemicals listed herein.

FOR FURTHER INFORMATION CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-3611.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical

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Evaluation Committee (CEC) are published with request for comment in the **Federal Register**. This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP ot make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP Executive Committee for its decision-making. The NTP chemical selection process is summarized in the **Federal Register**, April 14, 1981 (46 FR 21828), and also in the NTP FY 1985 *Annual Plan*, pages 201–202.

On September 16, 1986, the CEC met to evaluate eight chemicals nominated to the NTP for toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the CEC at the meeting.

Chemical	CAS No.	Committee recommendation(s)
1. Chlordiazepoxide.	58-25-3	No testing.
2. Clorazepate	23887-31-2	No testing.
3. Diazepam	439-14-5	—Carcinogenicity in mice —Prechronic studies should include sperm morphology testing.
4. Flurazepam	17617-23-1	—Carcinogenicity in mice and rats —Prechronic studies should include sperm morphology testing —Fertility assessment by ontinuous breeding studies —Teratology studies
5. Oxazepam	604-75-1	—Carcinogenicity in mice —Prechronic studies should include sperm morphology testing —Fertility assessment by continuous breeding.
6. o-Aminophenol.	95-55-6	No Testing.
7. p-Aminophenol.	123-30-8	No Testing.
8 Chlorinated paraffins (C_{12}, 60% chlorine).	63449-39-8	Defer, pending EPA evaluation of submitted studies on the *in vitro* absorption of the chemical through human skin.

Of the eight chemicals, four have been previously selected for toxicology study by the NTP. Diazepam has been selected for testing in the Salmonella microsomal assay and is currently on test for chromosomal aberrations and sister chromatid exchanges in Chinese hamster ovary cells *in vitro*. o-Aminophenol was mutagenic in the *Salmonella* microsomal assay but did not induce sex-linked recessive lethal mutations in *Drosophila*. p-Aminophenol was nonmutagenic in the *Salmonella* microsomal assay. Chlorinated paraffins (C_{12}, 60% chlorine) was nonmutagenic in the *Salmonella* microsomal assay. In an NTP gavage carcinogenicity study there was clear evidence for carcinogenicity for chlorinated paraffins ($_{12}$, 60% chlorine) in both sexes of F-344/N rats and $B6C3F_1$ mice.

Interested parties are requested to submit pertinent information. The following types of data are particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential.

(2) Uses and resulting exposure levels, where known.

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results in the case of completed studies.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by November 10, 1986. Any submissions received after the above date will be accepted and utilized where possible.

Dated: Oct. 6, 1986.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 86-22965 Filed 10-9-86; 8:45 am]

BILLING CODE 4140-01-M

Privacy Act of 1974: Addition of Routine Use to Existing System of Records

AGENCY: Public Health Service, DHHS.

ACTION: Notification of addition of routine use to existing system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposed new routine use for an existing system of records, 09–25–0005, "Administration: Library Circulation and User I.D. File, HHS/NIH/OD." The proposed new routine use will permit disclosure to a contractor for the purpose of compiling information regarding the needs of the users of the National Institutes of Health's Library.

DATE: PHS invites interested persons to submit comments on the proposed new routine use on or before November 10, 1986.

PHS will adopt the new routine uses without further notice 30 days after the date of publication (November 10, 1986) unless PHS receives comments which would result in a contrary determination.

ADDRESS: Send comments to the NIH Privacy Act Coordinator at the address listed below. Comments received may be inspected weekdays between 9 a.m. and 3 p.m., at that address.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Bullman, J.D. NIH Privacy Act Coordinator, Building 31, Room 3B03D, 9000 Rockville Pike, Bethesda, MD 20892

or call 301–496–2832 (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH), Division of Research Services, proposes to establish a new routine use in the system of records: 09–25–0005, "Administration: Library Circulation and User I.D. File, HHS/NIH/OD."

The NIH Library circulation and user files are a part of an automated catalog and circulation control system providing rapid and thorough services to Library's users.

The proposed new routine use will enable contractors to access the Library circulation and user file in order to compile information needed to establish general NIH users' needs and requirements. In situations where it is cost effective to do so, or when NIH lacks staff or other necessary resources, the proposed routine use will also allow NIH to contract with private firms for specific activities which contribute to accomplishing the purpose for which these systems are maintained. This new routine use is compatible with the stated purpose for which the information is collected.

The Library has 6,500 cardholders who are entitled to all Library services including circulation of a part of the collection, interlibrary loan, free photocopy service, reference services and computerized bibliographic retrieval services. The contractor will work closely with library personnel in selecting and compiling data needed to determine alternative means of satisfying user needs and requirements, including costs and performance of these alternatives. The information provided from the Library's circulation file is used for surveys and interviews of selected library users, comparisons of Library data with other automated systems in similar libraries, and determinations of need to collect additional information.

For purposes of the Privacy Act, contractors and contractor employees are legally considered employees of the agency, with the same responsibilities and liabilities as regular Government employees for implementing the Privacy Act. Contractors are instructed to make no further disclosure except as authorized by the system manager. Contractors are required to comply with the requirements of the Privacy Act. NIH program officials will monitor contractor compliance.

In addition, the Safeguard section of the notice has been revised to reflect the addition of the new routine use. NIH has also made other updating changes to improve the clarity and specificity of the system notice.

The proposed routine use will not become effective until 30 days after the date of this publication. However, it is written in the present tense, rather than future tense in order to avoid the unnecessary expenditure of public funds to republish the notice after the routine use has become effective.

Dated: October 2, 1986.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09–25–0005

System name:

Administration: Library Circulation and User I.D. File, HHS/NIH/OD.

Security classification:

None.

System location:

Building 10, Room 1L25B
and
Building 12A, Room 3018, 9000 Rockville Pike, Bethesda, MD 20892.

Categories of individuals covered by the system:

NIH employees.

Categories of records in the system:

Library records.

Authority for maintenance of the system:

Public Health Service Act: 42 U.S.C. 241.

Purpose of the system:

Library material, services and circulation control.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records of Library users may be disclosed to NIH contractors and staff in order to accomplish library material, services and circulation control. Recipients are required to maintain Privacy Act safeguards with respect to those records.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevent and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS has determined that such disclosure is compatible with the purpose for which the records were collected.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored on computer tape and disc, and on file cards.

Retrievability:

Records are retrieved by name.

Safeguards:

Authorized Users: Employees and authorized contractors who maintain records in this system are instructed to grant regular access only to Library staff members who need to verify that Library identification cards have been issued to those Library users requesting services such as MEDLINE and other computer online bibliographic searches, translations and interlibrary loans. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

Physical Safeguards: The offices housing the cabinets and file drawers for storage of records are locked during all library off-duty hours. During all duty hours offices are attended by employees who maintain the files.

Procedural Safeguards: Access to the file is strictly controlled by employees who maintain the files. Records may be removed from files only at the request of the system manager or other authorized employees. Access to computerized records is controlled by the use of security codes known only to authorized users.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, Supplementary chapter PHS of: 45–13, and Part 6, "ADP System Security" of the HHS Information Resource Management Manual.

Retention and disposal:

Years at NIH: 3. Disposal methods include burning or shredding paper materials and erasing computer tapes.

System manager and address:

Chief, Reference and Bibliographic Services Section, Library Branch, Division of Research Services, Building 10, Room 1L21, NIH, 9000 Rockville Pike, Bethesda, MD 20892
and
Librarian, Division of Computer Research and Technology, Building 12A, Room 3018, NIH, 9000 Rockville Pike, Bethesda, MD 20892

Notification procedure:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Record access procedure:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record, if any.

Contesting record procedure:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

Record source categories:

Individual, NIH Library ID cards.

Systems exempted from certain provisions of the Act:

None.

[FR Doc. 86-23002 Filed 10-9-86; 8:45 am]

BILLING CODE 4410-17-M

DEPARTMENT OF THE INTERIOR

National Park Service

Oil Drilling Big Cypress National Preserve; Oil and Gas Plans of Operation

Notice is hereby given pursuant to § 9.52(b) of Title 36 of the Code of Federal Regulations of the availability for comment and review of a plan of operations submitted by Clements Energy, Inc., for the purpose of oil drilling in the Big Cypress National Preserve. Copies of the plan of operations are available for review at: Big Cypress National Preserve, S.R. Box 110, Satinwood Drive, Ochopee, Florida, 33943 (telephone 813-695-2000); National Park Service, Southeast Regional Office, 75 Spring Street SW., Atlanta, Georgia, 30303 (telephone 404-331-4916); and at the Miami-Dade Public Library, 1 Biscayne, Miami, Florida, 33139. Comments received within 30 days of the publication of this notice will be entered into the official records. For further information contact Fred Fagergren, Superintendent, Big Cypress National Preserve, (813) 695-2000.

Fred J. Fagergren,

Superintendent.

[FR Doc. 86-23052 Filed 10-9-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the eighteenth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on October 28, 1986.

The primary purpose of the meeting is to develop recommendations for BIFAD as to what steps or actions should be taken to implement the Agenda for the second decade of Title XII. The recommendations will specify who or what groups (i.e. Panels, BIFAD Staff, etc) should take to lead in each action.

JCARD will meet from 9:00 a.m. to 4:00 p.m. on October 28 in room 5951, New State Department Building, 22nd & "C" St. NW., Washington DC. Any interested person may attend, may file written statements with the Committee before or after the meetings, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits. An escort from the "C" Street Information Desk (Diplomatic Entrance) will conduct you to the meeting.

Dr. John Stovall, BIFAD Support Staff, is the designated A.I.D. Advisory Committee Representative at the meetings. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Washington, DC 20523 or telephone him at (202) 647-6987.

Dated: October 7, 1986.

John Stovall,

A.I.D. Advisory Committee Representative, Joint Committee on Agricultural Research and Development Board for International Food and Agricultural Development.

[FR Doc. 86-23003 Filed 10-9-86; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30917]

Alabama & Florida Railroad Co., Inc.—Trackage Rights—Andalusia & Conecuh Railroad Co., Inc.; Exemption

Andalusia & Conecuh Railroad Company, Inc. (A&C) has agreed to grant local and overhead trackage rights to Alabama & Florida Railroad Company, Inc. (A&F) between the point of interchange between A&C and A&F (milepost S-429 plus 770 feet), and the Amoco Fabrics Plant (milepost S-426 plus 3,800 feet), a distance of approximately 2.0 miles in Andalusia, AL. The trackage rights will be effective on October 1, 1986.

This Notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: September 29, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-23084 Filed 10-9-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-32; Sub. 35X]

Boston and Maine Corp.—Exemption—Abandonment in Strafford County, NH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Boston and Maine Corporation of a 1.53-mile segment of rail line located in the City of Dover, Strafford County, NH, subject to standard labor protection.

DATES: This exemption will be effective November 10, 1986. Petitions for stay must be filed by October 20, 1986, and reconsideration must be filed by October 30, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-32 (Sub-No. 35X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Kinga M. LaChapelle, Boston and Maine Corporation, Iron Horse Park, North Billerica, MA 01862-1685.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22966 Filed 10-9-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30907]

Baltimore and Ohio Railroad et al.; Railroad Car Service Pooling Application; Filing and Proposed Special Rules of Procedure

October 6, 1986.

An application, as summarized below, has been filed by certain railroad companies under 49 U.S.C. 11342(a) for authority to enter into an agreement for the pooling of car service (pooling agreement) with respect to boxcars (defined to be those cars designated by Association of American Railroads Car Type Code XM, XF, XL, XP, XMI, XLI, and XPI in the Official Railway Equipment Register) and for prior approval of that agreement. The railroads listed as applicants are:

The Baltimore and Ohio Railroad Company
The Chesapeake and Ohio Railway Company
CSX Transportation, Inc.
Consolidated Rail Corporation
Guilford Transportation Industries, Inc. (Rail Division)
Illinois Central Gulf Railroad Company
Richmond, Fredericksburg & Potomac Railroad Company.

Applicants' representatives are: Basil Cole, Esq., Robert P. vom Eigen, Esq., 888 16th Street NW., Washington, DC 20006, (202) 835-8267.

Description of the Transaction

The proposed pool consists of an arrangement allowing Fleet Management, Inc. (FMI), a wholly-owned subsidiary of Fruit Growers Express Company (FGE), to manage a fleet of boxcars that have been contributed to the pool by the participating carriers. As manager of the pool, FMI will act as agent for those carriers for the purpose of directing the routing of the empty boxcars assigned to the pool.

Applicants assert that the proposed transaction involves no pooling of earnings. Rather, the proposed pool will be operated as a commercial venture, with each railroad participant compensating FMI for its services based on actual reduction in empty car-miles. Through FMI's management of the fleet, the participants expect to decrease the empty mileage for boxcars by the reloading of empty cars at points closer to the original point of unloading than is feasible under the current common practice of returning each empty to its owner road or assigned loading point.

Participation in the pool will not be limited to the railroads that have joined in the filing of the application, but will be open to other United States railroads who become signatories to the pooling agreement and comply with its provisions. If the application is approved, applicants have requested that the Commission adopt an expedited procedure for approval of other railroads' participation.

A copy of the application is on file and can be examined in the Office of the Secretary, Interstate Commerce Commission, Washington, DC. A copy of the application may also be requested from applicants.

In the opinion of applicants, the requested Commission action will not significantly affect either the quality of the human environment or energy consumption. Any protest may include a statement indicating the presence or absence of any impact of the requested Commission action on energy conservation, energy efficiency or the environment. If any such impacts are alleged, the statement shall be accompanied by supporting data indicating the nature and degree of the anticipated impact.

Evidence will be received through written verified statements in accordance with the following provisions: (a) Applicants' verified statements are those accompanying their application; (b) other verified statements in support of the application shall be due on October 30, 1986; (c) any protests and supporting verified statements shall be filed with the Commission by November 10, 1986, with a copy to be served on applicants' counsel at the address stated above; (d) reply statements by all parties shall be due on December 1, 1986. No oral hearing is contemplated.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 22965 Filed 10-9-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30900; Finance Docket No. 30900 (Sub-No. 1)]

Application and Petition for Exemption Joint Application of CSX Corp. and Sea-Land Corp.; CSX Corporation—Control—Sea-Land Freight Service, Inc. and Intermodal Systems, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for filing comments.

SUMMARY: American President Companies, Ltd. and Farrell Lines Incorporated request that the time for filing comments on the application and petition for exemption [51 FR 31734] be extended from October 6, 1986, to October 27, 1986. Applicants oppose any extension. Because responses to interrogatories were not completed until September 26, 1986, an extension is warranted, but it must be limited in view of the need for expedited consideration of the application and petition for exemption. A 10-day extension is granted.

DATES: Comments are now due October 16, 1986, and applicants' replies are now November 17, 1986.

ADDRESS: An original and 15 copies of comments and replies, referring to Finance Docket Nos. 30900 and 30900 (Sub-No. 1), should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

One copy of comments should be sent to each of applicants' representatives, whose names and addresses were listed in the previous notice [51 FR 31374]. Applicants must serve their replies on all parties who file comments.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, 275-7245
or
Thomas Gire, 275-1723

Decided: October 2, 1986.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22966 Filed 10-9-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30727]

Exemption; Grand Trunk Western Railroad Co.—Trackage Rights—Michigan Interstate Railway Co.

Michigan Interstate Railway Company (MIRC) has agreed to grant overhead trackage rights to Grand Trunk Western Railroad Company (GTW) over its line of railroad between the point of connection of MIRC's line and GTW's line at Diann, MI, and MIRC's terminal at Galena Street in Toledo, OH, a distance of approximately 19.82 miles. The trackage rights will be effective after expiration of the notice period specified in 49 CFR 1180.4(g)(1).

As a condition to use of this exemption, any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

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This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction

Dated: October 2, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22987 Filed 10-9-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-57 (Sub-No. 16X); Finance Docket No. 30681]

Soo Line Railroad Co.; Abandonment Exemption Between Bismarck and Moffit, ND; Soo Line Railroad Co.; Exemption; Construction at Rail Connection at Moffit, ND

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemptions.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of: (1) 49 U.S.C. 10903 *et seq.*, the abandonment by Soo Line Railroad Company (Soo) of 23.10 miles of track between milepost 416.00, near Bismarck, ND, and milepost 392.90, near Moffit, ND, subject to standard labor protective conditions; and (2) 49 U.S.C. 10901, the construction by Soo of 644 feet of connecting track between its line and a Burlington Northern Railroad Company (BN) line near Moffit, ND, over which Soo will operate under a trackage rights agreement with BN.

DATES: These exemptions will be effective on November 13, 1986. Petitions to stay must be filed by October 20, 1986, and petitions for reconsideration must be filed by October 30, 1986.

ADDRESSES: Send pleadings referring to the applicable docket number to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Byron D. Olsen, 804 Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55440

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the full decision. To purchase a copy of it write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 2, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22989 Filed 10-9-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

State of Maine Department of Labor; Hearing

This notice announces an opportunity for a hearing for the State of Maine Department of Labor, pursuant to section 3302(c)(3) of the Internal Revenue Code of 1954, 26 U.S.C. 3302(c)(3), and 29 CFR 91.63(e), to be held at 9:30 o'clock in the morning of October 15, 1986, in a courtroom in the Vanguard Building, 1111 20th Street, NW., Washington, DC. The State agency will have an opportunity to make a record.

The hearing will be held on the following issue:

Issue: Whether the State of Maine has fulfilled its commitments for the year 1986 under an Agreement with the Secretary of Labor entered into under Section 239 of the Trade Act of 1974, as amended.

Basis of Issue: Provisions for Trade Readjustment Allowances (TRA) for U.S. workers affected by foreign import competition were incorporated into Sections 231 to 234 of the Trade Act of 1974 (Act). 19 U.S.C. 2291 to 2294. Under section 239 of the Act, 19 U.S.C. 2231, the Secretary of Labor (Secretary) is authorized to enter into an agreement with a State, enabling the State to administer the TRA program, as an agent of the United States. Such an agreement was entered into between the State of Maine and the Secretary, on March 28, 1975 (Agreement). Effective after September 30, 1981, sections 231 to 233 of the Act were amended by the Omnibus Reconciliation Act of 1981 (OBRA), Pub. L. 97-35, 95 Stat. 357, 881-890. The Agreement between Maine and the Secretary was correspondingly modified, on September 24, 1981, to incorporate the statutory changes.

Prior to the 1981 amendments, the TRA eligibility period for each adversely affected worker was measured from the worker's last qualifying separation from adversely affected employment. Provisions to that effect were found in regulations published in 1975 at 29 CFR Part 91. However, the entire eligibility provisions under section 231 to 233 of the Trade Act were amended by the OBRA and the provision for using a worker's last separation from employment has been eliminated from the statute. The conflict that exists between the State of Maine and the U.S. Department of Labor (USDOL) is whether the last qualifying separation is applicable in determining the TRA eligibility period, as contended by Maine, or whether only the first such separation is relevant, as contended by the USDOL. The issue is, then, whether the eligibility provisions of the 1975 regulations remain controlling or whether they have been superseded by the statutory amendments in the OBRA (1981). This is the matter presently before the Secretary.

If the Secretary finds that the State's administration of the program is not in accord with the law, it will mean that the State has failed to fulfill its commitments under the Agreement. Such a finding could resut in a partial reduction of the tax credits otherwise allowable to Maine employers for the year 1986, pursuant to section 3302(c)(3) of the Federal Unemployment Tax Act. 26 U.S.C. 3302(c) (3). Therefore, by this Notice, the Secretary is affording the State of Maine the opportunity for a hearing, pursuant to 29 CFR 91.63(e) and 26 U.S.C. 3302(c) (3), in order for the State to present its case and to make a record before the Secretary issues his decision in the matter.

Authority for Notice of Hearing

This Notice of Hearing is issued pursuant to section 3302(c) (3) of the Internal Revenue Code of 1954, 26 U.S.C. 3302(c) (3) and 29 CFR 91.63(e). Section 302(c) (3) of the Internal Revenue Code of 1954 provides:

(3) If the Secretary of Labor determines that a State, or State agency, has not—

(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 15, 1975, or

(b) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974,

then, in the case of a taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 7¼ percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.

Section 91.63(e) of Title 29, Code of Federal Regulations (40 FR 16304, April 11, 1975) provides, in pertinent part:

(e) *Breach.* If the Secretary finds that a State or State agency has not executed an agreement under this section before July 1, 1975, or that a State or State agency has not fulfilled its commitments under such agreement, section 3302(c)(4) [in the Code redesignated as paragraph (3)] of the Internal Revenue Code of 1954, as added by section 239 of the Act, shall apply. A State agency or State shall receive reasonable notice and opportunity for hearing before a finding is made under this paragraph that it has not fulfilled its commitments under its agreement.

These Proceedings

Following the hearing, a decision will be made by the Secretary of Labor which will have a bearing on whether the tax credits otherwise allowable to Maine employers under section 3302 of the Internal Revenue Code of 1954 for the taxable year 1986 shall be partially reduced, pursuant to section 3302(c)(3) of the Code.

The proceedings in this matter shall be in accordance with the Rules of Procedure accompanying this notice. For purposes of this hearing, all motions, briefs, and other papers shall be filed, pursuant to the above referenced Rules of Procedure, with the presiding Administrative Law Judge, U.S. Department of Labor, Suite 700, Vanguard Building, 1111 20th Street, NW., Washington, DC 20036, who will be designated in accordance with the Rules of Procedure.

Counsel for the Maine Department of Labor shall enter an apperance with the presiding Administrative Law Judge no later than October 8, 1986; a copy shall be provided to Charles D. Raymond, Acting Associate Solicitor for Employment and Training, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, as expeditiously as possible.

Counsel for the U.S. Department of Labor shall enter an appearance with the presiding Administrative Law Judge no later than October 8, 1986; a copy shall be provided to the Maine Department of Labor as expeditiously as possible.

Signed at Washington, DC, on October 6, 1986.

William E. Brock,

Secretary of Labor.

Rules of Procedure

1. An Administrative Law Judge will be designated by the Chief Administrative Law Judge, United States Department of Labor, to preside over the hearing and perform the functions required by these Rules.

2. The parties of record shall be the Maine Department of Labor and the United States Department of Labor. The Maine Department of Labor is hereafter designated as the MDOL, and the United States Department of Labor is hereafter designated as the USDOL.

3. Any non-party State agency, individual worker, employer, organization, association of workers or employers, or member of the public, asserting an interest in the proceedings, may be permitted by the presiding Administrative Law Judge, upon motion granted, to participate in these proceedings as *amicus curiae* only. Participation by any such *amicus curiae* shall be limited to the submittal of such briefs as may be directed by the presiding Administrative Law Judge. All motions contemplated by this Rule shall be filed with the presiding Administrative Law Judge no later than two (2) days prior to the scheduled hearing, and shall be served upon and received by the counsel for each party prior to the hearing. The presiding Administrative Law Judge shall rule on all such motions and inform the applicants and the parties of the rulings prior to the hearing or at the beginning of the hearing.

4. The presiding Administrative Law Judge may issue an appropriate prehearing order governing all issues to be raised in the proceedings, and designation of evidence to be offered at the hearing.

5. The hearing will be conducted in an informal but orderly and expeditious manner. The presiding Administrative Law Judge will regulate all matters pertaining to the course and conduct of the proceedings, may grant extensions of time regarding the submission of briefs and other papers, and may reschedule the hearing for another time or date for good cause shown.

6. Upon the commencement of the hearing, the USDOL will be offered an opportunity to make an opening statement as to the nature of the hearing and the matters in issue. The MDOL will then be offered a similar opportunity to make an opening statement.

7. The order of the presentation of evidence will be as follows:

(a) The USDOL will proceed first by presenting any evidence it may wish to offer which is relevant to the issue specified in the Notice of Hearing.

(b) The MDOL will proceed next to present any evidence it may wish to offer which is relevant to the issue referred to in Rule 7(a) above, followed by any evidence relevant to any additional issue, except that evidence regarding any issue other than the issue referred to in the Notice of Hearing may be admitted only if the party offering such evidence has provided notice of such issue and a summary of such evidence, including a copy of any document to be offered, to the USDOL at least three business days prior to the hearing.

(c) The USDOL may next present relevant evidence in rebuttal of any issue, and the trial record shall thereafter be closed, except as provided for by Rule 9 below.

8. Technical rules of evidence shall not apply to the hearing. The presiding Administrative Law Judge will rule upon offers of proof and the admissibility of evidence, and may exclude irrelevant, immaterial, or unduly repetitious evidence or any other evidence excludable under these Rules, and may examine witnesses. All writings, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a satisfactory showing of their authenticity, relevancy, materiality, and admissibility under these Rules, be received in evidence.

9. During the hearing the presiding Administrative Law Judge may require the production and introduction of further evidence upon any relevant matter. After the hearing is closed, no further evidence shall be taken unless (a) provision has been made at the hearing for the later receipt of such evidence for the record by the presiding Administrative Law Judge; or (b) the Secretary of Labor requires further evidence in order to issue his decision, and so directs.

10. The proceedings at the hearing shall be recorded verbatim. The original and one copy of the transcript shall be furnished to the presiding Administrative Law Judge. Copies of the transcript of the record of hearing may be obtained by the parties of record and any interested person permitted to participate in the proceedings upon such terms as they may arrange.

11. When any document is offered in evidence, two additional copies thereof shall be submitted to the presiding Administrative Law Judge and, unless previously provided, a copy shall be provided to the opposing party of record.

12. At the conclusion of the receipt of evidence, the presiding Administrative Law Judge shall hear oral argument presented by the parties of record, which shall be recorded. Oral arguments shall be in the following order: opening argument for the USDOL, unless waived; argument for the MDOL unless waived; and closing argument for the USDOL, unless waived.

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13. The parties of record and any *amicus curiae* authorized to participate in the proceedings shall be permitted to file briefs. The parties of record may also file reply briefs and proposed findings of fact and conclusions of law on the matters in issue. All such briefs and other papers shall be filed, in an original and one copy, with the presiding Administrative Law Judge, with proof of service upon the parties, within such time periods as are established by the presiding Administrative Law Judge.

14. Briefs and other papers filed with the presiding Administrative Law Judge under these rules shall be deemed to be filed on the date they are received in the office of the presiding Administrative Law Judge. If the last day of a time limit for filing briefs or other papers falls on a Saturday, Sunday, or a Federal legal holiday, the time limit shall be extended to the next official business day. Briefs and other papers filed with the presiding Administrative Law Judge shall be accepted subject to timely filing and sufficient proof of service upon the parties as required by these Rules.

15. As soon as possible, but in any event no later than November 26, 1986, the presiding Administrative Law Judge shall: (a) Prepare a recommended decision on the basis of the record, containing recommended findings of fact and conclusions of law on all issues raised by the parties; (b) certify to the Secretary of Labor such recommended decision and the entire record of the proceedings; and (c) forward a copy of the recommended decision to each party of record and *amicus curiae*.

16. Any party of record may file with the Secretary of Labor a Statement of Exceptions, with proof of service, setting forth any exceptions they may have to the recommended decision, within ten (10) days after service by mail of the recommended decision. In the absence of timely filing and sufficient proof of service on the party, a Statement of Exceptions filed by a party shall not be considered by the Secretary of Labor in making his decision.

17. As soon as possible after such certification to him by the presiding Administrative Law Judge (paragraph 15, above), but no later than December 15, 1986, the Secretary shall render his decision in the matter, in writing, and shall forward copies of his decision to the Governor of the State, to each party of record, and to any *amicus curiae* authorized to participate in the proceedings.

18. The decision of the Secretary of Labor shall constitute final agency action.

[FR Doc. 86-23041 Filed 10-9-86; 8:45 am]
BILLING CODE 4510-30-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Bakken Industries, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 22, 1986–September 26, 1986 and September 29, 1986–October 3, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision, have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–17,354; Bakken Industries, Inc., Godfrey, IL

TA–W–17,398; General Electric Co., Capacitor Products Dept., Hudson Falls, NY

TA–W–17,414; Bijur Lubricating Corp., Bennington, VT

TA–W–17,564; LTV Steel Co., Wilton, IA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–17,538; Babcock & Wilcox Co., Tubular Products Group, Beaver Falls Works, Beaver Falls, Ambridge and Koppel, PA

Aggregate U.S. imports of seamless carbon steel pipe and tubing did not increase as required for certification.

TA–W–17,646; Gus Manufacturing, El Paso, TX

Aggregate U.S. imports of electrical geophysical instruments did not increase as required for certification.

TA–W–17,619; Sun Exploration & Production Co., Inc., Exploration Div., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,386; Hughes Drilling Fluids, Oklahoma City, OK

Aggregate U.S. imports of drilling fluids are negligible.

TA–W–17,387; Hughes Drilling Fluids, Houston, TX

Aggregate U.S. imports of drilling fluids are negligible.

TA–W–17,388; Hughes Drilling Fluids, Candian, TX

Aggregate U.S. imports of drilling fluids are negligible.

TA–W–17,610; Wilson Brothers Drilling Co., Seminole, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,593; S.W. Jack Drilling Co., Buckhannon, WV

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,623; Beard Drilling Co., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,627; Geco Geophysical Co., Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,535; Westburne Drilling, Inc., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,244; Duti Duds, Huddleston, VA

Separations at the subject firm were due to a domestic transfer of operations.

TA–W–17,545; Phillips Petroleum Co., Phillips 66 Natural Gas Co., Williston Office, Williston, ND

The workers provided support services for an affiliated production facility whose workers are not currently certified.

TA–W–17,445; Lone Star Steel Co., Lone Star, TX

Aggregate U.S. imports of carbon steel pipe and tube did not increase as required for certification.

TA–W–17,450; Lone Star T & N Warehouse Co., Lone Star, TX

Aggregate U.S. imports of carbon steel pipe and tube did not increase as required for certification.

TA–W–17,632; Geosource, Inc., Formerly Known as Petty-Ray Geophysical, Englewood, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,768; Precision Exploration, Olney, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,661; Big C Oil Co., Archen, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,542; LTV Steel Co., Beaver Falls, PA

Aggregate U.S. imports of carbon and alloy steel bars did not increase as required for certification.

TA–W–17,805; Whiteside Casing Crews, Inc., Laredo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,720; Dresser Industries, Guiberson Division, Dallas, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA–W–17,722; Genseo, Inc., Houston, TX

Aggregate U.S. imports of carbon steel pipe and tube did not increase as required for certification.

TA–W–17,793; Exxon Production Research Co., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,884; LTV Steel Co., Hammond Cold Finished Bar Plant, Hammond, IN

Aggregate U.S. imports of cold finished carbon steel bars and alloy steel bars did not increase as required for certification.

TA–W–17,935; AT&T Information Systems, Austin, TX

Imports did not contribute importantly to employment declines at the firm.

TA–W–18,010; Pool Company, Tioga, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,011; Pool Company, Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,836; Buckeye, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,751; Smith Drilling Co., Lawrenceville, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,749; Sojourner Drilling Co., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,738; Brinkerhoff-Signal Drilling Co., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,343; Ottenheimer & Co., Inc., Dawson Springs, KY

Separations at the subject firm were due to a domestic transfer of operations.

TA–W–17,841; H&L Rentals, Inc., Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,845; Timax Drilling, Inc., Millersburg, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,846; West Sierra Drilling Co., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,854; Lenwood Tarpley, Inc., Crane, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,858; Strata Energy Minerals, Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,817; Mac Services, Inc., Victoria, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,818; Wills Enterprises, Inc., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,821; Franks Fuel, Inc., Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,822; Bandera Drilling Co., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,823; Cactus Drilling Co., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,824; Global Marine Drilling Co., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,825; WellTech, Inc., Sidney, MT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,827; Maxwell Herring Drilling Corp., Tyler, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,828; Halliburton Services, Mission, TX

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The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-17,384; Bendix Safety Restraint Systems Division, Knoxille, TN

A certification was issued covering all workers is the assembly department of the firm separated on or after August 1, 1985 and before January 15, 1986.

TA-W-17,334; American Rubber Manufacturing Co., Inc., Oakland, CA

A certification was issued covering all workers of the firm separated on or after April 4, 1985 and before September 30, 1986.

TA-W-17,332; Milan Manufacturing Division of HKH Industries, Milan, GA

A certification was issued covering all workers of the firm separated on or after September 1, 1985 and before June 30, 1986.

TA-W-17,259; Coquette Manufacturing Co., Mauston, WI

A certification was issued covering all workers of the firm separated on or after March 6, 1985 and before November 1, 1985.

TA-W-17,361; Nortech, Inc., Benidji, MN

A certification was issued covering all workers of the firm separated on or after June 1, 1985.

TA-W-17,372; Weyenberg Shoe Manufacturing Co., Lakeskid Plant, Beaver Dam, WI

A certification was issued covering all workers of the firm separated on or after February 1, 1986.

TA-W-17,435; Sperry Corp., Plant #4, Roseville, MN

A certification was issued covering all workers of the firm separated on or after October 1, 1985 and before July 15, 1986.

TA-W-17,199; Cherin Dress Co., Inc., Newark, NJ

A certification was issued covering all workers of the firm separated on or after January 10, 1985 and before October 30, 1985.

TA-W-17,137; American Standard, Inc., Westinghouse Air Brake Co. (WABCO) Wilmerding, PA

A certification was issued covering all workers of the firm separated on or after January 17, 1985.

TA-W-17,136; American Standard, Inc., Westinghouse Air Brake Co. (WABCO) Greensburg, PA

A certification was issued covering all workers of the firm separated on or after September 1, 1985.

TA-W-17,506; Necla Mining Co., Lucky Friday Mine, Mullan, ID, Consolidated Silver Mine, Osburn, ID, Hecla Shop, Burke, ID

A certification was issued covering all workers of the firm separated on or after May 1, 1985.

TA-W-17,375; Corning Glass Works Middle Factory, Charleroi, PA

A certification was issued covering all workers of the firm separated on or after April 16, 1985.

TA-W-17,399; General Electric Co., Capacitor Products Dept., Fort Edward, NY

A certification was issued covering all workers of the firm separated on or after April 23, 1985.

TA-W-17,392; A&M Rubber Supply, Inc., Lewiston, ME

A certification was issued covering all workers of the firm separated on or after April 18, 1986.

TA-W-17,326; Triangle Tool Group, Orangeburg, SC

A certification was issued covering all workers of the firm separated on or after March 27, 1985.

TA-W-17,358; Diamond Tool & Horseshoe Co., Duluth, MN

A certification was issued covering all workers of the firm separated on or after December 5, 1985.

TA-W-17,329; GTE Communication System Corp., El Paso, TX

A certification was issued covering all workers of the firm separated on or after March 16, 1985.

TA-W-17,750; Midland Ross Corp., Midtex Div., North Mankato, MN

A certification was issued covering all workers of the firm separated on or after July 14, 1985.

TA-W-17,559; Steelton Highspire Railroad, Steelton, PA

A certification was issued covering all workers of the firm separated on or after May 29, 1985.

TA-W-17,422; New Departure Hyatt Division of General Motors Corp., Bristol, CT Plant

A certification was issued covering all workers of the firm separated on or after April 28, 1985.

TA-W-17,522; Sunshine Mining Co., Kellogg, ID

A certification was issued covering all workers of the firm separated on or after May 20, 1985.

TA-W-17,373; Carmel Energy, Inc., Deerfield, MO

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA-W-17,374; Carmel Energy, Inc., Iola, KS

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA-W-17,380; Noranda Aluminum, Inc., New Madrid, MO

A certification was issued covering all workers of the firm separated on or after April 16, 1985.

I hereby certify that the aforementioned determinations were issued during the period September 22, 1986–September 26, 1986 and September 29, 1986–October 3, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 6, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-23042 Filed 10-9-86; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 20, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 20, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 30th day of September 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Horizon Mud Company (workers)	Midland, TX	9/18/86	9/10/86	TA-W-18,210	Sales and service of drilling fluids and chemicals
J.H. Clough Oil Field Contracting Service (workers)	Beecher City, IL	9/15/86	9/5/86	TA-W-18,211	Trucking service
Whipco Hydraulic and Valve, Inc. (workers)	Odessa, TX	9/15/86	9/12/86	TA-W-18,212	Gauges and pressure products used in oil field drilling
Sharp Drilling Co. (workers)	Odessa, TX	9/16/86	9/11/86	TA-W-18,213	Oil and gas drilling services
Coronado Transmission Company (workers)	Houston, TX	9/16/86	9/3/86	TA-W-18,214	Pipe laying service
Elaine Pleating Inc. (workers)	N. Bergen, NJ	9/19/86	9/12/86	TA-W-18,215	Pleated garments
Kingwood Shoe, Div., Kinney Shoe Corp. (ACTWU)	Kingwood, WV	9/18/86	9/15/86	TA-W-18,216	Women's girls' dress/casual shoes
Cowdens Mfg. Co. (workers)	Stanford, KY	9/19/86	9/3/86	TA-W-18,217	Women's jeans
Rockwell Intl. Corp. (workers)	Barberton, OH	9/23/86	9/12/86	TA-W-18,218	A system of distributorships
Gubelman Chart Div. (workers)	Newark, NJ	9/26/86	9/16/86	TA-W-18,219	Med. and Indus. Recordings charts
Botany 500 (workers)	Philadelphia, PA	9/22/86	9/19/86	TA-W-18,220	Suits and sportcoats
Judson Steel Corp. (workers)	Emeryville, CA	9/22/86	9/17/86	TA-W-18,221	Steel reinforcing bars
Sexton Can (workers)	Everett, MA	9/22/86	9/17/86	TA-W-18,222	Electronic capacitors-aircraft cans
Elkay Mining Company	Rita, WV	9/16/86	9/16/00	TA-W-18,223	Metallurgical and steam coal
Carbon Coal (workers)	Gallup, NM	9/15/86	9/15/86	TA-W-18,224	Steam coal
Benton Casing Service (workers)	Victoria, TX	9/12/86	9/4/86	TA-W-18,225	Oil services
United Energy (workers)	Bridgeport, TX	9/15/86	9/1/86	TA-W-18,226	Oil services
Chevron Refinery (OCAWU)	Cleveland, OH	9/11/86	9/3/86	TA-W-18,227	Oil refinery products
Canals Well Service (workers)	Kermit, TX	9/15/86	9/8/86	TA-W-18,228	Oil services
Diolyn Field Drilling (workers)	Alice, TX	9/15/86	9/3/86	TA-W-18,229	Oil services
Santa Fe International (workers)	Lafayette, LA	9/11/86	9/8/86	TA-W-18,230	Oil services
Energy Exchange Corp. (workers)	Oklahoma, OK	9/4/86	9/20/86	TA-W-18,231	Oil and gas exploration
AMF Scientific Drilling (workers)	Corpus Christi, TX	9/12/86	9/12/86	TA-W-18,232	Oil services
Bob Fourent Co. (the) (workers)	Corpus Christi TX	9/11/86	9/11/86	TA-W-18,233	Oil survey
Standard Oil Production (workers)	Dallas, TX	9/12/86	9/8/86	TA-W-18,234	Oil services
Westwood Drilling Co. (workers)	Laredo, TX	9/11/86	9/4/86	TA-W-18,235	Oil drilling
Wilson Downhole Service (workers)	Bay City, TX	9/10/86	9/4/86	TA-W-18,236	Oil services
Halliburton Services (workers)	Elkview, WV	9/5/86	9/3/86	TA-W-18,237	Oil services
Wheeling-Pittsburgh Steel (workers)	Manessen, PA	9/15/86	9/12/86	TA-W-18,238	Steel rails
Wheeling-Pittsburgh Steel (workers)	Allenport, PA	9/15/86	9/12/86	TA-W-18,239	Steel sheet and tubing
E.I. DuPont DeNemours Co. (workers)	Ingleside TX	9/22/86	9/18/86	TA-W-18,240	Carbon tetrachloride
Simonds Cutting Tools (workers)	Newcomerstown, OH	9/23/86	9/9/86	TA-W-18,241	Files and rasp for metal and wood cutting
Famco Mach. Div. (workers)	Kenosha, WC	9/22/86	9/22/86	TA-W-18,242	Power squaring shears
Goodyear Tire & Rubber (workers)	E. Gadsden, ALA	9/22/86	9/15/86	TA-W-18,243	Auto., truck, tractor, tires, etc.
GTE Sylvania (workers)	Winchester, KY	9/23/86	9/16/86	TA-W-18,244	Fght. indoor, outdoor, proj., etc.
Gen. refractories, Co. (workers)	Sprout, PA	9/24/86	9/22/86	TA-W-18,245	Refractories (clay, alumina)
Ashland Chem., Co. (workers)	Larenzo, TX	9/22/86	9/17/86	TA-W-18,246	Chem. used in oil and gas explor., etc.
Dav. and Geck (Amer. Cyanmid) (ICWU)	Danbury, CT	9/23/86	9/15/86	TA-W-18,247	Surgical supplies dist. to hosp. etc.
Aletex, Inc. (workers)	Crestview, FL	9/24/86	9/22/86	TA-W-18,248	Mens underwear
Clint Hurt and Associate (Jane Moore)	Midland, TX	9/11/86	9/8/86	TA-W-18,249	Oil services
Baker International (workers)	Houston, TX	9/3/86	9/3/86	TA-W-18,250	Service tools
Baker Service Tools (workers)	Snyder	9/15/86	9/15/86	TA-W-18,251	Service tools
Bethleherm Steel (workers)	Beaumont, TX	9/12/86	9/12/86	TA-W-18,252	Pipe fitters
Dowell Schlumberger (workers)	Alice, TX	9/15/86	9/11/86	TA-W-18,253	Cement castings
Frank Casing Crew (workers)	Corpus Christi, TX	9/15/86	9/9/86	TA-W-18,254	Runs tubing and casings
Rebel Mud Company (workers)	Corpus Christi, TX	9/12/86	9/9/86	TA-W-18,255	Supplies mud/oil well drilling
Dresser Atlas (workers)	Alice, TX	9/15/86	9/8/86	TA-W-18,2256	Survey service
Santa Fee Drilling Co. (workers)	Odessa, TX	9/16/86	9/6/86	TA-W-18,257	Contract drilling
Vachel's Telecomm. (workers)	Ross ND	9/11/86	9/11/86	TA-W-18,258	Sales and service

[FR Doc. 86-23043 Filed 10-9-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut CT86-1 (Jan. 3, 1986). pp. 64-76.
Kentucky:
KY86-25 (Jan. 3, 1986) ..... pp. 325-329.
KY86-26 (Jan. 3, 1986) ..... pp. 333-336.
KY86-27 (Jan. 3, 1986) ..... p. 338.
KY86-28 (Jan. 3, 1986) ..... pp. 343-345.
Massachusetts: MA86-1 (Jan. 3, 1986). p. 349.
New York:
NY86-5 (Jan. 3, 1986) ..... pp. 677-680.
NY86-6 (Jan. 3, 1986) ..... pp. 711-716.
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd day of October 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-22783 Filed 10-9-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-85-126-C]

Buck Mountain Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Buck Mountain Coal Company, 14 Maple Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Buck Mountain Slope (I.D. No. 36-01962) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is damp to very wet. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

3. Petitioner states that the distance from the portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Sections of the mine are subjected to freezing temperatures making constant availability of the device questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 10, 1986. Copies of the petition are available for inspection at that address.

Dated: September 30, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-23044 Filed 10-9-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-183-C]

International Anthracite Corp.; Petition for Modification of Application of Mandatory Safety Standard

International Anthracite Corporation, Box 546, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its B & M Tunnel (I.D. No. 36-01781) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. Petitioner states that the mine is damp to very wet and all tunnels and gangways are in solid rock with steel sets or roof bolts used for support. If a fire were to occur anywhere on the intake side of the mine, it would be discovered immediately by an automatic monitoring system currently in use.

3. Sections of the mine are subjected to freezing temperatures and the devices may not function properly in those temperatures. The wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescurers.

4. Petitioner further states that the devices are too heavy and bulky to be lugged around in the small confines of the mine.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 10, 1986. Copies of the petition are available for inspection at that address.

Dated: October 1, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-23045 Filed 10-9-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-119-C]

R.S. and W. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

R.S. and W. Coal Company, Box 34, Leck Hill, Pennsylvania 17836 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its R.S. and W. Drift Mine (I.D. NO. 36-01818) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is always damp to wet, with one piece of electrical equipment, which is a small pump located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the device questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modificaion of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 10, 1986. Copies of the petition are available for inspection at that address.

Dated: September 30, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-23046 Filed 10-09-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-89-C]

Wenrich Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Wenrich Coal Company, Star Route, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Buck Mountain Slope (I.D. No. 36-05717) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is always damp to wet, with one piece of electrical equipment, which is a large pump located at the foot of the slope.

3. Petitioner states that the distance from the portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the device questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 10, 1986. Copies of the petition are available for inspection at that address.

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Dated: September 30, 1986.
Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.
[FR Doc. 86-23047 Filed 10-9-86; 8:45 am]
BILLING CODE 4510-29-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86-122; Exemption Application No. D-6537, et al.]

Grant of Individual Exemptions; Los Angeles County Painting Industry Pension Trust Fund et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Los Angeles County Painting Industry Pension Trust Fund (the Pension Plan) and Los Angeles County Painting Industry Apprenticeship Trust Fund (the Apprenticeship Plan; together, the Plans) Located in Los Angeles, California

[Prohibited Transaction Exemption 86-122; Exemption Application Nos. D-6537 and D-6540]

Exemption

The restrictions of section 406(a), 406 (b)(1), and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Pension Plan of certain improved real property to the Apprenticeship Plan, which is a party in interest with respect to the Pension Plan; provided that the transaction is on terms at least as favorable to each Plan as could be obtained an arm's-length transaction between unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 25, 1986 at 51 FR 26779.

Written Comments: The Department received one written comment and no requests for a hearing. In the written comment received by the Department, the commentor expressed approval of the proposed transaction.

For further information contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Dynamic Warehouse and Trucking Co., Inc. Employees' Pension Plan; Dynamic Warehouse and Trucking Co., Inc. Employees' Profit Sharing Plan; Dynamic Ocean Services International, Inc. Employees' Profit Sharing Plan; Dynamic Air Freight Services, Inc. Employees' Profit Sharing Plan; and Dynapack Export Crating, Inc. Employee Profit Sharing Plan (collectively, the Plans) Located in Houston, Texas

[Prohibited Transaction Exemption 86-123; Exemption Application No. D-6617 through D-6621]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sales by the Plans of two parcels of improved real property to Mr. and Mrs. Alexander G. Arroyos, parties in interest with respect to the Plans, for cash in an amount not less than $450,000, provided that such amount is no less than the fair market value of the properties on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1986 at 51 FR 23000.

Notice to interested persons: The applicant informed the Department that the original letter providing notice to interested persons did not include a copy of the Notice of Proposed Exemption. However, the applicant has represented that proper notice was provided to all interested persons, with a copy of the Proposed Exemption, by August 12, 1986.

Interested persons were informed that they had until September 11, 1986, to comment or request a hearing with respect to the proposed exemption. No comments or hearing requests were received by the Department.

For further information contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Public Service Electric and Gas Company Payroll-Based Employee Stock Ownership Plan; the Public Service Electric and Gas Company Tax Reduction Act Employee Stock Ownership Plan; and the Public Service Electric and Gas Company Thrift and Tax Deferred Savings Plan (collectively, the Plans) Located in Newark, New Jersey

[Prohibited Transaction Exemption 86-124; Exemption Application No. D-6356, D-6357 and D-6358]

Exemption

The restrictions of sections 406(a) and 407(a) the of Act shall not apply to (1) the past receipt by the Plans of certain stock rights (the Rights) pursuant to a stock rights offering by the Public Service Electric and Gas Company (PSE&G), the sponsor of the Plans, to shareholders of record of PSE&G common stock on October 16, 1985; and (2) the temporary holding of the Rights by the Plans during subscription period.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 25, 1986 at 51 FR 26775.

Effective date: The effective date of this exemption is from October 16, 1985 until October 24, 1985.

Written comments: The applicant has advised the Department that the representation in paragraph #2 of the Notice of Proposed Exemption referring to the warrant card as a "security' is erroneous. The applicant states that the warrant card is not a security but is a certificate evidencing ownership of the Rights. In addition, paragraph #5 of the Notice of Proposed Exemption referred to Mr. William E. Scott, a member of the Board of Directors of First Jersey National Bank, as a director of PSE&G. The applicant states that Mr. Scott is no longer a director of PSE&G, effective April 15, 1986.

After consideration of the entire record, the Department has determined to grant the exemption.

For further information contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Sherwin-Williams Company Salaried Employees Retirement Plan (the Plan), Located in Cleveland, Ohio

[Prohibited Transaction Exemption 86-125; Exemption Application No. D-6379]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a series of loans, originated within a six-year period, by the Plan to the Sherwin-Williams Company, the sponsor of the Plan (the Employer), and its wholly owned subsidiaries; provided that all terms and conditions of such loans are at least as favorable to the Plan as the Plan could obtain in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 11, 1986, at 51 FR 25289.

Temporary Nature of Exemption

This exemption is effective as to loans originated within six years of the date on which this exemption is published in the Federal Register.

Written comments: The Department received five written comments to the proposed exemption and no requests for a hearing. Four of the written comments expressed objection to the proposed transaction without citing specific reasons for the objection. A fifth written comment expressed objection to the proposed exemption and cited three reasons: (1) The commentator expressed the view that the proposed exemption would allow the Employer to borrow up to twenty-five percent of the Plan's assets at the time of each loan and that there would be no limit on the amount of money which could be borrowed from the Plan; (2) The commentator cited the Employer's representation that it has been able to borrow funds from commercial lenders at rates below the prime rate and questioned why the Employer does not continue to borrow from such commercial lenders; and (3) The commentator also stated that due to recent bank failures, the use of irrevocable letters of credit as security for the loans poses a potential for increased risk to the Plan.

In response to these written comments, the Employer provided the following comments: (1) The Employer states that the commentator has a misunderstanding of the terms of the proposed loan transactions in that the credit agreement governing the proposed loans provides that at all times the aggregate amount of outstanding loans under the credit agreement could never be greater than the lesser of $65 million or twenty-five percent of the Plan's assets; (2) In response to the written comment relating to the Employer's representation of its ability to borrow funds from commercial lenders at rates below the prime rate, the Employer asserts that such ability is evidence of the Employer's creditworthiness and serves as further evidence that the proposed loans are in the best interests of the participants of the Plan; and (3) Finally, the Employer agrees with the commentator that the quality of a letter of credit as loan security is dependent upon the creditworthiness of the issuing bank, but the Employer points out that under the proposed arrangement the independent Loan Fiduciary will evaluate each proposed loan individually and will consider the financial soundness of the bank whose letter of credit is to be used as collateral for a particular loan.

After consideration of the entire record, the Department has determined to grant the exemption.

For further information contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fidciuary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fidiciary responsibility provisions of secton 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

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Signed at Washington, DC, this 7th day of October, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-23053 Filed 10-9-86; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6461 et al.]

Proposed Exemptions; National Training Fund Employee Benefit Pension Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

National Training Fund Employee Benefit Pension Plan (the Plan) Located in St. Paul, MN

[Application No. D-6461]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed purchase by the Plan of a mobile welding trailer (the Trailer) from the Leasing Corporation America (LCA); (2) the lease (the Lease), through May, 1990, of the Trailer from the Plan to the National Training Fund for the Sheet Metal and Air Conditioning Industry (the Employer), a contributing employer to the Plan; and (3) the sale of the Trailer to the Employer at the end of the Lease, provided that the terms of the transactions are at least as favorable to the Plan as those between unrelated parties would be.

Summary of Facts and Representations

1. The Plan is a multiple employer defined benefit pension plan covering substantially all of the employees of the Employer and the National Energy Management Institute, Inc. (NEMI). The Plan has approximately 40 participants and assets of $1,080,600. The Employer is a collectively bargained training plan established by the Sheet Metal Workers' International Association (the Union) and the Sheet Metal and Air Conditioning Contractors National Association (the Trade Association) and governed by an eight-member Board of Trustees, four appointed by the Union and four by the Trade Association. The Plan's two trustee are also Trustees of the Employer. NEMI is a tax-exempt, non-profit corporation established and directed by the Union and the Trade Association which also provides training to employees.

2. The Employer currently owns five trailers similar to the Trailer which are used nationwide to provide welding training to sheet metal workers. The trailer has been leased, since May 1985, from LCA under a 60 month lease. The lease between LCA and the Employer is tructured as a five year loan at an interest rate of 16.49%, which amortizes the principal over the term of the lease. The Employer is paying $5,425.02 per month in rent with the right to purchase the Trailer at the end of the lease term for one dollar.

3. The applicant proposed that the Plan purchase the Trailer from LCA for the remaining principal due under the lease between LCA and the Employer and take LCA's place as the lessor of the Trailer on the same terms as the lease between LCA and the Employer. As of September, 1986 the remaining principal is $175,243.72. The Trailer's manufacturer, Howard and Smith, Inc., indicated that as of April 21, 1986, the Trailer would, if properly maintained, always be worth more than the principal balance due under the Lease. The payments under the Lease will represent an annual return of approximately 16.49% to the Plan. The Employer has committed to exercise the purchase option at the end of the Lease.

4. The Plan has retained NS&T Bank (the Bank), of Washington, DC., to act as investment manager in deciding whether to enter into the proposed transaction. The only connections the Bank has with the Plan, the Employer, the Union and the Trade Association are: (1) The bank is the depository bank for all employer contributions to national trust funds in the sheet metal industry, which funds are disbursed to each trust fund's won bank, which is Riggs Bank with respect to the Employer;' and (2) the Bank is a depository bank for the Union.

5. The Bank has examined the Plan and the proposed transaction. While the proposed transaction is relatively illiquid, the Bank represents that the rate of return on the Lease makes the investment attractive and that it does not represent and imprudent concentration of funds in one assets.

6. The Plan has appointed Larry Mitchell, Esq., of Arnall, Goldman & Gregory of Washington, DC to act as independent legal counsel to the Plan for the Lease. Neither Mr. Mitchell nor his law firm have any prior association or affiliation with the Employer, the Union, the Trade Association, any related trust funds in the sheet metal industry as a whole. Mr. Mitchell will represent the Plan in the Lease and will take any actions necessary to protect enforce the Plan's rights.

7. In summary, the applicant represents that the transactions satisfy the criteria of section 408(a) of the Act because: (a) The lease will be on the same terms as that between LCA and the Employer; (b) the annual rate of return under the Lease will be 16.49%; and (c) the Trailer will represent less than 20% of the Plan's assets.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

St. Paul Radiology Profit Sharing Plan (the Plan) Located in St. Paul, MN

[Application No. D-6491]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed purchase from Dr. Clifford G. Leach (Dr. Leach) by the segregated account (the Account) in the Plan of Dr. Leach of 6000 shares of common stock (the Stock) of Medical Imaging Centers of America, Inc. (MICA) for $18,500, provided that the price is no more than the fair market value of the Stock as of the date of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with approximately 61 participants and assets of $6,567,620. Keith W. Johnson, M.D. and Sheldon W. Damberg, M.D. are the Plan's trustees. The Plan permits participants to direct the investments of their accounts and Dr. Leach has elected to direct his Account's investments. The Account has assets of $281,852.

2. Dr. Leach received a warrant from MICA as compensation entitling him to purchase 6000 shares of the common stock of MICA for $1.67 per shares. Dr. Leach exercised the warrant in December, 1985, and now desires to sell the Stock to his Account.

3. MICA is a medical imaging services corporation. MICA is not affiliated with the Employer. Its common stock is publicly traded and the 3.9 million outstanding shares currently trade for approximately $7.25. The Stock, unlike the shares referred to in the previous sentence, may not be resold for a period of two years from December, 1985, under § 144 of the Securities Act of 1933. After December, 1987, there will be no restrictions on the sale of the Stock.

4. The Account currently owns 7500 shares of MICA stock, and Dr. Leach believes that it is a good investment for the Account. The Account has over $200,000 in cash or cash equivalents, so that this investment will not cause liquidity problems.

5. Robert L. Constant, of Donaldson, Lufkin & Jenrette, an independent stock brokerage firm, has appraised the fair market value of the Stock at $3.25 per share as or May 13, 1986, due to the two year restriction on disposition of the Stock. This price is equal to the price of MICA stock sold under the most recent private placement of such stock, which is also subject to the two year restriction.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The Stock will be purchased for its fair market value as determined by an independent, qualified party; (b) the purchase of the Stock will represent less than 10% of the Account's assets; and (c) Dr. Leach is the only Plan participant to be affected by the transaction and he desires that it be consummated.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Sunnyvale Medical Clinic, Inc., Employee Profit Sharing and Retirement Plan (the Plan) Located in Sunnyvale, CA

[Application No. D-6510]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed cash purchase of certain improved real property (the Property) by the Plan from Sunnyvale Medical Building Company, a party in interest with respect to the Plan and (2) the proposed lease (the Lease) of the Property by the Plan to Sunnyvale Medical Clinic, Inc. (the Employer), provided that the terms and conditions of the transactions are at least as favorable to the Plan as those between unrelated parties would be.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 232 participants and assets of $14,550,000 as of December 31, 1985. The Plan's trustee (the Trustee) is Barclay's Bank of California, which is represented to be unrelated to the Employer and to have no other relationships with the Employer or any of its officers and directors.

2. The applicant is seeking an exemption to permit the Plan to acquire the Property and lease it to the Employer. The Property consists of a 15,000 square foot medical office building, a 1,400 square foot medical administration building and adjoining parking lots in Sunnyvale, CA. The Property serves as the Employer's place of business. The Property was appraised as of July 17, 1985, by Floyd D. Clevenger, MAI, SRPA and Lawrence E. Willis, ASA, SRPA, independent real estate appraisers in Santa Clara, CA. As of that date, the Property's fair market value was $3,400,000. This amount represents approximately 23.4% of the Plan's assets.

3. The Lease will be for ten years with two options to extend the Lease for five years each. The rent will be triple net and will be adjusted annually based on appraisals of the fair market rental value made by an independent real estate appraiser appointed by the Trustee who has at least five years full-time commercial real estate experience in the area. Messrs. Clevenger and Wills appraised the fair market rental value, as of July 17, 1985, as $28,216 per month.

4. The Trustee has examined the proposed transaction within the context of the Plan's investment portfolio and funding policy. The Trustee also reviewed the appraisal of the Property. The Trustee concluded that:

a. The overall value of the investment wills represent less than 25% of the total value of the Plan and thus will significantly contribute to the

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diversification of the investments of the Plan in line with the state funding policy.

b. The Employer is a large, well established medical clinic, servicing a growing and diversified community. The staff and the scope of its services are expanding in line with its stated objectives. Its financial resources are significant and considered to be more than adequate to met its current and furture obligations.

c. The projected return to the Plan is above average and will provide a significant and well secured level of income for the foreseeable future, especially when compared to the returns currently available from alternative investments.

d. In addition to the rent, the Employer will be responsible for all expenses, such as insurance coverage, real estate taxes, repairs and maintenance of the Property.

e. An analysis of the various studies covering participant turnover and projected distribution amounts which have been made by the staff of the Employer with the assistance of the outside professional administrator of the Plan, indicates that this investment will not impair the ability of the Plan to meet its current and anticipated liquidity requirements.

f. In addition, the multiple uses for the Property, the Trustees' ability to terminate the Lease and void all future obligations related to the transaction as well as the alternative authority to sell, assign, or transfer the Plan's interest in the Property, and the "triple net" features of the Lease provide significant and appropriate safeguards of the interests of the participants.

g. An annual review of the Lease terms will be undertaken by the Trustee to insure that the rental values and other terms are at or better than the then current fair market values.

5. The applicant represents that the Trustee must approve any modifications or other actions made with respect to the Lease, including the exercise of the options to extend the Lease by the Employer.

6. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) The Plan will pay no more than the fair market value for the Property; (b) the Employer will pay at least the Property's fair market rental value under the Lease; (c) the rental will be adjusted annually based on appraisals be qualified independent appraisers; and (d) the Trustee has reviewed the proposed transactions and has concluded that they are in the interests and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Brookwood Orthopedic Associates, P.C. Money Purchase Pension Plan (the Money Purchase Plan) and Brookwood Orthopedic Associates, P.C. Profit Sharing Plan (the Profit Sharing Plan; together, the Plans) Located in Brimingham, Alabama

[Application Nos. D-6666 & D-6667

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c) (2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b) (1) and (b) (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) a proposed loan by the Plans (the Loan) to Jones and Brackin Real Estate (the Partnership), and partnership which is a party in interest with respect to the Plans; and (2) the personal guarantees of the Loan by Burce Brackin, M.D. (Dr. Brackin) and Dewey H. Jones, M.D. (Dr. Jones), parties in interest with respect to the Plans; provided that all terms of the Loan are at least as favorable to the Plans as the Plans could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Money Purchase Plan is a defined contribution pension plan with 49 participants and total assets of $1,037,316.74 as of March 14, 1986. The Profit Sharing Plan is a defined contribution plan with 62 participants and assets of $689,789.18 as of March 14, 1986. The Plans are sponsored by Brookwood Orthopedic Associates, P.C. (the Employer), an Alabama professional corporation engaged in the parctice of orthopedic medicine in Birmingham, Alabama. The trustee of both Plans is the South Trust Bank of Alabama, N.A. (the Trustee), which represents itself to have substantial fiduciary experience under the Act. The Trustee also represents itself to be independent of the Employer, with total deposits and loans of the Employer constituting less than one percent of the Trustee's total loans and deposits. Drs. Jones and Brackin are officers, shareholders, directors, and employees of the Employer and participants in each of the Plans. Drs. Jones and Brackin have formed the Partnership as an Alabama general partnership for the purpose of owning a portion (the Condominium) of an office building located on a parcel of land (the Property) located on Second Street Northeast in Alabaster, Alabama. Drs. Jones and Brackin are requesting an exemption to permit the Plans to make the Loan to the Partnership to replace the short-term financing which was necessary for the Condominium's construction. The exemption is also requested to permit Drs. Jones and Brackin to personally guarantee the Loan.

2. Drs. Jones and Brackin are the sole partners in the Partnership, in which Dr. Jones owns a one-third interest and Dr. Brackin owns a to-thirds interest. The sole purpose of the Partnership is the construction and ownership of the Condominium on the Property. The Property is owned jointly by the Partnership, which has a sixty percent interest, and Ginger Alred, M.D. (Dr. Alred), and unrelated party who owns a forty percent interest. The Partnership and Dr. Alred have constructed an office building (the Building) on the Property which is owned sixty percent by the Partnership and forty percent by Dr. Alred. The Employer occupies the Condominium, leasing it from the Partnership under a lease (the Lease) which requires fair market rentals. The construction cost of the Building was $400,000, sixty percent of which, or $240,000, is attributable to the Condominum. Drs. Jones and Brackin seek the Loan to partially retire the short-term financing with which the Partnership funded the Condominium's construction. As of July 5, 1986, the Condominium had a fair market value of $372,000 according to Tom Cory, a certified real estate appraiser with the Blair Realty Company in Birmingham, Alabama.

3. The Loan is proposed as an individually directed investment by Drs. Jones and Brackin of their individual, segregated accounts in the Plans. The Loan is proposed in the amount of $200,000, but in no event will the funds for the Loan exceed twenty-five percent of the balance of any account at the time the Loan is made. Dr. Jones' accounts in the Plans will contribute forty percent of the funds for the Loan, or $80,000, and Dr. Brackin's accounts will contribute sixty percent, or $120,000. As of October 31, 1985, Dr. Brackin's account in the Money Purchase Plan had a balance of $292,221.43 and his account in the Profit Sharing Plan had a balance of $201,629.43. As of October 31, 1985, Dr. Jones' account in the Money Purchase Plan had a balance of $273,269.16 and his account in the Profit Sharing Plan had a balance of $222,733.52. It is proposed that each of Dr. Jones' accounts in the Plans contribute $40,000 toward the Loan, that Dr. Brackin's Money Purchase Plan account contribute $70,000 and that Dr. Brackin's Profit Sharing Plan account contribute $50,000. The Loan will be for a term of ten years with an interest rate per annum equal to the Trustee's prime rate plus two percent, adjusted annually. The Loan will be repayable in equal monthly installments of principal and interest amortized over ten years. The Loan will be secured by a first mortgage on the Condominium in favor of the Plans. The Loan will also be secured by the personal guarantees of Drs. Jones and Brackin. Dr. Jones represents that he had a net worth of $1,356,000 as of December 31, 1985, and Dr. Brackin represents that he had a net worth of $1,525,500 as of October 31, 1985. The Loan will be further secured by the Partnership's assignment to the Plan of the Partership's right to receive all rentals paid by the Employer under the Lease. Drs. Jones and Brackin represent that the terms of the proposed Loan are at least equivalent to those of an arm's-length transaction between unrelated parties. John J. Burke, Private Banking Officer with the Trustee, represents that the Trustee would make a loan for the same amount under the same terms and at the same interest rate as now proposed for the Loan transaction.

4. The Trustee will monitor the Partnership's compliance with the Loan terms and enforce the terms of the Loan on behalf of the Plans, including making demand for timely payment, bringing suit or other appropriate action in the event of default and keeping appropriate records with respect to the Loan. The Trustee will ensure, on a continuing basis, that the value of the Loan collateral, the Condominium, remains at least 150 percent of the outstanding balance of the Loan at all times during the term of the Loan. In the event the appraised value of the Condominium falls below that level, the Trustee will require additional acceptable collateral to be posted by the Partnership so that the value of collateral securing the Loan remains at least 150 percent of the Loan's outstanding balance. George Caraway, Vice President and Trust Officer of the Trustee (Caraway), represents that he has examined and considered the proposed Loan and the entire investment portfolio of each accounts of Drs. Jones and Brackin and has determined that the Loan will be in the best interests of the Plans. Caraway represents that the proposed Loan will not impair the Plans' liquidity needs and that the proposed interest rate of the loan is equivalent to the rate which the Partnership would be charged by a commercial lender in an arm's-length transaction.

5. In summary, the applicant represents that the criteria for section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The interest of the Plans for all purposes related to the Loan are represented by an independent fiduciary, the Trustee, which has determined that the Loan will be in the Plans' best interests and which will monitor and enforce the Employer's compliance with the Loan's terms; (2) The Loan is to be a directed investment of the segregated individual account of Drs. Jones and Brackin in the Plans, constituting less than twenty-five percent of the balance of each such account; (3) The Loan will be secured by a first mortgage on the Condominium and by the Partnership's assignment of its rights to receive rentals from the Employer; (4) The Loan will be further secured by the personal guarantees of Drs. Jones and Brackin, each of whom represents a net worth in excess of $1 million; (5) The Trustee will ensure that the value of collateral property securing the Loan remains at least one hundred fifty percent of the principal balance of the Loan at all times and will require additional collateral property in the event the Condominium's value should fall below that level; and (6) A private banking officer of the Trustee has determined that the Trustee would make a loan for the same amount under the same terms and at the same interest rate as proposed by Drs. Jones and Brackin.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

John D. Latendresse Money Purchase Pension Plan (the Plan) Located in Washington, DC

[Application No. D-6761]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale (the Sale) of a certain parcel of real property (the Property) by the Plan to John D. Latendresse, M.D. (Latendresse), a party in interest with respect to the Plan, provided that the consideration paid for the Property is not less than the greater of either $125,000 or the fair market value of the Property on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with total assets of $255,343 as of June 30, 1986. Latendresse is the only participant and fiduciary of the Plan as well as the sole owner of the sponsor of the Plan, John D. Latendresse, M.D., Professional Corporation (the Employer).[1] Latendresse has operated a practice of psychiatry for over thirty years in Washington, DC. In 1972, he incorporated his practice and had the Employer establish the Plan and a profit sharing plan to provide for his retirement benefits. Both these qualified plans received favorable letters of determination from the Internal Revenue Service and were subsequently amended and restated in accordance with applicable regulations under the Act to remain fully qualified.

2. On December 19, 1980, the Plan purchased the Property, an unimproved parcel of real property, located in Bethany Dunes, Bethany Beach, Sussex County, Delaware and shown on Sussex County Tax Map 1-34-9 as parcel #371. The Plan paid the purchase price of $40,000 for the Property with cash and a note and mortgage at 12 percent interest per annum for a term of five years. The note has been fully paid and the mortgage released. The current fair market value of the Property was determined as of December 6, 1985, to be $125,000 by C.E. Rupert Smith III of Hickman Real, Estate Bethany Beach, Delaware.

3. Latendresse proposes to purchase the Property from the Plan for a cash amount that will be the greater of either the sum of $125,000 or the fair market value of the Property on the date of the sale. It is represented by the applicant that the Sale will liquidate a substantial asset of the Plan and reduce the overall investment risk; permit a substantial profit to be realized from the asset when values have peaked; and invest the cash realized for the Sale in revenue producing assets.

[1] Since Latendresse is the sole owner of the sponsor of the Plan and the only participant, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

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4. In summary, the applicant represents that the proposed transaction satisfies the criteria for an exemption under section 4975 of the Code because (a) the Sale will be a one-time transaction for cash with no expenses incurred by the Plan; (b) the Plan will sell the Property at its fair market value as determined by an independent qualified appraiser; (c) the Plan will be able to avoid any future expenses or losses that could be incurred by owning the Property; and (d) the Plan will be able to invest the proceeds from the Sale in income producing assets.

Notice to Interested Person: Because Latendresse is the sole participant of the Plan and is the only shareholder of the Employer, it has been determined by the Department that there is no need to distribute the notice of pendency to interested persons. Comments and rquests for hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

West End Studios, Inc., Aspen Graphics, Inc. Profit Sharing Plan (the Plan) Located in Los Angeles, California

[Application No. D-6476]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale by the Plan for cash of certain real property (the Real Property) to Aspen Graphics, Inc., the Plan sponsor (the Plan Sponsor), and to the assumption by the Plan Sponsor of all obligations under an existing trust deed on the Real Property, provided that the price received for the Real Property is not less than the greater of its fair market value on the date of sale or the price originally paid by the Plan.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with ten participants as of October 1, 1985 and total assets of $471,920, as of June 27, 1986. The Plan sponsor is Aspen Graphics, Inc., a commercial printing firm doing business in Los Angeles, California. The Plan's trustees are Thomas Lippert and Judith Libbert, who together are 100% shareholders of the Plan Sponsor.

2. On June 15, 1981, the Plan purchased the Real Property, a resort condominium unit located in Mammoth Lakes, California, for $315,000 from Tennis Village Condominium, an unrelated third party, with $116,295 in cash and a mortgage for the remainder in favor of Security Pacific National Bank, an unrelated third party.[1] Because of the popularity of the Mammoth Lakes area as a vacation and ski resort, the trustees of the Plan expected to derive substantial rental income from the Real Property.

3. However, in June, 1982, the United States Geological Survey (USGS) announced that a volcanic hazard existed in the area. Although the USGS announced in August, 1984, that the swarms of earthquakes which had caused the alarm had subsided, the real estate market has declined significantly and the rental income generated by the Real Property has been far below the Plan's original expections. In fact, the Real Property generated only $18,519 in rent from unrelated persons, during the period 1982-1985. The applicant represents that there has been no use of the Real Property by parties in interest as defined in section 3(14) of the Act.

4. The Real Property was appraised on January 15, 1986, by H.L. Bryan, Jr., owner of High Sierra Properties, an independent real estate appraisal and construction enterprise in Mammoth Lakes, California. The appraisal concluded that the fair market value of the Real Property, as of January 15, 1986, was $196,000. The applicant represents that he has been advised by area real estate brokers that it will take seven to ten years for the Real Property to recover its 1981 value.

5. The Plan Sponsor proposes to purchase the Real Property from the Plan for the greater of its fair market value as of the date of sale or the price originally paid by the Plan, and to reimburse the Plan for all expenses over and above the original purchase price paid by the Plan, in connection with the acquisition and holding of the Real Property, including, but not limited to, taxes, common grounds fees, and maintenance expenses. As of the end of 1985, the common grounds fees alone totalled $12,722. The Plan Sponsor will assume all obligations under the existing trust deed, which had a principal balance of $198,195 as of the June 27, 1986, and will pay the Plan the remainder in cash. The Plan will incur no costs with respect to the proposed transaction. The applicant represents that the sale by the Plan to the Plan Sponsor at a price above the current fair market value of the Real Property will not result in a contribution to the Plan exceeding the limitations set forth in section 415(c) of the Code.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The proposed sale of the Real Property will be a one-time transaction for cash; (b) the Plan will be relieved of all obligations under the existing trust deed; (c) the Plan will be able to invest the proceeds from the sale in income producing assets; (d) the Plan will be protected from the decrease in the value of its assets due to the decline in value of the Real Property; (e) the Plan will be reimbursed by the Plan Sponsor for all expenses it has incurred in connection with the acquisition and holding of the Real Property; and (f) no expenses will be incurred by the Plan with respect to the proposed sale.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan's either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Defined Benefit Plan of Linc Handley, Inc. (the Plan) Located in Soledad, California

[Application No. D-6592]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase by the Plan of several promissory notes (the Notes) secured by first deeds of trust from Linc Handley, Inc. (the Employer), the Plan sponsor, provided the purchase prices for the Notes are no more than the fair market value of the Notes on the date of sale.[2]

Summary of Facts and Representations

1. The Plan is a defined benefit plan with two participants, the Handleys. As of May 14, 1986, the assets of the Plan were $514,565. Mr. Handley is the Plan trustee and the sole shareholder of the Employer.

2. The applicant represents that the Notes represents four loans made from the Employer to three unrelated parties in connection with the sales of real property. The Notes are secured by first deeds of trust on the properties involved. The Notes are paid in monthly installments and have been paid in a timely manner.

3. Two of the Notes were executed by Frederick H. Heblon and Rebecca E. Wallo (the Heblon Notes) in an aggregate amount of $80,000 at 14½% annual interest in June 20, 1982. The Heblon Notes are due in June, 1987, with a provision allowing an extension of the Heblon Notes for an additional five years. The interest rate for the extended period will be the higher of two percentage points below the prime rate or 10%. The outstanding balance on the Heblon Notes was $79,443 as of March 5, 1986. The Heblon Notes are secured by a first deed of trust for a house in Capitola, California. This property has been appraised by Patti Higgason, a realtor with Stevens Creek Realty, Inc. of Scotts Valley, California, which the applicant represents is independent of the Handleys and the Plan sponsor. As of April 2, 1986, the appraised value of the house was $139,000, approximately 175% of the outstanding loan balance.

4. The third Note was executed by John Paul and L. Wanda Sue Strickland (the Strickland Note) on June 18, 1982 for $50,000 at 12% annual interest. The Strickland Note is due on February 15, 1993. The outstanding balance on the Strickland Note was $28,008 as of March 11, 1986. The Strickland Note is secured by a first deed of trust on a house in Greenfield, California. This property was appraised by Velton Tidwell of the Henry Doyle Agency, a realtoral in Greenfield, California, which the applicant represents is independent of the Handleys and the Plan sponsor. As of April 8, 1986, the appraised value of this house was $77,000, approximately 275% of the outstanding loan balance.

5. The fourth note was executed by Patricia J. Case (the Case Note), on May 13, 1982, for $60,000 at 12% annual interest. Interest only payments of $600 per month are being made until the Case Note is due and payable in full on May 14, 1992. The Case Note is secured by a first deed of trust on a house in Capitola, California. This house was appraised by Patti Higgason of Stevens Creek Realty as having a value of $121,000 as of May 23, 1986, which represents approximately 200% of the loan amount.

6. Charles B. Hawley, an independent real estate and mortgage investment consultant located in Monterey, California, appraised the Notes as of July 21, 1986. Mr. Hawley represents that the Heblon Notes have a fair market value of $50,751.42, the large discount due to time and uncertainties of the extension periods. The Strickland Note ws appraised at $23,150.84 and the Case Note at $50,935.10. The total purchase price to be paid by the Plan for the Notes would therefore be $124,837.36, representing approximately 24.2% of the Plan's assets. The total payment on the Notes is $24,981.48 annually.

7. The applicant represents that the Notes will represent secure, high-yielding investments for the Plan. The payments on the Notes have been timely and the Notes are all adequately secured should the obligors default and the Plan foreclose on the collateral.

8. The applicant represents that there are no other participants or beneficiaries of the Plan, and that if other employees do become eligible to participate in the Plan in the future, a separate but identical plan will be established for them.

9. In summary, the applicant represents that the proposed transaction satisifes the statutory criteria because: (a) The Notes represents secure, high-yielding investments; (b) the Notes are adequately secured; (c) the Notes represent less than 25% of the Plan's assets; and (d) Mr. Handley, the Plan's trustee, has determined that the transaction is in the Plan's interests and desires that it be consummated.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan ; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representatives contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of October 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-23054 Filed 10-9-86; 8:45 am]

BILLING CODE 4510-29-M

[1] In this proposed exemption, the Department expresses no opinion as to whether the acquisition by the Plan of the Real Property violated any provisions of Part 4 of Title I of the Act.

[2] Because Lincoln Handley (Mr. Handley), the sole shareholder of the Employer, and Kathleen Handley, his wife, are the sole Plan participants, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Commission Meeting

October 3, 1986.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby

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given of a public meeting of the National Commission for Employment Policy at the Crystal City Sheraton Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

Dates: Thursday, October 30, 1986—8:00 a.m. to 5:00 p.m.; Friday, October 31, 1986—8:00 a.m. to 5:00 p.m.

Status: The meeting will be open to the public.

Matters to be discussed: Commission members will discuss the reseach priorities and outreach activities of the Commission for the next program year, and an orientation session will be held for newly appointed Commissioners.

FOR FURTHER INFORMATION CONTACT: Mr. Robert V. Mahaffey, National Commission for Employment Policy, 1522 K Street NW., Suite 300, Washington, DC 20005, 202/724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress on national employment issues. Business meetings are open to the public. Handicapped individuals wishing to attend should contact Kathy McMichael of the Commission staff so that appropriate accommodations can be made.

Copies of the Minutes of the meeting and materials prepared for it will be available for public inspection at the Commission's offices, 1522 K Street NW., Suite 300, Washington, DC 20005.

Signed this 3rd Day of October 1986.

Scott W. Gordon,

Director.

[FR Doc. 86–23040 Filed 10–9–86; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held Tuesday, November 18, 1986. The meeting will be held at the MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, Virginia. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

a. Opening remarks.
b. Administrative remarks.
c. Briefings on industry and government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692–6274 or write the Manager, National Communications System, Washington, DC 20305–2010.

Charles F. Noll,

Captain, U.S. Navy, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 86–23016 Filed 10–9–86; 8:45 am]

BILLING CODE 3610–05–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Council on the Humanities; Meeting

October 6, 1986.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on November 6–7, 1986.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on November 6, 1986, will not be open to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on November 6, 1986, will be as follows:

Committee Meetings

(Open to the Public)

8:30 a.m.–9:30 a.m.
Coffee for Council Members—Room 526

9:30 a.m.–10:30 a.m.
Committee Meetings—Policy Discussion
Education Programs—Room M–14
Fellowship Programs—Room 315
General Programs—Room 415
Research Programs—Room 316–2
State Programs—Room M–07 East

10:30 a.m. until adjournment
(Closed to the Public for the reasons stated above)—Consideration of specific applications

(Open to the Public)

Policy Discussion

3:00 p.m.–3:30 p.m.
Challenge Grants—Room 430
Preservation Grants—Room M–07 West

3:30 p.m. until adjournment
(Closed to the Public for the reasons stated above)—Consideration of specific applications

The morning session on November 7, 1986, will convene at 9:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public.

The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending meeting will be served from 8:30 a.m.–9:00 a.m.)

Minutes of the Previous Meeting—Reports
A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Final Fiscal Year Reports: Applications; Matching; and Obligations
E. Fiscal Year 1987 Appropriations
F. NEH Policy Regarding Eligibility of Institutions and Individuals with Outstanding Financial Obligations
G. Committee Reports on Policy and General Matters
1. Education Programs
2. Fellowship Programs
3. Preservations Grants
4. Research Programs
5. General Programs
6. State Programs
7. Challenge Grants
8. Jefferson Lecture
H. Emergency Grants and Actions Departing from Council Recommendation—Approvals

The remainder of the proposed meeting will be given to the consideration of specific applications

(closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86–22982 Filed 10–9–86; 8:45 am]

BILLING CODE 7536–01–M

Humanities Panel Meeting; Change

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Change in meeting notice.

This amends the notice of Humanities Panel meetings to be held on October 27–28, 1986 and October 30–31, 1986 at the National Endowment for the Humanities, Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506, which was published in the **Federal Register** on September 29, 1986 on page 34511. The description of the program for each panel meeting is amended to read as follows:

Program

This meeting will review applications submitted for Humanities Projects in Libraries and Public Humanities Projects, Division of General Programs, for projects beginning after April 1, 1987.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86–22983 Filed 10–9–86; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Waste Management; Notice of Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on October 30 and 31, 1986, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, October 30, 1986—8:30 a.m. until the conclusion of business
Friday, October 31, 1986—8:30 a.m. until the conclusion of business.

The Subcommittee will review: (1) The NRC Staff's review of DOE's Final Environmental Assessments for the five nominated geologic repository sites, (2) the BWIP (Hanford) site, including issues that have been raised pertaining to that site, (3) assessing compliance with the EPA Standard, (4) Rulemaking conforming Part 60 to the EPA Standard, (5) Seismo-Tectonic Generic Technical Position (GTP), (6) overview of LLW program, FY 87 Budget for Staff and Technical Assistance programs, and status of long-range planning, (7) status of the States' implementation of the Low-Level Radioactive Waste Policy Amendments Act of 1985 [LLRWPPA], (8) status of alternatives to shallow land burial, (9) safety assessment of alternatives to shallow land burial, and (10) status of the NRC waste package corrosion program.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff members, Mr. Owen S. Merrill (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 6, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–23659 Filed 10–9–86; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, CE 402–4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 1 to Regulatory Guide 3.50 and is entitled "Guidance on Preparing a License Application to Store Spent Fuel and High-Level Radioactive Waste." The guide is being developed to present a format acceptable to the NRC staff for submitting the information required by 10 CFR Part 72 in an application for a license to store spent fuel or high-level radioactive waste.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both the draft guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by December 1, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently

being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 6th day of October 1986.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 86-23057 Filed 10-9-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318]

Baltimore Gas & Electric Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 123 and 105 to Facility Operating Licenses Nos. DPR-53 and DPR-69, issued to the Baltimore Gas and Electric Company (the licensee), which revised the Technical Specifications for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (the facility), located in Calvert County, Maryland. The amendments were effective as of the date of their issuance.

The amendments change the Technical Specification (TS) 3/4.8.1 as follows: (1) TS 3.8.1.1.b limiting condition for operation is modified to reflect that an individual day fuel tank and separate fuel transfer pump is required for each diesel generator and that the two diesel generators share a common fuel storage system consisting of two independent storage tanks and, (2) TS 3.8.1.1 will incorporate a new Action Statement "f" that will permit continued operation of up to 72 hours with one Diesel Fuel Oil Storage Tank inoperable and requires an alternate 8000 gallon fuel supply onsite during this period. Action Statement "f" is not applicable to an inoperable #21 Diesel Fuel Oil Storage Tank from April 1 through September 30 nor is it applicable for two inoperable Diesel Fuel Oil Storage Tanks. Action Statement "e" is applicable for these conditions.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on May 20, 1986 (51 FR 18519). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action significantly beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated April 1973.

For further details with respect to the action see (1) the application for amendments dated April 14, 1986 as supplemented July 24, 1986, (2) Amendment Nos. 123 and 105 to Facility Operating License Nos. DPR-53 and DPR-69, (3) the Commission's related Safety Evaluation dated and (4) the Environmental Assessment dated September 8, 1986. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Calvert County Library, Prince Frederick, Maryland. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 6th day of October, 1986.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Directorate #8 Division of PWR Licensing-B.

[FR Doc. 86-23058 Filed 10-9-86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1013]

Advisory Committee on Oceans and International Environmental and Scientific Affairs; Closed Meeting

The Department of State's Advisory Committee on Oceans and International Environmental and Scientific Affairs will meet at 8:15 a.m. on Thursday, October 30, 1986 in Room 1408 of the Department of State, 22d and C Streets NW., Washington, DC in a session which will not be open to the public. As this session will include discussion of classified material and issues which are the subjects of ongoing meetings and negotiations with respect to nuclear energy and nuclear safety, it will be closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in current and future negotiations. The meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on the meeting should be directed to Thomas J. Wajda of OES/STS, Room 4329, Department of State. He may be reached by telephone on (202) 647-2764.

Dated: October 3, 1986.

John D. Negroponte,

Assistant Secretary.

[FR Doc. 86-23014 Filed 10-9-86; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicles, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes November 13, 1986.

ADDRESS: Comments to: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9668-N	Pesco, Inc., Mills, WY	49 CFR 173.110(c)(1), 173.93(b), (c)	To ship charged well casing jet perforating guns with detonators and arrest device attached. (Modes 1, 3.)
9670-N	Hercules Incorporated, Wilmington, DE	49 CFR 173.65(j)	To allow drums containing nitroguanidine, Class A explosives, to be marked "HIGH EXPLOSIVES—DANGEROUS" on their side instead of both ends. (Mode 1.)
9671-N	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.302	To ship non-liquefied ethylene, classed as flammable gas, in DOT Specification 4BA240 cylinders. (Mode 1.)
9672-N	Stauffer Chemical Company, Westport, CT	49 CFR 173.337-11(c)	To authorize shipment of metal alkyl solutions, n.o.s., classed as a flammable liquid, in DOT Specification MC-331 cargo tanks which will be constructed without the required remote self-closing valves. (Mode 1.)
9673-N	Mauser Packaging, Ltd., New York, NY	49 CFR Part 173	To manufacture, mark and sell fiber drums not to exceed 250 liter capacity, comparable to DOT Specification 21C, except for the top head which is constructed of 0.48 mm gauge steel, for shipment of those commodities authorized in DOT 21C fiber drums. (Modes 1, 2, 3.)
9674-N	General Battery Corporation, Reading, PA	49 CFR 173.154	To authorize shipment of lead peroxide, classed as an oxidizer, in the capacity of formed positive plates for storage batteries, contained in specially designed packaging. (Mode 1.)
9675-N	Surpass Chemical Company, Inc., Albany, NY	49 CFR 172.301(a)	To authorize shipment of approximately 100,000, five gallon capacity DOT Specification 34 drums containing hypochlorite solution, classed as a corrosive material which are inadvertently marked NA 1791 rather than the required UN 1791. (Mode 1.)
9676-N	EM Science, Cincinnati, OH	49 CFR 173.119(b)(4), 176.205	To authorize shipment of certain flammable liquids contained in four inner glass bottles or PVC coated glass bottles of 1 gallon capacity each, overpacked in a fiberboard carton comparable to DOT Specification 12B65 except for handholes. (Mode 1.)
9677-N	Allied Universal Corporation, Miami, FL	49 CFR 173.263	To authorize shipment of hydrochloric acid, classed as corrosive material, in one gallon capacity polyethylene containers overpacked not to exceed 60 gallon per one specially designed heavy-wall polyethylene cart. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 6, 1986.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86-22980 Filed 10-9-86; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become Party to an Exemption

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing a public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes October 30, 1986.

ADDRESS: Comments to: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No. and applicant	Renewal of exemption
1479-X—Allied Chemical, Morristown, NJ (See Footnote 1)	1479
3167-X—Siler Optical of Florida, Inc., St. Petersburg, FL	3167
4575-X—Union Carbide Corporation, Danbury, CT	4575
4575-X—Rocan, Inc., Wichita, KS	4575
4621-X—Nitrochem Energy Corporation, Blaisbik, MN	4621
5348-X—Static Control Systems Division/3M, New Brighton, NM	5348
6267-X—Silo-Lab, Incorporated, Conyers, GA	6267
6286-X—Flaths Chemical Company, Fremont, NE	6286
6349-X—Union Carbide Corporation, Danbury, CT	6349
6434-X—Rhone-Poulenc Inc., Monmouth Junction, NJ	6434
6472-X—Morton Thiokol, Inc., Ogden, UT	6472
6484-X—Dow Chemical Co., Midland, MI	6484
6484-X—ANGUS Chemical Company, Northbrook, IL	6484
6874-X—Milsea and Co., (U.S.A.), Inc., New York, NY	6874
6922-X—Halocarbon Products Corporation, Hackeneack, NJ	6922
7466-X—Firmenich Incorporated, Princeton, NJ	7466
7517-X—Trinity Industries, Inc., Dallas, TX	7517
7574-X—Remmers Aviation, Inc., Burlington, IA	7574
7846-X—Union Carbide Corporation, Danbury, CT	7846
7873-X—Bromine Compounds, Limited, Beer Sheva, Israel	7873
8051-X—Mauser Packaging, Ltd., New York, NY (See Footnote 2)	8051
8063-X—Taylor-Wharton Division of Harsco Corporation, Indianapolis, IN	8063
8094-X—Milport Chemical Company, Milwaukee, WI	8094
8119-X—GJ-Titan Services, Houston, TX	8119
8451-X—U.S. Department of Energy, Washington, DC	8451
8451-X—Unidynamics/Phoenix, Inc., Phoenix, AZ	8451
8472-X—Olmart Corporation, Cincinnati, OH	8472

Application No. and applicant	Renewal of exemption
8477-X—Mobay Chemical Corporation, Pittsburgh, PA	8477
8480-X—The Gillette Company, Boston, MA	8480
8526-X—National Starch and Chemical Corporation, Bridgewater, NJ	8526
8554-X—Metallo Powder Company, Hibbing, MN	8554
8554-X—Austin Powder Company, Cleveland, OH	8554
8554-X—Atlas Powder Company, Dallas, TX	8554
8560-X—Priority Air, Incorporated, Sanford, FL	8560
8748-X—Battelle, Pacific Northwest Laboratories, Richland, WA	8748
8831-X—Teledyne Energy Systems, Timonium, MD	8831
8862-X—ABERCO Inc., Seabrook, MD	8862
8927-X—HTL Industries, Inc., Duarte, CA	8927
8939-X—Hollco Clark Truck Fabrication, Inc., Odessa, TX	8939
8942-X—Poly Processing Company, Inc., Monroe, LA	8942
8952-X—Trojan Corporation, Salt Lake City, UT	8952
9181-X—Honeywell, Inc., Horsham, PA (See Footnote 3)	9181
9197-X—Greif Bros. Corp., Springfield, NJ	9197
9236-X—Stauffer Chemical Company, Westport, CT (See Footnote 4)	9289
9298-X—Eli Lilly Company, Indianapolis, IN	9298
9316-X—Fluoroware, Inc., Chaska, MN	9316
9323-X—U.S. Department of Defense, Falls Church, VA	9323
9326-X—Carbonaire, Inc., Palmerton, PA	9326
9331-X—Olin Chemicals, Stamford, CT	9331
9340-X—Pioneer Plastics & Services Co., Ltd., Brampton, Ont., Canada	9340
9513-X—American Cyanamid Company, Wayne, NJ (See Footnote 5)	9513

[1] To revise and update exemption to include additional driver qualifications requirements; change placard I.D.

[2] To modify exemption to permit a thinner sidewall in a limited and specific location of polyethylene drums.

[3] To authorize an additional lithium battery device similar to the one presently approved.

[4] To renew and to authorize metal or polyethylene portable tanks with a volumetric capacity from 110 gallons to 250 gallons.

[5] To authorize an increase in the active ingredient of an organic phosphate compound, from 5% to 15%, shipped in a non-DOT specification pneumatic bulk trailer.

Application No. and applicant	Parties to exemption
6267-P—Chem-Tab Chemical Corporation, Carson, CA	6267
8530-P—Scott Environmental Technology, Inc., Plumsteadville, PA	8530
7052-P—Lear Siegler, Inc., Grand Rapids, MI	7052
7007-P—Smith & Dennison, Hayward, CA	7007
7654-P—Tennessee Eastman Company, Kingsport, TN	7654
8453-P—Austin Powder Company, Cleveland, OH	8453
8453-P—El Dorado Chemical Company, St. Louis, MO	8453
8480-P—Braun, Inc., Lynnfield, MA	8480
8554-P—Piedmont Explosives, Inc., Statesville, NC	8554
9066-P—Volvo North America Corporation, Rockleigh, NJ	9066
9130-P—Calgon Corporation, St. Louis, MO	9130
9157-P—Montana Sulphur & Chemical Company, Billings, MT	9157
9271-P—CSX Transportation, Inc., Jacksonville, FL	9271
9275-P—Liz Claiborne Cosmetics, North Bergen, NJ	9275
9366-P—Gulf Central Storage & Terminal Company, Tulsa, OK	9366
9485-P—Kaw Valley Inc., Leavenworth, KS	9485
9610-P—Remington Arms Company, Inc., Bridgeport, CT	9610
9632-P—Eurosarer, Paris, France	9632

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 6, 1986.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86-22961 Filed 10-9-86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

[Number 106-09]

Electronic Funds and Securities Transfer Policy—Message Authentication and Enhanced Security; Order

Dated: October 2, 1986.

By virtue of the authority vested in me as Secretary of the Treasury, the following policy is hereby mandated in order to prevent the undetected, deliberate, or inadvertent unauthorized manipulation, modification, or loss of Electronic Funds Transfer (EFT) data.

1. It is Treasury policy that EFT transactions be properly authenticated. Authentication measures must conform to American National Standards Institute (ANSI) Standard X9.9, "American National Standard for Financial Institution Message Authentication" or equivalent authentication technique. This standard established a universally applicable method to authenticate financial messages, including fund transfers, letters of credit, security transfers, loan agreements, and foreign exchange contracts which are transmitted by electronic means.

2. This policy shall be applied to Federal systems which originate, transmit, relay, receive, or process Federal Government EFT transactions.

3. The Fiscal Assistant Secretary is delegated the authority to execute the provisions of this order within the Department of the Treasury and throughout the Federal Government. This authorization may be redelegated.

4. The Assistant Secretary of the Treasury (Management) is responsible for providing technical support, to include: Evaluation of proposed security techniques; maintenance of a list of approved authentication and other security devices; providing key materials for fielded systems; and providing consulting services within the Department as required.

James A. Baker III,

Secretary of the Treasury.

[FR Doc. 86-23061 Filed 10-9-86; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Removal of Prohibition on Importation of Tuna and Tuna Products From Costa Rica

AGENCY: Customs Service, Treasury.

ACTION: Notice of removal of prohibition.

SUMMARY: This notice is to advise that under the Fishery Conservation and Management Act of 1976 (the "Act"), the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs has notified the Secretary of the Treasury that the reasons for the imposition of a prohibition on the importation of tuna and tuna products from Costa Rica no longer prevail. Accordingly, the prohibition against the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Costa Rica is removed.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Commercial Compliance Division (202-566-5307).

SUPPLEMENTARY INFORMATION:

Background

Section 205(a)(4)(C) of the Fishery Conservation and Management Act of 1976(16 U.S.C. 1801, *et seq.*), provides that the Secretary of State shall certify to the Secretary of the Treasury any determination that a fishing vessel of the U.S., while fishing in water beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the U.S., has been seized by a foreign nation as a consequence of a claim of jurisdiction not recognized by the U.S. The responsibility for this certification was delegated to the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs by Department of State Delegation of Authority No. 136 of April 29, 1977.

Pursuant to section 205(b) of the Act, upon receiving the certification, the Secretary of the Treasury is required to take such action as may be necessary and appropriate to prohibit the importation of all fish and fish products from the fishery involved.

Section 205(c) of the Act provides that if the Secretary of State finds that the reasons for the import prohibition no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove the import prohibition.

On April 24, 1986, a notice was published in the **Federal Register** (51 FR 15571), advising that under section 205(a)(4)(C) of the Act, on March 10, 1986, the Secretary of State certified to the Secretary of the Treasury that a U.S. fishing vessel, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the U.S., was seized by Costa Rica as a consequence of a claim of jurisdiction which is not recognized by the U.S. Under the authority of section 205 (b) and (c) of the Act, the Secretary of the Treasury determined that the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Costa Rica was prohibited until the Department of State notified the Secretary of the Treasury that the reasons for this prohibition no longer prevailed.

On August 29, 1986, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs informed the Secretary of the Treasury that the reasons for the imposition of the import prohibition on tuna and tuna products from Costa Rica no longer prevail. Accordingly, the prohibition against the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Costa Rica is removed.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

Dated: September 26, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-23049 Filed 10-9-86; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

[Delegation Order No. 77 (Rev. 20)]

Delegation of Authority; Tax Examiners

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This delegation order is revised to provide that there is delegated to each Tax Examiner, grade GS-6 and above, in the Service Center Collection Branch, the authority to sign and send to the taxpayer by registered or certified mail any notice of deficiency granted by section 6212 of the Internal Revenue Code of 1954. The text of the delegation order appears below.

EFFECTIVE DATE: September 22, 1986.

FOR FURTHER INFORMATION CONTACT: Sam Pagnotta, OP:C:O, 1111 Constitution Avenue NW., Room 7539, Washington, DC 20224, Telephone Number: (202) 566-4993.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

S.C. Pagnotta,

Associate Director, Office of Field Operations.

Order No. 77 (Rev. 20)

Effective date: 9/22/86.

Authority To Issue Notices of Deficiency

1. The authority granted to the Commissioner of Internal Revenue and District Directors, by 26 CFR 301.7701-9, 26 U.S.C. 6212, 26 CFR 301.6212-1, Treasury Department Order 150-37, and 26 CFR 301.6861-1 to sign and send to the taxpayer by registered or certified mail any notice of deficiency is hereby delegated to the following officials:

a. Chief Counsel;
b. Regional Counsel;
c. Regional Directors of Appeals;
d. Chiefs and Associate Chiefs of Appeals Offices;
e. Appeals Team Chiefs as to their respective cases;
f. Service Center Directors;
g. Assistant Commissioner (International);
h. Reviewers (grade GS-12 and higher) in Employee Plans and Exempt Organizations Divisions;
i. Revenue Agents, and Tax Auditors (Reviewers) (grade GS-6 and higher), in the Examination Divisions and the Office of Compliance, Assistant Commissioner (International);
j. Revenue Agents (grade GS-11 and higher) in streamlined districts Examination Sections and/or groups;
k. Chiefs of Correspondence and Processing Sections;
l. Examination Tax Examiners/Revenue Agents (grade GS-6 and higher) in Service Center Compliance Divisions;
m. Tax Examiners (grade GS-5 and higher) in Service Center Processing and Tax Accounts Divisions;
n. Tax Examiners (Reviewers) (Grade GS-6 and higher), Quality Assurance and Management Support Division, Service Centers; and
o. Tax Examiners (grade GS-6 and higher), in Service Center Collection Branch.

2. Delegation Order No. 77 (Rev. 19), effective May 12, 1986, is superseded.

Dated: September 22, 1986.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 86-23025 Filed 10-9-86; 8:45 am]

BILLING CODE 4830-01-M

Performance Review Board

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective October 20, 1986.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, PM:HR:H:E, Room 3515, 1111 Constitution Avenue NW., Washington, DC 20224, Telephone No. (202) 566-4633 (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for Assistant Commissioners, Regional Commissioners, and senior executives in the Office of the Commissioner are as follows:

Philip E. Coates, Associate Commissioner (Operations)
M. Eddie Heironimus, Associate Commissioner (Data Processing)
Jean Owens, Deputy Chief Counsel
John M. Rankin, Jr., Assistant Commissioner (Inspection)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 86-23026 Filed 10-9-86; 8:45 am]

BILLING CODE 4830-01-M

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VOL 51 ISS 197 OCT 10 1986 UMI

Sunshine Act Meetings

Federal Register
Vol. 51, No. 197
Friday, October 10, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:57 a.m. on Tuesday, October 7, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 8, 1986.

Federal Deposit Insurance Corporation.

Margret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-23128 Filed 10-8-86; 2:54 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, October 7, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Far West Bank, Provo, Utah, an insured State nonmember bank, for consent to merge, under its charter and title, with United Thrift and Loan Company, Orem, Utah, a nonisured industrial loan company, and for consent to establish the sole office of United Thrift and Loan Company as a branch of the resultant bank.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: October 7, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-23129 Filed 10-8-86; 2:55 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, October 7, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the liquidation of an asset acquired by the Corporation from The First National Bank of Midland, Midland, Texas (Case No. 46,711-L).

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(B), and (c)(10)).

Dated: October 7, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-23130 Filed 10-8-86; 2:56 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:23 p.m. on Friday, October 3, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the purchase of certain assets of and the assumption of the liability to pay deposits made in Columbia Community Bank, Hermiston, Oregon, an insured bank scheduled for closing later in the day by the Oregon State banking department, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 7, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-23094 Filed 10-8-86; 12:19 pm]

BILLING CODE 6714-01-M

5

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10:00 a.m., Wednesday, October 15, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 7, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-23087 Filed 10-8-86; 8:50 am]

BILLING CODE 6210-01-M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 13, 1986:

A closed meeting will be held on Wednesday, October 15, 1986, at 2:30 p.m. An open meeting will be held Thursday, October 16, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, October 15, 1986, at 2:30 p.m., will be:

Withdraw institution of administrative proceeding of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive action.
Regulatory matter regarding self regulatory organization.

The subject matter of the open meeting scheduled for Thursday, October 16, 1986, at 10:0 a.m., will be:

1. Consideration of whether to propose for comment: (a) New Rule 430A under the Securities Act of 1933 and a related amendment to Item 512 of Regulation S-K, which, if promulgated, will eliminate the filing of many pricing amendments by permitting registration statements to be declared effective without disclosing the price, certain price-related information and information concerning the underwriting syndicate; (b) amendments to Rules 424(b) and 497 to require more immediate filing of the prospectus where the procedure outlined in proposed Rule 430A has been employed; and (c) other amendments to Rule 424 which would be applicable to other prospectuses and would eliminate unnecessary filings, provide for the classification of prospectuses according to the nature of the information being modified or added, and reduce the filing period for prospectuses used after the effective date. For further information regarding Rule 430A, and amendments to Item 512 and Rule 424, please contact Mauri L. Osheroff, at (202) 272-2573 or Abigail Arms at (202) 272-2589. For information regarding the application of these proposals to investment companies and the amendments to Rule 497, please contact Thomas S. Harmen at (202) 272-2107.

2. Consideration of whether to issue a release adopting amendments to Securities Exchange Act Rule 15c3-1 that would expand the types of instruments that could be used to create a hedged position in highly rated corporate debt securities. The amendment would also lower the deductions from net worth in arriving at net capital for hedged corporate debt securities positions and would redefine the criteria for determining whether the maturities of two offsetting positions are close enough to consider the combined corporate debt securities positionas hedged for purposes of Rule 15c3-1. For further information, please contact Michael P. Jamroz at (303) 272-2396.

3. Consideration of whether to approve rule proposals submitted by the American Stock Exchange, Inc. and the New York Stock Exchange, Inc. Both proposals would ease restricitons imposed on an approved person affiliated with a specialist if an adequate "Chinese Wall" were established between the approved person and the specialist. For further information, please contact Sharon Lawson at (202) 272-2910 or Ellen K. Dry at (202) 272-2843.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any , matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272-2002.

Jonathan G. Katz.

Secretary

October 7, 1986.

[FR Doc. 86-23095 Filed 10-8-86; 12:19 pm]

BILLING CODE 8010-01-M

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federal register

Friday
October 10, 1986

Part II

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416

Federal Old-Age, Survivors, and Disability Insurance Benefits and Supplemental Security Income for the Aged, Blind and Disabled; Payments for Vocational Rehabilitation Services; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Federal Old-Age, Survivors, and Disability Insurance Benefits and Supplemental Security Income for the Aged, Blind, and Disabled; Payments for Vocational Rehabilitation Services

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed rules implement section 11 of Pub. L. 98-460 (the Social Security Disability Benefits Reform Act of 1984). This legislation adds two new provisions under which the Social Security Administration (SSA) will pay vocational rehabilitation (VR) agencies (includes both State VR agencies and alternate participants) for the costs of VR services provided to disabled persons receiving benefits under title II of the Social Security Act (the Act) and disabled or blind persons receiving Supplemental Security Income (SSI) benefits under title XVI of the Act. Current regulations permit payment for VR services where the person completes a continuous 9-month period of substantial gainful activity (SGA).

Under the first new provision, SSA will pay VR agencies for the costs of VR services provided to individuals continuing to receive payment under section 225(b) or section 1631(a)(6) of the Act because they are participating in a VR program after their disability has ceased. The second new provision allows payment to VR agencies for the costs of VR services provided to certain beneficiaries or recipients who refuse without good cause to continue or to cooperate in a VR program in such a way as to preclude their successful rehabilitation.

DATE: Comments must be received on or before December 9, 1986.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301-594-7460.

SUPPLEMENTARY INFORMATION: Under the present regulations (§§ 404.2101 through 404.2127 and §§ 416.2201 through 416.2227) implementing sections 222(d) and 1615(d) of the Act, as amended by Pub. L. 97-35, effective October 1, 1981, SSA will only pay VR agencies for the costs of rehabilitating disabled or blind beneficiaries or recipients who subsequently complete a continuous period of SGA of 9 months duration. The requirement must be met in every case and no other provision is made for making payment for VR services if this requirement is not met. If met, payment may be made for VR services provided after September 30, 1981, during any month for which an individual was entitled (including the waiting period) to title II disability benefits or receiving title XVI disability or blindness payments. However, no payment for VR services will be made for any month after the month in which the continuous 9-month period of SGA is completed. Also, if certain other criteria are not met (e.g., there would be no savings to the trust funds or general fund, costs of a VR service are payable from some other source, or the VR services provided did not contribute to the completion of the continuous 9-month period of SGA), payment for all or some of the VR costs cannot be made.

We are proposing to add the two provisions created by section 11 of Pub. L. 98-460 to the existing provision for payment for VR services. Under the first new provision, SSA will pay VR agencies for the costs of VR services provided to individuals continuing to receive payment under section 225(b) or section 1631(a)(6) of the Act because they are participating in a VR program after the physical or mental impairment on which entitlement is based has ceased. We call this the VR medical cessation provision. The second new provision allows payment to VR agencies for the costs of VR services provided to certain beneficiaries or recipients who refuse without good cause to continue or to cooperate in a VR program in such a way as to preclude their successful rehabilitation. We call this the VR refusal provision.

Under the new provisions, a VR agency may be reimbursed for services furnished to individuals in the cases described above which were rendered after September 30, 1981. However, for a VR agency to receive payment for such services, the disabled individual must be receiving payment under section 225(b) or section 1631(a)(6) of the Act, or the disabled or blind individual must be refusing VR services (including failing to cooperate), in or after November 1984, the effective date of the VR amendments described in section 11 of Pub. L. 98-460. To receive payment under the new provisions, it will not be necessary that a continuous 9-month period of SGA be completed before payment can be made. However, in the event a continuous 9-month period of SGA is completed in a case where the person is receiving payments despite a medical cessation of disability because of participation in an approved VR plan, no payment can be made for VR services provided after the continuous 9-month period of SGA ends or after the month entitlement ceases, whichever is earlier.

Identification of Potential Claims

The VR agency may not be able to readily identify those cases in which the individual's benefits have been continued under section 225(b) or 1631(a)(6) of the Act, or in which the individual's benefits have been suspended due to VR refusal (i.e., cases where we determine that the refusal to continue or failure to cooperate in the VR program is without good cause). Therefore, in an effort to limit the number of erroneous claims which might be filed by VR agencies under these new provisions, we decided that we would use our records to identify cases which might meet the requirements for VR payment under the new provisions. The VR agency would then be requested to file a claim for payment for each case identified as a potential allowance.

This decision was made after preliminary contacts with selected VR agencies revealed that estimated VR refusals processed by VR agencies annually, for example, numbered in the thousands, whereas actual suspensions for VR refusal after applying the good cause provision for refusal as required by this legislation, numbered less than 100 annually. Therefore, it was apparent that it would be much easier for all concerned if we identified the suspension actions resulting from VR refusal and requested claims in these cases rather than have the VR agencies file, and us process, a large number of inappropriate claims. Using the same approach for claims in cases involving the continuation of benefits under section 225(b) or 1631(a)(6) of the Act would have similar advantages.

We will identify cases involving a potential allowance under the new provisions in two ways. First, we will screen our existing records to identify previous title II and title XVI cases in which benefits were suspended for VR refusal, or in which benefits were continued under section 225(b) or 1631(a)(6) of the Act, for a month after October 1984. Second, as a regular day-to-day operating procedure we will identify, on an ongoing basis, current cases in which we suspend benefits for VR refusal or continue benefits under section 225(b) or 1631(a)(6) of the Act. When a case is so identified, we will send a written notice to the VR agency to file a claim for payment for VR services in that case. In addition, however, the VR agency may file claims for any cases which the VR agency believes were overlooked in the identification process.

Deadlines for Filing Claims Under the New Provisions

For accounting purposes and to expedite payments to VR agencies, the existing regulations (20 CFR 404.2106(a) and 416.2206(a)) require that a claim for payment for VR services must be filed within 12 months after the individual's completion of a continuous 9-month period of SGA. Because the completion of a continuous 9-month period of SGA is not required for payment under the new provisions, different starting dates for time periods for filing claims under the two new provisions had to be established: (1) for cases in which we send a written notice to the VR agency requesting that a VR claim be filed with us; and (2) for cases in which we do not send the VR agency a notice requesting that a claim be filed, but the VR agency files a claim because its records show a claim is warranted. In addition, because we will generally be sending a written notice to the VR agency advising the agency of a potential claim, we believe that a shorter time period for filing the claim in such cases is appropriate. Therefore, the proposed regulations provide that in cases where we send a written notice to the VR agency requesting that a claim be filed under the new provisions the VR agency will have a 90-day time period within which to file the claim. This 90-day period should allow the VR agencies ample time to compile complete cost data necessary to file their claim and at the same time allow us to pay the claim and close our records for accounting purposes within a reasonable time. In cases where we do not send the VR agency a written notice advising the agency of a potential claim, we recognize that the VR agency should have a longer time period (i.e., 12 months) within which to file a claim under either of the two new provisions.

Under the proposed regulations, §§ 404.2116 and 416.2216, if we send a State VR agency or alternate participant a written notice requesting that a claim be filed under the new provisions, the VR agency must file the claim—

1. Under the VR refusal provision, within 90 days after the date the VR agency receives our written notice; or

2. Under the VR medical cessation provision, within 90 days following the month in which VR services end or, if later, within 90 days after receipt of our written notice.

In cases where we do not send the VR agency a written notice requesting that a claim be filed, but the VR agency, on the basis of its own records, chooses to file a claim under the new provisions, the VR agency must file the claim—

1. Under the VR refusal provision, within 12 months after the month for which payment is suspended because of VR refusal; or

2. Under the VR medical cessation provision, within 12 months after the month in which VR services end.

A VR agency will also be allowed to file a claim within 12 months after the publication date of the final implementing regulations if this date is later than the filing deadlines described above in cases where a written notice to file a claim was not sent to the VR agency.

Appeals by VR Agencies of Denials

We also propose that if a VR claim is denied because the individual involved is not receiving payment under section 225(b) or section 1631(a)(6) of the Act or is not in a nonpay status for VR refusal that this finding cannot be appealed by a VR agency. This is similar to the provision in §§ 404.2127(c) and 416.2227(c) applicable to appeals by VR agencies, of decisions made on title II and title XVI cases which affect a beneficiary's or recipient's right to payment (i.e., medical cessations). The reason for this provision is that these decisions only apply to a beneficiary's or recipient's right to disability or blindness payments and, as such, can only be appealed by a beneficiary or recipient. However, in the event that a VR agency submits evidence that shows that our decision may be incorrect, that evidence will be considered in reviewing our determination if it is appealed by the claimant or reopened by us.

Limitations on Payment

We have added proposed §§ 404.2117(f) and 416.2217(f) to emphasize that payment cannot be made more than once for the same VR service or cost. We did this primarily because a VR agency that is paid under one of the new provisions may file a later claim based upon the completion of a continuous 9-month period of SGA. If this happens, it is possible that the same period or a portion thereof, could apply to both claims. For example, if an individual was placed in a nonpay status because of his or her refusal to continue in a VR program effective for the month of December 1984, a VR agency could be paid for services provided this individual during the period from October 1, 1981 through November 30, 1984 (the month before the month that payment was withheld due to VR refusal) under proposed §§ 404.2113 and/or 416.2213. If the individual later resumed participation in a VR program, disability payments would then be reinstated. It is now possible, because of the VR services provided, that this individual could complete a continuous 9-month period of SGA and that the VR agency would again be eligible for payment for the VR services provided this individual. If this happened, the VR agency could request payment for its services during the period from October 1, 1981 through the month that the continuous 9-month period of SGA ended. However, because the VR agency was paid for its services, based on the VR refusal provision, for the period October 1, 1981 through November 30, 1984, payment for services provided during this period should not be included in computing the payment due the VR agency based upon the completion of a continuous 9-month period of SGA.

Payment in VR Refusal Situations

Finally, in dealing with the VR refusal provision, the proposed regulations (§§ 404.2113 and 416.2213) state that payment to a VR agency will only be made for services provided to those individuals who, without good cause, refuse to continue to participate in a VR program, or refuse to cooperate in such a manner as to preclude their successful rehabilitation. In order for VR services to be reimbursable under this provision, the individual (1) must be receiving title II or title XVI disability or blindness payments at the time he or she refuses to continue or fails to cooperate in the VR program, and (2) must have had his or her payments suspended or terminated due to such refusal or failure to cooperate. The proposed regulations make clear that the individual must have at least filed an application for VR services before payment to a VR agency can be considered under this provision. Payment to a VR agency cannot be made when the only action taken by the

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VR agency was, for example, to request contact with the individual regarding the provision of VR services and the individual failed to respond. This provision does not change the existing law which requires that a social security disability beneficiary's or disabled or blind SSI recipient's payments be suspended for his or her refusal, without good cause, to accept VR services available. Therefore, there could be situations where an individual is not receiving payments from us because of VR refusal in which the VR agency cannot be paid under the VR payment provision.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These proposed regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they presently apply only to States and their VR agencies. There are presently no alternate participants. We would not expect a substantial number of alternate participants, if any, in the foreseeable future. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income (SSI).

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance; 13.807 Supplemental Security Income)

Dated: October 3, 1986.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: October 6, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The title and authority citation for Subpart V are revised to read as follows:

Subpart V—Payments for Vocational Rehabilitation Services

Authority: Secs. 205, 222, and 1102 of the Social Security Act, as amended; 49 Stat. 624, 68 Stat. 1082, 49 Stat. 647; 42 U.S.C. 405, 422, and 1302; Sec. 2209 of Pub. L. 97-35; 95 Stat. 840; Sec. 11 of Pub. L. 98-460; 98 Stat. 1805.

2. Section 404.2101 is revised to read as follows:

§ 404.2101 General.

Section 222(d) of the Social Security Act authorizes the transfer from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund of such sums as may be necessary to pay for the reasonable and necessary costs of vocational rehabilitation (VR) services provided certain disabled individuals entitled under sections 223, 225(b) 202(d), 202(e) or 202(f) of the Social Security Act. The purpose of this provision is to make VR services more readily available to disabled individuals, help State VR agencies and alternate participants to recover some of their costs in VR refusal situations as described in § 404.2113, and ensure that savings accrue to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund. Payment will be made for VR services provided on behalf of such an individual in cases where—

(a) The furnishing of the VR services results in the individual's completion of a continuous 9-month period of substantial gainful activity (SGA) as specified in §§ 404.2110 through 404.2111;

(b) The individual continues to receive disability payments from us, even though his or her disability has ceased, because of his or her continued participation in an approved VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls (see § 404.2112); or

(c) The individual refuses, without good cause, to continue or to cooperate in a VR program in such a manner as to preclude his or her successful rehabilitation (see § 404.2113).

3. In § 404.2102, introductory text is revised, paragraphs (e), (f), (g), (h), (i), (j), (k), and (l) are redesignated as (f), (h), (i), (j), (k), (l), (m), and (n), respectively, paragraphs (f), (h), (i), and (j) as redesignated are revised, and new paragraphs (e) and (g) are added to read as follows:

§ 404.2102 Purpose and scope.

This subpart describes the rules under which the Secretary will pay the State VR agencies or alternate participants for VR services. Payment will be provided for VR services provided on behalf of disabled individuals under one or more of the three provisions discussed in § 404.2101.

* * * * *

(e) Sections 404.2112 and 404.2113 describe when payment will be made to a VR agency or alternate participant because an individual's disability benefits are continued based on his or her participation in a VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls; and when payment will be made to a VR agency or alternate participant when an individual refuses, without good cause, to continue to participate in a VR program or fails to cooperate in such a manner as to preclude his or her successful rehabilitation.

(f) Sections 404.2114 through 404.2115 describe services for which payment will be made.

(g) Section 404.2116 describes the filing deadlines for claims for payment for VR services.

(h) Section 404.2117 describes the payment conditions.

(i) Section 404.2118 describes the applicability of these regulations to alternate participants.

(j) Section 404.2119 describes how we will make payment to State VR agencies or alternate participants for successful rehabilitation services.

* * * * *

4. Within § 404.2103, the definition of "Disability beneficiary" is revised and a definition of "Good cause" is added thereafter to read as follows:

§ 404.2103 Definitions.

* * * * *

"Disability beneficiary" means a disabled individual who is entitled to benefits under section 223, 202(d), 202(e) or 202(f) of the Act or is continuing to receive payment under section 225(b) of the Act after his or her disabling physical or mental impairments have ceased.

"Good cause" for VR refusal (as described in § 404.2113) is defined in § 404.422(e) of this part.

* * * * *

5. In § 404.2108, paragraphs (a), (b) and (d) are revised, paragraph (e) is removed, and paragraphs (f) and (g) are redesignated as (e) and (f), respectively, and paragraph (f), as redesignated, is revised to read as follows:

§ 404.2108 Requirements for payment.

(a) The State VR agency or alternate participant must file a claim for payment in each individual case within the time periods specified in § 404.2116;

(b) The VR services for which payment is being requested must have been provided during the period specified in § 404.2115;

* * * * *

(d) The individual must meet one of the VR payment provisions specified in § 404.2101;

* * * * *

(f) The amount to be paid must be reasonable and necessary and be in compliance with the cost guidelines specified in § 404.2117.

6. Section 404.2109 is revised to read as follows:

§ 404.2109 Responsibility for making payment decisions.

The Commissioner will decide—

(a) Whether a continuous period of 9 months of SGA has been completed;

(b) Whether a disability beneficiary whose disability has ceased should continue to receive benefits under §§ 404.316(c), 404.337(c), or 404.352(c) for a month after October 1984, based on his or her continued participation in a VR program;

(c) Whether suspension of a disability beneficiary's benefits for a month after October 1984, was due to the beneficiary's refusal, without good cause, to continue to accept VR services or to cooperate in such a manner as to preclude his or her successful rehabilitation;

(d) If and when medical recovery has occurred;

(e) Whether documentation of VR services and expenditures is adequate;

(f) If payment is to be based on completion of a continuous 9-month period of SGA, whether the VR services contributed to the continuous period of SGA; and

(g) What VR costs were reasonable and necessary and will be paid.

§ 404.2110 [Amended]

7. In § 404.2110, paragraph (c) is amended by changing "§ 404.2113 of" to "§ 404.2115 for".

8. Section 404.2111 introductory text is revised to read as follows:

§ 404.2111 Criteria for determining when VR services will be considered to have contributed to a continuous period of 9 months.

The State VR agency or alternate participant may be reimbursed for VR services if such services contribute to the individual's performance of a continuous 9-month period of SGA. The following criteria apply to individuals who received more than just evaluation services. If a State VR agency or alternate participant claims payment for services to an individual who received only evaluation services, it must establish that the individual's continuous period or medical recovery (if medical recovery occurred before completion of a continuous period) would not have occurred without the services provided. In applying the criteria below, we will consider all services initiated, coordinated or provided, including services before October 1, 1981.

* * * * *

9. Section 404.2112 is redesignated as § 404.2114, § 404.2113 is redesignated as § 404.2115, § 404.2116 is redesignated as § 404.2117, § 404.2117 is redesignated as § 404.2118, and § 404.2118 is redesignated as § 404.2119.

10. A new § 404.2112 is added to read as follows:

§ 404.2112 Payment for VR services in a case where an individual continues to receive disability payments based on participation in an approved VR program.

Sections 404.1586(f), 404.316(c), 404.337(c), and 404.352(c) explain the criteria we will use in determining if an individual whose disability has ceased should continue to receive disability benefits from us because of his or her continued participation in a VR program. A VR agency or alternate participant can be paid for the cost of VR services provided to an individual if the individual was receiving benefits in a month or months, after October 1984, based on §§ 404.316(c), 404.337(c), or 404.352(c). If this requirement is met, a VR agency or alternate participant can be paid for the costs of VR services provided within the period specified in § 404.2115, subject to the other payment and administrative provisions of this subpart.

11. A new § 404.2113 is added to read as follows:

§ 404.2113 Payment for VR services in a case where an individual refuses to continue or fails to cooperate in a VR program.

Payment can be made to a VR agency or alternate participant for the costs of VR services provided to an individual who, after filing an application with a VR agency for rehabilitation services, without good cause, refuses to continue to accept VR services or fails to cooperate in such a manner as to preclude the individual's successful rehabilitation. A VR agency or alternate participant may be paid, subject to the provisions of this subpart, for the costs of services provided an individual if the individual's monthly disability payment has been suspended for a month or months after October 1984, because of VR refusal. VR refusal means refusal to continue to accept VR services or failure to cooperate in such a manner as to preclude the individual's successful rehabilitation.

12. Section 404.2115, as redesignated, is revised to read as follows:

§ 404.2115 When services must have been provided.

(a) In order for the VR agency or alternate participant to be paid, the services must have been provided—

(1) After September 30, 1981;

(2) No earlier than the beginning of the waiting period or the first month of entitlement, if no waiting period is required; and

(3) Before completion of a continuous 9-month period of SGA or termination (suspension of benefits in cases described in § 404.2113) of payments to the individual, whichever occurs first.

(b) Where disability or blindness payments are made simultaneously to an individual based on the provisions of both this part and part 416, the determination as to when services must have been provided may be made under this section or § 416.2215, whichever is advantageous to the State VR agency or alternate participant that is participating in both VR programs.

13. A new § 404.2116 is added to read as follows:

§ 404.2116 When claims for payment for VR services must be made (Filing deadlines).

The State VR agency or alternate participant must file a claim for payment in each individual case within the following time periods:

(a) A claim for payment for VR services based on the individual's completion of a continuous 9-month period of SGA must be filed within 12 months after the month in which the

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continuous 9-month period of SGA is completed.

(b) A claim for payment for VR services provided to an individual whose disability benefits were continued after disability has ceased because of that individual's continued participation in a VR program must be filed as follows:

(1) If a written notice requesting that a claim be filed was sent to the State VR agency or alternate participant, a claim must be filed within 90 days following the month in which VR services end, or if later, within 90 days after receipt of the notice.

(2) If no written notice was sent to the State VR agency or alternate participant, a claim must be filed within 12 months after the month in which VR services end or, if later, within 12 months after the month of publication of § 404.2116.

(c) A claim for payment based on an individual's refusal, without good cause, to continue or cooperate in a VR program must be filed—

(1) Within 90 days after the VR agency or alternate participant receives our written request to file a claim for payment; or

(2) If no written notice was sent to the State VR agency or alternate participant, a claim must be filed within 12 months after the month for which disability benefit payments are suspended because of VR refusal, or if later, within 12 months after the month of publication of § 404.2116.

14. In § 404.2117, as redesignated, the introductory text is revised, paragraphs (d) and (e) are revised, paragraph (f) is redesignated as paragraph (g) and a new paragraph (f) is added to read as follows:

§ 404.2117 What costs will be paid.

In accordance with section 222(d) of the Social Security Act, the Secretary will pay the State VR agency or alternate participant for all VR services performed during the period described in § 404.2115, but subject to the following limitations:

* * * * *

(d) The total payment in each case, including any prior payments related to earlier continuous 9-month periods of SGA made under this subpart, must not be so high as to preclude a "net saving" to the Trust Funds (a "net saving" is the difference between the estimated saving to the Trust Funds, if disability benefits eventually terminate, and the total amount we pay to the State VR agency or alternate participant);

(e) Any payment to the State VR agency for either direct or indirect VR expenses must be consistent with the cost principles described in OMB Circular No. A–87, published at 46 FR 9548 on January 28, 1981 (see § 404.2118(a) for cost principles applicable to alternate participants);

(f) Payment for VR services or costs may be made under more than one of the VR payment provisions described in §§ 404.2111 through 404.2113 of this subpart and similar provisions in §§ 416.2211 through 416.2213 of Subpart V of Part 416. However, payment will not be made more than once for the same VR service or cost. For example, payment to a VR agency based upon the completion of a continuous 9-month period of SGA which was made after an earlier payment based upon VR refusal, would only include payment for those VR costs incurred or services provided after the individual resumed VR services after refusal; and

* * * * *

15. Section 404.2119, as redesignated, is revised to read as follows:

§ 404.2119 Method of payment.

Payment to the State VR agencies or alternate participants pursuant to this subpart will be made either by advancement of funds or by payment for services provided (with necessary adjustments for any overpayments and underpayments), as decided by the Commissioner.

§ 404.2120 [Amended]

16. In § 404.2120, paragraph (c) is amended by changing the reference from § 404.2117(b) to § 404.2118(b).

17. In § 404.2127, paragraph (a) is amended by changing the reference from § 404.2117(b) to § 404.2118(b), and paragraph (c) is revised to read as follows:

§ 404.2127 Resolution of disputes.

* * * * *

(c) *Disputes on determinations made by the Secretary which affect a disability beneficiary's rights to benefits.* Determinations made by the Secretary which affect an individual's right to benefits (e.g., determinations that disability benefits should be terminated, denied, suspended, continued or begun at a different date than alleged) cannot be appealed by a State VR agency or alternate participant. Because these determinations are an integral part of the disability benefits claims process, they can only be appealed by the beneficiary or applicant whose rights are affected or by his or her authorized representative. However, if an appeal of an unfavorable determination is made by the individual and is successful, the new determination would also apply for purposes of this subpart. While a VR agency or alternate participant cannot appeal a determination made by the Secretary which affects a beneficiary's or applicant's rights the VR agency can furnish any evidence it may have which would support a revision of a determination.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The title and authority citation for Subpart V are revised to read as follows:

Subpart V—Payments for Vocational Rehabilitation Services

Authority: Secs. 1102, 1615, and 1631(d) of the Social Security Act, as amended; 49 Stat. 647, 86 Stat. 1474; 42 U.S.C. 1302, 1382d and 1383(d); Sec. 2344 of Pub. L. 97–35; 95 Stat. 887; Sec. 11 of Pub. L. 98–460; 98 Stat. 1805.

2. Section 416.2201 is revised to read as follows:

§ 416.2201 General.

Section 1615(d) of the Social Security Act authorizes payment from the general fund for the reasonable and necessary costs of vocational rehabilitation (VR) services provided certain disabled or blind individuals eligible under section 1614(a)(2), 1614(a)(3), 1619(a), or who continue to receive payment under 1631(a)(6) of the Social Security Act. The purpose of this provision is to make VR services more readily available to disabled or blind individuals, help State VR agencies and alternate participants to recover some of their costs in VR refusal situations, as described in § 16.2213, and ensure that savings accrue to the general fund. Payment will be made for VR services provided on behalf of such an individual, in cases where—

(a) The furnishing of the VR services results in the individual's completion of a continuous 9-month period of substantial gainful activity (SGA) as specified in §§ 416.2210 through 416.2211;

(b) The individual continues to receive disability payments from us, even though his or her disability has ceased, because of his or her continued participation in an approved VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls (see § 416.2212); or

(c) The individual refuses, without good cause, to continue or to cooperate in a VR program in such a manner as to preclude his or her successful rehabilitation (see § 416.2213).

3. In § 416.2202, the introductory text is revised, paragraphs (e), (f), (g), (h), (i), (j), (k), and (l) are redesignated as (f), (h), (i), (j), (k), (l), ((m), and (n), respectively, paragraphs (f), (h), (i), and (j) as redesignated are revised, and new paragraphs (e) and (g) are added to read as follows:

§ 416.2202 Purpose and scope.

This subpart describes the rules under which the Secretary will pay the State VR agencies or alternate participants for VR services. Payment will be provided for VR services provided on behalf of disabled or blind individuals under one or more of the three provisions discussed in § 416.2201.

* * * * *

(e) Sections 416.2212 and 416.2213 describe when payment will be made to a VR agency or alternate participant because an individual's disability benefits are continued based on his or her participation in a VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls; and when payment will be made to a VR agency or alternate participant when an individual refuses, without good cause, to continue to participate in a VR program or fails to cooperate in such a manner as to preclude his or her successful rehabilitation.

(f) Sections 416.2214 through 416.2215 describe services for which payment will be made.

(g) Section 416.2216 describes the filing deadlines for claims for payment for VR services.

(h) Section 416.2217 describes the payment conditions.

(i) Section 416.2218 describes the applicability of these regulations to alternate participants.

(j) Section 416.2219 describes how we will make payment to State VR agencies or alternate participants for successful rehabilitation services.

* * * * *

4. Within § 416.2203, the definition of "Eligible" is revised and a definition of "Good cause" is added immediately thereafter to read as follows:

§ 416.2203 Definitions.

* * * * *

"Eligible" means meets all the requirements for supplemental security income benefits under sections 1614(a)(2), 1614(a)(3), or 1619(a) and is receiving SSI payments or continues to receive benefits under section 1631(a)(6) of the Act.

"Good cause" for VR refusal (as described in § 416.2213) is defined in § 416.1715(b) of this part.

* * * * *

5. In § 416.2208, paragraphs (a), (b), and (d) are revised, paragraph (e) is removed, and paragraphs (f) and (g) are redesignated as (e) and (f), respectively, and paragraph (f), as redesignated, is revised to read as follows:

§ 416.2208 Requirements for payment.

(a) The State VR agency or alternate participant must file a claim for payment in each individual case within the time periods specified in § 416.2216;

(b) The VR services for which payment is being requested must have been provided during the period specified in § 416.2215;

* * * * *

(d) The individual must meet one of the VR payment provisions specified in § 416.2201;

* * * * *

(f) The amount to be paid must be reasonable and necessary and be in compliance with the cost guidelines specified in § 416.2217.

6. Section 416.2209 is revised to read as follows:

§ 416.2209 Responsibility for making payment decisions.

The Commissioner will decide:

(a) Whether a continuous period of 9 months of SGA has been completed;

(b) Whether a disability recipient whose disability has ceased should continue to receive payments under § 416.1338 of this part for a month after October 1984, based on his or her continued participation in a VR program;

(c) Whether suspension of a disability or blindness payment for a month after October 1984, was due to the recipient's refusal, without good cause, to continue to accept VR services or to cooperate in such a manner as to preclude his or her successful rehabilitation;

(d) If and when medical recovery has occurred;

(e) Whether documentation of VR services and expenditures is adequate;

(f) If payment is to be based on completion of a continuous 9-month period of SGA, whether the VR services contributed to the continuous period of SGA; and

(g) What VR costs were reasonable and necessary and will be paid.

§ 416.2210 [Amended]

7. In § 416.2210, paragraph (c) is amended by changing the reference from § 416.2213 to § 416.2215.

8. Section 416.2211 introductory text is revised to read as follows:

§ 416.2211 Criteria for determining when VR services will be considered to have contributed to a continuous period of 9 months.

The State VR agency or alternate participant may be reimbursed for VR services if such services contribute to the individual's performance of a continuous 9-month period of SGA. The following criteria apply to individuals who received more than just evaluation services. If a State VR agency or alternate participant claims payment for services to an individual who received only evaluation services, it must establish that the individual's continuous period or medical recovery (if medical recovery occurred before completion of a continuous period) would not have occurred without the services provided. In applying the criteria below, we will consider all services initiated, coordinated or provided, including services before eligibility and before October 1, 1981.

* * * * *

9. Section 416.2212 is redesignated as § 416.2214, § 416.2213 is redesignated as § 416.2215, § 416.2216 is redesignated as § 416.2217, § 416.2217 is redesignated as § 416.2218, and § 416.2218 is redesignated as § 416.2219.

10. A new § 416.2212 is added to read as follows:

§ 416.2212 Payment for VR services in a case where an individual continues to receive disability payments based on participation in an approved VR program.

Section 416.1338 contains the criteria we will use in determining if an individual whose disability has ceased should continue to receive disability payments from us because of his or her continued participation in a VR program. A VR agency or alternate participant can be paid for the cost of VR services provided to an individual if the individual was receiving payments in a month or months after October 1984, based on this provision. If this requirement is met, a VR agency or alternate participant can be paid for the costs of VR services provided within the period specified in § 416.2215, subject to the other payment and administrative provisions of this subpart.

11. A new § 416.2213 is added to read as follows:

§ 416.2213 Payment for VR services in a case where an individual refuses to continue or fails to cooperate in a VR program.

Payment can be made to a VR agency or alternate participant for the costs of

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VR services provided to an individual who, after filing an application with a VR agency for rehabilitation services, without good cause, refuses to continue to accept VR services or fails to cooperate in such a manner as to preclude the individual's successful rehabilitation. A VR agency or alternate participant may be paid, subject to the provisions of this subpart, for the costs of services provided an individual if the individual's monthly disability or blindness payment has been suspended or terminated for a month or months, after October 1984, because of VR refusal. Vocational rehabilitation refusal means refusal to continue to accept VR services or failure to cooperate in such a manner as to preclude the individual's successful rehabilitation.

12. Section 416.2215, as redesignated, is revised to read as follows:

§ 416.2215 When services must have been provided.

(a) In order for the VR agency or alternate participant to be paid the services must have been provided—

(1) After September 30, 1981;

(2) During months the individual is eligible for SSI disability or blindness payments; and

(3) Before completion of a continuous 9-month period of SGA.

(b) Where disability or blindness payments are made simultaneously to an individual based on the provisions of both this Part and Part 404, the determination as to when services must have been provided may be made under this section or § 404.2115, whichever is advantageous to the State VR agency or alternate participant that is participating in both VR programs.

13. A new § 416.2216 is added to read as follows:

§ 416.2216 When claims for payment for VR services must be made (Filing deadlines).

The State VR agency or alternate participant must file a claim for payment in each individual case within the following time periods:

(a) A claim for payment for VR services based on the completion of a continuous 9-month period of SGA must be filed within 12 months after the month in which the continuous 9-month period of SGA is completed.

(b) A claim for payment for VR services provided to an individual whose disability benefits were continued after disability has ceased because of that individual's continued participation in a VR program must be filed as follows:

(1) If a written notice requested that a claim be filed was sent to the State VR agency or alternate participant, a claim must be filed within 90 days following the month in which VR services end, or if later, within 90 days after receipt of the notice.

(2) If no written notice was sent to the State VR agency or alternate participant, a claim must be filed within 12 months after the month in which VR services end or, if later, within 12 months after the month of publication of § 416.2216.

(c) A claim for payment based on an individual's refusal, without good cause, to continue or cooperate in a VR program must be filed—

(1) Within 90 days after the VR agency or alternate participant receives our written request to file a claim for payment; or

(2) If no written notice was sent to the State VR agency or alternate participant, a claim must be filed within 12 months after the month for which disability benefit payments are suspended because of VR refusal, or if later, within 12 months after the month of publications of § 416.2216.

14. In § 416.2217 as redesignated, the introductory text is revised, paragraphs (d) and (e) are revised, paragraph (f) is redesignated as paragraph (g) and a new paragraph (f) is added to read as follows:

§ 416.2217 What costs will be paid.

In accordance with section 1615(d) of the Social Security Act, the Secretary will pay the State VR agency or alternate participant for all VR services performed during the period described in § 416.2215, but subject to the following limitations:

* * * * *

(d) The total payment in each case, including any prior payments related to earlier continuous 9-month periods of SGA made under this subpart, must not be so high as to preclude a "net saving" to the general fund (a "net saving" is the difference between the estimated savings to the general fund, if payments for disability or blindness remain reduced or eventually terminate, and the total amount we pay to the State VR agency or alternate participant);

(e) Any payment to the State VR agency for either direct or indirect VR expenses must be consistent with the cost principles described in OMB Circular No. A–87, published at 46 FR 9548 on January 28, 1981 (see § 416.2218(a) for cost principles applicable to alternate participants);

(f) Payment for VR services or costs may be made under more than one of the VR payment provisions described in §§ 416.2211 through 416.2213 of this subpart and similar provisions in §§ 404.2111 through 404.2113 of Subpart V of Part 404. However, payment will not be made more than once for the same VR service or cost. For example, payment to a VR agency based upon the completion of a continuous 9-month period of SGA which was made after an earlier payment based upon VR refusal, would only include payment for those VR costs incurred or services provided after the individual resumed VR services after refusal; and

* * * * *

15. Section 416.2219, as redesignated, is revised to read as follows:

§ 416.2219 Method of payment.

Payment to the State VR agencies or alternate participants pursuant to this subpart will be made either by advancement of funds or by payment for services provided (with necessary adjustments for any overpayments and underpayments), as decided by the Commissioner.

§ 416.2220 [Amended]

16. In § 416.2220, paragraph (c) is amended by changing the reference from § 416.2217(b) to § 416.2218(b).

17. In § 416.2227, paragraph (a) is amended by changing the reference from § 416.2217(b) to § 416.2218(b), and paragraph (c) is revised to read as follows:

§ 416.2227 Resolution of disputes.

* * * * *

(c) *Disputes on determinations made by the Secretary which affect a disability beneficiary's rights to benefits.* Determinations made by the Secretary which affect an individual's right to benefits (e.g., determinations that disability benefits should be terminated, denied, suspended, continued or begun at a different date than alleged) cannot be appealed by a State VR agency or alternate participant. Because these determinations are an integral part of the disability benefits claims process, they can only be appealed by the beneficiary or applicant whose rights are affected or by his or her authorized representative. However, if an appeal of an unfavorable determination is made by the individual and is successful, the new determination would also apply for purposes of this subpart. While a VR agency or alternate participant cannot appeal a determination made by the Secretary which affects a beneficiary's or applicant's rights the VR agency can furnish any evidence it may have which would support a revision of a determination.

[FR Doc. 86–22907 Filed 10–9–86; 8:45 am]
BILLING CODE 4150–11–M

federal register

Friday
October 10, 1986

Part III

Department of Health and Human Services

Office of Human Development Services

Alaskan Native Social and Economic Development Projects; Program Announcement 13612–872

VOL
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ISS
197
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement 13612-872]

Alaskan Native Social and Economic Development Projects

AGENCY: Office of Human Development Services, HHS.

ACTION: Program announcement 13612-872.

SUMMARY: The Administration for Native Americans (ANA) announces that applications are being accepted for competitive financial assistance for Alaskan Native social and economic development projects. Regulations governing this program are published in the Code of Federal Regulations at 45 CFR Part 1336.

DATES: The closing dates for receipt of applications are January 16, 1987 and June 5, 1987.

FOR FURTHER INFORMATION CONTACT: Applicants wanting additional information regarding this program announcement should contact: Ted George, (206) 442-0992, or Robert Kreidler, (206) 442-8113, Administration for Native Americans, Office of Human Development Services, DHHS, 2901 3rd Avenue, Seattle, WA 98121.

SUPPLEMENTARY INFORMATION: The purpose of this program announcement is to announce the availability of Fiscal Year 1987 financial assistance to promote self-sufficiency for Alaskan Natives through support of local governance, as well as social and economic development projects. Funds will be awarded under section 803 of the Native American Programs Act of 1974, Pub. L. 93-644, 88 Stat. 2291, 2324 (current version 42 U.S.C. 2991(b)).

Proposed projects will be reviewed on a competitive basis against the evaluation criteria set forth in this announcement.

(The application requirements are approved under OMB Control No. 0980-0016)

Programs Purpose

The purpose of the financial assistance provided by the Administration for Native Americans (ANA) under the Native American Program Act (the Act) is to promote social and economic self-sufficiency for American Indians, Alaskan Natives, and Native Hawaiians.

ANA believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and Alaskan Native villages and in the leadership of Native American groups. The development of self-sufficiency requires strengthening governance, economic progress, and improvement of social systems which protect and enhance the health and well-being of individuals, families and Communities. Achievement of self-sufficiency is based on the community's ability to plan, organize, and direct resources in a comprehensive manner to achieve long-range community goals. ANA bases its program and policy initiatives on the following three program goals:

(1) *Governance:* To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making responsibility over their resources.

(2) Economic development: To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) Social development: To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To accomplish these goals, ANA supports tribal and village governments and other Native American organizations in the development and implementation of community-based, long-term governance and social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining their own goals, setting priorities, and planning and implementing programs aimed at achieving those goals; the unique mix of socio-economic, political, and cultural factors involved in each community makes such self-determination necessary; the local community is in the best position to apply its own cultural, political, and socio-economic values in deciding on long term strategies and programs.

(2) Economic and social development are interrelated, and development in one area should be balanced with development in the other in order to enhance self-sufficiency. Without a careful balance of the two, the community's development efforts may be jeopardized. A basic premise is that expansion of social services, without providing opportunities for employment and economic development, may lead to greater dependency. Conversely, inadequate social services can seriously impede productivity and economic development.

The fundamental task which Native American communities face is developing enduring social and economic strategies in keeping with local goals, resources, and cultural values. ANA is interested in assisting local communities in the implementation of projects that are a part of long-range strategies to achieve social and economic self-sufficiency. ANA expects its applicants to have undertaken a long-range planning process that addresses the community's development and encourages social and economic growth for the community. Such long-range planning must consider the maximum use of available resources, directing those resources at opportunities and addressing issues that hinder progress. Planning and feasibility studies are acceptable strategies as long as they are part of a larger project which produces concrete, measurable results.

Governance. In the development toward self-sufficiency, ANA places the highest emphasis on increasing the effectiveness of the governing capability of Indian tribes, Alaskan Native villages, and Native American groups. Effective governance is a necessary foundation for social and economic development and efforts to achieve effective governance include: (1) Strengthening the effectiveness of tribal and village governments; (2) increasing the ability of tribes, villages, and Native Americans groups and organizations to plan, develop, and administer a comprehensive program supportive of community social and economic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans are entitled either by virtue of the federal trust relationship, legislative authority, or as citizens of the United States.

Under the governance goal, ANA strongly encourages tribal and village councils and other governing bodies to strengthen and streamline their institutional management in order to develop and implement social and economic development strategies and to improve the daily management of programs. By improving such capabilities, Indian Tribes, Alaskan Native villages, and Native American groups can better define and achieve the goals of their people and promote greater efficiency and effectiveness in the use of available resources.

Building on the foundation of strong local governance, ANA expects tribal and village governments and other Native American organizations to move toward coordinated and balanced development and implementation of social and economic development strategies. These interrelated strategies should coordinate and direct all resources (Federal and non-federal) toward locally determined priorities, and impact the community and its members in ways that promote greater economic and social self-sufficiency. In addition, these strategies should provide an independent source of revenue to the community which will assist the applicant in decreasing its dependency on public funds.

Economic development is the long-term mobilization and management of economic resources to achieve a diversified economy characterized by widespread distribution of economic resources, services, and benefits; participation of community members in the productive activities and economic investments of the community; and pursuit of economic interests in ways that balance economic gain with social development.

Social development is the mobilization and management of resources for the social benefit of community members, and involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over the institutions that protect the health and welfare of individuals and families, and preserve the values, language, and culture of the community.

Alaska Initiative

In Fiscal Year 1984, ANA implemented a three-year special Alaska social and economic development initiative. The purpose of this special effort was to provide financial assistance at the village level or for village specific projects aimed at social and economic development. Under this program announcement, 13612-872, ANA is adding a fourth year to the Alaska initiative. ANA continues to place major emphasis on village-level development efforts. ANA sees both the non-profit and for-profit corporations in Alaska as being able to play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which take advantage of the opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Pub. L. 92-202.

Examples of the types of projects that ANA is seeking to fund include, but are not limited to, projects that will:

Governance

- Initiate a demonstration program at a regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base.
- Assist in developing land use capabilities and develop skills in the areas of land and natural resource management including resource assessment and development, as well as potential impacts upon the environment and the subsistence ecology.
- Assist village consortia in the development of tribal constitutions, codes, and court systems.
- Develop agreements between the state and villages that transfer programs, jurisdictions, and/or control to Native entities.
- Strengthen village government control of land management, including land protection.
- Develop tribal courts, adoption codes, and/or related comprehensive children's codes.
- Assist in status clarification for traditional councils.
- Initiate village level mergers between village council and village corporations.
- Develop Regional IRAs (Indian Reorganization Act of 1934) and village consortia, in order to maximize tribal government resources, i.e., to develop model codes, or tribal court systems.

Economic development

- Assist villages to develop businesses and industries which (1) use local materials, (2) create jobs for Alaska Natives, (3) are capable of high productivity at a small scale of operation, and (4) complement traditional and necessary seasonal activities.
- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system.
- Assist villages or consortia of villages in developing subsistence compatible industries that will retain local dollars in villages, reducing dependency on State and Federal subsidies.
- Assist in new or expanded Native businesses.
- Assist villages in labor export, i.e., people leaving the local communities for seasonal work and returning to their communities.

Social development

- Assist villages in developing the service sector.
- Assist in developing training and education programs for those jobs in education, government, and health usually found in local communities and also to work with the various agencies to encourage job replacement of non-Natives by Natives.
- Coordinate land use planning with village corporations and city government.
- Develop local control of planning and delivery of social services.
- Develop new service programs established with ANA funds and funded for continued operation by local communities or the private sector.
- Develop or coordinate activities with state-funded projects, in decreasing the incidences of child abuse and neglect, or fetal alcohol syndrome, or Native suicides.
- Assist in obtaining licenses to provide housing or related services for State or local governments or both.
- Assist in increasing the number of Native adoptions, or Native children returning home from foster care.
- Assist in respite care for family caretakers.

Program Priority

The ANA program priority is to fund projects that will make the greatest impact in promoting improved governance and increased social and economic self-sufficiency for Native Americans. The project proposal must clearly identify in measurable terms the expected results of the project and its positive and continuing impact on the community. ANA encourages applicants to consider innovative approaches to achieve the specific governance and social and economic goals of the community, and to use non-ANA resources including human, natural, and financial ones to strengthen and broaden the proposed project's impact in the community.

In the Part IV, section A, number 2, of the application package, *Resources Available to the Proposed Project*, the applicant must address any specific financial circumstances which may impact on the project. The applicant must justify the specific reasons it is seeking ANA funds, particularly if the applicant apparently has other resources to support the proposed project and chooses not to use them.

If a profit making venture is being proposed, revenue must be reinvested in the business in order to decrease or eliminate ANA's future participation.

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Such revenue must be reported as general program income and used in accordance with the deduction alternative. [See 45 CFR 74.42(c)]. Grant funds may not be paid as profit to any grantee.

Community Coordination

ANA supports the concept that the key to balanced socio-economic development is the local village. ANA encourages Native village governments to coordinate their local plans with other village entities, if any, and especially the city government and the village corporation. In addition, villages are encouraged to make maximum use of regional nonprofit resources, including village-to-regional corporation subcontracts.

Eligible Applicants

The following are eligible to apply for a grant award under this program announcement:

- Alaskan Native villages as defined in the Alaska Native Claims Settlement Act.
- Nonprofit Alaskan Native Regional Corporations in Alaska with village specific projects.
- Nonprofit organizations in Alaska with village specific projects.
- Current ANA grantees in Alaska funded under section 803 of the Native American Programs Act with a project period ending in Fiscal Year 1987, with the exception of Metlakatla. Metlakatla will have the opportunity to apply for Fiscal Year 1987 funds under ANA program Announcement 13612–871.
- Alaskan Native Indian communities as recognized by the Bureau of Indian Affairs.

Although for-profit Regional Corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in the project.

Available Funds

ANA expects to award approximately $1.5 million in grant awards under this program announcement.

Funding guidance: ANA plans to award approximately 15–18 grants. For individual village projects, the funding level will be up to $100,000; for regional nonprofit and village consortia, the funding level is up to $150,000, commensurate with approved multi-village objectives. For multi-year projects, the funding range for Fiscal Years 1988 and 1989 will be the same.

Note.—Subpart H, 45 CFR Part 74 describes those elements of a generally acceptable accounting system for Federal grantees. The financial management standards in Subpart H require: (1) Accurate, current and complete disclosure; (2) records which show source and application of funds; (3) effective control and accountability of funds and property; (4) comparison of actual and budgeted amounts; (5) procedures to minimize time lapsing between transfer and disbursement of funds; (6) procedures to determine allowability and allocating of funds; (7) accounting records with source documentation; (8) periodic audits; and (9) a follow-up system.

Village governments without established accounting systems must arrange for qualified, acceptable accounting services prior to release of grant funds.

Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project, one extending more than 12 months, affords applicants the opportunity to undertake prior long-range planning and continuing development, unlike what can be achieved readily in a single annual plan or project. Multi-year projects should be related to an outcome, rather than a duplication or a continuation of a prior year activity.

Applicants proposing multi-year projects must fully describe project objectives and activities, and provide an itemized budget of the Federal and nonfederal costs of the project, for each budget period. Applicants must justify the entire time-frame of the project and describe the results to be achieved by the end of the project period. The budget period for each multi-year project grant will be 12 months. Funding after the first twelve months of a multi-year project will be noncompetitive and will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, and compliance with applicable statutory and regulatory requirements. The applicant should specify the entire project period length on the Form 424, Block 16, not the length of the first budget period.

Multi-year projects, as well as single-year projects, must be complete, self-sustaining or supported with other than ANA funds at the end of the project period. ANA's funding of multi-year projects is not for a program in the applicant community which operates indefinitely and has need for ANA funding on an annual basis.

Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions. The total approved cost of the project is the sum of the Federal share and the nonfederal share. An itemized budget detailing the applicant's nonfederal share and its source must be included in the application. A request for a waiver of the nonfederal share requirement may be submitted in accordance with § 1336.50(b)(3) of the Native American Program Regulations.

Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application requirements are approved under OMB Control No. 0980–0016. The application kits containing the necessary forms may be obtained from: Administration for Native Americans, Office of Human Development Services, DHHS, 2901 3rd Avenue, Seattle, WA 98121. Attention: No. 13612–872, (206) 442–0992.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be hand delivered or mailed to: Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Banch, 2901 3rd Avenue, Seattle, WA 98121. Attention: ANA 13612–872.

The application shall be signed by an individual authorized to act for the applicant tribe or organization and to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subject to a competitive review and evaluation process by an independent review panel against the published criteria. The results of this review will assist the Commissioner in making final funding decisions.
- The Commissioner's decision also takes into account the comments of the ANA staff, State and Federal agencies having performance related informaton, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this Program Announcement, and the limits of available funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within 120 days of the closing date. Successful applicants are notified through an official Notice of Financial Assistance Awarded (NFAA). The NFAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the nonfederal matching share requirement.

Review Process

Applications submitted in a timely manner under this program announcement will undergo a prereview to determine:

(1) That the applicant is eligible in accordance with the Eligible Applicant Section of the announcement;

(2) That the application proposes project objectives which are responsive to the Program Announcement; and

(3) That the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. All required materials and forms are listed in the Grant Application Checklist in the Application Kit.

Applications which pass the prereview will be evaluated and rated by an independent review panel on the basis of the following criteria:

(1) *Project goals.* The application describes long-range community goals, within the context of a long range plan. (10 points)

(2) *Project objectives and activities.* The application proposes project objectives, and project activities which:

- Are realistic;
- Are based on a fully described and locally determined balanced social and economic development strategy;
- Clearly address a major problem within the community; and
- Are adequately addressed by supporting evidence, documentation or information from reports or studies. [25 points).

(3) *Project outcomes.* The proposed project will result in measurable, concrete outcomes which will clearly contribute to the overall development of the community and its members. Where possible, baselines are provided against which the outcomes can be evaluated at year end. (Example: Unemployment will decrease by 2 percent on the reservation, from 13 percent to 11 percent.) (20 points)

(4) *Resource commitments.* The applicant has justified its need for ANA funds and has referenced other resources which will assist the project. The application demonstrates the coordinated use of specific nonfederal and Federal resources (other than from ANA) as part of its strategy. (15 points)

(5) *Budget and work plan.* The application presents a detailed budget and work plan, with the budget specifically related to the work plan. The budget and work plan contain complete explanations and justification of line items, including technical assistance. The budget is reasonable in terms of the outcome and benefits expected. (15 points)

(6) *Management and administrative capabilities.* The applicant demonstrates the management and administrative capabilities necessary to ensure accountability and to justify receipt of federal funds. The application identifies by position or role all proposed key personnel, consultants, and contractors, and indicates their qualifications by the inclusion of resumès or position descriptions. (15 points)

Guidance to Applicants

ANA seeks to fund projects that reflect self-determination at the local level; that cause measurable impact in the community at the end of the project period; that have a discernible completion date and do not require continued ANA support; and that incorporate a developed strategy for achieving social and economic self-sufficiency, a strategy that utilizes all resources in the community.

The following policies, pointers, and instructions are provided to assist applicants in developing a fully competitive application.

I. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement or Which Are Inconsistent With the Policies of ANA

- Projects which support a grantee in providing training and/or technical assistance (T/TA) to other tribes and Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or use for its members (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is encouraged;
- Plans, feasibility studies, or manuals that are not essential to achieving the long-range goals of the local community;
- On-going social service delivery, or continuation of existing social service delivery programs, or direct services;
- Core administrative functions or major activities that essentially support the applicant's administrative office;
- Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development);
- Projects plans or strategies clearly not determined or developed at the local level;
- Proposals from consortia of tribes that are not specific in regard to support from and roles of member tribes;
- Projects which should be supported by other Federal funding sources appropriate and available for the proposed activity;
- Lack of measurable, concrete outcomes or benefits to the community;
- Activities that will not be completed, not be self-sustaining or not be supported by other than ANA funds at end of the project period;
- Lack of demonstrated coordination with non-ANA resources;
- Lack of a justification or explanation for requesting ANA funds, or a lack of discussion of other resources and revenues for use in the project;
- The purchase of real estate (see 45 CFR 1336.50 (e)) or construction with ANA funds (see HDS Grants Administration Manual 3–e);
- Investment in business development (venture capital);
- Projects reflecting heavy reliance on consultant use, especially where consultants have prepared the application and have written themselves a major role in the project.

ANA also will review very carefully and critically applications in which major capital expenditures, franchise or management fees, or the acquisition of major capital equipment, especially

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computers or word processing equipment, are a major component of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application.

II. Pointers on the Application Process Itself

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority for the applicant.
- ANA suggests that the pages of the application be numbered sequentially from the first page. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.
- Two copies of the application plus the original are required.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria and score the application prior to its submission in order to gain a better sense of their application's quality and potential competitiveness.
- Applications involving special circumstances, i.e., business development, should include a description of the unique characteristics of the project. For example, an applicant may wish to include ownership stipulations, market potential, financing aspects, cost of production (service or product), projected profit, and a 3–5 year pro forma financial statement. The more information given a review panel on a proposed business, the better able it is to evaluate the potential for success.
- A project abstract summarizing the proposed project must be included. Detailed instructions are included in the Application Kit.
- ANA does not fund on the basis of need. ANA funds those projects that have the greatest potential for positively affecting a community's local governance and social and economic development.
- For purposes of planning and developing an ANA application, the expected project start date for successful applicants will be 120 days after the closing date under which the application was submitted.
- ANA will not accept two identical applications from two different applicants to serve the same geographical or constituent area, nor will ANA fund similar projects serving the same constituency.
- ANA will accept only one application from any one applicant. If an applicant sends in two applications, the one with the earlier postmark will be accepted for review.
- An applicant from a federally recognized tribe must be from the governing body.

Due Dates for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are January 16, 1987 and June 5, 1987.

Receipt of Applications

Applications must be hand delivered or mailed.

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting the deadline if they are:

(1) Received on or before the deadline date at the address specified in the Application Submission Section, or

(2) Sent on or before the deadline date. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications. HDS shall notify each late applicant that its aplication will not be considered in the current competition.

Extension of deadlines. HDS may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if HDS does not extend the deadline for all applicants, it may not waive or exend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dared: July 30, 1986.

William Lynn Eagles,

Commissioner, Administration for Native Americans.

Approved: September 22, 1986.

Jean K. Elder,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 86–23012 Filed 10–9–86; 8:45 am]
BILLING CODE 4130–01–M

federal register

Friday
October 10, 1986

Part IV

Environmental Protection Agency

Preliminary Determination To Cancel Registrations and Deny Applications for All Pesticide Products That Contain Cadmium Compounds; Availability of Technical Support Document and Draft of Intent To Cancel; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/20C; FRL-3094-3]

Preliminary Determination To Cancel Registrations and Deny Applications for All Pesticide Products That Contain Cadmium Compounds; Availability of Technical Support Document and Draft of Intent To Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Preliminary Determination; Notice of Availability.

SUMMARY: This Notice announces EPA's preliminary determination to cancel registrations and to deny applications for all pesticide products that contain cadmium compounds (salts of chloride, sebacate, succinate, carbonate, and anilinocadmium dilactate) as active ingredients and that are for use on turf sites. The proposed action is based on the Agency's determination that the use of cadmium fungicides will result in unreasonable adverse effects to applicators of the products for these uses. This Notice further informs the public of the availability of a draft Notice of Intent to Cancel and documents in support of this action.

DATE: Comments from the public on this notice must be received on or before November 24, 1986.

ADDRESS: Three copies of written comments, identified by the docket number [OPP-30000/20C] should be sent to: By mail:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:
Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:
By mail:

Valerie M. Bael, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number:
Rm. 1006, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2314).

SUPPLEMENTARY INFORMATION:

I. Comments and Docket

The Agency has established a public docket for the Cadmium Special Review. The docket will contain all public comments as well as other relevant Agency documents pertaining to the Special Review. For a complete list of the categories of documents which are placed in a Special Review docket, see 40 CFR 154.15.

All interested persons may submit comments, regarding the risks and benefits associated with the use of cadmium pesticides and the Agency's proposed decision, to the address given above.

On a monthly basis, the Agency will distribute a compendium of indices for newly received comments and documents that have been placed in the public docket for this Special Review. This compendium will be distributed by mail to those members of the public who have specifically requested such material for this Special Review.

Information submitted in any comment or response concerning this Notice may be claimed confidential by making any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. To assert a claim of confidentiality for all or any part of a written submission concerning a Special Review, the submitter must furnish three copies of the material. Two complete copies must be submitted, with claimed CBI clearly marked in the text. Items in the document that are claimed confidential should be numbered consecutively throughout the text. The third copy must have the claimed CBI excised from the text without closing up or paraphrasing the remaining text. The deletions should be consecutively numbered to correspond to numbering of the complete copies. Each copy must be marked on the cover as to whether it contains claimed CBI. Information not marked confidential may be made available through the docket or otherwise disclosed publicly by EPA without prior notice to the submitter.

The docket and index will be available for inspection and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, at the following location:
Program Management and Support Division, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

II. Introduction

The Agency issued a notice commencing a Special Review of cadmium pesticides, as published in the Federal Register of October 26, 1977 (42 FR 56524). The Special Review was based on the determination that the use of cadmium pesticide products exceeded risk criteria relating to oncogenicity, mutagenicity, teratogenicity and fetotoxicity. Following review of public comments and available data, the Agency determined that the risk concerns for oncogenicity remained, and risk concerns for other acute and chronic effects (kidney effects) have been added. Risk concerns for mutagenicity, teratogenicity, and fetotoxicity no longer remain. The Agency also concluded that the use of cadmium fungicide would result in unreasonable adverse effects on applicators of the products to turf. Therefore, the Agency proposes in this Notice to deny applications and cancel registrations of cadmium pesticide products for this use.

III. Statutory and Regulatory Background

A. The Statute

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 1136 et seq.). Before a product can be registered, it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel the registration under section 6 of FIFRA.

B. The Special Review Process

The Special Review process, formerly called the Rebuttable Presumption Against Registration (RPAR), is a mechanism by which the Agency collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects on the environment. The Special Review process is governed by 40 CFR Part 154.

Through the Special Review process the Agency (1) announces and describes its risk concerns regarding pesticidal use based on certain risk criteria; (2) establishes a public docket; (3) solicits comments from the public, and under certain circumstances, from the Secretary of Agriculture and the Scientific Advisory Panel (SAP) regarding the Agency's analysis and proposed regulatory decisions; (4) reviews and reponds to all significant comments timely submitted; and (5) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

IV. Preliminary Determination To Cancel

The Agency, by issuing this Notice of Preliminary Determination, is proposing to cancel registrations and deny applications for registration for all pesticide products that contain cadmium compounds (salts of chloride, sebacate, succinate, carbonate and anilinocadmium dilactate) as active ingredients and that are for use on turf sites. This action is based on the Agency's determination that the use of cadmium fungicides will result in significant risks to applicators of the products for this use. The Agency has also determined that the risk associated with this use is not outweighed by its relatively minor benefits as discussed in detail by the Agency in the Technical Support Document.

The Agency evaluated laboratory animal and human epidemiological studies for cadmium's potential to cause toxic effects. Both types of studies indicate that cadmium compounds are oncogenic and can cause kidney effects. The Agency also evaluated applicator exposure studies. In comparing the results of the toxicological studies with the estimated applicator exposures, the Agency concluded that there is up to a 10^{-4} lifetime risk of oncogenicity to certain applicators and a very close association between applicator exposure levels and kidney effect levels.

Data from a chronic rat inhalation study using cadmium chloride aerosol, and from an epidemiological study of factory workers who were chronically exposed to cadmium oxide and dust, suggest statistically significant, dose-related increases of lung tumors. Based on these and results of other studies, cadmium has been classified by the Agency as a "B1" or "probable" human carcinogen (Guidelines for Carcinogenic Risk Assessment 1986).

Based on results from other laboratory animal studies and a human epidemiological study of factory workers who were chronically exposed to cadmium compounds, the Agency concludes there is a significant association between dermal and inhalation exposure and kidney effects, including proteinuria and kidney dysfunction. The Agency has concluded that the cancer and kidney effects associated with cadmium exposure exceed the criteria for special review set out in 40 CFR Part 154.

The pesticidal usage of cadmium compounds is estimated to be approximately 30,000 pounds per year. This represents less than 0.1 percent of the total cadmium usage (30,000 to 35,000 tons) in the United States for industrial purposes. Although registered for use on both golf course and home lawn turf, cadmium fungicides are used almost exclusively by turf maintenance personnel on golf courses.

The Agency reviewed information concerning the benefits relating to cadmium fungicide uses. The benefits were assessed relative to the economic impacts which would result if cadmium compounds were cancelled and users chose to use alternative fungicides. Agency estimates suggest that the annual impacts on the principal use site, golf courses, may be approximately $240,000 for the affected golf courses, or approximately $500 per golf course using cadmium compounds. The impacts on other turf sites would be negligible.

In weighing the risks and benefits and considering regulatory options, the Agency considered measures to reduce applicator exposure and risk. Protective clothing requirements and imposition of a requirement prohibiting use of hand-held spray equipment were considered; however, the Agency evaluated the effectiveness and utility of these measures and concluded that they would not adequately mitigate exposure and risk.

Also, the Agency is concerned about the purposeful addition of a heavy metal (cadmium) to the environment. Cadmium pesticide products are produced for the intent of direct application to sites in the environment in comparison to cadmium compounds that enter the environment as by-products of industrial production. Given the commonly recognized undesirable characteristics of adding heavy metals to the environment, the high (30 pounds/acre/year) application rate, and the low benefits from applying cadmium pesticides, the Agency does not believe it prudent to permit the continued use of cadmium pesticides.

Therefore, in consideration of the toxicological effects of cadmium compounds, the estimated potential risks of these effects to applicators, the lack of effective measures to mitigate these unacceptable risks, the availability of effective alternatives, an estimated minor economic impact to users, and the undesirable practice of purposefully adding high levels of a heavy metal to the environment the Agency has made a preliminary determination that risks of use of cadmium for turf disease control outweigh the benefits of such use. Therefore, the Agency proposes to cancel registration and deny application for all turf uses of cadmium pesticide products. This is based on the Agency's judgment that the risks of continued cadmium use outweigh the associated benefits.

V. Availability of Technical Support Document and Draft Notice of Intent To Cancel

The Cadmium Technical Support Document (TSD) discusses in detail the basis for the issuance of the Notice of Preliminary Determination proposing to cancel registrations and deny applications for registration for all pesticide products that contain cadmium compounds as active ingredients in pesticide products that are for use on turf sites. In addition, a draft Notice of Intent to Cancel (NOIC) implementing the preliminary determination described in this Notice has been prepared for transmittal to the U.S. Department of Agriculture (USDA) and the SAP pursuant to sections 6 and 25 of FIFRA. Copies of this Notice of Preliminary Determination and the TSD will also be transmitted to the SAP and USDA. The draft NOIC and the TSD are available to the public on request. Copies of these documents may be obtained from Valerie M. Bael, Registration Division, at the address/telephone number given above.

Dated: September 30, 1986.

John A. Moore,
Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-23011 Filed 10-9-86; 8:45 am]
BILLING CODE 6560-50-M

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federal register

Friday
October 10, 1986

Part V

Federal Home Loan Bank Board

12 CFR Part 571

Transfers of Assets of Insured Institutions; Interpretive Rule; Clarifying Amendment

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 571

Transfers of Assets of Insured Institutions

Dated: October 7, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Interpretive rule; clarifying amendment.

SUMMARY: The Board is adopting a clarifying amendment to its statement of policy regarding mergers and transfers of assets. The purpose of the amendment is to make clear that the Board's regulations governing transfers of assets and savings account liabilities of insured institutions are applicable to transfers by operation of law which are effected pursuant to charter conversions, mergers, consolidations and other business combinations and reorganizations in which an insured institution is not the surviving entity, and that, accordingly, application to the approval by the Board are required for such transactions.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Buchman, Attorney, (202) 377-6983; or Julie L. Williams, Deputy General Counsel and Director, Corporate and Securities Division, (202) 377-6459; Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On April 26, 1983, the Federal Home Loan Bank Board ("Board"), acting as head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), amended § 563.22 of its regulations governing institutions whose accounts are insured by the FSLIC ("insured institutions") to require that insured institutions which propose to make "transfers" of a substantial portion of their assets or savings account liabilities must file an application with and receive the approval of the Board. *See* Resolution No. 83-243, 48 FR 21302 (May 12, 1983) (codified at 12 CFR 563.22(b)). In support of its action, the Board noted that bulk transfers could raise significant supervisory and legal concerns and that the Board's review and consideration of such transactions was therefore necessary. *Id.* At the same time, the Board also adopted a definition of the term "transfers" which described a number of types of transactions which would be subject to the application and approval requirements of § 563.22(b). In § 571.5(a) of its regulations (12 CFR 571.5(a)), the Board defined "transfers" as "transfers in bulk not made in the ordinary course of business, including the transfer of assets and savings account liabilities, purchase of assets, and assumption of savings accounts and liabilities."

Within the past six months a number of contemplated transactions have been announced in which the assets and savings account liabilities of an insured institution are to be transferred to a commercial bank or savings bank insured by the Federal Deposit Insurance Corporation ("FDIC"). In several instances, the transfer is to be effected by means of a transaction in which the assets of an institution are purchased, and its liabilities are assumed, by a bank ("purchase and assumption transaction"). In other cases, however, the transfer would occur by operation of law pursuant to the conversion of an institution into a bank, the accounts of which would be insured by the FDIC ("thrift-to-bank conversion"), and the subsequent acquisition of the converted institution by a bank or bank holding company.

Transfers involving purchase and assumption transactions fall clearly within the definition of "transfer" in 12 CFR 571.5(a). Consequently, it is also clear that application to and approval by the Board are required for these types of transactions under 12 CFR 563.22(b). The Board notes, however, that some uncertainty may exist as to whether the provisions of § 563.22(b) apply to transfers by operation of law because transfers of this type are not specifically listed in the Board's definition. In this regard, the Board believes that in several instances proposed transactions may have been structured as transfers by operation of law (rather than bulk asset sales) in an effort to avoid the Board scrutiny which would necesssarily accompany an approval requirement.[1]

In order to resolve any uncertainty concerning the proper interpretation of its asset transfer regulations, the Board is hereby amending its definition of "transfers" in § 571.5(a) to make clear that all transfers of assets or account liabilities not in the ordinary course of business from an insured institution to a different corporate entity, whether effected by conventional transfer, operation of law, or otherwise, and regardless of the characterization of the transaction under state law, are subject to the Board's approval. The Board believes that there is no basis for limiting the application and approval requirements of § 563.22(b) only to transfers which result from a conventional purchase and assumption transaction or a bulk sale of assets. In the Board's view, it is consistent with the language and purpose of the regulation to apply § 563.22(b) to all transfers, other than those already covered by § 563.22(a) or other regulations, regardless of how they may be effected, whether by statutory conversions, mergers, consolidations, other business reorganizations or combinations or otherwise, and regardless of whether an FSLIC-insured institution is the surviving corporate entity. A transfer by operation of law has the same practical effect as a purchase and assumption transaction: Namely, transfer of an institution's assets, deposits, and other liabilities to a separately existing legal entity. Moreover, many of the same legal and supervisory issues are raised in both contexts. Thus, the Board sees no reason to draw a distinction between transfers structured as a bulk sale of assets and those which occur as a consequence of a corporate reorganization or transformation. Although the structure of such transactions may differ, the effect is the same, and, thus, both equally warrant Board oversight.

The clarifying amendment to § 571.5(a) which the Board is adopting today also is consistent with one of the Board's primary purposes when it amended § 563.22(b) in 1983—to protect accountholders whose rights and interests could be adversely affected by a transfer of their accounts in connection with a transfer of substantially all of an institution's assets. *See* Board Resolution No. 83-243, 48 FR at 21303. Conversion by operation of law of a mutual institution into a commercial bank or savings bank insured by the FDIC presents the concern that the rights and interests of the accountholders in the institution would no longer be preserved and protected by the Board's conversion regulations (12 CFR Part 563b). Similarly, transformation into an FDIC-insured bank of an insured institution which has recently converted to the stock form of ownership, and the accompanying transfer of the institution's liquidation account, would limit the ability of the Board to ensure protection of former mutual accountholders in the liquidation account of the converted institution in the event of its subsequent liquidation. Thus, the Board's interpretation of § 563.22(b) as requiring application to and approval by the Board for transfers by operation of law, and the amendment to 12 CFR 571.5(a) which clarifies this interpretation, furthers a primary objective of the Board when paragraph (b) was added to § 563.22. *See id.;* Board Resolution No. 83-88, 48 FR 8480 March 1, 1983).

In addition, the Board believes that application of § 563.22(b) to transfers of all types, whether effected through bulk sales transactions or by operation of law, also is supported by the approach which has been followed in cases of comparable concepts implemented by the Savings and Loan Holding Company Amendments to the National Housing Act ("Holding Company Act") and other regulations of the Board. The provisions governing "acquisitions" under the Holding Company Act, for example, explicitly encompass transfers of control of an institution effected through a variety of types of transactions, including mergers, consolidations, or purchases of assets. *See* 12 U.S.C. 1730(e)(1)(A)(ii). The Board's conversion regulations also define a transfer which would entail an acquisition of control as including "every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise." *See* 12 CFR 563b.3(i)(8)(iii). The approach taken in determining whether a transaction is an "acquisition" for purposes of the Holding Company Act and the Board's regulations is to focus on the practical consequences of a transaction, rather than its characterization or structure. A similar approach in this context would dictate that transfers by operation of law are "transfers" within the meaning of § 571.5(a) and, therefore, within the scope of § 563.22(b).

As a final point, the Board notes that its Office of General Counsel ("OGC") has recently issued several opinion letters advising insured institution contemplating transfers by operation of law that their proposed transactions would be "transfers" which fall within the ambit of § 563.22(b). The Board agrees with OGC's interpretation of the definition of "transfers" in the existing regulation and does not believe that today's clarifying amendment to § 571.5(a) is necessary in order for § 563.22(b) to be applicable to all types of transfers. However, the Board desires to state clearly its position with regard to this matter and has concluded that this interpretation is the most effective method of notifying all insured institutions that transfers by operation of law are also subject to the provisions of its transfers of assets regulations.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that notice and public comment are unnecessary, as is the 30-day delay of the effective date of the amendment, because of the clarifying and interpretive nature of this amendment. The Board also finds that a 30-day delay of the effective date of the amendment to 12 CFR 571.5(a) should not apply because such delay would be contrary to the public interest. Unless the amendment takes effect immediately, uncertainty could continue to exist as to the types of transfers subject to § 563.22(b). Moreover, during the delay period insured institutions may attempt to consummate transfers of their assets and liabilities by operation of law without having complied with the application and approval requirements of the regulations. Therefore, good cause exists to make this amendment effective on Octover 10, 1986.

List of Subjects in 12 CFR Part 571

Accounting, Bank deposit insurance, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 571—STATEMENTS OF POLICY

1. The authority citation for Part 571 is revised to read as follows, and the authority citations at the ends of the sections are removed.

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1728, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp., p. 1071.

2. Paragraph (a) of § 571.5 is revised to read as follows:

§ 571.5 Mergers and transfers of assets and liabilities.

(a) *General policy.* This is a statement of the Federal Home Loan Bank Board's general policy on merger and transfer proposals. It does not ordinarily apply to mergers and transfers instituted for supervisory reasons. The term "merger" includes consolidations as well as statutory mergers, and the term "transfers" means transfers in bulk not made in the ordinary course of business, including, but not limited to, transfers of assets and savings account liabilities, purchases of assets, assumptions of savings accounts and other liabilities, and transfers of assets in bulk which are effected by operation of law pursuant to statutory conversions, mergers, consolidations, and other reorganizations and combinations. Transactions in accordance with § 545.82 of this chapter between a Federal association or a state-chartered insured institution and a finance subsidiary as defined in § 563.13-2(a)(4) of this subchapter are not "transfers" for purposes of this paragraph. Potential merger and transfer applicants are encouraged to review proposed transactions with the Supervisory Agent prior to proceeding with the formal application process. Generally, the Board regards mergers or transfers primarily as business decisions to be made by the institutions involved.

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-23171 Filed 10-9-86; 10:00 am]

BILLING CODE 6720-01-M

[1] Other important legal issues are raised by these types of transfers, including whether the institution must pay to the FSLIC a final insurance premium pursuant to section 407(d) of the National Housing Act, as amended (12 U.S.C. 1730(d)), and, in the case of an institution which has converted to the stock form of ownership, whether distribution of its liquidation account to accountholders would be required under § 563b.3(f)(3) of the Board's conversion regulations (12 CFR 563b.3(f)(3)). These issues are not addressed by this amendment.

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S.J. Res. 159/Pub. L. 99–449

To designate the rose as the national floral emblem. (Oct. 7, 1986; 100 Stat. 1128; 1 page) Price: $1.00

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

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Tuesday, October 14, 1986

Presidential Documents

Title 3—

The President

Proclamation 5542 of October 8, 1986

American Liver Foundation National Liver Awareness Month, 1986

By the President of the United States of America

A Proclamation

Liver diseases claim 50,000 lives in the United States each year and are the fourth leading cause of death of Americans between the ages of 15 and 65. There are more than 100 liver disorders. Some of these are progressively debilitating and often fatal. Liver diseases strike infants, children, adolescents, and adults, regardless of sex, race, or economic status. Unfortunately, people with liver disease suffer not only physically from the disease, but also emotionally from the unjust stigma placed on them by the common, but mistaken, notion that liver disease is caused only by alcoholism.

Through the American Liver Foundation, a network of volunteers, families, researchers, and health care professionals throughout the United States has dedicated itself to funding and increasing research to find the causes, treatments, cures, and ways to prevent these devastating diseases. The American Liver Foundation, the only national organization to focus on all types of liver disease, is committed to promoting the health of all Americans by increasing public awareness of all conditions that can lead to liver disease and by supporting and enhancing the quality of life for those individuals and their families who must cope with a liver disease.

The Congress, by Senate Joint Resolution 202, has designated the month of October 1986 as "American Liver Foundation National Liver Awareness Month" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1986 as American Liver Foundation National Liver Awareness Month. I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to learn more about the liver, to support appropriate efforts to discover the causes and cures of all types of liver disease, and to aid those who suffer from the crushing physical, psychological, and financial burden of a liver disease.

IN WITNESS WHEREOF, I have hereunto set my hand this eight day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23210
Filed 10-9-86; 12:06 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5543 of October 8, 1986

National Down Syndrome Month, 1986

By the President of the United States of America

A Proclamation

Down Syndrome is the most common genetic birth defect associated with mental handicap. Approximately one in 800 babies is born with Down Syndrome.

Over the last decade, Americans have become more aware of the accomplishments and the potential of developmentally disabled people, particularly those with Down Syndrome, thanks to the efforts of concerned physicians, teachers, and parents' groups such as the National Down Syndrome Congress and the National Down Syndrome Society.

As a result, we have programs to educate new parents of babies with Down Syndrome, special education classes within mainstreamed programs in schools, vocational training for competitive employment in the work force, and preparation for young adults with Down Syndrome for independent living in the community.

Paralleling these improvements in educational opportunities are advances in medical treatment that are enhancing the outlook for those born with this condition. In addition, the public is showing increased acceptance of people with Down Syndrome. We must continue our efforts to dispel myths about Down Syndrome and the degree to which it is disabling.

Because we live, regrettably, in an age when some people no longer value every human life regardless of condition, we must be vigilant in recalling that "all men are created equal" and that people with Down Syndrome have the same rights to "Life, Liberty and the pursuit of Happiness" that we all do. We have a duty to see that they receive all the help they need, before birth, in the nursery, and throughout life. Our heritage as Americans bids us do no less.

The Congress, by Senate Joint Resolution 321, has designated the month of October 1986 as "National Down Syndrome Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1986 as National Down Syndrome Month. I invite all concerned citizens, agencies, and organizations to unite during October with appropriate observances and activities directed toward assisting affected individuals and their families to enjoy to the fullest the blessings of life.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23211
Filed 10-9-86; 12:07 pm]
Billing code 3195-01-M

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ISS
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Presidential Documents

Proclamation 5544 of October 8, 1986

National Spina Bifida Month, 1986

By the President of the United States of America

A Proclamation

Spina bifida strikes one to two of every one thousand babies born in the United States. It is the most common crippler of newborns. When this disease occurs, the baby's spinal cord forms abnormally and the arches of the vertebrae, the bones that surround the cord, fail to develop. The spinal cord or its protective tissue may be displaced outside the spinal canal. Nerves supplying the legs, bladder, and bowel are incompletely developed or damaged.

The nerve damage resulting from this disease can have devastating consequences, including muscle paralysis, loss of sensation in the skin, and spine and limb deformities. Most babies with spina bifida also develop hydrocephalus—a potentially dangerous buildup of fluid pressure within the brain.

But thanks to important advances in neurosurgery and antibiotic therapy, a baby born with spina bifida today has between an 80 and 95 percent chance for survival. And the development of new surgical and bracing procedures and devices to compensate for lost function have made it possible for patients to lead more active and normal lives.

Research now under way in the Nation's scientific laboratories is aimed at improving our understanding the cause of this disease and developing methods to prevent it. Much of this work is being done by scientists supported by the Federal government's National Institute of Neurological and Communicative Disorders and Stroke and the National Institute of Child Health and Human Development. Voluntary agencies like the Spina Bifida Association of America, the National Easter Seal Society, and the March of Dimes Birth Defects Foundation also promote vital research and provide essential services and encouragement to families. In the work of these agencies, and that of the researchers and clinicians they sponsor, lies the hope that we will one day conquer spina bifida.

To enhance public awareness of the problem of spina bifida, the Congress, by Senate Joint Resolution 366, has designated the month of October 1986 as "National Spina Bifida Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1986 as National Spina Bifida Month, and I call upon the people of the United States to observe this month with appropriate observances and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of Oct., in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23215
Filed 10-9-86; 12:08 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5545 of October 8, 1986

National Job Skills Week, 1986

By the President of the United States of America

A Proclamation

The economy of the United States, in the midst of one of the longest sustained periods of growth since World War II, is creating a record number of new jobs. More Americans are at work now than ever before. Technological advances in all areas of American industry are contributing not only to the growth in the number of jobs, but to sustained growth in productivity. The dynamic changes occurring in our own marketplace as well as in the global economy will place an even greater emphasis on the development of new job skills.

One of America's greatest competitive assets is the high quality and productivity of its work force. It is appropriate, therefore, that Americans have come to understand the changes that are underway in the workplace and the demands these developments are generating for new skills. In order to focus national attention on the role of job training efforts in maintaining a competitive work force, the Congress adopted House Joint Resolution 721 designating the week of October 12 through October 18, 1986, as "National Job Skills Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 12 through October 18, 1986, as National Job Skills Week, and I urge all Americans and interested groups to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23213
Filed 10-9-86; 12:09 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5546 of October 8, 1986

National School Lunch Week, 1986

By the President of the United States of America

A Proclamation

Since 1946, the National School Lunch Program has made it possible for our Nation's children to enjoy nutritious, well-balanced, low-cost lunches. Now in its 40th year, this Program stands as a remarkable example of a successful partnership between Federal and State governments and local communities to make food and technical assistance available in an effort to provide a more nutritious diet for students.

The National School Lunch Program demonstrates our commitment to the promotion of the health and well-being of our youth. Under its auspices, more than 23 million lunches are served daily in nearly 90,000 schools throughout our country. The success of this effort is largely due to resourceful and creative food service managers and staff working in cooperation with government personnel, parents, teachers, and members of civic groups.

By joint resolution approved October 9, 1962, the Congress designated the week beginning on the second Sunday of October in each year as "National School Lunch Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 12, 1986, as National School Lunch Week, and I call upon all Americans to give special and deserved recognition to those people at the State and local level who, through their dedicated and innovative efforts, have made it possible to have a successful school lunch program.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23214
Filed 10-9-86; 12:10 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5547 of October 9, 1986

Leif Erikson Day, 1986

By the President of the United States of America

A Proclamation

Millions of people in the United States trace their origins to the Nordic countries. Their ancestors came here in search of new land, new opportunity, and the ability to work and prosper in this land of freedom and justice. Courage and an adventurous spirit brought them here; strength and determination have brought success to a great many. Those characteristics well describe Leif Erikson, the first Nordic we know to have visited North America.

Leif Erikson was sent by King Olav in the year 1000 to convert the Nordic settlers of southern Greenland to Christianity; he also sailed much farther west and came upon a new land. "Leif the Lucky," as he was known, described North America for his countrymen, and kindled the enthusiasm that brought other European explorers, missionaries, settlers, and adventurers to North America in the years to follow. Today, the cultures of Denmark, Finland, Iceland, Norway, and Sweden are intertwined with the American culture and are an important part of our national heritage. The Nordic people have added their traditions of courage and adventure to our national characteristics, giving us pride in the knowledge that the spirit of Leif Erikson still lives among all Americans.

In honor of Leif Erikson and the heritage of America's Nordic people, the Congress, by a joint resolution approved on September 2, 1964 (78 Stat. 849, 36 U.S.C. 169c), has authorized the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate October 9, 1986, as Leif Erikson Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on that day. I also invite the people of the United States to honor Leif Erikson and our Nordic-American heritage by holding appropriate exercises and ceremonies in suitable places throughout the land.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23229
Filed 10-9-86; 2:13 p m]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 51, No. 198
Tuesday, October 14, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ASW-31; Amdt. 39-5422]

Airworthiness Directives; McDonnell Douglas Helicopter Co. Model 369 Helicopters and Military Models YOH-6A and OH-6A Certificated for Civil Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) which presently requires deactivation of the rotor brake system and repetitive inspections of the tail rotor (T/R) drive shaft forward flexible coupling or installation of a coupling failsafe device on McDonnell Douglas Helicopter Company (MDHC) Model 369D helicopters. This new AD requires installation of a failsafe device on forward and aft flexible couplings and is applicable to additional models of MDHC Model 369 series helicopters and corresponding military models. This action is prompted by two recent reports of T/R drive shaft aft coupling failures. This new AD makes installation of the failsafe device mandatory on both forward and aft flexible couplings and prescribes preflight and postflight checks to detect primary coupling failure. These actions are needed to prevent potential failure of the drive shaft system which could result in loss of T/R control.

EFFECTIVE DATE: October 24, 1986.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 24, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: The applicable service information notices may be obtained from McDonnell Douglas Helicopter Company, Centinela Avenue and Teale Street, Culver City, California 90230.

A copy of each applicable service information notice is contained in the Rules Docket located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbur F. Wells, Regulations Program Management, Aircraft Certification Division, FAA, P.O. Box 1689, Fort Worth, Texas 76101; telephone (817) 624-5123.

SUPPLEMENTARY INFORMATION: In September 1981, following a series of failures of the forward flexible coupling in the tail rotor drive system of MDHC Model 369D helicopters, the FAA issued Amendment 39-4166 (46 FR 40668), AD 81-17-20, as amended by Amendment 39-4221 (46 FR 46568), AD 81-17-20R1, to require (1) deactivation of the rotor brake system and repetitive inspections of the forward flexible coupling, or (2) fitting the forward coupling with a failsafe device. Investigations have now disclosed that this inspection is inadequate to intercept impending failure of this forward coupling. Two instances of failure of the aft flexible coupling in the tail rotor drive system occurred recently. One of these failures resulted in a fatal accident.

Therefore, the FAA finds it necessary to supersede AD 81-17-02R1 with an AD that requires both fore and aft flexible couplings on all models of these helicopters to be modified to incorporate a failsafe device.

Since this condition is likely to develop on other helicopters of the same type design, an AD is being issued which requires installation of failsafe devices on both fore and aft tail rotor drive system flexible couplings in certain McDonnell Douglas Helicopter Company Model 369 helicopters including military Models YOH-6A and OH-6A certificated for civil operations.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

McDonnell Douglas Helicopter Company (Hughes Helicopters, Inc.): Applies to Model 369, 369A, 369D, 369E, 369H, 369HE, 369HM, and 369HS helicopters, including military Models YOH-6A and OH-6A, certificated in any category, equipped with tail rotor drive shaft flexible couplings, Part Number (P/N) 369A5501 or 369H22504.

Compliance required as indicated unless already accomplished.

To prevent failure of the tail rotor (T/R) drive shaft system and subsequent loss of T/R control, accomplish the following:

(a) Within 100 hours' time in service after the effective date of this AD, install aft coupling failsafe device (P/N's 369D25530

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bolt and 369D25531 socket) in accordance with Part I of the applicable Service Information Notices (SIN) DN–143, HN–206, or EN–31, each dated August 26, 1986. Installation of the failsafe device on military Models YOH–6A or OH–6A helicopters in civil use shall be accomplished in accordance with Part I of SIN HN–206.

Note.—The failsafe device required by paragraph (a) will be installed before delivery on all applicable Model 369E helicopters, Serial Number 0135E, and subsequent.

(b) Within 100 hours' time in service after the effective date of this AD, install forward coupling failsafe device (P/N's 369D25530 bolt and 369D25531 socket) in accordance with Part I of SIN DN–95, dated August 7, 1981, or Part III, HN–173, dated November 2, 1981, as applicable. Installation of the coupling failsafe device on military Models YOH–6A or OH–6A helicopters shall be accomplished in accordance with Part III of SIN HN–173.

(c) For all helicopters with tail rotor driveshaft flexible coupling failsafe devices installed, the T/R drive shaft forward and aft flexible couplings shall be checked as follows:

(1) *At Each Preflight Check:* Check for T/R backlash or looseness by rocking the T/R back and forth in its plane of rotation. The blade should not move in excess of 0.75 inch (1.93cm) at the blade tip without rotation of the main rotor blades.

(2) *At Each Aircraft/Engine Shutdown:* If thumping or rapping is heard from the T/R drive train during final revolutions of the T/R, check the T/R to assure that the T/R blade does not move in excess of 0.75 inch (1.93cm) at the blade tip without rotation of main rotor blades.

(d) The checks required by this AD may be performed by the pilot and must be recorded in accordance with FAR § 91.173.

(e) If during the checks required by paragraph (c), the tail rotor blade tip movement exceeds the specified limits, prior to further flight, inspect and replace, as necessary, either or both fore and aft tail rotor drive shaft couplings.

(f) Rotorcraft may be ferried in accordance with the provisions of FAR §§ 21.197 and 21.199 to a base where the modifications and inspections of paragraphs (a) and (b) of this AD can be accomplished.

(g) An alternate method of compliance which provides an equivalent level of safety may be approved by the Manager, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

The procedure shall be done in accordance with applicable parts of MDHC SIN's DN–143, HN–206, EN–31, all dated August 26, 1986; HUGHES SIN DN–95, dated August 7, 1981; HUGHES SIN HN–173, dated November 2, 1981. The incorporation by reference of these documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Helicopter Company, Centinela Avenue and Teal Street, Culver City, California 90230. These documents may be examined at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76101, the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California, or the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment supersedes Amendment 39–4186 (46 FR 40868), AD 81–17–02, as amended by Amendment 39–4221 (46 FR 46566), AD 81–17–02R1.

This amendment becomes effective October 24, 1986.

Issued in Fort Worth, Texas, on September 10, 1986.

R.G. Knight,

Acting Director, Southwest Region.

[FR Doc 86–23145 Filed 10–10–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–CE–42–AD; Amdt. 39–5441]

Airworthiness Directives; Piper Model PA–44–180T Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Piper Model PA–44–180T airplanes. It requires replacement of the ammeters with shunted ammeter kits which will eliminate full electrical power passing through the ammeter gauges. This AD is prompted by reports of heat damaged ammeters and smoke in the cockpit caused by shorting ammeter terminal posts. A shorted condition at the ammeter could result in complete electrical failure, and/or fire, or smoke in the cockpit. This action will assure proper operation of the airplane's electrical system and eliminate the smoke generating conditions at the airplane's ammeter electrical connections.

EFFECTIVE DATE: October 17, 1986.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: Piper Aircraft Corporation Service Bulletin (S/B) No. 847, dated August 28, 1986, and Ammeter Replacement Kit, Piper Part No. 765–302 may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (305) 567–4361. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Bill Trammell, ACE–130A, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7781.

SUPPLEMENTARY INFORMATION: There have been reports of heat damaged ammeters and loosening and shorting of the ammeter terminal posts in certain Piper Model PA–44–180T airplanes which resulted in smoke in the cockpit and unscheduled/emergency landings. Piper previously issued S/B No. 811A which substituted a shunted ammeter replacement kit for the direct reading ammeter on the Model PA–28, –32 and –34 airplanes, and was the subject of AD 86–17–01. Since that time it has been determined that a similar problem exists on the PA–44–180T airplanes. As a result of this determination Piper subsequently issued S/B No. 847 applicable to the PA–44–180T airplanes which requires replacement of the ammeters with shunted ammeter kits. These kits eliminate full electrical power passing through the ammeter gauges. On all airplanes affected by S/B 811A and 847 in the past five year period, 41 occurrences have been reported with 26 in the last two years.

Since a condition still exists which could result in complete electrical failure or fire or smoke in the cockpit, an AD is being issued requiring compliance with Piper S/B No. 847 on all Piper Aircraft Corporation Model PA–44–180T airplanes. The applicability of this amendment includes serial numbers of airplanes not modified as production airplanes. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedures hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct this condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Lists of Subjects in 14 CFR 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Piper Aircraft Corporation: Applies to Model PA–44–180T (Serial Numbers 44–8107001 through 44–8207020) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent smoke in the cockpit and possibly complete electrical failure resulting from shorting of ammeter terminal posts, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, replace both ammeters with Ammeter Replacement Kits, Piper Part No. 765–302, in accordance with the instructions contained in Piper Service Bulletin No. 847, dated August 28, 1986.

(b) Airplanes may be flown in accordance with FAR § 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance if used, must be approved by the Manager, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Piper Aircraft Corp., 2926 Piper Drive, Vero Beach, Florida 32960; or the FAA, Rules Docket, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on October 17, 1986.

Issued in Kansas City, Missouri, on October 2, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc 86–23146 Filed 10–10–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket Number 86–ANE–31; Amdt. 39–5374]

Airworthiness Directives; Avco Lycoming T5508D Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires visual inspection for wear of the first stage turbine disk and shaft mating surfaces, fluorescent penetrant inspection for cracks of the first stage turbine disk, and replacement of the disk to shaft retaining bolts, on a one time basis for the first turbine rotor assembly installed in Avco Lycoming T5508D turboshaft engines. The AD is needed to prevent uncontained first stage turbine disk failure.

DATES: Effective October 10, 1986. Compliance Schedule—As prescribed in the body of the AD. Comments for inclusion in the docket must be received on or before December 10, 1986. Incorporation by Reference—Approved by the Director of the Federal Register as of October 10, 1986.

ADDRESSES: Comments on the amendment may be mailed in duplicate to:

Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86–ANE–31, 12 New England Executive Park, Burlington, Massachusetts 01803

or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 86–ANE–31".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) may be obtained from Avco Lycoming, 550 Main Street, Stratford, Connecticut 06497. A copy of the SB is contained in Rules Docket Number 86–ANE–31, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7084.

SUPPLEMENTARY INFORMATION: The FAA has determined that there have been two ruptures of the first stage turbines disk in T5508D turboshaft engines, installed on single engine powered helicopters. Both disk ruptures occurred at less than 200 feet above ground level, during external load engagement. The first disk rupture resulted in two fatalities, while the second resulted in severe injuries to the crew, and in both ruptures the aircraft were a total loss.

Investigation of the first rupture concluded that the primary cause of engine failure was the first stage turbine disk, but it was inconclusive in regards to the cause of the disk rupture because insufficient parts were recovered to make a finding. Investigation of the second rupture revealed residue of thread lubricant in the bolt holes of the compressor shaft. Application of such lubricant on these bolts in prohibited, in accordance with the overhaul and maintenance manuals. The presence of thread lubricant could have resulted in an excessive load on the bolts at the required torque level, causing yielding of the bolts and subsequent relaxation of the clamping force between the disk and the shaft. Loss of clamping force between the mating parts can lead to excessive wear on the mating surfaces causing an unacceptable reduction in disk fatigue life. It was also determined that there is sufficient evidence that other engines of the same type may have been assembled with disk to flange retaining bolts treated with thread lubricant. A one time inspection, in accordance with Avco Lycoming SB 5508–0031, Revision 1, is therefore needed to assure that the bolts are free of thread lubricant, and that the disk and shaft mating faces are not worn. Since it cannot readily be determined if the bolts have traces of thread lubricant or have yielded, a one time replacement of the bolts is necessary.

This AD also requires reporting of the inspection results to the FAA. Those findings will be evaluated to determine if they are consistent with the past experience upon which the AD is founded, or whether further inspections or other action is needed. Information collection requirements contained in the amendment to § 39.13 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued

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which requires a one time inspection of the first turbine rotor assembly for evidence of thread lubricant and wear. The AD also requires a one time replacement of the disk to shaft retaining bolts.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above. A report summarizing each FAA public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowlege receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-31". The postcard will be dated/time stamped and returned to the commenter.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of the final evaluation if filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Avco Lycoming: Applies to Avco Lycoming model T5508D turboshaft engines. Compliance is required as indicated, unless already accomplished. To prevent failure of the first stage turbine disk that can cause an uncontained engine failure, accomplish the following:

(a) Visual and fluorescent penetrant inspect the first turbine rotor assembly, Part Number (P/N) 2-120-030-43 within the next 50 hours time in service after the effective date of this AD, in accordance with the Accomplishment Instructions contained in Avco Lycoming Service Bulletin (SB) 5508-0031, Revision 1, dated August 19, 1986, or FAA approved equivalent.

(b) Remove and replace with new parts, bolts P/N 2-100-079-05 and their associated locking plates P/N 2-100-078-01, when accomplishing the inspections of Paragraph (a) above, in accordance with the Accomplishment Instructions contained in Avco Lycoming SB 5508-0031, Revision 1, dated August 19, 1986, or FAA approved equivalent.

(c) Remove from service and replace with a serviceable part, prior to further flight, all first turbine disks that exhibit fretting on the disk to shaft mating face and/or a crack indication during inspection.

(d) Report the following information in writing for each inspection within 30 days of the inspection to the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803. (Telex Number 949301 FAANE BURL) (Reporting approved by the Office of Management and Budget (OMB) under OMB Number 2120-0056):

(1) Engine serial number
(2) Inspection date
(3) Disk part number and serial number
(4) Disk total time and cycles
(5) Disk time and cycles since last installation
(6) Breakaway up torque for bolts, P/N 2-100-079-05
(7) Any evidence of oil leakage and/or fire in the Number 2 bearing area
(8) Disk disposition (crack indication or, no crack indication, fretting or, no fretting, thread marks inside the boltholes or not)

Note.—For the purpose of this AD fretting is defined as metal removal below the original machined surface that is exemplified by a pitting pattern

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, may adjust the compliance times specified in this AD.

Avco Lycoming SB 5508-0031, Revision 1, dated August 19, 1986, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Avco Lycoming, 550 Main Street, Stratford, Connecticut 06497. This document also may be examined at the Office of the Regional Counsel, Rules Docket Number 86-ANE-31, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 86-ANE-31, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on October 10, 1986.

Issued in Burlington, Massachusetts, on September 12, 1986.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 86-23144 Filed 10-10-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-23877; File No. S7-5-86]

Depository Shipment Control List Transfer Instructions; Definition of Item

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of Rule Amendments.

SUMMARY: The Securities and Exchange Commission is adopting rule amendments designed to enhance confidence in and increase the efficiency of the National System for the Clearance and Settlement of Securities Transactions. The amendments alter the definition of the term "item" as it relates to transfer instructions on depository shipment control lists ("SCLs"). Under the amendment definition, each line on a depository SCL is a separate item.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Sandra Sciole or Jerry Greiner at (202) 272-2775, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C 20549.

SUPPLEMENTARY INFORMATION:

On February 10 1986, the Securities and Exchange Commission ("Commission") proposed for comment amendments to Rule 14Ad-1 under the Securities Exchange Act of 1934 ("Act") that would define as an item each line on a depository shipment control list ("SCL").[1] The Commission received 18 comment letters, [2] a majority of which supported the amendments. Several commenters suggested modifications, urged the Commission to clarify the intended effect of the proposed amendments on transfer processing, or opposed the amendments as unnecessary in light of their experience in completing depository transfer submissions. As discussed below, the Commission is adopting the amendments as modified to account for certain of these comments.[3] To facilitate transfer agent compliance with the amendments, this release outlines certain operational aspects associated with processing depository SCLs.

I. Background

In 1977, the Commission adopted Rules 17Ad-1 through 17Ad-7 under the Act ["turnaround rules"], [4] designed to protect investors and persons facilitating transactions on behalf of investors and to contribute to the establishment of the National System for the Clearance and Settlement of Securities Transactions ("National System"). Rule 17Ad-2, in particular, seeks to ensure that registered transfer agents perform their functions in a prompt and accurate manner by requiring them, among other things, to turnaround 90% of the routine items they receive for transfer within three business days. An item is the basic unit for which turnaround times and other requirements are prescribed. An item was defined initially as the certificates of a single issue of securities presented under one ticket, or, if there is no ticket (as is often the case with mail items from individuals), presented at one time by one presentor.[5]

Transfer agents often receive submissions from depositories that contain many lines of individual transfer instructions concerning the same securities issue. These depository submissions generally are referred to as SCLs and are submitted to transfer agents on paper, magnetic tape, or via computer-to-computer transmission. SCLs contain either deposit or withdrawal instructions, but never both.

Generally, deposit SCLs contain instructions to the transfer agent to transfer record ownership of securities from depository participants or their customers to the depository. For example, one line of a deposit SCL could reflect 10 accompanying certificates registered in the names of different customers of a depository participant, all of which are to be transferred to the depository's nominee.[6] Because deposit SCLs must be accompanied by all certificates that are to be transferred into the depository's nominee name, depositories submit deposit SCLs on paper, rather than magnetic tapes or computer transmissions.

The second type of SCL is a withdrawal-by-transfer (or "withdrawal" SCL), by which registered ownership of securities is transferred from the depository to depository participants, their individual customers, or other entities. Each line of a withdrawal SCL generally consists of one individual transfer instruction.[7] For example, one line might provide that 200 shares of IBM registered in a depository's nominee are to be transferred to John A. Smith. Withdrawal SCLs are submitted on paper, magnetic tape, or via computer transmission. Withdrawal SCLs may be accompanied by one or more certificates, or may instruct the transfer agent to cancel certificates or reduce balance positions it maintains for the depository under a transfer agent custodian ("TAC") arrangement.[8]

Transfer agents and depository participants at the 1984 Securities Processing Roundtable discussed the need for a review of the Commission's interpretation of the term "item."[9] Since at least 1980, that interpretation treated each SCL as a single routine item.[10] Some transfer agents advised the staff that the average number of lines on certain SCLs has doubled in recent years, with no additional credit given transfer agents for turnaround compliance. Furthermore, they noted that the percentage of depository requests for transfer has increased in relation to all requests for transfer, and that perhaps undue weight is being given to non-depository items solely as a result of the definition of the term "item." Finally, they noted that transfer agents in danger of failing to meet their 90% turnaround requirement [11] could be

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[1] Securities Exchange Act Release No. 22883 (February 10, 1986), 51 FR 5721 (February 18, 1986) ("Proposal Release").

[2] Comments were received from: American Bankers Association; American Transtech; Bank of America; First National Bank of Boston; Bank of New York; Bankers Trust Company; Continental Stock Transfer & Trust Company; Depository Trust Company ("DTC"); First National Bank of Chicago; Manufacturers Hanover Trust Company; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Guaranty Trust Company of New York; Municipal Securities Rulemaking Board; Pacific Gas and Electric Company; Southeastern Securities Transfer Association; South Carolina National Bank; Sovran Bank; and Stock Transfer Association.

[3] In accordance with section 17A(d)(3)(A)(i) of the Act, the Commission consulted with, and requested the views of, the federal bank regulatory agencies.

[4] 17 CFR 240.17Ad-1 through 17Ad-7. *See* Securities Exchange Act Release No. 13638, 42 FR 32404 (June 24, 1977) ("Turnaround Release").

[5] Turnaround Release, *supra* note 4, 42 FR at 32405.

[6] Commenters have suggested that deposit SCLs generally can contain up to 44 lines, but occasionally may contain more.

[7] Although withdrawal SCLs submitted on paper are often confined to 20 lines, the Commission understands that tape or computer transmission for withdrawal SCLs many contain hundreds or even thousands of lines.

[8] Under a TAC program, the transfer agent safekeeps one or more "balance" certificates reflecting the depository's securities position in a particular issue. In that way, the depository can reduce the number of certificates held in its vault and participant withdrawals-by-transfer can be automated and expedited.

[9] *See* Division of Market Regulation, *Report of the 1984 Securities Processing Roundtable*, May 31, 1984, at 32-33.

[10] *See* Securities Exchange Act Release No. 17111 (September 2, 1980), 45 FR 59840 (Sept. mber 11, 1980).

[11] *See* Rule 17Ad-2, which requires that certain registered transfer agents turnaround within three

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tempted to put aside depository SCLs and instead focus attention on transferring non-depository items, which generally contain fewer transfer instructions.

II. The Adopted Amendments

As adopted today, the amendments to Rule 17Ad–1 provide a new definition of the term "item" for deposit and withdrawal SCLs,[13] and retain the current definition of the term "item" for non-SCL presentments.[14] The amendments define a deposit SCL as a list of transfer instructions accompanying certificates to be cancelled and reissued in a registered clearing agency's nominee name. A withdrawal SCL is defined as a list of transfer instructions directing (1) cancellation of depository nominee-name certificates and reissuance in other names or, (2) the reduction of the depository's position balance maintained by the transfer agent for the depository under a transfer agent custodian program. Under the amended definition, each line on an SCL is counted as a separate item.

The Commission received comments from self-regulatory organizations (including a registered depository), registered broker-dealers, and a cross-section of the transfer agent industry, including bank and non-bank transfer agents, issuer transfer agents, and transfer agent associations. The majority of commenters supported adoption of the proposed amendments. A number of commenters, however, suggested modifications to the proposed amendments or opposed the amendments for specific reasons. Those comments are discussed below.

A. National System Concerns

Nine commenters believed that the National System goals of efficiency and immobilization would be furthered by the proposed amendments to the "item" definition.[15] Six commenters also stated that the amended definition and resulting new method of calculating turnaround would measure more accurately a transfer agent's performance and would provide more equitable credit to transfer agents in light of the increased volume of depository transfer work.[16]

Two commenters suggested that the amendments may be unnecessary because they currently process most depository SCL presentments quickly, usually within one day. The Commission recognizes that most transfer agents process depository SCLs promptly and accurately. The proposed amendments, however, are intended to encompass all transfer agents that handle depository SCLs, and the Commission believes the amendments should increase, in the aggregate, transfer agent speed and accuracy in SCL processing. These two commenters also suggested that the Commission should make the amended definition of "item" optional at the transfer agent's choice. The Commission believes that optional use of the Rule amendments would not address adequately the need to assure prompt turnaround of depository transfer presentments, because transfer agents could choose to delay processing SCL presentments in favor of simpler items presented for transfer.

The Commission believes that transfer agents, especially those that handle depository-eligible securities issues, play a crucial role in the National System.[17] Transfer agents provide the link through which securities certificates can be immobilized at depositories and thereafter delivered and received via quick and efficient depository book entries. Similarly, transfer agents process certificate withdrawals-by-transfer from the depository to market professionals and individual investors. Prompt and accurate transfer agent performance is necessary to prevent operational confusion and financial loss that can result from inaccurate or delay transfer.

In recent years, use of National System facilities has grown dramatically. Market professionals and individual investors have increased their use of securities depositories for transaction processing and safekeeping of corporate equity and debt securities. At the same time, securities depositories have greatly expanded the number and types of securities issues eligible for depository services. As a result, municipal securities and new securities products are now processed in the National System. The efficiency and cost-savings that result from transaction processing in the National System have led SROs to mandate National System use by market professionals.[17] For those reasons, the Commission believes it is necessary for transfer agents to have the incentives that are provided by the rule amendments to process depository SCLs as promptly and accurately as possible.[18]

B. Recordkeeping Requirements

The Commission's recordkeeping rules generally require registered transfer agents to maintain current records that show the day on which each routine and non-routine item is received and when those items are made available to presentors.[19] Transfer agents also must maintain records demonstrating the number of routine items received during each month and the number of routine items that were turned around within three business days versus those that were not. Transfer agents also must record, as of the end of each month, in one-day increments, all routine items aged more than four business days. For non-routine items, transfer agents must track the number of items received during the month that were turned around and the number of items in the transfer agent's possession at the end of each month.

In the Proposal Release, the Commission solicited comment on the degree to which the amendments might affect transfer agent recordkeeping requirements. The majority of commenters indicated that the amendments would create modest increased recordkeeping costs for affected transfer agents.[20] Those commenters believed that their recordkeeping systems could be modified easily by continuing to track an entire SCL, and not each SCL line, for purposes of determining when the SCL items were received and made available and merely multiply the number of SCL lines for turnaround calculations. Those commenters stated that the benefits of the amendments outweighed any increased costs.

Three commenters, however, stated that the amendments would increase their recordkeeping costs significantly. Two of these commenters understood the amendments to require a separate log ticket or entry for each line on an SCL.[21] Although a separate log ticket or entry for each SCL line would be one method of tracking SCLs, several commenters suggested that transfer agents also could track each SCL under one entry or ticket, provided the number of SCL lines is used for turnaround calculation. The Commission endorses this method of recordkeeping for SCLs. Because SCLs are accompanied by an index enabling transfer agents to identify easily the number of lines on the SCL, the commenters noted that this method of recordkeeping would avoid the more costly method of maintaining separate tickets for each SCL line.

As discussed above, Rule 17Ad-6(a) requires transfer agents to keep records that: (1) show when an item is received and made available; (2) indicate the number of routine and nonroutine items received each month; and (3) document turnaround performance on all routine items received each month. The Commission believes that, under the amendments to Rule 17Ad-1, transfer agents may satisfy the recordkeeping requirements of Rule 17Ad-6 in two ways. First, transfer agents may log each line on an SCL as a separate item. Each SCL line also would count as an item received during the month, and each routine SCL line item would be reflected in turnaround calculations.

Alternatively, transfer agents may elect to track an SCL under one ticket provided that all items on the SCL are made available on the same day. Under this method, all items on the SCL would be received on the same day and all items made available at the same time.[22] Transfer agents would be required to use the total number of lines contained on the SCL to calculate the number of items received during the month and to calculate turnaround performance for that month. To document these calculations, the Commission believes it is sufficient if transfer agents retain a copy of all SCL index sheets to supplement the log required by Rule 17Ad-6(a).

C. Non-routine and routine items on the same SCL

The Commission's current interpretation of Rule 17Ad–1 provides that an SCL must be treated as a single routine item, even if the SCL contains one or more non-routine items.[23] Under that interpretation, if a transfer agent cannot turnaround an SCL in three days due to difficulties created by a non-routine transfer, the transfer agent must count the SCL as a single item which the transfer agent failed to turnaround in the required three-day turnaround period.

Several commenters noted that, under the proposed amendments, the inclusion of a non-routine item on an SCL might result in either of two undesirable consequences.[24] First, transfer agents that track an entire SCL on one log ticket or entry for recordkeeping purposes might incur significant expense in closing out that log ticket and reopening several log tickets, tracking the routine and non-routine items separately. Alternatively, transfer agents that continue to track the entire SCL on one log ticket and do not succeed in turning around all routine and non-routine items on that SCL within the three-day period would be considered to have failed to meet turnaround on the total number of routine items on the SCL. Transfer agents suggest that such a result would be unfair and an inaccurate method of measuring their performance.[25]

The Commission believes transfer agents should treat mixed SCLs as routine items and has revised the proposed amendments to clarify the treatment of mixed SCLs. Under these amendments, the transfer agent may choose to retain the non-routine transfer instructions for transfer, but should treat each line on a mixed SCL as a routine item. The Commission understands that many transfer agents would prefer to treat mixed SCLs as multiple routine items and do not expect this method of calculating turnaround to affect their turnaround performance negatively.

Alternatively, transfer agents may elect to return to the depository any non-routine transfer instructions on a mixed SCL and should treat each line on the SCL that reflects a retained transfer instruction as a routine item.[26] Under

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business days 90% of the routine items they receive for transfer each month.

[13] 17 CFR 240.17Ad–1(a)(1) (ii), (iii).

[14] 17 CFR 240.17Ad–1(a)(1)(i).

[15] *See* Section 17A of the Act in which Congress directed the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.

[16] The Commission understands that for many transfer agents, depository SCLs constitute the majority of their transfer work. SCL volume has increased in recent years due to: (1) increased immobilization of depository-eligible securities issues; (2) increased transaction volumes for those securities; (3) large increases in the number and types of securities issues eligible for depository immobilization; and (4) self-regulatory organization ("SRO") initiatives that require the use of depositories for municipal securities processing and institutional transactions settlement. *See, e.g.*, Municipal Securities Rulemaking Board Rules G–12, and G–15 and New York Stock Exchange ("NYSE") Rule 387.

[17] The Commission recently adopted amendments requiring low-volume transfer agents, previously exempt from a 3-day turnaround standard, to turnaround routine items within 5 days if they perform transfer functions for any depository-eligible issue. *See* Securities Exchange Act Release No. 21375 (October 5, 1984), 49 FR 40573 (October 15, 1984).

[18] *See* note 15, *supra*.

[19] The Commission urges depositories and transfer agents to cooperate to establish uniform standards for SCL submissions and to make maximum use of efficient, automated SCL presentments.

[20] *See* Rule 17Ad-6(a).

[21] *See* comments of Bowran Bank, Morgan Guaranty, STA, ABA and Bank of New York.

[22] *See* comments of Bankers Trust, Continental Stock Transfer and Trust Company, and Bank of Boston. Transfer agents assign "tickets" to transfer presentments for recordkeeping and internal control purposes.

[23] The Commission understands that most transfer agents currently make available at the same time all transferable items contained in an SCL.

[24] *See* Securities Exchange Act Release No. 17111, 45 FR at 39843. Rule 17Ad–1(i) defines routine item by specifying when an item is not routine: "(i) An item is "routine" if it does not (1) require requalifying certificates of an issue for which the transfer agent, under the terms of its agency, does not maintain a supply of certificates; (2) include a certificate as to which the transfer agent has received notice of a stop order, adverse claim or any other restriction on transfer; (3) require any additional certificates, documentation, instructions, assignment, guarantees, endorsements, explanations or opinions of counsel before transfer may be effected; (4) require review of supporting documentation other than assignments, endorsements or stock powers, certified corporate resolutions, signature or other common and ordinary guarantees or appropriate tax or tax waivers ["legal items"]; (5) involve a transfer in connection with a reorganization, tender offer, exchange, redemption or liquidation; (6) include a warrant, right or convertible security presented for transfer of record ownership within five business days before any day upon which exercise or conversion privileges lapse or change; (7) include a warrant, right or convertible security presented for exercise or conversion; (8) includes a security of an issue which within the previous 15 business days was offered to the public, pursuant to a registration statement effective under the Securities Act of 1933, in an offering not of a continuing nature."

[25] The Commission understands that approximately 5% to 10% of deposit SCLs may contain both routine and non-routine items. The non-routine items typically are items requiring legal review of documentation or securities subject to stop transfer instructions. *See* note 23 *supra*. Non-routine items do not generally appear on withdrawal SCLs.

[26] Because of these concerns, some commenters suggested that if an SCL contains routine and non-routine transfer instructions, all lines on the SCL should be considered non-routine. They noted that under accepted industry practice, non-routine instructions should not be included with routine instructions, on an SCL, but should be presented separately. Counting all lines on the SCL as non-routine would therefore serve to encourage depositories to assess carefully all SCLs to ensure that no non-routine instructions are included.

The Commission does not agree with that suggestion. Relaxing turnaround standards with respect to routine items would adversely affect National System goals and participants. Moreover, although depository presentors should screen carefully all SCLs to ensure that non-routine instructions are presented separately from routine instructions, the Commission recognizes that depositories cannot always detect non-routine instructions before submitting them to the transfer agent. For example, depositories would not be aware that a certificate is subject to a stop transfer notice and would therefore be considered non-routing by the transfer agent.

[27] The Commission has interpreted Rules 17Ad–1 and 17Ad–2 to allow transfer agents to return to a depository presentor any non-routine instructions on a mixed SCL while continuing to process all routine SCL instructions. Under that procedure, the transfer agent must notify the depository and return such non-routine instructions with an explanation of their return. The transfer agent would transfer and make available to the depository all routine transfers. The depository would then present transferable non-routine instructions separately to the transfer agent and return to participants items which cannot be transferred for, among other reasons, lack of sufficient documentation. *See* Securities Exchange Act Release No. 17111, 45 FR at 39845. Transfer agents also must maintain appropriate documentation under Rule 17Ad–6 and must indicate on the SCL records which instructions have been returned to the depository.

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this alternative, those returned non-routine transfer instructions would then be presented separately to the transfer agent by the depository.[27] The Commission understands that some transfer agents and depository presentors may prefer this alternative procedure. Transfer agents also would continue to return to depository presentors any transfer instructions that cannot be effected for failure to comply with state law and industry standards for securities transfers.[28] Under this alternative, the Commission believes transfer agents should include with returned non-routine transfer instructions a copy of the SCL indicating those instructions that have been returned versus those instructions that have been retained for transfer. That procedure should facilitate depository and transfer agent recordkeeping and reconciliation of securities transfers. Accordingly, the Commission has incorporated that procedure in the Rule amendments.

The Commission believes these procedures strike an appropriate balance between the interests of transfer agents and depositories. The procedures should provide an incentive to depository presentors to present separately routine and non-routine transfers. If a non-routine item is mixed with a routine SCL, the transfer agent will have the flexibility to treat the item as routine and effect transfer or return the item to the depository. If returned, the depository could present the item separately or return it to its participant with a rejection form explaining the reasons for return.

D. Broker-Originated Window Tickets

In the Proposal Release, the Commission invited comment on whether the turnaround treatment of broker-originated window tickets ("BOWTs") should be changed and whether the Commission should continue to maintain uniform treatment of BOWTs regardless of whether they include depository presentments.[29] The majority of commenters believed that the treatment of BOWTs should remain unchanged. Those commenters indicated that most BOWTs contain only one or two assignments and should be counted as a single item. Several commenters also noted that a change in BOWT treatment would necessitate internal changes and increase costs without producing material benefits. One commenter, however, believed that BOWTs should be given multiple-item treatment for turnaround purposes.[30]

The Commission believes that BOWTs should continue to count as single items regardless of deliverer. Unlike SCLs, BOWTs generally do not contain more that a few assignments. Moreover, processing delays on BOWTs do not pose the same disruptive effects as delays on SCL processing because SCLs contain significantly more transfer instructions, affecting multiple depository participants. The Commission believes that the absence of index sheets on BOWTs and the lack of automated presentment methods support continued treatment of BOWTs as single items. The Commission also believes that continued single-item treatment of BOWTs will provide incentives to depositories and their participants to use efficient depository SCL presentments and to automate those presentments when possible.

E. Effect on Small Transfer Agents

As noted in the Proposal Release, multiple-item treatment of depository SCLs for turnaround purposes might change a transfer agent's status under Rule 17Ad–4(b), which provides exemptions to certain transfer agents [31] from the three-day turnaround standard and from Rule 17Ad–3 and certain provisions of Rule 17Ad–6.[32] The Commission invited commenters to address the effects of the proposed amendments on exempt transfer agents.

Five commenters addressed the potential loss of exempt status for transfer agents that handle depository SCLs. All of those commenters believed that all transfer agents that handle depository SCLs should be subject to uniform treatment. They further urged that uniform turnaround standards for transfer agents that handle any depository-eligible issues in the National System would be beneficial to the National System. They indicated that, to the extent the stricter requirements would result in increased costs for those transfer agents, the increase in costs would be outweighed by the benefits of stricter turnaround standards for National System transfer agents handling SCLs and elimination of any incentives for transfer agents to delay SCL processing in favor of single-transfer-instruction items.

The Commission generally agrees with those commenters and believes any loss of exempt status for small transfer agents affected by these amendments is equitable and justified. As indicated above, multiple-item treatment of depository SCLs reflects more accurately the actual work transfer agents must perform in SCL processing. Under the amendments, a transfer agent that processes an SCL containing 10 transfer instruction lines would be treated much the same as a transfer agent that processes 10 individual mail items, as opposed to current disparate treatment that would treat those transfer agents as having transferred 1 item and 10 items, respectively. In addition to more equitable treatment among transfer agents, the Commission believes the amendments should improve transfer agent processing in the National System. The amendments, as indicated, remove incentives to delay SCL processing. The Commission believes that even small transfer agents that handle depository SCLs play an important role in National System processing and that the aggregate disruptions that result from poor transfer agent performance in National System issues justify increased performance standards for those transfer agents.

F. Effective Date

Several commenters indicated that they would need several months lead time to make internal changes necessary to comply with the Rule 17A–1 amendments. The Commission has determined to set the effective date of the amendments at January 1, 1987. The amendments will be mandatory at the time. The Commission also has determined to allow transfer agents voluntarily to follow these Rule 17Ad–1 amendments at any time after the date of this release and before the mandatory effective date.

[27] Because the depositing participant would likely have given value for the security, and the depository would have credited the participant for the security, the Commission believes depositories will have incentives to present those returned instructions on a separate SCL either on the same day or on the next day.

[28] State commercial law and industry standards, such as the Rules of the Stock Transfer Association, set forth detailed requirements concerning securities transfers. Non-transferable instructions typically are returned to presentors with a standard reject form that explains the rejection.

[29] Transfer items presented by brokers or banks directly to the transfer agent are called presentments and typically are presented in BOWT format. The Commission understands that only DTC routinely presents SCLs to transfer agents and that other depository presentments generally are in BOWT format. The Commission urges the other depositories to develop and utilize standardized SCL formatting.

[30] *See* comment of Bank of America.

[31] Rule 17Ad–4(b) sets forth the conditions under which a registered transfer agent may become "exempt" from the three-day turnaround performance standard and certain recordkeeping rules. To qualify as "exempt" a transfer agent, among other things, must receive fewer than 500 items for transfer and fewer than 500 items for processing during the preceding six months. Rule 17Ad-2(e) sets forth a five-day turnaround standard for "exempt" transfer agents that handle depository-eligible items, including SCLs.

[32] Rule 17Ad-3 prohibits transfer agents that fail to comply with turnaround requirements, under certain circumstances, from taking on any new transfer agent business. Rule 17Ad-6 requires transfer agents to maintain certain records. In addition, those transfer agents losing their "exempt" status under Rule 17Ad-4(b) also may be required to meet stricter time frames for posting information to the issuer's master securityholder file in connection with purchases, sales of transfer under Rule 17Ad-10(a) and unless otherwise exempt under Rule 17Ad-13(d), may be required to obtain an annual report on the transfer agent's system of accounting control.

III. Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. § 604, as amended by the Regulatory Flexibility Act ("RFA"), regarding the amendments to Rule 17Ad–1. The Analysis notes that the amendments to Rule 17Ad–1 are part of the Commission's review of transfer agent turnaround standards. The Analysis notes that the Rule 17Ad–1 amendments affect registered transfer agents that handle SCLs presented for transfer by registered securities depositories. The Commission states in the Analysis its belief that affected transfer agents will be able to implement the amendments through inexpensive recordkeeping and system modifications. In areas where commenters suggested alternatives to the amendments to accommodate their systems or to ease any recordkeeping burdens, the Commission has, where consistent with the purposes of the Rule, modified the amendments to provide those alternatives.

The Commission, in the Analysis, also notes that the amendments could affect the "exempt" status of certain small entity transfer agents that handle depository SCLs. Although some registered transfer agents could lose "exempt" status as a result of the amendments, the Commission believes the increased performance standards, as opposed to design standards which are not imposed, for such transfer agents are equitable and justified by the demands of the National System. The Anayisis also notes that many such transfer agents would continue to be eligible for exemptions from the Rule 17Ad–13 accountant's report requirement. [33]

The Commission recognizes its obligation to formulate compliance and reporting requirements that take into account the economic impact on small entity transfer agents. The RFA directs the Commission to consider significant alternatives to the amendments that would establish the stated objectives of applicable statutes and minimize any significant economic impact on small entity transfer agents. As discussed in the Analysis, the Commission considered the alternatives set forth in the RFA in developing the amendments. The Commission also modified the amendments to provide alternatives to affected transfer agents. Accordingly, the Commission believes that any costs that may be incurred by small entity transfer agents because of the amendments are far outweighed by the benefits that will accrue to the securities industry from the more efficient and effective operation of the National System. As noted above, commenters also believed that the benefits to the National System that would result from the amendments outweigh any costs that might be incurred by transfer agents.[34]

A copy of the Analysis can be obtained by contacting Jerry Greiner, Attorney, (202) 272–2966, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

IV. Competitive Considerations

The Commission, pursuant to section 23(a)(2) of the Act, has considered whether the rule amendments will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes the rule amendments will not impose any burden on competition and finds that any potential burden resulting from the rule amendments would be necessary or appropriate in furtherance of the purposes of the Act and, in particular, Section 17A of the Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Statutory Basis and Text of the Amendments

The Commission is amending Chapter II of title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation.

Authority: Sec. 23, 48 Stat. 901 as amended, 15 U.S.C. § 78. * * * § 240.17Ad–1 is also authorized under sections 2, 17, 17A and 23(a); 48 Stat. 841 as amended, 48 Stat. 897, as amended, 89 Stat. 137, 141, and 48 Stat. 901 (15 U.S.C. 78b, 78q, 78q–1, 78w) * * *

2. Section 240.17Ad–1 is amended by revising paragraph (a) as follows:

§ 240.17Ad–1 Definitions.

* * * * *

(a)(1) The term "item" means:

(i) A certificate or certificates of the same issue of securities covered by one ticket (or, if there is no ticket, presented by one presentor) presented for transfer, or an instruction to a transfer agent which holds securities registered in the name of the presentor to transfer or to make available all or a portion of those securities;

(ii) Each line on a "deposit shipment control list" or a "withdrawal shipment control list" submitted by a registered clearing agency; or

(iii) In the case of an outside registrar, each certificate to be countersigned.

(2) If a "deposit shipment control list" or "withdrawal shipment control list" contains both routine and non-routine transfer instructions, a registered transfer agent shall at its option:

(i) Retain all transfer instructions listed on the shipment control list and treat each line on the shipment control list as a routine item; or

(ii) Return promptly to the registered clearing agency a shipment control list line containing non-routine transfer instructions (together with a copy of the shipment control list, an explanation for the return instructions and all routine transfer instructions reflected on the same line) and treat each line on the shipment control list that reflects retained transfer instructions as a routine item.

(3) A "deposit shipment control list" means a list of transfer instructions that accompanies certificates to be cancelled and reissued in the nominee name of a registered clearing agency.

(4) A "withdrawal shipment control list" means a list of instructions (either in paper or electronic medium) that:

(i) Directs issuance of certificates in the names of persons or entities other than the registered clearing agency; and

(ii) Accompanies certificates to be cancelled which are registered in the nominee name of a registered clearing agency, or directs the transfer agent to reduce certificate or position balances maintained by the transfer agent on behalf of a registered clearing agency under that clearing agency's transfer agent custody program

* * * * *

[33] Rule 17Ad–13 requires certain registered transfer agents to file annually an independent accountant's report concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds.

[34] *See, e.g.*, comments of STA and ABA.

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By the Commission.
Shirley E. Hollis,
Assistant Secretary.
Dated: October 2, 1986.
[FR Doc. 86-23089 Filed 10-10-86; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. 84-48]

Schedules of Controlled Substances; Scheduling of 3,4-Methylenedioxymethamphetamine (MDMA) into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This is a final rule placing the drug 3,4-methylenedioxymethamphetamine (MDMA) into Schedule I of the Controlled Substances Act (CSA). MDMA will be classified as a hallucinogenic controlled substance. This action was initiated following the Drug Enforcement Administration's (DEA) review of the abuse and illicit trafficking of MDMA. The Assistant Secretary for Health, Department of Health and Human Services (DHHS), supported DEA's position that the substance be placed into Schedule I of the CSA. The effect of this rule is to impose the criminal sanctions and regulatory controls of Schedule I on the manufacture, distribution and possession of MDMA.

DATE: The effective date of this order is November 13, 1986.

SUPPLEMENTARY INFORMATION: On March 13, 1984, the Administrator of the Drug Enforcement Administration submitted information relevant to the abuse potential and illicit trafficking of 3,4-methylenedioxymethamphetamine (MDMA) to the Assistant Secretary for Health, Department of Health and Human Services. Briefly, the information documented that 3,4-methylenedioxymethamphetamine, trafficked on the street as MDMA or "Ecstasy": (1) Is an analog of the Schedule I controlled substance, 3,4-methylenedioxyamphetamine (MDA), (2) has no legitimate medical use or manufacturer in the United States, (3) has been clandestinely synthesized and encountered in the illicit drug traffic, (4) produces stimulant and psychotomimetic effects in humans similar to those produced by MDA, and (5) has been associated with medical emergencies as reported by the Drug Abuse Warning Network (DAWN).

In accordance with the provisions of 21 U.S.C. 811(b), the DEA Administrator requested a scientific and medical evaluation of the relevant information and a scheduling recommendation for 3,4-methylenedioxymethamphetamine from the Assistant Secretary for Health. On June 6, 1984, the Administrator of the Drug Enforcement Administration received a letter from the Assistant Secretary for Health, acting on behalf of the Secretary of the Department of Health and Human Services, stating that 3,4-methylenedioxymethamphetamine (MDMA) has a high potential for abuse and presents a significant risk to the public health, and recommending that it should be placed into Schedule I of the Controlled Substances Act.

On July 27, 1984, the Administrator of the Drug Enforcement Administration, based upon a review of investigations by the Drug Enforcement Administration and relying on the scientific and medical evaluation and the recommendation of the Secretary of Health and Human Services in accordance with 21 U.S.C. 811(c), issued a Notice of Proposed Rulemaking to amend § 1308.11 of Title 21 of the Code of Federal Regulations by placing MDMA in Schedule I as a hallucinogenic controlled substance. 49 FR 30210. MDMA was not, at that time, a controlled substance.

The Notice of Proposed Rulemaking allowed sixty days for interested parties to submit comments, objections or requests for a hearing.

Sixteen comments were received in response to the notice, seven of which requested a hearing.

These comments and requests for hearing came from a variety of physicians, counselors, instructors and others in medical or health care related professions, as well as from former subjects of experimental studies involving the use and effects of MDMA.

All of the persons or entities that submitted comments and/or requests for hearing opposed the proposed placement of the substance into Schedule I. DEA was urged by many to delay this proposed action until after additional research could be completed. Most felt that preliminary usage and studies had shown MDMA to have enormous potential value as an adjunct to psychotherapy, as an analgesic and in the treatment of problems of drug addiction.

Most of the writers vigorously objected to one of DEA's stated bases for the proposed scheduling, that being the finding that MDMA had no currently accepted medical use in treatment in the United States. Some of the responding physicians and psychiatrists reported having used it in their practices with what they felt were positive results. Many disputed the Agency's concept of "currently accepted medical use."

Several stated that the highly restrictive scheduling which was contemplated would effectively end presently ongoing research and scientific experimentation. Some felt that the costs involved in obtaining an Investigational New Drug permit from the Food and Drug Administration to conduct human research with a Schedule I drug would be prohibitive to any individual researcher. Another stated that it would be unrealistic to believe that any pharmaceutical company would develop the drug.

Several felt that DEA did not have sufficient information regarding the present and potential uses of this drug and urged that the proposed scheduling action be delayed until DEA had the opportunity to consider additional studies and reports of experimentation and research.

A few of the writers questioned the finding of high abuse potential as a basis for placement into Schedule I. While most of them acknowledged that there is some evidence of unsupervised use of MDMA, they felt the reported instances of abuse were not sufficient in number to warrant the conclusion that it is a substance with a high potential for abuse. Others stated that a potential for abuse had not led DEA to place certain other substances into Schedule I. A few believed that there may be some confusion of this substance with another which is known to be abused, MDA, and that the differences between the two should be closely examined. A number of the writers were not opposed to the placement of MDMA into one of the schedules under the CSA, but believed that Schedule I was not the appropriate schedule.

On November 13, 1984, the Deputy Administrator of DEA referred the matter to the Agency's Administrative Law Judge, Francis L. Young, to conduct a hearing for the purpose of receiving factual evidence and expert opinion regarding the proposed scheduling of MDMA. Judge Young was directed to report to the Administrator of DEA his findings and recommended conclusions on the appropriate scheduling action to be taken with respect to MDMA and on the question of whether a drug which has potential for abuse but no currently accepted medical use in treatment can lawfully be placed in any schedule other than Schedule I. The proceeding was

conducted "on the record after opportunity for a hearing" as required by 21 U.S.C. 811(a) and in accordance with the Administrative Procedures Act. 5 U.S.C. 556 and 557.

The authority and criteria for classifying substances into schedules under the Controlled Substances Act is found in 21 U.S.C. 811. This section of the Act sets forth the standards by which the Attorney General and the Secretary of the Department of Health and Human Services are to evaluate substances for control, decontrol or rescheduling. The Secretary of DHHS is charged with making scientific and medical evaluations, including scientific evidence of a substance's pharmacological effects, the state of current scientific knowledge regarding the drug or other substance, what risk there is to the public health, the psychic or physiological dependence liability of the drug, and whether the substance is an immediate precursor of a substance already controlled under the Act. The Attorney General must consider those items presented by the Secretary, and in addition must consider the actual or relative potential for abuse of the substance, the history and current pattern of abuse, and the scope, duration and significance of abuse. MDMA was not a controlled substance. It had not been approved for marketing in the United States by the Food and Drug Administration.

Following prehearing procedures, there remained five parties, including the Agency, participating in the hearing process. The participants were the Agency staff; George Greer, M.D., Lester Grinspoon, M.D., Thomas B. Roberts, Ph.D. and James Bakalar; McNeilab, Inc. and Hoffmann-LaRoche, Inc.; Lyn B. Ehrnstein, Esq.; and David E. Joranson.

Five hearing sessions, compromising nine hearing days, beginning on February 1, 1985, and culminating on November 1, 1985, were conducted before the Administrative Law Judge; the testimony of 33 witnesses was heard and 95 exhibits were received into evidence.

At a preliminary prehearing conference on February 1, 1985, the Administrative Law Judge determined that one of the issues identified presented a purely legal question which might be decided without the need of any evidence and in advance of the other issues in the case. The issue was:

> Assuming that a substance has a potential for abuse and has no currently accepted medical use in treatment in the United States, can the substance be placed in any schedule other than Schedule I?

After studying briefs submitted by the participants, the judge issued a recommended decision on that issue, dated June 1, 1985. He recommended, first, that the language of the Act was such that a substance with a potential for abuse less than a "high" potential, and having no currently accepted medical use in treatment, cannot be placed in *any* of the five schedules. Alternatively, the judge recommended that such a substance should be placed in either Schedule III, IV or V, depending upon its degree of potential for abuse. In a letter to the Administrative Law Judge, dated October 7, 1985, the Administrator advised that he had decided not to issue a final agency ruling on that initial ruling until he had received the entire record at the conclusion of the case.

During the course of the hearing, on July 1, 1985, in an independent action by the Administrator of DEA, MDMA was placed into Schedule I of the CSA pursuant to the emergency scheduling provisions of 21 U.S.C. 811(h)(1), following a determination by the Administrator that this action was necessary to avoid an imminent hazard to the public safety. 50 FR 23118.

On May 22, 1986, the judge issued his Opinion and Recommendations regarding the scheduling of MDMA. The judge recommended that MDMA be placed in Schedule III of the CSA. He reached this conclusion after finding that MDMA has a currently accepted medical use in treatment in the United States, that MDMA does not lack accepted safety for use under medical supervision, and that it has less than a high potential for abuse.

Concerning the issue of "accepted medical use", the judge refused to accept the Agency's argument that if a drug or other substance being considered for scheduling is not approved for marketing in the United States under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301, *et seq.*, then it has no "accepted medical use." He concluded that "accepted medical use" is determined by what is actually going on within the health care community. Using this standard, the judge found that, based on the testimony of a relatively small group of psychiatrists and psychotherapists who have used MDMA in treatment of humans and found it to have certain desirable effects, MDMA had an accepted medical use in treatment in the United States. With regard to the issue of "accepted safety for use", the judge concluded that MDMA does not lack accepted safety for use because the same group of psychiatrists and psychotherapists mentioned above have administered MDMA to willing subjects in uncontrolled, nonresearch studies and would not have done so if such a procedure was unsafe. Finally, with regard to the issue of abuse potential, the judge found that the Agency did not meet its burden in establishing that MDMA has a high potential for abuse.

On June 11, 13 and 24, 1986, respectively, David Joranson, counsel for DEA, and two counsel for Hoffman-LaRoche, Inc. filed exceptions to the Opinion and Recommendations of the Administrative Law Judge. In reply, Grinspoon, Greer, et al. filed a Response to the exceptions on June 27, 1986, and also moved to strike portions of the Government's exceptions alleging the Government's use of the term "bias" with respect to the Administrative Law Judge's opinion was prejudicial. Additionally, they filed a motion for the opportunity for oral presentation to the Administrator. On July 24, 1986, the Administrative Law Judge certified and transmitted the record to the Administrator of DEA. The record included the Opinion and Recommendations of the Administrative Law Judge, the findings of fact and conclusions of law proposed by all parties, the exceptions filed by the parties, the response to those exceptions and motions filed by Grinspoon, Greer, et al., all of the exhibits and affidavits, and all of the transcripts of the hearing sessions.

On August 11, 1986, the Administrator granted the motion to strike portions of the Government exceptions, filed by Grinspoon, Greer, et al., and ordered the Government to refile its exceptions without use of the term "bias" with respect to the Administrative Law Judge's opinion. The Administrator also denied the motion for the opportunity for oral presentation to him filed by Grinspoon, Greer, et al. On August 21, 1986, the Government refiled its exceptions.

The Administrator has carefully reviewed the entire record in this matter and hereby issues this final rule as prescribed by 21 CFR 1316.67. The Administrator declines to accept the recommendations of the Administrative Law Judge and finds that there is substantial evidence in the record to support the decision that MDMA be placed in Schedule I as a hallucinogenic controlled substance. The Administrator finds, consistent with his decision that:

1. A new drug application (NDA) must be approved by the Food and Drug Administration prior to the marketing of a new drug in the United States. The NDA generally consists of data collected during the pre-clinical and

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investigational new drug (IND) processes. The data in the NDA must include toxicity studies, carcinogenic studies in animals, reproductive studies in animals, side effects in humans, and sufficient results from controlled studies to show that the drug is safe and effective in humans for the therapeutic purpose advanced by the sponsor. New drug applications have been required prior to marketing since 1938.

2. Section 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355) outlines the new drug application process. The statute provides at section 505(a) that, "No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an approval of an application filed pursuant to subsection (b) of this section is effective with respect to such drug." The statute further provides that a person filing an application for a new drug must include "full reports of investigations which have been made to show whether such drug is effective in use." (Section 505(b)).

3. Section 505(i) of the Federal Food, Drug and Cosmetic Act allows the Secretary of the Department of Health and Human Services to exempt from the application of the requirements of approval of an NDA prior to marketing "drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs." The section goes further to delineate certain requirements which must be met by these experts.

4. Before an unmarketed new drug may be tested on humans, an investigational new drug exemption (IND) must be applied for and approved by the Food and Drug Administration. This approval is required for both pharmaceutical companies who ultimately intend to market the drug and physicians or researchers who are interested in using the drug solely as a research tool. These IND requirements are necessary to comply with provisions of the Federal Food, Drug and Cosmetic Act, its implementing regulations, and the basic ethical principles regarding the conduct of research in human subjects. These standards were established as a result of the Nuremberg trials in the Nuremberg Code, and later reiterated in the Helsinki Agreement of 1975.

5. In order for an IND to be initially approved by the Food and Drug Administration, the sponsor must provide information regarding the composition, source and manufacturing safeguards of the substance; animal toxicity studies showing that the substance will not produce irreversible damage at the doses used, and that there will be no unreasonable hazard in initiating studies in humans; a detailed research protocol of the proposed clinical investigation, information regarding the training and experiences of the investigators; and an agreement to notify the FDA if any adverse effects arise during animal or human tests.

6. On June 29, 1982, the Food and Drug Administration (FDA) published in the **Federal Register** "Proposed Recommendations to the Drug Enforcement Administration Regarding the Scheduling Status of Marihuana and its Components and Notice of Public Hearing" (47 FR 28141) in which the Commissioner of Food and Drugs stated:

> FDA interprets the term "accepted medical use" to mean lawfully marketed under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, *et seq.* . . . A drug may be marketed lawfully under the Federal Food, Drug, and Cosmetic Act after approval of a new drug application (NDA) for that drug. There are, theoretically other ways in which a drug could be marketed legally. The drug could satisfy either the requirements for exemption from the definition of "new drug" in 21 U.S.C. 321(p) or the requirements for a "grandfather clause" from the new drug approval provision. (47 FR 28150)

The Commissioner of FDA continued at page 28151 by saying:

> The mechanism set up by Congress for lawful marketing of a new drug requires submission of an NDA to FDA and FDA approval of that application before marketing. Before FDA can approve an NDA, however, the drug sponsor must submit data from an extensive battery of experimental testing on both animals and humans to establish the drug's safety and effectiveness for its proposed uses. In addition, the sponsor must submit data and manufacturing controls, demonstrating that standards of identity, strength, quality, and purity will be met.

and concludes by saying:

> Thus, the lack of an approved NDA for a drug substance leads FDA to find that a substance lacks an "accepted medical use in treatment" for two reasons. First, if use of the drug is unlawful whenever interstate commerce is involved, medical use of the drug cannot be classified as accepted. Second, in the absence of the data necessary for approval of an NDA, the agency has no basis for concluding that medical use of the drug in treatment can be considered acceptable by medical standards.

7. In March 1984, there was no reference in the files of the Food and Drug Administration to the substance 3,4-methylenedioxymethamphetamine (MDMA); there were no investigational new drug applications or approvals; there were no new drug applications or approvals; and there was no indication that any sponsor had informed FDA that such submission would be forthcoming. It was also determined at that time that MDMA was not a grandfathered drug and that it had not been approved for over-the-counter use.

8. On June 6, 1984, the Acting Assistant Secretary for Health sent a letter to the Administrator of DEA which stated that a scientific and medical evaluation of MDMA had been completed. He further recommended that MDMA be placed in Schedule I of the CSA. Attached to the letter was an "Evaluation of the DEA Recommendation to Control MDMA in Schedule I of the CSA." In this evaluation, the Acting Assistant Secretary for Health stated that he concurred with DEA's recommendation of Schedule I for MDMA. The evaluation included a list of the findings required to be made for Schedule I substances, which included the finding that the drug has no currently accepted medical use in treatment in the United States. The evaluation of the Acting Assistant Secretary for Health stated that he concurred with this finding.

9. The phrase "currently accepted medical use in treatment in the United States" as used in 21 U.S.C. 812, means that the Federal Food and Drug Administration has determined that a drug or other substance can be lawfully marketed in the United States.

10. Since it has been determined that MDMA may not be lawfully marketed in the United States, the Administrator finds that MDMA has no currently accepted medical use in treatment in the United States.

11. The Food and Drug Administration evaluates the safety of a substance throughout the investigational new drug (IND) process, and as part of the new drug application (NDA) approval status.

12. The sponsor of an IND is responsible for supplying FDA with the results of preclinical (animal) studies which show that there will be no unreasonable hazards in initiating studies in humans with the drug. At a minimum, these initial studies must include a pharmacological profile of the drug, acute toxicity studies in several species, and short-term toxicity studies ranging from two weeks to three months.

13. A substance is not deemed "safe" by the Food and Drug Administration unless FDA, after a review of scientific data submitted during the IND process, has determined that the substance can be given to humans without irreversible harm.

14. No scientific data was supplied to the Food and Drug Administration which would demonstrate the safety of MDMA, and a review of the scientific literature led an FDA official who evaluates the safety and efficacy of drugs to conclude that the literature does not support the safety of MDMA for use under medical supervision.

15. On June 29, 1982, the Food and Drug Administration (FDA) published in the **Federal Register** "Proposed Recommendations to the Drug Enforcement Administration Regarding the Scheduling Status of Marihuana and Its Components and Notice of a Public Hearing" (47 FR 28141) in which the Commissioner of Food and Drugs stated:

> The Federal Food, Drug and Cosmetic Act provides that FDA approve an NDA upon scientific evidence that the drug has been shown to be safe and effective for its proposed uses. See 21 U.S.C. 355(d). Because no drug is ever completely safe in the absolute sense, FDA considers "safe" to mean (in the context of a human drug) that the therapeutic benefits to be derived from the drug outweigh its known and potential risks under the conditions of use in labeling . . .
>
> Another factor considered by FDA in assessing the drug's safety is the proposed labeling which is approved at the time of approval for marketing. A drug might be considered safe for some proposed uses but not others. Only those proposed uses where the benefit/risk ratio is favorable will be included in the indications section of the drug's labeling. . . .
>
> But it is only upon approval for marketing, when there has been an institutional decision based upon scientific judgement by the regulatory agency charged with the responsibility of evaluating the safety and efficacy of new drugs, that a drug becomes "accepted" as safe under medical supervision. (47 FR 28152)

16. There is no legitimate commercial manufacturer of MDMA in the United States. Further, the MDMA which has been used by psychiatrists is not labeled with safety or therapeutic considerations.

17. The phrase "accepted safety for use . . . under medical supervision" as used in 21 U.S.C. 812(b) means that a drug has been evaluated for safety by the Food and Drug Administration and approved for marketing in the United States.

18. Accordingly, the Administrator finds that since MDMA has not been evaluated for safety by the Food and Drug Administration, and has not been approved for marketing in the United States, it does not possess "accepted safety for use . . . under medical supervision."

19. MDMA, or 3,4-methylenedioxymethamphetamine, belongs to a class of compounds which can be termed phenethylamines or, narrowly defined, phenylisopropylamines or amphetamines.

20. MDA, or 3,4-methylenedioxyamphetamine, amphetamine and methamphetamine are also phenylisopropylamines.

21. MDA, or 3,4-methylenedioxyamphetamine, is formed by the addition of a methylenedioxy group to amphetamine.

22. MDMA is formed by the addition of a methylenedioxy group to methamphetamine.

23. The addition of a methylenedioxy group to the aromatic nucleus of amphetamines produces compounds with psychotomimetic activity.

24. Psychotomimetic is a term used to describe a large class of compounds which change or modify a person's mood or mental state. The terms psychotomimetic and hallucinogenic are commonly used interchangeably.

25. MDMA is the N-methyl analog of MDA. This means that MDMA differs structurally from MDA the same way that methamphetamine differs from amphetamine, by the addition of an N-methyl group.

26. N-methylation of MDA yields MDMA which retains the psychotomimetic properties of MDA.

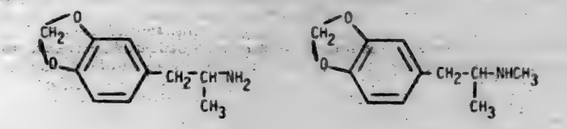
27. N-methylation of amphetamine yields methamphetamine which retains the central nervous system activity of amphetamine.

28. The difference in structure between amphetamine and methamphetamine is illustrated by the following diagram:



amphetamine methamphetamine

29. The difference in structure between MDA and MDMA is illustrated by the following diagram:



MDA MDMA

30. MDMA produces pharmacological effects in common with both central nervous system stimulants like amphetamine, and hallucinogens like MDA in animals.

31. MDA and MDMA both produce central nervous system stimulation as measured by increased locomotor activity in mice.

32. Tests conducted by Braun, Shulgin and Braun show that at an oral dose of 20 mg./kg. in mice, MDA produced a significant increase in locomotor activity. At the same dose, MDMA produced approximately three times the motor activity of MDA during the first three hours after application. They concluded that MDA, MDMA and N-ethyl MDA caused the greatest stimulation and that this is consistent with results of tests in mice of amphetamine compounds with no ring substitution (e.g., amphetamine and methamphetamine). Braun, Shulgin and Braun further conclude that "compounds which cause a sharp increase in motor activity in animals generally prove to have a pronounced central nervous system effect in man."

33. A study conducted by Intox Laboratories reported significantly reduced body weights at 7 and 14 days following initiation of MDMA dosing in rats.

34. The Intox Laboratory study also reported that rats who had been administered MDMA showed hyperactivity, excitability, aggressive behavior and stereotypic behavior.

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35. Studies conducted by Dr. Harris at the Medical College of Virginia compared the locomotor activity in mice using d-amphetamine and MDMA. Dr. Harris found that MDMA produces slightly less central nervous system stimulation than amphetamine at peak activity which is 1½ hours after administration. However, at 5–15 minutes and 2–3 hours after administration, the maximum stimulating effect of MDMA is substantially greater than that produced by d-amphetamine.

36. MDA and MDMA produce similar centrally mediated analgesic effects in mice as determined by the hot-plate test, the tail-flick test and the stretch test. The tail-flick test and hot-plate test showed that MDMA produces an increased analgesic effect over that produced by MDA.

37. MDA and MDMA both produce an increase in body temperature when administered to rabbits at similar potencies. Hyperthermia in rabbits is reported to be a measure of central nervous system activity. Dr. Shulgin notes that there is a reasonably good parallel between the hyperthermia response in rabbits and some of the effects of LSD, and that these parallel quite closely the psychopharmacological potency in humans. He believes that it is probably the best animal test at present for estimating psychotomimetic potency.

38. Both MDA and MDMA are potent releasers of serotonin or 5-hydroxytryptamine, a neurotransmitter which has a widely accepted role in the activity of hallucinogens.

39. In mice, dogs and monkeys, MDA and MDMA produce the same spectrum of pharmacological effects when observed during toxicity studies. These effects include hyperactivity, excitability, emesis, apprehension or fright, aggressive behavior, bizarre body attitudes, apparent hallucinations, dyspnea and hyperpnea. Motor activity effects include convulsions, muscular rigidity and tremors and the autonomic activity includes mydriasis, piloerection, salivation and vascular flushing. These effects are part of what is described as the classical pharmacological response of the dog to intravenous mescaline.

40. The lethality of a compound is reported as an LD_{50}, which is the dose of a drug which will kill 50% of the animals treated with that dose.

41. The LD_{50}'s for mescaline, MDA and MDMA were determined by intravenous or intraperitoneal administration in five species of animals. MDMA had LD_{50}'s between 2 and 6 times less than those of mescaline and between 1.5 and 3 times more than MDA. This means that MDMA is more lethal than mescaline but less lethal than MDA.

42. Intraperitoneal LD_{50}'s for MDA and MDMA were determined in mice by Dr. Davis. The LD_{50}'s of MDMA and MDA were substantially the same with the LD_{50} for MDA equalling 90.0 mg./kg. and the LD_{50} for MDMA equalling 108.5 mg./kg. Dr. Hardman found the LD_{50} of MDA to be 92 mg./kg. Davis also found that both MDA and MDMA showed the amphetamine-like property of increased lethality under aggregated housing conditions compared to isolated housing conditions.

43. In the study conducted by Intox Laboratories the oral LD_{50} for MDMA in rats was estimated to be approximately 325 mg./kg. No oral value was reported for MDA, but based on the data from Intox Laboratories, Dr. Hardman estimated it to be approximately 150 mg./kg.

44. MDMA, MDA, amphetamine and methamphetamine produce neurotoxic effects when administered to animals. MDMA and MDA are neurotoxic in rats at doses which are very low compared to the neurotoxic doses of amphetamine and methamphetamine.

45. MDMA and MDA both produce long term reduction in serotonin levels and serotonin uptake sites in the rat brain. These neurochemical depletions are due to the destruction of serotonin nerve terminals as determined by visual staining techniques.

46. In humans, serotonin nerve terminals are believed to play a major role in mood, emotion, pain perception, sleep and affect the regulation of aggressive and sexual behavior.

47. Although single injections of MDMA may be slightly less neurotoxic than MDA, MDMA, used chronically, appears to be more neurotoxic than MDA.

48. The neurotoxicity of amphetamine and methamphetamine has been determined in rats, guinea pigs and monkeys.

49. MDMA and MDA may produce the same neurotoxic effects to serotonergic nerves in humans.

50. Drug discrimination studies in animals allow one to determine if a particular dose of a test substance produces effects which are recognized as the same as those produced by a particular dose of another substance. It is believed that the effects recognized by the animals in these studies are central nervous system effects and hence this paradigm is very useful in characterizing centrally acting compounds.

51. If a test drug in animal drug discrimination studies elicits similar responses to a standard drug, both the test drug and the standard drug are assumed to have similar abuse potential if the reinforcing properties and adverse effects of the standard and test drugs are similar.

52. In drug discrimination paradigms, complete generalization indicates that the test compound is similar enough for the animal to recognize it as the training drug by responding on the appropriate drug lever at least 80% of the time. No generalization indicates that the test compound is unlike the training compound so that a low number of responses will be made on the drug lever. Partial generalization indicates that there may be pharmacological effects common to both test and training drug, but that some doses of the test and training drug are similar and that, at the tested doses, another type of pharmacological effect may predominate.

53. MDMA shares discriminative stimulus properties in common with amphetamine and MDA in drug discrimination studies in rats.

54. In a drug discrimination test described by Dr. Glennon, rats trained to recognize amphetamine also recognized MDA and MDMA. MDMA was slightly more potent than MDA in being recognized as amphetamine. Other compounds which generalized to the amphetamine stimulus included methamphetamine, cocaine and para-methoxyamphetamine.

55. Rats trained to recognize MDA recognized MDMA in drug discrimination studies conducted by Dr. Glennon.

56. MDA completely generalized (83% correct response) in rats trained to recognize 4-methyl-2,5-dimethoxyamphetamine (DOM), a substance with known hallucinogenic properties, but only within a very narrow dosage range.

57. MDMA showed partial generalization (52% correct response) in rats trained to recognize DOM, at a specific dose.

58. A standard abuse liability test for assessing the reinforcing properties of a drug is the substitution procedure. It is the most common and reliable method for determining whether a drug will be self-administered. In this procedure, new drugs are tested to determine whether or not they will maintain the responding of animals trained to press a lever for intravenous delivery of a known drug reinforcer.

59. In tests conducted with rhesus monkeys and baboons trained to self-administer cocaine, the monkeys and baboons continued to self-administer

when MDMA was substituted for cocaine.

60. Of three baboons that self-administered MDMA, two exhibited unusual behavior. One appeared to track nonexistent objects, and another exhibited aggressive behavior. Levels of self-administration in all three baboons tested were in the same range as those of MDA and slightly less than those of cocaine, amphetamine and phencyclidine.

61. Drs. Shulgin and Nichols first reported that MDMA produces psychotomimetic effects in man in 1976. These effects are described as intoxication, altered state of consciousness and sympathomimetic stimulation.

62. The racemic mixture of MDMA, which is a combination of both optical isomers, is the drug which is clandestinely produced, found in the illicit traffic and used by psychiatrists.

63. In a 1978 publication, Dr. Shulgin reported that racemic MDMA produced a high level of intoxication in man at doses of 100-160 mg. Color enhancement as well as physical symptoms of mydriasis and jaw clenching were noted. MDMA was described as maintaining the same potency as MDA but exhibiting subtle differences in the qualitative nature of the intoxication.

64. In a 1980 publication, Dr. Shulgin and others describe MDA and MDMA as having both stimulant and psychotomimetic properties in humans. Racemic MDA and MDMA were administered orally to five volunteers at doses up to 160 mg. The effective dose of MDA was 80-120 mg., while that of MDMA was 100-160 mg. Dr. Shulgin and others noted a drive increasing effect, a change in expression and an apparent increase in the acoustic, visual and tactile sensory perceptions, as well as a tension-decreasing, mood-lightening effect in the human subjects. Mydriasis and sympathomimetic stimulation were noted during the entire period. The effects of MDA and MDMA were apparent beginning 30 minutes after ingestion and continuing for approximately four hours, except that a noted increase in motor activity lasted several more hours. Shulgin concluded that the "psychopharmacological profiles of MDA and MDMA are very similar."

65. The Haight-Ashbury Free Medical Clinic in San Francisco treats approximately three to four clients per month who seek help for problems arising from the use of MDMA, MMDA or MDA. Individuals seen at the clinic have taken up to 15 doses of MDMA in one day, likely to be 50 to 150 mg. each. The use of higher doses produces rapid pulse and heartbeat, severe anxiety, paranoia, fear, insomnia, psychological craving for the drug and depression.

66. Dr. Siegel, in his interviews with 171 individuals who claim to have used MDMA in the Los Angeles, California area, reports that effects of MDMA at low doses approximate those of low doses of mescaline, and that effects reported for higher doses of MDMA (200 mg.) produce effects similar to those of LSD. The high dose effects include hallucinations, either visual, tactile, olfactory or auditory.

67. Low to moderate doses of MDMA have been given to individuals by psychiatrists. Some of these psychiatrists claimed that the MDMA administered was made by them under the supervision of Dr. Shulgin in his laboratory in California.

68. MDMA has been reported, by the psychiatrists administering to themselves and others, and by other individuals to produce the following physical effects: jaw clenching, anorexia, insomnia, flight of ideas, increased heart and pulse rate, mydriasis, nystagmus, blurred vision, enhanced deep tendon reflexes, fatigue after use, ataxia, nausea, vomiting, headache and shakiness.

69. Psychological effects reported for low to moderate doses of MDMA include euphoria, sense of well-being, increases in physical and emotional energy, focus on the here and now, impaired judgment, heightened sensual awareness, anxiety, brief short-term memory loss, distortion in depth perception, brief hallucination, visual illusion, nervousness, mild depression, mental fatigue, confusion and altered state of consciousness.

70. MDMA was first identified by a DEA laboratory in 1972. Between 1972 and April 1985, DEA laboratories identified 41 exhibits of MDMA consisting of over 60,000 dosage units.

71. Since its temporary placement into Schedule I on July 1, 1985, MDMA has been identified in at least 14 exhibits submitted to DEA laboratories from Texas alone. These 14 exhibits contained over 35,000 dosage units of MDMA.

72. MDMA is available in tablets, capsules and powders with recent analyses indicating approximately 110 mg. of racemic MDMA per dosage unit. MDMA has been encountered in many sections of the United States and other countries.

73. Since 1978, non-Federal forensic laboratories have reported over 41 exhibits of MDMA to DEA.

74. Pharm Chem Laboratories and Toxicology Testing Service are laboratories which provide confidential analysis of drug samples voluntarily submitted to them. Their data provides information on the availability of street drugs and trends in drug abuse patterns.

75. Between 1973 and 1982, Pharm Chem Laboratories reported MDA and MDMA in the same category. The total number of submissions of MDA/MDMA between 1973 and 1982 was 610, ranging from 21 in 1974 to 88 in 1978.

76. Pharm Chem reported 20 submissions of MDMA between May 1983 and May 1984, when it discontinued its testing service.

77. Toxicology Testing Service reported 18 submissions of MDMA between April 1984 and March 1985.

78. In its investigation of the clandestine manufacture of controlled substances, DEA has encountered five laboratories producing or possessing the necessary chemicals to produce MDMA. Each laboratory had produced or had the capability of producing kilogram (10,000 dosage units) quantities of MDMA. Impurities found in the MDMA analyzed by forensic laboratories indicate that MDMA is produced in clandestine laboratories.

79. A DEA investigation conducted in June 1984 of a suspected cocaine distributor resulted in information concerning the widespread availability of "Ecstasy," or MDMA, in the Dallas, Texas area.

80. "Ecstasy," or MDMA, with a claimed origination of California, was being distributed in the Dallas area in 100 tablet bottles by organized groups. The tablets were found to contain approximately 110 mg. of MDMA.

81. Street prices for MDMA in 1985 were found to be $750 for 1,000 doses in Austin, Texas; $12.50 per dose in Boulder, Colorado; $70 per gram in New York; $85 per gram in California, and $10–$20 per dose in New Hampshire.

82. Dr. Inaba from the Haight-Ashbury Clinic in San Francisco reports medically unsupervised use of MDMA in San Francisco by the gay male population, young professionals and individuals with a history of hallucinogenic drug use.

83. Dr. Siegel of UCLA estimates that the street distribution of MDMA has risen from 10,000 dosage units in 1976 to 30,000 dosage units per month in 1985.

84. Students at the University of Texas in Austin indicate that MDMA is easily available on campus at about $5 to $20 per tablet.

85. Dr. Ingrasci, a psychiatrist who has himself used MDMA on patients, has interviewed over 500 individuals who have used MDMA over the past seven to eight years. More than half of these individuals had used MDMA in a non-

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therapeutically motivated setting for curiosity or recreation.

86. Dr. Joseph J. Downing, a practicing psychiatrist in San Francisco, California, conducted a pilot study in 1984 into the effects in healthy humans of a single exposure to MDMA. The 21 subjects in Dr. Downing's MDMA study had all used MDMA previously. One had used MDMA 15 times, one 10 times, and one only once. The mean frequency of use of the 21 subjects was once every 2.2 months.

87. Dr. Lester Grinspoon reports that MDMA is being taken by a growing number of people, particularly students and young professionals in a casual and recreational manner.

88. Dr. George Greer, a practicing psychiatrist in Santa Fe, New Mexico, has used MDMA as an adjunct to psychotherapy in clinical work. He reported that one of his subjects, after taking the unusually high dosage of 350 mg. of MDMA, reported visual hallucinations, illusions, hearing impairment, brief memory loss and distortion in depth perception.

89. Between 1977 and 1981, the Drug Abuse Warning Network (DAWN) reported eight emergency room episodes associated with the use of MDMA.

90. MDMA is reported to have been associated with two overdose deaths. One death occurred in Seattle, Washington in 1979, and one in Santa Monica, California.

91. The Assistant Secretary of Health, Department of Health and Human Services, in his scientific and medical evaluation of MDMA, concluded that MDMA has a high potential for abuse.

92. Therefore, the Administrator finds that MDMA has a high potential for abuse.

Discussion

The phrase "currently accepted medical use in treatment in the United States" is found in 21 U.S.C. 812(b). It is one of the three findings required for placement of a substance into one of the five Schedules of the Controlled Substances Act. Whereas placement of a drug or other substance into Schedules II through V requires a finding that the substance has a currently accepted medical use in treatment in the United States, placement of a substance into Schedule I requires a finding that the substance "has no currently accepted medical use in treatment in the United States." 21 U.S.C. 812(b)(1)(B). The Controlled Substances Act does not define this term.

The Administrator concludes that the term "currently accepted medical use in treatment in the United States" means that the drug or other substance is lawfully marketed in the United States pursuant to the Federal Food, Drug and Cosmetic Act of 1938 (FDCA), 21 U.S.C. 355. The FDCA establishes procedures regarding approval of drugs for marketing in the United States, and an exemption for investigational use of approved drugs prior to marketing. These procedures require that FDA must approve a new drug as being safe and effective before it may be introduced into interstate commerce in the United States.

If a substance is not marketed in interstate commerce in the United States, it is not manufactured by the pharmaceutical manufacturers who are licensed by the FDA to produce the vast array of medications currently available in this country; it is not distributed by pharmaceutical wholesalers licensed to sell pharmaceuticals, it is not stocked in retail pharmacies, hospitals and other medical facilities which daily dispense drugs to patients; and it cannot be prescribed by the hundreds of thousands of physicians and other practitioners who are authorized by their licenses and registrations to prescribe pharmaceuticals, including controlled substances, in the course of their professional practices. Such a substance cannot be said to have a "currently accepted medical use in *treatment* in the United States." (Emphasis added)

The complex system of approval for marketing and conditions for use of non-approved drugs for investigational purposes is designed to protect the health of the humans to whom the drug is to be given. A drug must be shown to be safe and effective before any manufacturer can market it in this country. Approval of a substance makes it "acceptable" and available for medical use. Any other meaning of "currently accepted medical use in treatment in the United States", other than approval for marketing by the Food and Drug Administration, would make the NDA process a sham and would require pure conjecture on the part of the Secretary and the Administrator in determining if a substance had an "accepted medical use." This interpretation is also consistent with that of the Uniform Controlled Substances Act, which has been adopted by almost all of the 50 states.

The Administrative Law Judge, in recommending that the Administrator find that MDMA has an accepted medical use in treatment, urged that the Administrator look at "what is actually going on within the health care community" in order to make this determination. The Administrator cannot accept this recommendation. The Administrator cannot, consistent with his responsibility to protect the American public from the abuse and misuse of dangerous drugs, declare legitimate a substance which has not been found safe and effective under the procedures required by the FDCA. He cannot find that a drug, which is not available through commercial, legitimate channels to the medical community, has an "accepted medical use in treatment in the United States." The fact that a handful of physicians are of the opinion that a substance may have therapeutic value is not an acceptable alternative to the thorough clinical and preclinical evaluation which precedes the approval of an NDA.

Another finding required to be made by the Administrator for placement of a substance in Schedule I is that "there is a lack of accepted safety for use of the drug or other substances under medical supervision." The same rationale discussed with regard to "accepted medical use" applies to "accepted safety for use . . . under medical supervision."

MDMA has not been approved for marketing in the United States by the Food and Drug Administration. MDMA has not been approved for investigational use by the Food and Drug Administration. No studies have been submitted to the Food and Drug Administration which would demonstrate the safety of MDMA with reliable scientific data. There is no basis upon which to conclude that MDMA has "accepted safety for use . . . under medical supervision."

Instead of relying on scientific data, or the opinion of the Food and Drug Administration, the Administrative Law Judge chose to rely upon the "world of health care practitioners" to determine "accepted safety for use." He chose to disregard scientific, controlled studies conducted by scientific researchers which have shown MDMA to be neurotoxic when administered to rats, and instead substituted the anecdotal judgments of a handful of physicians who observed the behavior of human animals under the influence of MDMA.

A drug's safety for use in humans, both at the investigational stage and at the marketing approval stage, can only be established through controlled scientific studies which are submitted to and evaluated by the FDA. These determinations are given great weight by the Administrator in evaluating scientific and medical matters.

For placement of a substance in Schedule I, the Administrator is also required to find that "the drug or other substance has a high potential for abuse."

The available scientific data clearly show that MDMA produces physical and psychological effects in common with central nervous system stimulants like amphetamine, and with known hallucinogens or psychotomimetics like MDA in both animals and humans. The chemical structure of MDMA is very closely related to MDA and to methamphatamine. Its pharmacological properties are almost identical to those of MDA. In preliminary studies, MDMA has been shown to be neurotoxic in animals, just as MDA has been shown to be neurotoxic. In the studies conducted specifically to determine abuse liability, MDMA has been shown to have an abuse liability similar to stimulants such as cocaine and amphetamine, both substances with an established high potential for abuse. MDMA is a substance which is clandestinely produced and trafficked on the street in the United States, and is taken for its pleasurable effects.

Animal and human studies which completely characterize the pharmacology, safety and efficacy of MDMA are not available.

The Administrator finds that the Agency sustained its burden that MDMA has a high potential for abuse. It has a similar chemical structure and pharmacological properties nearly identical to substances already found to have a high potential for abuse. It is clandestinely manufactured, trafficked, and actually abused. Its lack of established safety and potential neurotoxicity make it a serious risk to the public health and safety.

Because the Administrator has found that MDMA has no accepted medical use in treatment and has a high potential for abuse, it is unnecessary to address the issue of "whether a drug which has potential for abuse but no currently accepted medical use in treatment can lawfully be placed in any schedule other than Schedule I."

In reaching the conclusion that MDMA should be placed in Schedule I of the Controlled Substances Act, the Administrator has also considered the following information. In 1983, the World Health Organization recommended that MDMA be placed in Schedule I of the Convention on Psychotropic Substances (CPS), 1971, and the United Nations Commission on Narcotic Drugs subsequently placed MDMA in Schedule I.

In addition, MDMA is controlled in Schedule H of the Canadian Food and Drug Act, along with MDA and LSD. Reports of clandestine manufacture and distribution of MDMA continues in Canada. The Federal Republic of Germany has also reported the clandestine manufacture and distribution of MDMA.

The Administrator has read with interest the comments from various parties in the record concerning what effect placement of MDMA into Schedule I would have on legitimate research into the substance.

The Controlled Substances Act contains specific provisions for research with Schedule I substances. The registration provisions are found in 21 U.S.C. 823(f). The major difference in the regulatory requirements imposed upon researchers handling Schedule I controlled substances and those conducting research with Schedule II, III, IV and V controlled substances is the registration requirements which require review of a protocol by the Secretary of the Department of Health and Human Services.

The information required to be contained in this protocol is outlined with specificity in 21 CFR 1301.33. The protocol requirements also make reference to the investigational new drug (IND) procedures. They provide a mechanism for researchers wishing to conduct clinical (human) investigations with controlled substances in Schedule I.

All researchers utilizing controlled substances must be registered by the Drug Enforcement Administration. All researchers must keep records, and all researchers must maintain the controlled substances in a "securely locked, substantially constructed cabinet." The records required to be kept by researchers in Schedule I are not substantially different from the records required to be kept by a researcher or dispenser of Schedule II, III, IV or V controlled substances.

A review of the above regulations demonstrates that those who wish to conduct research with MDMA have available avenues by which to pursue such research.

Placement of a substance into Schedule I and designating it as a hallucinogenic imposes certain regulatory requirements on those handling the substance. Since MDMA has been a Schedule I controlled substance since July 1, 1985, the requirements imposed by the CSA and implementing regulations continue as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports MDMA, or who engages in research or conducts instructional activities with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* MDMA must be manufactured, distributed and stored in accordance with §§ 1301.71 through 1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of MDMA must comply with the requirements of §§ 1302.03 through 1302.05, 1302.7 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for MDMA shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of MDMA shall take an inventory pursuant to 1304.11 through1304.19 of Title 21 of the Code of Federal Regulations of all stocks of this substance on hand.

6. *Records.* All registrants required to keep records pursuant to 1304.21–1301.27 of Title 21 of the Code of Federal Regulations shall do so regarding MDMA.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.37 through 1304.41 of Title 21 of the Code of Federal Regulations shall do so regarding MDMA.

8. *Order Forms.* All registrants involved in distribution of MDMA shall comply with the order form requirements of §§ 1305.01 through 1305.16 of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of MDMA shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with respect to MDMA not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act continues to be unlawful. The criminal penalties are those of a Schedule I hallucinogenic.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the placement of MDMA into Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be

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Flexibility Act (Pub. L. 96-354). This action involves the control of a substance with no currently approved medical use or manufacture in the United States.

In accordance with the provisions of section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)), this scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to provisions of the Administrative Procedures Act, 5 U.S.C. 556 and 557, and as such have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice, 28 CFR 0.100(b), the Administrator hereby orders that Part 1308, Title 21, Code of Federal Regulations, be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES [AMENDED]

1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.11 is amended by redesignating the existing paragraphs (d)(7) through (d)(24) as (d)(8) through (d)(25) and adding a new paragraph (d)(7) as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(7) 3,4-methylenedioxymethamphetamine (MDMA). . . . 7405

* * * * *

3. Section 1308.11 is amended by removing paragraph (g)(1) and redesignating the existing paragraphs (g)(2) through (g)(12) as (g)(1) through (g)(11).

* * * * *

Dated: October 6, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-23080 Filed 10-10-86; 8:45 am]

BILLING CODE 4410-09-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Part 51-3

Application of Priorities in Assignment of Commodities

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Final rule; correction.

SUMMARY: This notice corrects the final rule in FR Doc. 86-22048 appearing on page 34598 in the issue of September 30, 1986. On page 34601, third column, § 51-3.3(c), line 12, insert the word "has" after the word "Committee".

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Fletcher, Executive Director, (202) 557-1145.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-23118 Filed 10-10-86; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 51186-5186]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce announces the prohibition of the further take of porpoise in the U.S. tuna fishery in the eastern tropical Pacific Ocean beginning at 0001 hours local time, October 21, 1986, to ensure that the aggregate porpoise mortality quota is not exceeded. The NOAA Assistant Administrator for Fisheries has determined that the 20,500 porpoise quota established by the Marine Mammal Protection Act (MMPA) will be reached on that date.

DATES: Prohibition on the take of porpoise by U.S.-flag tuna purse seine vessels is effective at 0001 hours local time, October 21, 1986, until 0001 hours local time, January 1, 1987. Comments on this notice will be received until October 29, 1986.

ADDRESSES: Comments may be mailed to Robert B. Brumsted, Acting Director, Office of Protected Species and Habitat Conservation, F/M4/NMFS, 1825 Connecticut Avenue, NW., Washington, DC 20235. Observer retention requests should be made to E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, NMFS, Southwest Region at (213) 514-6196. Requests for future observer placement should be made to the Tuna/Porpoise Management Branch at (619) 293-6540.

SUPPLEMENTARY INFORMATION: The MMPA, as amended in 1984, extended the general permit issued to the American Tunaboat Association in 1980 which limited to 20,500 porpoise the number that may be killed incidentally in U.S. tuna purse seining operations during any year.

The NMFS estimates, based on reports from onboard observers and using the method published in the **Federal Register** on May 4, 1977, that the number of porpoise killed incidentally in the U.S. tuna purse seine fishery will reach the quota by the effective date. Regulations governing the taking of marine mammals incidental to commercial fishing operations (50 CFR 216.24) require that all tuna fishing associated with porpoise cease seven days after the publication of this notice. Therefore, beginning at 0001 hours local time, October 21, 1986, U.S.-flag purse seine vessels are prohibited from setting nets around porpoise. Restrictions on the catching, possessing and landing (50 CFR 216.24(a)(4)) and importing (50 CFR 216.24(e)(9)) of yellowfin and bigeye tuna which were published on September 16, 1986 (51 FR 32786), become effective on the day porpoise fishing is prohibited. The porpoise fishing prohibition will remain in effect until 0001 hours local time January 1, 1987 when the next year's porpoise quota becomes available. Import restrictions remain in effect until 0001 hours, July 1, 1987.

Vessels at sea with observers placed by the NMFS or the Inter-American Tropical Tuna Commission must return the observer directly to an approved port at no cost to the government, unless the vessel managing owner or other authorized agent requests in writing that the observer remain onboard for the remainder of the trip to verify that the vessel does not set its net around porpoise after this closure is effective (see Addresses). Approved ports for returning observers include any U.S. port and the following foreign ports: Mazatlan, Mexico; Acapulco, Mexico; Puntarenas, Costa Rica; and Balboa, Republic of Panama. All observers NMFS officials collecting data and observing the fishing operations. Observers' records and statements will be used to determine compliance with the porpoise fishing prohibition.

Vessels at sea without an observer are subject to the yellowfin and bigeye tuna restrictions as well as the prohibition on porpoise fishing. These Management Branch (see Information Contact) to arrange to place an observer on board or to have fish wells containing yellowfin or bigeye tuna sealed at a port designated by NMFS.

Other Matters

This action is taken under the authority of Chapter 50 Code of Federal compliance with Executive Order 12291.

Dated: October 3, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-22819 Filed 10-10-86; 8:45 am]

BILLING CODE 3510-22-M

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ANM-11]

Proposed Establishment of Rifle, CO, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish 700 foot and 1,200 foot transition areas at Rifle, Colorado. These areas are necessary to provide controlled airspace for aircraft executing a new instrument approach procedure at Garfield County Airport.

DATE: Comments must be received on or before November 3, 1986.

ADDRESS: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 86-ANM-11, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-533, Federal Aviation Administration, Docket No. 86-ANM-11, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ANM-11". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace around the Garfield County Airport. The areas will be shown on aeronautical charts enabling pilots to circumnavigate the areas or otherwise comply with instrument flight rules during instrument flight conditions.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore; (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§71.181 [Amended]

2. Section 71.181 is amended as follows:

Rifle, Colorado (New)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Garfield County Airport (lat. 39°31'34"N. long. 107°43'23"W.); and within 5 miles each side of the 273° bearing (260 mag) from the Garfield County Airport extending from the 8-mile radius to 21 miles east of the airport., and that airspace extending upward from 1,200 feet above the surface beginning at lat. 39°44'00"N, long. 107°54'00W; to lat. 39°44'00"N, long. 106°57'00"W; to lat. 39°24'00"N, long. 106°57'00"W; to lat. 39°24'00"N, long. 107°54'00"W; to the point of beginning excluding that airspace overlying the Aspen, Eagle, and Meeker, Colorado, transition areas.

14 CFR Part 71

[Airspace Docket No. 86-ACE-03]

Proposed Alteration of Transition Area; Spencer, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Spencer, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Spencer, Iowa, Municipal Airport, utilizing the Spencer VOR as a navigational aid.

DATE: Comments must be received on or before November 14, 1986.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before taking action on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at Spencer, Iowa. To enhance airport usage, an additional instrument approach procedure to the Spencer, Iowa, Municipal Airport is being established utilizing the Spencer VOR as a navigational aid. The establishment of this new instrument approach procedure, based on this navigational aid, entails alteration of the transition area at Spencer, Iowa, at and above 700 feet above ground level within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B, dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Spencer, IA

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Spencer, Iowa, Municipal Airport (Lat. 43°09'45"N., Long. 95°11'30"W) and within 4 miles each side of the Spencer VOR 314° radial, extending from the 6.5 mile radius zone to 8.5 miles northwest of the VOR; within 4 miles each side of the Spencer VOR 122° radial, extending from the 6.5 mile radius zone to 8.5 miles southeast of the VOR; within 3.75 miles each side of the Spencer VOR 122° radial, extending from the 6.5 mile radius zone to 12.5 miles southeast of the Spencer VOR; excluding that portion that overlies the Milford, Iowa, transition area.

Issued in Kansas City, Missouri, on September 30, 1986.

T.R. Beckloff,

Manager, Air Traffic Division, Central Region.

[FR Doc. 86-23147 Filed 10-10-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 660

[Docket No. 85N-0184]

Limulus Amebocyte Lysate; Reduction of Samples for Testing

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations in the additional standards for Limulus Amebocyte Lysate (LAL) by reducing the number of containers for potency and quality tests and the number of

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samples submitted to FDA for testing. FDA is proposing the reduction in the testing requirements because adequate data are now available to demonstrate that the proposed requirements provide the same assurances of acceptable product suitability as the current regulatory requirements. The proposed amendments would result in an economic benefit for manufacturers of LAL because fewer final containers would be utilized for testing the product.

DATE: Written comments by December 15, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Michael L. Hooton, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 16, 1980 (45 FR 32296), FDA published additional standards under 21 CFR Part 680 for the manufacture of LAL. LAL is prepared from the circulating blood cells (amebocytes) of the horseshoe crab (*Limulus polyphemus*). It is a licensed biological product used as a reagent for in vitro testing to detect bacterial endotoxins (pyrogens) in certain human and animal parenteral drugs, biological products, and medical devices.

In the preamble to the 1980 final additional standards for LAL, FDA responded to comments received on the proposed rule. Included in the comments was one suggestion to reduce the minimum number of vials (20) required under § 680.102 for performing the potency test for LAL (item number 2 of the 1980 final rule). A similar comment suggested that a smaller sample size be required under § 680.103(f) for performing the test for quality (item number 19 of the 1980 final rule). FDA rejected the comments at that time because it concluded that at least 20 vials of test lysate were necessary for performing the tests to ensure that the procedures were statistically valid for estimating vial-to-vial variability of the test lysate. In 1980, there were only a few licensed manufacturers of LAL and the available data concerning potency and quality were insufficient for FDA to reduce the sample size for testing (required since the product was first licensed in 1977) while maintaining confidence that the tests were statistically valid. However, after several years of accumulating data related to LAL, FDA has reviewed the data and has now reconsidered the requirements in the LAL additional standards. FDA now believes that there are adequate data to demonstrate that the required potency and quality of LAL can be assured if the sample size for testing under §§ 680.102 and 680.103(f) is reduced from a minimum of 20 vials to 8 vials. A summary of the data on which FDA has based this conclusion is on file at the Dockets Management Branch (address above).

Therefore, FDA is proposing to amend §§ 680.102 and 680.103(f) to reduce the number of samples for testing potency and quality, respectively, from the currently required minimum of 20 vials from each filling to 8 vials from each filling. Consistently, FDA is also proposing to amend § 680.105(a)(1) to reduce the currently required number of vials of lysate submitted to FDA for testing from 28 vials to the number used in the potency test under § 680.102. FDA advises that § 680.102 permits the sample size to be increased to 28 vials if the potency test result is invalid when tested with a smaller sample size. Therefore, under this proposed rule, FDA expects that the number of samples submitted to FDA under § 680.105(a)(1) would routinely be eight vials, although the number of samples submitted could be greater if a manufacturer uses more than eight vials to obtain a valid potency test. FDA must have the same number of vials for testing that a manufacturer used for its testing in order to duplicate the test procedures and results, and to facilitate release of the product.

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the proposed rule would reduce the number of samples that each of the six currently licensed manufacturers are required to test and submit to FDA for agency testing and official release of each lot of LAL, resulting in reduced costs. Therefore, the agency concludes that the rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Interested persons may, on or before December 15, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 680

Biologics; Labeling.

Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 680 be amended as follows:

PART 680—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

1. The authority citation for 21 CFR Part 680 is revised to read as follows:

Authority: Secs. 215, 315, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

2. By revising the fourth sentence in the introductory paragraph of § 680.102 to read as follows:

§ 680.102 Potency test.

* * * A minimum of 8 vials and a maximum of 28 vials from each filling or, if freeze-dried, from each drying chamber run representing all parts of the chamber load, shall be tested in parallel with an equal number of tests from one or more vials of the U.S. Reference Lysate. * * *

* * * * *

3. By revising § 680.103(f)(1) to read as follows:

§ 680.103 General requirements.

* * * * *

(f) * * *

(1) Samples from each of 8 final containers from each filling or, if freeze-dried, from each filling in each drying chamber run representing all parts of the chamber load, shall be used.

* * * * *

4. By revising § 680.105(a)(1) to read as follows:

§ 680.105 Samples and protocols; official release.

(a) * * *

(1) *Samples.* Not fewer than the number of vials of lysate used for the potency test in § 680.102, two of which

packaged for distribution and including all ancillary reagents and materials.

* * * * *

Dated: September 23, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-23075 Filed 10-10-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3190

Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections by Non-Federal Employees

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Rulemaking.

SUMMARY: This proposed rulemaking would establish administrative procedures for programs for the inspection of Federally supervised oil and gas leases by other than Federal employees. These procedures are designed to implement certain provisions of the Federal Oil and Gas Royalty Management Act of 1982. While the proposed rulemaking would ultimately establish a framework for all such programs, the specific procedures proposed in this document apply only to delegation of authority to States under section 205 of the Act.

DATE: Comments should be submitted by December 15, 1986. Comments received or postmarked after the above date may not be considered in the decisionmaking process on issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Susan Pepperney, (202) 653–2200
or
Robert C. Bruce, (202) 343–8735

SUPPLEMENTARY INFORMATION: This proposed rulemaking would establish a new Part 3190 in group 3100 which would implement the authority contained in the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) relating to programs for the inspection of Federally supervised oil and gas leases by other than Federal employees. The purpose of the inspection program that would be is to determine whether there is compliance with the requirements of the mineral leasing laws and the Federal Oil and Gas Royalty Management Act. The Act provides three means which the Secretary of the Interior can use to authorize non-Federal employees to inspect Federally supervised oil and gas leases.

Section 202 of the Federal Oil and Gas Royalty Management Act authorizes the Secretary of the Interior to enter into cooperative agreements with States and Indian tribes for the purpose of sharing oil and gas royalty management information, and of carrying out inspection, investigation and enforcement activities, including those activities authorized by section 108 of the Act. The Secretary may not enter into cooperative agreements with a State involving Indian lands without permission of the affected Indian tribe or allottee.

Section 205 of the Federal Oil and Gas Royalty Management Act permits the Secretary of the Interior to delegate all or part of the authority and responsibilities under the Act to conduct inspections and investigations to States requesting such authority. The Act contains no authorization for delegation of Secretarial authority to Indian tribes. This delegation of authority may apply to all Federal lands and Indian lands within a State. However, the Secretary may not undertake a delegation of authority involving Indian lands without the express permission of the involved Indian tribe or allottee.

Section 301 of the Federal Oil and Gas Royalty Management Act authorizes the Secretary of the Interior to enter into contracts with non-Federal inspectors and other persons as are deemed necessary to carry out the functions of the Secretary under the Act.

It is the policy of the Department of the Interior to implement section 205 of the Federal Oil and Gas Royalty Management Act first and, then, to follow with the implementation of sections 202 and 301 as they are needed. Therefore, this proposed rulemaking would provide procedures for the delegation of authority, with future rulemakings adding provisions for cooperative agreements and contracts to Part 3190.

Due to different interests, proposals and subsequent delegated authorities among the States, the proposed and final rulemakings are intended to provide a basic framework for the program and are, therefore, general in nature. Delegations of authority will not be put into effect until they have been published in the Federal Register in their proposed form for public comment and, when finalized, will again be published in the Federal Register. These delegations will provide details relating to the Federal and State responsibilities for inspections and other activities covered by a delegation of authority. As delegations of authority are finalized, they will be listed in Part 3190.

The development of this proposed rulemaking was facilitated by a series of meetings between the Bureau of Land Management and representatives of States which have significant Federal and Indian onshore oil and gas operations. The meetings were held to assist the Bureau of Land Management in determining the depth of State interest in such a program, to advise States of the various provisions of the regulations that were being considered for implementation of the program, and to address specific standards that would be used in accomplishing delegations of inspection authority. In considering this proposed rulemaking, States should be aware that the continuation of any delegation made under any regulations promulgated as a result of this rulemaking process will be conditioned upon the availability of the funds for compensation to a State participating in the program.

The principal authors of this proposed rulemaking are Susan Pepperney and Gilbert Lockwood, Division of Inspection and Enforcement, and Stephen Spector, Division of Fluid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rulemaking will not have a significant economic effect on the States involved because they will be reimbursed for costs incurred as required by the Federal Oil and Gas Royalty Management Act of 1982.

This proposed rulemaking will not have a major impact on Federal and

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Indian leases. Much of the information required by State regulatory agencies from a lessee or operator is essentially a duplicate of that presently required by the United States. In addition, under the existing system, a lessee or operator is often required to comply with two sets of operating regulations and is subject to twice the regulatory presence. The reduction in duplication of effort by State and Federal governments resulting from this proposed rulemaking should result in less burdensome conditions for a lessee or operator.

The information collection requirements contained in 43 CFR Part 3190 do not require approval of the Office of Management and Budget under 44 U.S.C. 3501 because there are fewer than 10 respondents annually. Of the 29 States eligible to participate in the delegation of authority or cooperative agreement programs authorized by this part, only two States have expressed interest in a delegation of authority and only one State has expressed interest in a cooperative agreement. The Bureau of Land Management currently has non-funded cooperative agreements with three Indian tribes and has received indications of interest from three additional tribes. Therefore, it is anticipated that participants in any of the programs authorized by this part will be less than 10 annually.

List of Subjects in 43 CFR Part 3190

Administrative practice and procedure, Government contracts, Indian lands—mineral resources, Intergovernmental relations, Mineral royalties, Oil and gas production, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 18, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399) and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), it is proposed to amend Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations by adding a new part 3190 as set forth below:

PART 3190—DELEGATION OF AUTHORITY, COOPERATIVE AGREEMENTS AND CONTRACTS FOR OIL AND GAS INSPECTION

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; General

Sec.

3190.0–1 Purpose.
3190.0–3 Authority.
3190.0–4 Objective.
3190.0–5 Definitions.
3190.0–7 Cross reference.
3190.1 Proprietary data.
3190.2 Recordkeeping, funding and audit.
3190.2–1 Recordkeeping.
3190.2–2 Funding.
3190.2–3 Audit
3190.3 Sharing of civil penalties.

Subpart 3191—Delegation of Authority

3191.1 Petition for delegation.
3191.1–1 Petition.
3191.1–2 Eligibility.
3191.1–3 Action upon petition.
3191.1–4 Public hearing on petition.
3191.2 Terms of delegation.
3191.3 Termination and reinstatement.
3191.3–1 Termination.
3191.3–2 Reinstatement.
3191.4 Standards of delegation.
3191.5 Delegation for Indian lands.
3191.5–1 Indian lands included in delegation.
3191.5–2 Indian lands withdrawn from delegation.

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 18, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399) and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.).

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; General

§ 3190.0–1 Purpose.

The purpose of the part is to provide procedures for approval, implementation and administration of delegations of authority, cooperative agreements and contracts for inspection, enforcement and investigative activities related to oil and gas operations on Federal and Indian lands under the provisions of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C 1701 et seq.).

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.).

§ 3190.0–4 Objective.

The objective of this part is to assure that delegations of authority, cooperative agreements and contracts as provided for under the Federal Oil and Gas Royalty Management Act are carried out in accordance with the provisions of the Act and this title.

§ 3190.0–5 Definitions.

As used in this part, the term:

(a) "Inspection" means the examination of oil and gas lease sites, records or motor vehicle documentation by an authorized representative of the Secretary of the Interior to determine if there is compliance with applicable regulations, orders and the mineral leasing laws.

(b) "Investigation" means any inquiry into any action by or on behalf of a lessee or operator of a Federal or Indian lease, or transporter of oil from such lease.

(c) "Contractor" means any individual, corporation, association, partnership, consortium or joint venture who has contracted to carry out activities under this part.

§ 3190.0–7 Cross references.

(a) 25 CFR 211.18; 212.24; 213.34.

(b) 30 CFR Part 229.

(c) 43 CFR Part 3160.

§ 3190.1 Proprietary data.

With regard to any data or information obtained by a State, Indian tribe or individual, whether under a delegation of authority, cooperative agreement or contract, the following applies:

(a) Proprietary data shall be made available to a State or Indian tribe pursuant to a cooperative agreement under the provisions of 30 U.S.C. 1732 if such State or Indian tribe:

(1) Consents in writing to restrict the dissemination of such information to such persons directly involved in an investigation under 30 U.S.C. 1732;

(2) Agrees in writing to accept liability for wrongful disclosure;

(3) In the case of a State, the State demonstrates that such information is essential to the conduct of an investigation or to litigation under 30 U.S.C 1732; and

(4) In the case of an Indian tribe, the tribe demonstrates that such information is essential to the conduct of an audit or investigation and waives for wrongful disclosure.

(b) Any person or State that obtains proprietary data pursuant to a delegation of authority, cooperative agreement or contract under this part is subject to the same provisions of law with respect to the disclosure of such information as would apply to any officer or employee of the United States.

§ 3190.2 Recordkeeping, funding and audit.

§ 3190.2–1 Recordkeeping.

(a) Records and accounts relating to activities under delegations of authority, cooperative agreements or contracts shall be identified in the delegation, cooperative agreement or contract.

(b) All records and other materials relating to a delegation of authority, cooperative agreement or contract shall be maintained by the State, Indian Tribe or contractor for a period of 6 years from the date they are generated or such other period as may be specified in the delegation, cooperative agreement or contract.

§ 3190.2–2 Funding.

(a) States and Tribes shall provide adequate funding for administration and execution of activities carried out under a delegation or cooperative agreement.

(b) Reimbursement for allowable costs incurred by a State, Indian tribe or contractor as a result of activities carried out under a delegation of authority, cooperative agreement or contract shall be as negotiated, with the following limitations:

(1) Up to 100 percent for a delegation of authority; or

(2) Up to 50 percent for a cooperative agreement.

(c) Funding shall be subject to the availability of funds.

(d) States, Indian tribes or contractors shall maintain financial records relating to the funds received and expended under a delegation of authority, cooperative agreement or contract as specified in the delegation of authority, cooperative agreement or contract.

(e) Reimbursement shall be at least quarterly and only shall be made upon submission of an invoice or request for reimbursement to the authorized officer.

§ 3190.2–3 Audit.

States, Indian tribes and contractors shall comply with generally accepted accounting principles and audit requirements established by the Department of the Interior and Bureau of Land Management in maintaining financial records relating to the funds received and expended under a delegation of authority, cooperative agreement or contract.

§ 3190.3 Sharing of civil penalties.

Fifty percent of any civil penalty collected by the United States as a result of activities carried out by a State under a delegation of authority or a State or Indian tribe under a cooperative agreement shall be payable to that State or Indian tribe upon receipt by the United States. Such amount shall be deducted from compensation due to the State or Indian tribe by the United States under the delegation of authority or cooperative agreement.

Subpart 3191—Delegation of Authority

§ 3191.1 Petition for delegation.

§ 3191.1–1 Petition.

The Governor or other authorized official of any eligible State may request in writing that the Director delegate all or part of his/her authority and responsibility for inspection, enforcement and investigation on oil and gas leases on Federal lands within the State and on Indian lands within the State where the affected Indian tribe or Indian allottee has given written permission for such inspection, enforcement and investigation. Requests by a State for delegation of other activities may be granted by the Director with the approval of the Secretary.

§ 3191.1–2 Eligibility.

Any State with producing oil or gas leases on Federal or Indian lands may request a delegation of authority.

§ 3191.1–3 Action upon petition.

Upon request for a delegation of authority, the Director shall determine if:

(a) The State has proposed an acceptable plan for carrying out the delegated activities and will provide adequate resources to achieve the purposes of 30 U.S.C. 1735. This plan shall, at a minimum:

(1) Identify specific authorities and responsibilities for which the State is requesting a delegation of authority and whether it is applicable to Federal lands only or includes Indian lands;

(2) Provide evidence of written permission of the affected Indian tribe(s) or allottee(s) for such lands;

(3) Include specifics for carrying out the delegated activities;

(4) Indicate the inspector resources for carrying out the delegated activities and documentation of inspector qualifications;

(5) Describe the proposed record keeping for funding purposes;

(6) Detail the frequency and method of payment; and

(7) Include copies of any non-Federal forms that are to be used.

(b) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Department of the Interior in accordance with the provisions of 30 U.S.C. 1735.

(c) The delegation will be carried out in coordination with activities retained by the Bureau so that such delegation will not create an unreasonable burden on any lessee.

§ 3191.1–4 Public hearing on petition.

Prior to the granting of any delegation of authority, the notice of proposed delegation shall be published in the Federal Register. The Federal Register notice shall provide an opportunity for a public hearing in the affected State.

§ 3191.2 Terms of delegation.

(a) Delegations shall be continuing, contingent upon available funding, providing that there is an annual finding by the Director that the provisions of the delegation and the mineral leasing laws are still being carried out and that the requirements of § 3191.1–3 (a), (b) and (c) of this title are still in effect.

(b) Authority delegated to a State under this subpart shall not be redelegated.

(c) The State regulatory authority shall maintain sufficient, qualified, personnel to comply with the terms and purpose of the delegation.

(d) Inspection identification cards shall be issued by the authorized officer to all certified State inspectors for the purpose of identifying the bearer as an authorized representative of the Secretary. Identification cards remain the property of the United States.

(e) The delegation shall provide for coordination with designated offices of the Bureau of Land Management, the Minerals Management Service, and, where appropriate, the Bureau of Indian Affairs.

(f) The delegation shall provide for annual program review.

(g) The delegation shall provide for annual budget and program reporting in conjunction with the Federal Budget process.

(h) The Director reserves the right to make inspections on Federal and Indian leases inspected by a State under this subpart for the purpose of evaluating the manner in which the delegation is being carried out.

(i) The Director reserves the right to act independently to carry out his/her responsibilities under the law.

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§ 3191.3 Termination and reinstatement.

§ 3191.3–1 Termination.

(a) The delegation may be terminated by mutual written consent at any time.

(b) The Director may revoke a delegation if it is determined that the State has failed to meet the minimum standards for complying with the delegated authority.

(c) Prior to any action to revoke a delegation, the Director shall notify the State in writing of the deficiencies in the program leading to such revocation.

(d) Upon notification of intent to revoke a delegation, the State shall have 30 days to respond with a plan to correct the cited deficiencies. If the Director determines that the plan of correction is acceptable, the Director shall then approve the plan and specify the timeframe within which the cited corrections shall be corrected.

(e) In the event the Director makes a determination to revoke a delegation of authority, the State shall be provided an opportunity for a hearing prior to final action.

§ 3191.3–2 Reinstatement.

Terminated delegations of authority may be reinstated as set out below:

(a) For a delegation terminated by mutual consent under § 3191.3–1(a) of this title, the State shall apply for reinstatement by filing a petition with the Director, who shall determine whether such reinstatement should be granted.

(b) For a delegation of authority revoked by the Director, the State shall file a petition requesting reinstatement. In applying for reinstatement, the State shall provide written evidence that it has remedied all defects for which the delegation was revoked and that it is fully capable of resuming the activities carried out under the delegation. Upon receipt of the petition, the following actions shall be taken:

(1) The authorized officer, after review of the petition, may recommend approval of the reinstatement but shall provide proof that the deficiencies have been corrected and that the State is fully capable of carrying out the delegation.

(2) The Director shall review the petition and the recommendation of the authorized officer and may approve the reinstatement of a delegation upon a determination that the findings of the authorized officer are acceptable.

§ 3191.4 Standards of delegation.

(a) The Director shall establish minimum standards to be used by a State in carrying out activities established in the delegation.

(b) The delegation shall identify functions, if any, that are to be carried out jointly.

(c) A delegation shall be made in accordance with the requirements of this section.

(d) Copies of delegations shall be on file in the Washington Office of the Bureau and shall be available for public inspection.

§ 3191.5 Delegation for Indian lands.

§ 3191.5–1 Indian lands included in delegation.

(a) No activity under a delegation made under this subpart may be carried out on Indian lands without the written permission of the affected Indian tribe or allottee.

(b) A State requesting a delegation involving Indian lands shall provide, as evidence of permission, a written agreement signed by an appropriate official(s) of the Indian tribe for tribal lands, or by the individual allottee(s) or their representative(s) for allotted lands. The agreement shall at a minimum specify the type and extent of activities to be carried out by the State under the agreement, and provisions for State access to carry out the specified activities.

(c) Delegations covering Indian lands shall be separate from delegations covering Federal lands.

§ 3191.5–2 Indian lands withdrawn from delegation.

(a) When an Indian tribe or allottee withdraws permission for a State to conduct inspection and related activities on its lands, the Indian tribe or allottee shall provide written notice of its withdrawal of permission to the State.

(b) Immediately upon receipt of a notice of withdrawal of permission, the State shall provide written notification of said notice to the authorized officer, who immediately shall take all necessary action to provide for inspection and enforcement activities on the affected Indian lands.

(c) No later than 120 days after receipt of a notice of withdrawal of permission draw from an Indian tribe or allottee, the delegation on the lands covered by the notice shall terminate.

(d) Upon termination of a delegation covering Indian lands, appropriate changes in funding shall be made by the authorized officer.

James E. Cason,

Acting Assistant Secretary of the Interior.

August 28, 1986.

[FR Doc. 86–23061 Filed 10–10–86; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 60224–6024]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In response to a 1984 amendment to the Marine Mammal Protection Act, the NMFS proposed on August 13, 1986, to amend the marine mammal regulations regarding the importation of yellowfin tuna caught with purse seines in the eastern tropical Pacific Ocean. The NMFS invited the general public and affected industry to submit comments on the proposal on or before October 14, 1986. This comment period is being extended for an additional thirty days (See DATE).

DATE: Comments on the proposed rule must be postmarked on or before November 14, 1986.

ADDRESS: Comments should be addressed to Robert B. Brumsted, Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (Marine Resources Management Specialist, NMFS), 202/673–5351.

SUPPLEMENTARY INFORMATION: The NMFS published proposed regulations in the **Federal Register** on August 13, 1986 (51 FR 28963–28968) to amend the marine mammal regulations regarding the importation of yellowfin tuna caught with purse seines in the eastern tropical Pacific Ocean. This proposed rule was in response to a 1984 amendment to the Marine Mammal Protection Act (16 U.S.C. 1361–1407). The comment period is being extended an additional thirty days to ensure adequate time for all interested parties, particularly affected nations, and those organizations and individuals not in the United States, to respond to the rulemaking.

Classification: The classification statements made in the proposed rule (51 FR 28963, August 13, 1986) apply also to this notice.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine Mammals,

Pollution, Reporting and recordkeeping requirements, Transportation.

Dated: October 7, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–23114 Filed 10–10–86; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 611

[Docket No. 60085–6185]

Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes the 1987 foreign fee schedule for foreign vessels fishing in the fishery conservation zone (FCZ). Under this fee schedule, owners or operators of foreign vessels would pay $184 per fishing permit application and 20.28 percent of the FY 1986 Magnuson Fishery Conservation and Management Act (Magnuson Act) costs. Vessels of certain fishing nations meeting the criteria of Pub. L. 99–272 would be required to pay an additional incremental amount of 73.35 percent of the base fees. Comments are requested on this fee schedule. This action will comply with section 204(b)(10) of the Magnuson Act.

DATE: Comments must be received on or before November 13, 1986.

ADDRESS: Send comments to: Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, Washington, DC 20235. Mark envelopes "Foreign Fees."

Copies of the draft regulatory impact review (RIR) and a detailed breakdown of NMFS costs are available at this address.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202–673–5315.

SUPPLEMENTARY INFORMATION: NOAA proposes a schedule of foreign fishing permit application and poundage fees for fishing during 1987 by foreign vessels in the FCZ. The new schedule would target collections of about $41.064 million, from foreign fishing in 1987 with an additional amount of $29.984 million in collections possible under provisions of Pub. L. 99–272. These amounts are determined as described below. NOAA has consulted with the Coast Guard and the Department of State (DOS) on this propsal. The Department of State agrees with its publication for public comments. No fees are proposed for joint ventures in this action.

NOAA is again publishing the proposed 1987 fee schedule as a single unit containing both foreign poundage and permit application fees. Readers are advised, however, that the final fees may be published separately should there be delays in adopting either final poundage or final permit application fees.

Background

Subparagraph 204(b)(10)(B) of the Magnuson Act requires the Secretry of Commerce to impose fees on the owners or operators of foreign fishing vessels for which permits are issued "at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of [the Magnuson] Act during . . . fiscal year [1986] the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during [1985] bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during [1985]." (16 U.S.C. 1824(b)(10)(B)).

However, if the Secretary of Commerce, in consultation with the Secretary of State, finds a fishing nation to be "harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary", or "failing to take sufficient action to benefit the conservation and development of United States fisheries", subparagraph 204(b)(10)(C) applies. Subparagraph 204(b)(10)(C) requires the Secretary to impose fees for that nation which bear to the ratio of the fish harvested by foreign vessels in the FCZ to the aggregate quantity of fish harvested by both foreign and domestic vessels in the FCZ only. Removing the quantity of U.S. harvested fish caught in the territorial waters from the formula increases the ratio and thereby the fees that the nation must pay.

Fees have been collected for foreign fishing since 1977 under annual schedules set forth at 50 CFR 611.22. Fees collected under these schedules were $7.1 million in 1977, $8.8 million in 1978, $10.8 million in 1979, $16.7 million in 1980, $24.1 million in 1981, $33.4 million in 1982, $41.3 million in 1983, $42.9 million in 1984 and $41.5 million in 1985. Collections have not been completed for 1986, but less than $49.7 million is anticipated. Foreign fees are assessed for poundage of fish harvested and for processing foreign fishing applications. Poundage fees were assessed at a rate of 3.5 percent of the ex-vessel value of a species until 1980. Fees were increased in 1981 by amendment of the Magnuson Act, Pub. L. 96–561, to recover at least the foreign share of the Federal cost of carryingf out the purposes of the Magnuson Act. In proposing the fee schedule for 1983, NOAA established but did not exercise authority to collect fees in excess of the amounts specified as the foreign share above (47 FR 51336, November 12, 1982).

In 1986, Pub. L. 99–272 amended section 204(b)(10) of the Magnuson Act to require that higher fees be paid by certain foreign nations. On September 4, 1986, NOAA revised the 1986 fee schedule effective October 1, 1986, at 51 FR 32089, to require that any foreign nation found to be harvesting anadromous species of U.S. origin at unacceptable levels or to be failing to take sufficient action to benefit the conservation and development of U.S. fisheries pay for the last quarter of calendar year 1986 an incremental amount of 78.5 percent of the poundage fees to the general fund of the U.S. Treasury in addition to the scheduled fees.

The foreign fee target proposed for 1987 is $41.064 million, less than the $49.7 million foreign fee collection target in 1986. The incremental amount proposed for 1987 is 73.35 percent of the poundage fee collection target. The foreign fee target amount is determined by applying the ratio of the foreign catch in the FCZ to the total catch in the FCZ and territorial waters, 20.28 percent, against the total Magnuson Act costs for fiscal year (FY) 1986, $202.705 million. The ratio of foreign catch to the total catch in the FCZ, 35.05 percent, governs the incremental amount. The ratio of the poundage fee collection target to the estimated value of the 1987 foreign harvest of all species (as discussed later) determines the rate at which fees are assessed by species.

Species fee rates were varied in the fee schedules from 1981 through 1984 to reflect certain fisheries management considerations. After reviewing the effectiveness of such variable rates in promoting reductions in the foreign incidental harvest of species important to U.S. fishermen and increases in the foreign harvest of species of lower value to U.S. and foreign fishermen, NOAA decided to discontinue their use in 1985. The decision to apply a uniform species fee rate was also applied in the 1986 fee schedule and governs the proposed species fee rates for 1987 as well. Therefore, the species fees proposed in this schedule and listed in the table of the regulatory text at § 611.22 are a uniform percentage of exvessel value.

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FY 1986 Costs for Purposes of the Magnuson Act

The Federal Government's costs of carrying out provisions of the Magnuson Act in FY 1986 were calculated by using the general estimating techniques that were used to estimate costs for fee schedules since 1982 (see 46 FR 55729, Nov. 12, 1981). Some improvements were included in estimates for the 1986 fee schedule (50 FR 41533, Oct. 11, 1985). The improvements were prompted by discussions with General Accounting Office (GAO) auditors following a review of the NMFS fee setting process, and are continued in the estimates for the 1987 schedule.

All NMFS units submit documentation of the planned use of their funding allocations. The documents are "operations plans," which include a narrative description of activities and the amounts budgeted for labor, travel, contracts, etc. Operations plans are analyzed to identify the costs of performing functions directed toward provisions of the Magnuson Act, without regard to legislative authorizations for certain activities predating the Magnuson Act. NOAA's policy is to calculate the full direct and indirect costs, not incremental costs, for performing services for others (NOAA Budget Handbook, Chapter 2, Section 3). Documentation of NMFS's determination of Magnuson Act costs is available at the above address. The documentation specifies, by unit, the amount of each operations plan considered to contribute to carrying out provisions of the Magnuson Act (Magnuson Act costs) and includes appropriate Magnuson Act costs of grants (and associated overhead costs) and reimbursable work, inter-NOAA transfers of funds, underutilized species development, marine recreational fisheries programs, and salmon research.

Using this process, the total FY 1986 NMFS cost was determined to be $79.085 million. The NMFS FY 1986 costs are one percent above its actual revised FY 1985 costs of $78.445 million. Other NOAA and Department of Commerce Magnuson Act costs are $10.861 million or 7.9 percent below FY 1985 costs. The FY 1986 cost data for establishing the 1987 fee target are shown in Table 1, together with comparative data from FY 1984 and FY 1985 for all Federal agencies incurring Magnuson Act costs.

The Department of State (DOS) estimates its FY 1986 costs at $289,800, the same level as in FY 1985.

The Coast Guard's costs for fisheries enforcement activities in FY 1986 were determined using the same methods as in FY 1985. The NMFS asked the Coast Guard to include indirect program support costs and these costs are included as part of its FY 1986 Magnuson Act costs. The Coast Guard's FY 1986 costs of $112.459 million are down 15 percent from actual Coast Guard costs in FY 1985.

The estimated total cost for carrying out the provisions of the Magnuson Act in FY 1986 is $202.705 million. This total is proposed to be adopted for the calculation of the foreign fishing fee target in 1987.

TABLE 1.—DETERMINATION OF FISCAL YEAR 1986 AGENCY COSTS FOR PURPOSES OF THE MAGNUSON ACT AND COMPARISONS WITH FISCAL YEARS 1984 AND 1985 COSTS

(Thousand dollars)

Department/agency/line office	FY84 cost	FY85 diff	FY85 cost (1)	FY86 diff	FY86 cost	FY86 +(−) %
DOC-Support Total	169	8	177	0	177	0.00
DOC-NOAA-ADMIN	188	96	284	20	304	7.04
DOC-NOAA-NESDIS	264	12	276	11	287	3.98
DOC-NOAA-FIASCS	375	(185)	190	(15)	175	(7.89)
DOC-NOAA-Sea Grant	463	270	763	(30)	733	(3.93)
DOC-NOAA-Ships	10,163	(90)	10,093	(918)	9,175	(9.10)
Total	11,501	105	11,606	(932)	10,674	(8.03)
DOC-NMFS-HDQS	14,518	787	15,307	263	15,570	1.72
DOC-NMFS-F/NEC	11,868	(128)	11,730	233	11,963	1.99
DOC-NMFS-F/SEC	9,454	2,724	12,178	661	12,839	5.43
DOC-NMFS-F/SWC	5,375	798	6,161	(188)	5,973	(3.05)
DOC-NMFS-F/NWC	16,805	7,150	16,055	157	16,222	0.92
DOC-NMFS-F/NER	3,267	1,503	4,770	378	5,148	7.92
DOC-NMFS-F/SER	2,495	714	3,208	(158)	3,050	(4.95)
DOC-NMFS-F/SWR (2)	1,936	648	2,574	(370)	2,204	(14.37)
DOC-NMFS-F/Misc	2,154	363	2,517	(198)	2,319	(7.87)
DOC-NMFS-F/AKR	1,384	560	1,944	(137)	1,807	(7.05)
Total	63,326	15,117	78,445	150	79,095	0.83
DOC-All Agency Total	74,908	15,230	90,225	(252)	89,548	(0.31)
DOS-OES/OFA Total	280	20	300	0	300	0.00
DOT-CG (3) Total	94,782	37,552	132,314	(19,855)	112,459	(15.01)
Grand Total	170,040	52,802	222,842	(20,137)	202,705	(9.04)

(1) FY85 grand total revised (figure previously reported at 50 FR 41535 was $222,812K).
(2) Southwest region's greater than ten percent reduction in FY86 costs attributable mainly to decreases in Magnuson Act costs related to law enforcement CYOP and to grants.
(3) Coast Guard's greater than ten percent reduction in FY86 costs attributable to decreases in funds available for law enforcement. Coast Guard further notes that its accounting system indicates $77,040K of the $112,459K above more accurately approximates the FY86 actual cost for foreign enforcement than foreign costs calculated by the ratios of foreign catch to total catch.

Ratios of the 1985 Foreign Catch to Total Catch

Principles applied since enactment of Pub. L. 96-561 for estimating the ratio of the foreign catch to the total catch in the FCZ and territorial waters are employed for the 1985 ratio. The 1985 catch data are the most current official data now available for the year preceding preparation of this fee schedule. Readers interested in more details should refer to the discussion on the statistics for setting fees contained in 50 FR 41533.

In determining the ratio of the foreign catch to the total catch in the FCZ and territorial waters, the U.S. catch in international waters and freshwater and U.S. catch of tunas is subtracted from the total U.S. reported commercial catch to obtain the U.S. commercial catch in the FCZ and territorial waters (which include internal marine waters). The resulting commercial catch is corrected to international standards by adding the weight of mollusk shells. The total U.S. catch in the FCZ and the territorial waters is obtained by adding the preliminary recreational catch in the FCZ from "Fisheries of the United States." The ratio for the 1987 fee schedule is 20.26 percent. Table 2(A) lists the 1985 data used for this ratio.

In addition to the above, subparagraph 204(b)(10)(C) requires that a higher level of fees be established for each fiscal year for nations found to be harvesting anadromous species of U.S. origin at levels unacceptable to the Secretary or not taking actions to benefit the conservation and development of United States fisheries. That level is determined by the ratio of the foreign catch to the total catch in the FCZ only. Table 2(B) shows the 1985 catches in the FCZ and appropriate adjustments of the tuna and mollusk catches. **The ratio of catches so determined shows that 35.05 percent of the 1985 catch in the FCZ was taken by foreign vessels. That ratio was 30.7 percent in the prior year. Nations failing under one or both of the above criteria ("high fee nations") in calendar year 1987 will pay against 35.05 percent of total Magnuson Act costs or pay an incremental amount equal to 73.35 percent of their poundage fees in addition to the poundage fees for their catches in 1987.**

TABLE 2.—ESTIMATE RATIOS OF FOREIGN CATCH TO TOTAL CATCH, 1985

	Metric tons
(A) Including Territorial waters:	
U.S. commercial catch [1]	3,948,197
Exclusions:	
International waters	229,512
Tuna (0–200 miles)	14,753
Freshwater (incl. G. Lakes alewives)	86,040
U.S. commercial catch less exclusions	3,637,892
Additions:	
Correction for mollusks [2]	767,053
Recreational catch [4]	176,708
Total U.S. catch	4,581,653
Foreign catch [5]	1,163,930
Total catch	5,745,583
Ratio including territorial waters	20.26
(B) Excluding territorial waters:	
U.S. commercial catch [1]	3,948,197
Exclusions:	
International waters	229,512
Tuna (3–200 miles)	14,417
All catch inside 3 miles [3]	2,052,268
U.S. commercial catch less exclusions	1,652,000
Additions:	
Correction for mollusks [2]	413,656
Recreational catch [4]	91,200
Total U.S. catch	2,156,856
Foreign catch [5]	1,163,930
Total catch	3,320,786
Ratio excluding territorial waters	35.05

[1] This figure and all following figures for U.S. commercial catch from pages 8–11 of "Fisheries of the United States, 1985" (calculated in pounds and converted to metric tons). Figures may not add due to rounding.
[2] Except for Texas and west coast of Florida, where boundary line is nine nautical miles from shore. Also excludes any waters beyond three nautical miles from shore considered to be internal (E.G. areas of Puget Sound).
[3] Addition of mollusk shells (U.S. statistics for internal use include only edible meat weight, whereas international standard includes shell weights).
[4] Based on 1984 data for Atlantic, Gulf and Pacific; 1981 data for Western Pacific; 1979 data for Caribbean. Includes catch types A and B1 and assumes average weight of B1 is similar to A.
[5] From page 22, "Fisheries of the United States, 1985."

The 1987 Foreign Fishing Fee Collection Target

Section 204(b)(10)(B) of the Magnuson Act requires that foreign fishing vessel owners or operators pay at least the amount calculated from the ratio of the foreign catch to the total catch in the FCZ and territorial waters. Therefore, the fees will be based on a target of at least 20.26 percent of the total Magnuson Act costs ($202.705 million calculated in Table 1) in 1987. That target is $41.064 million as shown below.

Fee target (1987) = ($202.705 million) × (0.2025782) = $41.064 million.

If all nations in 1987 were found to be "high fee" nations, $71.048 million would be the total fees to be collected. A similar calculation uses the ratio of the catches in the FCZ, 35.05 percent, to calculate that amount.

High fee amount (1987) = ($202.705) × (0.3504983) = $71.048 million.

Approximately $184,000 is expected to be received for 1987 permit application fees (see below). The application fees are subtracted from $41.064 million to arrive at the amount to be collected for the foreign catch by poundage fees, $40.880 million or $70.864 million under the "high fees." The 1987 proposed poundage fee target is $6.620 million lower than the $49.5 million target in 1986, and the "high fee" amount is $17.436 million less than the "high fee" target for the last quarter of 1986. These changes reflect the reductions in the Coast Guard's FY 1986 costs and the overall reduction in total FY 1986 Magnuson Act costs. They also reflect the reductions in the respective ratios of catches used in the calculations for 1986 and 1987.

Permit Application Fees

NOAA determines foreign fishing permit application fees annually by estimating the costs of processing an application during that fee year (45 FR 82267, December 15, 1980). The estimated costs used to develop the proposed 1987 permit application fee are shown in Table 3.

TABLE 3.—ESTIMATED COSTS ASSOCIATED WITH PROCESSING 1987 FOREIGN FISHING PERMIT APPLICATIONS

Department/category	Dollars
DOC—Computer	20,000
DOC—Printing (applications/permits)	200
DOC—Printing (Federal Register)	10,820
DOC—Salaries/benefits	116,394
DOC—Total	147,514
DOS—Computer	3,500
DOS—Duplicating/mailing	1,300
DOS—Salaries/benefits	30,000
DOS—Travel	1,200
DOS—Total	36,000
Grand total	183,514

The total estimated cost of processing each permit application in 1987 is $184. The total cost is apportioned to each application by estimating that 1,000 applications will be received in 1987 and then rounding the average unit cost to $184 per application. Foreign applicants would pay the $184 but no surcharge for each application in 1987 (see below). Applicants for 1987 permits should pay this amount at the time of making application pending a final rule. NOAA will bill for any additional permit application fees or credit to future fees any differences in the amounts paid if the final permit application fee is different from the fee proposed. The increase in the permit application fee from $167 per application in 1986 results from nearly equal costs for processing permit applications in 1986 and in 1987, but a slight reduction in the anticipated number of applications expected to be processed in 1987.

Proposed Species Fees

NOAA collects the major portion of the foreign fees through tonnage fees for fish caught by foreign vessels. These are called the poundage fees. The fee per ton for a species is based on an estimate of "exvessel value" of that species, that is, the value to fishermen on delivering the catch to the first buyer. The Japan Fisheries Association (JFA) litigated the 1984 fee schedule on the grounds that some species fees selected for that schedule did not take into account relevant value considerations or were in error. In settling that suit NOAA agreed to work more closely with Japan (and with other nations) to determine exvessel values appropriate for the fee schedule.

On June 11, 1986, the Deputy Assistant Administrator for Fisheries Resource Management requested information on current foreign exvessel values from representatives of foreign nations fishing in the FCZ. A list of exvessel values for setting fees in 1987 was prepared using some new information furnished by respondents and data held by NMFS. The list was provided to the foreign representatives prior to the publication of this proposal for their information. This action by NOAA met its commitment to work closely with Japan (and other nations) as part of the settlement of the JFA's suit on the 1984 foreign fees.

Methods used to determine appropriate exvessel values for the 1987 fee schedule are similar to the methods adopted in the 1985 schedule and also used in 1986. NOAA continues to hold the view that prices paid to U.S. joint venture fishermen are perhaps different from the values of fish to foreign fishing companies for the reasons stated in the 1985 fee schedule, see response to Comment 3.b at 50 FR 460 (January 4, 1985). Joint venture prices for different species in a fishery complex may be useful, in some instances, for establishing the relative values of the fish species which make up that complex or when other information is not available. The methods used for establishing 1987 exvessel values in the main depend on foreign price information and other data held by NMFS. In a few cases, joint venture prices were used to establish an absolute value when other information was unavailable. However, joint venture prices are first adjusted if appropriate to include consideration of the fees

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which would be paid for the foreign harvest. Values by fishery were determined as follows: Table 4 lists the proposed exvessel values and comparisons with values adopted in the 1986 schedule.

TABLE 4.—COMPARISON OF 1986 FINAL AND 1987 PROPOSED EXVESSEL VALUES PER METRIC TON

Species	Fishery	1986 final exvessel value (dollars)	1987 proposed exvessel value (dollars)	1987 (dollars) increase/ decrease	1987 (percent) increase/ decrease
Alaska pollock	BSA/GOA	122	172	50	40.98
Atka mackerel	BSA/GOA	184	237	53	28.80
Pacific cod	BSA/GOA	256	257	1	0.35
Flatfish	BSA/GOA	136	169	27	(17.31)
Pacific ocean perch	BSA/GOA	390	381	(9)	(2.01)
Other Rockfish	BSA/GOA	462	651	188	40.91
Pacific squid	BSA/GOA	224	140	(84)	(37.50)
Other species	BSA/GOA	151	213	62	41.06
Sablefish	BSA	384	419	35	9.11
Snails	BSA	256	256	0	0.00
Sablefish	GOA	730	796	66	9.04
Jack mackerel	WOC	510	510	0	0.00
Flatfish	WOC	617	661	44	7.25
Pacific ocean perch	WOC	648	804	55	10.89
Other rockfish	WOC	589	686	97	16.47
Sablefish	WOC	576	810	234	40.63
Pacific whiting	WOC	122	122	0	0.00
Other species	WOC	582	725	143	24.57
Butterfish	NWA	618	618	0	0.00
Red hake	NWA	369	369	0	0.00
Silver hake	NWA	363	363	0	0.00
River herring	NWA	139	139	0	0.00
Atlantic mackerel	NWA	139	139	0	0.00
Squid, illex	NWA	390	390	0	0.00
Squid, loligo	NWA	633	662	29	4.58
Other species	NWA	286	286	0	0.00
Atlantic sharks	AES	423	423	0	0.00
Pacific billfish	PBS	1,365	1,365	0	0.00
Dolphin fish	PBS	5,515	5,515	0	0.00
Striped marlin	PBS	1,854	1,854	0	0.00
Pacific sharks	PBS	1,103	1,103	0	0.00
Pacific swordfish	PBS	2,337	2,337	0	0.00
Wahoo	PBS	2,206	2,206	0	0.00
Seamount groundfish	SMT	397	397	0	0.00
Coral (dollars per kilogram)	WPC	206	206	0	0.00

The Alaska Groundfish Fisheries

Representatives of Korean fishing interests provided average exvessel values by species by month for Alaska groundfish landed in Korean ports. The JFA provided data on fresh and frozen fish landings for the Kushiro Wholesale Market. The information used covered the period April 1985 through March 1986. Additionally, Japanese market information contained in the Foreign Fishery Information Release, appended to the NMFS Market News Report, was used to establish the exvessel value of Alaskan pollock. Alaska pollock was used as the index of Alaska groundfish prices. The frozen pollock surimi block prices on the Tokyo Central Wholesale Market (TCWM) were reduced to exvessel values under the assumptions concerning product recovery, profit, and value added described in NOAA's proposed fee schedule for 1985 (49 FR 40615, October 17, 1984). Prices of frozen surimi blocks for the period April 1985 through March 1986 were considered. The prices were reasonably steady at $0.75 to $0.80 per pound until June when the prices begin climbing rapidly while fluctuating slightly above and below the general trend. Prices rose to about $1.20 to $1.12 per pound by the end of the period. The yen to dollar relation was said to be the cause of this increase. However, a comparison with increases in the exvessel values of fresh pollock landed at the Kushiro Wholesale Market (up by about 70 percent during the year) bears out that, at least in Japanese markets, pressure resulting from current or future reductions in supplies appears to be driving the cost of the pollock resource as well as several other ground-fish species upward. Although a surimi block price of up to $1.30 per pond could be supported by the data, a conservative index price of $1.12 per pound for frozen surimi block is selected in order to smooth out fluctuations but follow the general trend. Based on this surimi price an exvessel value of $172/mt is proposed.

Exvessel values for all the Alaska groundfish species were derived from the ratios of frozen block prices on the Kushiro market to a theoretical frozen Alaska pollock block price in that market. These ratios were multiplied by the exvessel value estimated for pollock to determine exvessel values for each species. The resulting species values were adopted for the fee schedule after being compared with the data provided by Korea which were within 18 percent of the resulting values, except for the "other rockfish" and "other groundfish" catagories which were significantly lower and for Pacific squid which was somewhat higher than the resulting values. The adopted exvessel values are listed in Table 4. In selecting a flatfish price, NOAA reviewed estimated catch summary data compiled by the Foreign Fishing Observer program of the Northwest and Alaska Fisheries Center to determine species composition of the 1985 flatfish category. The adopted exvessel value for flatfish of $183/mt represents a weighted price based on the 1985 composition and species price ratios to pollock, where available.

The Pacific Groundfish Fishery

Data on current exvessel or frozen block values of Pacific whiting in foreign markets are sparse, because markets for whiting are mainly in eastern Europe and prices are State controlled. NOAA therefore proposes to continue the exvessel value of $122/mt from 1986 into 1987 to obtain public comments and additional data.

The exvessel values proposed for the other species taken in the Pacific groundfish foreign trawl fisheries under the incidental catch provisions of the Pacific Groundfish Fishery Management Plan are domestic prices and taken from the Pacific Fishery Management Council's preliminary Port Group Report: Commercial Groundfish, estimated prices per pound for 1986 for all areas. Exvessel values for all groundfish are increased significantly over last year's values; the jack mackerel value is the same as in 1986. Use of domestic pricing does not significantly affect this foreign fishery because incidental catch constitutes less than 0.05 percent of the Pacific whiting catch. The selected exvessel values for these incidental species are shown in Table 4.

Northwest Atlantic Ocean Fisheries

Loligo squid harvested by U.S. vessels are competitive in price with the foreign harvest of these species in the Atlantic. Therefore, the exvessel *Loligo* squid value proposed in this fee schedule considers adjusted joint venture prices as well as current average exvessel values for U.S. landings. The value proposed is $662/mt, see Table 4. NOAA has no firm information on *Illex* squid and no information on butterfish. It therefore proposes for comment the exvessel values of $390/mt for *Illex* squid and $618/mt for the incidental catch of butterfish which were adopted last year.

NOAA has reviewed confidential economic data received on the Atlantic mackerel fisheries and concluded that the exvessel value of $139/mt adopted in 1986 is also appropriate for use in the 1987 fee schedule.

The exvessel values proposed for red and silver hakes, and other species are the same as the values used in 1986 because NOAA has no information to support any changes in 1987. Since herring is competitive with mackerel, an exvessel value for river herring of $139/mt is also adopted. Proposed 1987 values for the Northwest Atlantic Ocean fisheries are shown in Table 4.

Western Pacific Fisheries

NOAA has not received any information to cause a revision of the exvessel values adopted in the final schedule for 1986. Therefore, NOAA proposes that the same values be used in 1987 (see Table 4).

Summary of Proposed 1987 Species Fees

The species fee per ton is calculated by multiplying the ratio of the poundage fee collection target to the estimated total exvessel value of the foreign catch in 1987 to determine the poundage fee assessment rate and then multiplying that rate by the exvessel value of that species. The total value of the foreign catch is calculated by multiplying the exvessel value proposed for each species by the projected catch of that species in 1987. Catch projections were provided by NMFS Regional Offices based on current understandings of the TALFFs which may be available in 1987. The total value of the 1987 foreign catch is the sum of the values of the catches of all species. Table 5 shows the data used for these calculations and lists the entire set of proposed 1987 species fees. The ratio of the poundage fee collection target ($40.880 million) to be estimated total exvessel value of the 1987 foreign catch ($84.126 million) results in a 1987 poundage fee assessment rate of 48.59 percent of the exvessel values in 1987.

TABLE 5.—ESTIMATED 1987 FOREIGN CATCH/VALUE WITH RECOVERED COSTS OF $40,880,000

Species	Fishery	Proposed exvessel value (dollars)	Estimated foreign catch (metric tons)	Estimated foreign catch value (dollars)	Proposed species fee (dollars)	Recovered costs (dollars)
Alaska pollock	BSA/GOA	172	216,022	37,499,784	83.56	18,222,549
Atka mackerel	BSA/GOA	237	1	237	115.17	115
Pacific cod	BSA/GOA	287	45,583	13,082,321	139.48	6,357,190
Flat fish	BSA/GOA	183	50,543	9,249,369	89.03	4,494,615
Pacific Ocean perch	BSA/GOA	391	23	8,993	190.00	4,370
Other rockfish	BSA/GOA	651	13	8,463	316.35	4,112
Pacific squid	BSA/GOA	140	463	57,620	68.03	32,859
Other species	BSA/GOA	213	1,912	407,256	103.50	197,931
Sablefish	BSA	419	95	39,805	203.61	19,343
Snails	BSA	256	0	0	124.40	0
Sablefish	GOA	796	0	0	386.81	0
Jack mackerel	WOC	510	1,500	765,000	247.83	371,742
Flatfish	WOC	661	50	32,550	316.26	15,817
Pacific Ocean perch	WOC	804	31	18,724	283.51	9,099
Other rockfish	WOC	686	369	253,134	329.95	123,007
Sablefish	WOC	810	86	69,560	393.61	33,850
Pacific whiting	WOC	122	60,000	7,320,000	59.28	2,557,062
Other species	WOC	725	250	181,250	352.30	88,076
Butterfish	NWA	618	330	203,940	300.31	99,102
Red hake	NWA	369	5,500	2,029,500	179.31	986,210
Silver hake	NWA	363	13,400	5,296,200	180.07	2,559,044
River herring	NWA	139	200	27,800	67.55	13,509
Atlantic mackerel	NWA	139	25,900	3,475,000	67.55	1,686,633
Squid, illex	NWA	390	2,000	780,000	189.52	379,031
Squid, loligo	NWA	662	3,500	2,317,000	321.65	1,125,917
Other species	NWA	268	2,000	536,000	130.23	260,462
Atlantic sharks	AES	423	1,150	486,450	205.55	236,384
Pacific billfish	PBS	1,985	0	0	964.59	0
Dolphin fish	PBS	5,515	0	0	2,679.84	0
Striped marlin	PBS	1,854	0	0	900.93	0
Pacific sharks	PBS	1,103	0	0	535.99	0
Pacific swordfish	PBS	2,337	0	0	1,135.64	0
Wahoo	PBS	2,206	0	0	1,071.98	0
Seamount groundfish	SMT	397	0	0	192.92	0
Coral (dollars per kilogram)	WPC	206	0	0	100.10	0
Totals			432,041	84,126,056		40,880,000

The proposed 1987 poundage fee assessment rate is greater than the 1986 final rate of 35.6 percent, and represents a 36.49 percent increase in the rate from 1986 to 1987. The increase is due to the sharp decrease in the foreign harvest estimated in 1987 which is only slightly offset by the decrease in the Magnuson Act costs and the two percent reduction in the harvest ratio in 1985. The average exvessel value in 1986 was $139/mt; the 1987 average is $195/mt. This increase in the average exvessel value shows an effect of the large reduction in the estimated harvest of Alaska pollock. The "higher fee" assessment rate as determined by this rule would be 84.24 percent of the total exvessel value of the foreign catch ($70.884 million/$84.126 million). The Magnuson Act (at 16 U.S.C. 1824(b)(10)(F)(ii)) requires that additional fees collected as a result of the "higher fee" criteria be deposited in the general fund of the U.S. Treasury rather than the Fisheries Loan Fund. NOAA has elected to collect the additional fees as an incremental amount rather than publish a separate fee table based on fees assessed at 84.24 percent of exvessel values. In practice, NOAA will bill countries meeting one or both of the criteria at the lower fee rate, but add an incremental amount as a percentage of the total fee bill. The amount of 73.35 percent (or $29.984 million/$40.880 million x 100) of the lower fees for the tonnage caught will be added to bills for these countries and be identified as the amount to be paid to the general fund of the U.S. Treasury.

Consistent with the reasons given above, NOAA proposes to amend section 611.22 of the foreign fishing regulations by this action as required by the fee provisions of 16 U.S.C. 1824(b)(10).

Surcharge

The Assistant Administrator for Fisheries, NOAA, has determined that the Fishing Vessel and Gear Damage Compensation Fund established by the Fisherman's Protective Act (22 U.S.C. 1980(10)(f)) continues to be sufficiently capitalized to pay any claims in 1987. Capitalization of the fund is derived from a surcharge on the foreign fishing fees imposed under section 204(b)(10) of the Magnuson Act. NOAA proposes to maintain the surcharge at zero percent, effectively waiving the surcharge in 1987 as it has been since 1984. Therefore, no change is proposed by this notice for regulations governing this surcharge at 50 CFR 611.22(b). NOAA reserves the right to modify the surcharge at a later date if unanticipated claims occur.

Classification

NOAA has prepared a regulatory impact review (RIR) that discusses the economic consequences and impacts of the proposed fee schedule and its alternatives. Copies of the RIR are available at the above address. Based on the RIR, the Administrator, NOAA, has determined that the proposed schedule does not constitute a major rule under E.O. 12291. The regulatory impact review demonstrates that the

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proposed fee schedule complies with the requirements of section 2 of E.O. 12291.

The General Counsel for the Department of Commerce has certified that the proposed fee schedule if adopted will not have a significant economic impact upon a substantial number of small entities for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This certification has been forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Because the proposed fee schedule will not have a significant economic impact upon a substantial number of small entities, a regulatory flexibility analysis is not required.

NOAA Directive 02-10 published at 45 FR 48312 (July 24, 1980) adopts internal procedures to implement the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*). Under those procedures, programmatic functions with no potential for significant environmental impacts are generally excluded from NEPA requirements.

The proposed fee schedule has no direct impact on the fishery resources in the FCZ. At the most, a fee schedule might affect the harvesting strategy of foreign fishing vessels and result in a different species mix being removed from the environment; however, the proposed schedule meets the criterion that fees should minimize disruption of traditional fishing patterns on target species. The environmental impact of harvesting the TALFF is described for each fishery management plan, and no further environmental assessment is necessary.

This proposed rule has no information collection provisions for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: October 8, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons above, 50 CFR Part 611 is proposed to be amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Paragraphs § 611.22 (a), (b)(1), (c) and (d) are revised as follows:

(a) *Permit application fees.* Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $184 per vessel, plus the surcharge, if required under paragraph (d) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA," must be sent to the Division Chief, Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, Washington, D.C. 20235. The permit fee payment must be accompanied by a list of the vessels for which the payment is made.

(b) *Poundage fees.*

(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (d) of this section.

TABLE 1.—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	300.31
2. Hake, red	179.31
3. Hake, silver	190.97
4. Herring, river	67.55
5. Mackerel, Atlantic	67.55
6. Other groundfish	130.23
7. Squid, *Illex*	189.52
8. Squid, *Loligo*	321.09
Atlantic and Gulf fisheries:	
9. Shark, Atlantic	205.55
10. Shrimp, royal red	(1)
Alaska fisheries:	
11. Pollock, Alaska	83.58
12. Cod, Pacific	139.46
13. Pacific ocean perch	190.00
14. Rockfish, other	316.35
15. Mackerel, Atka	115.17
16. Squid, Pacific	66.03
17. Flounders	58.93
18. Sablefish (Gulf of Alaska)	366.61
19. Sablefish (Bering Sea and Aleutian islands)	203.61
20. Groundfish, other	103.50
21. Snails	124.40
Pacific fisheries:	
22. Whiting, Pacific	59.26
23. Sablefish	393.61
24. Pacific ocean perch	293.51
25. Rockfish, other	333.35
26. Flounders	315.35
27. Mackerel, jack	247.83
28. Groundfish, other	352.30
Western Pacific fisheries:	
29. Coral [2]	100.10
30. Dolphin fish	2,679.94
31. Wahoo	1,071.98
32. Sharks	535.99
33. Marlin, striped	900.93
34. Billfish	964.59
35. Swordfish	1,136.64

[1] Reserved.
[2] Dollars per kilogram.

* * * * *

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10)(C) of section 204(b) of the Magnuson Act (16 U.S.C. 1824(b)(10)(C)). This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1987 will be 73.35 percent of the total poundage fee in each quarter during which this provision applies.

(d) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraph (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has waived the surcharge for 1987 fees.

* * * * *

[FR Doc. 86-23183 Filed 10-10-86; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 641

[Docket No. 60873-6173]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; regulatory amendment.

SUMMARY: NOAA issues this proposed rule to amend the implementing regulations for the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) which set minimum mesh size requirements for fish traps. The current regulations set 1 x 2 inches as the minimum mesh size. This proposed rule would allow other minimum mesh sizes to be used as well, including 1.5 x 1.5-inch and 1.5-inch hexagonal. The intent of the proposed rule is to allow the industry to use the most advantageous of several commercially available mesh materials and to make the FMP rule with respect to minimum mesh size identical to that for the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (South Atlantic plan), thereby eliminating the difficulty encountered by South Florida fishermen in attempting to comply with different rules for waters bisected by two separate Council areas.

DATE: Comments on the proposed rule must be received on or before November 28, 1986.

ADDRESSES: Comments on this proposed rule and requests for copies of the supplemental regulatory impact review/initial regulatory flexibility analysis prepared for this rule should be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan (813) 893-3722.

SUPPLEMENTARY INFORMATION: The FMP, which was approved by the Secretary of Commerce on June 3, 1983, under the authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act), and which is implemented by regulations appearing at 50 CFR Part 641, contains a provision at § 641.24(b)(4) which sets a minimum mesh size of 1 x 2 inches and requires a minimum of four 2 x 2-inch escape windows in fish traps used for taking reef fish.

During 1986, the Gulf of Mexico Fishery Management Council (Council), at the request of fishing industry representatives reviewed the issue of mesh sizes and scientific information related to fish escapement from various mesh sizes. The fishing industry representatives requested the Council to consider amending § 641.24(b)(4), through the FMP framework procedure of section 8.3.1. 2(8)A of the FMP, to conform with § 646.22 of the implementing regulation for the South Atlantic plan, for the following reasons: (1) Fishermen had difficulty in complying with different rules in adjacent waters (e.g., on the Gulf and Atlantic sides of the Florida Keys), and (2) alternative minimum mesh sizes woud allow more advantageous mesh and trap materials to be used. For example, 1.5 x 1.5-inch wire mesh is constructed of longer-lasting, heavier gauge wire than 1 x 2-inch mesh, and does not require steel frames. Also use of 1.5 x 1.5-inch woven net mesh would allow traps to be collapsible.

Reviews of scientific information indicated that all the alternative minimum mesh sizes authorized under the South Atlantic plan allowed larger fish to escape that was possible through 1 x 2-inch mesh, thereby providing greater escapement of the smaller, unsaleable juvenile fishes. These alternative meshes would reduce or eliminate embolism mortality of the smaller fish by allowing them to escape from traps which are being pulled. The alternative meshes would also increase the opportunity for escapement from lost (or "ghost") traps. One Caribbean study indicated that 1 x 2-inch mesh retained 9.5 times the number of fish than retained by 1.5-inch hexagonal mesh.

Based on the scientific analyses and data and on testimony, the Council has acted to amend the regulation for mesh size to conform with that for the South Atlantic plan, but in doing so retained the requirement for the four 2 x 2-inch escape windows currently required by the FFM.

Classification

The Assistant Administrator for Fisheries, NOAA, has previously determined that the FMP is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law, as summarized in the preamble to the final rule implementing the FMP (49 FR 3948, October 9, 1984). Since the Assistant Administrator has previously determined that the indentical trap mesh size requirements in the implementing regulations for the South Atlantic plan are also consistent with such standards, provisions, and law (49 FR 33448, August 23, 1984), that determination suffices to cover this proposed rule as well.

It was also previously determined, on the basis of a regulatory impact review (RIR), that the rule implementing the FMP is not major under Executive Order 12291. The RIR and initial regulatory flexibility analysis also were summarized in the preamble to the final rule for the FMP. A draft supplemental RIR was prepared for this proposed rule and the Assistant Administrator has determined this is not major under E.O. 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the rule retains the existing requirement for a 1 x 2-inch mesh size and simply allows the use of other alternative mesh sizes, if the fishermen desire to change to those alternatives. The impacts which are beneficial are summarized in the supplemental initial regulatory flexibility analysis which has been made part of the supplemental RIR.

The rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

This action does not significantly modify the Federal action for which an environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 24, 1983 (48 FR 38511).

The Council has previously determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management progam.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing.

Dated: October 8, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble 50 CFR Part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.24, paragraph (b)(4) is revised to read as follows:

§ 641.24 *Gear limitations.*

* * * * *

(b) * * *

(4) Fish traps must meet all the following mesh size requirements (based on centerline measurements between opposite wires or netting strands):

(i) A minimum of 2 square inches for each mesh;

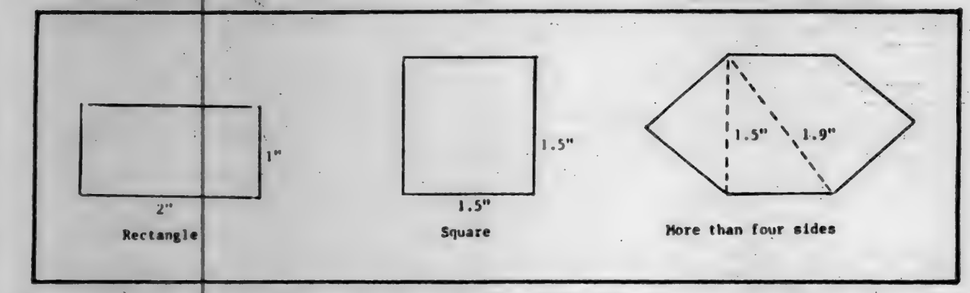
(ii) One-inch minimum length of shortest side;

(iii) Minimum distance of 1 inch between parallel sides of rectangular openings, and 1.5 inches between parallel sides of mesh openings with more than four sides;

(iv) One and nine-tenths (1.9) inches minimum distance for diagonal measures of mesh (Figure 3); and,

(v) Each trap must have a least two escape windows on each of two sides (excluding the bottom) which are 2 x 2 inches or larger.

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[FR Doc. 86-23143 Filed 10-10-86; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 650

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Availability of a Secretarial Amendment to the Fishery Management Plan for the Atlantic Sea Scallop Fishery and request for comments.

SUMMARY: NOAA issues this notice that the Secretary of Commerce has submitted to the New England Fishery Management Council a Secretarial Amendment to the Fishery Management Plan for Atlantic Sea Scallops (FMP) and is requesting comments from the public. The Secretarial Amendment would continue the management measures established in the FMP, and thereby supersede Amendment 1. In addition, it would allow the Regional Director to grant exemptions from the sea scallop regulations for the conduct of research. Copies of the Secretarial Amendment may be obtained at the address below.

DATE: Comments on the Amendment should be submitted on or before December 19, 1986.

ADDRESSES: All comments should be sent to Richard H. Schaefer, Acting Regional Director, Northeast Region, NMFS, 14 Elm Street, Gloucester, MA 01930. Mark on the outside of the envelope, "Comments on the Sea Scallop Secretarial Amendment."

Copies of the Secretarial Amendment are available from Carol J. Kilbride, Northeast Region, NMFS, 2 State Fish Pier, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride, 617-281-3600 extension 331.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), section 304(c), provides authority for the Secretary of Commerce to prepare necessary amendments to FMPs. On May 28, 1986, the New England Fishery Management Council voted unanimously to request the Secretary to prepare a Secretarial Amendment to re-establish the management measures of the original FMP, and thereby supersede Amendment 1. In addition, the Council requested the Secretary to include a provision that would allow the Regional Director to grant exemptions from the regulations for the conduct of research beneficial to the sea scallop resource or fishery.

This Secretarial Amendment is necessary for regulating the harvest of the Atlantic sea scallop fishery. It is intended to provide adequate time for the Council to develop and analyze alternative measures that will meet the objectives of the FMP and be accepted by the industry.

Dated: October 8, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-23113 Filed 10-10-86; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 198
Tuesday, October 14, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of the Market Stabilization Price for Sugar for Fiscal Year 1987

Correction

In FR Doc. 86-22244 appearing on page 35012 in the issue of Wednesday, October 1, 1986, make the following correction:

In the second column, in the second complete paragraph, fourth line, "21.87" should read "21.76".

BILLING CODE 1505-01-M

Forest Service

Proposed Draft Forest Plan and Draft Environmental Impact Statement, Sierra National Forest, Fresno, Madera, and Mariposa Counties, CA

The Sierra National Forest is sponsoring two public advisory hearings to provide an opportunity for oral comments to the Forest Service concerning the proposed Forest plan and environmental statement. Oral testimony may be given at the following formal hearing locations:

November 13—
Hacienda Resort and Convention Center, 2550 West Clinton Avenue (Off Hwy 99 at Clinton Exit), Fresno, CA

November 18—
Episcopal Camp and Conference Center, 43555 Hwy 41, Oakhurst, CA.

Both hearings will begin at 7 p.m. Individuals interested in speaking have the option of preregistering by contacting the Forest Supervisor's Office receptionist by mail or telephone or by preregistering at the hearings from 6:30 to 7 p.m.

Both oral and written testimony will be accepted. Speakers will be limited to five minutes each. All testimony will be recorded, transcribed, and entered in the public record for analysis.

Sign-in sheets will be used to document attendance. Speakers will also be required to fill out a 3×5 card with their name, address, and affiliation. These cards will be given to the hearing officer in the order in which they signed in (those who preregistered via the SO receptionist will go before those signing in at the hearing). Elected officials will be allowed to speak first. Shortly before the hearing begins, the timekeeper will collect the 3×5 cards, put them in order in which they will speak (which will include the names of individuals who preregistered with the SO receptionist) and give them to the hearing officer. No group presentations will be allowed, although a group could sign up consecutively. Signs, banners, posters, etc., will not be allowed in the meeting hall.

The timekeeper will use colored cards to indicate the amount of time the speaker has remaining. At the end of five minutes, a red card will be shown indicating that the alloted time is over.

A court reporter will record all oral testimony and transcribe it so it can be made a part of the official public comment record. Written comment will also be accepted and entered into the official comment record.

The hearing officer will call the hearing to order, and explain the procedures that will be followed.

For further information, contact James L. Boynton, Forest Supervisor, Sierra National Forest, 1130 O Street, Fresno, CA 93721. Telephone: (209) 487-5143.

Dated: October 7, 1986.

James L. Boynton,

Forest Supervisor.

[FR Doc. 86-23131 Filed 10-10-86; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has sumbitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1987 Economic Censuses General Schedule
Form number: Agency—NC-9923; OMB—NA
Type of request: New collection
Burden: 325,000 respondents; 75,000 reporting hours
Needs and uses: This Survey, to be conducted in FY88, will provide a standard basis for assigning Standard Industrial Classification codes of establishments engaged in all areas of economic activity.
Affected public: Business or other for-profit institutions, non-profit institutions, small businesses on organizations
Frequency: Quinquennially
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: October 8, 1986.

Edward Michals,

Department Clearance Officer, Information Management Division, Management.

[FR Doc. 86-23152 Filed 10-10-86; 8:45 am]
BILLING CODE 3510-07-M

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Microforges

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce 14th & Constitution Avenue NW., Washington, DC.

Docket number: 84-120. Applicant: Harvard University, Cambridge, MA 02138. Intended Use: See notice at 49 FR 13735. Advice submitted by: National Institutes of Health: June 1, 1984.

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Docket number: 85-278. Applicant: University of Hawaii, Honolulu, HI 96822. Intended use: See notice at 50 FR 38503. Advice submitted by: National Institutes of Health: April 3, 1986.

Instrument: Microforge.

Manufacturer: Narishige Scientific Instrument Laboratory, Japan.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: The foreign instruments accurately shape and fire polish patch-clamp capillary tubes with orifice diameters to about 1.0 micrometer. The National Institutes of Health advises in its respectively cited memoranda that (1) this capability is pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23156 Filed 10-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-010]

Carbon Steel Wire Rod From Brazil, Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from Insular Wire Products Corporation, an importer, the Department of Commerce has conducted an administrative review of the antidumping duty order on carbon steel wire rod from Brazil that was in effect prior to October 1, 1984. The review covers Companhia Siderurgica Fi-E1, one of the three known exporters of this merchandise to the United States, and the period October 1, 1983 through April 30, 1984. The review indicates the existence of dumping margins for Fi-E1 during the period.

In response to a request from the petitioners, the Department also initiated a review covering the other two known Brazilian exporters. The Department terminated its review of Companhia Siderurgica Belgo-Mineira and Companhia Siderurgica da Guanabara on April 18, 1986, the date the Department received the petitioners' withdrawal of their request for an administrative review.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value for shipments by Fi-E1.

On September 20, 1985, the Department published (50 FR 38150) the final results of a changed circumstances administrative review and the revocation of the order, effective October 1, 1984. Therefore, no cash deposits of estimated antidumping duties are required on this merchandise exported on or after October 1, 1984.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 52110) an antidumping duty order on carbon steel wire rod from Brazil. We began the October 1, 1983 through April 30, 1984 review of the order under our old regulations. After the promulgation of our new regulations, the petitioners, Atlantic Steel Co., Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., and an importer, Insular Wire Products Corporation, requested that we complete the administrative review in accordance with § 353.53a(a) of the Commerce Regulations. The Department published in the **Federal Register** (50 FR 48825, November 27, 1985) a notice of initiation of antidumping duty administrative review.

The Department terminated its review of Companhia Siderurgica Belgo-Mineira and Companhia Siderurgica da Guanabara on April 18, 1986, the date the Department received the petitioners' withdrawal of their request for an administrative review.

On September 20, 1985, the Department published (50 FR 38150) the final results of a changed circumstances administrative review of the order and the revocation of the order, effective October 1, 1984.

Scope of the Review

Imports covered by the review are shipments of Brazilian carbon steel wire rod. This merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated. The review covers one of the three known exporters of carbon steel wire rod from Brazil and the period October 1, 1983 through April 30, 1984.

United States Price

In calculating United States price the Department used the purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). The purchase price was based on the f.o.b. price to an unrelated purchaser in the United States. There were no packing costs. We made deductions for foreign inland freight and brokerage and handling charges, and added a tax paid in the home market but not collected on the exported merchandise. No adjustments were allowed for taxes levied on both home market and exported merchandise. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used the home market price, as defined in section 773 of the Tariff Act. Sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. The home market price was based on the c.&f. price to unrelated purchasers in the home market. We made adjustments for inland freight, differences in credit, and differences in commission paid to unrelated parties. We disallowed claims for selling expenses, because these claims were insufficiently substantiated. Appropriate adjustments for home market taxes were made to the United States price. There were no packing costs. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 11.31 precent exists for Fi-E1 for the period October 1, 1983 through April 30, 1984.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

On September 20, 1985, the Department published in the **Federal Register** (50 FR 38150) a notice of the final results of its changed circumstances administrative review of the antidumping duty order on carbon steel wire rod from Brazil and its revocation of the order, effective October 1, 1984. This administrative review covering the period October 1, 1983 through April 30, 1984 does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate all entries of this merchandise exported on or after October 1, 1984 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: October 7, 1986

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 86-23158 Filed 10-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-468-009]

Carbon Steel Wire Rod From Spain; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on carbon steel wire rod from Spain. The review covers the period February 24, 1984 through September 30, 1984 and seven programs.

As a result of the review, the Department has preliminarily determined the net subsidy to be 7.78 percent *ad valorem* for Forjas Alavesas, S.A., and 24.04 percent *ad valorem* for all other firms during the period of review. Interested parties are invited to comments on these preliminary results.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 18069) a countervailing duty order on carbon steel wire rod from Spain. We began this review of the order under our old regulations. On October 1, 1985, after the promulgation of our new regulations, a Spanish exporter, Forjas Alavesas, S.A., requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of this order. We published the initiation of the administrative review on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). We revoked the order effective October 1, 1984 (50 FR 37018, September 11, 1985).

Scope of Review

Imports covered by the review are shipments of Spanish carbon steel wire rod which includes coiled, semi-finished, hot-rolled carbon steel products of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter, no tempered or treated, not partly manufactured, and valued over 4 cents per pound. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated.

The review covers the period February 24, 1984 through September 30, 1984 and seven programs: (1) A rebate of indirect taxes upon exportation under the DFE; (2) Operating capital loans; (3) Long-term loans; (4) Capital grants for pollution control, energy conservation and economic development; (5) Short-term Privileged Circuit Exporter Credit programs other than operating capital loans; (6) Research and development programs; and (7) Accelerated depreciation and reduction in taxes.

We received a response from Forjas Alavesas, S.A., but we did not receive responses from the Spanish government or from any other firm.

Analysis of Programs

(1) DFE

Spain employs a cascading tax system. Under this system, the government levies a turnover tax ("IGTE") on each sale of a product through its various stages of production, up to (but not including) the final sale in Spain. Upon exportation of the product, the government, under the Desgravacion Fiscal a la Exportacion ("the DFE"), rebates both these accumulated IGTE indirect taxes and certain final stage taxes.

Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs which are physically incorporated in the exported product (see Annex 1.1 of Part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage [see Annex 1.2 of Part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy.

We requested information concerning the indirect tax incidence on physically incorporated inputs used to produce carbon steel wire rod to determine whether the DFE rebates allowable indirect taxes. However, we did not receive this information. Therefore, we consider the entire DFE rebate to provide a countervailable benefit.

On July 11, 1984, the Spanish government reduced the DFE rebate on steel products from 14.5 percent to 12.3 percent of the f.o.b. invoice price. To calculate the benefit for all firms other than Forjas Alavesas, the single firm responding to the questionnaire, we prorated these two rates according to the proportion of the review period that each rate was in effect. On this basis, we preliminarily determine the benefit to be 13.89 precent *ad valorem.*

Forjas Alavesas used imported as well as domestically produced billets as an input for making wire rod. The DFE rebate is paid only on the domestic value-added content of each shipment. In addition, the Spanish government deducts one percent of the DFE payment if the date of payment from customers is later than 90 days from the date of shipment. We verified the actual amount of DFE payments on wire rod received by Forjas Alavesas during the review period and allocated that amount over the total f.o.b. value of the merchandise exported by the company during the review period. Based on this information, we preliminarily determine that Forjas Alavesas received a

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weighted-average benefit of 7.08 percent *ad valorem*.

(2) Long-Term Loans

The Spanish government directs banks to make long-term loans to companies in certain industries at rates or on terms inconsistent with commercial considerations. Such loans are provided for approximately ten years. Forjas Alavesas received long-term loans for pollution control and plant modernization that had outstanding balances during the review period.

To calculate the benefit from these loans, we used the loan methodology in the Subsidies Appendix attached to the notice of final affirmative countervailing duty determination and countervailing duty order on cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006, April 26, 1984). Forjas Alavesas did not obtain any comparable commercial loans in the years in which it received the non-commercial long-term loans. Therefore, we used as our long-term commercial benchmark the national average interest rate for long-term loans, as published by the Bank of Spain in its *Boletin Estadistico*. Because we were unable to obtain the national average rate of return on equity to calculate the weighted cost of capital, we used the long-term commercial benchmark rate as the discount rate.

Since these loans benefit a company's total production, we allocated the benefit over the company's total sales during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.43 percent *ad valorem* for Forjas Alavesas during the review period.

For all other firms, we are using the rate for long-term loans from the notice of final affirmative countervailing duty determination on oil country tubular goods (49 FR 47060, November 30, 1984), which is the highest contemporaneous rate from another Spanish case, as the best information available. On this basis, we preliminarily determine the benefit to be 5.75 percent *ad valorem*.

(3) Capital Grants

The Basque Regional Government in Spain provides grants under Law 11/1981 of November 18, 1981, which established the "Center for Energy and Mineral Conservation (CADEM)." These grants are provided to companies in the Basque region that purchase equipment for energy conservation. Orders 478, 627 and 628 established the requirements for obtaining benefits under CADEM. The Basque Regional Government in Spain also provides grants under Order 8/1983 to industries in the Basque region that install pollution control equipment in their plants.

These government grants are designed to cover a portion of total investment by firms in purchasing certain new energy conservation and pollution control equipment required by the Basque government.

Because we were unable to determine whether these grants were provided to more than one industry in the Basque region, and we know of only one company that received these benefits, we consider them to be countervailable.

The Regional Board of the Province of Alava, through Agreements of October 30, 1981 and November 7 and 23, 1981, provides grants to certain industries located in priority zones. Because these grants are available only in certain priority zones within the Province of Alava, we consider them to be countervailable.

Forjas Alavesas received grants under CADEM, Order 8/1983 of the Basque government, and the Regional Board of the Province of Alava during the review period.

To calculate the benefits we applied the grant methodology from the Subsidies Appendix using a 15-year allocation period (the average useful life of assets in the steel industry, according to the U.S. Internal Revenue Service Class Life Asset Depreciation Range System) and the same discount rate as described for the long-term loans. Because these grants benefit a company's total production, we allocated the benefit over total sales of all steel products by Forjas Alavesas during the review period. On this basis, we preliminarily determine that Forjas Alavesas received a benefit of 0.25 percent *ad valorem*.

For all other firms, we are using as the best information available the rate for Forjas Alavesas, which is the highest contemporaneous rate.

(4) Operating Capital Loans

The Spanish government requires banks to set aside funds for short-term operating capital loans as part of its Privileged Circuit Exporter Credit program, which provides short-term financing to exporters at preferential rates. The operating capital loans are granted for a period of less than one year.

Forjas Alavesas had no loans from this program on which interest was due during the review period. Therefore, we preliminarily determine that Forjas Alavesas received no benefits from this program during the review period.

For all other firms, we are using the rate from the final determination in oil country tubular goods from Spain as the best information available. On this basis, we preliminarily determine the benefit to be 3.46 percent *ad valorem*.

(5) Other Programs

We also examined the following programs and preliminarily find that Forjas Alavesas did not use them during the review period.

A. Short-term Privileged Circuit Exporter Credit loans other than operating capital loans;

B. Research and development incentives; and

C. Accelerated depreciation and reduction in taxes.

We found that short-term export credits under the Privileged Exporter Circuit program provided a countervailable benefit of 0.69 percent *ad valorem* in the notice of final results of administrative review of the countervailing duty order on amoxicillin trihydrate and its salts from Spain (49 FR 12730, March 30, 1984). Therefore, we are using this rate as the best information available for all other firms. Because the Department has never found research and development incentives and accelerated depreciation and reduction in taxes to constitute or provide a countervailable benefit in any Spanish case, we preliminarily determine there to be no benefit from these programs.

Preliminary Results of Review

As a result of the review, we preliminarily determine the net subsidy to be 7.66 percent *ad valorem* for Forjas Alavesas and 24.04 percent *ad valorem* for all other firms. Because we consider these rates to be significantly different as defined in section 706(a)(2) of the Tariff Act, we are granting a company-specific rate to Forjas Alavesas.

The Department intends to instruct the Customs Service to assess countervailing duties of 7.76 percent of the f.o.b. invoice price on all shipments of Spanish carbon steel wire rod from Forjas Alavesas, S.A., and 24.04 percent of the f.o.b. invoice price of shipments of this merchandise from all other firms entered, or withdrawn from warehouse, for consumption on or after February 16, 1984 and exported on or before September 30, 1984.

Because we revoked this order effective October 1, 1984, we do not intend to instruct the Customs Service to collect a cash deposit of estimated countervailing duties.

Interested parties may submit written comments on these preliminary results within 25 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday afterward. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 7, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-23153 Filed 10-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-003]

Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on ceramic tile from Mexico. The review covers the period July 1, 1983 through June 30, 1984 and 15 programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant to be zero or *de minimis* for 18 firms and 4.43 percent *ad valorem* for all other firms during the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Alan Long or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 1986, the Department of Commerce ("the Department") published in the Federal Register (51 FR 20871) the final results of its last administrative review of the countervailing duty order on ceramic tile from Mexico (47 FR 20013, May 10, 1982). On September 10, 1985, September 25, 1985, and October 15, 1985, three Mexican exporters, Azulejos Grino, S.A., Ceramica Regiomontana, S.A., and Vitromex, S.A., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation of the administrative review on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican ceramic tile, including non-mosaic, glazed and unglazed ceramic floor and wall tile. Such merchandise is currently classifiable under items 532.2400 and 532.2700 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983 through June 30, 1984 and 15 programs: (1) FOMEX; (2) Article 94 of the Banking Law; (3) CERPROFI; (4) FONEI; (5) FOGAIN; (6) State tax incentives; (7) FOMIN; (8) NDP perferential discounts; (9) Import duty reductions and exemptions; (10) FIDEIN; (11) Bancomext loans; (12 Delay of payments on loans; (13) Delay of payments to PEMEX of fuel charges; (14) Preferential state investment incentives; and (15) CEDI.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: pre-export (production) financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since these loans are given only on merchandise destined for export. We found that the annual interest rate that financial institutions charged borrowers for FOMEX per-export financing outstanding during the period of review, denominated in Mexican pesos, ranged from 7 to 19.30 percent. The annual interest rate for FOMEX export financing, denominated in the currency of the importing country, ranged from 4.50 to 8.10 percent during the period of review.

Since we do not now have sufficient information to measure effective interest rates in Mexico, we chose nominal peso and dollar rates as our benchmarks. For peso-denominated loans, we used as a benchmark for the commercial interest rate in Mexico the average of the nominal interest rates published monthly by the Banco de Mexico in the *Indicadores Economicos*. For dollar-denominated loans, we used interest information obtained from the U.S. Federal Reserve Board.

We consider the benefit, or the cash flow effect, from loans to occur when the interest is paid. The interest on FOMEX pre-export loans is paid at maturity. Since certain FOMEX pre-export loans that matured during the period of review were taken out in May and June 1983, we used peso benchmarks from May and June 1983 and from the period of review. For FOMEX export loans, on which interest is pre-paid, we used only a benchmark for the period of review.

Based on this information, we preliminarily determine that comparable peso-denominated loans were available commercially at 64.65 percent for the pre-export loans outstanding from May and June 1983, and 60.73 percent for pre-export loans obtained during the period of review. Comparable dollar-denominated loans were available at 13.10 percent during the period of review. We found the resulting interest differentials to range between 41.43 percent and 57.65 percent for peso-denominated loans and between 5.00 percent and 8.80 percent for dollar-denominated loans.

Seven of the 25 known exporters of this merchandise used these programs during the period of review. Because we found that three of the exporters were able to tie all FOMEX loans to exports to specific countries, we used only the FOMEX loans on U.S. shipments for those three firms and allocated the benefit over only the value of total U.S. shipments (excluding exports from firms with zero or *de minimis* aggregate benefits) during the period of review. For the other four exporters that were unable to tie their FOMEX loans to exports to specific countries, we allocated their total FOMEX benefits over the total value of their exports. We then weight averaged the resulting benefits by those companies' proportion of total exports to the United States (excluding exports from firms with zero or *de minimis* aggregate benefits) during the the period of review. We preliminarily determine the benefit from

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FOMEX pre-export loans to be 3.22 percent, and from FOMEX export loans to be 0.65 percent, for a total benefit during the review period of 3.87 percent *ad valorem*.

On June 16, 1986, the Banco de Mexico changed the interest rates for FOMEX pre-export and export financing to 48 percent and 6.5 percent, respectively. To calculate the estimated duty deposit rate, we compared the new FOMEX interest rates to our most recent commercial benchmarks. The interest differential for peso-denominated loans is 33.76 percent, and for dollar-denominated loans, 3.07 percent. On this basis, we preliminarily find, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 2.57 percent *ad valorem*.

(2) Article 94 of the Banking Law

Section 2 of Article 94 of the General Law of Credit Institutions and Auxiliary Organizations ("the Banking Law") established that up to 25 percent of a bank's total deposits must be funneled as loans into specially designated sectors of economic activity. Loans granted under section 2 are obtained at below-market interest rates.

In Circular 1842/79, the Banco de Mexico established 12 categories of industries that are eligible to obtain financing under section 2 of Article 94. Most categories carry their own maximum interest rates, set by the Banco de Mexico. Category 12 consists only of exports of manufactured products.

We consider financing obtained at the preferential interest rate under category 12 of constitute an export bounty or grant because it is given only on merchandise destined for export. One firm received financing under category 12 during the period of review. The interest on category 12 loans is paid at maturity. To calculate the benefit from these peso-denominated loans, we used as a benchmark the same average commercial interest rates as for the FOMEX pre-export loans. The resulting interest differentials were 11.51 percent for loans outstanding from May and June 1983 and ranged between 7.00 and 12.62 percent during the period of review.

Since these Article 94 loans are based on shipments to specific countries, we allocated the benefit that the company received on its exports to the United States over the value of total exports (excluding exports from firms with zero or *de minimis* aggregate benefits) of the merchandise to the United States during the period of review. On this basis, we preliminary determine the benefit from this program to be 0.56 percent *ad valorem*.

(3) CEPROFI

Certification of Fiscal Promotion ("CEPROFI") are tax certificates that are used to promote the goals of the National Development Plan ("NDP") and are granted in conjunction with investments in designated industrial activities and geographic regions. CEPROFI certificates can be used to pay a variety of federal tax liabilities.

Article 25 of the decree that established the authority for issuing CEPROFI's published inthe *Diario Oficial* on March 6, 1979, requires each receipt to pay a four percent supervision fee. The four percent supervision fee is "paid in order to qualify for, or to receive," the CEPROFI's. Therefore, it is an allowable offset, as defined by section 771(6)(A) of the Tariff Act, from the gross bounty or grant.

Ceramic tile firms can receive CEPROFI benefits under three provisions: "Category I," which makes CEPROFI certificates available for the manufacture and processing of construction an capital goods; "Category II," which makes CEPROFI certificates available for particular industrial activities; and a third provision, which makes CEPROFI certificates available for the purchase of Mexican-made equipment.

The Department held in the final affirmative countervailing duty determination on bricks from Mexico (49 FR 19564, May 8, 1984) that CEPROFI certificates granted for the purchase of Mexican-made equipment are not countervailable since such certificates are available to any company that purchases Mexican-made equipment.

We consider the other two types of CEPROFI certificates to be domestic bounties or grants because they are available only to certain industries. We allocated the benefits each company received from the Category I and Category II CEPROFI provisions, less the four percent supervision fee, over the total value of each firm's sales to all markets during the period of review. We then weight-averaged the resulting *ad valorem* benefits by each company's proportion of the value of Mexican exports to the United States of this merchandise (excluding exports from firms with zero or *de minimis* aggregate benefits). On this basis, we preliminarily determine the benefit from this program to be 0.001 percent *ad valorem* during the period of review.

(4) FONEI

The Fund for Industrial Development ("FONEI"), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the NDP, which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts loan benefits to those enterprises located outside of Zone IIIA.

Azulejos Orion, S.A., and Internacional de Ceramica, S.A., were the only two exporters that had FONEI loans for plant expansion or modernization outstanding during the period of review. Azulejos Orion, S.A., received a five-year variable-rate loan in May 1980 and Internacional de Ceramica, S.A., received a six-year variable-rate loan in April 1979.

We treated these variable-rate loans as a series of short-term loans. To calculate the benefits from these peso-denominated loans, we compared our benchmarks (the same average commercial interest rates as for FOMEX pre-export loans) to the preferential interest rates in effect for each FONEI loan payment made during the period of review. We allocated the benefits over the companies' total/sales to all markets. On this basis, we preliminarily determine that Azulejos Orion and International de Ceramica received benefits of 0.06 and 0.10 percent, respectively.

Ladrillera Monterrey, S.A., received a three-year variable-rate FONEI working capital loan in February 1983. In the absence of additional information, we consider this loan to be countervailable. To calculate the benefit from this peso-denominated loan, we used as benchmarks the same average commercial interest rates as for FOMEX pre-export loans.

Because Ladrillera Monterrey is not one of the firms that received zero or *de minimis* aggregate benefits, we have used this company's FONEI benefit as the basis for the country-wide benefit from this program. We allocated the benefit over the company's total sales to all markets. We then weight-averaged the resulting *ad valorem* benefit by the company's proportion of the value of Mexican exports to the United States of this merchandise (excluding exports from firms with zero or *de minimis* aggregate benefits). On this basis, we preliminarily determine the benefit from this program to be 0.001 percent *ad valorem*.

(5) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries ("FOGAIN") is a program that provides long-term loans to all small and medium-size firms in Mexico. However, the interest rates vary under the program depending on whether a small or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth.

To the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it to be countervailable because of the more beneficial rates available to certain small and medium-size firms in certain types of industries and/or locations. Without these conditions that limit the magnitude of the available benefits, FOGAIN would not be countervailable because all small and medium-size firms in Mexico, regardless of the type of industry or location, are at a minimum eligible to receive FOGAIN loans at the least beneficial interest rate available under the program.

Three firms had FOGAIN loans on which interest payments were due during the period of review. Because the interest rates are variable, we treated the loans as a series of short-term loans. To determine the benefit, we used as our benchmarks the least beneficial interest rates that were available under FOGAIN.

We verified that the interest rates paid by the three firms to their banks for these FOGAIN loans were higher than the least beneficial contemporaneous interest rates available from the government under FOGAIN. We therefore find no benefits from this program during the period of review.

(6) Other Programs

We also examined the following programs and preliminarily find that exporters of ceramic tile did not use them during the review period:

(A) State tax incentives;
(B) National Industrial Development Fund ("FOMIN");
(C) NDP preferential discounts;
(D) Import duty reductions and exemptions;
(E) Trust Fund for the Study and Development of Industrial Parks ("FIDEIN");
(F) Bancomext loans;
(G) Delay of payments on loans;
(H) Delay of payments to PEMEX of fuel charges;
(I) Preferential state investment incentives; and
(J) Tax Rebate Certificates ("CEDI").

Firms Not Receiving Any Benefits

In this case the Department has established a certification process that would allow a rate of assessment and of cash deposit of estimated countervailing duties of zero for those firms certified as having neither applied for nor received countervailable benefits. We have received certificates from 17 firms stating that they neither applied for nor received countervailable benefits during the period of review and would not do so in the future. Those 17 firms are:

(1) Alfareria Montezuma, S.A.
(2) Arturo Carranza de la Pena.
(3) Azulejos Orion, S.A.
(4) Ceramica Santa julia.
(5) Corporacion Euromexicana Comercial, S.A.
(6) Eduardo S. Garcia de la Pena.
(7) Internacional de Ceramica, S.A.
(8) Industrias AGE, S.A.
(9) J. Garza Arecha, S.A.
(10) Arenas y Barros.
(11) Gres, S.A.
(12) Transcon Distribuidora, S.A.
(13) Juana Maria Ramos Trevino.
(14) Luz Maria de la Pena Sanchez.
(15) Pisos Coloniales de Mexico, S.A.
(16) Porcelanite.
(17) Vitromex, S.A.

During the review period, we verified three of the 17 firms applying for zero rates under the certification process and found that none of those firms received countervailable benefits in excess of *de minimis*. In addition, during this review we found that Alfareria San Marco, S.A., did not receive countervailable benefits.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period of review to be zero for the 16 firms listed above, and 4.43 percent *ad valorem* for all other firms.

The Department intends to instruct the Customs Service not to assess countervailing duties on shipments of this merchandise from the 16 firms and countervailing duties of 4.43 percent of the f.o.b. invoice price on shipments from all other firms exported on or after July 1, 1983, and on or before June 30, 1984.

The Department intends to instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 16 firms listed above and to collect a cash deposit of estimated countervailing duties of 3.13 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. These deposit requirements and waivers shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the last workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 7, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-23154 Filed 10-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-002]

Cotton Yarn From Peru; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: In response to a request from the Government of Peru, the Department of Commerce has conducted an administrative review of the countervailing duty order on cotton yarn from Peru. The review covers the period January 1, 1983 through December 31, 1983 and three programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant for the period of review to be 28.56 percent *ad valorem*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 14, 1986.

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FOR FURTHER INFORMATION CONTACT: Al Jemmott or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 34544) the final results of its last administrative review of the countervailing duty order on cotton yarn from Peru (48 FR 4508, February 1, 1983). We began this review of the order under our old regulations. On September 19, 1985, after the promulgation of our new regulations, the Government of Peru requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of the order. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 (" the Tariff Act").

Scope of Review

Imports covered by the review are shipments of various Peruvian cotton yarns currently classifiable under the following item numbers of the Tariff Schedules of the United States: 300.60, 301.01 through 301.60, 301.70, 301.80, 301.82, 301.84, 301.86, 301.88, 301.92, 301.94, 301.96, 301.98, 302.01 through 302.60, 302.70, 302.80, 302.82, 302.84, 302.86, 302.88, 302.92, 302.94, 302.96, and 302.98.

The review covers the period January 1, 1983 through December 31, 1983 and three programs: (1) CERTEX; (2) FENT; and (3) The Export Law.

Analysis of Programs

(1) CERTEX

Under the Certificates of Tax Rebate ("CERTEX") program, the Government of Peru issues tax certificates to exporters in amounts equal to a percentage of the f.o.b. invoice price of export shipments. Exporters can use the certificates to pay taxes owed to the Peruvian government. Five exporters used this program during the period of review.

We calculated the benefit under the program by dividing the total amount of CERTEX tax certificates issued on U.S. exports by total exports of cotton yarn to the United States during the period of review. We preliminarily determine the benefit conferred by the program to be 13.95 percent *ad valorem*.

The Peruvian government discontinued this program, effective September 15, 1983, for shipments of this merchandise to the United States. We preliminarily determine, for purposes of cash deposits of estimated countervailing duties, that there is no current benefit from this program.

(2) FENT

Under the Nontraditional Export Fund ("FENT") program, the Government of Peru makes short-term export financing available to exporters of goods not traditionally exported. There are three types of short-term financing: soles loans, foreign currency loans and mixed currency loans. Exporters of cotton yarn used soles and foreign currency (dollar) loans during the review period. The loans are drawn from a fund established by the Banco Central de Reserva Del Peru ("BCRP") and passed through the Banco Industrial del Peru and a commercial bank. Because this program is available only to exporters, we preliminarily determine that it confers a bounty or grant on cotton yarn.

Soles loans are made in amounts of up to 90 percent of the export value of the shipment for a maximum period of 90 days. One exporter received a soles loan at an annual interest rate of 53 percent. To calculate the benefit, we established the differential between the preferential interest rate and a commercial benchmark rate, which we determine is the rate charged by commercial banks on promissory notes. We then multiplied the full loan principal by the interest rate differential, adjusting for the duration of the loan.

Foreign currency loans are granted for a maximum period of 180 days at a concessional annual interest rate of 1 percent. The amount of the loan cannot exceed 90 percent of the export value of the shipment. In order to receive this FENT loan, the firm must borrow in foreign currency from an external commercial source an amount equal to 80 percent of the value of the FENT loan. The BCRP reports the interest rate on these external dollar loans to be the prime rate plus a spread of 1.15 percentage points plus finance charges. The firm must deposit the full amount of this external loan with the BCRP, where it earns an interest rate of the London Interbank Offer Rate ("LIBOR") plus 5 percentage points.

To calculate the benefit, we first determined the annual interest differential between the 1 percent interest on the FENT loan and the average commercial rate for dollar loans available in Peru during the period of review. We multiplied the differential by the full amount of the FENT Loan, adjusting for the duration of the loan. We then calculated the net cost to the firm of the required external dollar loans by subtracting the return on the BCRP deposits of those loans from the cost of the loans. For the period of review, the cost to each firm of the external dollar loans exceeded the return on the BCRP deposits. We subtracted the net cost of those loans from the benefit on the FENT loans. Since the FENT loans are allocated specifically to U.S. shipments, we divided the total benefit by the total exports of cotton sheeting and sateen to the United States. On this basis, we preliminarily find the benefit from this program to be 10.68 percent *ad valorem*.

The Peruvian government discontinued this program, effective September 13, 1983, for exports of cotton yarn to the United States. We therefore preliminarily determine, for purposes of cash deposits of estimated countervailing duties, that there is no current benefit from this program.

(3) The Export Law

The aim of the Law for the Promotion of Exports of Nontraditional Goods ("the Export Law") is to improve the foreign trade structure by promoting nontraditional exports.

Articles 8 and 9 of the Export Law permit exporters of nontraditional goods to invest or reinvest a larger proportion of their income, free of income tax, than is permitted other firms. The benefit is given in the form of a tax credit. One exporter used this program during the review period. To calculate the benefit, we divided the exporter's tax credit by its total exports and multiplied the result by its percentage of total exports of cotton yarn to the United States during the review period. We preliminarily determine the benefit from Articles 8 and 9 to be 0.03 percent *ad valorem*.

Under Article 16 of the Export Law, exporters may defer payment of import duties on machinery used to manufacture merchandise for export if they meet specified export targets set in the Export Law.

The deferral of duties it contingent upon meeting yearly export targets. If exporters achieve all targets within a maximum of five years, they are eligible for full exemption from payment of the duties. The exemption takes effect in the year that the export targets are reached. If the firm fails to meet the export targets, it must pay the duties with penalties. During the period of review, four firms obtained import duty deferrals on exports to the United States.

We consider these import duty deferrals to be equivalent to one-year interest-free loans because there is uncertainty from year to year whether the duties will be paid or exempted from payment. We calculated the benefit by multiplying the amount of duties deferred by the same benchmark rate we determined for soles FENT loans. We then divided the results by each firms's total exports during the review period and multiplied these amounts by that firms's percentage of the total exports of cotton yarn to the United States. We preliminarily determine the benefit from Article 16 to be 3.89 percent *ad valorem*.

Article 31 of the Export Law, used by one exporter during the review period, provides for reduced shipping rates to exporters of nontraditional goods. The benefit is equal to the difference between the reduced rate and the rate charged to other shippers. We divided this amount by the firm's total exports and multiplied the result by the firm's share of total cotton yarn shipments to the United States. We preliminarily determine the benefit from Article 31 to be 0.01 percent *ad valorem*.

Preliminary Results of Review

As a result of the review, we preliminarily determine the total bounty or grant to be 28.56 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 28.56 percent of the f.o.b invoice price on any shipments of this merchandise exported on or after January 1, 1983 and on or before December 31, 1983.

The elimination of the FENT loans and of the CERTEX benefits on exports of this merchandise to the United States reduces the total estimated bounty or grant to 3.93 percent *ad valorem*. Therefore, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 3.93 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 7, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary.

[FR Doc. 86–23155 Filed 10–10–86; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Certain Steel Slabs; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to certain carbon steel slabs.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099, (202) 377–3833.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Central Steel Products provides that if the U.S. ". . .determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extending delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category. . . ."

We have received a short supply request for the following continuously cast, internally clean low carbon steel:

1. .085 maximum carbon steel slabs used in tin mill product two-piece can applications (drawn and ironed or drawn and re-drawn) and other critical end uses, in widths ranging from 33 to 38 inches;

2. .02 maximum carbon steel slabs used for extra deep draw, hot dipped galvanized, critical exposed automotive applications, in widths ranging from 70 to 72 inches;

3. .05 maximum carbon steel slabs used for critical exposed automotive and office furniture applications, in widths ranging from 58 to 72 inches; and

4. .05 maximum carbon steel slabs used for critical exposed automotive and office furniture applications, in widths ranging from 60 to 66 inches.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

October 7, 1986.

[FR Doc. 86–23150 Filed 10–10–86; 8:45 am]

BILLING CODE 3510-DS-M

University of Wisconsin-Madison; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW, Washington, DC.

Docket Number: 84–073R. Applicant: University of Wisconsin-Madison, Madison, WI 53706. Instrument: Gas Isotope Ratio Mass Spectrometer System, Model Delta E. Manufacturer:

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Finnigan MAT GmbH, West Germany. Original notice of this resubmitted application was published in the Federal Register of March 5, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can analyze a small (30 microliter) sample of carbon dioxide with a guaranteed internal precision of ±0.02 o/oo. The National Bureau of Standards advises in its memorandum dated August 25, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23157 Filed 10-10-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Announcing Research Grants Program; Center for Manufacturing Engineering

SUMMARY: The purpose of this notice is to inform potential applicants that the Center for Manufacturing Engineering, National Bureau of Standards, which conducts a program of basic and applied research in computer automated manufacturing, also administers a program of research grants in highly selected areas of research related to the mission of the Center. Funding available for grants is variable depending upon levels of external support for Center research. During fiscal year 1986 the Center awarded grants totaling approximately $1.5 million. The grant program is limited to unsolicited proposals and is highly competitive.

ADDRESS: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, Standard Form 424 as referenced under the provisions of OMB Circular A-110 to: Office of the Director, Center for Manufacturing Engineering, National Bureau of Standards, Bldg. 220, Room B-322, Gaithersburg, MD 20899, (301) 921-3421.

SUPPLEMENTARY INFORMATION: The NBS Center for Manufacturing Engineering conducts a program of basic and applied research in computer automated manufacturing. During fiscal year 1986 approximately $1.5 million was made available for grants and cooperative research under this program. Grants made under this research program are awarded on the basis of unsolicited proposals that are in accord with the objective and programs of the Center. Areas of active research include:

(a) Realtime Control. Realtime control of robots, clusters of robots and machine tools (workstations), material handling systems, supporitng devices, and aggregations of workstations.

(b) Automated Systems Integration. Architectural issues for large computer automated systems, initialization, restart, orderly shutdown, error detection and recovery.

(c) Sensory Systems and Adaptive Control. Sensors and applications of sensors to closed-loop control of major systems.

(d) Factory Floor Communications. Development and testing of factory floor communications networks.

(e) Data Management. Development and testing of architectures for distributed data
management on the factory floor.

(f) Robot Metrology. Characterization and measuremant of errors in robot motion and development of techniques to accommodate those errors.

(g) Robot Vision and Sensory World Modeling. Study of models for processing and inference from vision and other complex source sensory systems.

(h) Machine Tool Metrology. Application of software and hardware techniques for improvement of machine tool accuracy and evaluation of machine tool performance.

(i) Automated Process Planning. Development of systematic approach to computer aided process planning leading to fully generative systems.

(j) Organization and Processing of Manufacturing Geometry Data. CAD-directed inspection, common domain data formats, integration of vision data, automated feature selection, automated generation of machining sequences from geometry.

(k) Application of expert systems and artificial intellegience to automated manufacturing systems.

(l) Software Engineering Tools applied to real-time control systems. Development of tools for specification, design, testing, and verification of software for automated manufacturing.

(m) Quality control issues in an automated factory. Development of tools and procedures for measuring quality control during manufacturing operations.

(n) Scheduling in an automated factory. Development of algorithms and simulation/emulation techniques for planning factory scheduling.

Proposal Review Process

All proposals will be reviewed first for suitability of the topic to the mission of the Center. Proposals on topics outside the mission of the Center will be returned. Proposals on topics within the mission of the Center will be reviewed further in accordance with the following process and criteria:

(a) Uniqueness. (20 points) Proposals for research which builds upon or makes direct use of Center results or facilities, or which addresses identifiable problems being investigated in the Center will receive favorable consideration over proposals for general research that could be supported by other grant programs, such as those of the National Science Foundation,

(b) Applicability. (20 points) Propopsals for research which will be conducted at NBS or which will be implemented or tested in facilities of the Center will receive favorable consideration over research to be conducted apart from the Center. It is generally expected that senior workers on the project will find it appropriate to conduct a major portion of their effort on-site at NBS in Gaithersburg, Maryland.

(c) Technical Merit of Proposal. (30 points) Proposals should identify a clearly defined research problem, set forth a technically feasible line of attack, and demonstrate knowledge of the state of the art. Ratings in this category wll be based on these criteria.

(d) Technical Qualifications of Proposer. (30 points) Qualifications of the Principal Investigator and availability of suitable laboratory support will be reviewed under this criterion.

Each proposal reviewed will be considered by a panel of three professionals from NBS. In cases of special technical complexity, experts from other interested government agencies, universities, or industry will be substituted for one or more of the NBS panel. The proposal, with evaluation, will be transmitted to the relevant Division Chief within the Center for Manufacturing Engineering for his or her consideraiton with respect to availability of funding.

Applicants should allow 60 days processing time.

Administrative questions pertaining to the grant process may be directed to the Grant Specialists, Sharon Green, National Bureau of Standards, Bldg. 301,

Room B-158, Gaithersburg, MD 20899. Telephone number (301) 921-2971.

Dated: October 7, 1986.

Ernest Ambler,

Director.

[FR Doc. 86-23079 Filed 10-10-86; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Fisheries Advisory Committee; Announcement of Change to a Previously Announced Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA.

Federal Register Citation of Previous Announcement: 51 FR 35386.

Previously Announced Time and Date of the Meeting: The meeting will convene at 1:00 p.m., October 27, 1986, and adjourn at approximately 4:00 p.m. October 29, 1986.

Changes in the Meeting: The order in which agenda items will be presented at the scheduled meeting on October 27-28, 1986, of the Marine Fisheries Advisory Committee published in the Federal Register, October 3, 1986 (51 FR 35386), has been changed.

Portions Open to the Public

October 27, 1986, 1:00-5:00 p.m.—foreign ownership of U.S. flag vessels and non-tariff trade barriers.

October 28, 1986, 9:00-11:30 a.m.—seafood inspection, 1:30-5:00 p.m.—marine fishing license.

Dated: October 7, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries.

[FR Doc 86-23082 Filed 10-10-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Agency Information Collection Activities Under OMB Review

ACTION: Pubic Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) An estimate of the number of responses; (5) An estimate of the total number of hours needed to provide the information; (6) To whom comments regarding the information collection are to be forwarded; (7) The point of contact from whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplement Part 45 and Supplement 3 to the DoD FAR Supplement

The reporting requirement contained in 45.505-14 is a revision to an existing reporting requirement to provide Department of Defense better property management information.

Businesses or others for profit/small business or organizations:

Responses: 76,000

Burden Hours: 38,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, WHS/DIOR/ICD, 1215 Jefferson Davis Hwy., Suite 1204, Arlington, VA, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Owen Green at the following address: ODASD(P)/DARS, c/o OASD(A&L)(M&RS), Room 3C841, The Pentagaon, Washington, DC 20301-3062, telephone (202) 697-7266. This is a revision of an existing collection.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 8, 1986.

[FR Doc. 86-23133 Filed 10-10-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Policy Board Advisory Committee, Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The defense Policy Board Advisory Committee will meet in closed session on 27-28 October 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Policy Board is to advise the Secretary of Defense, Deputy Secretary and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters dealing with South Asia, chemical weapons and space.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub.L. No. 92-463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this DPB Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means

OSD Federal Register Liaison Officer Department of Defense.

October 8, 1986.

[FR Doc. 86-23134 Filed 10-10-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Acquisition Regulatory Council, Meetings

AGENCY: Department of Defense (DoD).

ACTION: Notice of meetings.

SUMMARY: The Defense Acquisition Regulatory Council will travel to Boston, Massachusetts, and Long Beach, California, during the week of October 20, 1986. The Council will conduct joint Government/Industry meetings at both locations and will discuss acquisition topics of mutual interest. The Council will be available for questions on specific DAR cases and issues.

DATES: October 21, 1986, and October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, 202/697-7268.

SUPPLEMENTARY INFORMATION: The Defense Contract Administration Services Region (DCASR) Boston, Massachusetts 02210-2184, will host the Council's meeting on Tuesday, October 21, 1986, from 8 a.m. to 4 p.m. The point of contact for further information is Mr. Thomas O'Brien, 617/451-4244.

On Thursday, October 23, 1986, from 8 a.m. until 4 p.m., the Council will conduct a joint Government/Industry meeting at the Naval Regional Contracting Center, Long Beach, California 90822. The point of contact for further information is Ms. Mary Jones, 213/547-8451.

Charles W. Lloyd,

Executive Secretary Defense Acquisition Regulatory Council.

[FR Doc. 86-23132 Filed 10-10-86; 8:45 am]

BILLING CODE 3810-01-M

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Department of the Navy

Performance of Commercial Activities: Announcement of Program Cost Studies

The Department of the Navy intends to conduct OMB Circular A-76 (48 FR 37110, August 16, 1983) cost studies of various functions at the listed activities. The cost study process is a time-consuming procedure and, depending upon the size of the functions involved, can take several months to several years to complete. Upon completion of the cost study process, solicitations will be synopsized in the *Commerce Business Daily* with instructions for potential contractors prior to bid opening. Consolidated bidders' list are not maintained since the solicitations will be processed by various contracting offices throughout the U.S.

Naval Hospital, Camp Pendleton, CA
Data Processing Services
Naval Hospital, Long Beach, CA
Data Processing Services
Fleet Numerical Oceanography Center, Monterey, CA
Operations of ADP Equipment
ADP Magnetic Media Library
Maintenance of Applications Software
Development and Maintenance of Systems Software Other ADP Operations
Naval Medical Command, Northwest Region, Oakland, CA
Data Processing Services
Systems Design, Development & Programming Services
Naval Supply Center, San Diego, CA
Other Storage and Warehousing
Naval Communication Station, Stockton, CA
Audiovisual Services
Custodial Services
Naval Submarine Base, New London, CT
ADP Keypunch Services
Naval Submarine Medical Research Laboratory, Groton, CT
Data Processing Services
Headquarters Naval District Washington, Washington, DC
Administrative Support Services
Naval Medical Command Southeast Region, Jacksonville, FL
Data Processing Services
Systems Design, Development & Programming Services
Other Automatic Data Processing (Provide Technical Support Services)
Fleet Aviation Specialized Operational Training Group Detachment, Mayport, FL
Training Devices and Simulators
Storage and Warehousing
Naval Air Station, Whiting Field, Milton, FL
Refuse Collection and Disposal Services
Naval Hospital, Orlando, FL
Data Processing Services
Naval Hospital, Pensacola, FL
Data Processing Services
Systems Design, Development & Programming Services
Naval Telecommunications Center, Pearl Harbor, HI
Consolidated Maintenance Department (TOO) Management and Support for All Divisions
Naval Training Station, Great Lakes, IL
Other Nonmanufacturing Operations
Naval Hospital, Great Lakes, IL
Data Processing Services
Systems Design, Development & Programming Services
Naval Security Group Activity, Winter Harbor, ME
Heating Plants and Systems
Sewage and Waste Plants and Systems
Buildings and Structures (Family Housing)
Buildings and Structures (Other than Family Housing)
Naval Radio Transmitting Facility, Annapolis, MD
Electrical Plants and Systems
Naval Hospital, Bethesda, MD
Data Processing Services
Naval Medical Data Service Center, Bethesda, MD
Other ADP Operations and Support
Operation of ADP Equipment
Systems Design, Development & Programming Services
Other Automatic Data Processing (Provide Technical Support Services)
Production Control & Customer Services
Naval Air Maintenance Training Group Detachment, Patuxent River, MD
Training Development and Support
Naval Construction Training Center, Gulfport, MS
Training Development and Support
Naval Technical Training Center, Meridian, MS
Printing/Reproduction
Training Development and Support
Naval Air Engineering Center, Lakehurst, NJ
Products Made From Fabrics or Similar Material
Naval Air Technical Training Center, Lakehurst, NJ
Still Photography
Audiovisual Training Aids and Devices
Word Processing Center
Other Administrative Support Services
Training Devices and Simulators
USNS Pt. Loma (T-AGOS2)
Other Water Transportation Services
USNS Mercy (T-AH19)
Other Water Transportation Services
USNS Comfort (T-AH2Z)
Other Water Transportation Services
Naval Hospital, Camp Lejeune, NC
Data Processing Services
Systems Design, Development & Programming Services
Navy Ships Parts Control Center, Mechanicsburg, PA
Base Operations Support
Motor Vehicle Operations
Motor Vehicle Maintenance
Buildings & Structures [Other than Family Housing]
Naval Hospital, Philadelphia, PA
Data Processing Services
Navy Aviation Supply Office, Philadelphia, PA
Base Operations Support
Installation Bus Service
Insect and Rodent Control
Motor Vehicle Operations
Motor Vehicle Maintenance
Electrical Plants and Systems
Heating Plants and Systems
Air Conditioning/Refrigeration Plant
Other Installation Services
Buildings & Structures (Other than Family Housing)
Naval Damage Control Training Center, Philadelphia, PA
Training Development and Support
Training Development and Support
Naval Hospital, Newport, RI
Data Processing Services
Naval Electronic Systems Engineering Center, Charleston, SC
Administrative Support
Naval Hospital, Charleston, SC
Data Processing Services
Systems Design, Development & Programming Services
Naval Supply Center, Charleston, SC
Physical Inventory
Naval Telecommunications Center, Charleston, SC
Custodial Services
Storage and Warehousing
Naval Air Station, Memphis, TN
Aeronautical Support Equipment
Chief of Naval Technical Training, Millington, TN
Administrative Support Services
Naval Hospital, Millington, TN
Systems Design, Development & Programming Services
Naval Hospital, Corpus Christi, TX
Data Processing Services
Systems Design, Development & Programming Services
Naval Guided Missile School, Dam Neck, VA
Word Processing Centers
Other Nonmanufacturing Operations
Administrative Support Services
Administrative Support Services
Printing and Reproduction
Naval Environmental Health Center, Naval Station, Norfolk, VA
Data Processing Services
Naval Medical Command Mid.-Atlantic Region, Norfolk, VA
Data Processing Services
Systems Design, Development & Programming Services
Other Automatic Data Processing (Provide Technical Support Services)
Navy Communication Area Master Station Atlantic Headquarters, Norfolk, VA
Storage and Warehousing (T801) 860201
Navy Management Systems Support Office, Norfolk, VA
Operation of ADP Equipment
ADP Magnetic Media Library
Navy Manpower Engineering Center, Norfolk, VA
Word Processing Center
Develop/Maintain Application Software
Develop/Maintain Systems Software
Naval Hospital, Bremerton, WA
Data Processing Services
Naval Station Seattle, Everett, WA
Library Services
Install Business Services
Pest Control
Motor Vehicle Operations
Motor Vehicle Maintenance
Electrical Plant
Heating Plant
Water System
Sewage/Waste
Air Conditioning
Storage/Warehousing
Messenger Service
Family Housing Management
Building/Structures
Grounds/Surface Areas
Waterways/Waterfront
Naval Radio Station T, Jim Creek, WA
Other Communications and Electronic Systems
Naval Communication Station, Puget Sound, WA
Storage and Warehousing
Administrative Support Services
Communication Centers
Naval Radio Station R, Sugar Grove, WV
Unaccompanied Personnel Housing
Other Recreational, Morale and Welfare Activities

Dated: October 6, 1986.

T.H. Upton,

Head, Commercial Activities Branch.

[FR Doc 86-23078 Filed 10-10-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.133F]

Notice Inviting Applications for Research Fellowships Under the National Institute of Handicapped Research for Fiscal Year 1987

Purpose: Provides support directly to highly qualified individuals to conduct research on the rehabilitation of disabled persons. Six proposed priority areas in which individuals may apply for these awards are listed in the Notice of Proposed Priorities published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed priorities. If there are any significant changes in the final priorities, applicants will be given an opportunity to amend or resubmit their applications.

Deadline for Transmittal of Applications: The deadline for submission of applications is January 15, 1987.

Applications available: October 28, 1986.

Available Funds: $300,000.

Estimated range of awards: $50,000.

Estimated average size of awards: $50,000.

Project Period: 12 months.

Applicable Regulations: (a) National Institute of Handicapped Research Regulations, 34 CFR Part 356, and (b) When published in final form, the funding priorities for this program.

For Applications or Information Contact: George Engstrom, National Institute of Handicapped Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732-1207; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

Program Authority: 29 U.S.C. 760-762.

Dated: October 7, 1986.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 86-23122 Filed 10-10-86; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 13, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or

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Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 7, 1986.

Carlos U. Rice,

Acting Director, Information Technology Services.

Office of Educational Research and Improvement

Type of Review: New
Title: Fast Response Survey System—Chapter 1 of the Education Consolidation and Improvement Act Participation of Nonpublic School Students
Agency Form Number: ED 2379–25
Frequency: Non-recurring
Affected Public: Businesses or other for-profit; Non-profit institutions
Reporting Burden:
Responses: 900; Burden Hours: 367
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.

Abstract: The purpose of the survey is to collect information on how Chapter 1 participation of nonpublic school students has been affected by the recent Supreme Court decision (*Aquilar* v. *Felton*), which dealt with the provision of Chapter 1 instructional services to students on the premises of nonpublic sectarian (religiously affiliated) schools. Findings of the survey will be used by the Department in Congressionally mandated reports evaluating Chapter 1, which Congress will consider in its reauthorization of Chapter 1.

Type of Review: New
Title: Libraries and Literacy Education Survey
Agency Form Number: G50–19P
Frequency: Once only
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 5,441; Burden Hours: 4,081
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.

Abstract: These instruments survey the extent of library involvement in literacy education and will help to determine what library literacy service models exist in different types of libraries in urban and rural settings. Public, secondary school, and state institutional libraries are being surveyed.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: State Agency Project and Local Educational Agency Recordkeeping
Agency Form Number: B20–19P
Frequency: NA
Affected Public: State and local governments
Reporting Burden:
Responses: 0; Burden Hours: 0
Recordkeeping Burden:
Recordkeepers: 158; Burden Hours: 500.

Abstract: In order to receive a sub-grant under Pub. L. 89–313, State Operated Programs and Local Educational Agencies for Handicapped children must submit an application for a sub-grant to the State Education Agency.

Type of Review: New
Title: Evaluation of the National Institute of Handicapped Research (NIHR) Research and Training Centers Program
Agency Form Number: B20–17P
Frequency: Once only
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 334; Burden Hours: 1,004
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.

Abstract: This evaluation will assess impacts and effectiveness of the Research and Training Centers (RTC) program through a survey of all RTCs and of agencies and organizations that use RTC research findings and training activities to improve rehabilitation practice.

Type of Review: New
Title: Evaluation of Special Rehabilitation Projects and Demonstrations for Severely Disabled Individuals
Agency Form Number: B20–18P
Frequency: Once only
Affected Public: Individuals or households; state or local governments; non-profit institutions
Reporting Burden:
Responses: 33; Burden Hours: 117
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.

Abstract: This report will evaluate the rehabilitation projects for severely disabled individuals and will be used to prepare a report to Congress describing the program and its impacts.

Type of Review: Revision
Title: Grant Application Under the Education of the Handicapped Act
Agency Form Number: ED 9037
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 3,390; Burden Hours: 108,480
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.

Abstract: The application form provides instructions and information necessary for applicants to submit a request for Federal assistance. The information submitted is used by the Office of Special Education to determine grantee eligibility, acceptibility of application, and amount of grant award.

Office of Elementary and Secondary Education

Type of Review: Revision
Title: Instructions for Performance Status Report Law Related Education Program
Agency Form Number: ED 740–1,2
Frequency: Annually
Affected Public: State or local governments; non-profit institutions; small business organizations
Reporting Burden:
Responses: 27; Burden Hours: 81
Recordkeeping Burden:
Recordkeepers: 27; Burden Hours: 54.

Abstract: These instructions are utilized by grantees to submit reports that monitor compliance with the terms and conditions of grant awards under the Law Related Education Program.

Type of Review: Extension
Title: Application for School Assistance in Federally Affected Areas
Agency Form Number: A10–10P
Frequency: Annually
Affected Public: Individuals or households; State and local governments; non-profit institutions
Reporting Burden:
Responses: 3,000,300; Burden Hours: 327,840
Recordkeeping Burden:
Recordkeepers: 3300; Burden Hours: 1.

Abstract: This application is used by local education agencies that apply through their State education agencies for grants under the Impact Aid Program.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for Upward Bound Program
Agency Form Number: ED 40–2P

Frequency: Annually
Affected Public: State or local; non-profit institutions; small businesses organization
Reporting Burden:
Responses: 400; Burden Hours: 6000
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.

Abstract: The form is used to apply for non-competing continuation grants under the Upward Bound Program.

[FR Doc. 23120 Filed 10–10–86; 8:45 am]

BILLING CODE 4000–1–M

Office of Special Education and Rehabilitation Services

Project for Initiating Special Recreational Programs for Handicapped Individuals

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priority for Fiscal Year 1987.

SUMMARY: The Secretary proposes an annual funding priority for grants for Initiating Special Recreation Programs for Handicapped Individuals. The Secretary proposes a single priority to support applications for recreation programs which provide handicapped individuals with the opportunity for contact with non-handicapped peers, other than recreational service personnel, during at least part of the recreational program. The objective of this contact should be the eventual integration of handicapped individuals into existing community recreational programs which serve non-handicapped person.

DATE: Comments must be received on or before November 13, 1986.

ADDRESS: All written comments and suggestions should be sent to: Ed Sontag, Acting Associate Commisisoner, Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitation Services, Room 3042, Mary E. Switzer Building, Department of Education, 400 Maryland Avenue SW., MS 2312, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Frank S. Caracciolo, Telphone: (202) 732–1340.

SUPPLEMENTARY INFORMATION: Grants for Handicapped Individuals are authorized by section 316 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 777f). Program regulations are established at 34 CFR Part 378. The purpose of the Special Recreation Programs for Handicapped Individuals is to support projects which initiate recreational activities for handicapped individuals to aid in their mobility and socialization.

Eligible applicants: State and public or other nonprofit agencies and organizations are eligible to apply for grants under this program.

Funds available: Final action on the fiscal year 1987 appropriation has not been taken, and the Department has not requested funds for this program in fiscal year 1987. However, in fiscal year 1986 the Congress appropriated $2,200,000 for this program and mandatory reduction required by Public L. 99–177 reduced the amount available to $2,105,000. Any funds appropriated for fiscal year 1987 will be used to support new special recreation projects which address the proposed priority described below.

Proposed priority: In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give absolute preference to applications that integrate handicapped individuals into existing community recreational programs. The purpose of this proposed priority is to support applications which propose to develop exemplary recreational programs that aid handicaped individuals in their mobility, socialization, independence, and community integration. Specifically, applications under this priority must propose recreational programs which provide the opportunity for handicapped individuals to have contact with non-handicapped peers, other than recreational service personnel, during at least part of the recreational program. The objective of this contact should be the eventual integration of handicappoed individuals into existing community recreational programs which serve non -handicapped persons. Applicants will be evaulated according to criteria which appear in program regulations at 34 CFR 378.31.

Projects to be funded: All funds available under this program in fiscal year 1987 will be used to support project applications submitted in response to this proposed priority.

Invitation to comment: Interested persons are invited to submit comments and recommendations regarding this proposed priority. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues a final priority. All comments submitted in reponse to this proposed priority will be available for public inspection, during and after the comment period, in Room 3042 Switzer Building, 330 C Street SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Authority: (29 U.S.C. 777f)

(Catalog of Federal Domestic Assistance No. 84.128 Initiating Special Recreation Programs for Handicapped Individuals)

Dated: September 25, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86–23121 Filed 10–10–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action to Implement the International Energy Program; Meetings

On October 7, 1986, notice was published of two meetings of the Industry Advisory Board to the International Energy Agency, to be held at Paris, France, on October 14, and 15, 1986 (51 FR 35685). The notice stated that the meetings would be held at the offices of UNESCO, 9 Place de Fontenoy, 75007, Paris. Following publication of the meeting notice, the Department of Energy was advised that the location of the meetings had been changed to the UNESCO Bonvin Building, 1 Rue Miollis, 75007, Paris.

Issued in Washington, DC October 9, 1986.

J. Michael Farrell,

General Counsel.

[FR Doc. 86–23201 Filed 10–9–86; 11:29 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

[Case Nos. RF–003 and RF–004]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver from Refrigerator and Refrigerator-Freezer Test Procedure to Whirlpool Corp.

AGENCY: Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order [Case Nos. RF–003 and RF–004] granting Whirlpool Corporation a waiver for its refrigerator-freezer models equipped with electronic adaptive defrost controls from the existing U.S. Department of Energy refrigerator and refrigerator-freezer test procedure.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and

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Renewable Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue SE., Washington, DC 20585; (202) 252–9127
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue SE., Washington, DC 20585; (202) 252–9513.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is herey given of the issuance of the Decision and Order set out below. In the Decision and Order, Whirlpool Corporation has been granted a waiver for its refrigerator-freezer models equipped with electronic adaptive defrost controls, permitting the company to use an alternate test method.

Issued in Washington, DC, October 3, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Decision and Order of the Department of Energy, Office of Conservation and Renewable Energy

In the matter of: Whirlpool Corp.; [Case Nos. RF–003 and RF–004]

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3266, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations, by adding § 430.27, to allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedure or when the prescribed test procedure may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 45 FR 64108 (Sept. 26, 1980).

Pursuant to § 430.27(g), the Assistant Secretary shall publish in the **Federal Register** notice of each waiver granted, and any limiting conditions of each waiver.

On August 23, 1985, DOE's Office of Conservation and Renewable Energy granted a waiver (Case No. RF–001) from the DOE test procedure to the Whirlpool Corporation (Whirlpool) for refrigerators and refrigerator-freezers on the grounds that the procedure yielded materially inaccurate estimates of the energy consumed by Whirlpool's refrigerator-freezers models equipped with what the Company has termed "electronic adaptive defrost Controls" (ADC). 50 FR 34186. Whirlpool's ADC initiates defrost cycles on the basis of compressor run time, refrigerator and freezer door openings, and the length of the preceeding defrost period.

On March 12, 1986, Whirlpool submitted a Petition for Waiver (Case No. RF–003) of DOE test procedure requirements for a new ADC-equipped basic model which is considered different from the basic model cited in the previous petition. Whirlpool's new basic model, Frigidaire Model FPE26VWD has a different capacity, 25.7 cubic feet, and does not have the SERVA-DOOR feature of the previous model. The petition proposed using the same alternate test procedure determined by DOE in Case No. RF–001.

On April 8, 1986, Whirlpool submitted a Petition for Waiver (Case No. RF–004) of DOE test procedure requirements for another refrigerator-freezer the Company has developed with a slightly revised adaptive defrost control system, Kenmore Model 106.85769. With this design modification the actual interval between defrost cycles could be from six hours to approximately six days, whereas the ADC-equipped basic models addressed in Case Nos. RF–001 and RF–003 have an interval between defrost cycles from six hours to 12 days. Therefore, this petition proposed using the alternate test procedure in Case No. RF–001, but modified to allow use of an estimated factor representing frequency of defrost until field tests are conducted to determine actual frequency of defrost when using this control. Whirlpool has stated it is currently conducting such tests.

According to DOE's regulations, at 10 CFR 430.2, Whirlpool's new refrigerator-freezers described in Case Nos. RF–003 and RF–004 constitute different "basic models" since different capacity and features affect energy consumption. Whirlpool seeks to use the same test method for testing its new ADC-equipped models as was granted in the earlier case discussed above. The arguments presented in the petitions as to faults with the existing DOE test procedure and the basis for an alternative procedure were the same as those presented in the previous petition (Case No. RF–001).

On April 10 and April 18, 1986, respectively, Whirlpool filed an "Application for Temporary Exception" with the Office of Hearings and Appeals (OHA) of DOE in accordance with 10 CFR 205.125. On July 8, 1986, OHA issued a Decision and Order, addressing both applications, granting Whirpool a temporary exception from the DOE refrigerator and refrigerator-freezer test procedure for the two new basic models of refrigerator-freezers which use an electronic adaptive defrost control system and which are manufactured by the firm. OHA stipulated in its decision and Order that the temporary exception relief granted shall remain in effect until the Office of Conservation and Renewable Energy of DOE issues a final Decision and Order with respect to Whirlpool's Petition for Waiver under the authority of 10 CFR 430.27 or until the close of business on November 30, 1986, whichever occurs first.

With regard to Whirlpool's Petitions for Waiver, the Office of Conservation and Renewable Energy published the petitions in the **Federal Register** and solicited comments, data, and information respecting the petitions in conformance with the requirements of 10 CFR 430.27. 51 FR 18655 (May 21, 1986). Comments were received from one manufacturer of refrigerators and refrigerator-freezers, General Electric Company (GE). GE's comments are discussed later in this notice.

The Office of Conservation and Renewable Energy consulted with the Federal Trade Commission on August 4, 1986, concerning the Whirlpool petitions.

Assertions and Determinations

Whirlpool is a manufacturer of home appliances, including refrigerator-freezers. Whirlpool has developed what it terms an "electronic adaptive defrost control" for refrigerator-freezers that initiates defrost cycles in response to operating conditions and usage patterns. Whirlpool's petitions requested DOE to grant Whirlpool relief from the DOE test procedure for refrigerators and refrigerator-freezers for its ADC-equipped refrigerator-freezer models on the basis that the existing test procedure yields materially inaccurate estimates of the energy consumption of such units.

Whirlpool stated that its ADC-equipped refrigerator-freezers initiate defrost cycles on the basis of compressor run time, refrigerator and freezer door openings, and the length of the proceeding defrost period. Whirlpool

cited three faults with using the current DOE test procedure for refrigerators and refrigerator-freezers to evaluate the energy consumption of ADC-equipped refrigerator-freezers.

First, the current test procedure has no provision for determine the interval between defrost cycles for ADC-equipped refrigerator-freezers which would be comparable to actual usage patterns. Second, the current test procedure would likely underestimate the actual energy consumption of such products because the unrepresentative low humidity conditions normally encountered within the product during the test and the lack of refrigerator and freezer compartment door openings during the test lengthens the period between defrost cycles beyond that which would be expected under normal usage conditions. Third, this lengthening of the period between defrost cycles lengthens the duration of the existing DOE test to the point that it becomes unduly burdensome to conduct.

DOE agrees with Whirlpool that the existing DOE test procedure for refrigerators and refrigerator-freezers (Appendix A1) is not appropriate for testing its new ADC-equipped refrigerator-freezers since it would not yield results reflective of the expected energy consumption of such units in actual usage and would be burdensome to conduct because of the extremely long length of each test period. Also, DOE considers that Whirlpool has provided sufficient evidence throughout the waiver process that it is deserving of relief from the DOE test procedure for refrigerators and refrigerator-freezers for its new ADC-equipped refrigerator-freezer models.

In Case No. RF–001, DOE agreed with Whirlpool that the provisions for testing "long-time" automatic defrost refrigerator-freezers found in the existing DOE test procedure could be adapted for testing Whirlpool's ADC-equipped refrigerator-freezer models. DOE determined that the alternate test should be the "long-time" automatic defrost test and the value for the typical time between defrost cycles for use in the alternative test should be three days (72 hours) which equates to 0.33 cycles per day.

For the pending petition, Case No. RF–003, GE argued that Whirlpool did not provide a rationale or test data supporting its request to use the same test procedure as Case No. RF–001 for a model that has different features than the models in that earlier case.

Furthermore, regarding Case No. RF–004, GE maintained that Whirlpool failed to submit technical data supporting its request for use of an estimated factor representing frequency of defrost for the test procedure in Case No. RF–001 to be used on a model equipped with a modified automatic defrost control not covered by the existing waiver.

Although there are differences in features (capacity and through-the-door service) between the basic models in Case No. RF–001 and Frigidaire Model FPE26VWD, Case No. RF–003, DOE does not consider these models to differ significantly in terms of design and time between defrosts. The models in Case Nos. RF–001 and RF–003 defrost between every six hours and every twelve days and may be expected to have similar energy consumption with almost equal efficiencies. Therefore, DOE considers the alternative test procedure prescribed in Case No. RF–001 to be appropriate for the model described in Case No. RF–003 (Frigidaire Model FPE26VWD).

In regard to Whirlpool's request for the Kenmore Model 106.85769, Case No. RF–004, DOE agrees with GE that Whilpool has not provided sufficient data to justify use of an estimated factor representing frequency of defrost. The maximum intervals between defrost periods for the models in Case No. RF–001 and the model in RF–004 (six days and 12 days respectively) will have little, if any, effect on energy consumption. Moreover, while the algorithms employed by the models differ slightly, DOE is not convinced that the models will consume significantly different amounts of energy or have significantly different efficiencies. Therefore, DOE considers the alternate test procedure prescribed in Case No. RF–001, without modification, to be appropriate for the Kenmore Model 106.85769.

General Electric also critized Whirlpool's petitions for not identifying the models for which waivers are requested.

DOE's test procedure waiver provisions require that Petitions for Waiver ". . . shall identify the particular basic model for which a waiver is requested . . ." (§ 430.27(b), 10 CFR Part 430). DOE's interpretation of its regulation is that the information necessary to identify the particular basic model is that which DOE deems necessary to identify clearly the basic model in question. A generic designation of the model line or series which constitutes a basic model may be sufficient in many cases; however, DOE reserves the right to use the specific model numbers of the basic model for identification purposes. Therefore, DOE requested and Whirlpool provided the model numbers applicable to the products covered in the Petitions for Waiver. DOE uses these model numbers in today's Decision and Order to specifically identify the ADC-equipped refrigerator-freezers to which it applies. DOE considers the use of model numbers to be appropriate in this case since there is no reason why the presence or absence of the ADC device on any particular refrigerator-freezer model would be self evident even to an informed observer. The model numbers are used to avoid possible confusion between refrigerator-freezer models covered by today's Decision and Order and those models not covered by today's action.

DOE believes the alternate test procedure prescribed in Case No. RF–001 to reasonably reflect the energy consumption and energy efficiency of Whirlpool's two new ADC-equipped refrigerator-freezer models. Furthermore, consumers will find that the energy consumption and energy efficiency results from this test procedure are comparable to those of conventional refrigerator-freezer models as tested under the existing DOE test procedure for refrigerators and refrigerator freezers.

It is therefore ordered that:

(1) The "Petitions for Waiver" filed by Whirlpool Corporation (Case Nos. RF–003 and RF–004), are hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4). (2) Notwithstanding any contrary provisions of Appendix A1 of 10 CFR, Part 430, Subpart B, Whirlpool Corporation shall be permitted to test its Frigidaire Model FPE26VWD and Kenmore Model 106.85769 refrigerator-freezer models equipped with electronic adaptive defrost controls on the basis of the test procedure specified in 10 CFR, Part 430, with the modifications set forth below:

(i) Section 4.1.2 is modified by adding the following sentence at the end of the section:

"If the model being tested has an electronic adaptive defrost control, the provisions of section 4.1.2.2 shall apply."

(ii) Section 4.1.2.2 is added to read:

"4.1.2.2 Electronic Adaptive Defrost Control. If the model being tested has an electronic adaptive defrost control system, the test time period shall consist of two parts. The first part shall be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part shall start when a defrost period is deliberately initiated during a compressor "on" cycle and shall terminate at the second turn "on" of the compressor motor after the turn "on" at

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the conclusion of the defrost period or after four hours, whichever comes first."

(iii) Section 5.1.2 is modified by adding the following sentence at the end of the section:

"For models equipped with electronic adaptive defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.1.2.2."

(iv) Section 5.2.1.3 is added to read:

"5.2.1.3 Electronic Adaptive Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = [1440 \times EP1/T1] + [EP2 - (EP1 \times T2/T1)) \times 0.33]$

where:

ET and 1440 are defined in 5.2.1.1

EP1 = energy expended in kilowatt-hours during the first part of the test

EP2 = energy expended in kilowatt-hours during the second part of the test

T1 = length of time in minutes of the first part of the test

T2 = length of time in minutes of the second part of the test

0.33 = predicted number of defrost cycles per day.

(3) The waiver shall remain in effect from the date of issuance of this order until the Department of Energy prescribes final test procedures appropriate to Frigidaire Model FPE26VWD and Kenmore Model 106.85709 refrigerator-freezers models equipped with electronic adaptive defrost controls manufactured by Whirlpool Corporation.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, October 3, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-23109 Filed 10-10-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA87-1-45-000]

Inter-City Minnesota Pipelines, Limited, Inc.; Request for Waiver of PGA Filing Date and Shortening of Notice Period

October 7, 1986.

Take notice that on September 29, 1986, Inter-City Minnesota Pipeline, Limited, Inc. (Inter-City), filed pursuant to § 154.51 of the Commission's regulations a request for a waiver of the filing date for its annual PGA and a commensurate shortening of the notice period to allow the PGA filing, when made, to become effective on November 1, 1986.

Inter-City states that its annual PGA filing is to be filed on or before October 15, 1986 and to become effective November 1, 1986 pursuant to § 154.38(d)(4)(iv)(a) of the Commission's regulations. Inter-City further states that although it has prepared a filing reflecting current Canadian border rates, it now believes ongoing negotiations involving a contract amendment to lower the purchased gas price for both its Eastern and Western Zones will be completed in the very near future. Rather than file and refile its PGA or to file based on as-yet uncertain rates, Inter-City states that a filing reflecting completed negotiations will be made on or before october 15, 1986 and that it will seek the November 1, 1986 effective date for the reduced rates.

Inter-City further states that a copy of its request was served on all customers and on the Minnesota Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23106 Filed 10-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-53-000, 001]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

October 8 1986.

Take notice that on October 1, 1986, K N Energy, Inc. (K N) tendered for filing Twenty-Fifth Revised Sheet No. 4, Seventh Revised Sheet No. 4A and Fourth Revised Sheet No. 4B to its FERC Gas Tariff, Third Revised Volume No. 1.

K N states that the proposed changes adjust the rates charged to its jurisdictional customers pursuant to the Gas Cost Adjustment provision (section 19) and the Incremental Pricing Surcharges provision (section 20) of the General Terms and Conditions of its FERC Gas Tariff, to reflect an increase in the base cost of gas and to amortize certain unrecovered gas costs. The proposed changes would increase the commodity rate under each of K N's jurisdictional rate schedules by 18.91¢ per Mcf, of which 1.56¢ per Mcf represents the increase in the base purchase gas cost and 17.35¢ per Mcf represents the increase in the unrecovered gas cost surcharge.

K N states that copies of this filing were served on its jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23107 Filed 10-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-165-000]

Petition of Kentucky West Virginia Gas Company for Waiver of Commission Regulations and for Direct Billing of Certain NGPA Costs

October 8, 1986.

Take notice that on September 30, 1986, Kentucky West Virginia Gas Company ("Kentucky West") filed pursuant to the Commission's regulations a petition for waiver of the Commission's Natural Gas Policy Act ("NGPA") regulations so as to permit the retroactive qualification of company-owned wells as NGPA sections 107and 108 wells. Kentucky West states that the requested waiver is fully consistent with Commission policy as expressed in *Consolidated Gas*

Transmission Corp., et al., 36 FERC ¶ 61,193 (1986).

Kentucky West also petitions the Commission to permit the direct billing of NGPA prices associated with the wells for which a waiver of the Commission's regulations is sought.

By such petition Kentucky West requests Commission authorization to bill its customers directly for the difference between (1) the amounts each such customer paid during the period December 1, 1978, through March 2, 1983, for Kentucky West's pipeline production for which retroactive well qualification authorization is sought; and (2) the amounts each such customer would have paid if Kentucky West during such time period had not been unlawfully denied the right to price such pipeline production at Natural Gas Policy Act prices, plus interest calculated in accordance with the Commission's Regulations. Customers of Kentucky West will be given the option of paying the direct billing amounts in either a lump sum payment, or in equal monthly installments of direct billing amounts, plus interest, to be paid over a ninety-five month period.

Kentucky West states that its direct billing proposal is the only reasonable and realistic method of implementing the *Kentucky West* mandate and that such proposal (1) affords the only reasonable and practical method of recovering the gas costs involved from the customers who purchased the gas; (2) is necessary to avoid placing an undue burden upon certain Kentucky West customers; and (3) failure to permit direct billing would violate judicial mandate and applicable law.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214. All such motions or protests must be filed on or before October 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23108 Filed 10-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-166-000]

Petition of Kentucky West Virginia Gas Company for Direct Billing

October 8, 1986.

Take notice that on September 30, 1986, Kentucky West Virginia Gas Company ("Kentucky West") filed a petition in accordance with the mandate of the United States Court of Appeals for the Fifth Circuit in *Kentucky West Virginia Gas Company* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), and the Federal Energy Regulatory Commission's Order on Remand therefrom.

By such petition Kentucky West requests Commission authorization to bill its customers directly for the difference between (1) the amounts each such customer paid during the period November 1, 1979, through March 2, 1983, for Kentucky West's pipeline production that received well qualifications in accordance with the Commission's Regulations and for which Kentucky West had sought timely recovery through its rates; and (2) the amounts each such customer would have paid if Kentucky West during such time period had not been unlawfully denied the right to price such pipeline production at Natural Gas Policy Act prices, plus interest calculated in accordance with the Commission's Regulations. Customers of Kentucky West will be given the option of paying the direct billing amounts in either a lump sum payment, or in equal monthly installments of direct billing amounts, plus interest, to be paid over a eighty-four month period.

Kentucky West states that its direct billing proposal is the only reasonable and realistic method of implementing the *Kentucky West* mandate and that such proposal (1) affords the only reasonable and practical method of recovering the gas costs involved from the customers who purchased the gas; (2) is necessary to avoid placing an undue burden upon certain Kentucky West customers; and (3) failure to permit direct billing would violate judicial mandate and applicable law.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214. All such motions or protests must be filed on or before October 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23109 Filed 10-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-2-000]

Mississippi River Transmission Corp.; Application

October 3, 1986.

Take notice that on October 1, 1986, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP87-2-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the interruptible transportation of natural gas for Arkla Energy Resources, a division of Arkla, Inc. (AER), pursuant to a Gas Transportation Agreement (Agreement) between AER and MRT, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

MRT requests authorization to receive up to 150 billion Btu equivalent of natural gas per day from AER or for AER's account at three points of delivery at MRT's facilities in jefferson, Jackson and Faulkner Counties, Arkansas. MRT would redeliver thermally equivalent volumes, less an allowance attributable to compressor fuel, lost gas and gas unaccounted for, at three points of interconnection between MRT's and AER's facilities in Caddo and Ouachita Parishes, Louisiana, it is stated. MRT states that the Agreement provides that, to the extent AER has additional gas it desires to have transported, MRT may, at its discretion, transport such additional volumes. The primary term of the Agreement is 15 years, it is stated.

MRT proposes to charge AER a rate of 9.84 cents per MMBtu equivalent which is based on the non-gas cost of service and billing determinants approved in the settlement of MRT's most recent general rate case in Docket No. RP84-63-000, refined to establish a cost of service for transportation performed only in the southern portion of MRT's system.

MRT states that the proposed transportation would serve the public convenience and necessity, inasmuch as the proposed transportation may under certain circumstances be accomplished by backhaul, and would therefore result in reduced operating costs for MRT and

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its customers. MRT also states that the proposed service would be fully interruptible and will be subordinate to transportation of MRT's system supply gas. Finally, MRT states that the proposed transportation would improve AER's gas purchasing flexibility, increase its transportation capabilities and increase the reliability of AER's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 17, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for MRT to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23110 Filed 10-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-16-002]

National Fuel Gas Supply Corp.; Proposed Tariff Changes

October 8, 1986.

Take notice that on October 1, 1986, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Substitute Sixth Revised Sheet No. 4 to be effective August 1, 1986, in compliance with Commission Order dated July 31, 1986 in Docket No. TA86-4-16-000. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until October 2, 1986.

National states that the purpose of Third Substitute Sixth Revised Sheet No. 4 is to reflect a net decrease of 55.13 cents per Dth. This change consists of a decrease in current purchase gas cost of 40.12 cents per Dth, and an increase in the purchase gas cost surcharge credit adjustment of 15.01 cents per Dth.

National states that copies of this filing were served upon the company's jurisdictional customers and the regulatory commissions of the states of New York, Ohio, Pennsylvania, Delaware, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23111 Filed 10-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-172-000]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

October 8, 1986.

Take notice that on Septebmer 30, 1986, Transcontinental Gas Pipeline Corporation (Transco) tendered for filing First Revised Sheet Nos. 706 and 707 to its FERC Gas Tariff, Original Volume No. 2.

Transco states that the subject filing reflects a minor revision to its Rate Schedule X-74, which is a gas exchange agreement between Transco and Tennessee Gas Pipeline Company, A Division of Tenneco, Inc. (Tennessee) dated June 25, 1974, as amended, and authorized by the Commission by certificate of public convenience and necessity issued in Docket No. CP74-331 on November 29, 1974. Transco states that the tariff revision is being made to change the balancing provision of the gas exchange agremeent from a volumetric to a thermal basis as provided for in an amendatory agreement between Transco and Tennessee dated June 1, 1986.

The tariff sheets are proposed to become effective June 1, 1986, the date of the amendment to the gas exchange agreement providing for the change in the balancing provision. A copy of the filing has been served upon Tennessee.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordnace with Rules 214 and 211 of the Commission's Rules and Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23112 Filed 10-10-86; 8:45 am]

BILLING CODE 6771-01-M

Western Area Power Administration

Developing and Marketing Power From the Diamond Fork Power System and Jordanelle Powerplant

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Response to comments on proposals for developing and marketing power from the Diamond Fork Power System and Jordanelle Powerplant.

SUMMARY: On March 29, 1985, the Department of Energy, Western Area Power Administration (Western), issued a **Federal Register** notice (50 FR 12619) requesting comments on the proposed Diamond Fork Power System and Jordanelle Powerplant and an indication of interest in non-Federal financing for the proposed project. Further, a combined public information and comment forum was held in Salt Lake City on April 25, 1985, when representatives of Western and the Bureau of Reclamation (Reclamation) explained the proposal and alternatives for construction and marketing the power produced. The majority of the respondents indicated that interest in non-Federal financing of the proposal was not sufficient to justify continuation with the project as proposed. As a result, Reclamation plans to refine the project's configuration to a smaller size.

ADDRESS: Clarifying information may be obtained by writing to: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147. Telephone: (801) 524-5493.

SUPPLEMENTARY INFORMATION: The Diamond Fork Power System and Jordanelle Powerplant are features of the Bonneville Unit of the Central Utah Project (CUP). A primary purpose of the CUP is to provide water supplies to central Utah. The Secretary of the Interior was authorized in 1956 to construct, operate, and maintain the CUP as a participating project of the Colorado River Storage Project (CRSP) under section 1 of the CRSP Act, 43 U.S.C. Section 620.

The March 29, 1985, **Federal Register** notice contained the following elements:

1. Proposed five powerplants for the Diamond Fork Power System with an installed capacity of 166.20 MW and one powerplant for the Jordanelle Powerplant with a capacity of 10.40 MW. Total annual generation was estimated at 401.40 gWh. Reductions due to irrigation pumping and municipal and industrial (M&I) use resulted in 154.60 MW of capacity with 368.30 gWh of energy to be available as commercial power.

2. Proposed an optional annual purchase by Western of 300 gWh on a pass-through cost basis to increase the load factor of the available resource.

3. Estimated construction costs including the power system's share of the costs of the facilities serving more than one purpose totaled $272,832,000 of which $235,536,000 was associated with commercial power costs.

4. Provided a construction schedule calling for work to begin in 1990 with an on-line date of January 1, 1994.

5. Allocated costs to non-Federal financing totalling $217,536,000 or approximately 80 percent of the total construction costs.

6. Estimated that the additional repayment obligations would increase the Salt Lake City Area Integrated Projects rate by 4 to 5 mills per kWh, assuming that most existing CRSP customers would participate.

7. Proposed that transmission facilities would be built by Western and funded through either Congressional appropriations or cost participation agreements with interested utilities. The estimated cost of transmission system additions and related construction was $22,600,000. The cost of such transmission would be uncertain until points of delivery were identified.

Comments were received from 23 parties prior to the comment deadline of May 6, 1985. Of these comments, 17 were opposed to all or part of the proposal, particularly the assistance to M&I repayment. Moreover, insufficient interest was shown to be able to proceed with the nonfederally financed portion of the project as proposed.

Respondents were concerned with the expense of the 176.6 MW proposal. The composite cost of generation for the commercial portion of the Diamond Fork Power System would have been approximately 132 mills per kilowatt hour. Respondents stated that this cost was not competitive with other resource options then available. Current CRSP customers were concerned that the high cost of the proposal as presented would cause a significant increase in CRSP firm rates. Under the proposal, CRSP firm rates could have increased by 70 percent.

Very few of the respondents indicated that they were willing to participate in financing the non-Federal portion of the proposal; however, several indicated that they would be interested in a smaller, lower-cost plan. Two respondents submitted alternate designs with lower associated costs for the development of the Diamond Fork Power System.

As a result of the comments received, Reclamation is refining the design of the Diamond Fork Power System. The power system will be constrained by the water delivery system which is now being sized to only accommodate water deliveries of the Bonneville Unit and the Strawberry Valley Project. Western will also need to revise requirements for transmission system facilities and related delivery conditions. Details of the new proposal and an opportunity to comment on the revised plan will be published in a **Federal Register** notice in the spring of 1987. Anyone interested in the development of marketing and allocation procedures can contact Western at the address provided above. Those interested in details of the revised plan can contact: Mr. Clifford Barrett, Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Salt Lake City, UT 84147, (801) 524-5592.

Issued in Golden, Colorado, October 3, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-2390 Filed 10-10-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL 3094-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 or FTS 382-2712.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Potential NESHAP Development for Ethylene Oxide Emission Sources (EPA ICR #1288). (Revision of a currently approved collection.)

Abstract: This is a one-time only request about ethylene oxide use in chemical synthesis. EPA will use the information to determine long-term emission rates for each facility, the population at risk, and the dispersion of ethylene oxide emissions from vents or drains. The ultimate purpose is to estimate the health risks to the U.S. population by modeling human exposure.

Respondents: Owners and operators of facilities that use ethylene oxide in chemical synthesis.

Comments on all parts of this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of

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Standards and Regulations (PM–223), Information and Regulatory Systems Division, 401 M Street, SW, Washington, DC 20460
and
Wayne Leiss, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW, Washington, DC 20503.

Dated: October 6, 1986.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 86–23010 Filed 10–10–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59768; FRL–3095–1]

Styrene, Acrylic Modified Alkyd; Certain Chemical Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 21, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary of each.

DATES: Close of Review Period: Y 86–259—October 20, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86–259

Manufacture. Confidential.
Chemical. (G) Styrene, acrylic modified alkyd.
Use/Production. (S) Industrial and commercial protective coatings. Prod. range: 218,000 to 436,000 kg./yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 2 workers up to 5 hrs/day, up to 57 days/yr.
Environmental Release/Disposal. 5 kg/batch released to land. Disposal by landfill and sawdust.

Dated: October 6, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86–23105 Filed 10–10–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51644; FRL–3095–2]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-eight such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86–1743, 86–1744, 86–1745, 86–1746, 86–1747, 86–1748, 86–1749, 86–1750, 86–1751 , 86–1752, 86–1753, 86–1754, 86–1755, 86–1756, 86–1757 and 86–1758—December 24, 1986.

P 86–1759, 86–1760, 86–1761, P 86–1762, 86–1763, 86–1764, 86–1765, 86–1766, 86–1767, 86–1768, 86–1769 and 86–1770—December 27, 1986.

P 86–1771, 86–1772' 86–1773, 86–1774, 86–1775 and 86–1776—December 28, 1986.

P 87–1, 87–2, 87–3 and 87–4—December 30, 1986.

Written comments by:

P 86–1743, 86–1744, 86–1745, 86–1746, 86–1747, 86–1748, 86–1749, 86–1750, 86–1751, 86–1752, 86–1753, 86–1754, 86–1755, 86–1756, 86–1757 and 86–1758—November 24, 1986.

P 86–1759, 86–1760, 86–1761, 86–1762, 86–1763, 86–1764, 86–1765, 86–1766, 86–1767, 86–1768, 86–1769 and 86–1770—November 27, 1986.

P 86–1771, 86–1772, 86–1773, 86–1774, 86–1775 and 86–1776—November 28, 1986.

P 87–1, 87–2, 87–3 and 87–4—November 30, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–51644]" and the specific PMN number should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201 , 401 M Street, SW., Washington, D.C. 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86–1743

Manufacturer. Confidential.
Chemical. (G) Cresol, aryl aldehyde polymer.
Use/Production. (G) Coating component. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1744

Manufacturer. Confidential.
Chemical. (G) Cresol, aryl aldehyde polymer.
Use/Production. (G) Coating component. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1745

Manufacturer. The Dow Chemical Company.
Chemical. (S) 1,3-Phenylene-bis(3-methyl-1-(methyl phenyl) pentylidene)-bis-lithium.

Use/Production. (S) Site-limited polymerization initiator. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 3 workers.
Environmental Release/Disposal. Disposal by incineration.

P 86–1746

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyamide—DB.
Use/Production. (S) Industrial electric and electronic industries, automotive and appliance industries, film and fiber. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Released to air and land. Disposal by navigable waterway.

P 86–1 747

Manufacturer. The Dow Chemical Company.
Chemical. (S) 1,1'-methylenbis(4-isocyanatobenzene); 1,9-nonanedioic acid (azelaic).
Use/Production. (S) Industrial electric, electronic industries, automotive, appliance industries, film and fiber. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Confidential.

P 86–1748

Importer. DSM Resins US, Incorporated.
Chemical. (G) Phenolic modified rosin ester.
Use/Import. (S) Industrial gravure inks. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal and inhalation, a total of 2 to 5 workers, up to 1 hr/per batch.
Environmental Release/Disposal. Disposal by adequate exhaust equipments with dustfilters.

P 86–1749

Importer. DSM Resin US, Incorporated.
Chemical. (G) Phenolic modified rosin ester.
Use/Import. (S) Industrial web fed, heatset offset inks.
Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal and inhalation, a total of 2 to 5 workers, up to 1 hr/batch.
Environmental Release/Disposal. Disposal by adequate exhaust equipments with dustfilters.

P 86–1750

Importer. DSM Resins US, Incorporated.
Chemical. (G) Maleic modified rosin ester.
Use/Import. (S) Industrial heatset sheet fed offset inks.
Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal and inhalation, a total of 2 to 5 workers, up to 1 hr/per batch.
Environmental Release/Disposal. Disposal by adequate exhaust equipments with dustfilters.

P 86–1751

Importer. DSM Resins US, Incorporated.
Chemical. (G) Phenolic modified rosin ester.
Use/Import. (S) Industrial web fed, heatset offset inks.
Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal and inhalation, a total of 2 to 5 workers, up to 1 hr/per batch.
Environmental Release/Disposal. Disposal by adequate exhaust equipments with dustfilters.

P 86–1752

Importer. DSM Resins US, Incorporated.
Chemical. (G) Phenolic modified rosin ester.
Use/Import. (S) Industrial heatset web offset inks.
Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal and inhalation, a total of 2 to 5 workers, 1 hr/per batch.
Environmental Release/Disposal. Disposal by adequate exhaust equipments with dustfilters.

P 86–1753

Importer. DSM Resins US, Incorporated.
Chemical. (G) Hydrocarbon resin.
Use/Import. (S) Industrial gravure inks. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal and inhalation, a total of 2 to 5 workers, 1 hr/per batch.
Environmental Release/Disposal. Disposal by adquate exhaust equipments with dustfilters.

P 86–1754

Importer. DSM Resins US, Incorporated.
Chemical. (G) Hydrocarbon resin.
Use/Import. (S) Industrial hot melt and pressure sensitive hot melt adhesives. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal and inhalation, a total of 1 to 3 workers, up to 20 minutes per batch.
Environmental Release/Disposal. No data submitted.

P 86–1755

Importer. DSM Resins US, Incorporated.
Chemical. (G) Hydrocarbon resin.
Use/Import. (S) Industrial hot melt and pressure sensitive hot melt adhesives. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal and inhalation, a total of 1 to 3 workers, up to 20 minutes per batch.
Environmental Release/Disposal. No data submitted.

P 86–1756

Importer. DSM Resins US, Incorporated.
Chemical. (G) Fumaric rosin ester.
Use/Import. (S) Industrial gravure and flexo inks for packaging.
Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal and inhalation, a total of 2 to 5 workers, up to 1 hr/per batch.
Environmental Release/Disposal. Disposal by adaquate exhaust equipments with dustfilters.

P 86–1757

Manufacturer. Confidential.
Chemical. (G) Poly (vinyl ester co-saturated dicarboxylic acid ester co-olefin).
Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1758

Importer. DSM Resins US, Incorporated.
Chemical. (G) Fumaric rosin ester.
Use/Import. (S) Industrial sheet fed offset inks and overprint varnishes. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal and inhalation, a total of 2 to 5 workers, up to 1 hr/per batch.
Environmental Release/Disposal. Disposal by adequate exhaust equipments with dustfilters.

P 86–1759

Manufacture. ALCOLAC, Incorporated.

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Chemical. (G) Epoxidized, hydroxylated natural ester.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total 1 worker, up to 4 hrs/da, up to 48 days/yr.
Environmental Release/Disposal. 26 to 52 kg released to water. Disposal by Publicly Owned Treatment Works (POTW).

P 86–1760

Manufacture. ALCOLAC, Incorporated.
Chemical. (G) Polyalkoxylated, hydroxylated natural ester.
Use/Production. (G) Moisturizer. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 to 4 workers, up to 6 hrs/da, up to 10 days/yr.
Environmental Release/Disposal. 88 to 176 kg released to water. Disposal by POTW.

P 86–1761

Importer. American Hoechst Corporation.
Chemical. (G) Saturated polyester resin.
Use/Import. (S) Industrial organic filler for epoxy powder coatings and polyurethane powder coatings. Import range: 1 ,000,000 to 2,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86–1762

Manufacturer. Confidential.
Chemical. (G) Polyvinyl acetate copolymer.
Use/Production. (S) Industrial coatings applications for textile and paper products. Prod. range: 1,500,000 to 3,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 3 hrs/day, up to 120 days/yr.
Environmental Release/Disposal. 8,000 kg/yr released to land with 1,000 kg/yr to water. Disposal by POTW, permitted lanfill and navigable waterway.

P 86–1763

Manufacturer. Ashland Chemical Company.
Chemical. (G) Modified phenol formaldehyde resin.
Use/Production. (G) Open, non-dispersive use. Prod. range Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 3 hrs/day, up to 12 days/yr.
Environmental Release/Disposal. 1 to 3 kg/batch released to land. Disposal by incineration and sanitary landfill.

P 86–1764

Manufacturer. Ashland Chemical Company.
Chemical. (G) Modified phenol formaldehyde resin.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 3 hrs/day, up to 12 days/yr.
Environmental Release/Disposal. 1 to 3 kg/batch released to land. Disposal by sanitary landfill and incineration.

P 86–1765

Manufacturer. Confidential.
Chemical. (G) Acrylic modified alkyd resin.
Use/Production. (G) Resin is converted into paint systems Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1766

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Resin is converted into paint systems.Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1767

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Resin is converted into paint systems. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1768

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Resin is converted into paint systems. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1769

Manufacturer. Confidential.
Chemical. (G) Modified alkyd resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.
Toxicitv Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1770

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Resin is converted into paint systems. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1771

Importer. CIBA-GEIGY Corporation.
Chemical. (G) Benzotriazole derivative.
Use/Import. (G) Light stabilizer for polymers. Import range: Confidential.
Toxicity Data. Acute oral > 2,000 mg/kg; COD: 2.02 g.
Exposure. Processing: dermal and inhalation, a total of 4 to 8 workers, up to 15 to 30 minutes per day, up to 60 days/yr.
Environmental Release/Disposal. No data submitted.

P 86–1772

Manufacturer. Products Research and Chemical Corporation.
Chemical. (S) Polymer of 2-ethanol, 1, 1'-thiobis; ethanol, 2-mercapto, reaction product with propylene oxide; 3-thiahept-5-ene-1-ol; 1 ,3-propanediol, 2-ethyl-2- (hydroxymethyl) and ethanethiol, 2,2'(1,2-ethanediyl bis [oxy]) bis.
Use/Production. (S) Industrial polymer for adhesives and sealants. Prod. range: 60,000 to 500,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 47 workers, up to 8 hrs/day, up to 60 days/yr.
Environmental Release/Disposal. 3 to 5 kg/batch released to land. Disposal by approved landfill.

P 86–1773

Manufacturer. Products Research and Chemical Corporation.
Chemical. (S) Polymer of 2-ethanol, 1, 1'-thiobis; ethanol, 2-mercapto, reaction product with propylene oxide; 3-thiahept-5-ene-1-ol; 1,3-propanediol, 2-ethyl-2-(hydroxymethyl) and ethanethiol, 2,2'-thiobis.
Use/Production. (S) Industrial polymer for adhesive and sealants. Prod. range: 60,000 to 500,000 kg/yr.

Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 47 workers, up to 8 hrs/day, up to 60 hrs/yr.
Environmental Release/Disposal. .3 to 5 kg/batch released to land. Disposal by approved landfill.

P 86–1774

Manufacturer. Products Research and Chemical Corporation.
Chemical. (S) Polymer of ethanol, 2-mercapto oxirane extended, hydroxy terminated and methylene bis-(4-cyclohexyl isocyanate).
Use/Production. (S) Industrial polymer for adhesives, sealants, and coatings. Prod. range: 50,000 to 200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 49 workers, up to 4 hrs/day, 80 days/yr.
Environmental Release/Disposal. 5 kg/batch released to land. Disposal by approved landfill.

P 86–1775

Manufacturer. Products Research and Chemical Corporation.
Chemical. (S) 1,5,14,18-Tetrahydroxy-7,12-dioxa-3, 16-dithiaoctadecane.
Use/Production. (S) Site-limited and industrial crosslinking agent for adhesives, sealants, coatings and encapsulating formulations. Prod. range: 1 ,000 to 5,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 9 workers, up to 2 hrs/day, 4 days/yr.
Environmental Release/Disposal. 1 kg/batch released to land. Disposal by approved landfill.

P 86–1776

Manufacturer. Confidential.
Chemical. (S) Polymer of phthalic anhydride; 2,2,4-trimethyl-1- 3-pentanediol; 2,2-oxybis (ethanol); 2-ethyl hexanol; trimethylolpropane; and fascat 4100.
Use/Production. (S) Industrial and site-limited polymer for general metal finishing. Prod. range: 100,000 to 250,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 13 workers, up to 1 hr/day up to 36 days/yr.
Environmental Release/Disposal. .5 to 40 kg/day released to air and land. Disposal by incineration and sanitary landfill.

P 87–1

Importer. Confidential.
Chemical. (G) Aliphatic polycarboxilic acid metal salt.
Use/Import. (G) Contained use bleaching agent. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 87–2

Importer. Confidential.
Chemical. (G) Substituted polyester of neopentyl glycol.
Use/Import. (G) Coatings for industry. Import range: 1 ,500 to 15,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 28 workers, up to 4 hrs/day, up to 260 days/yr.
Environmental Release/Disposal. .02 to .8 kg/batch released to land. Disposal by sanitary landfill and incineration.

P 87–3

Importer. Confidential.
Chemical. (G) Polymer of styrene with substituted acrylate and methacrylate.
Use/Import. (G) Industrially used coatings with dispersive use. Import range: 3,000 to 32,300 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 6 workers, up to 2 hrs/day, up to 66 days/yr.
Environmental Release/Disposal. .05 to .2 kg/batch released to land. Disposal by sanitary landfill and incineration.

P 87–4

Importer. MTC America Incorporated.
Chemical. (G) Bis (p-ethylbenzylidene) sorbitol.
Use/Import. (G) Nucleating agent. Import range: Confidential.
Toxicity Data. Acute oral: 50,000 parts per million (ppm): Ames test: Non-mutagenic.
Exposure. No data submitted.
Environmental Release/Disposal. No release.

Dated: October 6, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86–23104 Filed 10–10–86; 8:45 am]

BILLING CODE 6560–50–M

Farm Credit Administration

District Director Elections

AGENCY: Farm Credit Administration.

ACTION: Notice of decision.

SUMMARY: Section 607 of the Farm Credit Amendments Act of 1985 (1985 Amendments) amended section 5.2 of the Farm Credit Act of 1971, as amended (Act), to provide for the direct election of the at-large member of each Farm Credit System (System) district board. In response to questions concerning the implementation of this provision, on January 29, 1986, the Farm Credit Administration (FCA) informed the System that district directors who were appointed and confirmed before December 23, 1985, and whose terms commenced before January 22, 1986, could continue to serve out the remainder of their terms. (Letter from Donald E. Wilkinson, Acting Chairman, to Ed Breihan, Chairman, Tenth Farm Credit District Board, January 29, 1986.)

On June 27, 1986, a Petition in the Matter of Elections of the At-Large Members of Each Farm Credit District Board was filed with the FCA by a group of System borrowers (petitioners) requesting that the FCA immediately implement section 5.2 and hold elections to fill the at-large director positions. In response to this petition, the Farm Credit Administration Board (Board) determined at its july 1, 1986 meeting that public comment should be solicited on the implementation of the at-large director election provisions of the 1985 Amendments. Accordingly, on July 10, 1986, the Board published in the **Federal Register** an invitation for public comment on the issue. The Board requested comments on whether the at-large district directors should be elected either immediately without regard to existing terms of appointed directors or after the terms of the appointed directors expire. The Board also invited comments on any other aspect of district director elections that would be useful in the regulation of district board elections. The Board determined that comments should be submitted to the agency on or before August 15, 1986. *See* 51 FR 25069 as amended by 51 FR 26014.

The FCA Board considered all of the comments received and reached a decision at a meeting held on Wednesday, September 3, 1986. The Board made the following determinations.

1. The ongoing election of directors-at-large whose current terms expire on December 31, 1986, shall be completed;

2. The election process shall begin immediately for directors-at-large whose terms will expire on December 31, 1987 and 1988;

3. Appointed director positions shall not be vacated and such persons shall occupy their positions until they voluntarily leave the board or until their successors are elected;

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4. Directors whose terms would otherwise expire on December 31, 1987, and December 31, 1988, shall expire on December 31, 1987; and

5. The terms of the at-large directors shall be 3 years ending on December 31, 1990, for those directors replacing appointed directors whose terms expire on December 31, 1987, and 4 years ending on December 31, 1991, for those directors replacing appointed directors whose terms expire on December 31, 1988; and thereafter, all terms of directors-at-large will be 3 years.

SUPPLEMENTARY INFORMATION:

Petitioners advanced a number of legal and policy arguments to suport their claim that the FCA has an obligation to hold immediate elections for the at-large director positions. They believe that Congress' use of the word "shall" without any qualification or limitation indicates that elections are to be held immediately. Petitioners note that Congress deleted all references in section 5.2 to the Governor's appointment power and substituted a requirement that borrowers-at-large shall elect the at-large director. The sole contingency, in petitioners' view, was the provision in section 401 of the 1985 Amendments that provided a 30-day delayed effective date for the amendments. Petitioners believe that their right to elect the at-large director vested on the effective date of the 1985 Amendments.

Petitioners state that their position is supported by section 402(d) of the 1985 Amendments, which provides that appointments made under the Act prior to the date of enactment would remain valid until superseded or replaced under the authority of the 1985 Amendments. Upon the 1985 Amendments becoming effective, petitioners assert that such appointments were terminated.

In contrast to that argument, petitioners suggested that the transition provision in section 402(d) did not apply to section 607. They note that section 402(d) arose in the House bill, H.R. 3792, which contained no provision modifying the method of choosing the at-large director. They stated that section 607 originated in the Senate bill, S. 1884, which did not contain a transition provision with language comparable to that in section 402(d). Accordingly, petitioners assert that Congress did not intend to allow appointed directors to continue in office. Petitioners argue that where Congress intends the term of an official to continue past the date of legislative change, the extension is expressly provided for in the statute.

Petitioners state that the legislative history of the 1985 Amendments also supports their position. They observe that one of the principle purposes of the 1985 Amendments was to break the structural ties between the FCA and System institutions and remove the FCA from management of System institutions. The FCA's failure to implement the at-large director provision has preserved a structural tie that must be severed. Petitioners assert that, for the FCA to be a truly independent regulator, it must hold immediate elections to select replacements for the appointed directors. Furthermore, this is a remedial provision, which as a matter of statutory construction should be interpreted broadly and implemented without delay. Any different rule would frustrate Congress' purpose.

Petitioners advance a number of policy reasons to support their request for immediate elections. One of the acknowledged principle considerations in the passage of the 1985 Amendments was the emphasis on maintaining and enhancing local control of the System through mechanisms such as the election of the at-large director. The FCA's failure to implement this provision is at odds with its ministerial duty and the intent of Congress. It gives the appearance that the agency is opposed to local control.

Petitioners question who the appointed directors represent since they were appointed by the Governor and that position has been abolished. They believe Congress did not intend for individuals who are not accountable to anyone to sit on the district boards in light of the need for responsible corporate governance in these financially stressful times. Petitioners argue that the safe and sound management of System institutions dictates that the FCA hold immediate elections to permit accountable directors to take office.

Petitioners also believe that Congress did not intend for the uneven treatment of shareholders between the districts that are currently electing at-large directors and shareholders in other districts that presently cannot elect directors until the terms of the appointed directors expire. Therefore, petitioners believe that immediate elections for the at-large director position should be held.

Comments From Public

The FCA received 40 comments to the Notice. Of these comments, six arrived after the corrected closing date for comments, August 15, 1986. However because of the confusion which may have resulted by the original publication of an incorrect date, the Board considered all the comments received.

Of the comments received, 39 addressed the issue of implementation of the at-large election provisions of the 1985 Amendments. The remaining comment expressed concern over the turnout of eligible voters in district elections and offered suggestions to encourage more active involvement by voters in the election process. The commentators include 24 shareholders of various System institutions, of which 15 are residents of the State of Texas and 9 of those individuals are directors of Federal land bank associations (FLBA) located in Texas. The remaining commentators included eight FLBAs, six of which are from the Texas District; the Board of Directors of the Tenth Farm Credit District; a Congressman; the president of a commercial bank located in Texas; a shareholders' advisory committee; three individuals; and the Farm Credit Corporation of America (FCCA), who claimed to represent the 37 banks of the System.

There were 37 comments in favor of holding immediate elections for the at-large director positions. One commentator offered a suggestion related to the at-large election process. The FCCA, claiming to represent the 37 banks, opposed immediate implementation of the provisions.

A number of commentators expressed total support for the petition and recommended that the agency grant the relief requested. A common theme of a number of the shareholders and FLBA commentators is that the FCA has a mandatory, nondiscretionary duty to immediately hold elections. They argue that failure to immediately hold elections discriminates against shareholders based on their residence. They observed that the Columbia, St. Louis, Wichita, and Spokane districts are in the process of electing at-large directors to their district boards while the shareholders in the remaining districts will not elect directors until 1987 or 1988, depending on when the term of the appointed director expires. These commentators argue that Congress did not intend such an unfair result.

A number of other commentators viewed the at-large election provisions as intended to strengthen local control and allow shareholders a voice in the operation of the System. They argued that the 1985 Amendments granted them the right to vote in director elections and the failure to implement this provision abridges such right. One FLBA commentator stated that the election of the at-large director would give

associations the ability to voice their opinions and reclaim some of the local control that has recently been lost in the System. It believes that if this loss of local control continues, the System will not be shareholder-controlled and, as a result, shareholders will lose contact with the System.

Other commentators expressed a number of varied concerns. One shareholder expressed the opinion that the problems of the System are due to the misuse of power by the FCA and that problems began when local associations lost control of the System. Another commentator expressed the opinion that because appointed directors may be in office illegally, any board votes taken by such persons may also be illegal. A number of the shareholder commentators asserted that because appointed directors were placed in their positions by the former Governor, such directors represent the former Governor or the FCA and not shareholders.

Several of the association commentators expressed the belief that immediate elections will not be disruptive and will not destory continuity on boards. In support of that argument, one commentator noted that the most recent appointee to the Tenth Farm Credit Board had no previous experience on it and had replaced a 6-year veteran of the board. It asserted that the election of a replacement director could only add to the continuity of the board. Another commentator expressed the opinion that any objections to elections based on the need to preserve continuity do not outweigh the right of shareholders to have a voice in the management of System institutions.

Although not addressed by most commentators, a few persons expressed an opinion regarding the term of the at-large director. One association suggested that at-large directors should serve the remainder of the appointed term. Another association suggested that at-large dirctor serve a 3-year term.

In an unrelated matter, one association commentator stated that independent associations in a consolidated district should be permitted to select the at-large director because, otherwise, the consolidated association would always be able to elect the at-large director.

A Congressman opined that failure to institute at-large director elections is inconsistent with congressional intent to reform the governing process of the System. Consistent with the position of a number of the commentators, the Congressman believes that arguments based on the issues of the need for continuity and staggered terms are irrelevant to the Board's decision. The Congressman, along with several other commentators, also noted that there's nothing to prevent appointed directors from running in the election process.

Another concern expressed by several commentators was that the System needs to work together to accomplish common goals. They stated that it is important to the financial markets for the system to eliminate any divisiveness over matters such as the election of at-large directors. These commentators believe the FCA must do all it can to resolve these controversies and has an obligation to hold elections immediately. Several of the commentators urge that whatever the FCA does, it should reach a decision immediately so the financial markets will have a chance to respond.

In contrast to the opinions of the other commenters, the FCCA believes that appointed directors should be allowed to complete their terms. The FCCA believes its position is supported by both the 1985 Amendments and a number of policy arguments including the maintenance of board continuity; the maintenance of staggered terms for directors; the need to avoid potential problems that could arise if a district board had only six members, even on a temporary basis; and the need to avoid the expense associated with unscheduled elections at this critical time when the System is suffering severe financial stress.

The FCCA argues that section 607 of the 1985 Amendments must be read in conjunction with section 402. It believes that the language of section 402(d) authorizes appointed directors to complete their terms. The FCCA disagrees with petitioners' argument that section 402 does not apply to section 607.

The FCCA believes that section 402 is analogous to provisions in previous amendments to other Farm Credit Acts in which Congress has reconstituted one or more boards and has specifically provided that incumbents continue to serve until their terms expire. The FCCA argues that if Congress had intended to immediately replace all appointed directors with newly elected directors it could have easily made that intent clear in the 1985 Amendments. The FCCA notes there is not a single reference in the legislative history to indicate that Congress intended to implement the at-large director provisions through immediate elections.

In response to petitioners' comment regarding whether appointed directors represent anyone, the FCCA noted that under general corporate legal principals, directors are responsible to shareholders for their actions. They argued that, as a matter of law, a person assuming an appointed directorship would have a fiduciary duty to the institution and its shareholders, not the FCA.

The FCCA expressed concern over the extremely low percentage of ballots cast in a recent at-large election. It believes this demonstrates a clear need to provide better information to shareholders regarding the election process. It suggested that the FCA should provide shareholders with information concerning eligibility criteria for the nomination and election process, and the name and telephone number of an FCA employee who could be contacted regarding additional information and to answer questions concerning the election process. The FCCA also commented that the FCA should coordinate the timing of press releases so that information reaches the voters in a timely fashion.

The FCCA suggested that there was a need for the FCA to establish guidelines concerning the role of System officers, employees, and directors in elections. Specifically, the FCCA believes that such individuals should not answer questions from voters regarding eligibility and conflict of interest, but that it would be appropriate for them to prepare materials educating borrowers concerning the background, purpose, and process of at-large elections. In a final comment, the FCCA believes that each individual borrower is entitled to one vote regardless of whether a borrower has a loan from more than one System institution.

A stockholders' advisory committee also expressed concern over the low voter turnout in the at-large election process. It recommended that the FCA consider expanding the information given to voters regarding the election process by describing the qualifications, duties, and responsibilities of district directors. In addition, the FCA should provide information to association boards of directors to be used to explain at-large director election procedures to members.

Opinion of the Board

The arguments of the commentators supporting immediate elections are, for the most part, simple, brief distillations of detailed arguments presented by petitioners. The FCCA disputes the legal arguments asserted by petitioners and offers a number of policy arguments in opposition to immediate elections. The Board's determination of the issue is based on an analysis of the claims raised in the petition and the arguments

raised by the commentators supporting or opposing immediate elections.

Section 5.2 of the Act does not impose a ministerial, nondiscretionary duty on the FCA to hold immediate at-large director elections. Contrary to the argument of the petitioners, the use of the word "shall" in section 5.2 is not determinative of the issue. The regulation only requires that at-large directors be elected by borrowers-at-large and does not impose a requirement for immediate implementation of the provision.

Petitioners argue that section 402(d) does not apply to the tenure of the at-large directors since that section came from House bill H.R. 3792, which did not include any provision amending the election of district board members. In effect, petitioners are suggesting that in order to determine the interaction between various sections of an act, one must discern the origins of the particular sections in question. Under petitioner's approach, if a provision was drafted in one chamber without contemplation of another provision that was adopted in the other legislative chamber, the effect of the one provision on the other may be disregarded. This analysis appears to disregard the fact that both Houses of Congress enacted and the President signed the entire 1985 Amendments, including both provisions in question. Moreover, reliance on the legislative history of a provision only has relevance in situations where the statutory language is not clear. In this instance, spection 402(d) plainly provides that all appointments, including at-large director appointments, remain in effect until superseded by the 1985 Amendments.

Petitioners claim that Congress' failure to include in the 1985 Amendments a provision specifically providing for appointed directors to continue in their positions evidences congressional intent that appointed directors be immediately replaced with elected directors. Petitioners' statutory analysis is not compelling. First, Congress has provided in section 402(d) a provision that allows for the continuation of appointments made prior to the effective date of the 1985 Amendments. Second, an analysis of prior Farm Credit Acts illustrates that Congress has taken various approaches to address the issue of holdover appointments. Generally, where Congress has intended the person to immediately step down upon the effective date of a new act, the act has included a specific provision to that effect. For example, the Farm Credit Act of 1953 (1953 Act) changed the Governor from a Presidential appointee to an appointee of the Federal Farm Credit Board (FFCB). The 1953 Act directed that upon its effective date, the existing Governor would be replaced by an interim Governor until a successor was selected by the FFCB. A comparable provision relating to the Governor was also included in the 1985 Amendments. The absence of this type of transition provision regarding appointed directors supports the argument that their positions are not terminated until replacement directors have been elected.

While the Board concurs in the FCCA's observation that there is no specific reference to Congress' intending that the FCA hold immediate at-large director elections, the Board finds that neither is there any indication from the legislative history that Congress intended appointed directors to serve out the remainder of their terms.

Petitioners' also argue that one of the primary purposes of the 1985 Amendments, the establishment of the FCA as an arm's-length regulator, will be negated if appointed directors continue in office. This argument is premised on petitioners' perception that appointed directors owe no duty to their institution and serve at the day-to-day direction of the FCA. There is no validity to this argument. Upon appointment to a district board, the director's fiduciary duties run to the stockholders of the bank and the bank itself. Neither the Act nor any other statutory provisions authorized the FCA to exercise any control over such person's conduct while on a district board. Indeed, appointed members had no reporting obligations to the Governor or the FCA and did not serve at the pleasure of the Governor or the FCA. The Board acknowledges it could be argued that since appointed directors could be reappointed for one additional term, they would be sensitive to the wishes of the Governor during their first terms. However, this argument has no further relevance since the reappointment power no longer exists.

The Board finds that the FCCA's concerns regarding the continuity of service of board members, continuity of staggered terms, continuation of a full board, and the expense of elections are not determinative. Every time a new director is elected to any board there is a break in continuity. This is inherent in the election system. The existing staggered terms can be maintained by electing directors for different terms as provided for by section 5.1 of the Act. The FCCA's third concern regarding the continuation of a full board is addressed in section 402(d), which provides that existing at-large directors shall hold office until their successors are elected. Thus, the board would remain at seven members. In any event, even if a board loses one of its members, that would not be a unique occurrence. District boards have functioned with less than seven members in the past. With respect to the expense, the Board acknowledges these are financially stressful times; however, if the 1985 Amendments require immediate elections, any expense involved must be borne as a statutory cost of doing business.

Accordingly, the Board believes neither the arguments of petitioners and supporting commentators nor counterarguments of the FCCA are conclusive with respect to determining whether the FCA must hold immediate elections for the at-large director positions. However, a provision in the 1985 Amendments not cited or discussed by any of the commentators, section 403—Sense of Congress, provides insight into Congress' intent with respect to section 607.

In section 403, Congress stated that the 1985 Amendments should be implemented as soon as practicable. Although a Sense of Congress provision does not have the force of law, it is a demonstration of Congress' purpose or design with respect to the accompanying legislation. The fact that Congress used a nonbinding provision is evidence that it intended to leave the timing of the implementation to the sound discretion of the FCA. Congress recognized that while it might be preferable to implement various provisions quickly, this desire must be balanced against the necessity of a smooth transition period and an intent to avoid needless confusion and disruption in the operation of the System. Thus, the Board finds that section 403 supports the election of replacement directors in an orderly manner and within a reasonable time frame and that the terms of appointed directors would expire upon the election and assumption of office of their successors.

The Board finds that due to statutory requirements, the logistics involved and the fact that there are 24 other district director elections scheduled in 1987, it appears that the election process cannot be completed until December 1987. Specifically, the FCA must conduct a contracting competition to select vendors to handle the printing, envelope stuffing, and mailing of nomination and election ballots. Prior to sending nomination ballots, each district bank must prepare and transmit to the FCA a list of eligible voters, which the Board estimates will number 512,000 persons.

Section 5.2 of the Act specifies that nomination ballots shall be sent to borrowers-at-large 60 days prior to the date of nomination. Based on the nominations received, the FCA tallies the votes and directs the vendor to prepare an election ballot consisting of the two nominees receiving the highest number of votes. Section 5.2 requires that election ballots be mailed to voters 60 days prior to the date of election. Upon receipt of the completed election ballots, the FCA counts the votes and determines the person selected as at-large director. Further complicating the election process are the 24 regular district director positions up for election in 1987; two positions in each district, one person to be elected by FLBAs and the other by PCAs.

In order to ensure that all at-large elections are completed in a timely manner, the Board has determined that all at-large directors elected in 1987 shall have their terms commence on January 1, 1988. In addition, the Board finds that to preserve the present staggering of terms of at-large directors and to avoid the expense of holding additional elections in 1988, the directors replacing appointed directors whose terms will expire on December 31, 1987, shall be elected for 3-year terms, and the directors replacing appointed directors whose terms will expire on December 31, 1988, shall be elected for 4-year terms. Thereafter, all director terms shall be 3 years in length.

With respect to the commentator's request that the independent, nonconsolidated associations be permitted to elect the at-large director, staff observes that the commentator misunderstands section 5.2. Section 5.2 authorizes all borrowers-at-large not including associations to vote for the at-large director. As such, no action can be taken on the associations' recommendation.

With regard to the general comments on district elections, the Board agrees that voting should be encouraged. In the most recent at-large director elections, the FCA included in the nomination ballots mailed to voters, information regarding qualifications requirements and nomination procedures. However, the agency's only statutorily authorized function and responsibility is to carry out the election duties specified in section 5.2 of the Act and, therefore, the agency is limited in the actions it can undertake. The Board believes that it is the System's responsibility to undertake programs to improve voter turnout. Providing detailed information to voters and institutions for dissemination to voters is best performed by the System. System institutions have closer contact with shareholders/voters and have greater resources than the FCA to develop and disseminate such information in an efficient and cost-effective manner.

In response to the FCCA's comment regarding guidelines for elections, the Board notes that existing regulations at §§ 612.2200 and 612.2230 offer guidance to bank and association employees regarding appropriate behavior during the election process.

The Board disagrees with the FCCA's interpretation of section 5.2 and finds that a person is entitled to more than one vote if that person has loans from more than one institution. Congress' use of the conjunctive "and" rather than the word "or" in section 5.2(a)(2)(B) indicates that a person can be a borrower-at-large in more than one institution. The reference in section 5.2(c) to the vote of a borrower-at-large refers to each borrower-at-large in an institution as having a single vote. It does not preclude a person from being a borrower-at-large in two institutions. From a policy standpoint, this interpretation is consistent with the recognition that each borrower in the different institutions has concerns unique to that organization and, accordingly, should have the right to vote these different interests.

Frank W. Naylor, Jr.,
Chairman.
Marvin Duncan,
Member.
[FR Doc. 86-23060 Filed 10-10-86; 8:45 am]
BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the paperwork reduction act of 1980.

Title of Information Collection: Application for a Merger or Other Transaction Pursuant to Section 18(c) of the FDI Act (Phantom Bank Merger and Corporate Reorganization) (OMB No. 3064-0015).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget Standard Form 83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

COMMENTS: Comments on this collection of information should be submitted on or before October 29, 1986.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is requesting OMB approval to extend, for a three-year period, the expiration date of the form used by FDIC-supervised banks who apply for a merger-type transaction under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) that involve a phantom bank merger or other merger which is for the purpose of corporate reorganization. The form, FDIC 6220/07, requires the applicant to furnish information concerning the terms and conditions of the merger, structure of the transaction and a statement of condition of recent date for the applicant and the other institutions. The information collected on the form is used by the FDIC as a basis for evaluating certain factors as required by section 18(c) of the FDI Act before approving the application. The aggregate annual burden for this collection is estimated to be 4,800 hours.

Dated: October 7, 1986.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86-23127 Filed 10-10-86; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants; T & O International, Inc., et al.

Notices is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR 510.

BEST COPY AVAILABLE

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

T & O International, Inc., 1040 East Wardlow Road, Long Beach, CA 90807, Officer: John Anthony Dedola, President

Loor International Forwarders, Inc., 1915 Brickell Avenue, #CPH5, Miami, FL 33129, Officers: Julio Alberto Loor, President/Director, Caridad Loor, Vice President/Secretary/Treasurer

Alaska Pacific Trading Company, dba ALPAC, 827 Pioneer Blvd., 600 1st Avenue, Seattle, WA 98104, Officers: Takayki Someya, Chairman of the Board, Setsuo Kimura, President/Secretary, Hidehiko Tsuru, Vice President

Saga Transport (USA) Inc., 500 Fifth Avenue, New York, NY 10036, Officers: Francis Alexander, President, Georges Abitbol, Director, Didier Bissery/Director, Michael Fiemeyer, Director

Jorge A. Colon, dba King International, 1782 N.W. 82nd Avenue, Miami, FL 33126

Pasha International, Inc., 5725 Paradise Drive, Corte Madera, CA 94925, Officers: George W. Pasha, III, President, Janet M. Pasha, Vice President, Robert W. Stout, Vice President, Glenn S. Yamagruchi, Vice President/Secretary/Treasurer, Joelle C. Vossbrink, Assistant Secretary

Dated: October 7, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-23077 Filed 10-10-86; 8:45 am]

BILLING CODE 6730-01-M

[C.O. 1, Amdt. No. 8]

Organization and Functions of the Federal Maritime Commission

The following delegation of authority is made to the Director, Bureau of Agreements and Trade Monitoring, by amending Commission Order 1, Section 8 *Specific Authorities Delegated to the Director, Bureau of Agreements and Trade Monitoring,* to add subsection 8.17.

8.17 (a) Authority to determine that no action should be taken to prevent an agreement or modification of an agreement from becoming effective under section 6(c)(1) of the Shipping Act of 1984 for all unopposed agreements and modifications to agreements which will not result in a significant reduction in competition. Agreements which are deemed to have the potential to result in a significant reduction in competition and which, therefore, are *not* covered by this delegation include but are not limited to:

1. New agreements authorizing the parties to collectively discuss or fix rates (including terminal rates).

2. New agreements authorizing the parties to pool cargoes or revenues.

3. New agreements authorizing the parties to establish a joint service or consortium.

4. New sailing agreements.

5. New equal access agreements.

6. Significant modifications to the above categories of agreements as set forth in 46 CFR 572.403(a)(3).

(b) Authority to grant or deny shortened review pursuant to 46 CFR 572.605 for agreements for which authority is delegated in (a) above.

Dated: October 7, 1986.

Edward V. Hickey, Jr.,

Chairman.

[FR Doc. 86-23076 Filed 10-10-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86F-0363]

Fluid Systems, Division of UOP, Inc.; Filing of Food Additive Petition

Correction

In FR Doc. 86-21691 appearing on page 34503 in the issue of Monday, September 29, 1986, make the following corrections:

1. The docket heading is corrected as set forth above.

2. In the second column, in the third line, insert "filed a " after "has".

3. In the fifth line, "cross-linked" was misspelled.

4. In the tenth line, "copolymer" was misspelled.

5. Under **SUPPLEMENTARY INFORMATION,** in the sixteenth line, insert "the" before "food-contract".

BILLING CODE 1505-01-M

[Docket No. 77N-0240; DESI 1786]

Certain Single Entity Coronary Vasodilators—Nitroglycerin Ointment; Drug Efficacy Study Implementation; Revocation of Exemption; Announcement of Marketing Conditions

Correction

In FR Doc. 86-19797, beginning on page 31371 in the issue of Wednesday, September 3, 1986, make the following corrections:

1. On page 31371, in the second column, in the **FOR FURTHER INFORMATION CONTACT** caption, the contact person should read "Mary E. Catchings".

2. On page 31374, in the first column, in the last line, the date should read "November 3, 1986". And in the second column, in paragraph 2., sixteenth line, the date should read "March 3, 1987".

3. And on the same page, in the third column, paragraph 3., the last two lines should read, "Division of Bioequivalence at the address given above".

BILLING CODE 1505-01-M

National Institutes of Health

National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for November 1986.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6) Title 5, U.S. Code and section 10(d) of Publ L. 92-463, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications.These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485 will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Population Research Committee

Acting Executive Secretary: Dr. Stanley Slater, Room 6C03, Landow Building, Telephone: 301, 496-1696

Date of Meeting: November 6-7, 1986

Place of Meeting: Landow Building, Conference Room A

Open: November 6, 1986, 9:00 a.m.-10:00 a.m.

Closed: November 6, 1986, 10:00 a.m.-5:00 p.m. November 7, 1986, 9:00 a.m.-adjournment

Name of Committee: Maternal and Child Health Research Committee

Executive Secretary: Dr. Laurence Johnston, Room 6C03, Landow Building, Telephone: 301, 496-1485

Date of Meeting: November 12-13, 1986

Place of Meeting: Landow Building, Conference Room A

Open: November 12, 1986, 9:00 a.m.-10:00 a.m.

Closed: November 12, 1986, 10:00 a.m.-5:00 p.m., November 13, 1986, 9:00 a.m.-adjournment

Name of Committee: Mental Retardation Research Committee

Executive Secretary: Dr. Stanley Slater, Room 6C03, Landow Building, Telephone: 301, 496-1696

Date of Meeting: November 19-20, 1986.

Place of Meeting: Landow Building, Conference Room A

Open: November 19, 1986, 9:00 a.m.-10:00 a.m.

Closed: November 19, 1986, 10:00 a.m.-5:00 p.m. November 20, 1986, 9:00 a.m.-adjournment

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: September 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-23097 Filed 10-10-86; 8:45 am]

BILLING CODE 4140-01-M

Public Health Services

National Toxicology Program; Amended Notice of Availability of Fourth Annual Report on Carcinogens: Call for Public Comments, Fifth Annual Report on Carcinogens

The following information was inadvertently deleted from the notice published on Thursday, October 2, 1986 (51 FR 35297).

Appendix A—List of Substances in Annual Report on Carcinogens

Reference Source

1. Substances or groups of substances, occupational exposures associated with a technological process, and medical treatments that are known to be carcinogenic.

CAS Nos.	Substance	NCI/NTP technical reports	IARC vol.
000092-67-1	4-Aminobiphenyl		1
	Analgesic mixtures containing phenacetin	57	24
	Arsenic and certain arsenic compounds		23
001332-21-4	Asbestos		14
000446-86-6	Azathioprine		26
000071-43-2	Benzidine	280	29
000065-27-5	Benzene		29
000494-03-1	N,N-bis(2-chloroethyl-2-naphthylamine (chlornaphazine)		4
000542-86-1	Bis(choloromethyl)ether and technical grade chloromethyl methyl ether	191	4
000107-30-2			
000055-98-1	1,4-Butanediol dimethylsulfonate (myleran)		4
	Certain combined chemotherapy for lymphomas		26
000305-03-3	Chlorambucil		26
	Chromium and certain chromium compounds		23
	Coke oven emissions [OSHA Fed. Reg. Vol. 41 (206) 1976 1976 p. 46742-46790-		
	Conjugated estrogens		21
000050-18-0	Cyclophosphamide		26
000056-53-1	Diethylstilbestrol		21
	Hematite underground mining		1
	Isopropyl alcohol manufacture (strong-acid process)		15
	Manufacture of auramine		1
000148-82-3	Melphalan		9
	Methoxsalen with ultra-violet A therapy (PUVA)		24
000505-60-2	Mustard gas		9
000091-59-8	2-Naphthylamine		4
	Nickel refining		11
	Rubber industry (certain occupations)		28
	Soots, tars, and mineral oils (occupational exposure)		3
	Thorium dioxide [MacMahon, Am. J. Path., Vol. 23, 1947, p. 565-613]		
000075-01-4	Vinyl chloride		19

2. Substances or groups of substances, occupational exposures associated with a technological process, and medical treatments which may reasonably be anticipated to be carcionogens.

CAS Nos.	Substance	NCI/NTP Technical reports	IARC vol.
000053-96-3	2-Acetylaminofluorene [R.H. Wilson, Cancer Res., Vol. 1, 1941, p. 595-608]		
000107-13-1	Acrylonitrile		19
023214-92-8	Adriamycin		10
001402-68-2	Aflatoxins		10
000117-79-3	2-Aminoanthraquinone	144	27
000082-28-0	1-Amino-2-methylanthraquinone	111	27
000061-82-5	Amitrole		7
000090-04-0	o-Anisidine and		
000134-29-2	o-anisidine hydrochloride	86	27
000140-57-8	Aramite		5
000056-55-3	Benz(a)anthracene		3
000205-99-2	Benzo(b)fluoranthene		3
000050-32-8	Benzo(a)pyrene		3
000098-07-7	Benzotrichloride		29
	Beryllium and certain beryllium compounds		23
000154-93-8	Bischloroethyl nitrosoures		26
	Cadmium and certain cadmium compounds		11

CAS Nos.	Substance	NCI/NTP Technical reports	IARC vol.
000056-23-5	Carbon tetrachloride		20
013010-47-4	1-(2-Chloroethyl)-3-cyclohexyl-1-nitrosourea (CCNU)		26
000067-66-3	Chloroform		20
000095-83-0	4-Chloro-o-phenylenediamine	63	27
000120-71-8	p-Cresidine	142	27
000135-20-6	Cupferron	100	
041901-08-7	Cycasin		10
004342-03-4	Dacarbazine		26
000050-29-3	DDT	131	5
039156-41-7	2,4-Diaminoanisole sulfate	84	27
000095-80-7	2,4-Diaminotoluene	152	16
000226-36-8	Dibenz(a,h)acridine		3
000224-42-0	Dibenz(a,j)acridine		3
000053-70-3	Dibenz(a,h)anthracene		3
000194-59-2	7H-Dibenzo(c,g)carbazole		3
000189-64-0	Dibenzo(a,h)pyrene		3
000189-55-9	Dibenzo(a,i)pyrene		3
000096-12-8	1,2-Dibromo-3-chloropropane	206,26	20
000106-93-4	1,2-Dibromoethane (EDB)	210,86	
000091-94-1	3,3'-Dichlorobenzidine		29
000107-06-2	1,2-Dichloroethane	55	26
001464-53-5	Diepoxybutane		11
000117-81-7	Di(2-ethylhexyl)phthalate	217	29
000064-67-5	Diethyl sulfate		4
000119-90-4	3,3'-Dimethoxybenzidine		4
000060-11-7	4-Dimethylaminoazobenzene		8
000119-93-7	3,3'-Dimethylbenzidine		1
079-44-7	Dimethylcarbamoyl chloride		12
000057-14-7	1,1-Dimethylhydrazine		4
000077-78-1	Dimethyl sulfate		4
000123-91-1	1,4-Dioxane	80	11
001937-37-7	Direct Black 38	108	29
002602-46-2	Direct Blue 6	108	29
000106-89-8	Epichlorohydrin		11
000050-28-2	Estrogens (not conjugated): 1. Estradiol 17b		21
000053-16-7	Estrogens (not conjugated): 2. Estrone		21
000057-63-6	Estrogens (not conjugated): 3. Ethinylestradiol		21
000072-33-3	Estrogens (not conjugated): 4. Mestranol		21
000075-21-8	Ethylene oxide		36
000096-45-7	Ethylene thiourea		7
000050-00-0	Formaldehyde (Gas)		29
000118-74-1	Hexachlorobenzene		20
000680-31-9	Hexamethylphosphoramide		15
000302-01-2	Hydrazine and hydrazine sulfate hydrazine sulfate		4
010034-93-2			
000122-66-7	Hydrazobenzene	92	
000193-39-5	Indeno(1,2,3-cd)pyrene		3
009004-66-4	Iron dextran complex		2
000143-50-0	Kepone (Chlordecone)	76-1278	20
000301-04-2	Lead acetate and lead phosphate		23
007446-27-7			
	Lindane and other hexachlorocyclohexane isomers	14	20
000075-55-8	2-Methylaziridine (propyleneimine)		9
000101-14-4	4,4'-Methylenebis(2-chloroaniline) (MBOCA)		
000101-61-1	4,4'-Methylenebis(N,N-dimethyl)benzenamine	156	27
000101-77-9	4,4'-Methylenedianiline and its dihydrochloride	248	
013552-44-8			
000074-88-4	Methyl iodide		15
000443-48-1	Metronidazole		13
000090-94-8	Michler's ketone	181	
2385-85-5	Mirex	181	20
	Nickel and certain nickel compounds		11
000139-13-9	Nitrilotriacetic acid	6	
000099-59-2	5-Nitro-o-anisidine	127	27
001836-75-5	Nitrofen	184,26	30
000055-66-7	Nitrogen mustard		9
000079-46-9	2-Nitropropane		29
000924-16-3	N-Nitrosodi-n-butylamine		17
001116-54-7	N-Nitrosodiethanolamine		17
000055-18-5	N-Nitrosodiethylamine		17
000062-75-9	N-Nitrosodimethylamine		17
000156-10-5	p-Nitrosodiphenylamine	193	27
000621-64-7	N-Nitrosodi-n-propylamine		17
000759-73-9	N-Nitroso-N-ethylurea		17
000684-93-5	N-Nitroso-N-methylurea		17

Appendix B—Chemicals Proposed for Addition in the Fifth Annual Report on Carcinogens

CAS No.	Chemical	References used in evaluation*
00093-58-3	b-Aminoazotoluene	IARC 8 (1975)
00106-99-0	1,3-Butadiene	NTP TR 288
00115-28-6	Chlorendic acid	NTP TR 304
63449-39-8	Chlorinated paraffins C12, 60% chlorine)	NTP TR 308
0563-47-3	3-Chloro-2-methyl propene	NTP TR 300
0569-61-9	C.I. Basic Red 9 HCl	NTP TR 285
0106-46-7	1,4-Dichlorobenzene	NTP TR 319 IARC 29 (1982)
0075-09-2	Dichloromethane (methylene dichloride)	NTP TR 306 IARC 20 (1979)
0101-90-6	Diglycidyl resorcinol ether	NTP TR 257 IARC 36 (1985)

CAS No.	Chemical	References used in evaluation*
0513-37-1	Dimethylvinyl chloride	NTP TR 316
0140-88-5	Ethyl acrylate	NTP TR 259 IARC 19 (1979)
	Other polycyclic hydrocarbons	
0205-82-3	a. Benzo(j)fluoranthene	IARC 32 (1983)
0207-08-9	b. Benzo(k)fluoranthene	IARC 32 (1983)
0192-65-4	c. Dibenzo(a,e)pyrene	IARC 32 (1983)
0191-30-0	d. Dibenzo(a,l)pyrene	IARC 32 (1983)
3697-24-3	e. 5-Methylchrysene	IARC 32 (1983)
0101-80-4	4,4'-Oxydianiline	NTP TR 205 IARC 29 (1982)
0063-92-3	Phenoxybenzamine HCl	NTP TR 72 IARC 24 (1980)
0075-56-9	Propylene oxide	NTP TR 267 IARC 36 (1985)
0542-75-6	Telone II® (mainly 1,3-dichloropropene)	NTP TR 269
0127-18-4	Tetrachloroethylene (perchloroethylene)	NTP TR 13/311 IARC 20 (1979)

*NTP TR can be obtained by requests to the Public Information Office, NTP, P.O. Box 12233, Research Triangle Park, NC 27709;=Tel. (919-541-3991) or FTS (629-3991).
*IARC vols. can be ordered from WHO Publications Center USA, 49 Sheridan Ave., Albany NY 12210.

Dated: October 8, 1986.

David P. Rall, M.D.,

Director, National Toxicology Program.

[FR Doc. 86-23098 Filed 10-10-86; 8:45 am]

BILLING CODE 4140-01-M

Request for Establishment of Collaborative Agreement for the Preclinical and Clinical Development of Dideoxycytidine as an Anti-Viral Agent Useful in the Treatment of Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services solicits responses to establish a collaborative agreement with an industrial sponsor for the preclinical and clinical development of dideoxycytidine as a drug for the treatment of Acquired Immunodeficiency Syndrome. Scientists from the National Cancer Institute have established that this compound is effective in inhibiting in vitro growth of HTLV-III, the etiologic agent of AIDS. In exchange for the successful participation in this collaborative agreement, the Government will grant the industrial sponsor exclusive royalty-bearing license under U.S. Patent Application Serial No. 769,017. The Government is seeking "orphan drug" status for dideoxycytidine. The Government seeks a sponsor who, in accordance with the requirements of the regulations governing the licensing of Government-owned inventions (37 CFR 404.8), presents the most meritorious plan for the development of dideoxycytidine to New Drug Application (NDA) status with the best terms for the Government. Specifically, respondents are sought who will be able to:

(1) Synthesize necessary bulk pharmaceutical product for the treatment of 500–1,000 patients with HIV infection in Phase I, Phase II, and Phase III developmental studies.

(2) Perform formulation, vialing, quality control testing, and distribution of drug for Phase I and Phase II and, if appropriate, Phase III clinical trials both in the intramural program of the National Cancer Institute and extramural AIDS Treatment Evaluation Units recently established by the National Institutes of Allergy and Infectious Diseases. These clinical trials may be performed under the sponsorship of an Investigational New Drug Application to be held by the National Cancer Institute or the NIAID. Prior to being released for commercial distribution, the drug would have to be granted a product license by the Food and Drug Administration.

(3) The drug company will be expected to perform clinical studies. In addition, the National Institute of Allergy and Infectious Diseases may conduct studies of dideoxycytidine in the AIDS Treatment Evaluation Units. However, the drug company will be encouraged to do additional testing in other medical centers as indicated.

(4) Provide data management support for both intramural and extramural studies of dideoxycytidine necessary for submission of a New Drug Application to the Food and Drug Administration.

(5) Cost share in intramural and extramural clinical monitoring studies (pharmacokinetics, patient immune profiles and viral outgrowth studies) necessary for the demonstration of clinical efficacy of dideoxycytidine in the treatment of AIDS.

(6) The United States government will receive reasonable royalties, once the drug is marketed for general use.

ADDRESS: Applications should be sent to: Dr. Lowell T. Harmison, Science Advisor, Office of the Assistant Secretary for Health, 200 Independence Ave., SW., Washington DC 20201.

For further information (including copy of the patent application) contact: Dr. Eddie Reed, Executive Secretary, AIDS Drug Selection Committee, Building 31, Room 3A49, Bethesda, MD 20892.

DATE: In view of the important priority of developing new drugs for the treatment of AIDS, interested parties should submit responses to the Assistant Secretary for Health within 45 days of the date of this notice. Late responses will not be considered. Respondents may be provided an additional opportunity to provide additional information, to present an oral statement and to answer questions if the Department determines that it be necessary.

SUPPLEMENTARY INFORMATION: Responses will be reviewed by senior scientists from the National Cancer Institute, the National Institute of Allergy and Infectious Diseases, and the Office of the Assistant Secretary for Health. Criteria for choosing the industrial partner in this collaborative agreement will include:

(1) Experience in preclinical and clinical drug development with special emphasis on the development of antiviral compounds.

(2) Prior manufacturing capabilities and experience with drugs for broad distribution.

(3) Ability to package, market, and distribute antiviral pharmaceutical products in a nationwide marketing system at a reasonable price.

(4) Experience in the evaluation, monitoring, and interpretation of data from investigational biologic and virologic assays under an Investigational New Drug Application.

(5) Experience in the evaluation, monitoring and interpretation of data from Phase I and Phase II clinical

studies under an Investigational New Drug Application.

(6) Willingness to cooperatge with the Public Health Service in collection, evaluation, publication and maintenance of data from clinical trials and tests of investigational biologic assays.

(7) Willingness to cost share in AIDS drug development as outlined above (i.e., bulk drug synthesis, data management, etc.).

(8) Agreement to be bound by DHHS rules involving human/animal subjects.

Dated: October 9, 1986.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 86-23295 Filed 10-10-86; 9:31 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paper Reduction Act.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: Additional Requirements for Trust Responsibilities, 25 CFR 271.33.

Abstract: Indian tribes which are preparing contract applications which involve Bureau trust responsibilities in the area of natural resources provide additional information to assure the protection, preservation and perpetuation of such resources, to ensure fair market value to tribes or individual Indians and that no delegation of trust responsibility occurs.

Frequency: Upon initial application.

Description of Respondents: Indian tribes contracting Bureau programs in the area of natural resources.

Annual Responses: 74.

Annual Burden Hours: 2,300.

Bureau clearance officer: Cathie Martin 202-343-3577.

October 2, 1986.

Hazel E. Elbert,

Deputy to the Assistant Secretary—Indian Affairs (Tribal Services).

[FR Doc. 86-23073 Filed 10-10-86; 8:45 am]

BILLING CODE 4310-02-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposals for the collection of information listed below have been submitted to the Office of Management and Budget for approval under the provision of the paperwork reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and explanatory materials may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: 25 CFR 13.11 Content of reassumption petition.

Abstract: Federally recognized Indian tribes in Pub. L. 83-280 states may, under the Indian Child Welfare Act, reassume jurisdiction of Indian child custody proceedings. This information enables the Secretary to determine whether reassumption is feasible.

Bureau Form Number: none.

Frequency: Once, or as needed until approved.

Description of Respondents: Federally Recognized Indian Tribes.

Annual Responses: 1.

Annual Burden Hours: 80.

Title: 25 CFR 21.3—State or other contracting agency furnish plan of operation.

Abstract: The Bureau requires a plan executed by the State or other agency entering into a contract with the Bureau specifying the services and assistance to be rendered under the terms of the contract, and a budget showing the plan for expenditures of funds. Upon approval of the contract no deviation from the plan shall be made without prior approval.

Bureau Form Number: None.

Frequency: Annually, or at time of contract.

Description of Respondents: States or other agencies who contract with the Bureau.

Annual Responses: 3.

Annual Burden Hours: 12.

Title: 25 CFR 21.6—Financial statement.

Abstract: Any state or agency which has contracted with the Bureau shall thirty days after the close of each fiscal year provide the Commissioner of Indian Affairs an analysis of financial expenditures made pursuant to that contract.

Bureau Form Number: None.

Frequency: Annually, or thirty days after the close of each fiscal year.

Description of Respondents: States or other agencies that contract with the Bureau.

Annual Burden Hours: 24.

Title: 23:13—Payment for appointed counsel in state Indian child custody proceedings.

Abstract: A state court that appoints counsel for an indigent party in an Indian child custody proceeding for which appointment of counsel is not authorized by state law shall send written notice to the Bureau. The Area Director using this information can certify if the client in the notice is eligible to have his counsel compensated by the Bureau in accordance with the Indian Child Welfare Act.

Bureau Form Number: None.

Frequency: Upon request for assistance.

Description of Respondents: State courts.

Annual Responses: 4.

Annual Burden Hours: 12.

Bureau Clearance Officer: Anne Bolton, 202-343-1676.

Hazel R. Elbert,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 86-23072 Filed 10-10-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AZ-050-06-4830-02]

Arizona; Yuma District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Yuma (Arizona) District Advisory Council Meeting.

SUMMARY: A meeting and field tour by the Yuma District Advisory Council will be held on Friday, November 7. Council members will tour the Imperial Dam Long-Term Visitor Area and then hold a regular Advisory Council meeting in the afternoon.

DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Douglas B. Stockdale, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, (603) 726-3600.

SUPPLEMENTARY INFORMATION: A short initial meeting will be held at 10 a.m. at the Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona. The tour will begin at 10:30 a.m. The Council will return to the District Office at 2 p.m. for a regular meeting. Discussions will center on the day's tour and other Council-initiated topics. The public is invited to attend the meetings and tour but must provide their own transportation and meal.

Written statements from the public may be filed for the Council's consideration. Statements must arrive at the District Office by November 5. Oral statements will also be accepted but, depending on the number of persons wishing to address the Council, a per-person time limit may be imposed.

Summary minutes of the District Advisory Council meeting will be maintained in the Yuma District Office and will be available for inspection and reproduction during regular business hours (7:45 a.m. through 4:30 p.m.) within 30 days of the meeting.

Dated: October 6, 1986.

J. Darwin Snell,

District Manager.

[FR Doc. 86-23175 Filed 10-10-86; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Time Extension for Annual List

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The annual list of labor surplus areas for the period October 1, 1985, through September 30, 1986, is extended until further notice. A recently enacted statute reduced the minimum population criteria for labor surplus areas to twenty-five thousand. The Employment and Training Administration will continue to accept exceptional circumstance petitions for labor surplus area designations on the basis of the criteria in effect at the time, except that minimum population criterion shall be twenty-five thousand.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4470 Attention: TEESS, Washington, DC 20210. Telephone (202) 535-0186.

SUPPLEMENTARY INFORMATION: Section 18003(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, 100 Stat. 82, 363, added a new subsection (n) to section 15 of the Small Business Act, 15 U.S.C. 644(n). Subsection (n) provides, in part, that "the determination of labor surplus areas shall be made on the basis of the criteria in effect at the time of the determination, except that any minimum population criteria shall not exceed twenty-five thousand." The amendment was effective July 7, 1986. Pub. L. 99-272 Section 18003(b). Previously, the minimum population criteria had been set, by regulation, at fifty-thousand, 20 CFR 654.4(b).

Accordingly, effective July 7, 1986, the Employment and Training Administration began accepting exceptional circumstance petitions (20 CFR 654.5(b)) submitted by appropriate State employment security agencies to classify civil jurisdictions with a population of twenty-five thousand or more as labor surplus areas.

Annually, the Employment and Training Administration reviews the appropriate data for all civil jurisdictions to determine which areas meet the basic labor surplus area criteria at 20 CFR 654.5(a). The list of qualifying civil jurisdictions, known as the annual list of labor surplus areas, is usually released to the public on or about October 1 of each year. Classification issued on or about October 1 of each year are valid through September 30 of the following year.

The next classification of civil jurisdictions for the annual list of labor surplus areas under the criteria at 20 CFR 654.5(a) must utilize the twenty-five thousand minimum population criteria mandated by 15 U.S.C. 644(n). The Employment and Training Administration, therefore, cannot make the determinations under 20 CFR 654.5(a) until all of the necessary steps to implement 15 U.S.C. 644(n) have been implemented. For that reason the Employment and Training Administration is extending the effective date of the annual list of labor surplus areas for the period of October 1, 1985, through September 30, 1986, until further notice while implementation of 15 U.S.C. 644(n) is being completed. See 50 FR 41606 (October 11, 1985). After implementation, the Employment and Training Administration will publish the new annual list of labor surplus areas, utilizing the new minimum population criteria of twenty-five thousand, in the **Federal Register.**

Signed at Washington, DC, on September 29, 1986.

Roger D. Semerad

Assistant Secretary of Labor.

[FR Doc. 86-23135 Filed 10-10-86; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-86-104-C]

Petition for Modification of Application of Mandatory Safety Standard; Hegins Mining Co.

Hegins Mining Company, Zerbe, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its No. 3 Skidmore Slope (I.D. No. 36-01856) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is damp to very wet, with one piece of electrical equipment which is a small sump pump located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the device questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 13, 1986. Copies of the

petition are available for inspection at that address.

Dated: October 1, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-23136 Filed 10-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-94-C]

Petition for Modification of Application of Mandatory Safety Standard; Ronald Bush Coal Co.

Ronald Bush Coal Company, R.D. Box 44, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Skidmore Slope (I.D. No. 36-01956) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is always damp to wet. There is a fire extinguisher at all electrical equipment underground

3. Petitioner states that the distance from the gangway to another split of air is 2,000 feet. The mine can be evacuated in less than 15 minutes into another mine.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the device questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 13, 1986. Copies of the petition are available for inspection at that address.

Dated: October 1, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-23137 Filed 10-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-96-C]

Petition for Modification of Application of Mandatory Safety Standard; S.&T. Coal Company

S.&T. Coal Company, R.D. #1, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Skidmore Slope (I.D. No. 36-01984) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is damp to very wet, with one piece of electrical equipment, which is a small pump located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the device questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington Virginia 22203. All comments must be postmarked or received in that office on or before November 13, 1986. Copies of the petition are available for inspection at that address.

Dated: October 1, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-23138 Filed 10-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-97-C]

Petition for Modification of Application of Mandatory Safety Standard; Western Fuels Utah, Inc.

Western Fuels Utah, Inc., P.O. Box 1067, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 77.1600 (cutout switches) to its Deseret Western Railroad Deserado Mine (I.D. No. 05-03505) located in Rio Blanco County, Colorado. The petition is filed under section 101(C) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires be provided with cutout switches at intervals of not more than 2,000 feet.

2. Petitioner states that application of the standard in the 9928 foot loading loop trolley would result in a diminution of safety to the miners in that opening cutout switch 600 KW no load or 12000 KW under full load could result in injury to the person operating the switch.

3. The trolley wire is out in the open on the surface and is 22 feet in the air, which protects the mines from inadvertently coming into contact with it.

4. As an alternate method, petitioner states that—

(a) In case of an emergency there is a qualified person that can deenergize the trolley conductor. This person must notify the Western Area Power Administration as to which line needs to be deenergized, what disconnects need to be opened and what grounding disconnects need to be closed. W.A.P.A. then notifies the power plant with the procedures to take to deenergize the trolley line. Once the trolley line has been deenergized, W.A.P.A. calls the Deseret Western Railroad and informs the authorized person that the line has been deenergized.

(b) The access roof door of the locomotive is padlocked at all times with the key available only to supervisors in charge of the locomotive operation and maintenance. The access door is only unlocked after receiving verification from W.A.P.A. that the trolley is dead; and

(c) Railroad personnel test the trolley line with a special voltage tester to ensure deenergization.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 13, 1986. Copies of the petition are available for inspection at that address.

Dated: October 6, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-23139 Filed 10-10-86; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-1918]

Proposed Exemption for Certain Transactions Involving the Trammell Crow Co., Inc. Employee Profit Sharing Plan and Trust (the Plan); Dallas, TX

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt certain real estate transactions between the Plan and parties in interest (the Parties in Interest) with respect to the Plan. Such transactions will arise in conjunction with a program of divestiture and diversification of the Plan's investment portfolio as described hereinafter.

EFFECTIVE DATE: This proposed exemption will be effective on the date of publication of the grant of this exemption in the **Federal Register** and will expire on the earlier of (i) ten (10) years from its effective date or (ii) upon the disposition of all properties and interests subject to the exemption and the initial investment of all proceeds pursuant to the exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address below, within the time period set forth below. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth below.

DATES: Written comments and requests for a public hearing must be received by the Department within 45 days from the date of publication of this proposed exemption in the **Federal Register.**

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D-1918. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Temporary Nature of Exemption

The Department has determined that the exemption, if granted, will be temporary in nature and, unless extended pursuant to timely application made following substantial compliance with the real estate divestiture and diversification program, described hereinafter, will expire on the earlier of (i) ten years from its effective date or (ii) upon the disposition of all properties and interests subject to the exemption and the initial investment of all proceeds pursuant to the exemption.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan by the Trammell Crow Company, Inc. and the trustees of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor.[1] Therefore, this notice of pendency is issued solely by the Department.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which provides for discretionary contributions by Trammell Crow Company, Inc. (TCC), the sponsor of the Plan. As of October 31, 1985, the Plan had approximately 2,055 participants. The Plan is administered currently by a seven member Profit Sharing Committee. These seven Individuals also serve as trustees (the Trustees) for the Plan. The current Trustees are all employees of TCC and are participants in the Plan. The Trustees have exclusive authority and discretion with respect to the investment of the Plan's assets.

2. TCC is a Texas corporation founded by Mr. Trammell Crow. TCC sponsored entities comprise the largest private commercial real estate developer in the United States. Trammell Crow Partners, Ltd. (TCP), a Texas limited partnership, is an owner of a substantial number of the shares of TCC. Various owners of TCP are the organizers of and the general partners in real estate partnerships (the Partnerships) which own, develop, and manage TCC-conceived and sponsored real estate projects located in 32 states. Key personnel of TCC are also permitted to acquire ownership interests in the Partnerships. Typically, real estate Partnerships have from 3 to 10 general partners and from 1 to 40 limited partners. There are currently approximately 1, 800 Partnerships.

From its inception, a real estate Partnership acquires the land needed for a project and enters into contracts and

[1] The references in this exemption to specific sections of the Act refer also to the corresponding sections of the Code.

other arrangements for services needed to complete the project. TCC and key employees of TCC provide many of these services to the project which include the coordination of land use for various zoning ordinances, review of architectural design work, the obtaining of interim and permanent financing, and the coordination of the construction of the project with contractors and subcontractors. Additional services to the Partnerships are performed by certain management companies (the Management Companies) that are under TCC control. The Management Companies serve each of the 55 divisions in which the Partnerships are organized. The Management Companies act as direct overhead cost centers, charging each Partnership in a division with its share of overhead expenses and salaries of TCC, and also provide working capital to the Partnerships in a division.

3. The Plan was established in 1983 as a means to allow staff and employees of TCC to participate in the profits associated with the business of TCC. This was accomplished by TCC inviting the Trustees of the Plan to acquire on behalf of the Plan general and limited partnership interests in certain of the Partnerships (the Partnership Interests) at their low fair market value upon formation. Typically, the Plan purchased Partnership Interests for a nominal amount of either one dollar or ten dollars per percentage point of interest acquired. From the Plan's establishment until 1975, the Plan had acquired Partnership Interests in 42 Partnerships. Also, prior to 1975, as part of their real estate investment program, the Trustees acquired on behalf of the Plan, (1) direct ownership interests in seven parcels of real property (the Improved Real Property) located in Texas and Missouri and leased to third parties, and (2) a 20% undivided ownership interest (the Undivided Interests) in each of two real estate entities. (Hereinafter, the Partnership Interests, the improved Real Property, and the Undivided Interests will be referred to, collectively, as the Pre-ERISA Real Estate Investments.)

4. In 1975, pursuant to advice of independent counsel, the Trustees reviewed all Plan investments in order to ascertain the possible impact of the passage of the Act. Except for the acquisition of a small number of Partnership Interests in 1975 (or shortly thereafter), purchased under pre-1975 commitments, the Trustees decided to cease purchasing new Partnership Interests. In addition, after January 1, 1975, the Trustees reorganized and disposed of certain of the Plan's Partnership Interests and converted into limited Partnerships Interests. Currently, the Plan owns twenty one (21) limited Partnership Interests and five (5) general Partnership Interests.[2]

5. In 1977, TCC created Employee's Inc., as a wholly owned subsidiary. Employee's, Inc. was formed to own and manage new interests in Partnerships. When Employee's, Inc. was formed, TCC anticipated that a number of years would pass before the interests in Partnerships acquired by Employee's, Inc. would have a positive net value. However, by 1980, it became clear that interests in the Partnerships acquired by Employees, Inc. accrued in value much earlier and at a faster rate than anticipated. In 1980, Employee's, Inc. was reorganized to provide for two classes of stock, non-voting common and voting preferred. As a result of the reorganization, TCC became the owner of 100% of the preferred stock of Employee's, Inc., and the Plan purchased 100% of the common stock of Employee's, Inc. The applicants have characterized the common stock of Employee's Inc. as "qualifying employer securities," as that term is defined in section 407(d)(5) of the Act. Accordingly, the applicants represent that the Plan's acquisition and holding of such stock is entitled to the relief from the prohibited transaction provisions of section 406 of the Act by reason of the statutory exemption contained in section 408(e).[3]

6. Since 1983, total aggregate capital investments by the Plan in Pre-ERISA Real Estate Investments were approximately $4.2 million of which $1.2 million represented investments in the Partnership Interests. Because the Plan invested in the Partnership Interests at the inception of the relevant Partnerships and on very favorable terms, substantial appreciation in value frequently occurred and retirement benefits accumulated rapidly. In addition, since acquisition, the Improved Real Property and the Undivided Interests also appreciated in value.[4]

On April 25, 1979, the Dallas Area Office (DAO) of the Department began an investigation of the Plan in which representatives of the Kansas City Regional Office and the Internal Revenue Service also participated. The investigation covered Plan years ending December 31, 1975 through December 31, 1979. In a letter dated August 12, 1982, the DAO informed the Trustees that it found that 70% of the Plan's assets were invested in the Pre-ERISA Real Estate Investments with 50% of the Plan's assets in the Partnership Interests, alone. As part of its findings, the DAO recommended that the Plan should dispose of all TCC-related Partnership investments described above, or seek retroactive exemption for any past prohibited transaction which may have occurred with respect to such investments. In addition, the DAO recommended that the Plan diversify its real estate holdings such that, in the future, at least 80% of Plan funds derived from contributions by TCC and income from investments, including disposition proceeds (collectively, the Investment Proceeds, as defined in Section IV(f) of this proposal), would not be invested in real property or related investments.

As of December 31, 1984, the Plan had total assets of $59,491,661 with approximately 38% of those assets invested in the Pre-ERISA Real Estate Investments.[5] Specifically, 29.54%, 8.2%, and .35% of the Plan's assets were invested in the Partnership Interests, the Improved Real Property, and the Undivided Interests, respectively. While the percentage of Plan assets represented by the Pre-ERISA Real Estate Investments has decreased since the end of the years subject to the DAO Investigation, their absolute value, as estimated by TCC, has increased. Such percentage decrease was largely due to the increase in value of Employee's Inc. stock since 1980, when it was acquired by the Plan, and to the resulting increase in the Plan's asset base. As of December 31, 1984, Employee's Inc. stock represented 36% of the Plan's assets. The remaining 26% of the Plan's assets was invested in various securities and corporate stock.

7. Although TCC and the Trustees filed an application for retroactive exemption in 1983, the Department has not been able to determine from the record presented by the applicants that a proposed exemption relating to prohibited transactions which may have occurred since the passage of the Act would meet the criteria described in section 408(a) of the Act. However, in view of the Plan's continued holding of the Pre-ERISA Real Estate Investments, the Trustees have agreed to a Plan divestiture and diversification program consistent with the DAO investigation and recommendations. Thus, the applicants have agreed to the following divestiture and diversification program over a ten year period commencing with the effective date of the grant of this exemption: (1) The applicants will make a good faith effort to dispose of all Pre-ERISA Real Estate Investments; (2) The Plan, during this period of divestiture, will not invest directly in any new interests in Partnerships involving real estate projects sponsored by TCC; and (3) The Plan will not purchase any additional shares of any corporation, partnership, or entity controlling, controlled by, or under the common control of TCC, TCP, or any partner of TCP, including Employee's Inc. common stock.[6] Additionally, as one of the conditions of this exemption, the Trustees wil be required to invest at least 80% of the Investment Proceeds of the Plan in investments which are not real estate related (the Real Estate Related Investments), as defined in Section IV(j).

8. The applicants represents that a ten year period for divestiture is necessary because an orderly disposition of the Pre-ERISA Real Estate Investments is critical and in the best interests of the Plan's participants and beneficiaries. Attempting to sell these assets too quickly or prematurely could create a "fire sale" mentality among prospective purchasers and subject the Plan to depressed market prices or less than arm's length terms and conditions.

Dispositions may occur in several ways. If the Pre-ERISA Real Estate Investment consists of the Improved Real Property, the realty may be the subject of the disposition. If the Pre-ERISA Real Estate Investment consists of a Partnership Interest or Undivided Interest, such interests may be the subject of the disposition. Although the applicants represent that attempts will be made to sell the Pre-ERISA Real Estate Investments to unrelated parties, it may be determined to be appropriate to sell such assets to Parties in Interest. Accordingly, pursuant to the agreed upon program of divestiture and diversification, the applicants have requested exemptive relief for the proposed sales to Parties in Interest of the Pre-ERISA Real Estate Investments.

The applicants represent that all dispositions to Parties in Interest will be cash sales and that every disposition of any of the Pre-ERISA Real Estate Investments will be based upon an appraisal performed by an independent, qualified appraiser.

9. Prior to the time determined to be appropriate to dispose of any of the Pre-ERISA Real Estate Investments, certain funds may be required to maintain and protect their value. As a result, the Trustees may desire to reinvest, as needed, a limited amount of funds (the Reinvestments) in the Pre-ERISA Real Estate Investments. Such Reinvestments shall be used in connection with Pre-ERISA Real Estate Investments only: (a) For repairs, improvements, renovations, refurbishments, or other similar and reasonable expenditures to maintain, preserve, and enhance the value and commercial viability of the Pre-ERISA Real Estate Investments; and (b) For funding any capital contributions (the Capital Contributions) to the Pre-ERISA Real Estate Investments. In addition, Capital Contributions by the Plan may be made to the Pre-ERISA Real Estate Investments to fund the Plan's proportionate share of "operational cash shortages,"[7] of any such investments. The applicants represent that Parties in Interest, such as certain key employees of TCC, currently own and may own in the future sufficient aggregate equity interests in certain of the Partnerships in which the Plan owns Partnership Interests to cause those Partnerships to be Parties in Interest with respect to the Plan, under section 3(14) of the Act. Accordingly, the applicants have requested exemptive relief for Reinvestments, including additional Capital Contributions, if any, to be made in the future by the Plan in the Pre-ERISA Real Estate Investments which are or become Parties in Interest with respect to the Plan.

The applicants represent that (1) the Plan will make no more than its *pro-rata* share of any Capital Contributions to the Pre-ERISA Real Estate Investments; (2) such Capital Contributions will constitute an equity investment by the Plan: and (3) distributions of income and profits from the Pre-ERISA Real Estate Investments, if and when made to all other owners of the Undivided Interests, or to partners who invest on the same terms as the Plan in the Partnerships, will also be made to the Plan on a *pro-rata* basis. The applicants further represent that during the term of the exemption, the Reinvestments, including Capital Contributions, shall not exceed the greater of four million dollars ($4,000,000), or an amount equal to twenty percent (20%) of the value of the Pre-ERISA Real Estate Investments, as determined on December 31, 1986 (the Limitation of Reinvestments).[8]

10. The applicants represent that an independent qualified real estate investment manager (the Real Estate Investment Manager) will be appointed by TCC to manage, control, and dispose of the Pre-ERISA Real Estate Investments. His advice, consent, and written approval will be a prerequisite to engaging in any transaction affecting the Pre-ERISA Real Estate Investments, including those covered by this exemption.

The Real Estate Investment Manager will have sufficient authority, responsibility, and control to enable him to discharge his responsibilities with respect to the Pre-ERISA Real Estate Investments and any conflicts which may arise in the course of management and disposition of these investments, without the prior approval of the

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[2] The applicants represent that services rendered by TCC, the Management Companies, or employees of TCC to the Partnerships in which the Plan invested did not constitute prohibited transactions under section 406 of the Act, as a provision of services to a plan by a party in interest as defined in section 3(14) of the Act, inasmuch as the Partnerships which owned, managed, and developed real estate were, in effect, real estate operating companies not engaged in the investment of capital.

[3] The Department expresses no opinion as to whether the common stock in Employee's Inc. is qualifying employer securities under section 407(d)(5) or whether the acquisition and/or holding of such common stock in Employee's Inc. constitutes a violation of any of the provisions of Part 4 of Title I of the Act.

[4] As of December 31, 1984, according to the estimate of TCC, the Partnership Interests, the Improved Real Property, and the Undivided Interests had values of $17,575,000 $4,861,327, and $211,070, respectively.

[5] TCC determines on an annual basis the value of all Partnerships that it services. Because of the growing number of projects involving different types of real estate developments, TCC represents that it is impractical to have every project independently appraised. Accordingly, all statements as to Plan assets values are based on TCC estimates.

[6] However, Employee's Inc. (which is not deemed to be a Pre-ERISA Real Estate Investment) may invest its internally generated profits (the Internally Generated Profits), as defined in Section IV(e), in the purchase of interests in newly formed Partnerships.

[7] "Operational cash shortages" means all costs, expenses, or charges with respect to the operation of the Partnerships and the ownership, operation, development, maintenance, and upkeep of any of the Partnerships, or property owned by any of the Partnerships (including interest payments), insurance premiums, repairs, costs of capital improvements, direct and indirect overhead expenses, advertising expenses, professional fees, wages, and utility costs, to the extent such costs, expenses, or charges exceed the cash flow, if any, derived from the operation of the Partnerships and the proceeds of any loans made to the Partnerships.

[8] The Department herein is proposing exemptive relief solely with respect to such Reinvestment or Capital Contribution transfers of assets of the Plan to entities which are Parties in Interest. Other transactions which may result in conflicts of interest by reason of the sharing of the investments between the Plan and Parties in Interests and fiduciaries with respect to the Plan are not the subject of this exemption.

The applicants maintain that payments for services which will be rendered and other transactions which will take place during the term of this exemption between the Partnerships in which the Plan owns Partnership Interests, TCC, employees of TCC, and the Management Companies will not be prohibited transactions under the Act, because the assets owned by those Partnerships are not Plan assets. The Department herein is not expressing any opinion as to whether the assets of the Partnerships in which the Plan owns Partnership Interests are or will become Plan assets.

Trustees of the Plan. The Real Estate Investment Manager will have authority to hire assistants, employees, outside consultants, and expert staff to assist him in carrying out his duties. In this regard, the Real Estate Investment Manager will have access to sufficient funds from Plan assets to enable him to hire assistants, employees, experts, and consultants, including independent qualified appraisers to assure that the price he approves as a part of the disposition of any of the Pre-ERISA Real Estate Investments, is the fair market value, and to enable him to initiate and maintain until final decision any action or law suit which he deems necessary to file on behalf of the participants and beneficiaries of the Plan. Upon written notification by the Real Estate Investment Manager, the Trustees will promptly replace any amounts expended from such funds. The applicants represent that the Real Estate Investment Manager will have at least five (5) years experience in a variety of commercial real estate areas and will be well rounded in business and economics, including decision-making management experience and service in an advisory capacity or service on the boards of directors of at least two (2) broad-based business or financial organizations.

11. The specific duties and responsibilities of the Real Estate Investment Manager are set forth in a letter to the Department dated March 31, 1986, and in a management agreement between TCC, the Trustees, and the Real Estate Investment Manager. The Real Estate Investment Manager will be responsible for each of the following:

(a) At least twice each year, the review of all information, transactions, and other matters which the Real Estate Investment Manager deems to be relevant and material and which concern the Pre-ERISA Real Estate Investments;

(b) The approval in writing of all terms, provisions, price, timing, and any other aspects of any transactions involving the Pre-ERISA Real Estate Investments and the Plan, whether the transactions are with unrelated third parties or with Parties in Interest;

(c) The disposition of any of the Pre-ERISA Real Estate Investments which may arise under the operation of the Partnerships' agreements because of the occurrence of "conversion events" (the Conversion Events) or in certain "buy-sell" circumstances (the Buy-Sells) and the authority to exercise all of the Plan's rights, title, and interests in, or connected with, the Pre-ERISA Real Estate Investments;[9]

(d) Monitoring the actions of the Trustees to assure that at least 80% of the Investment Proceeds is invested in non-Real Estate Related Investments;

(e) The written approval of Reinvestments or Capital Contributions by the Plan, and actions to assure that the Plan is not treated in a discriminatory manner when such Reinvestments or Capital Contributions occur;

(f) The determination that the Limitation on Reinvestments is not exceeded;

(g) The review, before independent accountants complete their annual report, of all information and other matters which are reasonably deemed to be relevant and material to the valuation of the Pre-ERISA Real Estate Investments, in order to confirm the valuation of the investments and the methodology used in arriving at the valuation;

(h) Upon disposition of the Pre-ERISA Real Estate Investments, the verification that each participant in the Plan will receive, pursuant to the Plan, their share of the undiscounted fair market value of such asset; and

(i) Review and verification that the Plan's Annual Report (Form 5500) reflects the current value of all of the Plan's real estate assets consistent with section 3(26) of the Act.

12. The management agreement between the Trustees and the Real Estate Investment Manager also provides that:

(a) The Real Estate Investment Manager will have no ownership in or any significant financial involvement with or any dependency on TCC or any affiliate of TCC (the Affiliates), as defined in section IV(a). The Real Estate Investment Manager will not be a director or employee of TCC or any of the Affiliates or receive more than five percent (5%) of his gross income during any calendar year in the form of direct or indirect compensation, fees, or payments for serving in an advisory capacity to TCC or any of the Affiliates (including his duties as the Real Estate Investment Manager to the Plan).

(b) TCC or any of the Affiliates will not have the power to exercise any controlling influence over the decisions to be made by the Real Estate Investment Manager pursuant to this proposed exemption.

(c) The Real Estate Investment Manager shall receive from the Plan a reasonable monthly fee for the services which he shall provide to the Plan and to the Trustees as a Real Estate Investment Manager.

(d) Written minutes will be taken and documents maintained in connection with all meetings involving the Real Estate Investment Manager. Such minutes will include a rationale as to why decisions were made by the Real Estate Investment Manager with respect to his duties and responsibilities.

(e) Should the Real Estate Investment Manager resign, TCC has authority to name a successor Real Estate Investment Manager (the Successor). Otherwise, the Real Estate Investment Manager may not be dismissed by TCC, except for "good cause," as defined in Section IV(c), upon fifteen (15) days notification in writing by the Trustees to the Real Estate Investment Manager.

(f) Within thirty (30) days of the appointment of a Successor by TCC, the Trustee shall file with the Department the name of such Successor along with his qualifications and shall notify the Department of the reason for such action.

It is represented that the Plan document will be amended if the terms of these representations or any agreement with the Real Estate Investment Manager would otherwise contravene any provision of the Plan.

13. TCC, the Trustees, and William E. Cooper (Mr. Cooper) of Dallas, Texas, have executed a management agreement which appoints Mr. Cooper as the Real Estate Investment Manager for the Plan. Mr. Cooper represents that he is qualified for the position in that he has had experience in a wide variety of commercial real estate areas and in management. He has served on the board of directors of broad-base business or financial organizations and has been chairman of many charitable and philanthropic associations. Further, Mr. Cooper states that he has received the advice of counsel concerning his fiduciary responsibilities under the Act, in particular as those responsibilities apply to the Plan, and acknowledges that he is a fiduciary with respect to the Plan.[10]

14. Mr. Cooper represents that he is independent in that he is not one of the Parties in Interest with respect to the Plan, pursuant to section 3(14) of the Act or section 4975(e)(2) of the Code, other than by reason of his status as fiduciary for the Plan. It is represented that Mr. Cooper has and will have no direct or indirect business relationship with TCC or with any of the Affiliates. Further, during his term as the Real Estate Investment Manager, he will not become an owner, officer, director, or employee of TCC, or any of the Affiliates. It is represented that Mr. Cooper will not receive any significant amount of direct or indirect compensation from Mr. Trammell Crow, TCC, or any of the Affiliates, nor will any of his compensation or fees from TCC, any of the Affiliates, and those he receives from serving as the Real Estate Investment Manager for the Plan, constitute more than five percent (5%) of his gross income during any calendar year. It is also represented that neither the Trustees, Mr. Crow, TCC, nor any of the Affiliates, nor any owner thereof, will have the power to exercise any controlling influence over the decisions made by Mr. Cooper, pursuant to his duties as Real Estate Investment Manager.

15. Notwithstanding the representations made in paragraph 14 above, in addition to his duties as Real Estate Investment Manager to the Plan, Mr. Cooper presently serves as an advisor to the Dallas Market Center Company and the Trammell Crow Hotel Company, which are owned by Mr. Trammell Crow and/or Mr. Crow's children. However, Mr. Cooper represents that the aggregate fees he received from both companies for advisory services rendered during 1985 comprised less than 1.4% of his gross income. Mr. Cooper also serves on the corporate board of Trammell Crow Distribution Company, shares of which are owned by the Plan. Mr. Cooper is currently receiving payments from Mr. Crow's children pursuant to a sale in 1981 of a business in Houston, Texas in which he was a fifty percent (50%) owner.

[9] Conversion Events include such occurrences as withdrawals by a general partner from one of the Partnerships, termination of employment of a general partner with TCC, the unauthorized attempt to dispose of a general partnership interest in one of the Partnerships, or attempted assignment of an interest in one of the Partnerships for the benefit of creditors. Upon the occurrence of such Conversion Events, the general partner's partnership interest automatically converts to a limited partnership interest, and all other partners have a conditional option to purchase all of the converted interest at an appraised price, or upon agreed terms, and in accordance with their respective percentage of ownership. If less than all other partners elect to purchase the converted partners interests, that interest may be allocated among the purchasing partners as they may agree. If no partner exercises any option, the converted partner may purchase the entire interest of all the other partners at the established price.

A Buy-Sell may occur following a Conversion Event if a third party, not affiliated with any partner in such Partnership, makes an offer to purchase all of the Partnership's assets or all of the interests of the Partnership. Then either: (1) All of the partners are bound to accept the terms of the offer; or (2) One or more of the partners may refuse to accept the offer and instead purchase all the assets or interests owned by the other partners on the same terms as contained in the offer. Thus, Conversion Events and Buy-Sells may give rise to sales and purchases of a Partnership Interest between the Plan and Parties in Interest. The Department is not in a position to make any exemptive findings at this time with respect to potential purchases of Partnership Interests by the Plan, pursuant to Conversion Events or Buy-Sells to the extent that the Circumstances surrounding a particular purchase may vary from transaction to transaction.

[10] The Department relies on the representations of Mr. Cooper with respect to his status as a fiduciary under the Act and does not hereby construe any exculpatory clauses contained in the management agreement between Mr. Cooper, TCC, and the Trustees in any way to modify his fiduciary duties and responsibilities with respect to the Plan imposed by reason of Part 4 of Title I of the Act and by the management agreement.

Notice To Interested Persons

Within fifteen (15) days following publication of the proposed exemption in the **Federal Register**, a copy of the pendency notice will be furnished to all active participants and former participants who have any deferred vested account balances in the Plan.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Proposed Exemption

Section I-Specific exemption involving disposition of pre-ERISA real estate investments to parties in interest. If the exemption is granted, the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale to Parties in Interest of any or all of the Pre-ERISA Real Estate Investments, including certain parcels of Improved Real Property directly held by the Plan, the Undivided Interests in real estate, and the Partnership Interests owned by the Plan, if the following conditions are met:

(a) The sales price is the fair market value as determined by an independent qualified appraiser; and

(b) The conditions as set forth below in section III of this exemption are met.

Section II-Specific exemption for transactions involving reinvestments in parties in interest. If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to Reinvestments by the Plan in, including Capital Contributions by the Plan to, the Pre-ERISA Real Estate Investments, which are or become Parties in Interest with respect to the Plan under section 3(14) of the Act and section 4975(e)(1) of the Code, if the following conditions are met:

(a) Any Capital Contributions made by the Plan represent an equity investment and are in proportion to the Plan's existing equity ownership interest in any of the Partnerships in which the Plan owns Partnership Interests or in other entities which comprise the Pre-ERISA Real Estate Investments; and

(b) The conditions set forth in Section III of this exemption are met.

Section III-General conditions

(a) An Independent Qualified Real Estate Investment Manager for the Plan, as defined in section IV(d), who may not be removed except for "good cause," as defined in section IV(c), reviews and approves or initiates such transactions;

(b) At the time such transactions are entered into by the Plan, the terms of the transactions are not less favorable to

the Plan than the terms generally available in arm's length transactions between unrelated parties;

(c) The total amount of Reinvestments (including any Capital Contributions) made by the Plan with respect to Pre-ERISA Real Estate Investments throughout the term of this proposed exemption, do not exceed the greater of four million dollars ($4,000,000) or an amount equal to twenty percent (20%) of the value of the Plan's Pre-ERISA Real Estate Investments, as determined on December 31, 1986;

(d) Subject to review by the Independent Qualified Real Estate Investment Manager, at least eighty percent (80%) of the Investment Proceeds of the Plan, as defined in sectin IV(f), will be invested in non-Real Estate Related Investments, as defined in section IV(j);

(e) The Plan will not be subject to discrimination with respect to its ability to make (or forebear from making) Reinvestments or Capital Contributions in a manner and to the extent available to all partners who invest on the same terms as the Plan in the Partnerships;

(f) The Plan does not invest in any new Partnership Interests;

(g) The Plan does not purchase any additional common or preferred sares of stock in Employee's Inc. However, Employee's Inc. may invest Internally Generated Profits, as defined in Section IV(e), in the purchase of interests in newly formed Partnerships;

(h) The Plan does not purchase stock or any ownership interest in any corporation, partnership, or other entity directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with TCC, TCP, or any partner of TCP, which entity engages in the ownership and development of real estate through the purchase of interests in commercial real estate; and

(i) The Trustees maintain, for a period ending three years after the term of this exemption, records and all documents necessary to enable the persons described below in paragraph (a) of this secton III (i) to determine whether the conditions of this exemption have been met. Sepcifically, these records and documents shall include but not be limited to: (1) written minutes of all meetings in which the Independent Qualified Real Estate Investment Manager takes part which include an explanation as to why decisions were made by the Independent Qualified Real Estate Investment Manager with respect to all transactions under his responsibility; and (2) Records which will permit identification of the assets owned by Employee's Inc., and the Plan's proportionate interest therein. However, (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the applicants, the records are lost or destroyed prior to the end of the period ending three years after the term of this exemption, and (2) no Parties in Interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (a) below.

(a) (1) Except as provided in section (2) of this paragrah (a) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) of this Section III are unconditionally available at the office of the Trustees for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of the Plan and/or the Independent Qualified Real Estate Investment Manager of the Plan and any duly authorized employee or representative of such fiduciary or Independent Qualified Real Estate Investment Manager;

(C) TCC, or any duly authorized employee or representative of TCC; and

(D) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participant or beneficiary.

(a) (2) None of the persons described in subparaghraphs (B) through (D) of this paragraph (a) shall be authorized to examine trade secrets of the applicants, or commercial or financial information which is privileged or condifential.

Section IV-Definitions. For the purposes of this exemption:

(a) "Affiliates" of TCC include—

(1) Any of the owners of TCC;

(2) TCP or any partner of TCP;

(3) Any Management Company; or

(4) Any TCC sponsored entity (including the partnerships) which is involved in commerical real estate development and is not a publicly held organization.

(b) "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) "Good cause" means any act or refusal to act in such a manner that the consequence thereof will:

(1) be a violation of any significant duty or obligation imposed on him as the Independent Qualified Real Estate Investment Manager of the Plan; or

(2) result in material and substantial harm or damage to the Plan or its assets or result in any consequence which is adverse to the best interests of the Plan participants and beneficiaries; or

(3) be the inability of the Independent Qualified Real Estate Investment Manager to perform his usual duties in the normal course of affairs because of any physical, mental, disability, or other condition.

(d) "Independent Qualified Real Estate Investment Manager" means a fiduciary who has acknowledged in writing that he is a fiduciary with respect to the Plan and is qualified to serve with respect to the real estate transactions described herein. The Independent Qualified Real Estate Investment Manager will have the power to engage in any transaction related to the holding and disposition of the Pre-ERISA Real Estate Investments, including sufficient control to enable him to discharge his responsibility with respect to the management and disposition of all of the Pre-ERISA Real Estate Investments of the Plan. The Independent Qualified Real Estate Investment Manager will be independent in that he is not an owner, director, or employee of TCC or of any of the Affiliates of TCC, as defined in Section IV(a). Also, he will earn no more than 5% of his gross income during any calendar year in the form of direct or indirect compensation, fees, or payments for services in an advisory capacity to TCC or any of the Affiliates (including his duties as the Independent Qualified Real Estate Investment Manager for the Plan).

(e) "Internally Generated Profits" means income minus expenses plus depreciation and other non-cash charges deducted in determining such net profit plus other cash amounts in excess of reasonable corporate needs as determined by the Board of Directors of Employee's Inc., minus amounts distributed to the Plan as a shareholder.

(f) "Investment Proceeds" means contributions to the Plan by TCC, plus net cash income, plus net disposition proceeds derived from all Plan assets (including net proceeds from the disposition of all of the Pre-ERISA Real Estate Investments and distributions to the Plan from Employee's Inc.).

(g) "Parties in Interest" means persons as defined by section 3(14) of the Act.

(h) "Partnership Interests" means any general or limited partnership interest owned by the Plan in real estate Partnerships that are conceived and sponsored by TCC;

(i) "Pre-ERISA Real Estate Investments" means the Improved Real Property, the Undivided Interests, and the Partnership Interests which the Plan either purchased, or incurred a binding obligation to purchase, prior to the effective date of the Act.

(j) "Real Estate Related Investments" means any interests in unimproved or improved real property, undivided interests in real property, and partnership interests in partnerships which own real property.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Signed at Washington, DC, this 8th day of October 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefits, U.S. Department of Labor Administration.

[FR Doc. 86-23140 Filed 10-10-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for the Biophysics Program; Meeting

In accordance with the Federal Advisory Committee, as amended, Pub. L. 92-463, The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Biophysics Program.

Date and Time: Wednesday, Thursday and Friday, October 22, 23, and 24, 1986 from 8:00 AM to 6:00 PM.

Place: The National Science Foundation, 1800 G Street NW. Washington, DC, Room 1242.

Type of Meeting: Closed.

Contact: Dr. Arthur Kowalsky, Director, Biophysics Program; Dr. Patricia Jost, Director, Biophysics Program (202) 357-7777 or 7778.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10 (d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

October 6, 1986.

[FR Doc. 86-23115 Filed 10-10-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Cell Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cell Biology.

Date and Time: Wednesday, Thursday, and Friday, October 22, 23, and 24, 1986, from 9:00 AM to 5:00 PM.

Place: Room 628, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Eve Briles, Assistant Program Director, Cell Biology Program, Room 334. Telephone: 357-7474.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provision, of section 10(d) of Pub. L. 92-463. The Committee Management Office was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

October 6, 1986.

[FR Doc. 23116 Filed 10-10-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Ocean Sciences (ACOS); Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ocean Sciences (ACOS).

Date and time: October 27 and 28, 1986—8:30 a.m. to 5:00 p.m. each day.

Place: Room 203, The Brookings Institution, 1775 Massachusetts Ave., NW, Washington, DC.

Type of meeting: Open.

Contact person: Dr. M. Grant Gross, Director, Division of Ocean Sciences, Room 609, National Science Foundation Washington, DC—Telephone: 202/357-9639.

Summary minutes: May be obtained from the contact person.

Purpose of committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF Division of Ocean Sciences.

Agenda

The Committee will hold morning and afternoon Sessions on both days. Following opening remarks and general introductions—the Committee will hear presentations and status reports of current and topical interest from various officials and representatives from NSF, other departments and agencies, and other organizations active in ocean sciences matters. The Committee will also hear reports from subcommittees, ranging from Ocean Engineering to Oversight Review, and determine a proper course of action based on the information and circumstances presented. The committee will also discuss the draft updated Long-Range for Ocean Sciences and take appropriate action concerning further presentation and dissemination. The Committee will also conduct necessary administrative functions in accordance with established custom and practice with respect to: Approval of the minutes of the previous meeting; determination of time and place of the next meeting; as well as any other appropriate business.

M. Rebecca Winkler,

Committee Management Officer.

October 7, 1986.

[FR Doc. 86-23117 Filed 10-10-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-322-OL-5; ASLBP No. 86-534-01-OL]

Long Island Lighting Co.; Shoreham Nuclear Power Station, Unit 1 (EP Exercise); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), Docket

No. 50-322-OL-5, is hereby reconstituted by appointing Administrative Judge John H Frye, III, in place of Administrative Judge Morton B. Margulies and Administrative Judge Oscar H. Paris in place of Administrative Judge Jerry R. Kline because of schedule conflict Administrative Judge John H Frye is appointed Chairman of the Board.

As reconstituted, the Board is comprised of the following Administrative Judges:

John H Frye, III, Chairman
Oscar H. Paris
Frederick J. Shon

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The addresses of the new Board members are:

Administrative Judge John H Frye, III, Chairman Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555
Administrative Judge Oscar H. Paris, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 7th day of October, 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-23167 Filed 10-10-86; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Commission Meetings

Notice is hereby given of meetings of the prospective payment Assessment Commission on October 28-29, 1986, at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

The Subcommittee on Diagnostic and Therapeutic Practices will meet in the Montgomery Room at 9 o'clock a.m., October 28, 1986. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene at 9 o'clock a.m., October 28, 1986, in the Maryland Room.

The full Commission will convene at 9:30 a.m. on October 29, 1986, in the Montgomery Room.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 86-23253 Filed 10-10-86; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-23684; File No. SR-Amex-86-25]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to the Imposition of a $500 Filing Fee Payable by New Applicants for Regular, Options Principal and Associate Membership, Trading Permit Privileges and for Approval as Authorized Representatives

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 24, 1986, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. proposes to implement a $500 processing fee payable by new applicants for regular, options principal and associate membership, trading permit privileges and for approval as authorized representatives.

The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange, Inc. and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis ofr, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

When an individual applies for membership, trading permit privileges (such as the existing options trading permits or the newly proposed limited trading permits), or for approval as an authorized representative, the Exchange staff provides a significant amount of administrative support in connection with the application process.

The staff reviews in detail with the applicant all of the documents which must be provided in support of the application, arranges for a background investigation by an outside agency, and reviews the SEC Litigation, Actions, and Proceedings Bulletin to determine whether the applicant is, or has been, the subject of any disciplinary proceedings. In addition, each applicant is required to attend a 2½ day educational seminar, and pass a qualifying examination, prior to being elected to membership.

In order to recover a portion of the cost of processing such applications, a relatively modest $500 fee will be imposed. This fee will be required for applications in the following categories: Regular, options principal and associate membership; trading permit privileges; memberships/permits which are held subject to special transfer agreements, i.e., lease agreements; and authorized representatives.

If an applicant has previously been processed and approved in one of the above categories, and has been active in such category during the preceding 12 months, he will not be required to pay another processing fee. In such situations, the exchange will require that the individual update his existing application, which normally would not require the same extensive background and litigation checks undertaken in connection with a new applicant. For example, a regular member who transfers his seat and within one year purchases or leases an options principal membership will not be charged the $500 fee in connection with his application as an options principal member.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(4) in particular in that the $500 processing fee provides for equitable dues, fees and other charges among the Exchange's members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 4, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 6, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-23165 Filed 10-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23685; File No. SR-Phlx-86-31]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating To Use of the General Securities Representative (Series 7) Examination and Its Study Outline To Qualify Persons Seeking Registration as General Securities Representatives

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on September 11, 1986, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (Phlx) hereby announces as a proposed rule change the use of the Series 7 examination and its study outline to qualify persons seeking registration as general securities representatives.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change reflects the PHLX's current use and commitment to future use of the Series 7 examination and its study outline in qualifying persons seeking registration as general securities representatives. The PHLX is particularly proud or its on-going participation in the joint self-regulatory efforts in updating the examination to reflect the significant developments in the securities markets. These developments include the introduction of new securities products such as index options, interest rate options, and foreign currency options.

The use of the Series 7 examination and its study outline for the above stated purposes is consistent with section 6(c)(3) of the Securities Exchange Act of 1934 which authorizes a national securities exchange to "examine and verify the qualifications of an applicant" to become a member or associated with a member in accordance with procedures established by the rules of the exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or others

Comments on the proposed rule change were neither solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted by November 4, 1986.

IV. Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.

The Commission finds good cause for approving the proposed rule change

prior to the thirtieth day after the date of publication of notice thereof, in that, the Commission recently approved a proposed rule change submitted by the National Association of Securities Dealers, Inc. ("NASD") that permitted it to revise and update the Series 7 Examination and its study outline to adequately reflect current trends in the securities markets.[1] Accordingly, the Commission believes that Phlx should be permitted to use the Series 7 Examination to foster continuity among the national securities exchanges in examining and verifying the qualifications of an applicant seeking registration as a general securities representative.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 6, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-23164 Filed 10-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. NO. IC—15350; Filed No. 812-6388]

GMO Core Trust; Application

October 7, 1986.

Notice is hereby given that, GMO Core Trust, a business trust formed under the laws of Massachusetts ("Applicant"), 125 High Street, Boston, Massachusetts 02110, filed an application on May 19, 1986, and an amendment thereto on September 15, 1986, for an order, pursuant to sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act"), exempting Applicant from section 17(a) of the Act to the extent necessary to permit certain shareholders to make in-kind investments and to allow Applicant to redeem shares of certain shareholders in-kind. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

Applicant is an open-end, diversified management investment company registered under the Act and currently has only as single portfolio ("Fund") represented by shares of Applicant's Domestic Equity Series (together with the shares of any subsequently created series, "Shares"). The investment objective of the Fund is to achieve a total return greater that that of the Standard and Poor's 500 Stock Index through investment in a broadly diversified and liquid portfolio of common stocks. The Fund is advised and managed by Grantham, Mayo, Van Otterloo and Co. ("Manager").

Shares are sold to investors with a minimum initial investment of $5,000,000 and minimum subsequent investment of $500,000. Applicant's prospectus and statement of additional information (together, "Prospectus") provide that an investor may purchase Shares either in cash or in exchange for shares of common stock owned by the investor ("in-kind investments") or a combination thereof. The purchase price of Shares is the net asset value of the Shares determined after the purchase order is received plus a premium established from time to time by Applicant. The premium on cash investments is .10% of the net asset value of the Shares purchased plus an amount determined by the Manager based on the anticipated brokerage and other expenses of the Fund incurred in connection with the investment; provided, however, that the total premium on cash investments may not be more than .38% of the net asset value. The premium on in-kind investments is .10% of the net asset value of the Shares. The premiums are paid to and retained by the Fund.

An investor may make an in-kind investment in the Fund only if (1) the Manager, in its sole discretion, believes the investor's securities are appropriate investments for the Fund, (2) the investor represents and agrees that all securities offered to the Fund are not subject to restriction upon their sale by the Fund under the Securities Act of 1933, or otherwise, and (3) the securities may be acquired under the investment restrictions of the Fund.

Shares are redeemed at the net asset value per share next determined after receipt of the redemption request, less tha applicable redemption fee. In the case of cash redemptions, the redemption fee will be .10% of the amount redeemed plus an amount equal to the brokerage and transaction costs of the Fund associated with the redemption, as determined by the Manager, except that, if the redeeming shareholder is able to arrange for the simultaneous purchase of Shares by a new investor or the pruchase of additional Shares by a current shareholder, the redemption fee will be .10% of the amount redeemed, up to the value of the purchase by the new investor or curent shareholder. Notwithstanding the foregoing, the redemption fee charged on cash redemptions will not exceed an amount established from time to time by the Fund, currently .38%. In the case of in-kind redemptions, the redemption fee will be .10% of the amount redeemed. These charges are retained by the Fund and are intended to cover brokerage and other expenses of the Fund arising out of redemptions.

Applicant seeks an exemption from section 17(a) of the Act to allow the shareholders owning more than 5% of the outstanding Shares (such shareholders not otherwise "affiliated persons") of Applicant within the meaning of section 2(a)(3) of the Act being referred to as "Affiliated Shareholders" to make in-kind investments and to allow Applicant to redeem shares of such Affiliated Shareholders in-kind, subject to the following conditions:

(1) The securities acquired by the Fund in an in-kind investment or distributed to an Affiliated Shareholder pursuant to a redemption in-kind ("Securities") will be limited to Securities listed on a securities exchange or Securities for which quoted bid prices are available;

(2) The Securities will be valued, in the case of Securities listed on a securities exchange for which market quotations are available, at their last quoted sales price, or, if there is no such reported sale, at the most recent quoted bid price and, in the case of unlisted equity Securities, at the most recent quoted bid price;

(3) Applicant's board of trustees, including a majority of the trustees who are not interested persons (as defined in the Act) of Applicant ("Independent Trustees") will determine no less frequently than annually: (a) whether the Securities have been valued in accordance with Condition (2); (b) whether the acquisition or distribution of any such Securities is consistent with the policies of the Fund as reflected in the Prospectus; and (c) whether the procedures for valuation and review described in Condition (2) and this Condition (3) continue to be appropriate;

(4) Applicant will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any in-kind investment by, or redemption in-kind to, an Affiliated Shareholder occurred, the first two years in an easily accessible place, a written record of each such investment of redemption setting forth a description of each security distributed, the identity of the Affiliated Shareholder, the terms of the acquisition or distribution and the information or materials upon which the valuation described in Conditions (2) was made.

Applicant submits that the requested exemption meets the standards set forth in section 17(b) of the Act. All in-kind investments by Affiliated Shareholders will be on terms which are reasonable and fair to Applicant and the Affiliated Shareholder because they will be valued pursuant to an objective, verifiable standard. Applicant argues that the use of quoted prices for valuing the Securities leaves no room for the Affiliated Shareholder or the Manager to effect a transaction detrimental to the other shareholders of the Trust. Further, because the standard for valuing the Securities is the same as that used by the Fund to value its portfolio, Applicant submits that purchases and redemptions in-kind will have no adverse effect on the Fund's net asset value per share. Also, periodic review by the board of trustees, including the Independent Trustees, will provide additional assurance that the transactions are fair and reasonable.

Applicant further states that, for similar reasons, the use of an objective, verifiable standard to value the Securities also assures that there is no overreaching by either party. In addition, contends that the Manager's fiduciary obligation to Applicant and the Manager's professional incentive to achieve the highest possible return for the Fund will guard against overreaching by an Affiliated Shareholder. Applicant also states that all its shareholders have invested substantial amounts in the Fund and are believed to be vigilant and sophisticated investors.

According to Applicant, in-kind investments and redemptions by an Affiliated Shareholder are not inconsistent with the Fund's investment policy set forth in the Prospectus and are consistent with the general purposes of the Act because in-kind investments and redemptions offer reduced costs and increased returns to all Affiliated Shareholders without any additional expense, and with possible savings for Applicant. For these reasons, Applicant submits that the proposed transactions, conducted subject to the conditions set forth above, would be reasonable and fair, would not involve any overreaching by either Applicant or the Affiliated Shareholders and, are consistent with the investment policies of the Fund and with the general purposes of the Act. Further, Applicant submits that the proposed transactions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 30, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Sercretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its motion.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-23162 Filed 10-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15348; File No. 812-6449]

OKOBANK Osuuspankkien Keskuspankki Oy and OKO Funding Inc.; Foreign Bank Application

October 3, 1986.

Notice is hereby given that OKOBANK Osuuspankkien Keskuspankki Oy ("Bank") Arkadiankatu 23, SF-00100 Helsinki 10, Finland, and OKO Funding Inc., ("Subsidiary"), 1209 Orange Street, Wilmington, Delaware 19801, filed an application on August 8, 1986, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting the Bank and the Subsidiary (collectively, "Applicants") from all provisions of the Act. All interested persons are referred to the application on file with Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for text of all applicable provisions.

According to the application, the Bank is a commercial bank organized under the Finnish Law Governing the Commercial Banks of August 29, 1986. The Bank is the central bank for Finnish cooperative banks and one of Finland's leading commercial banks. On the basis of total assets at December 31, 1985, the Bank, on a consolidated basis, ranked fifth among all banks in the Republic of Finland. At December 31, 1985, the Bank's share capital totaled the equivalent of $73 million, 99.93% of the share capital of the Bank is owned by the cooperative banks and the Finnish Government owns the remainder. The Subsidiary is a corporation organized under the laws of the State of Delaware. All of the issued and outstanding shares of capital stock of the Subsidiary are owned by the Bank. The Subsidiary was established for the sole purpose of obtaining funds in the commercial paper market to be used by the Bank.

Applicants proposes to issue and sell short-term unsecured negotiable promissory notes of the type generally referred to as commercial paper ("Notes"). Although neither of them has a present intention of doing so, Applicants may in the future offer other securities, other than equity securities ("Future Securities"). The Notes and any Future Securities will be (1) direct and unconditional obligations of the Bank, (2) direct and unconditional obligations of the Subsidiary unconditionally guaranteed by the Bank or (3) a combination of (1) and (2).

The Notes and any Future Securities issued by the Bank will rank *pari passu* among themselves and equally with all other unsecured indebtedness of the Bank and prior to any subordindated indebtedness of the Bank and to the Bank's capital stock. The Notes and any Future Securities issued by the Subsidiary will be direct liabilities of the Subsidiary and will rank *pari passu* among themselves, prior to the Subsidiary's capital stock, and, while it is not contemplated that the Subsidiary will have any indebtedness other than Notes issued by it, but in the event that it does issue any Future Securities, equally with all other unsecured, unsubordinated indeptedness of the Subsidiary and prior to any of the Subsidiary's subordinated indetedness. The Bank's guarantee of the Notes and any Future Securities issued by the Subsidiary will rank equally with all other unsecured, unsubordinated indebtedness of the Bank, and prior to any subordinated indebtedness of the Bank and to the Bank's capital stock.

Applicants plan to issue and sell the Notes without registration under the Securities Act of 1933 ("1933 Act"), in reliance upon an opinion of special legal counsel in the United States that the offering and sale of the Notes will qualify for the exemption from the registration requirements of the 1933 Act provided by section 3(a)(3) thereof. Offerings of any Future Securities will be made only pursuant to a registration statement under the 1933 Act or

[1] *See* Securities Exchange Act Release No. 23325 (June 10, 1986), 51 FR 22974.

pursuant to an applicable exemption for such registration, the availability of which will be confirmed by an opinion of special legal counsel in the United States. Applicants do not request Commission review or approval of such opinion. The Notes and any Future Securities will have received, prior to issuance, one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating organizations, and special legal counsel in the United States shall certify the receipt of such rating; provided, however, that no such rating need be obtained with respect to any such issue if, in the opinion of special legal counsel in the United States, an exemption from registration is available under section 4(2) of the 1933 Act.

The Notes will be sold to one or more commercial paper dealers in the United States which, as principal, will offer them to investors in the United States. In certain cases, however, the commercial paper dealers may offer the Notes as agents. Applicants undertake to secure an undertaking from each such dealer that (1) the Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold to institutional investors, wealthy individuals and other purchasers of the type that normally participate in the commerical paper market, and (2) such commercial paper dealers will provide each offeree, prior to any sale of the Notes, a memorandum describing the business and containing the most recent publicly available fiscal year-end audited financial statements of the Bank. Applicants will provide or cause to be provided to such dealers information sufficient to prepare such memorandum. Applicants represent that the memorandum will be at least as comprehensive as those customarily used in commerical paper offerings in the United States and will include a brief paragraph highlighting material differences between Finnish and United States generally accepted accounting principles applicable to commercial banks such as the Bank. Such memorandum will be updated periodically to reflect material changes in the financial status of the Bank. Any Future Securities of the Bank or the Subsidiary offered in the United States will be done on the basis of disclosure documents at least as comprehensive as those used in the presently proposed offering. Such a disclosure document will be provided to each offeree who has indicated an interest in such securities, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such a disclosure document will be provided to such persons and in such manner as may be required by the 1933 Act. Applicants consent to having any order granting the relief requested, under section 6(c) of the Act, expressly conditioned upon compliance by them with their undertaking regarding disclosure memoranda.

Applicants represents that they will appoint agents for service of process in any action based on the Notes or any Future Securities issued by the Bank or any guarantee by the Bank of the Notes or any Future Securities issued by the Subsidiary and instituted in any New York State or United States Federal court in The City of New York by a holder of any of the Notes or any Future Securities. The Bank further represents that it will expressly accept the jurisdiction of an appropriate New York State court or United States Federal court in The City of New York in respect of any such action based on the Notes or any Future Securities issued by the Bank or any guarantee by the Bank of the Notes or any Future Securities issued by the Subsidiary. Applicants represent that such appointment by the Bank and the Subsidiary of an authorized agent and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes or any Future Securities have been paid; that the Bank will be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Notes or any Future Securities or otherwise.

Applicants assert that, among other things, compliance by them with a number of substantive provisions of the Act would, as a practical matter, conflict with the Bank's operations and that the Bank would, thus, be effectively precluded from making a public offering of debt securities in the United States if the Bank or the Subsidiary were required to register as an investment company and comply with such provisions of the Act. Applicants also assert that approval of their application would advance the policies underlying the International Banking Act of 1978 by permitting the Bank to offer securities in the United States. Further, the Bank's operations are supervised and regulated by the Government of Finland and, therefore, the application of the requirements of the Act to the offer and sale of the Notes would be unnecessary and in some cases prevent the Bank from operating normally as a commercial bank. Applicants further assert that neither the Bank, as a Finnish bank subject to such supervision and regulation, nor the Subsidiary, as its wholly-owned subsidiary, should be treated as an investment company within the meaning of the Act. Based on all the facts and circumstances recited in their application, Applicants submit that granting an exemptive order, pursuant to section 6(c) of the Act, would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 27, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-23161 Filed 10-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15347; File No. 811-4783]

Thirteen Star Partners, Ltd.; Application

October 3, 1986.

Notice is hereby given that Thirteen Star Partners, Ltd. ("Applicant"), a Florida limited partnership and registered under the Investment Company Act of 1940 ("Act") as a non-diversified management company, 180 Park Avenue North, Suite 2-B, Winter Park, Florida 32789, filed an application on September 3, 1986, pursuant to section 8(f) of the Act, for an order declaring that it has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for all applicable provisions.

Applicant was formed for the purpose of participating in the distribution of thirteen designated motion pictures through the acquisition of a limited partnership interest in Warner Bros. Thirteen Star Distributing Company, a California limited partnership. Applicant offered units of limited partnership interest pursuant to Regulation D under the Security Act of 1933. At the time of filing of this application, Applicant had approximately 166 limited partners.

On June 2, 1986, Applicant filed an application, pursuant to section 6(c) of the Act, for an order exempting it from all provisions of the Act. The application was granted by order dated August 21, 1986 (Investment Company Act Released No. 15270). Accordingly, Applicant is requesting that the Commission issue an order terminating its registration under the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 27, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-23163 Filed 10-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23678]

Securities Processing; Availability of Revised Rules; Stock Transfer Assn.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of availability of the revised rules of the Stock Transfer Association.

SUMMARY: A copy of the Rules of the Stock Transfer Association (as amended in April 1986) may be obtained from: Ms. Janie Goggin, c/o Bank of New York, Corporate Trust Administration, 90 Washington Street, 27th Floor, New York, New York 10015.

All requests should be accompanied by a fee of $10 payable to the Stock Transfer Association, Inc.

SUPPLEMENTARY INFORMATION: The Stock Transfer Association ("STA") and other transfer agent acssociations have revised and updated the rules of the STA. Those Rules represent a compendium of state commercial law and industry practice concerning the registration and transfer of securities. Specifically, the Rules of the STA cover common procedures, simplification statutes, security description and registration forms, and the transfer of securities by corporations, partnerships, fiduciaries, and other individuals or entities. The Rules of the STA should serve as a reference guide for transfer agents and also should assist presentors in the presentment of securities transfers.

Dated: October 3, 1986.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-23086 Filed 10-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23683; File No. SR-NASD-86-23]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 5, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to sections 1(zz) and 3 of Appendix E of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("Corporation" or "NASD") The proposed rule change would define a control based system of aggregating options positions for the purpose of determining options limits.

The proposed system establishes "control," rather than "ownership," as the determinative factor for the aggregation of accounts. The Corporation propose to define "control" as the power to make investment decisions for an account or accounts, or to materially influence directly or indirectly the actions of any person or entity who makes investment decisions. Thus, if a person or entity has such power over two or more accounts, the Corporation would presume that control exists and that the positions in such accounts would be aggregated. In addition, control would be presumed under the following circumstances: (1) Between members of joint accounts who have authority to act on behalf of the account; (2) between general partners; (3) shared ownership interests of 10% or more in two entities; (4) when accounts have common directors or management; and (5) where a person or entity has the authority to execute transactions in an account.

The presumption of control, however, would be rebuttable by a person or entity who submits an affidavit or other evidence sufficient to negate the presumption. The Corporation will consider the following factors in determining if aggregation of accounts is required: (1) Whether similar patterns of trading activity appear among separate entities; (2) whether similar business purposes and interest exist between the two accounts; (3) whether there is common supervision of the entities which extends beyond assuring adherence to each entity's investment objectives and/or restrictions; and (4) the degree of contact and communication between directors and/or managers of separate accounts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

BEST COPY AVAILABLE

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board of Governors approved the proposed rule change to define a control-based system of aggregating options positions for the purpose of determining options limits. The proposed rule change would also make materially uniform the language of the respective options markets' rules concerning options limits in that the Commission has approved control based systems for the American Stock Exchange, Chicago Board Options Exchange, Inc. and Philadelphia Stock Exchange.

The proposed rule change is consistent with the requirements of section 15A of the Securities Exchange Act of 1934 ("Act") and the rules and regulations thereunder applicable to the Corporation by providing for a more practical standard for determining if two of more accounts should be aggregated. Therefore, the proposed rule change is consistant with section 15A(b)(6) of the Act, which provides, in pertinent part, that the Corporation's rules be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule changes contained in this filing.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because the rule change is substantively the same as rule changes filed previously by the Chicago Board Options Exchange, Inc. ("CBOE) the American, Philadelphia and New York Stock Exchanges, ("Amex", "Phlx" and "NYSE" respectively), and approved by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the rule change is substantively the same as proposals filed previously by the CBOE, Amex, NYSE and Phlx and approved by the Commission.[1]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 4, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 6, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-23160 Filed 10-10-86; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Releases Nos. 22550 (October 22, 1985), 22865 (December 9, 1985) and 23041 (March 20, 1962), 50 FR 43824 (October 28, 1985), 50 FR 20976 (December 13, 1985) and 51 FR 10592 (March 27, 1986), respectively.

DEPARTMENT OF TRANSPORTATION

[Docket No. 44380]

Seattle/Portland-Japan Service Review Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter will be held on November 10, 1986, at 10:00 a.m. (local time) in Room 5332, 400 7th Street SW., Washington, DC., before the undersigned administrative law judge.

Order 86-9-92 defines the issues to be considered. In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and two copies to the judge of (1) proposed stipulations; (2) requests for information and evidence in addition to the proposed evidence request attached to Order 86-9-92; (3) statements of position; and (4) proposed procedural dates. The Office of Aviation Enforcement and Proceedings (AEP) will circulate its material on October 30, 1986, and the other parties on November 6, 1986. The submissions of the other parties shall be limited to points on which they differ with AEP and shall use the marking and lettering system used by AEP. In addition, the other parties shall describe any problems they may have in complying with the evidence request attached to Order 86-9-92.

The October 30 and November 6 dates are delivery dates and not mailing dates.

Dated at Washington, DC., October 6, 1986.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 86-23182 Filed 10-10-86; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending—October 3, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44389 R-1—R-13

Parties: Members of International Air Transport Association.
Date Filed: October 1, 1986.
Subject: South Atlantic Cargo Rates.
Proposed Effective Date: October 1, 1986.

Docket No. 44390 R-1—R-21

Parties: Members of International Air Transport Association.
Date Filed: October 1, 1986.
Subject: Intra Europe Passenger Fares.
Proposed Effective Date: October 1, 1986.

Docket No. 44391 R-1 and R-2

Parties: Members of International Air Transport Association.
Date Filed: October 1, 1986.
Subject: TC3 Cargo Rates.
Proposed Effective Date: October 1, 1986.

Docket No. 44392

Parties: Members of International Air Transport Association.
Date Filed: October 1, 1986.
Subject: Increase Rates ex Tunsia.
Proposed Effective Date: October 1, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-23151 Filed 10-10-86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Week Ended October 3, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the applicaton by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44382

Date Filed: September 30, 1986.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 28, 1986.
Description: Application of Northwest Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment to its certificate of public convenience and necessity for Route 129 to permit Northwest to provide air transportation services between the United States and Thailand via Japan.

Docket No. 44383

Date Filed: October 1, 1986.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 29, 1986.
Description: Application of Avair, Inc. pursuant to section 401(d)(1) of the Act requests a certificate of public convenience and necessity authorizing scheduled interstate air transportation, also requests a determination of fitness pursuant to Part 204 and, pursuant to Part 215 of the Economic Regulations, authorization to use the tradename "American Eagle".

Docket No. 44393

Date Filed: October 1, 1986.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 29, 1986.
Description: Application of Pan American World Airways, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests authority to provide scheduled combination service from a point or points in the United States via intermediate points to Grand Cayman, Cayman Islands and beyond to other points in the Caribbean and South America on Pan Am's Route 136.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-23150 Filed 10-10-86; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 86-059]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for Applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership in the Towing Safety Advisory Committee (TSAC). This committee advises the Secretary of Transportation on rulemaking matters related to shallow draft and coastal waterway navigation and towing safety.

Eight members will be appointed as follows: Four (4) representatives from the barge and towing industry; two (2) representatives from the port districts, authorities, or terminal operators; and two (2) representatives from the general public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The Committee will meet at least once a year in Washington, DC or another location selected by the Coast Guard.

DATE: Requests for applications should be received no later than 1 December 1986 and must be completed and returned to the Coast Guard no later than 1 January 1987.

ADDRESS: Persons interested in applying should write to Commandant (G-CMC/21), U.S. Coast Guard, Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Captain J. H. Parent, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, DC 20593-0001, (202) 267-1477.

Dated: October 8, 1986.

J. H. Parent,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 86-23126 Filed 10-10-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-86-17]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: November 3, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____ 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 6, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25001	Millon Air, Inc	14 CFR 121.371 and 121.378	To allow petitioner to have the overhaul, maintenance, and inspection of the engines, powerplants, and components of its CL–44 aircraft No. N908L performed by any or all of the companies Motoren-und Turbinen-Union of West Germany, Alfa Romeo of Italy, and/or Aircrew Howden, Ltd., of England.
25037	Sheila Johnson	14 CFR 61.103(a)	To allow petitioner to obtain a private pilot's license at age 16.
18861	Experimental Aircraft Association	14 CFR 91.22(a)(1)	Extension of Exemption No. 2689 to allow members of the International Aerobatic Club to participate in aerobatic competitions sanctioned by the International Aerobatic Club, a division of Experimental Aircraft Association, without being required to meet the fuel requirement for flight under visual flight rules.
25087	People Express Airlines	14 CFR Part 145	To allow petitioner to utilize certificated repair stations to perform line and overnight maintenance services at places other than the home base of the certificated repair station.
25088	Beech Aircraft Corporation	14 CFR 61.57(a)(1), 61.57(e)(2), 61.63(d)(2) and (3), 61.157(a), and Part 61, Appendix A.	To allow Beechcraft Training Center to utilize simulators for training and checking pilots for portions of flight tests required for pilot certification.
25043	United Executive Jet, Inc	14 CFR § 135.165(b)	To allow petitioner to operate its Learjet Model 35 aircraft with only one high frequency communications receiver and one Global/VLF Omega Long Range Navigation Receiver.
18114	Flying Tigers	14 CFR 121.547(c) and 121.583(a)	Extension of Exemption No. 2600 to allow petitioner to carry a journalist, reporter, or photographer on board its cargo aircraft.
25077	Pecono Airlines, Inc	14 CFR 135.429(a) and 135.435	To allow petitioner to employ Societe Nationale Industrielle Aerospatiale, Seamat Rousseau Aviation, Turbomeca, and Ratier-Figeac of France and Lucas Aerospace, Ltd., of England to overhaul and repair its Nord 262 aircraft even though these companies do not hold the appropriate U.S. certificates.
25075	Versatile Helicopters, Inc	14 CFR 141.35(d)(3)(ii)	To allow Mr. Keith Hickman to fulfill the duties of chief flight instructor for Versatile Helicopters, Inc., without meeting the requirement of 1,500 hours as a certificated flight instructor.
25079	Montex Drilling Company	14 CFR 61.58(c)	To allow petitioner's pilots to complete the requirement for 24-month pilot-in-command check for the BA–111 in an FAA-approved simulator.
25038	Skywold Airlines	14 CFR 121.503 (a) and (b) and 121.511	To allow petitioner to schedule a pilot or flight engineer in excess of 8 hours of flight time in any 24 consecutive hours without a rest period of 16 hours following the flight time.
24446	American Flyers	14 CFR 141.91(a)	Amendment of Exemption No. 4419 to allow petitioner to operate a pilot ground school in Farmers Branch, Texas, 26 nautical miles from its home base of operations.
25086	Aeroservice International Training Center, Inc	14 CFR 121.407(a)(1)(i) and Part 141, Appendix F, Item IV.	To allow petitioner's students, who are enrolled in AITC rating programs under Part 141 for the Boeing 707, Boeing 737, and McDonnell-Douglas DC–9 aircraft to complete the required training in an airplane simulator instead of in an airplane in flight.
25074	Aero Industries, Inc	14 CFR 135.267(d)	To allow petitioner to schedule day and night rest periods for its flight crewmembers in lieu of meeting the 10-hour rest requirement preceding an assigned flight.
25073	Atlantis Airlines, Inc	14 CFR 91.116 (f) and (g) and 135.225(e)(1).	To allow petitioner to take off from Myrtle Beach Air Force Base with less than the required 1-mile minimum visibility.
82-CE-27-AD	William T. Creech	AD 82–19–01	Relief from the requirement to inspect the wing spars of PA–24 Comanche aircraft after each 100 hours of flight time.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought—Disposition
20378	PHH Beckett, Inc	14 CFR 61.58(c)	Extension of Exemption No. 3067 to allow petitioner's pilots in command to complete their entire 24-month pilot-in-command checks for the BAC 1–11 in an FAA-approved visual flight simulator. *GRANTED September 15, 1986.*
24164	United Airlines	14 CFR 43.3 and 43.7	Extension of Exemption No. 4127 to allow petitioner to acquire aircraft parts from Canadian Pacific Airlines, Ltd., which have been maintained or approved for return to service by persons prescribed by §§ 43.3 and 43.7 for installation on petitioner's aircraft when located other than in Canada. *GRANTED August 29, 1986.*
12227	National Business Aircraft Association	14 CFR 91.169 and 91.181(a)	Extension of Exemption No. 1637, as amended, to allow members of petitioner to operate small civil airplanes and helicopters of U.S. registry under the operation rules of §§ 91.183 and 91.215 and the inspection procedures of § 91.169(f) subject to certain conditions. *GRANTED September 25, 1986.*
18324	American Airlines	14 CFR 43.3 and 121.709(b)(3)	Extension of Exemption No. 2678 to allow petitioner's certificated flight engineers to stow supplemental oxygen masks during flight and to make an entry in the aircraft maintenance logbook. *GRANTED September 10, 1986.*
25009	City of Jacksonville Mosquito Control Branch	14 CFR 137.53(c)(2)	To allow petitioner to install a supplemental type certificated approved spray system on its Cessna aircraft 337A, SN 337–0486, Registration No. N53865, for the control and eradication of mosquitoes in Duval and surrounding counties. Petitioner states that the aircraft does not require being equipped with device capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds, when operated over congested areas, as required by the subject section. *DENIED September 25, 1986.*
24945	San Diego Mesa College	14 CFR 141.35(e)	To permit Mr. Donald E. Taylor to act as the Chief Ground Instructor for San Diego Mesa College even though he does not meet the requirement of 1 year of experience as a ground school instructor in a certificated pilot school. *GRANTED Septe 25, 1986.*
24975	Transco Energy Company	14 CFR 61.161(b)(3)	To exempt Mr. Gerald D. Barnes from meeting the 8-year requirement for night flight time as specified in § 61.161(b)(3). *GRANTED September 25, 1986.*
24954	Seattle Jet Center	14 CFR 135.267	To allow petitioner to operate its fixed wing aircraft in Hospital Emergency Medical Transport Service without meeting the flight and duty time limitations. *DENIED 9/3/86.*
25094	Western Airlines, Inc	SFAR 46	To permit petitioner to initiate operations at LaGuardia Airport on or before November 1, 1986, with slots acquired in the special slot lottery conducted on March 27, 1986. *PARTIAL GRANT 9/19/86.*

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought—Disposition
25093	McClain Airlines, Inc	SFAR 46	To permit petitioner to initiate operations at O'Hare International Airport on or before October 15, 1986, with slots acquired in the special slot lottery conducted on March 27, 1986. *PARTIAL GRANT 9/19/86.*
24470	Mountain Air Cargo	14 CFR 135.179	To exempt petitioner from the cited section and any other pertinent section which purports to govern the development of and operation of Cessna 208A aircraft under a Minimum Equipment List ("MEL"). *DENIED 9/3/86.*
21987	Texas Department of Public Safety	14 CFR 91.65(b), 91.70(b), 91.73(a), 91.79(c), 91.85(b), & 91.109(a).	To permit petitioner to conduct certain law enforcement flight operations in close proximity to suspect aircraft; in airport traffic areas at speeds greater than the authorized limits; without operating the aircrafts position lights; at less than 500 feet above the surface over other than congested areas; in airport traffic areas other than to land or take off from an airport in that area; and/or in deviation from prescribed VFR cruising altitudes. *PARTIAL GRANT 9/27/86.*
24761	Executive Jet Aviation, Inc	14 CFR 91.191(a)(4) & 135.165(b)	To allow petitioner to operate its turbojet/target aircraft in extended overwater operations with one Omega/VLF Long-range navigations system (LRNS) and one high-frequency (HF) communication system. *PARTIAL GRANT 9/11/86.*
24693	Fairchild Aircraft Corporation	14 CFR 135.157(b)(2)	To permit petitioner and any othe similary situated operator of SA226–TC, SA227–AC, and SA227–TC aircraft to operate those aircraft under the oxygen quantity requirements of § 121.133(e)(1) & (2). *DENIED 9/15/86.*
24904	Omniflight Helicopters, Inc	14 CFR 133.1	To allow petitioner to carry properly trained personnel below the helicopter for the accomplishment of routine maintenance and construction on powerline utility projects. *DENIED 9/25/86.*
16955	American Airlines	14 CFR 61.58(c)	To change the name on exemption 2473 to American Airlines from American Airline Training Corp. to permit petitioner's trainees to complete their entire 24-month pilot-in-command check in a Federal Aviation Administration (FAA)-approved flight simulator, subject to certain conditions and limitations. *GRANTED 9/25/86.*
24564	Air Logistics	14 CFR 135.429	To allow petitioner to operate aircraft equipped with nine or less seating configurations when maintained in accordance with § 135.411(a)(2) *DENIED 9/22/86.*
24718	ERA Helicopters, Inc	14 CFR 43.3(g)	To allow petitioner's certified pilots to remove, check, clean and re-install magnetic chip detector plugs on the engine and gearboxes on certain company helicopters. *GRANTED 9/19/86.*

[FR Doc. 23149 Filed 10–10–86; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Harford County, Maryland

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement and section 4(f) Evaluation is being prepared for the proposed widening of Maryland Route 22 from Bel Air to Interstate Route 95.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda, 301/962–4010, and/or Mr. Louis Ege, Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/659–1130.

SUPPLEMENTARY INFORMATION: The FWHA, in cooperation with the Maryland State Highway Administration, is preparing an environmental impact statement to develop an acceptable alternate to widen a 9.5 mile portion of Maryland Route 22 to four through-lanes and to construct on new location a 2.3 mile bypass of the Town of Churchville.

In addition to the No-Build, two Build alternates are under consideration for the widening of Maryland 22. The Four Lane Divided Highway Alternate would provide two through-lanes in each direction separated by a 20-foot median. Left turn lanes would be provided at the signalized intersections. The widening would be constructed along the present route. The Five Lane Undivided Highway Alternate would provide two through-lanes in each direction with a continuous center lane for left turns. This alternate also would be constructed along the present route. With either alternate, several optional connections from Maryland Route 155 to Maryland Route 22 are proposed in order to reduce the traffic conflicts created by the close proximity of the MD 155/MD 22 intersection to the MD 136/MD 22 intersection. Also proposed are two bypass alternates around Churchville. Bypass Alternate B consists of a two-lane undivided rural highway with partial control of access, on new location to the south of Maryland Route 22. Bypass Alternate A consists of a similar type highway located further south, in proximity of Graftons Lane.

The primary impacts associated with the proposed improvements consist of proximity impacts along the widening, and farmland impacts on the bypass alignments.

A public hearing will be held after circulation of the DEIS. A public notice will give the time and place of the public hearing, and individual notices will be sent to those agencies, groups, and individuals on the mailing list. The Draft EIS will be vailable for public and agency review and comment prior to the public hearing. To ensure that the full range of issues related to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.)

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 86–23074 Filed 10–10–86; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 38]

Surety Companies Acceptable on Federal Bonds; Termination of Authority, International Business and Mercantile Reassurance Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to International Business and Mercantile Reassurance Company of Chicago, Illinois, under the United

States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1986.

The Company was last listed as an acceptable surety of Federal bonds at 50 FR 41288, dated October 9, 1985.

With respect to any bonds currently in force with this Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2298.

Dated: October 6, 1986.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 23091 Filed 10–10–86; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Advisory Committee on Native American Veterans; Rescheduling Meeting

The meeting of the Advisory Committee on Native American Veterans which was originally scheduled for October 21, 22 and 23, 1986. (51 FR 33972, September 24, 1986), has been rescheduled to November 12, 13 and 14, 1986. The sessions will be held in the Omar Bradley Conference Room, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC. The meetings on November 12 and 13 will convene at 8:30 a.m., and run until 4:30 p.m. The November 14 meeting will convene at 8:30 a.m., and adjourn at 12:30 p.m. All sessions will be open to the public.

Dated: October 3, 1986.

By direction of the Administration.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–23119 Filed 10–10–86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 198

Tuesday, October 14, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 PM (Eastern Time) Monday, October 20, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

1. Proposed Contracts for Expert Services In Connection With Court Cases.
2. Proposed Commission Decision.
3. Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: October 8, 1986.

Johnnie L. Johnson, Jr.,

Attorney-Advisor, Executive Secretariat.

This Notice Issued October 8, 1986.

[FR Doc. 86–23199 Filed 10–9–86; 11:06 am]

BILLING CODE 6750-06-M

2

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Pub.L. no. 94–409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME AND DATE: 9:00 a.m., Friday, November 14, 1986.

STATUS: Open and Closed.

ADDRESS: Field Museum of Natural History, Roosevelt Road, Lake Shore Drive, Chicago, Illinois 60605. (312) 922–9410.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Buck, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506. (202) 786–0536.

SUPPLEMENTARY INFORMATION:

The National Museum Services Board is established under the Museum Serivces Act, Title LL of the Arts, Humanities, and Cultural Affairs act of 1976, Pub. L. 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities invested in the Institute under this Title. Grants are awarded by the Institute of Museum Services after review by the Board.

The meeting of November 14, 1986 will be open to the public from 9:00 a.m. through discussion of agenda item number V. The meeting will be closed to the public for a review of agenda item VI pursuant to paragraphs 6,9 (B), and other relevant provisions of subsection (c) of section 552 of Title 5, United States Code because the Board will consider information that may disclose: Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of privacy; and information the disclosure of which might significantly impede implementation of proposed agency actions related to the grant award process.

National Museum Services Board—November 14, 1986 Meeting Agenda

I. Approval of Minutes of July 18, 1986 Meeting
II. Director's Report
III. Legislative and Regulatory Update
IV. Other Business
V. Program Report
  A. Museum Assessment Program
  B. Conservation Support Program
  C. General Operating Support
VI. Closed Session

Dated: October 6, 1986.

Lois Burke Shepard,

Director.

[FR Doc. 86–23252 Filed 10–9–86; 4:00 pm]

BILLING CODE 7036-01-M

3

OVERSEAS PRIVATE INVESTMENT CORPORATION

ACTION: Meeting of the Board of Directors.

TIME AND DATE: 10:30 a.m. (closed meeting) Tuesday, October 21, 1986.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street NW., Washington, DC.

STATUS: The meeting will be closed to the public.

MATTER TO BE CONSIDERED: Insurance Project in East Asian Country.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation at (202) 457–7007.

Mildred A. Osowski,

Corporate Secretary.

October 9, 1986.

[FR Doc. 86–23200 Filed 10–9–86; 11:06 am]

BILLING CODE 3210-01-M

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federal register

Tuesday
October 14, 1986

Part II

Environmental Protection Agency

Pesticide Products Containing Dinoseb; Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66013; FRL-3094-6]

Decision and Emergency Order Suspending the Registrations of All Pesticide Products Containing Dinoseb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of emergency suspension order.

SUMMARY: This Notice announces the emergency suspension of all registrations issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for pesticide products containing dinoseb (2-sec-butyl-4,6-dinitrophenol) or any of its salts. The Administrator has determined that continued sale, distribution, or use of dinoseb products during the time required to cancel such products would pose an imminent hazard and that an emergency exists that does not permit EPA to hold a hearing before suspending such products. These determinations are based primarily on evidence that dinoseb exposure poses a risk of birth defects, male sterility, and acute toxicity to agricultural workers. The substantive basis for these determinations and the procedures which affected registrants must follow to obtain a hearing on these determinations are set forth below.

DATE: The Emergency Order suspending all registrations of pesticide products containing dinoseb was issued and became effective immediately on October 7, 1986. Any request by a registrant for a hearing on the issue of whether an imminent hazard exists must be received by the Office of the Hearing Clerk at the address given below within 5 days of receipt of this Notice by that registrant.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Additional information supporting this action is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information and Services Section, Management and Program Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Michael McDavit, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1014A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1787).

SUPPLEMENTARY INFORMATION:

I. Order

This Notice and Emergency Order suspends the registration of each pesticide product which contains dinoseb (2-sec-butyl-4,6-dinitrophenol) or any of its salts. I have determined that continued registration of dinoseb products during the time required to conduct a cancellation proceeding would be likely to result in unreasonable adverse effects on the environment and therefore poses an imminent hazard. I have also determined that continued sale, distribution, or use of dinoseb products during the pendency of a suspension hearing would involve unacceptable risks and that an emergency exists that does not permit me to hold a hearing before suspending such products. Accordingly, I am today issuing an emergency order immediately suspending all registrations of dinoseb products, as published elsewhere in today's **Federal Register.** The substantive rationale for these determinations is explained below.

Pursuant to section 6(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136d(c)(3), I hereby suspend the registration of each pesticide product containing dinoseb (2-sec-butyl-4,6-dinotrophenol) or any of its salts. Effective immediately, no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver to any person any pesticide product containing dinoseb or any of its salts. This Order also expressly prohibits any person from using any pesticide product containing dinoseb or any of its salts for any purpose. However, nothing in this Order prohibits any registrant, wholesaler, dealer, retailer, or other distributor who previously sold or distributed dinoseb products to any person from reacquiring such products from that person in contemplation of an indemnification claim or for safe disposal.

II. Legal Authority

A. Standards for Maintaining a Registration

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by the Environmental Protection Agency under FIFRA sections 3(a) and 12(a)(1). A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions. A pesticide product may be registered or remain registered only if it performs its intended pesticidal function without causing "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5). "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of [the] pesticide" (FIFRA section 2(bb). The burden to demonstrate that a pesticide product satisfies the criteria for registration is at all times on the proponents of initial or continued registration. *Industrial Union Dept.* v. *American Petroleum Institute,* 448 U.S. 607, 653 n. 61 (1980); *Environmental Defense Fund* v. *Environmental Protection Agency,* 510 F.2d 1292, 1297, 1302 (D.C. Cir. 1975).

Under FIFRA section 6, the Agency may issue a notice of intent to cancel the registration of a pesticide product whenever it determines that the product no longer satisfies the statutory criteria for registration. The Agency may specify particular modifications in the terms and conditions of registration, such as deletion of particular uses or revisions of labeling, as an alternative to cancellation. If a hearing is requested by an adversely affected person, the final order concerning cancellation of the product is not issued until after a formal administrative hearing.

B. Suspension of a Pesticide Product

The suspension provisions in FIFRA section 6(c) give the Administrator authority to take interim action until completion of the time-consuming procedures which may be required to reach a final cancellation decision. Under this section, the Administrator may suspend the registration of a product and prohibit its distribution, sale, or use during cancellation proceedings upon a finding that the pesticide poses an "imminent hazard" to humans or the environment. "Imminent hazard" is defined by FIFRA section 2(l) as:

> . . . a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior under Pub. L. 91–135.

As noted above, "unreasonable adverse effects on the environment" means that the risks associated with use of a pesticide outweigh the benefits of its use. Thus, in order to find an "imminent hazard," the Agency must determine that the risks associated with continued registration during the period likely to be necessary to complete a cancellation proceeding appear to outweigh the benefits. The Agency may not suspend the registration of a pesticide to prevent an imminent hazard unless it has previously issued, or simultaneously issues, a notice of intent to cancel the registration or change the classification of that pesticide.

Suspension is an interim remedy which enables the Agency to abate potential risks in advance of the full analysis of risks and benefits in a cancellation hearing. The function of suspension "is to make a preliminary assessment of evidence, and probabilities, not an ultimate resolution of difficult issues." *Environmental Defense Fund* v. *Environmental Protection Agency,* 465 F.2d 528, 537 (D.C. Cir. 1972). The courts have emphasized that suspension does not require a "crisis." Rather, "it is enough if there is substantial likelihood that serious harm will be experienced during the year or two required in any realistic projection of the administrative [cancellation] process." *Environmental Defense Fund* v. *Environmental Protection Agency,* 510 F.2d 1292, 1297 (D.C. Cir. 1975), quoting *Environmental Defense Fund* v. *Environmental Protection Agency,* 465 F.2d 528, 540 (D.C. Cir. 1972).

A notice of intent to suspend (unlike an emergency suspension order) does not take effect immediately. Registrants are notified and afforded 5 days from the date of receipt of the notification to request an expedited hearing on the question of imminent hazard. If no hearing is requested for a product, the suspension of that product becomes final and is not reviewable by any court. If a hearing is requested for a product, the final order concerning suspension of the product is not issued until after the completion of an expedited hearing.

C. Emergency Suspension

If the Administrator determines that (1) a pesticide poses an imminent hazard, and (2) that "an emergency exists that does not permit him to hold a hearing before suspending," FIFRA section 6(c)(3) provides that he may issue an emergency order immediately suspending registration of the pesticide.

The term "emergency" is not defined by FIFRA. The Agency interprets FIFRA section 6(c)(3) to mean that, if the threat of harm to humans or the environment associated with continued sale, distribution, or use of a pesticide is sufficiently serious and immediate that the risks would be likely to outweigh the benefits during the time required for a suspension hearing, the registration of that pesticide may be suspended immediately. Thus, the determination whether an emergency exists is even more preliminary than the determination concerning the question of imminent hazard, and an emergency order is analogous to a temporary restraining order issued by a court while it is determining whether to issue a preliminary injunction. *Dow Chemical Company* v. *Blum,* 469 F.Supp. 892, 901 (E.D. Mich. 1979).

An emergency suspension order may be issued without prior notice to affected registrants and is effective immediately upon issuance. Registrants are notified that an emergency order has been issued and may request an expedited hearing by submitting a valid hearing request within five days from receipt of the notification. If a registrant does not request an expedited hearing concerning a particular product, but does request a hearing concerning cancellation of that product, the emergency order remains in effect until the completion of the cancellation proceeding. If an expedited hearing is held concerning any product, the hearing is confined solely to the question of imminent hazard, and the emergency order remains in effect during the pendency of the expedited hearing. Following the expedited hearing, the Administrator issues a final order which may either retain, modify, or rescind the suspension during subsequent cancellation hearings.

The Administrator's determination that an emergency exists that does not permit him to hold a hearing before suspending is subject to review in an appropriate United States district court. The only issues in any such review are whether the order was arbitrary, capricious, or an abuse of discretion, and was issued in accordance with procedures established by law (FIFRA section 6(c)(4)).

III. Findings Concerning Imminent Hazard and Emergency

Dinoseb and its salts are registered as a herbicide, desiccant, fungicide, and insecticide. The principal use of dinoseb is to control broadleaf weeds as a contact herbicide at preemergence and postemergence. Other major uses of dinoseb are to control fungus and to desiccate vegetation before harvest. I have determined that the further sale, distribution, and use of dinoseb as a herbicide, desiccant, fungicide, or insecticide would pose an imminent hazard during the period required to conduct administrative hearings concerning cancellation. I have further determined that an emergency exists with respect to all dinoseb products which does not permit me to hold a hearing concerning my determination of imminent hazard before acting to prohibit further sale, distribution, and use of such products.

This unit summarizes my findings concerning the existence of an imminent hazard and an emergency. Units IV and V then set forth in greater detail the evidence and analyses upon which these findings are based.

A. Findings Concerning Imminent Hazard

In order to find that a pesticide poses an imminent hazard and may therefore be suspended, I must determine whether the risks associated with continued registration during the period necessary to complete a cancellation hearing appear to outweigh the benefits. For purposes of this determination, and in conformity with the timetable for any cancellation hearing held pursuant to the Notice of Intent to Cancel for dinoseb products issued today, I have assumed that a cancellation hearing concerning the various registered dinoseb products would require approximately 18 months.

In evaluating the risks which dinoseb would pose during a cancellation hearing, I have placed the greatest emphasis on new studies which were recently submitted to the Agency which indicate that dinoseb may cause birth defects. I have also relied on other data which indicate that dinoseb may cause adverse reproductive effects in males and is acutely toxic. In addition, I have considered laboratory data which indicate that dinoseb induces cataracts, and may cause cancer and immunologic defects.

The Agency's exposure analysis indicates that virtually all workers directly involved in the application of dinoseb products have an inadequate margin-of-safety (MOS) between their estimated exposure and the highest dose at which no teratogenic effects have been observed in animals. A substantial portion of all application workers have literally no MOS at all. Indeed, the exposure estimates for some workers approach or exceed the dose which actually caused birth defects in animals.

Further, the Agency believes that the potential risk for birth defects is not confined to workers engaged in applying dinoseb. Although it is more difficult to

quantify the risk for other exposed populations, it appears that workers engaged in maintenance and repair of farm equipment and agricultural workers re-entering treated fields may also have an unacceptable risk. In some instances, bystander exposure through drift and inadvertent contact with contaminated equipment or clothing may also pose an unacceptable risk.

I am especially concerned about the teratogenic risks posed by dinoseb use because the evidence demonstrates that birth defects may be induced by dinoseb exposures which cause no other apparent adverse effects. Since a substantial number of people report acute reactions to dinoseb exposure every year, it is reasonable to infer that a significantly greater number of people are exposed to dinoseb concentrations which may pose a developmental hazard. Moreover, Agency scientists believe that irreversible damage to the fetus may result from a single exposure of a pregnant female at a time when she may not yet be aware that she is pregnant.

In addition to its potential teratogenic effects, dinoseb may cause adverse reproductive effects such as decreased fertility or sterility in males with repeated exposure. The acute toxicity of dinoseb, as evidenced by frequent reports of toxic reactions in exposed workers, is also an important concern.

Based on the Agency's analysis of the available evidence, I believe that applicators and other populations with substantial dinoseb exposure are at significant risk for teratogenic and other adverse effects. I have no reason to believe that such risk would be any less severe during the 18 months required to conduct a cancellation hearing. In the absence of a suspension order, every use of every registered dinoseb product could lawfully continue during that 18 months. It is therefore necessary for me to evaluate the likely benefits of continued use of dinoseb during the same 18-month period.

The Agency has concluded that reasonably efficacious alternatives would be available in sufficient quantity for most of the registered uses of dinoseb during the pendency of a cancellation hearing. In many instances, use of an alternative will result in increased treatment costs, but these costs will have a negligible impact at the consumer level. The lack of a satisfactory alternative to dinoseb for use on peanuts at the "cracking" stage may result in substantial initial yield losses and have an impact at the consumer level. Although it is likely that a satisfactory alternative will eventually be identified, the short-term impact on peanut growers may be significant.

I have evaluated the available information concerning the risks and benefits associated with continued use of dinoseb during the approximately 18 months required for a cancellation hearing. Based on this information, I have determined that the risks of continued use during this period are likely to outweigh the benefits and that registered dinoseb products therefore pose an imminent hazard.

B. Findings Concerning Existence of an Emergency

In order to find that an emergency exists, I must determine whether the threat of harm associated with continued sale, distribution, or use of dinoseb products is sufficiently serious and immediate that the risks would be likely to outweigh the benefits during the time required for a suspension hearing. For purposes of this determination, and in conformity with the mandatory timetable I have established for any hearing on the question of imminent hazard, I have assumed that a suspension hearing would require approximately four months.

In the absence of an emergency order, it appears that substantial exposure to dinoseb could occur as a result of lawful use during the time required for a suspension hearing. Dinoseb is used for multiple purposes during the fall and winter months on a large number and variety of agricultural sites and nonagricultural sites, including forage legumes, small grains, fruit and nut orchards, berries, cucurbits, grapes, hops, potatoes, beans, onions, garlic, ornamentals, conifers, and non-crop areas (such as rights-of-way and aquatic drainage ditches). Many of these uses involve hand-held spraying, which can result in high acute exposure and involve more applicators treating a given area than what is required for ground boom application. Based on the large number of registered uses, the complexity of use patterns, and the effects of weather and multiple growing seasons, the Agency has concluded that virtually all registered dinoseb products could be applied for some use during the time period required for an expedited suspension hearing. Further, the Agency has concluded that the additional introduction of dinoseb products into channels of trade or continued sale of such products would frustrate any effort to prohibit continued use during an expedited hearing and would reduce the enforceability of an emergency order directed at such use.

An immediate prohibition on use of dinoseb products would probably cause some disruption, as users are required to identify and obtain or implement alternatives. However, the Agency has concluded that, with the possible exception of the use of dinoseb for desiccation of potato vines, supplies of alternative pesticides are likely to be sufficient. In any event, the majority of the potato crop for 1986 has already been treated. On balance, the incremental benefits of continued sale, distribution, and use of dinoseb products during a suspension hearing appear to be similar to the benefits of continued registration during a cancellation hearing.

Based on the available evidence on risks and benefits, I have determined that an emergency exists that does not permit me to hold a hearing before suspending the registration of dinoseb products. I have concluded that the risks of continued use are sufficiently serious and immediate to require immediate prohibition of all use of all pesticide products containing dinoseb. I have also concluded that continued distribution or sale of dinoseb products would be inconsistent with and frustrate enforcement of any prohibition on continued use of such products.

I am therefore issuing today an Emergency Order immediately prohibiting any further distribution, sale, or use of any pesticide product containing dinoseb. This Order will remain in effect during any hearing which may be requested concerning the question of imminent hazard. In the event that any such hearing is requested, the deadlines which I have established should permit a final determination on the issue of imminent hazard prior to the spring growing season.

IV. Risk Assesment

A. Hazards of Dinoseb

A review of the toxicology literature on dinoseb, including data recently submitted to EPA in support of reregistration, indicates that exposure to dinoseb may pose a variety of hazards such as developmental toxicity (including frank teratogenic effects), reproductive toxicity, acute toxicity, induction of cataracts, and immunotoxicity. An oncogenicity hazard may also exist (from the parent compound and certain salts contaminated with nitrosamines).

Based on data recently submitted to EPA, it is now known that dinoseb is a developmental toxicant in laboratory animals. Further, EPA has data that indicate dinoseb affects the reproductive system of male laboratory animals, and lastly, acute toxicity of dinoseb is achieved through exposure to relatively low doses by both the oral and dermal routes when compared with other pesticides.

The following discussion describes the hazards, exposures and risks of dinoseb.

1. Developmental Toxicity

The recent evidence is clear that dinoseb is a developmental toxicant in laboratory animals. EPA has reviewed new studies that indicate that dinoseb induces birth defects in both the rabbit and rat by the oral route of exposure. In the rabbit, dinoseb exposure induced defects associated with the neurologic systems, specifically the brain, the spinal cord, and the skeletal system. In the rat, dinoseb exposure induced skeletal defects and eye malformations.

Dinoseb was administered by oral gavage to Chinchilla rabbits at doses of 0, 1, 3, and 10 mg/kg/day during days 6–18 of gestation (Leist, 1986a). The study found that dinoseb produced biologically and statistically significant increases in malformations and/or anomalies in the rabbit at the highest dose tested when compared against the control group. External, internal (body cavities and cephalic viscera), and skeletal defects were observed in 11 out of 16 litters. These defects included cranial defects associated with hydrocephaly, hydrocephaly alone, scoliosis/kyphosis/malformed/fused caudal or sacral vertebrae, and encephalocele.

In the rabbit, dams did not show indications of toxicity at any dose. The defects observed in the fetuses were generally irreversible.

Developmental toxicity was also observed in a second recently submitted teratology study (Leist, 1986b). In this study, dinoseb was administered by oral gavage to female Wistar rats at doses of 0, 1, 3, and 10 mg/kg/day during days 6–15 of gestation. Developmental toxicity was observed at the high dose level, as evidenced by a slight depression in fetal weight, delayed ossification, and an increase in supernumerary ribs. An increased incidence of supernumerary ribs may be indicative of more severe skeletal changes at higher doses. Maternal toxicity, in the form of body weight depression, was also observed at this dose level.

In addition to the recent submissions of teratology data, other evidence in the scientific literature of adverse developmental effects in multiple species supports the finding that dinoseb may pose a developmental hazard. A recently published study by Giavanni (1986) reported eye malformations (microphthalmia) in the rat at dietary dose levels only slightly higher than those administered in the rat teratology study recently submitted to EPA. Screening studies were conducted by several investigations in which rats or mice were exposed to dinoseb by intraperitonal, subcutaneous, oral intubation or *in vitro* routes at various times during gestation. Although the results were variable and depended on the species tested, route of administration, and endpoint examined, various manifestations of developmental toxicity were observed, including skeletal defects, supernumerary ribs, hydrocephaly, and delayed neural tube closure (Gibson, 1973; McCormack et al., 1980; Beaudoin and Fisher, 1981; Kavlock, 1985; Preache and Gibson, 1975).

Based on all of these studies, EPA scientists have concluded that dinoseb is a potential human developmental toxicant. The evidence clearly demonstrates that developmental effects can be produced in multiple species (rabbit, rat and mouse) by differing routes of exposure (oral routes: gavage and feeding; intraperitoneal; and subcutaneous injection). In these species, the primary targets for this chemical are the brain and spinal cord, and the vertebrae associated with the spinal cord.

2. Reproductive Toxicity

Dinoseb causes adverse male reproductive effects in the rat and mouse. Studies have demonstrated that dinoseb induces testicular effects including decreased sperm counts (with partial or no recovery) and abnormal sperm cell morphology in rats and testicular atrophy in mice.

In a study published in 1982, Linder *et al* administered dinoseb in the feed to Sherman rats at doses of 0, 75, 150, 225, 300 ppm for an 11-week period followed by a 16-week recovery period. In this study, dinoseb exposure produced the following effects: (1) depressed body and organ weights (testes and epididymis), (2) decreased reproductive performance, fetal viability, and sperm count, (3) induced sperm malformations, and (4) increased mortality (in the high dose group).

In 1981, Brown concluded a dinoseb chronic feeding study in CD–1 mice. Test animals were administered dinoseb in the feed for 100 weeks at nominal dose levels of 0, 1, 3 and 10 mg/kg/day. In this study, dinoseb exposure produced adverse effects on the reproductive organs of male animals. At all dose levels, dinoseb produced adverse effects on the testes, including atrophy/hypospermatogenesis/degeneration and dystrophic calcification, in exposed males.

EPA scientists have concluded that there is sufficient evidence to consider dinoseb a potential cause of human male reproductive disorders, such as decreased fertility or sterility. Adverse effects in the male reproductive system of rats and mice exposed to dinoseb indicate that dinoseb can impair male reproductive function.

3. Acúte Toxicity

Dinoseb is highly acutely toxic to humans by all routes of exposure. In recent years, at least one human fatality has been attributed to dermal exposure to dinoseb.

While using a backpack hand-held sprayer in 1983, a farmworker in Texas received a lethal dose of dinoseb (alkanolamine salt formulation) from dermal exposure. The sprayer apparently leaked dinoseb onto his body, which permitted a sufficiently lethal quantity of dinoseb to contact and penetrate his skin.

The California Department of Food and Agriculture (CDFA) also annually reports a substantial number of poisoning incidents resulting from the use of dinoseb (Blondell, 1986). Dinoseb, in contrast to most heribicides, is more acutely toxic by the dermal route of exposure. Dinoseb has a dermal LD_{50} of about 75 mg/kg. As shown below, end-use formulations of representative alternative herbicides and desiccants have higher LD_{50}'s and, therefore, are less toxic by the dermal route of exposure than dinoseb (Ware, 1983).

Parsquat	236 mg/kg
Diquat	>400 mg/kg
Bentazon	>2500 mg/kg
Glyphosate	7940 mg/kg
Diuron	>10,000 mg/kg
2,4-DB	>10,000 mg/kg

4. Dermal Penetration

This chemical appears to be significantly absorbed through the skin of laboratory animals and humans. Dinoseb is a lipophilic compound and, as such, is soluble in alcohol, spray oil, and most organic solvents (Hayes, 1982). Lipophilic substances of low or moderate molecular weight like dinoseb are generally well absorbed through the skin.

The human fatality in Texas in 1983 from dinoseb exposure was attributed to exposure primarily through the dermal route. As discussed above, in laboratory animals the dermal LD_{50} is relatively low. In fact, oral LD_{50} values and acute dermal LD_{50} values in four different

species (rats, guinea pigs, mice, and chickens) (Rowe, 1949?) indicate that the ratio (oral LD_{50} divided by dermal LD_{50} value) is generally close to 1 (i.e., comparable absorption is occurring by either route). Ratios using oral and dermal dermal LD_{50} values for alkanolamine salts are generally closer to 0.2, indicating a lesser rate of absorption. Pertinent laboratory data for several end-use formulations of dinoseb administered to the rat and rabbit are summarized below.

	LD_{50} Values (mg/kg)	
	Oral (Rat)	Dermal (Rabbit)
Alkanolamine salt formulation	89	356
Dinoseb parent formulation	89 (male), 59 (female)	75

An *in vivo* study of dermal penetration in rats at the EPA laboratory in Research Triangle Park (RTP) found that more than 90 percent of dinoseb applied to the skin penetrated within a 72-hour period (unpublished data). A limitation of this study is that dinoseb was applied in an acetone vehicle, and acetone will disrupt the integrity of the epidermis/dermis layers due to its lipid-dissolving properties. Nonetheless, this experiment found dinoseb to be the most effective dermal penetrant from among a group of 14 pesticides.

5. Human Observations

EPA is not aware of any human studies on the developmental or reproductive toxicity of dinoseb. The following discussion concerns human poisoning incidents involving dinoseb.

California is the only State that enforces mandatory reporting of occupational pesticide incidents. Accordingly, the California Department of Food and Agriculture (CDFA) has provided EPA with summaries of pesticide poisoning reports attributed to the dinitrophenol class of pesticides (Blondell, 1986). Dinoseb is the major dinitrophenol pesticides in use today, and 99 percent of all the dinitrophenol pesticide used in California contain dinoseb or one of its salts. As a result, most reports of poisoning incidents concerning dinitrophenol pesticides involve dinoseb or its salts.

California physicians reported an average of 8 cases of systemic poisoning and 10 cases of skin or eye injury caused by dinitrophenol pesticides each year from 1981 through 1985.

According to the California reporting system, incident data are summarized into one of the following mutually exclusive categories: (1) systemic, (2) eye only, (3) skin only, or (4) both eye and skin. During the 1981–1985 time period, dinitrophenol was the ninth largest cause of systemic poisoning in California. Four people were hospitalized for a total of 9 days because of these poisonings and 35 people were absent from work for a total of 145 days.

The poisoning incidents are summarized in Table 1. These data indicate that some poisoning incidents occur in each category of individuals exposed as a result of dinoseb application. The greatest hazard is apparently from ground boom application. EPA has no reason to believe that a similar hazard does not exist in other States where dinoseb is used. The majority of dinoseb usage is in the Southeast States for weed control on peanuts and soybeans. Only a fraction of dinoseb usage is in California, and yet, poisoning incidents are consistently reported there annually.

TABLE 1.—SUMMARY OF OCCUPATIONAL ILLNESS DUE TO DINITROPHENOLS IN CALIFORNIA, 1981–1985

Type of worker	Systemic	Eye	Skin	Eye and skin	Total
Ground applicator [1]	20	7	16	2	45
Hand applicator [2]	9	4	2	0	15
Mixer-loader [3]	5	6	0	1	12
Consistential exposure [4]	1	1	1	2	5
Exposure to field residue [5]	0	0	3	1	4
Other	3	2	2	0	7
Total	38	20	24	8	88

[1] Person exposed while applying by dust or spray rig.
[2] Person exposed while applying by hand-pump, hose-end, or backpack sprayer, duster or aerosol can.
[3] Person exposed while mixing or loading pesticide.
[4] Person exposed to an application-strength dilution, not directly involved in handling the pesticide. Primarily includes persons exposed to spray drift.
[5] Persons exposed to residues while working in a previously treated field.

6. Other Hazards

EPA scientists have reviewed some studies that indicate that dinoseb induces other significant toxicological effects in humans and laboratory animals.

Dinoseb has the potential to damage human eyes. This conclusion is based both on evidence that humans exposed to dinitrophenols develop cataracts and on similar effects observed in laboratory animals exposed to dinoseb. Cataracts were induced in people as a result of the former use of dinitrophenol as a weight reducing aid for humans in the 1930's (Hayes, 1982; Gosselin et al, 1981). Eventually, this effect was linked directly to the medicinal use of dinitrophenol. In addition, cataracts have been observed in the eyes of three different species of laboratory animals following exposure to dinoseb (Brown, 1981; Spencer et al., 1948; McCollister et al., 1967; Tucker et al., 1967).

Another possible toxic effect of dinoseb is oncogenicity. One recently submitted long-term study indicates that dinoseb causes tumors in the liver of female mice (Brown, 1981). A statistically significant ($p<0.05$) treatment-related, but not dose-related increase in liver adenomas, and in adenomas plus carcinomas, was found in treated female mice. The treated males did not have any statistically significant increases in tumor incidence.

The Agency has tentatively concluded that dinoseb is a Class C oncogen, i.e., a possible human carcinogen.

Potentially potent cancer-causing compounds known as nitrosamines are also present as contaminants in two salt formulations of dinoseb (alkanolamine and triethanolamine). Based on data provided by registrants, the amount of nitrosamines contaminating these formulations ranges from 0.6 to 279 ppm. According to the notice of Proposed Policy on Pesticides Contaminated With N-nitroso Compounds (45 FR 42854) issued on June 25, 1980, any level of nitrosamine contamination above 1 ppm must be mitigated, or a series of risk reduction measures must be initiated.

Limited studies also suggest that dinoseb has the potential to affect the immunological system. In hamsters, laboratory tests have indicated that dinoseb exposure may cause antibody production to decrease (Dandliker, et al., 1980), and in mice, a study found that dinoseb exposure induced changes in the appearance of the thymus (Brown, 1981).

27. Mechanism of Action

The toxicity of dinoseb is apparently related to the properties of the class of chemicals in which it belongs, dinitrophenols (Hayes, 1982). The dinitrophenols produce toxicity through interference with fundamental chemical processes involving the production of energy necessary for the formation of vital carbohydrate, fat, and protein building blocks. Dinoseb uncouples oxidative phosphorylation by preventing the phosphorylation of adenosine diphosphate (ADP) to adenosine triphosphate (ATP). This reaction is a basic energy conserving step in cell biochemistry, and when disrupted, results in other cellular changes such as increased oxygen uptake and increased permeability of mitochondria to hydrogen ions.

B. Dose—Response Assessment

EPA scientists believe that the study most suitable for the calculation of MOS is the oral study in rabbits. In this study, frank teratogenicity was observed in the rabbits at the high dose of 10 mg/kg/day, and a single fetus at the 3 mg/kg/day dose level had malformations very similar to those observed at the high dose level. Maternal toxicity was not observed at any dose level. Based on these findings in the high dose group, the developmental toxicity No-Observed-Effect Level (NOEL) was established at 3 mg/kg/day and the maternal toxicity NOEL at 10 mg/kg/day. A tabulation of the malformations observed in this study is given in Table 2.

TABLE 2.—SUMMARY OF RABBIT TERATOLOGY MALFORMATIONS AND ANOMALIES

Dose group (mg/kg)	Type of effect	Fetuses (affected/examined)	Litters (affected/examined)
0	—Bipartite sternebrae 5	2/123	2/15
	—Shortened rib No. 12	1/123	1/15
1	—Omphalocele	1/117	1/16
	—Acrania, anencephaly, agenesis of the face, abnormally shaped sternebrae 2–5, fused sternebrae (4–5)	1/117	1/16
3	—Fused ribs 6 and 7, abnormally shaped, absent or fused thoracic vertebral bodies (6 and 10)	1/120	1/15
10	—External: Dyscrania, omphalocele, lacunae of cranie, encephalocele, micrognathia, microglossia or anophthalmia, palatoschisis, cheilognathopalatoschism, kyphosis or scoliosis, shortened tail, malrotated hind limbs, dysmorphogenesis of vertebral column, arthrogryposis, aphalangia, hypoactyl, ectromelia	26/122	6/16
	—Internal (Body Cavities): Partial agenesis of diaphragm, agenesis of right kidney, hypertrophy of left kidney, agenesis of left kidney, hemidiaphragm, caudal dystrophy of both kidneys	4/122	3/16
	—Internal (cephalic viscera): hydrocephalus, microcephaly	37/122	10/16
	—Skeletal: Shortened femur and tibia, agenesis of fibula, shortened tail, malrotated hind limbs, dymorphogenesis of vertebral column, arthrogryposis, aphalangia, hypodactyly, ectromelia, shortened femur and tibia, agenesis of fibula, spina bifida occulta	10/122	4/16

As corroborating evidence, the new rat teratology study also indicates a developmental toxicity NOEL of 3 mg/kg/day, based on an increased incidence of skeletal variations observed at 10 mg/kg/day. Maternal toxicity was observed in this study at the high dose level of 10 mg/kg/day based on moderate body weight depression. Nonetheless, each of the recently submitted teratology studies independently results in the same NOEL. The Agency "Guidelines for the Health Assessment of Developmental Toxicants" state that, although agents that produce developmental toxicity at a dose that is not toxic to the maternal animal are of greatest concern, it is not appropriate to assume that developmental effects observed at maternally toxic doses result only from maternal toxicity. In the case of dinoseb, there is clear evidence in the rabbit that developmental toxicity consisting of a variety of malformations can be produced at a level that does not result in maternal toxicity. The rat studies provide evidence that developmental toxicity occurs in a second species at comparable dose levels.

C. Exposure Assessment

All methods of application of dinoseb results in some level of worker exposure. Depending on the crop and the target pest, dinoseb is applied by either a ground boom sprayer, aerial applicator, or hand-held sprayer. EPA has recently completed a generic worker exposure assessment for each of these methods, and has utilized data from this assessment to estimate mixer/loader and applicator exposure levels to dinoseb.

Approximately 45,000 workers, including up to 2,200 females, are involved in application of dinoseb. A large number of farmworkers and bystanders may also be exposed to dinoseb during or shortly after application, and other people may be exposed to dinoseb as an indirect result of application by a secondary route of exposure (for example, laundering of contaminated clothing).

Dietary exposure to dinoseb may occur through the consumption of treated commodities, but dinoseb residues in such commodities are low or nonexistent. Dinoseb has been found in ground water in several States indicating that exposure through drinking water is also possible.

The scientific basis, assumptions, and the results of EPA's exposure assessments are described in this unit.

1. Exposure of Application Workers

a. *Methodology for assessing worker exposure.* In estimating the range of likely exposures for workers involved in application of dinoseb, EPA employed a standard methodology in which exposure data for other pesticides (surrogate data) are used to derive exposure estimates (Honeycutt, 1985). In evaluating exposure to other agricultural pesticides, EPA has reviewed numerous worker exposure studies. The results of such studies can be appropriately used to estimate dermal exposure to other pesticides because the factors that most influence the amount of pesticide exposure to the skin are formulation type, application method, and application rate. These factors are more related to the physical parameters governing a pesticide's use than to the properties of the specific pesticide. Accordingly, dermal exposure can be estimated by combining the results of appropriate surrogate studies with information concerning dinoseb use practices.

i. *Selection of surrogate exposure studies.* The factors noted above were used to help select appropriate surrogate exposure studies to estimate dinoseb worker exposure. The selection of suitable surrogate studies was also dependent on the kind of application activity or type of pesticide worker. Workers exposed to dinoseb include mixer/loaders, ground boom applicators, aerial applicators (pilots), flaggers, and applicators using hand-held sprayers.

(1) *Formulation type.* The primary formulations of dinoseb are liquids as emusifiable and soluble concentrates. In estimating dinoseb exposure levels, EPA used only those exposure studies on liquid formulations or dilutions.

(2) *Application method.* Dinoseb is applied by three different application methods: ground boom, aerial, and hand-held sprayer. EPA used those studies in which similar application equipment was used to apply the pesticide. In some cases, studies were used in which state-of-the-art protective equipment (such as closed loading systems and enclosed tractor cabs) was employed even though such equipment is not required by any federally registered dinoseb label.

(3) *Application rate.* Pesticide application rates used in the surrogate exposure studies varied as a function of the pesticide, crop site, target pest, etc. Exposure estimates from these studies were converted into uniform expressions of dermal exposure per 1 pound of active ingredient (a.i.) applied per acre. This conversion facilitates adjustments for the specified application rates for particular uses of dinoseb.

ii. *Types of workers exposed to dinoseb*—(1) Mixer/loader. A search of the published literature found 12 studies on mixer/loader exposure resulting from handling mixing and loading equipment used for aerial or gound boom application of pesticides. The mixer/loader exposures were categorized by formulation type, and within formulation type by the use of gloves and closed or

open loading systems. These articles did not contain sufficient information to adjust exposure for the use of a face shield or apron. Exposure estimates were calculated for a mixer/loader wearing protective gloves, long pants, and a long-sleeve shirt.

The BAAL (1983) and Lavy (1982) studies provided a combined total of 19 replicates in which mixer/loader exposure could be expressed as mg/lb a.i. An open loading system was used in these studies. Based on a weighted average, the dermal exposure to mixer/loaders wearing gloves and using an open loading system was calculated as 0.95 mg/lb a.i.

A total of 20 replicates from three studies, Lavy (1982), Dubelman (1982), and Peoples (1979), were utilized to provide exposure information on mixer/loaders wearing gloves and using closed loading systems. Based on a weighted average, the estimated dermal exposure for mixer/loaders wearing gloves and using a closed loading system is 0.023 mg/lb a.i.

(2) *Pilot.* A total of 29 replicates from six studies, Lavy (1980 and 1982), Maddy (1982), Peoples (1979), Mumma (1985), and Atallah (1982), were used to estimate dermal exposure to pilots. Dermal exposure was calculated assuming that the pilots wore long pants and long sleeve shirts, which reduced exposure to the covered areas by 50 percent. Adjusting these data to 1 lb a.i. per acre and using a weighted average, the estimated dermal exposure to pilots is 0.67 mg/hr.

(3) *Flagger.* A total of 24 replicates from four studies, Lavy (1980), Maddy (1982), Peoples (1979), and Atallah (1982), were used to estimate dermal exposure to flaggers. These exposure estimates were calculated assuming that the flaggers wore long sleeve shirts and long pants, which reduced exposure by 50 percent to the torso and the legs. The estimated dermal exposure to flaggers ranges from 0.32 to 20 mg/hr and the weighted average is 3.8 mg/hr.

Exposure to flaggers may be much higher. Flagger exposure is extremely variable because wind shifts can produce dermal exposures as high as 1,700 mg/hr.

(4) *Ground boom applicator.* A total of 92 replicates from six studies, BAAL (1983), Dubelman (1982), Maitlen (1982), Staiff (1975), Wojeck (1983), and Wolfe (1987), were used to estimate dermal exposure to ground boom applicators. The exposure estimates were calculated assuming that the applicator wore long sleeve shirts and long pants, which reduced exposure by 50 percent to the covered areas.

Estimated exposure values from these six studies ranged over three orders of magnitude. Such wide variation is expected due to the kinds and number of variables associated with ground boom application. The variables that result in a wide range of estimated exposure to ground boom applicators include the use of open versus enclosed tractor cabs, individual working habits, boom placement, and weather.

Because the estimated exposure values based on surrogate data ranged widely, and a higher proportion of the data points were located at the low end of the range, a geometric mean was calculated rather than a simple, weighted mean. A geometric mean is a more representative and meaningful average under these conditions because the final value is not as influenced by outlying data points. However, both the geometric mean and the range are provided to characterize the variation within the surrogate data. The estimated dermal exposure ranges from 0.33 mg/hr to 146 mg/hr and the geometric mean is 6.3 mg/hr.

(5) *Handsprayer.* A total of 49 replicates from four studies, BAAL (1983), Copplestone (1976), Davis (1983), and Everhart (1982), were used to estimate dermal exposure to applicators from the use of hand-held sprayers. The tank concentration was adjusted to 0.1 percent a.i. The exposure estimates were calculated assuming applicators wore longsleeved shirts and long pants, which reduced exposure to covered areas by 50 percent.

In these four studies, applicators used hand-held sprayers to treat lawns, shrubs, and trees. The direction that the spray nozzle was pointed in these studies affected the total exposure and the distribution of exposure to the body. However, the number of replicates was too small to control for the direction of the spray. The weighted average for dermal exposure from hand-held sprayers using a spray concentration of 0.1 percent a.i. is 8.8 mg/hr.

iii. *Protective clothing assumptions.* EPA initiated a Label Improvement Program (LIP) for all dinoseb products in 1983 primarily in response to the farmworker fatality in Texas that resulted from dermal exposure to dinoseb. Registrants of approximately 95 percent of all dinoseb products have complied with that notice. The major elements of the LIP were to require the use of additional protective clothing, and to upgrade the first aid information for treating people exposed to dinoseb.

While applying or spraying diluted dinoseb products, the revised label requires that workers wear long leg pants, long-sleeved shirts or coveralls, and shoes and socks. While mixing and/or loading concentrated dinoseb products, the label requires that workers wear the above-mentioned clothing, and further, use impermeable gloves, goggles or a face shield, and an impermeable apron.

These protective clothing requirements are similar to the application practices in many of the surrogate studies. Some of the surrogate studies reflect use of additional protective measures not included on the revised dinoseb label. Use of these additional measures would likely result in exposures toward the lower end of the estimated range. Failure to comply with label requirements would result in exposures exceeding EPA's estimates. This is important because recent surveys demonstrate that application workers often do not conform to such requirements (Opinion Research Corp., 1985; Waldron, 1985) and FIFRA requires EPA to consider the effects of "widespread and commonly recognized practice."

Most exposure to agricultural pesticides occurs to the hands. During mixing/loading, from 50 to 99 percent of the exposure is to the hands. The surrogate data base reflects that fact. Goggles, face shields, and aprons are intended to protect the worker from acute injury resulting from splashes or spills. Under routine conditions, these additional precautions are not expected to yield substantial exposure reductions beyond those attributable to impermeable gloves.

iv. *Dinoseb use practices.* EPA evaluated crop and geographic parameters in order to estimate the amount of dermal exposure resulting from the use of dinoseb on a given crop, and in some cases, in different geographic locations. Based on the best available information, EPA estimated the following factors for a given crop treated with dinoseb: (1) the average acreage of a field, (2) the average acreage treated in a day (or the average amount of time per day to treat a crop), (3) the average number of application days per year, and (4) the amount of active ingredient used per acre.

For certain crops grown in multiple locations (such as potatoes in Maine and Idaho), EPA assumed that crop conditions varied according to location. The same crop grown in different parts of the country often has distinctive growing conditions that bear on the use of pesticides like dinoseb, such as field size, weed pressure, etc. These factors directly influence the amount of exposure expected from the use of dinoseb.

EPA also had to estimate the proportion of dinoseb usage by commercial and private applicators for a given crop and to determine when it was appropriate to combine exposure values from mixing/loading and application. This latter determination was made when EPA concluded that the same person would be performing both functions.

b. *Worker exposure estimates.* EPA's estimates of worker exposure to dinoseb reflect a range of application practices. For the various kinds of workers using dinoseb on representative major crops, the middle of the estimated range represents likely exposure levels for users utilizing required protective clothing while mixing/loading and applying dinoseb. The low end of the range represents likely exposure for users employing additional protective measures such as closed loading systems and enclosed tractor cabs. The high end of the range represents likely exposure levels for users who wear only some of the required protective clothing and use equipment will like open loading systems.

EPA's exposure estimates, derived from surrogate data and adjusted to reflect dinoseb use practices, are presented in Table 3.

TABLE 3.—SUMMARY OF DAILY OCCUPATIONAL EXPOSURES TO DINOSEB ON MAJOR SITES

Use site	Daily exposure (mg/kg/day) [a] [b]
Soybeans:	
Ground boom application: [c]	
Open pour:	
Preemergence	12 (0.1–72)
Early post	6.4 (5.0–39)
Late post	1.4 (1.1–8.9)
Closed loading:	
Preemergence	2.9 (0.36–63)
Early post	1.6 (0.20–34)
Late post	0.37 (0.045–7.9)
Aerial application: [d]	
Mixer/loader:	
Open pour:	
Preemergence	39
Early post	21
Late post	4.9
Closed loading:	
Preemergence	0.95
Early post	0.52
Late post	0.12
Pilot:	
Preemergence	0.34
Early post	0.19
Late post	0.043
Flagger:	
Preemergence	2.0
Early post	1.1
Late post	0.24
Potatoes (desiccation): [c]	
Maine	0.60 (0.28–8.2)
Idaho	1.2 (0.56–17)
Commercial	1.8 (0.82–25)
Cotton (postemergence): [c]	3.9 (2.5–34)
Peanuts (early postemergence): [c]	
Open pour	15 (12–75)
Closed	3.0 (0.44–63)
Peas: [c]	
New York:	
Preemergent	4.4 (3.2–34)
Postemergent	0.86 (0.62–6.9)

TABLE 3.—SUMMARY OF DAILY OCCUPATIONAL EXPOSURES TO DINOSEB ON MAJOR SITES—Continued

Use site	Daily exposure (mg/kg/day) [a] [b]
Washington:	
Preemergent	0.5 (0.2–50)
Postemergent	1.1 (0.78–8.7)
Grapes (hand sprayer): [c] [e]	1.1
Apples (hand sprayer): [c] [e]	6.7

[a] The exposure estimate is a geometric mean for ground boom applications, otherwise the estimate is a weighted mean. On sites where a ground boom is used an exposure range is also given in parenthesis.

[b] A standard weight of 70 kg was used to characterize dinoseb exposure on a mg/kg basis. EPA recognizes that adult females in the United States often weigh less than 70 kg. Adjusting exposure to reflect a lower expected mean weight of 60 kg would increase exposure only slightly (approximately 5 percent).

[c] Exposure estimate includes mixing/loading and application.

[d] Ranges are not presented for data that were not widely variable.

For the other minor uses of dinoseb in which a hand-held sprayer is used and which are not included in Table 3, EPA estimates that applicators will receive exposures in the range between the estimate for grapes (1.1 mg/kg/day) and the estimate for apples (6.7 mg/kg/day). The conditions under which dinoseb is applied to these two crops exemplifies the conditions (acreage, application rate, etc.) under which dinoseb is applied to the other sites that require the use of a hand-held sprayer.

Workers exposed to dinoseb, when used as a fungicide or herbicide for small fruit, orchards, nut farms, and certain field crops, may apply dinoseb to more than one crop and thereby receive a higher aggregate exposure.

The exposure estimates presented in Table 3 do not include the significant dinoseb exposure associated with in-field equipment maintenance. The CDFA annual incident reports indicate that in-field maintenance and repair of equipment used to apply dinitrophenol pesticides has resulted in frequent poisonings. Although the level of average exposure during such activities is difficult to quantify, EPA is concerned that this kind of activity may be another significant source of exposure to dinoseb.

c. *Dinoseb exposure studies.* Several exposure studies have been done directly with dinoseb. Exposure estimates from these studies are close to the estimates derived from the generic data base. Wolfe (1961) found overall exposure to the skin to be 89 mg/hr for workers that wore short sleeve shirts and long pants. This study also found that exposure to the hands under protective gloves is 22 mg/hr. For pilots, exposure to only the hands is 0.2 mg/hr.

More recently, Maddy and Fong (1983) assessed the combined dermal exposure resulting from mixing/loading and applying dinoseb using hand-held and truck-mounted boom sprayers. Exposure to the skin was measured underneath the clothing worn (long sleeved shirt, long pants, and protective gloves) during the study. The range of exposure from this study for these workers is 5.6 to 335 mg/hr.

For the particular use practices evaluated in the exposure studies on dinoseb, the exposure estimates were actually higher than the estimates derived from the surrogate data. At minimum, these studies corroborate the magnitude of the exposure estimates used in EPA's exposure evaluation.

d. *Number of dinoseb applicators.* EPA has estimated the number of applicators exposed annually to dinoseb to be approximately 45,000. Based on annual dinoseb usage figures, EPA derived this figure by assuming an applicator could treat a certain amount of acreage per day. Using the number of acres under cultivation for a given crop and the number of farms growing that crop, coupled with the amount of acreage treated potentially in a day, provided EPA with a framework to estimate the size of the work force used to apply dinoseb. EPA also assumes that up to 5 percent of that work force is female. Therefore, approximately 2,200 females may be currently handling dinoseb. The total number of applicators handling dinoseb by crop is summarized in Table 4.

TABLE 4.—ESTIMATED ANNUAL NUMBER OF APPLICATORS HANDLING DINOSEB

Crop/site	Annual applicators		
	Commercial	Private	Total
Alfalfa	105	3,500	3,600
Almonds and walnuts	0	1,600	1,600
Beans	0	3,000	3,000
Cane and bush berries	0	4,800	4,800
Cotton	0	6,760	6,760
Field crops (other)	5	200	205
Fruit trees	10	1,320	1,330
Grapes	0	3,450	3,450
Hops	0	90	90
Peas	10	240	250
Peanuts	0	6,850	6,850
Potatoes	70	600	670
Soybeans	425	12,000	12,425
Strawberries	0	60	60
Total	620	44,270	44,890

2. Bystander/Secondary Exposure

Bystanders and other people in the agricultural community are also exposed to dinoseb. CDFA annual incident reports indicate that farm workers (including females) are regularly exposed to dinoseb from residues in the field. Although the stability of dinoseb is not fully understood, EPA does know that dinoseb is stable in full light and in

water at different pH levels and, therefore, may persist in treated fields long enough to expose farmworkers re-entering such fields immediately after treatment. To maintain some perennial crops, farm workers may re-enter fields after dinoseb application to conduct activities such as scouting for pests, pruning plants, or repairing or moving irrigation equipment. Given these practices and the reported incidents, EPA has determined that some farmworkers, even when they are not involved in pesticide application, may be exposed to dinoseb if working in fields recently treated.

Aerial application, in particular, and ground boom application as well, may result in spray drift. Although efforts are being made by agricultural pesticide users to reduce the exposure of people downwind of pesticide application sites, some amount of drift from the target site is inevitable. In California, 15 percent of the total illnesses due to pesticide exposure in 1985 resulted from coincidental exposure (primarily as spray drift), and about 6 percent of all dinitrophenol poisoning incidents from 1981 to 1985 resulted from coincidental exposure. Therefore, people located in areas adjacent to fields being treated with dinoseb may be exposed. Occupational groups particularly vulnerable to spray drift exposure include utility or road repair personnel, mosquito abatement workers and game wardens. For example, in 1981 the CDFA reported that two gas utility workers were acutely exposed to a dinitrophenol during aerial application.

Agricultural workers and their families may also be exposed to dinoseb by indirect routes. Clothing worn while applying dinoseb is contaminated with the pesticide and may eventually expose whoever launders that clothing. Studies have shown that when clothing contaminated with a pesticide is laundered with noncontaminated household laundry, cross-contamination can also occur. Farm spray equipment and tractors will have some level of surface residue after dinoseb use. People may contact these surfaces and be exposed to dinoseb while cleaning or servicing the equipment and tractors.

3. Dietary and Ground Water Exposure

In 1985 and 1986, the Food and Drug Administration (FDA) analyzed 70 food samples for dinoseb residues. Only one cotton seed meal sample had a trace of dinoseb. No dinoseb residues were detected in shelled or unshelled peanuts; sweet, red, and white potatoes from three different areas of the country; and several other commodities. Edible plant parts are not directly treated with dinoseb. Tolerances are published under 40 CFR 180.281 for dinoseb residues in a number of food crops (ranges from 0.1 ppm on most commodities to 1 ppm on soybean forage and hay). Exposure to dinoseb through the diet is considered highly unlikely.

Dinoseb has been found in ground water in potato growing regions of New York and Massachusetts in the range of 1–5 ppb. On a national scale, the extent of contamination is unknown. The highest level found to date is 36.7 ppb.

D. Risk Characterization

Risk characterization is the final evaluation that takes into account all components discussed above. The hazard identification unit has identified concerns in the areas of developmental, reproductive, and acute toxicity, as well as other areas.

The greatest concern, based on both qualitative and quantitative considerations, is in the area of developmental toxicity. Dinoseb has been shown to induce developmental toxicity in both the rat and rabbit by the oral route of administration. In the rabbit, a variety of malformations was observed at levels that did not induce maternal toxicity. Screening studies in several species support the classification of dinoseb as a developmental toxicant.

In addition, several lines of evidence suggest that dinoseb is well absorbed dermally. These data include dermal penetration studies conducted by EPA, a comparison of oral and dermal LD_{50} values, and case reports of human poisoning following dermal exposure.

1. Occupational Risk of Dinoseb

Using a NOEL of 3 mg/kg/day and assuming 100 percent dermal absorption, MOS values for developmental toxicity were calculated for workers involved in applying dinoseb. The MOS is a comparison of the expected human exposure with the NOEL in laboratory testing. EPA has calculated individual MOS values and ranges corresponding to the exposure levels previously presented. The MOS values for major sites are presented in Table 5, as well as the exposure estimates previously discussed.

TABLE 5.—SUMMARY OF DAILY OCCUPATIONAL EXPOSURES TO DINOSEB AND MARGINS-OF-SAFETY ON MAJOR SITES

Use	Daily Exposure (mg/kg/day)	Margins-of-safety (MOS)
Soybeans/Ground Boom:		
Open Pour:		
Preemergence.	12 (9.1—72)	<1 (range <1)
Early Post	6.4 (5.0—39)	<1 (range <1)
Late Post	1.4 (1.1—8.9)	2 (<1 to 4)
Closed Loading:		
Preemergence.	2.9 (0.36—63)	1 (<1 to 6)
Early Post	1.6 (0.20—34)	2 (<1 to 15)
Late Post	0.37 (0.045—7.8)	8 (<1 to 67)
Soybeans/Aerial[1]:		
Mixer/Loader:		
Open pour:		
Preemergence,	39	<1
Early Post	21	<1
Late Post	4.9	<1
Closed loading:		
Preemergence,	0.95	3
Early Post	0.52	6
Late Post	0.12	25
Pilot:		
Preemergence	0.34	9
Early Post	0.19	16
Late Post	0.043	70
Flagger:		
Preemergence.	2.0	2
Early Post	1.1	3
Late Post	0.24	13
Potatoes (desiccation):		
Maine	0.60 (0.26—8.2)	5 (<1 to 11)
Idaho	1.2 (0.56—17)	3 (<1 to 5)
Commercial	1.8 (0.82—25)	2 (<1 to 4)
Cotton (postemergence).	3.9 (2.6—34)	<1 (<1 to 1)
Peanuts (early postemergence):		
Open Pour	15 (12—75)	<1 (range <1)
Closed	3.0 (0.44—63)	1 (<1 to 7)
Peas:		
New York:		
Preemergent,	4.4 (3.2—34)	<1 (range <1)
Postemergent.	0.86 (0.62—6.9)	3 (4 to 5)
Washington:		
Preemergent,	8.8 (6.2—69)	<1 (range <1)
Postemergent.	1.1 (0.78—8.7)	3 (<1 to 4)
Grapes/Hand spray[2].	1.1	3
Apples/Hand spray[2].	6.7	<1

[1] The exposure estimate is a geometric mean for ground boom applicators, otherwise the estimate is a weighted mean. On sites where a ground boom is used an exposure range is given in parenthesis.
[2] The Margin-Of-Safety is the ratio of the No-Observed-Effect Level of 3 mg/kg/day for developmental toxicity (in the rabbit) to the estimated human exposure level.
[3] Ranges are not provided for data that were not widely variable.

To ensure that people that handle pesticides like dinoseb are not at a significant risk, EPA traditionally requires a "margin-of-safety" or "MOS" between the highest level at which no effects are observed in laboratory animals and the dose at which people are exposed. This allows some protection for potentially greater susceptibility of humans compared to test species, differences in sensitivity among humans, limitations in study design for establishing a threshold, etc. An MOS greater than or equal to 100 is generally necessary to provide an acceptable level of protection from developmental toxicity effects for a pesticide.

In this case, EPA has determined that virtually no MOS exists against inducing birth defects in pregnant workers who handle dinoseb for each of the registered uses. Many MOS values are less than 1 and all are much less than 100.

Women of child bearing age who handle dinoseb and who wear the required protective clothing and use state-of-the-art protective farm equipment will still receive sufficient exposure to have no effective protection against potential dinoseb-induced birth defects. Because the risk of developmental toxicity is based on acute exposure, an MOS less than 100 results even if a female worker uses dinoseb only once per season (for example, in orchards for weed control).

2. Coincidental Risk of Dinoseb

From either direct routes (spray drift) or indirect routes (contaminated clothing), people other than applicators can be exposed to dinoseb and be at risk. At this time, EPA does not have sufficient data to quantify the risk but it appears that spray drift, re-entry, and secondary exposure to residues on equipment or clothing may pose a substantial risk of inducing birth defects.

As previously discussed, poisoning incidents from spray drift of dinitrophenol pesticides have been reported in California. These data reveal that acute poisonings from spray drift occur annually, and it may be inferred that low level drift exposure may place exposed individuals at risk for birth defects even more frequently. Accordingly, EPA has concluded that women of child bearing age inadvertently exposed to dinoseb by spray drift are at risk of dinoseb=induced birth defects.

In addition to the risk of developmental toxicity, certain male applicators are at potential risk of dinosebinduced adverse reproductive effects. Studies in both rats and mice indicate effects on the testes from subchronic and chronic exposure at dose levels comparable to those observed among certain male applicators of dinoseb. There may be an inadequate MOS for male reproductive effects and those applicators using dinsoeb over an extended period may be at risk of temporary or permanent sterility.

3. Dietary Risk of Dinoseb

EPA determined the risk of developmental toxicity from dietary exposure to dinoseb residues in food and ground water. Dinoseb residues are rarely found in food, and dinoseb levels found in ground water are far less than worker exposure levels; consequently, the risk of developmental toxicity appears to be negligible.

Utilizing the Tolerance Assessment System (TAS), a maximum daily exposure of 0.00111 mg/kg (body weight)/day for females over 13 years old was estimated assuming exposure to residues at the tolerance level and a maximum intake of treated commodities. The MOS for this maximum daily exposure is equal to 2703. Available data on representative crops support the established tolerance levels, and the Food and Drug Administration (FDA) has not detected dinoseb residues in representative commodities and foodstuffs. Therefore, EPA has concluded that there is an adequate MOS for the risk of developmental toxicity occurring in women consuming foods from crops that have been treated with dinoseb.

Dinoseb has been found in the ground water of two States. Based on levels found in these States, EPA determined the risk of developmental toxicity for pregnant females consuming such water. Using the highest reported level of dinoseb contamination found (36.7 ppb), the MOS for pregnant females is equal to 2452. This MOS provides sufficient protection against developmental toxicity.

V. Determination of Benefits

EPA has conducted an assessment of the benefits associated with the continued use of dinoseb on crops for which it is currently registered for use. Dinoseb is a pesticide with herbicidal, fungicidal, and insecticidal properties used on a variety of field crops, fruits, nuts, vegetables, and some non-agricultural sites. This assessment focuses on the economic impacts resulting from the lack of availability of dinoseb during the time required for suspension and cancellation hearings.

EPA's estimates of the economic impact associated with the unavailability of dinoseb during the time required for a suspension hearing are based on use which would have otherwise occurred between late September 1986 and March 1, 1987. In addition to potential increases in treatment costs and yield losses, these estimates include short-term impacts associated with the limited availability of alternative pesticides. The total usage which would have occurred during the time required to hold a suspension hearing is estimated to be between 10 percent and 15 percent of the total annual dinoseb usage.

EPA's estimates of the economic impact associated with the unavailability of dinoseb during the time required for a cancellation hearing are based on the assumption that such a hearing would last 18 months. These estimates are based almost entirely on potential increases in treatment costs and yield losses. For this analysis, it was assumed that sufficient supplies of registered alternatives would be available prior to the beginning of any cancellation hearing.

Economic losses from the unavailability of dinoseb are primarily due to increased control costs and expected yield losses for some sites. The lack of dinoseb is expected to affect the desiccation use on potatoes and the herbicide use on peanuts. For some other sites, such as green peas, snap beans, caneberries, and hops, the extent of economic impacts is uncertain. The economic impact on the following remaining crops is expected to be minor during the time it takes to conduct cancellation hearings: soybeans, potatoes (weed control), cotton, alfalfa and clovers, grapes, almonds and other nut crops, other field crops, non-crop areas, and other fruit and vegetable crops. Overall, economic impacts at the consumer level are not expected to be significant, with the possible exception of peanuts.

The largest single use of dinoseb in the fall/winter period is the desiccation of potato vines prior to harvest. All of the current dinoseb treatments for this purpose could be eventually replaced by the pesticides diquat and paraquat. Paraquat use would be limited to potatoes not intended for storage. The lack of dinoseb for any remaining 1986 harvest could be economically disruptive. While sufficient supplies of the alternatives may not be available at the present time, the majority of the potato crop has already been treated this year. Based on market surveys, desiccating effectiveness, and relative costs, diquat is expected to occupy a larger market share in the future.

The estimated annual economic impacts are presented in Table 6.

TABLE 6.—Annual Economic Impacts of Withdrawal of Dinoseb Products From the Pesticide Market

Crops	Purpose	Active ingredient applied annually (1,000 pounds)	Annual impacts of dinoseb unavailability	
			User impacts ($ million)	Market and consumer impacts
Soybeans	Herbicide	3,500	5.2	None.
	Desiccant	negligible	negligible	None.
Peanuts	Herbicide	740	71	Possible price increases.
Cotton	Herbicide	1,300	2.4	None.
Beans (snap)	Herbicide	186	0.477	Undetermined.
Potatoes	Desiccant	1,200	4.9	Minor.
	Herbicide	150	0.770	None.
Green Pea	Herbicide	185	1.2	Possible price increase (<1%).
Grapes	Herbicide	170	0.1	None.
	fungicide	negligible	negligible	None.
Alfalfa	Herbicide desiccant (combined)	350	0.7	None.
Almonds and Walnuts	Herbicide	127	.144	None.
	fungicide	negligible		
Berries	Herbicide	47	.078	Undetermined.
Hops	Herbicide fungicide (combined)	80	.117	Undetermined.
Non Crop Areas	Herbicide	500	None	None.
Other crops	Herbicide fungicide desiccant insecticide (combined)	282	0.8	None.
Total Impact	NA	8,757	90–95	No significant impacts except for possible peanut price increase.

A. Uses of Dinoseb as an Herbicide, Desiccant, and Fungicide

1. Soybeans and Peanuts

The single largest usage (40 percent) of dinoseb is on soybeans for weed control and about 4 percent of the soybean crop is treated with dinoseb. Both the alkanolamine and sodium salts are registered for use on soybeans. Approximately 9 percent of dinoseb usage is on peanuts and as of 1985, one source indicated that 36 percent of the peanut crop was treated with dinoseb (some sources estimate a higher percent of crop treated). Dinoseb is used to control immature broadleaf weeds at the "cracking stage" when soybean and peanut seedlings are just emerging from the soil. Dinoseb use at this early postemergence period reduces competition with seedling weeds including cocklebur, morningglory and pigweed. Broadleaf weed control at this growth stage is a significant benefit of dinoseb. A mixture of the dinoseb sodium salt and the naptalam sodium salt (Dyanap®, Ancrack®, Preemerge Plus®) is widely used in the South as a preemergence, cracking stage, and postemergency spray to control broadleaf weeds.

Nearly all the dinoseb usage on peanuts is at the cracking stage, and dinoseb is the principal herbicide registered for use during the cracking stage. Although diphenamid and alcahlor are registered for use during this period on peanuts, these herbicides are often tank-mixed with dinoseb. Without dinoseb, peanut growers will have to rely more on other herbicides that can be applied at late postemergence, such as bentazon, acifluorfen and 2,4–DB.

These other postemergence herbicides do not provide the same broad spectrum weed control activity that dinoseb provides. No postemergence grass control chemcials are available for use on peanuts. The recently registered soybean herbicides, imazaquin (Sceptor®), Canopy®, and Classic®, will control some dinoseb-controlled weeds on soybeans, but these herbicides are not currently registered for use on peanuts.

Most alternative chemicals and combinations will control many of the same weeds as dinoseb except for certain broadleaf weeds such as sicklepod, Florida beggarweed, and most grasses. Without the early postemergence use of dinoseb there will be greater reliance on the alternatives to provide effective control of larger, more mature, broadleaf weeds. If effective control cannot be achieved, adverse yield and revenue impacts could occur in the soybean and peanut markets.

Little or no dinoseb usage on soybeans and peanuts is likely to occur during the time required for a suspension hearing and therefore no economic impact is expected.

The annual economic impact on peanut growers is estimated at $71 million and the impact on soybean growers is estimated at $6.2 million if dinoseb is unavailable during the 18-month period required for a cancellation hearing. Peanut producers rely on the early postemergence weed control of dinoseb. Alternative pesticides are limited in number and do not provide the same weed control spectrum as dinoseb. EPA estimates that the lesser efficacy of currently available alternatives will result in a 20 percent reduction in peanut yields ($70 million revenue loss) during the first year that dinoseb is unavailable. In addition, treatment costs would increase by $1 million because the alternatives are more expensive.

Changes in consumer prices and Government support payments are difficult to assess at this time given the current Government support levels, acreage allotments, and poundage quotas. However, impacts on peanut producers are expected to decrease by approximately 20 percent in subsequent years because of anticipated support program adjustments. Consumers may also experience commodity price increases for peanuts over the next few years.

2. Cotton

Approximately 15 percent of dinoseb usage is on cotton and about 6 percent of the total cotton crop in the U.S. is treated with dinoseb. The alkanolamine salt of dinoseb is used as a postemergence directed spray after the crop is 4 to 5 inches high and when the weeds are still less than 1 inch high. A second and third application may be made between 7 to 14 days apart, before the cotton bolls begin to open. Dinoseb is used to control broadleaf weeds that are not controlled by preplant incorporated or preemergence herbicides. Preplant incorporated herbicides used on cotton include trifluralin, bensulide, norflurazon, prometryn, pendimethalin and dalapon. Preemergence herbicides include DCPA, diuron, dipropetryn, diphenamid, norflurazon, and oryzalin. Postemergence herbicides for broadleaf weed control on cotton are cyanazine (may be tank mixed with MSMA or norflurazon), MSMA, DSMA, EPTC, linuron, oxyfluorfen, fluometuron, diuron, and glyphosate.

Little or no dinoseb usage on cotton is likely to occur during the time required for a suspension hearing and therefore no economic impact is expected.

If dinoseb is unavailable for use on cotton during the time required for a cancellation hearing, the economic impact is expected to be minor. The use of alternatives is expected to have minor economic impacts on treatment costs and effectiveness. The potential increase in treatment costs would not exceed $2.4 million.

3. Snap Beans

Approximately 2 percent of dinoseb usage is on snap beans and about 20 percent of the snap bean acreage is treated with dinoseb annually to control annual weeds. The primary alternatives to dinoseb are metolachlor and chloramben. Dinoseb use on snap beans is scattered throughout the U.S. and no particular geographic region of the country relies heavily on dinoseb for broadleaf weed control.

EPA estimates that approximately 72,000 pounds of dinoseb active ingredient would otherwise be used on some snap beans during the time required for a suspension hearing, with the major use occurring in early spring. The economic impact associated with lack of availability of dinoseb during such a hearing is expected to be approximately $100,000.

The economic impact associated with treatment cost changes is expected to be minor (approximately $477,000 annually) if dinoseb is unavailable during the period required for a cancellation hearing. However, the relative efficacy of the alternatives is uncertain.

4. Potatoes

Dinoseb is used on potatoes both as a herbicide and as a vine desiccant prior to harvest. Approximately 16 percent of dinoseb usage is on potatoes and about 50 percent of all potato acreage in the U.S. is treated with dinoseb annually. Only 10 percent of all dinoseb used on potatoes is as a herbicide (mostly in the Eastern States) and the remaining 90 percent is used as a vine killer prior to mechanical harvesting throughout the Eastern and Western potato States.

As a herbicide, dinoseb is used mainly for broadleaf weed control. Typically, dinoseb is tank-mixed with alachlor, metolachlor or dalapon to control grass weeds. Registered alternatives for broadleaf weed control are metribuzin, EPTC, and linuron.

Potatoes are planted in different parts of the country throughout the year to provide a nearly continuous supply of production. Harvesting occurs throughout the year, but is mainly done in the fall. Some regions may have two potato seasons per year.

As a potato vine killer, or desiccant, dinoseb is applied 10 to 20 days before harvest. Desiccation of potato vines both facilitates mechanical harvesting and helps to "set" or toughen the potato skin so that the tubers can be harvested with a minimum of skinning and bruising. Dinoseb may be applied to potatoes by a ground boom or by aerial application. In the Northeast, dinoseb application is done by ground boom and, in the Central and West areas of the U.S., dinoseb application is equally split between ground and air applications.

The main chemical alternative to dinoseb for desiccation is diquat. Frost is also used to kill potato vines in late producing States, especially during the late part of the harvest season. Other alternative desiccants are endothall and ametryn, but these chemicals work more slowly than dinoseb and their use may require multiple applications to achieve comparable results. Paraquat may be used for fresh market potatoes, but not potatoes intended for storage.

An estimated 25 percent of the dinoseb usage for potato desiccation will occur through October 1, at which time the harvest season nears completion. Treatment cost increases could result in losses to growers of approximately $1.2 million during the period required for a suspension hearing. Alternatives are not expected to be in adequate supply to replace dinoseb. Production and quality losses are likely to occur on 150,000 acres or 12 percent of the U.S. potato acreage but data are not available to assess resultant losses.

If dinoseb is unavailable for desiccation during the time required for a cancellation hearing, diquat and paraquat will be the principal alternatives. Because the cost and efficacy of diquat is similar to dinoseb, diquat will probably acquire a large portion of the market. A large proportion of the 1986 potato crop has already been treated so it is unlikely that a disruption in the potato harvest would ensue this fall. A nonchemical alternative currently being used is a mechanical beater which kills the vines with a steel or rubber flail.

The total annual economic impact if dinoseb is unavailable during the time required for a cancellation hearing is estimated at $5.67 million annually (assuming the supplies of alternative chemicals adjust to the new demand). Treatment cost increases could be as high as $10 per acre. However, no major impacts on commodity prices are expected and the overall long term impact would be negligible.

5. Green Peas

Over one-third of the annual green pea crop is treated with dinoseb either preemergence or postemergence to control broadleaf weeds. The major alternatives are bentazon, MCPA, and MCPB. Major pea growing States that use dinoseb are Wisconsin, Minnesota, New York, Washington, Oregon, and Colorado.

Little or no dinoseb usage on green peas is likely to occur during the time required for a suspension hearing and therefore no economic impact is expected.

Most of the alternatives provide poor control of black nightshade, so the unavailability of dinoseb during the period required for a cancellation hearing may have significant economic impacts. Average treatment costs could increase by as much as $10 to $11 per acre, reducing farm income for green pea producers. Those farms with serious black nightshade infestations may have larger economic impacts because of yield and crop quality losses. If yield reductions are sufficiently large, small increases in retail prices could occur. The total annual impact of such effects would be approximately $1.2 million.

6. Grapes

The usage of dinoseb on grapes (only 2 percent) is concentrated in California. About 15 percent of the total grape acreage in California is treated for control of black nightshade, pigweed, purslane, and other winter broadleaf weeds. The herbicide alternatives are glyphosate, paraquat, diuron, simazine, and napropamide.

The triethanolamine salt of dinoseb is applied as a fungicide to dormant grape vines in the winter to control dead-arm disease. It is applied as a directed spray to the soil using a hand-held spray gun or a tractor drawn spray boom. The fungicide alternative for use on dormant grape vines is sodium arsenite. However, when treating non-dormant vines, the following alternative fungicides are available: captan, basic copper sulfate, folpet, and mancozeb. All of these provide adequate control of dead-arm disease.

During the time required for a suspension hearing, effective alternatives for use on grapes would be available and are expected to be in adequate supply. Some minor impacts for this period are possible but the aggregate impact of loss of dinoseb for use on grapes is expected to be less than $100,000.

If dinoseb is unavailable during the time required for a cancellation hearing, the available alternatives for control of weeds or disease are comparable in cost and efficacy. No price impacts for consumers are expected. The total annual economic impact will not exceed $100,000 if dinoseb is withdrawn from use on grape vineyards.

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7. Alfalfa

Approximately 4 percent of annual dinoseb usage is on alfalfa to control annual and perennial weeds and grasses and to desiccate the seed crop before harvest. However, only 2 percent of the nation's alfalfa crop is treated with dinoseb. The major alternatives to dinoseb for use on alfalfa are propham, 2,4-DB, simazine, chlorpropham, paraquat, and diuron.

The benefits from the use of dinoseb on alfalfa are negligible. Approximately 350,000 pounds of dinoseb active ingredient would otherwise be used on alfalfa during the time required for a suspension hearing. Alternative chemicals are available for use and the overall economic impact is estimated to be $700,000.

Similarly, if dinoseb is unavailable for the 18 month period required for a cancellation hearing, the annual economic impact at the user level would not exceed $700,000.

8. Almonds and Walnuts

The use of dinoseb on almonds and walnuts is confined to California where approximately 12 percent of the almond crop and 3 percent of the walnut crop are treated. The combined dinoseb usage on these two nut crops is slightly more than 1 percent of the total dinoseb annual usage.

On both almonds and walnuts, dinoseb is used as a contact herbicide for control of annual grasses and broadleaf weeds. The primary alternatives to dinoseb for herbicide use on almonds are paraquat, glyphosate, simazine, and napropamide. The alternatives to dinoseb for herbicide use on walnuts are paraquat, simazine, diuron, EPTC, oxyfluorfen.

The triethanolamine salt of dinoseb is also used as a contact eradicant fungicide to aid in the control of blossom brown rot disease. This salt is applied at either the dormant or delayed dormant stage of almond trees. One major fungicide alternative to dinoseb for control of blossom rot disease is sodium pentachlorophenate. This chemical is equally effective when used in the same manner as dinoseb. Many other alternatives are also registered for treating blossom rot disease as a direct leaf spray.

During the time required for a suspension hearing, effective alternatives for use on almonds and walnuts would be available and expected to be in adequate supply. Some minor impacts for this period are possible but the aggregate impact of loss of dinoseb for use on both nuts is expected to be less than $144,000.

Minimal annual economic impacts are expected if dinoseb is not available for use on almonds and walnuts during the 18 month period required for a cancellation hearing. The estimated annual impact would be $144,000 and adverse consumer effects are not expected.

9. Berries

Dinoseb is registered for use on many berry crops including blueberry, blackberry, currant, raspberry, boysenberry, gooseberry, loganberry, and strawberry. Generally both the percent of crops treated and the percent of dinoseb usage are negligible for these sites. Noteworthy exceptions include the treatment of up to 3 percent of the California strawberry crop, and use in Oregon for weed control in raspberry and blackberry crops. Dinoseb is used to control annual grasses and broadleaf weeds between and within the berry rows. For strawberries, dinoseb is used to control chickweed and annual winter grasses.

The alternatives to dinoseb for use on strawberries are DCPA and napropamide. The standard treatment in California is napropamide. The alternatives to dinoseb for use on the other berries are mainly paraquat and diuron.

During the time required for a suspension hearing, the economic impact due to the unavailability of dinoseb for use on various berries is not expected to exceed $78,000.

If growers had to use the alternatives for weed control on these berry crops, some minor treatment cost impacts could occur and be as much as $13 per acre treated. The impact on the strawberry crop is estimated to be less. For all berries, the total annual economic impact could exceed $78,000 if dinoseb were unavailable for use in the period required for a cancellation hearing.

10. Hops

In the States of Washington, Oregon, and Idaho, up to 25 percent of the hops is treated annually with dinoseb to control or suppress downy mildew. Dinoseb usage on hops is only 0.1 percent of the total dinoseb usage. Nonetheless, it is a routine part of the downy mildew control system in the hops industry.

To control downy mildew on hops, dinoseb is used within an overall control system in which multiple fungicides and non-chemical controls are utilized. Dinoseb is generally applied up to four times in one growing season as a directed spray to the basal portion of the hops vine (but not within 14 days of harvest). A hand-held spray gun or directed nozzles from a tractor drawn ground boom are used to apply dinoseb to hops.

The other pesticides used with dinoseb for downy mildew control are copper fungicides and metalaxyl. Since there appears to be no true alternative currently registered with comparable action to replace dinoseb for downy mildew control, users will have to rely on other available chemicals and/or modify their production systems. As a result, treatment costs may increase and yields could be affected without the use of dinoseb.

During the time required for a suspension hearing, EPA expects that growers will be able to adjust the current downy mildew control system to provide effective pest control. The economic impact for this time period is estimated to be $20,000.

The most significant impact likely to occur if dinoseb is unavailable for use on hops during the period for a cancellation hearing would be an increase in treatment costs. This annual economic impact may be as high as $117,000.

11. Non-Crop Areas

Up to 6 percent of dinoseb usage is for weed control in non-crop areas. Dinoseb is of limited usefulness on non-crop sites because it is relatively short-lived and it primarily affects only emerged vegetation. Numerous alternative herbicides are available for this use. During the time required for a suspension hearing, no economic impact is expected since there are satisfactory alternative chemicals available for use. Similarly, no economic impact is expected due to lack of availability of dinoseb during the time required for a cancellation hearing.

12. Other Minor Uses

Dinoseb is registered as a herbicide, fungicide or desiccant on the following crops or sites: clovers (alsike, ladino, sweet, and red), apple, apricot, barley, other beans (field, lima, kidney and navy), birdsfoot trefoil, cherry, citrus, corn, cucurbits (cucumbers, pumpkins, and squash), date, fig, filbert, garlic, lentils, mint, nectarine, oats, olive, onion, peach, pear, pecan, plum, rye, wheat, dichondra, flax, timothy hay, ornamental bulbs (bulbous iris, daffodil, gladiolus, narcissus and tulip), ornamental shrubs (ligustrum, lilac, spirea and yew), roses, forestry (conifer release) and drainage ditches. EPA has found little or no usage of dinoseb on these crops or sites. This fact suggests that farmers and consumers receive

little benefit from these registered uses. The economic impact of dinoseb unavailability would be negligible during the period required for suspension and cancellation hearings.

B. Uses of Dinoseb as an Insecticide

Two currently registered products containing the triethanolamine salt of dinoseb are labeled for use as insecticides. Available data indicate neither is currently marketed, but both are registered for the control of mites, aphids, and other insects on fruits and nuts and several other sites. This insecticide is applied by the same methods as the fungicidal applications.

The unavailability of the triethanolamine salt of dinoseb for use as an insecticide during the period required for suspension and cancellation hearings will have no economic impact.

VI. Risk Reduction Measures

Based on the available evidence concerning the risks and benefits of dinoseb, EPA has concluded that the risks associated with the continued use of dinoseb products as currently registered during the time required for suspension and cancellation hearings would be likely to outweigh the benefits. Before deciding to issue this Emergency Order, EPA evaluated a number of risk reduction measures short of immediate suspension to determine whether or not such measures would be likely to reduce the risks for developmental toxicity to acceptable levels. In each instance, such measures would be implemented through mandatory revisions in labeling or other terms and conditions of registration. EPA has concluded that none of these measures is a practical and efficacious alternative to immediate prohibition of use. In the discussion that follows, risk reduction measures that EPA considered are evaluated for their potential effectiveness and feasibility.

A. Protective Clothing

The use of additional protective clothing and protective farm equipment can be required on the label. Most current labels (revised per the Label Improvement Program in 1983) requires that workers wear goggles or a face shield, impermeable gloves, and an apron when handling the concentrated form of dinoseb. These labels also state that workers must wear longsleeved shirts, long leg pants and shoes and socks when handling the concentrate and while spraying the prepared formula.

The total body exposure to dinoseb could be reduced with the use of chemically resistant coverall-type suits. EPA is aware that the registrants of dinoseb are exploring ways to decrease worker exposure in this manner. A consortium of dinoseb registrants has conducted, but not yet submitted to EPA, an applicator exposure study in which all participants were required to wear Tyvek® suits (synthetic, disposable coveralls) when handling dinoseb.

EPA has concluded that requiring the use of such protective clothing for workers applying dinoseb is not an acceptable alternative. Not only is this kind of protective clothing requirement impractical and difficult to enforce, it is also potentially hazardous to workers handling chemicals like dinoseb.

Studies and calculations by CDFA have shown that above 80° F the hazard of heat stress becomes very important when this type of clothing is worn. EPA is concerned about heat stress resulting from the use of such protective equipment in the field.

This concern is compounded by specific toxic properties of dinoseb. Acute exposure to dinoseb is characterized by an increase in body temperature. If an applicator is already hot from wearing a water-tight outfit such as a Tyvek® suit, and then accidentally contacts (e.g., a leaking back-mounted, hand-held sprayer) a sufficient quantity of dinoseb to induce hyperthermia, the applicator may attribute his discomfort to the suit and not to an acute poisoning symptom from dinoseb exposure.

In short, the use of such suits could compromise the use of increased body temperature as a timely and key diagnostic tool for detecting acute poisoning by dinoseb. Given this information, EPA does not regard the use of Tyvek® suits to be a practical solution to reduce applicator exposure to dinoseb. The potential problem of aggravated heat stress nullifies this option.

Because protective equipment is already required on dinoseb labels and because special p?otective clothing (Tyvek+ suits) is contra-indicated, EPA has concluded that no further protective clothing requirements would sufficiently and safely reduce exposure to dinoseb.

B. Protective Farm Equipment

The revised dinoseb label does not require the use of specialized protective farm equipment. Nonetheless, EPA scientists assumed that closed loading systems and enclosed tractor cabs were being used by applicators of dinoseb when they estimated the range of dinoseb exposure from surrogate exposure data. Closed loading systems are mechanical systems used to transfer concentrated pesticide. Pumps are used to move the pesticide from one container to another, thereby theoretically reducing worker exposure from splashes and vapors otherwise occurring while pouring liquid pesticides from open containers. Enclosed tractor cabs reduce applicator exposure by simply protecting the operator from pesticide drift.

EPA has determined that the use of this equipment would not adequately reduce worker exposure to dinoseb. As previously mentioned, the use of such protective equipment was considered in the recent exposure assessment. Some of the surrogate exposure studies were conducted with the use of this state-of-the-art protective equipment. As such, the higher MOS values reflect conditions that would result in less dinoseb exposure. Although higher MOS values were calculated for mixer/loaders using closed loading systems (and different application rates), and higher MO ranges were calculated for applicators using a variety of application equipment including enclosed tractor cabs, none of these MOS values provided adequate margins of safety from the risk of developmental toxicity. All MOS values were still well below 100.

The use of closed loading systems and enclosed tractor cabs would not provide sufficient protection against dinoseb exposure and, therefore, this option would not effectively mitigate risk.

C. Lower Application Rates

Another possible option to mitigate risk is to reduce the application rate to a level that produces a significantly lower exposure to mixer/loaders and applicators. Handling less pounds of active ingredient does generally reduce exposure to mixer/loaders and applicators. The exposure assessment identified sites that use high application rates such as some preemergence uses of dinoseb (9 to 12 pounds active ingredient per acre). Conversely, relatively low application rates (0.625 pound active ingredient per acre) are used for fungicidal uses of dinoseb. While the exposure will in fact be influenced by a lower application rate, high exposure will still occur. MOS values for sites where lower application rates are currently used are still significantly below 100.

The use of lower application rates would not effectively mitigate the risk from dinoseb exposure.

D. Gender-Based Restrictions

A number of gender-based restrictions could be required to reduce the risk of developmental toxicity associated with exposure to dinoseb. Because only the fetuses of pregnant women are at risk of

developmental toxicity, the labeling for dinoseb products could be amended to prohibit women of childbearing capacity from mixing/loading or applying dinoseb. EPA could require label or other warnings to alert women to the potential for developmental toxicity. In addition, EPA could require employers to obtain the informed consent of female workers in writing before permitting them to work with dinoseb.

As a practical matter, pregnant women could misunderstand a label warning or prohibition or could knowingly jeopardize the health of the fetus. Some women may be pregnant but not yet be aware of their pregnancy. Birth defects may be induced early in the first trimester of pregnancy—often at that time when women are unaware of their condition.

The current work force handling dinoseb contains an expanding number of females. Nationally, EPA estimates that 5 percent of the mixer/loaders and applicators of pesticides are female. Many women have entered the agricultural workforce in the last two decades. Today, more women own and operate farms and more women professionally apply pesticides than did in previous decades.

Warning female farmworkers or prohibiting them from handling dinoseb or working in dinoseb-treated areas is impractical and difficult to enforce. United States Department of Agriculture (USDA) statistics on the number of female farmworkers in 1981 show that nearly 490,000 work either permanently or temporarily on farms in the U.S. Crops such as grapes, berries, nuts, and fruit orchards typically require large farmworker support.

Other pregnant females may be exposed to dinoseb as bystanders from spray drift or as farm residents from clothing or other items contaminated with dinoseb. No adequate means exist to warn or prohibit pregnant females from being in the proximity of farms that use dinoseb. Women could contact contaminated farm equipment or other contaminated surfaces on the farm premises, or handle contaminated clothing or protective equipment. All of these exposure pathways could not be effectively controlled by gender-based restrictions.

Moreover, gender-based restrictions will not mitigate the risks associated with male reproductive effects and acute toxicity. Some male workers handling dinoseb are at risk of dinoseb-induced sterility and all workers are at risk of acute toxicity.

EPA has considered the feasibility of gender-based restrictions and concluded that these are not practical for reducing exposure to dinoseb and the risk of developmental toxicity, reproductive toxicity, and acute toxicity.

VII. Procedural Matters

This Notice announces that the Agency has issued an Emergency Order suspending the registrations of all pesticide products containing dinoseb or any of its salts. The Emergency Order expressly prohibits any further sale, distribution, or use of any pesticide product containing dinoseb, including federally registered products and products registered under state law and marketed solely in intrastate commerce pursuant to 40 CFR 162.17. Registrants of products affected by the Emergency Order may request an expedited Agency hearing on the question of whether an imminent hazard exists. This unit explains how to request an expedited hearing, the consequences of requesting or not requesting an expedited hearing, and the procedures which will govern any expedited hearing in the event one is requested.

A. Procedures for Requesting a Hearing

Any registrant of a pesticide product containing dinoseb may request a hearing concerning the Agency's determination that an imminent hazard exists. Registrants who request a hearing must comply with the Agency's Rules of Practice Governing Hearings, 40 CFR Part 164. These procedures establish the following requirements: (1) Each hearing request must specifically identify by registration or accession number each individual pesticide product concerning which a hearing is requested, 40 CFR 164.121(a)(3) and 164.22(a); (2) Each hearing request must be accompanied by a document setting forth specific objections to the Agency's findings pertaining to the question of imminent hazard and state the factual basis for each such objection, 40 CFR 164.121(a)(3) and 164.22(a); and (3) Each hearing request must be received by the Office of the Hearing Clerk within 5 days from the date of receipt of this Notice, FIFRA section 6(c)(2); 40 CFR 164.121(a)(2) and 164.5(a). Failure to comply with any one of these requirements will invalidate the request for a hearing and result in suspension of the products in question by operation of law.

Requests for hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

B. Consequences of Failure to File a Hearing Request

Unless the registrant of a particular dinoseb product submits a timely and valid request for an expedited hearing concerning that product, the suspension of that product will become final by operation of law, will not be reviewable by any court, and will remain in effect until a final order is issued concerning the proposed cancellation of that product. Submission of a request for an expedited hearing concerning a particular dinoseb product will not prevent cancellation of that product by operation of law in the event no cancellation hearing is requested.

C. Consequences of Filing a Hearing Request

The Emergency Order announced by this Notice is effective immediately, regardless of whether or not a registrant requests an expedited hearing concerning the question of imminent hazard. The Order will remain in effect until completion of any expedited hearing and issuance of a final order on the issue of suspension. The final suspension order to be issued by the Administrator or his delegate after any expedited hearing may retain the suspension, modify it, or rescind it.

D. Hearing Procedures

If a registrant of a dinoseb product submits a timely and valid request for an expedited hearing, that hearing must commence within 5 days of receipt of the hearing request unless the registrant and the Agency agree that it will commence at a later time (FIFRA section 6(c)(2)). Valid and timely requests received subsequently may be consolidated with requests received prior to commencement of the suspension hearing. Any suspension hearing will be limited to the question of whether an imminent hazard exists (FIFRA section 6(c)(1)) and no parties other than affected registrants and the Agency will be permitted to participate actively in the hearing (FIFRA section 6(c)(3)).

I am also establishing a specific mandatory timetable for the evidentiary phase of any expedited hearing held concerning the suspension of dinoseb. The evidentiary hearing must begin no more than 15 calendar days after the first prehearing conference and the presentation of evidence must be concluded no more than 90 calendar days after the beginning of the evidentiary hearing. Once the presentation of evidence has been concluded, FIFRA section 6(c)(2) provides that the Administrative Law Judge will have 10 days to submit recommended findings and conclusions to me and I will have 7 days to issue a final order on the issue of suspension.

Additional time requirements are set forth at 40 CFR 164.121(j).

E. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearing on the issue of imminent hazard: the office of the Administrative Law Judge, the office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

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The public docket containing the above references is located at 1921 Jefferson Davis Highway, Room 236,

Arlington, Virginia. The references can be viewed from 8 a.m. to 4 p.m., Monday thru Friday, except legal holidays.

Dated: October 7, 1986.

Lee M. Thomas,

Administrator.

[FR Doc 86-23099 Filed 10-10-86; 8:45 am]

BILLING CODE [illegible]

[OPP-56132; FRL-3004-7]

Dinoseb; Intent To Cancel and Deny all Registrations for Pesticide Products Containing Dinoseb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel; notice of intent to deny.

SUMMARY: The Administrator has today ordered the emergency suspension of all registered products containing dinoseb (2-sec-butyl-4,6-dinitrophenol) or any of its salts. As required by section 6(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, this Notice announces that the Agency also intends to cancel the registrations for all such products. In addition, this Notice announces that the Agency intends to deny all pending applications for Federal registration of pesticide products containing dinoseb.

DATE: Requests for a hearing by an affected registrant or applicant must be received by the Office of the Hearing Clerk at the address given below on or before November 13, 1986, or within 30 days of receipt of this Notice by the registrant or applicant, whichever occurs later. Requests for a hearing by any other adversely affected party must be received by the Office of the Hearing Clerk on or before November 13, 1986.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Additional information supporting this action is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information and Services Section, Management and Program Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Michael McDavit, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number:

Room 1014A, Crystal Mall #2,

Arlington, VA (703-557-1787).

SUPPLEMENTARY INFORMATION:

I. Introduction

I am today issuing an emergency order suspending the registrations of all pesticide products which contain dinoseb (2-sec-butyl-4,6-dinitrophenol) or any of its salts and immediately prohibiting all sale, distribution, and use of dinoseb products, as published elsewhere it today's **Federal Register**. Section 6(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136d(c)(1), provides that the Agency may not suspend the registration of a pesticide unless it has previously issued, or simultaneously issues, a notice of intent to cancel the registration or change the classification of that pesticide. For the reasons set forth below, I have determined that all registered dinoseb products, when used in accordance with widespread or commonly recognized practice, appear to cause unreasonable adverse effects on the environment. Accordingly, I am today issuing this Notice of Intent To Cancel the registrations of all pesticide products containing dinoseb and to deny all pending applications for registration of any product containing dinoseb.

II. Legal Authority

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by the Environmental Protection Agency (FIFRA sections 3(a) and 12(a)(1)). A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions. A pesticide product may be registered or remain registered only if it performs its intended pesticidal functions without causing "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)). "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of [the] pesticide" (FIFRA section 2(bb)). The burden to demonstrate that a pesticide product satisfies the criteria for registration is at all time on the proponents of initial or continued registration. *Industrial Union Dept.* v. *American Petroleum Institute,* 448 U.S. 607, 653 n.61 (1980); *Environmental Defense Fund* v. *Environmental Protection Agency,* 510 F.2d 1292, 1297, 1302 (D.D. Cir. 1975).

Under FIFRA section 6, the Agency may issue a notice of intent to cancel the registration of a pesticide product whenever it determines that the product no longer satisfies the statutory criteria for registration. The Agency may specify particular modifications in the terms and conditions of registration, such as deletion of particular uses or revisions of labeling, as an alternative to cancellation. If a hearing is requested by an adversely affected person, the final order concerning cancellation of the product is not issued until after a formal administrative hearing.

Under FIFRA section 3(c)(6), when the Agency refuses to grant a pending application for registration, it issues a notice of intent to deny that application. The applicant or an interested person with the concurrence of the applicant may then request a hearing.

As noted above, no pesticide may be lawfully sold in either interstate or intrastate commerce unless it is registered by EPA. However, under 40 CFR 162.17, the Agency has permitted certain products previously registered under State law to continue to be sold and distributed solely in intrastate commerce, pending a final decision concerning Federal registration. In each instance, the State registrant was required to submit a "notice of application" for Federal registration and to agree to submit the balance of the application upon request by the Agency. Depending on the circumstances, when the Agency issues a notice of intent to cancel Federal registrations for a pesticide, it may either instruct intrastate applicants for similar products to submit a full application for Federal registration conforming to appropriate terms and conditions or notify the intrastate applicant that it intends to deny the application.

III. Findings Concerning Unreasonable Adverse Effects

The Emergency Order issued today announces that I have determined that continued use of pesticide products containing dinoseb would pose an imminent hazard during the period required for a cancellation hearing and that an emergency exists which requires suspension of further sale, distribution, and use of these products prior to any hearing concerning the issue of imminent hazard. In making these determinations, I relied upon the evidence and analyses concerning the risks and benefits of continued use of dinoseb products summarized in that Order.

Based in large measure on the same information, I have today determined that pesticide products containing dinoseb, when used in accordance with widespread and commonly recognized practice, appear to cause unreasonable adverse effects on the environment. I have further determined that none of the available alternatives to cancellation of such products could reduce the potential risks to acceptable labels. Accordingly, I am issuing this Notice of Intent to Cancel such products.

IV. Risk Assessment

A review of the toxicology literature on dinoseb, including data recently submitted to EPA in support of reregistration, indicates that exposure to dinoseb may pose a variety of hazards such as developmental toxicity (including frank teratogenic effects), reproductive toxicity, acute toxicity, induction of cataracts, and immunotoxicity. An oncogenicity hazard may also exist (from the parent compound and certain salts contaminated with nitrosamines).

Based on data recently submitted to EPA, it is now known that dinoseb is a developmental toxicant in laboratory animals. Further, EPA has data that indicate dinoseb affects the reproductive system of male laboratory animals, and lastly, acute toxicity of dinoseb is achieved through exposure to relatively low doses by both the oral and dermal routes when compared with other pesticides.

Moreover, even if the potential risks to exposed humans could be reduced to acceptable levels, the use of dinoseb also poses hazards to wildlife. Dinoseb is highly toxic to many kinds of non-target organisms. As many as 31 endangered or threatened species may be jeopardized by the continued use of dinoseb.

This unit of the Notice describes the EPA's rationale for these risk concerns, as well as, the potential human health concerns.

A. Effects on Humans

1. Hazard Identification

a. *Developmental toxicity.* The recent evidence is clear that dinoseb is a developmental toxicant in laboratory animals. EPA has reviewed new studies that indicate that dinoseb induces birth defects in both the rabbit and rat by the oral route of exposure. In the rabbit, dinoseb exposure induced defects associated with the neurologic systems, specifically the brain, the spinal cord, and the skeletal system. In the rat, dinoseb exposure induced skeletal defects and eye malformations.

The rabbit study found that dinoseb produced biologically and statistically significant increases in malformations and/or anomalies in the rabbit at the highest dose tested. Frank teratogenic effects, including external, internal (body cavities and cephalic viscera), and skeletal defects, were observed in the majority of the litters. Dams did not show indications of toxicity at any dose and the defects observed in the fetuses were generally irreversible.

Developmental toxicity was observed in the rat from another recently submitted teratology study. In this study, developmental toxicity was observed at the high dose level as evidenced by a slight depression in fetal weight, delayed ossification, and an increase in supernumerary ribs. Maternal toxicity, in the form of body weight depression, was also observed at the high dose level.

In addition to the recent submissions of teratology data, other evidence in the scientific literature of adverse developmental effects in multiple species supports the finding that dinoseb may pose a developmental hazard. A recently published study reported malformations in the rat at dietary dose levels only slightly higher than those tested in the rat teratology study recently submitted to EPA. Furthermore, a number of other investigators have tested rats and mice using a variety of routes of exposure and generally found various manifestations of developmental toxicity.

Based on all of these studies, EPA scientists have concluded that dinoseb is a potential human developmental toxicant. The evidence clearly demonstrates that developmental effects can be produced in multiple species (rabbit, rat and mouse) by differing routes of exposure. In these species, the primary targets for this chemical are the brain and spinal cord, and the vertebrae associated with the spinal cord.

b. *Reproductive toxicity.* Dinoseb causes adverse male reproductive effects in the rat and mouse. Studies have demonstrated that dinoseb induces testicular effects including decreased sperm counts (with partial or no recovery) and abnormal sperm cell morphology in rats, and testicular atrophy in mice.

A study in the rat demonstrated that dinoseb exposure produced the following effects: (1) Depressed body and organ weights (testes and epididymis), (2) decreased reproductive performance, fetal viability, and sperm count, (3) induced sperm malformations, and (4) increased mortality (in the high dose group). In a chronic feeding mouse study, dinoseb exposure produced adverse effects on the testes, including atrophy/hypospermatogenesis/degeneration and dystrophic calcification, in exposed males.

EPA scientists have concluded that there is sufficient evidence to consider dinoseb a potential cause of human male reproductive disorders, such as decreased fertility or sterility. Adverse effects in the male reproductive system of multiple species exposed to dinoseb clearly indicate that dinoseb can impair male reproductive function.

c. *Acute toxicity.* Dinoseb is highly acutely toxic to humans by all routes of exposure. In recent years, at least one human fatality has been attributed to dermal exposure to dinoseb. The California Department of Food and Agricuture (CDFA) also annually reports a substantial number of poisoning incidents resulting from the use of dinoseb.

Dinoseb is acutely toxic by the oral and dermal route of exposure to test animals. The oral LD_{50} of one representative dinoseb formulation is about 70 mg/kg (rat) and the corresponding dermal LD_{50} is about 75 mg/kg (rabbit).

Dinoseb's ability to penetrate the skin may account for the relatively similar acute toxicity observed from oral and dermal routes of exposure. Available data clearly indicate that dinoseb is well absorbed by the skin. *In vivo* studies in rats at the EAP laboratory in Research Triangle Park (RTP) indicate a substantial degree of dermal penetration. Even though this study had some limitations, if found dinoseb to be the most effective dermal penetrant from among a group of 14 pesticides.

d. *Human observations:* EPA is not aware of any human studies on the developmental or reproductive toxicity of dinoseb. The following discussion concerns human poisoning incidents involving dinoseb. Additional information on this topic is provided in the companion emergency Order.

California is the only State that enforces mandatory reporting of occupational pesticide incidents. Accordingly, the California Department of Food and Agriculture (CDFA) has provided EPA with summaries of pseticide poisoning reports attributed to the dinitrophenol class of pesticides. Dinoseb is the major dinitrophenol pesticide in use today.

California physicians reported an average of 8 cases of systemic poisoning and 10 cases of skin or eye injury caused by dinitrophenol pesticides each year from 1981 through 1985. During the 1981-1985 time period, dinitrophenol was the ninth largest cause of systemic

poisoning in California. Four people were hospitalized for a total of 9 days because of these poisonings and 35 people were absent from work for a total of 145 days.

EPA has no reason to believe that a similar hazard does not exist in other States where dinoseb is used. The majority of dinoseb usage is in the southeastern states for weed control on peanuts and soybeans. Only a fraction of dinoseb usage is in California, and yet, poisoning incidents are consistently reported there annually.

3. *Other hazards.* EPA scientists have reviewed some studies that indicate that dinoseb induces other significant toxicological effects in humans and laboratory animals. Dinoseb has the potential to induce cataracts. This conclusion is based both on evidence that humans exposed to dinitrophenols develop cataracts and on similar effects observed in laboratory animals exposed to dinoseb.

Another possible toxic effect of dinoseb is oncogenicity. One recently submitted long-term study indicates that dinoseb causes tumors in the liver of female mice. EPA has tentatively concluded that dinoseb is a Class C oncogen, i.e., a possible human carcinogen. Potentially potent cancer-causing compounds known as nitrosamines are also present as contaminants in two salt formulations of dinoseb (alkanolamine and triethanolamine).

Limited studies also suggest that dinoseb has the potential to affect the immunological system. In hamsters, laboratory tests have indicated that dinoseb exposure may cause antibody production to decrease, and in mice, a study found that dinoseb exposure induced changes in the appearance of the thymus.

f. *Mechanism of action.* The high acute toxicity of dinoseb is apparently related to the basic toxicity of the class of chemicals in which it belongs. This class, the dinitrophenols, generally produce high acute toxicity because they interfere with fundamental chemcial processes occurring in cells which produce energy or assist in the formation of vital carbohydrate, fat, and protein building blocks. Dinoseb "uncouples" oxidative phosphorylation by preventing the phosphorylation of adenosine diphosphate (ADP) to adenosine triphosphate (ATP). This reaction is a basic energy conserving step in cell biochemistry, and when disrupted, results in other cellular changes such as increased oxygen uptake and increased permeability of mitochondria to hydrogen ions.

2. Does—Response Assessment

EPA scientists believe that the study most suitable for the calculation of margins-of-safety (MOS) is the oral study in rabbits. In this study, frank teratogenicity was observed in the rabbits at the high dose of 10 mg/kg/day. Maternal toxicity was not observed at any dose level. Based on these findings in the high dose group, the developmental toxicity No-Observed-Effect Level (NOEL) is 3 mg/kg/day and the maternal toxicity NOEL is 10 mg/kg/day.

As corroborating evidence, the new rat teratology study also found a developmental toxicity NOEL of 3 mg/kg/day based on increased incidence of skeletal variations observed at 10 mg/kg/day. Maternal toxicity was observed in this study at the high dose level of 10 mg/kg/day based on moderate body weight depression. Nonetheless, both of the recently submitted teratology studies found the same NOEL. The Agency "Guidelines for the Health Assessment of Developmental Toxicants" state that, although agents that produce developmental toxicity at a dose that is not toxic to the maternal animal are of greatest concern, it is not appropriate to assume that developmental effects observed at maternally toxic doses result only from maternal toxicity. In the case of dinoseb, there is clear evidence in the rabbit that developmental toxicity consisting of a variety of malformations can be produced at a level that does not result in maternal toxicity. The rat studies provide evidence that developmental toxicity occurs in a second species at comparable dose levels.

3. Exposure Assessment

All methods of application of dinoseb results in some level of worker exposure. Depending on the crop and the target pest, dinoseb is applied by either a ground boom sprayer, aerial applicator, or hand-held sprayer. EPA has recently completed a generic worker exposure assessment for each of these methods, and has utilized data from this assessment to estimate mixer/loader and applicator exposure levels to dinoseb.

Approximately 45,000 workers, including up to 2,200 females, are involved in application of dinoseb. A large number of farmworkers and bystanders may also be exposed to dinoseb during or shortly after application, and other people may be exposed to dinoseb as an indirect result of application by a secondary route of exposure (for example, laundering of contaminated clothing.)

Dietary exposure to dinoseb may occur through the consumption of treated commodities, but dinoseb residues in such commodities are generally low or nonexistent. Dinoseb has been found in ground water in several States indicating that exposure through drinking water is also possible.

The scientific basis, assumptions, and the results of EPA's exposure assessments are summarized in this unit. A detailed account of these matters is contained in the companion Emergency Order.

a. *Exposure of application workers—(i) Methodology for assessing worker exposure.* In estimating the range of likely exposures for workers involved in application of dinoseb, the EPA employed a standard methodology in which exposure data for other pesticides ("surrogate data") are used to derive dermal exposure estimates (Honeycutt, 1985). In evaluating exposure to other agricultural pesticides, the Agency has reviewed numerous worker exposure studies. The results of such studies can be appropriately used to estimate dermal exposure to other pesticides because the factors that most influence the amount of pesticide exposure to the skin are formulation type, application method, and application rate. These factors were used to select appropriate surrogate exposure studies for the variety of application activities or types of pesticide workers involved in the use of dinoseb.

Consequently, EPA selected surrogate exposure studies on the kinds of workers exposed to dinoseb, which include mixer/loaders, ground boom applicators, aerial applicators (pilots), flaggers, and applicators using hand-held sprayers. EPA corroborated the generic exposure estimates with several exposure studies done directly with dinoseb and found that the dinoseb-specific exposure estimates were close to or higher than the estimates derived from the generic data base.

One factor influencing the amount of dinoseb exposure to workers is the use of protective clothing. The revised dinoseb label developed under a Label Improvement Program (LIP) in 1983, requires workers, while applying or spraying diluted dinoseb products, to wear long-legged pants, long-sleeved shirts or coveralls, and shoes and socks. While mixing and/or loading concentrated dinoseb products, the label requires that workers wear the above-mentioned clothing, and further, use impermeable gloves, goggles or a face shield, and an impermeable apron. These protective clothing requirements are similar to the application practices in many of the surrogate studies. Some of the surrogate studies reflect use of additional protective measures not included on the revised dinoseb label. Use of these additional measures would likely result in exposures toward the lower end of the estimated range. Failure to comply with label requirements would result in exposures exceeding EPA's estimates. This is important because recent surveys demonstrate that application workers often do not conform to such requirements and FIFRA requires the Agency to consider the effects of "... widespread and commonly recognized practice".

Most exposure to agricultural pesticides occurs to the hands. During mixing/loading, from 50 to 99 percent of the exposure is to the hands. Since EPA assumes gloves are worn while mixing/loading, the surrogate data essentially reflect compliance with the most protective rquirement during mixing/loading.

EPA evaluated certain crop and geographic parameters in order to estimate dermal exposure. Based on the best available information, EPA estimated the following factors for a given crop treated with dinoseb: (1) The average acreage of a field, (2) the average acreage treated in a day (or the average amount of time per day to treat a crop), (3) the average number of application days per year, and (4) the amount of active ingredient used per acre. Some of these parameters had to be determined for more than one location.

(ii) *Worker exposure estimates.* EPA's estimates of worker exposure to dinoseb reflect a range of application practices. For the various kinds of workers using dinoseb on representative major crops, the middle of the estimated range represents likely exposure levels for users wearing required protective clothing while mixing/loading and applying dinoseb. The low end of the range represents likely exposure for users employing additional protective measures such as closed loading systems and enclosed tractor cabs. The high end of the range represents likely exposure levels for users who wear only some of the required protective clothing and use equipment like open loading systems.

The Agency's exposure estimates, derived from surrogate data and adjusted to reflect dinoseb use practices, in this unit are presented in Table 1.

TABLE 1—SUMMARY OF DAILY OCCUPATIONAL EXPOSURES TO DINOSEB ON MAJOR SITES

Use site	Daily exposure (mg/kg/day) [1]
Soybeans:	
Ground boom application: [2]	
Open pour:	
Preemergence	12 (0.1–72)
Early post	6.4 (5.0–99)
Late post	1.4 (1.1– 108.9)
Closed Loading:	
Preemergence	2.9 (0.38 –63)
Early Post	1.6 (0.20 –34)
Late post	0.37 (0.045– 7.8)
Aerial application: [3]	
Mixer/loader:	
Open pour:	
Preemergence	39
Early post	21
Late post	4.8
Closed loading:	
Preemergence	0.05
Early post	0.02
Late post	0.12
Pilot:	
Preemergence	0.34
Early post	0.19
Late post	0.043
Flagger:	
Preemergence	2.0
Early post	1.1
Late post	0.24
Potatoes [4] (desiccation):	
Maine	0.60 (0.28– 8.2)
Idaho	1.2 (0.56–17)
Commercial	1.8 (0.82–25)
Cotton [5] (postemergence)	3.9 (2.8– 34)
Peanuts [3] (early postemergence):	
Open pour	15 (12– 75)
Closed	3.0 (0.44–63)
Peas: [3]	
New York:	
Preemergent	4.4 (3.2–34)
Postemergent	0.96 (0.62– 6.9)
Washington:	
Preemergent	8.8 (6.2–68)
Postemergent	1.1 (0.78– 8.7)
Grapes [3 6] (hand sprayer)	1.1
Apples [3 6] (hand sprayer)	6.7

[1] The exposure estimate is a geometric mean for ground boom applicators, otherwise the estimate is a weighted mean. On sites where a ground boom is used an exposure range is also given in parentheses.

[2] Exposure estimate includes mixing/loading and application.

[3] Ranges are not presented for data that were not widely variable.

For the other minor uses of dinoseb in which a hand-held sprayer is used and which are not included in Table 1, EPA estimates that applicators will receive exposures in the range between the estimate for grapes (1.1 mg/kg/day) and the estimate for apples (6.7 mg/kg/day). The conditions under which dinoseb is applied to these two crops exemplifies the conditions (acreage, application rate, etc.) under which dinoseb is applied to the other sites that require the use of a hand-held sprayer.

Workers exposed to dinoseb, when used as a fungicide or herbicide for small fruit, orchards, nut farms, and certain field crops may apply dinoseb to more than one crop and thereby receive a higher aggregate exposure.

The exposure estimates presented in Table 1 do not include the significant dinoseb exposure associated with in-field equipment maintenance. The California Department of Agriculture (CDFA) annual incident reports indicate that in-field maintenance and repair of equipment used to apply dinitrophenol pesticides has resulted in frequent poisonings. Although the level of average exposure during such activities is difficult to quantify, EPA is concerned that this kind of activity may be another significant source of exposure to dinoseb.

EPA has estimated the number of applicators exposed annually to dinoseb to be approximately 45,000. Based on annual dinoseb usage figures, EPA has estimated this figure by assuming certain parameters about farm size and average acreage treated per day for a given crop.

EPA also assumes that up to 5 percent of that work force is female. Therefore, approximately 2,200 females may be currently handling dinoseb. The total number of applicators handling dinoseb by crop is summarized in Table 2.

TABLE 2.—ESTIMATED ANNUAL NUMBER OF APPLICATORS HANDLING DINOSEB

Crop/site	Annual applicators		
	Commercial	Private	Total
Alfalfa	100	3,500	3,600
Almonds and walnuts	0	1,600	1,600
Beans	0	3,000	3,000
Cane and bush berries	0	4,600	4,600
Cotton	0	6,760	6,760
Field crops (other)	5	200	205
Fruit trees	10	1,320	1,330
Grapes	0	3,450	3,450
Hops	0	90	90
Peas	10	240	250
Peanuts	0	6,850	6,850
Potatoes	70	600	670
Soybeans	425	12,000	12,425
Strawberries	0	80	80
Total	620	44,270	44,890

b. *Bystander/secondary exposure to dinoseb.* Bystanders and other people in the agricultural community are also exposed to dinoseb. CDFA annual incident reports indicate that farm workers (including females) are regularly exposed to dinoseb from residues in the field. EPA believes that dinoseb may persist in treated fields long enough to expose farmworkers re-entering such fields immediately after treatment.

Given these practices and the reported incidents, EPA has determined that some farm workers, even when they are not involved in pesticide application, may be exposed to dinoseb if working in fields recently treated.

Aerial application in particular, and ground boom application as well, may result in spray drift. Certain people located in areas adjacent to fields being treated may be exposed to dinoseb. Furthermore, agricultural workers and their families may also be exposed to dinoseb by indirect routes. People may

contact contaminated clothing or farm equipment immediately after dinoseb application. EPA has not quantified these exposure routes, but believes that such routes may be significant under certain circumstances.

c. *Dietary and ground water exposure.* In 1985 and 1986, the Food and Drug Administration (FDA) analyzed 70 food samples for dinoseb residues. Only one cotton seed meal sample had a trace of dinoseb. No dinoseb residues were detected in shelled or unshelled peanuts; sweet, red, and white potatoes from three different areas of the country; and several other commodities. Edible plant parts are not directly treated with dinoseb. Tolerances for dinoseb are published under 40 CFR 180.281 for a number of residues in food crops (ranges from 0.1 ppm on most commodities to 1 ppm on soybean forage and hay).

Dinoseb has been found in ground water in potato-growing regions of New York and Massachusetts in the range of 1 to 5 ppb. On a national scale, the extent of contamination is unknown. The highest level found to date is 36.7 ppb.

4. Risk Characterization

Risk characterization is the final evaluation that takes into account all components discussed above. The hazard identification section has identified concerns in the areas of developmental, reproductive, and acute toxicity, as well as several other areas.

The greatest concern, based on both qualitative and quantitative considerations, is in the area of developmental toxicity. Dinoseb has been shown to induce developmental toxicity in both the rat and rabbit by the oral route of administration. In the rabbit, a variety of malformations were observed at levels that did not induce maternal toxicity. Screening studies in several species support the classification of dinoseb as a developmental toxicant.

In addition, several lines of evidence suggest that dinoseb is well absorbed dermally. These data include dermal penetration studies conducted by EPA, a comparison of oral and dermal LD_{50} values, and case reports of human poisoning following dermal exposure.

a. *Occupational risk of dinoseb.* Using a NOEL of 3 mg/kg/day and assuming 100 percent dermal absorption, margin-of-safety (MOS) values for developmental toxicity were calculated for workers involved in applying dinoseb. The MOS is a comparison of the expected human exposure with the NOEL in laboratory testing. EPA has calculated individual MOS values and ranges corresponding to the exposure levels previously presented. The MOS values for major sites are presented in Table 3, as well as the exposure estimates previously discussed.

TABLE 3.—SUMMARY OF DAILY OCCUPATIONAL EXPOSURES TO DINOSEB AND MARGINS-OF-SAFETY ON MAJOR SITES

Use	Daily exposure (mg/kg/day) [1]	Margins-of-safety (MOS) [2]
Soybeans/ground boom:		
Open pour:		
Preemergence	12 (9.1 –72)	<1 (range <1)
Early post	6.4 (5.0 –39)	<1 (range <1)
Late post	1.4 (1.1 –8.9)	2 (<1 to 4)
Closed loading:		
Preemergence	2.9 (0.36–63)	1 (<1 to 8)
Early post	1.6 (0.20–34)	2 (<1 to 15)
Late post	0.37 (0.045– 7.8)	8 (<1 to 67)
Soybeans/aerial: [3]		
Mixer/loader:		
Open pour:		
Preemergence	39	<1
Early post	21	<1
Late post	4.9	<1
Closed loading:		
Preemergence	0.95	3
Early post	0.52	6
Late post	0.12	25
Pilot:		
Preemergence	0.34	9
Early post	0.19	16
Late post	0.043	70
Flagger:		
Preemergence	2.0	2
Early post	1.1	3
Late post	0.24	13
Potatoes (dessiccation):		
Maine	0.60 (0.26–8.2)	5 (<1 to 11)
Idaho	1.2 (0.56–17)	3 (<1 to 5)
Commercial	1.8 (0.82–25)	2 (<1 to 4)
Cotton (postemeregence)	3.9 (2.5 –34)	<1 (<1 to 1)
Peanuts (early postemergence):		
Open pour	15 (12–75)	<1 (range <1)
Closed	3.0 (0.44–63)	1 (<1 to 7)
Fruits:		
New York:		
Preemergent	4.4 (3.2–34)	<1 (range <1)
Postemergent	0.85 (0.62–6.9)	3 (4 to 5)
Washington:		
Preemergent	8.8 (5.2–69)	<1 (range <1)
Postemergent	1.1 (0.78–8.7)	3 (<1 to 4)
Grapes/Hand spray [3]	1.1	3
Apples/Hand spray [3]	8.7	<1

[1] The exposure estimate is a geometric mean for ground boom applicators, otherwise the estimate is a weighted mean. On sites where a ground boom is used an exposure range is given in parentheses.
[2] The Margin-of-Safety is the ratio of the No-Observed-Effect Level of 3 mg/kg/day for developmental toxicity (in the rabbit) to the estimated human exposure level.
[3] Ranges are not provided for data that were not widely variable.

From the MOS values in Table 3, EPA has determined that virtually no MOS exists against inducing birth defects in pregnant workers who handle dinoseb for each of the registered uses. Furthermore, those registered uses also represent comparable exposure situations for the other crops not represented on the table, but currently registered for dinoseb. Hence, the respective MOS values are below 100 for those other sites, which indicates in total that no MOS exists against dinoseb induced birth defects on any registered site.

In summary, women of child bearing age who handle dinoseb and who wear the required protective clothing and use state-of-the-art protective farm equipment will receive sufficient exposure to have no effective protection against potential dinoseb-induced birth defects. Because the risk of developmental toxicity is based on acute exposure, an MOS less than 100 results even if a female worker only uses dinoseb once per season (for example, in orchards for weed control).

In addition to the risk of developmental toxicity, certain male applicators are at potential risk of dinoseb induced adverse reproductive effects. Studies in both rats and mice indicate effects on the testes from subchronic and chronic exposure at dose levels comparable to those observed among certain male applicators of dinoseb. There may be an inadequate MOS for male reproductive effects and those applicators using dinoseb over an extended period may be at risk of temporary or permanent sterility.

b. *Coincidental risk of dinoseb.* From either direct routes (spray drift) or indirect routes (contaminated clothing), people other than applicators can be exposed to dinoseb and be at risk. At this time, there are not sufficient data to quantify the risk, but it appears that spray drift, reentry and secondary exposure to residues on equipment or clothing may pose a substantial risk of inducing birth defects.

As previously discussed, poisoning incidents from spray drift of dinitrophenol pesticides have been reported in California. These data reveal that acute poisonings from spray drift occur annually, and it may be inferred that low level drift exposure may place more exposed individuals at risk for birth defects even more frequently. Accordingly, EPA has concluded that women of child bearing age inadvertently exposed to dinoseb by spray drift are at risk of dinoseb-induced birth defects.

c. *Dietary risk of dinoseb.* EPA determined the risk of developmental toxicity from dietary exposure to dinoseb residues in food and ground water. Dinoseb residues are rarely found in food and dinoseb levels found in ground water are less than worker exposure levels, consequently the risk of developmental toxicity is negligible.

Utilizing the Tolerance Assessment System (TAS), a maximum daily exposure of 0.00111 mg/kg (body weight)/day for females over 13 years old was estimated assuming exposure to residues at the tolerance level and a maximum intake of treated commodities. The MOS for this maximum daily exposure is equal to 2703. Available data on representative crops supports the established tolerance levels and FDA has not detected dinoseb residues in representative commodities and foodstuffs. Therefore, EPA has concluded that there is an adequate MOS for the risk of developmental toxicity occurring in women consuming foods from crops that have been treated with dinoseb.

Dinoseb has been found in the ground water of two States. Based on levels found in these States, EPA determined the risk of developmental toxicity for pregnant females consuming such water. Using the highest reported level of dinoseb contamination found (36.7 ppb), the MOS for pregnant females is equal to 2452. This MOS provides sufficient protection against developmental toxicity.

B. Effects on Wildlife

1. Non-Target Organisms

Dinoseb has the potential to affect non-target organisms. This pesticide is acutely toxic to mammals, birds, and certain aquatic animals. Dinoseb may also pose a risk of reproductive impairment to exposed mammals.

a. *Mammals.* The use of dinoseb and its salts poses significant acute and subacute risks to non-target mammals. Dinoseb is highly toxic to mammals when administered as an acute oral dose (LD_{50}s: rat=40 mg/kg; guinea pig=25 mg/kg; mouse=41 mg/kg) and has similar toxicity when administered as an acute dermal dose.

Application rates of dinoseb up to 10 lbs a.i. per acre are allowed on numerous sites. Such rates can result in residue levels of >2000 ppm on short rangegrass, >1000 ppm on long grass, >1000 ppm on leaves and leafy crops, >550 ppm on forage, >100 ppm on pod-containing seeds and large insects, and 70 ppm on fruit. These estimated residue levels for the most part exceed the subacute dietary LC_{50}. Field kills of wild rabbits have been attributed to dinoseb exposure.

From laboratory studies on reproductive effects, a dinoseb dosage of 1 mg/kg/day can impair reproduction in rats and mice. For the mouse, a residue level in fodder of approximately 7 ppm would be sufficient to produce this dosage of 1 mg/kg/day. EPA does not have adequate data on the persistence of dinoseb in the environment, but even if breakdown in the environment is relatively rapid, the initial residues of 500–1000 ppm in treated vegetation that are expected from maximum-rate applications would take long periods to dissipate below 7 ppm. The full extent of reproductive impairment is unknown, but EPA has sufficient information to conclude that dinoseb may interfere with the reproductive viability of mammals exposed from field application.

b. *Birds.* The use of dinoseb and its salts poses significant acute and subacute risks to non-target birds. Dinoseb acid is highly toxic to waterfowl and upland gamebirds when administered in a single acute oral dose (mallard LD_{50}=11.5 mg/kg, bobwhite quail LD_{50}=42.5 mg/kg). The alkanolamine salt is moderately toxic to upland gamebirds when administered as a single acute oral dose (bobwhite quail LD_{50}=122 mg/kg for the 51 percent emulsifiable concentrate), but no data are available on the acute oral toxicity of the ammonium and triethanolamine salts.

As previously mentioned, for many of the registered use patterns applications of dinoseb or its salts at maximum permissible use rates will result in initial residues of 500 to 2000 ppm on various types of foliage and feed. This concentration exceeds the subacute dietary LC_{50} for upland gamebirds (ring-necked pheasant LC_{50}=515 ppm). Field kills of pheasants and songbirds have been attributed to dinoseb exposure.

c. *Fish.* Dinoseb and the triethanolamine formulation may be hazardous to non-target fish. Dinoseb acid is highly toxic to warmwater fish (fathead minnow 96-hour LC_{50}=0.7 mg/L) and very highly toxic to coldwater fish (lake trout 96-hour LC_{50}=0.067 mg/L). A test on fathead minnows showed that the no-effect level (NOEL) for the embryo-larvae stage was between 14.5 and 48.5 ppb. The maximum acceptable toxicant concentration (MATC) is therefore 14.5 ppb. Because the estimated environmental concentration (EEC) that would result in the waters of a hypothetical pond receiving runoff from an application of dinoseb acid to a corn field at the maximum permissible rates (2.50 lb a.i. per acre) is 29 ppb, which exceeds the 14.5 ppb MATC, use of dinoseb in proximity to water may pose a hazard to fish. The triethanolamine salt of dinoseb is highly toxic to warm-water fish (bluegill sunfish 96-hour LC_{50}=0.110 mg/L for the 51 percent soluble concentrate/liquid).

d. *Other freshwater and marine animal species.* Dinoseb and its four salts may also be hazardous to other freshwater and marine animal species. Technical dinoseb acid is highly toxic to aquatic invertebrates (48=hour LC_{50}=0.68 mg/L). However, no data have been submitted on the acute toxicity of the alkanolamine, ammonium, or triethanolamine salts to aquatic invertebrates.

Dinoseb acid is moderately toxic to juvenile estuarine invertebrates (pink shrimp 96-hour LC_{50}=1.96 mg/L), and highly toxic to the embryo-larvae stage of oysters (48 hour EC_{50}=0.209 mg/L). Certain registered uses of dinoseb (corn, cotton, citrus, soybeans, and peanuts) can be expected to cause dinoseb to enter the estuarine or marine environment because significant amounts of these crops are grown in coastal areas.

2. Hazards to Endangered Species

Dinoseb has been found to pose a threat to the continued existence of more than 30 endangered species. As part of a generic examination of the risk which agricultural chemicals pose to endangered species, EPA consulted with the Department of the Interior's Office of Endangered Species (OES). In response to EPA's request for consultation, OES issued a generic biological opinion stating that a group of pesticides including dinoseb pose jeopardy to the following species:

Attwater's Greater Prairie chicken
Aleutian Canada goose
Everglade kite
Valley Elderberry longhorn beetle
Delta green ground beetle
12 mussel species
Kern Primrose sphinx moth
Slackwater darter
Scioto madtom
Woundfin
Pecos gambusia
Commanche
Springs pupfish

To mitigate such jeopardy to these species, the biological opinion recommended that EPA prohibit the use of dinoseb within the habitat of the listed endangered species. Therefore, in order to protect these species from the hazards posed by exposure to dinoseb, it would be necessary to prohibit use of dinoseb in certain portions of approximately 116 counties located in fifteen States.

Based on dinoseb's similar toxicity to chemicals found to pose jeopardy to endangered species through EPA's case-by-case reviews, dinoseb may also pose a risk to the following additional threatened or endangered species:

Red Hills salamander
San Marcos salamander
Texas blind salamander
Houston toad
Alabama cavefish
Santa Cruz long-toed salamander
Blunt-nosed leopard lizard
Commanche Springs pupfish
Pahranagat bonytail
Bayou darter

Fountain darter
Leopard darter
San Marcos gambusia
Gila topminnow
Pahrump killifish
Pecos gambusia
Cui-ui
Colorado squawfish

The registered alternatives to dinoseb do not pose the same level of risk to endangered species. With the exception of paraquat (used as a desiccant), no alternatives to dinoseb have been identified as posing high risks to endangered species. Most alternatives are much less acutely toxic and either do not or have not been demonstrated to have comparable reproductive toxicity. Although the data bases are not complete for all of these pesticides, the alternatives for use on the current major dinoseb sites (cotton, soybeans, and peanuts) do have relatively complete data bases. These particular alternatives do not pose the same high risk to endangered species.

V. Determination of Benefits

EPA has conducted an assessment of the benefits associated with the continued use of dinoseb on crops for which it is currently registered for use. Dinoseb is a pesticide with herbicidal, fungicidal, and insecticidal properties used on a variety of field crops, fruits, nuts, vegetables, and some non-agricultural sites. The assessment focuses on the economic impact due to the cancellation of dinoseb.

This assessment will differ from the benefits assessment in the accompanying Emergency Suspension Order because an indefinite timeframe is used in this assessment rather than a set time period (length of suspension of cancellation hearings). However, as it turns out, the long term economic impacts of cancellation of dinoseb should not generally differ significantly from the impact of a suspension.

Economic losses from the unavailability of dinoseb are primarily due to increased control costs and expected yield losses for some sites. The lack of dinoseb is expected to affect particularly the desiccation use on potatoes and the herbicide use on peanuts. For some other sites, such as green peas, snap beans, caneberries, and hops, the extent of economic impacts is uncertain. The economic impact on the following remaining crops are expected to be minor if dinoseb were cancelled: Soybeans, potatoes (weed control), cotton, alfalfa and clovers, grapes, almonds and other nut crops, other field crops, non-crop areas, and other fruit and vegetable crops.

Overall, economic impacts at the consumer level are not expected to be significant, with the possible exception of peanuts.

The estimated annual economic impacts are presented in Table 4.

TABLE 4.—ANNUAL ECONOMIC IMPACTS OF WITHDRAWAL OF DINOSEB PRODUCTS FROM THE PESTICIDE MARKET

Crops	Purpose	Active ingredient applied annually (1,000 pounds)	Annual impacts of Dinoseb unavailability	
			User impacts ($ million)	Market and consumer impacts
Soybeans	Herbicide	3,500	6.2	None.
	Desiccant	Negligible	Negligible	None.
Peanuts	Herbicide	740	71	Possible price increases.
Cotton	Herbicide	1,300	2.4	None.
Beans (snap)	Herbicide	186	0.477	Undetermined.
Potatoes	Desiccant	1,200	4.9	Minor.
	Herbicide	150	0.770	None.
Green Pea	Herbicide	165	1.2	Possible price increase (<1%).
Grapes	Herbicide	170	0.1	None.
	Fungicide	Negligible	Negligible	None.
Alfalfa	Herbicide desiccant (combined).	350	0.7	None.
Almonds and Walnuts	Herbicide	127	.144	None.
	Fungicide	Negligible		
Berries	Herbicide	47	.078	Undetermined.
Hops	Herbicide fungicide (combined).	60	.117	Undetermined.
Noncrop Areas	Herbicide	500	No effect	None.
Other crops	Herbicide, fungicide, desiccant, insecticide (combined).	262	0.6	None.
Total impact	NA	8,757	80–90	No significant impacts except for possible peanut price increase.

A. Uses of Dinoseb as an Herbicide, Desiccant, and Fungicide

1. Soybeans and Peanuts

The single largest usage (40 percent) of dinoseb is on soybeans for weed control and about 4 percent of the soybean crop is treated with dinoseb. Both the alkanolamine and sodium salts are registered for use on soybeans. Approximately 9 percent of dinoseb usage is on peanuts, and as of 1985, one source indicated that 36 percent of the peanut crop was treated with dinoseb (some sources estimate a higher percent of crop treated). Dinoseb is used to control immature broadleaf weeds at the "cracking stage" when soybean and peanut seedlings are just emerging from the soil. Broadleaf weed control at this growth stage is a significant benefit of dinoseb. Nearly all the dinoseb usage on peanuts is at the cracking stage and dinoseb is the principal herbicide registered for use during the cracking stage.

Although diphenamid and alachlor are registered for use during this period, these herbicides are often tank-mixed with dinoseb. Without dinoseb, growers will have to rely more on the herbicides that can be applied late postemergence, such as bentazon, acifluorfen and 2,4–DB.

These other postemergence herbicides do not provide the same broad spectrum weed control activity that dinoseb provides. No postemergence grass control chemicals are available for use on peanuts. The recently registered soybean herbicides, imazaquin (Scepto®), Canopy®, and Classic®, will control some dinoseb-controlled weeds on soybeans, but these herbicides are not currently registered for use on peanuts.

Most alternative chemicals and combinations will control many of the same weeds as dinoseb except for certain broadleaf weeds such as sicklepod, Florida beggarweed, and most grasses. Without the early postemergence use of dinoseb there will be greater reliance on the alternatives to provide effective control of larger, more mature, broadleaf weeds. If effective control cannot be achieved, adverse yield and revenue impacts could occur in the soybean and peanut markets.

The annual economic impact on peanut growers is estimated at $71 million and the impact on soybean growers is estimated at $6.2 million if dinoseb were cancelled. Peanut producers rely on the early postemergence weed control of dinoseb. Alternative pesticides are limited in number and do not provide the same weed control spectrum as dinoseb. EPA estimates that the lesser efficacy of currently available alternatives will result in a 20 percent reduction in peanut yields ($70 million revenue loss) during the first year that dinoseb is unavailable. In addition, treatment costs would increase by $1 million because the alternatives are more expensive.

As alternatives become registered and available for use on peanuts (such as the newly registered soybean herbicides), the economic impact from yield losses will diminish. Furthermore, impacts on peanut producers are expected to decrease by approximately 20 percent in subsequent years because of anticipated Federal support program adjustments. Consumers may also experience commodity price increases for peanuts over the next few years, but that trend will also diminish as more effective alternatives are registered.

2. Cotton

Approximately 15 percent of dinoseb usage is on cotton and about 6 percent of the total cotton crop in the U.S. is treated with dinoseb. The alkanolamine salt of dinoseb is used as a postemergence directed spray. Dinoseb is used to control broadleaf weeds that are not controlled by preplant-incorporated or preemergence herbicides.

If dinoseb were cancelled for use on cotton, the economic impact is expected to be minor. The use of alternatives is expected to have minor economic impacts on treatment costs and effectiveness. The potential increase for treatment costs would not exceed $2.4 million. This impact is also expected to diminish as new, less expensive alternatives become available.

3. Snap Beans

Approximately 2 percent of dinoseb usage is on snap beans and about 20 percent of the snap bean acreage is treated annually with dinoseb to control annual weeds. Dinoseb use on snap beans is scattered throughout the U.S. and no particular geographic region of the country relies heavily on dinoseb for broadleaf weed control.

The economic impact associated with treatment cost changes is expected to be minor (approximately $477,000 annually) if dinoseb were cancelled. Although the relative efficacy of the alternatives is uncertain, EPA expects that effective alternatives will become available in the future.

4. Potatoes

Dinoseb is used on potatoes both as a herbicide and as a vine desiccant prior to harvest. Approximately 16 percent of dinoseb usage is on potatoes and about 50 percent of all potato acreage in the U.S. is treated with dinoseb annually. Only 10 percent of all dinoseb used on potatoes is as a herbicide (mostly in the Eastern States) and the remaining 90 percent is used as a vine killer prior to mechanical harvesting throughout the Eastern and Western potato States.

As a herbicide, dinoseb is used mainly for broadleaf weed control. Typically, dinoseb is tank mixed with alachlor, metolachlor or dalapon to control grass weeds.

As a potato vine killer, or desiccant, dinoseb is applied to not only facilitate mechanical harvesting, but also to help "set" or toughen the potato skin so that the tubers can be harvested with a minimum of skinning and bruising.

The main chemical alternative to dinoseb for desiccation is diquat. Frost is also used to kill potato vines in late producing States, especially during the late part of the harvest season. Other alternative desiccants are endothall and ametryn, but these chemicals work more slowly than dinoseb and their use may require multiple applications to achieve comparable results. Paraquat may be used for fresh market potatoes, but not potatoes intended for storage.

If dinoseb were cancelled for the desiccant use on potato vines, diquat and paraquat would be the prinicipal alternatives. Because the cost and efficacy of diquat is similar to dinoseb, diquat will probably acquire a large portion of the market.

The annual economic impact of dinoseb's unavailability if it were cancelled is estimated at $5.67 million (assuming the supplies of alternative chemicals adjust to the new demand). Treatment cost increases could be as high as $10 per acre. However, no major impacts on commodity prices are expected and the overall long-term impact would be negligible.

5. Green Peas

Over one third of the annual green pea crop is treated with dinoseb either preemergence or postemergence to control broadleaf weeds. The major alternatives are bentazon, MCPA, and MCPB.

Most of the alternatives provide poor control of black nightshade so the cancellation of dinoseb may initially have significant economic impacts. Average treatment costs could increase per acre by as much as $10 to $11, reducing farm income for green pea producers. Those farms with serious black nightshade infestations may have larger economic impacts because of yield and crop quality losses. If yield reductions are sufficiently large, small increases in retail prices could occur. The total annual impact of such effects would be approximately $1.2 million until alternatives are registered than can control black nightshade.

6. Grapes

The usage of dinoseb on grapes (only 2 percent) is concentrated in California. About 15 percent of the total grape acreage in California is treated for control of certain weeds. Also, the triethanolamine salt of dinoseb is used as a fungicide on dormant grape vines in the winter to control dead-arm disease.

If dinoseb were unavailable, growers are not expected to bear higher costs nor lose efficacy for control of weeds or disease. No price impacts are expected for consumers if dinoseb were cancelled for use on grapes. The total annual economic impact would not exceed $100,000 if dinoseb were to be withdrawn from use on grape vineyards.

7. Alfalfa

Approximately 4 percent of annual dinoseb usage is on alfalfa to control annual and perennial weeds and grasses and to desiccate the seed crop before harvest. However, only 2 percent of the nation's alfalfa crop is treated with dinoseb.

If dinoseb were cancelled, an annual economic impact at the user level would not exceed $700,000. This impact is also expected to diminish as less expensive alternatives become available.

8. Almonds and Walnuts

The use of dinoseb on almonds and walnuts is confined to California where approximately 12 percent of the almond crop and 3 percent of the walnut crop are treated. The combined dinoseb usage on these two nut crops is slightly more than 1 percent of the total dinoseb annual usage.

On both almonds and walnuts, dinoseb is used as a contact herbicide for control of annual grasses and broadleaf weeds. The triethanolamine

salt of dinoseb is also used as a contact eradicant fungicide to aid in the control of blossom brown rot disease.

One major fungicide alternative to dinoseb for control of blossom rot disease is sodium pentachlorophenate. This chemical is equally effective when used in the same manner as dinoseb. Many other alternatives are also registered for treating blossom rot disease as a direct leaf spray.

Minimal annual economic impacts are expected if dinoseb is cancelled for use on almond and walnuts. The estimated annual impact would be $144,000. Adverse consumer effects are not expected.

9. Berries

Dinoseb is registered for use on many berry crops including blueberry, blackberry, currant, raspberry, boysenberry, gooseberry, loganberry, and strawberry. Generally both the percent of crops treated and the percent of dinoseb usage are negligible for these sites. Noteworthy exceptions include the treatment of up to 3 percent of the California strawberry crop, and use in Oregon for weed control in raspberry and blackberry crops.

If growers had to use the alternatives for weed control on these berry crops, some minor cost impacts could be as much as $13 per acre treated. The impact on the strawberry crop is estimated to be less. For all berries, the total annual economic impact is not expected to exceed $78,000 if dinoseb were cancelled.

10. Hops

In the States of Washington, Oregon, and Idaho, up to 25 percent of the hops is treated annually with dinoseb to control or suppress downy mildew. Dinoseb usage on hops is only 0.1 percent of the total dinoseb usage.

To control downy mildew on hops, dinoseb is used within an overall control system in which multiple fungicides and non-chemical controls are utilized.

Since there appears to be no true alternatives currently registered with comparable action to replace dinoseb for downy mildew control, users will have to rely on other available chemicals and/or modify their production systems. As a result, treatment costs may increase and yields could be affected without the use of dinoseb.

The most significant impact likely to occur if dinoseb were cancelled is an increase in treatment costs. The total annual economic impact may be as high as $20,000. However, EPA expects that growers will be able to adjust the current downy mildew control system to provide effective pest control.

11. Non-Crop Areas

Up to 6 percent of dinoseb usage is for weed control in non-crop areas. Dinoseb is of limited usefulness on non-crop sites. Numerous alternative herbicides are available for this use. If dinoseb were unavailable for use on non-crop areas little or no economic impact would occur for users.

12. Other Minor Uses

Dinoseb is registered as a herbicide, fungicide or desiccant on the following crops or sites: Clovers (alsike, ladino, sweet, and red), apple, apricot, barley, other beans (field, lima, kidney, and navy), birdsfoot trefoil, cherry, citrus, corn, cucurbits (cucumbers, pumpkins, and squash), date, fig, filbert, garlic, lentils, mint, nectarine, oats, olive, onion, peach, pear, pecan, plum, rye, wheat, dichondra, flax, timothy hay, ornamental bulbs (bulbous iris, daffodil, gladiolus, narcissus and tulip), ornamental shrubs (ligustrum, lilac, spirea and yew), roses, forestry (conifer release), and drainage ditches. EPA has found little or no usage of dinoseb on these crops or sites. This fact suggests that farmers and consumers receive little benefit from these registered uses. The economic impact of the cancellation of dinoseb would be collectively negligible on these registered sites.

B. Uses of Dinoseb as an Insecticide

Two currently registered products containing the triethanolamine salt of dinoseb can be used as insecticides. Available data indicate neither is currently marketed, but both are registered for the control of mites, aphids, and other insects on fruits and nuts and several other sites. These insecticides are applied by the same methods as the fungicidal applications. The cancellation of the triethanolamine salt of dinoseb will have little or no economic impact.

VI. Regulatory Options for Risk Reduction

There are three basic options for regulating all uses of dinoseb as a pesticide:

Option 1—Continuation of registration without changes,

Option 2—Continuation of registration with modifications to the terms and conditions of registrations, and,

Option 3—Cancellation of registration.

Adoption of option 1 would be appropriate when the Agency has concluded that the level of risk is acceptable when compared to the benefits of use and that further risk reduction measures are not necessary to assure that the use of the pesticide meets the statutory standard for continued registration. Adoption of option 3 would be appropriate when EPA has concluded that the risks from a use outweigh the benefits of that use. In other words, the risks cannot be mitigated to an acceptable level when compared to the benefits by any other measures short of cancellation.

Option 2 is appropriate when the risks of a pesticide use can be reduced to a level where the benefits of use outweigh the risks. This risk reduction is accomplished by modifying the terms and conditions of the pesticide's registration. These modifications, which are usually expressed through the pesticide's labeling, are generally changes in the way the pesticide is used. These changes are designed to reduce the exposure to the pesticide and thus reduce or eliminate the risk from the pesticide. In the discussion that follows, risk reduction measures that EPA considered are evaluated for their potential effectiveness and feasibility.

The specific risk reducing modifications which were selected for further consideration are presented in this unit.

A. Protective Clothing

The use of additional protective clothing and protective farm equipment can be required on the label. Most current labels (revised per the Label Improvement Program in 1983) require that workers wear goggles or a face shield, impermeable gloves, and an apron when handling the concentrated form of dinoseb. These labels also state that workers must wear longsleeved shirts, long-legged pants and shoes and socks when handling the concentrate and while spraying the prepared formula.

The total body exposure to dinoseb could be reduced with the use of chemically resistant coverall-type suits. EPA is aware that the registrants of dinoseb are exploring ways to decrease worker exposure in this manner. A consortium of dinoseb registrants have conducted, but not yet submitted to EPA, an applicator exposure study in which all participants were required to wear Tyvek® suits (synthetic, disposable coveralls) when handling dinoseb.

EPA has concluded that requiring the use of such protective clothing for workers applying dinoseb is not an acceptable alternative. Not only is this kind of protective clothing requirement impractical and difficult to enforce, it is also potentially hazardous to workers handling chemicals like dinoseb.

Studies and calculations by CDFA have shown that above 80 °F the hazard of heat stress becomes very important when this type of clothing is worn. EPA is concerned about heat stress resulting from the use of such protective equipment in the field.

This concern is compounded by specific toxic properties of dinoseb. Acute exposure to dinoseb is characterized by an increase in body temperature. If an applicator is already hot from wearing a water-tight outfit such as a Tyvek® suit, and then accidentally contacts (e.g., a leaking back-mounted, hand-held sprayer) a sufficient quantity of dinoseb to induce hyperthermia, the applicator may attribute his discomfort to the suit and not to an acute poisoning symptom from dinoseb exposure.

In short, the use of such suits could compromise the use of increased body temperature as a timely and key diagnostic tool for detecting acute poisoning by dinoseb. Given this information, EPA does not regard the use of Tyvek® suits to be a practical solution to reduce applicator exposure to dinoseb. The potential problem of aggravated heat stress nullifies this option.

Because protective equipment is already required on dinoseb labels and because special protective clothing (Tyvek+ suits) is contra-indicated, EPA has concluded that no further protective clothing requirements would sufficiently and safely reduce exposure to dinoseb.

B. Protective Farm Equipment

The revised dinoseb label does not require the use of specialized protective farm equipment. Nonetheless, EPA scientists assumed that closed loading systems and enclosed tractor cabs were being used by applicators of dinoseb when they estimated the range of dinoseb exposure from surrogate exposure data. Closed loading systems are mechanical systems used to transfer concentrated pesticide. Pumps are used to move the pesticide from one container to another, thereby theoretically reducing worker exposure from splashes and vapors otherwise occurring while pouring liquid pesticides from open containers. Enclosed tractor cabs reduce applicator exposure by simply protecting the operator from pesticide drift.

EPA has determined that the use of this equipment would not adequately reduce worker exposure to dinoseb. As previously mentioned, the use of such protective equipment was considered in the recent exposure assessment. Some of the surrogate exposure studies were conducted with the use of this state-of-the-art protective equipment. As such, the higher MOS values reflect conditions that would result in less dinoseb exposure. Although higher MOS values were calculated for mixer/loaders using closed loading systems (and different application rates), and higher MOS ranges were calculated for applicators using a variety of application equipment including enclosed tractor cabs, none of these MOS values provided adequate margins of safety from the risk of developmental toxicity. All MOS values were still well below 100.

The use of closed loading systems and enclosed tractor cabs would not provide sufficient protection against dinoseb exposure and, therefore, this option would not effectively mitigate risk.

C. Lower Application Rates

Another possible option to mitigate risk is to reduce the application rate to a level that produces a significantly lower exposure to mixer/ loaders and applicators. Handling less pounds of active ingredient does generally reduce exposure to mixer/loaders and applicators. The exposure assessment identified sites that use high application rates such as some preemergence uses of dinoseb (9 to 12 pounds active ingredient per acre). Conversely, relatively low application rates (0.625 pounds active ingredient per acre) are used for fungicidal uses of dinoseb. While the exposure will in fact be influenced by a lower application rate, high exposure will still occur. MOS values for sites where lower application rates are currently used are still significantly below 100.

The use of lower application rates would not effectively mitigate the risk from dinoseb exposure.

D. Gender-Based Restrictions

A number of gender-based restrictions could be required to reduce the risk of developmental toxicity associated with exposure to dinoseb. Because only the fetuses of pregnant women are at risk of developmental toxicity, the labeling for dinoseb products could be amended to prohibit women of child bearing capacity from mixing/loading or applying dinoseb. EPA could require label or other warnings to alert women to the potential for developmental toxicity. In addition, EPA could require employers to obtain the informed consent of female workers in writing before permitting them to work with dinoseb.

As a practical matter, pregnant women could misunderstand a label warning or prohibition or could knowingly jeopardize the health of the fetus. Some women may be pregnant but not yet be aware of their pregnancy. Birth defects may be induced early in the first trimester of pregnancy—often at that time when women are unaware of their condition.

The current work force handling dinoseb contains an expanding number of females. Nationally, EPA estimates that 5 percent of the mixer/loaders and applicators of pesticides are female. Many women have entered the agricultural workforce in the last two decades. Today, more women own and operate farms and more women professionally apply pesticides than in previous decades.

Warning female farmworkers or prohibiting them from handling dinoseb or working in dinoseb-treated areas is impractical and difficult to enforce. United States Department of Agriculture (USDA) statistics on the number of female farmworkers in 1981 show that nearly 490,000 work either permanently or temporarily on farms in the U.S. Crops such as grapes, berries, nuts, and fruit orchards typically require large farmworker support.

Other pregnant females may be exposed to dinoseb as bystanders from spray drift or as farm residents from clothing or other items contaminated with dinoseb. No adequate means exist to warn or prohibit pregnant females from being in the proximity of farms that use dinoseb. Women could contact contaminated farm equipment or other contaminated surfaces on the farm premises, or handle contaminated clothing or protective equipment. All of these exposure pathways would not be effectively controlled by gender-based restrictions.

Moreover, gender-based restrictions will not mitigate the risks associated with male reproductive effects and acute toxicity. Some male workers handling dinoseb are at risk of dinoseb-induced sterility and all workers are at risk of acute toxicity.

EPA has considered the feasibility of gender-based restrictions and concluded that these are not practical for reducing exposure to dinoseb and the risk of developmental toxicity, reproductive toxicity, and acute toxicity.

E. Reformulation

Some pesticides have been reformulated with the intent to reduce worker exposure. For example, products can be microencapsulated by encasing the pesticide with a microscopic, synthetic sheath. Alachlor (Lasso®) was microencapsulated to reduce exposure to mixer/loaders and applicators.

Exposure assessments were conducted on both the microencapsulated and emulsifiable concentrate formulations, but no statistically significant difference in worker exposure was found between the two assessments. The apparent failure of this attempt to reduce worker exposure demonstrates that it is difficult to reformulate a pesticide into a product that yields less exposure to workers.

Water soluble bags have also been developed that can contain a pesticide safely while it is being transferred to mixing tanks. Mixer/loader exposure is clearly reduced by such product innovations. Unfortunately, even pilots conducting aerial applications receive a relatively high degree of exposure (when compared with the developmental toxicity NOEL), and yet pilots receive the least amount of exposure of all applicators. Pilots receive the least amount of exposure because they do not mix and load the pesticide and they are also within a confined space during application. Even with this protection, pilots still have MOS values well below 100. Reduced mixer/loader exposure alone will not suffice as long as the applicator exposure remains high.

Based on the reformulation technologies in use today, EPA has no reason to believe that such techniques will sufficiently reduce occupational exposure to dinoseb.

VII. Risk-Benefit Analysis

This unit presents EPA's analysis of the relative risks and benefits of the uses of dinoseb as a pesticide. It sets out EPA's determinations whether these uses cause unreasonable adverse effects on the environment.

A. Uses of Dinoseb as an Herbicide, Desiccant, and Fungicide

As summarized above, dinoseb's use as a herbicide, desiccant, and fungicide poses a considerable risk of developmental toxicity, male sterility, and acute dermal toxicity from occupational and possibly from coincidental exposure to dinoseb. Furthermore, the continued use of dinoseb poses a risk to non-target organisms including certain threatened and endangered species.

Although the benefits from the use of dinoseb on soybeans, peanuts, cotton, potatoes, and green peas are evidently high, the known risks substantiate the findings that these uses cause unreasonable adverse effects on the environment. EPA, therefore, has determined to cancel all registrations of dinoseb products for these uses.

EPA has also decided to cancel all other registered uses of dinoseb as a herbicide, desiccant, and fungicide based on the high risk posed by continued use and by the fact that the benefits were determined to be low to inconsequential of these remaining uses.

B. Uses of Dinoseb as an Insecticide

Because the dinoseb products registered as insecticides are applied in the same manner as the fungicidal uses, the same risks are posed to agricultural workers and other people coincidentally exposed to dinoseb as the formerly discussed uses. In addition, the benefits from the use of dinoseb as an insecticide are negligible.

EPA has determined that the insecticidal use of dinoseb poses unreasonable adverse effects on the environment and, therefore, the insecticidal uses of dinoseb are hereby cancelled.

VIII. Procedural Matters

This Notice announces that the Agency intends to cancel each registration and deny each pending application for registration of any pesticide product which contains dinoseb or any of its salts. Each of these products is also subject to the Emergency Suspension Order issued today, which expressly prohibits further sale, distribution, or use of any pesticide containing dinoseb or any of its salts. This unit explains how eligible persons may request a cancellation or denial hearing, the consequences of requesting or failing to request such a hearing, and the procedures which will govern any hearing in the event one is requested.

A. Procedures for Requesting a Hearing

Any registrant of a pesticide product containing dinoseb or applicant for registration of a dinoseb product (including intrastate applicants who have previously marketed such products pursuant to 40 CFR 162.17) may request a cancellation or denial hearing by submitting such a request within 30 days of receipt of this Notice, or within 30 days from the date of publication of this Notice in the **Federal Register**, whichever occurs later. Any other person adversely affected by the Agency's intent to cancel, or any interested person with the concurrence of an applicant whose application the Agency intends to deny, may request a hearing within 30 days of the date of publication of this Notice in the **Federal Register**.

All persons who request a hearing must comply with the Agency's Rules of Practice Governing Hearings, 40 CFR Part 164. These procedures establish the following requirements: (1) Each hearing request must specifically identify by registration or accession number each individual pesticide product concerning which a hearing is requested, 40 CFR 164.22(a); (2) each hearing request must be accompanied by a document setting forth specific objections to the Agency's findings concerning unreasonable adverse effects and state the factual basis for each such objection, 40 CFR 164.22(a); and (3) each hearing request must be received by the Office of the Hearing Clerk within the applicable 30-day period (40 CFR 164.5(a)). Failure to comply with any one of these requirements will invalidate the request for a hearing and result in final cancellation or denial of registration for the product in question by operation of law.

Requests for hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

B. Consequences of Failure To File a Hearing Request

If no valid hearing request is submitted regarding a specific registration or application for registration of a dinoseb product, the cancellation or denial of registration for that product will be final and effective 30 days after receipt of this Notice by the registrant or applicant, or 30 days after publication of this Notice, whichever occurs later. Even if the registrant or applicant for registration of a dinoseb product requests an expedited hearing concerning the determination of imminent hazard set forth in the Emergency Order issued today, that request will not prevent subsequent cancellation or denial of registration for that product if no valid hearing request is submitted within the applicable 30-day period.

C. Consequences of Filing a Hearing Request

If a hearing concerning any product affected by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice Governing Hearings, 40 CFR Part 164. In the event a hearing is held concerning a particular product, cancellation or denial of the registration for that product will not become effective except pursuant to an order by the Administrator or his Judicial Officer at the conclusion of the hearing. Any hearing will be confined to the specific registrations or applications concerning which the hearing was requested.

D. Hearing Procedures

Any hearing concerning cancellation or denial of registration for any pesticide product containing dinoseb will be held in accordance with FIFRA section 6(d). In the event that an expedited suspension hearing on the question of imminent hazard is held concerning any pesticide product subject to this Notice, any cancellation or denial hearing requested pursuant to this Notice will be held in abeyance and will not commence until entry of a final order concerning the issue of suspension. I am also establishing a mandatory timetable for completion of any cancellation or denial hearing held pursuant to this Notice. The first pre-hearing conference concerning any cancellation or denial hearing must be held within 45 calendar days from the date of the publication of this Notice or 15 calendar days from the date of issuance of a final order concerning the issue of suspension, whichever is later. The evidentiary phase of the hearing must be completed and the Administrative Law Judge must forward his recommended decision to me within 15 months of the date of the first pre-hearing conference. I or my Judicial Officer will then issue a final order concerning the issue of cancellation and/or denial within 90 days, as provided by FIFRA section 6(d).

E. USDA and SAP Review

When the Agency intends to issue a Notice of Intent to Cancel, it must furnish a draft of that notice and an analysis of the impact of the proposed action on the agricultural economy to the Secretary of the Department of Agriculture (USDA) for comment at least 60 days prior to issuing the notice (FIFRA section 6(b)). In addition, the Agency must within the same time period submit the proposed cancellation action to the FIFRA Scientific Advisory Panel (SAP) for comment concerning the impact of the proposed action on health and the environment (FIFRA section 25(d)).

In the event that written comments are received from the USDA or the SAP within 30 days of such referral, the Agency must publish those comments and the Agency's response to the comments along with the cancellation notice. However, in the event that the Administrator determines that suspension of a pesticide registration is necessary to prevent an imminent hazard to human health, he may waive the requirements of notice to and consultation with the USDA and SAP (FIFRA section 6(b)).

As noted above, I am today issuing an Emergency Order suspending the registrations, and prohibiting all further distribution, sale, and use, of all pesticide products containing dinoseb. Having made the requisite determination that suspension of all dinoseb registrations is necessary to prevent an imminent hazard, I hereby waive the formal requirements that the Agency provide the USDA and the SAP with 60 days notice and an opportunity to comment prior to issuance of the Notice. FIFRA section 25(d), as amended in 1980, provides that, when I exercise my authority under section 6(c) to immediately suspend the registration of a pesticide, I must promptly submit that suspension action to the SAP for comment. In accordance with this provision, the Emergency Order suspending the registrations of all dinoseb products and this Notice of Intent to Cancel have been forwarded to the SAP and will be considered at the SAP meeting scheduled for October 29, 1986. In addition, although I have waived the formal requirement for notice to and consultation with the Secretary of Agriculture prior to issuance of this Notice, the Agency did in fact consult with USDA representatives concerning its intent to suspend the registrations of dinoseb products prior to issuance of this Notice and the accompanying Emergency Order.

F. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Cancel: The office of Administrative Law Judge, the office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

Dated: October 7, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86–23100 Filed 10–10–86; 8:45 am]

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Tuesday
October 14, 1986

Part III

Department of Education

National Institute of Handicapped Research; Proposed Funding Priorities for Research Fellowships; Notice

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research; Proposed Funding Priorities for Research Fellowships

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for research fellowships for fiscal year 1987.

SUMMARY: The Secretary of Education proposes funding priorities for research fellowships to be supported by the National Institute of Handicapped Research (NIHR) in fiscal year 1987. In the past, NIHR has funded some fellowships without specifying priority areas, as well as a number of fellowships based on announced priorities. The regulations provide that the Secretary may set priorities when there are critical areas to be addressed. The Secretary has determined that research fellows are needed in the following priority areas: study of rehabiiltation facilities; survey of professional development and training in rehabilitation research; analysis of employment issues related to learning disabilities; assessment of rehabilitation technology research; rehabilitation technology diffusion networking; and assessment of efforts in prevention of secondary disability.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before November 13, 1986.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute of Handicapped Research, Department of Education, 400 Maryland Avenue, SW., Room 3070 Switzer Building, Mail Stop 2305, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: National Institute of Handicapped Research. Telephone (202) 732–1207; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

SUPPLEMENTARY INFORMATION: Authority for the fellowship program of NIHR is contained in Section 202(d) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 and by Pub. L. 98–221. The purpose of this program is to build research capacity and also to allow the Secretary to obtain the benefits of research conducted by highly qualified individuals. This research has a direct bearing on the development of programs, methods, procedures, and devices to assist in the provision of rehabilitative services to individuals. NIHR fellowship regulations authorize the Secretary to establish priorities for fellowships by reserving funds to support fellowships in particular areas.

NIHR invites public comment on the merits of the proposed priorities, both individually and collectively, including suggested modifications to the proposed priorities. Comments can include factors which support the importance of a priority to handicapped individuals and others.

The final priorities will be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. However, for the purpose of submitting applications, applicants should assume that these proposed priorities will be the final priorities. If there are any significant changes in the final priorities, applicants will be given an opportunity to modify their applications.

The following six priorities represent areas in which NIHR proposes to support research and related activities through priority fellowships. The publication of these proposed priorities does not bind the United States Department of Education to fund fellowships in any or all of these research areas. Funding of particular fellowships depends on both the availability of funds and on responses to this notice.

Proposed Priorities

NIHR proposes to accept applications for fellowships in the following priority areas only:

Fellow to Study Rehabilitation Facilities

Vocational rehabilitation facilities provide a wide range of rehabilitation-related services to disabled clients, including services contracted for by state service agencies. The actual number of facilities and the number of clients they serve have increased in recent years. A recent survey of accredited vocational facilities (University of Wisconsin, Stout, 1985) indicates that mental retardation and mental illness account for approximately two-thirds of all clients of these facilities (with 15 percent and 51 percent of the total respectively). Recent research (e.g., University of Arkansas, 1985; J. Noble, 1985) indicates that the most effective strategy to promote employment for these two populations is the "place-train" method in which training is conducted in the actual competitive employment in which the work will be performed. Facilities, in contrast, rely heavily on a facility-based "train-place" model of vocational development. If vocational facilities are to effectively serve mentally retarded and mentally ill target groups, they must develop new approaches.

In addition, few clients currently served in facilities fall within the primary disability categories which are associated with the disability management approaches—job retention and return-to-work—currently used in business and industry (Menninger Foundation, 1985). The disability management approach focuses on individuals who become disabled while employed, and thus is not appropriated to the needs of chronically mentally ill and mentally retarded individuals, most of whom do not experience the onset of disability while employed. Thus, it would be important to determine whether facilities can serve effectively as resources to industry in abetting disability management, particularly to small firms which cannot operate their own employee assistance programs.

An absolute priority will be given to applications for a fellowship to:

- Review the current practices of vocational rehabilitation facilities in promoting competitive employment for their clients of various disability groups;
- Analyze the need and potential for rehabilitation facilities to adopt the alternate "place-train" strategy of vocational development, including the personnel development and training needs which would be associated with such a change;
- Investigate the feasibility of rehabilitation facilities developing technical assistance and related service programs to serve business and industry in an effect to improve the management of disability among employees, including the related pesonnel development and training needs; and
- Assess the potential of facilities to respond to the interests of the Social Security Administration in identifying improved methods for rehabilitating recipients of Supplemental Security Income benefits and for reducing costs of the Social Security Disability Insurance Program.

Fellow to Survey Rehabititation Research

There are currently no standards for assessing professional development in rehabilitation research in the various relevant fields—e.g., rehabilitation psychology, physiatry, nursing, occupational and physical therapy, prosthetics and orthotices, orthopedic surgery, neurology, rehabilitation engineering, and other medical and nonmedical specialties. Nor is there a general awareness of practices in effect in universities and hospitals regarding standards and guidelines for training or accrediting professionals engaged in research.

NIHR funds training in rehabilitation research as well as research activities. In reports accompanying the 1985 appropriations bill for NIHR, Congress noted the the need for additional training in rehabilitation research. NIHR believes that not enough is known about current needs and practices in developing research capacity in the various disciplines involved in rehabilitation.

An absolute priority will be given to applications for a fellowship to:

- Determine the current deployment of professionals in rehabilitation research by discipline, credentials, and types of training, and assess needs for additional training in various areas;
- Identify, through surveys of professional associations and academic sources, current practices in training and providing credentials to researchers in rehabilitation-related fields;
- Characterize current practices in terms of entry requirements for research training, amount of didactic and experiential training, formal and informal mentorships, internships and other types of supervision, types of support for research training, duration and intensity of training, accreditation of the training sources, evaluation of trainee achievement, credentials earned, and how those trained make use of the new research expertise;
- Study and describe preservice and inservice training practices for research in at least one area which is comparable to rehabilitation in several important characteristics, and assess the applicability of some of those practices to training for rehabilitation research; and
- Provide a final report to NIHR including the findings of all of the above inquiries and recommendations for options to strengthen training in rehabilitation research.

Fellow to Study Employment Issues Related to Learning Disabilities

Persons with severe learning disabilities have considerable difficulty in obtaining and maintaining employment; this problem is often attributable to behavioral and social skills deficits. Estimates of unemployment among learning disabled adults range from 37–75 percent, generally depending on the age of the group studies (W.J. White, 1982; Crimando, 1984).

While learning disability is generally an aggregate of various perceptual and communication difficulties, inappropriate social and interpersonal behavior is a frequent result.

Any efforts to enhance employability and promote employment for this population must be based on an awareness of behavior patterns associated with successful employment. Such efforts also require knowledge of both effective intervention programs to enhance social skills and strategies to modify jobs or worksites to increase the incidence of employment and job retention in this group. Indications are that many strategies used with other disabled and nondisabled populations are not effective with learning disabled idividuals, while some techniques seem to have exceptional applicability. (Crimando, 1984).

NIHR is interested in advancing the state-of-knowledge in this area by contributing to an awareness of the differences in behavior and social skills typically associated with employment and unemployment in this population, and by aggregating knowledge of effective interventions to increase the incidence of successful employment for this group.

An aboslute priority will be given to applications for a fellowship to:

- Identify behavior patterns prevalent among different subgroups of adults with severe learning disabilities, particularly behavioral problems likely to affect job performance and interpersonal relations on the job;
- Undertake an analysis, using employment data bases, existing literature, consumers, counselors, and employers as information sources, to determine whether specific behavior characteristics or patterns can be used to predict employability and success in different types of jobs;
- Survey and assess intervention strategies which indicate a probability of success in assisting learning disabled youth and adults to develop requisite social skills;
- Survey any existing models or strategies for job modifications which have been successful with this population; and
- Provide a final report on these findings which includes strategies for the dissemination of this information to appropriate users such as job counselors, employers, educators, consumers, and family members for possible incorporation into individualized education programs and individualized written rehabilitation programs.

Fellow in Evaluation of Rehabilitation Technology Research

NIHR and other Federal agencies support research and development of rehabilitation technology through a number of mechanisms, including a major program of Rehabilitation Engineering Centers (REC's). NIHR currently allocates about $10,000,000 per year for the area of technology research.

Developments in technological aids and devices for the total population, including disabled and nondisabled individuals, have been both rapid and extensive in recent years, because of general improvements in available materials, solid-state circuitry and microprocessors, and increased public responsiveness to the use of technology. Private business and industry, as well as academia and government, are making major investments in the development, adaptation, and distribution of technological devices relevant to disabled individuals, including computers, telecommunications, robotics, and environmental controls.

For planning purposes, NIHR seeks periodically to evaluate the effectiveness and adequacy of research in various rehabilitation fields, including technology. NIHR has found that there is a paucity of models and methods to be applied in evaluating research programs, particularly those in fields such as rehabilitation. There has been no systematic assessment of the feasibility and utility of applying various types of evaluation strategies to rehabilitation research. Possible evaluation approaches include, but are not limited to: studies of impact on clients; cost effectiveness studies; studies of the utilization of research projects; management-by-objective assessment; evaluability assessment; process evaluations; and assessment of the effects on future research and development. Evaluation approaches may include longitudinal studies, case studies, cross-sectional studies, management analyses, and product evaluations, among others.

NIHR believes there is a need for a study of the state-of-the-art in research evaluation, with an assessment of the relative usefulness of various approaches for the evaluation of fields of research, such as rehabilitation technology. A research study would yield alternative models for analysis of the technology program, including assessment of the appropriateness of the focus and priorities of the program; assessment of productivity and accomplishments; usefulness of technology research to the rehabilitation field and to disabled people; its relationships to private sector development and distribution activities; and its relation to technology research sponsored by other Federal agencies.

An absolute priority will be given to applications for a fellowship to:

- Review the relevant literature on evaluation of research programs in

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related areas, and review the existing literature on the technology program;

• Analyze the utility of various evaluation approaches for the assessment of the rehabilitation technology research program;

• Develop alternative assessment models which consider such factors as purposes and objectives of the technology research program; quality of research and management; quality, level, and appropriateness of personnel engaged in research and development and clinical services; needs for personnel development and training in research; research outcomes; importance and utilization of research products; appropriateness of priority areas of activity; relationship of REC's and the research programs of the REC's to other technology research and development, in both the private and public sectors; the role of the NIHR technology research program, especially the REC's, in producing clinical and research leaders in rehabilitation technology; institutional location and support to the technology research program; level and quality of client-services provided by REC's or other research projects; and other appropriate factors to be considered in an evaluation;

• Suggest various appropriate data collection strategies and data analysis methods which could be used for an evaluation of the technology research program, utilizing various types of data acquisition, including evaluation of written reports, use of self-reported and mail survey data, information collected from external sources, and on-site surveys; and

• Identify other sources of rehabilitation technology research and development for comparison purposes and to assess the extent of duplication or potential synergy.

Fellow in Rehabilitation Technology Diffusion Networking

There is a great disparity in the availability of technological aids and devices and the extent of their use by disabled individuals. There are many reasons for this gap, including lack of awareness about or availability of technological devices, costs, unsuitability of existing devices for specific individual needs, and lack of the personal assistance necessary to use the device or the interpersonal support to encourage its use.

The unmet needs of disabled persons for assistive devices have not been thoroughly documented. However, the 1979 Health Interview Survey published by the National Center for Health Statistics, estimated that 3.5 million noninstitutionalized adults, two million of them under age 65, need either assistance equipment or the aid of another person to perform basic functions of personal care, while an estimated additional 4.1 million adults need such help to perform general home management activities. An unknown number of disabled persons require assistive devices in order to maintain or improve job performance or to enhance the quality of their lives in social, cultural, educational, and recreational areas.

One approach to promote wider and more effective use of technological devices could be through the Independent Living Centers (ILC's), by establishing a network of resource centers for information on available technology and on commuity and other resources for individualized adaptations. Such an approach would enhance the capacity of ILC's individually and as network, and would stimulate the identification, development, and use of community resources and volunteers.

An absolute priorty will be given to applications for a fellowship to:

• Study ways to make information on assistive technology available through existing Independent Living Centers, including connections to existing databases on aids and devices (e.g., ABLEDATA) and plans to provide necessary training for staff to implement such information systems;

• Identify gaps in information and resources needed to make such a system feasible for ILC's and effective for disabled people;

• Review existing local programs involving volunteers and consumers in the provision of information about and assistance technological devices;

• Design a model for ILC's to use to assess the availability in their areas of standard technological devices and the local resources for making individual adaptations, including the availability of community groups and volunteers;

• Design one or more models for creating local volunteer councils involving professionals, consumers, and other volunteers, and assess liability issues involved in the use of volunteers and other community resources to adapt equipment; and

• Provide a model system which could be used by Independent Living Centers to establish information systems locally or to develop a national technology information network, including software and documentation for the system.

Fellow in Prevention of Secondary Disability

About 34.4 million Americans are disabled, over 25 million of whom have moderate or severe impairments that impede their abilities to carry out their major activities. Many disabled people are at high risk for further impairment and further loss of functional and daily living skills. This further loss of function may result from an increase in the severity of the disabling condition, as is often the case with a progressive disease such as multiple sclerosis and certain types of hearing or vision loss. Such a loss may also be caused by an additional related impairment for which the individual is at risk; circulatory or vision problems resulting from diabetes, or emotional impairment or social disabilities resulting from a traumatic injury or a chronic condition are examples of this type of additional disability. Finally, disabled individuals are at risk of further disability from the incidence of any impairment or disabiling condition to which people are susceptible generally, as well as to the effects of aging in disabled persons.

Whatever the etiology, the result is an increase in the severity of disability and the limitation in function. At present, the field has only limited knowledge of the problems and causes of additional disability, and we do not have strategies to prevent the occurrence of further disability, or so-called "secondary prevention".

An absolute priority will be given to applications for a fellowship to:

• Analyze the incidence and prevalence of additional impairments and disabilities among disabled people, and assess the extents to which disabled people become more disabled;

• Identify those disabilities most associated with additional risk;

• Identify Federal legislation which could have an impact on the prevention of further disability among disabled persons;

• Review the existing research on the topic and create an annotated bibliography;

• Identify current strategies to prevent further disability among disabled people;

• Identify priority areas for additional prevention efforts, including the disability groups and age groups associated with the greatest incidence of preventable secondary disabilities; and

• Conduct an in-depth analysis of one of the following issues, documenting past and present efforts and recommending areas for further research:

(1) One or more disability groups at high risk for increase in disability and for whom secondary prevention measures have been inadequate, including development of specific strategies to assist the subject population; or

(2) Extent and quality of existing public education efforts aimed at secondary prevention, including methods used by physicians and hospitals, related health personal, and voluntary organizations; or

(3) Role of fitness and recreation in the prevention of further disability, with emphasis on those disabilities where specific strategies are needed to effect maintenance of physical function and social skills; or

(4) The role of assistive devices in secondary prevention, especially as related to the physiology of muscle functioning and in the areas of communication and socialization.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed priorities. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before (the 30th day after publication of this document) will be considered before the Secretary issues final priorities. All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in Room 3070, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C., between the hours of 8:30 A.M. and 4:00 P.M., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research).

William J. Bennett,

Secretary of Education.

[FR Doc. 86-23123 Filed 10-10-86; 8:45 am]

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Part IV

Department of Education

Secondary Education and Transitional Services for Handicapped Youth Program; Applications for New Awards and Funding Priorities; Notices

DEPARTMENT OF EDUCATION

[CFDA No. 84.158]

Notice Inviting Applications for New Awards Under the Secondary Education and Transitional Services for Handicapped Youth Program for Fiscal Year 1987

Purpose: To assist handicapped youth in the transition from secondary school to postsecondary environments such as competitive or supported employment.

Applications Available: October 23, 1986 [158C&L]; December 1, 1986 [158J].

Project Period: up to 36 months.

Applicable Regulations: (a) The Secondary Education and Transitional Services for Handicapped Youth Program, 34 CFR Part 326, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79, and (c) when adopted in final form, the Annual Funding Priorities for this program. A notice of proposed annual funding priorities is published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed priorities. If there are any changes made when the final annual funding priorities are published, applicants will be given the opportunity to amend or resubmit their applications.

Priorities: The Secretary has proposed to establish the following priorities for fiscal year 1987. The Secretary intends to give an absolute preference to applications that meet any of these priorities.

CFDA No.	Priority	Closing date	Intergovernmental review deadline	Available funds	Estimate of awards
84.158C	Models for cooperative planning and implementation of transitional services	12/15/86	2/13/87	$700,000	7
84.158J	The development, access, and use of interpersonal contacts, relationships, and networks by handicapped youth	2/2/87	4/03/87	950,000	8
84.158L	Models for providing secondary mainstreamed learning disabled and other mildly handicapped students with job-related training	12/15/86	2/13/87	700,000	7

For applications or information contact: Dr. William Halloran, for CFDA Numbers 84.158C and 84.158L, U.S. Department of Education, Office of Special Education Programs, Division of Educational Services, 400 Maryland Avenue, SW., (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202, Telephone: (202) 732–1112; and Linda Glidewell, for CFDA Number 84.158J, U.S. Department of Education, Office of Special Education Programs, Division of Innovation and Development, 400 Maryland Avenue, SW., (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202, Telephone: (202) 732–1099.

Program Authority: 20 U.S.C. 1425

Dated: October 7, 1986.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 86–23124 Filed 10–10–86; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services

Secondary Education and Transitional Services for Handicapped Youth Program

AGENCY: Department of Education.

ACTION: Notice of proposed annual funding priorities.

SUMMARY: The Secretary proposes annual funding priorities for the Secondary Education and Transitional Services for Handicapped Youth Program to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1987.

DATE: Comments must be received on or before November 13, 1986.

ADDRESS: Comments should be addressed to the contact person listed in each individual proposed priority.

FOR FURTHER INFORMATION CONTACT: The person listed in each individual proposed priority.

SUPPLEMENTARY INFORMATION: The Secondary Education and Transitional Services for Handicapped Youth Program is authorized by section 626 of Part C of the Education of the Handicapped Act, as amended by the Education of the Handicapped Amendments of 1983, Pub. L. 98–199. This program supports research, development, demonstration, evaluation, and other types of projects that: (1) Strengthen and coordinate activities to assist in the transition to postsecondary education, vocational training, competitive employment, continuing education, or adult services for handicapped youth; and (2) stimulate the improvement and development of programs for secondary special education.

Eligible Applicants

Awards are made under this program to institutions of higher education, State educational agencies, local educational agencies, and other public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act).

Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference in fiscal 1987 to applications for projects that respond to one of the priorities described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priorities.

Priority 1—Models for Cooperative Planning and Implementation of Transitional Services

This priority would support model projects for cooperative planning and implementation of transitional services for handicapped youth between State, intermediate, and local educational agencies and adult service providers. These projects would: (1) Identify systemic barriers in agencies affecting the transition of handicapped youth from school to work; (2) develop and implement innovative approaches for transitional service delivery; and (3) evaluate the effectiveness of cooperative planning and implementation efforts. Adult service providers include: vocational rehabilitation, mental health, mental retardation, and adult education agencies as well as community colleges, centers for independent living, private and public employers and other similar providers.

Projects submitted under this priority must include a planning phase which consists of cooperative planning for delivering transitional services and an implementation and evaluation phase which develops, implements and evaluates transitional services to handicapped youth. These models must be innovative approaches to the cooperative planning and implementation of transitional services to handicapped youth across agencies, not an extension or replication of current efforts. The cooperative planning must extend beyond collaboration to new formal working commitments and agreements.

The focus of the cooperative planning phase must be to identify and address systemic barriers to effectively linking a handicapped youth exiting from school with adult service providers who can provide postsecondary training, employment, and other related services. Applicants must document the need for, and potential impact of, the project. The planning process should result in an implementation plan which: presents an analysis of systemic barriers to providing effective transitional services to handicapped youth; proposes solutions to ameliorate the systemic barriers; describes implementation procedures; and incorporates a rigorous evaluation plan. In addition, the planning process should be sufficiently documented in terms of procedures, resources required, and outcomes obtained so that others could replicate the cooperative planning process.

The implementation phase of these model projects must result in replicable approaches highlighting the procedures and resources required to coordinate and provide effective transitional services leading to employment, training and other related services for handicapped youth exiting school. These models must be rigorously evaluated to determine their effectiveness.

For further information contact: Dr. William Halloran, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202. Telephone (202) 732–1112.

Priority 2—The Development, Access, and Use of Interpersonal Contacts, Relationships, and Networks by Handicapped Youth

It is increasingly apparent that school, work, community, and leisure contacts, relationships, and networks are important in the successful adjustment of handicapped youth while in school and in the transition to adult life. Such contacts, relationships, and networks may be casual (passengers on the bus), personal (family and friends), or formal (an organized club, recreation program, or service agency). All, however, when appropriately developed and used can reduce the social isolation of handicapped individuals as well as assist them in solving problems encountered day-to-day in school, work, community, and leisure settings.

This priority would support research projects that: (1) Examine factors (attitudes, contexts, behaviors, social skills, etc.) related to the development, access, or use by handicapped youth of contacts, relationships, and networks in naturally occurring school, work, community, and leisure settings; (2) develop strategies that result in improved social interaction opportunities for handicapped youth through the access and use of contacts, relationships, and networks; and (3) determine the effectiveness of those intervention and support strategies for promoting the personal development, social adjustment, and community integration of handicapped youth.

For further information contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1099.

Priority 3—Models for Providing Secondary Mainstreamed Learning Disabled and Other Mildly Handicapped Students With Job-Related Training

This priority would support projects that: (1) Identify the job-related training and experience needed by mainstreamed secondary-aged learning disabled and other mildly handicapped students if they are to succesfully exit school to competitive employment and an independent adult life; (2) develop vocational/occupational intervention models providing job-related training and experience while maintaining the student's placement predominantly within general education; and (3) evaluate the effectiveness of the model using quantitative and qualitative evaluation approaches and incorporating comparison groups or cohorts into the evaluation design.

The target population for these projects are learning disabled and other mildly handicapped students at the secondary level receiving special education services within the general education class or receiving up to two hours of special education per day within a resource room class setting. It is expected that applications submitted under this priority will provide detailed information regarding the needs and problems encountered by the target population, and will describe procedures for supplementing this information base and obtaining additional baseline data within the early months of the project. It is further expected that the proposed models will be directly linked to the identified problems and needs and that the application will provide a conceptual framework based on special education, vocational education, and vocational rehabilitation research that shows the links between the identified problems and proposed intervention strategies. Finally, applications submitted under this priority must propose intervention models that are consistent with State and district requirements for obtaining a high school diploma upon graduation.

For further information contact: Dr. William Halloran, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1112.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed annual funding priorities. Written comments and recommendations may be sent to the address listed under each individual proposed priority. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues the final priorities.

All comments submitted in response to these proposed annual funding priorities will be available for public inspection, during and after the comment period, in Rooms 4094, (Priorities 1 and 3) and 3522 (Priority 2), Switzer Building, 330 "C" Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Authority: 20 U.S.C. 1425)

(Catalog of Federal Domestic Assistance number 84.158; Secondary Education and Transitional Services for Handicapped Youth Program

Dated: September 25, 1986.

William D. Bennett,

Secretary of Education.

[FR Doc. 86-23125 Filed 10-10-86; 8:45 am]

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H.R. 1246/Pub. L. 99–450
Colorado River Floodway Protection Act. (Oct. 8, 1986; 100 Stat. 1129; 9 pages) Price: $1.00

H.R. 5506/Pub. L. 99–451
To amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken. (Oct. 8, 1986; 100 Stat 1138; 2 pages) Price: $1.00

H.R. 5521/Pub. L. 99–452
To extend until October 13, 1986, the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository

Institutions Act of 1982. (Oct. 8, 1986; 100 Stat. 1140; 1 page) Price: $1.00

H.J. Res. 547/Pub. L. 99–453
To designate October 1986 as "Polish American Heritage Month." (Oct. 8, 1986; 100 Stat. 1141; 1 page) Price: $1.00

H.J. Res. 611/Pub. L. 99–454
To designate the period of December 1, 1986, through December 7, 1986, as "National Aplastic Anemia Awareness Week." (Oct. 8, 1986; 100 Stat. 1142; 1 page) Price: $1.00

H.J. Res. 721/Pub. L. 99–455
To designate the week of October 12, 1986, through October 18, 1986, as "National Job Skills Week." (Oct. 8, 1986; 100 Stat. 1143; 1 page) Price: $1.00

S. 1766/Pub. L. 99–456
To designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in honor of J. Glenn Beall, Sr. (Oct. 8, 1986; 100 Stat. 1144; 1 page) Price: $1.00

S. 2294/Pub. L. 99–457
Education of the Handicapped Act Amendments of 1986. (Oct. 8, 1986; 100 Stat. 1145; 33 pages) Price: $1.25

S.J. Res. 202/Pub. L. 99–458
Designating October 1986 as "American Liver Foundation National Liver Awareness Month." (Oct. 8, 1986; 100 Stat. 1178; 2 pages) Price: $1.00

S.J. Res. 245/Pub. L. 99–459
Designating "National Epidermolysis Bullosa Awareness Week." (Oct. 8, 1986; 100 Stat. 1180; 1 page) Price: $1.00

S.J. Res. 318/Pub. L. 99–460
Designating November 1986 as "National Diabetes Month." (Oct. 8, 1986; 100 Stat. 1181; 1 page) Price: $1.00

S.J. Res. 368/Pub. L. 99–461
To designate the month of October 1986, as "National Spina Bifida Month." (Oct. 8, 1986; 100 Stat. 1182; 1 page) Price: $1.00

S.J. Res. 406/Pub. L. 99–462
To designate October 4, 1986, as "National Outreach to the Rural Disabled Day." (Oct. 8, 1986; 100 Stat. 1183; 1 page) Price: $1.00

H.J. Res. 749/Pub. L. 99–463
Waiving the printing on parchment of certain enrolled bills and joint resolutions during the remainder of the second session of the Ninety-ninth Congress. (Oct. 9, 1986; 100 Stat. 1184; 1 page) Price: $1.00

H.J. Res. 750/Pub. L. 99–464
Making further continuing appropriations for the fiscal year 1987, and for other purposes. (Oct. 9, 1986; 100 Stat. 1185; 9 pages) Price: $1.00

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[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing these parts.

[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Pages 36673-36794

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Presidential Documents

Title 3—

The President

Proclamation 5548 of October 13, 1986

Polish American Heritage Month, 1986

By the President of the United States of America

A Proclamation

In October, we celebrate Polish American Heritage Month in the United States. Our Nation owes an immeasurable debt of gratitude to the millions of freedom-loving Poles who have come to our shores to build a new land. Polish Americans can be justly proud of the vital contributions people of Polish descent have made to our Nation in the arts, the sciences, religion, scholarship, and every area of endeavor.

The military genius of Kosciuszko and Pulaski was essential in the defense of our freedoms in the Revolutionary War. Since then, millions of Poland's sons and daughters have helped build our country's prosperity and defend our liberty.

Mankind's desire for liberty is universal. We are, as a country, linked with the Polish people in love for individual liberty, faith, and defense of the family. We share unstinting devotion to political and religious freedom, as expressed so courageously by Pope John Paul II and Lech Walesa.

We have supported the aspirations of Poles in recent years for a greater voice in determining their nation's destiny. We welcome the recent general amnesty for political prisoners in Poland as a positive step. We reaffirm our solidarity with these brave Polish citizens who, at great risk to themselves, have sought to expand liberty and to promote justice in their homeland.

As Polish Americans celebrate their cultural and spiritual values across the country during Polish American Heritage Month, all Americans can express gratitude for Poland's heroic example of faith and sacrifice through the centuries and for Polish Americans' manifest contributions to our Nation.

The Congress, by House Joint Resolution 547, has designated the month of October as "Polish American Heritage Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 1986 as Polish American Heritage Month. I urge all Americans to join their fellow citizens of Polish descent in observance of this month.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23455
Filed 10-14-86; 10:42 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5549 of October 13, 1986

National Children's Television Awareness Week, 1986

By the President of the United States of America

A Proclamation

Television is a medium of enormous potential capable of bringing a myriad of sights and sounds into our homes, schools, and places of work. Parental involvement and guidance can ensure that this miracle of modern technology can be used as an innovative tool of learning to enhance and enrich the education of our children.

The advent of cable television and video cassette recorders has created a technological revolution in the television industry that affords producers and broadcasters virtually limitless possibilities to improve and enrich TV programming. Quality television programming can open wide the windows of curiosity for children and enable them to share in the wonder of man's experience—whether in history, politics, religion, culture, or sports.

Television can also be a powerful tool in convincing children to say "no" to illegal drugs and "yes" to life. Parents now have a wonderful opportunity to work closely with schools, churches, libraries, and community groups to encourage and foster programming that will nurture the intellect and imagination of our children while at the same time promoting and reinforcing parental values that strengthen the family unit. Although television can never replace the adventure of good books, the two can serve to stimulate and reinforce each other while preparing our children to take up the exciting challenges that lie before them.

In order to increase the awareness of how television can be used to enhance the education of our children, the Congress, by Public Law 99-444, has designated the week beginning October 12, 1986, as "National Children's Television Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 12, 1986, as National Children's Television Awareness Week. I invite all of our citizens to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23456
Filed 10-14-86; 10:43 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5550 of October 13, 1986

White Cane Safety Day, 1986

By the President of the United States of America

A Proclamation

As more and more blind and visually handicapped Americans enter the mainstream of society to live and work among sighted people, all of us should reflect on the significance of the white cane. Through the aid of a white cane and an informed public, many blind and visually handicapped people can better enjoy the fullness of life.

The white cane guides its users and signals others—but it also symbolizes the ability of blind and visually impaired citizens to enjoy the freedom and independence meant for all Americans. Sighted people should be aware that many white cane users lead independent lives and that others are well on their way to doing so. White cane bearers should always receive friendliness, consideration, and respect on the street, on the job, and everywhere else Americans' paths cross.

In recognition of the significance of the white cane, the Congress, by joint resolution approved October 6, 1964, has authorized the President to designate October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 15, 1986, as White Cane Safety Day. I urge all Americans to salute the independence of those who carry the white cane and to consider how each of us, in our work and in our daily rounds, can show our respect for these proud and able Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23487
Filed 10-14-86; 10:44 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5551 of October 13, 1986

Thanksgiving Day, 1986

By the President of the United States of America

A Proclamation

Perhaps no custom reveals our character as a Nation so clearly as our celebration of Thanksgiving Day. Rooted deeply in our Judeo-Christian heritage, the practice of offering thanksgiving underscores our unshakeable belief in God as the foundation of our Nation and our firm reliance upon Him from Whom all blessings flow. Both as individuals and as a people, we join with the Psalmist in song and praise: "Give thanks unto the Lord, for He is good."

One of the most inspiring portrayals of American history is that of George Washington on his knees in the snow at Valley Forge. That moving image personifies and testifies to our Founders' dependence upon Divine Providence during the darkest hours of our Revolutionary struggle. It was then—when our mettle as a Nation was tested most severely—that the Sovereign and Judge of nations heard our plea and came to our assistance in the form of aid from France. Thereupon General Washington immediately called for a special day of thanksgiving among his troops.

Eleven years later, President Washington, at the request of the Congress, first proclaimed November 26, 1789, as Thanksgiving Day. In his Thanksgiving Day Proclamation, President Washington exhorted the people of the United States to observe "a day of public thanksgiving and prayer" so that they might acknowledge "with grateful hearts the many signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a form of government for their safety and happiness." Washington also reminded us that "it is the duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly to implore His protection and favor."

Today let us take heart from the noble example of our first President. Let us pause from our many activities to give thanks to Almighty God for our bountiful harvests and abundant freedoms. Let us call upon Him for continued guidance and assistance in all our endeavors. And let us ever be mindful of the faith and spiritual values that have made our Nation great and that alone can keep us great. With joy and gratitude in our hearts, let us sing those stirring stanzas:

O beautiful for spacious skies,
For amber waves of grain,
For purple mountain majesties,
Above the fruited plain!
America! America!
God shed His grace on thee.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, in the spirit of George Washington and the Founders, do hereby proclaim Thursday, November 27, 1986, as a National Day of Thanksgiving, and I call upon every citizen of this great Nation to gather together in homes and places of worship on that day of thanks to affirm by their prayers and their gratitude the many blessings bestowed upon this land and its people.

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IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23488
Filed 10-14-86; 10:45 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Kiwifruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the United States Standards for Grades of Kiwifruit. The Kiwifruit Administrative Committee (KAC), representing California kiwifruit growers, requested this action so the grade standards would reflect current industry practices and consumer demand. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Michael V. Morrelli, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3011.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Departmental Regulation 1512-1 and Executive Order 12291 and has been designated as "nonmajor." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This action brings the U.S. Standards for Grades of Kiwifruit into conformity with current marketing practices. Compliance with these standards will not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of such entities relative to large businesses.

On July 28, 1986, a proposed rule inviting public comment on a possible change in minimum shape requirements for U.S. Fancy Kiwifruit was published in the Federal Register (51 FR 144). The proposal also outlined a request that USDA redesignate two official kiwifruit models and modify a definition for "not badly misshapen" fruit in official inspection instructions. The models and inspection instructions are used by USDA licensed fruit and vegetable inspectors in the official application of these U.S. grade standards.

The 30-day comment period ended on August 27, 1986, and 27 comments were received. Commenters included the Kiwifruit Growers of California, the California Kiwifruit Commission, and various growers and handlers. All but one approved of the proposed change and many urged that it become effective prior to the 1986 harvest, anticipated to begin in mid-September.

One grower suggested that the USDA inspection instructions explanation of a "not badly misshapen" fruit, the minimum shape allowed in the U.S. No. 2 grade, should not be changed. This explanation provides guidelines for scoring "fan" shaped fruit that the grower asserts are considered highly desireable by consumers. However, such fruit cannot be marketed even under current California Kiwifruit Marketing Order rules. The change is made to clarify the inspection instructions to accurately reflect current practices. Other issues addressed by this commentor were primarily concerned with marketing practices established by the KAC and do not apply to this proposed change in U.S. grade standards.

All U.S. grade standards are developed and revised at the specific request of industry and with their support. The grade standards serve as a common trading language so that the industry can uniformly market the commodity. In addition to the grade standards, USDA prepares inspection instructions and visual aids that are used by inspectors in the application of the grade standards. The content of the inspection instructions and the visual aids are based on marketing practices used by the majority of the industry in both shipping areas and terminal markets. The comments received by USDA indicate clearly that industry approves of these changes. Therefore, the changes previously proposed and discussed herein, are revised with no changes.

Pursuant to 5 U.S.C. 553, it is also found contrary to industry needs and unnecessary to the public interest to postpone the effective date of this final rule until 30 days after the date of publication because of the following:

1. Harvest began on September 8, 1986, and this change should apply to as much of the crop as possible;

2. These grade standards are an integral part of the kiwifruit industry's marketing program in that they are used in wholesale sales contracts and referred to in a Federal Marketing Order (7 CFR 920.302);

3. The industry has requested this change and is prepared to market kiwifruit in accordance with its provisions during and subsequent to the 1986 season.

List of Subjects in 7 CFR Part 51

Fresh fruits, Vegetables, and Other products (inspection, certification, and standards).

PART 51—[AMENDED]

Accordingly, 7 CFR Part 51 is amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended; 1090 as amended. (7 U.S.C. 1622, 1624).

2. In Subpart—United States Standards for Grades of Kiwifruit, § 51.2335, paragraph (a)(1)(vi) is revised to read as follows:

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§ 51.2335 [Amended]

* * * * *

(vi) Well formed.

* * * * *

3. Section 51.2339 is amended by adding a definition for "well formed" preceding the current definition for "fairly well formed."

§ 51.2339 [Amended]

* * * * *

"Well formed" means the fruit has the shape characteristic of the variety and slight bumps or other roughness are permitted providing they do not detract from the appearance.

* * * * *

Done in Washington, D.C., on October 8, 1986.

James C. Hardley,
Administrator.

[FR Doc. 86-23206 Filed 10-14-86; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 86-336]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the Federal Register on June 13, 1986, which amended the witchweed quarantine and regulations by adding areas in North Carolina and South Carolina to the list of suppressive areas. The interim rule also amended the list of suppressive areas by deleting areas in North Carolina and South Carolina and by making certain nonsubstantive editorial changes. This action is necessary in order to impose certain restrictions on the interstate movement of regulated articles for the purpose of preventing the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

An interim rule published in the Federal Register on June 13, 1986, (51 FR 21499-21509) amended § 301.80-2a of the witchweed quarantine and regulations (7 CFR 301.80 *et seq.*, referred to below as the regulations) by adding areas in North Carolina and South Carolina to the list of suppressive areas. The interim rule also amended the list of suppressive areas by deleting areas in North Carolina and South Carolina. In addition, the interim rule made certain nonsubstantive editorial changes to the regulations. The regulations imposed certain restrictions on the movement of regulated articles and deleted restrictions on the interstate movement of regulated articles. The interim rule became effective on the date of publication.

Comments were solicited for 60 days after publication of the interim rule. No comments were received in response to the interim rule. The factual situations set forth in the document of June 13, 1986, still provide a basis for the amendments made by the interim rule. Accordingly, it has been determined that the amendments should remain effective as published in the Federal Register on June 13, 1986.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an estimated annual effect on the economy of approximately $100; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, it has been determined that approximately 290,000 small entities move regulated articles interstate from the specified areas in North Carolina and South Carolina, and that many hundreds of thousands of small entities move such articles interstate from nonregulated areas in the United States. However, it has been determined that only 10 small entities in North Carolina and South Carolina move regulated articles interstate from the areas that will be affected by this action. Further, the overall economic impact from this action is estimated to be approximately $100.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 51 FR 21499-21509 on June 13, 1986, is adopted as a final rule.

(Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162; and 164-167 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 9th day of October 1986.

William F. Helms,
Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-23248 Filed 10-14-86; 8:45 am]
BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Parts 418, 419, 427, and 429

[Doc. No. 37515]

Wheat, Barley, Oat, and Rye Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the Federal Register on June 16, 1986 (51 FR 21729). The interim rule amended the Wheat, Barley, Oat, and Rye Crop Insurance Regulations (7 CFR Parts 418, 419, 427, and 429), by removing the effect of the provision which cancels the policy for failure to furnish production records for the previous crop year for the 1986 crop year. The intended effect of this rule is to remove a restriction requiring retroactive production records which was inadvertently included in the regulations. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Monday, June 16, 1986, FCIC published an interim rule, effective upon publication in the Federal Register at 51 FR 21729, amending the Wheat, Barley, Oat, and Rye (7 CFR Parts 418, 419, 427, and 429), by removing the effect of the provision which cancels the policy for failure to furnish production records for the previous crop year for the 1986 crop year.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the Federal Register, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the Federal Register as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Parts 418, 419, 427, and 429

Crop insurance; Wheat, Barley, Oat, Rye.

Final Rule

PARTS 418, 419, 427 AND 429—[AMENDED]

Accordingly, the Interim Rule published in the Federal Register on Monday, June 16, 1986, at 51 FR 21729, is hereby adopted as final.

(Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on September 10, 1986.

Edward Hews,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-23178 Filed 10-14-86; 8:45 am]
BILLING CODE 3410-08-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 304

Forms, Instructions and Reports

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") has revised Part 304 (12 CFR Part 304) of its regulations which identifies the necessary forms and the places at which the forms used by insured banks for submitting reports and other information required by the FDIC may be obtained. The purpose of the revision was to remove obsolete information from the regulation, update information which still pertains, and to add information not previously included. Also, Part 304 was reorganized in order to improve its clarity and overall utility to the reader.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: John R. Keiper, Jr., Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, (202) 898-3810.

SUPPLEMENTARY INFORMATION: Part 304 of FDIC's regulations is issued pursuant to section 552 of Title 5 of the United States Code (5 U.S.C. 552), which requires that each agency shall make available to the public information pertaining to the description of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of reports and other submittals. Part 304 was selected for review under FDIC's Regulation Review Program (see 50 FR 14247, April 11, 1985) and was found to contain outdated information. The regulation contained obsolete form numbers and references and information that was no longer applicable. The regulation was revised to remove the outdated information, publish current Office of Management and Budget control numbers assigned to forms pursuant to OMB regulation (5 CFR 1320.7(f)(2)), and to make such other changes that would improve the regulation's clarity and overall utility. As a further aid to the reader, an appendix has been added that lists all forms used in connection with applications, reports and other submittals required of insured banks by the FDIC. An appendix that lists FDIC regional offices bank supervision has also been included.

Regulatory Factors

The revised rule does not require any action by insured banks that they do not now perform pursuant to current regulations, policy or practice. The revision serves only to update and correct Part 304 of FDIC's regulations and to improve its clarity and overall utility to the reader. Therefore, in accordance with the Administrative Procedure Act (5 U.S.C. 553), the Board of Directors may waive notice of proposed rulemaking and public comment, and the Board of Directors

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has determined that good cause exists for making the rule immediately effective.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board of Directors hereby certifies that the revised rule will not have a significant economic impact on a substantial number of small entities because the rule does not impose any new actions or requirements on insured banks.

The revised rule neither alters any existing nor creates any new recordkeeping or reporting requirements. Therefore, the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not applicable.

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304.3(n)	304.4(b).
304.3(o)	304.4(a).
304.3(p)	304.4(b).
304.3(q)	304.5(a).
304.3(r)	304.3(a).
304.3(s)	304.3(c).
304.3(t)	304.3(c).
304.3(u)	304.3(d).
304.3(v)	304.5(b).
304.3(w)	Obsolete.
304.3(x)	304.5(d).
304.3(y)	304.5(e).
304.3(z)(1)	304.6(a)(1).
304.3(z)(2)	304.6(a)(2).
304.4(b)(1)	304.6(b)(1).
304.4(b)(2)	304.6(b)(2).
304.4(b)(3)	304.6(b)(3).
304.4(b)(4)	304.6(b)(4).
304.4(b)(5)	304.6(b)(5).
304.4(b)(6)	304.6(b)(6).
304.4(c)	Unnecessary.
304.4(d)	304.7.

List of Subjects in 12 CFR Part 304

Administrative practice and procedure; Bank deposit insurance; Banks, banking; Foreign banks, banking; Reporting and recordkeeping requirements.

Accordingly, the FDIC hereby revises 12 CFR Part 304 to read as follows:

PART 304—FORMS, INSTRUCTIONS AND REPORTS

Sec.

304.1 Purpose and scope.
304.2 Forms and instructions—general.
304.3 Certified statements.
304.4 Reports of condition and income.
304.5 Other forms.
304.6 Report of fully insured brokered deposits and fully insured deposits placed directly by depository institutions.
304.7 Display of control numbers.

Appendix A to Part 304—List of Forms

Appendix B to Part 304—Federal Deposit Insurance Corporation Regional Offices—Bank Supervision

Authority: 5 U.S.C. 552; 12 U.S.C. 1817, 1818, 1819, 1820.

§ 304.1 Purpose and scope.

This part is issued under section 552 of Title 5 of the United States Code (5 U.S.C. 552), which requires that each agency shall make available to the public information pertaining to the description of forms available or the places at which forms may be obtained, and instructions as to the scope and content of reports and other submittals. The forms mentioned in this part are limited to those which are not already mentioned elsewhere within the rules and regulations of the Federal Deposit Insurance Corporation. However, Appendix A to this part lists all forms required by the FDIC and identifies the sections of FDIC's regulations where the forms are referenced.

§ 304.2 Forms and instructions—general.

Necessary forms with their related instructions to be used in connection with applications, reports, and other submittals can be obtained from FDIC regional offices—bank supervision. Appendix B to this part lists FDIC regional offices—bank supervision.

§ 304.3 Certified statements.

The certified statements required to be filed by insured banks under the provisions of section 7 of the Federal Deposit Insurance Act as amended (12 U.S.C. 1817), shall be filed with the Fiscal Agent, FDIC, Washington, DC 20429. Assessments must be certified and paid to the Corporation at the time the statements are required to be filed. The certified statement forms will be furnished to all insured banks by, or may be obtained upon request from, the Fiscal Agent. Questions regarding the forms should be directed to the Fiscal Agent. The forms which are applicable are as follows:

(a) *Form 6420/07: Certified Statement.* Form 6420/07 must be submitted on or before January 31 and July 31 of each year by every insured bank, except any newly insured banks which must submit their first certified statement on Form 6420/10. Form 6420/07 shows the deposit liabilities, less authorized deductions, reported in two reports of condition in each semiannual assessment period. The form must show the computation of the assessment base and the amount of the assessment due the Corporation;

(b) *Form 6420/10: First Certified Statement.* The First Certified Statement, Form 6420/10, must be submitted on or before July 31 or January 31 following the semiannual period in which the bank began operation as an insured bank. The form shows the deposit liabilities, less authorized deductions, as provided by law, on the last date within the period for which it was required to submit a report of condition or, if the bank became an insured bank after the last date in such period for which a report of condition was required, the bank shall make a report of condition as of the last day of the semiannual period, and shall file with the Corporation a certified statement showing, as its assessment base for the period, its assessment base for the date of the special report. The form must show the computation of the assessment base and the amount of the assessment due the Corporation;

(c) *Form 6420/11: Final Certified Statement—for use by an insured bank whose deposits are assumed by another insured bank.* This statement shows the deposit liabilities, less authorized deductions, of the bank in the report or reports of condition prior to the assumption date. Form 6420/11, accompanied by an appropriate letter of explanation and instructions, will be mailed by the Fiscal Agent to each insured bank whose deposit liabilities are assumed by another insured bank. If the deposits of the liquidating bank are assumed by a newly insured bank, the liquidating bank is not required to file Form 6420/11 or to pay any assessments upon the deposits so assumed after the semiannual period in which the assumption takes effect;

(d) *Form 6400/01: Consolidated Statement Amending Certified Statements.* This form is for amending or correcting previously submitted certified statements. The form is prepared and mailed by the Fiscal Agent of the Corporation, signed by an official of the bank, and returned to the Fiscal Agent.

§ 304.4 Reports of condition and income.

Quarterly reports of condition and income shall be filed by all State nonmember Banks (except District banks) with the Bank Financial Reporting Section, Division of Accounting and Corporate Services, FDIC, Washington, DC 20429. The report forms and the instructions for completing the reports will be furnished to all such banks by, or may be obtained upon request from, the Bank Financial Reporting Section. The forms which are applicable are as follows:

(a) *Forms FFIEC 031, 032, 033, and 034: Consolidated Reports of Condition and Income (from banks other than mutual and stock savings).* Forms FFIEC 031, 032, 033, and 034 are reports, for banks of different asset sizes or with foreign offices, as appropriate, in the form of an income statement, a reconciliation of changes in total equity capital accounts, and a balance sheet of the reporting bank. Supporting schedules request additional detail with respect to charge-offs and recoveries, income from international operations, specific assets and liability accounts, commitments and contingencies, past due and nonaccrual loans and leases, and information for assessment purposes. Reports of condition and income must be prepared and submitted in accordance with the appropriate instructions contained in the Federal Financial Institutions Examination Council booklet entitled "Instructions—Consolidated Reports of Condition and Income," which is furnished by the Corporation to all insured State nonmember commerical banks (except District banks);

(b) *Form 8040/25: Consolidated Reports of Income and Condition for Savings Banks.* Form 8040/25 contains reports in the form of an income statement, a reconciliation of changes in total net worth accounts, and a balance sheet of the reporting bank. Supporting schedules request additional detail with respect to charge-offs and recoveries, specific asset and liability accounts, commitments and contingencies, past due and nonaccrual loans and leases, and information for assessment purposes. Form 8040/25 must be ued by all state chartered mutual and stock savings banks. Reports of income and condition filed by savings banks must be prepared and submitted in accordance with the appropriate instructions contained in the FDIC booklet entitled "Instructions—Consolidated Reports of Income and Condition for Savings Banks," which is furnished by the FDIC to savings banks.

§ 304.5 Other forms.

The forms described below have been prepared by the Corporation for the use of banks.

(a) *Form 8020/05: Summary of Deposits (Commercial and Mutual and Stock Savings Banks).* Form 8020/05 is a report on the amount of deposits in various types of categories for each authorized office of an insured bank with branches; unit banks do not report. Reports as of June 30 of each year must be submitted no later than the immediately succeeding July 30. The report is filed with the Bank Financial Reporting Section, Division of Accounting and Corporate Services, FDIC, Washington, DC 20429. The report forms and the instructions for completing the reports will be furnished to all such banks by, or may be obtained upon request from, the Bank Financial Reporting Section, Division of Accounting and Corporate Services, FDIC, Washington, DC 20429.

(b) *Form 6120/06: Notification of Performance of Bank Services.* Form 6120/06 may be used to satisfy the notice requirement for bank service arrangements that is contained in section 7 of the Bank Service Corporation Act (12 U.S.C. 1867), as amended. In lieu of the form, a bank may satisfy the requirement by submitting a letter stating: The name of the servicer; the address at which the service is performed; the service being performed; and the date the service commenced. Either the form or the letter containing the notice information must be submitted to the regional director—bank supervision of the region in which the bank's main office is located within 30 days of the making of the bank service contract or the performance of the bank service, whichever occurs first.

(c) *Form FFIEC 001: Annual Report of Trust Assets.* This is an interagency report developed by the Federal Financial Institutions Examination Council. All insured state nonmember commercial and savings banks operating trust departments or banks granted consent by the Corporation to exercise trust powers, and their trust subsidiaries, are required to submit the December 31 report no later than February 15th of each year. When circumstances necessitate, additional information may be required about certain operations of the trust department. The report is filed with the Bank Financial Reporting Section, Division of Accounting and Corporate Services, FDIC, Washington, DC 20429. The report forms and instructions for completing the report will be furnished to all such banks by, or may be obtained upon request from, the Bank Financial Reporting Section, Division of Accounting and Corporate Services, FDIC, Washington, DC 20429.

(d) *Form FFIEC 002: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.* Form FFIEC 002 is a report in the form of a statement of the assets and liabilities of U.S. branches and agencies of foreign banks together with an additional detailed breakdown of selected items and, in the case of insured branches, information for assessment purposes. The report must be prepared in accordance with the instructions contained in the instruction booklet for the report, copies of which are furnished to all U.S. branches and agencies of foreign banks by the Federal Reserve System. The Board of Governors of the Federal Reserve System collects and processes the report on behalf of FDIC-supervised branches. The report is submitted quarterly to the appropriate Federal Reserve District Bank.

(e) *Form FFIEC 004: Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks.* Form FFIEC 004 is a recommended form that may be used by the executive officers and principal shareholders of an insured State nonmember bank to report to the board of directors of their bank on their indebtedness (and that of their related interests) to correspondent banks, as required by Part 349 of the FDIC's regulations. The reports are due January 31 of each year and cover indebtedness to correspondent banks during the preceding calendar year. Form FFIEC 004 is mailed annually by the FDIC to each bank.

§ 304.6 Report of fully insured brokered deposits and fully insured deposits placed directly by depository institutions.

(a) *Filing.* (1) Within ten days after the end of each month, each insured bank shall report the data described in paragraph (a)(2) of this section to the appropriate FDIC regional director—bank supervision if the total amount of the bank's fully insured brokered deposits and fully insured deposits placed directly by depository institutions as of the end of that month was in excess of either the bank's total capital and reserves or five percent of the bank's total deposits on such date.

(2) If a report is required by paragraph (a)(1) of this section, it must be in letter form, signed by an executive officer of the bank, and contain the following

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bank data, as of the end of the month in question: Total fully insured brokered deposits, total fully insured deposits placed directly by depository institutions, total assets, total loans and leases (net of unearned income), total deposits, and total capital and reserves. The report must also include the range of rates paid on fully insured brokered deposits and fully insured deposits placed directly by depository institutions received during the reporting month. Dollar amounts may be rounded to the nearest thousand.

(b) *Definitions.* For purposes of this section:

(1) The term "appropriate FDIC regional director—bank supervision" means the FDIC regional director in the FDIC region in which the insured bank is located;

(2) The term "brokered deposits" means deposits in domestic offices of insured banks (including insured domestic branches of foreign banks) and in insured banks and branches in Puerto Rico and United States territories and possessions which an insured bank receives from brokers or dealers for the account of others either directly or ultimately. All deposits received from brokers or dealers are deemed brokered deposits;

(3) The term "fully insured brokered deposits" means brokered deposits: (i) Issued in denominations of $100,000 or less, or (ii) issued in denominations of more than $100,000 that have been or will be participated out by the broker or dealer in shares of $100,000 or less. In the absence of information available to the insured bank that a brokered deposit issued in a denomination of more than $100,000 has not been or will not be participated out by the broker or dealer in shares of $100,000 or less, such a brokered deposit is deemed to be a fully insured brokered deposit. For this purpose, an insured bank may rely on statements made by a broker or dealer concerning the source of or ultimate disposition of a brokered deposit, unless there is a valid reason to believe such statements are untrue;

(4) The term "fully insured deposits placed directly by depository institutions" means the sum of the time and savings deposits in domestic offices of insured banks (including insured domestic branches of foreign banks) and in insured banks and branches in Puerto Rico and United States territories and possessions which an insured bank receives directly from those depository institutions in the United States whose total deposits in such offices of the insured bank are $100,000 or less (excluding accrued and unpaid interest). This definition does not include situations where a depository institution in the United States has uninsured funds (excluding accrued and unpaid interest) placed with the bank;

(5) The term "total capital and reserves" means: (i) For banks other than savings banks, the sum of "total equity capital" and the "allowance for loan and lease losses," as those terms are defined in the *Instructions—Consolidated Reports of Condition and Income* which is mentioned in § 304.4(a) of this part, and (ii) for savings banks (mutual and stock), the sum of "total net worth" and the "allowance for loan and lease losses," as those terms are defined in the *Instructions—Consolidated Reports of Income and Condition for Savings Banks*, which is mentioned in § 304.4(b) of this part;

(6) The term "total deposits" means the sum of "deposits in domestic offices" and "deposits in foreign offices." The terms "total assets," "depository institutions in the United States," "deposits in domestic offices," "deposits in foreign offices," and "total loans and leases (net of unearned income)" shall have the same meaning as found in the *Instructions—Consolidated Reports of Condition and Income* which is mentioned in § 304.4(a) of this part.

§ 304.7 Display of control numbers.

The following sections of this part of FDIC's regulations containing collection of information requirements are listed with the control numbers assigned by the Office of Management and Budget:

Section of 12 CFR Part 304	Currently Assigned OMB Control No.
304.3	3064-0057
304.4(a)	3064-0052
304.4(b)	3064-0052
304.5(a)	3064-0061
304.5(b)	3064-0029
304.5(c)	3064-0024
304.5(d)	7100-0032
304.5(e)	3064-0029
304.8	3064-0074

APPENDIX A TO PART 304—LIST OF FORMS

Form	Title	Section of FDIC's regulations (12 CFR Chapter III) where the form is referenced	OMB No.
FDIC 6112/01	Initial Statement of Beneficial Ownership of Equity Securities (Form F-7)	335.413	3064-0030.
FDIC 6112/02	Statement of Changes in Beneficial Ownership of Equity Securities (Form F-8)	335.414	3064-0030.
FDIC 6120/06	Notification of Performance of Bank Services	304.5(b)	3064-0029.
FDIC 6140/03	Report of Compliance with the Bank Protection Act	326.5	
FDIC 6200/05	Application for Federal Deposit Insurance (Commercial Banks)	303.1	3064-0001.
FDIC 6200/06	Financial Report	(*)	3064-0008.
FDIC 6200/07	Application for Federal Deposit Insurance for Operating Noninsured Institutions	303.1	3064-0069.
FDIC 6200/09	Application for Consent to Exercise Trust Powers	(*)	3064-0025.
FDIC 6220/01	Application for a Merger or Other Transaction Pursuant to section 18(c) of the Federal Deposit Insurance Act	303.3	3064-0016.
FDIC 6220/07	Application for a Merger or Other Transaction Pursuant to section 18(c) of the Federal Deposit Insurance Act (Phantom or Corporate Reorganization).	303.7(a)(4) and 303.3	3064-0015.
FDIC 6400/01	Consolidated Statement Amending Certified Statements	304.3(d)	
FDIC 6420/07	Certified Statement	304.3(a)	3064-0057
FDIC 6420/10	First Certified Statement	304.3(b)	3064-0057
FDIC 6420/11	Final Certified Statement	304.3(c)	3064-0057
FDIC 6500/70	Fair Housing Home Loan Application Log Sheet	338.4(e)(2)(iv)	3064-0046.
FDIC 6710/06	Report of Apparent Crime (Short Form)	353.1	3064-0077
FDIC 6710/06A	Report of Apparent Crime (Long Form)	353.1	3064-0077.
FDIC 6710/07	Application Pursuant to section 19 of the Federal Deposit Insurance Act	(*)	3064-0018.
FDIC 6922/01	Notice of Acquisition of Control	303.4(b)	3064-0019.
FDIC 8020/05	Summary of Deposits	304.5(a)	3064-0061.
FDIC 8040/25	Consolidated Reports of Income and Condition for Savings Bank	304.4(b)	3064-0054.
FDIC 8040/80	Report of Income and Condition—Monthly (FDIC-Insured Savings Banks—Large)	(*)	3064-0058.
FFIEC 001	Annual Report of Trust Assets	304.5(c)	3064-0024
FFIEC 002	Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks	304.5(d)	7100-0032
FFIEC 004	Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks	304.5(e)	3064-0029
FFIEC 009	Country Exposure Report	351.3	3064-0017
FFIEC 009a	Country Exposure Information Report	351.3	3064-0017
FFIEC 019	Country Exposure Report for U.S. Branches and Agencies of Foreign Banks	(*)	7100-0213
FFIEC 030	Foreign Branch Report of Condition	347.6(b)	3064-0011

APPENDIX A TO PART 304—LIST OF FORMS—Continued

Form	Title	Section of FDIC's regulations (12 CFR Chapter III) where the form is referenced	OMB No.
FFIEC 031	Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices	304.4(a)	3064-0052
FFIEC 032	Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets of $300 Million or More	304.4(a)	3064-0052
FFIEC 033	Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets of $100 Million or More But Less Than $300 Million.	304.4(a)	3064-0052
FFIEC 034	Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets of Less than $100 Million.	304.4(a)	3064-0052
FFIEC 035	Monthly Consolidated Foreign Currency Report of Banks in the United States	(*)	1557-0156
TA-1	Registered Transfer Agents—Form TA-1 for Registrations and Amendments	341.6	3064-0006
MSD-4	Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer	343.3	3064-0027
MSD-5	Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer.	343.3	3064-0027

[1] Not referenced in 12 CFR Chapter III. The report form is submitted by each individual director or officer of a proposed or operating bank applying to the FDIC for Federal deposit insurance as a state nonmember bank, or by a person proposing to acquire ownership or control of an insured state nonmember bank.
[2] Not referenced in 12 CFR Chapter III. The application form is submitted by insured state nonmember banks applying for FDIC consent to exercise trust powers.
[3] Not referenced in 12 CFR Chapter III. The application form is submitted by FDIC-insured banks applying for FDIC consent to employ persons who have been convicted of crimes involving dishonesty or breach of trust.
[4] Not referenced in 12 CFR Chapter III. The report form is submitted monthly by large FDIC-insured savings banks (assets of $500 million or more) to the Division of Research and Strategic Planning, FDIC, Washington, DC 20429.
[5] Not referenced in 12 CFR Chapter III. The report form is submitted by State chartered and Federally-licensed branches and agencies of foreign banks in the U.S. with $30 million or more in total direct claims on foreign residents. The Federal Reserve Board collects and processes the report on behalf of FDIC-supervised branches. The report is submitted quarterly to the appropriate Federal Reserve District Bank.
[6] Not referenced in 12 CFR Chapter III. The report form is submitted by banks (other than savings banks) and bank holding companies with a dollar equivalent of $100 million or more in assets, liabilities, foreign exchange contracts bought, and foreign exchange contracts sold in any six specific foreign currencies as of the end of a month. The Office of the Comptroller of the Currency collects and processes this montly report on behalf of insured state nonmember banks.

Appendix B to Part 304—Federal Deposit Insurance Corporation Regional Offices—Bank Supervision

Atlanta Regional Office

Regional Director (Bank Supervision), Federal Deposit Insurance Corporation, Marquis One Tower, Suite 1200, 245 Peachtree Center Avenue, NE., Atlanta, GA 30303
Alabama, Florida, Georgia, North Carolina, South Carolina, Virginia

Boston Regional Office

Regional Director (Bank Supervision), Federal Deposit Insurance Corporation, 60 State Street, 17th Floor, Boston, MA 02109
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Chicago Regional Office

Regional Director (Bank Supervision), Federal Deposit Insurance Corporation, 30 S. Wacker Drive, Suite 3100, Chicago, Illinois 60606
Illinois, Indiana, Wisconsin

Columbus Regional Office

Regional Director (Bank Supervision), Federal Deposit Insurance Corporation, 1 Nationwide Plaza, Suite 2800, Columbus, Ohio 43215
Kentucky, Michigan, Ohio, West Virginia

Dallas Regional Office

Regional Director (Bank Supervision), Federal Deposit Insurance Corporation, 1910 Pacific Avenue, Suite 1900, Dallas, TX 75201
Colorado, New Mexico, Oklahoma, Texas

Kansas City Regional Office

Regional Director (Bank Supervision), Federal Deposit Insurance Corporation, 2345 Grand Avenue, Suite 1500, Kansas City, MO 64108
Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota

Memphis Regional Office

Regional Director (Bank Supervision), Federal Deposit Insurance Corporation, 1 Commerce Square, Suite 1600, Memphis, TN 38103
Arkansas, Louisiana, Mississippi, Tennessee

New York Regional Office

Regional Director (Bank Supervision), Federal Deposit Insurance Corporation, 452 Fifth Avenue, 21st Floor, New York, NY 10018
Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virgin Islands

San Francisco Regional Office

Regional Director (Bank Supervision), Federal Deposit Insurance Corporation, 25 Ecker Street, Suite 2300, San Francisco, CA 94105
Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming

By order of the Board of Directors.

Dated at Washington, DC, this 7th day of October 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-23232 Filed 10-14-86; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 442

[Docket No. 86N-0331]

Antibiotic Drugs; Cefoperazone Sodium Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of cefoperazone sodium, cefoperazone sodium injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective October 15, 1986; comments, notice of participation, and request for hearing by November 14, 1986; data, information, and analyses to justify a hearing by December 15, 1986.

ADDRESS: Written comments to the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard Norton, Cener for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of cefoperazone sodium, cefoperazone sodium injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR Part 442 to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or

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cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective October 15, 1986. However, interested persons may, on or before November 14, 1986, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 14, 1986, a written notice of participation and request for hearing, and (2) on or before December 15, 1986, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 442 is amended as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 442 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10

2. By adding new § 442.12 to read as follows:

§ 442.12 Cefoperazone sodium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefoperazone sodium is the sodium salt of (6*R*, 7*R*)-7-[(*R*)-2-(4-ethyl-2,3-dioxo-1-piperazinecarboxamido)-2-(*p*-hydroxyphenyl)acetamido]-3-[[(1-methyl-1*H*-tetrazol-5-yl)thio]methyl]-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylate. It is a white to off-white crystalline powder or a lyophilized powder. It is so purified and dried that:

(i) Its cefoperazone content is not less than 870 micrograms and not more than 1,015 micrograms of cefoperazone per milligram on an anhydrous basis.

(ii) Its moisture content is not more than 5.0 percent, except if it is the lyophilized powder, its moisture content is not more than 2.0 percent.

(iii) The pH of an aqueous solution containing 250 milligrams per milliliter is not less than 4.5 and not more than 6.5.

(iv) It passes the identity test if the retention times of the sample and working standard agree within ±3.0 percent.

(v) It is crystalline, except if it is the lyophilized powder.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for cefoperazone content, moisture, pH, identity, and crystallinity (if it is not the lyophilized powder).

(ii) Samples, if required by the Director, Center for Drugs and Biologics: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Cefoperazone content.* Proceed as directed in § 436.338 of this chapter.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 250 milligrams per milliliter.

(4) *Identity.* From the high-performance liquid chromatograms of the sample and the cefoperazone working standard determined as directed in paragraph (b)(1) of this section, calculate the adjusted retention times of the cefoperazone in the sample and standard solutions as follows:

$$\text{Adjusted retention time of cefoperazone} = t - t_s$$

where:

t = Retention time measured from point of injection into the chromatograph until the maximum of the cefoperazone sample or working standard peak appears on the chromatogram; and

t_s = Retention time measured from point of injection into the chromatograph until the maximum of nonretarded solute appears in the chromatogram.

The sample and the cefoperazone working standard should have corresponding adjusted cefoperazone retention times within ±3.0 percent.

(5) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

3. By redesignating § 442.212 as § 442.212a and by adding new §§ 442.212 and 442.212b to read as follows:

§ 442.212 Cefoperazone injectable dosage forms.

§ 442.212b Cefoperazone sodium injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefoperazone sodium injection is a frozen aqueous iso-osmotic solution of cefoperazone sodium which may contain one or more suitable and harmless buffer substances in a diluent. Each milliliter contains cefoperazone sodium equivalent to 40 milligrams of cefoperazone per milliliter. Its cefoperazone content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cefoperazone that it is represented to contain. It is sterile. It is nonpyrogenic. Its pH is not less than 4.5 and not more than 6.5. It passes the identity test. The cefoperazone sodium used conforms to the standards prescribed by § 448.12(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The cefoperazone sodium used in making the batch for potency, moisture, pH, and identity.

(*b*) The batch for potency, sterility, pyrogens, pH, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The cefoperazone sodium used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* Thaw the sample as directed in the labeling. The sample solution used for testing must be at room temperature.

(1) *Potency.* Proceed as directed in § 436.339 of this chapter, preparing the sample solution and calculating the cefoperazone content as follows:

(i) *Sample solution.* Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion from each container and dilute with mobile phase to obtain a solution containing 160 micrograms per milliliter (estimated).

(ii) *Calculations.* Calculate the milligrams of cefoperazone per milliliter of sample as follows:

$$\text{Milligrams of cefoperazone per milliliter} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the cefoperazone peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefoperazone peak in the chromatogram of the cefoperazone working standard;

P_s = Cefoperazone activity in the cefoperazone working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, except inject a sufficient volume of the undiluted solution to deliver 10 milligrams of cefoperazone per kilogram.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(5) *Identity.* The high-performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the cefoperazone working standard.

Dated: October 3, 1986.

Sammie R. Young,

Deputy Director, Office of Compliance.

[FR Doc. 86-23193 Filed 10-14-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-86-1573; FR-2133]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice; correction.

SUMMARY: This document corrects errors in HUD's August 29, 1986, final notice announcing fiscal year 1986 fair market rent schedules for all market areas. The rents were effective upon publication—August 29, 1986.

FOR FURTHER INFORMATION CONTACT: For technical information on the development of schedules or the method used for the rent calculations, Michael Allard, Economic and Market Analysis Division, Office of Economic Affairs, (202) 755-5577. For information about the section 8 program, Cecelia D. Livingston, Office of Elderly and Assisted Housing, (202) 755-6477. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The August 29, 1986 Federal Register contained a complete listing of Fair Market Rents for use in the section 8 Certificate and other programs. (See 51 FR 31014.) The final notice contained mathematical or computation-related errors, resulting in incorrect FMRs for six counties. This document corrects these errors. (Because the Wilmington, Delaware PMSA covers three states, it appeared three times in the final notice. This correction repeats this pattern.)

Accordingly, this document corrects the following entries appearing in FR Doc. 86-19566 on August 29, 1986, as follows:

1. On page 31024, the entry for New Castle County, DE is corrected to read as follows:

STATE: DELAWARE

Wilmington, DE-NJ-MD PMSA	0br	1br	2br	3br	4br
County: New Castle	368	386	468	594	708

2. On page 31034, the entry for Cecil County, MD, is corrected to read as follows:

STATE: MARYLAND

Wilmington, DE-NJ-MD PMSA	0br	1br	2br	3br	4br
County: Cecil	328	390	468	598	703

3. On page 31039, the entries for Leflore County, Mississippi and Lowndes County, Mississippi are corrected to read as follows:

STATE: MISSISSIPPI

Nonmetropolitan Counties	0br	1br	2br	3br	4br
Leflore	222	348	394	379	410
Lowndes	244	369	348	467	462

4. On page 31042, the entry for Salem, NJ, is corrected to read as follows:

STATE: NEW JERSEY

Wilmington, DE-NJ-MD PMSA	0br	1br	2br	3br	4br
County: Salem	328	388	468	598	703

5. On page 31043, the entry for Clinton, NY, is corrected to read as follows:

STATE: NEW YORK

Nonmetropolitan Counties	0br	1br	2br	3br	4br
Clinton	349	399	348	425	471

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Dated: October 9, 1986.
Grady J. Norris,
Assistant General Counsel for Regulations.
[FR Doc. 86-23277 Filed 10-14-86; 8:45 am]
BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional Rates

AGENCY: Pension Benefit Guaranty Corporation.
ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning November 1, 1986. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The PBGC adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after November 1, 1986 and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: November 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The PBGC's regulation on the valuation of plan benefits in single-employer plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments to Title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") change significantly the rules for terminating single-employer plans, the valuation rules are much the same. (SEPPAA applies to all plan terminations initiated on or after January 1, 1986.) Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination (like all insufficient plans under prior law) must value guaranteed benefits and (new under SEPPAA) benefit commitments under the plan using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit commitments, although this is not required. (Such plans may value benefit commitments that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since October 1, 1986 (51 FR 32836 (September 15, 1986)). Changes in the financial and annuity markets now require a increase in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after November 1, 1986, which set reflects an increase of ¼ percent in the immediate interest rate to 7¾ percent.

Generally, the interest rates and factors will be in effect for a least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after November 1, 1986, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 continues to read as follows:

Authority: Secs. 4002(b)(3), 4041 (b) and (c), 4044, 4082 (b) and (c), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(1), 403(d), 402(a)(7), Pub. L. 98-364, 94 Stat. 1302, 1301, 1299, and by secs. 11007-11009, 11011, Pub. L. 99-272, 100 Stat. 244, 248, 253 [29 U.S.C. 1302, 1341, 1344, 1362].

2. Rate Set 64 of Appendix B is revised and Rate Set 65 of Appenix B is added to read as follows. (The introductory text is republished for the convenience of the reader and remains unchanged.)

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2, are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (pct)	Deferred annuities				
	On or After	And before		k_1	k_2	k_3	n_1	n_2
64	10-1-86	11-1-86	7.50	1.0675	1.0550	1.0400	7	8
65	11-1-86	.....	7.75	1.0700	1.0575	1.0400	7	8

Kathleen P. Utgoff,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 86-23203 Filed 10-14-86; 8:45 am]
BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.
ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal, which was published on March 25, 1986 (at 51 FR 10322). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of November 1986.

EFFECTIVE DATE: November 1, 1986.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. [*See* 5 U.S.C. 533 (b) and (d).] Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: Secs. 4002(b)(3), 4219(c)(1)(D), and 4281(b), Pub. L. 93-406, as amended by secs. 403(1) and 104(2) (respectively), Pub. L. 96-364, 94 Stat. 1302, 1237-1238, and 1201 (1980) [29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1)].

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
November 1986	.09825	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 6th day of October, 1986.
Kathleen P. Utgoff,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 86-22979 Filed 10-14-86; 8:45 am]
BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-3-FRL-3094-6]

Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Reading Body Works, Inc.

AGENCY: Environmental Protection Agency.
ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order (Order) issued by the Pennsylvania Department of Environmental Resources to Reading Body Woks, Inc. The Order requires the Company to bring air emissions from its miscellaneous metal parts painting facility in Reading Township, Berks County, Pennsylvania, into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by April 21, 1987. Because of the Administrator's approval, compliance with the Order will preclude suits under the enforcement provisions under section 113 of the Act of the citizen suit provisions under section 304 of the Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: This rule will take effect on October 15, 1986.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during normal business hours at:

Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Rosemarie P. Nino, Environmental Protection Specialist, (215) 597-9836.

SUPPLEMENTARY INFORMATION: On May 28, 1986, the Regional Administrator of

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the Environmental Protection Agency's Region III Office published in the Federal Register, Vol. 51, No. 102, Page 19223, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Reading Body Works, Inc. The basis for EPA's conclusion supporting the issuance of the DCO are set forth in that notice. The notice asked for the public comments by June 27, 1986, on the EPA proposal. No public comments were received in response to the notice.

The Delayed Compliance Order issued to Reading Body Works, Inc., is hereby approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Reading Body Works, Inc. on a schedule to bring its miscellaneous metal parts painting facility in Berks Country into compliance as expeditiously as practicable with Title 25 of the Pennsylvania Code, section 129.52, Miscellaneous Metal Parts and Products, a part of the Federally approved Pennsylvania State Implementation Plan. The Order requires emission monitoring and reporting requirements as required by sections 113(d)(1)(C) and 113(d)(7) of the Act. If the conditions of the Order are met, it will permit Reading Body Works, Inc., to delay compliance with SIP regulations covered by the Order until April 21, 1987. Reading Body Works, Inc. was unable to comply with these regulations prior to the compliance date called for by the DCO because low solvent coatings were still being developed. EPA has determined that its approval of the Order shall be effective October 15, 1986, because of the need to immediately place Reading Body Works, Inc., on a Federally enforceable schedule under the Clean Air Act requiring compliance with the applicable requirements of the State Implementation Plan.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of publication of this notice of final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: October 7, 1986.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDER

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413, 7601.

2. Section 65.431 is amended by adding the following entry to the table in alphabetical order to read as follows:

§ 65.431 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Reading Body Work, Inc.	Reading, Berks County, PA.		May 28, 1986	§ 129.52 of Title 25.	Apr. 21, 1987.

[FR Doc. 86-23102 Filed 10-14-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 157 and 162

[OPP-250076; FRL-3094-9]

Child Resistant Packaging; Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Effective date.

SUMMARY: As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA submitted a final regulation to both Houses of Congress for review prior to the regulation's taking effect. This regulation: (1) Reorganizes and redesignates regulations for child-resistant packaging of pesticides; and (2) establishes an exemption from the requirement for child-resistant packaging for pesticide products in large packages, replacing the "serviceperson" concept. This regulation was published in the Federal Register of June 11, 1986 (51 FR 21276). The minimum 60-day period for congressional review has ended.

EFFECTIVE DATE: The regulation is effective on October 15, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Jean M. Frane, Registration Division (TS-767C), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0044).

SUPPLEMENTARY INFORMATION: EPA issued a final regulation on May 31, 1986, which was published in the Federal Register of June 11, 1986 (51 FR 21276), under section 3 of FIFRA, as amended. The regulation reorganized and redesignated regulations for child-resistant packaging of pesticides. It also established an exemption from the requirement for child-resistant packaging for pesticide products in large packages. The exemption replaced a previous agency policy that accepted a labeling statement restricting use to "servicepersons" in lieu of child-resistant packaging for certain pesticide products. However, as required by section 25(a)(4) of FIFRA, the regulation could not take effect until it has been submitted to both Houses of Congress for a period of 60 days of continuous congressional session, as defined by section 25(a)(4). Since it was not possible to predict an exact date on which the congressional review period would end, the preamble to the final regulation stated that EPA would issue a separate Federal Register notice, after the review period was over, announcing the effective date of the regulation. The 60-day period of continuous congressional session has elapsed.

Accordingly, the final regulation is effective on October 15, 1986.

Authority: 7 U.S.C. 136w.

List of Subjects in 40 CFR Parts 157 and 162

Administrative practice and procedure, Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: October 6, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-23103 Filed 10-14-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 64

[Docket No. FEMA 6734]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Administrator finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appear for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
South Carolina: Dillon	Latta, Town of*	450087B	Oct. 29, 1974, Emerg.; July 3, 1986, Reg.; July 3, 1986, Susp.; Sept. 3, 1986, Rein.	June 14, 1974, Mar. 5, 1976 and July 3, 1986.
Pennsylvania: Armstrong	Kittanning, Borough of	420096B	June 18, 1984, Emerg.; July 3, 1986, Reg.; July 3, 1986, Susp.; Sept. 5, 1986, Rein.	May 31, 1974, May 21, 1976 and July 3, 1986.
Michigan: Charlevoix	Eveline, Township of	260773-New	Sept. 8, 1986	
Georgia: Stewart	Unincorporated Areas	130093	do	May 12, 1976.
Tennessee: Bradley	do	470057	Sept. 12, 1986, Emerg	July 8, 1978.
Texas: Fort Bend and Harris Counties	Willow Fork Drainage District 1	481603-New	Sept. 18, 1986, Emerg.; Sept. 8, 1986, Reg.	
Florida: Taylor	Unincorporated Areas	120302B	Apr. 25, 1975, Emerg.; Nov. 16, 1983, Reg.; Nov. 16, 1983, Susp.; Sept. 11, 1986, Rein.	Jan. 10, 1975, Jan. 13, 1978 and Nov. 16, 1983.
Michigan: Sanilac	Croswell, City of	260515A	Oct. 13, 1976 Emerg.; Aug. 19, 1986 Reg.; Aug. 19, 1986, Susp.; Sept. 12, 1986, Rein.	Apr. 11, 1975 and Aug. 19, 1986.
Georgia: Jackson	Unincorporated Areas	130345	Sept. 24, 1986, Emerg	Apr. 23, 1976.
Missouri: Benton	do	290027	do	Jan. 5, 1984.
New Hampshire: Rockingham	Seabrook Beach Village District	330054	Sept. 17, 1986, Emerg.; Sept. 17, 1986, Reg	Aug. 5, 1986.
Alabama: Elmore	Coosada, Town of	0150128	Sept. 17, 1986, Emerg.; Sept. 17, 1986, Reg	Dec. 15, 1978 and Aug. 19, 1986.
South Carolina: Greenwood	Ninety Six, Town of	450244B	Sept. 17, 1986, Emerg.; Sept. 17, 1986, Reg	Sept. 22, 1978 and Sept. 4, 1986.
West Virginia: Upshur	Buckhannon, City of	540199	July 8, 1975, Emerg.; Sept. 4, 1986, Reg.; Sept. 4, 1986, Susp.; Sept. 17, 1986, Rein.	June 26, 1974, Oct. 17, 1975 and Sept. 4, 1986.
Indiana: Starke	Hamlet, Town of*	180241B	Dec. 17, 1975, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Sept. 19, 1986, Rein.	June 21, 1974 and Sept. 1, 1986.
Iowa: Ida	Galva, City of*	190424A	June 28, 1978, Emerg.; Aug. 19, 1986, Reg.; Aug. 19, 1986, Susp.; Sept. 25, 1986, Rein.	Sept. 19, 1985 and Aug. 10 1986.
Michigan:				
Chippewa	DeTour, Township of	260775-New	Sept. 26, 1986, Emerg	
Lapeer	Elba, Township of	260776-New	do	
Oceana	Hart, Township of	260777-New	do	
Charlevoix	Hayes, Township of	260778-New	do	
Sanilac	Port Sanilac, Village of	260779-New	do	
New York: Montgomery	Ames, Village of	360439B	Oct. 7, 1975, Emerg.; Dec. 4, 1986, Reg.; Dec 4, 1986, Susp.; Sept 25, 1986, Rein.	July 15, 1977 and Dec. 4, 1986
Pennsylvania: Pike	Dingman, Township of	421864B	Mar. 6, 1979, Emerg.; Dec. 4, 1986, Reg.; Dec. 4, 1986, Susp.; Sept. 26, 1986, Rein.	Feb. 14, 1975, Jan. 11, 1980 and Dec. 4, 1986.
Indiana: Greene	Linton, City of	180456A	Sept. 30, 1986, Emerg	May 25, 1979.
Michigan: Osceola	Evart, City of*	260327A	Sept. 24, 1986, Emerg	Apr. 25, 1975.
Missouri: Ripley	Unincorporated Areas	290830A	Sept. 29, 1986, Emerg.; Sept. 29, 1986, Reg	Jan. 17, 1986.

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State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Pennsylvania: Bradford	New Albany, Borough of*	420172A	Aug. 14, 1975, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Sept. 26, 1986, Rein.	Nov. 8, 1974 and Sept. 1, 1986.
West Virginia: Marshall	Cameron, City of	540257	Mar. 31, 1982, Emerg.; Sept. 4, 1986, Reg.; Sept. 4, 1986, Susp.; Sept. 26, 1986, Rein.	Sept. 4, 1986.
Tennessee: Franklin	Estill Springs, Town of	470272B	July 17, 1975, Emerg.; May 15, 1986, Reg.; June 17, 1986, Susp.; Sept. 29, 1986, Rein.	Feb. 1, 1974, Oct. 22, 1976 and May 15, 1986.
Vermont: Essex	Brighton, Town of Essex County	500205A	Mar. 27, 1975, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Rein.	Nov. 26, 1976.
Michigan: Osceola	Hersey, Village of	260469	Sept. 25, 1986, Emerg	July 11, 1975.

* Willow Fork Drainage District has adopted by reference Fort Bend and Harris Counties Flood Insurance Studies with the accompanying Flood Hazard Boundary Maps, Flood Insurance Rate Maps, Flood Boundary-Floodway Maps, and any revisions thereto for floodplain management and flood insurance purposes.

† Minimal.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Region I			
Massachusetts:			
Orleans, city of, Barnstable County	250010C	Sept. 4, 1986, suspension withdrawn.	May 31, 1974, Mar. 4, 1971, Oct. 1, 1983, and Sept. 4, 1986.
Salisbury, town of, Essex County	250103C	do	Sept. 13, 1974, May 2, 1977, June 24, 1977, and Sept. 4, 1986.
Manchester, town of, Essex County	250090B	do	Apr. 5, 1974, Oct. 22, 1976, and Sept. 4, 1986.
Vermont: Stockbridge, town of, Windsor County	500155B	do	Nov. 1, 1974, Aug. 23, 1977, and Sept. 4, 1986.
Region II			
New York:			
Somers, town of, Westchester County	361242B	do	Dec. 20, 1974, June 4, 1976, and Sept. 4, 1986.
Southeast, town of, Putnam County	361041A	do	Oct. 1, 1974, and Sept. 4, 1986.
Horseheads, town of, Chemung County	360153B	do	Oct. 18, 1974, Jan. 16, 1976, and Sept. 4, 1986.
Kent, town of, Putnam County	360671B	do	Apr. 12, 1974, May 14, 1976, and Sept. 4, 1986.
Wallkill, town of, Orange County	360634B	do	May 31, 1974, July 30, 1976, and Sept. 4, 1986.
Concord, town of, Erie County	360235C	do	Aug. 2, 1976, Aug. 27, 1976, Feb. 27, 1984, and Sept. 4, 1986.
Horseheads, village of, Chemung County	360154B	do	Nov. 23, 1973, May 21, 1976, and Sept. 4, 1986.
Region III			
Delaware: New Castle County, unincorporated areas	105065B	do	Dec. 7, 1971, July 1, 1974, Dec. 26, 1975, and Sept. 4, 1986.
West Virginia:			
Philippi, city of, Barbour County	540004	do	Feb. 1, 1974, Apr. 2, 1976, and Sept. 4, 1986.
Parkersburg, city of, Wood County	540214B	do	June 14, 1974, Sept. 19, 1975, and Sept. 4, 1986.
Buckhannon, city of, Upshur County	540199B	do	June 28, 1974, Oct. 17, 1975, and Sept. 4, 1986.
Cameron, city of, Marshall County	540267	do	Sept. 4, 1986.
Region V			
Ohio: Lockland, city of, Hamilton County	390223B	do	Feb. 15, 1974, Jan. 13, 1978, and Sept. 4, 1986.
Wisconsin:			
Downing, village of, Dunn County	550121B	do	Apr. 3, 1981 and Sept. 4, 1986.
Glenwood City, city of, St. Croix County	550361A	do	May 14, 1976 and Sept. 4, 1986.
Region X			
Oregon: Salem, city of, Marion and Polk Counties	410167D	do	Aug. 9, 1974, July 2, 1976, June 15, 1979, July 5, 1984, and Sept. 4, 1986.
Region I			
Vermont:			
Addison, town of, Addison County	500163B	Sept. 18, 1986, suspension withdrawn.	Nov. 22, 1974, Sept. 24, 1976, and Sept. 18, 1986.
Ferrisburg, town of, Addison County	500002B	do	Sept. 6, 1974, May 17, 1977, and Sept. 18, 1986.
Panton, town of, Addison County	500169B	do	Jan. 17, 1975, Oct. 22, 1976, and Sept. 18, 1986.
Vergennes, city of, Addison County	500011B	do	June 28, 1974, June 25, 1976, and Sept. 18, 1986.
Region II			
New Jersey: Rockaway, township of, Morris County	340360B	do	Jan. 4, 1974, Nov. 15, 1978, and Sept. 18, 1986.
New York:			
Chester, town of, Orange County	360870A	do	Apr. 12, 1974, Dec. 5, 1975, and Sept. 18, 1986.
Mount Kisco, village of, Westchester County	360915B	do	Dec. 9, 1977, and Sept. 18, 1986.
Region III			
West Virginia: McDowell County, unincorporated areas	540114B	do	Jan. 10, 1975, Aug. 6, 1982, and Sept. 18, 1986.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Region IV			
Kentucky: Ghent, city of, Carroll County	210046B	do	Jan. 16, 1974, June 4, 1976, and Sept. 18, 1986.
Region V			
Illinois:			
Chandlerville, village of, Cass County	170023B	do	Nov. 23, 1973, Jan. 16, 1976, and Sept. 18, 1986.
Hull, village of, Pike County	170553A	do	June 11, 1976 and Sept. 18, 1986.
Petersburg, city of, Menard County	170506B	do	Dec. 7, 1973, Mar. 26, 1976, and Sept. 18, 1986.
Streator, city of, LaSalle and Livingston Counties	170406B	do	Nov. 9, 1973, Mar. 26, 1976, and Sept. 18, 1986.
Indiana: Wabash County, unincorporated areas			Dec. 27, 1974, Jan. 27, 1978, and Aug. 18, 1986.
Wisconsin: Kendall, village of, Monroe County	550267B	do	Aug. 30, 1974, Apr. 16, 1976, and Sept. 18, 1986.
Madison, city of, Dane County	550083D	do	Mar. 8, 1974, Sept. 5, 1975, Aug. 18, 1977, Sept. 30, 1980, and Sept. 18, 1986.
Region VI			
New Mexico: Las Vegas, city of, San Miguel County	350068C	do	June 28, 1974, Oct. 29, 1976, Apr. 19, 1983, and Sept. 18, 1986.
Oklahoma:			
Cowets, city of, Wagoner County	400216A	do	June 4, 1976 and Sept. 18, 1986.
Claremore, city of, Rogers County	405375E	do	Aug. 28, 1971, July 1, 1974, Jan. 19, 1975, Oct. 3, 1975, and Sept. 18, 1986.
Texas:			
Kirbyville, city of, Jasper County	482364B	do	May 10, 1974, Jan. 2, 1976, and Sept. 18, 1986.
Flower Mound, town of, Denton County	480777A	do	Oct. 29, 1976 and Sept. 18, 1986.
Region I			
Massachusetts:			
Cohasset, town of, Norfolk County	250236B	Sept. 29, 1986, suspension withdrawn.	Aug. 2, 1974, Oct. 29, 1976, and Sept. 29, 1986.
Scituate, town of, Plymouth County	250282C	do	Sept. 6, 1974, Sept. 30, 1977, Oct. 1, 1983, and Sept. 29, 1986.
Vermont: Weybridge, town of, Addison County	500174B	do	Jan. 17, 1975, July 16, 1982, and Sept. 29, 1986.
Region II			
New Jersey: Wayne, township of, Passaic County	345327B	do	Feb. 20, 1973, July 1, 1974, Nov. 18, 1976, and Sept. 29, 1986.
New York: Nichols, village of, Tioga County	360838C	do	June 7, 1974, Apr. 30, 1976, Nov. 3, 1978, and Sept. 29, 1986.
Region IV			
Alabama: Dallas County, unincorporated areas	0100030	do	Jan. 3, 1975, Mar. 3, 1978, and Sept. 29, 1986.
South Carolina:			
Beaufort, city of, Beaufort County	450026	do	June 28, 1974, Sept. 5, 1975, May 2, 1977, Sept 5, 1984, and Sept. 29, 1986.
Jasper County, unincorporated area	4501128	do	Mar. 31, 1978 and Sept. 29, 1986.
Port Royal, town of, Beaufort County	4500250	do	June 14, 1974, Oct. 10, 1975, Apr. 15, 1977, Sept. 5, 1984, and Sept. 29, 1986.
Region V			
Illinois:			
Cissna Park, village of, Iroquois County	1702998	do	Feb. 22, 1974, Oct. 10, 1975, and Sept. 29, 1986.
Milford, village of, Iroquois County	1702948	do	June 28, 1974, Aug. 22, 1975, and Sept. 29, 1986.
Ohio:			
Evendale, village of, Hamilton County	390214B	do	Mar. 1, 1974, Aug. 27, 1976, and Sept. 29, 1986.
North College Hill, city of, Hamilton County	390232B	do	June 7, 1974, July 25, 1975, and Sept. 29, 1986.
Region VI			
Texas:			
The Colony, city of, Denton County	481581A	do	Aug. 16, 1984 and Sept. 29, 1986.
Comal County, unincorporated areas	485463C	do	Nov. 9, 1973, July 1, 1974, May 14, 1976, and Sept. 29, 1986.
Canton, city of, Van Zandt County	480632B	do	May 10, 1974, Jan. 30, 1976, and Sept. 29, 1986.
Region VIII			
Colorado: Mancos, town of, Montezuma County	080123B	do	May 17, 1974, Jan. 16, 1976, and Sept. 29, 1986.
North Dakota: Beach, city of, Golden Valley County	380215A	do	July 11, 1975 and Sept. 29, 1986.
South Dakota: Custer County, unincorporated areas	460018B	do	Oct. 18, 1977 and Sept. 29, 1986.
Utah: Richfield City, city of, Sevier County	490131B	do	May 24, 1974, Dec. 5, 1975, and Sept. 29, 1986.
Region IX			
California:			
Camarillo, city of, Ventura County	065020B	do	July 19, 1974, Oct. 24, 1975, and Sept. 29, 1986.

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State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Crescent City, city of, Del Norte County	060039D	do	May 3, 1974, Dec. 13, 1974, Sept. 29, 1978, and Sept. 29, 1986.
Kern County, unincorporated areas	060075B	do	June 20, 1978 and Sept. 29, 1986.
McFarland, city of, Kern County	060060B	do	June 28, 1974, Aug. 15, 1975, and Sept. 29, 1986.
Moorpark, city of, Ventura County	060712A	do	Sept. 29, 1986.
San Buenaventura, city of, Ventura County	060419B	do	May 31, 1974, Dec. 19, 1975, and Sept. 29, 1986.
Tulare County, unincorporated areas	065066B	do	Feb. 14, 1975, Apr. 17, 1979, and Sept. 29, 1986.
Region X			
Oregon:			
Clatskanie, city of, Columbia County	410035C	do	Dec. 7, 1978, Sept. 19, 1979, Nov. 21, 1975, and Sept 29, 1986.
Eugene, city of, Lane County	410122B	do	June 7, 1974, Oct. 31, 1975, and Sept. 29, 1986.
Linn County, unincorporated areas	410136B	do	Dec. 6, 1977, and Sept. 29, 1986.
Malheur County, unincorporated areas	410149B	do	Apr. 4, 1978, and Sept. 29, 1986.
Sisters, city of, Deschutes County	410056B	do	Dec. 7, 1973, Apr. 23, 1976, and Sept. 29, 1986.
St. Helens, city of, Columbia County	410040B	do	Nov. 30, 1973, Apr. 23, 1976, and Sept. 29, 1986.
Washington:			
Cathlamet, town of, Wahkiakum County	530278A	do	Apr. 2, 1976, and Sept. 29, 1986.
Grays Harbor County, unincorporated areas	530057B	do	June 28, 1974, Feb. 21, 1975, and Sept. 29, 1986.
Region I—Minimal Conversion			
Vermont: Goshen, town of, Addison County	500004C	Sept. 1, 1986, suspension withdrawn.	Dec. 20, 1977, Nov. 28, 1980, and Sept. 1, 1986.
Region III			
Pennsylvania:			
Bloomfield, township of, Crawford County	421563B	do	Jan. 31, 1975, May 26, 1978, and Sept. 1, 1986.
Brighton, township of, Beaver County	422309A	do	Jan. 3, 1975 and Sept. 1, 1986.
Chippewa, township of, Beaver County	422311A	do	Dec. 27, 1974 and Sept. 1, 1986.
Columbia, township of, Bradford County	421059B	do	Aug. 2, 1974, May 7, 1976, and Sept. 1, 1986.
Connoquenessing, township of, Butler County	421418A	do	Nov. 15, 1974 and Sept. 1, 1986.
Delano, township of, Schuylkill County	422001A	do	Feb. 7, 1975 and Sept. 1, 1986.
East Brunswick, township of, Schuylkill County	422002B	do	Jan. 24, 1975, June 27, 1980, and Sept. 1, 1986.
East Union, township of, Schuylkill County	422004A	do	Nov. 15, 1974, and Sept. 1, 1986.
Forest Hills, Borough of, Allegheny County	420035B	do	May 10, 1974, Sept. 10, 1976 and Sept. 1, 1986.
Loganton, Borough of, Clinton County	421533B	do	Nov. 8, 1974, and Sept. 1, 1986.
Peters, township of, Franklin County	421654B	do	Sept. 13, 1974, May 26, 1976, and Sept. 1, 1986.
Richmond, township of, Crawford County	421568B	do	Oct. 25, 1974, Aug. 6, 1976, and Sept. 1, 1986.
Todd, township of, Fulton County	421665B	do	Jan. 17, 1975, Aug. 15, 1980, and Sept. 1, 1986.
Union, township of, Schuylkill County	422024A	do	Nov. 6, 1974 and Sept. 1, 1986.
Warren, township of, Bradford County	421406B	do	Jan. 31, 1975, Jan. 16, 1980, and Sept. 1, 1986.
Region IV			
Alabama: Blue Springs, town of, Barbour County	010224A	do	Jan. 10, 1975, and Sept. 1, 1986.
Georgia:			
Cairo, city of, Grady County	130067B	do	June 28, 1974, Sept. 19, 1975, and Sept. 1, 1986.
Seminole County, unincorporated areas	130067A	do	May 14, 1976, and Sept. 1, 1986.
Kentucky:			
Morganfield, city of, Union County	210216B	do	May 17, 1974, Dec. 19, 1975, and Sept. 1, 1986.
Providence, city of, Webster County	210223B	do	Feb. 1, 1974, Feb. 27, 1976, and Sept. 1, 1986.
Sturgis, city of, Union County	210217B	do	May 15, 1974, Sept. 19, 1975, and Sept. 1, 1986.
Vicco, city of, Perry County	210192B	do	May 10, 1974, Mar. 5, 1976, and Sept. 1, 1986.
South Carolina:			
Loris, town of, Horry County	450106B	do	June 21, 1974, Apr. 16, 1976, and Sept. 1, 1986.
Stuckey, town of, Williamsburg County	450192B	do	Sept. 6, 1974, July 23, 1976, and Sept. 1, 1986.
Yemassee, town of, Hampton and Beaufort Counties	450103B	do	June 21, 1974, Oct. 17, 1975, and Sept. 1, 1986.
Tennessee:			
Cornersville, town of, Marshall County	470325A	do	Sept. 17, 1976, and Sept. 1, 1986.
Haywood County, unincorporated areas	470027B	do	Dec. 30, 1977, and Sept. 1, 1986.
Region V			
Illinois:			
Piatt County, unincorporated areas	170542B	do	Jan. 31, 1975, Jan. 6, 1978, and Sept. 1, 1986.
Rock Falls, city of, Whiteside County	170694B	do	Mar. 22, 1974, Apr. 9, 1976, and Sept. 1, 1986.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Indiana:			
Loogootee, city of, Martin County	180165B	do	June 28, 1974, Dec. 26, 1975, and Sept. 1, 1986.
Shoals, town of, Martin County	180166B	do	Jan. 9, 1974, Aug. 20, 1976, and Sept. 1, 1986.
Newton County, unincorporated areas	180179B	do	Jan. 3, 1975, July 1, 1977, and Sept. 1, 1986.
Worthington, town of, Greene County	180079B	do	Nov. 23, 1973, May 28, 1976, and Sept. 1, 1986.
Michigan:			
Big Rapids, city of, Mecosta County	260139B	do	May 24, 1974, May 21, 1976, and Sept. 1, 1986.
Fruitland, township of, Muskegon County	260285B	do	June 28, 1974, June 25, 1976, and Sept. 1, 1986.
Glen Arbor, township of, Leelanau County	260604B	do	Dec. 30, 1977 and Sept. 1, 1986.
Golden, township of, Oceana County	260301A	do	Jan. 17, 1975 and Sept. 1, 1986.
Hart, city of, Oceana County	260484A	do	Apr. 11, 1975 and Sept. 1, 1986.
Maple Rapids, village of, Clinton County	260384A	do	Apr. 25, 1975 and Sept. 1, 1986.
Newfield, township of, Oceana County	260697B	do	Dec. 23, 1977 and Sept. 1, 1986.
Newton, township of, Calhoun County	260647B	do	May 28, 1976 and Sept. 1, 1986.
Minnesota: Jasper, city of, Rock and Pipestone Counties	270410B	do	Mar. 28, 1974, Oct. 31, 1975, and Sept. 1, 1986.
Ohio:			
Holmesville, village of, Holmes County	390276B	do	Mar. 22, 1974, July 30, 1976, and Sept. 1, 1986.
Jeromesville, village of, Ashland County	390006B	do	May 3, 1974, May 21, 1976, and Sept. 1, 1986.
Magnolia, village of, Carroll and Stark Counties	390051B	do	May 3, 1974, Jan. 30, 1974, and Sept. 1, 1986.
Mechanicsburg, village of, Champaign County	390057B	do	Feb. 1, 1974, June 4, 1976, and Sept. 1, 1986.
New Carlisle, city of, Clark County	390002B	do	Feb. 1, 1974, Apr. 9, 1976, and Sept. 1, 1986.
Wisconsin:			
Bruce, village of, Rusk County	550370B	do	May 24, 1974, May 28, 1976, and Sept. 1, 1986.
Coleman, village of, Marinette County	550280B	do	May 31, 1974, May 28, 1976, and Sept. 1, 1986.
Cumberland, city of, Barron County	550013B	do	May 31, 1974, Dec. 12, 1975, and Sept. 1, 1986.
Eleland, village of, Sawyer County	550409B	do	Aug. 16, 1974, June 4, 1976, and Sept. 1, 1986.
Fall Creek, village of, Eau Claire County	550130A	do	May 24, 1974, Sept. 24, 1976, and Sept. 1, 1986.
Frederic, village of, Polk County	550334B	do	May 31, 1974, Apr. 2, 1976, and Sept. 1, 1986.
Hollandale, village of, Iowa County	550178B	do	Sept. 20, 1974, May 14, 1976, and Sept. 1, 1986.
Kekoskee, village of, Dodge County	550101B	do	Jan. 23, 1974, June 4, 1976, and Sept. 1, 1986.
Mentiken, village of, Jackson County	550169B	do	May 31, 1974, May 28, 1976, and Sept. 1, 1986.
Minong, village of, Washburn County	550469B	do	Aug. 30, 1974, May 14, 1976, and Sept. 1, 1986.
Nelsonville, village of, Portage County	550539B	do	Jan. 23, 1974, Aug. 29, 1986, and Sept. 1, 1986.
Poplar, village of, Douglas County	550114B	do	Dec. 28, 1973, May 14, 1976, and Sept. 1, 1986.
Radisson, village of, Sawyer County	550411B	do	Sept. 6, 1974, Dec. 5, 1975, and Sept. 1, 1986.
Region VII			
Nebraska:			
Clearwater, village of, Antelope County	310255B	do	Apr. 2, 1976, Aug. 15, 1978, and Sept. 1, 1986.
Culbertson, village of, Hitchcock County	310110B	do	May 16, 1974, Nov. 14, 1975, and Sept. 1, 1986.
Verdigre, village of, Knox County	310133B	do	June 28, 1974, Dec. 5, 1975, and Sept. 1, 1986.
Winnebago, town of, Thurston County	310233B	do	Mar. 5, 1974, Dec. 26, 1975, and Sept. 1, 1986.
Iowa:			
Dedham, city of, Carroll County	190043A	do	Nov. 1, 1974 and Sept. 1, 1986.
Dow City, city of, Crawford County	190067B	do	May 31, 1974, Dec. 19, 1975, and Sept. 1, 1986.
Earling, city of, Shelby County	190947B	do	May 3, 1974, Jan. 2, 1976, and Sept. 1, 1986.
Kimballton, city of, Audubon County	190014A	do	Dec. 13, 1974 and Sept. 1, 1986.
Shenandoah, city of, Page County	190220B	do	June 28, 1974, Dec. 26, 1975, and Sept. 1, 1986.
Wall Lake, city of, Sac County	190504A	do	Sept. 26, 1975 and Sept. 1, 1986.
Westside, city of, Crawford County	190102B	do	Jan. 10, 1975, Nov. 26, 1979, and Sept. 1, 1986.
Kansas:			
Logan, city of, Phillips County	200068B	do	July 19, 1974, Oct. 17, 1975, and Sept. 1, 1986.
Madison, city of, Greenwood County	200121B	do	July 19, 1974, June 11, 1976, and Sept. 1, 1986.
Virgil, city of, Greenwood County	200122A	do	Jan. 10, 1975, and Sept. 1, 1986.
Mountain Grove, city of, Wright County	290409B	do	Apr. 5, 1974, Oct. 17, 1975, and Sept. 1, 1986.

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State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Region IV—Minimal Conversions			
Georgia:			
Irwinton, city of, Wilkinson County	130440A	Sept. 4, 1986, suspension withdrawn.	Apr. 25, 1975 and Sept. 4, 1986.
Lake City, city of, Clayton County	130044B	do	May 31, 1974, May 14, 1976, and Sept. 4, 1986.
Mississippi: Ecru, town of, Pontotoc County	280133C	do	Feb. 1, 1974, Feb. 13, 1976, May 9, 1980, and Sept. 4, 1986.
North Carolina:			
Lillington, town of, Harnett County	370361B	do	May 5, 1978 and Sept. 4, 1986.
Mitchell County, unincorporated areas	370161B	do	June 30, 1978 and Sept. 4, 1986.
Pollocksville, town of, Jones County	370142B	do	Mar. 15, 1974, June 4, 1976, and Sept. 4, 1986.
Region V—Minimal Conversions			
Illinois: New Baden, village of, Clinton County	170050B	do	May 24, 1974, June 21, 1976, and Sept. 4, 1986.
Michigan: Bridgeton, township of, Newaygo County	260466A	do	Oct. 22, 1976 and Sept. 4, 1986.
Wisconsin: Luxemburg, village of, Kewaunee County	550216B	do	Sept. 4, 1986.
Region VII			
Kansas: Sharon Springs, city of, Wallace County	200529A	do	Sept. 12, 1975 and Sept. 4, 1986.
Missouri: Licking, city of, Texas County	290441C	do	Mar. 1, 1974, Apr. 23, 1976, Apr. 12, 1983, and Sept. 4, 1986.
Wayland, city of, Clark County	290064B	do	Oct. 18, 1974, Feb. 6, 1976, and Sept. 4, 1986.
Region V—Minimal Conversions			
Michigan: Breen, township of, Dickinson County	260389B	Sept. 18, 1986, suspension withdrawn.	Mar. 31, 1978 and Sept. 18, 1986.
Region VIII			
Utah: Nephi, city of, Juab County	490065	do	Aug. 5, 1986.
Region X			
Idaho: White Bird, city of, Idaho County	160072B	do	Sept. 13, 1974, Dec. 26, 1975, and Sept. 18, 1986.
Region VIII—Minimal Conversions			
North Dakota:			
Dwight, township of, Richland County	380657B	Sept. 29, 1986, suspension withdrawn.	Sept. 29, 1986.
Lindaas, township of, Traill County	380300B	do	Sept. 29, 1986.
Roseville, township of, Traill County	380541B	do	Sept. 29, 1986.
Region IX			
California: Wheatland, city of, Yuba County	060460A	do	May 2, 1975 and Sept. 29, 1986.
Region VIII—Minimal Conversions			
Colorado: Huerfano County, unincorporated areas	080206B	Oct. 1, 1986, suspension withdrawn.	Nov. 22, 1977 and Oct. 1, 1986.
North Dakota:			
Mapleton, township of, Cass County	380262B	do	Dec. 8, 1981 and Oct. 1, 1986.
Raymond, township of, unincorporated areas	380261B	do	Dec. 8, 1981 and Oct. 1, 1986.
St. John, city of, Rolette County	380106	do	Dec. 6, 1974 and Oct. 1, 1986.
South Dakota: Revillo, town of, Grant County	460031A	do	Sept. 19, 1975 and Oct. 1, 1986.
Region X			
Idaho: Minidoka, county of, unincorporated areas	160201B	do	Sept. 6, 1977 and Oct. 1, 1986.

Issued: October 8, 1986.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 86-23222 Filed 10-14-86; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 64

[Docket No. FEMA 6733]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain mangement measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special flood hazard areas identified	Date [1]
Region III				
Pennsylvania:				
Scalp Level, borough of, Cambria County.	420237B	Apr. 19, 1986, Emerg.; Oct. 17, 1986, Reg.; Oct. 17, 1986, Susp.	June 26, 1974, July 23, 1976 and Oct. 17, 1986.	Oct. 17, 1986.
Windber, borough of, Somerset County.	422046A	Apr. 29, 1975, Emerg.; Oct. 17, 1986, Reg.; Oct. 17, 1986, Susp.	Jan. 31, 1975 and Oct. 17, 1986.	Do.
Region V				
Michigan: Huron, township of, Wayne County.	260545B	May 28, 1982, Emerg.; Oct. 17, 1986, Reg.; Oct. 17, 1986, Susp.	June 30, 1978 and Oct. 17, 1986.	Do.
Region VII				
Iowa:				
Muscatine County, unincorporated areas.	190638B	Apr. 8, 1975, Emerg.; Oct. 17, 1986, Reg.; Oct. 17, 1986, Susp.	May 31, 1977 and Oct. 17, 1986.	Do.
West Liberty, City of, Muscatine County.	190215B	Apr. 30, 1976, Emerg.; Oct. 17, 1986, Reg.; Oct. 17, 1986, Susp.	Jan. 16, 1974, Apr. 30, 1976 and Oct. 17, 1986.	Do.
Kansas: Syracuse, city of, Hamilton County	200124C	July 25, 1975, Emerg.; Oct. 17, 1986, Reg.; Oct. 17, 1986, Susp.	Jan. 9, 1974, Nov. 14, 1975, Oct. 2, 1979 and Oct. 17, 1986.	Do.
Missouri: Moniteau County, unincorporated areas	290235B	June 20, 1983, Emerg.; Oct. 17, 1986, Reg.; Oct. 17, 1986, Susp.	Sept. 30, 1983 and Oct. 17, 1986.	Do.

[1] Certain Federal assistance no longer available in special flood hazard areas.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: October 8, 1986.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 86-23221 Filed 10-14-86; 8:45 am]

BILLING CODE 6718-01-M

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 513 and 553

[Acquisition Circular AC–86–4; Supplement 1]

Revised Procedures for Use of the GSA Form 300, Order for Supplies and Services

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation (GSAR) Acquisition Circular AC–86–4 extends the expiration date to April 1, 1987. The intended effect is to extend the policies and procedures as established in AC–86–4, which implemented a change in the procedures for processing orders for supplies and services placed on the GSA Form 300, pending a revision to the GSAR.

DATES: *Effective Date:* October 2, 1986.

Expiration Date: This circular expires April 1, 1987, unless extended or cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations, Washington, DC 20405, (202) 566–1224.

Regulatory Impact

This temporary rule was not published for public comment because it does not have a significant effect beyond the internal operating procedures of the agency or have a cost or administrative impact on contractors or offerors. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). This temporary rule revises internal agency procedures. Accordingly, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq. Government procurement.

PARTS 513 AND 553—[AMENDED]

1. The authority citation for 48 CFR Parts 513 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 513 and 553 are amended by the following supplement to Acquisition Circular AC–86–4

General Services Administration Acquisition Regulation—Acquisition Circular AC–86–4; Supplement 1

To: All GSA contracting activities.

Subject: Revised procedures for use of the GSA Form 300, Order for Supplies and Services.

1. *Purpose.* This supplement extends the expiration date of the General Services Administration Acquisition Regulation (GSAR) Acquisition Circular AC–86–4.

2. *Effective date.* October 2, 1986.

3. *Expiration date.* Acquisition Circular AC–86–4 and this supplement will expire on April 1, 1987, unless cancelled earlier.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86–23177 Filed 10–14–86; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 51, No. 199
Wednesday, October 15, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

Fresh Peaches Grown in Georgia; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among growers of fresh peaches grown in Georgia to determine whether they favor continuance of the marketing order under which they operate.

DATES: The referendum period is October 20 through October 31, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447–5697.

SUPPLEMENTARY INFORMATION: This action is taken under Marketing Order 918 (7 CFR Part 918) regulating the handling of fresh peaches grown in Georgia. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the act.

On July 29, 1986, the Georgia Peach Industry Committee petitioned the Secretary to conduct a continuance referendum to ascertain whether or not growers favored continuance of the marketing order. The Department is required under § 918.61(c) to conduct such a referendum when requested by the committee prior to December 1. A continuance referendum on this order was last held by the Department in September 1976.

A vote approving continuation of the order would require approval by two-thirds of the producers voting in the referendum or by producers voting who have produced two-thirds of the volume of production represented in the referendum

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. In the event that the requisite majority of producers, by number or volume of production represented in the referendum, do not approve continuation of an order, the Secretary will consider termination of the order but would not be required to terminate. In evaluating the merits of termination, the Secretary will not only consider the results of the continuance referendum but also other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the act.

In any event, section 8c(16)(B) of the act requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination, and such majority produced more than 50 percent of the commodity for market.

It is hereby directed that a referendum be conducted during the period October 20 through October 31, 1986, among growers who, during the period March 1, 1986, through September 1, 1986 (which period is hereby determined to be a representative period for purposes of this referendum), were engaged, in production in the order area of fresh peaches for market, to ascertain whether such growers favor the continuance of the marketing order.

John R. Toth, Fruit and Vegetable Division, AMS, USDA, P.O. Box 9, Lakeland, Florida 33802, and Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, are hereby designated as referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended" (7 CFR Part 900.400 *et seq.*).

Authority: Agricultural Marketing Agreement Act of 1937, as amended, secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: October 8, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–23321 Filed 10–14–86; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

Documentary Requirements for Nonimmigrants; Waivers, Admission of Certain Inadmissible Aliens, Parole

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Extension of comment period for notice of proposed rulemaking.

SUMMARY: The Service has extended from October 7, 1986 to October 24, 1986 the deadline for submitting comments in response to requests received from the public. The amendments the Service proposed were published on August 8, 1986 at 51 FR 28576.

DATE: Comments are now due on or before October 24, 1986.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Flora T. Richardson, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: The Service has extended the deadline for submitting written comments from October 7, 1986 to October 24, 1986 to allow the public additional opportunity to comment on proposed amendments published on August 8, 1986 at 51 FR 28576. The proposed rule would amend the regulations relating to temporary alien workers seeking classification under section 101(a)(15)(H) of the Immigration and Nationality Act. The rule proposes to clarify Service requirements for classification, admission, and maintenance of status under this nonimmigrant classification and to consolidate into regulation

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numerous policies that are embodied in precedent decisions, Operations Instructions, and other policy issuances.

Dated: October 7, 1986.

Harriet B. Marple,

(Acting) Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-23093 Filed 10-14-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Ch. III

[Docket No. 60984-6184]

Request for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Notice of request for comments on foreign policy-based export controls.

SUMMARY: The Office of Technology and Policy Analysis (OTPA), Export Administration, is reviewing the foreign policy-based export controls in the Export Administration Regulations (15 CFR Parts 368 through 399) to determine whether they should be modified, rescinded or extended. To help OTPA make this determination, OPTA is seeking comments on how existing foreign policy-based controls have affected exporters and the general public.

DATE: Comments must be received by December 15, 1986 to assure full consideration in the formulation of export control policies.

ADDRESS: Written comments (six copies) should be sent to Joan Maguire, Regulations Branch (Room 1622), Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Joan Sitnik, Country Policy Branch, Strategic Planning and Policy Division, Office of Technology and Policy Analysis, Export Administration. Telephone: (202) 377-4930.

SUPPLEMENTARY INFORMATION:

Generally, the foreign policy controls maintained by Export Administration relate to the following: Human rights, South Africa and Namibia, Libya, anti-terrorism, chemical warfare, regional stability, embargoed communist countries, oil and gas equipment for the Soviet Union and Afghanistan, and truck manufacturing equipment for the Soviet Kama River and ZIL truck plants.

The licensing policies for these control programs are defined in Parts 376 and 385 of the Export Administration Regulations.

Some of these controls are mandated by statute, while some have been imposed administratively.

Subsequent to the most recent extension of controls on January 21, 1986, two additions to the foreign policy controls were made. On June 5, 1986, existing foreign policy-based controls on light helicopters (10,000 lbs. or less empty weight) to Cuba, Iran, and Libya were expanded to include PDR Yeman and Syria. Also on June 5, 1986, Syria became subject to existing controls on chemicals to Iran and Iraq.

Effective July 13, 1986, the Department of Commerce, in consultation with the Department of State, extended foreign policy controls on exports to South Africa and Namibia pursuant to section 6 of the Export Administration Act of 1979, as amended. This action extended controls that had been made effective upon enactment of the Export Administration Amendments Act of 1985.

To assure maximum public participation in the review process, comments on the extension or revision of the existing foreign policy controls are solicited. The Department is particularly interested in the experience of individual exporters in complying with these controls, with emphasis on economic impact and specific instances of business lost to foreign competitors.

Parties submitting comments are asked to be as specific as possible. Respondents, however, are reminded that the Department is soliciting only information that can be used publicly. Confidential business information will not be accepted. Any information so designated will be returned to the commenter.

All comments received before the close of the comment period will be considered by the Department in developing the report to Congress. The Department considers the following criteria in determining whether to continue or revise U.S. foreign policy export controls:

1. The probability that such controls will achieve the intended foreign policy purpose, in light of the availability from other countries of the goods or technology proposed for such controls, and that the foreign policy purpose cannot be achieved through negotiations or other alternative means;

2. The compatibility of the proposed controls with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

3. The likelihood that the reaction of other countries to the extension of such export controls by the United States will not render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

4. The effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives;

5. The ability of the United States to enforce the proposed controls effectively; and

6. The foreign policy consequences of not extending the export controls.

All comments will become a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are required. If oral comments are received, they must be followed by written memoranda that will be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not routinely be made available for public inspection.

The public record concerning these comments will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at this facility may be obtained from Patricia Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

List of Subjects in 15 CFR Ch. III

Administrative practice and procedure, Advisory committees, Boycotts, Communist countries, Computer technology, Exports, Imports, Law enforcement, Marketing quotas, Nuclear energy, Penalties, Reporting and Recordkeeping requirements, Science and technology, Trade practices.

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 27857, July 10, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986).

Dated: October 8, 1986.

Vicent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-23228 Filed 10-14-86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Tariff Classification of Fiber Reinforced Plastic Cellulosic Sausage Casings

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: A petition has been submitted on behalf of a domestic interested party regarding Customs rulings on the tariff classification of imported fiber reinforced plastic cellulosic sausage casings composed of paper, regenerated cellulose and glycerin. The petitioner states that ruling letters which are the basis for the current classification of the product as sausage casings, not specially provided for, whether or not cut to length, other, erroneously reversed a prior interpretation of the TSUS. The petitioner claims these rulings were issued in disregard of a tariff provision which bars Customs from reversing or modifying a prior interpretation of the TSUS without the concurrence of the Attorney General or the Court of International Trade. The petitioner states that all cellulosic plastic sausage casings are to be classified as sausage casings, not specially provided for, whether or not cut to length, of cellulosic plastics material. This classification would subject the product to a higher rate of duty. The petition also challenges the current classification based on a determination of the product's component material of chief value. This document invites comments with respect to the correct classification of the product.

DATE: Comments must be received on or before December 15, 1986.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, DC 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Jeremy N. Baskin, Classification and Value Division, (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a domestic interested party petition has been filed with respect to decisions which are the basis for Customs current classification of fiber reinforced plastic cellulosic sausage casings under item 790.47, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), as sausage casings not specially provided for, whether or not cut to length, other. This classification would subject the product to a column one rate of duty of 4.4 percent ad valorem.

On January 12, 1984, Customs issued Ruling 073604 which reaffirmed conclusions reached in Ruling 061462 dated May 27, 1983. Ruling 061462 was issued in response to Request for Internal Advice No. 162/79. Ruling 061462 held that the subject fiber reinforced cellulose tubing was composed of paper, regenerated cellulose and glycerin and that the correct classification of the product was dependent on its component material of chief value. The ruling also stated at what point in the manufacturing process the chief value determination was to be made. Based on these rulings, Customs has classified the product under item 790.47, TSUS.

On September 30, 1985, a petition was submitted on behalf of a domestic interested party representing a company which manufactures and wholesales a product similar to that classified in Ruling 061462. The petitioner contends that the ruling is incorrect for several reasons. First, the ruling was issued in disregard of section 502(b), Tariff Act of 1930, as amended (19 U.S.C. 1502(b)), which bars Customs from reversing or modifying a prior interpretation of the TSUS without the concurrence of the Attorney General or the Court of International Trade. By issuing the 1983 ruling, the petitioner states Customs reversed rulings made on October 31, 1975 (038749) and May 12, 1977 (051718) without seeking such concurrence. In Rulings 038749 and 051718, Customs held that fiber reinforced cellulosic plastic sausage casings were classifiable under item 790.45, TSUS, as sausage casings, not specially provided for, whether or not cut to length, of cellulosic plastics material.

The petitioner states that the legislative history of the Tariff Schedules Technical Amendments Act of 1965 (Pub. L. 89-241, 79 Stat. 933, amending 19 U.S.C. 1202) reflects the intent of Congress that all cellulosic plastics sausage casings, whether fiber reinforced or not, are to be classified under item 790.45, TSUS, which provides for a column one duty rate of 7.3 percent ad valorem—a higher rate than is provided for in item 790.47 TSUS. The petitioner further avers that the legislative history of items 790.45 and 790.47, TSUS, dictates that item 790.47, TSUS, be restricted to casings made from natural animal products rather than fibrous cellulosic materials. The petitioner argues that the chief value standard is inapplicable to the classification of the subject casings and that the correct determination is dependent upon the casings' essential character.

Finally, the petitioner contends that if the operative standard of determining classification is component material of chief value, and the paper and glycerin ingredients of the subject casings are treated as discrete components for purposes of that chief value determination, the component material of chief value remains cellulosic plastics material. In the case of the paper, only the cost of the paper itself, not costs subsequently incurred in the production process, should be considered in measuring the value of the paper. Glycerin, a plasticizer, should be included in the value of the cellulosic plastics material.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on this issue. The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

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Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved: September 26, 1986.

Francis A. Keating II,
Assistant Secretary of the Treasury.

[FR Doc. 86-23235 Filed 10-14-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Proposed Public Comment Period and Opportunity for Public Hearing on Proposed Amendments to the Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of proposed amendments submitted by Oklahoma as modifications to its permanent regulatory program (hereinafter referred to as the Oklahoma program) under the Surface Mining Reclamation Act of 1977 (SMCRA). The amendments consist of revised regulations for several parts of its program.

This notice sets forth the times and locations that the Oklahoma program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing.

DATES: Written comments from the public not received by 4:00 p.m. on December 1, 1986, will not necessarily be considered in the decision process. A public hearing on the proposed amendments has been scheduled for 9:00 a.m. on November 14, 1986, at the address shown below under **"ADDRESSES"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. James H. Moncrief at the OSMRE Tulsa Field Office by 4:00 p.m. on November 4, 1986. If no one expresses an interest in participating in the hearing by this date, the hearing will not be held. If only one person has so contacted Mr. Moncrief, a public meeting, rather than a hearing, may be held; the results of the meeting will be included in the Oklahoma administrative record.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Tulsa, Oklahoma 74103.

Copies of the Oklahoma program, the proposed modifications to the program, and the administrative record of the Oklahoma program are available for public review and copying at the OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Tulsa Field Office

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103. Telephone: (918) 581-7927

Oklahoma Department of Mines, 4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105. Telephone: (405) 521-3859

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5124, Washington, DC 20240. Telephone: (202) 343-4655

The public hearing, if requested, will be held at the Federal Building, 125 South Main Street, Muskogee, Oklahoma 74401.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Tulsa, Oklahoma 74103. Telephone: (918) 581-7927

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981, (46 FR 4910). Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission as well as the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Oklahoma program can be found in the January 19, 1981 **Federal Register** (46 FR 4910), in the April 2, 1982 **Federal Register** (47 FR 14152), in the May 4, 1983 **Federal Register** (48 FR 20050) and the August 28, 1984 **Federal Register** (49 FR 34000). Subsequent actions on conditions of approval and program amendments are identified at 30 CFR 936.11 and 936.15.

II. Submission of Amendments

In accordance with the provisions of 30 CFR 732.17(d) through (f), on July 15, 1985, the Director notified Oklahoma of the changes necessary to ensure that the approved regulatory program, as revised since January 19, 1981, when the program was originally approved, was no less effective than SMCRA and its implementing regulations. To comply with this letter and to meet other needs and State objectives, the State elected to undertake a complete rewrite of the regulations governing its permanent regulatory program.

By letters dated August 19 and August 29, 1986, Oklahoma submitted several sections of these regulations to OSMRE for review as program amendments (Administrative Record Nos. OK-747 and OK-749). The proposed regulations, consisting of Parts 700, 701, 761, 762, 764, 772, 773, 774, 775, 777, 778, 783, 785, 795, 800, 810, 815, 819, 823, 824, 827, 828, 842 and 843, would replace those Parts of the currently approved regulatory program.

In accordance with the provisions of 30 CFR 731.17 and 884.14, OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15, 731.17, 884.14 and 884.15. If approved, the proposed amendments will become part of the Oklahoma permanent regulatory program.

III. Procedural Requirements

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: October 6, 1986.

Arthur W. Abbs,
Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-23234 Filed 10-14-86; 8:45 am]

BILLING CODE 4310-05-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 86-7]

Definition of Cable Systems

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of inquiry.

SUMMARY: This notice of inquiry is issued to advise the public that the Copyright Office of the Library of Congress is considering amendments to its regulations implementing portions of section 111 of the Copyright Act, Title 17 of the United States Code, pertaining to the secondary transmission of copyrighted works by cable systems. Section 111 prescribes various conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of certain notices and statements of account. The purpose of this notice is to elicit public comments, views, and information which will inform the Copyright Office as to the advisability of clarifying the definition of "cable system" in 37 CFR 201.11(a)(3), in light of changes in communications law and regulations, and new methods of distributing copyrighted television programming such as satellite master antenna systems and multichannel multipoint distribution systems.

DATES: Comments should be received on or before December 15, 1986. Reply comments should be received on or before January 13, 1987.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Office of the General Counsel, Copyright Office, Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room 407, First and Independence Ave., SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Department D.S., Washington, DC 20540. Telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Section 111(c) of the Copyright Act, Title 17 of the United States Code, establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject, among other conditions, to requirements that the cable system comply with certain provisions regarding recordation of notices under section 111(d)(1) and deposit of statements of account under section 111(d)(2).

Crucial to application of these provisions is the concept of "cable system" as defined by statute and regulation. Section 111(f) of the copyright law defines "cable system" as follows:

> A "cable system" is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, or other communications channels to subscribing membes of the public who pay for such service. For purposes of determining the royalty fee under subsection (d)(2), two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered as one system.

Regulations of the Copyright Office have been adopted which elaborate on this definition. Section 201.11(a)(3) Provides that:

> A "cable system" is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wire, cables, or other communications channels to subscribing members of the public who pay for such service. A system that meets this definition is considered a "cable system" for copyright purposes, even if the FCC excludes it from being considered a "cable system" because of the number or nature of its subscribers or the nature of its secondary transmissions. The Notice required to be recorded by this section, and the statements or account and royalty fees to be deposited under § 201.17 of these regulations, shall be recorded and deposited by each individual cable system desiring its secondary transmissions to be subject to compulsory licensing. For these purposes, and the purpose of § 201.17 of these regulations, an "individual" cable system is each cable system recognized as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission in effect: (i) On the date of recordation with the Copyright Office in the case of the preparation and filing of an Initial Notice of Indentity and Signal Carriage Complement or Notice of Change of Identity or Signal Carriage Complement: or (ii) on the last day of the accounting period covered by a Statement of Account, in the case of the preparation and deposit of a Statement of Account and copyright royalty fee. For these purposes, two or more cable facilities are considered as one individual cable system if the facilities are either: (A) In contiguous communities under common ownership or control or (B) operating from one headend.

When first proposed in 1977, the definition which was adopted in 37 CFR 201.11(a)(3) generated some public comments concerning the application of the FCC's existing standards and the tests to determine an "individual cable system" for filing purposes. The Copyright Office considered and then rejected these proposals in adopting final regulations (43 FR 958). The following reasons were given:

> Several copyright owners objected to our proposal to define an "individual" cable system" as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission in effect on the date of recordation or deposit," subject to certain qualifications (§§ 201.11(a)(3), 201.17(b)(2)). They asserted that this definition would cause confusion because a "cable system" for copyright purposes is not the same as a "cable system" for FCC purposes. Representatives of cable systems generally agreed with our proposal. We are not persuaded that our original purpose in adopting this definition, namely, "to minimize confusion and benefit all interested parties" will fail. Accordingly, we have adopted the definition as proposed. If the FCC changes its definition of a cable system in the future, we can then consider whether the change is consistent with the provisions of the Copyright Act, and if it is not, make appropriate changes in our rules.

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Developments since the adoption of § 201.11(a)(3) suggest that the appropriateness of the definition should be reviewed. A significant number of satellite master antenna television (SMATV) systems and multichannel multipoint distribution services (MMDS) have sought to use the compulsory licensing provisions of section 111, and it is presently unclear under our regulations whether such entities meet the definition of "cable system." In 1985, the Federal Communications Commission amended its regulatory definition of cable system in light of the Cable Communication Policy Act of 1984.[1]

a. Satellite Master Antenna Television (SMATV)

In 1979, the FCC determined the public interest would be served by immediate implementation of voluntary licensing for domestic receive-only earth stations (TVROs).[2] This deregulation provided the impetus for the expansion of the SMATV industry, since it became practical and economically feasible to provide satellite-fed programming to small, self-contained markets, particularly in areas not reached by franchised cable systems. In recent years, SMATV systems have grown up in many cities in the U.S. and Canada.

Like franchised cable systems, SMATVs draw programming from a variety of sources. SMATV systems use TVROs to receive transmissions via satellite, and a master antenna for receipt of over the air television signals. The programming is then combined and distributed by cable to subscribers, primarily in apartment houses and other multi-unit residential buildings.

b. Multichannel Multipoint Distribution Services (MMDS)

The FCC first allocated spectrum for multipoint distribution services (MDS) in 1962.[3] The FCC classified MDS as "common carriers" and authorized the facilities to provide non-broadcast omnidirectional service. A technical limitation on MDS was removed in 1970, and several facilities filed applications with the FCC proposing to use the spectrum for the common carrier distribution of television programming from a central location to numerous points selected by a carrier's subscribers. The applicants perceived a need "to provide for relay of instructional and training television to schools, industry, and municipal government and for other miscellaneous uses such as the coverage of business, industry, or medical conventions." [4] In reviewing the possibilities for development of this service, the FCC noted the potential use of these facilities for the distribution of closed circuit entertainment programming to mass audiences.[5] In January 1974, the FCC reallocated channels from Instructional Television Fixed Service (ITFS) to MDS.[6] This resulted in a change in the programming delivered by MDS, so that the majority of transmission time leased by MDS common carrier licensees was henceforth used by their customers to transmit premium programming to hotels, motels, apartment complexes, and single family residences.[7] To further encourage the growth in use of MDS channels, the FCC reallocated two groups of four channels each from ITFS use for *multichannel* multipoint distribution services (MMDS).[8] With more channels available, some MMDS operators are contemplating retransmitting the signals of television broadcast stations in addition to their delivery of premium programming.

2. Issues Presented

From a copyright perspective, the retransmission of most subscription services by SMATV and MMDS facilities does not pose unique problems. However, with respect to their retransmission of television broadcast signals, the status of these entities for purposes of compulsory licensing under section 111 of the Copyright Act is not clear. With increasing frequency, SMATV and MDS operators have sought to use the compulsory licensing provisions of section 111 of the Copyright Act of 1976 to satisfy their copyright obligations for retransmitting the signals of television broadcast stations. The Copyright Office has not taken any position of the eligibility of SMATV or MMDS operations to invoke the cable compulsory license; that is, the Office has not refused the filings of such operators but it has also not affirmatively decided that any of the filings are acceptable under the Act and applicable regulations. Filings of notices and statements of account by SMATV and MMDS operators have been accepted by the Office for whatever value thay may be held to have by a competent court.

To qualify as a cable system under section 111(f) of Title 17, an entity must make secondary transmissions of broadcast signals or programs to "subscribing members of the public who pay for such service." A question arises as to whether SMATV and MMDS facilities in fact serve such subscribers. SMATV and MMDS facilities commonly serve residents of a condominium, apartment building, or trailer park, occupants of a hotel or motel or other lodging; are these residents and occupants "subscribers" who "pay for such service" indirectly when they pay only condominium fees, rent, service or lodging fees and the like?

The classification of SMATV and MMDS operators as cable systems would also necessarily initiate a reevaluation of the definition of "individual" cable system in 37 CFR 201.11(a)(3) of the Copyright Office regulations. That definition is part applies the FCC's "current" definition of "cable system" as a method for determining when two or more entities comprise one individual cable system under the Copyright Act.

Recently, in amending its definition, the FCC decided to follow generally the definition of cable system adopted by Congress in the Cable Communications Policy Act of 1984.[9] In 47 CFR 76.5(a), the FCC defines the term as follows:

Cable system or cable television system. A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility systems.

[1] Public Law 98-549, 98th Cong., 2d Sess. (1984).

[2] *Regulation of Receive-Only Domestic Earth Stations. First Report and Order in CC Doc. No. 78-374.* 74 F.C.C.2d 205 (1979).

[3] *Report and Order in Doc. No. 14712.* 39 F.C.C. 534 (1962).

[4] *Multipoint Distribution Service. Notice of Proposed Rulemaking in Doc. No. 19493.* 34 F.C.C.2d 719 (1972). For FCC rules on purposes of permissible MDS service, see 47 CFR 21.903 (1986).

[5] 34 F.C.C.2d at 722.

[6] *Instructional Television Fixed Service (MDS Reallocation).* 54 R.R.2d (P&F) 107, 110 (1983).

[7] *Id.* "Premium television" is television entertainment programming supported by viewer fees rather than by advertising revenues. *See id.* at n. 3.

[8] *Id.* at 135.

[9] *Implementation of the Provisions of the Cable Communications Policy Act of 1984. Final Rule.* 50 FR 18637, 18641 (1985).

Note 1: [deleted]

Note 2: The provisions of Subparts D and F shall also apply to all facilities defined previously as cable systems on or before April 28, 1985.

Under this definition of cable system, presumably most SMATV and MMDS operations are not cable systems because they serve subscribers in multiple unit dwellings and *do not* use public rights-of-way. Thus, the FCC's current definition would not be helpful for determining what is an "individual" cable system for the filing purposes of §§ 201.11 and 201.17 in the case of SMATV and MMDS operations.

The lack of applicability of this portion of the regulation creates a difficult policy question in circumstances where several SMATV or MMDS operations under common ownership are located in the same geographic region under local franchising or FCC rules. Should the several different operations be combined to form one individual cable system for filing purposes, or should each operation be treated separately? If SMATV and MMDS operations are eligible for the cable compulsory license of 17 U.S.C. 111, § 201.11(a)(3) of the Office's regulations should perhaps be amended to deal with these questions since the current FCC regulations do not provide guidance on the issue of SMATV and MMDS operations.

In order to establish policies and rules concerning the status of SMATV and MMDS operations under the cable compulsory license, the Copyright Office solicits public comments regarding all aspects of this issue. In particular, the Copyright Office desires specific answers to the following questions:

(1) Under what circumstances, if any, do SMATV or MMDS operators qualify as "cable systems" within the meaning of 17 U.S.C. 111(f)? Specifically, which operations, if any, (a) make secondary transmissions of broadcast signals or programs "by wires, cables, or other communications channels"†; and (b) provide such services to "subscribing members of the public"?

(2) Assuming a SMATV system or MMDS entity qualifies as a "cable system" under the Act, can the operations be accommodated within the present definition of "cable system" in § 201.11(a)(3)? Should regulation § 201.11(a)(3) be modified in order to apply to SMATV and MMDS operations, and if so, what policies are suggested?

(3) If the SMATV or MMDS qualifies as a "cable system" under the Act, how should the portion of the definition of "cable system" in 17 U.S.C. 111(f) and 37 CFR 201.11(a)(3) concerning transmitting signals to (a) "subscribing members," (b) "of the public," (c) "who pay for such service" be interpreted as regarding typical SMATV and MMDS operations? In order for a particular operation to qualify as a "cable system" must there be a separate charge to the subscriber for the retransmission service? If not, how shall the gross receipts from subscribers be identified? Is it permissible under the Act to report "zero" gross receipts because the retransmission service fees are subsumed with other services as part of lodging fees, condominium or cooperative fees and the like?

(4) Assuming SMATV and MMDS operations do fall within the Copyright Act's definition of "cable system," how should an "individual" cable system for filing purposes be determined? If several SMATV or MMDS operations under common ownership fall within the same geographic region should the operations be treated separately or as one individual system? If SMATV or MMDS operations are to be grouped for filing purposes, what standards should be identified in the Copyright Office regulations to determine the groupings? What hardships would be imposed on SMATV and MMDS operators if they were required to group their systems?

(5) If the SMATV or MMDS qualifies as a "cable system" under the Act, who is the "owner" of the system for purposes of completing the Statement of Account where the reception and redistribution equipment is owned by an apartment complex, but the installation, maintenance, and coordination of the programming service is supplied by another entity?

(17 U.S.C. 111; 702)

Dated: October 2, 1986.

Ralph Oman,

Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 86-23198 Filed 10-14-86; 8:45 am]

BILLING CODE 1410-07-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3094-5]

Hazardous Waste Management System; Identification and Listing; Proposed Exclusions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at four facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at four particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated all four of the petitions which are discussed in today's notice. Based on our review at that time, these petitioners were granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors which reasonably could cause the wastes to be hazardous.

DATES: EPA will accept public comments on the proposed exclusions until October 30, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on these proposed decisions by filing a request with Bruce Weddle, whose address appears below, by October 27, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSP/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-86-EVEP-FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

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The RCRA regulatory docket for this proposed rule is located at U.S. Environmental Protection Agency, 401 M Street SW (subbasement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used To Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is nonhazardous based on the factors for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the factors for which the waste was originally listed), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the factors for which the waste was listed, it then will evaluate the waste with respect to other factors or contaminants, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (i.e., those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating the volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground

water transport model, is used to predict reasonable worst-case contaminant levels in ground water in hypothetical nearby receptor wells—the "compliance point" (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. For wastes that are managed in a landfill, the mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to delist the waste from four petitioners.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted. EPA has conducted spot check sampling at two of the facilities listed in this notice.

Finally, before the Hazardous and Solid Waste Amendments of 1984 were enacted, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a exclusion. All of the exclusions proposed today will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those from requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Envirite Corporation, Canton, Ohio;
Envirite Corporation, Harvey, Illinois;
Envirite Corporation, Thomaston, Connecticut; and
Envirite Corporation, York, Pennsylvania.

I. Envirite Corporation—Canton, Ohio

A. Petition for Exclusion

Envirite Corporation (Envirite), (previously known as Liqwacon Corporation), located in Canton, Ohio, operates a waste treatment facility for treatment of multiple metal-bearing waste streams for industrial clients.[3] Envirite has petitioned the Agency to exclude the residue produced by its treatment facility. The residue is generated from the treatment of the following EPA Hazardous Wastes:

F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.
F007—Spent cyanide plating solutions from electroplating operations.
F008—Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.
F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
F011—Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.
F012—Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.
F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.
K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments.
K003—Wastewater treatment sludge from the production of molybdate orange pigments.
K004—Wastewater treatment sludge from the production of zinc yellow pigments.
K005—Wastewater treatment sludge from the production of chrome green pigments.
K006—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).
K007—Wastewater treatment sludge from the production of iron blue pigments.
K008—Oven residue from the production of chrome oxide green pigments.
K061—Emission control dust/sludge from the primary production of steel in electric furnaces.
K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).
K069—Emission control dust/sludge from secondary lead smelting.
K100—Waste leaching solution from the acid leaching of emission control dust/sludge from secondary lead smelting.

The listed constituents of concern for these wastes are summarized as follows:

F006—Cadmium, hexavalent chromium, nickel, and cyanide (complexed)
F007—Cyanide (salts)
F008—Cyanide (salts)
F009—Cyanide (salts)
F011—Cyanide (salts)
F012—Cyanide (complexed)
F019—Hexavalent chromium and cyanide (complexed)
K002—Hexavalent chromium and lead

[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 FR 1602, January 14, 1986). The Agency, however, has not yet evaluated the comments on this proposal. If this approach is promulgated, the Agency will consider revising the delisting analysis at that time.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

[3] Envirite also has submitted delisting petitions for its York, Pennsylvania; Harvey, Illinois; and Thomaston, Connecticut facilities.

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K003—Hexavalent chromium and lead
K004—Hexavalent chromium
K005—Hexavalent chromium and lead
K006—Hexavalent chromium
K007—Cyanide (complexed) and hexavalent chromium
K008—Hexavalent chromium
K061—Hexavalent chromium, lead, and cadmium
K062—Hexavalent chromium and lead
K069—Hexavalent chromium, lead, and cadmium
K100—Hexavalent chromium, lead, and cadmium.

Based upon the Agency's review of the petition, Envirite was granted a conditional temporary exclusion on December 16, 1981 for EPA Hazardous Waste Nos. F006, F007, F008, F009, F011, F012, F015 and K062 (see 46 FR 61281). The Agency's basis for granting the temporary exclusion (at that time) was the low migration potential of cadmium, chromium, lead, nickel, and cyanide in the waste, and Envirite's stringent pre-screening process for accepting wastes and contingency plan ensuring that levels of constituents in the treatment residue were always within an acceptable range. Since the granting of their temporary exclusion, Envirite submitted an addendum to their original petition in November 1985 expanding the list of wastes to be delisted to include EPA Hazardous Waste Nos. F019, K002, K003, K004, K005, K006, K007, K008, K061, K069, and K100. These wastes are not yet treated by the facility, therefore their temporary exclusion is still active. Also, since Envirite's temporary exclusion, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Envirite's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which it was originally listed; and (2) Determine whether the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Envirite's petition.

In support of their petition, Envirite has submitted a detailed description of its pre-screening process, treatment process, and contingency testing plan; total constituent analysis and EP toxicity test results of the treatment residue for each of the listed constituents—cadmium, total chromium, lead, and nickel; and analytical results for total, free, and leachable cyanide. Envirite also submitted total constituent analysis and EP toxicity test results for arsenic, barium, mercury, selenium, and silver; results of total oil and grease analyses; and analytical results for reactive sulfide. Envirite further submitted total constituent analyses for priority pollutant volatile, base/neutral, and acid extractable organic compounds; National Bureau of Standards (NBS) library searches for any other Appendix VIII hazardous constituents that might be present in the waste; an explanation detailing why specific Appendix VIII hazardous constituents were not tested; and a list of clients serviced at the Canton facility. (See 47 *FR* 52309, November 19, 1982 for a list of the priority pollutants.) In addition, Envirite submitted descriptions of proposed process changes presently being considered for its Canton facility. These changes included solid residue treatment units for treating incoming solid and semi-solid wastes (one such unit is already in operation at Envirite's York facility); recovery operations for metals, acid, and cyanide as an alternative to its current procedures; a wet air oxidation system to destroy cyanide; and a post-treatment sludge drying process. As noted above, the Agency requested much of this information to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.[4]

Envirite accepts metal-bearing wastes from industrial clients for treatment. Envirite conducts stringent client pre-screening tests prior to accepting a waste for treatment to ensure that wastes are compatible with the Envirite treatment process. Envirite claims that the pre-screening procedure effectively prevents the acceptance of toxic organic compounds for treatment. Envirite's pre-screening process includes an examination of the client's process description and analytical monitoring of wastes to be treated by Envirite for listed constituents and any Appendix VIII hazardous constituents that might be expected to be present. Other pre-screening parameters include: Total organic carbon (TOC), non-listed EP toxic metals, cyanide, ammonia, specific gravity, and analysis for the percent acidity and alkalinity, as well as other non-RCRA metals. In addition, before a given waste is accepted for treatment, it is subjected to a laboratory simulation of Envirite's treatment process. The resulting analysis must show that the treated waste meets Envirite's effluent discharge standards and that the treatment residue meets the requirements of Envirite's temporary exclusion. If the treatment residue fails to meet these requirements, it is a hazardous waste, and will be managed accordingly.

Envirite's treatment process includes pre-treatment with chromium reduction and cyanide destruction followed by batch treatment with batch formulation (a preplanned combining of wastes from various storage areas and recovery systems for batch treatment), neutralization and hydroxide precipitation, sulfide addition and precipitation, and vacuum filtration. Envirite plans to implement a segregated solid and semi-solid treatment process at its Canton facility. (Envirite has added this capability at its York, Pennsylvania facility.) Envirite claims that the treatment process used for solid and semi-solid wastes employs the same chemical reactions as are used currently in the liquid waste treatment process; the waste types treated by the liquid and solid processes are the same except for the amount of water the waste contains. Envirite submitted total constituent analysis and EP toxicity test results for wastes treated by the York facility's solids treatment system to show that this process is equally successful in rendering wastes non-hazardous.

Envirite also is proposing to initiate recovery operations at the Canton facility. Recovery operations such as ion exchange, evaporative recovery, crystallization, and electrolytic recovery would be employed prior to waste treatment to remove metals, acid, and cyanide. Envirite plans to add drying operations at the Canton facility to reduce further the water content of the filter cake generated from the wastewater treatment process. Envirite also plans to use wet air oxidation methods at its Canton facility. This method would permit the high temperature reduction of organic compounds in the aqueous phase and would be used to destroy cyanide. Envirite states that such a system would allow them to treat waste categories they currently are not permitted to accept under their delisting. They claim, however, that wastes not covered by the delisting would be carefully segregated and managed as hazardous. (Should Envirite begin to accept wastes outside of their delisting, a new petition would have to be submitted to include those wastes.)

Envirite uses an additional quality assurance method to ensure that its treated residues are rendered non-hazardous. Batches that have completed treatment remain in the neutralization tanks and treatment residue samples are subjected to the EP Toxicity Test to ensure the waste's compliance with limits established in the 1981 temporary exclusion (see 46 FR 61281). Treatment residue batches exceeding these limits are re-treated or disposed as hazardous wastes. Based on its stringent prescreening process, treatment process, and quality assurance plan, Envirite claims that its treatment residue is non-hazardous because the constituents of concern are present either in insignificant concentrations, or if present at significant levels, are essentially in immobile forms. Envirite also believes that the waste is non-hazardous for any other reason.

Envirite initially presented analytical data on eight weekly composite samples collected from the knife of the vacuum filter dewatering system. One sample was taken from each batch processed and stored until the end of the week-long composite sampling period. These samples then were combined in a bench top blender and homogenized. All analytical testing occurred on these homogenized samples. Envirite initially submitted data in October 1984. They collected eight more composite samples in April 1985 to demonstrate that the facility could achieve the ten-fold dilution allowed by the proposed version of the vertical and horizontal spread (VHS) model (see 50 FR 7882, February 26, 1985). As a result of public comments, the Agency modified the VHS model, and the dilution factor applicable to the maximum of 40,000 tons of treatment residue generated annually at Envirite's Canton facility was decreased to 6.3 times the drinking water standards for the EP toxic metals and cyanide. Envirite re-sampled each facility's waste in an effort to show that their treatment process also could achieve this lower dilution level. Since Envirite previously had analyzed 16 samples and their exclusion would be conditional as is typical of the Agency's policy for Multiple Waste Treatment Facilities, (MWTFs), (*i.e.*, each batch of treatment residue would require testing), the Agency permitted Envirite to collect and re-analyze only 4 composite samples. Sampling methodologies for these 4 samples were similar to those for the previous 16 samples with the exception that each composite sample was collected over a 4-day period rather than a week-long period. This represented a sampling period of approximately 1 month. All samples collected since April 1985 were analyzed for oil and grease, reactive sulfide, and Appendix VIII hazardous constituents. Envirite claims that these sampling periods addressed more than 50 percent of their clients and represented time periods of sufficient length to show the variation in concentrations of listed constituents in their treated wastes (for all of the wastes which were a part of the original delisting request).

Total constituent analysis and EP toxicity test results of the treatment residue generated at Envirite's Canton facility revealed the maximum concentrations reported in Tables 1 and 2.[5]

TABLE 1.—MAXIMUM CONCENTRATIONS

Listed Constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Cadmium	115	0.5
Chromium (total)[1]	4,140	<0.1
Lead	840	<0.1
Nickel	1,060	0.12
Cyanide	3.34	0.15

<: Denotes concentrations below the detection limit.
[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

TABLE 2.—MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Arsenic	0.24	0.025
Barium	63	1.0
Mercury	0.31	0.005
Selenium	0.21	<0.01
Silver	2.6	0.08

<: Denotes concentrations below the detection limit.

Envirite also submitted total constituent analyses for Appendix VIII hazardous constituents potentially present in the waste. Envirite has limited its initial gas chromatographic/mass spectroscopy (GC/MS) analytical work to the volatile, base/neutral, and acid fractions of the priority pollutants, and an NBS library scan for remaining Appendix VIII constituents likely to be present. Envirite's rationale for limiting Appendix VIII testing included the deletion of: (1) Toxicants for which there are no known analytical methods; (2) toxicants that are reactive or hydrolyze in water; and (3) toxicants that are present primarily in wastes generated from industries not serviced by Envirite (primarily pharmaceuticals). A more detailed explanation and list of these toxicants is available in the public docket. Maximum concentrations for Appendix VIII hazardous constituents that are potentially present in the treatment residue are reported in Table 3.

TABLE 3.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY ENVIRITE IN THE TREATMENT RESIDUE (PPM)

Constituents	Total constituent analyses
Bis(2-ethyl hexyl)phthalate	2.0
Butyl benzyl phthalate	7.0
Methylene chloride	0.851
Tetrachloroethylene	0.127
Toluene	0.568
1,1,1-Trichloroethane	0.328

Envirite also has submitted information regarding a solids treatment process, which exists as a segregated treatment process at the York facility and which is proposed to be added to the Canton facility. Envirite has indicated that the process is similar to their liquids treatment process with the exception that different solid reagents are used in the pre-treatment for hexavalent chromium, cyanide, and metal hydroxides, depending on the moisture content of the waste. Envirite has submitted EP toxicity test analyses on 17 batches of treatment residues generated over 6 weeks from the solids treatment process at the York facility. The maximum extract concentrations from the data are summarized in Table 4.

TABLE 4.—MAXIMUM CONCENTRATIONS FOR THE SOLIDS TREATMENT PROCESS AT THE YORK FACILITY

Constituents	EP toxicity analyses (mg/l)
Arsenic	<0.98
Barium	<1.24
Cadmium	<0.03
Chromium	<0.25

[4] The Agency generally requests that raw materials lists be submitted from single waste stream petitioners to determine whether additional Appendix VIII hazardous constituents may be present in the waste at levels of regulatory concern. For Multiple Waste Treatment Facilities (MWTFs), however, the Agency realizes that hundreds of clients may be involved, therefore making it impossible for raw materials lists to be presented. The Agency has decided to request test data on a minimum of eight samples of waste for all Appendix VIII hazardous constituents reasonably expected to be present in the waste. (At a minimum, testing should be conducted for the priority pollutants.) The MWTF petitioner may choose to limit the number of Appendix VIII hazardous constituents tested by submitting suitable explanations of why specific toxicants are not present in the waste at levels of regulatory concern.

[5] The latest collection of four samples reflects Envirite's operational adjustments to meet the 6.3 dilution requirement of the VHS model; therefore, only the analytical results for these four samples were considered for the maximum concentrations given in Tables 1 and 2.

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TABLE 4.—MAXIMUM CONCENTRATIONS FOR THE SOLIDS TREATMENT PROCESS AT THE YORK FACILITY—Continued

Constituents	EP toxicity analyses (mg/l)
Lead	<0.88
Mercury	<0.0072
Selenium	<0.24
Silver	<0.07
Nickel	2.58
Cyanide	<2.0
Cyanide (total in waste)	183.8

The maximum total oil and grease value reported by Envirite was 0.11 percent. Envirite also analyzed the treatment residue for reactive sulfides with the maximum concentration reported to be below the detection limit of <1.0 ppm. Envirite also submitted data indicating that the sludge is not ignitable, corrosive, or reactive.

B. Agency Analysis and Action

Envirite has demonstrated that its original waste treatment system and the proposed solids treatment system, under specified controlled conditions, produces a non-hazardous treatment residue. Envirite has not, however, made this demonstration for the recovery, drying, or wet air oxidation processes it proposes for the Canton facility. Should Envirite adjust its processes to include the above treatment changes, it would have to submit a new petition for each change.

The Agency believes that the four samples collected by Envirite from the filter press of the wastewater treatment system over a 1-month period were non-biased and adequately represent any variations that may occur in the treatment residue over this time period for each of the treated wastes except EPA Hazardous Waste Nos. K061, K069, and K100.[6] The key factors that could vary toxicant concentrations in the residue at MWTFs are the addition of new clients, the variation of client processes occurring from time to time, and variations in raw materials used at client waste generator facilities. Variations in raw materials can be expected when the clients of the MWTF perform as job shops or when the product line changes on a seasonal basis. The Agency does not believe it is possible to represent this variation without sampling that would be considered excessive for a delisting petition demonstration. The Agency, therefore, has requested all MWTF petitioners to submit analytical data collected during a 2-month period on a minimum of eight composite samples.[7]

The Agency permitted Envirite to submit only 4 samples based on the final VHS model, as the facility already had submitted 16 samples demonstrating its ability to adjust the treatment process to comply with VHS model modifications. The Agency is familiar with the ability of Envirite's and similar technologies to adjust mixing ratios to achieve lower leachate levels for heavy metals. Furthermore, the final exclusion, when granted, would require testing of each treated batch to ensure compliance with the exclusion's specifications. The demonstration with respect to Appendix VIII hazardous constituents still was required, however, to cover a minimum of eight samples collected over a 2-month period.

The Agency has evaluated the mobility of the listed constituents from Envirite's waste using the VHS model.[8] The VHS model generated compliance point values using the 40,000 ton per year maximum generation rate and the maximum extract levels reported by Envirite as input parameters. These predicted compliance point concentrations are reported in Table 5. (When leachate concentrations were below the detection limits, the value of the detection limit was used.)

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	0.079	0.01
Chromium (total)	0.016	0.05
Lead	0.016	0.05
Nickel	0.019	0.35
Cyanide	0.024	0.2

The treatment residue exhibited levels for the listed constituents (at the compliance point), except for cadmium, below the National Interim Primary Drinking Water Standards, nickel levels below the Agency's interim health advisory,[9] and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[10] Total cyanide levels in the treatment residue also were below the Agency's threshold limit of 250 ppm.[11] Using the maximum reported cadmium concentration of 0.5 ppm in the VHS model generated a compliance point concentration above the National Interim Primary Drinking Water Standard. Under the continuous testing provision of the conditional exclusion, the Agency believes that, for the majority of the time, this facility can generate a non-hazardous treatment residue with respect to mobile cadmium. This will be effected, in part, by Envirite's pre-screening operations. Any batch exhibiting an extract level over 0.063 ppm would be re-treated or handled as hazardous. The Agency notes that the other reported extract levels for cadmium generate compliance point concentrations (0.008, 0.006, and 0.003 ppm, respectively) well below the drinking water standard.

The Agency also concluded, through using the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 6.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.004	0.05
Barium	0.16	1.0
Mercury	0.0006	0.002
Selenium	0.0016	0.01
Silver	0.014	0.05

The Agency also has evaluated the mobility of organic constituents detected in the sludge by first estimating their leachate concentrations with the Organic Leachate Model (OLM), and then predicting their compliance point concentrations with the VHS model.[12]

[6] Envirite had not treated these wastes during the sampling period. Although these wastes are listed for the same metals as wastes previously petitioned by Envirite, the Agency has data in other delisting petitions that indicate that these wastes are more difficult to treat than the other wastes included in Envirite's petition. Any decision regarding these wastes will, therefore, be deferred by the Agency until Envirite has submitted data on the treatment residue specifically generated from these wastes.

[7] The Agency's intention for MWTFs is to grant conditional exclusions requiring continuous batch testing when the initial demonstrations are successful in meeting delisting requirements.

[8] See 50 FR 7882, Appendix I, February 28, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

[9] See 50 FR 20847 (May 15, 1985) for a complete description of the development of the Agency's interim standard for nickel.

[10] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

[11] See Internal Agency Memorandum dated July 12, 1985, entitled "Interim Thresholds for Toxic Gas Generation Reactivity" in the RCRA public docket.

[12] For a discussion of the Agency's proposed OLM, see 50 FR 48944, Appendix, November 27, 1985. See 51 FR 27081, Notice of Data Availability and Request for Comment, July 28, 1986, for a discussion of the revised OLM.

Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 7.

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS [1] (PPM)

Constituents	Predicted leachate concentrations (Base)	Predicted leachate concentrations (95%)	Compliance point concentrations (Base)	Compliance point concentrations (95%)	Regulatory standards
Bis(2-ethyl hexyl) phthalate	0.0024	0.0029	0.00007	0.0005	0.7
Butyl benzyl phthalate	0.0146	0.0147	0.0010	0.0023	3.75
Methylene chloride	0.076	0.100	0.012	0.0106	0.056
Tetrachloroethylene	0.0035	0.0049	0.00055	0.00077	0.0007
Toluene	0.0149	0.0189	0.0024	0.0031	10.5
1,1,1-Trichloroethane	0.015	0.021	0.0024	0.0032	1.2

[1] Since the Organic Leachate Model (OLM) has not been finalized, both the baseline equation and 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized only one of these two versions will apply.

Table 7 lists only those constituents found in the treatment residue above detection limits. In each instance, the resulting predicted compliance point concentrations (with the exception of tetrachloroethylene) were below the Agency's respective regulatory standards. The Agency has previously granted Envirite a conditional exclusion which required batch testing. Through this batch testing condition, Envirite has periodically identified "problem" batches. Treatment failures under the temporary exclusion were identified only in terms of cyanide or heavy metals. If process adjustments did not successfully treat the waste, Envirite has successfully identified and eliminated the acceptance of "problem" wastes through their pre-screening program. The Agency did not previously specify any limitations on trace organics in the temporary exclusion nor did the Agency specify acceptable concentrations of trace organics. Envirite, therefore, has not had the opportunity to adjust its treatment or eliminate clients to address tetrachloroethylene levels. Under these circumstances the Agency believes it inappropriate to penalize Envirite's petition effort due to the unacceptable levels of tetrachloroethylene found to be present in batches tested for the petition effort. Instead, the Agency is proposing to add this constituent (as well as other potential organic constituents) to Envirite's conditional batch testing program. The Agency believes that if Envirite cannot successfully treat the present level of organic contaminants, that they can eliminate the wastes containing these constituents through their pre-screening operations. Given the changeable nature of clients and wastes accepted by the facility for treatment, the Agency believes it necessary to incorporate organics batch testing into the contingency testing program to ensure that stray organic constituents are not present in the treatment residue at levels of regulatory concern.

The Agency believes that a conditional exclusion can be granted to the Envirite facility. The conditions of the exclusion would necessitate continuous batch testing for the EP toxic metals, nickel, cyanide, and those organics detected in the treatment residue. The Agency believes this testing requirement is necessary due to the inherent variability encountered by a changing client base, the process variation associated with each of the clients serviced, the high concentrations of toxic constituents in the incoming wastes and in the treatment residue, and the high volumes of treatment residue generated annually by Envirite.

This testing requirement is self-implemented, that is, the results of testing each batch need not be reviewed by State or Federal EPA representatives prior to disposal. The test data must be recorded and kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Agency on a semi-annual basis.

The Agency, therefore, proposes to grant an exclusion to Envirite's Canton facility providing that the following contingency testing program is followed:

(1) Each batch [13] of treatment residue must be representatively sampled and tested using the EP toxicity test for the EP toxic metals and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste will be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

[13] The Agency is defining "batch" as the volume of waste generated for periodic disposal (e.g., if a dumpster of treatment residue is generated every 2 days, but is accumulated for a week before disposal, representative samples would be collected prior to disposal from each dumpster of waste and composited for analysis).

(2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm [14] or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(3) Each batch must be tested for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards under 40 CFR Part 270. This list of organic constituents is a compilation of organics detected at each of Envirite's four facilities.[15] The Agency notes that this condition does not allow retreating as does Condition 1 and 2, because Envirite's existing treatment process is not designed for organics treatment.

Compound	Maximum acceptable levels [1] (ppm) (Base)	Maximum acceptable levels [1] (ppm) (95%)
Anthracene	72	46
1,2-Diphenyl hydrazine	0.801	0.0805
Methylene chloride	8.10	5.27
Methyl ethyl ketone	313	175
n-Nitrosodiphenylamine	11.3	8.1
Phenol	1,980	982
Tetrachloroethylene	0.688	0.113
Trichloroethylene	0.592	0.376

[1] Since the OLM has not been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline) are calculated here. Once finalized, only one of these two versions will apply.

(4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using GC/MS analysis for the compounds listed above, as well as the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982 for a list of the priority pollutants.) These data must be kept on file at the facility, and submitted

[14] See footnote 11.

[15] The Agency's VHS model was used to calculate the maximum extract levels of the EP toxic metals, nickel, and cyanide corresponding to Envirite's reported maximum annual waste volume. Similarly, the Agency's OLM and VHS models were used to calculate the maximum acceptable levels for organic constituents. These maximum levels are the highest concentrations that can be present in the leachate (for metals and cyanide) and in the waste (for organics) and still pass the VHS model evaluation. When the OLM and VHS model resulted in a compliance point concentration greater than 1,000 ppm, the organic constituent was not included in this testing requirement because the pre-screening procedures are not expected to allow acceptance of wastes that will result in concentrations at this level.

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to the Administration by certified mail semi-annually. The Agency has required that these additional scans be run on monthly composites to determine if additional organic constituents should be added to the group of parameters tested on a batch basis due to variation of existing client wastes or variation of the client base. The Agency will review this information and, if needed, will propose to modify or withdraw the exclusion.

(5) Due to insufficient analytical data, this exclusion does not apply to EPA Hazardous Waste Nos. K061, K069, and K100. If Envirite desires to delist these waste types, they must submit a new petition providing the necessary analytical data demonstrating the effectiveness of the treatment process in rendering these wastes non-hazardous.

The Agency's decision to exclude conditionally the treatment residue generated from the wastewater and proposed solids treatment systems at Envirite's Canton facility applies only to the systems as described in the delisting petition. The exclusion does not apply to the proposed process additions described in the petition as recovery (including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange), additional sludge drying capacities, and wet air oxidation. For the Agency to consider excluding these wastes, Envirite should submit a complete description of these processes, as well as pilot scale and on-line test data to demonstrate their ability to generate a non-hazardous treatment residue after this additional treatment is performed on the waste.

Based on the VHS model analyses, total constituent analyses, the pre-screening process, and the contingency plan, the Agency believes that the treatment residue generated at Envirite Corporation's Canton, Ohio facility from their wastewater treatment processes, under the conditions specified above, is non-hazardous (for all reasons). The Agency therefore proposes to exclude conditionally Envirite's treatment residue from hazardous waste control for the following EPA Hazardous Waste Nos.: F006, F007, F008, F009, F011, F012, F019, K062, K002, K003, K004, K005, K006, K007, and K008, as described in their petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the treatment process).[16] In addition, Envirite is still obligated to determine whether their treatment residue exhibits any characteristics of a hazardous waste.)

II. Envirite Corporation—Harvey, Illinois

A. Petition for Exclusion

Envirite Corporation (Envirite), (previously known as Liqwacon Corporation), located in Harvey, Illinois, operates a waste treatment facility for treatment of multiple metal-bearing waste streams for industrial clients.[17] Envirite has petitioned the Agency to exclude the residue produced by its treatment facility. The residue is generated from the treatment of the following EPA Hazardous Wastes:

F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

F007—Spent cyanide plating solutions from electroplating operations.

F008—Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.

F011—Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.

F012—Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.

F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.

K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments.

K003—Wastewater treatment sludge from the production of molybdate orange pigments.

K004—Wastewater treatment sludge from the production of zinc yellow pigments.

K005—Wastewater treatment sludge from the production of chrome green pigments.

K006—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).

K007—Wastewater treatment sludge from the production of iron blue pigments.

K008—Oven residue from the production of chrome oxide green pigments.

K061—Emission control dust/sludge from the primary production of steel in electric furnaces.

K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).

K069—Emission control dust/sludge from secondary lead smelting.

K100—Waste leaching solution from the acid leaching of emission control dust/sludge from secondary lead smelting.

The listed constituents of concern for these wastes are summarized as follows:

F006—Cadmium, hexavalent chromium, nickel, and cyanide (complexed)
F007—Cyanide (salts)
F008—Cyanide (salts)
F009—Cyanide (salts)
F011—Cyanide (salts)
F012—Cyanide (complexed)
F019—Hexavalent chromium and cyanide (complexed)
K002—Hexavalent chromium and lead
K003—Hexavalent chromium and lead
K004—Hexavalent chromium
K005—Hexavalent chromium and lead
K006—Hexavalent chromium
K007—Cyanide (complexed) and hexavalent chromium
K008—Hexavalent chromium
K061—Hexavalent chromium, lead, and cadmium
K062—Hexavalent chromium and lead
K069—Hexavalent chromium, lead, and cadmium
K100—Hexavalent chromium, lead, and cadmium.

Based upon the Agency's review of the petition, Envirite was granted a conditional temporary exclusion on December 16, 1981 for EPA Hazardous Waste Nos. F006, F007, F008, F009, F011, F012, F015 and K062 (see 46 FR 61281). The Agency's basis for granting the temporary exclusion (at that time) was the low migration potential of cadmium, chromium, lead, nickel, and cyanide in the waste, and Envirite's stringent pre-screening process for accepting wastes and contingency plan ensuring that levels of constituents in the treatment residue were always within an acceptable range. Since the granting of their temporary exclusion, Envirite submitted an addendum to their original petition in November 1985 expanding the list of wastes to be delisted to include EPA Hazardous Waste Nos. F019, K002, K003, K004, K005, K006, K007, K008, K061, K069, and K100. These wastes are not yet treated by the facility, therefore, their temporary exclusion is still active. Also, since Envirite's temporary exclusion, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Envirite's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine whether the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Envirite's petition.

In support of their petition, Envirite has submitted a detailed description of its pre-screening process, treatment process, and contingency testing plan; total constituent analysis and EP toxicity test results of the treatment residue for each of the listed constituents—cadmium, total chromium, lead, and nickel; and analytical results for total, free, and leachable cyanide. Envirite also submitted total constituent analysis and EP toxicity test results for arsenic, barium, mercury, selenium, and silver; results of total oil and grease analyses; and analytical results for reactive sulfide. Envirite further submitted total constituent analyses for priority pollutant volatile, base/neutral, and acid extractable organic compounds; National Bureau of Standards (NBS) library searches for any other Appendix VIII hazardous constituents that might be present in the waste; an explanation detailing why specific Appendix VIII hazardous constituents were not tested; and a list of clients serviced at the Harvey facility. (See 47 FR 52309, November 19, 1982 for a list of the priority pollutants.) In addition, Envirite submitted descriptions of proposed process changes presently being considered for its Harvey facility. These changes included solid residue treatment units for treating incoming solid and semi-solid wastes (one such unit is already in operation at Envirite's York facility); recovery operations for metals, acid, and cyanide as an alternative to its current procedures; a wet air oxidation system to destroy cyanide; and a post-treatment sludge drying process. As noted above, the Agency requested much of this information to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.[18]

Envirite accepts metal-bearing wastes from industrial clients for treatment. Envirite conducts stringent client pre-screening tests prior to accepting a waste for treatment to ensure that wastes are compatible with the Envirite treatment process. Envirite claims that the pre-screening procedure effectively prevents the acceptance of toxic organic compounds for treatment. Envirite's pre-screening process includes an examination of the client's process description and analytical monitoring of wastes to be treated by Envirite for listed constituents and any Appendix VIII hazardous constituents that might be expected to be present. Other pre-screening parameters include: total organic carbon (TOC), non-listed EP toxic metals, cyanide, ammonia, specific gravity, and analysis for the percent acidity and alkalinity, as well as non-RCRA metals. In addition, before a given waste is accepted for treatment, it is subjected to a laboratory simulation of Envirite's treatment process. The resulting analysis must show that the treated waste meets Envirite's effluent discharge standards and that the treatment residue meets the requirements of Envirite's conditional temporary exclusion. If the treatment residue fails to meet these requirements, it is a hazardous waste, and will be managed accordingly.

Envirite's treatment process includes pre-treatment with chromium reduction and cyanide destruction followed by batch treatment with batch formulation (a preplanned combining of wastes from various storage areas and recovery systems for batch treatment), neutralization and hydroxide precipitation, sulfide addition and precipitation, and vacuum filtration. Envirite plans to implement a segregated solid and semi-solid treatment process at the Harvey facility. (Envirite has added this capability at the York, Pennsylvania facility.) Envirite claims that the treatment process used for solid and semi-solid wastes employs the same chemical reactions as are used currently in the liquid waste treatment process; the waste types treated by the liquid and solid processes are the same except for the amount of water the waste contains. Envirite submitted total constituent analysis and EP toxicity test results for wastes treated by the York facility's solids treatment system to show that this process is equally successful in rendering wastes non-hazardous.

Envirite also is proposing to initiate recovery operations at the Harvey facility. Recovery operations such as ion exchange, evaporative recovery, crystallization, and electrolytic recovery would be employed prior to waste treatment to remove metals, acid, and cyanide. Envirite plans to add drying operations at the Harvey facility to reduce further the water content of the filter cake generated from the wastewater treatment process.

Envirite also plans to use wet air oxidation methods at its Harvey facility. This method would permit the high temperature reduction of organic compounds in the aqueous phase and would be used to destroy cyanide. Envirite states that such a system would allow them to treat waste categories they currently are not permitted to accept under their delisting. They claim, however, that wastes not covered by the delisting would be carefully segregated and managed as hazardous. (Should Envirite begin to accept wastes outside of their delisting, a new petition would have to be submitted to include those wastes.)

Envirite uses an additional quality assurance method to ensure that its treated residues are rendered non-hazardous. Batches that have completed treatment remain in the neutralization tanks and treatment residue samples are subjected to the EP Toxicity Test to ensure the waste's compliance with limits established in the 1981 temporary exclusion (see 46 FR 61281). Batches of treatment residue exceeding these limits are re-treated or disposed as hazardous wastes. Based on its stringent pre-screening process, treatment process, and quality assurance plan, Envirite claims that its treatment residue is non-hazardous because the constituents of concern are present either in insignificant concentrations, or if present at significant levels, are essentially in immobile forms. Envirite also believes that the waste is non-hazardous for any other reason.

Envirite initially presented analytical data on eight weekly composite samples collected from the knife of the vacuum filter dewatering system. One sample was taken from each batch processed and stored until the end of the week-long composite sampling period. These samples then were combined in a bench top blender and homogenized. All analytical testing occurred on these homogenized samples. Envirite initially submitted data in October 1984. They collected eight more composite samples in April 1985 to demonstrate that the facility could achieve the ten-fold dilution allowed by the proposed version of the vertical and horizontal spread (VHS) model (see 50 FR 7882, February 26, 1985). As a result of public comments, the Agency modified the

[16] The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

[17] Envirite also has submitted delisting petitions for its York, Pennsylvania; Canton, Ohio; and Thomaston, Connecticut facilities.

[18] See footnote 4.

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VHS model, and the dilution factor applicable to the maximum of 40,000 tons of treatment residue generated at Envirite's Harvey facility was decreased to 6.3 times the drinking water standards for the EP toxic metals and cyanide. Envirite re-sampled each facility's waste in an effort to show that their treatment process also could achieve this lower dilution level. Since Envirite previously had analyzed 16 samples and their exclusion would be conditional as is typical of the Agency's policy for Multiple Waste Treatment Facilities (MWTFs), (*i.e.*, each batch of treatment residue would require testing), the Agency permitted Envirite to collect and re-analyze only 4 composite samples. Sampling methodologies for these 4 samples were similar to those for the previous 16 samples with the exception that each composite sample was collected over a 4-day period rather than a week-long period. This represented a sampling period of approximately 1 month. All samples collected since April 1985 were analyzed for oil and grease, reactive sulfide, and Appendix VIII hazardous constituents. Envirite claims that these sampling periods addressed more than 50 percent of their clients and represented time periods of sufficient length to show the variation in concentrations of listed constituents in their treated wastes (for all of the wastes which were a part of the original delisting request).

Total constituent analysis and EP toxicity test results of the treatment residue generated at Envirite's Harvey facility revealed the maximum concentrations reported in Tables 1 and 2.[19]

TABLE 1.— MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Cadmium	110	0.08
Chromium (total)[1]	9,300	0.3
Lead	750	0.1
Nickel	1,300	0.71
Cyanide	9.0	<0.125

<: Denotes concentrations below the detection limit.
[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

TABLE 2.— MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP Leachate analyses (mg/l)
Arsenic	0.36	0.005
Barium	82	1.8
Mercury	0.53	0.012

[19] See footnote 5.

TABLE 2.— MAXIMUM CONCENTRATIONS—Continued

Listed constituents	Total constituent analyses (mg/kg)	EP Leachate analyses (mg/l)
Selenium	0.045	<0.004
Silver	21	0.11

<: Denotes concentrations below the detection limit.

Envirite also submitted total constituent analyses for Appendix VIII hazardous constituents potentially present in the waste. Envirite has limited its initial gas chromatographic/mass spectroscopy (GC/MS) analytical work to the volatile, base/neutral, and acid fractions of the priority pollutants, and an NBS library scan for remaining Appendix VIII constituents likely to be present. Envirite's rationale for limiting Appendix VIII testing included the deletion of: (1) Toxicants for which there are no known analytical methods; (2) toxicants that are reactive or hydrolyze in water; and (3) toxicants that are present primarily in wastes generated from industries not serviced by Envirite (primarily pharmaceuticals). A more detailed explanation and list of these toxicants is available in the public docket. Maximum concentrations for Appendix VIII hazardous constituents that are potentially present in the treatment residue are reported in Table 3.

Envirite also has submitted information regarding a solids treatment process, which exists as a segregated treatment process at the York facility and which is proposed to be added to the Harvey facility. Envirite has indicated that the process is similar to their liquids treatment process with the exception that different solid reagents are used in the pre-treatment for hexavalent chromium, cyanide, and metal hydroxides, depending on the moisture content of the waste. Envirite has submitted EP toxicity test analyses on 17 batches of treatment residues generated over 6 weeks from the solids treatment process at the York facility. The maximum extract concentrations from the data are summarized in Table 4.

TABLE 3.— MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY ENVIRITE IN THE TREATMENT RESIDUE (PPM)

Constituents	Total constituent analyses
Anthracene	2.0
Bis(2-ethyl hexyl)phthalate	10.0
Butyl benzyl phthalate	27
Dibutyl phthalate	2.0
Di-n-octyl phthalate	1.6

TABLE 3.— MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY ENVIRITE IN THE TREATMENT RESIDUE (PPM)—Continued

Constituents	Total constituent analyses
Ethyl benzene	0.572
Methylene chloride	1.148
Naphthalene	15.0
n-Nitrosodiphenylamine	1.0
Phenol	1.4
Tetrachloroethylene	0.811
Toluene	1.034
1,2,4-Trichlorobenzene	86.0
1,1,1-Trichloroethane	1.402
Trichloroethylene	0.031

TABLE 4.— Maximum Concentrations for the Solids Treatment Process at the York Facility

Constituents	EP toxicity analyses (mg/l)
Arsenic	<0.55
Barium	<1.24
Cadmium	<0.03
Chromium	<0.25
Lead	<0.69
Mercury	<0.0072
Selenium	<0.24
Silver	<0.07
Nickel	3.58
Cyanide	<2.0
Cyanide (total in waste)	92.9

The maximum total oil and grease value reported by Envirite was 0.09 percent. Envirite also analyzed the treatment residue for reactive sulfides with the maximum concentration reported to be below the detection limit at <1.0 ppm. Envirite also submitted data indicating that the sludge is not ignitable, corrosive, or reactive.

B. Agency Analysis and Action

Envirite has demonstrated that its original waste treatment system and the proposed solids treatment system, under specified controlled conditions, produces a non-hazardous treatment residue. Envirite has not, however, made this demonstration for the recovery, drying or wet air oxidation processes, it proposes for the Harvey facility. Should Envirite adjust its processes to include the above treatment changes, it would have to submit a new petition for each change.

The Agency believes that the four samples collected by Envirite from the filter press of the waste water treatment system over a 1-month period were non-biased and adequately represent any variations that may occur in the treatment residue over this time period for each of the treated wastes except EPA Hazardous Waste Nos. K061, K060, and K100.[20] The key factors that could

[20] See footnote 6.

vary toxicant concentrations in the residue at MWTFs are the addition of new clients, the variation of client processes occurring from time to time, and variations in raw materials used at client waste generator facilities. Variations in raw materials can be expected when the clients of the MWTF perform as job shops or when the product line changes on a seasonal basis. The Agency does not believe it is possible to represent this variation without sampling that would be considered excessive for a delisting petition demonstration. The Agency, therefore, has requested all MWTF petitioners to submit analytical data collected during a 2-month period on a minimum of eight composite samples.[21]

The Agency permitted Envirite to submit only 4 samples based on the final VHS model, as the facility had already submitted 16 samples demonstrating its ability to adjust the treatment process to comply with VHS model modifications. The Agency is familiar with the ability of Envirite's and similar technologies to adjust mixing ratios to achieve lower leachate levels for heavy metals. Furthermore, the final exclusion, when granted, would require testing of each treated batch to ensure compliance with the exclusion's specifications. The demonstration with respect to Appendix VIII hazardous constituents still was required, however, to cover a minimum of eight samples collected over a 2-month period.

The Agency has evaluated the mobility of the listed constituents from Envirite's waste using the VHS model.[22] The VHS model generated compliance point values using the 40,000 ton per year maximum generation rate and the maximum extract levels reported by Envirite as input parameters. These predicted compliance point concentrations are reported in Table 5. (When leachate concentrations were below the detection limits, the value of the detection limit was used.)

TABLE 5.— VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	0.0095	0.01
Chromium (total)	.048	.05
Lead	.016	.05
Nickel	.11	.35
Cyanide	.0199	.2

The treatment residue exhibited levels for the listed constituents (at the compliance point) below the National Interim Primary Drinking Water Standards, nickel levels below the Agency's Interim Health Advisory,[23] and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[24] Total cyanide levels in the treatment residue also are below the Agency's threshold limit of 250 ppm.[25]

The Agency also concluded, through using the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 6.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Nonlisted constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.00079	0.05
Barium	.29	1.0
Mercury	.0019	.002
Selenium	.00063	.01
Silver	.017	.05

The Agency also has evaluated the mobility of organic constituents detected in the sludge by first estimating their leachate concentrations with the Organic Leachate Model (OLM), and then predicting their compliance point concentrations with the VHS model.[26] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 7.

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS [1] (PPM)

Constituents	Predicted leachate concentrations (Base)	Predicted leachate concentrations (95 percent)	Compliance point concentrations (Base)	Compliance point concentrations (95 percent)	Regulatory standards
Anthracene	0.0011	0.0016	0.00017	0.00025	0.002
Bis(2-ethyl hexyl) phthalate	.0015	.0021	.00024	.00033	.7
Butyl benzyl phthalate	.029	.0359	.0046	.0057	.85
Dibutyl phthalate	.0087	.011	.0014	.0018	.5
Di-n-octyl phthalate	.0018	.0025	.00028	.0004	.5
Ethyl benzene	.0135	.0136	.0017	.0022	.3
Methylene chloride	.092	.129	.015	.026	.056
Naphthalene	.048	.058	.0076	.0091	9.0
n-Nitrosodiphenylamine	.00054	.00109	.0013	.0017	.0071
Phenol	.185	.256	.029	.042	3.5
Tetrachloroethylene	.0068	.0129	.0015	.0020	.0007
Toluene	.022	.029	.0038	.0046	10.5
1,2,4-Trichlorobenzene	.156	.189	.025	.029	.7
1,1,1-Trichloroethane	.040	.052	.0063	.0082	1.2
Trichloroethylene	.0026	.0039	.0004	.0006	.0032

[1] Since the Organic Leachate Model (OLM) has not been finalized, both the baseline equation and 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized, only one of these two versions will apply.

Table 7 lists only those constituents found in the treatment residue above detection limits. In each instance, the resulting predicted compliance point concentrations (with the exception of tetrachloroethylene) were below the Agency's respective regulatory standards. The Agency has previously granted Envirite a conditional exclusion which required batch testing. Through this batch testing condition, Envirite has periodically identified "problem" batches. Treatment failures under the temporary exclusion were identified only in terms of cyanide or heavy metals. If process adjustments did not successfully treat the waste, Envirite has successfully identified and eliminated acceptance of "problem" wastes through their pre-screening program. The Agency did not previously specify any limitations on trace organics in the temporary exclusion, nor did the Agency specify acceptable concentrations of trace organics. Envirite, therefore, has not had the opportunity to adjust its treatment or eliminate clients to address the tetrachloroethylene levels. Under these circumstances, the Agency believes it inappropriate to penalize Envirite's petition effort due to the unacceptable levels of tetrachloroethylene found to be present in batches tested for the petition effort. Instead, the Agency is proposing to add this constituent (as well as other potential organic constituents) to Envirite's conditional batch testing program. The Agency believes that if Envirite cannot successfully treat the present level of organic contaminants, that they can eliminate the wastes

[21] See footnote 7.
[22] See footnote 8.
[23] See footnote 9.
[24] See footnote 10.
[25] See footnote 11.
[26] See footnote 12.

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containing those constituents through their pre-screening operations. Given the changeable nature of clients and wastes accepted by the facility for treatment, the Agency believes it necessary to incorporate organics batch testing into the contingency testing program to ensure that stray organic constituents are not present in the treatment residue at levels of regulatory concern.

The Agency believes that a conditional exclusion can be granted to the Envirite facility. The conditions of the exclusion would necessitate continuous batch testing for the EP toxic metals, nickel, cyanide, and those organics detected in the treatment residue. The Agency believes this testing requirement is necessary due to the inherent variability encountered by a changing client base, the process variation associated with each of the clients serviced, the high concentrations of toxic constituents in the incoming wastes and in the treatment residue, and the high volumes of treatment residue generated annually by Envirite.

This testing requirement is self-implemented, that is, the results of testing each batch need not be reviewed by State or Federal EPA representatives prior to disposal. The test data must be recorded and kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Agency on a semi-annual basis.

The Agency, therefore, proposes to grant an exclusion to the Envirite facility providing that the following contingency testing program is followed:

(1) Each batch [27] of treatment residue must be representatively sampled and tested using the EP toxicity test for the EP toxic metals, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste will be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm [28] or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

[27] See footnote 13.

[28] See footnote 11.

(3) Each batch must be tested for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. This list of organic constituents is a compilation of organics detected at each of Envirite's four facilities.[29] The Agency notes this condition does not allow retreating as does condition 1 and 2, because Envirite's existing treatment process is not designed for organics treatment.

Compound	Maximum acceptable levels [1] (ppm)	
	(Basis)	(95 percent)
Anthracene	72	45
1,2-Diphenyl hydrazine	.001	.0005
Methylene chloride	8.18	5.27
Methyl ethyl ketone	313	175
n-Nitrosodiphenylamine	11.9	9.1
Phenol	1,506	982
Tetrachloroethylene	.156	.113
Trichloroethylene	.592	.376

[1] Since the OLM has not been finalized, both versions of the model, (i.e., the baseline equation and the 95 percent confidence interval applied to the baseline) are calculated here. Once finalized, only one of these two versions will apply.

(4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the compounds listed above, as well as the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982 for a list of the priority pollutants.) These data must be kept on file at the facility, and submitted to the Administrator by certified mail semi-annually. The Agency has required that these additional scans be run on monthly composites to determine if additional organic constituents should be added to the group of parameters tested on a batch basis due to variation of existing client wastes or variation of the client base. The Agency will review this information and, if needed, will propose to modify or withdraw the exclusion.

(5) Due to insufficient analytical data, this exclusion does not apply to EPA Hazardous Waste Nos. K061, K069, and K100. If Envirite desires to delist these waste types, they must submit a new petition providing the necessary analytical data demonstrating the effectiveness of the treatment process in rendering these wastes non-hazardous.

The Agency's decision to exclude conditionally the treatment residue generated from the wastewater and proposed solids treatment systems at Envirite's Harvey facility applies only to the systems as described in the delisting petition. The exclusion does not apply to the proposed process additions described in the petition as recovery (including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange), additional sludge drying capacities, and wet air oxidation. For the Agency to consider excluding these wastes, Envirite should submit a complete description of these processes, as well as pilot scale and on-line test data to demonstrate their ability to generate a non-hazardous treatment residue after this additional treatment is performed on the waste.

Based on the VHS model analyses, total constituent analyses, the pre-screening process, and the contingency plan, the Agency believes that the treatment residue generated at Envirite Corporation's Harvey, Illinois facility from their wastewater treatment processes, under the conditions specified above, is non-hazardous (for all reasons). The Agency therefore proposes to exclude conditionally Envirite's treatment residue from hazardous waste control for the following EPA Hazardous Waste Nos.: F006, F007, F008, F009, F011, F012, F019, K062, K002, K003, K004, K005, K006, K007, and K008, as described in their petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (e.g., the waste is altered as a result of changes in the treatment process).[30] In addition, Envirite is still obligated to determine whether their treatment residue exhibits any of the characteristics of a hazardous waste.)

[29] See footnote 15.

[30] See footnote 16.

III. Envirite Corporation—Thomaston, Connecticut

A. Petition for Exclusion

Envirite Corporation (Envirite), (previously known as Liqwacon Corporation), located in Thomaston, Connecticut, operates a waste treatment facility for treatment of multiple metal-bearing waste streams for industrial clients.[31] Envirite has petitioned the Agency to exclude the residue produced by its treatment facility. The residue is generated from the treatment of the following EPA Hazardous Wastes:

F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

F007—Spent cyanide plating solutions from electroplating operations.

F008—Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.

F011—Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.

F012—Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.

F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.

K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments.

K003—Wastewater treatment sludge from the production of molybdate orange pigments.

K004—Wastewater treatment sludge from the production of zinc yellow pigments.

K005—Wastewater treatment sludge from the production of chrome green pigments.

K006—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).

K007—Wastewater treatment sludge from the production of iron blue pigments.

K008—Oven residue from the production of chrome oxide green pigments.

K061—Emission control dust/sludge from the primary production of steel in electric furnaces.

K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).

K069—Emission control dust/sludge from secondary lead smelting.

K100—Waste leaching solution from the acid leaching of emission control dust/sludge from secondary lead smelting.

The listed constituents of concern for these wastes are summarized as follows:

F006—Cadmium, hexavalent chromium, nickel, and cyanide (complexed)
F007—Cyanide (salts)
F008—Cyanide (salts)
F009—Cyanide (salts)
F011—Cyanide (salts)
F012—Cyanide (complexed)
F019—Hexavalent chromium and cyanide (complexed)
K002—Hexavalent chromium and lead
K003—Hexavalent chromium and lead
K004—Hexavalent chromium
K005—Hexavalent chromium and lead
K006—Hexavalent chromium
K007—Cyanide. (complexed) and hexavalent chromium
K008—Hexavalent chromium
K061—Hexavalent chromium, lead, and cadmium
K062—Hexavalent chromium and lead
K069—Hexavalent chromium, lead, and cadmium
K100—Hexavalent chromium, lead, and cadmium.

[31] Envirite also has submitted delisting petitions for its York, Pennsylvania; Harvey, Illinois; and Canton, Ohio facilities.

Based upon the Agency's review of the petition, Envirite was granted a conditional temporary exclusion on December 16, 1981 for EPA Hazardous Waste Nos. F006, F007, F008, F009, F011, F012, F015 and K062 (see 46 FR 61281). The Agency's basis for granting the temporary exclusion (at that time) was the low migration potential of cadmium, chromium, lead, nickel, and cyanide in the waste, and Envirite's stringent pre-screening process for accepting wastes and contingency plan ensuring that levels of constituents in the treatment residue were always within an acceptable range. Since the granting of their temporary exclusion, Envirite submitted an addendum to their original petition in November 1985 expanding the list of wastes to be delisted to include EPA Hazardous Waste Nos. F019, K002, K003, K004, K005, K006, K007, K008, K061, K069, and K100. These wastes are not yet treated by the facility, therefore, Envirite's temporary exclusion is still active. Also, since Envirite's temporary exclusion, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Envirite's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which it was originally listed; and (2) determine whether the waste is nonhazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Envirite's petition.

In support of their petition, Envirite has submitted a detailed description of its pre-screening process, treatment process, and contingency testing plan; total constituent analysis and EP toxicity test results of the treatment residue for each of the listed constituents—cadmium, total chromium, lead, and nickel; and analytical results for total, free, and leachable cyanide. Envirite also submitted total constituent analysis and EP toxicity test results for arsenic, barium, mercury, selenium, and silver; results of total oil and grease analyses; and analytical results for reactive sulfide. Envirite further submitted total constituent analyses for priority pollutant volatile, base/neutral, and acid extractable organic compounds; National Bureau of Standards (NBS) library searches for any other Appendix VIII hazardous constituents that might be present in the waste; an explanation detailing why specific Appendix VIII hazardous constituents were not tested; and a list of clients serviced at the Thomaston facility. (See 47 FR 52309, November 19, 1982, for a list of the priority pollutants.) In addition, Envirite submitted descriptions of proposed process changes presently being considered for its Thomaston facility. These changes included solid residue treatment units for treating incoming solid and semi-solid wastes (one such unit is already in operation at Envirite's York facility); recovery operations for metals, acid, and cyanide as an alternative to its current procedures; and a post-treatment sludge drying process.

As noted above, the Agency requested much of this information to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.[32]

Envirite accepts metal-bearing wastes from industrial clients for treatment. Envirite conducts stringent client pre-screening tests prior to accepting a waste for treatment to ensure that wastes are compatible with the Envirite treatment process. Envirite claims that the pre-screening procedure effectively prevents the acceptance of toxic organic compounds for treatment. Envirite's pre-screening process includes an examination of the client's process description and analytical monitoring of wastes to be treated by Envirite for listed constituents and any Appendix VIII hazardous constituents that might be expected to be present. Other pre-screening parameters include: total organic carbon (TOC), non-listed EP toxic metals, cyanide, ammonia, specific gravity, and analysis for the percent acidity and alkalinity, as well as other non-RCRA metals. In addition, before a given waste is accepted for treatment, it is subjected to a laboratory simulation of Envirite's treatment process. The resulting analysis must show that the treated waste meets Envirite's effluent discharge standards and that the treatment residue meets the requirements of Envirite's temporary exclusion. If the treatment residue fails to meet these requirements, it is a hazardous waste and will be managed accordingly.

Envirite's treatment process includes pre-treatment with chromium reduction and cyanide destruction followed by batch treatment with batch formulation

[32] See footnote 4.

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(a preplanned combining of wastes from various storage areas and recovery systems for batch treatment), neutralization and hydroxide precipitation, sulfide addition and precipitation, and vacuum filtration. Envirite plans to implement a segregated solid and semi-solid treatment process at the Thomaston facility. (Envirite has added this capability at their York, Pennsylvania facility.) Envirite claims that the treatment process used for solid and semi-solid wastes employs the same chemical reactions as are used currently in the liquid waste treatment process; the waste types treated by the liquid and solid processes are the same except for the amount of water the waste contains. Envirite submitted total constituent analysis and EP toxicity test results for wastes treated by the York facility's solids treatment system to show that this process is equally successful in rendering wastes non-hazardous.

Envirite also is proposing to initiate recovery operations at all four of its facilities, including the Thomaston facility. Recovery operations such as ion exchange, evaporative recovery, crystallization, and electrolytic recovery would be employed prior to waste treatment to remove metals, acid, and cyanide. Envirite plans to add drying operations at each facility to reduce further the water content of the filter cake generated from the wastewater treatment process.

Envirite uses an additional quality assurance method to ensure that its treated residues are rendered non-hazardous. Batches that have completed treatment remain in the neutralization tanks and treatment residue samples are subjected to the EP Toxicity Test to ensure the waste's compliance with limits established in the 1981 temporary exclusion (see 40 FR 61281). Treatment residue batches exceeding these limits are re-treated or disposed as hazardous wastes. Based on its stringent pre-screening process, treatment process, and quality assurance plan, Envirite claims that its treatment residue is non-hazardous because the constituents of concern are present either in insignificant concentrations, or if present at significant levels, are essentially in immobile forms. Envirite also believes that the waste is non-hazardous for any other reason.

Envirite initially presented analytical data on eight weekly composite samples collected from the knife of the vacuum filter dewatering system. One sample was taken from each batch processed and stored until the end of the week-long composite sampling period. These samples then were combined in a bench top blender and homogenized. All analytical testing occurred on these homogenized samples. Envirite initially submitted data in October 1984. They collected eight more composite samples in April 1985 to demonstrate that the facility could achieve the ten-fold dilution allowed by the proposed version of the vertical and horizontal spread (VHS) model (see 50 FR 7882, February 26, 1985). As a result of public comments, the Agency modified the VHS model, and the dilution factor applicable to the maximum of 40,000 tons of treatment residue generated at Envirite's Thomaston facility was decreased to 6.3 times the drinking water standards for the EP toxic metals and cyanide. Envirite re-sampled each facility's waste in an effort to show that their treatment process also could achieve this lower dilution level. Since Envirite previously had analyzed 16 samples and their exclusion would be conditional as is typical of the Agency's policy for Multiple Waste Treatment Facilities (MWTFs), (*i.e.*, each batch of treatment residue would require testing), the Agency permitted Envirite to collect and re-analyze only 4 composite samples. Sampling methodologies for these 4 samples were similar to those for the previous 16 samples with the exception that each composite sample was collected over a 4-day period rather than a week-long period. This represented a sampling period of approximately 1 month. All samples collected since April 1985 were analyzed for oil and grease, reactive sulfide, and Appendix VIII hazardous constituents. Envirite claims that these sampling periods addressed more than 50 percent of their clients and represented time periods of sufficient length to show the variation in concentrations of listed constituents in their treated wastes (for all of the wastes which were a part of the original delisting request.)

In addition to Envirite's sampling efforts, EPA conducted a spot check sampling visit to the facility in December 1983. One composite sample was taken directly from the filter press. Fourteen additional composite samples were collected from random locations at the facility's on-site landfills.

Total constituent analysis and EP toxicity test results of the treatment residue generated at Envirite's Thomaston facility revealed the maximum concentrations reported in Tables 1 and 2.[33]

[33] See footnote 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Cadmium	205	0.03
Chromium (total)[1]	11,000	.10
Lead	750	<.06
Nickel	7,900	.43
Cyanide	6.9	<.10

<Denotes concentrations below the detection limit.
[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

TABLE 2.—MAXIMUM CONCENTRATIONS

Listed constituents	Total constituents analyses (mg/kg)	EP leachate analyses (mg/l)
Arsenic	0.40	<0.002
Barium	74.2	<.30
Mercury	.70	<.002
Selenium	1.2	<.005
Silver	35.2	.08

<Denotes concentrations below the detection limit.

Envirite also submitted total constituent analyses for Appendix VIII hazardous constituents potentially present in the waste. Envirite has limited its initial gas chromatographic/mass spectroscopy (GC/MS) analytical work to the volatile, base/neutral, and acid fractions of the priority pollutants, and an NBS library scan for remaining Appendix VIII constituents likely to be present. Envirite's rationale for limiting Appendix VIII testing included the deletion of: (1) toxicants for which there are no known analytical methods; (2) toxicants that are reactive or hydrolyze in water; and (3) toxicants that are present primarily in wastes generated from industries not serviced by Envirite (primarily pharmaceuticals). A more detailed explanation and list of these toxicants is available in the public docket. Maximum concentrations for Appendix VIII hazardous constituents that are potentially present in the treatment residue are reported in Table 3.

TABLE 3.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY ENVIRITE IN THE TREATMENT RESIDUE (PPM)

Constituents	Total constituents analyses
Bis(2-ethyl hexyl)phthalate	2.6
Methylene chloride	.312
Methyl ethyl ketone	3.405
Tetrachloroethylene	.058
Toluene	.322
1,1,1-Trichloroethane	.060
Trichloroethylene	.027

The sludge samples collected by EPA from the filter press and on-site landfills were analyzed for total and leachable concentrations of the EP metals, nickel, and cyanide. These concentrations are reported in Tables 4, 5, 6, and 7.

TABLE 4.—MAXIMUM CONCENTRATIONS FROM EPA SPOT CHECK FILTER CAKE (PPM)

Listed Constituents	Total constituent analyses	EP Toxicity analyses
As	9.3	<0.02
Ba	8.7	<.5
Cd	21	<.25
Cr	1,300	<.2
Pb	590	<.13
Hg	.093	<.001
Se	<3	<.05
Ag	<1.5	<.02
Ni	2,000	<.25
CN	93	

TABLE 5.—MAXIMUM CONCENTRATIONS FROM EPA SPOT CHECK LANDFILL AREA 1 [1] (PPM)

Listed constituents	Total constituent analyses	EP toxicity analyses
As	11.0	0.028
Ba	39	<.5
Cd	710	.053
Cr	3,000	<.2
Pb	799	.24
Hg	.39	<.001
Se	<3	<.05
Ag	<1.5	<.02
Ni	4,700	.25
CN	<1.5	

[1] Area claimed by Envirite to be located in a permitted hazardous waste cell.

TABLE 6.—MAXIMUM CONCENTRATIONS FROM EPA SPOT CHECK LANDFILL AREA 2 [1] (PPM)

Listed constituents	Total constituent analyses	EP toxicity analyses
As	12	<0.02
Ba	45	<.5
Cd	140	1.7
Cr	4,500	<.2
Pb	640	<.13
Hg	.76	.011
Se	7.8	<.05
Ag	<1	.025
Ni	3,900	22
CN	73	

[1] Area claimed by Envirite to be located in a permitted hazardous waste cell.

TABLE 7.—MAXIMUM CONCENTRATIONS FROM EPA SPOT CHECK LANDFILL AREA 3 (PPM)

Listed constituents	Total constituent analyses	EP toxicity analyses
As	9.0	<0.02
Ba	31	<.5
Cd	160	.023
Cr	5,800	<.2
Pb	720	.24
Hg	2.66	<.001
Se	<3	<.05
Ag	<1	<.02
Ni	7,500	.26
CN	109	

The samples also were analyzed by EPA for 128 priority pollutants and volatile organics. Table 8 summarizes concentrations of these organics detected in the samples.

TABLE 8.—MAXIMUM APPENDIX VIII ORGANICS CONCENTRATIONS IDENTIFIED BY EPA (PPM)

Listed constituents	Total constituent analyses
Bis(2-ethyl hexyl)phthalate	16
Carbon disulfide	19
Diethyl phthalate	2.3
Di-n-octyl phthalate	14
1,2-Diphenyl hydrazine	11
Methyl isobutyl ketone	.99
Phenol	4.9
Tetrachloroethylene [1]	8
Trichloroethylene [2]	15

[1] Identified in one filter press sample, but not detected in 14 other landfill samples at 0.5 ppm.
[2] Identified in one confirmation landfill sample, but not detected in 14 other samples.

Envirite also has submitted information regarding a solids treatment process, which exists as a segregated treatment process at the York facility and which is proposed to be added to each of the remaining facilities, including the Thomaston facility. Envirite has indicated that the process is similar to their liquids treatment process with the exception that different solid reagents are used in the pre-treatment for hexavalent chromium, cyanide, and metal hydroxides, depending on the moisture content of the waste. Envirite has submitted EP toxicity test analyses on 17 batches of treatment residues generated over 6 weeks from the solids treatment process at the York facility. The maximum extract concentrations from the data are summarized in Table 9.

TABLE 9.—MAXIMUM CONCENTRATIONS FOR THE SOLIDS TREATMENT PROCESS AT THE YORK FACILITY

Constituents	EP toxicity analyses (mg/l)
Arsenic	<0.05
Barium	<1.24
Cadmium	<.03
Chromium	<.25
Lead	<.05
Mercury	<.0012
Selenium	<.24
Silver	<.07
Nickel	3.58
Cyanide	<.2
Cyanide (total in waste)	90.9

The maximum total oil and grease value reported by Envirite was 0.16 percent. Envirite also analyzed the treatment residue for reactive sulfides with the maximum concentration reported to be at the detection limit at <1.0 ppm. Envirite also submitted data indicating that the sludge is not ignitable, corrosive, or reactive.

Envirite also provided the results from ground water monitoring data for the site. Data were included for five monitoring wells located on the perimeters of Envirite's on-site landfill cells. Envirite claims that background and upgradient wells indicate that cadmium, chromium, and nickel levels in downgradient wells are similar to levels found in background and upgradient wells. (Complete ground-water monitoring data for the site are available in the public docket for this notice.)

B. Agency Analysis and Action

Envirite has demonstrated that its original waste treatment system and the proposed solids treatment system, under specified controlled conditions, produces a non-hazardous treatment residue. Envirite has not, however, made this demonstration for the recovery and drying processes it proposes for the Thomaston facility. Should Envirite adjust its processes to include the above treatment changes, it would have to submit a new petition for each change.

The Agency believes that the four samples collected by Envirite from the filter press of the wastewater treatment system over a 1-month period were non-biased and adequately represent any variations that may occur in the treatment residue for this time period for each of the treated wastes except EPA Hazardous Waste Nos. K061, K069, and K100.[34] The key factors that could vary toxicant concentrations in the residue at MWTFs are the addition of new clients, the variation of client processes occurring from time to time, and variations in raw materials used at client waste generator facilities. Variations in raw materials can be expected when the clients of the MWTF perform as job shops or when the product line changes on a seasonal basis. The Agency does not believe it is possible to represent this variation without sampling that would be considered excessive for a delisting petition demonstration. The Agency, therefore, has requested all MWTF petitioners to submit analytical data collected during a 2-month period on a minimum of eight composite samples.[35]

The Agency permitted Envirite to submit only 4 samples based on the final VHS model, as the facility already had submitted 16 samples demonstrating its ability to adjust the treatment process to comply with initial VHS model modifications. The Agency is familiar with the ability of Envirite's and similar technologies to adjust mixing ratios to achieve lower leachate levels for heavy metals. Furthermore, the final exclusion, when granted, would require testing of each treated batch to ensure compliance with the exclusion's specifications. The

[34] See footnote 6.
[35] See footnote 7.

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demonstration with respect to Appendix VIII hazardous constituents still was required, however, to cover a minimum of eight samples collected over a 2-month period.

The Agency has evaluated the mobility of the listed constituents from Envirite's waste using the VHS model.[36] The VHS model generated compliance point values using the 40,000 ton per year maximum generation rate and the maximum reported extract levels reported by Envirite as input parameters. These predicted compliance point concentrations are reported in Table 10. (When leachate concentrations were below the detection limits, the value of the detection limit was used.)

TABLE 10.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	0.0048	0.01
Chromium (total)	.016	.05
Lead	.014	.05
Nickel	.068	.35
Cyanide	.015	.2

The treatment residue exhibited levels for the listed constituents (at the compliance point) below the National Interim Primary Drinking Water Standards, nickel levels below the Agency's interim health advisory,[37] and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[38] Total cyanide levels in the treatment residue also are below the Agency's threshold limit of 250 ppm.[39]

The Agency also concluded, through the use of the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 11.

TABLE 11.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Nonlisted constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.00032	0.05
Barium	.048	1.0
Mercury	.00032	.002
Selenium	.00079	.01
Silver	.013	.05

[36] See footnote 8.
[37] See footnote 9.
[38] See footnote 10.
[39] See footnote 11.

The Agency has also analyzed the data collected during its spot-check visit using the VHS model. The EP toxicity values for the filter cake sample generated compliance point concentrations for all listed and non-listed EP toxic metals and nickel below their respective standards. Similarly, the random core samples collected in "Area 3" of the landfill exhibited compliance point concentrations for all listed and non-listed EP toxic metals and nickel below their respective standards. The maximum EP toxicity values for nickel in "Area 1" and nickel and cadmium in "Area 2" generated compliance point concentrations above their respective standards. Envirite has disposed of hazardous waste in several permitted cells prior to 1983, and has provided blueprints, diagrams, and overhead photographs to identify these areas. The Agency accepts Envirite's claim that the samples collected in "Areas 1 and 2" were located in an area of "Cell #4" which contains hazardous waste. Therefore, the Agency has not used these data in the evaluation of the petitioned treatment residue.

The Agency also has evaluated the mobility of organic constituents detected in the sludge by first estimating their leachate concentrations with the Organic Leachate Model (OLM), and then predicting their compliance point concentrations with the VHS model.[40] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 12.

TABLE 12.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS [1] [2] (PPM)

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	(Base)	(95 percent)	(Base)	(95 percent)	
Bis(2-ethyl hexyl) phthalate	0.0098	0.0125	0.0015	0.002	0.7
Carbon disulfide	.304	.384	.045	.0609	3.5
Dibutyl phthalate	.0122	.0154	.002	.0024	3.5
Di-n-octyl phthalate	.019	.023	.003	.0036	.7
1,2-Diphenyl hydrazine	.176	.22	.028	.036	.00005
Methylene chloride	.036	.0547	.0060	.0087	.56
Methyl ethyl ketone	.509	.747	.061	.118	1.8
Phenol	.557	.785	.068	.124	3.5
Tetrachloroethylene	.056	.066	.0089	.011	.0007
Toluene	.010	.014	.0018	.002	10.5
1,1,1-Trichloroethane	.0047	.0070	.00075	.001	1.3
Trichloroethylene	.181	.225	.029	.035	.0032

[1] Since the Organic Leachate Model (OLM) has not been finalized, both the baseline equation and 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized, only one of these two versions will apply.
[2] Includes both EPA and Envirite data.

Table 12 lists only those constituents found in the treatment residue above detection limits. In each instance, the resulting predicted compliance point concentrations (except for 1,2-diphenyl hydrazine, tetrachloroethylene, and trichloroethylene) were below the Agency's respective regulatory standards. (The VHS model analysis was not used to evaluate methyl isobutyl ketone levels detected in the treatment residue, as this constituent is listed solely for its ignitability properties.) The Agency has previously granted Envirite a conditional exclusion which required batch testing. Through this batch testing condition, Envirite has periodically identified "problem" batches. Treatment failures under the temporary exclusion were identified only in terms of cyanide or heavy metals. If process adjustments did not successfully treat the waste, Envirite has successfully identified and eliminated the acceptance of "problem" wastes through their pre-screening program. The Agency did not previously specify any limitations on trace organics in the temporary exclusion, nor did the Agency specify acceptable concentrations of trace organics. Envirite, therefore, has not had the opportunity to adjust its treatment process or eliminate clients to address these constituents. Under these circumstances, the Agency believes it inappropriate to penalize Envirite's petition effort due to the unacceptable levels of 1,2-diphenyl hydrazine, tetrachloroethylene, and trichloroethylene found to be present in batches tested for the petition effort. Instead, the Agency is proposing to add these constituents (as well as other potential organic constituents) to Envirite's conditional batch testing program. The Agency believes that if Envirite cannot successfully treat the present level of organic contaminants, that they can eliminate the wastes containing those constituents through

[40] See footnote 12.

their pre-screening operations. Given the changeable nature of clients and wastes accepted by the facility for treatment, the Agency believes it necessary to incorporate organics batch testing into the contingency testing program to ensure that stray organic constituents are not present in the treatment residue at levels of regulatory concern.

Envirite also submitted ground-water monitoring data from wells located on-site at the Thomaston facility.[41] These data showed that cadmium, chromium, and nickel may be contaminating ground water. However, due to concentrations present in background and upgradient wells, a definitive determination cannot be made for cadmium and chromium. The landfill appears to be causing contamination of the ground water with nickel. The Agency considers the hazardous waste previously disposed in the on-site landfill to be the likely source of this contamination. In addition, the facility disposed of other wastes on-site which contained high levels of metals.[42] This proposed exclusion, however, would not change the status of wastes previously disposed of on-site. The exclusion, if promulgated, would effect only wastes generated after the effective date of the exclusion.

The Agency believes that a conditional exclusion can be granted to Envirite for its waste as generated. The conditions of the exclusion would necessitate continuous batch testing for the EP toxic metals, nickel, cyanide, and those organics detected in the treatment residue. The Agency believes this testing requirement is necessary due to the inherent variability encountered by a changing client base, the process variation associated with each of the clients serviced, the high concentrations of toxic constituents in the incoming wastes and in the treatment residue, and the high volumes of treatment residue generated annually by Envirite.

This testing requirement is self-implemented, that is, the results of testing each batch need not be reviewed by State or Federal EPA representatives prior to disposal. The test data must be recorded and kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Agency on a semi-annual basis.

The Agency, therefore, proposes to grant an exclusion to the Envirite facility providing that the following contingency testing program is followed:

(1) Each batch [43] of treatment residue must be representatively sampled and tested using the EP toxicity test for the EP toxic metals and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste will be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If reactive cyanide levels exceed 250 ppm [44] or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(3) Each batch must be tested for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. This list of organic constituents is a compilation of organics detected at each of Envirite's four facilities.[45] The Agency notes that this condition does not allow re-treating as do Conditions 1 and 2, because Envirite's existing treatment process is not designed for organics treatment.

Compound	Maximum acceptable levels [1] (ppm)	
	(base)	(95 pct)
Anthracene	72	45
1,2-Diphenyl hydrazine	0.001	0.0005
Methylene chloride	8.18	5.27
Methyl ethyl ketone	313	175
n-Nitrosodiphenylamine	11.9	8.1
Phenol	1,588	992
Tetrachloroethylene	.186	.119
Trichloroethylene	.562	.376

[1] Since the OLM has not been finalized, both versions of the model (*i.e.*, the baseline equation and the 95 percent confidence interval applied to the baseline) are calculated here. Once finalized, only one of these two versions will apply.

(4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using GC/MS analysis for the compounds listed above, as well as the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, for a list of the priority pollutants.) These data must be kept on file at the facility, and submitted to the Administrator by certified mail semi-annually. The Agency has required that these additional scans be run on monthly composites to determine if additional organic constituents should be added to the group of parameters tested on a batch basis due to variation of existing client wastes or variation of the client base. The Agency will review this information and, if needed, will propose to modify or withdraw the exclusion.

(5) Due to insufficient analytical data, this exclusion does not apply to EPA Hazardous Waste Nos. K061, K069, and K100. If Envirite desires to delist these waste types, they must submit a new petition providing the necessary analytical data demonstrating the effectiveness of the treatment process in rendering these wastes non-hazardous.

Due to the previous disposal of hazardous waste in the on-site landfill and ground-water contamination possibly caused by this previously disposed hazardous waste which was not the subject of the petition, the proposed exclusion applies only to the treatment residue as generated, and not to the on-site landfill.

The Agency's decision to exclude conditionally the treatment residue generated from the wastewater and proposed solids treatment systems at Envirite's Thomaston facility applies only to the wastewater and proposed solids treatment system as described in the petition. The exclusion does not apply to the other proposed process additions described in the petition such as recovery (including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange), and additional sludge drying operations. For the Agency to consider excluding these wastes, Envirite should submit a complete description of these processes, as well as pilot scale and on-line test data to demonstrate their ability to generate a non-hazardous treatment residue after this additional treatment is performed on the waste.

Based on the VHS model analyses, total constituent analyses, the pre-screening process, and the contingency plan, the Agency believes that the treatment residue generated at Envirite Corporation's Thomaston, Connecticut

[41] See the public docket for a complete summary of ground-water monitoring at the Thomaston facility.

[42] After receiving a temporary exclusion in December 1981, the facility began disposing their delisted waste in on-site landfill cells. Initially, the waste was disposed in the un-used portion of a landfill (Cell No. 4), which contained hazardous materials. When that area reached grade, the delisted material was spread over the entire landfill as cover material, over the hazardous and non-hazardous (delisted) materials. Previously filled cells (over which the delisted material was spread) contained hazardous treatment residues generated from 1975 to 1981. Test data submitted by Envirite on the material disposed as hazardous prior to 1981 indicate that the waste was EP toxic.

[43] See footnote 13.
[44] See footnote 11.
[45] See footnote 15.

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facility from their wastewater treatment processes and proposed solids treatment process, under the conditions specified above, is non-hazardous (for all reasons). The Agency therefore proposes to exclude conditionally Envirite's treatment residue from hazardous waste control for the following EPA Hazardous Waste Nos.: F006, F007, F008, F009, F011, F012, F019, K062, K002, K003, K004, K005, K006, K007, and K008, as described in their petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the treatment process).[46] In addition, Envirite is still obligated to determine whether the treatment residue exhibits any of the characteristics of a hazardous waste.)

IV. Envirite Corporation—York, Pennsylvania

A. Petition for Exclusion

Envirite Corporation (Envirite), (previously known as Liqwacon Corporation), located in York, Pennsylvania, operates a waste treatment facility for treatment of multiple metal-bearing waste streams for industrial clients.[47] Envirite has petitioned the Agency to exclude the residue produced by its treatment facility. The residue is generated from the treatment of the following EPA Hazardous Wastes:

F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

F007—Spent cyanide plating solutions from electroplating operations.

F008—Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.

F011—Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.

F012—Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.

F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.

[46] See footnote 16.

[47] Envirite also has submitted delisting petitions for its Canton, Ohio, Harvey, Illinois; and Thomaston, Connecticut facilities.

K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments.

K003—Wastewater treatment sludge from the production of molybdate orange pigments.

K004—Wastewater treatment sludge from the production of zinc yellow pigments.

K005—Wastewater treatment sludge from the production of chrome green pigments.

K006—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).

K007—Wastewater treatment sludge from the production of iron blue pigments.

K008—Oven residue from the production of chrome oxide green pigments.

K061—Emission control dust/sludge from the primary production of steel in electric furnaces.

K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).

K069—Emission control dust/sludge from secondary lead smelting.

K100—Waste leaching solution from the acid leaching of emission control dust/sludge from secondary lead smelting.

The listed constituents of concern for these wastes are summarized as follows:

F006—Cadmium, hexavalent chromium, nickel, and cyanide (complexed)
F007—Cyanide (salts)
F008—Cyanide (salts)
F009—Cyanide (salts)
F011—Cyanide (salts)
F012—Cyanide (complexed)
F019—Hexavalent chromium and cyanide (complexed)
K002—Hexavalent chromium and lead
K003—Hexavalent chromium and lead
K004—Hexavalent chromium
K005—Hexavalent chromium and lead
K006—Hexavalent chromium
K007—Cyanide (complexed) and hexavalent chromium
K008—Hexavalent chromium
K061—Hexavalent chromium, lead, and cadmium
K062—Hexavalent chromium and lead
K069—Hexavalent chromium, lead, and cadmium
K100—Hexavalent chromium, lead, and cadmium.

Based upon the Agency's review of the petition, Envirite was granted a conditional temporary exclusion on December 16, 1981 for EPA Hazardous Waste Nos. F006, F007, F008, F009, F011, F012, F015 and K062 (see 46 FR 61281).[48] The Agency's basis for granting the temporary exclusion (at that time) was the low migration potential of cadmium, chromium, lead, nickel, and cyanide in the waste, and Envirite's stringent pre-screening process for accepting wastes and contingency plan ensuring that levels of constituents in the treatment residue were always within an acceptable range. Since the granting of their temporary exclusion, Envirite submitted an addendum to their original petition in November 1985 expanding the list of wastes to be delisted to include EPA Hazardous Waste Nos. F019, K002, K003, K004, K005, K006, K007, K008, K061, K069, and K100. These wastes are not yet treated by the facility, therefore Envirite's temporary exclusion is still active. Also, since Envirite's temporary exclusion, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Envirite's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which it was originally listed; and (2) determine whether the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Envirite's petition.

In support of their petition, Envirite has submitted a detailed description of its pre-screening process, treatment process, and contingency testing plan; total constituent analysis and EP toxicity test results of the treatment residue for each of the listed constituents—cadmium, total chromium, lead, and nickel; and analytical results for total, free, and leachable cyanide. Envirite also submitted total constituent analysis and EP toxicity test results for arsenic, barium, mercury, selenium, and silver; results of total oil and grease analyses; and analytical results for reactive sulfide. Envirite further submitted total constituent analyses for priority pollutant volatile, base/neutral, and acid extractable organic compounds; National Bureau of Standards (NBS) library searches for any other Appendix VIII hazardous constituents that might be present in the waste; an explanation detailing why specific Appendix VIII hazardous constituents were not tested; and a list of clients serviced at the York facility. (See 47 FR 52309, November 19, 1982, for a list of the priority pollutants.) In addition, Envirite submitted descriptions of proposed process changes presently being considered for its York facility. These changes included solid residue treatment units for treating incoming solid and semi-solid wastes (one such unit is already in operation at Envirite's York facility); recovery operations for metals, acid, and cyanide as an alternative to its current procedures; and a post-treatment sludge drying process. As noted above, the Agency requested much of this information to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.[49]

[48] The Agency has reviewed this petition and its original temporary exclusion at the request of Envirite. The Pennsylvania DER already granted Envirite a final exclusion on November 5, 1981. Envirite requested a Federal decision since they may transport the residue to another State at some point in the future.

Envirite accepts metal-bearing wastes from industrial clients for treatment. Envirite conducts stringent client pre-screening tests prior to accepting a waste for treatment to ensure that wastes are compatible with the Envirite treatment process. Envirite claims that the pre-screening procedure effectively prevents the acceptance of toxic organic compounds for treatment. Envirite's pre-screening process includes an examination of the client's process description and analytical monitoring of wastes to be treated by Envirite for listed constituents and any Appendix VIII hazardous constituents that might be expected to be present. Other pre-screening parameters include: total organic carbon (TOC), non-listed EP toxic metals, cyanide, ammonia, specific gravity, and analysis for the percent acidity and alkalinity, as well as other non-RCRA metals. In addition, before a given waste is accepted for treatment, it is subjected to a laboratory simulation of Envirite's treatment process. The resulting analysis must show that the treated waste meets Envirite's effluent discharge standards and temporary exclusion. If the treatment residue fails to meet these requirements, it is a hazardous waste and will be managed accordingly.

Envirite's treatment process includes pre-treatment with chromium reduction and cyanide destruction followed by batch treatment with batch formulation (a preplanned combining of wastes from various storage areas and recovery systems for batch treatment), neutralization and hydroxide precipitation, sulfide addition and precipitation, and vacuum filtration. Envirite has added a segregated solid and semi-solid treatment process at its York facility and plans to implement this process at all four of its facilities. Envirite claims that the treatment process used for solid and semi-solid wastes employs the same chemical reactions as are used currently in the liquid waste treatment process; the waste types treated by the liquid and solid processes are the same except for the amount of water the waste contains. Envirite submitted total constituent analysis and EP toxicity test results for wastes treated by the York facility's solids treatment system to show that this process is equally successful in rendering wastes non-hazardous. Envirite also is proposing to initiate recovery operations at the York facility. Recovery operations such as ion exchange, evaporative recovery, crystallization, and electrolytic recovery would be employed prior to waste treatment to remove metals, acid, and cyanide.

Envirite uses an additional quality assurance method to ensure that its treated residues are rendered non-hazardous. Batches that have completed treatment remain in the neutralization tanks and treatment residue samples are subjected to the EP Toxcity Test to ensure the waste's compliance with limits established in the 1981 temporary exclusion (see 46 FR 61281). Treatment residue batches exceeding these limits are re-treated or disposed as hazardous wastes. Based on its stringent pre-screening process, treatment process, and quality assurance plan, Envirite claims that its treatment residue is non-hazardous because the constituents of concern are present either in insignificant concentrations, or if present at significant levels, are essentially in immobile forms. Envirite also believes that the waste is non-hazardous for any other reason.

Envirite initially presented analytical data on eight weekly composite samples collected from the knife of the vacuum filter dewatering system. One sample was taken from each batch processed and stored until the end of the week-long composite sampling period. These samples then were combined in a bench top blender and homogenized. All analytical testing occurred on these homogenized samples. Envirite initially submitted data in October 1984. They collected eight more composite samples in April 1985 to demonstrate that the facility could achieve the ten-fold dilution allowed by the proposed version of the vertical and horizontal spread (VHS) model (see 50 FR 7882, February 26, 1985). As a result of public comments, the Agency modified the VHS model, and the dilution factor applicable to the maximum of 40,000 tons of treatment residue generated at Envirite's York facility was decreased to 6.3 times the drinking water standards for the EP toxic metals and cyanide. Envirite re-sampled each facility's waste in an effort to show that their treatment process also could achieve this lower dilution level. Since Envirite previously had analyzed 16 samples and their exclusion would be conditional as is typical of the Agency's policy for Multiple Waste Treatment Facilities (MWTFs), (*i.e.*, each batch of treatment residue would require testing), the Agency permitted Envirite to collect and re-analyze only 4 composite samples. Sampling methodologies for these 4 samples were similar to those for the previous 16 samples with the exception that each composite sample was collected over a 4-day period rather than a week-long period. This represented a sampling period of approximately 1 month. All samples collected since April 1985 were analyzed for oil and grease, reactive sulfide, and Appendix VIII hazardous constituents. Envirite claims that these sampling periods addressed more than 50 percent of their clients and represented time periods of sufficient length to show the variation in concentrations of listed constituents in their treated wastes (for all of the wastes which were a part of the original delisting request.)

In addition to Envirite's sampling efforts, EPA conducted a spot check sampling visit to the facility in November 1983. Three composite samples were taken of the sludge contained in the dumpsters used to collect treated sludge material until its disposal. One composite sample was taken from the conveyer belt, which leads from the vacuum drum filtration unit to the dumpster.

Total constituent analysis and EP toxicity test results of the treatment residue generated at Envirite's York facility revealed the maximum concentrations reported in Tables 1 and 2.[50]

TABLE 1.—MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Cadmium	38	<0.03
Chromium (total) [1]	3,160	<.25
Lead	1,875	.14
Nickel	2,250	<.09
Cyanide	<.51	.025 [2]

<Denotes concentrations below the detection limit.
[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.
[2] Leachable cyanide tests were not performed. However, leachable cyanide was determined by assuming that all of the cyanide present would leach according to the 20:1 dilution of the EP toxicity test.

[49] See footnote 4.

[50] See footnote 5.

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TABLE 2.—MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Arsenic	<8.80	<0.002
Barium	848	<1.24
Mercury	<.072	<.0072
Selenium	<2.4	<.01
Silver	42	.07

<Denotes concentrations below the detection limit.

Envirite also submitted total constituent analyses for Appendix VIII hazardous constituents potentially present in the waste. Envirite has limited its initial gas chromatographic/mass spectroscopy (GC/MS) analytical work to the volatile, base/neutral, and acid fractions of the priority pollutants and an NBS library scan for remaining Appendix VIII constituents likely to be present. Envirite's rationale for limiting Appendix VIII testing included the deletion of: (1) Toxicants for which there are no known analytical methods; (2) toxicants that are reactive or hydrolyze in water; and (3) toxicants that are present primarily in wastes generated from industries not serviced by Envirite (primarily pharmaceuticals). A more detailed explantion and list of these toxicants is available in the public docket. Maximum concentrations for Appendix VIII hazardous constituents that are potentially present in the treatment residue are reported in Table 3.

TABLE 3.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY ENVIRITE IN THE TREATMENT RESIDUE (PPM)

Constituents	Total constituent analyses
Bis(2-ethyl hexyl)phthalate	3
Ethyl benzene	.169
Methyl chloride	1.518
Methyl ethyl ketone	4.116
Tetrachloroethylene	.018
Toluene	1.350

The sludge samples collected by EPA from the sludge dumpsters and conveyor belt were analyzed for total and leachable concentrations of the EP metals, nickel, and cyanide. These concentrations are reported in Table 4.

TABLE 4.—MAXIMUM CONCENTRATIONS FROM EPA SPOT CHECK [1]

Listed constituents	Total constituent analyses (mg/kg)	EP toxicity analyses (mg/l)
Arsenic	13.0	<0.02
Barium	121	.55
Cadmium	1,950	<.025
Chromium	11,000	<.2
Lead	94	.26
Mercury	.031	<.001
Selenium	<10	<.05
Silver	42	.07
Nickel [2]	14,000	31
Cyanide	11.8	

[1] One of Envirite's archived samples was also analyzed, however, this sample represented a batch of waste which was mismanaged and disposed of as a hazardous waste due to high cadmium extract levels (0.51 ppm).

[2] This nickel extract value represents a filter press sample. Three additional composites of the same "batch" taken from dumpsters on-site exhibited nickel levels below the conditions set in the temporary exclusion.

The samples also were analyzed by EPA for the priority pollutants and volatile organics. Table 5 summarizes concentrations of these organics detected in the samples.

TABLE 5.—MAXIMUM APPENDIX VIII ORGANICS CONCENTRATIONS IDENTIFIED BY EPA FROM SPOT CHECK VISIT (PPM)

Listed constituent	Total constituents analyses
Bis(2-ethyl hexyl)phthalate	2.2
Carbon disulfide	24
Di-n-octyl phthalate	3.4
Toluene	8.5

Envirite also has submitted information regarding a solids treatment process, which exists as a segregated treatment process at the York facility and which is proposed to be added to each of the remaining facilities. Envirite has indicated that the process is similar to their liquids treatment process with the exception that different solid reagents are used in the pre-treatment for hexavalent chromium, cyanide, and metal hydroxides, depending on the moisture content of the waste. Envirite has submitted EP toxicity test analyses on 17 batches of treatment residues generated over 6 weeks from the solids treatment process at the York facility. The maximum extract concentrations from the data are summarized in Table 6.

TABLE 6.—MAXIMUM CONCENTRATIONS FOR THE SOLIDS TREATMENT PROCESS AT THE YORK FACILITY

Constituents	EP Toxicity analyses (mg/l)
Arsenic	<0.08
Barium	<1.24
Cadmium	<.02
Chromium	<.28
Lead	<.68
Mercury	<.0072
Selenium	<.34
Silver	<.07
Nickel	3.58
Cyanide	<2
Cyanide (total in waste)	90.9

The maximum total oil and grease value reported by Envirite was 0.16 percent. Envirite also analyzed the treatment residue for reactive sulfides with the maximum concentration reported to be at the detection limit at <1.0 ppm. Envirite also submitted data indicating that the sludge is not ignitable, corrosive, or reactive.

B. Agency Analysis and Action

Envirite has demonstrated that its original waste treatment system and the new solids treatment system, under specified controlled conditions, produces non-hazardous treatment residues. Envirite has not, however, made this demonstration for the proposed recovery processes, and the drying processes. Should Envirite adjust its processes to include the above treatment changes, it would have to submit a new petition for each change.

The Agency believes that the four samples collected by Envirite from the filter press of the wastewater treatment system over a 1-month period were non-biased and adequately represent any variations that may occur in the treatment residue for this time period for each of the treated wastes except EPA Hazardous Waste Nos. K061, K069, and K100. [51] The key factors that could vary toxicant concentrations in the residue at MWTFs are the addition of new clients, the variation of client processes occuring from time to time, and variations in raw materials used at client waste generator facilities. Variations in raw materials can be expected when the clients of the MWTF perform as job shops or when the product line changes on a seasonal basis. The Agency does not believe it is possible to represent this variation without sampling that would be considered excessive for a delisting petition demonstration. The Agency, therefore, has requested all MWTF petitioners to submit analytical data collected during a 2-month period on a minimum of eight composite samples. [52]

The Agency permitted Envirite to submit only 4 samples based on the final VHS model, as the facility already had submitted 16 samples demonstrating its ability to adjust the treatment process to comply with VHS model modifications. The Agency is familiar with the ability of Envirite's and similar technologies to adjust mixing ratios to achieve lower leachate levels for heavy metals. Furthermore, the final exclusion, when granted, would require testing of each treated batch to ensure compliance with

[51] See footnote 6.
[52] See footnote 7.

the exclusion's specifications. The demonstration with respect to Appendix VIII hazardous constituents still was required, however, to cover a minimum of eight samples collected over a 2-month period.

The Agency has evaluated the mobility of the listed constituents from Envirite's waste using the VHS model. [53] The VHS model generated compliance point values using the 40,000 ton per year maximum generation rate and the maximum extract levels reported by Envirite as input parameters. These predicted compliance point concentrations are reported in Table 7. (When leachate concentrations were below the detection limits, the value of the detection limit was used.)

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	0.005	0.01
Chromium (total)	.040	.05
Lead	.022	.05
Nickel	.014	.35
Cyanide	.004	.2

The treatment residue exhibited levels for the listed constituents (at the compliance point) below the National Interim Primary Drinking Water Standards, nickel levels below the Agency's interim health advisory [54], and cyanide levels below the U.S. Public Health Service's suggested drinking water standard. [55] Total cyanide levels in the treatment residue also are below the Agency's threshold limit of 250 ppm. [56]

The Agency also concluded, through using the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 8.

TABLE 8.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Nonlisted constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.0003	0.05
Barium	.198	1.0
Mercury	.0011	.002
Selenium	.0016	.01
Silver	.011	.05

[53] See footnote 8.
[54] See footnote 9.
[55] See footnote 10.
[56] See footnote 11.

The treatment residue sampled during EPA's spot check sampling visit in December 1983 was generated under the specifications of the temporary exclusion. The Agency notes that all three of the dumpster samples analyzed were within the acceptable limits of the conditional temporary exclusion (*i.e.*, 30 times the respective standards) for all EP toxic metals and nickel. If the Agency evaluated these samples using the VHS model, the compliance point concentrations for all of the EP toxic metals would be below their respective standards. Nickel extract levels would, however, generate a compliance point concentration above the Agency's interim health advisory for nickel in one of three dumpster samples and the filter press sample. The Agency cannot determine if this particular "batch" failed the VHS model analysis for nickel since the fourth dumpster of the "batch" was not yet generated. Extract values from composite samples from each of the four dumpsters would have been "averaged" by compositing all of the samples to determine whether the batch passed the limits of the conditional exclusion. (Nickel extract levels for the three dumpsters were 2.2, 20.0 and <0.25 ppm). If the Agency assumes that the 31 ppm filter cake extract value represents the fourth dumpster of this batch, a mathematical average of the four nickel values would pass the conditions of the temporary but would fail the VHS evaluation. Therefore, because the "batch" had not been completely generated and due to the fact that Envirite has 'nodified its treatment process to meet the 6.3 dilution requirement of the VHS model, the Agency believes that it would be inappropriate to consider these data in the VHS model evaluation. [57]

The Agency also has evaluated the mobility of organic constituents detected in the sludge by first estimating their leachate concentrations with the Organic Leachate Model (OLM), and then predicting their compliance point concentrations with the VHS model. [58] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 9.

TABLE 9.—VHS. MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS [1] (PPM)

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	(Base)	(95%)	(Base)	(95%)	
Bis(2-ethyl hexyl) phthalate	0.0033	0.0044	0.0005	0.0007	0.7
Carbon disulfide	.346	.449	.055	.071	3.5
Di-n-octyl phthalate	.0071	.0092	.0011	.0014	.8
Ethyl benzene	.0024	.0035	.00038	.00056	3.5
Methylene chloride	.125	.171	.020	.027	.056
Methyl ethyl ketone	.560	.849	.062	.135	1.75
Tetrachloroethylene	.0006	.0012	.00012	.00019	.0007
Toluene	.094	.115	.015	.018	10.5

[1] Since the Organic Leachate Model (OLM) has not been finalized, both the baseline equation and 95 percent confidence interval (applied to the baseline) are calculated here. Once finalized, only one of these two versions will apply.

Table 9 lists only those constituents found in the treatment residue above detection limits. In each instance, the resulting predicted compliance point concentrations were below the Agency's respective regulatory standards. Although the levels of organic compounds present in Envirite's waste are not of regulatory concern, given the changeable nature of clients and wastes accepted by the facility for treatment, the Agency believes it necessary to incorporate organics batch testing into the contingency testing program to ensure that stray organic constituents are not present in the treatment residue at levels of regulatory concern.

The Agency believes that a conditional exclusion can be granted for Envirite's York facility. The conditions of the exclusion would necessitate continuous batch testing for the EP toxic metals, nickel, cyanide, and those organics detected in the treatment residue. The Agency believes this testing requirement is necessary due to the inherent variability encountered by a changing client base, the process variation associated with each of the clients serviced, the high concentrations of toxic constituents in the incoming wastes and in the treatment residue, and the high volumes of treatment residue generated annually by Envirite.

This testing requirement is self-implemented, that is, the results of testing each batch need not be reviewed by State or Federal EPA representatives prior to disposal. The test data must be recorded and kept on file at the facility for inspection purposes and must be

[57] The Agency specifically requests comments on this interpretation.
[58] See footnote 12.

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compiled, summarized, and submitted to the Agency on a semi-annual basis.

The Agency, therefore, proposes to grant an exclusion to the Envirite facility providing that the following contingency testing program is followed:

(1) Each batch [59] of treatment residue must be representatively sampled and tested using the EP toxicity test for the EP toxic metals and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste will be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting requirements of 40 CFR Part 270.

(2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If reactive cyanide levels exceed 250 ppm [60] or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(3) Each batch must be tested for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. This list of organic constituents is a compilation of organics detected at each of Envirite's four facilities.[61] The Agency notes that this condition does not allow retreating as does condition 1 and 2, because Envirite's existing treatment process is not designed for organics treatment.

Compound	Maximum acceptable levels [1] (ppm)	
	(Base)	(95%)
Anthracene	72	45
1,2-Diphenyl hydrazine	0.001	0.0005
Methylene chloride	8.18	5.27
Methyl ethyl ketone	313	175
n-Nitrosodiphenylamine	11.9	9.1
Phenol	1,586	882
Tetrachloroethylene	.188	.113
Trichloroethylene	.562	.376

[1] Since the OLM has not been finalized, both versions of the model (i.e., the baseline equation and the 95 percent confidence interval applied to the baseline) are calculated here. Once finalized, only one of these two versions will apply.

(4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using GC/MS analysis for the compounds listed above, as well as the remaining organics on the priority pollutant list. (See 47 *FR* 52309, November 19, 1982, for a list of the priority pollutants.) These data must be kept on file at the facility, and submitted to the Administrator by certified mail semi-annually. The Agency has required that these additional scans be run on monthly composites to determine if additional organic constituents should be added to the group of parameters tested on a batch basis due to variation of existing client wastes or variation of the client base. The Agency will review this information and, if needed, will propose to modify or withdraw the exclusion.

(5) Due to insufficient analytical data, this exclusion does not apply to EPA Hazardous Waste Nos. K061, K069, and K100. If Envirite desires to delist these waste types, they must submit a new petition providing the necessary analytical data demonstrating the effectiveness of the treatment process in rendering these wastes non-hazardous.

The Agency's decision to exclude conditionally the treatment residue generated from the wastewater and solids treatment systems at Envirite's York facility applies only to the systems as they presently exist as described in the delisting petition. The exclusion does not apply to the other proposed process additions described in the petition such as recovery (including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange), and additional sludge drying capacities. For the Agency to consider these wastes, Envirite should submit a complete description of these processes, as well as pilot scale and on-line test data to demonstrate their ability to generate a non-hazardous treatment residue after this additional treatment is performed on the waste.

Based on the VHS model analyses, total constituents analyses, the pre-screening process, and the contingency plan, the Agency believes that the treatment residue generated at Envirite Corporation's York, Pennsylvania facility from their wastewater treatment processes, under the conditions specified above, is non-hazardous (for all reasons). The Agency therefore proposes to exclude conditionally Envirite's treatment residue from hazardous waste control for the following EPA Hazardous Waste Nos.: F006, F007, F008, F009, F011, F012, F019, K062, K002, K003, K004, K005, K006, K007, and K008, as described in their petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the treatment process).[62] In addition, Envirite is still obligated to determine whether the treatment residue exhibits any of the characteristics of a hazardous waste.)

V. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case for the four proposed exclusions since this rule reduces rather than increases the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The granting of the four exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have no effect of increasing overall waste disposal costs. For the four facilities that may be excluded, this amendment will reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulations, therefore, does not require a regulatory flexibility analysis.

[59] See footnote 13.
[60] See footnote 11.
[61] See footnote 15.
[62] See footnote 16.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: October 7, 1986.

Jeffrey D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order to tables 1 and 2:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Envirite Corp.	Canton, OH; Harvey, IL; Thomaston, CT; and York, PA.	Dewatered wastewater sludges (EPA Hazardous Waste No. F006), generated from electroplating operations; spent cyanide plating solutions (EPA Hazardous Waste No. F007) generated from electroplating operations; plating bath residues from the bottom of plating baths (EPA Hazardous Waste No. F008) generated from electroplating operations where cyanides are used in the process; spent stripping and cleaning bath solutions (EPA Hazardous Waste No. F009) generated from electroplating operations where cyanides are used in the process; spent cyanide solutions from salt bath pot cleaning (EPA Hazardous Waste No. F011) generated from metal heat treating operations; quenching wastewater treatment sludges (EPA Hazardous Waste No. F012) generated from metal heat treating where cyanides are used in the process; wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after October 16, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the EP Toxicity test for arsenic, barium, cadmium, chromium, lead, selenium, silver, mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium exceed 0.063 ppm; mercury exceeds 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (3) Each batch of waste must be tested for the total content of specific organic toxicants. If the total content of anthracene exceeds 72 ppm, 1,2-diphenyl hydrazine exceeds 0.001 ppm, methylene chloride exceeds 8.18 ppm, methyl ethyl ketone exceeds, 313 ppm, n-nitrosodiphenylamine exceeds 11.9 ppm, phenol exceeds 1,586 ppm, tetrachloroethylene exceeds 0.19 ppm, or trichloroethylene exceeds 0.59 ppm, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using GC/MS analysis for the compounds listed in #3 above as well as the remaining organics on the priority pollutant list. (See 47 *FR* 52309, November 19, 1982, for a list of the Priority pollutants.) (5) The data from conditions 1-4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail semi-annually. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion. The Agency's decision to conditionally exclude the treatment residue generated from the wastewater treatment systems at these facilities applies only to the wastewater and solids treatment systems as they presently exist as described in the delisting petition. The exclusion does not apply to the proposed process additions described in the petition as recovery including crystalization, electrolytic metals recovery, evaporative recovery, and ion exchange.

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TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Enviriite Corp..	Canton, OH; Harvey, IL; Thomaston, CT; and York, PA.	Spent pickle liquor (EPA Hazardous Waste No. K062) generated from steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332); wastewater treatment sludges (EPA Hazardous Waste No. K002) generated from the production of chrome and orange pigments; wastewater treatment sludges (EPA Hazardous Waste No. K003) generated from the production of molubdate orange pigments; wastewater treatment sludges (EPA Hazardous Waste No. K004) generated from the production of zinc yellow pigments; wastewater treatment sludges (EPA Hazardous Waste No. K005) generated from the production of chrome green pigments; wastewater treatment from the production of chrome oxide green pigments (anhydrous and hydrated) wastewater treatment sludges (EPA Hazardous Waste No. K007) generated from the production of iron blue pigments; oven residues (EPA Hazardous Waste No. K008) generated from the production of chrome oxide green oxide pigments after October 15, 1986. To insure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the pertinent wastes. This testing program must meet the following conditions for the exclusions to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the EP Toxicity test for the EP Toxic metals, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium exceed 0.063 ppm; mercury exceeds 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste will be retreated or managed and disposed of as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm; or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed of as hazardous. (3) Each batch of waste must be tested for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed of as a hazardous waste under 40 CFR Parts 262 and 165 and the permitting standards of 40 CFR Part 270: Compound (Maximum Acceptable Level): methylene chloride 0.885; 1,1-dichloroethene, 1,2-dichloroethane, 9.9; 1,2-dichloroethene, 9.9; chloroform, 0.018; 1,1,1-trichloroethane, 44.0; carbon tetrachloride, 0.111; trichloroethylene, 0.805; benzene, 0.164; 1,1,2-trichloroethane, 0.0393; tetrachloroethylene, 1.0; toluene, 1802; carbon disulfide, 1,2,4-trichlorobenzphenol, 50.0. (4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using GMS analysis for the compounds listed above as well as the remaining organics on the priority pollutant list (see 47 FR 52309, November 18, 1982, Appendix A126 Priority Pollutants). (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail, semi-annually. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion. The Agency's decision to conditionally exclude the treatment residue generated from the wastewater treatment systems at each of Enviriite's facilities applies only to the wastewater and solids treatment systems as they presently exist as described in the delisting petition. The exclusion does not apply to the proposed process additions described in the petition as recovery including crystalization, electrolytic metals recovery, evaporative recovery, and ion exchange.

[FR Doc. 86-23101 Filed 10-14-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 86-22]

Miscellaneous Amendments to Rules of Practice and Procedure; Availability of Finding of No Significant Impact

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 86-22 and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATE: Petitions for review are due October 27, 1986.

ADDRESS: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Special Studies, 1100 L Street NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that the Commission's proposed rule in Docket No. 86-22 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 *et seq.*, and the preparation of an environmental impact statement is not required.

In Docket No. 86-22 the Commission proposes to revise its Rules of Practice and Procedure. Proceedings before the Federal Maritime Commission are conducted pursuant to the Commission's Rules of Practice and Procedure, 46 CFR Part 502. The proposed amendments would revise the Commission's Rules of Practice and Procedure to provide, among other things, for appeals from Commission staff actions and a procedure for the filing of a brief of amicus curiae in adjudicatory proceedings.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection upon request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 523-5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-23217 Filed 10-14-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 67 and 69

[CC Dockets 78-72 and 80-286]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, extension of reply comment period.

SUMMARY: The Common Carrier Bureau has partially granted the request of the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) for an extension in the deadline for filing comments in the Commission's Further Notice of Proposed Rulemaking in the above-reference dockets released July 2, 1986, FCC 86-305 published on 51 FR 27426, July 31, 1986. That Further Notice, which seeks to determine what further steps the Commission should take to promote the goals of its access charge proceeding, directed interested parties to file comments on the designated issues on August 29, 1986 and reply comments no later than October 1, 1986. OPASTCO requested an extension allowing replies to be filed as late as October 15, 1986. OPASTCO requested an extension because of the delay in the distribution of comments to parties participating in this access charge proceeding resulting from the revised procedures for filing comments established by the Commission subsequent to release of the Further Notice. In this Order, the Bureau has granted an extension for reply comments until October 9, 1986.

DATES: Reply Comments are due October 9, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Anne M. Siegel, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-6363.

SUPPLEMENTARY INFORMATION: This is a summary of the Order granting an extension of time for the filing of reply comments in response to the Commission's Further Notice of Proposed Rulemaking released July 2, 1986 in CC Docket Nos. 78-72 and 80-286.

The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Carl D. Lawson,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 86-23195 Filed 10-14-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-373, RM-5424]

Radio Broadcasting Services; Cherryvale, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jon E. Hotaling proposing to allot FM Channel

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263A to Cherryvale, Kansas, as that community's first FM broadcast channel.

DATES: Comments must be filed on or before November 24, 1986, and reply comments on or before December 9, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jon E. Hotaling, P.O. Box 6, Hays, Kansas 67601 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–373, adopted September 16, 1986, and released October 2, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–23196 Filed 10–14–86; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1162 and 1312

[Ex Parte No. MC–165 (Sub-No. 2)]

Exemption of Water Contract Carriers From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Water contract carriers are currently required to comply with Commission tariff filing regulations at 49 CFR Parts 1162 and 1312. The Commission is proposing to exempt water contract carriers from all such filing requirements pursuant to 49 U.S.C. 10761(b). It tentatively finds that such an exemption would be consistent with the public interest and the transportation policy of 49 U.S.C. 10101.

DATE: Comments are due on November 14, 1986.

ADDRESS: Send an original and, if possible, 10 copies of comments referring to Ex Parte No. MC–165 (Sub-No. 2) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Marc A. Lerner, (202) 275–7150

or

Louis E. Gitomer, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275–7428.

This action does not appear to significantly affect either the quality of the human environment or the conservation of energy resources.

Under 5 U.S.C. 601, *et seq.*, we are required to analyze the potential impact of the proposed rule on small entities. Because of the relatively small number of water contract carriers, we tentatively conclude that the proposed rule will not have a significant economic impact on a substantial number of small entities. We do conclude, however, that any impact on these carriers will be beneficial as it will reduce carrier costs.

List of Subjects

49 CFR Part 1162

Administrative practice and procedure, Maritime, carriers, and Motor carriers.

49 CFR Part 1312

Freight forwarders, Maritime carriers, Motor carriers, and Railroads.

Authority: 49 U.S.C. 10321 and 10761 and 5 U.S.C. 553.

Decided: October 7, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

Appendix

Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

1. The authority citation for Part 1162 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10928; 5 U.S.C. 559.

§ 1162.3 [Amended]

2. Section 1162.3(b) would be amended by adding water contract carriers to the exception in parenthesis in sentence one. As revised, the first sentence would read as follows:

* * * * *

(b) A carrier (except a motor contract carrier of property or a water contract carrier) may not lawfully perform transportation under a grant of TA or ETA until compliance has been made with the rate and other requirements of 49 U.S.C. 10761 and 10762. * * *

§ 1162.5 [Amended]

3. Section 1162.5(b) would be amended by adding water contract carriers to the exception in parenthesis in sentence one of paragraph (1). As revised, the first sentence would read as follows:

* * * * *

(b) * * *

(1) Each application for ETA (except an application seeking authority as a motor contract carrier of property or a water contract carrier) shall be accompanied by a statement of the rates, fares, charges, and other tariff or schedule provisions to become effective if the application is granted. * * *

* * * * *

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

4. The authority citation for Part 1312 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10706, 10761 and 10762; 5 U.S.C. 553.

§ 1312.12 [Amended]

5. Section 1312.12(e) would be amended by deleting "water and" in sentence one in paragraph (1). As revised, the first sentence would read as follows:

* * * * *

(e) * * *

(1) (This paragraph applies to motor passenger contract carriers.) * * *

* * * * *

§ 1312.14 [Amended]

6. Section 1312.14(a) would be amended by deleting "water and" from the fifth sentence of paragraph (1). As revised, that sentence would read as follows:

(a) * * *

(1) * * * Tariffs of motor passenger contract carriers shall provide an explicit statement of the minimum rates, fares, or charges actually maintained.

* * * * *

[FR Doc. 86–23206 Filed 10–14–86; 8:45 am]

BILLING CODE 7035–01–M

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Notices

Federal Register
Vol. 51, No. 199
Wednesday, October 15, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Cannonville Farm Irrigation RC&D Measure Plan, Garfield County, UT

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cannonville Farm Irrigation RC&D Measure Plan, Garfield County, Utah.

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, P.O. Box 11350, Salt Lake City, Utah 84147, telephone 810–524–5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for pressurized sprinkler irrigation system with hydro-electric plant to conserve water and improve irrigation water management. The planned works of improvement include installing approximately 5 miles of pressure pipeline, hydro electric plant, diversion structure and storage reservoir, movable sprinkler and technical assistance for irrigation water management.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Francis T. Holt.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding state and local clearing house review of federal and federally assisted programs and projects is applicable)

Norman W. Priest,

Acting State Conservationist.

[FR Doc. 86–23251 Filed 10–14–86; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–606]

Preliminary Negative Countervailing Duty Determination; Paint Filters and Strainers From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of paint filters and strainers. Therefore, our preliminary countervailing duty determination is negative. We have notified the U.S. International Trade Commission (ITC) of our determination.

If this investigation proceeds normally, we will make our final determination by December 22, 1986.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles, Bradford Ward, or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–3174, 377–2239 or 377–2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of paint filters and strainers.

Case History

On July 15, 1986, we received a petition in proper form filed by the Louis M. Gerson Co., Inc., a domestic producer of paint filters and strainers.

In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Brazil of paint filters and strainers receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 4, 1986, we initiated such an investigation (51 FR 28739, August 11, 1986). On August 12, 1986, petitioner amended its petition to allege critical circumstances and requested clarification of the class or kind of merchandise to be included in the scope of investigation. We stated that we expected to issue a preliminary determination by October 8, 1986.

Since Brazil is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On August 29, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of paint filters and strainers (51 FR 32257, September 10, 1986).

On August 15, 1986, we presented a questionnaire to the government of Brazil in Washington, DC concerning the petitioner's allegations and requested a response by September 15, 1986. On

September 12, 1986, upon request of respondents, we granted additional time to submit a response. On September 22, 1986, we received a response to our questionnaire.

On September 26, 1986, after a review of the questionnaire response, we requested additional information. We received such information on October 1 and October 3, 1986.

There is one known producer and exporter in Brazil of paint filters and strainers that exported to the United States during the review period. That producer is Industrias Celulosa e Papel Guaiba (CELUPA). According to the Government of Brazil, CELUPA accounts for substantially all exports of paint filters and strainers to the United States.

Scope of Investigation

The products covered by this investigation are disposable paint filters and strainers, of paper, containing cotton gauze, provided for in item 256.9060 of the *Tariff Schedules of the United States Annotated* (TSUSA); disposable paint filters and strainers of cotton gauze, containing paper, provided for in item 366.5300 of the TSUSA; and disposable paint filters and strainers of nylon mesh, containing paper, provided for in item 389.6270 of the TSUSA.

Subsequent to our initiation of this investigation, petitioner requested that we clarify this section of our notice to cover disposable paint filters and strainers including those with nylon mesh, containing paper, as described above.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" (49 FR 18006, April 26, 1984).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is calendar year 1985. In its response, the Government of Brazil provided data for the applicable period, including financial statements, for CELUPA.

Based upon our analysis of the petition and the response to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined Not to be Used

We preliminarily determine that manufacturers, producers, or exporters in Brazil of paint filters and strainers did not use the following programs which were listed in our notice of "Initiation of a Countervailing Duty Investigation: Paint Filters and Strainers from Brazil" (51 FR 28739, August 11, 1986):

A. Income Tax Exemptions for Export Earnings

Under Decree-Laws 1158 and 1721, Brazilian exporters are eligible for an exemption from income tax on a portion of profits attributable to export revenue.

In its response, the Government of Brazil stated that the paint filters and strainers producer under investigation did not claim this deduction on its 1984 tax return (filed in 1985) and, therefore, did not benefit from this program during the review period.

B. Preferential Working-Capital Financing for Exports

The Carteira do Comercio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working capital financing for the purchase of inputs. During the review period, these loans were provided under Resolution 950, as amended by Resolution 1009.

Under Resolution 950, as amended, the Banco do Brasil pays the lending institution an equalization fee of up to 15 percent of the interest (after monetary correction). According to the response, the lending bank passes the 15 percent equalization fee on the borrower in the form of a reduction of the interest due. Receipt of the equalization fee by the borrower reduces the interest rate on these working capital loans below the commercial rate of interest. Resolution 950 loans are also exempt from the Imposto Sobre Operacoes Financieras (IOF), a tax charged on all domestic financial transactions in Brazil.

The Government of Brazil stated in its response that the paint filters and strainers producer under investigation had no loans under this program outstanding or with payments during the review period.

C. Export Financing Under the CIC–CREGE 14–11 Circular

Under its CIC–CREGE 14–11 Circular (14–11), the Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan. Loans under this program are also exempt from the IOF.

The Government of Brazil stated on its response that the paint filters and strainers producer under investigation had no loans under this program outstanding or with payments during the review period.

D. Resolution 330 of the Banco Central do Brasil

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. Exporters of paint filters and strainers would be eligible for financing under this program. However, the Government of Brazil stated in its response that the paint filters and strainers producer under investigation did not participate in this program during the review period.

E. The BEFIEX Program

The Comissao para a Consessao de Beneficios Fiscais a Programas Especiais de Exportacao (Commission for the Granting of Fiscal Benefits to Special Export Programs or BEFIEX) grants at least seven categories of benefits to Brazilian exporters:

- First, under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the Imposto sobre Produtos Industrializados (Tax on Industrial Products or IPI) on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Second, under article 13 of Decree No. 72.1219, BEFIEX may extend the

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carry-forward period for tax losses from four to six years;

• Third, under Article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved products;

• Fourth, pursuant to long-term contracts under the BEFIEX program, the Government of Brazil may continue to provide and certain exporting companies may continue to receive the IPI Export Credit Premium beyond the termination date of that program;

• Fifth, a total exemption from import duties, IPI, and a tax on distribution of goods may be provided for specially approved export programs;

• Sixth, Federal tax liability may be reduced through use of a supplementary income tax on dividends from export income; and

• Seventh, the "law of similars," which prohibits importation of products competitive with Brazilian-made products, may be waived.

In its response, the Government of Brazil stated that the paint filters and strainers producer under investigation did not participate in this program during the review period.

F. The CIEX Program

Decree-Law 1428 authorized the Comissao para Incentivos a Exportacao (Commission for Export Incentives or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. In its response, the Government of Brazil stated that the paint filters and strainers producer under investigation did not participate in this program during the review period.

G. Accelerated Depreciation for Brazilian-Made Capital Equipment

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the Conselho do Desenvolvimento Industrial (Industrial Development Council or CDI) may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. In the response, the Government of Brazil stated that the paint filters and strainers producer under investigation did not use this program during the review period.

H. Incentive for Trading Companies

Under Resolution 643 of the Banco Central do Brasil, trading companies can obtain export financing similar to that obtained by manufacturers under Resolution 950. In its response, the Government of Brazil stated that the paint filters and strainers producer under investigation did not receive any benefits under this program during the review period.

I. The PROEX Program

Short-term credits for exports are available under the Programa de Financiamento a Producao para a Exportacao (Export Production Financing Program or PROEX), a loan program operated by Banco Nacional do Desenvolvimeto Economico e Social (National Bank of Economic and Social Development or BNDES). In its response, the Government of Brazil stated that the paint filters and strainers producer under investigation did not receive loans or have loans outstanding under this program during the review period.

J. Resolutions 68 and 509 (FINEX) Financing

Resolutions 68 and 509 of the Conselho Nacional do Comercio Exterior (National Foreign Trade Council or CONCEX) provide the CACEX may draw upon the resources of the Fundo de Financiamento Exportacao (Export Financing Fund or FINEX) to extend dollar-denominated loans to both exporters and foreign buyers of Brazilian goods. Financing is granted on a transaction-by-transaction basis. In its response, the Government of Brazil stated that neither the paint filters and strainers producer under investigation nor U.S. buyers of the subject merchandise received or had outstanding, Resolution 68 or 509 loans during the review period.

K. Loans Through the Apoio o Desenvolvimento Tecnologica a Empresa Nacional (ADTEN)

Petitioner alleges that the Government of Brazil maintains, through the Financiadora de Estudos Projectos (Financing of Research Projects or FINEP), a loan program, ADTEN (Support of the Technological Development of National Enterprises), that provides long-term loans on terms inconsistent with commercial considerations to encourage the growth of industries and developoment of technology. In its response, the government of Brazil stated that the company under investigation received no loans or had loans outstanding under this program during the review period.

Negative Preliminary Determination of Critical Circumstances

On August 12, 1986, petitioner amended the July 15, 1986 petition to allege that, pursuant to section 703(e) of the Act, critical circumstances exist with respect to paint filters and strainers from Brazil. Subsequently, we began our investigation of the allegation.

Under section 703(e)(1) of the Act, critical circumstances exist if we find there is a reasonable basis to believe or suspect that:

(A) The alleged subsidy is inconsistent with the Agreement, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of investigation over a relatively short period.

Because our preliminary determination is negative, we have determined that manufacturers, producers, or exporters in Brazil of paint filters and strainers do not receive any subsidies inconsistent with the Agreement. Accordingly, we do not need to consider whether there have been massive imports over a relatively short period of time.

Therefore, we preliminarily determine there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of paint filters and strainers from Brazil.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. We will not accept for our final determination any statement in response that cannot be verified.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary informaion relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without consent of the Deputy Assistnt Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 75 days after the Department makes its final determination.

Public Comment

In accordance with § 355.35 of the Commerce Regulations (19 CFR 355.35) we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination, at 10:00 on November 7, 1986, at the U.S. Department of Commerce, Room 1413, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the **Federal Register.**

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least ten copies of the proprietary version and seven copies of the non-proprietary version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by October 31, 1986. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within ten days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

October 8, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-23244 Filed 10-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-601]

Extension of the Deadline Date for the Final Countervailing Duty Determination and Rescheduling of the Public Hearing; Porcelain-on-Steel Cooking Ware From Spain

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the General Housewares Corporation and the Porcelain-on-Steel Committee of the Cookware Manufactures Association, we are extending the deadline date for the final determination in the countervailing duty investigation of porcelain-on-steel cooking ware from Spain to correspond to the date of the final determination in the antidumping investigation of the same product pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). In addition, we are rescheduling the public hearing.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Gary Taverman Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0186 or 377-0161.

SUPPLEMENTARY INFORMATION:

Case History

On June 30, 1986, we received antidumping and countervailing duty petitions filed by the General Housewares Corporation and the Procelain-on-Steel Manufactures Association against porcelain-on-steel cooking ware from Spain.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petition alleged that imports of porcelain-on-steel cooking ware from Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds on which to initiate an antidumping duty investigation, and on July 21, 1986, we initiated such an investigation (51 FR 26729, July 25, 1986). The preliminary determination in this antidumping investigation will be made on or before December 6, 1986.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Spain of porcelain-on steel cooking ware directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds on which to initiate a countervailing duty investigation, and on July 21, 1986, we initiated such an investigation (51 FR 26730, July 25, 1986). On September 23, 1986, we issued a preliminary negative determination in the countervailing duty investigation (51 FR 34480, September 29, 1986).

On October 3, 1986, petitioners filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping investigation.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an (antidumping) investigation . . . which involves imports of the same class of kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination (in the countervailing duty investigation) to the date of the final determination" in the antidumping investigation [19 U.S.C. 1671d(a)(1)]. Pursuant to this provision, we are granting an extension of the deadline date for the final determination in the countervailing duty investigation of porcelain-on-steel cooking ware from Spain to February 20, 1987, the current deadline for the final determination in the antidumping investigation.

In addition, due to the extension of the final determination in the countervailing duty investigation, we are rescheduling the date of the public hearing, originally set for November 7, 1986. If requested, this hearing will now be held at 10:00 a.m. on December 15, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by December 8, 1986. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 355.34, all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within 10 days after the hearing transcript is available.

October 8, 1986.

Gilbert B. Kaplan,

Deputy Assistance Secretary for Import Administration.

[FR Doc. 86-23246 Filed 10-14-86; 8:45 am]

BILLING CODE 3510-DS-M

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Applications for Duty-Free Entry of Scientific Instruments; North Carolina State University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86–318 *Applicant:* North Carolina State University, Department of Chemistry, Box 8204, Raleigh, NC 27695–8204. *Instrument:* Mass Spectrometer, Model JMS–HX110 with Accessories. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument is intended to be used to analyze compounds under investigation in biotechnology research such as proteins, glycoproteins and polysaccharides. Other compounds will include organic chemicals, polymers from textile research and high molecular weight adducts and conjugates of potentially toxic substances like drugs and pesticides. In addition, the instrument will be used for educational purposes in the course Organic Mass Spectrometry, 595Y. *Application received by Commissioner of Customs:* September 15, 1986.

Docket No.: 86–319 *Applicant:* Yale University School of Medicine, 333 Cedar Street, New Haven, CT 06510. *Instrument:* Inverted Microscope with attachments. *Manufacturer:* Zeiss Optical, West Germany. *Intended Use:* The instrument is intended to be used to study the mechanism of electrolyte transport across individual cell membrane. Specific aims of this research will include the mechanism by which endogenous hormones affect Na and K transport across epithelial cells that line the intestinal tract and the functional units of the kidney, the nephron. In addition to direct research studies, the intrument will be used to train post-graduate students in medicine in physiological approaches for studying living cells. *Application received by Commissioner of Customs:* September 17, 1986.

Docket No.: 86–320. *Applicant:* Yale University School of Medicine, 333 Cedar Street, New Haven, CT 06510. *Instrument:* Piezomanipulator, Model PM 20B with Accessories. *Manufacturer:* Biomedizinische Instrumente, West Germany. *Intended Use:* The instrument is intended to be used for measurement of voltage and resistance of individual cell membranes by impalement of individual cells. Experiments will be conducted to determine mechanism by which chloride is secreted by epithelial cells. In addition, the instrument will be used to instruct post graduate students, in advanced methods for studying the function of epithelial cells. *Application received by Commissioner of Customs:* September 18, 1986.

Docket No.: 86–322. *Applicant:* Gulf Coast Research Laboratory, P.O. Box 7000, East Beach, Ocean Springs, MS 39564. *Instrument:* Electron Microscope, Model JEM–100SX. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument is intended to be used primarily in cell biological studies on diseases, nutrition and development of shrimp species used in development of maricultured shrimp. Diseases that will be studied include those with viral, bacterial, protozoan, metazoan, and environmental etiologies. Nutrition studies will focus on how cells of the hepatopancreas assimilate, store, and release nutrients. Developmental studies will concern mainly changes in cells and tissues during metamorphosis and within stages and how those changes relate to disease and nutrition. *Application received by Commissioner of Customs:* September 22, 1986.

Docket No.: 86–324. *Applicant:* Los Angeles County Medical Center, 1200 North State Street, Los Angeles, CA 90033. *Instrument:* Electron Microscope, Model EM 109. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument is intended to be used to examine pathologic tissues from human biopsies for:

(1) Precise classification of malignant neoplasms;
(2) Evaluation of functional properties of human tumors, such as the ability to express enzymes and the mechanism whereby some tumors manufacture and excrete hormones;
(3) Study of the viral infection causing the acquired immunodeficiency synndrome (AIDS)

In addition, the instrument will be used for instructional purposes in the course "Ultrastructural Pathology." *Application received by Commissioner of Customs:* September 23, 1986.

Docket No.: 86–325. *Applicant:* Research Institute of Scripps Clinic, 10666 North Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Cryo Microtome, sledge type, Model LKB #2250–041. *Manufacturer:* Palmstiernas Mekaniska Verkstad AB, Sweden. *Intended Use:* The instrument is intended to be used for studies of whole animals and human tissues. Investigations will include quantitative mapping of host and viral genes and proteins in whole animals and in human organs. The objective of the investigations is to enhance understanding of viral pathogenesis by studying viral tropism and the effects of viral infection on host gene expression. The instrument will also be used to follow and evaluate the response of infected animals to therapeutic interventions. *Application received by Commissioner of Customs:* September 24, 1986.

Docket No.: 86–326. *Applicant:* University of Kentucky, Department of Physics and Astronomy, Lexington KY 40506. *Instrument:* NMR Magnetometer System with Accessories. *Manufacturer:* Nuclear Research Centre, Canada. *Intended Use:* The instrument will be used for studies of nuclear reactions and scattering of nucleons from nuclei, such as Sn, Pt, Os, Ba, Zr isotopes. Experiments will be conducted in order to learn about nuclear structure, and also about the properties of the nucleon-nucleus interaction. *Application received by Commissioner of Customs:* September 25, 1986.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 86–23245 Filed 10–14–86; 8:45 am]
BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; North Gulf Oceanic Society (P351A)

On August 19, 1986, notice was published in the **Federal Register** (51 FR 29579) that an application had been filed by North Gulf Oceanic Society, P.O. Box 156, Cordova, Alaska 99574, to take by harassment up to 90 killer whales *(Orcinus orca)*.

Notice is hereby given that on October 8, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Protected Species Division, National Marine Fisheries Service, Washington, DC;
Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE BIN C15700, Seattle, Washington 98115;
Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: October 8, 1986.
Richard B. Roe,
Director, Office of Fisheries Management, National Marine Fisheries Service.
[FR Doc. 86–23269 Filed 10–14–86; 8:45 am]
BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in Officials Authorized to Issue Export Visas and Exempt Certificates for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

October 9, 1986.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 21, and 23, 1985, as amended, between the Governments of the United States and Malaysia, the Government of Malaysia has notified the United States Government that Mr. Abdul Ghafar bin Musa is replacing Mr. Mohamed Akbar Hj. Mahbat and Mr. Alias Hj. Jamsuri as an official authorized to issue export visas and exempt certificates for textile and textile products covered by the agreement. The purpose of this notice is to advise the public of this change.

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 86–23243 Filed 10–14–86; 8:45 am]
BILLING CODE 3510–DS–M

COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

Invitation To Submit Recommendations Concerning Executive, Legislative, and Judicial Salaries

AGENCY: Commission on Executive, Legislative, and Judicial Salaries.
ACTION: Notice.

Notice is hereby given that the Commission on Executive, Legislative, and Judicial Salaries, provided for by Pub. L. 90–206, December 16, 1967 (81 Stat. 642) and reauthorized under Pub. L. 99–190, December 19, 1985, has been established and has begun its review of pay rates for top executives, Members of Congress, and judges throughout the Federal service. The statute requires that the Commission's report and recommendations be forwarded to the President by December 15, 1986.

Organizations and individuals are urged and invited to submit for consideration any views or recommendations that they believe are relevant to the mission of the Commission: e.g., specific salary levels for various categories in the three areas of concern; the appropriateness of certain positions in the Executive Schedule and their current salary levels, comparison of salaries in the private sector with comparable executive, legislative, and judicial positions, questions of outside remuneration that help to supplement currrent salaries.

Fifteen copies of each submission should be sent to Chandler van Orman, Esq., Executive Director, Commission on Executive, Legislative, and Judicial Salaries, 734 Jackson Place NW., Washington, DC, 20006, at the earliest date possible but not later than November 3, 1986.

Commission on Executive, Legislative, and Judicial Salaries.
Chandler van Orman,
Executive Director.
[FR Doc. 86–23170 Filed 10–14–86; 8:45 am]
BILLING CODE 8225–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors; Meeting

AGENCY: Defense Systems Management College, DOD.
ACTION: Board of Visitors meeting.

SUMMARY: A meeting of the Defense Systems Management College (DSMC) Board of Visitors will be held in Building 226, Fort Belvoir, Virginia, on Friday, November 21, 1986, from 8:30 a.m. until 3:30 p.m. The agenda will include a review of accomplishments related to the system acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitations on the space available, allocation of seating will be made on a first-come, first-serve basis. Persons desiring to attend the meeting should call Mrs. Joyce Reniere on (703) 664–5489.

October 9, 1986.
Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 86–23254 Filed 10–14–86; 8:45 am]
BILLING CODE 3810–01–M

Defense Science Board Task Force on Security Subgroup on Technological and Operational Surprise

ACTION: Change in Date of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Security Subgroup on Technological and Operational Surprise scheduled for October 15, 1986 as published in the **Federal Register** (Vol. 51, No. 142, FR Doc. 86–16684, Thursday, July 24, 1986) will be held on November 18, 1986. In all other respects the original notice remains unchanged.

October 9, 1986.
Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 86–23256 Filed 10–14–86; 8:45 am]
BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)
Dates of Meeting: 30–31 October 1986
Times of Meeting: 0800–1630 hours daily
Places: Armament Research Development and Engineering Center, Dover, New Jersey

Agenda

The Army Science Board Effectiveness Review Panel of the US Army Armament Research Development and Engineering Center will visit the ARDEC for the purpose of gathering data for conducting the review of that facility. Briefings will be presented by each directorate covering their work program. The panel will meet in the executive session to discuss the methodology for conducting the review and to discuss observations as a result of the briefings. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1,

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subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–23257 Filed 10–14–86; 8:45 am]

BILLING CODE 3710-08-M

Defense Nuclear Agency

Membership of the Defense Nuclear Agency Performance Review Boards

AGENCY: Department of Defense, Defense Nuclear Agency.

ACTION: Notice of membership of the Defense Nuclear Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Nuclear Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance and performance awards to the Director, Defense Nuclear Agency.

EFFECTIVE DATE: The effective date of service for the appointees of the DNA PRBs is 20 October 1986.

FOR FURTHER INFORMATION CONTACT: Allen I. Barke, Chief, Civilian Personnel Management Division (MPCV), Defense Nuclear Agency, Washington, DC 20305–1000, (703) 325–7591/92.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the DNA PRBs are set forth below. All are DNA officials unless otherwise identified:.

Board I

Mr. David G. Freeman, Director, Acquisition Management
Mr. Paul H. Carew, Comptroller
Dr. Kenneth I. Daugherty, Deputy Director, Research and Engineering, Defense Mapping Agency

Board II

Dr. Don A. Linger, Assistant to the Deputy Director (Science and Technology) for Experimental Research
Mr. Kenneth B. Bohein, Deputy Manager, Plans and Programs, National Communications Systems, Defense Communications Agency
Dr. Goerge W. Ullrich, Chief, Aerospace Systems Division

Patricia H. Means,

OSD Federal Register, Liaison Officer, Department of Defense.

October 9, 1986

[FR Doc. 86–23255 Filed 10–14–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Aquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523–5166 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

FAR clause 52.243–6, Change Order Accounting, requires that, wherever the estimated cost of a change or series of related changes exceed $100,000., the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 6,750; responses per respondent, 18; and total reporting and recordkeeping hours, 26,303.

Obtaining Copies of Proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0026, Change Order Accounting.

Dated: October 6, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–23179 Filed 10–14–86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF EDUCATION

Inviting Applications for New Awards Under the Outreach Component of the Handicapped Children's Early Education Program (HCEEP) for Fiscal Year 1987 (CFDA No: 84.024C)

Purpose: These projects support the replication of established practices to assist other agencies and organizations in expanding and improving services to handicapped children.

Deadline for transmittal of applications: December 19, 1986.

Deadline for intergovernmental review comments: February 19, 1987.

Applications available: October 20, 1986.

Available funds: $3,095,000.

Estimated range of awards: $80,000–$170,000.

Estimated No. of awards: 24.

Project period: 12 months.

Applicable regulations: (a) the Handicapped Children's Early Education Program Regulations, 34 CFR Part 309, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Priority

In accordance with 34 CFR 75.105(c)(3), the Secretary will give an absolute priority to each application that meets one of the priority areas listed in 34 CFR 309.32 (a)–(d).

The Secretary especially urges the submission of applications for outreach projects that—(1) Address the needs of unserved and underserved preschool children who are severely and multiply handicapped; and (2) attempt to improve skills for use in the family, home, community or day care centers by parents and personnel participating in the projects. However, applications that meet the invitational priorities described in this paragraph will not receive a competitive preference over the other applications that meet the priorities described in 34 CFR 309.32(a)–(d).

For applications or information contact: Gerald B. Boyd, Early Childhood Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4609, Switzer Building), Washington, DC 20202. Telephone (202) 732–1050.

Program authority: 20 U.S.C. 1423.

Dated: October 8, 1986.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 86–23247 Filed 10–14–86; 8:45 am]

BILLING CODE 4000-01-M

Intergovernmental Advisory Council on Education Executive Committee; Meeting

AGENCY: Intergovernmental Advisory Council on Education Executive Committee.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Intergovernmental Advisory Council on Education Executive Committee. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: October 30, 1986.

ADDRESS: Senate Conference Room #313, State of Arizona Senate Building, 1700 West Washington Street, Phoeniz, Arizona, 85007.

FOR FURTHER INFORMATION CONTACT: Dr. James G. Horn, Executive Director (A), Intergovernmental Advisory Council on Education, 513 Reporter's Building, Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

A portion of the meeting on October 30, 1986 will be closed to the public when agenda item I is discussed, a period of one to three hours when applicants for the position of Executive Director are reviewed and interviewed. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemption (6) of section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C 552b(c)(6). Discussion of the applications will include consideration of the qualifications and fitness of the candidates and will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

The proposed agenda includes:

—Review of applications and interviews of candidates for the position of Executive Director in a closed meeting
—Old Business and New Business including reports from Council Committees

Records are kept of all Council proceedings, and are available for public inspection at the Intergovernmental Advisory Council on Education, 513 Reporter's Building, 300 7th Street, SW., from 9:00 a.m. to 5:00 p.m.

Dated: October 10, 1986.

Nancy R. Greer,

Acting Deputy Under Secretary.

Tentative Agenda—Intergovernmental Advisory Council on Education, Executive Committee, October 30, 1986, Senate Conference Room #313, State of Arizona Senate Building, Phoenix, AZ

I. Interview of candidates for the position of Executive Director.
II. Open meeting—Discussion and/or action in reference to hiring of an Executive Director.
III. Old Busines
  A. Committee Reports—
    1. Update of efforts to place IACE under GEPA.
    2. Review of Job Training Task Force Report.
    3. Reports from other Committees.
  B. Other Old Business
IV. New Business—
  A. Discussion and/or action of major project(s) for FY 1987.
  B. Other New Business

Agenda Item I will be Closed to the Public.

[FR Doc. 86–23362 Filed 10–14–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement With Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under general license issued by the U.S. Nuclear Regulatory Commission.

The subsequent arrangement to be carried out under the above authority involves approval of the following sale:

Contract Number S–CA–395, for the supply of 30 millligrams of uranium–236 and 30 milligrams of uranium–234 to the Royal Ontario Museum, Toronto, Canada, for use as tracers for uranium-lead age determination studies.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 9, 1986.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–23270 Filed 10–14–86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement With European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the return of 55 kilograms of U.S. origin irradiated research reactor fuel from the HFR reactor in the Netherlands for reprocessing and storage in U.S. Department of Energy facilities. The return of highly enriched uranium (HEU) is consistent with U.S. nonproliferation

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policy in that it serves to reduce the amount of HEU abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 9, 1986.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-23271 Filed 10-14-86; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement With Euratom

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer:

RDT/NO(EU)-53, for the retransfer of 30 grams of fissile plutonium of United States origin incorporated in irradiated plutonium-uranium irradiated mixed-oxide fuel from the Federal Republic of Germany to Norway for post-irradiation examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy

Dated: October 9, 1986.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-23272 Filed 10-14-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) collection title; (3) type of request, e.g., new, revision, or extension; (4) frequency of collection; (5) response obligation, ie., mandatory, voluntary, or required to obtain or retain benefit; (6) affected public; (7) an estimate of the number of respondents annually; (8) annual respondent burden i.e., an estimate of the total number of hours needed to respond to the collection; and (9) a brief abstract describing the proposed collection and, briefly, the respondents.

DATES: Comments must be filed November 14, 1986. Last notice published Monday, September 22, 1986, (51 FR 33654).

ADDRESS: Address comments to Mr. Vartkes Broussalian, Department of Energy Desk Office, Officer, of Management and Budget, 726 Jackson Place, NW., Washington DC 20503. (Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the address below.)

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection Services Division (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-2308.

SUPPLEMENTARY INFORMATION: If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise Mr. Broussalian of your intent as early as possible.

Statutory Authority:

Sec. 13(b), 5(b), 5(a), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 772(b), 764(b), 764(a), and 790a).

Issued in Washington, DC, October 9, 1986.

Douglas Hale,

Acting Director, Statistical Standards, Energy Information Administration.

DOE COLLECTIONS UNDER REVIEW BY OMB

Collection No. (1)	Collection title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Affected public (5)	No. of respondents annually (7)	Respondent burden hrs. annually (8)	Abstract (9)
EIA: EIA-28	Financial reporting system.	Extension	Annually	Mandatory	Business or other for profit.	22	25,344	The Form EIA-28 provides data to evaluate the energy industry competitive environment and to analyze energy industry resource development, supply, distribution, and profitability issues. Survey results from 22 major energy producers are published annually for both private and public sector use.

[FR Doc. 86-23273 Filed 10-14-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-47-NG]

Brymore Gas Marketing, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Brymore Gas Marketing, Inc. (Brymore), blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 86-47-NG authorizes Brymore to import up to 200 Bcf of Canadian gas over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 3, 1986.

Barton R. House,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-23202 Filed 10-14-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP85-58-015]

El Paso Natural Gas Company; Compliance Filing

October 8, 1986.

Take notice that on October 3, 1986, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, the following tariff sheets to its FERC Gas Tariff:

Tariff Volume	Tariff Sheet
First Revised Volume No. 1	Substitute Ninth Revised Sheet No. 100.
	First Substitute Revised Sheet No. 220.
	Fourth Revised Sheet No. 221.
	Third Revised Sheet No. 222.
	Third Revised Sheet No. 251.
	Fourth Revised Sheet No. 252.
	First Revised Sheet No. 253.
	Second Revised Sheet No. 254.
	First Revised Sheet Nos. 255, 256 and 313.
Original Volume No. 1-A	Substitute Fourth Revised Sheet No. 24.
	Substitute Original Sheet No. 114.
	First Revised Sheet No. 115.
	First Revised Sheet No. 116.
	First Revised Sheet Nos. 122 through 124.

El Paso states that the tendered tariff sheets to First Revised Volume No. 1 and Original Volume No. 1-A to its FERC Gas Tariff are submitted in compliance with the provisions of section 6.2 of Article VI of the Stipulation and Agreement in Settlement of Rate Proceedings at Docket No. RP85-58-000, *et al.*, which states in part that "If as a result of any order or decision by the Commission in Docket No. RP81-130-000, *et al.* . . . the minimum commodity bill of Transwestern Pipeline Company ("Transwestern") applicable to sales to Pacific Lighting Gas Supply Company ("PLGS") is esablished at any level other than sixty (60) percent of an annual contract quantity of 278,597,585 dekatherms, then, El Paso shall be required to modify the additional fixed cost reimbursement quantity established by section 5.3 of Rate Schedule G to reflect the same percentage level as that reflected in Transwestern's minimum bill to PLGS by filing the appropriate tariff sheet(s) with the Commission and serving them on jurisdictional customers and interested state commissions within sixty (60) days of the date the minimum commodity bill of Transwestern is established at such other level."

By Opinion No. 238 issued July 1, 1985 at Docket No. RP81-130-007, *et al.*, the Commission ordered that Transwestern's minimum bills be eliminated effective the date the Commission issues an order on rehearing. By Opinion No. 238-A issued August 4, 1986 at Docket No. RP81-130-024, *et al.*, the Commission denied the applications for rehearing filed by Transwestern, El Paso and a group of El Paso's customers known as the EOC companies.

El Paso further states that the tendered tariff sheets reflect (i) the elimination of El Paso's Fixed Cost Reimbursement Charge (minimum bill) under § 3.1(c) and the related provisions under §§ 3.3 and 5.3 of Rate Schedule G; (ii) certain conforming changes in other provisions of Rate Schedule G due to the elimination of references to the Fixed Cost Reimbursement Charge; and (iii) the elimination of section 4 of Rate Schedules INC-1, T-1 and T-2 which pertained to section 3.3 of Rate Schedule G. Also, tendered Tenth Revised Sheet No. 100 (Statement of Rates) of the First Revised Volume No. 1 Tariff reflects the elimination of the rate referenced under section 3.1(c) of Rate Schedule G (Fixed Cost Component of the Commodity Charge). Certain of the tendered tariff sheets are submitted only to reflect conforming changes necessitated by the renumbering of provisions under the identified Rate Schedules after elimination of the minimum bill provisions.

El Paso also tendered First Revised Sheet No. 313 to First Revised Volume No. 1 which serves to reflect the deletion of section 5.3, *Adjustment of Maximum Contracted Daily Demand*, under section 5, BILLING, of the General Terms and Conditions of said Tariff which section is no longer necessary in the operation of natural gas service under Service Agreements applicable to Rate Schedule G.

El Paso requests that the tendered tariff sheets be accepted by the Commission and permitted to become effective August 4, 1986, the effective date of the elimination of Transwestern's minimum bill.

El Paso states that copies of the filing have been served upon all parties of record in Docket No. RP85-58-000, *et al.*, and, otherwise, upon all of its interstate pipeline system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before October 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23262 Filed 10-14-86; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TC86-19-000]

K N Energy, Inc.; Motion for Extension of Time

October 8, 1986.

Take notice that on September 26, 1986, K N Energy, Inc (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. TC86-19-000 a motion pursuant to Rule 212 of the Commission's rules of practice and procedure (18 CFR 385.212) for an extension of time for K N to comply with the filing requirement of Article 6.2, *Annual Three Year Forecast*, of the stipulation and agreement approved by the Commission's order in Docket Nos. RP76-90, *et al.*, issued November 21, 1981, all as more fully described in the motion which is on file with the Commission and open to public inspection.

Specifically, under Article 6.2, K N is required to file with the Commission, on or before October 1 of each year, a three-year forecast of the gas requirements on its interstate system and the gas supply available to meet those requirements for twelve-month periods from November 1 through October 31. K N states that while its gas supply requirements have been defined, it will not have a current gas supply forecast until the second week of November, 1986. In addition, K N states that it has experienced delays in obtaining certain required data from its computerized billing system. K N, therefore, requests that it be granted a 45-day extension of time to permit it to file the aforementioned forecast for this year no later than November 14, 1986.

K N states that all parties to the stipulation and agreement in Docket Nos. RP76-90, *et al.*, as reflected on the Commission's official service list, have been served with this motion.

Any person desiring to be heard or to make any protest with reference to the instant filing should on or before October 17, 1986, file with the Fedeal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23263 Filed 10-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-1-000]

Natural Gas Pipeline Company of America; Change in FERC Gas Tariff

October 8, 1986.

Take notice that on October 1, 1986, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective April 1, 1987:

Twenty-fourth Revised Sheet No. 301
Twenty-second Revised Sheet No. 302
Twenty-third Revised Sheet No. 303
Twenty-third Revised Sheet No. 304
Twenty-second Revised Sheet No. 305
Ninth Revised Sheet No. 306
Tenth Revised Sheet No. 307
Tenth Revised Sheet No. 308
Ninth Revised Sheet No. 309

Natural states that the purpose of the filing is to set out the Buyer's quantity entitlements under section 22 of the General Terms and Conditions of Natural's FERC Gas Tariff for the service year April 1, 1987 through March 31, 1988. Natural requested waiver of the Commission's regulations to the extent necessary to permit the revised sheets to become effective April 1, 1987 the beginning of the 1987-1988 service year.

The Monthly Quantity Entitlements on Sheet Nos. 301 through 309 have been changed, where required, to reflect requested changes in such entitlements by Natural's sixteen (16) DMQ-1 and thirty-three (33) G-1 customers. Customers requesting changes in Daily Quantity Entitlements were accommodated where feasible by Natural. The Monthly and Daily Entitlements on these sheets provide sufficient gas volumes to allow each customer to fully meet (within contractual limits) its reported requirements.

A copy of the filling was mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commissions rules of practice and procedure All such motions or protests must be filed on or before October 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23264 Filed 10-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-2-000]

Northern Natural Gas Co., Division of Enron Corp.; Tariff Filing

October 8, 1986.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern) on October 1, 1986, tendered for filing, proposed changes to its FERC Gas Tariff. Such changes have been filed to comply with §§ 284.7(a), 284.7(b)(2) and 284.8(d) of the Commission's regulations, all as more fully explained in the filing which is available for public inspection.

Northern is filing to establish rates and the applicable rate schedule to provide open-access non-discriminatory firm transportation service in accordance with Section 311 of the Natural Gas Policy Act.

Accordingly, Northern proposes through this tariff filing to establish rates for firm transportation services, which are equivalent to the rates filed in Northern's Stipulation and Agreement of Settlement in Docket No. RP85-206 for firm transportation service under Rate Schedule FT-1. These rates are filed herein at Second Revised Sheet No. 4g.1 and Original Sheet No. 4g.2 of Northern's FERC Gas Tariff, Third Revised Volume No. 1. Such rates are intended to comply fully with §§ 284.7, 284.7(b)(2), and 284.8(d) of the Commission Regulations. Northern is also proposing as part of this tariff filing to establish the aforementioned Rate Schedule FT-1, which incorporates the General Terms and Conditions pursuant to which Northern will provide firm transportation services. The aforementioned will remain in effect only until superseding transportation rates and rate schedules are established and become effective by a final order of the Commission in Docket No. RP85-206.

Copies of the filing were served upon all of Northern's jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of this chapter. All such motions or protests should be filed by October 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23259 Filed 10-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-4-000]

Northern Natural Gas Co., Division of Enron Corp., Tariff Filing

October 8, 1986.

Take Notice that on October 2, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern), F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2.

Third Revised Volume No. 1

Fifth Revised Sheet No. 27e
Third Revised Sheet No. 56a
Third Revised Sheet No. 56b
Second Revised Sheet No. 62

Original Volume No. 2

First Revised Sheet No. 194
First Revised Sheet No. 196
Second Revised Sheet No. 230
Second Revised Sheet No. 232
First Revised Sheet No. 320
First Revised Sheet No. 322
First Revised Sheet No. 332
Second Revised Sheet No. 334
First Revised Sheet No. 381
First Revised Sheet No. 386
First Revised Sheet No. 588
First Revised Sheet No. 591
First Revised Sheet No. 651
First Revised Sheet No. 654
Second Revised Sheet No. 761
Second Revised Sheet No. 765
First Revised Sheet No. 772
First Revised Sheet No. 777
First Revised Sheet No. 962
First Revised Sheet No. 965
Second Revised Sheet No. 1504
Second Revised Sheet No. 1506
First Revised Sheet No. 1553
First Revised Sheet No. 1557
First Revised Sheet No. 1564
First Revised Sheet No. 1566
First Revised Sheet No. 1579a
First Revised Sheet No. 1579d
First Revised Sheet No. 1590
First Revised Sheet No. 1593

These pages revise the billings period for all of Northern's jurisdictional sales rate schedules from a fiscal billing month to a calendar billing month, revise the SS-1 Rate Schedule to provide for eight additional billings days in the billing month of November and two additional billing days in the month of April.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC, 20426, in accordance with the Commission's rules of practices and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23256 Filed 10-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-106-001]

Tennessee Gas Pipeline Co.; Availability of the Tope Project Environmental Assessment

October 10, 1986.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has prepared an environmental assessment (EA) on the above-referenced docket and has determine that construction and operation of the proposed TOPS project would not constitute a major Federal action significantly affecting the quality of the human environment. The proposed project includes 82.5 miles of 20-inch-diameter pipeline construction in the onshore and offshore vicinity of Corpus Christi, Texas, a separation/dehydration plant in San Patricio County, and associated metering, valves, and pipeline access facilities. Alternatives are also considered in the EA, and environmentally superior modifications to the proposal have been recommended.

The EA will be used in the regulatory decision-making process at the Commission and may be presented as evidentiary matter in formal hearings. Anyone desiring to file a motion to intervene with the FERC on the basis of the EA should do so in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR 385.212 and 385.214. Anyone desiring to file a protest should do so in accordance with 18 CFR 385.211.

The EA has been placed in the public files of the Commission and is available for public inspection in the FERC's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. Copies have been sent to the public, all parties to the proceeding, and Federal, State and local officials, and are available in limited quantities from the FERC's Division of Public Information.

Any person who wishes to do so may file comments on the EA. Comments should be sent to the office of the Secretary, FERC, 825 North Capitol Street, NE., Washington DC, 20426, within 30 days of publication of this notice. Additional information about the project is available from Mr. Lonnie Lister, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-8883.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23257 Filed 10-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-7-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

October 8, 1986.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on October 6, 1986, tendered for filing certain tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed changes would increase revenues from jurisdictional sales, transportation and storage services by approximately $181 million annually based upon the 12-month period ended June 30, 1986, as adjusted. The proposed effective date of the instant filing is November 6, 1986. However, because Transco has agreed in Article VII of the pending Stipulation and Agreement in Docket No. TA85-1-29-000, *et al.* not to place increased rates into effect prior to April 1, 1987, it is anticipated that the Commission will suspend this filing and permit it to become effective on April 1, 1987. Such suspension period would be five days less than the full five-month period provided in section 4(c) of the Natural Gas Act. In that regard, Transco requests that the Commission not suspend the instant filing for the full

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period because an April 1, 1987 effective date (1) coincides with the commencement of the pipeline summer period; (2) would avoid the administrative burden on Transco and its customers of a rate change becoming effective in the middle of a billing month; and (3) coincides with the termination of the 36-month period under the PGA regulations at 18 CFR 154.38(d)(4)(vi).

Transco states that the principal causes of the rate increase are (1) increases in operating and maintenance expenses and depreciation expenses; (2) an increase in rate base due primarily to the inclusion in rate base of the unamortized balance of the costs of buyouts and buydowns of supplier contracts reflected during the test period; (3) an increase in the overall return and related income taxes; and (4) a slight reduction in projected pipeline throughput.

In addition, *pro forma* tariff sheets and tariff modifications were filed which would (1) allow Transco to track future storage cost increases by Consolidated Gas Supply Corporation (Con Gas) from whom Transco acquires storage service in order to render storage service to its customers; (2) allow Transco to track in system sales rates, future contract buyout and buydown costs with respect to its supplier contracts; (3) allow Transco to track through charges to specific customers the costs, if any, of payments to producers to take-or-pay claims or settlement thereof arising under new supply contracts and which are attributed to the low load factor purchase levels by such customers; and (4) provide for credits to demand charges under certain firm sales rate schedules in those circumstances where the customer receives interruptible transportation quantities (at fully allocated rates per Order No. 436) within its sales contract demand level.

Transco states that there is pending before the Commission on exceptions an ALJ's Initial Decision in Docket No. RP82–55 addressing, among other things, a reserved issue on Transco's rate design, the ultimate determination of which shall be applicable on a prospective basis. Transco's proposed rates have been designed on the basis of a modified fixed-variable (MFV) rate design methodology which is consistent with the Commission's current policies, *see, e.g., Texas Eastern Transmission Corporation*, 30 FERC ¶ 61,144 (1985); and *Tennessee Gas Pipeline Company*, 36 FERC ¶ 61,071 (1986). Transco believes that there exists no legal bar to its making effective rates based on an MFV methodology as proposed. Nevertheless, Transco has included in its filing, as an alternative, revised tariff sheets and supporting schedules reflecting the status quo regarding these matters—the continuation of the existing *Seaboard* rate design.

Copies of the filing were served upon the Company's customers and interested State Commissions. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 86–23260 Filed 10–14–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–3–30–002]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

October 8, 1986.

Take notice that on September 30, 1986 Trunkline Gas Company (Trunkline) tendered for filing the following revised sheet to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 21–J.2

The proposed effective date of this revised tariff sheet is September 1, 1986.

This revised tariff sheet is being submitted by Trunkline at this time in compliance with the Commission's August 29, 1986 Order to reflect revised tariff language for Trunkline's flexible PGA to exclude the effects of storage activity from the determination of gas costs in determining compliance with the three percent limitation.

Trunkline states that the filing of this revised tariff sheet by Trunkline in compliance with the Commission's August 29, 1986 Order in this proceeding is without prejudice to Trunkline's rights to seek rehearing or review of the conditions contained in the August 29, 1986 Order.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–23261 Filed 10–14–86; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of September 8 through September 12, 1986

During the week of September 8 through September 12, 1986, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Cernak Fuel, 9/10/86, *KEE–0134*

Central Fuel filed an Application for Exception from the requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Sales Report." In considering the request, the OHA considered the facts that the company had only one bookkeeper and that she was forced to examine each of the firm's contracts individually in order to obtain the information necessary to file the form. Accordingly, the OHA determined that Cernak should the granted an exception which would allow the firm to estimate the data on the reports for the remainder of its reporting period.

Ekrut Oil Company, 9/11/86, *KEE–0054*

Ekrut Oil Company filed an Application for Exception from the requirement to file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Sales Report." In evaluating the request, the DOE found that the firm had not shown that it was more adversely affected by the reporting requirement that other reporting firms. Accordingly, exception relief was denied.

Moonlight Oil Company, 9–11–86, *KEE–0056*

Moonlight Oil Company filed an Application for Exception from the requirement to file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Sales Report." In evaluating the request, the DOE found that the firm had not shown that it was more adversely affected by the reporting requirement than other reporting firms. Accordingly, exception relief was denied.

Supplemental Order

Texaco, Inc., 9/9/86, *KRX–0021*

Texaco Inc. (Texaco) filed a petition for review of a Special Report Order (SRO) that was issued to the firm by the Deputy Director for Economic Analysis, Office of Hearings and Appeals (OHA), on August 1, 1986. *Texaco Inc.*, 14 DOE ¶ _____, Case No. KRX–0019 (August 1, 1986). In considering Texaco's petition for review, the Director of OHA determined that Texaco failed to substantiate its claim that issuance of the SRO was a prosecutoral act and improperly involved OHA in investigatory functions, or that issuance of the SRO was premature. Accordingly, Texaco's petition request that the SRO be rescinded or stayed was denied. However, the SRO was modified to afford Texaco a two-month extension of time for compliance with the SRO's reporting requirements.

Implementation of Special Refund Procedures

Mountain Fuel Supply Company J.N. Abel, Inc. 9/11/86, *KEF–0025, KEF–0034*

The DOE issued a Decision and Order implementing procedures for the distribution of $910,062.21 (plus accrued interest) received from two crude oil producers: Mountain Fuel Supply Company and J.N. Abel, Inc. The DOE determined that the monies should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. *See* 51 FR 27899 (August 4, 1986). In accordance with DOE policy, 80 percent of the money in these cases was divided between the State and Federal governments. Twenty percent was reserved for direct restitution to injured parties. Applications for refund by injured firms and individuals must be submitted within 90 days.

Refund Applications

Gary Energy Corporation/H.S. Sowards & Sons, Inc. Utah-Colorado Gas, Inc., 9/12/86, *RF47–5, RF48–6*

H.S. Sowards & Sons, Inc. and Utah-Colorado Gas, Inc., both owned by Glade M. Sowards and Kenneth H. Sowards, filed Applications for Refund in the Gary Energy Corporation refund proceeding. The DOE found that the applicants were not bona fide independent resellers of Gary Energy's products. They transported natural gas liquid products to certain purchasers designated by Gary Energy and received from Gary Energy a transportation margin on a per gallon basis. Data submitted by the applicants indicated that during the consent order period, they were able to increase their business volume with Gary Energy, while maintaining the transportation margin they received. Since there was no evidence that the applicants were in any way injuried by the alleged overcharges of Gary Energy, the DOE denied the refund requests submitted by Sowards and Utah-Colorado.

Gulf Oil Corporation/Bunt's Auto Service, Inc. et al., 9/8/86, RF40–370 ET AL.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $14,014, representing $11,551 in principal and $2,463 in accrued interest.

Gulf Oil Corporation/Reedy Creek Utilities Co., Inc. et al, 9/11/86, *RF40–39 et al.*

The DOE issued a Decision and Order concerning 20 Applications for Refund filed in the Gulf Oil Corporation special refund proceeding. All of the applicants were end-users of petroleum products purchased directly from Gulf. In its Decision, the DOE granted the 20 applications under the standards specified in *Gulf Oil Corp.*, 12 DOE ¶85,048 (1984). The refunds granted total $289,640, representing $220,776 in principal and $48,864 in interest.

Marathon Petroleum Company/Altenburger Service Station, et al, 9/2/86, *RF250–845 et al.*

The DOE issued a Decision and Order concerning 70 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $56,398 in principal and $2,553 in interest.

Marathon Petroleum Company/Andy's Marathon, et al, 9/12/86, *RF250–677 et al.*

The DOE issued a Decision and Order concerning 36 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $29,598 in principal and $1,335 in interest.

Marathon Petroleum Company/Around Clock Auto Center, et al, 9/9/86, *RF250–568 et al.*

The DOE issued a Decision and Order concerning 38 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $33,300 in principal and $1,428 in interest.

Marathon Petroleum Company/Chuck Diehl Oil Service, Inc. et al., 9/12/86, *RF250–1178 et al.*

The DOE issued a Decision and Order concerning ten Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the approved $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $7,041 in principal and $316 in interest.

Marathon Petroleum Company/Kunkel's Marathon, 9/10/86, *RF250–1171*

The DOE issued a Decision and Order concerning an Application for Refund filed by purchaser of products covered by a consent order with Marathon Petroleum Company. The applicant demonstrated the volume of its Marathon purchases, and did not request a refund greater than the $5,000 small claims refund amount. The refund approved in this Decision is $1,293 in principal and $55 in interest.

Marathon Petroleum Company/Loia & Peloso Oil Company, 9/10/86, *RF250–1151*

The DOE issued a Decision and Order concerning the Application for Refund filed by Loia & Peloso Oil Company, a purchaser of middle distillates covered by a consent order with Marathon Petroleum Company. Loia demonstrated that it purchased 2,127,362 gallons of covered product from Marathon during the consent order period. Under the $5,000 small claims presumption, the refund approved in this Decision is $893 in principal and $40 in interest.

Mobil Oil Corporation/Allied Fuel Company et al., 9/10/86, *RF225–547 et al.*

The DOE issued a Decision granting 73 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the Mobil decision *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985). The DOE granted refunds totalling $19,547.

Mobil Oil Corporation/Ameron-Price Company et al., 9/10/86, *RF225–4777 et al.*

The DOE granted 46 Applications for Refund from a fund obtained through a Consent Order with Mobil Oil Corporation.

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All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount in accordance with the procedures established in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $4,470 ($3,784 in principal plus $686 in interest).

Mobil Oil Corporation/Anthony Barbato et al., 9/12/86, RF225–3008 et al.

The DOE issued a Decision granting 55 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totaling $15,871 ($13,403 principal plus $2,468 interest).

Dismissals

The following submissions were dismissed:

Name	Case No.
ERA	KRS–0003
Texaco Corp	HES–0102
L.F. Phillips & Sons, Inc.	RF225–3359
White Consolidated Industries, Inc.	KEE–0005

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

October 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–23274 Filed 10–14–86; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of September 1 Through September 5, 1986

During the week of September 1 through September 5, 1986, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Texaco Inc., 9/5/86 HRO–0273

Texaco Inc. and the States of California and Texas objected to a Proposed Remedial Order that the Economic Regulatory Administration issued to the firm on February 7, 1985. In the PRO, ERA found that Texaco referred to excessive May 15, 1973 selling prices in computing maximum allowable prices for sales of middle distillates and motor gasoline to certain customers that purchased those products on or before May 15, 1973 pursuant to written fixed-priced contracts. Specifically, ERA found that Texaco incorrectly referred to posted price quotations implemented on June 1, 1973 and thereafter as its May 15, 1973 base prices rather than the prices charged in actual sales on or before May 15, 1973. In its Statement of Objections, Texaco maintained that it correctly used its June 1, 1973 price quotations for many of its customers because they orally agreed to those prices on or before May 15, 1973. In rejecting Texaco's position, the DOE held *inter alia*, that, under the express terms of Ruling 1977–5, a presumption existed that oral contracts become binding on the date of delivery of product and, therefore, a presumption existed that Texaco's alleged oral contracts were post-May 15, 1973 transactions. The DOE held that Texaco had failed to rebut that presumption. The DOE further held that the use of an excessive May 15, 1973 selling prices was a per se violation of the price rule for which a refund based on the difference between the incorrect and correct May 15, 1973 selling price was appropriate. In adopting a refund remedy, the DOE granted in part the Statements of Objections filed by the States. Finally, consistent with its determination in a Remedial Order issued to Texaco on July 23, 1986, *see Texaco Inc.*, 14 DOE ¶ 14,063,034 (1986), the DOE modified the PRO to exclude the requirements that Texaco (i) perform a self-audit with respect to customers not identified in the PRO whose May 15, 1973 selling prices were determined to be incorrect, (ii) provide data and calulations for those customers and, upon ERA's approval, (iii) make refunds to those customers.

Request for Exception

Standard Oil of Connecticut, 9/5/86, KEE–0034

Standard Oil of Connecticut filed an Application for Exception in which it sought relief from its obligation to submit Form EIA–782B entitled "Resellers'/Retailers' Monthly Petroleum Sales Report." In considering the request, the DOE found that there was some merit to the firm's contention that it was burdened by the filing requirement. After balancing this burden against the public interest in gathering reliable energy data, the determination was made that a limited form of exception relief was appropriate. Accordingly, the request for exception relief was granted in part.

Interlocutory Orders

Economic Regulatory Administration/Port Petroleum, Inc., 9/3/86, KRZ–0150; KRZ–0290

The Economic Regulatory Administration (ERA) filed a Motion to Join and a Motion to Consolidate Proceedings in connection with two enforcement proceedings initiated against Port Petroleum, Inc. (Port). The first motion sought to add Morris M. James, T. Michael Howell and Gregory C. Crafts (respondents) as additional parties to an amended Proposed Remedial Order (1985 PRO) issued to Port. The Office of Hearings and Appeals (OHA) granted this motion, finding that the ERA had established a *prima facie* case of personal liability based upon the respondents' substantial ownership interest in Port and their active participation in Port's operations. The OHA also found that joinder of these parties was not unduly prejudicial since the respondents will be affored their full procedural rights and since the public interest in ensuring full restitution of the overcharges outweighed any inconvenience caused by the delay in the proceeding. Accordingly, the Motion for Joinder was granted. In the second motion the ERA had sought to consolidate the 1985 PRO with a second PRO issued to Port and the respondents. The OHA denied this Motion, stating that any efficiencies gained from consolidating the two PROs would be outweighed by the resultant complexities of analyzing violations emanating from nonidentical audit periods.

Port Petroleum, Inc. et al., 9/3/86, KRZ–0042

Port Petroleum, Inc., Morris M. James, T. Michael Howell and C. Gregory Crafts filed a motion to dismiss the Proposed Remedial Order (PRO) that the Economic Regulatory Administration issued to them on April 7, 1986. The PRO alleges that Port Petroleum and the individuals named in the PRO violated the Department of Energy rules concerning the firm's entitlement obligations during the period August 1979 through December 1980, and that the violations resulted in benefits of $9,020,867 plus interest accrued on that amount. In their motion, Port and the individuals argued that the PRO should be dismissed because it fails to establish a prima facie case of the alleged violations. The office of Hearings and Appeals (OHA) denied the motion, finding that the PRO and supporting exhibits did establish a prima facie case. The OHA further held that evidence submitted for one month of the audit period by Port and the individuals with their Statement of Objections to the PRO was the type of evidence that could be used to rebut the PRO. The OHA stated that if similar evidence was submitted for two other months of the audit period, and the ERA did not satisfactorily refute that evidence in its Response to the Statement of Objections, the PRO would be rescinded.

Implementation of Special Refund Procedures

Gibbs Industries, Inc., 9/2/86, HEF–0079

This Decision established procedures for the distribution of funds totaling $37,000 obtained as a result of a Consent Order entered into between the DOE and Gibbs Industries, Inc. involving alleged allocation violations. The Decision sets forth refund application procedures for Gibbs customers who purchased motor gasoline during the consent other period: May and June 1979. Specific information regarding the date to be included in refund applications is discussed in the Decision.

Refund Applications

Marathon Petroleum Company/A.L. Blades and Sons et al., 9/2/86, RF250–333 et al.

The DOE issued a Decision and Order concerning 31 Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applications were evaluated in accordance with the procedures set forth in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986). The sum of the refunds approved in this Decision is $9,752, representing $9,348 in principal and $404 in interest.

Marathon Petroleum Company/Ron's Marathon, et al., 9/4/86, RF250–195 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $4,897 in principal and $211 in interest.

Mobil Oil Corporation/A.W. Oliver et al., 9/5/86, RF225–6033 et al.

The DOE issued a Decision granting 32 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totaling $20,164 ($17,033 principal plus $3,131 interest).

Mobil Oil Corporation/Agriculture Chemical Company et al., 9/4/86, RF225–4008 et al.

The DOE granted 42 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased product directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per-gallon volumetric refund amount in accordance with the procedures established in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $4,470 ($3,784 principal plus $686 interest).

Mobil Oil Corporation/American Rice, Inc. et al., 9/3/86, RF225–5119 et al.

The DOE granted 12 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $3,007 ($2,596 principal plus $471 interest).

Mobil Oil Corporation, Beisaw's et al., 9/2/86, RF225–4488 et al.

The DOE granted 47 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $4,092 ($3,463 principal plus $629 interest).

Mobil Oil Corporation/Bornhoft Concrete Products et al., 9/3/86, RF225–3556 et al.

The DOE granted 49 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to the amount of their documented purchase volumes times 100 percent of the per gallon volumetric refund amount. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $4,407 ($3,799 principal plus $668 interest).

National Helium Corp./Mississippi, Perry Gas Processors, Inc./Mississippi Standard Oil Co. (Indiana)/Mississippi, 9/2/86

RQ3–301, RQ183–302, RQ251–303

The State of Mississippi filed a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Orders establishing procedures for the disbursement of funds obtained under consent orders with National Helium Corp., Perry Gas Processors, Inc., and Standard Oil Co. (Indiana). Mississippi proposed to use the refunds to supplement existing SECP funds in order to increase ridership on urban and rural transit systems and to develop a fleet management program that would primarily benefit state motor pools. The OHA concluded that Mississippi's enlargement of the SECP program would benefit injured consumers, and funds for this program were granted. However, OHA concluded that the fleet management program would not adequately benefit injured consumers; funds for this program were denied.

Quaker State Oil Refining Corp./Certified Gasoline Co. 9/4/86, RF213–0146

The DOE issued a Decision and Order concerning an Application for Refund filed by Certified Gasoline Co., a reseller of Quaker State Oil Refining Corp. refined petroleum products. Certified had purchased refined petroleum products from Quaker State on a sporadic basis and was therefore considered a spot purchaser. In *Quaker State Oil Refining Corp.*, 13 DOE ¶ 85,211 (1985), the DOE established a rebuttable presumption that spot purchasers were generally not injured by the alleged Quaker State overcharges. Despite being given the opportunity to do so, Certified did not rebut this presumption, and its Application for Refund was denied.

Dismissals

The following submissions were dismissed:

Name and Case No.

Anjac Plastics, Inc. RF225–2770, RF225–2771
Borough of Buena, RF225–3482
Brockway Standards, Inc. RF225–3491
Champion Laboratories, Inc. RF225–3504
City of Cleveland, RF225–3510
City of Viroqua, RF225–3501
Cloud County Courthouse, RF225–3488
Cut Rate Auto Parts, RF225–2897
D.H. Holmes Co. Ltd. RF225–3506
Detroit Diesel Allison, RF225–3499
Fred H. McGrath and Son, Inc., RF225–3489
H.B. Fuller Co., RF225–3547, RF225–3548
Harvey's Gulf Service, RF40–211
Joe's Gulf, RF40–1144
Le Van Specialty Co, Inc., RF225–3493
Manufacturers Consultants, Inc., RF225–3526, RF225–3529
McCabe Gulf, RF40–286
McGraw-Edison Power Systems, RF225–3490
Molded Container Co., RF225–3566
National Optical Astronomy, Observatories RF225–3495
Pacific Forge, Inc., RF225–3502
Palm Beach Newspapers, Inc., RF225–3494
Phelps Fan Mfg. Co, Inc., RF225–3478, RF225–3479
Putnam Tool Div., TRW, RF225–3503
Reggie's Gulf Service, RF40–1296
Ronco Precision Automatics, Inc. RF225–3511
School District of Crete, RF225–3496
Solar Compounds Corp. RF225–3505
The Kenyon Piece Dyeworks, Inc., RF225–3492
United States Lines (S.A.), Inc., RF225–3523, RF225–3524
University of Washington, RF225–6253
UNO W. HYOPPONEN, RF225–2780, RF225–2781, RF225–2782
Veeder-Root Inc., RF225–3521, RF225–3522
Ventura Coastal Corp., RF225–3509
Western Gear Corp. RF225–3488
Western Mound Township, RF225–3530, RF225–3537, RF225–3528

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

October 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–23275 Filed 10–14–86; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

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ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for refunding to adversely affected parties $35,971 obtained as the result of consent orders which the DOE entered into with the following firms:

Leathers Oil Co. of Portland, Oregon
Marlen L. Knutson Distributors, Inc. of Stanwood, Washington

The funds are being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of either the Leathers or the Knutson consent order funds must be filed in duplicate on or before January 13, 1987. Applications should refer to the appropriate case number, HEF–0113 for Leathers, and HEF–0110 for Knutson. Address applications to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Nancy Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision explains the procedures that the DOE has formulated to distribute to adversely affected parties the $35,971, plus accrued interest, that the DOE obtained under the terms of consent orders entered into with Leathers Oil Co. and Marlen L. Knutson Distributors, Inc. Leathers and Knutson provided these funds to settle all claims and disputes with the DOE regarding the manner in which each firm applied the federal price regulations to its sales of motor gasoline. Both consent orders covered the firms' sales of motor gasoline during the period March 1, 1979 through December 31, 1979. Firms or individuals that purchased motor gasoline from Leathers or Knutson during this time period may be eligible to receive a portion of the consent order funds.

The DOE solicited comments concerning distribution of the consent order funds in a Proposed Decision and Order issued on February 7, 1986. 51 FR 5797 (February 18, 1986). Following this, the DOE determined the final refund application procedures. As the Decision explains, the DOE audit of Knutson identified three first purchasers which may be eligible for refunds. To receive a refund, these firms must submit either a schedule of their monthly purchases from Knutson, or a statement verifying that they purchased motor gasoline from Knutson and are willing to rely on the data in the audit files. The Decision also describes the process by which purchasers not identified in the DOE audits may apply for refunds. These unidentified purchasers must submit monthly schedules of their motor gasoline purchases from Leathers or Knutson, and proof that they were injured by Leathers' or Knutson's alleged pricing violations. Applicants claiming $5,000 or less need only document their purchase volumes.

The specific information required in an Application for Refund is set forth in the Decision and Order. Applications will be reviewed provided they are filed within 90 days of the publication of this Decision and Order in the **Federal Register.**

Dated: October 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

October 7, 1986.

Name of Firms: Leathers Oil Co., Marlen L. Knutson Distributors, Inc.

Dates of Filing: October 13, 1983, October 13, 1983

Case Numbers: HEF–0113, HEF–0110.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with Leathers Oil Co. (Leathers), and Marlen L. Knutson Distributors, Inc. (Knutson) (hereinafter both of the companies referenced above will be collectively referred to as the consent order firms).

I. Background

Leathers and Knutson are both "reseller-retailers" of motor gasoline as that term was defined in 10 CFR 212.31. Leathers is located in Portland, Oregon, and Knutson is located in Stanwood, Washington. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a separate consent order with the DOE. The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. Additionally, the consent orders state that the consent order firms do not admit that they committed violations. A brief discussion of the pertinent matters covered by each consent order follows.

The Leathers consent order covers the period March 1, 1979 through December 31, 1979. In order to settle all claims and disputes between Leathers and the DOE regarding Leathers' compliance with the DOE's price regulations in its sales of motor gasoline during the period covered by the audit, the firm entered into a consent order with the DOE on October 15, 1981. The consent order amount represented 38 percent of the potential liability, including interest. In accordance with the consent order, Leathers agreed to remit $10,000 to the DOE for deposit into an interest-bearing escrow account pending distribution by the DOE. Leathers paid the $10,000 in full on October 20, 1980.[1]

The Knutson consent order covers the firm's sales of motor gasoline made during the same period, March 1, 1979 through December 31, 1979. The consent order, which was made effective on September 24, 1981, resolved a Notice of Probable Violation (NOPV) issued on October 6, 1980. The consent order required that Knutson deposit $25,971 into interest-bearing escrow account for ultimate distribution by the DOE. Knutson fulfilled this requirement on October 19, 1981.[2]

On February 7, 1986, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable demonstration of injury as a result of the consent order firms' alleged violations in their sales of motor gasoline during the consent order periods. 51 FR 5797 (February 18, 1986). The PD&O stated that the basic purpose of a special refund proceeding is to make restituton for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

[1] As of August 31, 1986, the Leathers escrow account contained $15,780 representing $10,000 in principal, and $5,780 in accrued interest.

[2] As of August 31, 1986, the Knutson escrow account contained $41,209 representing $25,971 in principal, and $15,238 in accrued interest.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. Copies were also sent to any identified purchasers and to various service station dealers' associations. None of the consent order firms' customers submitted comments on the proposed procedures. Comments were submitted collectively on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. Those comments concern the distribution of any funds remaining after all refunds have been made to injured parties. However, the purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the Leathers and Knutson refund proceedings. Any procedures pertaining to the disposition of any monies remaining after this first stage will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, we will not address the issues raised by the states' comments at this time.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of enforcement proceedings. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who might have been injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by the consent order firm's pricing practices during their particular consent order periods. Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified and Unidentified Purchasers. A special refund proceeding is designed to provide restitution to parties that were injured as a result of alleged or actual regulatory violations. We have consistently maintained that the information contained in ERA's audit files may reasonably be used to determine the identities of purchasers allegedly overcharged in the first instance and the amounts of the overcharges. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984). In the Knutson proceeding three first purchasers were identified in the material developed by the DOE during its audit of Knutson. The total amount of refunds assigned to these purchasers equals $753, plus accrued interest. The first purchasers identified by the audit and the share of the settlement earmarked for each are listed in the Appendix.

In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the purchasers identified in the audit, and other as yet unidentified customers that may have been injured by purchases from the consent order firm. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Co.*, 12 DOE ¶ 85,150 (1984). Therefore, in the Knutson proceeding we will allot the remaining $25,218 plus accrued interest to those unidentified purchasers. No first purchasers were identified in the DOE's audit of Leathers. Therefore, all of the funds in the escow account will be allotted to customers who are as yet unidentified.

As we have done in many prior refund cases, we will adopt certain presumptions which will be used to help determine the level of a purchaser's injury. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. 10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

As an initial matter, we will adopt a presumption that the alleged overcharges committed by the consent order firms were dispersed evenly among all sales of motor gasoline made by the firms during their relevant consent order periods. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,184.

Using a volumetric approach, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of motor gasoline purchased by the claimant. For claimants which purchased motor gasoline from Leathers, the volumetric factor is $0.000858 per gallon.[3] For successful applicants applying for a share of the Knutson escrow account, the volumetric factor is $0.002045 per gallon.[4] In addition, successful claimants will receive a proportionate share of the accrued interest.

Second, we presume that purchasers of the consent order firms' products seeking small refunds were injured by the consent order firms' pricing practices. Under the small-claims presumption, if a refund is below a certain sum a reseller- or retailer-claimant will not be required to make a detailed showing of injury other than evidence of the volumes of motor gasoline which the claimant purchased from the consent order firm. In this case, $5,000 is a reasonable amount for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

Unlike threshold claimants, an applicant which claims a refund in excess of $5,000 will be required to document its inquiry. A reseller will be required to demonstrate that it maintained a "bank" of unrecovered product costs.[5] In addition, a reseller

[3] This figure was derived by dividing the $10,000 principal amount by the estimated 15,188,084 gallons of motor gasoline sold by Leathers during the consent order period.

[4] This figure was derived by dividing the $25,128 principal amount by the 12,331,179 gallons of motor gasoline which the company stated it sold during the consent order period.

[5] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973 with increased costs incurred since that time. A firm which was unable to charge its

Continued

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claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Triton Oil and Gas Corporation/Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

Retailer claimants will be subject to a different requirement for demonstrating injury than that outlined above for reseller applicants. We believe a modification of the injury requirement for retailers is justified because during most of the firms' consent order periods, specifically, from July 16, 1979 to December 31, 1979, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 20546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.*

We note that retailer applicants in other refund proceedings are generally unable to claim refunds above the threshold amount if they lack a showing of banks of unrecouped product costs, since banks help to prove that a firm absorbed rather than passed through its increased product costs. However, for the purposes of this proceeding, retailers which lack banks subsequent to July 16, 1979 may still file a claim for a refund for that period which exceeds the small claim threshold.[6] Retailers should, however, submit bank calculations from March 1, 1979 through July 16, 1979. In addition, like resellers, they must show that market conditions prevented them from recovering those increased costs. Indicators of a competitive disadvantage include a detailed description of lowered profit margins, decreased market shares, or depressed sales volumes.[7]

If a reseller or retailer made only spot purchases, it should not receive a refund since it is unlikely to have experienced injury. This is true because

> [t]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. Firms which made only spot purchases from the consent order firms will not receive refunds unless they present evidence which rebuts this presumption and establishes the extent to which they experienced injury.

We find that end user—or ultimate consumer—purchasers whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. These entities were not subject to DOE regulations during the relevant periods, and are thus outside our inquiry about pass-through of overcharges. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, to prove injury, ultimate consumers must document only their purchase volumes.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE At 85,225. *See also* 10 CFR § 205.286(b). The same principle applies here.

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Leathers and Knutson consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased motor gasoline from either of the consent order firms during the period March 1, 1979 through December 31, 1979. Each of the three identified purchasers listed in the Appendix may submit a statement verifying that it purchased motor gasoline from Knutson and is willing to rely on the data in the audit file. The remaining applicants will be required to provide schedules of their monthly purchases of motor gasoline from the consent order firms, including specific information as to the volume of motor gasoline purchased, the date of purchase, the name of the firm from which the purchase was made, and the extent of any injury alleged. If they claim injury at a level greater than the threshold level, they must document this injury in accordance with the procedures described above. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. section 1001. All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to the relevant case number, either Case No. HEF–0113 for Leathers, or Case No. HEF–0110 for Knutson, and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Leathers Oil Co. pursuant to the consent order executed on October 15, 1981, may now be filed.

(2) Applications for refunds from the funds remitted to the Department of Energy by Marlen L. Knutson Distributors, Inc. pursuant to the consent order executed on September 24, 1981, may now be filed.

(3) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: October 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix

Marlen L. Knutson Distributors, Inc.

First purchasers	Share of settlement
Elger Bay, 1992A Elger Bay Road, Camano Island, Washington 98292	$52
Gary Drivshuen, Red Barn Snow King, 202 Ferry Street, Monroe, Washington 98272	623
Whitehorse Mercantile, 38710 SR530, Arington, Washington 98223	78

[FR Doc. 86–23276 Filed 10–14–86; 8:45 am]

BILLING CODE 6450–01–M

MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 20546 (1980).

[6] The cost bank requirement has been relaxed in other instances regarding the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982) (Tenneco).

[7] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,028 at 88,122 (1982) (Ada).

ENVIRONMENTAL PROTECTION AGENCY

[OPP–36128 (FRL–3093–6)]

Addenda on Data Reporting to Pesticide Assessment Guidelines

AGENCY: Office of Pesticides and Toxic Substances Environmental Protection Agency (EPA).

ACTION: Request for comments.

SUMMARY: EPA is making available, for public comment, proposed addenda to the following studies in the Pesticide Assessment Guidelines: field testing for pollinators, honey bee toxicity, honey bee acute contact LD_{50}, wild mammal toxicity, leaching, photodegradation, hydrolysis, aerobic soil metabolism residues in processed foods and feeds, and residues as a result of seed treatments, fumigation, and post-harvest treatments. The addenda would supersede paragraphs in the Guidelines on data reporting and would provide a format for preparation of study reports by those submitting data to EPA. This will increase the efficiency of pesticide registration and other regulatory activities. Copies of the proposed addenda are available at the address given below for the Information Service Section.

DATE: Comments, identified by the document control number OPP–36128, must be received on or before December 15, 1986.

ADDRESS: Submit three copies of written comments, identified with the document control number "OPP–36128," by mail to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 In person, deliver comments to: Rm. 236, Cm#2, 1921 Jefferson Davis Highway, Arlington, Va.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Copies of the draft guidelines are also available at this address.

FOR FURTHER INFORMATION CONTACT: Elizabeth M.K. Leovey, Hazard Evaluation Division (TS–769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 807, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1354).

SUPPLEMENTARY INFORMATION: The Pesticide Assessment Guidelines describe protocols for performing tests to support the registration of pesticides under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act. A description of the organization of these Guidelines and their relationship to data requirements, along with the necessary information for ordering them from the National Technical Information Service, appears in 40 CFR 158.115, published in the **Federal Register** of October 24, 1984 (49 FR 42856). The Data Reporting addenda will clarify sections in the Guidelines on data reporting and provide formats which guide pesticide registrants in report preparation. With consistent and complete reports, the Agency will spend less time in reorganizing data, retrieving information, and resolving misunderstandings.

This is the third set of Data Reporting addenda which has been made available for public comment. Public comment on the initial set of eight Data Reporting Guidelines was requested in the **Federal Register** on July 31, 1985 (50 FR 31010) and these guidelines are being processed for publication by the National Technical Information Service. A second set of 12 was reviewed by the public in response to the **Federal Register** request of May 21, 1986 (51 FR 18660) and these comments are currently being reviewed. The specific subdivisions and series now being considered are: Subdivision E, Series 71–3, Wild Mammal Toxicity Test; Subdivision L, Series 141–1, Honey Bee Acute Contact LD_{50}; Subdivision L, Series 141–2, Honey Bee —Toxicity of Residues on Foliage; Subdivision L, Series 141–5, Field Testing for Pollinators; Subdivision N, Series 161–1, Hydrolysis Studies; Subdivision N, Series 161–2 and 162–3, Photodegradation Studies in Water and on Soil; Subdivision N, Series 162–1, Aerobic Soil Metabolism Studies; Subdivision N, Series 163–1, Leaching and Adsorption/Desorption Studies; and Subdivision O, Series 171–4, Magnitude of the Residue: Processed Food/Feed Study and Specialty Applications (Classification of Seed Treatments and Treatment of Crops Grown for Seed Use Only as Non-Food or Food Uses, Magnitude of the Residue: Post-harvest Fumigation of Crops and Processed Foods and Feeds, and Magnitude of the Residue: Post-harvest treatment (Except Fumigation) of Crop and Processed Foods and Feeds).

Drafts have been reviewed by the Agency. Comments on this set of reporting formats will be considered by the Agency in preparing a final draft for publication by the National Technical Information Service.

Dated: September 24, 1986.

John W. Melone,

Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 86–22946 Filed 10–14–86; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL–3095–4]

Science Advisory Board; Municipal Waste Combustion Review Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that two-day meeting of the Science Advisory Board's Municipal Waste Combustion Review

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Subcommittee will meet November 10–11, 1986. The meeting will begin at 9:00 a.m. on November 10 in Classroom #3 of the U.S. EPA, Environmental Research Center, Route 54 and Alexander Drive, Research Triangle Park [RTP], North Carolina. On November 11, 1986, the meeting will be held in Classroom #2 of the RTP facility and will adjourn no later than 4:00 p.m.

The main purpose of the meeting is to continue with a review of a series of scientific issues related to muncipal waste incineration and to assess more recent information made available to the Subcommittees.

The meeting will be open to the public. Any member of the public wishing to attend or to present information to the subcommittee, or to receive further meeting information, should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, [A101F] Environmental Effects, Transport and Fate Committee, Science Advisory Board, by noon on November 7, 1986. The telephone number is (202) 382–2552.

Dated: October 6, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86–23227 Filed 10–14–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–774–DR]

Michigan; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Michigan (FEMA–774–DR), dated September 18, 1986, and related determinations.

DATED: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice

The notice of a major disaster for the State of Michigan, dated September 18, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 1986:

Allegan County as an adjacent area for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dave McLoughin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86–23220 Filed 10–14–86; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–774–DR]

Michigan; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Michigan (FEMA–774–DR), dated September 18, 1986, and related determinations.

DATE: October 6, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice

The notice of a major disaster for the State of Michigan, dated September 18, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 1986:

Genesee County as an adjacent area for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Joe D. Winkle,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86–23219 Filed 10–14–86; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Shipping Conditions in the United States/Colombia Trade; Filing of Petition; O.N.E. Shipping, Ltd.

October 8, 1986.

O.N.E. Shipping, Limited, a liquid bulk carrier engaged in the trade between the United States and Colombia has filed an amended petition under section 19 of the Merchant Marine Act, 1920 (46 U.S.C. app. 876), for the Federal Maritime Commission to issue regulations under 46 CFR Part 585 to adjust or meet conditions unfavorable shipping in the foreign trade of the United States. O.N.E. had filed a similar earlier petition alleging that the cargo preference laws of Colombia had severely damaged ONE's financial position through the reservation of cargoes for Colombian and associated vessels to the detriment of U.S. and third nation vessels. The petition was noticed by the Commission in the **Federal Register** on June 20, 1986 (51 FR 22561), and comments in response thereto were submitted.

The present amendment supplements material previously submitted, and provides information about Colombia government laws promulgated, and actions taken, subsequent to the original filing of the petition.

In order for the Commission to make a full and complete evaluation on the matter interested persons are requested to submit views, arguments and/or data on the amended petition no later than November 4, 1986. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573 in an original and 15 copies. Responses shall also be served on counsel for Petitioner:

Graham and James, 1050 17th Street, NW., Suite 1200, Washington, DC 20036

Copies of the petition are available for examination at the Washington, DC office of the Commission, 1100 L Street, NW., Room 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 86–23173 Filed 10–14–86; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004165–002.

Title: Savannah Terminal Agreement.

Parties: Georgia Ports Authority (Port), Hapag-Lloyd, A.G., Intercontinental Transport (ICT) BV (ICT), Compagnie Generale Maritime (CGM).

Synopsis: The proposed amendment reflects a change in the location of leased storage space and the granting of preferential berthing assignments by the Port, as well as the addresses of ICT and CGM. The parties have requested a shortened review period.

Agreement No.: 203–010678–004.

Title: Med-U.S.A. Westbound Stabilization Agreement.

Parties: Mediterranean-U.S.A. Freight Conference, A.P. Moller-Maersk Line, Trans Freight Lines.

Synopsis: The proposed amendment would permit the parties to discuss and agree upon individual or joint service contracts. The parties have requested a shortened review period.

Agreement No.: 213–011018.

Title: Transnave-Navconsa Space Charter and Sailing Agreement.

Parties: Tranportes Navieros Ecuatorianos Naviera Consolidada, S.A.

Synopsis: The proposed agreement would permit the parties to cross-charter space on one or two vessels each and to coordinate sailing of those vessels in the trade between Florida, Ecuador, and Panama.

Dated: October 9, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86–23218 Filed 10–14–86; 8:45 am]

BILLING CODE 6730–01–M

Marine Terminal Service Agreements; Supplemental Waiver of Penalties

AGENCY: Federal Maritime Commission.

ACTION: Supplemental notice of waiver of penalties.

SUMMARY: This supplemental notice extends the waiver of the assessment of penalties under the Shipping Act, 1916, and the Shipping Act of 1984 for pre-filing implementation of marine terminal service agreements until further notice. It also holds in abeyance recent petitions for exemption from filing requirements.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Wm. Jarrel Smith, Jr., Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, 1100 L Street NW., Washington, DC. 20573 (202) 523–5787.

SUPPLEMENTARY INFORMATION: On June 25, 1986, the Commission published in the **Federal Register** (51 FR 23154) Notice of Waiver of Penalties (June Notice) which established a 120-day moratorium of the assessment of penalties for previously implemented but unfiled terminal service agreements if filed with the Commission during that peiod.

Since publication of the June notice, the Commission has received numerous requests for clarification of the filing requirement and expressions of concern as to its commercial impact and regulatory necessity. Recently, petitions have been filed with the Commission by the New Orleans Steamship Association, the National Association of Stevedores and the West Gulf Maritime Association (Petitions) asking either for an enlargement of the time in which to comply or a total exemption of terminal service agreements from the filing requirements of the Shipping Act, 1916, and the Shipping Act of 1984, on the grounds that filing such agreements is unduly burdensome and disruptive and serves no valid regulatory purpose.

In response to the concern expressed by the terminal and ocean carrier industries relative to the filing of terminal service agreements, the Commission is extending until further notice the moratorium for filing such agreements. In the meantime, the Commission plans to undertake a formal study to determine the scope and impact of the filing requirement and whether an exemption would be appropriate for certain agreements. Pending further action by the Commission, the aforementioned Petitions for exemptions will be held in abeyance.

Accordingly, notice is hereby given that the penalty provisions of section 32(a) of the Shipping Act, 1916, 46 U.S.C. app. 831, and section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712, will not be invoked against parties to terminal service agreements for failure to file such agreements with the Commission, as required by section 15 of the 1916 Act, 46 U.S.C. app. 814, and/or section 5 of the 1984 Act, 46 U.S.C. app. 1704, until further notice. This Supplemental Notice supersedes the June Notice.

The Petitions for exemption filed by New Orleans Steamship Association, the National Association of Stevedores and the West Gulf Maritime Association are held in abeyance pending further Commission action.

By the Commission October 8, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86–23216 Filed 10–14–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

October 8, 1986.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–6880)

Request for OMB Approval To Extend Without Revision

1. *Report title:* Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks

Agency form number: FFIEC 004

OMB Docket number: 7100–0034

Frequency: Annually

Reporters: Executive officers and principal shareholders of member banks, small businesses are affected

General description of report: This information collection is mandatory [12 U.S.C. 1972(2)(9)(i)] and is given confidential treatment [5 CFR 215.22(d)].

Executive officers and principal shareholders of member banks who are indebted to correspondent banks must file the FFIEC 004 report on such indebtedness to them or their related interests. State member banks are required to retain these reports for a period of three years.

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Board of Governors of the Federal Reserve System, October 8, 1986.
William W. Wiles,
Secretary of the Board.
[FR Doc. 86-23188 Filed 10-14-86; 8:45 am]
BILLING CODE 6210-01-M

Agency Forms Under Review

October 8, 1986.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-6880)

Request for OMB Approval To Extend, Without Revision, the Following Report:

1. *Report title:* Reports of Condition and Income
Agency form number: FFIEC 031-034, FR 2109ps/2109pf
OMB Docket number: 7100-0036
Frequency: Quarterly
Reporters: State member banks, small businesses are affected
General description of report: This information collection is mandatory [12 U.S.C. 324] and is given partial confidential treatment.

State member banks are required to file detailed schedules of assets, liabilities, and capital accounts in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes.

Board of Governors of the Federal Reserve System, October 8, 1986.
William W. Wiles,
Secretary of the Board.
[FR Doc. 86-23187 Filed 10-14-86; 8:45 am]
BILLING CODE 6210-01-M

Carolina Mountain Holding Co. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Carolina Mountain Holding Company*, Highlands, North Carolina; to engage *de novo* through its subsidiary, Community Finance Company, Franklin, North Carolina, in making consumer finance loans pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

2. *First Bankshares, Inc.*, Barboursville, West Virginia; to engage *de novo* through its subsidiary, Equitable Mortgage Company, Barboursville, West Virginia, in making and servicing mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. Comments on this application must be received by October 30, 1986.

3. *Maryland National Corporation*, Baltimore, Maryland; to engage *de novo* through its subsidiary, MN Credit Corporation, Baltimore, Maryland, in the business of commercial and retail lending, direct and indirect, secured and unsecured; engaging generally in the business of leasing personal and real property of all sorts where the lease is the functional equivalent of an extension of credit; originating lending and leasing transactions as principal or agent; servicing lending and leasing transactions as principal or agent for affiliated or nonaffiliated agent; buying, selling or otherwise dealing in lending and leasing transactions as principal or agent; acting as advisor or broker in lending and leasing transactions; engaging in the sale as agent or broker of insurance similar in form and intent to credit life pursuant to § 225.25(b)(1)(i), (1)(iv), (5), and (8) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; Norwest Financial Services, Des Moines, Iowa; and Norwest Financial Inc., Des Moines, Iowa; to engage *de novo* through their subsidiaries, Centurion Life Insurance Company, Des Moines, Iowa, and Centurion Casualty Company, Des Moines, Iowa, in underwriting, directly or through reinsurance arrangements, credit life, and accident and health insurance that is related to extensions of credit by Norwest Corporation or its subsidiaries which are secured by first mortgages on residential real estate pursuant to section 4(c)(8)(A) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, October 8, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86-23189 Filed 10-14-86; 8:45 am]
BILLING CODE 6210-01-M

Kish Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 31, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Kish Bancorp, Inc.*, Belleville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Kishacoquillas Valley National Bank of Belleville, Belleville, Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to merge with First National Corporation of Sparta, Sparta, Tennessee, and thereby indirectly acquire First National Bank of Sparta, Sparta, Tennessee. Comments on this application must be received by November 5, 1986.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Vermilion Bancshares Corporation*, Kaplan, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Vermilion Bank and Trust Company, Kaplan, Louisiana.

D. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan; to acquire at least 25.77 percent of the voting shares of the successor by conversion and merger of MetroBank, Federal Savings Bank, Grand Rapids, Michigan.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Centerre Bancorporation*, St. Louis, Missouri; to acquire at least 85.22 percent of the voting shares of Goppert Bank and Trust Company, Kansas City, Missouri.

2. *Citizens Bancshares of Eldon, Inc.*, Eldon, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Citizens Bank of Eldon, Eldon, Missouri.

3. *First Bancorp of Russell County, Inc.*, Russell Springs, Kentucky; to acquire at least 88 percent of the voting shares of Citizens Bank and Trust Company, Campbellsville, Kentucky. Comments on this application must be received by November 4, 1986.

4. *State Bancorp., Inc.*, Washington, Indiana; to acquire 100 percent of the voting shares of The Bank of Mitchell, Mitchell, Indiana.

F. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lake Bank Shares, Inc.*, Albert Lea, Minnesota; to become a bank holding company by acquiring 91.8 percent of the voting shares of Security State Bank of Albert Lea, Albert Lea, Minnesota; and 100 percent of the voting shares of Emmons Agency, Inc., Emmons, Minnesota; and thereby indirectly acquire at least 80 percent of the voting shares of First State Bank of Emmons Emmons, Minnesota.

2. *Ridgeland Bancorp, Inc.*, Phillips, Wisconsin; to become a bank holding company by acquiring 87.83 percent of the voting shares of Farmers State Bank, Ridgeland, Wisconsin, and thereby indirectly acquire Bank of Dallas, Dallas, Wisconsin. Comments on this application must be received by November 4, 1986.

G. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Chambanco, Inc.*, Chambers, Nebraska; to acquire 18.8 percent of the voting shares of Ewing Agency, Inc., Ewing, Nebraska, and thereby indirectly acquire Farmers State Bank, Ewing, Nebraska. Comments on this application must be received by November 4, 1986.

H. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Oregon Pacific Financial, Inc.*, Portland, Oregon; to become a bank holding company by acquiring 51.49 percent of the voting shares of Santiam Valley Bank, Aumsville, Oregon.

Board of Governors of the Federal Reserve System, October 8, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86-23190 Filed 10-14-86; 8:45 am]
BILLING CODE 6210-01-M

Standard Chartered PLC; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that

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outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1986.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Standard Chartered PLC*, London, England; Standard Chartered Bank, London, England; Standard Chartered Overseas Holdings Limited, London, England; Standard Chartered Holdings Inc., Los Angeles, California; and Union Bancorp, Los Angeles, California; to merge with United Bancorp of Arizona, Phoenix, Arizona, and thereby indirectly acquire United Bank of Arizona, Phoenix, Arizona.

In connection with this application, Applicants have also applied to acquire H.S. Pickrell Company, Phoenix, Arizona, and thereby engage in mortgage banking pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 8, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-23191 Filed 10-14-86; 8:45 am]

BILLING CODE 6210-01-M

The Standard Life Assurance Company et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 29, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Standard Life Assurance Company*, Edinburgh, Scotland; to acquire IFA, Incorporated, Palatine, Illinois, and thereby engage in leasing personal property of a commercial nature pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to acquire Internet, Inc., Reston, Virginia, and thereby engage in providing electronic network and switching services in connection with the operation of the MOST electronic funds transfer system pursuant to § 225.25(b) (1) and (7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 8, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-23192 Filed 10-14-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Anesthesiology and Respiratory Therapy Devices Panel scheduled for October 17, 1986. The meeting was announced by notice in the **Federal Register** of September 26, 1986 (51 FR 34255).

FOR FURTHER INFORMATION CONTACT: Michael S. Gluck, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

Dated: October 9, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-23301 Filed 10-10-86; 12:58 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-86-1643; FR-2282]

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages; Application Deadline for Funds for Fiscal Year 1987

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of application deadline for funds under the CDBG Program for Indian Tribes and Alaskan Native Villages for fiscal year 1987.

SUMMARY: This Notice sets the deadline dates for filing applications for funds under the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages for Fiscal Year 1987. Applications are required in order to provide HUD with the information necessary to rate the proposed project(s) and to assure HUD that the necessary citizen participation has taken place.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy P. Gonnella, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (202) 755-6092. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This Notice sets the deadline dates for submitting applications for the Community Development Block Grant program for Indian Tribes and Alaskan Native Villages. HUD will use the information furnished in these applications to rate the proposed project(s) and to assure the Department that there has been the necessary citizen participation. These dates apply only to applications submitted by Indian Tribes and Alaskan Native Villages for Fiscal Year 1987.

The field responsibility for the administration of the program is divided among the following offices: Region V Office of Indian Programs (OIP) in Chicago, responsible for all HUD Indian program activities within Regions I–V, plus the State of Iowa; Oklahoma City Office, responsible for all HUD Indian program activities in the States of Arkansas, Texas, Oklahoma, Kansas, Louisiana, and Missouri; Region VIII OIP in Denver, responsible for all HUD Indian program activities in Region VIII, plus the State of Nebraska; Region IX OIP in Phoenix, responsible for all HUD Indian program activities in Region IX, plus the State of New Mexico; Region X OIP in Seattle, responsible for all HUD Indian program activities in Region X, with the exception of the State of Alaska; and the Anchorage Office, responsible for all HUD Indian and Alaskan Native program activities in the State of Alaska.

Applications will be accepted by HUD as of the publication date of this Notice.

Final Dates for Submission of Applications

Offices	Applications must be submitted no later than [1]
Region V, OIP	December 15, 1986
Oklahoma City Office	March 27, 1987
Region VIII, OIP	November 21, 1986
Region IX, OIP	February 20, 1987
Region X, OIP	December 19, 1986
Anchorage Office	March 6, 1987

[1] Applications must be received or postmarked no later than the date specified above. Applications received or postmarked after the deadline will not be considered.

Tribes and Villages submitting applications for this program must do so on HUD forms approved by the Office of Management and Budget under OMB Control Number 2506-0043. These forms request information which assures HUD that the necessary citizen participation has taken place. Forms will be provided by the appropriate HUD Field Offices.

Authority: Sec. 107, Housing and Community Development Act of 1974 (42 U.S.C. 5307); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 6, 1986.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 86-23197 Filed 10-14-86; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-06-4990-11-6001; W-85311]

Proposed Conversion of Unpatented Oil Placer Mining Claim (Black Bird Claim No. 3) to Noncompetitive Oil and Gas Lease; Wyoming

October 7, 1986.

Pursuant to sections 31 and 17(c) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188) as amended by Title IV of the Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 987-451), a petition for conversion on unpatented oil placer mining claim has been timely filed. The proposed lease has been assigned serial number W-85311. The claim to be converted is the Black Bird No. 3 unpatented oil placer mining claim located in Converse County, Wyoming. The description of the land is as follows: T. 33 N., R. 76 W., 6th Principal Meridian, Wyoming, Section 3: NE¼SE¼, containing 33.57 acres m/l.

This notice explains the reasons for the proposed conversion of the mining claim to a noncompetitive oil and gas lease. The unpatented oil placer mining claim was validly located prior to February 25, 1920, it is currently producing oil, and it was deemed conclusively abandoned for failure to timely file instruments as required by section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744). The statutory date of abandonment was December 30, 1980. Conoco Inc., on behalf of itself and others, has petitioned for the conversion. When issued, the lease will be in the name of Conoco Inc., et al. The lessees have agreed to four special lease terms in addition to the normal lease terms of a noncompetitive oil and gas lease. They include:

1. Standard BLM Stip No. 1—Surface Disturbance.

2. Payment of royalty shall be not less than 12½% on production removed or sold from the unpatented oil placer mining claim including royalty on production since December 30, 1980.

3. Payment of rental of not less than $5 per acre or fraction of an acre per year, including back rentals accruing from December 30, 1980. Rental is due annually in addition to royalty.

4. This lease will be committed to East Unit, Big Muddy Field that was approved February 8, 1961. All information pertaining to unit operations such as production reports, plans of development, plans of operation, etc., will be submitted to the District Manager, Casper, Wyoming, within thirty days after lease issuance.

The lessee has paid the required $500.00 administrative fee and will reimburse the Department for the cost of this **Federal Register** notice. In addition, all back rental and royalty will be paid from December 30, 1980, current to the date the lease is issued.

Production reports have been submitted for the period from December 1980 to May 1983. The production during this period totaled 2150.68 barrels of oil. Royalty from May 1983, current to the date the lease is issued, still needs to be submitted. This will be paid before the lease is issued. Rental is due in addition to royalty at $5.00 per acre or fraction thereof per year. Since the lessee has met all the requirements for conversion of the unpatented oil placer mining claim as set out in the laws referenced above, the Bureau of Land Management is proposing to issue lease W-85311 effective December 30, 1980.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-23180 Filed 10-14-86; 8:45 am]

BILLING CODE 4310-22-M

[CA-940-06-4520-12; Group 884—Correction]

California Plat Survey Filing; Correction

October 2, 1986.

In the **Federal Register** for Thursday, April 17, 1986, Vol. 51, No. 74, page 13106, in the middle column, make the following correction:

Under [**Group 884**] California, Filing of Plat of Survey, April 8, 1986, in paragraph 2, "Township 37 North, Range 4 East", should be changed to "Township 36 North, Range 4 East".

This error appears twice within paragraph 2.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 86-23161, Filed 10-14-86; 8:45 am]

BILLING CODE 4310-40-M

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[WO-150-07-4830-11]

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet November 12–14, 1986, at Zeno's Motel, 1621 Martin Springs Drive, Rolla, Missouri. The meeting hours will be 8:00 a.m. to 5:00 p.m. on Wednesday, the 12th, 2:00 p.m. to 5:30 p.m. on Thursday, the 13th, and 7:30 a.m. to 10:00 a.m. on Friday, the 14th. Council members will also participate in a field tour of lead and zinc mining operations in southeastern Missouri the morning of the 13th and visit a wild horse and burro satellite adoption center the morning of the 14th. The proposed agenda for the meeting is:

Wednesday, November 12

Morning: Address by U.S. Congressman Bill Emerson; Council old and new business, to include Department responses to previous Council resolutions; Meeting of Council subcommittees (Energy and Minerals, Lands, and Renewable Resources).

Afternoon: Eastern Lands and Resources Council (ELRC) presentation; Public Statement Period; Panel Discussion—The Role of Missouri State Agencies in Federal Land and Minerals Programs; Meeting of Council subcommittees.

Thursday, November 13

Afternoon: Presentations on Eastern States Land Records, Minerals Program, and Cadastral Surveying Operations; Meeting of Council subcommittees.

Friday, November 14

Morning: Final meetings of Council subcommittees; Report from subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council will be open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1:15 p.m. on Wednesday, November 12. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written testimony prior to oral delivery. Please send written comments by November 5 to the Bureau of Land Management's Eastern States Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: November 12–14—Council Meeting. November 12—Public Statements.

ADDRESS: Copies of public statements should be mailed by November 5 to: Director, Eastern States Office (912), Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Washington, DC Office, BLM, telephone (202) 343–2054; or Charlie Most, Eastern States Office, BLM, telephone (703) 274–0190.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

David C. O'Neal,
Acting Director.
October 8, 1986.

[FR Doc. 86–23194 Filed 10–14–86; 8:45 am]
BILLING CODE 4310–84–M

[CA-010-07-4212-11; CA 16073]

Proposed Lease for Archery Range in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; proposed lease of public lands.

SUMMARY: The following described land has been examined and proposed as suitable for lease under provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.)

Mt. Diablo Meridian, California

T. 26 S., R. 33 E., Sec. 32,
W½SW¼, W½E½SW¼.
Containing 120 acres, more or less.

SUPPLEMENTARY INFORMATION: The land is located near the town of Lake Isabella, California. The terrain is physically suitable for an archery range and no significant environmental impacts are expected. The range would utilize the Cook Peak escarpment as a backdrop and safety zone. The State of California, Department of Fish and Game has petitioned the Bureau to classify the subject lands as suitable and accept their lease application for the development of an archery range to include a National Field Archery Range, fencing, clubhouse, parking area, picnic area, etc. This notice hereby proposes the subject lands to be classified as suitable for Recreation and Public Purposes leasing. The proposed classification will become final 60 days from the date of publication in the **Federal Register**, unless modified by the Bureau. The proposal is consistent with Bureau and Kern County planning documents, and would serve the recreational interests of the Kern County area. The range would be developed and managed according to plans submitted to the Bureau by the State, with mandatory provisions for public safety and compatibility. It would be open to the public during regularly scheduled events.

DATES: For a period on or before December 1, 1986, interested parties may submit written comments.

ADDRESS: Written comments should be sent to the Bureau of Land Management, Caliente Resource Area Manager, 520 Butte St., Bakersfield, CA 93305.

FOR FURTHER INFORMATION CONTACT: Glenn A. Carpenter, Caliente Resource Area Manager, Bureau of Land Management, 520 Butte St., Bakersfield, CA 93305; phone (805) 861–4236.

Dated: October 7, 1986.

Daniel E. Vaughn,
Acting Caliente Resource Area Manager.
[FR Doc. 86–23249 Filed 10–14–86; 8:45 am]
BILLING CODE 4310–40–M

[ID-010-07-4630-11-F107]

Motor Vehicle Closures on Burned Lands in Gem, Payette, and Washington Counties, ID

AGENCY: Bureau of Land Management, Boise District Office.

ACTION: Notice of motor vehicle closures on burned BLM lands in Gem, Payette, and Washington Counties.

SUMMARY: Pursuant to 43 CFR 8341.2, motor vehicle use on burned BLM-managed lands is limited within the following boundaries:

The area formed by the Main Payette River on the south, Squaw Creek on the east, the Adams County line on the north, and the Snake and Weiser Rivers on the west.

Designated roads and trails within this area will be marked as closed.

The purpose of the limitation is to protect public lands from undue degradation during fire rehabilitation.

DATE: This action is effective October 15, 1986.

FOR FURTHER INFORMATION CONTACT: George Farrow or Dick Geier at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, (208) 334–1582.

October 3, 1986
J. David Brunner,
District Manager.
[FR Doc. 86–23250 Filed 10–14–86; 8:45 am]
BILLING CODE 4310–C–M

INTERSTATE COMMERCE COMMISSION

[No. MC–C–10999]

Matlack, Inc.; Transportation Within Missouri; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition for declaratory order.

SUMMARY: Matlack, Inc., a motor carrier, seeks institution of a declaratory order proceeding to determine whether the transportation of chemicals from three distribution facilities at St. Louis, Kansas City, and Springfield, MO, to other points in Missouri is interstate or intrastate in nature. Chemtech Industries, Inc., is a manufacturer and distributor of chemicals. It ships bulk chemicals from out-of-State to the above-noted three Missouri facilities by barge, rail, and motor carrier, temporarily stores them there, breaks them down into smaller volumes, and then reships them by motor carrier or rail to customers at other Missouri points and at points in other States. Matlack hauls shipments from the St. Louis facility.

Any interested party may file a comment in this proceeding according to the schedule set forth below.

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by October 30, 1986. A list of interested parties will then be compiled and served. Matlack and Chemtech will have 10 days from the service date of that list to serve each party on the list and the Commission with a copy of their comments. The parties will then have 35 days from the service date of the service list to submit their comments to the Commission and to petitioner's representative. Petitioner will have 50 days from the service date of the service list to reply.

ADDRESS: Send an original and, if possible, 10 copies of comments referring to No. MC–C–10999 to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to petitioner's representative: Edward J. Kiley, 1730 M Street NW, Suite 501, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT:
Paul W. Schach, (202) 275–7685.
Louis E. Gitomer, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll-free (800) 424–5403.

Decided: October 6, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,
Secretary.
[FR Doc. 86–23224 Filed 10–14–86; 8:45 am]
BILLING CODE 7035–01–M

[Section 5a Application No. 110]

Florida Specialized Carriers Interstate Rate Conference, Inc.; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Revocation of antitrust immunity.

SUMMARY: The Commission dismisses Florida Specialized Carriers Interstate Rate Conference, Inc.'s, pending application for approval of its collective ratemaking agreement, and revokes all antitrust immunity for collective activities performed under that agreement.

EFFECTIVE DATE: This decision is effective on October 14, 1986.

FOR FURTHER INFORMATION CONTACT:
Robert G. Rothstein, (202) 275–7912.
or
Louis E. Gitomer, (202) 275–7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. To purchase a copy, contact T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423; or call toll-free (800) 424–5403, or (202) 289–4357 in the Washington, DC, metropolitan area. This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10706 and 10321.
Decided: October 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,
Secretary.
[FR Doc. 86–23223 Filed 10–14–86; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86–41]

Gordon M. Acker, D.M.D., Jericho, NY, and Spring Lake Heights, NJ; Hearing

Notice is hereby given that on May 6, 1986 and on May 13, 1986, the Drug Enforcement Administration, Department of Justice, issued to Gordon M. Acker, D.M.D., Orders To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificates of Registration, AA2055362 and AA1793822, respectively, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Orders To Show Cause were received by Respondent and written requests for hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in these matters will be held commencing at 10:00 a.m. on Wednesday, October 15, 1986, in Courtroom No. 10, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: October 8, 1986.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 86–23230 Filed 10–14–86; 8:45 am]
BILLING CODE 4410–09–M

Importation of Controlled Substances; Registration; Sigma Chemical Co.

By Notice dated June 25, 1986, and published in the Federal Register on July 2, 1986; (51 FR 24241), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Ibogaine (7260)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-methylenedioxy amphetamine (7400)	I

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Drug	Schedule
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Amphetamine, its salts, optical isomers, and salts of its isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II
Phencyclidine (7471)	II
Anileridine (9020)	II
Ecgonine (9180)	II
Morphine-3-Glucuronide (9229)	II

A maximum of 25 grams for each of the above listed substances will be imported annually and will be utilized in researcher or analytical studies.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: October 8, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-23231 Filed 10-14-86; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Division of Atmospheric Sciences; Advisory Committee for Atmospheric Sciences; Ruling

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

NAME: Advisory Committee for Atmospheric Sciences (ACAS).
DATE: October 30-31, 1986.
TIME: 9:00 a.m.—5:00 p.m.
PLACE: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550.
TYPE OF MEETING: Open.
CONTACT: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357-9874.

PURPOSE OF MEETING: The Advisory Committee for Atmospheric Sciences provides advice, recommendations, and oversight concerning support for research and research-related activities in the atmospheric sciences area.

AGENDA: *October 30, 1986, Room 540, 9:00 a.m. to 5:00 p.m.*
—Opening remarks by Chairman, ACAS, and Division Director
—Long-Range Planning discussion

October 31, 1986, Room 540, 9:00 a.m. to 4:30 p.m.
—Long-Range Planning discussion continued
—Date and Agenda Items for Spring Meeting, 1987
—Adjourn General Meeting

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-23184 Filed 10-14-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Atmospheric Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).
Date and time: October 30-31, 1986, 9:00 a.m.-5:00 p.m. each day.
Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC.
Type of meeting: Open.
Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9874.
Minutes: May be obtained from the contact person listed above.

Purpose of meeting: To provide advice and recommendations on long-range planning and oversight concerning support for research and research areas.

Agenda: October 30 and 31, 1986, 9:00 a.m. to 5:00 p.m., Room 540.
—Opening remarks by Chairman, ACAS, and Division Director
—Long-Range Planning
M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-23185 Filed 10-14-86; 8:45 am]

BILLING CODE 7555-01-M

President's Committee on the National Medal of Science; Meeting

The National Science Foundation announces the following meeting:

Name: President's Committee on the National Medal of Science.
Date and time: Friday, October 31, 1986, 9:00 am—4:00 pm.
Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.
Type of meeting: Closed.
Contact person: Dr. Mary E. Clutter, Executive Secretary, President's Committee on the National Medal of Science, National Science Foundation, Washington, DC 20550. Telephone: 202/357-9443.

Purpose of meeting: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

Agenda: To review nominations, with supporting documentation, as part of the selection process for the Medals.

Reason for closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within Exemptions 4 and 6 of the Government in the Sunshine Act.

Authority to close meeting: The determination made on September 25, 1986 by the Director of the National Science Foundation pursuant to the provisions of section 10(d) of Pub. L. 92-463.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-23186 Filed 10-14-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-321]

Georgia Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Georgia Power Company (GPC), Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, the licensees for the Edwin I. Hatch Nuclear Plant, Unit No. 1 (Hatch 1), located in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action

In accordance with GPC's request dated March 5, 1979, the exemption would permit the licensees to leak test the Main Steam Isolation Valves at 28 psig with an acceptance criteria of 11.5 scfh for any valve. Leakage from these valves will not be included in the summation of the local leak rates.

The Need for the Proposed Action

10 CFR 50.54(o) requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate the containment. Appendix J was published on February 14, 1973, and by letter dated August 7, 1975, the Commission requested GPC to review the containment leakage testing program for the facility and to provide a plan for achieving full compliance where necessary.

GPC responded on August 28, 1975, by stating that the containment leak rate test program for Hatch 1 had been reviewed and the program was in full compliance with Appendix J. However, in a letter dated November 16, 1977, GPC reported that in formulating a test program for the Edwin I. Hatch Nuclear Plant, Unit 2 (Hatch 2), it discovered that the Hatch 1 program needed to be updated. Consequently, proposed changes to the Hatch 1 Technical Specifications were also submitted in the November 16, 1977 letter. In response to GPC's proposed changes, the Commission issued Amendment No. 53 to Facility Operating License No. DPR-57 for Hatch 1 on April 12, 1978. In its letter of April 12, 1978, the Commission indicated that Amendment No. 53 did not resolve all of GPC's proposed changes but that they would be reviewed as part of the review of the Hatch 2 program.

Subsequently, on March 5, 1979, GPC submitted an updated containment leak rate test program which was developed utilizing the then recently-approved test program for Hatch 2. In its review of this March 5, 1979 submittal, the staff determined that an exemption to the requirement of 10 CFR Part 50, Appendix J is requried for the proposed testing of the main steam isolation valves (MSIVs) so that they may be tested at ½ the Appendix J required pressure and so that the leakage through the MSIV's is not required to be added in the summation of the leakage from the other isolation valves and penetrations.

Environmental Impact of the Proposed Action

The proposed exemption to the Appendix J test requirements for the MSIV's will not cause post-accident radiological releases to exceed those determined previously for Hatch 1. The proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. Likewise, the proposed exemption does not affect facility nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Since the Commission has concluded there is no measurable environmental impact associted with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require literal compliance with Appendix J to 10 CFR Part 50. Such an action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in connection with the Final Environmental Statement (FES) relating to this facility, FES for Edwin I. Hatch Units 1 and 2, USAEC (October 1972).

Agencies and Persons Consulted

The Commission's staff reviewed GPC's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated March 5, 1979, which is available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland, this 7th day of October 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate #2, Division of BWR Licensing.

[FR Doc. 86-23238 Filed 10-14-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the withdrawal of an application dated September 9, 1985, filed by the Boston Edison Company. The application requested amendment of Facility Operating License No. DPR-35 for operation of the Pilgrim Nuclear Power Station located in Plymouth County, Massachusetts. The proposed amendment would have revised the Technical Specifications to allow a qualified person to verify control rod movements, when the rod worth minimizer is inoperable, at power levels less than or equal to 20% of rated thermal power. The Commission issued a Notice of Consideration of Issuance of Amendment in the Federal Register on October 9, 1985 (50 FR 41243). By letter dated August 21, 1986, the licensee withdrew the application for the proposed amendment. The Commission has considered the licensee's August 21 1986 letter and has determined that permission to withdraw the September 9, 1985 application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated September 9, 1985; (2) our letter to Boston Edison Company dated May 20, 1986; (3) the licensee's letter of withdrawal dated August 21, 1986; and (4) our letter to Boston Edison Company dated October 1, 1986.

Dated at Bethesda, Maryland this 1st day of October 1986.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, BWR Project Directorate No. 1, Division of BWR Licensing.

[FR Doc. 86-23239 Filed 10-14-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Niagara Mohawk Power Corporation (the licensee) to withdraw its March 4, 1986 application for amendment to Facility Operating License No. DPR-63 issued to the licensee for operation of the Nine Mile Point Nuclear Station, Unit No. 1 (NMP 1) located in Oswego County, New York. Notice of the consideration of issuance of this amendment was published in the Federal Register on April 23, 1986 (51 FR 15404).

The request proposed changes to Tables 3.6.2k and 4.6.2k, High Pressure Coolant Injection, of the Appendix A Technical Specifications (TS). The amendment would have placed additional surveillance requirements and limiting conditions for operation on NMP 1 due to a modification providing high reactor coolant level tripping of the motor-drive feedwater pumps. Rather than proceed with the proposed amendment, Niagara Mohawk intends to incorporate these requirements into

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procedures in accordance with TS section 6.0, Administrative Controls.

By letter dated June 27, 1986, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw its March 4, 1986 application. The Commission has considered the licensee's request and has determined that permission to withdraw the March 4, 1986 application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated March 4, 1986, (2) the licensee's request for withdrawal dated June 27, 1986, and (3) our letter dated October 1, 1986. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the State University of New York, Penfield Library, Reference and Documents Department, Oswego New York 13126.

Dated at Bethesda, Maryland this 1st day of October 1986.

For The Nuclear Regulatory Commission

John A. Zwolinski,

Director, BWR Project Directorate No. 1, Division of BWR Licensing.

[FR Doc. 86-23240 Filed 10-14-86; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-259, 260, and 296]

Tennessee Valley Authority; Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Tennessee Valley Authority (the licensee) to withdraw its October 27, 1983, application as supplemented August 1, 1984, for proposed amendments to Facility Operating Licenses Nos. DPR-33, DPR-52, and DPR-68 for the Browns Ferry Nuclear Plant, Units 1, 2, and 3 located in Limestone County, Alabama. The proposed amendments would have revised the provisions in the Technical Specifications for Radiological Effluents. The Commission issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 20, 1984 (49 FR 3356). By letter dated April 4, 1986 the licensee withdrew its application for the proposed amendments.

By letter dated September 30, 1986, the licensee submitted a new amendment request which is technically identical to the old request but in a new format. This new request will be separately noticed.

For further details with respect to this action, see (1) the application for amendments dated October 27, 1983 as supplemented August 1, 1984, (2) the licensee's letter dated April 4, 1986, withdrawing the application for license amendment, and (3) and licensees new application dated September 29, 1986. The above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room in the Athens Public Library, South and Forrest, Athens, Alabama 35611.

Dated this 7th day of October 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate #2, Division of BWR Licensing.

[FR Doc. 86-23241 Filed 10-14-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-2061-SC]

Kerr-McGee Chemical Corp.; (Kress Creek Decontamination); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of October 8, 1986, oral argument on the NRC staff's appeal from the Licensing Board's June 19, 1986, initial decision in this show cause proceeding will be heard at *10:00 a.m. on Wednesday, October 29, 1986, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4530 East-West Highway, Bethesda, Maryland.*

Dated: October 8, 1986.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 86-23236 Filed 10-14-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-2061-SC; Source Material License No. STA 583]

Kerr-McGee Chemical Corp.; Kress Creek Decontamination; Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this show cause proceeding. As reconstituted, the Appeal Board for this proceeding will consist of the following members:

Christine N. Kohl, Chairman
Dr. W. Reed Johnson
Howard A. Wilber

Dated: October 8, 1986.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 86-23237 Filed 10-14-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. MC87-1; Order No. 710]

Mail Classification Schedules; Third-Class Maximum Size Change, 1986

Issued October 8, 1986.

Before Commissioners: Janet D. Steiger, Chairman, Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Notice is hereby given that on October 1, 1986, the United States Postal Service, pursuant to section 3623 of Title 39, United States Code, filed a request with the Postal Rate Commission for a Recommended Decision on proposed changes to the Domestic Mail Classification Schedule increasing the maximum size for bulk third-class carrier route presort mail from 13.50 to 14.00 inches in length and 11.50 to 11.75 inches in width. § 300.0230, 39 CFR 3001.030(b), Appendix A.[1] This filing has been designated Docket No. MC87-1.

The proposal was accompanied by the filing of Library References LR-TSC-1 and 2 and the Direct Testimony of Michele A. Denny in support of the proposal.

Motion for Waiver of Rules 64(b)(3) And 64(c)

Simultaneously with the filing of the case, the Postal Service filed a Motion for Waiver of sections 64(b)(3) and 64(c) of the Commission's rules of practice. [39 CFR 3001.64(b)(3) and (c)]. Section 64(b)(3) requires the Postal Service to file a statement "identifying the degree of substitutability between various classes and subclasses" including a description of cross-elasticity of demand between various classes of mail. Section 64(c) requires the Postal Service to provide information concerning the characteristics of mailers and the items they mail by class and subclass.

The Postal Service says that it should be granted a waiver because the proposed changes will not affect rates or costs and will have an insignificant impact on the amount of mail eligible for carrier route presort rates. In this regard, the Postal Service says that "the proposed change would act merely to permit publishers of Plus publications to enter their mail at third-class carrier route presort rates instead of the third-class five-digit rates to which they are already eligible." The Postal Service concludes that the proposed size enlargement will not affect inter-class mail volumes and thus would not be useful in the consideration of its proposal.

Persons who wish to address the Postal Service's motion should file their answers on or before October 27, 1986.

The request of the Postal Service for a recommended decision on establishing changes to the Domestic Classification Schedule and the motion for waiver of certain filing provisions of the Commission's rules of practice and procedure are on file with the Commission and are available for public inspection during regular business hours.

Intervention

Any person desiring to be heard with reference to the proposal submitted by the Postal Service in Docket No. MC87-1 and to become a party to the proceeding, or to participate as a party in any hearing thereon, should file a notice of intervention. Notices of intervention must be filed with the Secretary, Postal Rate Commission, Washington, DC 20268-0001 on or before October 27, 1986, and must be in accordance with section 20 of the Commission's rules of practice (39 CFR 3001.20). We direct specific attention to section 20(b) which provides that petitions for leave to intervene shall affirmatively state whether or not the petitioner requests a hearing, or, in lieu thereof, a conference; and further, whether or not the petitioner intends to participate actively in the hearing.[2] Alternatively, persons seeking limited participation, but who do not wish to become parties may, on or before October 27, 1986, file a written notice of limited participation, pursuant to section 20a of the Commission's rules of practice (39 CFR 3001.20a). In addition, persons wishing to express their views informally, and not desiring to become a party or limited participant, may file comments pursuant to section 20b of the Commission's rules, 39 CFR 3001.20b.

Officer of the Commissioner

The Officer of the Commission charged with representing the interests of the general public in this docket [39 U.S.C. 3624(a)] is Stephen A. Gold, Director, Office of the Consumer Advocate. During this proceeding, he will direct the activities of the Commission personnel assigned to assist him and neither he nor such personnel will participate in nor advise as to any Commission decision (39 CFR 3001.8). The Officer of the Commission shall supply for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this case.

In this case the Officer of the Commission shall be separately served with three copies of all filings, in addition to and simultaneously with service on the Commission of the 25 copies required by section 10(c) of the rules of practice [39 CFR 3001.10(c)].

The Commission orders:

(A) Notices of intervention as a full or limited participator in this docket shall be sent to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268-0001, on or before October 27, 1986.

(B) Responses to the Postal Service's motion for waiver of sections 64(b)(3) and 64(c) of the rules of practice shall be due on or before October 27, 1986.

(C) Stephen A. Gold is designated Officer of the Commission to represent the interests of the general public in this proceeding. Service of documents on the Commission shall not constitute service on the Officer of the Commission, who shall separately be served three copies of all documents.

(D) The Secretary shall cause this Notice and Order to be published in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 86-23174 Filed 10-14-86; 8:45 am]

BILLING CODE 7715-01-M

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[1] The specific changes to the Domestic Mail Classification Schedule are set out in legislative format in Attachment A of the Postal Service's Request.

[2] In this regard, parties who intend to participate actively in this proceeding are encouraged to inform the Postal Service informally and promptly of desired peliminary clarifications of the Postal Service's presentation wherever the participant believes such clarification will expedite this proceeding.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15343; File No. 812-6364]

Application and Opportunity for Hearing; IDS Life Insurance Co. et al

October 6, 1986.

Notice is hereby given that IDS Life Insurance Company ("IDS Life"), IDS Life Variable Account for Sherson Lehman ("Separate Account"), at 800 IDS Tower, Minneapolis, Minnesota 55474, and Shearson Lehman Brothers, Inc. ("Shearson"), at 2 World Trade Center, New York, New York 10048, (collectively, "Applicants"), filed an application on April 25, 1986, and amendments thereto on August 4, 1986 and October 3, 1986, pursuant to sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act"), for an order granting exemptions from sections 2(a)(32), 2(a)(35), 12(d)(1), 17(a), 22(c), 26(a), 27(c)(1), 27(c)(2), 27(d) and 27(f) of the Act, and Rules 6e-2(b)(1), 6e-2(b)(12), 6e-2(b)(13), 6e-2(c)(1), 6e-2(c)(4), 22c-1 and 27f-1 thereunder, to the extent necessary to permit Applicants to offer the single premium variable life contract described in the application. A further amendment to this application will be filed shortly requesting that an order disposing of this application be issued retroactive to October 20, 1986, unless the Commission orders a hearing upon request or upon its own motion. Previous notice of the filing of the application was provided in Investment Company Act Release No. 15298, issued on September 9, 1986 (36 SEC Docket 937, September 23, 1986), and the notice period closed on October 1, 1986. However, through inadvertence such notice was not published in the **Federal Register.** All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the complete text of those provisions that are relevant to the application.

Applicants state that IDS Life, an indirect wholly-owned subsidiary of American Express Company, is a stock life insurance company organized under the laws of the State of Minnesota, and the Separate Account is a segregated investment account of IDS Life that is registered under the Act as a unit investment trust. Applicants further state that IDS Life and the Separate Account intend to issue and Shearson intends to distribute single premium variable life insurance contracts ("Contracts"), as defined in paragraph (c)(1) of Rule 6e-2 under the Act, funded through the Separate Account. According to the application, the Separate Account will invest at net asset value in shares issued by the Shearson Lehman Series Fund, Inc. ("Fund"), a diversified open-end management investment company, or in units of The Shearson Lehman Brothers Stripped ("Zero Coupon") U.S. Treasury Securities Fund ("Zero Fund"), a unit investment trust established by Shearson, an indirect wholly-owned subsidiary of American Express Company.

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I. The Contracts

A. Custodianship

Applicants request an exemption from sections 26(a) and 27(c)(2) of the Act and Rule 6e–2 to the extent necessary to permit the Separate Account to hold shares of the Fund under an open account arrangement without the use of stock certificates and without IDS Life acting as trustee or custodian pursuant to a trust indenture. Applicants represent that they will meet the conditions of the proposed amendments to Rule 6e–2(b)(13)(iii),[1] *i.e.*, that the life insurer complies with all other applicable provisions of section 26 as if it were a trustee, depositor or custodian for the separate account; files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000; and is examined from time to time by the insurance regulatory authority of such State, territory or District of Columbia as to its financial condition and other affairs and is subject to supervision and inspection with respect to its separate account operation.

B. Surrender Charge

No sales charge is deducted from the single premium payment; however, Applicants state that IDS Life will use a deferred sales charge ("Surrender Charge") and access a Distribution Expense Charge, as deacribed below, to recover certain expenses relating to the sale of the Contract, including commissions paid to sales personnel, and other promotional and selling expenses. Applicants state that the surrender values under the Contract will be adjusted to reflect a charge equal to 8% of the Contract's cash value in the first contract year, declining by 1% each year thereafter until the charge is 1% in the eighth Contract year and 0% in all succeeding Contract years. However, Applicants note that if the contract experiences significantly favorable investment performance, the actual dollar amount that is assessed as a Surrender Charge could increase from one year to the next. Applicants represent that the Surrender Charge, together with the total cumulative Distribution Expense Charge, will not exceed 9% of the single premium. It will apply only upon the full surrender of a Contract, since the Contract does not provide for partial surrenders. Applicants further state that this charge will affect the cash surrender value of the Contract, as well as the amount available for Contract loans and that it will not affect the amounts that can be transferred among the Separate Account's subaccounts, the subaccount's investment performance, a contractholder's voting interest, a contractholder's conversion rights or the Contract's death benefits.

Applicants assert that their deferred sales load benefits the public, is more advantageous to the investor than a front-end load, and is consistent with the essential purpose of variable life insurance. Applicants submit that the Surrender Charge will generally provide higher cash surrender values and a generally greater death benefits than a front-end sales charge since more money is at work for the contractholder from the start of the contract. Applicants assert that Rule 6e–2 can be read as only contemplating sales loads imposed upon a premium payment, and Applicants seek exemptive relief in order to avoid any question regarding complete compliance with the Act and rules thereunder.

Applicants assert that section 2(a)(35) contemplates that a charge to cover sales and promotional expenses incurred in connection with the sale of investment company securities will be deducted at the time payment for those securities is made, and that a deferred sales charge may not be encompassed by the definition of sales load in Rule 6e–2, paragraphs (b)(1) and (c)(4). Applicants seek exemptive relief from those provisions to permit the imposition of a deferred sales charge on the grounds, *inter alia*, that the timing of the Surrender Charge does not change its essential nature. Applicants also seek exemptive relief from sections 2(a)(32), 27(c)(1), and 27(d), and Rule 6e–2, paragraphs (b)(12) and (b)(13)(iv), to the extent that such provisions do not contemplate the imposition of a sales charge at the time of redemption. Applicants submit that the Contracts are redeemable securities, whether the sales charge is imposed at the time of purchase or whether such charge is deferred and made contingent upon an occurrence at a later time.

With respect to section 22(c) and Rule 22c–1, Applicants assert that Rule 6e–2(b)(12) affords exemptive relief from those provisions with respect to redemption procedures, which include surrender and exchange provisions in the context of variable life insurance, and that Rule 6e–2(b)(12) could be read as being premised on the absence of a deferred sales charge. Applicants state that their Surrender Charge would in no way have the dilutive effect which rule 22c–1 was designed to prohibit, that variable life insurance contracts do not lend themselves to the kind of speculative short-term trading against which Rule 22c–1 was aimed, and that the Surrender Charge would discourage rather than encourage any such trading. Accordingly, Applicants seek exemptive relief from section 22(c) and Rules 22c–1 and 6e–2(b)(12) to the extent necessary to permit them to effect their proposed pricing.

Applicants request exemption from Rule 6e–2(c)(1)(i), which defines "variable life insurance contract" in terms of a cash surrender value that varies to reflect the investment experience of a separate account, to the extent necessary for this provision to be deemed to apply to the structure of cash surrender values under the Applicant's Contract.

C. Distribution Expense Charge

Applicants state tht IDS Life deducts from the Separate Account a Distribution Expense Charge equal, on an annual basis, to .30 percent of the daily net asset value of the Separate Account for the first ten Contract years, and 0 percent thereafter.

As discussed more fully above, Applicants note that serction 2(a)(35) and paragraphs (b)(1) and (c)(4) of Rule 6e–2 contemplate a front-end sales load format. Accordingly, Applicants request exemptive relief from section 2(a)(35) and Rules 6e–2(b)(1) and 6e–2(c)(4), to the extent necessary for the term "sales load", as used in the Act and rules thereunder, to be deemed to contemplate the distribution Expense Charge under Applicants' Contract. Applcants submit that a deferred sales load is in the owner's interest and therefore the requested relief is appropriate and in the public interest because, as noted above, a Distribution Expense Charge, such as under the Contract, results in greater amounts of money being available for investment on the owner's behalf, and generally higher cash values under the Contract. Moreover, since greater amounts of money are allocated to the Separate Account, the amount of death benefits provided under the Contract will generally be larger than it woulld be if the sales load were deducted prior to the allocation of monies to the Separate Account.

[1] See Investment Company Act Rel. No. 14421, March 15, 1985.

In addition, Applicnts request exemptions from sections 26(a)(2) and 27(c)(2) and from paragraphs (b)(13)(i), (ii) and (iii) of rule 6e–2 to permit the Distribution Expense Charge to be deducted in the manner proposed. Applicants assert that their procedures obtain sales loads using two different methods (i.e., through a Surrender Charge and a Distribution Expense Charge). Applicants note that the proposed amendments to paragraph (b)(13)(ii) of rule 6e–2 provide that sales loads deducted pursuant to any method permitted by the rule cannot exceed the proportionate amount of sales load deducted prior thereto pursuant to the same method. Applicants request the relief necessary to permit those deductions.

Also, Applicants note that the proposed amendments to paragraph (b)(13)(i) and (iii) of Rule 6e–2 recognize that sales loads may not be deducted directly from the premium, but may be subsequently deducted from the contract's values. Moreover, Applicants' represent that IDS Life will monitor the amount of the Distribution Expense Charge on an ongoing basis and that such charge (either alone or when added to any applicable Surrender Charge) will never exceed 9 percent of the single premium.

D. Mortality Charge and State Premium Tax Charge

Applicants assert that the exemptive relief provided by Rule 6e–2(b)(13)(iii) is broad enough to permit a deduction from the Separate Account for the Mortality Charge and the State Premium Tax Charge. Nevertheless, Applicants request exemption from sections 26(a)(2) and 27(c)(2) of the Act.

Applicants state that IDS Life deducts from the Separate Account a Mortality Charge for the anticipated cost of paying death benefits equal, on an annual basis, to .50 percent of the daily net asset value of the Separate Account. Although the Mortality Charge may be increased under the terms of the Contract, Applicants represent that IDS Life guarantees that this daily asset charge will never exceed a daily cost of insurance charge based upon (1) the 1958 Commissioner's Standard Ordinary Mortality Table; (2) the insured's age and sex; (3) the interest rate assumed in the contract; and (4) the death benefit determined by multiplying the Contract value times the applicable death benefit factor (even though the death benefit under the Contract is the greater of the guaranteed minimum death benefit or the Contract value times the death benefit factor on the date of death). Thus, Applicants believe that the Contract assesses Mortality Charges which are commensurate with the risks assumed.

Applicants state that IDS Life deducts a charge equivalent, on an annual basis, to .20 percent of the daily net asset value of the Separate Account during the first then years, and 0 percent thereafter. Applicants further state that this daily asset charge is deducted to cover the premium taxes assessed by the varius states and to compensate IDS Life for the average premium tax expense it incurs when issuing the Contract.

Applicants argue that this method of deduction to recover mortality costs and state premium taxes increases the amount invested on behalf of contractowners. Applicants believe that it is more equitable, and beneficial to contractholders to deduct these charges on an ongoing basis directly from each contract rather than to deduct it from the single premium. Applicants state that a deduction from the single premium for mortality costs would be a large one, accompanied by a significant risk charge, basis on necessary assumptions about the length of time the contract would be in force, the investment performance of the various subaccounts, and the other factors necessary to determine the net amount at risk over the life of the Contract.

E. Minmum Death Benefit Guarantee Risk Charge

Applicants state that IDS Life deducts from the Separate Account a Minimum Death Benefit Guarantee Risk Charge equal, on an annual basis to .40 percent of the daily net asset value of the Separate Account. Applicants request an exemption from section 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit this deduction.

In accordance with the provisions of proposed paragraph (b)(13)(iii) of Rule 63–2, Applicants represent that they have reviewed to level of the Minimum Death Benefit Guarantee Risk Charge and assert that it is reasonable in relation to the risks assumed by IDS Life under the Contract. Applicants note that unlike the typical variable life contract where the minimum death benefit guarantee ("MDBG") comes into effect only when the cash value is exhausted, the MDBG under the Contract can come into effect immediately. In this regard, Applicants further note that an MPDG cost is incurred when IDS Life is providing a higher death benefit than it is charging for under the Mortality Charge. This cost is incurred, Applicants maintain, when the difference between the mimimum death benefit (*i.e.*, the initial face amount) and the actual death benefit being charged for (*i.e.*, the cash value multiplied by the death benefit factor) is positive.

Applicants further represent that IDS Life will maintain at its home office, available to the Commission, a memorandum explaining the basis for the representation and the documents used to support it. Applicants state that they do not believe that the Surrender Charge being imposed under the Contracts will cover the expected costs of distributing the Contracts. IDS Life has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Separate Account and the contractholders and represents that a memorandum setting forth the basis for this representation will be maintained at IDS Life's home office and will be available to the Commission. Applicants further represent that the Separate Account will only invest in underlying fund(s) which have undertaken to have a board of directors, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b–1 under the Act of finance distribution expenses.

F. Withdrawal Notice

Applicants propose to personally deliver the right of withdrawal notice together with the Contract in certain circumstances, and to furnish notice of such withdrawal right and a statement of contract charges on a written document containing information comparable to that required by Form N–27I–2. Applicants request exemptions from section 27(f), Rule 27f-1, and Rule 6e-2(b)(13)(iii)(A) and (viii)(C) to permit such a delivery. Applicants state their belief that their notice will be a more effective disclosure document since it will be tailored to the Contracts and that personal delivery conforms to industry practice and is a less costly way of delivering the required notice. Applicants also state that comparable relief has been afforded to flexible premium contracts and has been proposed for scheduled contracts in pending amendments to Rule 6e-2(b)(13)(viii)(A) and (viii)(C).

G. Section 6(c)

Applicants represent pursuant to section 6(c) that all exemption requested are necessary or apropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further represent that if and to the extent that Rule 6e-2 is amended to provide relief

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on terms or conditions different from any relief granted to them pursuant to this application, Applicants shall take all necessary steps to comply with amended Rule 6c-2.

II. The Zero Fund

A. Operation

The Zero Fund is registered under the Act and is comprised of multiple unit investment trusts ("Trust"), each Trust containing U.S. Treasury securities which have been stripped of their unmatured interest coupons, interest coupons which have been stripped from U.S. Treasury securities, and receipts and certificates for such stripped obligations and stripped coupons. The Separate Account will purchase units of each Trust based upon the net transactions by contractowners. Applicants state that the total offering price of Zero Fund units placed in the Separate Account, whether they are sold to the Separate Account in the primary or secondary market, will include a "transaction charge" paid directy by IDS Life to Shearson. The Separate Account will not directly pay such charge; instead IDS Life will pay an amount to Shearson out of its general account assets to compensate Shearson as the sponsor and principal underwriter of the Zero Fund. Applicants state that the transaction charge ranges from .5–2.0% of the offering price, depending upon the maturity of the Trusts for which securities are purchased. Thereafter, IDS Life will seek to be reimbursed for the amounts advanced by assessing a charge on the assets of the Separate Account held in the subaccounts investing in the Zero Fund. Applicants state that the amount of the asset charge is currently set at an effective annual rate of .25% percent, and in no event will it exceed an annual rate of .50% percent of the average daily net assets of each of the subaccounts investing in the Trusts. Applicants represent that this charge will be cost-based with no anticipated element of profit for IDS Life, although it will include an element of interest compensating IDS Life for the delay in recouping amounts advanced. Applicants state that the rate of interest will be based on the current yield for U.S. Treasury bonds having a maturity closely approximating the weighted average maturity of the bonds held in the Zero Fund (rounded to the nearest full year) as to which the Separate Account holds an interest.

B. Asset Charge

IDS Life and the Separate Account seek relief from the provisions of section 12(d)(1) to allow the Separate Account to acquire the units of the Zero Fund and from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit IDS Life to recover through an asset charge the amounts paid by it to Shearson in connection with the Separate Account's acquisition of Zero Fund units. In support of their application, Applicants asset that this proposed structure does not raise legal or policy issues materially different from the common separate account structure in which a unit investment trust invests solely in shares of an underlying open-end management investment company, which Applicants assert is permitted by section 12(d)(1)(E) of the Act. Moreover, Applicants note that by permitting the investment divisions of the Account to be allocated to the Zero Fund, which invests in zero coupon bonds, contractowners will have available an investment vehicle that will have a fixed yield for a specified period of time. Applicants contend that the proposed transactions does not run counter to the statutory purposes underlying section 12. In this regard, Applicants state that the transaction is not a method for leveraging control or assessing overlapping charges.

Applicants claim that the compensation received by Shearson is necessary to induce Shearson to create the Zero Fund, to implement the operational procedues for the Zero Fund, and to commit to maintaining the secondary market. Applicans note that the secondary market here, unlike the case of most publicly offered unit investment trusts, is not merely a desirable feature designed to avoid disruption of the Trust's portfolio; it is necessary to maintain the stabilized rate of return on the funds in a subaccount of the Separate Account. Applicants state that the asset charge is not designed as reimbursement of distribution expenses or to compensate IDS Life for sales efforts, and that the amount of the transaction fee is the same as a charge negotiated at arm's length and imposed by Shearson as sponsor and market-maker for a unit investment trust in a non-affiliated venture identical in all material respects to the venture described in the application. Applicants believe that having IDS Life pay the transaction charge, with reimbursement by the Separate Account through the asset charge, is desirable in that allocating a proportionate share of the acquisition expenses to all contractowners who allocate premiums to the subaccounts of the Separate Accounts investing in the Zero Fund, rather than permitting the expenses borne by individual contractowners to vary based upon the timing of their particular allocation (as would be the case if the Separate Account paid the transaction charge directly), benefits contractowners by stabilizing yield and by creating more equitable results among contractowners.

Applicants assert it is appropriate to recover interest costs through deduction of the proposed asset charge. IDS Life expects to advance large amounts in the early years in connection with the purchase of units of interests in the Zero Fund, but considerably less in later years because purchases of units (and transaction charges) will diminish since later purchases by contractowners will be offset by redemptions. Because the asset charge will be designed to recover these charges over the life of each of the Trusts (thus spreading the costs among contractowers purchasing early in the life of each Trust and those purchasing later), Applicants represent that a significant portion of the cost to IDS Life is the loss of interest on monies advanced caused by the delay in recovery. Given that IDS Life anticipates recovery of the transacton costs over the life of each Trust, Applicants believe that a rate of interest associated with the weighted average maturity of the bonds held by the Trust is the fair and reasonable measure of the time value of the monies advanced by IDS Life. Applicants represent that as to each subaccount of the Separate Account, the rate of interest will be applied to the amounts by which the transaction charges for the subaccount for each quarter exceed the asset charges collected as reimbursement for such charges, plus any amounts (including interest) that were unrecovered at the end of the prior quarter. Applicants further represent that IDS Life will monitor the cumulative amounts collected for each subaccount through this asset charge in comparison with the amounts paid by IDS Life and will not charge any subaccount of the Separate Account more than actual costs.

C. Affiliated Transactions

Applicants request exemption from section 17(a) of the Act to permit the proposed transactions between Shearson and Separate Account. Applicants state that all the outstanding voting stock of Shearson and IDS Life is beneficially owned by American Express Company, and thus, Shearson and the Separate Account are affiliated persons within section 2(a)(3) of the Act. Applicants assert, however, that the conditions set forth in sections 6(c) and 17(b) for the granting of an exemptive order are met under the proposed transactions between Shearson and the Separate Account.

Applicants assert that the consideration the Separate Account will pay Shearson upon the purchase of Trust units, including, indirectly, the transaction charge, will be fair and reasonable and will not involve overreaching on the part of any person concerned. According to the application, the price at which the Separate Account will purchase and resell units from and to Shearson will be based upon the offering side evaluation of the underlying securities. Applicants state that a qualified independent evaluator [2] will determine the offering side valuation of the underlying securities for any purchase or sale of units by the Separate Account and that market prices for the underlying securities are usually readily available. Applicants assert that as a result of this independent evalution of the worth of the underlying securities, the Separate Account will be buying and selling units from Shearson at a price determined to be at "market," and this evaluation should eliminate any possibility that Shearson would sell units to the Separate Account at an inflated price or purchase units from the Separate Account at a price below their market value. Applicants state that the presence of Shearson as market maker enables the Separate Account to receive a better price for units it sells than it might otherwise receive if Shearson were not standing ready and able to purchase the units at a price based on the offering side of the market. Applicants further state that Shearson will not be able to influence the Separate Account to purchase or sell units the Separate Account would not otherwise have purchased or sold. The Separate Account will only purchase units from Shearson as contractowners choose to direct their purchase payments for contracts or cash value of existing Contracts to subaccounts of the Separate Account that correspond to a Trust. Similarly, the Separate Account will only sell units when contractowners surrender their Contract, reallocate cash value from those subaccounts, or make a Contract loan.

Finally, Applicants note that while IDS Life and Shearson are affiliated persons, they have separate management and each is operated as a separate "profit center." Applicants represent that the compensation of sales persons selling the Contracts is not dependent upon nor affected by the particular investment vehicle or vehicles to which contractowners allocate the premiums for or the cash value of the Contracts. Applicants therefore assert that such sales persons are not expected to have a preference as to which investment vehicle or vehicles contractowners select under the Contract.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 27, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion. For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–23215 Filed 10–14–86; 8:45 am]

BILLING CODE 8010-01-M

[2] Applicants state that the evaluator is not affiliated with Shearson or IDS Life, nor is the evaluator an affiliate of Shearson or IDS Life, nor will any successor evaluator for the Zero Fund be so affiliated.

DEPARTMENT OF STATE

[Public Notice CM-8/1014]

Advisory Committee on Historical Diplomatic Documentation; Partially Closed Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet from 9 a.m. to 5 p.m. on November 6 and 7, 1986, in Room 1107 of the Department of State. Entry to the building is controlled. Members of the public wishing to attend the open portion of the session, November 7, from 9 a.m. to noon, should notify The Historian, Department of State, Washington, DC 20520 (telephone: (202) 663–1122) in advance to arrange for admission. Persons making advance arrangements will use the Diplomatic Entrance, 22nd and C Streets on November 7.

The Advisory Committee advises the Bureau of Public Affairs, and in particular the Office of the Historian, concerning matters connected with preparation of the documentary series entitled *Foreign Relations of the United States* and other responsibilities of that Office. Of particular importance are editorial and publishing practice and questions related to declassification of official records as specified in Executive Order 12356 (April 2, 1982).

In accordance with section 10(d) of the Advisory Committee Act (Pub. L. 92–463) it has been determined that certain discussions during the meeting will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities be withheld from disclosure. The meeting will therefore be closed when such discussions take place, from 9 a.m. to 5 p.m., on Thursday, November 6, and from 2 p.m. to 5 p.m. on Friday, November 7.

Dated: October 7, 1986.

William Z. Slany,

Executive Secretary.

[FR Doc. 86–23223 Filed 10–14–86; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Administration

[Docket No. IP85–20; Notice 2]

Alfa Romeo, Inc.; Grant of Petition For Determination of Inconsequential Noncompliance

This notice grants the petition by Alfa Romeo, Inc. of Englewood Cliffs, New Jersey, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101 and 571.105, Motor Vehicle Safety Standards No. 101, *Controls and Displays* and No. 105, *Hydraulic Brake Systems*. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on December 24, 1985, and an opportunity afforded for comment (50 FR 52581).

According to paragraph S5 and Table 2 of Standard No. 101, the brake system telltale shall be identified with the word "Brake". Paragraphs S5.3(a) and (b) of Standard No. 105, require that:

S5.35(a) "Each indicator lamp shall display word or words in accordance with the requirements of Standard No. 101 (49 CFR 571.101) and/or this section,

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which will be legible to the driver in daylight when lighted * * *."

(b) If a single common indicator is used, the lamp shall display the word "Brake" * * *."

The petitioner, Alfa Romeo, Inc., produced some 1,150 1986 Spider models with ISO (International Standard Organization) symbol for "Brake" instead of the word. This was done in anticipation of the ISO symbol being selected over the other methods of identification in proposed changes to the standard pending at the time.

Alfa Romeo indicated that production orders have been given to the instrument cluster supplier to retool and produce the warning lamp lens with the word "Brake", but before the running change can be effected, some 1,150 vehicles will have been manufactured and sold.

Because of the disproportionate high cost due to the small number of vehicles, $520 per vehicle claimed by Alfa Romeo, the petitioner proposed that the following be allowed in lieu of total replacement of the instrument panel:

a. A special label attached to the outside of the instrument cluster, which would clearly tell the driver that the ISO symbol means "Brake".

b. An Owner's manual insert explaning clearly that the ISO symbol means "Brake."

All vehicles in Alfa Romeo stock would be identified as outlined above. In addition, Alfa Romeo dealers stock would be identified prior to sale to the user. Those vehicles now in the hands of users would be identified by recalling them for application of an instrument cluster lable and updating their Owner's Manuals. This would be performed within Alfa Romeo's standard recall procedure, but not according to the requirements of 49 CFR Parts 577 and 579, due to the small quantity involved.

No comments were received on the petition.

On May 12, 1986, the petitioner informed NHTSA that it had proceeded to implement its suggested plan to place inserts in Owner's Manuals, to attach labels to the outside of the instrument cluster, and to provide owners of vehicles with inserts and labels. The agency has concluded that these actions should materially reduce the likelihood of confusion that the noncompliance could create, and that the noncompliance has therefore become inconsequential as it relates to motor vehicle safety. Petitioner therefore has met its burden of persuasion, and its petition is granted.

(Sec. 102 Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on October 8, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-23172 Filed 10-14-86; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-17845]

Motor Carrier exemptions, Dillingham Acquisition Corp.; Control Exemption; Foss L & T Co. and Propane Transport, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Dillingham Acquisition Corporation (DAC), a noncarriers has filed a petition under 49 U.S.C. 11343(e) seeking exemption of its acquisition of control of Foss L & T Co. (Foss) (MC-128420 and W-587), a motor and water carrier of property, and Propane Transport, Inc. (PTI) (MC-114969), a motor carrier of property, through acquisition from noncarrier KKR Associates of indirect control of Dillingham Holdings, Inc. (Dillingham), a noncarrier. Dillingham indirectly controls both Foss and PTI pursuant to an exemption approved in Finance Docket No. 30152. The majority of the voting stock of DAC will be held by the existing management of Dillingham and by employee benefit plans of Dillingham or its subsidiaries.

DATE: Comments must be received by November 14, 1986.

ADDRESSES: Send comments (an original plus 10 copies) referring to Docket No. MC-F-17845 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioners' representatives: Harold E. Mesirow, Barbara Morgret Campbell 21 Dupont Circle, NW., Washington DC 20036.

FOR FURTHER INFORMATION CONTACT: Warren Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: DAC seeks exemption under 49 U.S.C. 11343(e) and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: October 10, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-23463 Filed 10-14-86; 11:14 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 199

Wednesday, October 15, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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DEPARTMENT OF DEFENSE

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 34313, September 26, 1986.

PREVIOUSLY ANNOUNCED DATE OF THE MEETING: Tuesday, October, 7, 1986.

CHANGE IN MEETING: Open but for a portion of the meeting to Faculty Appointments which was closed.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295-3049.

SUPPLEMENTARY INFORMATION: Regents Olch, Colemen, Nixon, Johns, Peterson, Hill, O'Rourke, Lambird and Ramirez voted to close a portion of the 7 October 1986 Board meeting relating to Faculty Appointments to discuss information of a personal nature, relating to a possible candidate for a University position, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and which was not known until immediately prior to the convening of the meeting so that no earlier announcement of this change was possible. In addition to the Regents, the meeting attendees included the President, Uniformed Service University of the Health Sciences, and the Executive Secretary, Board of Regents.

GENERAL COUNSEL CERTIFICATION: The Acting General Counsel, in accordance with section 3(f)(1) of the Government in the Sunshine Act, 5 U.S.C. 552b(f)(1) and the Board of Regents' rules issued under that Act, 32 CFR 242a.6(g), hereby certifies that portion of the Board of Regents' meeting of October 7, 1986, at which the Board considered a possible candidate for a University position, pursuant to 10 U.S.C. 2113(f), was properly closed to the public on the basis of the exemption set forth in the Board of Regents' rules at 32 CFR 242a.4(b) and (f).

October 10, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-23373 Filed 10-10-86; 3:44 pm]

BILLING CODE 3810-01-M

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FEDERAL ENERGY REGULATORY COMMISSION

October 6, 1986.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

TIME AND DATE: October 15, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

Consent Power Agenda, 843RD Meeting—October 15, 1986, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 10002-001, American Power Producers, Inc.
CAP-2.
Project No. 4349-008, Long Lake Energy Corporation
CAP-3.
Project Nos. 8015-008, and 010, Charles D. Howard
CAP-4.
Project No. 9167-001, Pennsylvania Hydroelectric Development Corporation
CAP-5.
Project No. 9231-001, Scott Paper Company
CAP-6.
Project Nos. 77-007, and 008, Pacific Gas and Electric Company
CAP-7.
(A) Project Nos. 9550-001 and 002, Lower Patterson, Inc.
(B) Project No. 9550-003, Lower Patterson, Inc.
Project No. 9587-001, Patterson Creek Associates
CAP-8.
Project Nos. 9952-001 and 002, Warren Osborn
CAP-9.
Project No. 6415-003, Slush Cup Company
CAP-10.
Project No. 4948-002, Energeology, Inc. and Lower Power River Irrigation District
CAP-11.
Project No. 3865-003, Guadalupe-Blanco River Authority
CAP-12.
Project No. 3228-003, Atlantic Power Development Corporation
CAP-13.
Docket No. EL82-4-000, Hydroelectric Development, Inc.
CAP-14.
(A) Docket No. QF86-734-000, Luz Solar Partners III, LtD.
(B) Docket No. QF86-736-000, Luz Solar Partners IV, Ltd.
CAP-15.
Omitted
CAP-16.
Docket No. ER86-674-000, Duke Power Company
CAP-17.
Docket No. ER86-562-002, Boston Edison Company
CAP-18.
Docket Nos. ER86-558-003, 004 and 005, Gulf States Utilities Company
CAP-19.
Docket No. ER86-504-002, Pennsylvania Power and Light Company
CAP-20.
Docket Nos. ER85-785-009, 010, ER86-387-002 and ER86-526-002, Wisconsin Electric Power Company
CAP-21.
Docket No. ER84-579-000, AEP Generating Company,
Docket No. ER84-707-001, AEP Generating Company, Appalachian Power Company, Indiana and Michigan Electric Company and Virginia Electric Power Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM85-19-000, Generic Determination of Rate of Return on Common Equity for Public Utilities
CAM-2.
Docket No. FA85-63-001, Long Island Lighting Company
CAM-3.
Docket No. FA84-61-000, Central Maine Power Company
CAM-4.

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Docket No. FA86-23-000, Montaup Electric Company
CAM-5.
Docket No. IS86-3-034, Arco Pipe Line Company
CAM-6.
Docket No. GP85-16-000, Minerals Management Service, Metairie, Louisiana, Section 102(d) Determination, Conoco, Inc., OCS-1030 No. E-10 Well, Sidetrack No. 1, MMS Docket G4-4428, FERC No. JD85-10119
CAM-7.
Docket No. RM85-1-000, Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol (Bishop Pipeline Corporation)

Consent Gas Agenda

CAG-1.
Docket No. RP86-162-000, Natural Gas Pipeline Company of America
CAG-2.
Docket No. RP86-118-002, Consolidated Gas Transmission Corporation
CAG-3.
Docket No. RP86-101-001, Superior Offshore Pipeline Company
CAG-4.
Docket No. Docket No. RP86-85-002, Texas Gas Transmission Corporation
CAG-5.
Docket Nos. TA86-3-59-004 and 005, Northern Natural Gas Company, Division of Enron Corporation
CAG-6.
Docket No. RP86-93-003, United Gas Pipe Line Company
CAG-7.
Docket No. RP86-143-000, Columbia Gas Transmision Corporation
CAG-8.
Docket No. RP86-147-001, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-9.
Docket No. RP86-144-002, Sea Robin Pipeline Company
CAG-10.
Docket No. RP86-142-001, Natural Gas Pipeline Company of America
CAG-11.
Docket No. RP86-42-002, El Paso Natural Gas Company
CAG-12.
Docket No. RP86-86-001, Sabine Pipe Line Company
CAG-13.
Omitted
CAG-14.
Docket Nos. TA86-2-15-002, 003, 004, RP86-138-001, 002 and 003, Mid Louisiana Gas Company
CAG-15.
Docket No. RP86-105-000, ANR Pipeline Company
CAG-16.
Docket No. RP86-40-000, Westar Transmission Company v. Northern Natural Gas Company, Division of Enron Corporation
CAG-17.
Docket No. RP85-13-000 RP85-85-000, Northwest Pipeline Corporation
CAG-18.
Docket No. RP86-72-000, Pacific Interstate Transmission Company
CAG-19.
Docket No. RP85-209-006, United Gas Pipe Line Company
CAG-20.
Docket Nos. ST86-1630-000, ST86-1631-000, ST86-1632-000, ST86-1633-000, ST86-1636-000, ST85-1686-00 and ST86-1874-000, Louisiana Resources Company
CAG-21.
Docket Nos. ST86-2366-000, ST85-1000-000 and ST85-1001-000, Somerset Gas Service
CAG-22.
Docket No. ST86-1657-001, ANR Pipeline Company
CAG-23.
Docket No. ST81-260-006 and 010, Mustang Fuel Corporation
CAG-24.
Docket No. RI82-6-000, Arco Oil & Gas Company
CAG-25.
Docket Nos. RI74-188-086 and RI75-21-061, Independent Oil & Gas Association of West Virginia
CAG-26.
Docket No. CI86-52-000, Pogo Producing Company
Docket No. CI86-180-000, Holden Energy Corporation
CAG-27.
Docket No. CP86-280-005, et al., Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. CI67-1810-003, et al., the Louisiana Land and Exploration Company
CAG-28.
Docket Nos. CI84-361-000, CI84-382-000 and CI84-383-000, Man-Gas Transmission Company
CAG-29.
Docket No. CI73-494-000, FERC Gas Rate Schedule No. 13, Columbia Gas Development Corporation
CAG-30.
Docket Nos. CP65-393-005 and TC82-63-001, Florida Gas Transmission Company
CAG-31.
Docket No. CP86-368-000, Transcontinental Gas Pipe Line Corporation
CAG-32.
Docket No. CP86-362-000, National Fuel Gas Supply Corporation
CAG-33.
Omitted
CAG-34.
Docket No. CP86-416-000, Northern Natural Gas Company, Division of Enron Corporation
CAG-35.
Docket No. CP86-385-000, Trunkline Gas Company and Panhandle Eastern Pipe Line Company
CAG-36.
Docket No. CP85-715-002, ANR Pipeline Company
CAG-37.
Docket Nos. CP85-794-000 and 001, Texas Gas Transmission Corporation
CAG-38.
Docket No. CP86-509-000, Alabama-Tennessee Natural Gas Company
CAG-39.
Docket No. CP86-547-000, ANR Pipeline Company
CAG-40.
Docket No. CP86-390-000, Locust Ridge Gas Company
CAG-41.
Docket No. CP86-642-000, Shell Gas Pipeline Company
CAG-42.
Docket No. CP86-617-000, Tricentrol Interstate Pipeline, Inc.
CAG-43.
Docket No. RP86-87-000, Mountain Fuel Resources, Inc.,
CAG-44.
Docket No. RP86-90-000 and 001, Black Marlin Pipeline Company
CAG-45.
Docket No. RP86-95-000, Canyon Creek Compression Company
Docket No. RP86-96-000, Trailblazer Pipeline Company
Docket No. RP86-88-000, Overthrust Pipeline Company
Docket No. RP86-82-000, Wyoming Interstate Company, Ltd.
CAG-46.
Docket No. CP86-422-000, Great Lakes Gas Transmission Corporation

I. Licensed Project Matters

P-1.
Project Nos. 2934-008 and 009, New York State Electric and Gas Corporation
Project Nos. 4684-004 and 005, Long Lake Energy Corporation
P-2.
Docket No. EL84-11-000, Aquenergy Systems, Inc.

II. Electric Rate Matters

ER-1.
Docket No. EL86-26-003, San Diego Gas and Electric Company v. Alamito Company
ER-2.
Docket Nos. ER83-416-000 and ER84-166-000 (Phases I and II), Kansas Power and Light Company
ER-3.
Docket No. QF82-179-000, Hetch Hetchy Water and Power Department

Miscellaneous Agenda

M-1.
Docket No. RM86-20-000, Rules of practice and procedure: Time period for appeals of staff actions
M-2.
Reserved
M-3.
Reserved
M-4.
Omitted
M-5.
Omitted
M-6.
Docket No. RM85-1-000, Regulation of natural gas pipelines after partial wellhead decontrol (Cascade Natural Gas Corporation)

I. Pipeline Rate Matters

RP-1.
Omitted
RP-2.
Omitted
RP-3.
Omitted
RP-4.
Omitted
RP-5.
Docket Nos. RP82-71-017, 018, TA83-1-59-006, TA84-1-59-005 and TA85-1-59-005, Northern Natural Gas Company, division of Enron Corporation

II. Producer Matters

CI-1.
Docket No. CI86-307-000, Sea Robin Pipeline Company

III. Pipeline Certificate Matters

CP-1.
Docket Nos. CP86-232-001, 002, CP86-486-000, CP86-504-000, CP86-551-000, CP86-573-000 and CP86-598-000, Panhandle Eastern Pipe Line Company
Docket No. CP86-584-000, Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipe Line Company
Docket No. CP86-663-000, Independent Petroleum Association of Mountain States v. Colorado Interstate Gas Company
CP-2.
Omitted
CP-3.
Omitted
CP-4.
Docket No. TC85-19-000, El Paso Natural Gas Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23206 Filed 10-9-86; 4:25 pm]

BILLING CODE 6717-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

AGENCY MEETING

Pursuant to the provisions of the "Government in the Sushine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 3:00 p.m. on Thursday, October 16, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance and for consent to merge and establish eight branches:

People's Bank, Bridgeport, Connecticut, an insured State mutual savings bank, for consent to merge, under its charter and title, with First Federal Savings Bank, Norwalk, Connecticut, a non-FDIC-insured institution, and for consent to establish the five existing and three approved unopened offices of First Federal Savings Bank as branches of the resultant bank; First Federal Savings Bank, Norwalk, Connecticut, for Federal deposit insurance upon its coversion to a State-chartered mutual savings bank.

Applications for Federal deposit insurance (U.S. Branches of a Foreign Bank) and for consent to purchase assets and assume liabilities:

The Hongkong and Shanghai Banking Corporation, Hong Kong, a foreign bank, for consent to purchase certain assets and assume certain liabilities of Global Union Bank, New York, New York, an insured State nonmember bank, and for Federal deposit insurance of deposits received at and recorded for its proposed branches at 19 Division Street and 68 Pine Street, Wall Street Plaza, New York, New York.

Application for consent to purchase assets, and assume liabilities:

The Bank of Glenwood, Glenwood, Arkansas, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the Glenwood, Arkansas, office of FirstSouth, F.A., Pine Bluff, Arkansas, a non-FDIC-insured institution.

Applications for consent to purchase assets and assume liabilities and establish one branch:

Columbus Bank and Trust Company, Columbus, Georgia, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in the Warm Springs Office of First American Bank, Warm Springs, Georgia, and for consent to establish that office as a branch of Columbus Bank and Trust Company.

Norstar Bank of Maine, Portland, Maine, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the North Windham, Maine, branch of American Bank, FSB, Sanford, Maine, a non-FDIC-insured institution, and for consent to establish that office as a branch of Norstar Bank of Maine.

Application for consent to merge and establish one branch:

Bank of Coweta, Newnan, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with the First American Bank, Warm Springs, Georgia, and for consent to establish the Luthersville Office of First American Bank as a branch of the resultant bank.

Application for consent to purchase assets and assume the liability to pay deposits upon transfer and establish a temporary branch:

Farmers and Merchants State Bank of Hale, Hale, Michigan, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits, upon transfer, of the Hale Branch of Michigan Bank—Huron, East Tawas, Michigan, a State member bank, and for consent to establish that office as a temporary branch of Farmers and Merchants State Bank of Hale.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,688-NR—The First National Bank of Darrouzett, Darrouzett, Texas
Case No. 46,712-L (Amendment)—United American Bank in Knoxville, Knoxville, Tennessee

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Quarterly Report for Actions Approved Under Delegated Authority as of June 30, 1986

Discussion Agenda: No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: October 9, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-23333 Filed 10-10-86; 12:04 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on Thursday, October 16, 1986, the Federal Deposit Insurance Corporation's Board of Diectors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters.

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors

requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof;

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(5), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(5), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Request for exemption from Part 325 of the Corporation's rules and regulations;

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" [5 U.S.C. 552b(c)(8), and (c)(9)(A)(ii)].

Discussion Agenda:

Requests for financial assistance pursuant to section 12(c) of the Federal Deposit Insurance Act.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.;

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" [5 U.S.C. 552b(c)(2), and (c)(6)].

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: October 9, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-23384 Filed 10-10-86; 12:04 pm]

BILLING CODE 6714-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 9, 1986.

TIME AND DATE: 10:00 a.m., Thursday, October 9, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission also discussed the following:

2. NACCO Mining Company, Docket No. LAKE 86-47-R, etc; Emerald Mines Corp., Docket No. PENN 85-290-R; White County Coal Corp., Docket No. LAKE 86-59-R; and Greenwich Collieries, etc., Docket No. PENN 85-196-M. (Consideration of pending motions)

3. Odell Maggard v. Claney Creek Coal Corporation, Docket No. KENT 86-1-D, KENT 86-51-D. (Consideration of pending motion).

4. Fife Rock Products Co., Docket No. WEST 85-142-M. (Consideration of operator's request for relief from default order)

5. Litigation matters

It was determined by a unanimous vote of Commissioners that these items be added to this meeting and that no earlier announcement of the additions was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-23297 Filed 10-10-86; 9:29 am]

BILLING CODE 6735-01-M

6

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 11:00 a.m., Monday, October 20, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employee.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 10, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-23383 Filed 10-10-86; 4:01 pm]

BILLING CODE 6210-01-M

7

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Wednesday, October 15, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first two items will be open to the public. The last two items will be closed to the public under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Pipeline Accident Report:* Northeast Utilities Service Company Explosion and Fire, Derby, Connecticut, December 8, 1985.

2. *Safety Study:* Passenger/Commuter Train and Motor Vehicle Collisions at Grade Crossings.

3. *Opinion and Order:* Administrator v. Doty, Docket SE-7918; disposition of the appeals of the Administrator and the respondent.

4. *Opinion and Order:* Administrator v. MacGlashan, Docket SE-6933; disposition of the Administrator's appeal.

FOR MORE INFORMATION, CONTACT: H. Ray Smith (202) 382-6525.

Ray Smith,

Federal Register Liaison Officer.

October 9, 1986.

[FR Doc. 86-23278 Filed 10-10-86; 9:29 am]

BILLING CODE 7533-01-M

8

COMMISSION ON CIVIL RIGHTS

October 10, 1986.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, October 17, 1986, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes for September 11, 1986 Meeting
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. Program Planning for FY '87
V. Report on Indian Hearing
VI. Civil Rights Developments in the Central States Region.

PERSON TO CONTACT FOR FURTHER INFORMATION: Deborah Burston-Wade, Press and Communications Division, (202) 376-8312.

William H. Gillers,

Solicitor.

[FR Doc. 86-23401 Filed 10-14-86; 10:55 am]

BILLING CODE 6335-01-M

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federal register

Wednesday
October 15, 1986

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 15
Federal Acquisition Regulation (FAR); Use of Letter RFP for Noncompetitive Procurements; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

Federal Acquisition Regulation (FAR); Use of Letter RFP for Noncompetitive Procurements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) 15.402 to permit the use of letter requests for proposals for sole source acquisitions.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 15, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 86–54 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed changes to FAR 15.402 do not appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the proposed coverage does nothing more than permit use of an alternate format for a limited number of solicitations.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes to FAR 15.402 do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: October 6, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for Part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 15.402 is amended by redesignating the existing paragraph (g) as paragraph (h) and by adding a new paragraph (g) to read as follows:

15.402 General.

* * * * *

(g) Unless prohibited by agency regulations, letter FRPs may be used for sole source acquisitions. Letter RFPs should be as clear and concise as possible and exclude any unnecessary verbiage or notices. When a letter RFP is used, the uniform contract format procedures of 15.406 do not apply. Letter RFPs should only request data and information necessary for providing a proposal. However, contracting officers must still obtain any required representations and certifications and must still comply with other portions of this regulation such as Subparts 5.2, Synopses of Proposed Contract Actions, and 15.8, Price Negotiation.

* * * * *

15.406–2 [Amended]

3. Section 15.406–2 is amended by removing in the first sentence of paragraph (a)(1) the words "Part 53" and inserting in their place the words "this regulation".

[FR Doc. 86–23178 Filed 10–14–86; 8:45 am]

BILLING CODE 6820–61–M

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federal register

Wednesday
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Part III

Department of Agriculture

Agricultural Stabilization and Conservation Service

7 CFR Part 713

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Feed Grain, Rice, Cotton, and Wheat; Interim Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 713

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Feed Grain, Rice, Cotton, and Wheat

AGENCY: Commodity Credit Corporation ("CCC"), and Agricultural Stabilization and Conservation Service ("ASCS"), USDA.

ACTION: Interim rule.

SUMMARY: This interim amends the regulations found at Part 7 of Chapter VII of the Code of Federal Regulations effective for the 1987 crops of feed grains, rice, cotton, and wheat. Included in the changes are amendments with respect to: (1) The limited cross compliance requirement; (2) adjusting crop acreage bases; (3) providing "considered planted" credit for farms owned by Farmers Home Administration and for farms that do not participate in the acreage reduction program in effect for a crop; (4) the appeal of farm program payment yields established for the 1981 through 1985 crop years; (5) the reserve for adjusting crop acreage bases established for extra long staple cotton; (6) the procedure for accepting bids to participate in "cost reduction option" diversion programs; and (7) the rules for use of conserving use acreage and acreage designated as acreage conservation reserve ("ACR"). Implementation of the changes made by this interim rule will improve the effectiveness of the commodity programs for the 1987 and subsequent crop years.

DATES: Effective October 14, 1986. Comments must be received on or before November 14, 1986, in order to be assured of consideration.

ADDRESSES: Submit Comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bill Harshaw, Assistant to Director, Cotton, Grain, and Rice Price Support Division, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447–7902.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that Regulatory Impact Analyses are not required for the changes which are made in this interim rule.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

A draft environmental impact statement pertaining to agricultural acreage adjustment programs has been prepared. Further information is available from Phillip Yasnowsky, Program Analysis Division, ASCS, USDA, P.O. Box 2415, Washington DC 20013; (202) 447–7887.

This program/activity is not subject to the provisions of Executive Order 12372 which requries intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560–0030, 0560–0071, 0560–0091 and 0560–0650 have been assigned.

Discussion of Changes

1. On May 30, 1986, the Secretary of Agriculture announced certain provisions of the production adjustment and price support programs that will be in effect for the 1987 crops of wheat, feed grains, cotton, and rice. In order to implement these provisions, amendments to the regulations currently found at 7 CFR Part 713 must be made.

(a) Section 503 of the Agricultural Act of 1949 (the "1949 Act") requires that farm acreage bases be established for farms for the 1987 and subsequent crop years. Section 505 of the 1949 Act provides that the Secretary may permit an upward adjustment of any crop acreage base established for a farm, except that such adjustment may not exceed 10 percent of the farm acreage base established for the farm. Such an upward adjustment must be offset by an equivalent downward adjustment in other crop acreage bases established for the farm. The Secretary's May 30, 1986 announcement stated that adjustments using this authority will not be permitted for the 1987 crop year. Accordingly, § 713.11(a) is amended to provide that adjustments made in accordance with section 505 of the 1949 Act will be permitted as determined and announced by the Secretary.

(b) Sections 101A, 103A, 105C, and 107D of the 1949 Act authorizes the Secretary to require that, as a condition of eligibility of producers on a farm for loans, purchases, or payments, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect must not exceed the crop acreage base for that commodity. This is commonly referred to as "limited cross compliance" "Full cross compliance." is authorized by sections 105C and 107D, if a set-aside program is in effect for a crop of wheat or feed grains. "Full cross compliance" means that, as a condition of eligibility for loans, purchases, or payments, a producer must comply on the farm with the terms and conditions of any other commodity program. The Secretary's May 30, 1986 announcement stated that "limited cross compliance" will be in effect for the 1987 crops of wheat, feed grains, upland cotton, and rice. Accordingly, § 713.101(a) is amended to set forth the terms of the "limited cross compliance" requirement.

2. Section 1314 of the Food Security Act of 1985 (the "1985 Act") amended section 335 of the Consolidated Farm and Rural Development Act with respect to the sale or leasing of farmland owned by the Farmers Home Administration ("FmHA"). Section 335 sets forth the restrictions which must be followed to sell or lease such land. Section 335(e)(8) provides that compliance by the Secretary with the provisions of section 335(e) shall not cause any acreage allotment, marketing quota, or acreage base assigned to such property to lapse, terminate, be reduced, or otherwise be adversely affected. Accordingly, § 713.3(e) is amended to provide that considered planted credit may be

provided in accordance with instructions issued by the Deputy Administrator for crop acreage bases established for farms owned by FmHA.

3. Section 713.3(e)(2)(vii) provides that producers on a farm who do not participate in the production adjustment program in effect for a crop may obtain considered planted credit in order to preserve the crop acreage base when they do not plant the crop. Considered planted credit can be obtained in an amount equal to the acreage of conserving uses credited to the crop and not to exceed the crop acreage base for the crop.

a. Because "limited cross compliance" will be in effect for the 1987 crops, this provision could be abused by producers in areas, such as summer fallow areas, with abundant availability of acreage which may be designated as acreage devoted to conserving uses. For example, a producer on a farm who is not participating in the program for any crop could preserve the crop acreage base for one crop by crediting available acreage as a conserving use in order to receive considered planted credit for such crop and thereby preserve the crop acreage base. Meanwhile the producer could plant an acreage of another program crop that is larger than that commodity's crop acreage base and thereby increase the acreage base for that crop for future years. Producers who do not have access to such acreage which may be considered to be a conserving use would therefore be treated in an inequitable manner since such credit would not be available to them.

b. Producers who plant an acreage of a crop which is less than the total amount of the crop acreage base but do not participate in the program in effect for a crop cannot obtain any considered planted credit in order to preserve the crop acreage base established for the crop for the farm. These producers are treated inequitably in comparison with producers who plant no acreage at all. Producers who do not plant any acreage of a crop for which a crop acreage base has been established may receive considered planted credit in an amount equal to the total amount of the crop acreage base.

In order to alleviate these inequities, § 713.3(e)(2)(vii) is revised to provide that considered planted credit may be approved for any acreage of conserving uses designated to the crop in accordance with § 713.102, regardless of whether any acreage of the crop is planted. Section 713.102 limits the acreage of conserving uses that may be designated to a crop to the difference between the crop acreage base and the sum of the planted acreage, prevented planted acreage, and acreage conservation reserve ("ACR") acreage. Section 713.3(e)(2)(vii) is amended to provide that, in accordance with instructions issued by the Deputy Administrator, considered planted credit may be obtained only if producers on the farm have not violated any cross compliance requirement that is in effect for the crop year and have not planted an acreage of the crop in excess of the acreage base for any program crop.

4. Section 509 of the 1949 Act requires the Secretary to establish an administrative appeal procedure which provides for an administrative review of determinations made with respect to farm acreage bases, crop acreage bases, and farm program payment yields. The administrative procedure so established is set forth at 7 CFR Part 780. With respect to farm program payment yields, be the average of the farm program payments yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest. The 1985 Act provides that, if no crop of the commodity was produced or no farm program payment yield was established for any of the 1981 through 1985 crop years, the farm program payment yield shall be established on the basis of the average farm program payment yield for such crop years for similar farms in the area. With respect to farm program payment yields established for a crop for any of the 1981 through 1985 crop years before the enactment of the 1985 Act, there is no authority to change or adjust such yields. Accordingly, § 713.155 is amended to clarify that farm program payment yields for the farm which were established before the enactment of the 1985 Act are not appealable. Determinations of farm program payment yields which are established after December 23, 1985 may be appealed in accordance with 7 CFR Part 780.

5. The Extra Long Staple Cotton Act of 1983 authorized a special reserve for adjusting acreage bases established for extra long staple cotton. The authority for this reserve expired with the 1986 crop year. Accordingly, § 713.11(d) is deleted.

6. On June 30, 1986, the Secretary announced that the option to implement the cost reduction options authorized by section 1009 of the 1985 Act with respect to the 1987 crop of wheat would not be exercised at that time. Section 1009(e) provides that the Secretary may, at any time prior to harvest, reopen the program for a crop for which a production control or loan program is in effect to participating producers for the purpose of accepting bids from producers for the conversion of acreage planted to such crop to diverted acres in return for payment in kind from CCC surplus stocks of the commodity to which the acreage was planted. In taking such action, the Secretary must determine that (1) changes in domestic or world supply or demand conditions have substantially changed after announcement of the program for such crop, and (2) without action to further adjust production of such crop, the Federal Government and producers will be faced with a burdensome and costly surplus. Such payments in kind shall not be included within the payment limitation of $50,000 per person established under section 1001 of the 1985 Act, but shall be limited to a total $20,000 per year per producer for any one commodity. Section 713.58 is added to provide the regulations which would apply to a bid diversion program which may be announced under section 1009. These regulations are generally similar to those formerly set forth at 7 CFR Part 770 which were in effect for the 1983 crop year with respect to the Payment-In-Kind Program.

7. Several comments were received with respect to the haying and grazing provisions of the interim rule published on March 11, 1986 (51 FR 8428) that were applicable to the 1986 crop year. Due to the need to implement the 1986 programs in a timely manner, some of the proposals presented by these comments which were determined to be meritorious could not be implemented with respect to the 1986 crop year. However, the following revisions have been made with respect to the use of ACR acreage for the 1987 and subsequent crop years:

(a) Section 713.3(d) is amended to provide that State committees must consult with interested parties before deciding whether to authorize haying of conserving use acreage. This section is also amended to provide that acreages which are hayed shall be considered to be nonprogram crop acreages if the State committee has determined that haying of conserving use acreage is prohibited.

(b) Section 713.63(a) has been amended to require the State committee to consult with interested parties before deciding to authorize grazing of ACR acreage and, if authorized, the 5 month nongrazing period applicable to such acreage.

(c) Section 713.63(c)(2) has been amended to clarify that producers may charge fees for hunting and fishing on ACR acreage.

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List of Subjects in 7 CFR Part 713

Cotton, Feed grains, Price support programs, Wheat, Rice.

Interim Rule

PART 713—[AMENDED]

Accordingly the regulations found at Part 713 of Chapter VII of Title 7 of the Code of Federal Regulations are amended as follows:

1. The authority citation for Part 713 is revised to read as follows:

Authority: Secs. 101A, 103A, 105C, 107C, 107D, 107E, 109, 113, 401, 403, 503, 504, 505, 506, 507, 508, and 509 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1444, 1383, as amended, 1446; 91 Stat. 950, as amended, 63 Stat. 1054, as amended, 99 Stat. 1461, 1461, as amended, 1462, 1463, 1463, 1464, 1464 (7 U.S.C. 1441–1, 1444–1, 1444b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445h, 1421, 1423, and 1461 through 1469); sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444 (7 U.S.C. 1308); sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309); sec. 1009 of the Food Security Act of 1985, 99 Stat. 1453 (7 U.S.C. 1308a).

2. Section 713.3 is amended by republishing the introductory text of (d), revising paragraphs (d)(1) and (e)(2)(vii), removing paragraphs (d)(2)–(d)(4), redesignating paragraphs (d)(5)–(d)(10) as paragraphs (d)(2)–(d)(7), and adding paragraph (e)(4) to read as follows:

§ 713.3 Definitions.

* * * * *

(d) *"Conserving uses"* shall mean all uses during a year of cropland as defined in Part 719 of this chapter except for:

(1) Acreage of crops planted for harvest or use during the current crop year, which shall include:

(i) A crop of rice, upland cotton, feed grains, wheat, or ELS cotton;

(ii) A crop of soybeans;

(iii) Any nonprogram crop;

(iv) Any crop for which price support is available through loans and purchases in accordance with Chapter XIV of this title; and

(v) In a State where the State committee, after consulting with interested parties, has determined that haying of conserving use acreage shall not be permitted, any acreage which is harvested for green chop, hay, silage, or haylage.

* * * * *

(e) * * *

(2) * * *

(vii) For farms which are not participating in a set-aside, acreage reduction, or diversion program for the crop, the acreage of nonprogram crops and conserving uses credited to the crop in accordance with § 713.102, provided that, in accordance with instructions issued by the Deputy Administrator, producers on the farm are not in violation of any cross compliance requirement in effect in accordance with § 713.100 and such producers have not planted an acreage of a program crop in excess of the acreage base established for the crop for the farm.

* * * * *

(4) With respect to farms owned by the Farmers Home Administration for 1986 and subsequent crop years, an acreage equal to the crop acreage base established for the farm in accordance with instructions issued by the Deputy Administrator.

* * * * *

3. Section 713.11 is amended by removing and reserving paragraph (d) and revising paragraph (a)(1) to read as follows:

§ 713.11 Adjusting crop acreage bases.

(a) *Adjustments using farm acreage base.* (1) With respect to the 1987 and subsequent crop years, if determined and announced by the Secretary, an operator of a farm may adjust acreage bases established for crops of wheat, feed grains, upland cotton, and rice in accordance with paragraphs (a)(2) through (a)(4) of this section.

* * * * *

(d) [Reserved]

* * * * *

4. Section 713.58 is added to read as follows:

§ 713.58 Bid diversion program.

(a) The Secretary will announce:

(1) If, when there is a production control or loan program in effect for a crop of a major agricultural commodity, the program is being reopened to participating producers for the purpose of accepting bids for the conversion of acreage planted to such crop to diverted acres;

(2) The period of time during which bids may be submitted;

(3) The form of the bid, i.e. whether the bid shall be as a percentage of the farm program payment yield for the farm, as a number of pounds or bushels per acre, or such other form as may be determined and announced;

(4) The basis for evaluating bids; including any limitation upon the number of acres that may be accepted;

(5) The manner in which payment will be made to producers whose bids are accepted; and

(6) Other requirements of the program.

(b) Except as otherwise announced by the Secretary, and in accordance with instructions approved by the Executive Vice President, CCC, when a bid diversion program is announced by the Secretary:

(1) The operator of a farm and any other producers on the farm may submit a bid for contract with CCC on a form prescribed by CCC.

(i) To be eligible to submit a bid, the operator and any other producers on the farm must be parties to a contract to participate in the program for the applicable commodity for the crop year for the farm and must not have been determined to be in violation of such contract.

(ii) The contract to participate in the bid diversion program may contain requirements as to the eligibility of acres planted to the crop, the time and manner by which the growing crop must be destroyed, limitations on the use of the acreage and the crop residue, provision for assessing liquidated damages in the case of violation of the contract, and such other provisions as may be necessary for effective operation of the program.

(iii) The bid may be submitted to the appropriate county ASCS office prior to the close of business on a date to be announced by the Secretary.

(2) If a bid diversion program is offered for more than one commodity, the operator and any other producers may select the commodities to be included in the bid, except that CCC may require that the bid include either both crops or neither crop of corn and grain sorghum, or barley and oats.

(3) The bid shall be determined by the operator and other producers and shall be in the form as announced by the Secretary.

(4) After the final date for submitting bids, the bids in each county shall be ranked for each commodity, treating corn and grain sorghum or barley and oats as single commodities, if so required by CCC, on the basis of the percentage of the farm program payment yield, with the lowest percentage being ranked highest, or such other basis as announced by the Secretary. In the case of identical bids, such bids shall be ranked in the order received or, where an appointment procedure was utilized by the county ASCS office during the time in which producers submitted bids, a lottery shall be conducted to determine the order by which such bids should be ranked. The bids for each commodity shall then be accepted in rank order. CCC may establish the number of acres for which bids will be accepted for each commodity in each county.

(5) To the extent practicable, any questions as to the content of the bid shall be resolved by the county committee when bids are opened. Any decision by the county committee may be appealed as provided in § 713.155. If an appeal is resolved in the producer's favor, the bid may then be accepted without regard to whether accepting such bid would result in exceeding the maximum number of acres which may be enrolled in the program as established for the county.

(c) In accordance with the regulations in Part 795 of this chapter, the total amount of payments which a person shall be entitled to receive annually in accordance with the diversion program described in this section shall not exceed $20,000 per commodity. CCC may require that corn and grain sorghum shall be considered as one commodity, that barley and oats shall be considered as one commodity, or that all such commodities shall be considered as one commodity.

5. Section 713.63 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 713.63 Use of ACR acreage.

(a) *State committee determination.* The State committee, after consulting with interested parties, may authorize grazing of ACR acreage for the 1987 through 1990 crops, except during a 5-consecutive-month period for a county as determined by the State committee.

* * * * *

(c) * * *

(2) The ACR acreage may be used for noncommercial recreation, temporary location of beehives, or for home gardens. Fees may be charged for hunting and fishing.

* * * * *

6. § 713.100 is amended by revising paragraph (a) to read as follows:

§ 713.100 Cross compliance on the farm.

(a) Whenever an acreage reduction program is determined and announced by the Secretary with respect to a crop of rice, upland cotton, wheat, or feed grains, and the Secretary announces that limited cross compliance is in effect with repect to such a crop, as a condition of eligibility for loans, purchases, and payments with respect to such a crop, producers on a farm shall not plant an acreage of another commodity in excess of the acreage base established for the crop for the farm if an acreage reduction program is in effect for such commodity.

* * * * *

7. Section 713.155 is revised to read as follows:

§ 713.155 Appeals.

(a) A producer, an assignee of a cash payment, or holder of a commodity certificate issued in accordance with § 713.154 may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at Part 780 of this chapter.

(b) With respect to farm program payment yields, determinations made before December 23, 1985 are not appealable.

Signed at Washington, DC on October 7, 1986.

Milt Hertz,

Acting Executive Vice President, Commodity Credit Corporation, and Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86–23066 Filed 10–14–86; 8:45 am]

BILLING CODE 3410–05–M

VOL
51
ISS
199
OC
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UMI

federal register

Wednesday
October 15, 1986

Part IV

Commission on the Bicentennial of the United States Constitution

45 CFR Part 2001
Project Recognition and Use of Logo; Final Rule

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COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2001

Project Recognition and Use of Logo

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Final rule.

SUMMARY: These regulations set forth general provisions and policies governing the process adopted by the Commission on the Bicentennial of the United States Constitution for project recognition and support and for use of the Commission's logo. These policies will apply to all projects, programs and other activities designed to commemorate the 200th anniversary of the drafting, signing, ratification and adoption of the United States Constitution, in 1787 and 1788, and the beginnings of the Federal Government under the Constitution in 1789, including the election of the First Congress and of America's first President and Vice President, the creation of the first cabinet departments and the creation of the Federal judiciary system.

These regulations are necessary so that the mandates of Congress in Pub. L. 98-101 may be carried out by the Commission in accomplishing its principal purpose, to promote and coordinate activities to commemorate the bicentennial of the Constitution. The effect of these regulations is to enable individuals, private and public organizations, including governmental agencies and states, to obtain the official recognition of the Commission for their proposed projects and to use the Commission's National Bicentennial Logo. The regulations also make clear the criteria for Commission involvement with projects and the limitations on such involvement.

EFFECTIVE DATE: October 15, 1986.

ADDRESS: Communications relative to this rule and all applications resulting therefrom should be mailed to: Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Joseph B. McGrath, General Counsel, Tel. (202) 653-9800 or (202) 653-2427.

SUPPLEMENTARY INFORMATION

Background

These regulations were approved by the Commission on November 25, 1985 as an interim rule to govern policies on project recognition and support and use of the Commission's logo during the organizational phase of Commission operations. They were published as an interim rule on March 10, 1986, (51 FR 8300-8304). Comments were requested from the public, to be received on or before May 9, 1986. No substantive comments were received.

The Commission functioned under the interim regulations from November 1985 through July 1986. As a result of this experience, the Commission adopted policy resolutions expanding and clarifying portions of the interim rule. These substantive amendments are incorporated into this final rule. There is no further public comment period. The changes in the interim rule are summarized below. In addition, the title caption in the heading has been changed so that it will more accurately describe the contents of this final rule.

Amendments

(a) Section 2001.22 has been revised to define the meaning of "commercial use" of the logo in terms of existing statutory restrictions and legislative history.

(b) Section 2001.24 has been added to authorize federal agencies to use the logo on stationery and publications, and to provide for use of the logo by general media.

(c) Section 2001.25 has been added to provide full notice to the public that any unauthorized use or abuse of the Commission's logo is subject to penalties under existing Federal law, and that the logo is registered and protected under the Trademark Act of 1946, as amended.

(d) A new paragraph (e) has been added to § 2001.35 to authorize official recognition, upon request, of programs and projects of nonprofit organizations which do not have a single project or major group of projects which meet the recognition requirements for submission under § 2001.35(a).

(e) Additional language has been added to paragraph (c) of § 2001.37 to provide for designation of a Bicentennial Community in the absence of a recognized State Bicentennial Commission. Similar language has been added to § 2001.43.

(f) A simplified model application form has been included under Appendix C for use by local communities requesting official recognition as a Designated Bicentennial Community.

Classification

This is not a major rule under E.O. 12291 since it is not likely to have any effect on the economy, on costs or on prices, nor does it affect competition, employment, investment, productivity, innovation or the ability of U.S. based enterprises to compete with foreign enterprises. A regulatory analysis is not required for this rulemaking. This rule has no effect on the environment and an environmental impact statement under the National Environmental Policy Act is not required.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The information collection requirements have been approved by OMB for use through September 30, 1989, and have been assigned OMB control number 3312-0014.

Lists of Subjects in 45 CFR Part 2001

National bicentennial logo, State bicentennial commission, Designated bicentennial community, National register of bicentennial projects, U.S. Constitution bicentennial, Officially recognized projects, Seals and insignia.

Issued in Washington, DC, on September 26, 1986.

Mark W. Cannon,
Staff Director.

For the reasons set out in the preamble and under the authority of Pub. L. 98-101, 97 Stat. 719, Part 2001 which was added at 51 FR 8300, March 10, 1986 as an interim rule is adopted as a final rule and revised to read as follows:

CHAPTER XX—COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

PART 2001—PROJECT RECOGNITION AND USE OF LOGO

Subpart A—General Policies

Sec.
2001.10 Commission policy.
2001.11 Financial support decisions.
2001.12 Nonexclusive involvement.

Subpart B—National Bicentennial Logo

2001.20 Design and adoption.
2001.21 Authorized use of logo.
2001.22 No commercial use permitted.
2001.23 Informational use of logo.
2001.24 Penalties for unauthorized use.

Subpart C—Involvement With Bicentennial Projects

2001.30 Commission decisions.
2001.31 Withdrawal of involvement.
2001.32 Types of projects.
2001.33 Commission projects.
2001.34 Cosponsored projects.
2001.35 Officially recognized projects.
2001.36 State bicentennial commissions.
2001.37 Designated bicentennial communities.

Subpart D—Selection Process

Sec.
2001.40 Submission of applications.
2001.41 Application requirements.
2001.42 Evaluation.
2001.43 State commission approval.
2001.44 Letter of encouragement.
2001.45 Commission approval.

Subpart E—Coordination and Information

2001.50 National register of bicentennial projects.

Appendix A to Part 2001—National Bicentennial Logo
Appendix B to Part 2001—Application for Project Recognition
Appendix C to Part 2001—Bicentennial Community Application

Authority: Pub. L. 98-101, 97 Stat. 719, 5 U.S.C. 552.

Subpart A—General Policies

§ 2001.10 Commission policy.

The Commission on the Bicentennial of the United States Constitution was established by Pub. L. 98-101 to promote and coordinate activities to commemorate the bicentennial of the Constitution. All public and private groups are encouraged to conduct activities that will foster awareness, knowledge and appreciation of the Constitution of the United States, the establishment of the Federal Government and passage of the Bill of Rights. Insofar as its resources permit, the Commission will offer information, advisory assistance, and coordination to individuals and groups interested or involved in bicentennial activities.

§ 2001.11 Financial support decisions.

Commission involvement with a project in any of the ways herein described does not obligate the Commission to contribute financial support to that project. Any decision to provide financial support to a bicentennial project shall be considered by the Commission separately and on its own merits in relation to the resources of the Commission.

§ 2001.12 Nonexclusive involvement.

Unless otherwise indicated by the Commission in advance and in writing, Commission involvement with a project will not in any way limit the Commission from involving itself in other projects of the same or a similar nature.

Subpart B—National Bicentennial Logo

§ 2001.20 Design and adoption.

Under the authority granted by section 5(j) of Pub. L. 98-101, 97 Stat. 721, the Commission has designed and adopted a Logo as the official emblem of the bicentennial. This design is depicted and described in Appendix A to this part of the Commission's regulations. It is hereby designated by the Commission as the official National Bicentennial Logo and this designation includes any likeness of this Logo which, in whole or in part, is used in such manner as to suggest this Logo. Its use shall be governed by these regulations.

§ 2001.21 Authorized use of logo.

(a) Authorization for use of the National Bicentennial Logo shall be granted only at the sole discretion of the Commission and in accord with these regulations. Reproduction of the Logo is permitted only after written authorization of the Commission. Authorized users may not delegate use of the Logo to others unless specifically authorized to do so in writing by the Commission or by these regulations.

(b) The Logo shall be reproduced always in its entirety as adopted by the Commission and depicted in Appendix A to this part. It shall not be altered nor may it be overprinted with any legend, symbol or other marking. All uses of the Logo should incorporate high standards of design, dignity and taste. When used by officially recognized State Bicentennial Commissions, Bicentennial Communities, nonprofit organizations and officially recognized project sponsors or cosponsors, the Logo shall bear a legend beneath it that reflects authorization for use in accordance with these regulations.

§ 2001.22 No commercial use permitted.

(a) *Statutory prohibitions.* No commercial use of the National Bicentennial Logo is authorized. This prohibition on commercial use in section 5(j), Pub. L. 98-101, 97 Stat. 721, is defined to mean that the Logo shall not be used by any corporation or private person in connection with the production or manufacture of any commercial goods, as part of an advertisement promoting any commercial goods or services, or as part of an endorsement for any such goods or services. Goods and services produced or sold by tax-exempt nonprofit organizations are not "commercial goods and services" within the meaning of this definition.

(b) *Commission review.* The Commission shall review all requests for use of the Logo by commercial organizations. The Commission shall also review requests of a State Bicentennial Commission or a Designated Bicentennial Community (see below) for use of the Logo by a commercial sponsor of a project officially recognized by such Commission or Community. In exercising its discretion, the Commission shall determine each case on its merits.

§ 2001.23 Informational use of logo.

(a) *Federal agencies.* The Commission has authorized use of the National Bicentennial Logo by Federal agencies and departments on their stationery and publications to the extent that such use is otherwise permitted by law. This designation of Federal agencies and departments is defined to include all organizations of the U.S. Government, including those of the executive, the legislative and the judicial branches. Use of the Logo is authorized only under the following conditions:

(1) Each agency, department, Congressional office or judicial organization wishing to use the Logo shall submit a written request approved or signed by the head of the agency, department, Congressional office or judicial organization involved.

(2) If the Logo is desired for use on Government publications, a list of the names and types of publications should be supplied to the Commission. If possible, sample copies should be sent to the Commission.

(3) Written requests, lists of publications and sample copies should be sent to: Staff Director, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503; Attention: Federal Programs Division.

(4) Approval of each request for Logo use shall be made by the Commission Staff director or his designee following review of staff analysis and recommendations. A written response to each request shall be provided by the Staff Director together with copies of the Logo and directions for its use.

(5) Each agency, department, Congressional office or judicial organization shall be informed of the correct design uses of the Logo and of prohibitions on its use. Permission to use the Logo does not authorize an agency to grant use of the Logo to any other Government or private organization by any form of subsequent agreement, lease of contract.

(b) *General media use.* Following adoption by the Commission and its publication in the Federal Register on March 10, 1986 (51 FR 8303), the National Bicentennial Logo has been available on request to the general media in connection with news stories, informational articles and public awareness uses. Copies of the Logo and guidelines for its use shall be available on request to all print and electronic news services, publications, or representatives thereof, solely for the

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purpose of informing the general public about the Commission and its activities or the commemoration of the Constitution and its bicentennial.

§ 2001.24 Penalties for unauthorized use.

(a) Use of the official National Bicentennial Logo without specific authorization granted in writing in accordance with these regulations shall be subject to applicable penalties under Federal law. Under section 701, chapter 33, title 18 U.S.C., the penalty for unauthorized use, possession, manufacture or sale of an official Government insignia or any colorable imitation or likeness thereof, is a fine of $250 and imprisonment of up to six months, or both.

(b) Registration of the National Bicentennial Logo by the Commission with the United States Patent and Trademark Office, effective July 1, 1986, is a recognition and notice of the Commission's ownership thereof, and evidence of the Commission's exclusive right to use the Logo in commerce. No person or organization has the right to use a mark in commerce which is in identical form or in such near resemblance to the Logo as may be likely to cause confusion or mistake, or to deceive the public.

Subpart C—Involvement with Bicentennial Projects

§ 2001.30 Commission decisions.

Unless delegated by vote of the Commission to a committee of the Commission, or to the Commission's Staff Director, authority to decide Commission involvement with projects remains with the full Commission. Commission involvement with bicentennial projects shall be determined by written decisions on each project as set forth herein.

§ 2001.31 Withdrawal of involvement.

The Commission reserves the right at all times and with respect to any project to withdraw its involvement or recognition, or both, including any authorization for use of the Logo.

§ 2001.32 Types of projects.

There are five forms of Commission involvement with bicentennial projects. These are identified as Commission Projects, Cosponsored Projects, Officially Recognized Projects, State Bicentennial Commissions, and Designated Bicentennial Communities. The details as to each type of project recognition are set forth in the following sections of this subpart.

§ 2001.33 Commission projects.

Commission projects are defined as projects of national or international significance, for the development and implementation of which the Commission takes full responsibility. Such projects will be few in number and approved in advance by the Commission.

§ 2001.34 Cosponsored projects.

(a) *Commission participation.* The Commission may choose to cosponsor a limited number of projects with private and public organizations, domestic and foreign, including all branches and agencies of the Federal Government. In doing so, the Commission reserves the option to participate in a project's development and implementation, although primary responsibility for the project will ordinarily rest with the other sponsor or sponsors.

(b) *Use of logo.* Cosponsors shall be authorized to use the National Bicentennial Logo solely in connection with the project for which the Commission is a cosponsor. Such use shall include the legend, "Cosponsored by the Commission on the Bicentennial of the United States Constitution." A cosponsored project shall also be considered an Officially Recognized Project (see below).

(c) *Qualification criteria.* For a project to qualify for Commission cosponsorship the Commission must determine that (1) the project will make an exceptional contribution to advancing the national commemoration; (2) the project will increase public understanding and appreciation of the Constitution; (3) the cost to the Commission, if any, is reasonable in relation to what the project will accomplish; and, (4) the project will be adequately financed and directed.

§ 2001.35 Officially recognized projects.

(a) *Recognition requirements.* (1) The Commission shall grant Official Recognition to projects of exceptional merit with regional, national, or international significance. To be considered for Official Recognition, such projects must have substantial educational and historical value in relation to the U.S. Constitution and must be adequately financed and directed.

(2) Projects which are undertaken in honor of the Constitution and its bicentennial and which otherwise meet the project recognition requirements of this section, but are not in substance directly related to the Constitution, may also be considered by this Commission for Official Recognition.

(b) *Implementation.* Responsibility to develop and implement an Officially Recognized Project lies with the project's sponsor or sponsors. To the extent feasible the Commission shall monitor all Officially Recognized Projects.

(c) *Certificates of recognition.* Projects granted Official Recognition shall receive a Certificate of Official Recognition and such other symbolic recognition as may be approved by the Commission.

(d) *Use of logo.* Sponsors of Officially Recognized Projects are authorized to use the National Bicentennial Logo solely in connection with the recognized project. Such use shall include the legend, "Officially Recognized by the Commission on the Bicentennial of the United States Constitution."

(e) *Federal agency projects.* To obtain Official Recognition, projects and programs sponsored by Federal agencies shall meet the recognition requirements of paragraph (a) of this § 2001.35. They are also subject to the other provisions of this section and to the application requirements of these regulations. The term Federal agencies is defined to include all agencies, departments, offices and other organizations and establishments of the U.S. Government, including those of the executive, the legislative and the judicial branches of Government. A specially designed application form for Federal agencies is available from the Commission.

(f) *Nonprofit organization programs.* (1) Upon written request the Commission may grant Official Recognition to bicentennial programs and projects of nonprofit organizations of regional, national or international scope. Such organizations must have created on their agenda one or more activities designed to honor and commemorate the United States Constitution, but not a project or projects of such exceptional merit or size as to warrant an application for Official Recognition under paragraph (a) of this § 2001.35.

(2) Qualifying programs and projects of nonprofit organizations may be granted Official Recognition singly or en bloc as deemed appropriate by the Commission. No particular form is required for submission of a written request but it should contain all pertinent information including, but not limited to, the following: Identification and background description of applicant, including address and telephone number; a clear and concise description of the bicentennial program, project or activities; name of the responsible official; information as to timing, budget, source of funds and other relevant information. The Commission reserves the right to request further information.

§ 2001.36 State bicentennial commissions.

(a) *Recognition.* The Commission shall recognize any bicentennial organization as a State Bicentennial Commission upon the request of the Governor or the legislature of a state, or upon the request of the chief executive in the case of the District of Columbia, the Commonwealth of Puerto Rico, and the territories of American Samoa, Guam, and the Virgin Islands. A State Bicentennial Commission, so recognized, shall qualify as a state advisory commission under section 6(d) of Pub. L. 98–101, 97 Stat. 722. This Commission is authorized to delegate authority to such state advisory commissions to assist the Commission in carrying out its purposes.

(b) *Use of Logo.* Recognized state bicentennial commissions are authorized to use and to grant use of the National Bicentennial Logo. Permission to use the Logo may be granted only to nonprofit organizations which are sponsors of projects officially recognized by a state commission as a part of a state bicentennial program, provided such sponsors have been advised in writing by the state commission of such recognition. In order to grant use of the Logo, the state commission shall determine in advance that the project will increase public understanding and appreciation of the U.S. Constitution, and that it will be adequately financed and directed.

(c) *Nonprofit organizations.* Nonprofit organizations which are sponsors of state-recognized projects may be authorized to use the National Bicentennial Logo solely in connection with the recognized project. Such use shall include the legend, "Recognized by the [Name of State Bicentennial Commission]."

(d) *Monitoring responsibility.* A state commission which grants use of the National Bicentennial Logo shall be responsible for monitoring such use to assure that it is consistent with the requirements of this Commission and with the letter and spirit of Pub. L. 98–101, 97 Stat. 719, and any amendments thereto.

§ 2001.37 Designated bicentennial communities.

(a) *Definitions.* The Commission encourages local governing bodies to establish Bicentennial Communities. The term "community" includes all political subdivisions having an elected government, such as a city, county, town, village, township, borough, any Native American tribe or reservation, or any combination thereof. Unincorporated areas which have an established identity of their own may also apply for designation through any representative organization satisfactory to the Commission or a state bicentennial commission.

(b) *Qualification criteria.* A Designated Bicentennial Community is one which (1) has established a bicentennial committee broadly representative of the community; (2) has developed a commemorative program that will educate its residents about the meaning and significance of the Constitution; and, (3) has received an official designation from the Commission.

(c) *Application process.* (1) To be considered as a Designated Bicentennial Community, a community should submit a completed application form to its State bicentennial commission. Upon approval by the State commission, the application with the State commission's recommendation shall be sent to this Commission for its review and decision. (See Subpart D—Selection Process, of this part.)

(2) The Commission shall issue a Certificate of Designation to all communities whose applications are approved by the Commission or its Staff Director. In the absence of a recognized State bicentennial commission, official recognition may be granted through submission of a completed application directly to this Commission where it will be reviewed and, if approved by the Commission's Staff Director, shall be granted.

(d) *Use of logo.* Designated bicentennial communities are authorized to grant use of the National Bicentennial Logo to nonprofit organizations which are sponsors of projects officially recognized by the designated community's bicentennial committee as part of the community bicentennial program, provided the sponsors have been advised in writing by the local bicentennial committee of such recognition.

(e) *Nonprofit organizations.* Organization sponsors of community-recognized projects are authorized to use the National Bicentennial Logo only in connection with the recognized project. Such use shall include the legend, "Recognized by [Name of Community], a Bicentennial Community."

(f) *Monitoring responsibility.* A Designated Bicentennial Community which grants use of the National Bicentennial Logo shall be responsible for monitoring such use to assure that it is consistent with the requirements of this Commission and with the letter and spirit of Pub. L. 98–101, 97 Stat. 719, and any amendments thereto.

Subpart D—Selection Process

§ 2001.40 Submission of applications.

To apply for Cosponsorship or Official Recognition of a project, or for a Designated Bicentennial Community, sponsors and applicants must complete a Commission application form and submit it together with all required materials to: Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC. 20503. Copies of application forms may be obtained from the Commission.

§ 2001.41 Application requirements.

(a) Project applications should include a comprehensive description of the project and a narrative statement indicating how the project meets the criteria established by the Commission, as provided on the application form. The application shall include a statement that the applicant agrees to be bound by all policies, requirements, regulations and other decisions made by the Commission affecting the applicant's project and responsibilities. (See Appendix B for sample form.)

(b) Applications for designation as a bicentennial community should include basic data on the community, identification of the community bicentennial committee and a brief statement as to how its commemorative program and plans will educate residents about the meaning and significance of the Constitution. (See Appendix C for sample form.)

§ 2001.42 Evaluation.

The Commission staff shall evaluate all requests for cosponsorship or official recognition, and for designation as a bicentennial community, and shall prepare recommendations for action thereon. The Commission shall be informed of all applications for cosponsorship or official recognition and of all requests for recognition of state bicentennial commissions and designated bicentennial communities.

§ 2001.43 State commission approval.

(a) Approval of the appropriate state bicentennial commission shall be required if a project which meets the recognition requirements under § 2001.35(a) of these regulations is to be conducted or carried out within a single state. In the absence of an officially recognized state bicentennial commission, a project application shall

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be processed by this Commission without such approval.

(b) If a project is not of regional, national, or international significance so as to meet the recognition requirements under § 2001.35(a) of these regulations, and it is to be conducted or carried out within a single state, the project application should be submitted to and approved by the appropriate bicentennial community or state bicentennial commission. If neither exists, the application may be sent directly to this Commission.

§ 2001.44 Letter of encouragement.

The Commission may issue a letter of encouragement when a project demonstrates outstanding merit but has not yet reached that stage of development or obtained that level of support which would provide reasonable assurance of implementation. This letter does not authorize use of the National Bicentennial Logo.

§ 2001.45 Commission approval.

Commission approval of an application shall be in writing and shall result in the issuance of a letter of agreement to cosponsorship or a certificate of official recognition, or a certificate of designation establishing a bicentennial community.

Subpart E—Coordination and Information

§ 2001.50 National register of bicentennial projects.

(a) As a means of coordination, and to enable the Commission to provide information and advisory assistance to all interested individuals and groups, the Commission shall maintain a National Register of Bicentennial Projects.

(b) This Register shall include all those projects, activities, and programs in which the Commission has involved itself. These may also be publicized by inclusion in commemorative calendars and schedules of bicentennial events published by the Commission.

(c) Within the limits of Commission resources, and to the extent feasible, the National Register shall be expanded to include officially recognized bicentennial projects approved and reported to the Commission by state bicentennial commissions and bicentennial communities.

Appendix A to Part 2001—National Bicentennial Logo

This appendix is intended to improve the utility of Part 2001 by setting forth a depiction of the National Bicentennial Logo, criteria for its use and a detailed description. The Logo was designed and adopted by the Commission under authority of section 5(j), Pub. L. 96-101, as the official emblem of the bicentennial. As such, it is the subject of Subpart B of these regulations and it has been registered as a trademark of the Commission. Copies may be obtained from the Commission. This appendix does not amend or affect existing portions of CFR text, nor does it introduce new requirements or restrictions into the regulations of the Commission.

Criteria for use

The Logo must always be reproduced in its entirety as adopted by the Commission and depicted below. It may not be altered nor may it be overprinted with any legends, symbols or markings. When used by State Bicentennial Commissions, Designated Bicentennial Communities, nonprofit organizations, officially recognized project sponsors and other users, the Logo must bear a legend beneath it that reflects authorization for use.

Description of Logo

In color the Logo is intended to appear on a white or light-colored field. The canton of the American flag is dark blue and the stripes are bright red. The scroll lettering and borders are in gold; the eagle and flag staff are in gold. The circular lettering and dates are in dark blue. When printed in color, the following PMS color designations must be used: Gold, PMS 873C; Red, PMS 199C; Blue, PMS 281C. The Logo may also be duplicated wholly in black or dark blue on a light or white field.



Appendix B to Part 2001—Application for Project Recognition

This Appendix is intended to improve the utility of Part 2001 by setting forth a sample application form as a guide for use in applying to the Commission for cosponsorship or official recognition of a bicentennial project. It does not amend or affect existing portions of the CFR text, nor does it introduce new requirements or restrictions into the regulations of the Commission. Copies are available from the Commission.

The expectation of the Commission is that this sample application form will be used as a guide for all project recognition or cosponsorship applications. Applicants should modify informational requirements as may be necessary for particular projects or activities. As a general matter, however, information requested on the form below will be required by the Commission for its evaluation process prior to granting official recognition of a commemorative project.

Note to Applicants

It is not required, but it will be helpful in expediting review by the Commission for applicants to transmit three (3) copies of their Application (the original and two copies). To the extent practicable, it will be appreciated if the Application and accompanying papers are printed or typed on 8½" x 11" pages, one-side only.

Commission File No. _____

Application for Official Recognition by the Commission on the Bicentennial of the United States Constitution

(Please type or print)

Date of Application.

I. Identification

1. _____
Name of sponsor (individual, organization, or agency).
2. _____
Address of sponsor.
3. _____
Sponsor's telephone number.
4. _____
Name of project for which recognition is sought.
5. _____
Name of project director.
6. _____
Address and telephone No. (if different from sponsor).

II. General Background Information (attach separate sheet)

1. Brief identification and history of the sponsor, including names of the members of the Board of Directors or other leadership body of the sponsoring organization, relevant background of principal organization's personnel, and description of sponsor's previous experience, if any, with this type of project.

Please indicate who will be responsible for the operation of the project and in what capacity they will be so responsible. Please attach resumes of director and co-director or equivalents. If sponsor is a nonprofit 501(c)(3) organization, please attach IRS verification.

2. A summary of the operations and programs of the sponsoring organization during the year immediately preceding the date of this application, including income and budget data. (Not applicable to newly formed organizations.)

3. Please attach copies of significant or representative endorsements of the project by individuals and governmental, business, community, service, academic, Bicentennial, or other organizations.

III. Project Description (attach additional sheets)

1. Provide a brief (no more than one typewritten page) description of the project for which recognition is sought.

2. Attach a comprehensive description of the project in narrative form, including the ways in which the project will be carried out, dates at which significant milestones will be reached, the approximate number and background of probable participants and/or audience, and any other information relevant to the successful conduct of the project. Also, please indicate how the project meets the regulatory criteria established by the Commission on the Bicentennial of the U.S. Constitution (45 CFR Part 2001).

IV. Timing and Budget Information

1. Please state the beginning and ending dates of the project. If specific dates are not yet determined, please state the criteria that will determine the duration of the project.

Period of major emphasis: _____

2. Total actual or estimated cost of project:
$ _____
Actual ——— Estimated ———

3. Total funds available (Do not include funds committed but not yet received):
$ _____

4. Please indicate the sources of funds included in number 3 above:

	Amount
Federal	
State	
Local government	
Corporate	
Foundation grants	
Other	

Please indicate below the government agencies and programs, if any, from which funds have been received and, if you choose to do so, the names of corporations and foundations that have provided funds.

5. Please indicate by source the amount of required funds not currently available for the project but that are committed or otherwise anticipated. Please indicate the status of any pending applications or requests, including approximate time receipt of funds is expected.

	Amount	Status
Federal		
State		
Local government		
Corporation		
Foundation grants		
Other		

If you choose to do so, please indicate the agencies, corporations, foundations, or other sources of anticipated funds.

6. Briefly describe the system of supervision of funds that will be employed for this project.

The signature below attests to the applicant's agreement to be bound by all policies, requirements, regulations, and other decisions that have been made, or will be made, by the Commission on the Bicentennial of the United States Constitution affecting the applicant's project and responsibilities.

Signature of Responsible Officer:

Title: _____
Date signed: _____

Note to Applicants: It is not required, but it will be helpful to the Commission, for applicants to transmit three (3) copies of their Application together with the original. Also, to the fullest extent practicable, it will be appreciated if the Application and accompanying papers are printed or typed on 8½" x 11" pages, one-sided only.

Please send to:

Commission on the Bicentennial of the United States Constitution, Plans and Project Recognition, 734 Jackson Place, NW., Washington, DC 20503.

Appendix C to Part 2001—Bicentennial Community Application

This Appendix is intended to improve the utility of Part 2001 by setting forth a sample application form for use by local governing bodies and representative community organizations in applying to the Commission for official recognition and designation as a Bicentennial Community. This appendix does not amend or affect existing portions of CFR text, nor does it introduce new requirements or restrictions into the regulations of the Commission.

The expectation of the Commission is that this form or a facsimile thereof will be used by community groups and local governing bodies for all Bicentennial Community applications. Applicants may find it necessary to modify or add to the basic information requested on this form. As a general matter, however, this information is required by the Commission for its review and approval process. Copies of the form are available from the Commission.

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BICENTENNIAL COMMUNITY APPLICATION

The Commission on the Bicentennial of the United States Constitution takes great pleasure in extending to you and your community a cordial invitation to participate in the 200th anniversary of the writing of this historic document.

The creation and development of our representative government from Revolution through Independence and to the present is a remarkable story that is best commemorated through local observance. The Bicentennial Community Program enables citizens of large cities and small towns alike to participate in this recognition of American history. We sincerely urge you to join this program by completing the enclosed application.

REGULATIONS ON DESIGNATING BICENTENNIAL COMMUNITIES

The Commission encourages local governing bodies to establish Bicentennial Communities. The term "community" includes all political subdivisions having an elected government, such as a city, county, town, village, municipality, township, borough, any Native American tribe or reservation, or any combination thereof. Unincorporated areas which have an established identity of their own also may apply for designation.

A Designated Bicentennial Community is one which (1) has established a Bicentennial Committee broadly representative of the Community; (2) has developed and approved plans for a commemorative program that will educate its residents about the meaning and significance of the Constitution; and, (3) has received an official designation from the federal Commission.

To be considered a Designated Bicentennial Community, a community should submit a completed application form to its State Bicentennial Commission. Upon approval by the State Commission, the application with the State Commission's approval noted will be sent to the federal Commission for its review and decision. Notification of approval as a Designated Bicentennial Community then will be forwarded to the local Bicentennial group by the federal Commission.

STATE/LOCAL AFFAIRS
COMMISSION ON THE BICENTENNIAL
OF THE
UNITED STATES CONSTITUTION

734 Jackson Place, N.W.
Washington, D.C. 20503
(202) 653-8808

Basic Data
(Please Type or Print)

DATE OF APPLICATION	NAME OF COMMUNITY	
TYPE (city, county, etc.)	POPULATION	STATE
COUNTY	COUNTY SEAT	
MAILING ADDRESS (include zip)		
OFFICIAL NAME OF BICENTENNIAL GROUP		
LOCAL BICENTENNIAL CHAIRPERSON		PHONE NUMBER (include area code)
MAILING ADDRESS (include zip)		
NAME OF CHIEF ELECTED LOCAL OFFICIAL		PHONE NUMBER (include area code)
MAILING ADDRESS (include zip)		

Brief Outline of Bicentennial Plans

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Bicentennial Community Application

(Name of Community)

Please list names, addresses and affiliations of the members of your Bicentennial group. If you need more space to list members, use blank sheets and attach.

NAME	ADDRESS	AFFILIATION

Certification

IT IS CERTIFIED:

1. That as Chairperson of the Bicentennial Group, I am Authorized to Sign This Certification.
2. That all the Above Procedural Steps Have Been Accomplished.
3. That the Undersigned or my Successor will Furnish Periodic Progress Reports When Requested.
4. That if Approved, the National Logo will be Used in Accordance With Federal Commission Regulations.

SPACE FOR OFFICIAL SEAL

Signature of Chairperson

Signature of Chief Elected Official

[FR Doc. 86-23002 Filed 10-14-86; 8:45 am]
BILLING CODE 6340-01-C

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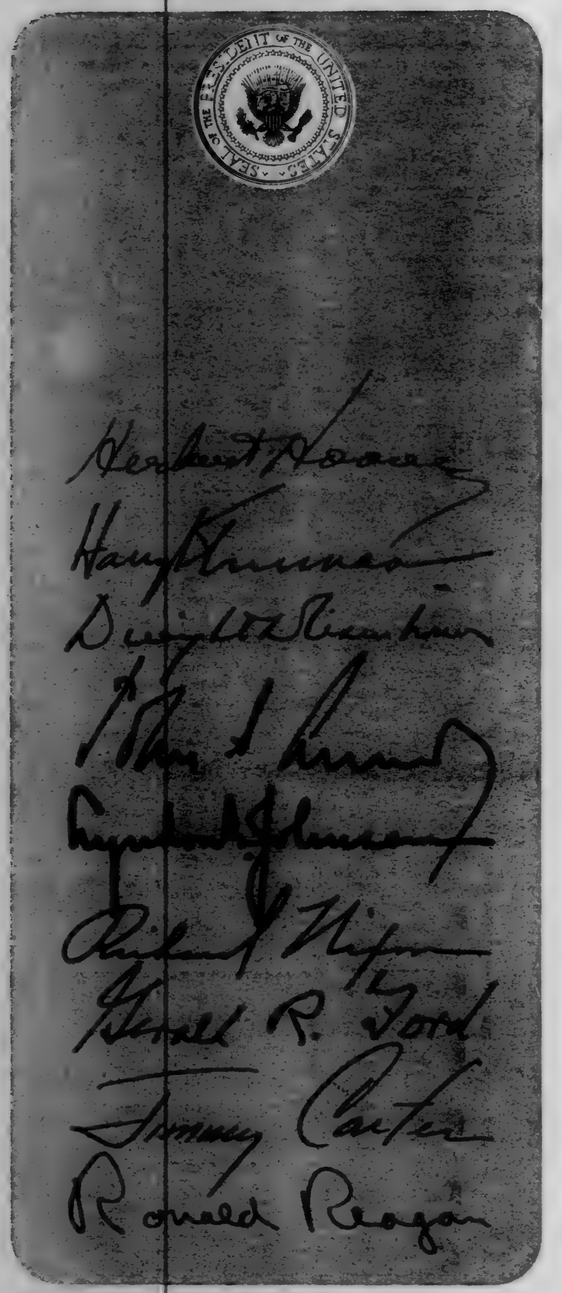
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VOL
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10-16-86
Vol. 51 No. 200

federal register

Thursday
October 16, 1986

**********5-DIGIT 48106

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SECOND CLASS NEWSPAPER
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VOL
51
ISS
200
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10-16-86
Vol. 51 No. 200
Pages 36795-36990

federal register

Thursday
October 16, 1986

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VOL
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 540

Performance Management and Recognition System; Minimum Performance Award Funding

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising the minimum percentage for calculating funds to pay performance awards to Performance Management and Recognition System (PMRS) employees for Fiscal Year 1987. Establishing a new minimum percentage each year is required by Title II of the Civil Service Retirement Spouse Equity Act of 1984, which established the PMRS.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Jack Pokoyk, (202) 632–7620.

SUPPLEMENTARY INFORMATION: On August 20, 1986, at 51 FR 29855, OPM published a proposed regulation setting the minimum funding for performance awards to be paid to PMRS employees for Fiscal Year 1987, with a 30-day comment period. During the comment period, which ended September 19, 1986, OPM received one agency comment on the proposed legislation.

The agency recommended that OPM defer issuance of the final regulation, pending congressional action on FY 1987 appropriations. The agency thinks that, if congressional action requires agencies to make severe budget reductions, OPM should retain last year's award budget percentage (.85 percent) for FY 1987.

OPM is required by statute to prescribe regulations annually adjusting the percentage incrementally over the previous fiscal year (5 U.S.C. 5406(c)(2)(A)(i)). The last incremental adjustment expired September 30, 1986. Therefore, we are unable to adopt the agency's suggestion, and we are issuing the final regulation as it was originally proposed.

Waiver of 30-Day Delay in Effective Date of Final Regulation

Pursuant to section 553(d)(3) of Title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective retroactively to meet the requirement in section 5406(c)(2)(A)(i) of Title 5, U.S. Code, as described in the discussion of the agency comment above. October 1, 1986, begins a new fiscal year (FY 87) and therefore OPM must adjust the minimum percentage for performance awards incrementally over the minimum percentage used in Fiscal Year (1986) on that date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees and agencies.

List of Subjects in 5 CFR Part 540

Government employees, Wages.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Part 540 as follows:

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

1. The authority citation for Part 540 continues to read as follows:

Authority: 5 U.S.C. Chapters 43 and 54.

2. Section 540.109(b)(1)(i) is revised to read as follows:

§ 540.109 Performance awards.

* * * * * *

(b) * * *

(1) * * *

(i) Each agency is required to pay a minimum of .95 percent of the estimated aggregate amount of PMRS employees' basic pay for Fiscal Year 1987 for performance awards;

* * * * * *

[FR Doc. 86–23370 Filed 10–15–86; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Parts 870 and 872

Federal Employees' Group Life Insurance Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These regulations make two logical changes to the administration of the Federal Employees' Group Life Insurance Program—a designation of beneficiary will no longer cancel on the day an employee transfers to another agency; and the effective date of a cancellation of family optional insurance may be made retroactive under specified conditions. These two changes will make the Program more responsive to the needs of employees and annuitants.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Agatha Gray, (202) 632–0003.

SUPPLEMENTARY INFORMATION: On June 12, 1986, the Office of Personnel Management (OPM) published proposed regulations in the **Federal Register** (51 FR 21368) to eliminate the provision whereby a Federal employee's designation of beneficiary for payment of group life insurance proceeds automatically cancels on the day the employee transfers (except by mass transfer) to another agency. OPM also proposed allowing a cancellation of family optional insurance to be retroactive to the end of the pay period in which there ceased to be eligible family members whenever an employee or annuitant so requests and provides proof satisfactory to the employing office that there was no longer any family member eligible for coverage.

OPM received two written comments during the 60-day comment period. However, several agency life insurance officers provided oral comments expressing their support for our revisions under the FEGLI Program.

Only one commenter suggested changing the regulations. The suggested change was for OPM to specify an

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effective date 60 to 90 days after publication of the final regulations. The commenter believes that agencies need this time to inform employees of the elimination of the automatic cancellation of designation of beneficiary provision. We did not adopt this suggestion because we believe it is unnecessary. Most employees are unaware that a transfer to another Federal agency presently results in automatic cancellation of the designation of beneficiary. Delaying the effective date would only hamper our efforts to prevent the insurance carrier's payment of large amounts of money to an unintended beneficiary.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees and annuitants.

List of Subjects in 5 CFR Parts 870 and 873

Administrative practice and procedures, Government employees, Life insurance, Retirement.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Parts 870 and 873 as follows:

PART 870—BASIC LIFE INSURANCE

1. The authority citation for Part 870 continues to read as follows:

Authority: 5 U.S.C. 8716

2. In § 870.901, paragraph (f) is revised to read as follows:

§ 870.901 Designation of beneficiary.

* * * * *

(f) A designation of beneficiary is automatically canceled 31 days after the employee stops being insured.

* * * * *

PART 873—FAMILY OPTIONAL LIFE INSURANCE

3. The authority citation for Part 873 continues to read as follows:

Authority: 5 U.S.C. 8716

4. In § 873.204, paragraph (b) is revised to read as follows:

§ 873.204 Declination.

* * * * *

(b) A cancellation of family optional insurance becomes effective and family optional insurance stops at the end of the pay period in which the declination of waiver is properly filed, except that at the request of the employee or annuitant and upon proof satisfactory to the employing office that there was no family member eligible for coverage, the effective date of the cancellation may be made retroactive to the end of the pay period in which there ceased to be eligible family members.

* * * * *

[FR Doc. 86-23300 Filed 10-15-86; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ASW-9; Amdt. 39-5430]

Airworthiness Directives; Rogerson Hiller Corp., Model UH-12D, UH-12E, UH-12E4, and Military Model OH-23F and OH-23G Series Helicopters, Including all Models Converted to Turbine Power by STC SH177WE and STC SH178WE Equipped With Main Rotor Blade Assembly, Parson's Part Number (P/N) 2253-1101-04 or 2253-1101-03

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) which presently requires inspections of the main rotor blade on certain Rogerson Hiller Corporation series helicopters. After issuing the AD, the FAA has received reports of additional incidents of severe cracking and one complete blade failure that resulted in a nonfatal accident. This amendment requires a daily visual check, reduces the compliance time for the dye penetrant inspection, and requires additional main rotor blade overhauls. This action is considered necessary to prevent potential main rotor blade failure which could result in loss of the aircraft.

EFFECTIVE DATES: November 3, 1986.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 3, 1986.

Compliance: As prescribed in body of the AD.

Comment Date: Comments must be received on or before December 1, 1986.

Comments on this amendment may be mailed in duplicate to Federal Aviation Administration, Southwest Region, Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, Texas 76106, or delivered in duplicate to the above address, Room 158, Building 3B.

Comments delivered must be marked: Docket No. 86-ASW-9.

Comments may be inspected at Room 158, Building 3B, between the hours of 8 a.m. and 4:30 p.m. weekdays, except Federal holidays.

ADDRESSES: The applicable service bulletin may be obtained from Rogerson Hiller Corporation, 2140 West 18th Street, Port Angeles, Washington 98362-0262.

A copy of the service bulletin is contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas. The service bulletin may also be examined at the Seattle Aircraft Certification Office, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Brodie, Rotorcraft Standards Staff, ASW-110, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624-5116 or FTS 734-5116.

SUPPLEMENTARY INFORMATION: This amendment supersedes Amendment 39-3836 (45 FR 46345; July 10, 1980), AD 80-14-12, which currently requires repetitive inspections of certain main rotor blades for chipping and looseness of paint and fairing compound, dye penetrant inspections of the main rotor blade spar, a "coin tap" test of specified areas of the main rotor blade, and visual inspection of the surface of the fairing compound along the aft edge of the steel spar for indications of rust. After issuing Amendment 39-3836, the FAA received reports of two additional incidents of severe cracking and one complete blade failure that resulted in a nonfatal accident. In addition, the FAA has recently received reports that main rotor blades sent to approved overhaul facilities for additional overhaul in accordance with Rogerson Hiller SB UH12-51-6, dated December 19, 1985, have resulted in an approximate 60-percent rejection rate. Therefore, the FAA is superseding Amendment 39-3836 by establishing a visual check to be accomplished daily by the pilot and by decreasing both the dye penetrant inspection and the blade overhaul intervals.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making the amendment effective in less than 30 days.

Request for Comments on the Final Rule

Although the action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. If the FAA finds that changes are appropriate, rulemaking proceedings to amend the regulation will be initiated.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.

2. By superseding Amendment 39-3836 (45 FR 46345), AD 80-14-12, with the following new AD:

Rogerson Hiller Corp.: Applies to Model UH-12D, UH-12E, and UH-12E4 series helicopters, including military Models OH-23F and OH-23G, and all those converted in accordance with STC's SH177WE and SH178WE, certificated in any category, equipped with main rotor blade assembly Parson's P/N 2253-1101-04 or 2253-1101-03. This AD supersedes AD 80-14-12, Amendment 39-3836.

Compliance is required as indicated, unless already accomplished.

To prevent main rotor blade failure due to cracking of the spar or delamination of the trailing edge skin from the spar, accomplish the following:

(a) Prior to the first flight of each day after the effective date of this AD, visually check the main rotor blades (P/N 2253-1101-04 or -03) for cracks in the leading edge area identified in figure 1 of Rogerson Hiller Service Bulletin (SB) No. UH12-51-6, dated December 19, 1985.

(b) Within the next 25 hours' time in service after the effective date of this AD and thereafter at intervals not to exceed 25 hours' time in service from the last inspection, conduct a dye penetrant or magnaflux inspection of the blade for cracks in accordance with paragraph IIB of Rogerson Hiller SB No. UH12-51-6, dated December 19, 1985.

(c) Within the next 100 hours' time in service after the effective date of this AD and thereafter at intervals not to exceed 100 hours' time in service from the last inspection, conduct a visual and coin tap inspection of the spar to trailing-edge-skin bond line for corrosion and voids in accordance with paragraph IIC of Rogerson Hiller SB No. UH12-51-6, dated December 19, 1985.

(d) If the blade has not been overhauled and has over 1,000 hours' time in service, or has had the 2,500-hour overhaul and has more than 3,500 hours' time in service, overhaul the blade within the next 100 hours' time in service and thereafter at intervals not to exceed 1,000 hours' time in service.

(e) When the overhauls required by paragraph (d) have been accomplished, conduct the dye penetrant checks required by paragraph (b) at intervals not to exceed 100 hours' time in service.

Note 1. The overhauls required by paragraph (d) may be accomplished by an FAA authorized repair station whose certificate indicates approval for overhaul or major repair of Fairchild Hiller main rotor blades.

Note 2. A maintenance record entry showing compliance with this AD is required by FAR § 91.173.

(f) If discrepancies are found as a result of compliance with this AD which exceed the limitations specified in Rogerson Hiller SB No. UH12-51-6, dated December 19, 1985, replace the blade prior to further flight.

(g) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to operate helicopters to a base for the accomplishment of inspections required by this AD.

(h) Alternative inspections, modifications, blade overhaul methods' or other actions which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

This procedure shall be done in accordance with Rogerson Hiller Service Bulletin UH12-51-6, revised December 19, 1985. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Rogerson Hiller Corporation, 2140 West 18th Street, Port Angeles, Washington 98362-0262.

Copies may be inspected at the Office of Regional Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective November 3, 1986.

This amendment supersedes Amendment 39-3836 (45 FR 46345), AD 80-14-12.

Issued in Fort Worth, Texas, on September 24, 1986.

Don P. Watson,
Acting Director, Southwest Region.

[FR Doc 86-23281 Filed 10-15-86; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-124-AD; Amdt. 39-5443]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 airplanes, which requires inspection for proper clearance between the number two engine fuel feed tube and adjacent strut fairing fasteners, and adjustment or replacement, if necessary. This action is prompted by a report of a fuel leak on one airplane, resulting from chafing between the fuel tube and fasteners. This condition, if not corrected, could result in a strut fire.

EFFECTIVE DATE: November 24, 1986.

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ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Aerospace Engineer, Propulsion Branch, ANM–140S; telephone (206) 431–1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection for proper clearance, and adjustment or replacement, if necessary, of the number two engine fuel feed tube was published in the Federal Register on June 3, 1986 (51 FR 19846). The comment period for the proposal closed on July 25, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received, which was from the Air Transport Association (ATA) of America on behalf of its members. The member airlines had no objections to the provisions of the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 60 airplanes of U.S. registry will require the inspection, which will require one manhour per airplane. It is estimated that 30 airplanes of U.S. registry will require modification, which will require 5 manhours per airplane. At an estimated labor cost of $40 per manhour, the total cost impact of this AD on U.S. operator is estimated to be $8,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737–300 airplanes are operated by small entities. A final regulatory evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation of Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to the Model 737–300 series airplanes specified in Boeing Alert Service Bulletin 737–28A1062, Revision 1, dated April 11, 1986, certificated in any category.

To minimize the fire hazard associated with a fuel leak, due to the fuel feed tube assembly chafing against strut fasteners, accomplish the following within 3 months after the effective date of this AD, unless previously accomplished:

A. Inspect and, if necessary, adjust fuel feed tube assembly clearance and replace chafed tubes in accordance with Boeing Service Bulletin 737–28A1062, Revision 1, dated April 11, 1986, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Nowthwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received copies of the manufacturer's Service Bulletin may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certificate Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment become effective November 24, 1986.

Issued in Seattle, Washington, on October 8, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–23280 Filed 10–15–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 73

[Airspace Docket No. 86–AWP–26]

Revocation of Restricted Area R–2521 Salton Sea, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the existing Restricted Area R–2521 in the state of California. This action is necessary since the Department of Navy no longer uses the airspace. This action restores for public use previously restricted airspace.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9245.

The Rule

The purpose of these amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) is to revoke Restricted Area R–2521 in the state of California. The Department of Navy, which is the using agency, has informed the FAA that the area is too small to effectively contain scheduled flight operations. The Department of Navy has, therefore, requested that Restricted Area R–2521 be eliminated Because the purpose of the area no longer exists, and becuse this action would simply restore the airspace to public use, I find that notice or public procedure under 5 U.S.C. 533(b) is unnecessary because the action is a minor amendment on which the public would not be particularly interested in commenting. Sections 71.151 and 73.25 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation Safety, Continental Control Area and Restricted Areas

Adoption of the Amendments

PARTS 71 AND 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. § 71.151 is amended as follows:

R–2521 Salton Sea, CA [Remove]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

1. § 73.25 is amended as follows:

R–2521 Salton Sea, CA [Remove]

Issued in Washington, DC, on October 3, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–23282 Filed 10–15–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 25092; Amdt. No. 1331]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference: Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Standard Instrument approaches, Incorporation by reference.

Issued in Washington, DC on October 3, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective January 15, 1987

Montague, CA—Siskiyou County, NDB–A, Amdt. 6

Effective December 18, 1986

Santa Rosa, CA—Sonoma County, VOR RWY 32, Amdt. 18

Santa Rosa, CA—Sonoma County, ILS RWY 32, Amdt. 14

Roseau, MN—Roseau Muni, VOR–A, Amdt. 5

Roseau, MN—Roseau Muni, VOR RWY 16, Amdt. 4

Warroad, MN—Warroad Intl-Swede Carlson Field, RNAV RWY 31, Amdt. 1

Billings, MT—Billings Logan INTL, LOC BC RWY 27R, Amdt. 7, Cancelled

Lovelock, NV—Derby Field, VOR/DME RWY 1, Amdt. 1, Cancelled

Plattsburgh, NY—Clinton Co, VOR–A, Amdt. 16, Cancelled

Plattsburgh, NY—Clinton Co, VOR RWY 19, Orig

Plattsburgh, NY—Clinton Co, ILS RWY 1, Amdt. 1

Potsdam, NY—Potsdam Muni/Damon FLD—VOR/DME RWY 24, Amdt. 4

Potsdam, NY—Potsdam Muni/Damon FLD, NDB RWY 24, Amdt. 3

Saranac Lake NY—Adirondack, NDB RWY 23, Amdt. 5

Saranac Lake, NY—Adirondack, ILS RWY 23, Amdt. 7

Albemarle, NC—Stanly County, NDB RWY 4, Amdt. 2

Burlington, VT—Burlington Intl, VOR RWY 1, Amdt. 10

Burlington, VT—Burlington Intl, NDB RWY 15, Amdt. 17

Burlington, VT—Burlington Intl, ILS RWY 15, Amdt. 20

Highgate, VT—Franklin County State, VOR–A, Amdt. 2, Cancelled

Highgate, VT—Franklin County State, VOR–B, Orig

Moen Island, TT—Truk Intl, NDB–A, Amdt. 1

Moen Island, TT—Truk Intl, NDB–B, Amdt. 3

Moen Island, TT—Truk Intl, NDB/DME RWY 4, Amdt. 1

Moen Island, TT—Truk Intl, NDB/DME RWY 22, Amdt. 1

Effective November 20, 1986

Mobile, AL—Bates Field, VOR OR TACAN RWY 9, Amdt. 23

Mobile, AL—Bates Field, NDB RWY 14, Amdt. 1

Mobile, AL—Bates Field, ILS RWY 14, Amdt. 28

Mobile, AL—Bates Field, ILS RWY 32, Amdt. 5

Bakersfield, CA—Meadows Field, VOR RWY 12L, Amdt. 4

Bakersfield, CA—Meadows Field, LOC BC RWY 12L, Amdt. 8

Bakersfield, CA—Meadows Field, NDB RWY 30R, Amdt. 4

Bakersfield, CA—Meadows Field, ILS RWY 30R, Amdt. 24

Modesto, CA—Modesto City County Arpt—Harry Sham Fld., NDB RWY 28R, Amdt. 7

Modesto, CA—Modesto City County ARPT—Harry Sham Fld, ILS RWY 28R, Amdt. 11

Fort Lauderdale, FL—Ft Lauderdale-Hollywood Intl, ILS RWY 27R, Amdt. 2

Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 8R, Amdt. 44, Cancelled

Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 9L, Amdt. 8, Cancelled

Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 26L, Amdt. 15, Cancelled

Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 27R, Amdt. 5, Cancelled

Atlanta, GA—The William B. Hartsfield Atlanta Intl, RADAR–1, Amdt. 30

Moultrie, GA—Moultrie Muni, RNAV RWY 22, Amdt. 1, Cancelled

Winder, GA—Winder, VOR/DME–A, Amdt. 9

Winder, GA—Winder, LOC RWY 31, Amdt. 8

Coeur d'Alene, ID—Coeur d'Alene Air Term, ILS RWY 8, Amdt. 2

Owensboro, KY—Owensboro-Daviess County, VOR RWY 5, Amdt. 9, CANCELLED

Owensboro, KY—Owensboro-Daviess County, VOR RWY 17, Amdt. 5

Owensboro, KY—Owensboro-Daviess County, VOR RWY 35, Amdt. 13

Owensboro, KY—Owensboro-Daviess County, NDB RWY 35, Amdt. 5

Owensboro, KY—Owensboro-Daviess County, ILS RWY 35, Amdt. 7

Hagerstown, MD—Washington County Regional, ILS RWY 27, Amdt. 5

Beverly, MA—Beverly Muni, VOR RWY 16, Amdt. 2

Beverly, MA—Beverly Muni, LOC RWY 16, Amdt. 3

Beverly, MA—Beverly Muni, NDB–A, Amdt. 10

Lansing, MI—Capital City, VOR RWY 6, Amdt. 21

Lansing, MI—Capital City, VOR RWY 24, Amdt. 6

Lansing, MI—Capital City, NDB RWY 28L, Amdt. 22

Lansing, MI—Capital City, ILS RWY 10R, Amdt. 7

Lansing, MI—Capital City, ILS RWY 28L, Amdt. 23

Gothenburg, NE—Quinn Field, VOR–A, Orig

Gothenburg, NE—Quinn Field, NDB RWY 32, Orig

Millville, NJ—Millville Muni, LOC RWY 10, Amdt. 3, Cancelled

Millville, NJ—Millville Muni, ILS RWY 10, Orig

Erwin, NC—Harnett County, NDB RWY 22, Orig

Smithfield, NC—Johnston County, NDB RWY 21, Amdt. 4

Johnstown, PA—Johnstown-Cambria County, VOR RWY 5, Amdt. 5

Johnstown, PA—Johnstown-Cambria County, VOR RWY 15, Amdt. 8

Johnstown, PA—Johnstown-Cambria County, VOR/DME RWY 15, Amdt. 4

Johnstown, PA—Johnstown-Cambria County, VOR RWY 23, Amdt. 6

Johnstown, PA—Johnstown-Cambria County, VOR/DME RWY 23, Orig

Johnstown, PA—Johnstown-Cambria County, ILS RWY 33, Amdt. 2

Effective October 23, 1986

Nashville, TN—Nashville Metropolitan, ILS RWY 31, Amdt. 5

Effective September 26, 1986

Kokomo, IN—Kokomo Muni, ILS RWY 23, Amdt. 4

Effective September 18, 1986

Santa Maria, CA—Santa Maria Public, LOC/DME BC–A, Amdt. 10

Note.—Remove and destroy the following proposed procedure in TL 85–13.

Petersburg, WV, Grant County, NDB–A Orig.

[FR Doc 86-23283 Filed 10-15-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Exemptions From Restrictions on ex Parte Communications in Adjudicative Proceedings

AGENCY: Federal Trade Commission.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Trade Commission is revising Rule 4.7(f) of its Rules of Practice, which governs exemptions to the prohibitions of Rule 4.7(b) against *ex parte* communications in adjudicative proceedings. The rule is revised (1) by deleting the requirement for disclosure of statements from an exempt communication that relate to facts in issue in a pending adjudicative proceeding, (2) by deleting the requirement for placement on the public record of a description of any trade secrets or other confidential information excised from such statements, (3) by expanding the exemptions of the rule to include communications between the Commission and persons outside the Commission that are occasioned by and concern a nonadjudicative function, and (4) by clarifying two of the rule's specified exemptions.

DATES: The interim rule is effective on October 16, 1986. The Commission will, however, accept comments on the revised rule that are received on or before November 17, 1986 and may re-evaluate the rule in light of those comments.

ADDRESS: Comments should be submitted to Secretary, Federal Trade Commission, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, Office of General Counsel, Federal Trade Commission, Washington, DC 20580, (202) 523–3521.

SUPPLEMENTARY INFORMATION: Current Rule 4.7(f) expressly exempts from the prohibitions of Rule 4.7(b) a communication between the Commission and its enforcement staff that is occasioned by and concerns a nonadjudicative matter before the Commission even though the matter may involve parties or issues that are also involved in a pending adjudicative proceeding. Rule 4.7(f) also includes a two sentence proviso, which states that "to the extent such communication relates to a fact in issue in a proceeding in adjudicative status, such portions will be placed in the docket binder of the proceeding to which it pertains except for trade secrets or other confidential commercial or financial information," and that "[a] brief statement describing the general subject matter of an *ex parte* communication of trade secrets or other commercial or financial information will be placed in the docket binder." This proviso was included not because it was required by law but simply to avoid "any appearance of unfairness." 42 FR 33042 (June 29, 1977). After nearly a decade of experience with the proviso, however, we have concluded that the burdens it creates far outweigh whatever appearances of unfairness it may allay.

In particular, we find that the proviso has imposed unnecessary burdens upon the staff in determining whether any given statement in an exempt communication "relate[s] to a fact in issue" in an adjudicative proceeding within the meaning of that phrase. The requirement has also had a chilling effect upon full and candid consultations between the Commission and its enforcement staff with respect to nonadjudicative matters. Section 554(d) of the Administrative Procedure Act ("APA") does not restrict such consultations even when they may involve parties or factual issues that are also involved in an ongoing Commission adjudicative proceeding. *Maremont Corp.* v. *FTC*, 431 F.2d 124, 128 (7th Cir. 1970); *Environmental Defense Fund, Inc.* v. *EPA*, 510 F.2d 1292, 1304–06 (D.C. Cir. 1975); *Environmental Defense Fund, Inc.* v. *EPA*, 548 F.2d 998, 1006 n.20 (D.C. Cir. 1976, *cert. denied*, 431 U.S. 925 (1977); *see also*, Asimow, *When the Curtain Falls: Separation of Functions in the Federal Administrative Agencies*, 81 Col. L. Rev. 759, 768 (1981). Accordingly, we have determined to delete the proviso from the rule.

We have also observed that outside persons involved in a nonadjudicative matter before the Commission seem reluctant to communicate fully and candidly with us about factual issues relevant to the matter when the same or similar issues may also be present in a pending Commission adjudicative proceeding. Their reluctance appears to stem from a concern that section 557(d) of the APA and Rule 4.7 may prohibit their communicating with us about such overlapping issues and may require disclosure or any such prohibited communication, once made.[1] If this is their concern, we do not believe that it is justified.

Section 557(d) of the APA by its terms applies only to adjudications and other formal proceedings required by statute to be determined on the record after opportunity for an agency hearing, and not to nonadjudicative matters. In particular, section 557(d) does not prohibit "any communication with an agency decisionmaking official if not involving a formal adjudicatory proceeding," H.R. Rep. No. 1441, 94th Cong., 2d Sess. 29 (1976), S. Rep. No. 1178, 94th Cong., 2d Sess. 29 (1976), or any communication that "does not directly discuss the merits of a pending adjudication." S. Rep. No. 354, 94th Cong., 1st Sess. 37 (1975); *see also* H.R. Rep. No. 880, Part I, 94th Cong., 2d Sess. 20 (1976); H.R. Rep. No. 880, Part II, 94th Cong., 2d Sess. 20 (1976). Hence, we do not believe that section 557(d) should be construed to prohibit private communications about a nonadjudicative matter between the Commission and persons outside the Commission who are involved in the matter even when such communications address factual or legal issues that may also be present in a pending Commission adjudicative proceeding. Nor do we believe that Rule 4.7(b) should be interpreted to impose any greater restrictions than are imposed by section 557(d).

Accordingly, we have revised Rule 4.7(f) to make clear that the rule's exemptions apply not only to communications between the Commission and its enforcement staff but also to those between the Commission and persons outside the Commission who are involved in a nonadjudicative matter.[2] With these revisions, the enforcement staff and outside persons should feel free to communicate fully and candidly with the Commission about any nonadjudicative matter in which they are involved.

It is conceivable, however, that a nonadjudicative matter could be so directly related to a pending adjudicative proceeding because of a mutuality of parties and facts that the Commission could conclude that the interests of justice would better be served by disclosure of a communication on the nonadjudicative

[1] Section 557(d) of the APA prohibits *ex parte* communications between an "interested person" outside an agency and an agency decisionmaker that are "relevant to the merits of [an adjudicative] proceeding." 5 U.S.C. 557(d)(1)(A) and (B). It further requires the agency decisionmaker to place any prohibited communication "on the public record of the proceeding." 5 U.S.C. 557(d)(1)(C). Rule 4.7(b) adopts the same prohibition as section 557(d) but extends its coverage to all persons outside the Commission, not just "interested persons"; Rule 4.7(c) implements section 557(d) by requiring public record disclosure of any *ex parte* communication prohibited by Rule 4.7(b).

[2] Ex parte communications between the Commission and its enforcement staff or persons outside the Commission that directly discuss the merits of a pending adjudicative proceeding will, of course, continue to be prohibited by Rule 4.7(b).

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matter. A provision has therefore been added to Rule 4.7(f) which provides for disclosure of such a communication at the Commission's discretion and under such restrictions as it may deem appropriate. Any disclosures will, of course, be subject to statutory or other legal restrictions governing confidential commercial or other information.

In addition, the exemption of current Rule 4.7(f)(1) can be read to exclude from the prohibitions of Rule 4.7(b) a communication occasioned by and concerning the "conduct or disposition" of an "adjudicative proceeding." This reading of the exemption conflicts with sections 554(d) and 557(d) of the APA. Accordingly, the exemption has been reworded so as to make clear that it applies only to communications involving a nonadjudicative matter, such as the initiation, conduct, or disposition of an investigation, the issuance of a complaint, or the initiation of a rulemaking or other proceeding.

Finally, the exemption of current Rule 4.7(f)(4) can be read to apply to the disposition of a consent settlement under Rule 3.25 only when the settlement is "executed by some but not all respondents." The exemption is, in fact, meant to cover any Rule 3.25 consent settlement, whether it involves some or all of the respondents or some or all of the charges set forth in a complaint. The rule is revised to reflect that intention.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure.

PART 4—[AMENDED]

In consideration of the foregoing, 16 CFR Part 4 is amended as follows:

1. The authority for Part 4 continues to read as follows:

Authority: Sec. 6(g), 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383, as amended (5 U.S.C. 552).

2. Section 4.7(f) is revised to read as follows:

§ 4.7 Ex parte communications.

* * * * *

(f) The prohibitions of paragraph (b) of this section do not apply to a communication occasioned by and concerning a nonadjudicative function of the Commission, including such functions as the initiation, conduct, or disposition of a separate investigation, the issuance of a complaint, or the initiation of a rulemaking or other proceeding, whether or not it involves a party already in an adjudicative proceeding; a proceeding outside the scope of § 3.2, including a matter in state or federal court or before another governmental agency; a nonadjudicative function of the Commission, including but not limited to an obligation under § 4.11 or a communication with Congress; or the disposition of a consent settlement under § 3.25 concerning some or all of the charges involved in a complaint and executed by some or all respondents. The Commission, at its discretion and under such restrictions as it may deem appropriate, may disclose to the public or to respondent(s) in a pending adjudicative proceeding a communication made exempt by this paragraph from the prohibitions of paragraph (b) of this section, however, when the Commission determines that the interests of justice would be served by the disclosure. The prohibitions of paragraph (b) of this section also do not apply to a communication between any member of the Commission, the Administrative Law Judge, or any other employee who is or who reasonably may be expected to be involved in the decisional process, and any employee who has been directed by the Commission or requested by an individual Commissioner or Administrative Law Judge to assist in the decision of the adjudicative proceeding. Such employee shall not, however, have performed an investigative or prosecuting function in that or a factually related proceeding.

By direction of the Commission, dated October 7, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86-23332 Filed 10-15-86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C-3197]

Independent Insurance Agents of America, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, prohibits a New York City-based insurance agent association from encouraging its members to refuse to deal with companies based on the companies' sales policies.

DATE: Complaint and Order issued August 25, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/L-501, James C. Egan, Jr., Washington, DC 20580 (202) 254-6024.

SUPPLEMENTARY INFORMATION: On Monday, June 9, 1986, there was published in the **Federal Register**, 51 FR 20635, a proposed consent agreement with analysis In the Matter of Independent Insurance Agents of America, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Aiding, Assisting and Abetting Unfair or Unlawful Act or Practice: § 13.290 Aiding, assisting and abetting unfair act or practice. Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring: S 13.405 To discriminate unfairly or restrictively in general

List of Subjects in 16 CFR Part 13

Insurance agents, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc 86-23348 Filed 10-15-86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. 9174]

Warner Communications, Inc., et al. and Polygram Records, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent orders.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, these consent orders require, among other things, two New York City record companies to obtain prior FTC approval before acquiring any interest in major record companies and to notify the FTC about distribution agreements planned with those companies.

DATE: Complaint issued March 19, 1984. Decisions issued September 8, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/L-501, James C. Egan, Jr., Washington, DC 20580. (202) 254-6024.

SUPPLEMENTARY INFORMATION: On Thursday, June 19, 1986, there was published in the **Federal Register**, 51 FR 22301, a proposed consent agreement with analysis In the Matter of Warner Communications, Inc., a corporation, Warner Bros. Records, Inc., a corporation, Chappell & Co., Inc., a corporation, and Polygram Records, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5-20 Federal Trade Commission Act; § 13.6 Arrangements, connections, dealings, etc.; § 13.7 Joint ventures. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements.

List of Subjects in 16 CFR Part 13

Major record companies, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc 86-23349 Filed 10-15-86; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

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16 CFR Part 13

[Docket C-3196]

Independent Insurance Agents and Brokers of California, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, prohibits a San Francisco-based insurance agent association from encouraging its members to take action against insurance companies who use direct marketing.

DATE: Complaint and Order issued Aug. 25, 1986[1]

FOR FURTHER INFORMATION CONTACT: FTC/L-501, James C. Egan, Jr., Washington, DC 20580. (202) 254-6024.

SUPPLEMENTARY INFORMATION: On Monday, June 9, 1986, there was published in the **Federal Register**, 51 FR 20635, a proposed consent agreement with analysis In the Matter of Independent Insurance Agents and Brokers of California, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Aiding, Assisting and Abetting Unfair or Unlawful Act or Practice: § 13.290 Aiding, assisting and abetting unfair act or practice. Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring: § 13.405 To discriminate unfairly or restrictively in general.

List of Subjects in 16 CFR Part 13

Insurance agents, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86-23346 Filed 10-15-86; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

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16 CFR Part 13

[Docket C-3199]

Independent Insurance Agents Association of Montana, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, prohibits a Helena, Montana-based insurance agent association from encouraging its members to refuse to deal with companies based on the companies' sales policies.

DATE: Complaint and Order issued August 25, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/L-501, James C. Egan, Jr., Washington, DC 20580. (202) 254-6024.

SUPPLEMENTARY INFORMATION: On Monday, June 9, 1986, there was published in the **Federal Register**, 51 FR 20635, a proposed consent agreement with analysis In the Matter of Independent Insurance Agents Association of Montana, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Aiding, Assisting and Abetting Unfair or Unlawful Act or Practice: § 13.290 Aiding, assisting and abetting unfair act or practice. Subpart—Coercing and Intimidating: § 13.367 Members.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

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Subpart—Combining or Conspiring:
§ 13.384 Combining or conspiring;
§ 13.405 To discriminate unfairly or restrictively in general.

List of Subjects in 16 CFR Part 13

Insurance agents, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86-23347 Filed 10-15-86; 8:45 am]

BILLING CODE: 6750-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Ground Control at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; technical amendments and corrections.

SUMMARY: This document makes nonsubstantive technical amendments and corrections to a final rule for safety standards for ground control at metal and nonmetal mines, published October 8, 1986 (51 FR 36192).

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, or Yvonne Johnson, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On October 8, 1986, the Mine Safety and Health Administration published a final rule of the safety standards for ground control at metal and nonmetal mines in Title 30 of the Code of Federal Regulations (51 FR 36192). This document makes the following nonsubstantive technical amendments and corrections:

Under **"EFFECTIVE DATE"**, eliminate the exception relating to § 57.3461.

§§ 56.3203 and 57.3203 **[Corrected]**

In §§ 56.3203(d) and 57.3203(d) the word "required" is revised to read "manufacturer's recommended hole".

(30 U.S.C. 811)

Dated: October 10, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 86-23366 Filed 10-15-86; 8:45 am]

BILLING CODE 4510-43-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1155

Statement of Organization and Procedures

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board at its May 12, 1986, meeting, adopted amendments to its Statement of Organization and Procedures, which sets forth the procedures for Board and Board committee meetings. The amendments were adopted to effect changes from the previous procedures and are being published so that all affected persons will be fully informed about procedures governing the meetings.

EFFECTIVE DATE: May 12, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Laurinda Steele, Office of Administration and Management, Architectural and Transportation Barriers Compliance Board, 330 C Street, SW., Washington, DC 20202, phone (202) 245-1801 (voice or TDD).

SUPPLEMENTARY INFORMATION: Pursuant to section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391, as amended, the Architectural and Transportation Barriers Compliance Board (ATBCB or Board) adopted a Statement of Organization and Procedures on September 16, 1975. The Statement was published at 50 FR 1032 (1985) and codified at 36 CFR Part 1155. The ATBCB adopted amendments to the Statement of Organization and Procedures several times, most recently on May 12, 1986. The reasons for the amendments are to place more responsibility for committee recommendations at the Board member level rather than at the staff level, and to provide designated committee vice chairpersons.

List of Subjects in 36 CFR Part 1155

Handicapped, Organizations and Functions (Government Agencies), Procedures.

For the reasons stated in the preamble, 36 CFR Part 1155 is amended as follows:

PART 1155—[AMENDED]

1. The authority citation for Part 1155 continues to read as follows:

Authority: 29 U.S.C. 792, Pub. L. 93-112, as amended Pub. L. 95-602.

2. Section 1155.3 is amended by revising paragraph (b)(1), removing paragraph (b)(4)(i), redesignating paragraphs (b)(4) (ii), (iii), and (iv) as (b)(4) (i), (ii), and (iii), respectively, and revising the newly redesignated paragraph (b)(4)(i) to read as follows:

§ 1155.3 Committees.

* * * * *

(b) *Subject Matter Committees—(1) Composition.* The Chairperson of the Board shall appoint an equal number of public and Federal members and a chairperson and a vice chairperson for each subject matter committee, totalling at least four (4) members on each committee.

Each chairperson may appoint an acting chairperson when both the chairperson and vice chairperson are absent.

* * * * *

(4) *Voting*—(i) Only committee members or the member of the committee who holds the absent member's proxy may vote in the committee meetings. Any other Board member agency staff and the Board staff may attend and participate in meetings but may not vote.

* * * * *

Dated: September 30, 1986.

Madeleine Will,

Vice Chairperson, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 86-23288 Filed 10-15-86; 8:45 am]

BILLING CODE 8630-BP-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-5-FRL-3095-7]

Michigan; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of Michigan for final authorization.

SUMMARY: Michigan has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (U.S. EPA) has reviewed Michigan's application and found it includes all the information necessary for final authorization. U.S. EPA is granting final authorization to the State of Michigan for the base RCRA program and Cluster I, so that it may operate its hazardous waste management program in lieu of the Federal program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: Final authorization for the State of Michigan is effective at 1:00 P.M. on October 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Sharrow, Michigan Regulatory Specialist, Solid Waste Branch, U.S. EPA, Region V, 230 South Dearborn Street, 5HS-JCK-13, Chicago, Illinois 60604, (312) 886-3716 (FTS: 8-886-3716).

SUPPLEMENTARY INFORMATION: Section 3006 of the RCRA as amended, allows U.S. EPA to authorize a State hazardous waste management program to operate in a State in lieu of the Federal hazardous waste management program. To qualify for final authorization, a State's program must: (1) Be equivalent to the Federal program; (2) be no less "stringent" than the Federal program; (3) be consistent with the Federal program and other authorized State programs; (4) provide for adequate enforcement authority; and (5) provide for public participation in the permit process. [Section 3006(b) of the RCRA, 42 U.S.C. 6926(b).]

On November 7, 1985, the State of Michigan submitted a complete application to obtain final authorization to administer the RCRA program. After completion of a comprehensive review of the State's official application, U.S. EPA forwarded comments to the State on January 22, 1986. These comments reflected several areas which the State needed to further clarify. Michigan responded satisfactorily on August 20, 1986. Region V conducted a comprehensive Capability Assessment evaluating past State program performance and present resource capability for future program implementation. The Capability Assessment, which documented that Michigan continues to demonstrate a commitment to effective implementation of the Hazardous Waste Management program, was transmitted to the State on January 24, 1986, without a Letter of Intent. Region V had found that a Letter of Intent was not necessary to ensure that certain improvements were implemented.

Since the publication of the tentative determination, Region V has continued to monitor the State, and has found that a Letter of Intent is still not necessary.

This action is documented in the Capability Assessment Update, which is available from Ms. Diane Sharrow, Michigan Regulatory Specialist, Solid Waste Branch, U.S. EPA, Region V, 230 South Dearborn Street, 5HS-JCK-13, Chicago, Illinois, 60604, (312) 886-3716, (FTS: 8-886-3716).

Decision

After reviewing the public comments and the clarifications made by the State, I conclude that Michigan's application for final authorization meets all the statutory and regulatory requirements established by RCRA. Accordingly, Michigan is granted final authorization to operate its hazardous waste management program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984, [Pub. L. 98-616, November 8, 1984 (HSWA)]. Michigan now has the responsibility for permitting hazardous waste management treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to HSWA. In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. U.S. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA provisions apply in authorized States in the interim. This authority will remain with U.S. EPA. Michigan is not authorized to operate the RCRA program on Indian lands, and this authority will remain with U.S. EPA.

As a result of HSWA, there will be a dual State/Federal regulatory program in Michigan. To the extent the authorized program is unaffected by HSWA, the State program will operate in lieu of the Federal program. Where HSWA-related requirements apply, however, U.S. EPA will administer and enforce them in Michigan until the State receives authorization to do so. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program defines the applicable Subtitle C requirements in Michigan.

Michigan is being authorized for one provision under the HSWA: Section 3006(f), the Availability of Information Provision. Since this provision has been determined to be an extension of the current RCRA requirement, U.S. EPA has labeled this provision as both a RCRA and HSWA provision. Once the State is authorized to implement other HSWA requirements prohibitions, the State program in that area will operate in lieu of the Federal program. Until that time, the State will assist U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

U.S. EPA has published a Federal Register notice that explains in detail HSWA and its effect on authorized States. That notice was published in the July 15, 1985, Federal Register (50 FR 28702), and should be referred to for further information.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3, Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Michigan's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water supply.

Authority

(Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), and EPA Delegation 8-7.)

Dated: September 23, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86-23354 Filed 10-15-86; 8:45 am]

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40 CFR Part 403

[OW-10-FRL-3095-6]

Washington Pretreatment Program Approval and Current NPDES List

AGENCY: Environmental Protection Agency.

ACTION: Approval of NPDES Pretreatment Program for Washington State and Current NPDES List.

SUMMARY: On September 30, 1986, the Environmental Protection Agency (EPA), Region 10, approved the State of Washington's National Pollutant Discharge Elimination System (NPDES) State Pretreatment Program. This action authorizes the State of Washington to administer the National Pretreatment Program as it applies to municipalities and industries within the State. Also included, in this document, is an up-to-date listing of approved NPDES States.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Robert R. Robichaud, Water Permits and Compliance Branch M/S 521, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Ave., Seattle, WA 98101; 206/442-1448.

SUPPLEMENTARY INFORMATION: The Pretreatment Program, required by the Clean Water Act of 1977, governs the control of industrial wastes introduced into Publicly Owned Treatment Works (POTWs). The objectives of the Pretreatment Program are to: (1) prevent introduction of pollutants into POTWs which will interfere with the operations of a POTW and/or disposal of municipal sludge; (2) prevent the introduction of pollutants into POTWs which will pass through treatment works or otherwise be incompatible with such works; and (3) improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludge. The national pretreatment program within each state is administered either by the EPA or by the state upon receiving EPA approval. In either case, local POTW pretreatment programs will be the primary vehicle for administering, applying, and enforcing pretreatment standards for industrial users.

States which administer the NPDES permit program are required to submit and administer a pretreatment program under 40 CFR 403.10. To receive pretreatment program approval, a state must submit to the EPA a modification to its National Pollutant Discharge Elimination System (NPDES) program pursuant to the requirements and procedures of the General Pretreatment Regulation (40 CFR Part 403). As required by Section 403.10(f), a request for State Pretreatment Program Approval must demonstrate that the state has adequate legal authority to implement pretreatment program requirements, procedures, funding, and staffing to carry out the program.

EPA's criteria for reviewing the State of Washington's application are contained in 40 CFR 403.10(h). Simply stated, EPA is required to insure that the state has developed and submitted a program application that satisfies the applicable requirements of § 403.10. This requires an assessment as to whether the state has adequate legal authority, procedures, funds and staff to implement the program.

The State of Washington, on May 5, 1986, submitted its program application to EPA Region 10. In support of its application for pretreatment program approval, the state provided to EPA copies of the relevant statutes and regulations; an Attorney General Statement certifying, with appropriate citations to the statutes and regulations, that the state has adequate legal authority to administer the pretreatment program as required by 40 CFR Part 403; a discussion of program procedures, a workload analysis for program implementation, and a description of resources to be dedicated to administering the program.

EPA determined that the state's application was complete and, as required under 40 CFR 123.62, issued a 30-day public notice of the state's request for pretreatment program authority. Five comment letters were received during the comment period.

EPA has concluded upon reviewing all of the state's submitted materials and a review of the public comments, that the state has adequate legal authority to administer the pretreatment program, including the authority to perform each of the activities set forth in 40 CFR 403.10(f)(1)(i)–(vi), and that it has the necessary procedures and resources, including the procedures and resources listed in 40 CFR 403.10(f) (2) and (3). This conclusion is supported not only by a review of the state's program description but also is buttressed by Washington's experience in administering its approved NPDES program. The State does not have any provisions for granting removal credits (40 CFR 403.10(f)(1)(vii)) based on its desire to be more stringent than the Federal program and not grant removal credits. The State is authorized to adopt this more stringent approach by section 510 of the Clean Water Act.

The following are responses to the major comments.

Response to Major Comments

1. *Comment:* The state does not have authority to administer the federal pretreatment program on Indian lands.

Response: The state's application for the pretreatment program does not contain a request for authority to regulate Indian lands, and today's program approval extends only to non-Indian lands. The EPA will continue to implement pretreatment program requirements for industrial sources located on Indian lands.

2. *Comment:* Two commenters indicated that the state does not have comparable public participation requirements as spelled out under EPA rules (specifically 40 CFR Part 25, and 40 CFR Part 123). One of the commenters suggested that the EPA delay approval until the state enacts comparable public participation requirements.

Response: The assurance of adequate public participation is one of EPA's primary concerns when reviewing a state program submission. Pretreatment program implementation affords the public several opportunities for meaningful participation including the following:

- Participation in the development of state laws and regulations related to the pretreatment program (34.08 RCW);
- State issuance and modification of POTW's NPDES permit which include pretreatment conditions (90.48 RCW, WAC 173–220–150);
- State approval and modification of local POTW pretreatment programs (90.48 RCW, WAC 173–208, 216);
- Public notice of all facilities which are in significant violation of the pretreatment standards and requirements (90.48 RCW, Memorandum of Understanding with EPA);
- Public access to information regarding a facility's discharge and the environmental effects including the quality of the receiving water (42.17 RCW), and;
- Public awareness of state enforcement activities, and citizen challenges to state decisions and orders, including intervention in state administrative actions [43.21.B RCW, WAC 371–08–005(2)(b)].

Requirements for state programs to assume pretreatment authority are contained in 40 CFR 403.10 and 40 CFR Part 123, so far as it pertains to public participation. Unlike the NPDES permit program, the pretreatment program is self-implementing. The pretreatment regulations require industrial facilities to comply with pretreatment standards and reporting requirements. States and local municipalities with authority to implement pretreatment programs are required to insure that industrial facilities comply with these requirements and standards. Specifically, states and local authorities must identify users covered by published standards, notify them of the regulations and reporting requirements, review industrial reports, insure compliance by way of compliance monitoring, and institute enforcement action against non-compliers.

States and POTWs are granted the discretion of choosing from a variety of enforceable mechanisms, including contacts, agreements or permit schemes as a means of program implementation. POTWs operating approved local programs have already indicated how their programs will be implemented and may have public participation practices in addition to those provided under state law.

POTWs which have been delegated pretreatment programs are required to have extensive participation, including public notices of significant violators, informing the public of proposed changes to its sewer use ordinance, local limits, and allowing the public access to its pretreatment records (see 40 CFR 403.8(4)(2)(vii), 403.12 and 403.14). These federal requirements are in-corporated into the State program (WAC 173–216–150).

Washington's program description indicates that the state will be using a permit-type system to regulate those industrial users located in communities not required to implement local pretreatment programs (see WAC 173–090). This regulation contains a variety of public participation requirements including procedures for issuing public notices of permits for comment. Moreover, state law requires that public notices be filed in the State Register (see RCW 34.08.020).

One commenter suggested that it is difficult to obtain information from the state regarding its activities to regulate users via its permit system. Although the state's regulations require that a public notice be placed in the local newspaper, the commenter felt that this was insufficient and that a broader notice mechanism be employed. As outlined in WAC 173–216–090(4)(a), the state does maintain a mailing list of persons and organizations who have expressed an interest in the state's environmental activities.

As a matter of practice, the state generates reports, newsletters on agency ongoing activities such as enforcement actions. They are generally prepared in a timely fashion in part to facilitate public participation, as appropriate. In addition, the state provides notices on public hearings for regulation changes and proposed state policy, notices of proposed permit issuance and proposed state-issued permits to indirect dischargers, and notices on general pretreatment program requirements. EPA believes these practices provide citizens of Washington with public awareness and participation. It is our understanding that the state will, upon request, provide specific notice on ongoing activities to interested parties.

3. *Comment:* The state does not have similar freedom of information requirements as contained in federal regulations (40 CFR Part 2). EPA should require the state to develop comparable requirements as provided in 40 CFR Part 2.

Response: After reviewing the Washington submission, EPA finds that the public has adequate access to information, other than confidential business information (42.17 RCW). In particular, WAC 173–216–080 states that all information describing the quantity and characteristics of the effluent must be made available. Apparently, one of the chief concerns raised by two commenters was the "waiver of fee" requirement. EPA is not in a position to evaluate the propriety of the state's decision on fees charged for providing information to individuals.

4. *Comment:* A few comments revolved around pretreatment programs at the local level. The following points were raised: 1) local programs in the state should not have been approved by EPA; 2) local programs are not being implemented consistently, and; 3) local officials lack understanding of pretreatment program requirements and are unwilling to implement the program.

Response: EPA's assessment of the state's ability to implement the federal pretreatment program rests on a determination of those requirements contained in § 403.10(f) (1), (2), and (3). EPA's own efforts to date in implementing the pretreatment program are not relevant to addressing the adequacy of the state's pretreatment program application; however, the Agency provides the following as a response to the points raised by the two commenters.

The EPA Region 10 office has approved six (6) local pretreatment programs in the state. These programs were approved based on each community satisfying the program requirements contained in 40 CFR 403.8(f). Each of the local communities have similar pretreatment requirements contained in their NPDES permit or contained in their approval letter. Once programs have been approved, states and EPA are required to insure that local programs are being implemented adequately.

Pretreatment audits have been conducted by the EPA of each of the six local programs. As one of the commenters suggested, some programs are not being adequately or consistently implemented. The Agency has written reports and submitted comments to the affected POTWs requiring program deficiencies to be addressed. If the affected POTWs do not fully address the deficiencies and implement all essential program requirements, EPA may take enforcement actions against the POTWs. The state will be required to undertake similar activities under its approved pretreatment program.

With regards to POTWs' lack of understanding program implementation, the Agency has developed numerous guidance documents and conducted workshops. EPA's goal is to foster a better understanding among POTWs. The fact that the state is requesting approval of the federal pretreatment program should not only facilitate consistent implementation, but also permit timely assistance by the state regional office staff who have closer contact with the POTWs.

5. *Comment:* The state has not dedicated sufficient resources necessary to implement the program.

The present pretreatment application states that 5.5 Full Time Equivalents (FTE's) will be dedicated to pretreatment implementation, 2.0 FTE paid for by the use of EPA's Section 104(b) grant funds. (EPA expects that 104(b) funds will continue to be made available in FY '87.) After reviewing the detailed workload and pricing factor analyses in the program submission, EPA finds that the level of manpower is adequate to administer the pretreatment program in Washington. It is expected that the bulk of pretreatment activities in the State will be accomplished by local POTW programs. Currently, there are 6 such approved programs and 4 more under development. In addition, the State is studying 6 more communities as potential program candidates and anticipates program approvals by 1990, if local programs are determined to be needed. Together these POTWs account for approximately 80–85 percent of the significant industrial users in the State. In cases where some shortfall will exist, the state will be able to utilize, as needed, EPA staff and its contractor to assist in program implementation. The EPA will monitor the state's progress in implementation. It will use the annual planning process (State-EPA agreement) to identify

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priority activities and correct any major deficiencies.

6. *Comment:* The EPA should delay approval of the state's pretreatment program until the Puget Sound Water Quality (PSWQA) issues its final water quality plan for the Puget Sound area.

Response: EPA does not believe that delaying approval of the pretreatment program is warranted while the water quality plan is being finalized. Provided that the state application meets the requirements contained in Section 403.10, the state needs to begin immediate implementation of program requirements on POTWs and industrial users statewide.

Because of the heightened interest in the Puget Sound area, we would expect that the state will focus its attention on regulating toxics from industrial sources located on Puget Sound as well as insuring that POTWs in the Puget Sound area adequately implement their respective program. Approving the Washington program will serve to strengthen the regulatory response to the plan once it is finalized. In the interim, EPA and the state are reviewing the various PSWQA issue papers that will be used in finalizing the Puget Sound water quality plan and will work toward implementing its recommendations.

Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country.

State program	Approved NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment
Alabama	10/19/78	10/19/78	10/19/78
California	05/14/73	05/05/78	.....
Colorado [1]	03/27/75	.....	.....
Connecticut	09/26/73	.....	06/03/81
Delaware	04/01/74	.....	.....
Georgia	06/28/74	12/08/80	03/12/81
Hawaii	11/28/74	08/01/79	06/12/83
Illinois [1]	10/23/77	09/20/79	.....
Indiana	01/05/75	12/09/78	.....
Iowa	08/10/78	08/10/78	06/03/81
Kansas	08/05/78	06/28/85	.....
Kentucky [1]	09/30/83	09/30/83	09/30/83
Maryland	09/06/74	.....	09/30/85
Michigan	10/17/73	12/09/78	06/07/83
Minnesota	06/30/74	12/09/78	07/15/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri [1]	10/30/74	06/26/79	06/03/81
Montana [1]	06/10/74	06/23/81	.....
Nebraska	06/12/74	11/02/78	09/07/84
Nevada	09/19/75	08/31/78	.....
New Jersey [1]	04/13/82	04/13/82	04/13/83
New York	10/23/75	06/13/80	.....
North Carolina	10/19/75	09/26/84	06/14/82
North Dakota	06/19/75	.....	.....
Ohio	12/11/74	01/28/83	07/27/83
Oregon [1]	09/26/73	03/02/79	09/12/81
Pennsylvania	06/30/78	06/30/78	.....

State program	Approved NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment
Rhode Island [1]	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77	.....	09/10/83
Vermont	03/11/74	.....	03/16/82
Virgin Islands	06/30/76	.....	.....
Virginia	03/31/75	02/09/82	.....
Washington	11/14/73	.....	.....
West Virginia [1]	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	.....

[1] Indicates State approved to issue General Permits.

Review Under Executive Order 12291 and the Regulatory Flexibility Act.

The Office of Management and Budget (OMB) has exempted this action from OMB review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State Pretreatment Program Approval will not have a significant impact on a substantial number of small entities. Approval of the Washington NPDES State Pretreatment Program establishes no new substantive requirements, but merely transfers responsibility for administration of the program from EPA to the State.

Dated: September 30, 1986.

Robie G. Russell,

Regional Administrator, Region 10.

[FR Doc. 86-23353 Filed 10-16-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6625

[AA-320-07-4220-10; C-39308]

Colorado; Withdrawal of National Forest System Land for Protection of Recreational Values

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 4,572 acres within the Arapaho National Forest from mining for a period of 50 years for the protection of existing and planned recreational facilities near Keystone, Colorado. The lands have been and remain open to such other forms of disposition as may by law be made of national forest lands and mineral leasing.

EFFECTIVE DATE: October 16, 1986.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303-236-1768.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Channel 2) to protect existing and planned recreational values which are a part of the Keystone Ski Area:

Arapaho National Forest

Sixth Principal Meridian

T. 5 S., R. 76 W.,
Sec. 19, lots 28 through 38, 40 through 51, S½SW¼SE¼NW¼NE¼, NW¼NE¼SW¼NE¼, N½NW¼SW¼NE¼, SW¼NW¼SW¼NE¼, N½SW¼SW¼NE¼, S½NE¼SE¼NW¼, and N½SE¼SE¼NW¼, comprising all those lands in sec. 19 reconveyed to the United States in Forest Exchange Colorado 23301, more particularly described in Warranty Deed dated March 15, 1979, Reception No. 188191, and recorded with the County Clerk and Recorder, Summit County, Colorado, containing 28.734 acres (previously described as lots 28 through 38, 40 through 57, and 28.734 acres in the SW¼NE¼ and SE¼NW¼);
Sec. 29, W½SW¼;
Sec. 30, lots 1 through 4, E½NE¼, exclusive of Mineral Survey No. 15359B, Patent No. 38078 and Mineral Survey No. 15346B, Patent No. 38079, W½NE¼, E½W½, and NE¼SE¼ (previously described as lots 1 through 4, NE¼ exclusive of patented land, E½W½, and NE¼SE¼);
Sec. 31, lots 1 through 4, W½NE¼, SE¼NE¼, E½W½, and SE¼;
Sec. 32, NW¼NW¼.
T. 5 S., R. 77 W.,
Sec. 24, lots 8 and 9, SE¼, and two parcels aggregating 10.83 acres in the S½N½NE¼ and N½S½NE¼, comprising all of parcels 3 (East) and 3 (West), reconveyed to the United States in Forest Exchange Colorado 23301, more particularly described in Warranty Deed dated March 15, 1979, Reception No. 188191, recorded with the County Clerk and Recorder, Summit County, Colorado (previously described as 10.83 acres in the S½N½NE¼ and N½S½NE¼);
Sec. 25, NE¼, NE¼NW¼, E½SE¼, and NW¼SE¼;
Sec. 36, NW¼SE¼NW¼, S½SE¼NW¼, E½NE¼SW¼, W½NW¼SE¼, and S½SE¼.
T. 6 S., R. 76 W.,
Sec. 6, lots 3 through 6, 11 through 14, E½SW¼, and W½SE¼;
Sec. 7, lots 1 through 4, NE¼, E½NW¼, NE¼SW¼, and NE¼SE¼, that portion lying northwesterly of the northwesterly boundary of Mineral Survey No. 5703, Patent No. 18207 (previously described as the N½SE¼).
T. 6 S., R. 77 W.,
Sec. 1, lots 1 through 4, S½N½, and S½;
Sec. 2, E½SE¼;
Sec. 12, NE¼, N½NW¼, SE¼NW¼, and N½SE¼.

The areas described aggregate approximately 4,571.53 acres of national forest lands in Summit County, Colorado.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of national forest lands under lease, license, or permit of governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Mangement Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

October 10, 1986.

[FR Doc. 86-23350 Filed 10-15-86; 8:45 am]

BILLING CODE 4310-84-M

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Proposed Rules

Federal Register
Vol. 51, No. 200
Thursday, October 16, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its Federal Employees Health Benefits Program (FEHBP) regulations to amend the timeframe for conversion to nongroup coverage when an FEHBP enrollment is terminated. This change would ensure that all employees have a sufficient amount of time to convert, regardless of whether or not receipt of the conversion notice was delayed.

DATE: Comments must be received on or before December 15, 1986.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Myers, (202) 632–4634.

SUPPLEMENTARY INFORMATION: Under current FEHB regulations, an individual whose group coverage is terminated other than by voluntary cancellation of the enrollment or by discontinuance of the plan under which he or she is covered is entitled to a 31-day extension of group coverage which begins the day after the date that his or her enrollment is terminated. (An individual whose plan is discontinued may enroll in another plan.) The FEHB regulations currently permit an individual to convert within 15 days of the agency notice of the right to convert, but in no event later than 75 days from the loss of group coverage. Since there is currently no requirement for agencies to issue a conversion notice within a specific timeframe, many agencies do not issue such notices in a timely fashion. As a result, most individuals have 15 days or less to apply for conversion, which is often insufficient to complete the conversion process.

To ensure that individuals have a sufficient time to convert to nongroup coverage, we are proposing to require agencies to produce a notice of the right to convert within 60 days after the initial loss of group coverage. In addition, we are proposing to extend the timeframe from 15 days from the date of the agency notice or 75 days from the loss of group coverage (whichever is earlier) to 31 days from the date of the agency notice or 91 days from the loss of group coverage (whichever is earlier). If the agency fails to issue a notice within 60 days after the loss of group coverage or an individual can show cause beyond his or her control for not requesting conversion in a timely manner, we are proposing that the individual be given a belated opportunity to request conversion by writing directly to the carrier. Such a request would have to be made within 6 months from the date of the loss of group coverage and would have to be accompanied by verification of the loss of group coverage; i.e., a Standard Form 50 showing the individual's separation from the service.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95–454, 92 Stat. 1112; Sec. 890.301 also issued under 5 U.S.C. 8905(b); Sec. 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); Sec. 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251.

2. In § 890.201, paragraph (a)(4) is amended by revising the third sentence and adding a sentence immediately after the third sentence to read as follows:

§ 890.201 Minimum standards for health benefits plans.

(a) * * *

(4) * * * When an employing office gives an employee, annuitant, or former spouse written notice of his or her privilege of conversion, the carrier shall permit conversion at any time before 31 days after the date of notice or 91 days after the enrollment is terminated, whichever is earlier. Belated conversion opportunities as provided in section 890.401(c) shall also be permitted by the carrier.

* * * * *

3. Section 890.401 is amended by adding a new paragraph (c) to read as follows:

§ 890.401 Temporary extension of coverage and conversion.

* * * * *

(c)(1) The employing agency must notify the employee, annuitant, or former spouse of the loss of group coverage and the right to convert to an individual policy within 60 days of the loss of such coverage.

(2) The individual who has lost group coverage must request conversion information from the losing carrier within 31 days of the agency notice of loss of group coverage and of the right to convert.

(3) When an agency fails to provide the notification described in paragraph (c)(1) of this section within 60 days of the loss of group coverage, or the individual fails for other reasons beyond his or her control to request conversion as described in paragraph (c)(2) of this section, he or she may request conversion to an individual policy by writing directly to the carrier. Such a request must be filed within 6 months after the individual became eligible to convert his or her group coverage and must be accompanied by verification of the loss of group coverage; e.g., an SF 50, showing the individual's separation from the service. In addition, the individual must show that he or she was not notified of the loss of group coverage and of the right to convert, and was not otherwise aware of it, or that he or she was unable, for cause beyond his or her control, to convert. The carrier will determine if the individual is eligible to convert; and when the determination is affirmative, the individual may convert within 31 days of the determination. If the determination by the carrier is negative, the individual may request a review of the carrier's determination from OPM.

(4) When an individual converts his or her coverage anytime after the group coverage has ended, the individual plan coverage is retroactive to the day following the day the temporary extension of group coverage ended. The individual must pay the premiums due for the retroactive period.

(5) An individual who fails to exercise his or her right to convert to an individual policy within 31 days after receiving notice of the right to convert from the carrier is deemed to have declined the right to convert unless the carrier determines the failure was for cause beyond his or her control.

[FR Doc. 86–23008 Filed 10–15–86; 8:45 am]

BILLING CODE 6325–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Rules of Practice for Domestic Licensing Proceedings; Role of NRC Staff in Adjudicatory Licensing Hearings

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing an advance notice of proposed rulemaking that presented for comment possible changes to the NRC staff's role as a full party in adjudicatory hearings in initial licensing proceedings for nuclear power reactors. The Commission has decided that the staff's existing role as an advocate in these proceedings should not be changed.

FOR FURTHER INFORMATION CONTACT: Linda S. Gilbert, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7678.

SUPPLEMENTARY INFORMATION: On November 2, 1983 the Commission published an advanced notice of proposed rulemaking (ANPR) on the role of the NRC staff in adjudiciary licensing proceedings. 48 FR 50550. In that ANPR the Commission explained that it was considering amending its rules of practice to change the staff's role as a full party in initial licensing hearings for nuclear power reactors. The Commission requested advice and recommendations on several proposals and on a series of related questions designed to assist the Commission in deciding whether and to what extend the staff's role should be changed.

As described in the ANPR, Option 1 would have limited the staff's participation to controverted factual issues on which the staff disagreed with the technical bases, rationale, or conclusions of another party. Staff participation as a party would have been discretionary. The staff also could have acted as an *amicus*, advising the presiding officer on the second regarding matters in controversy, either on the staff's initiative or at the presiding officer's request.

Option 2 would have required the staff to participate as a party with respect to all substantive issues raised but would have eliminated staff advocacy and participation with respect to procedural issues.

Option 3 would have retained the staff's existing role as a full party. It could have been implemented without any modification of existing practice. Alternatively, it could have been coupled with measures designed to improve public perception of the staff's role or to allow greater Commission access to staff expertise.

Option 4 would have expanded the opportunity for public involvement in the early stages of initial licensing proceedings, before issuance of a notice of opportunity for hearing. It could have been used alone or in combination with any of the first three options.

The comment period expired on January 3, 1984. The Commission received twenty-eight letters of comment on the ANPR. Twelve were from nuclear utilities or their counsel, nine were from present and former intervenors or their counsel, four were from individuals, and three were from nuclear engineering firms or industry groups. The Commission's Regulatory Reform Task Force prepared a detailed summary of the comments received for the Commission's consideration. The summary may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

The comments indicated support for all four options, although the majority of persons commenting favored either Option 2 or Option 3. The major issues raised in the comments are addressed briefly below. Following a review of the comments received, as well as advice supplied by its legal office, the Commission decided that the staff's existing role as an advocate in initial licensing proceedings should not be changed. *See* Letter from Nunzio J. Palladino, Chairman, U.S. Nuclear Regulatory Commission, to the Honorable Tom Bevill, Chairman, Subcommittee on Energy and Water Development, Committee on Appropriations, U.S. House of Representatives, dated January 2, 1985. Accordingly, the Commission is adopting Option 3 (no change in the staff's role) and is withdrawing the ANPR for the reasons discussed below.

Several concerns had prompted the Commission's publication of the ANPR. First, in a proceeding for the issuance of a license to construct or to operate a nuclear power reactor, the license applicant has the burden of showing that it can construct and operate the plant safely. Because the NRC staff has no real stake in the issuance of the license, the need for the staff's participation as a full party in the licensing hearing could be questioned. Second, the staff's advocacy of a particular position could have the effect of lending support to the case in favor of the license applicant and, therefore, could create the impression that the staff is advocating the applicant's case. Third, the staff's participation as a full story in licensing hearings might not represent the most efficient use of staff resources. Fourth, it could be argued that changes in the staff's role as an advocate might mitigate the legal constraints placed on the Commission's access to staff expertise in contested cases.

Further examination of these concerns reveals that no change to the staff-existing role is warranted. Regarding the first point, the Commission has concluded that the staff's participation on all substantive issues is necessary to assist in the development of a sound record. It therefore has decided to reject Option 1. The Commission and the adjudicatory boards rely heavily on the staff's expertise in determining whether an applicant has met the requirements for issuance of a license and what

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conditions the license should contain. The Commission also believes that the staff is the representative of the public interest in these proceedings and that the staff should continue to present and defend the results of its objective evaluation of the application at the hearing for the benefit of the public. The staff's participation on procedural issues is desirable because it could reduce or even eliminate some of the substantive issues to be heard. In addition, the staff is often the best source of guidance for the adjudicatory boards on procedural matters. In short, the Commission believes that the staff should continue to participate as a full party and has therefore decided to reject Option 2 as well. Of course, this does not preclude from declining to take a position on matters which do not affect the staff's interests in the proceedings.

With regard to the matter of public perception, the Commission agrees with comments that such perception is difficult to assess and that it is important to distinguish between members of the public in general and those who are familiar with NRC proceedings. The Commission is not convinced that there is a problem with respect to public perception of the staff's role. To the extent that such a problem may exist, however, it is attributable not to bias on the staff's part but to the nature of the staff's extensive prehearing review of the application. The applicant often makes changes in the application in order to secure the staff's approval, so that by the time the hearing commences, many of the staff's concerns have been accommodated. Intervenors might otherwise have to argue for such changes in the application during the hearing.

The Commission considered providing an opportunity for expanded public involvement prior to issuance of a notice of opportunity for hearing (Option 4) as a possible means of increasing public understanding of the staff's role. The Commission also sought comments on this option as a possible means of providing useful information about local and site-related concerns in a non-adversarial setting. The Commission has concluded that there is no need to adopt this proposal, either alone or in combination with any of the other options. Pursuant to 10 CFR 2.101, a copy of a tendered application for a nuclear facility is made available for public inspection in the Commission's Public Document Room (PDR). The Commission also establishes a Local Public Document Room (LPDR) near the site of the proposed facility. Upon completion of its review of the acceptability of the application for docketing, the staff holds an initial management meeting with the applicant to discuss the review process and schedule. Notice of this meeting is published and members of the public may attend. After the application is docketed, the staff's licensing review process is accessible to the public through noticed open meetings and the placement of formal correspondence in the PDR and LPDR. The staff also holds informal meetings with potential intervenors and members of the public in the vicinity of the plant site. The Commission believes that these measures provide an adequate opportunity for public information and involvement in the early stages of the licensing process. In addition, the Commission has concluded that the staff resources that would have to be expended for increased public involvement prior to issuance of a notice of opportunity for hearing would outweigh any improvement that might result in public perception of the staff's role.

At present, the Commission does not believe that staff resources committed to litigation of admitted contentions in individual licensing proceedings could better be used to study, analyze, and resolve other important uncontested matters involved in particular proceedings or generic safety questions common to one or more classes of light water reactors. The Commission believes that, instead of changing the staff's role in licensing hearings, effort should be directed to improving the effectiveness and efficiency of the hearing process to the benefit of all parties. This is the purpose of the Commission's recently published regulatory reform proposals. *See* "Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process," 51 FR 24365 (July 3, 1986). The Commission will reexamine this issue should it become necessary to do so.

Finally, the Commission has concluded that the appropriate role for the staff should be determined independently of any consideration of legal constraints on the commission's access to its staff in contested cases. That issue is now being considered in another recently published proposed rule. *See* "Revisions to Ex Parte and Separation of Functions Rules Applicable to Formal Adjudicatory Proceedings," 51 FR 10393 (March 26, 1986).

For all the foregoing reasons, the Commission has concluded that it has not identified a problem with the staff's existing role in reactor licensing proceedings that any of the suggested options would resolve. Accordingly, the Commission is adopting Option 3 and is withdrawing the ANPR.

Dated at Washington, DC, this 10th day of October, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-23385 Filed 10-15-86; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Parts 50 and 73

[Docket No. PRM-50-36]

Nuclear Utility Backfitting and Reform Group; Partial Grant and Partial Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Partial grant and partial denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission has assessed the petition for rulemaking filed by the Nuclear Utility Backfitting and Reform Group that petitions the NRC to modify reporting requirements imposed on its licensees of nuclear power plants and applicants for nuclear power plant construction permits. The petition discusses eight issues of concern and requests amendment of the regulations in 10 CFR Parts 50 and 73. Two of the petitioner's concerns were granted in two other rules; two others are being denied; and the remaining four are being considered and will be addressed in pending proposed rulemakings. This notice discusses NRC actions to date on each of the eight issues.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert Parcover, Information and Records Management Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-8689.

SUPPLEMENTARY INFORMATION:

1. Background

On June 21, 1983, the Commission published in the **Federal Register** (48 FR 28282) a notice announcing the receipt of a petition for rulemaking filed by the Nuclear Utility Backfitting and Reform Group. A brief description of the eight issues follows:

Issue I

The petitioner proposes to amend § 50.54(p) to make it consistent with § 50.59(b), so that a change to a security or safeguards effectiveness plan that does not decrease its effectiveness be submitted to the NRC annually.

Issue II

The petitioner proposes to amend § 50.54(q) so that a change to an emergency plan that does not decrease its effectiveness be submitted to the NRC annually or, as an alternative, to make it consistent with § 50.54(p), reported within two months of a change, rather than 30 days under the current rule.

Issue III

The petitioner proposes to amend § 50.55(e) to eliminate the 24-hour telephone notification by holders of construction permits of each deficiency found in design and construction, which if it were to remain uncorrected, could have adversely affected safety or, as an alternative, proposes a 5-day telephone notification after discovery for a reportable deficiency in design or construction under a construction permit.

Issue IV

The petitioner proposes (1) that, for a licensee of an operating production or utilization facility, § 50.59(b) requirements to submit reports of a change to a facility or a procedure described in a Final Safety Analysis Report (FSAR) be satisfied by compliance with § 50.71 requirements and (2) that reports of conduct of tests and experiments not described in the FSAR be submitted annually, except for changes to a facility or procedure or the conduct of tests or experiments that involve a change in a facility's technical specifications or an unreviewed safety question.

Issue V

The petitioner proposes to amend Appendix E, Section V, to 10 CFR Part 50 to specify a "threshold of significance" for reporting changes to emergency plans which must be satisfied before a report is required.

The petitioner proposes that the "threshold" be similar to the one specified in § 50.54(p), and that changes be reported annually, rather than within 30 days.

Issue VI

The petitioner proposes to amend § 73.71 so that a followup written report involving loss, theft, or sabotage of strategic special nuclear material or lessened effectiveness of physical security systems be required 30 days after an initial verbal report, rather than 15 days.

Issue VII

The petitioner proposes that when reporting requirements in license technical specifications duplicate the reporting requirements of § 50.72(a), the plant technical specifications should be amended to eliminate duplicate requirements.

Issue VIII

The petitioner proposes to lengthen the period between an initial telephone report and the due date for a followup written report of reportable occurrences from 14 to 30 days in response to NUREG-0123 and to any similar provisions in NUREGs-0103, -0212, and -0452.

Eighteen comments were received on the petition: Two from a single commenter, eleven from electric utilities, three from engineering firms, two from private citizens, and one from an industrial association. Seven commenters generally endorsed the petition, some of them offering specific comments on certain issues. Nine commenters agreed with the petition, in part, and one disagreed with all of the petitioner's proposals. *Issue III* (§ 50.55(e)) received the most comments.

The petitioner's concerns addressed in Issues II, III, V, and VI are being considered and will be addressed in current rulemakings. The petitioner's concerns already have been granted for Issues VII and VIII. The petitioner's proposals to alleviate the concerns stated in Issues I and IV are being denied.

One commenter stated that most of the existing immediate notification reports, which were at issue in this petition for rulemaking, were initiated prior to the inception of the Resident Inspector Program, which is now time-tested and proven. He suggests that making the resident inspector the point of contact for some of these immediate notification requirements may resolve some of the reporting burdens at issue in this petition.

Another commenter proposed that a review of the standards by which safety significance is assessed in the following regulations relates to this petition and should be assessed:

—10 CFR Part 21, Substantial Safety Hazards
—10 CFR 50.55(e), Significant Deficiencies
—10 CFR 50.59, Unreviewed Safety Question
—10 CFR 50.92, Significant Hazards Considerations.

Of these, the § 50.59 standard is discussed under Issue IV. The Part 21 and § 50.55(e) standards are being considered in the proposed rule related to Issue III. The § 50.92 standard was addressed in a final rule published in the Federal Register March 6, 1986 (51 FR 7744).

2. Discussion Of Comments Received and NRC Action On Each Issue

Issue I

The petitioner proposes to amend § 50.54(p) to make it consistent with § 50.59(b), so that a change to a security or safeguards effectiveness plan that does not decrease its effectiveness be submitted to the NRC annually.

Currently, the reports required by § 50.54(p) must be submitted to the NRC within two months after a change has been made.

Comments

Of the eight commenters who specifically addressed this issue, one disagreed with the petitioner and stated that 10 CFR 50.54(p) should not be changed because the judgment as to whether safeguards effectiveness has been reduced should be made by the NRC within the 60 days now allowed in order to see if the changes did or did not decrease the safeguards effectiveness of the plan. The other seven commenters agreed, at least in part, with the petitioner stating, in part, that annual changes to emergency and safeguards plans and procedures are sufficient because the majority of changes are not significant and are not important from a standpoint of public health and safety. These commenters think that implementation of this change would reduce a large administrative burden now imposed on licensees.

Action

The NRC is denying the petition with respect to this issue. The petitioner considers the changes to the plan unimportant from the standpoint of public health and safety. However, NRC disagrees that such changes are unimportant because in the event that the licensee misjudges the significance of the change, the NRC would be unaware of such misjudgment for up to a year and would be unable to take timely

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corrective actions. Actions in the past have shown that changes thought to be insignificant by the licensees have in fact been significant and required timely corrective action. The NRC does not consider it to be in the best interest of the public health and safety to delay judging the effect of each change any longer than two months after a change has been implemented.

Issue II

The petitioner proposes to amend § 50.54(q) so that a change to an emergency plan that does not decrease its effectiveness is submitted to the NRC annually to make it consistent with § 50.54(p), or, as an alternative, reported within two months of a change.

Currently, the reports required by § 50.54(q) must be submitted to the NRC within 30 days of implementation.

Comments

Of the eight commenters who specifically addressed this issue, one disagreed with the petitioner and stated that the NRC should judge whether or not a change is "substantial" and should judge the impact of cumulative changes to a single procedure. Another disagreed with the petitioner's proposal because, if implemented, the NRC copy of each emergency plan could be from 2 to 12 months out of date from the plan in effect. This commenter thinks that changes should be submitted "within 2 months" after they are made. Six commenters supported the petitioner's proposal and stated, in part, that the changes could be codified without adversely impacting the quality of the emergency plans or adversely affecting public health and safety and would eliminate much unnecessary paperwork.

Action

The staff is planning to reevaluate the emergency planning regulations in 1987 in light of new information based on the ongoing research pertaining to accident source terms as this information becomes available. The petitioner's proposal to increase the interval for submitting emergency plan changes will be considered during this planned review.

Issue III

The petitioner proposes to amend § 50.55(e) to eliminate the 24-hour telephone notification by holders of construction permits of each deficiency found in design and construction, which if it were to remain uncorrected, could have adversely affected safety or, as an alternative, proposes that a reportable deficiency in design or construction under a construction permit be submitted up to five days following discovery.

Currently, holders of construction permits must notify the NRC by telephone within 24 hours of each deficiency in design and construction which, if it were not corrected, would adversely affect the safety of operations anytime throughout the expected lifetime of the plant, and follow up this initial verbal notification with a written report within 30 days.

Comments

Of the ten commenters who specifically addressed this issue, two commenters disagreed with the petitioner and eight generally agreed. One commenter who disagreed, was concerned about whether the NRC or the utility made the determination on a reportable deficiency. The other commenter who disagreed thought that the current practice is contrary to the regulatory requirement. The commenter contends that the current regulation does not require notification until 24 hours after a deficiency has been found significant, but that often industry reports a deficiency within 24 hours of discovery. Therefore, the commenter thinks the rule change is unnecessary. Some of those supporting the petition believe that the deficiency is reportable upon discovery, others do not. Those who understand that the licensee reporting the deficiency determines whether it is reportable stated, in part, that the 24-hour notification does not allow sufficient time to collect and analyze data to determine whether a problem is a reportable deficiency. Further, determining whether a problem is reportable is said to require multi-disciplinal and multi-organizational review. This proposal would, according to some commenters, minimize the reporting of nonproblems without adversely impacting the public health and safety. Several commenters said that these deficiencies, reported while a plant is being constructed, pose no immediate danger to public health and safety.

Action

The petitioner's concerns are being considered and will be addressed in a rulemaking currently being developed in amendments to 10 CFR Parts 21 and 50, "Revisions to the Criteria and Procedures for the Reporting of Defects," scheduled to be published as a proposed rule in the near future The contact person for this rulemaking is Rabindra Singh, telephone number (301) 492–4149.

Issue IV

The petitioner proposes (1) that, for a licensee of an operating production or utilization facility, § 50.59(b) requirements to submit reports of a change to a facility or a procedure described in a Final Safety Analysis Report (FSAR) be satisfied by compliance with § 50.71 requirements and (2) that reports of conduct of tests and experiments not described in the FSAR be submitted annually, except for changes to a facility or procedure or the conduct of tests or experiments that involve a change in a facility's technical specifications or an unreviewed safety question.

Currently, the reports required by § 50.59(b) must be submitted annually or at shorter intervals specified in a license. These changes are also reported annually as updates to the facility's FSAR under § 50.71.

Comments

Of the eight commenters who specifically addressed this issue, one commenter who disagrees with the petitioner's proposal believes that a § 50.59(b) brief report is easier for the Commission to review in order to regulate changes to a licensee's plant than an annual update to an FSAR. He contends that understanding reports of a change submitted under § 50.71 requirements would require searching out and studying several FSAR sections.

Another commenter agrees that the reports could be combined if § 50.59(b) were rewritten to reflect accurately, what he thinks is, its intent. That is, the commenter thinks the requirement is intended to provide the NRC an opportunity for a reflective review of each change made by a licensee to see whether or not it compromises safety and, ultimately, constitutes an unreviewed safety question. The commenter thinks that the words, "change in the facility (procedure) as described in the Safety Analysis Report (SAR)," actually leads to a prescriptive or cursory review to determine whether or not a figure or text in the FSAR must be altered as a result of the change. The commenter is concerned that such a prescriptive approach often causes one to lose sight of the basic purpose of § 50.59(b).

The commenter adds that these words are interpreted inconsistently within the nuclear industry. The commenter thinks that some licensees apply this terminology if any portion of the facility or procedure being changed is described in any manner in the FSAR and others, perhaps most, apply this requirement only if the portion of the facility or procedure being changed is specifically described in the FSAR. The commenter believes this latter application can lead to a prejudgment on erroneous grounds as to whether a change can compromise safety. He suggests rewriting § 50.59(b) to remove troublesome and unnecessary terminology from the regulations and focus the attention in § 50.59(b) on the performance of safety evaluations in support of conclusions as to whether or not proposed changes involve an unreviewed safety question.

Of the seven who specifically supported this issue, one commenter suggested that FSAR updates be submitted within two years of completion of the FSAR for new licensees and annually thereafter. Other commenters stated that the current § 50.59(b) reporting requirement, in effect, duplicates other reports and that by eliminating such duplication, available resources could be directed toward matters of genuine safety significance.

Action

The NRC is denying the portion of the petition affecting § 50.59(b). The intent of the requirement in § 50.71 for updating FSARs is to keep the description of the plant up to date. FSARs provide cumulative records of all changes. But, the report required by § 50.59(b) is applicable to specific changes made throughout the year and is available at the plant site for ready review by the NRC s resident inspectors. It is important to recognize that efforts performed in support of § 50.59(b) reviews are substantially different from the final product the Commission would expect to be documented in FSAR updates. Specifically, a utility reviews and documents complicated projects to determine whether they involve unreviewed safety questions, whether changes to Technical Specifications are required, and, as necessary, to make determinations about significant hazards considerations under 10 CFR 50.92.

The synthesis of a large volume of work will usually be condensed in the FSAR update and technical evaluations will be referenced. The Commission's regulations address the submittal of all § 50.59(b) actions on an annual basis or at such shorter intervals as may be specified in the license. Periodically, at the request of the resident inspector, a Regional Office will review an individual § 50.59(b) action.

The reporting under § 50.59(b) enables the staff to perform timely and efficient reviews of the changes made by a licensee to determine whether or not its changes impact the public health and safety, often before receipt of the annual updates to the FSAR. Therefore, reliance on § 50.71 annual FSAR submittals would not allow continual determinations of licensees' changes that could, in their opinion, impact public health and safety; moreover, delayed NRC reviews could adversely impact safety.

Issue V

The petitioner proposes to amend Appendix E, Section V, to 10 CFR Part 50 to specify a "threshold of significance" for reporting changes to emergency plans which must be satisfied before a report is required. The petitioner proposes that the "threshold" be similar to the one specified in § 50.54(p), and that changes be reported annually.

Currently, changes to emergency plans or procedures must be reported to the NRC within 30 days of making the changes.

Comments

Two of the six commenters who specifically addressed this issue disagreed with this proposal. One proposed that a change be submitted "within 2 months" of the change to prevent, as in the case of § 50.54(q), the emergency plan the NRC retains from being as much as one year out of date. The other felt that the NRC should determine the threshold of significance as is now done by review of each change within 30 days.

The other commenters who agreed with the petitioner specifically on this issue stated that the reports currently generated are of questionable value when compared to the effort expended. One commenter cited the utility's approximate 3,000-page submittal of changes as "a wasteful use of paper and resources." One commenter, further, stated that hundreds of procedures are changed without written notification under § 50.59, and also that section V of Appendix E to 10 CFR Part 50 is an example of a requirement imposed that was an overreaction to the accident at Three Mile Island and that its requirements should be relaxed.

Action

The staff is planning to reevaluate the emergency planning regulations in 1987 in light of new information based on the ongoing research pertaining to accident source terms as this information becomes available. The petitioner's proposal to establish a "threshold of significance" for submitting changes to emergency plans or procedures will be considered during this planed review.

Issue VI

The petitioner proposes to amend § 73.71 so that a followup written report involving loss, theft, or sabotage of strategic special nuclear material or lessened effectiveness of physical security systems be required 30 days after an initial verbal report.

Currently, the written followup report required by 73.71 must be submitted within 15 days.

Comments

One of the six commenters who specifically addressed this issue disagreed with this proposal and thinks that a timely written report provides the NRC better factual information than a verbal report by telephone, which may create confusion.

The other five commenters specifically agreed with the petitioner on this issue. They stated, in part, that the modified reporting criteria would improve the usefulness of these reports by allowing licensees to fully resolve the problem before submitting a written report. An increased reporting interval would allow licensees to resolve problems more quickly and comprehensively instead of expending resources to generate reports of marginal value.

Action

The Commission agrees that it is desirable to extend this reporting period from 15 to 30 days and it published a proposed rule on August 27, 1985 (50 FR 34708) that would grant this portion of the petition. The final rule is scheduled to be published in January 1987.

Issue VII

The petitioner proposes that when reporting requirements in license technical specifications duplicate the reporting requirements of § 50.72(a), the plant technical specifications should be amended to eliminate duplicate requirements.

Comments

Of four commenters who specifically addressed this issue, three commenters addressed Issue VII and agreed with the petitioner. A commenter stated, in part, that technical specifications should contain only those requirements that directly impact public health and safety. Reports which are mere duplicates of regulations are unnecessary and should be eliminated.

One commenter suggests that "significant events" (§ 50.72(a)) and "reportable occurrences" (technical specifications) be consolidated in either the regulations or the technical

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specifications. Further, he thinks that the reporting requirements for these two types of events are currently inconsistent, and suggests that written reports for "significant events" should be required as they are for events requiring "prompt notification with written follow-up." One commenter disagreed with the petitioner stating that the current requirements force individuals to look at the entire problem.

Action

The issue of duplicative requirements has already been addressed and the petition was granted in two final rules published July 27, 1983 (48 FR 33850) and August 29, 1983 (48 FR 39039), that both became effective on January 1, 1984. The first of these rules amended 10 CFR 50.73 and the second amended 10 CFR 50.72. The amendments to 10 CFR 50.72 and 50.73 superseded the old requirements in § 50.72(a) (2) and (5), eliminated the 24-hour report and the confirming telegram, changed the reporting period from 14 to 30 days, and clarified the language that caused the licensee to perceive that differing reporting requirements were required by the NUREGs in question. In addition, Generic Letter 83-43 [1] (December 19, 1983) provided guidance for complying with this regulation.

Issue VIII

The petitioner proposes to lengthen the period between an initial telephone report and the due date for a written followup report of reportable occurrences from 14 to 30 days in response to NUREG-0123 and to any similar provisions in NUREGs-0103, -0212, and -0452.

Comments

Five of the six commenters who specifically addressed this issue expressed agreement with this proposal. One commenter stated, in part, that the reporting modification would improve effectiveness without adversely affecting NRC's ability to ensure that corrective and preventive actions are accomplished. Another commenter noted that the Licensee Event Report (LER) has replaced the 14-day reporting interval with a 30-day reporting requirement. One commenter disagreed with the petitioner.

Action

The petition for this issue was also addressed and granted in a final rule published July 27, 1983 (48 FR 33850), that became effective January 1, 1984. The amendment to 10 CFR 50.73 in this rule changed the reporting period from 14 days to 30 days and clarified any perception that different reporting periods are described in NUREGs-0123, -0103, - 0212, and -0452. Generic Letter 83-43 (December 19, 1983) provided guidance for complying with the July 27, 1983, regulation.

3. Summary of Actions

The Nuclear Regulatory Commission has acted upon the petitioner's concerns as follows: two are being denied, four are being addressed in current rulemakings, and two have been granted. Issues I and II (§ 50.54(p) and § 50.59(b)) are denied for the reasons given in "Discussion of Comments." Issues II, III, V, and VI (50.54(q), 50.55(e), App. E, and 73.71) are being addressed in current rulemakings. Issues VII and VIII (50.72(a), NUREGs-0123, etc.) have been resolved and the petitioner's concerns met by the amendment to 10 CFR 50.73.

Dated at Bethesda, Maryland, this 3rd day of October 1986.

For The Nuclear Regulatory Commission.

Victor Stello, Jr.

Executive Director for Operations.

[FR Doc. 86-23242 Filed 10-15-86; 8:45 am]

BILLING CODE 7590-01-M

[1] Generic Letter 83-43 is available for inspection or copying for a fee at the NRC's Public Document Room, 1717 H Street NW., Washington, DC 20555.

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10 CFR Part 71

[Docket No. PRM-71-10]

The State of Wisconsin; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-71-10) filed by the State of Wisconsin. The petitioner requests that the NRC expand the scope of its regulations pertaining to spent nuclear fuel transport "to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum prior to approval of the shipment and route." It is the NRC's conclusion that the new procedure requested in the petition is not justified by the arguments presented in the petition when considered together with the views and arguments of other persons who commented on the petition and in light of experience, testing, analysis, and other information. The Commission concludes that its existing regulation of the transportation of spent nuclear fuel, when viewed in the context of the combined program of the NRC, the Departments of Transportation (DOT) and Energy (DOE), the Federal Emergency Management Agency (FEMA), and the States is sufficient to provide adequate assurance against unreasonable risk to the health and safety of the public. The Commission also concludes that the procedures suggested in the petition would not significantly serve to improve the protection of the public against unreasonable risk from the transportation of radioactive materials.

ADDRESSES: Copies of correspondence and documents cited in this document are available for public inspection and copying for a fee at the NRC's Public Document Room at 1717 H Street NW., Washington, DC. Copies of NUREG-0170 may be purchased by calling (202) 275-2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082.

FOR FURTHER INFORMATION CONTACT: Donald R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7680.

SUPPLEMENTARY INFORMATION:

I. Background
II. Issues raised
III. Public comments
IV. Consideration of petition issues
V. Consideration of comment issues
VI. NRC conclusion

I. Background

By letter dated December 13, 1984, Mr. Carl A. Sinderbrand, on behalf of the State of Wisconsin, filed with the NRC a petition for rulemaking which requested that the NRC amend its regulations to initiate a new procedure to specifically approve individual spent nuclear fuel shipments and to afford a mechanism for public input for each approval decision. The NRC published a notice of receipt of the petition on February 4, 1985 (50 FR 4866), including the full text of the petitioner's proposed amendment, and invited public comments.

NRC has never had a procedure for approving individual shipments of spent nuclear fuel. Under its regulatory program, the Atomic Energy Commission (AEC) issued specific licenses authorizing types of shipments, including a specified shipping cask, until 1973. Repetitive specific licenses were issued when more than one licensee used the same shipping cask.

In 1973 the AEC agreed to take the lead in reviewing and approving packages for all commercial radioactive material shipments except those limited to designated small quantities, while DOT exercised its authority in other areas. At that time, the procedure of issuing repetitive specific licenses was dropped and was replaced by the current system of approving designs of and quality assurance programs for packages which any licensee may use by registering as a user. This system was combined with a general license authorizing any Commission licensee to make shipments in an NRC-approved package provided the person is registered to use the package, has an NRC approved quality assurance program, and has certain specified documentation. The use of the general license eliminated a large paperwork burden on AEC and licensees alike, and has been proven by experience over the years to provide adequate control.

II. Issues Raised

The petitioner proposes a rule which would (1) prohibit unapproved spent nuclear fuel shipments; (2) require an application for approval which demonstrates (i) that the applicant will satisfy safety, safeguards, and routing requirements, (ii) that the shipment is necessary, (iii) that there are no unique risks along the proposed route, (iv) that alternatives to the shipment and route have been evaluated, and (v) that the proposed shipping cask will withstand all reasonably foreseeable incidents along the proposed rule; (3) provide an opportunity for public participation in the approval decision; and (4) provide for adequate protection of the public health and safety.

The petitioner cites the existence of the following five conditions in support of its claim that NRC needs to establish a regulatory process for the evaluation and approval of individual shipments of spent nuclear fuel proposed by licensees:

1. No Federal agency considers the safety or environmental risks associated with selected routes;
2. No Federal agency requires adequate safeguards to protect the public in the event of an accident or other emergency;
3. The NRC does not regulate the carrier of spent nulcear fuel or consider its safety record;
4. No Federal agency considers the need for or propriety of individual shipments of spent nuclear fuel; and
5. The public has no opportunity for meaningful participation with respect to the decision to transport spent nuclear fuel.

III. Public Comments

In response to the invitation for public comments on the petition for rulemaking, 44 comment letters were submitted to the NRC by State and local governments, individuals, public interest groups, and power and other industrial companies. Of the 21 comment letters from State and local governments, 18 supported the need for the new regulatory process or some variation of it. Those who expressed reservations cited undue hardship associated with the proposal, security problems, and undue delays associated with the proposed hearings. One Indian tribe noted the lack of any specific provision for involvement by Tribal governments. Six of the seven individual commenters supported the rule for the reasons stated in the petition. The one who expressed reservations cited the lack of justification for the proposal. All six public interest groups supported the proposal for the reasons outlined in the petition. The 10 power companies and other industrial organizations that commented opposed the petition citing lack of justification, duplication, undue burden, and lack of legal foundation. In summation, 30 commenters supported the petition primarily for the reasons given in the petition, and 14 commenters opposed the petition for lack of justification, duplication, security problems, undue burdens and delays, and lack of a legal foundation for the petitioner's proposal.

IV. Consideration of Petition Issues

The petitioner cites a number of contentions in support of its request that the NRC adopt the proposals in the petition.

1. Failure to consider safety or environmental risks of specific routes

In its first contention, the petitioner, in speaking of spent nuclear fuel shipments over the last 18 months, states that "no federal agency has considered . . . the safety or environmental risks associated with the selected routes. . . ." Petition at 4. Later, the petitioner argues that "the NRC does not independently consider the safety of the particular route, does not evaluate the potential safety and environmental risks of the shipment. . . ." *Id* at 6. Finally, in describing what it considers to be "a significant gap in the regulatory program," the petitioner states that "no agency considers risks associated with specific routes." *Id.*

The petition would require that an applicant for spent nuclear fuel shipment approval evaluate alternatives to the proposal route and demonstrate that the proposed shipment, including its route, is the alternative which provides the least risk of radiological exposure to the public.

The DOT has specific regulations for the routing of spent nuclear fuel by road which require, with certain exceptions, that the carrier operate over preferred routes which include interstate highways and State-designated alternate routes. The routes are selected after consideration is given to minimization of radiological risk. The routing rule was upheld by the Second Circuit Court of Appeals in *City of New York* v. *Department of Transportation*, 715 F.2d 732 (2nd Cir. 1983), *cert. denied*, 104 S. Ct. 1403 (1984). In upholding the DOT regulation, the Court stated that the Hazardous Materials Transportation Act (HMTA) does not require that the safest means be used in transporting spent fuel or any other hazardous material, but only requires the DOT to promulgate rules that provides for adequate safety. *Id.* at 740. Thus, no Federal agency, under the HMTA, could require a licensee to show that the proposed shipment is the alternative which provides the least risk as long as the shipment provides for adequate safety as prescribed under the DOT routing rules.

The routing rule is based on the DOT's finding that the interstate highway system generally minimizes the risk of transporting spent nuclear fuel, and that State agencies can designate alternate routes in accordance with DOT guidelines for minimizing risk. The DOT has made a generic evaluation of highway routes and concludes that the interstate highway system should serve as the basic Federal framework for providing safe and efficient routes for transporting spent nuclear fuel by road. In addition to this generic evaluation by DOT of interstate and alternate routes available for spent nuclear fuel transportation, the NRC specifically evaluates and approves routes selected by licensees for safeguards purposes. These route approvals are not limited to individual shipments of spent nuclear fuel, but may be used for repetitive shipments.

For rail transportation, the DOT physically inspects rail track for safety when a rail route is used for transportation of spent nuclear fuel. The inspections are made before the start of a series of shipments over the same route and at six-month intervals during those shipments. Although there is no formal routing rule for rail shipments of spent nuclear fuel, the Federal Railroad Administration (FRA) works informally with the utility and carrier to investigate

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alternative routes by rail. Many of the principles of the highway routing rule are incorporated into the process for rail route selection.

In addition to the informal application of routing standards for spent nuclear fuel shipments by rail, the FRA has regulations in 49 CFR Part 174 which impose rail safety requirements. These rules require a separation of spent nuclear fuel by at least one car from the engine, from an occupied caboose, and from another placarded car in the train. The rules impose a 48-hour limit on forwarding a spent nuclear fuel shipment after acceptance at an originating point or receipt at any yard or transfer station (weekends and holidays excluded). The FRA rules require documentation aboard the train and reports of any accidents and incidents enroute. The FRA rules also set standards for wheels and brakes, hours of service, track standards related to train speeds, employee training, and qualifications of train crews.

The FRA's 325 inspectors are responsible for complete inspection of all rolling stock, including locomotives; for monitoring carrier's operating rules and training procedures; for monitoring the nation's rail tracks; for monitoring the railroads signal systems; and for inspecting hazardous cargoes. For the initial move of all the spent nuclear fuel shipments from Nebraska and Minnesota to Morris, Illinois, since August 1984, FRA has inspected the entire track from origin to destination, and completely inspected the signal systems, the carriers' operating rules, the equipment to be used, the documentation and the cargo. In addition to the FRA's complete inspection for the initial move, it is FRA policy to conduct a full equipment inspection and documentation check on each spent nuclear fuel shipment. After the initial track and signal inspection, further inspections are conducted on a periodic basis.

In addition to the DOT controls exercised over spent nuclear fuel shipments, NRC conducts a safeguards evaluation of rail routes in much the same way as it does for highway routes.

In addition to the determinations of routing adequacy made by the DOT, the NRC concluded, after issuing its Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes (NUREG–0170) in December 1977, that its regulations were adequate to protect the public against unreasonable risk from the transportation of spent nuclear fuel. For 1985, the report projected that there would be 1,530 spent nuclear fuel shipments by truck and 652 by rail (Table 1.1). These shipments were evaluated as presenting an accident risk of only .0008 latent cancer fatalities per year (Table 5.9). Based on this evaluation, the risk associated with any individual shipment of spent nuclear fuel transported in accordance with NRC and DOT regulations is small.

In support of the petition's contention that shipping controls may not be adequate for some routes, a commenting State agency conducted a review of the technical literature on cask design, development, and performance and concluded that the safety of existing casks is sufficiently uncertain as to warrant more extensive testing which would address potentially hazardous conditions for each proposed route. An individual commenter noted that casks now in use have not been tested for strength when heated to the temperature at which they travel and then submerged into the cold waters of the Mississippi River.

The Commission notes the long-standing disagreement between it and some persons who question the adequacy of the NRC package standards for transportation of radioactive material and who doubt whether the packages can be adequately evaluated by engineering analysis rather than being physically tested under all conditions to ensure their accident resistance. The NRC employs the package standards of the International Atomic Energy Agency which have been in use throughout most of the world for almost 20 years. While spent nuclear fuel casks have not been subjected to all possible combinations of accident conditions during that time, there has been enough accident and testing experience to confirm the high strength of casks in use today. The difference between the normal operating temperature of a spent nuclear fuel cask and the temperature of a large river such as the Mississippi is not large enough to cause a structural or containment problem. Furthermore, the large mass of the cask would slow its cooling, thereby reducing any potential for damage.

2. Protection of the Public in Emergencies

The petitioner's second assertion is that no Federal agency requires "adequate safeguards to protect against emergencies," and that "NRC . . . only gives cursory attention to emergency planning." Petition at 5 and 6.

The Federal plan for providing adequate safeguards to protect against radiological emergencies is described in a Federal Register notice issued by the FEMA on September 12, 1984 (49 FR 35696). The plan describes how 12 Federal agencies that have resources and capabilities to respond to a radiological emergency will work together and will work with State governments and private organizations during an emergency response.

The plan, known as the Federal Radiological Emergency Response Plan (FRERP), describes how the Federal Government will respond to State requests for assistance during a major radiological emergency, how the Department of Energy (DOE) will maintain radiological monitoring and assessment support to the State and local governments, and how the other Federal agencies are prepared to augment the DOE support, if necessary. The FRERP has been tested by the Federal agencies and proven viable. NRC has issued a general statement of Policy on NRC Response to Accidents Occurring During the Transportation of Radioactive Material (49 FR 12335, March 29, 1984).

The scope of the FRERP specifically includes Federal response to transportation accidents involving radioactive materials. One of the FRERP planning assumptions is that State or local governments have primary responsibility for determining and implementing any measures to protect life, property, and the environment in any areas not within the boundaries of a fixed nuclear facility. In a transportation accident, the State or local government has the responsibility for taking emergency action, while appropriate Federal resources may be used to support State and local government response measures, if requested. Federal agency response plans recognize the primacy of the response roles of state and local governments, operators of the transporting vehicle, and owners of the spent fuel.

A utility commented that when an accident occurs the response to it is, of necessity, a local responsibility. After reviewing the responsibility of the DOT to reduce the probability of transportation emergencies and the responsibility of the DOE to maintain response teams to assist local authorities in the event of a nuclear emergency, the utility referred to a DOT conclusion that "spent nuclear fuel poses a much lower risk of transportation accident than do any number of common chemicals, the containment of which could also be expected to exceed the capacity of local groups to respond (49 FR 46884)."

In commenting on the petition, a second utility agreed that it would appear appropriate for a State, in conjunction with its emergency response

capabilities, to examine possible transport routes within its borders and recommend to NRC that these preselected routes be used. The Commission notes that this process is already in use for safeguards purposes and that a number of States have recommended routes within their boundaries. These State recommendations are considered by NRC in its route approval process for spent nuclear fuel shipments.

An individual from the State of Wisconsin, after reviewing the regulatory system now in place, the small risk of radiation injuries from a spent nuclear fuel incident, and the numerous competent groups available to respond to a transportation accident involving radioactive material in Wisconsin, concluded that the Wisconsin proposal would result in adverse consumer economics without significantly improving public safety.

An item sometimes referred to as necessary for an effective emergency response is prenotification to State and local authorities that a spent fuel shipment is being made. In response to a Congressional requirement, NRC regulations in 10 CFR 71.97 now require prior notification of licensee shipments of spent nuclear fuel to the Governor of each State through or into which the shipment will pass. In commenting on the Wisconsin petition, a State agency noted that, particularly in the area of advance notification of shipment of spent nuclear fuel, the NRC's regulations must be strengthened. A second State expressed its concern with the lack of enforcement and inspection procedures needed to assure that proper prenotification is made by the shipper and that information submitted is accurate. In addition, a city urged the NRC to increase the length of the notice period for spent nuclear fuel advance notifications. The Commission considers its advance notification rule to be reasonable in terms of the length of notification period and considers its inspection and enforcement of this rule to be sufficient to ensure its effectiveness. However, this must be considered a separate issue not covered within the Wisconsin petition, because no proposal to amend the advance notification provisions is included in the petition. Changes to those requirements may be proposed under the "petition for rulemaking" provisions of 10 CFR 2.802 of the NRC regulations.

Another essential ingredient for adequate emergency response capability is trained response personnel at both the State and local levels. The FEMA, in its March 11, 1982 revision of 44 CFR Part 351, "Radiological Emergency Planning and Preparedness," sets out Federal agency roles and assigns tasks regarding Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. FEMA places upon itself the responsibility to develop and manage a radiological emergency response training program to meet State and local needs, using technical expertise and resources of other involved agencies. The NRC, the Environmental Protection Agency, and the Departments of Health and Human Services, Energy, Transportation, Agriculture, and Commerce all have responsibilities to assist FEMA, in their particular fields of expertise, in the development, implementation, and presentation of training programs for Federal, State, and local radiological emergency preparedness personnel. The DOT has the particular responsibility in the area of transportation emergencies to provide guidance and materials for use in training emergency services and other response personnel for transportation accidents involving radioactive materials.

Emergency response training programs which have resulted from these Federal responsibilities are as follows:[1]

a. DOE, through Oak Ridge Associated Universities (ORAU), offers—

- "Medical Planning and Care in Radiation Accidents," a one-week course for physicians, training about 48 participants per year.
- "Health Physics in Radiation Accidents," a one-week course for health physicists, training about 36 participants per year.
- "Handling of Radiation Accidents by Emergency Personnel," a 2½-day course for emergency room surgeons and nurses, training about 54 participants per year.

b. DOT offers—

- "Radioactive Materials Transportation Information and Incident Guidance," a self-training manual.
- *Emergency Response to Hazardous Materials in Transportation (Self Study Guide)*, U.S. Department of Transportation, 1982. This is a DOT-offered self-study course on full-spectrum transportation regulations.
- "Handling Radioactive Materials Transportation Emergencies," a training package for first-on-the-scene responders. This is a 6- to 8-hour tape and slide presentation.
- *Hazardous Materials: 1980 Emergency Response Guidebook*, U.S. Department of Transportation, 1980. This document has relevance to full-spectrum hazardous material response. The DOT has distributed this document with the intent of providing a copy of operators of every emergency vehicle in the United States.

c. FEMA Radiological Emergency Preparedness (REP) program offers—

- "Radiological Emergency Planning Seminar," a one-week seminar focusing on nuclear power plant offsite planning requirements.
- "Radiological Accident Assessment Course," a one-week course to train radiological health personnel in offsite dose assessment and projection techniques.
- "Radiological Emergency Response Course," a ten-day course to train State and Federal radiological emergency response team personnel in techniques of responding to a wide range of radiological accidents. Approximately 400 persons are trained each year.

d. NRC, through, ORAU, offers—

- A ten-week program for State health physicists, training about 20 participants per year.

e. Colorado Training Institute offers—

- A three-day seminar and a two-week course on all phases of hazardous materials transportation incident response, including radioactive materials. Originally funded by a grant from DOT, but now an independent State-run program.

On a training related issue, the DOT highway routing regulation requires that drivers of vehicles carrying spent nuclear fuel receive emergency action training within the 2 years preceding that transportation. The training must include the properties and hazards of the spent nuclear fuel and the procedures to be followed in the event of an accident or other emergency. The DOT regulation also requires the driver to have a copy of the mandatory route plan including telephone numbers which will access emergency assistance in each State to be entered. 49 CFR §§ 177.825(c)–(d). The required training for escorts, applicable to all modes of transport, includes the following five subjects: (1) Security en route, (2) communications, (3) radiological considerations, (4) response to contingencies, and (5) response to threats.

[1] FEMA–REP–5, Guidance for Developing State and Local Radiological Emergency Response Plans and Preparedness for Transportation Accidents, March 1983, Federal Emergency Management Agency.

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3. NRC Regulations of the Carrier

The petitioner's third contention that "the NRC does not regulate the carrier or consider its safety record" fails to recognize that the DOT performs this function. Petition at 6. DOT imposes regulations that relate to both the hazardous nature of the cargo and the safety aspects of the transporting vehicle. DOT also inspects and enforces against its carrier rules.

Although NRC considers that it has the authority under the Atomic Energy Act to regulate carriers insofar as they transport material regulated by the NRC, it has agreed under a Memorandum of Understanding with DOT dated June 8, 1979 [44 FR 38690] that it will leave the development of carrier safety standards to DOT because of DOT's greater experience and expertise in that role.

On the issue of incomplete regulatory control, one State referred to a report issued in 1984 by the National Research Council entitled "Social and Economic Aspects of Radioactive Waste Disposal-Considerations for Institutional Management." On the issue of transportation of spent nuclear fuel, the panel of experts "found that an underdeveloped regulatory framework currently exists for the transportation of spent fuel and high-level waste. The federal governmental agencies involved defer to each other, with primary responsibility essentially delegated to NRC's reactor licensees." The panel recommends "a careful evaluation of existing federal regulation of highway transport to assure that (a) a sufficiently broad and uniform regulatory regime exists for the safe transport of radioactive wastes, (b) any redundancies and incompleteness in the existing NRC-DOT regulations have been eliminated, and (c) the needs of States to control safety on their highways are met." The State submits that the conclusions and recommendation of the report are warranted, and that adoption of the Wisconsin petition would help the problem. The Commission strongly disagrees that its regulatory framework is underdeveloped. The existing rules were developed over substantial periods of time with full opportunity for public comment. The regulations have met the test of time producing an excellent safety record over many years. In the absence of any demonstration that the regulations are inadequate, and the National Research Council report has not been specific in that regard, the Commission is not inclined to act on the recommendations of the report.

A nuclear equipment manufacturer commented that the Wisconsin petition is apparently based on the premise that the transport of spent nuclear fuel is not adequately even though it is one of the most heavily regulated transportation activities. The commenter argued that the basic regulatory system for transport of spent nuclear fuel has been demonstrated by experience nationally and internationally to be sufficiently encompassing to ensure protection of public health and safety. The proposed procedures for approval of spent nuclear fuel shipments would cause an enormous use of NRC and utility resources for little, if any, public gain. The Commission agrees that the same package and transportation standards are applied internationally and have proved to be adequate. However the systems (i.e., agencies or combination of agencies) that apply those uniform standards differ from country to country. The NRC is continually monitoring the relationship between its regulations and those of the other agencies with which it shares jurisdiction in the United States.

4. Need for and Propriety of Individual Shipments

In referring to spent nuclear fuel shipments over the last 18 months, the petitioner comments that "no Federal agency has considered the need for the shipments . . . or the propriety of exposing the public to these risks." Petition at 4. In enlarging on this same concept, the petitioner argues that "the utilities' ratepayers may be exposed to substantial costs, the public in the vicinity of the route may be exposed to substantial safety hazards, and States and municipalities along the route may be exposed to substantial liability and costs for emergency response without any opportunity to question the propriety of the shipment." Petition at 7. The petitioner requests that an applicant for approval of an individual spent nuclear fuel shipment be required to demonstrate that "the proposed shipment is necessary to meet the requirements of the licensee's operating license or required minimum fuel storage capacity." Petition at 2.

A State agreed with Wisconsin's assertion that there are significant gaps in the regulatory program regarding shipment of spent nuclear fuel. Specifically,

- There should be a Federal policy designed to minimize spent nuclear fuel shipments prior to the operation of a commercial nuclear waste repository; and
- There should be a Federal regulatory system for evaluating the *need* for spent nuclear fuel shipments prior to the operation of a repository.

A State senator supported that view by noting that spent nuclear fuel shipments which have been and are being made to the Morris Storage Facility will have to be removed from Morris and transported again when the U.S. Government develops an interim storage facility or a disposal facility. He believes this raises the serious question of the necessity of shipments to Morris. An individual agreed by noting that shipments of spent nuclear fuel from Monticello, Minnesota to Morris, Illinois are being made only for economic gain since the storage pool at Monticello has about 4 more years of space left in it at current use rates.

A public interest group asserted that there should be consideration given to the need for the shipments and the safety and environmental risks associated with various routes, and related that consideration to its belief that the training of fire fighters, law departments, and hospitals is inadequate at this time.

A State summarized its view that it is irrefutable that spent nuclear fuel shipments pose some risk and that the unnecessary and uncoordinated random shipment of those materials must be avoided. the State concluded that even after a comprehensive and reasonably predictable strategy for spent nuclear fuel management has been developed and the impacts of shipments can be analyzed, a review of the need for such shipments must be conducted and used as the basis for granting or denying authorization for the shipments.

On the other hand, a utility noted that local governments have imposed regulations in the past requiring the transporter to demonstrate a need for each shipment. The utility further noted that all such regulations have been struck down as being in violation of the Commerce Clause of the U.S. Constitution. As support for this proposition, the utility cited *Kassel* v. *Consolidated Freightways Corporation of Delaware*, 450 U.S. 662 (1981).

A law firm representing multiple utilities commented that the Wisconsin petition proceeds from the two false assumptions that (1) spent nuclear fuel shipments are so dangerous or environmentally harmful that they should only be permitted in the event of dire need, and (2) NRC possesses the legal authority to determine the "need" for proposed shipments. The commenter cited the Nuclear Waste Policy Act of 1982 and its requirement that the Department of Energy provide interim storage capacity (prior to the establishment of a permanent high-level waste repository) for civilian nuclear

power reactors that cannot reasonably provide adequate storage on site. This capacity is to be made available only to a person who is "diligently pursuing licensed alternatives to the use of Federal storage capacity" including transshipent to another civilian nuclear power reactor owned by such person. The commenter believes that Congress thus expressly acknowledged the possible need for electric utilities to transship spent nuclear fuel. The commenter also cited Public Law 96-295, which required that NRC provide for prenotification of spent nuclear fuel shipments to State Governors, as evidence that Congress specifically contemplated shipments of spent nuclear prior to the operation of a repository. The commenter then pointed to the NRC and DOT regulations under which spent nuclear fuel shipments are authorized, regulations the adequacy of which has been reaffirmed on a number of occasions, and concluded that "any additional specific determinations by NRC as to the 'need' to transport would needlessly and unlawfully circumscribe the managerial discretion of the operators of licensed nuclear power plants."

Finally, a State agency noted that the issue of whether spent nuclear fuel should be transported is not an appropriate subject for resolution through the rulemaking process, but should be resolved only by Federal legislative action.

The NRC has analzyed the risks associated with the transportation of spent nuclear fuel, and found them to be small. The Commission acknowledges enactment of several laws (e.g., The Atomic Energy Act of 1954, as amended, The Nuclear Waste Policy Act of 1982, and The Hazardous Materials Transportation Act) which make it abundantly clear that some spent nuclear fuel shipments are expected and accepted in the public interest, but this cannot be taken as a statement of national policy that all shipments of spent nuclear fuel have been authorized by Congress.

The NRC's recent rulemaking to establish 10 CFR Part 53, "Criteria and Procedures for Determinign the Adequacy of Available Spent Nuclear Fuel Storage Capacity," published in the Federal Register on February 11, 1985 (40 FR 5548), raised the issue whether the Commission should give preference to onsite storage alternatives in determining the need for Federal interim storage for a licensee. Consideration was given to indications in the legislative history of the Nuclear Waste Policy Act of 1982 (NWPA) to the effect that onsite storage of spent nuclear fuel should be encouraged and that transportation of spent nuclear fuel should be minimized. The Commissoin took the position in that rulemaking action, and affirms it here, that it has no authority under subtitle B of the NWPA to establish priorities for the pursuit of spent nuclear fuel storage alternatives. if the Commission finds, pursuant to 10 CFR Part 53, that one or more alternatives to Federal interim storage is feasible, the utility is not eligible to participate in the Federal interim storage program. The choice of which alternative to pursue will be decided elsewhere.

As to the petitioner's concern over substantial costs to the utilities' ratepayers from unnecessary shipments of spent nuclear fuel, the economic decisions made by utilities in transporting spent nuclear fuel are beyond the purview of the NRC's regulatory authority as long as the utility meets NRC regulatory requirements with respect to health, safety, common defense, and security. See, *Pacific Gas & Electric Co.* v. *State Energy Resources Conservation and Development Commission*, 461 U.S. 190, 221–22 (1983).

In addition to the Commission having found that the risks of spent nuclear fuel transportation are low, it also explored the consequences of serious incidents which might cause the spent nuclear fuel casks to fail. One recent series of tests included the destructive testing of spent nuclear fuel in simulated fuel casks occurring from presumed acts of sabotage. The preponderance of available evidence, including the recent testing to analyze the effect of explosives, showed that accidental releases from spent nuclear fuel casks would be neither severe nor far-reaching.[2] Based on this preponderance of evidence, the Commission finds no basis for further restrictions on the shipment of spent nuclear fuel or for an examination of the need for individual shipments.

The Commission does have a study underway on this subject, however, to assess the accident resistance of spent nuclear fuel shipping casks when subjected to the stresses associated with historically-based realworld accidents. The study will evaluate the ability of spent fuel transportation containers designed ot meet the performance criteria in current NRC regulation (10 CFR Part 71) to safely retain its radioactive contents, maintain its shielding, and prevent nuclear criticality when subjected to stresses associated with severe road or rail accidents. it will also assess the probability and potential consequences of any accidents in which stresses exceed values associated with current regulations. The study is nearly complete and results are expected to be published in late 1986 following an indepenent peer review. This study, as well as other initiatives, is part of the continuing Commission process to assess and maintain its transportation regulations adequate in light of changing transportation patterns and technologies.

With risks low and potential consequences even from an improbable, severe accident less than catastrophic, additional controls are only justified if the cost of those controls does not exceed their benefits. In the case of the additional controls sought by the petitioner, the technical benefits would be measures in terms of the value of normal and accidental exposures avoided. While the costs of the new approval procedure proposed in the petition have not been quantified, it is the Commission's judgment that, because of the small technical benefits available under any foreseeble circumstances, a favorable cost/benefit balance could not be obtained.

5. Opportuntiy for Meaningful Public Participation

The petitioner's final contention in support of the proposal is that "the public has no opportunity for meaningful input into the decision to transport waste, as this decision is wholly within the discretion of the licensee." Petition at 7. The petitioner requests that the "NRC exercise its regulatory authority to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum. . . ." *Id* at 1.

A State commenter reported that two public discussions held in advance of spent nuclear fuel shipments from the State had some constructive results. The utility involved was able to demonstrate that it had reviewed alternate means of addressing its storage problems, and State agencies, the utility, and the carrier were spurred by public concern to take safety precautions beyond the minimum required by Federal regulations. Based on this experience, the State suggested three reasons for a positive response to the Wisconsin petition:

[2] NUREG-0170 "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes," December 1977. NUREG/CR-2472, "Final Report on Shipping Cask Sabotage Source Term Investigation," October 1982.

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• Open discussion of the issues may result in a greater range of choices, both formal and informal;

• Fears that public participation would somehow get out of hand and undermine rational, technically-sound decisionmaking are probably not realistic. Reasonable resolution leaves everyone better off; and

• If the NRC itself provides a public forum, resort to State and local government as a source of information and discussion is less likely. Legally futile attempts to ban spent nuclear fuel transportation by local ordinance can only generate local resentment and undermine Federal authority.

The Commission, together with DOT, has also attempted to establish a dialogue with affected persons on the issue of spent nuclear fuel transportation. At a DOT/NRC hosted seminar in Chicago on July 31–August 2, 1985, those agencies met with representatives of 40 States, local governments, and Indian Tribes to discuss the problems and potential solutions associated with spent nuclear fuel transportation. A total of 275 people participated.

In addition, an NRC contractual study has included numerous interviews with government officials and members of the public regarding their concerns over shipments of spent nuclear fuel from the West Valley, New York, former reprocessing plant now being decommissioned. The focus of the study has been to obtain information documenting the concerns and actions of affected institutions in previous spent fuel shipment campaigns. The contractual study is not yet complete.

Most of the public commenters who supported the Wisconsin petition also supported the formal hearing process which was part of the petition and on which the approval of the spent nuclear fuel shipment in question would in part be based. For example, a State observed that members of the affected public have not been given an opportunity through the route-approval process to express their concerns about their own personal safety and the protection of the environment in which they live. The Wisconsin petition gives the public an appropriate opportunity to provide input into the decisionmaking process. A public interest group complained that "it has been impossible to provide input into the decisionmaking process for nuclear waste shipments," and believes that "if there is no public input the health and safety of the public will not be insured."

Some persons supporting and some persons opposing the petition registered comments against the formal hearings proposed. A utility commented that the rule as proposed is silent on whether the requirements would be repeatedly imposed for a specific shipping route even though approval was granted for a prior shipment, and could be construed so as to benefit individuals interested in making frivolous repeated requests for hearings for already established shipping routes. A State commented that the basic reason for the rulemaking petition is to allow more public input to the decisions regarding transportation of spent nuclear fuel. While the State encouraged public participation in all aspects of interstate transportation, it believed the Wisconsin proposal would result in undue hardship on the shipper and carrier. The State believed that NRC and DOT provisions for public input have been adequate for route selection, and in fact the State had designated certain routes as preferred routes for spent nuclear fuel shipments. The State's recent accident experience has been good.

There was some division of sentiment among State and local officials on the time when public hearings would be most useful. Although it was not clear from the petition whether a series of shipments could be approved as a result of a single hearing or whether an individual shipment would be subject to the entire approval process by itself, some commenters clearly preferred approval of a series of shipments. For example, a commenting State favored a generic, rather than specific, examination of spent fuel shipments to establish generic criteria for designating routes and alternate routes, for establishing the need to ship, and for calculating risks, but favored avoiding the possibility of a hearing each time spent nuclear fuel is shipped. A city endorsed Wisconsin's request for individual approval of spent nuclear fuel shipments, for public comments on each request, and for environmental impact statements if required under Federal law, rules and requirements, but would give the NRC discretion on whether to conduct a hearing when requested by a commenting person.

Another State supported the Wisconsin contention that the current NRC transportation rules be thoroughly reviewed by the Commission, including ample opportunity for State and public comments. Procedurally, however, the State supported a thorough public review only prior to any major campaign to ship radioactive wastes between two points, including an opportunity for affected States to participate in routing decisions. It suggested that an understanding should also be reached with all affected States of the roles of all parties in inspection of shipments, emergency response, prior notification, and liability.

A State supporting the Wisconsin petition suggested the following revisions to the Wisconsin proposal:

(1) Allow for an application and approval/denial for a series of shipments from one point of origin to one destination; and

(2) Clarify whether an Enviornmental Impact Statement or an Environmental analysis will be required.

Finally, some commenters seemed to express more of a need for an exchange of information than for a formal hearing where a shipment approval decision is involved. A public interest group complained that the public does not have information as to the safety of the casks being used, the necessity of the shipments, the proper routes to take, or other life protection issues. The commenter did not believe that shipping spent nuclear fuel from one temporary location to another is a responsible policy, and urged that shipments be stopped until a more responsible policy can be put into effect. One individual supported the petition for its provisions allowing public input, believing that any economic activity affecting the economic and physical health of the public should be subject to effective public input.

The Commission believes it has been very open to public participation in the processes which established the present rules for transporting spent nuclear fuel. This includes public rulemaking proceedings for establishment of packaging standards in 10 CFR Part 71 begun on December 21, 1965 (30 FR 15748); for the general-license, package-approval system in 10 CFR Part 71 begun on November 20, 1971 (36 FR 22134); for the establishment of standardized impacts associated with the transportation of radioactive material, including spent nuclear fuel, to and from nuclear power plants begun on November 1, 1973 (38 FR 30203); and the reevaluation of NRC transportation regulations begun on June 2, 1975 (40 FR 23768). In each of these cases, announcements were issued and public comments were solicited.

As with the radioactive material transportation regulations promulgated by NRC, those adopted by the DOT were also considered through public rulemaking proceedings. The DOT routing rule is an example where there were multiple opportunities for public participation. An Advance Notice of Proposed Rulemaking was issued on August 17, 1978 (43 FR 36492) soliciting public comments. A Notice of Proposed Rulemaking followed on January 31, 1980 (45 FR 7410) that was followed by seven public hearings held in Philadelphia, Atlanta, Chicago, Denver, Seattle, Boston, and New York, plus three additional public meetings in Akron, Ohio; Eugene, Oregon; and Union City, California. DOT received and reviewed over 1,000 public comments and reviewed over 1,800 pages of transcripts from the public meetings. This represents an extraordinary level of public participation.

V. Consideration of Comment Issues

The public comments raised a number of issues not included in the Wisconsin petition, but which are related to the petition in various ways.

1. Disclosure of Safeguards Information

A utility suggested that the requirement for an applicant to demonstrate that he or she has fulfilled the 10 CFR 73.37 requirements for physical protection of spent nuclear fuel in transport is redundant since the regulation already imposes an obligation to comply with its provisions. The utility further suggested that if a licensee were required to make available for public inspection detailed information relating to security of the shipments, the purposes of § 73.37 would be defeated. A State agency thought that adoption of the Wisconsin petition would compromise the security to spent nuclear fuel shipments by making known during the public hearing process the actual shipment dates and times. An individual commented that announcement of proposed shipments in the Federal Register would breach some needed security and thereby increase the risk of sabotage or theft of the shipment.

The Commission does not agree with the utility's comment that there is no difference between having a requirement for a physical protection program in 10 CFR 73.37 and having the NRC staff review that program to assure that it satisfies those same requirements. As with individuals working in any specialty, the NRC staff develops expertise from reviewing and discussing a large number of physical protection programs which the staff can then apply to its review of other programs. In the Commission's judgment, this process results in greater assurance that the physical protection requirements of 10 CFR 73.37 are being adequately applied. In fact, for some time an NRC staff review of licensee's physical protection program for transportation of spent nuclear fuel has been done when the licensee applies for its route approval under § 73.37(b)(7).

The Commission, however, does agree with the commenters that public hearings in which details of a particular shipment and the security arrangements regarding the shipment are discussed might result in increasing the risk of its sabotage or theft.

2. Extending Scope of Wisconsin Petition

A State recommended that the concept proposed in the Wisconsin petition be extended to "other highly radioactive material that the Commission . . . determines by rule requires permanent isolation" under the provisions of the Nuclear Waste Policy Act (NWPA). The same commenter urged that the same rules also apply to spent nuclear fuel and high-level waste transportation activities undertaken by DOE. A second State also endorsed the amendments to 10 CFR Part 71 proposed by PRM 71–10, and was particularly concerned that the amendments apply to DOE shipments to spent nuclear fuel pursuant to the NWPA. The State interpreted 10 CFR Part 71 requirements as applying to the DOE shipments.

A public interest group supported the Wisconsin petition but asked that protection of the environment be added to the proposed consideration of minimizing radiological exposures. The group also requested that the Commission, on reciept of a request for hearing while considering an individual licensing case, be required to hold a hearing within 60 days in the State from which the request was received.

In general, DOE activities—including spent nuclear fuel shipments—are exempt from NRC regulation as a matter of law. (For the principal exception, see section 202 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5842.) It should be noted, however, that DOE is required by section 137 of the NWPA, 42 U.S.C. 10157, to utilize by contract private industry to the fullest extent possible in each aspect of transportation of spent nuclear fuel under that Act. As a result, the rules pertaining to licensed shipments may apply.

It is the Commission's view that no additional regulatory review of spent nuclear fuel shipments is necessary or desirable. The same view would apply to other types of radioactive material with comparable hazards.

3. Miscellaneous Support For and Opposition to the Petition

Many of the commenters were forceful in their support for or opposition to the petition without providing much new information which would assist the Commission in deciding the issue. A sampling of those comments follows:

a. Support For the Petition

• A public interest group supported the Wisconsin petition by asking for a public rulemaking proceeding to examine the issues raised by Wisconsin, and for a hearing to be held in Wisconsin. The reasons for concern are the following:

1. The lack of consideration of the need for spent nuclear fuel shipments;
2. The lack of examination of alternatives to the shipment;
3. The lack of physical testing of casks;
4. The lack of demonstrated emergency response capability in case of a radiation accident; and
5. The lack of clear evaluation of alternative routes.

• Another public interest group supported the Wisconsin petition because of its concern that there is no Federal agency considering the safety of the public or environmental risks involved in radioactive waste shipments.

• A State Representative believed that "despite the extreme hazard of these radioactive materials the safety of these shipments has not been adequately assured." He cited the failure to determine the need for the shipments, safety and environmental risks associated with specific routes, and lack of adequate emergency response capability as the reasons for inadequate safety. He concluded by stating that all citizens subject to the hazards of these highly radioactive shipments have the right to be assured that all possible steps are being taken to assure their safety.

• One individual supported the Wisconsin petition based on his belief that no adverse or ill effects would be realized by power companies or shippers of spent nuclear fuel.

b. Opposition To The Petition

• An industry commenter made the point that the petitioner has not identified a need for adoption of the proposed rule, and the petition contains no new data or information which would point out inadequacies in the current regulatory basis. The commenter stated his belief that the current transport regulations of the Commission and the corresponding regulations of the DOT provide significantly more than adequate assurances of the public health and safety.

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• A utility, in addition to finding the Wisconsin proposal inappropriate and unnecessary, found the language of the proposal so vague in places that one could not demonstrate compliance. The utility also believed that spent nuclear fuel transportation has relatively benign credible accident consequences compared to many chemical shipments which are not subject to such scrutiny.

• A utility referred to a report by Drs. Courtney and Lambremont of Louisiana State University on a review of 190 scientific and technical papers examining radioactive material transportation over an 18-year period. The reviewers concluded that "the risk to the general public from the transportation of radioactive materials is extremely low. The extensive amount of work which supports this conclusion reflects a remarkable international consensus."

• A utility believed the Wisconsin proposal unnecessary given (1) the emphasis on cask design safety; (2) the security provisions of Part 73; (3) the spent nuclear fuel considerations in reactor licensing hearings; and (4) the regulations of the DOT. The utility argued that there has been no showing that an additional evaluation would provide any increased public health and safety protection.

• A representative of an Indian Tribe noted that the Wisconsin proposal omits any reference to a Tribal government's interest in applications for approval of spent nuclear fuel shipments and is thus inconsistent with policies under the NWPA which generally encourage Tribal consent and consultation in the decision-making process.

• A utility, after considering the NRC regulatory framework, safeguards/safety studies, and the safeguards/safety record, recommended that current requirements be reduced.

VI. NRC Conclusion

The petition was examined in the context of the Memorandum of Understanding (MOU) between NRC and DOT dated June 3, 1979 [published July 2, 1979; 44 FR 38230], by which transportation regulatory functions are divided between the two agencies in the interest of completeness and avoidance of duplication of effort. Where the MOU calls for the DOT to lead in some particular area, such as in the regulation of carriers of radioactive material and the routes over which they travel, NRC does not consider its regulations or its regulatory programs to be deficient because they do not duplicate that control. The Commission concludes that its existing regulation of transportation of spent nuclear fuel, when viewed in the context of the combined programs of NRC, DOT, DOE, FEMA and the States, is sufficient to provide adequate assurance against unreasonable risk to the health and safety of the public. The contentions cited in the petition are therefore not accepted by the Commission as adequate justification for the changes requested in the petition. The Commission also concludes that the procedures suggested in the petition would not significantly serve to improve the protection of the public against unreasonable risk from the transportation of radioactive materials.

For the above reasons, the NRC has denied this petition.

While denying the State of Wisconsin's petition for rulemaking, the Commission certainly recognizes the concern on the part of Wisconsin and other States about the transportation of spent nuclear fuel and high level radioactive waste. The transportation of spent nuclear fuel is an issue which will affect many States. A safe and reliable spent nuclear fuel transportation system will be an important element for a successful nuclear waste disposal program.

While believing that the exiting Federal system provides adequate protection of the public health and safety, the Commission realizes the desire of States for greater participation in the transportation regulation process. If States desire an additional degree of confidence that spent nuclear fuel is being transported safely within their borders, the Commission suggests that States examines the inspection and escort program of the State of Illinois. Each spent fuel shipment traveling in Illinois is inspected by the State's Department of Nuclear Safety to assure that all applicable Federal and State radiation protection requirements are met. The Illinois State Police inspect and escort trucks carrying these shipments. The Illinois Commerce Commission inspect rail shipments. This inspection and escort program provides Illinois with an added measure of assurance that spent nuclear fuel is being transported safely without, it appears, imposing burdensome procedures on licensees and carriers.

Dated at Washington, DC, this 10th day of October, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-23304 Filed 10-15-86; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 615

Capital Adequacy and Minimum Capital Requirements

AGENCY: Farm Credit Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (FCA Board), publishes for comment proposed regulations that eliminate FCA prior approval requirements and incorporate requirements contained in the proposed capital adequacy regulations that were published in the July 23, 1986 Federal Register (51 FR 26402).

DATE: Written comments must be received on or before November 14, 1986.

ADDRESS: Submit any comments (in triplicate) in writing to Frederick R. Medero, General Counsel, Farm Credit Administration, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: On July 23, 1986, the FCA published proposed regulations relating to capital adequacy and minimal capital requirements for Farm Credit System (System) institutions (51 FR 26402). The capital adequacy regulations, when final, will eliminate many FCA approval requirements that are currently applicable to the capital-related activities of System institutions. These proposed regulations, approved by the FCA Board at its regularly scheduled August meeting, contain conforming amendments to other regulations that will eliminate specific approval requirements and incorporate other changes provided for in the proposed capital adequacy regulations.

The current regulation § 614.4270 establishes a general requirement for System institutions to develop interest rate policies. Proposed § 614.4270 would incorporate the requirements contained in the capital adequacy regulations by requiring each System institution to set interest rates at a level sufficient to generate the earnings required to maintain its capital above the minimum capital requirements, taking into consideration all relevant requirements,

including each institution's obligation to provide assistance to other System institutions.

The current regulation § 614.4280 requires System institutions to obtain FCA approval for their interest rate policies and the rates established pursuant to those policies. In addition, the regulation establishes parameters for the contents of interest rate plans and limits the power of bank boards to delegate interest rate setting authorities. Proposed § 614.4280 eliminates the requirements for FCA prior approvals and, in accordance with the proposed capital adequacy regulations, requires each System institution to establish interest rates in accordance with the institution's financial plan. The proposed regulation also clarifies the authority of each System institution's board of directors to delegate interest rate setting activities to management.

The current regulation § 614.4320 provides that interest rates charged by production credit associations (PCAs) shall be authorized by Federal intermediate credit bank (FICB) programs which have been adopted by the bank board and approved by the FCA. Proposed § 614.4320 provides that each PCA shall establish interest rates in accordance with the PCA's financial plan. As with all regulations providing for activities to be undertaken in accordance within financial plans, when the institution's financial condition has deterioriated and the financial health of the institution is threatened, FCA approval of those financial plans will be required in accordance with the proposed capital adequacy regulations.

The current regulation § 614.4330 establishes requirements relating to loan participations. The proposed amendment to § 614.4330 deletes the reference to statutory debt-to-capital ratios, which were repealed by the Farm Credit Amendments Act of 1985 (1985 Amendments), and substitutes a reference to the capital requirements contained in the proposed capital adequacy regulations.

The current regulation § 615.5320 establishes requirements relating to the retirement of stock by FICBs. Proposed § 615.5320 conforms the regulation with the 1985 Amendments by deleting the reference to ownership of FICB stock by the Governor of the FCA. In addition, the proposed amendments conform the regulation to the proposed capital adequacy regulations by requiring that all retirements of stock, participation certificates, and allocated legal reserve shall be made in accordance with the financial plan of the bank.

Proposed § 615.5340 combines and replaces current regulations §§ 615.5330, 615.5335, and 615.5340, relating to allowances for loan losses applicable to each System institution. The proposed regulation requires that all allowance for loan loss accounts be maintained in accordance with generally accepted accounting principles except in the case of PCAs, where under certain circumstances the Act authorizes an allowance greater than that required under generally accepted accounting principles.

Proposed § 615.5350 combines and replaces current regulations §§ 615.5350, 615.5360, 615.5370, 615.5390, 615.5400, 615.5410, 615.5420, and 615.5430, relating to the payment of dividends and patronage refunds by System institutions. The proposed regulation (1) eliminates existing requirements for FCA approval; (2) conforms the dividend payment and earnings distribution requirements with the provisions of the capital adequacy regulations; (3) requires that dividends and patronage refunds be made in accordance with the institution's financial plan and the proposed capital adequacy regulations; and (4) prohibits any institution from paying dividends or making a patronage distribution during any period in which such institution is a net recipient of financial assistance from the Farm Credit System Capital Corporation. The remaining provisions in the proposed regulation are unchanged from current regulations and conform with statutory requirements.

List of Subjects in 12 CFR Parts 614 and 615

Accounting, Agriculture, Banks, banking, Capital, Credit, Government securities, Investments, Rural areas.

As stated in the preamble, it is proposed that Parts 614 and 615 of Chapter VI, Title 12, of the Code of Federal Regulations be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 is revised to read as follows:

Authority: Secs. 4.12, 4.13, 4.13A, 4.13B, 4.14, 5.9, 5.10, and 5.17, Pub. L. 99-205, 99 Stat. 1678 12 U.S.C. 2252(a)(10).

Subpart G—Interest Rates and Charges

2. Section 614.4270 is revised to read as follows:

§ 614.4270 Policy.

It shall be the objective of each System institution, in setting interest rates and fees on loans, to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the cost of money, necessary reserves and expenses, services provided to members, the capital requirements prescribed by Part 615 of this chapter, and the obligation of each institution to provide financial assistance to other System institutions.

3. Section 614. 4280 is revised to read as follows:

§ 614.4280 Interest rates—banks.

Banks shall establish interest rates charged on loans in accordance with the financial plan of the institution. The board of directors of each bank may establish interest rates or make interest rate changes either on a case-by-case basis or by providing guidance to management regarding the circumstances under which management may adjust rates subject to specified limits on the range within which management may raise or lower rates.

4. Section 614.4320 is revised to read as follows:

§ 614.4320 Interest rates—production credit associations.

The board of directors of each production credit association shall establish the rates of interest charged on loans within approved interest rate programs in accordance with the association's financial plan.

Subpart H—Loan Participations

5. Section 614. 4330 is amended by revising paragraph (d)(5)(ii) to read as follows:

§ 614.4330 General.

* * * * *

(d) * * *

(5) * * *

(ii) The amount subject to the repurchase agreement shall be considered a liability of the selling Farm Credit System institution for the purpose of determining capital requirements prescribed in Subpart H of Part 615 of this chapter.

* * * * *

PART 615—FUNDING AND FISCAL AFFAIRS

6. The authority citation for Part 615 is revised to read as follows:

Authority: Secs. 4.3, 5.9, 5.17, Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. 2154, 2243, 2252(a)(10).

7. The title for Part 615 is revised to read as follows:

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PART 615—FUNDING AND FISCAL AFFAIRS

Subpart J—Prescription, Subscription, and Retirement of Stock

8. Section 615.5320 is amended by revising paragraphs (a), (b) introductory text, and (b)(2)(ii) to read as follows:

§ 615.5320 Retirement of Federal intermediate credit bank Class B stock, participation certificates, and allocated legal reserve.

(a) Except as provided in paragraph (b) of this section, banks may, in accordance with their financial plans and the provisions of Subpart H of this part, retire Class B stock at par, participation certificates at face amount, and allocated legal reserve at book value without preference to all holders thereof and in such manner that the oldest outstanding stock, participation certificates, or allocated legal reserve will be retired first.

(b) Notwithstanding the priorities contained in paragraph (a) of this section:

* * * * *

(2) * * *

(ii) In case of liquidation of a production credit association; or

* * * * *

9. The title of Subpart K is revised to read as follows:

Subpart K—Reserves

§§ 615.5330 and 615.5335 [Removed]

10. Subpart K is amended by removing §§ 615.5330 and 615.5335.

11. Section 615.5340 is revised to read as follows:

§ 615.5340 Allowance for loan losses.

(a) Banks. Each bank shall establish and maintain an allowance for losses account on loans and loan-related assets determined in accordance with generally accepted accounting principles.

(b) Federal land bank associations. Each Federal land bank association shall establish and maintain an allowance for losses for its liability on loans and loan-related assets that exists by reason of its endorsement liability, or its liability under agreement to share losses with the Federal land bank on loans originated by the association. This allowance shall be determined in accordance with generally accepted accounting principles.

(c) Production credit associations. Each production credit association shall establish and maintain an allowance for losses on loans and loan-related assets. Additions to the allowance shall be equal to the greater of (1) 0.5 percent of outstanding loans and accrued interests, or net income without respect to such addition, whichever is less, or (2) the amount of such addition needed to maintain the allowance at a level determined in accordance with generally accepted accounting principles. Where the allowance for loan losses equals or exceeds 3.5 percent of outstanding loans and accrued interest, additions to the allowance shall be made only as required in accordance with generally accepted accounting principles.

(d) The Farm Credit System Captial Corporation shall establish and maintain an allowance for losses account on loan and loan-related assets which is determined in accordance with generally accepted accounting principles.

(e) Determinations of the amounts necessary to maintain the allowance for losses shall be made at such frequency as is required to ensure that the allowance is maintained in accordance with generally accepted accounting principles. Upon such determination, each institution shall make the adjustments to the allowance for losses necessary to ensure issuance of accurate financial reports.

§§ 615.5360 and 615.5370 [Amended]

12. Supart L is amended by removing §§ 615.5360 and 615.5370.

13. Section 615.5350 is revised to read as follows:

§ 615.5350 Dividends and patronage refunds.

(a) Federal land banks and Federal land bank associations.

(1) Each Federal land bank and Federal land bank association may declare dividends or pay patronage refunds in accordance with the provisions of its financial plan and the provisions of Subpart H of this part, out of the whole or part of net earnings.

(2) Federal land bank and Federal land bank association dividends shall be noncumulative and may be paid on stock or participation certificates. Dividends may be paid in the form of stock, participation certificates, or cash. The rate of dividends may differ between classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the institution but otherwise dividends shall be without preference.

(3) Each Federal land bank and Federal land bank association may pay patronage refunds in nonvoting stock, participation certificates, allocated surplus, and/or cash. The patronage refund paid to each borrower shall be in proportion to the amount of interest paid by the borrower divided by the total amount of interest paid by all borrowers during the fiscal year. A Federal land bank may make a indirect patronage refund to borrowers by making a distribution to the associations which will make a corresponding distribution of like kind and equivalent value to the borrowers.

(b) Federal intermediate credit banks.

(1) Each Federal intermediate credit bank, in accordance with its financial plan and the provisions of Subpart H of this part, may declare dividends or pay patronage refunds out of the whole or part of net earnings.

(2) Dividends shall be noncumulative and may be paid in the form of stock, participation certificates, or cash. The dividend rate may differ between classes and issues of stock and participation certificates when computed on the basis of each holder's relative contributions to the capital or earnings of the bank; otherwise, dividends shall be paid without preference.

(3) Patronage refunds may be paid to production credit associations and other financing institutions in stock, participation certificates, and/or cash. Each patronage refund shall be distributed to patrons in the same proportion as the interest paid by each patron bears to the total interest paid to the bank.

(c) Production credit associations.

(1) Each production credit association may pay noncumulative dividends on preferred stock in accordance with the authorization to issue such stock. Each production credit association may pay noncumulative dividends on stock, other than preferred stock, and participation certificates in accordance with the association's financial plan and bylaws. The rate of dividends may differ between classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the association, but otherwise dividends shall be paid without preference.

(2) Each production credit association may, in accordance with the association's financial plan and bylaws, pay a patronage distribution in stock, participation certificates, allocated equities, and/or cash. Patronage refunds shall be paid to borrowers of the fiscal year for which such patronage refunds are distributed. The patronage refund paid to each borrower shall be in proportion to the amount of interest paid by the borrower divided by the total amount of interest paid by all borrowers during the fiscal year.

(d) Banks for cooperatives.

(1) Each bank for cooperatives may, in accordance with its financial plan, pay dividends on nonvoting investment stock of the bank.

(2) Each district bank for cooperatives may, in accordance with its financial plan, make a patronage distribution in stock, participation certificates, and/or cash to borrowers. The amount of the patronage distribution paid to each borrower shall be in proportion to the amount of interest and fees on loans paid by the borrower divided by the total amount of interest and fees on loans paid by all borrowers during the fiscal year.

(3) The Central Bank for Cooperatives may, in accordance with its financial plan, make a patronage distribution in stock, participation certificates, and/or cash to district banks for cooperatives and cooperative associations that are direct borrowers. Patronage distribution to district banks for cooperatives shall be based on the interest held by the Central Bank for Cooperatives in loans made by the district banks. Patronage distributions to cooperative associations that are direct borrowers of the Central Bank for Cooperatives shall be paid to the district bank or banks which issued the stock to the cooperative borrower incident to the loan, and such district bank or banks shall make a corresponding distribution of like kind and equivalent value to the cooperative borrowers. The amount of the patronage refund paid to each district bank for cooperatives or indirectly paid to each cooperative association that is a direct borrower shall be in proportion to the amount of interest and fees paid to the Central Bank for Cooperatives from loan participations with a district bank or paid by a direct borrower divided by the total amount of interest and fees paid to the Central Bank for Cooperatives.

(e) No institution shall make patronage distributions or pay dividends during any period in which such institution is a net recipient of financial assistance from the Farm Credit System Capital Corporation.

Subpart M—[Removed and Reserved]

14. Subpart M is removed and reserved.

Marvin Duncan,

Acting Chairman, Farm Credit Administration.

[FR Doc. 86-23382 Filed 10-15-86; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 86-ACE-1]

Proposed Alteration of Restricted Areas R-4501 A-D and Establishment of R-4501E Fort Leonard Wood, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions, altitudes, and/or times of use of Restricted Areas R-4501 A, B, C and D and to establish R-4501E, located near Fort Leonard Wood, MO. After reviewing the subject restricted areas, the FAA has determined that the alteration of Restricted Areas R-4501 A-D and the establishment of R-4501E will enable the using agency, U.S. Army, to release additional airspace to the flying public when it is not in use.

DATE: Comments must be received on or before November 28, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 86-ACE-1, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9245.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ACE-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned With this rulemaking will be filed in the docket. Send comments on environmental and land use aspects to Commanding General, Fort Leonard Wood, MO.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to alter the descriptions, altitudes, and/or times of use of Restricted Areas R-4501 A-D and to establish R-4501E, located near Fort Leonard Wood, MO. After reviewing R-4501 A-D, the FAA has determined that the alteration of these areas and the establishment of R-4501E will give the U.S. Army the ability to release additional airspace to the flying public when the areas are not in use. R-4501A will be removed from the Continental Control Area and R-4501E will be added. These proposals will also reduce

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the amount of time the restricted areas are in use. Sections 71.151 and 73.45 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation Safety, Continental control area, Restricted areas.

The Proposed Amendments

PARTS 71 AND 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.151 is amended as follows:

R–4501A Fort Leonard Wood West, MO [Remove]
R–4501E Fort Leonard Wood, MO [New]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. Section 73.45 is amended as follows:

R–4501A Fort Leonard Wood West, MO [Amended]

By removing the present Time of designation and substituting the following:

Time of designation. 0700–1800 local time, Monday–Friday; other times by NOTAM issued at least 24 hours in advance.

R–4501B Fort Leonard Wood East, MO [Amended]

By removing the present Time of designation and substituting the following:

Time of designation. 0700–1800 local time, Monday–Friday; other times by NOTAM issued at least 24 hours in advance.

R–4501C Fort Leonard Wood, MO [Amended]

By removing the present Designated altitudes and Time of designation and by substituting the following:

Designated altitudes. From 2,200 feet MSL to 5,000 feet MSL.

Time of designation. As specified by NOTAM issued at least 24 hours in advance.

R–4501D Fort Leonard Wood, MO [Amended]

By removing the present Boundaries, Designated altitudes and Time of designation and by substituting the following:

Boundaries. Beginning at lat. 37°41'00" N., long. 92°16'10" W.; to lat. 37°41'26" N., long. 92°10'15" W.; to lat. 37°40'16" N., long. 92°07'05" W.; to lat. 37°38'20" N., long. 92°06'55" W.; to lat. 37°36'07" N., long. 92°10'27" W.; to lat. 37°35'22" N., long. 92°15'31" W.; to the point of beginning.

Designated altitudes. From 5,000 feet MSL to 12,000 feet MSL.

Time of designation. As specified by NOTAM issued at least 24 hours in advance.

R–4501E Fort Leonard Wood, MO [New]

Boundaries. Beginning at lat. 37°41'00" N., long. 92°16'10" W.; to lat. 37°41'26" N., long. 92°10'15" W.; to lat. 37°40'16" N., long. 92°07'05" W.; to lat. 37°38'20" N., long. 92°06'55" W.; to lat. 37°36'07" N., long. 92°10'27" W.; to lat. 37°35'22" N., long. 92°15'31" W.; to the point of beginning.

Designated altitudes. From 12,000 feet MSL to FL 180.

Time of designation. As specified by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Commanding General, Fort Leonard Wood, MO.

Issued in Washington, DC, on October 7, 1986.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86–23284 Filed 10–15–86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5242 and 5252

Department of the Navy Federal Acquisition Regulations; Policy Concerning Navy Requests for Refunds

AGENCY: Department of the Navy.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is proposing to amend its policy and associated clause concerning refunds for overpriced spare parts and items of support equipment. This revision clarifies the definition of intrinsic value, establishes a time limit for mandatory refunds, and establishes conditions under which a contractor is not liable for a refund.

DATE: Comments must be received on or before November 17, 1986.

ADDRESS: Comments may be mailed to: Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), Contracts and Business Management (CBM–BPC), Attn: S. Tronic, Washington, DC 20360–5000.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney Tronic, Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), Contracts and Business Management (CBM–BPC), Washington, DC 20360–5000, Telephone (202) 692–3558/9.

SUPPLEMENTARY INFORMATION:

1. Background

As published on June 3, 1986 at 51 FR 19842–19843, the Navy promulgated guidance and a clause effective April 28, 1986 which provides for the Navy to be entitled to mandatory refunds in the event that the price paid by the Navy for a spare part or item of support equipment exceeds the part or item's intrinsic value. Discussion and comment concerning the Navy's guidance and clause continued after the period specified for public comment. Several constructive suggestions for improvement were subsequently made. The Navy has reviewed these comments and determined that certain changes in the Navy's guidance and clause are appropriate. The following is a summary of the significant changes which the Navy proposes to make in its guidance and clause.

Definition of Intrinsic Value

The definition of "intrinsic value" is expanded for items that are sold, or that are substantially similar or functionally equivalent to items that are sold, in substantial quantities to the general public to mean the established catalog or market price, plus the value of any unique requirements. In addition, the definition of "intrinsic value" as it applies to other items is changed to delete the reference to "standard" costs and to clarify that the price an individual would expect to pay is based upon the cost to manufacture in economic production quantities.

Time Limit On Refund Requests

A time limit of four years after delivery of the part or item is established for the Navy to request a refund. This four year period is proposed because it coincides with the contract record retention period discussed in Federal Acquisition Regulation Subpart 4.705.

Contractor Notification That Price Exceeds Intrinsic Value

Provision is made for a contractor to not be liable for a refund if the contractor advises the contracting officer that the price it would propose for a spare part or item of support equipment will exceed the part or item's intrinsic value. This change will protect contractors in those situations where they know that their price will exceed intrinsic value, but are specifically directed to deliver the part or item, anyhow.

Clause Inapplicable To Prices Established Through Adequate Price Competition

The clause is revised to clarify that it is not, and was not before, applicable to prices established through adequate price competition.

2. Statutory and Regulatory Requirements

The proposed revisions to the existing Navy guidance and clause will not have a significant economic effect (and need not be published for public comment). Therefore, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is not applicable. The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) does not apply to the proposed revisions because they do not impose any additional reporting requirements on the public.

3. Public Comments On Proposed Revisions

Prior to promulgating final revisions to its guidance and clause concerning refunds for spare parts and items of support equipment, however, the Navy desires to consider any comments received from interested parties. Such comments should be submitted in writing to the address listed above.

List of Subjects in 48 CFR Parts 5242 and 5252

Government procurement.

For the reasons set out in the preamble, it is proposed to amend Parts 5242 and 5252 of Title 48, Code of Federal Regulations, as follows.

1. Part 5242 is revised to read as follows:

PART 5242—CONTRACT ADMINISTRATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

Subpart 5242.90—Refunds Requirements (Spares and Support Equipment)

5242.9000 Requests for refunds.

(a) *Policy.* This subpart establishes uniform policy and procedures on requesting refunds and ensuring fair and reasonable prices for spare parts or items of support equipment. Contracting activities shall request a refund whenever the contract price of any spare part or item of support equipment significantly exceeds the item's intrinsic value after considering the impact of specified delivery terms and quantity. The intrinsic value of an item is defined as follows:

(1) If the item is one which is sold, or is substantially similar or functionally equivalent to one that is sold, in substantial quantities to the general public, intrinsic value is the established catalog or market price, plus the value of any unique requirements, including inspection, packaging or labeling.

(2) If there is no comparable item sold in substantial quantities to the general public, intrinsic value shall be defined as the price an individual would expect to pay for the item based upon the cost to manufacture the item in economic production quantities.

(b) *Examples.* The following are examples of circumstances which may establish a basis for a refund request or pricing adjustment:

(1) A technical or engineering analysis, such as that done by PRICE FIGHTER, results in a determination that the intrinsic value is significantly lower than the historical price.

(2) The price paid for an item bought competitively in similar quantity *and circumstances* (e.g. urgency, delivery terms) is significantly less than the former sole source price.

(3) Prices paid to the manufacturer of an item indicate the amount previously charged by the prime contractor for the item significantly exceeded the intrinsic value of the prime contractor's efforts in providing the item.

(4) Postaward audit reports identify overcharges.

(c) *Solicitation Provisions.* The contracting officer shall insert the clause at 5252.242–9000 in solicitations, Basic Ordering Agreements, and contracts (as defined in FAR 2.101) which contain or may contain requirements for spare parts or items of support equipment, except those contracts awarded as a result of competitive small purchase procedures. Heads of Contracting Activities (HCAs) are delegated, without power of redelegation, authority to establish monetary thresholds below which refunds will not be requested.

2. Part 5252 is revised to read as follows:

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

Subpart 5252.2—Texts of Provisions and Clauses

5252.242–9000 Refunds.

As prescribed in 5242.9000 insert the following clause:

Refunds (Spares and Support Equipment) (Sep 86)

(a) In the event that the price of a spare part or item of support equipment delivered under this contract exceeds its intrinsic value, the contractor agrees to refund the difference.

(b) For purposes of this clause, the intrinsic value of an item is defined as follows:

(1) If the item is one which is sold, or is substantially similar or functionally equivalent to one that is sold in substantial quantities to the general public, intrinsic value is the established catalog or market price, plus the value of any unique requirements, including inspection, packaging, or labeling.

(2) If there is no comparable item sold in substantial quantities to the general public, intrinsic value shall be defined as the price an individual would expect to pay for the item based upon the cost to manufacture the item in economic production quantities.

(c) At any time up to four years after delivery of a spare part or item of support equipment, the contracting officer may notify the contractor that based on all information available at the time of the notice, the price of an item described above, exceeds its intrinsic value.

(d) The contractor shall enter into good faith negotiations for the downward repricing of an item. All information available to the Navy, whether or not available at the time the original contract price was negotiated and any additional information, including cost data, supplied by the contractor, shall be considered in determining the amount of any refund.

(e) If agreement on a downward repricing of the item cannot be reached, and the Navy's return of the new or unused item to the contractor is practical, the Navy may elect to return the item to the contractor. Upon return of the item to its original point of government acceptance, the contractor shall refund in full the price paid. If no agreement concerning downward repricing is reached, and return of the item by the Navy is impractical the contracting officer may, with the approval of the Head of the Contracting Activity,

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determine a reasonable refund, subject to contractor appeal as provided in the Disputes clause.

(f) The contractor will make refunds, as required under this clause, in accordance with instructions from the contracting officer.

(g) The contractor shall not be liable for a refund if the contractor advised the contracting officer that the price it would propose for a spare part or item of support equipment exceeded its intrinsic value, and with such advice, specified the estimated proposed price, the estimated intrinsic value, and alternative sources of items that can meet the requirement, and the contracting officer after receipt of that information directed the contractor to provide the item. The government shall not be liable for any cost for such part or item unless after receipt of the information, the contracting officer directs in writing that such part or item be provided.

(h) This clause does not apply to any spare parts or items of support equipment whose price is determined through adequate price competition.

[End of clause]

Dated: October 10, 1986.

Harold L. Stoller, Jr.,

CDR, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-23337 Filed 10-15-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390-399

[BMCS Docket No. 118, Notice No. 86-14]

Commercial Motor Vehicle Safety Regulatory Review Panel; Opportunity To Review Draft Compilation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of opportunity to review draft compilation.

SUMMARY: The FHWA, in support of the Commercial Motor Vehicle Safety Regulatory Review Panel, has sent a copy of a draft compilation of State laws and regulations pertaining to commercial motor vehicle safety to each State and to each FHWA Division Office, Office of Motor Carrier Safety. The compilation sent to each State and Division Office consists only of the State laws and regulations of that State. A complete compilation of all the State laws and regulations has been placed in the public docket referred to above and maintained in Washington, DC. Each compilation provides the citation to the State law or regulation, the citation to the comparable Federal regulation, if any, and the text or an abstract of the text of each State law or regulation.

States and other interested persons are requested to review these compilations. The Safety Panel seeks information as to whether the compilation for each State is complete and accurate, and whether each State law or regulation is matched with an appropriate corresponding Federal regulation if one exists.

DATE: Comments are requested by December 1, 1986.

ADDRESSES: Comments should refer to the docket number that appears at the top of this document, and should be addressed to the Commercial Motor Vehicle Safety Regulatory Review Panel, Office of Motor Carrier Standards, Federal Highway Administration, Room 3404, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366-2991, or Mr. Thomas P. Holian, Attorney, Office of the Chief Counsel, (HCC-20), (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) was established by the Federal Highway Administration (FHWA) on June 18, 1985, pursuant to section 209 of the Motor Carrier Safety Act of 1984 (the Act), 49 U.S.C. App. section 2508 (Supp. II 1984). Establishment of the Safety Panel was announced in the **Federal Register** on August 2, 1985 at 50 FR 31452.

Pursuant to section 208 of the Act, 49 U.S.C. App. section 2507 (Supp. II 1984), the Safety Panel is reviewing all State laws and regulations pertaining to commercial motor vehicle safety to determine whether each such law or regulation has the same effect as, is less stringent than, or is additional to or more stringent than any regulation issued by the Department of Transportation. The Safety Panel is to notify the Secretary of Transportation, through the Federal Highway Administrator, of its determinations.

The Secretary, pursuant to notice and comment rulemaking and giving great weight to the corresponding determinations of the Safety Panel, is required by the law to determine the relative stringency of each State law or regulation pertaining to commercial motor vehicle safety. 49 U.S.C. App. section 2507(c) (Supp. II 1984). If the Secretary determines that any State law or regulation has the same effect as a regulation issued by the Secretary, then that State law or regulation may remain in effect and be enforced with respect to commercial motor vehicles in interstate commerce after October 30, 1989. If the Secretary determines that any State law or regulation is less stringent than a regulation issued by the Secretary, then the State law or regulation shall not have effect and be enforced with respect to commercial motor vehicles in interstate commerce after October 30, 1989. If the Secretary finds that a State law or regulation is additional to or more stringent than a regulation issued by the Secretary, then the State law or regulation may be in effect and enforced with respect to commercial motor vehicles in interstate commerce after October 30, 1989, unless the Secretary further finds that there is no safety benefit associated with the State law or regulation; the State law or regulation is incompatible with the regulation issued by the Secretary; or enforcement of the State law or regulation would be an undue burden on interstate commerce.

Pursuant to section 207 of the Act, 49 U.S.C. App. section 2506 (Supp. II 1984), States have been asked to submit and have previously submitted copies of all their laws and regulations pertaining to commercial motor vehicle safety to the Safety Panel. 50 FR 1243 (Jan. 10, 1985) and 7357 (Feb. 22, 1985) (notices of guidelines to the States) and 51 FR 5565 (Feb. 14, 1986) (announcement of review of State safety regulations). The guidelines provided to the States requested that the States submit all safety laws, regulations, rules, standards, or orders related to the subject matter of each of the Federal Motor Carrier Safety Regulations, 49 CFR Parts 390-399. The submissions were not to include such subjects as: (1) Vehicle size and weight laws; (2) vehicle traffic laws, unless they are unique in their applicability to commercial motor vehicles; and (3) licensing or permit laws. This request is a continuing one in that States have been asked to submit changes to their laws or regulations as they occur. *See* 49 U.S.C. App. section 2506(b) (Supp. II 1984). Changes in State law or regulation which have occurred after April 30, 1986, will also have to be addressed by the Safety Panel, and information on any such changes is also requested. The States have also been requested to submit their stringency analyses of their own laws and regulations for consideration by the Safety Panel. (51 FR 5565 Feb. 14, 1986).

The purpose of this notice is to afford all interested persons an opportunity to review the draft compilation of State laws and regulations and to advise the Safety Panel of any omissions or other inaccuracies. Because of the expense involved, each State and FHWA Division Office has been provided only with that portion of the compilation which relates to that State or the State in which the Division Office is located. It is believed that this will be adequate for most interested persons from each such State. Interested persons may contact the appropriate FHWA Division Office, Office of Motor Carrier Safety, to arrange to review this material. The FHWA Division Offices in each State are typically located in the State capital city, and the addresses of these offices are set forth at 49 CFR Part 7, Appendix D (1985).

Because of administrative necessity, the compilation includes only those State laws and regulations which were in effect as of April 30, 1986.

The Safety Panel has begun its review and analysis of State laws and regulations based on the draft compilation. This work will incorporate information provided to the Safety Panel as a result of comments received in response to today's notice. In conducting its stringency analysis of State laws and regulations, the Safety Panel intends to consider the analyses submitted by the individual States. It is anticipated that adequate opportunity for public participation in this phase of the Panel's deliberations will be provided at the appropriate time. The form this participation will take and the schedule for it will be considered more fully by the Safety Panel at its next scheduled public meeting which will be announced in the **Federal Register.**

Issued on October 6, 1986.

R.D. Morgan,

Executive Director, Federal Highway Administration.

[FR Doc 86-23265 Filed 10-15-86; 8:45 am]

BILLING CODE 4910-22-M

VOL 51 ISS 200 OCT 16 1986 UMI

Notices

Federal Register
Vol. 51, No. 200
Thursday, October 16, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 10, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Rural Electrification Administration
  REA Borrower Service Area Data
  REA Form 50
  Once in six years
  Businesses or other for-profit; Non-profit institutions; 1,900 responses; 3,800 hours; not applicable under 3504(h)
  Thomas M. Scanlon, (202) 382–1946.

Revision

- Cooperative State Research Service
  Food and Agricultural Sciences National Needs Graduate Fellowships Program
  Forms CSRS 701, 702, 703, 706; New Form 707; Delete Forms 704 & 705
  On occasion; Annually
  Individuals or households; Non-profit institutions; 400 responses; 8,500 hours; not applicable under 3504(h)
  Dr. K. Jane Coulter, (202) 447–7854.
- Food and Nutrition Service
  Nutrition Program for the Elderly; Titles III and VI of the Older Americans Act. Program Performance Reports; Subpart II, C–1, C–2.
  Program Performance Reports: Title III-Part II: Subparts C–1, C–2, Title VI Parts, C–3, C–4
  Recordkeeping; Monthly
  State or local governments; Federal agencies or employees; 2,172 responses; 694 hours; not applicable under 3504(h)
  Anneva Hackley, (703) 756–3166.
- Foreign Agricultural Service
  Licensing of Sugar Exempt from Quotas for Purpose of Production of Polyhydric Alcohol
  On occasion; Monthly
  Businesses or other for-profit; 225 responses; 225 hours; not applicable under 3504(h)
  Gordon E. Patty, (202) 447–2579.

Reinstatement

- Federal Crop Insurance Corporation
  Standard Reinsurance Agreement
  On occasion; Weekly; Monthly; Annually
  Businesses or other for-profit; 1,818 responses; 22,360 hours; not applicable under 3504(h)
  William Flora, (202) 382–9897.

Donald E. Hulcher,
Departmental Clearance Officer.

[FR Doc. 86–23375 Filed 10–15–86; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Marketing Service

Beef Promotion and Research; Board and State Beef Council Addresses

AGENCY: Agricultural Marketing Service.
ACTION: Notice.

SUMMARY: This document provides the address of the Cattlemen's Beef Promotion and Research Board, established pursuant to the Beef Promotion and Research Act, and the addresses of the 40 qualified State beef councils certified by the Board.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447–2650.

SUPPLEMENTARY INFORMATION: Pursuant to the Beef Promotion and Research Act (7 U.S.C. 2901 *et. seq.*), a Beef Promotion and Research Order (Order) was published in the July 18, 1986 **Federal Register** (51 FR 26132). Regulations implementing the order were published in the October 1, 1986, issue of the **Federal Register** (51 FR 35196).

The order and the regulations provide that, beginning October 1, 1986, cattle sold in the United States are subject to an assessment of $1 per head. Persons who collect assessments from producers under the order and regulations are required to remit them to the qualified State beef council of the State where they reside, or to the Cattlemen's Beef Promotion and Research Board (Board), is there is no qualified State beef council in their State. Imported cattle, beef and beef products are also subject to assessments; these are paid through the U.S. Customs Service.

Producers may request refunds of assessments from the qualified State beef council in the State where they reside, or if there is no qualified State beef council in that State, producers may request refunds from the Board.

This Notice provides the addresses of the Board and the qualified State beef councils. It should be noted that many of the qualified State beef councils have different addresses for different purposes. Requests for refund application forms should be sent to the address for inquires and general business of the appropriate State beef council; request for refunds should be sent to the indicated address. The address of the Board is Cattlemen's Beef Promotion and Research Board, P.O. Box 27–275, Kansas City, Missouri 64180–0001.

ADDRESSES OF THE QUALIFIED STATE BEEF COUNCILS

Inquiries and general business	Remit assessments and accompanying reports to—	Request refunds from—
Alabama Cattlemen's Association, P.O. Box 1746, Montgomery, AL 36103.	Alabama Dept. of Agr., Stockyards & Brand Sec., P.O. Box 3336, Montgomery, AL 36193.	Alabama Cattlemen's Association, P.O. Box 1746, Montgomery, AL 36103.
Arizona Beef Council, Suite 110, 5025 E. Washington St., Phoenix, AZ 85034.	Arizona Livstk. Board, 1688 W. Adams St., Room 333, Phoenix, AZ 85007.	Arizona Beef Council, Suite 110, 5025 E. Washington St., Phoenix, AZ 85034.
Arkansas Beef Council, P.O. Box 31, 10720 Kanis Road, Little Rock, AR 72211.	Arkansas Revenue Div., Misc. Tax Section, P.O. Box 896, Rm. 230, Little Rock, AR 72203.	Arkansas Revenue Div., Misc. Tax Section, P.O. Box 896, Rm. 230, Little Rock, AR 72203.
California Beef Council, Suite A, 551 Foster City Boyd., Foster City, CA 94404.	California Dept. of Marketing, 1220 N. St., Sacramento, CA	California Beef Council, Suite A, 551 Foster City Boyd., Foster City, CA 94404.
Colorado Beef Council, 328 Livstk. Exchg. Bldg., Denver, CO 80216.	State Board of Stock Inspec. Commissioners, 201 Livstk. Exchg. Bldg., Denver, CO 80216.	Colorado Beef Council, 328 Livstk. Exchg. Bldg., Denver, CO 80216.
Florida Beef Council, P.O. Box 1929, Kissimmee, FL 32741	Florida Beef Council, P.O. Box 1929, Kissimmee, FL 32741	Florida Beef Council, P.O. Box 1929, Kissimmee, FL 32741.
Georgia Beef Board, Suite 107, 2996 Riverside Drive, Macon, GA 31204.	Georgia Beef Board, P.O. Box 6515, Macon, GA 31208–9990	Georgia Beef Board, P.O. Box 18008, Milledgeville, GA 31208.
Idaho Beef Council, 2120 Airport Way, Boise, ID 83705	State of Idaho Brand Dept., 2118 Airport Way, Boise, ID 83705.	Idaho Beef Council, 2120 Airport Way, Boise, ID 83705.
Illinois Beef Council, Suite 337, 2375 W. Monroe, Springfield, IL 62704.	Illinois Beef Council, Suite 337, 2375 W. Monroe, Springfield, IL 62704.	Illinois Beef Council, Suite 337, 2375 W. Monroe, Springfield, IL 62704.
Indiana Beef Council, 6790 Purdue Road, Indianapolis, IN 46268.	Indiana Beef Council, 6790 Purdue Road, Indianapolis, IN 46268.	Indiana Beef Council, 6790 Purdue Road, Indianapolis, IN 46268.
Iowa Beef Industry Council, P.O. Box 451, Ames, IA 50010	Iowa Beef Industry Council, P.O. Box 451, Ames, IA 50010	Iowa Beef Industry Council, P.O. Box 451, Ames, IA 50010.
Kansas Beef Council, P.O. Box 4569, Topeka, KS 66604	Kansas Beef Council, P.O. Box 4569, Topeka, KS 66604	Kansas Beef Council, P.O. Box 4569, Topeka, KS 66604.
Kentucky Beef Cattle Assoc., Suite 110, 386 Waller Ave., Lexington, KY 40504.	Kentucky Beef Cattle Assoc., Suite 110, 386 Waller Ave., Lexington, KY 40504.	Kentucky Beef Cattle Assoc., Suite 110, 386 Waller Ave., Lexington, KY 40504.
Louisiana Beef Industry Council, P.O. Box 26, I–10 West Service Rd., Port Allen, LA 70767.	Louisiana Dept. of Agr., P.O. Box 94002, Baton Rouge, LA 70804–9002.	Louisiana Dept. of Agr., P.O. Box 94002, Baton Rouge, LA 70804–9002.
Maryland Beef Council, P.O. Box 1117, Bowie, MD 20715	Maryland Beef Council, P.O. Box 1117, Bowie, MD 20715	Maryland Beef Council, P.O. Box 1117, Bowie, MD 20715.
Michigan Beef Industry Commission, Suite 307, 815 Coolidge Road, Lansing, MI 48912.	Michigan Beef Industry Commission, Suite 307, 815 Coolidge Road, Lansing, MI 48912.	Michigan Beef Industry Commission, Suite 307, 815 Coolidge Road, Lansing, MI 48912.
Minnesota Beef Council, Suite 111, 2950 Metro Drive, Minneapolis, MN 55420.	Minnesota Beef Council, Suite 111, 2950 Metro Drive, Minneapolis, MN 55420.	Minnesota Dept. of Agr., Beef Promotion Refunds, 90 W. Plato Blvd., St. Paul, MN 55107.
Mississippi Cattle Industry Board, 121 N. Jefferson, Jackson, MS 39201.	Mississippi Cattle Industry Board, 121 N. Jefferson, Jackson, MS 39201.	Mississippi Cattle Industry Board, 121 N. Jefferson, Jackson, MS 39201.
Missouri Beef Industry Council, P.O. Box 315, Ashland, MO 65010.	Missouri Beef Industry Council, c/o Missouri Dept. Agr., P.O. Box 630, Jefferson, MO 65102.	Missouri Beef Industry Council, c/o Missouri Dept. Agr., P.O. Box 630, Jefferson, MO 65102.
Montana Beef Council, P.O. Box 1679, 420 N. California St., Helena, MT 59601.	Montana Dept. of Livstk., Capitol Station, Helena, MT 59620	Montana Dept. of Livstk., Capitol Station, Helena, MT 59620.
Nebraska Beef Industry Development Board, P.O. Box 2408, Rover Park B–1, Unit 1, Kearney, NE 68847–2408.	Nebraska Beef Industry Development Board, P.O. Box 2408, Rover Park B–1, Unit 1, Kearney, NE 68847–2408.	Nebraska Beef Industry Development Board, P.O. Box 2408, Rover Park B–1, Unit 1, Kearney, NE 68847–2408.
Nevada Beef Council, P.O. Box 11100, Reno, NV 89510	Nevada Beef Council, P.O. Box 11100, Reno, NV 89510	Nevada Beef Council, P.O. Box 11100, Reno, NV 89510.
New Mexico Beef Council, 2804 Aztec, N.E., Albuquerque, NM 87184.	New Mexico Livstk. Board, 7013 Central N.E., Albuquerque, NM 87108.	New Mexico Beef Council, 2804 Aztec, N.E., Albuquerque, NM 87194.
New York Beef Industry Council, P.O. Box 219, Richmondville, NY 12149.	New York Beef Industry Council, P.O. Box 219, Richmond, NY 12149.	New York Beef Industry Council, P.O. Box 219, Richmondville, NY 12149.
North Carolina Cattlemen's Assoc., P.O. Box 25758, 221 W. Martin St., Raleigh, NC 27611.	North Carolina Dept. of Agriculture, P.O. Box 27647, Raleigh, NC 27611.	North Carolina Cattlemen's Assoc., P.O. Box 25758, 221 W. Martin St., Raleigh, NC 27611.
North Dakota Beef Commission, 4023 N. State St., Bismarck, ND 58501.	North Dakota Beef Commission, 4023 N. State St., Bismarck, ND 58501.	North Dakota Beef Commission, 4023 N. State St., Bismarck, ND 58501.
Ohio Beef Council, P.O. Box 845, 283 S. State St., Westerville, OH 43081.	Ohio Beef Council, P.O. Box 845, 283 S. State St., Westerville, OH 43081.	Ohio Beef Council, P.O. Box 845, 283 S. State St., Westerville, OH 43081.
Oklahoma Beef Commission, 312 NE 28th, Oklahoma City, OK 73105.	Oklahoma Beef Comm., 312 NE 28th, Okla. City, OK 73105	Oklahoma Beef Comm., 312 NE 28th, Okla. City, OK 73105.
Oregon Beef Council, Red Lion Lloyd Ctr. Hotel, 1000 NE Multnomah, Portland, OR 97232.	Oregon Dept. of Agr., Livstk. Division, 635 Capitol St., NE, Salem, OR 97310.	Oregon Dept. of Agr., Livstk. Division, 635 Capitol St., NE, Salem, OR 97310.
Pennsylvania Beef Council, 4714 Orchard St., Harrisburg, PA 17109.	Pennsylvania Beef Council, 4714 Orchard St., Harrisburg, PA 17109.	Pennsylvania Beef Council, 4714 Orchard St., Harrisburg, PA 17109.
South Carolina Cattle and Beef Board, Wade Hampton Office Bldg., P.O. Box 11280, Columbia, SC 29211.	South Carolina Cattle and Beef Board, c/o S.C. Dept. of Agr., P.O. Box 11280, Columbia, SC 29211.	South Carolina Cattle and Beef Board, c/o S.C. Dept. of Agr., P.O. Box 11280, Columbia, SC 29211.
South Dakota Beef Industry Council, P.O. Box 1037, Pierre, SD 57501.	South Dakota Beef Industry Council, P.O. Box 1037, Pierre, SD 57501.	South Dakota Beef Industry Council, P.O. Box 1037, Pierre, SD 57501.
Tennessee Beef Industry Council, Suite C–6, 109 Holiday Court, Franklin, TN 37064.	Tennessee Beef Industry Council, c/o Williamson County Bank, P.O. Box 220, Franklin, TN 37065–0220.	Tennessee Beef Industry Council, Suite C–6, 109 Holiday Court, Franklin, TN 37064.
Texas Beef Industry Council, Suite 300, 12741 Research, Austin, TX 78759.	Texas Beef Industry Council, Dept. RB0825, P.O. Box 580, Austin, TX 78789–0825.	Texas Beef Industry Council, Suite 400, 6504 Bridgepoint Pkwy., Austin, TX 78730.
Utah Beef Council, Suite 10–B, 150 South 6th East, Salt Lake City, UT 84102.	Utah Dept. of Agr., 350 N. Redwood Rd., Salt Lake City, UT 84116.	Utah Beef Council, Suite 10–B, 150 South 6th East, Salt Lake City, UT 84102.
Virginia Cattle Industry Board, P.O. Box 176, U.S. Route 220, Daleville, VA 24083.	Virginia Cattle Industry Board, P.O. Box 176, U.S. Route 220, Daleville, VA 24083.	Virginia Cattle Industry Board, P.O. Box 176, U.S. Route 220, Daleville, VA 24083.
Washington State Beef Commission, P.O. Box 799, 1720 Canyon Rd., Ellensburg, WA 98926.	Livestock Service Div., Mail Stop AX–41, Olympia, WA 98504	Washington State Beef Commission, P.O. Box 799, 1720 Canyon Rd., Ellensburg, WA 98926.
West Virginia Beef Industry Assess. Board, General Delivery, Scherr, WV 26726.	West Virginia Beef Industry Assess. Board, P.O. Box 268, Buckhannon, WV 26201.	West Virginia Beef Industry Assess. Board, P.O. Box 268, Buckhannon, WV 26201.
Wisconsin Beef Council, 3648 Hypoint Road, Lancaster, WI 53813.	Wisconsin Beef Council, P.O. Box 770, Madison, WI 53701–0770.	Wisconsin Beef Council, P.O. Box 770, Madison, WI 53701–0770.
Wyoming Beef Council, P.O. Box 208, Cheyenne, WY 82201	Wyoming Livstk. Board, P.O. Box 206, Cheyenne, WY 82201	Wyoming Livstk. Board, P.O. Box 206, Cheyenne, WY 82201.

Done at Washington, DC, on October 10, 1986.

James C. Handley,
Administrator.

[FR Doc. 86–23351 Filed 10–15–86; 8:45 am]
BILLING CODE 3410–02–M

Commodity Credit Corporation

Prevented Planting Deficiency Payments for 1986 Crops of Wheat, Feed Grains, Upland Cotton, and Rice

AGENCY: Commodity Credit Corporation (CCC), USDA.
ACTION: Notice of determination.

SUMMARY: The Urgent Supplemental Appropriation Act of 1986 (Pub. L. 99–349) requires the Secretary of Agriculture to make payments to certain producers who are prevented from planting 1986 crops of wheat, feed grains, upland cotton, or rice or other nonconserving crops on the intended acreage for such crops because of flood, heavy rains, excessive moisture, or

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drought. The purpose of this notice is to inform producers of the requirements for eligibility for these payments and the deadline for applying for payment.

DATE: Applications for such payments will not be accepted after November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Chief, Production Adjustment Branch, Cotton, Grain and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013 (202) 447–4698.

SUPPLEMENTARY INFORMATION:

Background

The Urgent Supplemental Appropriation Act of 1986 (the "Act") includes a requirement that the Secretary of Agriculture make payments to producers who were prevented from planting wheat, feed grains, upland cotton, rice ("program crops") or other nonconserving crops because of adverse weather conditions. The Act requires that these payments ("prevented planted deficiency payments") be made with respect to these 1986 program crops if the Secretary determines that:

(a) The producers on a farm are prevented from planting, because of flood, heavy rains, excessive moisture, or drought, any portion of the acreage intended for a program crop to the crop or other nonconserving crops; and

(b) The farm is located in an area that the Secretary determines has been substantially affected by a natural disaster in the United States or by a major disaster or emergency designated by the President under the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.).

The amount of prevented planting deficiency payments shall be computed by multiplying:

(a) 40 percent of the projected deficiency payment rate for the crop by

(b) The number of acres which the producer was prevented from planting, because of flood, heavy rains, excessive moisture, or drought, to the program crop or other nonconserving crop but not to exceed the acreage planted to the crop for harvest (including any acreage that the producers were prevented from planting to the crop or other nonconserving crops in lieu of the commodity because of flood, heavy rains, excessive moisture, or drought) in the immediately preceding year by

(c) The Farm program payment yield established for the crop for the farm.

The amount of any prevented planting deficiency payment is required to be deducted from crop insurance indemnity payments due the producer as a result of such disaster.

Determination

Prevented planting deficiency payments required by the Act shall be made available to producers who: (1) Have filed applications with the county Agricultural Stabilization and Conservation (ASC) committees for disaster credit in accordance with 7 CFR 713.105, (2) are in compliance with all contract provisions of the 1986 production adjustment program for the applicable program crop, and (3) otherwise meet the requirements set forth by the Act. State Agricultural Stabilization and Conservation committees shall, in accordance with instructions issued by the Executive Vice President, CCC, determine areas which have been substantially affected by a natural disaster for the purpose of determining eligibility for these payments. Accordingly, producers who believe that they qualify for such payments and desire to file an application for payment may obtain further information from county Agricultural Stabilization and Conservation Service offices.

Applications for such payments will not be accepted after November 17, 1986.

Signed at Washington, DC, on October 10, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation and Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86–23376 Filed 10–15–86; 8:45 am]

BILLING CODE 3410–05–M

1986 Crop Soybean Final Loan and Purchase Rate; Final Determination of Price Level

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1986 crop soybean final level of price support.

SUMMARY: The level of price support for the 1986 soybean crop is $4.77 per bushel. This determination is made pursuant to section 201(i) of the Agricultural Act of 1949, as amended (the "1949 Act").

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Analysis Division, ASCS–USDA, P.O. Box 2415, Washington, DC 20013, Telephone (202) 447–4417.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated "not major." It was designated "not major" because it will not result in: (1) An annual effect on the economy or $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse impacts on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation is not requied by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. A final impact analysis has been prepared and is available from the above named individual.

Section 201(i)(1)(A) of the 1949 Act provides that the price of soybeans for each of the 1986 through 1990 marketing years shall be supported through loans and purchases. Section 201(i)(1)(B) provides that the support price for the 1986 and 1987 crops of soybeans shall be $5.02 per bushel. However, if the Secretary of Agriculture determines in accordance with section 201(i)(2) that the level of loans or purchases determined for a marketing year would discourage the exportation of soybeans and cause excessive stocks of soybeans in the United States, the Secretary may reduce the loan and purchase level for soybeans by the amount the Secretary determines necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 5 percent in any year nor below $4.50 per bushel. Any reduction made in accordance with section 201(i)(2) in the loan and purchase level for soybeans shall not be considered in determining the loan and purchase level for soybeans for subsequent years.

Section 201(i)(5) of the 1949 Act provides that the Secretary shall make a preliminary announcement of the level of price support for a crop of soybeans not earlier than 30 days prior to September 1, the beginning of the soybean marketing year, based upon the latest imformation and statistics then available. The final announcement of the level of price support must be made no later than October 1 of the marketing year to which the announcement is applicable. The level of support in the final announcement cannot be less than that of the preliminary announcement.

A preliminary announcement of a price support level of $4.77 per bushel for the 1986 crop of soybeans was made on August 29, 1986 (51 32343). It was announced on September 12, 1986 that the level of price support for the 1986 crop of soybeans is $4.77 per bushel.

Determination

Ending stocks of soybeans for the 1985–1986 marketing year are expected to be approximately 535 million bushels, an amount considered to be excessive. Maintaining the price support level for the 1986 crop of soybeans at $5.02 per bushel would likely result in ending stocks of approximately 630 million bushels for the 1986–1987 marketing year since such a support level would discourage the exportation of soybeans and, to a lesser degree, result in lower domestic use of soybeans. Based upon 1986 estimated production of soybeans, it is estimated that a $4.77 per bushel price support level would result in ending stocks of approximately 590 million bushels for the 1986–1987 marketing year. As compared to a $5.02 per bushel price support level, a $4.77 per bushel price support level would increase the export of soybeans about 2 percent and also increase slightly the domestic use of soybeans. The price support level for the 1986 crop of corn has been established at $1.92 per bushel. Establishing a 1986 soybean price support level of $5.02 per bushel, based upon a $1.92 per bushel price support level for corn, would result in an adverse distortion of the historical corn/soybean price relationship and result in an adverse impact on the use of soybeans. However, a 1986 soybean price support level of $4.77 per bushel would better maintain this normal corn/soybean price relationship. Accordingly, the 1986-crop soybean price support level is $4.77 per bushel, which is 5 percent less than the price support level of $5.02 per bushel which was established for the 1985 crop of soybeans.

(Sec. 201 of the Agricultural Act of 1949, as amended, 63 Stat. 1052, as amended (7 U.S.C. 1446))

Signed at Washington, DC, on October 9, 1986.

Peter C. Myers,

Acting Secretary.

[FR Doc. 86–23322 Filed 10–15–86; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Proposed Forest Land and Resource Management Plan and Draft Environmental Impact Statement, Shasta-Trinity National Forests, CA, Humboldt, Modoc, Shasta, Siskiyou, Tehama, and Trinity Counties, CA

In response to several public requests the Department of Agriculture, Forest Service, has extended the public review and comment period for the Shasta-Trinity National Forest Proposed Forest Plan and Draft Environmental Impact Statement to January 16, 1987. All written comments must be postmarked by January 16, 1987 and should be addressed to Forest Supervisor Robert R. Tyrrel, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, CA 96001.

The Forest Service will hold four public hearings on its Proposed Forest Land and Resource Management Plan and Draft Environmental Impact Statement for the Shasta-Trinity National Forests. The hearings will be held in Redding, Hayfork, Weaverville, and Mt. Shasta City, California. The public hearings are being held to receive formal public comments on the two referenced documents. The hearing times, dates, and places are as follows:

December 8, 1986, Monday, 2–5 and 7–10 p.m., Redding: Redding City Council Chambers, 1313 California Street.

December 9, 1986, Tuesday, 2–5 and 7–10 p.m., Hayfork: Trinity County Fairgrounds, Dining Hall.

December 10, 1986, Wednesday, 2–5 and 7–10 p.m., Weaverville: Civil Defense Hall, C.D. Loop.

December 11, 1986, Thursday, 2–5 and 7–10 p.m., Mt. Shasta City: Mt. Shasta City Park, Recreation Center Building, 1315 Nixon Road.

The hearings will be conducted by a hearing officer. A court reporter will keep a verbatim record of all oral testimony. Speakers may pre-register for any one of the hearings with the receptionist at the Forest Supervisor's Office in Redding (916–246–5222) or at the door beginning one-half hour prior to the hearing. Speakers will be asked to give comments in the order of registration. Elected officials will be entitled to speak first. Each person may be limited to a five minute presentation to ensure that everyone has an opportunity to speak. The Forest Service will neither respond to comments nor debate issues during the hearings.

For additional information on the hearings, contact the Public Affairs Officer at the above address or telephone number for the Shasta-Trinity National Forests.

Dated: October 8, 1986.

Robert R. Tyrrel,

Forest Supervisor.

[FR Doc. 86–23377 Filed 10–15–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Members of the Departmental Performance Review Board

This notice announces the members of the Departmental Performance Review Board (PRB) in the Department of Commerce. The purpose of the Departmental PRB is to review the performance of appointing authorities and their immediate deputies who are in the SES and SES members whose ratings are initially prepared by their respective appointing authorities.

These Departmental PRB members are appointed for the two year term ending November 30, 1988. The list of members eligible to serve on the Departmental PRB is as follows:

Office of the Secretary

Mark Policinski, Associate Deputy Secretary
Helen Robbins, Executive Assistant to the Secretary.

Office of General Counsel

Robert Brumley, Deputy General Counsel
Marilyn Wagner, Assistant General Counsel for Administration.

Office of the Assistant Secretary for Administration

Otto Wolff, Deputy Assistant Secretary
Joseph Brown, Deputy Director, Office of Personnel and Civil Rights.

Minority Business Development Agency

John Christian, Associate Director for Field Operations.

Economic Development Administration

Steven Brennen, Deputy Assistant Secretary for Loan Programs
Beverly Milkman, Deputy Director for Grants Programs
John Corrigan, Atlantic Regional Director.

Office of Economic Affairs

John Cremeans, Director, Office of Business Analysis
Robert Wilson, Director, Office of Strategic Resources
C. Louis Kincannon, Deputy Director, Bureau of the Census
Allan Young, Director, Bureau of Economic Analysis
Lucy Falcone, Senior Advisor to the Chief Economist.

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National Telecommunications and Information Administration

Carol Emery, Associate Administrator for Policy Analysis and Development
Dennis Connors, Director, Office of Policy Coordination and Management.

International Trade Administration

Saul Padwo, Director, Office of Trade Information Services
Peter Hale, Director, Office of Western Europe
Vincent DeCain, Deputy Assistant Secretary for Export Administration
John Richards, Director, Office of Industrial Resource Administration
Roger Severance, Director, Office of the Pacific Basin
George Hambleton, Deputy Assistant Secretary for U.S. and Foreign Commercial Services
James Phillips, Deputy Assistant Secretary for Capital Goods and International Construction
Robert Watkins, Deputy Assistant Secretary for Automotive Affairs and Consumer Goods
George Muller, Deputy Director, Office of Export Trading Company Affairs.

National Oceanic and Atmospheric Administration

Alan Thomas, Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research
Paul Wolff, Assistant Administrator, Ocean Services and Coastal Zone Management
Robert Smith, Director, Eastern Administrative Support Center
B. Kent Burton, Director, Congressional Affairs.

National Bureau of Standards

Edward Brady, Associate Director for International Affairs
Samuel Kramer, Deputy Director, National Engineering Laboratory
Lyle Schwartz, Director, Institute for Materials Science and Engineering
Guy Chamberlin, Director of Administration.

Patent and Trademark Office

William Lawson, Patent Documentation Administrator
Stephen Kunin, Group Director

Persons desiring any further information about the Departmental PRB or its membership may contact Mr. David E. Mathis, Executive Secretary to the Departmental Performance Review Board, Office of Personnel, Herbert C. Hoover Building, Room 5102, Washington, DC 20230 (202) 377–3453.

Dated: October 2, 1986.

David E. Mathis,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 86–23304 Filed 10–15–86; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Coastal Zone Management Programs and Estuarine Sanctuaries State Programs; Alabama; Approval of Amendment

ACTION: Notice of approval of amendment.

Location: Baldwin County, Alabama.

SUMMARY: Notice is hereby given that the Director of the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) approved Amendment No. 2 to the federally approved Alabama Coastal Area Management Program (ACAMP). The amendment consists of a change in the State's regulatory definition of its Construction Setback Line (CSL) to a Construction Control Line (CCL) for managing development on beaches and dunes in Baldwin County, Alabama. The CCL is a fixed, mapped line demarcated by the use of concrete monuments. This amendment eliminates the need to identify the crestline of the primary dune system on a case-by-case permit request basis. The amendment allows for increased predictability and consistency in the management of the ACAMP. This approval was made pursuant to section 306 of the Coastal Zone Management Act of 1972, as amended (CZMA), (16 U.S.C. 1451 *et seq.*), and NOAA regulations on Amendments to Approved State Management Programs, 15 CFR 923.80–923.82 (March 28, 1979).

Notice of the Director's preliminary decision to approve the amendment was published on July 16, 1986 in the **Federal Register** (51 FR 25728). An environmental assessment with a Finding Of No Significant Impact was distributed and a 30-day comment period was provided. Five responses were received and responded to prior to making the final findings of approvability.

A copy of the findings and responses to comments made by the Director including that this Amendment meets the requirements of the CZMA may be obtained from the Office of Ocean and Coastal Resource Management. Inquires regarding the ACAMP and the findings may be addressed to: James P. Burgess, Chief, Coastal Programs Division, Universal South Building, 1825 Connecticut Avenue NW., Washington, DC 20235, (202) 673–5130.

In accordance with section 307 of the CZMA, Federal agencies are required to conduct their activities directly affecting the coastal zone consistent to the maximum extent practicable with the ACAMP, as amended. The Federal consistency requirements are fully explained at 15 CFR Part 930. To determine how these requirements are applied in Alabama, Federal agencies should contact William A. Rushton, Director, Office of State Planning and Federal Programs, State Capitol, Montgomery, Alabama 36130, (205) 285–8700.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: October 9, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86–23336 Filed 10–15–86; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management Programs and Estuarine Sanctuaries State Programs; Alaska; Approval of Amendment

ACTION: Notice of approval of amendment.

LOCATION: Bristol Bay, Alaska.

SUMMARY: The Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the State of Alaska to amend the Alaska Coastal Management Program (ACMP) to incorporate the Bristol Bay Coastal Resource Service Area (CRSA) Coastal Management Program (BBCMP). The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 14559(g) and implementing regulations at 15 CFR 923.81. The BBCMP creates a new coastal boundary for the ACMP in the region and establishes goals and policies for activities taking place in Bristol Bay's coastal area. The BBCMP follows the guidelines and standards for local program development set in the ACMP and will be administered both by the CRSA and the State.

The Director of the Office of Ocean and Coastal Resource Management has reviewed the amendment request and has made a preliminary determination

that the ACAMP as amended will still constitute an approvable program and that the procedural requirements of section 306(c) of the CZMA have been met.

The Director also determined that approval of the proposed change does not constitute a major Federal action having a significant effect on the environment. Therefore, an environmental impact statement on the approval of the amendment under the National Environmental Policy Act of 1969, as amended, is not required. Copies of the Finding of No Significant Impact (FONSI), including the supporting Environmental Assessment (EA) and the Director's preliminary determination of approvability, are available at the address below.

Comments on the Preliminary Determination to approve the Alaska amendment request and on the EA and FONSI should be made within 30 days from the date of this notice. Address comments to: Ben Mieremet, Coastal Hazards and Technical Assistance Coordinator, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235, (202) 673–5161.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: October 10, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86–23339 Filed 10–15–86; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management; Federal Consistency Appeal of Exxon From an Objection by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Resumption of appeal.

On September 5, 1986, Exxon Company U.S.A. (Exxon) requested that the Secretary of Commerce resume processing of its appeal filed in January, 1983 under sections 307(c)(3)(A) and (B) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(3)(A) and (B), and regulations at 15 CFR 930 Subpart H. The appeal was taken from an objection by the California Coastal Commission to Exxon's proposed Development and Production Plan (DPP) to increase production from the Santa Ynez Unit (SYU), contiguous oil and gas lease tracts on the Outer Continental Shelf in the Western Santa Barbara Channel. The SYU is estimated to contain 300–400 million barrels of crude oil and 600–700 standard cubic feet of natural gas.

On October 8, 1986, the Secretary of Commerce granted Exxon's request for the reactivation of its appeal. Public comments will be invited on the remaining issues to be decided on appeal, after Exxon has filed information supporting the resumption of its appeal. Notice will be given in the **Federal Register** at that time. In addition, a public hearing will be held on the issues raised by this appeal. Notice giving place, date and time will be published in **Federal Register** thirty days before the hearing will be held.

FOR ADDITIONAL INFORMATION CONTACT: L. Pittman, Attorney/Advisor, Office of the Assistant General Counsel for Ocean Services, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: October 9, 1986.

Daniel W. McGovern,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86–23270 Filed 10–15–86; 8:45 am]

BILLING CODE 3510–08–M

National Telecommunications and Information Administration

[Docket No. 61091–6191]

Comprehensive Review of Rate of Return Regulation of the U.S. Telecommunications Industry

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is responsible for developing and setting forth telecommunications policies pertaining to the nation's economic and technological advancement and to the regulation of the telecommunication industry. Accordingly, NTIA: (a) Conducts studies and makes recommendations regarding telecommunications policies, activities, and opportunities; and (b) ensures that Executive branch views on telecommunications matters are effectively presented to the Federal Communications Commission (FCC), state and local governments, and Congress.

With this notice, NTIA is initiating a review of rate of return regulation, the mechanism historically used by Federal and state agencies to regulate prices charged by domestic and international telecommunications firms. Our objective is to determine whether rate of return regulation remains an effective method of supervising companies in rapidly-changing telecommunications services markets, and whether there are preferred alternative regulatory mechanisms.

DATE: Comments in response to this request should be submitted not later than 60 days from the date of this Notice to receive full considereration.

ADDRESS: Send comments to: Honorable Alfred C. Sikes, Assistant Secretary for Communications and Administraiton, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Carol R. Emery, Associate Administrator, Office of Policy Analysis and Development, National Telcommunications and Information Administration, U.S. Department of Commerce, Washington, DC 20230 ((202) 377–1880).

I. Introduction

Government regulation of prices charged by enterprises "affected with a public interest" has been practiced for more than a century.[1] Telecommunications has long been considered sufficiently "affected with a public interest" to warrant government scrutiny. Regulation was premised on a belief that telcommunications services exhibited "natural monopoly" characteristics; multiple suppliers would thus be inefficient. Rate of return regulation has been the preferred mechanism to constrain the economic power of the "natural monopoly" suppliers.

Rate of return regulation imposes certain costs on society, however. Agencies and firms incur significant administrative and personnel costs. A growing body of economic literature, moreover, identifies potential inefficiencies and undesirable incentives created by this form of regulation.[2]

We are therefore soliticing comments on the costs imposed by rate of return regulation, as well as any inefficiencies and adverse incentives resulting from it. While we identify obvious problem areas, interested parties are strongly encouraged to address other aspects of

[1] *See Munn* v. *Illinois*, 94 U.S. 113 (1877).

[2] *See* Sections III and IV, *infra*.

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rate of return regulation.[8] Finally, we seek comment on potential alternatives to rate of return regulation, as well as interim measures appropriate during any necessary transition from rate of return regulation to other regimes. These alternatives may provide comparable protection for ratepayers with fewer costs to society.

II. Components of Rate of Return Regulation

Conceptually, rate of return regulation is straightforward. Regulated firms are allowed to set prices that (a) recover allowable operating expenses and (b) earn a return sufficient to cover the cost of capital acquired in debt and equity markets. Rate of return regulation, in theory, gives consumers the benefits of large scale production while assuring "just and reasonable" rates. At the same time, shareholders are assured a fair return on investment used to provide regulated services.

Implementation of the theory is more complicated, however. Rate of return regulation has numerous components, including:

1. Determining property to be included in the rate base;
2. Prescribing depreciation rates used to compute depreciation expenses;
3. Determining a rate of return that reflects the regulated firm's cost of capital;
4. Establishing criteria for "allowable" operating expenses;
5. Developing regulatory accounting and information systems to track revenues and expenses;
6. Specifying criteria to review submitted tariffs; and
7. Establishing rules and procedures to exercise regulatory control.

Each enumerated component, in turn, presents implementation problems. Difficulties in determining the rate base, for example, have led to valuation of assets at historical, versus replacement costs. Such a practice may lead to distortions in incentives to invest in capacity for telecommunications services. Likewise, there are problems with determining a "fair" return on equity. Examining returns in "comparable" industries suffers the perennial problem of identifying such industries. These and related problems raise the question whether problems with rate of return regulation can be eliminated or mitigated by just modifying some constituent elements, or if costs and inefficiencies can by minimized only be eliminating the entire process and replacing it with an improved system to protect ratepayers.

[8] In each case, commenting parties should support their views with quantitative data and economic analysis.

III. Direct Costs of Rate of Return Regulation

Rate of return regulation imposes direct costs on the public and regulated firms. There are 51 state public utility commissions (including the District of Columbia), in addition to the FCC, all supported chiefly by taxpayers. To assess these regulatory costs, we request specific data on the following question: How much staff time and what percentage of operating budgets do state and Federal agencies devote to regulating telecommunications firms subject to their jurisdiction?

"Public" costs of rate of return regulation are paralleled by costs imposed on regulated firms. Each company incurs substantial costs to participate effectively in the process. Regulated firms are requested to submit data in response to the following question: What management, personnel, and administrative costs are incurred in complying with rate of return regulation?

The direct costs of rate of return regulation may be exacerbated by "regulatory lag." By creating a time lag between the filing of a rate increase and its effective date, rate of return regulation may adversely affect a regulated firm's earnings, particularly during periods of inflation. We seek comment on the effect of regulatory lag on the operations and financial performance of regulated firms.

IV. Indirect Costs Attributable to Rate of Return Regulation

Rate of return regulation may also produce indirect costs by creating incentives in regulated firms to behave inefficiently. Although we discuss only the most frequently cited concerns, interested parties are encouraged to identify others. Commenters should also consider whether regulatory alternatives might reduce or eliminate any of these undesirable incentives.

A. Distorted Investment Decisions

A common criticism of rate of return regulation is predicated on the so-called Averch-Johnson-Wellisz ("A–J–W") effect. The A–J–W theory holds that because profits of rate regulated firms are functionally related to rate base size, those firms have an incentive to make more capital investment than is required to produce a given level of output.[4] As a related matter, rate of return regulation may distort a firm's research and development ("R&D") efforts by encouraging development of labor saving innovations, rather than capital saving innovations.[5]

Some economists criticize the A–J–W theory on a number of grounds. Williamson argues the A–J–W model is flawed because it assumes that firms generally maximize profits, which may not be the case.[6] Bailey and Coleman suggest regulatory lag, attributable to rate of return regulation, often encourages cost minimization.[7] Finally, because incentives to overcapitalize obtain only when capital costs are less then the rate of return, one of the authors of the A–J–W models has recognized the A–J–W effect may not occur during periods of inflation.[8]

Accordingly, we request parties to comment on the following: Does the A–J–W effect exist in the domestic telecommunications industry? Are the economic welfare effects substantial? What market assumptions underlying the A–J–W model are necesary for its operation? Does rate of return regulation distort R&D efforts, for example, by favoring labor saving innnovations over capital saving innovations?

B. Incentives To Inflate Costs

A related problem stems from the fact that rate of return regulation gives rise essentially to "cost-plus" ratemaking. Regulated firms are generally entitled to recover all costs legitimately expended to provide service. As a result, firms may be disinclined to minimize operating costs, or may "gold plate" their service offerings. The result is excessive use of scarce resources, to the detriment of ratepayers. Interested parties are requested to comment on the following: Is "gold plating" prevalent in the domestic telecommunications industry? To what extent would increased competition induce regulated firms to minimize costs of operation?

C. Adverse Effects on Innovation

Some observers claim rate of return regulation stifles the incentives of regulated firms to innovate. Such claims remain unproven since existing studies compare the relationship between innovation and market structure.[9] Verification of these claims requires an analysis contrasting the level of innovation produced in a rate of return regulated industry with the level produced in a comparable industry that is not rate regulated. We encourage interested parties to provide us with such analyses. More generically, commenters are requested to submit analysis on the relationship between rate of return regulation and levels of innovation.

A 1976 study performed by A.D. Little for AT&T cites a possible link between rate of return regulation and innovation.[10] The study concluded that, in the short run, rate regulated firms have greater incentives to introduce cost-reducing innovations than to introduce demand-increasing innovations.[11] Cost-reducing innovation enables regulated firms to increase profits by holding prices steady and capturing cost savings. Profits would persist until regulators moved to reduce prices.

Demand-increasing innovation typically involves increasing rates or introducing new services. Delays in obtaining regulatory approval may limit the firm's ability to obtain immediate benefit from the innovation. Under many likely price regulation conditions, moreover, increased profits generated by a demand-increasing innovation will be less than the increased profits attributable to a cost-reducing innovation.[12] For these reasons, the Little study concluded that regulated firms would tend to favor cost-reducing innovations. Is this conclusion valid under current market and regulatory conditions?

Although the Little study suggests that rate of return regulation may induce regulated firms to prefer one type of innovation over another, it does not indicate whether or not rate regulation reduces a firm's incentive to introduce both types of innovations. Interested parties are encouraged to comment on this issue. They should also consider whether society should prefer cost-reducing innovations over demand-increasing innovations, or vice versa. If demand-increasing innovations create greater welfare, it would seem unwise to retain a regulatory scheme—rate of return regulation—that may impede the introduction of such innovations.

To assess the potential impact of rate of return regulation on innovation, a measure for the level of innovation must be identified. One possible measure is domestic telecommunications patent activity recorded by the United States Patent and Trademark Office.[13] The Patent Office found the proportion of foreign-originated patents in telecommunications increased sharply between 1970 and 1983. In 1983, 43.8 percent of United States telecommunications patents were of foreign origin, as compared to 25.6 percent in 1970. The decline in the proportion of telecommunications patents granted to domestic firms may reflect a decline in the R&D activities of those firms. This may hamper their ability to compete in international markets and, thus, contribute to the growing U.S. trade deficit.

What are the advantages and limitations of using patent activity to measure the innovation levels in the telecommunications industry? Interested parties are requested to address whether changes in the level of domestic-originated patenting between 1970 and 1983 may be, in part, attributable to rate of return regulation. Commenters are also requested to submit data in response to these questions:

1. Do the rate of return process and related proceedings (especially the opportunities they afford competitors to challenge new offerings before administrative agencies) deter introduction of new products by regulated firms?
2. Are the goals of maintaining rate of return regulation and facilitating rapid dispersal of the latest technologies incompatible?
3. Has rate of return regulation exacerbated the U.S. trade deficit by dampening domestic telecommunications research and development and innovation activities? How would increased R&D and innovation by U.S.-based telecommunications firms enhance their position in the international marketplace?

V. Alternatives to Rate of Return Regulation

Given the costs and inefficiencies attributable to rate of return regulation, it may be appropriate to replace rate regulation with another mechanism that provides comparable protection against excessive rates with lesser social and economic costs. Several alternatives to rate of return regulation have been proposed. We seek comment on each alternative, as well as suggestions for other approaches.

A. "Social Contract" and Related Regulatory Schemes

Several states have considered "social contract" approaches to telecommunications regulation. Under plans such as the one proposed by Vermont Public Service Board Chairperson Louise McCarren, prices for local exchange service to residential and small business customers would be frozen for a designated period of time. Increases thereafter would be limited by a certain formula (such as increases in the consumer price index). In return, all other telephone company services would be deregulated or detariffed.

Legislation recently enacted in Nebraska employs a variation of the "social contract" approach. As of January 1, 1987, local telephone companies may increase local exchange rates up to 10 percent on 90 days notice without state commission approval. For five years, however, the commission will be required to hold hearings upon petition from a certain percentage of the company's customers. In return, companies will be freed from rate of return regulation for other services. Moreover, interLATA toll services will be deregulated as of January 1, 1987, and intraLATA services will be deregulated two years later.

These regulatory schemes are not without problems. The consumer price index may not be an appropriate benchmark for determining subsequent price increases. some companies contend any rigid cap on their prices would constitute an unconstitutional "taking," because they, potentially, would be obligated to render service at arbitrarily fixed, noncompensatory prices.

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[4] Wellisz, *Regulation of Natural Gas Pipeline Companies: An Economic Analysis*, 55 J. Pol. Econ. 30 (1963); Averch and Johnson, *Behavior of the Firm Under Regulatory Constraint*, 53 Am. Econ. Rev. 1053 (1962).

A recent study has confimed the existence of the A–J–W effect in the Candaian telecommunications industry. Mirzucki, *A Study of the Averch-Johnson Hypothesis in the Telecommunications Industry*, *13 Atlantic Econ. J. 121 (1984).*

[5] *See* Westfield, "Innovation and Monopoly Regulation," in *Technological Change in Regulated Industry* 529 (W. Capron ed. 1971).

[6] Williamson, *The Economics of Discretionary Behavior: Managerial Objectives in a Theory of the Firm* (1964). The notion that firms may not be profit maximizers has important implications for an analysis of rate of return regulation. The costs and incentives created by rate of return regulation may be different depending on the corporate objectives of the regulated firms. *See, eg.*, Bailey and Malone, *Resources Allocation in the Regulated Firm*, 1 Bell J. Econ. and Mgmt Sciences 129 (1970) (under rate of return constraint, profit maximizing firms will tend to overcapitalize; sales or output maximizing firms will tend to undercapitalize). We therefore solicit comment on how best to characterize the corporate objectives of the typical regulated telecommunications firm.

[7] *See* Bailey and Coleman, *The Effect of Lagged Regulation in an A–J Model*, 2 Bell J. Econ. and Mgmt. 278 (1971).

[8] Johnson, *Behavior of the Firm Under Regulatory Constraint: A Reassessment*, 63 Am. Econ. Rev. 90 (1973).

[9] *See, e.g.*, Kamien and Schwartz, *Market Structure, Elasticity of Demand, and Incentive to Invent*, 13 J. Law and Econ. 241 (1970).

[10] A.D. Little, Inc., *The Relationship of Market Structure to Innovation* (1975), reprinted in *Domestic Telecommunications Common Carrier Policies: Hearing Before the Subcom. on Communications of the Senate Comm. on Commerce, Science, and Transportation*, 95th Cong., 1st Sess. 309 (1977).

[11] *Id.* at 322–23. In the longer term, however, a series of cost-reducing innovations may produce a demand-increasing innovation by laying the groundwork for a new service that was not possible previously. *Id.* at 323.

[12] *Id.* at 335 and Addendum A–1.

[13] U.S. Patent and Trademark Office, *Patent Profiles: Telecommunications* (1984).

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Additionally, telephone companies might possibly evade pricing limits by degrading service quality while holding prices flat. The cost of providing regulated local exchange services might also decline, as was the case for toll services. If so, local telephone companies might reap excessive profits. Finally, freezing prices for only one customer class might stimulate cross-subsidization, with attendant inefficiencies.

Interested parties should comment on "social contract" alternatives to rate of return regulation. In this regard, the British Government adopted such an approach when it privatized British Telecom in 1984. We request further information on the success of the British plan.

B. "Marketbasket" Regulation

Some experts propose supervising only the overall performance of regulated telephone companies, giving them broad discretion in day-to-day operations. Under one approach, a regulated firm's performance would be compared annually to a "marketbasket" of corporate stocks with performance and risk characteristics comparable to telephone companies. If the regulated company's stock outperformed the marketbasket, suggesting excessive profits, regulators could order appropriate refunds. This approach would give companies broad pricing and rate structure discretion while ensuring abuses would trigger a refund obligation.

Adoption of marketbasket regulation, however, might simply exchange a complicated regulatory "known"—rate of return regulation—for a complicated regulatory unknown. Additionally, the standards may be difficult to apply to firms that offer both regulated and unregulated services. A firm might outperform the marketbasket because of large profits in its unregulated operations, and regulators might require refunds even though the regulated portion of the firm's business produced only normal profits. Further, there is concern that this approach might deter innovation or competitive pricing initiatives for fear that firms might, by competing more effectively, trigger refund obligations.

Interested parties should address these and other issues related to marketbasket regulation. In particular, they should specify criteria that could be used to identify stocks that have performance and risk characteristics comparable to telephone companies.

C. "Banded" Pricing

A third approach might be to give all regulated telecommunications firms discretion to raise or lower prices within a certain band without requiring regulatory approval. The band could be held constant over time, or gradually expanded from year to year. The objective would be to move towards total deregulation of competitive services while giving users and competitors time to adjust to a changing regulatory environment.

There have been criticisms of banded pricing proposals with respect to interstate services. Some claim AT&T retains "market power" in that market, and thus according it greater pricing flexibility increases the potential for predatory pricing. This argument, however, assumes both that AT&T possesses market power and that predatory pricing is a rational policy. We request comment on the validity of these assumptions.

Some also argue that allowing AT&T to institute selective price cuts may increase pressures for deaveraging interstate toll rates. Additionally, large users may find that adoption of banded pricing complicates the task of interpreting carrier tariffs, forecasting costs, and efficiently managing private networks. We request comment on these and other potential drawbacks of banded pricing. We also seek views on its benefits, as well as the appropriate way to implement banded pricing.

D. Deregulation of Small Companies

Some states have considered or adopted plans exempting telephone companies with fewer than a specified number of customers or access lines from rate of return regulation. This reduces administrative costs that are borne, in part, by customers of those companies. Critics argue, however, that because small companies typically serve areas that are less likely to attract competitive entry, their ability to fix excessive rates or provide inadequate service is greater than larger companies facing competitive entry. Critics also argue that so long as AT&T and other carriers are required to provide long distance services to and from small company service areas, regulatory scrutiny remains necessary to ensure reasonable interstate access charges.

We seek comment on the merits of small company deregulation. In particular, we solicit views on the appropriate definition of a "small company." Interested parties should also comment on the potential market power exercisable by small companies, the costs which full rate of return regulation imposes on them, and the extent to which small company service areas are subject to competitive entry. We also solicit data comparing the rates charged by smaller companies with those established by larger, presumably more closely regulated companies.

VI. Promotion of Greater Competition in Telecommunications Markets

These alternative plans seek to minimize the direct costs attributable to rate of return regulation by limiting the services or companies subject to regulatory scrutiny, or by broadening the range of price changes allowed before triggering regulatory involvement. None, however, necessarily resolves another fundamental problem associated with rate of return regulation: The fact it is frequently coupled with restrictions on competitive entry. It may therefore be appropriate to accompany any replacement of rate of return regulation with the removal of legal barriers to entry into all telecommunications markets, to create the potential for competitive provision of all services.[14]

Allowing competitive entry would induce incumbent firms to be more efficient. Cost savings may exceed any economies of scale attributable to provision of service by a single firm. This conclusion is supported by studies comparing prices for electrical utilities possessing monopoly franchises with utilities facing competitive providers. One study concluded that operational inefficiencies resulting from monopoly provision of electricity outweighed the benefits of economies of scale below annual sales of 225 million kilowatt hours.[15] We seek comment on whether similar net efficiency gains can be obtained by allowing greater competitive entry into domestic telecommunications markets.

VII. Conclusion

The purpose of this Notice of Inquiry is to further debate on the continued efficacy of rate of return regulation in controlling the prices charged by domestic telecommunications firms. We hope to gather sufficient data to enable us to evaluate the costs resulting from rate of return regulation. Our objective is to determine whether these costs are sufficiently high to warrant replacement of rate of return regulation with an alternative system which provides protection against excessive prices with lesser cost to society.

[14] *Cf.* Rassenti and Smith, *Electric Utility Deregulation*, Univ. of Arizona Econ. Sci. Lab. Working Paper No. 86-3 (Mar. 1986).

[15] *See* Primeaux, *An Assessment of X-Efficiency Gained Through Competition*, 1977 Rev. of Econ. and Statistics 105-08.

Dated: October 10, 1986.

Alfred C. Sikes,

Assistant Secretary for Communications and Information.

[FR Doc. 86-23372 Filed 10-15-86; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Notice was published September 17, 1986, at 51 FR 32943 that the Naval Research Advisory Committee Panel on Over the Horizon Targeting Capabilities will meet on October 29–30, 1986. The meeting agenda has been changed to add an Executive Session on Friday, October 31, 1986. The additional session will commence at 9:00 a.m. and terminate at 1:00 p.m. on October 31, 1986. All other information in the previous notice remains effective.

Dated: October 10, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-23336 Filed 10-15-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No: 6(c)-86]

Proposed Legal Interpretation of Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act; Notice of Availability and Hearing Procedures

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of availability.

SUMMARY: Bonneville Power Administration (BPA) proposes to interpret section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act or Act), 16 U.S.C. 839d(c). Section 6(c) requires the Administrator to conduct public hearings on any BPA proposal to acquire a major resource and to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, and to determine whether the proposed major resource acquisition is consistent with the Pacific Northwest Electric Power and Conservation Planning Council's (Council) Northwest Conservation and Electric Power Plan (Plan). If either BPA or the Council determine that the proposed major resource acquisition is inconsistent with the Plan, BPA can acquire the major resource only after receiving approval from Congress. The proposed legal interpretation addresses the types of resource acquisition proposals subject to section 6(c) review, the procedures for section 6(c) hearings, and the criteria for a BPA finding of consistency with the Plan.

Responsible Officials: James O. Luce, Assistant General Counsel, is the official responsible for this statutory interpretation. John D. Carr, Director, Division of Planning and Evaluation, Office of Conservation, is an official responsible for implementing section 6(c).

DATE: The proposed statutory interpretation is available at this time.

ADDRESS: Requests for a copy or copies of the proposed interpretation should be made to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Lynn W. Baker, Public Involvement Office, at the address listed above, 503–230–3478. Oregon callers outside Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. Terrence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Federal Building, 550 W. Fort Street, Rm 376, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant Statutory Provision

Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act, (Act) 16 USC 839d(c), requires the Administrator to conduct public hearings on any BPA proposal to acquire a major resource or to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, and to determine whether the proposed major resource acquisition is consistent with the Council's Plan. In addition, the Act also permits the Council to determine subsequently whether the major resource or conservation measure is consistent with the Council's Plan. If either the Administrator or the Council determine that the proposed major resource acquisition or conservation measure implementation is inconsistent with the Plan, BPA can acquire the major resource or implement the conservation measure only after receiving expenditure authorization from Congress. Section 6(c) provides:

6.(c)(1) For each proposal under subsection (a), (b), (f), (h) or (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall—

6.(c)(1)(A) publish notice of the proposed action in the FEDERAL REGISTER and provide a copy of such notice to the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;

6.(c)(1)(B) not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officers, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;

6.(c)(1)(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator; and

6.(c)(1)(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the

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requirements of subsection (a), (b), (f), (h), (l), or (m) of this section, as appropriate—

6.(c)(1)(D)(i) if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

6.(c)(1)(D)(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or notwithstanding its inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.

6.(c)(1)(D) In the case of subsection (f) of this section, such decision shall be treated as satisfying the applicable requirements of this subsection and of subsection (f) of this section, if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

6.(c)(2) Within sixty days of the receipt of the Administrator's decision pursuant to paragraph (1)(D) of this subsection, the Council may determine by a majority vote of all members of the Council, and notify the Administrator—

6.(c)(2)(A) that the proposal is either consistent or inconsistent with the plan, or

6.(c)(2)(B) if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

6.(c)(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined pursuant to paragraph (1) or (2) by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2)—

6.(c)(3)(A) unless the Administrator finds that, notwithstanding such inconsistency, such resource is needed to meet the Administrator's obligations under this Act, and

6.(c)(3)(B) until the expenditure of funds for that purpose has been specifically authorized by Act of Congress enacted after the date of the enactment of this Act.

6.(c)(4) Before the Administrator implements any proposal referred to in paragraph (1) of this subsection, the Administrator shall—

6.(c)(4)(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2)) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969.

6.(c)(4)(B) publish notice of the decision in the Federal Register and

6.(c)(4)(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

6.(c)(4) The Administrator may not implement any such proposal until ninety days after the date on which such proposal has been noted in such budget or after the date on which such decision has been published in the Federal Register, whichever is later.

6.(c)(5) The authority of the Council to make a determination under paragraph (2)(B) if no plan is in effect shall expire on the date two years after the establishment of the Council.

B. Public Comment Procedures

BPA and the Council published a joint Issue Paper on July 29, 1986, in which the major issues involving section 6(c) were presented and alternative approaches were discussed and explored. BPA and the Council received 30 written comments in response to the Issue Paper. BPA and the Council also created a Consultation Group to meet with both agencies to discuss the Issue Paper and assist the agencies in the development of their respective proposed interpretations. This group met on July 24 and September 2, 1986.

Requests for copies of the proposed interpretation should be directed to the Public Involvement Manager at P.O. Box 12999, Portland, Oregon 97212. BPA intends to publish the final interpretation in late October, 1986.

C. Scope of Interpretation

This proposed interpretation of section 6(c) addresses only proposals to acquire major resources under subsections (a), (b) and (1), and proposals to implement a conservation measure under subsection (a) and (b) which will conserve an amount of electric power equivalent to that of a major resource. This proposed interpretation does *not* address proposals to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource under subsection (f), or proposals to grant billing credits or services involving a major resource under subsection (h).

II. Proposed Legal Interpretation

A. Definitions

This section contains definitions of terms used in the proposed legal interpretation and is a part of the interpretation. Terms defined in the Northwest Power Act have the same meaning in this interpretation, unless further defined.

1. *Acquire or acquisition.* To "acquire" means to incur, and an "acquisition" is, a contractual obligation to make payment for (1) specified rights to the output or capability of a resource or (2) for the installation of specified conservation measures.

2. *Binding contract offer.* A "binding contract offer" exists when the Administrator presents a unilaterally executed contract for signature by the other contracting party.

3. *Conservation resource.* A "conservation resource" is actual or planned reduction of electric power consumption resulting from increases in the efficiency of energy use, production or distribution, by either:

a. the direct application of renewable resources by a consumer; or

b. the implementation of conservation measures.

4. *Generating resource.* A "generating resource" is actual or planned electric power capability of a generating facility of a type of either:

a. renewable resources, such as solar, wind, hydro, geothermal, biomass, or similar sources of energy; or

b. resources using waste heat or having high fuel conversion efficiency; or

c. thermal resources, such as nuclear, coal, or combustion turbine.

5. *Option.* An "option" is the purchase of a unilateral right to acquire an existing or proposed generating or conservation resource within a particular time on specified terms. No commitment to acquire a resource is made at the time an option is purchased.

B. Threshold

1. Proposals

a. The existence of a proposal, and when to initiate a section 6(c) hearing process on the proposal, will be determined by the Administrator in his sole discretion. This determination will take into account, among other criteria, the existence of sufficient information concerning a future resource action such that the proposal's compliance with statutory requirements and its consistency with the Council's Plan can be adequately assessed.

b. BPA and the Council shall consult with one another and with representatives from the region prior to the time a section 6(c) review is initiated. Such consultation will address the advisability of modifying BPA's proposal and/or amending the Council's Plan. In addition, BPA shall consult periodically with the Council and representatives of the region with a view to discussing potential proposals to acquire resources within the context of section 6(c).

2. Generating resources

a. A proposal to acquire a generating resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired at any one generating resource project constitute more than 50 average megawatts and are acquired for a period of more than 5 years.

b. A proposal to acquire a generating resource through a utility system sale shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired from the utility from that sale constitute more than 50 average megawatts and are acquired for a period of more than 5 years.

c. The aggregate megawatts proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, the term of the contract for acquisition, and the existing and proposed budget levels or limitations.

3. Generation programs

a. A generation program shall be subject to section 6(c) review if the Administrator proposes to multiple entities binding contract offers proposed by the Administrator to capture more than 50 average megawatts of electric power for a period of more than 5 years,

(1) from a single generating resource technology, and

(2) at a fixed price or formula.

b. The electric power proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, the term of the contract for acquisition, and the existing and proposed budget levels or limitations.

c. An individual contract resulting from a generation program which has been reviewed under section 6(c) shall not be subject to further review under section 6(c).

4. Conservation resources

a. A proposal to acquire a conservation resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired under a single contract constitute more than 50 average megawatts and are acquired for a period of more than 5 years.

b. The aggregate megawatts proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, the planned savings based upon a reasonably expected penetration of the activities, the resource planning horizon, the term of the contract for acquisition, and the existing and proposed budget levels and limitations.

5. Conservation programs

a. A conservation program shall be subject to section 6(c) review if the Administrator proposes to multiple entities generic contracts which consist of a set of logically related activities proposed by the Administrator to capture more than 50 average megawatts of energy savings in a recognized planning sector or subsector for a period of more than 5 years, and which either:

(1) Do not specify particular measures to be installed or implemented, but require an actual delivery of savings for payment; or

(2) Are provided by a single mode or program delivery and consist of a well-defined set of measures, but do not require actual delivery of savings for payment.

b. The energy savings proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but no limited to, the planned savings based upon a reasonably expected penetration of the activities, the term of the contract for acquisition, and the existing and proposed budget levels and limitations.

c. An individual contract resulting from a conservation program which has been reviewed under section 6(c) shall not be subject to further review under section 6(c).

6. Requests for proposals

a. A request for proposals (RFP) issued by the Administrator, which the Administrator has determined does not constitute a binding contract offer, shall not be subject to section 6(c) review.

b. In response to a RFP, the Administrator retains the discretion to acquire the electric power or the energy savings through an acquisition under sections 2–5, above. In the event of an acquisition under section 3 or 5, the Administrator may choose to expand the program to entities which did not participate in or respond to the RFP.

7. Options to acquire major resources

a. A proposal to purchase an option shall not be subject to section 60(c) review.

b. A proposal to exercise an option shall be subject to section 6(c) review.

8. Section 6(1) Resources

a. A proposal to acquire a major extraregional renewable resource shall be subject to section 6(c) review.

b. Interregional exchanges are not subject to section 6(c) review.

C. Section 6(c) Hearings Procedures

Appendix A, incorporated by reference into this proposed interpretation, specified the proposed procedures for the section 6(c) hearing is limited to an inquiry into whether the Administrator's proposal will achieve substantially the goals and objectives of the Council's Plan as described in section D. The Council has the option of participating in the hearing, and the Administrator may determine prior to the initiation of the hearing whether an expedited proceeding is appropriate.

D. Consistency

A BPA proposal pursuant to section 6(c)(1) of the Northwest Power Act shall be found consistent with the Northwest Conservation and Electric Power Plan if it is judged to be so structured that it will achieve substantially the goals and objectives of the power plan in effect at the time the proposal is made.

Issued in Portland, Oregon, on this 19th day of September, 1986.

James J. Jura,

Administrator.

Appendix A—Major Resource Acquisition Hearings Procedures

1. Applicability and Scope

(a) *General Procedures.* These procedures apply to all proceedings conducted under the procedural requirements contained in section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839d(c).

(b) *Scope.* The scope of all proceedings conducted under these procedures shall be limited to an inquiry into whether the action proposed by the Administrator will achieve substantially the goals and objectives of the Council's Power Plan.

(c) *Waiver.* To the extent permitted by law, the Administrator may waive any section of these procedures or prescribe any alternative procedures he determines to be appropriate.

2. Definitions

(a) "Administrator" means the BPA Administrator or the Acting Administrator.

(b) "Agent" means counsel, consultants, witnesses, employees and other representatives of a person.

(c) "Council" means the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council.

(d) "Hearing Officer" means the official designated by the Administrator to conduct a hearing pursuant to Northwest Power Act section 6(c).

(e) "Legal Issue" includes any issue grounded on any contractual right or obligation, any of BPA's organic statutes, the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, or the Trade Secrets Act, 18 U.S.C. 1905, which has a bearing on the propriety of the action proposed by the Administrator.

(f) "Participant" means any person submitting for the record oral or written comments pursuant to section 6 of these procedures on a major resource action proposed by the Administrator.

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(g) "Party" means any person whose intervention is effective under section 5.

(h) "Person" means an individual, partnership, corporation, association, an organized group of persons, a municipality, including a city, county, or any other political subdivision of a state, a state, any agency, department, or instrumentality of a state, a state compact agency or interstate body, a province, or the United States, or any officer, or agent of any of the foregoing acting in the course of his or her employment or agency.

(i) "Record" means the testimony, exhibits, transcripts, notices, comments, briefs, pleadings, such other materials and information as submitted or developed by the Administrator, draft record of decision, and record of decision certified by the hearing officer.

(j) "Record of Decision" means the document, issued by BPA which identifies and resolves each issue in the 6(c) hearing; summarizes the factual, legal and policy arguments presented by BPA and the parties on each issue; and sets forth the Administrator's decision on each issue.

3. Notice of Proposed Action

(a) The Administrator shall publish notice of any proposed action pursuant to section 6(c) in the Federal Register and provide a copy of the notice to:

(1) The members of the Council and its executive staff,

(2) The Governor of each State in the Pacific Northwest Region,

(3) The Administrator's customers, and

(4) Others the Administrator deems appropriate.

(b) The Administrator may initiate the public hearing with this notice by indicating a date, not less than 60 days following publication of this notice, on which a public hearing or hearings will be held pursuant to section 6(c). This notice must comply with the requirements of section 4.

4. Initiation of 6(c) Hearing

(a) A hearing on the Administrator's proposed major resource action may be initiated by a hearing notice published in the Federal Register. The hearing notice shall:

(1) Specify the proposed major resource action;

(2) Establish a deadline for filing petitions to intervene;

(3) State the timeframe permitted the hearing officer to conduct the 6(c) hearing together with a statement of reasons for the Administrator's decision;

(4) Establish a date on which the hearing officer will conduct the prehearing conference and commence the 6(c) hearing;

(5) Specify the date on which the Administrator will issue the record of decision, which date shall be used by the hearing officer in establishing the procedural schedule for the hearing; and

(6) Provide other information which the Administrator determines to be pertinent to the hearing.

(b) The Administrator shall provide a copy of the notice to the persons identified in section 3(a).

5. Intervention

(a) *Filing.* A person seeking to become a party in a 6(c) hearing must file a petition to intervene with the hearing officer. A copy of the petition shall be served on BPA's Office of General Counsel/APP.

(b) *Contents.* The petition shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two persons on whom service will be made. The major resource sponsor, contracting entities, or the Council shall be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing.

(c) *Time.* (1) Petitions must be filed within the time specified in the section 4. Notice for the hearing in question.

(2) Granting an untimely petition to intervene must not be a basis for delaying or deferring any procedural schedule. A late intervenor must accept the record developed prior to its intervention. In acting on an untimely petition, the hearing officer shall consider whether:

(i) The petitioner has a good reason for filing out of time,

(ii) Any disruption of the proceeding might result from allowing a late intervention,

(iii) The petitioner's interest is adequately represented by existing parties, and

(iv) Any prejudice to, or extra burdens on, existing parties might result from permitting the intervention.

(d) *Opposition.* Any opposition to an intervention petition shall be filed and served at least 24 hours before the prehearing conference. Opposition to a late intervention petition shall be filed and served within 2 days after service of the petition.

(e) *Application of hearing procedures.* Procedures specified in sections 8–15 are available only to parties, and are not available to participants.

6. Participation

Any person who is not a party, may become a participant by submitting oral or written recommendations for the record or by testifying in legislative-style hearings when conducted by the Administrator for the purpose of receiving public comments. Oral or written comments must be submitted to the BPA Public Involvement Office. The hearing officer may allow reasonable questioning of participants by BPA counsel or requesting parties.

7. Prehearing Conference

A prehearing conference shall be held on the date specified in the Administrator's section 4. Federal Register notice. During the conference, the hearing officer hall:

(a) Act on all intervention petitions,

(b) Establish any special procedures the hearing officer considers appropriate, provided that such special procedures conform to BPA's procedures governing proposed major resource acquisitions.

(c) Establish a service list,

(d) Establish a procedural schedule for the entire hearing, and

(e) Consolidate parties with similar interests into groups for purposes of filing jointly sponsored testimony and briefs and for expediting cross-examination.

8. Discovery

BPA and the parties to any 6(c) hearing may engage in discovery, and be subject to discovery requests, according to the following rules:

(a) *Informal requests.* Prior to initiation of a 6(c) hearing, information concerning the Administrator's proposed action may be requested by making a written request through BPA's Public Involvement Office.

(b) *Data requests.* Data requests shall be made in writing at the times designated in the procedural schedule. Any relevant information may be requested that is not privileged or unduly burdensome to produce. Requests shall be addressed to counsel for the party to whom the requests are sent (or directly to a party not represented by counsel), and shall be served on all parties to the service list compiled by the hearing officer. Responses to data requests are required to be served on the requesting party or counsel for the requesting party.

(c) *Clarification sessions.* The hearing officer may schedule one or more transcribed sessions for the purpose of allowing parties to question witnesses about the contents of their prepared testimony and the derivation of their recommendations and conclusions. The procedural schedule shall require that BPA and the parties wishing to participate in clarification of a witnesses' testimony serve all data requests pertaining to that testimony at least one business day prior to the session. Witnesses shall have the option of providing answers to data requests during the clarification session. If a witness is unable to answer a given question during the clarifying session, the answer to that question shall be provided in accordance with paragraph (b) of this section.

(d) *Objections to discovery.* Objections to data requests or to questions asked during clarification sessions shall be submitted within the time specified in the procedural schedule. Objections must explain the grounds on which response is being withheld.

(e) *Motions to compel.* Anyone whose data request or clarifying question is not answered may file a motion with the hearing officer to compel an answer. The movant must certify that it first attempted to resolve the objection informally with the objecting party. Motions to comple must be made within the time specified in the procedural schedule.

(f) *Privileged Information.* The hearing officer may issue protective orders or made in camera inspection of documents as necessary to protect copyrighted, proprietary, or otherwise privileged information. The hearing officer may not order release of documents in BPA's possession withheld on the basis of exemptions to the Freedom of Information Act, 5 U.S.C. 552, or the Trade Secrets Act, 18 U.S.C. 1905.

(g) *Sanctions.* The hearing officer may remedy any refusal to comply with an order compelling answer to a data request or clarification question by:

(1) Striking the testimony or exhibits to which the question or request relates, or

(2) Limiting discovery or cross-examination by the party refusing to answer or respond, or

(3) Recommending to the Administrator that an appropriate adverse inference be drawn against the party refusing to answer or respond.

(h) *Copies.* Any party wishing copies of date responses should request them for the party submitting the response.

9. General 6(c) Proceedings

A general 6(c) proceeding is a hearing on the Administrator's proposed major resource action where the Administrator does not utilize the procedures in section 10. For an expedited 6(c) proceeding. The hearing officer may establish the procedures and conduct hearings, consistent with this rule, as necessary to develop a full and complete record and to receive public comment and argument related to the proposal.

10. Expedited 6(c) Proceedings

(a) *General Rule.* The Administrator may expedite the 6(c) hearing to accommodate the nature of the proposal. The record of decision in 6(c) hearings conducted under this section shall be issued within 30, 60, 90, or 120 days after the date set for hearing in the notice issued under section 4, except as provided in paragraph (b) of this section. Consistent with fairness to the parties, the hearing officer shall establish the procedures necessary to satisfy the Administrator's expedited schedule.

(b) *Extensions.* Only the hearing officer may request the Administrator to extend the hearing limit, on a showing of good cause by a party. Upon a determination of the hearing officer that a party's showing has merit and is not dilatory, the hearing officer may request in writing an extension of time from the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of his determination within 4 days thereafter.

11. Testimony And Exhibits

(a) General Rule.

(1) The opportunity for refutation or rebuttal on any material submitted by any other party or by BPA shall be provided to the parties as the hearing officer deems appropriate. Except as provided in paragraph (b), witnesses shall submit all testimony and exhibits at the times specified in the procedural schedule. Oral testimony will be permitted only by leave of the hearing officer.

(2) Any rebuttal to BPA's direct case must be contained in a party's direct testimony, which shall also contain any affirmative case that party wishes to present. Any subsequent rebuttal testimony permitted by the hearing officer shall be limited to rebuttal of the parties' direct cases. In lieu of cross-examination, the hearing officer is encouraged to allow the filing of surrebuttal testimony on an issue.

(3) Written testimony must have line numbers inserted in the left-hand margin of each page. It is the responsibility of each party to obtain from the hearing officer's clerk exhibit numbers for display on prefiled testimony and exhibits.

(4) The hearing officer shall reject exhibits and other documentation of excessive length. Parties may only introduce into evidence excerpts or summaries of such documentation, which excludes irrelevant or redundant material.

(b) *Items by reference.* Other testimony, exhibits, or studies may be designated as items by reference in any proceeding. Items by reference should not be physically included in the record, unless the hearing officer so orders.

(c) *Official notice.* The hearing officer may take official notice of any matter that may be judicially noticed by federal courts, or any matter about which BPA is expert.

(d) *Motions to strike.* Motions to strike prefiled testimony and exhibits shall be filed within 7 days after service. Answers to the motion may be made; however, the movant may not reply to the answer.

(e) *Record of participants.* Testimony and comments received pursuant to section 6. shall be compiled in a separate section of the record.

(f) *Sanctions.* The hearing officer may reject or exclude all or part of any evidentiary material or pleading not submitted in accordance with this section.

12. Hearing

(a) *Panels.* The hearing officer may permit a party's witnesses to testify in a panel, provided that each panel member (1) has submitted a statement of qualifications, and (2) is under oath. Any panel member may respond to a cross-examination question.

(b) *Cross-examination.* (1) Cross-examination shall be provided as the hearing officer deems appropriate and shall be limited to issues which the hearing officer determines there are material disputes of fact or to issues identified in a statement of issues adopted by the hearing officer. The hearing officer may impose reasonable time limitations on the cross-examination of any witness.

(2) Only counsel for a witness may object to questions asked during cross-examination, except in instances of friendly cross-examination or where the objector can demonstrate that answers would unduly prejudice its interests.

(3) Where parties have substantially similar positions, the hearing officer may appoint lead counsel to conduct cross-examination.

(4) The hearing officer shall not permit cross-examination on issues where it is clear that the questioner's position is not adverse to that of the witness, *viz.*, friendly cross-examination.

(c) *Cross-examination exhibits.* (1) Documents used during cross-examination of any witness must be submitted to the hearing officer and to the witnesses' counsel 1 day prior to the date set for cross-examination.

(2) If a document used as a cross-examination exhibit contains material not offered as evidence, the party utilizing the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(d) *Stipulations.* The hearing officer may receive into evidence stipulations on any issue of fact.

(e) All other matters relating to conduct of hearings are left to the discretion of the hearing officer.

13. Briefs

(a) *General rule.* Briefs shall be filed at times specified by the hearing officer in the procedural schedule. All evidentiary arguments in briefs must be based on cited material contained in the record. Materials not admitted into evidence shall not be attached to any brief. Incorporation by reference shall not be permitted. The hearing officer may impose page limitations on any brief.

(b) *Waiver of issues or arguments.* Parties whose briefs do not raise and fully develop their positions on any issue shall be deemed to take no position on such issue. Arguments not raised are deemed to be waived.

(c) *Initial brief.* At the conclusion of the evidentiary portion of a hearing, the hearing officer shall allow each party to submit an initial brief. The purpose of an initial brief is to identify separately each legal, factual, and policy issue to be resolved by the Administrator and present all arguments in support of a party's position on each of these issues. The initial brief should also rebut contentions made by adverse witnesses in their prepared testimony.

(d) *Brief on exceptions.* After issuance of BPA's draft record of decision, each party may file a brief on exceptions. The purposes of the brief on exceptions are to: (i) Raise any alleged legal, policy, or evidentiary errors in the draft record of decision, or (ii) provide additional support for tentative decisions contained in the draft record of decision. Alleged errors not raised in briefs on exceptions shall be deemed waived.

(e) *Sanctions.* The hearing officer shall not admit into the record any brief that does not conform to this section.

14. Oral Argument

An opportunity for parties to present oral argument may be provided at the discretion of the Administrator.

15. Service Of Documents

BPA and each party shall provide a copy of all motions, briefs, pleadings and prefiled materials to all persons listed in the service list compiled by the hearing officer. Until a service list is adopted by the hearing officer under section 6, service on parties may be made by service on BPA General Counsel/APP. Parties may designate no more than two persons on whom service shall be made. The Administrator may designate additional persons upon whom service will be made. Participants shall not be included on the service list. Service of requests for data and responses to such requests is governed by section 8(b) and (h).

16. Record Of Decision

(a) Determinations.

The Administrator shall make public a written decision which contains the following two determinations:

(1) the proposed action satisfies the requirements of subsection (a), (b), (f), (h), (i), or (m) of section 6 of the Northwest Power Act, as appropriate; and either:

(2) the proposed action is consistent with the Council's Power Plan; or

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(3) the proposed action is inconsistent with the Council's Power Plan; or

(4) notwithstanding the proposed action's inconsistency with the Council's Power Plan a finding that the proposed action is needed to meet the Administrator's obligations under the Northwest Power Act.

(b) Submission of Record.

The Administrator shall promptly provide a copy of the Record of Decision to the Council.

(c) Service of Record.

The Administrator shall promptly serve copies of the record of decision on all parties to the proceeding. Copies of the record of decision will be made available to participants and the public upon request to BPA's Public Involvement Manager.

[FR Doc. 86-23398 Filed 10-15-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time: Thursday, November 13, 1986, 8:00 a.m.—5:00 p.m., Friday, November 14, 1986, 8:00 a.m.—12:00 noon.

Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington DC 20008.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A081, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202-252-8290.

Purpose of The Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Congress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative agenda

Thursday, November 13, 1986

- Overview of EES Program.
- Briefings on Energy Extension Service Programs by Board Members.
- Public Comment (10 minute rule).

Friday November 14, 1986

- Issues for Eighth Annual Report.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202-252-8290. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except Federal holidays.

Issued at Washington, DC, on October 10, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-23399 Filed 10-15-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-716-000, et al.]

Electric Rate and Corporate Regulation Filings; Appalachian Power Co. et al.

October 9, 1986.

Take notice that the following filings have been made with the Commission:

1. Appalachian Power Company

[Docket No. ER86-716-000]

Take notice that on September 25, 1986, Application Power Company (APCO) tendered for filing a power sales agreement executed with Utilicorp United Inc. (Utilicorp). Utilicorp has entered into an agreement Virginia Electric and Power Company (Virginia Power) to purchase Virginia Power's West Virginia retrail electric service territory. Under the provisions of the enclosed service agreement Utilicorp proposed to purchase from APCO at APCO's standard rate for wholesale service the power and energy necessary to serve the West Virginia retail electric service territory being acquired by Utilicorp.

APCO requests a proposed effective date for the tendered agreement of December 1, 1986 to match the requested effective date for service requested by Utilicorp.

Copies of the filing were served upon Utilicorp, Virginia Power and the Public Service Commission of the State of West Virginia.

Comment date: October 27, 1986, in accordance with Standard paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. EC87-1-000]

Take notice that on October 6, 1986, Consolidated Edison Company of New York, Inc. (Applicant), a corporation organized under the laws of the State of New York, with its principal business office at New York, New York, filed an application with the Federal Energy Regulatory Commission, pursuant to section 203 of the Federal Power Act, seeking an Order authorizing the Applicant to purchase or acquire securities of other public utilities as a part of a planned expansion of corporate investments. The Applicant proposes to limit its holding or ownership of any given class of securities, directly or through subsidiaries, of affiliaties, to an amount not to exceed one percent of the issuer's capital stock or funded debt outstanding. Additionally, the Applicant is requesting a modification of the reporting requirements under 18 CFR 33.8 to allow an annual update and status report only. The application is on file with the Commission and open to public insepction.

Comment date: October 27, 1986, in accordance with Standard paragraph E at the end of this notice.

3. The Dayton Power and Light Company

[Docket No. ER86-715-000]

Take notice that on September 25, 1986, The Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the village of Minster (Minster), Ohio.

The proposed Agreement allows Minster to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Minster.

Comment date: October 27, 1986, in accordance with Standard paragraph E at the end of this notice.

4. The Dayton Power and Light Company

[Docket No. ER86-718-000]

Take notice that on September 29, 1986, The Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Versailles (Versailles), Ohio.

The proposed Agreement allows Versailles to purcahse energy requirements from Third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Versailles.

Comment date: October 27, 1986, in accordance with Standard Paragraph E at the end of this document.

5. Kansas Gas & Electric Company

[Docket No. ER83-628-010]

Take notice that on September 29 1986, Kansas Gas & Electric Company (KG&E) tendered for filing a refund report for the cities of Augusta, Burlington, Chanute, Coffeyville and Girard, Kansas. The refund amount includes interest from the date payment was received through September 26, 1986 at the appropriate interst rate in accordance with 18 CFR 35.19 (a).

Comment date: October 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Upper Peninsula Power Company

[Docket No. ES86-64-000]

Take notice that on September 29, 1986, Upper Peninsula Power Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204(a) of the Federal Power Act, to issue short-term notes of an aggregate principal amount of up to $6,000,000. The notes will be issued on or before October 1, 1988 and will have a final maturity date not later than October 1, 1989.

Comment date: October 26, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23312 Filed 10-15-85; 8:45 am]

BILLING CODE 6717-01-M

Rockdale, IL, et al.; Notice of Availability of Environmental Assessment and Finding of no Significant Impact

October 9, 1986.

In the matter of Village of Rockdale, Illinois, Project No. 3944-002, City of Peru, Illinois, Project No. 4031-001, Holyoke Gas & Electric Department, Project No. 7758-000, Idaho Renewable Resources, Bonneville Pacific Corporation, & Big Wood Canal Company, Project No. 8909-000, Pacific Gas & Electric Company, Project No. 619-005.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town or county	Applicant
			Licenses		
3944-002	Brandon Road Lock and Dam	IL	DesPlaines River	Joliet	Village of Rockdale, Illinois.
4031-001	Starved Rock Lock	IL	Illinois River	Village of Utica	City of Peru, Illinois.
7758-000	Number 4 Hydro	MA	First and Second Level Canals of the Connecticut River.	Holyoke	Holyoke Gas and Electric Department.
8909-000	Dietrich Drop	ID	Big Wood River	Dietrich	Idaho Renewable Resources, Bonneville Pacific Corporation, and Big Wood Canal Company.
			Amendments		
619-005	Bucks Creek	CA	Bucks and Grizzly Creeks	Quincy and Greenville	Pacific Gas and Electric Company.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23316 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-742-000 et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Co. et al.

October 9, 1986.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP86-742-000]

Take notice that on September 29, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP86-742-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon certain sales service under the blanket authorization issued in Docket No. CP82-430-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

BEST COPY AVAILABLE

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United requests authority to abandon certain industrial sales service as follows:

Customer name	Contract expiration date	Original authorization
Amerada Hess Corporation	01/01/87	G-12,322
Benton Creosoting Works, A Division of Kennedy Saw Mills, Inc.	01/01/87	N/A
Dias Gin, Inc., Formerly Sentell Gin Inc.	01/01/87	N/A
Georgia-Pacific Corporation	01/01/87	CP70-169, CP70-44, CP66-290, CP67-310, CP83-415
Griffin Industries, Inc. of Mississippi	01/01/87	G-8230
Joerns Bayou Production Corp, Formerly Arcadia Refining Co.	01/01/87	N/A
Kaiser Aluminum & Chemical Corp.	01/01/87	G-15,005, CP71-89
Kinder Canal Co., Inc.	01/01/87	CP71-89
Marathon LeTourneau Co., Marine Division	01/01/87	G-8230
St. Joe Brick Works, Inc.	01/01/87	G-1447
Schneider Brick Co	01/01/87	G-232
Shell Chemical Co	01/01/87	CP66-89, CP84-213
Southern Coast Sugars, Inc.	01/01/87	CP71-89
Teche Sugar Co., Formerly Caldwell Sugar	01/01/87	CP71-89
R. W. Tyson Producing Co., Inc.	01/01/87	CP62-12

United states that the abandonments have been agreed to by the affected customers. United further states that its facilities would remain in place in anticipation of future service.

Comment date: November 24, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Central Pipeline Corporation

[Docket No. CP86-740-000]

Take notice that on September 25, 1986, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86-740-000 a request pursuant to § 157.205 of the Commisson's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and other related jurisdictional facilities necessary to deliver gas to A-K Holdings, Inc., (Holdings) a direct sales customer, under the certificate issued in Docket Nos. CP82-479-000 and CP82-479-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Northwest Central proposes to constuct and operate a tap on its 12-inch pipeline in Section 18, Township 18 North, Range 2 East, Payne County, Oklahoma, together with measuring, regulating and appurtenant facilities for the direct interruptible sale of natural gas to Holdings for use in lease operations. It is further stated that the projected volume of delivery to Holdings is approximately 36,500 Mcf per year and 100 Mcf on a peak day. Northwest Central estimates the cost of the facilities to be $8,350 which would be paid from available cash.

Northwest Central states that it would not need to acquire any new gas supply to make this sale, and such sale would not have any detrimental effect on any of Northwest Central's existing customers.

Comment date: November 24, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Mid Louisiana Gas Company

[Docket No. CP86-737-000]

Take notice that on September 23, 1986, Mid Louisiana Gas Company (Mid La), Post Office Box 2511, Houston, Texas 77002, filed in Docket No. CP86-737-000 a request pursuant to §§ 157.205 and 157.216 (18 CFR 157.205 and 157.216) of the Regulations under the Natural Gas Act for permission and approval to abandon certain pipeline facilities located in East Baton Rouge Parish, Louisiana, under authorization issued in Docket No. CP82-539-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Mid La proposes to abandon approximately 4,905 feet of 10-inch pipeline, a meter setting and appurtenant facilities, which were used to transport natural gas to a pulp mill owned by Georgia-Pacific Corporation (Georgia-Pacific) in Port Hudson, Louisiana. Mid La states that these facilities were operated pursuant to Commission order issued in Docket No. CP84-254-000 on June 5, 1984. Mid La asserts that its October 18, 1983, transportation agreement with Georgia-Pacific has terminated. Accordingly, Mid La states, it no longer requires the use of the subject facilities and proposes to abandon the lateral by sale to Louisiana Intrastate Gas Corporation (LIG). It is stated that LIG has entered into a gas transportation agreement with Georgia-Pacific and would use the facilities purchased from Mid La to provide service to Georgia-Pacific's Port Hudson plant. Mid La indicates that LIG would purchase the subject facilities for $188,217.45 on an "as is" basis.

Comment date: November 24, 1986, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP86-743-000]

Take notice that on September 29, 1986, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25315, filed in Docket No. CP86-743-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate an additional delivery point to an existing wholesale customer under the blanket authorization issued by the Commission in Docket No. CP83-76-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Columbia requests authority to construct and operate an additional delivery point and appurtenant metering facilities, at an estimated cost of $153,000, near Carlisle, Nicholas County, Kentucky, for Columbia Gas of Kentucky, Inc. (CKY). Columbia states that CKY would reimburse Columbia for the construction of these facilities, which would be owned, operated, and maintained by Columbia upon their completion.

Columbia also states that natural gas deliveries to CKY at the proposed delivery point would be 17,500 Mcf per day and 2,013,000 Mcf per annum. Columbia states that it would deliver these natural gas volumes to CKY under its currently effective FERC Rate Schedule CDS. CKY would further deliver these natural gas volumes to Toyota Motor Manufacturing, U.S.A., Inc.'s new automobile production plant near Georgetown, Kentucky, beginning on or about May 1, 1987. Columbia indicates that sales through the proposed facilities would not affect the peak day and annual deliveries from Columbia to which CKY's is entitled, but would offset to an extent continued market declines that CKY has experienced.

Comment date: November 24, 1986, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23311 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

ANR Pipeline Co. v. Wagner & Brown; Notice of Complaint

Issued: October 9, 1986.

Take notice that on September 8, 1986, ANR Pipeline Company (ANR) filed with the Commission pursuant to § 385.206 of the Commission's regulations (Rule 206), a complaint against Wagner & Brown, a partnership, alleging that Wagner & Brown is charging or attempting to collect rates in excess of applicable maximum lawful prices set forth in Title I of the Natural Gas Policy Act of 1978 (NGPA).

ANR states that it purchases natural gas from Wagner & Brown which is subject to the maximum lawful prices established by sections 102(c) and 107(c)(5) of the NGPA. According to ANR, its gas purchase contract with Wagner & Brown contains take-or-pay clauses which obligate ANR to pay for a certain volume of gas each year regardless of whether ANR actually purchases the gas. Under the contract ANR has an opportunity to make up the gas which it has paid for but not taken; however, make up must occur within five years of the year prepayments were made or the right is forfeited.

ANR states that for reasons beyond its control including changes in federal and state regulations, energy conservation, economic recession, and a worldwide glut of crude oil, it cannot purchase the quantities of gas specified in the contract and will likely be unable to do so for the forseeable future. ANR has informed Wagner & Brown that these unforseen events constitute *force majeure* pursuant to the contract, thereby reducing or suspending the parties' obligations thereunder. ANR states that Wagner & Brown has nevertheless demanded payment and has brought suit in a Texas state court to recover the take-or-pay deficiencies.

ANR contends that it has already paid the applicable maximum lawful prices for all gas actually purchased from Wagner & Brown under the contract for the years 1983 and forward, and that in light of its inability to recoup the take-or-pay payments demanded by Wagner & Brown, making further payments would result in Wagner & Brown receiving amounts in excess of applicable maximum lawful prices for gas actually delivered. ANR requests the commission to take jurisdiction in the matter and to issue an order finding that Wagner & Brown's demand for take-or-pay prepayments constitutes a demand for payment in excess of the maximum lawful prices established under Title I of the NGPA and is therefore unlawful.

Any person desiring to be heard or protest this complaint should file a motion to intervene or protest in accordance with Rules 214 or 211d of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, such motions or protests should be filed on or before November 10, 1986. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23313 Filed 10-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP86-55-000]

ANR Pipeline Co. et al.; Notice of Complaint

Issued: October 9, 1986.

In the matter of: ANR Pipeline Company v. Hamilton Brothers Oil Company; Hamilton Brothers Petroleum Corporation; H.B. Joint Venture (1973); and Hamilton Brothers Oil and Gas Corporation.

Take notice that on September 8, 1986, ANR Pipeline Company (ANR) filed with the Commission pursuant to § 385.206 of the Commission's regulations (Rule 206), a complaint against Hamilton Brothers Oil Company, Hamilton Brothers Petroleum Corporation, H.B. Joint Venture (1983), and Hamilton Brothers Oil and Gas Corporation (Hamilton Brothers) alleging that Hamilton Brothers are charging or attempting to collect rates in excess of the applicable maximum lawful price set forth in Title I of the Natural Gas Policy Act of 1978 (NGPA).

ANR states that it purchases natural gas from Hamilton Brothers under several natural gas purchase contracts which are subject to the maximum lawful prices established by sections 102(d) and 104 of the NGPA. According to ANR, its gas purchase contracts with Hamilton Brothers contain take-or-pay clauses which obligate ANR to take an annual contract quantity of gas each year. This annual contract quantity is then compared to the volumes of gas actually taken and if the actual takes are less than the contract quantity ANR must make a take-or-pay payment. Under the contracts ANR has an opportunity to make up the gas which it has paid for but not taken; however, make up must occur within five years of the year prepayments were made or the right is forfeited.

ANR states that for reasons beyond its control including changes in federal and state regulations, energy conservation, economic recession, and a worldwide glut of crude oil, it cannot purchase the quantities of gas specified in the contract and will likely be unable to do so for the forseeable future. ANR has informed Hamilton Brothers of its position that these unforseen events constitute *force majeure* pursuant to the contract, thereby reducing or suspending the parties' obligations thereunder. ANR states that Hamilton Brothers have nevertheless demanded payments and have brought suit in a Texas state court to recover the take-or-pay deficiencies.

ANR contends that it has already paid the applicable maximum lawful price for all gas actually purchased from Hamilton Brothers under the contracts for the years 1985 and forward, and that in light of its inability to recoup the take-or-pay payments demanded by Hamilton Brothers, making further payments would result in Hamilton Brothers receiving amounts in excess of the applicable maximum lawful price for gas actually delivered. ANR requests the Commission to take jurisdiction in the matter and to issue an order finding that Hamilton Brothers demand for take-or-pay prepayments constitutes a demand for payments in excess of the maximum lawful price established under Title I of the NGPA and is therefore unlawful. In the alternative ANR requests the Commission to determine that the provisions in the contracts which require ANR to pay unrecoupable take-or-pay charges are unjust and unreasonable pursuant to sections 4 and 5 of the Natural Gas Act.

Any person desiring to be heard or to protest this complaint should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission,

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825 North Capitol Street, NE., Washington, DC 20426, such motions or protests should be filed on or before November 10, 1986. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23314 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-84-001]

Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

October 10, 1986.

Take notice that on September 24, 1986, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 3:

1st Revised Sheet No. 658
1st Revised Sheet No. 659
1st Revised Sheet No. 660

According to § 381.103(b)(2) (iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until October 7, 1986.

By order issued June 27, 1986, in Docket No. RP86-84-000, a technical conference was convened to investigate the issue of the cost of service supporting the WDTS Rate Schedule rates. FGT provided Staff and the other parties with cost of service and other related information. FGT is advised that, based on the information supplied, there is no opposition to the WDTS Rate Schedule rates and Staff has determined that the rates are cost based. As a result of the technical conference, certain minor word changes to Rate Schedule WDTS were agreed to by FGT, Staff and the other parties. FGT submits that these revised tariff sheets to Rate Schedule WDTS are being filed to reflect such changes.

FGT states that a copy of this filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume Nos. 2 and 3 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 17, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23315 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-57-012]

Natural Gas Pipeline Co. of America; Notice of Proposed Changes to FERC Gas Tariff

October 10, 1986.

Take notice that on September 26, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing Ninth Revised Sheet No. 5E to be a part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that the purpose of this sheet is to set out the threshold percentages and discount rates applicable to Rate Schedule IOS for the month of October, 1986. The filing is being made in accordance with the provisions of Rate Schedule IOS which was authorized by FERC order issued March 13, 1986 at Docket No. CP85-57-003.

Natural requests waiver of the Commission's regulations to the extent necessary to permit Ninth Revised Sheet No. 5E to become effective October 1, 1986. Copies of this filing were mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 17, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23316 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-6-000]

Pacific Power & Light Co.; Notice of Filing

October 10, 1986.

Take notice that on October 3, 1986, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing Eleventh Revised Sheet No. 5C, superseding Tenth Revised Sheet 5C (Index of Purchasers) of Pacific's Service Agreement between Pacific and the Department of Public Utilities, County of Los Alamos, New Mexico.

Pacific states that the Service Agreement provides for the sale of nonfirm power and energy, in accordance with the rates specified in Service Schedule PPL-3 under Pacific's Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23317 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-1002-000 et al.]

First Energy Associates et al.; Filings for Qualifying Status as Small Power Production and Cogeneration Facilities.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. First Energy Associates

[Docket No. QF86-1002-000]

October 9, 1986.

On August 25, 1986, First Energy Associates (Applicant), of 71 Spit Brook Road, Nashua, New Hampshire 03060, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Cabot, Vermont. The facility will consist of two combustion turbine generators, a heat recovery steam generator (HRSG) and a condensing steam turbine-generator. Thermal energy recovered from the HRSG will be sold to the Cabot Cooperative Creamery for process heating and post-pasteurization product cooling and refrigeration. The primary energy source for the facility will be No. 2 fuel oil. The maximum net electric power production capacity of the facility will be approximately 16.66 MW. The installation of the facility will begin approximatley in April 1987.

2. Pasco County Board of County Commissioners

[Docket No. QF86-1008-000]

October 9, 1986.

On September 26, 1986, Pasco County Board of County Commissioners (Applicant), of 7530 Little Road, New Port Richey, Florida 33553, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Pasco County, Florida. The facility will consist of waterwall steam generators and a turbine-generator. The maximum electric power production capacity will be 35 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas or oil may be used for start-up purposes. However, such fossil fuels uses will not exceed one (1%) percent of the total energy input in any calendar year. Installation date will be on or after March, 1988.

3. Sunlaw Energy Corporation Sunlaw-J.C. No. 1 and Sunlaw-J.C. No. 2

[Docket No. QF86-1077-000 and QF86-1078-000]

October 6, 1986.

On September 22, 1986, Sunlaw Energy Corporation (Applicant), of 8530 Wilshire Blvd., Suite 401, Beverly Hills, California, 90211 submitted for filing applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittals constitute complete filings.

Sunlaw-J.C. No. 1 and Sunlaw-J.C. No. 2 small power production facilities will be located in the southern part of the State of New Jersey, within the service territory of Jersey Central Power & Light Company. The facilities will consist of circulating fluidized bed combustor and steam turbine generators. The primary energy source is petroleum coke. The maximum net electric power prouduction capacity of each facility will not exceed 30 MW.

Standard Paragraph.

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23320 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-9-000]

Central Jersey Energy Associates, Limited Partnership; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 14, 1986.

On October 7, 1986, Central Jersey Energy Associates, Limited Partnership (Applicant), of 67n Elm Street, Cohasset, Massachusetts 02025, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Windsor, New Jersey. The facility will consists of two combustion turbine generating units, two waste heat recovery steam generators, and two extraction/condensing steam turbine generating units. Steam produced by the facility will be utilized by Cosden Oil and Chemical for production of polystyrene, heating of thermoplastic molds, cleaning of the facility and heating and cooling of the plant; L.B. Foster for plant heating and steam cleaning of fabricated steel; and by Windsor Industrial for heating and cooling. The net electric power production capacity of the facility will be 280 MW. The primary energy sources will be coal and natural gas. The installation of the facility will begin on March 1, 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such petitions or protests must be filed within 15 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23321 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: Energy Research Advisory Board (ERAB)

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DATE AND TIME: November 5, 1986—8:30 a.m.–5:00 p.m., November 6, 1986—8:30 a.m.–12:00 Noon
PLACE: Department of Energy, 1000 Independence Avenue SW., Room 8E–089, Washington, DC 20585
CONTACT: Sarah Goldman, Department of Energy, Office of Energy Research, ER–6, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: 202/252–5775

Purpose of the Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: The specific agenda items and times are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the day of the meeting.

Tentative Agenda

November 5, 1986

8:30 a.m. Business Items
—Approval of August Meeting Minutes
—Dates for Future Meetings
—Use of Electronic Mail
8:45 a.m. Report of the Technical Panel on Magnetic Fusion of the Energy Research Advisory Board
10:45 a.m. Break
11:00 a.m. Current Events
12:00 Noon Lunch
1:00 p.m. Report of the Review Panel on "Physics through the 1990's"
2:45 p.m. Break
3:00 p.m. Civilian Radioactive Waste Management—Overview
3:30 p.m. Civilian Radioactive Waste Management—Engineering and Geosciences
4:50 p.m. Public Comment (10 Minute Rule)
5:00 p.m. Adjourn

November 6, 1986

8:30 a.m. Convene
8:45 a.m. Discussion with Secretary
9:30 a.m. Break
9:45 a.m. Report of the Solid Earth Sciences Panel
11:50 a.m. Public Comment (10 Minute Rule)
12:00 Noon Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sarah Goldman at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 9, 1986.

J. Robert Franklin,
Deputy Advisory Committee Management Officer.

[FR Doc. 86–23302 Filed 10–15–86; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50563; FRL–3095–9]

Issuance of Experimental Use Permits; Platte Chemical Co., et al.

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

34704–EUP–6

Issuance. Platte Chemical Company, P.O. Box 667, Greeley CO 80632. This experimental use permit allows the use of 697.5 pounds of the insecticide malathion on cotton to evaluate the control of the boll weevil. A total of 240 acres are involved; the program is authorized only in the States of Alabama, Arizona, Georgia, Louisiana, Mississippi, and Texas. The experimental use permit is effective from September 17, 1986 to September 17, 1987. A permanent tolerance for residues of the active ingredient in or on cotton has been established. (William Miller, PM 16, Rm. 211, CM#2, (703–557–2785))

707–EUP–109

Extension. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 33 pounds of the herbicide oxyfluorfen on cotton to evaluate its effectiveness as a harvest aid. A total of 550 acres are involved; the program is authorized only in the States of Arizona and California. The experimental use permit is effective from September 11, 1986 to September 11, 1987. A permanent tolerance for residues of the active ingredient in or on cotton has been established (40 CFR 180.381). A food additive regulation for residues of the active ingredient in or on cottonseed oil has been established (21 CFR 193.325). (Richard Mountfort, PM 2, Rm. 237, CM#2), (703–557–1830))

55947–EUP–1

Extension. Sandoz Corporation, 341 East Ohio St., Chicago, IL 60611. This experimental use permit allows the use of 882.3 pounds of the herbicide prodiamine on non-bearing orchards of fruits, grapes, and nuts; woody ornamental nursery crops; and ornamental turf. A total of 707.2 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Louisiana, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin and the District of Columbia. The experimental use permit is effective from September 16, 1986 to September 16, 1987. This permit is issued with the limitation that the pesticide will not be applied to fruits, tree nuts, and vineyards that will produce a harvestable crop within 1 year after application. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

Persons wishing to review these experimental use permit are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: October 8, 1986.

James W. Akerman,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–23359 Filed 10–15–86; 8:45 am]
BILLING CODE 6560–50–M

[PF–470; FRL–3095–5]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces amendments to, and withdrawal of, pesticide petitions previously filed and published in the **Federal Register**, proposing the establishment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF–470] and the petition number, attention Product Manager (PM) named in each petition, at the following address: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS–757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS–767C), Attn: (Product Manager (PM) named in the petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone number	Address
Henry M. Jacoby PM–21	Rm. 227, CM#2 703–557–1900	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202
Richard Mountfort PM–23	Rm. 247, CM#2 703–557–2830	Do.

SUPPLEMENTARY INFORMATION: EPA has received requests to file, amend, and/or withdraw pesticide (PP) and food additive (FAP) petitions as follows proposing the establishment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural and food commodities.

1. FAP 6H5514

BASF Corp., P.O. Box 181, Parsippany, NJ 07054. Proposes amending 21 CFR 193.137 by establishing a regulation to permit the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidine-dione (referred to hereafter as "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or processed tomato products with a tolerance limitation of 6.0 parts per million (ppm). (PM–21).

2. PP 1F2438

EPA issued a notice, published in the **Federal Register** of August 27, 1986 (51 FR 30542), which announced that Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640 has amended the proposed tolerances published in the **Federal Register** of July 13, 1984 (48 FR 32076) for residues of the herbicide 3,6-dichloro-2-pyridinecarboxylic acid in or on various animal meat commodities. Dow Chemical has further amended the petition as follows:

a. Increasing the tolerance levels for the following commodities:

Commodities	Proposed-51 FR 30542 Aug. 27, 1986	New level
Cattle, fat, meat, and meat byproducts (mbyp) (except kidney)	0.2	1.0
Cattle, Kidney	5.0	12.0
Goats, fat, meat, and mbyp (except kidney)	0.2	1.0
Goats, kidney	5.0	12.0
Horse, fat, meat, and mbyp (except kidney)	0.2	1.0
Horse, Kidney	5.0	12.0
Sheep, fat, meat, and mbyp (except kidney)	0.2	1.0
Sheep, kidney	5.0	12.0

b. The proposed tolerances for liver of cattle, goats, horse, and sheep were withdrawn. (PM–23).

3. PP 4F3054

EPA issued a notice, published in the **Federal Register** of April 16, 1984 (49 FR 15267), which announced that Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640 proposed amending 40 CFR Part 180 by establishing a tolerance for the herbicide 3,6-dichloro-2-pyridinecarboxylic acid in or on the agricultural commodity forage grasses at 100 ppm. Dow Chemical U.S.A. has amended the petition by changing the commodity description to "grasses, forage and hay" and increasing the residue level to "500 ppm". (PM–23).

4. PP 4E2998

EPA issued a notice, published in the **Federal Register** of January 11, 1984 (49 FR 1422), which announced that BASF Corp., P.O. Box 181, Parsippany NJ 07054 proposed to amend 40 CFR 180.380 by establishing tolerances for the combined residues of the fungicide vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on certain raw agricultural commodities which included cucumber at 1.0 ppm. BASF Corp. has withdrawn the proposed tolerance for cucumber without prejudice to future filing in accordance with 40 CFR 180.8.

Authority: 21 U.S.C. 346a and 21 U.S.C. 348.

Dated: October 7, 1986.

James W. Akerman,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–23357 Filed 10–15–86; 8:45 am]
BILLING CODE 6560–50–M

[SAB–FRL–3096–1]

Science Advisory Board Radiation Advisory Committee National Radon Survey Design Subcommittee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the second meeting of the National Radon Survey Design Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held at the U.S. Environmental Protection Agency, South Conference Area Room #2 on Friday, October 31, 1986. The Conference Area is located on the Ground Floor, near the EPA Washington Information Center, Waterside Mall, 401 M Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. and adjourn no later than 5:00 p.m.

The purpose of the meeting is to continue the review of the design for EPA's planned National Radon Survey.

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The Office of Radiation Programs will provide additional materials for the Subcommittee. Members of the public who would like copies of these materials should contact Mr. Daniel Egan by calling (202) 475–9605 or writing to the Office of Radiation Programs, ANR–460, Room 200, NE., Mall, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The meeting is open to the public; however, seating is limited. Any member wishing to attend, obtain further information, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101–F) Radiation Advisory Committee, Science Advisory Board, by the close of business on October 28, 1986. The telephone number is (202) 382–2552.

Dated: October 9, 1986.

Kathleen Conway,

Acting Director, Science Advisory Board.

[FR Doc. 86–23356 Filed 10–15–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreements; Request for Additional Information

Agreements No.: 204–010986, 204–010986–001.

Title: United States/Peru Equal Access Agreement.

Parties:

Compania Peruana de Vapores
Naviera Neptuno, S.A.
Empresa Naviera Santa, S.A.
Lykes Bros. Steamship Co., Inc.
Coordinated Caribbean Transport, Inc.

Synopsis: Notice is hereby given that the Federal Maritime Commission pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701–1720) has requested additional information from the parties to the agreements in order to complete the statutory review of Agreements No. 204–010986 and 204–010986–001 is required by the Act. This action extends the review period as provided in section 6(c) of the Act.

Dated: October 9, 1986.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86–23319 Filed 10–15–86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

ASB Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 5, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *ASB Bancshares, Inc.*, Ashville, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Ashville Savings Bank, Ashville, Alabama.

2. *FMB Banking Corporation*, Monticello, Florida; to acquire 80 percent of the voting shares of Pavo State Bank, Pavo, Georgia. Comments on this application must be received by October 31, 1986.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Canton Bancshares, Inc.*, Canton, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Canton State Bank, Canton, Illinois.

2. *Summcorp*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Western State Bank, South Bend, Indiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Cherry Valley Bancshares, Inc.*, Cherry Valley, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Cherry Valley, Cherry Valley, Arkansas.

2. *Mercantile Bancorporation, Inc.*, St. Louis, Missouri; to acquire 100 percent of the voting shares of Mercantile Acquisition Company, St. Louis, Missouri, and thereby indirectly acquire First Banchares Corporation of Illinois, Alton, Illinois, and thereby indirectly acquire First National Bank and Trust Company, Alton, Illinois, and Airport National Bank, Bethalto, Illinois.

In connection with this application, Mercantile Acquisition Company, St. Louis, Missouri, has applied to become a bank holding company by acquiring First Bancshares Corporation of Illinois, Alton, Illinois.

Board of Governors of the Federal Reserve System, October 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–23307 Filed 10–15–86; 8:45 am]

BILLING CODE 6210-01-M

First Bankshares, Inc., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under section 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23 (a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefitrs to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 1986.

A. Federal Reserve Bank of Richmond, (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Bankshares, Inc.*, Barboursville, West Virginia, to engage *de novo* through its subsidiary, Equitable Mortgage Company, Barboursville, West Virginia, in making and servicing loans pursuant to §225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by October 31, 1986.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chrisman Bancorp, Inc.*, Springfield, Illinois, to engage *de novo* in acting as broker in the sale of credit life and credit accident and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

2. *First Mid-Illinois Banchares, Inc.*, Mattoon, Illinois, to engage *de novo* through its subsidiary, Mid-Illinois Data Services, Inc., Mattoon, Illinois, in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comment on this application must be received by October 30, 1986.

Board of Governors of the Federal Reserve System, October 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–23306 Filed 10–15–86; 8:45 am]

BILLING CODE 6210-01-M

Iowa National Bankshares Corp.; Correction

This notice corects a previous **Federal Register** document (FR Doc. 86–20548), published at page 32537 of the issue for Friday, September 12, 1986.

Under the Federal Reserve Bank of Chicago, the entry for Iowa National Bankshares Corp., is revised to read as follows:

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Iowa National Bankshares Corp., Waterloo, Iowa; to acquire 100 percent of the voting shares of PT&S Bancorp, Indianola, Iowa, and thereby indirectly acquire Peoples Trust & Savings Bank, Indianola, Iowa. Comments on this application must be received by November 3, 1986.

Board of Governors of the Federal Reserve System, October 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–23305 Filed 10–15–86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. November 3, 2:30 p.m., November 4, 9 a.m., Conference Rm., Bldg. 12, National Center for Toxicological Research (NCTR), Jefferson, AR.

Type of meeting and contact person. Open committee discussion, November 3, 2:30 p.m. to 5 p.m.; open committee discussion, November 4, 9 a.m. to 12 m.; open public hearing, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. 3 p.m.; Ronald F. Coene, National Center for Toxicological Research (HFT–10), Food and Drug Administration, Rm. 14–101, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155.

General function of the Board. The Board advises the Director, NCTR, in establishing and implementing a research program that will assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The Board provides the extra-agency review in ensuring that research programs at NCTR are scientifically sound and pertinent to its stated goals and objectives.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentation should notify the contact person before October 20, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their comments.

Open Board Discussion. The Board will receive an update and discuss the Center's intergovernmental activities, personnel development and training activities, the fiscal yeart 1987 budget and resource allocation, and a facility tour. A final agenda will be available on October 25, by notifying the contact person.

Microbiology Devices Panel

Date, time, and place. November 19, 9 a.m., Rms. 503A–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss two premarket approval applications for tests to detect Hepatitis B core antibody (Anti-HB).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour

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long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committee under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to vidotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's direction.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 9, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

FR Doc. 86-23300 Filed 10-15-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BDSS-036-N]

Medicare and Medicaid Programs; International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the next meeting of the ICD-9-CM Coordination and Maintenance Committee.

DATE: The meeting will be held on Wednesday, November 19, 1986 and Thursday, November 20, 1986, beginning at 9:30 a.m. to 4:00 p.m. Eastern Standard Time.

ADDRESS: The meeting will be held in Room 703A Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Betty See, (301) 594-4885.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid and all other health-related HHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use by Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use for Federal programs. It is Co-Chaired by the National Center for Health Statistics and the Health Care Financing Administration.

At this meeting, the Committee will discuss electrical stimulation therapy, biopsies, implantable infusion pump, hyperthermia treatment for cancer, multiple vessel percutaneous transluminal coronary angioplasty, tissue expander of breast and other sites, ileal J pouch-anal anastomosis, Interleukin-2, hemofiltration, parathyroidectomy, and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.774, Supplementary Medical Insurance)

Dated: October 9, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86-23335 Filed 10-15-86; 8:45 am]

BILLING CODE 4120-01-M

[ORD-55-N]

Medicare and Medicaid Programs; Health Care Financing Research and Demonstration Cooperative Agreements and Grants; Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Amendment to Federal Register Notice of January 30, 1985.

SUMMARY: This notice revises the announcement of the availability of HCFA funds for certain research and demonstration cooperative agreements and grants for the Federal fiscal year 1987, by amending the descriptions of current HCFA funding priorities contained in the notice published on January 30, 1985. In addition, the closing date previously announced for applications requesting discretionary funds for fiscal year 1987 is being changed from November 3, 1986 until December 15, 1986. HCFA makes funds available for activities that will help to resolve major health care financing issues or to develop innovative methods for the administration of the Medicare and Medicaid programs. We have revised the statement of current funding priorities to reflect the major research and demonstration initiatives of HCFA and the Department.

Standard application forms and guidance for the completion of the forms are available from: Paul McKeown, Health Care Financing Administration, Office of Management and Budget, Administrative Contracts and Grants Branch, Room 364 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, (301) 594-3333.

FOR FURTHER INFORMATION CONTACT: Michael Spodnik, Health Care Financing Administration, Office of Research and Demonstrations, Office of Operations Support, 2-D-6 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, (301) 594-3825.

SUPPLEMENTARY INFORMATION: On January 30, 1985 HCFA published in the Federal Register a notice (50 FR 4460) soliciting grant and cooperative agreement applications in certain priority areas. The January 30, 1985 notice describes the application procedures, general policy considerations, criteria to be used in

reviewing applications, and selection criteria for HCFA grants and cooperative agreements. This notice amends the January 30, 1985 notice by revising the statement of current funding priorities for fiscal year 1987, as well as changing the closing date for applications requesting discretionary funds during FY 1987 from November 3, 1986 until December 15, 1986. The closing date for waiver-only applications during fiscal year 1987 remains unchanged: May 4, 1987.

This statement reflects our current priorities and emphasizes our primary interest in the following three areas:

1. Continued growth of Medicare capitated systems and increased competiton and consumer choice;

2. Continued access to quality of care under Medicare and Medicaid and how to measure it;

3. Refinement of the current Medicare hospital prospective payment system (PPS) and physician payment methodology, and study of the impact of the Medicare PPS on varied segments of the health care delivery and financing system;

4. Program analysis leading to increased efficiency in health care delivery and financing.

We are also interested in continuing our efforts in the areas of Medicaid research, State programs for long-term care, and beneficiary awareness and prevention.

After fulfilling our obligations to conduct congressionally mandated studies and reports, we plan to conduct a balanced research program focusing on short-term (0-2 years), mid-term (2-4 years), and long-term (4-8 years) research. Depending on the final FY 1987 and FY 1988 budgets, we hope to allocate approximately one-third of our funds to new programs. We are also paticularly interested in receiving proposals from individuals and institutions who might not have previously applied and who are representative of the entire country.

In our study of short-term policy issues, we will be continuing our efforts at refining the current Medicare hospital prospective payment system and physical payment methodology. We will also be continuing our assessment of the impact of the Medicare hospital prospective payment system on varied segments of the health care delivery and financing system, especially on access to the quality of care provided to Medicare beneficiaries.

For Mid-term policy issues, we will increasingly be directing our efforts to designing and beginning to test alternative payment methods for services that will increase competition in the health care marketplace, while ensuring the continued quality of care. Most notably, we will be promoting the growth of health maintenance organizations and competitive medical plans under the current capitation system, and designing demonstration projects to test different capitation systems.

We will be expanding our efforts directed toward ensuring that quality health care remains accessible to beneficiaries, particularly as the nature of the payment system changes. We will be directing our efforts at studying the impact that the provision of preventive services to individuals has on their current and future utilization of health care services. We will also be looking at the longer-range impact of program changes on segments of the health care delivery and financing system. Finally, for long-term policy issues, we will be focusing on major structural changes to the payment and delivery systems under the Medicare and Medicaid programs to promote increased competition and choice, cost-effective delivery of health care, while ensuring access to quality health care.

Current Priorities for HCFA Funding of New Grants and Cooperative Agreements

The statement of current priorities for HCFA research and demonstration grant/cooperative agreement applications set forth in the Federal Register notice published on January 30, 1985 is amended to read as follows:

Alternative Payment Systems

Our overall goal is to identify, develop, demonstrate, and evaluate effective alternative health care delivery and/or payment systems to control costs under the Medicare and Medicaid programs, while ensuring continued access to quality health care, and to move towards payment systems based on capitation and competition in the marketplace. In general, projects and inquiries should have the prospect of reducing costs in either the short or longer term; at a minimum, they must be budget neutral.

As part of this effort, we are interested in supporting research and demonstration projects that develop and test payment systems that provide incentives to Medicare and Medicaid beneficiaries to be informed purchasers of health care plans and services, including payment systems based on capitation and competition in the marketplace and consumer information projects that support such systems. Specific examples of these types of projects are as follows:

Refinements To Adjusted Average Per Capita Cost (AAPCC) Formula

Medicare reimbursement to Health Maintenance Organizations (HMOs) and Competitive Medical Plans (CMPs) is based on the Adjusted Average Per Capita Cost (AAPCC) formula. The formula uses age, sex, welfare status and institutional status as factors to predict the per capita amount that would be payable if Medicare services for HMO members were furnished in the local fee-for-service market. Past or current work on possible new adjustors has examined perceived health status, functional status, disability, prior use of nondiscretionary health services, causes of death, and ambulatory and hospital diagnoses. In addition, medical and social risk factors, including physiologic measures and propensity to use medical care, have been suggested as possible adjustors. In an effort to further refine the AAPCC methodology by making it a more accurate predictor and minimizing the change for bias, we are interested in projects that refine and expand the above-mentioned efforts or develop new adjustors, and in projects that test such adjustors in capitated systems. Group adjustors, in addition to individual rate factor adjustors, might also be developed when the group is well-defined (such as a retiree employment group). We also are interested in examining how disenrollment affects the pricing process.

Also, under a voucher program, how would an actuarial equivalence test work if the fee-for-service component no longer provides an adequate benchmark for pricing.

The present AAPCC formula reflects geographic variations in Medicare per capita expenses in the fee-for-service sector. We are interested in projects that examine whether alternative geographic units in determining the AAPCC would simplify the payment system and induce providers to join the HMO/CMP market; as well as projects to develop ways to pay HMOs and CMPs that would utilize alternative methods of reflecting area differences that would eliminate variance due to such factors as inappropriate utilization or excessive variance in provider treatment styles. We are also interested in projects designed to determine how to encourage HMO development in low-AAPCC areas.

• *Indemnity Insurers.* Indemnity insurers are prohibited from contracting with Medicare on a risk basis. We are interested in testing this alternative form of coverage for Medicare beneficiaries in addition to employer-at-risk models.

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Indemnity insurance plans that now offer individual Medicare wrap-around coverage would be desirable applicants for a demonstration of an integrated package of Medicare and supplemental health benefits financed by a Medicare capitation payment and additional beneficiary premium payments. Presumably these plans would perform case management or introduce other efficiency-producing measures in order to offer a competitive benefit package and premium structure.

Enrollment within a given geographic area should be on an open enrollment basis, consistent with current enrollment basis, for Medicare HMOs and competitive medical plans. Within such a demonstration, insurers would have the flexibility to restructure beneficiary cost-sharing for services covered by Medicare. Applicants should address benefit package design, cost-sharing, pricing, quality assurance and utilization control mechanisms, and marketing strategies in their proposals. It should be noted that indemnity insurers are also welcome as plan participants under the Independent Broker Model mentioned below.

• *Focused Capitation.* We are interested in testing partial capitation models where organizations such as physician groups would assume partial risk for Medicare benefits on a capitated basis. Under this system of payment, HCFA may share in the risk of certain services or categories of services for which risk exposure might be too great for such groups. For instance, HCFA could pay physician groups on a capitation basis for the provision of Medicare Part B services and for the management of care under Part A, but continue current reimbursement procedures for Part A providers. Profit and loss-sharing mechanisms for costs over or under estimated hospital utilization could be established. Under another option, a number of prepaid organizations could be charged a reinsurance premium. Those enrolling sicker individuals would have access to this risk-pool for coverage for some part of their costs. Those enrolling healthier individuals would, in effect, forfeit their premium. A stop-loss provision could be incorporated to maximize incentives to control inappropriate utilization. Proposals should clearly indicate the incentives for controlling total Medicare costs, so that Part B savings will not undermine parallel incentives under Part A (for example, avoiding cost-shifting).

Additional Pricing Issues

• *Medicaid Capitation Rates.* Capitated arrangements are becoming more prevalent as a mechanism for States to purchase and/or finance health care under the Medicaid program. Such arrangements may be with counties, health insuring organizations, or other prepaid organizations. One area of particular interest is covered of joint Medicare and Medicaid beneficiaries under Medicare-qualified capitated HMOs and CMPs. The equity of the rate-setting methodology is critical, particularly as more capitation arrangements are established. A variety of rate methodologies have been employed, and we are interested in discerning the factors and the methodologies which result in fair and accurate capitation rates. We are also interested in testing refinements in the capitation payment models developed by States.

• *Barriers to Transition.* Shifting to a prepaid capitated system may involve some one-time costs (for example, States may face a "cost bubble" of switching from a retrospective reimbursement to a prospective capitation system). We are interested in exploring innovative financing approaches which address this problem without undermining cost-effectiveness.

• *Alternative, Market-Oriented Pricing Methods for Payments in Capitated Systems.* Medicare's payment for services provided in HMOs is based on per capita costs in the fee-for-service sector. One issue we are interested in addressing is what happens to pricing mechanisms when Medicare's at-risk penetration is large and the number of fee-for-service beneficiaries is diminished. Particularly, what distortions occur in the pricing mechanisms and what alternative for pricing benefit packages exist?

Since these costs may differ from the costs to HMOs in providing care, alternative pricing systems, such as competitive bidding, may be a more cost-effective way for Medicare (and Medicaid) to set premiums. (The Federal Employees Health Benefits Program is a variant of a competitive bidding system.) HCFA is interested in projects that would develop, demonstrate, and evaluate systems for alternative, market-oriented methods to price for services (Medicare and Medicaid or both) in capitated systems.

Other Alternative Payment Systems and Issues

• *Preferred Provider Organizations.* Projects that test the cost-effectiveness of the preferred provider concept in a fee-for-service setting for Medicare beneficiaries.

Preferred provider organizations (PPOs) may offer services at a reduced cost to beneficiaries and may waive coinsurance and deductible amounts. The use of services from the non-PPOs would not be restricted. Applicants must propose a method to track and monitor reimbursement as well as quantity and type of services provided by both preferred providers and non-preferred providers. Applicants must demonstrate why their projects would not qualify as a CMP.

• *Independent Broker Model.* Projects that facilitate more informed Medicare beneficiary consumer choice through the awareness of costs and service options available in specific geographic areas. The independent broker could be responsible for a variety of tasks including marketing and enrolling beneficiaries for specific offerings. Such a model might mitigate against self-selection or HMO/CMP selection bias. Applicants should indicate the extent to which cooperation would be obtained from HMOs/CMPs and other providers offering to participate in the project. Another alternative would involve using brokers to increase utilization of providers whose fee schedules are set at lower than prevailing levels. We are interested in proposals that essentially use Medicare's potential volume in combination with discount prices as the main aspect of a project or in conjunction with other alternatives, potentially including PPOs and/or partial or full capitation. Such a proposal could also utilize differential copayments and deductibles possible by limiting or waiving them.

• *Studies of the Behavior of Health Plans and Enrollees.* Per capita health care costs in HMOs/CMPs are generally lower than in the fee-for-service sector. The capitation approach contains incentives for efficiency and resource use awareness. Recent studies have also suggested that part of the reason for lower rates in HMOs/CMPs may be favorable selection of low users of health care. We are interested in projects on how HMOs/MCPs achieve their savings, including comparisons of the types and quality of services received in HMO/CMP and fee-for-service populations.

We are interested in studies of health plan behavior (including marketing) that may result in favorable selection, as well as strategies to minimize or offset preferential selection. We are interested in the role of types of services offered by HMOs/CMPs and access to services in favorable or unfavorable selection. We are also interested in studies of factors that explain enrollment and disenrollment in HMOs/CMPs and their relation to biased selection. We are interested in studies that measure the difference in health status among HMO/CMP and fee-for-service enrollees and analyze the difference in terms of the health status of new enrollees, disenrollees, and continuing members.

Another topic of interest is economic analyses of the behavior of health plans within the context of the local market for health care. Competitive behavior in terms of pricing, benefits, marketing, expansion, and mergers are areas of interest.

• *Long-Term Effects of Competition.* It has been argued that competition among health plans will reduce cost. However, lack of understanding of the effects of switching among plans, of possible biased selection of low cost plans by healthy persons, and of exactly how HMOs/CMPs achieve their savings make it difficult to estimate the long-term effects of competition on costs. We are interested in analyses of the competitive process among health plans to understand better what a competitive environment might lead to in terms of costs, provider behavior, organization of health services and impact on Medicare and Medicaid beneficiaries.

• *Alternative Payment Approaches for Episodes of Care.* We are also interested in projects that would develop, refine, test, and evaluate new payment approaches for episodes of care, or for a specific diagnosis, condition or illness, and which would involve packaging payment for acute and/or subacute services utilized by patients during these episodes of care. These projects might include physicians and nonphysician services during the episode or stay, skilled nursing facility services, rehabilitative services, and/or payments for home-based services. Such projects might include approaches (such as global fees) which would make a single or combined payment to the hospital when the hospital has directly provided or has arranged for the provision of the post-hospital subacute services, or payment of a fixed amount to other organizations or providers.

• *Outpatient Hospital Services.* We are interested in projects seeking to determine the factors underlying the rapid growth in Medicare outpatient hospital costs (including capital investments), and projects designed to test prospective rate systems to control inappropriate growth in hospital outpatient costs.

Quality of Care

Section 603(a)(2)(A) of the Social Security Amendments of 1983 (Pub. L. 98-21) mandated that we study and report on the impact the hospital prospective payment system has on Medicare beneficiaries. A major aspect of the potential impact on beneficiaries is the impact of PPS on the quality of care provided to beneficiaries. The decreased resource utilization resulting from this system raised the concern as to whether the quality of care provided has been affected; or whether access to needed levels of care has been limited. The rapid changes in other Medicare and Medicaid program areas make it even more critical that we ensure that the level of care provided under Medicare and Medicaid is of high quality.

In order to assess the impact of program changes on the quality of health care furnished to program beneficiaries, as well as to ensure continuation of quality care, we are interested in developing and refining reliable and valid objective quality of care measures for different payment systems and different treatment settings. Therefore, we are interested in projects which develop, demonstrate, and evaluate quality of care measures for nursing homes and home health agencies, and refined quality of care and outcome measures for inpatient hospital services; as well as in the development and demonstration of monitoring systems for quality of care, under various payment systems and in capitated environments. We are also interested in projects examining methods (such as hospital discharge planning and case management approaches) to ensure continuity of care between acute and sub-acute care settings. Careful consideration should be given in proposals submitted in this area as to the types of data that can be efficiently collected and the relationship of such data to objective measures of quality of care, as well as the underlying process of providing quality health care, particularly as it relates to effective patient outcomes.

Some Medicaid beneficiaries may have inadequate access to health care due to insufficient numbers of providers in a specific locale, frequently despite a relatively high concentration of Medicaid beneficiaries. We are interested in testing arrangements which would attract and sustain a health care entity in such an underserved area, with the entity simultaneously improving both access to and the quality of care.

Hospital Payment

The Social Security Amendments of 1983 (Pub. L. 98-21) established a prospective payment system (PPS) for most hospitals participating in the Medicare program. Section 603 of Pub. L. 98-21 and subsequent legislation (for example, Pub. L. 98-369, Pub. L. 99-272) directed the Secretary to study a number of issues relating to PPS, including the impact of PPS on the health care delivery and financing systems; the extension of prospective payment to hospitals not now subject to the system and to all other third party payors; and the refinement of case-mix (diagnosis related group (DRG)) reimbursement.

Analysis of Case-Mix Growth Among Hospitals. HCFA has supported a great deal of research and demonstration projects that would improve case-mix measurement and test alternative case-mix measurement systems for prospective payment of inpatient hospital care or other health care providers and test alternative case-specific payment systems for Medicare or other payors. We are especially interested in examining the impact of case-mix variation on different types of hospitals (for example, urban/rural hospitals, teaching hospitals, and large/small hospitals).

Refinement of Specific PPS Payment Factors. We are interested in studies which address alternative ways to recalibrate DRG relative values, the current PPS outlier payment policy, and systems which examine severity of illness within a given DRG.

Financial Impact of PPS on Other Payor Systems on Hospitals. We are interested in better understanding the impact of the Medicare PPS on different types of hospitals; with analysis using such variables as hospital size, rural/urban status, teaching status, and disproportionate share status. We are also interested in studying the effect that private and public (non-Medicare) payors have on a hospital's financial status. The study should compare Medicare revenue and resource utilization to private and public (non-Medicare) revenue and resource utilization.

We are very interested in projects which examine the effects on the continuity of care between acute hospital care and post-acute care settings. We are also interested in projects that examine both the short-and long-run effects of PPS on all providers.

Analysis of Hospital Outpatient Care. We are interested in projects that will help us better understand the rapid growth in hospital outpatient costs, especially projects examining such issues as: The specific areas of outpatient growth, the composition of services and expenditures provided in these departments, the relationship between payments in these departments and other settings, and the differences in patient characteristics between these departments and other settings.

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Hospital Capital Payments. We are interested in further understanding the capital investment patterns (including an analysis of interest, principal, and depreciation) of different types of hospitals on both a historical and a projected basis. We are also interested in understanding how hospitals finance different types of investment, for example, movable (equipment) and fixed (plant and building).

Refinements of Disproportionate Share Adjustment. In the Consolidated Omnibus Budget Reconciliation Act of 1985, Congress passed legislation requiring the Secretary to pay an additional payment to hospitals that have a disproportionately high percentage of low-income patients. We are interested in projects which could refine this "disproportionate share" adjustment factor, with specific emphasis on appproaches that combine: (1) An understanding of the underlying disproportionate share issues and (2) a statistical methodology to address these issues. In particular, we are interested whether low income patients have higher Part A costs but lower Part B costs.

Analysis of Direct Medical Education Payments. We are interested in projects examining variations in direct medical education payments to hospitals, as well as appropriate refinements to the current payment system.

Examination of Indirect Medical Education Factor. We are interested in further examining the methodology to determine the underlying factors which relate to the indirect medical education teaching adjustment. We are especially interested in variations in indirect teaching costs based on geographic region and size of teaching program.

Examination of Excluded Hospital Payment Methodologies. We are interested in projects that would examine appropriate alternative payment systems for categories of hospitals currently excluded from the Medicare PPS: Rehabilitation, pediatric, and psychiatric hospitals.

Physician Payment

Our overall goal in this area is to identify, develop, demonstrate, and evaluate effective refinements and alternatives to control the costs of physician reimbursement under Medicare and Medicaid, while maintaining a high quality of care. Since 1979, Medicare payments for physician services have grown approximately 17.3 percent per year. Even with a freeze on Medicare physician payments in FY 1985, physician outlays grew at 11.4 percent. We are interested in projects that will help us understand the factors causing this rapid growth in order to continue to develop refinements to the current system. We are also interested in continuing the development of alternative payment strategies using capitation as the basic payment mechanism for physician services.

Analysis of Overpriced Procedures. We are interested in projects which study overpriced procedures, particularly those surgicial services for which Medicare spending is large. Such projects might include procedures which are overpriced due to decreasing costs, difficulty and/or risk for the procedure, but whose reimbursement rates have not been lowered; or are overpriced compared to a related procedure; or are overpriced compared with other areas; or are overpriced compared to other payors. We are also interested in studying whether global fees for surgical cases are overpriced (for example, because of decreases in lengths-of-stay).

Studying Variations in Physician Fees, Participation and Practice Patterns. We are interested in projects which would assist in the gathering and analyses of information on such subjects as:

- Variations in charges for teaching physicians and the extent to which they are involved with patient care.
- Variations among areas in the rates at which various procedures are performed, as well as the actual charges and costs for such services; and
- Variations in participation and assignment rates by geographic areas, physician specialty, site of service, etc.

Other Initiatives. We are interested in projects which develop data bases and models that will allow us to understand and estimate the redistributive impact of refinements to current physician payment methods on beneficiaries and their out-of-pocket costs, physicians and their practice revenues and, participation and assignment rates by geographic areas (carriers, states, localities, within localities), specialty, site of service, type of services, etc. We are interested in projects which analyze charge distributions within areas and among areas, for example, the percent of customary charges at and above the prevailing charge.

We also seek to gain a better understanding of whether, and how, patients treated in physician offices are medically different from patients treated in hospital outpatient or ambulatory settings, and whether (and, if so, why) the care which medically similar patients receive differs by setting. We remain interested in understanding the incentives which affect physician behavior in selecting or influencing the choice of setting for providing particular services and procedures, and the different types of arrangements physicians have to cover the costs for providing services in diverse settings.

Because of the impact of malpractice suits and awards, physician fees and costs are being increased, and some vital physician services are disappearing in some localities. State entities are invited to develop models for legislation and adjudicative processes to address the concerns arising from professional liability for malpractice, particularly under the Medicare program.

Alternative Physician Payment Systems. We are interested in projects which study and develop competitive strategies using capitation as the basic payment mechanism for physician services.

Program Efficiencies, Analyses, and Refinements

We are interested in further improving our knowledge and understanding of the potential impact of program changes and the factors influencing program performance.

In the past 5 years, Congress has enacted several legislative changes which have improved greatly the effectiveness and efficiency of the Medicare and Medicaid programs. We have planned and implemented a variety of intramural research and extramural research efforts to gauge the impact of these changes. The focus of our projects is primarily national and the projects generally rely on centrally maintained records of Medicare claims submitted for payment and central systems of aggregate level and encounter-level Medicaid statistics. Additionally, program analyses in HCFA rely on data generated from major national surveys sponsored by the Federal government.

We are specifically interested in projects that focus on fundamental issues which relate to meeting program objectives, including the following:

- Determining effectiveness and efficiency in the provision of services funded by Medicare and Medicaid, particularly in specific treatment settings. For example, we are interested in projects that study such issues as the inter-carrier variations in reimbursement rates for items and services; the composition of Medicare spending for a class of items and services such as durable medical equipment in terms of rental and purchase rates, assignment and participation rates, and cost of charge distributions; the impact of alternative payment rates for services on providers and suppliers, and their revenues, and on beneficiaries; and the relationship between the resources used to perform or provide services and the actual payment for such services. Examples of the types of services are interested in having studies focus on include clinical laboratory services and durable medical equipment.
- Analyzing the impact of the End State Renal Disease (ESRD) composite rate on resource utilization in ESRD facilities, for example, labor inputs, dialysis reuse and use of other supplies. We are also interested in the changing role of nephrologist since the implementation of the composite rate.
- Describing and interpreting differences in patterns of care, particularly geographic variations and measurable quality differences attendant to geographic variations. Determining the extent to which inter-carrier and intermediary variation in application of coverage criteria affect patterns of care.

Beneficiary Awareness and Prevention

As part of our long-range efforts to study and move toward some form of capitation system for payment of health care services, we are interested in projects which examine the understanding beneficiaries have with respect to Medicare and/or Medicaid programs, and the impact beneficiary awareness/education efforts have on program understanding, selection of health care alternatives, and selection of treatment modalities. We are also interested in projects on the extent to which preventive services and patient education or behavior modification efforts prevent, control, delay or reduce morbidity from chronic diseases, and reduce the overall cost of health care in the Medicare and Medicaid programs.

Included in our topics of interest are projects in the following areas:

- Projects identifying added Medicare and Medicaid costs of smoking, drug abuse, and excessive alcohol consumption on aged and disabled Medicare and Medicaid beneficiaries.
- Projects concerning the financial incentives, cost effectiveness, and other economic aspects of various preventive services, including Medicaid coverage of prenatal care and preventive services for children, and coverage of preventive services for adults.
- Effect of Medicaid coverage on health of pregnant women and their newborns.

State Programs for Long Term Care

Medicaid is a principal source of funding for long term care (LTC) in the United States. Between 1973 and 1984, LTC expenditures under Medicaid increased by over $12 billion, an average annual rate of increase of about 18 percent. This growth rate is the fastest for any health service area, and is expected to continue to increase in the future, due in part to demographic trends. Medicaid is a program operated and funded by States. The Federal government shares in the funding of the Medicaid program through the Federal matching percentage rate established for each State. Since we share in the financing of this program, and in view of the anticipated growth in costs, we share the States' particular interest in State and locality-developed projects that would provide a better understanding of the current LTC delivery and financing systems under Medicaid and that would design and test alternatives to these systems.

Various researchers have conducted initial descriptive efforts concerning the design of alternative payment systems, case-mix methodologies, and other approaches that affect cost and quality of LTC. Examples of these studies are: Birnbaum, et al., Abt Associates, Inc. (1981); Grimaldi, American Enterprise Institute (1981); Spitz and Urban Institute (1981); and Shaughnessy, et al., Center for Health Services Research, University of Colorado (1980, 1982). Specifically, there is interest in the following types of State and locality-developed projects:

- State and locality-developed projects which test alternative financing schemes for LTC services, including capitation and block grants, patient-related or case-mix based prospective payment and competitive bidding systems for skilled nursing facility and intermediate care facility levels of care; State and locality-developed projects which demonstrate the integration of payment for the continuation of services; and approaches which expand private risk-sharing for LTC costs, such as private LTC health insurance models, reverse annuity programs, life care centers, and various State tax incentive programs. We are looking for State and local entities to test, over a multi-year period, innovative managed care systems with Federal funding provided under various non-traditional payment arrangements. We recognize that these programs may not meet cost effectiveness criteria in the first year, provided they are intended to be cost effective over multiple years.
- State and locality-developed projects which assess the effects of innovative State, local, and private programs to promote home care by the family or by other community support arrangements. For example, State and locality-developed research and demonstration projects which focus on LTC populations such as Alzheimer's patients, AIDS patients or institutionalized elderly, the mentally retarded and developmentally-disabled, or persons at risk of institutionalization because they have no family network, for the purpose of testing cost effective methods of providing in-home or other support services (adult day care, adult foster care or shared housing) which substitute for or deter the institutional care of such patients.
- State and locality-developed projects which design and test criteria and information systems to identify institutionalized individuals who are potential candidates for non-institutional care, and non-institutionalization.
- State and locality-developed projects which demonstrate and evaluate the effects of a single payment system for acute and subacute care on LTC institutions and networks.

(Secs. 1110, 1115(a), 1875, and 1861(f) of the Social Security Act (42 U.S.C. 1310, 1315(a), 1395, 1395rr(f); sec. 222(a) of the Social Security Amendments of 1972, as amended (42 U.S.C. 1395b–1 (note)); sec. 402 of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b–1); section 603 of the Social Security Amendments of 1983 (Pub. L. No. 98–21); sec. 605(b) of the Social Security Amendments of 1983 (42 U.S.C. 1395x(v)(1)(E)[Note]).

(Catalog of Federal Domestic Assistance Program No. 13.766 Health Financing Research, Demonstrations and Experiments)

Dated: August 22, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86–23400 Filed 10–15–86; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

Notice of Reestablishment of Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 Stat. 770–776] and the Health Research Extension Act of 1985, November 20, 1985 [Pub. L. 99–158, section 402(b)(6)], the Director, National Institutes of Health, announces the reestablishment, effective November 1, 1986, of the following committees:

Biomedical Sciences Study Section
Biopsychology Study Section
Radiation Study Section
Sensory Disorders and Language Study Section
Surgery, Anesthesiology, and Trauma Study Section

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The duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: October 14, 1986.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 86-23565 Filed 10-15-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing records maintained by the U.S. Fish and Wildlife Service and the National Park Service. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other administrative revisions which have occurred since the publication of the material in the Federal Register on April 11, 1977 (42 FR 19021). The revised notice, published in its entirety below, is titled "Youth Conservation Corps (YCC) Recruitment Files—Interior, Office of the Secretary-29".

The notice is revised primarily to reflect recent organization changes within the Department regarding the administration of youth programs. The description of the system managers responsible for the records is changed to reflect decentralization of functions to the U.S. Fish and Wildlife Service and the National Park Service.

The statement describing the categories of records in the system is revised to clarify the types of information being maintained. Also, the existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act.

Since these changes do not involve any new or intended use of the information in the system of records, the notice shall be effective on October 16, 1986. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: October 6, 1986.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/OS-29

SYSTEM NAME:

Youth Conservation Corps (YCC) Recruitment Files—Interior, Office of the Secretary—29.

SYSTEM LOCATION:

Records are kept at participating field stations of the U.S. Department of the Interior's Fish and Wildlife Service and National Park Service. A listing of field locations may be obtained from the pertinent system manager noted below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Youths between the ages of 15 and 18 who file an application to attend a Department of the Interior, or State Grant YCC camp.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of application forms submitted by eligible youth and contains the following categories of information: name, address, telephone number, birthdate, sex, and name of parent or guardian.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93-408.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is for selection among applications of all eligible applications. Persons selected are either offered employment in a YCC camp or placed on an alternate list to be used in case of declination. Disclosures outside the Department of the Interior may be made (1) to the U.S. Forest Service, States, counties, cities and other subgrantees for employment purposes; (2) to the U.S. Department of Justice or in a proceeding before a court of adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual.

RETRIEVABILITY:

Applications are filed alphabetically by name of individual applicant.

SAFEGUARDS:

Records are kept locked in confidential files.

RETENTION AND DISPOSAL:

Pending approval of the Archivist of the U.S.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Refuges, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240; (2) Director, Office of Youth Activities, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the appropriate system manager. A written, signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the appropriate System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the appropriate System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

The records in this system originate in two ways: (1) The YCC application form prepared by the applicant and any additions or corrections thereto, also prepared by the applicant. (2) Additional information added to the file by the State recruiter concerning the applicant's selection, nonselection, declination, etc.

[FR Doc. 86-23290 Filed 10-15-86; 8:45 am]

BILLING CODE 4310-85-M

Bureau of Land Management

[UT-040-07-4322-02]

Cedar City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, November 20, 1986. The meeting will begin at 9:30 a.m. in the Bureau of Land Management Cedar City District Office located at 176 East D.L. Sargent Drive, Cedar City, Utah.

The agenda is as follows: (1) Election of Advisory Board Officers; (2) Review of current Advisory Board Charter; (3) Review of recently completed AMPs; (4) Policy on Delinquent Grazing Bills; (5) Report on Cedar, Beaver, Garfield Resource Management Plan; (6) Report on use of FY86 Range Improvement Funds; (7) General Advisory Board business.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East D.L. Sargent Drive, Cedar City, Utah 84720, phone 801-586-2401, by November 17, 1986. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: October 7, 1986.

Morgan S. Jelsing,

District Manager.

[FR Doc. 86-23291 Filed 10-15-86; 8:45 am]

BILLING CODE 4310-DQ-M

Susanville District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Managment, Interior. Susanville District Grazing Advisory Board, Susanville, California 96130.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-579 (FLPMA) that a meeting of the Susanville District Grazing Advisory Board will be held on November 19, 1986.

The meeting will begin at 10:00 a.m. at the Susanville District Office of the Bureau of Land Management, 705 Hall Street, Susanville, California. The agenda will include discussions of the allocation of FY87 project funds, status report on the wild horse and burro program, subleasing, unauthorized use, Grazing Advisory Board Account, Susanville District's Monitoring Policy, and other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 and 4:40 p.m. on November 19, 1986, or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California, 96130, by November 13, 1986. Depending upon the the number of persons wishing to make oral statements a per person time limit may be established.

Summary minutes of the board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 86-23378 Filed 10-15-86; 8:45 am]

BILLING CODE 4310-40-M

[NV-020-07-4322-02]

Winnemucca District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-163 that a meeting of the Winnemuca District Grazing Advisory Board will be held on December 4, 1986. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Orientation/update of district rangeland management program by District Manager.
2. Election of Officers.
3. Public Statements.
4. Allotment Management Plans:
   (a) Delinquent fee billings
   (b) Billing flexibility
   (c) Monitoring
5. Range Betterment (range improvement) funds:
   (a) 1986 FY projects
   (b) 1987 FY projects
   (c) Maintenance of existing projects

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by November 20, 1986. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: October 7, 1986.

Frank C. Shields,

District Manager.

[FR Doc. 86-23379 Filed 10-15-86; 8:45 am]

BILLING CODE 4310-HC-M

District Boundary Changes; Alaska State Offices

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of change in the number of districts within the Bureau of Land Management-Alaska from two to five. The boundaries and office locations for the new districts are depicted on maps available to the public at locations set out below.

SUMMARY: This notice describes the action being taken by the Alaska State Office, Bureau of Land Management, to adjust district boundaries in accordance with reorganization plans. Maps of the geographic areas and specific boundaries will be available for public review at:

(1) Bureau of Land Management, State Office Public Room, First Floor (D-137), Federal Building, 701 C Street, Anchorage, AK 99513.
(2) Bureau of Land Management,

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Fairbanks Support Center, Public Room, 1541 Caffney Road, Fairbanks, AK 99707.

DATE: The reorganization will be effective on November 15, 1986.

Maps depciting specific geographic boundaries of the newly-defined, five-district structure will be available for public inspection Monday through Friday 7:30 a.m. to 4:15 p.m. beginning November 15, 1986.

FOR FURTHER INFORMATION CONTACT:

South Alaska: Public Room, Branch of Land Office, Services, Bureau of Land Management, P.O. Box 13, Ancorage, Alaska 99513, (907) 271–5960.
North Alaska: Public Room, Fairbanks Support Center, Bureau of Land Management, 1541 Caffney Road, Faribanks, Alaska 99707, (907) 356–2025.

SUPPLEMENTAL INFORMATION: The Bureau of Land Management-Alaska reorganization has created five new districts. Two districts in the south half of the state will be headquartered in Anchorage and Glennallen, Alaska. The three districts in the north half of the state, Arctic, Kobuk and Steese/White, will be headquatered in Fairbanks, Alaska.

Detailed geographic boundary maps, scale 1:250,000 and Series E, are available for purchase in the offices listed in the summary description.

Dated: October 9, 1986.

Michael J. Penfold,

State Director.

[FR Doc. 86–23330 Filed 10–15–86; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Endangered Species Convention; Foreign Law Notification, Singapore

Subject: Notice of Information No. 10.

This is a Schedule I Notice: Wildlife subject to this notice is subject to detention, to refusal of clearance, or to seizure and forfeiture, if imported into the United States.

Subject: Singapore—Amends U.S. announced policy on refusal to clear import of wildlife exports and re-exports to allow clearance only of non-CITES species of live fish.

Source of foreign law information: United States through the Department of State and the Government of Singapore.

ACTION: On September 25, 1986 (51 FR 34159) the U.S. Fish and Wildlife Service published Notice of Information No. 9 advising the public that it would refuse to clear all wildlife and wildlife products imported into the United States declaring Singapore as country of origin or of export or re-export. Based upon negotiations with the Government of Singapore, and having received assurances from the Government of Singapore of its cooperation in providing authentication of export and re-export documents and information on shipments, the United States will accept export and re-export documents from Singapore to authorize clearance only of exported or re-exported live fish species not listed as endangered or threatened under United States laws or on any appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Effective immediately and until further notice, shipments of nonendangered, nonthreatened, non-CITES listed live fish exported or re-exported from Singapore or which declare Singapore as country of origin may be imported into the United States provided these shipments are otherwise legally imported and declared and are accompanied by documents meeting the requirements of the laws and regulations of the United States. The public is advised that this amendment of policy is temporary, and is a good faith gesture by the United States to encourage the cooperation and good faith of the Government of Singapore in wildlife enforcement issues. As of January 1, 1987, the performance of the Government of Singapore will be evaluated related to its cooperation with the United States. The public should be aware that unless sufficient progress by the Government of Singapore has been achieved in these areas, this amendment may be rescinded and the policy of refusing to clear any wildlife reinstituted.

Shipments of any wildlife or wildlife products other than nonendangered, nonthreatened, non-CITES listed live fish, exported or re-exported from Singapore or which declare Singapore as country of origin will continue to be refused clearance until further notice.

EFFECTIVE DATE: October 16, 1986. Expiration date: Until further notice.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20005, Telephone: 202/343–9242.

Frank Dunkle,

Director.

[FR Doc. 86–23305 Filed 10–15–86; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 032 and 033, Blocks 18 and 19, respectively, Grand Isle Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on October 3, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: October 7, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–23292 Filed 10–15–86; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination, Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4103, Block 69, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on October 6, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Lousiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 6, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–23380 Filed 10–15–86; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Development Operations Coordination; Mobil Oil Exploration, and Producing Southeast Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposal development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 0478, Blocks 116, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 6, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD's available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 7, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–23293 Filed 10–15–86; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Development Operations Coordination; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0445, Block 176, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 3, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendents of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: October 7, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–23294 Filed 10–9–86; 8:45 am]

BILLING CODE 4310–MR–M

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National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 4, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior Washington, DC 20243. Written comments should be submitted by October 31, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Pulaski County

Little Rock, *Albert Pike Memorial Temple (Little Rock Main Street MRA)*, 700—724 Scott St.
Little Rock, *First Presbyterian Church (Little Rock Main Street MRA)*, 123 E. Eight St.
Little Rock, *Pulk Building (Little Rock Main Street MRA)*, 300 Main St.
Little Rock, *Gus Blass Department Store (Little Rock Main Street MRA)*, 318—324 Main St.
Little Rock, *Rose Building (Little Rock Main Street MRA)*, 307 Main St.
Little Rock, *St. Andrews Catholic Cathedral (Little Rock Main Street MRA)*, 617 Louisiana St.
Little Rock, *Taylor Building (Little Rock Main Street MRA)*, 304 Main St.
Little Rock, *Worthen Bank Building (Little Rock Main Street MRA)*, 401 Main St.

DELAWARE

Kent County

Clayton, *Clayton Railroad Station*, Bassett St.
Wyoming, *Wyoming Historic District*, Roughly bounded by Front St., Rodney Ave., Southern Blvd., and Mechanic St.

New Castle County

Newark vicinity, *Armstrong, A., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Old Wilmington Rd. W of Brackenville Rd.
Newark vicinity, *Bartley—Tweed Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Foxden Rd. W of Polly Drummond Rd.
Newark vicinity, *Dixon, S.P., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Woodale and Brackenville Rds.
Newark vicinity, *Eastburn, David, Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Corner Ketch Rd. SE of Wilmington-Landenberg Rd.
Newark vicinity, *Eastburn, J., Barn (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Pleasant Hill Rd. SW of Corner Ketch Rd.
Newark vicinity, *Lindsey, J., Barn (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Middleton Dr. near Mermaid-Stoney Batter Rd.
Newark vicinity, *Mason, J., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* DE 82 S of Way Rd.
Newark vicinity, *McCormick Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Newport Gap turnpike N of Mill Creek Rd.
Newark vicinity, *McDaniel, J., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Paper Mill Rd. E of Fiks Creek Rd.
Newark vicinity, *McIntyre, J., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Limestone Rd. N of Valley Rd.
Newark vicinity, *Morgan, William, Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Wilmington-Landenberg Rd. N of Corner Ketch Rd.
Newark vicinity, *Pierson, T., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Southwood Rd.
Newark vicinity, *Springer Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Limestone Rd.
Newark vicinity, *Stinson, J., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* 750 Corner Ketch Rd.
Newark vicinity, *Walker, J., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Mermaid-Stoney Batter Rd. W of Mill Creek Rd.
Newark vicinity, *Walker, R., Barn (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Near corner of Skyline and Foxcroft Drs.

Sussex County

Seaford, *Building at 200—208A High Street (Seaford Commercial Buildings TR)*, 200 & 200A High St.
Seaford, *Building at 218 High Street (Seaford Commercial Buildings TR)*, 218 High St.
Seaford, *Building at High and Cannon Streets (Seaford Commercial Buildings TR)*, High and Cannon Sts.
Seaford, *Cox, J. W., Dry Goods Store (Seaford Commercial Buildings TR)*, 214 High St.
Seaford, *First National Bank of Seaford (Seaford Commercial Buildings TR)*, 116 Pine St.
Seaford, *Sussex National Bank of Seaford (Seaford Commercial Buildings TR)*, 130 High St.

DISTRICT OF COLUMBIA

Washington

Asbury United Methodist Church, Eleventh and K Sts., NW.
Buildings at 1644—1666 Park Road NW, 1644—1666 Park Rd., NW.
Embassy Building No. 10, 3149 Sixteenth St., NW.
Evans—Tibbs House, 1919 Vermont Ave., NW.
McLachlen Building, 1001 G St., NW.
Southern Aid Society—Dunbar Theater Building, 1901—1903 Seventh St., NW.
Tenth Precinct Station House, 750 Park Rd., NW.

MINNESOTA

Rice County

Faribault, *Administration Building—Girls' Dormitory, Minnesota School for the Deaf*, MN 299

St. Louis County

Duluth, *Duluth Civic Center Historic District*, Fifth Ave. West and First St.

MISSISSIPPI

Smith County

Taylorsville, *Taylorsville Signal Office and Watkins General Store*, 336 Eureka St.

Warren County

Vicksburg, *Fitzhugh Hall*, 1322 Chambers St.

NEW HAMPSHIRE

Cheshire County

Harrisville, *Beech Hill Summer Home District (Harrisville MRA)*, Roughly Venable, Appleton and Old Harrisville Rds.
Harrisville, *Chesham Village District (Harrisville MRA)*, Roughly bounded by Yellow Wings, Beaver, Chesham, and Marienfield Rds.
Harrisville, *Gilchrist Homestead (Harrisville MRA)*, NH 137
Harrisville, *Glenclevet (Harrisville MRA)*, NH 137
Harrisville, *Eaton, Moses, Jr., House (Harrisville MRA)*, NH 137 at Sargent Camp Rd.
Harrisville, *Harrisville Rural District (Harrisville MRA)*, Roughly along Venable Old Harrisville, New Harrisville, and Bonds Corner Rds.
Harrisville, *Harrisville Village District (Harrisville MRA)*, Roughly Prospect, Grove, Chestire, Main, School, Island, and Water Sts.
Harrisville, *Pottersville District (Harrisville MRA)*, Roughly intersection of Roxbury and Medow Rds., and along Brown Rd. NE of Chesham Rd.
Harrisville, *Silver Lake District (Harrisville MRA)*, Roughly along Old Nelson, Eastside, and Westside Rds.
Harrisville, *Stationmaster's House (Harrisville MRA)*, Jaquith Rd.
Harrisville, *Townsend, Jabez, House (Harrisville MRA)*, E. Harrisville and Cherry Hill Rds.

NEW JERSEY

Essex County

Montclair, *Anchorage, The (Harrisville MRA)*, 155 Wildwood Ave.
Montclair, *Bardsley, Joseph, House (Montclair MRA)*, 345 Park St.
Montclair, *Brodner's Pharmacy (Montclair MRA)*, 33 Watchung Plaza
Montclair, *Carnegie Library (Montclair MRA)*, Church St. at Valley Rd.
Montclair, *Casa Deldra (Montclair MRA)*, 35 Afterglow Way

Montclair, *Central Presbyterian Church (Montclair MRA)*, 46 Park St.
Montclair, *Chestnut Street School (Montclair MRA)*, 65 Chestnut St.
Montclair, *Christian Union Congregational Church (Montclair MRA)*, 176 Cooper Ave.
Montclair, *Cliffside Chapel (Montclair MRA)*, 583 Valley Rd.
Montclair, *Cliffside Hose Company No. 44 (Montclair MRA)*, 588 Valley Rd.
Montclair, *Congregational Church (Montclair MRA)*, 42 S. Fullerton Ave.
Montclair, *Crane, Ira, House (Montclair MRA)*, 33—35 S. Fullerton Ave.
Montclair, *DeLuce, Elizabeth, House (Montclair MRA)*, 41 S. Mountain Ave.
Montclair, *Egbert Farm (Montclair MRA)*, 128 N. Mountain Ave.
Montclair, *Erwin Park Historic District (Montclair MRA)*, Roughly bounded by Central Ave., Valley Rd., Holland Ter., Midland Ave., and Brunswick Rd.
Montclair, *Fenn, Henry, House (Montclair MRA)*, 208 N. Mountain Ave.
Montclair, *First Baptist Church (Montclair MRA)*, 23 S. Fullerton Ave.
Montclair, *First Baptist Church (Montclair MRA)*, 68 Church St.
Montclair, *First Methodist Episcopal Church (Montclair MRA)*, 24 N. Fullerton Ave.
Montclair, *First Residential District (Montclair MRA)*, Bounded by Mountain and Hillside Aves., Plymouth and Union Sts., Prospect Ter., Hawthorne Pl., Harrison and Gates Aves.
Montclair, *Free Public Library, Upper Montclair Branch (Montclair MRA)*, 185 Bellevue Ave.
Montclair, *Garrabrandt House (Montclair MRA)*, 471 Valley Rd.
Montclair, *Goodwillie, Frank, House (Montclair MRA)*, 17 Wayside Pl.
Montclair, *Greenough House (Montclair MRA)*, 340 Highland Ave.
Montclair, *Haskell's Bloomfield Villa (Montclair MRA)*, 84 Llewllyn Rd.
Montclair, *Highway (Montclair MRA)*, 120 Lloyd Rd.
Montclair, *Hinck Development House (Montclair MRA)*, 58 Christopher St.
Montclair, *House at 10 Rockledge (Montclair MRA)*, 10 Rockledge
Montclair, *House at 103 Chestnut Street (Montclair MRA)*, 103 Chestnut St.
Montclair, *House at 11 James St. (Montclair MRA)*, 11 James St.
Montclair, *House at 135 Norwood Ave. (Montclair MRA)*, 135 Norwood Ave.
Montclair, *House at 147 Park Street (Montclair MRA)*, 147 Park St.
Montclair, *House at 152 Park Street (Montclair MRA)*, 152 Park St.
Montclair, *House at 18 Brunswick Road (Montclair MRA)*, 18 Brunswick Rd.
Montclair, *House at 185 Valley Road (Montclair MRA)*, 185 Valley Rd.
Montclair, *House at 190 S. Mountain Avenue (Montclair MRA)*, 190 S. Mountain Ave.
Montclair, *House at 21 Stoneridge Road (Montclair MRA)*, 21 Stoneridge Rd.
Montclair, *House at 239 South Mountain Avenue (Montclair MRA)*, 239 S. Mountain Ave.
Montclair, *House at 275 Claremont Avenue (Montclair MRA)*, 275 Claremont Ave.
Montclair, *House at 29 Cedar Street (Montclair MRA)*, 29 Cedar St.
Montclair, *House at 30 Wayside Place (Montclair MRA)*, 30 Wayside Pl.
Montclair, *House at 40 Northview Avenue (Montclair MRA)*, 40 Northview Ave.
Montclair, *House at 44 Pleasant Avenue (Montclair MRA)*, 44 Pleasant Ave.
Montclair, *House at 50 Lloyd Road (Montclair MRA)*, 50 Lloyd Rd.
Montclair, *House at 52 Wayside Place (Montclair MRA)*, 52 Wayside Pl.
Montclair, *House at 53 Lloyd Road (Montclair MRA)*, 53 Lloyd Rd.
Montclair, *House at 580 Park Street (Montclair MRA)*, 580 Park St.
Montclair, *House at 67 Warren Place (Montclair MRA)*, 67 Warren Pl.
Montclair, *House at 68 Eagle Rock Way (Montclair MRA)*, 68 Eagle Rock Way
Montclair, *House at 80 Lloyd Road (Montclair MRA)*, 80 Lloyd Rd.
Montclair, *House at 83 Watchung Avenue (Montclair MRA)*, 83 Watchung Ave.
Montclair, *House at 97 Warren Place (Montclair MRA)*, 97 Warren Pl.
Montclair, *Huestis, C.H., House (Montclair MRA)*, 4 Duryea Rd.
Montclair, *Immaculate Conception Church (Montclair MRA)*, N. Fullerton and Munn Sts.
Montclair, *Interest Manor (Montclair MRA)*, 149 Watchung Ave.
Montclair, *King, James S., House (Montclair MRA)*, 786 Valley Rd.
Montclair, *Lamb, Joseph, Birthplace and Childhood Home (Montclair MRA)*, 111 N. Fullerton Ave.
Montclair, *Lambie Concrete House (Montclair MRA)*, 309 N. Mountain Ave.
Montclair, *Loomis, Archery H., House (Montclair MRA)*, 18 Princeton Pl.
Montclair, *Marlboro Park Historic District (Montclair MRA)*, Roughly along Fairfield St., Waterbury Rd., Montclair Ave., and Watchung Ave. between N Fullerton and Grove Sts.
Montclair, *Marsellis House (Montclair MRA)*, 190 Cooper Ave.
Montclair, *Mayes, Frederick W., House (Montclair MRA)*, 40 Bradford Ave.
Montclair, *Melcher House (Montclair MRA)*, 228 Grove St.
Montclair, *Miller Street Historic District (Montclair MRA)*, Miller and Fulton Sts. between Elmwood Ave. Elm. and New Sts.
Montclair, *Montclair Art Museum (Montclair MRA)*, 3 S. Mountain Ave.
Montclair, *Mott, Dr. John R., House (Montclair MRA)*, 75 Midland Ave.
Montclair, *Mountain District (Montclair MRA)*, Roughly bounded by Highland, Bradford, Upper Mountain, and Claremont Aves.
Montclair, *Mulford House (Montclair MRA)*, 207 Union St.
Montclair, *Munn Tavern (Montclair MRA)*, 17 Valley Rd.
Montclair, *Nason House (Montclair MRA)*, 166 Orange Rd.
Montclair, *Old Stage Coach Stop (Montclair MRA)*, 764 Bloomfield Ave.
Montclair, *Post Office Building Upper Montclair (Montclair MRA)*, 242—244 Bellevue Ave.
Montclair, *Reading, M.F., House (Montclair MRA)*, 87 Midland Ave.
Montclair, *Red Gables (Montclair MRA)*, 99 S. Fullerton Ave.
Montclair, *Sadler Place (Montclair MRA)*, 10 Euclid Pl.
Montclair, *Sigler Farm (Montclair MRA)*, 109 Alexander Ave.
Montclair, *Sigler, A.A., House (Montclair MRA)*, 51 Park St.
Montclair, *St. Luke's Church (Montclair MRA)*, 69 S. Fullerton Ave.
Montclair, *Stone Eagles (Montclair MRA)*, 90 Undercliff Rd.
Montclair, *Stone, Lucy, House (Montclair MRA)*, 118 N. Mountian Ave.
Montclair, *Varno, A.J., House (Montclair MRA)*, 387 Park St.
Montclair, *Wight, Allyn, House (Montclair MRA)*, 75 Gates St.
Montclair, *Wood, W.H., House (Montclair MRA)*, 136 Bellevue Ave.
Montclair, *Wynnewood (Montclair MRA)*, 38 Stonebridge Rd.

Morris County

Morristown, *Glanville Blacksmith Shop (Morristown MRA)*, 47 Bank St.
Morristown, *Lindenwold (Morristown MRA)*, 247 South St.
Morristown, *Mount Kemble House (Morristown MRA)*, 1 Mount Kemble Ave.
Morristown, *Oak Dell (Morristown MRA)*, Franklin St. and Madison Ave.
Morristown, *Spring Brook House (Morristown MRA)*, 187 James St.

OREGON

Baker County

Haines vicinity, *Maxwell, James O., Farmstead*, Rt. 2, Box 62 on N side Muddy Creek Rd.

Clackamas County

Canby, *Knight, William, House*, 525 SW Fourth Ave.

Clatsop County

Astoria, *Svenson Blacksmith Shop, 1769 Exchange St.*

Deschutes County

Bend, *O'Kane Building*, 115 NW Oregon Ave.

Jackson County

Ashland, *Kane, E.C., House*, 386 B St.

Lincoln County

Newport, *New Cliff House*, 287 NW Cliff St.

Multnomah County

Portland, *Belle Court Apartments*, 120 NW Trinity Pl.
Portland, *Medical Arts Building*, 1020 SW Taylor

PENNSYLVANIA

Lancaster County

Lancaster, *Farmer's Southern Market*, 108 S. Queen St.

SOUTH DAKOTA

Brookings County

Brookings, *Caldwell, W.A., House*, 804 Sixth Ave.
Brookings, *Mathews, G.A., House*, 423 Eighth St.
Brookings, *Nick's Hamburger Shop*, 427 Main Ave.

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Hutchinson County

Menno, *Schmitt, Gottlieb, House*, 150 W. Poplar

Lawrence County

Whitewood, *Selbie Building*, 1101 Meade

McPherson County

Leola, *McPherson County Courthouse*, SD 10

Minnehaha County

Sioux Falls, *Pettigrew, R.F., and Tate, S.L., Building*, 121—123 S. Main Ave.

VERMONT

Bennington County

Bennington, *Ritchie Block*, 405—473 Main St.

WASHINGTON

Clark County

Vancouver, *Vancouver Telephone Building*, 112 W. Eleventh St.

[FR Doc. 86-23285 Filed 10-15-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Proposed NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation, and therefore, are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, Attention: Chief of Registration (202) 343-9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from that same office.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

Zuni-Cibola Complex

New Mexico (Cibola and McKinley Counties)

Village of the Great Kivas

The site is delineated as a 160 acre polygon, drawn on the USGS 7.5 minute Horsehead Canyon NW Quadrangle, near Nutria Reservoir No. 2.

Yellow House

The site is delineated as a 60 acre polygon, drawn on the USGS 7.5 minute Horsehead Quadrangle, off State Highway 53.

Hawikuh

The site is delineated as a 180 acre polygon, drawn on the USGS 7.5 minute Ojo Caliente Reservoir Quadrangle, north of Ojo Caliente.

Kechipbowa

The site is delineated as a 270 acre polygon, drawn on the USGS 7.5 minute Ojo Caliente Reservoir Quadrangle, north of Ojo Caliente.

These geographic descriptions are deliberately general in order to protect the integrity of the archeological resources, as required by law.

Fort Concho Historic District

San Angelo, Texas (Tom Green County)

Verbal Boundary Description: The boundary begins at Point A, the south curb of the intersection of East (E.) Avenue (Ave) A, and runs east along the north curb of E. Ave A across Wool and Burgess Streets for approximately 400 yards to Point B. Point B is located on the north curb of E. Ave A, approximately 100 yards due north from the point where the railroad spur begins to curve. From Point B, the boundary turns south and proceeds across a vacant lot to its intersection with the railroad tracks; thence along the western most rail across E. Ave C and across E. Ave D to Point C, located approximately 130 yards south of E. Ave D. From Point C, the boundary extends due west across the storage yard to the east curb of Burgess Street and Point D, and then due north to Point E, a distance of approximately 400 yards. At Point E, the boundary crosses Burgess Street and runs west across vacant ground, along a partial fence line, for approximately 800 yards to Point F. Point F is located on the east curb of South Oakes Street. From Point F, the boundary turns north along the east curb of South Oakes Street, crossing E. Aves D, C, and B before terminating at Point A, a distance of 800 yards. Point A is the beginning point of the boundary.

Washington Crossing National Historic Landmark

New Jersey (Mercer County) and Pennsylvania (Bucks County)

It is composed of five, noncontiguous parcels.

(1) Washington's Crossing Lower National Historic Landmark District

Location: Along the Delaware River, partially in Hopewell Township, Mercer County, New Jersey and partially in Upper Makefield Township, Bucks County, Pennsylvania. The district includes portions of both the Pennsylvania and New Jersey Washington Crossing State Parks.

Verbal Boundary Description: Beginning at the intersection of the north curbline of PA Route 532 and the east curbline of PA Route 32, thence north along the east curbline of PA Route 32 approximately 750 feet to the first lower entrance to the area known as the "Valley of Concentration," then in a westwardly direction along the inner curbline of the lane that describes the oval area to the farthest northerly exit of that lane to PA Route 32, thence across PA Route 32 to the east curbline of that road, thence north along that curbline to a point opposite the most northerly point of the low water line of Taylors Island, thence to that point and continuing along the low water line of Taylors Island in a clockwise direction to a point that is the southeastern most point of the low water point of Taylors Island and then in a northeasterly direction across the Delaware River to a point that marks the intersection of the east curbline of NJ Route 29 and the inner curbline of the oval-shaped park access road, then along the inner curbline of the lane to a point opposite the south curbline of the park lane that is on the north of the Continental Army Trace Road and then along that south curbline to Brick Yard Road, then continuing in a straight line to the east curbline of country road 579 and then continuing to the east property line of the state park beyond the Bear Tavern/Park Office, and then along that east property line in a southeast direction to the north curbline of county road 546, then along that curbline to a point that is the imaginary extension of the north curbline of the park lane that is on the south side of the Continental Army Trace Road and then along that line to the curbline and along the curbline in a southwest direction to the inner curbline of the oval-shaped park access road and then along that inner curbline to the north curbline of county road 546 and then in a southerly direction along that curbline across the Delaware River, but not including any portion of the Delaware River Bridge, to the north curbline of PA Route 532 and then along that curbline to the place of beginning.

(2) Washington's Crossing Upper National Historic Landmark District

Location: This district is located in both Solebury and Upper Makefield Townships, Bucks County, Pennsylvania. It lies along the Delaware River about two miles south of New Hope and in the shadow of Bowman's Hill.

Verbal Boundary Description: This district includes the entire parcel of land known as Washington's Crossing State Park "Upper Park" in Pennslyvania. The boundary, as does the park boundary, extends to the state line halfway into the Delaware River.

(3) Merrick House

Location: On road 309 near the intersection of road 09054 in Upper Makefield Township, Bucks County, PA.

Verbal Boundary Description: The acreage for the Merrick House consists of the entire legal parcel of 6.2 acres and is also known as Upper Makefield Tax Parcel number 47-4-63.

(4) Hayhurst House

Location: On road 09055 just beyond the crossroads of Woodhill in Upper Makefield Township, Bucks County, PA.

Verbal Boundary Description: The acreage for the Hayhurst House consists of the entire legal parcel of 7.4 acres and is Upper Makefield tax parcel 47-4-76, known as lot 9, Eagle Farm.

(5) Dr. Chapman House

Location: On road number 309 about .3 miles south of road 09056. Upper Makefield Township, Bucks County, PA.

Verbal Boundary Description: The entire parcel of tax map lot 47-7-11 consists of 24.4 acres. Of this total only about 6 acres is included in the nomination. That acreage includes the house and outbuildings and serves to protect the house which is the only contributing element. The boundary is as follows: beginning at the intersection of the south drive and road 309 and proceeding in a straight line along the south curbline of the south drive to its intersection with the small creek bed about 750 feet east of road 309, thence in a north direction along the stream bed about 250 feet and then in a westerly direction away from the creek bed to a point on road 309 that is 750 feet north of the place of beginning and then south along the road 309 east curbline to the place of beginning.

[FR Doc. 86-23286 Filed 10-15-86; 8:45 am]

BILLING CODE 4310-70-M

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice and request for comment.

The areas listed below appear to qualify for designation as National Natural Landmarks, in accordance with the provisions of 36 CFR Part 62. Pursuant to 62.4(d)(1) of 36 CFR 62, written comment concerning the potential designation of these areas as National Natural Landmarks by the Secretary of the Interior may be forwarded to the Director, National Park Service (413), U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240. Written comments should be received no later than 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Charles M. McKinney III, Natural Areas Survey Branch, Interagency Resources Division, (202) 343-9525.

Dated: October 6, 1986.

Denis P. Galvin,

Acting Director.

California

El Dorado County

Grass Lake—This 350-acre site is located at an elevation of 7,700 feet in the El Dorado National Forest approximately 12 miles southwest of Lake Tahoe. The site was scoured out by Pleistocene glaciers and later filled with water. Grass Lake is perhaps the best representative example of a true bog in the Sierra Nevada Natural Region and the largest floating or quaking bog known in California, an extremely rare type of peatland in the State. The site is unique for its size, quality and diversity of habitat.

Humboldt County

Lanphere-Christensen Dunes—This 603-acre northern California coastal sand pit encompasses a full range of regional coastal sand dune habitats, including beach, foredune, dune hollows, large moving dunes and old dune coniferous forest and red alder forest. Associated wetlands include salt marshes, willow swamp and brackish marsh. It is the largest undisturbed dune system in the North Pacific Border Natural Region. These habitats contain over 140 species of vascular plants, 48 bryophytes, 100 fungi, 14 mammals and 151 birds. Some of the plant communities are now extremely rare, especially the native dune ryegrass foredune and the mixed herbal community on partly stabilized dunes.

Kern County

Semitropic Ridge Area—This 20,000-acre site, located 26 miles northwest of Bakersfield, represents the last remaining example of an unbroken sequence of shrubland communities which were once widespread in the Southern Central Valley of the South Pacific Border Natural Region. These include Valley Sink habitats at the lower elevations, Valley Saltbush types at slightly higher elevations, with vernal pools scattered throughout.

Merced County

Kesterson-San Luis—This 15,500-acre area, located 25 miles west of Merced, largely within the Kesterson Wildlife Refuge, represents the last large tract of the Alkali Grassland community in the Great Valley of the South Pacific Border Natural Region, a rare community in California today. The area is marked by quality grasslands, native annuals, alkali scalds, and vernal pools. The marshy areas present quality resting areas for many species of waterfowl.

Nevada County

Sagehen Creek—This 250-acre site, located 11 miles north of Truckee, Nevada, within the Sagehen National Forest, contains fens, or mineral-rich alkaline peatlands, rare in the Sierra Nevada National Region. The fens at Sagehen Creek are particularly numerous and well-developed, and they contain a representative sample of the fen flora known from the Sierra Nevada. Nowhere else in the region does such a concentrated group of high quality fens occur.

Plumas County

Butterfly Valley—This 86-acre site, located 6 miles north of Quincy within the Plumas National Forest, is a large, wet meadow surrounded by a mid-elevation, Sierran mixed conifer forest. The meadow and other wet, seepy areas on the surrounding slopes support one of the largest populations of certain herbaceous plant species in California. The site is also distinguished by its very large number of total plant species. Although not a peatland in the strictest sense, this site supports many vascular plant species associated with the Sierran peatlands.

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Solano County

Dixon Vernal Pools—This 15,200 acre site, located approximately 15 miles south of Dixon, represents the best example of the Valley Needlegrass Grassland in the Great Central Valley of the South Pacific Border Natural Region. There are only three sites of Valley Needlegrass Grassland remaining today. The site contains extensive stands of perennial needlegrasses in a mosiac with claypan vernal pools, another critically rare natural community. The rolling, hummocky topography results in a complex patchwork of grasses and native wildflowers.

Florida

Brevard, Orange, Seminole and Volusia Counties

Seminole Ranch/Tosohatchee State Reserve—This 63,841-acre site, approximately 10 miles west of Titusville, is a large, mostly intact area containing one of the most diverse mosaics of a wide range of high-quality examples of certain ecosystem types in Florida. Approximately 2,000 acres of virgin cypress swamp, approximately 40 acres of virgin slash pine flatwoods, and the best remaining examples of St. Johns River marshes occur here.

Highlands County

Archbold Biological Station—This 4,250-acre site, located approximately 7 miles south of Lake Placid, encompasses the largest known tract of contiguous natural communities characteristic of the Lake Wales Ridge still in a relatively natural condition. The full range of moisture conditions (xeric-mesic-hydric-aquatic), and most stages of plant succession, are represented by high quality examples. Lake Annie is the highest quality water supply left in the system of valley sink lakes that extends northward from the Station. A large number of endemic and rare species of plants and animals are located here.

New Hampshire

Cheshire County

Mount Monadnock—This 4,578-acre site, located within the towns of Jaffrey and Dublin about 80 miles northwest of Boston, is the type locality of a monadnock, or isolated mountain remnant. In addition, the mountain exhibits the conspicuous effects of Pleistocene glacial erosion, including striations, roche moutonnees or whalebacks, and an oversteepened profile resulting from glacial plucking.

Grafton and Carroll Counties

Nancy Brook Virgin Spruce Forest and Scenic Area—This 1,590-acre site, located approximately 6 miles northwest of Bartlett, is probably the largest virgin montane spruce forest in New England. Additionally, the diversity of the landscape is enhanced by landslides, steep valley walls, waterfalls, boulder streams, ponds, beaver clearings, mountain slopes, ridges, summits and distant views.

Oregon

Benton County

Willamette Floodplain—This 682-acre site, located approximately 15 miles south of Corvallis, represents the largest remaining native unplowed example of bottomland interior valley grasslands in the North Pacific Border Natural Region. All of these grasslands and shrubland communities have become exceedingly rare as most have been cultivated or converted to pastureland.

Tennessee

Sumner County

Taylor Hollow—This 128-acre site, located approximately 3 miles south of Westmoreland, represents the best remaining example of a forest characterized as mixed mesophytic in the Interior Low Plateaus, though this forest type is somewhat attenuated at this location relative to its main distribution. It contains many species disjunct from the Cumberland Plateau ridges.

White County

Anderson Pond—This approximately 71-acre site, located about 10 miles south of Cookeville, represents one of the few remaining karst pond swamps in the Eastern Highland Rim Subsection of the Interior Low Plateaus Natural Region, which was once a widespread landscape feature now virtually eliminated by agricultural practices. The palynological (pollen) record here dating back 20,000 years provided the first detailed pollen influx record for the Southeastern U.S., making it an extremely important site for the study of this region's vegetational history.

[FR Doc. 86-23287 Filed 10-15-86; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the seventy-eighth meeting of the Board for International Food and Agricultural Development (BIFAD) on October 29, 1986.

The purposes of the meeting are to consider performance on Title XII projects, discussion of the proposed Fiscal Year 1988 AID budget, discuss implications for Title XII programs and to hear a presentation on the Agricultural Education Project in Indonesia.

The Meeting will be held at 9:00 a.m. and adjourn at 12:00 p.m. on October 29, 1986. The meeting will be held in the Pan American Health Organization Building, 525 23rd Street NW., Washington, DC 20037. Any interested person may attend, and may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as AID Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, DC 20523, or telephone him at (703) 235-8929.

Dated: October 7, 1986.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 86-23371 Filed 10-15-86; 8:45am]
BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-257]

Electronic Wall Stud Finders; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 26, 1986, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Zircon International, Inc., 1580 Dell Avenue, Campbell, California 95008. Supplements to the complaint were filed on September 17 and September 30, 1986. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation into the United States of certain electronic wall stud finders, and in their sale, by reason of alleged (1) direct and induced infringement of claims 1 and 3–6 of U.S. Letters patent 4,099,118; and (2) trade secret misappropriation. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Ethel Lenardson Morgan, Esq., or Steven H. Schwartz, Esq., Office of Unfair Import Investigations, U. S. International Trade Commission, telephone 202-523-0113 and 202-523-4877, respectively.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's rules of practice and procedure (19 CFR 210-12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on October 2, 1986, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain electronic wall stud finders into the United States, or in their sale, by reason of alleged (1) infringement of claims 1 and 3–6 of U.S. Letters Patent 4,099,118; and (2) trade secret misappropriation, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Zircon International, Inc. 1580 Dell Avenue, Campbell, California 95008.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Philips Home Products, Inc. 22790 Lake Park Boulevard, Alliance, Ohio 44601 Meyer Electronics Ltd. 35 Hung to Road, 6/F Kwun Tong, Kowloon, Hong Kong.

(c) Ethel Lenardson Morgan, Esq., and Steven H. Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 122 and Room 124, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation of instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR section 201.16(d) and 210.21 (a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: October 3, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-23392 Filed 10-15-86; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 701-TA-282 and Investigations Nos. 731-TA-350-353 (Preliminary)]

Forged Steel Crankshafts From Brazil, the Federal Republic of Germany, Japan, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-282 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reasons of imports of certain forged steel crankshafts, provided for in items 660.67 and 660.71 of the Tariff Schedules of the United States, which are alleged to be subsidized by the government of Brazil.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-350-353 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports from the following countries of forged steel crankshafts, provided for in items 660.67 and 660.71 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value:

Brazil—Investigation No. 731-TA-350 (Preliminary)

Federal Republic of Germany—Investigation No. 731-TA-351 (Preliminary)

Japan—Investigation No. 731-TA-352 (Preliminary)

United Kingdom—Investigation No. 731-TA-353 (Preliminary).

As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by November 24, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the

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Commission's rules of practice and procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Diana J. Mazur (202–523–7914), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed October 9, 1986 by Wyman-Gordon Company, Worcester, MA.

Participation in These Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Committee's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to these investigation must be served on all other parties to these investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on October 31, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Diane Mazur (202–523–7914) not later than October 24, 1986 to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before November 4, 1986 a written statement of information pertinent to the subject of these investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must confrom with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: October 10, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–23398 Filed 10–15–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–245]

Low-Nitrosamine Trifluralin Herbicides; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Industria Prodotti Chimici, S.p.a. (II. Pi.Ci.) and Aceto Agricultural Chemicals Corp. (Aceto).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the commission thirty (3) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 7, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary U.S. International Trade Commission, 701 E. Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments.

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E. Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: October 6, 1986.

By order of the Commission:

Kenneth R. Mason,

Secretary

[FR Doc. 86–23390 Filed 10–15–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–245]

Low-Nitrosamine Trifluralin Herbicides; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Agan Chemical Manufacturers Ltd. and Makhteshim-Agan (America) Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 7, 1986.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: October 6, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–23391 Filed 10–15–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–349 (Preliminary)]

Welded Carbon Steel Pipes and Tubes From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–349 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of light-walled rectangular pipes and tubes[1] which are alleged to be sold in the United States at less than fair value.

As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 17, 1986. For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202–523–0339), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Conmission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on October 2, 1986, by counsel for the Committee on Pipe and Tube Imports.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to an investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on October 24, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Judity Zeck (202–523–0339) not later than October 21, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

[1] For purposes of this investigation, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness less than 0.156 inch, provided for in item 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA).

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Written submissions

Any person may submit to the Commission on or before October 28, 1986 a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: October 10, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-23394 Filed 10-15-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-271 (Final) and 731-TA-318 (Final)]

Oil Country Tubular Goods From Israel

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION: On June 26, 1986, the Commission instituted investigation No. 701-TA-271 (Final) without establishing a schedule for its conduct (51 FR 24947, July 9, 1986). On September 2, 1986, the Commission instituted investigation No. 731-TA-318 (Final) and approved a schedule for the conduct of both the subject investigations (51 FR 32256, September 10, 1986). Subsequently, the Department of Commerce extended the date for its final determination in the investigations from November 3, 1986 to January 7, 1987. The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on January 8, 1987; the public version of the prehearing staff report will be placed on the public record on December 23, 1986; the deadline for filing prehearing briefs is January 8, 1987; the hearing will be held in room 331 of the U.S. International Trade Commission Building at 9:30 a.m. on January 14, 1987; and the deadline for filing all other written submissions, including posthearing briefs, is January 21, 1987.

For further information concerning these investigations see the Commission's notices of investigations cited above and the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR part 207), and Part 201, Subparts A through E (19 CFR part 201).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: October 10, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-23397 Filed 10-15-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-341 Through 346 (Preliminary)]

Tapered Roller Bearings and Parts Thereof, and certain Housings Incorporating Tapered Rollers From Hungary, Italy, Japan, the People's Republic of China, Romania, and Yugoslavia

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Hungary (inv. No. 731-TA-341), Italy (Inv. No. 731-TA-342), Japan (inv. No. 731-TA-343), the People's Republic of China (inv. No. 731-TA-344), Romania (inv. No. 731-TA-345), and Yugoslavia (inv. No. 731-TA-346) of tapered roller bearings and parts thereof, provided for in Tariff Schedules of the United States (TSUS) items 680.30 and 680.39; flange, take-up, cartridge, and hanger units incorporating tapered roller bearings, provided for in TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, provided for in item 692.32 or elsewhere in the TSUS, all of which are alleged to be sold in the United States at less than fair value (LTFV). Products subject to the outstanding dumping order covering certain tapered roller bearings from Japan (T.D. 76-227, 41 FR 34974) are not included within the scope of investigation No. 731-TA-343 (Preliminary).

Background

On August 25, 1986, petitions were filed with the Commission and the Department of Commerce by the Timken Company, Canton, OH, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of the subject merchandise. Accordingly, effective August 25, 1986, the Commission instituted preliminary antidumping investigations Nos. 731-TA-341 through 346 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 4, 1986 (51 FR 31732). The conference was held in Washington, DC, on September 16, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 9, 1986. The views of the Commission are contained in USITC Publication 1899 (October 1986), entitled "Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers from Hungary, Italy, Japan, the People's Republic of China, Romania, and Yugoslavia: Determinations of the Commission in Investigations Nos. 731-TA-341 through 346 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

Issued: October 10, 1986.

By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 86-23395 Filed 10-15-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30880]

Delaware and Hudson Railway Co.; Discontinuance of Trackage Rights Exemption Between Greigsville and Alexander, NY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance by the Delaware and Hudson Railway Company of trackage rights over a portion of Consolidated Rail Corporation's track, known as the Groveland Secondary Track, between milepost 341.0 at Greigsville and milepost 360.2 at Alexander, a distance of 19.2 miles in the State of New York.

DATES: This exemption is effective on November 15, 1986. Petitions to stay must be filed by October 27, 1986, and petitions for reconsideration must be filed by November 5, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30880 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles E. Mechem, Room 1138, Six Penn Center Plaza, Philadelphia, PA 19103-2959.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7693.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 6, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-23325 Filed 10-15-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31; Sub-No. 23]

Grand Trunk Western Railroad Co.; Abandonment in Lapeer and Oakland Counties, MI; Findings

The Commission has issued a certificate authorizing Grand Trunk Western Railroad Company to abandon its 29.5-mile rail line between milepost 13.1 and Kings Mill (milepost 42.60) in Lapeer and Oakland Counties, MI. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27

Noreta R. McGee,

Secretary.

[FR Doc. 86-2332 Filed 10-15-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31; Sub-No. 23A]

Grand Trunk Western Railroad Co.; Abandonment in Oakland County, MI; Findings

The Commission has issued a decision and certificate of Interim Trail Use authorizing Grand Trunk Western Railroad Company to discontinue (if an Interim Trail Use Agreement is reached) or abandon (if an Interim Trail Use Agreement is not reached), its 5.0-mile rail line between Orion (milepost 8.1) and milepost 13.1 in Oakland County, MI. The decision and certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Noreta R. McGee,

Secretary.

[FR Doc. 86-23323 Filed 10-15-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33; Sub-No. 40X—Docket No. AB-36; Sub-No. 23X]

Union Pacific Railroad Co.; Exemption; Discontinuance of Operations in Fremont County, ID; Oregon Short Line Railroad Co.; Exemption; Abandonment in Fremont County, ID

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance of operations by Union Pacific Railroad Company, and the abandonment by Oregon Short Line Railroad Company, of a 0.4-mile portion of a line of railroad near Ashton in Fremont County, ID, subject to standard employee protective conditions.

DATES: This exemption will be effective on November 17, 1986. Petitions to stay must be filed by October 27, 1986, and petitions for reconsideration must be filed by November 5, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-33 (Sub-No. 40X) and AB-36 (Sub-No. 23X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S.

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InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC. Metropolitan area), or call toll-free (800) 424-5403.

Decided: October 7, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-23326 Filed 10-15-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Renewal of the Mediated Rulemaking Advisory Committee on 4,4'-Methylenedianiline (MDA)

Notice is given that after consultation with the General Services Administration, it has been determined that the MDA Negotiated Rulemaking Advisory Committee whose Charter expires November 7, 1986, is hereby renewed an redesignated as the Mediated Rulemaking Advisory Committee for the period November 7, 1986, to November 7, 1987. This action is necessary and in the public interest.

The Committee will advise the Secretary of Labor regarding the building of consensus by affected interests on issues associated with a proposed OSHA standard on MDA.

The Committee consists of 15 members and proportionately includes representatives of the following affected interests: manufacturers of MDA; primary users of MDA; secondary users of MDA; trade associations; labor organizations; public interest/consumer groups; State and/or local officials; and Federal safety and health officials.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Accordingly, its Charter will be filed 15 days from the date of this notice.

Interested persons are invited to submit comments regarding the renewal of the Mediated Rulemaking Advisory Committee on MDA.

Such comments should be addressed to: Mr. Tom Hall, OSHA Division of Consumer Affairs, Room N3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 10th day of October 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86-23340 Filed 10-15-86; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Dover Elevator Systems et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision if the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 27, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 27, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC, 20213.

Signed at Washington, DC, this 6th day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Dover Elevator Systems (I.B.E.W.)	Cincinnati OH	9/18/86	9/12/86	TA-W-18,259	Elevators.
Diversified Products Corp. (Company)	Opelika AL	9/19/86	9/16/86	TA-W-18,260	Rowers and exercisers.
Clovis Riley, Inc. (Workers)	Pearsall TX	9/30/86	9/25/86	TA-W-18,261	Transport drilling mud.
Bell & Howell, Audio Visual Div (Company)	Chicago IL	9/29/86	9/25/86	TA-W-18,262	Film projectors slide projectors overhead projectors.
Coastal Tank Lines (Workers)	Marysville MI	9/30/86	9/26/86	TA-W-18,263	Trucking.
Murfin Drilling, Co. (Workers)	Colby KS	9/26/86	9/26/86	TA-W-18,264	Oil drilling.
Weiler, Incorp. (Workers)	Abilene TX	9/26/86	9/22/86	TA-W-18,265	Oil well services.
Amoco Production Corp. (Workers)	Farmington NM	9/26/86	9/15/86	TA-W-18,266	Oil and natural gas.
Flexcel Co. Inc. (Company)	Marshall TX	9/26/86	9/19/86	TA-W-18,267	Oil well equipment.
Dalbys Field Drilling (Workers)	Alice TX	9/26/86	9/22/86	TA-W-18,268	Contract oil well drilling.
Cherokee Drilling and Develop. Co. (Wkrs)	Midland TX	9/26/86	9/23/86	TA-W-18,269	Contract oil well drilling.
Baker Packers (Workers)	Corpus Christi TX	9/23/86	9/19/86	TA-W-18,270	Oil well equipment.
Pool Company, North Central Region (Workers)	Abilene TX	9/26/86	9/26/86	TA-W-18,271	Oil well repair.
Red Tiger Drilling Co. (Workers)	Wichita KS	9/25/86	9/20/86	TA-W-18,272	Oil and natural gas.
Burch, Hopkins, Pham and Associates (Workers)	Corpus Christi TX	9/23/86	9/18/86	TA-W-18,273	Engineering/design services.
Banner Drilling Co. (Workers)	Scottsbluff NB	9/25/86	9/20/86	TA-W-18,274	Contract drilling.
Western Gear Machinery (IAM&A)	Everette WA	9/23/86	9/22/86	TA-W-18,275	Heavy equipment.
Lovett, Incorp. (Workers)	Corpus Christi TX	9/23/86	9/19/86	TA-W-18,276	Sell and installs cementing equipment.
Gemoco (Workers)	Corpus Christi TX	9/23/86	9/19/86	TA-W-18,277	Sales and services of cementing equipment.
A.I.E. Magnetics (USWA)	Nashville TN	9/25/86	9/23/86	TA-W-18,278	Transformers.
Hanna Nickel Smelting (USWA)	Cleveland OH	9/25/86	9/23/86	TA-W-18,279	Nickdamine and melter.
Key Tronic Corp. (Workers)	Newport WA	9/22/86	9/15/86	TA-W-18,280	Electric Computer Keyboard.
Pittsburg Tube Co. (USWA)	Monaca PA	9/25/86	9/23/86	TA-W-18,281	Steel Tubing.
Hydril Co. (USWA)	Houston TX	9/25/86	9/23/86	TA-W-18,282	Threaded pipes.
Rheem Manufacturing (USWA)	Houston TX	9/25/86	9/23/86	TA-W-18,283	Steel Barrels.
Teleflex, Inc. Marine Division (UAW)	Limerick PA	9/26/86	9/23/86	TA-W-18,284	Marine cable controls.
The Western Co. (Workers)	Snyder TX	9/22/86	9/5/86	TA-W-18,285	Oilwell servicing.
Trend Exploration Ltd, (Workers)	Denver CO	9/19/86	9/5/86	TA-W-18,286	Clerical and data processing staff.
Chevron U.S.A. (Workers)	Midland TX	9/19/86	9/16/86	TA-W-18,287	Administrative staff.
W.A. Moncrief & Sons (Workers)	Kamay TX	9/19/86	9/4/86	TA-W-18,288	Oil.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Duncan Oil Inc. (Workers)	Denver CO	9/22/86	9/19/86	TA-W-18,289	Exploration and production of oil and gas.
Halliburton Services (Workers)	Artesia NM	9/19/86	9/6/86	TA-W-18,290	Oilfield services.
Halliburton Services (Workers)	Rankin TX	9/19/86	9/14/86	TA-W-18,291	Oilfield services.
N.L. Baroid (Firm)	Port Lavaca TX	9/19/86	9/14/86	TA-W-18,292	Drilling fluid and muds (distribution).
Dresser Atlas (Workers)	Laredo TX	9/19/86	9/16/86	TA-W-18,293	Wireline service.
Johnn Drilling Co. (Workers)	Odessa TX	9/18/86	9/12/86	TA-W-18,294	Contract drilling services.
Lee Wilson, Incorp. (Firm)	Carmi IL	9/22/86	9/15/86	TA-W-18,295	Diesel drilling.
Bowen Tools, Inc. (Workers)	Willston	9/22/86	9/9/86	TA-W-18,296	Oilfield equipment.
Exxon Company-U.S.A. (Workers)	Corpus Christi TX	9/22/86	9/16/86	TA-W-18,297	Crude oil.
Domenico, Inc. (ILGWU)	Lynn MA	9/17/86	9/19/86	TA-W-18,298	Ladies sportswear.
Sperry Corp. (Workers)	St. Paul MN	9/13/86	9/13/86	TA-W-18,299	Computer systems.

[FR Doc. 86-23341 Filed 10-15-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,762]

Parker Drilling Co.; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Parker Drilling Company, Odessa, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-17,762: Parker Drilling Company, Odessa, Texas (October 6, 1986)

Signed at Washington, DC, this 6th day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-23352 Filed 10-15-86; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-86-30-C]

K-Lin Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

K-Lin Coal Company, Inc., Box 46, Belfry, Kentucky 41514 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-12472) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioners' statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 1 Mine is in the Lower Cedar Grove Seam and ranges from 35 to 48 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the use of a canopy on the mine's equipment could destroy roof support and it would limit the equipment operator's visibility and his or her seating position, increasing the changes of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 17, 1986. Copies of the petition are available for inspection at that address.

Dated: October 6, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-23343 Filed 10-15-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-159-C]

Preece Energy, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Preece Energy, Inc., Box 449, Turkey Creek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-09916) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 1 Mine is located in the Thacker Seam and ranges from 36 to 50 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the use of a canopy on the mine's equipment could destroy roof support and that it would limit the equipment operator's visibility.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 17, 1986. Copies of the petition are available for inspection at that address.

Dated: October 6, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-23342 Filed 10-15-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-158-C]

Webster County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Webster County Coal Corporation, P.O. Box 45, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.507-1(a) (electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements) to its Retiki Mine (I.D. No. 15-09872) located in Henderson County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all electric equipment, other than power-connection points,

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used in return air outby the last open crosscut in any coal mine be permissible.

2. As an alternate method, petitioner proposes to use a 5 h.p., 480V Franklin motor on a non-permissible Jabsco submergible pump, model 777–001, to drain water from the sump beneath the air shaft.

3. In support of this request, petitioner states that the operating electrical parts of the submergible pump are submerged in the water in the sump at all times. In the event the water level in the sump drops more than 1" below the intake point on this pump, it will discontinue to pump water from the sump. This eliminates the possibility of lowering the water level to the point of exposing the operating electrical parts of the pump. The electrical power supply to the submergible pump enters the pump at a point which is also below the water level in the sump at all times.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 17, 1986. Copies of the petition are available for inspection at that address.

Dated: October 8, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86–23344 Filed 10–15–86; 8:45 am]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for First Quarter CY 1986, Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licenses were determined to be abnormal occurrences (AOs) using the criteria published in the Federal Register on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG–0090, Vol. 9, No. 1 ("Report to Congress on Abnormal Occurrences: January-March, 1986"). This report will be available in the NRC's Public Document Room, 1717 H Street NW, Washington, DC about three weeks after the publication date of this Federal Register Notice.

Nuclear Power Plants

AO 86–1 Loss of Power and Water Hammer Event

One of the general abnormal occurrence criteria notes that a major degradation of essential safety-related equipment can be considered an abnormal occurrance.

Date and Place—On November 21, 1985, San Onofre Nuclear Generating Station (SONGS) Unit 1 experienced a partial loss of inplant ac electrical power while the plant was operating at 60 percent power. Following a manual reactor trip, the plant lost all inplant ac power for 4 minutes and experienced a severe water hammer in the feedwater system which caused a leak, damaged plant equipment, and challenged the integrity of the plant's heat sink. The most significant aspect of the event involved the failure of five safety-related check valves in the feedwater system, without detection, and jeopardized the integrity of safety systems. The event involved a number of equipment malfunctions, operator errors, and procedural deficiencies.

SONGS Unit 1 utilizes a Westinghouse-designed pressurized water reactor. The plant is operated by Southern California Edison Company (the licensee) and is located in San Diego County, California.

Nature and Probable Consequences—At 4:51 a.m., on November 21, 1985, the plant was operating at 60 percent power when a ground fault was detected by protective relays associated with the "C" transformer, which was supplying offsite power to one of the two safety-related 4160V electrical buses. The resulting isolation of the transformer caused the safety-related bus to de-energize, which tripped all feedwater and condensate pumps on the east side of the plant. The pumps on the west side of the plant were unaffected since their power was supplied from another bus which was being fed from the main generator.

The east feedwater pump discharge check valve (FWS–436) failed to seat as the de-energized pump coasted down. This provided a path for the discharge of the still operating high pressure (1300 psig) west feedwater pump to the low pressure (350 psig) east condensate piping and components. East flash evaporator condenser tubes became overpressured, ruptured and overpressurized the evaporator shell, causing the shell to develop a fish-mouth opening approximately 20 feet long and 2 feet wide, which relieved the pressure.

The operators, as required by emergency procedures dealing with electrical systems, tripped the reactor and turbine-generator. As a result, the plant experienced its first complete loss of steam generator feedwater and inplant electrical power since it began operation. The manual trip of the main generator caused loss of ac power to the remaining inplant loads. The subsequent 4-minute loss of inplant electric power started the emergency diesel generators (which by design did not load), deenergized all safety-related pumps and motors, significantly reduced the number of control room instrument indications available for operators to diagnose plant conditions, produced spurious indications of safety injection system actuation, and caused the NRC Emergency Notification System (ENS) phone on the operator's desk to ring spuriously. Restoration of inplant electric power was delayed by improper operation of an automatic sequencer.

The temporary total loss of steam generator feedwater was the direct result of the loss of ac power to the two main feedwater and one auxiliary feedwater pump motors, and the designed 3-minute warm-up period of the steam-powered auxiliary feedwater pump. The loss of the feedwater pumps, in combination with the failure of five feedwater check valves to close (one at the discharge of each feedwater pump and one in the feedwater line to each of the three steam generators), allowed loss of inventory from all three steam generators and the partial voiding of the long horizontal runs of feedwater piping within the containment building. The subseqent automatic start of feedwater injection by the steam-powered auxiliary feedwater pump did not result in the recovery of steam generator level because the auxiliary feedwater being injected into the feedwater lines was flowing backwards through the failed check valves to the ruptured feed heater in the condensate system.

Later, operators isolated the feedwater lines upstream of the failed check valves, as required by procedure, unknowingly initiating the process of refilling the feedwater lines in the containment building. As the auxiliary feedwater pumps refilled the feedwater

piping to the steam generators, conditions were being established for a phenomenon that can generate destructive forces greater than 150,000 pounds-force. Since the feedwater piping to the steam generators had drained because of the failed check valves, the pipes contained water and steam at high temperature and pressure from the steam generators. As the auxiliary feedwater system filled the piping with relatively cold water, an instability occurred at the steam/water interface, which created a slug of water in the steam space. The slug accelerated at great speed, as steam was condensed in front of the slug, until it encountered an obstruction or a change of direction in the piping, such as at an elbow or closed valve. Upon contact, the slug imparted its energy to the piping with the force of a hammer blow, i.e., a condensation-induced water hammer.

Because of the long (203 feet) horizontal layout of the feedwater piping to the B steam generator and other sustaining conditions, this piping experienced the water hammer. The forces from the water hammer displaced the 10-inch diameter feedwater piping, distorted its original configuration, and damaged pipe hangers and snubbers.

Outside the containment building, the forces associated with the water hammer were enough to stretch 10 one-half-inch diameter bolts holding the bonnet on a 4-inch bypass check valve by about one-half inch. All of the bolts were stretched into an hour glass shape. The steam and water from the check valve body to bonnet interface had sufficient force to blow away the insulation from all the piping located 360 degrees around the check valve. The significant steam and water leak from this check valve constituted the second leak in the event.

The design of the steam system at Unit 1 has the three steamlines joined into a common pipe (or steam header) inside the containment building without any valves to prevent simultaneous blowdown of all three steam generators should a leak in a steamline or a feedwater line occur. Hence, the leak from the B feedwater bypass check valve located outside the containment building communicated with all three steam generators, via the steam header and B feedring, and their steam inventories were vented via the leak to the atmosphere. In addition, the auxiliary feedwater flow to B steam generators escaped from this leak instead of going to the steam generator.

Despite these problems, operators succeeded in recovering water level in the two steam generators not directly associated with the feedwater piping leak. With the reestablishment of steam generator levels, the operators safely brought the plant to a stable cold shutdown condition, without a significant release of radioactivity to the environment (a preexisting primary to secondary leak was not exacerbated) and without significant additionl damage to plant equipment.

Cause or Causes—The most significant aspect of the event was that five safety-related feedwater system check valves degraded to the point of inoperability without detection by the licensee, and that their failure jeopardize the integrity of safety-related feedwater piping. The root causes of the check valve failures were a combination of inadequate maintenance, inadequate inservice testing, inadequate design, and inadequate consideration of the effects of reduced power operations.

Actions Taken to Prevent Recurrence

Licensee—The licensee has undertaken an extensive study (including testing programs) of the multiple failures associated with the event to determine root causes and effective corrective actions to preclude recurrence.

On April 8, 1986, subsequent to several meetings with NRC staff and the Commission, the licensee submitted a comprehensive report documenting the results of their investigations to that date and providing some conclusions and corrective actions being implemented. The licensee provided additional information on May 1, 1986.

The licensee concluded that the most likely cause of the cable failure which initiated the event was temperature-induced degradation due to the presence of local heat sources such as hot pipe flanges. Additionally the licensee concluded that the failure of the five check valves was caused by (1) their proximity to turbulent flow, (2) the fact that the valves were not properly sized for design flow conditions and therefore did not remain fully open in normal operation, (3) the design by which the valve disc was fastened to the valve hinge, and (4) extended reduced flow operation at 90% power which exacerbated the effects of the design deficiencies.

The licensee's actions described in the April 8, 1986 report were extensive and included examinations and corrective actions in the areas of testing, procedures development, training, maintenance, quality assurance, emergency preparedness, post-trip review and safety review programs.

The Licensee committed to and is in the process of implementing a number of corrective actions including repairs and design changes which include redesign and replacement of the damaged feedwater lines, replacement of the failed check valve design with another design, and adding an additional check valve in each feedwater line.

Additionally the licensee has committed to substantial initiatives to improve plant performance. These initiatives will systematically examine the material condition of the unit and identify and correct systems and components which deviate from defined standard conditions. The licensee has elicited the aid of recognized experts in this area and has committed to implement necessary actions prior to restart. Additional actions are being defined to maintain the material standard on an ongoing basis.

NRC—The San Onofre Resident Inspectors arrived at the site shortly after being notified of the event. They observed licensee actions to assure the plant remained in a stable condition and began an initial investigation of the circumstances associated with the event.

On November 21, 1985, the NRC Region V Regional Administrator forwarded a Confirmatory Action Letter to the licensee indicating, in part that the licensee would not perform any additional work on equipment that malfunctioned during the event until the NRC investigation could review the licensee's proposed actions. The letter also confirmed an understanding that the plant was not to be restrated until authorized by the NRC Region V Regional Administrator or his designee.

On November 22, 1985, responsibility for the incident investigation was assigned to a special NRC Incident Investigation Team (IIT) by the NRC Executive Director for Operations at the request of the Region V Regional Administrator, in conformance with an NRC staff-proposed incident Investigation Program. The Team, composed of six technical experts, was to (1) determine pertinent facts related to the event, (2) identify the probable cause, and (3) make appropriate findings and conclusions to form the basis for possible follow-on actions. The Team began their investigation at the plant site on November 23, 1985. The equipment which malfunctioned was quarantined.

The Team collected and evaluated information to determine the sequence of operator, plant, and equipment responses during the event and the causes of equipment malfunctions. The sequence of these responses was determined primarily by interviewing personnel who were at the plant during the event and by reviewing plant data

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from the period immediately preceding and during the event. The Team also toured the plant to examine the equipment which malfunctioned, the equipment that was key to mitigating the transient, and the control room instrumentation and controls. The Team also interviewed plant management personnel and NRC Region V personnel who arrived at the site soon after the plant was stabilized about their knowledge of the plant response and operator actions. By correlating plant records with personnel statements on their actions and observations, the Team was able to compile a discription of the event.

The results of the Team's investigation were issued in January 1986 in NUREG–1190 ("Loss of Power and Water Hammer Event at San Onofre, Unit 1, On November 21, 1985"). Problems identified included issues specific to SONGS Unit 1 and several possible generic issues. In addition, the Team concluded that the most significant aspect of the event was that five safety-related feedwater system check valves degraded to the point of inoperability during a period of less than a year, without detection, and that their failure jeopardized the integrity of safety related feedwater piping.

The root causes of the check valve failures have been determined by the licensee and are under independent review by the NRC. Potential contributors to this problem include inadequate inservice testing (IST), inadequate design, and inadequate consideration of the effects of reduced power operations. The licensee's IST program (submitted to but not yet approved by NRC) provided for testing a sampling of the check valves each quarter, but permitted deferral of testing when plant conditions were inappropriate (e.g., plant in operation). The testing was also intended to identify valve failure, not degradation or impending failure. The IST was therefore not effective in identifying the check valve failures before the event occurred. Finally, reduced power operations at Unit 1 are now routine because of steam generator tube plugging and sleeving, and the reduced feedwater flow may have increased the susceptibility of check valve components to hydraulically-induced vibration.

The NRC continues to be involved in the resolution of this event and related matters. The event provided an opportunity for the NRC to learn from experience and to feed back the pertinent lessons into NRC and licensee activities. The NRC Executive Director for Operations has directed NRC program managers to conduct an in-depth reappraisal of effectiveness of their programs in light of the lessons of the SONGS Unit 1 event with the view of making the NRC programs more effective. An NRC action plan has been developed through a cooperative effort of the Offices of Nuclear Reactor Regulation, Inspection and Enforcement, and Region V.

This plan resulted in three basic types of actions that the staff is undertaking:

- Evaluation of licensee corrective actions and evaluations that are required for restart in accordance with the NRC's action list. Most notably, these include an assessment of the licensee's review of plant material condition and readiness for operation.
- Evaluation of generic implications of the SONGS Unit 1 event through a sampling of industry experience and technical evaluations of root causes, e.g., check valve design implementation. (Lead responsibility for resolving generic issues related to check valve failures had been assumed by industry per a meeting with the NRC Executive Director for Operations on April 7, 1986. The NRC will monitor and review industry actions.)
- Evaluation of NRC requirements and positions in light of existing implementation practices, root causes of the event, and samples of industry practices.

These actions outline a program that evaluates the SONGS Unit 1 readiness for restart and assures that generic aspects are considered.

On January 6, 1986, the NRC Office of Inspection and Enforcement issued Information Notice No. 86–01 ("Failure of Main Feedwater Check Valves Causes Loss of Feedwater System Integrity and Water Hammer Damage") to all nuclear power reactor facilities holding an operating license or a construction permit to inform them of the San Onofre event.

* * * * *

AO 86–2 Loss of Integrated Control System Power and Overcooling Transient

One of the general occurrence criteria notes that major deficiencies in design, construction, use of, or management controls for licensed facilities or material can be considered an abnormal occurrence.

Date and Place—On December 26, 1985, Rancho Seco Nuclear Generating Station, located in Sacremento County, California, experienced a loss of dc power within the integrated control system (ICS) while the plant was operating at 76 percent power. Following the loss of ICS dc power, the reactor tripped on high coolant system (RCS) pressure followed by a rapid overcooling transient and automatic initiation of the safety features actuation system on low RCS pressure. The overcooling transient continued until ICS dc power was restored 26 minutes after its loss. The significance of the event is that a nonsafety related system failure initiated a plant transient which could have been more severe under other postulated scenarios.

The Rancho Seco Nuclear Generating Station, operated by the Sacramento Municipal Utility District (SMUD), is a Babcock & Wilcox (B&W)-designed pressurized water reactor.

Nature and Probable Consequences—At 4:14 a.m. on December 26, 1985, the plant was operating at 76 percent power, when a loss of ICS dc power occurred as a result of a single failure. The loss of dc power to the ICS (nonsafety-related system) caused a number of feedwater and steam valves to reposition authomatically and also caused the loss of remote control of the affected valves from the control room. In addition, the main feedwater (MFW) pump turbines slowed to minimum speed and the auxiliary feedwater (AFW) pumps started. The immediate result was a reactor coolant system (RCS) undercooling condition that resulted in the reactor tripping on high pressure. The reactor trip was followed by an overcooling condition that resulted in safety features actuation and excessive RCS cooldown.

The transient was initiated by the failure of a single monitoring module in the nonsafety-related ICS (i.e., the spurious tripping of the power supply monitoring module that interrupted all +/−24 Vdc power). The most probable cause of this failure was a bad crimp connection in the wiring between the +24 Vdc bus and the power supply monitor which caused the module to sense undervoltage and interrupt all dc power.

The operators did not immediately recognize that the dc switches had tripped and therefore did not reset the switches to promptly restore dc power within the ICS. As a result, nonlicensed operators were sent to isolate the affected steam feedwater valves locally with handwheels. During the first 7 minutes of the incident, the excessive steam and feedwater flows resulted in a rapid RCS cooldown of over 100°F. The pressurizer emptied and a small bubble formed in the reactor vessel head. The RCS cooldown continued and the RCS depressurized to about 1064 psig and then began to repressurize. This repressurization resulted in the RCS entering the B&W-designated pressurized themal shock (PTS) region.

The atmospheric dump valves and turbine bypass valves were isolated within 9 minutes after the reactor trip. However, the operators experienced difficulty closing the ICS-controlled AFW flow control valves. One of the flow control valves was finally shut; however, the second AFW flow control valve was damaged and failed open. The associated AFW manual isolation valves was found to be stuck open. Therefore, both AFW pumps continued to feed and overfill one steam generator. Water began to overflow into the main steam lines.

About 26 minutes after the reactor trip, the operators restored power within the ICS by reclosing two switches in an ICS cabinet. The operators were then able to close the open AFW flow control valve from the control room, which stopped the RCS cooldown, and started stabilizing the plant. The RCS had cooled down a total of 180°F in this 26-minute period.

While changing a valve lineup in the suction of the pump used to supply RCS makeup (makeup pump), the last suction valve to the makeup pump was inadequately shut. This resulted in the overheating and destruction of the makeup pump. About 450 gallons of contaminated water were spilled on the floor. This failure did not directly affect the incident since a high pressure injection (HPI) pump available to supply RCS makeup. In addition, the spilled water did not result in any signifiant onsite or offsite radioactivity release or personnel dose.

Operators later stabilized the plant and brought it to a cold shutdown without significant additional damage to plant equipment.

The December 26, 1985 overcooling incident did not seriously threaten the integrity of the Rancho Seco reactor vessel. However, the plant has had a number of overcooling incidents in its 12-year operating history. Each time this occurs the potential exists for additional operator errors and equipment failures that might exacerbate the event and threaten reactor vessel integrity. Thus, the significance of this incident lies in the fact that under alternate scenarios more serious consequences could occur.

The incident at Rancho Seco was also significant because a single failure in the ICS, which is a nonsafety-related system, subjected the plant to an undesirable overcooling transient. During the transient, the RCS cooled down 180°F in 26 minutes, the pressurizer emptied, a bubble formed in the ractor vessel head, the plant entered the licensee-defined pressurized thermal shock region, the safety features actuation system (SFAS) actuated, the water overflowed from a steam generator into the main steam lines.

Cause or Causes—The fundamental causes for this transient were design weaknesses and vulnerabilities in the ICS and in the equipment controlled by that system. These weaknesses and vulnerabilities were not adequately compensated by other design features, plant procedures or operator training. These weaknesses and vulnerabilities were largely known by the licensee and the NRC staff by virtue of a number of precursor events and through related analyses and studies. Yet, adequate plant modifications were not made so that this event would be improbable, or so that is course or consequences would be significantly altered.

Actions Taken to Prevent Recurrence

Licensee—The licensee has undertaken extensive study (including controlled disassembly, examination and testing) of the multiple failure associated with the event to determine root causes and to take corrective actions to prevent recurrence. Some specific improvements have been identified by these efforts and are being implemented prior to plant startup. These are described in the licensee's February 19, 1986 summary report to the NRC.

Plant Modifications

1. Replacement of power distribution wiring of the ICS Power Supply Monitor, to reduce the resistance in series with the voltage being monitored.

2. Provisions to ensure proper isolation and control room manual control capability for turbine bypass valves, atmospheric dump valves, and auxiliary feedwater flow control valves, under circumstances of ICS failure.

Training

Classroom and simulator training related to response to ICS power loss conditions, handling of overcooling and potential pressurized thermal shock, recovery from safety actions and implementation of emergency plan procedures.

Maintenance Program

1. Repair of damaged equipment that is required for normal and abnormal operating conditions.

2. Verification of acceptable condition of equipment in the non-nuclear systems of the plant.

3. Development of a preventive maintenance program for non-nuclear balance-of-plant equipment.

Emergency Procedures

Development of event-related procedures to complement the symptom-related emergency procedures, for ICS power loss and safety feature actuation system recovery.

NRC—Upon being notified of the event, the NRC Resident Inspectors for the plant arrived shortly thereafter. They observed licensee actions to assure the plant remained in a a stable condition and began an initial investigation of the circumstances associated with the event.

On December 26, 1985, the Regional Administrator of the NRC Region V Office forwarded two Confirmatory Action Letters to the licensee indicating that the licensee would perform a root cause analysis prior to return to power and would not perform any additional work on equipment that malfunctioned during the event until the NRC could evaluate the event.

On December 27, 1985, an NRC Augmented Inspection Team (AIT) was sent to the site by the Regional Administrator and started transcribed personnel interviews on December 28. The initial results of this investigation effort indicated that the event was complex and had potentially significant generic implications.

On December 31, 1985, the responsibility for the incident investigation was expanded to a special NRC Incident Investigation Team by the NRC Executive Director for Operations (EDO) at the request of the Region V Regional Administrator, in conformance with an NRC staff-proposed Incident Investigation Program. The Team, composed of six technical experts, was to (1) fact-find as to what happened, (2) identify the probable cause as to why it happened, and (3) make appropriate findings and conclusions to form the basis for possible follow-on actions. The Team consisted of the AIT members supplemented by additional staff. It continued the investigation started by the AIT as the plant site. The equipment which malfunctioned was quarantined.

The Team collected and evaluated information to determine the sequence of operator, plant, and equipment responses during the event and the casues of equipment malfunctions. The sequence of these response was determined primarily by interviewing personnel who were at the plant during the event and by reviewing plant data for the period immediately preceding and during the event. The Team also

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toured the plant to examine the equipment which malfunctioned, the equipment that was key to mitigating the transiet, and the control room instrumentation and controls. The Team also interviewed plant management personnel and NRC Region V personnel who arrived at the site soon after the plant was stablized about their knowledge of the plant response and operator actions. By correlating plant records with personnel statements on their actions and observations, the Team was able to compile a picture of the event.

During and subsequent to their onsite activities, the Team reviewed and concurred in specific troubleshooting plans developed by the licensee for equipment disassembly, inspection and testing. Several of these activities were witnessed by NRC inspectors. The results of the Team's investigation were issued during February 1986 in NUREG-1195 ("Loss of Integrated Control System Power and Overcooling Transient at Rancho Seco on December 26, 1985"). Problems identified included issues specific to Rancho Seco and several possible generic issues.

The NRC continues to be involved in the resolution of this event and related matters. The NRC EDO had directed NRC program managers to conduct further generic and plant specific follow-up actions. Development of NRC plant specific action plans commenced while the IIT was on-site in January 1986, and have been expanded subsequently to include a review of the completeness of prior staff and licensee actions associated with the control systems.

The NRC EDO has also addressed this event in a January 24, 1986 letter to the B&W Owners Group (B&WOG) which stated that the NRC staff will reassess the overall safety of B&W plants. Following the TMI accident there has been a growing realization among the NRC staff of the sensitivity of B&W plants to operational transients. A number of recent events at B&W-designed reactors have reinforced their concerns regarding these designs and lead them to conclude that there is a need to re-examine the basic design requirements for B&W reactors. While they believe that this reassessment is needed, they also believe that B&W reactors can safely continue to operate in the interim. The B&WOG has committed to taking a leadership role in the reassessment.

The January 24, 1986 letter to the B&WOG from the NRC EDO communicated plans for the design reassessment and outlined the scope envisioned for the study. A program plan for the reassessment was subsequently developed by the NRC Office of Nuclear Reactor Regulation (NRR) Staff and transmitted to the B&WOG in a March 13, 1986, letter to the B&WOG Chairman. The plan calls for studies in the area of operating experience, transient analysis, and probabilistic risk assessment. The plan also identified those areas that the Staff expects the B&WOG to take the lead or play a major role in completing.

As outlined in a March 21, 1986 memorandum from the NRC EDO to the NRC Commissioners, the B&WOG will assume a strong leadership role in accomplishing key aspects of the overall effort, where such involvement is appropriate. In a meeting with the Staff on April 8, 1986, they presented their program plan for reducing the reactor trip frequency and improving the transient response of B&W-designed plants. This program was formally submitted on May 15, 1986. The NRR Staff is currently reviewing this plan.

In addition to addressing those issues which have arisen directly as a result of the December 26, 1985 cooldown transient, the NRC Region V Office has re-evaluated the status of prior Rancho Seco open inspection findings to identify matters which should be resolved prior to restart of the plant. The licensee and NRR have included these in restart plans. Also, the NRC Staff has encouraged the licensee to reexamine the status of all critical plant systems to assure readiness for operation and maximum reliability, so that operation of the plant may be continued with a low probability of disruption from internal causes. Some of these efforts will be observed by NRC inspectors. To supplement this, the licensee has initiated a performance improvement program which will address management, training, and maintenance issues.

These actions outline a program that evaluates the Rancho Seco restart program, and assures that generic aspects are considered.

On January 31, 1986, the NRC Office of Inspection and Enforcement issued Information Notice No. 86-04 ("Transient Due to Loss of Power to Integrated Control System at a Pressurized Water Reactor Designed by Babcock & Wilcox") to all nuclear power facilities holding an operating license or a construction permit to inform them of the Rancho Seco event.

* * * * *

Fuel Cycle Facilities (Other Than Nuclear Power Plants)

A0 86-3 Rupture of a Uranium Hexafluoride Cylinder and Release of Gases

The general abnormal occurrence criterion notes that a major reduction in the degree of protection of the public health or safety can be considered an abnormal occurrence. In addition, one of the abnormal occurrence examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—At 11:30 a.m. on January 4, 1986, a cylinder filled with uranium hexafluoride (UF_6) ruptured while it was being heated in a steam chest at the Sequoyah Fuels Corporation's Sequoyah Facility near Gore, Oklahoma. One worker died from pulmonary edema caused by inhalation of hydrofluoric acid, a reaction product of UF_6 and airborne moisture. Much of the facility complex and some offsite areas to the south were contaminated with hydrofluoric acid, and a second reaction product, uranyl fluoride. The interval of release was approximately 40 minutes.

The licensee experienced another incident involving an overfilled uranium hexafluoride cylinder on March 13, 1986; however, in this incident the overfilled cylinder was not heated and no damage to the cylinder occurred.

Some other events involving overfilled uranium hexafluoride cylinders at Allied Chemical Company, Metropolis, Illinois, are discussed in the Annex to this abnormal occurrence. Allied Chemical Company is a division of Allied-Signal Corporation of Morristown, New Jersey.

Nature and Probable Consequences—At approximately 10:00 a.m. on January 3, 1986, the filling of a 14-ton capacity cylinder with UF_6 was commenced. This operation continued during the following work shifts. During the early morning of January 4, a chemical operator was unable to add further material into the cylinder, even though the targeted load of 27,500 pounds had not been achieved. The cylinder and its attendant cart had been placed on a scale during the filling process in order to monitor the net weight of the cylinder. At this time, the scale indicated that the cylinder contained 26,400 pounds of product.

The chemical operator inspected the cylinder and observed that the cart on which it sat has not been fully moved onto the scale platform. This condition occurred because the cylinder, being the largest design filled at the facility, was not properly positioned on the cart so as to allow clearance at the front end of the cylinder when the cart was moved onto the scale platform. When the cart and cylinder were repositioned onto the scale platform, the scale dial indicator registered its maximum possible reading of approximately 29,500 pounds. The cylinder had been filled with a quantity of UF_6 in excess of the amount measurable with the scale and in excess of the maximum shipping weight specification of the cylinder which is 27,560 pounds.

At approximately 6:15 a.m., the chemical operator began to evacuate UF_6 from the cylinder back into plant process vessels. He was relieved by the day shift chemical operator at 8:00 a.m., and the evacuation process continued until the material began to solidify in the cylinder. The operator consulted with the assistant shift supervisor, who is the ranking production manager on site, and who instructed the operator to move the cylinder to a steam chest located outside the process building. The steam chest was to be used to heat the cylinder to approximately 210°F, thus liquefying the contained UF_6. Although some material had been removed from the cylinder, the scale indicator still registered approximately 29,500 pounds before the cylinder was removed. Heating an overfilled cylinder was later noted to be contrary to company procedures.

At approximately 11:30 a.m., the cylinder ruptured in the steam chest. The cylinder ruptured while it was being heated because of the expansion or uranium hexafluoride as it changed from the solid to the liquid phase. Liquid UF_6 flowed from the 4-foot lengthwise rupture and rapidly reacted with moisture in the air to form uranyl fluoride and hydrofluoric acid. The resulting vapor cloud was carried south by southeast by a wind gusting to 25 mph.

The cloud enveloped with process building, and the acidic vapor fatally injured the chemical operator located within a structure approximately 70 feet southwest of the cylinder. Most of the approximately 40 workers at the site were in the plant lunch room and quickly evacuated the building. The airborne release continued for about 40 minutes crossing an interstate highway one mile to the south and private residences beyond.

The licensee immediately notified various local, state, and federal officials. Four injured workers were transported to a local hospital. A private physician arrived at the site within one hour of the accident and examined plant workers. During the afternoon, downwind residents were personally notified to go to nearby hospitals and clinics for examinations.

The NRC Region IV Duty Officer was notified of the incident by the NRC:HQ Operations Officer by pager at approximately 12:25 p.m. The Region IV Incident Response Center was staffed and communication links with NRC Headquarters and the licensee began at 12:55 p.m. Six NRC personnel were immediately dispatched and began arriving at the site at 6:00 p.m. Additional NRC personnel were dispatched to the site during the following days to oversee bioassay of workers and residents, evaluation of offsite effluents, and decontamination of the plant complex. An NRC Augmented Investigation Team was formed to investiate the incident. Their findings were reported in NUREG–1179, Vol. 1, published during February 1986 ("Rupture of Model 484 UF_6 Cylinder and Release of Uranium Hexaflouride"). An assessment of the public health impact of the accident was published during March 1986 as NUREG–1189 ("Assessment of the Public Health Impact from the Accidental Release of UF_6 at the Sequoyah Fuels Corporation at Gore, Oklahoma").

After the January accident, the licensee planned to drain UF_6 remaining in plant vessels into 10-ton shipping cylinders in order to enable modification of facilities and equipment at the plant. A procedure for the work was reviewed by NRC and the work commenced on March 12, 1986. The procedure limited the filling of the cylinders to 20,000 pounds each. The maximum shipping weight specification of the cylinders was 21,030 pounds. During the draining process on March 13, 1986, a scale malfunctioned which caused UF_6 to be drained into a cylinder in excess of both of the above limits. The final net weight of the cylinder was 26,017 pounds. Most of the excess material was immediately evacuated from the cylinder before the UF_6 solidified. The final net weight of the cylinder was 21,203 pounds.

The root cause of this second incident was identified as inadvertent damage to a scale apparently when it was decontaminated after the first incident. Results of the NRC investigation of this overfilling event, together with a report of a detailed metallurgical examination performed on the cylinder damaged on January 4, 1986, were reported in NUREG–1179, Vol. 2, published during June 1986.

Cause or Census—The NRC Augmented Investigation Team (AIT) which investigated both incidents reported the following causes in NUREG–1179, Vol. 1 and Vol. 2, respectively.

January 4, 1986 Incident

1. The cylinder was overfilled because it was not placed fully on the scales. Plant facilities were not designed to accommodate a 14-ton cylinders, and associated equipment were not designed to prevent improper positioning of cylinders on the scales.

2. The time required for filling the cylinder was long enough to allow partial solidification of the UF_6, which inhibited product removal from the cylinder.

3. The precise weight of the cylinder was not readily determinable after it was overfilled.

4. There was no secondary or alternative way to measure the quantity of material in a cylinder being filled.

5. Employees violated company procedures when they heated an overfilled cylinder. Workers, including line management personnel, had not been sufficiently trained in regard to company procedures. Procedural controls such as checklists or approval points were not used.

6. Equipment for monitoring or automatically venting cylinders that are being heated was not used.

In summary, the factors can be aggregated into the following causes of the accident:

- The physical equipment and facilities used for filing and weighing UF_6 cylinders were inappropriate for safe use with 14-ton cylinders.
- The training of workers in operating procedures and ensuring the implementation of the procedures were not carried out effectively.

March 13, 1986 Incident

1. The scale used for weighing the cylinder being filled malfunctioned.

2. The procedures for draining did not include any provisions for ensuring proper scale function.

3. The supervisor in charge of the operation did not recognize early indications of malfunction. (An operator advised his management of peculiar scale behavior during the filling of the cylinder.)

Actions Taken to Prevent Recurrence—Both NRC and licensee actions to prevent recurrence are currently in progress. The following summarizes actions as of mid-April 1986.

Licensee—The licensee has committed to keep the plant shut down until equipment modifications are made, plant personnel are retrained, plant procedures are rewritten, organization changes have been implemented, and NRC approves plant restart.

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NRC—A Lessons Learned Task Group reviewed regulatory practices in regard to such fuel facilities in general. The Group interviewed appropriate members of the NRC staff, licensee, State, and local authorities. A Lessons Learned Report was completed in May 1986. A request to restart the facility was received by NRC in May 1986 and is under review. NRC is monitoring licensee plant modification work. Enforcement actions are pending.

The staff is also compiling a list of followup items that need to be considered and addressed. Additional items are anticipated from the Lessons Learned Task Group and other sources. Upon completion of the list, action items will be grouped into categories and priorities assigned. Tasks will be undertaken based on priorities and resource requirements.

In the meantime, the staff is moving ahead on a number of near-term follow-on actions, such as: (1) Verification by NRC of existing emergency phone numbers; (2) requiring licensees to verify quarterly emergency numbers and availability of emergency response assistance; (3) informing DOE and other licensees, who are conducting operations involving UF_6, of the accident and providing relevant reports; and (4) conducting an independent review of the material licensing and inspection programs by a study group.

To assure that licensees have an updated list of telephone numbers to the NRC Operations Center and Regional Offices, the NRC Office of Inspection and Enforcement issued Information Notice No. 86–28 on April 24, 1986 ("Telephone Numbers to the NRC Operations Center and Regional Offices").

The event remains under review by the NRC.

Annex to AO 86–3

During the publicity associated with the Sequoyah Fuels Accident, NRC Region III (Chicago) received an inquiry from a newspaper reporter about an incident on December 7, 1984 at Allied Chemical Company, Metropolis, Illionis, involving overfilling and subsequent damage to a uranium hexafluoride cylinder. The licensee was asked about the incident and provided the following information. (The incident had not been previously reported to the NRC. The licensee stated that it had considered reporting it, but concluded that it did not meet any NRC reporting requirements).

On December 7, 1984, an overfill incident occured in which a cylinder was overfilled and the cylinder subsequently damaged during heating of the cylinder to remove the excess uranium hexafluoride. There was no release of any uranium hexafluoride to the environment associated with the incident, and there were no injuries. In the incident, a 48-inch diameter cylinder, with a maximum capacity of 26,560 pounds, was filled with 33,000 pounds of uranium hexafluoride. The weight recording device was apparently faulty and showed an incorrect weight during the filling operation. Based on the length of time the filling had been underway, licensee personnel suspected that it had been overfilled and moved it to another scale to be weighed. The second scale showed it to contain 33,000 pounds.

The cylinder was returned to the filling position and about 500 pounds of UF_6 was drawn off before the cylinder cooled and the UF_6 solidified. The cylinder was then moved to another fill location where a steam chest was placed over it to heat the cylinder. A line was attached to the cylinder to draw off the UF_6 as the cylinder was heated, but the line was blocked. Plant personnel were unable to clear to the line, and so the cylinder was heated for about 2–½ hours with the cylinder valve closed. The steam chest was then removed, and the cylinder was moved to the weighing location to draw off the UF_6.

At that time, plant personnel noted that the three stiffening rings which surround the cylinder were cracked at a welded joint. A portion of the UF_6 was then drawn off at the scale location, and then the cylinder was moved to another fill location where the remainder of the UF_6 was drawn off, while applying heat in a steam chest. It was later observed that the cylinder was slightly deformed—placing a straight edge along the cylinder wall showed a deformation of approximately ½ inch.

The licensee later provided information to the NRC on overfill incidents at the Metropolis facility for the time period 1981 through 1985. During the five-year period, there were 41 overfills—of which three were greater than 1,000 pounds. The three were 1,183 pounds in 1981, 5,448 in 1984 (described above), and 2,140 in 1985. With the exception of the December 7, 1984 event, none of the other overfill incidents involved damage to the cylinders. No releases of UF_6 occured in any of the incidents.

Another overfill incident occurred on March 23, 1986, when a cylinder was filled with 28,207 pounds (an overfill of 1,367 pounds). The excess was successfully removed without applying additional heat. This incident was attributed to the failure of an operator to "zero out" the scale to account for the empty weight of the cylinder combined with the erroneous calculation by another operator of the time required to fill the cylinder.

Subsequent to the December 1984 incident, the licensee installed new load cells (scales) at each fill location to provide clearer, more reliable weight measurements in the control room. A scale was also added to the overhead crane used to lift the cylinders to allow weighing of the cylinders without transporting them more than 50 feet to another weighing location.

After the January 1986 Sequoyah Fuels accident, the licensee installed a flow totalizer which measures the flow rate of the liquid UF_6 and has an alarm and automatic shutdown function based on total flow and data from the load scale. The licensee has also initiated improvements in its training and retraining programs, procedures, and level of supervision for cylinder filling activities.

In response to the January 1986 accident at Sequoyah Fuels, NRC Region III conducted a special inspection at the Metropolis facility on January 14–15, 1986 to observe the Allied Chemical Company cylindler handling procedures. Additional inspections were conducted to examine the circumstances of the December 7, 1984, incident, and the licensee's actions to preclude the occurrence of significant overfills.

Region III issued a Confirmatory Action Letter to the licensee on January 10, 1986 documenting the licensee's agreement that no overfilled cylinders would be heated without the review and concurrence of Region III. A second Confirmatory Action Letter was issued on March 24, 1986 documenting the licensee's planned actions in response to the March 23, 1986 overfill incident. These corrective measures include increased supervision of filling activities, prohibiting cylinder filling unless two independent methods are available to determine the amount of UF_6 in a cylinder, and completion of the installation of the new UF_6 flow readout and alarm functions by April 15, 1986.

A special NRC inspection, by a seven member team, was conducted in mid-April 1986 to extensively review the licensee's activities. The team identified two violations of NRC requirements: radiation survey instruments did not have the required sensitivity; and a procedure concerning the handling of overfilled cylinders did not have all the proper internal approvals.

An emergency planning inspection was conducted March 31–April 14, 1986, and the inspectors determined that while the licensee had an on-site emergency contingency plan, off-site emergency response capability for the area surrounding the plant was poorly coordinated. The inspectors also found that training of off-site emergency response personnel to respond to emergencies at the plant was inadequate. These items will be reviewed during a future inspection. In addition the NRC is currently reviewing its requirements for emergency planning at fuel facilities.

Although no regulations exists for off-site emergency response, the licensee has taken the initiative to work with the appropriate off-site groups to establish a coordinated capability.

On June 27, 1986, the NRC forwarded to the Allied-Signal Corporation (parent company of Allied Chemical Company) a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $25,000. The violations included the failing to report the December 7, 1984 incident to the NRC and for three instances of failing to follow procedures during the March 23, 1986 overfill incident.

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Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

AO 86–4 Therapeutic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On February 7, 1986, a patient at Washington Hospital Center, Washington, DC received a cobalt-60 teletherapy treatment of 150 rads to the abdomen which was intended for another patient.

Nature and Probable Consequences—On February 6, 1986, an attending surgeon of the Renal Transplant Unit ordered radiation therapy as follows for one of his patients: 150 rads per day to be repeated every other day for a total of 600 rads. The treatment was intended to forestall rejection of the kidney implanted on the previous day. The Unit clerk, in entering the order for the treatment into the computer for transmission to the Radiation Therapy Department for scheduling purposes, ordered the treatment for the wrong patient through careless use of the computer light pen.

The wrong patient, who was also a kidney transplant recipient, was brought to the radiation therapy department on the morning of February 7. A radiation therapy physician checked her chart, noted that there was no order in the chart for radiation therapy, but, contrary to hospital policy, directed the technologist to administer the treatment, since the computer schedule showed this patient's name. The mistake was discovered that afternoon and the correct patient was subsequently treated.

The consequence of this incident was that the patient received 150 rads to the abdomen contrary to the wishes of her physician. It should be noted, however, that her physician stated later that if in the future she showed signs of rejection of the kidney that had just been implanted, he would prescribe a similar course of radiation therapy. It should also be noted that some physicians who perform renal implants routinely prescribe radiation therapy without waiting for evidence of rejection.

The licensee's medical staff has concluded that the patient should experience no clinical complications.

Cause or Causes—The cause of the event was the failure of the radiation therapy physician to follow proper procedure. The physician should have investigated why a patient presented for radiation therapy did not have an order for such therapy written in her chart.

Actions Taken to Prevent Recurrence

Licensee—The licensee voluntarily suspended patient treatment pending the results of an internal investigation, and discussion of these results with NRC Region I.

Subsequently, the licensee committed to assure that an authorized physician reviews every patient chart prior to initiation of treatment and confirms that treatment has been requested and is appropriate, and to require consultation between an authorized user and the referring physician prior to the initiation of treatment of any patient.

NRC—The licensee was inspected by an NRC Region I inspector on February 10–11, 1986. The subject event was reviewed in detail. On February 11, 1986, Region I issued a Confirmatory Action Letter documenting the licensee's commitment described above.

The incident was reviewed by an NRC medical consultant.

A Confirmatory Order Modifying License was issued on May 29, 1986. The Order required that an authorized physician user review every teletherapy patient chart to confirm that cobalt-60 teletherapy treatment has been requested and that the authorized physician user consult with the referring physician or the Chief Resident prior to the initial treatment of each teletherapy patient. In their response to the Order, Washington Hospital Center confirmed that the required procedures had been in place since February 18, 1986.

The May 29, 1986 NRC letter also forwarded a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $5,000.

AO 86–5 Overexposure to a Member of the Public from an Industrial Gauge

One of the abnormal occurrences examples notes that an exposure to an individual in an unrestricted area such that the whole-body dose received exceeds 0.5 rem in one calendar year can be considered an abnormal occurrence.

Date and Place—On February 19, 1986, while checking a licensee which had apparently ceased operations, an NRC Region III inspector determined that an industrial gauge, containing a sealed source of cobalt-60, was in an unrestricted area of the former factory site. Subsequent inspection determined that at least two members of the public received exposures to radiation as a result of the improper disposal of the gauge. The gauge had been licensed to C–E Glass, Inc., a Division of Combustion Engineering Inc. The company operated a facility in St. Louis, Missouri, until October 1981.

Nature and Probable Consequences—C–E Glass, Inc., was licensed in 1971 for the use of level measurement gauge containing 2.5 curies of cobalt-60. The source was replaced in June 1978. In October 1981, the facility and equipment at C–E Glass' site was transferred to Hordis Brothers, Inc., which continued operations until May 1982.

C–E Glass violated two NRC regulations—(1) transferring the gauge to an unauthorized organization (Hordis Brothers did not have an NRC license) and (2) failing to notify the NRC that it had ceased all operaions at the St. Louis facility.

The facility and equipment were late sold by Hordis Brothers to a salvage company. The gauge was placed near a scrap pile at the site, and a salvage company employee removed the gauge's shutter control in early December 1984. For the next two months, two employees of the salvage company handled the gauge and worked near it. It was later moved to a scrap pile where access by other individuals was limited.

The gauge was then located by the NRC inspector, assisted by salvage company employees, on February 19, 1986, and later removed from the site by representatives of Combustion Engineering Company, who took it to another Combustion Engineering facility for storage and eventual disposal.

Interviews with the two salvage company employees determined that they frequently worked or took breaks

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in the vicinity of the gauge. Calculations based on the radiation level—with the shutter of the gauge open—concluded that one individual would have received a radiation exposure to his buttocks of 0.6 to 1.7 rem and to his leg of 69 to 208 rem. (A rem is a standard measure of radiation exposure.) NRC regulations do not permit radiation exposures to members of the public from licensed activities to exceed 0.5 rem.

The second individual would have received a significantly lower radiation dose. The first individual has been examined by a physician and his blood count, bone marrow, and physical condition were reported to be normal.

Cause or Causes—The uncontrolled use of the gauge and radiation exposure of at least two individuals were caused by the transfer of the gauge by the licensee to an unauthorized organization. There was therefore no control over access to the gauge, and a salvage company employee removed the shutter control, allowing the shutter of the gauge to open. [Had the shutter of the gauge remained closed, the radiation dose to persons in the area would be substantially less than with an open shutter.

Actions Taken to Prevent Recurrence

Licensee—The licensee is no longer in business and has no other guges in its possession.

NRC—An NRC inspector located the gauge and locked the shutter in its closed position. He then arranged for the licensee's corporate organization to remove the gauge to another site for storage and eventual disposal. NRC inspectors surveyed the former C–E Glass site to make certain there were no other gauges there.

A medical consultant was retained to review the circumstances of the case and to provide assistance to the exposed individuals' physicians.

On June 30, 1986, the NRC forwarded to the licensee a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $15,000, for violations associated with the handling of the gauge.

On May 5, 1986, the NRC issued Inspection and Enforcement Information Notice No. 86–31 ("Unauthorized Transfer and Loss of Control of Industrial Nuclear Gauges") to all NRC licensees authorized to possess and use industrial nuclear gauges to inform them of this event. Further information was provided to these licensees on July 14, 1986 by Supplement 1 to the Information Notice.

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AO 86–6 Breakdown of Management Controls at an Irradiator Facility

One of the abnormal occurrence examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On March 3, 1986, the NRC issued an Order Suspending License (Effective Immediately) to Radiation Technology, Incorporated (RTI) of Rockaway, New Jersey. The Order was based on NRC inspections which identified a number of instances of bypassing safety interlock systems; these indicated a significant breakdown in the licensee's management control system.

Nature and Probable Consequences—RTI has been licensed to operate a large irradiator near Rockaway, New Jersey, since November 1970. The licensee's irradiator uses sealed cobalt-60 sources to produce high intensity gamma ray fields for the sterilization of medical equipment and supplies and for various other industrial and scientific applications. In addition, the licensee has long sought FDA approval to irradiate food products for routine consumption. At the time of the March 3, 1986 NRC Order, the President of the company was also the Chairman of the Board of Directors, and the Radiation Safety Officer.

RTI also owns and operates irradiators through wholly owned subsidiaries in North Carolina and Arkansas, both Agreement States. Another wholly owned subsidiary, South Jersey Process Technology, recently built in Salem, New Jersey, was licensed by Region I on March 14, 1986.

RTI has been the subject of several escalated enforcement actions in the past; the most noteworthy was in 1977 when a plant worker at the Rockaway facility was able to walk into the irradiation room while the cobalt-60 was exposed because safety interlocks on the personnel access door, designed to prevent such entry, had been made inoperable. The employee received a radiation dose of 150–300 rem, far in excess of regulatory limits. The license was temporarily suspended following this incident until the licensee took necessary corrective actions. (This incident was reported as abnormal occurrence No. 77–10 in NUREG–0090–10, "Report to Congress on Abnormal Occurrences: October–December 1977.")

The events giving rise to the most recent Suspension Order first came to light during a routine NRC inspection in September 1984. The inspector discovered that the licensee had been operating the irradiator since April 1984 with an inoperable safety interlock on one of the tow conveyor openings used to transfer product into the irradiation room. On September 28, 1984, Region I issued a Confirmatory Action Letter that documented the licensee's commitment to operate the facility only if all safety interlocks were operable and to cease operations if any safety interlock failed to function as required. Review of relevant documentation by the inspector indicated that this bypassing of interlocks was implemented by the operators under the supervision of the Operations Manager. In November 1985, the interlock was replaced with a new design without required NRC approval.

During a recent inspection on February 26, 1986, the staff determined that the licensee had been operating the facility for several days prior to the inspection in spite of the malfunction of a radiation monitor which actuates the lock that assures that the personnel door to the irradiation room cannot be opened while the sources are exposed. Rather than fix the monitor prior to continued operation, as is required by the license, the licensee chose to operate the irradiator and, when necessary, opened the door by improperly tripping the door lock when the cobalt-60 appeared to have returned to its shielded position. Following this discovery, the staff requested that the licensee cease all operations until the monitor was repaired; conducted daily inspections to assure the facility was being operated safely and that all interlocks were functioning; and prepared the previously mentioned Order Suspending the License which was issued on March 3, 1986.

Subsequently, the licensee requested lifting of the suspension by letters to the NRC dated March 4 and 5, 1986. After the Region I staff met with the licensee on March 6, a more complete submission was provided by the licensee on March 10. This latter submission proposed interim plant operations under the surveillance of an independent Third Party, reporting directly to a member of the RTI Board of Directors, who, along with the licensee, would be responsible for assuring that the facility would be operated safely and in compliance with all NRC requirements. Further, an independent Fourth Party would monitor the activities of the Third Party on a weekly basis. Both parties would provide uncensored reports directly to the NRC. Following consideration of the proposal and agreement of the licensee to additional items, the staff concluded that temporary resumption of facility operations under these conditions would not endanger the health and safety of the public. Accordingly, a Conditional Rescinding of the Order Suspending License was issued on March 13, 1986. The licensee agreed to the terms of this Order in a leter dated March 13, 1986.

Cause or Causes—The root cause can be attributed to a serious breakdown in the licensee's management controls.

Action Taken to Prevent Recurrence

Licensee—The actions taken by the licensee are described above.

NRC—The NRC is continuing to inspect the performance of this licensee at frequent intervals.

A recent license amendment appointed an individual, who joined the company in March 1986, as the new Radiation Safety Officer. The individual who formerly held this position no longer has direct contact with, or responsibility for, this function. At a recent meeting of the Board of Directors, this same individual resigned as President, but remains Chairman of the Board. The responsibilities of President are being shared among three Vice Presidents while a new President is sought

In addition to the previously described actions taken by the NRC, on June 23, 1986 the NRC suspended the license again based on investigative findings indicating repeated and intentional violations of NRC requirements and impeding NRC inspection and investigations. The license is presently suspended pending further action by the NRC. South Jersey Process Technology, a subsidiary, has recently begun commercial operation of a more modern in-air irradiator in Salem, New Jersey. The licensee is attempting to build another irradiator in the Port of Elizabeth, New Jersey. No formal application has been received by the NRC for this facility.

• • • • •

AO 86–7 Tritium Overexposure and Laboratory Contamination

One of the abnormal occurrence examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—During a routine inspection on March 12, 1986 at Ferris State College, Big Rapids, Michigan, an NRC inspector determined that, based on a review of bioassay test results, a licensee researcher had received an overexposure to tritium (hydrogen 3) during experiments on August 3, 1985, equivalent to a whole body exposure of about 21 rems.

Continuing NRC inspections showed that two laboratories were contaminated. In addition, numerous deficiencies in the licensee's use and control of byproduct radioactive material were identified.

Nature and Probable Consequences—Ferris State College had a broad scope license from the NRC for the possession and use of byproduct radioactive material for training and research purposes.

The NRC inspector found that on August 3, 1985 a researcher was performing work in a ventilated glove box using 5 curies of tritium in a laboratory at the licensee's facility. (A glove box is a sealed box with viewing windows and gloves affixed to the box, allowing hazardous materials to be normally handled safety.) After completing the work, the researcher performed a urine bioassay test, which showed a tritium level of 520,000 counts per minute per 0.2 milliliters of urine. This level of tritium would indicate an internal uptake of 10,000 MPC hours, compared to the NRC quarterly limit of 520 MPC hours for occupational radiation exposures. (An MPC hour is equivalant to one hour of exposure to the maximum permissible concentration of a specific radioactive material.) This intake would be equivalent to a whole body exposure of 21 rem. A second bioassay test, 20 hours later, showed an internal intake of 1,210 MPC hours.

A radiation exposure of 21 rems (a rem is a standard measure of radiation exposure) would not normally be expected to produce any medically observable effects.

Bioassay rest results following another 5-curie experiment on December 1, 1985, showed a level of 239 MPC hours. This exposure was within the NRC limit, but was required to be reported to the NRC because of the urine concentration.

Surveys by the NRC—and subsequently by the licensee—showed the laboratory to be contaminated. A second laboratory on a different level of the same building was also found to be contaminated. Surveys by the licensee and the NRC did not identify any contamination in the hallways or other public areas of the building.

Cause or Causes—The tritium overexposure appeared to result from the failure of the researcher to properly seal off the glove box in which the tritium was being used. The glove box was pressurized with nitrogen gas which apparently forced the tritium gas through a blower fan into the laboratory rather than through the glove box vent system. The discharge of the tritium into the laboratory caused both the exposure to the researcher and the contamination of the laboratory. A research assistant also received some exposure as a result of the experiment or the laboratory contamination, but this exposure was within the NRC limits, according to bioassay test results.

NRC inspections identified numerous violations of NRC requirements (as discussed below), some of which may have contributed to the overexposure and laboratory contaminations.

Actions Taken to Prevent Recurrence

Licensee—After being notified of the initial NRC inspection findings, the licensee removed the researcher from any work involving radioactive material, restricted access to the laboratory areas, and began decontamination of the laboratory facility. Decontamination was subsequently completed, and the facility was released for normal use.

The licensee also provided information on the contamination to students or other persons who may have used the building where the laboratories are located and offered to provide bioassay testing for any concerned individuals. No one requested the testing.

Additional actions may be necessary in response to the numerous violations identified during the NRC inspections.

NRC—The NRC issued Confirmatory Action Letters to the licensee on March 19 and 21, 1986, documenting the licensee's agreement to remove the researcher from work involving radioactive materials, to restrict access to the laboratory areas, to undertake decontamination of the facility, and to stop all licensed activities except those associated with the nuclear medicine school .

NRC inspectors inspected the facility on several occasions to gather additional information on the licensee's handling of radioactive materials and to monitor the decontamination efforts. Confirmatory radiation surverys were also performed.

NRC inspections, which began March 12, 1986 and continued through April 17, 1986, also identified a total of 20 violations of NRC requirements. These violations included failure to perform required surveys for radioactive contamination, failure to check the glove box ventilation system for proper operation, failure to perform required bioassay tests in some instances, failure to take required follow-up actions when certain bioassay results are obtained, failure to report the over exposure, and failure to restrict access to the laboratory.

On April 28, 1986, the licensee's NRC license was amended, significantly restricting the scope of the authorized activities and providing that any new

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activities must be reviewed and approved by the NRC.

Enforcement action is pending on the violations identified during the NRC inspections.

Dated in Washington, DC, this 9th day of October 1986.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-23386 Filed 10-15-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-08027; License No. SUB-1010; EA 86-91; Amendment No. 4]

Sequoyah Fuels, Corp.; Order Modifying License

I

Sequoyah Fuels Corporation, P.O. Box 5801, Oklahoma City, OK 73125, (the licensee) is the holder of Source Material License No. SUB-1010 which authorizes the licensee to possess and use source material for the purpose of refining uranium from uranium ore concentrates and converting this uranium to uranium hexaflouride (UF_6) for use by enrichment facilities. The license was most recently renewed on September 20, 1985 and will expire on September 30, 1990.

II

On January 4, 1986 a cylinder containing in excess of 30,000 pounds of UF_6 ruptured while being heated in a steam chest at the Sequoyah Fuels facility in Gore, Oklahoma. The cylinder had been overfilled to the point that its contends exceeded the cylinder's maximum allowable shipping weight of 27,560 pounds. A process operator, with the consent of his supervisor, had placed the cylinder in a steam chest to heat the cylinder to facilitate removal of the excess UF_6. While the cylinder was being heated, the cylinder wall ruptured because of the expansion of UF_6 as it changed from the solid to the liquid phase. Heating of the overfilled cylinder was contrary to the licensee's operating procedures. The high pressure in the cylinder and the large size of the rupture resulted in the rapid release of much of the UF_6 into the atmosphere. One individual employed by the licensee died because of exposure to hydrogen fluoride (a hydrolysis product of UF_6). Other employees received exposures to uranium and hydrogen fluoride.

By letter dated January 9, 1986, the licensee committed not to restart the UF_6 conversion process at the Sequoyah facility without the concurrence of the NRC. In addition, the licensee made a number of commitments in meetings with the NRC Region IV staff. These commitments were confirmed in a Confirmation of Action Letter issued by Region IV to the licensee dated January 17, 1986.

Kerr-McGee Corporation promptly instituted an internal investigation of the event. (A letter from Sequoyah Fuels Corporation to the Director, Office of Inspection and Enforcement, dated September 24, 1986, summarizes the results of this investigation.) The NRC initiated a number of inspections, investigations, and reviews after the January 4 accident with the assistance of other State and Federal agencies to determine the cause and effects of the event and the efficiency and adequacy of the response of the licensee to the event. The NRC also has inspected and reviewed all of the requirements of the license.

As a result of these efforts, several violations of NRC requirements were identified. These violations will be dealth with in a separate enforcement action. On May 28, 1986, an enforcement conference was held to discuss these violations, their causes, and the licensee's corrective actions.

By letter dated May 7, 1986, the licensee requested that the Commission authorize the resumption of normal UF_6 production at the Sequoyah Fuels facility. In its May 23, 1986 response to this request, the NRC concluded that the licensee's letter did not provide an adequate basis for the NRC staff to determine that the future UF_6 production will be conducted in a manner that will properly protect the health and safety of workers and the public. The NRC states that the letter lacked sufficient detail for the NRC to assess the adequacy of the plant/equipment modifications, the revised training program, and the procedure upgrade program. Most importantly, the letter lacked sufficient detail on the management of quality assurance programs and the management oversight needed to assure safe operation in the future. By letter dated August 20, 1986, the licensee submitted a final response to the NRC's May 23 letter. Two pages dated September 3, 1986, provided corrections to the response. In this submittal, the licensee documented changes made at the Sequoyah Fuels facility since the time of the January 4, 1986 accident and committed to make improvements in its operations. The changes in the facility included numerous modifications and improvements to plant process equipment such as the cylinder filling area and the steam chests. These physical improvements form the technical bases for commitments made by the licensee, and also form a basis for certain new NRC requirements such as the conditions under which UF_6 cylinders may be heated.

On September 10, 1986, the licensee was asked for additional information including the results of its own investigation regarding instances of heating overfilled cylinders. By letter dated September 24, 1986, the licensee responded indicating that frequent heating of overfilled cylinders had occurred prior to the accident in violation of the Sequoyah Fuels Corporation plant operating procedures and regulatory requirements. Furthermore, the licensee indicated that given the number of cylinders that were apparently heated with more than the maximum net weight, it must be concluded that some supervisory personnel either acquiesced in or condoned this practive.

III

The violations which have been identified, the seriousness of the January 4 accident, and the information recently provided by the licensee demonstrate that there is a need for significant improvement in the licensee's control and supervision of licensed activities and UF_6 processing operations, especially those regarding the filling and preparation for shipment of UF_6 cylinders. The NRC has determined that implementation of the commitments made by the licensee in its August 20 submittal is essential to ensure the safe operation of the facility. In addition, other areas requiring corrective action have been identified. These include training and supervision of employees, adequacy of plant staffing, and proper followup of the health impacts of the January 4 accident on licensee personnel who were exposed to uranium. I have also concluded that further oversight of facility operations is necessary to provide reasonable assurance that the licensee will be in compliance with Commission requirements if the facility is permitted to resume operations. For this reason I have determined that the commitments made by Sequoyah Fuels Corporation as documented in its August 20, 1986 submittal to the Commission, as corrected with pages dated September 3, 1986, as well as the additional actions set forth below, are required to protect the public health, safety, and interest. Therefore, these commitments and actions must be imposed by an immediately effective Order as conditions of any continued operations at the Sequoyah Fuels facility. This Order does not authorize restart.

IV

Accordingly, pursuant to sections 63, 161(b), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and Part 40, It is hereby ordered, effective immediately, that

A. 1. The licensee shall, prior to restart, obtain the services of an independent oversight organization, with the qualifications described in Paragraph a below, to perform, as a minimum, the actions indicated in Paragraphs b–e below. (Independent means comprised of persons who have never been employed at the Sequoyah facility by Kerr-McGee or Sequoyah Fuels Corporation (SFC).) At least 10 days prior to proposed restart of UF_6 production at the Sequoyah Fuels facility, the licensee shall submit to the Regional Administrator, Region IV, for approval the name of the proposed independent oversight organization, including the qualifications of the individuals who will perform the oversight functions, statements from these individuals regarding the extent to which they have been previously employed by Sequoyah Fuels Corporation or Kerr-McGee Corporation, a description of a plan to accomplish the actions described below, and a copy of the licensee's proposed statement of work for the independent organization so that the NRC can verify that the organization's authority and responsibilities are in compliance with this Order. Restart shall not occur prior to approval of the plan by the Regional Administrator.

a. The independent organization shall have in-depth knowledge of chemical plant operations, radiation hazards associated with uranium processing, applicable NRC regultory requirements, and programmatic quality assurance through a combination of academic training and practical experience of its staff assigned to the task, sufficient to monitor and assess safety conditions of the Sequoyah Fuels facility and to determine that the plant is operating in conformance with NRC requirements.

b. The independent organization shall maintain a 24-hour daily surveillance (during operations) of plant processing operations to assure compliance with procedural and regulatory requirements, and shall bring to the immediate attention of the NRC Region IV Office and SFC any conditions it believes to be unsafe or not in conformance with NRC requirements.

c. The independent organization shall be given the authority to order an immediate shutdown of all or any plant operations as required to assure such compliance with procedural and regulatory requirements as is, in its independent judgment, necessary to protect the public health and safety.

d. The independent organization, in carrying out its responsibilities, shall review the following areas:

(1) The qualifications, training, commitment, and the adequacy and capability of SFC employees, including managers and supervisors, to conduct operations in accordance with license and other regulatory requirements.

(2) The adequacy and accuracy of SFC's operating procedures related to assigned chemical operations and radiation protection function.

(3) The adequacy and accuracy of SFC record-keeping necessary to demonstrate regulatory and procedural compliance.

(4) The adequacy and conduct of SFC's quality assurance program by which management at corporate and facility levels assures itself, through an independent system of checks and balances, that the chemical and radiation safety programs are adequate and are being conducted in accordance with NRC requirements.

e. Two weeks after startup, and monthly thereafter, the independent organization shall provide to the licensee with a copy, simultaneously to the Regional Administrator, Region IV, written reports summarizing the licensee's activities during the period covered by the report with special attention to the areas described in d (1)–(4) above, any problems identified, and recommendations for corrective actions.

f. Within 30 days after receipt of each of the independent organization's reports, SFC shall submit a response to the report in a letter to the Regional Administrator, Region IV, with a copy to the Director, Office of Inspection and Enforcement and the Director, Office of Nuclear Materials, Safety and Safeguards. SFC's responses shall describe how SFC will incorporate and implement any recommendations of the independent organization together with a schedule for implementation. If any recommendations are not adopted, SFC shall provide in its responses justification for not adopting the recommendations.

g. Nothing in this Order relieves the licensee of its responsibilities under the license to safely operate the facility and direct its shutdown if problems are identified.

A. 2. Licensee will develop, prior to restart, a plan for providing information to the NRC which incorporates internal coordination and review by appropriate managerial and technical personnel to assure the accuracy of such information. All information provided to the NRC shall be submitted under oath or affirmation of the President, Sequoyah Fuels Corporation.

A. 3. The Director, Office of Nuclear Materials, Safety and Safeguards or the Director, Office of Inspection and Enforcement may relax or rescind all or part of the above provisions upon demonstration of good cause.

B. Condition 9 of License No. SUB-1010 is modified to read as follows:

9. *Authorized Use:* For use in accordance with the statements, representations, and conditions contained in Chapters 1 through 8 of the license renewal application dated August 23, 1985, as supplemented with revised pages dated August 20 and September 3, 1986.

C. Condition 22 of License No. SUB-1010 is modified to read as follows:

22. The licensee shall implement, maintain, and execute the response measures of its Radiological Contingency Plan submitted to the Commission on August 20, 1986. The licensee shall also maintain Contingency Plan Implementing Procedures for its Radiological Contingency Plan as necessary to implement the Plan. The licensee shall make no change in its Radiological Contingency Plan or Contingency Plan Implementing Procedures that would decrease the response effectiveness of the Plan without prior NRC approval as evidence by a license amendment. The licensee may make changes to its Radiological Contingency Plan and Contingency Plan Implementing Procedures without prior NRC approval if the changes do not decrease the response effectiveness of the Plan. The licensee shall maintain records of changes that are made to the Radiological Contingency Plan and Contingency Plan Implementing Procedures that are made without prior NRC approval for a period of 2 years from the date of the change. The licensee shall furnish the Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and the appropriate NRC Regional Office specified in Appendix D of 10 CFR Part 20, a report containing a description of each change to the Radiological Contingency Plan and a summary of the types of changes made to the Contingency Plan Implementing Procedures within 6 months after the change is made.

D. The licensee has made a number of modifications to facility process equipment, organization, and management. These modifications are discussed in Section II of this Order. Based upon these modifications, License No. SUB-1010 is amended to include the following additional conditions:

23. The licensee shall use the printout capability of the cylinder filling scales to produce a record of final cylinder weight prior to removal of the cylinder from the cylinder filling area. This record shall be attached to the cylinder status sheet for the

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cylinder and shall be made part of the permanent record for that cylinder at the facility.

24. The licensee shall implement a method to "tamper safe" UF_6 cylinder valves. UF_6 cylinders shall be "tamper safed" on or before October 1, 1988.

25. The special case-by-case analysis required by Chapter 6, License Conditions, Item 16, page L6-3, shall be required for any cylinder containing UF_6 in excess of the weight limits specified by ORO-651. If the weight of UF_6 in the cylinder exceeds the limits specified by ORO-651 by more than 500 pounds, heating of the cylinder shall not be allowed without the specific approval of the NRC. The above condition shall be applicable only to Models 48X, 48Y, or equivalent cylinders. Heating of other cylinder types containing UF_6 in excess of the ORO-651 limits shall not be permitted without the specific approval of the NRC.

26. The licensee shall, prior to heating any cylinder containing UF_6, verify the amount of UF_6 in the cylinder using the accountability scale. A printout of the weight shall be attached to the cylinder status sheet.

27. The Manager, Quality Assurance, shall hold a degree in science or engineering with 5 years of experience in a chemical or nuclear materials processing plant with 3 years of management experience in programs having quality assurance responsibilities.

28. The licensee shall ensure that each employee receives and understands the information necessary to safely perform his function. Each employee shall sign a statement indicating the receipt of training and committing to following corporate policy and procedures. Supervisory personnel shall document that all employees under their supervision are aware of and understand changes made in procedures affecting the performance of their job function.

29. The Manager, Health, Safety, and Environment, and the Manager, Administration and Services, or their designated representatives, shall certify that each employee's on-the-job training and module certification has been adequate and that the employee is competent and qualified to perform his or her responsibilities.

30. The licensee shall provide a comprehensive monitoring program for those employees exposed to uranium during the January 4, 1986, incident. At a minimum, the monitoring program shall consist of the following:

a. Semimonthly quantitative urine uranium bioassay.

b. Semimonthly urinalysis for physiologic parameters including specific gravity, pH, protein, ketones, blood, and nitrate presence. A microscopic examination of the urine for the presence of formed elements such as casts and cells shall also be performed.

c. Semiannual pulmonary function testing.

d. Annual routine physical examinations.

A report of the findings of this study, including pertinent data allowing an independent analysis of results, shall be submitted to the NRC on or before July 1, 1988.

31. The minimum frequency established by the licensee for audits of operations and safety-related activities that are a part of the ongoing Quality Assurance Program shall not exceed every 12 months. A report of the areas audited shall be made quarterly to the General Manager, Sequoyah Facility.

32. The licensee shall establish a minimum surveillance frequency, commensurate with the safety function and not to exceed every 12 months, for each device covered in the maintenance surveillance program described in Chapter 2, License Conditions, section 2.7.5, pages 2-16.

33. The licensee shall maintain all documentation, records and tests required as a part of this license for a minimum of 5 years or longer if the regulations so require.

34. The licensee shall inform the NRC Region IV Office in writing of any violation of the National Pollutant Discharge Elimination System (NPDES) permit or changes in the permit, within 10 days of the determination of the event.

V

The licensee or any other person adversely affected by the Order may request a hearing on this Order. Any request for hearing shall be sent within 20 days of the date of issuance of this Order to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of any hearing request also shall be sent to the Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, Region IV at Parkway Central Plaza Building, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee or any person who has an interest adversely affected by this Order, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 2nd day of October 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-23367 Filed 10-15-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A87-1; Order No. 709]

Post Office Closing, Pinero, VA; Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: October 8, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Docket number: A87-1

Name of affected post office: Pinero, Virginia 23136

Name(s) of petitioner(s): Mary G. Dutton

Type of determination: Closing

Date of filing of appeal papers: October 2, 1986

Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before October 17, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

October 2, 1986—Filing of Petition.

October 8, 1986—Notice and Order of Filing of Appeal.

October 27, 1986—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

November 6, 1986—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b).

November 26, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

December 11, 1986—Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].

December 18, 1986—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

January 30, 1987—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 440(b)(5)].

[FR Doc. 86-23209 Filed 10-15-86; 8:45 am]

BILLING CODE 7715-01-M

[Order No. 711; Docket No. C86-3]

Notice and Order Permitting Intervention in Complaint Concerning Parcel Post Rates and Establishing Filing Dates

Issued: October 9, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

On August 28, 1986, United Parcel Service (UPS) filed a complaint with the Commission under 39 U.S.C. 3662. UPS asserts that the rates for parcel post currently do not cover attributable costs and make no contribution to nonattributable costs. UPS requests that the Commission promptly hold hearings and issue a recommended decision to increase parcel post rates to a level sufficient to cover those costs. UPS argues that the current parcel post rates constitute unfair competition, particularly in the near zones. Citing sections 403(c) and 3622(b)(1) of the Act, UPS says the current schedule constitutes an undue or unreasonable discrimination among users, as well as an undue or unreasonable preference to certain users.

UPS states that it is a competitor of the Postal Service, particularly for parcel post. UPS says that in the most recent omnibus rate case, Docket No. R84-1, the Commission found that parcel post must have a cost coverage of 116 percent to meet the requirements of the Postal Reorganization Act (Act). Citing the Commission's decision in Docket No. MC86-1, UPS asserts that, in fiscal 1985, parcel post rates did not cover their attributable costs and made no contribution to nonattributable costs. UPS predicts that the cost coverage for parcel post will continue to erode. UPS reports its understanding that a postal rate increase is unlikely for 18-24 months.

In accordance with the Commission's rules of practice (39 CFR 3001.84), the Postal Service filed an Answer on September 29, 1986. The Postal Service states that it believes the Complaint to be without merit. The Postal Service further suggests that it should be dismissed without the Commission holding the hearings requested by UPS. Generally, the Postal Service Answer denied every factual assertion UPS made with regard to parcel post rates and costs, and disagreed with every legal conclusion advanced by UPS. The Postal Service asserts that the current parcel post rates comply with the policies of the Act. The Postal Service points out that the current parcel post rates were established as a result of Docket No. R84-1, the only case where the rates were at issue and fully litigated in a proceeding affording due process to all interested parties.

Having considered the Answer to the assertions made in the Complaint, we believe further proceedings as provided for in rule 86 are warranted for the consideration and disposition of the controversy. Accordingly, the Commission invites those interested in becoming participants to file notices of intervention within 30 days of this order, under section 20 or 20a of our rules of practice. McGraw-Hill, Inc., Classroom Publishers Association and Direct Marketing Association, Inc. previously filed notices of intervention; they need not file additional ones.

In order to begin consideration of a procedural schedule, we are asking UPS to file, within 20 days, a notice stating when it anticipates having its case-in-chief ready for filing. Interested parties may comment on the proposed date for this evidence within 10 days of the scheduled time for the filing of that information.

It is ordered

(1) Notices of intervention are to be filed within 30 days of the date of this order.

(2) UPS is to file within 20 days of the date of this order a notice stating when in anticipates that it can file its evidence in support of the Complaint.

(3) Those wishing to comment on the UPS notice concerning the time for filing evidence may do so within 10 days of the scheduled date for the UPS notice.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 86-23361 Filed 10-15-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 8, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Loral Corporation
Common Stock, $.025 Par Value (File No. 7-9250)

Bernard Chaus, Inc.
Common Stock, $0.01 Par Value (File No. 7-9251)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 29, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-23331 Filed 10-15-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2254]

Illinois; Declaration of Disaster Area

As a result of the President's major disaster declaration on October 7, 1986, I find that the Counties of Lake, McHenry and Cook (9 townships only: Leyden, Lyons, Maine, Northfield, Norwood Park, Proviso, River Forest,

Riverside and Wheeling) constitutes a disaster loan area because of flooding beginning on September 21, 1986, and continuing. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on December 8, 1986, and for economic injury until the close of business on July 7, 1987, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Building, 75 Spring Street, SW, Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	7.500
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit) organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 225406 for physical damage and for economic injury the number is 645000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: October 8, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc 86-23360 Filed 10-15-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2253]

Wisconsin; Declaration of Disaster Area

As a result of the President's major disaster declaration on October 7, 1986, I find that the Counties of Fond du Lac, Kenosha, Milwaukee, Sheboygan and Ozaukee constitutes a disaster area because of flooding which occurred on September 10–11, 1986. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on December 8, 1986, and for economic injury until the close of business on July 7, 1987, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Building, 75 Spring Street SW, Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	7.500
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit) organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 225306 for physical damage and for economic injury the number is 644900.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: October 8, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

FR Doc 86-23361 Filed 10-15-86; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The U.S. Small Business Admistration Region III Advisory Council, located in the geographical area of Philadelphia, Pennsylvania, will hold a public meeting at 8:30 a.m. on Tuesday, October 28, 1986, at the Historic Strasburg Inn, Route 896, Strasburg (Lancaster County) Pennsylvania, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Willian T. Gennetti, District Director, U.S. Small Business Administration, One Bala Plaza, Suite 400-East Lobby, Bala Cynwyd, Pennsylvania 19004 (215) 596-5801.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 8, 1986.

[FR Doc. 86-23365 Filed 10-15-86; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Admistration Region VI Advisory Council, located in the geographical area of Little Rock, Arkansas, will hold a public meeting at 11:30 a.m. on Thursday, October 23, 1986, at the Riverfront Hilton Inn, #2 Riverfront Place, North Little Rock, Arkansas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald L. Libbey, District Director, U.S. Small Business Administration, 320 West Capitol, Suite 601, Little Rock, Arkansas 72201 (501) 378-5871.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 8, 1986.

[FR Doc. 86-23363 Filed 10-15-86; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 9:00 a.m. on Tuesday, October 16, 1986, at the Bank of America Executive Board Room, 555 South Flower Street, Los Angeles, California 90071, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, Small Business Administration, 350 South Figueroa Street, Suite #600, Los Angeles, California 90071. Telephone No. (213) 894-2977.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 8, 1986.

[FR Doc. 86-23364 Filed 10-15-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. S-790]

Lykes Bros. Steamship Co., Inc.; Application for Permission to Charter 20 Seabee Barges

Notice is hereby given that Lykes Bros. Steamship Co., Inc. (Lykes) by application dated October 7, 1986, has applied for written permission under section 805(a) of the Merchant Marine Act, 1936, as amended (Act), to charter at least 20 Seabee Standard Hopper Barges (Barges) to St. James Transportation Company (St. James) for operation by St. James on the inland waterways for four months. St. James intends to operate the Barges in the Mississippi River basin, its tributaries, and other inland waterways. The cargo expected to be carried in the Barges includes, among other things, bulk commodities such as molasses, food stuffs, cement and clinker.

This application is being submitted because Lykes is a subsidized operator pursuant to ODS Contract MA/MSB-451 and the proposed operation of the Barges on the inland waterways might be considered to be operation in the "coastwise trade."

Because Lykes is not involved in the inland waterways trades, Lykes indicates that it is not aware of any competing companies.

Lykes advises that there is at present a significant shortage of barges due not only to the well-publicized demands for grain storage but also to the current flooding and other severe weather conditions in the upper Mississippi and Arkansas River basin. Because of these circumstances, St. James has experienced difficulty in obtaining the barges that it needs for its services. Consequently, there is an urgent need for the barges in order to maintain the flow of commerce.

Any person, firm, or corporation having any interest in the application for section 805(a) permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, by 5:00 p.m. on October 27, 1986. If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest and the alleged facts relied on for relief.

If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS)

By Order of the Maritime Administrator.

Dated: October 10, 1986.

James E. Saari,

Secretary.

[FR Doc. 86-23367 Filed 10-15-86; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. IP85-17; Notice 2]

American Jawa Ltd. Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by American Jawa Limited of Plainview, Long Island, New York, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.115, *Vehicle Identification Number.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on November 25, 1985, and an opportunity afforded for comment (50 FR 48531).

Paragraph S4.2 of Federal Motor Vehicle Safety Standard 115, *Vehicle Identification Number,* states that each vehicle identification number (VIN) shall consist of seventeen (17) characters.

Certain of American Jawa Limited's 1981 and 1982 motor driven cycles (mopeds) imported for sale in the United States, did not comply with Federal Motor Vehicle Standard No. 115, *Vehicle Identification Number.*

The "VIN" number consisted of a six digit serial number which ranged from 330,000 to 440,000 and were not received in any particular sequential order. The vehicles consisted of 2,264 units of the Jawa Supreme, a deluxe model. Also, 208 Model 210 moped manufactured late in 1983 did not conform to Standard No. 115 but American Jawa Limited inadvertently failed to include them in its inconsequentiality petition.

VINs on the remaining 1984 models and all 1985 models have the full seventeen digit number, and have been submitted to the VIN coordinator of the National Highway Traffic Safety Administration. There was no production during model year 1983.

One comment was received on the petition, which supported it.

The agency has decided to grant American Jawa's petition. Although it manufactured vehicles with an improper VIN, it has maintained records on these vehicles and in the event of notification and remedy, it could identify the vehicles concerned. Given that no performance failure with a standard is involved, that the number of vehicles is limited, that the time of production is known, the agency has concluded that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: October 9, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-23328 Filed 10-15-86; 8:45 am]

BILLING CODE 4910-59-M

Saint Lawrence Seaway Development Corporation

Advisory Group on Strategic Planning for the St. Lawrence Seaway; Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the Advisory Group on Strategic Planning for the St. Lawrence Seaway will be meeting on October 29, 1986.

The Group will meet at 10:00 a.m. in Room 2253, Rayburn House Office Building, Washington, DC. The purpose of the meeting will be to review and adopt the Group's final report to the Secretary of Transportation.

The meeting is open to the public, however, attendance by the public will be limited to space available. Interested persons may make, subject to the approval of the Corporation's Administrator, oral statements at the meeting, or file a written statement for the Group's consideration. Persons wishing to make oral statements are requested to contact Joan C. Hall at (202) 366-0118 prior to October 24, 1986 so adequate time can be included on the agenda.

For further information contact Joan C. Hall, Advisory Group Liaison, St. Lawrence Development Corporation, 400 Seventh Street SW., Washington, DC 20590.

Issued at Washington, DC, on October 9, 1986.

Joan C. Hall,

Advisory Group Liaison.

[FR Doc. 86-23296 Filed 10-15-86; 8:45 am]

BILLING CODE 4910-61-M

VOL 51 ISS 200 OCT 16 1986 UMI

VOL 51 ISS 200 OCT 16 1986 UMI

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the Federal Register.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]:

Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen, Arab Republic, Yemen, Peoples Democratic Republic of.

J. Roger Mentz,

Assistant Secretary for Tax Policy.

[FR Doc. 86-23327 Filed 10-15-86; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of Systems Notice; Additional Routine Use Statement

Notice is hereby given that the VA (Veterans Administration) is considering adding a new routine use statement for the system of records entitled "Compensation, Pension, Education and Rehabilitation Records—VA" (58VA21/22/28) as set forth on pages 738–741 of the Federal Register Publication, Privacy Act Issuances, 1984 Comp., Vol. V and amended at 50 FR 10686 (March 18, 1985), 50 FR 28875 (June 28, 1985), 50 FR 31453 (August 2, 1985), 51 FR 24782 (July 8, 1986), 51 FR 25141 (July 10, 1986) and 51 FR 28289 (August 6, 1986) and revising a routine use statement for the system of records entitled "Veterans Assistance Discharge System (VADS)—VA" (45VA23) as set forth on pages 726–727 of the Federal Register Publication, Privacy Act Issuances, 1984 Comp., Vol. V and amended at 50 FR 23867 (June 6, 1985).

The Department of Defense Manpower Data Center (DMDC) has requested that the Veterans Administration provide information, including the last known address, from veterans' records in the above-mentioned systems of records. This information will be used by DMDC for four specific purposes, which are: (1) Recruiting needs for military recruiting commands, (2) Mobilization studies and mobilization information for civilian personnel offices of the Department of Defense (DOD), (3) Debt collection for DOD agencies, and (4) Locator services for Individual Ready Reserve (IRR) Units. Military recruiters occasionally try to reenlist prior military service members who have certain occupational specialties which the services now need. When asked, DMDC will identify for the recruiters individuals with prior military service who live in their recruiting area. DMDC provides the most current mailing address for the selected individuals along with information about their military service.

During a period of mobilization, DOD civilian personnel offices must be able to identify former military personnel with certain military occupational specialties who are now Federal employees working for DOD agencies and who live within certain geographical areas. DMDC is the central DOD facility that maintains such records and provides information from the individuals' military records to personnel offices. The geographical information is obtained from the address provided by the VA. The military services query DMDC for address information for former military service members who are indebted to the military service. The address information is used to advise the individual of his/her debt and to provide due process during the debt collection effort. Lastly, each military service is required by DOD to maintain current locator information for all reservists, including inactive reservists assigned to IRR units. This locator information is needed in the event these individuals must be recalled to active duty during a period of mobilization. Since inactive reservists are not required to attend regular drills, it is very easy for an IRR unit to lose track of these individuals. When requested, DMDC will provide address information to IRR units for individuals they cannot locate. There are no current routine uses which provide for the release of information for all of the purposes described above. The Veterans Administration has supported in the past, and will continue to support, the promotion of military readiness in a national emergency and the encouragement of job opportunities for veterans.

An amendment to routine use 12 of 45VA23 and a new routine use for 58VA21/22/28 are being added to provide for the four uses of information which include military recruiting command needs, Department of Defense civilian personnel offices' mobilization studies and mobilization information, Department of Defense agencies' debt collection, and Individual Ready Reserve Units' locator services.

The VA has determined that releases of information for these purposes are necessary and proper uses of information in these systems of records and that specific routine uses for transfer of this information are appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed new and amended routine uses to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before November 17, 1986, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 18, 1986. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Service Unit in room 132.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the Federal Register by the Veterans Administration, the routine use statements included herein are effective November 27, 1986.

Approved: October 9, 1986.

By the direction of the Administrator.

Thomas E. Harvey,

Deputy Administrator.

Notice of Amendment of Systems of Records

1. In the system identified as 45VA23, "Veterans Assistance Discharge System (VADS)—VA" as set forth on pages 726–727 of the Federal Register Publication, Privacy Act Issuances, 1984 Comp., Vol. V and amended at 50 FR 23867 (June 6, 1985) the following routine use statement is amended to read as follows:

45 VA 23

System name:

Veterans Assistance Discharge System (VADS—VA.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

12. Any information in this system of records may be disclosed to the Department of Defense Manpower Data Center, upon its official request, for statistical compilation of information contained on the separation documents issued by the Department of Defense. Veterans' addresses which are contained in this system of records may be disclosed to the Department of Defense Manpower Data Center, upon its official request, for military recruiting command needs, Department of Defense civilian personnel offices' mobilization studies and mobilization information, debt collection, and Individual Ready Reserve (IRR) Units' locator services.

* * * * *

2. In the system identified as 58VA21/22/28, "Compensation, Pension, Education and Rehabilitation Records—VA" as set forth on pages 738–741 of the Federal Register Publication, Privacy Act Issuances, 1984 Comp., Vol. V, and amended at 50 FR 10686 (March 18, 1985), 50 FR 28875 (June 28, 1985), 50 FR 31453 (August 2, 1985), 51 FR 24782 (July 8, 1986), 51 FR 25141 (July 10, 1986) and 51 FR 28289 (August 6, 1986), the following routine use statement is added to read as follows:

58 VA 21/22/28

System name:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

50. Veterans' addresses which are contained in this sytem of records may be disclosed to the Department of Defense Manpower Data Center, upon its official request, for military recruiting command needs, Department of Defense civilian personnel offices' mobilization studies and mobilization information, debt collection, and Individual Ready Reserve (IRR) Units' locator services.

* * * * *

[FR Doc. 86-23310 Filed 10-15-86; 8:45 am]

BILLING CODE 8320-01-M

VOL 51 ISS 200 OCT 16 1986 UMI

Sunshine Act Meetings

Federal Register
Vol. 51, No. 200
Thursday, October 16, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Consumer Product Safety Commission	1
Federal Deposit Insurance Corporation	2
Federal Election Commission	3
Foreign Claims Settlement Commission	4
United States International Trade Commission	5-7

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 11:00 a.m., Wednesday, October 15, 1986.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Management Review: Field Operations Reorganization

The Commission will consider issues related to reorganization options for field operations.

The Commission by majority vote decided that agency business required scheduling this meeting without normal advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

October 10, 1986.

[FR Doc. 86-23409 Filed 10-14-86; 9:08 a.m.]

BILLING CODE 6355-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act," (5 U.S.C. 552b), notice is hereby given that at 3:20 p.m. on Thursday, October 9, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the purchase of certain assets of and the assumption of the liability to pay deposits made in Independent National Bank, Covina, California, an insured bank scheduled for closing later in the day by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven day's notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 10, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 86-23506 Filed 10-14-86; 3:00 p.m.]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 21, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 23, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings.
Correction and approval of minutes.
Draft advisory opinion 1986-36 Honorable Charles E. Bennett.
Procedures for issuing statements of reasons for the Commission's dismissal of certain administrative complaints.
Routine administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-23537 Filed 10-14-86; 3:06 pm]

BILLING CODE 6715-01-M

4

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 1-87]

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time

Tuesday, October 28, 1986 at 10:30 a.m.

Subject Matter

Consideration of claims filed under the Ethiopian Claims Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC.

Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, DC, on October 14, 1986.

Jeanette Matthews,

Administrative Assistant.

[FR Doc. 86-23538 Filed 10-14-86; 3:07 pm]

BILLING CODE 4410-01-M

5

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Monday, October 20, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain moldable/extrudable polyetheresteramide copolymers (Docket Number 1346).
5. Inv. No. 731-TA-293, 294, and 296 (Final) (Certain welded carbon steel pipes and tubes from the Philippines and Singapore)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

October 3, 1986.

[FR Doc. 86-23388 Filed 10-10-86; 4:31 pm]

BILLING CODE 7020-02-M

6

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, October 15, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Inv. No. 701-TA-281 (P) (Stainless steel pipes and tubes from Sweden)—briefing and vote.
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

October 3, 1986.

[FR Doc. 86-23393 Filed 10-10-86; 4:31 pm]

BILLING CODE 7020-02-M

7

UNITED STATES INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published elsewhere in this issue (See USITC SE-86-36).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, October 15, 1986, 10:00 a.m.

CHANGE IN THE MEETING: Addition of agenda item for the meeting:

6. Matters associated with the proposed RFP for auditing services.

In conformity with 19 CFR 201.37, Commissioners Liebeler, Brunsdale, Eckes, Lodwick and Rohr determined by recorded vote that Commission business requires the change in subject matter by addition of the agenda item, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Stern did not participate in the decision to add this matter to the agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

October 9, 1986.

[FR Doc. 86-23389 Filed 10-10-86; 4:55 pm]

BILLING CODE 7020-02-M

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federal register

Thursday
October 16, 1986

Part II

Department of Agriculture

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 713, 770, 795, 796, 1421, 1425, 1427, 1434 and 1474

Marketing Quotas and Acreage Allotments; Feed Grain, Rice, Cotton, and Wheat; Food Security Act Implementation; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 713, 770, 795, 796, 1421, 1425, 1427, 1434 and 1474

Marketing Quotas and Acreage Allotments; Feed Grain, Rice, Cotton, and Wheat; Food Security Act Implementation

AGENCY: Commodity Credit Corporation, and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts as final, with minor changes, four interim rules which were published in the Federal Register on March 11, 1986 (51 FR 8428), June 16, 1986 (51 FR 21730 and 21828), and August 13, 1986 (51 FR 28921). These interim rules revised the regulations found at 7 CFR Parts 713, 770, 795, 796, 1421, 1425, and 1427 to implement the provisions of the Food Security Act of 1985 (the "1985 Act") and the Food Security Improvements Act of 1986 (the "1986 Act") with respect to the production adjustment and price support programs for the 1986 and subsequent crops of wheat, feed grains, cotton, rice, and other price supported commodities. 7 CFR Parts 1434 and 1474 are also amended by this final rule to provide technical cross references to 7 CFR Part 12.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Bill Harshaw, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447-7902.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Impact Analyses were prepared with respect to the programs for the 1986 crops of wheat, feed grains, cotton, and rice. Copies of the analyses are available to the public from Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, USDA, Room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Dairy Indemnity Payments—10.053; Emergency Conservation Program—10.054; Feed Grain Production Stabilization—10.055; Storage Facilities Equipment Loans—10.056; Wheat Production Stabilization—10.058; National Wool Act Payment—10.059; Beekeeper Indemnity Payments—10.060; Water Bank Program—10.062; Agricultural Conservation Program—10.063; Forestry Incentives Programs—10.064; Rice Production Stabilization—10.065; Emergency Feed Program—10.066; Grain Reserve Program—10.067; Rural Clean Water Program—10.068, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

A draft environmental impact statement has been prepared. Further information is available from Phillip Yasnowsky, Program Analysis Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013; (202) 447-7887.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560-0030, 0560-0040, 0560-0071, 0560-0091, 0560-0092, 0560-0096, and 0560-0650 have been assigned.

I. Interim Rules

The 1985 Act, enacted on December 23, 1985, amended the Agricultural Act of 1949 (the "1949 Act") to authorize price support, payment, and production adjustment programs for the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat. An interim rule was published in the Federal Register on March 11, 1986 (51 FR 8428) to amend the regulations found at 7 CFR Part 713 and 770 to set forth certain terms and conditions of these programs. The interim rule also amended the regulations found at 7 CFR Part 796 to incorporate provisions of the Act with respect to the denial of program benefits to persons convicted of violations of Federal and State controlled substance statutes. The regulations set forth at 7 CFR Parts 795, 1421, 1425, and 1427 which relate to payment limitation, price support loans and purchases, and cooperative marketing associations also were amended to conform to the provisions of the Act, to delete references to obsolete provisions, and to improve the operation of these programs for the 1986 and subsequent crop years. A 30-day comment period was provided.

The 1986 Act, enacted on March 20, 1986, further amended the 1949 Act with respect to such programs. Accordingly, a second interim rule was published in the Federal Register on June 16, 1986 (51 FR 21828) to amend the regulations found at 7 CFR Part 713 to set forth certain terms and conditions of these programs which must be changed to implement the provisions of the 1986 Act and to amend the regulations found at 7 CFR Parts 770, 795 and 1425. Because this interim rule amended provisions of the interim rule published on March 11, the comment period for the March 11 interim rule was extended to coincide with the comment period for the June 16 interim rule, which ended July 16, 1986.

An interim rule was published in the Federal Register on June 16, 1986 (51 FR 21730) which amended the Regulations Governing the Farmer-Owned Grain Reserve ("FOR") Program for 1986 and Subsequent Crops. The interim rule amended 7 CFR 1421.752 to provide an extension of the rotation period for corn and grain sorghum pledged as collateral for FOR loans from 15 to 30 days or within such a period as may be determined and announced by the Secretary. The interim rule also permits producers with wheat, barley, and oats pledged as collateral for FOR loans to replace this loan collateral with an equivalent quantity of grain of the same type that (1) has been harvested in a prior crop year by the producer; (2) is harvested in the current crop year by the producer; or (3) is purchased from another source. A comment period was provided through June 31, 1986.

An interim rule was published in the Federal Register on August 13, 1986 (51 FR 28921) to amend the regulations found at 7 CFR 770.4(g)(2) with respect to commodity certificates (1) issued as payments to upland cotton producers who agree to forgo obtaining a price support loan and (2) which are issued as additional yield payment to upland cotton producers. Because this interim rule changed the interim rule published on March 11 and June 16, 1986, the comment periods were extended to coincide with the comment period for the August 13 interim rule, which ended August 28, 1986.

II. Summary of Comments and Substantive Changes

The written comments discussed below are on file and available for public inspection in Room 3630 South Building, 14th and Independence Avenue, SW., Washington DC 20013.

7 CFR Part 713

Written comments pertaining to the regulations at 7 CFR Part 713 were received from one individual, one producer organization, and one wildlife organization.

(a) The individual and the producer organization were both concerned with the provisions relating to haying and grazing of acreage taken out of production (acreage conservation reserve ("ACR")) and of acreage devoted to conserving uses which is designated as an acreage of the program crop for purposes of computing deficiency payments under the provisions of the 1949 Act, commonly known as "50/92" provisions. These comments were concerned about the adverse effects haying and grazing of this acreage might have upon established hay producers.

(1) The individual requested that the regulations be changed to prohibit haying of ACR acreage and haying and grazing of conserving use acreage.

(2) The organization requested that there be a hearing process at the State or National level before decisions on permitting haying and grazing were made. It requested that there be a comment period before the Secretary determines, as required by the 1949 Act, that haying and grazing would not have an adverse economic effect.

(3) The organization requested that the definition of "conserving uses" as applied to hay be changed to "grasses and crops not harvested mechanically." This definition would prohibit hay as a conserving use under the 50/92 provisions.

(4) The organization stated that State Agricultural Stabilization and Conservation ("ASC") committees needed more data and guidance in making the decision on haying and grazing.

Because of the delays in enacting the Food Security Improvements Act of 1986 and the need to provide producers with information on the benefits and restrictions connected with their contracts to participate in the 1986 production adjustment programs, it was necessary to make decisions on haying and grazing prior to the spring of 1986. Accordingly, provisions of the March 11, 1986 interim rule that were applicable to 7 CFR 713.63 delegated authority to State ASC committees to determine whether to permit haying and/or grazing on ACR and conserving use acreages. A 5 consecutive month nongrazing period was required for ACR for the 1986 crop of cotton and rice and, if haying and/or grazing was authorized for the 1986 crop of wheat and feed grains, such haying or grazing was permitted during 5 of the principal growing months as determined by the State ASC committee.

Although the Secretary is authorized to prohibit haying and grazing if it is determined that there would be an adverse economic effect, most hay is produced and consumed within a locality. Generally, there is not a national market for hay and accordingly the adverse economic effects, if any, of a decision to permit haying and grazing will occur at a local level, not a national basis. With respect to the need for increased guidance of State ASC committees, past experience with production adjustment programs has demonstrated that the State committees are familiar with conditions in the State and the effects of authorizing haying and grazing. Accordingly, it has been determined that these recommendations will not be adopted at this time.

(b) The wildlife organization offered comments that focused on the need to obtain greater conservation benefits.

(1) The organization stated that the authority included in the Food Security Act of 1985 for a multi-year set-aside program should be implemented. The organization believes that annual programs leave landowners in uncertainty over the next year's program, leading landowners to plow ACR in the fall in order to be ready to plant for next year. They also noted that with annual programs landowners make no financial commitment to establish cover crops to control erosion, improve water quality, and restore conditions for wildlife.

(2) The organization requested that § 713.62(a)(ii) be amended to prohibit plowing ACR in the fall and leaving it bare until spring.

(3) The organization asked for clarification of the phrase "noncommercial recreation" in § 713.63(c)(2) as to whether it prohibits charging fees for hiking, hunting, fishing, and similar activities.

(4) The organization recommended that county ASC committees be required to coordinate dates for clipping weeds with representatives of State wildlife agencies.

(5) The organization recommended clarifying § 713.99(b) to provide that a producer who violates rules for sodbuster and swampbuster shall be ineligible for payments on all farms in which the producer has an interest.

(6) The organization recommended that § 713.103(b) be clarified to provide that producers who fail to comply fully with program rules will cause the producer to be ineligible for payments for all farms in which the producer has an interest.

Because producers have already entered into contracts with the Commodity Credit Corporation (CCC) to participate in the 1986 production adjustment and price support programs, it would be unfair and inequitable to change the provisions of the appropriate regulations at this time. Accordingly, it has been determined that only editorial changes and clarifications will be made in the regulations in 7 CFR Part 713. An interim rule will be issued shortly which will make changes in these regulations effective for the 1987 and subsequest crop years. The comments with respect to these issues will be considered in the formulation of that interim rule.

(c) One set of comments was received from the Iowa Attorney General and from the law firm representing certain Iowa producers in an action brought to compel the Secretary to implement certain disaster programs for the relief of Iowa producers from effects of the 1983 drought. The comments noted that §§ 713.130 and 713.131 implement the mandatory disaster payments program contained in the 1949 Act, which is not available when insurance under the Federal Crop Insurance Act is available to producers. However, the regulations contained in the interim rule do not implement the provisions of the 1949 Act which authorize the Secretary to implement a discretionary disaster payment program when such insurance is available to producers. These comments pointed out that, in considering this action, the United States District Court for the Southern District of Iowa ordered the Secretary to promulgate rules to implement similar provisions of the Agriculture and Food Act of 1981 (the "1981 Act") which were applicable for the 1982 through 1985 crop years. Accordingly, the comments stated

that such rules should have been included in the interim rule.

It has been determined that regulations to implement the Secretary's discretionary authority with respect to the similar types of payments authorized by the 1985 Act are more suited to a separate rulemaking procedure since these discretionary payments may be made in limited areas and for limited times depending upon the nature of the disaster. Accordingly, the regulation applicable to these payments will be developed separately.

(d) Two oral comments were received with respect to the definition of "conserving uses" in § 713.3(d). One person pointed out that "devoted at any time during the year to [a crop]" could mean that land on which wheat is planted in the fall of 1986 for harvest in 1987 would not be considered as being devoted to a conserving use for the 1986 crop year. This was not the intent of the interim rule and, therefore, § 713.3(d) is amended in this final rule for clarification.

The other person observed that the wording "Any land subject to [the Water Bank Program, Great Plains Conservation Program, Conservation Reserve Program]" in §§ 713.3(d)(6)–(8) was vague and could be taken to include land which the respective programs did not prohibit from being devoted to crops. Accordingly, these paragraphs also have been revised for clarity.

7 CFR Part 770

One comment was received with respect to the regulations in 7 CFR Part 770 pertaining to commodity certificates which was set forth in the interim rule of March 11, 1986. The comment requested that § 770.4(b)(8) be revised to clarify that a subsequent holder of commodity certificates is not subject to State laws or regulations with respect to the transfer or exchange of such certificates.

The regulations in Part 770 were revised in the interim rule of June 16, 1986. The revision included a provision that the provisions of § 770.4 take precedence over any state statutory or regulatory provisions which are inconsistent with the provisions of the section or with the provisions of the commodity certificates. The revised regulations also clarify, as requested by the commenter, that the provisions of § 770.4(b) apply without regard to the identity of the holder of the certificate.

7 CFR Part 795

No comments were received with respect to the regulations in Part 795.

7 CFR Part 796

No comments were received with respect to the regulations in Part 796. However, § 796.3(c) has been amended to delete the requirement that a corporation's or a limited partnership's payment be reduced if a shareholder or partner is denied benefits in accordance with § 796.1 because of a conviction with respect to the violation of a Federal or State law for the planting, cultivating, growing, producing, harvesting, or storing of a controlled substance. Since the major basis for the establishment, under State law, of a corporation or a limited partnership is the benefit of limited liability and the related concept that the entity be considered separate from its shareholders or partners, it has been determined that such entities will receive the entire program payment authorized to be made regardless of the conviction of one of its shareholders or partners for such violations.

In addition, § 796.2(a)(1) has been amended for clarity.

7 CFR Part 1421

No comments were received with respect to the regulations in Part 1421.

7 CFR Part 1425

The Department received comments with respect to the interim rules from two cotton marketing associations.

The comments discussed the increased net worth requirement for cotton cooperatives contained in § 1425.10(b)(3)(ii) of the regulations. The cooperatives offering the comments took the position that the $6.40 per bale net worth requirement would be a financial burden on each cooperative's members, and that the amount should be changed back to the previous $5.00 per bale requirement or that the increase should be deferred for one year.

The cooperative net worth requirements for all authorized commodities were increased to insure that cooperatives approved to participate in price support programs on behalf of their members are financially able to make financial advances to their members. Because of increased price support levels, CCC has made larger price support payments to cooperatives on behalf of their members. The increased payments means the cooperatives have greater financial responsibility to their members. In addition it would not be equitable to increase the net worth requirements for all authorized commodities except cotton. Accordingly, the equity unit rate for cotton will be $6.40 per bale.

7 CFR Part 1427

No comments were received with respect to the regulations in Part 1427.

III. Technical Changes

7 CFR Part 713

Section 713.1(b)(6) has been amended to add a reference to § 713.56.

The second sentence of § 713.3(a) has been clarified, and § 713.3(e)(2)(vii) has been amended to refer to "approved nonprogram crops."

An interim rule was published in the **Federal Register** on June 27, 1986 which contained regulations implementing sections 1201–1223 of the Food Security Act of 1985 commonly known as "sodbuster and swampbuster" provisions. Sections 713.3(s)(3) and 713.99 have been amended to refer specifically to these regulations.

Section 713.4(b)(10) has been amended to include rice along with wheat, barley, and oats, as a crop which may be left standing under certain conditions and still not be considered as acreage planted to a program crop.

Erroneous references to §§ 713.120–713.127, which were reserved for future use, have been removed from §§ 713.4(b)(3) and 713.6(c).

Section 713.6(a)(1) has been amended to clarify that, although separate irrigated and nonirrigated yields for wheat and feed grains may be established for 1986 or subsequent crop years, there shall not be an increase in the farm program payment yield established for a crop produced on the farm.

Section 713.6(a)(3)(ii)(B) has been added to state that the farm program payment yield for the 1986 crop year which shall be used to compute the farm program payment yield for 1988 and subsequent crops shall be the higher of the farm program payment yield for the 1986 crop year determined in accordance with Part 713 or 90 percent of the 1985 farm program payment yield. This incorporates a provision of the Food Security Improvements Act of 1986 which was omitted in the March 11 interim rule.

Section 713.60 has been amended to refer to § 713.51 instead of § 531.51.

Section 713.61(b)(1) has been amended for overall clarity and to correct an erroneous omission in order to provide that orchards that were planted before the fall of the previous year are not eligible for designation as ACR.

Section 713.62(c)(4) has been amended for clarity.

In § 713.101(c), the following words, which were omitted in the interim rule, have been inserted after the word "operator:", "shall assure that on any other farm in which the landlord, landowner, or operator" to clarify the meaning of this section.

The heading *"Reporting"* has been added to § 713.103(a).

Section 713.105(d) has been amended to refer to "doublecropping practices" rather than "established practices of doublecropping" to recognize that a producer may begin to doublecrop in the current year.

Section 713.108(a)(1)(i)(B) has been amended for clarity.

The first sentence in § 713.108(c)(3) is corrected to read "The 1988 through 1990 crop years . . . ." to clarify that the paragraph does not apply to the 1986 or 1987 crop years.

The cross-reference to § 713.11 in § 713.109(b)(2) is corrected to refer to § 713.111. The cross-reference to § 713.132 in the second sentence of § 713.109(c) is corrected to refer to § 713.152.

7 CFR Part 770

The last sentence in § 770.4(g)(2) is amended to correct a grammatical error. Accordingly, this sentence states: "Certificates issued as payments which are determined to be necessary to make raw cotton in inventory on August 1, 1986 available at competitive prices as determined by CCC in accordance with section 103A(a)(5)(D)(ii) of the Agricultural Act of 1949, as amended, may be exchanged for CCC-owned upland cotton only during such period or periods as may be determined and announced by CCC."

7 CFR Parts 1421, 1434, and 1474.

An interim rule was published in the **Federal Register** on June 27, 1986 which contained regulations implementing sections 1201–1223 of the Food Security Act of 1985 commonly known as "sodbuster and swampbuster" provisions. Producers who violate the "sodbuster and swampbuster" provisions will be ineligible for program benefits, including price support loans and purchases for the crop year. Parts 1421, 1434, and 1474 are amended to provide that compliance with these provisions is a condition of eligibility for price support loans and purchases.

7 CFR Part 1425

The title of § 1425.8(c) is changed to "Control."

Sections 1425.10(b)(3)(ii), 1425.14, 1425.17(a)(2) and (b)(4), and 1425.18(a)(2) and (3) have been revised for clarity by correcting grammatical errors or erroneous paragraph references.

List of Subjects

7 CFR Part 713

Cotton, Feed grains, Price support programs, Wheat, Rice.

7 CFR Part 770

Cotton, Feed grains, Price support programs, Wheat, Rice.

7 CFR Part 795

Price support programs.

7 CFR Part 796

Agriculture, Marihuana.

7 CFR Part 1421

Grains, Loan programs-agriculture, Price support programs, Surety bonds, Warehouses.

7 CFR Part 1425

Cooperatives, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1427

Cotton, Loan programs-agriculture, Price support programs, Packaging and containers, Surety bonds, Warehouses.

7 CFR Part 1434

Honey price support programs, Warehouse.

7 CFR Part 1474

Agricultural commodities, Loan programs-agriculture, Warehouses.

Final Rule

Accordingly, the regulations of Chapters VII and XIV of Title 7 of the Code of Federal Regulations are amended as follows:

1. The interim rule published at 51 FR 21730, which amended 7 CFR Part 1421, is hereby adopted as a final rule without change.

2. The interim rule published at 51 FR 21828 is hereby adopted as a final rule without change with respect to the regulations found at 7 CFR Part 795.

3. The interim rule published at 51 FR 8428 is hereby adopted as a final rule without change with respect to the regulations found at 7 CFR Part 795, 1421, and 1427.

4. The interim rule published at 51 FR 28921 is hereby adopted as a final rule without change with respect to the regulations found at 7 CFR Part 770.

5. The interim rule published at 51 FR 8428 and the interim rule published at 51 FR 21730 are adopted as final rules with respect to the regulations found at 7 CFR Parts 713, 770, 796 and 1425 with changes as described above. The complete text of these parts is set forth below:

A. Part 713 of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 713—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

Sec.

713.1 Applicability.
713.2 Administration.
713.3 Definitions.
713.4 Determining crop acreages.
713.5 [Reserved]
713.6 Farm program payment yields.
713.7 Crop acreage bases.
713.8 Farm acreage bases.
713.9 Normal crop acreages.
713.10 Notice of crop and farm acreage bases, yields, and NCA.
713.11 Reconstitution of farms.
713.12 Adjusting crop acreage bases.
713.13–713.48 [Reserved]
713.49 Nature of contract.
713.50 Contracting procedures.
713.51 Required acreage reduction.
713.52 Required set-aside.
713.53 Land diversion.
713.54 Wheat grazing and hay.
713.55 Loan deficiency program.
713.56 Inventory reduction program.
713.57 Reduction in acreage to be devoted to conservation uses.
713.58–713.59 [Reserved]
713.60 Basic rules for ACR acreage.
713.61 Eligible land.
713.62 Approved cover crops and practices.
713.63 Use of ACR acreage.
713.64 Control of erosion, insects, weeds, and rodents on ACR acreage.
713.65 Orchards.
713.66 Land going out of agricultural production.
713.67 Emergency grazing or harvesting.
713.68 Wildlife food or habitat.
713.69 Noncrop uses or practices.
713.70 Insufficient ACR acreage.
713.71 Destroyed crop acreage.
713.72 Provisions applicable to certain small grains.
713.73 Late harvesting.
713.74 Skip rows.
713.75–713.96 [Reserved]
713.97 Ineligible land.
713.98 Participation in Conservation Reserve Program.
713.99 Compliance with sodbuster and swampbuster provisions.
713.100 Cross compliance on the farm.
713.101 Offsetting compliance between farms.
713.102 Determination of farm program acreage.
713.103 General payment provisions.
713.104 Advance payments.
713.105 Disaster credit.
713.106 Established (target) prices.
713.107 National program acreage.
713.108 Deficiency payments.
713.109 Division of program payments.
713.110–713.129 [Reserved]
713.130 Eligibility for regular prevented planting and reduced yield payments.

Sec.
713.131 Regular disaster payment computations.
713.132–713.149 [Reserved]
713.150 Provisions relating to tenants and sharecroppers.
713.151 Successors-in-interest.
713.152 Misrepresentation and scheme or device.
713.153 Setoffs and assignments.
713.154 Payments by commodities and commodity certificates and refunds.
713.155 Appeals.
713.156 Performance based upon advice or action of county or State committee.
713.157 Paperwork Reduction Act assigned numbers.

Authority: Secs. 101A, 103A, 105C, 107C, 107D, 107E, 109, 113, 401, 403, 503, 504, 505, 506, 507, 508, and 509 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1444, 1383, as amended, 1446; 91 Stat. 950, as amended, 93 Stat. 1054, as amended, 99 Stat. 1461, 1461: as amended, 1462, 1463, 1463, 1464, 1464 (7 U.S.C. 1441–1, 1444–1, 1444b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445h, 1421, 1423 and 1461 through 1469); sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444 (7 U.S.C. 1308); sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309).

§ 713.1 Applicability.

(a) The regulations in this part, which are applicable to the feed grain, rice, upland and extra long staple ("ELS") cotton, and wheat programs for the 1986 and subsequent year crops, set forth the terms and conditions under which producers of these commodities who enter into contracts with the Commodity Credit Corporation ("CCC") and comply with the contracts and the provisions of this part may qualify for program benefits.

(b) In accordance with section 1001 of the Food Security Act of 1985, and the regulations in Part 795 of this chapter, the total amount of payments (excluding disaster payments) which a person shall be entitled to receive annually under the rice, upland and ELS cotton, feed grain, and wheat programs shall not exceed $ 50,000. The term "payments" does not include:

(1) Loans or purchases;

(2) Any part of any payment that represents compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(3) Any gain realized by a producer for repaying a loan for a crop of rice, upland cotton, feed grains, or wheat under a marketing loan program;

(4) Any deficiency payment received for a crop of wheat or feed grains as the result of a reduction of the loan level for the crop and the resulting increase in established "target" price payments in accordance with § 713.108(a)(4);

(5) Any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice in accordance with a program established under § 713.55;

(6) Any inventory reduction payment for a crop of rice, upland cotton, feed grains, or wheat in accordance with a program established under § 713.56; and

(7) Any benefit received as a result of any cost reduction action taken in accordance with section 1009 of the Food Security Act of 1985.

(c) In accordance with the regulations in Part 796 of this chapter, payments shall not be made for a period of 5 crop years to program participants who are convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance such as marihuana.

(d) The programs are applicable throughout the United States, including Puerto Rico.

§ 713.2 Administration.

(a) The programs will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service ("ASCS") and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (herein called "State and county committees").

(b) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also (1) correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part, or (2) require a county committee to withhold taking any action which is not in accordance with the regulation of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the program.

§ 713.3 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in Part 719 of this chapter governing the reconstitution of farms shall also be applicable except where those definitions conflict with the definitions set forth in this section.

(b) *"Annual nonconserving crop"* means any annual crop intended for harvest or use in any feed form except for the following:

(1) Grasses regardless of use, including sweet sorghum, millet, and sudan grass;

(2) Legumes, including peas, beans or soybeans for seed, grain, or processing where planting of such crops was delayed beyond the normal planting period by a disaster and the crop is too poor to be used for seed, grain, or processing. In all other cases, soybeans produced for seed, grains, or processing are a nonconserving crop; and

(3) Small grains that are disposed of before the disposal deadline and excluded by the operator.

(c) *"Base period"* means the five crop years immediately preceding the current crop year.

(d) *"Conserving uses"* shall mean all uses during a year of cropland as defined in Part 719 of this chapter except for:

(1) Acreage of crops for harvest or use during the current crop year. These crops shall include:

(i) A crop of rice, upland cotton, feed grains, wheat, or ELS cotton;

(ii) A crop of soybeans;

(iii) Any nonprogram crop; and

(iv) Any crop for which Price support is available through loans and purchases in accordance with chapter XIV of this title.

(2) Acreage which is not available to be cropped in the current year because:

(i) Of a contract under the Water Bank Program in accordance with Part 752 of this chapter;

(ii) Of an agreement under the Great Plains Conservation Program in accordance with Part 631 of this title;

(iii) Of a contract under the Conservation Reserve Program in accordance with Part 704 of this chapter; or

(iv) The acreage is designated as acreage conservation reserve ("ACR") acreage for the current year.

(3) Any land which the producer was prevented from planting to a crop of rice, upland or ELS cotton, feed grains, or wheat and which is considered as planted to such crop for the purpose of computing crop acreage bases;

(4) Any acreage which is determined to be ineligible in accordance with § 713.97; and

(5) Any other acreage which is not available to be cropped in the current year and which is excluded in accordance with instructions issued by the Deputy Administrator.

(e) *"Considered planted acreage"* means for a crop the following:

(1) With respect to the 1961 through 1985 crop years, the acreage of a program crop determined to be considered as planted in accordance with the regulations in this part which were applicable for such crop year; and

(2) With respect to the 1986 and subsequent crop years, the sum of the following except that for farms participating in a set-aside, acreage reduction, or diversion program for the crop, the sum of the planted acreage and considered planted acreage for the crop shall not exceed the crop acreage base for the crop for the crop year:

(i) Any acreage devoted to ACR for the crop under a set-aside, acreage reduction, or diversion program as set forth in this part or any other part;

(ii) For wheat, any acreage eligible for payment in accordance with the wheat grazing and hay program;

(iii) The acreage determined to be intended to be planted to the crop but which was prevented from being planted to the crop because of drought, flood, or other natural disaster, quarantine, or other conditions beyond the control of the producer in accordance with § 713.105;

(iv) For farms on which producers are participating in an acreage reduction program for the crop, the acreage of nonprogram crops and conserving uses credited to the crop in accordance with § 713.102;

(v) For farms on which the acreage required to be devoted to conservation uses has been reduced in accordance with § 713.57, the smaller of the following, as determined in accordance with instructions issued by the Deputy Administrator:

(A) The amount of the reduction in acreage required to be devoted to conservation uses; or

(B) The acreage of cropland on the farm which is devoted to conserving uses, nonprogram crops, soybeans, or peanuts and which is not considered as being planted to a program crop under any other provision of this part;

(vi) For farms for which there is a Conservation Reserve Program contract in effect, an acreage equal to the amount by which any crop acreage base is reduced in accordance with § 713.98 due to participation in the Conservation Reserve Program in accordance with Part 704 of this chapter.

(vii) For farms for which the acreage report filed in accordance with Part 718 of this chapter reflects zero acreage of the crop, the acreage of approved nonprogram crops and conserving uses credited to the crop in accordance with § 713.102.

(f) *"Corn"* means field corn or sterile high-sugar corn. Popcorn, sweet corn, and corn varieties grown for decoration uses are excluded.

(g) *"Cotton"* means upland cotton and ELS cotton.

(h) *"Crop"* or *"Commodity"* means barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, or wheat ("Crop" is used when the reference is to a specific year or to growing plants; "Commodity" is used when the reference is general and abstract).

(i) *"Current year"* means the calendar year in which the crop with respect to which payment may be made under this part would normally be harvested.

(j) *"Disposal deadline"* means the date or time by which an acreage of barley, wheat, or oats must be disposed of in order that such acreage will not be considered as barley, wheat or oats for harvest or by which an acreage of rye or similar grain must be disposed of in order for the acreage to qualify as ACR acreage in accordance with § 713.62 or as a conserving or conservation use.

(k) *"Doublecropping"* means the planting and harvesting of two or more different crops on the same acreage during a crop year, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

(l) *"Farm program acreage"* means the acreage used to compute deficiency payments for the crop for the farm as determined in accordance with § 713.108(b).

(m) *"Farm program payment yield"* means the yield for the farm which is determined by the county committee in accordance with § 713.6 adjusted to reflect any determinations made with respect to such yield in accordance with Part 780 of this chapter.

(1) *"1985 farm program payment yield"* means:

(i) The yield for the farm which was determined by the county committee in accordance with the regulations in this part which were applicable for the 1985 crop year; or

(ii) The yield for the farm which is determined in accordance with instructions issued by the Deputy Administrator if no yield was determined for the farm for the 1985 crop year.

(n) *"Extra Long Staple (ELS) cotton"* means any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified by the Deputy Administrator: American-Pima; Sea Island; Sealand; all other varieties of the Barbadense species of cotton and any hybrid thereof; and any other cotton in which one or more of these varieties predominate.

(o) *"Grain sorghum"* means grain sorghum of a feed grain or dual purpose variety (including any cross which, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is excluded regardless of use.

(p) *"Marketing year"* means the 12-month period beginning in the current year and ending the next year as follows:

(1) Barley, oats, and wheat. June 1–May 31.

(2) Cotton and rice. August 1–July 31.

(3) Corn and grain sorghum. September 1–August 31.

(q) *"NCA crops"* means the crops which are so designated by the Secretary of Agriculture for any crop year in an announcement which establishes a normal crop acreage requirement.

(r) *"Nonprogram crop"* means any crop other than a crop of rice, upland or ELS cotton, feed grains, wheat, or soybeans as determined in accordance with instructions issued by the Deputy Administrator.

(1) *"Approved nonprogram crop"* means:

(i) Any nonprogram crop, including any crop which is grown for experimental purposes, which is approved by the Administrator, or a designee of the Administrator, after determining: (i) That the production of such crop is not likely to increase the cost of the price support program, and will not affect farm income adversely, and (ii) the production is needed to provide an adequate supply of the commodity, or, in the case of commodities for which no substantial domestic production or market exists but that could yield industrial raw materials, the production is needed to encourage domestic manufacture of such raw material and could lead to increased industrial use of such raw material to the long-term benefit of United States industry.

(ii) With respect only to the 1986 crop, any nonprogram crop which the producer has, after December 23, 1985, and before February 26, 1986, planted or contracted to plant, as determined by the State committee or its representative

in accordance with instructions issued by the Deputy Administrator.

(z) *"Other nonprogram crop"* means any nonprogram crop except approved nonprogram crops.

(aa) *"Person"* means an individual, joint stock company, corporation, estate or trust, association, or other legal entity, except that two or more entities shall be combined as one person in accordance with:

(1) The regulations found at Part 795 of this chapter for the purpose of administering maximum payment limitations;

(2) The regulations found at Part 796 of this chapter for the purpose of administering the provisions of the Food Security Act of 1985 with respect to the production of controlled substances; and

(3) The regulations found at Part 12 of this title pertaining to the highly erodible land and wetland provisions (commonly known as "sodbuster and swampbuster" provisions).

(bb) *"Planted acreage"* for a crop means the total of:

(1) The acreage planted for harvest as determined under the guidelines set forth in § 713.4; and

(2) The volunteer acreage of the crop except that acreage which is determined not to be economically practical to harvest.

(cc) *"Producer"* means a person who, as owner, landlord, tenant, or sharecropper, shares in the risk of producing the crop, or would have shared had the crops been produced.

(dd) *"Rice"* means rice excluding sweet, glutenous, or candy rice such as Mochi Gomi.

(ee) *"Small grains"* means barley, oats, wheat, and rye.

(ff) *"Soybeans"* means any variety of soybeans which is planted regardless of the intended use.

(gg) *"Upland cotton"* means planted cotton and stub cotton other than ELS cotton.

§ 713.4 Determining crop acreages.

(a) The county committee shall apply the guidelines in paragraphs (b) and (c) of this section in determining crop acreages planted for harvest, as well as any further instructions which may be issued by the Deputy Administrator.

(b) The county committee shall include as crop acreage planted for harvest any of the following:

(1) The acreage harvested;

(2) The acreage of small grains which was not disposed of before the disposal deadline; and

(3) The acreage of small grains which was disposed of before the disposal deadline if such acreage qualified for a reduced yield disaster payment in accordance with the provisions of §§ 713.130 and 713.131 or failed acreage credit in accordance with the provisions of § 713.105.

(c) The county committee shall exclude as crop acreage planted for harvest any of the following:

(1) The acreage which failed and could have been replanted by the final planting date established for the crop, as determined by the Deputy Administrator, but which was not replanted;

(2) The acreage that is approved as ACR acreage in accordance with the provisions of §§ 713.60–713.74;

(3) The acreage which was disposed of without feed or other benefit (including lint benefit for cotton) and excluded by the operator on the report of acreage as provided in Part 718 of this chapter;

(4) The acreage of barley, oats, or wheat disposed of with feed benefit before the disposal deadline;

(5) The acreage which was approved for wildlife food plots or planted for wildlife in accordance with instructions issued by the Deputy Administrator;

(6) The acreage approved for grazing and hay payments in accordance with the provisions of § 713.54; and

(7) The acreage that was planted so late that it could not mature and produce grain or lint and, with respect to corn and grain sorghum, was not harvested for silage;

(8) Any acreage which is planted for experimental purposes under the direct supervision of a State experimental station or a commercial company and which meets other requirements as prescribed by the Deputy Administrator;

(9) The acreage of barley, oats or wheat which is determined by the county committee to be not economically practical to harvest because of a low yield and which is excluded as crop acreage by the operator;

(10) The acreage of barley, oats, wheat or rice which is left standing as a cover crop past the disposal deadline determined by the Deputy Administrator if the producer: (i) Requests from the county committee, in writing, permission to allow such crop to be left standing before the crop reporting date; (ii) destroys the crop mechanically if the crop does not deteriorate before the end of the nongrazing period so that no benefit can be derived from the grain; (iii) does not obtain feed benefit from the crop; and (iv) pays the cost of a farm visit by a representative of the county committee to determine compliance with program requirements for disposal of the crop; and

(11) Any acreage designated under the Conservation Reserve Program in accordance with Part 704 of this chapter.

(d) The county committee shall consider mixtures of crops to be the crop that is predominant in the mixture, except as follows:

(1) When a crop of barley, oats, or wheat is the first seeded crop in a mixture of small grains seeded or volunteered at different times, the mixture is considered to be the crop of barley, oats, or wheat which is first seeded.

(2) When corn or grain sorghum is mixed with another crop in the same row, the mixture shall be considered to be corn or grain sorghum, as applicable.

§ 713.5 [Reserved]

§ 713.6 Farm program payment yields.

(a) *Rice, upland cotton, barley, corn, grain sorghum, oats, and wheat yields.* (1) The bushel or pound per acre farm program payment yield for the 1986 and 1987 crop years shall be established in accordance with instructions issued by the Deputy Administrator and shall be the average of the farm program payment yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest.

(2) If no farm program payment yield for a crop was established for any of the 1981 through 1985 crop years, the county committee may assign a yield in accordance with instructions issued by the Deputy Administrator for any such year based upon the farm program payment yields for similar farms in the county or other surrounding area.

(3) The bushel or pound per acre farm program payment yield for the 1988, 1989, and 1990 crop years shall, as announced by CCC:

(i) Be equal to the farm program payment yield established for the farm in the 1986 and 1987 crop years; or

(ii) Be established in accordance with instructions issued by the Deputy Administrator. Such instructions shall provide that the farm program payment yield shall equal the yield per harvested acre for the crop for each of the five immediately preceding crop years, excluding the crop year with the highest yield per harvested acre, the crop year with the lowest yield per harvested acre, and any crop year in which the crop was not planted on the farm. For purposes of this paragraph, the yield per harvested acre shall mean:

(A) With respect to the 1983 through 1985 crop years, the farm program payment yield for the crop;

(B) With respect to the 1986 crop year, the larger of the farm program payment yield for the crop or 90 percent of the 1985 farm program payment yield for the crop; and

(C) With respect to the 1987 and subsequent crop years:

(*1*) The actual yield per harvested acre; or

(*2*) If the actual yield per harvested acre is not available, the county committee may assign the farm a yield for the farm on the basis of actual yields for the crop for such crop year on similar farms in the area.

(b) *ELS Cotton.* The yield in pounds per acre for the current year shall be the average of the actual yields per harvested acre for the farm for the 3 preceding years, adjusted as follows:

(1) If no acreage of the crop was grown on the farm for a year, a yield for the crop shall be assigned by the county committee for the farm for such year based upon the actual yields for similar farms in the county or surrounding area;

(2) If any yield in the 3-year period preceding the current year is affected adversely as the result of a natural disaster or other condition beyond the producer's control, the county committee may adjust the yield for any such year upward to the simple average of the highest 4 actual yields of the most recent 5 years; and

(3) The Deputy Administrator may prescribe a limitation on the amount by which an ELS cotton yield may be reduced from one year to the next year.

(c) *Yield reduction.* For the purpose of determining the amount of any deficiency payment as provided in § 713.108 or the amount of any disaster payment as provided in §§ 713.130 and 713.131, the farm program payment yield for a farm shall be reduced in accordance with instructions issued by the Deputy Administrator to reflect:

(1) Any reduction in the current year's yield for such farm which is the result of causes other than a natural disaster or other condition beyond the producer's control, such as a change in farming practice; or

(2) The inclusion in the farm program acreage of an acreage of nonprogram crops or conserving uses in accordance with § 713.108(b)(2) provided that such acreage would not normally produce the farm program payment yield for the applicable crop of rice, upland cotton, feed grains, or wheat.

(d) *Reports of production and supporting evidence.* A report of production is required to determine the actual yield per harvested acre for ELS cotton for the 1986 through 1990 crop years and, if applicable in accordance with paragraph (a) of this section for rice, upland cotton, feed grains, and wheat for the 1987 through 1990 crop years. Such report shall be made in accordance with instructions issued by the Deputy Administrator and on forms prescribed by the Deputy Administrator. When production has been disposed of through commercial channels, the county committee may require the operator or other producers to furnish documentary evidence in order to verify the information provided on the report. Acceptable evidence may also include such items as the original or a copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries. The county committee may also verify the evidence submitted by the producer with the warehouse, gin, or other entity which received production. If the evidence is not furnished or the information provided on the report cannot be verified, the county committee may disapprove the report of production.

(e) *Unrepresentative acreage.* If the crop acreage for a year is less than 50 percent of the acreage base for the crop, the county committee may determine, in accordance with instructions issued by the Deputy Administrator, that the actual yield for the year is unrepresentatively high and reduce the yield accordingly. Such reduced yield shall be used to compute actual harvested yields in accordance with paragraph (a)(3) of this section or for ELS cotton yields in accordance with paragraph (b) of this section.

§ 713.7 Crop acreage bases.

(a) An acreage base shall be established for a farm for each year beginning with 1986 for barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, and wheat.

(b) Except as provided in paragraphs (e) and (f) of this section, the crop acreage bases for any farm for the 1986 and subsequent crops of barley, corn, grain sorghum, oats, and wheat shall be the average of the acreage planted and considered planted to such program crop on the farm in the base period.

(c) For upland cotton and rice, except as provided in paragraphs (d), (e), and (f) of this section, the crop acreage base shall be equal to the average of the acreages planted and considered planted in the base period, excluding years in which no planted and considered planted acreage has been determined for the farm.

(d) Any crop acreage base established in accordance with paragraph (c) of this section shall not exceed the average of the acreages planted and considered planted to the crop in the two crop years of the base period immediately preceding the current crop year, if an acreage of the crop was not planted or considered planted during one or more years of the base period.

(e) If the county committee determines that a crop is grown on a farm in a clearly established crop-rotation pattern for 2 or more years, the acreage base established for such crop will be determined by using the average of the planted and considered planted acreages for the 3 immediately preceding crop years in the rotation cycle that correspond to the current year and in accordance with instructions issued by the Deputy Administrator.

(f) The sum of the crop acreage bases for a farm for a crop year shall not exceed the cropland for the farm, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator. If the sum of such crop acreage bases exceeds the cropland, the operator will be given the opportunity to reduce one or more crop acreage bases. If the operator fails to make such a reduction, such a reduction shall be made in accordance with instructions issued by the Deputy Administrator.

(g) The crop acreage base established for a crop of ELS cotton on a farm shall be the average of the planted and considered planted acreages for ELS cotton for the 3 years immediately preceding the year prior to the current year.

§ 713.8 Farm acreage bases.

(a) For the 1986 crop year, a farm acreage base shall not be established for any farm.

(b) For 1987 and subsequent crop years, a farm acreage base shall be established for each farm for each such crop year when one or more crop acreage bases are established for the farm for crops of wheat, feed grains, upland cotton, and rice. Such farm acreage base shall equal the sum of:

(1) The crop acreage bases established for such crop year for wheat, feed grains, upland cotton, and rice;

(2) The average of the acreages planted to soybeans for harvest in 1986 and subsequent crop years; and

(3) The average of acreages devoted to a conserving use in 1986 and subsequent crop years, excluding acreages considered in computing crop acreage bases.

(c) In no case may the farm acreage base for a farm for a crop year exceed the cropland for the farm for such crop

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year, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator.

§ 713.9 Normal crop acreages.

The normal crop acreage (hereinafter called "NCA") is the average of the sum of the acreages for the farm during a period of the NCA crops as designated by the Secretary of Agriculture in an announcement which establishes an NCA requirement for the crop year.

§ 713.10 Notice of crop and farm acreage bases, yields, and NCA.

The operator of a farm shall be notified in writing of the crop acreage bases, yields, and, if applicable, the farm acreage base and/or NCA which are established for the farm. However, no such notice shall be mailed to any producer who has on file in the county office a request in writing that such producer not be furnished with the notice. Such a producer shall be considered as having been notified timely and correctly of the contents of the notice.

§ 713.11 Reconstitution of farms.

(a) Farms shall be reconstituted in accordance with Part 719 of this chapter.

(b) The actual yield established and the yield established by the county committee for any crop for a farm resulting from a combination of farms or portions of farms shall not, except for rounding, exceed the weighted average of the applicable yields established for the component portions of such farm.

(c) The weighted average of the actual yield established and the yield established by the county committee for any crop for a farm resulting from a division of a farm shall not, except for rounding, exceed the applicable yields established for the parent farm before the division of such farm.

(d) In determining the weighted average yields determined in accordance with paragraphs (b) and (c) of this section, the crop acreage base for the farm for the current year shall be used.

§ 713.12 Adjusting crop acreage bases.

(a) *Adjustments using farm acreage base.* (1) With respect to the 1987 and subsequent crop years, an operator of a farm may adjust acreage bases established for crops of wheat, feed grains, upland cotton, and rice in accordance with paragraphs (a)(2)–(4) of this section.

(2) Within 15 days from the day the county committee issues a notice of the crop and farm acreage bases established for the farm for such crop year, the operator must file with the county committee a request for an adjustment of such bases.

(3) Any upward adjustment in the acreage base established for one crop must be offset by an equivalent total downward adjustment in the acreage bases established for such crop year for one or more other crops produced on the farm.

(4) Any increased adjustment of a crop acreage base established for a farm shall not exceed 10 percent of the farm acreage base. If more than one crop acreage base is increased, the total of such increases shall be limited to 10 percent of the farm acreage base.

(5) A crop acreage base of zero shall not be increased under this section.

(b) *Other adjustments.* The acreage base established for a crop of a commodity produced on the farm may be adjusted in accordance with instructions issued by the Deputy Administrator:

(1) If, in accordance with the regulations set forth at Part 780 of this chapter, it is determined that the acreage base previously established for a crop of a commodity produced on the farm is not representative of the current operator's normal farming operations on the farm; or

(2) When the county committee approves a recomputation of the acreage base established for the crop of a commodity produced on the farm in an amount not to exceed the planted and considered planted acreages for the farm for 1 or more previous years.

(c) *Changes from rotation to regular or vice versa.* The operator of a farm may request that the acreage base for a crop of a commodity produced on a farm be established in accordance with either § 713.7(e) or § 713.7(b)–(d). Such a request shall not increase the acreage base for such crop in the current year. The county or State committee may approve an increase in the acreage base established for such crop in future crop years in accordance with instructions issued by the Deputy Administrator.

(d) *ELS cotton adjustments.* An acreage base reserve is established for the 1986 crop of ELS cotton that equals 5 percent of the total of the acreage bases established for such crop in accordance with paragraph (b) of this section. Such reserve is in addition to the total of the acreage bases established for such crop in accordance with paragraph (b) of this section and shall be used by the county committee, after approval by and in accordance with instructions issued by the Deputy Administrator, for the purpose of adjusting the 1986 ELS crop acreage bases established for farms to correct for inequities and prevent hardship, and for the purpose of establishing ELS cotton acreage bases for farms on which no ELS cotton was planted during the period 1982–1985. The operator shall file a written request, in such manner as is prescribed by the Deputy Administrator, for an adjustment using the acreage base reserve. Such adjustments shall be in addition to, and not in lieu of, adjustments approved under paragraphs (b) and (c) of this section.

(e) *Reductions.* If the county committee determines that an adequate supply of irrigation water is a prerequisite for growing the crop of a commodity produced on the farm, the county committee shall reduce the acreage base established for such a crop for a crop year to the extent that irrigation water is not available.

§ 713.13–713.48 [Reserved]

§ 713.49 Nature of contract.

(a) The contract shall provide that the operator and each producer on the farm shall agree to limit the acreage of the crop planted for harvest and devote an eligible acreage of land to approved conservation uses as may be required by the commodity program for the crop as announced by the Secretary and as provided in this part. The contract shall provide for recording the shares for division of payments for the crop. The operator shall agree to file timely a report of acreage on Form ASCS–578 accurately listing the ACR acreage and the planted acreage of the program crop(s) planted for harvest on the farm, and such other acreages as are subject to the terms and conditions of the contract.

(b) CCC shall agree that harvested production of the crop shall be eligible for loans and purchases in accordance with Parts 1421 and 1427 of this title. CCC shall also agree that deficiency payments, if it is determined that a final deficiency payment will be greater than zero, and any applicable diversion payments, disaster payments, or wheat grazing and hay payments shall be made to such operator and producers.

(c) The contract shall contain such other provisions as CCC determines appropriate to carry out programs established by this part.

(d) The contract shall provide for the payment of liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the contract. The purpose of an acreage reduction, set-aside, land diversion, or wheat grazing and hay program is to obtain a reduction of acreage from the production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once a contract has been entered into between CCC and producers, the Department and other segments of the agricultural community act based upon the assumption that the contract will be fulfilled and the reduction in acreage will be obtained. The actions of CCC include budgeting and planning for programs in subsequent crop years. A producer's failure to comply with a contract undermines the basis for these actions, damages the credibility of the Department's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. While the adverse effects on CCC of the producer's failure to comply with a contract are obvious, it would be impossible to compute the actual damages suffered by CCC.

§ 713.50 Contracting procedures.

(a) *Signup.* Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office where the records for the farm are maintained not later than a date specified in the announcement of the program.

(b) *Producer eligibility.* (1) The producer must be a person who shares in the risk of producing the program crop produced in the current year, or shares in the proceeds therefrom, on the farm for which the contract is submitted, or would have shared in the crop if it had been produced on such farm in the current year. The county committee shall determine who is a person in accordance with Part 795 of this chapter and instructions issued by the Deputy Administrator.

(2) A minor will be eligible to participate in the program only if one of the following conditions exists:

(i) The right of majority has been conferred upon the minor by court proceedings;

(ii) A guardian has been appointed to manage the minor's property and the applicable documents are signed by the guardian; or

(iii) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

§ 713.51 Required acreage reduction.

(a) The Secretary will announce:

(1) Whether an acreage reduction program is in effect for a crop year for a specific crop;

(2) The percentage reduction to be applied to the crop acreage base to determine the amount of required reduction; and

(3) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the permitted acreage, which is the acreage base established for the crop minus the sum of the acreage required to be devoted to ACR in accordance with an acreage reduction program and minus any acreage which is required to be devoted to ACR in accordance with a land diversion program;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage equal to the reduced acreage, or, as determined in accordance with instructions issued by the Deputy Administrator, a proportionately smaller acreage if the planted acreage is smaller than the permitted acreage; and

(3) Otherwise comply with all program requirements.

§ 713.52 Required set-aside.

(a) The Secretary will announce:

(1) Whether a set-aside requirement is in effect for a crop year for a specific crop of feed grains or wheat;

(2) The percentage of the planted crop acreage that is required to be set aside; and

(3) Whether producers on a farm are required not to exceed the NCA established for the farm, less any acreage which is devoted to conservation uses under any program and any wheat grazing and hay acreage; and

(4) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the NCA requirements, if applicable;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage equal to the set-aside requirement, and

(3) Otherwise comply with all program requirements.

§ 713.53 Land diversion.

(a) The Secretary will announce:

(1) Whether a land diversion program is in effect for a crop year for a specific crop;

(2) The percentage of the planted crop acreage or of the crop acreage base that producers are required to divert from the production of the crop under the program;

(3) The payment rate;

(4) Whether advance program payments will be available;

(5) Whether compliance with the land diversion requirement is required in order for the producer on the farm to be eligible for loans, purchases and payments for the crop; and

(6) Other requirements of the program.

(b) In order to be eligible for any land diversion payment, producers of the applicable crop or crops shall:

(1) Comply with all other program requirements for the crop;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage which is equal to the required diverted acreage.

§ 713.54 Wheat grazing and hay.

(a) The Secretary will announce whether a wheat grazing and haying program is offered for a crop year and the applicable payment rate.

(b) In order to be eligible for payment under the wheat grazing and hay program for a crop year, producers of wheat shall do all of the following:

(1) Graze or cut for green chop, hay, or silage, immature wheat that was planted for harvest as grain;

(2) Report the acreage for grazing and hay on Form ASCS–477;

(3) Complete the cutting or grazing to the point that the wheat is substantially destroyed by the disposal deadline; and

(4) Comply with all other program requirements for the crop.

(c) In no event can producers receive a payment under the wheat grazing and hay program on more than the larger of:

(1) 50 acres; or

(2) 40 percent of the total acreage on the farm of barley, corn, grain sorghum, oats, upland cotton, and wheat which is intended for harvest in the current year.

§ 713.55 Loan deficiency program.

(a) The Secretary will announce whether loan deficiency payments will be made to producers on a farm for a specific crop for a crop year. In order to be eligible for any loan deficiency payments if such payments are made available, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain loans or purchases in accordance with Parts 1421 or 1427 of this title, as applicable;

(2) Agree to forego obtaining such loans or purchases; and

(3) Otherwise comply with all program requirements.

(b) The loan deficiency payment shall be computed by multiplying the loan payment rate, determined in accordance with paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan in accordance with Parts

1421 and 1427 of this title but not to exceed the product obtained by multiplying:

(1) The individual farm program acreage for the crop determined in accordance with § 713.108 by

(2) The farm program payment yield for the farm provided in § 713.6.

(c) The loan payment rate for a crop shall be the amount by which the level of price support loan originally determined for the crop exceeds the level at which CCC has announced, in accordance with Parts 1421 and 1427 of this title, that producers may repay their price support loans.

(d) With respect to upland cotton, an amount not to exceed one-half of such payment may be made and, with respect to rice, an amount not to exceed one-half of such payments shall be made in accordance with Part 770 of this chapter.

§ 713.56 Inventory reduction program.

(a) The Secretary will announce whether an inventory reduction program is in effect for a crop year for a specific crop for producers on a farm.

(b) In order to be eligible for any inventory reduction payments, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain a loan or purchase agreement in accordance with Parts 1421 or 1427 of this title, as applicable;

(2) Agree to forego obtaining such loans or purchases;

(3) Agree to forego receiving deficiency payments made in accordance with § 713.106;

(4) Limit the acreage of the crop planted for harvest to the crop acreage base reduced by one-half of the acreage required to be diverted from production in accordance with any acreage reduction and/or land diversion program for the crop; and

(5) Otherwise comply with all program requirements.

(c) Inventory reduction payments shall be computed in the same manner as set forth in § 713.55 (b) and (c). Such payments shall be made in accordance with Part 770 of this chapter.

§ 713.57 Reduction in acreage to be devoted to conservation uses.

(a) A producer whose payments under the feed grain, rice, upland and ELS cotton, or wheat programs may be reduced because of the application of the provisions with respect to the payment limitation as specified in accordance with Part 795 of this chapter may request a downward adjustment in the amount of acreage which is otherwise required to be devoted to conservation uses on the farm. The request shall be in writing and shall be filed with the county committee on a form and by a date prescribed by the Deputy Administrator. If such a producer is sharing in program payments with respect to farms in two or more counties, it shall be the producer's responsibility to furnish information concerning the producer's participation in the other counties to the county committee with which the application for the downward adjustment is filed.

(b) Any reduction in ACR acreage required under this section shall be computed by: (1) estimating the producer's total payments which would be received under the feed grain, rice, upland and ELS cotton, and wheat program on all farms, (2) determining the percentage by which the estimated total payments must be reduced in order to comply with the payment limitation, and (3) multiplying such percentage by the number of acres in the producer's portion of the ACR acreage which is required for the farm or farms participating in the programs. When both land diversion and acreage reduction or set-aside programs are in effect, the acreage required to be devoted to ACR in accordance with the acreage reduction or set-aside programs shall be reduced to zero before the acreage to be devoted to ACR in accordance with the land diversion acreage is reduced.

(c) If the producer is participating in the acreage reduction or set-aside program on two or more farms, the producer may elect to have the reduction in ACR acreages under these programs, but not under the land diversion programs, divided among the farms in such proportion as the producer may designate.

§§ 713.58–713.59 [Reserved]

§ 713.60 Basic rules for ACR acreage.

Except as set forth in §§ 713.65–713.74, or as announced by the Secretary, ACR acreage which is designated in accordance with the provisions of §§ 713.51–713.53 must:

(a) Be eligible land in accordance with § 713.61;

(b) Meet minimum size and width requirements as specified in Part 718 of this chapter;

(c) Be devoted to approved cover or practices in accordance with the provisions of § 713.62;

(d) Not be grazed or harvested, except as provided in § 713.63; and

(e) Be cared for in accordance with the provisions of § 713.64.

§ 713.61 Eligible land.

(a) For 1986 and subsequent crop years, land designated as ACR acreage must:

(1) Meet one of the provisions of paragraph (b) of this section, and

(2) Meet all provisions of paragraph (c) of this section.

(b) ACR acreage must be cropland that:

(1) Is not in a summer fallow rotation and was devoted to small grains, row crops, or other crops planted annually in 2 of the 3 immediately preceding years. Land that was designated as ACR acreage or conservation use acreage under a production adjustment program will be considered as planted acreage in the year designated, except that land which is designated in accordance with paragraph (b)(3) of this section and which was not devoted to small grains or row crops in the immediately preceding year, land on which water storage systems are installed, and land on which orchards were planted may not be so considered;

(2) Is in a summer fallow rotation as shown by the past history of crops produced on the farm if the land was devoted to small grains, row crops, or other crops planted annually in 1 of the 2 immediately preceding years, or was considered to have been so cropped;

(3) Is currently devoted to, and in at least 2 of the 3 immediately preceding years was devoted to, grasses or legumes for the production of hay, seed, or pasture in rotation with small grains or row crops if the acreage devoted to such grasses or legumes and designated as ACR equals or exceeds acreage newly seeded to such grasses or legumes:

(i) In the summer or fall of the preceding year or seeded in the spring of the current year; and

(ii) On cropland that would have been eligible for designation as ACR acreage under paragraph (b)(1) of this section; or

(4) Does not meet the requirements of paragraph (b)(1) of this section if the ACR acreage requirement exceeds the total of all of the cropland, including the cropland planted in the current year which is eligible to be designated according to paragraph (b)(1) of this section, and such cropland is designated as ACR acreage in the following order:

(i) All cropland eligible under paragraph (b)(1) of this section even though such cropland may already have been planted in the current year;

(ii) All cropland that was devoted to small grains or row crops in 1 of the last 3 years; and

(iii) All cropland that was not devoted to small grains or row crops in the last 3 years.

(c) Land designated as ACR acreage may not be land:

(1) That is designated:

(i) Under the Water Bank Program in accordance with Part 752 of this chapter;

(ii) Under the Great Plains Conservation Program in accordance with Part 631 of this title;

(iii) Under the Conservation Reserve Program set forth in accordance with Part 704 of this chapter;

(iv) As ACR acreage for another program crop;

(2) For which a deficiency payment is or could be made for the program crop;

(3) That is acreage credited to the crop in accordance with § 713.102;

(4) Used as turn areas, except that these areas may be designated if both of the following apply:

(i) Minimum size requirements as specified in Part 718 of this chapter are met; and

(ii) The county committee determines that the areas are normally planted to a crop;

(5) That is determined to be ineligible in accordance with § 713.97; or

(6) That is flooded or under water at any time during the year unless one of the following applies:

(i) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year;

(ii) After being flooded, such land could be planted in the current year by no later than the final reporting date for spring-seeded crops.

§ 713.62 Approved cover crops and practices.

(a) *Establishing and maintaining cover crops or practices.* (1) An approved cover crop or practice shall be established on acreage which is designated as ACR acreage by the end of the planting season for spring-seeded crops. Such cover crop or practice shall be maintained through the end of the calendar year except as follows:

(i) The ACR acreage may be seeded in the fall to crops which are of a type that when seeded in the fall in the county in which the farm is located normally attain maturity in the next calendar year;

(ii) The ACR acreage may be tilled in the fall for spring planting and left bare only if approved in accordance with paragraph (c) of this section; and

(iii) If the ACR acreage is used for nonagricultural purposes, the cover crop or practice must be maintained through the end of the nongrazing period established for ACR acreage.

(b) *Nationally approved cover crops and practices.* The following are nationally approved cover crops and practices for ACR acreage:

(1) Annual, biennial, or perennial grasses and legumes, excluding soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(2) Barley, oats, rice, wheat, and other small grains planted and disposed in accordance with instructions issued by the Deputy Administrator.

(3) Crop residue from using "no till" or "minimum till" practices.

(c) *Locally approved cover crops.* Cover crops and practices that will protect the ACR acreage from wind and water erosion throughout the calendar year may be approved on a State or local basis as follows:

(1) The county committee, in consultation with the district conservationist of the Soil Conservation Service ("SCS"), may recommend the cover crop or practice. The State committee shall consult with appropriate wildlife agencies and organizations and other interested groups to determine whether additional practices that further the goals of such organizations and groups can be developed.

(2) The cover crops or practices recommended shall not include:

(i) The growing of soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(ii) Control measures which are more costly to the producer than other similar alternatives normally accepted for the area.

(iii) Control measures which are inconsistent with erosion control measures normally used on other cropland in the area.

(3) Residue and stubble of destroyed program crops may be recommended, provided that the crop residue, as opposed to regrowth, shall not be grazed after the end of the nongrazing period announced by the county committee in accordance with § 713.63(b).

(4) The State committee shall approve the cover crops or practices after consulting the SCS State Conservationist as to whether the practices will sufficiently protect the land from wind and water erosion.

§ 713.63 Use of ACR acreage.

(a) *State committee determination.* The State committee may authorize grazing of ACR acreage for the 1986 through 1990 crops and haying for the 1986 crop, except that:

(1) With respect to ACR designated for the 1986 crop of upland cotton, ELS cotton, and rice, haying and/or grazing shall not be permitted during any 5-consecutive month period, as determined by the State committee, during the 1986 calendar year;

(2) With respect to ACR designated for the 1986 crops of wheat and feed grains, haying and/or grazing shall, if authorized, be permitted during at least 5 of the principal growing months as determined by the State committee; and

(3) With respect to ACR designated for the 1987 through 1990 crops of rice, upland cotton, ELS cotton, feed grains, and wheat, grazing shall not be permitted during any 5-consecutive-month period, as determined by the State committee, during the applicable calendar year.

(b) *Harvesting.* Except as provided in paragraphs (a) and (d) of this section and § 713.72, harvesting on ACR acreage is prohibited for all crops:

(1) In the current year; and

(2) After December 31 of the current year if the crop would normally mature and be harvested in the current year.

(c) *Other uses.* (1) Removing catfish, crayfish, and other fish for commercial purposes is prohibited during any period during which haying and/or grazing is prohibited in accordance with paragraph (a) of this section.

(2) The ACR acreage may be used for noncommercial recreation, temporary location of beehives, or for home gardens.

(d) *Emergency Uses.* Notwithstanding the provisions of § 713.63 (a)–(c), the Deputy Administrator may authorize, on a county by county basis, the use of the ACR acreage for haying or grazing under such conditions as may be prescribed when abnormal weather conditions cause a critical shortage of hay and forage in the county.

§ 713.64 Control of erosion, insects, weeds, and rodents on ACR acreage.

(a) The farm operator shall use needed control measures in a timely manner to control erosion, insects, weeds, and rodents on the ACR acreage.

(b) Control measures for weeds need only be sufficient to prevent the spread of weeds. These measures must be consistent with control practices normally carried out on similar cropland in the area. It is not intended that control practices be more costly to the producer than what is normal for the area.

(c) The county committee shall prescribe and require additional control measures upon a determination that those used by the producer are inadequate. When clipping or mowing to control weeds is prescribed, the county committee shall specify a time for clipping or mowing which is compatible

with wildlife practices, but such time must be before the time such weeds form seeds.

§ 713.65 Orchards.

Unless the State committee determines otherwise, the entire area of an orchard or nursery meeting the minimum size requirements specified in Part 718 of this chapter is eligible to be designated as ACR if the trees were planted in the current year or fall of the previous year. The land also must meet the eligibility requirements of § 713.61.

§ 713.66 Land going out of agricultural production.

If the county committee determines that the designated ACR acreage may be devoted to a nonagricultural use during the current year, the operator must establish that the land, in the absence of the program, would have been planted to a program crop.

§ 713.67 Emergency grazing or harvesting.

ACR acreage may be hayed or grazed in emergency conditions in accordance with guidelines issued by the Deputy Administrator.

§ 713.68 Wildlife food or habitat.

(a) Land devoted to wildlife food plots that meets requirements determined by the State committee, in consultation with wildlife agencies, is eligible to be designated as ACR acreage. Program crops may be grown on such acreage and small grains need not be disposed of by the disposal deadline. However, there must also be compliance with the requirements of § 713.67.

(b) Land which is owned or operated by State or Federal agencies and which is planted to grain for wildlife for the agency is not eligible to be designated as ACR acreage.

§ 713.69 Noncrop uses or practices.

(a) The uses and practices listed in paragraph (b) of this section are eligible for ACR acreage if:

(1) Such uses and practices are installed on acreage that is otherwise eligible as provided in § 713.61; and

(2) The requirements in §§ 713.62 and 713.63 are met.

(b) The following uses and practices are eligible on ACR acreage:

(1) Trees or shrubs planted for any purpose other than orchards or vineyards;

(2) Terraces and sod waterways;

(3) Water storage developed for any purpose, including fish or wildlife habitat; or

(4) Filter strips used to reduce siltation in a stream or ditch.

§ 713.70 Insufficient ACR acreage.

Before the final date for reporting crop acreage as provided in Part 718 of this chapter, producers may destroy crops on an acreage to do one of the following:

(a) Decrease the amount of program crop so that the ACR acreage available is sufficient; or

(b) Designate all or part of the destroyed acreage as ACR acreage. The acreage must be eligible land as provided in § 713.61. The acreage shall be devoted to an approved cover or practice in accordance with the provisions of § 713.62 as soon as practicable after destruction of the crop.

§ 713.71 Destroyed crop acreage.

(a) Operators may substitute for the ACR acreage already designated and reported on Form ASCS–578 acreages of small grains or row crops that were destroyed. However, with respect to such substitution of acreages, the following conditions are applicable.

(1) The operator must request the substitution in writing and agree that there will be no deficiency payment made with respect to the production from the substituted acreage;

(2) The land must be determined to be eligible as provided in § 713.61; and

(3) The land must be devoted to an approved cover or practice in accordance with the provisions of § 713.62 as soon as practicable after the substitution.

(b) The substitution of acreages cannot be used to offset a payment reduction as a result of the application of the failure to comply fully provisions of Part 791 of this chapter.

§ 713.72 Provisions applicable to certain small grains.

The following provisions are applicable with respect to 1986 ACR acreage only:

(a) Acreage which was devoted to wheat, barley, or oats and was growing before announcement by the Secretary of the 1986 programs for such crops may be designated as ACR acreage and may be harvested or grazed in accordance with the provisions of this section and § 713.63. This provision shall be applicable only as specified in an announcement by the Secretary.

(b) The acreage shall be subject to the requirements for minimum size as specified in Part 718 of this chapter and the requirement for the care of ACR acreage as set forth in § 713.64.

§ 713.73 Late harvesting.

Harvesting of a crop on ACR acreage may be permitted when all of the following apply:

(a) The crop matured in the preceding year; and

(b) The county committed determines that:

(1) The crop was not harvested because of adverse weather or other conditions beyond the producer's control; and

(2) Harvesting will be completed as soon as practicable.

§ 713.74 Skip rows.

The acreage between rows of the crop is eligible ACR acreage if:

(a) The skip is at least the larger of 4 normal rows or 160 inches from plant to plant, and

(b) The land meets the requirements for eligible land as set forth in § 713.61 and use and care of the acreage as set forth in §§ 713.63 and 713.64.

§§ 713.75—713.96 [Reserved]

§ 713.97 Ineligible land.

(a) Land described in paragraphs (b)–(f) of this section shall not be eligible for the following purposes:

(1) Payments under any program in accordance with this part;

(2) Designation as ACR; or

(3) Consideration as being planted to a crop in accordance with § 713.102.

(b) Land which the producer does not own, lease or sharecrop.

(c) Land which the producer does not have authority to use for program crops, such as highway, railroad, or other right of way, airport buffer strips and other similar areas.

(d) Land which is subject to a restrictive easement on behalf of the Farmer's Home Administration which prohibits its use for program crops.

(e) Land that is flooded or under water at any time during the year unless one of the following applies:

(1) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year, or

(2) After being flooded, such land could be planted in the current year by no later than the final reporting date for spring planted crops.

(f) Land that is going out of agricultural production during the current year unless the county committee determines that the land could have been planted to a program crop and that such crop could have been harvested.

§ 713.98 Participation in Conservation Reserve Program.

(a) Whenever the owner or operator of a farm signs a contract to participate in the Conservation Reserve Program formulated in accordance with sections

1231–1245 of the Food Security Act of 1985:

(1) The farm acreage base, if applicable, and the total of the crop acreage bases, acreage allotments, and marketing quotas established for the farm for the first crop year for which such contract is applicable shall be reduced in the same proportion as the ratio of the cropland taken out of production under the conservation reserve contract to the total cropland on the farm. If acreage bases, acreage allotments, and marketing quotas were established for more than one crop, the owner or operator shall determine which acreage bases, acreage allotments, or marketing quotas shall be reduced to achieve the total reduction required.

(2) The crop acreage bases established for the farm for each succeeding crop year for which the conservation reserve contract is in effect shall be:

(i) Computed in accordance with § 713.7; and

(ii) Then reduced in accordance with instructions issued by the Deputy Administrator.

(3) The amount of the reduction made in accordance with paragraphs (a) (1) and (2) of this section shall be considered as planted to the applicable crop for the purpose of establishing future crop acreage bases.

(4) If there is a contract in effect between CCC and the producers with respect to the annual program for one or more of the crops for which the acreage base is reduced in accordance with paragraph (a) (1) of this section, the operator and producers shall have the option of:

(i) Complying with the contract using the acreage base for the crop after such reduction is determined; or

(ii) Canceling such contract without liability for liquidated damages.

(b) After the end of the period of a conservation reserve contract, the farm acreage base and crop acreage bases for the next crop year shall be computed in accordance with §§ 713.7 and 713.8.

§ 713.99 Compliance with sodbuster and swampbuster provisions.

(a) Whenever a producer, or a person affiliated with a producer, is determined to be ineligible in accordance with part 12 of this title, such producer shall be ineligible for any payments under this part and shall refund any payments already received in accordance with § 713.103(e).

(b) Notwithstanding any other provisions of this part, any acreage of highly erodible land or converted wetland that is planted to crops in violation of the provisions of part 12 of this title shall be disregarded in determining acreages planted for harvest, considered planted acreages, acreages devoted to nonprogram crops, and acreages devoted to conserving uses.

§ 713.100 Cross compliance on the farm.

(a) Whenever an acreage reduction program is announced by the Secretary with respect to a crop of rice, upland cotton, wheat, or feed grains, and the Secretary announces that cross compliance is in effect with respect to such a crop, as a condition of eligibility for loans, purchases, and payments with respect to such a crop, producers on a farm shall not plant an acreage of rice, upland cotton, ELS cotton, feed grains, or wheat in excess of the acreage base established for the crop for the farm if an acreage reduction program is in effect for such crop of rice, upland cotton, ELS cotton, feed grains, or wheat.

(b) With respect to feed grains and wheat, whenever a set-aside program is announced by the Secretary for one or more of such crops, compliance on the farm with any one commodity program (i.e., wheat or feed grains) may be required as a condition of eligibility for loans, purchases and payments made in accordance with the other commodity programs.

§ 713.101 Offsetting compliance between farms.

(a) Whenever offsetting compliance requirements are made applicable to a crop program for the current year as announced by the Secretary the provisions of paragraphs (b) through (g) of this section shall be applicable.

(b) To be eligible for loans, purchases, and payments authorized for a crop when an acreage reduction or set-aside program is in effect for a crop of feed grains, ELS cotton, or wheat, the landlord, landowner, or operator shall assure that on any other farm in which the landlord, landowner, or operator has an interest as landlord, landowner, or operator, the total acreage of the crop on the farm does not exceed the crop acreage base established for such crop.

(c) To be eligible for loans, purchases, and payments authorized for an NCA crop when compliance with the NCA is required for a crop of wheat or feed grains, the landlord, landowner, or operator shall assure that on any other farm in which the landlord, landowner, or operator has an interest as landlord, landowner, or operator that the total acreage of NCA crops on the farm does not exceed the NCA for such farm.

(d) A landowner or landlord is subject to paragraphs (b)–(c) of this section even if the landowner or landlord leases for cash or other consideration all or part of a farm when the lease is executed after the Secretary announces any offsetting compliance requirement.

(e) Any executor, trust officer, or farm manager responsible for the management of a farm shall be considered as the operator of the farm for purposes of paragraphs (b) or (c) of this section if such person receives a percentage of the gross or net farm income exceeding 10 percent of the crops or proceeds thereof for such management service.

(f) For purposes of paragraphs (b) or (c) of this section, all persons or entities in each category listed below shall be considered as the same producer and shall be fully responsible for the action of any person or entity in that category:

(1) Husband and wife, except that the husband and wife may be considered as separate producers if the spouse receiving benefits does not share to any degree in crops or proceeds thereof from the other farm, ownership or managerial control of the other farm is not shared by such spouse, and there have been no changes in the ownership, operation, or managerial control of the other farm which would tend to defeat the purposes of paragraphs (b) or (c) of this section.

(2) Minor children and the parent, guardian, or other person legally responsible for the minor unless the person legally responsible for the minor does not occupy the same household as the minor and shares no interest in the farming operations of the minor.

(3) A partnership and a member of the partnership with over 50 percent interest in the partnership.

(4) A corporation and a stockholder with over 50 percent of the stock of such corporation.

(5) An estate and the sole heir of the estate.

(6) A trust and the sole beneficiary of the trust.

(7) Two or more corporations, estates, trusts, or any combination of such entities which have common stockholders, beneficiaries or heirs who own more than a combined 50 percent interest in each corporation, estate, or trust.

(g) Notwithstanding the foregoing:

(1) Any person who places land in a trust the beneficiary of which is such person's parent, brother, sister, spouse, child or grandchild shall be considered the same producer as the trust for purposes of paragraphs (b) or (c) of this section if such person acts as the trustee or trust officer for the trust or in any

other way retains any management responsibility for the land subject to the trust even though such person does not receive any share of the crops or proceeds thereof from such land.

(2) When the State committee, or the county committee with the approval of the State committee, determines that a corporation, partnership, or trust was formed, modified or used for the purpose of circumventing paragraphs (b) or (c) of the section, the corporation and any stockholder of the corporation, the partnership and any member of the partnership, or the trust and any beneficiary of the trust shall be considered as the same producer and shall be fully responsible for the actions of the corporation, partnership, or trust.

(3) A landowner, landlord, or operator may be exempted from complying with paragraphs (b) or (c) of this section with respect to a crop if the county committee determines that a lease which prevents compliance was executed prior to the time that the Secretary announced that offsetting compliance is a requirement of the program for such crop.

(4) A landowner may be exempt from complying with paragraphs (b) or (c) of this section if the landowner has an undivided interest in the farm that does not exceed 50 percent.

(5) A landowner, landlord, or operator may be exempt from complying with paragraphs (b) or (c) of this section for the current year if that person assumed ownership or control of the land after the crop was planted for the current year.

§ 713.102 Determination of farm program acreage.

(a) *Reporting.* As a condition of eligibility for loans, purchases and payments in accordance with the provisions of this part, the operator must submit a report of acreage in accordance with Part 718 of this chapter that lists all crops and land uses which are subject to the contract for all cropland on the farm for the crop year. Except as otherwise provided in this part, all acreage determinations shall be made in accordance with Part 718 of this chapter.

(b) *Designation to a program crop.* The operator shall designate on the report of acreage filed in accordance with Part 718 of this chapter whether the acreage of approved nonprogram crops and conserving uses on the farm shall be credited to one or more of the crops of wheat, feed grains, upland cotton, and rice. The operator shall also designate the acreage of other nonprogram crops to one or more of the crops of wheat, feed grains, upland cotton, and rice. If the operator fails to so designate such acreages to such crops by the final reporting date established for the farm, the county committee shall allocate the acreage of approved nonprogram crops and conserving uses and the acreage of other nonprogram crops in accordance with instructions issued by the Deputy Administrator.

(c) *Irrigated acreage.* In accordance with instructions issued by the Deputy Administrator, an acreage of approved nonprogram crops and conserving uses may be credited as an irrigated acreage of wheat or feed grains if: (1) Both irrigated and nonirrigated yields have been established for such crop of wheat or feed grains; (2) all or part of the acreage actually planted to wheat or feed grains for harvest is irrigated; and (3) the acreage of approved nonprogram crops and conserving uses is irrigated or considered to be irrigated in the current crop year.

(d) *Limitation.* The sum of the acreage of approved nonprogram crops and conserving uses and the acreage of other nonprogram crops credited to the crop shall not exceed the difference between the acreage base for the crop for the crop year and the sum of:

(1) The acreage of the crop planted for harvest;

(2) The acreage which the county committee determines, in accordance with § 713.105, the producer was prevented from planting to the crop due to a natural disaster or similar condition beyond the producer's control; and

(3) The acreage which is designated as ACR for the crop.

(e) *Other nonprogram crops.* An acreage of other nonprogram crops, excluding peanuts, shall be credited to a crop of rice, upland cotton, feed grains, or wheat only as follows:

(1) Producers on the farm must be participating in the acreage reduction program for such program crop;

(2) The acreage of the program crop planted for harvest must equal at least 50 percent of the permitted acreage for such crop;

(3) The amount of acreage of other nonprogram crops to be credited shall be limited to: (i) 50 percent of the permitted acreage of the program crop for each of the 1986 and 1987 crop years; (ii) 35 percent of the permitted acreage of the program crop for the 1988 crop year; and (iii) 20 percent of the permitted acreage of the program crop for the 1989 crop year; and

(4) No acreage of other nonprogram crops shall be credited to a crop of rice, upland cotton, feed grains, or wheat if the farm program acreage for the crop determined in accordance with § 713.108(b) includes any acreage of approved nonprogram crops or conserving uses.

(f) *Haying and grazing.* Haying and grazing of approved nonprogram crops and conserving uses credited as the program crop shall only be permitted if haying and/or grazing is requested by the State committee and the Secretary approves such a request.

§ 713.103 General payment provisions.

(a) *Issuance.* The payment of any amount which is due the operator or other producers on a farm shall be made only after the producers are determined to be in full compliance with the contract and applicable regulations.

(b) *Failure to comply fully.* Except as otherwise provided herein and in Part 791 of this chapter, no payment shall be made for a farm or to a producer when there is failure to comply fully with the regulations set forth in this part.

(c) *Payment due producer.* Subject to the provisions of the maximum payment limitation in accordance with § 713.1 and the payment limitation regulations found at Part 795 of this chapter, the total earned payment due each eligible producer under the program shall be determined by multiplying the total earned payment for the farm by the producer's share of such payment.

(d) *Payment declined or producer ineligibility.* If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the payment computed for the farm in accordance with the provisions of this section, such payment or portions thereof shall not become available for any other producer on the farm.

(e) *Unearned payments and overpayments.* A person shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. A late payment charge may be assessed in accordance with the provisions of Part 1403 of this title.

(f) *Combined entities.* Whenever two or more individuals or entities are considered to be one person in accordance with the maximum payment limitation regulations found at Part 795 of this chapter, the controlled substance regulations found at Part 796 of this chapter, or the sodbuster and swampbuster regulations found at Part 12 of this title:

(1) Any payment issued to one such individual or entity in accordance with this part shall be considered a payment to all such individuals and entities; and

(2) Each individual or entity shall be jointly and severally liable for refunding the amounts of any unearned payments or overpayments in accordance with paragraph (e) of this section and for

paying any liquidated damages applicable under the contract.

(g) *Making payments.* When diversion or deficiency payments computed for two or more crops on a farm result in a determination that a payment is due to a producer for one crop but a refund of an unearned payment is due from the producer under the program for another crop, CCC shall, without regard to the regulations on setoffs and withholdings found at Part 13 of this title:

(1) Deduct the amount of the refund from the amount of the payment due;

(2) Pay the producer the remaining amount of the payment due, if any; and

(3) Provide the producer with an explanation of the payment computations and the basis for the reductions.

§ 713.104 Advance payments.

(a) *General.* In order to receive an advance deficiency or diversion payment authorized for a crop:

(1) The operator and other producers on a farm must:

(i) Enter into a contract with CCC to participate in the acreage limitation, set-aside, and land diversion program, if applicable;

(ii) Request the advance payment; and

(2) The farm must not have been determined to be out of compliance with any of the requirements of the contract or the program at the time of payment.

(b) *Advance deficiency payments.* Advance deficiency payments will be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and time of payment.

(c) *Advance diversion payments.* Advance diversion payments will be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and time of payment.

(d) *Refunds.* (1) The provisions of § 713.103(e) are applicable to the amounts of any advance diversion or deficiency payments which are not earned by the producer. However, no late payment charge shall be assessed with respect to producers who have otherwise complied with the requirements of the program for the crop but have failed to refund to CCC the amount of the advance deficiency payments before the end of the marketing year for the crop when the final deficiency payment rate determined under § 713.108(a) is zero or is less than the advance deficiency payment rate.

(2) In addition to the provisions of § 713.103(e), interest shall be charged on the amount of the advance payment if a producer obtains an advance deficiency or land diversion payment, or both, for a crop on a farm but does not comply with the requirements for any acreage limitation, set-aside, or land diversion program required for the crop on the farm for the year. Interest shall be computed from the date of issuance of the payment to the date such payment is refunded. The rate of interest shall be the rate of interest in effect for CCC commodity loans on the date of the issuance of the payment.

§ 713.105 Disaster credit.

(a) In order to obtain failed acreage or prevented planting credit, the operator must file an application for disaster credit on a form prescribed by the Deputy Administrator. Such application shall be filed with the county committee by a date prescribed by the Deputy Administrator.

(b) In cases of prevented planting, the county committee shall approve prevented planting credit for the acreage which the committee determines that the producer intended to plant to the crop and a natural disaster or other condition beyond the producer's control prevented the planting of the crop.

(c) In cases of failed acreage, the county committee shall approve failed acreage credit for the acreage which the committee determines was planted to the crop with the reasonable expectation of producing a crop and was damaged or destroyed by a natural disaster or other condition beyond the producer's control such that harvesting the crop is not feasible or economical.

(d) When prevented planting or failed acreage credit for a crop is approved for an acreage:

(1) And producers on the farm are participating in the production adjustment program for such crop, such credit shall be limited to the permitted acreage for such crop.

(2) Except for established practices of doublecropping as prescribed by the Deputy Administrator, any later crop planted on such acreage shall not be considered to be planted for any purpose under the programs authorized by this part and Parts 1421 and 1427 of this title regardless of the permitted acreage for such crop.

§ 713.106 Established (target) prices.

The established prices for each crop of a commodity will be announced by the Secretary.

§ 713.107 National program acreage.

Whenever an acreage reduction requirement is not in effect for a crop, a national program acreage shall be established and announced by the Secretary. The national program acreage shall equal the number of harvested acres the Secretary estimates will produce the quantity (less imports) that will be used domestically and for export during the marketing year for such crop. The national program acreage which is established for any crop may later be revised if the Secretary determines that an adjustment is necessary, based upon the latest information available, for the purpose of determining an allocation factor for use as provided for in § 713.106.

§ 713.108 Deficiency payments.

(a) *Basis for payment rate.* Except as provided in paragraphs (a)(2) and (4) of this section:

(1) The deficiency payment rate shall be the amount by which the established (target) price exceeds the higher of:

(i) The national average loan rate established for the crop; or

(ii) The national weighted average market price received by producers for the crop during:

(A) The first 5 months of the marketing year for wheat, feed grains, and rice;

(B) The calendar year that includes the first 5 months of the marketing year for upland cotton; and

(C) The first 8 months of the marketing year for ELS cotton.

(2) For each of the 1986 through 1988 crops of wheat and feed grains, the Secretary may announce that, if the national weighted average market price received by producers for the crop during the first 5 months of the marketing year exceeds the amount specified in paragraph (a)(3) of this section, the deficiency payment rate for such crop shall be the amount by which the established "target" price for such crop exceeds the higher of the amount specified in paragraph (a)(3) of this section and the loan rate determined for such crop before any adjustment made by the Secretary to maintain a competitive market position.

(3) The amounts applicable with respect to paragraph (a)(2) shall be:

(i) For wheat, $2.55 per bushel for the 1986 crop; $2.65 per bushel for the 1987 crop; and $2.82 per bushel for the 1988 crop; and

(ii) For corn, $2.04 per bushel for the 1986 crop; $2.19 per bushel for the 1987 crop; and $2.24 per bushel for the 1988 crop, and for grain sorghum, oats, and, if applicable, barley, such amounts as are determined to be fair and reasonable in relation to the amount which is determined for corn.

(4) For wheat and feed grains, whenever the Secretary announces a reduction in the loan and purchase level

for a crop in order to maintain a competitive market position for such crop, the deficiency payment rate shall be increased by such amount as is determined necessary to provide the same total return to producers as if the loan and purchase level had not been reduced, taking into consideration payments made in accordance with paragraph (a)(2) of this section. In accordance with section § 713.1, payments made as a result of such increase shall not be subject to the $50,000 maximum payment limitation. In such case, the amount of the deficiency payment rate shall be the smaller of:

(i) The difference between the national average loan rate for the crop before the reduction by the Secretary and the national weighted average market price received by producers during the entire marketing year, or

(ii) The difference between the national average loan rate before reduction and the national average loan rate after reduction by the Secretary.

(b) *Farm program acreage.* (1) If no acreage reduction requirement is in effect for a crop, the farm program acreage shall be the acreage of the crop planted for harvest for the current year multiplied by an allocation factor. The allocation factor shall be determined by dividing the national program acreage for the crop, as specified in § 713.107, by the estimated national current year acreage for harvest of the crop. However:

(i) The allocation factor shall not be less than 80 percent for each of the crops of barley, corn, grain sorghum, oats, rice, and wheat nor more than 100 percent for such crops and upland and ELS cotton;

(ii) The farm program acreage shall not be reduced by the allocation factor if the current year acreage of the crop on the farm is reduced voluntarily from the acreage base for the crop by a percentage announced by the Secretary; and

(iii) The allocation factor shall be adjusted in accordance with instructions issued by the Deputy Administrator to provide equity for a farm for which the reduction in the current year's acreage is insufficient to exempt the farm from the application of the allocation factor.

(2) If an acreage reduction program or required land diversion program is in effect for the crop, the farm program acreage shall be the acreage of the crop planted for harvest for the current year, not to exceed the permitted acreage. However, for wheat, feed grains, upland cotton, and rice, if an acreage reduction program is in effect and the acreage of the crop planted for harvest is less than 92 percent of the permitted acreage for the crop, the farm program acreage may be increased, but not to exceed 92 percent of the permitted acreage of the crop, as follows:

(i) If the acreage of the crop planted for harvest is less than 50 percent of the permitted acreage of the crop, the farm program acreage shall not be increased,

(ii) If the acreage of the crop planted for harvest is at least 50 percent of the permitted acreage of the crop for the year, the farm program acreage shall be the sum of:

(A) The acreage of the crop planted for harvest, plus

(B) The amount by which the sum of the acreages of approved nonprogram crops and conserving uses credited to the crop in accordance with § 713.102 exceeds 8 percent of the permitted acreage for the crop; and

(iii) If a State or local agency has imposed in an area of the State or county a quarantine on the planting for harvest of any crop for which price support is available, the Deputy Administrator, based upon a recommendation of the State committee, may allow the acreage subject to the quarantine to be considered as eligible for purposes of program payments as follows:

(A) Acreage subject to the quarantine may be credited to a crop in accordance with § 713.102, and

(B) The farm program acreage on a farm where such acreage is credited to the crop shall be the sum of the acreage of the crop planted for harvest and the sum of the acreages of approved nonprogram crops and conserving uses credited to a crop in accordance with § 713.102 which is in excess of 8 percent of the permitted acreage for such crop.

(c) *Payment computation.* Deficiency payments shall be determined for:

(1) The 1986 crop year, for each crop by multiplying the farm program acreage by the higher of the farm program payment yield as provided for in § 713.6 or 97 percent of the 1985 farm program payment yield by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(2) The 1987 crop year, for each crop by multiplying the farm program acreage by the higher of the farm program payment yield as provided for in § 713.6 or 95 percent of the 1985 farm program payment yield by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(3) The 1988 through 1990 crop years for each crop by multiplying the farm program acreage by the farm program payment yield as provided for in § 713.6 by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(d) *Date of payment.* Deficiency payments will be made to producers as soon as practicable after the following dates:

(1) *Barley, oats and wheat.* December 1 of the current year.

(2) *Upland cotton and rice.* February 1 following the current year.

(3) *Corn and grain sorghum.* March 1 following the current year.

(4) *ELS cotton.* May 15 following the current year.

(5) *Increased payments.* If applicable, the increased payments for feed grains and wheat prescribed in paragraph (a)(4) of this section shall be made as soon as practicable after the following dates:

(i) *Wheat, barley, and oats.* July 1.

(ii) *Corn and grain sorghum.* October 1.

(e) *Additional yield payments.* If, with respect to the 1986 crop of any commodity, 97 percent of the 1985 farm yield exceeds the farm program payment yield for the 1986 crop or, with respect to the 1987 crop of any commodity, 95 percent of the 1985 farm yield exceeds the farm program payment yield for the 1987 crop, the portion of the deficiency payment which is attributable to such difference shall be made in commodity certificates in accordance with Part 770 of this title. Such payments shall be made no later than the dates specified in paragraph (d) of this section. Advance payments may be made as announced by the Secretary.

§ 713.109 Division of program payments.

(a) *General.* Each person on a participating farm shall be given the opportunity to participate in the program for a crop in proportion to such person's interest in the program crop or the interest such person would have had if the crop had been produced. The name of such person shall be listed on the contract. Federal agencies can earn no program payments, but any shares to which such agencies would otherwise be entitled shall also be shown on the contract as though the agencies were earning them. The sum of the percentage shares of the program payment shall equal 100 percent.

(b) *Division of program payment.* Each producer's share of the farm program payment for a crop shall be based on the following:

(1) The producer's share of the crop or the proceeds thereof, or

(2) If no crop is produced, the share which the producer would have received had the crop been produced. Notwithstanding the preceding sentence: a different division of payment which is fair and equitable may be approved by the county committee if all of the producers who would otherwise share in the payment agree to the different division in writing. Such different division of payments may also be approved by the county committee, with the concurrence of a representative of the State committee, even though all of the producers do not agree with respect to the division of payment. In addition, a different division of payments may be approved by the county committee when required by § 713.111.

(c) *Refund of payments not properly divided.* Payments which producers receive with respect to which they are determined not to be entitled shall be refunded to CCC as required by § 713.103. In the event of fraud, the producers shall be subject to the provisions relating to fraudulent representation as set forth at § 713.152.

§§ 713.110–713.129 [Reserved]

§ 713.130 Eligibility for regular prevented planting and reduced yield payments.

(a) Prevented planting payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and if prevented planting crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(b) Reduced yield payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and reduced yield crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(c) Prevented planting payments and reduced yield disaster payments are authorized to be made to producers of wheat, feed grains, upland cotton and rice only if:

(1) Such a producer has entered into a contract with CCC for the applicable crop of the commodity on a farm;

(2) The operator and all producers have been determined to be in compliance with such contract; and

(3) The operator of the farm submits a Form ASCS–574, Application for Disaster Credit, in accordance with instructions issued by the Deputy Administrator, and also submits a report of production and disposition in accordance with § 713.6(d).

(d) In addition to the requirements of paragraph (c) of this section, the county committee must also determine that the operator and other producers were prevented from planting an eligible commodity or that the production of an eligible commodity on an acreage resulted in a reduced yield of such commodity because of a drought, flood, other natural disaster or other condition beyond the control of the operator or other producer.

(e) Regular disaster payments shall be computed in accordance with § 713.131.

§ 713.131 Regular disaster payment computations.

(a) *Prevented planting*—(1) *Payment rate.* The payment rate is one-third of the established (target) price as provided for in § 713.106.

(2) *Acreage eligible for payment.* The acreage eligible for payment equals the smallest of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster of other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the crop that was planted or prevented from being planted in the previous year;

(iii) For crops for which an acreage reduction or set-aside requirement is in effect or on farms participating in a land diversion or wheat grazing and hay program, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year; or

(iv) The acreage for which crop insurance under the Federal Crop Insurance Act is not available.

(3) *Payment computation.* Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm program payment yield as provided in § 713.6 times the prevented planting payment rate.

(b) *Reduced yield*—(1) *Payment rate.* The reduced yield payment rate is one-third of the established (target) price for upland cotton and rice and one-half of the established (target) price for barley, corn, grain sorghum, oats, and wheat as provided in § 713.106.

(2) *Payment computation.* Reduced yield payments shall be determined for each crop by multiplying the reduced yield payment rate times the smaller of the following computations:

(i) The result determined by multiplying the acreage of the crop on the farm by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6, and subtracting the determined production for the farm therefrom; or

(ii) The result determined by multiplying the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6, and subtracting the determined production for the eligible acreage therefrom.

(3) *Determining production.* The production from any acreage shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and shall be added to the actual production for the purpose of determining eligibility for and the amount of reduced yield disaster payments; and

(ii) The farm program payment yield shall be used with respect to any acreage for which the production cannot be determined. However, if the county committee determines that the acreage was affected by a natural disaster, the farm program payment yield with respect to such acreage shall be the larger of 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6 or the actual average yield from the harvested acreage of the crop.

§§ 713.132–713.149 [Reserved]

§ 713.150 Provisions relating to tenants and sharecroppers.

(a) Program payments shall not be approved for the current year if it is determined that any of the conditions specified below exist:

(1) The landlord or operator has not given the tenants and sharecroppers on the farm an opportunity to participate in the program;

(2) The number of tenants and sharecroppers on the farm is reduced by the landlord or operator below the number on the farm in the year before the current year in anticipation of or because of participating in the program, except that this provision shall not apply to the following:

(i) A tenant or sharecropper who leaves the farm voluntarily or for some reason other than being forced off the farm by the landlord or operator in anticipation of or because of participating; or

(ii) A cash tenant, standing-rent tenant, or fixed-rent tenant unless: (A) Such tenant was living on the farm in the year immediately preceding the current year, or (B) at least 50 percent of such tenant's income was received from farming in the immediately preceding year;

(3) There exists between the operator or landlord and any tenant or sharecropper, any lease, contract, agreement, or understanding unfairly exacted or required by the operator or landlord which was entered into in anticipation of participating in the program the effect of which is:

(i) To cause the tenant or sharecropper to pay to the landlord or operator any payments earned by the person under the program,

(ii) To change the status of any tenant or sharecropper so as to deprive the person of any payments or other right which such person would otherwise have had under the program,

(iii) To reduce the size of the tenant's or sharecropper's producer unit, or

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper;

(4) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC.

(b) Notwithstanding any other provision of this section, landlords or operators who in the past had tenants or sharecroppers on their land for purposes of producing the program crop and such individuals are not classified as employees subject to the minimum wage provisions under the Fair Labor Standards Act, may pay these individuals on a wage basis and will not be considered as reducing the number of tenants or sharecroppers.

§ 713.151 Successors-in-interest.

(a) In the case of death, incompetency, or disappearance of any producer whose name appears on the contract, the payment due such producer shall be made to such producer's successor, as determined in accordance with the regulations found at Part 707 of this chapter.

(b) When any person who had an interest as producer of the crop or would have had an interest in the crop as a producer if the crop had been planted (the "predecessor") is succeeded on the farm by another producer (the "successor") after a contract has been executed, any payment which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the county committee agree is fair and equitable, the contract shall be revised accordingly, and the successor shall sign the revised contract. If the predecessor and successor fail to agree on a revised contract and the predecessor has become unable to carry out the producer's responsibilities under the contract, CCC may terminate the contract with respect to the predecessor and enter into a new contract with the successor.

(c) In any case in which the amount of any payment due any successor producer has been paid previously to another producer, such payment shall not be paid to the successor unless it is recovered from the producer to whom it has been paid or payment to the successor is authorized by the Deputy Administrator.

§ 713.152 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program determination shall not be entitled to payments under the crop program with respect to which the representation was made and shall refund to CCC all payments received by such producer with respect to such farm and such crop program and shall be liable for liquidated damages in accordance with the contract.

(b) A producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly: (1) adopted any scheme or device which tends to defeat the purpose of the program, (2) made any fraudulent representation, or (3) misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to all farms and shall be liable for liquidated damages in accordance with the contract.

§ 713.153 Setoffs and assignments.

(a) *Producer indebtedness and claims.* Except as provided in paragraph (b) of this section, any payment or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing setoffs and withholdings found at Part 13 of this title shall be applicable to such payments.

(b) *Assignments.* Any producer entitled to any payment may assign any such payments which are made in cash in accordance with regulations governing assignment of payment found at Part 709 of this chapter.

§ 713.154 Payments by commodities and commodity certificates and refunds.

(a) Payments under the programs authorized by this part may be made in the form of commodities or commodity certificates in accordance with Part 770 of this chapter.

(b) Whenever it is determined in accordance with § 713.103 that a producer was overpaid or received payments that were not earned, and such payments were in the form of commodities or commodity certificates, the producer shall refund the amount of the overpayment either by returning commodity certificates in an amount equal to the overpayment or by making cash payments to CCC.

§ 713.155 Appeals.

A producer, an assignee of a cash payment, or a holder of a commodity certificate issued in accordance with § 713.154 may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at Part 780 of this chapter. .

§ 713.156 Performance based upon advice or action of county or State Committee.

The provisions of Part 791 of this chapter with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 713.157 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 713) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Numbers 0560–0092, 0560–0650, 0560–0091, 0560–0030, and 0560–0071.

B. Part 770 of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 770—COMMODITY CERTIFICATES, IN KIND PAYMENTS, AND OTHER FORMS OF PAYMENT

Secs.

770.1 Applicability.
770.2 Payments in lieu of cash payments.
770.3 Payments to persons with outstanding CCC loans.
770.4 Commodity certificates.
770.5 In kind payments.
770.6 Assignments.
770.7 Miscellaneous provisions.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101A, 103A, 105C, 107C, 107D, 107E, and 405 of the Agricultural Act of 1949, as amended; 99 Stat 1419, as amended, 1407, as amended, 1395, as amended, 1446, 1383, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1441–1, 1444–1, 1444b, 1444b–2, 1444b–3, 1444b–4, 1445d, and 1425).

§ 770.1 Applicability.

This part shall be applicable to payments and loans made in accordance with the programs administered by the Commodity Credit Corporation (CCC) or the Agricultural Stabilization and Conservation Service (ASCS) as determined and announced by the Secretary of Agriculture or a designee of the Secretary. The definitions of the terms applicable to 7 CFR Part 713 set forth at § 713.3 also shall be applicable to this part, except that the term "commodity" shall mean any agricultural commodity.

§ 770.2 Payments in lieu of cash payments.

(a) CCC will, in accordance with applicable program provisions, make payments in a form other than in cash to persons who otherwise are eligible to receive a cash payment from CCC. Further, subject only to statutory prohibition and notwithstanding any provisions of the contract to participate in a program administered by CCC or ASCS, CCC may: at its option, make payments in a form other than in cash.

(b) As determined by CCC, payments in a form other than in cash may be made in the following manner:

(1) By delivery of a commodity to a person at a warehouse or other similar facility;

(2) By transfer of negotiable warehouse receipts;

(3) By the issuance of certificates which CCC shall redeem in accordance with this part;

(4) By the acquisition and use of commodities pledged as collateral for CCC price support loans;

(5) By the use of commodities owned by CCC; and

(6) By such other methods as CCC determines appropriate, including methods to enable the producer to receive payments in order to assure that the producer receives the same total return as if the payments had been made in cash.

(c) The value of the payments made in any manner set forth in paragraph (b) shall be determined by CCC.

(d) Notwithstanding any other provision of this part, CCC may, with respect to producers who are members of a cooperative marketing association which has been determined in accordance with Part 1425 of this title to be eligible to receive price support on behalf of its producer-members, enter into agreements with such producers and such cooperatives to facilitate the making of payments to such producers. Such agreements may include a provision which allows a producer to make available for the use of the cooperative the value of the non-cash payment which would otherwise be made to the producer.

§ 770.3 Payments to persons with outstanding CCC loans.

(a) Persons with outstanding CCC loans who are eligible to receive payments from CCC, including a person authorized to receive a payment on behalf of another person, may be required to liquidate such loans in accordance with this section in order to be eligible to receive a payment authorized by § 770.2.

(b) A person with an outstanding CCC loan must, unless otherwise agreed upon by the person and CCC, redeem and sell to CCC a quantity of the commodity pledged as collateral for a CCC loan, as determined by CCC, in an amount equal in value to the value of the payment which would otherwise be made to such person. If the person has more than one outstanding CCC loan, CCC may, by contract or otherwise, prescribe which loan collateral the person shall be required to redeem in order to receive payment. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advance storage payments received with respect to the redeemed collateral. After redemption and the subsequent sale to CCC of the commodity pledged as collateral for such CCC loan, CCC shall make available to the person a like quantity of the commodity.

§ 770.4 Commodity Certificates.

(a) *General.* CCC may issue commodity certificates as a form of payment. Commodity certificates will bear a dollar denomination. Such certificate may be transferred, exchanged for the inventory of CCC (including the receipt in accordance with paragraph (e) of this section of loan collateral by a person to whom a loan secured by such collateral is made); or exchanged for cash, as provided for in this section. Commodity certificates shall be subject to the provisions of this part, and to any terms, conditions and restrictions provided on the certificate, which are incorporated by reference herein.

(b) *Liens, encumbrances, and State law.* (1) The provisions of this section or the commodity certificates shall take precedence over any state statutory or regulatory provisions which are inconsistent with the provisions of this section or with the provisions of the commodity certificates.

(2) Commodity certificates shall not be subject to any lien, encumbrance, or other claim or security interest, except that of an agency of the United States Government arising specifically under Federal statute.

(3) The provisions of this paragraph (b) shall apply without regard to the identity of the holder of the certificate.

(c) *Transferability.* Except as provided in paragraph (f) of this section, any person may transfer a commodity certificate to any other person. However, any such transfer must be in the full amount of the certificate, and can be effected only by restrictive endorsement on the back of the certificate, showing the name of the transferee and the date of the transfer, and signed by the transferor. CCC will not honor any certificate bearing any endorsement to "bearer" or any other nonrestrictive endorsement, or otherwise transferred in a manner contrary to the regulations contained in this section. The person who submits a commodity certificate to CCC shall endorse the certificate to CCC.

(d) *Exchange of commodity certificate for CCC-owned commodities.* (1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may exchange such certificate, by itself or together with other commodity certificates, for such commodities as are made available by CCC by endorsing and submitting the certificate to CCC. If a person submits commodity certificates for exchange in order that the person would be eligible to receive a quantity of a commodity

which includes less than an entire unit in which the commodity is stored (e.g., less than an entire bale of cotton or an entire barrel of honey): (i) Such person may forfeit the partial unit of the commodity to CCC, or (ii) CCC may issue a check to such person for the partial unit of the commodity or permit such person to purchase the remainder of such unit at a price determined by CCC. A person may obtain information regarding commodities available for exchange and the procedure for exchange from Kansas City Commodity Office, ASCS–USDA, Kansas City: MO 64141–0205.

(2) *Minimum quantities.* A holder of an amount of commodity certificates sufficient to acquire a carload lot, or other quantity as may be determined by CCC, may present such amount for exchange at any time on or before the expiration date of such certificates. A holder who is permitted to exchange the certificate for CCC-owned commodities but who does not possess commodity certificates in the amount specified in the preceding sentence may, not to exceed once during a calendar month, submit such certificates to CCC. CCC will, at CCC's option, pay such holder by check in the amount of the certificate or transfer to such holder title to commodities owned by CCC.

(3) *CCC-owned commodities stored by a person who submits commodity certificates to CCC.* CCC may require or permit holders of commodity certificates to exchange such certificates for commodities owned by CCC which are stored by such holder, without making such commodities or kinds of commodities available to other holders of commodity certificates.

(4) *Valuation.* Except as otherwise may be announced by CCC, CCC will determine the value of CCC-owned commodities made available to holders of commodity certificates.

(5) *Transfer of title.* Title to commodities owned by CCC which are transferred to a person who submits commodity certificates to CCC shall be transferred in store, except as may be determined and announced by CCC. The person who submits certificates to CCC shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC. The transfer of title to such commodities shall occur without regard to any State law or any claim of lien against the commodity or proceeds thereof which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute.

(6) *Expiration date.* CCC may, at its option, disccunt or refuse to accept any commodity certificate presented for exchange after the expiration date stated on the certificate.

(e) *Use of commodity certificates to receive loan collateral.*

(1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may use such certificate to receive commodities pledged as collateral for CCC loans made to such person, at any time on or before the expiration date stated on the certificate. A holder of a commodity certificate who wishes to receive a quantity of a commodity pledged by such person as collateral for a CCC loan in exchange for a certificate shall redeem and sell to CCC a quantity of the commodity equal in value to the dollar denomination of the certificate, as determined by CCC. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advanced storage payments received with respect to the redeemed loan collateral. Upon submission of the certificate, which is endorsed to CCC, to the county ASCS office which issued the loan, the holder of a commodity certificate will receive the quantity of the commodity which has been sold to CCC. Except as otherwise determined by CCC, if the holder of such certificate does not have commodities pledged as collateral for CCC loans equal in value to the dollar denomination of the certificate, as determined by CCC, CCC will, at CCC's option and after the producer has submitted the certificate, pay the difference to the person by check or in the form of a new commodity certificate.

(2) *Ineligible commodities.* No person may use a commodity certificate to receive a quantity of tobacco, peanuts, or extra long staple cotton pledged as collateral for a CCC loan. No person may, before August 1, 1986, use a commodity certificate to receive a quantity of upland cotton pledged as collateral for a CCC loan.

(f) *Certificates bearing a first transfer deadline.* If a commodity certificate bears a "first transfer deadline" date, the person to whom the certificate is issued may not transfer such certificate to another person after such date. Further, the person to whom such a certificate is issued may not exchange the certificate for commodities owned by CCC. Nor after the "first transfer deadline" may such person use such a certificate to receive a quantity of a commodity pledged as collateral for a CCC loan. However, such person may, but only during the ten business days immediately following the first transfer deadline date, submit such certificate, endorsed to CCC, at the issuing county ASCS office in exchange for payment by check in the amount of the commodity certificate.

(g) *"Generic" and commodity-specific commodity certificates.*

(1) *General.* If a commodity certificate indicates that it is a "generic" certificate, such certificate may, subject to the provisions of paragraphs (a) through (f) of this section, be exchanged for any commodity made available by CCC or, as appropriate, used to receive a quantity of any commodity which serves as collateral for a CCC loan. If a certificate is not a "generic" certificate, such certificate may be exchanged for or used to receive only a quantity of the commodity or commodities indicated on the face of the certificate.

(2) *Payments to first handlers, payments to producers who agree to forego obtaining loans, additional yield payments and inventory protection payments.* Notwithstanding any other provision of this section, a certificate issued as payment to first handlers of cotton, as payment to upland cotton producers who agree to forego obtaining price support loans, or as an additional yield payment to producers of upland cotton, as determined by CCC, in accordance with sections 103A(a)(5)(D)(ii), 103A(b), and 506(b)(2), respectively, of the Agricultural Act of 1949, as amended, may not be exchanged for CCC-owned upland cotton until after the expiration of five months following the month in which such certificate is issued. Certificates issued as payments which are determined to be necessary to make raw cotton in inventory on August 1, 1986 available at competitive prices as determined by CCC in accordance with section 103A(a)(5)(D)(ii) of the Agricultural Act of 1949, as amended, may be exchanged for CCC-owned upland cotton only during such period or periods as may be determined and announced by CCC.

(3) *Commodities not available in CCC inventory.* Notwithstanding any other provision of this section, if a person submits a commodity specific certificate to CCC in exchange for a quantity of such commodity and CCC determines it is not possible to make such commodity available, CCC may: (i) Require such person to exchange the commodity specific certificate for a generic certificate; or (ii) refuse to accept

submission of such certificate until CCC is able to make available a quantity of the commodity specified on such certificate.

(h) CCC, at its option, may discount or refuse to accept any certificate made, transferred, or submitted in violation of this section.

§ 770.5 In kind payments.

(a) Subject to the provisions of §§ 770.2 and 770.3, CCC may make payments in the form of commodities. Quantities of commodities made available as payment shall be based upon the value of the commodity, as determined by CCC. Such quantity may be adjusted by CCC to reflect the location, quality, and other similar factors which CCC determines to affect the value of the commodity.

(b) The transfer of title to commodities made available in accordance with paragraph (a) of this section shall be in store, except as determined by CCC, and shall be made without regard to any State law or any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute. The recipient of such commodities shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC.

§ 770.6 Assignments.

Notwithstanding any other provision of this chapter, a payment made under this part may not be the subject of an assignment, except as determined and announced by CCC.

§ 770.7 Miscellaneous provisions.

Except as determined by CCC, the following provisions of this title shall apply to this part:

(a) Part 13, Setoffs and Withholding.

(b) Part 707, Payments Due Persons Who Have Died, Disappeared, or Been Declared Incompetent.

(c) Part 718, Determination of Acreage and Compliance.

(d) Part 780, Appeal Regulations.

(e) Part 790, Incomplete Performance Based Upon Actions or Advice of an Authorized Representative of the Secretary.

(f) Part 791, Authority to Make Payments When There has been a Failure to Comply Fully with the Program.

(g) Part 795, Payment Limitation.

(h) Part 796, Denial of Program Eligibility for Controlled Substance Violations.

(i) Part 1403, Interest on Delinquent Debts.

(j) All other parts of the Code of Federal Regulations which are made applicable to this part.

C. Part 796 of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 796—DENIAL OF PROGRAM ELIGIBILITY FOR CONTROLLED SUBSTANCE VIOLATION

Sec.

796.1 Definitions.
796.2 Prohibition against payments to producers or participants.
796.3 Protecting the interests of landlords, tenants, and sharecroppers and special rule for corporations, partnerships and trusts.

Authority: Sec. 1764 of the Food Security Act of 1985, 99 Stat. 1652 (21 U.S.C. 861a); and Annual Agricultural Appropriation Acts.

§ 796.1 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) "Controlled Substances" means the term as set forth in accordance with 21 CFR Part 1308.

(b) "Person" means an individual, joint stock company, corporation, association, trust, estate, or other legal entity. In order to be considered a separate person for the purpose of this part, the individual or other legal entity must:

(1) Have a separate and distinct interest in the land or the crop involved,

(2) Exercise separate responsibility for such interest, and

(3) Be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

(c) "State" means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

§ 796.2 Prohibition against payments to producers or participants.

(a) Any person who, on or after December 23, 1985, is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for:

(1) As to any commodity produced by such person during that crop year, and during the four succeeding crop years:

(i) Any price support or payments, including price support loans and purchase agreements, made available under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), or any other Act;

(ii) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(iii) A disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*); and

(2) A payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity that is:

(i) Produced during that crop year, or any of the four succeeding crop years, by such person; and

(ii) Acquired by the Commodity Credit Corporation.

(b) Notwithstanding any other provision of Title 7 of the Code of Federal Regulations, with respect to all programs set forth in such title administered by the Agricultural Stabilization and Conservation Service under which production or other payments, including wheat marketing certificates, are made to program participants, no such payment for any crop year through the 1985 crop year shall be made after August 10, 1971, to any producer or program participant who, after August 10, 1971, harvests or knowingly permits to be harvested for illegal use, marihuana, or other such prohibited drug-producing plants on any part of the lands owned or controlled by such producer or participant. Prohibited plants include marihuana (*cannabis satiua*), opium poppies (*papauer somniferum*), coca bushes (*erythroxylum coca*), cacti of the genus *lophophora*, and other drug producing plants, the planting or harvesting of which is prohibited by Federal or State law.

§ 796.3 Protecting the interests of Landlords, Tenants, and Sharecroppers, and Special Rule for Corporations, Partnerships, and Trusts.

The tenant, sharecropper, landlord, or any producer on the farm separate from the person determined to be ineligible for program benefits in accordance with § 796.2 shall remain eligible for any or all of the program benefits listed in § 796.2 unless such tenant, sharecropper, landlord, or any such producer on the farm:

(a) Is also convicted of planting, cultivating, growing, producing, or storing a controlled substance; or

(b) Is otherwise determined to be ineligible to receive any or all of the benefits listed in § 796.2.

(c) Notwithstanding any other provision of this section, if any person denied benefits under this part is beneficiary of a trust, benefits for which the trust is eligible shall be reduced, for the appropriate period, by a percentage equal to the total interest of the beneficiary in the trust.

D. Part 1425 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

Sec.

1425.1 General provisions.
1425.2 Administration.
1425.3 Definitions.
1425.4 Approval.
1425.5 Confidentiality.
1425.6 Approved cooperatives.
1425.7 Suspension and termination of approval.
1425.8 Ownership and control.
1425.9 Charter and bylaw provisions.
1425.10 Financial condition.
1425.11 Operations.
1425.12 Conflict of interest.
1425.13 Uniform marketing agreement.
1425.14 Member business.
1425.15 Vested authority.
1425.16 Eligible commodity and pooling.
1425.17 Distribution of proceeds.
1425.18 Member cooperatives.
1425.19 Nondiscrimination.
1425.20 Records required.
1425.21 Inspection and investigation.
1425.22 OMB control number assigned pursuant to Paperwork Reduction Act.
1425.23 Appeals.

Authority: Secs. 4, 5, and 12 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072, 1073 (15 U.S.C. 714b, 714c and 714j); secs. 101, 201, 203, 301, and 401 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 70 Stat. 212, 63 Stat. 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1446, 1446d, 1447, 1421).

§ 1425.1 General provisions.

This part sets forth the terms and conditions which a cooperative marketing association ("cooperative") must meet in order to be approved to obtain from the Commodity Credit Corporation (CCC) price support on behalf of its members for the 1986 and subsequent crops of a commodity. A cooperative meeting such terms and conditions may obtain price support with respect to any crop of a commodity for which a price support program is in effect if regulations issued with respect to such price support program incorporate the provisions of this part or permit a cooperative which meets the provisions of this part to participate in the price support program for a crop of such commodity.

§ 1425.2 Administration.

On behalf of CCC, the Agricultural Stabilization and Conservation Service (ASCS) will administer the provisions of this part under the general direction and supervision of the Deputy Administrator, State and County Operations, ASCS. In the field, the provisions of this part will be administered by the State and county ASC committees.

§ 1425.3 Definitions.

(a) *Active member* means a member who has utilized the services offered by a cooperative in one of the three preceding cooperative fiscal years or such shorter period as may be provided in the cooperative's articles of incorporation or bylaws.

(b) *Approved cooperative* means a cooperative that has been approved by CCC to participate in price support programs authorized with respect to one or more authorized commodities.

(c) *ASCS* means the Agricultural Stabilization and Conservation Service, an agency of the U.S. Department of Agriculture.

(d) *Authorized commodity* means those commodities for which an approved cooperative may apply for price support, including barley, corn, cotton, honey, oats, rice, rye, seed cotton, sorghum, soybeans, and wheat.

(e) *CCC* means the Commodity Credit Corporation.

(f) *Close relative* means a spouse or a person related as child, parent, brother, or sister, by blood, adoption, or marriage, and shall include in-laws within such categories of relationship.

(g) *Eligible commodity* means a commodity which meets the eligibility requirements applicable to such commodity set forth in Chapter XIV of this title which is delivered to, or which is acquired by, a cooperative.

(h) *Member* means a person who is a member of an agricultural cooperative or an agricultural cooperative member of another cooperative. A person applying for membership in an agricultural cooperative must have: (1) fully paid for the membership stock or earned equity credits; (2) be accepted by the cooperative; and (3) be entitled to all membership rights including voting and holding office except where the law of the State in which the cooperative is incorporated provides for stock subscribers as members but does not allow them to hold office.

(i) *Person* means such term as defined in the regulations governing the Reconstitution of Farms and Allotments, Part 719 of this title.

(j) *Producer* means such term as defined in the regulations governing the Reconstitution of Farms and Allotments, Part 719 of this title.

§ 1425.4 Approval.

(a) *Application.* In order for a cooperative to obtain price support with respect to the 1986 and subsequent crops of authorized commodities, a cooperative must submit an application for approval with respect to such authorized commodities to CCC.

(b) An application must include:

(1) A completed Form CCC–846;

(2) The latest financial audit of the cooperative including any accompanying notes, schedules, or exhibits, certified by a certified public accountant from the books of original entry as fairly representing the financial condition of the cooperative;

(3) A copy of the cooperative's articles of incorporation or articles of association, bylaws, all marketing agreements for eligible commodities and any other document which is requested by CCC with respect to the cooperative's methods of conducting business which an official of the cooperative has certified as being current;

(4) A conflict of interest statement (Form CCC–846–2) for each director, officer, and principal employee;

(5) Resolutions made by the cooperative's board of directors which provide that the cooperative will abide by provisions of this part and the nondiscrimination provisions thereof;

(6) A statement of any cooperative transactions that either have occurred in the preceding year before the initial application for approval is submitted or are contemplated by the cooperative as provided in § 1425.12;

(7) A detailed description of the method by which proceeds from a pool of eligible commodities for which price support is obtained will be distributed as provided for in § 1425.17.

(8) Other information requested by CCC concerning the organizational, operational, financial or any other aspect of the cooperative determined by CCC to be necessary to act upon the application for approval.

(c) *Annual recertification.* An approved cooperative must submit the following information to CCC:

(1) A completed Form CCC–846–1;

(2) The cooperative's latest complete financial audit;

(3) The numbers of active and inactive members;

(4) A statement showing the allocated equity in the cooperative owned by active members, inactive members, and others, and the unallocated equity in the cooperative;

(5) The names of any members who own in excess of 10 percent of the equity of the cooperative and the amount owned by each;

(6) The quantity of each eligible commodity delivered to the cooperative for marketing and the portion of such commodities received from active members during the prior year;

(7) The quantity of each eligible commodity tendered by the cooperative to CCC as security for a price support loan and the quantity of such commodities redeemed during the prior year;

(8) The quantity of each commodity tendered to CCC for price support purchase during the prior year; and

(9) A statement of any cooperative transactions that either have occurred in the cooperative's prior fiscal year of operations or are contemplated to occur in the cooperative's current fiscal year as provided for in § 1425.12.

(d) *Changes.* An approved cooperative shall promptly furnish to CCC:

(1) Any changes in the articles of incorporation, bylaws, and marketing agreements of the cooperative;

(2) Any resolutions affecting price support operations;

(3) Any changes in officers, directors, or principal employees and conflict of interest statements in accordance with § 1425.12(d);

(4) Any change in pooling operations with an explanation of the change and why such change was necessary; and

(5) Additional information as may be requested by CCC at any time with respect to the continued approval by CCC of the cooperative as an approved cooperative in accordance with this part.

§ 1425.5 Confidentiality.

Information submitted to CCC with respect to trade secrets or financial or commercial operations or information concerning the financial condition of a cooperative, whether for initial approval or continued approval, shall be kept confidential by the officers and employees of CCC and the Department of Agriculture except to the extent CCC determines such disclosures are necessary for the conduct of a price support program or such information is required to be disclosed by law.

§ 1425.6 Approved cooperatives.

(a) *Determination of approval.* CCC shall, in accordance with the provisions of this part, approve a cooperative marketing association to obtain price support.

(b) *Type of approval.* CCC may approve a cooperative to participate in a price support program with respect to the 1986 or subsequent crop of a commodity as:

(1) Unconditionally approved; or

(2) Conditionally approved. A cooperative may be conditionally approved if it has not met all of the requirements of this part but has substantially met all such requirements. Such a cooperative must agree in writing to meet all of the requirements for approval set forth in this part within the time period specified by CCC. Board resolutions in which the cooperative agrees to comply with provisions of this part may be accepted by CCC as substantial compliance with the requirements for approval for purposes of this section.

(c) *Term of approval.* A cooperative is approved to participate in a price support program for an authorized commodity until such time as the cooperative's approval is suspended or terminated by CCC.

§ 1425.7 Suspension and termination of approval.

(a) *Suspension.* A cooperative may be suspended by CCC from further participation in a price support program if it is determined that the cooperative has not operated in accordance with representations made in the cooperative's application for approval, has not complied with applicable regulations, or has failed to correct deficiencies noted during an administrative review or an audit of the cooperative's operations with respect to a price support program. Such suspension may be lifted upon the receipt of documents indicating that the cooperative has complied with all of the requirements for approval. If such documents are not received within one year from the date of the suspension, the cooperative's approval for participation in a price support program shall be terminated.

(b) *Termination.* (1) CCC may terminate the approval of the cooperative marketing association's ability to pledge commodities as collateral for CCC price support loans by giving the cooperative written notice of such termination. Ten days after the termination date, or at anytime thereafter. CCC may on demand call all outstanding CCC price support loans made to the cooperative. The commodities pledged as collateral for such loans may be redeemed not later than the date specified by CCC. If redemption is not made by such date, title to the commodity shall vest in CCC and CCC shall have no obligation to pay for any market value the commodity may have in excess of the principal amount of such loans.

(2) An approved cooperative may at any time, upon written notice to CCC, voluntarily terminate the cooperative's approval to participate in a price support program, provided, that the cooperative does not have any outstanding price support loans at the time of voluntary termination.

§ 1425.8 Ownership and control.

(a) *Active members.* All approved cooperatives must be owned and controlled by active members of the cooperative.

(b) *Allocated equity.* The cooperative must establish that its active members own equity in the cooperative in an amount constituting more than 50 percent of the allocated equity of the cooperative. Such ownership equity shall be in the form of stock, revolving fund certificates, capital retains, book credits, or other capital interests issued by the cooperative. In determining the requisite equity held by active members, the following shall be deducted from the amount of equity allocated to such active members:

(1) The allocated equity held by any active member who owns more than 10 percent of the cooperative's total equity; and

(2) The allocated equity of any active member that has acquired equity as a result of a loan from the cooperative unless such member is obligated to repay the loan within a reasonable period of time.

(c) *Control.* The organization and operation of the cooperative shall be under the control of its active members. A cooperative shall be considered to be under the control of its active members if more than 50 percent of its membership consists of active members.

(d) *Directors.* (1) All directors must be: (i) Active members of the cooperative; (ii) representatives of such active members who are also employed as a farm manager or its equivalent (including an officer of a corporation and a partner in partnership); or (iii) officers, employees, or active members of an active member cooperative.

(2) A director shall be nominated and elected by members except when selected to fill the unexpired term of a director so elected.

(e) *Approved plan.* An applicant or an approved cooperative not under the ownership or control, or both, of its active members, may be approved by

CCC to participate in a price support program if the cooperative is able to establish that, by retiring the equity of its inactive members or by obtaining new members, the cooperative can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§ 1425.9 Charter and bylaw provisions.

The articles of incorporation, articles of association, or the bylaws of the cooperative shall provide for each of the following requirements:

(a) *Annual meeting.* The cooperative shall hold an annual meeting of members or delegates at one or more locations within its operating area which will afford a reasonable opportunity for all members or their delegates to attend and participate.

(b) *Notice of meeting.* The cooperative shall give written notice to each member or delegate, of the time, place, and purpose of all regular and special meetings of members or delegates.

(c) *Open membership.* The cooperative shall admit to membership every applicant who (1) applies for admission for the purpose of participating in the activities of the cooperative, and (2) is eligible for membership under the statute incorporating the cooperative. The cooperative may, however, refuse membership to an applicant if the cooperative bases the refusal on reasonable grounds that the applicant's admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the cooperative.

(d) *Nominations.* (1) Nominations for election of delegates and directors shall be made by members.

(2) Nominations for officers shall be made by elected directors.

(3) Nominations may be made by balloting, nominating committee, petition of members, or from the floor, provided that nominations from the floor shall be requested in addition to nominations made by a nominating committee or by petition.

(e) *Balloting.* The election of directors, delegates, and officers shall be by balloting when there are two or more nominees for a position to be filled, or there are more nominees than there are positions to be filled.

(f) *Voting rights.* Each member of the cooperative shall have a single vote regardless of the number of shares of stock owned or controlled by such member except that CCC may approve another voting method which will adequately protect the ownership and control interests of the members of the cooperative.

(g) *Proxy or power of attorney.* (1) Except as provided in paragraph (2) of this section, voting by proxy or under a power of attorney shall not be permitted.

(2) Voting by proxy or under power of attorney may be permitted if a cooperative: (i) Determines that it is necessary to amend the cooperative's articles of incorporation, articles of association, or bylaws, and (ii) establishes to the satisfaction of CCC that the law of the State in which the cooperative is incorporated permits voting by proxy or power of attorney, but does not permit members to vote by mail, with respect to such issue.

(h) *Financial statement.* Annually, each member of the cooperative shall be given a summary financial statement of the cooperative which is based on an annual audit conducted by a certified public accountant of the recordkeeping books and accounts of the cooperative.

§ 1425.10 Financial condition.

(a) *Financial ability.* An approved cooperative must be financially able to make financial advances to its members and to market commodities of such members.

(b) *Factors to consider.* The factors which will be considered in determining the financial condition of a cooperative include the following:

(1) The ability of the cooperative to meet current obligations, including the expenses of marketing the commodities on behalf of its members;

(2) The ability of the cooperative to make advance payments to its members, either from its own funds or through arrangements with financial or other institutions; and

(3)(i) The net worth of the cooperative. The cooperative shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in Table 1) multiplied by the total number of units of such commodity handled by the cooperative during the preceding marketing year, or, if the cooperative is in its first full marketing year of operations, the estimated quantity of such commodity that it will handle during such year. If a cooperative has not been approved to participate in a price support program for each of the three crop years immediately preceding the crop year for which approval is being considered, CCC may establish the unit total of a commodity to be used in determining the sufficiency of the cooperative's net worth.

(ii) If the amount of the net worth of the cooperative is between 34 and 99 percent of the amount computed in accordance with paragraph (b)(3)(i) and the cooperative is determined by CCC to be otherwise financially sound, CCC may determine that the operation of the cooperative is being carried out in a financially sound basis. Such a determination by CCC may be made if (A) the board of directors of the cooperative agrees to make a capital retain in the amount set forth in Table 2 with respect to each unit of the commodity delivered to the cooperative until the net worth of the cooperative is at least equal to the amount computed in accordance with paragraph (b)(3)(i) and (B) the cooperative agrees to deduct the full amount of the estimated expenses of handling the commodities received by the cooperative. The failure to carry out such agreements shall be grounds for terminating a cooperative's approval.

TABLE 1

Commodity	Unit	Amount per unit
Barley	Bushel	.13
Corn	Bushel	.13
Cotton	Bale	5.40
Honey	Hundredweight	1.90
Oats	Bushel	.13
Rice	Hundredweight	.52
Rye	Bushel	.13
Seed Cotton (lint basis)	Pounds	.008
Sorghum	Hundredweight	.19
Soybeans	Bushel	.43
Wheat	Bushel	.15

TABLE 2

Commodity	Unit	Amount per unit
Barley	Bushel	$0.07
Corn	Bushel	.07
Cotton	Bale	3.30
Honey	Hundredweight	.95
Oats	Bushel	.07
Rice	Hundredweight	.29
Rye	Bushel	.07
Seed Cotton (lint basis)	Pounds	.004
Sorghum	Hundredweight	.10
Soybeans	Bushel	.22
Wheat	Bushel	.08

(c) For the purposes of paragraph (b) of this section, the net worth of the cooperative shall be reduced by the value of the amount of any assets or funds which are not reflected as a liability of the cooperative in the financial statement of the cooperative and which are: (1) Pledged as security, deposited, or otherwise used to secure or guarantee any indebtedness of the cooperative, or (2) deposited in a restricted account or otherwise used to guarantee the performance of an obligation of the cooperative.

§ 1425.11 Operations.

(a) A cooperative shall establish to the satisfaction of CCC, with respect to the commodity for which approval is requested, that the cooperative is so organized and staffed by individuals employed directly by the cooperative that it is able to perform contracts with its members and to provide an effective marketing operation for its members.

(b) If a cooperative cannot satisfactorily establish that it can provide an effective marketing operation for its members, the cooperative may enter into a marketing agreement with another cooperative marketing association to market the commodity only if:

(1) Such marketing agreement is permitted by law;

(2) The articles of incorporation, articles of association, or bylaws of the cooperative acquiring the marketing service and the marketing agreement such cooperative has entered into with its members provide the necessary authority to enter into such agreement;

(3) The cooperative acquiring the marketing service is a member of the cooperative which will provide the marketing service; and

(4) The cooperative which will provide the marketing service has been approved under this part to obtain price support for such commodity.

(c) Any marketing agreement entered into by a cooperative in accordance with the provisions of paragraph (b) of this section, must, as determined by CCC: (1) Adequately protect the ownership and control interests of the cooperative members; (2) be in the best interest of the members of the cooperative acquiring the service; and (3) require that all proceeds from the marketing operation be distributed as provided in § 1425.17.

§ 1425.12 Conflict of interest.

(a) *Transactions detrimental to members.* The cooperative shall not be approved for participation in price support programs unless CCC determines that the cooperative's transactions, if any, which are of a kind described in this section have not operated and will not operate to the detriment of members of the cooperative.

(b) *Cooperative transactions.* The cooperative shall submit with the initial application for approval, and with each recertification, a detailed report concerning all of the transactions (including transactions involving purchases, sales, handling, marketing, insurance, transportation, warehousing, and related activities) of the cooperative with the following persons which differ from transactions entered into by the cooperative with its general membership:

(1) Any director, officer, or principal employee of the cooperative, or any of their close relatives;

(2) Any partnership from which any person is entitled to receive a percentage of the gross profits;

(3) Any corporation in which any person owns stock;

(4) Any business entity from which any person receives fees for transacting business with or on behalf of the cooperative; or

(5) Any business entity in which an agent, director, officer or employee of the cooperative was an agent, director, officer or employee of such business entity.

(c) *Contemplated transactions.* The cooperative shall also submit a statement as to whether any transactions of the kind described in paragraph (b) of this section are contemplated between the date of the application, or the date such information is requested to be submitted in accordance with § 1425.4, as applicable, and the end of the next marketing year for the authorized commodity. If any transactions are contemplated, the cooperative shall submit a detailed explanation of such contemplated transactions and a statement of the reasons for such transactions.

(d) *Directors, officers, and employees.* The cooperative shall furnish information, as requested, showing the interest or relationship of its directors, officers, and principal employees and their close relatives with persons who engage in any business relating to a commodity for which the cooperative is approved to obtain price support. Such information shall be revised to reflect any change in any such interest or relationship.

§ 1425.13 Uniform marketing agreement.

(a) The cooperative must enter into a uniform marketing agreement with each member who delivers a commodity to an eligible pool for which price support is obtained on any quantity of the commodity in such pool.

(b) A cooperative may provide alternative methods of marketing commodities to its members, in addition to the methods set forth in its marketing agreement, if the terms and conditions thereof are reasonable to its members, and information concerning the use of such methods of marketing are made available to all members.

(c) An approved cooperative, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for a period not to exceed two crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method by the cooperative, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the cooperative's membership publication or included in other written notice mailed to members.

§ 1425.14 Member business.

At least 80 percent of a crop of a commodity that is acquired by, or delivered to, the cooperative for marketing must be produced by its members in order for the cooperative to obtain price support for such crop. CCC may, for a period not to exceed two years, waive such requirement for a cooperative if: (a) The quantity of such crop acquired by the cooperative for marketing from its members has a value greater than the value of the quantity acquired or received from nonmembers for marketing; (b) the cooperative can establish to the satisfaction of CCC that such authorization is necessary for the efficient operation of the cooperative; and (c) the cooperative has a plan approved by CCC which will bring the cooperative into compliance with the provisions of this section. Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

§ 1425.15 Vested authority.

An approved cooperative shall have the authority to pledge as collateral for a price support loan the commodity delivered to it by its members, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the cooperative.

§ 1425.16 Eligible commodity and pooling.

(a) *Pools.* (1) A cooperative may establish separate pools as needed for quantities of a commodity.

(2) Price support will be made available to the cooperative with respect to a quantity of an eligible commodity included in an eligible pool as provided in paragraph (c) of this section.

(b) *Eligible pool.* (1) A pool shall be eligible for price support if: (i) except as provided in paragraph (b)(2) of this section, all of the commodity included in the pool is eligible for price support; (ii) the eligible commodity in such pool was (A) delivered to the cooperative for marketing for the benefit of the members

of the cooperative and (B) delivered by members who retain the right to share in the proceeds from the marketing of the commodity in accordance with § 1425.17; and (iii) all of the commodity placed in such pool was delivered by members who have agreed to accept a payment of the initial advances made available to such producers by the cooperative with respect to such commodity in accordance with § 1425.17(a).

(2) A quantity of a commodity in a pool which is ineligible for price support because of grade or quality or, in the case of cotton because of bale weight or repacking, shall not make the pool ineligible for price support.

(c) *Availability of price support.* (1) Price support will be available to the cooperative for the quantity of a commodity stored commingled in an approved warehouse equal to the smaller of: (i) the quantity of an eligible commodity received from members of the cooperative, or (ii) the quantity of commodity which is in the cooperative's inventory. The cooperative must have in inventory a quantity of commodity of each class and grade at least equal to the quantity of that commodity of each class and grade pledged as loan collateral.

(2) Price support will be available as provided in §§ 1421.3(g) and 1434.3(d) for farm-stored commodities that have been delivered to the cooperative.

(3) Except as provided in paragraph (c)(2) of this section, price support will be available to the cooperative for the quantity of the eligible commodity stored identity preserved in an approved warehouse which was received from members of the cooperative and which is in the cooperative's inventory at the time such commodity is pledged as collateral for a price support loan or is offered to CCC for purchase.

(4) Price support eligibility for commingled commodities stored on a farm or in a warehouse may be transferred to an approved warehouse.

(d) *Allocation of costs and expenses.* If price support is obtained with respect to any quantity of a crop of a commodity which has been pooled, allocations by the cooperative of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting principles and practices.

(e) *Losses.* (1) Any losses incurred by the cooperative in the marketing of a crop of a commodity for which price support has not been obtained shall not be assessed against the proceeds from the marketing of a crop of a commodity included in a pool for which price support was obtained.

(2) Except as provided in paragraph (e)(3) of this section, losses incurred by the cooperative in the marketing of a crop of a commodity included in a pool for which price support has been obtained may not be carried forward and applied against subsequent crops of commodities included in a pool for which price support is obtained.

(3) (i) CCC may authorize an approved cooperative to carry forward losses incurred by the cooperative in the marketing of a crop of a commodity included in a pool for which price support has been obtained when CCC determines that such action will result in the equitable treatment of all members participating in comparable eligible pools in the period needed to offset losses and is not contrary to the purposes of the price support program.

(ii) The authorization referred to in paragraph (e)(3)(i) of this section will be approved on the basis of a plan, subject to the approval of CCC, for the carrying forward of losses submitted by an approved cooperative and will be continued on the condition that the approved cooperative remains in substantial compliance with the approved plan, as reflected in periodic progress reports.

(A) Factors which will be considered in determining whether to approve such a plan include, but are not limited to, the following: (I) The stability of the membership and participation between affected pools; (II) the financial condition of the cooperative; and (III) whether the loss can reasonably be expected to be amortized and recovered from future earnings over the proposed time period.

(B) The plan submitted by the cooperative must include the following: (I) A provision for notifying existing and new members of the cooperative of the plan to deduct eligible pool losses from subsequent eligible pool gains; and (II) a procedure for maintaining necessary data and records needed to generate periodic progress reports as directed by CCC.

(iii) Any losses incurred subsequent to those contained in the approved plan may only be carried forward against subsequent eligible pools in accordance with a revised plan which has been approved by CCC under the criteria specified in paragraph (e)(3) of this section.

§ 1425.17 Distribution of proceeds.

(a) *CCC loans and purchases.* (1) If CCC makes available price support loans or purchases with respect to any quantity of the eligible commodity in a pool, the proceeds from such loans or purchases shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in the pool less any authorized charges for services performed or paid by the cooperative which are necessary to condition the commodity or otherwise make the commodity eligible for price support. Such proceeds shall be distributed within 15 days from the date the cooperative receives the proceeds from CCC.

(2) Any advances by the cooperative to its members who have a quantity of the commodity in the eligible pool for which advances are made prior to the pledging of the commodity as security for a CCC loan or prior to entering into a purchase agreement with CCC may be credited by the cooperative against the distribution required in paragraph (a)(1) of this section.

(b) *Pool proceeds.* (1) If price support is obtained from CCC for any quantity of the eligible commodity in a pool, all proceeds of such pool shall be distributed only to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in such pool.

(2) Except as provided in paragraph (b)(3) of this section, all proceeds from an eligible pool for which price support has been obtained shall not be combined with proceeds from ineligible pools for distribution and final settlement, and the method of distribution of proceeds shall be as specified in the information provided to CCC in accordance with § 1425.4(b)(7).

(3) Sales proceeds from an eligible pool may be combined with sales proceeds from ineligible pools or other eligible pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in such pools.

(4) Pool proceeds obtained from price support made by CCC shall not be combined with proceeds from other eligible or ineligible pools.

(c) *Unclaimed funds.* If a cooperative has attempted to distribute to its members a part of its equity, as defined in § 1425.8, in accordance with the articles of incorporation, articles of association or the bylaws of the cooperative and has given notice of distribution both by publication and personal letter addressed to such members, the cooperative may provide, to the extent permitted by the law of the State applicable to such distribution, for reallocation of such undistributed equity to its members and patrons on an equitable basis if:

(1) The period of limitation for the payment of debts has run, such period to begin on the date the equity to be distributed was declared to be payable by the cooperative;

(2) The cooperative, 30 days prior to the lapse of the period of limitation specified in paragraph (c)(1) of this section, has given the affected member notice (by certified mail, return receipts requested, at the member's last known address as reflected on the books of the cooperative) of the amount of equity payable to such member(s) and notice that such equity may be distributed to other members and patrons if the affected member does not make a claim for such equity within the period of limitation specified in paragraph (c)(1) of this section; and

(3) No claim for payment of the equity to be distributed has been made within the period of limitation described in paragraph (c)(1) of this section.

§ 1425.18 Member cooperatives.

(a) *Obtaining price support.* Except as provided in paragraph (c) of this section, in order for a cooperative to obtain price support for any quantity of an eligible commodity delivered by a member cooperative or for a cooperative to obtain price support for any quantity of an eligible commodity included in the same pool with the commodity delivered by a member cooperative, the cooperative and such member cooperative must meet the requirements of this paragraph.

(1) The eligible commodity delivered by the member cooperative must be produced by the members of such member cooperative.

(2) The member cooperative must be authorized to: (i) Sell the commodity; (ii) pledge such commodity as collateral for a price support loan; (iii) place a lien on such commodity; and (iv) deliver such commodity to the cooperative for marketing.

(3) The cooperative must either: (i) In its articles of incorporation, articles of association, bylaws, or marketing agreement, require each such member cooperative to meet the requirements of this part; or (ii) determine and certify annually to CCC that each such member cooperative meets the requirements of this part.

(b) *State law.* The cooperative shall determine and certify annually to CCC that its member cooperatives which are not subject to paragraph (a) of this section are in compliance with the producer ownership, membership meeting, and voting requirements of applicable State law.

(c) *Exception.* An approved cooperative is required to meet only the provisions contained in paragraphs (a) (1) and (2) of this section with respect to a member cooperative for whom the member cooperative markets the production of the member cooperative's members in accordance with § 1425.11(b).

§ 1425.19 Nondiscrimination.

The cooperative shall not, on the ground of race, color, age, sex, religion, national origin, or physical or mental handicap, deny any producer participation in, or otherwise subject any producer to discrimination with respect to any benefits resulting from its approval to obtain price support and shall comply with the provisions of Title VI of the Civil Rights Act of 1964 and the Secretary's regulations issued thereunder, appearing in §§ 15.1–15.12 of this title (29 FR 16274 and 38 FR 16986), and any amendments thereto; section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978; and provisions of the Age Discrimination Act of 1975 as amended. The cooperative shall not discriminate against employees under Title VII of the Civil Rights Act of 1964, as amended, or the Equal Pay Act of 1963 or Title VI of the Civil Rights Act of 1964 as administered by the Equal Employment Opportunity Commission, and will handle employee discrimination complaints as provided for in 28 CFR Part 42 and 29 CFR Part 1691. The United States shall have the right to enforce compliance with such statutes and regulations by suit or by any other action authorized by law. The cooperative shall submit a certification with its application that the above cited regulations and rules have been read and understood and that the cooperative will abide by them.

(c) An approved cooperative, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for not to exceed two crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method by the cooperative, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the cooperative's membership publication or included in other written notice mailed to members.

§ 1425.20 Records required.

(a) *Acquisitions.* An approved cooperative and its member cooperatives shall maintain a record which shows the quantity of commodity which is received from each of its members and nonmembers, the date received, the eligibility status for price support of each such quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable quality factor applies.

(b) *Dispositions.* The cooperative shall maintain a record which shows each quantity of commodity which is disposed of; and, if sold, the date sold and the price received; and the date removed for processing or shipped. Except as provided in paragraph (c) of this section, inventory shall be allocated in the following manner until the entire inventory in a particular pool is depleted:

(1) *Commodities which are processed.* The inventory of an eligible pool or ineligible pool or both eligible and ineligible pools shall be adjusted at the time the commodity is withdrawn from inventory for processing.

(2) *Commodities not processed.* The quantity of a commodity to be shipped shall be allocated to an eligible pool, an ineligible pool, or a combination of eligible and ineligible pools and the pool inventories shall be adjusted accordingly when the commodity is shipped.

(c) Records of eligible and ineligible pool dispositions need not be maintained separately so long as sales proceeds from such pools are allocated among the pools according to the quantity and quality of commodity included.

§ 1425.21 Inspection and investigation.

(a) *Retention of records.* The books, documents, papers, and records of the approved cooperative, member cooperatives, and subsidiaries, shall be maintained for a period of five years and shall be made available to CCC for inspection and examination at all reasonable times.

(b) *Examination.* CCC shall have the right at any time after an application is received, to examine all books, documents, papers, and determine whether the cooperative is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles association, bylaws, and agreements with producers, the representations made by the cooperative in its application for approval, and, where applicable, its agreements with CCC.

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§ 1425.22 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1425) have been approved by the Office of Management (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560–0040.

§ 1425.23 Appeals.

A cooperative may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at Part 780 of this title.

5. Part 1421 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1421—[AMENDED]

A. Part 1421 is amended by removing the following Subparts and sections:

Subpart—1978 and Subsequent Crops of Flaxseed Purchase Program Regulations (§§ 1421.150–1421.158); Subpart—Regulations Governing the Wheat Reserve Program for 1981 and Subsequent Crops and Alternative Program for 1981 and Prior Crops of Wheat (§§ 1421.700–1421.714); and Subpart—Regulations Governing the Feed Grain Reserve Program for 1981 and Subsequent Crops and Alternative Program for 1980 and Prior Crops (§§ 1421.720–1421.734).

§ 1421.3 [Amended]

B. The first sentence of § 1421.3(a) is amended by removing the word "and" in paragraph (1) and inserting a semicolon in its place; and by removing the period in pargraph (2) and inserting in its place the following: "; and (3) which meets the eligibility requirements prescribed in 7 CFR Parts 12, 713, 718, 770, and 791."

PART 1434—[AMENDED]

6. Part 1434 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended by revising § 1434.3(a) to read as follows:

§ 1434.3 Eligible producers.

(a) *Producer.* An eligible producer shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, or other legal entity) who: (1) Extracts honey produced by bees owned by the producer; (2) meets the eligibility requirements prescribed in 7 CFR Part 12.

* * * * *

PART 1474—[AMENDED]

7. Part 1474 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended by adding paragraph (c) to § 1474.4 to read as follows:

§ 1474.4 Eligible borrowers.

* * * * *

(c) The applicant meets the eligibility requirements prescribed in 7 CFR Part 12.

* * * * *

Signed at Washington, DC, on October 7, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation and Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc 86–23085 Filed 10–15–86; 8:45 am]

BILLING CODE 3410–05–M

federal register

Thursday
October 16, 1986

Part III

Nuclear Regulatory Commission

10 CFR Parts 30, 31, 32, 35, and 40
Medical Use of Byproduct Material; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, 32, 35, and 40

Medical Use of Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its regulations to modify the process for licensing and regulating the medical use of radioactive byproduct material. The revision will primarily affect hospitals, clinics, and individual physicians.

By clarifying and consolidating all the essential radiation safety requirements that are now contained in the regulations, license conditions, regulatory guides, and staff positions, the regulation provides a single source of requirements related specifically to the medical use of byproduct materials. The regulation also provides flexibility for licensees by allowing them to update their day-to-day radiation safety procedures without applying for and receiving a license amendment. The revised regulations provide for a more efficient method of regulating the medical use of byproduct material.

EFFECTIVE DATE: April 1, 1987. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 1, 1987.

ADDRESSES: Copies of the regulatory analysis, analysis of major issues, environmental impact assessment, and the comments received on the proposed rule may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Single copies of the regulatory analysis, analysis of major issues, and environmental impact assessment are available from Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4108.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4108.

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I. Byproduct Material in Medicine

Use for Patient Care

Radioactive materials are used in drugs in the field of nuclear medicine. Drugs labeled with radioisotopes are known as radiopharmaceuticals. In diagnostic nuclear medicine, patients receive these materials by injection, inhalation, or oral administration. Physicians use radiation detection equipment to visualize the distribution of a radioactive drug within the patient. Using this technology, it is possible to locate tumors, assess organ function, or monitor the effectiveness of a treatment. In therapeutic nuclear medicine, larger quantities of radiopharmaceuticals are administered to treat hyperactive thyroid conditions and certain forms of cancer. An estimated 10 million nuclear medicine procedures are performed in this country annually.

Sealed radioactive sources that produce high radiation fields are used in radiation therapy to treat cancer. A radioactive source in a teletherapy machine can be adjusted to direct a radiation beam to the part of the patient's body to be treated. An estimated 100,000 patients receive cobalt-60 teletherapy treatments from NRC licensees each year. Smaller, less radioactive sealed sources are designed to be implanted directly into a tumor area or applied on the surface of an area to be treated. This procedure is known as brachytherapy. NRC licensees perform approximately 10,000 brachytherapy treatments annually.

Sealed radioactive sources can also be used in machines that are used for diagnostic purposes. The source provides a beam of radiation that is projected through the patient. A device on the other side of the patient detects the amount or spatial distribution of radiation that goes through the patient. This can provide information about tissues within the patient. This is a relatively new development in the field of medicine and the NRC has no estimate of the number of these diagnostic procedures performed annually.

State and Federal Regulation

Twenty-eight States, known as Agreement States, have assumed responsibility for regulating certain radioactive materials within their respective borders by agreement with the NRC. (This kind of agreement is authorized by the Atomic Energy Act.) They issue licenses for the medical use of byproduct material, and currently regulate about 5,000 licensees. In non-Agreement States, the NRC issues licenses to medical institutions (mostly hospitals and clinics) and to individual physicians. These licenses authorize certain diagnostic and therapeutic uses of radioactive materials.

II. NRC's Regulatory Program

Policy Regarding the Medical Use of Byproduct Material

In a policy statement published February 9, 1979 (44 FR 8242), the NRC noted that it regulates the medical use of byproduct material as necessary to provide for the radiation safety of workers and the general public, regulates the radiation safety of patients where justified by the risk to patients, and minimizes its intrusion into medical judgments affecting patients and into other areas traditionally considered to be the practice of medicine. The NRC does have the authority to regulate the medical use of byproduct material to protect the health and safety of patients, but also recognizes that physicians have the primary responsibility for the protection of their patients. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions in the best interest of their patients.

This revision retains NRC's current balance between adequate controls and undue interference in medical judgments. Too much regulation could result in poorer health care delivery to patients. Insufficient regulation could result in the unwarranted or unsafe use of radiation.

Current Licensing Practice

The current regulations in 10 CFR Part 35, "Human Uses of Byproduct Material," provide for licensing medical institutions and physicians for medical use. A license may be issued for one or more of six types of medical use. The types of use are defined in Groups I–VI in the current § 35.100. Each group is comprised of a number of diagnostic or therapeutic procedures that have been grouped together because they require similar physician training and radiation safety precautions for safe use. A separate specific license may also be issued for use of a teletherapy unit. Applications for a specific license are very detailed and contain the applicant's step-by-step radiation safety procedures, which are reviewed and approved individually by NRC.

NRC currently has about 2500 specific medical licensees (2200 hospitals and 300 physicians in private practice). Each year the NRC receives about 100 new applications, 500 license renewal applications, and 2,000 license amendment requests.

To help licensees design their radiation safety programs, the NRC has published many NUREG reports and regulatory guides that contain radiation safety guidance. These publications address three general areas: radiological health and safety, personnel training and experience, and facilities and equipment. Experience has shown that if licensees follow the guidance in the publications, the medical use of byproduct material generally poses no hazard to workers and the public.

Because of the potential radiation hazard to workers and the public, the specific license program that NRC uses to regulate medical use incorporates three regulatory features: case-by-case review of applications, on-site inspections, and periodic license renewals.

A major problem with the current licensing program is that radiation protection requirements are not located in one document. Requirements are scattered in the regulations, inspection and Enforcement (IE) orders that modify a license or group of licensees, and in conditions attached to individual licenses. Suggestions for good practice are contained in NRC regulatory guides and technical reports (NUREG's). For example, Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Programs," [1] and NUREG–0267, "Principles and Practices for Keeping Occupational Radiation Exposure at Medical Institutions As Low As Reasonably Achievable," [2] contain many recommendations that the NRC believes are important for the safe use of byproduct material. The revision of Part 35 incorporates those recommendations, and also corrects the piecemeal fashion in which the regulations have been amended over the years to address specific problems.

When preparing a specific license application for review under the current licensing program, the applicant must include sufficient information to assure NRC reviewers that byproduct material will be used safely. Applicants include, as an integral part of the application package, copies of their proposed step-by-step radiation safety procedures. In many cases, the procedures are edited versions of procedures described in Regulatory Guide 10.8.

When NRC receives the application, a licensing reviewer evaluates the applicant's training and experience, facility, equipment, and radiation safety procedures in detail. If the application is found to be incomplete or inadequate, a "deficiency letter" is sent to the applicant explaining what additional information is needed. Review of the application is not resumed until a written response from the applicant has been received. Staff studies indicate that about 40 percent of all applicants receive either a deficiency letter or a phone call for additional information. The need for deficiency letters stems from two sources. Guidance on what submissions are required to get a license is unclear and scattered in various documents. Application review practice must be conservative because the application and license comprise the basis for regulatory control. Deficiency letters are costly for the NRC and the applicant and greatly increase the time needed to complete licensing actions.

When the application, including any additional submitted information, is approved, the NRC issues a specific license that grants the authority for medical use of byproduct material in accordance with the program described in the application. Requirements in addition to those contained in the regulations are frequently incorporated in the license as conditions of use. Since the licensee must comply with conditions specified in the license, the license, rather than the regulations, is frequently used to regulate radiation safety in the day-to-day use of byproduct material.

The specific license is valid for five years. The license must be amended before methods of use or procedures may be added or changed, or before permitting additional physicians to use materials. Amendments to a specific license involve an application, review, and approval process similar to that for new licenses. Renewals are treated in the same manner as new license applications.

This regulatory process was appropriate during the evolution of the use of byproduct material in medicine. Radiation safety problems were not well defined, regulatory requirements had not caught up with developing technology, physician training curricula had not been established, and there were no formal training programs for nuclear medicine technologists. Therefore, it was necessary to regulate by reviewing each individual radiation safety program to ensure that the applicant had adequate personnel, facilities, and equipment.

III. Revision of the Regulatory Program

Overview

NRC is modifying its regulation of the medical use of byproduct material. The Commission has revised the regulations to provide a single source of requirements specifically related to medical use of byproduct materials. Within the boundaries set by the regulations, NRC will allow medical licensees to make minor changes in their radiation safety procedures that are not potentially important to safety. Such changes are sometimes needed so licensees can make prompt use of new safety methods and also meet new needs caused by changes in the demand for various patient care services or changes in the number of patients served by the licensee. The revision of 10 CFR Part 35 is consistent with the Commission's general policy on medical use of byproduct material issued February 9, 1979 (44 FR 8242). As stated

[1] Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington DC. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

[2] Copies of NUREGs may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

in the policy statement, "NRC will continue to regulate the medical uses of radioisotopes, as necessary, to provide for the radiation safety of workers and the general public."

Codification of Requirements in the Regulations

The proposed revision was published for public comment on July 26, 1985 (50 FR 30616). In the proposal, the NRC said it would simplify regulation of medical licensees by incorporating all medical use requirements into 10 CFR Part 35. These regulations would become the primary means of regulating the medical use of byproduct material. General safety requirements for worker instruction, worker safety, noncompliance reports, and materials licensing that are in Parts 19, 20, 21, and 30 will also continue to apply to Part 35 licensees.

The current license application process will be unchanged. The applicant still will complete Form NRC–313, which asks for the following information: the name and mailing address of the applicant; the location of use; a person who can be contacted about the application; what materials are requested; the purpose (in this case, "medical use"); the training and experience of the authorized users and Radiation Safety Officer; the worker radiation safety training program; facilities and equipment; the radiation safety program; and waste management.

Licensees will not face significant new regulatory burdens in their radiation safety programs because, in most cases, the information submitted on Form 313 is transformed into license conditions. Under the revised regulations the license authorizes medical use of byproduct materials for specified types of use. A licensee's use of byproduct material is controlled by the regulations and by license conditions for sitespecific circumstances that can not be generically covered by regulations. This simplifies inspections for NRC because inspectors need only be familiar with one set of regulations rather than a different set of license conditions and radiation safety procedures at each facility.

License Application, Issuance, and Authority and Responsibility Radiation Safety Programs.

New revisions of Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Programs," and Draft Regulatory Guide TM 608–4,[3] "Guide for the Preparation of Licenses in Medical Teletherapy Programs," which were distributed to licensees for comment, contain instructions on the type and extent of information that must be submitted based on the byproduct materials for which the applicant has requested a license. The regulatory guides also contain model procedures that the applicant can use to develop site-specific procedures. (Consistent with current practice, applicants will alternatively be allowed to simply certify that they will follow a model radiation safety procedure developed by NRC staff with public comment and published in a regulatory guide. This method significantly reduces the amount of time NRC must spend reviewing radiation safety procedures.) The applicant mails the completed license application, with application fee, to the NRC office identified on the form.

The NRC staff will continue to review the application to determine whether the applicant's radiation safety program is sufficient to comply with the regulations. After completing the review, if the applicant's program appears incomplete or inadequate, NRC will issue a deficiency letter that describes the apparent shortcomings in the applicant's program and requests clarification or correction. If the applicant's response to the deficiency letter is satisfactory, or if no deficiency letter was needed, the license will be issued.

In most cases license conditions will only be used to identify authorized users for each type of use, the Radiation Safety Officer, a teletherapy physicist if required, types of material authorized, possession limits for teletherapy units and brachytherapy sources, and areas set aside for byproduct material use. This regulatory scheme will not incorporate the current license condition requirement that licensees use byproduct material in accordance with the statements made in the application.

Major radiation safety program changes that are clearly potentially important to safety are listed in §§ 35.13 and 35.605 of the final rule; they will require a license amendment. This is required because such changes could significantly affect the public health and safety. Licensees will be free to make minor changes in their radiation safety programs that are not potentially important to safety after conducting an internal review and approval process. This will allow each licensee to make prompt use of new safety methods and to adjust radiation safety procedures to meet new needs caused by changes in demand for patient care services or patient load. A list of radiation safety topics that should be considered when reviewing proposed changes appears in the new revision of Regulatory Guide 10.8. The right to make minor changes does not relieve the licensee from the requirement to comply with the regulations. For example, requirements to have certain equipment on hand and to conduct certain surveys at a certain frequency are required by regulation and cannot be changed. See the analysis of comments on § 35.31 for further discussion of this matter.

The regulations require specific training and experience for each type of use. Proposed authorized user physicians, teletherapy physicists, and Radiation Safety Officers will have to submit summaries of their training and experience. The NRC will review those individuals' training and experience against the standards in the regulation before authorizing them to work under the license. Consistent with current practice, any individual who does not meet the standards may ask for an exemption from the training and experience requirements. The NRC staff will review the individual's training and experience with the assistance of its Advisory Committee on the Medical Uses of Isotopes, and may issue the exemption as a license condition.

Training and Experience Criteria

The NRC notes that, as a separate project, it is reviewing its physician training and experience criteria. If it decides that changes might be in order, the proposed changes will be published for public comment as a separate rulemaking action.

Enforcement

Licensees will be cited for failure to meet the requirements of the regulations or license conditions (which will list, for example, authorized users, address of use, types of use, byproduct material and inventory limits, and site-specific limitations), failure to have on hand the written procedures required by the regulations, failure to follow the procedures on hand, failure to have the records required by the regulations, or failure to follow technically valid radiation safety procedures (examples: using an instrument that doesn't work, not determining instrument detection efficiency, not allowing an instrument enough time to respond, or making unsubstantiated assumptions in calculations). Use of material can be authorized either by license or by virtue of working under the supervision of an authorized user. Use without authorization would be a violation of the regulations and the Act, which would subject the licensee and individual to enforcement action.

Amendments

Under current regulatory policy, the application coupled with the licensee condition requirement to use material in accordance with the statements made in the application usually provides the basis for inspection citations. Now the regulations will contain sufficient prescriptive and performance criteria on which to base enforcement actions. Therefore, the NRC will allow a licensee to make minor changes in its radiation safety procedures that are not potentially important to safety after making an internal review to assure that the change complies with the regulations in Part 35 and in other parts of 10 CFR Chapter I.

However, amendments still will be required for some changes. The NRC will review the training and experience of each proposed authorized user, Radiation Safety Officer, and teletherapy physicist before the individual is listed on a license. A licensee's request to add a type of use (for example, adding radiopharmaceutical therapy to a license that authorizes radiopharmaceuticals for imaging) to an existing license will be handled as a new application. The authorized user's training and experience and the procedures needed in support of the request will be reviewed for completeness and adequacy with respect to the new type of use before the amendment is issued.

A request to leave one location of use and begin working in a new location, for example when moving a private practice to a new office or when moving into a new hospital building, will have to be supported by a complete new license application package.

Licensees that are already allowed to receive packages, prepare radiopharmaceuticals, and package waste at a central facility, but use the byproduct material at satellite locations, will only have to identify the new location. (Due to the training, space, and equipment commitments needed for safety during therapy procedures, the NRC will generally not authorize licensees to perform therapies, except low-level iodine therapies, outside medical institutions. This type of request will be handled on a case-by-case basis.)

Renewals

The NRC license is valid for five years. If a person wants to continue using byproduct material after the five-year license period the license must be renewed. The renewal application must completely describe the entire radiation safety program just as a new application does. If a radiation safety procedure, facility description, or equipment list that was submitted in the application or an approved amendment still accurately reflects that part of the licensee's program, the renewal applicant may simply make a clear reference to the previous submission. If the licensee has changed a procedure, or is using different equipment, a complete new description of the particular procedure or equipment must be submitted. The licensee may also take this opportunity to identify new authorized users or request wider authorization.

Summary of Changes in the Regulatory Program

In summary, the new regulation will require that licensees meet standards that are currently imposed by license conditions. The NRC will continue to review user training and experience. The NRC will review applicants' radiation safety programs, including the site-specific radiation safety procedures, for completeness and adequacy and issue deficiency letters if necessary, but will allow licensees to make minor changes in their radiation safety procedures that are not potentially important to safety after conducting an internal radiation safety review of each change. However, the right to change procedures does not relieve the licensee from the requirement to comply with the regulations. Amendment requests will generally be reviewed just as new applications are reviewed, but they may include by reference material contained in the original application and any previous amendments.

Transition Policy For General Licensees

The General License for Medical Use. The general license program is based on the fact that the quantities and forms of material that are authorized by a general license present a very low health risk. The NRC believes it is no longer efficient to issue medical general licenses that allow the administration of byproduct material to humans. The tests authorized under § 35.31 have been superseded by newer procedures with greater diagnostic accuracy. These developments have been reflected by a significant decrease in applications for general licenses.

To determine the status of general license use, the staff performed a telephone survey of 10 percent of the current registrants. The survey results indicated that less than 9 percent of all the current registrants still use material for medical use under a general license. Many general licensees are now using byproduct material under a specific license. Because of the low level of use of the general license, the NRC has concluded that it no longer serves a useful role in licensing the medical use of byproduct material.

The in vivo general license contained in current § 35.31 has been eliminated from the regulations. In the future, all medical use will be authorized by a specific license. Current general licensees, all of whom are physicians, will receive a specific license that will be incorporated into NRC's filing system for keeping track of specific licensees. However, these licensees will be limited to the clinical procedures described in the current § 35.31, and relieved, by license condition on a pre-printed license, from the requirements that are more burdensome than current requirements under the general licensee. The only action they will need to take is to respond affirmatively to an NRC notice that asks if they want to continue to have an NRC license that is limited to the clinical procedures authorized by the current general license.

The Commission will, under § 170.11(b), exempt these licensees from application and renewal fees as long as their programs are limited to the material uses described in current § 35.31. Under the new specific licensing system, former general licensees that want to make any changes in their programs, amend their licenses, or transfer them to other physicians, will have to apply for a specific license and will be subject to all the fees that apply to other specific licensees.

The Commission has decided to waive fees to former general licensees for the following reasons. General licensees do not now pay fees. About 90% of the 1,100 or so general licensees are inactive. Each year NRC receives only a very few requests for general licenses under § 35.31. There would be no NRC review time needed and only a minor NRC administrative cost to process these licenses. It would be unfair to charge these licensees the fees listed in 10 CFR Part 170, and it would be more costly for NRC to alter that fee structure than to grant the exemption.

The General License for in vitro use. The current Part 35 also grants a general

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license for in vitro work described in § 31.11 to group licensees without requiring that they submit an in vitro registration form. The NRC will continue this program unchanged.

Transition Policy for Specific Licensees

Under the current regulatory program, the license document with the appended application is used to regulate each individual licensee. Because the requirements in the revision were taken from commonly used topical license conditions and from regulatory guidance that most licensees have incorporated into their applications, the Commission does not expect any significant inconsistencies between current licensee radiation safety programs and radiation safety programs of applicants that apply after the effective date of the regulations. Therefore, current licensees will normally be cited if they do not comply with the new regulations. However, because each current licensee's radiation safety program was reviewed individually and license conditions were tailored to meet the licensee's individual needs, there may be an occasional inconsistency between a license condition and the regulation (for example, a license may require survey instrument calibration biennially, but the proposed regulation would require calibration annually). There is no health and safety reason to undo these licenses to effect compliance with the regulation. To impose the regulation in addition to or in lieu of the license conditions would not provide for significant additional protection for the public health and safety. The Commission has decided to resolve possible temporary inconsistencies between license conditions and the regulation by providing in the regulation a transition period between the effective date of the rule and the expiration date of each license. During this transition period, if there is an inconsistency between a provision in a license (issued prior to the regulation) and the regulation, the license condition takes precedence over the regulation. Because the license conditions were reviewed from the perspective of overall safety and approved by the NRC, the inconsistency would not result in an increased risk to workers or the public.

In addition to the topical license conditions mentioned above (for example, sealed source leak test requirements, special bioassay requirements, radioactive patient surveys and release limits, or waste disposal restrictions), each specific license has an encompassing license condition that requires each licensee to possess and use licensed material in accordance with the statements, representations, and procedures contained in the license application and in letters of clarification. Despite this encompassing condition, licensees would be allowed to make minor changes in their radiation safety procedures that are not potentially important to safety; permissible changes would be restricted to those identified in § 35.31, and the licensee would have to conduct the internal review required by that section.

In the case of record retention, the regulation will take precedence because, in the past, the Commission has not offered much guidance on this topic. If a record is substantively the same as a record described in the proposed regulation and the licensee has not stated a retention period for that specific record, licensees may adopt the retention period stated in the final rule. However, during the transition period, licensees still will have to comply with any record retention period required by a license condition that deals with a specific topic, or by another Part of 10 CFR Chapter I (for example Part 20). For example, surveys that provide the basis for occupational dose records or measurements of effluent release are governed by Part 20. A license condition that requires retention of a particular record would only have been imposed for a specific public health and safety reason.

NRC does not currently review teletherapy physicist credentials, and does not identify the Radiation Safety Officer on the license. NRC will begin to review the credentials of the Radiation Safety Officer and Teletherapy Physicist and identify both of them just as it does now for authorized users. To add current licensees to this new scheme, licensees must submit the credentials for review and approval when the next amendment or renewal request is required. These individuals will be identified on the next license amendment.

IV. Analysis of Comments

Overview

The NRC analyzed all 113 comment letters that were received prior to drafting the final rule. Comments came from many different sources. A tally is provided in Table 1.

TABLE 1

Source [1]	PP	H	A	C	I	S	O	M
Comments submitted	18	42	8	10	5	22	2	5
ALARA	1	6	0	2	0	1	1	0
Minor changes	0	5	0	1	0	20	2	0
Misadministration reports	1	10	2	1	1	0	2	0
Technical comments	2	31	5	10	5	16	3	4

[1] PP-private practioner; H-hospital; A-professional association; C-radiation safety consultant; I-individual; S-state regulatory program; O-Scientific organization; M-manufacturer.

Twenty-nine of the letters addressed training and experience criteria for diagnostic radiopharmaceuticals, an issue which the NRC stated in the Notice of Proposed Rulemaking was being handled as a separate project that will be published for public comment separately. Thirty-three complimented the agency on the completeness and clarity of the rule.

Many commenters addressed the three major issues raised by the proposed rule: the requirement to have an ALARA program, misadministration reporting requirements, and the provision that allows licensees to make minor changes in their radiation safety programs. Nine of the 11 comments received on the ALARA program requirement recommended that the requirement be placed on private practitioners as well as medical institutions. Two recommended either no change or lessening of the requirement. Of those that addressed the provision for minor changes in licensees' radiation safety programs, individuals associated with state regulatory programs were unanimous in recommending that all program changes require license amendment. The other comments indicated satisfaction with the provision. Of the 17 letters that addressed the misadministration reporting requirement, 13 recommended deletion of the diagnostic misadministration reporting requirement, and 4 recommended no change.

The NRC mailed notices to all 1,100 general medical licensees that are licensed under the current § 35.31. Ten requested more information, and 5 indicated that they wanted a license that would allow them to continue their work. The Postal Service returned 141 of the notices as undeliverable.

General Comments

1. *Consolidation and clarification.* Commenters were almost unanimous in complimenting the agency for publishing

the proposed consolidation of requirements. Many endorsed the NRC's view that noncompliance is frequently born of ignorance rather than negligence, and that this problem is best dealt with by putting all requirements in one place. Furthermore, the timing of the revision is appropriate given the growth over the past two decades of the professional literature and various professional organizations.

2. *Word use.* In the notice of proposed rulemaking, the NRC clarified several terms of art that it proposed to use when dealing with medical licensees. Several comments were received.

Licensee. Several commenters noted that the regulations should be revised to allow contractors to do certain chores, noting that the regulation requires "the licensee" to perform certain tasks, while in practice licensees frequently hire outsiders to perform these tasks. The NRC stated in the Notice of Proposed Rulemaking, "The person (individual, partnership, corporation, or agency) listed on the license as the 'licensee' is responsible for compliance with regulations and license conditions. The licensee may effect compliance through full-time or part-time employees, contracts with consultants or service organizations, or other business arrangements. The word 'licensee' is used throughout the regulation to stress the fact that, no matter which method is used, the licensee is legally responsible in case of noncompliance." Therefore, there is no need to revise the regulations in this regard.

Operable. Some commenters suggested that the word "operable" should be inserted "where appropriate to obviate the need, in the future, to constantly explain to licensees that meters must, in fact, *be* operable." The NRC can only repeat what was stated in the notice of proposed rulemaking. "The word 'operable' is not used in the proposed regulation because every piece of equipment must be operable. If a piece of equipment is not operable or reliable, whether due to old or absent batteries, incomplete or improper maintenance, damage, inappropriate use, or improper use, it cannot be used to meet a regulatory requirement because there is no assurance that it accomplished the task for which it was used." The NRC repeats: Every piece of equipment used to meet a regulatory requirement must be operable.

Teletherapy physicist. The current Part 35 uses the term "qualified expert," which is usually used to denote an individual with special training and experience in a field determined in context by the reader. The proposed Part 35 used the term of art "qualified teletherapy calibration expert" to denote the field of special expertise. The final regulation uses the less unwieldy term of art "teletherapy physicist." Although the terminology was changed, the functions of the individual have not.

Roentgen, rad, and rem. These base units are used to measure three different quantities: exposure, dose, and dose equivalent respectively. The NRC notes in 10 CFR 20.4(c) that a dose of one rem is equal to an exposure of one roentgen of x or gamma radiation or a dose of one rad of x, gamma, or beta radiation. In this final rule the NRC has used the base unit rem throughout.

Dose and dosage. In pharmacy, the word "dose" is used to indicate the amount of chemical administered; in radiation biology it is used to indicate the amount of ionizing energy absorbed per unit mass; and in radiation safety it is used as a shorthand term to indicate a worker's exposure to radiation. In order to avoid confusion, the word "dosage" is used in the revised Part 35 to indicate quantities of radioactivity that are measured with the base unit Curie. The word dose is used to indicate quantities of radiation absorbed dose or dose equivalent that are measured with the base unit rad or rem.

Record and report. A record is a user-retrievable notation or complete document. It may consist of something as small as a check-mark on a form or something as extensive as a survey of a newly installed teletherapy unit with appended calculations to demonstrate compliance with the limits on exposure in unrestricted areas. A report is a transfer of information which might be made face to face, by telephone, telegram, computer link, or hard copy transmittal.

Test and check. For many pieces of equipment, drafting committees comprised of industry experts have prepared standards of performance and complete calibration protocols. If a piece of equipment is subjected to the protocol in the calibration laboratory and meets all the standards, then the ability of the equipment to perform as expected in normal field use is assured. In the revised Part 35, this concept of complete examination is referred to as a "test." During field use it is common practice to subject a piece of equipment to a quick examination to determine whether it is working. This procedure does not examine all parameters of equipment performance. In the revised Part 35, this perfunctory examination is referred to as a "check."

Address of use, facility, and area of use. The phrase "address of use" is used to describe the building or buildings (typically identified by a single street address) where byproduct material is used. The word "facility" connotes a room or contiguous rooms where byproduct material is used, such as a nuclear medicine clinic comprised of an office, an imaging room, and a dosage preparation and waste storage room. The phrase "area of use" connotes the space used by a worker when performing a specific task connected with receiving, handling, or storing byproduct material.

Dedicated check source. A long-lived radioactive source can be used to check the day-to-day constancy of an instrument. The *same* source (a "dedicated" source) must be used every day so that the user knows what reading to expect from the instrument. The source may also be used for other purposes.

3. *Instruction.* Several commenters asked if instruction for workers had to be in classroom lecture format. The NRC recognizes that instruction can be in the form of lectures, laboratory exercises, audiovisual packages, printed handouts, preceptorials, or apprenticeships. The important point here is not the format of the instruction, but rather that the instruction be retained and used by the worker. To help correct misunderstandings, an opportunity for questions and answers should be an integral portion of each instruction module.

The NRC did not address the frequency of review sessions because that judgment must be made on-site. If employees are performing all their assigned tasks correctly, there is no need to spend time reviewing procedures with the employees. If instruction has not been followed by regular use of the procedures taught, then review instruction is probably necessary. If an employee is unable to do things correctly, then review and continued close supervision, or re-assignment, is necessary.

4. *Signatures on records.* Several commenters stated that the requirement that a certain individual sign a record or report implicitly required that individual to perform the survey, check, or test that is documented by the record or report. No such implication was or is intended. The NRC realizes that technicians, students, and residents do many of the tasks required by the regulations. The purpose of having a particular individual sign a report is to assure that someone with special training or radiation safety program oversight responsibilities has reviewed the document for correctness, completeness, and need for follow-up action.

5. *Temporary absence.* Several commenters asked if a license amendment or notification was required if an authorized user, Radiation Safety Officer, or Teletherapy Physicist was absent for illness, vacation, sabbatical, or continuing education. Because the specific facts and circumstances would dictate the appropriate action by the licensee, it would be impossible for the NRC to make generic determinations in advance of the situation.

The point can not be reiterated sufficiently that the licensee, despite the absence of personnel, remains responsible for assuring continued compliance with NRC radiation safety requirements.

6. *Deletion of the general medical license in § 35.31.* As noted in the discussion of the transition policy for general licensees for medical use, the general medical license, which authorizes a few radiopharmaceuticals for a few listed clinical procedures, is not frequently used and therefore no longer an efficient way of regulating the medical use of byproduct material. Thus, it has been deleted. However, current general medical licensees will be allowed to continue using materials under specific licenses that the NRC will issue.

7. *Fees.* One licensee said NRC should reduce its medical license fees when applicants propose to use radiation safety procedures that are published in regulatory guides because that reduces the time NRC needs to review the application. The comment can not be addressed in this rulemaking because the proposed rulemaking did not propose any changes to the fee schedule in 10 CFR Part 170. A petition for rulemaking to change Part 170 may be submitted.

8. *Records.* A few commenters said the detailed nature of some recordkeeping requirements ran counter to the philosophy of flexibility on which the revision is based, and may require a change in other administrative procedures. The NRC has retained the detailed prescriptive requirements that describe the information that must be included in each record. The NRC has carefully reviewed each element of data required and believes each is an important part of the record or indicates completion of an important step in a procedure.

Some commenters said a certain record requirement duplicated other records kept elsewhere—for example, diagnostic radiopharmaceutical dosages may be listed in a clinical procedures manual. There is no need to duplicate that information unless the regulation specifically requires that the information be posted or recorded in a certain place.

The NRC notes that, as a separate rulemaking, it is reviewing *all* of its record retention requirements. Some of the retention periods in this final rulemaking may be changed as a result of that project, which will be published for public comment.

9. *SI Units.* A few commenters recommended that the newer International System of Units (SI), which has new units for amount of radioactivity, radiation exposure, radiation dose, and dose equivalent, be used in place of the special radiation units because the SI system is now being used more frequently. The NRC believes that, if indicated, such a change should be made through all NRC regulations at one time, not where it would affect only one group of licensees.

10. *Specialty certification.* Some commenters questioned whether certain physicians who have successfully completed an examination in a medical speciality (diplomates) should be authorized to serve as Radiation Safety Officer, and some recommended that other additional certifications be recognized. The NRC compared the examination criteria applied to diplomates to the responsibilities shouldered by certain individuals and made a judgment that the certifications identified for certain individuals provide an appropriate demonstration of adequate training and experience. Thus, some certifications have been added that were not listed in the proposed rule: American Board of Nuclear Medicine or Board of Pharmaceutical Specialties in Nuclear Medicine for Radiation Safety Officer; and American Board of Radiology for therapeutic use of radiopharmaceuticals.

11. *Training and experience criteria.* Several commenters recommended changes in the training and experience criteria the NRC applies to physicians who want to use radiopharmaceuticals for diagnostic clinical procedures. In the notice of proposed rulemaking the NRC noted that it had "received and is reviewing suggested alternative training standards for some methods of use. The review is being handled as a separate project. If any changes in training standards come out of that project, they will be published for public comment. . . ." The NRC is continuing to review recommendations for alternative training criteria; they will be published for public comment at a later date.

A few commenters said authorized users and Teletherapy Physicists should be at least "board eligible," meaning that they have training and experience sufficient to allow the individual to apply for the certification examination. The NRC notes that most boards do not use this term (instead saying an individual is certified, not certified, or in the examination process), and believes the use of the term might create more confusion than it would resolve.

A few commenters said the required hour-by-hour distribution of content in the classroom and laboratory portions of the training and experience sections was overly restrictive, and would not recognize differences in students or programs. The NRC agrees, and has simply listed required topics, but has retained the *total time* requirements.

12. *Effect on medical broad licensees.* A few commenters said the NRC should indicate which sections apply to broad licensees authorized for medical use under Part 33; some are allowed to name authorized users and some are also allowed to develop new byproduct materials for medical use. The NRC has retained the solution to this question that was in the notice of proposed rulemaking. "These licensees would be required to comply with the proposed prescriptive and performance criteria of Part 35, but would be exempted from the training and experience requirements of Subpart J and the authorized materials and authorized use restrictions in proposed §§ 35.49, 35.100, 35.200, 35.300, 35.400, and 35.500." These changes will not limit broad licensees' authority to conduct medical research and identify authorized users.

13. *Therapy patients.* One commenter suggested that requirements be drafted regarding the handling of deceased patients who had been administered therapeutic radiopharmaceuticals or implants. The NRC notes that § 35.404 requires that the licensee retrieve temporary implants. The regulations, in §§ 35.315 and 35.415, require prompt notification of the Radiation Safety Officer in case of the patient's death, who then is responsible for taking steps to ensure compliance with requirements in Part 20. In case of death after release from confinement for radiation safety purposes, the NRC expects licensees to take steps to reduce doses to pathologists, morticians, and other individuals, but also recognizes the licensee may no longer have control over the remains. Therefore, the NRC can not expect that the licensee is able to take appropriate action.

14. *Voluntary submission of economic data.* Several commenters noted that the application form asks applicants to indicate their annual receipts, number of employees, number of beds, and willingness to furnish additional cost information on the economic impact of

NRC regulations, and said this has nothing to do with NRC's responsibility to assure the public health and safety. The NRC notes that the Regulatory Flexibility Act of 1980 requires Federal agencies to fit requirements to the scale of the entity being regulated. That Act requires that each agency consider the economic effect of its regulations on small entities and that, if a proposed regulation will have a "significant economic impact on a substantial number of small entities," the agency prepare an analysis of the impact. Thus, the NRC requests voluntary submission of economic data to determine what portion of affected licensees are small entities, how they are affected, and whether the regulation could be changed to alleviate adverse effects.

Comments on Specific Sections

Section 35.14 Notification.

Comment: There is no need for a licensee with several authorized users to notify the NRC when one of them leaves. The collective expertise is still sufficient to assure the public health and safety.

Response: The NRC believes this notification is important because high turnover in professional staff may indicate inadequate management of the radiation safety program. The requirement has been retained.

Section 35.20 ALARA program.

Comment: All medical licensees should have such a program because the hazards are the same, whether in a hospital or a clinic. Although it may be burdensome, the private practitioners' programs should be reviewed by an outside consultant.

Comment: "It appears that the principle of ALARA is replacing maximum permissible dose as a standard in matters of radiation exposure. This means that an objective standard with a widely recognized and approved set of limits can no longer be relied upon in quality control and risk management. Instead, radiation exposure will be weighed, *post hoc*, by the 'reasonable man.' "

Response: The NRC agrees that individuals may have difficulty defining what is reasonable, although most can offer "reasonable" solutions to hypothetical problems. However, ALARA is an operating philosophy or principle on which safety programs should be based. It does not prescribe permissible exposure limits.

The NRC has broadened the requirement to apply to all medical licensees. Although on occasion this may result in a private practitioner having a "one-participant conversation," the NRC believes that reviewing a radiation safety program from the perspective of worker protection rather than from clinical or business need may allow for insight or alternative methods that provide for increased safety. Moreover, the requirement for an ALARA program may help inculcate the philosophy of reducing unnecessary exposure in operating procedures.

The NRC agrees that an independent outside review may be helpful, but believes there is inadequate basis for imposing such a requirement. It is beyond the ken of a federal agency to know whether an outsider is needed to review the program managed by the Radiation Safety Officer.

Comment: There is no need for two trigger levels that initiate investigation of higher than usual worker doses; one is sufficient.

Response: The lower level initiates a timely investigation into the cause of a worker dose; the higher level initiates a prompt investigation *and* a review of viable mitigating actions because the investigation may indicate possibility of high worker dose or likelihood of unnecessary worker dose.

Section 35.21 Radiation Safety Officer.

Comment: It is unlikely that an authorized user/Radiation Safety Officer will have the time or inclination to do all the required tasks.

Response: The assigned responsibilities are essential elements of a radiation safety program. Because its inspection program has indicated a high degree of voluntary compliance, the NRC does not foresee adequate motivation as a problem. The NRC repeats that tasks, but not responsibility, can be delegated.

Section 35.22 Radiation Safety Committee.

Comment: The requirement that a licensee's Radiation Safety Committee approve each clinical procedure is unnecessarily burdensome. The NRC has acknowledged that physicians are motivated to act in the best interest of their patients, yet, because of the time needed to conduct the approval process, the physician may not be able to offer services needed by the patient. It is difficult to conceive of radiation safety issues that warrant this requirement.

Response: The NRC agrees that physicians need latitude to provide care for their patients. Once a physician has demonstrated training and experience adequate to safely use a group of materials with similar radiation hazards, an additional internal review is unnecessarily burdensome. The requirement has been withdrawn.

However, to allow the Radiation Safety Committee to meet its oversight responsibilities, the authorized user should report these new diagnostic clinical procedures so they may be incorporated as part of the annual Radiation Safety Program review.

Comment: To avoid potential conflicts, the regulation should identify who should chair the Radiation Safety Committee.

Response: It is beyond the ken of a Federal agency to know which individual or officer in each of 2500 local organizations is best suited to chair a committee.

Comment: NRC should require that a radiopharmacist sit on each committee because medical use includes the use of new radiopharmaceuticals.

Response: FDA's review of new radiopharmaceuticals and package inserts provides adequate assurance that materials distributed for medical use can be used safely. Furthermore, diagnostic radiopharmaceuticals do not present a credible risk to the patient. Therapy radiopharmaceuticals are not compounded or reconstituted by medical licensees.

Comment: The proposed regulation would allow several committees to share the responsibilities of the Radiation Safety Committee. This may cause coordination problems.

Response: The NRC believes that allowing more than one committee to oversee the radiation safety program may lead to misunderstandings about jurisdiction and responsibility that result in incomplete oversight of the program. The section has been changed to call for a single committee. That committee may of course consult with other committees and individuals.

Comment: The Radiation Safety Committee should be allowed to name authorized users. Other committees in a hospital are allowed to confer certain medical privileges.

Response: The NRC considered this, but believes that an independent review of training and experience credentials is necessary to assure the public health and safety.

Section 35.23 Statements of authority and responsibilities.

Comment: The NRC should clarify the regulation to indicate that the Radiation Safety Committee and the Radiation Safety Officer should have not only technical responsibilities, but authority to assure that the policy is adhered to and that the radiation safety program is

managed in a businesslike and efficient way.

Response: The section has been modified to indicate that both must have the authority to manage the program so as to assure that materials are used in accordance with NRC regulations.

Section 35.25 Supervision.

Comment: There may be only one authorized user on a hospital's license. If the authorized user is absent, the hospital has to hire an authorized user from another area to care for the patients. There may be capable residents at a nearby medical college who cannot be hired only because they are not listed as authorized users on a license. Yet, they may have been supervised by the authorized user before and found capable of delivering proper care for patients.

Comment: The NRC should require that each physician authorized user and technologist be certified by the appropriate board. This would help assure that individuals have been trained.

Comment: Requiring the authorized user to be physically present on one hour's notice is arbitrarily stringent. Choose a more reasonable time.

Comment: There should be a time limit on use of the supervision clause with respect to a physician-in-training in order to avoid use of the supervision clause in lieu of licensure.

Response: The purpose of supervision is to provide assurance that technologists and physicians do not use byproduct materials in a manner that is contrary to the requirements of the license, the regulations, or that is hazardous to the public health and safety. The proposed requirement that the authorized user be immediately available by telephone and physically present on one hour's notice was an attempt at a prescriptive definition of supervision in the medical setting.

NRC recognizes that medical practice is regulated differently in each state, but that, in the end, the physician is responsible for providing quality medical care. A prescriptive definition that describes delegable tasks, timely response in case of untoward events, and training requirements that are suited for one setting may hinder the delivery of medical care in another setting. The authorized user physician identified on the license is responsible for delivering quality medical care, and is best situated to determine what tasks a certain physician or technologist is capable of performing and the amount of personal supervision that each needs.

Under the final regulation, a licensee may delegate to unnamed individuals performance of any task associated with the medical use of byproduct material from package receipt through quality control, prescription, administration, interpretation or follow-up for individual clinical procedures, and radioactive waste disposal. The delegations must be consistent with other institutional requirements and the state's regulation of medicine. The NRC did not retain the "immediately available by telephone and physically present on one hour's notice" clause.

The licensee can not delegate *responsibility* to supervised individuals. If a supervised individual, through misunderstanding, negligence, or commission, acts contrary to the requirements of the license, the regulations, or an order, the *licensee* remains responsible.

The NRC believes this strikes the best balance between its responsibility to assure the public health and safety and a physician's responsibility to deliver quality medical care.

Section 35.29 Administrative requirements that apply to the provision of mobile nuclear medicine service.

Comment: The proposed requirement that mobile service not be provided to NRC-licensed hospitals because of clouded responsibilities eliminates an option a hospital needs for delivery of medical care in case of prolonged nuclear medicine department downtime. There could be significant delay in providing necessary clinical procedures and patients may have to be transported to another hospital. The regulation could result in inferior health care delivery to patients and could be counterproductive to health care cost containment.

Response: To respond to its charge to protect the public health and safety, it is appropriate for NRC to place restrictions on where and by whom byproduct material may be used. These restrictions make compliance more likely and corrective action simpler in case of hazards or noncompliance.

In this case, however, commenters properly pointed out that the regulation could have an adverse impact on the public health by making certain clinical procedures unavailable or inconvenient. The NRC's responsibility to assure public safety must be balanced with the responsibility of the NRC-licensed hospital-client of a mobile nuclear medicine service to provide care for its patients.

The regulation has been changed to allow mobile nuclear medicine services to provide service to NRC-licensed hospitals because they may need this option to provide timely medical care. However, when an NRC-licensed hospital exercises its authority to invite a mobile nuclear medicine service to provide medical service, the NRC will deal with this as though the hospital has delegated tasks to another licensee. The NRC-licensed hospital, not the mobile nuclear medicine service, will normally be held responsible for items of noncompliance that occur at the hospital.

The same considerations and decision apply to NRC-licensed private practitioners who invite a mobile nuclear medicine service to provide service.

Comment: Can a mobile nuclear medicine service receive byproduct material at a client's address of use.

Response: This is not allowed because there is no assurance that the client knows what safety measures to initiate. The section has been clarified by adding a paragraph that clearly forbids such practice.

Section 35.31 Radiation Safety Program Changes.

Comment: Although the proposed section will relieve the licensing staff of some casework, the responsibility to assure that new radiation safety procedures are adequate will fall on the inspector's shoulders. An inspector does not have time to review procedures in the field, and will not have the opportunity to consult reference works or colleagues if necessary.

Comment: Many licensees do not have the expertise needed to properly review a proposed change. A licensee may unwittingly degrade a radiation safety procedure or the Radiation Safety Officer may be pressured into changing it; the degraded procedure could be in effect for years before an NRC inspection triggers its correction.

About 40 percent of amendment requests are deficient. This demonstrates that many licensees are not capable of making an adequate safety review of a proposed change. The NRC should reduce the scope of the term "minor change" or continue to review all changes.

Comment: The NRC is shirking its responsibility. Why is the NRC bothering to require applicants to submit radiation safety procedures if licensees won't be required to follow them?

Comment: A licensee should earn the authority to make minor changes. NRC should grant this authority case-by-case after examining a licensee's inspection history and radiation safety staff. Perhaps only those with certified physicists would be allowed to make changes.

Comment: Although the proposed policy will give management the opportunity to promptly implement new or better safety procedures, it may also allow for increased productivity at the expense of safety. Committee members might be removed without cause. This could be precluded by requiring licensees to notify the NRC of membership changes.

Comment: The Joint Commission on the Accreditation of Hospitals states that "The service of a health or radiation physicist should be available, at least on a consultant basis, for educational purposes and for safety evaluations of all equipment and storage and handling practices." This negates the argument made by some that inadequately trained hospital staff will make changes in radiation safety procedures without guidance.

While accreditation of hospitals is a voluntary system, it is important to note that if a hospital does not volunteer for accreditation, it cannot be reimbursed by Federal programs such as Medicare and Medicaid, and other insurance organizations will not reimburse that hospital either. Although this is a carrot and stick system, the stick is so large that very few hospitals are not accredited.

Therefore, national voluntary standards and business considerations provide alternative assurance that hospital licensees will not make untoward changes in their radiation safety programs.

Private practitioners and small medical institutions do not look for ways to change procedures so frequently because they are disinclined to change things if their most recent inspection was favorable and business is running smoothly.

Comment: NRC should clarify the distinction between major and minor changes. The examples given are extreme.

Response: Changes that require a license amendment are listed in §§ 35.13 and 35.606, License amendments. Before publishing the proposed rule, the NRC analyzed 5 percent of the requests for medical license amendments received in a one year period. A summary of the analysis appears in Table 1. The NRC believes the list of major changes that are potentially important to safety provides adequate guidance regarding those cases in which an amendment request must be submitted.

Table 1. Analysis of Medical License Amendment Requests

Number of completed actions that were analyzed	[1] 100
Number of requests that included a major change which would require an amendment under the proposed revision of 10 CFR Part 35	60
Users	51
Type of use	15
Address of use	5
Inventory	2
Number of requests for an administrative change, e.g., name change, change of address but not location, short-term extension, etc.	6
Number of requests that included a minor change which would not require an amendment under the proposed revision of 10 CFR Part 35	37
Area of use [2]	21
Replacement equipment	5
Equipment quality assurance procedures	11
Service contractor	8
Handling procedure	8

[1] Some requests contained both Major and Minor changes and therefore were tallied twice; thus the division by Major, Administrative and Minor does not add up to 100.

[2] The proposed rule would have allowed licensees to use byproduct material in areas of use that were not identified in the application. On further consideration the Commission believes that such changes are potentially important to safety and should be reviewed by the staff.

The NRC has clarified the concept of "minor change" by using a new word and providing a list of examples. Minor changes should be ministerial in nature. As used by NRC in this section, a ministerial change is one that is made, after ascertaining the applicable requirements, by persons in authority in conformance with the requirements and without making a discretionary judgment about whether those requirements are needed in the case at hand to assure the public health and safety. A licensee may not make discretionary judgments about things such as survey frequencies, minimum detectable amounts of radioactivity or dose rates, or what information constitutes a minimally adequate record of an action. The NRC has already made a discretionary judgment about such matters.

The examples provided in the regulatory text were taken from recently submitted amendment requests and staff suggestions. They are not the only kinds of minor changes that may be made. There will undoubtedly be unclear cases in which the licensee is not certain whether an amendment request should be submitted. In unclear cases, licensees may consult the licensing staff.

Before selecting a course, NRC reviewed its inspection and enforcement record for medical licensees. In 1985, the NRC took escalated enforcement action against 35 byproduct materials licensees. Only eight involved medical licensees, and none of those eight involved overexposures to workers or the public. In 1982, NRC conducted 1,566 inspections of medical licensees. Almost all of the 1,240 line items that were cited were for minor safety infractions that did not represent a worker or public safety hazard. More recent data are similar. The NRC believes that its inspection findings demonstrate a high level of voluntary compliance with its requirements, whether they be couched in terms of regulations or site-specific license conditions.

The NRC believes the deficiency rate in the current application process is caused by having requirements scattered in several documents and not caused by ignorance of basic radiation safety practice. Thus, the deficiency rate is not a valid measure of a licensee's ability to design and operate a radiation safety program.

The NRC does not believe that administrators will pressure Radiation Safety Officers into compromising their programs. The impact of the adverse publicity that accompanies an escalated enforcement action far outweighs the potential short-term savings of a compromised program.

The NRC will provide, in Regulatory Guide 10.8, a list of questions that should be considered when a licensee makes an internal review of a proposed change. The NRC notes that many licensees use the services of radiation safety consultants to periodically review their programs now, and assumes that, in many cases, these consultants will also be asked to provide an independent review before a change is made. However, even absent an independent review, the NRC is convinced that safety will not be endangered by permitting licensees to make minor changes that are not potentially important to safety in their radiation safety programs.

The NRC notes that it currently receives about 800 requests for amendment each year from its 2,500 medical licensees for license amendments that are characterized as "minor changes" under this rule. This represents a minor radiation safety program change about once each three years for each licensee. The NRC does not believe it likely that licensees will make frequent changes in their radiation safety programs, even when spared the amendment fee.

The requirement to submit a detailed radiation safety program as part of the application process provides assurance that the licensee will have a program in place when byproduct materials are received. However, the NRC recognizes that a licensee's needs and resources change with time. At issue here is

whether a regulatory agency must approve minor changes in a licensee's day-to-day radiation safety program. Does a desk review of minor operational changes contribute significantly to public health and safety? The NRC is convinced that it does not.

The NRC believes the essential elements of a medical licensee's radiation safety program are well defined and have been consolidated in the regulation. The present review policy is resource intensive, causes backlogs due to the bulk of material submitted for review and the number of license amendments needed, and results in a different set of radiation safety requirements for each licensee. Inspectors may occasionally review changes to assure that the process required for making changes was followed. However, inspectors will examine the working day-to-day radiation safety program for compliance with the regulations.

The NRC believes this change in licensing policy provides both necessary flexibility by permitting licensees to make minor changes in their radiation safety programs and yet provides for NRC oversight of changes that might affect the public health and safety.

The NRC notes that the proposed rule would have allowed licensees to use byproduct material in areas of use that were not described in the application for license. The NRC now believes that such a change should require a license amendment because physical structures often provide features that are potentially important to safety. Such a change might also compromise NRC's ability to conduct an unannounced inspection.

Section 35.33 Records and reports of misadministrations.

Comment: The level of public emphasis that NRC has placed on misadministrations has proven to be an effective mechanism to limit their number. No change is needed.

Comment: At least to the extent that it deals with diagnostic clinical procedures, the misadministration rule should be deleted or substantially modified. The case for its deletion is made by the misadministration reports submitted to the NRC.

The misadministration rate for radiopharmaceuticals is much less than for non-radioactive drugs. The hazard to the patient is much less than that associated with the misadministration of physiologically active drugs or with other medical mistakes. In virtually all instances, the patient sustains neither actual nor theoretically significant potential injury. The hazard to workers and the public is almost non-existent.

Misadministrations are precipitated by human error, such as momentary distraction or miscommunication, not radiation safety program deficiencies. Although a fail-safe system might be achieved through multiple levels of checking and cross-checking, the added costs would far outweigh the marginal benefit that would accrue to society.

Response: The NRC is well aware that the misadministration rate for radiopharmaceuticals is much lower than for other drugs, that there is no reporting requirement for misadministrations of cyclotron-produced radiopharmaceuticals, x-rays, and nonradioactive drugs, and that the risk to patients, workers, and the public is small. None of the assertions are at issue.

The fact that there are other greater potential hazards found in the medical arena does not relieve NRC of its responsibility to assure public health and safety as it may be affected by material under its jurisdiction. Rather, at issue is whether there is a safety problem, and, if so, can it be corrected at an expense that is reasonable compared to the hazard.

Therapy clinical procedures, in the view of the NRC, present a greater risk to the public and patients than diagnostic clinical procedures. Given the increased risk to the public health and safety, the reasoned judgment of the NRC requires the maintenance of the current misadministration rule for therapy uses of byproduct material. The NRC will continue to carefully review therapy misadministration reports. The NRC staff is also considering an advance notice of proposed rulemaking that would request public comment on regulations regarding quality assurance in radiation therapy as well as other NRC actions resulting from therapy misadministrations. This request for early public comment will be published at a later date.

The NRC believes that misadministrations that result in a dose to the patient greater than a dose to a member of the public permitted under § 20.105(a) should require a report to the NRC and the referring physician. Furthermore, licensees should keep records of all misadministrations. As a result, the diagnostic administration reporting requirement has been changed to require reports for misadministrations when such misadministrations result in a whole body dose greater than 500 millirem or an organ dose greater than 2 rem. (Licensees may use dosimetry tables in package inserts, corrected only for administered millicuries, to determine whether a report is required.)

In order to assure that diagnostic misadministrations are not occurring in a particular licensee's program with excessive frequency, the NRC believes that there should be an internal investigation and report by the Radiation Safety Officer. The NRC will review these reports during its field inspections. In addition, the reports will assist the licensee in carrying out the ALARA principles of Parts 20 and 35.

Because of the public health and safety nature of the reporting requirement, the NRC will require Agreement States to implement compatible requirements.

Comment: While it should be retained, the therapy misadministration report trigger should be relaxed from 10 percent error to 20 percent error. That range better reflects the diversity of medical opinion on the optimum dose for a particular patient.

Response: The NRC has not changed its requirements that apply to therapy misadministrations because of their importance to public health and safety. The NRC reiterates that the 10 percent trigger level is *not* based on the diversity of medical opinion regarding the optimum radiation dose for a certain disease stage. Rather, the NRC recognizes there are uncertainties in the measurement and administration of radiation that make it impossible to demonstrate that the exact radiation dose that was prescribed was delivered. However, when the dose delivered is more than 10 percent different than the dose prescribed, it is clear that a mistake has been made. The mistake should be investigated and steps should be taken to prevent its recurrence.

Comment: NRC should take enforcement action against licensees who administer radioactive material when it might have serious consequences for the patient.

Comment: Enforcement actions may reduce compliance with the misadministration reporting requirement.

Response: The diagnostic misadministration reporting requirement will continue to require reports to the NRC for certain diagnostic misadministrations that are listed in the regulations. The reporting requirement for all therapy misadministrations has been retained.

The NRC deals with misadministrations case-by-case. Various levels of enforcement are available. It does not appear that NRC's enforcement program has caused noncompliance in any area of its jurisdiction.

Section 35.50 Possession, use, calibration, and check of dose calibrators.

Comment: Does this possession and use requirement mean that even small licensees that use only precalibrated unit dosages of radiopharmaceuticals will have to buy a dose calibrator?

Response: The NRC believes that requiring licensees to ensure that the desired dosage has been prepared is essential to fulfilling its statutory responsibilities. The NRC recognizes that the overwhelming majority of its licensees use a dose calibrator to meet this requirement, and therefore, in the regulations, directly addresses their use. This does not prevent an applicant from proposing an alternative method for measuring dosages and requesting an exemption in the application. If the applicant is able to demonstrate that the alternative provides adequate accuracy and reliability, the licensee will be allowed, by license condition, to use the alternative method.

Comment: Is a volumetric determination of a dosage from a calibrated multi-dose vial an acceptable alternative method for measuring dosages?

Response: No. Any alternative must provide for the measurement of the amount of radioactivity in the individual dosage.

Comment: Sealed sources that are used for dose calibrator accuracy tests should be traceable to the National Bureau of Standards.

Response: The NRC reviews proposed label wording and traceability assertions before a manufacturer is authorized to distribute sealed sources. This provides adequate assurance of accuracy.

Comment: The regulation requires mathematical correction or repair if the dose calibrator shows inaccuracy greater than 10 percent; Regulatory Guide 10.8 has a 5 percent trigger level. Which is the requirement?

Response: The regulation imposes the requirement; the Regulatory Guide provides a method for meeting the requirement. The guide has a more stringent trigger level so the licensee can take action *before* the regulatory limit is passed instead of *after*. However, the licensee is not required to follow the Regulatory Guide. The licensee can specify an alternative method in the application. The NRC will review the alternative method to determine whether it provides adequate assurance of public health and safety.

Section 35.51 Calibration and check of survey instruments.

Comment: Not all survey instruments have a built-in check source. If an instrument is shipped to a calibration laboratory, the check source reading that is required at the time of calibration could be made instead when the instrument is returned.

Response: The NRC believes the check source reading made at the time of calibration is important to demonstrate that the instrument has not stopped operating properly since it was calibrated. Thus the source should accompany the instrument to the calibration laboratory. For instruments that do not have a built-in check source, the NRC notes that uncalibrated 10 microcurie Cs-137 sources are available for only $25.

Comment: This requirement will increase personnel dose from handling the check source, and takes time. A daily or weekly check is sufficient.

Response: The NRC does not believe the check source presents a significant exposure source when compared to other sources in the laboratory, but agrees that a requirement to check instruments before and after each period of use may be unnecessarily burdensome. The section has been changed to require a daily check.

Comment: With all the errors inherent in measuring radiation, there is no need to calibrate a survey instrument within 20 percent; a factor of 2 would suffice.

Response: The NRC believes that a range of 20 percent provides adequate leeway in the calibration process. This is consistent with the recommendation in ANSI N323-1978, Radiation Protection Instrumentation Test and Calibration, section 4.2.2.1.[4]

Section 35.53 Measurement of radiopharmaceutical dosages.

Comment: Clarify when the measurement should be made.

Response: The NRC has purposefully not specified when the measurement must be made so as to allow for different licensees' procedural needs.

Comment: It is difficult to remove iodine-131 therapy dosage containers from their radiation shields and they should therefore be exempted from the measurement requirement.

Response: It is very important to assure that the manufacturer has supplied the prescribed therapy dosage so the patient will receive the prescribed radiation dose. The requirement to measure therapy dosages remains. The majority of commenters did not mention difficulty making the measurement.

Comment: The NRC should allow the licensee to use the trade name or abbreviation in place of the generic name in the dosage measurement record. These alternative identifications are equally well-recognized.

Response: The alternative has been allowed.

Comment: The need for verifying the activity of manufacturer-supplied unit dosages is unclear.

Comment: Dose calibrators are too expensive to require their use for small programs.

Response: The NRC believes it is necessary to require an independent measurement, to the extent possible, to assure that the patient is receiving the prescribed dosage. Licensees that believe the expense of acquiring a dose calibrator is unwarranted may request permission to use an alternative method of assuring that the prescribed dosage is being administered.

Comment: The rule should not require the measurement of radiopharmaceuticals that emit only beta radiation. Such measurements are difficult when made in a calibration laboratory and tenuous when made in the clinical setting.

Response: The rule has been clarified only to require the measurement of photon-emitting radiopharmaceuticals.

Comment: It is not clear whether the proposed rule applies to brachytherapy sources.

Response: The proposed rule only applies to radiopharmaceuticals. The NRC recognizes that there are special problems associated with the measurement of brachytherapy source activity that must be worked out before a measurement requirement could be proposed.

Comment: It is not clear whether NRC expects licensees to suspend operations if the dose calibrator breaks.

Response: The NRC expects each licensee to measure dosages before administering them. Licensees may want to make arrangements that provide alternative measurement procedures in case of equipment breakdown.

Comment: The requirement to measure each dosage will increase technologist finger exposure.

Response: Any time radioactive material is handled there is the potential for exposure. The magnitude of the exposure must be balanced against the need to handle the material. NRC believes that the measurement is important because if the incorrect amount of radiopharmaceutical is administered to the patient, the

[4] This report is available from American National Standards Institute, 1430 Broadway, New York, NY 10018.

diagnosis or therapy may be compromised. The NRC believes its calculations and dose records of workers who measure dosages indicate that the amount of exposure is small compared to the benefit that comes with assurance that the correct amount of activity is being administered.

Section 35.57 Authorization for calibration and reference sources.

Comment: You should raise the sealed source design limit from 6 millicuries to 15 millicuries. These reference and calibration sources are needed by nuclear medicine clinics for quality assurance checks and do not pose a significant radiation hazard when used in that setting.

Response: The change has been made.

Section 35.60 Syringe shields and labels.

Comment: NRC should recommend, but not require, that licensees use syringe shields when drawing individual dosages. In some cases experience has revealed that only a leaded-glass syringe shield permits viewing the miniscus when drawing dosages—these syringe shields are expensive and fragile.

Response: No change has been made. However, the section has been reworded to clarify that syringe shields are only required when preparing radiopharmaceutical kits.

Comment: The open literature is ambiguous on the effectiveness of syringe shields.

Response: The NRC disagrees. Syringe shields may dramatically reduce finger dose ("Efficacy of various syringe shields for 99mTc," NL McElroy, *Health Physics*, v41 n3 pp 535-542, September 1981).

Comment: In some hospitals one individual draws a dosage and then immediately administers it. In this case a syringe label is not needed.

Response: The NRC does not believe this is an unreasonably burdensome requirement for the few licensees that fit that description. The NRC considered drafting criteria that addressed clinics with one technician but notes that, even in that case, some misadministrations have been caused by accidentally transposing syringes after drawing two dosages. Therefore, the benefits from avoiding misadministrations outweigh the costs to the licensee.

Comment: More information, such as amount of activity and time of syringe preparation, should be included on the label.

Response: The NRC believes the required information supplies sufficient information to those handling the syringes.

Comment: The NRC should allow color coding of syringes with different radiopharmaceuticals rather than requiring the name or abbreviation.

Response: Different manufacturers use different color schemes for the same radiopharmacuetical. Allowing the use of color coding in place of labeling may lead to misadministrations. Therefore labeling is required.

Section 35.61 Vial shields and labels.

Comment: This label should also include the lot number, activity, and expiration time.

Response: This information may be included in the dosage measurement records, but is not required by NRC because these are matters of pharmacy.

Section 35.70 Surveys for contamination and ambient radiation exposure rate.

Comment: A licensee may occassionally administer a dosage in the patient's room. Is a survey necessary there?

Response: No. However, employees should be reminded to take care to collect all potentially contaminated material.

Comment: The regulation allows a licensee flexibility in setting removable contamination levels, then removes that flexibility by arbitrarily setting a sensitivity limit of 200 disintegrations per minute. Can't wipe samples be evaluated by holding them next to the GM tube of a survey instrument?

Response: The purpose of setting a sensitivity limit is to ensure that samples are not simply compared to the background counting rate of the measurement system; that comparison does not provide a measure of the amount of radioactivity on the sample. Action levels indicate when mitigating action should be taken. The regulation allows the Radiation Safety Officer to set different trigger levels for different areas of use because different levels of contamination are to be expected in different areas of use.

Comment: The sensitivity limit of 200 disintegrations per minute is unnecessarily restrictive.

Response: The NRC agrees. For most of the radionuclides used in medical use, a sensitivity limit of 2000 disintegrations per minute provides adequate assurance of public health and safety. (The NRC has retained the 200 disintegrations per minute limit for radiopharmaceutical therapy rooms. See § 35.315 Safety Precautions.)

Section 35.75 Release of patients containing radiopharmaceuticals or permanent implants.

Comment: The NRC should require that patients released with residual radiopharmaceutical or permanent implants be provided information regarding the activity of the byproduct material so that special precautions can be taken if the patient is re-hospitalized elsewhere.

Response: The NRC believes the release criteria, which are similar to criteria recommended by NCRP (NCRP Report No. 37, "Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides," Chapter 4 [6]) provide adequate assurance of safety. Although the suggestion is well taken, it seems most likely that the patient would visit a physician familiar with the patient's medical history. In case of emergency treatment there is no assurance the patient would be capable of reporting the information to the attending physician.

Comment: The proposed rule stated that the 30-millicurie release limit is based on NCRP guidance. In fact, NCRP provides a range of limits.

Response: The NRC meant to imply that the limit was based on considerations addressed in the subject chapter, not that it was adopting an NCRP recommendation.

Release limits are based on approximate dose rates emanating from the source-patient and time-at-a-distance assumptions for household members. Although the calculations are straightforward, the validity of the assumptions (biological half-life of the radioactive material in the patient for the radiopharmaceutical used, physical size of the patient, duration of proximity and exact distance of household members) for a specific case is tenuous. The NRC believes that a 30-millicurie release limit provides an adequate measure of public health and safety.

The alternative 6 millirem per hour criterion has been reduced to 5 millirem per hour to provide a more conservative and more easily remembered criterion. It is the approximate dose rate that would be expected from a patient with a 30-millicurie burden of I-131, the most radiotoxic byproduct material used for medical use.

[6] This report is available from NCRP Publications, 7910 Woodmont Avenue, Suite 1016, Bethesda, MD 20814.

Section 35.80 Technical requirements that apply to the provision of mobile nuclear medicine service.

Comment: A ban on the mobile use of generators seems unnecessary.

Response: The NRC considered this when drafting the proposed regulation, but believed the greater public benefit accrued from the present system under which generators are received, stored, and eluted only at a base station. There were no commenters who demonstrated that this system deprives some members of the public of the benefits of diagnostic nuclear medicine, or that the requirement to use generators only in a base station is unduly burdensome.

Comment: Mobile service licensees should be allowed to reconstitute radiopharmaceuticals at a client's facility.

Response: The NRC recognizes that many radiopharmaceuticals should be used within six hours after reconstitution, and in some cases within one hour. Thus, it is possible that the proposed requirement for mobile diagnostic nuclear medicine services to transport only prepared radiopharmaceuticals may adversely impact the delivery of services because the licensee may not be able to reach all the day's patients within a few hours after reconstituting the radiopharmaceuticals at the base station. Therefore, the section has been reworded to allow licensees to transport radiopharmaceutical kits in addition to prepared radiopharmaceuticals.

Comment: You should not require quality assurance programs for imaging equipment. Quality assurance is the responsibility of the user.

Response: Nuclear medicine equipment is generally not designed for daily highway transportation (some nuclear medicine imaging equipment is designed to be transported within a hospital). The possibility of damage to the equipment during transportation might lead to useless administration of byproduct material. Thus, the NRC believes an equipment performance check prior to the administration of radiopharmaceuticals is indicated and is not unduly burdensome. No change has been made.

Section 35.90 Storage of volatiles and gases.

Comment: There is no apparent need for additional containment systems when storing xenon. The manufacturer's original packaging is sufficient. The ventilation posting requirement should take care of any problems.

Comment: Clarify what is meant by storing these materials "in a container with two barriers against release."

Response: The NRC has re-examined this proposed requirement and agrees with the comments. The NRC has determined that storage in the original shipping container will provide adequate control. This does not require retention of the entire package, but rather just the radiation shields and containers.

Section 35.92 Decay-in-storage.

Comment: The requirement to store waste for ten half-lives is unduly burdensome. The requirement that the container surface dose rate be at background is sufficient.

Response: This section allows for uncontrolled release of material that was contaminated with large amounts of radioactivity. Given that, the NRC believes that the storage requirement, which reduces the amount of radioactivity in the container by radioactive decay, coupled with a confirmatory survey is not unduly burdensome.

Sections 35.100 Use of radiopharmaceuticals for uptake, dilution, and excretion studies, and 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.

Comment: The requirements to use diagnostic radiopharmaceuticals in accordance with the FDA-approved package insert should be removed. The risk associated with the administration of diagnostic radiopharmaceuticals is too small to justify a regulation that denies nuclear medicine practitioners the latitude needed to provide up-to-date medical care for their patients.

The package insert represents a summary of available scientific evidence indicating that a drug is safe and effective for a particular indication when used in accordance with the directions in the package insert. The FDA does not intend for the package insert to be a restrictive document; a physician may use any drug in any fashion deemed to be in the best interest of the patient. This is predicated on the assumption that physicians are motivated to act in the best interest of their patients.

New uses of approved radiopharmaceuticals are developed at medical research institutions and reported, along with safety and effectiveness information, in the scientific literature. However, the package insert is usually not updated because the process for revising a package insert is expensive and slow. Manufacturers are not inclined to shoulder this burden because the additional sales that would result would not justify the expense of the revision.

Response: NRC's concern for worker and public health and safety must be balanced by the physician's need to provide proper medical services to the patient. The NRC believes that diagnostic radiopharmaceuticals have proven to be safe when handled by individuals with appropriate training. For diagnostic radiopharmaceuticals, the requirement to follow the package insert may have an adverse impact on the public health and safety because it prevents physicians from performing diagnostic clinical procedures needed by their patients, and is therefore withdrawn.

Comment: The NRC should not allow licensees to change the chemical form of a radiopharmaceutical.

Response: If a licensee altered the chemical form of a radiopharmaceutical, the modified radiopharmaceutical would be a new radiopharmaceutical that would not be the subject of an FDA acceptance or approval. Therefore it would not be authorized for use.

Comment: Why does NRC list approved radiopharmaceuticals in the regulations? It is only necessary to have a list available.

Response: The list has been deleted from the regulation; it will be available from NRC's regional offices.

Sections 35.120, 35.220, 35.320, 35.520, 35.620 Possession of survey instruments, and 35.420 Availability of survey instrument.

Comment: A low level survey meter cannot be used to survey around a stuck teletherapy source.

Comment: The NRC should require a low level meter for brachytherapy programs.

Response: Quoting at length from NCRP Report No. 57, Instrumentation and Monitoring Methods for Radiation Protection, Chapter 5, Instrumentation:

"If the dose equivalents are small compared to the maximum permissible value, then measurement errors by a factor of 2 are acceptable . . . For dose equivalents close to the maximum permissible value, an accuracy of about 30 percent is desirable . . . Most of the x-ray and gamma-ray *exposure* rate measurements . . . are made with small, portable ionization chambers . . . G-M counters are used in surveys for the detection of x- and gamma-ray fields. This generally limits their use to *exposure* rates in the range from background up to a few mR/h. . . . The counters respond to the number of

ionizing events within them and give no information about the energy associated with the events. Therefore, they do not respond with equal count rates to equal *exposure* rates from photons of different energies. . . . They are generally used only for detection rather than measurement . . . G–M counters are sometimes used to estimate *exposure* rates where the rate is low enough for the resulting inaccuracy of its measurement to be unimportant. . . ."

The NRC has reviewed its rationale as stated in the notice of proposed rulemaking for requiring certain licensees to have certain survey instruments on hand or available. The only change that has been made is to require that brachytherapy licensees have a detection instrument on hand because it might be needed to find a lost brachytherapy source. The wording of each section has been revised to better indicate the range of dose rates the instrument must be capable of detecting or measuring.

Section 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.

Comment: The NRC should not list xenon-133 in a group with radiopharmaceuticals that are administered by injection. The regulations should require agency approval of areas of use because there are special ventilation needs for its safe use.

Response: The training and experience needed for safe use and the radiological hazard of all the materials permitted under each subpart are similar. The NRC realizes that special ventilation is necessary for the safe use of gases and aerosols, and therefore placed additional requirements in § 35.205 Control of aerosols and gases.

Section 35.204 Permissible molybdenum-99 concentration.

Comment: The NRC notes that dose calibrators cannot measure accurately below 10 microcuries, yet proposes that radiopharmaceuticals not have more than 0.15 microcurie of Mo-99 per millicurie of Tc-99m. How is this to be measured?

Response: The amount of Mo-99 in an elution of Tc-99m is usually measured, and recorded as a concentration of microcuries of Mo-99 per millicurie of Tc-99m, before using the elution. If the fresh elution has as little as 300 millicuries of Tc-99m, then the licensee need only demonstrate that there is less than 15 microcurie of Mo-99 in the elution. Note that this is one-half the allowed concentration for sake of this explanation the NRC assumes that the freshly eluted Tc-99m is administered over the next six hours, at which time, due to the radioactive decay of the Tc-99m, the Mo-99 concentration would be about doubled.

Comment: The NRC should require licensees to notify the NRC in case of excessive Mo-99 concentration. This could indicate a widespread manufacturing defect.

Response: Notification is required under 10 CFR 21.21(b).

Section 35.205 Control of aerosols and gases.

Comment: The need for negative pressure in a room where aerosols and gases are used is not apparent given the other safety measures that are required.

Response: The NRC disagrees. A patient who is having trouble breathing, is under mental stress, or is disoriented may remove the breathing mask that is used to administer the xenon gas and spill the dosage. Dispersion of a spill throughout the workplace, which would result if the room were at positive pressure, is not an acceptable cleanup method. The requirement has been retained.

Comment: Trapping units should be checked more frequently.

Response: The NRC notes that there has not been much study of breakthrough rates of collection systems that are used in the clinical setting. Given the simplicity of the procedure used to check for breakthrough. The NRC believes that a more frequent check may be beneficial and is not unduly burdensome.

Section 35.315 Safety precautions, and § 35.415 Safety precautions.

Comment: It is not necessary for the Radiation Safety Officer and authorized user to authorize each visit by an individual under age 18 on a case-by-case basis.

Comment: Visits by individuals under age 18 should only be allowed in special cases.

Response: The NRC did not mean to imply that each individual visit need be approved. Rather, the NRC recognizes that the benefits that might be derived by the patient must be balanced against the radiation dose incurred by the visitor. If the physician determines that the greater benefit derives from allowing visits, then a notation on the patient's chart or door that visits are allowed is all that is needed. No changes have been made.

Comment: The patient release criteria in § 35.75 may cause unnecessary radiation dose to members of the patient's household and the public from patients who still have radioactivity.

Response: The sections have been modified to require the licensee to provide radiation safety guidance to the patient prior to release. "Guidelines for Patients Receiving Radioiodine Treatment," published by the Society of Nuclear Medicine, and NCRP Report No. 37, "Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides," [7] provide appropriate guidance.

Section 35.315 Safety precautions.

Comments: The proposed rule appears to require that extensive safety precautions be taken when caring for *any* patient receiving radiopharmaceutical therapy while hospitalized. This does not differentiate between patients who receive low dosages and patients who receive high dosages.

Response: The wording has been revised to clarify that the safety precautions are only required when patients must be hospitalized until the amount of radioactivity in them is low enough to allow their release.

Comment: It is not necessary to measure the thyroid burden of personnel who administer encapsulated iodine-131.

Response: The NRC disagrees. It has been observed ("Contamination from Therapeutic I–131 Capsules," by D. R. Shearer, et al., *Health Physics* v49 p81, July 1985) that individuals who handle encapsulated iodine-131 may be exposed to levels of surface contamination for which thyroid monitoring is indicated. No change has been made.

Comment: Does the 2000 dpm/100cm ^{2} removable contamination requirement apply to patient rooms that are released for unrestricted patient use?

Response: No. Because of its greater radiotoxicity, the removable contamination limit for iodine-131 in patient rooms following completion of high level radiopharmaceutical therapy is 200 dpm/100cm ^{2}.

Comment: This section should require a survey of the ambient dose rate in contiguous restricted and unrestricted areas to demonstrate compliance with the requirements of Part 20.

Response: The requirement has been added.

[6] This publication is available through the Society of Nuclear Medicine, 136 Madison Avenue, New York, NY 10016.

[7] This publication is available through NCRP Publications, 7910 Woodmont Avenue, Suite 1016, Bethesda, MD 20814.

Comment: We administer several dosages of I–131 each week. A weekly measurement of the technician's thyroid burden would be sufficient.

Response: The regulation assumes administration of a therapeutic dosage is an occasional event. Those licensees who frequently administer I–131 may propose an alternative monitoring program that would be approved by license condition.

Comment: There is no need to quarter a radiopharmaceutical therapy patient in a private room. These patients can be quartered safely with teletherapy patients.

Response: The NRC disagrees. This would unnecessarily expose patient care staff and visitors for the teletherapy patient to removable contamination from the radiopharmaceutical therapy patient.

Section 35.400 Use of sources for brachytherapy.

Comment: The NRC should require source intensity checks for brachytherapy sources.

Response: The NRC considered this but is not convinced that the requisite equipment and procedures are readily available. The NRC may address this matter at a later date in a separate rulemaking proceeding.

Section 35.406 Brachytherapy sources inventory.

Comment: The requirement to count all the sources after returning to storage the few that were used will increase personnel dose.

Response: The licensee need only count the number of sources returned to storage, and add that to the number on hand to determine the total number in storage. There is no need to count each source that remained in storage.

Section 35.415 Safety precautions.

Comment: A hospital may have a radiation-shielded room designed for two brachytherapy patients. The proposed requirement to provide a private room for each patient would not allow it to efficiently use this resource.

Comment: Because the dose rate around an I–125 implant patient is only about 0.2 millirem per hour at one meter, there is no need for a private room.

Response: In the past, most licensees ensured low dose rates in uncontrolled areas by providing brachytherapy patients with private rooms. The NRC notes that some licensees have gone to the expense of shielding a room for these patients. Portable radiation shields specifically designed for brachytherapy use are now commercially available. Therefore, shielding is available and provides an acceptable method of keeping doses in uncontrolled areas within limits. The section has been changed to allow quartering more than one radiation therapy patient in a room. Licensees are reminded that, for patient care staff and visitors, dose limits in Part 20 for workers and the public apply.

Because the dose rate around these I–125 implant patients is very low, the section has been revised to allow a licensee to quarter an implant patient with a patient who is not receiving radiation therapy if the licensee can show compliance with criteria for dose rates in unrestricted areas.

Comment: This section should require a survey of the ambient dose rate in contiguous restricted and unrestricted areas to demonstrate compliance with the requirements of Part 20.

Response: The requirement has been added.

Comment: The NRC should also prescribe radiation safety procedure requirements for cases in which the sources are loaded in other than the patient's room.

Response: The dose rate limits in Part 20 apply. In this case, the NRC cannot prescribe safety measures specifically suited to each licensee's needs.

Section 35.500 Use of sealed sources for diagnosis.

Comment: This subpart should also allow the use of bone mineral analyzers that use gadolinium-153.

Response: When the proposed regulation was drafted the NRC did not foresee the extent of medical interest that would develop regarding the gadolinium-153 scanner. However, several commenters recommended it be included here. The NRC has determined that the training and experience and radiation safety procedures needed for use of gadolinium-153 in a bone mineral analyzer are similar to those for other devices in this subpart. The NRC has added this device to this subpart.

Section 35.632 Full calibration measurements, and § 35.633 Periodic spot-checks.

Comment: Timer accuracy is not important because the same timer that is used in source calibration is used in patient treatments. Timer constancy is important and is indirectly checked each month by measuring the output. However, timer linearity need not be checked under the proposed regulation but is important because many dosimetry systems can only measure about 70 rads, while a single treatment dose may be much higher than this.

Response: The requirement to measure timer accuracy has been changed to timer constancy and linearity. The NRC agrees that constancy is indirectly checked by measuring the output, but believes that the additional assurance of accuracy that is provided by an independent check far outweighs the minimal cost.

Section 35.900 Radiation Safety Officer.

Comment: Authorized users have sufficient training and experience to oversee the management of a radiation safety program. To require an authorized user to be authorized for all of the types of use authorized by the license before being designated as the Radiation Safety Officer is unduly burdensome.

Response: The requirement has been modified to allow any authorized user listed on the license to serve as Radiation Safety Officer.

Comment: Revise the wording regarding the one year of full time experience you require so that a consultant who gets experience by working at several institutions over a year can be listed as Radiation Safety Officer.

Response: The NRC believes that the experience should be gained working full time at one institution because an individual serving as a consultant is not likely to be exposed to the day-to-day business management problems that must be effectively dealt with in a radiation safety program.

Comment: The grandfather clause in § 35.901 would require a Radiation Safety Officer to get additional training and experience if only one new material is added to a license.

Response: The NRC recognizes that new developments in medical care require changes in radiation safety procedures for which formal training of experienced individuals is unnecessary. Similarly, Radiation Safety Officers are capable of determining what requirements apply to the receipt, use, storage, and disposal of new byproduct material that comes under their jurisdiction. The requirement has been relaxed.

Section 35.930 Training for therapeutic use of radiopharmaceuticals.

Comment: The proposed rule requires that authorized users who are not certified have experience using soluble phosphorus-32 and colloidal intracavitary radiopharmaceuticals. These clinical procedures are not frequently performed, so it may not be possible for physicians to get the

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Final section No.	Proposed section No.	Topic	Origin
		Subpart B—General Administrative Requirements	
35.20	35.30	ALARA Program	New text; see RG 10.8 Appendix O revised.
35.21	35.31	Radiation Safety Officer	RG 10.8.
35.22	35.32	Radiation Safety Committee	35.11(b) revised.
35.23	35.33	Statements of authority and responsibilities	New text.
35.27	35.34	Visiting authorized user	License condition.
35.29	35.35	Mobile nuclear medicine service administrative requirements	Licensing policy.
35.31	35.36	Radiation safety program changes	New text.
35.33	35.37	Records and reports of misadministrations	35.42.
35.25	35.38	Supervision	Expanded from RG 10.8 p. 3.
35.49	35.49	Suppliers	35.14 revised.
		Subpart C—General Technical Requirements	
35.50	35.50	Possession, use, calibration, and check of dose calibrators	RG 10.8 Appendix D2 revised, and new text.
35.51	35.51	Calibration and check of survey instruments	RG 10.8 Appendix D1 revised and new text.
35.53	35.53	Measurement of radiopharmaceutical dosages	Proposed rulemaking 35.15 (46 FR 43840; Sept. 1, 1981).
35.58	35.58	Authorization for calibration and reference sources	35.14(d) revised.
35.59	35.59	Requirements for possession of sealed sources	35.14(e)(1)(i), 35.14(f) revised.
35.60	35.60	Syringe shields	Inspection and Enforcement letter Apr. 16, 1979.
35.61	35.61	Vial shields	Inspection and Enforcement letter Apr. 16, 1979.
35.60	35.62	Syringe labels	New text.
35.61	35.63	Vial shield labels	New text.
35.70	35.70	Surveys for contamination and ambient radiation exposure rate	RG 10.8 Appendix I revised.
35.75	35.75	Release of patients containing radiopharmaceuticals or permanent implants	New text.
35.80	35.80	Mobile nuclear medicine service technical requirements	Licensing policy.
35.90	35.90	Storage of volatiles and gases	RG 10.8 Appendix M revised.
35.92	35.92	Decay-in-storage	License condition.
		Subpart D—Uptake, Dilution, and Excretion	
35.100	35.100	Use of radiopharmaceuticals, for uptake, dilution, and excretion studies	35.31 and 35.100(a) (Group I) revised.
35.120	35.120	Possession of survey instrument	RG 10.8 page 5.
		Subpart E—Imaging and Localization	
35.200	35.200	Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies	35.100 (b) and (c) (Groups II and III) revised.
35.204	35.204	Permissible molybdenum-99 concentration	US Pharmacopeia.
35.205	35.205	Control of aerosols and gases	RG 10.8 Appendix M revised.
35.220	35.220	Possession of survey instruments	RG 10.8 page 5.
		Subpart F—Radiopharmaceuticals for Therapy	
35.300	35.300	Use of radiopharmaceuticals for therapy	35.100 (d) and (e) (Groups IV and V) revised.
35.310	35.310	Safety instruction	19.12 revised.
35.315	35.315	Safety precautions	RG 10.8 Appendix K.
35.320	35.320	Possession of survey instruments	RG 10.8 page 5.
		Subpart G—Sources for Brachytherapy	
35.400	35.400	Use of sources for brachytherapy	35.100(f) (Group VI) revised.
35.404	35.404	Release of patients treated with temporary implants	35.14(b)(5)(vii) revised.
35.406	35.406	Brachytherapy sources inventory	RG 8.18 page 8.
35.410	35.410	Safety instruction	19.12 revised.
35.415	35.415	Safety precautions	RG 10.8 Appendix L.
35.420	35.420	Possession of survey instruments	New text.
		Subpart H—Sealed Sources for Diagnosis	
35.500	35.500	Use of sealed sources for diagnosis	New text.
35.520	35.520	Availability of survey instrument	New text.
		Subpart I—Teletherapy	
35.600	35.600	Use of a sealed source in a teletherapy unit	New text.
35.605	35.605	Maintenance and repair restrictions	License condition.
35.606	35.606	Amendments	New text.
35.610	35.610	Safety instruction	License condition and new text.
35.615	35.615	Safety precautions	License condition.
35.620	35.620	Possession of survey instrument	New text.
35.621	35.621	Radiation monitoring device	35.25 (48 FR 2115; January 18, 1983).
35.622	35.622	Viewing system	License condition.
35.630	35.630	Dosimetry equipment	35.22, 35.23 revised.
35.632	35.632	Full calibration measurements	35.21 revised.
35.633	35.633	Periodic spot-checks	35.22 revised and license condition.
35.641	35.641	Radiation surveys for teletherapy facilities	License condition.
35.642	35.642	Safety checks for teletherapy facilities	License condition.
35.643	35.643	Modification of teletherapy unit or room before beginning a treatment program	New text.
35.644	35.644	Reports of teletherapy surveys, checks, tests and measurements	license condition.
35.645	35.645	Five-year inspection	License condition.

Final section No.	Proposed section No.	Topic	Origin
		Subpart J—Training and Experience Requirements	
35.900	35.900	Radiation Safety Officer	New text.
35.901	35.901	Training for experienced Radiation Safety Officer	New text.
35.910	35.910	Training for uptake, dilution, and excretion studies	New text.
35.920	35.920	Training for imaging and localization studies	Revision of Federal Register Notice (47 FR 53476; December 2, 1982).
35.930	35.930	Training for therapeutic use of radiopharmaceuticals	Revision of Federal Register Notice (47 FR 53476; December 2, 1982).
35.932	(New)	Training for treatment of hyperthyroidism	Recommended by commenters.
35.934	(New)	Training for treatment of thyroid carcinoma	Recommended by commenters.
35.940	35.940	Training for use of brachytherapy sources	Revision of Federal Register Notice (47 FR 53476; December 2, 1982).
35.941	35.941	Training for ophthalmic use of strontium-90	Revision of Federal Register Notice (47 FR 53476; December 2, 1982).
35.950	35.950	Training for use of sealed sources for diagnosis	New text.
35.960	35.960	Training for teletherapy	Revision of Federal Register Notice (47 FR 53476 December 2, 1982).
35.961	35.961	Training for teletherapy physicist	35.24 revised.
35.970	35.970	Training for experienced authorized users	New text.
35.971	35.971	Physician training in a three month program	New text.
35.972	35.972	Recentness of training	Revision of Federal Register Notice (47 FR 53476 December 2, 1982).
		Subpart K—Enforcement	
35.990	35.990	Violations	New text.
35.999	35.999	Resolution of conflicting requirements during transition period	New text.

VI. Administrative Statements

Finding of No Significant Environmental Impact: Availability

The Commission is revising the regulations governing the medical use of byproduct material. The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that promulgation of this regulation is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The radiation levels and release of byproduct material authorized by this regulation are consistent with the Commission's other regulations and internationally accepted standards. Most radiation experts agree that levels and releases that are within these regulations and standards will not have a significant effect on the quality of the human environment. The assessment analyzes the possible impact of release of radioactive patients, the transportation of byproduct material for medical use, storage and control of aerosols and gases, waste disposal by decay-in-storage, and dose rates outside teletherapy rooms. The environmental assessment and finding of no significant impact on which this determination is based are available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. McElroy (see "FOR FURTHER INFORMATION CONTACT:" heading).

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget under OMB Number 3150-0010.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Mr. McElroy (see "FOR FURTHER INFORMATION CONTACT:" heading).

Regulatory Flexibility Certification

In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, the Commission certifies that this rule, will not have a significant economic impact on a substantial number of small entities. The NRC has issued approximately 2500 medical licenses under 10 CFR Part 35. Of these, approximately 2200 are held by institutions, and approximately 300 by individual physicians. Most of the institutional licensees are community hospitals. The NRC has adopted size standards that classify a hospital as a small entity if its average gross annual receipts do not exceed $3.5 million, and a private practice physician as a small entity if the physician's annual gross receipts are $1 million or less. Under these size standards, some NRC medical licensees could be considered "small entities" for purposes of the Regulatory Flexibility Act.

The number of medical licensees that would fall into the small entity category does not constitute a substantial number for purposes of the Regulatory Flexibility Act.

The primary objective of the rule is to simplify the medical licensing process by consolidating requirements without lessening the protection necessary for public health and safety. This has been accomplished by incorporating frequently used license conditions into the regulations and eliminating or modifying requirements that are not essential to the protection of public health and safety. These steps will make it easier for persons to determine what is required to obtain a license and what is required of licensees. Therefore, there should not be a significant economic impact on these small entities.

The Commission has prepared a regulatory analysis for this regulation which contains information concerning the anticipated economic effect of this regulation on licensees and presents the basis for the Commission's belief that the regulation will not result in

significant additional costs to any licensees. It is available for public inspection in the NRC Public Document Room at 1717 H Street NW., Washington, DC. Single copies are available from Mr. McElroy (see "FOR FURTHER INFORMATION CONTACT:" heading).

Resolution of Petition for Rulemaking PRM 35-2

The American Association of Physicists in Medicine filed a petition regarding dosimetry equipment calibration frequency (Petition Docket No. PRM 35-2; see 47 FR 4311, January 29, 1982). This rulemaking resolves that petition in § 35.630 Dosimetry equipment. The petition is granted essentially as recommended by the petitioner.

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Labeling, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct materials, Labeling, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 35

Byproduct material, Drugs, Health devices, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553 the NRC is adopting the following revision of 10 CFR Part 35 and the following amendments to 10 CFR Parts 30, 31, 32, and 40.

VII. Text of Final Regulations

1. 10 CFR Part 35 is revised to read as follows:

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

Subpart A—General Information

Sec.
35.1 Purpose and scope.
35.2 Definitions.
35.8 Information collection requirements: OMB approval.
35.11 License required.
35.12 Application for license, amendment, or renewal.
35.13 License amendments.
35.14 Notifications.
35.18 License issuance.
35.19 Specific exemptions.

Subpart B—General Administrative Requirements

35.20 ALARA program.
35.21 Radiation Safety Officer.
35.22 Radiation Safety Committee.
35.23 Statements of authority and responsibilities.
35.25 Supervision.
35.27 Visiting authorized user.
35.29 Administrative requirements that apply to the provision of mobile nuclear medicine service.
35.31 Radiation safety program changes.
35.33 Records and reports of misadministrations.
35.49 Suppliers.

Subpart C—General Technical Requirements

35.50 Possession, use, calibration, and check of dose calibrators.
35.51 Calibration and check of survey instruments.
35.53 Measurement of radiopharmaceutical dosages.
35.57 Authorization for calibration and reference sources.
35.59 Requirements for possession of sealed sources and brachytherapy sources.
35.60 Syringe shields and labels.
35.61 Vial shields and labels.
35.70 Surveys for contamination and ambient radiation exposure rate.
35.75 Release of patients containing radiopharmaceuticals or permanent implants.
35.80 Technical requirements that apply to the provision of mobile nuclear medicine service.
35.90 Storage of volatiles and gases.
35.92 Decay-in-storage.

Subpart D—Uptake, Dilution, and Excretion

35.100 Use of radiopharmaceuticals for uptake, dilution, and excretion studies.
35.120 Possession of survey instrument.

Subpart E—Imaging and Localization

35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.
35.204 Permissible molybdenum-99 concentration.
35.205 Control of aerosols and gases.
35.220 Possession of survey instruments.

Subpart F—Radiopharmaceuticals for Therapy

35.300 Use of radiopharmaceuticals for therapy.
35.310 Safety instruction.
35.315 Safety precautions.
35.320 Possession of survey instruments.

Subpart G—Sources for Brachytherapy

35.400 Use of sources for brachytherapy.
35.404 Release of patients treated with temporary implants.
35.406 Brachytherapy sources inventory.
35.410 Safety instruction.
35.415 Safety precautions.
35.420 Possession of survey instrument.

Subpart H—Sealed Sources for Diagnosis

35.500 Use of sealed sources for diagnosis.
35.520 Availability of survey instrument.

Subpart I—Teletherapy

35.600 Use of a sealed source in a teletherapy unit.
35.605 Maintenance and repair restrictions.
35.606 License amendments.
35.610 Safety instruction.
35.615 Safety precautions.
35.620 Possession of survey instrument.
35.630 Dosimetry equipment.
35.632 Full calibration measurements.
35.634 Periodic spot-checks.
35.636 Safety checks for teletherapy facilities.
35.641 Radiation surveys for teletherapy facilities.
35.643 Modification of teletherapy unit or room before beginning a treatment program.
35.645 Reports of teletherapy surveys, checks, tests, and measurements.
35.647 Five-year inspection.

Subpart J—Training and Experience Requirements

35.900 Radiation Safety Officer.
35.901 Training for experienced Radiation Safety Officer.
35.910 Training for uptake, dilution, and excretion studies.
35.920 Training for imaging and localization studies.
35.930 Training for therapeutic use of radiopharmaceuticals.
35.932 Training for treatment of hyperthyroidism.
35.934 Training for treatment of thyroid carcinoma.
35.940 Training for use of brachytherapy sources.
35.941 Training for ophthalmic use of strontium-90.
35.950 Training for use of sealed sources for diagnosis.
35.960 Training for teletherapy.
35.961 Training for teletherapy physicist.
35.970 Training for experienced authorized users.
35.971 Physician training in a three month program.
35.972 Recentness of training.

Subpart K—Enforcement

35.990 Violations.

35.999 Resolution of conflicting requirements during transition period.

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.11, 35.13, 35.20(a) and (b), 35.21(a) and (b), 35.22, 35.23, 35.25, 35.27(a), (c) and (d), 35.31(a), 35.49, 35.50(a)–(d), 35.51(a)–(c), 35.53(a) and (b), 35.59(a)–(c), (e)(1), (g) and (h), 35.60, 35.61, 35.70(a)–(f), 35.75, 35.80(a)–(e), 35.90, 35.92(a), 35.120, 35.200(b), 35.204(e) and (b), 35.205, 35.220, 35.310(a), 35.315, 35.320, 35.400, 35.404(a), 35.408(a) and (c), 35.410(a), 35.415, 35.420, 35.500, 35.520, 35.605, 35.606, 35.610(a) and (b), 35.615, 35.620, 35.630(a) and (b), 35.632(a)–(f), 35.633(a)–(f), 35.636(a) and (b), 35.641(a) and (b), 35.643(a) and (b), 35.645(a) and (b), 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.980, 35.961, 35.970, and 35.971 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27(a) and (c), 35.29(b), 35.33(a)–(d), 35.36(b), 35.50(e), 35.51(d), 35.53(c), 35.59(d) and (e)(2), 35.59(g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.204(c), 35.310(b), 35.315(b), 35.404(b), 35.408(b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(j), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161o, 68 Stat. 950 as amended (42 U.S.C. 2201(o)).

Subpart A—General Information

§ 35.1 Purpose and scope.

This part prescribes requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of this part are in addition to, and not in substitution for, others in this chapter. The requirements and provisions of Parts 19, 20, 21, 30, 71, and 170 of this chapter apply to applicants and licensees subject to this part unless specifically exempted.

§ 35.2 Definitions.

"Address of use" means the building or buildings that are identified on the license and where byproduct material may be received, used, or stored.

"Agreement State" means any State with which the Commission or the Atomic Energy Commission has entered into an effective agreement under subsection 274b of the Atomic Energy Act of 1954, as amended.

"ALARA" (as low as reasonably achievable) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical:

(1) Consistent with the purpose for which the licensed activity is undertaken,

(2) Taking into account the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and

(3) In relation to utilization of nuclear energy in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing byproduct material.

"Authorized user" means a physician, dentist, or podiatrist who is identified as an authorized user on a Commission or Agreement State license that authorizes the medical use of byproduct material.

"Brachytherapy source" means an individual sealed source or a manufacturer-assembled source train that is not designed to be disassembled by the user.

"Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

"Dental use" means the intentional external administration of the radiation from byproduct material to human beings in the practice of dentistry in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Dentist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry.

"Management" means the chief executive officer or that person's delegate or delegates.

"Medical Institution" means an organization in which several medical disciplines are practiced.

"Medical use" means the intentional internal or external administration of byproduct material, or the radiation therefrom, to human beings in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Ministerial change" means a change that is made, after ascertaining the applicable requirements, by persons in authority in conformance with the requirements and without making a discretionary judgment about whether those requirements should apply in the case at hand.

"Misadministration" means the administration of:

(1) A radiopharmaceutical or radiation from a sealed source other than the one intended;

(2) A radiopharmaceutical or radiation to the wrong patient;

(3) A radiopharmaceutical or radiation by a route of administration other than that intended by the prescribing physician;

(4) A diagnostic dosage of a radiopharmaceutical differing from the prescribed dosage by more than 50 percent;

(5) A therapy dosage of a radiopharmaceutical differing from the prescribed dosage by more than 10 percent; or

(6) A therapy radiation dose from a sealed source such that errors in the source calibration, time of exposure, and treatment geometry result in a calculated total treatment dose differing from the final prescribed total treatment dose by more than 10 percent.

"Mobile nuclear medicine service" means the transportation and medical use of byproduct material.

"Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

"Physician" means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine.

"Podiatric use" means the intentional external administration of the radiation from byproduct material to human beings in the practice of podiatry in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Podiatrist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry.

"Radiation Safety Officer" means the individual identified as the Radiation Safety Officer on a Commission license.

"Sealed source" means any byproduct material that is encased in a capsule designed to prevent leakage or escape of the byproduct material.

"Teletherapy physicist" means the individual identified as the teletherapy physicist on a Commission license.

"Visiting authorized user" means an authorized user who is not identified as an authorized user on the license of the licensee being visited.

§ 35.8 Information collection requirements: OMB approval.

(a) The Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements in this part under control number 3150–0010.

(b) The approved information collection requirements contained in this part appear in §§ 35.12, 35.13, 35.14, 35.21, 35.22, 35.23, 35.27, 35.29, 35.31, 35.33, 35.50, 35.51, 35.53, 35.59, 35.60, 35.61, 35.70, 35.80, 35.92, 35.204, 35.205, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.610, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, and 35.647.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved as follows:

(1) In § 35.12, Form NRC–313 is approved under control number 3150–0120.

§ 35.11 License required.

(a) A person shall not manufacture, produce, acquire, receive, possess, use, or transfer byproduct material for medical use except in accordance with a specific license issued by the Commission or an Agreement State, or as allowed in paragraph (b) of this section.

(b) An individual may receive, possess, use, or transfer byproduct material in accordance with the regulations in this chapter under the supervision of an authorized user as provided in § 35.25, unless prohibited by license condition.

§ 35.12 Application for license, amendment, or renewal.

(a) If the application is for medical use sited in a medical institution, only the institution's management may apply. If the application is for medical use not sited in a medical institution, any person may apply.

(b) An application for a license for medical use of byproduct material as described in §§ 35.100, 35.200, 35.300, 35.400, and 35.500 of this part must be made by filing an original and one copy of Form NRC–313, "Application for Materials License." For guidance in completing the form, refer to the instructions in the most current versions of the appropriate Regulatory Guides. A request for a license amendment or renewal may be submitted as an original and one copy in letter format.

(c) An application for a license for medical use of byproduct material as described in § 35.600 of this part must be made by filing an original and one copy of Form NRC–313. For guidance in completing the form, refer to the instructions in the most current version of the appropriate Regulatory Guide. A request for a license amendment or renewal may be submitted as an original and one copy in letter format.

(d) For copies of regulatory guides, application forms, or to submit an application or an amendment request, refer to § 30.6 of this chapter.

§ 35.13 License amendments.

A licensee shall apply for and must receive a license amendment:

(a) Before it receives or uses byproduct material for a clinical procedure permitted under this Part but not permitted by the license issued pursuant to this part;

(b) Before it permits anyone, except a visiting authorized user described in § 35.27, to work as an authorized user under the license;

(c) Before it changes Radiation Safety Officers or Teletherapy Physicists;

(d) Before it orders byproduct material in excess of the amount, or radionuclide or form different than authorized on the license; and

(e) Before it adds to or changes the areas of use or address or addresses of use identified in the application or on the license.

§ 35.14 Notifications.

A licensee shall notify the Commission by letter within thirty days when an authorized user, Radiation Safety Officer, or Teletherapy Physicist permanently discontinues performance of duties under the license or has a name change, or when the licensee's mailing address changes. The licensee shall mail the report to the appropriate address identified in § 30.6 of this chapter.

§ 35.16 License issuance.

The Commission shall issue a license for the medical use of byproduct material for a term of five years if:

(a) The applicant has filed Form NRC–313 "Application for Materials License" in accordance with the instructions in § 35.12;

(b) The applicant has paid any applicable fee as provided in Part 170 of this chapter;

(c) The Commission finds the applicant equipped and committed to observe the safety standards established by the Commission in this Chapter for the protection of the public health and safety; and

(d) The applicant meets the requirements of Part 30 of this chapter.

§ 35.19 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. The Commission will review requests for exemptions from training and experience requirements with the assistance of its Advisory Committee on the Medical Uses of Isotopes.

Subpart B—General Administrative Requirements

§ 35.20 ALARA program.

(a) Each licensee shall develop and implement a written radiation protection program that includes provisions for keeping doses ALARA.

(b) To satisfy the requirement of paragraph (a) of this section:

(1) At a medical institution, management, the Radiation Safety Officer, and all authorized users must participate in the program as requested by the Radiation Safety Committee.

(2) For licensees that are not medical institutions, management and all authorized users must participate in the program as requested by the Radiation Safety Officer.

(c) The program must include notice to workers of the program's existence and workers' responsibility to help keep dose equivalents ALARA, a review of summaries of the types and amounts of byproduct material used, occupational doses, changes in radiation safety procedures and safety measures, and continuing education and training for all personnel who work with or in the vicinity of byproduct material. The purpose of the review is to ensure that licensees make a reasonable effort to maintain individual and collective occupational doses ALARA.

§ 35.21 Radiation Safety Officer.

(a) A licensee shall appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program.

(b) The Radiation Safety Officer shall:

(1) Investigate overexposures, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, disposals, misadministrations, and other deviations from approved radiation safety practice and implement corrective actions as necessary;

(2) Establish, collect in one binder or file, and implement written policy and procedures for:

(i) Authorizing the purchase of byproduct material;

(ii) Receiving and opening packages of byproduct material;

(iii) Storing byproduct material;

(iv) Keeping an inventory record of byproduct material;

(v) Using byproduct material safely;

(vi) Taking emergency action if control of byproduct material is lost;

(vii) Performing periodic radiation surveys;

(viii) Performing checks of survey instruments and other safety equipment;

(ix) Disposing of byproduct material;

(x) Training personnel who work in or frequent areas where byproduct material is used or stored;

(xi) Keeping a copy of all records and reports required by the Commission regulations, a copy of these regulations, a copy of each licensing request and license and amendments, and the written policy and procedures required by the regulations.

(3) Brief management once each year on the byproduct material program;

(4) Establish personnel exposure investigational levels that, when exceeded, will initiate an investigation by the Radiation Safety Officer of the cause of the exposure;

(5) Establish personnel exposure investigational levels that, when exceeded, will initiate a prompt investigation by the Radiation Safety Officer of the cause of the exposure and a consideration of actions that might be taken to reduce the probability of recurrence;

(6) For medical use not at a medical institution, approve or disapprove minor changes in radiation safety procedures that are not potentially important to safety with the advice and consent of management; and

(7) For medical use at a medical institution, assist the Radiation Safety Committee in the performance of its duties.

§ 35.22 Radiation Safety Committee.

Each medical institution licensee shall establish a Radiation Safety Committee to oversee the use of byproduct material.

(a) Each Committee must meet the following administrative requirements:

(1) Membership must consist of at least three individuals and must include an authorized user of each type of use permitted by the license, the Radiation Safety Officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a Radiation Safety Officer. Other members may be included as the licensee deems appropriate.

(2) The Committee must meet at least quarterly.

(3) To establish a quorum and to conduct business, at least one-half of the Committee's membership must be present, including the Radiation Safety Officer and the management's representative.

(4) The minutes of each Radiation Safety Committee meeting must include:

(i) The date of the meeting;

(ii) Members present;

(iii) Members absent;

(iv) Summary of deliberations and discussions;

(v) Recommended actions and the numerical results of all ballots; and

(vi) ALARA program reviews described in § 35.20(c).

(5) The Committee must promptly provide each member with a copy of the meeting minutes, and retain one copy for the duration of the license.

(b) To oversee the use of licensed material, the Committee must:

(1) Review recommendations on ways to maintain individual and collective doses ALARA;

(2) Review, on the basis of safety and with regard to the training and experience standards in Subpart J of this part, and approve or disapprove any individual who is to be listed as an authorized user, the Radiation Safety Officer, or a Teletherapy Physicist before submitting a license application or request for amendment or renewal;

(3) Review on the basis of safety, and approve with the advice and consent of the Radiation Safety Officer and the management representative, or disapprove minor changes in radiation safety procedures that are not potentially important to safety and are permitted under § 35.31 of this Part;

(4) Review quarterly, with the assistance of the Radiation Safety Officer, a summary of the occupational radiation dose records of all personnel working with byproduct material;

(5) Review quarterly, with the assistance of the Radiation Safety Officer, all incidents involving byproduct material with respect to cause and subsequent actions taken; and

(6) Review annually, with the assistance of the Radiation Safety Officer, the radiation safety program.

§ 35.23 Statements of authority and responsibilities.

(a) A licensee shall provide the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, sufficient authority, organizational freedom, and management prerogative, to:

(1) Identify radiation safety problems;

(2) Initiate, recommend, or provide corrective actions; and

(3) Verify implementation of corrective actions.

(b) A licensee shall establish and state in writing the authorities, duties, responsibilities, and radiation safety activities of the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, and retain the current edition of these statements as a record until the Commission terminates the license.

§ 35.25 Supervision.

(a) A licensee that permits the receipt, possession, use, or transfer of byproduct material by an individual under the supervision of an authorized user as allowed by § 35.11(b) of this part shall:

(1) Instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of byproduct material;

(2) Require the supervised individual to follow the instructions of the supervising authorized user, follow the procedures established by the Radiation Safety Officer, and comply with the regulations of this chapter and the license conditions with respect to the use of byproduct material; and

(3) Periodically review the supervised individual's use of byproduct material and the records kept to reflect this use.

(b) A licensee that supervises an individual is responsible for the acts and omissions of the supervised individual.

§ 35.27 Visiting authorized user.

(a) A licensee may permit any visiting authorized user to use licensed material for medical use under the terms of the licensee's license for sixty days each year if:

(1) The visiting authorized user has the prior written permission of the licensee's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee;

(2) The licensee has a copy of a license issued by the Commission or an Agreement State, or a permit issued by a Commission or Agreement State broad licensee that is authorized to permit medical use, that identifies the visiting authorized user by name as an authorized user for medical use; and

(3) Only those procedures for which the visiting authorized user is specifically authorized by the license or permit are performed by that individual.

(b) A licensee need not apply for a license amendment in order to permit a visiting authorized user to use licensed material as described in paragraph (a) of this section.

(c) A licensee shall retain the records specified in this section for two years after the visiting authorized user's last use of licensed material, but may discard the records if the visiting authorized user has been listed as an authorized user on the licensee's license.

§ 35.29 Administrative requirements that apply to the provision of mobile nuclear medicine service.

(a) The Commission will license mobile nuclear medicine service only in accordance with Subparts D, E and H of this part and § 31.11 of this chapter.

(b) Mobile nuclear medicine service licensees shall obtain a letter signed by the management of each client for which services are rendered that authorizes use of byproduct material at the client's address of use. The mobile nuclear medicine service licensee shall retain the letter for two years after the last provision of service.

(c) If a mobile nuclear medicine service provides services that the client is also authorized to provide, the client is responsible for assuring that services are conducted in accordance with the regulations in this chapter while the mobile nuclear medicine service is under the client's direction.

(d) A mobile nuclear medicine service may not order byproduct material to be delivered directly from the manufacturer or distributor to the client's address of use.

§ 35.31 Radiation safety program changes.

(a) A licensee may make minor changes in radiation safety procedures that are not potentially important to safety, i.e., ministerial changes, that were described in the application for license, renewal, or amendment except for those changes in §§ 35.13 and 35.606 of this part. Examples of such ministerial changes include: editing of procedures for clarity or conformance with local drafting policy or updating names, telephone numbers, and addresses; adoption of model radiation safety procedures published in NRC Regulatory Guides; replacement of equipment; reassignment of tasks among employees; or assignment of service contracts for services such as personnel dosimetry, radiation safety equipment repair or calibration, waste disposal, and safety surveys. A licensee is responsible for assuring that any change made is in compliance with the requirements of the regulations and the license.

(b) A licensee shall retain a record of each change until the license has been renewed or terminated. The record must include the effective date of the change, a copy of the old and new radiation safety procedures, the reason for the change, a summary of radiation safety matters that were considered before making the change, the signature of the Radiation Safety Officer, and the signatures of the affected authorized users and of management or, in a medical institution, the Radiation Safety Committee's chairman and the management representative.

§ 35.33 Records and reports of misadministrations.

(a) When a misadministration involves any therapy procedure, the licensee shall notify by telephone the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter. The licensee shall also notify the referring physician of the affected patient and the patient or a responsible relative (or guardian), unless the referring physician agrees to inform the patient or believes, based on medical judgment, that telling the patient or the patient's responsible relative (or guardian) would be harmful to one or the other, respectively. These notifications must be made within 24 hours after the licensee discovers the misadministration. If the referring physician, patient, or the patient's responsible relative or guardian cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or the patient's responsible relative or guardian without first consulting the referring physician; however, the licensee shall not delay medical care for the patient because of this.

(b) Within 15 days after an initial therapy misadministration report to NRC, the licensee shall report, in writing, to the NRC Regional Office initially telephoned and to the referring physician, and furnish a copy of the report to the patient or the patient's responsible relative (or guardian) if either was previously notified by the licensee under paragraph (a) of this section. The written report must include the licensee's name; the referring physician's name; a brief description of the event; the effect on the patient; the action taken to prevent recurrence; whether the licensee informed the patient or the patient's responsible relative (or guardian), and if not, why not. The report must not include the patient's name or other information that could lead to identification of the patient.

(c) When a misadministration involves a diagnostic procedure, the Radiation Safety Officer shall promptly investigate its cause, make a record for NRC review, and retain the record as directed in § 35.33(d). The licensee shall also notify the referring physician and the appropriate NRC Office specified in § 30.6 of this part in writing on Form NRC——[1] within 15 days if the misadministration involved the use of byproduct material not intended for medical use, administration of a dosage five-fold different from the intended dosage, or administration of byproduct material such that the patient is likely to receive an organ dose greater than 2 rem or a whole body dose greater than 500 millirem. Licensees may use dosimetry tables in package inserts, corrected only for amount of radioactivity administered, to determine whether a report is required.

(d) Each licensee shall retain a record of each misadministration for ten years. The record must contain the names of all individuals involved in the event (including the physician, allied health personnel, the patient, and the patient's referring physician), the patient's social security number or identification number if one has been assigned, a brief description of the event, the effect on the patient, and the action taken, if any, to prevent recurrence.

(e) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, patients, or responsible relatives (or guardians).

§ 35.49 Suppliers.

A licensee may use for medical use only:

(a) Byproduct material manufactured, labeled, packaged, and distributed in accordance with a license issued pursuant to the regulations in Part 30 and §§ 32.72, 32.73, or 32.74 of this chapter or the equivalent regulations of an Agreement State;

(b) Reagent kits that have been manufactured, labeled, packaged, and distributed in accordance with an approval by the Commission pursuant to § 32.73 or an Agreement State under equivalent regulations for the

[1] The staff is developing this form and will make it available before the effective date of this regulation. A notice of its availability will be published in the Federal Register.

preparation of radiopharmaceuticals for medical use; and

(c) Teletherapy sources manufactured and distributed in accordance with a license issued pursuant to Part 30 of this chapter or the equivalent regulations of an Agreement State.

Subpart C—General Technical Requirements

§ 35.50 Possession, use, calibration, and check of dose calibrators.

(a) A medical use licensee authorized to administer radiopharmaceuticals shall have in its possession a dose calibrator and use it to measure the amount of activity administered to each patient.

(b) A licensee shall:

(1) Check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use. To satisfy the requirement of this paragraph, the check must be done on a frequently used setting with a sealed source of not less than 10 microcuries of radium-226 or 50 microcuries of any other photon-emitting radionuclide;

(2) Test each dose calibrator for accuracy upon installation and at least annually thereafter by assaying at least two sealed sources containing different radionuclides whose activity the manufacturer has determined within 5 percent of its stated activity, whose activity is at least 10 microcuries for radium-226 and 50 microcuries for any other photon-emitting radionuclide, and at least one of which has a principal photon energy between 100 keV and 500 keV;

(3) Test each dose calibrator for linearity upon installation and at least quarterly thereafter over the range of its use between the highest dosage that will be administered to a patient and 10 microcuries; and

(4) Test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(c) A licensee shall also perform appropriate checks and tests required by this section following adjustment or repair of the dose calibrator.

(d) A licensee shall mathematically correct dosage readings for any geometry or linearity error that exceeds 10 percent if the dosage is greater than 10 microcuries and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds 10 percent.

(e) A licensee shall retain a record of each check and test required by this section for two years unless directed otherwise. The records required in paragraphs (b)(1) through (b)(4) of this section must include:

(1) For paragraph (b)(1), the model and serial number of the dose calibrator, the identity of the radionuclide contained in the check source, the date of the check, the activity measured, and the initials of the individual who performed the check;

(2) For paragraph (b)(2), the model and serial number of the dose calibrator, the model and serial number of each source used and the identity of the radionuclide contained in the source and its activity, the date of the test, the results of the test, and the signature of the Radiation Safety Officer;

(3) For paragraph (b)(3), the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, and the signature of the Radiation Safety Officer; and

(4) For paragraph (b)(4), the model and serial number of the dose calibrator, the configuration of the source measured, the activity measured for each volume measured, the date of the test, and the signature of the Radiation Safety Officer.

§ 35.51 Calibration and check of survey instruments.

(a) A licensee shall calibrate the survey instruments used to show compliance with this part before first use, annually, and following repair. The licensee shall:

(1) Calibrate all scales with readings up to 1000 millirem per hour with a radiation source;

(2) Calibrate two separated readings on each scale that must be calibrated; and

(3) Conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(b) When calibrating a survey instrument, the licensee shall consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 20 percent, and shall conspicuously attach a correction chart or graph to the instrument.

(c) A licensee shall check each survey instrument for proper operation with the dedicated check source each day of use. A licensee is not required to keep records of these checks.

(d) A licensee shall retain a record of each survey instrument calibration for two years. The record must include:

(1) A description of the calibration procedure; and

(2) The date of the calibration, a description of the source used and the certified exposure rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, and the signature of the individual who performed the calibration.

§ 35.53 Measurement of radiopharmaceutical dosages.

A licensee shall:

(a) Measure the activity of each radiopharmaceutical dosage that contains more than 10 microcuries of a photon-emitting radionuclide before medical use;

(b) Measure the activity of each radiopharmaceutical dosage with a desired activity of 10 microcuries or less of a photon-emitting radionuclide before medical use to verify that the dosage does not exceed 10 microcuries;

(c) Retain a record of the measurements required by this section for two years. To satisfy this requirement, the record must contain the:

(1) Generic name, trade name, or abbreviation of the radiopharmaceutical, its lot number, and expiration dates and the radionuclide;

(2) Patient's name, and identification number if one has been assigned;

(3) Prescribed dosage and activity of the dosage at the time of measurement, or a notation that the total activity is less than 10 microcuries;

(4) Date and time of the measurement; and

(5) Initials of the individual who made the record.

§ 35.57 Authorization for calibration and reference sources.

Any person authorized by § 35.11 of this Part for medical use of byproduct material may receive, possess, and use the following byproduct material for check, calibration, and reference use:

(a) Sealed sources manufactured and distributed by a person licensed pursuant to § 32.74 of this chapter or equivalent Agreement State regulations and that do not exceed 15 millicuries each;

(b) Any byproduct material listed in §§ 35.100 or 35.200 with a half-life not longer than 100 days in individual amounts not to exceed 15 millicuries;

(c) Any byproduct material listed in §§ 35.100 or 35.200 with a half-life longer than 100 days in individual amounts not to exceed 200 microcuries each; and

(d) Technetium-99m in individual amounts not to exceed 50 millicuries.

§ 35.59 Requirements for possession of sealed sources and brachytherapy sources.

(a) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer, and shall maintain the instructions for the duration of source use in a legible form convenient to users.

(b) A licensee in possession of a sealed source shall:

(1) Test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six months before transfer to the licensee; and

(2) Test the source for leakage at intervals not to exceed six months or at other intervals approved by the Commission or an Agreement State and described in the label or brochure that accompanies the source.

(c) To satisfy the leak test requirements of this section, the licensee must:

(1) Take a wipe sample from the sealed source or from the surfaces of the device in which the sealed source is mounted or stored on which radioactive contamination might be expected to accumulate or wash the source in a small volume of detergent solution and treat the entire volume as the sample;

(2) Take teletherapy and other device source test samples when the source is in the "off" position; and

(3) Measure the sample so that the leakage test can detect the presence of 0.005 microcuries of radioactive material on the sample.

(d) A licensee shall retain leakage test records for five years. The records must contain the model number, and serial number if assigned, of each source tested, the identity of each source radionuclide and its estimated activity, the measured activity of each test sample expressed in microcuries, a description of the method used to measure each test sample, the date of the test, and the signature of the Radiation Safety Officer.

(e) If the leakage test reveals the presence of 0.005 microcurie or more of removable contamination, the licensee shall:

(1) Immediately withdraw the sealed source from use and store it in accordance with the requirements in Parts 20 and 30 of this chapter; and

(2) File a report within five days of the leakage test with the appropriate NRC Office listed in § 30.6 of this chapter, with a copy to Director of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, describing the equipment involved, the test results, and the action taken.

(f) A licensee need not perform a leakage test on the following sources:

(1) Sources containing only byproduct material with a half-life of less than 30 days;

(2) Sources containing only byproduct material as a gas;

(3) Sources containing 100 microcuries or less of beta or gamma-emitting material or 10 microcuries or less of alpha-emitting material;

(4) Sources stored and not being used. The licensee shall, however, test each such source for leakage before any use or transfer unless it has been leakage-tested within six months before the date of use or transfer; and

(5) Seeds of iridium-192 encased in nylon ribbon.

(g) A licensee in possession of a sealed source or brachytherapy source shall conduct a quarterly physical inventory of all such sources in its possession. The licensee shall retain each inventory record for five years. The inventory records must contain the model number of each source, and serial number if one has been assigned, the identity of each source radionuclide and its nominal activity, the location of each source, and the signature of the Radiation Safety Officer.

(h) A licensee in possession of a sealed source or brachytherapy source shall measure the ambient dose rates quarterly in all areas where such sources are stored. This does not apply to teletherapy sources in teletherapy units or sealed sources in diagnostic devices.

(i) A licensee shall retain a record of each survey required in paragraph (h) of this section for two years. The record must include the date of the survey, a plan of each area that was surveyed, the measured dose rate at several points in each area expressed in millirem per hour, the survey instrument used, and the signature of the Radiation Safety Officer.

§ 35.60 Syringe shields and labels.

(a) A licensee shall keep syringes that contain byproduct material to be administered in a radiation shield.

(b) To identify its contents, a licensee shall conspicuously label each syringe, or syringe radiation shield that contains a syringe with a radiopharmaceutical. The label must show the radiopharmaceutical name or its abbreviation, the clinical procedure to be performed, or the patient's name.

(c) A licensee shall require each individual who prepares a radiopharmaceutical kit to use a syringe radiation shield when preparing the kit and shall require each individual to use a syringe radiation shield when administering a radiopharmaceutical by injection unless the use of the shield is contraindicated for that patient.

§ 35.61 Vial shields and labels.

(a) A licensee shall require each individual preparing or handling a vial that contains a radiopharmaceutical to keep the vial in a vial radiation shield.

(b) To identify its contents, a licensee shall conspicuously label each vial radiation shield that contains a vial of a radiopharmaceutical. The label must show the radiopharmaceutical name or its abbreviation.

§ 35.70 Surveys for contamination and ambient radiation exposure rate.

(a) A licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

(b) A licensee shall survey with a radiation detection survey instrument at least once each week all areas where radiopharmaceuticals or radiopharmaceutical waste is stored.

(c) A licensee shall conduct the surveys required by paragraphs (a) and (b) of this section so as to be able to detect dose rates as low as 0.1 millirem per hour.

(d) A licensee shall establish radiation dose rate trigger levels for the surveys required by paragraphs (a) and (b) of this section. A licensee shall require that the individual performing the survey immediately notify the Radiation Safety Officer if a dose rate exceeds a trigger level.

(e) A licensee shall survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

(f) A licensee shall conduct the surveys required by paragraph (e) of this section so as to be able to detect contamination on each wipe sample of 2000 disintegrations per minute.

(g) A licensee shall establish removable contamination trigger levels for the surveys required by paragraph (e) of this section. A licensee shall require that the individual performing the survey immediately notify the Radiation Safety Officer if contamination exceeds the trigger level.

(h) A licensee shall retain a record of each survey for two years. The record must include the date of the survey, a plan of each area surveyed, the trigger level established for each area, the

detected dose rate at several points in each area expressed in millirem per hour or the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters, the instrument used to make the survey or analyze the samples, and the initials of the individual who performed the survey.

§ 35.75 Release of patients containing radiopharmaceuticals or permanent implants.

(a) A licensee may not authorize release from confinement for medical care any patient administered a radiopharmaceutical until either:

(1) The measured dose rate from the patient is less than 5 millirems per hour at a distance of one meter; or

(2) The activity in the patient is less than 30 millicuries.

(b) A licensee may not authorize release from confinement for medical care of any patient administered a permanent implant until the measured dose rate from the patient is less than 5 millirems per hour at a distance of one meter.

§ 35.80 Technical requirements that apply to the provision of mobile nuclear medicine service.

A licensee providing mobile nuclear medicine service shall:

(a) Transport to each address of use only syringes or vials containing prepared radiopharmaceuticals or radiopharmaceuticals that are intended for reconstitution of radiopharmaceutical kits;

(b) Bring into each address of use all byproduct material to be used and, before leaving, remove all unused byproduct material and all associated waste;

(c) Secure or keep under constant surveillance and immediate control all byproduct material when in transit or at an address of use;

(d) Check survey instruments and dose calibrators as described in §§ 35.50 and 35.51, and check all other transported equipment for proper function before medical use at each address of use;

(e) Carry a radiation detection survey meter in each vehicle that is being used to transport byproduct material, and, before leaving a client address of use, survey all radiopharmaceutical areas of use with a radiation detection survey meter to ensure that all radiopharmaceuticals and all associated waste have been removed;

(f) Retain a record of each survey required in paragraph (e) of this section for two years. The record must include the date of the survey, a plan of each area that was surveyed, the measured dose rate at several points in each area of use expressed in millirem per hour, the instrument used to make the survey, and the initials of the individual who performed the survey.

§ 35.90 Storage of volatiles and gases.

A licensee shall store volatile radiopharmaceuticals and radioactive gases in the shipper's radiation shield and container. A licensee shall store a multi-dose container in a fume hood after drawing the first dosage from it.

§ 35.92 Decay-in-storage.

(a) A licensee may hold byproduct material with a physical half-life of less than 65 days for decay-in-storage before disposal in ordinary trash and is exempt from the requirements of § 20.301 of this chapter if it:

(1) Holds byproduct material for decay a minimum of ten half-lives;

(2) Monitors byproduct material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot be distinguished from the background radiation level with a radiation detection survey meter set on its most sensitive scale and with no interposed shielding;

(3) Removes or obliterates all radiation labels; and

(4) Separates and monitors each generator column individually with all radiation shielding removed to ensure that it has decayed to background radiation level before disposal.

(b) A licensee shall retain a record of each disposal permitted under paragraph (a) of this section for two years. The record must include the date of the disposal, the date on which the byproduct material was placed in storage, the radionuclides disposed, the survey instrument used, the background dose rate, the dose rate measured at the surface of each waste container, and the name of the individual who performed the disposal.

Subpart D—Uptake, Dilution, and Excretion

§ 35.100 Use of radiopharmaceuticals for uptake, dilution and excretion studies.

A licensee may use any byproduct material in a radiopharmaceutical and for a diagnostic use involving measurements of uptake, dilution, or excretion for which the Food and Drug Administration (FDA) has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a "New Drug Application" (NDA).

§ 35.120 Possession of survey instrument.

A licensee authorized to use byproduct material for uptake, dilution, and excretion studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range 0.1 millirem per hour to 100 millirem per hour.

Subpart E—Imaging and Localization

§ 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.

(a) A licensee may use any byproduct material in a diagnostic radiopharmaceutical or any generator or reagent kit for preparation and diagnostic use of a radiopharmaceutical containing byproduct material for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a "New Drug Application" (NDA).

(b) A licensee shall elute generators and prepare reagent kits in accordance with the manufacturer's instructions.

§ 35.204 Permissible molybdenum-99 concentration.

(a) A licensee may not administer to humans a radiopharmaceutical containing more than 0.15 microcurie of molybdenum-99 per millicurie of technetium-99m.

(b) A licensee that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration in each eluate or extract.

(c) A licensee that must measure molybdenum concentration shall retain a record of each measurement for two years. The record must include, for each elution or extraction of technetium-99m, the measured activity of the technetium expressed in millicuries, the measured activity of the molybdenum expressed in microcuries, the ratio of the measures expressed as microcuries of molybdenum per millicurie of technetium, the time and date of the measurement, and the initials of the individual who made the measurement.

§ 35.205 Control of aerosols and gases.

(a) A licensee that administers radioactive aerosols or gases shall do so in a room with a system that will keep airborne concentrations within the limits prescribed by §§ 20.103 and 20.106 of this chapter. The system must either be directly vented to the atmosphere through an air exhaust or provide for collection and decay or disposal of the aerosol or gas in a shielded container.

(b) A licensee shall administer radioactive aerosols and gases in rooms that are at negative pressure compared to surrounding rooms.

(c) Before receiving, using, or storing a radioactive gas, the licensee shall calculate the amount of time needed after a spill to reduce the concentration in the room to the occupational limit listed in Appendix B to Part 20 of this chapter. The calculation must be based on the highest activity of gas handled in a single container, the air volume of the room, and the measured available air exhaust rate.

(d) A licensee shall make a record of the calculations required in paragraph (c) of this section that includes the assumptions, measurements, and calculations made and shall retain the record for the duration of use of the area. A licensee shall also post the calculated time and safety measures to be instituted in case of a spill at the area of use.

(e) A licensee shall check the operation of collection systems each month, and measure the ventilation rates available in areas of use each six months.

§ 35.220 Possession of survey instruments.

A licensee authorized to use byproduct material for imaging and localization studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 100 millirem per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour.

Subpart F—Radiopharmaceuticals for Therapy

§ 35.300 Use of radiopharmaceuticals for therapy.

A licensee may use any byproduct material in a radiopharmaceutical and for a therapeutic use for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND), or approved a "New Drug Application" (NDA). The licensee shall comply with the package insert instructions regarding indications and method of administration.

§ 35.310 Safety instruction.

(a) A licensee shall provide radiation safety instruction for all personnel caring for the patient receiving radiopharmaceutical therapy and hospitalized for compliance with § 35.75 of this chapter. To satisfy this requirement, the instruction must describe the licensee's procedures for:

(1) Patient control;

(2) Visitor control;

(3) Contamination control;

(4) Waste control; and

(5) Notification of the Radiation Safety Officer in case of the patient's death or medical emergency.

(b) A licensee shall keep for two years a list of individuals receiving instruction required by paragraph (a) of this section, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

§ 35.315 Safety precautions.

(a) For each patient receiving radiopharmaceutical therapy and hospitalized for compliance with § 35.75 of this chapter, a licensee shall:

(1) Provide a private room with a private sanitary facility;

(2) Post the patient's door with a "Radioactive Materials" sign and note on the door or in the patient's chart where and how long visitors may stay in the patient's room;

(3) Authorize visits by individuals under age 18 only on a patient-by-patient basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

(4) Promptly after administration of the dosage, measure the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of Part 20 of this chapter, and retain for two years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in millirem per hour, the instrument used to make the survey, and the initials of the individual who made the survey.

(5) Either monitor material and items removed from the patient's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle them as radioactive waste.

(6) Provide the patient with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before authorizing release of the patient.

(7) Survey the patient's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient to the room. The room must not be reassigned until removable contamination is less than 200 disintegrations per minute per 100 square centimeters; and

(8) Measure the thyroid burden of each individual who helped prepare or administer a dosage of iodine-131 within three days after administering the dosage, and retain for the period required by § 20.401(c)(1) a record of each thyroid burden measurement, its date, the name of the individual whose thyroid burden was measured, and the initials of the individual who made the measurements.

(b) A licensee shall notify the Radiation Safety Officer immediately if the patient dies or has a medical emergency.

§ 35.320 Possession of survey instruments.

A licensee authorized to use byproduct material for radiopharmaceutical therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range 0.1 millirem per hour to 100 millirem per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour.

Subpart G—Sources for Brachytherapy

§ 35.400 Use of sources for brachytherapy.

A licensee shall use the following sources in accordance with the manufacturer's radiation safety and handling instructions:

(a) Cesium-137 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(b) Cobalt-60 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(c) Gold-198 as a sealed source in seeds for interstitial treatment of cancer;

(d) Iridium-192 as seeds encased in nylon ribbon for interstitial treatment of cancer;

(e) Strontium-90 as a sealed source in an applicator for treatment of superficial eye conditions; and

(f) Iodine-125 as a sealed source in seeds for interstitial treatment of cancer.

§ 35.404 Release of patients treated with temporary implants.

(a) Immediately after removing the last temporary implant source from a patient, the licensee shall make a radiation survey of the patient with a radiation detection survey instrument to

confirm that all sources have been removed. The licensee may not release from confinement for medical care a patient treated by temporary implant until all sources have been removed.

(b) A licensee shall retain a record of patient surveys for two years. Each record must include the date of the survey, the name of the patient, the dose rate from the patient expressed as millirem per hour and measured at one meter from the patient, the survey instrument used, and the initials of the individual who made the survey.

§ 35.406 Brachytherapy sources inventory.

(a) Promptly after removing them from a patient, a licensee shall return brachytherapy sources to the storage area, and count the number returned to ensure that all sources taken from the storage area have been returned.

(b) A licensee shall make a record of brachytherapy source use which must include:

(1) The names of the individuals permitted to handle the sources,

(2) The number and activity of sources removed from storage, the patient's name and room number, the time and date they were removed from storage, the number and activity of the sources in storage after the removal, and the initials of the individual who removed the sources from storage;

(3) The number and activity of sources returned to storage, the patient's name and room number, the time and date they were returned to storage, the number and activity of sources in storage after the return, and the initials of the individual who returned the sources to storage.

(c) Immediately after implanting sources in a patient the licensee shall make a radiation survey of the patient and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

(d) A licensee shall retain the records required in paragraphs (b) and (c) of this section for two years.

§ 35.410 Safety instruction.

(a) The licensee shall provide radiation safety instruction to all personnel caring for the patient undergoing implant therapy. To satisfy this requirement, the instruction must describe:

(1) Size and appearance of the brachytherapy sources;

(2) Safe handling and shielding instructions in case of a dislodged source;

(3) Procedures for patient control;

(4) Procedures for visitor control; and

(5) Procedures for notification of the Radiation Safety Officer if the patient dies or has a medical emergency.

(b) A licensee shall retain for two years a record of individuals receiving instruction required by paragraph (a) of this section, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

§ 35.415 Safety precautions.

(a) For each patient receiving implant therapy, a licensee shall:

(1) Not quarter the patient in the same room with a patient who is not receiving radiation therapy unless the licensee can demonstrate compliance with the requirements of § 20.105(b) of this chapter at a distance of one meter from the implant;

(2) Post the patient's door with a "Radioactive Materials" sign and note on the door or in the patient's chart where and how long visitors may stay in the patient's room;

(3) Authorize visits by individuals under age 18 only on a patient-by-patient basis with the approval of the authorized user after consultation with the Radiation Safety Officer; and

(4) Promptly after implanting the material, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of Part 20 of this chapter, and retain for two years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in millirem per hour, the instrument used to make the survey, and the initials of the individual who made the survey.

(5) Provide the patient with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before releasing the patient if the patient was administered a permanent implant.

(b) A licensee shall notify the Radiation Safety Officer immediately if the patient dies or has a medical emergency.

§ 35.420 Possession of survey instrument.

A licensee authorized to use byproduct material for implant therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range 0.1 millirem per hour to 100 millirem per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour.

Subpart H—Sealed Sources for Diagnosis

§ 35.500 Use of sealed sources for diagnosis.

A licensee shall use the following sealed sources in accordance with the manufacturer's radiation safety and handling instructions:

(a) Iodine-125, americium-241, or gadolinium-153 as a sealed source in a device for bone mineral analysis; and

(b) Iodine-125 as a sealed source in a portable imaging device.

§ 35.520 Availability of survey instrument.

A licensee authorized to use byproduct material as a sealed source for diagnostic purposes shall have available for use a portable radiation detection survey instrument capable of detecting dose rates over the range 0.1 millirem per hour to 100 millirem per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour. The instrument must have been calibrated in accordance with § 35.51 of this part.

Subpart I—Teletherapy

§ 35.600 Use of a sealed source in a teletherapy unit.

The regulations and provisions of this subpart govern the use of teletherapy units for medical use that contain a sealed source of cobalt-60 or cesium-137.

§ 35.605 Maintenance and repair restrictions.

Only a person specifically licensed by the Commission or an Agreement State to perform teletherapy unit maintenance and repair shall:

(a) Install, relocate, or remove a teletherapy sealed source or a teletherapy unit that contains a sealed source; or

(b) Maintain, adjust, or repair the source drawer, the shutter or other mechanism of a teletherapy unit that could expose the source, reduce the shielding around the source, or result in increased radiation levels.

§ 35.606 License amendments.

In addition to the changes specified in § 35.13 of this part, a licensee shall apply for and must receive a license amendment before:

(a) Making any change in the treatment room shielding;

(b) Making any change in the location of the teletherapy unit within the treatment room;

(c) Using the teletherapy unit in a manner that could result in increased radiation levels in areas outside the teletherapy treatment room;

(d) Relocating the teletherapy unit; or

(e) Allowing an individual not listed on the licensee's license to perform the duties of the teletherapy physicist.

§ 35.610 Safety instruction.

(a) A licensee shall post instructions at the teletherapy unit console. To satisfy this requirement, these instructions must inform the operator of:

(1) The procedure to be followed to ensure that only the patient is in the treatment room before turning the primary beam of radiation on to begin a treatment or after a door interlock interruption;

(2) The procedure to be followed if:

(i) The operator is unable to turn the primary beam of radiation off with controls outside the treatment room or any other abnormal operation occurs; and

(ii) The names and telephone numbers of the authorized users and Radiation Safety Officer to be immediately contacted if the teletherapy unit or console operates abnormally.

(b) A licensee shall provide instruction in the topics identified in paragraph (a) of this section to all individuals who operate a teletherapy unit.

(c) A licensee shall retain for two years a record of individuals receiving instruction required by paragraph (b) of this section, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

§ 35.615 Safety precautions.

(a) A licensee shall control access to the teletherapy room by a door at each entrance.

(b) A licensee shall equip each entrance to the teletherapy room with an electrical interlock system that will:

(1) Prevent the operator from turning the primary beam of radiation on unless each treatment room entrance door is closed;

(2) Turn the primary beam of radiation off immediately when an entrance door is opened; and

(3) Prevent the primary beam of radiation from being turned on following an interlock interruption until all treatment room entrance doors are closed and the beam on-off control is reset at the console.

(c) A licensee shall equip each entrance to the teletherapy room with a beam condition indicator light.

(d) A licensee shall install in each teletherapy room a permanent radiation monitor capable of continuously monitoring beam status.

(1) A radiation monitor must provide visible notice of a teletherapy unit malfunction that results in an exposed or partially exposed source, and must be observable by an individual entering the teletherapy room.

(2) A radiation monitor must be equipped with a backup power supply separate from the power supply to the teletherapy unit. This backup power supply may be a battery system.

(3) A radiation monitor must be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients.

(4) A licensee shall maintain a record of the check required by paragraph (d)(3) of this section for two years. The record must include the date of the check, notation that the monitor indicates when its detector is and is not exposed, and the initials of the individual who performed the check.

(5) If a radiation monitor is inoperable, the licensee shall require any individual entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter must be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in paragraph (d)(4) of this section.

(6) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

(e) A licensee shall construct or equip each teletherapy room to permit continuous observation of the patient from the teletherapy unit console during irradiation.

§ 35.620 Possession of survey instrument.

A licensee authorized to use byproduct material in a teletherapy unit shall have in its possession either a portable radiation detection survey instrument capable of detecting dose rate over the range 0.1 millirem per hour to 100 millirem per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1,000 millirem per hour.

§ 35.630 Dosimetry equipment.

(a) A licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions must be met.

(1) The system must have been calibrated by the National Bureau of Standards or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration must have been performed within the previous two years and after any servicing that may have affected system calibration; or

(2) The system must have been calibrated within the previous four years; eighteen to thirty months after that calibration, the system must have been intercompared at an intercomparison meeting with another dosimetry system that was calibrated within the past twenty-four months by the National Bureau of Standards or by a calibration laboratory accredited by the AAPM. The intercomparison meeting must be sanctioned by a calibration laboratory or radiologic physics center accredited by the AAPM. The results of the intercomparison meeting must have indicated that the calibration factor of the licensee's system had not changed by more than 2 percent. The licensee may not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating cobalt-60 teletherapy units, the licensee shall use a teletherapy unit with a cobalt-60 source. When intercomparing dosimetry systems to be used for calibrating cesium-137 teletherapy units, the licensee shall use a teletherapy unit with a cesium-137 source.

(b) The licensee shall have available for use a dosimetry system for spot-check measurements. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with paragraph (a) of this section. This comparison must have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in paragraph (a) of this section.

(c) The licensee shall retain a record of each calibration, intercomparison, and comparison for the duration of the license. For each calibration, intercomparison, or comparison, the record must include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by paragraphs (a) and (b) of this section.

the correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison, the names of the individuals who performed the calibration, intercomparison, or comparison, and evidence that the intercomparison meeting was sanctioned by a calibration laboratory or radiologic physics center accredited by AAPM.

§ 35.632 Full calibration measurements.

(a) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(1) Before the first medical use of the unit; and

(2) Before medical use under the following conditions:

(i) Whenever spot-check measurements indicate that the output differs by more than 5 percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) Following replacement of the source or following reinstallation of the teletherapy unit in a new location;

(iii) Following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(3) At intervals not exceeding one year.

(b) To satisfy the requirement of paragraph (a) of this section, full calibration measurements must include determination of:

(1) The output within ±3 percent for the range of field sizes and for the distance or range of distances used for medical use;

(2) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(3) The uniformity of the radiation field and its dependence on the orientation of the useful beam;

(4) Timer constancy and linearity over the range of use;

(5) On-off error; and

(6) The accuracy of all distance measuring and localization devices in medical use.

(c) A licensee shall use the dosimetry system described in § 35.630(a) to measure the output for one set of exposure conditions. The remaining radiation measurements required in paragraph (b)(1) of this section may be made using a dosimetry system that indicates relative dose rates.

(d) A licensee shall make full calibration measurements required by paragraph (a) of this section in accordance with either the procedures recommended by the Scientific Committee on Radiation Dosimetry of the American Association of Physicists in Medicine that are described in *Physics in Medicine and Biology* Vol. 16, No. 3, 1971, pp. 379–396, or by Task Group 21 of the Radiation Therapy Committee of the American Association of Physicists in Medicine that are described in *Medical Physics* Vol. 10, No. 6, 1983, pp. 741–771, and Vol. 11, No. 2, 1984, p. 213. (Both of these references have been approved for incorporation by reference by the Director of the Federal Register. Copies of the documents are available for inspection or may be obtained from the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 H Street NW., Washington, DC 20555. Copies of the documents are also on file at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20408. A notice of any change in the material will be published in the **Federal Register**.)

(e) A licensee shall correct mathematically the outputs determined in paragraph (b)(1) of this section for physical decay for intervals not exceeding one month for cobalt-60 or six months for cesium-137.

(f) Full calibration measurements required by paragraph (a) of this section and physical decay corrections required by paragraph (e) of this section must be performed by the licensee's teletherapy physicist.

(g) A licensee shall retain a record of each calibration for the duration of use of the teletherapy unit source. The record must include the date of the calibration, the manufacturer's name, model number, and serial number for both the teletherapy unit and the source, the model numbers and serial numbers of the instruments used to calibrate the teletherapy unit, tables that describe the output of the unit over the range of field sizes and for the range of distances used in radiation therapy, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, an assessment of timer linearity and constancy, the calculated on-off error, the estimated accuracy of each distance measuring or localization device, and the signature of the teletherapy physicist.

§ 35.634 Periodic spot-checks.

(a) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that include determination of:

(1) Timer constancy, and timer linearity over the range of use;

(2) On-off error;

(3) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(4) The accuracy of all distance measuring and localization devices used for medical use;

(5) The output for one typical set of operating conditions measured with the dosimetry system described in § 35.630(b) of this part; and

(6) The difference between the measurement made in paragraph (b)(5) of this section and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).

(b) A licensee shall perform measurements required by paragraph (a) of this section in accordance with procedures established by the teletherapy physicist. That individual need not actually perform the spotcheck measurements.

(c) A licensee shall have the teletherapy physicist review the results of each spot-check within 15 days. The teletherapy physicist shall promptly notify the licensee in writing of the results of each spot-check. The licensee shall keep a copy of each written notification for two years.

(d) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month that assure proper operation of:

(1) Electrical interlocks at each teletherapy room entrance;

(2) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);

(3) Beam condition indicator lights on the teletherapy unit, on the control console, and in the facility;

(4) Viewing systems;

(5) Treatment room doors from inside and outside the treatment room; and

(6) Electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(e) A licensee shall arrange for prompt repair of any system identified in paragraph (d) of this section that is not operating properly, and shall not use the teletherapy unit following door interlock malfunction until the interlock system has been repaired.

(f) A licensee shall retain a record of each spot-check required by paragraphs (a) and (d) of this section for two years.

The record must include the date of the spot-check, the manufacturer's name, model number, and serial number for both the teletherapy unit and source, the manufacturer's name, model number and serial number of the instrument used to measure the output of the teletherapy unit, an assessment of timer linearity and constancy, the calculated on-off error, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the calculated on-off error, the determined accuracy of each distance measuring or localization device, the difference between the anticipated output and the measured output, notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system and doors, and the signature of the individual who performed the periodic spot-check.

§ 35.636 Safety checks for teletherapy facilities.

(a) A licensee shall promptly check all systems listed in § 35.634(d) for proper function after each installation of a teletherapy source and after making any change for which an amendment is required by § 35.606 (a)–(d).

(b) If the results of the checks required in paragraph (a) of this section indicate the malfunction of any system specified in § 35.634(d), the licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(c) A licensee shall retain for two years a record of the facility checks following installation of a source. The record must include notations indicating the operability of each entrance door interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system, and doors, and the signature of the Radiation Safety Officer.

§ 35.641 Radiation surveys for teletherapy facilities.

(a) Before medical use, after each installation of a teletherapy source, and after making any change for which an amendment is required by § 35.606 (a)–(d), the licensee shall perform radiation surveys with a portable radiation measurement survey instrument calibrated in accordance with § 35.51 of this part to verify that:

(1) The maximum and average dose rates at one meter from the teletherapy source with the source in the off position and the collimators set for a normal treatment field do not exceed 10 millirem per hour and 2 millirem per hour, respectively; and

(2) With the teletherapy source in the on position with the largest clinically available treatment field and with a scattering phantom in the primary beam of radiation, that:

(i) Radiation dose quantities per unit time in restricted areas are not likely to cause personnel exposures in excess of the limits specified in § 20.101 of this chapter; and

(ii) Radiation dose quantities per unit time in unrestricted areas do not exceed the limits specified in § 20.105(b) of this chapter.

(b) If the results of the surveys required in paragraph (a) of this section indicate any radiation dose quantity per unit time in excess of the respective limit specified in that paragraph, the licensee shall lock the control in the off position and not use the unit:

(1) Except as may be necessary to repair, replace, or test the teletherapy unit shielding or the treatment room shielding; or

(2) Until the licensee has received a specific exemption pursuant to § 20.501 of this chapter.

(c) A licensee shall retain a record of the radiation measurements made following installation of a source for the duration of the license. The record must include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the teletherapy unit, the source, and the instrument used to measure radiation levels, each dose rate measured around the teletherapy source while in the off position and the average of all measurements, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in each area expressed in millirem per hour, the calculated maximum quantity of radiation over a period of one week for each restricted and unrestricted area, and the signature of the Radiation Safety Officer.

§ 35.643 Modification of teletherapy unit or room before beginning a treatment program.

(a) If the survey required by § 35.641 indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by § 20.105(b) of this chapter, before beginning the treatment program the licensee shall:

(1) Either equip the unit with stops or add additional radiation shielding to ensure compliance with § 20.105(b);

(2) Perform the survey required by § 35.641 again; and

(3) Include in the report required by § 35.645 the results of the initial survey, a description of the modification made to comply with paragraph (a)(1) of this section, and the results of the second survey.

(b) As an alternative to the requirements set out in paragraph (a) of this section, a licensee may request a license amendment under § 20.105(a) of this chapter that authorizes radiation levels in unrestricted areas greater than those permitted by § 20.105(b). A licensee may not begin the treatment program until the license amendment has been issued.

§ 35.645 Reports of teletherapy surveys, checks, tests, and measurements.

A licensee shall mail a copy of the records required in §§ 35.636, 35.641, 35.643, and the output from the teletherapy source expressed as roentgens or rads per hour at one meter from the source and determined during the full calibration required in § 35.632, to the appropriate Commission Regional Office listed in § 30.6 of this chapter within thirty days following completion of the action that initiated the record requirement.

§ 35.647 Five-year inspection.

(a) A licensee shall have each teletherapy unit fully inspected and serviced during teletherapy source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(b) This inspection and servicing may only be performed by persons specifically licensed to do so by the Commission or an Agreement State.

(c) A licensee shall keep a record of the inspection and servicing for the duration of the license. The record must contain the inspector's name, the inspector's license number, the date of inspection, the manufacturer's name and model number and serial number for both the teletherapy unit and source, a list of components inspected, a list of components serviced and the type of service, a list of components replaced, and the signature of the inspector.

Subpart J—Training and Experience Requirements

§ 35.900 Radiation Safety Officer.

Except as provided in § 35.901, the licensee shall require an individual fulfilling the responsibilities of the Radiation Safety Officer as provided in § 35.32 to be an individual who:

(a) Is certified by:

(1) American Board of Health Physics in Comprehensive Health Physics;

(2) American Board of Radiology;
(3) American Board of Nuclear Medicine;
(4) American Board of Science in Nuclear Medicine; or
(5) Board of Pharmaceutical Specialties in Nuclear Pharmacy; or
(b) Has had classroom and laboratory training and experience as follows:
(1) 200 hours of classroom and laboratory training that includes:
(i) Radiation physics and instrumentation;
(ii) Radiation protection;
(iii) Mathematics pertaining to the use and measurement of radioactivity;
(iv) Radiation biology; and
(v) Radiopharmaceutical chemistry; and
(2) One year of full time experience as a radiation safety technologist at a medical institution under the supervision of the individual identified as the Radiation Safety Officer on a Commission or Agreement State license that authorizes the medical use of byproduct material; or
(c) Be an authorized user identified on the licensee's license.

§ 35.901 Training for experienced Radiation Safety Officer.

An individual identified as a Radiation Safety Officer on a Commission or Agreement State license before October 1, 1986 need not comply with the training requirements of § 35.900.

§ 35.910 Training for uptake, dilution, and excretion studies.

Except as provided in §§ 35.970 and 35.971, the licensee shall require the authorized user of a radiopharmaceutical in § 35.100(a) to be a physician who:
(a) Is certified in:
(1) Nuclear medicine by the American Board of Nuclear Medicine;
(2) Diagnostic radiology by the American Board of Radiology; or
(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or
(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised clinical experience as follows:
(1) 40 hours of classroom and laboratory training that includes:
(i) Radiation physics and instrumentation;
(ii) Radiation protection;
(iii) Mathematics pertaining to the use and measurement of radioactivity;
(iv) Radiation biology; and
(v) Radiopharmaceutical chemistry; and
(2) 20 hours of supervised clinical experience under the supervision of an authorized user and that includes:
(i) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;
(ii) Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
(iii) Administering dosages to patients and using syringe radiation shields;
(iv) Collaborating with the authorized user in the interpretation of radioisotope test results; and
(v) Patient followup; or
(c) Has successfully completed a six-month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

§ 35.920 Training for imaging and localization studies.

Except as provided in § 35.970 or 35.971, the licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit in § 35.200(a) to be a physician who:
(a) Is certified in:
(1) Nuclear medicine by the American Board of Nuclear Medicine;
(2) Diagnostic radiology by the American Board of Radiology; or
(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or
(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:
(1) 200 hours of classroom and laboratory training that includes:
(i) Radiation physics and instrumentation;
(ii) Radiation protection;
(iii) Mathematics pertaining to the use and measurement of radioactivity;
(iv) Radiopharmaceutical chemistry; and
(v) Radiation biology; and
(2) 500 hours of supervised work experience under the supervision of an authorized user that includes:
(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
(ii) Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;
(iii) Calculating and safely preparing patient dosages;
(iv) Using administrative controls to prevent the misadministration of byproduct material;
(v) Using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and
(vi) Eluting technetium-99m from generator systems, measuring and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and
(3) 500 hours of supervised clinical experience under the supervision of an authorized user that includes:
(i) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;
(ii) Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
(iii) Administering dosages to patients and using syringe radiation shields;
(iv) Collaborating with the authorized user in the interpretation of radioisotope test results; and
(v) Patient followup; or
(c) Has successfully completed a six-month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

§ 35.930 Training for therapeutic use of radiopharmaceuticals.

Except as provided in § 35.970, the licensee shall require the authorized user of radiopharmaceuticals in § 35.300 to be a physician who:
(a) Is certified by:
(1) The American Board of Nuclear Medicine; or
(2) The American Board of Radiology in radiology or therapeutic radiology; or
(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:
(1) 80 hours of classroom and laboratory training that includes:
(i) Radiation physics and instrumentation;
(ii) Radiation protection;
(iii) Mathematics pertaining to the use and measurement of radioactivity; and
(iv) Radiation biology; and

(2) Supervised clinical experience under the supervision of an authorized user at a medical institution that includes:
(i) Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in 10 individuals; and
(ii) Use of iodine-131 for treatment of thyroid carcinoma in 3 individuals.

§ 35.932 Training for treatment of hyperthyroidism.

Except as provided in § 35.970, the licensee shall require the authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:
(a) 80 hours of classroom and laboratory training that includes:
(1) Radiation physics and instrumentation;
(2) Radiation protection,
(3) Mathematics pertaining to the use and measurement of radioactivity; and
(4) Radiation biology; and
(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and the treatment of hyperthyroidism in 10 individuals.

§ 35.934 Training for treatment of thyroid carcinoma.

Except as provided in § 35.970, the licensee shall require the authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:
(a) 80 hours of classroom and laboratory training that includes:
(1) Radiation physics and instrumentation;
(2) Radiation protection;
(3) Mathematics pertaining to the use and measurement of radioactivity; and
(4) Radiation biology; and
(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in 3 individuals.

§ 35.940 Training for use of brachytherapy sources.

Except as provided in § 35.970, the licensee shall require the authorized user of a brachytherapy source listed in § 35.400 for therapy to be a physician who:
(a) Is certified in:
(1) Radiology or therapeutic radiology by the American Board of Radiology;
(2) Radiation oncology by the American Osteopathic Board of Radiology;
(3) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or
(4) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or
(b) Is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, supervised work experience, and supervised clinical experience as follows:
(1) 200 hours of classroom and laboratory training that includes:
(i) Radiation physics and instrumentation;
(ii) Radiation protection;
(iii) Mathematics pertaining to the use and measurement of radioactivity; and
(iv) Radiation biology;
(2) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:
(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
(ii) Checking survey meters for proper operation;
(iii) Preparing, implanting, and removing sealed sources;
(iv) Maintaining running inventories of material on hand;
(v) Using administrative controls to prevent the misadministration of byproduct material; and
(vi) Using emergency procedures to control byproduct material; and
(3) Three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:
(i) Examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;
(ii) Selecting the proper brachytherapy sources and dose and method of administration;
(iii) Calculating the dose; and
(iv) Post-administration followup and review of case histories in collaboration with the authorized user.

§ 35.941 Training for ophthalmic use of strontium-90.

Except as provided in § 35.970, the licensee shall require the authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:
(a) 24 hours of classroom and laboratory training that includes:
(1) Radiation physics and instrumentation;
(2) Radiation protection;
(3) Mathematics pertaining to the use and measurement of radioactivity; and
(4) Radiation biology;
(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals that includes:
(1) Examination of each individual to be treated;
(2) Calculation of the dose to be administered;
(3) Administration of the dose; and
(4) Followup and review of each individual's case history.

§ 35.950 Training for use of sealed sources for diagnosis.

Except as provided in § 35.970, the licensee shall require the authorized user of a sealed source in a device listed in § 35.500 to be a physician, dentist, or podiatrist who:
(a) Is certified in:
(1) Radiology, diagnostic radiology, or therapeutic radiology by the American Board of Radiology;
(2) Nuclear medicine by the American Board of Nuclear Medicine; or
(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or
(b) Has had 8 hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that includes:

(1) Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;
(2) Radiation biology;
(3) Radiation protection; and
(4) Training in the use of the device for the uses requested.

§ 35.960 Training for teletherapy.

Except as provided in § 35.970, the licensee shall require the authorized user of a sealed source listed in § 35.600 in a teletherapy unit to be a physician who:
(a) Is certified in:
(1) Radiology or therapeutic radiology by the American Board of Radiology;
(2) Radiation oncology by the American Osteopathic Board of Radiology;
(3) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or
(4) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or
(b) Is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, supervised work experience, and supervised clinical experience as follows:
(1) 200 hours of classroom and laboratory training that includes:
(i) Radiation physics and instrumentation;
(ii) Radiation protection;
(iii) Mathematics pertaining to the use and measurement of radioactivity; and
(iv) Radiation biology;
(2) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:
(i) Review of the full calibration measurements and periodic spot checks;
(ii) Preparing treatment plans and calculating treatment times;
(iii) Using administrative controls to prevent misadministrations;
(iv) Implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and
(v) Checking and using survey meters; and
(3) Three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:
(i) Examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment, and any limitations or contraindications;
(ii) Selecting the proper dose and how it is to be administered;
(iii) Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and
(iv) Post-administration followup and review of case histories.

§ 35.961 Training for teletherapy physicist.

The licensee shall require the teletherapy physicist to be an individual who:
(a) Is certified by the American Board of Radiology in:
(1) Therapeutic radiological physics;
(2) Roentgen ray and gamma ray physics;
(3) X-ray and radium physics; or
(4) Radiological physics; or
(b) Holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a teletherapy physicist at a medical institution that includes the tasks listed in §§ 35.59, 35.632, 35.634, and 35.641 of this part.

§ 35.970 Training for experienced authorized users.

Physicians, dentists, or podiatrists identified as authorized users for the medical, dental, or podiatric use of byproduct material on a Commission or Agreement State license issued before April 1, 1987 who perform only those methods of use for which they were authorized on that date need not comply with the training requirements of Subpart J.

§ 35.971 Physician training in a three month program.

A physician who, before July 1, 1984, began a three month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program need not comply with the requirements of §§ 35.910 or 35.920.

§ 35.972 Recentness of training.

The training and experience specified in this subpart must have been obtained within the five years preceding the date of application or the individual must have had related continuing education and experience since the required training and experience was completed.

Subpart K—Enforcement

§ 35.990 Violations.

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of:
(1) The Atomic Energy Act of 1954, as amended;
(2) Title II of the Energy Reorganization Act of 1974, as amended; or
(3) Any rule, regulation, or order issued under these Acts.
(b) A court order may be obtained for the payment of a civil penalty imposed for violation of:
(1) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 under section 234 of the Atomic Energy Act of 1954, as amended;
(2) Section 206 of the Energy Reorganization Act of 1974;
(3) Any rule, regulation, or order issued under these Acts;
(4) Any term, condition, or limitation of any license issued under these Acts; or
(5) Any requirement for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.
(c) Any person who willfully violates any provision of the Atomic Energy Act of 1954, as amended, or any rule, regulation, or order issued under the Act may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both as provided by law. Regulations issued under the Act include regulations issued under sec. 161, and cited in the authority citation at the beginning of this part for the purposes of sec. 223.

§ 35.999 Resolution of conflicting requirements during transition period.

If the rules in this part conflict with the licensee's radiation safety program as identified in its license, and if that license was approved by the Commission before April 1, 1987 and has not been renewed since April 1, 1987, then the requirements in the license will apply. However, if that licensee exercises its privilege to make minor changes in its radiation safety procedures that are not potentially important to safety under § 35.31 of this chapter, the portion changed must comply with the requirements of this Part. At the time of license renewal and thereafter, these admendments to this Part shall apply.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

2. The authority citation for Part 30 continues to read as follows:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

3. Section 30.4 is amended by revising paragraphs (h) and (l) to read as follows and by adding new paragraphs (y) and (z) as follows:

§ 30.4 Definitions.

* * * * *

(h) "Medical use" means the intentional internal or external administration of byproduct material, or the radiation therefrom, to human beings in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

* * * * *

(l) "Physician" means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine;

* * * * *

(y) "Dentist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry.
(z) "Podiatrist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry.

4. Section 30.34 is amended by revising paragraph (g) to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(g) A licensee may prepare technetium-99m radiopharmaceuticals only with technetium-99m that contains less than 0.15 microcuries of molybdenum-99 per millicurie of technetium-99m. The licensee shall perform tests and retain the records required by § 35.204.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

5. The authority citation for Part 31 is revised to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).
Section 31.6 is also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).
For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 31.5(c)(1)–(3) and (5)–(9), 31.8(c), 31.10(b), and 31.11(b), (c), and (d) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 31.5(c)(4), (5), and (8), and 31.11(b) and (e) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. The authority citations following §§ 31.2, 31.5, 31.6, 31.7, 31.8, 31.10 and 31.11 are removed.

7. Section 31.11 is amended by revising paragraph (b) to read as follows:

§ 31.11 General license for use of byproduct material for certain in vitro clinical or laboratory testing.

* * * * *

(b) A person shall not receive, acquire, possess, use, or transfer byproduct material under the general license established by paragraph (a) of this section unless that person:
(1) Has filed Form NRC–483, "Registration Certificate—In Vitro Testing with Byproduct Material Under General License," with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and received from the Commission a validated copy of Form NRC–483 with a registration number assigned; or
(2) Has a license that authorizes the medical use of byproduct material that was issued under Part 35 of this chapter.

* * * * *

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIALS

8. The authority citation for Part 32 continues to read as follows:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 32.70 [Removed]

9. Section 32.70 is removed.

10. In § 32.72 the section heading, the introductory text of paragraph (a), and paragraph (a)(4)(i) are revised to read as follows:

§ 32.72 Manufacture and distribution of radiopharmaceuticals containing byproduct material for medical use under Part 35.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing byproduct material for use by persons authorized pursuant to Part 35 of this chapter will be approved if:

* * * * *

(4) * * *

(i) The label affixed to each package of the radiopharmaceutical contains information on the radionuclide, quantity, and date of assay, and the label, or the leaflet or brochure that accompanies each package, contains a statement that the U.S. Nuclear Regulatory Commission has approved distribution of the radiopharmaceutical to persons licensed to use byproduct material listed in §§ 35.100, 35.200, or 35.300, as appropriate, and to persons who hold an equivalent license issued by an Agreement State. However, labels worded in accordance with requirements that were in place on March 30, 1987 may be used until March 30, 1989.

* * * * *

11. In § 32.73 paragraph (a)(5)(ii) is revised to read as follows:

§ 32.73 Manufacture and distribution of generators or reagent kits for preparation of radiopharmaceuticals containing byproduct material.

(a) * * *

(5) * * *

(ii) A statement that this generator or reagent kit (as appropriate) is approved for distribution to persons licensed by the U.S. Nuclear Regulatory Commission to use byproduct material identified in § 35.200 or under an equivalent license of an Agreement State. However, labels worded in accordance with requirements that were in place on March 30, 1987 may be used until March 30, 1989.

* * * * *

12. In § 32.74 the introductory text of paragraph (a) and paragraph (a)(3) are revised to read as follows:

§ 32.74 Manufacture and distribution of sources or devices containing byproduct material for medical use.

(a) An application for a specific license to manufacture and distribute sources and devices containing byproduct material to persons licensed pursuant to Part 35 of this chapter for use as a calibration or reference source or for the uses listed in §§ 35.400 and 35.500 of this chapter will be approved if:

* * * * *

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of

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assay, and a statement that the U.S. Nuclear Regulatory Commission has approved distribution of the (name of source or device) to persons licensed to use byproduct material identified in §§ 35.58, 35.400, or 35.500, as appropriate, and to persons who hold an equivalent license issued by an Agreement State. However, labels worded in accordance with requirements that were in place on March 30, 1987 may be used until March 30, 1989.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

13. The authority citation for Part 40 continues to read as follows:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

14. Section 40.4 is amended by revising paragraph (g) to read as follows:

§ 40.4 Definitions.

* * * * *

(g) "Physician" means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine;

* * * * *

Dated at Washington, DC, this 7th day of October 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-23168 Filed 10-15-86; 8:45 am]

BILLING CODE 7590-01-M

federal register

Thursday
October 16, 1986

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 6, 8, 13, 15, 31, 33, 36, 44, 52, and 53

Federal Acquisition Regulations; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 6, 8, 13, 15, 31, 33, 36, 44, 52, and 53

[Federal Acquisition Circular 84-23]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-23 amends the Federal Acquisition Regulation (FAR) with respect to the following: Changes to FAR 6.302-5(c)(2) to clarify procedures for certain noncompetitive purchases; Extension of Agency Policies and Procedures concerning Acquisition of Utility Services; OFPP Policy Letter 80-6 concerning appeal rights; Should-Cost Analysis to clarify its definition; Revision to FAR 33.210, Contracting Officer's Authority, to emphasize limitations in settlement of claims involving fraud; Definition of Architect-Engineer Services; Subcontracts—Clause Preface and Title (FAR 44.201, 52.244-1, and 52.222-28); and Editorial Corrections.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Public Comments

Public comments have not been solicited with respect to these revisions since such revisions either (a) do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these final rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

C. Regulatory Flexibility Act

Analyses of these revisions indicate that they are not "significant revisions" as defined in FAR 1.501-1; i.e., they do not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 96-525 and section 302 of Pub. L. 96-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on these revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act (Pub. L. 96-354) does not apply.

List of Subjects in 48 CFR Parts 1, 6, 8, 13, 15, 31, 33, 36, 44, 52, and 53

Government procurement.

Dated: October 9, 1986.

Lawrence J. Rizzi,
Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84-23]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-23 is effective September 30, 1986.

Eleanor R. Spector,
Deputy Assistant Secretary of Defense for Procurement.

Terence C. Golden,
Administrator.

S.J. Evans,
Assistant Administrator for Procurement.

Federal Acquisition Circular (FAC) 84-23 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Changes to FAR 6.302-5(c)(2)

FAR 6.302-5(c) is revised to clarify that written justifications and approvals described in FAR 6.303 and 6.304 are not required when a statute expressly requires that a procurement be made from a specified source.

Item II—Extension of Agency Policies and Procedures Concerning Acquisition of Utility Services

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision of FAR Subpart 8.3, Acquisition of Utility Services. A proposed rule was published in the Federal Register on May 7, 1986 (51 FR 16988), with comments due July 7, 1986. The public comment period was extended on June 26, 1986 (51 FR 23248) to September 7, 1986, to ensure the adequacy of the time made available for public consideration of the proposed rule. Comments received to date raise a number of significant policy issues. Until these issues are resolved, a final rule will not be promulgated and FAR 8.300 is amended to extend the period in which agency policies and procedures predating the effective date of the FAR may continue to be used for the acquisition of utility services. If, after the policy issues are resolved, a revision to the FAR is necessary, a proposed rule again will be issued for full public comment.

Item III—OFPP Policy Letter 80-6

FAR 13.105 is revised to clarify that existing appeal rights of small business specialists and SBA representatives with respect to set-asides apply to small business-small purchase set-asides.

Item IV—Should-Cost Analysis

FAR 15.801 is revised to clarify the definition of cost analysis as it relates to should-cost analysis. FAR 15.810 is revised to (1) provide a definition of should-cost analysis, which distinguishes it from cost analysis; (2) clarify the objective of a should-cost analysis; (3) provide guidance in determining the scope and size of the should-cost analysis team; and (4) require the submission of a separate audit report, if a report is appropriate.

Item V—Revision to FAR 33.210, Contracting Officer's Authority

The current instructions in FAR 33.210 are revised to emphasize the limitations on the contracting officer's authority in the settlement of claims involving fraud.

Item VI—Definition of Architect-Engineer Services

The revision to FAR 36.102, Definitions, corresponding revisions to FAR 53.236-2 of the definition on Standard Form (SF) 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, and FAR 36.601, Policy, implement the Office of Federal Procurement Policy Letter 83-3, June 8, 1983. The revisions add a definition and guidance regarding the acquisition of architect-engineer services.

Item VII—Subcontracts—Clause Preface and Title (FAR 44.201-1, 52.244-1, and 52.222-28)

In the April 1984 edition of the FAR the clause preface at 52.244-1 included an instruction to the contracting officer which authorized lowering the subcontract dollar threshold for contracting officer consent under certain circumstances. This authority was deleted when the preface was revised by FAC 84-7, thereby creating an ambiguity as to whether lowering the threshold is still permissible. There has been no change in policy, and the present revision simply reinstates the instruction in the clause preface.

Item VIII—Editorial Corrections

FAR 15.805-5(h) and 52.233-1(c) are revised to make corrections to FAC 84-18 published in the Federal Register on July 29, 1986 (51 FR 27114). FAR 1.105 and 31.205-46(a)(2)(ii) are revised to make corrections to FAC 84-19 published in the Federal Register on July 31, 1986 (51 FR 27488).

Therefore, 48 CFR Parts 1, 6, 8, 13, 15, 31, 33, 36, 44, 52, and 53 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 6, 8, 13, 15, 31, 33, 36, 44, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding, in numerical order, a FAR segment and a corresponding OMB Control Number to read as follows:

1.105 [Amended]

FAR segment	OMB control No.
• • • • •	
31.205-46(a)(3)	9000-0088
• • • • •	

PART 6—COMPETITION REQUIREMENTS

3. Section 6.302-5 is amended in paragraph (c)(2) by inserting a dash following the word "for" and removing the remainder of the sentence and by adding paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

6.302-5 [Amended]

• • • • • •

(c) • • •

(2) • • •

(i) Contracts awarded under (a)(2)(ii), (b)(2), or (b)(4) of this subsection; or

(ii) Contracts awarded under (a)(2)(i) of this subsection when the statute expressly requires that the procurement be made from a specified source. (Justification and approval requirements apply when the statute authorizes, but does not require, that the procurement be made from a specified source.)

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.300 [Amended]

4. Section 8.300 is amended by inserting in the second sentence a period following the word "used" and removing the remainder of the sentence and by removing in the third sentence the words ", or any policies or procedures to be used after September 30, 1986,".

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

5. Section 13.105 is amended by adding in paragraph (d)(2) a second sentence to read as follows:

13.105 Small business-small purchase set-asides.

• • • • • •

(d) • • •

(2) • • • If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with a small business-small purchase set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in 19.505.

PART 15—CONTRACTING BY NEGOTIATION

6. Section 15.801 is amended by revising the definition of "Cost Analysis" to read as follows:

15.801 Definitions.

"Cost analysis" means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

• • • • • •

15.805-5 [Amended]

7. Section 15.805-5 is amended in paragraph (h) by removing in the first sentence the words "the contracting officer believes" and by inserting in the second sentence a period following the word "necessary" and removing the remainder of the sentence.

8. Section 15.810 is amended by revising paragraphs (a) and (e), by redesignating the existing paragraph (c) as (f), and by adding a new paragraph (c) to read as follows:

15.810 Should-cost analysis.

(a) Should-cost analysis is a specialized form of cost analysis which is used to evaluate the cost of production programs by evaluating and challenging a contractor's management and operating systems or portions thereof. It does not assume the use of the contractor's existing workforce, methods, materials, facilities, or management and operating systems. It addresses significant cost drivers and may be tailored to a specific part of the contractor's operations, for example, indirect expense activities, factory layout, etc. This analysis is accomplished by an integrated team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost analysis is to promote both short- and long-range improvements in the contractor's economy and efficiency by evaluating and challenging the contractor's existing workforce, methods, materials, facilities, or management and operating systems to identify uneconomical or inefficient practices. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic price objectives for negotiation.

• • • • • •

(c) The scope of a should-cost analysis can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale review examining specific portions of a contractor's operation. When a should-cost analysis is conducted relative to a contractor proposal, a separate audit report on the proposal is required. In determining the team size for the review, the various factors outlined in this paragraph (c) should be considered.

• • • • • •

(e) In acquisitions for which a should-cost analysis is conducted, a separate should-cost analysis team report, prepared in accordance with agency procedures, is required. Field pricing reports are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations contained in the should-cost analysis team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer a report of any identified uneconomical or inefficient practices, together with a

report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205-46 [Amended]

9. Section 31.205-46 is amended in paragraph (a)(2)(ii) by removing "Stock No. 908-010-00000-1" and inserting in its place "Stock No. 908-010-00000-1".

PART 33—PROTESTS, DISPUTES, AND APPEALS

10. Section 33.210 is amended by revising paragraph (b) to read as follows:

33.210 Contracting officer's authority.

* * * * *

(b) The settlement, compromise, payment or adjustment of any claim involving fraud.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

11. Section 36.102 is amended by adding in alphabetical order the definition "Architect-Engineer Services" to read as follows:

36.102 Definitions.

"Architect-Engineer Services" means—

(a) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or

(b) Such other professional services, as determined by the contracting officer, which uniquely or to a substantial or dominant extent logically require performance by a registered or licensed architect or engineer; and

(c) Incidental services that members of the architect or engineering professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L. 92–582 procedures.

* * * * *

12. Section 36.601 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

36.601 [Amended]

(a) * * *

(b) Other than "incidental services" as specified in the definition of architect-engineer services in 36.102, services that do not require performance by a registered or licensed architect or engineer, notwithstanding the fact that architect-engineers also may perform those services, should be acquired pursuant to Parts 13, 14, and 15.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.201-1 [Amended]

13. Section 44.201-1 is amended by removing in paragraph (d) the words "Under Fixed Price Contracts" and inserting in their place the words "(Fixed-Price Contracts)".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.222-28 [Amended]

14. Section 52.222-28 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence.

52.233-1 [Amended]

15. Section 52.233-1 is amended by removing in the first sentence of paragraph (c) of the clause the words "certain sum" and inserting in their place the words "sum certain".

16. Section 52.244-1 is amended by removing the colon in the introductory text following the word "clause" and inserting a period in its place and by adding a second sentence to read as follows:

52.244-1 Subcontracts (Fixed-Price Contracts).

* * * The threshold in subparagraphs (b)(2) and (b)(3) of the clause may be lowered when closer surveillance of subcontracting is necessary because of the nature of the industry involved, criticality of the work expected to be subcontracted, absence of competition in placing the prime contract, uncertainties as to the adequacy of the contractor's purchasing system, or novelty of the supplies or services being purchased.

* * * * *

PART 53—FORMS

17. Section 53.236-2 is amended by adding at the end of paragraph (b) a second sentence and the definition "Architect-engineer services"; and by adding at the end of paragraph (c) a second sentence and the definition "Architect-engineer services" to read as follows:

53.236-2 Architect-engineer services (SF's 252, 254, 255, 1421).

* * * * *

(b) * * * Pending issuance of a new edition of the form, the definition "Architect-engineer and related services" is replaced by the following:

"Architect-Engineer Services" means—

(1) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or

(2) Such other professional services, as determined by the contracting officer, which uniquely or to a substantial or dominant extent logically require performance by a registered or licensed architect or engineer; and

(3) Incidental services that members of the architect-engineer professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L. 92–582 procedures.

(c) * * * Pending issuance of a new edition of the form, the definition "Architect-engineer and related services" is replaced by the following:

"Architect-Engineer Services" means—

(1) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or

(2) Such other professional services, as determined by the contracting officer, which uniquely or to a substantial or dominant extent logically require performance by a registered or licensed architect or engineer; and

(3) Incidental services that members of the architect-engineer professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L. 92–582 procedures.

[FR Doc 86-23299 Filed 10-15-86; 8:45 am]
BILLING CODE 6820-61-M

federal register

Thursday
October 16, 1986

Part V

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusions

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3095-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at three facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at three particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated all three of the petitions which are discussed in today's notice. Based on our review at that time, all three of these petitioners were granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors which reasonably could cause the wastes to be hazardous.

DATES: EPA will accept public comments on the proposed exclusions and denials until October 31, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on these proposed decisions by filing a request with Bruce Weddle, whose address appears below, by October 27, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSP/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–86–TRPE–FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at U.S. Environmental Protection Agency, 401 M Street SW. (subbasement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5090.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetical receptor wells—the "compliance point" (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to delist the wastes from three petitioners.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984 were enacted, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a exclusion. All of the exclusions proposed today will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those that requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Tricil Environmental Services, Inc., Hilliard, Ohio;

Tricil Environmental Services, Inc., Muskegon, Michigan;

Tricil Environmental Services, Inc., Nashville, Tennessee.

[1] The Agency proposed a similar approach, including a ground water transport model, as part of the proposed toxicity characteristic (see 51 FR 21648, June 13, 1986). The Agency has not completed its evaluation of the comments on this proposal, however. If a regulation is promulgated, using the ground water transport model, Agency will consider revising the delisting analysis.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

I. Tricil Environmental Services, Inc.—Hilliard, Ohio

A. Petition for Exclusion

Tricil Environmental Services, Inc., (Tricil), located in Hilliard, Ohio, operates a waste treatment facility for treatment of multiple metal-bearing waste streams for industrial clients. Tricil has petitioned the Agency to exclude the residue of specific segregated wastes produced by its treatment facility. This sludge is generated from the treatment of EPA Hazardous Wastes Nos. K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332); and F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. K062 are hexavalent chromium and lead. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of the petition, Tricil was granted a temporary exclusion on March 18, 1981 (see 46 FR 17197). The Agency's basis for granting the temporary exclusion (at that time) was the low concentration of cadmium, chromium, lead, nickel, and cyanide and the low migration potential of cadmium, chromium (hexavalent), lead, and nickel in the waste.

Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Tricil's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine whether the waste is nonhazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Tricil's petition.

In support of their petition, Tricil has submitted a detailed description of its pre-screening process, bench-scale and proposed full-scale treatment process (which has since been installed), and contingency testing plan; total constituent analyses and EP toxicity test results of the treatment residue for cadmium, total chromium, lead, and nickel; and analytical results for total oil and grease, total cyanide, and total sulfide. Tricil also submitted total constituent analyses and EP toxicity test results for arsenic, barium, mercury, selenium, and silver; and results from total constituent analyses for selected Appendix VIII hazardous constituents. As noted above, the Agency requested this information to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.[2]

The Tricil process treats spent pickle liquor with electroplating wastes. The treatment process involves waste combination, neutralization with lime, metal precipitation, equalization, and final dewatering of the sludge by vacuum filtration. Monitored mixing of pickling and electroplating wastes at controlled ratios results in the reduction of hexavalent chromium by the ferrous ions present in the pickling wastes. Subsequent lime addition elevates the pH and converts lead, nickel, chromium, and cadmium to a hydroxide form. The sludge generated has a pH of 8.5–9.7.

Tricil claims that no cyanide-bearing wastes are accepted for treatment at the Hilliard facility. The Tricil pre-screening process includes analytical monitoring of incoming wastes for the presence of free cyanide. No wastes bearing free cyanides over 1 ppm are accepted for treatment. The absence of cyanide was confirmed through analyzing Tricil treatment residue. In addition, analytical monitoring of incoming wastes is used to pre-qualify wastes which, when treated, will generate a residue that meets the Agency's requirements. Tricil claims that its treated wastewater sludge is non-hazardous because the constituents of concern are present either in insignificant concentrations or, if present at significant levels, are essentially in immobile forms. Tricil also believes that the waste is not hazardous for any other reason.

Tricil initially presented analytical data on four samples collected from the vacuum filter. As a result of HSWA requirements, Tricil submitted additional organics sampling data. Nine composite samples of the sludge were collected from the sludge storage pile weekly over a 2-month period. Tricil claims that the treatment facility is operated in a consistent manner, and is monitored to verify compliance with pretreatment standards and delisting requirements. Tricil submitted additional EP toxicity analytical data for cadmium, chromium, nickel, and lead for 8 samples collected over a 2-month period to demonstrate the effectiveness of the bench-scale treatment process. Tricil further claims that all samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. In addition to Tricil's sampling efforts, EPA conducted a spot check sampling visit to the facility in May 1983. A composite sample was taken from randomly selected areas of the treated sludge contained in four piles on the concrete storage pallet.

Tricil's total constituent and EP toxicity analyses of the filter press sludge for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses [1] (mg/l)
Cadmium	11.4	0.049
Chromium (total) [3]	2,860.0	.203
Lead	1,980.0	.110
Nickel	884.0	1.196
Cyanide (total)	4.2	[4] .21

[1] EP leachate values were taken from Tricil's data submittal of May 16, 1986. This data is representative of segregated F006 and K062 wastes; earlier submittals were for unsegregated wastes which are not representative of the wastes that may be delisted under the contingency plan outlined later in this notice. Tricil claims that one data point for chromium (0.78 ppm) was an outlier. The Agency believes this claim and supports this conclusion using the Dixon Extreme Value Test.

[3] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

[4] Leachable cyanide was not measured by Tricil. The Agency estimated the maximum leachable cyanide by assuming a theoretical leaching of 100 percent and twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

Tricil's total constituent and EP toxicity analyses of the filter press sludge for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Non-listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Arsenic	82.0	<0.005
Barium	695.0	<.025
Mercury	2.5	.0013
Selenium	3.0	<.005
Silver	2.0	<.002

Note.—< Denotes concentrations below the detection limit.

Tricil also submitted total constituent analyses for Appendix VIII hazardous constituents potentially present in the waste. Tricil analyzed the samples for all Appendix VIII hazardous constituents except those that are reactive or hydrolyze in water and those that require special analytical methods. A more detailed explanation and list of these compounds is available in the public docket. Maximum concentrations for these constituents in the sludge are reported in Table 3. (The maximum concentrations for organics detected are reported in Table 3.)

TABLE 3.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY TRICIL'S ANALYSES OF THE FILTER PRESS SLUDGE (ppm)

Constituents	Total constituent analyses
Acrolein	27.3
Anthracene	1.18
Benzene	.054
Bis(2-ethylhexyl)phthalate	14.2
Butyl benzyl phthalate	303.0
p-Chloro-m-cresol	3.34
m- and p-Cresols	6.868
1,1-Dichloroethane	2.73
Di-n-octyl phthalate	6.09
Fluorene	1.19
Methylene chloride	1.30
Methyl ethyl ketone	1.48
Naphthalene	8.26
Phenanthrene	4.39
Phenol	30.7
2,4,5-TP (Silvex)	.68
Tetrachloroethylene	1.83
Toluene	2.67
1,1,1-Trichloroethane	2.31
Trichloroethylene	.068

The sludge sample collected by EPA from the sludge storage piles was analyzed for total and leachable concentrations of the EP metals, nickel, and cyanide. These concentrations are reported in Table 4.

TABLE 4.—MAXIMUM SLUDGE CONCENTRATIONS

Constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Arsenic	57.0	<0.02
Barium	540.0	.102
Cadmium	9.0	<.025
Chromium	990.0	<.20
Lead	2,900.0	.26
Mercury	2.8	<.001
Nickel	1,110.0	11.0
Selenium	<50.0	<.06
Silver	<4.0	<.02
Cyanide (total)	5.5	<.010
Cyanide (amenable)	5.6	[1]

[1] Not applicable.
Note.—< Denotes concentrations below the detection limit.

The sludge sample also was analyzed by EPA for the 126 priority pollutants and volatile organics. (See 47 FR 52309, November 19, 1982—Appendix A.) Table 5 summarizes concentrations of Appendix VIII hazardous constituents detected in EPA's samples.

TABLE 5.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY EPA'S ANALYSES OF THE FILTER PRESS SLUDGE (ppm)

Constituents	Total constituent analyses
Bis(2-ethylhexyl)phthalate	11.0
p-Chloro-m-cresol	14.0
1,1-Dichloroethane	2.0
Ethyl benzene	16.0
Fluorene	4.3
Methylene chloride	450
Naphthalene	5.4
N-Nitrosodiphenylamine	3.1
Pentachlorophenol	.89
Phenanthrene	8.4
Pyrene	1.4
Tetrachloroethylene	25
Toluene	160
Trichloroethylene	11

The maximum total oil and grease value reported by Tricil was 0.12 percent. Tricil also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Tricil, in addition, analyzed the filter press sludge for total sulfides; the maximum reported concentration in the sludge was 27 ppm. Tricil claims to generate a maximum of 9,000 tons of filter press sludge per year.

B. Agency Analysis and Action

Tricil has demonstrated that its waste treatment system, under specified controlled conditions, produces a non-hazardous sludge. The Agency believes that the eight samples collected by Tricil from the sludge storage pile over 2 months and the additional sample collected in EPA's spot check sampling visit were non-biased and adequately represent any variations that may occur in the filter press sludge. The key factors that could vary toxicant concentrations in the residue at MWTFs are the addition of new clients, the variation of client processes occurring from time to time, and variations in raw materials used at generator facilities on the original client list of a MWTF. This variation in raw materials can be expected when the clients of the MWTF perform as job shops or when the product line changes on a seasonal basis. The Agency does not believe it is possible to represent this variation without sampling that would be considered excessive for a delisting petition demonstration. The Agency, therefore, has requested all MWTF petitioners to submit analytical data collected during a 2-month period on a minimum of eight composite samples.[4] The Agency believes that the sampling period used by Tricil was long enough to cover any variations in the treatment process.

The Agency has evaluated the mobility of the listed constituents from Tricil's waste using the vertical and horizontal spread (VHS) model.[5] The VHS model generated compliance point values using the 9,000 ton per year maximum waste generation rate and the maximum reported extract levels reported by Tricil or EPA as input parameters. These predicted compliance point concentrations are reported in Table 6. (When leachate concentrations were below the detection limits, the value of the detection limit was used.) The conditions specified below will require batch testing for oil and grease contents. If content exceeds 1 percent the OWEP would be required. The EP is used here since the oil and grease content did not exceed 1 percent. (See 49 FR 42501, October 23, 1984.) (The sludge sample collected by EPA was not analyzed for total oil and grease content.)

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	0.008	0.01
Chromium (total)	.022	.05
Lead	[1] .055	.05
Nickel	[1] 1.74	.35
Cyanide	.00	.2

[1] Maximum concentrations obtained from EPA's sampling results.

The sludge exhibited cadmium and chromium levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards, and cyanide levels below the

[2] The Agency generally requests that raw materials lists be submitted from single waste stream petitioners to determine whether additional Appendix VIII hazardous constituents may be present in the waste at levels of regulatory concern. For Multiple Waste Treatment Facilities (MWTFs), however, the Agency realizes that hundreds of clients may be involved, therefore making it impossible for raw materials lists to be presented. The Agency has decided to request testing of a minimum of eight samples of waste for all Appendix VIII hazardous constituents reasonably expected to be present in the waste. (At a minimum, testing should be conducted for the priority pollutants.) The MWTF petitioner may choose to limit the number of Appendix VIII hazardous constituents tested by submitting suitable explanations of why specific toxicants are not present in the waste at levels of regulatory concern.

[4] The Agency's intention is to grant conditional exclusions requiring continuous batch testing where the initial demonstration is successful.

[5] See 50 FR 7882, Appendix I, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

U.S. Public Health Service's suggested drinking water standard.[6] Using the maximum reported lead and nickel concentrations (from the EPA sampling results), the VHS model generated compliance point concentrations that exceeded the National Interim Primary Drinking Water Standard for lead and the Agency's interim health-based standard for nickel.[7] The Agency notes, however, that these extract levels did not exceed the limits set in Tricil's temporary exclusion. In addition, all other reported lead and nickel concentrations (*i.e.*, nine other segregated waste samples) did not fail the VHS model evaluation. Under the pre-screening controls, the Agency believes that, for the majority of the time, this facility can generate a non-hazardous treatment residue with respect to mobile lead and nickel. Furthermore, under the continuous testing provisions of a conditional exclusion, Tricil will be required to retest or dispose as hazardous any batch exhibiting lead or nickel extract levels above 0.31 and 2.2 ppm, respectively. (The Agency specifically requests comments on this interpretation.) The waste's maximum sulfide and cyanide contents (27 and 5.5 ppm, respectively) also are low enough not to be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[8] (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) These constituents, therefore, are not of regulatory concern.

The Agency also concluded, through using the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 7.

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	[1] <0.009	0.05
Barium	[1] .02	1.0
Mercury	.0002	.002
Selenium	[1] <.008	.01
Silver	[1] <.003	.05

[1] Maximum concentrations from EPA's sampling results.

The Agency also has evaluated the mobility of organic constituents detected in the sludge by first estimating their leachate concentrations with the Agency's Organic Leachate Model (OLM), and then predicting their compliance point concentrations with the VHS model.[9] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 8.

TABLE 8.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS [1] [2] (ppm)

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	(Base)	(95%)	(Base)	(95%)	
Acrolein	1.91	2.76	0.303	0.437	0.5
Anthracene	.0008	.0011	.0001	.0002	.002
Benzene	.0047	.0066	.0007	.0010	.0012
Bis(2-ethylhexyl)phthalate	.009	.012	.0014	.0019	.70
Butyl benzyl phthalate	.15	.195	.024	.029	8.75
p-Chloro-m-cresol [3]	.274	.349	.043	.055	.2
m- and p-Cresols	.369	.505	.059	.081	1.8
1,1-Dichloroethane	.103	.138	[4].016	[4].022	.00036
Di-n-octyl phthalate	.0044	.008	.0007	.0009	.6
Ethyl benzene [3]	.106	.117	.017	.018	3.5
Fluorene [3]	.007	.009	.001	.0014	.002
Methylene chloride [5]	5.3	7.4	[4].84	[4] 1.17	.058
Methyl ethyl ketone	.296	.426	.045	.067	1.8
Naphthalene	.032	.039	.005	.0062	9.6
N-Nitrosodiphenylamine [3]	.018	.022	.0029	.0035	.0071
Pentachlorophenol [3]	.005	.0056	.0008	.0009	1.1
Phenanthrene [3]	.010	.012	.0015	.002	.002
Phenol	1.18	1.85	.187	.292	3.5
Pyrene [3]	.001	.002	.0002	.0003	4.0
2,4,5-TP (Silvex)	.103	.0135	.0016	.0021	.01
Tetrachloroethylene [3]	.121	.145	[4].019	[4].02	.0007
Toluene [3]	.582	.835	.108	.132	10.5
1,1,1-Trichloroethane	.057	.0729	.009	.012	1.2
Trichloroethylene [3]	.145	.18	[4].023	[4].03	.0032

[1] Combines detectable EPA and Tricil data (i.e., uses the maximum concentrations found either by EPA or Tricil) from Tables 3 and 5.
[2] Since the OLM has not been finalized, both the baseline equation and the 95 percent confidence interval (applied to the baseline) are calculated here. Once it has been finalized only one of these two versions will apply.
[3] Maximum concentration obtained from EPA's sampling results.
[4] Concentration exceeds standard.

Methylene chloride and trichloroethylene levels for one of eight samples generated compliance point concentrations that exceeded the Agency's regulatory standards. 1,1-Dichloroethane levels for all eight samples generated compliance point concentrations that exceeded the Agency's regulatory standards. Tetrachloroethylene levels for six of nine samples also generated compliance point concentrations that exceeded the Agency's regulatory standard. The Agency believes that since trichloroethylene and methylene chloride were not present at levels of concern for the majority of the samples analyzed, and since Tricil performs stringent pre-screening, the sources of these organic constituents can be traced and eliminated. The Agency has previously granted Tricil a conditional exclusion which required batch testing. Through this batch testing condition of their exclusion, Tricil has periodically identified "problem" batches. Treatment failures under the temporary exclusion were identified only in terms of cyanide or heavy metals. If process adjustments did not successfully treat the waste, Tricil has successfully eliminated acceptance of "problem" wastes through their pre-screening program. The Agency did not previously specify limitations on trace organics in the temporary exclusion nor did the Agency specify acceptable concentrations of trace organics. Tricil has not had, therefore, the opportunity to adjust its treatment system or eliminate clients to address tetrachloroethylene and 1,1-dichloroethane. Under these circumstances the Agency feels it inappropriate to penalize Tricil's petition effort due to the unacceptable levels of tetrachloroethylene and 1,1-dichloroethane found to be present. Instead the Agency is proposing to add these constituents (as well as other potential organic constituents) to Tricil's conditional batch testing program. The Agency believes if Tricil cannot successfully treat the present level of organic contaminants, that they can eliminate the wastes containing these constituents through their pre-screening operations. The Agency believes it necessary, therefore, to incorporate organics batch testing into the contingency testing program to ensure that organic constituents are not present in the treatment residue at levels of regulatory concern.

The Agency believes that a conditional exclusion can be granted to the Tricil Hilliard facility. The conditions of the exclusion would necessitate testing each batch of treated waste for the EP toxic metals, nickel, cyanide, and a group of organics. The Agency believes this testing requirement is necessary due to the inherent variability encountered by a changing client base, the process variation associated with each of the clients serviced, the high concentrations of toxic constituents in the incoming wastes and in the treatment residue, and the high volumes of treatment residue generated annually by Tricil.

This testing requirement is self-implemented, that is, the results of testing each batch need not be reviewed by state or Federal EPA representatives prior to disposal. The test data must be recorded and kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis.

The Agency, therefore, proposes to grant an exclusion to the Tricil Hilliard facility providing that the following contingency testing program is followed:

(1) Each batch [10] of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP test if the oil and grease content of the waste exceeds one percent) for the EP toxic metals (As, Ba, Cd, Cr, Pb, Se, Ag, and Hg) and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm [11] or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(3) Each batch of waste must be tested for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. This list of organic constituents is a compilation of organics detected at each of Tricil's three facilities.[12]

Compound	Maximum acceptable level [1] [9] (ppm)	
	(Base)	(95%)
Acrolein	30.9	22.9
Anthracene	72	45
Benzene	.106	.060
p-Chloro-m-cresol	132.4	82.1
m- and p-Cresols	1,030	619
1,1-Dichloroethane	.01	.005
Fluorene	10.4	7.23
Methylene chloride	8.18	5.27
Methyl ethyl ketone	313	175
N-Nitrosodiphenylamine	11.0	8.1
Phenanthrene	13.95	9.57
Phenol	1,560	862
Tetrachloroethylene	.180	.113
Trichloroethylene	.59	.36
Chloroform	.012	.0061
1,2-Dichloroethane	.0062	.0038
2,4-Dimethylphenol	126	87
Vinyl chloride	.18	.105
1,2-Diphenylhydrazine	1.95	.917

[1] Since the OLM has not been finalized, both versions of the model (*i.e.*, the baseline equation and the 95 percent confidence interval applied to the baseline) are calculated here. Once it has been finalized, only one of these two versions will apply.
[9] Includes constituents identified at all of Tricil's petitioning facilities.
[12] Although the original list of constituents was the same for all of Tricil's petitioning facilities (*i.e.*, constituents detected at each facility are to be tested for at all of the facilities), the actual tabulation in each proposed exclusion may vary due to the facility's specific generation rate and our subsequent 1,000 ppm VHS model limitation.

(4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the compounds listed above, as well as for the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, Appendix A—126 Priority Pollutants) These data must be kept on file at the facility and submitted to the Administrator by certified mail semi-annually. The Agency has required that these additional scans be run on monthly composites to determine whether additional organic constituents should be added to the group of parameters tested on a batch basis due to variation of existing client wastes or variation of the client base. The Agency will review this information and, if needed, will propose to modify or withdraw the exclusion.

The Agency notes that the limits specified above are based on the VHS model and a treatment residue generation rate of greater than 8000 tons per year. Based on total constituent analyses, the pre-screening process, the VHS analyses, and the contingency plan, the Agency believes that the treatment residue generated at Tricil Environmental Services' MWTF located in Hilliard, Ohio, from their wastewater treatment processes, under the conditions specified above, is non-hazardous (for all reasons). The Agency, therefore, proposes to exclude conditionally Tricil's treatment residue from hazardous waste control for the EPA Hazardous Waste Nos. F006 and K062, as described in their petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the treatment process.) [13] In addition, Tricil is still obligated to determine whether their treatment residue exhibits any of the characteristics of a hazardous waste.

II. Tricil Environmental Services, Inc.—Nashville, Tennessee

A. Petition for Exclusion

Tricil Environmental Services, Inc., (Tricil), located in Nashville, Tennessee, is involved in the pretreatment of industrial wastes, including a chrome electroplating waste. Tricil has

[6] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).
[7] See 50 FR 20247 (May 15, 1985) for a complete description of the development of the Agency's interim standard for nickel.
[8] See Internal Agency Memorandum entitled "Interim Thresholds for Toxic Gas Generation Reactivity" in the RCRA public docket (July 12, 1985).
[9] For a discussion of the Agency's proposed OLM, see 50 FR 48896, Appendix, November 27, 1985. See 51 FR 27081, Notice of Data Availability and Request for Comment, July 28, 1986, for a discussion of the revised OLM.
[10] The Agency is defining "batch" as the volume of waste generated for periodic disposal. That is, if a dumpster of filter cake is generated every 2 days, but is accumulated for a week before disposal, representative samples would be collected from each dumpster of waste and composited for analysis prior to disposal.
[11] See footnote 8.
[13] The current exclusion applies only to the processes covered by the original demonstration. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

petitioned the Agency to exclude its wastewater treatment residue presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. The listed constituents of concern for this waste are hexavalent chromium and cyanide (complexed).

Based upon the Agency's review of the petition, Tricil was granted a temporary exclusion on March 18, 1981 (see 46 FR 17197). The Agency's basis for granting the temporary exclusion (at that time) was the low concentration of cyanide and the low migration potential of chromium in the waste. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Tricil's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine whether the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Tricil's petition.

In support of their petition, Tricil has submitted a detailed description of its waste screening process and sludge treatment system; total constituent analyses and EP toxicity test results of the residue for total chromium; and analytical results for total cyanide and total sulfide. Tricil also submitted total constituent analyses and EP toxicity test results for arsenic, barium, cadmium, lead, mercury, nickel, selenium, and silver; results of total oil and grease analyses on representative waste samples; and total constituent analyses for Appendix VIII hazardous constituents. As noted above, the Agency requested this information to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.[15]

Tricil's treatment process uses waste combination, neutralization, metal precipitation, settling and final dewatering of the sludge by vacuum filtration. Tricil claims that no cyanide-bearing wastes are accepted for treatment at the Nashville facility. The Tricil pre-screening process includes analytical monitoring of incoming wastes for the presence of free cyanide. No wastes bearing free cyanides over 1 ppm are accepted for treatment. The absence of cyanide was confirmed through analyzing Tricil treatment residue. In addition, analytical monitoring of incoming wastes is used to pre-qualify wastes which, when treated, will generate a residue that meets the Agency's requirements.

Tricil claims that its treated wastewater residue is nonhazardous because the constituents of concern are present either in insignificant concentrations or, if present at significant levels, are essentially in immobile forms. Tricil also believes that the waste is not hazardous for any other reason.

Tricil presented analytical data on seven composite samples collected from the filter drum. Each weekly composite sample was composed of 60 grab samples collected from the filter drum. The grab samples were collected at random times over a 1-week period. As a result of HSWA requirements, Tricil submitted additional organics sampling data. Eight composite samples of the residue were collected from the filter drum at random times over a 2-month period. Tricil claims that the treatment facility is operated in a consistent manner, and is monitored to verify compliance with pretreatment standards and delisting requirements. In addition, Tricil claims that the sampling period was long enough to cover any scheduled changes in the wastes received and, therefore, all samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. In addition to Tricil's sampling efforts, EPA conducted a spot check sampling visit to the facility in June 29, 1984. A total of six samples were taken of the sludge; two from the filter press and four from the storage dumpsters.

Tricil's total constituent and EP toxicity analyses of the residue for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Chromium (total) [1]	8680.0	0.75
Cyanide	1.40	[2] .57

[1] Seven EP toxicity values for total chromium were reported in the March 28, 1986 Tricil data. Tricil claims that three values (14.4, 10.6, and 3.20 ppm) reflect influent wastes which will be diverted from the F019 waste treatment residue proposed for delisting.

[2] Leachable cyanide was not measured by Tricil. The Agency estimated the maximum leachable cyanide by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

Tricil's total constituent and EP toxicity analyses of the residue for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS (ppm)

Non-listed constituents	Total constituent analyses	EP leachate analyses
Arsenic	4.0	0.2
Barium	82.4	.31
Cadmium	21.0	.11
Lead	480.0	.37
Mercury		[1] 0.0095
Nickel	258.0	4.2
Selenium	7.0	.30
Silver	<1.0	.007

[1] Six EP toxicity values for mercury were reported in the March 28, 1986 Tricil data. Tricil claims that one value (i.e., 0.2 ppm) is an outlier. The Agency also believes that this value does not reflect the typical mobility of mercury. The Agency's conclusion is supported by the Dixon Extreme Value Test. The Agency, therefore, considers that a maximum mercury level of 0.0095 ppm (the second-highest value) to more accurately reflects mercury mobility from the waste.

Tricil also submitted total constituent analyses for Appendix VIII hazardous constituents potentially present in the waste. Tricil analyzed the samples for all Appendix VIII hazardous constituents except those that are reactive or hydrolize in water and those that require special analytical methods. A more detailed explanation and list of these compounds is available in the public docket.

Maximum concentrations for these constituents in the residue are reported in Table 3. (The maximum concentrations for organics that were detected are reported in Table 3.)

TABLE 3.—Maximum Concentrations of Organics Identified by Tricil's Analyses of the Filter Press Sludge (ppm)

Constituents	Total constituent analyses
Anthracene	0.61
Bis(2-ethyl hexyl)phthalate	13
Butyl benzyl phthalate	360
Chlorobenzene	.104
p-Chloro-m-cresol	4.73
m- and p-Cresols	2.630
Di-n-butyl phthalate	6.96
1,1-Dichloroethene	2.59
1,2-Dichloroethene	0.152
1,2-trans-Dichloroethylene	2.43
2,4-Dimethylphenol	28.1
Dimethyl phthalate	28.614
Methylene chloride	2.18
Methyl ethyl ketone	2.16
Naphthalene	21.7
N-Nitrosodimethylamine	.363
Phenanthrene	105
Phenol	232
2,4,5-TP (Silvex)	1.3
Tetrachloroethylene	1.88
Toluene	2.53
1,1,1-Trichloroethane	.080
Trichloroethylene	6.12
Vinyl chloride	.223

[14] See footnote 3.

The sludge samples collected by EPA from the filter press and dumpster were analyzed for total and leachable concentrations of the EP metals, nickel, and cyanide. These concentrations are reported in Table 4.

TABLE 4.—MAXIMUM SLUDGE CONCENTRATIONS (ppm)

Constituents	Total constituent analyses	EP leachate analyses
Arsenic	11	<0.02
Barium	130	<.5
Cadmium	39	.221
Chromium	16,350	<.20
Lead	1,300	.147
Mercury	.33	<.001
Nickel	680	1.5
Selenium	9.9	<.02
Silver	1.2	<.02
Cyanide (total)	8.2	[1] .26
Cyanide (amenable)	5.2	([2])

[1] Leachable cyanide was not measured by EPA. The Agency estimated the maximum leachable cyanide by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

[2] Not applicable.

Note.—<Denotes concentrations below the detection limit.

The sludge samples also were analyzed by EPA for the 129 priority pollutants and volatile organics. (See 47 FR 52309, November 19, 1982—Appendix A.) Table 5 summarizes concentrations of Appendix VIII hazardous constituents detected in EPA's samples.

TABLE 5.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY EPA'S ANALYSES OF THE FILTER PRESS SLUDGE (ppm)

Constituents	Total constituent analyses
Anthracene	3.6
Bis(2-ethyl hexyl)phthalate	46.0
p-Chloro-m-cresol	4.3
Di-n-octyl phthalate	8.3
Ethyl benzene	4.5
Fluorene	3.2
Phenanthrene	5.6
Phenol	17.0
Tetrachloroethylene	27.0
Toluene	15.0
Trichloroethylene	2.1

The maximum total oil and grease value reported by Tricil was 0.4 percent. EPA detected total oil and grease levels for the sample of 8.32 percent. Tricil also provided test data indicating that the residue is not ignitable, corrosive, or reactive. In addition, Tricil analyzed the residue for total sulfides; the maximum concentration reported was 17 ppm. Tricil claims to generate a maximum of 700 tons of residue per year from F019 segregated waste.

B. Agency Analysis and Action

Tricil has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the eight samples collected by Tricil from the filter drum over a 2-month period were non-biased and adequately represent any variations that may occur in the residue.[16] The key factors that could vary toxicant concentrations in the residue at MWTFs is the addition of new clients, the variation of client processes occurring from time to time, and variations in raw materials used at generator facilities on the original client list of a MWTF. Variations in raw materials can be expected when the clients of the MWTF perform as job shops or when the product line changes on a seasonal basis. The Agency does not believe it is possible to represent this variation without sampling that would be considered excessive for a delisting petition demonstration. The Agency, therefore, has requested all MWTF petitioners to submit analytical data collected during a 2-month period on a minimum of eight composite samples.[16] The Agency believes that the sampling period used by Tricil was long enough to cover any variations in the treatment process.

The Agency has evaluated the mobility of the listed constituents from Tricil's waste using the vertical and horizontal spread (VHS) model.[17] The VHS model generated compliance point values using the 700 tons per year maximum waste generation rate and the maximum extract levels reported by Tricil or EPA as input parameters. These predicted compliance point concentrations are reported in Table 6. (When leachate concentrations were below the detection limits, the value of the detection limit was used.) The Agency notes that since the samples tested by Tricil did not exhibit oil and grease levels above one percent, the EP data is acceptable. EPA's sample, however, exceeded one percent oil and grease content. (See 49 FR 42591, October 23, 1984.) The Agency believes that this variability will require verification in the conditional batch testing program described below.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Listed constituents	Compliance point concentrations	Regulatory standards
Chromium (total)	0.004	0.05
Cyanide	[1].012	.2

[1] Maximum concentration obtained from EPA's sampling results.

[16] The authoritative grab samples collected by EPA confirm that the samples collected by Tricil are representative.

[17] The Agency's intention is to grant conditional exclusions requiring continuous batch testing where the initial demonstration is successful.

[17] See footnote 5.

The residue exhibited chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standard; and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[18] The waste's maximum sulfide and cyanide contents (17 and 5.2 ppm, respectively) also are low enough not to be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[19] (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactive characteristic.) These constituents are, therefore, not of regulatory concern.

The Agency also concluded, through using the VHS model, that no other EP toxic metals, except selenium, are present in the residue at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 7.

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Nonlisted constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.009	0.05
Barium	[1] <.825	1.0
Cadmium	[1].0069	.01
Lead	.017	.05
Mercury	.00004	.002
Nickel	.78	.35
Selenium	[2].013	.01
Silver	[1].0008	.05

[1] Maximum concentrations obtained from EPA's sampling results.

[2] Exceeds regulatory standard.

Using the maximum reported selenium concentration, the VHS model generated a compliance point concentration that exceeded the National Interim Primary Drinking Water Standard for selenium. (The Agency notes that only the maximum selenium value reported failed the VHS model evaluation. Extract values reported for 13 other samples generated compliance point concentrations well below the drinking water standard.) Under the pre-screening controls, the Agency believes that, for the majority of the time, this facility can generate a non-hazardous treatment residue with respect to mobile selenium. Furthermore, under the continuous testing provisions of a conditional exclusion, Tricil will be

[18] See footnote 6.

[19] See footnote 8.

required to retreat or dispose as hazardous any batch exhibiting selenium levels above 0.22 ppm. Selenium values, therefore, are also not of regulatory concern. (The Agency specifically requests comments on this interpretation.)

The Agency also has evaluated the mobility of organic constituents detected in the sludge by first estimating their leachate concentrations with the Agency's organic leachate model (OLM), and then predicting their compliance point concentrations using the VHS model.[30] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 8.

TABLE 8.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS [1] [2] (ppm)

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	(Base)	(95%)	(Base)	(95%)	
Anthracene	0.003	0.004	0.0001	0.0002	0.0002
Bis(2-ethyl hexyl) phthalate [3]	.02	.026	.0009	.0012	.70
Butyl benzyl phthalate	1.12	1.40	.051	.063	8.75
Chlorobenzene	.004	.006	.0002	.0003	1.1
p-Chloro-m-cresol	.13	.169	.0058	.0076	.2
m- and p-Cresols	.19	.26	.0066	.012	1.8
Di-n-butyl phthalate	.020	.025	.0006	.0011	3.5
1,1-Dichloroethane	.10	.13	.0045	.0059	.00038
1,2-Dichloroethane	.017	.024	*.0008	*.0011	.0004
1,2-trans-Dichloro-ethylene	.10	.13	.0045	.006	.35
2,4-Dimethyl phenol	.21	.25	.0095	.011	.02
Dimethyl phthalate	.46	.58	.021	.027	350
Di-n-octyl phthalate [3]	.0069	.0079	.0003	.0004	.6
Ethyl benzene [3]	.016	.047	.0006	.0021	3.5
Fluorene [3]	.006	.007	.0003	.0003	.002
Methylene chloride	.14	.19	.006	.0086	.056
Methyl ethyl ketone	.378	.566	.017	.025	1.8
Naphthalene	.061	.074	.003	.003	9.0
N-Nitrosodimethylamine	.0042	.0056	.00019	.0003	.0071
Phenanthrene	.049	.062	*.0022	*.0026	.002
Phenol	6.02	8.65	.27	.39	3.5
2,4,5-TP (Silvex)	.016	.02	.0007	.0009	.01
Tetrachloroethylene [3]	.127	.15	*.006	*.0068	.0007
Toluene [3]	.14	.17	.006	.0077	10.5
1,1,1-Trichloroethane	.003	.0043	.0001	.0002	1.2
Trichloroethylene	.098	.12	*.004	*.0054	.0032
Vinyl chloride	.068	.075	*.003	*.0034	.002

[1] Since the OLM has not been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline) are calculated here. Once the OLM has been finalized only one of these two versions will apply.
[2] Combines detectable EPA and Tricil data (i.e., uses maximum concentrations found either by EPA or Tricil, from Tables 3 and 5).
[3] Maximum concentration obtained from EPA's sampling results.
* Value exceeds regulatory standard.

The 1,2-dichloroethane level for 1 of 15 samples generated a compliance point concentration that exceeded the Agency's regulatory standard. Tetrachloroethylene levels for 8 of 16 samples generated compliance point concentrations that exceeded the Agency's regulatory standard. Phenanthrene levels for 1 of 14 samples generated compliance point concentrations that exceeded the Agency's regulatory standard. Trichloroethylene levels for 1 of 16 samples also generated compliance point concentrations that exceeded the Agency's regulatory standard. The maximum vinyl chloride value also generated a compliance point concentration that exceeded the Agency's regulatory standard.

The Agency believes that since 1,2-dichloroethane, trichloroethylene, and vinyl chloride were not present at levels of concern for the majority of the samples analyzed, and since Tricil performs stringent pre-screening, the sources of 1,2-dichloroethane, trichloroethylene, and vinyl chloride can be traced and eliminated. The Agency has previously granted Tricil a conditional temporary exclusion which required batch testing. Through this batch testing condition of their exclusion Tricil has periodically identified "problem" batches. Treatment failures under the temporary exclusion were identified only in terms of cyanide or heavy metals. If process adjustments did not successfully treat the waste, Tricil has successfully eliminated acceptance of "problem" wastes through their pre-screening program. The Agency did not previously specify any limitations on trace organics in the temporary exclusion nor did the Agency specify acceptable concentrations of trace organics. Tricil has not had the opportunity, therefore, to adjust its treatment system or eliminate clients to address tetrachloroethylene. Under these circumstances the Agency feels it inappropriate to penalize Tricil's petition effort due to the unacceptable levels of tetrachloroethylene found to be present. Instead the Agency is proposing to add this constituent (as well as other potential organic constituents) to Tricil's conditional batch testing program. The Agency believes that if Tricil cannot successfully treat the present level of organic contaminants, that they can eliminate the wastes containing these constituents through their pre-screening operations. The Agency, therefore, believes it is necessary to incorporate organics batch testing into the contingency testing program to ensure that organic constituents are not present in the treatment residue at levels of regulatory concern.

[30] See footnote 9.

The Agency believes that a conditional exclusion can be granted to the Tricil Nashville facility. The conditions of the exclusion would necessitate testing each batch of treated waste for the EP toxic metals, nickel, and a group of organics. The Agency believes this testing requirement is necessary due to the inherent variability encountered by a changing client base, the process variation associated with each of the clients serviced, and the high concentrations of toxic constituents in the incoming wastes and in the treatment residue.

This testing requirement is self-implemented. That is, the results of testing each batch need not be reviewed by state or Federal EPA representatives prior to disposal. The test data must be recorded and kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis.

The Agency, therefore, proposes to grant an exclusion to the Tricil Nashville facility, providing that the following contingency testing program is followed:

(1) Each batch[31] of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP test if the oil and grease content of the waste exceeds one percent) for the EP toxic metals (As, Ba, Cd, Cr, Pb, Se, Ag, and Hg) and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 1.1 ppm; barium levels exceed 22.2 ppm; cadmium and selenium levels exceed 0.22 ppm; mercury levels exceed 0.044 ppm; or nickel levels exceed 7.8 ppm, the waste will be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm [32] or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 4.4 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(3) Each batch of waste must be tested for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. This list of organic constituents is a compilation of organics detected at each of Tricil's three facilities.[33]

Compound	Maximum acceptable level [1] [2] (ppm)	
	(Base)	(95%)
Acrolein	254	146
Anthracene	486	287
Benzene	.87	.49
p-Chloro-m-cresol	847	569
1,1-Dichloroethane	.057	.029
Fluorene	86.6	49.24
Methylene chloride	59.2	34.7
n-Nitrosodiphenylamine	76.1	39.8
Phenanthrene	89.4	62.4
Tetrachloroethylene	1.2	.81
Trichloroethylene	3.76	2.83
Chloroform	.024	.044
1,2-Dichloroethane	.088	.044
1,2-trans-Dichloroethylene	1,474	894
2,4-Dimethylphenol	78.7	60
Vinyl chloride	1.15	.75
1,2-Diphenyl hydrazine	12.54	6.54

[1] Since the OLM has not been finalized, both versions of the model, (i.e., the baseline equation and the 95 percent confidence interval applied to the baseline) are calculated here. Once finalized, only one of these two versions applies.
[2] Includes constituents identified at all of Tricil's petitioning facilities.
[3] Although the original list of constituents was the same for all of Tricil's petitioning facilities (i.e., constituents detected at each facility are to be tested for at all of the facilities) the actual tabulation in each proposed exclusion may vary due to the facility's specific generation rate and the subsequent 1000 ppm VHS limitation.

(4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the compounds listed above, as well as for the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, Appendix A—128 Priority Pollutants.) These data must be kept on file at the facility, and submitted to the Administrator by certified mail semi-annually. The Agency has required that these additional scans be run on monthly composite samples to determine if additional organic constituents should be added to the group of parameters tested on a batch basis due to variation of existing client wastes or variation of the client base. The Agency will review this information and, if needed, will propose to modify or withdraw the exclusion.

(5) The Agency notes that the limits specified above are based on the VHS model and a maximum treatment residue generation rate of 700 tons per year. These limits and the exclusion do not apply to generation rates exceeding 700 tons per year. If Tricil anticipates increasing this generation rate, a new petition would need to be filed. Based on the VHS analyses, total constituent analyses, the pre-screening process, and the contingency plan, the Agency believes that the treatment residue generated at Tricil Environmental Services' MWTP located in Nashville, Tennessee, from their wastewater treatment processes, under the conditions specified above, is non-hazardous (for all reasons). The Agency, therefore, proposes to exclude conditionally Tricil's treatment residue from hazardous waste control for the EPA Hazardous Waste No. F019, as described in their petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (e.g., the waste is altered as a result of changes in the treatment process).[34] In addition, Tricil is still obligated to determine whether their treatment residue exhibits any of the characteristics of a hazardous waste.)

[31] The Agency is defining "batch" as the volume of waste generated for periodic disposal. That is, if a dumpster of filter cake is generated every 2 days, but is accumulated for a week before disposal, representative samples would be collected from each dumpster and composited for analysis prior to disposal.

[32] See footnote 8.

[33] See footnote 72.

[34] See footnote 73.

III. Tricil Environmental Services, Inc.—Muskegon, Michigan

A. Petition for Exclusion

Tricil Environmental Services, Inc. (Tricil), located in Muskegon, Michigan, operates a waste treatment facility for treatment of multiple metal-bearing waste streams for industrial clients. Tricil has petitioned the Agency to exclude the residue produced by its treatment facility. This sludge is generated from the treatment of EPA Hazardous Wastes Nos. K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332); and F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. K062 are chromium and lead. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of the petition, Tricil was granted a temporary exclusion on March 18, 1981 (see 46 FR 17197). The Agency's basis for granting the temporary exclusion (at that time) was the low concentration of cadmium, chromium, lead, nickel, and cyanide and the low migration potential of cadmium, chromium (hexavalent), lead, and nickel in the waste. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Tricil's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine whether the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Tricil's petition.

In support of their petition, Tricil has submitted a detailed description of its pre-screening process, treatment process, and contingency testing plan; total constituent analyses and EP toxicity test results of the treatment residue for cadmium, total chromium, lead, and nickel; and analytical results for total cyanide and total sulfide. Tricil also submitted total constituent analyses and EP toxicity test results for arsenic, barium, mercury, selenium, and silver; results of total oil and grease analyses on representative waste samples; and results of total constituent analyses for Appendix VIII hazardous constituents. As noted above, the Agency requested this information to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.[35]

[35] See footnote 3.

The Tricil process treats spent pickle liquor with electroplating wastes, waste acids, and oils. The treatment process involves waste combination, neutralization, and metal precipitation; a 5-day settling/equalization period; and final dewatering of the sludge by vacuum filtration. Monitored mixing of pickling and electroplating wastes at controlled ratios results in the reduction of hexavalent chromium by the iron present in the pickling wastes. Waste combination also neutralizes acidic wastes and subsequent lime addition elevates the pH and converts lead, nickel, chromium, and cadmium to a hydroxide form. The sludge generated has a pH of 8.5–9.7, thus confirming the acid neutralization.

Tricil claims that no cyanide-bearing wastes are accepted for treatment at the Muskegon facility. The Tricil pre-screening process includes analytical monitoring of incoming wastes for the presence of free cyanide. No wastes bearing free cyanides over 1 ppm are accepted for treatment. In addition, analytical monitoring of incoming wastes is used to pre-qualify wastes which, when treated, will generate a residue that meets the Agency's requirements. Tricil claims that its treated wastewater sludge is non-hazardous because the constituents of concern are present either in insignificant concentrations or, if present at significant levels, are essentially in immobile forms. Tricil also believes that the waste is not hazardous for any other reason.

Tricil initially presented analytical data on one composite sample collected from the vacuum filter. The composite sample was composed of five grab samples collected from the vacuum filter; the grab samples were collected at random times over 5 days of operation. As a result of HSWA requirements, Tricil submitted additional organics sampling data. Nine composite samples of the sludge were collected from the sludge storage pile weekly over a 2-month period. Tricil claims that the treatment facility is operated in a consistent manner, and is monitored to verify compliance with pretreatment standards and delisting requirements. Tricil further claims that all samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. In addition to Tricil's sampling efforts, EPA conducted a spot check sampling visit to the facility in April 1984. Three composite samples were taken of the sludge contained in the filter press storage shed, and two composite samples were taken of the sludge in a filtered sludge pile.

Tricil's total constituent and EP toxicity analyses of the filter press sludge for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Cadmium	1.4	0.047
Chromium (total) [1]	21,500	.29
Lead	15,300	.6
Nickel	9,340	5.5
Cyanide (total)	19	[2] .05

[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.
[2] Leachable cyanide was not measured by Tricil. The Agency estimated the maximum leachable cyanide by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

Tricil's total constituent and EP toxicity analyses of the filter press sludge for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Nonlisted constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Arsenic	<5.0	0.08
Barium	1,240.0	.95
Mercury	0.4	.003
Selenium	4.0	.005
Silver	22.0	.032

Tricil also submitted total constituent analyses for Appendix VIII hazardous constituents potentially present in the waste. Tricil analyzed the samples for all Appendix VIII hazardous constituents except those that are reactive or hydrolyze in water and those that require special analytical methods. A more detailed explanation and list of these compounds is available in the public docket. Maximum concentrations for those organics that were detected are reported in Table 3.

TABLE 3.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY TRICIL'S ANALYSES OF THE FILTER PRESS SLUDGE (ppm)

Constituents	Total constituent analyses
Anthracene	0.293
Benzyl chloride	25.4
Bis(2-ethylhexyl)phthalate	46.5
Butyl benzyl phthalate	10.1
Carbon disulfide	.094
p-Chloro-m-cresol	1.08
m- and p-Cresols	.715
o-Cresol	.43
2,4-D	1.0
1,1-Dichloroethane	.567
1,2-trans-Dichloroethylene	.025
2,4-Dimethyl phenol	1.17
Fluorene	1.017
Methylene chloride	1.38
Methyl ethyl ketone	2.24
Naphthalene	5.0
Pentachlorophenol	1.77
Phenanthrene	8.25
Phenol	14.0
2,4,5-TP (Silvex)	2.0
Tetrachloroethylene	.243
Toluene	8.57
1,2,4-Trichlorobenzene	.545
1,1,1-Trichloroethane	.474
Trichloroethylene	.844

The sludge samples collected by EPA were analyzed for total and leachable concentrations of the EP metals, nickel, and cyanide. These concentrations are reported in Table 4.

TABLE 4.—MAXIMUM SLUDGE CONCENTRATION

Constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Arsenic	22	<0.02
Barium	14	<.5
Cadmium	13	.052
Chromium	12,000	[1] .31
Lead	640	.12
Mercury	0.13	<.001
Nickel	2,300	.34
Selenium	<7	<.02
Silver	<1.5	.004
Cyanide (total)	90	[2]

< Denotes concentrations below the detection limit.
[1] This value represents the second highest reported concentration. The Agency has concluded, using the Dixon Extreme Value Test, that the maximum reported concentration is an outlier. The Agency notes that even the maximum chromium value of 1.0 did not exceed the limits of the temporary exclusion.
[2] Not tested.

The sludge samples also were analyzed by EPA for the 126 priority pollutants and volatile organics. (See 47 FR 52309, November 19, 1982—Appendix A.) Table 5 summarizes concentrations of Appendix VIII hazardous constituents detected in EPA's samples.

TABLE 5.—MAXIMUM CONCENTRATIONS OF ORGANICS DETECTED IN EPA'S ANALYSES OF THE FILTER PRESS SLUDGE (ppm)

Constituents	Total constituent analyses
Bis(2-ethylhexyl)phthalate	1.90
Di-n-butyl phthalate	1.5
Di-n-octyl phthalate	1.2
1,2-Diphenyl hydrazine	1.3
Ethyl benzene	5.9
Fluorene	.205
Naphthalene	1.2
N-Nitrosodiphenylamine	.58
Phenanthrene	2.5
Phenol	2,040
Tetrachloroethylene	59.0
Toluene	4.5
Trichloroethylene	.85

The maximum total oil and grease value reported by Tricil was 1.7 percent. EPA detected a maximum total oil and grease level equal to 6 percent. Tricil also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Tricil, in addition, analyzed the filter press sludge for total sulfides; the maximum reported concentration in the sludge was 28 ppm. Tricil claims to generate 12,000 tons of filter press sludge per year.

B. Agency Analysis and Action

Tricil has demonstrated that its waste treatment system, under specified controlled conditions, produces a non-hazardous sludge. The Agency believes that the nine samples collected by Tricil from the sludge storage pile over 8 weeks and the additional samples collected in EPA's spot check sampling visit were non-biased and adequately represent any variations that may occur in the filter press sludge. The key factors that could vary toxicant concentrations in the residue at MWTFs are the addition of new clients, the variation of client processes occurring from time to time, and variations in raw materials used at generator facilities on the original client list of a MWTF. Variations in raw materials can be expected when the clients of the MWTF perform as job shops or when their products line change on a seasonal basis. The Agency does not believe it is possible to represent this variation without sampling that would be considered excessive for a delisting petition demonstration. The Agency, therefore, has requested all MWTF petitioners to submit analytical data collected during a 2-month period on a minimum of eight composite samples.[56] The Agency believes that the sampling period used by Tricil was long enough to cover any variations in the treatment process.

The Agency has evaluated the mobility of the listed constituents from Tricil's waste using the vertical and horizontal spread (VHS) model.[57] The VHS model generated compliance point values using the 12,000 ton per year maximum waste generation rate and the maximum reported extract levels reported by Tricil or EPA as input parameters. These predicted compliance point concentrations are reported in Table 6. (When leachate concentrations were below the detection limits, the value of the detection limit was used.) The Agency has used the EP data in its VHS model analyses, however, since the oil and grease content of Tricil's waste exceed one percent, the oily waste EP (OWEP) should have been run. (See 49 FR 42591, October 23, 1984.) Tricil did not furnish OWEP data since the conditions of their temporary exclusion only require that the EP test be run. The Agency has, as noted below, conditioned Tricil's exclusion to require each batch of waste to be tested for oil and grease content. If the oil and grease content exceeds one percent the OWEP must be run instead of the EP to determine if the residue meets the conditions of the exclusion.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	[1] 0.0082	0.01
Chromium (total)	[1] .048	.05
Lead	[1] .025	.05
Nickel	[1] .37	.35
Cyanide	.15	.2

[1] Maximum concentration obtained from EPA's sampling results.
[2] Value exceeds regulatory standard. (The extract level generating this compliance point concentration, however, is well below the maximum acceptable limit in Tricil's temporary exclusion.)

The sludge exhibited cadmium and chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standards, and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[58] The maximum reported concentration for lead (*i.e.*, one of fifteen samples) generated a compliance point concentration that exceeded the National Interim Primary Drinking Water Standard for lead. Nickel levels for two of fourteen samples generated compliance point concentrations that exceeded the Agency's interim health-based standard for nickel.[59] Under the pre-screening controls, the Agency believes that, for the majority of the time, this facility can generate a non-hazardous treatment residue with respect to mobile lead and nickel. Furthermore, under the continuous testing provisions of a conditional exclusion, Tricil will be required to retreat or dispose as hazardous any batch exhibiting lead or nickel extract levels above 0.31 and 2.2 ppm, respectively.[60] (The Agency specifically requests comments on this interpretation.)

The waste's maximum sulfide and cyanide contents (26 and 90 ppm, respectively) also are low enough not to be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[61] (The capability of a sulfide-or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) These constituents, therefore, are not of regulatory concern.

The Agency also concluded, through using the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 7.

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Nonlisted constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.0095	0.05
Barium	.1	1.0
Mercury	.0005	.002
Selenium	[1] <.003	.01
Silver	[1] .03	.05

[1] Maximum concentrations obtained from EPA's sampling results.

The Agency also has evaluated the mobility of organic constituents detected in the sludge by first estimating their leachate concentrations with the Agency's organic leachate model (OLM), and then predicting their compliance point concentrations with the VHS model.[62] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 8.

[56] The Agency's intention is to grant conditional exclusions requiring continuous batch testing where the initial demonstration is successful.
[57] See footnote 5.
[58] See footnote 6.
[59] See footnote 7.
[60] It should be noted that these extract levels were below the maximum acceptable limits set in Tricil's temporary exclusion.
[61] See footnote 8.
[62] See footnote 9.

TABLE 8.—VHS MODEL: CALCULATED COMPLIANCE POINT [1] [2] CONCENTRATIONS (ppm)

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	(Base)	(95%)	(Base)	(95%)	
Anthracene	0.0003	0.0004	0.00005	0.00006	0.002
Benzyl chloride	.50	.81	.079	.097	.2
Bis(2-ethylhexyl)phthalate	.020	.026	.0032	.0041	.7
Butyl benzyl phthalate	.035	.043	.0055	.0068	8.75
Carbon disulfide	.0083	.012	.0013	.0019	3.5
p-Chloro-m-cresol	.048	.064	.0076	.010	.2
Cresols	.108	.152	.017	.024	1.8
2,4-D	.027	.035	.004	.006	.4
Di-n-butyl phthalate [3]	.0071	.0092	.0011	.0014	3.5
1,1-Dichloroethane	.042	.058	[4].0067	[4].0092	.00029
1,2-trans-Dichloroethylene	.0042	.0065	.0007	.001	.35
2,4-Dimethyl phenol	.068	.079	.009	.012	.02
Di-n-octyl phthalate [3]	.095	.115	.015	.018	.8
1,2-Diphenyl hydrazine [3]	.041	.053	[4].0065	[4].0084	.00004
Ethyl benzene [3]	.048	.056	.007	.009	3.5
Fluorene	.0026	.0035	.0004	.0006	.002
Methylene chloride	.105	.143	.017	.023	.056
Methyl ethyl ketone	.364	.567	.061	.090	1.8
Naphthalene	.023	.028	.0036	.0044	9.0
N-Nitrosodiphenylamine [3]	.007	.0089	.0012	.0016	.0071
Pentachlorophenol	.0082	.010	.0013	.0016	1.1
Phenanthrene	.0065	.0085	.001	.0013	.002
Phenol	.902	1.27	.143	.201	3.5
2,4,5-TP (Silvex)	.0210	.026	.003	.004	.01
Tetrachloroethylene [3]	.16	.186	[4].026	[4].029	.0007
Toluene	.079	.097	.012	.015	10.5
1,2,4-Trichlorobenzene	.0050	.0066	.0008	.0011	.7
1,1,1-Trichloroethane	.029	.040	.0046	.0064	1.2
Trichloroethylene	.026	.034	[4].0041	[4].0054	.0032

[1] Since the OLM has not been finalized, both versions of the model baseline equation and 95 percent confidence interval (applied to the baseline) are calculated here. Once finalized, only one of these two versions will apply.
[2] Compares directly EPA and Tricil data (i.e., uses the maximum concentrations found either by EPA or Tricil, from Tables 3 and 5).
[3] Maximum concentration obtained from EPA's sampling results.
[4] Exceeds regulatory standard.

1,2-Diphenyl hydrazine was detected in one sample; the waste concentration generated a compliance point concentration that exceeded the Agency's regulatory standard. Tetrachloroethylene levels for ten of fourteen samples also generated compliance point concentrations that exceeded the regulatory standard. Three of fourteen (four for the 95% version of the OLM model) samples failed the VHS model evaluation for trichloroethylene levels. All nine samples failed the VHS model evaluation for 1,1-dichloroethane levels. The Agency believes that since 1,2-diphenyl hydrazine and trichloroethylene were not present at levels of concern for the majority of the samples analyzed, and since Tricil performs stringent pre-screening, the sources of these organic constituents can be traced and eliminated.

The Agency has previously granted Tricil a conditional exclusion which required batch testing. Through this batch testing condition of their exclusion Tricil has periodically identified "problem" batches. Treatment failures under the temporary exclusion were identified only in terms of cyanide or heavy metals. If process adjustments did not successfully treat the waste, Tricil has successfully eliminated acceptance of "problem" wastes through their prescreening program. The Agency did not previously specify any limitations on trace organics in the temporary exclusion nor did the Agency specify acceptable concentrations of trace organics. Tricil has not, therefore, had the opportunity to adjust its treatment system or eliminate clients to address 1,1-dichloroethane and tetracholoroethylene. Under these circumstances the Agency feels it inappropriate to penalize Tricil's petition effort due to the unacceptable levels of 1,1-dichloroethane and tetrachloroethylene found to be present. Instead the Agency is proposing to add these constituents (as well as other potential organic constituents) to Tricil's conditional batch testing program. The Agency believes that if Tricil cannot successfully treat the present level of organic contaminants, that they can eliminate the wastes containing these constituents through their prescreening operations. The Agency, therefore, believes it is necessary to incorporate organics batch testing into the contingency testing program to ensure that stray organic constituents are not present in the treatment residue at levels of regulatory concern.

The Agency believes that a conditional exclusion can be granted to the Tricil Muskegon facility. The conditions of the exclusion would necessitate testing each batch of treated waste for the EP toxic metals, nickel, cyanide, and a group of organics. The Agency believes this testing requirement is necessary due to the inherent variability encountered by a changing client base, the process variation associated with each of the clients serviced, the high concentrations of toxic constituents in the incoming wastes and in the treatment residue, and the high volumes of treatment residue generated annually by Tricil.

This testing requirement is self-implemented. That is, the results of testing each batch need not be reviewed by state or Federal EPA representatives prior to disposal. The test data must be recorded and kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis.

The Agency, therefore, proposes to grant an exclusion to the Tricil Muskegon facility providing that the following contingency testing program is followed:

(1) Each batch [33] of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP test if total oil and grease levels are greater than one percent) for the EP toxic metals (As, Ba, Cd, Cr, Pb, Se, Ag and Hg) and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm [34] or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(3) Each batch of waste must be tested for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. This list of organic constituents is a compilation of

[33] The Agency is defining "batch" as the volume of waste generated for periodic disposal. That is, if a dumpster of filter cake is generated every 2 days, but is accumulated for a week before disposal, representative samples would be collected prior to disposal from each dumpster of waste and composited for analysis.
[34] See footnote 8.

organics detected at each of Tricil's three facilities.[35]

Compound	Maximum acceptable level [1] [2] (ppm)	
	Baseline	95 percent
Acrolein	39.9	22.3
Anthracene	72	45
Benzene	0.106	0.060
p-Chloro-m-cresol	132.4	82.1
m- and p-Cresols	1,030	619
1,1-Dichloroethane	.01	.005
Fluorene	10.4	7.23
Methylene chloride	8.18	5.27
Methyl ethyl ketone	313	175
N-Nitrosodiphenylamine	11.9	9.1
Phenanthrene	13.95	9.57
Phenol	1,580	882
Tetrachloroethylene	.186	.113
Trichloroethylene	.59	.36
Chloroform	.012	.0081
1,2-Dichloroethane	.0062	.0038
2,4-Dimethylphenol	126	87
Vinyl chloride	.18	.105
1,2-Diphenyl hydrazine	1.95	.917

[1] Since the OLM has not been finalized, both versions of the model (i.e., the baseline equation and the 95 percent confidence interval applied to the baseline) are calculated here. Once finalized, only one of these two versions will apply.
[2] Includes constituents identified at all of Tricil's petitioning facilities.
[3] Although the original list of constituents was the same for all of Tricil's petitioning facilities (i.e., constituents detected at each facility are to be tested for at all of the facilities), the actual tabulation in each proposed exclusion may vary due to the facility's specific generation rate and our subsequent 1000 ppm VHS limitation.

(4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the compounds listed above, as well as for the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, Appendix A—126 Priority Pollutants.) These data must be kept on file at the facility and submitted to the Administrator by certified mail semi-annually. The Agency has required that these additional scans be run on monthly composites to determine whether additional organic constituents should be added to the group of parameters tested on a batch basis due to variation of existing client wastes or variation of the client base. The Agency will review this information and, if needed, will propose to modify or withdraw the exclusion.

The Agency notes that the limits specified above are based on the VHS model and a treatment residue generation rate of greater than 8000 tons per year. Based on the VHS analyses, total constituent analyses, the pre-screening process, and the contingency plan, the Agency believes that the treatment residue generated at Tricil Environmental Services' MWTF located in Muskegon, Michigan, from their wastewater treatment processes, under the conditions specified above, is non-hazardous (for all reasons). The Agency, therefore, proposes to exclude conditionally Tricil's treatment residue from hazardous waste control for the EPA Hazardous Waste Nos. F006 and K062, as described in their petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the treatment process).[36] In addition, Tricil is still obligated to determine whether their treatment residue exhibits any of the characteristics of a hazardous waste.)

[35] See footnote 8.
[36] See footnote 13.

IV. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case for the three proposed exclusions since this rule reduces, rather than increases, the existing requirements for generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on these petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that the exclusions, if promulgated, should be effective immediately.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The granting of the three exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have no effect of increasing overall waste disposal costs. For the three facilities that may be excluded, this amendment will reduce the overall costs of EPA's hazardous waste regulations. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial numbers of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: October 8, 1986.

Jeffrey D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add to tables 1 and 2 the following wastestreams in alphabetical order:

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Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Tricil Environmental Services, Inc	Hilliard, OH	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of final rule's publication]. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP test, if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (3) Each batch of the waste must be tested for the total content of the following organic toxicants. If the total content of any of the constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. Maximum Acceptable Levels (ppm) Acrolein, 39.9 Anthracene, 72 Benzene, 0.106 p-Chloro-m-cresol, 132.4 m- and p-Cresols, 1,030 1,1-Dichloroethane, 0.01 Fluorene, 10.4 Methylene chloride, 8.16 Methyl ethyl ketone, 313 N-Nitrosodiphenylamine, 11.9 Phenanthrene, 13.95 Phenol, 1,560 Tetrachloroethylene, 0.188 Trichloroethylene, 0.59 Chloroform, 0.012 1,2-Dichloroethane, 0.0092 2,4-Dimethylphenol, 126 Vinyl chloride, 0.16 1,2-Diphenyl hydrazine, 1.95 (4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the organic compounds shown above as well as the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982, Appendix A—126 Priority Pollutants); (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion.
Tricil Environmental Services, Inc	Nashville, TN	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F019) generated the chemical conversion coating of aluminum after [insert date of final rule's publication]. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP test if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.31 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste; under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 4.4 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (3) Each batch of waste must be tested for the total content of the following organic toxicants. If the content of any of these constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. Maximum Acceptable Levels (ppm) Acrolein, 254 Anthracene, 355 Benzene, 0.67 p-Chloro-m-cresol, 847 1,1-Dichloroethane, 0.057 Fluorene, 66.6 Methylene chloride, 52.2 N-Nitrosodiphenylamine, 76.1 Phenanthrene, 89.4 Tetrachloroethylene, 1.2 Trichloroethylene, 3.78 Chloroform, 0.081 1,2-Dichloroethane, 0.062 1,3-trans-Dichloroethylene, 1,474 2,4-Dimethylphenol, 79.7 Vinyl chloride, 1.15 1,2-Diphenyl hydrazine, 12.51

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(4) a grab sample must be collected from each batch to form a monthly composite sample, which must be tested using GC/MS analysis for the organic compounds shown above, as well as for the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982—Appendix A—126 Priority Pollutants); (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion; (6) This exclusion applies to a maximum treatment residue generation rate of 700 tons per year.
Tricil Environmental Services, Inc	Muskegon, MI	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of final rule's publication]. To ensure that hazardous constituents are not present at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 1.1 ppm; barium levels exceed 2.2 ppm; cadmium and selenium levels exceed 0.22 ppm; mercury levels exceed .044 pm; or nickel levels exceed 7.8 ppm, the waste will be retreated or managed and disposed as a hazardous waste under Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (2) Batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (3) Each batch of waste must be tested for the total content of the following organic toxicants. If the total content of any of these constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. Maximum Acceptable Levels (ppm) Acrolein, 39.9 Anthracene, 72 Benzene, 0.106 p-Chloro-m-cresol, 132.4 m- and p-Cresols, 1,030 1,1-Dichloroethane, 0.01 Fluorene, 10.4 Methylene chloride, 8.16 Methyl ethyl ketone, 313 N-Nitrosodiphenylamine, 11.9 Phenanthrene, 13.95 Phenol, 1,560 Tetrachloroethylene, 0.188 Trichloroethylene, 0.59 Chloroform, 0.012 1,2-Dichloroethane, 0.0092 2,4-Dimethylphenol, 126 Vinyl chloride, 0.16 1,2-Diphenyl hydrazine, 1.95 (4) One grab sample must be collected from each batch to form one monthly composite sample, which must be tested using the GC/MS analysis for the organic compounds shown above, as well as for the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982—Appendix A—126 Priority Pollutants); (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Tricil Environmental	Hilliard, OH	Spent pickle liquor (EPA Hazardous No. K062) generated by steel finishing operations of facilities within the iron and steel industry (SIC codes 331 and 332) after [insert date of final rule's publication]. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP test, if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (3) Each batch of the waste must be tested for the total content of the following organic toxicants. If the total content of any of the constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Maximum acceptable levels (ppm) Acrolein, 39.9 Anthracene, 72 Benzene, 0.106 p-Chloro-m-cresol, 132.4 m- and p-Cresols, 1,030 1,1-Dichloroethane, 0.01 Fluorene, 10.4 Methylene chloride, 8.18 Methyl ethyl ketone, 313 N-Nitrosodiphenylamine, 11.9 Phenanthrene, 13.95 Phenol, 1,560 Tetrachloroethylene, 0.188 Trichloroethylene, 0.59 Chloroform, 0.012 1,2-Dichloroethane, 0.0082 2,4-Dimethylphenol, 126 Vinyl chloride, 0.18 1,2-Diphenyl hydrazine, 1.95 (4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the organic compounds shown above, as well as the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982, Appendix A—126 Priority Pollutants); (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semiannual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion.
Tricil Environmental Services, Inc	Muskegon, MI	Spent pickle liquor (EPA Hazardous Waste No. K062) generated by steel finishing operations of facilities within the iron and steel industry (SIC codes 331 and 332), after (insert date of final rule's publication). To ensure that hazardous constituents are not present at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 1.1 ppm; barium levels exceed 2.2 ppm; cadmium and selenium levels exceed 0.22 ppm; mercury levels exceed 0.044 pm; or nickel levels exceed 7.8 ppm, the waste will be retreated or managed and disposed as a hazardous waste under Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (2) Batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (3) Each batch of waste must be tested for the total content of the following organic toxicants. If the total content of any of these constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. Maximum acceptable levels (ppm) Acrolein, 39.9 Anthracene, 72 Benzene, 0.106 p-Chloro-m-cresol, 132.4 m- and p-Cresols, 1,030 1,1-Dichloroethane, 0.01 Fluorene, 10.4 Methylene chloride, 8.18 Methyl ethyl ketone, 313 N-Nitrosodiphenylamine, 11.9 Phenanthrene, 13.95 Phenol, 1,560 Tetrachloroethylene, 0.188 Trichloroethylene, 0.59 Chloroform, 0.012 1,2-Dichloroethane, 0.0082 2,4-Dimethylphenol, 126 Vinyl chloride, 0.18 1,2-Diphenyl hydrazine, 1.95 (4) One grab sample must be collected from each batch to form one monthly composite sample, which must be tested using the GC/MS analysis for the organic compounds shown above, as well as for the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982—Appendix A—126 Priority Pollutants); (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion.

[FR Doc 86–23225 Filed 10–15–86; 8:45 am]
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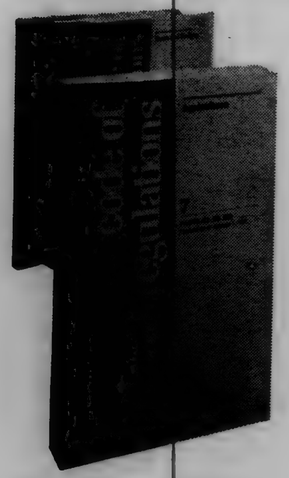
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federal register

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Friday
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Presidential Documents

Title 3—

The President

Proclamation 5552 of October 15, 1986

National Institutes of Health Centennial Year

By the President of the United States of America

A Proclamation

The National Institutes of Health, which began as a one-room laboratory at the Marine Hospital on Staten Island in 1887, has become the world's foremost biomedical research center. Its investigators are at the forefront of discoveries that contribute to better health for mankind.

The National Institutes of Health provides ongoing leadership in a unique relationship among government, academia, industry, and voluntary organizations. In addition to conducting investigations in its own laboratories, the NIH supports the activities of non-Federal scientists in universities, medical schools, hospitals, and other public, private, and voluntary research institutions. It plays a crucial role in training our Nation's biomedical research scientists and fosters biomedical communication throughout our country and abroad. The NIH facilitates international assemblies of scientists and promotes the exchange of scientists and scientific information between the United States and other countries.

The efforts of biomedical scientists have contributed to bringing our Nation's death rate to an all-time low. Survival rates have improved for patients with seven of the ten major forms of cancer. The death rate for cardiovascular diseases has declined more rapidly than has that for all other causes of death combined. New methods of hypertension control have reduced the incidence of stroke. Dramatic progress has taken place in prevention of blindness through laser technology and in the understanding and treatment of genetic diseases.

Achievements such as these have been recognized internationally by the awarding of Nobel Prizes to four NIH scientists and to 81 recipients of NIH grant support.

Despite the significant improvements in health over the past century, many health-related mysteries remain. The National Institutes of Health will continue to play a vital role in solving these problems. The NIH is opening exciting new opportunities at nearly every level of biomedical research, and our Nation is proud of this great institution and its accomplishments.

The Congress, by Senate Joint Resolution 395, has designated the period beginning October 1, 1986, through September 30, 1987, as the "National Institutes of Health Centennial Year" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the year beginning October 1, 1986, as the National Institutes of Health Centennial Year. I call upon the people of the United States to observe this occasion with appropriate ceremonies and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23678
Filed 10-16-86; 10:17 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5553 of October 15, 1986

National Forest Products Week, 1986

By the President of the United States of America

A Proclamation

The greatness of our Nation is paralleled by the greatness of our forests. By providing food, water, shelter, fuel, and the raw materials for thousands of products, the forests sustained the pioneers, provided for our Nation's growth, and assisted in our defense. Today our country, and indeed the entire world, continues to need the products of our forests to meet social, economic, and industrial demands.

We have been blessed with an abundance of natural resources, and we have the responsibility to be good stewards of our land. Throughout our history, when people have cared for the forests, using them wisely and replenishing them in a timely way, the forests and the Nation alike have prospered.

A forest is a wondrous environment, with an amazing number of checks and balances that maintain its vitality. Human intervention by knowledgeable, caring people benefits forest productivity. Advances brought about through research and implemented by professional land managers have significantly increased the productivity of our forested lands.

Evidence that productive forests benefit the people is all around us. Wood is an essential component of the houses we live in, the furniture we sit on, the newspapers we read, and countless other products we use every day. The jobs generated by processing forest products are an important part of our economic prosperity. The water most of us use is generated and purified by forest ecosystems, and forests provide essential habitats for fish and wildlife. Additionally, the recreation opportunities afforded by forests provide visitors with rejuvenating experiences and help fuel thousands of business enterprises that cater to our recreation needs. In short, proper use of our forest resources can significantly increase the economic, social, and environmental wealth and strength of our Nation.

To promote greater awareness and appreciation of the many benefits of our forests to our Nation's well-being, the Congress, by Public Law 86-753 (36 U.S.C. 163), has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 19, 1986, as National Forest Products Week and urge that all Americans express their appreciation for our Nation's forests through suitable activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-23679
Filed 10-16-86; 10:18 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 51, No. 201
Friday, October 17, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Fees for Federal Rice Inspection Services

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Final rule.

SUMMARY: This final rule maintains the current level of fees for Federal rice inspection services. The Federal Grain Inspection Service (FGIS or Service) will not increase fees for Federal rice inspection services as proposed. The Service has determined that an increase in these fees is not necessary at the time in view of the best information available including recent cost and revenue figures. FGIS, however, will establish, as proposed, a fee to cover the cost of performing milling yield in rough rice and brown rice for processing when requested as one single factor and for total oil and free fatty acid analysis for brown rice for processing and milling rice. In addition, miscellaneous changes are made to the fee schedules for clarity.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 1661, South Building, 1400 Independence Avenue SW., Washington, DC 20250; telephone (202) 382–1738.

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.2(e)).

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulations 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Mr. David R. Galliart, Acting Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the rice inspection services do not meet the requirements for small entities. In addition, FGIS is directed and authorized by statute to recover the cost of providing rice inspection services, as nearly as practicable.

Final Action

In the July 21, 1986, **Federal Register** (51 FR 26161) FGIS proposed increases in the fees for Federal rice inspection services performed under the Agricultural Marketing Act of 1946. Two comments were received regarding the proposal from two industry trade organizations. Both comments opposed the proposed fee increases.

One commenters suggested that FGIS review its operating budget and reduce fixed overhead costs. In addition, that commenter indicated that the increased fees would reduce demand for official inspection services and thereby create larger revenue shortfalls. The second commenter believed that a fee increase was not needed at this time. This commenter noted that the decline in request for inspection services during the first four months of calendar year 1986 was temporary. It was noted that with the implementation of a new marketing loan program on April 15, 1986, rice exports were increasing and would do so dramatically. Section 602 of the Food Security Act of 1985 (Pub. L. 88–198) did amend the Agricultural Act of 1949 (7 U.S.C. 1441(i)) to provide, effective April 15, 1986, for a marketing loan for the 1985 crop of rice.

FGIS continually monitors its cost, revenue, and operating reserve levels to assure that there are sufficient resources for the Services' operations. FGIS has continued to reduce staffing levels, to identify and implement furlough leave situations, and other cost-saving measures in an effort to provide cost-effective quality services. While the level of fees may affect the demand for service especially in a voluntary program, section 203(h) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h)) provides for the collection of fees that as nearly as practicable cover the costs of the services rendered.

When the proposal was published, the period form April 1, 1985 through March 31, 1986, included the most current one-year figures available. It was the basis for projecting the FGIS budget for fiscal year 1987 revenue levels. When revenues were compared with costs, there was a slight positive margin. However, an analysis of the first six-month period of fiscal year 1986 (October 1, 1985–March 31, 1986) indicated that costs were exceeding revenues reflecting a trend which might eliminate the margin. FGIS believed that this trend would continue and would deplete the program's operating reserve. Accordingly, FGIS proposed a fee increase for rice inspection services which would maintain the Service's operating reserve at a three month level.

However, an analysis of rice inspection costs and revenues through July 31, 1986, the latest accumulative monthly figures for fiscal year 1986 to date reveals a small positive margin indicating that requests for FGIS rice inspection services are increasing. In addition, the months of August and September have historically been positive revenue producing months. Accordingly, FGIS projects that the fiscal year 1986 rice inspection revenues will exceed costs. After reviewing the best information available including recent cost and revenue figures, FGIS will not at this time increase fees for Federal rice inspection services. FGIS will, however, closely monitor its cost and revenue figures and will propose revisions to the inspection fees, as deemed appropriate.

FGIS is establishing, as proposed, a fee of $18.00 to cover the cost of performing the milling yield in rough rice and brown rice for processing when requested as a single factor. A fee of $28.00 is established for performing total oil and free fatty acid analysis for brown rice for processing and milled rice, in response to the industry's needs.

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In addition, as proposed, a new footnote 3 is being added for clarity to § 68.42(b), Table 2, to cover those other services not specified in Table 2. The fees for these services are based on the noncontract hourly rate listed in Table 1. Also, footnote 2 of Table 2 is revised to reflect the new address for the Board of Appeals and Review.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Rice, Export.

Accordingly, 7 CFR Part 68 is amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND PRODUCTS THEREOF

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Section 68.42b is amended by revising Table 2 as follows:

§ 68.42b Fees for certain Federal rice inspection services.

* * * * *

TABLE 2.—UNIT RATES

Service [1] [2]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$23.00	$20.00	$14.30
Factor analysis for any single factor (per factor):			
(a) Milling yield, per sample	16.00	16.00	—
(b) All other factors, per factor	8.60	8.60	8.60
Total oil and free fatty acid	—	28.00	28.00
Interpretive lines samples [3]			
(a) Milling degree (per set)	—	—	60.00
(b) Parboiled light (per sample)	—	—	15.00
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or combined at other than the point of service.
[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, Federal Grain Inspection Service, Field Management Division, Board of Appeals and Review, USDA, FGIS Technical Center, 10383 North Executive Hills Boulevard, Kansas City, MO 64153.
[3] Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Deputy Director, Field Management Division, USDA, FGIS, Washington, DC 20250. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.
[4] Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in Table 1.

Dated: September 23, 1986.

D.R. Galliart,

Acting Administrator.

[FR Doc. 86–23547 Filed 10–16–86; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 531; Lemon Regulation 530, Amendment 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 252,500 cartons during the period October 19 through October 25, 1986, and increases the quantity of lemons that may be shipped during the period October 12 through October 18, 1986, to 280,000 cartons. Such action is needed to balance the supply of fresh lemons with demand for such periods, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: Regulation 531 (§ 910.831) is effective for the period October 19 through October 25, 1986, and the amendment (§ 910.830) is effective for the period October 12 through October 18, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1986–87. The committee voted by telephone on October 13, 1986, and met publicly on October 14, 1986, at Redlands, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that the lemon market is active and lemon demand and prices have shown improvement. The increase in the current week's allotment was recommended due to the improvement in the lemon market which resulted in inadequate allotment to meet lemon demand.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, or postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling to lemons. Handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, and Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.831 is added to read as follows:

§ 910.831 Lemon Regulation 531.

The quantity of lemons grown in California and Arizona which may be handled during the period October 19, 1986, through October 25, 1986, is established at 252,500 cartons.

3. Section 910.830 is revised to read as follows:

§ 910.830 Lemon Regulation 530.

The quantity of lemons grown in California and Arizona which may be handled during the period October 12, 1986, through October 18, 1986, is established at 280,000 cartons.

Dated: October 15, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–23674 Filed 10–16–86; 9:06 am]

BILLING CODE 3410–02–M

7 CFR Parts 916, 917, 919, 920, 926, 930, 932, 948, 958, 981 and 993

Authorization of Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 916, 917, 919, 920, 926, 930, 948, 958, 981, and 993 for the respective 1986–87 fiscal year for each order. Marketing Orders 916 and 932 expenses are amended for the 1985–86 fiscal year. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: March 1, 1985–February 28, 1986 (amended § 916.224), March 1, 1986–February 28, 1987 (§§ 916.225, 917.244, 917.245, 917.246); July 1, 1986–June 30, 1987 (§§ 919.225, 948.295, 958.230 and 981.335); August 1, 1986–July 31, 1987 (§§ 920.202, 993.337); April 1, 1986–March 31, 1987 (§ 926.226); May 1, 1986–April 30, 1987 (§ 930.216); January 1, 1986–December 31, 1986 (amended § 932.220).

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

It is estimated that approximately 275 handlers of California nectarines, 608 handlers of California pears, plums, and peaches, 32 handlers of Colorado peaches, 76 handlers of California kiwifruit, 14 handlers of California Tokay grapes, 70 handlers of Michigan and other states cherries, 7 handlers of California olives, 72 handlers of Colorado Area II potatoes, 23 handlers of Idaho-Oregon onions, 70 handlers of California almonds, and 16 handlers of California dried prunes, will be subject to regulation during the course of the current season and that the great majority of these firms may be classified as small entities.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective dates until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Each order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. To enable the committees to meet current fiscal obligations, approval of the expenses is necessary without delay. Handlers have been apprised of the provisions and effective dates specified in this final rule. It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Parts 916, 917, 919, 920, 926, 930, 932, 948, 958, 981, and 993

Marketing agreements and orders, Nectarines (California), Pears, Plums, Peaches (California), Peaches (Colorado), Kiwifruit (California), Tokay grapes (California), Tart cherries (Michigan, New York, Wisconsin, Pennsylvania; Ohio, Virginia, West Virginia, Maryland), Olives (California), Potatoes (Colorado), Onions (Idaho-Oregon), Almonds (California), Dried prunes (California).

1. The authority citation for 7 CFR Parts 916, 917, 919, 920, 926, 930, 932, 948, 958, 981, and 993 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

New §§ 916.225, 917.244, 917.245, 917.246, 919.225, 920.202, 926.226, 930.216, 948.295, 958.230, 981.335, and 993.337 are added and §§ 916.224 and 932.220 are amended as follows (the following sections prescribe the annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.224 [Amended]

Section 916.224 is amended by changing $2,701,666 to $2,707,093.

§ 916.225 Expenses and assessment rate.

Expenses of $2,563,867 by the Nectarine Administrative Committee are authorized, and an assessment rate of $0.16 per No. 22D standard lug box of nectarines is established for the fiscal year ending February 28, 1987. Unexpended funds from the 1985–86 fiscal year may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

§ 917.244 Expenses and assessment rate.

Expenses of $1,704,964 by the Plum Commodity Committee are authorized, and an assessment rate of $0.19 per No. 22D standard lug box of plums is established for the fiscal year ending February 28, 1987. Unexpended funds from the 1985–86 fiscal year may be carried over as a reserve.

§ 917.245 Expenses and assessment rate.

Expenses of $2,173,062 by the Peach Commodity Committee are authorized and an assessment rate of $0.16 per No. 22D standard lug box of peaches is established for the fiscal year ending February 28, 1987. Unexpended funds from the 1985–86 fiscal year may be carried over as a reserve.

§ 917.246 Expenses and assessment rate.

Expenses of $863,053 by the Pear Commodity Committee are authorized and an assessment rate of $0.20 per No. 29B special lug box of pears is established for the fiscal year ending February 28, 1987. Unexpended funds may be carried over as a reserve.

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

§ 919.225 Expenses and assessment rate

Expenses of $1 000 by the Administrative Committee are authorized, and an assessment rate of $0.01 per bushel of peaches is

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established for the fiscal year ending June 30, 1987.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

§ 920.302 Expenses and assessment rate.

Expenses of $299,311 by the Kiwifruit Administrative Committee are authorized and an assessment rate of $0.0525 per 7½ pound tray or equivalent is established for the fiscal year ending July 31, 1987. Unexpended funds may be carried over as a reserve.

PART 925—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

§ 925.229 Expenses and assessment rate.

Expenses of $111,032 by the Tokay Industry Committee are authorized, and an assessment rate of $0.16 per 23 pound lug of grapes is established for the fiscal year ending March 31, 1987. Unexpended funds may be carried over as a reserve.

PART 930—CHERRIES GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA, AND MARYLAND

§ 930.216 Expenses and assessment rate.

Expenses of $136,132 by the Cherry Administrative Board are authorized, and an assessment rate of $1.00 per ton of cherries delivered for processing is established for the fiscal year ending April 30, 1987. Unexpended funds from the 1985–86 fiscal year may be carried over as a reserve.

PART 932—OLIVES GROWN IN CALIFORNIA

§ 932.220 [Amended]

Section 932.220 is amended by changing $2,309,350 to $2,318,235.

PART 948—IRISH POTATOES GROWN IN COLORADO

§ 948.295 Expenses and assessment rate.

Expenses of $37,495 by the Colorado Area II Potato Committee are authorized, and an assessment rate of $0.018 per hundredweight of assessable potatoes is established for fiscal period ending June 30, 1987. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

§ 958.230 Expenses and assessment rate.

Expenses of $710,000 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.09 per hundredweight of onions is established for the fiscal period ending June 30, 1987. Unexpended funds may be carried over as a reserve.

PART 981—ALMONDS GROWN IN CALIFORNIA

§ 981.335 Expenses and assessment rate.

Expenses of $7,400,088 by the Almond Board of California are authorized for the crop year ending June 30, 1987. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at $0.026 per pound of almonds (kernelweight basis) less any amount credited pursuant to § 981.41 but not to exceed $0.025 per pound of almonds (kernelweight basis).

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

§ 993.337 Expenses and assessment rate.

Expenses of $259,700 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at $2.65 per ton for salable dried prunes for the 1986–87 crop year ending July 31, 1987.

Dated: October 10, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 86–23545 Filed 10–16–86; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 12337, Special Conditions No. 23–47–CE–5]

Special Conditions; Beech Model 300 and 1900 Series Airplanes With Electronic Flight Instrument Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment No. 4 to Special Conditions No. 23–47–CE–5.

SUMMARY: These special conditions are issued to become part of the type certification basis for the Beech 300 and 1900 series airplanes to allow incorporation of Electronic Flight Instrument System (EFIS). These airplanes have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards applicable to these airplanes. These novel and unusual design features include the use of cathode-ray tube electronic flight instrument system for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards applicable to the Beech 300 and 1900 series airplanes.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Regulations and Policy Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1986, Beech Aircraft Corporation, Wichita, Kansas, made application to the FAA for approval of installation of a Bendix EFS–10 Electronic Flight Instrument System (EFIS) on the Beech Model 300 airplane. This installation incorporates an electronic attitude director indicator (EADI) and electronic horizontal situation indicator (EHSI) in lieu of traditional mechanical or electro-mechanical indicators providing similar information to the flightcrew.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notices as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the Bendix EFS–10 EFIS installation in the Beech Model 300 airplane contains a number of novel or unusual design features not envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Bendix EFS–10 EFIS installation in the Beech Model 300 airplane.

Special Conditions No. 23–47–CE–5 applicable to the Beech 300 are also applicable to the Beech 200 and 1900 airplanes. However, the requirements of SFAR 41C are applicable to the Beech 300 and 1900 airplanes, but are not applicable to the Beech 200 airplanes. Therefore, these special conditions will also be applicable to the Beech 300 and 1900 for installation of similar EFIS (not limited to the same manufacturer) without further amendment of the special conditions, but will not be applicable to the Beech 200 airplanes.

Beech has proposed cathode-ray tube (CRT) electronic display units for primary attitude, hearing, and navigation cockpit displays. The cockpit instrument panel configuration would feature three EFIS displays, an electronic attitude director indicator (EADI) and electronic horizontal situation indicator (EHSI) on the left instrument panel, and a multi-function display in the center panel. All other displays; i.e., airspeed, altitude, vertical speed, etc., will be conventional instruments. An optional configuration would provide for an EADI and EHSI on the copilot's side.

Type Certification Basis

The type certification basis for the Beech Models 300 and 1900 airplanes is as follows: Special Federal Aviation Regulation (SFAR) 41C, effective September 13, 1982; Part 23 of the Federal Aviation Regulations (FARs), effective February 1, 1965, through Amendment 23–9; Amendment 23–11; Amendment 23–14, §§ 23.143(a), 23.145(d), 23.153, 23.161(c)(3), 23.173(a), 23.175, 23.427, 23.441, and 23.445; Amendment 23–15, §§ 23.951(c) and 23.997(d); Amendment 23–23, § 23.1545(a); Amendment 23–26, §§ 23.967 and 23.1305(n); Special Conditions No. 23–47–CE–5, including Amendments Nos. 1, 2, and 3 dated November 15, 1982; Part 25 of the FAR, § 25.929, effective February 1, 1965; Amendment 25–23, § 25.1419; Amendment 25–41, § 25.831(d); Part 36 of the FARs, through Amendment 36–10; SFAR 27, through Amendment 27–4, and § 25.1419 when ice protection equipment is installed in accordance with the equipment list; and any other changes to Special Conditions No. 23–47–CE–5.

Discussion of Comments

No comments were received to Notice No. 23–ACE–17 which was published in the **Federal Register** on July 22, 1986 (51 FR 26281). The comment period closed August 21, 1986. Clarifying comments to the Beech Model 200 special conditions (51 FR 28509, August 8, 1986) were incorporated into Beech 300 and 1900 special conditions, sections 1 (a) and (b) for consistency. These changes do not change the applicable requirements.

Conclusion

This action affects only Beech Models 300 and 1900 model series airplanes. It is not a rule of general applicability and applies only to the series and models of airplanes identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, and Tires.

The authority citation for these Special Conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration issues the following special conditions as an Amendment No. 4 to Special Conditions No. 23–47–CE–5 applicable to the Beech 300 and 1900 series airplanes equipped with an electronic flight instrument system (EFIS).

Systems and Equipment

1. In addition to Appendix A of Part 135 and in lieu of applicable requirements of Part 23 of the Federal Aviation Regulations to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operation conditions, must be designed and examined to comply with the following additional requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures under any anticipated operation condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would create additional hazards.

(4) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunction and damage from foreseeable sources;

(ii) Consequence of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequence;

(iv) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation do not inhibit the primary display of attitude; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The display units, including their systems and installations, must be

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designed so that one display of information essential to safety and successful completion of the flight will remain available to the pilot, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

Issued in Kansas City, Missouri on September 29, 1986.

Edwin S. Harris,

Director, Central Region

[FR Doc. 86-23403 Filed 10-16-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-CE-44-AD; Amendment 39-5442]

Airworthiness Directives; Cessna Model 404 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to all Cessna Model 404 airplanes requiring inspection for cracks and, if necessary, modification of the engine mount beams. Failure of a cracked engine mount beam in flight could cause airplane control problems and separation of the engine. This action prescribes those comprehensive inspections and modifications necessary to ensure structural integrity of the engine mount beams.

EFFECTIVE DATE: October 21, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Multi-Engine Service Bulletin MEB 86-7, dated April 18, 1986, applicable to this AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201; Telephone (316) 946-7550. A copy of the information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri, 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence S. Abbott, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: Several reports of engine beams developing fatigue cracks in the vicinity of the engines aft mount fittings on Cessna Model 404 airplanes have been received by the FAA and Cessna. Engines on Cessna Model 404 airplanes are secured to the airframe by beams that are cantilevered from the wing. The early Cessna light twins from which the Model 404 evolved, had aluminum hat section engine mount beams. The later models of the 400 Series, including the Model 404, have redesigned engine mount beams made of thin stainless steel to minimize fire hazard forward of the engine firewall. These thinner, harder materials have been more susceptible to cracking at the eccentrically loaded aft engine mounts. Timely detection and repair of those cracks is necessary to assure continued structural integrity of the attachment of the engines to the airplane. Accordingly, Cessna issued Service Bulletin MEB 86-7 recommending fluorescent penetrant inspections of the affected areas of the engine beams and installation of Service Kit SK 404-40 for repair, if cracks are found, to preclude possible separation of the engine in flight.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop on other airplanes of the same type design, an AD is being issued requiring inspections and modification, as necessary, to engine mount beams on Cessna Model 404 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure herein are impractical and contrary to the public interest and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to the Model 404 (Serial Numbers 404-0001 through 404-0138, 404-0201 through 404-0246, 404-0401 through 404-0460, 404-0601 through 404-0695, and 404-0801 through 404-0859) airplanes certificated in any category:

Compliance: Required as indicated, unless already accomplished.

To ensure the structural integrity of the engine mount beams, accomplish the following:

(a) Inspect the engine beams for cracks in accordance with the provisions of Cessna Multi-Engine Service Bulletin MEB 86-7, dated April 18, 1986, per the following schedule:

(1) On all airplanes with 1600 or more hours time-in-service (TIS), fluorescent penetrant inspect the engine beams within the next 100 flight hours and at each 800 hours TIS thereafter.

(2) On all airplanes with less than 1600 hours TIS, fluorescent penetrant inspect the engine beams between 1600 and 1700 hours TIS and at each 800 TIS thereafter.

(3) The flourescent penetrant inspections required by paragraphs (a)(1) and (a)(2) of this AD are no longer required on engine beams that have Service Kit SK 404-40 installed.

(b) If cracks are found in the inspection of Paragraph (a), prior to further flight perform the following in accordance with Cessna Service Bulletin MEB 86-7:

(1) If cracks found in the top (horizontal portion) of the beam are less than 2.00 inches in length, stop drill and install SK 404-40 in accordance with MEB 86-7.

(2) If cracks found in the top (horizontal portion) of the beam are greater than 2.00 inches in length, contact Cessna Aircraft Company for FAA approved repair disposition at the following address: Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201; Telephone (316) 946-7550.

(c) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where the provisions of this AD can be accomplished.

(d) Any equivalent method of compliance with this AD must be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Cessna Aircraft Company, P.O. Box 1521, Wichita, Kansas 67201; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective October 21, 1986.

Issued in Kansas City, Missouri, on October 6, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-23404 Filed 10-16-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AGL-24]

Establishment of Transition Area, Greenville, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Greenville, Michigan, transition area to accommodate a new VOR/DME-A instrument approach procedure to Greenville Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 U.T.C. December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Thursday, August 28, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Greenville, Michigan, transition area (51 FR 30674).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Greenville, Michigan, transition area to accommodate a new VOR/DME-A instrument approach procedure to Greenville Municipal Airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Greenville, MI [New]

That airspace extending upward from 700 feet above the surface within a 6 mile radius of Greenville Municipal Airport (Lat. 43°08'30" N., Long. 85°15'15" W.)

Issued in Des Plaines, Illinois, on October 3, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-23405 Filed 10-16-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3200]

The North Carolina Orthopaedic Assoc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, prohibits The North Carolina Orthopaedic Assoc. from placing unreasonable restrictions against podiatrists seeking access to hospital facilities or surgical privileges and including hospitals or medical staffs to deny such privileges to qualified podiatrists.

DATE: Complaint and Order issued Sept. 19, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Douglas B. Brown, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree Street NW., Atlanta, GA 30367. (404) 881-4836.

SUPPLEMENTARY INFORMATION: On Thursday, June 5, 1986, there was published in the **Federal Register**, 51 FR 20498, a proposed consent agreement with analysis In the Matter of The North Carolina Orthopaedic Association, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.390 To control employment practice. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; §13.533-20 Disclosures; § 13.533-45 Maintain

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

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records. Subpart—Cutting Off Supplies or Service: § 13.655 Threatening disciplinary action or otherwise.

List of Subjects in 16 CFR Part 13

Hospital privileges, Podiatry, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86-23534 Filed 10-16-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

[T.D. 86-192]

Notice of Due Date of Customs Brokers Lists of Employees

AGENCY: Customs Service, Treasury.

ACTION: Clarification of final rule and compliance date.

SUMMARY: This notice is to advise customs brokers when they must submit to each district director of Customs where the broker has a permit to transact customs business, the list of its employees. This notice also clarifies that brokers' employees who do not work directly in the brokerage portion of the business must be included on the list and that employees employed in several districts must be reported on the list of each district.

EFFECTIVE DATE: October 17, 1986.

FOR FURTHER INFORMATION CONTACT: Fred Burns O'Brien, Entry, Licensing and Restricted Merchandise Branch, (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

In T.D. 86-161, published in the **Federal Register** on August 26, 1986 (51 FR 30336), Parts 111, 171 and 178, Customs Regulations (19 CFR Parts 111, 171 and 178), were extensively revised to implement the statutory changes made by the Trade and Tariff Act of 1984 (Pub. L. 98-573), relating to the regulation of customs brokers. Section 111.28(b), Customs Regulations (19 CFR 111.28(b)), was amended to state that each broker shall submit, in writing, to each district director where the broker has a permit to transact customs business, a list of names of persons currently employed in that district by the broker. For each such employee, the broker shall also provide the current home address, last prior home address, social security number, date and place of birth, and if the employee has been employed by the broker for less than 3 years, the name and address of each former employer and dates of employment for the 3-year period preceding current employment with the broker.

Section 111.28(b) further provides that after an initial submission is made, the list shall be updated and submitted with the status report required by § 111.30(d), Customs Regulations (19 CFR 111.30(d)). However, no date was indicated in § 111.28(b) as the deadline for the initial submission. To give brokers ample time to prepare the list, Customs has now determined that initial submissions will not be required until January 31, 1987.

Regarding the employee lists, it is to be noted that the lists must include all employees who are employed by a broker in each district. This means that even those employees who do not work in the brokerage portion of the business must be listed. Also, employees who are employed in several districts must be reported on the list of each district in which they work.

Dated: October 10, 1986.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 23531 Filed 10-16-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H-033D]

Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Partial administrative stay of final rules; redesignation and amendment of final rule.

SUMMARY: OSHA's revised final standards for occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry (§ 1910.1001) and construction (§ 1926.58) promulgated on June 17, 1986, were published in the **Federal Register** on June 20, 1986, and became effective on July 21, 1986 (51 FR 22612). This document gives notice of a 9-month administrative stay of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. This stay is granted for the purpose of reopening the record, reviewing new submissions, and conducting supplemental rulemaking limited to the issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standards and to the same extent as asbestos, or should be treated in some other way.

This stay applies only to the application of the revised standards to non-asbestiform tremolite, anthophyllite and actinolite. In all other respects, the revised standards will take effect as previously scheduled. In addition, during the period of the stay, the provisions of the 1972 standard governing occupational exposure to asbestos will remain in effect with respect to regulation of non-asbestiform tremolite, anthophyllite and actinolite.

To provide notice of the application of the 1972 standard to non-asbestiform tremolite, anthophyllite and actinolite, OSHA is republishing and redesignating the 1972 standard as 29 CFR 1910.1101 and is making several technical changes to that standard.

The 1972 standard is redesignated as 29 CFR 1910.1101 to distinguish it from the revised standard for general industry which is designated as 29 CFR 1910.1001. The provisions in the prior standard which constituted the Emergency Temporary Standard for Asbestos issued in November 1983, are being deleted. Also a note is added to clarify the scope and application of the redesignated § 1910.1101.

DATE: The partial stay of 1910.1001 and 1926.58 was effective July 21, 1986 and will expire April 21, 1987. Revisions to the 1972 standard republished as 1910.1101 and all other amendments in this rule are effective October 17, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N 3637, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: On June 17, 1986, OSHA issued revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry and construction. They were published in the **Federal Register** on June 20, 1986 (51 FR 22612) and will be codified at 29 CFR 1910.1001 and 1926.58. Their effective date is July 21, 1986. The revised standards amend OSHA's previous asbestos standard

issued in 1972 and codified at 29 CFR 1910.1001 and 29 CFR 1926.55(c).

OSHA's 1972 asbestos standard defined "asbestos" as including "chrysotile, amosite, crocidolite, tremolite, anthophyllite and actinolite,". In recognition of the fact that tremolite, anthophyllite, and actinolite appear as both asbestiform and non-asbestiform minerals, the revised standards redefined the term "asbestos" to include only the asbestiform varieties of these substances (as well as chrysotile, amosite and crocidolite). The title of the standards were changed, however, to apply not only to "asbestos" as redefined, but also to non-asbestiform tremolite, actinolite and anthophyllite, 29 CFR 1910.1001 (b) and 1926.58(b) (1986). OSHA made these changes to conform to mineralogical terminology, as reflected by the evidence in its rulemaking record. Thus while a change in nomenclature was made, the Agency noted that the 1972 standard and the revised standards regulate precisely the same substances (51 FR 22612, 22679).

Since the issuance of the revised standards on June 17, 1986, OSHA has received letters and petitions from rulemaking participants and non-participants which contain additional comments, assertions, and information which the rulemaking record may not fully reflect. These letters and petitions concern the appropriateness of regulating non-asbestiform tremolite, anthophyllite and actinolite as presenting the same health risk as asbestos.

For the reasons indicated below, a temporary stay of 9 months of the effective date of the revised standards has been granted insofar as the standards apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite.

OSHA granted this temporary stay in part to enable the Agency to review a July 17, 1986 letter from the Director of the National Institute for Occupational Safety and Health (NIOSH) and certain related NIOSH staff memoranda which have recently been brought to OSHA's attention, as well as submissions by the R.T. Vanderbilt Co. and various trade associations concerning the appropriateness of regulating non-asbestiform tremolite, anthophyllite and actinolite in the revised asbestos standards. These documents, and, in particular, the documents generated by NIOSH, raise serious questions about the nature and extent of the hazards posed by these non-asbestiform minerals. This temporary stay was granted also to allow sufficient time for OSHA to reopen the rulemaking record and conduct supplemental rulemaking proceedings on the issue of whether and how to regulate occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite.

OSHA's decision to reopen the record is consistent with the Agency's determination that it provided adequate notice to the public that the recent asbestos rulemaking would address whether the Agency should amend the 1972 definition of asbestos, and whether the revised standards should apply to the three non-asbestiform minerals. Nevertheless, OSHA acknowledges that letters and petitions which contain additional comments, as described above, have been received since the issuance of the revised standards. These letters and petitions contain information which the rulemaking record may not fully reflect, and request an opportunity to submit further information. To assure that these submissions are fully considered by OSHA, to allow public comment on these additional submissions, and to invite additional comment and evidence on all issues relevant to regulation of non-asbestiform tremolite, anthophyllite and actinolite, OSHA will shortly reopen the rulemaking record, by notice in the **Federal Register**, to consider the limited issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated as presenting the same health risk as asbestos, or whether they should be treated in some other way.

When that notice is published, all submissions to OSHA concerning the regulation of these minerals which have been received since the rulemaking record was closed on September 26, 1985, will be placed in the record and made available for public review and comment.

It should be noted that during the period of the stay, the provisions of the 1972 standard governing occupational exposure to asbestos (now redesignated 29 CFR 1910.1101) will remain in effect with respect to regulation of non-asbestiform tremolite, anthophyllite and actinolite.

The continued applicability of the 1972 standard was provided in the preamble to the revised standard in order not to leave "gaps in coverage and so that the existing provisions not terminate unless the new provisions are in effect." 51 FR 22704, 22732. Therefore, OSHA stated that if the amended provisions (of the revised standards) are not in effect because of stays or judicial action, then the unamended provisions (of the 1972 standard) will remain in effect" *Ibid.*

To provide notice of the continued applicability of the 1972 standard, OSHA believes it is appropriate to republish the 1972 standard to ensure continued protection for employees exposed to non-asbestiform tremolite, anthophyllite and actinolite as well as in the event that other administrative stays or judicial actions render provisions of the revised standards unenforceable.

In such case the parallel provisions of the 1972 standard would come into effect and would be immediately enforceable by OSHA. Without this automatic reversion to the older standard, employees would be denied the protection which they have long been assured. Given the very serious nature of the asbestos hazard, OSHA regards such denial as inconsistent with the Agency's mandate under the Occupational Safety and Health Act of 1970.

Several technical revisions to the 1972 standard are being made to facilitate this "back-up" function. First, the 1972 standard is being redesignated as 29 CFR 1910.1101 to distinguish it from the revised general industry standard which is codified as 29 CFR 1910.1001. OSHA is also adding a "note" to the 1972 standard to describe the intended application of the standard.

In addition, OSHA is deleting paragraph (k) of the 1972 standard, because that paragraph constituted the requirements of the emergency temporary standard issued by OSHA in November 1983 and was invalidated by the 5th Circuit Court of Appeal's decision in *Asbestos Information Ass'n v. OSHA*, 727 F.2d 415. Finally, OSHA is deleting an outdated provision which set the permissible exposure limit from July 7, 1972 to July 1, 1976.

OSHA is also amending the references to the 1972 asbestos standard which are found in the revised standards to reflect the redesignation of the 1972 standard as 29 CFR 1910.1101.

With respect to the temporary stay which has been granted, OSHA finds that advance notice and opportunity for comment are impracticable and unnecessary within the meaning of 5 U.S.C. 553, in view of (a) the limited duration of the stay; (b) the need to provide the relief requested before the standard went into effect; and (c) the continued applicability of the 1972 standard to non-asbestiform tremolite, anthophyllite and actinolite during the period of the stay.

Similarly, OSHA is making the technical amendments to 1910.1101 without advance notice and opportunity for comment pursuant to the authority of 5 U.S.C. 553(b). OSHA finds such process unnecessary and impractical due to the fact that these revisions (1)

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implement a policy already determined after full rulemaking to continue to enforce parallel provisions of the 1972 standard where a stay or judicial action renders provisions of the 1972 standard unenforceable (see 51 FR 22704, 22732) and (2) delete provisions which are no longer effective. In neither case is an evidentiary issue involved.

List of Subjects

29 CFR Part 1910

Asbestos, Cancer, Health, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

29 CFR Part 1926

Asbestos, Cancer, Construction industry, Hazardous materials, Health, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC, 20210.

It is issued pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), 29 CFR Part 1911 and Secretary of Labor's Order No. 9–83 (48 FR 35736), and 5 U.S.C. 551 et seq.

Signed at Washington, D.C., this 10th day of October, 1986.

John A. Pendergrass,

Assistant Secretary for Occupational Safety and Health.

Amended Standards

PART 1910—[AMENDED]

PART 1926—[AMENDED]

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended as follows:

1. The authority citation for Subpart B of Part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Health Act, 41 U.S.C. 35 et seq.; Service Contract Act of 1965, 41 U.S.C. 351 et seq.; Pub. L. 91–54, 40 U.S.C. 333; Pub. L. 85–742, 33 U.S.C. 941; National Foundation on Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736); and 29 CFR Part 1911.

2. Paragraph (a) of § 1910.19 is hereby revised to read as follows:

§ 1910.19 Special provisions for air contaminants.

(a) Asbestos, tremolite, anthophyllite, and actinolite dust. Section 1910.1001 or 1910.1101 shall apply to the exposure of every employee to asbestos, tremolite, anthophyllite, and actinolite dust in every employment and place of employment covered by §§ 1910.13, 1910.14, 1910.15 or 1910.16, in lieu of any different standard on exposure to asbestos, tremolite, anthophyllite, and actinolite dust which would otherwise be applicable by virtue of any of those sections.

* * * * *

Subpart Z—[Amended]

3. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority: Sec. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z–1, Z–2, Z–3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z–1.

Section 1910.1002 not issued under 29 U.S.C., 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 556.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1970.1047 also issued under 29 U.S.C. 653.

Section 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

§ 1910.1001 [Amended]

§ 1926.58 [Amended]

4. Sections 1910.1001 and 1926.58 are hereby amended by adding the following note after Appendix H to § 1910.1001 and Appendix I to 1926.58.

Note.—Pursuant to a 9-month administrative stay effective July 21, 1986 (Insert citation from this **Federal Register** document), enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period of this stay the provisions of the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect with respect to regulation of non-asbestiform tremolite, anthophyllite and actinolite.

5. Paragraph (o)(1) of § 1910.1001 is hereby revised to read as follows:

§ 1910.1001 Asbestos.

* * * * *

(o) *Dates—Effective date.*

This standard shall become effective July 21, 1986. The requirements of the asbestos standard issued in June 1972 (37 FR 11318), as amended, and published in 29 CFR 1910.1101 remain in effect until compliance is achieved with the parallel provisions of this standard.

6. Paragraph (o)(1) § 1926.58 is hereby revised to read as follows:

§ 1926.58 Asbestos, tremolite, anthophyllite, and actinolite.

* * * * *

(o) *Dates—Effective date.*

This section shall become effective July 21, 1986. The requirements of the asbestos standard issued in June 1972 (37 FR 11318), as amended, and published in 29 CFR 1910.1101 remain in effect until compliance is achieved with the parallel provisions of this standard.

7. Section 1910.1101 is hereby added to read as follows:

§ 1910.1101 Asbestos.

Note.—This section applies to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite during the pendency of the stay of the revised standards (29 CFR 1910.1001; 29 CFR 1926.58).

(See [Insert citation from this **Federal Register** document] for a description of the stay).

This section also applies whenever all or part of the revised standards are rendered unenforceable because of a stay or judicial action. In such a case, to preclude a gap in coverage, parallel provisions of this section will take effect. OSHA will publish an appropriate notice in the **Federal Register** announcing each such application of this section. This section also applies pursuant to the requirements of 29 CFR 1910.1001(O) and 29 CFR 1926.58(O).

(a) *Definitions.* For the purpose of this section, (1) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite. (2) "Asbestos fibers" means asbestos fibers longer than 5 micrometers.

(b) *Permissible exposure to airborne concentrations of asbestos fibers.*

(1) The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employment may be exposed shall not exceed two fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the

method prescribed in paragraph (e) of this section.

(2) *Ceiling concentration.* No employee shall be exposed at any time to airborne concentration of asbestos fibers in excess of 10 fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(c) *Methods of compliance*—(1) *Engineering methods.* (i) *Engineerings controls.* Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet exposure limits prescribed in paragraph (b) of this section.

(ii) *Local exhaust ventilation.* (A) local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with the American National Standards Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2–1971, which is incorporated by reference herein. (B) See § 1910.6 concerning the availability of ANSI Z90.2–1971, and the maintenance of a historic file in connection therewith. The address of the American National Standards Instituted is given in § 1910.100.

(iii) *Particular tools.* All hand-operated and power-operated tools which may produce or release asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, such as, but not limited to, saws, scorers, abrasive wheels, and drills, shall be provided with local exhasuet ventilation systems in accordance with paragraph (c)(1)(ii) of this section.

(2) *Work practices*—(i) *Wet methods.* Insofar as practicable, asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborn fibers in excess of the exposure limits prescribed in paragraph (b) of this section, unless the usefulness of the product would be dimished thereby.

(ii) *Particular products and operations.* No asbestos cement, mortor, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne asbestos fibers in excess of the limits prescribed in paragraph (b) of this section.

(iii) *Spraying, demolition, or removal.* Employees engaged in the spraying of asbestos, the removal, or demolition of pipes structures, or equipment covered or insultated with asbestos, and in the removal of demolition of asbestos insulation or coverings shall be provided with respiratory equipment in accordance with paragraph (d)(2)(iii) of this section and with special clothing in accordance with paragraph (d)(3) of this section.

(d) *Personal protective equipment*—(1) Compliance with the exposure limits prescribed by paragraph (b) of this section may not be achieved by the use of respirators of shift rotation of employees, except:

(i) During the time period necessary to install the engineering controls and to institute the work practices required by paragraph (c) of this section;

(ii) In work situations in which the methods prescribed in paragraph (c) of this section are either technically not feasible or feasible to an extent insufficient to reduce the airborne concentrations of asbestos fibers below the limits prescribed by paragraph (b) of this section: or

(iii) In emergencies.

(iv) Where both respirators and personnel rotation are allowed by paragraphs (d)(1) (i), (ii) or (iii) of this section, and both are practicable, personnel rotation shall be preferred and used.

(2) Where a respirator is permitted by paragraph (d)(1) of this section, it shall be selected from among those approved by the Bureau of Mines, Department of the Interior, or the National Institute for Occupational Safety and Health, Department of Health, Education, and Welfare, under the provisions of 30 CFR Part 11 (37 FR 6244, Mar. 25, 1972), and shall be used in accordance with paragraph (d)(1) (i), (ii), (iii), and (iv) of this section.

(i) *Air purifying respirators.* A reusable or single use air purifying respirator, or a respirator described in paragraph (d)(2) (ii) or (iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average concentrations of asbestos fibers are reasonably expected to exceed no more than 10 times those limits.

(ii) Powered air purifying respirators. A full facepiece powered air purifying respirator, or a powered air purifying respirator, or a respirator described in paragraph (d)(2)(iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average concentrations of asbestos fibers are reasonably expected to exceed 10 times, but not 100 times, those limits.

(iii) Type "C" supplied-air respirators, continuous flow or pressure-demand class. A type "C" continuous flow or pressure-demand, supplied-air respirator shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed 100 times those limits.

(iv) *Establishment of a respirator program.* (A) The employer shall establish a respirator program in accordance with the requirements of the American National Standards Practices for Respiratory Protection, ANSI Z88.2–1969, which is incorporated by reference herein.

(B) See § 1910.6 concerning the availability of ANSI Z88.2–1969 and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in § 1910.100.

(C) No employee shall be assigned to tasks requiring the use of respirators if, based upon his most recent examination, an examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or other employee will be impaired by his use of a respirator. Such employee shall be rotated to another job or given the opportunity to transfer to a different position whose duties he is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer, if such different position is available.

(3) Special clothing: The employer shall provide, and require the use of, special clothing, such as coveralls or similar whole body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos fibers, which exceed the ceiling level prescribed in paragraph (b) of this section.

(4) Change rooms: (i) At any fixed place of employment exposed to airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, the employer shall provide change rooms for employees working regularly at the place.

(ii) Clothes lockers: The employer shall provide two separate lockers or containers for each employee, so separated or isolated as to prevent

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contamination of the employee's street clothes from his work clothes.

(iii) Laundering: (A) Laundering of asbestos contaminated clothing shall be done so as to prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(B) Any employer who gives asbestos-contaminated clothing to another person for laundering shall inform such person of the requirement in paragraph (d)(4)(iii)(A) of this section to effectively prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(C) Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and labeled in accordance with paragraph (g) of this section.

(e) *Method of measurement.* All determinations of airborne concentration of asbestos fibers shall be made by the membrane filter method at 400–450 X (magnification) (4 millimeter objective) with phase contrast illumination.

(f) *Monitoring*—(1) *Initial determinations.* Within 6 months of the publication of this section, every employer shall cause every place of employment where asbestos fibers are released to be monitored in such a way as to determine whether every employee's exposure to asbestos fibers is below the limits prescribed in paragraph (b) of this section. If the limits are exceeded, the employer shall immediately undertake a compliance program in accordance with paragraph (c) of this section.

(2) *Personal monitoring*—(i) Samples shall be collected from within the breathing zone of the employees, on membrane filters of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) *Sampling frequency and patterns.* After the initial determinations required by paragraph (f)(1) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees. In no case shall the sampling be done at intervals greater than 6 months for employees whose exposure to asbestos may reasonably be foreseen to exceed the limits prescribed by paragraph (b) of this section.

(3) *Environmental monitoring.* (i) Samples shall be collected from areas of a work environment which are representative of the airborne concentrations of asbestos fibers which may reach the breathing zone of employees. Samples shall be collected on a membrane filter of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) Sampling frequencey and patterns. After the initial determinations required by paragraph (f)(1) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall sampling be at intervals greater than 6 months for employees whose exposures to asbestos may reasonably be foreseen to exceed the exposure limits prescribed in paragraph (b) of this section.

(4) *Employee observation of monitoring.* Affected employees, or their representatives, shall be given a reasonable opportunity to observe any monitoring required by this paragraph and shall have access to the records thereof.

(g) *Caution signs and labels*—(1) *Caution signs*—(i) *Posting.* Caution signs shall be provided and displayed at each location where airborne concentrations of asbestos fibers may be in excess of the exposure limits prescribed in paragraph (b) of this section. Signs shall be posted at such a distance from such a location so that an employee may read the signs and take necessary protective steps before entering the area marked by the signs. Signs shall be posted at all approaches to areas containing excessive concentrations of airborne asbestos fibers.

(ii) *Sign specifications.* The warning signs required by paragraph (g)(1)(i) of this section shall conform to the requirements of 20"x14" vertical format signs specified in § 1910 145(d)(4), and to this subdivision. The signs shall display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to that specified in this subdivision.

Legend	Notation
Asbestos	1" Sans Serif, Gothic or Block.
Dust Hazard	¾" Sans Serif, Gothic or Block.
Avoid Breathing Dust	¼" Gothic.
Wear Assigned Protective Equipment.	¼" Gothic.
Do Not Remain In Area Unless Your Work Requires It.	¼" Gothic.
Breathing Asbestos Dust May Be Hazardous To Your Health.	14 point Gothic.

Spacing between lines shall be at least equal to the height of the upper of any two lines.

(2) *Caution labels*—(i) *Labeling.* Caution labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers, except that no label is required where asbestos fibers have modified by a bonding agent, coating, binder, or other material so that during any reasonably foreseeable use, handling, storage disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section will be released.

(ii) *Label specifications.* The caution labels requied by paragraph (g)(2)(i) of this section shall be printed in letters of sufficient size and contrast as to be readily visible and legible. The label shall state:

Caution—Contains Asbestos Fibers, Avoid Creating Dust, Breathing Asbestos Dust May Cause Serious Bodily Harm

(h) *Housekeeping*—(1) *Cleaning.* All external surfaces in any place of employment shall be maintained free of accumulations of asbestos fibers if, with their dispersion, there would be an excessive concentration.

(2) *Waste disposal.* Asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing, consigned for disposal, which may produce in any reasonably foreseeable use, handling, storage, processing, disposal, or transportation airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section shall be collected and disposed of in sealed impermeable bags, or other closed, impermeable containers.

(i) *Recordkeeping*—(1) *Exposure records.* Every employer shall maintain records of any personal or environmental monitoring required by this section. Records shall be maintained for a period of at least 20 years and shall be made available upon request to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of the National Institute for Occupational Safety and Health, and to authorized representatives of either.

(2) *Access.* Employee exposure records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(l).

(3) *Employee notification.* Any employee found to have been exposed at any time to airborne concentration of asbestos fibers in excess of the limits prescribed in paragraph (b) of this section shall be notified in writing of the exposure as soon as practicable but not later than 5 days of the finding. The employee shall also be timely notified of the corrective action being taken.

(j) *Medical examinations*—(1) *General.* The employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by this paragraph.

(2) *Preplacement.* The employer shall provide or make available to each of his employees, within 30 calendar days following his first employment in an occupation exposed to airborne concentrations of asbestos fiber, a comprehensive medical examination, which shall include, as a minimum a chest roentgenogram (posterior-anterior 14x17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(3) *Annual examinations.* On or before January 31, 1973, and at least annually thereafter, every employer shall provide, or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers. Such annual examination shall include, as minimum, a chest roentgenogram (posterior-anterior 14x17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(4) *Termination of employment.* The employer shall provide or make available, within 30 calendar days before or after the termination of employment of any employee engaged in an occupation exposed to airborne concentration of asbestos fibers, a comprehensive medical examination which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14x17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(5) *Recent examinations.* No medical examination is required of any employee, if adequate records show that the employee has been examined in accordance with this paragraph within the past 1-year period.

(6) *Medical records*—(i) *Maintenance.* Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be retained by employers for at least 20 years.

(ii) *Access.* Records of the medical examinations required by this paragraph shall provide upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(l). These records shall also be provided upon the request to the Director of NIOSH. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer of the examined employee all the information specifically required by this paragraph, and any other medical information related to occupational exposure to asbestos fibers.

TABLE 1.—RESPIRATOR PROTECTION FOR AIRBORNE CONCENTRATIONS OF ASBESTOS

Airborne concentration of asbestos (TWA)	Required respirator [1]
Not in excess of 5 f/cc (10 x PEL).	Reusable or single use air purifying respirator.
Not in excess of 50 f/cc (100 x PEL).	Full facepiece air purifying respirator, or a powered air purifying respirator.
Greater than 50 f/cc	A type "C" continuous flow or pressure demand, supplied air respirator.

[1] Respirators specified for high concentrations may be used at lower concentrations of asbestos.

(Approved by the Office of Management and Budget under control number 1218O010)

8. The authority citation for Subpart D of Part 1926, continues to read as follows:

Authority: Secs. 4, 5, 6, 8 Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable. Sections 1926.55(c) and 1926.58 also issued under 29 CFR Part 1911.

9. Paragraph (c) of § 1926.55 is hereby revised to read as follows:

§ 1926.55 Gases, vapors, fumes, dusts, and mists

* * * * *

(c) Paragraphs (a) and (b) of this section do not apply to the exposure of employees to airborne asbestos, tremolite, anthophyllite, or actinolite dust. Whenever any employee is exposed to airborne asbestos, tremolite, anthophyllite, or actinolite dust, the requirements of § 1910.1101 or § 1926.58 of this title shall apply.

[FR Doc. 86–23402 Filed 10–16–86; 8:45 am]

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Mine Safety and Health Administration

30 CFR Parts 16 and 17

Stemming and Blasting Devices; Revocation of Regulations Concerning Approval

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revokes obsolete the Mine Safety and Health Administration's (MSHA) regulations concerning approval of stemming devices and blasting devices under the authority of section 508 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 957).

EFFECTIVE DATE: October 17, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: MSHA originally published these final rules in the **Federal Register** on June 20, 1986 (51 FR 22519 and 22520); however, the Agency withdrew them on June 30, 1986 (51 FR 23536) to avoid paying republishing costs for Title 30. The Code of Federal Regulations is published on an annual basis and MSHA's volume (Title 30) is revised on July 1 of each year.

The requirements in Part 16 apply to stemming devices that incorporate asbestos, the manufacture of which has been discontinued because of health hazards associated with asbestos. Asbestos stemming devices have not been used in underground coal mines for approximately 30 years, and no MSHA approvals have been issued under Part 16 since August 1957. The requirements in Part 17 apply to devices that use high gas pressure to blast coal, a method of blasting that has not been used for at least 20 years in underground coal mines. No approvals for blasting devices have been issued under Part 17 since June 1960. The regulations in 30 CFR Parts 16 and 17 are therefore obsolete and are removed.

Executive Order 12291 and the Regulatory Flexibility Act

MSHA certifies that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

Publication as a Final Rule

This rule eliminates obsolete regulations and does not affect the rights or obligations of any person currently holding an approval. In

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addition, the rule relates to agency practice and procedure for approval of devices that are no longer used in underground coal mines. Accordingly, publication of a general notice of proposed rulemaking is not required by 5 U.S.C. 553.

List of Subjects in 30 CFR Parts 16 and 17

Mine safety and health, Explosives.

PARTS 16 AND 17—[REMOVED]

Accordingly, 30 CFR Parts 16 and 17 are removed from Chapter I of Title 30 of the Code of Federal Regulations.

Dated: October 8, 1986.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-23539 Filed 10-16-86; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1, 7, and 50

General Regulations for Areas Administered by the National Park Service; National Capital Parks Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule recognizes regulations pertaining to the management and protection of areas administered by the National Park Service in the National Capital Region. It also makes applicable to those park areas the General Regulations that apply to all other units of the National Park System throughout the country.

The Park Service has determined that a completely separate set of regulations is no longer necessary to manage park areas in Washington, DC and vicinity effectively. Only those regulations that address issues unique to park areas in the National Capital Region will be retained as Special Regulations; all others that duplicate provisions of the Service's General Regulations will be eliminated. Some regulations have been revised slightly to make consistent use of terms and format found in the Service's General Regulations, but no new regulatory actions are being proposed.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, DC 20242, telephone (202) 426-6700.

SUPPLEMENTARY INFORMATION:

Background

General regulations found in Parts 1 through 5 of 36 Code of Federal Regulations (hereinafter "General Regulations") apply to all units of the National Park System except those administered by the National Capital Region in the District of Columbia and its environs (defined as Arlington, Fairfax, Loudoun, Prince William, and Stafford counties and Alexandria city in Virginia, and Prince Georges, Charles, Anne Arundel, and Montgomery counties in Maryland, 36 CFR 50.4(c)).

The General Regulations are supplemented by special regulations applicable to individual park areas, as found in Parts 7 and 13 (hereinafter "Special Regulations"). National Capital Region parks are subject to extensive regulations found in Part 50.

This dual set of regulatory schemes has resulted in considerable redundancy. For example, both the General Regulations (Part 2) and regulations applicable to National Capital Region parks (Part 50) deal with many of the same resource protection and public use matters, for example, horses, pets, picnicking, and disorderly conduct. It serves no purpose to have two sets of regulations which regulate many of the same activities.

Further, having different sets of regulatory schemes for different geographic areas has resulted in some confusion. For example, Park Rangers and U.S. Park Policemen in C&O Canal National Historical Park, encompassing lands in the District of Columbia, Maryland, and West Virginia, must use one set of regulations for parts of the park located in the District of Columbia and in Montgomery County, Maryland, and another, set of regulations for those parts of the park located in the remainder of Maryland and in West Virginia.

Further, Part 50 regulations sometimes neglect provisions necessary to more rural parks. For example, Part 50 does not address aircraft such as hot air balloons or ultra light craft, as the General Regulations do in 36 CFR 2.17. Managers of parks subject only to Part 50, such as Manassas, are without regulatory tools to manage the rapidly-increasing use of these balloons and crafts. Another example of an activity not addressed by Part 50 regulations, but which is occasionally a problem, is snowmobiling. The General Regulations address this activity in § 2.16.

Another problem is the illegal use of metal detectors for location of Civil War artifacts in battlefield parks such as Manassas. Part 50 regulations requires some actual damage, injury or removal before an individual with a metal detector can be prevented from using the device under the regulations. (36 CFR 50.7(1)). The General Regulations prohibit the possession of a mineral or metal detector unless the device is broken down and stored to prevent its use while in park areas. (36 CFR 2.1(a)(7)).

Public Comments

To meet these concerns, the National Park Service published a proposed rulemaking on December 19, 1985. 50 FR 51782. The public was given sixty days to submit comments on the proposal. No comments were received on the proposed rulemaking.

Regulatory Changes

To meet the concerns caused by the present dual system of park regulations, the National Park Service: (1) Eliminates the CFR Part applicable only to the parks in the District of Columbia and its environs (Part 50); (2) makes the General Regulations contained in parts 1–5 applicable to all units of the National Park Service, including the District of Columbia parks; and (3) places regulations specifically applicable only to National Capital Region parks in special regulations in Part 7. The specific changes follow.

1. Part 1 (General Provisions)

The final rule amends § 1.2 of 36 CFR by eliminating the present provision excepting parks in the District of Columbia and its environs from the applicability of the General Regulations. Thereby, parks in the District of Columbia and its environs are subject to the same regulations as parks throughout the country, thus avoiding the duplication and confusion in the present dual regulation systems. Regulations specific to these parks supplement the General Regulations and are placed in Part 7.

In addition, § 1.2 is amended to make the General Regulations applicable to other Federal reservations in the environs of the District of Columbia. Section 1.4 is amended to include the definition of the term "other Federal reservations in the environs of the District of Columbia." Finally, § 1.2 is amended to delete references to Part 6, which was deleted in a 1983 rulemaking. See 48 FR 30275, June 30, 1983.

2. Part 50 (National Capital Parks Regulations)

Since the General Regulations are made applicable to the National Capital Region parks, regulations in Part 50 are deleted except for those specific to the District of Columbia and its environs. Regulations retained are placed in Part 7 as detailed below.

Regulations deleted are those that are duplicative of the General Regulations or those duplicative of local law. For example, both Part 50 and Part 2 deal with horses, pets, and picnicking. Further, provisions in Part 50 dealing with such topics as disorderly conduct and traffic are covered by local law. Especially in the District of Columbia, which is an area of exclusive federal jurisdiction, local law often is applied. The following sections in Part 50 are deleted altogether:

Sec.
50.2 Applicability of Federal laws.
50.3 Applicability of District of Columbia and State laws.
50.4 Definitions.
50–5 Penalties.
50.7 Federal property; miscellaneous provisions.
50.8 Lamps and lamp posts in park areas.
50–9 Comfort stations and other structures.
50.10 Trees, shrubs, plants, grass and other vegetation.
50.11 Dogs, cats, and livestock.
50.12 Horses.
50.13 Grazing; permitting animals to run loose.
50.14 Picnics in park areas.
50.17 Gambling.
50.26 Indecency, immorality, profanity.
50.28 Use of liquors; intoxication.
50.29 Laws and regulations applicable to traffic control; enforcement.
50.30 Obstructing entrances, exits, sidewalks.
50.31 Speed restrictions.
50.32 Reckless driving; prohibited operations.
50.33 Parking restrictions; impounding of vehicles.
50.34 Traffic signs.
50.35 Washing of cars prohibited.
50.37 Vehicles; weight and tread restrictions.
50.38 Tampering with vehicles prohibited.
50.39 Prevention of smoke.
50.40 Bicycling, roller skating and coasting restrictions.
50.41 Boating.
50.42 Swimming, water skiing, etc.
50.43 Collection of scientific specimens.
50.44 Lost and found articles.
50.45 Photographing, restrictions.
50.46 Discrimination in furnishing public accommodations and transportation services.
50.46a Discrimination in employment practices.
50.47 Installation permits.
50.48 Making false reports to the United States Park Police.
50.49 Dangerous weapons.
50.50 Fires.
50.51 Sanitation.

3. Part 7 (Special Regulations)

The regulations presently in Part 50 that are being retained are redesignated as sections in Part 7. The retained regulations are placed under special regulation 36 CFR 7.96, National Captial Region Parks.

The special regulation applicable only to parks in the District of Columbia and its environs now includes the following provisions formerly in Part 50:

Section 50.1 Applicability of regulations

This section is revised to make these special regulations applicable to areas administered by the National Park Service in the District of Columbia and its environs and to other Federal reservations in the environs of the District of Columbia.

Section 50.15 Athletics.

This section is being retained in its entirety, except for the reference in paragraph (d) to another section in Part 50, and except for minor changes, as it addresses specific District of Columbia park areas and addresses problems of substantial impact on parks in the District of Columbia and its environs.

Section 50.16 Model planes.

This section is being retained, with minor grammatical changes, as the General Regulations provide no comparable prohibitions and the flying of model planes could be a significant problem in urban parks.

Section 50.18 Hunting and fishing.

This section is deleted as presently written because the General Regulations cover the subjects of hunting and fishing. However, to avoid making unlawful those fishing practices that are sanctioned under various state laws, a new regulation allowing fishing as authorized under state law, unless otherwise designated, is added.

Section 50.19 Demonstrations and special events.

This section is being retained in its entirety, with minor grammatical changes, as it specifically addresses issues unique to the Washington area parks. These regulations have been carefully crafted over the years to respond to the experiences of the National Park Service in the District of Columbia area and to local court decisions.

Section 50.24 Soliciting, advertising, sales.

This section is being deleted as duplicative of provisions in the General Regulations concerning advertising and of provisions in former § 50.52 concerning sales, with the exception of paragraph (a) relating to solicitations. This provision is retained as it applies a flat ban to solicitations, this being more restrictive than provisions in the General Regulations allowing solicitations for which a permit is granted. However, the section is revised to make the languague consistent with the sales provision in § 2.37 of Part 2 of this Chapter.

Section 50.25 Nuisances; disorderly conduct.

This section is deleted with the exception of the paragraph concerning swimming in certain park areas and entering into waters from park areas. This paragraph address specific National Capital Region parks and grants law enforcement officers the authority to cite persons for entering into dangerous waters, an authority lacking in Parts 1–5 of Chapter 1.

Section 50.27 Camping.

The majority of this section is being retained as it addresses problems specific to parks in the District of Columbia and its environs and responds to local court decisions. Provisions duplicative of provisions in the General Regulations are deleted.

Section 50.36 Commercial vehicles and common carriers.

This section is being retained in its entirety, with minor grammatical changes, with the exception of paragraph (c) which duplicates in large part paragraph (a). This section is retained because it addresses activities of unique concern to parks in the District of Columbia and its environs and, in fact, addresses those activities in several named parks.

Section 50.52 Sale and distribution of printed matter.

This section is being retained in its entirety, with minor grammatical changes, as it addresses specific parks in the District of Columbia and problems specific to parks in the District of Columbia and its environs, and responds to local court decisions.

The only changes that occurred in these sections when they were transposed were: (1) Corrections of typographical errors in the original sections; (2) revisions in references to

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internal paragraphs and sections; (3) redesignation of "National Capital Parks" as "the National Capital Region", reflecting an administrative name change; (4) deletion of the reference in § 50.19(c) to the availability of permit applications at the National Visitor Center, Union Station, as the National Park Service no longer administers that facility; (5) deletion of the reference to the President's Cup Regatta in § 50.19, as there is no longer such an event; (6) revision in § 50.19 of the location of the Folk Life Festival, held in the Mall each year, as this location has changed slightly; (7) revision in § 50.19(c)(1)(vii), "Inaugural Ceremonies", to change the date "January 20, 1981" to the more general "Inauguration Day" to reflect the true intent of the paragraph; and (8) revisions of text to clarify the intent of certain regulations, to correct grammatical errors or to make consistent the use of terms defined in § 1.4.

4. Changes From Proposed Regulation

The final regulation is changed slightly from the proposed regulation. That change involves the geographical applicability of the provisions concerning demonstrations, solicitations, sales and camping. The proposed regulation had made those provisions applicable only to parks within the District of Columbia, whereas they were formerly applicable to all National Capital Region parks. The change in applicability unintentionally changed the venue of criminal cases brought under those provisions, *that is*, cases brought under regulations applicable only within the District of Columbia are heard in the District of Columbia Superior Court, whereas regulations not applicable exclusively within the District are heard in the United States District Court for the District of Columbia. So as not to change the venue and in order to maintain consistency throughout the National Capital Region parks, the Park Service is making all of the regulations retained from Part 50 applicable to all parks within the National Capital Region.

Drafting Information

The following persons participated in the writing of this rule: Richard G. Robbins and Patricia S. Bangert, Office of the Solicitor, U.S. Department of the Interior.

Paperwork Reduction Act

The information requirements contained in the General Regulations, Parts 2 and 3 of 36 CFR, have been approved by the Office of Management and Budget under 44 U.S.C. 3501, et seq., and assigned clearance number 1024–0026. The information requirements contained in § 7.96 have been approved by the Office of Management and Budget under 44 U.S.C. 3501, et seq., and assigned clearance number 1024–0021.

Compliance with Other Laws

The National Park Service has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291. The National Park Service also has determined that the rule will not have a significant economic impact on a substantial number of small entities and, therefore, does not require a small entity flexibility analysis under 5 U.S.C. 601. The rule eliminates many present restrictions. Which it extends the applicability of other provisions to parks administered by the National Capital Region, the rule makes applicable, to a great extent, provisions that are duplicative of those presently in effect. No new provisions are being instituted. Further, experience has been that the General Regulations have had minimal positive or negative impacts on the following types of businesses: some small businesses selling certain park-related items; local guide services and commercial packers; aircraft salvage companies; local repair shops and filling stations; and ranching and farming interests. Therefore, the rule will have no significant impact on any aspect of the economy.

The National Park Service has further determined that this rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act, 42 U.S.C. 4332, et seq. An environmental assessment and a Finding of No Significant Impact (FONSI) have been prepared by the National Park Service for the general regulations here made applicable to the National Capital Region parks. We adopt those documents here. The documents are available for review at the Division of Visitor Services, National Park Service, 18th and C Street NW., Washington, DC 20240, telephone (202) 343–4874.

List of Subjects

36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

36 CFR Part 50

District of Columbia, National parks.

In consideration of the foregoing, 36 CFR Chapter 1 is amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for Part 1 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460 l–6a(e), 462(k); D.C. Code 8–137, 40–721 (1981).

2. Section 1.2 is revised to read as follows:

§ 1.2 Applicability and scope.

(a) The regulations contained in this chapter apply to all persons entering, using, visiting or otherwise within:

(1) The boundaries of federally-owned lands and waters administered by or subject to the jurisdiction of the National Park Service; or

(2) The boundaries of lands and waters, controlled, leased, administered or otherwise subject to the jurisdiction of the National Park Service, including other Federal reservations in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the Act of March 17, 1948 (62 Stat. 81); or

(3) Less-than-fee interests to the extent necessary to fulfill the purpose of the acquired Federal interest and compatible with the retained nonfederal interest.

(b) The regulations contained in Parts 1 through 5 and Part 7 of this chapter are not applicable on privately owned lands and waters (including Indian lands and waters owned individually or tribally) within the boundaries of a park area, except as may be provided by regulations relating specifically to privately owned lands and waters under the legislative jurisdiction of the United States.

(c) The regulations contained in Part 7 and Part 13 of this chapter are special regulations prescribed for specific park areas. Those regulations may amend, modify, relax or make more stringent the regulations contained in Parts 1 through 5 and Part 12 of this chapter.

(d) The regulations contained in Parts 2 through 5 and Part 7 shall not be construed to prohibit administrative activities conducted by the National Park Service, or its agents, in accordance with approved general management and resources management plans, or in emergency operations involving threats to life, property, or park resources.

3. Paragraph (a) of § 1.4 is amended by adding the following definition after the definition of "Operator" and before the definition of "Pack animal":

§ 1.4 Definitions.

(a) * * *

"Other Federal reservations in the environs of the District of Columbia" means Federal areas, which are not under the administrative jurisdiction of the National Park Service, located in Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the City of Alexandria in Virginia and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland, exclusive of military reservations, unless the policing of military reservations by the U.S. Park Police is specifically requested by the Secretary of Defense or a designee thereof.

* * * * *

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

4. Part 7 is amended as follows:

a. By revising the authority citation to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); section 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

b. By adding a new section 7.96 to read as follows:

§ 7.96 National Capital Region parks.

(a) *Applicability of regulations.* This section applies to all park areas administered by National Capital Region in the District of Columbia and in Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the City of Alexandria in Virginia and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland and to other federal reservations in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the act of March 17, 1948 (62 Stat. 81).

(b) *Athletics*—(1) *Permits for organized games.* Playing baseball, football, croquet, tennis, and other organized games or sports except pursuant to a permit and upon the grounds provided for such purposes, is prohibited.

(2) *Wet grounds.* Persons holding a permit to engage in athletics at certain times and at places authorized for this use are prohibited from exercising the privilege of play accorded by the permit if the grounds are wet or otherwise unsuitable for play without damage to the turf.

(3) *Golf and tennis; fees.* No person may use golf or tennis facilities without paying the required fee, and in compliance with conditions approved by the Regional Director. Trespassing, intimidating, harassing or otherwise interfering with authorized golf players, or interfering with the play of tennis players is prohibited.

(4) *Ice skating.* Ice skating is prohibited except in areas and at times designated by the Superintendent. Skating in such a manner as to endanger the safety of other persons is prohibited.

(c) *Model planes.* Flying a model powered plane from any park area is prohibited without a permit.

(d) *Fishing.* Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(e) *Swimming.* Bathing, swimming or wading in any fountain or pool except where officially authorized is prohibited. Bathing, swimming or wading in the Tidal Basin, the Chesapeake and Ohio Canal, or Rock Creek, or entering from other areas covered by this section the Potomac River, Anacostia River, Washington Channel or Georgetown Channel, except for the purpose of saving a drowning person, is prohibited.

(f) *Commercial vehicles and common carriers*—(1) *Operation in park areas prohibited; exceptions.* Commercial vehicles and common carriers, loaded or unloaded, are prohibited on park roads and bridges except on the section of Constitution Avenue east of 19th Street or on other roads and bridges designated by the Superintendent, or when authorized by a permit or when operated in compliance with paragraph (f)(2) of this section.

(2) *George Washington Memorial Parkway; passenger-carrying vehicles; permits; fees.* (i) Taxicabs licensed in the District of Columbia, Maryland, or Virginia, are allowed on any portion of the George Washington Memorial Parkway without a permit or payment of fees.

(ii) Passenger-carrying vehicles for hire or compensation, other than taxicabs, having a seating capacity of not more than fourteen (14) passengers, excluding the operator, when engaged in services authorized by concession agreement to be operated from the Washington National Airport and/or Dulles International Airport, are allowed on any portion of the George Washington Memorial Parkway in Virginia without a permit or payment of fees. However, when operating on a sightseeing basis an operator of such a vehicle shall comply with paragraph (f)(2)(iv) of this section.

(iii) Passenger-carrying vehicles for hire or compensation, other than those to which paragraphs (f)(2) (i) and (ii) of this section apply, are allowed on the George Washington Memorial Parkway upon issuance of a permit by the Regional Director, under the following conditions:

(A) When operating on a regular schedule: to provide passenger service on any portion between Mount Vernon and the Arlington Memorial Bridge, or to provide limited direct nonstop passenger service from Key Bridge to a terminus at the Central Intelligence Agency Building at Langley, Virginia, and direct return, or to provide limited direct nonstop passenger service from the interchange at Route 123 to a terminus at the Central Intelligence Agency Building at Langley, Virginia, and direct return. Permittees shall file a schedule of operation and all schedule changes with the Regional Director showing the number of such vehicles and total miles to be operated on the parkway.

(B) When operating nonscheduled direct, nonstop service primarily for the accommodation of air travelers arriving at or leaving from Dulles International Airport or Washington National Airport: between Dulles International Airport and a terminal in Washington, DC, over the George Washington Memorial Parkway between Virginia Route 123 and Key Bridge; or between Washington National Airport and a terminal in Washington, D.C., over the George Washington Memorial Parkway between Washington National Airport and 14th Street Bridge; or between Dulles International Airport and Washington National Airport over the George Washington Memorial Parkway between Virginia Route 123 and Washington National Airport. Permittees shall file a report of all operations and total miles operated on the George Washington Memorial Parkway with the Regional Director.

(C) Permits are issued to operators of vehicles described in paragraphs (f)(2)(iii) (A) and (B) normally for a period of one year, effective from July 1 until the following June 30, at the rate of one cent (1) per mile for each mile each such vehicle operates upon the parkway. Payment shall be made quarterly within twenty (20) days after the end of the quarter based upon a certification by the operator of the total mileage operated upon the parkway.

(iv) Sightseeing passenger-carrying vehicles for hire or compensation other than taxicabs may be permitted on the George Washington Memorial Parkway upon issuance of a permit by the Regional Director, to provide sightseeing service on any portion of the parkway. Permits may be issued either on an

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annual basis for a fee of three dollars ($3.00) for each passenger-carrying seat in such vehicle; on a quarterly basis for a fee of seventy-five cents (75) per seat; or on a daily basis at the rate of one dollar ($1.00) per vehicle per day.

(3) *Taxicabs*—(i) *Operations around Memorials.* Parking, except in designated taxicab stands, or cruising on the access roads to the Washington Monument, the Lincoln Memorial, the Jefferson Memorial, and the circular roads around the same, of any taxicab or hack without passengers is prohibited. However, this section does not prohibit the operation of empty cabs responding to definite calls for hack service by passengers waiting at such Memorials, or of empty cabs which have just discharged passengers at the entrances of the Memorials, when such operation is incidental to the empty cabs' leaving the area by the shortest route.

(ii) *Stands.* The Superintendent may designate taxicab stands in suitable and convenient locations to serve the public.

(4) The provisions of this section prohibiting commercial trucks and common carriers do not apply within other Federal reservations in the environs of the District of Columbia and do not apply on that portion of Suitland Parkway between the intersection with Maryland Route 337 and the end of the Parkway at Maryland Route 4, a length of 0.6 mile.

(g) *Demonstrations and special events*—(1) *Definitions.* (i) The term "demonstrations" includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct which involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.

(ii) The term "special events" includes sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, parades, fairs, festivals and similar events (including such events presented by the National Park Service), which are not demonstrations under paragraph (g)(1)(i) of this section, and which are engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term also does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.

(iii) The term "national celebration events" means the annually recurring special events regularly scheduled by the National Capital Region, which are listed in paragraph (g)(4)(i) of this section.

(iv) The term "White House area" means all park areas, including sidewalks adjacent thereto, within these bounds; on the south, Constitution Avenue NW.; on the north, H Street NW.; on the east, 15th Street, NW.; and on the west, 17th Street NW.

(v) The term "White House sidewalk" means the south sidewalk of Pennsylvania Avenue NW., between East and West Executive Avenues NW.

(vi) The term "Lafayette Park" means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Pennsylvania Avenue NW.; on the north, H Street NW.; on the east, Madison Place NW.; and on the west, Jackson Place NW.

(vii) The term "Ellipse" means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Constitution Avenue NW.; on the north, E Street, NW.; on the west, 17th Street NW.; and on the east, 15th Street NW.

(viii) The term "Regional Director" means the official in charge of the National Capital Region, National Park Service, U.S. Department of the Interior, or an authorized representative thereof.

(ix) The term "other park areas" includes all areas, including sidewalks adjacent thereto, other than the White House area, administered by the National Capital Region.

(x) The term "Vietnam Veterans Memorial" means the structures and adjacent areas extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

(2) *Permit requirements.* Demonstrations and special events may be held only pursuant to a permit issued in accordance with the provisions of this section except:

(i) Demonstrations involving 25 persons or fewer may be held without a permit *provided* that the other conditions required for the issuance of a permit are met and *provided further* that the group is not merely an extension of another group already availing itself of the 25-person maximum under this provision or will not unreasonably interfere with other demonstrations or special events.

(ii) Demonstrations may be held in the following park areas without a permit *provided* that the conduct of such demonstrations is reasonably consistent with the protection and use of the indicated park area and the other requirements of this section. The numerical limitations listed below are applicable only for demonstrations conducted without a permit in such areas. Larger demonstrations may take place in these areas pursuant to a permit.

(A) *Franklin Park.* Thirteenth Street, between I and K Streets NW., for no more than 500 persons.

(B) *McPherson Square.* Fifteenth Street, between I and K Streets NW., for no more than 500 persons.

(C) *U.S. Reservation No. 31.* West of 18th Street and south of H Street NW., for no more than 100 persons.

(D) *Rock Creek and Potomac Parkway.* West of 23rd Street, south of P Street NW., for no more than 1,000 persons.

(E) *U.S. Reservation No. 46.* North side of Pennsylvania Avenue, west of Eighth Street and south of D Street, SE., for no more than 25 persons and south of D Street SE., for no more than 25 persons.

(3) *Permit applications.* Permit applications may be obtained at the Office of Public Affairs, National Capital Region, 1100 Ohio Drive SW., Washington, DC 20242. Applicants shall submit permit applications in writing on a form provided by the National Park Service so as to be received by the Regional Director at least 48 hours in advance of any proposed demonstration or special event. This 48-hour period will be waived by the Regional Director if the size and nature of the activity will not reasonably require the commitment of park resources or personnel in excess of that which are normally available or which can reasonably be made available within the necessary time period. The Regional Director shall accept permit applications only during the hours of 8 a.m.–4 p.m., Monday through Friday, holidays excepted. All demonstration applications, except those seeking waiver of the numerical limitations applicable to Lafayette Park (paragraph (g)(5)(ii) of this section), are deemed granted, subject to all limitations and restrictions applicable to said park area, unless denied within 24 hours of receipt. However, where a permit has been granted, or is deemed to have been granted pursuant to this subsection, the Regional Director may revoke that permit pursuant to paragraph (g)(6) of this section.

(i) *White House area.* No permit may be issued authorizing demonstrations in the White House area, except for the White House sidewalk, Lafayette Park and the Ellipse. No permit may be issued authorizing special events, except for the Ellipse, and except for annual commemorative wreath-laying ceremonies relating to the statutes in Lafayette Park.

(ii) *Other park areas.* No permits may be issued authorizing demonstrations or special events in the following other park areas:

(A) The Washington Monument, which means the area enclosed within the inner circle that surrounds the Monument's base, except for the official annual commemorative Washington birthday ceremony.

(B) The Kennedy Center, which means the area under the administration of the National Park Service within the building known as the John F. Kennedy Center for the Performing Arts and includes the roof terrace and outdoor terraces on the north, south, and west portions of the institution as well as the driveways leading to the parking garages. For the purpose of this section, the term "Kennedy Center" does not include the east building sidewalk, outdoor plaza or grassy areas at the Center. Demonstrations are permitted on those latter areas *provided* entrances to the Center are not obstructed or vehicular traffic in its vicinity is not impeded.

(C) The Lincoln Memorial, which means that portion of the park area which is on the same level or above the base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level, except for the official annual commemorative Lincoln birthday ceremony.

(D) The Jefferson Memorial, which means the circular portion of the Jefferson Memorial enclosed by the outermost series of columns, and all portions on the same levels or above the base of these columns, except for the official annual commemorative Jefferson birthday ceremony.

(E) The Vietnam Veterans Memorial, except for official annual Memorial Day and Veterans Day commemorative ceremonies. Note: The darkened portions of the diagrams at the conclusion of paragraph (g) of this section show the areas where demonstrations or special events are prohibited.

(4) *Permit processing.* (i) Permit applications for demonstrations and special events are processed in order of receipt, and the use of a particular area is allocated in order of receipt of fully executed applications, subject to the limitations set forth in this section. *Provided, however,* that the following national celebration events have priority use of the particular park area during the indicated period.

(A) *Christmas Pageant of Peace.* In the oval portion of the Ellipse only, during approximately the last three weeks in December.

(B) *Cherry Blossom Festival.* In the Japanese Lantern area adjacent to the Tidal Basin and on the Ellipse and the Washington Monument Grounds adjacent to Constitution Avenue, between 15th & 17th Streets NW., for six days usually in late March or early April.

(C) *Fourth of July Celebration.* On the Washington Monument Grounds.

(D) *Festival of American Folklife.* In the area bound on the south by Jefferson Drive NW.; on the north by Madison Drive NW.; on the east by 7th Street NW.; on the west by 14th Street NW., for a two-week period in approximately late June and early July.

(E) *Columbus Day Commemorative Wreath-Laying.* At the Columbus statue on the Union Plaza on Columbus Day.

(F) *Inaugural ceremonies.* The White House sidewalk and Lafayette Park, exclusive of the northeast quadrant, for the exclusive use of the Inaugual Committee on Inauguration Day.

(ii) Other demonstrations or special events are permitted in park areas under permit to the National Celebration Events listed in this paragraph to the extent that they do not significantly interfere with the National Celebration Events. No activity containing structures is permitted closer than 50 feet to another activity containing structures without the mutual consent of the sponsors of those activities.

(iii) A permit may be denied in writing by the Regional Director upon the following grounds:

(A) A fully executed prior application for the same time and place has been received, and a permit has been or will be granted authorizing activities which do not reasonably permit multiple occupancy of the particular area; in that event, an alternate site, if available for the activity, will be proposed by the Regional Director to the applicant.

(B) It reasonably appears that the proposed demonstration or special event will present a clear and present danger to the public safety, good order, or health.

(C) The proposed demonstration or special event is of such a nature or duration that it cannot reasonably be accommodated in the particular area applied for; in that event, the Regional Director shall propose an alternate site to the applicant, if available for the activity; in this connection, the Regional Director shall reasonably take into account possible damage to the park, including trees, shrubbery, other plantings, park installations and statues.

(D) The application proposes activities contrary to any of the provisions of this section or other applicable law or regulation.

(5) *Permit limitations.* Issuance of a permit is subject to the following limitations:

(i) No more than 750 persons are permitted to conduct a demonstration on the White House sidewalk at any one time.

(ii) No more than 3,000 persons are permitted to conduct a demonstration in Lafayette Park at any one time.

(A) The Regional Director may waive the 3,000 person limitation for Lafayette Park and/or the 750 person limitation for the White House Sidewalk upon a showing by the applicant that good faith efforts will be made to plan and marshal the demonstration in such a fashion so as to render unlikely any substantial risk of unreasonable disruption or violence.

(B) In making a waiver determination, the Regional Director shall consider and the applicant shall furnish at least ten days in advance of the proposed demonstration, the functions the marshals will perform, the means by which they will be identified, and their method of communication with each other and the crowd. This requirement will be satisfied by completion and submission of the same form referred to in paragraph (g)(3) of this section.

(iii) No permit will be issued for a demonstration on the White House Sidewalk and in Lafayette Park at the same time except when the organization, group, or other sponsor of such demonstration undertakes in good faith all reasonable action, including the provision of sufficient marshals, to insure good order and self-discipline in conducting such demonstration and any necessary movement of persons, so that the numerical limitations and waiver provisions described in paragraphs (g)(5) (i) and (ii) of this section are observed.

(iv) No permit will be issued authorizing demonstrations or special events in excess of the time periods set

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out below: *Provided, however,* that the stated periods will be extended for demonstrations only, unless another application requests use of the particular area and said application precludes double occupancy:

(A) White House area, except the Ellipse: Seven days.

(B) The Ellipse and all other park areas: Three weeks.

(v) The Regional Director may restrict demonstrations and special events weekdays (except holidays) between the hours of 7:00 to 9:30 a.m. and 4:00 to 6:30 p.m. if it reasonably appears necessary to avoid unreasonable interference with rush-hour traffic.

(vi) Special events are not permitted unless approved by the Regional Director. In determining whether to approve a proposed special event, the Regional Director shall consider and base the determination upon the following criteria:

(A) Whether the objectives and purposes of the proposed special event relate to and are within the basic mission and responsibilities of the National Capital Region, National Park Service.

(B) Whether the park area requested is reasonably suited in terms of accessibility, size, and nature of the proposed special event.

(C) Whether the proposed special event can be permitted within a reasonable budgetary allocation of National Park Service funds considering the event's public appeal, and the anticipated participation of the general public therein.

(D) Whether the proposed event is duplicative of events previously offered in National Capital Region areas or elsewhere in or about Washington, DC.

(E) Whether the activities contemplated for the proposed special event are in conformity with all applicable laws and regulations.

(vii) In connection with permitted demonstrations or special events, temporary structures may be erected for the purpose of symbolizing a message or meeting logistical needs such as first aid facilities, lost children areas or the provision of shelter for electrical and other sensitive equipment or displays. Temporary structures may not be used outside designated camping areas for living accommodation activities such as sleeping, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Temporary structures are permitted to the extent described above, provided prior notice has been given to the Regional Director, except that:

(A) Structures are not permitted on the White House sidewalk.

(B) All such temporary structures shall be erected in such a manner so as not to harm park resources unreasonably and shall be removed as soon as practicable after the conclusion of the permitted demonstration or special event.

(C) The Regional Director may impose reasonable restrictions upon the use of temporary structures in the interest of protecting the park areas involved, traffic and public safety considerations, and other legitimate park value concerns.

(D) Any structures utilized in a demonstration extending in duration beyond the time limitations specified in paragraphs (g)(5)(iv) (A) and (B) of this section shall be capable of being removed upon 24 hours notice and the site restored, or, the structure shall be secured in such a fashion so as not to interfere unreasonably with use of the park area by other permittees authorized under this section.

(E) Individuals or groups of 25 persons or fewer demonstrating under the small group permit exemption of paragraph (g)(2)(i) of this section are not allowed to erect temporary structures other tan small lecterns or speakers' platforms. This provisions does not restrict the use of portable signs or banners.

(viii) No signs or placards shall be permitted on the White House sidewalk except those made of cardboard, posterboard or cloth having dimensions no greater than three feet in width , twenty feet in length, and one-quarter inch in thickness. No supports shall be permitted for signs or placards except those made of wood having cross-sectional dimensions no greater than three-quarter of an inch by three-quarter of an inch. Stationary signs or placards shall be no closer than three feet from the White House sidewalk fence. All signs and placards shall be attended at all times that they remain on the White House sidewalk. Signs or placards shall be considered to be attended only when they are in physical contact with a person. No signs or placards shall be tied, fastened, or otherwise attached to or leaned against the White House fence, lamp posts or other structures on the White House sidewalk. No signs or placards shall be held, placed or set down on the center portion of the White House sidewalk, comprising ten yards on either side of the center point on the sidewalk; *Provided, however,* that individuals may demonstrate while carrying signs on that portion of the sidewalk if they continue to move along the sidewalk.

(ix) No parcel, container, package, bundle or other property shall be placed or stored on the White House sidewalk or on the west sidewalk of East Executive Avenue NW., between Pennsylvania Avenue NW., and E Street NW., or on the north sidewalk of E Street NW., between East and West Executive Avenues NW.; *Provided, however,* that such property, except structures, may be momentarily placed or set down in the immediate presence of the owner on those sidewalks.

(x) The following are prohibited in Lafyette Park:

(A) The erection, placement or use of structures of any kind except for the following:

(*1*) Structures that are being hand-carried are allowed.

(*2*) When one hundred (100) or more persons are participating in a demonstration in the Park, a temporary speaker's platform as is reasonably required to serve the demonstration participants is allowed as long as such platform is being erected, dismantled or used, *provided that* only one speaker's platform is allowed per demonstrating group, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (g) of this section.

(*3*) When less than one hundred (100) persons are participating in a demonstration in the Park, a temporary "soapbox" speaker's platform is allowed as long as such platform is being erected, dismantled or used, *providing that* only one speaker's platform is allowed per demonstrating group, and *provided further that* the speaker's platform is no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (g) of this section.

(*4*) For the purpose of this section, the term "structure" includes props and displays, such as coffins, crates, crosses, theaters, cages, and statues; furniture and furnishings, such as desks, chairs, tables, bookcases, cabinets, platforms, podiums and lecterns; shelters, such as tents, boxes and other enclosures; wagons and carts; and all other similar types of property which might tend to harm park resources including aesthetic interests. *Provided however* that the term "structure" does not include signs; bicycles, baby carriages and baby strollers lawfully in the Park that are temporarily placed in, or are being moved across, the Park, and that are attended at all times while in the Park (the term "attended' is defined as an individual being within three (3) feet of his or her bicycle, baby carriage or baby stroller); and wheelchairs and other devices for the handicapped in use by handicapped persons.

(B) The use of signs except for the following:

(*1*) Hand-carried signs are allowed regardless of size.

(*2*) Signs that are not being hand-carried and that are no larger than four (4) feet in length, four (4) feet in width and one-quarter (¼) inch in thickness (exclusive of braces that are reasonably required to meet support and safety requirements and that are not used so as to form an enclosure of two (2) or more sides) may be used in Lafayette Park, *provided that* no individual may have more than two (2) such signs in the Park at any one time, and *provided further that* such signs must be attended at all times (the term "attended' is defined as an individual being within three (3) feet of his or her sign(s)), and *provided further that* such signs may not be elevated in a manner so as to exceed a height of six (6) feet above the ground at their highest point, may not be arranged or combined in a manner so as to exceed the size limitations set forth in this paragraph, and may not be arranged in such a fashion as to form an enclosure of two (2) or more sides. For example, under this provision, two four-feet by four-feet signs may not be combined so as to create a sign eight feet long and four feet wide, and three such signs may not be arranged to create a sign four feet long and twelve feet wide, and two or more signs of any size may not be leaned or otherwise placed together so as to form an enclosure of two or more sides, etc.

(xi) Stages and sound amplification may not be placed closer than one hundred (100) feet from the boundaries of the Vietnam Veterans Memorial and sound systems shall be directed away from the memorial at all times.

(xii) Sound amplification equipment is allowed in connection with permitted demonstrations or special events, provided prior notice has been given to the Regional Director, except that:

(A) Sound amplification equipment may not be used on the White House sidewalk, other than hand-portable sound amplification equipment which the Regional Director determines is necessary for crowd-control purposes.

(B) The Regional Director reserves the right to limit the sound amplification equipment so that it will not unreasonably disturb nonparticipating persons in, or in the vicinity of, the area.

(xiii) A permit may contain additional reasonable conditions and additional time limitations, consistent with this section, in the interest of protecting park resources, the use of nearby areas by other persons, and other legitimate park value concerns.

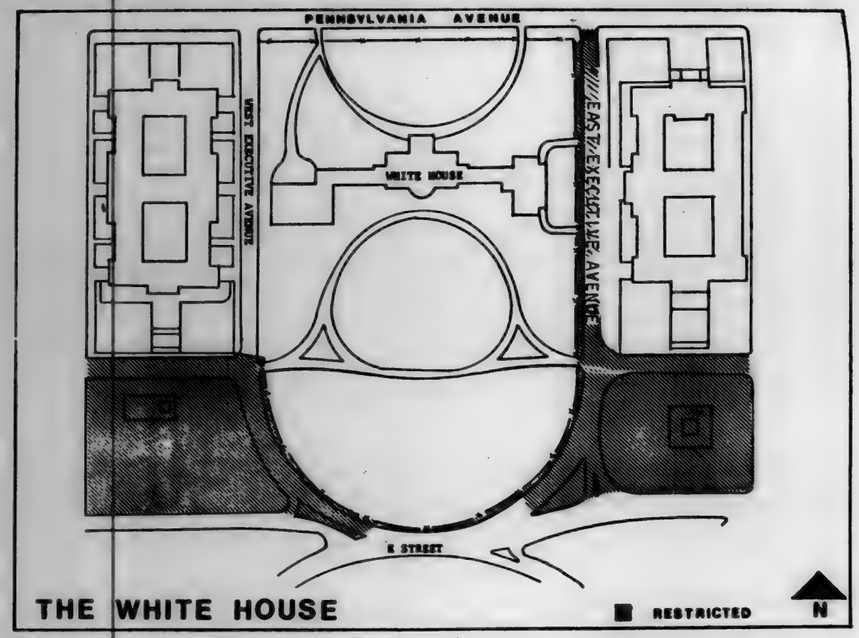
(xiv) A permit issued under this section does not authorize activities outside of areas under administration by the National Capital Region. Applicants may also be required to obtain a permit from the District of Columbia or other appropriate governmental entity for demonstrations or special events sought to be conducted either wholly or in part in other than park areas.

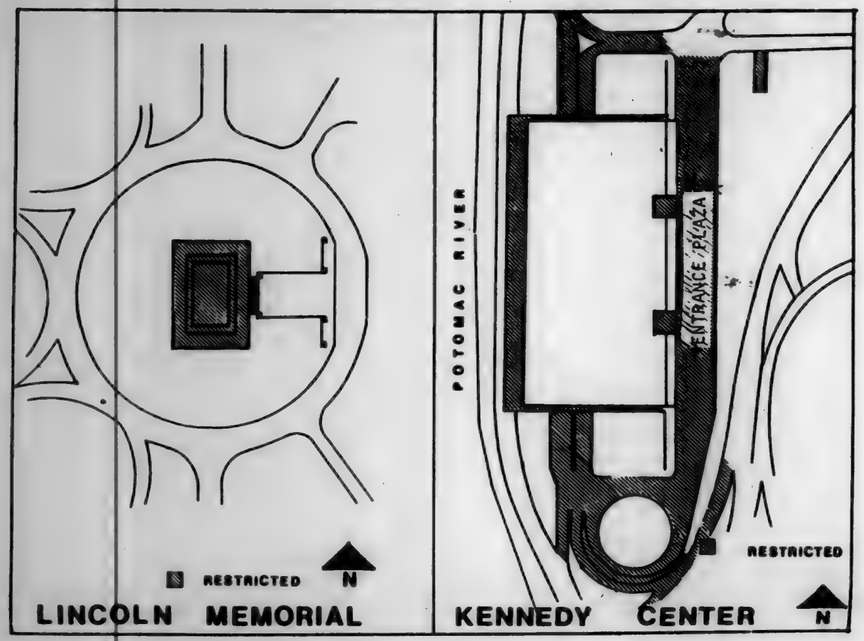
(6) *Permit revocation.* A permit issued for a demonstration is revocable only upon a ground for which an application therefor would be subject to denial under paragraphs (g) (4) or (5) of this section. Any such revocation, prior to the conduct of the demonstration, shall be in writing and shall be approved by the Regional Director. During the conduct of a demonstration, a permit may be revoked by the ranking U.S. Park Police supervisory official in charge if continuation of the event presents a clear and present danger to the public safety, good order or health or for any violation of applicable law or regulation. A permit issued for a special event is revocable, at any time, in the reasonable discretion of the Regional Director.

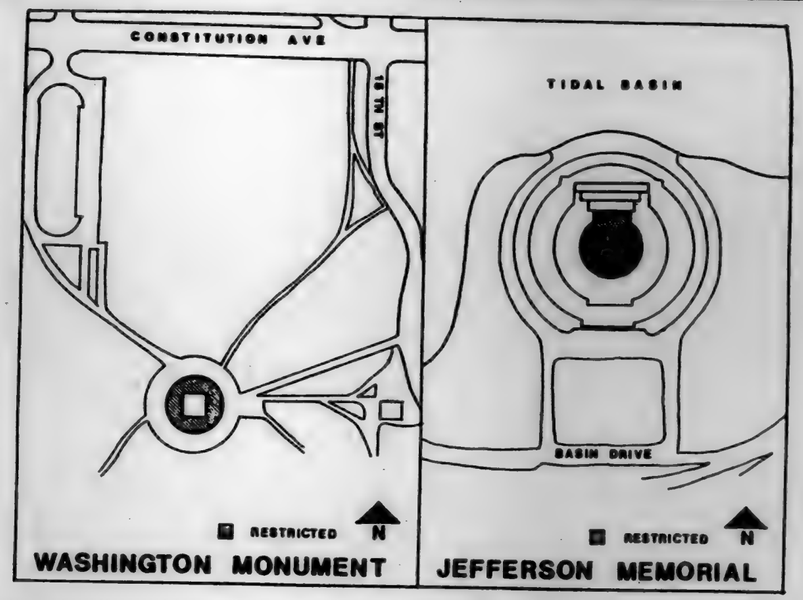
(7) Further information on administering these regulations can be found in policy statements published at 47 FR 24289, June 4, 1982, and at 47 FR 24302, June 4, 1982. Copies of the policy statements may be obtained from the Regional Director.

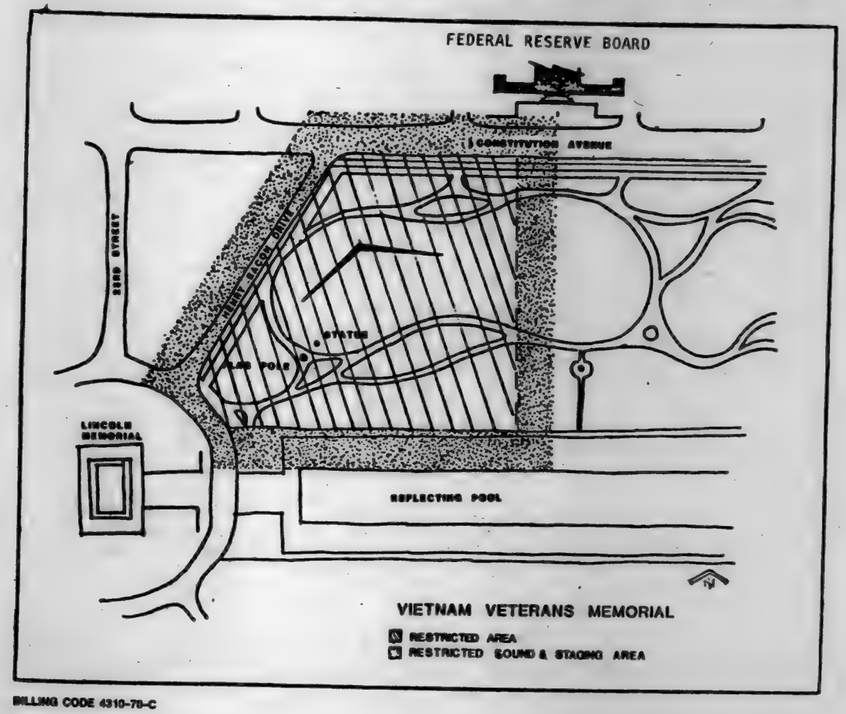
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(h) *Soliciting.* Soliciting or demanding gifts, money, goods or services is prohibited.

(i) *Camping.* (1) Camping is defined as the use of park land for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Camping is permitted only in areas designated by the Superintendent, who may establish limitations of time allowed for camping in any public campground. Upon the posting of such limitations in the campground, no person shall camp for a period longer than that specified for the particular campground.

(2) Further information on administering these regulations can be found in policy statements published at 47 FR 24302 (June 4, 1982). Copies of the policy statements may be obtained from the Regional Director.

(j) *Sales.* (1) No sales shall be made nor admission fee charged and no article may be exposed for sale without a permit except as noted in the following paragraphs.

(2) The sale or distribution of newspapers, leaflets, and pamphlets, conducted without the aid of stands or structures, is allowed in all park areas open to the general public without a permit except the following areas where such sale or distribution is prohibited:

(i) Lincoln Memorial area which is on the same level or above the base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level.

(ii) Jefferson Memorial area enclosed by the outermost series of columns, and all portions on the same levels or above the base of these columns.

(iii) Washington Monument area enclosed within the inner circle that surrounds the Monument's base.

(iv) The interior of all park buildings, including, but not limited to, those portions of the Kennedy Center and Ford's Theatre administered by the National Park Service.

(v) The White House Park area bounded on the north by H Street, NW.; on the south by Constitution Avenue, NW.; on the west by 17th Street, NW.; and on the east by 15th Street, NW.; except for Lafayette Park, the White House sidewalk (the south Pennsylvania Avenue, NW. sidewalk between East and West Executive Avenues) and the Ellipse.

(vi) Vietnam Veterans Memorial area extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

(3) The sale and distribution of newspapers, leaflets and pamphlets from fixed location stands is permitted within the Kennedy Center, provided a permit to do so has been issued by the General Manager: *And provided further,* that the printed matter is not primarily commercial advertising.

(i) An application for such a permit must set forth the name of the applicant; the name of the organization, if any; the date, time, duration, and location of the proposed sale or distribution; and the number of participants.

(ii) The General Manager shall, without unreasonable delay, issue a permit on proper application unless:

(A) A prior application for a permit for the same time and location has been made which has been or will be granted and the activities authorized by that permit do not reasonably permit multiple occupancy of the particular area;

(B) The sale or distribution will present a clear and present danger to the public health or safety;

(C) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for;

(D) The location applied for has not been designated as available for the sale or distribution of printed matter; or

(E) The activity would constitute a violation of an applicable law or regulation.

(iii) If an application for a permit is denied, the General Manager shall so inform the applicant in writing, with the reason(s) for the denial clearly set forth.

(iv) The General Manager shall designate on a map, which shall be available for inspection in the Office of the General Manager, the locations within the Kennedy Center that are available for the sale or distribution of printed matter. Locations may be designated as not available only if the sale or distribution of printed matter would:

(A) Cause injury or damage to park resources;

(B) Unreasonably impair the atmosphere of peace and tranquility maintained in commemorative areas;

(C) Unreasonably interfere with interpretive, living history, visitor services, or other program activities or with the administrative functions of the National Park Service; or

(D) Substantially impair the operation of public use facilities or services of concessioners or contractors.

(v) The permit may contain such conditions as are reasonably consistent with protection and use of the park area.

(vi) No permit will be issued for a period in excess of 14 consecutive days: *Provided,* That permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(vii) Persons engaged in the sale of distribution of printed matter under paragraph (j) of this section shall not conduct activities from other than a stand in the locations designated, or hawk or call out from the stand. Each stand shall bear a sign identifying the sponsor, in a form approved by the General Manager.

(viii) The sale of distribution or printed matter without a permit, or in violation of the terms or conditions of a permit, is prohibited.

(ix) A permit may be revoked under any of those conditions, as listed in paragraph (j)(3)(ii) of this section, which constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation.

(4) Persons engaged in the sale or distribution of printed matter under this section shall not obstruct or impede pedestrians or vehicles, harass park visitors with physical contact, misrepresent the purposes or affiliations of those engaged in the sale or distribution, misrepresent whether the printed matter is available without cost or donation.

(k) *Information collection.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0021. The information is being collected to provide notification to park managers, United States Park Police, Metropolitan Police, and the Secret Service of the plans of organizers of large-scale demonstrations and special events in order to assist in the provision of security and logistical support. This information will be used to further those purposes. The obligation is required to obtain a benefit.

PART 50—[REMOVED]

5. Part 50 is removed.

Dated: September 23, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–23298 Filed 10–16–86; 8:45 am]

BILLING CODE 4310-70-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM87–1 and MC86–2; Order No. 712]

Amendment to Domestic Mail Classification Schedule, Third-Class Mail Preparation Requirements; Order Adopting Final Rule

Issued: October 10, 1986.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with the October 7, 1986, adoption of the Postal Rate Commission's recommended Docket No. MC86–2 decision by the Governors of the Postal Service, the Commission is publishing the corresponding changes for the Domestic Mail Classification Schedule (DMCS). The DMCS is found as Appendix A to Subpart C of the Commission's rules of practice and procedure (39 CFR 3001.61 through 3001.67). This change concerns the preparation requirements for third-class mail eligible for the five-digit presort level rates.

EFFECTIVE DATE: October 9, 1986.

ADDRESS: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street NW., Suite 300 Washington, DC 20268 (telephone: 202/789–6820).

SUPPLEMENTAL INFORMATION: On December 26, 1985, the Postal Service filed a case, pursuant to 39 U.S.C. 3623, requesting that the Domestic Mail Classification Schedule (DMCS) be amended to change the definition of bulk third-class mail eligible for the five-digit presort rate in light of operating changes since the classification was established. The Commission invited interested persons to comment and participate in the proceeding. 51 FR 795–96 (Jan. 8, 1986). A Postal Service witness testified at a public hearing on May 6, 1986. The Commission gave the parties the opportunity to file briefs and reply briefs. On September 9, 1986, the Commission issued a decision recommending a change in § 300.0231 of the DMCS. The Board of Governors approved the recommended decision on October 7, 1986, and set October 9, 1986, as the effective date for the change. A temporary change producing the same effect as the amended § 300.0231 had been in effect since April 7, 1986. The temporary language is superseded by the amended § 300.0231 effective October 9, 1986. The amendment to the DMCS which is published in this order reflects the Governors' October 7, 1986, decision. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85–1) which led to the publication of the DMCS in the **Federal Register,** this addition is published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

List of Changes

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303 (5 U.S.C. 553), 80 Stat. 383.

2. The following change in the Domestic Mail Classification Schedule published as Appendix A to Subpart C (39 CFR 3001.61 through 3001.67) of the Commission's rules of practice and procedure is adopted:

Revise 300.0231 to read as follows:

300.0231 Five-Digit Presort Level

Five-digit presort level mailings must contain at least 200 pieces or 50 pounds of five-digit presorted mail prepared in accordance with USPS regulations so as to avoid handling of individual pieces prior to incoming secondary distribution.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 86–23501 Filed 10–16–86; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3096-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the solid wastes generated at three particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: October 17, 1986.

ADDRESS: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–BBEF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424–9346, or (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection

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Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTAL INFORMATION: On September 18, 1986, EPA proposed to exclude specific wastes generated by three facilities, including: (1) BBC Brown Boveri, Incorporated, located in Sanford, Florida (see 51 FR 33069); (2) Pamcor C, Incorporated, located in Las Piedras, Puerto Rico (see 51 FR 33071); and William L. Bonnell Company, located in Carthage, Tennessee (see 51 FR 33072). These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final the three proposals and to make our decisions effective immediately. More specifically, today's rule allows these three facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[1] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

[1] The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[2] To date only one State (Georgia) has received approval for their delisting program. The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

BBC Brown Boveri, Inc., Sanford, Florida;
Pamcor C, Inc., Las Piedras, Puerto Rico;
William L. Bonnell Co., Carthage, Tennessee.

I. BBC Brown Boveri, Inc.

A. Proposed Exclusion

BBC Brown Boveri, Inc. (BBC) has petitioned the Agency to exclude its wastewater treatment sludge (dewatered sludge) from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by BBC substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by BBC indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 33069–33071, September 18, 1986, for a more detailed explanation of why EPA proposed to grant BBC's petition.)

[2] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to BBC for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the dewatered sludge is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to BBC Brown Boveri, Inc. for its wastewater treatment sludge (EPA Hazardous Waste No. F006) generated at BBC's Sanford, Florida facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[3] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. Pamcor C, Inc.

A. Proposed Exclusion

Pamcor C, Inc. (Pamcor) has petitioned the Agency to exclude its wastewater treatment sludge (drummed sludge) from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Pamcor substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Pamcor indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 33071–33072, September 18, 1986, for a more detailed explanation of why EPA proposed to grant Pamcor's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Pamcor for the waste identified in its petition.

[3] See footnote 1.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the drummed sludge is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Pamcor C, Inc. for its wastewater treatment sludge (EPA Hazardous Waste No. F006) generated at Pamcor's Las Piedras, Puerto Rico facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[4] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

III. William Bonnell Company

A. Proposed Exclusion

William L. Bonnell Company (Bonnell) has petitioned the Agency to exclude its wastewater treatment sludge (vacuum filter sludge) from EPA Hazadous Waste No. F019, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Bonnell substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Bonnell indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (see 51 FR 33072–33073, September 18, 1986, for a more detailed explanation of why EPA proposed to grant Bonnell's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Bonnell for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the vacuum filter sludge is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to William L. Bonnell Company for its dewatered wastewater treatment sludge (vacuum filter sludge) resulting from the chemical conversion coating of aluminum, listed as EPA Hazardous Waste No. F019, generated at its Carthage, Tennessee facility.[5] (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[6] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

[4] See footnote 1.

[5] Bonnell petitioned the Agency to exclude its wastewater treatment sludge and sludge contained in its on-site surface impoundments. This final exclusion applies only to the wastewater treatment sludges currently generated at the facility, and not to sludges in the on-site impoundments.

[6] See footnote 1.

IV. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

VII. List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: October 10, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 as indicated:

Appendix IX—[Amended]

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
• • •	• • •	• • •
BBC Brown Boveri, Inc.	Sanford, FL	Dewatered Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after October 17, 1986.
• • •	• • •	• • •
Pamcor C, Inc.	Las Piedras, PR	Dewatered Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after October 17, 1986.
• • •	• • •	• • •
William L. Bonnell Co.	Carthage, TN	Dewatered Wastewater treatment sludges (Vacuum filter sludge) (EPA Hazardous Waste No. F019) currently generated from the chemical conversion coating of aluminum after October 17, 1986. This exclusion does not apply to sludges in the on-site surface impoundments.

[FR Doc. 86–23561 Filed 10–16–86; 8:45 am]
BILLING CODE 6560–50–M

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 19

[FCC 86-404]

Conflict of Interests; Editorial Amendment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Order, the Commission is amending its conflict of interest rules to correct citations therein.

EFFECTIVE DATE: November 6, 1986.

FOR FURTHER INFORMATION CONTACT: A. Holly Kaufman, Office of General Counsel, (202) 632-6990.

Amendment of § 19.735-204(e)(3) of the Commission's Rules; Order

Adopted: September 19, 1986.
Released: September 30, 1986.

By the Commission

1. In 1983, the Commission amended certain provisions of its conflict of interest rules with respect to prohibited financial holdings of its employees. *Financial Interests of Commissioners and Employees of the Commission in Entities Regulated by the Commission.* 48 FR 38240 (Aug. 23, 1983). That amendment revised § 19.735-204(e)(3), which requires an employee to avoid participating in any matter in which a person with whom such employee is negotiating, or from whom he has accepted employment, has a financial interest. Section 19.735-204(e)(3) was intended to cross reference that section of Part 19 which sets forth the procedures for filing disqualification statements. Currently, the cross reference refers to § 19.735-412(e), which no longer exists. That section was renumbered as section 412(b)(7). The cross reference, therefore, should be changed to reflect this recodification. Thus, this Order is issued for the purpose of revising § 19.735-204(e)(3) to correct the cross reference from former § 19.735-412(e) to the current § 19.735-412(b)(7).

2. Additionally, the authority citation for Part 19 of the Commission's rules contains several typographical errors and is being amended pursuant to 5 U.S.C. 553(a)(3)(A).

3. We find that prior notice and comment procedures are unnecessary to implement these rule amendments, because the amendments involve general rules of agency organization, practice or procedure. *See* 5 U.S.C. 553(b)(3)(A).

4. In view of the foregoing and pursuant to sections 4 (i) and (j) of the Communications Act of 1934, as amended, IT IS HEREBY ORDERED that Part 19 of the Commission's Rules is amended as set forth below, effective November 6, 1986.

List of Subjects in 47 CFR Part 19

Conflict of interests.

Federal Communications Commission.
William J. Tricarico,
Secretary.

PART 19—[AMENDED]

Part 19 of Title 47 of the CFR is amended as follows:

1. The authority citation for Part 19 is revised to read as follows:

Authority: E.O. 11222, 3 CFR 1965 Comp., 5 CFR 735.104, unless otherwise noted.

2. Section 19.735-204 is amended by revising paragraph (e)(3) to read as follows:

§ 19.735-204 Financial interests.

* * * * *

(e) * * *

(3) An employee may not participate in his governmental capacity in any matter in which a person from whom he has accepted employment, or with whom he is negotiating for employment, has a financial interest. At the outset of negotiations with such a prospective employer, the employee shall notify his immediate supervisor. The supervisor shall review the employee's current assignments and responsibilities and discharge him from any that could affect the interests of the prospective employer. The employee shall thereupon file a statement of disqualification and non-participation pursuant to § 19.735-412(b)(7). The statement shall continue in effect until such time (if any) as the negotiations are unsuccessfully terminated.

* * * * *

[FR Doc. 86-23503 Filed 10-16-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 22

[CC Docket No. 86-165]

Simplification of the Separate Subsidiary; Reporting Requirement

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has determined that the separate subsidiary reporting requirement in the Common Carrier Bureau's Domestic Public Cellular Radio Telecommunications Service should be modified. Specifically, separate subsidiaries will be required to file only those agreements between themselves and their parent Bell companies or affiliates that relate directly or interconnection with landline exchange and transmission facilities. This action is taken in response to comments received as a result of our Notice of Proposed Rulemaking, 51 FR 17366.

EFFECTIVE DATE: December 8, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia McClain-Hill, tele: (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's report and order, CC Docket 86-165, adopted September 16, 1986, and released October 1, 1986.

The complete text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On April 18, 1986, the Commission adopted a Notice of Proposed Rulemaking (Notice) which solicited comments concerning a proposed change in the rules to require that separate subsidiaries in the Common Carrier Bureau's Domestic Public Cellular Radio Telecommunications Service file only those agreements with parent BOC's or affiliates that relate specifically to interconnection with landline exchange and transmission facilities. After careful consideration of the comments, the Commission adopted the proposed rule.

2. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b) it is certified that the final rule will not have a significant impact on a substantial number of small entities. This action is expected to promote efficient and expedient authorization of cellular licenses and lower the administrative costs associated with the process of granting cellular licenses.

3. Authority for this rulemaking is contained in sections 1, 4 (i) and (j), 301, 303 and 309 of the Communications Act

of 1934, as amended, and section 553 of the Administrative Procedure Act.

List of Subjects in 47 CFR Part 22

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.
William J. Tricarico,
Secretary.

47 CFR Chapter Part 22 is amended as follows:

PART 22—PUBLIC MOBILE RADIO SERVICES

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.901 is amended by revising paragraph (c)(3) to read as follows:

§ 22.901 Eligibility.

* * * * *

(c) * * *

(3) All transactions between the separate corporation and the carrier or its affiliates which involve the transfer, either direct or by accounting or other record entries, of money, personnel, resources, other assets or anything of value, shall be reduced to writing. A copy of any contract, agreement or other arrangement entered into between such entities with regard to interconnection with landline network exchange and transmission facilities shall be filed with the Commission within thirty days after the contract, agreement or other arrangement is made. A copy of all other contracts, agreements or arrangements between such entities shall be kept available by the separate corporation for inspection upon reasonable request by the Commission. The provision shall not apply to any transaction governed by the provision of an effective state or federal tariff.

* * * * *

[FR Doc. 86-23505 Filed 10-16-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 43

[CC Docket No. 86-192, FCC 86-396]

Common Carrier Service; Elimination of Reporting Requirement for Maritime Radio Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has eliminated the requirement that maritime radio carriers file Annual Report Form M. This decision is part of the Commission's overall effort to eliminate unnecessary and burdensome reporting requirements.

EFFECTIVE DATE: November 6, 1986.

FOR FURTHER INFORMATION CONTACT: Katie Rangos at (202) 632-0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's report and Order, CC Docket 86-192, adopted September 17, 1986 and released September 30, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M St., Northwest, Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On May 9, 1986, the Commission issued a Notice of Proposed Rulemaking (Notice) CC Docket No. 86-192, FCC 86-247, released May 15, 1986, that proposed to eliminate the reporting requirement of maritime radio carriers. In that *Notice* we reasoned that the reports of the maritime radio carriers are used infrequently and thus unnecessarily burdened both the companies and the staff. Although ample time was given, there were no comments submitted to that *Notice*. We take this lack of response as a strong indication that this requirement should not be retained. Thus, we are amending our rules to eliminate the reporting requirement for maritime radio carriers.

2. Section 43.21 of the Commission's Rules (47 CFR 43.21) and Annual Report Form M require that communication common carriers in the maritime radio service having annual operating revenues in excess of $50,000 shall file annual reports with the Commission. The Form M is a 93 page report that contains detailed information on stock and stockholders; officers and director; and financial and operating data of the companies.

3. The maritime radio carriers Form M reports have been used on an infrequent and limited basis. The Form M is primarily a telephone company report with only one schedule pertaining to maritime carrier operations. As stated in the *Notice*, we do not publish any information from the maritime radio reports comparable to the statistical tabulations of the telephone carrier reports.

4. Finally, we note that this Commission retains the authority to undertake special studies requesting detailed information if necessary. A special study could be designed so as to acquire the specific information in the least costly manner possible. Eliminating the maritime radio filing requirement thus will reduce the burden on both the industry and this Commission without impairing this Commission's ability to regulate effectively.

5. The requirement of § 43.21 that maritime radio carriers file Form M is unnecessary and burdensome. The information filed by the maritime carriers is not used by this Commission for any ongoing regulatory purpose. The filing taxes the resources of the carrier without any substantive benefits. Eliminating the requirement will also be consistent with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) which requires agencies to revoke rules that serve no beneficial function. OMB approval is not necessary because there are less than 10 maritime carriers submitting Form M.

6. Accordingly, it is ordered, that pursuant to the provisions of section 4(i), 219, 220, 403 and 404 of the Communication Act of 1934, as amended, 47 U.S.C. 54(i), 219, 220, 403 and 404, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, the policies discussed herein are adopted, and that Section 43.21 of the Commission's Rules, 47 CFR 43.21, and Annual Report Form are amended as set forth in the Appendix, effective November 6, 1986.

7. It is further ordered, that this proceeding is hereby terminated.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and record keeping requirements, Marine.

Federal Communications Commission
William J. Tricarico,
Secretary.

Rule Change

PART 43—[AMENDED]

Part 43, Chapter 1 of Title 47, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 43 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted.

2. Section 43.21(a) is revised to read as follows:

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§ 43.21 Annual reports of carriers and certain affiliates.

(a) Communication common carriers having annual operating revenues in excess of $100 million, licensees in the Domestic Public Land Mobile Radio Service, Licensees in the Domestic Public Point-to-Point Microwave Radio Service who are miscellaneous common carriers as defined by § 21.1 of this chapter, communication common carriers operating to overseas points having annual operating revenues in excess of $50,000, and certain companies (as indicated in paragraph (c) of this section) directly or indirectly controlling such carriers shall file with the Commission annual reports as provided in this section. Except as provided in paragraph (c) of this section, each annual report required by this section shall be filed not later than March 31 of each year, covering the preceding calendar year. It shall be filed on the appropriate report form prescribed by the Commission (see § 1.785 of this chapter) and shall contain full and specific answers to all questions propounded and information requested in the currently effective report forms. The number of copies to be filed shall be as specified in the applicable report form. At least one copy of the report shall be signed on the signature page by the responsible accounting officer. A copy of each annual report shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection.

* * * * *

2. The Annual Report Form M at page 1, "General Instructions," paragraph 1, is amended to read as follows:

This annual report form is prescribed for the use of telephone companies operating telephone exchanges and having annual operating revenues in excess of $100,000,000 and telephone companies not operating telephone exchanges but operating to overseas points and having annual operating revenues in excess of $50,000. Each company subject hereto (hereinafter referred to as the "respondent") shall prepare its annual report to the Commission in the form and manner herein prescribed and shall file two copies of such annual report with the Commission at its offices in Washington, DC not later than March 31 of the year following that for which the report is made. (See particularly section 43.21(a) of the Commission's Rules.)

[FR Doc. 86-23504 Filed 10-16-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-317; RM-5053, 5180]

Radio Broadcasting Services; Trenton, GA and South Pittsburg, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 247C2 to South Pittsburg, Tennessee and Channel 274A to Trenton, Georgia at the request of Marion County Broadcasting Service, Inc., and Trenton Service Company, Inc., respectively. A first FM service could be provided to each community. A site restriction of 3.4 kilometers (2.1 miles) northeast of South Pittsburg is required. The filing window dates for these new allotments will be announced at a future date. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 12, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-317, adopted September 26, 1986, and released October 7, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202, paragraph (b), the table of allotments is amended by adding the following entries for Trenton, Georgia, Channel 274A and for South Pittsburg, Tennessee, Channel 247C2.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-23509 Filed 10-16-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-343; RM-5001]

Radio Broadcasting Services; Mt. Vernon, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 271B1 to Mt. Vernon, Illinois as its second FM Channel with a 13.2 mile northwest site restriction, at the request of Midwest Consultants, Inc. However, we shall delay acceptance of applications for this allotment at Mt. Vernon until Station KEZK(FM), St. Louis, Missouri, is granted a license for its new transmitter site. This relocation would alleviate a current short spacing to two stations. A filing window for Channel 271B1 at Mt. Vernon will be announced at a future date. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 12, 1986; The window period for filing applications will open on November 13, 1986, and close on December 15, 1986.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-8530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-343, adopted September 25, 1986, and released October 7, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202, paragraph (b), the table of allotments, is amended under Mt. Vernon, Illinois to add Channel 271B1.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-23510 Filed 10-16-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

Television Broadcasting Services; Key West, Marathon and Islamorada, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates VHF Channel 8 to Key West, Florida, UHF Channel 16 to Marathon, Florida, and VHF Channel 9 to Islamorada, Florida, in response to a petition filed by the Mass Media Bureau.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: John I. Riffer, Adjudication Division, (202) 632-7220.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, adopted September 19, 1986 and released September 26, 1986. The full text of this Commission Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcript Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read:

Authority: 47 U.S.C. 154(i), 303.

§ 73.606 [Amended]

2. Section 73.606 (b) is amended by revising the channel nos. for the following cities under Florida: Key West 8,*13,22+, Marathon 16+, and Islamorada *9+.

William Tricarico,

Secretary.

[FR Doc. 86-23512 Filed 10-16-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-73]

TV Broadcasting Services; Grand Island, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document changes the offset designation for Channel 17 at Grand Island, Nebraska, from minus to zero, on the Commission's own motion. The *Report and Order* also modifies the construction permit of Station KTVG to specify operation on Channel 17 with a zero offset. The change could avoid objectionable interference between Station KTVG and co-channel Station KTTW at Sioux Falls, South Dakota. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 12, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-73, adopted September 26, 1986, and released October 7, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

TV broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. In § 73.606, paragraph (b), the table of allotments is amended, under Nebraska, by revising Channel 17— to Channel 17 for Grand Island.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-23513 Filed 10-16-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-35; RM-5134; RM-5377]

Radio Broadcasting Services; Trinity and Rogersville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 223A to Trinity, Alabama, as that community's first local service, in response to a request filed by Dorsey Eugene Newman, and Channel 230A to Rogersville, Alabama, also as a first local service, in response to a proposal filed by Radio Rogersville. With this action, this proceeding is terminated.

EFFECTIVE DATES: November 12, 1986. The window period for filing applications will open on November 13, 1986, and close on December 15, 1986, for Channel 223A at Trinity, AL, while that for Channel 230A at Rogersville, AL, will be announced later.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-35, adopted September 25, 1986, and released October 7, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202, paragraph (b), the table of allotments is amended by adding Rogersville, Channel 230A and Trinity, Channel 223A, under Alabama.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 86-23508 Filed 10-16-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-319; RM-5054]

Radio Broadcasting Services; Hondo, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 253A to Hondo, Texas, as that community's first FM service at the request of DLB Broadcasting Corporation. A site restriction of 11.4 kilometers (7.1 miles) south of the community is required. Mexican government has concurred.

With this action, this proceeding is terminated.

EFFECTIVE DATES: November 12, 1986. The window period for filing applications will open on November 13, 1986, and close on December 15, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-319, adopted September 15, 1986, and released October 7, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202, paragraph (b), the table of allotments, in the entry for Hondo, Texas, Channel 253A is added.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-23511 Filed 10-16-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 85-23, FCC 86-364]

Radio Services, Frequencies and Emissions

AGENCY: Federal Communications Commission.

ACTION: Final rules; memorandum opinion and order.

SUMMARY: This document partially grants the Petition for Reconsideration of David B. Popkin and adopts certain rule changes pursuant to that petition. These rules are being adopted to clarify the Commission's earlier actions in this docket.

EFFECTIVE DATE: These rule changes are effective 0001 UTC November 14, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: August 7, 1986.
Released: August 19, 1986.

By the Commission.

In the Matter of Amendment of Part 97 of the Commission's Rules to Implement the Final Acts of the World Administrative Radio Conference, Geneva, 1979, PR Docket No. 85-23.

1. In the *Report and Order* in this proceeding, 51 FR 2712, January 21, 1986, we adopted rules to complete implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979, with respect to the Amateur Radio Service. David B. Popkin filed a Petition for Reconsideration which sought: (1) To correct certain emissions limitations in the 7075-7100 kHz frequency band; (2) to coordinate the effective dates of the Report and Order in this matter with the *Report and Order* in PR Docket No. 85-104; (3) to include a specific reference to § 97.3(t) in § 97.67(b), (4) to reword § 97.67(i); and (5) to reword § 97.7(g)(8) and 97.7(g)(9).

2. A subsequent *Order*, 51 FR 9012, March, 1986, in this matter corrected the status of emissions limitations in the 7075-7100 kHz band and resolved the conflicting effective dates of the rules adopted in PR Docket No. 85-104 and in this proceeding. These issues are therefore moot.

3. Popkin sought cross-reference to § 97.3(t) in § 97.67(b) because we removed the term "peak envelope power" from § 97.67(b). However, we removed that term because "transmitter power" as defined in § 97.3(t) *is* peak envelope power. Wherever "transmitter power" appears in the amateur rules, it means peak envelope power as specified in § 97.3(t). We defined "transmitter power" to eliminate the need to elaborate each time it appears in the amateur rules. Popkin's request for cross-reference to § 97.3(t) In § 97.67(b) is therefore unnecessary.

4. Popkin stated that the wording of § 97.67(i) is confusing when compared to the original § 97.7(b)(15). We are adopting reworded rules in this document to clarify this section.

5. Popkin recommended redrafting §§ 97.7(g)(8) and 97.7(g)(9) to clarify that secondary status bears no relation to the areas of prohibited operation for the 902-928 MHz band. We are adopting reworded rules in accord with this recommendation in order to eliminate any possible confusion.

6. Finally, on our own motion we are adopting rules to reinstate the definition of the National Radio Quiet Zone, which was adopted in this proceeding as § 97.3(k), but which was inadvertently superseded by *Report and Order* in PR Docket No. 85-22, 51 FR 17342, May 12, 1986. We are also adopting rules to reinstate pulse emissions in the 902-928 MHz frequency band, which were adopted in PR Docket No. 84-860 but which were inadvertently removed by prior action in PR Docket No. 85-23.

7. The new rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

8. Accordingly, it is ordered pursuant to § 1.429 of the Commission's rules [47 CFR 1.429) and sections 4(i) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. §§ 154(i) and 303(r)), that, effective 0001 UTC November 14, 1986, the Commission's rules are amended as set forth in the attached Appendix.

9. It is further ordered that the Petition for Reconsideration filed by David B. Popkin is granted in part consistent with this Memorandum Opinion and Order and denied in all other respects.

10. It is further ordered that this proceeding is terminated.

11. For further information about this document contact John J. Borkowski, (202) 632-4964.

List of Subjects in 47 CFR Part 97

Amateur radio, Frequencies.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for Part 97 continues to read:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. In § 97.3 paragraph (k) is revised and a new paragraph (dd) is added to read as follows:

§ 97.3 Definitions.

* * * * *

(k) *National Radio Quiet Zone.* the area bounded by 39°15'N on the north, 78°30'W on the east, 31°30'N on the south and 80°30'W on the west.

* * * * *

(dd) *Coordinated station operation.* the repeater or auxiliary operation of an amateur station for which the transmitting and receiving frequencies have been implemented by the licensee in accordance with the recommendation of a frequency coordinator.

3. In § 97.7, paragraphs (g)(8) and (9) and are revised to read:

§ 97.7 Frequency privileges.

* * * * *

(g) *Limitations*:

* * * * *

(8) In the 902-928 MHz band, amateur stations shall not operate within the States of Colorado and Wyoming, bounded by the area of: latitude 39°N to 42°N, and longitude 103°W to 108°W. Also in this band, amateur stations shall not operate in those portions of the States of Texas and New Mexico bounded on the south by latitude 31°41'N, on the east by longitude 104°11'W, on the north by latitude 34°30'N, and on the west by longitude 107°30' W.

(9) This band is allocated on a secondary basis to the Amateur service subject to not causing harmful interference to the operations of Government stations authorized in this band or to Automatic Vehicle Monitoring (AVM) systems authorized under § 90.239. Stations in the Amateur service are not protected from any interference due to the operation of industrial, scientific and medical (ISM) devices, AVM systems or Government stations authorized in this band.

* * * * *

4. Paragraph (c) of § 97.61 is revised to read:

§ 97.61 Authorized emissions.

* * * * *

(c) *Above 144.1 MHZ:* Amateur stations are authorized to transmit the following emissions on amateur frequencies above 144.1 MHz: NoN, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, H3E, J3E, and R3E. PoN emissions (the emission letters "K, L, M, Q, V, W and X" may also be used in place of the letter "P" for pulsed radars) may be transmitted at all amateur frequencies above 902 MHz, except in the 1240-1300 MHz and 10.0-10.5 GHz bands. In the 902-928 MHz and F8E emissions may also be used.

5. Paragraph (1) of § 97.67 is revised to read:

§ 97.67 Maximum transmitting power.

* * * * *

(1) In the 902-928 MHz frequency band the transmitter power shall not exceed 50 watts for operation outside of the White Sands Missile Range but within 150 miles of its boundaries. Its boundaries are those portions of Texas and New Mexico bounded on the south by latitude 31°41'N, on the east by longitude 104°11'W, on the north by latitude 34°30'N, and on the west by longitude 107°30'W.

§ 97.85 [Amended]

6. Paragraph (g) of § 97.85 is amended by changing the cross-reference in the first sentence after "coordinated" to read: (see § 97.3(dd)).

[FR Doc. 86-23507 Filed 10-16-86; 8:45 am]

BILLING CODE 6712-01-M

VETERANS ADMINISTRATION

48 CFR Part 846

Acquisition Regulations; Quality Assurance

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The VA (Veterans Administration) is issuing final regulation amendments to the VAAR (VA Acquisition Regulation) to specify factors that are to be considered in determining the need to require subsistence inspections by the Departments of Agriculture or Commerce. Such factors include other mandatory inspection systems, suppliers' quality control systems, the feasibility of prequalifying suppliers and the cost of the inspections.

EFFECTIVE DATE: This final rule is effective October 17, 1986.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Chief, Policy Division, Office of Procurement and Supply, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2334.

SUPPLEMENTARY INFORMATION: These regulation amendments are for internal guidance and do not require public comment. Therefore, they are being published as final rules.

I. Executive Order 12291

These final regulation amendments have been reviewed in conjunction with Executive Order 12291, Federal Regulation, and have been determined not to be a "major rule" as defined therein.

II. RFA (Regulatory Flexibility Act)

Because this final rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that act. In any case, these amendments will not have significant impact on a substantial number of small entities because the provisions are primarily internal procedures.

III. Paperwork Reduction Act

This final rule requires no additional information collection or recordkeeping requirements upon the public.

List of Subjects in 48 CFR Part 846

Government procurement.

Approved: October 8, 1986.
By direction of the Administrator.
Thomas E. Harvey,
Deputy Administrator.

Part 846 of Title 48 of the Code of Federal Regulations is amended as follows:

PART 846—QUALITY ASSURANCE

1. The authority citation for Part 846 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

846.403 [Amended]

2. In 48 CFR 846.403(b) remove the word "marketing" and add, in its place, the words "marking".

846.408-70 [Amended]

3. Section 846.408-70 is amended as follows:

a. In paragraph (a) remove the words "Department of Agriculture" and add, in

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their place, the words, "USDA (U.S. Department of Agriculture)".

b. Paragraphs (b) and (c) are redesignated as paragraphs (c) and (d).

In newly redesignated paragraph (c) remove the words "Department of Agriculture" and add, in their place, the acronym "USDA".

c. A new paragraph (b) is added to read as follows:

846.408-70 Inspection of subsistence.

* * * * *

(b) Since the requirement for USDA or Department of Commerce inspections and certifications results in additional contractor costs which may be ultimately reflected in bid prices, the contracting officer, in consultation with the Chief, Dietetics Service, must evaluate the need for such inspections. The evaluation shall include the following:

(1) The quality assurance already provided by other mandatory inspection systems;

(2) The proposed suppliers' own quality control system;

(3) Experience with the proposed suppliers;

(4) The feasibility of prequalifying suppliers' quality assurance systems and subsequently waiving certifications for future solicitations; and

(5) The cost of the inspections.

* * * * *

846.408-71 [Amended]

5. Section 846.408-71 is amended as follows:

a. In paragraph (a) remove the words "VAAR Program Guide G-1" and add, in their place, "Federal Hospital Subsistence Guide G-1" wherever it occurs.

b. In paragraph (a) remove the words "U.S. Department of Agriculture (USDA)" and add, in their place, the acronym "USDA".

[FR Doc. 86-23309 Filed 10-16-86; 8:45 am]
BILLING CODE 3320-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. 74-14; Notice 47]

Occupant Crash Protection and Automatic Restraint Phase-In Reporting

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: On April 12, 1985, NHTSA published a notice proposing amendments to Standard No. 208, *Occupant Crash Protection.* On March 21, 1986, NHTSA published a final rule that addressed a number of the proposed requirements. This notice announces the agency's decisions on several of the remaining proposals. NHTSA has decided to adopt an exemption from the automatic restraint requirement for convertibles. The exemption would only apply during the phase-in period. In a subsequent rulemaking the agency will determine whether to apply the automatic restraint requirement to convertibles manufactured after September 1, 1989, or whether to apply a dynamic test requirement to the manual safety belts used in those vehicles. The agency is modifying the head injury criterion used in Standard No. 208 compliance testing by adopting a maximum time interval of 36 milliseconds for calculating the HIC values.

DATES: The amendments made by this notice will be effective on October 17, 1986. Petitions for reconsideration must be filed by November 17, 1986.

ADDRESS: Petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 Telephone (202) 426-2264.

SUPPLEMENTARY INFORMATION: On April 12, 1985 (50 FR 14589), NHTSA published a notice, which is the basis for the final rule being issued today, proposing the following amendments to Standard No. 208, *Occupant Crash Protection:* reporting requirements for the phase-in of automatic restraints, deletion of the oblique crash test, use of the New Car Assessment Program (NCAP) test procedures, adoption of a due care defense, alternative calculations of the head injury criterion (HIC), and alternative occupant crash protection requirements for convertibles. The notice also proposed the dynamic testing of manual lap/shoulder belts for passenger cars, light trucks and light van-type vehicles.

On March 21, 1986 (51 FR 9800), NHTSA published a final rule amending Standard No. 208 that retained the oblique crash test for automatic restraint equipped cars, adopted some NCAP test procedures for use in the standard's crash tests, provided for a due care defense with respect to the automatic restraint requirement, and required the dynamic testing of manual lap/shoulder belts in passenger cars if the automatic restraint requirement is rescinded. The March 1986 notice also created a new Part 585 setting reporting requirements regarding compliance with the automatic restraint phase-in requirements of the standard. This notice announces the agency's decision on several of the other actions proposed in the April 1985 notice. NHTSA will soon publish a separate notice announcing its decision on dynamic testing of safety belts in light trucks, buses, and multipurpose passenger vehicles.

Convertibles

The April 1985 notice proposed alternative occupant crash protection requirements for convertibles, beginning with model year 1990. The agency proposed that manufacturers have the option of installing manual lap belts, subject to the belt strength requirements of Standard No. 209, *Seat Belt Assemblies,* and the anchorage strength requirements of Standard No. 210, *Seat Belt Assembly Anchorages,* instead of installing automatic restraints subject to the occupant crash protection criteria of Standard No. 208.

As a part of the notice, NHTSA requested data on several specific questions to assist the agency in making a decision. Those questions covered such issues as current and future production figures for convertibles and the cost and practicability of installing various types of automatic restraints. The answers provided by the commenters show that:

- Through 1989, convertibles will average slightly over one percent of annual passenger car production.
- Manufacturers uniformly said that automatic safety belts are not a practical alternative for convertibles. For example, General Motors estimated an automatic lap/shoulder belt would cost $600 for convertibles, with much of that cost needed for structural modifications to the car. It also said that while automatic lap belts may be technically possible, their actual performance could be below that of manual belts because of additional belt "slack" that would be inherent in such designs.
- Manufacturers' estimates of the costs of air bag systems, exclusively for use in convertibles, ranged from $1,200 to $3,500.

- Most manufacturers supported exemption of convertibles from the automatic restraint requirement, saying that the increased costs of automatic restraints would diminish convertible sales. Ford, Toyota, and Volkswagen said that if convertibles had to meet the automatic restraint requirement, they would probably have to discontinue their convertible lines.
- All manufacturers that provided information on the type of safety belt they are installing in their convertibles stated that they use lap/shoulder safety belts, even though the standard currently gives them the option of using only a lap belt. Volkswagen suggested requiring all convertibles to have lap/shoulder belts.
- The Center for Auto Safety (CFAS), Insurance Institute for Highway Safety (IIHS), and State Farm, all of which supported the use of automatic restraints in convertibles, argued that convertibles are "luxury" cars and thus any cost increase associated with automatic restraints would not affect the sales of convertibles. In support of its argument for requiring automatic restraints in convertibles, CFAS also noted that the agency's NCAP data show that, with two exceptions, crash test results in the convertible version of a vehicle were considerably worse than in the "parent" vehicle.
- The National Transportation Safety Board (NTSB) argued that the current provision in the standard allowing manufacturers the option of installing only lap belts in convertibles is inadequate and may not provide sufficient protection in a crash.

After reviewing the comments, NHTSA continues to believe that applying the automatic restraint requirement to convertibles is not reasonable, practicable or appropriate for that vehicle type, at least during the phase-in. The information provided by the commenters shows that use of automatic belts is not reasonable for some models because they would have to make substantial structural redesigns to incorporate a "pylon" or other structure for attaching the upper torso portion of the automatic belt. If manufacturers use air bag systems, then the cost of the system could be substantial enough to severely curtail sales of those models. However, as new types of air bag and other automatic restraint systems are developed, the cost could be reduced. The agency has therefore decided to limit the exemption for convertibles to the phase-in period. NHTSA will re-examine, at a later date, the issue of whether to apply an automatic restraint requirement to convertibles manufactured after September 1, 1989, or to require dynamic testing of the manual safety belts installed in those vehicles.

NHTSA believes that its decision is consistent with its duty, under section 103(f)(3) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(f)(3)), to "consider whether any such proposed standard is reasonable, practicable and appropriate for the particular type of motor vehicle . . . for which it is prescribed." The legislative history of the Vehicle Safety Act makes clear that Congress recognized that it might not be appropriate to set the same standards for some vehicle types, such as convertibles, as other vehicle types. In discussing the purpose of section 103(f)(3), the Senate Report stated that:

> [T]he committee intends that the Secretary will consider the desirability of affording consumers continued wide range of choices in the selection of motor vehicles. Thus it is not intended that standards will be set which will eliminate or necessarily be the same for small cars or *such widely accepted models as convertibles* and sports cars, so long as all motor vehicles meet basic minimum standards. [Emphasis added.]

NHTSA's decision with regard to convertibles is also consistent with the guidance provided by the U.S. Court of Appeals for the Sixth Circuit in its decision in *Chrysler* v. *Department of Transportation,* 472 F.2d 659 (1972). In that decision, the court reviewed the legislative history of section 103(f)(3), discussed above, and concluded that the agency did not give sufficient attention to the issue of whether convertibles should be subject to the same occupant crash protection requirements as hard top vehicles. While the court's decision to send the rule back to the agency for further consideration was based primarily on the perceived inadequacy of the test dummy used in compliance tests, the decision was also based on the need for the agency to consider adequately the potential effects of the occupant crash protection rule on convertibles.

The substantial cost impact of requiring convertibles to have automatic restraints, would be true even if convertibles were considered "luxury" cars, since the cost would have to be spread over a very low production volume. For example, although the agency believes that the cost for low volume installation of air bag systems—10,000 to 100,000 cars or less annually—would be smaller than the estimates submitted by some manufacturers, the cost, which ranges from $600 to $1,500 per vehicle, would still be substantial. Although convertible models are priced higher than their sedan counterparts, they are not all "high priced" or "luxury" cars. For example, convertible versions of the Renault Alliance, Chevrolet Cavalier, Chrysler LeBaron, Dodge 600, Ford Mustang LX, and Pontiac Sunbird all sell from $11,000–$13,000.

It is possible that development of new technology may lead to new air bag systems with lower costs. The agency is currently conducting research with the Breed Corporation on an air bag system with an all-mechanical sensor, which has the potential of being produced at a lower cost than current systems with electronic sensors. The preliminary data from the sled and crash tests of the Breed system are promising. However, the system still must be field-tested before the agency will be able to evaluate its effectiveness. Thus, it is still too early to predict whether this research system or other systems can be successfully developed into an effective and low-cost air bag system that can be used in convertibles and other passenger cars.

In the case of "built-in" safety (i.e., use of padding and structural changes to provide protection to unrestrained occupants), the agency notes that only General Motors has done some preliminary work, and GM has not yet indicated that it could certify convertibles or any vehicles to the injury protection criteria of Standard No. 208. Thus, the practicability of this approach across the fleet of convertibles (i.e., for all manufacturers for each of their convertibles) is uncertain at this time. The agency will continue to monitor the development of new automatic belt, air bag and built-in safety systems and review the practicability and appropriateness of those systems for convertibles.

Definition of Convertible

Toyota asked the agency to clarify what vehicles are considered to be convertibles; in particular, it asked whether a passenger car with a T-bar roof or a Targa top would be considered a convertible. In several letters of interpretation, the agency has said that a convertible is a vehicle whose A-pillar or windshield peripheral support is not joined at the top with the B-pillar or other rear roof support rearward of the B-pillar by a fixed rigid structural member. Thus, a vehicle with a Targa top would be considered a convertible since it does not have any fixed structural member connecting the tops of the A and B-pillars. However, a vehicle with a T-bar roof would not be

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considered a convertible since there is a fixed structural member in the vehicle's roof which connects the A and B-pillars.

Changes in Reporting Requirements

Part 585, *Automatic Restraint Phase-in Reporting Requirements*, requires manufacturers to provide NHTSA with a yearly report on their compliance with the automatic restraint phase-in requirements of Standard No. 208. Part 585 currently requires manufacturers to provide data on their entire production of passenger cars, including convertibles. Since NHTSA has decided to exempt convertibles from the requirement for mandatory installation of automatic restraints during the phase-in period, the agency is making a change to Part 585. The agency is amending the reporting requirement so that a manufacturer does not have to count convertibles as a part of its passenger car production volume when it is calculating its phase-in requirement. However, since a manufacturer may decide to install voluntarily automatic restraints in its convertibles, the changes made to the phase-in requirements of Standard No. 208 and the reporting requirements of Part 585 will allow a manufacturer the option to include automatic-restraint equipped convertibles in its passenger car production volume when it is determining its compliance with the automatic restraint phase-in requirement.

Modification of the head injury criterion

In response to a petition from the Committee on Common Market Automobile Constructors and comments from other vehicle manufacturers, the April 1985 notice set forth two proposed alternative methods of using the head injury criterion (HIC) in situations when there is no contact between the test dummy's head and the vehicle's interior during a crash. The agency said that, after considering the comments, it would decide whether to retain the current HIC requirement or to adopt one of the proposed alternatives. As discussed in detail below, the agency has decided to adopt the proposed alternative which will calculate a HIC in both contact and non-contact situations, but limit the calculation to a maximum time interval of 36 milliseconds.

I. First Proposed HIC Alternative.

A. Use HIC Only When There is Head Contact

The first proposed alternative was to retain the current HIC calculation for contact situations, but limited to the actual times that contact occurs. However, in non-contact situations, the agency proposed that a HIC would not be calculated, but instead new neck injury criteria would be calculated. The agency proposed that neck criteria would be calcualted differently depending upon whether the existing Part 572 test dummy or the Hybrid III test dummy was used in the crash test. The reason for the proposed difference was that the Hybrid III test dummy has instrumentation in its neck to measure directly shear and tension forces in the neck and the existing Part 572 dummy does not. The agency proposed to use the Hybrid III's neck instrumentation and set limits on the shear and tension forces in the neck. Since neck forces cannot be measured directly by the existing Part 572 test dummy, the agency proposed to use a surrogate measure for neck forces through the use of head acceleration-based criteria, a calculation that is valid only when the head does not contact any object during a crash test.

The agency explained that a crucial element necessary for deciding whether to use the HIC calculation or the neck criteria was an objective technique for determining the occurrence and duration of head contact in the crash test. As discussed in detail in the April 1985 notice, there are several methods available for establishing the occurrence and/or duration of head contact, but there are questions about their levels of consistency and accuracy.

Almost all of the commenters opposed the use of the first proposed alternative. The commenters uniformly noted that there is no current technique that can accurately and reliably identify whether and exactly when head contact has or has not occurred during a crash test in all situations. The agency agrees that, in the absence of such a method to determine the occurrence and duration of head contact, the first alternative is not appropriate.

B. Apply Neck Criteria if There is no Head Contact

As discussed above, the agency proposed a new neck criteria to be used in non-contact situations; however, because of the problems involved in trying to identify when head contact occurs, the agency in not adopting the non-contact proposal. CFAS urged the agency to apply the neck injury criteria in both contact and non-contact situations. It also argued that because the neck has more soft tissue than the head, a lower acceleration threshold should be used. As noted above, with the Part 572 test dummy, the proposed neck injury criteria (based on head acceleration measurements) are valid only when the head does not contact another object, so they should not be used in situations when there is an impact to the head. Similarly, the impossibility of determining, in all situations, when head contact begins and ends precludes the agency from adopting the proposed non-contact neck injury criteria for the Part 572 test dummy. The agency has already indicated that it will consider the issue of neck injury criteria for the Hybrid III test dummy in the separate rulemaking on that test dummy.

II. Second HIC Alternative.

At present, a HIC is calculated for the entire crash duration. The second alternative proposed by the agency would calculate a HIC in both contact and non-contact situations, but it would limit the time duration during which a HIC is calculated. NHTSA proposed a limit on the maximum time duration of the HIC calculation because the current calculation can produce high HIC values for a crash which has a relatively low acceleration level, but a long time duration, and which in all likelihood will not result in brain injuries.

The agency proposed to limit the HIC calculation to a maximum of 36 milliseconds because it determined that the 36 millisecond limit together with a HIC of 1000 limit will assure that the acceleration level of the head will not exceed 60 g's for any period greater than 36 milliseconds. The 60 g's acceleration limit was set as a reasonable head injury threshold by the originators of the Wayne State Tolerance Curve, which was used in the development of the HIC calculation. (Readers are referred to the April 12, 1985 notice of proposed rulemaking for information on the development of HIC.)

There was a marked division among the commenters on the second alternative. Manufacturers and their trade associations commenting on the issue uniformly supported the use of the second alternative; although nine of those commenters (AMC, Chrysler, Ford, GM, Motor Vehicle Manufacturers Association (MVMA), Peugeot, Renault, Volvo, and Volkswagen) argued that the HIC calculation should be limited to a time interval of approximately 15 to 17 milliseconds, which would limit average long time duration head accelerations to 80–85 g's. Other commenters (CFAS, IIHS, and State Farm) argued that the current HIC calculations should be retained; they said that the proposed alternative would lower HIC levels without ensuring that motorists were still receiving adequate head protection.

Those favoring the second alternative raised a number of arguments in support of its use. They said that using a time limit for the HIC calculation is appropriate because head contacts with hard surfaces generally have high accelerations, but a short time duration (10 to 15 milliseconds). In the case of head contacts with softer surfaces, such as an airbag system, they said that the time duration of the contact is longer, but the acceleration is much lower, and thus the potential for injury is reduced. Ford pointed to airbag system testing in which human volunteers "experienced average accelerations between 59 to 63 g's for HIC calculation durations of 24 to 30 ms, without any head or neck injury."

Those favoring use of a shorter time duration than 36 ms offered additional arguments. They said that the proposed 36 ms requirement is too stringent because it would not allow the average head acceleration levels during a crash to exceed 60 g's. For example, GM said that the the Wayne State cadaver test data show that the head can withstand acceleration levels of up to 80 g's without injury. GM also said that Wayne State and other test data show that brain injuries and skull fractures in cadavers occur at HIC durations of 15 ms or less and thus there is no basis for considering any time interval longer than 15 ms. Likewise, Volvo said that it does not believe that 60 g is a critical acceleration level. Volvo noted that Standard No. 201, *Occupant Protection in Interior Impact*, permits an acceleration level of up to 80 g's in 15 mile per hour impacts of the instrument panel with a headform.

Mercedes-Benz, which supported the second alternative, urged the agency to measure HIC only during the time interval when the acceleration level in the head exceeds 60 g's. It said that this method would more effectively differentiate results received in contacts with hard surfaces and results obtained from systems, such as airbags, which provide good distribution of the loads experienced during a crash.

Those opposing the proposed second alternative argued that a 36 millisecond time limit is too short and could result in lower HIC scores being calculated than are calculated by the current HIC formula. For example, IIHS noted that a 60 g impact with a time duration of 50 milliseconds would produce a HIC of greater than 1,000 using the calculation methods currently found in the standard. IIHS also said that since some brain injuries can occur at the HIC level of less than 1,000, the agency should not take any action that would, in effect, allow HIC levels of above 1,000. It also urged the agency not to adopt the 36 millisecond limit since there is evidence showing that even mild brain injuries can produce long-term disability and it is not known whether such injuries can be caused without head contact.

A. Rejection of 17 Millisecond HIC Limit

To evaluate the effect of the 17 millisecond limit suggested by many of the commenters, NHTSA reexamined the biomechanical studies cited by the commenters and looked at the effect of how the recommended time limits would affect the HIC values measured in a 30 mile per hour barrier crash test, which is the compliance test used in Standard No. 208, for different types of restraint systems and also with respect to the New Car Assessment Program (NCAP). After completing this review, NHTSA has concluded, as discussed below, that the use of a 17 millisecond limit is not appropriate in vehicle crash tests.

The agency reviewed the Wayne State laboratory tests results cited by several of the commenters in support of adopting a 17 millisecond limit for the HIC calculation. In those tests, cadaver heads were dropped on various hard and padded surfaces. The results from those tests show that those impacts generally produce a single peak acceleration, which ranges from 4 to 13 ms in duration. While NHTSA agrees that a 17 millisecond limit would be appropriate for short duration, single impacts into a hard surface, head acceleration responses in crash tests are considerably different from laboratory drop tests. In a vehicle crash, the duration of head impacts is often considerably longer, the head impact can involve considerably higher forces, and the head can experience multiple impacts. Given these differences, NHTSA does not believe that a 17 millisecond limit, based on single, short duration laboratory tests, should be adopted.

NHTSA agrees with Ford that the test results from the human volunteer airbag test are important and demonstrate that the probability of injury in longer duration impacts (greater than 15 milliseconds) with moderate accelerations is low. However, NHTSA believes that the air bag tests are limited in their application. Those well-controlled tests using young, healthy males, do not necessarily represent the results that would be found using other segments of the population. Likewise, the recommendation by the Wayne State researchers regarding a head acceleration limit of 60 to 80 g's is deduced mostly from tests with healthy 19 to 48 year old male volunteers. As to Volvo's comments about the use of an 80 g criteria in Standard No. 201, the agency notes that the standard places a specific limit on the 80 g criteria by prohibiting the accelerations from exceeding 80 g's for more than 3 continuous milliseconds.

NHTSA believes that it should take a cautious approach in modifying the head injury tolerance level set by the HIC requirement. Any modifications should ensure that a wide range of the population is provided protection. Therefore, the agency believes that it should use a HIC calculation which will not exceed 60 g's during relatively long duration impacts, which is the lower end of the recommended range proposed by the Wayne State researchers for use with HIC.

A review of the effect of a 17 millisecond limit on 291 test results from the 35 mph NCAP test program and the test results from 30 mph barrier impact tests also support the agency's decision not to adopt that suggestion. This analysis yielded the following results: 1. Using the current HIC calculation, this agency noted that the average HIC for the 291 NCAP tests was 1107 and the percentage of HIC's that exceeded 1,000 was 46 percent. Using a 17 millisecond limit, the average HIC in the 291 NCAP tests dropped to 931 and the percentage of HIC's that exceeded 1,000 fell to 35 percent.

2. The current HIC failure rate of approximately 16 percent for 30 mph belted occupants could be cut to approximately 8 percent.

3. For unrestrained occupants, the average HIC value would drop by 21 percent and their Standard No. 208 compliance failure rate would be reduced by 42 percent.

4. Airbag average HIC values would be reduced by 28 percent; however, this would not affect the Standard No. 208 failure rates, since air bags that function properly produce HIC values well below the 1000 level.

B. Rejection of Mercedes-Benz HIC Limitation

To evaluate the effect of the Mercedes-Benz suggestion to limit the calculation of HIC to instances when the acceleration exceeded 60 g's, the agency recalculated the HIC values for 30 mph 3-point belts (driver and passenger sides), 30 mph unrestrained driver and passenger), air bag (only), and 35 mph NCAP barrier and barrier equivalent crash tests using the Mercedes-Benz method.

Compared to the 36 ms proposed by NHTSA and 15–17 ms. approach advocated by some commenters, the Mercedes-Benz method would bring

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about the most significant numerical reduction in HIC scores. At 30 mph, all lap/shoulder belt passenger HIC scores would be reduced to zero (a 100 percent reduction). Using the current HIC calculation, the average HIC for the 291 NCAP tests was 1107 and the percentage of HIC's that exceeded 1,000 was 46 percent. Using a 60 g limit, the average HIC would drop to 808 and the percentage of HIC's that exceed 1,000 would fall to 32 percent. 30 mph air bag HIC values would be cut by 47.9 percent and unrestrained occupants would experience a 31 to 36 percent reduction of the average HIC score. The data also indicates that failure rates on airbags would not be affected, while approximately 14 percent of the unrestrained passengers would be shifted from failing to passing the HIC 1000 limit.

The use of a minimum head acceleration threshold or cut-off to define the maximum HIC time duration, as proposed by Mercedes-Benz, provides a means of differentiating between critical and non-critical acceleration peaks, if and when they exceed 60 g's. However, there are a number of problems which led the NHTSA to reject the proposed Mercedes-Benz method. The Mercedes-Benz method only takes into account head accelerations that are greater than 60 g's. Thus, the average head acceleration permitted by the Mercedes-Benz method must be, at a minimum, 60 g's and most likely the average head acceleration permitted by the Mercedes-Benz method would substantially exceed that limit. In contrast, the 36 millisecond alternative adopted by the agency will ensure that the average head acceleration does not exceed the 60 g acceleration limit. In addition, it is unclear from Mercedes-Benz's comments how their method would accommodate multiple non-continuous acceleration peaks in excess of 60 g's. Discriminating between injurious and non-injurious peaks is critical to picking the time duration. If *all* peaks are to be included, it is unclear from Mercedes' proposal how the time interval would be measured. Given all of these concerns, NHTSA believes that the Mercedes-Benz proposal should not be adopted.

C. Adoption of 36 Millisecond HIC Limit

As discussed earlier in this notice, the agency proposed a time limit for the HIC calculation because the current method can produce an artifically high HIC for a crash which has relatively low acceleration level, but a long time duration. To evaluate the effects of the proposal, NHTSA took the NCAP results and recalculated the HIC using the proposed 36 millisecond limit. That analysis shows that the 36 millisecond limit would have only a minor effect on HIC scores recorded in the NCAP tests. As discussed above, using the current HIC calculation, the average HIC for the 291 tests was 1107 and the percentage of HIC's that exceeded 1,000 was 46 percent. Using a 36 millisecond limit, the average HIC dropped slightly to 1061, and the percentage of HIC values that exceeded 1,000 dropped to 41 percent. Thus, the results show that in the NCAP tests, which are conducted at 35 mph, the average HIC value would be only four percent lower when calculated with the 36 millisecond limit. In additon, the results showed that of the 291 NCAP tests, only 38 tests had both a HIC value which exceeded 1,000 *and* a HIC duration exceeding 36 milliseconds. Of this group of 38 tests, there are only 15 instances in which the 36 millisecond limit results in a new HIC value less than 1,000. Since the NCAP tests at 35 mph involve 36 percent greater energy than the 30 mph tests used in Standard No. 208 compliance testing, the number of HIC values possibly changing from above 1000 to below 1000 because of the 36 millisecond limit should be even less in the Standard No. 208 compliance tests.

The agency further examined these 15 instances of HIC's greater than 1000 being recalculated to be less than 1000. In 12 of these 15 cases, the original HIC (i.e., without a time limitation) was between 1000 and 1074. Again at 30 mph, with 36 percent, less energy involved, it is doubtful if any of these vehicles would have had occupant HIC's greater than 1000. Thus, in only three cases (one percent of the total involved) would a "fail" have potentially become a "pass", using the 208 criteria. If this same value is associated with 30 mph barrier tests, the risks to safety associated with having a HIC calculation which is founded on a sounder basis than the current calculation are not significant.

To further evaluate the effects of a 36 millisecond limit, the agency specifically examined the potential impact of the new HIC calculation on whether a vehicle will pass or fail the HIC of 1000 limit set in Standard No. 208. NATSA recalculated the HICs recorded in a wide variety of 30 mph crash tests, which is the compliance test speed used in Standard No. 208, The tests included vehicle using the following different types of restraint systems: manual lap/shoulder belts, automatic belts, air bags only and air bag with lap and lap/shoulder belts. In addition, the agency recalculated the HIC values recorded in 30 mph tests with unrestrained occupants, which would simulate the types of HIC values that could be recorded in vehicles with built-in safety features. (The results of those tests are discussed in Chapter III of the Final Regulatory Evaluation on HIC). The agency's analysis shows that in all the 30 mph tests, the 36 millisecond limit does not change a "failing" HIC into a "passing" HIC. Thus, a vehicle which currently does not comply with the HIC requirement of Standard No. 208 using the prior HIC calculation method also will not comply using the 36 millisecond limit.

Cost and Benefits

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a regulatory evaluation that examines the economic and other impacts of this rulemaking action.

The changes in the HIC calculation should not have a significant impact. As discussed in detail above, the agency's analysis of crash test data shows that the 36 millisecond limit does not have any significant effect on changing the HIC values currently recorded in 30 mile per hour compliance crash tests. The extent of the effect of this change on mild brain injuries is unknown. As IIHS noted, there is insufficient data on how such injuries are caused. Thus, the agency cannot assess the role of the current or changed HIC calculation in preventing or reducing such injuries. However, since the agency's crash test analysis shows that a vehicle that currently exceeds a HIC of 1000 in Standard No. 208's 30 miles per hour compliance test will still exceed 1000 using the new 36 millisecond limit, the agency believes that the effect of the 36 millisecond limit on mild brain injuries should be no different than the effect of the current calculation. In addition, NHTSA does not believe that manufacturers will change their vehicle designs because of the slight change in the HIC calculation. Thus, the 36 millisecond limit should not adversely effect safety or a manufacturer's compliance costs.

Likewise, the decision to exempt convertibles during the phase-in period should not have a significant effect. Because convertibles represent a small portion of most manufacturers' production, they do not need to install automatic restraints in their convertibles in order to meet the production requirements during the phase-in. The problems associated with installing automatic restraints in convertibles also make it unlikely that manufacturers would equip their convertibles with such restraints during the phase-in. Thus, the exemption adopted in this notice should have little effect on the type of restraint system that will be used in convertibles during the phase-in.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a full regulatory flexibility analysis.

Few, if any, passenger car manufacturer would qualify as small entities. Small organizations and government units should not be affected since the change in the HIC calculation should not affect vehicle designs or prices.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Paperwork Reduction

The phase-in reporting requirements of this rule contain information collection requirements which have been previously submitted to and approved by the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through June 30, 1988 (OMB approval number 2127–0535). The amendments made by today's final rule do not increase the reporting burden on manufacturers. Instead, the agency is giving manufacturers the option of excluding the number of convertibles they produce from their phase-in production reports.

Effective Date

NHTSA has determined that it is in the public interest to make the amendments, adopted in today's notice, effective immediately. The change in the HIC calculation can affect manufacturer's plans for the model year beginning September 1, 1986.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 585

Reporting and recordkeeping requirements.

In consideration of the foregoing, Parts 571 and 585 of Title 49 of the Code of Federal Regulations are amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. A new S4.1.3.1.3 is added to § 571.208 to read as follows:

S4.1.3.1.3 A manufacturer may exclude convertibles which do not comply with the requirements of S4.1.2.1, when it is calculating its average annual production under S4.1.3.1.2(a) or its annual production under S4.1.3.1.2(b).

3. A new S4.1.3.2.3 is added to § 571.208 to read as follows:

S4.1.3.2.3 A manufacturer may exclude convertibles which do not comply with the requirements of S4.1.2.1, when it is calculating its average annual production under S4.1.3.2.2(a) or its annual production under S4.1.3.2.2(b).

4. A new S4.1.3.3.3 is added to § 571.208 to read as follows:

S4.1.3.3.3 A manufacturer may exclude convertibles which do not comply with the requirements of S4.1.2.1, when it is calculating its average annual production under S4.1.3.3.2(a) or its annual production under S4.1.3.3.2(b).

6. S6.2 of § 571.208 is revised to read as follows:

S6.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 1,000 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t_1 and t_2 are any two points in time during the crash of the vehicle which are separated by not more than a 36 millisecond time interval.

PART 585—AUTOMATIC RESTRAINT PHASE-IN REPORTING

1. The authority citation for Part 585 continues to read as follows:

Authority: 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.50.

2. Section 585.4 is revised to read as follows:

§ 585.4 Definitions.

(a) All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

(b) "Passenger car" means a motor vehicle with motive power, except a multipurpose passenger vehicle, motorcycle, or trailer, designed for carrying 10 persons or less.

(c) "Production year" means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

3. Section 585.5(b)(1) is revised to read as follows:

§ 585.5 Reporting requirements.

* * * * *

(b) *Report content*—(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of passenger cars manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that is, for the first time, manufacturing passenger cars for sale in the United States must report the number of passenger cars manufactured during the current production year. For the purpose of the reporting requirements of this Part, a manufacturer may exclude its production of convertibles, which do not comply with the requirements of S4.1.2.1 of § 571.208 of this Chapter, from the report of its production volume of passenger cars manufctured for sale in the United States.

* * * * *

Issued on: October 10, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86–23329 Filed 10–16–86; 8:45 am]

BILLING CODE 4910–59–M

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC-43 (Sub-No. 17)]

Authorized Carrier Lease of Equipment and Drivers to Private Carriers and Shippers

AGENCY: Interstate Commerce Commission.

ACTION: Removal of rules.

SUMMARY: The Commission repeals the rules in 49 CFR 1057.41 so as to allow authorized carriers to lease equipment and drivers to private carriers and shippers provided certain minimum criteria are set forth in the written lease. The proposed action was published at 50 FR 41533, October 11, 1985. The use of equipment and driver leasing (popularly termed "single-source leasing") increases the spectrum of price and service quality options available to shippers and receivers. Carriers can earn additional revenues by the productive use of their equipment and personnel by shippers and private carriers and also may be able to reduce insurance costs. Shippers and private carriers benefit by having an additional source for equipment and drivers. These results promote competition and efficient resource use in the public interest.

EFFECTIVE DATE: This decision is effective on November 17, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert G. Rothstein, (202) 275-7912

or

Andrew L. Lyon, (202) 275-7292.

SUPPLEMENTARY INFORMATION: Additional information is contained in the full Commission decision which is available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, or may be purchased from T.S. InfoSystems, Inc., Room 2229, c/o Interstate Commerce Commission Building, 12th Street and Constitution Avenue, NW., Washington, DC 20423; or call toll-free (800) 424-5403; or (202) 289-4357 in the Washington, DC, metropolitan area.

Energy and Environmental Statement

This action does not appear to significantly affect the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

The action taken here will have a positive, but not significant beneficial economic impact upon small entity lessees and lessors of equipment. By allowing another option for more efficient equipment utilization during periods when equipment might not otherwise be used, authorized carrier lessors will realize a benefit in their ability to lease out idle equipment for short periods of time and collect revenues from such transactions. Shipper and private carrier lessees will benefit by having additional sources from which to obtain equipment and drivers for use in their proprietary transportation operations. These advantages should benefit the public in the form of improved service and lower rates. The modifications will not impose regulatory burdens because they are permissive and do not require regulated carriers to enter into such arrangements.

List of Subjects in 49 CFR Part 1057

Motor carriers.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 11107 and 10321 and 5 U.S.C. 553.

Decided: October 6, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

Appendix

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

Title 49, Part 1057 is amended as follows:

1. The authority citation following § 1057.12 is removed and the authority citation for 49 CFR part 1057 is revised to read as follows:

Authority: 49 U.S.C. 11107 and 10321; 5 U.S.C. 553.

§ 1057.41 [Removed]

2. Section 1057.41 is removed.

[FR Doc. 86-23465 Filed 10-16-86; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Parts 1135 and 1312

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission has modified its rules governing railroad cost recovery procedures by requiring railroads to adjust their cost recovery tariffs to take into account declines in the rail cost adjustment factor (RCAF). The Commission will address declines in the RCAF that cannot be practicably addressed through rate reduction orders by postponing authorizations for future cost recovery rate increases. The Commission has also adopted procedures to mitigate errors in forecasting costs in a previous quarter. Finally, the Commission has ordered the railroads to cancel cost recovery tariff RCCR X-0-86. These new policies seek to interpret the enabling statute in light of current realities in a manner that is fair to all parties.

DATE: The new rules take effect on November 17, 1986.

FOR FURTHER INFORMATION CONTACT:

William T. Bono—(202) 275-7354, Bureau of Accounts

or

Craig M. Keats—(202) 275-7602, Office of General Counsel

SUPPLEMENTARY INFORMATION: Proposed rules in this proceeding were published at 51 FR 16363, May 2, 1986. Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (Washington, DC, metropolitan area), or toll-free (800) 424-5403.

This decision will not significantly affect the quality of the human environment or conservation of energy resources. It will not have a significant adverse impact on a substantial number of small entities, because it does not prescribe maximum rate levels, but rather addresses only the methodologies by which rail carriers may set rates.

List of Subjects

49 CFR Part 1135

Administrative practice and procedures, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1312

Railroads.

Decided: October 6, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Chairman Gradison submitted a separate expression. Commissioner Andre dissented with a separate expression.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1135—[AMENDED]

1. The authority citation for Part 1135 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10707a; 5 U.S.C. 553.

2. Section 1135.1 is amended by redesignating paragraph (f) as paragraph (g), revising paragraph (b), and adding a new paragraph (f), to read as follows:

§ 1135.1 Quarterly adjustment of rates.

* * * * *

(b) The allowable increase will be based on a projection of the index to the midpoint of the quarter to which the index will apply. The percentage change must be calculated from a comparison of the forecast index for the midpoint of the quarter during which the rates will be in effect with the forecast index for the midpoint of the previous quarter. Each quarterly index will be adjusted for forecast error in the index issued six months earlier. The adjustments will be made by adding or subtracting, as appropriate, the difference between the index using actual data for the second prior quarter and the index using forecasted data for that quarter.

* * * * *

(f) All cost recovery tariffs filed with the Commission shall state that they are being filed in conformity with the rules in 49 CFR 1135.1 and 1312.17(k), and shall be amended under the same timetable applicable to rate increases, to reflect declines in the cost index. Any declines in the index below the level in effect on December 31, 1985, will be addressed by postponing authorizations for future cost recovery rate increases pursuant to a "banking" procedure described more fully in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, served October 17, 1986.

* * * * *

PART 1312—[AMENDED]

3. The authority citation for Part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321, 10708, and 10762; 5 U.S.C. 553.

4. Section 1312.17 is amended by adding a new paragraph (k)(3) reading as follows:

§ 1312.17 Amendments.

* * * * *

(k) * * *

(3) All cost recovery tariffs filed with the Commission shall state that they are being filed in conformity with the rules in 49 CFR 1135.1 and 1312.1 applicable to cost recovery rate increases, to reflect declines in the cost index. Any declines in the index below the level in effect on December 31, 1985, will be addressed by postponing authorizations for future cost recovery rate increases pursuant to a "banking" procedure described more fully in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, served October 17, 1986.

* * * * *

[FR Doc. 86-23466 Filed 10-16-86; 8:45 am]

BILLING CODE 7035-01-M

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Proposed Rules

Federal Register
Vol. 51, No. 201
Friday, October 17, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 251

Temporary Emergency Food Assistance Program; Advance Notice of Proposed Rulemaking

AGENCY: Food and Nutrition Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Nutrition Service invites comments on methods to revise the formula used to allocate donated foods and funds among States for use in the Temporary Emergency Food Assistance Program (TEFAP). The Food and Nutrition Service feels that the current allocation formula may need to be more responsive to changes in economic conditions in order to do an adequate job of targeting commodities and funds to States in greatest need. Under TEFAP, USDA provides donated foods and administrative funds to help State and local agencies defray the costs of distributing food. Currently, donated foods and funds are allocated among States based on the following formula: (1) The number of households with incomes below the poverty level weighted at 60%; and (2) The number of unemployed persons weighted at 40%. This action advises interested parties to suggest ways to improve the current allocation of food and funds to make it more responsive to current and future need.

DATE: Comments must be received on or before December 16, 1986.

ADDRESS: Comments should be sent to Beverly A. King at the address listed below.

FOR FURTHER INFORMATION CONTACT: Beverly A. King, Chief, Program Administration Branch, Food and Nutrition Service, Food Distribution Division, Park Office Center, Alexandria, Virginia 22302, Telephone (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. Compliance with the provisions in this rule will not have an annual effect on the economy of more than $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This action has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601–612). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the Catalog of Federal Domestic Assistance under 10.568 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015 Subpart V and 49 FR 22675, May 31, 1984).

Legislative Background

Title II of Pub. L. 98–8 is designated as the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c *note*), hereafter referred to as the "Act". The Act requires the distribution of surplus agricultural commodities, acquired by the Commodity Credit Corporation, to charitable institutions, food banks, hunger centers, soup kitchens and other public or private non-profit recipient agencies for emergency hunger relief and provides authorization for $50 million to help defray State and local distribution costs. The Act was amended most recently by Pub. L. 99–198, the Food Security Act of 1985 which extends TEFAP through September 30, 1987. Congress' intent under the Act is to provide food to relieve situations of emergency and distress among needy persons including low income and unemployed persons.

The Department currently divides commodities and funds available under the Act on the basis of the number of persons unemployed and the number of persons in poverty in each State. These factors were chosen because the Department had determined that use of these factors best identifies areas in need of emergency relief.

Each year USDA establishes the type and amounts of commodities that will be made available to States. USDA apportions these commodities and funds among States on the basis of the following formula: (1) The number of households with income below the poverty level weighted at 60%; and (2) The number of unemployed persons weighted at 40%.

FNS is concerned that the allocation formula has become outdated and may no longer target commodities and funds to areas of current need. The Agency also feels that the formula could be more responsive to economic changes which cause the situations of emergency need that the program is intended to address.

For example, State by State poverty figures are available only from the U.S. Department of Commerce Bureau of the Census. Current allocations made under the formula are based on poverty statistics derived from the 1980 Census, which is based on 1979 income. To the extent that the geographic distribution of poverty has changed in the past six years, these data may fail to adequately target commodities and funds to areas of current emergency need.

The Agency is soliciting comments on ways to revise the allocation formula for commodities and administrative funds to better target them to areas of greatest need. Options could include alternative measures of low-income or poverty status, methods to update poverty statistics to make them more current and alternative weighting of factors included in the formula to make the allocation more responsive to areas of emergency need.

The Agency has already examined a number of alternative formulae. These include allocating commodities using Food Stamp Program participation as a measure of poverty, using mean or median per capita income as a measure of poverty and alternatives which would include the above options using different weighting schemes.

Some projections of allocations using options described above have been done by FNS. Commenters interested in the results may write to Ms. King for a copy or may obtain a copy from Ms. King's office at the above address.

Comments on ways to update the data used in the present formula as well as comments on possible alternative formulas should be forwarded to the Food and Nutrition Service by the specified date.

Authority: 7 U.S.C. 612c *note*.

Dated: October 14, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86–23544 Filed 10–16–86; 8:45 am]
BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Parts 1033, 1036, and 1040

[Docket Nos. AO–166–A56, AO–179–A51, and AO–225–A38]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals to change the classification of skim milk and butterfat used to produce ice cream and related products from Class III to Class II in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan milk orders. Also to be considered are proposals to amend only the Southern Michigan order. These proposals would change the diversion limits on producer milk, reduce the pooling standards for balancing and supply plants, and revise the Class II price. Proponents contend that the modifications are needed to promote uniformity in order application and to reflect changed marketing conditions.

DATE: The hearing will convene at 9:30 a.m. on October 28, 1986.

ADDRESS: The hearing will be held at the Ramada Inn-Airport, 8270 Wickham Road, Romulus, Michigan 48174, (313) 729–6300.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Ramada Inn-Airport, 8270 Wichkam Road, Romulus, Michigan 48174, beginning at 9:30 am., on October 28, 1986, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operations. Most parties subject to a milk order are considered small businesses. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1033, 1036, and 1040

Milk marketing orders,
Milk,
Dairy Products.

The authority citation for Parts 1033, 1036, and 1040 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Milk Marketing, Inc. (MMI)

Proposal No. 1

In § 1033.41, revise paragraphs (b)(3) and (c)(1) to read as follows:

§ 1033.41 Classes of utilization.

* * * * * *

(b) * * *

(3) Used to produce yogurt, sour cream, sour mixtures (such as dips and dressings), cottage cheese, cottage cheese curd, pancake mixes, puddings, frozen cream, milkshake mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and any concentrated milk product in bulk, fluid from other than that used to produce a Class III product; and

* * * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, nonfat dry milk, dry whole milk, dry whey, dry buttermilk, casein, cheese (except cottage cheese and cottage cheese curd), dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, any product containing six percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids.

* * * * * *

Proposal No. 2

In § 1036.40, revise paragraphs (b)(3) and (c)(1) to read as follows:

§ 1036.40 Classes of utilization.

* * * * * *

(b) * * *

(3) Used to produce yogurt, sour cream, sour cream products (e.g. dips), cottage cheese and cottage cheese curd, frozen desserts and frozen dessert mixes, eggnog, frozen cream, milkshake mixes containing 20 percent or more total solids and any concentrated milk product in bulk, fluid form other than that used to produce a Class III product; and

* * * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, cheese (excluding cottage cheese and cottage cheese curd),

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evaporated and condensed milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, any product containing six percent or more nonmilk fat (or oil), and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermetically sealed glass or metal containers;

* * * * *

Proposed by Michigan Milk Producers Association (MMPA)

Proposal No. 3

In § 1040.40, revise paragraphs (b)(3), (c)(1)(iv), and (c)(1)(vii) to read as follows:

§ 1040.40 Classes of utilization.

* * * * *

(b) * * *

(3) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milk shake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts (including frozen yogurt), and frozen dessert mixes (including frozen yogurt mixes);

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this seciton.

(c) * * *

(1) * * *

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

* * * * *

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package;

* * * * *

Proposed by the Kroger Company

Proposal No. 4

§§ 1033.41 and 1040.40 [Amended]

Amend §§ 1033.41(b)(3) and 1040.40(c)(1)(v) by adding the words "buttermilk biscuit mixes" to the products included therein.

Proposed by MMPA

Proposal No. 5

§ 1040.7 [Amended]

In the last sentence of § 1040.7(b), change "April through September" to read "April through August", and change "October through March" to read "September through March".

Proposal No. 6

In § 1040.7, revise paragraphs (b)(2)(i), (ii) and (iii) and (b)(3) and add a new paragraph (b)(6) to read as follows:

§ 1040.7 Pool plant.

* * * * *

(b) * * *

(2) * * *

(i) Not less than that percentage of its total member producers' milk which is designated by the Market Administrator for the current month pursuant to paragraph (b)(6) of this section; or

(ii) Not less than that percentage of its total member producers' milk which was designated by the Market Administrator for the second through the thirteenth preceding months pursuant to paragraph (b)(6) of this section, if such plant was qualified under this paragraph in each of the preceding thirteen months; and

(iii) A supply plant that qualifies as a pool plant pursuant to this subparagraph in each of the months of September through March shall be a pool plant for the following months of April through August.

(3) A plant which has been a pool plant for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(i) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than that percentage designated by the Market Administrator for the current month pursuant to paragraph (b)(6) of this section; and

(ii) Shipments to distributing plants for qualification purposes shall include both transfers from supply plants to plants described in paragraph (b)(5) of this section, and by deliveries directly from farm routes to distributing plant(s) qualified under paragraph (a) of this section; and

(iii) A supply plant that qualifies as a pool plant pursuant to this subparagraph in each of the months of September through March shall be a pool plant for the following months of April through August.

* * * * *

(6) The shipping percentage that applies to a handler described in paragraphs (b) (2) and (3) of this section shall be determined in the following manner:

(i) Upon completion of a compilation of the statistical summary for the current marketing month, the Market Administrator shall calculate the percentage that packaged fluid milk sales represent the total producer milk in that month's pool.

(ii) The Market Administrator will refer to the following table for the purpose of announcing the shipping percentage applicable for determination of pool plant status for this same month of the following year:

Packaged fluid milk sales as a percent of total producer milk	Applicable shipping (percent)
Below 34.99	30
35 to 39.99	35
40 to 44.99	40
45 to 49.99	45
50 and over	50

* * * * *

Proposed by National Farmers Organization (NFO)

Proposal No. 7

In § 1040.7, revise paragraph (b)(2) to read as follows:

§ 1040.7 Pool plant.

* * * * *

(b) * * *

(2) A plant operated by a cooperative association, except a plant that qualifies for pool plant status pursuant to paragraph (a) or (b) (1) or (3) of this section, or which is a pool plant under similar provisions of another Federal order, if the cooperative requests pool status for such plant and transfers from such plant to plants described in paragraph (b)(5) of this section and by direct delivery from farms to pool distributing plants are:

(i) For any month during the 12 month period beginning in March, the percentage announced by the Market Administrator pursuant to (b)(6)* of this section.

*Note—NFO supports the MMPA proposed § 1040.7(b)(6).

(ii) The percentage specified in (b)(2) of this section may be satisfied by qualifying shipments during the current month or on the basis of the average of such shipments during the preceding 12 month period ending with the current month.

* * * * *

Proposal No. 8

Amend § 1040.13 by deleting the present provisions of paragraph (d) and substituting the following:

§ 1040.13 Producer milk.

* * * * *

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1040.9(b) subject to the following conditions:

(1) During each of the months of September through February not less than one day's production of the producer must be physically received at a pool plant;

(2) In any month of September through February, the operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 60 percent of the producer milk physically received at such pool plant during the month;

(3) In any month of September through February, a cooperative association may divert an aggregate quantity of milk not exceeding 60 percent of the producer milk the cooperative association caused to be physically received at or diverted from pool plants during the month; and

(4) Any milk diverted in excess of the limit set forth in paragraph (d) (2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler.

Proposed by MMPA

Proposal No. 9

§ 1040.50 [Amended]

In § 1040.50(b)(1) change "15 cents" to "10 cents".

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 10

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrators of each of the aforesaid marketing orders or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan Marketing Orders

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on October 14, 1986.

James C. Handley,

Administrator.

[FR Doc. 86-23546 Filed 10-16-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-45-AD]

Airworthiness Directives; Beech Models 1900 and 1900C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Beech Models 1900 and 1900C airplanes equipped with optional "Chip Detect" annunciators. The AD would require that the Pilots Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM) be revised to remove language which could allow flights beyond the point of first intended landing following illumination of a "chip detect" annunciator, and to insert in its place a requirement that the cause of the illumination be determined and corrected prior to the next takeoff. This annunciator is intended to inform the flight crew of magnetic particle contamination in the engine reduction gear oil supply, a condition which could lead to in-flight engine failure, and continued illumination of a "chip detect" caution annunciator may reduce the attention-getting qualities of other required caution and warning lights with a resulting adverse effect upon safe operation.

DATE: Comments must be received on or before December 22, 1986.

ADDRESSES: Copies of the applicable POH/AFM revisions are available from Beech Aircraft Corporation, 9709 East Central, P.O. Box 85, Wichita, Kansas 67201. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-45-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. L.D. Felix, ACE-160W, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4433.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-45-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

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Discussion

Language introduced into the Beech Model 1900/1900C POH/AFM Part Number 114–590021–3 by Revision A2 dated September 1985 would authorize flights beyond the point of first intended landing following illumination of a "chip detect" caution annunciator without first determining the cause of the illumination. For reasons of operating safety, the FAA considers that any caution annunciation, once given, must be considered valid until its cause is found and corrected. The "chip detect" caution annunciator is intended to inform the flight crew of magnetic particle contamination in the engine reduction gear oil supply, a condition which may lead to in-flight engine failure. A failure to determine and correct the cause of such annunciation at the point of first intended landing exposes the occupants of the airplane to possible undue hazard due to in-flight engine failure on any additional flights, including those which may be necessary to reach a point at which normal maintenance may be performed.

The warning, caution, and advisory annunciators installed in the Model 1900 and 1900C cockpits are presented in a format that is compatible with the requirements of the Federal Aviation Regulations. In this format, red (warning) annunciators are used to indicate hazards which may require immediate corrective action. Amber (caution) annunciators are used to indicate the possible need for future corrective action. Green annunciators are used to indicate safe operation, and annunciators of other colors may be used to indicate system status. The safety benefits of this format depend upon the attention-getting qualities of the individual annunciators. Where any warning (red) or caution (amber) annunciator operates continuously, the attention-getting qualities of the remaining annunciators may be compromised. This may result in the flight crew's failure to detect and take timely action with respect to failures in other installed systems, particularly if flight is extended beyond the point of first intended landing. Since flight operation beyond the point of first intended landing with a caution annunciator illuminated may lead to unsafe flight crew actions, the FAA has determined that an unsafe condition exists. The proposed AD requires that pen-and-ink changes be made to the POH/AFM to delete a requirement that, following illumination of a chip detect annunciator, the cause of the malfunction should be determined and corrected at the next point where maintenance can be performed, and to insert in its place a requirement that the cause of the malfunction should be determined and corrected prior to the next takeoff.

Revision A3, dated February 1986, incorporates POH/AFM changes which are substantively the same as those directed by this proposed AD, and Beech has provided copies of Revision A3 to operators for each Model 1900 and 1900C airplane in service. Notwithstanding this, the unsafe procedure that is contained in the POH/AFM Revision A2 material is legally presumed to be safe unless it is subject to directed revision or unless the FAA approval is rescinded.

Since the condition described is likely to exist or develop in other Beech Model 1900/1900C airplanes of the same design, the AD would require that the Beech Model 1900/1900C POH/AFM P/N 114–590021–3 be revised to require pen and ink correction to material inserted by Revision A2, dated September 1985. The FAA has determined there are approximately 58 airplanes affected by the proposed AD. The cost of revising the POH/AFM of these airplanes as required by this proposed AD is estimated to be zero per airplane. The total cost is estimated to be zero to the private sector.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to Models 1900 and 1900C (all serial numbers) airplanes equipped with optional "Chip Detect" annunciators, certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To preclude the reduction of the attention-getting qualities and enhance pilot awareness of the cockpit caution and warning annunciators, accomplish the following:

(a) Revise Beech Model 1900/1900C Pilots Operating Handbook and FAA-Approved Airplane Flight Manual (POH/AFM), Part Number (P/N) 114–590021–3, by incorporating Revision A3, dated February, 1986.

(b) An alternate means of compliance with paragraph (a) of the AD is as follows:

(1) Using pen-and-ink or other permanent means, delete the words "at the next point where maintenance can be performed" from the precedure entitled Illumination of "Chip Detect" Annunciator on page 3A–6.

(2) In place of the words deleted in step (1), insert the words "prior to the next takeoff".

(c) The requirements of paragraph (a) or (b) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations (FAR) on any airplane owned or operated by him. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(d) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4400.

All persons affected by this directive may obtain copies of the document(s) applicable to this AD upon request to Beech Aircraft Corporation, 9709 East Central, P.O. Box 85, Wichita, Kansas 67201; of the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 7, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–23406 Filed 10–16–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–CE–43–AD]

Airworthiness Directive; British Aerospace Models HP.137 Jetstream MK.1, Jetstream Series 200, and Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) Models HP.137 Jetstream MK.1, Jetstream Series 200 and Jetstream Model 3101 airplanes which would limit the in-service life of the flap torque shaft assembly to 18,000 landings or the equivalent as a result of BAe fatigue tests. This proposed AD would give instructions for determining the "in-service life" and labeling the flap torque shaft assemblies in service.

DATE: Comments must be received on or before December 22, 1986.

ADDRESSES: BAe Mandatory Service Bulletin (MSB) 27–JA840421 dated January 14, 1986, and Service Bulletin (S/B) 27–JM7500 dated January 23, 1986, applicable to this proposed AD may be obtained from British Aerospace, Engineering Department, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435–9100 or at the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–43–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Brussels Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; Telephone 513.38.30; or Mr. Harvey Chimerine, FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64016; Telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–CE–43–AD Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Based upon the results of BAe conducted fatigue tests, the "in-service life" of the flap torque shaft assembly used in BAe Models HP.137 Jetstream MK.1, Jetstream Series 200 and Jetstream Model 3101 airplanes is restricted to 18,000 landings or the equivalent. BAe S/B 27–JM7500 dated January 23, 1986, details procedures for the identification of these assemblies by individual serial number to facilitate the recording of the expired life of an individual component. BAe MSB 27–JA840421 dated January 14, 1986, includes instructions for determining the "in-service life" and labeling of flap torque shaft assemblies in service.

The Civil Aviation Authority United Kingdom (CAA–UK) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom has classified BAe MSB 27–JA840421 service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of the CAA–UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of BAe MSB 27–JA840421 dated January 14, 1986, and S/B 27–JM7500 dated January 23, 1986. Based on the foregoing, the FAA believes that the condition addressed by a reduction in the original life limits for the continued airworthiness of the flap torque assembly is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require a modification record and serial number plate on the torque shafts to facilitate the keeping of records. It would provide instructions for determining the "in-service life" and labeling of flap torque shaft assemblies that are installed. It would also provide instructions for affixing labels on flap torque shafts which were in-service and state on the label the number of landings which would indicate the "in-service life". The FAA has determined there are approximately 50 airplanes affected by the proposed AD. The cost of inspecting and modifying these airplanes in accordance with the proposed AD is estimated to be $1,050 per airplane. The total cost is estimated to be $52,500 to the private sector.

Few if any, small entities own the affected airplanes therefore the cost of compliance is so small that it would not imposed a significant economic inpact on any such owners.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

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proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace: Applies to Models HP.137 Jetstream MK.1 Jetstream Series 200 and Jetstream Model 3101 airplanes (All Serial Numbers), certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure to the flap torque shaft assembly accomplish the following:

(a) Within 100 hours time-in-service:

(1) Modify the flap torque shaft assembly by securing a "Modification and Serial Number Plate" to the flap torque shaft which includes part number, serial number (assigned by British Aerospace (BAe)), date and number of landings in accordance with the provisions of Section 2 "Accomplishment Instructions" of BAe SB 27-JM7500 dated January 23, 1986.

(2) On airplanes with flap torque shaft assemblies having 17,900 or more landings on the effective date of this AD, within the next 100 landings replace the flap torque shaft assembly with an airworthy part of the same part number modified as per paragraph (a)(1) above and modified in accordance with the provisions of Section 2 "Accomplishment Instructions" Part A "Torque Shaft Assembly installed on In-service Aircraft" of BAe MSB 27-JA840421 dated January 14, 1986.

(3) On airplanes with flap torque shaft assemblies having less than 17,900 landings on the effective date of this AD replace the flap torque shaft assemblies before accumulating 18,000 landings, with an airworthy part of the same part number modified as per paragraph (a)(1) above and modified in accordance with the provisions of Section 2 "Accomplishment Instructions" Part A "Torque Shaft Assembly Installed on Inservice Aircraft" of BAe 27-JA840421 dated January 14, 1986.

(b) If the actual number of landings is unknown for the purpose of complying with this AD, one landings may be substituted for each ½ flight hour unless the operator substantiates a different flight hours to landings ratio. This substantiation must be submitted to and approved by the Manager, Atlanta Aircraft Certification Office, address below.

(c) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where the AD can be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace, Engineering Department, Post Office Box 17414, Dulles International Airport, Washington DC; telephone (703) 435-9100, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 6, 1986.

Jerold M. Chavkin,

Acting Director Central Region.

[FR Doc. 86-23407 Filed 10-16-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWA-40]

Proposed Establishment of Airport Radar Service Areas

Correction

In FR Doc. 86-22118, beginning on page 35140, in the issue of Wednesday, October 1, 1986, make the following corrections:

On page 35141, second column, first complete paragraph, fifth line, "can" should read "are".

On the same page, same column, fourth paragraph, fifth line from the bottom, "State" should read "Stage".

On page 35142, third column, first complete paragraph, thirteenth line, "what" should read "that".

On the same page, same column, same paragraph, twentieth line "change" should read "charge".

On page 35150 at the bottom of the page, the file line was omitted, and should have read as follows:

[FR Doc. 86-22118 Filed 9-30-86; 8:45 am]

BILLING CODE 1505-01-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-32]

Proposed Revision to Livermore, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the description of the Livermore California, transition area. This will extend the 700 foot transition area to the southeast of the Livermore Municipal Airport, California, and provide controlled airspace for aircraft executing the Instrument Landing System (ILS) Runway 25 approach to the Livermore Municipal Airport.

DATE: Comments must be received on or before November 30, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 86-AWP-32, Air Traffic Division, P.O. Box 90027, Worldway Postal Center, Los Angeles, California 90009-2007.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice maybe changed in light of the comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA pesonnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposal Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to expand the 700 foot transition area southeast of the Livermore Municipal Airport, California. Section 71 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B, dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep him operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety/transition areas.

The Proposal Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.18 [Amended]

2. Section 71.181 is amended as follows:

Livermore, CA—[Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 37°44'00" N., long. 121°52'00" W.; to lat. 37°46'15" N., long. 121°40'00" W., to lat. 37°41'30" W., long. 121°34'00" W.; to lat. 37°37'15" N., long. 121°32'00" W.; to lat. 37°36'00" N., long. 121°52'00" W.; thence, to the point of beginning.

Issued in Los Angeles, California, on October 8, 1986.

Attachment.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 86-23408 Filed 10-16-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 970 and 971

[Docket No. 50712-5112]

Deep Seabed Mining; Proposed Regulations for Commercial Recovery and Revision of Regulations for Exploration

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Extension of comment period for proposed rule.

SUMMARY: Pub. L. 96-283, the Deep Seabed Hard Mineral Resources Act (the Act), authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue to eligible United States citizen applicants, licenses for exploration for and permits for the commercial recovery of deep seabed hard mineral resources. The Act also requires that NOAA issue regulations with respect to deep seabed mining licenses and permits.

On July 25, 1986, NOAA proposed a rule governing application for and issuance of commercial recovery permits [51 FR 26794]. NOAA has been asked, and has decided, to extend the period for comment on the proposed regulation from October 23, 1986, to November 24, 1986.

DATE: Comments on the proposed rule must be received on or before November 24, 1986.

ADDRESS: Submit comments to: James P. Lawless, Chief, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: John W. Padan, Program Manager, Deep Seabed Mining, (202) 673-5117, at the above address.

SUPPLEMENTARY INFORMATION: Copies of transcripts of the public hearings held in conjunction with this rulemaking are available for inspection at the following addresses:

a. *Washington, DC*- Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, Suite 710, 1825 Connecticut Avenue, NW., Washington, DC 20235.

b. *Honolulu, Hawaii*—Ocean Resources Branch, Hawaii Department of Planning and Economic Development, Room 248, Old Federal Court House Building, 335 Merchant Street, Honolulu, Hawaii.

c. *Hilo, Hawaii*—Mookini Library, University of Hawaii at Hilo.

Approved: October 14, 1986.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-23549 Filed 10-16-86; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 127

Proposed Customs Regulations Amendment Relating to Sale of Unclaimed and Abandoned Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to allow for the sale of unclaimed and abandoned merchandise in a district other than the district in which the merchandise was imported. It is expected that permitting sales in other districts would often result in higher bids for the merchandise at auction, and thus higher sales prices. Also, Customs would be able to consolidate the sales so that fewer Customs districts would be involved. This would allow for more efficient use of Customs personnel who organize and conduct such sales.

DATE: Comments must be received on or before December 16, 1986.

BEST COPY AVAILABLE

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ADDRESS: Comments (preferably in triplicate) may be addressed to, and inspected at, the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John Holl, Office of Cargo Enforcement Facilitation (202–566–8151).

SUPPLEMENTARY INFORMATION:

Background

Sections 490 through 493, Tariff Act of 1930, as amended (19 U.S.C. 1490–1493), set forth procedures to be followed whenever there has been an incomplete entry of imported merchandise, as well as procedures for the subsequent disposition of the merchandise. Whenever entry of any imported merchandise is not made within the time permitted by law or regulations, or whenever entry of such merchandise is incomplete because of the failure to pay the estimated duties, or whenever, in Customs opinion, entry cannot be made for lack of proper documents or other cause, or whenever Customs believes that any merchandise is not correctly or legally invoiced, the merchandise is taken into Customs custody and sent to a bonded warehouse or public store. The merchandise, known as "general order", is held at the warehouse or public store at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production.

If the general order merchandise remains in Customs custody for one year from the date of importation, without payment of all estimated duties and storage or other charges, it is then considered unclaimed and abandoned to the Government. The merchandise may then be appraised and sold by Customs at public auction. Gunpowder, explosives, or other merchandise subject to depreciation in value by damage, leakage, or other reasons, to such extent that the proceeds of the sale of the merchandise may be insufficient to pay the duties, storage, and other charges if it remains in a public store or a bonded warehouse for a period of one year, may be sold immediately.

Any merchandise which is subject to sale under these laws may be entered (but not for warehouse) or withdrawn for consumption at any time prior to sale, upon payment of all duties, storage, and other charges and expenses that may have accrued upon the merchandise. Also, there are separate provisions relating to the disposition of merchandise subject to Internal Revenue tax.

Sections 127.0 through 127.37, Customs Regulations (19 CFR 127.0 through 127.37), implement the laws concerning general order merchandise and the disposition of unclaimed and abandoned merchandise. Pursuant to § 127.22, relating to the place of sale of unclaimed and abandoned merchandise, the district director, in his discretion, may sell such merchandise at any port within his district.

It has come to Customs attention that unclaimed and abandoned merchandise could often be more advantageously sold if the sale were to occur in a district other than the one in which the merchandise was imported. This would allow Customs to consolidate the sales. Thus, fewer Customs districts would be involved, which would result in more efficient use of Customs personnel who organize and conduct such sales. It would also allow for more competition in the bidding (and therefore higher sales prices) since a greater number of prospective buyers would be present at these consolidated sales. In addition, certain merchandise, such as collector's quality firearms and rare birds, which appeal to specific kinds of buyers, would bring a higher price if they could be sold in a district with a concentration of these buyers. It is believed that the higher sales prices obtained in the consolidated sales would cover the costs of transportation of the merchandise to the district where the sale is to take place and still result in a greater return to the Government.

Proposed Action

It is proposed to amend § 127.22, Customs Regulations (19 CFR 127.22), to allow for the sale of unclaimed and abandoned merchandise in a district other than the one in which the merchandise was imported. The decision to transfer the merchandise for purposes of sale would be within the discretion of the district director in the district where the merchandise was imported. With the exception of certain merchandise as noted in 19 U.S.C. 1491 and 1492, only merchandise which has remained in general order for one year and is thereupon considered unclaimed and abandoned may be transferred to another district for sale.

The consignee of the merchandise would be notified of its transfer to another district for sale inasmuch as the consignee, pursuant to 19 U.S.C. 1491, has the option of making entry at any time prior to the sale, upon the payment of all duties, storage and other charges, and expenses that may have accrued on the merchandise. The costs of transfer would be assumed by Customs. They would be considered an expense of the sale, to be reimbursed to Customs out of the proceeds of the sale.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2428, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from the other offices participated in its development.

List of Subjects in 19 CFR Part 127

Customs duties and inspection, Unclaimed and abandoned merchandise.

Proposed Amendment

It is proposed to amend Part 127, Customs Regulations (19 CFR Part 127), as set forth below.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

1. The general authority citation of Part 127 is revised to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

2. It is proposed to revise § 127.22 to read as follows:

§ 127.22 Place of sale.

All merchandise at a port other than a district headquarters port, which becomes subject to sale (including explosives, perishable articles and articles liable to depreciation), shall be promptly reported to the headquarters port for disposition. The district director at the port, in his discretion, may authorize the sale of such merchandise, as well as merchandise at the headquarters port which is subject to sale, at any port within his district, or in any other district. The consignee of any merchandise which is to be transferred from the district where it was imported to another district for sale, shall be notified of the transfer so that he may have the option of making entry for the merchandise before the transfer and sale.

William von Raab,
Commissioner of Customs.

Approved: October 3, 1986.

Francis A. Keating II,
Assistant Secretary of the Treasury.

[FR Doc. 86–23532 Filed 10–16–86; 8:45 am]
BILLING CODE 4820–02–M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 353

[Docket No. 60504–6104]

Antidumping Duties; Extension of Comment Period

AGENCY: International Trade Administration, Commerce.

ACTION: Proposed rule and request for comments; extension of comment period.

SUMMARY: The International Trade Administration announces that the deadline for receipt of comments on the proposed rule on antidumping duties (19 CFR Part 353) published August 13, 1986 (51 FR 29046) is extended for 30 days.

DATES: Writtem comments on the proposed rule must be received by November 13, 1986.

ADDRESS: Address written comments (10 copies) to Gilbert B. Kaplan, Deputy Assistant Secretary for Import Administration, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Deputy Chief Counsel for Import Administration, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230 (202) 377–1411.

SUPPLEMENTARY INFORMATION: On August 13, 1986, the Department of Commerce, International Trade Administration, published in the **Federal Register** (51 FR 29046) proposed revisions to its regulations relating to antidumping duties (19 CFR Part 353). This notice stated that the public comment period for that rulemaking closes on October 14, 1986.

The Department, which has received requests for additional time for comment, believes that the proposed rule is sufficiently complex to warrant a comment period longer than the normal 60 days.

Accordingly, this notice announces that the public comment period for that rulemaking is extended until November 13, 1986. Comments on the proposed rule must be submitted on or before that date.

Dated: October 10, 1986.

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–23555 Filed 10–16–86; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

29 CFR Part 530

Employment of Homeworkers in Certain Industries; Extension of Comment Period

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Notice of proposed rulemaking: Extension of comment period.

SUMMARY: This document extends the period for filing comments on the notice of proposed rulemaking concerning Part 530 of Title 29 of the Code of Federal Regulations (29 CFR Part 530). The proposed changes would modify the current restrictions on the employment of industrial homeworkers in six industries.

DATE: Comments must be received on or before December 1, 1986.

ADDRESS: Written comments should be addressed to Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8305. This is not a toll free number.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 21, 1986 (51 FR 30036), the Department of Labor published a proposed rule which amend existing 29 CFR Part 530. The current regulations restrict, pursuant to section 11(d) of the Fair Labor Standards Act, the employment of industrial homeworkers in women's apparel; jewelry manufacturing; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. These same regulations currently permit the employment of homeworkers in the knitted outerwear industry, provided the employer first obtains a certificate from the Department of Labor. Under the proposed rule, homeworker would be permitted in the six restricted industries under the same certification system used in the knitted outerwear industry. Comments were requested to be submitted on or before October 20, 1986. The agency believes that an extension of the comment period is appropriate because a number of interested parties have requested such an extension in order to permit them to fully examine the notice of proposed rulemaking and provide substantive comments.

Signed at Washington, DC, on this 14th day of October, 1986.

Paula V. Smith,
Administrator, Wage and Hour Division, Employment Standards Administration.

[FR Doc. 86–23574 Filed 10–16–86; 8:45 am]
BILLING CODE 4510–27–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 86–297]

Establishment of a Federal-State Joint Board; Extension of Comment Period

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of time for filing comments and replies.

SUMMARY: The Chief, Common Carrier Bureau, grants a request for a change in the pleading cycle in the Federal-State Joint Board's proceeding proposing

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revisions to the Commission's separations rules to conform current procedures to the revised Uniform System of Accounts, published on 51 FR 29126 August 14, 1986.

DATES: The pleading cycle is changed to provide that comments and data on the proposed Class A Separations Manual may be filed on or before October 17, 1986; comments and data on the Class B Separations Manual may be filed on or before October 31, 1986; replies on the Class A Manual may be filed on or before November 3, 1986; replies on the Class B Manual may be filed on or before December 5, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Michael Wilson, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554 (202) 632–7500

Cindy Schonhaut, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554 (202) 632–7500

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Memorandum Opinion and Order, *Amendment of Part 67 of the Commission's Rules and Establishment of a Federal-State Joint Board,* CC Docket No. 86–297, Mimeo No. 6803, released September 8, 1986, and the Erratum thereto, Mimeo No. 6952, released September 17, 1986. The full texts are available for inspection and copying during normal business hours in the Federal Communications Commission, Dockets Branch, 1919 M Street NW, Room 230, Washington, DC 20554. The complete text may also be purchased from the Commission's copying contractor, International Transcription Service, 2100 M Street NW, Room 140, Washington, DC 20037, (202) 857–3800.

Federal Communications Commission.

Michael Wilson,

Chief, Audits Branch, Common Carrier Bureau.

[FR Doc. 86–23514 Filed 10–16–86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 201
Friday, October 17, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Request Under Review

Summary:

This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

Background:

Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect informations from the public or impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Information About This Proposed Collection:

Agency Clearance Officer—Melvin E. Beetle, (202) 634–9318
Agency Address: ACTION, 806 Connecticut Avenue NW., Washington, DC 20525.
Office of ACTION issuing the Proposal: Domestic and Anti-Poverty Operations, Office of Older American Volunteer Programs
Title of Form: Project Grant Application: Older American Volunteer Programs (OAVP includes Foster Grandparent, Senior Companion Program, and Retired Senior volunteer Program
Type of Request: Revision
Frequency of Collection: Annually
General Description of Respondents: State or local governments, non-profit institutions or organizations.
Estimated Number of Annual Responses: 1100
Estimated Annual Reporting or Disclosure Burden: 11,000 hour
Respondent's Obligation to Reply: Required to obtain and retain benefit.
Person responsible for OMB Review: Judy MacIntosh, (202) 395–6880.

Dated: October 9, 1986.

Melvin E. Beetle,

ACTION Clearance Office.

[FR Doc 86–23482 Filed 10–16–86; 8:45 am]

BILLING CODE 6050-28-M

Information Collection Request Under Review

Summary

This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

Background

Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Information About This Proposed Collection

Agency Clearance Officer—Melvin E. Beetle—202–634–9318
Agency Address: ACTION, 806 Connecticut Avenue NW., Washington, DC 20525
Office of ACTION Issuing Proposal: Domestic Operations/VISTA
Title of Form: VISTA Project Application
Type of Request: Extension
Frequency of Collection: Annually
General Description of Respondents: State or local governments, non-profit institutions, small business or organization.
Estimated Number of Responses: 1,500
Estimated Annual Reporting or Disclosure Burden: 19,000 hours
Respondent's Obligation to Reply: Required to obtain or retain a benefit.
Person responsible for OMB Review: Judy MacIntosh, (202) 395–6880.

Melvin E. Beetle,

Clearance Officer, ACTION.

[FR Doc. 86–23483 Filed 10–16–86; 8:45 am]

BILLING CODE 6050-28-M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States, to be held at 1 p.m., Friday, October 24, 1986, at the Administrative Conference of the U.S., 2120 L Street, NW. Suite 500, Washington, DC. The committee will meet to consider a draft recommendation on medicare appeals, based on a study by Professor Eleanor Kinney of the Indiana University School of Law. For further information, call Jeffrey S. Lubbers, 202–254–7065.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the committee before, during or after the meeting. Minutes of the meeting will be available on request.

Jeffrey S. Lubbers,

Research Director.

October 5, 1986.

[FR Doc. 86–23602 Filed 10–16–86; 8:45 am]

BILLING CODE 6110-01-M

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ADVISORY COUNCIL ON HISTORIC PRESERVATION

Ratification of Two Programmatic Memoranda of Agreement Affecting Historic Properties on BLM Lands in Utah and Colorado

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute two Progammatic of Memoranda of Agreement, pursuant to its regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the Bureau of Land Management (Colorado and Utah State Directors) and the Colorado and Utah State Historic Preservation Officers, providing for comprehensive means for the Bureau to comply with section 106 of the National Historic Preservation Act (16 U.S.C. 470f) for all Bureau actions affecting historic and cultural properties. Such actions include both Bureau-initiated programs and projects and actions initiated by others with Bureau permit, approval, or issuance of rights-of-way.

Comments Due: November 17, 1986.

ADDRESS: Executive Director, Western Division of Project Review, Advisory Council on Historic Presesrvation, Suite 450, 730 Simms Street, Golden, CO 80401; 303–236–2682 (commercial) or 776–2682 (FTS).

Dated: October 9, 1986.

John M. Fowler,

Acting Executive Director.

[FR Doc. 86–23415 Filed 10–16–86; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Amendment of an Existing System of Records

Correction

In FR Doc. 86–22532 appearing on page 35539 in the issue of Monday, October 6, 1986, make the following correction:

In the third column, in the last paragraph, in the third line, "illegally" should read "legally".

BILLING CODE 1505–01–M

Soil Conservation Service

Black Creek Watershed (Hill Portion), MS; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Black Creek Watershed (Hill Portion), Holmes and Carroll Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: Louie Pete Heard, Acting State Conservationist, Soil Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Louie Pete Heard, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection in a partially completed watershed. The planned works of improvement include the remaining land treatment throughout the watershed, 20 floodwater retarding structures, 3 major grade control structures, a levee around an industrial area, channel improvement on minor tributaries through an urban area, flood proofing (raising one house), streambank protection, and minor grade control structures. Planned measures will be installed jointly by the Corps of Engineers and the Soil Conservation Service as a component of a Demonstration Erosion Control Project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Louie Pete Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: October 9, 1986.

L. Pete Heard,

Acting State Conservationist.

[FR Doc. 23412 Filed 10–16–86; 8:45 am]

BILLING CODE 3410–16–M

Choctaw Creek Watershed, TX; Availability of a Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Coy A. Garrett, responsible Federal official for projects administered under the provision of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Texas, is hereby providing notification that a record of decision to proceed with the installation of the Choctaw Creek Watershed project is available. Single copies of this record of decision may be obtained from Coy A. Garrett at the address shown below.

FOR FURTHER INFORMATION CONTACT: Coy A. Garrett, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501–7682, telephone (817)–774–1214.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 9, 1986.

Charles W. Conklin,

State Administrative Officer.

[FR Doc. 86–23469 Filed 10–16–86; 8:45 am]

BILLING CODE 3410–16–M

Perkins Park Improvements Critical Area Treatment RC&D Measure, MI; Environmental Impact Statement

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Perkins Park Improvements RC&D Measure, Marquette County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for flood prevention. The planned works of improvement include the following items: 500 feet of rustic fence, 400 cu. yds. of rock riprap, adding topsoil and planting adapted grasses. Total construction cost is estimated to be $47,000, of which RC&D funds will pay 59% and local funds 41%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interest parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(This activitiy is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: October 7, 1986.

Homer R. Hilner,

State Conservationist.

[FR Doc. 86–23413 Filed 10–16–86; 8:45 am]

BILLING CODE 3410–16–M

West Orangeburg Watershed, SC; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); the Soil Conservation Service Guidelines (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the West Orangeburg Watershed, Aiken and Orangeburg Counties, South Carolina.

FOR FURTHER INFORMATION CONTACT: Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, Telephone (803) 765–5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 31,300 acres of cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: October 6, 1986.

Billy Abercrombie,

State Conservationist.

[FR Doc. 86–23475 Filed 10–16–86; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees (CAC) on the American Indian and Alaska Native Populations, the Asian and Pacific Islander Populations, the Black Population, and the Hispanic Population for the 1990 Census; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC on the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census. The joint meeting will convene on November 6 and 7, 1986, at the Ramada Hotel, 6400 Oxon Hill Road, Oxon Hill, Maryland 20745.

Each of these committees is composed of nine members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communications between the communities they represent and the Bureau of the Census on the problems and opportunities of the 1990 decennial census.

The committees will draw on the knowledge and insight of their members to provide advice during the planning of the 1990 Census of Population and Housing on such elements as improving the accuracy of the population count, suggesting areas of research, recommending subject content and tabulations of particular use to the populations they represent, expanding the dissemination of census results among present and potential users of census data in their communities, and generally improving the usefulness of the census product.

The agenda for the November 6 combined meeting that will begin at 8:45

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a.m. and end at 2:30 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) Cooperative program with the U.S. Geological Survey; (3) 1990 planning update; (4) 1990 processing office strategy; (5) Reports on observation of content reinterview; and (6) Summary of 1980 law suits and adjustment research.

In their separate meetings that will begin at 2:45 p.m. and end at 5:15 p.m. on November 6, the committees will consider the Census Bureau responses to committee recommendations and information requests from their last meetings.

The agendas for the four committees in their separate meetings that will begin at 8:45 a.m. and end at 12:15 p.m. on November 7 are:

The CAC on the American Indian and Alaska Native Populations for the 1990 Census: (1) Update on American Indian enumeration issues (supplementary questionnaire, reservation boundaries, Alaska plans); (2) Development and discussion of recommendations and suggested agenda for next meeting; and (3) Comments by outside observers.

The CAC on the Asian and Pacific Islander Populations for the 1990 Census: (1) Update on Asian and Pacific Islander population issues (1980 data, non-English materials, southeast Asia immigrant enumeration); (2) Development and discussion of recommendations and suggested agenda for next meeting; and (3) Comments by outside observers.

The CAC on the Black Population for the 1990 Census: (1) Census Community Awareness Program and the Black population; (2) Development and discussion of recommendations and suggested agenda for next meeting; and (3) Comments by outside observers.

The CAC on the Hispanic Population for the 1990 Census: (1) Use of Spanish language questionnaire; (2) Development and discussion of recommendations and suggested agenda for next meeting; and (3) Comments by outside observers.

The agenda for the combined meeting that will begin at 1:15 p.m. and adjourn at 3:00 p.m. is: (1) Comments by outside observers; and (2) Presentation of recommendations and plans and suggested agenda for the next meeting.

All meetings are open to the public, and two brief periods are set aside on November 7 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact Mr. Russell L. Valentine, Assistant Chief for Outreach and Program Information, Decennial Planning Division, Bureau of the Census, Room 3705, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone (301) 763-5855.

Dated: October 15, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86-23592 Filed 10-16-86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-351-606]

Postponement of Preliminary Antidumping Duty Determination: Tubeless Steel Disc Wheels From Brazil

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioner in this investigation to postpone the preliminary determination, as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determination as to whether sales of tubeless steel disc wheels from Brazil have occurred at less than fair value until not later than December 19, 1986.

EFFECTIVE DATE: October 17, 1986.

FOR FURTHER INFORMATION CONTACT: William D. Kane or Charles Wilson, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377-1766 or 377-5288.

SUPPLEMENTARY INFORMATION: On June 17, 1986 (51 FR 21952), we announced the initiation of an antidumping duty investigation to determine whether tubeless steel disc wheels from Brazil are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue a preliminary determination by October 30, 1986.

As detailed in that notice, the petition alleged that imports of tubeless steel disc wheels from Brazil are being, or are likely to be sold in the United States at less than fair value. On October 1, 1986, counsel for petitioner, the Budd Company, requested that the Department extend the period for the preliminary determination until not later than 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for determination in the case is hereby extended. We intend to issue a preliminary determination not later than December 19, 1986.

This notice is published pursuant to section 733(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

October 9, 1986.

[FR Doc. 86-23556 Filed 10-16-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-064]

Fresh Cut Roses From Israel; Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination Not to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on fresh cut roses from Israel. The review covers the period October 1, 1981 through September 30, 1984 and 10 programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant to be 12.03 percent *ad valorem* for the period October 1, 1981 through September 30, 1982, 13.88 percent *ad valorem* for the period October 1, 1982 through September 30, 1983, and 28.72 percent *ad valorem* for the period October 1, 1983 through September 30, 1984. We also tentatively determine not to revoke the countervailing duty order. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 17, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia Gozigian or Alan Long, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 924) the final results of its last administrative review of the countervailing duty order on fresh cut roses from Israel (45 FR 58516; September 4, 1980). We began this review of the order under our old regulations. On October 2, 1985, after the promulgation of our new regulations, the petitioner, Roses, Inc., requested in accordance with section 355.10 of the Commerce Regulations that we complete the administrative review of this order. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Israeli fresh cut roses. Such merchandise is currently classifiable under items 192.1810 and 192.1890 of the Tariff Schedules of the United States Annotated.

The review covers the period October 1, 1981 through September 30, 1984 and ten programs: (1) The ECIL; (2) Government-guaranteed Minimum Price Program; (3) preferential short-term financing; (4) government funding of AGREXCO; (5) cash payments to growers for greenhouses; (6) cash payments to packing houses; (7) cash payments from the Export Promotion Fund; (8) fuel grants to rose growers; (9) long-term loans to AGREXCO; and (10) a capital fund for AGREXCO.

Analysis of Programs

The Israeli government did not respond to the Department's questionnaires covering the review period. Therefore, we calculated the benefits using the best information available. Sources include information collected during previous administrative reviews, published documents, the final affirmative countervailing duty determination on potassium chloride from Israel (49 FR 36122, September 14, 1984) ("the potash final determination"), and the preliminary determination on oil country tubular goods from Israel (51 FR 21201, June 11, 1986) ("the OCTG preliminary determination").

(1) ECIL

The purpose of the Encouragement of Capital Investment Law ("the ECIL") is to attract capital to Israel with a view toward developing the productive capacity of the national economy, improving the balance of payments, absorbing immigration and offsetting the economic disadvantages in Israel's development areas. To become eligible for these benefits, individual enterprises must obtain government approval for each investment project.

From previous reviews, we know that the Israeli government has not approved rose growers for ECIL benefits. However, we found that the government had approved ECIL benefits for two rose exporters and eight packing houses. These benefits include:

(A) Ten-Year Exemption From ⅙ of the Property Tax on Stock and Machinery/Equipment

The Israeli government repealed this provision in 1978, but those enterprises approved prior to repeal continued to receive benefits during the review period.

We have no information on the value of equipment for approved enterprises during the review period. Therefore, we used as the best information available the rate calculated for the previous administrative review. On this basis, we preliminarily determine the benefit from this provision to be 0.01 percent *ad valorem* for the review period.

(B) Investment Grants Based on the Cost of Property and/or Machinery/Equipment for an Approved Project

Seven enterprises involved in exporting roses received grants under these provisions beginning in 1977. We have information on the grants received only up to the 1979-80 growing year (*i.e.*, October 1, 1979 through September 30, 1980). To estimate the amount of grants provided during the growing years under review, we used as the best information the highest aggregate grant amount provided to any of the seven companies in any single previously examined period, *i.e.*, 1979-80.

In computing the benefit from the grants, we used the grant methodology outlined in the Subsidies Appendix to the notice of "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" on certain cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006, April 26, 1984) ("the Subsidies Appendix"). We allocated the grants over ten years, the average useful life of agricultural assets according to the "Asset Guideline Classes" of the U.S. Internal Revenue Service. For a discount rate, we used as the best information available a rate we determined for the seven companies in the 1979-80 review: The average London Interbank Offer Rate ("LIBOR") prevailing during the growing year in which the grant was received, plus five percentage points.

We multiplied the benefit for each growing year by the ratio of total rose to flower exports and divided the result by the total estimated rose exports of that growing year. Based on these calculations, we preliminarily determine the benefit to be 0.57 percent *ad valorem* for the 1981-82 period, 0.67 percent *ad valorem* for the 1982-83 period, and 0.72 percent *ad valorem* for the 1983-84 period.

(C) Preferential Accelerated Depreciation, and

(D) Income Tax Reductions and Exemptions

Section 42 of the ECIL provides that approved enterprises may depreciate: (1) Machinery and equipment at double the normal rate for five years; and (2) buildings at four times the normal rate. The law states that the accelerated depreciation is available only to approved enterprises. Another ECIL provision allows income tax reductions and exemptions for approved enterprises.

We used as the best information available the rate calculated for both provisions during the 1979-80 administrative review. We preliminarily determine the benefit from these provisions to be 0.26 percent *ad valorem* for the review period.

(E) "Drawback" Grants

Section 40E of the ECIL provides that the owner of an approved enterprise is entitled to a drawback grant with respect to taxes on investments and investment expenditures. Grants are based on a fixed percentage of the investment. From previous Israeli government responses we know that in 1980 one packing house, Bickel, had received an award. The ECIL project approvals of the other packing houses stated that they were not eligible to receive these grants. Because of the infrequent use of this program, we have assumed there were no new grants during any year covered by the current review.

We calculated the benefit from this program in accordance with the grant methodology outlined in the Subsidies Appendix, allocating the grants over ten years and using the same discount rate as described for the property investment grants. We multiplied the benefit for each growing year by the ratio of total rose to flower exports and divided the result by the total estimated rose exports of that

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(2) Government-Guaranteed Minimum Price Program

The Government of Israel provides funds under this program as year-end, lump sum payments. The payments are based on claims submitted to the Ministry of Agriculture after the close of the growing season.

We used as the best information available the rate for cash deposits of estimated countervailing duties from our last administrative review. On this basis, we preliminarily determine the benefit to be 0.38 percent *ad valorem* for the period of review.

(3) Preferential Short Term Financing

During the period of review, the Bank of Israel provided preferential short-term financing through three export credit funds: The Export Production Fund (for working capital loans); the Imports-for-Export Fund (to finance imported materials used for export production); and the Export Shipments Fund (tied to accounts receivable). Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates. We allocated the benefits from the following three funds over total rose exports to all makerts:

(A) EPF

Under the Export Production Fund ("EPF"), the Bank of Israel provides loans to exporters to enable them to finance export production. During the review period, EPF financing was available only in Israeli shekels. In the potash final determination, we found that the preferential rate under the EPF was 42 percent. As the best information available, we have applied this rate to the review period.

We based our commercial benchmark on the Bank of Israel's quarterly rates reflecting the cost of overdraft accounts (*see*, potash final determination). These rates include commitment fees, management fees and penalties. The differential between our commercial benchmark rate and the quarterly non-commercial interest rates is 59.50 percent for the 1981–82 period, 65.00 percent for the 1982–83 period, and 183.00 percent for the 1983–84 period.

The Bank of Israel determines maximum eligibility (*i.e.*, a line of credit) for these loans using a "rate-of-credit" formula. To rate-of-credit formula is based on three factors: A value-added rate, a rate-of-financing ratio based on the dollar/shekel exchange rate, and a turnover rate. In our administrative review of the 1979–80 period, we found that rose exporters used the entire amount of credit available to them under this formula.

To calculate the benefit, we multiplied the annual interest rate differential by the rate-of-credit formula. On this basis, we preliminarily determine the benefit to be 7.14 percent *ad valorem* for the 1981–82 period, 7.80 percent *ad valorem* for the 1982–83 period, and 21.96 percent *ad valorem* for the 1983–84 period.

In July 1985, the Bank of Israel discontinued EPF financing in Israeli shekels. EPF loans are now available in U.S. dollars. However, we found in our OCTG preliminary determination that the preferential dollar rates are company-specific and thus not relevant to the firms covered by this review. Therefore, as the best information available, we have used the benefit from the 1983–84 period to establish the rate of estimated countervailing duties for cash deposit purposes.

(B) IEF

Under the Imports-for-Export-Fund ("IEF"), exporters may receive dollar-denominated loans in order to finance imported materials used for export production. We used as our dollar benchmark an interest rate we found in the OCTG preliminary determination: The three-month LIBOR plus two percentage points.

We found in the potash final determination that exporters obtain financing under this fund at an interest rate equal to sixty percent of the twelve-month LIBOR. As the best information available, we consider this rate to be the average preferential interest rate during the review period. We calculated the benefit by multiplying the rate of eligibility (based on another Bank of Israel rate-of-credit formula) by the differential between the preferential interest rate and the commercial benchmark.

On this basis, we preliminarily determine the benefit from this program to be 0.07 percent *ad valorem* for the 1981–82 period, 0.04 percent *ad valorem* for the 1982–83 period, and 0.05 percent *ad valorem* for the 1983–84 period.

(C) ESF

Under the Export Shipments Fund ("ESF"), the Bank of Israel provides loans to exporters to enable them to extend credit in foreign currency to their foreign customers. Financing is granted after shipment of the goods, and for not more than six months. The maximum eligibility rate under this fund is 90 percent of the shipment value. Since fresh-cut rose exporters have not provided information concerning their use of this fund during the review period, we have assumed that they received the maximum amount and that all loans were for six months.

ESF loans are dollar-denominated. We used as our commercial benchmark for this fund the dollar benchmark described under the IEF. We found in the potash final determination that exporters obtain financing under this fund at an interest rate equal to the three-month LIBOR plus 1.5 percentage points. On this basis, we preliminarily determine the benefit from this program to be 0.005 percent *ad valorem* for the 1983–84 period.

(4) Government Funding of AGREXCO

The Ministry of Agriculture provided AGREXCO with funds to finance the expansion of its air freight terminal at Ben Gurion Airport in 1978–79 and 1979–80. The Government of Isreal maintains that these funds represented purchases of equity in AGREXCO. However, in our 1979/80 review, the Israeli government did not provide sufficient evidence to support this contention. We therefore treat the funds as grants. Because of their infrequency, we have assumed that there were no new grants during any growing years covered by the review.

We calculated the benefits using the grant methodology outlined in the Subsidies Appendix, allocating the grants over 10 years and using the same discount rate as described for the property investment grants. We multiplied the benefit for each growing year by the ratio of total rose to flower exports and divided the result by the total estimated rose exports of the corresponding growing year. Based on these calculations, we preliminarily determine the benefit to be 0.15 percent *ad valorem* for the 1981–82 period, 0.14 percent *ad valorem* for the 1982–83 period, and 0.11 percent *ad valorem* for the 1983–84 period.

(5) Cash Payments to Growers for Greenhouses

The Ministry of Agriculture awards grants to flower growers for the establishment and/or expansion of greenhouses. We have information only on grants received between 1975 and 1979. To calculate the benefit for the review period, we allocated all grants received before the growing years under review in accordance with the Subsidies Appendix, using a 10-year period and the same discount rate as described for the property investment grants. To estimate the amount of grants provided during the growing years under review, we used as the best information the highest aggregate grant amount provided to all growers in any single previous growing year, which was 1978–79. The total benefit for the growing years under review is the sum of the grants allocated to those years.

We then multiplied the benefit for each growing year by the ratio of total rose to flower exports and divided the result by the total estimated rose exports of the corresponding year. On this basis, we preliminarily determine the benefit to be 2.16 percent *ad valorem* for the 1981–82 period, 2.56 percent *ad valorem* for the 1982–83 period, and 2.71 percent *ad valorem* for the 1983–84 period.

(6) Cash Payments to Packing Houses

The Ministry of Agriculture provides grants to packing houses for investments in buildings and machinery. We have information on grants received between 1977 and 1980. To calculate the benefit for each growing year, we allocated all grants received before the growing years under review in accordance with the Subsidies Appendix, using a 10-year period and the same discount rate as described for the property investment grants. To estimate the amount of grants provided during the growing years under review, we used as the best information the highest aggregate grant provided to the growers in any single previous growing year, which was 1977–78. The total benefit for the growing years under review is the sum of the grant amounts allocated to those years.

We then multiplied the benefit for each growing year by the ratio of total rose to flower exports and divided the result by the total estimated rose exports of the corresponding year. On this basis, we preliminarily determine the benefit to be 0.50 percent *ad valorem* for the 1981–82 period, 0.61 percent *ad valorem* for the 1982–83 period, and 0.64 percent *ad valorem* for the 1983–84 period.

(7) Cash Payments From the Export Promotion Fund

The Ministry of Agriculture provides grants to exporters to compensate for export expenses such as advertising, merchandising and public relations. Only AGREXCO has recieved such grants. We have information on grants received by AGREXCO in 1980. The payments are based on exports of all flowers to specific countries. To calculate the benefit for each growing year, we allocated all grants received before the growing years under review in accordance with the Subsidies Appendix, using a 10-year period and the same discount rate as described for the property investment grants. To estimate the amount of grants received during the growing years under review, we used as best information the highest grant provided to AGREXCO in any single previous growing year, which was 1980–81. The total benefit for each growing year under review is the sum of the grants allocated to those years. We multiplied the benefit for each growing year by the ratio of AGREXCO's rose to flower exports to the United States and divided the result by the total estimated rose exports to the United States of that growing year. On this basis, we preliminarily determine the benefit to be 0.01 percent *ad valorem* for the review period.

(8) Fuel Grants to Rose Growers

In 1982 the Israeli Institute for Farm Research published a survey on the profitability of rose prodction in the 1980–81 season. That study stated that the gross income for rose growers included grants for fuel expenses and interest savings on low-cost credit. In the absence of additional information, we assume that this program is countervailable. We determined the total grant for the 1980–81 growing year by adding the amount of fuel grants and the amount of interest savings reported by the Israeli Institute for Farm Research. We treated the interest savings as a grant because we have no information on the terms, interest rate, or length of the low-cost credit.

To estimate the amount of grants provided during the growing years under review, we used as the best information the aggregate grant amount provided during the 1980–81 growing year. In our last review, we expensed the full amount of the 1980–81 grant in the year of receipt. We have now allocated all grants received during the review period in accordance with the Subsidies Appendix, using a 10-year period and the same discount rate as described for the property investment grants. We then divided the benefit for each growing year by the total estimated rose exports of that growing year. On this basis, we preliminarily determine the benefit to be 0.73 percent *ad valorem* for the 1981–82 period, 1.35 percent *ad valorem* for the 1982–83 period, and 1.81 percent *ad valorem* for the 1983–84 period.

(9) Long-Term Loans to AGREXCO

AGREXCO's 1979–80 financial report, obtained during the first administrative review, lists long-term loans at interest rates lower than the commercial interest rates for long-term credit published in the Bank of Israel's 1981 Annual Report. In the absence of other information, we assume that these loans are countervailable.

To measure the benefit, we used as the best information available the rate calculated during the first administrative review. We preliminarily determine the benefit to be 0.04 percent *ad valorem* for the review period.

(10) Capital Fund for AGREXCO

AGREXCO's 1979 financial statement shows a capital fund created from Ministry of Agriculture investment grants. In the absence of information concerning the frequency of grants received under this program, we assume AGREXCO received an equivalent grant during each growing year covered by the period of review.

In our last review, we expensed the entire amount of the fund in the period of review. We have now allocated each new grant over 10 years in accordance with the Subsidies Appendix, using the same discount rate as described for the cost of property investment grants. On this basis, we preliminarily determine the benefit to be 0.002 percent *ad valorem* for the 1981–82 period, 0.004 percent *ad valorem* for the 1982–83 period, and 0.006 percent *ad valorem* for the 1983–84 period.

Preliminary Results of Review and Tentative Determination Not To Revoke Countervailing Duty Order

As a result of the review, we preliminarily determine the total bounty or grant to be 12.03 percent *ad valorem* for the period October 1, 1981 through September 30, 1982, 13.88 percent *ad valorem* for the period October 1, 1982 through September 30, 1983, and 28.72 percent *ad valorem* for the period October 1, 1983 through September 30, 1984. The Department intends to instruct the Customs Service to assess countervailing duties of 12.03 percent of the f.o.b. invoice price on any shipments exported on or after October 1, 1981 and on or before September 30, 1982, 13.88 percent of the f.o.b. invoice price on any shipments exported on or after October 1, 1982 and on or before September 30, 1983, and 28.72 percent of the f.o.b. invoice price on any shipments exported on or after October 1, 1983 and on or before September 30, 1984.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 28.72 percent of the f.o.b. invoice price on all shipments of Israeli fresh-cut roses entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This deposit requirement shall remain in effect until publication of the final

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results of the next administrative review.

On April 7, 1986, the Government of Israel requested that we revoke the countervailing duty order on fresh cut roses from Israel based on its position that the countervailing duty order is unlawful. The Israeli government argues that because the Department issued the countervailing duty order under section 303 of the Tariff Act without an affirmative injury determination by the International Trade Commission ("the ITC"), because Israel is now a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act, and because the ITC has stated that it lacks authority to conduct an injury determination, the Department must revoke the order. The Israeli government holds that since section 303 provides for the imposition of countervailing duties "*except in the case of an article or merchandise which is the product of a country under the Agreement (within the meaning of section 1671(b),*" section 303 no longer applies to this order. Rather, the Israeli government believes that since September 13, 1985, when the United States formally recognized Israel as a "country under the Agreement," section 701 applies to this order and section 701 does not authorize continuation of this order without an affirmative injury determination by the ITC.

We must look to the statutory scheme to determine whether section 303 orders issued after January 1, 1980 remain valid without an affirmative injury determination once a country acquires "country under the Agreement" status.

In section 104 of the TAA, Congress provided that a request for an injury determination could be made with respect to orders issued under section 303 on products from "countries under the Agreement" if the order was in effect on January 1, 1980 (or issued pursuant to litigation instituted before that date), and the request was made by December 31, 1982. Congress thus set forth specific requirements for "countries under the Agreement" to obtain an injury test for section 303 orders, *i.e.*, it created a "window" for requesting injury tests on existing section 303 orders. Congress also dealt with section 303 orders not yet in existence on January 1, 1980: In section 701 of the Tariff Act, it provided for an injury test for products from "countries under the Agreement" in investigations not yet begun; and in section 102 of the TAA, it provided for an injury test for investigations in progress at the time a country became a "country under the Agreement."

The statutory scheme makes clear that Congress provided an injury test for section 303 orders in existence on January 1, 1980, the date the TAA became effective and the first date on which a country could obtain an injury test on dutiable products, *if it had signed the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code") and thereby become a "country under the Agreement."* But except for this limited situation, Congress did not provide an injury test for section 303 orders on dutiable products from a country which signed the Subsidies Code *after* the issuance of the section 303 order.

In fact, in section 103 of the TAA, Congress amended section 303 to make clear that for orders issued under that section, the injury test requirements of title VII of the Tariff Act would not apply. For section 303 investigations on dutiable products conducted after the effective date of the TAA, Congress did not provide for an injury test unless the exporting country became a "country under the Agreement" prior to the issuance of the order.

The Israeli government asks us to read this failure of Congress to provide for an injury test in this situation as a requirement for revocation of the section 303 order. That is, if Israel, now a "country under the Agreement," cannot receive an injury test, we must revoke the order because international and U.S. law prohibit assessment of duties on products from "countries under the Agreement" without an affirmative injury determination.

To read such a requirement for revocation into the Tariff Act would produce an absurd result, one which we cannot assume Congress intended. If we revoked this order, we would be affording greater rights, *i.e.*, automatic revocation, to later Subsidies Code signatories than to earlier Subsidies Code signatories. The earlier signatories received the *right* to an injury test. They could obtain a revocation of the order only if the determination were negative, whereas later signatories would automatically obtain revocation. Congress could not have intended this result.

Therefore, we conclude that although Congress did grant "countries under the Agreement" the injury test in the limited circumstances specified in sections 102 and 104(b) of the TAA and section 701 of the Tariff Act, Congress cannot be presumed to have required an injury test in this situation. We believe that the statutory scheme is clear and that Congress was not silent on whether a post–1979 section 303 order issued prior to a country's becoming a "country under the Agreement" should be revoked if no injury test is provided. If Congress had intended for such an order to be revoked, it would have explicitly provided for revocation.

The Report of the Committee on Ways and Means on the United States-Israel Free Trade Area Implementation Act of 1985 confirms our conclusions. The Committee stated that:

> Israel upon its accession to the GATT Agreement will become a "country under the Agreement" under section 701(b) of the Traiff Act of 1930 and thereby receive the material injury test under the U.S. countervailing duty law on dutiable imports; the test already applies to duty-free imports from Israel. The test will be applied prospectively, not to existing countervailing duty orders. [H.R. Rep. No. 99–64, 99th Cong., 1st Sess. 8 (May 6, 1985).]

We therefore tentatively determine that section 303 of the Tariff Act remains the valid authority for the order on fresh cut roses from Isreal, that we have the authority to assess countervailing duties on entries of that product, ant that we will not revoke the order.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556; August 13, 1985).

Dated: October 10, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–23554 Filed 10–16–86; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-001]

Certain Refrigeration Compressors From the Republic of Singapore; Preliminary Results of Countervailing Duty; Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty; Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. The review covers the period January 1, 1984 through December 31, 1984 and five programs.

As a result of the review, the Department preliminarily determines that Matsushita Refrigeration Industries (Singapore) Pte. Ltd., Matsushita Electric Trading (Singapore) Pte. Ltd., and the Government of Singapore, the signatories to the suspension agreement, have complied with the terms of the agreement. The Department also preliminarily determines that the net bounty or grant to be offset by the export charge is 8.35 percent of the f.o.b. value of the merchandise. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 17, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia Cozigian or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 51167) a notice of suspension of countervailing duty investigation regarding certain refrigeration compressors from Singapore. On November 26, 1985, the petitioner, Tecumseh Products Company, Inc., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the suspension agreement. We published the initiation of the administrative review on December 13, 1985 (50 FR 50933). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Singaporean hermetic refrigeration compressors rated not over one-quarter horsepower.

Such merchandise is currently classifiable under item 661.0900 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1984 through December 31, 1984, and five programs: (1) An income tax exemption on export earnings as provided for in Part IV of the Economic Expansion Incentives Act; (2) financing provided by the rediscount facility of the Monetary Authority of Singapore; (3) the payment of technical assistance fees; (4) the transfer of funds between related companies; and (5) accelerated depreciation.

The review covers a producer, Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), and its exporter, Matsushita Electric Trading (Singapore) Pte. Ltd. (METOS). These two companies, along with the Government of Singapore, are the signatories to the suspension agreement.

Analysis of Programs

(1) The Economic Expansion Incentives Act—Part IV

Part IV of the Economic Expansion Incentives Act allows a 90-percent tax exemption on a company's profits if the company is designated as an export enterprise. MARIS is so designated and used this tax exemption during the period of review.

MARIS exports all of its refigeration compressors through METOS. To calculate the benefit, we divided MARIS' tax savings from the program by the f.o.b. value of METOS' total exports of refigeration compressors. On this basis, preliminarily determine the benefit from this program to be 8.35 percent of the f.o.b. value of the merchandise.

(2) Financing Through the Monetary Authority of Singapore

The suspension agreement prohibits MARIS and METOS from applying for or receiving any financing provided by the rediscount facility of the Monetary Authority of Singapore for shipments of refrigeration compressors to the United States. We preliminarily determine that neither MARIS nor METOS received any financing through the Monetary Authority during the review period and, therefore, that both have complied with this clause of the agreement.

(3) Technical Assistance Fee Payments

The petitioner, Tecumseh Products Company, alleges that MARIS reduces its reportable profit and thus its tax liability by paying excessive technical assistance fees to one of its Japanese parent companies, Matsushita Electric Industrial Co. ("MEI").

The Economic Development Board ("EDB") and the Inland Revenue Department ("IRD") review technical assistance fees to ensure that they are not excessive. In evaluating these payments, the EDB and the IRD are concerned with the nature of the assistance provided as well as with the amount paid for such assistance. They consider any fee above 10 percent of sales to be excessive.

In our last review, we verified that the EDB and the IRD reviewed and accepted MARIS' technical assistance fee payments. We also reviewed a study done by MEI that outlined the costs incurred from supplying the technical assistance and that supported the amounts it charges MARIS for this assistance. We have no new evidence that these fees are excessive or that they are used to reduce MARIS' tax liability. On this basis, we preliminarily determine that these payments do not confer a countervailable benefit on MARIS.

(4) Transfer of Funds Between Reloted Companies

Tecumseh alleges that funds received by MARIS from its parent companies, Matsushita Electric Industrial (Japan) and Matsushita Refrigeration Company (Japan), may represent either cash infusions or receipts from overpriced sales and may constitute a countervailable benefit.

A parent company may use several means for providing funds to its subsidiary, such as an increase in equity, intra-corporate purchases of merchandise, payments made through letters of credit, and remittances. Such transfers are normal commercial transations between a parent company and its subsidiary. We do not consider cash infusions or other transfers of funds from a parent company to its subsidiery under normal commercial circumstances to constitute a countervailable benefit. We have no evidence that transfers of funds to MARIS from its parent companies represent anything other than normal commercial transactions. Therefore, we preliminarily determine that MARIS does not receive countervailable benefits from its parent companies.

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(5) Accelerated Depreciation

Tecumseh contends that the rate of depreciation reported by MARIS in 1984 may not be in accordance with normal accounting practices or the generally accepted useful life of a depreciated asset and, therefore, may constitute a subsidy in contravention of the terms of the suspension agreement.

The Inland Revenue Department allows all companies in Singapore to select any method of depreciation that is suitable for its company's accounting as long as the method is in accordance with generally accepted accounting principles. MARIS chose in 1983 to change its depreciation schedule from 8 years to 5 years, a practice that is in accordance with generally accepted accounting principles. On this basis, we preliminarily determine that MARIS' method of depreciation is available to more than a specific enterprise or industry or group of enterprises or industries and, therefore, does not constitute a countervailable benefit.

Preliminary Results of Review

As a result of the review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement, including the payment of the provisional export charge of 5.86 percent, for the period January 1, 1984 through December 31, 1984. We also preliminarily determine the net bounty or grant to be 8.35 percent of the f.o.b. value of the merchandise for the review period. The suspension agreement states that the Government of Singapore will offset completely with an export charge the net bounty or grant calculated by the Department.

Following the methodology outlined in section B.4 of the agreement, the Department preliminarily determines that a positive adjustment must be made to the provisional export charge of 5.86 percent established in the notice of suspension of countervailing duty investigation to reflect the difference between the provisional export charge and the final export charge found in this review, which is 8.35 percent of the f.o.b. value of the merchandise. The Government of Singapore shall collect, in accordance with section B.4.c. of the agreement, this amount plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department.

The Department intends to notify the Government of Singapore that the provisional export charge on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 8.35 percent of the f.o.b. value of the merchandise.

The agreement can remain in force only as long as shipments covered by it account for at least 85 percent of imports of Singaporean refrigeration compressors into the United States. Our information indicates that the two companies accounted for 100 percent of imports into the United States of this merchandise during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751 of the Tariff Act (19 U.S.C.(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 10, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-23553 Filed 10-16-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-068R. Applicant: National Bureau of Standards, Gaithersburg, MD 20899. Instrument: Scanning Electron Microscope, Model JSM-840 with Accessories. Manufacturer: JEOL, Japan. Intended use: See notice at 51 FR 25732.

Comments: None received.

Decision: No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) Simultaneous imaging by light and by scanning electron microscopy and (2) multiple wavelength-dispersive spectrometers. The National Institutes of Health advises in its memorandum dated September 3, 1986 that: (1) These capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23550 Filed 10-16-86; 8:45 am]

BILLING CODE 3510-DS-M

University of California, San Diego; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-072. Applicant: University of California, San Diego, La Jolla, CA 02093. Instrument: Gas Source Isotope Ratio Mass Spectrometer System, Model 251EM. Manufacturer: Finnigan Corporation, West Germany. Intended Use: See notice at 51 FR 5752.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a major beam (mass/charge for CO_2 gas) with an ion current of $2.0x10^{-7}$A and a guaranteed internal precision of 0.008°/00 for CO_2 samples as small as 1 microliter. The National Bureau of Standards advises in its memorandum dated September 10, 1986 that: (1) This capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of not other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23551 Filed 10-16-86; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Oklahoma et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 6:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 85-259R. Applicant: University of Oklahoma, 660 Parrington Oval, Norman, OK 73019. Instrument: Mass Spectrometer, Model MS-25 with Accessories. Manufacturer: Kratos Analytical Instruments, United Kindgom. Original notice of this resubmitted application was published in the Federal Register of August 26, 1985.

Docket number: 86-323. Applicant: Mt. Sinai School of Medicine of the City University of New York, 1 Gustave L. Levy Place, New York, Ny 10029. Instrument: Micromanipulator, Model PM20H. Manufacturer: Biomedizinische Instrumente, West Germany. Intended use: The instrument will be used in experiments which involve the monitoring of acid or alkali transport by bladder using electrophysiological techniques while viewing the different cell types of the tissue with a microscope. Once a particular cell type is located, its intracellular electrical parameters will be monitored by means of a glass microelectrode which has been inserted into that cell. The research objectives are the identification of the cell(s) which produce and regulate urinary acid-base excretion. Application received by Commissioner of Customs: September 22, 1986.

Docket number: 86-327. Applicant: Department of the Interior, U.S. Geological Survey—Western Region, 345 Middlefield Road, MS-285, Menlo Park, CA 94025. Instrument: Mass Spectrometer, Model Series 216. Manufacturer: Mass Analyzer Products Limited, United Kingdom. Intended use: The instrument is intended to be used of studies for argon isotopes, both naturally occurring and produced by irradiation with fast neutrons, in rocks and minerals. The isotopic composition as a measure of geologic age and thermal history will be investigated. Experiments will be conducted to determine precise ages for mineral, especially those that can be obtained in very small quantities, to determine valid ages from contaminated samples, and to determine thermal histories of rocks using several mineral species from the same rock sample. This information is used in support of programs in mineral resource appraisal, geothermal energy, volcano hazards studies, radioactive waste disposal investigations, and geologic framework investigations. Application received by Commissioner of Customs: September 26, 1986.

Docket number: 86-328. Applicant: The University of Chicago, Section of Pulmonary and Critical Care, 5841 S. Maryland Avenue, Chicago, IL 60637. Instrument: Mass Spectrometer, Model MGA 2000 with Accessories. Manufacturer: Airspec Limited, United Kingdom. Intended use: The instrument is intended to be used to study respiratory heat and water exchange. Experiments will include determination of the sites and magnitudes of respiratory heat and water exchange within canine airways as anesthetized, intubated dogs are mechanically ventilated with inspired gas of various air temperature and water content, and with varying breathing pattern. The instrument will also be used for postdoctoral training of plumonary and critical care research fellows. Application received by Commissioner of Customs: September 26, 1986.

Docket number: 86-329. Applicant: Lehigh University, Department of Geological Sciences, Williams 31, Bethlehem, PA 18015-3188. Instrument: Portable Rock Magnetometer, MS 1. Manufacturer: Molspin Limited, United Kingdom. Intended use: The instrument will be used for studying the direction and intensity of magnetization of sedimentary and igneous rocks and recent glacial, lacustrine and marine sediments. The instrument will also be used for educational purposes in the course Geological Sciences 405, The Earth's Magnetism. Application received by Commissioner of Customs: September 26, 1986.

Docket number: 86-330. Applicant: Texas Tech University, Department of Geosciences, Lubbock, TX 79409-4109. Instrument: Mass Spectrometer, Model SIRA 12 with Accessories. Manufacturer: VG Isogas, United Kingdom. Intended use: The instrument will be used in the following general areas of research:

(i) low temperature geochemistry
(ii) paleoclimatology and paleotemperatures
(iii) carbonate geochemistry
(iv) organic chemistry
(v) physical geography/desert varnish studies
(vi) igneous petrology
(vii) paleoanthropology/diet reconstruction
(viii) paleoecology
(ix) plant nitrogen studies
(x) arid land studies/plant water retention and usage.

In addition, the instrument will be used for educational purposes in graduate and undergraduate research courses and in the following courses:

(1) Geochemistry 5301, Groundwater Geochemistry
(2) Geochemistry 5306, Sedimentary Geochemistry
(3) Geology 5328, Paleoecology

Application received by Commissioner of Customs: September 29, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23473 Filed 10-16-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Utah; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-226. Applicant: University of Utah, Salt Lake City, UT 84112. Instrument: Mass Spectrometer, Model VG 7070F with Accessories. Manufacturer: Vacuum Generators Analytical Ltd., United Kingdom. Intended use: See notice at 50 FR 29343.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a guaranteed resolution of 25,000 (10%

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Valley), a mass range of 2000 at 6 kV, a sensitivity of $2X10^{-9}$ C/microgram with a standard EI/CI source on ion methyl stearate at 1000 resolution (10% Valley). The National Bureau of Standards advises in its memorandum dated October 29, 1985 that: (1) This capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23552 Filed 10-16-86; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

October 10, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 14, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 30, 1985, January 27, 1986 and March 3, 1986 notices were published in the **Federal Register** (50 FR 53182, 51 FR 3392 and 51 FR 7313), which announced import restraint limits for cotton and man-made fiber textile products in Categories 339 (women's, girls' and infants' cotton knit shirts), 359-V (cotton vests—only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 378.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421, and 384.4422), and 605-T (man-made fiber thread—only T.S.U.S.A. number 310.9500), produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

In accordance with the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 19, 1983, as amended, and at the request of the People's Republic of China, swing is being applied to the restraint limit previously established for cotton textile products in Category 339, increasing it from 992,929 dozen to 1,042,575 dozen, and man-made fiber textile products in Category 605-T, increasing it from 450,000 pounds to 472,500 pounds, for the current agreement year. The limit for Category 359-V is being reduced from 1,134,558 pounds to 1,039,732 pounds to account for the increases applied to Categories 339 and 605-T. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for Categories 339, 359-V and 605-T.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III

Chairman, Committee for the Implementation of Textile Agreements.

October 10, 1986

Committee for the Implementation of Textile Agreements

Comissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives issued to you on December 24, 1985, January 22, 1986 and February 26, 1986 by the Chairman, Committee for Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1986.

Effective on October 14, 1986, the directives of December 24, 1985, January 22, 1986 and February 26, 1986 are hereby further amended to adjust the previously established limits for cotton and man-made fiber textile products in Categories 339, 359-V [1] and 605-T [2], as provided under the terms of the bilateral agreement of August 19, 1983, as amened:[3]

Category	Adjusted 1986 limit [1]
339	1,042,575 dozen
359-V	1,039,732 pounds
605-T	472,500 pounds

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-23472 Filed 10-14-86; 11:58 am]

BILLING CODE 3510-DR-M

[1] In Category 359, only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

[2] In Category 605, only T.S.U.S.A. number 310.9500.

[3] The Agreement provides, in part, that: (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement

DEPARTMENT OF DEFENSE

Department of the Air Force

Receipt of Application of Civilian Employees of the U.S. Army and U.S. Navy Who Participated in the Defense of Bataan and Corregidor During the Period December 7, 1941 Through May 6, 1942

Under the provisions of section 401, Pub. L. 95-202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "Civilian Employees of the U.S. Army and U.S. Navy who Participated in the Defense of Bataan and Corregidor during the Period December 7, 1941 through May 6, 1942." Persons with information or documentation pertinent to the determination of whether the service of this group is to be considered equivalent to active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (SAF/MIPC), Washington, DC 20330-1440. Copies of documents or other materials submitted cannot be returned. For further information, contact LtCol Dandar, (202) 692-4744 or LtCol Todd (202) 692-4746.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-23414 Filed 10-16-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Request for Data and Information Under the Bilingual Education; State Educational Agency Program for Fiscal Year 1985.

Programmatic Information

This program provides financial assistance to State educational agencies (SEAs) to collect and report data and information on limited English proficient (LEP) persons under section 732 of the Bilingual Education Act (20 U.S.C. 3242), and 34 CFR Part 548, published in the **Federal Register** on August 16, 1985 at 50 FR 33204. SEAs are required to report data and information to the Secretary in accordance with section 732(b) of the Act, and 34 CFR 548.10.

(Approved under OMB control number 1885-0509)

Date for Submitting Data and Information

Fiscal year 1985 SEA grantees are required to submit this report containing data and information on LEP persons to the U.S. Department of Education by November 28, 1986.

Addresses: Information should be sent to Luis A. Catarineau, U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202.

Further Information: For further information contact Luis A. Catarineau. Telephone: (202) 245-2922.

Authority: 20 U.S.C. 3242(b).

Dated: October 14, 1986.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 86-23543 Filed 10-16-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Energy Policy Plan; Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of public hearings on National Energy Policy Plan.

SUMMARY: In accordance with section 801 of the Department of Energy Organization Act (Pub. L. 95-91), the Department of Energy (DOE) is beginning to prepare the sixth biennial National Energy Policy, currently scheduled to be submitted to the Congress early in 1987. To have the benefits of a broad range of public viewpoints in the development of the National Energy Policy, DOE will hold a series of public hearings throughout the Nation. Listed below are the dates, locations, and field contacts for the hearings.

Public Hearings on the National Energy Policy

Salina, Kansas

Date and Time: November 17, 1986, 10:00 a.m. to 7:00 p.m.
Place: Marymount College, Fine Arts Building, East Iron and Marymount Road, Salina, Kansas 67401
Contact: Anne Scheer, Staff Assistant, Kansas City Support Office, U.S. Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106, (816) 374-5533

Philadelphia, Pennsylvania

Date and Time: November 18, 1986, 10:00 a.m. to 7:00 p.m.
Place: Philadelphia Centre Hotel, Hall of Flags, 17th & John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19102
Contact: Fred M. Ramirez, Director of Public Affairs, U.S. Department of Energy, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, (215) 597-3612

New Orleans, Louisiana

Date and Time: November 19, 1986, 10:00 a.m. to 7:00 p.m.
Place: Marriott Hotel, La Gallery, 555 Canal Street, New Orleans, Louisiana 70123
Contact: Nancy Fussell, Public Affairs Office, U.S. Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123, (504) 734-4644

Chicago, Ilinois

Date and Time: November 20, 1986, 10:00 a.m. to 7:00 p.m.
Place: Americana Congress Hotel, Lake Shore Room, 520 South Michigan Avenue, Chicago, Illinois 60605
Contact: Gary L. Pitchford, Director, Office of Communications, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, (312) 972-2010

Sacramento, California

Date and Time: November 21, 1986, 10:00 a.m. to 7:00 p.m.
Place: Sacramento Community Convention Center, 1100 14th Street (14th & K), Sacramento, California 95814
Contact: Norma Del Gaudio, Information Coordinator, Energy Information Center, San Francisco Operations Office, U.S. Department of Energy, 1333 Broadway, Oakland, California 94612, (415) 273-4428

Procedure

Written Comment: Interested persons are invited to submit within 45 days of the date of this Notice, data, reviews, or recommendations with respect to the next National Energy Policy Plan. Written comments should be addressed to: Margaret W. Sibley, Director, Office of Policy Integration, Policy, Planning and Analysis, Room 7B084, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

"NEPP-VI" should be written on the outside of the envelope and on documents submitted.

Any information or data considered confidential by the person furnishing it must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and to treat the information or data according to its determination.

Public Hearings: Any person or representative of a group may make a written or oral request for an opportunity to make an oral presentation at the public hearngs. Such requests must be received no later than 3 working days before the appropriate hearing. Requests should be directed to the appropriate hearing contact at the address given above, and should be in accordance with the procedures set forth below. Written requests should be labeled "NEPP-VI" both on the document and on the envelope. No oral requests for presentation will be scheduled until after all written requests are scheduled.

Those who register in advance will be heard first or at times reserved for them. Those present at the hearing who would like to speak but who have not preregistered will be accommodated if time permits. Verbatim transcripts will be made of all sessions.

It would be helpful if persons making the requests would describe briefly the interest concerned; if applicable, indicate why they are the proper representative of the group having such

an interest; and provide a phone number where they may be contacted during working hours.

While an attempt will be made to accommodate all who wish to be heard, it may not be practical to do so, and DOE reserves the right to schedule the presentations of persons to be heard, and to establish the procedures governing the conduct of the hearings. Time allotted to each presentation may be limited, based on the number of persons requesting to be heard.

A presiding officer will be designated to conduct the hearings. These hearings will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings. As a rule, oral presentations shall be limited to 10 minutes. Any additional testimony may be submitted in writing.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

Transcripts

Verbatim transcripts of the hearings will be made and the entire record of the hearings, including the transcripts, will be retained by DOE and made available for inspection at DOE's Freedom of Information Office Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

Issued in Washington, DC, on October 14, 1986.

William F. Martin,

Deputy Secretary.

[FR Doc. 86-23571 Filed 10-16-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-733-000 et al.]

Equitable Gas Co. et al.; Natural Gas Certificate Filings

October 10, 1986.

Take notice that the followings filings have been made with the Commission:

1. Equitable Gas Company, a Division of Equitable Resources, Inc.

[Docket No. CP86-733-000]

Take notice that on September 22, 1986, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP86-733-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a sales tap in order to provide gas service to a new housing development in Plum Borough, Allegheny County, Pennsylvania, pursuant to its sales tariffs on file with the Pennsylvania Public Utility Commission, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitable estimates that the proposed sales tap would cost $25,350, which cost would be financed from cash on hand. It is stated that the customers to be served would be charged the applicable sales rate contained in Equitable's retail distribution tariff on file with and approved by the Pennsylvania Public Utility Commission. Equitable estimates that the gas to be delivered through the proposed sales tap would be 115 Mcf of gas on a peak day and 9,600 Mcf of gas per year. It is indicated that this volume would have an insignificant impact on Equitable's peak day and annual delivery requirements which total approximately 768,000 Mcf of gas and 76,000,000 Mcf of gas, respectively.

Comment date: October 31, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. National Fuel Gas Supply Corp.

[Docket No. CP86-608-008]

Take notice that on September 25, 1986, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85-608-008 a petition to further amend its certificate of public convenience and necessity in this proceeding so as to authorize, for an additional two year period commencing January 1, 1987, the transportation of up to 61,624 Mcf of natural gas per day on behalf of National Fuel Gas Distribution Corporation (Distribution) for the account of 38 end users, all as more fully set forth in Appendix hereto and in the petition which is on file with the Commission and open to public inspection.

The petition states that National was authorized by Commission order issued October 31, 1985, as amended, to transport up to 56,485 decatherms of natural gas per day on an interruptible basis for Distribution for delivery to 39 specified industrial and large commercial customers for a term ending on December 31, 1986. The Appendix attached hereto provides details for each of the 38 industrial and commercial customers of Distribution and indicates that Ramco Fitzsimmons Steel Company and Koppers Inc. have been acquired by Cold Drawn Steel Inc. and Neville-Synthesis, respectively. One of the original end-users, Jackson China, Inc., is no longer is business and seven other end-users, AlTech Specialty Steel Corp., Ferro Corp., National Forge Company, Pendrick Laundry, Ralston Purina Co., Spaulding Fibre Co., and The Stackpole Corporation have requested increases totaling 5,139 Mcf of gas per day.

National seeks authorization to continue to provide the service authorized in this proceeding for an additonal two year period commencing January 1, 1987. The petition states that authorization of this extension prior to January 1, 1987, is needed to avert a disruptive suspension of service to National's existing end user shippers.

National states that it would receive the subject transportation volumes at existing receipt points on its system and would redeliver the volumes to Distribution at existing points of redelivery. National requests that the Commission continue to allow it to add or delete receipt points without further authorization.

National adds that it would charge Distribution pursuant to its Rate Schedule T-1 which currently provides for a rate of 26.82 cents per Mcf of gas and 2 percent shrinkage. It is explained that this rate and the treatment of revenues under this proposal would be subject to the outcome of National's current rate filing at Docket No. RP86-135-000.

Appendix

NATIONAL FUEL GAS SUPPLY CORPORATION
END-USER TRANSPORTATION CUSTOMERS

End-user	Location	Maximum daily volumes (Mcf/day)
Airco Carbon Div. of BOC, Inc.	Niagara Falls, NY	2,500
Airco Carbon, Div. of BOC, Inc.	St. Mary's, PA	3,300
AlTech Speciality Steel Corp	Dunkirk, NY	2,750
Angelica HealthCare Service Group.	Batavia, NY	250
Arcata Graphics Co	Depew, NY	1,325
Arco Metals Co., American Brass.	Buffalo, NY	3,000
Bethlehem Steel Corp	Buffalo, NY	7,000
Booth Oil Co., Inc	Buffalo, NY	300
Chautauqua Hardware Corp	Jamestown, NY	215
Cold Drawn Steel Inc. (formerly Ramco Fitzsimmons Steel Co.).	Buffalo, NY	166
Darling and Company	Cheektowaga, NY	300
Erie Wastewater Treatment Plant.	Erie, PA	777
Ferro Corp	Buffalo, NY	800
Great Lakes Carbon Corp	Niagara Falls, NY	1,047
Goodyear Tire and Rubber Co	Niagara Falls, NY	1,500
Hammermill Papers Group	Erie, PA	6,280
Hopes Architectural Products, Inc.	Jamestown, NY	300
Jamestown Metals	Jamestown, NY	110
Kaufman's Bakery, Inc	Buffalo, NY	280
McInnes Steel Co	Corry, PA	1,500
Morgan Services, Inc	Buffalo, NY	167
National Forge Co	Irvine, PA	3,333

NATIONAL FUEL GAS SUPPLY CORPORATION
END-USER TRANSPORTATION CUSTOMERS—Continued

End-user	Location	Maximum daily volumes (Mcf/day)
Neville-Synthesis (formerly Koppers Inc.).	Oil City, PA	1,750
O-AT-KA Milk Products Cooperative, Inc.	Batavia, NY	700
Occidental Chemical Corp	Niagara Falls, NY	648
Pendrick Laundry, Inc	Buffalo, NY	90
PPG Industries, Inc	Pittsburgh, PA	7,000
Ralston Purina Co	Dunkirk, NY	1,000
Robbin Industries, Inc	Dunkirk, NY	2,000
Sorrento Cheese Co., Inc	Buffalo, NY	750
Spaulding Fibre Co., Inc	Tonawanda, NY	2,000
Special Metals Corp	New Hartford, NY	640
TAM Ceramics, Inc	Niagara Falls, NY	583
The Stackpole Corp	St. Mary's, PA	1,800
Trico Products Corp	Buffalo, NY	1,310
Union Carbide Corp	Niagara Falls, NY	1,833
Wheatland Tube Co	Wheatland, PA	800
Witco Chemical Corp	Bradford, PA	1,500

Comment date: October 31, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Co.

[Docket No. CP86-748-000]

Take notice that on September 30, 1986, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP86-748-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by removal two compressor units at its Hugoton Compression Station, Stevens County, Kansas (Hugoton), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon by removal two Cooper-Bessemer GMVH-10-C compressors and related facilities that are currently located at Hugoton, stating that the units are no longer required. Panhandle explains that, since it has experienced a stabilization of production rates from the gas reservoirs in the Hugoton field and in view of present and anticipated operation of the field, compression previously installed to meet declining reservoir pressures would no longer be required. Panhandle states that abandonment of the two compressor units would not adversely affect Panhandle's ability to meet its contractual obligations. Panhandle estimates that the total cost of the abandonment of facilities would be $375,000.

Panhandle advises that it intends to relocate and use the subject compressor units at its Glenarm Compressor Station in Sangamon County, Illinois, as part of a project to be implemented pursuant to § 2.55(b) of the Commission's Regulations.

Comment date: October 31, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP86-736-000]

Take notice that on September 23, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-736-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Tenngasco Corporation (Tenngasco), acting as agent for Bunge Corporation (Bunge), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states it has agreed to receive daily, on an interruptible basis, up to 1,250 dekatherms (dt) equivalent of natural gas per day which Tenngasco makes available at the following existing points of receipt:

(1) Vermilion Block 250, Offshore Louisiana (LA),
—Applicant Meter Number 10955
(2) South March Island 60/61, Offshore LA,
—Applicant Meter Number 11119
(3) Ship Shoal Block 198(H), Offshore LA,
—Applicant Meter Number 11180
(4) Ship Shoal Block 182, Offshore LA,
—Applicant Meter Number 11182
(5) Eugene Island Block 348, Offshore LA,
—Applicant Meter Number 11220
(6) Eugene Island Block 215, Offshore LA,
—Applicant Meter Number 11740
(7) Ship Shoal Block 198(J), Offshore LA,
—Applicant Meter Number 11802
(8) Vermilion Block 245, Offshore LA,
—Applicant Meter Number 11386

Applicant further states it would transport and deliver thermally equivalent quantities of gas, less Plant Thermal Reduction quantities delivered at the Blue Water Processing Plant, Acadia Parish, Louisiana, and the Ycloskey Plant, St. Bernard Parish, Louisiana, and less quantities for Applicant's fuel and uses and gas lost and unaccounted for, for Tenngasco, to the existing interconnection between the facilities of Applicant and Entex at Applicant's Meter No. 2-0022 in Quitman County, Mississippi.

Applicant avers it has agreed to accept the associated liquid hydrocarbons (exclusive of oil) produced with the transported volumes when applicable, and to transport and deliver such liquid hydrocarbons for the account of Tenngasco or to Tenngasco's producers separation and storage facilities.

No new facilities would be needed to implement this transportation service, according to the Applicant.

Applicant explains that it would charge Tenngasco for the proposed transportation service a quantity charge equal to the product of the rate (ranging from 21.74 cents per dt equivalent of gas to 26.26 cents per dt equivalent of gas) set forth in Exhibit B of the gas transportation agreement between Applicant and Tenngasco multiplied by the total quantity in dekatherms equivalent of gas delivered by Applicant for the account of Tenngasco from each receipt point. Additionally, Applicant states it would include the GRI surcharge in its charges to Tenngasco and would required Tenngasco to provide gas for Applicant's system fuel and uses ranging from 2.25 percent to 2.44 percent of volumes tendered. Applicant avers that it would also charge Tenngasco for the transportation of liquids, with the rate ranging from $0.622 per barrel to $1.158 per barrel.

Applicant maintains that its proposal is in the public interest because it would assist Bunge in obtaining needed gas supplies at market-clearing prices, enabling Bunge to maintain its business operations on a profitable basis. Applicant relates that Bunge is the single largest employer in the Marks, Mississippi, area, and to become unprofitable would force the plant to close and increase the already high unemployment rate in the area.

Comment date: October 31, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Gas Transmission Corp.

[Docket No. CP86-143-003]

Take notice that on September 30, 1986, Texas Gas Transmission Corporation (Petitioner), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP86-143-003, a petition to amend the Commission's order issued February 14, 1986, 34 FERC ¶ 61,203, pursuant to section 7 of the Natural Gas Act so as to authorize certain changes relating to the transportation of natural gas on an interruptible service basis for certain customers, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by the order issued February 14, 1986, Petitioner

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received authorization to transport gas on an interruptible basis for 52 end-user customers. Petitioner states that it now seeks authority to increase the contract demand of ten of the customers.

Customer Name	Existing contract demand (MMBtu)	New contract demand (MMBtu)
1. Jackson/Procter and Gamble	1,527	2,400
2. Indiana Gas/Fairfield	918	1,016
3. Indiana Gas/U.S. Gypsum	3,257	3,757
4. Indiana Gas/Knauf Fiberglas	2,341	2,641
5. Brownsville/Haywood	254	600
6. Elizabethtown/Dow Corning	305	433
7. Western/Phelps Dodge	2,025	2,545
8. Memphis/Velsicol Chemical	1,018	1,650
9. Memphis/Dupont	5,088	17,504
10. Olin Corporation	4,580	5,500

Petitioner further states that with respect to one customer, Texas Gas Exploration Corporation (Exploration), Petitioner requests authorization for: (i) The addition of a new point of delivery at the interconnection between Petitioner and the jointly owned pipeline of ANR Pipeline Company and Tennessee Gas Pipeline Company in Vermilion Block 241, and (ii) the charging to Exploration of any third-party transportation costs Petitioner may incur by reason of the transportation of gas on behalf of Exploration under the subject agreement through Petitioner's capacity in certain third-party pipeline systems.

Comment date: October 31, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Texas Gas Transmission Corporation.

[Docket No. CP86-349-001]

Take notice that on September 23, 1986, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP86-349-001, a petition to amend the Commission's order issued September 11, 1986, in Docket No. CP86-349-000, pursuant to section 7(c) of the Natural Gas Act so as to reflect changes in the interruptible transportation of natural gas to two customers, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Texas Gas states that by the order issued September 11, 1986, it was authorized to provide interruptible transportation service for ten customers, two for a period extending until June 13, 1988 (Columbia Gas Transmission Corporation and Consolidated Gas Transmission Corporation), and until June 13, 1987, for the remaining eight customers. Texas Gas seeks to alter the original application and order with respect to two of the customers for which authorization to transport gas was granted.

Texas Gas states that one of the ten customers included in the original application, IMC Pipeline Company, Inc. (IMC), an intrastate pipeline, has asked that its request for service under the instant docket be withdrawn, due to the jurisdictional consequences of having gas transported by Texas Gas pursuant to section 7 of the Natural Gas Act. Thus, Texas Gas requests that IMC be deleted from the list of customers for whom service was authorized in this docket.

Texas Gas further states that with respect to another of the ten customers included in the authorized transportation, The Cincinnati Gas and Electric Company (CG&E), Texas Gas requests the addition of a new point of delivery under the applicable transportation agreement. Such delivery point is located on Texas Gas' 26-inch main line system near the community of Fernald, in Hamilton County, Ohio (Fernald Meter Station). It is stated that the new point of delivery would enable CG&E to access existing customers located behind the Fernald Sales Meter Station with low cost gas supplies transported by Texas Gas on behalf of CG&E.

Comment date: October 31, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its disignee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23522 Filed 10-16-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-159-001]

Blue Dolphin Pipe Line Co.; Compliance Filing

October 10, 1986.

Take notice that on October 7, 1986, Blue Dolphin Pipe Line Company (Blue Dolphin) tendered for filing First Revised Sheet Nos. 42, 44, 57, 58, 90, and 91 to its FERC Gas Tariff, Original Volume No 1.

United indicates that the revised sheets conform to the Commission's order of September 29, 1986 in Docket No. RP86-159-000, and reflect changes specifically prescribed by the Commission, *i.e.*, the correction of specific typographical errors and the deletion in its entierty of a specified provision.

Any person desirning to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 17, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23524 Filed 10-16-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-106-001, ER86-570-000, and ER85-570-001]

Idaho Power Co., The Washington Water Power Co., and Idaho Power Co.; Order Denying Appeal From Staff Action, Accepting Rates, Granting Waivers, Granting Intervention and Establishing Hearing Procedures

Issued: October 10, 1986.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

Background

Docket No. ER86-106-001

On January 9, 1986, Pacific Power & Light Company (PP&L) filed, pursuant to Rule 1902 of the Commission's Rules of Practice and Procedure (18 CFR 385.1902 (1986)), a petition for appeal from action taken by the Commission's staff in a letter order issued on December 10, 1985. In that order, the Director of the Division of Electric Power Application Review, Office of Electric Power Regulation, accepted for filing Idaho Power Company's (Idaho Power) tariff for non-firm transmission service tendered on October 31, 1985 in Docket No. ER86-106-000. The order also granted PP&L's untimely motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.214 (1985).[1]

PP&L requests that the Commission find that Idaho Power may not charge PP&L its rate for non-firm transmission service involving facilities for which PP&L allegedly already compensates Idaho Power pursuant to a September 10, 1980 Transmission Services Agreement between the parties. The Company argues that Idaho Power has failed to show why Pacific should pay any additional charge for non-firm transmission or why application of the rate to it will not result in a double recovery. In addition, PP&L requests that the Commission clarify the letter order to state that Idaho Power may not collect its rate for non-firm transmission from signatories to a September, 1973 Intercompany Pool (ICP) Agreement among Idaho Power, PP&L and other utilities located in the western United States. In support of this request, PP&L claims that Idaho Power must propose change in *all* the rates provided for under section 8 of that agreement, which governs payments for the use of other utilities' transmission systems to the other signatories, and submit the changes for their approval and may make a unilateral filing, as here, only in the event the parties are unable to agree. PP&L contends that Idaho Power has failed to follow these procedures.

On January 24, 1986, Idaho Power filed an answer to PP&L's pleading, requesting that the Commission deny PP&L's petition in its entirety. With regard to PP&L's first argument, Idaho responds that under the circumstances presented in its filing, a rolled-in methodology cost of service analysis is justified, and that Idaho Power specifically includes revenues derived from transfer services for which PP&L compensates Idaho Power pursuant to the Transmission Services Agreement to decrease its cost of service when calculating its non-firm transmission service rate. With respect to the ICP Agreement, Idaho Power responds that it is entitled, under the terms of that agreement, to seek a rate change in order to recover its reasonable costs and, further, that it fully compiled with all the obligations of section 8 of that agreement prior to making its filing.

Docket Nos. ER86-570-000 and ER86-570-001

On July 1, 1986, The Washington Water Power Company (WWP), Montana Power Company (Montana Power), PP&L, Portland General Electric Company (Portland), Puget Sound Power & Light Company (Puget), Utah Power & Light (UP&L), and Sierra Pacific Power Company (Sierra) submitted for filing in Docket No. ER86-570-000 a proposed change in transmission rates pursuant to the First Amendment to the ICP Agreement.[2] The filing proposes to increase the rate for non-firm transmission services from 0.75 mills per kWh to 1.50 mills per kWh, and to increase the wheeling rates for forced outages, operating reserves and stored energy from no charge to 0.5 mills per kWh. The filing parties request a waiver of the 60-day notice requirement so that the proposed rates as between the filing parties may become effective July 1, 1986. As to Idaho Power, the non-filing party in Docket No. ER86-570-000, the filing parties propose an effective date of September 1, 1986.

Notice of the filing was published in the **Federal Register** [3], with comments due on or before July 10, 1986.

On July 23, 1986, Idaho Power filed an untimely motion to intervene in the proceeding in Docket No. ER86-570-000. Idaho Power states, *inter alia*, that it does not accept that the rates to be charged are just and reasonable, and the July 1, 1986, or September 1, 1986, effective dates or that the waiver of the 60-day notice requirement by the filing parties is permissible or appropriate.

On August 14, 1986, Idaho Power filed in Docket No. ER86-570-001 a certificate of concurrence submitting a change in transmission rates pursuant to the First Amendment to the ICP Agreement.[4] Idaho Power proposes to decrease its existing non-firm transmission service rate to ICP companies from 1.77 mills per kWh to 1.50 mill per kWh, and to increase Idaho Power's wheeling rates to ICP companies for forced outages, operating reserves and stored energy from no charge to 0.5 mills per kWh. Idaho Power states that its filing signifies agreement on the proposed change in Idaho Power's non-firm transmission service rates and charges among all ICP companies *except* PP&L. As to the proposed rates between WWP, Montana Power, Portland, Puget, UP&L, Sierra and Idaho Power, Idaho Power proposes an effective date of August 15, 1986, and states that these parties request a waiver of the 60-day notice requirement. As ot PP&L, Idaho Power proposes an effective date of October 15, 1986, unless PP&L agrees to waiver of the notice requirements and agrees to an ealier effective date of August 15, 1986.

Notice of Idaho Power's filing was published in the **Federal Register**,[5] with comments due on or before September 10, 1986.

PP&L filed a timely motion to intervene in Docket No. ER86-570-001. PP&L states that it is in general agreement that a uniform rate for non-firm transmisison service among ICP Agreement companies is desirable and does not wish to delay the implementation of such a uniform rate. However, PP&L contests the applicability of the ICP Agreement non-firm wheeling rate to wheeling provided by Idaho Power for PP&L through the Midpoint Substation. PP&L notes that it raised this issue previously in its appeal of staff action in Docket No. ER86-106-001. PP&L states that it agrees to waiver of the notice requirements and consents to an effective date of August 15, 1986 for Idaho Power's proposed ICP Agreement non-firm wheeling charge to PP&L, except as it relates to wheeling

[1] Untimely motions to intervene were also filed in Docket No. ER86-106-000 by the Montana Power Company (December 10, 1985); Portland General Electric Company (December 16, 1985); and Puget Sound Power & Light Company (March 25, 1986). We do not address those motions, as the letter order of December 10, 1985 terminated Docket No. ER86-106-000.

[2] *See* Attachment for rate schedule designations.

[3] 51 FR 25,243 (1986).

[4] *See* Attachment for rate schedule designations.

[5] 51 FR 31,301 (1986).

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provided by Idaho Power for PP&L through the Midpoint Substation.

Discussion

Docket No. ER86–106–001

We shall deny PP&L's request that the Commission order Idaho Power not to charge PP&L for certain transactions involving facilities for which PP&L allegedly already compensates Idaho Power. PP&L claims that Idaho Power's charging its non-firm tariff rate for certain transactions involving PP&L will result in double recovery. The Commission cannot know at this time if there is any merit to this claim. The September 10, 1985 Tranmission Services Agreement is not currently on file with the Commission.[6] Moreover, PP&L failed to fully explain its concerns in a timely manner since it did not raise them in its motion to intervene, but rather, presented specific legal and factual quesitons for the first time in its appeal of staff action. Because PP&L's arguments were not before us, and based on the information available at the time, we permitted Idaho Power's rate changes to take effect on December 30, 1985 without exercising our suspension authority. The letter order of December 10, 1985, states that "[t]he filing of a petition appealing this action to the Commission or an application for rehearing as provided in section 313(a) of the Federal Power Act does not operate as a stay of any date specified in this letter except as specifically ordered by the Commission." Since we lack the authority to suspend a rate after it has become effective (*See* 18 CFR 2.4(a) (1986)), we cannot now change our earlier decision not to suspend and make the rate in Docket No. ER86–106–000 subject to refund. In any event, we find no compelling reason to change that decision since Idaho Power should not be forced to remain uncertain of the status of its rates because PP&L failed to fully explain its concerns in a timely manner. *See Minnesota Power & Light Company*, 22 FERC ¶ 61,315 (1983).[7]

We shall further deny PP&L's request for clarification of the December 10, 1985 order regarding the ICP Agreement. The transmittal letter accompanying Idaho Power's October 31, 1985 filing indicated an intent to bring Idaho Power's ICP wheeling rate in line with its non-firm tariff wheeling rate. The company complied with the procedural requirements set forth in section 6, by notifying the ICP parties of the proposed rate change and requesting their approval. Therefore, the letter order of December 10, 1985 accepting Idaho Power's tariff increase amended the ICP Agreement and altered the rates charged pursuant to that agreement.

Docket Nos. ER86–570–000 and ER86–570–001

We shall deem Idaho Power's filing in Docket No. ER86–570–001 to be an amendment to WWP's filing in Docket No. ER86–570–000; thus, both submittals are deemed completed on August 14, 1986.

We find that good cause exists to grant Idaho Power's untimely motion to intervene in Docket No. ER86–570–000, given the early stage of the proceeding and the lack of opposition by the other parties.

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 (1986)), the timely motion to intervene makes PP&L a party to the proceeding in Docket No. ER86–570–001.

We shall accept the ICP revisions submitted in Docket No. ER86–570–000 for WWP, Montana Power, PP&L, Portland, Puget, UP&L and Sierra for filing. Good cause is shown for waiver of the notice requirements. Therefore, the proposed rates shall become effective July 1, 1986. As to the ICP revisions submitted in Docket No. ER86–570–000 for Idaho Power, we shall permit the proposed rates to become effective on September 1, 1986, as requested.

We shall accept the ICP revisions submitted in Docket No. ER86–570–001 for filing. Good cause is shown for waiver of the notice requirements. Therefore, Idaho Power's proposed rates in Docket No. ER86–570–001, except for that portion which would be applied to wheeling provided by Idaho Power for PP&L through the Midpoint Substation, shall become effective August 15, 1986, not subject to refund. In light of the argument raised in PP&L's motion to intervene, we shall suspend for one day that portion of the submittal in Docket No. ER86–570–001 which would be applied to wheeling provided by Idaho Power for PP&L through the Midpoint Substation and permit it to become effective on October 15, 1985, subject to refund. We shall, furthermore, order a hearing for the purpose of addressing PP&L's applicability provision argument. We shall also order Idaho Power to file with the Commission the Transmission Services Agreement with PP&L within 30 days of the date of this order.

The Commission Orders

(A) PP&L's petition for appeal is hereby denied, as discussed above.

(B) Within thirty (30) days of the date of this order, Idaho Power shall file with the Commission the September 10,1980 Transmission Services Agreement with PP&L.

(C) Docket No. ER86–106–001 is hereby terminated.

(D) Idaho Power's untimely motion to intervene in Docket No. ER86–570–000 is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(E) The request for waiver of notice requirements in Docket No. ER86–570–000 is hereby granted for good cause shown.

(F) The submittal in Docket No. ER86–570–000, except as to Idaho Power, is hereby accepted for filing, without suspension or hearing, to become effective on July 1, 1986. As to Idaho Power, the submittal in Docket No. ER86–570–000 is accepted for filing, without suspension or hearing, to become effective on September 1, 1986.

(G) The request for waiver of notice requirements in Docket No. ER86–570–001 is hereby granted for good cause shown.

(H) The submittal in Docket No. ER86–570–001, except for that portion which would be applied to wheeling provided by Idaho Power for PP&L through the Midpoint Substation, is hereby accepted for filing, to become effective on August 15, 1986, without suspension or a hearing.

(I) That portion of the submittal in Docket No. ER86–570–001 which would be applied to wheeling provided by Idaho Power for PP&L through the Midpoint Substation is hereby accepted for filing, and is suspended for one day, to become effective on October 15, 1986, subject to refund.

(J) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of that portion of Idaho Power's rates in Docket No. ER86–570–001 which would be applied to wheeling provided by Idaho Power for PP&L through the Midpoint Substation.

(K) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within forty-five (45) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Such conferences shall be held for purposes of establishing procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(L) Docket No. ER86–570–000 is hereby terminated.

(M) Docket No. ER86–570–001 is hereby terminated, and Docket No. ER86–570–002 is hereby assigned to the hearing ordered in Ordering Paragraph (J).

(N) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Docket No. ER86–576—Rate Schedule Designations

Designation	Description
(1) *The Washington Water Power Company*, Supplement No. 4 to Rate Schedule FPC No. 87.	Revised nonfirm wheeling rates among ICP members.
(2) *Idaho Power Company*, Supplement No. 2 to Rate Schedule FPC No. 58.	Do.
(3) *Montana Power Company*, Supplement No. 2 to Rate Schedule FPC No. 37.	Do.
(4) *PacifiCorp/Pacific Power & Light Company*, Supplement No. 3 to Rate Schedule FPC No. 116.	Do.
(5) *Portland General Electric Company*, Supplement No. 3 to Rate Schedule FPC No. 27.	Do.
(6) *Puget Sound Power & Light Company*, Supplement No. 5 to Rate Schedule FPC No. 55.	Do.
(7) *Utah Power & Light Company*, Supplement No. 3 to Rate Schedule FPC No. 112.	Do.
(8) *Sierra Pacific Power Company*, Supplement No. 1 to Rate Schedule FERC No. 18.	Do.

[FR Doc. 86–23523 Filed 10–16–86; 8:45 am]

BILLING CODE 6717–01–M

[6] Insofar as PP&L may be suggesting that Idaho Power's tariff is not, for reasons other than the existence of the 1980 Transmission Services Agreement, applicable to service provided on its behalf, the company's argument is beyond the scope of the proceeding. In its filing of October 31, 1985, Idaho Power did not propose any revisions to the applicability provisions of its tariff, and none were accepted.

[7] PP&L is hereby put on notice that, in future, it should raise clearly any objections to a proposed rate filing in a timely motion to intervene. The Commission will not look favorably on parties who use the appeal process to supplement their interventions.

[Docket No. SA86–30–000]

Juniper Operating Co.; Petition for Adjustment

October 14, 1986.

Take notice that on August 11, 1986, Juniper Operating Company (Juniper) filed with the Federal Energy Regulatory Commission a petition for waiver of Btu refund obligations, resulting from the promulgation of Order Nos. 399,[1] 399–A,[2] and 399–B.[3]

In support of its petition, Juniper states that it was operator of the well from which sales were made to Liquid Energy Corporation. Further, Juniper states that although it was operator of the subject well it had no interest in the well. Also, Juniper states that the subject well was plugged and abandoned on September 12, 1984, and had been operating at a loss for several months prior to the plugging. Finally, Juniper states that it has been having difficulty contacting former owners of the subject well.

The procedures applicable to the conduct of this adjustment proceeding are set forth in Rules 1101–1117 (18 CFR 385.1101–385.1107 (1986)) of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–23526 Filed 10–16–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7756–003]

Surrender of Preliminary Permit; Marcal Paper Mills, Inc.

October 15, 1986.

Take notice that the Marcal Paper Mills, Incorporated, permittee for the Marcal Project No. 7756, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 7756 was issued on March 30, 1984, and would have expired on February 28, 1987. The project would have been located on the Little Androscoggin River, in Androscoggin County, Maine.

The permittee filed the request on October 1, 1986, and the preliminary permit in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–23523 Filed 10–16–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–3–000]

Northern Natural Gas Company, Division of Enron Corp.; Tariff Filing

October 10, 1986.

Take notice that on October 7, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern) tendered the following tariff sheets to become a part of its FERC Gas Tariff, Third Revised Volume No. 1:

Original Sheet Nos. 52k, 52k.1 through 52k.10

Original Sheet Nos. 85s, 85s.1 through 85s.5

Original Sheet Nos. 85t, 85t.1 through 85t.5

Northern is filing to establish a new rate schedule, Rate Schedule XD–1, to provide qualifying shippers with an exchange and displacement service that is implemented under section 311 of the Natural Gas Policy Act. Rate Schedule XD–1 is one of several firm and interruptible transportation rate schedules that comprise Northern's open access transportation program proposed by Northern in its Offer of Settlement and Stipulation and Agreement of Settlement in Docket No. RP85–206 and agreed to by the parties therein.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 17, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

[1] 49 FR 37735 (September 26, 1984), FERC Stats & Regs. [Regs. Preambles 1982–1985] ¶ 30,597.

[2] 49 FR 46353 (November 26, 1984), FERC Stats. & Regs. [Regs. Preambles 1982–1984] ¶ 30,612.

[3] 50 FR 30141 (July 24, 1985), FERC Stats. & Regs. [Regs. Preambles 1982–1985] ¶ 30,651.

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intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23527 Filed 10-16-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-601-000 et al.]

TXP Operating Co.; Applicaton

October 14, 1986.

Take notice that on September 29, 1986, TXP Operating Company (TXPO), of P.O. Box 1396, Houston, Texas 77251, filed an application as successor in interest to Exchange Oil and Gas Corporation (EOG), pursuant to section 7 of the Natural Gas Act and § 157.23 *et seq.* of Subpart E of the regualtions of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity authorizing TXPO to render service previously authorized by the Commission in all the properties covered by EOG's certificates of public convenience and necessity issued in the dockets listed on the attached Exhibit "A", which is on file with the Commission and open to public inspection. TXPO also requests to be substituted for EOG in any proceedings related to such dockets pending before the Commission and redesignation of EOG's rate schedules listed in the attached Exhibit "A" as the rate schedules of TXPO.

On September 16, 1985, Transco Energy Investment Company (TEIC) purchased all of the issued and outstanding capital stock and business operation of Exchange Oil and Gas Corporation (EOG) pursuant to a Purchase Agreement among Transco and Georgia-Pacific Leasing Corporation and Geogria-Pacific Corporation. Effective as of September 30, 1985, TEIC assigned its interest in all of EOG assets owned by TEIC on that date to TXPO. As a result of such assignment, TXPO acquired all of the interests of EOG in the properties which are subject to the certificates of public convenience and necessity issued to EOG in the dockets listed on the attached Exhibit "A".

Any person desiring to be heard or to make any protest with reference to said application should, on or before October 28, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Exhibit "A"

Field/State	Rate schedule No.	Certificate docket No.	Purchaser
Hell Hole Bayou, Vermilion Parish, LA.	3	CI66-601	Texas Gas Transmission.
Franklin Field, St. Mary Parish, LA.	4	CI67-219	Michigan-Wisconsin Pipeline.
West Cameron Block 17, Offshore, LA.	5	CI67-805	Michigan-Wisconsin Pipeline.
Twin Island, Cameron Parish, LA.	6	CI67-1364	Columbia Gas Transmission.
South Lake, St. Mary Parish, LA.	7	CI68-945	Michigan Wisconsin Pipeline.
Twin Island, Cameron Parish, LA.	9	CI68-1430	Trunkline Gas.
Vermilion Block 16 Field, Offshore, LA.	10	CI68-1397	Transcontinental Gas Pipe Line Corp.
Kings Ridge, LaFourche Parish, LA.	18	CI70-820	Southern Natural Gas.
East Lake Decade, Terrebonne Parish, LA.	19	CI72-106	Transcontinental Gas Pipe Line Corp.
Lake Campo (N. Black Bay), Plaquemine Parish, LA.	20	CI72-389	Southern Natural Gas.
South Valentine, LaFourche Parish, LA.	22	CI72-526	Columbia Gas Transmission.
Ship Shoal Block 23 Field, Offshore, LA.	24	CI72-839	Texas Gas Transmission.
Vermilion Block 16, Offshore, LA.	26	CI61-1162	Transcontinental Gas Pipe Line Corp.
South Valentine, LAFourche Parish, LA.	28	CI73-626	Columbia Gas Transmission.
Orange Grove, Terrebonne Parish, LA.	31	CI75-456	Transcontinental Gas Pipe Line Corp.
Bayou Piquant, Terrebonne Parish, LA.	32	CI75-724	Texas Gas Transmission.
Cameron Meadows, Cameron Parish, LA.	33	CI76-12	United Gas Pipeline.
Cameron Meadows, Cameron Parish, LA.	34	CI76-27	Columbia Gas Transmission.
Ship Shoal Block 23 Field, Offshore, LA.	35	CI77-242	Texas Gas Transmission.
Loreal, Iberia Parish, LA.	36	CI76-232	United Gas Pipeline.

[FR Doc. 86-23526 Filed 10-16-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-158-001]

United Gas Pipe Line Co.; Compliance Filing

October 10, 1986.

Take notice that on October 6, 1986, United Gas Pipe Line Company (United) submitted Substitute Fourth Revised Sheet No. 4-E and Substitute Original Sheet No. 48-C1 to its FERC Gas Tariff, First Revised Volume No. 1 in compliance with Ordering Paragraph (B) of the Commission's September 29, 1986 Order issued in the captioned proceeding. This compliance filing eliminates gathering costs in the reservation charge stated on Sheet No. 4-E and eliminates section 3(b)(1) of United's FTS Rate Schedule.

United states that the filing of these substitute sheets is being made under protest and without prejudice to its right to a determination of the appropriateness of the reservation charge and the allocation provisions of section 3(b)(1) of its FTS Rate Schedule.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 17, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23529 Filed 10-16-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Objection to Proposed Remedial Order Filed for Period of June 23 Through September 19, 1986

During the period of June 23 through September 19, 1986, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 9, 1986.

Pennzoil Company, Houston, Texas, KRO-0310 Crude Oil

On September 17, 1986, Pennzoil Company, 700 Milam Street, Houston, Texas 77101 filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to the firm on August 22, 1986. In the PRO the ERA found that during the period September 1976 through May 1977, Pennzoil misreported its crude oil receipts and runs to stills by excluding volumes of crude oil processed for a non-refiner. Alternatively, the PRO alleges that Pennzoil engaged in practices which resulted in the circumvention or contravention of the Entitlements Program. According to the PRO the violation resulted in $9,023,472 of overcharges.

[FR Doc. 86-23470 Filed 10-16-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order for Period of September 22 Through October 3, 1986

During the period of September 22 through October 3, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 9, 1986.

Perry Bros. Oil Co., Inc., Americus, Georgia, KEE-0027

Perry Bros. Oil Co., Inc. filed an Application for exception from the requirement to file Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report." On September 29, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 86-23471 Filed 10-16-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3096-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 or FTS 382-2712.

SUPPLEMENTARY INFORMATION:

Office of Administration and Resources Management

Title: Procurement Solicitations (RFPs and IFBs) (EPA ICR #1038). (Renewal of a previously approved ICR.)

Abstract: Federal Acquisition Regulations require the issuance of solicitation documents for acquisitions that exceed $25,000. Responses to these solicitations are the basis for EPA determining which offerors/bidders receive contract awards.

Respondents: Contract offerors and bidders.

Office of Pesticides and Toxic Substances

Title: FIFRA Sec. 24(c) Survey Questionnaire for State Special Local Needs Registrations (EPA ICR #1348). (This is a new collection under an existing regulation.)

Abstract: EPA will conduct a questionnaire-type survey of state agencies responsible for FIFRA Sec. 24(c) special local needs programs. The responses will enable EPA to determine if the agencies have the expertise necessary to review the type of 24(c) registrations being granted, and the adequacy of their written procedures. States will also be asked for a data base update of all active 24(c) registrations.

Respondents: State lead agencies.

Office of Solid Waste and Emergency Response

Title: Reporting on Accidental Release Causes and Preventive Techniques (EPA ICR #1331). (This is a new collection.)

Abstract: EPA is gathering information from fixed facilities on the causes and prevention of releases of hazardous substances in order to establish a data base to analyze trends and effects. Those facilities having releases that meet certain criteria will receive a letter requiring this information.

Respondents: Owners of hazardous waste facilities that have accidental spills or releases.

* * * * *

Agency PRA Clearance Requests Completed by OMB

EPA ICR #1262, Water Quality and Health Effects Associated with Shellfish Consumption, was approved 9/08/86 (OMB #2080-0025; expires 6/30/89).

EPA ICR #1344, Survey of Antifouling Paint Use at Boatyards and Shipyards,

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was approved 9/26/86 (OMB #2070-0065; expires 10/31/87).

* * * * *

Comments on all parts of this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street SW., Washington, DC 20460.

and

Rick Otis (#1038) and Carlos Telles (all others), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, DC 20503.

Dated: October 9, 1986.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 86-23495 Filed 10-16-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3096-5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed October 6, 1986 Through October 10, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860413, Draft, IBR, SD, Central South Dakota Water Supply System, Agricultural Irrigation Plan, Pick-Sloan Missouri Basin Program, Due: January 2, 1987, Contact: John Lawson (406) 657-6164

EIS No. 860414, Final, BLM, ID, Eastern Idaho Planning Area, Hell's Half Acre, Hawley Mountain, Black Canyon, Cedar Butte, and Petticoat Peak Wilderness Study Areas, Wilderness Recommendation, Due: November 17, 1986, Contact: O'dell Frandsen (208) 529-1020

EIS No. 860415, Draft, EPA, PR, Arecibo, Ponce, Mayaquez, and Yabucoa Harbors, Ocean Dredge Material Disposal Sites, Designation, Due: December 15, 1986, Contact: Robert Witte (212) 264-5393

EIS No. 860416, Draft, AFS, AZ, Mount Graham Astrophysical Area Development, Approval and Management, Pinaleno Mountains, Coronado National Forest, Graham County, Due: January 20, 1987, Contact: R. B. Tippeconnic (602) 629-6403

EIS No. 860417, Final, COE, MO, Southeast Missouri Port Facility Construction, Mississippi River, Cape Girardeau and Scott Counties, Due: November 17, 1986, Contact: John Brady (314) 263-5711

EIS No. 860418, Draft, COE, CA, Pamo Dam and Reservoir Emergency Water Supply Project, Construction, Santa Ysabel Creek, San Diego County, Due: December 15, 1986, Contact: Joan Drake (213) 894-0245

EIS No. 860419, Final, AFS, UT, WY, Ashley National Forest, Land and Resource Management Plan, Due: November 17, 1986, Contact: Duane Tucker (801) 789-1181

EIS No. 860420, Draft, FHW, OR, I-5/Pacific Highway Improvement, Hayesville Interchange to Battle Creek Interchange, Marion County, Due: December 11, 1986, Contact: Dale Wilken (503) 399-5749

EIS No. 860421, Draft, AFS, WY, Bridger-Teton National Forest, Land and Resource Management Plan, Teton County, Due: February 6, 1987, Contact: Carl Pence (307) 733-2752

EIS No. 860422, FSuppl, USN, GA, Kings Bay Fleet Ballistic Missile Submarine Support Base, St. Marys Entrance Channel Dredging Program Modification, Camden County, Due: November 17, 1986, Contact: Peter Havens (202) 325-7344

Amended Notices

EIS No. 860356, Draft, FRC, ID, Salmon River Basin, Fifteen Hydroelectric Power Projects, Construction, Operation, and Maintenance, Licenses, Due: November 10, 1986, Published FR 9-5-86—Review period extended

EIS No. 860386, Draft, FWS, AK, Selawik National Wildlife Refuge, Comprehensive Conservation, Wilderness Review and Wild River Plan, Wilderness Recommendation, Kotzebue Sound, Due: December 24, 1986, Published FR 9-26-86—Review period extended

EIS No. 860387, Draft, FWS, AK, Nowitna National Wildlife Refuge, Comprehensive Conservation, Wilderness Review, and Wild River Plan, Wilderness Recommendations, Yukon River Valley, Due: December 24, 1986, Published FR 9-26-86—Review period extended

EIS No. 860385, Final, FWS, AK, Togiak National Wildlife Refuge Comprehensive Conservation Plan, and Wilderness Review, Wilderness Designation, Due: November 10, 1986, Published FR 9-26-86—Review period extended

EIS No. 860395, Final, BLM, UT, Warm Springs Resource Area, Resource Management Plan, Millard County, Due: November 10, 1986, Published FR 10-03-86—Review period reestablished.

Dated: October 14, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-23519 Filed 10-16-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3096-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 29, 1986 through October 3, 1986 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. DS-COE-A36420-00, Rating LO, Tombigbee River and Tributaries, Luxapalila Creek, Phase 2 Channel Modifications, MS and AL. Summary: EPA's review revealed that the environmental consequences of the major design elements of this proposal were adequately addressed in the EIS. EPA hopes that the technical disagreements over mitigation between the Corps and the U.S. Fish and Wildlife Service will be resolved to the satisfaction of both parties.

ERP No. D-COE-B36025-VT, Rating EO2, Missisquoi River Flood Control Plan, VT. Summary: EPA has made a preliminary determination that the recommended plan may not comply with EPA's 404(b)(1) Guidelines under the Clean Water Act, and that the draft EIS does not fully comply with the requirements of NEPA. EPA believes that the project as proposed will cause substantial impacts to aquatic resources. Further, EPA believes the draft EIS is deficient in both its evaluation of these impacts and its analysis of reasonable alternatives. EPA requests that the Corps prepare a supplemental EIS to address the deficiencies identified in EPA's comment letter and give agencies and the public an opportunity to comment on the new information.

ERP No. D-COE-L01003-WA, Rating EO2, Grays Harbor Refinery Construction, Molybdenum Processing, Sect. 10 and 404 Permit, Chehalis and Hoquiam Rivers, WA. Summary: EPA's major concern was that the draft EIS did not present an adequate alternatives analysis as required by NEPA and the EPA 404(b)(1) Guidelines. EPA requested that the split site alternative be thoroughly evaluated. EPA also recommended revision of the water quality discussion using the most recent ambient water quality criteria and the finalized new source performance standards for molybdenum refineries. EPA suggested that consideration be given to the synergestic effects on aquatic biota due to the mixture of metals in the refinery effluent. Finally, EPA suggested that the Department of Ecology/Corps of Engineers give serious consideration to preparing a revised Draft EIS so that the new information on alternatives and water quality impacts could be subjected to a full peer review.

ERP No. D-ERA-B08002-00, Rating LO, New England/Hydro-Quebec 450 kV Transmission Line Interconnection Phase II, Construction and Operation, 404 Permit, Amendment to Presidential Permit PP-76, NH and MA. Summary: From the standpoint of EPA's areas of jurisdiction and expertise, EPA does not object to the proposed project. However, mitigation of unavoidable wetland losses through creation of wetlands and enhancement of existing degraded wetlands within the transmission line rights-of-way or creation of wetlands offsite should be explored.

Final EISs

ERP No. F-COE-F40286-IL, North-South Tollway Construction, Fill Material Discharge, Lily Cache Creek and Du Page River, Sect. 404 Permit, IL. Summary: EPA's review resulted in no objections to the proposed action. Commendable wetland mitigation has been developed. EPA requested an opportunity to review a draft Record of Decision.

ERP No. F-FHW-D40124-PA, Industrial Highway/PA-291/LR 542 Improvement, Fourth and Price Streets, to Ridley Creek, PA. Summary: EPA's previous concerns have been adequately addressed and, thus, there is no further objection to the proposed project.

ERP No. F-FHW-L40148-OR, 185th Ave. Improvements, Rock Creek Blvd. to Tualatin Valley Hwy., 404 Permit, OR. Summary: The final EIS was unresponsive to the concerns EPA raised at the draft EIS stage. EPA identified water quality impacts associated with secondary commercial and secondary residential growth induced by the project. The final EIS did not evaluate the primary and secondary effects of the project on sewage overflows and urban runoff. EPA suggested a meeting with Washington County to resolve these issues before the Record of Decision is signed.

Regulations

ERP No. RR-DOI-A20022-00, 43 CFR Part 11, Natural Resource Damage Assessments, Type B Standard Procedures for Simplified Assessments Requiring Minimal Field Observations (51 FR 16636). Summary: EPA strongly supports an approach to obtain more appropriate compensation for injury to resources having significant ecological/intrinsic value. However, EPA believes that DOI's original approach and definition of special resources is too restrictive. At a minimum, the special resource definition should be broadened to include resources protected by federal or state administrative action, resources that are identified for special protection under international treaties to which the United States is a party, and multiple use resources. Trustees should also have the flexibility to determine on a case-by-case basis which resources are special even after a release has been detected.

Amended Notice

ERP No. F-COE-L35012-WA, Adoption of USN 1985 Final EIS—Puget Sound Region, Homeporting Project, Carrier Battleship Group, Construction and Operation, Sect. 10 and 404 Permit, WA. Summary: EPA made no formal comments. EPA's major concerns with the U.S. Navy's (USN) final EIS for the Puget Sound Carrier Battleship Group were in relation to the dredge and fill aspects of the project, and EPA recommended that the Corps of Engineers (COE) supplement the USN final EIS before issuing their 404 permit. EPA commented on the dredge and fill aspects of the project in comments provided to the COE on the draft supplemental EIS. Therefore, EPA has not objections to the COE adoption of the USN final EIS for this project.

Dated: October 14, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-23520 Filed 10-16-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3097-1]

Advisory Committee Negotiating the Hazardous Waste Injection Restrictions Rulemaking; Open Meeting

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of an open, two-day meeting of the Advisory Committee negotiating hazardous waste injection restrictions.

The meeting will be held on Wednesday and Thursday, November 5 and 6, 1986, at The Conservation Foundation, 1255 23rd Street, NW., First Floor Library, Washington, DC. Each day, the meeting will start at 9:30 a.m. and will run until 5:00 p.m. The purpose of the meeting is to continue examining regulatory options and working on the substantive issues which the Committee has identified for resolution.

If interested in receiving more information, please contact Kathy Tyson at (202) 382-5352.

Dated: October 10, 1986.

John M. Campbell,

Acting Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 86-23559 Filed 10-16-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3096-9]

Advisory Committee Negotiating Regulations Governing Major and Minor Modifications of Resource Conservation and Recovery Act (RCRA) Permits; Open Meeting

As required by section 9(a)(2)of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of an open meeting of the Advisory Committee negotiating regulations governing major and minor modifications of Resource Conservation and Recovery Act (RCRA) permits.

The meeting will be held on Tuesday, November 4, 1986, at The National Institute for Dispute Resolution, 1901 L Street, N.W., Suite 600, Washington, D.C. The meeting will start at 8:30 a.m. and will run until 4:00 p.m. The purpose of the meeting is to continue working on the substantive issues which the Committee has identified for resolution, including categorization, permit application requirements, and modifications involving new waste streams, new capacities, and new processes.

If interested in receiving more information, please contact Kathy Tyson at (202) 382-5352.

Dated: October 10, 1986.

John M. Campbell,

Acting Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 86-23560 Filed 10-16-86; 8:45 am]

BILLING CODE 6560-50-M

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FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0089
Title: Application for Land Radio Station License in the Maritime Services
Form No.: FCC 503
Action: Revision
Estimated Annual Burden: 2,923 Responses; 2,923 Hours.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86–23515 Filed 10–16–86; 8:45 am]
BILLING CODE 6712–01–M

[Report No. CL–87–1]

Common Carrier Public Mobile Services Information; Mobile Services Division Releases Guidance Regarding Questions of Real Party in Interest and Transfers of Control for Cellular Applications in Markets Beyond Top 120

October 2, 1986.

In the course of reviewing applications submitted by tentative selectees for cellular licenses in Markets 121 and beyond, recurring questions have arisen concerning the issues of real party in interest and unauthorized transfers of control.

These questions have arisen as a result of arrangements by some of the tentative selectees to obtain services from another company to finance, design, construct, operate and manage the proposed cellular system. In some circumstances such company has the option to purchase controlling interest of the tentative selectee within a set period of time. In other situations the financing is contingent upon the financing entity being allowed to provide all or many of the above components.

The tentative selectees that present these proposals for the most part indicated that any term found not to be in compliance with the Commission's rules will be deleted or modified accordingly.

We are concerned that by entering into one of these arrangements a tentative selectee may have divested itself of substantial responsibility and control of its proposed facility in violation of section 310 of the Communications Act of 1934, as amended. We had indicated in *Guidelines for Settlements and Changes in Ownership of Cellular Systems*, Public Notice of March 24, 1986, p.2, n.1, that:

> Ownership changes involving a party who was not an applicant in the market involved, or who did not acquire its ownership share through an eligible trade, must be evaluated on a case-by-case basis to determine whether a substantial change of ownership has taken place, under the body of case law governing changes in ownership and control. . . . Other factors, such as relative interests of other parties, practical day-to-day control, and the relationships of the parties to each other and to the company's business must be considered.

To facilitate our processing of applications and to guide future applicants, we are issuing the following guidelines.

A Commission licensee must at all times have control of and responsibility for its facility. To determine who has control of a proposed facility the Commission will examine the following factual questions:

1. Does the licensee have unfettered use of all facilities and equipment?
2. Who controls daily operations?
3. Who determines and carries out the policy decisions, including preparing and filing applications with the Commission?
4. Who is in charge of employment, supervision and dismissal of personnel?
5. Who is in charge of the payment of financing obligations, including expenses arising out of operating? and
6. Who receives monies and profits derived from the operation of the facilities?

See, Intermountain Microwave, 94 Rad. Reg. (P&F) 983, 984 (1983).

Where the answers to these questions are such as to indicate that the tentative selectee has given up control of the facilities, its application may be rejected on real party in interest or unauthorized transfer of control grounds. However, since it appears that applicants may have been uncertain as to what the standards concerning these arrangements are, and since we have not previously delineated what provisions would be acceptable, we will permit all tentative selectees in Markets 121 and beyond to file amendments to assure that the arrangement that they propose fully complies with section 310 of the Act, as well as Commission policy. Amendments may include modification of one or more of the elements of the proposed arrangement; however, in no event would the tentative selectee be permitted to provide a new source of financing. Amendments shall be filed within thirty (30) days of this Public Notice.

For further information please contact Gerald M. Goldstein at (202) 632–6444.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86–23516 Filed 10–16–86; 8:45 am]
BILLING CODE 6712–01–M

Weekly Emergency Broadcast System (EBS) Test Script Change

October 8, 1986.

The Commission recently received a request from radio station WLIF, Baltimore, Maryland, for permission to substitute station call letters in the portions of the weekly EBS testr script worded "this station."

After review of this matter by the staff and a favorable recommendation from the Chairman of the Maryland State Emergency Communications Committee, the Commission finds that granting of the request would better serve the public interest. Therefore, all broadcast stations now have the option of either using the present weekly EBS test script, or substituting their call letters (as authorized in their FCC license) in the portions of the weekly tese script worded "this station."

The EBS Checklist is amended to show the above change, and reads as follows:

Broadcast Announcement

This is a test. This station (optional—insert station call letters) is conducting a test of the Emergency Broadcast System. This is only a test.

Transmit Attention Signal

Broadcast the two-tone Attention Signal (See § 73.906 of the FCC Rules) for from 20 to 25 seconds.

Broadcast Announcement

This is a test of the Emergency Broadcast System. The broadcasters of your area in voluntary cooperation with Federal, State and local authorities have developed this system to keep you informed in the event of an emergency. If this had been an actual emergency, the Attention Signal you just heard would have been followed by official information, news or instructions. This station (optional—insert station call letters) serves the (operational area name) area. This concludes this test of the Emergency Broadcast System.

All stations are reminded that they must perform this test a minimum of once a week at random days and times between 8:30 A.M. and local sunset, unless they have participated in a state or local EBS activation or coordinated test during the test week period.

For additional information, contact Management Planning & Program Evalualtion Office, (202) 632–3906.

Federal Communication Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86–23517 Filed 10–16–86; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 1623]

Petitions for Reconsideration and Clarification and Applications for Review of Actions in Rulemaking Proceedings

October 8, 1986.

Petitions for reconsideration and clarification and applications for review have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e) and 1.115. The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800). Oppositions to these petitions and applications must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Exemptions in Subpart J of Part 15 of the Commission Rules for controlling the Interference Potential of Computers and Similar Electronic Equipment. (Gen 84–801, RM–4248) Number of petitions received: 1

Subject: Amendment of Part 97 of the Commission's Rules to Permit Volunteer-Examiner Coordinators (VEC's) to Maintain Pools of Questions for Amateur Operator Examinations. (PR Docket No. 85–196) Number of petitions received: 5

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Top Sail Beach and Wilmington, North Carolina) (MM Docket No. 86–27, RM's 5157 and 5364) Number of petitions received: 1

Subject: Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Gary, Indiana) (MM Docket No. 86–60, RM–5303) Number of petitions received: 1

Applications for Review

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (San Clemente, California) (MM Docket No. 84–442, RM–4724) Number of applications received: 2

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86–23518 Filed 10–16–86 8:45 am]
BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Consolidated Reports of Condition and Income (insured State Nonmember Commercial Banks) (OMB No. 3064–0052).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget Standard Form 83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before November 3, 1986.

SUMMARY: The FDIC is requesting OMB approval to extend, for a three-year period, the expiration date of the quarterly Consolidated Reports of Condition and Income (Call Reports) filed by insured state nonmember commercial banks. The OMB clearance for the collection expires on January 31, 1987. There is no change in the method or the substance of the collection.

Section 7 of the Federal Deposit Insurance Act requires all insured commercial banks to file four reports of condition and income each year with their primary Federal bank regulatory authority, either the FDIC, the Office of the Comptroller of the Currency (OCC) or the Board of Governors of the Federal Reserve System (FRB). Insured state nonmember commercial banks submit these reports to the FDIC.

The reporting requirements of the Call Reports for insured commercial banks are jointly developed by the Reports Task Force of the Federal Financial Institutions Examination Council (FFIEC) representing the Federal bank regulatory agencies. The Call Reports are used by the FDIC, the OCC and the FRB both on an individual bank basis and in aggregate form for supervisory/surveillance, regulatory, research/statistical, and informational purposes. Extensive use is made of the Call Reports for off-site monitoring and surveillance of banks. It is estimated that 815,656 hours are spent annually by insured state nonmember commercial banks, collectively, in preparing Call Reports.

Dated: October 10, 1986.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86–23461 Filed 10–16–86; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Federal Employees; Testing of Employees in Certain Occupational Categories To Discover Positive Indicators of Drug Abuse, 5 U.S.C. 7101, et seq.

ACTION: Notice of extention of time for the submission of *amicus* briefs on the negotiability of Union proposals relating to various aspects of agency initiated testing of civilian employees to identify drug use: Extension until January 20, 1987.

SUMMARY: On August 22, 1986, the Federal Labor Relations Authority published notice of the opportunity for all interested parties to file *amicus* briefs by October 22, 1986, in certain proceedings involving the negotiability

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of various proposals relating to the testing of civilian employees to identify drug use. 51 FR 30124. Subsequently on September 15, 1986, President Reagan issued Executive Order 12564, requiring a drug-free Federal workplace. In section 3 of the Executive Order, the President directed the head of each agency to establish mandatory and voluntary drug testing programs for agency employees and applicants.

On October 3, 1986, the General Counsel of the United States Office of Personnel Management ("OPM"), and the Assistant Attorney General, Civil Division, Department of Justice, jointly requested the Authority to extend the time for the Executive Branch to submit its views on the negotiability of agency-initiated drug testing of federal employees for ninety days, or until January 20, 1987.

The basis for this request is that under section 6 of Executive Order 12564, the Office of Personnel Management shall, among other things, issue government-wide guidance to agencies on the implementation of the terms of the Order. Further, under section 6(b) of the Order, "The Attorney General shall render legal advice regarding the implementation of this Order and shall be consulted with regard to all guidelines, regulations, and policies proposed to be adopted pursuant to this Order."

The Authority has provided informational copies of the joint OPM/Department of Justice motion to the parties to the cases cited in the August 22, 1986, solicitation of *amicus* briefs.

Executive Order 12564 and the implementation of its provisions by the various agencies responsible for taking actions thereunder have significant implications for the resolution of the matters pending before the Authority and future cases coming before the Authority. Accordingly, the Authority has determined to extend the time for filing *amicus* briefs until January 20, 1987. Persons and organizations which have already filed *amicus* briefs may supplement or replace those filings within the extended time limit.

FOR FURTHER INFORMATION CONTACT: Harold Kessler, Director of Case Management, 500 C Street, Room 238, Washington, DC 20424; (202) 382-0715.

Dated: October 15, 1986

For the Authority.

Harold D. Kessler,

Acting Executive Director.

[FR Doc. 86-23580 Filed 10-16-86; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL RESERVE SYSTEM

Southern National Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 6, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Southern National Corporation,* Lumberton, North Carolina; to merge with First Palmetto Bancshares Corporation, Columbia, South Carolina, and thereby indirectly acquire First Palmetto State Bank and Trust Company, Columbia, South Carolina.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *BMR Bancorp, Inc.,* Atlanta, Georgia; to merge with Toombs Bank Shares, Inc., Vidalia, Georgia, and thereby indirectly acquire Brice Banking Company, Vidalia, Georgia.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illinois Marine Bancorp, Inc.,* Elmhurst, Illinois; to acquire 100 percent of the voting shares of Colonial Bancorporation, Inc., Peru, Illinois, and thereby indirectly acquire Colonial Trust and Savings Bank of Bureau County, Princeton, Illinois, and Colonial Trust and Savings Bank, Peru, Illinois.

2. *Unibancorp, Inc.,* Chicago, Illinois; to acquire at least 95.62 percent of the voting shares of DuPage County Bank of Glendale Heights, Glendale Heights, Illinois. Comments on this application must be received by November 5, 1986.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Financial Banchares, Inc.,* St. Louis, Missouri, and Schmid Brothers Investment Company, Inc., Clayton, Missouri; to acquire at least 89 percent of the voting shares of Oran State Bank, Oran, Missouri.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Houghton Financial, Inc.,* Houghton, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Houghton National Bank, Houghton, Michigan. Comments on this application must be received by November 5, 1986.

F. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Gulfbanks, Inc.,* Corpus Christi, Texas; to acquire 100 percent of the voting shares of Security State Bank of Portland, Portland, Texas.

G. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1 *Hemet Bancorp,* Hemet, California; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Hemet, Hemet, California.

Board of Governors of the Federal Reserve System, October 10, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-23460 Filed 10-16-86; 8:45 am]

BILLING CODE 6210-01-M

The Sumitomo Bank, Ltd., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, the outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 5, 1986.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Sumitomo Bank, Ltd.,* Osaka, Japan; to acquire JAIS-California, San Francisco, California, and thereby engage in joint venture data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of California.

Board of Governors of the Federal Reserve System, October 10, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-23459 Filed 10-16-86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Consumer Protection Appliance Energy Labeling; Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act, 44 U.S.C. 3507, for clearance of information collection requirements contained in an amendment to the Appliance Energy Labeling Rule, 16 CFR Part 305. An amendment of the existing clearance, OMB control No. 3084-0069, has been requested.

SUMMARY: The Appliance Energy Labeling Rule, which implements Title III of the Energy Policy and Conservation Act, 42 U.S.C. 6291, *et seq.,* requires manufacturers and importers of major energy-consuming appliances to disclose energy information to consumers by means of point-of-sale labels. The amendment extends the labeling requirement to air conditioners and heat pumps.

DATE: Comments on this application must be submitted on or before November 17, 1986.

ADDRESS: Send comments to Mr. Don Arbuckle, FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of the application may be obtained from Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James G. Mills, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 376-8934.

By direction of the Commission.

Emily H. Rock,

Secretary

[FR Doc. 86-23535 Filed 10-16-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committees; November Meetings

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Research Education Review Committee, NIMH

Date and Time: November 6-7: 9:00 a.m.

Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814

Status of Meeting:
Open—November 6: 9:00-10:00 a.m.
Closed—Otherwise

Contact: Shirley Maltz, Room 9C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the area of biological sciences related to mental health with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Epidemiology Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH

Date and Time: November 12-14: 9:00 a.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209

Status of Meeting:
Open—November 12: 9:00-10:00 a.m.
Closed—Otherwise

Contact: Gloria Yockelson, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services with recommendations to the National Advisory Mental Health Council for final review.

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIMH: Ms. Joanna Kieffer, Committee Management Officer, Room 9-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: October 10, 1986.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-23454 Filed 10-16-86; 8:45 am]

BILLING CODE 4160-20-M

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Centers for Disease Control

Antibiotic-Resistant Gonorrhea in the United States; Open Meeting

The Division of Sexually Transmitted Diseases (DSTD), Center for Prevention Services (CPS), Centers for Disease Control (CDC), Atlanta, Georgia, will sponsor a meeting to discuss antibiotic-resistant gonorrhea in the United States. Attendance by the public will be limited to the space available.

Date: December 2–3, 1986
Time: 8:00 a.m.–4:30 p.m.
Place: Centers for Disease Control, Building 1, Room 1003, 1600 Clifton Road, NE., Atlanta, Georgia 30333
Additional information may be obtained from: Mr. Peter Crippen, Program Services Branch, DSTD, CPS, CDC, Atlanta, Georgia 30333. Telephones: FTS: 236–1275. Commercial: (404) 329–1275.

Dated: October 10, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86–23448 Filed 10–16–86; 8:45 am]

BILLING CODE 4160–18–M

Injury Research Grant Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee act (Pub. L. 92–463), the Centers for Disease Control announces the following Committee meeting:

Name: Injury Research Grant Review Committee.
Dates: November 3–6, 1986
Place: Hotel Tower Place, 3340 Peachtree Road, N.E., Atlanta, Georgia 30026
Time: 8:30 a.m. — 5:00 p.m.
Type of Meeting: Open 8:30 a.m. — 9:45 a.m., November 3, 1986. Closed 1:00 a.m., November 3 — 5:00 p.m., November 6, 1986
Contract Person: Mark L. Rosenberg, M.D., Executive Secretary of the Committee, Center for Environmental Health, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, GA 30333, Telephone: FTS: 236–4542. Commercial: (404) 454–4542
Purpose: This Committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, Centers for Disease Control, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.
Agenda: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications. Beginning at 10:00 a.m., Monday, November 3, through 5:00 p.m., Wednesday, November 6, the Committee will conduct its review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Dated: October 10, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86–23450 Filed 10–16–86; 8:45 am]

BILLING CODE 4160–18–M

Fall Hazards Associated With Erection of Painted Steel Structural Members; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: November 20, 1986
Time: 10 a.m.–3 p.m.
Place: Room 138–B, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505
Purpose: To discuss a study to be conducted by the University of Oklahoma pursuant to a contract with NIOSH. This study is to correlate quantitative measurements of the coefficient of friction of painted structural steel members, under various conditions, with the subjectively determined workers' acceptability of slipperiness. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.
Additional information may be obtained from: Ronald Stanevich, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888, Telephones: FTS: 923–4531. Commercial: 304/291–4531

Dated: October 10, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86–23449 Filed 10–16–86; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 86F–0362]

Betz Laboratories; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Betz Laboratories has filed a petition proposing that the food additive regulation for boiler water additives be amended to provide for the safe use of a copolymer of methacrylic acid and acrylic acid as an active polymer in boiler water.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6A3957) has been filed on behalf of Betz Laboratories, Somerton Rd., Trevose, PA 19047, proposing that § 173.310 *Boiler water additives* (21 CFR 173.310) be amended to provide for the safe use of a copolymer of methacrylic acid and acrylic acid as an active polymer in boiler water.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 3, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–23451 Filed 10–16–86; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

General Hospital and Personal Use Devices Panel

Date, time, and place. November 3, 9 a.m., Rm. 503A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW. Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 11 a.m.; closed peresentation of data, 11 a.m. to 12 m.; closed committee deliberations, 1:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 4 p.m.; Andrea A. Wargo, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 27, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss safety and effectiveness data for a programmable implantable infusion pump.

Closed presentation of data. Trade secret and/or confidential commercial information will be presented to the committee regarding materials, computer software, and manufacturing information. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information on materials, computer software, and manufacturing information. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Radiologic Devices Panel

Date, time, and place. November 24, 9 a.m., Rm. 416, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 a.m.; open committee discussion, 1 p.m. to 4:30 p.m.; Robert Phillips, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave, Silver Spring, MD 20910, 301–427–7514.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or veiws, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 17, and submit a brief statement of the general nature of the evidence or agruments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for magnetic resonance imaging devices. The committee will also discuss the requirements for reclassification of devices and generalized requirements for magnetic resonance imaging device premarket approval applications.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information relevant to premarket approval applications for magnetic resonance imaging devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's deacretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in

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certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 10, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-23452 Filed 10-16-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 51, No. 138, pg. 26060-26062, dated Friday, July 18, 1986) is amended to reflect a revision to the Division and Medicare Payments II functional statement. This change will emphasize the financial analysis responsibilities of the division and will help distinguish the difference in functions between the two Medicare Payments Divisions in the Office of Financial Management, Office of Prepaid Health Care.

The specific changes are:

- Section FC.20.D.3., Division of Medicare Payments II, is deleted in its entirety and replaced by a new functional statement for the division to read as follows:

3. Division of Medicare Payments II (FCC3).

Responsible for all activities which involve Medicare prepaid health plan accounting policy implementation and payments for Regions VI through X. Reviews and approves Adjusted Community Rate (ACR) proposals for contractor reimbursement on a risk basis as set out under the Tax Equity and Fiscal Responsibility Act. Provides training for "risk" contractors on the technicalities of ACR determinations. Conducts onsite visits to review contractors' documentation for ACR computations and the overall assessment of contractors' accounting operations. Renders technical guidance, coordinates appeals, and provides assistance concerning prepayment plan cost reimbursement and audit. Recommends new procedures to improve operations, such as guidelines for targeting prepaid health plan audits. Coordinates payment policy formulation with the Bureau of Program Policy and the Office of the Actuary. Reviews health maintenance organizations' annual budget and enrollment forecasts, quarterly cost reports, and final cost reports. Prepares information for sending requests for proposals to independent certified public accounting (CPA) firms, reviews audit reports from CPA firms, and negotiates settlement of audit exceptions with prepaid health plans. Develops and maintains reimbursement forms and manuals, and interprets reimbursement policy applicable to individual accounting situations. Determines interim payments due prepaid health plans, schedules payments accordingly, and maintains records of payments made. Reviews and analyzes national data on an ongoing basis for the purpose of monitoring prepaid health care in the areas of plan enrollment and payments. Develops and implements an ongoing analysis and review of operational/policy areas that impact upon the office's financial operations.

Dated: September 26, 1986.

Bartlett S. Fleming,

Associate Administrator for Management and Support Services.

[FR Doc. 86-23477 Filed 10-16-86; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration, (**Federal Register**, Vol. 49, No. 133, pg. 28120, dated Tuesday, July 10, 1984 and **Federal Register**, Vol. 48, No. 3, dated Wednesday, January 5, 1983), is amended to reflect a change in the organizational structure of the Office of Coverage Policy (OCP), Bureau of Eligibility, Reimbursement and Coverage, Office of the Associate Administrator for Program Development. OCP is being reorganized to reflect additional responsibilities and the consolidation of all currently fragmented aspects of coverage policy pertaining to providers and suppliers of services. The Division of Provider and Supplier Standards (DPSS) will be abolished. The function of DPSS will be divided among the remaining two divisions, the Division of Medical Services Coverage Policy and the Division of Provider Services Coverage Policy.

The specific amendments to Part F. are described below:

- Section FQ.20.3.Q, Division of Provider Services Coverage Policy (FQA71), is deleted in its entirety and replaced by the following:

a. Division of Provider Services Coverage Policy (FQA71).

Develops, evaluates, and reviews national policies and standards concerning the coverage of services and the conditions of participation under Medicare, Medicaid, and other Federal programs for hospitals, skilled nursing facilities (SNFs), intermediate care facilities (ICFs), Christian Science Sanitoriums, home health agencies (HHAs), hospices, and other providers of services. Develops, evaluates, and reviews national policies concerning the coverage of mental health, alcoholism and drug treatment, medical day care, family planning, sterilization, abortion and teenage pregnancy, early and periodic screening, diagnois and treatment (EPSDT), personal care and Indian health services, utilization review, physician certification and prior authorization requirements, and the comparability of service and state-wideness requirements under the Medicaid program. Develops, evaluates, and reviews national policies and standards concerning States' requests for waivers of Medicaid requirements to provide home and community-based services, and reviews requests from individual States for such waivers to determine whether they should be approved or disapproved. Develops, evaluates, and reviews national policies concerning Medicaid contracts and interagency agreements, and coordinates HCFA program coverage policies and Peer Review Organization (PRO) requirements. Develops, evaluates, and reviews national policies concerning the amount, duration, and scope of services. Reviews related State plan amendment requests under Medicaid. Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of program policies to program contractors, State agencies, and the health care field. Identifies, studies, and makes recommendations for modifying HCFA program coverage polices and providers' health and safety standards to reflect changes in beneficiary health care needs, program objectives, and the health care delivery system. Analyzes and recommends legislative or other remedies to improve coverage, health and safety, and utilization effectiveness. Coordinates with other components responsible for health and safety standards, program operations, and quality control, professional groups and standard setting organizations, and with other parties and individuals, as appropriate.

- Section FQ.20.A.3.b., Division of Medical Services Coverage Policy (FQA72) is deleted in its entirety and replaced by the following:

b. Division of Medical Services Coverage Policy (FQA72)

Develops, evaluates, and reviews national policies and health and safety standards concerning the coverage of items and services which are provided by physicians (including hospital-based and teaching physician services and resident and intern services), nonphysician practitioners, ambulatory surgical centers (ASCs) health maintenance organizations (HMOs), comprehensive medical plans, rural health clinics (RHCs) comprehensive outpatient rehabilitation facilities (CORFs), outpatient physical therapy/outpatient speech pathology (OPT/OSP) providers, and other alternative health care organizations. Develops, evaluates, and reviews national policies and heath and safety standards concerning the coverage of medical and other health servcies including supplies, drugs, rehabilitation services, eyeglasses, laboratory services, x-ray services, ambulance and other transportation services, and second opinions, new and unusual items and services, dialysis and transplant services for Medicare beneficiaries with End-Stage Renal Disease (ESRD), and those medical items and services which are excluded from coverage. Reviews related State plan amendment requests under Medicaid. Develops, evaluates, and reviews national policies concerning the amount, duration, scope, reasonableness, and necessity for services. Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of program policies to program contractors, State agencies, and the health care field. Identifies, studies, and makes recommendations for modifying HCFA program coverage policies to reflect changes in beneficiary health care needs, program objectives, and the health care delivery system. Analyzes and recommends legislative or other remedies to improve coverage, health and safety, and utilization effectiveness. Coordinates with other components responsible for health and safety standards, program operations, quality control, and other parties and individuals, as appropriate.

Section FQ.20.A.3.C., Division of Provider and Supplier Standards (FQA73), is deleted in its entirety.

Dated: September 25, 1986.

Bartlett S., Fleming,

Associate Administrator for Management and Support Services.

[FR Doc. 86-23476 Filed 10-16-1986; 8:45 am]

BILLING CODE 4120-03-M

Public Health Services

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 3-Chloro-2-methylpropene

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of 3-chloro-2-methylpropene, used as an intermediate for the production of plastics, pharmaceuticals, and other organic chemicals and as an insecticide and fumigant for grains, tobacco and soil.

Toxicology and carcinogenesis studies of technical grade 3-chloro-2-methylpropene (containing 5% dimethylvinyl chloride) were conducted by administering the chemical in corn oil by gavage to groups of 50 male and 50 female rats at doses of 0, 75, or 150 mg/kg body weight 5 days per week for 103 weeks. Groups of 50 male and 50 female mice received 3-chloro-2-methylpropene at 0, 100, or 200 mg/kg on the same schedule. Dose-related incidences of basal cell or epithelial hyperplasia of the forestomach and of squamous cell papillomas of the forestomach were observed in rats and mice of each sex; squamous cell carcinomas of the forestomach were observed in high dose male rats and in all dosed groups of mice.

Under the conditions of these 2-year gavage studies, there was clear evidence of carcinogenicity [1] for 3-chloro-2-methylpropene as shwon by the increased incidences of squamous cell neoplasms in the forestomach of male and female F344/N rats and of male and female $B6C3F_1$ mice.

Copies of *Toxicology and Carcinogenesis Studies of 3-Chloro-2-methylpropene in F344/N Rats and B6C3F1 Mice (Gavage Studies)* (TR 300) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park NC 27709. Telephone: (919) 541-3991. FTS: 629-3991.

Dated: October 9, 1986.

David P. Rall,

Director.

[FR Doc. 86-23500 Filed 10-16-86; 8:45 am]

BILLING CODE 4140-01-M

[1] The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Reestablishment of the National Earthquake Prediction Evaluation Council

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is reestablishing the National Earthquake Prediction Evaluation Council. The purpose of the Council shall be to evaluate predictions made by scientists not on the Council including both Government and non-Government

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scientists and to advise the Director of the Geological Survey as a basis for his deciding whether to issue a prediction or take other action pertinent to the potential for the occurrence of a future significant earthquake.

Further information regarding the Council may be obtained from the Director, U.S. Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

The certification of reestablishment is published below.

Certification

I hereby certify that reestablishment of the National Earthquake Prediction Evaluation Council is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 16 U.S.C. *et seq.*, and 16 U.S.C. 431, *et seq.*

Note.—This notice must be published in the Federal Register at least 15 days prior to the filing of the committee charter with the appropriate committees of Congress. The committee may not meet or take action prior to the time the charter is filed.

Dated: October 3, 1986.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 86-23416 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Plan for the Use and Distribution of the White Earth Band of the Minnesota Chippewa Tribe Judgment Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

EFFECTIVE DATE: This Plan was effective as of September 6, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Code 440B, 31-SIB, 1951 Constitution Ave. NW., Washington, DC 20245.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on May 17, 1985, in satisfaction of the award granted to the White Earth Band of the Minnesota Chippewa Tribe before the United States Claims Court in Docket 188. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated May 12, 1986 and was received (as recorded in the Congressional Record) by the Senate on May 19, 1986, and by the House of Representatives on May 13, 1986. The plan became effective on September 6, 1986 as provided by the 1973 Act, as amended by Pub. L. 97-458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

To Provide for the Use of the Chippewa Indians of the White Earth Reservation Judgment Funds in Docket 188 Before the United States Claims Court

The funds appropriated on May 17, 1985 in satisfaction of the award granted to the Chippewa Indians of the White Earth Reservation in Docket 188 before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be invested by the Secretary of the Interior. The principal, interest, and investment income accrued shall be available for use by the tribal governing body on a budgetary basis, subject to the approval of the Secretary, for tribal administration and program support.

General Provisions

None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources, nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

Ronald L. Esquerra,

Deputy to the Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 86-23417 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-6703-B]

Alaska Native Claims Selection; Tatitlek Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Tatitlek Corporation for approximately 2 acres. The lands involved are in the vicinity of Tatitlek, Alaska.

Copper River Meridian

T. 11 S., R. 9 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Cordova Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 17, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-23418 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-JA-M

[ID-030-06-4332-08; FES 86-39]

Availability of Final Environmental Impact Statement, Eastern Idaho Wilderness

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) for the Eastern Idaho Wilderness proposals.

SUMMARY: This EIS assesses the environmental consequences of managing five Wilderness Study Areas (WSAs) as wilderness, not designating them, and designating part of one WSA as wilderness. The alternatives assessed in this EIS include: (1) An "all wilderness" alternative for each WSA, (2) a "no wilderness" alternative for each WSA, and (3) a "partial wilderness alternative for the Hawley Mountain WSA.

The names of the five WSAs analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

—Hells Half Acre: 66,200 acres—all suitable
—Hawley Mountain: 15,510 acres—all nonsuitable
—Black Canyon: 5,400 acres—all nonsuitable
—Cedar Butte: 35,700 acres—all nonsuitable
—Petticoat Peak: 11,298 acres—all nonsuitable

Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulation, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the District Manager, Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20240
Bureau of Land Managment, Idaho State Office, 3380 American Terrace, Boise, Idaho 83706

FOR FURTHER INFORMATION CONTACT: Lloyd H. Ferguson, District Manager, Idaho Falls District Office (940), 940 Lincoln Road, Idaho Falls, Idaho 83401, Telephone: (208) 529-1020.

Dated: October 3, 1986.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 86-23403 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-GG-M

Clark County Management Framework Plan

AGENCY: Bureau of Land Management (BLM), Interior (NV-050-07-4121-08).

ACTION: Notice of intent to prepare an amendment to the Clark County Management Framework Plan (MFP) and invitation for public participation in the identification of issues and review of planning criteria; correction.

SUMMARY: This document corrects a previous notice that appeared on page 32853 in the Federal Register of Tuesday, September 16, 1986 (51 FR 32853). The timeframe for public comment and participation on the preliminary issues and planning criteria has been extended to October 31, 1986.

FOR FURTHER INFORMATION CONTACT: Ben F. Collins, District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 386-6403.

Dated: October 10, 1986.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 86-23453 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-HC-M

[OR120-6310-02; GP7-009]

Coos Bay District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR, Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Monday, November 17, 1986, beginning at 9:00 a.m. The meeting will be held in the conference room of the Coos Bay District Office, 333 South Fourth Street, Coos Bay, Ore.

Agenda: The agenda for the meeting will include:

1. Updates on old business including: the status of the Dean Creek Wildlife area, the status of the potential land exchange with International Paper Company, and the public comments received to date on the BLM planning process for the 1990s.
2. Discussion of future assignments for the council's consideration.
3. Discussion of the "issues identification" portion of the planning process, review of public comments received and the results of the open house public meeting, and a Council recommendation to the District Manager on the issues to be addressed in the planning process.
4. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested parties may make oral statements to the council from 10:00 a.m. to 10:30 a.m. on Monday, November 17, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Monday, November 10, 1986 (Telephone 503-269-5986).

ADDRESS: Bureau of Land Management, Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR 97420.

Minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Dated: October 7, 1986.

Robert T. Dale,

District Manager.

[FR Doc. 86-23420 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-JB-M

[UT-060-4410-02]

Moab District Advisory Council Tour and Meeting

AGENCY: Bureau of Land Management, Moab.

ACTION: Moab District Advisory Council tour and meeting.

SUMMARY: The Council will conduct a joint tour with the Montrose District Advisory Council on November 19, and a separate meeting on November 20.

SUPPLEMENTARY INFORMATION: The Moab and Montrose District Advisory Councils will meet jointly November 19 to review and discuss a National Park Service (NPS) proposal to expand Hovenweep National Monument.

9:30 a.m. Arrive at Hovenweep National Monument.
10:00 a.m. Convene meeting near Square Tower Unit Ranger Station. Briefing by NPS.
10:30 a.m. Begin field trip.
12:00 p.m. Lunch.
1:00 p.m. Briefing by BLM on planned management of proposed expansion area.
1:30 p.m. Field trip resumes.
4:00 p.m. Field trip ends.
6:30 p.m. Councils resume at Ramada Inn, 666 South Broadway, Cortez, CO.
7:00 p.m. Public Comments regarding Hovenweep proposal.
7:30 p.m. Formulation of joint Council resolution.
8:00 p.m. Adjourn joint Council meeting.

On Thursday, November 20, the Moab District Advisory Council will meet at the BLM, San Juan Resource Area Office, 435 North Main, Monticello, Utah according to the following schedule:

8:00 a.m. San Juan Resource Management Plan (RMP) briefing.
9:00 a.m. San Juan known geologic structures.
9:15 a.m. District coal reserves.
9:30 a.m. Mining claims and Riparian areas along the Colorado River.
9:45 a.m. San Rafael RMP update.
10:00 a.m. Break.
10:15 a.m. Integral vistas update.
10:30 a.m. Off-road vehicle Bill in Utah State legislature.

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11:00 a.m. Public comment.
11:30 a.m. Lunch.
1:00 p.m. Resolutions finalized, new business, adjourn thereafter.

All Advisory Council meetings are open to the public. Persons wishing to make a comment to the Council on either day must notify the BLM by November 17. Depending on the number of people desiring to make a statement, a per-person time limit may be established. Members of the public attending the Field Trip must provide their own transportation (Four-Wheel Drive recommended) and lunch.

FOR FURTHER INFORMATION CONTACT: Mary Plumb, Public Affairs Officer, P.O. Box 970, Moab, Utah 84532. Telephone (801) 259–6111.

Gene Nodine,
District Manager.

[FR Doc. 86–23421 Filed 10–16–86; 8:45 am]
BILLING CODE 4310–DQ–M

[CO–030–07–4331–12]

Montrose District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR Subpart 1784, that a meeting of the Montrose District Advisory Council will be held November 19 and 20, 1986 in Cortez, Colorado.

DATES: Requests to present oral comments must be received by November 17, 1986. Meetings are scheduled November 19 and 20, 1986.

ADDRESS: Submit requests to comment or requests for further information to: District Manager, Bureau of Land Management, Montrose District Office, 2465 South Townsend, Montrose, Colorado 81401.

SUPPLEMENTARY INFORMATION: the Montrose and Moab District Advisory Councils will meet jointly on November 19, 1986 to review and discuss the proposed expansion of Hovenweep National Monument. The meeting will convene at 10:00 a.m. near the Square Tower unit ranger station in Hovenweep National Monument. In addition, the Montrose District Advisory Council will hold a separate business meeting at the Anasazi Heritage Center near Dolores, Colorado on November 20, 1986.

Meeting Agenda—November 19

10:00 a.m. Convene meeting at Hovenweep National Monument.
Briefing by the National Park Service on the Hovenweep expansion proposal.
10:30 a.m. Begin tour.
12:00 noon Lunch (in the field).
1:00 p.m. Briefing by the Bureau of Land Management on the planned management of the proposed expansion area.
1:30 p.m. Tour resumes.
4:00 p.m. Tour ends.
6:30 p.m. Council meeting resumes at the Ramada Inn located at 666 S. Broadway in Cortez, Colorado.
7:00 p.m. Public comment period.
7:30 p.m. Formulation of joint Council resolution.
8:00 p.m. Adjourn.

Meeting Agenda—November 20

8:30 a.m. Convene meeting at the Anasazi Heritage Center. District Manager's remarks.
9-00 a.m. Update on Resoure Area issues.
12:00 noon Lunch.
1:00 p.m. Public comment period.
1:30 p.m. Discussion.
2:00 p.m. Adjourn.

The tour and meetings of the Council are open to the public. Anyone wishing to make an oral statement must contact the District Manager by November 17, 1986. The Council will accept oral statements on the Hovenweep expansion proposal between 7:00 and 7:30 p.m. on November 19, 1986. Comments on all other topics will be scheduled between 1:00 and 1:30 p.m. on November 20, 1986. Commentors may be required to limit the length of their oral statements.

Members of the public wishing to participate in the tour must provide their own transportation and lunch. For additional information, contact the District Manager.

Dated: October 9, 1986.

Kenneth D. Herman,
Acting District Manager.

[FR Doc 86–23422 Filed 10–16–86; 8:45 am]
BILLING CODE 4310–JB–M

Phoenix District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Phoenix District Advisory Council.

DATE: Thursday, November 20, 1986 at 9:30 a.m.

ADDRESS: 2015 West Deer Valley Road, Phoenix, AZ 85027, BLM Conference Room.

SUMMARY: The council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

The Resources Management Plan of the Phoenix Resource Area
Statewide Wilderness Environmental Impact Statement
Land Exchanges
Management Updates
Business from the floor
Public comments and statements
Future meetings and agenda topics

SUPPLEMENTARY INFORMATION: This is a public meeting and BLM welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters.

Summary minutes of the Board meeting will be maintained in the District office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: October 8, 1986.

Paul J. Buff,
Acting District Manager.

[FR Doc. 86–23423 Filed 10–16–86; 8:45 am]
BILLING CODE 4310–32–M

[WY–030–07–4322–14]

Rawlins District, Divide and Medicine Bow Resource Areas, Albany, Carbon, Laramie, and Portion of Sweetwater Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Rawlins District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–463 and 94–579 that a meeting of the Rawlins District Grazing Advisory Board will be held. This meeting will consist of discussions of rangeland improvement programs, grazing fees, subleasing and the grazing nonuse policy. There also will be an election of officers and a public comment period.

DATE: November 20, 1986.

ADDRESS: The Green Room, Quality Inn, 2222 East Cedar, Rawlins, Wyoming.

FOR FURTHER INFORMATION CONTACT: Don Glenn, District Range Conservationist, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324–7171.

SUPPLEMENTARY INFORMATION: The meeting will begin at 10:00 a.m. The agenda will include the following:

An update of the Medicine Bow and Divide RMP/EIS.
Discussion of grazing fees, subleasing and the grazing nonuse policy.
Discussion of the Rangeland Program Summary for the Gas Hills EIS Area.
Discussion of the Rangeland Program Summary Update for the Divide EIS Area.
Lunch
Election of Officers
Discussion of the Rangeland Improvement Program for FY 87.
2:00 p.m.—Public comment period. This meeting is open to the public.

Anyone wishing to make a statement before the board must notify the district manager by November 19, 1986. Written statements may also be filed for the boards consideration.

Richard Bastin,
District Manager.

[FR Doc. 86–23424 Filed 10–16–86; 8:45 am]
BILLING CODE 4310–23–M

[ID–040–4322–02]

Salmon District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Salmon District Grazing Advisory Board.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATE: The meeting will be held on Wednesday, December 10, 1986, at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467. The meeting will begin at 10:00 a.m.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92–463. The meeting is open to the public; public comments on agenda items will be accepted from 1:00 to 1:30 p.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467, by December 8, 1986.

The agenda items are: An Overview of the Functions of the Grazing Advisory Board, Election of Officers, FY 87 Range Improvement Projects, Pilot Riparian Project, discussion of the use of 8100 funds, and Allotment Management Plans.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:30 p.m.) within 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Jerry W. Goodman, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467; telephone (208) 756–5400.

Dated: October 8, 1986.

Jerry W. Goodman,
District Manager.

[FR Doc. 86–23425 Filed 10–16–86; 8:45 am]
BILLING CODE 4310–GG–M

[CA–020–4341]

Susanville District Advisory Council; Meeting

In accordance with sec. 309 of Pub. L. 94–579 (Federal Land Policy and Management Act as amended), the Susanville District Advisory Council will meet at 9:00 a.m. on November 6, 1986 in the conference room of the Susanville District Office, 705 Hall Street, Susanville, California.

The meeting agenda will include such topics as the interdisciplinary monitoring policy of the BLM Susanville District and a discussion relating to the Susanville District Advisory Council resolution, September 19, 1986, regarding the Muck Valley Hydroelectric Project.

Public comments and input regarding the Muck Valley Hydroelectric Project will be accepted at the meeting. For those wishing to present input to the Council regarding this project, please contact Louisa Beld, 916/257–5361, prior to close of business on November 5, 1986, to be placed on the agenda. A written copy of comments will be required of anyone presenting input to the Council and will be requested for the public record at the time of the meeting.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

C. Rex Cleary
District Manager.

[FR Doc. 86–23462 Filed 10–16–86; 8:45 am]
BILLING CODE 4310–40–M

[WY–920–06–4990–11–6001; W–76293]

Proposed Reinstatement of Terminated Oil and Gas Lease; Washakie County, Wyoming

October 10, 1986.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–76293 for lands in Washakie County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

In lessee has paid the required $500.00 administrative fee and $108.25 to reimburse the Department for the cost of this Federal Register notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–76293 effective June 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.

[FR Doc. 86–23426 Filed 10–16–86; 8:45 am]
BILLING CODE 4310–22–M

[WY–920–06–4990–11–6001; W–62345]

Proposed Reinstatement of Terminated Oil and Gas Lease, Campbell County, Wyoming

October 10, 1986.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–62345 for lands in Campbell County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 18⅞ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–62345 effective May 1, 1986, subject to the original terms and conditions of the lease and the

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increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-23427 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-33-M

[AZ-940-07-4212-14; A-20631]

Conveyance in Cochise County, AZ

October 9, 1986.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1987 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Marcellus W. DuBois and Eva F. DuBois, P.O. Box 897, Willcox, Arizona 85643, have purchased by competitive sale, at the fair market value of $9,450.00, public land situated in Cochise County described as follows:

Gila and Salt River Meridian, Arizona

T. 13 S., R 24 E.,
Sec. 30, lots 5 and 6.
Containing 61.49 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-23428 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-33-M

[AZ-940-07-4212-14; A-20630]

Conveyance in Cochise County, AZ

October 9, 1986.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Tri-W Ranch, Route 4, Box 34, Dimmitt, Texas, has purchased by direct sale, at the fair market value of $4,050.00, public land situated in Cochise County described as follows:

Gila and Salt River Meridan, Arizona

T. 12 S., R 23 E.,
Sec. 8, SW¼SW¼.
Containing 40.00 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-23429 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-33-M

[AZ-940-07-4212-14; A-19278]

Conveyance in Coconino County, AZ

October 9, 1986.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), George P. McCormick, P.O. Box 519, Fredonia, Arizona 86022, has purchased by competitive sale, at the fair market value of $6,932.00, public land situated in Coconino County described as folows:

Gila and Salt River Meridan, Arizona

T. 41 N., R 2 W.,
Sec. 29, lot 5.
Containing 20.14 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-23430 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-32-M

[AZ-940-07-4212-13; A-19395]

Exchange of Public and Private Lands in Pinal and Coconino Counties, AZ

October 9, 1986.

Notice is hereby given of the consummation of an exchange between the United States and Magma Copper Company. The Bureau of Land Management transferred the following described lands out of Federal ownership on February 3, 1986, by Patent No. 02-86-0015, pursuant to section 206 of the Federal Land Policy and Management Act of 1976:

Gila and Salt River Meridian, Arizona

T. 8 S., R. 16 E.,
Sec. 25, S½N½SW¼, S½SW¼, SW¼NW¼SE¼, W½SW¼SE¼;
Sec. 26, all remaining public lands;
Sec. 35, all remaining public lands.
Containing 566.10 acres in Pinal County.

In exchange, the following described lands were reconveyed to the United States:

T. 14 N., R. 13 E.,
Sec. 31, lots 9 and 10;
Sec. 33, NW¼NE¼, E½NE¼NE¼NW¼.
Containing 105.60 acres in Coconino County.

The Lands reconveyed to the United States immediately became subject to administration and management of the Forest Service, Department of Agriculture.

At 9:00 a.m. on November 24, 1986, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

This information is provided to all interested parties of the consummation of a land title exchange action.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-23435 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-33-M

[AZ-940-07-4212-14; A-20240]

Conveyance in Graham County, AZ

October 9, 1986.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Delmar B. and Elizabeth L. Stauffer, 1221 West Relation Street, Safford, Arizona 85546, have purchased by direct sale, at the fair market value of $450.00, public land situated in Graham County described as follows:

Gila and Salt River Meridian, Arizona

T. 8 S., R 26 E.,
Sec. 29, lots 16 and 22.
Containing 3.19 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-23431 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-33-M

[AZ-943-02-4212-13; A-19263]

Issuance of Land Exchange Conveyance; Document for Exchange of Public and Private Lands, in Mohave County, AZ

October 8, 1986.

Notice is hereby given that the following described land has been transferred out of Federal ownership pursuant to section 206 of the Federal Land Policy and Management Act of 1976 in exchange for privately owned land.

The land transfered to private ownership is described as:

Gila and Salt River Meridian, Arizona

T. 20 N., R. 21 W.,
Sec. 28, N½NE¼, SE¼NE¼, NE¼NW¼, S½S½.
T. 19 N., R. 22 W.,
Sec. 12, S½N½, N½S½.
The area comprises 640 acres in Mohave County, Arizona.

Land acquired by the United States is described as:

Gila and Salt River Meridian, Arizona

T. 18 N., R. 18 W.,
Sec. 1, lots 1-4, incl., S½N½, S½;
Sec. 17, NE¼, S½NW¼.
T. 19 N., R. 18 W.,
Sec. 5, lots 1-4, incl., S½N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 7, lots 1 and 2, NE¼, E½NW¼;
Sec. 9, E½, NE¼NW¼, S½NW¼, SW¼;
Sec. 11, NE¼, S½;
Sec. 25, E½SE¼;
Sec. 33, NE¼, S½.
T. 20 N., R. 18 W.,
Sec. 27, N½, N½SW¼, SE¼;
Sec. 29, NE¼, S½.
T. 18 N., R. 17 W.,
Sec. 7, those portions of lots 5 and 6, 15 and 16 lying easterly of the easterly boundary of the railroad right-of-way;
Sec. 13, all.
T. 19 N., R. 17 W.,
Sec. 7, those portions of lots 1, 10, 11, and 20 lying easterly of the easterly boundary of the railroad right-of-way;
Sec. 15, NE¼;
Sec. 19, those portions of lots 2, 9, 13, and 18 lying easterly of the easterly boundary of the railroad right-of-way;
Sec. 21, N½, N½SW¼, SE¼SW¼, SE¼.
T. 22 N., R. 17 W.,
Sec. 29, SE¼;
Sec. 33, W½.
The area comprises 6707.59 acres in Mohave County, Arizona.

At 9:00 a.m. on November 17, 1986, the reconveyed land described above will be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law.

The land acquired by the United States involves only the surface estate. The mineral estate is owned by the Santa Fe Pacific Railroad Company. The public interest was well served through completion of this exchange. The United States acquired private land adjacent to and partially within a Wilderness Study Area.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-23432 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-32-M

[AZ-940-07-4212-13; A-20225]

Conveyance of Public Land; Reconveyed Land Opened to Entry in Mohave County, AZ

October 9, 1986.

Notice is hereby given that the following described land has been transferred out of Federal ownership pursuant to section 206 of the Federal Land Policy and Management Act of 1976 in exchange for privately owned land. The land transferred to private ownership is described as:

Gila and Salt River Meridan, Arizona

T. 20 N., R. 18 W.,
Sec. 13, S½S½;
Sec. 14, E½SE¼SE¼, E½W½SE¼SE¼.
T. 21 N., R. 18 W.,
Sec. 34, SW¼.
Comprising 350 acres in Mohave County.

Land acquired by the United States is decribed as:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 18 W.,
Sec. 29, all.
Comprising 640 acres in Mohave County.

The exchange was made based on approximately equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and acquisition of private land by the Federal Government.

The land acquired by the Federal Government in this exchange will be open to entry under the general land laws, at 9 a.m. on November 24, 1986. The mineral estate is owned by the New Mexico and Arizona Land Company.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-23433 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-32-M

[AZ-940-07-4212-13; A-17295]

Conveyance of Public Land; Reconveyed Land Opened to Entry in Mohave County, AZ

October 9, 1986.

Notice is hereby given that the following described land has been transferred out of Federal ownership pursuant to section 206 of the Federal Land Policy and Management Act of 1976 in exchange for privately owned land. The land transferred to private ownership is described as:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 21 W.,
Sec. 31, lot 8.
Comprising 16.26 acres in Mohave County.

Land acquired by the United States is described as:

Gila and Salt River Meridian, Arizona

T. 20 N., R. 20 W.,
Sec. 3, SW¼SW¼;
Sec. 23, NE¼NW¼;
Sec. 27, SE¼SE¼.
Comprising 120.00 acres in Mohave County.

The exchange was made based on approximately equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and acquisition of private land by the Federal Government.

The land acquired by the Federal Government in this exchange will be open to the operation of the public land laws, subject to valid existing rights, at 9:00 a.m. on November 24, 1986. The mineral estate is owned by the Santa Fe Pacific Railroad Company.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-23434 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-07-421-13; A-21572]

Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange, public land, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchanged under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 19 N., R. 22 W.,
Sec. 12, N½N½.
Containing 160.00 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Walter E. Biewer of Kingman, Arizona:

Gila and Salt River Meridian

T. 18 N., R. 17 W.,
Sec. 9, N½N½, SE¼SW¼, and SE¼.
T. 20 N., R. 20 W.,
Sec. 23, NE¼, N½SE¼, E½SW¼SE¼, and SE¼SE¼.
Containing 660.00 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a). right-of-way for ditches and canals pursuant to the Act of August 30, 1890; and (b). all the oil and gas and with it the right to prospect for, mine, and remove same.

2. Subject to any restrictions that may be imposed by Mohave County Board of Supervisors in accordance with county flood-plain regulations established under Resolution No. 84-10 adopted on December 3, 1984.

Private lands to be acquired by the United States will be subject to the following reservations:

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1. All minerals are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 78 of Deeds, pages 250 and 348.

2. The right of the Santa Fe Pacific Railroad Company to appropriate rights-of-way incident to the operation of railroads as set forth in Book 78 of Deeds, page 348.

3. License to Citizens Utilities Company, dated February 1, 1941, for electric transmission line as set forth in Book 78 of Deeds, page 348.

4. An easement for ingress and egress and rights incident thereto as set forth in Book 84 of Deeds, page 497.

Publication of this Notice will segregate the subject lands from all appropriations under the public lands laws, including the mining laws, but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or two years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: October 9, 1986.

Henri E. Bisson,

Associate District Manager.

[FR Doc. 86-23436 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-33-M

[M-66519]

Realty Action, Exchange; Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior (MT-020-06-4212-13; M-66519).

ACTION: Notice of Realty Action M-66519, exchange of public and private lands in Powder River County, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian

T. 8 S., R. 48 E.,
Sec. 21, Lot 13;
Sec. 22, Lot 11;
Sec. 27, Lot 12;
Sec. 28, Lot 14.
T. 8 S., R. 49 E.,
Sec. 21, SE¼SW¼, S½SE¼;
Sec. 27, S½SW¼;
Sec. 28, N½N½, SW¼NW¼;
Sec. 29, SW¼NW¼, SW¼SE¼;
Sec. 32, SE¼NE¼;
Sec. 33, NW¼SW¼, SE¼SW¼;
Sec. 34, SW¼SW¼, S½SE¼;
Sec. 35, SW¼SW¼.
T. 9 S., R. 49 E.,
Sec. 2, W½ NW¼NE¼, S½NE¼, NW¼, N½NW¼SW¼, W½SW¼NW¼SW¼, E½SE¼NW¼ SW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 4, SW¼NW¼, SW¼SW¼, N½NE¼ SW¼SW¼, W½SW¼SW¼, S½SE¼ SW¼SW¼, SE¼SE¼;
Sec. 5, SE¼NE¼, NE¼SE¼;
Sec. 7, NE¼SE¼NE¼, S½SE¼NE¼;
Sec. 9, NW¼NW¼, W½SW¼;
Sec. 10, NE¼SE¼;
Sec. 11, N½NE¼NE¼NE¼, W½NE¼ NE¼, S½SE¼NE¼NE¼;
Sec. 21, E½;
Sec. 22, NE¼SW¼, S½SW¼, SW¼SE¼;
Sec. 25, SE¼NE¼, W½SE¼, SE¼SE¼;
Sec. 27, W½NW¼;
Sec. 28, N½NE¼, SW¼NE¼;
Sec. 35, NE¼, E½NW¼, NE¼SW¼, N½SE¼.
T. 9 S., R. 50 E.,
Sec. 19, Lots 10 and 11;
Sec. 30, Lots, 1, 2, 6, 9-11, SW¼NE¼, N½SE¼, SE¼SE¼;
Sec. 31, Lots 1-14, S½NE¼, N½SE¼.

Aggregating 4,123.32 acres of public lands.

In exchange for these lands, the United States will acquire the following described lands from E. Amory Hubbard:

Principal Meridian

T. 8 S., R. 48 E.,
Sec. 27, Lot 8;
Sec. 28, Lots 6 and 13, SW¼NE¼, SW¼SE¼.
T. 9 S., R. 48 E.,
Sec. 9, SW¼NE¼;
Sec. 21, NW¼NW¼, S½NW¼, SW¼, S½SE¼;
Sec. 22, S½;
Sec. 23, S½SW¼, SW¼SE¼;
Sec. 25, N½S½, SE¼SW¼, SE¼SE¼;
Sec. 26, N½N½, S½NW¼, W½SW¼, SE¼SW¼, N½SE¼, SW¼SE¼;
Sec. 27, SE¼NE¼, W½NW¼, SE¼NW¼, NE¼SW¼, SE¼;
Sec. 28, N½NE¼;
Sec. 34, N½NE¼, SE¼NE¼;
Sec. 35, Lots 1, 2, NE¼, NW¼SE¼.
T. 8 S., R. 49 E.,
Sec. 34, N½NE¼;
Sec. 35, NE¼SW¼, N½SE¼.
T. 9 S., R. 49 E.,
Sec. 18, Lot 1, W½SE¼, SE¼SE¼;
Sec. 20, SW¼NW¼, NW¼SW¼, SE¼SW¼;
Sec. 29, NE¼NW¼, SE¼SW¼, W½SE¼;
Sec. 32, W½NE¼, SE¼NE¼, NW¼SE¼.

Aggregating 3,377.10 acres of private lands.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address shown below. Any adverse comments will be evaluate by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report, is available for review at the Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The exchange will be made subject to:

1. A reservation to the United States for right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the Federal lands being transferred.

3. All valid existing rights (e.g., rights-of-way, easements, and leases of record).

4. Value equalization by cash payments or acreage adjustments.

5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

6. Reservation to E. Amory Hubbard of all oil and gas on those private lands held by him having fee minerals.

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The public interest will be served by completion of this exchange because it will enable the Bureau of Land Management to acquire lands with high public values, and will increase management efficiency to public lands in the area.

Dated: October 8, 1986.

Bruce Whitmarsh,

Acting District Manager.

[FR Doc. 86-23438 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-DN-M

Availability of White Sands Resource Management Plan; Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, a Record of Decision (ROD) for the White Sands Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared.

The RMP will provide the framework to guide management decisions during the next 10 to 20 years on the White Sands Resource Area's 1.8 million surface acres of public land and 3.6 million subsurface acres. The goal of this RMP is to provide for a combination of resource uses that will protect important environmental values and sensitive resources and at the same time, allow development of resources which produce commercial goods and services. The RMP also describes how the four key resource issues that were identified with public involvement early in the planning process will be resolved. These issues are: (1) Rangeland Management; (2) Special Management Areas; (3) Land Tenure Adjustment; and (4) Access.

In addition to the analysis performed for the EIS portion of the RMP, in compliance with the requirements of the National Environmental Policy Act of 1969, further environmental analysis will be conducted for site-specific plans and actions resulting from implementation of the RMP.

DATE: The ROD was approved by Monte G. Jordan, Acting New Mexico State Director on September 5, 1986.

ADDRESS: Review copies of the Draft and Final RMP/EIS, and copies of the ROD are available from: Area Manager, White Sands Resource Area, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: P. Robert Alexander, White Sands Area Manager at the address given above; telephone 505/525-8228, (FTS) 571-8350.

SUPPLEMENTARY INFORMATION: Implementation of the RMP decisions will continue over a period of years. Priorities will be developed to guide the order of implementation for those decisions that cannot be immediately implemented.

The implementation priorities may be revised based upon new administrative policies, new Departmental directions or new Bureau goals.

The ROD formally designates the Sacramento Escarpment Scenic Area of Critical Environmental Concern (ACEC). The ACEC contains 3,640 acres. The Sacramento Escarpment is one of the most conspicuous features of southern New Mexico. The ACEC is designed to protect and prevent irreparable damage and enhance the scenic value of the escarpment. Within the area, the existing No Surface Occupancy (NSO) stipulation for oil and gas and geothermal leasing on 3,300 acres will be retained and an additional 370 acres will be designated NSO. The ACEC will be managed under the objectives of Visual Resource Management Class I, including segregation from all forms of appropriation under the public land laws except the mining and leasing laws; no new rights-of-way easements would be approved; existing small trash dumps will be cleaned up; and the area would be closed to vegetative sale. Off-road vehicle use will be limited to designated roads. Approximately 80 acres of land will be pursued for acquisition to enhance the manageability of the ACEC.

The ROD has been sent to all recipients of the Proposed RMP/Final EIS. Copies of the forthcoming Plan and ACEC Management Plan are available upon request from the Area Manager listed in the address given above.

Dated: October 9, 1986.

Malcolm J. Schnitker,

Acting State Director.

[FR Doc. 86-23419 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-FB-M

[CA-940-06-4212-13; CA 15726

Exchange: of Public and Private Lands in San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land conveyance document.

SUMMARY: The purpose of this exchange was to obtain non-Federal land for use in Federal programs. The non-Federal land constitutes isolated holdings within the McCain Valley National Land and Wildlife Conservation Area and will serve the national interest by protecting known natural resources and by forming a more logical and efficient land and resource management area.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office (916) 978-4815.

The United States issued an exchange coveyance document to The Trust for Public Land on October 15, 1984, under the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716), for the following described land:

San Bernardino Meridian, California

T. 11 S., R. 2 W.,
Sec. 19, Lots 4, 5, and 8.
Containing 86.97 acres of public land.

In exchange for these lands, the United States acquired the following described land from The Trust for Public Land:

San Bernardino Meridian, California

T. 16 S., R. 7 E.,
Sec. 16, N½NE¼NW¼, SE¼NE¼NW¼, NW¼,SE¼NW¼,N½SW¼NW¼, SW¼SW¼NW¼, N½NW¼N E¼,SW¼NW¼NE¼, S½NE¼NE¼, NW¼SE¼NE¼, SE¼, SW¼NW¼S W¼, N½NE¼SW¼, NW¼SW¼SW¼, E½,NW¼SW¼, NE¼SE¼SW¼, SW¼NE¼NW¼;
Sec. 20, NE¼SE¼;
Sec. 21, W½SW¼.
Containing 505.00 acres of non-Federal land.

The values of the public land and non-Federal land in the exchange were equal.

Dated: October 9, 1986.

Sharon N. Janis,

Chief, Branch of Adjudication & Records.

[FR Doc. 86-23437 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-06-4520-12]

Filing of Plats of Survey; Colorado

October 6, 1986.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, Effective 10:00 A.M., October 6, 1986.

The plat representing the dependent resurvey of the south boundary of section 33, a portion of the west boundary, a portion of the subdivisional lines, and subdivision of certain sections, T. 34 N., R. 4 W., New Mexico Principal Meridian, Colorado, Group No. 744, was accepted September 23, 1986.

This plat was prepared to meet certain administrative needs of the U.S. Forest Service.

The plat, in three sheets, representing the corrective dependent resurvey of

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portions of the Lake City Townsite and Samuel Wade et al. placer, the dependent resurvey of a portion of the Eleventh Standard Parallel North (south boundary of T. 45 N., R. 4 W.), a portion of the south boundary, a portion of the east boundary, a portion of the subdivisional lines, the dependent resurvey of the West Lake Townsite and the dependent resurvey of certain mineral claims, and the subdivision of certain sections in T. 45 N., New R. 4 W., Mexico Principal Meridian, Colorado, Group No. 736, was accepted September 26, 1986.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfiled Street, Lakewood, Colorado 80215.

Jack A Eaves,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 86-23439 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-JB-M

[ES-940-07-4520-13; ES-036591, Group 2]

Filing of Plat of Dependent Resurvey; Maine

October 9, 1986.

1. The plat, in two sheets, of the dependent resurvey of the boundaries of the land held in trust for the Passamaquoddy Tribe in Township 5 Northern Division, Bingham's Penobscot Purchase, Washington County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on November 24, 1986.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., November 24, 1986.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 86-23440 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-940-07-4520-13; ES-036582, Group 10]

Filing of Plat of Dependent Resurvey; North Carolina

October 9, 1986.

1. The plat of the dependent resurvey of a portion of the Cherokee Indian Land and renonumentation of AP 30, within the 3200 Acre Tract, Swain County North Carolina, will be officially filed in the Eastern States Office Alexandria, Virginia at 7:30 a.m., on November 24, 1986.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., November 24, 1986.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 86-23441 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-940-07-4520-13; ES-036593, Group 10]

Filing of Plat of Dependent Resurvey and Survey; North Carolina

October 9, 1986.

1. The plat of the survey of a portion of the Qualla Indian Boundary in swain County and the dependent resurvey of a portion of the Qualla Indian Boundary in Jackson County, North Carolina, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on November 24, 1986.

2. The dependent resurvey and survey were made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., November 24, 1986.

4. Copies of the plat will be made available upon request and repayment of the reproduction fee of $4.00 per copy

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 86-23442 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-GJ-M

Filing of Plats of Survey; Oregon/ Washington

October 3, 1986.

AGENCY: Bureau of Land Management, Interior (OR-943-07-4520: GP7-003).

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the date hereinafter stated:

Willamette Meridian

Oregon

T. 27 S., R. 3 W., Accepted July 11, 1986
T. 32 S., R. 7 W., Accepted July 18, 1986
T. 12 S., R. 10 W., Accepted July 18, 1986

The above-listed plats were officially filed August 1, 1986.

T. 28 S., R. 4 W., Accepted August 22, 1986
T. 34 S., R. 8 W., Accepted August 22, 1986
T. 37 S., R. 14 W., Accepted August 22, 1986
T. 27 S., R. 43 E., Accepted August 15, 1986

The above-listed plats were officially filed August 28, 1986.

Washington

T. 8 N., R. 15 E., Accepted July 11, 1986, officially filed August 1, 1986.
T. 10 N., R. 31 E., Accepted August 15, 1986
T. 11 N., R. 31 E., Accepted August 15, 1986
T. 10 N., R. 32 E., Accepted August 15, 1986
T. 11 N., R. 32 E., Accepted August 15, 1986

The above-listed plats were officially filed August 20, 1986.

The above-listed plats represent a supplemental plat, dependent resurveys and subdivisions of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: October 3, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-23443 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-07-4220-11: GP7-001; WASH-01220]

Washington; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a portion of the land withdrawal for the Giant Tree Recreation Area continue for an additional 20 years. The land would remain closed to mining but would be opened to surface entry and has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The Forest Service, Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 1710 of August 6, 1958, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located approximately 35 miles north of Aberdeen and contains approximately 70 acres within Section 15, T. 23 N., R. 8 W., W.M., Grays Harbor County, Washington.

The purpose of the Withdrawal is to protect the Giant Tree Recreation Area within the Olympic National Forest. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal, except to open the lands to operation of the public land laws generally.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: October 9, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-23444 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), U.S. Department of the Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for Outer Continental Shelf (OCS) Minerals Exploration Proposals on the Alaska OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas exploration activities proposed on the Alaska OCS. This listing includes all proposals for which FONSI's were prepared by the Alaska OCS in the 3-month period preceding this Notice.

Activity/Operator

Exploration Drilling Program for the Eastern Beaufort Sea, Diapir Field (Sale 87) Exxon Company U.S.A., as operator for itself and others.

Location

Exxon is proposing to drill up to 17 exploratory wells utilizing four different platform scenarios. Leases with water depths less than 100 feet would use the Global Marine Concrete Island Drilling System or Canadian Marine Drilling Company's (Canmar) Single Steel Drilling Caisson, either one mounted on a berm or an Arctic Cone system. The Arctic Cone System has only been proposed and has yet to be build. Leases with water depths greater than 100 feet would use either the Canmar drillship Explorer IV, or similar vessel, or the Beaudrill icebreaking semisubmersible vessel, Kulluk. Well sequence will depend upon the results of drilling, testing, and evaluation of the initial well. The location of Exxon's leases is described as follows:

LEASE AND BLOCK NUMBERS

Lease	Protraction No.	Block
OCS-Y 0842	NR-6-4	570
OCS-Y 0844	NR-6-4	571
OCS-Y 0864	NR-6-4	630
OCS-Y 0852	NR-6-4	630
OCS-Y 0853	NR-6-4	636
OCS-Y 0865	NR-6-4	672
OCS-Y 0868	NR-6-4	675
OCS-Y 0869	NR-6-4	678
OCS-Y 0879	NR-6-4	729
OCS-Y 0880	NR-6-4	728
OCS-Y 0881	NR-6-4	728

LEASE AND BLOCK NUMBERS—Continued

Lease	Protraction No.	Block
OCS-Y 0887	NR-6-4	785
OCS-Y 0888	NR-6-4	786
OCS-Y 0921	NR-7-3	749
OCS-Y 0916	NR-7-3	723
OCS-Y 0925	NR-7-3	788
OCS-Y 0888	NR-6-4	843
	NR-7-3	917

Environmental Assessment

EA No. AK 86-03.

FONSI Date

August 14, 1986.

Activity/Operator

A one-time 1986 exception to the existing conditions for the Beaufort Sea Sale 87 Stipulation No. 4 for Union Oil Company of California (UNOCAL), as operator for itself and others. This exception to the existing conditions of the stipulation allows UNOCAL to drill during the bowhead migration and to conduct a study on the possible effects of drilling noise from their drillship on migrating bowhead whales. The proposal will require a one-time exception from the requirements of Sale 87, Stipulation 4 which prohibits exploratory drilling during the bowhead whale migration. The FONSI and associated EA address the possible effects of the exception.

Location

Lease	Protraction No.	Block
OCS-Y 0849	NR 6-4	634

Environmental Assessment

EA No. AK 86-04.

FONSI Date

September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the MMS office in the Alaska OCS Region.

The FONSI and associated EA are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508, phone: (907) 261-4435.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration

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for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the qualify of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in signficant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: October 7, 1986.

Regional Director,

Alaska OCS Region.

[FR Doc. 86-23468 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from November 1, 1986, through April 30, 1987. The List of Restricted Joint Bidders published in the **Federal Register** on April 8, 1986, at 51 FR 11984 covered the bidding period of May 1, 1986, through October 31, 1986.

Group I. Chevron U.S.A. Inc.; Chevron Corporation.
Group II. Exxon Corporation.
Group III. Texaco Inc.; Getty Oil Company; Texaco Oils Inc.; Texaco Producing Inc.
Group IV. Shell Offshore Inc.; Shell Oil Company; Shell Western E&P Inc.
Group V. Mobil Oil Corporation; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Superior Oil Company; Mobil Exploration and Producing North American Inc.

Dated: October 9, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-2364 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4397, Block 291, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on October 8, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m. Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans. Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OSC Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: October 10, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-23445 Filed 10-16-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporated Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporation intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: Emerson Electric Co., 8000 W. Florissant Avenue, St. Louis, Missouri 63136.

2. Wholly-owned subsidiaries which will participate in the operations:

Name and Jurisdiction of incorporation

(a) A.B. Chance Company—Delaware
(b) Appleton Electric Company—Delaware
(c) Automatic Switch Company—Delaware
(d) Beckman Industrial Corporation—Delaware
(e) Branson International Plasma Corp.—California
(f) Branson Ultrasonics Corp.—Delaware
(g) Camco Corp.—Minnesota
(h) Computer Power Systems Corp.—California
(i) Day-Brite Lighting, Inc.—Delaware
(j) Electronic Navigation Industries, Inc.—Delaware
(k) Electronic Speed Control Development Corp.—Missouri
(l) Emerint, Inc.—Delaware
(m) Emerson Contract Division, Inc.—Delaware
(n) Emerson Electric Canada Limited—Canada
(o) Emerson Electric Puerto Rico, Inc.—Delaware
(p) Fusite Corporation—Ohio
(q) Krautkramer Branson Incorporated—Connecticut
(r) Micro Motion, Inc.—Colorado
(s) Morse industrial Corporation—Delaware
(t) Ridge Tool Company—Ohio
(u) Rosemount, Inc.—Minnesota
(v) Skil Corporation—Delaware

(w) Southwest Mobile Systems Corporation—Delaware
(x) Sweco, Inc.—California
(y) Therm-O-Disc, Inc.—Ohio
(z) Vacco Industries—California
(aa) Van Gorp Corporation—Iowa
(bb) Western Forge Corporation—Delaware
(cc) Xomox Corporation—Ohio

B1. Parent corporation and address of principal office: General Fiberglass Supply, Inc., 1335 East Wisconsin Avenue, Pewaukee, Wisconsin 53072.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

Polydyne, Inc., 1608 Pearl Street, Waukesha, Wisconsin 53186
Incorporated: Wisconsin
Epic Resins, a division of General Fiberglass Supply, Inc., 1415 Ellis Street, Waukesha, Wisconsin 53186
Incorporated: Wisconsin (as a division of General Fiberglass Supply, Inc.)

C. 1. Parent corporation and address of principal office: Howes Leather Company, One Batterymarch Park, Quincy, MA 02169.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation: (1) Columbia Tanning Company, 101 Belmont Street, Brockton MA 02401 State of incorporation: Massachusetts.

D. 1. Parent corporation and address of principal office: Koch Industries, Inc., 4111 E. 37th Street, North, P.O. Box 2258, Wichita, Kansas 67201.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:
A. Chase Pipe Line Company—Kansas
B. Fincastle Mining, Inc.—W. Virginia
C. Koch Carbon, Inc.—Delaware
D. Kogas, Inc.—Oklahoma
E. Koch Engineering Company, Inc.—Kansas
F. Koch Exploration Company—Kansas
G. Koch Fuels, Inc.—Delaware
H. Koch Gathering Systems, Inc.—Kansas
I. Koch Membrane Systems, Inc.—Massachusetts
J. Koch Oil Company of Texas, Inc.—Texas
K. Koch Process Systems, Inc.—Delaware
L. Koch Refining Company—Delaware
M. Koch Service, Inc.—Kansas
N. Koch Sulfur Products Company—Kansas
O. Matador Coal Company—Delaware
P. Northern Pipe Line Company of Delaware, Inc.—Delaware
Q. Okie Pipeline Company—Kansas
R. Quanah Pipeline Corporation—Texas
S. Quivira Gas Company—Kansas
T. Sterling Hydrocarbon, Inc.—Kansas
U. The Matador Cattle Company—Delaware
V. Wood River Pipeline Company—Delaware

E. 1. Parent corporation and address of principal office: Leggett and Platt Inc., P.O. Box 757, Carthage, MI 64836.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: MFI, Inc., Texas.

F. 1. The Maytag Company and Magic Chef, Inc. have merged to become Maytag Corporation located at One Dependability Square, Newton, Iowa 50208.

2. The wholly owned subsidiaries which will participate in the operation and the states of their incorporation are:
(i) Maytag Company, Delaware
(ii) Jenn-Air Company—Division of Maytag Company
(iii) Jenn Industries, Inc., Delaware
(iv) Hardwick Stove Company—Division of Maytag Company
(v) Magic Chef, Inc., Delaware
(vi) Magic Chef Air Conditioning—Division of Magic Chef, Inc.
(vii) Admiral—Division of Magic Chef, Inc.
(viii) Norge—Division of Magic Chef, Inc.
(ix) Toastmaster, Inc.—Delaware
(x) Warwick Manufacturing Corporation—Virginia
(xi) Ardac, Inc.—Delaware
(xii) Dixie Narco, Inc.—West Virginia

G. 1. Parent corporation and address of principal office: Music Square Church, Inc., P.O. Box 710, Van Buren, Arkansas 72956.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:
(i) Tennessee Country Boy Distributors (Tennessee—state of incorporation for i through vii)
(ii) Alamo Freight (Tennessee)
(iii) Alamo of Nashville (Tennessee)
(iv) Alamo Construction (Tennessee)
(v) Alamo Ready-Mix (Tennessee)
(vi) Razorback Farms (Tennessee)
(vii) OK Liquidators (Tennessee)

H. 1. Parent corporation and address of principal office: Royal Packaging Industries Van Leer, B.V., Amsterdamseweg 208, Postbus 25, 1180 AA Amstelveen, The Netherlands.

2. Wholly owned subsidiaries which will participate in the operation and State(s) of incorporation:
Keyes Fibre Company, incorporated in Delaware
Van Leer Containers, Inc., incorporated in Delaware

I. 1. Parent corporation and address of principal office: Sears, Roebuck and Co., Sears Tower, Chicago, Illinois 60684.

2. Wholly owned subsidiaries which will participate in the operations and State(s) of incorporation:
Terminal Freight Handling Company, Delaware
Allstate Insurance Company, Illinois
Coldwell Banker Real Estate Group, Inc., Delaware
Dean Witter Financial Services, Inc., Delaware
Sears World Trade, Inc., Delaware
Homart Development Company, Delaware

J. 1. Parent Company: Tootal Thread, Inc., 1266 East Main Street, Stamford, Conn. 06907—State of incorporation: Delaware
Wholly-Owned Subsidiaries: 1. American Thread Company, Inc., 6757 Red Oak Blvd., Suite 201, Charlotte, NC 28210—State of incorporation: New Jersey
II. Tootal American, Inc., 1266 East Main Street, Stamford, Conn. 06907—State of Incorporation: Delaware

K. 1. Parent Corporation and Address of Principal Office: USG Corporation, 101 South Wacker Drive, Chicago, Illinois 60606

2. Wholly-owned Subsidiaries Which Will Participate in the Operations and States of Incorporation:

Corporation and Principal Office Address—Incorporated in

I. United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606—Delaware
II. Masonite Corporation, 1 South Wacker Drive, Chicago, IL 60606—Delaware
(A) Integrated Ceilings, Incorporated, 11500 Tennessee Avenue, West Los Angeles 90064—California
III. USG Industries, Inc., 101 South Wacker Drive, Chicago, IL 60606—Delaware
IV. USG Interiors Company, 101 South Wacker Drive, Chicago, IL 60606—Delaware
(A) USG Acoustical Products Company, 101 South Wacker Drive, Chicago, IL 60606—Delaware
(B) Donn, Incorporated, 1000 Crocker Road, Westlake, OH 44145—Ohio
(a) American Metals Corporation, 1000 Crocker Road, Westlake, OH 44145—Ohio
(b) American Metals Company, Inc., 1150 Marietta Industriel Dr., N.E., Marietta, GA 30062—Ohio
V. L&W Supply Corporation, 1 South Wacker Drive, Chicago, IL 60606—Delaware
(A) C-S-W Drywall Supply Company, 1 South Wacker Drive, Chicago, IL 60606—Delaware
(B) Stocking Specialists, Inc., 1 South

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Wacker Drive, Chicago, IL 60606—Delaware

VI. USG Foreign Investments, Limited, 101 South Wacker Drive, Chicago, IL 60606—Delaware

(A) Canadian Gypsum Company, Limited, 777 Bay Street, Toronto, Ontario M5W 1K9—Canada

VII. A.P. Green Refractories Company, Green Boulevard, Mexico, MO 65265—Delaware

(A) A. Lynn Thomas Company, Incorporated, 10 East Belt Boulevard, Richmond, VA 23225—Virginia

(B) A.P. Green Services, Incorporated, 1250 Maplelawn Drive, Troy, MI 48007-7000—Michigan

(C) Empire Firebrick Company, 219 Murray Street, Fort Wayne, IN 46803-2348—Indiana

Noreta R. McGee,

Secretary.

[FR Doc. 86-23467 Filed 10-16-86; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-122 (Sub-No. 2)]

Lease of Equipment and Drivers to Private Carriers; Petitions for Modification

AGENCY: Interstate Commerce Commission.

ACTION: Modification of policy statement.

SUMMARY: The Commission modifies the policy adopted in Ex Parte No. MC-122 (Sub-No. 2), *Lease of Equipment and Drivers to Private Carriers*, (47 FR 7885, February 23, 1982), 132 M.C.C. 756 (1982), to eliminate the requirement that private carriers and shippers using leased equipment and drivers from a single unregulated source comply with a minimum lease term of 30 days. The five remaining criteria in that decision remain unchanged. Notice of reopening in this proceeding was published at 50 FR 31439, August 2, 1985.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert G. Rothstein, (202) 275-7912

or

Louis E. Gitomer, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the full Commission decision. A copy may be purchased from T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423; or by calling toll-free (800) 424-5403, or (202) 289-4357 in the Washington, DC metropolitan area.

Energy and Environmental Statement

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 11107 and 10321 and 5 U.S.C. 553.

Decided: October 6, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-23464 Filed 10-16-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Trinidad Bascara, M.D.; Revocation of Registration

On July 10, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Trinidad Bascara, M.D. of 164 Heather Lane, Princeton, New Jersey 08540, an Order to Show Cause proposing to revoke her DEA Certificate of Registration, AB6851162, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated upon Dr. Bascara's controlled substance-related felony conviction on April 10, 1986, in the Superior Court, Mercer County, New Jersey.

The Order to Show Cause was sent to Dr. Bascara by registered mail. DEA received the return receipt which indicated that the Order to Show Cause was received on July 14, 1986. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Bascara is deemed to have waived her opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57

The Administrator finds that a two count accusation was filed on December 5, 1985, in the Superior Court, Mercer County, New Jersey, charging Dr. Bascara with one count of Medicaid fraud in violation of NJSA 30: 4D-17, and one count of maintaining a drug resort in violation on NJSA 24: 21-21 a(6) and b. The accusation specifically charged that during the period September 9, 1982, through July 31, 1985, Dr. Bascara received medical assitance payments totalling $15,477.97. Dr. Bascara was not entitled to these payments. She knowingly and willfully filed, with the New Jersey Divison of Medical Assistance and Health Services, false statements and representations regarding 618 claims for reimbursement for one-hour pyschotherapy sessions. Dr. Bascara did not in fact provide these services. The accusation further charged that between September 9, 1982, and July 3, 1985, Dr. Bascara knowingly and intentionally kept and maintained premises to be used for keeping and selling controlled dangerous substances.

On December 5, 1985, Dr. Bascara entered a plea of guilty to both counts. On April 10, 1986, Dr. Bascara was convicted on the two counts and ordered to pay a $10,000 fine on each count and to repay the medical assistance payments that she had wrongfully received. The count regarding the maintaining of a drug resort is a felony offense relating to controlled substances. Therefore, there is a lawful basis for the revocation of Dr. Bascara's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(2).

Dr. Bascara did not respond to the Order to Show Cause. She did not offer any evidence of explanation or mitigating circumstances. Accordingly, the Administrator concludes that the registration must be revoked.

On July 18, 1986, subsequent to the issuance of the Order to Show Cause in this matter, the New Jersey State Board of Medical Examiners ordered that Dr. Bascara surrender her medical license. Even if the ground for revocation based on Dr. Bascara's controlled substance related-felony conviction did not exist, the loss of state licensure requires DEA to revoke the DEA Certificate of Registration. 21 U.S.C. 823 and 21 U.S.C. 824(a)(3). See, *Jerry L. Word, M.D.*, 51 FR 26613 (1986) *Meyer Liebowitz, M.D.*, 51 FR 11654 (1986); *George P. Gotsis, M.D.*, 49 FR 33750 (1986).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AB6851162, previously issued to Trinidad Bascara, M.D., be and it hereby is revoked. In addition, the Administrator orders that any pending applications for registration with the Drug Enforcement Administration be, and they hereby are, denied.

This order is effective November 17, 1987.

Dated: October 14, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-23496 Filed 10-16-86; 8:45 am]

BILLING CODE 4410-09-M

Joseph P. Hutsko, D.O.; Revocation of Registration and Denial of pending Application for Renewal

On May 1, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joseph P. Hutsko, D.O., of 111 West Susquehanna Street, Allentown, Pennsylvania 18103, proposing to revoke his DEA Certificate of Registration, AH4307802, and to deny his pending application for renewal, executed on September 23, 1985, for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for seeking the revocation of Dr. Hutsko's current DEA certificate of Registration and the denial of his pending application for renewal is that Dr. Hutsko's continued registration is inconsistent with the public interest, as evidenced by, but not limited to Dr. Hutsko being found guilty on April 8, 1985, in the Pennsylvania Court of Common Pleas for Lehigh County, of nine counts of administering, dispensing or prescribing Phentermine, a schedule IV controlled substance, not in good faith; not within the scope of the patient relationship; not in accordance with treatment principles accepted by a responsible segment of the medical profession, in violation of 35 P.S. 780-113(14), and nine counts of dispensing Phentermine without affixing to the container in which the drug was sold or dispensed, label bearing the name and address of the practitioner, the date dispensed, the name and address of the patient and the directions for the use of the drug by the patient, in violation of 35 P.S. 780-113(17), all felony offenses relating to controlled substances.

The Order to Show Cause was sent by registered mail, return reciept requested, to Dr. Hutsko's last known address. The return receipt indicates that the Order to Show Cause was received and signed for by Dr. Hutsko on May 5, 1986. More than 30 days has elapsed since Dr. Hutsko received the Order to Show Cause and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator finds that Dr. Hutsko has waived his opportunity for a hearing on the issues raised in the Order to Show Cause, and enters this final order based on the record as it appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that on April 8, 1985, in the Pennsylvania Court of Common Pleas for Lehigh County, Dr. Hutsko was found quilty, after lengthy jury trial, of nine counts of administering, dispensing or prescribing Phentermine, a Schedule IV controlled substance, not in good faith; not within the scope of the patient relationship; and not in accordance with treatment principles accepted by a responsible segment of the medical profession, in violation of 35 P.S. 780-113(14), and nine counts of dispensing Phentermine without affixing to the container in which the drug was sold or dispensed, a label bearing the name and address of the practitioner, the date dispensed, the name of the patient, and the directions for use of the drug by the patient, in violation of 35 P.S. 780-113(17), all of the foregoing being felony offenses related to controlled substances. Dr. Hutsko was also found guilty of eight counts of defrauding the Pennsylvania Medical Assistance Program by knowingly and intentionally presenting for payment fraudulent claims for funishing services under Medical Assistance, in violation of 62 P.S. 1407(a) (1), (4), (6), and (7), also felony offenses.

The offenses mentioned above resulted from an undercover investigation of Dr. Hutsko's medical practice. During the investigation, two undercover investigators visited Dr. Hutsko's office and requested diet pills. The investigators were not overweight. Dr. Hutsko did not examine the investigators, although on a few occasions, he did weigh them and take therir blood pressures. Dr. Hutsko routinely dispensed Phentermine to the investigators in plain white envelopes, without explaining proper directions for use. During the visits, one investigator informed Dr. Hutsko that he was giving some of his medication to his wife and requested that the doctor also dispense additional medication for her. Without seeing or examining the investigator's wife, Dr. Hutsko dispensed Pohentermine for her. On each visit, Dr. Hutsko had the investigators complete various Medical Assistance forms. Since weight reduction is not covered by the Pennsylvania Medical Assistance program, Dr. Hutsko reported that the investigators and the wife were treated for various colds or other ailments which were covered under the program.

Although Dr. Hutsko was found guilty more than one year ago, on the several felony changes relating to controlled substances, he has yet to be sentenced. This lack of formal adjudication does not prevent the Administrator from taking action to revoke Dr. Hutsko's current DEA Certificate of Registration and to deny the pending application of renewal, based upon public interest considerations.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Administrator may revoke or deny the registration of a registrant or applicant if he determines that such registration would be inconsistent with the public interest. In determining whether a registration is in the public interest, the Administrator considers the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances;

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances; and

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f)(1)-(5).

After considering Dr. Hutsko's record in light of the foregoing factors, the Administrator concludes that Dr. Hutsko's continued registration is inconsistent with the public interest.

The Pennsylvania State Board of Osteopathic Medicine has twice suspended Dr. Hutsko's license for the offenses mentioned in this final order. Dr. Hutsko's license to practice medicine was first suspended on May 3, 1985, after he was found guilty of violating state controlled substance laws. His license was reinstated on September 16, 1985. The Board suspended Dr. Hutsko's license again on July 28, 1986, for a period of three months, for defrauding the State Medical Assistance Program.

The Administrator finds that Dr. Hutsko was clearly dispensing controlled substances in an improper and unlawful manner. He dispensed controlled substances for no legitimate propose and without conducting adequate physical examinations; he dispensed controlled substances for persons he had never seen or examined; and he dispensed controlled substances without properly identifying the drugs to the patient and without giving proper instructions for their use. The Administrator finds these dispensing practices constitute a willful abrogation of the responsibilities which accompany a DEA Certificate of Registration.

Although Dr. Hutsko has yet to be sentenced on the numerous felony offenses relating to controlled

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substances of which he was found guilty, the Administrator concludes, as did the jury, that Dr. Hutsko is guilty of numerous felony offenses relating to controlled substances and that he deliberately violated applicable Federal or State laws relating to the dispensing of controlled substances.

The Administrator also finds that Dr. Hutsko's conduct threatened the public health and safety. Dr. Hutsko dispensed controlled substances for no legitimate purpose, without examining his "patients;" he dispensed controlled substances to persons he had never seen, and who were not even patients; he dispensed controlled substances without affixing proper labels and without affixing instructions for use. Even if Dr. Hutsko was legitimately treating patients, his failure to perform even a normal examination and to take the routine precaution of providing a patient with information on a drug's use demonstrates that his continued registration constitutes a threat to the public health and safety.

For all of the foregoing reasons, the Administrator concludes that there is a lawful basis for the revocation of Dr. Hutsko's current DEA Certificate of Registration and for the denial of his pending application for renewal. The Administrator further concludes that, based on the facts and circumstances presented in this matter, Dr. Hutsko's current registration should be revoked and the pending application for renewal should be denied.

Therefore, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AH4307802, previously issued to Joseph P. Hutsko, D.O., be, and it hereby is revoked. The Administrator further orders that the application for renewal, executed on September 23, 1985, be, and it hereby is denied.

This order is effective October 17, 1986.

Dated: October 14, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-23497 Filed 10-16-86; 8:45 am]

BILLING CODE 4410-09-M

Charles P. Maier, D.V.M.; Revocation of Registration and Denial of Pending Applications for Registration

On February 8, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles P. Maier, D.V.M., of 1949 Highway 24, East Troy, Wisconsin. The Order to Show Cause proposed to revoke Dr. Maier's DEA Certificate of Registration, AM3576367, and to deny any pending applications for renewal of such registration. The Order the Show Cause was based upon the termination of Dr. Maier's license to practice veterinary medicine in Wisconsin and, consequently, his lack of authorization to handle controlled substances in that state.

Although the Order to Show Cause was delivered to Dr. Maier by registered mail, the Drug Enforcement Administration has not received any response from Dr. Maier. Accordingly, the Administrator concludes that Dr. Maier has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and hereby enters his final order in this matter, pursuant to 21 CFR 1301.54(d) and 1301.54(e), and based upon the record of this matter as it now appears.

The Administrator finds that on July 23, 1984, the Wisconsin Veterinary Examining Board issued an order denying Dr. Maier's application for renewal of his state veterinary license. Subsequently, on December 27, 1984, the Board held a hearing regarding the status of Dr. Maier's application for renewal. Neither Dr. Maier, nor anyone appearing on his behalf, attended the hearing. On January 16, 1986, the Board issued a final order denying Dr. Maier's application. As a result of those proceedings, Dr. Maier's license to practice veterinary medicine in Wisconsin was terminated. Consequently, he is not authorized to handle controlled substances in that state.

The Administrator has consistently held that when a DEA registrant loses his license to practice and his authority to handle controlled substances under the laws of the state in which he is registered, the Drug Enforcement Administration is without lawful authority to maintain the registration. See *Avner Kauffman, M.D.*, Docket No. 85-5, 51 FR 12751 (1985); *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983); and *Thomas E. Woodson, D.O.*, Docket No. 81-4, 47 FR 1353 (1982). Since Dr. Maier is no longer licensed to practice veterinary medicine and to handle controlled substances under the laws of the State of Wisconsin, DEA must revoke his registration under the Federal Controlled Substances Act. 21 U.S.C. 824 (a)(3). Likewise, any pending applications for renewal of such registration must be denied, 21 U.S.C. 823(f).

Having concluded that there is a lawful, indeed mandatory, basis for revoking Dr. Maier's DEA Certificate of Registration, and for denying any pending applications for renewal of that registration, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that DEA Certificate of Registration AM3576367, previously issued to Charles P. Maier, D.V.M be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of that registration be, and they hereby are, denied.

Since Dr. Maier cannot lawfully dispense, administer or prescribe controlled substances under the laws of the State of Wisconsin, this order is effective October 17, 1986.

Dated: October 14, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-23498 Filed 10-16-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-49]

William J. Powell, M.D.; Revocation of Registration

On October 1, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to William J. Powell, M.D. (Respondent) of Powell Clinic, 300 Bishop Avenue, Richardson, Texas 75081, an Order to Show Cause proposing to revoke his DEA Certificate of Registration, AP2238500 and deny any pending applications for renewal of such registration. The Order to Show Cause alleged two reasons for the proposed action. First, Respondent was convicted of controlled substance-related felony offenses on February 8, 1985, in the 283d Judicial District Court of Dallas County, Texas. Second, Respondent was without authority from the Texas State Board of Medical Examiners to handle controled substances in the State of Texas.

By letter dated October 25, 1985, Respondent's counsel requested a hearing on the issues raised by the Order to Show Cause. In this letter, Respondent acknowleged that the Texas State Board of Medical Examiners had indeed revoked his medical license but asserted that an appeal had been taken to the 160th Judicial District Court of Dallas County, Texas. The District Court granted an order staying the action of the Texas Board pending final determination of the appeal to the Court.

This matter was placed on the docket of Administrative Law Judge Francis L.

Young. During a telephonic prehearing conference, it was decided that since Respondent was effectively still authorized to handle controlled substances by the State of Texas, Government counsel would continue in this proceeding, relying only on Respondent's conviction as a ground for revocation of his DEA registration and denial of any pending renewal application. Following the prehearing proceedings, a hearing was held on March 5 and 6, 1986, in Fort Worth, Texas.

Subsequent to the hearing in this matter, both sides submitted proposed findings of fact, conclusions of law and written argument pursuant to 21 CFR 1316.64. Thereafter, in a letter dated May 21, 1986, Government counsel asserted that on May 9, 1986, the 160th Judicial District Court of Dallas County, Texas, entered a judgment affirming the Order of the Texas State Board of Medical Examiners revoking Respondent's license to practice medicine. In this letter, Government counsel requested that the Administrative Law Judge consider the fact that Respondent had now lost his state authorization to handle controlled substances, but that the decision in this case not be based on this ground alone. Over Respondent's objections, Judge Young decided to take Respondent's lack of state authorization to handle controlled substances into consideration in rendering his recommended decision. In addition, Judge Young ordered that a copy of the Texas State Court's judgment affirming the Board's revocation of Respondent's medical license be placed in the record.

On July 24, 1986, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law, ruling and decision. No exceptions were filed and, on August 22, 1986, the Administrative Law Judge transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact, and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is a general surgeon and has practiced medicine in Richardson, Texas for 27 years. The Richardson Police Department has been concerned about the legitimacy of Respondent's medical practice for a number of years. Officers of the Richardson Police Department noticed a number of people going to Respondent's clinic very late at night or in the early hours of the morning. Respondent admitted at the hearing in this matter that he would not make appintments to see patients but instead, would call patients in the middle of the night to arrange an office visit at that time.

In the late 1970's and early 1980's, Respondent reported several burglaries and robberies of his clinic involving controlled substances to the Richardson Police Deprtment. After some of the break-ins, Respondent did not provide detailed information to the police of the items and drugs allegedly stolen. It has always been Respondent's practice to stock a large amount of controlled substances in his clinic to dispense to his patients. This practice continued even after Respondent reported these numerous alleged thefts.

The Richardson Police Department received information from a known drug addict that the addict received Dilaudid, a Schedule II controlled substance, from Respondent on a number of occasions, for no legitimate medical need in exchange for money, stolen jewelry and other forms of payment.

In 1983, as a result of cumulative information such as described above, the Richardson Police Department initiated an investigation into Respondent's controlled substance prescribing practices. A Richardson Police Deprtment informant made seven visits to Respondent's office between May 18, 1983, and September 20, 1983. She was closely monitored by officers of the Richardson Police Department on each occasion. On each visit, the informant received controlled substances from Respondent, without any physical examination being performed and for no legitimate therapeutic need. Respondent dispensed a number of controlled substances to the informant including Dexedrine, Preludin and Tuinal, all Schedule II controlled substances; and meprobamate and Dalmane, both Schedule IV controlled substances.

On November 1, 1983 an undercover Dallas police officer went to Respondent's clinic. The undercover officer told Respondent that he was a truck driver and needed something to help him stay awake. Respondent ordered that some lab tests be performed to determine whether the undercover officer might suffer from narcolepsy. Before Respondent received the results from these tests, he prescribed Dexedrine for the undercover officer. On January 12, 1984, the undercover officer returned to Respondent's office. The officer told Respondent this time that he had gained ten pounds from "pigging out over the holidays." The officer was not overweight. Respondent prescribed or dispensed Dexedrine and Phenobarbital without first trying to have the undercover officer lose the weight through diet and exercise.

Respondent first came to DEA's attention in 1980 or 1981 when drug suppliers forwarded copies of order forms to DEA indicating that Respondent was purchasing large quantities of Schedule II controlled substances. As a result of this information, on March 6, 1984, a DEA Diversion Investigator went to Respondent's office to conduct an accountability audit of Schedule II controlled substances.

The audit covered the period from January 26, 1982, through March 6, 1984. Respondent was unable to provide an inventory figure for all of the substances to be audited. 21 U.S.C. 827(a) and 21 CFR 1304.13 require that registrants take complete and accurate biennial inventories of all controlled substances in their possession. Respondent had not conducted such a biennial inventory and, therefore, was in violation of the law. Respondent was able to arrive at inventory figures for some of the substances to be audited. For those substances where no inventory figure was available, a zero inventory balance was used. A zero inventory balance works in Respondent's favor, since it assumes that he did not have any of the substances in stock at the start of the inventory period, when it is likely that he did have such substances. By looking at the inventory figures and the amount of purchases Respondent had made, the investigator was able to determine the type and amount of Schedule II controlled substances that Respondent was accountable for during the audit period.

On January 1, 1982, a state law became effective in Texas requiring that all Schedule II controlled substances prescribed, dispensed or administered must be written or documented on a triplicate prescripion form. One copy of the prescription is kept by the doctor, another copy is kept by the pharmacy or by the doctor if he, himself, dispenses the substance and one copy must be sent to the Texas Department of Public Safety. The failure of a physician to execute a triplicate prescription form when directly dispensing Schedule II controlled substances is a felony under state law. The Texas Department of Public Safety notified practictioners of the new law in a letter mailed to them in October 1981.

To determine the quantity of controlled substances Respondent could

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account for, the Investigator took a physical inventory of drugs on hand March 6, 1984. Respondent was also given credit for drugs he claimed had been stolen, even though he had failed to report the alleged theft as required by 21 CFR 1301.76(b).

In order to ascertain the quantities of audited Schedule II controlled substances that Respondent dispensed during the audit period, the investigator looked only at Respondent's triplicate prescription records. These records are required by law in Texas and the triplicate prescription law was in effect during the entire period covered by the accountability audit.

The audit revealed large shortages of seventeen Schedule II controlled substances, including: 1,500 Ritalin 20 mg. or 100% of the amount for which Respondent was accountable; 5,200 Dexedrine 15 mg. or 86.67% of the amount for which he was accountable; 3,060 Percodan or 85% of the amount for which he was accountable; 3,072 Meperidine 50 mg. or 82.47% of the amount for which he was accountable; and 2,401 codeine 30 mg. or 82.06% of the amount for which he was accountable.

During the audit, the investigator discovered several additional violations of Federal law and regulations with respect to entries on DEA order forms. 21 CFR 1305.06. These order forms are used by registrants to order Schedule II controlled substances from suppliers. On at least one occasion, Respondent failed to sign the order form and on several occasions he failed to endorse the order forms with the quantity or date of receipt of the controlled substances.

In addition, while checking copies of triplicate prescriptions during the audit, the investigator noticed that some individuals were receiving combinations of substances not usually dispensed at the same time in legitimate medical practice. In one instance, Respondent wrote four triplicate prescriptions on December 26, 1983, for one woman. These prescriptions indicated that Respondent dispensed Percodan, Tuinal, phendimetrazine tartrate and meperidine hydrochloride to this one woman all on the same day. It is unusual in legitimate medical practice to dispense two types of narcotics, a sleeping pill and an appetite suppressant, all at one time. At the hearing in this matter, Respondent admitted giving this woman these substances even though she had not been in to see him in well over a year and even though he made no effort to find out whether she was under the care of another physician in California, where she then resided.

As a result of the investigations by the Richardson Police Department, Dallas Police Department and DEA, a Dallas County Grand Jury, during the July 1984 Term, returned ten indictments against Respondent charging him with violations of Texas law regarding triplicate prescriptions and with unlawfully dispensing controlled substances without a valid medical purpose. On February 8, 1985, Respondent pled guilty to, and was convicted of, two charges of dispensing controlled substances in violation of the triplicate prescription law. These are felony offenses under Texas law. Therefore, there is a lawful basis for the revocation of Respondent's registration. 21 U.S.C. 824(a)(2).

As noted above, the Texas State Board of Medical Examiners revoked Respondent's license to practice medicine in the State of Texas. On May 9, 1986, the 160th Judicial District Court of Dallas County, Texas affirmed the decision of the Board. As of that date, Respondent was without state authority to handle controlled substances in the State of Texas. This is an additional statutory basis for the revocation of Respondent's registration. 21 U.S.C. 824(a)(3).

The Administrative Law Judge concluded that Respondent has amply demonstrated that he cannot be entrusted with a DEA registration. Respondent kept most unusual office hours. He made no appointments and habitually saw patients in the middle of the night. Respondent freely dispensed highly abusable Schedule II controlled substances for no legitimate therapeutic purpose, sometimes taking stolen property in return for the drugs.

In addition, an audit of Respondent's stock of controlled substances revealed enormous shortages of very dangerous drugs. The law requires that a physician keep track of the drugs in his possession by maintaining certain required records. The shortages discovered during the audit reveal, at the very least, that Respondent ignored the recordkeeping requirements of both Texas and Federal law.

The Administrative Law Judge recommended that Respondent's DEA registration be revoked and that any pending applications for renewal of such registration be denied. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. The registration must be revoked and any pending applications denied.

Having concluded that there is a lawful basis for the revocation of Respondent's registration and denial of any pending applications, and having further concluded that under the facts and circumstances presented in this case the registration should be revoked and any applications denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AP2238500, previously issued to William J. Powell, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of such registration are hereby denied. This order is effective November 17, 1986.

Dated: October 14, 1986.

John C. Lawn,
Administrator.

[FR Doc. 86-23499 Filed 10-16-86; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Board and Committees; Meetings and Agenda

The regular fall meetings of the Board and Committees of the Business Research Advisory Council will be held on October 29 and 30, and November 20, 1986. All of the meetings will be held in the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, October 29, 1986

9 a.m.—Committee on Price Indexes; Room N3437 A & B

1. Consumer Price Index Revision
2. Consumer Expenditure Estimate Comparisons
3. Status Reports for Other Programs
4. Other Business

1 p.m.—Committee on Economic Growth; Room S4215 A & B

1. Election of Chairperson and Vice Chairperson
2. Review of Work in Progress
3. Discussion of Assumptions for Next Round of Projects
4. Other Business

1 p.m.—Committee on Wages and Industrial Relations; Room N3437 A & B

1. PATC Expansion: First Year Results
2. Employee Benefit Survey (EBS): An Update on Results and Plans
3. Today's Pension Plans: How Much Do They Pay?
4. Proposed Compensation Cost Levels for the Employment Cost Index
5. Review of Concepts in BLS Compensation Programs
6. Other Business

Thursday, October 30, 1986

9:30 a.m.—Committee on Productivity/Foreign Labor; Room S4215 A & B

1. Developmental Work on Measuring Productivity in Hospitals
2. Extension of Hours Worked Survey in 2-Digit Industries
3. Work on the Obsolescence Hypothesis
4. International Training Program
5. Other Business

9:30 a.m.—Committee on Employment and Unemployment Statistics; Room N5437 A & B

1. Plans for the Standard Industrial Classification Revision
2. Plans for the National Longitudinal Survey
3. Discussion of Current Labor Force Topics:
   a. Statistics on Homework
   b. Update on Temporary Help Industry Statistics
4. Review of Dislocated Worker Data Initiatives
   a. Secretary's Task Force on Economic Adjustment
   b. Mass Layoff Report Results
5. Update on Local Area Unemployment Statistics Methodology Research
6. Other Business

1:30 p.m.—BRAC Board; Room N5437 A & B

1. Chairperson's Opening Remarks
2. Commissioner's Remarks—Janet L. Norwood
3. Committee Reports:
   a. Price Indexes
   b. Economic Growth
   c. Wages and Industrial Relations
   d. Productivity/Foreign Labor
   e. Employment and Unemployment Statistics
4. Other Business
5. Chairperson's Closing Remarks

Thursday, November 20, 1986

1 p.m.—Committee on Occupational Safety and Health Statistics; Room N3437 A & B

1. Annual Survey Results
2. Status of National Academy of Sciences Panel
3. Records Audit
4. Guidelines/Outreach
5. Health Interview Survey Follow Up
6. State Health Department Project
7. Other Business

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area Code (202) 523-1347.

Signed at Washington, DC, this 14th day of October 1986.

Janet L. Norwood,
Commissioner of Labor Statistics.

[FR Doc. 86-23540 Filed 10-16-86; 8:45 am]
BILLING CODE 4510-06-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931 as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT86-1 (Jan. 3, 1986) ..... pp. 64-68.

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Massachusetts:
MA–86–3 (Jan. 3, 1986) ..... p. 376.
New Jersey:
NJ86–2 (Jan. 3, 1986) ..... pp. 580–588, p. 597.
NJ86–3 (Jan. 3, 1986) ..... pp. 599–603, pp. 605–606, p. 620.
NJ86–4 (Jan. 3, 1986) ..... pp. 622–626, p. 630.
New York:
NY86–2 (Jan. 3, 1986) ..... pp. 645–648, p. 651.
NY86–5 (Jan. 3, 1986) ..... pp. 677–678.
NY86–13 (Jan. 3, 1986) ..... pp. 752–756.
Pennsylvania:
PA86–4 (Jan. 3, 1986) ..... p. 822.
PA86–10 (Jan. 3, 1986) ..... p. 880.
PA86–14 (Jan. 3, 1986) ..... p. 895.
PA86–19 (Jan. 3, 1986) ..... p. 920, pp. 922–923.
PA86–23 (Jan. 3, 1986) ..... pp. 946–951.
Rhode Island:
RI86–1 (Jan. 3, 1986) ..... pp. 965–966.

Volume II

Illinois:
IL86–9 (Jan. 3, 1986) ..... p. 137.
IL86–12 (Jan. 3, 1986) ..... p. 152.
IL86–13 (Jan. 3, 1986) ..... p. 162.
IL86–15 (Jan. 3, 1986) ..... p. 182.
IL86–16 (Jan. 3, 1986) ..... p. 192.
Missouri:
MO86–1 (Jan. 3, 1986) ..... p. 542.

Volume III

Arizona:
AZ86–1 (Jan. 3, 1986) ..... pp. 11–12, 15.
AZ86–3 (Jan. 3, 1986) ..... pp. 29–31, p. 33.
California:
CA86–4 (Jan. 3, 1986) ..... p. 66.
Oregon:
OR86–1 (Jan. 3, 1986) ..... pp. 257–260.
Washington:
WA86–2 (Jan. 3, 1986) ..... p. 239.
WA86–3 (Jan. 3, 1986) ..... pp. 339–340.
WA86–9 (Jan. 3, 1986) ..... 365f.

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of October 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86–23345 Filed 10–16–86; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Council on the Arts Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on October 31—November 1, 1986, from 9:00 a.m.—5:30 p.m.; and on November 2, 1986, from 9:00 a.m.—3:00 p.m. in room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, October 31, from 9:00 a.m.—5:30 p.m.; and on Saturday, November 1, from 9:00 a.m.—5:30 p.m. The topics for discussion will include: Program Review/Guidelines for Locals, Design Arts, Visual Arts, Media Arts, Advancement, Challenge, Music Presenters and Festivals and Dance/Inter-Arts/State Programs Touring/Presenting Initiative; Five-Year Plan—Emerging Issues; and State of the Arts Study.

The remaining sessions on Sunday, November 2, 1986, from 9:00 a.m.—3:00 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information in reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/632–5433.

John H. Clark,

Director Council and Panel Operations National Endowment for the Arts.

October 9, 1986.

[FR Doc. 86–23447 Filed 10–16–86; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. STN 50–455 and STN 50–456]

Commonwealth Edison Co.; Byron Station, Unit 2, Braidwood Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendices A and J to 10 CFR Part 50 to Commonwealth Edison Company (the applicant) for Byron Station, Unit 2, located in Ogle County, Illinois, and Braidwood Station, Unit 1, located in Will County, Illinois.

Environmental Assessment

Identification of Proposed Action: One exemption would eliminate the full pressure text required by Paragraph III.D.2(b)(ii) of Appendix J following normal air locking opening and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The proposed exemption is in accordance with the applicant's request in the Final Safety Analysis Report in the response to Question 022.78. The proposed exemption was found acceptable in section 6.2.6 of both "Safety Evaluation Report Related to the Operation of Byron Station, Unit 2," dated February 1982, and "Safety Evaluation Report Related to the Operation of Braidwood Station, Units 1 and 2," dated November 1983 (NUREG–0876 and NUREG–1002, respectively).

The other exemption is from the requirements of General Design Criteria (GDC) 13 and 17 of Appendix A that instrumentation be provided to monitor variables and systems over their anticipated ranges and that provisions be included to minimize the probability of losing electric power. The proposed exemption is in accordance with the applicant's request dated October 9, 1986, and was found acceptable in section 9.5.4.1 of both Supplement No. 5 to NUREG–0876 and Supplement No. 1 to NUREG–1002.

Need for Proposed Action: The proposed exemption to Appendix J is required to provide the applicant with greater plant availability over the lifetime of the plant. The proposed exemption to Appendix A is required to provide the applicant with additional time to qualify the emergency diesel generator controls and instrumentation.

Environmental Impact of the Proposed Action: The proposed exemption to Appendix J grants the substitution of an air lock seal test for an air lock pressure test while the reactor is in a shutdown or refueling mode. When no maintenance has been performed on the air lock that could affect its sealing capability, the air lock doors have been properly closed, and the periodic 6-month test at Pa required by Paragraph III.D.2(b)(i) of Appendix J has been performed on schedule, there is no reason to expect the air lock to leak excessively just because it has been opened while the reactor is in a shutdown or refueling mode. Performing the door seal leak test of Paragraph III.D.2(b)(iii) of Appendix J is sufficient, in this case, to demonstrate the continuing integrity of the air lock.

With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability of containment leakage during an accident. This could lead to higher offsite and control room doses. However, this potential increase is very small, due to the added seal leakage test and the protection against excessive leakage afforded by the other tests required to Appendix J.

The proposed exemption to Appendix A allows additional time to meet the requirements of GDC 13 and GDC 17. The proposed exemption allows the applicant until startup from the first refueling outage of Byron Station, Unit 2 and Braidwood Station, Unit 1 to dynamically qualify the diesel generator controls and monitoring instrumentation for their present location, or install them on a free-standing floor mounted panel in such a manner (including the use of vibration isolation mounts if necessary) that any induced vibrations will not result in a cyclic fatigue failure for the expected life of the instrument. The staff does not expect that there will be enough induced vibrations prior to startup from the first refueling outage to cause cycle fatigue of the instruments. Thus, the staff concludes that granting this exemption will not prevent the diesel generators from functioning as required during the first cycle of plant operation, and that there is no environmental impact with respect to this exemption.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Agencies and Persons Contacted: The NRC staff reviewed the applicant's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the: (1) Request for the exemption dated October 9, 1986, (2) NUREG–0876, dated February 1982, (3) NUREG–1002, dated November 1983, (4) Supplement No. 5 to NUREG–0876, dated October 1984, and (5) Supplement No. 1 to NUREG–1002, dated September 1986 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Rooms located in the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103 and in the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Bethesda, Maryland, this 14th day of October, 1986.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Project Directorate No. 3, Division of PWR Licensing–A.

[FR Doc. 86–23598 Filed 10–16–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8697]

Rocky Mountain Energy Co.; Final Finding of No Significant Impact Regarding Termination of Source Material License SUA–1336 for the Reno Creek R&D in Situ Leach Facility Located in Campbell County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of finding of no significant impact.

(1) Proposed Action

The U.S. Nuclear Regulatory Commission (the Commission) is terminating Source Material License SUA–1336 for the Rocky Mountain Energy Company's Reno Creek R&D in situ leach facility located in Campbell County, Wyoming.

(2) Reasons for the Finding of No Significant Impact

The Commission's Uranium Recovery Field Office has reviewed the Rocky Mountain Energy Company's decommissioning report which was prepared in accordance with the Rocky Mountain Energy Company's decommissioning plan. The plan was approved by the Commission on May 2, 1985, and the report is dated August 13, 1986. Based on the decommissioning report, the Commission has determined that no significant impact will result from the proposed action, and therefore, an environmental impact statement is not warranted.

The following statements support the finding of no significant impact and summarize the contents of the decommissioning report:

(a) Two test patterns were utilized in the Reno Creek R&D project. Test Pattern I was operated with a sulfuric acid lixiviant. Test Pattern II was operated with a sodium bicarbonate lixiviant using hydrogen peroxide as the primary oxident.

Test Pattern I was operated for nine months in 1979 and was restored with a ground water sweep. Restoration was completed and approved by the Commission on February 24, 1986.

Test Pattern II was operated for three months in 1980. Restoration of Test Pattern II was completed and approved by the Commission on April 12, 1982 after utilizing ion exchange and ground water sweep methods.

Post restoration stability monitoring was performed for twelve months prior to the Commission approval of restoration of both test patterns.

(b) The decommissioning report addressed well abandonment, the

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removal of process equipment, evaporation reservoir removal, contamination surveys, soil sampling and environmental monitoring.

The wells from Patterns I and II were abondoned in accordance with the Wyoming State Engineer's Office permit requirements. Following cementation, each well casing was cut two feet below the ground surface. The tops were capped and the area was backfilled and seeded.

All process tanks, columns, pipes and associated equipment as well as the evaporation reservoir were removed and disposed of at a nearby licensed tailings impoundment. Area gamma surveys indicated contaminated soil which was subsequently removed and disposed of in the licensed tailings impoundment.

Soil samples were collected to a 15 centimeter depth from each former well pattern site and the evaporation reservoir site. Radium-226 concentrations did not exceed the limits specified in 40 CFR Part 192. Environmental monitoring for airborne radionuclides and direct gamma radiation continued through the decommissioning process with results well below the respective maximum permissible concentrations for unrestricted areas.

(c) Final decontamination tasks were completed in June of 1986. Utilities were disconnected, remaining buildings were cleaned and final radiation surveys were performed. Independent verification of site cleanup was performed by the USNRC on August 15, 1986.

Accordingly, the Commission's Uranium Recovery Field Office has determined that termination of Source Material License SUA-1338 will not have a significant effect on the quality of the human environment. This determination is based on the fact that all contamination has been cleaned up and removed from the site.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a Draft Finding of No Significant Impact. A Draft Finding of No Significant Impact was published on September 8, 1986, and no comments were received.

In accordance with 10 CFR 51.32, the Director, Uranium Recovery Field Office, made the determination to issue a Final Finding of No Significant Impact. This finding, together with the decommissioning report setting forth the basis for the finding and other related environmental documents, are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 8th day of October 1986.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Chief, Licensing Branch 2, Uranium Recovery Field Office, Region IV.

[FR Doc. 86-23567 Filed 10-16-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8726]

UNC Teton Exploration Drilling, Inc.; Final Finding of No Significant Impact Regarding Termination of Source Material License SUA-1373 for the Teton Leuenberger R&D In Situ Leach Facility Located in Converse County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

(1) Proposed Action

The U.S. Nuclear Regulatory Commission (the Commission) is terminating Source Material License SUA-1373 for the UNC Teton Exploration Drilling, Inc. (UNC Teton) facility located in Converse County, Wyoming.

(2) Reasons for the Final Finding of No Significant Impact

The Commission's Uranium Recovery Field Office has reviewed the UNC Teton's decommissioning report which was prepared in accordance with the UNC Teton's decommissioning plan. The plan was approved by the Commission on May 13, 1985 and the report was received at the USNRC on August 14, 1986. Based on the decommissioning report, the Commission has determined that no significant impact will result from the proposed action, and therefore, an environmental impact statement is not warranted.

The following statements support the finding of no significant impact and summarize the contents of the decommissioning report:

(A) One test pattern was utilized in the N ore zone formation (220–270 feet deep.) Lixiviant consisted of sodium bicarbonate. This test pattern was operated during the first six months of 1980. Restoration of this test pattern was completed in November of 1980 after performing a ground-water sweep. Fourteen months of post restoration stability monitoring was performed prior to the Commission's approval of restoration which occurred on February 28, 1983.

(b) Three test patterns were operated in the M ore zone formation (320–390 feet deep) during eleven months in 1980 and the first two months in 1981. Restoration methods utilized included filtration of recovered solutions, ion exchange, reverse polarity electrodialysis and reinjection of diluted solution. Post restoration stability monitoring was performed for nine months prior to the Commission's approval of the restoration which occurred on February 22, 1983.

(c) The decommissioning report addressed well abandonment, the removal of process equipment, evaporation pond removal, contamination surveys, disposal methods, soil sampling and environmental monitoring.

The wells from the four test patterns were abandoned in accordance with the Wyoming State Engineer's Office permit requirements. Each well casing was cut two feet below the ground surface. Plugging material consisted of bentonite with a top layer and cap of cement.

All process tanks, columns, pipes and associated equipment as well as the two evaporation ponds were removed and disposed of at several nearby licensed tailings impoundments. Area gamma surveys indicated contaminated soil which was subsequently removed and disposed of in these licensed tailings impoundments.

Soil samples were collected to a 15-centimeter depth from each former well pattern site, the evaporation pond sites and other locations as indicated by the area gamma surveys. Radium-226 concentrations did not exceed the limits specified in 40 CFR 192. Environmental monitoring for airborne radionuclides continued throughout the decommissioning process with results well below the respective maximum permissible concentrations for unrestricted areas.

(d) Final decontamination tasks were completed in June of 1986. Utilities were disconnected, the remaining building was cleaned and final radiation surveys were performed. The entire project site was recontoured, covered with topsoil and reseeded. Independent verification of site cleanup was performed by the USNRC on June 17, 1986.

According, the Commission's Uranium Recovery Field Office has determined that termination of Source Material License SUA-1373, will not have a significant effect on the quality of the human environment. This determination is based on the fact that all contamination has been cleaned up and removed from the site.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a Draft Finding of No Significant Impact. A Draft Finding of No Significant Impact was published in the **Federal Register** on September 5, 1986, and no comments were received.

In accordance with 10 CFR 51.32, the Director, Uranium Recovery Field Office, made the determination to issue a Final Finding of No Significant Impact. This finding, together with the decommissioning report setting forth the basis for the finding and other related environmental documents are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 8th day of October, 1986.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Chief, Licensing Branch 2, Uranium Recovery Field Office, Region IV.

[FR Doc. 86-23568 Filed 10-16-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power and Light Co., Oyster Creek Nuclear Generating Station; Modification of January 13, 1981 Order, December 19, 1981 Order and January 19, 1982 Order

I

The GPU Nuclear Corporation and Jersey Central Power and Light Company (the licensees) are the holders of Provisional Operating License No. DPR-16 which authorizes GPU Nuclear Corporation (the licensee) to operate the Oyster Creek Nuclear Generating Station (the facility) at power levels not in excess of 1930 megawatts thermal (rated power). The facility is a boiling water reactor located in Ocean County, New Jersey.

II

On January 13, 1981 the Commission issued an Order modifying the license requiring: (1) The licensee to promptly assess the suppression pool hydrodynamic loads in accordance with NEDO-21888 and NEDO-24583-1 and the Acceptance Criteria contained in Appendix A to NUREG-0661 and (2) design and install any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG-0661. The Order, published in the **Federal Register** on January 20, 1981 (46 FR 8139) required installation of any plant modifications needed to provide compliance with the Acceptance Criteria in Appendix A to NUREG-0661 be completed not later than December 31, 1981 or, if the plant is shut down on that date, before the resumption of power operation thereafter.

On December 19, 1981 a 45-day extension of this January 13, 1981 Order, published in the **Federal Register** on January 6, 1982 (47 FR 702) was granted by the Director of the Division of Licensing pending Commission approval of a staff generic proposal to extend the completion dates for the Mark I long-term program containment modifications for all affected licensees.

On January 19, 1982, an extension of this January 13, 1981 Order, published in the **Federal Register** on January 28, 1982 (47 FR 3656) was granted by the Director of the Division of Licensing. This was to extend the completion of the major modifications to prior to the start of Cycle 10 and the completion of the remaining modifications to prior to the start of Cycle 11.

III

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

Since the development of these acceptance criteria, significant progress has been made by the licensee in meeting the Order requirements. However, by letter dated July 28, 1985, the licensee requested that it not complete all the plant modifications by the start of Cycle 11 to meet the Order requirements. The Cycle 11 Refueling (Cycle 11R) outage was a major outage with large blocks of work of higher safety priority than the remaining work to meet the Order. This included completion of all remaining Appendix R Fire Protection modifications, a series of activities to enhance the plant piping to be less susceptible to intergranular stress corrosion cracking, substantial work in the control room and a number of other modifications, including work to meet the Order requirements. The few remaining plant modifications to complete the Order requirements are being deferred because they are less important than the high safety priority work being completed in the outage and will significantly delay the restart from the Cycle 11R outage.

The major modifications, which are those associated with the torus, vent system, internal structures and safety relief valve piping and which comprise approximately 75 percent of the total program effort, have been completed. Of the remaining minor modifications, only two items will not be completed by the start of Cycle 11. These remaining two items are: (1) The upgrading of the existing torus bulk water temperature indication which will be done during the Cycle 12R outage and (2) the remaining torus attached piping support modifications that do not require a plant shutdown which will be done during the operating Cycle 11 but no later than the Cycle 12R outage. Of all the torus attached piping supports to be done, thirty-two (57%) will be done in the Cycle 11R outage and twenty-four (43%) would be done in operating Cycle 11. These twenty-four supports are for the following piping: Crossover piping for the core spray system, test return piping for the core spray system, relief valve discharge piping for the reactor water cleanup system demineralizer, reference leg piping for the torus water level indication, reactor building-to-torus vacuum relief line, minimum flow line for containment spray system pumps and test return piping for the containment spray system. Thus, 85 percent of the total program effort will be completed prior to the start of Cycle 11. These remaining modifications are minor modifications of the Mark I containment program.

The Commission believes that substantial improvements have already been made in the margins of safety of the containment systems and expects improvements will continue to be made during the period until all the modifications required for compliance with this Order are completed. The Commission further believes an acceptable balance has been achieved between completion of most of the major modifications, which provide significant improvement in the safety margin, and the granting of additional time for completion of the remaining modifications which fully restore the originally intended safety margin.

The Commission has, therefore, determined to modify the January 13, 1981 Order, as modified by the Orders of December 29, 1981 and January 19, 1982, to extend the previously imposed

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completion dates for needed plant modifications.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that the completion date specified in Section V of the January 13, 1981, "Order for Modification of License," is hereby changed to read as follows: "Prior to start of Cycle 10 for completion of the major modifications and prior to the start of Cycle 11 for completion of the remaining modifications except for: (1) Upgrading the existing torus bulk water temperature indication by the start of operating Cycle 12, and (2) completing the torus attached piping supports, not requiring a plant shutdown, in operating Cycle 11 but no later than the start of operating Cycle 12." The Order of January 13, 1981, as modified December 19, 1981, and January 19, 1982, except as modified herein, remains in effect in accordance with its terms.

The Director, Division of BWR Licensing, may in writing grant further extensions of time for completing the above items if the request is timely and provides good cause for the requested action.

V

The licensees or any other person who is adversely affected by this Order may request a hearing on this Order within 20 days of the date of publication of this Order in the Federal Register. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the request shall also be sent to the Office of the General Counsel—Bethesda, at the same address.

If a hearing is requested, the Commission will issue an order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether the completion date specified in Section V of the January 13, 1981, "Order for Modification of License", should be changed to "Prior to start of Cycle 10 for completion of the major modifications and prior to the start of Cycle 11 for completion of the remaining modifications except for: (1) Upgrading the existing torus bulk water temperature indication by the start of operating Cycle 12, and (2) completing the torus attached piping supports, not requiring a plant shutdown, in operating Cycle 11 but no later than the start of operating Cycle 12."

This Order shall become effective upon expiration of the period within which a hearing may be requested or, if a hearing is requested, on the date specified in an order issued following further proceedings on this Order.

Dated at Bethesda, Maryland, this 6th day of October 1986.

For the Nuclear Regulatory Commission.

Robert M. Berriers,

Director, Division of BWR Licensing.

[FR Doc. 86-23569 Filed 10-16-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Certain Specialty Steel Products From Sweden; Decision not to Initiate Investigation

AGENCY: Office of the United States Trade Representative.

ACTION: Decision not to initiate an investigation.

The United States Trade Representative has determine not to initiate an investigation at this time under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) with respect to a petition filed on August 26, 1986, concerning imports of certain specialty steel pipe and tube and wire products from Sweden. This determination is deemed appropriate because of the recent initiation of a countervailing duty investigation by the Department of Commerce. The countervailing duty law is specifically designed to address the issue of domestic subsidies provided to the Swedish specialty steel industry and will provide expeditious relief if subsidized imports from Sweden cause or threaten to cause injury to the domestic industry. Thus, we believe that the countervailing duty investigation is the appropriate forum for resolving the problems presented in this Section 301 petition.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Assistant General Counsel, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC; telephone (202) 395-3432.

EFFECTIVE DATE: October 10, 1986.

Judith Hippler Bello,

Chairman, Section 301 Committee.

[FR Doc. 86-23560 Filed 10-16-86; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Economic Forecasting Advisory Committee Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Economic Forecasting Advisory Committee, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Presentation and discussion of a staff issue paper, Status Report of the Regional Economy and Loads.
- Discussion of Economic Forecasting activities and future committee business.
- Public comment, followed by adjournment.

DATE: Friday, October 24, 1986, 1:00 p.m. to 4:00 p.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Debbie Kitchin, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-23610 Filed 10-16-86; 8:45 am]

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PENSION BENEFIT GUARANTY CORPORATION

[Case No. 120-570]

Exemption From Bond/Escrow Requirement Relating to Sale of Assets By an Employer That Contributes to a Multiemployer Plan; CHF Industries, Inc. (Cameo Curtains)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974 to CHF Industries, Inc. A notice of the request for exemption was published in the Federal Register on August 13, 1986 (51 FR 29026). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the Public Affairs Office, Pension Benefit Guaranty Corporation, Suite 7100, 2020 K Street NW., Washington, DC 20006, between the hours of 9:00 a.m. 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (38000) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Under section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), a sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser furnish a bond or escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for an exemption if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of an exemption request in the Federal Register, and to give interested parties an opportunity to comment on the proposed exemption.

Decision

On August 13, 1986 (51 FR 29026), the PBGC published a notice of the pendency of a request from CHF Industries, Inc. ("CHF"), for an exemption from the bond/escrow requirement of ERISA section 4204(a)(1)(B), in connection with the purchase by CHF of the assets of M&MR Corp. (formerly Cameo Curtains, Inc.) ("M&HR") on January 3, 1983. (The request antedates the amendments to 29 CFR Part 2643 that were published in the Federal Register on May 31, 1984 (49 FR 22635).) No comments were received in response to the notice of pendency.

In connection with the sale, CHF assumed M&HR's obligation to contribute to the ILGWU National Retirement Fund ("the Fund"). The Fund has informed CHF that the amount of the bond or escrow required of CHF under section 4204(a)(1)(B) is $43,687. The estimated amount of the withdrawal liability that M&HR would otherwise incur as a result of the sale if section 4204 did not apply to the sale is $345,000.

CHF stated that the request for an exemption should be granted on a *de minimis* basis. Based on information provided to CHF by the Fund, the average annual contributions made by all employers to the Fund for the three plan years preceding the plan year in which the sale occurred were $144,505,961. Thus, the amount of the bond/escrow is about three-hundredths of one percent of the amount of employer contributions.

Based on the facts of this case and the representations and statements made in connection with the exemption request, the PBGC has determined that this request is *de minimis* in nature and thus an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the Fund. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to CHF's purchase of assets from M&HR. The granting of such an exemption does not constitute a determination by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). That is a determination to be made by the plan sponsor.

Issued at Washington, DC, on this 2nd day of October, 1986.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86-23411 Filed 10-16-86; 8:45 am]

BILLING CODE 7708-01-M

POSTAL RATE COMMISSION

[Order No. 713, Docket No. C86-2]

Complaint of The Sacramento Bee, The Des Moines Register, The Tennessean, and Nashville Banner; Order Setting Date of Comments and Interventions

Issued: October 10, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

On August 21, 1986, The Sacramento Bee, The Des Moines Register, The Tennessean, and Nashville Banner filed a complaint concerning change by the United States Postal Service in the eligibility standards for second class mail in violation of 39 U.S.C. 3623. On September 22, 1986, United States Postal Service filed a motion to dismiss the complaint as moot, stating the complained about regulation had been superseded. Postal Service reserved the right to answer the complaint should its motion to dismiss be denied.

An answer in opposition to this motion was filed by complainants on October 1, 1986. That answer alleged the controversy was not mooted by the adoption of new restrictive language, and that this new restrictive language was inappropriate also. Two other documents were submitted commenting on the Postal Service motion, one from Third Class Mail Association and one from Advo-System, Inc.

On October 3, 1986 Postal Service filed a Notice in which it stated that complainants had raised new arguments in their answer to the motion to dismiss, and that complainants were seeking to amend their complaint. Postal Service expressed an intent to respond to the complainants' answer on or before October 20.

The arguments raised in pleadings filed to date indicate that a decision on whether to proceed to initiate evidentiary hearings in conformity with 39 U.S.C. 3624 will involve interpretation of the Commission's responsibilities under 39 U.S.C. 3662. Prior to making such a decision, we would like to receive the advice of all interested members of the public. Therefore we invite any member of the Public interested in intervening to do so, and to file its comments, if any, on the appropriate procedural steps to follow in this controversy, on or before November 5, 1986. Any party that has already filed comments with the Commision shall be deemed to have intervened pursuant to Rule 20.

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It Is Ordered

(A) Noitices of intervention shall be filed on or before November 5, 1986.

(B) Interested persons wishing to file comments on: (1) Whether Docket No. C86–2 should be set for hearings; (2) the motion to dismiss this complaint filed by the Postal Service on September 22, 1986; or (3) the response the Postal Service will file by October 20 responding to complainants' answer, may do so by November 5, 1986.

By the Commission

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 86–23802 Filed 10–16–86; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549

Extension

Rule 17f–1(g)
No. 270–30

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17f–1(g) (17 CFR 240.17f–1(g) under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) which requires reporting institutions registered in the Lost and Stolen Securities Program to retain for three years certain records necessary to permit appropriate regulatory agencies to monitor compliance with Rule 17f–1. The potential affected persons are approximately 19,602 reporting institutions.

Submit comments to OMB Desk Officer: Ms. Sheri Fox, (202) 395–3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Jonathan G. Katz,

Secretary.

October 10, 1986.

[FR Doc. 86–23557 Filed 10–16–86; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–23686; File No. SR–DTC–86–4]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of The Depository Trust Co.

On April 22, 1986, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). Notice of the proposal was published in Securities Exchange Act Release No. 23215.[1] No comments were received. As discussed below, the Commission is approving the proposed rule change.[2]

I. Description

The proposed rule change modifies DTC's procedures regarding: (1) The crediting of cash dividend and interest payments to participants' cash accounts; (2) the charging back of certain dividend payments to participants' cash accounts; and (3) the monthly refunding of dividend investment income to paying agents. The proposal also allows DTC to pass through to participants charges by DTC's interest collection agent for interest costs incurred from late bearer municipal bond interest payments.

Under the proposal, DTC will credit all corporate cash dividend and interest payments on payable date, subject to certain exclusions.[3] DTC will have the right to withhold crediting participants' accounts any payments owed by paying agents that historically do not make dividend and interest payments in good funds on payable date. DTC, however, plans to credit participants' accounts on payable date for payments from paying agents owing DTC less than $5 million unless DTC's projected same-day funds is insufficient to meet its next day's payment obligation.[4]

As part of the proposal to credit dividend and interest payments, DTC will allow certain charge-backs of payments previously credited to participants. DTC will charge back previously credited payments upon written request from a paying agent within ten (10) business days of the payable date for: (1) An error by the paying agent; (2) a failure by the issuer to provide the paying agent with sufficient funds to cover the payments; or (3) the bankruptcy of the issuer on or prior to the payable date. DTC also may charge back any errors made by DTC as a result of erroneous announcements of calculations of payments credited to participants in anticipation of payments which have not been received by DTC 10 business days after payable date. For charge-backs resulting from a paying agent's written request, DTC will notify a participant one business day prior to the date DTC enters the charge-back in the participant's daily money settlement account.[5] Although DTC usually will attempt to verify the facts stated in the notice from the paying agent, DTC does not have any obligation to do so. If the paying agent notifies DTC more than 10 business days after payment date, DTC is not required to charge back a participant's account but will cooperate with the paying agent and the participant to resolve the matter. For DTC initiated charge-backs, DTC also will give participants a one business day notice if the charge-back will occur within 10 business days after payable date. Otherwise, DTC will notify participants five (5) business days prior to entry of the charge-back.

The proposal also modifies refund payment procedures to participants who also are payors of dividend and interest payments ("paying agents"). The proposal revises the present formula into a two-part test: (1) to determine if a paying agent qualifies for a refund; and (2) to determine the amount of the refund due a paying agent. To qualify for a refund, the paying agent must have paid, in same-day funds on payable date, at least 90% of the amount due DTC on payable date, based on the average experience during the preceding three months. (This reflects DTC's current test to determine if the paying agent is entitled to a rebate of 100% of its *pro rata* share of investment income.) To determine the amount of the monthly refund, the proposal establishes a new formula that will reduce the paying agent's *pro rata* refund by the precentage of funds the paying agent failed to pay DTC on payable date plus the percentage of funds not paid in same-day funds. DTC will calculate this new formula monthly to determine the exact amount of a paying agent's refund.

[1] (May 7, 1986), 51 FR 17099 (May 14, 1986).

[2] On April 18, 1986, DTC filed an identical proposal (DTC–86–03) seeking approval on a temporary basis until the Commission could review and approve the present proposal. *See* Securities Exchange Act Release No. 23219 (May 16, 1986), 51 FR 17845 (May 15, 1986), granting temporary approval.

[3] Bearer and registered municipal bond interest payments will continue to be credited on payable date.

[4] DTC expects to make a determination by approximately 2:30 p.m. concerning same-day funds available to meet its next day's payment obligations.

[5] DTC will notify the participant through the Participant Terminal System ("PTS") and by placing the notice in the Participant's box at DTC.

For example, if a paying agent makes 95% of its payments on payable date (a 5% shortfall) and 98% of its payments in same-day funds (a 4% shortfall) its refund for that month will be reduced by 9%. In addition, as part of DTC's efforts to have all paying agents meet these standards, DTC will telephone a paying agent who falls significantly from its present level of payment and who therefore will be subject to a reduction in its monthly refund from DTC.

The proposal also allows DTC to pass through to participants the interest collection agent's costs from late payments (called a "funds usage charge"). DTC channels all coupons for bearer municipal bonds to a central interest collection agent ("Agent"). On payable date the Agent pays DTC the total interest payments regardless of whether the Agent has collected all the funds from the various paying agents. Under the proposal, the Agent will charge DTC a funds usage charge and DTC will pass the charge on a *pro rata* basis to participants that received those particular payments.

II. DTC's Rationale

DTC believes that the proposed rule change is consistent with Section 17A of the Act because it will enhance the timeliness of dividend and interest payments to DTC participants and will improve processing and recordkeeping by DTC and it participants. DTC also believes the proposal is consistent with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

DTC received letters from 12 commenters concerning various aspects of the charge-back proposal. Most commenters expressed concerns about receiving timely notice of the charge-back from DTC. Many out-of-town participants stated that it was not unusual to receive such notices the day of or the day after the charge-back occurred. Several commenter suggested that sending those notices through PTS will ensure timely notice. Subsequent to the filing of this proposal, DTC agreed to notify participants through PTS and by placing the notice on the participant's box at DTC at least one day prior to the charge-back.

Some commenters stated that DTC should verify the facts surrounding a charge-back before debiting a participant's account. DTC, while not required to verify the fact, will attempt to verify claims from paying agents. Other commenters expressed concern with imposing the charge-back before the participant's customer returns the payment. DTC believes that charge-backs of this type will arise infrequently and are offset by the benefits derived from encouraging paying agents to continue making payments to DTC on payable date in same-day funds.

III. Discussion

The Commission agrees with DTC that the proposal is consistent with Section 17A of the Act and should be approved. In addition, the proposal will enable DTC to continue its efforts to improve the timely collection and payment of dividends and interest.

The proposal is part of DTC's continuing effort to distribute all dividend and interest payments to participants on payable date. In 1985, DTC received $80.5 billion in corporate dividends and interest payments and $14.7 billion in municipal bond interest payments from approximately 1,000 bank and corporate paying agents for credit to its participants. In 1985, DTC processed more than 250,000 payments, including more than 13,000 payments on some peak days. DTC has increasingly strived to work with paying agents to obtain all dividends and interest due DTC in same-day funds on payable date. Because of these initiatives, participants often receive dividend and interest payments more quickly than if payments were received directly from paying agents. DTC's processing of dividend and interest payments also spares participants the time and expense of maintaining facilities to process these payments.

1. Dividends and Interest Credits on Payable Date and Charge-Backs of Funds Usage Charges

One aspect of the proposal would extend to corporate dividend and interest payments DTC's policy of disbursing payments on the issuer's announced payable date, as is the case for disbursements of interest on municipal securities, rather than upon receipt. The Commission believes that DTC's decision to implement this aspect of the proposal reflects an appropriate balance of potentially competing concerns. On the one hand, crediting participants on payable date benefits those participants by establishing a presumption that dividend and interest payments will be made on payment date, thereby enabling participants to manage their funds more carefully and to disburse funds to their customers in a more timely fashion. On the other hand, this practice could increase DTC's financing costs and expose DTC to financial risk in the event of issuer defaults or paying agent failures. As discussed below, the proposal appears to incorporate appropriate protections to reduce those risks.

First, the proposal would authorize DTC to withhold dividend and interest credits if DTC believes that payments will not, for any reason, be received in time to satisfy DTC's payment obligations to participants. For example, DTC would be authorized to withhold credits to participants if DTC historically receives funds from a particular issuer or paying agent after DTC disburses settlement credits. [6]

Second, DTC's experience in collecting dividend and interest payments indicates that a substantial majority of all such payments are received in good funds on payable date, thereby reducing DTC's potential financial exposure and financing costs. Indeed, approximately 92% of corporate dividend and interest payments are received on payable date in good funds and 98% are received in either good funds on payable date or the next business day.

Third, DTC's experience during a six month pilot of crediting corporate dividend and interest payments on payable date indicates that the policy can be administered in a safe and responsible manner. During 3½ months of the pilot, DTC disbursed approximately $39.24 billion incorporate dividend and interest payments without financial loss. [7]

Finally, the proposal authorizes DTC to charge its participants for dividend and interest payments previously credited in the event of errors, issuer defaults or paying agents failures. Several DTC participants expressed concern that DTC provide adequate notice of DTC's intention to charge-back participants for previous dividend and interest credits. Accordingly, DTC revised the proposal to undertake to notify participants, through its participant terminal system, one day before any proposed charge for previously credited dividend and interest payments. [8]

[6] DTC settles payment obligations in clearing house funds that are valued as of the next business day. Accordingly, if DTC received dividend or interest payments on the day after payable date in clearing house funds, those funds generally could not be used to satisfy DTC's payment obligation to its participants reflecting amounts credited on payable date.

[7] Indeed, the Midwest Securities Trust Company, another registered clearing agency, adopted a similar credit policy with respect to dividend and interest payments in April 1982 (*See* Securities Exchange Act Release No. 18664 (April 19, 1982), 47 FR 17700 (April 23, 1982) and has experienced no financial losses to date.

[8] Several DTC participants also noted that the lack of finality associated with dividend and interest credits could increase their financial risks in safekeeping customer securities. Because of

Continued

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The proposal also will allow DTC to pass through an interest collection agent's costs from late payments (called a "funds usage charge") to participants. While DTC currently incurs a fund usage charge from its interest collection agent, DTC does not pass that charge on to its participants. As bearer bond eligibility increases, DTC believes those costs will increase and thus should be passed through, on a *pro rata* basis, to the participants that received those payments. Thus, the Commission believes that passing through the funds usage charge to participants receiving payments is consistent with Section 17A of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges.

2. Refunds of Investment Income

Another aspect of the proposal would revise DTC's policy and formula for allocating income from overnight investment of dividend and interest payments that are received on payable date in same-day funds. As noted above, DTC encourages paying agents to make dividend and interest payments in same-day funds on payable date. DTC's settlement system, however, credits payments to participants in next-day funds on payable date. As a means to come as close as practicable to passing these payments on to participants in same-day funds, DTC invests the funds overnight and refunds the investment income to participants in proportion to the dividend credits they received from DTC. In 1985, DTC's refunded to participants over $46 million of investment income from cash dividend and interest payments.

DTC's authority, in effect, to reverse dividend and interest credits, some commenters noted that participants who credit their customers with immediately available funds may not be able to collect those funds from their customers in the event DTC determines a credit reversal is appropriate. The Commission believes that those risks appear to be insufficient to justify a wholesale change in participants' payment policies. First, as discussed above, experience indicates that issuer defaults, paying agent failure and dividend and interest credit reversals are extremely rare; indeed, none have occurred to date. Second, the Commission expects that DTC will continue to monitor paying agent performance and will, where appropriate, exercise its authority to withhold dividend and interest credits rather than reversing those credits after the fact. Finally, the Commission understands that accepted commercial practice among banks and brokers is to collect dividend and interest payments for customers on an agency, rather than guaranteed, basis. The Commission also understands that most customers who receive dividend and interest payments from banks and brokers have a sufficient nexus with their custodians that significantly reduces the risks that customers will fail to honor a request, in the unlikely event of a credit reversal, to return part or all of a dividend or interest payment.

The proposal modifies DTC's rebating of investment income to encourage paying agents to make those payments in same-day funds on payable date. Currently, paying agents that have paid DTC, over the past three months, at least 90% of the dollar amount owed DTC in same-day funds on payable date receive a full refund. DTC's proposal will no longer grant full refunds to paying agents that pay less than 100% of the dollar amount owed DTC in same-day funds on payable date but will reduce the payments of those agents that pay less than 100% but at least 90% of the dollar amount owed DTC in same-day funds on payable date. DTC will reduce a paying agent's *pro rata* refund by the percentage of funds the paying agent fails to pay DTC on payable date plus the percentage of funds not paid in same-day funds. This change, in light of DTC's new policy of disbursing payments on the issuer's announced payable date rather than on receipt, will reduce DTC's financing costs since DTC will finance most shortfalls with same-day funds which otherwise would be available for investment overnight.

Under the proposal, a reduction in the refund to any particular paying agent occasionally might be greater than DTC's cost of financing that paying agent's shortfall. DTC believes that the reduction covers not only the cost of financing but also the uncertainty in the timing and method of paying agents' payments to DTC. While a particular paying agent's refund reduction may be greater or less than the costs to finance the associate shortfall in a particular month, DTC has chosen to mutualize the financing cost among paying agents that pay less than 100% of payments owed DTC in good funds on payable date. In addition, paying agents can continue to receive a full refund by paying DTC 100% of the dollar amount owed DTC in same-day funds on payable date.

The Commission understands that some paying agents have expressed concerns that the proposal will reduce refunds to paying agents without some type of notice. DTC has assured the Commission, however, that it will contact paying agents who fall significantly below the standard for full refunding and, consequently, will incur a reduction in their monthly refunds from DTC.[9] In addition, if DTC receives all payments in same-day funds on payable date, the amount of funds available for overnight investment and subsequent refunds will be higher. Thus, the Commission agrees with DTC that the proposed rule change concerning refunds, by allowing DTC to mutualize certain financing costs among paying agents that pay less than 100% of payments owed DTC in good funds on payable date, should encourage the timely payment of dividends and interest to DTC in good funds.

[9] During those telephone conversations, paying agents will have an opportunity to discuss their payment performance and any refund reduction.

IV. Conclusion

For the reasons discussed above, the Commission believes that the proposed rule change is consistent with Section 17A of the Act. The Commission believes that the proposal is a significant step in DTC's continuing effort to collect and disburse all dividend and interest payments on payable date. Because participants generally will receive payments on payable date, the Commission believes that the proposal will allow participants to make payments to their customers, the beneficial owners, in a more timely manner and, therefore, will have a positive impact on the Commission's immobilization efforts. Also, the Commission believes DTC has struck an appropriate balance between the various concerns and benefits of the proposal and has reached a reasonable decision that is consistent with the Act. The Commission therefore finds that the proposal is consistent with the Act, and in particular, with Section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,that the proposed rule change (SR–DTC–86–04) be, and it hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: October 7, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–23486 Filed 10–16–86; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–23688; File No. SR–OCC–86–21]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on September 16, 1986, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The proposal modifies and amends OCC's member agreements. The Commission is publishing notice to solicit comment on the rule change.

The proposed rule change will modify OCC's Foreign Clearing Member's Agreement by replacing the terms "Foreign Clearing Member" and "Foreign Regulatory Agency" with "Non-U.S. Clearing Member" and "Non-U.S. Regulatory Agency", respectively. The document will now be titled "Non-U.S. Clearing Member Agreement." The change reflects OCC's response to requests that OCC adopt more neutral labels in their documents for non-U.S. entities. References to "liens" and "security interests" in the Non-U.S. Clearing Member Agreement have been replaced by a new document entitled "Security Agreement," to be signed by non-U.S. Clearing Members. This Agreement spells out the extent of OCC's security interests in the Non-U.S. Clearing Member's OCC Settlement Accounts and does not substantively change those security interests in any way. Previously, Non-U.S. Clearing Members would have to review several provisions of OCC's By-Laws and Rules to learn the full extent of OCC's Security Interests. The Agreement will greatly simplify the review by centralizing in one document descriptions of OCC's most important security interests.[1]

This rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

You may submit written comments within 21 days after notice is published in the **Federal Register**. Please file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–86–21 and should be submitted by November 7, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: October 7, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–23486 Filed 10–16–86; 8:45 am]

BILLING CODE 8010–01–M

[1] Finally, the proposal also contains several other technical and grammatical corrections to OCC's Clearing Member's Agreement and Non-U.S. Clearing Member Agreement.

[Rel. No. 34-23687; File No. SR-PSE-86-14]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc. Order Approving Proposed Rule Change of

On July 17, 1986, the Pacific Stock Exchange, Inc., ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, a proposed rule change to amend its rules regarding appeal of disciplinary actions governing floor citations and summary proceedings after a default of a respondent.

The proposed rule change was noticed in Securities Exchange Act Release No. 23470 (July 28, 1986), 51 FR 27622, (August 1, 1986). No comments were received on the proposed rule change.

The PSE state that since the inception of the Rules governing options trading, there has been an ongoing need to revise certain aspects of the Rules to conform them to the natural evolution of regulation in this relatively new trading environment. This proposed rule change in an example of such a need.

The proposed rule change has the effect of first, consolidating all references to the procedure of appealing a sanction issued by a floor citation into one rule, Rule XX, Section 11.

Originally, Section 84 was drafted to allow members to request a review or hearing for what was termed "Exchange action other than disciplinary actions and arbitrations." This term was intended to cover those types of actions that are now dealt with by the use of Floor Citations.

Citations are issued on the floor of the Exchange by Floor Officials whose duty it is to see that members do not violate any of the specific rules dealt with by citations. However, because Section 84 was drafted prior to the establishment of the citation system, it is not stated that the section applies to Floor Citations.

Accordingly, the first part of the rule change is designed to update Section 84 to ensure that it is applicable to the current procedures of the Exchange. The Exchange also has added the ability to request witnesses at a hearing on these matters, at the discretion of the panel, to further protect the members' rights and to ensure a fair hearing.

Two additional changes appear in paragraph (c) of the current Section 84, "Procedure following Applications for Hearing and Review." The first change is to paragraph (c)(1) which deletes the provision that requires a copy of the Application for Hearing and Review to be sent to the Board of Governors.

When an application for a hearing or review is made, the appropriate commitee grants the review automatically. Therefore, sending the application to the Board has no effect because the review will take place regardless of whether the Board receives the application or not. Once a Member submits an application for hearing or review, a 3-member Hearing Panel is selected to hear or review the matter. The Panel's decision is then submitted to the full committee for their review, and is reported in the subsequent minutes. Because the Board receives the minutes of the Committee and then has the opportunity to review the Decision, the Exchange considers the initial referral of all applications to the Board to be an unnecessary duplication.

The second change to paragraph (c) of Section 84 is in (c)(1) which sets forth a deadline for review of a decision by the Board, on its own motion, within thirty days after issuance of the decision. The Exchange is concerned with the fact that there are times when, due to various factors, the Board may not see the decision within the thirty days after issuance. If that occurred, the Board would be precluded from reopening a decision if they felt it was incorrect. The Exchange has therefore added the provision to allow the Board to reopen the matter either within thirty days from the date of the decision, or upon presentation to the Board, whichever is later. This will ensure that the decision can be reopened by the Board at the time it is presented to them.

In (c)(1) of Section 84, the Committee will now be able to appoint a hearing panel composed of *other* approved members besides the current members of the Committee. This will allow hearings to be held without the delay caused by the inability of Committee members to find the time to serve as hearing panelists.

Finally, the entirety of Section 84 will be transferred to Rule XX Section 11, "Disciplinary Proceedings" in order to consolidate all disciplinary matters.

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In the second part of the proposal, the Exchange is amending Rule XX, Section 5, which sets out the procedures to be followed in the course of Exchange disciplinary actions. Section 5 of the Rule allows for summary determinations to be made by a Hearing Committee when a Member fails to answer any formal complaint issued by the Exchange Committee. This default provision only comes into use when the Member has failed to exercise his right to respond after several requests from the Exchange staff. Once a determination as to penalty is made, however, the Member must be notified of the penalty and is given ten days to ask for a Hearing.

While the Exchange is mindful of protecting the due process rights of the Member, it is also aware that Section 5 is overboard in that respect. As a matter of practice and courtesy, Exchange staff notifies Members of matters which could subject them to disciplinary action even before they initially are brought to an Exchange Committee, and affords them the opportunity to state their case. A Committee, composed of their peers, then deliberates on the merits of the case and considers the Members' response if they choose to submit one.

If a Committee issues a Complaint, a Member has at least 15 days to file an Answer. The PSE represents that it is lenient with respect to the granting of extensions, and also does not require a high level of formality with respect to the Answer. If no Answer is received, the Member is again contacted and asked to supply the Answer. If, at that time, no Answer is yet given, the same Committee then imposes a penalty based upon finding the Member in default.

The Exchange is of the belief that sufficient safeguards are in place to protect the due process rights of the Members even without the provision in Section 5 which allows a defaulting Member to set aside the determination of the Committee. For example, once a default penalty has been imposed by the Committee, a Member may still petition the Board of Governors for a rehearing, irrespective of the default provision found in Section 5. In addition, any member who is disciplined by the Exchange may petition the Commission for yet another review. The Exchange feels that such a rule change will have the practical effect of saving a substantial amount of staff time that could be allocated to other needs.

The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to foster cooperation and coordination with the members of the PSE and the Exchange's regulatory staff; and in accordance with Section 6(b)(7) in providing a fair procedure for the disciplining of members and those associated with members.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 7, 1986.

Jonathan G. Katz,

Secretary

[FR Doc. 86-23489 Filed 10-16-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing by Philadelphia Stock Exchange, Inc.

October 10, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission purusant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

SunTrust Banks, Inc.

Common Stock, $1.00 Par Value (File No. 7-9253)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-23490 Filed 10-16-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23897; File No. SR-PHILADEP 86-04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Depository Trust Co. Relating to the Disposition of Unclaimed Dividends and Other Distributions

Pursuant to section 19(b)(1), of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1986, the Philadelphia Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a proposal to adopt new Philadelphia Depository Trust Company ("PHILADEP") Rule 29 to govern the disposition of unclaimed dividends and other distributions, and a corresponding amendment to PHILADEP Rule 2 relating to participants and pledgees.

The following is the full text of the proposed rule change. (New language is italicized; deleted language is [bracketed].)

PHILADELPHIA DEPOSITORY TRUST COMPANY RULES

* * * * *

Participants and Pledgees

Rule 2. Section 1. * * *

An entity whose application to become a Participant has been approved by the Corporation shall pay to the Corporation its orginal contribution to the Participants Fund determined in accordance with the provisions of Rule 4 and shall sign and deliver to the Corporation and instrument in writing whereby such applicant shall agree: * * *

(e) That the Participant shall authorize the Corporation to retain for the Corporation's use the amount of any dividend or other distribution

outstanding and unclaimed after five years from the date of such dividend or distribution as set forth on the Corporation's books and records and the Participant shall waive any claim to any such dividend or distribution except as the Corporation may otherwise provide in accordance with the By-Laws and rules.

[(e)] *(f)* * * *
[(f)] *(g)* * * *
[(g)] *(h)* * * *
[(h)] *(i)* * * *
[(i)] *(j)* * * *
[(j)] *(k)* * * *
[(k)] *(l)* * * *
[(l)] *(m)* * * *
[(m)] *(n)* * * *

* * * * * *

Unclaimed Dividends and Other Distributions Rule 29.

Section 1. The Corporation shall make a payment equal to any dividend or other distribution at the time of the receipt thereof by the Corporation to any Participant whose entitlement thereto then appears on the books and records of the Corporation.

Section 2. The Corporation shall recognize any other claims relating to, and in the amount of, any dividend or other distribution for a period of five years from the date of such dividend or distribution.

Section 3. The Participant shall be deemed to waive any claim to the amount of any dividend or distribution for which he has not made a claim within a five year period expired prior to the adoption of this Rule 29.

Section 4. No claim shall be deemed made hereunder unless a written application is made to the Corporation for the return of any such amounts. The application shall include satisfactory evidence of Participant's claim, adequate indemnification to the Corporation against any claim by another person and expenses arising therefrom (including attorneys' fees) from the return of such amount to the Participant, and such other terms and conditions as the Corporation may prescribe.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concering the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of the Statutory Basis of the Proposed Rule Change

The rule change modifies PHILADEP's contractural relationship with participants with respect to unclaimed dividends and other distributions. The purpose of the rule change is establish a mechanism for the fair and orderly consideration and payment of claims to distributions of the entire PHILADEP participant community. The rule change authorizes PHILADEP's access to funds in its custody that otherwise would remain in an unsettled status for an unnecessarily long period. This rule change permits funds that have remained unclaimed for five years to be put to use by the Depository. While PHILADEP would reserve the discretion to use the funds to cover costs of any depository function, PHILADEP anticipates that the funds would be used to cover costs of replacing lost securities and deficits in the distribution accounts that may not be covered by insurance or other resources of PHILADEP. The funds also could be used to reduce the magnitude and frequency of participant fee increases as well as reduce the dependence on other funding sources. This source of non-earmarked funds in particularly useful in light of the extremely limited uses of other funding sources such as PHILADEP's Participants Fund.[1]

PHILADEP also notes that the proposed rule change establishes procedures for reclamation of unclaimed distributions for up to five years from the date of such dividend or distribution.

As noted above, the proposed rule change will make available to PHILADEP for depository-related use unclaimed funds in its possession. The rule change also would protect those who may have a legitimate right to reimbursement of those funds by providing them with an opportunity to claim funds within a reasonable time period.

When the proposed rule is approved, PHILADEP intends to retain any existing funds that have remained in an unclaimed distributions and overpayment status for at least five years and will retain and put to similar use any remaining preexisting funds as these funds mature to over five years. Prior to taking this action, PHILADEP will take reasonable steps to notify participants so that they may raise any legitimate claims as to the unclaimed distributions, including mailing a notice to each past and present participant of this matter.

In this regard, the proposed rule change, in so far as it provides an additional source of working funds for depository operations and enhancements, is consistent with section 17A(b)(3)(F) of the Act in that it improves the operation of the depository and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. In addition, since the Commission has approved rules of another registered clearing agency substantively identical to PHILADEP's proposed rule change,[2] approval of the latter will promote the "maintenance of fair competition among . . . clearing agencies . . . [and] assure equal regulation under this title of registered clearing agents."[3] Furthermore, approval of the rule change is consistent with "the development of uniform standards and procedures for clearance and settlement [which] will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors."[4]

B. Self-Regulatory Organizations Statement on Burden on Competition

The proposed rule change is procompetitive in that it establishes a policy and practice similar to that in effect at another registered clearing agency.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[1] PHILADEP Rule 4, Sec. 2 provides that "[t]he Participants Fund shall be used for the protection of the Corporation against loss in the performance of its function as a custodian or as an agent or attorney-in-fact in connection with the depository system."

Sec. 3(c) provides that the Participants Fund generally "shall not be used for the protection of the Corporation against losses from day-to-day operating expenses."

[2] *See* Midwest Securities Trust Company ("MSTC") Rule 11.

[3] Section 17A(a)(2) of the Act.

[4] Section 17A(a)(1)(D) of the Act.

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as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to whch the self-regulatory organization consents, the Commission will: (A) by order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted November 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 9, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-23485 Filed 10-16-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24211]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 9, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 3, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Granite State Electric Company (70-7288)

Granite State Electric Company ("Granite"), 33 West Lebanon Road, Lebanon, New Hampshire 03766, an electric utility subsidiary of New England Electric System, a registered holding company, has filed a declaration pursuant to section 6(a) and 7 of the act and Rule 50(a)(5) thereunder.

Granite proposes to issue and sell to an institutional investor(s), on or before December 31, 1987, a long-term promissory note(s) ("Note") in an aggregate principal amount not exceeding $5 million. The Note will be issued pursuant to a Note Agreement, the specific terms of which will be negotiated with the purchaser. The Note Agreement may provide for a sinking fund and may also prohibit redemption for a period of up to ten years, depending upon market conditions. Granite may retain an investment banking firm to assist in placement of the Note. Granite may negotiate the sale of the Note pursuant to an exception from the competitive bidding requirements of Rule 50, as requested.

Monongahela Power Company et al. (70-7300)

Monongahela Power Company ("Monongahela"), 1310 Fairmount Avenue, Fairmount, West Virginia 26554, The Potomac Edison Company ("Potomac"), Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, (collectively, the "Companies"), wholly owned electric utility subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed an application-declaration pursuant to section 6(a), 6(b), and 7 of the Act and Rule 50 thereunder.

Monongahela, Potomac, and West Penn propose to issue and sell, pursuant to the alternative competitive bidding procedures, their first mortgage bonds in the maximum aggregate principal amounts of $105 million, $70 million, and $35 million, respectively. Alternatively, the companies may, by amendment, seek authorization to negotiate the terms and conditions of the bonds. The bonds will be issued in one or more series from time to time not later than December 31, 1987, with maturities of from five to thirty years. The proceeds of the bonds will be used by the Companies to effect the optional redemption, prior to maturity, of certain series of their currently outstanding first mortgage bonds (or for the repayment of short-term borrowings or replenishment of internally generated funds used for that purpose) and for general corporate purposes.

New Orleans Public Service, Inc. (70-7303)

New Orleans Public Service, Inc. ("New Orleans"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a) and 7 of the act and Rule 50(a)(5) thereunder.

New Orleans proposes to issue and sell up to $30 million in aggregate principal amount of secured notes ("Secured Notes"). New Orleans requests, pursuant to Rule 50(a)(5) under the Act, that the proposed issuance and sale of the Secured Notes be excepted from the competitive bidding requirements of Rule 50, and that it be authorized to effect a private placement of the Secured Notes with institutional investor(s). The company may negotiate the terms and conditions of the issuance and sale of the Secured Notes.

It is proposed that the net proceeds derived from the issuance and sale of the Secured Notes will be used to finance a portion of New Orlean's 1986 capital requirements, including: (i) The financing of that portion of its allocated costs associated with Unit No. 1 of the Grand Gulf Nuclear Electric Station which is not currently being recovered through retail rates; (ii) The financing of New Orleans' construction program; (iii) The satisfaction of sinking fund requirements on preferred stock; and (iv) Other corporate purposes.

The Secured Notes will mature not more than nine months from the date of issuance thereof. In addition, the Secured Notes may be subject to optional termination of the proposed borrowing arrangements up 90 days' prior written notice, and optional and/or mandatory prepayment of the Secured Notes, in whole or in part, upon the occurrence of specified events.

It is stated that the Secured Notes will be secured by a lien on, and prior perfected security interest in, all accounts receivable of New Orleans arising from sales of electric energy and natural gas. The maximum principal amount of Secured Notes outstanding at any one time will not exceed the lesser of (1) $30 million or (2) 90% of the outstanding eligible electric and gas accounts receivable of New Orleans, as determined from time to time.

Repayments of the Secured Notes, and termination of the borrowing arrangements will occur upon consummation of permanent financing to be effected in 1987. Such permanent financing is expected to include one or more of the following: (i) The sale of long-term secured debt; (ii) The sale of preferred stock; (iii) The sale of common stock; and/or (iv) Such other forms of permanent financing as may be determined to be apropriate.

Arkansas Power and Light Company (70-7305)

Arkansas Power and Light Company ("Arkansas"), First Commercial Building, Little Rock, Arkansas 72201, an electric utility subsidiary company of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a pose-effective amendment to its previously filed application pursuant to section 9(a) and 10 of the Act.

Arkansas is currently leasing nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for Unit No. 2 at its Arkansas Nuclear One Generating Station from Ozark Fuel Corporation ("Fuel Company"), (HCAR No. 22272, November 13, 1961). Under the current terms of the leasing arrangement between Arkansas and Fuel Company ("Lease"), Fuel Company is committed ("Commitment") to make certain payments for Nuclear Fuel up to a maximum amount of $74 million at any one time outstanding, financed by a Credit Agreement ("Credit Agreement") between Fuel Company and Swiss Bank Corporation, New York Branch ("Bank"), the term of which is currently scheduled to expire on December 1, 1986.

Arkansas now proposes to amend its obligations under the Lease, and Fuel Company will amend its Credit Agreement accordingly, to provide for an increase in the Commitment to $84 million, and an extension of the term of the agreement through December 1, 1987. Fuel Company will pay the Bank commitment and service fees.

For the Commission, by the Division of Investment Management, Pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-23484 Filed 10-16-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 1-A (Revision 13)]

Delegation of Authority

Delegation of Authority No. 1-A (Revision 12) is hereby revised to read as follows:

(a) Pursuant to authority vested in me by the Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1965, 72 Stat. 689, as amended, authority is hereby delegated to the following officials in the following order:

(1) Associate Administrator for Procurement Assistance

(2) Associate Administrator for Finance and Investment

(3) General Counsel

to perform, in the event of the absence or incapacity of the Administrator and the Deputy Administrator any and all acts which the Administrator is authorized to perform, including but not limited to authority to issue, modify, or revoke delegations of authority and regulations, except exercising authority under sections 9(d) and 11 of the Small Business Act, as amended.

(b) An individual acting in any of the positions in Paragraph (a) remains in the line of succession only if he or she has been designated acting by the Administrator or Acting Administrator due to a vacany in the position.

(c) This delegation is not in derogation of any authority residing in the above-listed officials relating to the operations of their respective programs nor does it affect the validity of any delegations currently in force and effect and not revoked or revised herein.

EFFECTIVE DATE: October 17, 1986.

Dated: October 10, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-23480 Filed 10-16-86; 8:45 am]

BILLING CODE 8025-01-M

Senior Executive Service Performance Review Boards; List of Members

AGENCY: Small Business Administration.

ACTION: Listing of Personnel Serving as Members of this Agency's Senior Executive Service Performance Review Boards.

SUMMARY: Pub. L. 95-454 dated October 13, 1978, (Civil Service Reform Act of 1978) requires that Federal Agencies publish notification of the appointment of individuals who serve as members of that agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. James P. Gallogly, Assistant Administrator for Information Resources Management
2. Edwin T. Holloway, Associate Administrator for Finance and Investment
3. Janice E. Wolfe, District Director, Washington
4. Monika Edwards Harrison, Associate Administrator for Procurement Assistance
5. Robert H. Miller, Regional Administrator, Philadelphia
6. Richard L. Osbourn, Director of Personnel (Non-voting Technical Advisor)
7. George H. Robinson, Director of Equal Employment Opportunity and Compliance (Non-voting Equal Employment Advisor)
8. Robert G. Lineberry, Deputy Associate Administrator for Investment
9. June M. Nichols, Regional Administrator, Atlanta
10. Robert J. Moffitt, Deputy Associate Administrator for Procurement Assistance
11. Albert J. Prendergast, Director of Program Analysis and Review
12. Wilfredo J. Gonzalez, Associate Administrator for Minority Small Business and Capital Ownership Development
13. Renald Morani, Deputy Inspector General, Veterans Administration
14. Joseph J. Genovese, Assistant Inspector General for Auditing, Department of Transportation
15. Lawrence Dempsey (Alternate), Assistant Inspector General for Investigations, General Services Administration.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-23478 Filed 10-16-86; 8:45 am]

BILLING CODE 8025-01-M

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[License No. 06/06-0292]

Ford Capital Ltd.; Issuance of a Small Business Investment Company License

On May 13, 1986, a notice was published in the Federal Register (Vol. 51 No. 92) stating that an application has been filed by Ford Capital Ltd., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a license as a small business investment company.

Interested parties were given until close of business on June 12, 1986, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06-0292 on October 6, 1986, to Ford Capital Ltd., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 10, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-23479 Filed 10-16-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Soviet and Eastern European Studies Advisory Committee; Meeting

The Department of State announces that the Soviet and Eastern European Studies Advisory Committee will meet on November 12, 1986 starting at 9:30 a.m. in Room 1107, U.S. Department of State, 2201 C Street, NW., Washington, DC.

The Advisory Committee will recommend grant recipients for the advancement of the objectives of the Soviet-Eastern European Research and Training Act of 1983. The agenda will include: opening statements by the Chairman of the Committee and its members; oral statements by interested members of the public and receipt of written statements; and within the Committee, discussion, approval, and recommendation that the Department of State negotiate grant agreements with "national organizations with an interest and expertise in conducting research and training concerning the USSR and Eastern Europe" based on the guidelines amplifying the purposes set forth in the 1983 Act and contained in the Call for Applications published in the Federal Register on August 19, 1986.

The general public may attend the meeting to make and/or submit statements, and to observe the Committee's deliberations subject to the instructions of the Chairman. Public attendance will be limited to the seating available. In that regard, entry into the Department of State building is controlled and must be arranged in advance of the meeting. It is required that prior to the meeting, persons who plan to attend or to make or submit statements, so advise E. Raymond Platig, Executive Director, Soviet and Eastern European Studies Advisory Committee, INR/LAR, Department of State, Washington, DC 20520, (202) 632-2025 or 632-5879. All attendees must use the C Street entrance to the building.

Dated: October 3, 1986.

E. Raymond Platig,

Executive Director, Soviet and Eastern European Studies Advisory Committee.

[FR Doc. 86-23533 Filed 10-16-86; 8:45 am]

BILLING CODE 4710-32-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; Telephone Station Message Detail Reports

The Department of Transportation herewith publishes a notice relating to the proposed implementation of a system of records on telephone usage for administrative billing purposes. The records will identify Departmental employees use of telephones to place Federal Telecommunications System (FTS) and Commercial Long Distance Calls.

Any person or agency may submit written comments on the proposed system to the Privacy Officer (M-34) Room 7109, U.S. Department of Transportation, 400 Seventh Street, SW. Washington, D.C. 20590. Comments must be received within 30 days from date this notice is issued to be considered.

If no comments are received, the proposed changes will become effective 60 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, October 14, 1986.

Jon H. Seymour,

Assistant Secretary for Administrator.

Narrative Statement for the Department of Transportation, Assistant Secretary for Administration, Office of Information Resource Management

Telephone Station Message Detail Report

The Department of Transportation proposes to implement a system of records relating to telephone usage for administrative billing purposes.

The records will relate to the use of the Department's telephones to place Federal Telecommunications System (FTS) and Commercial Long Distance calls. They will also identify assignment of telephone numbers and locations of telephones to Department employees.

Only Telecommunication Management Branch personnel within the Office of the Secretary and selected operation and maintenance contract personnel will have access to tapes and records and will be responsible for implementation of necessary safeguards.

The purpose of this report is to comply with the Office of Management and Budget Circular A-130, Appendix I, entitled "Federal Agency Responsibilities for Maintenance of Records about Individuals" [50 FR 52738 (1985)].

DOT/ALL 4

PRIVACY ACT IMPLICATIONS OF CALL DETAIL PROGRAMS; PROPOSED NOTICE:

SYSTEM NAME:

Station Message Detail Reports (SMDR)

SYSTEM LOCATION:

U.S. Department of Transportation, Assistant Secretary for Administration, Room 9112, 400 7th Street, SW, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Transportation employees who make Federal Telecommunications Systems (FTS) and Domestic and International Commercial Long Distance calls from the three Headquarters Buildings: The Nassif and Trans Point buildings and Federal Building—10A.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of the Department's administrative telephones to place FTS and Commercial Long Distance calls, records indicating assignment of telephone numbers to

Departmental employees, and records relating to the location of telephones.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic Tape storage via batch processing.

RETRIEVABILITY:

Records are retrieved by employee name, telephone number, office routing symbol, or administration.

SAFEGUARDS:

Only telecommunications personnel within the Office of the Secretary and operation and maintenance contract personnel have access to tapes and records.

RETENTION AND DISPOSAL:

Records are disposed of as provided in National Archives and Records Administration General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager: Chief, Telecommunications Management Branch, M-33, U.S. Department of Transportation, Office of the Secretary, Office of Information Resource Management, 400 7th Street, SW, Room 9112, Washington, DC 20590.

NOTIFICATION PROCEDURES:

Contact Telecommunications Management Branch, M-33, at the above address.

RECORD ACCESS PROCEDURE:

Contact Telecommunications Management Branch, M-33, at the above address.

Individuals may review their own data upon presentation of a valid Department of Transportation ID card.

RECORD SOURCE CATEGORIES:

Telephone assignment records, call detail listings and results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86-23558 Filed 10-16-86; 8:45 am]

BILLING CODE 4910-62-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 201
Friday, October 17, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., October 22, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Portions closed to the public:

1. Docket No. 85-24—Matson Navigation Company, Inc., Proposed Overall Rate Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii Ports—Petition for Reconsideration.
2. Docket No. 86-11—"Neutral Container Rule"—U.S. Atlantic-North Europe Conference—Motion To Terminate Investigation.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 86-23656 Filed 10-15-86; 3:37 am]

BILLING CODE 6730-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 22, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-23572 Filed 10-15-86; 8:56 am]

BILLING CODE 6210-01-M

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NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 13, 20, 27, and November 3, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 13

Thursday, October 16

1:00 p.m.
Discussion/Possible Vote on Kerr-McGee Sequoyah Facility (Public Meeting)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Review of ALAB-840 (Limerick) (*postponed* from October 9)

Friday, October 17

10:00 a.m.
Briefing on Status of Fort St. Vrain (Public Meeting)

Week of October 20—Tentative

Thursday, October 23

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 27—Tentative

Wednesday, October 29

2:30 p.m.
Briefing on Near Term Operating Licenses (NTOLs) (Open/Portion may be Closed)

Thursday, October 30

10:00 a.m.
Briefing on Status of INPO Accreditation of Utility Training Programs (Public Meeting)
2:00 p.m.
Meeting with Members of INPO Plant Managers Course (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, October 31

2:00 p.m.
Briefing on Status of Performance Indicator Program (Public Meeting)

Week of November 3—Tentative

Monday, November 3

10:00 a.m.
Briefing on Initiatives to Improve Maintenance Performance (Public Meeting)
2:00 p.m.
Briefing on GE Containment Program (Public Meeting)

Thursday, November 6

10:00 a.m.
Briefing on Assessment of B&W Plants (Public Meeting)
2:00 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Tentative)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, November 7

10:00 a.m.
Discussion/Possible Vote on Davis Besse Restart (Public Meeting)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,

Office of the Secretary.

October 9, 1986.

[FR Doc. 86-23573 Filed 10-15-86; 8:56 am]

BILLING CODE 7590-01-M

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SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 36507; October 10, 1986.

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, October 7, 1986.

CHANGE IN THE MEETING: Deletion/additional items.

The following items will not be considered at an open meeting scheduled for Thursday, October 16, 1986, at 10:00 a.m.

1. Consideration of whether to approve rule proposals submitted by the American Stock Exchange, Inc. and the New York Stock Exchange, Inc. Both proposals would ease restrictions imposed on an approved person affiliated with a specialist if an adequate "Chinese Wall" were established between the approved person and the specialist. For further information, please contact Sharon Lawson at (202) 272-2910 or Ellen K. Dry at (202) 272-2843.
2. Consideration of whether to issue a release adopting amendments to Securities Exchange Act Rule 15c3-1 that would expand the types of instruments that could be used to create a hedged position in highly rated corporate debt securities. The amendments would also lower the deductions from net worth in arriving at net capital for hedged corporate debt securities positions and would redefine the criteria for determining whether the maturities of two offsetting positions are close enough to consider the combined corporate debt securities position as hedged for purposes of Rule 15c3-1. For further information, please contact Michael P. Jamroz at (303) 272-2396.

The following item will be considered at an open meeting scheduled for Thursday, October 16, 1986, at 10:00 a.m.

Consideration of whether the Commission should hold public hearings on the New York Stock Exchange's proposal (SR-NYSE-86-17) to amend its policy concerning the listing of equity securities with disparate voting rights. For further information, please contact Sharon Lawson at (202) 272-2910.

Commissioner Cox, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272-2092.

Johnathan G. Katz,

Secretary.

October 14, 1986.

[FR Doc. 86-23630 Filed 10-15-86; 2:46 pm]

BILLING CODE 8010-01-M

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federal register

Friday
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Part II

Department of Agriculture

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board Meeting; Notice

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.
Date: November 6-7, 1986.
Time: 9:00 a.m.-1:00 p.m., November 6, 1986.
8:00 a.m.-5:30 p.m., November 7, 1986

Place:
Prairie View A&M University—November 6, 1986, Prairie View, Texas
Texas A&M University—November 7, 1986, Memorial Student Center, Room 231, College Station, Texas

Type of Meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be meeting with representatives of the Colleges of Agriculture at Prairie View and College Station. The purpose of this meeting is to help the UAB become better informed on Federally funded research and extension programs in the land-grant system. Special emphasis will be made on integrated range management programs, the application of biotechnology to agricultural problems, how lean beef research is responding to the consumer's changing diet and health attitudes, and emerging irrigation technologies that have the potential to reduce water needs of agriculture.

Contact Person For Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 316-A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250; telephone (202) 447-3684.

Done in Washington, DC, this 25th day of September 1986.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 86-23474 Filed 10-16-86; 8:45 am]

BILLING CODE 3410-MT-M

federal register

Friday
October 17, 1986

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 705

Restriction on Financial Interests of State Employees; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 705

Restriction on Financial Interests of State Employees

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is adopting a final rule regarding certain portions of its regulations which (1) define the responsibilities of employees of State regulatory authorities performing duties or functions under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq. (the Act), concerning financial interests; (2) define "employee" for purposes of 30 CFR Part 705; and (3) set forth requirements applicable to such employees, for filing statements of financial interest. These rules are the final regulatory step in a proceeding which commenced with the filing of a rulemaking petition in 1979.

The amendments require that members of advisory boards and commissions established in accordance with State law or regulation to represent multiple interests, who perform a function or duty under the Act, shall file a statement of employment and financial interest and shall recuse themselves from proceedings which may affect their direct or indirect financial interests. Such members, however, will continue not to be subject to the structures of section 517(g) of the Act regarding proceedings other than those in which they may be directly affected.

EFFECTIVE DATE: This rule is effective November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Miller, Regulatory Development and Issues Management, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–5241.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of rules adopted.
III. Procedural matters.

I. Background

On August 23, 1977, the Department issued proposed regulations to implement the provision of the Act prescribing financial interest restrictions for State regulatory authority employees under section 517(g) of the Act. Section 517(g) of the Act specifies criminal sanctions for State employees performing any function or duty under the Act knowingly to have a direct or indirect financial interest in any coal mining operation. The Act further directs the Secretary to publish regulations which establish methods for monitoring and enforcing the provision. After publication of proposed rules and a comment period, the final financial interest restriction regulations in Part 705 were published on October 20, 1977 (42 FR 56060).

On December 15, 1978, five environmental organizations—the National Wildlife Federation, Save Our Mountains, Inc., Colorado Open Space Council, Save Our Cumberland Mountains, and Council of Southern Mountains—jointly petitioned the Office of Surface Mining to amend two definitions contained in 30 CFR 705.5 concerning financial interest restrictions. That petition was published for public comment. (44 FR 11795, March 2, 1979).

Petitioners proposed two changes to the definitions:

1. Amend the definition of "employee" to eliminate the exception created therein for "members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests * * *"

2. Change the definition of "indirect financial interest."

The proposed change to the definition of "indirect financial interest" was rejected by OSMRE on July 12, 1978, in a letter to Mr. Terrence Thatcher of the National Wildlife Federation.

On July 12, 1979, OSMRE granted in part the petition to amend the definition of "employee" contained in 30 CFR 705.5. A notice of proposed rulemaking was published on September 6, 1979. (44 FR 52096–52101). The September 6, 1979 notice contains a summary of the written comments received on the petition during the comment period which closed on April 2, 1979.

The definition of "employee" proposed by OSMRE on September 6, 1979, would have allowed persons with industry or other financially restricted interests to be board members, but not to exceed a majority of the voting members. Under that proposal, all board members would file conflict-of-interest statements to ensure that the majority of the board had no conflict of interest, either direct or indirect, and no board member could act on a matter which related to his or her financial interest.

The public comment period for the September 6, 1979 notice of proposed rulemaking closed on November 5, 1979. Since that time, the Secretary of the Interior has approved 25 programs submitted by States to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands under section 503 of the Act. State programs have been operational for periods ranging from two to five years.

On May 30, 1984, OSMRE reopened and extended the public comment period to seek additional public comment on the proposed definition of "employee," based on experience with the approved programs which utilize the current definition of "employee." (49 FR 22498). In the notice reopening the public comment period, OSMRE specifically requested information about States which currently have multiple-interest commissions or boards. OSMRE solicited specific information as to (1) whether the adoption of the proposal or any suggested modification would have the effect of dismembering a substantial number of existing boards; (2) what the effects would be; and (3) whether such results would be justified. In addition, OSMRE requested comments on the proposed revisions and alternative definitions for "employee." OSMRE also sought public comments on two additional alternatives. The first alternative would have deleted the board exemption in its entirety. The final alternative would be to take no action and leave the definition as it presently reads.

In the notice extending the public comment period, OSMRE solicited comments on a modification which would not only prohibit action by board members on matters related to their own financial interests, but would also prohibit participation by board members in proceedings when their financial interests could reasonably cause interested persons to question the impartiality of the proceedings. Comments were requested on the issue of whether impartiality would be assured or best served when boards do not contain a majority of members with similar financial or other interests.

II. Discussion of Rules Adopted

Section 705.4(d) Recusal of multi-interest board members.

Final § 705.4(d) has been added which requires multi-interest board members to recuse themselves from any proceeding which may affect their direct or indirect financial interests. This requirement will minimize disruption of existing state multi-interest board functions, but will ensure that board members do not act on those matters in which they might have a conflict of interest. Because board members will be required to recuse themselves from proceedings which may affect their interests, interested persons will now have a basis for requesting recusal by a board member, and ensuring that consideration of matters before the board is not biased by members' financial interests. Several States commented favorably on this approach, likening it to the conflict-of-interest prohibitions found in a number of existing state conflict-of-interest laws concerning state officials.

As proposed, this rule would have included the additional requirement that multi-interest board members with coal-related financial interests could continue to participate in board activities so long as the number of members with coal-related financial interests did not exceed 50 percent of total membership.

This additional feature has not been adopted. A commenter noted that the proposed 50 percent limit might require dismantling some multi-interest boards in which more than 50 percent of members have coal-related interests. Such restructuring could require legislative change, as, for example, in those cases where the board is structured to include elected officials or representatives of other state agencies. OSMRE agrees and has concluded that, rather than adopt a percentage limitation that could require dismantling or restructuring of boards or commissions, a recusal requirement directed at the individual members will foster impartiality while not having a significant destabilizing effect.

Another commenter asserted that permitting up to 50% of board members to have coal-related interests would allow a situation where members with industry interests could veto any actions not acceptable to industry. Under the amendment that is being adopted, interested board members must recuse themselves from participation in proceedings that may affect their interests. OSMRE finds that the 50% restriction does not appear to be necessary, so long as members recuse themselves as required.

Several commenters expressed concern as to what connection between the multi-interest board member's interests and the member's actions would invoke the requirement to recuse. They indicated that precise, enforceable language was needed, spelling out when a member with a coal-related interest should recuse himself or herself. For example, what if a decision involves only one industry party, but the precedent to be established will affect other operators (including the operator in which the member has an interest)? Several commenters noted that multi-interest boards which adopt rules and general policies have the most widespread effect and the greatest effect on coal companies, and, thus, this is the type of activity in which avoidance of conflicts of interest is most important.

Guidelines have not been adopted at this time because OSMRE cannot anticipate every type of factual situation in which a conflict of interest might arise. The standard set forth in § 705.4(d) is sufficiently descriptive to enable all affected persons to evaluate whether recusal is required: If the proceeding may affect the direct or indirect coal-related financial interests of a multi-interest board member, then the member must recuse himself or herself. OSMRE anticipates that over time case law will evolve in implementing the standard to provide clear examples of what is required. In the example mentioned by the commenter involving a proceeding where one of the parties is a coal company, a board or commission member would not have to be recused unless that member has a direct or indirect financial interest in the company which is party to the proceeding.

A commenter stated that OSMRE's proposal would allow a board member whose business relies on the health of the mining industry generally, to sit on board actions. OSMRE agrees, and notes that such a result is not prohibited by the Act, so long as the member's interests do not constitute a direct or indirect financial interest in a surface coal mining operation.

Another commenter questioned whether a multi-interest board member would be required to recuse himself or herself from acting on a permit application by a competitor to the coal-related interest in which the member has an investment. OSMRE believes that in most instances actions on permit applications would be performed by employees of the state regulatory authority rather than by multi-interest board members. In the event that a multi-interest board does act upon a permit application and direct, head-to-head competition exists between a permit applicant and a company in which the board member has an interest, recusal would be necessary if the decision on the permit application could in some way affect the member's interest.

Several commenters stated that the recusal requirement is inadequate because the influence of the interested board member can still be felt even if the member refrains from actual voting. That is, if an interested board member participated in discussion on the issue, his or her views may affect the vote, even if he or she does not vote, and objectivity will be jeopardized. With regard to these comments, OSMRE notes that the regulation requires the board member to recuse himself not only from the vote, but also from the entire proceedings of the board, including any hearing, discussion, or decision by the board, which may affect the member's coal-related financial interests.

In addition, a recused board member may not act as counsel for any party to the proceeding. However, if any member of a board or other person subject to 30 CFR Part 705 is otherwise authorized to participate in a proceeding as a party, a witness, an intervenor, or in some other recognized capacity, these regulations do not deprive the board member or employee of that right. To this extent, like any other legitimate participant in the proceedings, the board member or employee may attempt to influence the outcome by his participation.

Section 705.5 Definition of "employee."

The final definition of "employee" remains unchanged and continues to exclude members of multi-interest boards from the requirement not to have certain restricted financial interests. As noted in the preamble to the original rulemaking on Part 705 (42 FR 56060, 56061, October 20, 1977), it is essential to avoid dismembering boards or commissions composed in such a manner as to represent divergent interests. As one commenter stated, continuation of the exclusion will enable such boards to continue to attract well qualified board members with expertise concerning coal mining and related concerns.

The final rule appropriately addresses the concerns of petitioners in the 1978 petition for rulemaking, namely that multi-interest board members should file financial interest statements, and that decisions under the Act should not be made by members whose financial interests would be affected by the decisions. The new requirements for filing of financial statements and recusal from proceedings which may affect financial interests reflect commenter concerns that board or commission decisions should be free from any influence that may stem from direct or indirect financial interests of members, and that decisions of board members should have the appearance of fairness as well as being fair.

Such concerns are also resolved because other safeguards exist. For instance, board decisions are subject to

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administrative or judicial review; also OSMRE performs oversight to ensure that state substantive and procedural requirements are met and that board actions are consistent with SMCRA and OSMRE's regulations.

Several commenters offered their views as to whether multi-interest board members should be considered employees, under the Act. Some commenters asserted that any coal mining industry representation on a board is prohibited by the Act. Other commenters asserted that "employee" cannot include members of boards or commissions which oversee the state regulatory authority. Another commenter asserted that Congress did not intend that persons overseeing state programs, approving regulations, or ruling in adjudicatory proceedings should be allowed to hold coal-related interests and not be treated as employees. Another commenter stated that Congress wanted the rules implementing section 517(g) to cover all persons performing governmental functions or duties under the Act. A comment was received which alleged that OSMRE's approach treats state personnel different than Federal, and that no logical reason existed for Congress to expect more from Federal employees than from state employees, particularly in light of Congress' repeated statement that the Act was necessary because of States' failure to develop and enforce effective surface mining controls.

OSMRE has evaluated the legislative history of the Act, the text of section 517(g) of the Act, and the statutory definitions of the terms used in that provision and finds that Part 705 as amended by this rulemaking does not exempt any state personnel required to be covered under the Act.

The legislative history of section 517(g) of the Act is brief and inconclusive as to what state personnel are to be covered. A relevant discussion appears in the Congressional Record in 1975. The discussion compared a version of section 517(g) in an earlier bill, applicable even at that time to "employees of the state regulatory authority," to the predecessor of Section 201(f), the parallel provision applicable to employees of OSMRE or to any other Federal employee performing a function or duty under the Act.[1] In offering the amendment, Representative Heckler stated that—

> This amendment would apply the same conflict of interest regulations to the employees of State regulatory agencies and authorities . . . as applied to Federal regulatory officials. . . . [M]y amendment will ensure that appropriate and conforming conflict of interest regulations apply equitably.

121 Cong. Rec. 7046 (Mar. 18, 1975). Although in a discussion of the predecessor to section 201(f), Representative Dingell stated that the term "employee" should be construed broadly at the Federal level (121 Cong. Rec. 13372, May 7, 1975), little consideration was given precisely to whom the prohibition applied at the state level.

Section 517(g) of the Act uses different language to specify affected State employees than the language used in section 201(f) which defines affected Federal employees. Section 517(g) is directed at employees of the State regulatory authority. Section 201(f) applies to employees of OSMRE and any other Federal employee. The narrower language of section 517(g) allows a more restrictive reading of that section than section 201(f), if such an interpretation is rationally implemented.

Congress declared in section 101(f) of the Act that primary governmental responsibility to develop and enforce rules should vest with the States and in section 102(g) of the Act that the Act is intended to assist the States in developing and implementing a program. Thus support exists in the Act for allowing states to specify the governmental units by which they implement their programs. This proposition also is supported by the following passage in the Conference report on an earlier bill: [2]

> . . . many states already have a particular governmental unit regulating surface coal mining industry. The conferees believe that some aspects of the regulatory program might be carried out on the State level by more than one agency, especially where States with surface coal mining agencies have another agency which regulates surface impacts of underground mines.)

H.R. Rep. No. 93–1522, 93d. Cong., 2d. Sess. 83 (1974).

Since 1977 OSMRE has recognized that a number of states already had resource regulatory boards or commission which regulated matters such as surface coal mining, oil drilling or water quality, and a number of states would designate pre-existing multi-function boards to perform surface coal mining regulatory functions under SMCRA. Therefore, in the initial rulemaking for Part 705, OSMRE exempted members of multi-interest boards from the definition of employee. The original rulemaking for Part 705 was adopted immediately after enactment of the Act, and represented the Secretary's contemporaneous interpretation of Congressional intent as to implementation of financial interest restrictions on state personnel under the Act. To require board members now to divest themselves of all surface coal mining interests or else be subject to fine or imprisonment is a regulatory change without compelling need and which is unreasonable where the statute and legislative history do not clearly establish a requirement that members of such boards be subject to such sanctions.

To ensure that the objectives of SMCRA section 517(g) are met, disclosure and recusal requirements will ensure that such members do not act in situations in which there would be a conflict of interest. This interpretation and application of section 517(g) fairly resolves any uncertainties about the intended scope of the statutory provision; the balance struck ensures that conflicts of interest will not taint the actions of State board members, but does not require dismantling of the boards.

Since 1977, states have had considerable experience in implementation of their respective programs. Although certain commenters stated that perceived conflicts of interest or potential for conflicts of interest exist, specific examples were few. OSMRE has concluded that the use of boards representing multiple interests generally has been successful and that problems that have arisen can be properly addressed by the disclosure and recusal provisions adopted herein.

A commenter stated that the proposed changes to Part 705 would cripple a state's ability to regulate coal mining in the state's best interests because OSMRE is attempting to determine who can be appointed by a state to serve on a board. Under the final rule, OSMRE does not intend to determine who may be appointed by a State to an advisory commission or board. The regulation as adopted will optimize state discretion within the statutory framework, as discussed above.

Several commenters emphasized that the State boards and commissions need members with experience and expertise in order to make sound decisions, and that the multi-interest board exemption is essential to make this possible. Other commenters disagreed and took the position that the state regulatory authority will have sufficient staff expertise to advise the board and explain technical and legal matters, and the coal industry is fully capable of adequately representing its position. These commenters also asserted that political or value judgments are best rendered by persons without a vested interest in the industry. As indicated above, OSMRE concludes that the need for stability and expertise is best met by retaining the exclusion for multi-interest boards but utilizing the safeguards set forth in these amendments to avoid conflicts of interest in board proceedings. Many multi-interest boards or commissions were created at the State level prior to the enactment of the Act and represent delicate political judgments and compromises. Where consistent with law, OSMRE should minimize its interference with local decisions and allow such boards and commissions to remain.

One commenter noted that the original rules have been applied to exempt non-advisory bodies, and said that while the Act might not apply to truly advisory bodies, all other boards are covered by SMCRA. OSMRE does not agree. As discussed above, the Act is less than precise concerning its applicability to multi-interest board members, regardless of whether their roles are advisory. The definition of employee consistently has been construed to exclude members of multi-interest boards and commissions even if those members perform decisionmaking functions in accordance with state law. This interpretation will continue, because an exemption is not necessary for solely advisory bodies. Such groups are not covered by Section 517(g), which generally prohibits *decisionmakers* from having any interest in coal mining operations. Under the definition of employee, members of a board established in accordance with State law or regulations to represent various interests such as the coal mining industry, forestry, conservation, agriculture, environmentalists, or landowners, would be considered multi-interest board members.

Another commenter asked for an explanation of OSMRE's legal rationale for the proposed rulemaking. The commenter asked what the rationale and statutory basis was for proposed changes. As mentioned above, the proposal included three different options which were proposed in response to a petition for rulemaking. This preamble sets forth OSMRE's rationale for the option which OSMRE has selected, including: experience with State implementation of the prior regulation, statutory analysis, and policy considerations. The preceding discussion raises certain ambiguities about Congress' precise intent concerning the ambit of section 517(g), and sets forth the policy considerations which form the basis for OSMRE's regulations. Moreoever, the use of a multi-interest board in a state program has already withstood judicial challenge. See *Save Our Cumberland Mountains, et al.* v. *Watt*, No. 80–3723 (M.D. Tenn., 1983), and *Tug Valley Recovery Center* v. *Andrus*, No. 80–2529 (S.D. W.Va., 1982), *aff'd*, 703 F.2d 796 (4th Cir. 1983). Although neither of these cases ruled on the validity of OSMRE's definition of employee at 30 CFR 705.5, both held that the use of multi-interest boards was constitutional and created no due process violations. In addition to Section 517(g), the imposition of recusal and filing requirements for multi-interest board members is also supported by Sections 201(c)(2), 412(a), 501(b) and 503 of SMCRA.

Section 705.11(a) Requirement that members of multi-interest boards file statements of interest.

Section 705.11(a) is amended to require that members of advisory boards and commissions established in accordance with State law or regulations to represent multiple interests, who perform a function or duty under the Act, must file the same statement of employment and financial interests required of state regulatory authority employees. Because a potential for actual conflicts of interest exists involving multi-interest board members, OSMRE is adopting the filing requirement as one of the amendments to address this concern.

A commenter alleged that the proposed rule would impose an increased reporting burden on multi-interest board members. OSMRE acknowledges that these board and commission members will now have to file the same statements as do all other state personnel who are subject to Part 705. However, these disclosure requirements are reasonable and necessary to avoid conflicts of interest and are an appropriate means to implement the purposes of the Act.

A commenter alleged that the disclosure requirement may discourage citizen participation on multi-interest boards because of the filing burden and the invasion of privacy involved in the disclosure requirements. OSMRE does not agree. The administrative procedures involved in filing the statements should be minimal, based on the experience with the filing of such forms by other state personnel. Although perceived privacy interests could be affected, multi-interest board members may welcome the opportunity to verify the absence of any conflict of interest in their actions as public officials. And in any case, the public's interest in avoiding conflicts of interest outweighs any potential reluctance of board members to serve or to provide the information necessary to verify compliance. The financial statements will enable the head of the regulatory authority or OSMRE, either independently or upon request, to determine whether board members are properly acting to recuse themselves in compliance with § 705.4(d). Moreover, the requirement to file financial statements is essential in order to create a record, one purpose of which will be to serve as a basis for determining whether further regulatory changes are desirable.

Section 705.13 Time for filing.

To implement the filing requirement, § 705.13 will be extended to cover members of advisory commissions or boards designated to represent multiple interests. Inasmuch as these regulations are effective on November 17, 1986, multi-interest board members who are newly subject to the requirement to file a statement of employment and financial interests initially will be required to file on (Insert: date 150 days from the date of publication.) Additionally, unless the multi-interest board members are subject to § 705.13 (b) or (c), they will need to file their statements annually on February 1, as set forth in 30 CFR 705.13(a)(2).

Section 705.15 Where to file.

To implement the filing requirement, a conforming amendment is included in 30 CFR 705.15. This amendment specifies that statements that are required to be filed by multi-interest board members under § 705.11 should be filed with the head of the state regulatory authority or other official so designated under state law or regulation.

III. Procedural Matters

Paperwork Reduction Act

The information collection requirements in this final rule were approved by the Office of Management and Budget under 44 U.S.C. 3507 and are assigned Approval Number 1029–0067. The information is needed to meet the requirements of 517(g) of Public Law 95–87, and will be used to assess that no employee of the State regulatory

[1] The provision was originally offered as an amendment which would permit state regulatory authority employees a *de minimus* exclusion from conflict of interest prohibitions, for ownership of up to 100 shares of coal-related stock. This exclusion was the same as had been proposed for Federal employees. Both state and Federal *de minimus* exclusions were deleted from SMCRA.

[2] This earlier bill, a precursor to SMCRA, was passed by Congress but vetoed by the President for unrelated reasons.

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authority and no member of an advisory board or commission representing multiple interests performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operations. A technical change is being made to 30 CFR 705.10 to reflect that the relevant section of the Act is section 517(g), and not section 507(g) as erroneously appears in § 705.10.

Executive Order 12291

The DOI has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. This rule is directed at persons in State government rather than at members of the coal industry. Thus the economic effects of this rule are not major.

Regulatory Flexibility Act

The DOI certifies that this document will not have a significant economic effect on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under Public Law 96–354. This document will not impose any new requirements on surface coal mining operators.

Author

The author of this regulation is Peggy Moran, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue N.W., Washington, DC 20240; Telephone: 202 343–4665 (Commercial or FTS).

National Environmental Policy Act

This final rule is categorically excluded from the NEPA (National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.) process under 40 CFR 1507.3(b) and section 8.4B(16) of Appendix 8, DOI Department Manual (516 DM 6).

List of Subjects in 30 CFR Part 705

Conflict of interest, Coal mining, Surface mining, Underground mining

Accordingly, 30 CFR Part 705 is amended as set forth below:

Dated: August 4, 1986.

James E. Carson,

Acting Assistant Secretary for Land and Minerals Management.

PART 705—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 705 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 et seq.).

2. Section 705.4 is amended by adding paragraph (d) to read as follows:

§ 705.4 Responsibility.

* * * * *

(d) Members of advisory boards and commissions established in accordance with State laws or regulations to represent multiple interests, who perform a function or duty under the Act, shall recuse themselves from proceedings which may affect their direct or indirect financial interests.

3. Section 705.10 is revised to read as follows:

§ 705.10 Information collection.

The information collection requirement contained in 30 CFR 705.11 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0067. The information is being collected on Form OSM 23 to meet the requirement of section 517(g) of Pub. L. 95–87, which provides that no employee of the State regulatory authority shall have direct or indirect financial interest in any underground or surface coal mining operation. This information will be used by officials of the State regulatory authority agency to determine whether each State employee complies with the financial interest provisions of Pub. L. 95–87. The obligation to respond is mandatory.

4. Section 705.11 is amended by revising paragraph (a) to read as follows:

§ 705.11 Who shall file.

(a) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. Members of advisory boards and commissions established in accordance with State laws or regulations to represent multiple interests, who perform a function or duty under the Act, must file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Head of the State Regulatory Authority not to involve performance of any function or duty under the Act or who is no longer employed by the State Regulatory Authority at the time a filing is due, is not required to file a statement.

* * * * *

5. Section 705.13 is revised to read as follows:

§ 705.13 When to file.

(a) Employees and members of advisory boards and commissions representing multiple interests performing functions or duties under the Act shall file:

(1) Within 120 days of the effective date of these regulations; and

(2) Annually on February 1 of each year, or at such other date as may be agreed to by the Director, provided that such alternative date will allow sufficient time to obtain information needed by the Director for his or her annual report to the Congress.

(b) New employees and new members of advisory boards and commissions representing multiple interest hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(c) New employees and new members of advisory boards and commissions representing multiple interests are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 2, 1986 would file a statement on that date. Because December 2 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 1, 1988.

6. Section 705.15 is revised to read as follows:

§ 705.15 Where to file.

The head of the State Regulatory Authority shall file his or her statement with the Director. All other employees and members of advisory boards and commissions representing multiple interests, as provided in § 705.11, shall file their statements with the head of the State Regulatory Authority or such other official as may be designated by State law or regulation.

[FR Doc. 23462 Filed 10–16–86; 8:45 am]

BILLING CODE 4310–05–M

federal register

Friday
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Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

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CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS

October 1, 1986

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of October 1, 1986, of 21 deferrals contained in the first special message of FY 1987. There were no rescissions proposed. This message was transmitted to the Congress on September 26, 1986.

Rescissions (Table A and Attachment A)

As of October 1, 1986, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of October 1, 1986, $1,829.6 million in 1987 budget authority was being deferred from obligation and $6.0 million in 1987 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1987.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the Federal Register listed below:

Vol. 51, FR p. 35976, Tuesday, October 7, 1986

James C. Miller III
Director

TABLE A

STATUS OF 1987 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

****

TABLE B

STATUS OF 1987 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	1,835.6
Routine Executive releases through October 1, 1986 (OMB/Agency releases of $0 and cumulative adjustments of $0)	0
Overturned by the Congress	0
Currently before the Congress	1,835.6 a/

a/ This amount includes $6.0 million in outlays for a Department of the Treasury deferral (D87-21).

Attachments

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Attachment A - Status of Rescissions - Fiscal Year 1987

As of October 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1987

As of October 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 10-1-86
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	087-1	95,000		9-26-86					95,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	087-2	111,202		9-26-86					111,202
Timber salvage sales	087-3	29,731		9-26-86					29,731
Cooperative work	087-4	526,938		9-26-86					526,938
Gifts, donations, and bequests for forest and rangeland research	087-5	200		9-26-86					200
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	087-6	2,350		9-26-86					2,350
Family Housing									
Family housing, Defense	087-7	76,943		9-26-86					76,943
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation	087-8	1,065		9-26-86					1,065
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	087-9	165		9-26-86					165
Southwestern Power Administration, Operation and maintenance	087-10	7,554		9-26-86					7,554

DEPARTMENT OF HEALTH AND HUMAN SERVICES					
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program)	DA7-11	2,900	9-26-86		2,900
Social Security Administration Limitation on administrative expenses (construction)	DA7-12	7,073	9-26-86		7,073
DEPARTMENT OF JUSTICE					
Office of Justice Programs Crime victim fund	DA7-13	70,000	9-26-86		70,000
DEPARTMENT OF STATE					
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, Executive	DA7-14	6,100	9-26-86		6,100
Other Assistance for implementation of a Contadora agreement	DA7-15	2,000	9-26-86		2,000
DEPARTMENT OF TRANSPORTATION					
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund)	DA7-16	803,877	9-26-86		803,877
DEPARTMENT OF THE TREASURY					
Office of Revenue Sharing Local government fiscal assistance trust fund	DA7-17	74,149	9-26-86		74,149
Local government fiscal assistance trust fund	DA7-21	5,981	9-26-86		5,981
OTHER INDEPENDENT AGENCIES					
Commission on the Ukraine Famine Salaries and expenses	DA7-18	100	9-26-86		100
Office of the Federal Inspector for the Alaska Natural Gas Transportation System, Salaries and expenses	DA7-19	411	9-26-86		411
Pennsylvania Avenue Development Corporation Land acquisition and development fund	DA7-20	11,873	9-26-86		11,873
TOTAL, DEFERRALS		1,035,613	0	0 0	0 1,035,613

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (DA7-21) of outlays only.

[FR Doc. 86-23446 Filed 10-16-86; 8:45 am]
BILLING CODE 3195-01-C

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Part V

Department of the Interior

Minerals Management Service

Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Sulphur Lease Sale; Call for Information and Nominations

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UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Central and Western Gulf of Mexico
Outer Continental Shelf (OCS) Sulphur Lease Sale

CALL FOR INFORMATION AND NOMINATIONS

Introduction

Since 1976, sulphur consumption in the United States has exceeded supply, and the price has recently risen to the point where the sulphur producing industry is interested in expanding Outer Continental Shelf (OCS) operations. A June 3, 1986, Federal Register Notice responded to this interest by requesting comments on the desirability of conducting a Federal OCS sulphur lease sale in the Gulf of Mexico. The Notice included a brief history of sulphur leasing in the Central and Western Gulf areas. Respondents were asked to provide information on production technology and possible leasing strategies in recognition of the fact that the economics and technology of sulphur production have greatly changed since the last sulphur lease sale in 1969. The responses to the initial Notice have led to the issuance of this Call for Information and Nominations as discussed below.

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the OCS Lands Act (OCSLA) (43 U.S.C. 1331-1356 (1982)), as amended by the OCS Lands Act Amendments of 1985 (100 Stat. 147), and regulations appearing at 30 CFR 256 with regard to a proposed OCS sulphur lease sale tentatively considered for 1987. This information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decision points in the leasing process. It should be recognized that this Call does not indicate a preliminary decision to hold a lease sale.

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for sulphur development. Second, comments on possible environmental effects and use conflicts will be used in the analysis of environmental conditions in the proposed sale area. Together, these two considerations will allow a preliminary determination of the potential advantages and disadvantages of sulphur exploration and development both to the region and to the Nation. Thus, key decisions can be made in connection with the next step in the planning process--Area Identification--to resolve conflicts by selecting areas only where there is sufficient information to justify that action. The Area Identification selects the blocks to be analyzed and is scheduled for December 1986. At that time the decision will be made on whether to proceed further. If there is a decision to proceed, a third purpose for this Call will be to use the comments collected to initiate scoping procedures and to help identify and analyze alternatives to the proposed action. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used in understanding and considering ways to avoid or mitigate any potential conflicts between offshore sulphur activities and other offshore activities (including oil and gas operations) and State Coastal Management Programs (CMP).

Description of Area

The general area of this Call covers the Central and Western portions of the Gulf of Mexico which lie between approximately 88° W. longitude on the east and approximately 97° W. longitude on the west and extends from the Federal-State boundaries seaward to approximately 26° N. latitude. The entire Call area is offshore the States of Texas, Louisiana, Mississippi, and Alabama. Although this area constitutes the Central and Western Gulf of Mexico Planning Areas, the DOI at this stage is focusing attention on blocks lying in waters up to 400 feet in depth.

The following list names the Leasing Maps and the OCS Official Protraction Diagrams used in identifying this Call area. These maps and diagrams may be purchased from the Public Information Unit, Gulf of Mexico OCS Region, at the address stated below under "Instructions on Call."

1. Central Gulf of Mexico (CGCM)

Leasing Maps

Outer Continental Shelf Leasing Maps - Louisiana Nos. 1 through 12.
This set of 27 maps sells for $17.00.

Outer Continental Shelf Official Protraction Diagrams

These diagrams sell for $2.00 each.

NH 15-12	Ewing Bank	December 2, 1976
NH 16-4	Mobile	April 19, 1983
NH 16-7	Viosca Knoll	December 2, 1976
NH 16-10	Mississippi Canyon	December 2, 1976
NG 15-3	Green Canyon	December 2, 1976
NG 15-6	Walker Ridge	December 2, 1976
NG 16-1	Atwater Valley	November 10, 1983
NG 16-4	(No Name)	December 2, 1976

2. Western Gulf of Mexico (WGOM)

Leasing Maps

Outer Continental Shelf Leasing Maps - South Texas Nos. 1 through 4.
This set of seven maps sells for $5.00.

Outer Continental Shelf Leasing Maps - East Texas Nos. 5 through 8.
This set of nine maps sells for $7.00

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Outer Continental Shelf Official Protraction Diagrams

These diagrams sell for $2.00 each.

NG 14-3	Corpus Christi	January 27, 1976
NG 14-6	Port Isabel	January 27, 1976
NG 15-1	East Breaks	January 27, 1976
NG 15-2	Garden Banks	December 2, 1976
NG 15-4	Alaminos Canyon	March 26, 1976
NG 15-5	Keathley Canyon	December 2, 1976

Areas Deferred from this Call

In the High Island Area, East Addition, South Extension, Flower Garden Blocks A-375 and A-398 have been deferred from this Call.

Instructions on Call

Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have considered for sulphur leasing. Boundaries of the Call area are shown on the standard Call map available free from the Public Information Unit, Gulf of Mexico OCS Region, Minerals Management Service (MMS), 1420 South Clearview Parkway, New Orleans, Louisiana 70123-2394, telephone (504) 736-2519.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call map. Interest should be shown by nominating individual blocks.

Information concerning locations of interest will be used in determining the areas subject to analysis. In addition to the indications of interest, further consideration of areas for analysis would be based on sulphur potential and environmental, economic, and multiple-use considerations.

Information is requested on the following specific items in relation to sulphur leasing.

1. Suggested methods and technology for transporting sulphur to shore.

2. Suggested lease terms and conditions.

3. Suggested period of lease (years).

4. Current and projected sulphur market data and information. Contribution of potential OCS sulphur resources to the domestic supply.

5. The technology presently available or anticipated for exploration and development operations in deepwater areas.

6. Particular geological, environmental, biological, archaeological, socioeconomic conditions, conflicts, or other information which might bear upon the potential leasing and development of particular areas.

7. Possible conflicts between future OCS sulphur activities that may result from the proposed sale and State CMP's. If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict.

The DOI is evaluating methods for transferring the rights to use OCS salt in the extraction of the sulphur.

Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to outline the subject area on the standard Call map.

Indications of interest and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed Sulphur Leasing" or "Comments on the Call for Information and Nominations for Proposed Sulphur Leasing."

The standard Call map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the above New Orleans address.

The State of Louisiana has expressed an interest in leasing of sulphur on State submerged lands. The Minerals Management Service has agreed to facilitate their initial information-gathering as to industry interest in such lands. Those who are interested in areas for sulphur leasing or who wish to comment on the questions listed above for State lands offshore Louisiana are urged to reply directly to the State at the following address:

Louisiana State Address: Dr. Charles G. Groat
Louisiana Geological Survey
P.O. Box G, University Station
Louisiana State University
Baton Rouge, Louisiana 70893

Discussions are continuing with the State of Texas concerning sulphur leasing on State submerged lands. Anyone having interest or comments relating to leasing in Texas State waters should provide that information directly to the State. Please note that the Federal Government cannot assure protection of proprietary information provided directly to a State.

Existing Environmental Information

Although environmental impacts from sulphur operations differ somewhat from oil and gas operations, substantial baseline environmental data have been collected through numerous environmental impact statements (EIS's) for oil and gas leasing activities in the Gulf of Mexico since 1970. A Regional EIS also supplemented the overall environmental data base in 1983, and a new Gulfwide Regional EIS planned for publication in 1987 is presently in preparation.

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Data from the Environmental Studies Program have provided extensive information regarding the Central and Western Gulf of Mexico Planning Areas. The DOI initiated studies in these areas in 1973. The emphasis, including continuing studies, has been on geological mapping, environmental characterization of biologically sensitive habitats, physical oceanography, ocean circulation modeling, and ecological effects of OCS activities. These studies will provide useful information for a number of environmental issues, including topographic features, biological communities on the continental slope, coastal wetland habitats, and barrier islands.

A complete listing of available study reports and information for ordering copies can be obtained from the Public Information Unit, Gulf of Mexico OCS Region, at the address stated under "Instructions on Call" or by telephone at (504) 736-2519. The reports may also be ordered for a fee directly from the National Technical Information Service by calling (703) 487-4650. The mailing address is U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico OCS Regional Office at the address stated under "Instructions on Call" or by telephone at (504) 736-2896.

Future Action

Subject to the Area Identification decision to proceed with the planning process, final delineation of the areas for possible leasing would be made at a later date only after compliance with established Departmental procedures, all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and the OCSLA, as amended. A final Notice of Sale would then be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids would be received and opened.

Director, Minerals Management Service
William D. Bettenberg

Approved:

Assistant Secretary - Land and Minerals Management
J. Steven Griles

OCT 14 1986
Date

[FR Doc. 86-23563 Filed 10-16-86; 8:45 am]
BILLING CODE 4310-MC-M

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Part VI

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations, 34 CFR Part 668, to exempt from selected verification requirements for the 1986–87 and 1987–88 award years, institutions selected by the Secretary to participate in the Institutional Quality Control Pilot Project. The Secretary takes this action because it would be duplicative and unnecessarily burdensome to require institutions participating in the Pilot Project to meet these regulatory requirements.

DATE: Comments must be received on or before November 17, 1986.

ADDRESS: Comments should be addressed to Mr. Fred Sellers, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW., [Room 4318, Regional Office Building No. 3], Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Deborah Cohen (202) 472–4300.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 14, 1986 (51 FR 8946–8974), the Secretary amended the Student Assistance General Provisions regulations, 34 CFR Part 668, by adding a new Subpart E. That subpart established an integrated system for the verification of student aid application information reported by applicants when they apply to have their expected family contribution calculated for the Pell Grant, campus-based [National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant], and Guaranteed Student Loan programs. Collectively, these programs are known as the Title IV, HEA programs. The Secretary issued those regulations to reduce high error rates in data reported by applicants in order to assure, to the maximum extent possible, that eligible applicants receive the correct amount of Title IV, HEA program assistance. The Secretary believes, however, that an institution could also reduce both institutional and student errors in the awarding of Title IV, HEA program assistance if the institution develops and implements a quality control (QC) system with regard to its administration of these programs. To test this assumption, the Secretary has developed the Institutional Quality Control Pilot Project.

Institutional Quality Control Pilot Project

The Institutional Quality Control Pilot Project (Pilot Project) is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Title IV, HEA programs. Under such a quality control system, the institution evaluates its current procedures for administering the Title IV, HEA programs, ("management assessment component"), identifies the errors that result from its procedures ("error measurement process component"), and designs corrections to those procedures that will enable it to eliminate or significantly reduce those errors ("corrective actions process component"). Using these quality control components, an institution participating in the Pilot Project will be able to develop procedures tailored to meet the particular problems it faces in determining the appropriate amount of Title IV, HEA program assistance its students need and in disbursing those funds to them in a timely manner.

The Secretary notes that quality control is dependent on a successful quality assurance function. Quality assurance is the periodic verification, audit, and evaluation of quality control procedures conducted by an independent third party, which could be either an auditor or ED staff, to ensure that QC procedures are adequate and effective. Successful implementation of effective quality assurance functions is considered essential to success of the Pilot Project.

In order to provide the flexibility needed by a participating institution to develop its own QC procedures and to avoid burdening a participating institution with requirements that it may not need to undertake under the QC procedures it develops, the Secretary is proposing to exempt a participating institution from various requirements under the verification regulations for the 1986–87 and 1987–88 award years. The requirements that the Secretary proposes to exempt include the establishment of policies and procedures to verify the application information of applicants in § 668.53(a)(1) through (a)(4); the requirements for selecting applicants for verification in § 668.54(a)(1), (a)(2), and (a)(4); the items in § 668.56 to be verified by applicants selected for verification under § 668.54(a)(1) or (2); the documentation required by applicants selected for verification in § 668.57, except that a participating institution shall continue to require an applicant that it has selected for verification to submit to it a copy of the income tax return, if filed, of the applicant, his or her spouse and his or her parents, if the income reported on the income tax return was used in determining the expected family contribution; and deadlines in § 668.60(a) by which applicants selected for verification must submit the documentation required under § 668.57. The Secretary notes that institutions participating in the Pilot Project remain subject to §668.16(f) of the Student Assistance General Provisions and they must resolve any inconsistent information regarding the information on a student's application.

The Secretary will select institutions to participate in the Pilot Project on the basis of selection criteria published in the Federal Register. Proposed selection criteria, additional information concerning the Pilot Project and the deadline date for applying to participate in the Pilot Project are being published in this issue of the Federal Register. If an institution is selected to participate in the Pilot Project, the Secretary proposes to exempt it from the verification requirements described above from the date of its selection through the end of the 1987–88 award year.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. A maximum of 102 institutions will be selected on a voluntary basis to participate in the Pilot Project.

Paperwork Reduction Act of 1980

These proposed regulations do not contain any information collection requirements and are therefore not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) which governs such requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before the 30th day after publication of this document will be considered before the Secretary issues final regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4318, ROB #3, 7th and D Streets SW., Washington, DC 20202, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291, and the overall requirement of reducing regulatory burden, public comment is especially invited on further opportunities to reduce regulatory burden in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education loan programs—education, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: October 10, 1986.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assitance Numbers: Number 84.007, Supplemental Educational Opportunity Grant Program; Number 84.032, Guaranteed Student Loan Program; Number 84.033, College Work-Study Program; Number 84.038, National Direct Student Loan Program; Number 84.063, Pell Grant Program)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. In § 668.51, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 668.51 General.

* * * * *

(c) *Institutional Quality Control Pilot Project.* (1) For the 1986–87 and 1987–88 award years, the Secretary exempts institutions selected to participate in the Institutional Qulaity Control Pilot Project from the requirements contained in the following sections:

(i) Section 668.53(a)(1) through (4).

(ii) Section 668.54(a)(1), (2), and (4).

(iii) Section 668.56.

(iv) Section 668.57, except that an institution shall require an applicant that it has selected for verification to sumbit to it a copy of the income tax return, if filed, of the applicant, his or her spouse, and his or her parents, if the income reported on the income tax return was used in determining the expected family contribution.

(v) Section 668.60(a).

(2) For the purpose of this section, the Institutional Quality Control Pilot Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Title IV, HEA programs. Under such a quality control system, the institution must evaluate its current procedures for administering the Title IV, HEA programs ("management assessment component"), identify the errors that result from its current procedures ("error measurement process component") and design corrections to its procedures that will enable it to eliminate or significantly reduce those errors ("corrective actions process component").

* * * * *

[FR Doc. 86–23541 Filed 10–16–86; 8:45 am]

BILLING CODE 4000–01–M

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Part VII

Department of Education

Institutional Quality Control Pilot Project; Notice

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DEPARTMENT OF EDUCATION

Institutional Quality Control Pilot Project

AGENCY: Department of Education.

ACTION: Notice of the Proposed Selection Criteria and Deadline Date for Participation in the Institutional Quality Control Pilot Project.

SUMMARY: The Secretary proposes selection criteria to be used to select institutions to participate in the Institutional Quality Control Pilot Project (Pilot Project). The Secretary further establishes a deadline date by which an institution of higher education that wishes to participate in the Pilot Project must submit its application to the Secretary.

The Pilot Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Title IV, HEA programs. The Title IV, HEA programs include the Pell Grant, campus-based [National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant], and Guaranteed Student Loan programs.

DATES: Comments on the proposed selection criteria must be received by November 17, 1986.

There are no formal ED application forms that must be used to apply to participate in the Pilot Project. An institution applies to participate in the Pilot Project by sending a written notice to the Secretary of its request to participate. An institution must submit its request to participate in the Pilot Project by November 17, 1986.

ADDRESS: Comments on the proposed selection criteria and requests to participate in the Pilot Project may be mailed to Jerry Whitlock, Division of Quality Assurance, U.S. Department of Education, 400 Maryland Avenue, SW., [Regional Office Building 3, Room 5082], Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Jerry Whitlock, (202) 245-7505.

Program Information

The Pilot Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Title IV, HEA programs. Under such a quality control system, the institution evaluates its current procedures for administering the Title IV, HEA programs ("management assessment component"), identifies the errors that result from its current procedures ("error measurement process component"), and designs corrections to its procedures that will enable it to eliminate or significantly reduce those errors ("corrective actions process component"). Using these quality control components, an institution participating in the Pilot Project will be able to develop procedures tailored to meet the particular problems and errors it faces in determining the appropriate amount of Title IV, HEA program assistance its students need and in disbursing those funds to them in a timely manner.

The Secretary notes that quality control is dependent on a successful quality assurance function. Quality assurance is the periodic verification, audit, and evaluation of quality control procedures conducted by an independent third party, which could be either an auditor or ED staff, to ensure that QC procedures are adequate and effective. Successful implementation of effective quality assurance functions is considered essential to success of the Pilot Project.

The criteria the Secretary is proposing to use to select institutions to participate in the Pilot Project are based upon information already in the possession of ED. Therefore, an institution's application to participate will consist solely of its written request to participate. An institution should base its decision to apply on the proposed selection criteria. If, as a result of public comment, the Secretary changes the selection criteria, he will extend the closing date to allow institutions additional time to apply under the new criteria.

The Pilot Project will run through the end of the 1987–88 award year. If an institution is selected to participate in the Pilot Project, the Secretary believes that the institution should be exempt, for the period of its participation in the Pilot Project, from selected requirements set forth in the verification regulations of Subpart E of the Student Assistance General Provisions, 34 CFR Part 668, Subpart E. Therefore, in this issue of the **Federal Register**, the Secretary is proposing to amend § 668.51 of the Student Assistance General Provisions regulations to exempt, for the 1986–87 and 1987–88 award years, institutions participating in the Pilot Project from selected verification requirements.

Proposed Selection Criteria

The Secretary initiated the Pilot Project during the 1985–86 award year, and 42 institutions participated in the Pilot Project in that year. These institutions focused on the first two components of the quality control system. In order not to lose the benefits derived from these institutions' participation in the Pilot Project, the Secretary proposes to permit each of these institutions to continue in the Pilot Project if it so desires. To administer the Pilot Project properly, the Secretary has determined that the number of institutions participating in the Pilot Project should not exceed 102; therefore, if all 42 of the current participants choose to remain in the Pilot Project, the maximum number of institutions the Secretary would select under these selection criteria is 60.

The Secretary has determined that for the Pilot Project to provide a model that other institutions can follow, the institutions selected to participate in the Pilot Project should have experience in all the Title IV, HEA programs and in dealing with a significant number of students and Federal dollars in all the programs. Therefore, the Secretary is proposing selection criteria based on the number of programs in which an institution participates, the number of recipients at those schools, and the total number of dollars received by an institution.

The Secretary developed these criteria so that information used to evaluate an applicant will already be in the possession of ED. Therefore, when applying to participate in the Pilot Project, an applicant would not have to submit any information with its application.

I. In order to be selected to participate in the Pilot Project, an institution would have to—

1. Participate in the Pell Grant, campus-based [National Direct Student Loan, College Work-Study and Supplemental Educational Opportunity Grant] and GSL programs during the 1986–87 award year and have participated in all five programs during the 1984–85 and 1985–86 award years;

2. Have had, in the aggregate, at least 2000 Pell Grant and campus-based program recipients during the 1984–85 award year;

3. Have awarded, in the aggregate, at least $2 million under the Pell Grant and campus-based programs in the 1984–85 award year; and

4. Have submitted and had approved by ED its most recent audit report in which the reported liability was less than $150,000.

II. If not more than 60 applicants meet the above criteria, the Secretary would select all the applicants who meet the criteria to participate in the Pilot Project.

III. If more than 60 applicants meet the above criteria, the Secretary would select applicants on the basis of the following additional criteria.

The Secretary believes that new Pilot Project participants should have a history of proper administration of the Title IV, HEA programs. Therefore, the Secretary is proposing criteria related to potential loss rates in the National Direct Student Loan (NDSL) Program and program review findings. In addition, the Secretary believes that an institution's participation in the procedure of electronic transmission of data under the Pell Grant or campus-based programs evidences a sophistication needed for participation in the Pilot Project. Therefore, the Secretary has included a criterion with regard to participation in the electronic data transmission projects of the Pell Grant and campus-based programs.

To be selected, an applicant would have to score at least 50 points out of a potential 80 points. If more than 60 applicants score at least 50 points, the Secretary would select those applicants that score the highest number of points. The proposed selection criteria and points are:

1. *Findings of the latest ED program review.* (Maximum 15 points) An applicant will receive the following number of points based upon the findings of the latest program review conducted by ED at the institution:

Findings and Points

For each award year covered by the latest program review—

- compliance with all applicable statutes and regulations—15
- failure to comply with applicable statutory and regulatory requirements, which results in an assessed liability of an amount equal to not more than 15 percent of the amount received by the institution under the Pell and campus-based programs for that year—8
- failure to comply with applicable statutory and regulatory requirements, which results in an assessed liability of an amount equal to more than 15 percent of the amount received by the institution under the Pell and campus-based programs for that year—0

2. *The institution's full-time equivalent (FTE) enrollment for the 1984–85 award year.* (Maximum 20 points) An applicant will receive the following number of points based upon its FTE enrollment for the 1984–85 award year:

FTE enrollment	Points
Above 10,000	20
5001 to 10,000	15
2000 to 5000	10
Fewer than 2000	0

3. *Compliance with the Pell Grant Program reporting requirements.* (Maximum 20 points)

An applicant will receive 20 points if it complies with all the deadline dates for the receipt of institutional payment summary (IPS) documents for the 1985–86 award year which were set forth in Table IV of the Pell Grant Program deadline date notice published in the **Federal Register** of February 25, 1986, 51 FR 6583–6585.

4. *The applicant's potential loss rate under the National Direct Student Loan (NDSL) Program as of June 30, 1985.* (Maximum 15 points) A potential loss rate under the NDSL Program is calculated by dividing the cumulative principal amount of loans in default (including those loans that have been assigned or referred to ED for collection) by the cumulative principal amount of loans that have entered repayment. An applicant will receive the following number of points based upon its potential loss rate:

Potential loss rate (percent)	Points
0 to 10	15
10.1 to 15	7
15.1 to 20	3
Above 20	0

5. *Participation in ED electronic data transmission projects.* (Maximum 10 points)

An applicant will receive 10 points for participating in award year 1985–86 in either the "Pell Grant Program Electronic Pilot Project" or the campus-based programs' "Gateway Electronic FISAP" if: With regard to the Pell Grant Program, the institution has a direct electronic hook-up to the Pell Grant Program Central Processing Facility; and, with regard to the campus-based programs, the institution has a direct electronic hook-up to the ED-designated facility or provides the complete floppy disk to that facility. Under the Pell Grant Program, the Electronic Pilot Project is an electronic exchange system between the Secretary and an institution under which a student is able to correct or verify information contained on his or her SAR at the institution he or she is attending and the institution is able to print out a Student Aid Report for the student which is based on the corrected or verified information. Under the campus-based programs, the Gateway Electronic FISAP is an electronic system under which an institution is able to submit a Fiscal Operations Report and Application to Participate (FISAP) to the Secretary.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed criteria. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before the 30th day after publication of this document will be considered before the Secretary issues final selection criteria. All comments submitted in response to these proposed criteria will be available for public inspection, during and after the comment period, in Room 5082, ROB #3, 7th and D Streets, SW., Washington, DC 20202, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

(Authority: 20 U.S.C. 1094)

Dated: October 10 1986.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Number 84.007, Supplemental Educational Opportunity Grant Program; Number 84.032, Guaranteed Student Loan Program; Number 84.033, College Work-Study Program; Number 84.038, National Direct Student Loan Program; Number 84.063, Pell Grant Program)

[FR Doc. 86-23542 Filed 10-16-86; 8:45 am]

BILLING CODE 4000-01-M

VOL
51
ISS
201
OC
17
1986
UMI

federal register

Friday
October 17, 1986

Part VIII

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial of Exclusion Petitions

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3096-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial of Exclusion Petitions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to deny the petitions submitted by nine petitioners to exclude their solid wastes from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to deny certain wastes generated at nine particular facilities from listing as hazardous wastes under 40 CFR Part 261, and revoke the temporary exclusions of certain wastes generated at these nine facilities. Thus, the petitioned waste at the nine facilities being denied exclusions would then be considered hazardous.

The Agency has previously evaluated all nine of these petitions which are discussed in today's notice. Based on our review at that time, these petitioners were all granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions, have been evaluated both for the factors for which the wastes were originally listed, as well as other factors which reasonably could cause the wastes to be hazardous.

DATES: EPA will accept public comments on the proposed exclusions and denials until October 24, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on these proposed decisions by filing a request with Bruce Weddle, whose address appears below, by October 24, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSP/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–86–CHDP–FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; (202) 382–5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is:

(1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetical receptor wells—"compliance points" (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes discussed in today's publication. As a result of this evaluation, the Agency is tentatively denying exclusions for the wastes from nine petitioners.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984 were enacted, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a exclusion. All nine of the exclusions proposed today will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those that requested hearings, if any) are addressed.

Petitioners

The proposed denials published today are for the following petitioners:

American Telephone & Telegraph, North Andover, Massachusetts;

[1] The Agency proposed a similar approach, including a ground water transport model, as part of the proposed toxicity characteristic (see 51 *FR* 21648, June 13, 1986). The Agency, has not completed its evaluation of the comments on this proposal, however. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

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Diamond Shamrock Refining and Marketing Company, Sunray, Texas;
Hill Petroleum Company, Houston, Texas;
L-TEC Welding and Cutting Systems, Ashtabula, Ohio;
Murphy Oil USA, Inc., Superior, Wisconsin;
New Departure Hyatt, Sandusky, Ohio;
Virginia Chemicals, Inc., Bucks, Alabama;
Titan Oil Company, Indianapolis, Indiana;
Virginia Chemicals, Inc., Leeds, South Carolina.

I. American Telephone & Telegraph

A. Petition for Exclusion

American Telephone & Telegraph (AT&T), formerly Western Electric Company, located in North Andover, Massachusetts, is involved in the manufacturing of electronic telephone transmission equipment. In September of 1981, AT&T petitioned the Agency to exclude its de-watered wastewater treatment sludge, presently listed as EPA Hazardous Waste Number F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

Based upon the Agency's review of the petition, AT&T was granted a temporary exclusion for its de-watered wastewater treatment sludge on March 4, 1982.[8] The Agency's basis for granting the exclusion at that time was the low migration potential of cadmium, hexavalent chromium, nickel, lead, and cyanide (complexed). Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider other factors (including additional constituents other than those for which the waste was originally listed), if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f)).

[8] The exclusion applied only to the final treated and de-watered sludge. Furthermore, the exclusion was conditional upon batch testing for total cyanide. If the total concentration exceeded 10 ppm, then the waste had to be covered as daily practice in order to avoid photoconversion of the cyanide to cyanide gas.

In response to the Amendments, AT&T submitted a complete list of raw materials used at the facility and additional analytical testing results on December 7, 1984. As a result, the Agency has re-evaluated AT&T's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) evaluate the waste for additional factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. This notice presents the results of the Agency's re-evaluation of this petition.

In support of their petition, AT&T has submitted a detailed description of its manufacturing and waste treatment processes, including a schematic diagram, total constituent analyses and EP toxicity test results of the filter cake from its vacuum filter press for cadmium, chromium, nickel, and cyanide as well as for the non-listed EP toxic metals; and total oil and grease analyses of the waste.

AT&T manufactures electronic telephone transmission equipment. The manufacturing process uses seven plating lines to deposit copper, nickel, solder (tin, lead), and gold on the electronic components. All parts are cleaned, rinsed, plated, and rinsed.

The spent rinse waters, cleaning solutions, etching and acid/alkali baths, chromium wastes from the recirculating baths, and waste ferrite from the ferrite manufacturing process are all treated at the facility's wastewater treatment works.

Wastewater containing cyanide are batch treated by an alkaline chlorination process and the cyanide is reduced to carbon dioxide and nitrogen. The treated wastewater then flows to a collecting flume and rapid mix tank where it is combined with the rest of the treated wastewaters. Wastewaters containing chromates are reduced with sodium metabisulfate. The reduced chromate wastewater then flows to the collecting flume and then to the rapid mix tank where it is combined with the other treated wastewaters. Spent alkali and acid wastes are combined and neutralized with the addition of either sodum hydroxide or sulfuric acid. The neutralized wastewaters then flow to the collecting flume and the rapid mix tank where they are also combined with the other treated wastewaters. Ferrite waste is pH adjusted to a range of 8.8 to 9.2. The ferrite waste is then combined with the other treated wastewater at the rapid mix tank.

The combined treated wastewaters flow to an aeration tank where ferric chloride (primary coagulant) and a coagulant acid (anionic coagulant) are added in order to promote precipitation of the metals as hydoxides. The wastewater is then clarified and de-watered by a rotary vacuum filter using diatomaceous earth as the filter media. The de-watered sludge is taken off-site for disposal.

AT&T collected a total of five samples (four composites and one grab sample) and analyzed them for total constituent concentration and EP leachate concentrations. The four composite samples consisted of eight hourly grabs (500 ml each) taken each day during the periods of March 31, 1981 through April 3, 1981; April 14, 1981 through April 17, 1981; April 23, 1981 through April 26, 1981; and, April 27, 1981 through May 1, 1981. The one grab sample was taken directly from the rotary vacuum filter.

An additional four grab samples were taken on September 21, 1983 (10 am and 4 pm) and September 28, 1983, and were analyzed for total oil and grease. AT&T claims that the samples collected and analyzed are representatives of any variation of the listed and non-listed constituent concentrations in the waste, since the initial sampling program spanned a five month period and the maunfacturing process does not vary significantly over time (*i.e.*, AT&T claims that it is not a job shop and that it does not have seasonal variations in production).

Tables 1 and 2 show the results of total constituent analyses and EP leachate analyses, as reported by AT&T, for the listed constituents of concern and the non-listed EP toxic metals, respectively. The maximum total oil and grease content of the waste was reported as 0.2 percent.

TABLE 1.—MAXIMUM CONCENTRATION FOR THE LISTED CONSTITUENTS OF CONCERN

Listed constituents	Total Constituent concentrations (mg/kg)	EP leachate concentrations (mg/l)
Cd	4.6	[3] 0.5
Cr (total) [1]	1690	0.1
CN (total)	107	0.05
CN (amenable)	77	[4]
Ni	2130	19.9

[1] Hexavalent chromium is listed as the constituent of concern for this waste; however the concentration of the total chromium is low enough to make the determination of hexavalent chromium unnecessary.
[2] Represents the detection limit. The next highest detected value was 0.026 mg/l.
[3] Not Analyzed.

TABLE 2.—MAXIMUM CONCENTRATION FOR THE NON-LISTED CONSTITUENTS OF CONCERN

Non-Listed constituents	Total Constituent concentrations (mg/kg)	EP leachate concentrations (mg/l)
As	12.6	0.025
Ba	104	6.2
Pb	7800	0.16
Ag	16	0.1
Se	8	[1] 0.2
Hg	11	0.004

[1] Represents the detection limit. Next highest detected value was less than 0.02 mg/l.

AT&T's list of raw materials indicated that formaldehyde was used in the manufacturing process. No analyses for formaldehyde, however, were performed.[4] The list of raw materials did not indicate than any other Appendix VIII hazardous constituents are used in the process or are likely to be formed. AT&T also provided test data which indicated that the waste did not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. AT&T claims to generate a maximum of 1,380 tons of sludge per year.

B. Agency Analysis and Action

AT&T has not demonstrated to the Agency that its waste treatment system generates a non-hazardous sludge. Specifically, the date provided by AT&T indicate that the sludge contains hazardous concentrations of nickel and possibly cadmium, selenium and formaldehyde. The Agency, however, is proposing to deny AT&T's petition solely on the basis of the hazardous concentrations of nickel.[5]

The Agency believes that the petitioner has adequately characterized the sludge from the rotary vacuum filter and that the samples analyzed reflect any day-to-day variation in production. The Agency also believes AT&T's claim that the manufacturing and treatment processes are unform and consistent is well substantiated since the facility does not perform as a job shop or have seasonal product variation. Thus, we consider the sampling procedures used by AT&T to be adequate, and as such, they showed no significant variation in constituent concentrations. The Agency, therefore, concludes that the analytical information provided by AT&T is representative of their de-watered sludge.

[4] See the Agency Analysis section for an explanation of why analyses for formaldehyde were not requested.

[5] Since the Agency is proposing to deny AT&T's petition, we have not notified AT&T of our concerns regarding both the high detection limits used in the analyses of EP leachate concentration of cadmium or selenium, and the need for total constituent analyses for formaldehyde.

The Agency has evaluated the mobility of the constituents from AT&T's rotary vacuum filter sludge using the vertical and horizontal spread (VHS) model.[6] The Agency's evaluation of AT&T's 1,380 tons of de-watered sludge using the maximum EP leachate values for the listed constituents of concern and non-listed EP toxic metals generated the compliance point concentrations exhibited in Tables 3 and 4, respectively.

TABLE 3.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS FOR THE LISTED CONSTITUENTS OF CONCERN (PPM)

Listed constituents	Compliance point concentrations	Regulatory standards
Cd	0.043	0.01
Cr	0.006	0.05
CN	0.004	0.2
Ni	1.85	0.35

TABLE 4—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS FOR THE NON-LISTED CONSTITUENTS OF CONCERN (PPM)

Non-listed constituents	Compliance point concentrations	Regulatory standards
As	0.002	0.05
Ba	0.52	1.0
Pb	0.013	0.05
Ag	0.008	0.05
Se	0.016	0.01
Hg	0.001	0.002

The VHS model predicted that the compliance point concentrations of arsenic, barium, mercury, chromium, lead, and silver were all below the National Interim Primary Drinking Water Standards. Compliance point concentrations of cyanide also did not exceed the U.S. Public Health Service's suggested drinking water standard.[7] In addition, the total constituent concentration of cyanide and reactive cyanide are both well below the Agency's interim level of 250 ppm.[8]

The compliance point concentrations (generated by using the detection limits) of cadmium and selenium, however, exceed the National Interim Primary Drinking Water Standards. Additionally, nickel also exceeded the Agency's interim regulatory standard.[9]

The Agency is concerned with the high detection limits achieved in the EP leachate analyses for cadmium and selenium and the lack of analyses for formaldehyde. (As stated above, however, we have not requested additional analyses (which would have been required if the Agency were to propose an exclusion) necessary to correctly quantify the EP leachate levels of cadmium and selenium, and the total constituent concentration of formaldehyde.)

The potentially mobile concentration of nickel has caused the Agency to conclude that AT&T's waste is hazardous in a landfill disposal scenario (as proposed by the petitioner). The Agency concludes that the waste generated at AT&T's North Andover, Massachusetts facility, could present a significant hazard to both human health and the environment. The Agency believes that the waste should therefore be considered hazardous, and again subject to regulation under 40 CFR Parts 262 through 265. The Agency, therefore, proposes to deny AT&T's application for final exclusion and hereby proposes to revoke AT&T's temporary exclusion.

[6] See 50 FR 7882, Appendix I (February 28, 1985) for a detailed explanation of the development of the VHS model for use in the delisting program. See also 50 FR 48896, November 27, 1985 for the final version of the VHS model.

[7] Drinking Water Standards, U.S. Public Health Service, Publication No. 956, 1962. (0.2 ppm)

[8] See internal Agency memorandum dated July 12, 1985, regarding "Interim Agency Threshold for Toxic Gas Generation" (in the RCRA public docket).

[9] See 50 FR 20247 (May 15, 1985) for a complete description of the development of the Agency's interim regulatory standard for nickel (0.35 ppm).

II. Diamond Shamrock

A. Petition for Exclusion

Diamond Shamrock Refining and Marketing Company (Diamond Shamrock) performs petrochemical processing at its McKee Plants refinery near Sunray, Texas. These processes include crude oil refining, natural gas processing, and ammonia production. Diamond Shamrock has petitioned the Agency to exclude several hazardous wastes produced from these processes, including EPA Hazardous Waste No. K048—Dissolved air flotation (DAF) float from the petroleum refining industry; EPA Hazardous Waste No. K049—Slop oil emulsion solids from the petroleum refining industry; and EPA Hazardous Waste No. K051—API separator sludge from the petroleum refining industry. The listed constituents of concern for these wastes are hexavalent chromium and lead.

On February 28, 1982, Diamond Shamrock was granted a temporary exclusion for the K048, K049, and K051 wastes generated at its Sunray, Texas plant. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to

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consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such factors are present and could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. § 6921(f).) As a result, the Agency has re-evaluated Diamond Shamrock's petition to: (1) Determine whether the temporary exclusion should be made based on the original listing criteria; and (2) determine if the waste is non-hazardous with respect to factors and toxicants other than the original listing criteria. Today's notice is the Agency's re-evaluation of Diamond Shamrock's petition. Additional information was requested from Diamond Shamrock in order to more fully characterize these refinery wastes. Diamond Shamrock has provided additional information only for the currently generated K048 and K051 waste streams, and only these wastes have been evaluated by the Agency.

In support of its petition, Diamond Shamrock submitted a description of the manufacturing and treatment processes, including schematic diagrams; total constituent and EP toxicity test results for total chromium, hexavalent chromium, and lead; and results from analyses for reactive sulfide. Diamond Shamrock also submitted Oily Waste Extraction Procedure (OWEP) toxicity and total constituent test results for arsenic, barium, cadmium, chromium, lead, nickel, mercury, selenium, and silver; OWEP and total constituent test results for antimony, beryllium, cobalt, and vanadium; and test results from a gas chromatography/mass spectroscopy (GC/MS) scan for organic Appendix VIII constituents characteristically found in refinery wastes. The Agency requested much of this information, as noted above, to determine whether hazardous constituents other than those for which the waste was originally listed are present in the waste.

Diamond Shamrock produces a number of chemical and petrochemical products, including liquified gases, gasoline and diesel fuels, sulfuric acid and other acids, ammonia, and asphalt. The refining processes at the McKee Plants generate both an oily waste stream and a non-oily waste stream, each of which is served by a separate sewer system. The oily sewer collects all wastewaters which may contain oil and oily sludges, including refinery process wastes and desalter sludges. The oily waters are routed to a tandem set of API separators, where oil is recovered and conveyed to a slop oil tank before it re-enters the refinery. Oily sludges from the API separator are sent to a thickener. Oily wastewaters are then combined with non-oily wastewaters such as acid plant waters and caustic scrub waters (which have been pre-treated by adjustment of pH and skimming of floating oils), and sent to an equalization basin. Wastewaters are added into this basin from cooling tower blowdown and ammonia production. Solids that settle out are pumped periodically to the lime pits for disposal. The effluent is then rapid-mixed with a coagulant, and pH is adjusted. A polymer is also added prior to flocculation of solids. Dissolved air flotation (DAF) is used to remove particulate matter from the wastewater; the particulate fraction is collected, agitated, and pumped to the oily sludge thickener with the API separator sludges. The clarified oily wastewater is sand-filtered to remove remaining suspended materials before final disposal in an injection well. Thickened oily sludges are spead on the facility's landfarm.

In its initial (1981) presentation, Diamond Shamrock collected four samples of DAF float, four slop oil samples from the slop oil pits on-site and four samples of fresh slop oil emulsion solids, and four API separator sludge samples from the lime pits and from the API separator itself. The Agency determined that the original analyses performed on these sludges in support of the petition were insufficient, and requested additional information from Diamond Shamrock. Diamond Shamrock submitted test results from OWEP and total constituent analyses of single samples of DAF float and API separator sludge from the McKee Plants refinery. The Agency is, therefore, unable to fully evaluate the petitioned wastes (K048 and K051) or the slop oil emulsion solids (K049) from this facility due to lack of information.

The maximum concentrations of the listed constituents found by OWEP leachate analysis and total constituent analysis of each of the sample wastes are presented in Table 1. The maximum OWEP leachate concentrations and total constituent concentrations of the non-listed constituents are presented in Table 2. Data is presented from separate calculations made by Diamond Shamrock of the mobile metal concentration (MMC) of the sludges, using prefactors of 1 and 20 adjustments to account for the oil volume in the extraction.[10] Oil and grease was found to be present in these wastes at concentrations ranging from 10–23 percent. Diamond Shamrock's original (1981) EP data was not considered in the Agency's evaluation due to potential interferences resulting from the high oil and grease levels.

TABLE 1.—MAXIMUM CONCENTRATIONS [1]

Listed constituents	DAF float			API separator		
	Corrected OWEP analyses (mg/l)		Total constituent analyses (mg/kg)	Corrected OWEP analyses (mg/l)		Total constituent analyses (mg/kg)
	x1	x20		x1	x20	
Cr (total)	112	48	1082	0.7	0.43	226
Pb	1.1	0.48	41.9	<.19	<.12	52.4

[1] Detection limits vary with the method of calculation.

TABLE 2.—MAXIMUM CONCENTRATIONS [1]

Nonlisted constituents	DAF float			API separator		
	Corrected OWEP analyses (mg/l)		Total constituent analyses (mg/kg)	Corrected OWEP analyses (mg/l)		Total constituent analyses (mg/kg)
	x1	x20		x1	x20	
As	1.3	0.55	6.7	<0.36	<0.23	0.4
Ba	1.3	.55	15	.90	.55	13
Cd	0.02	.009	<0.4	.03	<.019	<.4
Hg	<.019	<.008	.44	<.014	<.009	.12
Ni	9.0	3.9	99	1.2	.71	8.6
Se	<.36	<.16	<.4	<.29	<.014	.3
Ag	<.01	<.004	<.3	<.023	<.014	<.3
Sb	<.27	<.12	.4	<.36	<.23	<.2
Be	.004	.002	<.1	.008	<.005	<.1
Co	.061	.026	.7	<.03	<.019	<.3
V	.066	.028	.8	.068	.042	.3

[1] Detection limits vary with the method of calculation.

[10] EPA's response to public comments on the use of the oily waste extraction procedure (OWEP) to evaluate oily wastes allowed petitioners the option of submitting OWEP data corrected for oil volume (with a prefactor of one) until the OWEP published in a final form.

Reactive sulfide was non-detectable in both the DAF float and API separator sludge at a detection limit of 0.5 ppm. No analyses were reported for the concentration of cyanide. Thus, the petition is incomplete.

Diamond Shamrock performed a GC/MS scan for organic constituents believed to be present in refinery wastes such as the DAF float and API separator sludge. The maximum concentrations of the detected compounds are presented in Table 3.

TABLE 3.—MAXIMUM DETECTED ORGANICS CONCENTRATIONS (PPM)

Constituents	DAF float	API separator
Benzene	20	88
Ethyl benzene	60	520
Toluene	130	540
Xylenes (total)	380	1570
Anthracene	2.2	13
Benz(a)anthracene	16	17
Benzo(b)fluoranthene	3.8	4.7
Benzo(a)pyrene	3.9	13
Chrysene	34	48
Dibenz(a,h)anthracene	2.6	4.2
Fluoranthene	2.0	4.2
Indene	1.0	5.4
1-Methyl naphthalene	209	320
Naphthalene	120	180
Pyrene	16	31
P- and m-Cresols	5	1.6
Phenol	8	2.6

Diamond Shamrock did not evaluate its waste for the hazardous waste characteristics of ignitability, corrosivity, and reactivity. Diamond Shamrock claims to generate a maximum of 980 cubic yards of DAF float, and up to 20,000 cubic yards of API separator sludge, on an annual basis.

B. Agency Analysis and Action

Diamond Shamrock has not demonstrated that its waste treatment system produces non-hazardous wastes. The Agency is not certain that the API separator sludge samples and DAF float samples collected at the McKee Plants Refinery were taken in a manner that would prevent test results from being biased. The Agency does not believe that these few samples, taken during a span of five years, adequately represent the variations that may occur in the waste streams petitioned for exclusion. Of the six K048 and six K051 samples collected and submitted to the Agency since 1981, only one sample of each waste was analyzed using the OWEP. The Agency believes that the production and treatment processes employed at the McKee Plants facility are relatively uniform and consistent, but no prediction of waste consistency may be made from the limited number of samples analyzed in the petition.

The Agency has evaluated the mobility of the constituents from Diamond Shamrock's waste using a vertical and horizontal spread (VHS) model.[11] The Agency's evaluation of Diamond Shamrock's annual generation of 980 tons of DAF float and 20,000 tons of API separator sludge and the maximum OWEP extract levels for the listed constituents of concerns using the VHS model has generated the compliance-point concentrations shown in Table 4. The maximum extract values are used in the analysis because only one replicate of OWEP data was submitted by Diamond Shamrock for Agency evaluation; this does not permit the use of any other statistically valid value in the evaluation.[12]

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (mg/l)

Listed constituents	Compliance-point concentrations		Regulatory standards
	DAF float	API separator	
Cr (total)	0.31	0.043	0.05
Pb	<.016	<.016	.05

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (mg/l) [1]

Nonlisted constituents	Compliance-point concentrations		Regulatory standards
	DAF float	API separator	
As	0.06	<0.06	0.05
Ba	.08	.14	1.0
Cd	.0012	<.0048	.01
Hg	<.0012	<.0022	.002
Ni	.55	.19	.35
Se	<.023	<.048	.01
Ag	<.0006	<.0036	.05
Sb	<.017	<.06	.01
Be	.0002	.0013	.03
Co	.0038	.0048	NA
V	.0041	.011	NA

[1] If total or leachable constituent concentrations are below detection limits, then the detection limit is assumed to be the maximum total or OWEP concentration for purposes of computation (e.g. if detection limit is <1 mg/l, then total concentration = 1 mg/l).

NA = Regulatory standard not available.

Both the DAF float and the API separator sludge exhibited lead levels below the National Interim Primary Drinking Water Standard (NIPDWS) for lead. The DAF float produced a value for chromium which is in excess of the Agency's standard, and chromium is of concern in this waste.[13]

For the non-listed constituents, the DAF float generated compliance-point concentrations for arsenic, nickel, antimony and selenium in excess of the Agency's standards for these metals. These metals are of regulatory concern. Barium, cadmium, and silver did not exceed their respective NIPDWS, so these constituents are not believed to be of concern. There are no regulatory standards available for the remaining metals, but the compliance-point concentrations are not believed to be of regulatory concern. The API separator sludge exceeded the Agency's standards for arsenic, mercury, antimony, and selenium, and these metals are of regulatory concern in this waste.

Reactive sulfides in the waste are not expected to be of regulatory concern from an air contamination route. The

[11] See footnote 6.

[12] In the evaluation, the Agency has used the data generated by the OWEP (with a prefactor of one) and has generally disregarded the OWEP data with a prefactor of 20, as well as earlier conventional EP toxicity data. The Agency was concerned that the earlier conventional EP leachate data was not representative due to the high oil and grease content of the waste. In addition, the Agency now requests petitioners to use the OWEP in the analysis of wastes containing greater than one percent oil and grease. See 49 FR 42501, October 31, 1984.

[13] The Agency believes that the evaluation of hazardous wastes in the context of delisting should include the use of chromium standards which are based upon total chromium, e.g. the EP toxicity characteristic. The acute toxicity of hexavalent chromium is well documented, and Cr(VI) has been incorporated in numerous hazardous waste listings as a constituent of concern. The Agency has information, however, which indicates that trivalent chromium, a less toxic form of chromium, is readily interconvertible with Cr(VI) in a number of environmental scenarios. Recent Agency studies on aqueous systems have determined that Cr (III) in ground water may be readily converted to Cr(VI) by chlorination (commonly used to disinfect drinking water supplies), at a rate dependent upon pH (Clifford, Dennis, and Jimmy Man Chau. 1984. The fate of chromium (III) in chlorinated water. Draft report prepared for MERL/ORD, U.S. EPA, Cincinnati, Ohio). The potential to form Cr(VI) exists for the entire pH range of most ground waters (Battelle, Pacific Northwest Laboratories. 1986. Geochemical behavior of chromium species. Interim report no. EA–4544, prepared for Electric Power Research Institute, Palo Alto, California). Cr(III) has also been found to oxidize readily to Cr(VI) under conditions found in many field soils. This reaction is catalyzed by oxidized manganese, such as manganese dioxide which is commonly present in soils and sediments (Bartlett, R. and James Bruce. 1979. Behavior of chromium in soils: III. Oxidation. J. Envir. Qual. 8(1): 31–35). Earlier findings of the potential interconvertibility of chromium species convinced the Agency to set its chromium water standard on the basis of total chromium, not hexavalent chromium. The EP toxicity characteristic was also set on the basis of total chromium. EPA's proposal to amend the characteristic to apply to hexavalent chromium (45 FR 72025–72033, October 30, 1980; see also 48 FR 22170–22171, May 17, 1983) has not been made final, and is not likely to be made final. A recommended maximum contaminant level (RMCL) of 0.12 mg/1 has been proposed for total chromium (50 FR 46936–47018, November 13, 1985). This new RMCL value is a non-enforceable health goal that serves as an initial stage for establishment of drinking water standards. A revised maximum contaminant level (MCL) for chromium will be proposed when the RMCL is promulgated. Until such time that a new MCL, which is an enforceable standard, is promulgated, the Agency will continue to use the current MCL for total chromium, which is the National Interim Primary Drinking Water Standard of 0.05 mg/1.

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low (0.5 ppm) concentration of sulfides precludes the generation of hazardous levels of toxic gases. In particular, reactive sulfide levels in the waste are below the air threshold limit set by the American Conference of Governmental Industrial Hygienists (ACGIH).[14] (The capability of a sulfide bearing waste to generate hazardous levels of toxic gases is a property of the reactivity characteristic.)

The Agency has also evaluated the mobility of the toxic organic constituents detected in Diamond Shamrock's wastes. The leachate concentrations of these constituents were calculated using the Agency's organic leaching model.[15] These concentrations were used as inputs into the VHS model to generate compliance-point concentrations for each constituent, and these results are presented in Table 6. Only those organic constitutents found to be present in the petitioned wastes at concentrations above their respective detection limits are included in this evaluation.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) [1]

	Best-fit concentrations		95% Confidence limit concentrations		Regulatory standard
	DAF float	API separator	DAF float	API separator	
Benzene	0.016	0.116	0.020	0.145	0.0012
Ethyl benzene	.014	.147	.016	.182	3.5
Toluene	.03	.236	.037	.297	10.5
Xylenes	.054	.358	.067	.451	2
Anthracene	$8x10^{-8}$	$6x10^{-4}$	$1.2x10^{-7}$	$8.5x10^{-3}$	$2x10^{-3}$
Benz(a) anthracene	$1.3x10^{-6}$	$1.3x10^{-4}$	$1.9x10^{-6}$	$5.2x10^{-3}$	$1x10^{-5}$
Benzo(b) fluoranthene	$7.7x10^{-5}$	$2.0x10^{-4}$	$1.1x10^{-4}$	$3.0x10^{-4}$	$2x10^{-5}$
Benzo(a) pyrene	$5x10^{-8}$	$1.5x10^{-4}$	$8x10^{-8}$	$2.4x10^{-4}$	$3x10^{-8}$
Chrysene	$1.4x10^{-5}$	$4x10^{-4}$	$2.1x10^{-5}$	$7x10^{-4}$	$2x10^{-4}$
Dibenz(a, h) anthracene	$1x10^{-5}$	$4x10^{-5}$	$2.4x10^{-5}$	$9.9x10^{-5}$	$7x10^{-7}$
Fluoranthene	$1x10^{-5}$	$5x10^{-3}$	$1.9x10^{-4}$	$7-8x10^{-4}$	0.2
Indene					NA
1-Methyl naphthalene					NA
Naphthalene	.011	.04	.013	0.053	9
Pyrene	.0004	0.0016	$5.2x10^{-4}$	$2.1x10^{-3}$	4
Cresols	0.018	0.03	.025	.022	1.75
Phenol	0.026	0.044	.039	.063	3.5

NA—Regulatory standard not available.
[1] A blank space found after a compound name indicates that no solubility data was available for that compound.

Both the DAF float and API separator sludge were found to produce compliance-point concentrations for several organic compounds in excess of the Agency's standards for those compounds. Benzene, benzo(b) fluoranthene, benz(a) anthracene, benzo(a) pyrene, and dibenz(a, h) anthracene generated compliance-point concentrations in excess of the Agency's standard in both the DAF float and API separator sludge; the use of the 95 percent confidence version of the organic leachate model shows that chrysene, in addition to the organics mentioned above, will exceed its standard in both the API separator sludge and DAF float. Chrysene was found to exceed its standard for the API separator sludge. Indene and 1-methyl naphthalene do not yet have regulatory standards. The Agency, as a matter of policy, will not use the presence of organic constituents for which there are no standards, as a basis for petition denial.

The Agency believes that the DAF float and API separator sludge generated at Diamond Shamrock's facility are hazardous, and as such should not be excluded from hazardous waste control. Additional information on the wastes generated at the McKee Plants refinery was requested from Diamond Shamrock on several occasions, but the information supplied to the Agency was insufficient to make a more detailed evaluation of the petitioned wastes. The petition is, therefore, incomplete. Due to the predicted potential of these wastes to leach excessive levels of several toxic metals and organic constituents and so contaminate ground water, and because of the lack of information necessary to evaluate these wastes, the Agency proposes to deny the delisting petition submitted by Diamond Shamrock, for its facility in Sunray, Texas, for the K048 and K051 wastes generated from its refinery operations. The Agency also proposes to deny the delisting petition for the K049 sludges (slop oil pits and slop oil emulsion solids) at the McKee Plants facility, which were part of the original delisting petition, but for which no additional data was submitted to the Agency.[16] The Agency also proposes to withdraw the temporary exclusion held by Diamond Shamrock for the K048, K049, and K051 wastes generated at this same facility. The Agency believes that these wastes should be considered hazardous and subject to regulation under 40 CFR Parts 262 through 265.

III. Hill Petroleum Company

A. Petition for Exclusion

Hill Petroleum Company (Hill), formerly Charter International Oil Company, located in Houston, Texas, operates an oil refinery that produces ethyl benzene, aromatics, benzene, fuel oil, leaded and unleaded gasoline, heptane, hexane, jet fuel, kerosene, octane, toluene, and xylene. Hill has petitioned the Agency to exclude its wastewater treatement sludges presently listed as EPA Hazardous Waste No. K048—Dissolved air flotation (DAF) float from the petroleum refining industry, and EPA Hazardous Waste No. K051—API separator sludge from the petroleum refining industry. The listed constituents of concern for these wastes are hexavalent chromium and lead.[17]

Based upon the Agency's review of the petition, Hill was granted a temporary exclusion on February 12, 1982. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. § 6921(f).) As a result, the Agency has re-evaluated Hill's petition to: (1) determine whether the exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine whether the waste is non-hazardous

[14] See *Documentation of Threshold Limit Values for Substances in Workroom Air*. American Conference of Governmental Industrial Hygienists, third edition. 1971. Cincinnati, Ohio.

[15] See 50 *FR* 48853, Appendix I, November 27, 1985 for a detailed explanation of the development of the OLM model for use in the delisting program. See also the revised version of the proposed OLM model, 51 *FR* 27061, July 29, 1986.

[16] Diamond Shamrock was notified, in a letter dated May 15, 1986, that the Characterization and Assessment Division (CAD) would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Diamond Shamrock's petition be denied. Diamond Shamrock declined to exercise its option to withdraw the petition.

[17] Hill originally petitioned the Agency to exclude five wastestreams; namely their DAF float (K048), slop oil emulsion solids (K049), heat exchanger bundle cleaning sludge (K050), API separator sludge (K051), and waste activated sludge. This notice discusses the Agency's decision regarding Hill's DAF float (K048) and API separator sludge (K051). Hill has withdrawn their petitions for the remaining three wastestreams.

with respect to factors and and toxicants other than the factors for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Hill's petition.

In support of their petition, Hill has submitted a detailed description of its manufacturing and treatement processes, including schematic diagrams; total constituent analysis results, EP toxicity test results, and Oily Waste EP (OWEP) toxicity test results of the DAF float and API separator sludge for the EP toxic metals, nickel, and other metals; and analytical results for reactive sulfides. Hill also submitted results of total oil and grease, and reactivity and corrosivity analyses on representative waste samples. Hill further submitted a list of petroleum feedstocks used at the refinery. As noted above, the Agency requested this information to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

The Hill refinery is a fully integrated oil refining facility with a capacity to refine 70,000 barrels per day. Major process operations include: atmospheric and vacuum distillation, hydrotreating, solvent de-asphalting, fluid catalytic cracking, alkylation-isomerization, and reforming. Liquid wastewater throughout the refinery is collected in a single process sewer. Hill claims that leaded tank bottoms are not discharged to the sewer. Wastewaters flow through the API separator, which provides separation of primay oil, water, and solids. Wastewaters flow into an equalization basin, then enter the DAF unit which provides secondary oil and solids removal, and is followed by activated sludge treatment. Sludge from the bottom of the API separator is scraped mechanically into sludge sumps and allowed to accumulate. After six to eight months, water in the sump is drained or pumped off, and the sludge is transferred by truck to tanks where the sludge is allowed to thicken prior to disposal offsite. DAF float is pumped to a holding tank, dewatered on a continuous belt filter press, and deposited into a container for off-site disposal. The activated sludge treatment generates a waste biological sludge or biosludge. The biosludge is drawn from the bottom of a clarifier and transferred to a sludge thickener. The thickened biosludge also is dewatered on a continuous belt filter press. Normally, the mixture being dewatered is ninety percent DAF float. Filtrate from the filter press is returned to the API separator forebay. Hill claims that its DAF float and API separator sludge are not hazardous because the constituents of concern are essentially in immobile forms. Hill also believes that the wastes are not hazardous for any other reason.

In April 1981, twelve grab samples of filter cake and filtrate were collected directly from the discharge point of the continuous belt filter press after it had dewatered a mixture of biosludge and DAF float, DAF float alone, and biosludge alone (four samples each). Three additional grab samples of dewatered DAF float alone were collected in May through July 1981 at intervals of one month. These samples were analyzed for total concentrations of chromium and lead, leachable concentrations of the EP metals, and oil and grease composition. In September 1981, a dewatered DAF float sample again was collected and analyzed for total concentrations of toluene and benzene. For the purposes of further testing because of HSWA requirements, five samples of the DAF float were collected in 1984 and 1985 and analyzed for total oil and grease, Appendix VIII hazardous constituents identified as of concern to the petroleum refinery industry, and leachable metal concentrations using the OWEP analysis. The four composite samples collected in 1985 were not samples of dewatered DAF float, but were constructed from grab samples taken from a sample tap as DAF float was being pumped from the DAF unit into a tank.

In April 1981, twelve API separator sludge core samples were collected from sludge storage tanks, which had accumulated sludge for 1 to 2 years. Core samples were taken at six points, two samples at each point, and combined in a 20-gallon container from which four composite samples were collected and analyzed. Following sludge removal from the storage tanks, API separator sludge was sampled again in June 1981 after fresh sludge had been allowed to accumulate. One composite sample was collected at this time. These five composite samples were analyzed for leachable concentrations of the EP toxic metals using the standard EP toxicity test. Total constituent analyses for chromium and lead and oil and grease analyses were also performed. In September 1981, two additional composite samples were collected from the storage tanks and analyzed for benzene and toluene concentrations. As a result of HSWA requirements, five API separator sludge composite samples also were collected in 1984 and 1985 from core samples taken from the primary bays of the API separator. These samples were analyzed for total oil and grease levels, Appendix VIII hazardous constituents identified as of concern to the petroleum refinery industry, and leachable metal concentrations using the OWEP analysis.

Hill claims that DAF float and the API separator sludge samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. The manufacturing processes used at the facility are relatively uniform and the use of different petroleum feedstocks and petroleum products does not vary significantly over time. In addition, Hill claims that if the feedstocks should vary, the characteristics of the DAF float and API separator sludge are not expected to differ significantly.

Total constituent and OWEP analyses of the DAF float and API separator sludge for the EP toxic and additional metals revealed the maximum concentrations reported in Tables 1 and 2, respectively.[18]

TABLE 1.—DAF FLOAT—MAXIMUM CONCENTRATIONS

Constituents	Total constituent analysis (mg/kg)	OWEP analyses (mg/l)
Antimony	<2.0	0.12
Arsenic	4.1	.12
Barium	75	.77
Beryllium	<0.1	.06
Cadmium	.85	[1] <0.016
Chromium (total)	620	13.37
Cobalt	6.9	[1] .83
Lead	10	.28
Mercury	.08	.03
Nickel	12	1.1
Selenium	2.1	.8
Silver	<0.3	.16
Vanadium	16	.67

<: Denotes concentrations below the detection limit.
[1] Maximum leachable levels for cadmium and lead of 0.24 and 1.5 mg/l, respectively, were reported. However, the leachate levels in the remaining four samples for cadmium were equal to or less than 0.016 mg/l and for lead were equal to or less than 0.28 mg/l. The Agency has concluded that the 0.24 and 1.5 mg/l levels are outliers and, therefore, that 0.016 and 0.28 mg/l more accurately reflect the respective leachable levels of cadmium and lead in the waste. The Agency's conclusion is supported by the Dixon Extreme Value Test.

[18] The Agency requests that the OWEP analysis be run for wastes that have oil and grease levels greater than 1 percent. The maximum total oil and grease levels in the DAF float and API separator sludge are 30.8 and 23.7 percent, respectively.

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TABLE 2.—API SEPARATOR SLUDGE—MAXIMUM CONCENTRATIONS

Constituents	Total constituent analyses (mg/kg)	OWEP analyses (mg/l)
Antimony	0.5	<0.13
Arsenic	13	0.03
Barium	140	1.48
Beryllium	.23	0.08
Cadmium	1.5	[1] 0.02
Chromium (total)	580	[1] 0.51
Cobalt	18.7	0.31
Lead	55	0.20
Mercury	2.6	0.011
Nickel	26	0.84
Selenium	6	0.21
Silver	.7	[1] <0.008
Vanadium	420	0.16

<: Denotes concentrations below the detection limit.
[1] Maximum leachable levels for cadmium, total chromium, and silver of 0.07, 11.06, and 0.05 mg/l, respectively, were reported. The leachate levels in the remaining four samples for cadmium, however, were equal to or less than 0.02 mg/l and for lead were equal to or less than 0.51 mg/l, and for silver were less than 0.008 mg/l. The Agency has concluded that the 0.07, 11.06, and 0.05 mg/l levels are outliers and, therefore, that 0.02, 0.51, and < 0.008 mg/l more accurately reflect the respective leachable levels of cadmium, chromium, and silver in the waste. The Agency's conclusion is supported by the Dixon Extreme Value Test.

Hill also submitted total constituent analyses for Appendix VIII hazardous constituents identified to be of concern in petroleum refining wastes. Maximum concentrations for these constituents detected in the DAF float and API separator sludge are reported in Table 3.

TABLE 3.—MAXIMUM TOTAL CONCENTRATIONS OF ORGANICS DETECTED IN DAF FLOAT AND API SEPARATOR SLUDGE (ppm)

Constituents	Total constituent analyses: DAF float	Total constituent analyses: API separator sludge
Anthracene	160	[1] 120
Benzene	[1] 21	[2] 30
Benzenethiol	[3] 150	[1] 2.85
Benz(a)anthracene	26	10
Benzo(b)fluoranthene	7	[4] 4
Benzo(a)pyrene	12	5
Chrysene	60	25
o-Cresol	4	7
m-,p-Cresol	51	18
Cresols (total)	51	25
Dibenz(a,h)anthracene	[4] 1	<1
2,4-Dimethylphenol	0.4	0.3
Ethyl benzene	690	700
Fluoranthene	[4] 51	[4] 16
1-Methylnaphthalene	310	480
Naphthalene	160	170
Phenanthrene	1,300	[1] 1,020
Phenol	92	27
Pyrene	45	120
Toluene	370	[5] 180
m-Xylene	170	600
o-,p-Xylene	140	300
Xylenes (total)	310	900

<: Denotes concentration below detection limit.
[1] Value is the average of duplicate analyses results for one sample.
[2] Not recovered consistently by the laboratory.
[3] A maximum benzene concentration of 2,100 ppm was reported; however, the benzene concentrations in the remaining four samples were equal to or less than 30 ppm. The Agency has concluded that the 2,100 ppm value is an outlier and, therefore, 30 ppm more accurately reflects benzene concentrations in the waste. The Agency's conclusion is supported by the Dixon Extreme Value Test.
[4] Tentative identification by the laboratory.
[5] A maximum toluene concentration of 6,600 ppm was reported; however, the toluene concentrations in the remaining four samples were equal to or less than 180 ppm. The Agency has concluded that the 6,600 ppm value is an outlier and, therefore, 180 ppm more accurately reflects toluene concentrations in the waste. The Agency's conclusion is supported by the Dixon Extreme Value Test.

The maximum total oil and grease values reported by Hill for the DAF and API separator sludge were 30.8 and 23.7 percent, respectively. Hill also submitted a list of petroleum feedstocks used at the refinery. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Hill also provided test data indicating that the DAF float and API separator sludge are not corrosive or reactive. Maximum reactive sulfide levels in the DAF float and API separator sludge were 68 and 12.3 ppm, respectively. Hill did not provide test data indicating the wastes are not ignitable. Hill claims that the wastes were not tested for ignitability because such a test was not available for a solid or semi-solid heterogeneous waste because only a uniform free-flowing liquid can flash. Hill claims to generate a maximum of 31,300 tons of DAF float per year, and a maximum of 4,200 tons of API separator sludge per year.[19]

B. Agency Analysis and Action

Hill has not demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the DAF float and API separator sludge samples collected by Hill over a period of several years adequately represent any variations that may occur in the wastes. The process generating these wastes is a continuous refining process line, both the production and treatment processes are consistent over time and the facility does not have seasonal changes. The key factor that could vary toxicant concentrations in the DAF float and API separator sludge would be the use of different petroleum feedstocks or petroleum products. Hill claims, however, that even if feedstocks should vary, the characteristics of the wastes should not differ significantly. The Agency believes that the sampling period used by Hill was long enough to cover any scheduled changes in the product line and that the samples are representative of the waste generated by Hill.

The Agency has evaluated the mobility of the inorganic constituents from Hill's DAF float and API separator sludge using the vertical and horizontal spread (VHS) model.[20] The VHS model generated compliance-point values using, as the model input parameters, the maximum generation rate per year and the maximum OWEP levels reported by Hill. These predicted compliance-point concentrations are reported in Table 4. (When leachate concentrations were below the detection limits, the value of the detection limit was used.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm)

Constituents	Compliance-Point concentrations: DAF flat	Compliance-Point concentrations: API separator sludge	Regulatory standards
Antimony	[1] 0.018	0.02	0.01
Arsenic	0.018	0.005	0.05
Barium	0.12	0.228	1.0
Beryllium	0.001	0.003	0.02
Cadmium	0.0025	0.003	0.01
Chromium (total)	[1] 2.12	[1] 0.078	0.05
Cobalt	0.13	0.048	NS
Lead	0.044	0.03	0.05
Mercury	[1] 0.0047	0.0017	0.002
Nickel	0.17	0.13	0.35
Selenium	[1] 0.1	[1] 0.032	0.01
Silver	0.026	0.001	0.05
Vanadium	0.11	0.028	NS

NS: No regulatory standard.
[1] Exceeds regulatory standard.

The DAF float exhibited arsenic, barium, and cadmium, lead and silver levels (at the compliance point) below the National Interium Drinking Water Standards; nickel levels below the Agency's interim health-based advisory; [21] and beryllium levels below its respective regulatory standard. Antimony, chromium, mercury, and selenium levels (at the compliance point) exceeded regulatory standards. Three out of five samples (two at detection limits) exceeded allowable levels for antimony. All five samples exceeded allowable levels for chromium and selenium. One of five samples exceeded allowable mercury levels. With respect to the DAF float, therefore, antimony, chromium, mercury, and selenium are of regulatory concern.

The API separator sludge exhibited metals concentrations below regulatory standards, except for chromium and selenium. The petitioner reported OWEP results for antimony in the API separator sludge of 0.03, <0.12, <0.12, <0.13, and <0.13 mg/l. The maximum detection limit value of 0.13 mg/l generates a compliance point concentration which exceeds the regulatory standard for antimony. The maximum detected concentration (0.03 mg/l), however, passes the VHS model analysis. Since the detection limits for antimony analysis were high, the Agency cannot conclude whether antimony levels are of regulatory concern. Two of four samples exceeded the allowable chromium level. (The result of a fifth sample was determined to be an outlier, as supported by the Dixon Extreme Value Test.) Five samples exceeded the allowable levels for selenium. With respect to the API separator sludge, therefore, chromium and selenium are of regulatory concern.[22]

The DAF float and API separator sludge maximum reactive sulfide contents (*i.e.*, 68 and 12.3 ppm, respectively) are low enough so as not to be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low as as to preclude the generation of hazardous levels of toxic gases.[23]

The Agency also has evaluated the mobility of organic constituents detected in the DAF float and API separator sludge using the VHS model. The VHS model generated compliance point values using the maximum generation rates per year and the maximum reported concentration of organics predicted by the Agency's Organic Leachate Model (OLM).[24] Predicted leachate concentrations, using the baseline version an the 95 percent confidence interval version of the OLM model, compliance point levels, and regulatory standards are presented in Tables 5 and 6, respectively. Since the OLM has not been finalized, both versions have been presented in this notice. Once finalized, only one of these two versions will apply.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (MG/1) USING THE BASELINE EQUATION

Constituents	Compliance point concentrations: DAF float	API separator sludge	Regulatory standards
Anthracene	[1] 0.003	[1] 0.003	0.002
Benzene	[1] .043	[1] .054	.0012
Benzenethiol [3]	.092	.0065	NS
Benz(a)anthracene	[1] .00062	[1] .0023	.00001
Benzo(b)fluoranthene	[1] .0002	[1] .00015	.00002
Benzo(a)pyrene	[1] .0001	[1] .000077	.000003
Chrysene	[1] .0005	[1] .00026	.0002
o-Cresol	.04	.056	1.8
m-,p-Cresol	.25	.11	1.8
Cresols	.25	.16	1.8
Dibenz(a,h)anthracene	[1] .00002	ND	.0000007
2,4-Dimethylphenol	.002	.0015	.02
Ethyl benzene	.171	.16	3.5
Fluoranthene	.0027	.0012	.2
1-Methylnaphthalene	.055	.071	NS
Naphthalene	.038	.038	9
Phenanthrene	[1] .043	[1] .03	.002
Phenol	.51	.22	3.5
Pyrene	.0021	.0036	4
Toluene	.19	.12	10.5
m-Xylene	.078	.18	2
o-,p-Xylene	.068	.12	2
Xylenes	.12	.23	2

ND: Concentrations below detection limit.
NS: No regulatory standard.
[1] Exceeds regulatory standard.
[2] Compliance point concentrations based on a solubility of 470 ppm at 15°C.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM) USING THE 95 PERCENT CONFIDENCE INTERVAL EQUATION

Constituents	Compliance point concentrations: DAF float	API separator sludge	Regulatory standards
Anthracene	[1] 0.005	0.0035	0.002
Benzene	[1] .054	[1] .067	.0012
Benzenethiol [3]	.12	.0082	NS
Benzo(a)anthracene	[1] .0009	[1] .0005	.00001
Benzo(b)fluoranthene	[1] .00035	[1] .00025	.00002
Benzo(a)pyrene	[1] .00022	[1] .00012	.000003
Chrysene	[1] .00074	[1] .0004	.0002
o-Cresol	.06	.086	1.8
m-,p-Cresol	.35	.15	1.8
Cresols	.35	.16	1.8
Dibenz(a,h)anthracene	[1] .00003	ND	.0000007
2,4-Dimethylphenol	.003	.002	.02
Ethyl benzene	.22	.22	3.5
Fluoranthene	.0035	.0015	.2
1-Methylnaphthalene	.07	.096	NS
Naphthalene	.044	.046	9
Phenanthrene	[1] .06	[1] .05	.002
Phenol	.73	.30	3.5
Pyrene	.0022	.0052	4
Toluene	.24	.15	10.5
m-Xylene	.094	.22	2
o-,p-Xylene	.082	.14	2
Xylenes	.14	.29	2

ND: Concentrations below detection limit.
NS: No regulatory standard.
[1] Exceeds regulatory standard.
[2] Compliance point concentrations based on a solubility of 470 ppm at 15°C.

The DAF float and API separator sludge exhibited cresol, 2,4-dimethyl phenol, ethyl benzene, fluoranthene, naphthalene, phenol, pyrene, toluene, and xylene compliance-point concentrations below the respective regulatory standards. Anthracene, benzene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(a)pyrene, chrysene, dibenz(a,h)anthracene (not detected in the API separator sludge), and phenanthrene for the DAF float and API separator sludge exhibited compliance-point concentrations above their respective regulatory standards. These constituents, therefore, are of regulatory concern. The Agency was unable to compare the calculated benzenethiol and 1-methyl naphthalene compliance point concentrations because regulatory standards for these constituents are not currently available. When the Agency cannot determine a regulatory standard for a constituent, as a matter of policy, that constituent will not be grounds for the Agency to continue to regulate the waste as hazardous.[25]

The Agency also reviewed Hill's raw material list. The Agency has concluded from this review that no other Appendix VIII hazardous constituents, other than those tested for, are present in the waste.

The Agency believes that Hill has not demonstrated that the DAF float and API separator sludge are not hazardous. Analysis of the DAF float using the VHS model indicates the potential of that waste to leach antimony, chromium, mercury, selenium, anthracene, benzene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(a)pyrene, chrysene, dibenz(a,h)anthracene and phenanthrene and contaminate the ground water. As well, the analysis of the API separator sludge indicated the potential of that waste to leach levels of chromium, selenium, anthracene, benzene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(a)pyrene, chrysene, and phenanthrene, and contaminate the ground water. The Agency, therefore, proposes to deny Hill Petroleum Company's petition for its DAF float and API separator sludge (respectively listed as EPA Hazardous Waste Nos. K048 and K051) generated at its Houston, Texas facility and revoke its temporary exclusion. The Agency believes that these wastes should be considered hazardous and subject to regulation under 40 CFR 262 through 265.

[19] Hill's petition and addendums reported conflicting annual waste generation rates for each wastestream. Specifically, the annual generation rate for the DAF float was reported to be both 2,250 and 31,300 tons; the annual generation rate for the API separator sludge was reported to be both 300 and 4,200 tons. The Agency has considered the higher rates during the evaluation of Hill's wastestreams, however, a discussion of the use of the lower rates in the Agency's evaluation is presented later in this notice.

[20] See footnote 8.

[21] See footnote 9.

[22] The Agency wishes to note that if the lower waste generation rates reported by Hill and been used in the VHS model evaluation, leachable chromium and selenium levels in the API separator sludge would not be of regulatory concern (*i.e.*, compliance point concentrations would not exceed regulatory standards). Leachable concentrations of antimony, chromium, mercury, and selenium in the DAF float, however, would still be of regulatory concern.

[23] See footnote 8.

[24] See footnote 15.

[25] The Agency wishes to note that if the lower waste generation rates reported by Hill had been used in the VHS model evaluation, the same organic constituents in the DAF float would be of regulatory concern. With respect to the API separator sludge, all of the same organic levels, except for chrysene and anthracene, would still be of regulatory concern.

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IV. L-TEC Welding and Cutting Systems

A. Petition for Exclusion

L-TEC Welding and Cutting Systems (L-TEC), (formerly Union Carbide Corporation, Linde Welding Products Division), located in Ashtabula, Ohio, is involved in the manufacture of coated steel welding wire for use in automatic welding machines. In November 1981, L-TEC petitioned the Agency to exclude its dewatered wastewater treatment sludge as well as its partially treated sludge contained in on-site impoundments, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern in EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of the petition, L-TEC was granted a temporary exclusion on May 5, 1982. The Agency's basis for granting the exclusion at that time was the low migration potential of cadmium, chromium, nickel, and cyanide. The exclusion applied only to the sludge contained in the treatment pond and dewatered sludge from L-TEC's filter press since L-TEC did not provide representative sample data on the sludge contained in the three other on-site impoundments.

Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents other than those for which the waste was originally listed), if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In response to the Amendments, L-TEC submitted a complete list of raw materials used at the facility on February 6, 1986. In addition, L-TEC submitted representative sample data on its dewatered filter cake since a new filter press had been in use after the granting of the temporary exclusion. Due to the high EP leachate data for nickel in the filter cake samples, L-TEC amended its petition on May 7, 1986, to seek a one-time delisting of the sludge in its impoundments.[26] As a result, the Agency has re-evaluated L-TEC's petition to: (1) Determine whether a one-time delisting should be granted based the original listing criteria; (2) evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous; and (3) to determine if the temporary exclusion should be made final for the treatment pond. This notice presents the Agency's re-evaluation of this petition.

In support of their petition, L-TEC has submitted a detailed description of its manufacturing and waste treatment processes, including a schematic diagram, the size and location of its impoundments, total constituent analyses and EP toxicity test results of the sludge in its impoundments for cadmium, chromium, nickel, and lead as well as for the non-listed metals; total constituent analyses and distilled water leach test results for cyanide; and ground-water analyses from five ground-water monitoring wells.

L-TEC manufactures steel welding wire for use in automatic welding machines. In the production process, coils of steel rod are cleaned and pickled, copper coated, drawn into wires, and then cut to length for packaging and shipping. The copper coating is accomplished by electroplating. In July of 1982, L-TEC replaced its copper cyanide/sodium cyanide plating process with an acid copper plating process.

To characterize the sludge in the impoundments and adequately show its variability, sixteen complete full depth core samples were collected from each impoundment in 1986. Four core samples were collected from random locations and composited for each quadrant, resulting in four composite samples for each impoundment. L-TEC claims that these samples are representative of any variation of the listed and non-listed constituents in the sludge since the manufacturing process did not vary significantly during the time the sludge was accumulated. Consequently, L-TEC believes that the samples collected and analyzed fully characterize the waste.

The maximum total constituent concentrations for both the listed constituents and the non-listed metals contained in the three impoundments is presented in Table 1. Table 2 presents the maximum concentrations for the EP toxicity analyses for both the listed constituents and the non-listed constituents contained in the three surface impoundments.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (MG/KG)

Constituents	Total constituents analyses
As	1.7
Ba	<50
Cd	<2
Cr	67.3
CN	24.3
Ni	231
Pb	<8
Ag	<2
Se	0.18
Hg	1.45

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS (MG/1)

Constituents	EP leachate analyses
As	<0.001
Ba	<.5
Cd	<.02
Cr	.28
CN	.049
Ni	1.95
Pb	<.08
Ag	.01
Se	<.038
Hg	.007

The total oil and grease content of the waste was found to be less than 0.23 percent.

L-TEC also provided ground-water monitoring data for the listed constituents and lead. The maximum detected values are reported in Table 3. Ground water samples were not tested for the other non-listed constituents.

TABLE 3.—GROUND-WATER ANALYSES (MG/L)

Constituents	Maximum upgradient concentration	Maximum downgradient concentrations	Regulatory standards
Cd	0.02	0.02	0.01
Cr (total)	<0.05	<0.05	<0.05
Ni	<.07	.07	.300
CN (total)	<0.01	<0.01	.20
Pb	<0.01	<0.01	.05

In July of 1986, the Agency conducted a spot-check verification sampling visit at L-TEC. The Agency randomly collected eight 2-point composite samples from the treatment pond, seven 2-point composite samples from the west impoundment, four 2-point composite samples from the northwest impoundment, and six 2-point composite samples from the northeast impoundment. The samples were analyzed for total constituent and EP toxicity concentrations of all the EP toxic metals, nickel and cyanide. A total constituent analysis for the volatile organic constituents, and acid/base neutral compounds was also performed on each sample. Table 4 presents the EP toxicity concentrations of nickel, and Table 5 presents the total constituent analyses on the organic constituents detected in L-TEC's waste. (The Agency's total constituent and EP toxicity analyses for the EP toxic metals (except chromium), have not been completed yet; the total constituent analyses for additional organics also have not been completed.) EP chromium was not detected using a detection limit of 0.5 mg/l in the remaining 24 samples.

TABLE 4—EP TOXICITY CONCENTRATIONS OF NICKEL (MG/L) SPOT-CHECK VISIT

Unit	Sample No.	Concentration
Treatment Pond	1	3.3
	2	2.9
	3	2.6
	4	2.5
	5	3.2
	6	3.2
	7	3.4
	8	3.7
West Impoundment	1	0.33
	2	1.9
	3	2.2
	4	0.081
	5	0.15
	6	1.5
	7	1.7
Northwest Impoundment	1	2.4
	2	2.1
	3	2.6
	4	1.6
Northeast Impoundment	1	1.5
	2	1.0
	3	0.21
	4	1.3
	5	2.1
	6	1.4

TABLE 5—MAXIMUM TOTAL CONSTITUENT ANALYSIS (MG/KG) SPOT-CHECK VISIT

Constituents	Maximum concentration
p-Chloro-m-cresol	33
2-Chlorophenol	33
4-Nitrophenol	30
Pentachlorophenol	25
Phenol	21
Acenaphthene	10
1,2,4-Trichlorobenzene	10
1,4-Dichlorobenzene	5.2
2,4-Dinitrotoluene	9.9
n-Nitrosodipropylamine	8.1
Pyrene	10
Bis-2-ethyl hexyl phthalate	4.1

L-TEC also claims that their impounded sludge does not exhibit the characteristics of reactivity, ignitability, or corrosivity. Furthermore, L-TEC submitted a list of raw materials used in the process. This list indicated that no Appendix VIII hazardous constituents are used in the production process, and that the formation of any of these constituents is highly unlikely. L-TEC estimates that the three impoundments contain a combined total of 9,000 tons of sludge.

B. Agency Analysis and Action

L-TEC has not demonstrated that the sludge contained in its impoundments is non-hazardous. The Agency believes the sampling procedure used by L-TEC in 1986 may not adequately characterize that waste, and that the samples analyzed may not accurately reflect variations in impoundment composition. The manufacturing and treatment processes are believed to be uniform and consistent, however, since the facility does not perform as a job shop or have seasonal product variations. The Agency, however, concludes that the analytical information provided by L-TEC is not representative of the sludge contained in its impoundments.[27]

The Agency evaluated the mobility of waste constituents in the sludge using the vertical and horizontal spread (VHS) model.[28] The Agency's evaluation of L-TEC's 9,000 tons of surface impoundment sludge[29] and the maximum EP extract levels for the listed and non-listed constituents of concern remaining in L-TEC's waste using the VHS model has generated the compliance point concentrations exhibited in Table 6.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM)

Constituents	Impoundments (L-TEC's data)	Agency's spot-check data	Regulatory standards
As	<0.001		0.05
Ba	<0.079		1.0
Cd	<0.003		.01
Cr	.044	0.017	.05
CN	.667		.2
Ni	.309	0.58	.35
Pb	<0.012		.15
Ag	.004		.15
Se	<0.001		.01
Hg	<0.001		.002

The VHS model predicts that compliance point concentration, of arsenic, barium, cadmium, chromium, mercury, selenium, and silver were below the National Interim Primary Drinking Water Standards. Compliance-point concentrations of cyanide also did not exceed the U.S. Public Health Service's suggested drinking water standard.[30] In addition, total constituent and reactive cyanide concentrations are well below the Agency's interim level of concern of 250 ppm.[31] Nickel levels (at the compliance point), however, exceed the regulatory levels of concern.[32]

The Agency also has evaluated the mobility of the organic constituents detected in the sludge by first estimating their leachate concentrations with the Organic Leachate Model (OLM), and then predicting their compliance-point concentrations with the VHS model.[33] Table 7 presents the compliance-point concentration and the regulatory standard for each of the detected organic constituents.

TABLE 7.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS[2] (MG/1)

Constituents	Compliance Point Concentrations		Regulatory Standards[1]
	Baseline	95% Confidence	
p-Chloro-m-cresol	0.078	0.099	0.2
2-Chlorophenol	.16	.22	5×10^{-3}
4-Nitrophenol	NC[3]	NC[3]	NA
Pentachlorophenol	.009	.011	1.05
Phenol	.18	.26	3.5
Acenaphthene	NC[3]	NC[3]	NA
1,2,4-Trichlorobenzene	.005	.006	.7
1,4-Dichlorobenzene	.007	.008	4.0
2,4-Dinitrotoluene	.012	.014	1.1×10^{-4}
n-Nitrosodipropylamine	NC[3]	NC[3]	NA
Pyrene	.0017	.001	4.8
Bis-2-ethyl hexyl phthalate	.0008	.0008	20.0

[1] An explanation of the derivation of the regulatory standards is available in the RCRA public docket.
[2] Not calculated since either the solubility or regulatory standard is not currently available.
[3] Since the OLM has not been finalized, both the baseline equation and the 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized, only one of these two versions will apply.

[26] L-TEC does not presently generate any filter cake. The filter cake which was the subject of their original petition has not been generated since 1985. L-TEC has submitted a separate petition to delist new filter cake material generated from a different treatment process. L-TEC will handle its filter cake as a hazardous waste (if it is generated in the future), until a decision is made on this new petition. The temporary exclusion granted for the filter cake as originally petitioned is considered moot. The temporary exclusion, however, still applies to the waste in the treatment pond.

[27] The Agency suspects that L-TEC's sampling methodology prevented them from obtaining the representative complete depth core samples necessary to characterize any vertical stratification of consistent concentrations contained in the impounded waste. L-TEC used a 5 inch diameter sampling tube and no stopper device or other vacuum promoting device to obtain their core samples. The Agency believes when L-TEC took their samples, that the impounded bottom material did not stay in the sampling tube (*i.e.*, as the tube was withdrawn from the impoundment, the bottom material slid out of the sampling tube). The Agency's samples, however, were obtained by using a sampling tube having a rubber stopper (necessary to ensure a proper seal). The Agency, therefore, believes that the spot-check visit samples more accurately characterize the variations in constituent concentrations contained in L-TEC's impounded wastes, than did L-TEC's samples.

[28] See footnote 6.

[29] Where a facility has more than one on-site impoundment in close proximity to each other, the Agency has concluded that their impact on any underlying aquifer will be considered collectively as a single contaminating source. The VHS analysis, therefore, is performed using the combined total sludge volume of all of the impoundments.

[30] See footnote 7.

[31] See footnote 8.

[32] See footnote 9.

[33] See footnote 15.

As indicated by Table 7, compliance-point concentrations for 2-chlorophenol and 2,4,dinitrotoluene were generated in excess of their respective regulatory standards. The remaining ten constituents were determined not to be present at the compliance-point in concentrations of regulatory concern.[34]

Except for cadmium, the maximum detected ground-water concentrations for the listed constituents and lead were less than regulatory levels of concern. Cadmium levels, however, in four of the five monitoring wells (including the upgradient well) were found to be 0.02 mg/1 exceeding the regulatory standard of 0.01 mg/1. Although the maximum concentration of cadmium in the ground water exceeds the regulatory standard, the Agency believes that there is no statistical basis to attribute this contamination to L-TEC's impoundments since it is present in both the upgradient and downgradient wells.

The Agency is unable to conclude whether or not there are additional Appendix VIII constituents present in the waste, due to the detection of two Appendix VIII hazardous constituents in the waste which were not included on any raw materials lists, or Material Safety Data Sheets. The Agency believes, based on the significantly high EP leachate concentrations of nickel and total constituent concentrations of 2-chlorophenol and 2,4-dinitrotoluene, that L-TEC's impounded sludge, contained in all four impoundments is hazardous, and as such, now presents a substantial hazard to human health and the environment. The Agency, therefore, proposed to deny the petition submitted by L-TEC Welding and Cutting System's, Ashtabula, Ohio facility, for their impounded electroplating wastewater treatment sludge contained in its on-site impoundments. The Agency also proposes to withdraw the temporary exclusion held by this facility. The Agency believes that these wastes should be considered hazardous and subject to regulation under 40 CFR Parts 262 through 265.

V. Murphy Oil USA, Inc.

A. Petition for Exclusion

Murphy Oil USA, Inc. (Murphy) performs petrochemical processing at its Superior Refinery in Superior, Wisconsin. Murphy has petitioned the Agency to exclude the wastewater treatment sludge generated at the facility, presently listed as EPA Hazardous Waste No. K049—Slop oil emulsion solids from the petroleum refining industry; K050—Heat exchanger bundle cleaning sludge from the petroleum refining industry; and K051—API separator sludge from the petroleum refining industry. Murphy has petitioned to exclude its refinery waste sludge because it does not meet the criteria for which it was originally listed.

The listed constituents of concern for K049 and K051 wastes are hexavalent chromium and lead, while the listed constituent for K050 wastes is hexavalent chromium. Murphy claims that its treatment process generates a non-hazardous sludge because the constituents of concern, although present in the waste, are in essentially an immobile form. Murphy further claims that the waste is not hazardous for any other reason.

On February 12, 1982, Murphy was granted a temporary exclusion. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such factors are present and could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Murphy's petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) determine if the waste is non-hazardous with respect to factors and toxicants other than the original listing criteria. Today's notice is the Agency's re-evaluation of Murphy's petition.

The Agency requested additional information from Murphy in order to evaluate additional constituents and factors in the waste, in anticipation of the passage of the Hazardous and Solid Waste Amendments of 1984. Murphy's petition was proposed to be denied on January 17, 1986, due to the lack of this additional information (see 51 FR 2526). The requested information was submitted to the Agency, and this notice presents the results from the Agency's re-evaluation of the petition.

Murphy's Superior Refinery processes 32,000 barrels of crude oil per day, producing a variety of chemical products, including gasolines, distillates, oils, and asphalt. Process wastes from the refinery operations are collected in a common sewer; these wastewaters include wastes from catalytic cracking, alkylation units, cooling towers, naphtha and distillate unifiners, boilers, and other processes. The combined wastewaters are then steam stripped to remove H_2S and ammonia. The stripper bottoms are routed to a desalter for removal of phenols. Desalter effluents are routed back to the sewer system and sent to an API separator (API #1). Effluent from API #1 is sent to another API separator (API #2), where it is combined with boiler blowdown, cooling tower blowdown, and contaminatred runoff. API #2 effluent is pumped to a biological treatment system for settling and aeration. Treated wastewater is discharged to a local creek. Waste oil from the API separators goes to a slop tank for emulsion breaking. Water from this tank goes back to API #2 as contaminated runoff, while recovered oil is routed back to the refinery. Solids from exchanger bundle cleaning and slop oil treatment are mixed with sand and clay entering the sewer from surface runoff. The mixed solids are then removed by vacuum truck and deposited in a surface impoundment for dewatering. Leachate water re-enters API #2 as contaminated runoff, and the dewatered sludges are transported to the City of Superior landfill. Since the API separator sludges are combined with two other listed hazardous wastestreams, the disposed API separator sludges are listed not only as a K051 waste but also as K049 and K050 waste.

Murphy has submitted a detailed description of its production and treatment processes, including schematic diagrams; test results for total constituent and Oily Waste Extraction Procedure (OWEP) tests for arsenic, barium, cadmium, total chromium, lead selenium, mercury, nickel, antimony, beryllium, cobalt, and vanadium; results from OWEP tests for cyanide; test results for total oil and grease; and test results for ignitability, reactivity, and corrosivity. In addition, Murphy presented results from a test scan for organic compounds in the waste. The Agency requested much of this information, as noted above, to determine whether hazardous constituents, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

Composite samples of the API separator sludges were made by taking grab samples with a bucket from each of four quadrants dividing the API separator sludge drying area. The four samples that were collected by Murphy represented sludges that had accumulated over a two to three month period. Murphy's original (1981) demonstration was based upon four grab samples that had been collected from two on-site sludge piles, and four composite samples of fresh API separator sludges. The four most recent samples are claimed by Murphy to be representative of any variation of the listed and non-listed constituent concentrations in the waste.

The total constituent and OWEP analyses of the API separator sludge for the listed constituents revealed the maximum concentrations reported in Table 1. Murphy was requested to perform testing using the OWEP because of the large concentration of oil typically found in the waste.[35] The maximum oil and grease value reported for the API sludge was 790,000 mg/kg (79 percent).

TABLE 1.—MAXIMUM CONCENTRATIONS (PPM)

Constituents	Total constituent analysis	OWEP analysis
Cr (total)	40.3	0.97
Pb	14.8	<1.83

The total constituent and OWEP analyses for the non-listed constituents of the API separator sludge are presented in Table 2. No evaluation of the sludge was made for silver, and no total constituent analysis was made for cyanide. Also, no quantitative evaluation of waste reactivity for cyanide or sulfide was made. Thus, the Agency considers the petition to be incomplete.

TABLE 2.—MAXIMUM CONCENTRATIONS (PPM)

Constituents	Total constituent analysis	OWEP analysis
As	1.6	0.19
Ba	79.1	<3.65
Cd	<0.3	0.23
Hg	0.54	0.0606
Se	1.9	1.13
Ni	45.7	7.88
Sb	<10	3.68
Be	1.9	0.28
Co	4.3	1.71
V	<25	<17
CN^-		0.39

Murphy also evaluated its waste for the presence of organic hazardous constituents. The total constituent analyses uncovered the maximum detectable concentrations given in Table 3.

TABLE 3.—MAXIMUM DETECTED CONCENTRATIONS (PPM)

Constituents	Maximum detected concentrations
Benzene	380
Ethyl benzene	520
Methyl ethyl ketone	297
Toluene	1746
Xylenes	1110
Anthracene	33
Benzo(a)anthracene	15
Bis(2-ethylhexyl)phthalate	1435
Chrysene	32
Fluoranthene	17
1-Methyl naphthalene	166
Naphthalene	105
Phenanthrene	474
Pyrene	78
Phenol	8

None of the samples tested demonstrated reactivity, corrosivity, or ignitability. Murphy claims to generate an annual volume 12,118 gallons of API separator sludge, or approximately 60 cubic yards per year.

B. Agency Analysis and Action

Murphy has not demonstrated that the API separator sludge generated from the treatment of its refinery wastes is non-hazardous. The Agency believes that, due to the mixing occurring in the sewer system and in the treatment process itself, the waste samples collected by Murphy were representative of its waste. The Agency believes that the refining processes performed at this facility are uniform and consistent. The Agency also believes that the sampling procedure chosen by Murphy was, in this case, adequate to obtain representative samples because of the shallow depth of the sludge (6–8 inches); that is, core samples were not necessary to collect representative samples. The Agency, therefore, concludes that the analytical information provided by Murphy is representative of the API separator sludge.

The Agency has evaluated the mobility of the constituents from Murphy's waste using the vertical and horizontal spread (VHS) model.[36] The Agency's evaluation of the 60 cubic yards of sludge disposed annually by Murphy and the maximum OWEP extract concentrations for the listed constituents of concern in the VHS model generated the compliance-point concentrations given in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE—POINT CONCENTRATIONS/API SLUDGE (PPM)

Constituents	Predicted concentration	Regulatory standard
Cr (total)	0.089	0.05
Pb	<0.050	0.05

The VHS model evaluation for the non-listed constituents of the waste generated the maximum compliance-point concentrations presented in Table 5.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS/API SLUDGE (PPM)

Constituents	Predicted concentrations	Regulatory standard
As	0.0089	0.05
Ba	<0.11	1.0
Cd	.0071	.01
Hg	.0022	.002
Se	.035	.01
Ni	.94	.35
Sb	.11	[1] .01
Be	.008	[1] .03
Co	.053	[2] NA
V	<0.53	NA
CN^-	.10	.20

[1] From Verified Reference Doses of the U.S. EPA, 1986.
[2] NA—Regulatory standard not available.

Chromium and lead are not present at the compliance point at concentrations in excess of the Agency's National Interim Primary Drinking Water Standards (NIPDWS) for chromium and lead. These constituents are, therefore, not of regulatory concern. Of the non-listed constituents, mercury and selenium are both present at levels in excess of their respective NIPDWS, and these constituents are of regulatory concern. Antimony also exceeds its regulatory standard. The other EP metals do not exceed their respective standards, and beryllium is not present at levels in excess of its regulatory standard. There are no regulatory standards available for cobalt or vanadium, but the concentrations of these constituents at the compliance point are not expected to be of environmental concern.

The Agency has also evaluated the mobility of the organic compounds found to be present in Murphy's sludge using the Agency's organic leaching model (OLM).[37] The results of this model were then used as inputs into the VHS model to calculate potential impacts upon ground water. The compliance-point concentrations of

[34] When the Agency cannot determine either the compliance-point concentration (due to the lack of a solubility value) or a regulatory standard, that constituent will not be grounds for the Agency to continue to regulate the waste as hazardous.

[35] The Agency now requests petitioners to use the OWEP in the analysis of wastes containing greater than one percent oil and grease (see 40 FR 42501, October 31, 1984).

[36] See footnote 6.

[37] See footnote 15.

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these compounds are presented in Table 6.[38]

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE—POINT CONCENTRATIONS/API SLUDGE (PPM)

Constituents	Best-fit concentrations	95% confidence limit concentrations	Regulatory standards
Benzene	6.0×10^{-3}	8.0×10^{-3}	1.2×10^{-3}
Ethyl benzene	0.029	0.036	3.5
Methyl ethyl ketone	0.30	0.50	1.75
Toluene	0.081	0.11	10.5
Xylene	0.057	0.073	2
Anthracene	2.4×10^{-4}	3.8×10^{-4}	2×10^{-3}
Benzo(a) anthracene	6.1×10^{-5}	9.2×10^{-5}	1×10^{-5}
Bis(2-ethyl-hexyl) phthalate	6.9×10^{-3}	9.4×10^{-3}	0.7
Chrysene	6.5×10^{-5}	9.7×10^{-5}	2×10^{-4}
Fluoranthene	2.5×10^{-4}	3.6×10^{-4}	0.2
1-Methyl naphthalene	NSol [1]	NSol	NA [2]
Naphthalene	5.4×10^{-3}	8.8×10^{-3}	9
Phenanthrene	4.4×10^{-3}	5.7×10^{-3}	2×10^{-3}
Pyrene	6.0×10^{-4}	9.0×10^{-4}	4
Phenol	0.018	0.026	3.5

[1] NSol = No solubility data available.
[2] NA = Regulatory standard not available.

Of the organics detected in Murphy's sludge, benzene, benzo(a)anthracene, and phenanthrene are found to generate compliance-point concentrations in excess of the Agency's regulatory standards. Benzene, benzo(a)anthracene, and phenanthrene, therefore, are of concern to the Agency. There is no regulatory standard available for 1-methyl naphthalene, and the concentration of this compound expected to occur at the compliance point may also be of regulatory significance.

The Agency believes that the API separator sludge generated at Murphy's Superior Refinery is hazardous and should be managed under hazardous waste control. The evaluation of this waste with the VHS model indicates the potential for this waste to leach excessive amounts of selenium and mercury, as well as benzene, benzo(a)anthracene, and phenanthrene, and so contaminate ground water. In addition, information necessary to complete the evaluation was not provided to the Agency, which renders the petition incomplete. The Agency, therefore, proposes to deny the petition filed by Murphy Oil USA, Inc. for the API separator sludge generated at its Superior Refinery in Superior, Michigan. The Agency also proposes to withdraw the temporary exclusion held by Murphy for this waste. The Agency believes that these wastes should be considered hazardous and, therefore, should be regulated under 40 CFR Parts 262 to 265.

[38] No detection limits were provided by Murphy for any other, nondetected organic compounds, so the Agency was not able to evaluate any other organic compounds. The Agency, therefore, considers the petition incomplete.

VI. New Departure Hyatt

A. Petition for Exclusion

New Departure Hyatt, located in Sandusky, Ohio, is involved in the plating of machine tools and overmachined bearing components. New Departure Hyatt has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operation except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel and cyanide (complexed). New Departure Hyatt has petitioned to exclude its waste because it does not meet the criteria for which it was listed.

Based upon the Agency's review of their petition, New Departure Hyatt's Sandusky, Ohio, facility was granted a temporary exclusion for this waste on December 15, 1981, based on the original listing criteria. The Agency's basis for granting the informal exclusion (at that time) was the low migration potential of the constitutents of concern, namely cadmium, hexavalent chromium, cyanide (complexed), and nickel. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous (see section 222 of the Amendments, 42 U.S.C. section 6921(f)).

The Agency requested additional information from New Departure Hyatt as required under the HSWA Amendments and has evaluated this information for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. The Agency has also re-evaluated New Departure Hyatt's petition to determine whether the final exclusion should be granted based on the original listing criteria. This notice presents the results of the Agency's re-evaluation of this petition.

In support of their petition, New Departure Hyatt has submitted a detailed description of their manufacturing process and waste treatment processes, including: schematic diagrams, total constituent analyses and Oily Waste EP analyses for all of the EP toxic metals and nickel; and total constituent analyses and water leachable test results for cyanide. New Departure Hyatt has also submitted analyses for total oil and grease content; lists of raw materials and material safety data sheets for trade name products; and total constituent analysis data for benzene, chlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, ethyl benzene, toluene, xylene, naphthalene, and phenol.[39] The Agency requested this information, as noted above, to determine whether hazardous constituents, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

New Departure Hyatt manufactures machine bearings and electroplates worn machine tools and overmachined bearing components for salvage. The production operations include machining, washing, hardening, grinding, and electroplating, honing, and anticorrosion coating.

The chromic acid wastes produced from postplating rinse operations are treated at New Departure Hyatt's industrial waste treatment plant. This system involves chromium reduction using ferrous sulfate, pH adjustment, lime precipitation, clarification, and filter press dewatering.

New Departure Hyatt collected 15 samples from the waste treatment sludge storage hopper during the period from March 21, 1981 through January 24, 1986. Five samples were collected over a 24-day time period in 1981, five samples were collected over a 10-month time period in 1985, and five samples were collected over a 15-day period in 1986. Complete core samples were collected from the hopper. For all samples collected, analysis was started within two hours of sample collection. New Departure Hyatt claims that these samples are representative of any variation of the listed and non-listed constituent concentrations in the

[39] These contaminants were identified as components of raw materials which could possibly enter the subject waste stream.

wastestream, since the samples collected represent waste generation over a two- to three-week period and are representative of any short-term variations. In addition, since the manufacturing processes do not vary over time, significant long-term variations in waste composition are not expected to occur. Consequently, they believe that the samples collected and analyzed fully characterize their waste.

Total constituent analyses for the listed and non-listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS

Toxicants	Concentrations (mg/kg)
As	25.2
Ba	96.9
Cd	65.3
Cr	3402.1
CN	5
Ni	204.3
Pb	105.5
Hg	.1
Ag	3
Se	8.7

The total oil and grease content of the waste ranged from 20.7 to 53.2 percent. Since the waste's total oil and grease content was above one percent, the EP leachate data collected between April 1981 and January 1986 were not used and New Departure Hyatt was requested to analyze the waste using the Oily Waste EP Toxicity Test. New Departure Hyatt analyzed additional samples collected in January 1986. The maximum metal concentrations detected using the Oily Waste EP methodology are presented in Table 2.

TABLE 2.—MAXIMUM MOBILE METAL CONCENTRATIONS

Toxicants	Concentrations (mg/l)
As	0.01
Ba	.02
Cd	.13
Cr	3.67
Pb	.77
Hg	.003
Ag	.02
Se	.01

The Agency reviewed the list of raw materials and material safety data sheets submitted by New Departure Hyatt and identified the following Appendix VIII hazardous constituents which may be present in the waste at significant levels: benzene, chlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, ethyl benzene, toluene, xylene, naphthalene, total aromatic organics, and phenol. New Departure Hyatt analyzed five representative samples collected in January 1986 for total constituent concentrations. The maximum total constituent concentrations detected are presented in Table 3.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS

Toxicants	Concentrations (mcg/l)
Benzene	0.4
Chlorobenzene	.5
1,2-Dichlorobenzene	.5
1,3-Dichlorobenzene	.5
1,4-Dichlorobenzene	.5
Ethyl Benzene	.7
Toluene	.4
Xylene	.7
Naphthalene	1.0
Total Aromatic Organics	5.7
Phenol (mg/kg)	9.6

No other Appendix VIII hazardous constituents were identified as components of New Departure Hyatt's raw materials, and it is unlikely that any other constituents are formed during manufacturing or treatment processes. New Departure Hyatt also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. New Departure Hyatt claims to generate a maximum of 1,800 cubic yards per year of filter cake from this process.

B. Agency Analysis and Actions

New Departure Hyatt has failed to sufficiently demonstrate that the filter cake generated at their Sandusky, Ohio facility is non-hazardous. Based on the data presented in New Departure Hyatt's petition, the Agency believes that the petition has adequately characterized the waste filter cake, and that the samples analyzed reflect the day to day variation in production. The Agency believes New Departure Hyatt's claim that the manufacturing and treatment processes are uniform and consistent is well substantiated since this facility does not perform as a job shop or have seasonal product variations. The Agency believes that the 10-month sampling period adequately characterized any expected variation in the waste since all operations were used during this time period.

The Agency has evaluated the mobility of the constituents of New Departure Hyatt's filter cake using the vertical and horizontal spread (VHS) model.[40] The Agency's evaluation of New Departure Hyatt's 1,800 cubic yards of filter cake using the maximum Oily Waste EP extract levels (mobile metal concentrations) for the listed and non-listed inorganic constituents in the VHS model generated the compliance point concentrations in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.001	0.05
Barium	.002	1.0
Cadmium	.013	.01
Chromium	.378	.05
Nickel		.350
Cyanide		.20
Lead	.078	.05
Mercury	.003	.002
Selenium	.001	.01
Silver	.002	.05

The filter cake exhibited cadmium, chromium, and lead levels (at the compliance point) significantly above the National Interim Primary Drinking Water Standards (NIPDWS). The filter cake did not, however, exhibit hazardous levels of arsenic, barium, selenium, or silver. New Departure Hyatt did not provide mobile metal concentrations for nickel or cyanide.

Since the total constituent concentration of cyanide was low (*i.e.*, <5 mg/kg), the filter cake material would not be expected to exhibit leachable cyanide at levels which would create a health hazard. Total cyanide, and thus, free cyanide, are not present in sufficient concentrations to volatilize and produce concentrations that exceed the workroom air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ACGIH).[41] Lastly, the filter cake is not reactive, ignitable, or corrosive.

The organic compounds listed in Table 3 were evaluated by first estimating their leachate concentrations using both baseline and 95 percent versions of the Organic Leachate Model (OLM),[42] and then predicting their compliance point concentrations with the VHS model. This procedure resulted in the compliance point concentrations presented in Table 5. Table 5 also presents for each organic compound, the regulatory standard to which the predicted concentration is compared.

[40] See footnote 6.
[41] See footnote 14.
[42] See footnote 15.

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TABLE 5.—VHS Model: Predicted Compliance Point Concentrations (mg/l)

Compound	Leachate concentration		Compliance point concentration		Regulatory standard [1]
	(Baseline)	(95 percent confidence)	(Baseline)	(95 percent confidence)	
Benzene	.0002	.0003	.000021	.00003	0.0512
Chlorobenzene	.00009	.0002	.000009	.00002	1.1
1,2-Dichlorobenzene	.00005	.0001	.000005	.00001	3.2
1,3-Dichlorobenzene	.00005	.00011	.000001	.000011	3.9
1,4-Dichlorobenze	.00006	.0001	.000031	.00001	2.6
Ethyl Benzene	.00008	.00012	.000009	.000012	3.5
Toluene	.0001	.0002	.00001	.000021	10.5
Xylene	.0001	.00014	.00001	.000014	2
Naphthalene	.00007	.00013	.000007	.000013	9
Phenol	.45	.85	.046	.087	13.5

[1] The references for these regulatory standards are available in the RCRA docket.

As indicated in Table 5, the concentration levels of the organic constituents at the compliance point do not exceed their respective regulatory standards. The Agency identified these constituents as components used by New Departure Hyatt through a review of their raw materials list, and thus, had reason to believe that they could be present in New Departure Hyatt's filter cake.

While the Agency did not use the EP leachate data collected by New Departure Hyatt because of the high concentration of oil and grease in the waste, we are concerned, however, with the level of leachable chromium present in the filter cake. In particular, the maximum reported EP leachate concentration for total chromium was 6.63mg/l. Under 40 CFR 261.20, a solid waste is considered a hazardous waste if it exhibits any of the characteristics of a hazardous waste including ignitability, corrosivity, reactivity, and EP toxicity if the extract from a representative sample of the waste contains any of the contaminants listed in 40 CFR 261.24(b) at a concentration equal to or greater than that specified. The maximum concentration of total chromium reported by New Departure Hyatt exceeds the maximum concentration for chromium specified in 40 CFR 261.24(b) and, accordingly, the waste is considered to exhibit the characteristic of EP toxicity.

The Agency has concluded, based on the potentially mobile concentration of cadmium, chromium, and lead in the waste as well as the representative sample of the waste exhibiting the characteristic of EP toxicity for chromium, that this waste is hazardous. New Departure Hyatt's wastes, therefore, generated at their Sandusky, Ohio facility, could present a significant hazard to both human health and the environment. The Agency believes that the waste should be considered hazardous and subject to regulation under 40 CFR Parts 262 thorugh 265. The Agency, therefore, proposes to deny New Departure Hyatt's application for final exclusion.

VII. Virginia Chemicals—Bucks

A. Petition For Exclusion

Virginia Chemicals, Inc. (Virginia Chemicals), involved in manufacturing sodium hydrosulfite at its facility in Bucks, Alabama, has petitioned the Agency to exclude its still bottoms presently listed as EPA Hazardous Waste No. F003—The following spent non-halogenated solvent: methanol; and the still bottoms from the recovery of this solvent. This waste is listed as a hazardous waste because of the characteristic of ignitability.

Based upon the Agency's review of the petition, Virginia Chemicals was granted a temporary exclusion on December 31, 1980 (see 45 FR 86544). The basis for granting the exclusion (at that time) was the low percentage of methanol contained in the waste (<0.1 percent by volume) and the non-ignitability of the waste (*i.e.*, a flashpoint greater than 212°F). Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such factors are present and could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. § 6921(f).) As a result, the Agency has re-evaluated Virginia Chemicals' petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine if the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Virginia Chemicals' petition.

In support of their petition, Virginia Chemicals submitted a detailed description of its sodium hydrosulfite production and methanol recovery process (including a schematic diagram);[43] constituent analyses of the still bottoms for methanol; analytical results for pH, sulfides, and oil and grease; and flashpoint tests for this material. Virginia Chemicals also submitted a list of raw materials used in the manufacturing process. As noted above, the Agency requested much of this information to determine if toxicants other than the original listing criteria are present in the waste at levels of regulatory concern. The Agency requested additional information from Virginia Chemicals on August 23, 1983; November 26, 1984; and June 2, 1986. Virginia Chemicals responded to all three information requests. Virginia Chemicals, however, did not respond completely to the request of June 2, 1986.

Virginia Chemicals manufactures sodium hydrosulfite using the sodium formate process. The reaction is run in a methanol solution; the methanol is not part of the reaction. The product precipitates directly from the solution during the reaction. The methanol then is recovered by distillation from filtrate and other solutions of the reaction and is recycled to the process. Virginia Chemicals states that the design efficiency of the methanol recovery column is 99.9+ percent. The still bottoms from the methanol recovery process are composed primarily of sodium and sulfur salts in an aqueous solution. The still bottoms are sold to users in the pulp and paper industry.[44] Virginia Chemicals claims that its still bottoms do not exhibit any of the properties for ignitable wastes. Virginia Chemicals also claims that the still bottoms are non-hazardous water solutions of chemicals that do not meet any of the characteristics of hazardous waste described in 40 CFR Parts 261.21 through 261.24.

[43] Virginia Chemicals has claimed their process description as confidential business information (CBI). This information, therefore, is not available in the public docket.

[44] In general, recycling activities involving hazardous wastes are subject to regulation from the point of generation until reclamation is commenced. Although sold Virginia Chemical's still bottoms are still considered to be a waste because the users in the pulp and paper industry are recovering sodium and sulfur salts from the still bottoms. (*i.e.*, reclamation activities are not complete at the time the still bottoms are transferred off-site.) Thus, the still bottoms are considered to be listed by-products (F003) being reclaimed and, therefore, are solid and hazardous wastes.

Virginia Chemicals collected ten grab samples of the still bottoms from the recycle pump sump valve of the methanol recovery column. These samples were collected between February 24 and March 7, 1980. Virginia Chemicals did not provide any other specific information regarding sample collection times or methods. Virginia Chemicals does claim that the samples are non-biased and representative of any variation in the still bottoms at any point in time. Virginia Chemicals claims that the production process, including the methanol recovery distillation column, operates continuously and does not vary substantially with time.

Analyses of all ten samples showed the material to be an aqueous solution of sodium and sulfur salts, specifically sodium bisulfite, sodium thiosulfate, sodium formate, sodium sulfate, and sodium chloride. These constituents are all non-hazardous (*i.e.*, they are not listed on Appendix VIII of Part 261). The percent solids content ranged from 23.4 to 28.6 while the reported minimum water content was 64.13 percent. Virginia Chemicals also reported that the total organic carbon ranged from 16,600 to 20,300 ppm and claimed that these values are the result of the alcohol which remains in solution after distillation. Virginia Chemicals also claimed that oil and grease are only present as a result of routine maintenance at 50 to 80 ppm. Virginia Chemicals did not make the oil and grease determination as a result of sample collection and analysis in support of this petition, but as a result of the analyses of samples collected during a process quality control check. (Virginia Chemicals regularly collects and analyzes samples for this purpose.)

Two of the ten samples from the facility were analyzed for methanol. Methanol was detected at less than 0.1 percent in each of the two samples. An ignitability test result for one sample also indicated that the flashpoint of the still bottom material was greater than 212°F. The pH of all ten samples ranged from 5.9 to 6.3. Virginia Chemicals also reported that sulfides are present at less than 0.01 ppm.

Virginia Chemicals also submitted a list of raw materials used in their manufacturing process. This list indicated that no Appendix VIII hazardous constituents are used in the process and that formation of such constituents is highly unlikely. Virginia Chemicals claims to generate a maximum of 31,500 tons of their still bottom waste per year.

B. Agency Analysis and Action

Virginia Chemicals has not demonstrated that its methanol recovery process generates non-hazardous still bottoms. Since the petitioner did not submit sufficient information regarding sampling methods, the Agency cannot determine whether the samples collected from the distillation column were non-biased and adequately represent any variations that may occur.

EPA Hazardous Waste No. F003 is listed solely for ignitability. Virginia Chemicals has demonstrated that the still bottoms are an aqueous solution. Virginia Chemicals' analyses of two samples indicated methanol concentrations in the still bottoms are less than 0.1 percent by volume. This is well below the limit of 24 percent alcohol set in § 261.21(a)(1) of the regulations. Section 261.21(a)(1) of the regulations also indicates that solutions with flashpoints above 140°F are considered non-ignitable. A flashpoint test run on one sample of the still bottoms indicated a flashpoint of greater than 212°Φ. Virginia Chemicals, however, did not submit a sufficient number of analytical results for percent of methanol by volume to demonstrate that the still bottoms do not exhibit the characteristic of ignitability.

The Agency also reviewed Virginia Chemicals' raw material list. This review concluded that no Appendix VIII hazardous constituents are expected to be present in the still bottoms. Virginia Chemicals, however, did not submit any analytical results to demonstrate that its waste does not exhibit the characteristic of EP toxicity. Virginia Chemicals did not adequately demonstrate that the waste is not reactive. Information regarding sampling procedures was not specific and, therefore, the Agency is unable to determine whether the total sulfide analyses are representative of the sulfide content of the waste. In addition, cyanide results were not submitted.

Virginia Chemicals has not demonstrated sufficiently that its methanol recovery system distillation column bottoms are non-hazardous. Virginia Chemicals did not completely respond to the Agency's request for additional information; consequently, the petition is not complete and the Agency cannot determine whether the waste is non-hazardous. The Agency, therefore, proposes to deny a final exclusion to Virginia Chemicals for the methanol recovery still bottoms generated at its Bucks, Alabama facility and revoke its temporary exclusion.[45]

VIII. Titan Oil Company

A. Petition for Exclusion

Titan Oil Company (Titan) located in Indianapolis, Indiana is involved in the reprocessing of hydraulic fluids and cutting oils. In October 1981, Titan petitioned the Agency to exclude its de-watered wastewater sludge, presently listed as EPA Hazardous Waste Nos. F010—Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process, and F012—Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.

Based upon the Agency's review of the petition, Titan was granted a temporary exclusion for its de-watered wastewater treatment sludge on May 5, 1982.[46] The Agency's basis for granting the exclusion was the low concentration and migration potential of cyanide salts and complexed cyanide. Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider other factors (including additional constituents other than those for which the waste was originally listed), if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In response to the Amendments, Titan was requested to submit a complete list of clients and wastes treated at the facility and results from additional analytical testing. This material was never received by the Agency. As a result, the Agency has re-evaluated Titan's petition to: (1) Determine whether the delisting should be granted based on the original listing criteria; and (2) evaluate the waste for additional factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. This notice presents the results of the Agency's re-evaluation of this petition.

In support of their petition, Titan has submitted a description of its waste treatment process, EP toxicity concentrations for the listed and non-listed constituents of concern, and information regarding ignitability, reactivity, and corrosivity.

[45] The Agency notes that Virginia Chemicals intends to submit the additional information necessary to make its petition complete and is in the process of compiling this information.

[46] The exclusion, applied only to the final treated and de-watered sludge, as the petitioner requested.

Titan reprocesses approximately 700,000 gallons of hydraulic fluids and cutting oils per month. The spent hydraulic fluids and cutting oils are pumped to a settling tank, from which the free liquids are skimmed from the top and the settled solids are collected from the bottom. The free liquids are then batch neutralized, first with the addition of spent battery acid and polymers, and then by settling. The free liquids are discharged to the sewer and the settled solids are combined with the settled solids obtained from the oil settling tank. The combined settled solids are neutralized with spent battery acid. A polymer is added to the neutralized solids and the mixture is pumped to one of two storage tanks. The stored solids flow to a centrifuge for de-watering. The supernatant is pumped back to the free liquids treatment unit and the de-watered filter cake is disposed off-site.

Titan analyzed four samples collected from the centrifuge on April 15, 1981, July 6, 1981, August 3, 1981 and August 25, 1981. Each sample consisted of a five gallon grab taken directly from the centrifuge. The samples were only analyzed for EP toxicity, ignitability, reactivity, and corrosivity. The EP toxicity data, however, has not been used by the Agency, since Titan's waste exhibits a total oil and grease content exceeding one percent. The Agency requests that the EP Toxicity Test for Oily Wastes be used on any waste which exhibits a total oil and grease content greater then one percent due to the inability of the EP Toxicity Test to filter the oil fraction of the waste.

The Agency conducted a spot-check verification sampling visit at Titan on June 24, 1985. Although Titan's centrifuge was inoperable; one composite sample from centrifuge waste remaining in an on-site dumpster was collected. In addition, two samples were taken from each of the two solids storage tanks. Sludge was collected from each release valve by first purging five gallons of sludge and then collecting two gallons of sludge. The two 2 gallon samples of the bottom sludges from both solids storage tanks were composited, and the four 1 gallon samples (multi-depth) from the first solids storage tank were composited with the one 2 gallon sample collected from the eight-foot release valve from the second solids storage tank. The Agency elected to composite the two multi-depth composite samples together and the two tank bottom samples together since both solids storage tanks feed the filter press with no pre-assigned pattern. A total of three samples, therefore, were analyzed for total constituent concentrations and mobile metal concentrations of all the EP toxic metals, nickel, and cyanide. Additionally, priority pollutant analyses were also performed on sample. Table 1 and 2 present the results of the total constituent analyses and Oily Waste EP leachate analysis for all the EP toxic metals, nickel, and cyanide, respectively. Table 1 also presents the total sulfide concentration of each sample.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (MG/KG)

Constituents	Solids Storage Tanks		Dumpster
	Bottom composite	Multi-depth composite	
As	2.6	2.3	3.3
Be	170	140	260
Cd	5.02	2.0	3.8
Cr	840	150	350
CN	<0.281	0.194	<0.275
Ni	70	40	81
Pb	300	170	330
Hg	2.0	0.83	4.1
Se	<2.5	<2.5	<2.4
Ag	0.88	<0.5	0.93
Sulfide	140	740	120

TABLE 2.—MAXIMUM MOBILE METAL CONCENTRATIONS (mg/l)

Constituents	Solids Storage Tanks		Dumpster
	Bottom composite	Multi-depth composite	
As	<0.079	<0.062	<0.076
Be	1.2	.32	1.5
Cd	<0.045	<0.044	<0.044
Cr	1.5	.37	2.9
CN	[1]	[1]	[1]
Ni	.65	.33	1.2
Pb	.38	.11	1.2
Hg	<0.001	<0.001	0.003
Se	<0.08	<0.06	<0.079
Ag	<0.023	<0.022	<0.062

[1] Not analyzed due to the low total constituent concentration of cyanide (<0.281 mg/kg).

TABLE 3.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (ppm)

Constituents	Solids Storage Tanks		Dumpster
	Bottom composite	Multi-depth composite	
1,1,1-Trichloroethane	13.0	4.5	18.0
Trichloroethylene	28.0	14.0	47.0
Tetrachloroethylene	18.0	22.0	47.0
Toluene	5.1	3.8	11.0
Ethyl benzene	ND	1.5	10.0
Xylenes	17.0	13.0	73.0
p-Chloro-m-cresol	27.0	11.0	50.0
Phenol	72.0	29.0	38.0
Bis(2-ethylhexyl) phthalate	14.0	5.5	39.0
Butyl benzyl phthalate	22.2	9.5	47.0
Diethyl phthalate	ND	5.3	ND
Phenanthrene	21.0	8.8	65.0
Fluoranthene	6.2	ND	30.0
Naphthalene	12.0	ND	31.0
Di-n-octyl phthalate	16.5	ND	62.0
Pyrene	5.9	ND	19.0
1,1-Dichloroethylene	ND	ND	8.4
Anthracene	ND	ND	11.0
Fluorene	ND	ND	13.0

TABLE 3.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (ppm)—Continued

Constituents	Solids Storage Tanks		Dumpster
	Bottom composite	Multi-depth composite	
Polychlorinated biphenyls	[1] 5	[1] 5	[1] 5

[1] The Agency analyzed Titan's waste for polychlorinated biphenyls (PCBs), however, due to the waste matrix, a detection limit of 5 mg/kg was used and no PCBs were detected. During the spot-check visit, however, the Agency reviewed Titan's analytical data which indicated that their waste generally contains 3–5 ppm of PCBs. The tabulated value of 5 mg/kg is included in this table since it was obtained during the spot-check visit.

Table 3 presents the total constituent concentrations of all the organics detected in the priority pollutant analyses. The waste exhibited a maximum of 740 mg/kg of total sulfide and a maximum of <0.281 mg/kg of cyanide. Titan claims to generate a maximum of 1,200 cubic yards (1,215 tons) of sludge per year.

B. Agency Analysis and Action

Titan has not demonstrated to the Agency that its waste treatment system generates a non-hazardous sludge. Specifically, the data provided by the Agency's spot-check verification sampling visit indicates that the sludge contains significant concentrations of chromium, lead, 1,1-dichloroethylene, trichloroethylene, tetrachloroethylene, and PCBs. The Agency, therefore, is proposing to deny Titan's petition on this basis.

The Agency is also denying Titan's petition due to the following factors discovered during the spot check visit: (1) Titan accepted and treated other listed hazardous wastes, specifically EPA Hazardous Waste F006, which was not specified in their petition request; (2) Titan does not operate an adequate pre-screening program (that is, incoming waste is not verified on a daily basis); and, (3) Titan has no treatment system for the destruction of cyanides at the facility (cyanide is the listed constituent of concern for EPA Hazardous Wastes Nos. F010 and F012).

Titan's petition states that only EPA Hazardous Waste Nos. F010 and F012 are handled at their facility. Upon inspection of the facility's records, however, it was discovered that Titan Oil was also accepting EPA Hazardous Waste No. F006. (This was determined through inspection of Hazardous Waste Manifests by Agency personnel.)

The Agency also considers Titan's petition to be incomplete since they have not provided total constituent analyses or Oily Waste EP leachate analyses for all of the EP toxic metals, nickel, and cyanide as requested by the Agency. The Agency does not consider the original four samples analyzed for EP leachate concentrations as representative of the waste since Titan did not use the Oily Waste EP toxicity analysis methodology.

The Agency believes that the sampling methodology used to collect samples during its site visit at Titan's facility was adequate. The samples were collected from the two solids storage tanks and represented at least two weeks of stored material. The Agency believes that the samples collected during its site visit indicate the potential for significant concentrations of hazardous materials (see below) to be present. The Agency notes that the samples obtained from the solids storage tanks represent material which has not been completely de-watered. The Agency, however, does not believe the de-watering process, in Titan's case, will decrease the concentrations of constituents. This belief is supported by the analytical data on the filter cake which exhibits greater arsenic, barium, cadmium, nickel, lead, and mercury levels than the waste stored prior to dewatering.

The Agency has evaluated the mobility of the constituents from both Titan's incompletely de-watered sludge and de-watered sludge using the vertical and horizontal spread (VHS) model.[47] The Agency's analysis of Titan's 1,200 cubic yards of de-watered sludge using the maximum Oily Waste EP leachate values for the listed constituent of concern and non-listed constituents of concern generated the compliance-point concentrations exhibited in Table 4.

The VHS model predicts that the compliance-point concentrations of arsenic, barium, cadmium, mercury, selenium, and silver were all below the National Interim Primary Drinking Water Standards. Compliance point concentrations for cyanide also did not exceed the U.S. Public Health Service's suggested drinking water standard.[48]

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS FOR THE LISTED AND NON-LISTED CONSTITUENTS OF CONCERN

Constituent	Solid Storage Tanks		Dumpster sludge	Regulatory standard
	Bottom composite	Multi-depth composite		
As	<0.005	<0.004	<0.005	0.05
Be	.066	.025	.111	1.5
Cd	<.008	<.008	<.008	.01
Cr	.111	.027	.215	.05
CN	[1] <.625	[1] .0444	[1] <.081	.2

[47] See footnote 6.
[48] See footnote 7.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS FOR THE LISTED AND NON-LISTED CONSTITUENTS OF CONCERN—Continued

Constituent	Solid Storage Tanks		Dumpster sludge	Regulatory standard
	Bottom composite	Multi-depth composite		
Ni	.040	.024	.008	.35
Pb	.026	.008	.009	.05
Hg	<.001	<.001	<.001	.002
Sc	<.005	<.004	.006	.01
Ag	<.001	<.001	<.001	.05

[1] Calculated using the total constituent concentration detected or inferred by detection limit (worst case analysis, assuming no dilution by the Oily Waste EP leachate analysis and 100 percent leaching).

In addition, the total constituent concentration of cyanide and reactive cyanide are both well below the Agency's interim level of 250 ppm.[49] Additionally, the compliance point concentration of nickel did not exceed the Agency's interim regulatory standard.[50]

The compliance point concentrations of chromium and lead from the sample obtained from the dumpster, and compliance point concentration of chromium from the sample obtained from the composite of the bottom solids, however, exceed the National Interim Primary Drinking Water Standards. The one sample obtained by compositing the multi-depth samples exhibited sufficient levels of total sulfide (although no analyses for reactive sulfide) to potentially be reactive (*i.e.*, the concentration of total sulfide is 740 mg/kg, therefore, it is possible for the concentration of reactive sulfide to exceed 500 mg/kg).[51]

The organic constituents detected by the priority pollutants analyses (listed in Table 3) were evaluated by first estimating their leachate concentrations (using the proposed Organic Leachate Model) and then predicting their compliance point concentrations with the VHS model.[52] This procedure resulted in the compliance point concentrations presented in Table 5 through 7. Table 5 through 7 also present, for each organic constituent, the regulatory standard to which the predicted compliance point concentration is compared.

As indicated in Tables 5 and 6, both the settled solids multi-depth composite and bottom's composite exhibited compliance point concentrations (using both the best-fit equation and the 95 percent confidence equation) of trichloroethylene, tetrachloroethylene, and PCBs in excess of their respective regulatory standards. As indicated in Table 7, the dumpster sludge exhibited predicted compliance point concentrations (using both the best-fit and the 95 percent confidence equation) of 1,1-dichloroethylene, trichloroethylene, tetrachloroethylene, and PCBs in excess of the constituents' regulatory standards.

[49] See footnote 8.
[50] See footnote 9.
[51] See internal Agency memorandum dated July 12, 1985, regarding "Reactivity Threshold for Sulfide" (in the RCRA public docket).
[52] See footnote 15.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS SOLIDS STORAGE TANKS MULTI-DEPTH COMPOSITE (mg/l)

Constituents	Compliance point concentrations		Regulatory standards [1]
	Baseline	95 percent confidence	
1,1,1-Trichloroethane	0.008	0.0084	1.2
Trichloroethylene	.012	.016	0.0082
Tetrachloroethylene	.008	.01	0.00088
Toluene	.0038	.0048	10.8
Ethyl benzene	.0011	.0017	3.5
Xylene	.006	.0077	2.8
p-Chloro-m-cresol	.017	.022	0.2
Phenol	.105	.150	3.5
Bis(2-ethylhexyl)phthalate	.0053	.00047	0.7
Butyl benzyl phthalate	.001	.0014	8.75
Diethyl phthalate	.002	.0026	455
Phenanthrene	.0008	.00088	0.002
Polychlorinated biphenyls	.00213	.00018	8.1×10^{-6}

[1] An explanation of the derivation of these regulatory standards is available in the public docket.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS SOLIDS STORAGE TANKS—BOTTOM COMPOSITE (mg/l)

Constituents	Compliance point concentrations		Regulatory standards [1]
	Baseline	95 percent confidence	
1,1,1-Trichloroethylene	0.011	0.014	1.2
Trichloroethylene	.0204	.025	0.0082
Tetrachloroethylene	.0068	.008	0.00088
Toluene	.0048	.006	10.8
Xylene	.0077	.009	2.8
p-Chloro-m-cresol	.03	.04	0.2
Phenol	.29	.387	3.5
Bis(2-ethylhexyl)Phthalate	.0007	.00088	0.7
Butyl benzyl phthalate	.0019	.0024	8.75
Phenanthrene	.0012	.0016	0.002
Fluoranthene	.0008	.00037	0.2
Naphthalene	.0091	.00870	2.8
Di-n-octylphthalate	.0015	.0018	0.8
Pyrene	.0002	.00034	4.0
Polychlorinated biphenyls	.00013	.00018	8.1×10^{-6}

[1] An explanation of the derivation of these regulatory standards is available in the public docket.

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TABLE 7.—VHS MODEL CALCULATED COMPLIANCE POINT CONCENTRATIONS DUMPSTER SLUDGE (MG/1)

Constituents	Compliance point concentrations		Regulatory standards [1]
	Baseline	95 percent confidence	
1,1,1-Trichloroethylene	0.011	0.014	1.2
Trichloroethylene	.0280	.036	0.0032
Tetrachloroethylene	.014	.018	0.00089
Toluene	.0083	.010	10.5
Xylene	.0046	.0059	3.5
p-Chloro-m-cresol	.04	.051	0.2
Phenol	.13	.19	3.5
Bis(2-ethylhexyl) phthalate	.0013	.0017	0.7
Butyl benzyl phthalate	.00320	.004	8.75
Phenanthrene	.0026	.0033	NA [2]
Fluoranthene	.00067	.000860	0.2
Naphthalene	.0058	.0088	9.0
Di-n-octyl phthalate	.0039	.0047	0.6
Pyrene	.00054	.00073	4.0
1,1-Dichloroethylene	.00980	.012	0.0003
Anthracene	.000250	.00037	0.002
Fluorene	.0011	.0014	0.002
Polychlorinated biphenyls	.00013	.00018	8.1 x 10⁻⁶

[1] An explanation of the derivation of these regulatory standards is available in the public docket.
[2] A regulatory standard is not currently available.

The Agency believes that the final dewatered sludge, (which is the petitioned wastestream), contains significant concentrations of mobile chromium, lead, 1,1-dichloroethylene, trichloroethylene, tetrachloroethylene, and PCBs. In addition, the Agency is concerned about the misrepresentation of the wastes accepted by Titan for reprocessing, the lack of a formal prescreening program (required for all multiple waste treatment facilities) and the lack of an acceptable cyanide treatment process. The Agency believes, therefore, that Titan has not demonstrated that their waste treatment residue is non-hazardous and that the centrifuge cake now presents and will continue to present substantial hazard to human health and the environment. The Agency, therefore, proposes to deny Titan Oil Company's petition to delist the residue generated from their Indianapolis, Indiana facility. The Agency believes that this waste should be considered hazardous and subject to regulation under 40 Parts 262 through 265.

IX. Virginia Chemicals—Leeds

A. Petition For Exclusion

Virginia Chemicals, Inc. (Virginia Chemicals), involved in manufacturing sodium hydrosulfite at its facility in Leeds, South Carolina, has petitioned the Agency to exclude its still bottoms presently listed as EPA Hazardous Waste No. F003—The following spent non-halogenated solvent: methanol; and the still bottoms from the recovery of this solvent. This waste is listed as a hazardous waste because of the characteristic of ingnitability.

Based upon the Agency's review of the petition, Virginia Chemicals was granted a temporary exclusion on December 31, 1980 (see 45 FR 86544). The basis for granting the exclusion (at that time) was the low percentage of methanol contained in the waste (<0.1 percent by volume) and non-ignitability of the waste (*i.e.*, a flashpoint greater than 212 °F). Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such factors are present and could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. § 6921 (f).) As a result, the Agency has re-evaluated Virginia Chemicals' petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed and (2) determine if the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Virginia Chemicals' petition.

In support of their petition, Virginia Chemicals submitted a detailed description of its sodium hydrosulfite production and methanol recovery process (including a schematic diagram); [53] constituent analyses of the still bottoms for methanol; analytical results for pH, sulfides, and total organic carbon, and flashpoint tests for this material. Virginia Chemicals also submitted a list of raw materials used in the manufacturing process. As noted above, the Agency requested this information to determine if toxicants other than the original listing criteria are present in the waste at levels of regulatory concern. The Agency requested additional information from Virginia Chemicals on August 23, 1983; November 28, 1984; and June 2, 1986. Virginia Chemicals responded to all three information requests. Virginia Chemicals, however, did not respond completely to the request of June 2, 1986.

Virginia Chemicals manufactures sodium hydrosulfite using the sodium formate process. The reaction is run in a methanol solution; the methanol is not part of the reaction. The product precipitates directly from the solution during the reaction. The methanol then is recovered by distillation from filtrate and other solutions of the reaction and is recycled to the process. Virginia Chemical states that the design efficiency of the methanol recovery column is 99.9+ percent. The still bottoms from the methanol recovery process are composed primarily of sodium and sulfur salts in an aqueous solution. The still bottoms are sold to users in the pulp and paper industry.[54] Virginia Chemicals claims that its still bottoms do not exhibit any of the properties for ignitable wastes. Virginia Chemicals also claims that the still bottoms are non-hazardous water solutions of chemicals that do not meet any of the characteristics of hazardous waste described in 40 CFR Parts 261.21 through 261.24.

Virginia Chemicals collected ten grab samples of the still bottoms from the methanol recovery column. These samples were collected between February 25 and 29, 1980. Virginia Chemicals did not provide any other specific information regarding sample collection times or methods. Virginia Chemicals does claim that the samples are non-biased and representative of any variation in the still bottoms at any point in time. Virginia Chemicals claims that the production process, including the methanol recovery distillation column, operates continuously and does not vary substantially with time.

Analyses of all ten samples showed the material to be an aqueous solution of sodium and sulfur salts, specifically sodium bisulfite, sodium thiosulfate, sodium formate, sodium sulfate, and sodium chloride. These constituents are all nonhazardous (*i.e.*, they are not listed on Appendix VIII of Part 261). The percent solids content ranged from 23.4 to 35.5 while the reported minimum water content was 65.11 percent.

[53] Virginia Chemicals has claimed their process description as confidential business information (CBI). This information, therefore, is not available in the public docket.

[54] In general, recycling activities involving hazardous wastes are subject to regulation from the point of generation until reclamation is commenced. Although sold Virginia Chemicals' still bottoms are still considered to be a waste because the users in the pulp and paper industry are recovering sodium and sulfur salts from the still bottoms (*i.e.*, reclamation activities are not complete at the time the still bottoms are transferred off-site.) Thus, the still bottoms are considered to be listed by-products (F003) being reclaimed and, therefore, are solid and hazardous wastes. 40 C.F.R. 261.2(c)(3).

Virginia Chemicals also reported that the total organic carbon ranged from 16,600 to 20,300 ppm and claimed that these values are the result of the alcohol which remains in solution after distillation. Virginia Chemicals also claimed that oil and grease are only present as a result of routine maintenance at 50 to 80 ppm. Virginia Chemicals did not make the oil and grease determination as a result of sample collection and analysis in support of this petition, but as a result of the analyses of samples collected during a process quality control check. (Virginia Chemicals regularly collects and analyzes samples for this purpose.)

Two of the ten samples from the facility were analyzed for methanol. Methanol was detected at less than 0.1 percent in each of the two samples. An ignitability test result for one sample also indicated that the flashpoint of the still bottom material was greater than 212°F. The pH of all ten samples ranged from 5.9 to 6.3. Virginia Chemicals also reported that sulfides are present at less than 0.01 ppm.

Virginia Chemicals also submitted a list of all raw materials used in their manufacturing process. This list indicated that no Appendix VIII hazrdous constitents are used in the process and that formation of such constituents is highly unlikely. Virginia Chemicals claims to generate a maximum of 26,500 tons of their still bottom waste per year.

B. Agency Analysis and Action

Virginia Chemicals has not demonstrated that its methanol recovery process generates non-hazardous still bottoms. Because Virginia Chemicals did not submit sufficient information regarding sampling methods, the Agency cannot determine whether the samples collected from the distillation column were non-biased and adequately represent any variations that may occur.

EPA Hazardous Waste No. F003 is listed solely for ignitability. Virginia Chemicals has demonstrated that the still bottoms are an aqueous solution. Virginia Chemicals' analyses of two samples indicated methanol concentrations in the still bottoms are less than 0.1 percent by volume. This is well below the limit of 24 percent alcohol set in § 261.21(a)(1) of the regulations. Section 261.21(a)(1) of the regulations also indicates that solutions with flashpoints above 140°F are considered non-ignitable. A flashpoint test run on one sample of the still bottoms indicated a flashpoint of greater than 212°F. Virginia Chemicals, however, did not submit a sufficient number of analytical results for percent of methanol by volume to demonstrate that the still bottoms do not exhibit the characteristic of ignitability.

The Agency also reviewed Virginia Chemicals' raw material list. This review concluded that no Appendix VIII hazardous constituents are expected to be present in the still bottoms. Virginia Chemicals, however, did not submit any analytical results to demonstrate that its waste does not exhibit the characteristic of EP toxicity. Virginia Chemicals did not adequately demonstrate that the waste is not reactive. Information regarding sampling procedures was not specific and, therefore, the Agency is unable to determine whether the total sulfide analyses are representative of the sulfide content of the waste. In addition, cyanide results were not submitted.

Virginia Chemicals has not demonstrated sufficiently that its methanol recovery system distillation column bottoms are non-hazardous. Virginia Chemicals did not completely respond to the Agency's request for additional information; consequently, the petition is not complete and the Agency cannot determine whether the waste is non-hazardous. The Agency, therefore, proposes to deny a final exclusion to Virginia Chemicals for the methanol recovery still bottoms generated at its Leeds, South Carolina facility and revoke its temporary exclusion.[55]

X. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. For the nine petitioners who may have their temporary exclusions revoked and their final exclusions denied, however, this is not the case. These petitioners may be required to revert back to handling their wastes as they did before they were granted their temporary exclusions (*i.e.*, they must handle their waste as hazardous). These petitioners would need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions would be six months after publication in the Federal Register.[56]

XI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. In addition, this proposal is not major even though it would also revoke a total of nine temporary exclusions and deny final exclusions to these facilities. The effect of this proposal would increase the overall costs for these nine facilities which currently have a temporary exclusion. The actual cost to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these facilities and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $30 million, well under the $100 million level constituting a major regulation.

XII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

[55] The Agency notes that Virginia Chemicals intends to submit the additional information necessary to make its petition complete and is in the process of compiling this information.

[56] The Agency notes that two petitions submitted by Virginia Chemicals are being denied due to lack of sufficient information which prohibited the Agency from determining the characteristics of the petitioned wastes (*i.e.*, the petitions are not complete). The effective date of the denial and revocation of the temporary exclusions would be November 8, 1986. If the requisite information would be submitted to the Agency prior to the close of the 15-day comment period of this notice (*i.e.*, if the petitions are complete), the Agency will evaluate Virginia Chemicals' petitions and make a decision to grant or deny the petitions.

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This amendment will have no effect of increasing overall waste disposal costs. Some of the facilities (being denied) in this notice may be considered small entities, however, this rule only effects nine facilities in different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that his proposed regulation will not have a significant economic impact on a substantial numbers of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: October 10, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86-23562 Filed 10-16-86; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
October 17, 1986

Part IX

Department of Health and Human Services

Health Care Financing Administration

Medicare Program Criteria for Medicare Coverage of Heart Transplants; Proposed Notice

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VOL
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ISS
201
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-362-PN]

Medicare Program; Criteria for Medicare Coverage of Heart Transplants

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice proposes Medicare coverage of heart transplantations under certain circumstances. We would extend coverage to heart transplants based on the results of the National Heart Transplant Study and our subsequent determination that heart transplants are a medically reasonable and necessary service when furnished by participating facilities that meet specific criteria, including patient selection criteria.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on November 17, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-362-PN, P.O. Box 26676, Baltimore, Maryland 21270.

In addition, please address a copy of your comments on the information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503, Attention: Fay Iudicello.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-362-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Barton McCann, M.D. (301) 594-9370.

SUPPLEMENTARY INFORMATION:

I. Background

In November 1979, Medicare began paying for heart transplantation procedures performed for Medicare beneficiaries at Stanford University Medical Center. This was an interim decision, based on preliminary findings by the Public Health Service (PHS) regarding the safety and efficacy of heart transplants performed at that center. We had expected to reach a final decision quickly, not only about coverage at that center, but also on generally applicable, broadly based criteria for approving Medicare coverage of heart transplants of other facilities.

Upon review of Medicare coverage of heart transplants, we determined that the issues were much more complex than originally thought and that adequate data did not exist to resolve many of them. Consequently, the Secretary of HHS announced a decision to exclude heart transplants from Medicare coverage, with the exception of a very few patients previously selected for and awaiting transplantations. That decision was announced June 12, 1980 by the Secretary and published as a notice of HCFA Ruling (HCFAR 80-1) in the **Federal Register** on August 6, 1980 (45 FR 52296).

Accompanying the decision to exclude heart transplants from Medicare coverage was an announcement that HCFA, in close cooperation with the PHS would conduct a broad study of heart transplants. On January 22, 1981, we published a notice in the **Federal Register** (46 FR 7072) that described the study in detail and solicited applications from hospitals and medical centers wishing to participate. We awarded the contract for the National Heart Transplant Study to the Battelle Human Affairs Research Centers of Seattle, Washington. The study had two aspects:

- Six hospitals and medical centers were selected to participate. These facilities were reimbursed for a limited number of heart transplants performed on Medicare patients during the course of the study. In addition, these facilities furnished data about heart transplants performed at their facilities.
- The contractor (Battelle) gathered, coordinated, evaluated, and reported the data it collected from those facilities and other sources.

The study encompassed analysis of data obtained from the six facilities on 441 heart transplant recipients (including 152 living recipients) from 1968 to June 30, 1983.

As part of the January 1981 notice, we stated that when the results of the study were analyzed, we would publish a proposed decision regarding Medicare coverage and would give the public an opportunity to comment on our proposal before developing a final policy.

II. Proposed Policy

After analyzing findings of the Battelle study and consulting with PHS, we have determined that, for Medicare coverage purposes, heart transplants are medically reasonable and necessary when performed in facilities that meet certain criteria. Facilities that wish to obtain this coverage for their Medicare patients would be required to submit an application and supply documentation showing their initial and ongoing compliance with each of the criteria. We will reexamine the use of the criteria in three years to verify its continuing appropriateness. For facilities which are approved, Medicare would cover under Part A (Hospital Insurance) all medically reasonable and necessary inpatient services. Payment for these services generally would be made under the Diagnosis Related Group (DRG) classification code #103, "Heart transplants". Organ acquisition costs would be paid separately on a cost-reimbursement basis. Physician services, as well as other non-hospital services related to the transplant, and pre- and post-transplant care, would be covered under Part B (Supplementary Medical Insurance) and reimbursed on the basis of reasonable charges. This post-transplant care would not include outpatient, self-administrable immunosuppressant drugs, such as cyclosporine, since Medicare coverage of self-administered drugs is excluded under section 1861(s)(2) of the Social Security Act. If a Medicare beneficiary receives a covered heart transplant from an approved facility, reasonable and necessary services for followup care and for complications are covered, even if such services are furnished by a hospital that is eligible for Medicare reimbursement but is not specifically approved by Medicare for heart transplantation.

We propose to make the effective date of coverage of heart transplants the date of publication of this proposed notice. Coverage as of the date of this proposed notice would be effective only for those facilities which would have qualified as heart transplant facilities when the transplant was performed and whose applications are received by HCFA within 90 days of the **Federal Register** publication of the final notice announcing our policy. The effective date of coverage for heart transplants performed at facilities applying after that date would be the date the facility receives approval from HCFA as a heart transplant facility.

Under the proposal, Medicare would not cover transplants or re-transplants in facilities which have not been approved as Medicare transplant facilities. If a Medicare beneficiary received a heart transplant from a facility that is not approved by Medicare for heart transplantation, we would not cover any inpatient services associated with the transplantation procedure. Neither would we cover physician services. Thus, payment would not be made for the performance of the transplant or for any other services which are incorporated into a global fee.

Additionally, we propose that, after a beneficiary has been discharged from a hospital (which has not been approved by Medicare as a heart transplant center) in which he or she received the heart transplant, medical and hospital services required as a result of the prior non-covered transplant may be covered in a facility otherwise eligible for Medicare reimbursement when they are reasonable and necessary in all other respects. Thus, coverage would be provided for subsequent inpatient stays or outpatient treatment ordinarily covered by Medicare even if the need for treatment arose because of a previous non-covered heart transplant procedure. These services also would be covered for Medicare beneficiaries who were not beneficiaries at the time they received a heart transplant regardless of whether or not the transplant was performed at an approved facility.

The PHS National Heart, Lung, and Blood Institute (NHLBI) has reported to us that heart transplantation has resulted in incremental increases in life expectancy and improvements in the quality of life in certain cases. These are cases of carefully selected patients managed according to specific protocols by experienced medical teams at facilities that have had substantial dedication to and experience with the procedure. This practice of patient selection for heart transplants is widely accepted by the medical profession. Thus, when specific criteria are considered in connection with the assessment of an individual patient's suitability for a heart transplant, we believe that heart transplants are medically reasonable and necessary. In conjunction with PHS and with technical assistance from the NHLBI, we have developed proposed patient selection guidelines, which are a subset of the criteria that facilities must meet so that we may be assured of their qualifications to provide medically reasonable and necessary heart transplants to Medicare patients. Thus, we propose to rescind the HCFA Ruling, HCFAR 80-1, "Exclusion of Heart Transplantation Procedures from Medicare Coverage".

The criteria we would use are an adaptation of those published in the January 1981 **Federal Register** and required for facility participation in the National Heart Transplant Study. The criteria we used for the National Heart Transplant Study were developed by NHLBI with the advice of experts in cardiology, cardiovascular surgery, organ transplantation and immunology. These criteria were used in the selection process to ensure that only qualified facilities could participate so that it would be most likely that patients chosen for transplants would receive optimum care. The criteria reflected the following factors that we considered necessary for clinical effectiveness:

- Careful and appropriate patient selection.
- Expert surgery.
- Postoperative care.
- Immunosuppression.
- Management of complications associated with immunosuppression.
- Patient education.
- Liaison with the patient's permanent physician for subsequent lifelong care.

These proposed criteria take into consideration advances in the cardiac transplantation field and reflect discussions with experts in cardiology cardiovascular surgery, cardiac transplantation, biostatistics, and experts familiar with the data bank of the International Society for Heart Transplantation. We realize that the indicators to measure the safety and efficacy of heart transplantations will continue to evolve. Thus, the criteria we propose may need to be updated periodically to recognize further developments in heart transplantation technology.

Under current Medicare policies, a procedure can be considered medically reasonable and necessary only if its safety and efficacy have been demonstrated adequately by scientific evidence, such as controlled clinical studies, and it has been accepted for general use by the medical community. Normally, surgical procedures and medical regimens, although requiring competent, skilled personnel, are of a nature that they can be performed successfully on most patients who require them in most facilities that meet the Medicare conditions of participation for hospitals (42 CFR Part 482). In the case of heart transplantation, however, many other factors are thought to be related to the safety and efficacy of the procedure. Thus, coverage of heart transplants requires detailed criteria to identify the context in which heart transplantations can be considered medically reasonable and necessary.

We would cover only those heart transplantations performed in facilities which demonstrate good patient outcomes, and broad compliance with the facility criteria. (While we believe that survival rates are important measures of successful outcomes, we do not believe that they can serve as the only criteria a center would have to meet in order to receive Medicare payment for heart transplants.) Once a facility applies for approval and is approved as a heart transplant facility for Medicare purposes, it is obliged to report immediately to HCFA any events or changes which would affect its approved status. Specifically, a facility must report any significant decrease in its experience level or survival rates, the loss of key members of the transplant team or any other major changes that could affect the performance of heart transplants at the facility. Changes from the terms of approval may lead to withdrawal of approval for Medicare coverage of heart transplants performed at the facility.

A facility that we would approve as meeting the criteria set forth in this notice could seek Medicare payment from its Medicare intermediary for heart transplants performed on Medicare patients. For facilities receiving Medicare payment under the Medicare prospective payment system, we would use the DRG classification #103, "Heart transplants". We have established a relative weight of 14.9944 for DRG 103 and a 51 day outlier threshold. DRG 103 will have the highest relative weight among the 473 DRGs.

The methodology used to compute the heart transplant weight was based on the procedures that were published in our September 3, 1985 final notice on FY 1986 prospective payment rates for hospitals (50 FR 35646). Since this was a low volume procedure, that is, less than 10 heart transplant cases appeared in Medicare's 1984 PATBILL file, we based the DRG weight on the most recent Medicare and non-Medicare charge data accumulated under the National Heart Transplant Study for procedures performed in 1983. The Hospital Input Price Index was used to update the 1983 charge data and to make the National Heart Transplant Study data consistent with the 1984 PATBALL data. [Note: In view of advances in the management of

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heart transplant recipients, we believe that the DRG weight may need to be revised. We are exploring the possibility of examining other sources of heart transplant cost data and, if appropriate, will revise the weight accordingly and publish any change in the Federal Register.]

The charge data from the National Heart Transplant Study that we used included 54 transplants performed at six hospitals across the country. As is the standard procedure in computing a DRG weight, those hospital stays with standardized charges which were more than three standard deviations from the mean of the log distribution of standardized charges per case for the DRG were eliminated from the data base to avoid distorting the results. In this case, we eliminated two non-Medicare cases. Our analysis, therefore, included four cases from the National Heart Transplant Study data that were paid by Medicare and 48 cases that were paid by sources other than Medicare.

Organ procurement amounts were also removed from our computations for heart transplants in order to be consistent with the rules pertaining to kidney transplants. Kidney acquisition costs are treated apart from the prospective payment rate and are reimbursed on a retrospective cost basis.

We propose that heart acquisition costs would be reimbursed as a cost pass through, in the same manner as kidney acquisition costs are handled in the ESRD program under Medicare.

A discussion of the proposed criteria that we would require facilities to meet in order to receive Medicare payment for heart transplantations follows.

A. Criteria for Facilities

1. *Patient selection.* A facility must have adequate patient selection criteria and an implementation plan for their application. (Guidelines for patient selection criteria appear in section II. D. of this preamble.)

2. *Patient management.* A facility must have adequate patient management plans and protocols that include the following:

a. Detailed plans for therapeutic and evaluative procedures for the acute and long-term management of a patient, including commonly encountered complications. The basis for confidence in these plans must be stated.

b. The logistics of the plans for patient management and evaluation during the waiting and immediate post-discharge, as well as in-hospital, phases of the program.

c. The logistics of the plans for long-term management and evaluation, including education of the patient, liaison with the patient's attending physician, and the maintenance of active patient records for five years.

3. *Commitment.* A facility must make a sufficient commitment of resources and planning to the heart transplant program to carry through its application. Indications of this commitment could include the following:

a. Commitment of the facility to the heart transplant program is at all levels and broadly evident throughout the facility. (A cardiac transplantation program requires a major commitment of resources. These may intermittently include many other departments as well as the principal sponsoring departments.)

b. The facility has both the expertise and the commitment for participation in medical, surgical, and other relevant areas, particularly cardiology, cardiovascular surgery, anesthesiology, immunology, infectious diseases, pulmonary diseases, pathology, radiology, nursing, and social services. The facility must identify individuals in these areas in order to achieve an identifiable and stable transplant team. Responsible medical/surgical members of the team must be board certified or eligible in their respective disciplines.

(1) The component teams must be integrated into a comprehensive team with clearly defined leadership and corresponding responsibility.

(2) The facility must have an active cardiovascular medical and surgical program. (General indicators of this type of program would be a minimum of 500 cardiac catheterizations and coronary arteriograms annually, with the ability and willingness to do these procedures on an emergency basis, and a surgical group that has demonstrated low mortality rates in an active open heart surgical program involving at least 250 procedures a year.) The surgical team responsible for transplantation must be an identified, stable group.

(3) The anesthesia service must identify a team for transplantation that must also be available at all times.

(4) The infectious diseases service must have both the professional skills and laboratory resources needed to discover, identify, and manage the complications from a whole range of organisms, many of which are uncommonly encountered in the usual infectious diseases laboratory.

(5) The nursing service must identify a team or teams trained not only in hemodynamic support of the patient, but also in the special problems of managing immunosuppressed patients.

(6) Pathology resources must be available for studying and reporting promptly the pathological responses to transplantation.

(7) Adequate social service resources must be available.

(8) Mechanisms must be in place for managing the heart transplant program which assure that—

(A) Patient selection criteria are consistent with those set forth in the facility's written patient selection criteria;

(B) The facility is responsible for the ethical, and medical considerations involved in the patient selection process and application of patient selection criteria.

(9) Adequate plans exist for organ procurement meeting legal and ethical criteria, as well as yielding viable transplantable organs in reasonable numbers.

4. *Facility plans.* The facility must have overall facility plans, commitments, and resources for a program that will assure a reasonable concentration of experience; specifically, 12 or more cardiac transplantation cases per year. This level of activity must be shown feasible and likely on the basis of plans, commitments, and resources.

5. *Experience and survival rates.* The facility must demonstrate experience and success with a clinical organ transplantation program involving immunosuppressive technique.

The facility must have an established cardiac transplantation program with documented evidence of 12 or more patients in each of the two preceding 12-month periods and 12 patients prior to that. Such programs are deemed to have the potential for acceptable data bases for estimating survival.

Survival rates may be influenced by many factors, including random chance and patient selection. However, most authorities agree that a patient who is not free of adverse prognostic factors warrants cardiac transplantation only if he or she has a reasonable prognosis and the donor heart cannot be used in a patient who is a good candidate with at least a moderately urgent need and who is in reasonable geographic proximity.

Initially, the facility must demonstrate actuarial survival rates of 73 percent for one year and 65 percent for two years for patients who have had heart transplants since January 1, 1982 at that facility.

6. *Maintenance of data.* The facility must agree to maintain and, when requested, periodically submit to HCFA summary data, in standard format, about patients selected, protocols used and short- and long-term outcome on all patients undergoing cardiac transplantation, not only those for whom payment under Medicare is sought. (Such data are necessary to provide a data base for an ongoing assessment of cardiac transplantation and to assure that approved facilities maintain appropriate patient selection criteria, adequate experience levels and satisfactory patient outcomes.) In addition, facilities must agree to notify HCFA immediately of any change related to the facility's transplant program that could effect the health or safety of patients selected for covered Medicare heart transplants or which would otherwise alter specific elements in their application.

7. *Organ procurement.* The facility must participate in an organ procurement program to obtain donor organs.

a. If a cardiac transplantation center utilizes the services of an outside organ procurement agency to obtain donor organs, it must have a written arrangement covering these services. The cardiac transplantation center must notify the Secretary in writing within 30 days of terminating such arrangements.

b. "Organ procurement agency" is defined as an organization that performs or coordinates all of the following services:

(1) Harvesting of donated hearts;

(2) Preservation of donated hearts;

(3) Transportation of donated hearts; and

(4) Maintenance of a system to locate prospective recipients for harvested organs.

8. *Laboratory services.* The facility must make available, directly or under arrangements, laboratory services to meet the needs of patients. Laboratory services are performed in a laboratory facility approved for participation in the Medicare program.

B. Process for Review and Approval of Facilities

The approval of facilities would be based on a careful review of the materials submitted regarding their experience and expertise, as well as their commitment to the heart transplant program. We propose to conduct the review with the aid and advice of a panel of non-Federal experts in such relevent fields as cardiology, cardiovascular surgery, organ transplantation, immunosuppression and health care resource utilization. The experts would report to use on their findings with respect to individual applications and would provide the basis for decisions as to the approval or disapproval of such applications.

We believe this approach would permit the most effective use of the talents of experts in determining promptly and efficiently whether applicants meet the heart transplant facility criteria. It would permit relatively rapid implementation of the criteria once they have been published in final form, and should assure applicants that their qualifications have been thoroughly and objectively reviewed by experts in the field of cardiac transplantation.

In approving facilities, we would compare the facility's submission against the criteria specified in this notice. The approval granted would be for a three year period and extensions of approval would require submission of a continuation application and would not be automatic.

In addition to reviewing applications, the expert panel may propose specific changes to the coverage criteria. Finally, in certain limited cases, exceptions to the strict criteria proposed may be warranted. We invite comments on the need for an exceptions policy and the structure this policy might take.

C. Application Procedure

In order to facilitate the approval of qualified facilities, we now will accept and begin to review applications from facilities that believe they are qualified based on the proposed criteria. Although the applications would be approved only on the basis of the criteria to be published in our final notice, we believe the proposed criteria provide a sufficient framework for facilities to develop and submit an application. To the extent that the proposed criteria are modified as a result of public comment, we would give facilities that submitted applications prior to the date of the final notice the opportunity to submit any necessary revision and additions to their applications.

The applications procedure is as follows:

1. An original and two copies of the application must be submitted on 8½ by 11 inch paper, signed by a person authorized to do so. The facility must be a participating hospital under Medicare and must specify its provider number, and the name and telephone number of an individual we could contract should we have questions regarding the application.

2. Information and data must be clearly stated, well organized and appropriately indexed to aid in its review against the criteria specified in this notice. Each page must be numbered.

3. To the extent possible, the application should be organized into eight sections corresponding to each of the eight major criteria and addressing, in order, each of the sub-criteria identified.

4. The application should be mailed to the address below in a manner which provides the facility with documentation that it was received by us.

Administrator, Health Care Financing Administration, c/o Office of Executive Operations, Room 777 East High Rise, 6325 Security Blvd., Baltimore, Maryland 21207

D. Guidelines for Patient Selection Criteria

We would require facilities to have written patient selection criteria, which they would follow in determining candidates for heart transplants. Such criteria should include or be comparable to, but need not be limited to, the following:

1. Patient selection criteria must be based upon both a critical medical need for transplantation and a maximum likelihood of successful clinical outcome.

2. The patient must have a very poor prognosis (for example, less than a 25 percent likelihood of survival for six months) as a result of poor cardiac status, but must otherwise have a good prognosis.

3. All other medical and surgical therapies that might be expected to yield both short- and long-term survival (for example, 3 or 5 years), comparable to that of cardiac transplantation, must have been tried or considered.

4. Many factors must be recognized at the present time to exert an adverse influence on the outcome after cardiac transplanation. The manner and extent to which adverse risk is translated into contraindication varies. A patient who meets patient selection criteria under section D. 2., 3., and 5., and is free of the adverse factors under this section 4a. and b., is considered a good candidate for cardiac transplantion. Some experts would not require freedom from all adverse factors under this section 4b. We recognize that some who may not be considered "good candidates" may also benefit,but the likelihood or extent of benefit is significantly less.

a. Strongly adverse factors include:

(1) Advancing age; for example, a patient beyond 53 to 57 years of age (the mid-50's). Until not long ago, limited experience with patients over age 50 showed that these patients had both impaired capacity to withstand post-operative and immunosuppressive complications and lessened survival. More recently, carefully selected patients through age 55 have had good

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survival experience; but experience with patients beyond age 55 is limited. The selection of any patient for transplantation beyond age 50 must be done with particular care to ensure an adequately young "physiologic" age and the absence or insignificance of coexisting disease.

(2) Severe pulmonary hypertension (because of the limited work capacity of the typical donor right ventricle which is an important consideration in orthotopic cardiac transplantation). Generally, pulmonary vascular resistance above 5 Wood units or pulmonary artery systolic pressure over 65 mm Hg is a serious adverse factor. However, these patients may be acceptable if a pulmonary vasodilator drug reduces both pulmonary vascular resistance below 3 Wood units and pulmonary artery systolic pressure below 50 mm Hg.

(3) Renal or hepatic dysfunction not explained by the underlying heart failure and not deemed reversible (because of the nephrotoxicity and hepatotoxicity of cyclosporine). For patients who are to receive azathioprine and high-dose corticosteroid rather than cyclosporine, a slightly higher level of hepatic or renal dysfunction is acceptable, but substantial dysfunction is still a contraindication (because of the likelihood of early exacerbation postoperatively and because of interference with immunosuppressive regimens).

(4) Acute severe hemodynamic compromise at the time of transplantation if accompanied by compromise or failure of one or more vital end-organs (because of a substantially less favorable prognosis for survival than for the average transplant recipient).

(5) Symptomatic peripheral or cerebrovascular disease (because of accelerated progression in some patients after cardiac transplantation and on chronic corticosteroid treatment).

(6) Chronic obstructive pulmonary disease or chronic bronchitis (because of poor postoperative course and likelihood of exacerbation of infection with immunosuppression).

(7) Active systemic infection (because of the likelihood of exacerbation with initiation of immunosuppression).

(8) Recent and unresolved pulmonary infarction, pulmonary roentgenographic evidence of infection, or of abnormalities of unclear etiology (because of the likelihood that this represents pulmonary infection).

(9) Systemic hypertension, either at transplantation or prior to development of end-stage heart disease, that required multi-drug therapy for even moderate control (for example, multidrugs to bring diastolic pressure below 105 mm Hg) for patients who would be on cyclosporine protocols (because of the substantial exacerbation of hypertension with cyclosporine and the difficulty of its management).

(10) Any other systemic disease considered likely to limit or preclude survival and rehabilitation after transplantation.

(11) Cachexia, even in the absence of major end-organ failure (because of the significantly less favorable survival of these patients).

(12) The need for or prior transplantation of a second organ such as lung, liver, kidney, or marrow (because this represents the coexistance of significant disease, and because multi-organ transplantation must still be considered experimental).

(13) A history of a behavior pattern or psychiatric illness considered likely to interfere significantly with compliance with a disciplined medical regimen (because a lifelong medical regimen is necessary, requiring multiple drugs several times a day, with serious consequences in the event of their interruption or excessive consumption).

(14) The use of a donor heart, that may have had its effectiveness compromised by such factors as the use of substantial vasopressors prior to its removal from the donor, its prolonged or compromised maintenance between the time of its removal from the donor and its implantation into the patient, or pre-existing disease.

b. Other factors given less adverse weight by some experts but considered importantly adverse by others include:

(1) Insulin-requiring diabetes mellitus, in the judgment of most experts (because the diabetes is often accompanied by occult vascular disease and because the diabetes and its complications are exacerbated by chronic corticosteroid therapy; even current cyclosporine immunosuppression regimens require chronic long-term corticosteroid, though at a lower dose, and high dose corticosteroid is used in the treatment of acute rejection).

(2) Asymptomatic severe peripheral or cerebrovascular disease (because of accelerated progression in some patients after cardiac transplantation and on chronic corticosteroid treatment).

(3) Documented peptic ulcer disease (because of the likelihood of early postoperative exacerbation).

(4) Current or recent history of diverticulitis (which must be considered a source of active infection that may be exacerbated with the initiation of immunosuppressant).

5. Plans for long-term adherence to a disciplined medical regimen must be feasible and realistic for the individual patient.

III. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any document such as this that meets the criteria of a "major rule". A major rule is one that is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for documents such as this, unless the Secretary certifies that implementation of the proposal would not have a significant economic impact on a substantial number of small entities.

Implementation of this proposal would not be likely to have an annual economic effect exceeding $100 million, or result in a major increase in costs or prices. However, it would affect all facilities that consider themselves capable of performing heart transplants. These facilities are considered small entities under the Regulatory Flexibility Act.

Our proposal could provide those hospitals that meet the criteria for performing heart transplants with a significant amount of additional Medicare revenue. Also, these hospitals could use their status as Medicare heart transplant centers to enhance their prestige and standing in the industry. This, in turn, could enable them to increase their overall market share of heart transplants at the expense of hospitals that also perform heart transplants but did not meet our criteria. It is important to emphasize, however, that since the market for heart transplants is supply-constrained, we do not believe that the criteria would in any way reduce the number of transplants. Those facilities that would not meet the proposed criteria may view our proposal as having a significant adverse effect on competition. Therefore, we have prepared the following analysis, which, in combination with the other sections of this proposed notice, is intended to conform to the objectives of E.O. 12291 and the RFA.

B. Entities Affected

In calendar year 1985, there were about 72 facilities that characterized themselves as heart transplantation facilities in this country. This number includes facilities that have performed at least one heart transplant in the past and could be interested in re-entering the field. We believe the criteria that we have developed are essential to the maintenance of high standards of quality and the most successful outcomes. We expect that the application of the proposed criteria would result in the approval of about ten facilities initially, with a total of approximately 20 a year later.

Many facilities that have performed at least one heart transplant would not meet the levels of experience and success required under the facility criteria that we are proposing. However, some might be found to have acceptable clinical programs with an adequate prospect for successful outcomes. We expect that Medicare coverage of heart transplantation could prompt additional third party payors, including State Medicaid plans, to cover this procedure and create incentives for some facilities to establish heart transplant programs.

C. Impact on Beneficiaries

It is likely that few Medicare beneficiaries would be suitable heart transplant recipients because the advanced age of most beneficiaries would generally make them poor medical candidates for this procedure. Beneficiaries entitled to Medicare on the basis of disability are required by law to serve a 24-month waiting period in addition to the 5 months they must have been disabled prior to entitlement to disability cash benefits. We recognize that the use for cardiac transplantation among some of those disabled by heart disease may arise earlier than the twenty-nine months that they must wait until they are entitled to Medicare.

We believe that the criteria we are proposing are the most effective means available to ensure that the heart transplants that are made available to Medicare beneficiaries are provided in a safe and effective manner so that they can be considered to be reasonable and necessary within the meaning of the law. We recognize that the criteria are fairly restrictive. However, we believe this approach is justified, considering both our concerns for patient safety and the success rates that are currently achievable with this modality. In any event, we do not believe that the criteria would have an effect on the number of heart transplants performed.

D. Projected Expenditures

It is difficult to make a precise estimate of future Medicare costs, largely due to the difficulty of predicting the extent to which heart transplantations will be performed successfully in increasingly older patients over the next few years. All dollar estimates depend on assumptions and estimates related to the number of covered transplants. Therefore, we considered factors necessary for developing high and low estimates.

In developing the high estimate, we made assumptions about the total number of heart transplants performed nationwide, and the future rate of increase of the number of transplants performed at approved facilities. We assumed this would go up with the number of facilities, but the rate of increase was assumed to fall over time due to competition for suitable recipients and available donor organs. In developing the low estimate, we assumed that initially very few heart recipients would also be eligible for Medicare, and that the age of recipients (hence, the probability of their Medicare eligibility) would not increase over the next five years. We also recognized that changes in Medicare coverage of heart transplants would affect Medicaid. Although we cannot be certain that all States that do not cover heart transplants now (approximately 20 such States) would do so if Medicare decided to provide coverage, we assumed that they would for the purposes of estimating Medicaid costs. We also assumed that the overall number of Medicaid transplants would be about twice the number of Medicare transplants, but the Medicaid reimbursement per transplant would be about 10 percent lower than for Medicare. The absence of increased Medicaid costs during FY 1987 and 1988 reflects the fact that States that do not now cover heart transplants would begin over the next two years to adopt Medicare's policy on heart transplants. As a result, we would not expect to see a noticeable increase in Medicaid expenditures until FY 1989.

Note that, due to the sensitivity of these assumptions and the uncertainty of actual outcomes, we view our projection of expenditure increases as an opinion, rather than an estimate.

PROJECTED INCREASES IN HEART TRANSPLANT EXPENDITURES

[Federal Expenditures (rounded to nearest $5 million)]

	Fiscal year—				
	1987	1988	1989	1990	1991
Medicare low	0	0	0	5	5
Medicare high	95	510	515	525	535
Medicaid	0	0	5	5	5

E. Alternatives Considered

We considered two major options in addition to the proposed criteria:

- To continue not to cover heart transplants; or
- To allow all Medicare participating hospitals to establish transplant programs without additional facility criteria, although requiring use of patient selection criteria.

Alternative 1: Continue present policy of noncoverage of heart transplants. The main reason for rejecting this option is our determination that heart transplants, when performed in accordance with the proposed criteria, would be medically reasonable and necessary and would meet the requirements for Medicare coverage.

Alternative 2: Allow all Medicare participating hospitals to establish transplant programs without additional selection criteria, although the patient selection criteria would have to be used. Although we are unable to estimate the number of facilities that may qualify, the Battelle Study projected that just under 200 facilities could be interested in qualifying in the next 5 years.

Our major reason for rejecting this alternative was that it would permit uncontrolled proliferation of transplant facilities, raising all the concomitant questions about the quality of services, given the limited availability of donor organs and experienced teams. Further, because the procedure would be spread among a larger number of facilities, it is likely the average experience level would be lower and would probably result in lower success and survival rates among recipients.

F. Conclusion

We believe that the proposal we are making would maintain the quality of the services required by this complex procedure, minimize coverage of the benefit at facilities and under conditions which have not been shown to be safe and effective, and allow entry of new, qualified providers. The proposed criteria for experience, survival rates and facility commitment are somewhat restrictive. We believe this approach is justified, particularly in view of the

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typical relationship between experience and quality of services.

IV. Paperwork Burden

This proposed notice contains information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. Specifically, facilities that wish to obtain approval for Medicare coverage of heart transplantation services must submit an application and documentation pertinent to the transplantation services. We submitted a copy of this proposed notice to the Executive Office of Management and Budget (EOMB) for its review of these information collection requirements. EOMB has approved the information collection requirements contained in this proposed notice under OMB control No. 0938-0490. Other organizations and individuals desiring to submit comments on the information collection requirements should follow the directions in the ADDRESS section of this preamble.

V. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed notice, we are not able to acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we decide to proceed with a final notice, we will respond to the comments in the preamble of that notice.

(Secs. 1102, 1862(a)(1) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y(a)(1) and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program)

Dated: August 15, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 30, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-23666 Filed 10-16-86; 8:45 am]

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H.R. 2163/Pub. L. 99–466
To amend title 28 of the United States Code to make certain changes with respect to the participation of judges of the Court of International Trade in judicial conferences and for other purposes. (Oct. 14, 1986; 2 pages) Price: $1.00

H.R. 2721/Pub. L. 99–467
To amend title 13, United States Code, to require the collection of statistics on domestic apparel and textile industries. (Oct. 14, 1986; 1 page) Price: $1.00

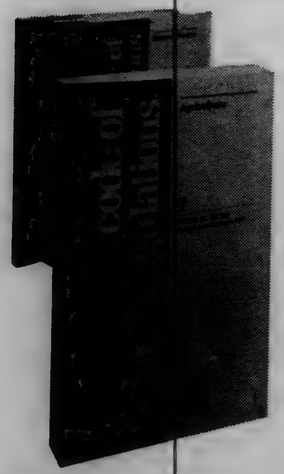
H.R. 2971/Pub. L. 99–468
Granting the consent of the Congress to the amendments to the Susquehanna River Basin Compact. (Oct. 14, 1986; 2 pages) Price: $1.00

H.R. 4217/Pub. L. 99–469
Tohono O'odham Tat Momolikot Dam Settlement Act. (Oct. 14, 1986; 3 pages) Price: $1.00

H.R. 4586/Pub. L. 99–470
To authorize appropriations for the Administrative Conference of the United States, and for other purposes. (Oct. 14, 1986; 1 page) Price: $1.00

S.J. Res. 390/Pub. L. 99–471
To authorize and request the President to proclaim the week of November 23, 1986, to November 30, 1986, as "American Indian Week." (Oct. 14, 1986; 1 page) Price: $1.00

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WHEN: December 5 at 10:00 a.m., Room 305A, 26 Federal Plaza, New York, NY
RESERVATIONS: Arlene Shapiro or Stephen Colon, New York Federal Information Center, 212-264-4810.

PITTSBURGH, PA.

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WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA
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Pittsburgh: 412-644-3456
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Title 3—

The President

Executive Order 12569 of October 16, 1986

Management of the Compact of Free Association With the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau

By the authority vested in me as President by the Constitution and laws of the United States, including the Compact of Free Association (the Compact) and Public Law 99–239, (the Act), it is ordered as follows:

Section 1. *Responsibility of the Secretary of State.* The Secretary of State shall conduct the government-to-government relations of the United States with the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (the "Freely Associated States"), including any subdivisions, officials or persons thereof, and may delegate or allocate such of his authority under this Order to such other United States officials as he may from time to time deem desirable. The authority of the Secretary of State shall include, consistent with Article V of Title One of the Compact and section 105(b)(1) of the Act, the establishment and maintenance of representative offices in the Freely Associated States and supervision of the United States representatives and their staff. The Secretary also shall provide, in accordance with applicable law, for appropriate privileges, immunities, and assistance to representatives to the United States designated by the Governments of the Freely Associated States, together with their officers and staff. In accordance with applicable law and the provisions of this Order, the Secretary also shall have the authority and responsibility to take such other actions as may be necessary and appropriate to ensure that the authorities and obligations of the United States set forth in the Compact and its related agreements and in the laws of the United States as they relate to the conduct of government-to-government relations with the Freely Associated States are carried out. The Secretary shall provide from appropriations made to the Department of State such funds as may be necessary to carry out the provisions of this Order in relation to the activities of the Department of State.

Sec. 2. *Responsibility of the Secretary of the Interior.* The Secretary of the Interior shall be responsible for seeking the appropriation of funds for and, in accordance with the laws of the United States, shall make available to the Freely Associated States the United States economic and financial assistance appropriated pursuant to Article I of Title Two of the Compact; the grant, service, and program assistance appropriated pursuant to Article II of Title Two of the Compact; and all other United States assistance appropriated pursuant to the Compact and its related agreements. The Secretary shall coordinate and monitor any program or any activity by any department or agency of the United States provided to the Freely Associated States and shall coordinate and monitor related economic development planning. This Section shall not apply to services provided by the Department of Defense to the Freely Associated States or to activities pursuant to Section 1 of this Order, including activities under the Peace Corps Act.

Sec. 3. *Interagency Group on Freely Associated State Affairs and the Office of Freely Associated State Affairs.*

(a) There is established an Interagency Group on Freely Associated State Affairs for the purpose of providing guidance and oversight with respect to the establishment and implementation of policy concerning the Compact and United States relations with the Freely Associated States.

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(b) The Interagency Group shall consist of the Secretary of State or his designee, who shall chair the Group, and of the principal officers or their designees from the Departments of the Interior, Defense, Commerce, Energy, and Justice, the Organization of the Joint Chiefs of Staff, the Office of Management and Budget, the National Security Council, and such other departments and agencies as may from time to time be appropriate.

(c) The Interagency Group shall make such recommendations as it shall deem appropriate to the President, through the Assistant to the President for National Security Affairs, concerning United States relations with the Freely Associated States. The Interagency Group also shall provide such guidance as it deems appropriate to departments and agencies delegated authority by this Order concerning administration of laws with respect to the Freely Associated States.

(d) If any department or agency charged by this Order with implementation of the Compact or other laws of the United States with respect to the Freely Associated States concludes that noncompliance sanctions pursuant to section 105(g) of the Act are appropriate, it shall make appropriate recommendations to the Interagency Group. The Interagency Group shall consider these recommendations and report its findings to the President for his review in making that determination.

(e)(1) There shall be in the Department of State an Office of Freely Associated State Affairs to conduct United States relations with the Freely Associated States and carry out related matters, as the Secretary of State shall direct or delegate, and provide appropriate support to the Interagency Group.

(2) The Office shall be headed by a Director designated by the Secretary of State, to whom the Secretaries of State, Defense, and the Interior may, to the extent permitted by law, delegate any or all of their respective authorities and responsibilities as described in this Order, including the authority to supervise the United States representatives referred to in Section 4 of this Order. The Director shall serve as Executive Secretary of the Interagency Group.

(3) Personnel additional to that provided by the Secretary of State may be detailed to the Office by the Executive departments and agencies that are members of the Interagency Group, and by other agencies as appropriate. Executive departments and agencies shall, to the extent permitted by law, provide such information, advice, and administrative services and facilities as may be necessary for the fulfillment of the functions of the Office.

Sec. 4. *United States Representatives to the Freely Associated States.* The United States Representative assigned to a Freely Associated State in accordance with Article V of Title One of the Compact shall represent the Government of the United States in an official capacity in that Freely Associated State, and shall supervise the actions of any Executive department or agency personnel assigned permanently or temporarily to that Freely Associated State.

Sec. 5. *Cooperation among Executive Departments and Agencies.* All Executive departments and agencies shall cooperate in the effectuation of the provisions of this Order. The Interagency Group and Office of Freely Associated State Affairs shall facilitate such cooperative measures. Nothing in this Order shall be construed to impair the authority and responsibility of the Secretary of Defense for security and defense matters in or relating to the Freely Associated States.

Sec. 6. *Delegation to the Secretary of the Interior.* The following authorities are delegated to the Secretary of the Interior:

(a) Reporting to the Congress on economic development plans prepared by the Government of the Federated States of Micronesia and the Government of the Marshall Islands, pursuant to sections 102(b) and 103(b) of the Act;

(b) The determination required by section 103(e) of the Act concerning the qualifications of the investment management firm selected by the Government of the Marshall Islands;

(c) Reporting to the Congress with respect to the impact of the Compact of Free Association on the United States territories and commonwealths and on the State of Hawaii, pursuant to section 104(e)(2) of the Act; and

(d) Causing an annual audit to be conducted of the annual financial statements of the Government of the Federated States of Micronesia and the Government of the Marshall Islands, pursuant to section 110(b) of the Act.

Sec. 7. *Delegation to the Secretary of State.* The following authorities are delegated to the Secretary of State:

(a) Reporting to the Congress on crimes in the Federated States of Micronesia and the Marshall Islands which have an impact upon United States jurisdictions, pursuant to sections 102(a)(4) and 103(a)(4) of the Act;

(b) Submitting the certification and report to the Congress for purposes of section 5 of the Fishermen's Protective Act of 1967, pursuant to section 104(f)(3) of the Act; and

(c) Reporting, with the concurrence of the Secretary of Defense, to the Congress on determinations made regarding security and defense, pursuant to section 105(q) of the Act.

Sec. 8. *Supersession and Saving Provisions.*

(a) Subject to the provisions of Section 9 of this Order, prior Executive orders concerning the former Trust Territory of the Pacific Islands are hereby superseded and rendered inapplicable, except that the authority of the Secretary of the Interior as provided in applicable provisions of Executive Order No. 11021, as amended, shall remain in effect, in a manner consistent with this Order and pursuant to section 105(c)(2) of the Act, to terminate the trust territory government and discharge its responsibilities, at which time the entirety of Executive Order No. 11021 shall be superseded.

(b) Nothing in this Order shall be construed as modifying the rights or obligations of the United States under the provisions of the Compact or as affecting or modifying the responsibility of the Secretary of State and the Attorney General to interpret the rights and obligations of the United States arising out of or concerning the Compact.

Sec. 9. *Effective Date.* This Order shall become effective with respect to a Freely Associated State simultaneously with the entry into force of the Compact for that State.

Ronald Reagan

THE WHITE HOUSE,
October 16, 1986.

[FR Doc. 86-23610
Filed 10-17-86; 10:26 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 51, No. 202
Monday, October 20, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 91, 161 and 162

[Docket No. 86-091]

Accreditation of Veterinarians and Origin Health Certificates; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Animal and Plant Health Inspection Service is correcting errors in a final rule entitled "Accreditation of Veterinarians and Origin Health Certificates" which was published in the Federal Register on May 12, 1986 (see 51 FR 17321).

FOR FURTHER INFORMATION CONTACT: Dr. Robert E. Wagner, Interstate Inspection and Compliance Staff, VS, APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8684.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service published a final rule entitled "Accreditation of Veterinarians and Origin Health Certificates" (see 51 FR 17321) which concerns, among other things, the accreditation of veterinarians and suspension of such accreditation. This notice corrects one paragraph of the final rule, which contained two words which were not intended (the word "who" was used where "whose" was intended, and the word "reaccreditation" was used where "reinstatement" was intended).

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

1. Paragraph (c) of § 161.1 is revised to read as follows:

§ 161.1 Requirements for accreditation.

* * * * *

(c) A veterinarian whose accreditation has been suspended (other than a summary suspension that is changed to a revocation as the result of an adjudicatory proceeding) will be automatically reinstated as an accredited veterinarian upon the completion of the suspension, except that such veterinarian shall be required to pass an examination administered by the Service as a condition of reinstatement if the suspension was for six months or more.

* * * * *

Done at Washington, DC, this 14th day of October, 1986.

John K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc 86-23507 Filed 10-17-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 309

[Docket No. 60969-6169]

Financial Assistance Requirements; Project Modification

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule and request for comments.

SUMMARY: The purpose of this amendment is to conform the statement of EPA's policy on project modification to guidelines established by the General Accounting Office on change of scope by putting into regulatory language that which has been actual EDA practice. The rule change provides standards and states that EDA will not allow project modification which would constitute a change of scope.

DATES: Effective Date: October 20, 1986.
Comments by: December 19, 1986.

ADDRESS: Send comments to James F. Marten, Deputy Chief Counsel for Operations and Administration, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Room 7009, Washington, DC 20230, (202) 377-5441.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel for Operations and Administration, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Room 7009, Washington, DC 20230, (202) 377-5441.

SUPPLEMENTARY INFORMATION: EDA's regulation on the modification of approved projects is found at 13 CFR 309.26. The regulation consists of two parts: rules for the modification of public works projects (paragraph a) and rules for the modification of business loan and guarantee projects (paragraph b).

The introductory text of paragraph (a)(3) is amended to state that change of scope modifications to a project funded in a prior fiscal year may not be approved.

Change of scope modifications, to be determined on a case by case basis, consist of changes in project need, purpose, or scope (community served and nature of the project). New paragraph (a)(3)(i) provides that EDA will not allow modifications which substantially alter the project. Existing paragraphs (a)(3) (i) through (iv) are renumbered as (a)(3) (ii) through (v) to accommodate this new restriction. Consistent with EDA's change of scope policy, renumbered paragraph (a)(3)(ii) no longer authorizes the Assistant Secretary to allow a change in the community or economic development purpose of the project.

The reason for the amendment to the introductory text of paragraph (a)(3), the addition of new paragraph (a)(3)(i) and the modification of renumbered paragraph (a)(3)(ii) is to put into regulatory format, EDA's guidance to recipients regarding what constitutes an acceptable project modification. With these changes, EDA's policy on project modification, which is in conformance with Decisions of the Comptroller

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General on change of project scope is now part of EDA's regulatory scheme.

The rules on modifications of business loan and guarantee projects are revised to follow those for public works projects. The introductory text to paragraph (b)(3) is revised to explain EDA's change of scope policy and the list of unacceptable project changes in paragraph (a) as modified by this amendment, is now added to paragraph (b).

Another change to this regulation is the deletion from the introductory text of paragraph (a)(1) of a reference to public works projects under the authority of Title II, Chapter 4 of the Trade Act of 1974, as amended (Trade Act). That program is now administrated by the International Trade Administration (ITA). No projects were approved pursuant to it during the period of EDA's administration. A similar reference in the introductory text of paragraph (b)(1) to Title II, Chapter 4 projects also is deleted. The reference to projects under Title II, Chapter 3 of the Trade Act in the introductory text of paragraph (b)(1) is modified to note that these rules apply only to projects approved prior to September 30, 1981, since ITA administers this program for projects approved thereafter.

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

Because this rule relates to grants, benefits, or contracts, it is exempt from all requirements of section 553 of the Administrative Procedure Act (APA)(5 U.S.C. 553).

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment, is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

However, because the Department is interested in receiving comments from those who will benefit from the amendment, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address listed in the **"ADDRESS"** section above.

Comments received by December 19, 1986 will be considered in promulgating a final rule.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under section 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Because this rule is exempt from the requirements of section 553 of the APA, it can be and is being made immediately effective upon publication.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 309

Community development, Grant programs—community development, Loan programs—community development, Penalties.

For the reasons set out in the preamble, Title 13, Chapter III is amended as set forth below.

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

1. The authority citation for Part 309 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Sec. 1-105, DOC Organization Order 10-4, as amended (40 FR 56702, as amended).

2. Section 309.26 is amended by revising paragraphs (a)(1) introductory text, (a)(3), (b)(1) introductory text and (b)(3), to read as follows:

§ 309.26 Project Modification.

(a) *Public works projects.* (1) Proposed modifications in public works project receiving assistance under sections 101, 201, 304, and 403 of the Act, and Titles IX and X of the Act must comply with the following requirements.

* * * * *

(3) A change of scope modification to a project which was funded in a prior fiscal year can not be approved. Change of scope modifications consist of changes in project need, purpose and scope (community served and nature of the project). EDA is under no obligation to accept proposed project changes and may choose to deobligate the project funds. The following project changes, as determined on a case by case basis, will not be accepted:

(i) Changes which would substantially alter the project.

(ii) Changes in the economic or community development purpose of the project.

(iii) Changes in the target population which will benefit from the project.

(iv) Limitations in the accessibility of project facilities to the target population.

(v) Changes in the general geographic location (i.e., city, community, Indian Reservation, Redevelopment Area) of the project.

(b) *Business development loan and guarantee projects.*

(1) Proposed modifications in loan and guarantee projects receiving assistance under sections 202 and 304 of the Act, Title IX of the Act, and Title II, Chapter 3 of the Trade Act of 1974 (for projects approved prior to September 30, 1981) must comply with the following requirements.

* * * * *

(3) A change of scope modification to a project which was funded in a prior fiscal year may not be approved. Change of scope modifications consist of changes in project need, purpose and scope (community), served and nature of the project). EDA is under no obligation to accept proposed changes and may choose to deobligate the project's funds. The following changes will not be accepted:

(i) Changes which would substantially alter the project.

(ii) Changes in the economic or community development purpose of the project.

(iii) Changes in the target population which will benefit from the project.

(iv) Limitations in the accessibility of project facilities to the target population.

(v) Changes in the general geographic location (i.e., city, community, Indian Reservation, Redevelopment Area) of the project.

Dated: October 15, 1986.

Orson G. Swindle, III,

Assistant Secretary for Economic Development.

[FR Doc. 86-23607 Filed 10-17-86; 8:45 am]

BILLING CODE 3510-24-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 2

Official Seal; Authorization To Redelegate Authorization To Affix

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: This rule revises Commission regulation 2.2(b) to authorize the Secretary to redelegate to the Deputy Secretary the authorization to affix the Seal to Commission documents and Materials.

EFFECTIVE DATE: October 20, 1986.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb at 202-254-6314.

SUPPLEMENTARY INFORMATION: Commission regulation 2.2(b) states that all Commission officials designated in paragraph (a) of this section, except the Secretary of the Commission, may redelegate this authority. In the interest of efficiency and timeliness of Commission actions needing the Commission Seal, this revision authorizes the Secretary of the Commission to redelegate this authority to the Deputy Secretary. The Commission finds that since the revision to regulation 2.2(b) has no effect upon a member of the public, this amendment will become effective immediately upon publication in the **Federal Register.** The Commission has determined that this amendment to regulation 2.2(b) relates solely to agency organization, procedure, and practice. Therefore, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally require notice of proposed rule making and provide other opportunities for public participation, are inapplicable.

Similarly, the provisions of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, do not apply. *See* 5 U.S.C. 601(2).

List of Subjects in 17 CFR Part 2

Seal and insignia.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, section 2(a)(11) of the Commodity Exchange Act, 7 U.S.C. 4a(j), the Commission hereby amends Chapter I of title 17 of the Code of Federal Regulations to read as follows:

PART 2—OFFICIAL SEAL

1. The authority citation for Part 2 is revised to read as follows:

Authority: 7 U.S.C. 4a(j).

§ 2.2 [Amended]

2. Part 2 is amended by revising § 2.2(b) to read as follows:

* * * * *

(b) The officials named in paragraph (a) of this section, may redelegate, and authorize redelegation of this authority, except that the Secretary may redelegate this authority only to the Deputy Secretary.

Issued in Washington, DC, on October 14, 1986.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-23582 Filed 10-17-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

Outer Continental Shelf Minerals and Rights-of-Way Management, General

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The rule amends the regulation regarding lease sales to require publication in the **Federal Register** of a notice of availability in lieu of a proposed notice of sale, thereby reducing annual publication costs to the Minerals Management Service (MMS).

EFFECTIVE DATE: The rule becomes effective on November 19, 1986.

FOR FURTHER INFORMATION CONTACT: John Mirabella; Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone (703) 648-7816, (FTS) 959-7816.

SUPPLEMENTARY INFORMATION: Currently, the proposed notice of sale is published in the **Federal Register.** Copies are also made available by MMS to lessees or other interested parties free of charge upon request. Therefore, publication of a notice of availability in the **Federal Register** is sufficient.

In the **Federal Register** Notice of July 22, 1986 (51 FR 26268), the MMS solicited comments on a proposed rule amending § 256.29(c) by requiring the publication in the **Federal Register** of a notice of availability in lieu of publishing the proposed notice of sale. One comment was received which supported the change, and one comment was received which objected to the change. The objection was a concern that the lack of the proposed notice of sale itself in the **Federal Register** would lead to such a delay in obtaining a copy of the sale notice that comments could not be submitted within the comment period.

As noted earlier in the preamble, MMS regional offices maintain extensive mailing lists of affected States, environmental and other special interest groups, and various companies who have requested a copy of the proposed notice. The recipients receive the mailed copy at approximately the same time as the notice is published in the **Federal Register.** The MMS has and will continue to maintain these mailing lists of any interested parties.

Since these parties usually have a copy of the proposed notice of sale in their possession at approximately the time of publication in the **Federal Register,** MMS feels that continued publication is not necessary. Any person, group, or entity not currently one the mailing list for a given Region or Regions is invited to submit a request to the appropriate Region(s), or this office, in writing. All groups making such a request will be included on the appropriate mailing list.

The Department of the Interior (DOI) has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The DOI also determined that this document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million.

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) as the entities that engage in offshore activities are not considered small due to the technical complexity and financial resources necessary to conduct offshore activities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Author: The principal author of this document is Mario Rivero, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Oil and gas exploration, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

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Dated: September 19, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 256 is amended as follows:

"1. The authority citation for Part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629.

§ 256.29 [Amended]

2. In § 256.29(c) the phrase "a notice of its availability shall" is added after the phrase "any affected State and."

[FR Doc. 86-23654 Filed 10-17-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 86-041]

Changes to Marine Inspection Zones and Captain of the Port Zones, Louisville, Kentucky and Cincinnati, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule deletes the Marine Inspection and Captain of the Port Zones for Cincinnati, Ohio, and expands the zones for Louisville, Kentucky to cover the area formerly covered by Cincinnati. This change is required to accommodate a change in Coast Guard organization, replacing the Marine Safety Office (MSO) in Cincinnati with a Marine Safety Detachment (MSD). This reorganization is necessary to increase the overall efficiency, quality, and effectiveness of Coast Guard marine safety functions in the region.

EFFECTIVE DATE: October 20, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael V. Franchini, Project Manager, Office of Marine Safety, Security and Environmental Protection, telephone 202-267-0493. Normal working hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not prepared for this regulation. These amendments are matters relating to agency organization and are exempt from the notice of proposed rulemaking requirements in 5 U.S.C. 553(b). Since this rule has no substantive effect, good cause exists to make it effective in less than 30 days after publication, under 5 U.S.C. 553(d). The rulemaking merely changes Marine Inspection and Captain of the Port Zone boundaries to conform with changes in internal organization. There will be no effect on the public, since the MSD in Cincinnati will perform all marine safety functions formerly performed by the MSO.

Drafting Information

The principal persons involved in drafting this rulemaking are Lieutenant Commander Ellis H. Davison, II, Project Manager, of the Office of Marine Safety, Security and Environmental Protection; Commander Thomas B. Rodino, Chief, Marine Planning and Budgeting Branch, Second Coast Guard District; and Lieutenant Sandra R. Sylvester, Project Counsel, of the Office of Chief Counsel.

Discussion

Marine Safety Offices perform the functions delegated to the Coast Guard Captain of the Port and the Officer in Charge, Marine Inspection, within zones designated in 33 CFR Part 3. The Coast Guard has conducted an evaluation of the distribution of Marine Safety Offices in the Second Coast Guard District. This evaluation takes into account many factors, including personnel considerations, workload, and commercial activity on the Western Rivers. In Cincinnati, Ohio, the workload does not warrant a full-time or full-scale Marine Safety Office. The MSO will be replaced by a Marine Safety Detachment (MSD). The MSD will be under the Commanding Officer of the Marine Safety Office in Louisville, Kentucky. Captain of the Port and Marine Inspection functions within the former MSO Cincinnati zone will continue to be performed by personnel working out of MSD Cincinnati. The change will not affect the public.

This reorganization will improve the use of manpower by redistributing the excess command overhead to satisfy workload shortages elsewhere. The Commandant of the Coast Guard has concluded that the disestablishment of the Marine Safety Office at Cincinnati, Ohio, and the redesignation of the Cincinnati unit as a Marine Safety Detachment is necessary for improved overall efficiency and effectiveness in carrying out Coast Guard marine safety functions.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided in section 1(a)(3) of the Order. It is considered to be nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. Coast Guard marine safety activities in the area will not be affected by this rulemaking. The Marine Safety Detachment at Cincinnati, Ohio, will carry out the functions previously performed by the Marine Safety Office in Cincinnati, Ohio.

Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 3

Marine safety, Organization and functions (Government agencies).

PART 3—[AMENDED]

In consideration of the preceding, Part 3 of Title 33 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

§ 3.10-20 [Removed]

2. Section 3.10-20 is removed.

3. Section 3.10-35 is revised to read as follows:

§ 3.10-35 Louisville Marine Inspection Zone and Captain of the Port Zone.

(a) The Louisville Marine Inspection Office and the Louisville Captain of the Port Office are located in Louisville, Kentucky.

(b) The Louisville Marine Inspection Zone and the Louisville Captain of the Port Zone are comprised of: That part of Indiana south of 41° N. latitude; and that part of Ohio south of 41° N. latitude and west of Ashland, Knox, Licking, Fairfield, Pickaway, Ross, Pike, and Scioto Counties; that part of Illinois north of Pope and Hardin Counties, east of Williamson, Franklin, Jefferson, Marion, Fayette, Effingham, Shelby, Moultrie, Piatt, McLean, and Livingston Counties, and south of 41° N. latitude; and in Kentucky: Todd, Logan, Simpson, Allen, Warren, Barren, Metcalfe, Muhlenberg, Butler, Edmonson, Hart, Green, Taylor, Adair, Casey, Lincoln, Webster, Hopkins, McLean, Ohio, Grayson, Henderson, Daviess, Hancock, Breckenridge, Meade, Hardin, Larue, Nelson, Washington, Marion, Anderson, Mercer, Boyle, Woodford, Jessamine, Garrard, Fayette, Clark, Madison, Estill, Powell, Lee, Bullitt, Spencer, Jefferson, Shelby, Franklin, Scott, Oldham, Henry, Owen, Trimble, Carroll, Montgomery, Bath, Rowan, Bourbon, Nicholas, Fleming, Harrison, Robertson, Mason,

Grant, Pendleton, Bracken, Gallatin, Boone, Kenton, and Campbell Counties, that part of Lewis County south and west of a line drawn from the point of intersection of Scioto and Adams Counties and the Ohio River to the point of intersection of Carter, Greenup, and Lewis Counties; and that part of Union County north of a line drawn from the point of intersection of Gallatin and Hardin Counties and the Ohio River to the point of intersection of Union, Webster, and Henderson Counties.

Dated: September 5, 1986.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 86-23638 Filed 10-17-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Parts 100 and 165

[CGD 86-060]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and special local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety Zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Security zones are temporarily established in response to a risk to national security present in a particular area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between July 1, 1986 and September 30, 1986 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the last published list.

ADDRESS: The complete text of any temporary regulations may be examined at, and is available on request from, Executive Secretary, Marine Safety Council (G-CMC), U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Deputy Executive Secretary, Marine Safety Council at (202) 267-1477.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdication; therefore, he has been delegated the authority to issue these regulations. Since Marine events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not requred to place the special local regulations, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expenses of the public, the Coast Guard publishes a periodic list of these temporary special local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1986 through September 30, 1986 unless otherwise indicated:

Docket No.	Location	Type	Date
1-86-04	Marina Bay 100	Special Local Regulation	July 19, 1986.
1-86-10	Great Kennebec River	do	July 5, 1986.
COTP Providence, RI, Reg. 86-12	Narragansett Bay	Safety Zone	July 23, 1986.
COTP Providence, RI, Reg. 86-13	do	do	Aug. 7, 1986.
COTP Providence, RI, Reg. 86-14	do	do	Aug. 21, 1986.
COTP Providence, RI, Reg. 86-07	do	do	July 1, 1986.
COTP Providence, RI, Reg. 86-15	do	do	Aug. 30, 1986.
COTP Boston, MA, Reg. 86-08	Boston Inner Harbor	do	July 4, 1986.
COTP Boston, MA, Reg. 86-16	do	do	Sept. 15, 1986.
2-86-05	Mississippi River, Mile 697.0	Special Local Regulation	July 2, 1986.
2-86-07	Ohio River, Mile 128.5	do	July 4, 1986.
2-86-08	Mississippi River, Mile 519.0	do	July 4, 1986.
2-86-10	Ohio River, Mile 307.5	do	July 26, 1986.
2-86-11	Allegheny River, Mile 11.0	do	July 26, 1986.
2-86-12	Ohio River, Mile 86.0	do	July 12, 1986.
2-86-13	Ohio River, Mile 220.0	do	Aug. 9, 1986.
2-86-16	Mississippi River, Mile 813.0	do	July 26, 1986.
2-86-17	Mississippi River, Mile 854.8	do	July 26, 1986.
2-86-18	Ohio River, Mile 556.0	do	July 3, 1986.
2-86-19	Ohio River, Mile 556.0	do	July 4, 1986.
2-86-20	Mississippi River, Mile 177.0	do	July 3, 1986.
2-86-21	Mississippi River, Mile 856.0	do	July 19, 1986.
2-86-22	Ohio River, Mile 505.5	do	Aug. 23, 1986.
2-86-23	Ohio River, Mile 792.0	do	July 11, 1986.
2-86-24	Kanawha River, Mile 56.0	do	Aug. 30, 1986.
2-86-25	Allegheny River, Mile 44.0	do	Aug. 23, 1986.
2-86-26	Beaver River, Mile 0.0	do	Aug. 15, 1986.
2-86-27	Ohio River, Mile 483.0	do	Aug. 10, 1986.
2-86-28	Allegheny River, Mile 0.0	do	July 31, 1986.
2-86-29	Missouri River, Mile 731.0	do	July 26, 1986.
2-86-30	Ohio River, Mile 355.5	do	Aug. 30, 1986.
2-86-31	Ohio River, Mile 602.0	do	Sept. 6, 1986.
2-86-33	Arkansas River, Mile 308.5	do	Sept. 6, 1986.
COTP Louisville, KY, Reg. 86-01	Ohio River, Mile 603.5	Safety Zone	Apr. 27, 1986.
COTP Louisville, KY, Reg. 86-02	Ohio River, Mile 597.0	do	June 8, 1986.
COTP Louisville, KY, Reg. 86-03	Ohio River, Mile 602.0	do	June 26, 1986.

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Docket No.	Location	Type	Date
COTP Louisville, KY, Reg. 86-04	Ohio River, Mile 603.5	do	July 4, 1986.
COTP Louisville, KY, Reg. 86-05	Ohio River, Mile 606.0	do	July 4, 1986.
COTP Louisville, KY, Reg. 86-06	Ohio River, Mile 603.5	do	July 19, 1986.
COTP Louisville, KY, Reg. 86-07	Ohio River, Mile 603.5	do	Sept. 1, 1986.
COTP Louisville, KY, Reg. 86-08	Ohio River, Mile 602.0	do	Sept. 5, 1986.
COTP Memphis, TN, Reg. 86-09	Arkansas River, Mile 115	do	June 15, 1986.
COTP Memphis, TN, Reg. 86-10	Mississippi River, Mile 734.7	do	June 21, 1986.
COTP Memphis, TN, Reg. 86-11	Mississippi River, Mile 734.7	do	July 4, 1986.
COTP Memphis, TN, Reg. 86-12	Arkansas River, Mile 300.0	do	July 4, 1986.
COTP Memphis, TN, Reg. 86-13	McKellar Lake, Mile .5	do	Aug. 14, 1986.
COTP Memphis, TN, Reg. 86-14	Mississippi River, Mile 736.0	do	Sept. 5, 1986.
COTP Memphis, TN, Reg. 86-15	Mississippi River, Mile 665.0	do	Aug. 19, 1986.
COTP Memphis, TN, Reg. 86-16	Mississippi River, Mile 818.0	do	Sept. 10, 1986.
COTP Memphis, TN, Reg. 86-17	Mississippi River, Mile 816.0	do	Sept. 13, 1986.
COTP Memphis, TN, Reg. 86-18	do	do	Sept. 16, 1986.
COTP Memphis, TN, Reg. 86-19	do	do	Sept. 18, 1986.
COTP Memphis, TN, Reg. 86-20	do	do	Sept. 21, 1986.
COTP Memphis, TN, Reg. 86-21	Mississippi River, Mile 725.0	do	Sept. 20, 1986.
COTP Memphis, TN, Reg. 86-22	Mississippi River, Mile 816.0	do	Sept. 24, 1986.
COTP Paducah, KY, Reg. 86-03	Mississippi River, Mile 910.0	do	Sept. 11, 1986.
COTP St. Louis, MO, Reg. 86-04	Illinois River, Mile 162.3	do	July 4, 1986.
COTP Huntington, WV, Reg. 86-04	Ohio River, Mile 184.2	do	Aug. 16, 1986.
COTP St. Louis, MO, Reg. 86-03	Mississippi River, Mile 758.0	do	June 11, 1986.
COTP Pittsburgh, PA, Reg. 86-02	Ohio River, Mile 10.0	do	May 29, 1986.
3-86-21	New Jersey Offshore, Grand Prix	Special Local Regulation	July 23, 1986.
3-86-30	Burlington, VT	Safety Zone	July 3, 1986.
3-86-34	Philadelphia, PA	do	July 6, 1986.
3-86-36	Upper New York Bay	do	July 1, 1986.
3-86-38	New London Harbor, CT	do	July 12, 1986.
3-86-39	Hudson River, Hoboken, NJ	do	June 28, 1986.
3-86-40	Liberty Island, NY	do	June 28, 1986.
3-86-41	Hudson River, NY	Security Zone	July 2, 1986.
3-86-42	Upper New York Bay, NY	do	July 4, 1986.
3-86-44	do	do	July 1, 1986.
3-86-45	do	do	July 4, 1986.
3-86-48	Marcus Hook, PA	Safety Zone	July 10, 1986.
3-86-52	Burlington, NJ	do	July 26, 1986.
3-86-53	Riverhead, LI	do	Aug. 6, 1986.
3-86-57	Hudson River, Albany, NY	do	Sept. 15, 1986.
3-86-58	Upper New York Bay, NY	do	Sept. 13, 1986.
3-86-61	Delaware River	do	Sept. 10, 1986.
3-86-62	Upper New York Bay, NY	Security Zone	Sept. 22, 1986.
3-86-63	East River, NY, NY	do	Sept. 22, 1986.
3-86-64	Riverhead, LI	Safety Zone	Sept. 30, 1986.
COTP Buffalo, NY, Reg. 86-01	Lake Erie, PA	do	Aug. 16, 1986.
COTP Buffalo, NY, Reg. 86-03	Erie Harbor, PA	do	Aug. 21, 1986.
COTP Buffalo, NY, Reg. 86-04	Lake Ontario, Sodus Bay, NY	do	Sept. 6, 1986.
5-86-04	Elizabeth River, VA	Special Local Regulation	July 27, 1986.
5-86-05	do	do	July 4, 1986.
5-86-07	Susquehanna River, MD	do	Aug. 2, 1986.
5-86-17	Inner Harbor, Baltimore, MD	do	July 4, 1986.
5-86-20	do	do	Aug. 8, 1986.
COTP Baltimore, MD, Reg. 86-06	Severn River and Annapolis Harbor	Security Zone	June 8, 1986.
COTP Hampton Roads, VA, Reg. 86-08	James River	Safety Zone	Sept. 22, 1986
COTP Hampton Roads, VA, Reg. 86-09	do	do	Sept. 25, 1986.
COTP Hampton Roads, VA, Reg. 86-10	Elizabeth River	do	Aug. 26, 1986.
7-86-25	Sarasota Bay, FL	do	July 6, 1986.
7-86-26	Sundays of Haulover/Tel Tec 100	Special Local Regulation	July 19, 1986.
7-86-33	I.C.W. Miami River Entrance, FL	Security Zone	July 23, 1986.
7-86-37	Ft. Lauderdale Jaycees Raft Race	Special Local Regulation	Sept. 7, 1986.
COTP San Juan, PR, Reg. 86-39	San Juan Harbor, PR	Security Zone	Aug. 26, 1986
COTP Savannah, GA, Reg. 86-30	Savannah River	Safety Zone	July 5, 1986.
COTP Mobile, AL, Reg. 86-14	Bayou La Batre Channel	do	June 22, 1986.
COTP Mobile, AL, Reg. 86-15	Back Bay Channel, MS	do	June 13, 1986.
COTP Mobile, AL, Reg. 86-16	Panama City, FL	Security Zone	July 6, 1986.
COTP Mobile, AL, Reg. 86-17	Pensacola Bay, FL	Safety Zone	July 4, 1986.
COTP Mobile, AL, Reg. 86-18	Pascagoula River, MS	do	Sept. 6, 1986.
COTP Mobile, AL, Reg. 86-19	Panama City, FL	Security Zone	Aug. 10, 1986.
COTP Mobile, AL, Reg. 86-20	do	do	Sept. 7, 1986.
COTP Houston, TX, Reg. 86-06	Houston Ship Channel	Safety Zone	May 31, 1986.
COTP Houston, TX, Reg. 86-07	do	do	June 2, 1986.
COTP Houston, TX, Reg. 86-08	Greens Bayou, TX	do	June 6, 1986.
COTP Houston, TX, Reg. 86-09	Houston Ship Channel	do	June 16, 1986.
COTP Houston, TX, Reg. 86-10	Greens Bayou, TX	do	June 12, 1986.
COTP Houston, TX, Reg. 86-11	Houston Ship Channel	do	June 25, 1986.
COTP Houston, TX, Reg. 86-12	Greens Bayou, TX	do	July 31, 1986.
COTP Houston, TX, Reg. 86-13	Houston Ship Channel	do	Aug. 5, 1986.
COTP New Orleans, LA, Reg. 86-04	I.C.W. Mile 107.5	do	June 6, 1986.
COTP New Orleans, LA, Reg. 86-05	Battleship WISCONSIN, Mississippi River	do	Aug. 14, 1986.
COTP Port Arthur, TX, Reg. 86-01	G.I.W.W., Mile 266	do	June 20, 1986.
COTP Port Arthur, TX, Reg. 86-02	Beaumont, TX	Security Zone	July 15, 1986.
9-86-07	Chicago Park, Lake Michigan	Special Local Regulation	July 13, 1986.
9-86-09	Milwaukee, WI	do	July 3, 1986.
9-86-12	Grand Haven, MI	do	Aug. 9, 1986.
9-86-14	Cleveland, OH	do	Aug. 28, 1986.
9-86-15	Catawba Island, Lake Erie	do	July 5, 1986.
9-86-16	Duluth Harbor, MN	do	July 4, 1986.
9-86-17	Huron, OH	do	July 13, 1986.
9-86-18	Detroit River, MI	do	July 2, 1986.
9-86-19	Niagara River, Tonawanda, NY	do	Sept. 13, 1986
9-86-20	Maumee River, Toledo, OH	do	Aug. 30, 1986.
9-86-21	Sandusky Bay, Lake Erie	do	Aug. 2, 1986.
9-86-23	Maumee River, Toledo, OH	do	Sept. 1, 1986.
COTP Cleveland, OH, Reg. 86-001	Ashtabula, OH	Safety Zone	Sept. 13, 1986.

Docket No.	Location	Type	Date
11-86-10	Santa Monica, CA	Special Local Regulation	July 11, 1986
11-86-12	Oceanside, CA	do	July 4, 1986.
COTP San Diego, CA, Reg. 86-10	San Diego Bay	Safety Zone	July 21, 1986.
COTP San Diego, CA, Reg. 86-11	do	do	July 31, 1986
COTP San Diego, CA, Reg. 86-12	do	Security Zone	Aug. 11, 1986
COTP San Diego, CA, Reg. 86-13	do	Safety Zone	Sept. 24, 1986
COTP LA/LB, CA, Reg. 86-19	Port of Long Beach, CA	do	June 26, 1986
COTP LA/LB, CA, Reg. 86-20	Port of Los Angeles, CA	do	July 6, 1986.
COTP LA/LB, CA, Reg. 86-21	do	do	July 18, 1986
COTP LA/LB, CA, Reg. 86-22	do	do	July 7, 1986.
COTP LA/LB, CA, Reg. 86-23	do	do	Aug. 15, 1986.
COTP LA/LB, CA, Reg. 86-24	Long Beach Pilot Area	do	Sept. 21, 1986
COTP LA/LB, CA, Reg. 86-25	Long Beach Explosive Loading Area K-4	do	Sept. 26, 1986
COTP San Francisco, CA, Reg. 86-03	San Francisco Bay, CA	do	July 4, 1986.
COTP San Francisco, CA, Reg. 86-05	do	do	Oct. 10, 1986
COTP San Francisco, CA, Reg. 86-07	do	Security Zone	Oct. 11, 1986
13-86-04	Elliott Bay, Seattle, WA	Special Local Regulation	July 4, 1986
13-86-08	Commencement Bay, Tacoma, WA	do	July 4, 1986
13-86-09	Lake Washington, Seattle, WA	do	July 20, 1986
13-86-012	Columbia River at Hood River, OR	do	Sept. 1, 1986
COTP Honolulu, HI, Reg. 86-05	Mamala Bay, Oahu, HI	Safety Zone	Sept. 21, 1986
COTP Southeast Alaska, Reg. 86-02	Sitka Sound, AK	do	Aug. 4, 1986

Dated: October, 14, 1986.

J.H. Parent,

Captain, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

[FR Doc. 86-23637 Filed 10-17-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD3 85-86]

Safety Zone Regulations; Northville Industries Offshore Platform, Riverhead, Long Island, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone around the Northville Industries Offshore Platform, Riverhead, Long Island, New York. This zone is needed to protect vessels from the possible dangers and hazards associated with a Liquid Petroleum Gas (LPG) Carrier, while it is moored at the Northville Industries Offshore Platform. Entry into this area will be prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATE: November 19, 1986.

FOR FURTHER INFORMATION CONTACT: LT Deens, Captain of the Port, Long Island Sound (203) 773-2464.

SUPPLEMENTARY INFORMATION: On May 22, 1986 the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations (51 FR 18803). Interested persons were requested to submit comments. One comment supporting the Safety Zone was received. This final rule is, therefore, unchanged from the rule as proposed. It is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Drafting Information

The drafters of this regulation are Lieutenant H.C. Deens, Project Officer for the Captain of the Port, and Ms. M.A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary since the theory and practice of establishing a safety zone around an LPG vessel has been in effect for a few years. The maritime community in the area is accustomed to planning vessel movement around scheduled LPG vessel Safety Zones with minimum economic impact. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

Final Regulations

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.305 is added to read as follows:

§ 165.305 Northville Industries Offshore Platform, Riverhead, Long Island, New York-saftey zone.

(a) The following area is established as a safety zone during the specified condition:

(1) The waters within a 500 yard radius of the Northville Industries Offshore Platform, Long Island, New York, 1 mile North of the Riverhead shoreline at 41°00″N, 072°38″ W, while a Liquefied Petroleum Gas (LPG) vessel is moored at the Offshore Platform. The Safety Zone remains in effect until the LPG vessel departs the Offshore Platform.

(b) The general regulations governing safety zone contained in 33 CFR 165.23 apply.

(c) The Captain of the Port will notify the maritime community of periods during which this safety zone will be in effect by providing notice of scheduled moorings at the Northville Industries Offshore Platform of LPG vessels via Marine Safety Information Radio Broadcast.

Dated: October 15, 1986.

D. H. Lyon,

Commander, U.S. Coast Guard, Captain of the Port, Long Island Sound, CT.

[FR Doc. 86-23642 Filed 10-17-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Department of the Army

35 CFR Part 253

Panama Canal Employment System

AGENCY: Department of the Army, Defense.

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ACTION: Final rule.

SUMMARY: The Panama Area Personnel Board, designated by the Secretary of the Army, is updating its regulations to reflect routine changes, such as editorial or correction of wording.

EFFECTIVE DATE: October 20, 1986.

ADDRESS: Department of the Army, Office of the Assistant Secretary of the Army (CW), Washington, DC 20310.

FOR FURTHER INFORMATION CONTACT: LTC Ken Dunn, Office of the Assistant Secretary of the Army (CW), Washington, DC 20310, Tel. (202) 695-0482.

SUPPLEMENTARY INFORMATION: Because this rule pertains to personnel of agencies covered by these regulations, it is not necessary to issue a notice of proposed rulemaking under 5 U.S.C. 553.

List of Subjects in 35 CFR Part 253

Administrative practice and procedure, Employment, Government employees, Panama Canal.

Adoption of Amendments

Accordingly, effective as indicated above, the following amendments to Title 35, Code of Federal Regulations are adopted:

PART 253—[AMENDED]

1. The authority citation for Part 253 continues to read as follows:

Authority: 5 U.S.C. 5102, E.O. 12173, 12215.

§ 253.8 [Amended]

2. Section 253.8 is amended by revising paragraph (b)(6) to read as follows:

* * * * *

(b) * * *

(6) Positions in the Panama Canal Commission and the incumbents thereof, if a substantial portion of the duties and responsibilities are performed in the United States. All of the rights and privileges which are provided by applicable laws and regulations for citizens of the United States employed in the competitive service, except Title 5 U.S. Code, Chapter 43 pertaining to performance appraisal, are extended to the incumbents of such positions, other than the Secretary and the Assistant to the Secretary for Congressional Affairs of the Panama Canal Commission.

* * * * *

Dated: October 9, 1986

William R. Gianelli,

Chairman, Panama Area Personnel Board.

[FR Doc. 86-23600 Filed 10-17-86; 8:45 am]

BILLING CODE 3710-01-M

VETERANS ADMINISTRATION

38 CFR Part 26

Environmental Effects of VA Actions

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is revising 38 CFR Part 26, Environmental Effects of VA Actions. The intent is to simplify requirements to prepare an Environmental Assessment or Environmental Impact Statement, and to shorten the regulations by deleting procedural guidelines. These regulations are a policy document for the VA.

EFFECTIVE DATE: October 20, 1986.

FOR FURTHER INFORMATION CONTACT: Dennis T. Gerdovich, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC, 20420 (202) 233-3316/3371.

SUPPLEMENTARY INFORMATION: On pages 17656 to 17659 of the **Federal Register** of May 14, 1986, there was published a Notice of Proposed Rulemaking to 38 CFR Part 26 to be followed to comply with the requirements of section 102(2) of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321-4370a); Executive Order 11514, March 5, 1970, "Protection and Enhancement of Environmental Quality (as amended by Executive Order 11991, May 24, 1977); and the implementing regulations issued by the Council on Environmental Quality (CEQ), 40 CFR Parts 1500-1508.

No comments were received during the comment period which closed June 23, 1986. Therefore, these regulations will become effective upon the date of publication.

The existing regulations were both a policy document and procedural guidelines. The revised regulations provide policy guidance for the departments and staff offices to assist in compliance with environmental laws and regulations. Procedural guidelines will be promulgated within the VA separately for each department.

The final regulations have been reviewed pursuant to Executive Order 12291, Federal Regulation, and have been found to be nonmajor. The regulations will not affect the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, nor will they have other significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator has certified that these regulations will not have a significant economic impact on any small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that the regulations will affect only the Agency's internal handling of matters relating to compliance with the NEPA. Pursuant to 5 U.S.C. 605(b), these regulations are, therefore, exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604.

There is no Federal Domestic Assistance number for these regulations.

List of Subjects in 38 CFR Part 26

Environmental impact statements.

Approved: September 26, 1986.

Thomas K. Turnage,

Administrator.

38 CFR Part 26, Environmental Effects of VA Actions, is revised to read as follows:

PART 26—ENVIRONMENTAL EFFECTS OF VA ACTIONS

Sec.

26.1 Issuance and purpose.
26.2 Applicability and scope.
26.3 Definitions.
26.4 Policy.
26.5 Responsibilities.
26.6 Environmental documents.
26.7 VA environmental decision making and documents.
26.8 Assistance to applicants.
26.9 Information on and public participation in VA environmental process.

Authority: 42 U.S.C. 4321-4370a; E.O. 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977.

§ 26.1 Issuance and purpose.

The purpose of this part is to implement the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321-4370a), in accordance with regulations promulgated by the Council of Environmental Quality (CEQ Regulations, 40 CFR Parts 1500-1508), and Executive Order 11514, March 5, 1970, as amended by Executive Order 11991, May 24, 1977. This part shall provide guidance to officials of the Veterans Administration (VA) on the application of the NEPA process to agency activities. (42 U.S.C. 4321-4370a)

§ 26.2 Applicability and scope.

This part applies to the VA, its departments and staff offices. (42 U.S.C. 4321-4370a)

§ 26.3 Definitions.

(a) "United States" means all States, territories, and possessions of the United States and all waters and air space subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(b) "VA elements," for the purposes of this part, means the Department of Medicine and Surgery, the Department of Veterans Benefits, the Department of Memorial Affairs and the Office of Construction.

(c) Other terms used in this part are defined in CEQ Regulations, 40 CFR Part 1508 (42 U.S.C. 4321-4370a).

§ 26.4 Policy.

(a) The VA must act with care in carrying out its mission of providing services for veterans to ensure it does so consistently with national environmental policies. Specifically, the VA shall ensure that all practical means and measures are used to protect, restore, and enhance the quality of the human environment; to avoid or minimize adverse environmental consequences, consistently with other national policy considerations; and to attain the following objectives:

(1) Achieve the fullest possible use of the environment, without degradation, or undesirable and unintended consequences;

(2) Preserve historical, cultural, and natural aspects of our national heritage, while maintaining, where possible, an environment that supports diversity and variety and individual choice;

(3) Achieve a balance between the use and development of resources, within the sustained capacity of the ecological system involved; and,

(4) Enhance the quality of renewable resources while working toward the maximum attainable recycling of nonrenewable resources.

(b) VA elements shall:

(1) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the NEPA and CEQ Regulations;

(2) Prepare concise and clear environmental documents which shall be supported by documented environmental analyses;

(3) Integrate the requirements of NEPA with agency planning and decision-making procedures;

(4) Encourage and facilitate involvement by affected agencies, organizations, interest groups and the public in decisions which affect the quality of the human environment; and,

(5) Consider alternatives to the proposed actions which are encompassed by the range of alternatives discussed in relevant environmental documents, and described in the environmental impact statement (42 U.S.C. 4321-4370a).

§ 26.5 Responsibilities.

(a) The Director of the Office of Environmental Affairs shall:

(1) Be responsible to coordinate and provide guidance to VA elements on all environmental matters;

(2) Assist in the preparation of environmental documents by VA elements; and, where more than one VA element, or Federal, State, or local agency is involved, assign the lead VA element or propose the lead Federal, State or local agency to prepare the environmental documents;

(3) Recommend appropriate actions to the Administrator on those environmental matters for which the Administrator has final approval authority;

(4) Assist in resolution of disputes concerning environmental matters within the VA, and among the VA and other Federal, State and local agencies;

(5) Coordinate preparation of VA comments on draft and final environmental impact statements of other agencies;

(6) Serve as the VA's principal liaison to the CEQ, the Environmental Protection Agency, the Office of Management and Budget, and other Federal, State, and local agencies on VA environmental actions; and

(7) Prepare appropriate supplemental guidance on implementation of these regulations.

(b) The VA General Counsel shall provide legal advice and assistance in meeting the requirement of NEPA, the CEQ Regulations and these regulations.

(c) The heads of each VA element shall:

(1) Adopt procedures to ensure that decisions are made in accordance with NEPA, the CEQ Regulations and these regulations; and

(2) Be responsible to prepare environmental documents relating to programs and proposed actions by their elements, when required by these regulations (42 U.S.C. 4321-4370a).

§ 26.6 Environmental documents.

(a) *Environmental Impact Statements.* The head of each VA element shall include a detailed written statement "in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environmental." NEPA 102(2), 42 U.S.C. 4332(2) *see* CEQ Regulations, 40 CFR Part 1502. An environmental impact statement shall be prepared in accordance with the following procedures:

(1) Typical Classes of Action Which Normally Do Require Environmental Impact Statements:

(i) Proposed legislation (CEQ Regulation, 40 CFR 1508.17);

(ii) Acquisition of land in excess of 10 acres for development of a VA medical center facility;

(iii) Acquisition of land in excess of 50 acres for development of a VA national cemetery; and

(iv) Promulgation of policies which substantially alter agency programs and which have a significant effect on the quality of the human environmental.

(2) Specific Criteria for Typical Classes of Action Which Normally Do Require Environmental Impact Statements:

(i) Probable significant degradation of historic or cultural resources, park lands, prime farmlands, designated wetlands or ecologically critical areas;

(ii) An increase in average daily vehicle traffic volume of at least 20 percent on access roads to the site or the major roadway network;

(iii) Probable conflict with Federal, State, or local environmental protection laws or requirements;

(iv) Probable threat or hazard to the public, or the involvement of highly uncertain risks to the environment;

(v) Similarity to previous actions that required an environmental impact statement; and

(vi) Probable conflict with, or significant effect on, local or regional zoning or comprehensive land use plans.

(b) *Categorical Exclusions.* A categorical exclusion is a "category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal Agency in implementation of these regulations . . . and for which, therefore, neither an environmental assessment (see suparagraph (c), *infra*) or an environmental impact statement is required." CEQ Regulations, 40 CFR 1508.4.

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(1) Typical Classes of Action Which Normally Do Not Require Either an Environmental Impact Statement or an Environmental Assessment:

(i) Repair, replacement, and new installation of primary or secondary electrical distribution systems;

(ii) Repair, replacement, and new installation of components such as windows, doors, roofs, and site elements such as sidewalks, patios, fences, retaining walls, curbs, water distribution lines, and sewer lines which involve work totally within VA property boundaires;

(iii) Routine VA grounds and facility maintenance activities;

(iv) Procurement activities for goods and services for routine facility operations maintenance and support;

(v) Interior construction or renovation;

(vi) New construction of 75,000 gross square feet or less;

(vii) Development of 20 acres of land or less within an existing cemetery, or development on acquired land of five acres or less;

(viii) Actions which involve support or ancillary appurtenances for normal operation;

(ix) Leases, licenses, permits, and easements;

(x) Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances or other similar causes;

(xi) VA policies, actions and studies which do not significantly affect the quality of the human environment;

(xii) Preparation of regulations, directives, manuals or other guidance that implement, but do not substantially change, the regulations, directives, manuals, or other guidance of higher organizational levels or another Federal agency; and

(xiii) Actions, activities, or programs that do not require expenditure of Federal funds.

(2) Specific Criteria for Typical Classes of Action Which Normally Do Not Require Either an Environmental Impact Statement or an Environmental Assessment:

(i) Minimal or no effect on the environment;

(ii) No significant change to existing environmental conditions;

(iii) No significant cumulative environmental impact; and

(iv) Similarity to Actions previously assessed with a finding of no significant impact.

(3) Extraordinary Circumstances That Must Be Considered by a VA Element Before Categorically Excluding a Particular Agency Action:

(i) Greater scope or size than normally experienced for a particular categorical exclusion;

(ii) Actions in highly populated or congested areas;

(iii) Potential for degradation, although slight, or existing poor environmental conditions;

(iv) Use of unproven technology

(v) Potential presence of an endangered species, archeological remains, or other protected resources; or

(vi) Potential presence of hazardous or toxic substances.

(c) *Environmental assessments.* If the proposed action is not covered by paragraph (a) or (b) of this seciton, the responsible official (head of the VA element) will prepare an environmental assessment (CEQ Regulations, 40 CFR 1508.9). Based on the environmental assessment, the official shall determine whether it is necessary to prepare an environmental impact statement, or to prepare a finding of no significant impact (CEQ Regulations, 40 CFR 1508.13).

(1) Typical Classes of Action Which Normally Do Require Environmental Assessments. But Not Necessarily Environmental Impact Statements:

(i) Acquisition of land of 10 acres or less for development of a VA medical facility;

(ii) Acquisition of land from 5 to 50 acres for development of a VA national cemetery; and,

(iii) New construction in excess of 75,000 gross square feet;

(2) Specific Criteria for Typical Classes of Action Which Normally Do Require an Environmental Assessment:

(i) Potential minor degradation of environmental quality;

(ii) Potential cumulative impact on environmental quality;

(iii) Presence of hazardous or toxic substances;

(iv) Potential violation of pollution abatement laws;

(v) Potential impact on protected wildlife or vegetation;

(vi) Potential effects on designated prime farmlands, wetlands, floodplains, or ecologically critical areas;

(vii) Alteration of stormwater runoff and retention;

(viii) Potential dislocation of persons or residences;

(ix) Potential increase of average daily vehicle traffic volume on access roads to the site by 10 percent or more but less than 20 percent, or which alters established traffic patterns in terms of location and direction;

(x) Potential threat or hazard to the public, or highly uncertain risks to the environment;

(xi) Potential conflicts with Federal, State, or local environmental protection laws or requirements;

(xii) Potential conflict with, or significant impact on, official local or regional zoning or comprehensive land use plans; and,

(xiii) Overloading of public utilities with insufficient capacity to provide reliable service and for average and peak periods (42 U.S.C. 4321–4370a).

§ 26.7 VA environmental decision making and documents.

(a) Relevant environmental documents shall accompany other decision documents as they proceed through the decision-making process.

(b) The major decision points for VA actions, by which time the necessary environmental documents must be completed, are as follows:

(1) *Leases.* Prior to execution of lease agreement.

(2) *Grants.* Prior to notification of grant award.

(3) *Policy.* Prior to final approval of a policy which substantially alters agency programs and which affects the human environment.

(4) *Legislative proposals.* Included in any recommendation or report to Congress on a legislative proposal which would affect the environment. The document must be available in time for Congressional hearings and deliberations.

(5) *Major, minor, minor miscellaneous delegated projects, and non-recurring maintenance projects.* Prior to contract award for working drawings or prior to in-house initiation of working drawings. If the Administrator or designee makes a finding of compelling need, working drawings may commence prior to completion of the environmental compliance process. However, this will not preclude completion of environmental compliance prior to construction.

(6) *Land acquisition for development.* Prior to the Administrator's acceptance of custody and accountability (for Federal lands), or acceptance of offer to donate or contract for purchase (for private lands).

(c) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the VA must act in accordance with CEQ Regulations, 40 CFR 1506.11 (42 U.S.C. 4321–4370a).

§ 26.8 Assistance to applicants.

(a) The CEQ Regulations (40 CFR 1501.2(d)) provide for advising of private applicants or other non-Federal groups when VA involvement in a particular action is reasonably foreseeable. Such foreseeable actions involve application to a VA element by private persons, States, and local agencies and pertain primarily to permits, leases, requests for financial assistance, grants, and related actions involving the use of VA real property.

(b) VA involvement may be reasonably foreseeable when the following actions are initiated by non-Federal groups:

(1) Easements and rights-of-way on VA land;

(2) Petroleum, grazing, and timber leases;

(3) Permits, license, and other use agreements or grants of real property for use by non-VA groups; and,

(4) Application for grants-in-aid for acquisition, construction, expansion or improvement of state veterans' health care facilities or cemeteries.

(c) Public notices or other means used to inform or solicit applicants for permits, leases, or related actions will describe the environmental documents, studies or information foreseeably required for later action by VA elements and will advise of the assistance available to applicants by the VA element.

(d) When VA owned land is leased or otherwise provided to non-VA groups, the VA element affected will initiate the NEPA process pursuant to these regulations.

(e) When VA grant funds are requested by a State agency, the VA element affected will initiate the NEPA process and ensure compliance with the VA environmental program. The environmental documents prepared by the grant applicant shall assure full compliance with State and local regulations as well as NEPA before the proposed action is approved, (42 U.S.C. 4321–4370a).

§ 26.9 Information on and public participation in VA environmental process.

(a) During the preparation of environmental documents, the responsible VA element shall include the participation of environmental agencies, applicants, State and local governments and the public to the extent practicable and in conformance with CEQ Regulations. Information or status reports on environmental documents shall be provided to interested persons upon request.

(b) Notice of availability or filing requirements vary, depending on the type of environmental documents requested. Specific requirements and procedures are defined for each VA element.

(c) For those actions relating specifically to the Administrator of Veterans Affairs, the Office of Environmental Affairs, or a VA element, information is available by writing to the Director, Office of Environmental Affairs, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (42 U.S.C. 4321–4370a).

[FR Doc. 86–23601 Filed 10–17–86; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 604 and 651

[Docket No. 60599–6141]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim rule; notice of OMB Control number.

SUMMARY: This rule makes effective a section in the interim rule implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) by confirming the OMB Control Number for its Information Collection Requirements (ICR). The Office of Management and Budget (OMB) has approved ICR for the exempted fishery programs (EFP) described in the FMP. The intent is to announce the effectiveness of the EFP program.

EFFECTIVE DATE: Sections 604.1, 651.4(n), 651.21(b)(3)(iii), and 651.22 are effective concurrent with the FMP from September 19, 1986, until September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Peter D. Colosi, Jr. (Multispecies Plan Coordinator), 617–281–3600, ext. 252.

SUPPLEMENTARY INFORMATION: On August 20, 1986 (51 FR 29642), NOAA published an interim rule implementing the FMP, effective September 19, 1986. On August 21, 1986, OMB approved the ICR of § 651.22 Exempted fisheries programs. This notice informs the public of the approval under OMB control number 0648–0016 for the duration of the interim rule and confirms the effectiveness of §§ 651.4(n), 651.21(b)(3)(iii), and 651.22. This is the same OMB control number that was previously approved for § 651.22 under the Interim Groundfish Plan, which the FMP has superseded; however, the FMP added new ICR to this section and also added a request for certification in new §§ 651.4(n) and 651.21(b)(3) which needed OMB approval under the Paperwork Reduction Act.

(16 U.S.C. 1801 *et seq.*)

Dated: October 14, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

NOAA amends 50 CFR Part 604 as set forth below:

PART 604—[AMENDED]

1. The authority citation for Part 604 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

2. The table in § 604.1 is amended by adding "(a) through (m)" to "§ 651.4" and by adding two lines following it, to read as follows:

§ 604.1 OMB control numbers assigned under the Paperwork Reduction Act.

* * * * *

50 CFR Part or section where the information collection requirement is located	Current OMB control No. (all numbers begin 0648–)
* * * * *	
§ 651.4 (a) through (m)	–0097
§ 651.4(n)	–0016
§ 651.21(b)(3)	–0016
* * * * *	

[FR Doc. 86–23628 Filed 10–17–86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 202
Monday, October 20, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 436

[Doc. No. 3614S]

Tobacco (Guaranteed Production Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to revise and reissue the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (2) provide for insurance coverage by type; (3) extend the end of the insurance period for certain types of tobacco; (4) change the method of calculating total production to count; (5) provide for use of a proportional value on damaged tobacco in adjusting for quality without determination of a price factor; (6) add a definition for "Average value per pound"; and (7) redefine the "Market price" definition. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than November 19, 1986 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Our current policy and loss adjustment procedure provides that any appraised production damaged by insurable causes can be adjusted for quality. This adjustment is determined through the adjuster's estimation of the proportional value of the damaged tobacco to the value of undamaged tobacco.

Once the proportional relationship is established, conversion to a price for comparison to the price of undamaged tobacco is required. The prices are then adjusted to appraised production to count through the automated indemnity calculation process using the price factor determined from the prices. A major reason for this complex process is to assure the mathematical accuracy of the price factor by removing the calculation from the adjuster's responsibility.

To simplify this process, it is proposed that the proportional value relationship be used without the determination of a price factor. Under this approach, the adjuster will continue to establish the appraised production of unharvested marketable (gross pounds) tobacco without regard to quality. The proportional value of the tobacco, as a percentage of the value of normal tobacco, is then determined. This percentage (not to exceed 100 percent) is multiplied times the appraised production. The result will be the appraised production

The advantages to this approach are:

1. The insured knows the final amount of appraised production to count when the claim is completed.

2. The quality adjustment process is easier to understand because it is no longer necessary to establish a price for unharvested tobacco (in an uncured condition) using a pricing system for harvested tobacco (in a cured or semi-cured condition).

3. Automated claims processing is simplified with the elimination of the adjustment for quality for appraised production from the computer system.

4. Claims preparation is simplified because fewer entries are required on the claim.

It is proposed that all quality of appraised production be determined in accordance with this procedure.

Other than minor changes in language and format, the other principal changes in the Tobacco (Guaranteed Production Plan) policy are:

1. *Section 2.a.*—Revise to allow insurance coverage by types of tobacco thereby permitting insureds to produce other types of tobacco which they may not wish to insure. The different types of tobacco are sufficiently distinguished to prevent production crossover.

2. *Section 2.c.*—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits

indemnities to the insurable interest at the time of loss.

3. *Section 4.b.*—Remove. The reduction in production guarantee provision for unharvested acreage is contained in Section 9.e.(3)(c).

4. *Section 7.e.*—Change the end of the insurance period date for certain types of tobacco.

5. *Section 9.e.(1)(a)*—Change the method of calculating total production to count by using an average value for the entire unit as opposed to separate loads or sales.

6. *Section 17.*—Add a definition for "Average value per pound" to clarify its use in Section 9.

Section 17.j.—Delete (1)(b) and (2)(a), and redesignate the remaining subsections accordingly.

Amend the "Market price" definition to permit the use of the "average price support" for specific types of tobacco and an alternate "season average price" when a price support is not in effect. The use of the "average price support" was the basis on which these types of tobacco were adjusted under the previous dollar plan of insurance. Its continued use will provide for an accurate and more easily administered loss adjustment procedure.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 436

Crop insurance, Tobacco (Guaranteed Production Plan).

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1987 and succeeding crop years, to read as follows:

PART 436—TOBACCO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

436.1 Availability of the guaranteed plan of tobacco crop insurance.
436.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
436.3 OMB control numbers.
436.4 Creditors.
436.5 Good faith reliance on misrepresentation.
436.6 The contract.
436.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75.430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§ 436.1 Availability of the guaranteed plan of tobacco crop insurance.

Insurance shall be offered under the provisions of this subpart on tobacco in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 436.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for tobacco which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§ 436.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 436.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 436.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the tobacco insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing

§ 436.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the tobacco crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 436.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the tobacco crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's

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determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a tobacco contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Guaranteed Production Plan) Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Tobacco—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;
(2) The failure to follow recognized good tobacco farming practices;
(3) The failure or breakdown of irrigation equipment or facilities;
(4) The failure to follow recognized good tobacco irrigation practices;
(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(6) Any cause not specified in subsection 1.a. as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be any of the following tobacco types which you elect, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table:

Flue Cured

Type 11A
Type 11B
Type 12
Type 13
Type 14

Fire Cured

Type 21
Type 22
Type 23

Burley

Type 31

Maryland

Type 32

Dark Air

Type 35
Type 36
Type 37

Cigar Filler

Type 41

Cigar Binder

Type 51
Type 52
Type 54
Type 55

Cigar Wrapper

Type 61

b. The acreage insured for each crop year will be tobacco planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;
(3) Which is destroyed, it is practical to replant to tobacco, and such acreage is not replanted;
(4) Initially planted after the final planting date set by the actuarial table unless you agree, in writing, on our form to coverage reduction;
(5) Planted to tobacco of a discount variety under the provisions of the tobacco price support program;
(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table;
(7) Designated as uninsurable by the actuarial table; or
(8) Planted for experimental purposes.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good tobacco irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice.

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. The practice; and

c. Your share on the date of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report.

If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, production, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date for submitting applications for the crop year as established by the actuarial table.

d. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report, we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75 percent of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-fourth percent (1-¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the tobacco policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;
(2) The premium reduction will not increase because of favorable experience;
(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;
(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and
(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;
b. Weighing-in at the tobacco warehouse;
c. Removal of the tobacco from the unit (except for curing, grading, packing, or immediate delivery to the tobacco warehouse);
d. Final adjustment of a loss; or
e. The following dates immediately after the normal harvest period:

(1) Types 11 and 12..... November 30;
(2) Type 13..... October 31;
(3) Type 14..... October 15;
(4) Type 36.....February 28;
(5) Types 21, 31, 35 and 37..... March 15;
(6) Types 22 and 23..... April 15;
(7) Type 32..... May 15;
(8) All other types..... April 30.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs. Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) For any unit of tobacco other than types 11, 12, 13, or 14, if probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any insured tobacco is destroyed or damaged by fire during the insurance period.

(5) If tobacco is not to be sold through auction warehouses and an indemnity is to be claimed, notice must be given to allow us 5 days to inspect the cured tobacco prior to its sale or other disposition.

(6) For any unit of tobacco of types 11, 12, 13, or 14 on which an indemnity is to be claimed and the tobacco stalks are to be destroyed, notice of loss must be given to us upon completion of harvest. The tobacco stalks must not be destroyed until we give consent.

(7) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco is completed on the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to be counted (see subsection 9.e.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Harvested production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the average value per pound of the harvested production by the recognized market price per pound; and

(b) Multiplying that product by the number of pounds of such damaged harvested tobacco.

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity:

(a) To inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of; and

(b) At our option to obtain additional offers on your behalf.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or put to another use without our prior written consent; and

(c) Not less than 35 percent of the production guarantee per acre for all other unharvested acreage.

(4) We may make an appraisal of not less than the guarantee per acre for any acreage of tobacco types 11, 12, 13, or 14 on which the stalks have been destroyed prior to our consent.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any unharvested tobacco may be determined on the basis of field appraisals conducted after the end of the normal harvest period.

(7) If you elect to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. We have a policy of paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us We will, in no instance, be liable for the payment of damages, attorney's fees.

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or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date the tobacco is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all tobacco produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Alabama; Florida; Georgia; Surry, Wilkes, Caldwell, Burke, and Cleveland Counties, North Carolina and all North Carolina counties east thereof; and South Carolina.	Mar. 31
All other North Carolina counties and all other states.	Apr. 15

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of guaranteed tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "Average value per pound" means the total value of all harvested production from the unit divided by the harvested pounds.

d. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by an ASCS farm serial number for the county but physically located in another county within the state.

e. "Crop year" means the period within which the tobacco is normally grown and is designated by the calendar year in which the tobacco is normally harvested.

f. "Harvest" means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed.

g. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

h. "Insured" means the person who submitted the application accepted by us.

i. "Loss ratio" means the ratio of indemnity to premium.

j. "Market price":

(1) For types 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 54, and 55, means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program less any no-net cost assessment for the type. If for any crop year a price support for the insured type is not in effect, we will use the season average price in the belt or area through the day tobacco sales are completed on any unit or part thereof which is harvested; and

(2) For types 32, 41, 51, 52, and 61, means the season average price for the applicable type of tobacco. Such price will be the season average price for the current crop year for any unit or part thereof which is harvested.

k. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

l. "Planting" means transplanting the tobacco plant from the bed to the field.

m. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

o. "Unit" means all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations (7 CFR Part 400, Subpart J).

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on September 17, 1986.

Peter F. Cole,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-23404 Filed 10-17-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 905

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Proposed Change in Minimum Size Requirement and Dancy Tangerines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would increase the minimum size requirement for Dancy tangerines from size 210 (2 9/16 inches) to size 176 (2 5/16 inches) shipped from the production area to any point in the continental United States, Canada, or Mexico. Smaller tangerines generally tend to be less flavorful than larger tangerines and are discounted when shipped in volume with larger sizes. This can have a price depressing effect on larger, more flavorful tangerines. This action is expected to result in the smaller Dancy tangerines being left on the trees longer to be shipped later in the season after they have attained further size and improved flavor.

DATE: Comments must be received by October 30, 1986.

ADDRESS: Comments should be sent to: Docket Clerk, Room 2065, South Building, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written material should be submitted and they shall be available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601-674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 95 handlers of Florida citrus subject to regulation under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida. In addition, there are approximately 99 producers in the production area. The majority of handlers and producers may be classified as small entities.

Pursuant to the requirements set forth in the RFA, the Administrator of AMS has considered the economic impact on small entities. This proposed rule would increase the minimum size requirement for Dancy tangerines which may be shipped from the production area from size 210 (2 9/16 inches) to size 176 (2 5/16 inches).

Smaller tangerines are often not as flavorful as larger sizes early in the season and generally do not provide the same level of consumer satisfaction. In addition, when ample supplies of larger sizes of tangerines are available for shipment, disposition of the smaller sizes can be accomplished only at a substantial price discount. This tends to depress the market for all sizes and adversely impacts grower returns. This proposal is expected to result in Dancy tangerines being left on the tress longer to attain further growth and improved flavor in the interest of producers and consumers.

In 1986-87, fresh Dancy tangerine shipments are expected to total 500,000 boxes, compared with 446,000 boxes in 1985-86, and 380,000 boxes in 1984-85. Only about 56 percent of the Dancy tangerine crop was shipped fresh in 1985-86; most of the balance was shipped for processing. These percentages are based on the portion of the crop that attained size 210 and larger during the marketing season. The Florida Citrus Administrative Committee estimated that about 7 percent of the 1986-87 season fresh Dancy tangerine shipments would be size 210's in the absence of this proposed rule. Size 210 Dancy tangerines comprised about 7.3 percent of the fresh shipments in 1985-86, 8.1 percent in 1984-85, and 5.9 percent in 1983-84. Hence, the size 210's generally account for a relatively small proportion of total fresh Dancy tangerine shipments.

Furthermore, while the proposed regulation would not permit shipment of size 210 Dancy tangerines outside the production area to any point in the continental United States, Canada, or Mexico, not all of the 210's would be subject to regulation. For example, shipments within the production area or to charitable institutions, relief agencies, commercial processors, and certain gift packages and minimum quantities as well as shipments for animal feed would not be subject to this proposed regulation.

It is not anticipated that the proposed rule, if adopted, will impose any significant additional costs on growers

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or handlers. Any additional costs to handlers and growers of implementing this regulation would be offset by the benefits derived from improved returns to growers and handlers in the production area while at the same time providing fresh markets with a ready supply of slightly larger, more flavorful Dancy tangerines.

This proposal is being issued under the marketing agreement and Order No. 905 (7 CFR Part 905), both as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The agreement and order are effective under the Act. These actions were recommended unanimously by the Citrus Administration Committee. The committee works with USDA in administering the marketing agreement and order program.

Florida Citrus Regulation 6 (7 CFR 905.306) was issued on a continuing basis (46 FR 60170; December 8, 1981) subject to modification, suspension, or termination upon recommendation by the committee and approval by the Secretary. Florida Citrus Regulation 6 was last amended for Dancy tangerines effective January 9, 1984 (49 FR 1487; January 12, 1984). Section 905.30(a) provides that no handler shall ship between the production area and any point outside that area in the continental United States, Canada, or Mexico, certain varieties of citrus unless the variety meets the applicable minimum grade and size requirements. For Dancy tangerines shipped on or after August 20, 1984, the minimum grade is U.S. No. 1 and the minimum size is size 210 (2$^{9}/_{16}$ inches).

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

This proposed action would, effective October 31, 1986, increase the minimum size requirement of Florida Dancy tangerines from size 210 (2$^{9}/_{16}$ inches) to size 176 (2$^{7}/_{16}$ inches). The proposal to change the minimum size requirement reflects the committee's and the Department's appraisal of the need to increase the size requirement applicable to domestic shipments of Dancy tangerines. This proposal recognizes the current supply and demand for such fruit and is necessary to prevent smaller, less flavorful tangerines from entering fresh markets.

This proposal would prevent the shipment of smaller size tangerines early in the season which can have a price depressing effect on larger, more flavorful tangerines. Smaller tangerines tend to be less flavorful than larger tangerines and generally do not provide the same level of consumer satisfaction. Ample supplies of larger size Dancy tangerines are expected to be available to meet market needs this year. Total Florida tangerine production is expected to increase over last year's level by 10 percent and fresh shipments, estimated at 1.2 million boxes, are expected to increase by nearly 14 percent. In addition, competing specialty citrus varieties from Florida, including Temples, tangelos, and K-early citrus are also expected to show an increase in production with fresh shipments estimated to increase about 13 percent. When heavy volumes of small tangerines are shipped with larger sizes in years of ample supply, the small sizes are discounted in the marketplace and this tends to depress the market for all sizes.

In addition, per capita fresh citrus consumption declined slightly during last year. It is anticipated that there will be an increase in per capita consumption during the 1986–87 season primarily due to increased citrus production.

This proposal is expected to result in Dancy tangerines being left on the trees longer to attain further growth and improved flavor. The smaller Dancy tangerines will mature but need to be left on the tree longer to develop acceptable flavor.

The proposed rule would also delete obsolete dates and references to minimum diameter and grade for Dancy tangerines which appear in Table I of § 905.306(a).

The 1986–87 Dancy tangerine harvest is about to begin. Therefore, a 10 day comment period is determined to be adequate so that the proposed rule, if adopted, may be implemented as early as possible in 1986–87 season.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—[AMENDED]

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

2. The provisions of § 905.306 would be amended by revising the following entry in Table I, paragraph (a), applicable to domestic shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amendment 40.

(a) * * *

TABLE I.

Variety	Regulation period	Minimum grade	Diameter (in.)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	* * *
Tangerines: Dancy.....	On or after Oct. 31, 1986.	U.S. No. 1....	2$^{9}/_{16}$
* * *	* * *	* * *	* * *

* * * * *

Dated: October 16, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–23692 Filed 10–16–86; 12:25 pm]

BILLING CODE 3410–02–M

7 CFR Part 911

Limes Grown in Florida; Proposed Amendment to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would permit lime handlers to make export shipments in 4 kilogram containers. Competition from foreign shippers using similar sizes in European markets has made this container necessary. Adoption of this container will allow U.S. shippers to compete more favorably in certain European markets.

DATE: Comments due November 19, 1986.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 26 handlers of Florida limes under the Florida Lime Marketing Order will be subject to regulation during the course of the current season and that the great majority of these firms may be classified as small entities. This proposal would add a new size container for export shipments of limes grown in the production area. A 4 kilogram container would be added to the list of containers presently permitted for shipments of limes. Permitting handlers to use the new size for export shipments will help handlers remain competitive with shippers from other countries who use the same size containers. It is the Department's view that adding an additional container size for export shipments will not increase costs for lime handlers.

Marketing Order No. 911 regulates the handling of limes grown in Florida. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Lime Administrative Committee, established under the order, is responsible for its local administration.

At a public meeting on May 14, 1986, the committee recommended adding a new container to be used only for export shipments. The new container would have inside dimensions of 7¾ by 11 by 5⅞ inches and contain 4 kilograms (between 8 and 9 pounds) of limes. Foreign shippers, notably those from Brazil, tend to adjust or change container sizes as the market price of limes changes. This can place U.S. shippers at a competitive disadvantage if they cannot use a container similar to those used by other shippers. The addition of the 4 kilogram container will make it easier for U.S. exporters to compete in certain European markets with shippers from other lime producing areas using the 4 kilogram container.

Since publication of Part 911 in Title 7 of the January 1, 1986, issue of the Code of Federal Regulations, Section 911.329 of the regulations has been amended at 51 FR 27517 (August 1, 1986) and 51 FR 32924 (September 17, 1986).

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.329 is hereby amended by adding a new (a)(2)(ix) as follows:

§ 911.329 Lime regulation 27.

(a) * * *

(2) * * *

(ix) Containers with inside dimensions of 7¾ by 11 by 5⅞ inches; except that any such container shall contain not less than 8 nor more than 9 pounds net weight of limes and shall be for export shipments only.

* * * * *

Dated: October 10, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–23658 Filed 10–17–86; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

[Docket No. 85–112]

9 CFR Part 94

Importation of Meat and Animal Products Imported From Countries With Rinderpest, etc.

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend 9 CFR Part 94 by restricting inspection of imported, cooked meat from ruminants or swine which originates in countries where foot-and-mouth disease or rinderpest exists to ports of arrival at defrost facilities specifically approved for this purpose by the Deputy Administrator, Animal and Plant Health Inspection Service (APHIS). This restriction appears to be necessary to help prevent the introduction of foot-and-mouth disease and rinderpest into the United States.

DATE: Written comments must be received on or before December 19, 1986.

ADDRESSES: Written comments should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket No. 85–112. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.)

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations) prohibit or restrict importation into the United States of certain animals, meat, and animal byproducts. The regulations are designed to prevent introduction into the United States of foot-and-mouth disease, rinderpest, African swine fever, hog cholera, swine vesicular disease, and viscerotropic velogenic Newcastle disease.

Present § 94.4(b) sets forth the conditions under which a person may import cooked meat (except for meat sterilized by heat in hermetically sealed containers) from ruminants or swine which originates in any country where foot-and-mouth disease or rinderpest exists. One of these conditions is that such meat "shall have been heated to such an extent that, upon inspection, the meat will have a thoroughly cooked appearance throughout." Thoroughly cooked meat poses no threat of disseminating foot-and-mouth disease or rinderpest. There are two problems with this provision, however. First, it does not stipulate where inspection shall be performed. Thus, under the present regulations, it is possible for cooked meat from ruminants or swine which originates in a country where foot-and-mouth disease or rinderpest exists to arrive at one port in the United States and be shipped to another location within the United States before it is inspected. Pilferage, loss, or container damage during shipping may result in such uninspected meat introducing foot-and-mouth disease or rinderpest into the United States. Second, the provision

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does not stipulate who shall inspect the meat or the facility in which the meat shall be inspected. Thus, there is a risk that the meat may be incorrectly appraised and, even after inspection, introduce foot-and-mouth disease or rinderpest into the United States.

This document proposes to revise present § 94.4(b) by adding a requirement that cooked meat (except for meat sterilized by heat in hermetically sealed containers) from ruminants or swine which originates in any country where foot-and-mouth disease or rinderpest exists be inspected at ports of arrival in defrost facilities specifically approved for this purpose by the Deputy Administrator. (Defrost facilities would be specified because such cooked meat is shipped frozen.)

Currently, the Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture employs inspectors at 17 U.S. ports of arrival to check imported, frozen, cooked meat for compliance with the Federal Meat Inspection Act. The inspectors check the meat at defrost facilities approved by FSIS, pursuant to 9 CFR Part 301 *et seq.* APHIS has proposed, and FSIS has agreed, to have FSIS inspectors at FSIS approved defrost facilities perform the inspection of imported, cooked meat which would be required if this proposed rule is adopted. This cooperative arrangement would enable the United States Department of Agriculture to use existing resources to reduce the threat of foot-and-mouth disease and rinderpest to the United States.

FSIS approved defrost facilities wishing to handle imported, cooked meat for inspection which would be required by this document would request separate, additional approval from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service. To obtain and maintain approval from the Deputy Administrator, such defrost facilities would have to be at a port of arrival and have equipment and procedures to enable inspectors to determine whether meat is thoroughly cooked. Requiring cooked meat under § 94.4(b) to be inspected at ports of arrival at defrost facilities specifically approved for this purpose by the Deputy Administrator should prevent undercooked meat from leaving port areas and introducing foot-and-mouth disease and rinderpest into the United States.

This document also would revise the regulations to clarify the restrictions on the importation of ruminants and swine and the fresh, chilled, or frozen meat from ruminants or swine which originates in or is shipped from any country where foot-and-mouth disease or rinderpest exists. Present § 94.1(b) prohibits the importation of such animals and meat except as provided in Title 9, Part 92, for wild ruminants and wild swine, and except as provided in § 94.1(c) for such meat which originates in countries free of foot-and-mouth disease and rinderpest but which transits or enters a port of any country where foot-and-mouth disease or rinderpest exists while en route to the United States. This proposal would add a third exception for cooked or cured meat from countries where foot-and-mouth disease or rinderpest exists, as provided in § 94.4. Further, this proposal would add a fourth exception for ruminants and swine imported into the United States through the Harry S. Truman Animal Import Center from countries in which foot-and-mouth disease or rinderpest exists.

This document also would establish a new § 94.0, "Definitions"; and add two footnotes to § 94.4. New footnote 2 would explain where to obtain the names and addresses of defrost facilities approved by the Deputy Administrator and the conditions for approval of such facilities. New footnote 3 would explain where to obtain the conditions for FSIS approval of defrost facilities.

Miscellaneous

This document would make certain nonsubstantive changes in the regulations for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule has been reviewed in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Cooked meat derived from ruminants or swine which originates in countries where foot-and-mouth disease or rinderpest exists is imported into the United States from South America. Such meat is shipped frozen in refrigerated containers aboard ships and arrives in the United States for FSIS inspection at the following 17 ports: Boston, Mass.; Charleston, S.C.; Chicago, Ill.; Gulfport, Miss.; Houston, Tex.; Jacksonville, Fla.; Los Angeles, Calif.; Miami, Fla.; New Orleans, La.; New York, N.Y.; Norfolk, Va.; Philadelphia, Pa.; San Francisco, Calif.; Seattle, Wash.; Takoma, Wash.; Tampa, Fla.; and Wilmington, Del. Such cooked meat from South America has been shipped to these same ports for over 10 years. Thirty-five defrost facilities located in these ports are approved by FSIS to receive this meat for inspection. All 35 defrost facilities meet the standards which would be required if this proposed rule is adopted.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that adoption of this proposal would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 94

African swine fever, Animal diseases, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, it is proposed to amend the regulations in 9 CFR Part 94 as follows:

1. The authority citation would continue to read:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In Part 94, a new § 94.0 would be added to read as follows:

§ 94.0 Definitions.

As used in this part, the following terms shall have the meanings set forth in this section.

Deputy Administrator. The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other Veterinary Services official authorized to act in the Deputy Administrator's stead.

FSIS Inspector. An individual authorized by the Administrator, Food Safety and Inspection Service, United States Department of Agriculture, to perform the function involved.

Operator. The person responsible for the day-to-day operations of a facility.

Thoroughly cooked. Heated so that the flesh and juices have lost all red or pink color.

3. In § 94.1, the section heading and paragraph (b) would be revised to read as follows:

§ 94.1 Countries where foot-and-mouth disease or rinderpest exists; importations prohibited.

* * * * *

(b) The importation of any ruminant or swine or any fresh, chilled, or frozen meat of any ruminant or swine [1] which originates in any country where foot-and-mouth disease or rinderpest exists, as designated in paragraph (a) of this section, or which enters a port in or otherwise transits a country in which foot-and-mouth disease or rinderpest exists, is prohibited: (1) Except as provided in Part 92 of this chapter for wild ruminants and wild swine; (2) except as provided in Part 92 of this chapter for the importation of ruminants and swine through the Harry S. Truman Animal Import Center; (3) except as provided in paragraph (c) of this section for meat of ruminants or swine which originates in countries free of foot-and-mouth disease and rinderpest but which enters a port or otherwise transits a country where foot-and-mouth disease or rinderpest exists; and (4) except as provided in § 94.4 for cooked or cured meat from countries where foot-and-mouth disease or rinderpest exists.

* * * * *

4. In § 94.1, a new footnote 1 would be added to read:

[1] Importation of such animals and meat includes the bringing of such animals or meat within the territorial limits of the United States on a means of conveyance for use as sea stores or for other purposes.

5. In § 94.4, paragraph (b)(3) would be redesignated (b)(4).

6. In § 94.4, the section heading and paragraphs (b) through (b)(2) would be revised, and a new paragraph (b)(3) would be added to read as follows:

§ 94.4 Cured or cooked meats [1] from countries where foot-and-mouth disease or rinderpest exists.

* * * * *

(b) The importation of cooked meat from ruminants or swine originating in any country where foot-and-mouth disease or rinderpest exists, as designated in § 94.1, is prohibited unless the following conditions are met:

(1) All bones have been completely removed in the country of origin.

(2) The meat has been thoroughly cooked in the country of origin.

(3) The meat is inspected by a FSIS inspector at a port of arrival in a defrost facility approved by the Deputy Administrator [2] and the meat is found to be thoroughly cooked.

(i) Request for approval of any defrost facility shall be made to the Deputy Administrator. The Deputy Administrator will approve a defrost facility only under the following conditions: (A) The defrost facility has equipment and procedures which permit FSIS inspectors to determine whether meat is thoroughly cooked; (B) The defrost facility is located at a port of arrival; and (C) The defrost facility is approved by the Food Safety and Inspection Service, United States Department of Agriculture.[3]

(ii) The Deputy Administrator may deny approval of any defrost facility if the Deputy Administrator determines that the defrost facility does not meet the conditions for approval. If approval is denied, the operator of the defrost facility shall be informed of the reasons for denial and be given an opportunity to respond. The operator shall be afforded an opportunity for a hearing with respect to any disputed issues of fact. The hearing shall be conducted in accordance with rules of practice which shall be adopted for the proceeding.

(iii) The Deputy Administrator may withdraw approval of any defrost facility as follows: (A) When the operator of the defrost facility notifies the Deputy Administrator in writing that the defrost facility no longer performs the required services; or (B) When the Deputy Administrator determines that the defrost facility does not meet the conditions for approval. Before the Deputy Administrator withdraws approval from any defrost facility, the operator of the defrost facility will be informed of the reasons for the proposed withdrawal and be given an opportunity to respond. The operator shall be afforded a hearing with respect to any disputed issues of fact. The hearing shall be conducted in accordance with rules of practice which shall be adopted for the proceeding. The Deputy Administrator shall remove a defrost facility from the list of approved defrost facilities if the approval of such defrost facility is withdrawn. * * *

Done at Washington, DC, this 14th day of October 1986.

John K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-23596 Filed 10-17-86; 8:45 am]

BILLING CODE 3410-34-M

[2] The names and addresses of approved defrost facilities and conditions for approval may be obtained from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Washington, DC 20250.

[3] Conditions for the approval of any defrost facility by the Food Safety and Inspection Service, United States Department of Agriculture, may be obtained from the Import Inspection Division, International Programs, Food Safety and Inspection Service, United States Department of Agriculture, Washington, DC 20250.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, 32, and 33

[Docket No. PRM-30-55]

Withdrawal of Petition for Rulemaking by the State of New Jersey

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Withdrawal.

SUMMARY: The Commission is withdrawing, at the petitioner's request, a petition for rulemaking that was filed by the State of New Jersey. In the petition, dated May 31, 1977, the State of New Jersey had requested that the Commission amend its regulations in 10 CFR Parts 30, 31, 32, and 33 for the purpose of adopting new national standards for the users of radioactive byproduct materials.

DATE: The petition is withdrawn as of October 20, 1986.

ADDRESSEES: Copies of the petitioner's letters of request and withdrawal are available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of these letters may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

FOR FURTHER INFORMATION CONTACT: Richard P. Grill, Office of Nuclear

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Regulatory Research, U.S. Nuclear Regulatory Commission, telephone (301) 443–7620.

SUPPLEMENTARY INFORMATION: In a Federal Register notice published on August 11, 1977 (42 FR 40791), the Commission announced the receipt of and requested comments on a petition for rulemaking (PRM–30–55 filed by the State of New Jersey. The petitioner requested that the Commission amend its regulations in Parts 30, 31, 32, and 33 in order to establish new national standards applicable to users of radioactive byproduct materials. Specifically, the petitioner requested that the Commission take the following actions which would, in the opinion of the petitioner, reduce public exposure to radioactive substances emitted from byproduct material facilities (e.g., major radiopharmaceutical manufacturing plants): (1) Establish criteria to qualify the "as low as reasonably achievable" emissions reduction policy for major facilities using byproduct materials from man-made fission reactions and require existing plants to meet these criteria, (2) Establish siting criteria for these facilities that would form a basis for evaluating the acceptability of new plant locations in terms of radiation doses to the public, and (3) Require new and existing byproduct facilities to develop and implement offsite environmental surveillance programs to provide information on levels of radioactivity in the environment around these facilities.

After reviewing the original reasons for the petition and the current state of the particular byproduct material facility that was the primary cause of concern, the petitioner believes that the previously existing situation has been resolved. In addition, the petitioner believes that the proposed amendments to 10 CFR Part 20 address the more general concerns of the petitioner. Therefore, by letter dated May 13, 1986, the petitioner requested that the petition be withdrawn.

The NRC has reached similar conclusions. Specifically, with regard to item (1), emissions from radioactive byproduct materials facilities historically have been only a very small fraction of their license release limits. Further, experience has shown that reducing releases below these levels is not practical. Hence regulatory "ALARA" limits established could be expected to be at, or near, the range of actual emissions. In addition, establishing a separate ALARA criterion for each of the hundred of individual manufacturing processes would not be practical. Item (2) on establishing siting criteria is moot in that few, if any, new applications for licenses for byproduct materials facilities are expected. If they are received, the siting issues can be handled better on a case by case basis, rather than by rulemaking. Item (3) on requiring offsite environmental surveillance programs is impractical and unnecessary because, while the very low levels of routine emissions can be detected by sensitive instrumentation at the points of release, such as facility stocks, these levels of emission would not be reliably detectable in the environment offsite of the dilution in the atmosphere.

The NRC thus agrees that the petition be withdrawn.

Dated at Bethesda, Maryland, this 29th day of September 1986.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86–23689 Filed 10–17–86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 86–AWA–58]

Proposed Alteration and Establishment of Jet Routes-Expanded East Coast Plan

Correction

In FR Doc. 86–22013, beginning on page 34651, in the issue of Tuesday, September 30, 1986, make the following corrections:

1. On page 34652, second column, under "The Proposal", first paragraph, second line from the bottom, "7400.bB" should read "7400.6B".

2. On the same page, third column, first paragraph, last line, "15" should read "14".

BILLING CODE 1505-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Application and Closing Out of Offsetting Long and Short Positions; Exception

AGENCY: Commodity Futures Trading Commission.

ACTION: Petition for rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has received a petition for rulemaking requesting that the Commission amend § 1.46 of its regulations, 17 CFR 1.46 (1986), to provide an additional exception to the general rule pertaining to the application, and closing out, by a futures commission merchant ("FCM") of offsetting long and short commodity futures or option positions in a customer account or option customer account. The additional exception requested by the petitioner would apply to purchases and sales of commodity futures or option contracts made in separate accounts owned by one customer, provided that, among other things, the trading for such accounts is directed by two or more persons acting independently, each of which is directing the trading of a separate account. The Commission has decided to request comment on the proposed rule amendment as suggested by the petitioner, with certain modifications.

DATE: Comments must be submitted on or before December 19, 1986.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, Attention: Secretariat. Refer to Rule 1.46.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Michael A. Watkins, Attorney-Advisor, Division of Trading and Markets, at the address listed above. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 1.46(a) of the Commission's regulations generally requires that an FCM close out a customer's or option customer's previously-held short or long commodity futures or option position if an offsetting purchase or sale is made for such customer's or option customer's account, and that an FCM furnish promptly to such customer or option customer a purchase-and-sale statement showing the financial result of the transactions involved. Section 1.46(b) generally provides that if the short or long position in the account of such customer or option customer immediately prior to the offsetting purchase or sale is greater than the quantity purchased or sold, the FCM must apply the offsetting purchase or sale to the oldest portion of the previously-held short or long position, unless the customer or option customer specifically instructs otherwise. There are currently five exceptions to § 1.46.[1]

[1] Five types of transactions are exempt from the requirements of paragraphs (a) and (b) of § 1.46, generally: (1) Purchases or sales of commodity options held by commercial interests in the

Continued

The petitioner requests that the Commission establish an additional exception to the requirements of paragraphs (a) and (b) of § 1.46 for purchases or sales of commodity futures or option contracts made in separate accounts owned by one customer, provided that, among other things, (1) the trading for such accounts is directed either by two or more persons acting independently, each of which is directing the trading of a separate account, or (2) the trading is directed pursuant to two or more separate and distinct trading systems, each of which determines the trading of a separate account. The petitioner states that an exception to the mandatory offset requirement would (1) be consistent with the purposes of § 1.46, (2) afford customers necessary flexibility in selecting and implementing diversified trading strategies, and (3) benefit futures commission merchants ("FCMs") by reducing the burden of identifying and offsetting customer positions in multiple accounts.

II. Petition Excerpts

Excerpts from the petition are set forth below.

Commodity Futures Trading Commission

In the Matter of CFTC Regulation § 1.46, Petition For Amendment Of A Rule Pursuant to Regulation § 13.2

Petition is hereby made to the Commodity Futures Trading Commission ("CFTC"), on good cause shown, to amend CFTC Regulation § 1.46, 17 CFR 1.46 (1986), so that separate accounts owned by one customer may be excepted from the operation of

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underlying commodity, where such purchases or sales are determined by the contract market to be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise pursuant to rules of the contract market which have been adopted in accordance with the requirements of § 1.61(b) (17 CFR 1.61(b) (1986)) and approved by the Commission pursuant to Section 5a(12) of the Act; (2) Purchases or sales constituting "bona fide hedging transactions" as defined in § 1.3(z) of the Commission's regulations (17 CFR 1.3(z) (1986)); (3) Sales during the delivery period of a futures contract for the purpose of making delivery on the contract during such delivery period if such sales are accompanied by appropriate documentation (*see* § 1.46(d)(3)); (4) Purchases or sales made in separate accounts of a commodity pool, provided that the trading for such pool is directed by two or more unaffiliated commodity trading advisors acting independently, each of which is directing the trading of a separate trading account (*see* § 1.46(d)(4)); and (5) Purchases or sales made by a leverage transaction merchant constituting cover of its obligations to leverage customers and made in accordance with §§ 31.18(a) and 31.12(b) of the Commission's regulations (17 CFR 31.18(a), 31.12(b) (1986)) (*see* § 1.46(d)(5)). Purchases or sales closed out during the same day (commonly known as "in-and-out trades" or "day trades") are exempt from the requirements of § 1.46(b) concerning application of an offsetting purchase or sale to the oldest portion of the previously-held short or long position (*see* § 1.46(c)).

Regulation § 1.46 provided that trading in the customer's accounts is either (i) controlled and directed by independent persons or (ii) controlled and directed pursuant to separate and distinct trading systems.

Statement of Interest

Petitioner is a futures commission merchant ("FCM") handling the accounts of many thousands of customers. Regulation § 1.46 imposes undue burdens on our operations and adversely affects the accounts of our customers.

We believe that an exception to the regulation for separate accounts owned by one customer wherein trading is controlled by different persons or pursuant to different trading systems must, in fairness, be adopted. The exception would be consistent with the purposes of the regulation while affording customers necessary flexibility in selecting and implementing diversified trading strategies. Such an exception would also benefit FCMs by lightening the huge burden imposed on them to ferret out and offset customer positions in multiple accounts.

History of Regulation § 1.46

With limited exceptions, Regulation § 1.46 provides that an FCM may not allow a customer to maintain simultaneous long and short positions in the same future of the same commodity on the same contract market; all such positions must be offset against one another. As noted by the CFTC, the purposes of the regulation are to ensure customer protection by requiring that an FCM promptly furnish a customer with a purchase and sale statement reflecting the result of offsetting transactions and to ensure accurate reporting of open interest. 46 FR 61140, 61141 (December 15, 1981).

The regulation was initially adopted on December 18, 1948 by the Commodity Exchange Authority (the Commission's predecessor, an agency within the Department of Agriculture). It was based on Chicago Board of Trade ("CBT") rule 1910 (now Rule 485.02) adopted in 1948. The CBT rule was intended to prevent persons controlling customer accounts from concealing losses from their customers.

On May 11, 1984, the CFTC amended the regulation to permit an FCM not to offset opposite positions taken by a commodity pool maintaining two or more accounts managed by separate trading advisors. The CFTC found this amendment consistent with achieving the purposes of Regulation § 1.46. 49 FR 19988, 19971 (May 11, 1984). The CFTC also stated that the amendment would benefit pool participants by affording them the advantages of diversified trading strategies. *Id.* at 19988.

Effect of Regulation § 1.46

The regulation as amended relieves the burden on FCMs with respect to commodity pool accounts and benefits commodity pool participants. However, the regulation ignores the plight of individual investors who desire trading flexibility and FCMs who desire to accommodate their customers and comply with CFTC regulations.

In today's market customers constantly seek different trading methods to enhance the performance of their portfolios. The CFTC's view would unnecessarily hamper the ability of a speculator to diversify among several trading techniques in order to limit his exposure by maintaining multiple accounts at one FCM.

Customers may want to establish multiple accounts to diversify trading strategies and commodities traded or to test and prove various trading systems. A customer might be knowledgeable with respect to metals trading and therefore wish to trade his own account. That same customer might want to give discretion to a third party to trade all markets for him in a separate account. Under the current regulation, the FCM would have to offset positions in the account traded by the customer against positions in the account traded by the third party. This result would obtain regardless of the specific intent of the customer to separate his assets and diversify his trading. The regulation would not take into account the purposes or timing of transactions so that, for example, futures positions initiated by the customer and intended as part of futures/physicals transactions might be closed by positions in another account placed by an independent manager who knew nothing of the customer's trades. Thus, the strategies of both the customer and the manager would be thwarted.

Similarly, a customer might wish to test particular trading systems by establishing separate accounts for each system. Even if the systems were as independent and unrelated as a fundamental system and a moving average system, trades in one would offset trades in the other. The results would give the customer no idea of the real performance of either system.

If the CFTC believes it is appropriate for a trader to maintain accounts at two FCMs, it is certainly illogical not to permit that trader to maintain those same accounts at one FCM. Whether the accounts are maintained at one or two FCMs, there would be no adverse impact on open interest and reports should be identical. Further, if the trader is an employee of the FCM, he will generally be contractually prohibited from opening an account at a different FCM.

Moreover, it is impossible to monitor or to compile actual performance by such after-the-fact meddling. Actual performance is required to be presented in CFTC-mandated disclosure documents. However, a trader with two separate trading systems who intends to become a trading advisor would be unable to comply with CFTC regulations with respect to actual performance. The actual results of a trading system permit prospective investors to evaluate the system's merit. Presentation of anything instead of actual performance makes evaluation more difficult.

Purpose of Regulation § 1.46

The proposed amendment is consistent with both stated purposes of the regulation as set forth by the CFTC. First, the proposed amendment would not adversely affect customer protection. No losses would be hidden from the customer as a result of not offsetting positions in his accounts. The customer would receive both confirmations of

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each transaction in each account and purchase and sale statements reflecting the results of all offsetting transactions in each account. Accounts would be separately margined and accounted for. Consequently, as a result of not offsetting pursuant to Regulation § 1.46, the customer would have a far more accurate picture of his equity as well as of the results of his selected trading strategies or systems.

Second, the proposed amendment would not adversely affect reports of open interest. So long as the FCM reports the customer's net positions by account, there can be no distortion of open interest. Each open position in one account will at some time have to be liquidated and therefore is properly reported as open. Further, the proposed amendment includes a prohibition against transferring open positions between accounts to avoid any possible inaccuracy or distortion in reporting open interest.

(End of Excerpts From Petition)

III. Commission Views

Based upon its experience with § 1.46(d)(4) regarding separate accounts of commodity pools, which was adopted approximately two years ago, the Commission believes that there may be merit to this petition. The Commission further believes that any exception to Commision Rule 1.46 for accounts of individuals should be similar to that already adopted for accounts of commodity pools. The revisions to the petitioner's suggested amendment are intended to provide that symmetrical treatment. The major modification which the Commission proposes to make to the petitioner's suggested amendment is to limit the exception to those situations where trading decisions are being made by two or more unaffiliated persons. The new exception would therefore not be applicable where either the account owner himself, or a person directing trading for the account owner, established separate accounts to be traded according to "different systems." The petitioner presented no standards by which an FCM could determine whether trading decisions made by the same person for different accounts had been arrived at independently of all trading decisions made for the other separate account or accounts. The Commission believes that, without such standards, an FCM would find it very difficult to determine when the exception would apply, and enforcement of the rule would likewise be complicated. If any commenters wish to address this issue, the Commission requests that they set forth with particularity standards to determine whether different trading decisions made by the same person for different accounts have been arrived at independently.

The petitioner stated that "the affiliation of a trading manager is irrelevant if he is acting independently of those with whom he is affiliated. Therefore, we think the requirement of nonaffiliation is unnecessary." The Commission disagrees and believes that an essential element of independent action is nonaffiliation. Accordingly, the proposed § 1.46(d)(6) contains a nonaffiliation requirement, just as is the case for § 1.46(d)(4). As the Commission stated when it adopted § 1.46(d)(4), to meet the nonaffiliation requirement neither trader can control the other directly or indirectly, nor can both traders be under the common control, either direct or indirect, of another entity. *See, e.g.*, 17 CFR 1.3(y)(2) (vii) and (viii) (1986).[2] The Commission believes that two associated persons of the same FCM could not be deemed to be unaffiliated, but specifically requests comment on that point.

The Commission does not believe that the suggested amendment would adversely affect customer protection, since one of the principal purposes of § 1.46, to require that an FCM promptly furnish a customer or option customer with a purchase-and-sale statement showing the financial result of offsetting transactions made for the customer's or option customer's account, will be fulfilled. If a customer himself directs trading for his own account, an FCM must promptly furnish such customer the purchase-and-sale statement required by § 1.46 with respect to each separate account for which the customer himself directs trading.[3] In addition, an FCM must promptly furnish such customer, as required by § 1.33 of the Commission's regulations, both a confirmation statement and a monthly statement which shows clearly, *inter alia*, the unrealized net gain or loss on open positions so that, notwithstanding the fact that offsetting positions remain open in several separate accounts, a customer will be informed regarding the overall net equity or net deficit in each separate account. Where the trading of an account is directed by a person other than the customer or option customer, the customer must still receive a confirmation of each trade, each purchase-and-sale statement and a monthly statement from the FCM, and the FCM also must promptly furnish such statements to the person directing the trading of the account.[4]

[2] *See* 49 FR 19989 n.5 (May 11, 1984).

[3] 17 CFR 1.46(a)(4) (1986).

[4] 17 CFR 1.33(d) (1986). Rule 1.33(d)(3) further provides that the duplicate statements requirements shall not apply to an account controlled by the spouse, parent or child of the customer for whom such account is carried.

Another purpose of § 1.46 is to ensure accurate reporting of open interest. The Commission previously expressed its concern regarding the accuracy of published open interest calculations in connection with the adoption of an amendment to § 1.46 to provide an additional exception for purchases and sales of commodity futures and commodity option contracts made in separate accounts of a commodity pool where the trading for the commodity pool is directed by two or more unaffiliated commodity trading advisors acting independently, each of which is directing the trading of a separate account. In promulgating that exception to § 1.46, which was also prompted by a petition for rulemaking, the Commission revised that petitioner's suggested amendment to ensure that trades entered into by separate commodity trading advisors acting independently for the account of a commodity pool are offset in an open and competitive manner on or subject to the rules of a contract market and not by means of a "transfer trade," *i.e.*, simply by means of an entry on the books of an FCM for the purpose of transferring existing trades from one account to another carried by the FCM whether no change in ownership is involved.[5] Similarly, in these circumstances, the Commission believes that to permit the transfer of trades between the separate accounts owned by a customer would cast doubt upon the "independece" of such separate accounts. The petitioner has incorporated those safeguards in his proposed amendment and, therefore, the Commission believes that the safeguards contained in the petitioner's proposed amendment will ensure that each separate account will accurately reflect the results of trading with respect to such separate account. Furthermore, the Commission recognizes that because each account will be traded separately and offset separately, the amount of open interest reported for any commodity futures contract or commodity option contract traded by two or more separate accounts will be greater than if all open positions in all separate accounts owned by a customer or option customer were offset against each other. However, the Commission believes that any increase in reported open interest will have no adverse impact since all open positions in each separate account must be offset, on or subject to the rules of a contract market, prior to the delivery date of a futures contract or the exercise date of a commodity option contract.[6]

[5] 49 FR 19989, 19970 (May 11, 1984).

The Commission wishes to emphasize that although the proposed amendment will permit any person who directs trading for separate, controlled accounts,[7] to maintain in each separate account a position in the same commodity futures contract or commodity option contract, all such positions in all separate controlled accounts shall be aggregated and considered by an FCM as a single account for reporting purposes under Part 17 of the Commission's regulations [8] and in determining compliance with speculative position limits established by a contract market under § 1.61 of the Commission's regulations.

Furthermore, an FCM carrying multiple accounts for the same customer where the trading for at least one of those accounts is directed by the FCM or an associated person ("AP") thereof may rely upon the additional exception provided by the proposed amendment only after the FCM has furnished the customer with a written statement disclosing that a customer who has multiple accounts with different persons directing the trading of those accounts may have offsetting long and short positions which, if held open, may result in the charging of additional fees and commissions and the payment of additional margin, although the offsetting positions will result in no additional market gain or loss. In this connection, the Commission is further proposing that the FCM also must furnish the customer quarterly a consolidated account statement for all separate accounts carried by the FCM. The account statement must be in the form of a Statement of Income (Loss) and a Statement of Changes in Net Asset Value, and set forth essentially the same information required to be furnished by a commodity pool operator pursuant to Commission rule 4.22(a) (1) and (2).[9] The Commission believes that such modifications should be proposed because, under the new exception to § 1.46, offsetting contracts maintained in separate accounts would not be closed out and any gain in one contract would be reduced by a loss of the same amount in the other contract.

However, a customer may experience a net loss with respect to such offsetting positions because of extra fees, commissions and margin requirements.[10] The Commission believes that a customer should be advised of this fact before authorizing an FCM or an AP thereof to direct trading in a separate account and is therefore proposing a separate disclosure to this effect. Further, the Commission believes that the customer should receive periodic reports with respect to the profitability of the separate accounts treated as a whole in order to asess properly the value of maintaining such accounts.

Although the Commission is proposing both the disclosure and reporting requirements, the Commission is specifically requesting comment on whether its regulatory purposes may be achieved if only one of the proposed modifications is adopted.

Finally, the petitioner's suggested amendment included a concluding paragraph requiring the customer to provide the FCM with written confirmation that his multiple accounts would be traded in accordance with the other provisions of the suggested amendment. The Commission believes that it may be appropriate for those persons directing trading for such accounts to give a similar writtten confirmation to the FCM, and the proposed amendment contains such a provision.

[6] The Commission wishes to note, however, that if the FCM carrying the separate account sought the protection of the bankruptcy laws, the Commission might, in appropriate cases and upon application by the trustee or the affected clearing organization, permit offsetting open contracts to be liquidated, or settlement on such contracts to be made, by transfer trades. 17 CFR 190.04(d) (1986).

[7] 17 CFR 1.3(j) (1986), provides that an account shall be deemed to be controlleld by a person if such person, by power of attorney or otherwise, actually directs trading for such account.

[8] 17 CFR 17.00(b) (1986). *See also* 17 CFR 1001 (a) and (b) (1986); 49 FR 19989, 19971 (May 11, 1984).

[9] 17 CFR 4.22(a) (1) and (2) (1986).

IV. Related Matters

A. Paperwork Reduction Act

There are no information collection requirements under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) contained in § 1.46. The Commission has notified the Office of Management and Budget of the amendments contained in this release.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The direct impact of the proposed amendment to Rule 1.46 affects FCMs, which have the obligation generally to close out offsetting positions and issue a purchase-and-sale statement. The Commission has previously determined that futures commission merchants should not be considered small entities for purposes of the RFA. Specifically, the Commission found that with respect to FCMs, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of a small entity.[11] Accordingly, the requirements of the RFA to not apply to FCMs. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that the proposed rule amendment will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact the proposed rule amendment may have on small entities.

[10] Moreover, an FCM may also retain the interest earned on the additional margin paid by a customer to maintain such offsetting positions.

[11] *See* 47 FR 18618, 18619 (April 30, 1982).

List of Subjects in 17 CFR Part 1

Offsetting positions, Close-out requirements, Futures Commission merchants, Commodity trading advisors, Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4g, 5 and 8a of the Act, 7 U.S.C. 6g, 7 and 12a (1982), the Commission hereby proposes to amend Chapter I ot Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 145 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 9, 12, 12a, 12c, 13a, 13a–1, 13a–2, 16, 19, 21, 23 and 24; 5 U.S.C. 552 and 552b, unless otherwise noted.

2. Section 1.46 is proposed to be amended by adding a new paragraph (d)(6) and a new paragraph (e) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

* * * * *

(d) *Exceptions.* The provision of this section shall not apply to:

* * * * *

(6) Purchases or sales made in separate accounts owned by one customer, *Provided, That:*

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(i) Each person directing trading for one of the separate accounts is unaffiliated with and acts independently from each other person directing trading for a separate account;

(ii) Each person directing trading for one of the separate accounts, unless he is the account owner himself, does so pursuant to a power of attorney;

(iii) Each trading decision made for each separate account is determined independently of all trading decisions made for the other separate account or accounts;

(iv) The purchases and sale for such accounts were executed by open and competitive means on or subject to the rules of a contract market;

(v) No position held for or on behalf of separate accounts traded in accordance with paragraphs (d)(6)(i), (d)(6)(ii), (d)(6)(iii) and (d)(6)(iv) of this section may be closed out by transferring such an open position from one of the separate accounts to another of such accounts; and

(vi) The customer and each person directing trading for the customer provides the futures commission merchant with written confirmation that the trading and the operation of the customer's accounts will be in accordance with paragraphs (d)(6)(i), (d)(6)(ii), (d)(6)(iii), (d)(6)(iv) and (d)(6)(v) of this section.

(e) With respect to the exception from the provisions of this section set forth in paragraph (d)(6) of this section, if a futures commission merchant that carries the separate accounts of a customer, or if an associated person of such futures commission merchant, directs trading for one of the separate accounts:

(1) The futures commission merchant must first furnish the customer with a written statement disclosing that, if held open, offsetting long and short positions in the separate accounts may result in the charging of additional fees and commissions and the payment of additional margin, although offsetting positions will result in no additional market gain or loss; and

(2) The futures commission merchant must prepare and furnish to the customer within 30 days of the end of each calendar quarter a consolidated account statement for all separate accounts of the customer carried by the futures commission merchant, which shall be presented in the form of a Statement of Income (Loss) and a Statement of Changes in Net Asset Value for that quarter.

(3) The portion of the account statement in the form of a Statement of Income (Loss) must separately itemize the following information:

(i) The total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period;

(ii) The change in unrealized net gain or loss on commodity interest positions during the reporting period;

(iii) The total amount of net gain or loss from all other transactions in which the separate accounts engaged during the reporting period;

(iv) The total amount of all brokerage commissions during the reporting period;

(v) The total amount of other fees for commodity interest and other investment transactions during the reporting period; and

(vi) The total amount of all other expenses incurred or accrued by the separate accounts during the reporting period.

(4) The portion of the account statement in the form of a Statement of Changes in Net Asset Value must separately itemize the following information:

(i) The net asset value of the separate accounts as of the beginning of the reporting period;

(ii) The total amount of additions to the separate accounts made during the reporting period;

(iii) The total amount of withdrawals from the separate accounts for the reporting period;

(iv) The total net income or loss of the separate accounts during the reporting period; and

(v) The net asset value of the separate accounts as of the end of the reporting period.

Issued in Washington, DC, on October 15, 1986, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-23625 Filed 10-17-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule amends the regulations to delete the requirement for a monthly report of operations under 30 CFR 250.93 and adds the requirement for a report of cessation of production for leases in their extended term which have ceased production. The deletion of the requirement for the monthly report of operations will avoid duplication with information available in the Oil and Gas Operations Report (OGOR) under 30 CFR 216.54 and other available sources. The additional requirement for a report when leases go off production is necessary to provide the Minerals Management Service (MMS) with timely information so approval can be given to lessees for drilling or workover operations only on valid leases.

DATE: Comments must be received or postmarked no later than November 19, 1986.

ADDRESS: Comments should be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22091; Attention: Norman J. Hess.

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, Telephone: (703) 648-7816, (FTS) 959-7816.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 7, 1986 (51 FR 8168), MMS published a final rule requiring submission of the OGOR. The OGOR includes information concerning production on the lease. This information duplicates much of the information contained in the monthly report of operations. Other information contained in the monthly report of operations is available to MMS through other means. The OGOR was intended as a replacement for the monthly report of operations. Therefore, MMS is proposing that the requirement for the monthly report of operations be deleted.

The OGOR is due 45 days after the end of the month being reported (as opposed to 20 days for the monthly report of operations). This delay in the identification of leases which are no longer producing is critical because the term of a lease which is beyond its primary term, in the absence of a suspension of operations, can be extended only if a drilling or workover operation is initiated within 90 days of last production (or of the last workover or drilling operation). Therefore, following cessation of production, MMS can approve the initiation of a workover or drilling operation only if less than 90 days have elapsed since production on the lease has ceased. Otherwise, the lease would have terminated.

To provide the timely information needed for MMS to assure that leases are still active prior to approval of drilling or workover operations, a partial report is needed in advance of the OGOR. The MMS is proposing to require the lessee to submit such a report within

15 days after the end of the first month in which production ceases. This report would include the date the last productive well ceased production and the number of the well.

The Department of the Interior (DOI) has also determined that this document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. The cost of compliance with the new requirement for a report when a lease goes off production will be less than the cost of compliance with the requirement of submission of the monthly report of operations.

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Entities that engage in offshore activities are not considered small due to the technical complexity and financial resources necessary to conduct offshore activities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Author: The document was prepared by John Mirabella, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations; Oil and gas exploration, Penalties, Pipelines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: September 9, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, the proposal to amend 30 CFR Part 250 is as follows:

1. The authority citation for Part 250 continues to read as follows:

Authority: Outer Continental Shelf Lands Act 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et seq.

2. Part 250 is amended by removing § 250.93, Monthly report of operations.

3. Part 250 is amended by adding a new § 250.93 as follows:

§ 250.93 Report of cessation of production.

When a lease is in its extended term under § 250.37(b), a report shall be submitted when the last well on the lease ceases production. Such a report shall contain the number of the well and the date the last well ceased production and shall be submitted within 15 days after the end of the first month in which production ceases. A report is not required when production resumes within 15 days after the end of the first month in which no production occurs.

[FR Doc. 86-23655 Filed 10-17-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

36 CFR Part 7

Buffalo National River, Arkansas; Fishing Regulations

AGENCY: National Park Service, Interior

ACTION: Proposed rule

SUMMARY: The proposed special regulations would allow fishing activities to continue in the traditional manner in accordance with State of Arkansas regulations except when the Superintendent may designate otherwise. It will allow the gigging of rough fish, use of attended trot lines, and noncommercial capture of bait fish, using traps or seines. It will also allow the collection and possession of terrestrial and aquatic insects by hand or hand net for use as bait. It will allow the taking of frogs, turtles and crayfish by traditional methods as designated by the Superintendent. These traditional activities were no longer allowed after April 30, 1984, when the new regulations for the National Park Service became effective. The activities authorized by these regulations will not have adverse impacts on the species involved or on other species of wildlife.

DATE: Written comments, suggestions, or objections will be accepted until November 19, 1986.

ADDRESS: Comments should be directed to: Superintendent, Buffalo National River, Post Office Box 1173, Harrison, Arkansas 72602-1173.

FOR FURTHER INFORMATION CONTACT: Alec Gould, Superintendent, Buffalo National River, Telephone: (501) 741-5443.

SUPPLEMENTARY INFORMATION:

Background

These proposed regulations authorize recreational fishing methods that are now prohibited by the general regulations. In order to relax restrictions on fresh water recreational fishing, the proposed regulations apply fishing methods that are allowed under State laws as appropriate. They allow visitors to Buffalo National River to continue the traditional, recreational activities that have occurred along the Buffalo River for many years. These activities are consistent with the purposes for which the park was established and will not, in the opinion of the National Park Service, have an adverse impact on the ecosystem, other species of wildlife or the reproductive potential of the species involved. These activities were legitimate recreational activities until the revised general regulations of the National Park Service became effective on April 30, 1984.

This regulation will allow the use of trot lines and limb lines along the river as long as the owner of these lines is present in the area and the lines are not placed in a manner hazardous to canoeists and are removed when the owner leaves. It will also allow the continued use of seines and minnow traps to capture native bait fish for bait. This will help prevent the introduction of exotic fish species into the river since most commercial bait fish dealers do not sell native minnows. It will not allow commercial bait fish operations to operate within the park. They will also authorize the capture of crayfish and both terrestrial and aquatic insects for use as bait, and the gigging of rough fish as defined by State regulations. Visitors will also be permitted to capture frogs, turtles and crayfish for personal consumption as well. Conditions for collection of insects will restrict capture techniques to hand capture or the use of hand nets. Similar restrictions will be applied to the capture of crayfish which can be captured by hand, hand-held net or seine or by baited hand lines. Neither insects, frogs, turtles nor crayfish can be captured for commercial purposes and the Superintendent may restrict these activities as necessary.

Also, as part of this rulemaking, the National Park Service is redesignating as Paragraph (c) the existing text in § 7.35 that pertains to the use of motors on boats. Although some editorial changes have been made for the purpose of clarification, the regulatory provisions remain the same and do not constitute new provisions for which public comment is being solicited.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to

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participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed regulation to the address noted at the beginnning of the rulemaking.

Drafting Information

The following persons participated in the writing of these regulations: Carl E. Hinrichs, Chief, Resource Management and Visitor Protection; Keith A. Whisenant, Resource Management Specialist, both of Buffalo National River.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are negligible. The regulations do not impose additional costs on individuals using Buffalo National River.

The Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

a. Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it.

b. Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it.

c. Conflict with adjacent ownerships or land uses; or

d. Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Part 7, Chapter I, as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for 36 CFR Part 7 continues as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By revising § 7.35 to read as follows:

§ 7.35 Buffalo National River.

(a) *Fishing.* (1) Unless otherwise designated by the Superintendent, fishing in a manner authorized under applicable State law is allowed.

(2) The Superintendent may designate times when and locations where and establish conditions under which the digging of bait for personal use is allowed.

(3) The Superintendent may designate times when and locations where and establish conditions under which the collection of terrestrial and aquatic insects for bait for personal use is allowed.

(4) Violating a designation or condition established by the Superintendent is prohibited.

(b) *Frogs, Turtles and Crayfish.* (1) The Superintendent may designate times and locations and establish conditions governing the taking of frogs, turtles and crayfish for personal use.

(2) Violating a designation or condition established by the Superintendent is prohibited.

(c) *Motorized Vessels.* (1) Except for a vessel propelled by a gasoline, diesel or other internal combustion engine with a rating of 10 horsepower or less, operating a motorized vessel from Erbie Ford to the White River is prohibited.

(2) Operating a vessel propelled by a motor is prohibited above Erbie Ford.

(3) The provisions of Paragraph (c) do not apply to a vessel operated for official use by an agency of the United States, the State of Arkansas or one of its political subdivisions.

Dated: September 27, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-23616 Filed 10-17-86; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

43 CFR Parts 3100, 3400, 3470, and 3500

[AA-660-07-4121-02]

Coal Management; General; Provisions and Limitations: Oil and Gas Leasing; Leasing of Solid Minerals Other Than Coal and Oil Shale; Amendments to Incorporate Changes Required by Section 2(a)(2)(A) of the Mineral Leasing Act of 1920

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing regulations in 43 CFR Groups 3100, 3400 and 3500 to bring them into compliance with the requirements of section 2(a)(2)(A) of the Mineral Leasing Act of 1920. This section was added to the Mineral Leasing Act by section 3 of the Federal Coal Leasing Amendments Act on August 4, 1976. Section 3 requires that any entity, or any of its affiliates, that holds and has held a Federal coal lease for 10 years beginning on or after August 4, 1976, and who is not producing coal in commercial quantities from each such lease, cannot qualify for issuance of any other lease granted under the Mineral Leasing Act. The cutoff date was extended by the Act of December 19, 1985, from August 4, 1986, to December 31, 1986.

DATE: Comments should be submitted by November 19, 1986. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Paul W. Politzer, (202) 343-7722
or
Allen B. Agnew, (202) 343-7722
or
Pamela J. Lewis, (202) 343-7722

SUPPLEMENTARY INFORMATION: Section 2(a)(2)(A) of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 201(a)(2)(A)), which provision

was added to the Mineral Leasing Act by section 3 of the Federal Coal Leasing Amendments Act, is a lessee-qualification requirement which mandates that any entity, or any of its affiliates, that holds and has held a Federal coal lease for 10 years when said entity, or any of its affiliates, is not, except as provided in section 7(b) of the Mineral Leasing Act, producing coal from the lease deposits in commercial quantities, cannot be issued any leases granted under the provisions of the Mineral Leasing Act.

The Bureau of Land Management has published guidelines for the implementation of the provisions of section 2(a)(2)(A) of the Mineral Leasing Act. The proposed guidelines were published in the **Federal Register** on February 15, 1985 (50 FR 6398), with a 60-day comment period. The comment period, in response to public requests, was later extended for an additional 30 days, ending on May 13, 1985. The proposed guidelines generated 21 comments, all of which were given careful consideration during the preparation of the final guidelines. The final guidelines, including a discussion of the comments received, were published in the **Federal Register** on August 29, 1985 (50 FR 35125). The public, in preparing its comments on this proposed rulemaking, is requested to review those guidelines and the preamble to the final guidelines which discusses the comments received and the responses to them. The final guidelines incorporated changes suggested in the comments on the proposed guidelines and advice rendered by the Office of the Solicitor, Department of the Interior, and are consistent with Solicitor's Opinion M-36951 (92 I.D. No. 11), which interpreted section 2(a)(2)(A) of the Mineral Leasing Act.

The Bureau of Land Management has delayed making necessary revisions to Title 43 of the Code of Federal Regulations because of legislation pending in the Congress that would amend section 2(a)(2)(A) of the Mineral Leasing Act. Since the 99th Congress has not taken action to amend section 2(a)(2)(A), the Bureau is initiating, through the publication of this proposed rulemaking, the process of amending the existing regulations in Title 43 of the Code of Federal Regulations to implement the provisions of section 2(a)(2)(A) of the Mineral Leasing Act.

This proposed rulemaking would amend various sections of Parts 3400, 3470 and 3500 of Title 43 of the Code of Federal Regulations. The first change that would be made by the proposed rulemaking is the addition of six terms to § 3400.0-5, terms that are needed in connection with the implementation of section 2(a)(2)(A) of the Mineral Leasing Act.

The new terms that would be added by this proposed rulemaking include provisions regarding control and the three-tiered application of ownership of voting securities. The proposed rulemaking would provide that ownership in excess of 50 percent of any entity is controlling, that ownership of between 20 and 50 percent creates a presumption of control, and that ownership of less than 20 percent does not constitute control. The public is requested to carefully review this provision and comment on whether the percentages used in the proposed rulemaking are appropriate, and if not, provide justification for other percentages of ownership of voting securities.

The proposed rulemaking would revise § 3472.1-2(e) in its entirety. The proposed rulemaking would provide the procedures for determining and certifying lessee-qualification of an entity, or any of its affiliates, under the provisions of section 2(a)(2)(A) of the Mineral Leasing Act.

Finally, the proposed rulemaking would amend §§ 3102.5 and 3502.1 to add the cross-reference to the lessee-qualifications provisions contained in Subpart 3472.

The principal authors of this proposed rulemaking are Allen B. Agnew and Pamela J. Lewis, Division of Solid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The economic impact of this rulemaking is not significant and its impact will fall equally on all affected entities, whether large or small.

This proposed rulemaking contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 3100

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3400

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources.

43 CFR Part 3470

Coal, Government contracts, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3500

Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351—359) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), it is proposed to amend Part 3100, Group 3100, Parts 3400 and 3470, Group 3400 and Part 3500, Group 3500, all of Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3100—[AMENDED]

1. The authority citation for Part 3100 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301-306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514), the Refuge Administration Act of 1966 (16 U.S.C. 668dd-ee), the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

§ 3102.5 [Amended]

2. Section 3102.5 is amended by removing from where it appears the

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phrase "and (d)" and replacing it with the figure "(d)" and by removing the period at the end of "(d)" and adding the phrase "; and (e) in compliance with section 2(a)(2)(A) of the act (See § 3472.1–2(e)). The term 'affiliate' is defined in § 3400.0–5(tt) of this title. A lease issued to any entity, or any of its affiliates, that qualifies under § 3472.1–2(e)(4) of this title shall be subject to the termination provisions of § 3472.1–2(e)(4)(ii) of this title."

PART 3400—[AMENDED]

3. The authority citation for Part 3400 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

4. Section 3400.0–5 is amended by adding new paragraphs (rr) through (ww) to read:

§ 3400.0–5 Definitions.

* * * * *

(rr) "Bracket" means the timeframe during which a lease is required to be producing in commercial quantities. The time period of a bracket shall not exceed 10 years. The first assigned bracket begins on the date that coal deposits are first produced on or after August 4, 1976. The bracket progresses with the holds and had held requirement of a lease. After a lease becomes subject to the diligence provisions of Part 3480 of this title, the applicable timeframe during which the lease is required to be producing in commercial quantities is that required to satisfy either diligent development requirements or continued operation requirements. The term "bracket," for the purposes of section 2(a)(2)(A) of the Act, applies only to leases issued prior to August 4, 1976, which are not yet subject to the diligence provisions of Part 3480 of this title.

(ss) "Producing," for the purposes of section 2(a)(2)(A) of the Act, means actually severing coal deposits or an ongoing mining operation where coal deposits (for logical mining units, either Federal or non-Federal coal deposits) are actually severed on a daily basis, except on those days when:

(1) Severance is temporarily suspended for such reasons as equipment relocation or repair, overburden removal, or sale of coal from stockpiles; or

(2) Severed coal is being processed, loaded, or transported from the point of severance to point of sale.

(tt) "Affiliate," for the purposes of section 2(a)(2)(A) of the Act, means any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation.

(uu) "Controlled by or under common control with," for the purposes of section 2(a)(2)(A) of the Act, based on the instruments of ownership of the voting securities of an entity, or any of its affiliates, means:

(1) Ownership in excess of 50 percent constitutes control;

(2) Ownership of between 20 and 50 percent creates a presumption of control; and

(3) Ownership of less than 20 percent does not constitute control.

(vv) "Arm's-length transaction," for the purposes of section 2(a)(2)(A) of the Act, means the transfer of any interest in a Federal coal lease to an entity, or any of its affiliates, that is in no way affiliated with, or controlled by, or under common control with the transferor.

(ww) "Holds and has held," for the purposes of section 2(a)(2)(A) of the Act, means the cumulative amount of time that an entity, or any of its affiliates, holds any property interest in a Federal coal lease under the Act on or after August 4, 1976. The 10-year period required by section 2(a)(2)(A) of the Act is Federal coal lessee-specific for each Federal coal lease.

PART 3470—[AMENDED]

5. The authority citation for Part 3470 continues to read:

Authority: 30 U.S.C. 181 et seq. and 30 U.S.C. 351–359.

6. Section 3472.1–2(e) is revised to read:

§ 3472.1–2 Special leasing qualifications.

* * * * *

(e)(1)(i) On or after December 31, 1986, no lease shall be issued to any entity, or any of its affiliates, and no existing lease shall be transferred to any entity, or any of its affiliates, that holds and has held for 10 years any lease from which the entity, or any of its affiliates, is not producing the coal deposits in commercial quantities, except as authorized under the advance royalty or suspension provisions of Part 3480 of this title. The authorized officer shall determine compliance with the control provisions of this subpart.

(ii) An entity, or any of its affiliates, seeking to obtain an interest in a lease, shall qualify both on the date of determination of lessee qualifications and on the date the lease is issued.

(iii) Once a lease has been issued to a qualified entity, or any of its affiliates, disqualification at a later date shall not result in surrender of that lease except as provided in paragraph (e)(4) of this section.

(2) An entity, or any of its affiliates, seeking to obtain an interest in a lease shall certify, in writing, that it is in compliance with the Act and the requirements of this subpart. The authorized officer shall determine the control exercised by an entity, or any of its affiliates, based on the written certification. If a lease is issued to an entity, or one of its affiliates, based upon an improper certification of compliance, the authorized officer shall administratively cancel the lease after complying with § 3452.2–2 of this title.

(3) The authorized officer may require an entity, or any of its affiliates, holding or seeking to hold an interest in a lease, to furnish, at any time, further evidence of compliance with the qualifications of this subpart.

(4)(i) An entity, or any of its affiliates, seeking to qualify for lease issuance or transfer shall not be disqualified under the provisions of this subpart if it has one of the following actions pending before the authorized officer for any lease that would otherwise disqualify it under this subpart:

(A) Request for lease relinquishment; or

(B) Application for arm's-length lease assignment; or

(C) Application for approval of a logical mining unit that the authorized officer determines would be producing in commercial quantities on its effective date.

(ii) Once a lease has been issued, or transfer approved, to an entity, or any of its affiliates, who qualify under paragraph (e)(4)(i) of this section, an adverse decision by the authorized officer on the pending action, or the withdrawal of the pending action by the applicant, shall result in termination of the lease or recision of the transfer approval. The possibility of lease termination shall be included as a special stipulation in every lease issued to an entity, or any of its affiliates, who qualify under paragraph (e)(4) of this section.

(iii) The entity, or any of its affiliates, shall not qualify for lease issuance or transfer under paragraph (e)(4)(i) of this section during the pendency of an appeal before the Office of Hearings and Appeals from an adverse decision by the authorized officer on any of the actions described in paragraph (e)(4)(i) of this section.

(5) As long as an approved logical mining unit is producing in commercial quantities (either Federal or non-Federal coal), the Federal coal leases contained in the logical mining unit shall not disqualify the entity(s), or any of its affiliates, under the provisions of this subpart.

(6) Leases that have been mined out (i.e., all recoverable reserves have been exhausted), as determined by the authorized officer, may be held for such purposes as reclamation without disqualification of the entity, or any of its affiliates, under the provisions of this subpart.

(7) The bracket shall be assigned and may be changed by the authorized officer based on the phase of the ongoing mining operation. An entity, or any of its affiliates, shall not be disqualified under the provisions of this subpart if each lease that the entity, or any of its affiliates, holds is:

(i) Producing and is within its assigned bracket;

(ii) Producing and has produced commercial quantities during the assigned bracket that ends on the date of determination of lessee qualification and the assigned bracket that ends on the date of lease issuance.

(iii) Producing in compliance with the diligent development and continued operation provisions of Part 3480 of this title; or

(iv) Relieved of a producing obligation pursuant to paragraphs (e)(1), (4) or (6) of this section.

* * * * *

PART 3500—[AMENDED]

7. The authority citation for Part 3500 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1966 (16 U.S.C. 460q et seq.); the Act of October 2, 1968 (16 U.S.C. 90c et seq.); the Act of October 27, 1972 (16 U.S.C. 460dd et seq.); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2—460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

8. Section 3502.1 is amended by adding a new paragraph (d) to read:

§ 3502.1 Who may hold leases and permits.

* * * * *

(d) A lease for leaseable minerals shall be issued only to an entity, or any of its affiliates, if it is in compliance with section 2(a)(2)(A) of the Act as provided in § 3472.1–2(e) of this title. The term "affiliate" is defined in § 3400.0–5(tt) of this title. A lease issued to any entity, or any of its affiliates, that qualifies under § 3472.1–2(e)(4) of this title shall be subject to the termination provisions of § 3472.1–2(e)(4)(ii) of this title.

J. Steven Griles,

Secretary of the Interior.

October 6, 1986.

[FR Doc. 86–23657 Filed 10–17–86; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 225 and 245

Department of Defense Federal Acquisition Regulation Supplement NATO Cooperative Projects

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering a change to the DoD FAR Supplement which would implement section 115 of the International Security and Development Cooperation Act of 1985 (Pub. L. 99–83) and section 1102 of the DoD Authorization Act of 1986 (Pub. L. 99–145).

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before December 19, 1986, to be considered in the formulation of the final rule. Please cite DAR Case 85–225 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L)(M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Barnett, International Acquisition Directorate, DASD–P(IA) (Pentagon), 202–697–9351.

SUPPLEMENTARY INFORMATION:

A. Background

Public Laws 99–83 and 99–145 provide authority to waive certain statutory requirements that relate to formation of contracts and contractual terms on a case-by-case basis in implementation of cooperative agreements. The objective of cooperative projects is to obtain economies by pooling scarce NATO resources. This proposed rule will provide guidance to DoD contracting components in support of cooperative projects. Principal coverage is in a proposed Subpart 225.79, with ancillary proposed changes in 201.103 and 245.603–71.

B. Regulatory Flexibility Act

This proposed rule is not likely to have a significant economic impact on a substantial number of small entities because the rule is geared to internal changes in contracting procedures when dealing with foreign sources under NATO Cooperative Projects. Comments are solicited on this determination and will be considered by the DAR Council.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is inapplicable, since no additional information gathering or maintenance of records is being proposed.

List of Subjects in 48 CFR Parts 201, 225 and 245

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 201, 225, and 245 be amended as follows:

1. The authority citation for 48 CFR Parts 201, 225 and 245 continues to read as follows:

Authority: 5 U.S.C. 301, U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.103 [Amended]

2. Section 201.103 is amended by inserting in the second sentence between the word "contracts" and the word "made" the words "by DoD Contracting Activities" and by inserting in the second sentence between the word "sales" and the word "without" the words "or NATO cooperative projects".

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PART 225—FOREIGN ACQUISITION

Subpart 225.78 [Reserved]

3. A new Subpart 225.78, marked "RESERVED", is added.

4. A new Subpart 225.79, consisting of sections 225.7900 through 225.7906, is added to read as follows:

Subpart 225.79—North Atlantic Treaty Organization (NATO) Cooperative Projects

Sec.
225.7900 Scope of subpart.
225.7901 Definitions.
225.7902 General.
225.7903 Policy.
225.7904 Procedures.
225.7905 Disposal of Property.
225.7906 Reports.

225.7900 Scope of subpart.

This subpart provides guidance on contractual implementation of NATO cooperative projects entered into under the authority of section 115 of the International Security and Development Cooperation Act of 1985 (Pub. L. 99–83) which amends the Arms Export Control Act, 22 U.S.C. 2751, *et seq.*, and section 1102 of the Department of Defense Authorization Act (Pub. L. 99–145) which adds section 2407 to Title 10, U.S.C.

225.7901 Definitions.

"Cooperative project" means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to further the objectives of standardization, rationalization, and interoperability of the armed forces of North Atlantic Treaty Organization member countries and which provides for:

(a) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(b) Concurrent production in the United States and in another member country of a defense article jointly developed in accordance with paragraph of this section (a); or

(c) Procurement by the United States of a defense article or defense service from another member country.

The term "other participant" means a participant in a cooperative project other than the United States.

225.7902 General.

(a) *Cooperative Project Authority.* (1) DoD Components which have been delegated authority to do so may enter into a cooperative project agreement with the North Atlantic Treaty Organization (NATO) or with one or more member countries of that organization in accordance with DoD Directive 5530.3, "International Agreements".

(2) In implementing cooperative project agreements, DoD Components may enter into contracts or incur other obligations on behalf of other participants without charge to any appropriation or contract authorization, in accordance with laws and regulations governing the negotiation of such cooperative project agreements.

(b) *Contracts implementing cooperative projects.* Heads of DoD Components are delegated authority to contract in implementation of cooperative projects, subject to the approvals specified in 225.7905. When contracting in support of cooperative project agreements, certain statutory requirements which relate to the formation of contracts and to contractual terms and conditions may be waived on a case-by-case basis.

225.7903 Policy.

Except to the extent waived under this subpart, contracts implementing cooperative projects will comply with all applicable laws relating to procurement. In addition, all such contracts will be entered into and administered in accordance with normal acquisition and contract administration procedures set forth in the FAR, this supplement and other applicable directives. Waivers of certain procurement laws and regulations, however, may be obtained when required by the terms of a written cooperative project agreement and when approved by the appropriate DoD officials based upon a determination that the waiver is necessary to ensure that the cooperative project will significantly further NATO standardization, rationalization, and interoperability.

225.7904 Procedures.

(a) *Directed subcontracting.* In order to implement work sharing arrangements in cooperative project agreements, the Assistant Secretary of Defense for Acquisition and Logistics (ASD(A&L)) may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement negotiated as described in 225.7902. In some instances it may not be feasible to name specific subcontractors at the time of conclusion of the agreement but the general provisions for work sharing at the prime and subcontractor level have to be clearly delineated in the agreement in order to provide the necessary authority to carry out such arrangement during the acquisition phase. The agreement itself will provide the necessary authority for inclusion of a contractual provision requiring the prime contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

(b) *Statutory waivers.* (1) In implementation of cooperative projects, the Deputy Secretary of Defense may waive with respect to contracts or subcontracts placed outside the United States any provision of law that specifically—

(i) Prescribes procedures to be followed in the formation of contracts;

(ii) Prescribes terms and conditions to be included in contracts;

(iii) Prescribes requirements for or preferences to be given to goods grown, produced, or manufactured in the United States or in United States Government-owned facilities or for services to be performed in the United States; or

(iv) Prescribes requirements regulating the performance of contracts.

(2) There is no authority for waivers of—

(i) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(ii) Any provision of 10 U.S.C. 2304;

(iii) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(iv) Any of the financial management responsibilities administrered by the Secretary of the Treasury.

(3) If any such waiver is contemplated under the terms of a cooperative project agreement, a request for the waiver will be forwarded to the Deputy Secretary of Defense through the ASD(A&L). The waiver request must be accompanied by a Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to further NATO standardization, rationalization, and interoperability significantly. The appproval of the Deputy Secretary of Defense must be obtained prior to a commitment to make such waivers in an agreement or an amendment to such agreement or contract.

225.7905 Disposal of Property.

Property which is jointly acquired by the members of a cooperative project will be disposed in accordance with the procedures established in the agreement or in a manner consistent with the terms of the agreement. (See also 245.603–71.)

225.7906 Reports

Congressional Notification of Designation of Particular Prime Contractors or Subcontractors for Cooperative Projects.

(a) Congressional notification is required whenever there is a DoD determination to award a prime or subcontract to a particular contractor if this determination was not part of the certification made under section 27(f) of the Arms Export Control Act prior to finalization of a cooperative agreement. DoD Components will provide a proposed Congressional notice including the reason for use of the authority to designate a particular contractor or subcontractor to the ASD(A&L) in sufficient time to forward to Congress prior to the time of contract award.

(b) Congressional notification is also required each time a statutory waiver in accordance with 225.7904(b) is exercised if such information was not provided in the certification to Congress prior to finalization of the cooperative agreement. Exercise of the waiver means a contract award or modification which provides for a statutory exception.

PART 245—GOVERNMENT PROPERTY

5. A new section 245.603–71 is added to read as follows:

245.603–71 Disposal of Contractor Inventory for NATO Cooperative Projects.

NATO cooperative project agreements may stipulate provisions for disposal of jointly acquired property without regard to any laws of the United States applicable to the disposal of property owned by the United States. Disposal of such property may include a transfer of the interest of the United States in such property to one of the other governments participating in the cooperative agreement or the sale of such property. Payment for the transfer or sale of any interest of the United States in any such property shall be made in accordance with the terms of the cooperative agreement. In those cases where disposal arrangements are included in the project agreement, disposal will be carried out in accordance with the agreement in lieu of the normal unilateral disposal determinations and procedures dictated by FAR 45.603 and 245.603–70 above.

[FR Doc. 86–23580 Filed 10–17–86; 8:45 am]
BILLING CODE 3810–01–M

48 CFR Part 208

Department of Defense Federal Acquisition Regulation Supplement Federal Supply Schedules

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering a change to the Defense Federal Acquisition Regulation Supplement (DFARS) at 208.404–2(a)(S–70) that would provide contracting officers flexibility in choosing to use optional Federal supply schedules or make open market purchases.

DATE: Comments on the proposed revision should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before November 19, 1986, to be considered in the formulation of the final rule. Please cite DAR Case 86–148 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L)(M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, 202/697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Present coverage at DFARS 208.404–2(a)(S–70) requires the Department of Defense to consider optional schedules as another source of supply. This means that further competition must be sought before purchases are made from General Services Administration's Federal supply schedules which are optional for use by DoD. This proposed revision will permit contracting officers to consider whether further competition obtained under an open market purchase would provide sufficient benefits to offset lower administrative costs and reduced contract placement leadtime associated with making a purchase against an optional Federal Supply Schedule when such schedules are available.

B. Regulatory Flexibility Act Information

The proposed change to DFARS 208.404–2(a)(S–70) does appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). An initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy for the Small Business Administration.

C. Paperwork Reduction Act Information

The proposed rule does contain a reduction in information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 208

Government procurement.

Owen L. Green, III,
Acting Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Part 208 be amended as follows:

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for 48 CFR Part 208 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 208.404–2 is amended by revising paragraph (a)(S–70) to read as follows:

208.404–2 Optional use.

(a)(S–70) As specified in FAR 8.001(a), optional schedules are preferred sources of supplies and services. Accordingly, contracting officers should make maximum use of optional schedules in meeting requirements for supplies and services. Further competition with respect to optional schedules is not required. However, if, in the contracting officer's judgment, the introduction of competition from nonschedule sources would be in the best interest of the Government in terms of quality, responsiveness or costs, other procedures may be used.

[FR Doc. 86–23586 Filed 10–17–86; 8:45 am]
BILLING CODE 3810–01–M

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Notices

Federal Register
Vol. 51, No. 202
Monday, October 20, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Department of Agriculture.

ACTION: Notice of a new system of records.

SUMMARY: Notice is hereby given that the U. S. Department of Agriculture (USDA), in accordance with the Privacy Act of 1974 (5 U.S.C. 552a) proposes to establish a new system of records: USDA/FS–3, Uniform Allowance System. This system of records is a necessary component of a new program utilizing a selected contractor who will manufacture, warehouse, and distribute uniform items to USDA, Forest Service employees entitled to a uniform allowance. Provision of the information contained in this system to the contractor will enable it to operate this program more efficiently and cost effectively.

DATES: Public comments must be received by November 19, 1986. This system shall take effect without further notice on December 19, 1986, unless comments received during the comment period cause a contrary decision. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of that system be published for comment, USDA invites such comment on all portions of this notice. Any comments should be submitted to the person and address listed under the caption **"FOR FURTHER INFORMATION CONTACT"** section.

ADDRESS: All comments submitted will be available for public inspection during business hours in Room 909 at 1621 North Kent Street, Rosslyn Plaza East, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Sheila M. Venson, Employee Relations and Labor Management Relations Group, Personnel and Civil Rights Staff, USDA, Forest Service, P.O. Box 2417, Washington, DC 20013. Telephone: 703/235–2588 (Not toll-free number).

SUPPLEMENTARY INFORMATION: The purpose of this system of records is to provide the U. S. Department of Agriculture, Forest Service, Personnel and Civil Rights Staff, with a more efficient program of managing those members of the work force who are entitled to a uniform allowance. Certain employees of the Forest Service have been required to wear uniforms since 1906. Employees entitled to uniforms are those who work with forest users and the public and need to be identified as Forest Service employees.

Currently, employees are required to obtain uniforms and receive an advance uniform allowance check from the National Finance Center in New Orleans, Louisiana. Employees have to refund the advance payment if the complete uniform is not obtained within 90 days. There are 12 manufacturing companies that manufacture separate components of the uniform and 10 retail stores that sell parts or all components of the uniform. Nine of the 10 retail stores are located on the west coast and one is located in Ohio. There are no retail stores in the midwestern or southern states for our employees there to have easy access of purchase.

The new system would establish a contract with one vendor in private industry and provide a more efficient payment system for the Forest Service. The selected contractor will be responsible for the manufacture, warehousing, and distribution of all Forest Service uniform items. The contractor will also develop and maintain an automated accounting/fiscal management system to assure that Forest Service funds are being accounted for properly. This system will be coordinated with the National Finance Center and be more cost effective and efficient than the current purchase and payment system.

Under the new system, employees who are required to obtain uniforms would be allocated a certain dollar amount in a charge account system with the selected contract vendor. Therefore, employees would be able to charge and receive all uniform components from one source.

Signed at Washington, DC, on October 9, 1986.

Peter C. Myers,
Acting Secretary.

Privacy Act System of Records USDA/FS–3 Report

The purpose of this system of records is to provide the U. S. Department of Agriculture, Forest Service, Personnel and Civil Rights Staff, with a more efficient program of managing the work force that are entitled to a uniform allowance. Due to the limited number of manufacturers and retailers of uniform items, it is more efficient to contract with one vendor to manufacture, warehouse, and distribute these items to Forest Service employees entitled to a uniform allowance. This system of records, containing information on employees and their entitlement to uniform allowance, is an indispensable component of this program.

The authority for maintaining this system of records is 5 U.S.C. 301; 5 U.S.C. 5901 through 5903; and 7 CFR 2.75.

Use of the system should not result in an infringement of any individual's right to privacy. While information within this system will be utilized by a contract vendor, the contractor will be required to adhere to all Privacy Act safeguards and guidelines. The system will be in full accord with the provisions of the Privacy Act.

Access to the system will be strictly controlled and limited to properly identified authorized employees of the U. S. Department of Agriculture and the contract vendor.

The information will be collected on magnetic tapes (IBM compatible) in the contractor's office and the National Finance Center, Accounting Operations Division. At the National Finance Center, magnetic tape files and disk files are kept in a locked computer room which can be accessed by authorized personnel only. The contractor will develop software application programs that will be restricted to authorized users.

Use of this system will have no effect upon privacy and other personal or property rights of individuals or on the preservation of the Constitutional principles of federalism and separation of powers.

The proposed system is not exempt from any provisions of the Privacy Act.

USDA/FS–3

SYSTEM NAME:

USDA/FS–3, Uniform Allowance System.

SYSTEM LOCATION:

The records in this system are maintained at the USDA, Forest Service Headquarters, P.O. Box 2417, Washington DC 20013; Regional Offices; Forest Supervisor's Offices; National Finance Center, P.O. Box 600000, New Orleans, Louisiana 70160; and Contractor's Office. The addresses of Forest Service Regional Offices and Forest Supervisor's Offices may be found in 36 CFR 200.1, Subpart A, or in the telephone directory of the applicable locality under the heading United States Government, Department of Agriculture, Forest Service. The address of the Contractor may be obtained by writing to Forest Service Headquarters at the above listed address.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

All Forest Service employees entitled to and receiving allowances for uniforms required in their work.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of complete files on advances, accruals, and payments to individuals within the Forest Service for uniform allowances. Information in these files will include the employee's name, social security number, employee location, allowance category(ies), year to date amount of sales, backorders, management code, and current status (active or terminated).

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301, 5 U.S.C. 5901 through 5903; and 7 CFR 2.75.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

(1) Information from this system of records developed by the Contractor and the National Finance Center is for Forest Service internal processing purposes in connection with the uniform allowance program.

(2) Disclosure to the Department of Justice for use in litigation when USDA, or any component thereof; or any employee of USDA in his or her official capacity; or any employee of USDA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or the United States, where USDA determines that litigation is likely to affect USDA or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by USDA to be relevant and necessary to the litigation, provided, however, that in each case, USDA determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(3) Disclosure in a proceeding before a court or adjudicative body before which USDA is authorized to appear, when USDA or any component thereof; or any employee of USDA in his or her official capacity; or any employee of the USDA in his or her individual capacity where USDA has agreed to represent the employee; or the United States, where USDA determines that litigation is likely to affect USDA or any of its components, is a party to litigation or has an interest in such litigation and USDA determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, USDA determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(4) Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or particular program statute, or by rule, regulation, or order issued pursuant thereto;

(5) To answer Congressional inquiries made at the request of the individual from whose record information is disclosed.

POLICY AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disk, or other format, as well as on input forms prepared by covered employees which may be stored in file folders.

RETRIEVABILITY:

Records are indexed by name and social security number of individual employees.

SAFEGUARDS:

Records are kept on magnetic tape and disk files. They are kept in a locked computer room and tape library which can only be accessed by authorized personnel utilizing a special access code. File folders are kept in locked file cabinets or in secure areas with access to authorized personnel only.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with the retention periods contained in Forest Service Handbook 6209.11, Records Management Handbook.

SYSTEM MANAGER AND ADDRESS:

Director, Personnel and Civil Rights Staff, USDA-Forest Service, P.O. Box 2417, Washington, DC 20013.

NOTIFICATION PROCEDURE:

Individuals may request information regarding this system of records, or information as to whether the system contains records pertaining to them from the system manager listed in the preceding paragraph. A request for information should contain name, address, and particulars involved (e.g., the date of action giving rise to the inquiry, complaint, etc.).

RECORD ACCESS PROCEDURES:

Individuals may obtain information as to the procedures for gaining access to records in the system which pertain to them by contacting the system manager as set forth in the preceding paragraph. The envelope and letter should be marked "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Use the same procedures as for record access.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from individuals who request payments of uniform allowances. Information may also be furnished by the employee's supervisor.

[FR Doc. 86–23599 Filed 10–17–86; 8:45 am]

BILLING CODE 3410–11–M

Forest Service

Threemile Timber Sale; Colville National Forest, Pend Oreille County, WA; Environmental Impact Statement; Revision

This notice revises the original Notice of Intent, published in the Federal Register of September 27, 1985.

The U.S. Department of Agriculture, Forest Service, will prepare an environmental impact statement for the development of the Threemile timber sale on the Sullivan Lake Ranger District. The environmental impact statement will be prepared in accordance with existing land and resource management plans.

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A range of alternatives for timber harvest in the assessment area will be considered. One of the alternatives will be no action. Other alternatives will consider various levels of timber harvest and road construction.

Federal, State and local agencies, potential purchasers, and other individuals or organizations who may be interested in or affected by the decision have been invited to participate in the scoping process. This process includes:

1. Identification of the issues to be addressed.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues, issues covered by previous environmental analysis, and issues not within the scope of this decision.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of Interior, will be invited to participate as a coordinating agency to evaluate potential impacts on threatened and endangered species habitat occurring as a result of this action.

Scoping for this project began in December, 1985, which included public input on issues, concerns and opportunities. A meeting was held in September, 1986 to finalize the preliminary issues, concerns and opportunities. A meeting of the interdisciplinary team will be scheduled for October, 1986 to discuss development of alternatives.

The analysis is expected to take about 5 months. The draft environmental impact statement should be available for public review by June, 1987. The final environmental impact statement should be available by June, 1988.

William D. Shenk, Forest Supervisor of the Colville National Forest, is the responsible official.

Written comments and suggestions concerning the analysis should be sent to William D. Shenk, Forest Supervisor, Federal Building, 695 South Main, Colville, Washington 99114, or to Warren N. Current, District Ranger, Sullivan Lake Ranger District, Metaline Falls, Washington 99153.

Questions about the proposed action and environmental impact statement should be directed to Kim E. Asman, Sale Planner, Sullivan Lake Ranger District, Metaline Falls, Washington 99153 (telephone: (509) 446-2681).

Dated: September 30, 1986.

William D. Shenk,

Forest Supervisor.

[FR Doc. 86-23576 Filed 10-17-86; 8:45 am]

BILLING CODE 3410-11-M

Environmental Impact Statement Cancellation Notice, Colville National Forest, WA

The U.S. Department of Agriculture, Forest Service, will not be preparing an environmental impact statement for the development of the Leola-Sullivan timber sale on the Sullivan Lake Ranger District at this time.

The Notice of Intent, published in the **Federal Register** of September 27, 1985, is hereby rescinded (50 FR 39156).

For further information contact: Kim E. Asman, Sale Planner, Sullivan Lake Ranger District, Metaline Falls, Washington 99153 (telephone: (509) 446-2681).

Dated: September 30, 1986.

William D. Shenk,

Forest Supervisor.

[FR Doc. 86-23577 Filed 10-17-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. OEE-3-86]

Export Privileges Affecting Bollinger GmbH, et al.

In the Matter of: Bollinger GmbH, Roseggergasse 34, 1160 Vienna, Austria; Leopold Hrobsky, Donaufelderstrasse 38, Stg. 4, Apt. 4, 1210 Vienna, Austria; Dietmar Ulrichshofer, with addresses at Kirchenstrasse 1, 3061 Ollersbach, Austria, and c/o Bollinger GmbH, Roseggergasse 34, 1160 Vienna, Austria, and, Vrablicz and Company Steinergasse 11, 1170 Vienna, Austria, Respondents

Order Renewing Temporary Denial of Export Privileges

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368-399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. sections 2401-2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Dietmar Ulrichshofer; Bollinger GmbH, which is owned by Dietmar Ulrichshofer; Leopold Hrobsky; and, Vrablicz and Company (hereinafter collectively referred to as respondents).[1] Ulrichshofer, who is subject to an outstanding indictment in the U.S. District Court for the Central District of California for conspiracy to violate U.S. export controls and is a fugitive from U.S. justice, resides in Ollersbach, Austria; all of the other respondents reside in Vienna, Austria.

The Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have conspired and acted in concert to violate the Act and the Regulations. The Department has reason to believe that the purpose of the conspiracy is to obtain U.S.-origin goods from third countries for ultimate destination in proscribed countries, without obtaining the required authorization from the Department for such shipments. The Department has reason to believe that respondents have participated in the unauthorized reexport of U.S.-origin commodities, including computer equipment and peripherals, from Austria to proscribed destinations, without authorization from the Department. Indeed, the Department has provided a statement by the U.S. Customs Attache in Austria that his aspect of the investigation to date has revealed that respondent Vrablicz, as recently as August 5, 1986, reexported such commodities to Czechoslovakia, which commodities were "owned" by respondent Bollinger.[2] The Department further shows that a statement given by the Customs Attache indicates that respondents currently have in their possession and control in Vienna, Austria, additional U.S.-origin equipment which requires authorization from the Department to permit its reexport from Austria. The Department has shown that there is a presumption of denial for any request seeking authorization to reexport this U.S.-origin equipment to proscribed destinations and, states that in any event, no such authorization has been requested. Nevertheless, the Department has reason to believe that respondents may attempt to reexport these U.S.-origin goods to proscribed destinations.

The Department states that the investigation gives it reason to believe that the violations under investigation were deliberate and covert. The Department has shown that respondents Ulrichshofer and Hrobsky directed sales of commodities covered by the investigation to the Soviet Bloc. Further, since the respondents currently have possession and control of U.S.-origin goods subject to the Act and the Regulations, the Department states that violations are likely to occur again. The Department submits that renewal of the August 12, 1986, temporary denial order naming respondents, with the exception of Betriebs and Finanzienrungs and Beratungs GmbH and Karl-Heinz Riedel, is necessary for the purpose of giving notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.[3]

Therefore, based on the showing made by the Department, I find that renewal of the order temporarily denying export privileges to respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations. This order is issued on an *ex parte* basis without a hearing, because none was requested.

Accordingly, it is hereby

Ordered

I. All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall by returned forthwith to the Office of Export Licensing for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose or, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(e) of the Regulations, any respondent may, at any time, appeal this order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served upon each respondent and published in the **Federal Register.**

Dated: October 11, 1986.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 86-23611 Filed 10-17-86; 8:45 am]

BILLING CODE 3510-25-M

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[1] The underlying temporary order of denial in the instant case, Case No. OEE-3-86, was issued on August 12, 1986, and included Betriebs and Finanzierungs and Beratungs GmbH (*sic*), Schulz Strassnitzki Gasse 8, 1090 Vienna, Austria and Karl Heinz Riedel (*sic*), Marc Aurel Strasse 7, 1010 Vienna, Austria as respondents. On October 10, 1986, the Department withdrew its request for renewal of the August 10, 1986, the temporary order of denial, as against Betriebs und Finanzierungs and Beratungs GmbH and Karl Heinz Riedel. Accordingly, those named parties are not subject respondents of this Order.

[2] In a letter to the Deputy Assistant Secretary for Export Enforcement, dated August 28, 1986, counsel for Vrablicz acknowledged that it has carried out shipping services for Bollinger on several occasions, but denied liability, under Austrian law, for any violation of the Export Administration Act or the Regulations.

[3] In yet another letter to the Deputy Assistant Secretary for Export Enforcement, dated September 29, 1986, respondent Vrablicz, through counsel, denied liability, under Austrian law, and stated that there is "close cooperation and assistance" (presumably between Vrablicz and U.S. authorities) in the clarification of the transactions which gave rise to this Order. It is fitting to note here that whether respondent Vrablicz is culpable under foreign (Austrian) law, is not controlling—even if relevant—on the resolution of the question under consideration, that is, whether renewal of the August 12, 1986 temporary denial order against Vrablicz and certain other respondents "is necessary in the public interest to prevent an imminent violation" of the Act and the Regulations. While cooperation with appropriate U.S. authorities on the part of a respondent of a temporary denial order could have bearing on the issue of "imminent violation". It is not dispositive of the Department's request for renewal of the order. In this regard, the sworn statement of U.S. Customs Attache Urbanski, on August 21, 1986, which was provided by the Department in support of its request for renewal casts doubt on Vrablicz's claim of cooperation. In any event, if the Department (Office of Export Enforcement) should show that *it* is satisfied by any effort of cooperation on the part of Vrablicz *and* that a temporary denial of export privileges is no longer necessary against Vrablicz, this Order could be accordingly modified.

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The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held November 19, 1986, 10:00 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provide for continuing review to update the Regulations as needed.

Agenda

1. General License Technical Data (GTDA) Review.
2. Reports to Congress on MCTL Implementation, Export Administration Act (EAA) 1985, (5)(d)4.
   a. DOD's Report to Congress.
   b. Joint Commerce/DOD Reports to Congress.
3. Report on 1986 accomplishments.
4. Plans for 1987.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administraion, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1 and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: October 15, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-23659 Filed 10-17-86; 8:45 am]

BILLING CODE 3510-DT-M

President's Export Council; International Competitiveness and Productivity Subcommittee; Partially Closed Meeting

A meeting of the President's Export Council will be held November 6, 1986, 10:00 a.m.-11:50 a.m. and 12:00-2:30 p.m. in Room 6802 of the Department of Commerce, 14th and Constitution Avenue NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

Open Session: 10:00 a.m.-11:50 a.m. Presentations by members on competitiveness issues. Discussion of the status of the semiconductor industry in world competition, the role of the subcommittee in addressing the competitiveness problem, and other related issues.

Closed Session: 12:00 p.m.-2:30 p.m. Discussion of matters properly classified under Executive Order 12356, dealing with competitiveness, trade negotiations, trade and economic relations with other countries, and other trade related matters.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) was approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

The morning session of the meeting will be open to the public with a limited number of seats available. For further information, reservations to attend the meeting, or copies of the minutes, contact Laureen Daly (202) 377-1125.

Dated: October 15, 1986.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 86-23613 Filed 10-17-86; 8:45 am]

BILLING CODE 3510-DR-M

President's Export Council; Subcommittee on Foreign Trade Practices and Negotiations; Partially Closed Meeting

A meeting of the President's Export Council Subcommittee on Foreign Trade Practices and Negotiations Subcommittee will be held November 5, 1986, 1:00 p.m. to 4:00 p.m., Room 4830, U.S. Department of Commerce, Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

General Session: 1:00 p.m.-2:55 p.m. Discussion of causes of the U.S. trade deficit and recent developments in multilateral trade negotiations.

Executive Session: 2:55 p.m.-4:00 p.m. Discussion of matters properly classified under Executive Order 12356, dealing with trade negotiations and economic relations to Japan and other classified issues.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information or copies of the minutes contact Sylvia Lino (202) 377-1125, Room 3213, U.S. Department of Commerce, Washington, DC 20230.

Dated: October 15, 1986.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 86-23612 Filed 10-17-86; 8:45 am]

BILLING CODE 3510-DR-M

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held November 7, 1986, 9 a.m. to 3 p.m., Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act as amended that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session: 9:00 a.m.-12:00 noon. Status reports by Ad Hoc Chairman and various developments at Commerce in the International Trade area.

Executive Session: 1:30 p.m.-3 p.m. Discussion of matters properly classified under Executive Order 12356 dealing with matters pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended in 1985. A Notice of Determination to close meetings or portions of meetings of the subcommittee to the public on the basis of 5 U.S.C. 522b(c)(1) was approved October 17, 1985 in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information and copies of the minutes, contact Connie White (202) 377-4275.

Dated: October 14, 1986.

Willard A. Workman,

Director, Strategic Planning and Policy Division, Export Administration.

[FR Doc. 86-23614 Filed 10-17-86; 8:45 am]

BILLING CODE 3510-DT-M

Georgetown University Hospital; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 86-130. Applicant: Georgetown University Hospital, Washington, DC 20007. Instrument: Cerebral Blood Flow Unit with Accessories. Manufacturer: Scan-Detectronic A/S, Denmark. Intended Use: See notice at 51 FR 8691.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides miniaturized detector electronics for 12-channel measurement of blood flow parameters using radioactive trace materials. The National Institutes of Health advises in its memorandum dated July 11, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-23660 Filed 10-17-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will convene separate public meetings of its advisory bodies as follows:

Permit Review Committee—Will convene October 29, 1986, at 10 a.m., in the Federal Building, 701 C Street, Anchorage, AK, to review the North Pacific Fishery Management Council's methodology for developing the total allowable level of foreign fishing allocation recommendations for 1987. For further information contact Jin H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Plan Team for the Bering Sea/Aleutian Islands Groundfish Fishery Management Plan—Will convene November 4, 1986, at 10 a.m. at the North Pacific Council's office, 411 West Fourth Avenue, Anchorage, AK, to review new information on the condition of the Bering Sea groundfish resources and to prepare a supplement to the 1986 Resource Assessment Document (RAD). The public meeting may extend into November 5 if necessary. For further information contact Jim Glock, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 telephone: (907) 274-4563.

Dated: October 14, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-23583 Filed 10-17-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Sea World, Inc. (P2R)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR 216).

1. Applicant: a. Name: Sea World, Inc.
   b. Address: 1720 South Shores Road, Mission Bay, San Diego, California 92109.
2. Type of Permit: Public Display.
3. Name and Number of Marine Mammals: Killer whale (*Orcinus orca*), 1.
4. Type of Activity: Importation.
5. Location of Activity: Importation of a captive animal to U.S. from Canada.
6. Period of Activity: 1 year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written date or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those the Applicant and do not necessarily reflect the view of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

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Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: October 14, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–23629 Filed 10–17–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Special Access Program CBI Export Declaration (Form ITA–370P)

On June 11, 1986, a notice was published in the **Federal Register** (51 FR 21208) which announced the implementation of the Special Access Program under the Caribbean Basin Initiative.

Orders for the Special Access Program CBI Export Declaration (Form ITA–370P) may be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (202/783–3238). The form will be sold for $31 per package of 100. Refer to stock number 003–009–00490–0.

Until the supplies are exhausted, the CBI Export Declaration may be obtained from your nearest U.S. Customs port.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–23606 Filed 10–17–86; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Consultations With the Government of Bangladesh on Category 647/648

October 15, 1986.

On September 28, 1986, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended by Protocols dated December 15, 1977, December 22, 1981 and July 31, 1986, requested the Government of Bangladesh to enter into consultations concerning exports to the United States of certain man-made fiber textile products in Category 647/648, produced or manufactured in Bangladesh.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Bangladesh, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of trousers, slacks and shorts of man-made fibers in Category 647/648, produced or manufactured in Bangladesh and exported to the United States during the twelve-month period which began on September 28, 1986 and extends through September 27, 1987, at a level of 396,333 dozen.

A summary market statement for this category follows this notice.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Anyone wishing to comment or provide data or information regarding the treatment of Category 647/648 under the agreement with Bangladesh, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Bangladesh—September 1986 Market Statement

Category 647/648—Man-Made Fiber Trousers

Summary and Conclusions

U.S. imports of Category 647/648 from Bangladesh were 428,466 dozen during the year ending July 1986, over 18 times the 23,296 dozen imported a year earlier. During the first seven months of 1986, imports of Category 647/648 from Bangladesh were 403,136, over 19 times the amount imported during the same period in 1985 and 8 times the amount imported during calendar year 1985.

The market for Category 647/648 has been disrupted by imports. The sharp and substantial increase in imports from Bangladesh has contributed to this disruption.

U.S. Production and Market Share

U.S. production of man-made fiber trousers declined by 5 percent from 40,879 dozen in 1983 to 39,004 dozen in 1985. The U.S. producers' share of this market declined from 76 percent in 1983 to 69 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 647/648 grew from 13,252 thousand dozen in 1983 to 17,624 thousand dozen in 1985, a 33 percent increase. During the first seven months of 1986, Category 647/648 imports were 13,352 thousand dozen, 27 percent above the 10,549 thousand dozen imported during the same period a year earlier. The ratio of imports to domestic production increased from 32 percent in 1983 to 45 percent in 1985.

Duty Paid Value and U.S. Producer Price

Approximately 50 percent of Category 647/648 imports from Bangladesh entered under TSUSA No. 384.9169—women's, girls' and other infants' man-made fiber shorts, not knit, not ornamented. These shorts entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable shorts.

[FR Doc. 86–23609 Filed 10–17–86; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Consultations With the Government of the People's Republic of China on Categories 831 and 833

October 15, 1986.

On September 30, 1986, the United States Government, in accordance with Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as extended by Protocols dated December 15, 1977, December 22, 1981 and July 31, 1986, requested consultations with the Government of the People's Republic of China with respect to gloves (Category 831) and suit-type coats (Category 833) of silk blends and vegetable fibers, other than cotton, produced or manufactured in China.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may later establish limits for the entry or withdrawal from warehouse for consumption of textile products in Categories 831 and 833, produced or manufactured in the People's Republic of China and exported to the United States during the twelve-month period which began on September 30, 1986 and extends through September 29, 1987, at levels of 385,584 dozen pairs for Category 831 and 11,210 dozens for Category 833.

A description of the textile categories in terms of T.S.U.S.A. numbes was published in the **Federal Register** on July 29, 1986 (51 FR 27068).

Summary market statements for these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington DC and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

China—September 1986 Market Statement

Category 831—Silk-Blend and Other Vegetable Fiber Gloves

Summary and Conclusions

U.S. imports of Category 831 from China were 216,975 dozen during the first seven months of 1986, forty-six times the 4,654 dozen imported during the first seven months of 1985. China is the largest supplier of Category 831 accounting for 72 percent of total imports during the year ending July 1986.

Imports of silk-blend gloves and gloves of vegetable fibers other than cotton have increased dramatically in recent years. The predominate blend being imported is ramie/cotton.

Imports of silk-blend and other vegetable fiber gloves compete with domestically produced cotton, wool, and man-made fiber gloves. The U.S. market for cotton, wool, and man-made fiber gloves, Category 331/431/631, has been disrupted by imports. The sharp and substantial increase of Category 831 imports from China is contributing to the disruption of this market.

Import Penetration and Market Share

The ratio of imports to production in Category 331/431/631, cotton, wool and man-made fiber gloves, increased to 129 percent in 1985. The share of this market held by domestic manufacturers dropped to 44 percent in 1985. Imports of Category 831 are contributing to this market disruption.

U.S. imports of Category 831 were 302 thousand dozen in 1985. They increased dramatically in 1986, reaching 301 thousand dozen in the first seven months, 182 percent higher than the January–July 1985 level.

When Category 331/431/631/831 imports are expressed at a 1986 annual rate, the import to production ratio increases to 132 percent and the domestic manufacturers' share of this market falls to 43 percent.

Duty-Paid Value and U.S. Producer Price

Approximately 96 percent of the imports of Category 831 from China during the first seven months of 1986 entered under TSUSA No. 704.4095—woven gloves, of vegetable fiber other than cotton, of preexisting fabric, not ornamented. These gloves entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable gloves.

China—September 1986 Market Statement

Category 833—Silk-Blend and Other Vegetable Fiber Men's and Boys' Suit-type Jackets

Summary and Conclusions

U.S. imports of Category 833 from China were 6,848 dozen during the first seven months of 1986 compared to 2,268 dozen imported during the first seven months of 1985, a 202 percent increase. China is the second largest supplier of Category 833 accounting for 16 percent of total imports during the year ending July 1986.

Imports of silk-blend men's and boys' suit-type jackets and men's and boys' suit-type jackets of vegetable fibers other than cotton have increased dramatically in recent years. The predominate blends being imported are ramie/cotton blends and linen blended with various fibers i.e. silk, ramie and acrylic. In some cases three fibers are blended. Also, a number of silk-blend men's and boys' suit-type jackets are being imported.

Imports of silk-blend and other vegetable fiber men's and boys' suit-type jackets compete with domestically produced cotton, wool, and man-made fiber men's and boys' suit-type jackets. The U.S. market for cotton, wool, and man-made fiber men's and boys' suit-type jackets, Category 333/433/633, has been disrupted by imports. The sharp and sustantial increase of Category 833 imports from China is contributing to the disruption of this market.

Import Penetration and Market Share

The ratio of imports to production in Category 333/433/633, cotton, wool and man-made fiber men's and boys' suit-type jackets, incresed to 49 percent in 1985. The share of this market held by domestic manufacturers dropped to 67 percent in 1985. Imports of Category 833 are contributing to this market disruption.

U.S. imports of Category 833 were 55 thousand dozen in 1985. They increased in 1986, reaching 39 thousand dozen in the first seven months, 29 percent higher than the January–July 1985 level.

When Category 333/433/633/833 imports are expressed at a 1986 annual rate, the import to production ratio increases to 50 percent and the domestic manufacturers, share of this market falls to 64 percent.

Duty-Paid Value and U.S. Producer Price

All of the imports of Category 833 from China during the first seven months of 1986 entered under TSUSA Numbers 381.6987—men's and boys' suit-type jackets, of vegetable fiber other than cotton, not knit, not ornamented; and 381.8682—men's and boys' silk-blend silk-type jackets, not knit, not ornamented. These suit-type jackets entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable suit-type jackets.

[FR Doc. 86–23610 Filed 10–7–86; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of Collection of Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520.), the Consumer Product Safety Commission has

submitted to the Office of Management and Budget a request for an extension of the expiration date of a currently approved collection of information requirement contained in the Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR Part 1205. The collection of information requirement requires manufacturers (including importers) of mowers subject to the standard to keep records of tests they perform to ensure that their mowers comply with the requirements of the standard (§ 1205.34) and to provide certain information on a label concerning the production of the mower (§ 1205.35).

The purposes of the requirement to keep records of the tests are to assure compliance with the standard and to reduce the need for inspections and sample collections to determine the industry's compliance with the standard. The purposes of the labeling requirement are to comply with 15 U.S.C. 2063 and to facilitate corrective actions with regard to defective products.

Information About the Collection of Information

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, DC 20207.

Title of information collection: Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR Part 1205.

Type of request: Extension of expiration date for currently approved requirement.

Frequency of collection: (1) Records of tests—no frequency specified, but records must show that the certificate of compliance is based on a test of each mower or on a reasonable testing program. (2) Label—one time for each mower produced.

General description of respondents: Manufacturers and importers of walk-behind power lawn mowers.

Estimated number of recordkeepers: 40.

Estimated average number of hours per recordkeeper: 390 per year.

Comments: Comments on this proposed collection of information should be addressed to Marina Gatti, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the proposed collection of information requirement are available. Copies of the proposed collection of information requirement are available from Francine Shacter, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6529.

Dated October 15, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86-23667 Filed 10-17-86; 8:45 am]

BILLING CODE 6355-16-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Command and Control Management

ACTION: Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Command and Control Management will meet in closed session on November 3, 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting this Task Force will evaluate progress made since 1978 on selected aspects of Command and Control Management.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 15, 1986.

[FR Doc. 86-23584 Filed 10-17-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology

ACTION: Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in closed session on November 19-20, 1986 at the Pentagon, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 15, 1986.

[FR Doc. 86-23585 Filed 10-17-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Pacific Command Air Defense

ACTION: Advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Pacific Command Air Defense, will meet in closed session on December 17, 1986 in the Institute for Defense Analyses Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine defense capabilities for shore installations in the Pacific Command and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 15, 1986.

[FR Doc. 86-23586 Filed 10-17-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Strategic Air Defense R&D

ACTION: Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Strategic Air Defense R&D will meet in closed session on November 6-7 and December 11-12, 1986 at the Pentagon, Airlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and

technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will investigate the feasibility of defense against cruise missiles and their delivery platforms.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. 11, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 15, 1986.

[FR Doc. 86-23587 Filed 10-17-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Library Services and Construction Act; Promulgation of Federal Shares

Sections 8(b)(1) and 7(b)(2) of the Library Services and Construction Act, Pub. L. 84-597, as amended (20 U.S.C. 351 *et seq.*), require the Secretary of Education to promulgate the Federal share for each State and Territory every second fiscal year beginning with fiscal year 1971. Per capita income data from the Department of Commerce for the years 1983, 1984, and 1985 have been used to establish the Federal shares applicable to Titles I and II of the Act. The Federal shares published in the table below are effective for the fiscal years ending September 30, 1988 and September 30, 1989.

(Catalog of Federal Domestic Assistance Program Number 84.034, Library Services—Grants for Public Libraries and 84.154, Public Library Construction)

Dated: October 15, 1986.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

State	Federal share (per-cent)
Alabama	61.48
Alaska	33.33
Arizona	54.12
Arkansas	62.15
California	42.15
Colorado	46.02
Connecticut	35.74
Delaware	48.31
District of Columbia	34.84
Florida	50.22
Georgia	55.18
Hawaii	49.29
Idaho	59.50
Illinois	46.85
Indiana	55.10
Iowa	54.51
Kansas	50.11
Kentucky	60.75
Louisiana	58.01
Maine	57.24
Maryland	43.30
Massachusetts	41.38
Michigan	50.83
Minnesota	49.44
Mississippi	66.00
Missouri	52.43
Montana	58.77
Nebraska	52.70
Nevada	47.43
New Hampshire	46.97
New Jersey	38.51
New Mexico	60.22
New York	42.72
North Carolina	56.30
North Dakota	55.62
Ohio	52.33
Oklahoma	54.86
Oregon	54.12
Pennsylvania	51.32
Rhode Island	49.56
South Carolina	61.62
South Dakota	59.47
Tennessee	59.61
Texas	51.07
Utah	61.80
Vermont	56.76
Virginia	45.01
Washington	49.92
West Virginia	62.61
Wisconsin	52.26
Wyoming	51.67
American Samoa	66.00
Guam	66.00
Puerto Rico	66.00
Trust Territory	100.00
Virgin Islands	66.00
Northern Mariana Islands	66.00

[FR Doc. 86-23605 Filed 10-17-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Restriction of Eligibility for Grant Award, Idaho Innovation Center

AGENCY: Department of Energy.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: In accordance with 10 CFR 600.7(6), eligibility for award of a grant resulting from (PR No. 07-871D10222) will be restricted to the Idaho Innovation Center.

Project Scope: The overall objective of the Idaho Innovation Center is to provide an incubator environment which will foster the commercialization of technologies developed at the Idaho National Engineering Laboratory (INEL) by assisting in the transfer of the INEL technologies to the private sector, universities, and no profit research organizations. Eligibility for the Grant has been restricted to the Idaho Innovation Center because it is the only organized incubator within 200 miles of the INEL and such an incubator environment has been found to be the best way to insure the likelihood of success for emerging INEL technologies.

FOR FURTHER INFORMATION CONTACT: W. C. Drake (208) 526-0775, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402.

Issued at Idaho Falls, Idaho, on October 3, 1986.

H. Brent Clark,

Contracts Management Division.

[FR Doc. 86-23603 Filed 10-17-86; 8:45 am]

BILLING CODE 6450-01-M

National Coal Council; Open Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meetings:

Name: Coal Policy Committee of the National Coal Council

Date and Time: Thursday, November 6, 1986, from 8:30 a.m. to 12 noon

Place: Mandalay Four Seasons Hotel, 221 East Las Colinas Boulevard, Irving, Texas 75039

Contact: Georgia A. Benjamin, U.S. Department of Energy, Office of Fossil Energy (FE-23), Washington, DC 20545, Telephone: 301-353-4718

Purpose of the Meeting: For the Committee to discuss reports to be prepared by the National Coal Council with respect to requests from the Secretary of Energy for advice, information, and recommendations.

Tentative Agenda

- Call to Order by Gerald Blackmore, Chairman.
- Discussion of issues presented by the Secretary for consideration for possible study as well as issues presented by members.
- Discussion of any other business properly brought before the Committee.
- Public Comment—10 Minute Rule.
- Adjournment.

Name: National Coal Council

Date and Time: Friday, November 7, 1986, from 9:30 a.m. to 11:30 a.m.

Place: Mandalay Four Seasons Hotel, 221 East Las Colinas Boulevard, Irving, Texas 75039

Contact: Georgia A. Benjamin, U.S. Department of Energy, Office of Fossil Energy (FE-23), Washington, DC 20545, Telephone: 301-353-4718

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:

- Call to Order by James McGlothlin, Chairman.

- Remarks by Chairman McGlothlin.
- Remarks by Department of Energy official.
- Report of the Coal Policy Committee.
- Report of the Finance Committee: Presentation of the 1987 Budget.
- Discussion of any other business properly brought before the Council.
- Public Comment—10 Minute Rule.
- Adjournment.

Public Participation: The meetings are open to the public. The Chairmen of the Council and Committee are empowered to conduct the meetings in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council or Committee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Georgia A. Benjamin at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 15, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86–23684 Filed 10–17–86; 8:45 am]

BILLING CODE 5450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES87–1–000 et al.]

Electric Rate and Corporate Regulation Filings; Centel Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Centel Corporation

[Docket No. ES87–1–000]

October 10, 1986.

Take notice that on October 6, 1986, Centel Corporation (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an Order authorizing the issuance of up to $300,000,000 aggregate principal amount of unsecured notes or debentures, up to 3 million shares of common stock, $2.50 par value, of the Applicant and a number of shares of convertible preferred stock of the Applicant which shall be convertible into up to 3 million shares of common stock, $2.50 par value, of the Applicant, as of the date of issuance.

Comment date: November 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER87–3–000]

October 14, 1986.

Take notice that on October 1, 1986, Boston Edison Company (Boston Edison) tendered for filing a proposed tariff to provide for the distribution component of the wheeling required for the delivery of power produced by Qualifying Facilities as defined in § 292.101 (b)(1) of the Commission's regulations. Boston Edison asks that the proposed tariff, which relates to service over facilities rated 14/24 kV, 4kV and at the secondary voltage level, be allowed to become effective December 1, 1986.

Copies of the filing have been served upon the Massachusetts Department of Public Utilities, Acton Hydro Electric Company, a potential QF customer, and the North Attleboro Electric Department which would purchase power from Acton Hydro.

Comment date: October 23, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Louisiana Public Service Commission v. Middle South Services, Inc.

[Docket No. EL86–59–000]

October 14, 1986.

Take notice that on September 26, 1986, the Louisiana Public Service Commission, pursuant to Rule 206 of the rules of practice and procedure of the Federal Energy Regulatory Commission (18 CFR 385.206) filed a Complaint against Middle South Services, Inc. The Louisiana Commission requests that the Commission institute a proceeding under sections 205 and 206 of the Federal Power Act (16 U.S.C 824d and 824e) and decrease the rate of return on equity authorized under the "Agreement among Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service, Inc. and Middle South Services, Inc." which was previously approved, with modifications, by the Commission's Opinion and Order No. 234, 31 FERC ¶ 61,305, issued June 13, 1985.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Martin Marietta Aluminum Properties, Inc.

[Docket No. EL87–2–000]

October 10, 1986.

Take notice that on October 7, 1986, Martin Marietta Aluminum Properties, Inc. ("MAPI") filed a request for the Commission to issue a declaratory order confirming that MAPI's application for certification of a cogeneration facility as a qualifying facility, filed in Docket No. QF86–686–000 on April 18, 1986, has been granted by operation of law pursuant to § 292.207(b) (5) of the Commission's regulations, 18 CFR 292.207(b) (5). MAPI submits that the issuance of a declaratory order confirming the applicability and operation of § 292.207(b) (5) to MAPI's application is necessary in light of the Commission's "Order Extending Time for Commission Action", issued September 29, 1986 in Docket No. QF86–686–000.

Comment date: October 23, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power and Light Company

[Docket No. ER86–684–000]

October 14, 1986.

Take notice that on September 29, 1986, GPU Service Corporation (GPU) as Agent for Pennsylvania Electric Company, Metropolitan Edison Company and Jersey Central Power & Light Company (collectively, GPU Companies) tendered for filing as an initial Rate Schedule an Agreement (The Agreement) between GPU and Niagara Mohawk Power Corporation (Niagara Mohawk). The Agreement, dated July 1, 1986, provides for the sale by the GPU Companies or Niagara Mohawk, of energy from their systems ("system energy") that may be available on an hourly, daily, weekly or monthly basis (a "transaction"). GPU states that the timing of transactions cannot be accurately estimated, but that the GPU Companies or Niagara Mohawk would offer to sell such system energy to the other only when it is economical to do so. The Buyer would only accept such offer if it was economical to do so.

Comment date: October 27, 1986, in accordance with Standard Paragraph E at the end of this document.

6. Sierra Pacific Power Company

[Docket No. ER86–655–000]

October 14, 1986.

Take notice that on October 1, 1986, Sierra Pacific Power Company (Sierra) tendered for filing an amendment to its initial rate filing that transmitted the "Transmission Services Agreement" between Sierra and Beowawe Geothermal Power Company (Beowawe) executed August 6, 1986. The amendment provides no changes to the Sierra-Beowawe contract, but only provides more information on the transportation service to be rendered pursuant to that contract.

Comment date: October 23, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER86–580–001]

October 14, 1986.

Take notice that on October 1, 1986 Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies), filed responses to a deficiency letter dated July 28, 1986 in connection with the filing of Service Schedule EP (Economic Energy Participation Schedule) to an interchange contract between Southern Companies and Florida Power & Light Company. The filed responses constitute an amendment to filing in Docket No. ER86–580–000.

Service Schedule EP sets forth the terms, conditions and rates under which Southern Companies agree to transmit economic energy purchased by FPL from certain third party utilities with which Southern Companies have direct Transmission interconnections. SCS requests that the new service schedule be allowed to become effective as soon as possible so as to allow FPL to determine whether additional economic energy transactions can be arranged to the benefit of the customers of all participating parties.

Comment date: October 23, 1986, in accordance with Standard Paragraph E at the end of this noitce.

8. Tucson Electric Power Company

[Docket No. ER87–4–000]

October 14, 1986.

Take notice that on October 2, 1986, Tucson Electric Power Company ("Tucson") tendered for filing an Interchange Agreement between Tucson and State of California, Department of Water Resources ("DWR"). The primary purpose of this Agreement is to provide the terms and conditions relating to the interconnection of the electrical systems of Tucson and DWR and the exchange of capacity, energy and non-firm transmission service between the two systems. Tucson states that services may be provided under two Services Schedules:

1. Amended Service Schedule A—Economy Energy Interchange.
2. Service Schedule B—Non-Firm Transmission Service.

Tucson states that copies of the filing were served upon DWR.

Tucson requests and effective date of December 15, 1986.

Comment date: October 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–23647 Filed 10–17–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP86–744–000 et al.]

Natural Gas Certificate Filings; El Paso Natural Gas Company et al.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP86–744–000]

October 10, 1986.

Take notice that on September 29, 1986, El Paso Natural Gas Company (El Paso), a Delaware Corporation, P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP86–744–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon miscellaneous minor gas sales facilities and the services rendered by means thereof under the certificate issued in Docket No. CP82–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

It is stated that the miscellaneous minor gas sales facilities which El Paso proposed to abandon consist of various size sales taps and/or sales meter stations with associated appurtenances, which permit El Paso to render natural gas service to its various customers. It is stated that the proposed abandonments would not result in or cause any interruption, reduction or termination of natural gas service presently rendered by El Paso to any of its customers. El Paso states that a periodic review of its system, together with the customers' advisements, indicates that there are eleven miscellaneous minor gas sales facilities eligible for abandonment, namely, three sales meters and eight sales taps. El Paso proposes to remove and place in stock the salvable materials and scrap nonsalvable items, without material change in its average cost of service.

Comment date: November 24, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

[Docket No. CP87–8–000]

October 10, 1986.

Take notice that on October 7, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed pursuant to section 7(c) of the Natural Gas Act an application to render an interruptible transportation service for Commonwealth Gas Company (Commonwealth), and to make certain meter station modifications necessary to render the proposed transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to the provisions of an agreement, between Applicant and Commonwealth dated September 4, 1986, Applicant has agreed to receive on an interruptible basis, up to 30,000 dt of vaporized liquid natural gas (LNG) per day for the account of Commonwealth at the existing interconnection between Applicant and Commonwealth at Applicant's Hopkinton purchase meter station located in Middlesex County, Massachusetts. Applicant sttes that it will deliver thermally equivalent quantities (less quantities retained for Tennessee's fuel and uses and gas lost

unaccounted for) to Commonwealth at (1) the existing interconnection between Commonwealth and Applicant at Applicant's existing Worcester sales meter station located in Worcester County, Massachusetts, or (2) other mutually agreeable points of interconnection between Applicant and Commonwealth when required by operating conditions.

Applicant also requests authority to make certain modifications at the Hopkinton and Worcester sale meter stations in order to enable Applicant to render the proposed transportation service. Applicant requests authority to replace two 10-inch meter tubes with two 12-inch meter tubes at Worcester sales meter station and to remove an 8-inch turbine meter, to relocate a 12-inch meter tube, to install an 8-inch regulator run, to revise a 20-inch header piping and to install data acquisition facilities at the Hopkinton purchase meter station. Applicant estimates the total cost of these modifications to be 157,000, which will be reimbursed by Commonwealth.

Applicant states that it proposes to charge for this transportation service a quantity charge of 4.44 cents per dt and to retain .5% of the quantities received for transportation for Applicant's fuel and use requirements and gas lost and unaccounted for.

Applicant alleges that Commonwealth requested that the proposed transportation service commence as of November 1, 1986, in order to meet the 1986–1987 winter demand.

Comment date: October 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. North East Heat and Light Company and Mercer Gas Company vs. National Fuel Gas Supply Corporation

[Docket No. CP86–746–000]

October 14, 1986.

Take notice that on September 26, 1986, North East Heat & Light Company (North East), 16 North Lake Street, North East, Pennsylvania 16428, and Mercer Gas Company (Mercer), 109 North Diamond Street, Mercer, Pennsylvania 16137, filed in Docket No. CP86–746–000 a joint complaint and request for investigation against National Fuel Gas Supply Corporation (National Fuel), pursuant to § 385.206 of the rules of practice and procedure, 18 CFR 385.206, alleging that, *inter alia:*

(1) National Fuel has violated and is in continuing violation of Section 4(b) of the Natural Gas Act (NGA); (2) National Fuel has acted in a manner contrary to the competitive policies expressed in FERC Order Nos. 436 and 380; and (3) National Fuel has used its franchise in a manner to restrain competition by precluding the complainants from obtaining lower priced natural gas. North East and Mercer request that the Commission initiate an investigation into the past, current and future practices of National Fuel, particularly as they adversely affect the operations of North East and Mercer.

It is stated that North East and Mercer are small, affiliated, local distribution companies operating in western Pennsylvania and that all their natural gas currently is furnished by National Fuel, a large, integrated natural gas company subject to the Commission's jurisdiction. It is further stated that both North East and Mercer are required to purchase their requirements under National Fuel's firm Rate Schedule RQ.

It is complained that National Fuel consistently and repeatedly refused to sell to either North East or Mercer under a form of rate schedule, which would enable North East and Mercer to provide more competitively priced gas to the high-priority consumers dependent upon each of them for service. It is further complained that National Fuel has discriminated against North East, because National Fuel has allowed in excess of twenty companies comparable in size to North East to pay at lower rates than the RQ Rate sought to be collected from North East.

The complainants also state that by refusing to provide interruptible service (or any other service more competitively priced than National Fuel's firm Rate Schedule RQ) to complainants, while providing non-firm service to other customers similarly situated, National Fuel has violated section 4(b) of the NGA. It is alleged that the failure to offer North East and Mercer interruptible service subjects these companies to an undue prejudice or disadvantage in violation of section 4(b) and the continuing refusal of National Fuel to sell natural gas to the complainants at a rate other than its firm Rate Schedule RQ also violates section 4(b) because it is the unlawful maintenance of an unreasonable difference in rates.

It is stated that during 1985, the impact on North East from National Fuel's conduct was an overbilling of approximately $307,256 and the financial impact on Mercer from National Fuel's refusal to make competitively priced gas available was approximately $177,887. In the first six months of 1986, the complainants state that North East's loss was approximately $217,486 and Mercer's loss was approximately $127,727 resulting from National Fuel's unilateral determination not to sell at a rate other than its rate Schedule RQ.

It is further stated National Fuel, in addition to refusing to sell competitively priced natural gas to the complainants, has refused to transport lower priced natural gas which will be used to meet the requirements of North East and Mercer's high-priority customers.

Comment date: Novemer 13, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–23648 Filed 10–17–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF86–1074–000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Babcock & Wilcox Company, Inc., et al.

October 10, 1986.

Comment Date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Babcock & Wilcox Company, Inc.

[Docket No. QF86–1074–000]

On September 16, 1986, Babcock & Wilcox, Inc. (Applicant), of 20 S. Van Buren, Avenue, Baberton, Ohio 44203, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Cambia County, Pennsylvania and will consist of two circulation fluidized bed steam generators and a steam turbine generator. Steam recovered from the facility will be sold to the State of Pennsylvania to provide hot water heating, space heating, laundry and kitchen needs of the Ebensburg Center, a state owned facility. The net electric power production capacity of the facility will be 44 MW. The primary source of energy will be bituminous coal waste. Construction of the facility is scheduled to commence in December 1987.

2. Texaco USA

[Docket No. QF86–1066–000]

On September 16, 1986, Texaco USA (Applicant), of P.O. Box 10269, Bakersfield, California 93389, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Monterey County, California and will consist of two combustion turbine generators and a heat recovery steam generator. Steam recovered from the facility will be used in thermal enhanced oil recovery. The electric power production capacity of the facility will be 49 MW. The primary source of energy will be natural gas. The facility is scheduled to begin operation July 1, 1988.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–23649 Filed 10–17–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP86–104–002 and CP86–589–000]

Colorado Interstate Gas Co.; Compliance Filing

October 15, 1986.

Take notice that on October 3, 1986, Colorado Interstate Gas Company (CIG) tendered for filing Substitute Original Sheet Nos. 8, 9, and 13 to its FERC Gas Tariff, Original Volume No. 1–A. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the approximate filing fee, which in the instant case was not until October 8, 1986.

CIG states that this filing is in compliance with Ordering Paragraph (D) of the Commission's Order issued September 29, 1986 in Docket Nos. RP86–104–001 and CP86–589–000, which required CIG to refile Original Sheet Nos. 8, 9 and 13 within five days of the issuance of the Order to reflect the elimination of section 7.3. Section 7.3 provided a mechanism by which a firm transportation customer's entitlement to capacity would be reduced to the extent that the capacity was not utilized for a period of time. CIG indicates that its elimination of this section from the referenced tariff sheets is without prejudice to CIG's right to continue to assert in these consolidated proceedings that such a mechanism is properly included in its firm transportation tariff.

CIG requests an effective date of September 5, 1986 for Substitute Original Sheet Nos. 8, 9, and 13. Copies of this filing were sent to each person designated on the official service list in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 22, 1986. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–23650 Filed 10–17–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–112–017]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 15, 1986.

Take notice that Columbia Gas Transmission Corporation (Columbia Gas), on October 7, 1986, tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective October 2, 1986:

Substitute Original Sheet No. 22C
Substitute Original Sheet No. 22F
Substitute Original Sheet No. 22O
Substitute Original Sheet No. 22Q

Columbia Gas states that these changes are being filed to comply with the Commission's order issued October 2, 1986 in the captioned docket.

It is stated that the tariff sheets submitted contain a notation that the penalty provisions of section 6 of both Columbia Gas' FTS and ITS Rate Schedules have been stayed pending final Commission action on the May 21, 1986 Offer of Statement submitted in Docket No. RP86–15, *et al.*, and that a new section 6A has been added, effective during the interim, to incorporate the applicable penalty provisions from the previously-effective GTS Rate Schedule.

Copies of the filing were served upon the Company's jurisdictional customers, interested state regulatory commissions, and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedures. All such motions or protests should be filed on or before October 22, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–23651 Filed 10–17–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–108–016]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

October 15, 1986.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on October 7, 1986, tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective as of October 2, 1986:

Substitute Original Sheet No. 161
Substitute Original Sheet No. 163
Substitute Original Sheet No. 200
Substitute Original Sheet No. 202

Columbia Gulf states that these changes are being filed to comply with the Federal Energy Regulatory Commission's (Commission) order issued October 2, 1986 in the captioned docket.

It is stated that the tariff sheets submitted contain a notation that the penalty provisions of section 6 of both Columbia Gulf's FTS–1 and ITS–1 Rate Schedules have been stayed pending final Commission action on the May 21, 1986 Offer of Settlement submitted in Docket No. RP86–14, *et al.*, and that a new section 6 has been added, effective October 2, 1986, to incorporate the applicable penalty provisions from the old GTS–1 Rate Schedule.

Copies of the filing were served upon Columbia Gulf's jurisdictional customers, interested state regulatory commissions, and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedures. All such motions or protests should be filed on or before October 22, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–23652 Filed 10–17–86; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of September 29 Through October 3, 1986

During the week of September 29 through October 3, 1986, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Exxon Company U.S.A., 10/1/86, KFA–0053

Exxon Company U.S.A. filed an Appeal of a denial of its Freedom of Information Act request. Exxon had requested documents concerning construction of terms used in Ruling 1975–2. The Director of the Office of Management and Information Systems of the Economic Regulatory Administration denied Exxon's request on the grounds that responsive records could not be located or did not exist. The Office of Hearings and Appeals denied the Appeal, finding that Exxon's original request was overly broad and unreasonably disruptive or burdensome in contravention of 10 C.F.R. 1004.4(c).

Ronald Couch, 10/2/86, KFA–0054

Ronald Couch filed an Appeal from a denial by the Office of Safeguards and Security of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that Couch's request was properly denied because responsive documents do not exist in DOE records. The Appeal was therefore denied.

Request for Exception

McLain Truck Service, Inc., 10/1/86, KEE–0028

McLain Truck Service, Inc. filed an Application for Exception from the requirement to file Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Sales Report," Form EIA–821, "Annual Fuel Oil and Kerosene Sales Report," and Form EIA–863, "Petroleum Product Sales Identification Survey." In evaluating the request, the DOE found that the firm had shown that it faced a higher burden in filing the EIA–782B form than other reporting firms, due to a severe reduction in business and staffing. The DOE found that the visibility of the firm was threatened, and thus that the burden of completing the final six forms it was required to file outweighed the interest of the nation in the survey data. DOE also excused the firm from the requirement to file Form EIA–821 for 1985, based on EIA's statement that firms are not required to file both EIA–821 and EIA–863. Finally, the DOE found that McLain did not experience a burden in filing Form EIA–863 sufficient to outweigh the public interest in obtaining the survey data. Accordingly, exception relief from filing Form EIA–863 was denied.

Motions for Discovery

Apache Oil Company, Inc., 9/29/86, KRD–0001

Apache Oil Company, Inc. filed a Motion for Discovery in connection with its Statement of Objections to a Proposed Remedial Order issued to the firm on April, 30, 1985. In the PRO, the Economic Regulatory Administration (ERA) alleges that Apache charged prices for regular, premium and unleaded motor gasoline that exceeded the Maximum Lawful Selling Prices (MLSP) set forth in 10 C.F.R. § 212.93. In its Motion for Discovery, Apache sought: (i) ERA's production of all documents pertaining to, discussing, or reflecting ERA's or DOE's policy of selecting the "nearest comparable outlet" establishing a "new market," establishing the "first sale as a basis for a firm's MLSP, and selecting Ada Oil Company as the nearest comparable outlet, and (ii) ERA's production of all documents reflecting ERA's consideration of Apache's classes of purchaser and workpapers which support ERA's allegations in the PRO. The OHA granted Apache's Motion for Discovery in part. The Decision and Order stated that the ERA should make available its final audit workpapers showing (i) the manner in which Ada's records were used by the ERA to impute base prices and costs for Apache and (ii) the manner in which the ERA calculated increased costs, including "allowable non-product" and "banked" product costs, in determining the amount of overcharges alleged in the PRO.

Houston Oil and Refining, Inc., Joseph A. Imparato, 10/2/86, HRD–0263, HRH–0263, KRZ–0044

Houston Oil and Refining, Inc. (HOR) filed Motions for Discovery and Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order issued to it by the Economic Regulatory Administration (ERA). HOR sought (1) administrative record discovery regarding various DOE rulemakings applicable to crude oil resellers; (2) contemporaneous construction discovery regarding the DOE's interpretation and implementation of its crude oil reseller price regulations; and (3) discovery related to the basis for ERA's contention of regulatory violations in the Proposed Remedial Order. The DOE found that HOR failed to show that the applicable regulations—10 CFR 205.202, 210.62(c), 212.183 and 212.186—were significantly ambiguous to warrant contemporaneous construction discovery or that administrative record discovery other than the publicly available official record should be granted. The Motion for Discovery was accordingly denied.

In its Motion for Evidentiary Hearing, HOR sought to establish that a genuine dispute of material fact existed with respect to the types of services that may be considered "historically and traditionally associated with the resale of crude oil" for the purposes of 10 CFR 212.186. The DOE found no genuine dispute of fact under the facts of this case as presented by the firm. However, the firm was given the opportunity to present documentary evidence in support of its claim of genuine factual dispute. Accordingly, the Motion for Evidentiary Hearing was denied without prejudice to the filing of a new motion based on additional documentary materials.

In his Motion to Dismiss, Joseph A. Imparato (Imparato), president and chairman of the board of HOR, requested that he be dismissed from the proceeding. Because one set of facts alleged by the ERA, if true, would be sufficient to establish a *prima facie* case holding Imparato liable for the firm's alleged violations, the DOE denied this motion as well.

Interlocutory Order

Highway Oil Company, Inc., 10/3/86, KRZ–0035

On June 1, 1985, Highway Oil Company, Inc. filed a Motion to File Supplemental Information in which the firm requested that the DOE accept into the record of the underlying enforcement proceeding a supplement to the firm's Statement of Objections and new factual documents. In denying the firm's request, the DOE stressed that despite numerous opportunities to present this material, Highway delayed submitting this evidence until eight years after the commencement of this proceeding. In light of the firm's inexcusable dilatory conduct and in the absence of any countervailing public interest, the DOE denied the request to supplement the record.

Implementation of Special Refund Procedures

Cloyce K. Box, 10/1/86, HEF–0041

The DOE issued a Decision and Order which established procedures to be used in evaluating claims for refunds from the $500,000 settlement fund obtained through a consent order entered into by Cloyce K. Box and the DOE. The settlement fund was provided by Box to settle alleged pricing violations which occurred in motor gasoline sales made on Box's behalf by certain brokers in specific transactions. The transactions covered by the Box consent order were motor gasoline sales made by Adams Oil Co. of Guymon, Oklahoma between April 2, 1974 and July 30, 1974, and by Ritco, Inc. of Waco, Texas during the period from March 21, 1974 through June 13, 1974. Refunds will be made to applicants who can demonstrate that they were injured as a result of either firm's pricing practices during the relevant time period. However, a reseller applicant whose claim is for $5,000 or less and end-users of the gasoline need only document their purchase claims in order to receive a refund. Spot purchasers will have to rebut the presumption of non-injury in order to receive a refund regardless of the size of their claimed refund.

Ferrell Companies, Inc., Lakes Gas Company, Inc., 9/30/86, HEF–0587, HEF–0112

The DOE issued a Decision and Order implementing a plan to distribute $106,500 received as a result of DOE consent orders with Ferrell Companies, Inc. (Ferrell) and Lakes Gas Company, Inc. (Lakes). The DOE decided to distribute the Ferrell and Lakes settlement funds to both identified and as yet unidentified customers who purchased propane from Ferrell between October 1, 1973, and January 27, 1981, or from Lakes between November 1, 1973, and February 29, 1980. The Decision describes the specific information required in refund applications.

UPG, Inc., 10/1/86 KEF–0026

The Department of Energy issued a Decision and Order implementing a plan to distribute $450,000 (plus accrued interest) received from UPG, Inc. (formerly known as P&O Falco, Inc.). Although the UPG/Falco Consent Order was global on its face, the DOE determined that the entire consent order amount was attributable solely to Falco's non-crude oil activities. Therefore, only persons who base their claim on alleged refined product overcharges may receive a refund from the UPG/Falco consent order fund.

The DOE determined that the UPG/Falco monies should be distributed using a two-stage refund proceeding. During the first stage, the DOE will refund monies to customers who purchased Falco refined products during the settlement period. If funds remain after this first stage is completed, a second stage may become necessary. First stage applications for refund must be submitted by February 1, 1987.

Refund Applications

Conoco Inc./Harold Dickey Oil et al., 9/30/86, RF220–308 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund. Each of the applicants had purchased refined petroleum products from Conoco Inc., and each sought a portion of the settlement fund obtained by the DOE through a consent order with Conoco. All of the 50 firms applied for refunds based upon the procedures for filing small claims outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the applications, the DOE concluded that all of the applicants should receive a refund, based on the volumetric per gallon refund amount established in the *Conoco* Decision. The total amount of refunds granted was $67,151.

Conoco Inc./ Kidds Oil Co. Inc et al., 9/29/86, RF220–184 et al.

The DOE issued a Decision and Order concerning 26 Applications for Refund. Each of the applicants had purchased refined petroleum products from Conoco Inc., and thus sought a portion of the settlement fund obtained by the DOE through a consent order with Conoco. All of the 26 firms applied for refunds based upon the procedures for filing small claims outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the applications, the DOE concluded that all of the applicants should receive a refund, based on the volumetric per gallon refund amount established in the *Conoco* Decision. The total amount of refunds granted was $33,592.

Crystal Oil Co./ Kerr-McGee Corp., Dynamic Industries, Chevron U.S.A. Inc., 10/1/86, RF233–27, RF233–34, RF233–37

The DOE issued a Decision and Order concerning Applications for Refund filed by Kerr-McGee Corp., Chevron U.S.A. Inc., and Dynamic Industries, who resold petroleum products purchased from Crystal Oil Company. All three applicants purchased petroleum products only on a sporadic basis from Crystal, and were therefore considered spot purchasers. In *Crystal Oil Company*, 13 DOE ¶ 85,361 (1986), the DOE established the rebuttable presumption that spot purchasers were generally not injured by the alleged Crystal overcharges. Since none of the applicants rebutted this presumption, their Applications for Refund were denied.

Marathon Petroleum Company/A.&C. Carriers, Inc. et al., 9/2/86, RF250–816 et al.

The DOE issued a Decision and Order concerning 31 Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applications were evaluated in accordance with the procedures set forth in *Marathon Petroleum Co.*, 14 DOE ¶ 85,289 (1986). The sum of the refunds approved in this Decision is $40,534, representing $38,694 in principal and $1,840 in interest.

Marathon Petroleum Company/Agee's Marathon et al., 9/29/86, RF250–1109 et al.

The DOE issued a Decision and Order concerning 65 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $57,079 in principal and $2,719 in interest.

Marathon Petroleum Company/ Black Hills Oil Marketers, Inc., 9/30/86, RF250–1316

The DOE issued a Decision and Order concerning an Application for Refund, filed by Eighty Eight Oil Company on behalf of Black Hills Oil Marketers, Inc., in connection with a consent order fund made available by Marathon Petroleum Company. The applicant demonstrated the volume of Black Hills' Marathon purchases, and was granted a refund under the small claims presumption of injury. The sum of the refund granted in this decision is $413 in principal and $20 in interest.

Marathon Petroleum Company/Jefferson Ice Company, 10/2/86, RF250–1233, RF250–1234

The DOE issued a Decision and Order concerning an Application for Refund filed by the Jefferson Ice Company in connection with a consent order fund made available by Marathon Petroleum Company. Jefferson demonstrated that it purchased 22,084,152 gallons of covered product from Marathon, but did not make a detailed showing of injury. Accordingly, Jefferson was granted a refund under the small claims presumption of injury. The sum of the refund granted in this Decision is $5,000 in principal and $250 in interest.

Marathon Petroleum Company/Naser Oil Company, 9/29/86, RF250–1283

The DOE issued a Decision and Order concerning the Application for Refund filed by Naser Oil Company, a purchaser of middle distillates covered by a consent order into which the agency entered with Marathon Petroleum Company. Naser demonstrated that it purchased 809,108 gallons of covered product from Marathon during the consent order period. Although Naser's original claim totaled 837,108 gallons, 28,000 gallons purchased in January and February 1973, before petroleum product prices were controlled, were not covered and therefore were not accepted as part of the Naser's claim. Under the small claims presumption, the refund approved in this Decision is $340 in principal and $16 in interest.

Mobil Oil Corporation/Albe Service Stations Inc. et al., 9/29/86, RF225–5332 et al.

The DOE issued a Decision granting 51 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $28,458 ($23,878 principal plus $4,580 interest).

Mobil Oil Corporation/Albury Town School District et al., 10/2/86, RF225–5032 et al.

The DOE granted 24 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the presumptions established in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $2,959; $2,484 in principal plus $475 in interest.

Mobil Oil Corporation/Allen Vander Molen et al., 10/2/86, RF225–5933 et al.

The DOE issued a Decision granting 85 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $23,668 ($19,824 principal plus $3,844 interest).

Mobil Oil Corporation/Anderson Oil Company et al., 10/3/86, RF225–307 et al.

The DOE issued a Decision granting 48 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $39,122 ($32,773 principal plus $6,349 interest).

Mobil Oil Corporation/Andy's Service Station et al., 10/1/86, RF225–2893 et al.

The DOE issued a Decision granting 73 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $20,754.

Mobil Oil Corporation/Forestville Central School et al., 9/29/86, RF225–2446 et al.

The DOE granted Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the presumptions established in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $9,992; $8,400 in principal plus $1,592 in interest.

Mobil Oil Corporation/Spring Brook Ice and Fuel, 9/29/86, RF225–10270

The DOE issued a Decision concerning an inadvertent overpayment of $1,375 to Spring Brook Ice and Fuel. A computer check revealed that the firm had received two refunds for its purchases of heating oil from Mobil. Accordingly, the firm was ordered to remit $1,375, plus $2 accrued interest, to the DOE.

National Helium Corp./New Jersey, 10/3/86, RQ3–287

The DOE issued a Decision and Order denying a proposed second-stage refund plan submitted by the State of New Jersey pursuant to a Decision and Order establishing procedures for the disbursement of funds obtained under a consent order with National Helium Corporation. New Jersey requested $175,000 for a traffic light synchronization project in Atlantic City. The DOE determined that New Jersey's proposed plan would disproportionately benefit injured consumers in a small area of the state.

Petrolane-Lomita Gasoline Co./Shawgo Gas Service, 10/1/86, RF208–4

Shawgo Gas Service filed a refund application in the Petrolane-Lomita Gasoline Company refund proceeding pursuant to special refund procedures established in *Thompson Oil Co.*, 12 DOE ¶ 85,126 (1985). Shawgo claimed a refund based on purchases of 5,771,171 gallons of propane from Petrolane. Since the firm's claim did not exceed the threshold level of $5,000, the DOE granted a refund to Shawgo on the volumetric allocation basis without requiring a detailed showing of injury. Shawgo was granted $2,657.50 in principal and $883.50 in accrued interest.

Sid Richardson Carbon and Gasoline Company/Drews Oil Co., Inc., Shawgo Gas Service, 9/29/86, RF26–38, RF26–33

Drews Oil Co., Inc. and Shawgo Gas Service each filed a refund application in the Sid Richardson Carbon and Gasoline Company refund proceeding. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983). Drews claimed that it purchased 2,175,740 gallons of natural gas liquid products from Sid Richardson during the consent order period. Shawgo claimed a purchase of 477,985 gallons. Since in none of the months during the consent order period did the purchase volume of either firm exceed the threshold level of 60,000 gallons, the DOE granted a refund to those firms on the volumetric allocation basis without requiring a detailed showing of injury. Drews was granted $13,687.58 in principal and $14,803.42 in accrued interest. Shawgo was granted $3,055.07 in principal and $3,303.93 in accrued interest.

Stinnes Interoil, Inc./Tesoro Petroleum Corporation, 9/30/86, RF125–5

The DOE issued a Decision and Order concerning an Application for Refund filed by Tesoro Petroleum Corporation (Tesoro), a purchaser of motor gasoline covered by a consent order the DOE entered into with Stinnes Interoil, Inc. (Stinnes). Based on the principles established for evaluating similar refund applications in previous Decisions, the DOE concluded that the applicant was injured. Therefore, the DOE granted Tesoro a refund of $68,535.20. However, the DOE also determined that it would not be appropriate to issue the refund directly to Tesoro at the present time since the firm is a respondent in two enforcement proceedings currently before the Office of Hearings and Appeals. Pending the outcome of these enforcement proceedings, the DOE concluded that the refund of $68,535.20 should be deposited into a separate interest-bearing escrow account on behalf of Tesoro.

Union Texas Petroleum Corporation/Graf Petroleum, Inc. et al., 9/30/86, RF140–31 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by four resellers of Union Texas Petroleum Corporation (UTP) petroleum products. The applications were filed in a special refund proceeding (Case No. HEF–0009) established by the Office of Hearings and Appeals pursuant to 10 CFR Part 205, Subpart V, to distribute funds remitted to the DOE by UTP under a 1982 consent order.

Three of the applicants in this proceeding elected to apply under both the volumetric and small claims presumptions set forth in the Decision establishing the UTP special refund procedures. *Union Texas Petroleum Corp.*, 12 DOE ¶ 85,166 (1985). In considering those applications, the DOE concluded that the applicants should receive refunds based upon the total volume of their eligible UTP purchases. The fourth applicant applied for a refund in excess of the $5,000 threshold (principal amount) established for the UTP proceeding. In evaluating this application, the DOE concluded that the data provided by the applicant showing "banks" of unrecouped costs and competitive disadvantage constituted sufficient evidence of injury to warrant the approval of a refund for all of its eligible purchase volumes. The refunds granted in this proceeding total $18,160.

Vickers Energy Corp./Minnesota, Belridge Oil Co./Washington, Standard Oil Co. (Indiana)/Washington, Coline Gasoline Corp./Rhode Island, National Helium Corp./Rhode Island, Standard Oil Co. (Indiana)/ North Carolina, Belridge Oil Co./North Carolina, 9/30/86, RQ1–293, RM8–32, RM21–33, RQ2–317, RQ3–318, RM21–34, RM8–35

The DOE issued a Decision approving the second-stage refund plans submitted by the States of Minnesota, Washington, Rhode Island, and North Carolina. Minnesota will use $27,430, plus accrued interest, from Vickers Energy Corp. for the Community Energy Council Program, which provides grants for energy conservation activities. The Vickers funds cannot be disbursed at this time because of pending litigation. Washington will add $6,000 of previously-approved Belridge Oil Co. and Amoco Oil Co. funds to its Alternative Fuels Program. Rhode Island will use $142,282 from Coline Gasoline Corp. and National Helium Corp. to print, distribute, and promote a state-wide bus system map. North Carolina will use $79,000 of previously-approved Amoco and Belridge funds to purchase Trawl Efficiency Devices and to promote the use of bus service within cities.

Dismissals

The following submissions were dismissed:

Name and Case No.

Barnes Energy Service, RF26–49
Benton Airport, Inc., RF225–1129
Butler Hill Texaco, RF148–8
Central Oregon Oil Co., RF167–8
Dept. of Interior (Lunday-Thagard), Hee–0096, HEZ–0216, HEZ–0217, HED–0231
Dept. of Interior (Howell), HEE–0159, HEZ–0200, HES–0049
Dept. of Interior (Tipperary), HEE–0092, HED–0219, HEZ–0208, HEZ–0207, HEZ–0225
Dept. of Interior (Western), HEE–0116
Haney Oil Company, RF225–9885, RF225–9886
Harold C. Grenier, RF225–2778, RF225–2779
Hirschburg, Peter L., KEF–0063
Home Petroleum Corporation, RF7–139, RF26–51, RF220–395, RF220–400, RF83–151, RF44–5, RF55–2
Home Petroleum Corporation, RF64–2, RF108–18, RF116–8, RF123–2, RF208–6,. RF253–3
J.C. Bangerter & Son's, Inc., RF125–2, RF152–1
Magnum Corporation, RF233–31
Mellon Enterprises, Inc., RF28–50, RF40–3280, RF108–19
National Helium/NV, RQ3–294
Triangle Gasoline Co., RF250–1301
United El Segundo Inc., RF225–363
Walter R. Benjamin, RF225–7352, RF225–7353, RF225–7354

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 10, 1986.

[FR Doc. 86–23570 Filed 10–17–86; 8:45 am]

BILLING CODE 6450–01–M

Issuances of Decisions and Orders; Week of September 15 through September 19, 1986

During the week of September 15 through September 19, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Gregg R. Potvin, 9/19/86, KFA–0051

Gregg R. Potvin filed an Appeal from a denial by the Director of Office Management and Information Systems of the Economic Regulatory Administration (ERA) of the Request for Information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that release of the names of reseller-retailer firms under audit by the ERA which were withheld under Exemption 7A would not interfere with ERA enforcement proceedings. Accordingly, the DOE determined that the Appeal should be granted and the requested information released.

Multinational Monitor, 9/18/86, KFA–0050

Multinational Monitor, a nonprofit monthly news magazine, and Marcy Burnstiner, a reporter for Multinational Monitor, filed an Appeal from a refusal by the Chief of Freedom of the FOI and Privacy Acts Branch, Office of Administrative Services, to issue a decision concerning a Request for Information which they had submitted under the Freedom of Information Act (the FOIA). Specifically, the Chief declined to make a determination concerning the requester's petition for a fee waiver until the records sought by the associated FOIA request had been located and reviewed, and until the requesters had agreed to pay any fees assessable for such a search. In considering the Appeal, the DOE found that the DOE criteria for determining fee waivers, 10 CFR 1004.9(a)(1), do not support the Chief's refusal to issue a determination in this case. Accordingly, the Appeal was remanded for a determination of the requesters' fee waiver petition.

Nourse & Associates, 9/18/86, KFA–0049

Nourse & Associates filed an Appeal from a partial denial by the Western Area Power Authority (WAPA) of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that WAPA was generally correct in withholding information under Exemptions 4 and 5. Some documents, however, that were withheld under Exemption 5 were not deliberative and should have been disclosed. In addition, the record was insufficient to determine the releasability of a number of other documents. Accordingly, the Appeal was granted in part, and several documents were remanded for further findings.

Remedial Order

RFB Petroleum, Inc., 9/18/86, HRO–0135

RFB Petroleum, Inc., and related parties, objected to a Proposed Remedial Order which was issued to them by the Economic Regulatory Administration. The PRO alleged that RFB's crude oil reselling activities had violated the layering rule, 10 CFR 212.186. The PRO also alleged that these activities violated the normal business practices and anti-circumvention rules, 10 CFR 205.202, 210.62(c).

The DOE found no merit to RFB's argument that the layering regulation was not validly promulgated. The DOE held that the layering rule required crude oil resellers to provide some tangible service which facilitated the movement of crude oil from the producer to the refiner or which provided some other function of economic benefit to the crude oil market, and that RFB had not provided such a service or function. The DOE found that these activities also violated the normal business practices and anti-circumvention rules. These rules were found to have been violated by RFB for transactions occurring both before and after the effective date of layering rule.

The DOE further found that RFB and RFB Trading Company, Inc., a sister corporation, should each be held liable for those transactions in which they participated. Robert F. Brown, the principal owner and officer of these two corporations, was found to be jointly and severally liable for the entire overcharge amount on the following two independent bases: (i) Because he disregarded the corporate forms and (ii)

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because he benefited from and was the animating force behind the corporations' illegal activities. CMC Oil Company, an unrelated corporation, was found to have been a joint venturer with the Brown firms in some of the transactions at issue and was on this basis held jointly liable for the overcharges resulting from the transactions in which it participated. The DOE reduced the overcharge amount to the total revenue received by the respondents less their total crude oil cost. As so modified, the PRO was issued as a final Order.

Request for Exception

Park Corner Oil Co., 9/17/86, KEE-0047

Park Corner Oil Co. filed an Application for Exception from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-863, entitled "Petroleum Product Sales Identification Survey." In considering the request, the DOE found that the firm had not shown that it was more adversely affected by the reporting requirements than over reporting firms. Accordingly, exception relief was denied.

Implementation of Special Refund Procedures

Cranston Oil Service Company, Inc., 9/19/86, KEF-0029

The DOE issued a Decision and Order implementing a plan for the distribution of $60,382.82 plus interest, received as a result of a 1977 Consent Order entered into by the DOE and Cranston Oil Service Company, Inc. (Cranston) and its successor-in-interest, Galego Oil Company. The Decision sets forth refund application procedures for customers who purchased No. 2 heating oil from Cranston during the period covered by the Consent Order—November 1, 1973 through May 29, 1976. Specific information regarding the data to be included in refund applications is discussed in the Decision.

Refund Applications

Crystal Oil Company, Blevons Country Store, et al., 9/16/86, RF233-2 et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund from the Crystal Oil Company consent order fund. The Applicants were resellers, end-users, and two firms with both end-user and reseller operations. Each applicant presented evidence that it purchased refined petroleum products from Crystal during the consent order period. The resellers' claims were at or below the $5,000 threshold amount. According to the methodology set forth in *Crystal Oil Company*, 13 DOE ¶ 85,361 (1986), each applicant was found to be eligible for a refund from the Crystal consent order fund based on the volume of its eligible purchases times the volumetric refund amount. The refunds approved in the Decision total $25,475.

Eastern of New Jersey, Inc./Alberta Poskanzer, Mediterranean Towers, 9/16/86, RF232-419, RF232-420

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were end-users who purchased No. 4 residual fuel oil from Eastern. In its Decision, the DOE granted the two applications under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶ 85,364 (1986). The refunds granted total $8,032, representing $3,721 in principal and $2,311 in interest.

Eastern of New Jersey, Inc./Town Fuel Company et al., 9/16/86, RF232-328 et al.

The DOE issued a Decision and Order concerning 25 Applications for Refund filed in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were either end-users or resellers whose purchases of No. 4 residual fuel oil from Eastern rendered them eligible for a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the two applications under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶ 85,364 (1986). The refunds granted total $11,185, representing $6,697 in principal and $4,288 in interest.

Everette Truck Line, Inc. 9/18/86, RF270-2

The DOE issued a Decision and Order in connection with its administration of the $10,750,000 escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonage to be used as a basis for the refund which will ultimately be issued to a trucking firm applicant, Everette Truck Line. The DOE found that Everette purchased 4,632,304 gallons of diesel fuel during the August 4, 1973 through January 27, 1981 settlement period. The DOE stated that since the size of an individual surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved for refund, the actual amount of Everette's refund would be determined at a later date.

Gulf Oil Corporation/Chuck Johns Gulf Service et al., 9/16/86, RF40-150 et al.

The DOE issued a Decision and Order concerning 26 Applications for Refund filed by retailers and resellers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1976 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $31,239, representing $25,751 in principal and $5,488 in accrued interest.

Gulf Oil Corporation/Druid Hills Gulf et al., 9/17/86, RF40-2394 et al.

The DOE issued a Decision granting 23 Applications for Refund from the Gulf Oil Corporation consent order fund filed by retailers of Gulf refined products. In considering the applications, the DOE found that each of the claimants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Accordingly, the firms were granted refunds which total $25,536, representing $20,908 in principal plus $4,630 in interest.

Gulf Oil Corporation/Fletcher Oil Co., Tesoro Petroleum Corp., 9/18/86, RF40-1462, RF40-1452

Fletcher Oil Company and Tesoro Petroleum Corporation each filed a refund application in the Gulf Oil Corporation refund proceeding. *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). Fletcher purchased Gulf gasoline from Tesoro. The DOE found that in its resales for Gulf gasoline to Fletcher, Tesoro received a markup on a per gallon basis, and effectively passed on the alleged overcharges to Fletcher. Thus, based on its purchase volume, the DOE granted Fletcher a refund of $33,040.80 ($27,053.56 in principal and $5,987.26 in accrued interest). Except for its resales to Fletcher, Tesoro demonstrated that it absorbed the alleged overcharges in its purchase and resale of Gulf products. Tesoro therefore was granted a refund of $16,249.79, representing $13,305.20 in principal and $2,944.59 in accrued interest.

Marathon Petroleum Company/Baioni's Service Station, et al., 9/15/86, RF250-745 et al.

The DOE issued a Decision and Order concerning 36 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $33,415 in principal and $1,511 in interest.

Marathon Petroleum Company/Bennett's Colonial Marathon, et al., 9/17/86, RF250-785 et al.

The DOE issued a Decision and Order concerning 36 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $28,430 in principal and $1,206 in interest.

Marathon Petroleum Company/Carsten McDougall Wingett, Inc., 9/15/86, RF250-1161, RF250-1162

The DOE issued a Decision and Order concerning two Applications for Refund filed by Carsten McDougall Wingett, Inc. (Carsten), in connection with a consent order fund made available by Marathon Petroleum Company (Marathon). Carsten sought a refund of $8,358, its volumetric share of the Marathon consent order funds. As Carsten declined to made a demonstration of injury, the DOE considered it appropriate to limit its refund to the $5,000 small claims threshold. Accordingly, Carsten was granted a refund of $5,000 in principal and $214 in interest from the Marathon consent order fund.

Mobil Oil Corporation/Al's Mobil Service Center et al., 9/17/86, RF225-2970 et al.

The DOE issued a Decision and Order granting 48 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers, and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $28,006 ($23,554 in principal plus $4,452 in interest).

Mobil Oil Corporation/Al's Service Station, Inc. et al., 9/17/86, RF225-3946 et al.

The DOE issued a Decision and Order granting 47 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $22,809 ($19,267 in principal plus $3,452 in interest).

Mobil Oil Corporation/Ben Lei et al., 9/17/86, RF225-7731 et al.

The DOE issued a Decision and Order granting 74 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $24,818 ($20,870 in interest).

Mobil Oil Corporation/Big John's et al., 9/17/86, RF225-1516 et al.

The DOE issued a Decision and Order granting 33 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers, of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $15,134 ($12,781 in principal plus $2,353 in interest).

Mobil Oil Corporation/City of Memphis et al., 9/16/86, RF225-2446 et al.

The DOE issued a Decision and Order granting 17 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable volumetric shares pursuant to the provisions of *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $1,863 ($1,569 in principal plus $294 in interest).

Northeast Petroleum Industries/New Hampshire, et al., 9/16/86, RQ25-289 et al.

The State of New Hampshire filed second-stage refund plans for funds remitted to the DOE under consent orders with Northeast Petroleum Industries, National Helium Corp., Coline Gasoline Corp. and Standard Oil Co. (Indiana). The DOE approved in part the proposed refund plans to use $75,000 allotted to the State from the escrow accounts established pursuant to those consent orders. Approved portions of those plans proposed to use the funds to produce or reprint six publications on conservation and renewable energy; to conduct a series of workshops and a correspondence course on energy efficient construction; and to finance an advertisement campaign, the production of a videotape and demonstration projects on energy conservation. The DOE rejected the State's proposal to use part of the funds to publish a pamphlet on used motor oil recycling in New Hampshire, since such an environmentally-oriented program did not provide proper indirect restitution to injured motor gasoline consumers. The total funds including interest approved for distribution in these proceedings are $74,258.

Dismissals

The following submissions were dismissed:

Name and Case No.

Hood Goldsberry & Goldsberry Operintng Co., Inc., HRO-0287, HRD-0287, HRD-0289
NGL Supply Inc., RF7-143, RF28-52, RF37-18, RF40-3384, RF84-3, RF108-20, RF192-21, RF204-11, RF208-7, RF220-398, RF225-10236, RF235-20, RF252-8
Rocket Oil Co., KEE-0067
Southern Bell Telephone & Telegraph Co., RF21-12625
Standard Oil Co. (IN)/AMOCO, HEG-0008
Tampa Electric Co., RF209-2

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 10, 1986.

[FR Doc. 86-23618 Filed 10-17-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 22 Through September 26, 1986

During the week of September 22 through September 26, 1986, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Supplemental Order

Beacon Oil Co., 9/26/86; KFX-0022

The DOE issued a Supplemental Order in which it revised a prior Decision and Order establishing procedures for the disbursement of funds obtained as a result of a Consent Order entered into by Beacon Oil Company and the DOE. Specifically, the DOE adjusted the volumes of Beacon product included in the computation of the volumetric factor for the Beacon refund proceeding. Accordingly, the volumetric factor in the Beacon Oil Company Special Refund Proceeding was raised to $0.015277 per gallon.

Implementation of Special Refund Procedures

La Gloria Oil and Gas Co., 9/22/86; HEF-0210

The DOE issued a Decision and Order implementing procedures for the distribution of $646,614 remitted by the La Gloria Oil and Gas Company pursuant to a consent order entered into with the DOE. The Decision stated that purchasers of La Gloria product during the period November 1, 1973 through May 30, 1979 who were injured by La Gloria's alleged overcharges may apply for refunds from the consent order fund. The Decision further provided that reseller claimants who limit their claims to $5,000 and end-users would not be required to prove that they absorbed the alleged overcharges.

Refund Applications

Gulf Oil Corp./A.N. Rusche Distributing Co., 9/22/86; RR40-2

The DOE issued a Decision and Order concerning a Request for Reconsideration of a Decision denying in part an Application for Refund filed by A.N. Rusche Distributing Company in the Gulf Oil Corporation special refund proceeding. Rusche had requested a refund of $46,692 plus interest. In order to receive such a refund, Rusche was obliged to show that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Upon reconsideration, the DOE concluded that for all but two months of the period November 1973 through January 1976, the firm had made the requisite showing. Accordingly, it received an additional refund of $39,657 in principal and $8,451 in interest.

Marathon Petroleum Co./Aker's Marathon, et al., 9/26/86; RF250-1245, et al.

The DOE issued a Decision and Order concerning 28 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refund approved in this Decision is $19,562 in principal and $932 in interest.

Marathon Petroleum Co./Alexanders Willow Knolls Marathon, et al., 9/26/86; RF250-1196, et al.

The DOE issued a Decision and Order concerning 37 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $26,926 in principal and $1,281 in interest.

Marathon Petroleum Co./Pannell and Moore Oil Co., 9/23/86; RF250–1302.

The DOE issued a Decision and Order concerning an Application for Refund filed by Pannell & Moore Oil Co., in connection with a consent order fund made available by Marathon Petroleum Company. Pannell sought a refund of $9,008, its volumetric share of the Marathon consent order funds. As Pannell did not attempt to demonstrate injury, the DOE limited the refund to the $5,000 small claims threshold. Accordingly, Pannell was granted a refund of $5,000 in principal and $238 in interest from the Marathon consent order fund.

Mobil Oil Corp./A.P.J.C. Service Station Inc., et al., 9/22/86; RF225–4631, et al.

The DOE issued a Decision and Order concerning 51 Applications for Refund, filed by retailers and resellers of refined petroleum products, seeking a portion of the settlement fund made available by Mobil Oil Corporation. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* implementation order. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $29,765 ($25,038 in principal plus $4,727 in interest).

National Helium Corp./Idaho, 9/22/86; RQ3–310.

The State of Idaho filed a second-stage refund plan for the use of funds obtained by the DOE under a consent order with National Helium Corporation. Idaho proposed to use the refund to fund traffic light synchronization in two Idaho cities. The DOE concluded that Idaho's restitutionary plan would benefit consumers injured by the alleged overcharges. Accordingly, a refund of $5,767 ($3,000 in principal plus $2,767 in interest) was approved.

Quaker State Oil Refining Corp./Bettis Corp., et al., 9/26/86; RF213–0167, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by three resellers of Quaker State Oil Refining Corporation refined petroleum products. Each applicant presented evidence that it purchased refined petroleum products from Quaker State during the consent order period and claimed a refund at or below the $5,000 small claims threshold level. Each applicant was found to be eligible for a refund from the Quaker State consent order fund based on the entire volume of its claimed purchases. The refunds plus interest totaled $9,861.

Stinnes Interoil, Inc./Apex Oil Co., 9/23/86; RF125–4.

The DOE issued a Decision and Order concerning an Application for Refund filed by Apex Oil Company, a reseller of motor gasoline, from a consent order fund made available by Stinnes Interoil, Inc. The DOE found that Apex had banks of unrecouped product costs and that the prices it paid for Stinnes motor gasoline were higher than average market prices. Therefore, the DOE concluded that Apex was injured and granted the firm a refund of $27,465.37 representing its full volumetric share of $18,158.62 and $9,306.75 in accrued interest.

Vickers Energy Corp./Oklahoma, 9/22/86; RQ1–297.

The State of Oklahoma filed a second-stage refund plan for use of funds obtained by the DOE under a consent order with Vickers Energy Corp. Oklahoma proposed to use the moneys to fund three programs: (i) A pooled self-insurance program for the State's public transportation systems; (ii) the designing of a manual to assist its municipalities in recognizing and bidding on energy-efficient equipment; and (iii) Oklahoma's seventh annual Energy Awareness Conference. The self-insurance program was not approved because it was unrelated to the energy costs involved in providing public transportation. Funds for the manual were also not approved because the benefits to injured customers were too indirect. The DOE concluded, however, that funds for the Energy Awareness Conference should be granted because the conference would benefit injured consumers. Accordingly, a refund of $8,435 plus accrued interest was approved.

Dismissals

The following submissions were dismissed:

Name and Case No.

Astroline Corp., RF225–10136.
Black Clawson, Inc., RF225–9424, RF225–9425, RF225–9426.
Breem Oil Co., KEE–0070.
BTU Energy Corp., RF208–8.
Chinchilla Mobil, RF225–8521.
Ellsworth and Lassow, Inc., KEE–0045.
Lend Lease, RF225–1797.
MGPC, Inc., HRO–0226.
MGPC, Inc., KCX–0005.
Progas Inc., RF157–3.
Simmons Oil Co., KEE–0064.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
Director, Office of Hearings and Appeals.
October 10, 1986.
[FR Doc. 86–23019 Filed 10–17–86; 8:45 am]
BILLING CODE 6450–01–M

Southwestern Power Administration

Federal Hydroelectric Power—Revised Proposed Power Allocation Policy

AGENCY: Southwestern Power Administration, DOE.

ACTION: Revised proposed policy for the allocation of power and energy from new Federal hydroelectric power projects constructed with non-Federal funds.

SUMMARY: In 1980, the Southwestern Power Administration (SWPA) adopted a Final Power Allocation which allocated existing and known future Federal hydroelectric peaking capacity and associated energy, hereinafter referred to as power, to preference customers in the SWPA marketing area. That power allocation was published in the **Federal Register** (45 FR 19032) dated March 24, 1980. The 1980 SWPA power allocation does not address the construction of new projects with funds advanced by non-Federal entities. By letter dated January 24, 1984, President Reagan set forth a policy which requires Federal agencies to negotiate reasonable non-Federal funding prior to the start of construction for new Federal hydroelectric power projects (new projects).

A notice of intent to develop additional power and energy allocation policy was published in the **Federal Register** (50 FR 7639) dated February 25, 1985. A proposed policy for the allocation of power and energy from new Federal hydroelectric power projects constructed with non-Federal funds was published in the **Federal Register** (50 FR 25316) dated June 18, 1985. That proposed policy indicated that new power and energy constructed with Federal funds or with non-Federal funds, where the sponsor did not want power and energy, would be allocated in accordance with the provisions of the 1980 Final Power Allocation. The proposed policy did not address allocation procedures to be used when the project impacted on system rates and/or required support from the Federally scheduled interconnected system. Interested parties were invited to comment on the proposed policy by July 18, 1985.

SWPA has carefully considered all of the comments and hereby announces a revised proposed policy for the allocation of power and energy to be generated from all new projects. The selection of non-Federal entities willing to provide funding, prior to the start of construction for new projects, will be a joint effort of SWPA and the U.S. Army Corps of Engineers (Corps). Selection procedures for project sponsor selection and criteria will be developed by SWPA and the Corps.

DATE: Comments must be submitted on or before November 19, 1986.

ADDRESS: Comments may be mailed to: Francis R. Gajan, Director of Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director of Power Marketing, (918) 581–7529.

SUPPLEMENTARY INFORMATION:

The SWPA markets hydroelectric power and energy from 23 operating multipurpose projects constructed and operated by the Corps. The SWPA's marketing area includes the states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and a portion of Texas.

The Corps has identified the new projects shown in the following table as economically feasible and environmentally acceptable. SWPA supports the construction of those projects. Additional hydroelectric power projects are being studied by the Corps. All of the proposed projects will probably require advance non-Federal funding.

Proposed Corps of Engineers Projects Suppported by SWPA

Proposed project	River basin	State	Installed capacity (in MWs)	Average annual energy (in GWHs)
Mayo Lock & Dam	Arkansas	OK	44.0	171.4
Fort Gibson Units 5 & 6	Arkansas	OK	22.5	38.9
Denison Units 3 & 4	Red	TX	70.0	80.2
Lock & Dam No. 9	Arkansas	AR	37.5	194.0
Toad Suck Ferry Lock & Dam	Arkansas	AR	15.0	77.1
Lock & Dam No. 26	Mississippi	IL	156.0	708.0
Norfork Units 3 & 4	North Fork	AR	85.0	4.4
Lock & Dam No. 2	Arkansas	AR	107.64	384.5
Lock & Dam No. 3	Arkansas	AR	36.66	154.3
Lock & Dam No. 4	Arkansas	AR	28.84	123.0
Lock & Dam No. 5	Arkansas	AR	33.36	154.8
David Terry L&D	Arkansas	AR	33.36	154.8
Lock & Dam No. 1	Red	LA	25.0	56.0
Lock & Dam No. 2	Red	LA	35.0	114.5
Lock & Dam No. 3	Red	LA	57.0	197.0
Lock & Dam No. 4	Red	LA	33.9	122.0
Lock & Dam No. 5	Red	LA	43.1	151.0
Totals			861.86	2,955.5

SWPA subscribes to the following general principles regarding new projects: First, hydroelectric power projects which are economically feasible and environmentally acceptable should be developed. Second, new generation and/or transmission projects should represent the lowest cost, long term power and energy supply to customers consistent with sound business principles. Finally, public bodies and cooperatives should have preference in receiving the power from those Federal projects.

Copies of the following Revised Proposed Power Allocation Policy will be mailed to all SWPA customers, state agencies, other Federal and non-Federal agencies, and other known interested parties.

Comments on the Revised Proposed Power Allocation Policy are invited by November 19, 1986 and should be addressed to: Francis R. Gajan, Director of Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529.

Issued in Tulsa, Oklahoma, September 5, 1986.

Walter M. Bowers,
Acting Administrator.

Southwestern Power Administration

(Revised Proposed Power Allocation Policy)

Introduction

In 1980, SWPA adopted a Final Power Allocation which allocated existing and known future Federal hydroelectric power to preference customers in the SWPA marketing area. That power allocation was published in the **Federal Register** (45 FR 19032) dated March 24, 1980. By letter, dated January 24, 1984, President Reagan set forth a policy which requires Federal agencies to negotiate reasonable non-Federal funding prior to the start of construction for new Federal hydroelectric power projects (new projects).

The SWPA supports the development of 17 hydroelectric power projects which have been proposed by the Corps. Additional projects are being studied by the Corps.

A proposed policy for the allocation of power and energy from new Federal hydroelectric power projects constructed with non-Federal funds was published in the **Federal Register** (50 FR 25316) dated June 18, 1985. Interested parties were invited to comment on the proposed policy by July 18, 1985. Ten letters containing comments and numberous letters in support of new hydroelectric power constructions were received. Information meetings were conducted in Tulsa, Oklahoma; Little Rock, Arkansas; Columbia, Missouri; Dallas, Texas; Baton Rouge, Louisiana; and Topeka, Kansas, to discuss new Federal hydroelectric power projects, financing of projects, and the revised power allocation policy.

Public Participation

Summaries of the comments on the proposed power allocation policy and SWPA's responses follow:

1. *Comment*—The term "allocation" as used by SWPA's applies to the distribution and marketing of hydropower and not to the distribution of costs. Therefore, it is suggested the following parenthetical term, "(market and distribute)" be inserted on page 6 after the word "allocate" in the first sentence of the policy statement.

SWPA Response—"Allocate" is a familiar and established term with customers of SWPA and is understood to mean power. The entire power allocation policy has been rewritten and we do not believe power allocation will be confused with cost allocation. The term "allocation" as used in these proceedings refers only to power and energy.

2. *Comment*—The policy should explicitly state that the power subject to allocation is the increment gained by the investment being made. Power from pre-existing power facilities at the same site should not be subject to redistribution.

SWPA Response—The policy applies to new hydroelectric power projects. Power from existing projects may be reallocated when existing contracts expire or are cancelled in accordance with contract provisions. The government cannot guarantee the disposition of its resources beyond present contract commitments.

3. *Comment*—Subparagraph b, page 6, of the policy statement should be clarified. If a non-Federal entity provides funds for a Federal hydroelectric power project and does not want Federal hydroelectric power or energy, SWPA should allocate all the marketable power and energy in accordance with the final power allocation. However, some consideration and payment must flow to the contributing non-Federal financing entity if they are to provide financing. The policy statement should address how such compensation could be accomplished.

SWPA Response—This policy concerns only power allocations and does not address repayment

considerations. Repayment considerations will be addressed in the sponsor selection process with full public participation.

4. *Comment*—The SWPA proposed policy for the allocation of power and energy from new Federal projects with non-Federal financial participation addresses only capital contribution. It would seem appropriate to address the responsibility for operation, maintenance, and rehabilitation expenditures (OM&R) over the productive life of the project and the contract period.

SWPA Response—The capital contribution will be a consideration in the allocation process; OM&R charges would be recovered from the power user and would be required in any marketing contract.

5. *Comment*—A profit should not be made on the sale of power from a Federal project.

SWPA Response—Current law requires that power and energy delivered from projects under control of the Department of the Army be sold at the lowest possible cost, consistent with sound business principles. However, the principle of non-Federal financing of Federal projects presupposes that the sponsoring non-Federal entity will receive consideration in exchange for project financing. The consideration may, in the case of preference customers, be an allocation of power from the project or it may be a return-on-investment. The consideration that results in the lowest cost would normally be selected.

6. *Comment*—A reasonable return-on-investment power and energy received during the term of the financing contract between the government and the sponsoring non-Federal entity is absolutely necessary if an investor-owned utility provides project financing.

SWPA Response—Concur. However, preference will be given to public bodies and cooperatives in the allocation of power and energy from Federal projects sponsored by entities not entitled to preference.

7. *Comment*—Those entities which provide advance funding of new projects should receive power allocations for the useful life of the projects of 50 years.

SWPA Response—The duration of power allocations from new projects will be negotiated. SWPA does not anticipate that any such allocation would exceed a period of fifty years.

8. *Comment*—An entity which provides advance funding of a new project should receive a power allocation for the useful life of the project. The entity takes the financial risk that the project's useful life will result in a reasonable return-on-investment through its power allocation. The entity's power allocation should continue for the project's useful life, should it be more than 50 years.

SWPA Response—SWPA has adopted the 50 year period as the upper limit for power allocations because 50 years has been recognized as the repayment period for Federal hydropower debt recovery and that period of time also coincides with the term of Federal Energy Regulatory Commission licenses.

9. *Comment*—A fixed percentage of power produced at Federal projects should be allocated to preference customers in the state where the power and energy is generated.

SWPA Response—This method of allocation was considered and rejected when the 1980 allocation criteria was adopted. As stated in the 1980 Final Power Allocation, we believe that adoption of this proposal would be inconsistent with Section 5 of the Flood Control Act of 1944 which requires "widespread use" of Federally marketed power.

10. *Comment*—The power and energy of the hydroelectric power projects that we developed in Arkansas and are financed by Arkansas entities should be allocated to wholesale requirement customers in Arkansas.

SWPA Response—Concur with basic idea. The revised policy takes the basic idea and expands on how the allocation would be accomplished under project development by different financing sponsors.

11. *Comment*—In response to comment c. in the June 18, 1985, Federal Register Notice, SWPA stated that it agreed "in principle" with the suggestion that project sponsors be allocated power and energy in proportion to the amount of funds provided. However, in the proposed policy, Southwestern states that the allocation would be in an amount "not to exceed" the percentage of construction funds provided by the entity. Thus, it is not clear whether the power would be allocated in "proportion" to the funds provided or whether some lesser amount of power would be supplied. It would be helpful if Southwestern would clarify this matter in its final statement of policy, and we urge Southwestern to change the words in the proposed policy from "not to exceed the percentage" to "proportionate to the amount."

SWPA Response—The purpose of the phrase "not to exceed" is to establish an upper limit on the amount of capacity and energy to which a sponsor is entitled. Amounts of capacity and energy equivalent to less than a proportionate share may be appropriate and acceptable to the sponsor. For example, a non-Federal preference entity who sponsors a Federal project where the dependable capacity of that project varies significantly may wish to accept an allocation less than its proportionate share of that project's output for a dependable amount of capacity from SWPA's interconnected system.

12. *Comment*—Southwestern's position on the interrelationship between a preference entity's role as a project sponsor and its role as a customer of other power marketed by Southwestern is not entirely clear. In response to comment k., Southwestern stated that it would "consider the amount of SWPA power and energy previously allocated to applicants for non-Federal power allocations as part of the sponsor selection process." However, Southwestern does not state how the preference customer's existing allocation would affect its eligibility as a project sponsor, nor does Southwestern indicate whether the role as a project sponsor would affect a customer's rights to future allocations of power from Southwestern. We would appreciate clarification of Southwestern's views on this subject and once again urge that Southwestern consider adopting a policy of isolating the role as a project sponsor from the role as an SWPA customer.

SWPA Response—Previously allocated power and energy will not impact the sponsor selection process. We agree that the role of the project sponsor should be isolated from the role of a SWPA customer. The revised allocation policy addresses project sponsor, existing customer, and new customer allocations in detail.

13. *Comment*—Southwestern has indicated in response to comment i. that it is not willing to adopt a policy requiring a provision in its contracts with investor-owned utilities that provide funding that would allow a preference customer to "buy out" the private utility's interest. We believe that this suggestion merits further consideration by Southwestern. Since, without such a provision in the government/utility contract, it is unlikely that a preference customer would have much bargaining power with the utility.

SWPA Response—Investor owned utilities (IOU) may sponsor Federal hydropower projects if their proposal would result in the lowest price of power to the ultimate consumer. However, preference in the allocation of power and energy from any Federal hydropower development will be given to public bodies and cooperatives. If no preference customer is ready, willing, and able to receive the power and energy from such a project, then the IOU could receive the allocation for a 5 year limited time. After the term of such a contract, SWPA would then again offer the project outputs to preference customers.

14. *Comment*—On the same subject, SWPA stated in response to commend d. that it concurs with the suggestion that projects funded by non-preference entities be allocated in accordance with Southwestern's existing power marketing policy. However, Southwestern limited its concurrence to instances in which non-preference entities providing funding did not want an allocation of power in return, which is unlikely to ever occur. We would agree that it is not feasible to expect non-preference entities to be willing to participate as project sponsors, if they were not to receive any power in return. However, in earlier comments to Southwestern it was suggested that where a non-preference entity provides funding, a portion of the power should be reserved for allocation to preference customers. We believe that this is a reasonable suggestion, since then the non-preference entity as well as the regional preference customers would benefit from its sponsorship of new resources. We urge Southwestern to reconsider that suggestion in developing its final policy.

SWPA Response—We believe that to be in compliance with Section 5 of the 1944 Flood Control Act, all of the power is reserved for allocation to preference customers. Non-preference sponsors would not be given Federal power and energy as a part of repayment if preference customers are ready, willing, and able to receive the allocation.

15. *Comment*—It appears from the policy (and particularly from SWPA's response to comments "d" and "i") that the policy is intended to apply equally to preference and non-preference entities. Under the proposed policy, a non-preference entity providing a proportionate share of the funding, seemingly, would be just as entitled to a share of the resulting output as would a preference entity providing funding. We believe that this aspect of the policy is inconsistent with the requirement in Section 5 of the Flood Control Act of 1944, that preference in the sale of the power and energy produced at projects under the control of the Department of the Army be given to public bodies and cooperatives. The fact, that under current administration policy a non-preference entity may provide part of the project funding does not legally justify an exception to the preference requirement in the disposition of the resulting power, and we believe any such exception created by the policy to be illegal. It is possible, given the far greater resources of many investor-owned utilities, that such non-preference entities will be the only potential funders of certain sites, or will be able to fund a greater share of a given project than any competing preference entity. If non-preference entities then receive a proportionate share of the resulting output at all such sites, they, ultimately, may hold the right to much of the power from the newly constructed projects. For this reason and because of the legal requirements of the Flood Control Act, all of the power generated at the newly constructed sites, regardless of funding provided by a non-preference entity, should be made available to preference entities.

SWPA Response—All of the power generated at the newly constructed sites, regardless of funding provided by a non-preference entity, will be allocated to preference entities in accordance with the revised proposed policy.

16. *Comment*—In response to comment "h", SWPA states that the duration of power allocations from new projects will be negotiated but probably will not exceed a period of fifty years. The fifty-year term should formally be made part of the policy. Additionally, the fifty-year period should not represent just a maximum, but should be the generally prevailing period of entitlement, absent special circumstances which might justify a shorter period in a limited number of instances. We believe that a guaranteed fifty-year entitlement is essential to encourage the funding of new projects.

SWPA Response—SWPA believes that the power allocation duration should be negotiable but should not exceed a 50 year term, since that term coincides with the repayment period for Federal projects and the term of Federal Energy Regulatory Commission licenses.

17. *Comment*—Some preference customers of SWPA have contracts which entitle the customers to the full production of a specific project. If that project were enlarged by the construction of additional units, the preference customers with the existing contracts should have a priority right in the selection of a project sponsor to fund the proposed additional units and should be entitled to the full production of the total project production.

SWPA Response—Existing contracts will be honored through the term of the contract. Where two or more potential project sponsors are in competition for a project, the potential project sponsor whose proposal provides power and energy to the ultimate consumer at the lowest price will be selected. Allocation of power and energy would then be based on the revised policy.

18. *Comment*—In the absence of Federal funding, preference entities—public power utilities and rural electric cooperatives—must be granted a first right to contribute development funds, and should receive power proportionate to their financial contribution. In addition, the following criteria must be followed: (1) Consistency with existing preference laws; (2) Federal control over development of Federal water and power resources; (3) Federal marketing of power from Federal projects; (4) cost-based pricing of federally developed water and power.

SWPA Response—In response to comments received on the proposed policy, the revised proposed policy has been changed so that non-preference financial sponsors will not be given the option of receiving power and energy in lieu of financial repayment unless no preference customer is ready, willing and able to receive such allocation. Financial sponsor, preference or non-preference, will normally be the entity that provides the project at the least cost. SWPA concurs with the criteria outlined above in all other respects.

19. *Comment*—We strongly object to several provisions of SWPA's proposal for allocating power from new Federal hydroelectric power projects for the following reasons: (1) Preference entities are not given the first right of refusal to contribute funds, and (2) if non-preference entity contributes funds to a Federal project and wants Federal hydropower, SWPA will allocate power and energy according to the amount of the contribution.

SWPA Response—The policy has been changed to require that preference be granted in the allocation of power and energy; however, public law does not provide that preference be given in project sponsor selection.

20. *Comment*—The proposed hydro allocation policy is deficient in one key area. While the proposed policy conforms to the preference laws in marketing power from projects financed by preference entities, it deviates from the requirements of section 5 of the Flood Control Act of 1944 in proposed sub-paragraph "a." which would allocate power based on who funded a project. Preference entities would be deprived of their statutory rights if this policy is implemented. The law requires that any Federal project marketed by

SWPA be sold on a preference basis. Source of funding is not a legally justifiable reason to ignore the preference principle and would establish a giant loophole in the law by administrative fiat. Sub-paragraph "a." should be modified to state that all power from Federal projects—regardless of source of funding—will be allocated and marketed to preference customers in accordance with existing law.

SWPA Response—The allocation policy has been changed to require that preference be granted in the allocation of power and energy.

21. *Comment*—Sub-paragraph "b." raises some question as to its application in the event that a customer-owned hydro financing entity is created. The contracts for power from projects financed by such an entity may not conform to the 1980 allocation formula. Projects could not be financed with non-Federal funds with a requirement that the 1980 formula be followed without regard to project participants. The sub-paragraph "b" should be revised to address this possibility.

SWPA Response—The members of a customer-owned hydroelectric financing entity, which is a sponsor of a Federal project, would be entitled to a power allocation provided they were entitled to preference. The amount of the power allocation to each member would be in proportion to that members contribution to the project. That amount could be adjusted depending on the operation and marketing of the project (see Section II of the Revised Proposed Policy).

22. *Comment*—We also must reject the notion that certain non-Federal developers are entitled to a profit from use of the public's water resources. Preference customers will not support rates based on a "return on investment" to private developers. The laws and the water policies established by the Congress have consistently rejected "for profit" water and power development. SWPA rates based on any other than non-profit recovery of costs would be contrary to the requirements of law, and deviation from this policy by SWPA would be opposed by preference customers.

SWPA Response—Section 5 of the 1944 Flood Control Act requires power and energy to be sold at the lowest possible rates to recover costs within a reasonable time period. Since a return on investment may be required to construct the project at the lowest possible cost, SWPA would establish the lowest possible rates necessary to recover that cost in a reasonable time period using sound business principles.

23. *Comment*—All preference customers support—insist—that the requirements of section 5 of the Flood Control Act of 1944 be met in any final allocation policy. We will oppose any policy which attempts to deviate from the preference principle embodied in the law.

SWPA Response—Preference shall be given to public bodies and cooperatives in the allocation policy.

24. *Comment*—If SWPA elects to proceed with the adoption of a new allocation policy, I would offer the following comments. A non-Federal entity which provides funding for a new hydroelectric project should be allocated a percentage of the power and energy not less than the percentage of construction funds provided by that entity for the life of the project. Equity demands that the provider of funds for a project reap the benefits of the project for the life of the project. Sound public policy will not support taking a project away from an entity which provides the funding, be they a preference entity or not.

SWPA Response—The Revised Proposed Power Allocation Policy does allocate power and energy to a non-Federal sponsor; if they are a preference entity by law; by the percentage of construction funds provided adjusted to reflect other impacts on the existing hydroelectric power system and or SWPA rates. SWPA believes that the duration of the power allocation should be negotiable; but should not exceed a 50 year term since 50 years coincides with the repayment period for Federal projects and licenses issued by the FERC. Federal law requires hydroelectric power and energy produced at a Federal facility, without regard as to how that facility was financed, be offered to a preference entity first and then to non-preference entities if the preference entities are not ready, willing, or able to except the power and energy. SWPA believes the revised policy will be equitable to both existing and new customers.

25. *Comment*—If a non-Federal entity provides the *Total* funding for a hydroelectric project at a Federal site, I question the advisability of SWPA being involved in the project at all. The provider of funds should receive the output of the project; in this case, a Federal marketing agency serves no useful purpose.

SWPA Response—When a hydropower facility is developed pursuant to a FERC license, SWPA would be involved only at the request of the sponsoring entity. FERC's regulations will not allow non-Federal development of hydropower at Federally owned reservoirs where hydropower facilities already exist or hydropower is authorized by Congress to be developed by the Federal government. In this case the Flood Control Act of 1944 requires a Federal marketing agency to market the power increases of project needs.

26. *Comment*—We support SWPA's concurrence with the comment that the ERCOT area of Texas has not received a fair share of SWPA marketed power. We also agree with SWPA's further statement that additional power could be allocated from new projects outside of the non-interconnected portion of Texas provided that delivery into that area were economically feasible and institutionally acceptable. Nevertheless, an ERCOT preference utility, which may be able to develop the ability to utilize hydroelectric power and energy from projects outside of the non-interconnected portion of Texas, should be given an opportunity to invest in and purchase power from new resources in the interconnected SWPA system.

SWPA Response—Concur, provided the entity could demonstrate the ability to utilize hydroelectric power and energy from projects outside of the non-interconnected portion of Texas.

27. *Comment*—Under the "Settlement Agreement" between the SWPA and the State of Arkansas, in the settlement of Civil Action No. LR–C–82–807, which stated in Paragraph 5 that SWPA acknowledged that:

"The 1980–1988 SWPA power allocations are not binding on future hydroelectic developments in the SWPA marketing area, or on additional increments of power produced at existing developments in the SWPA marketing area. Specifically, acknowledge that the "total preference load fair shares' set out at 45 FR 19037 (March 24, 1980) will not necessarily be binding on SWPA in any future power allocations."

SWPA Response—SWPA intends to comply with all terms in the referenced "Settlement Agreement".

28. *Comment*—New development should not place a burden on existing customers financially or cause the SWPA system to be operated in a manner which would provide less than the current levels of service. Revenue received by SWPA from the operation of new capacity developed should be adequate to meet the debt service and OM&R of the project.

SWPA Response—New hydroelectric power development may increase rates and/or reduce current levels of service to existing customers. However, this result has not discouraged past development and today's customers

benefit from previous development by sharing in hydropower resources at uniform system wide rates. Revenues received from a new project marketed at system rates will probably not be adequate to pay the new project's costs. However, it is the intent of the Revised Proposed Power Allocation Policy to partially compensate existing customers for increased rates and service reduction by providing each customer a share in the new project, if that project affects rates and/or service.

29. *Comment*—SWPA seems determined to justify new projects regardless of the high costs even to the point of suggesting that highest cost alternatives be developed first. In no way can this be considered a sound business principle nor does it represent the lowest cost, long-term power and energy supply to customers.

SWPA Response—SWPA is developing a formal procedure to determine the financial feasibility of propsed new hydroelectric power facilities. Prior to adopting that procedure, SWPA will provide an opportunity for public participation.

Proposed Policy for the Allocation of Power and Energy From New Federal Hydroelectric Power Projects

Section I: Allocation When Financing in Whole or in Part is with Federal Funds

The Administrator (Administrator) of the Southwestern Power Administration (SWPA) shall allocate all Federal hydroelectric power (in whole kilowatts) from new Federal hydroelectric power projects in proportion to the Federal project expenditures in accordance with the preference provisions of Section 5 of the Flood Control Act of 1944 and the following:

1. Each state in SWPA's marketing area shall receive an allocation of power from each new hydroelectric power project in a ratio of the existing SWPA customer's load in that state to the existing SWPA customers' total load. Except that each state which has not received a fair share of Federal hydroelectric power as determined in the Final Power Allocation of March 24, 1980 (45 FR 19032) shall receive an increase in its allocation up to 10% of its allocation until such time as that state receives its fair share. The allocation to states already having a fair share shall be reduced by an amount equal to the total adjustment to states that have not received their fair share divided proportionately among the states that have received a fair share.

2. Ninety percent of the power allocated to each state shall be allocated to the existing SWPA customers in the ratio that each existing SWPA customer's load bears to the sum of the existing SWPA customer's total load in that state.

3. Ten percent of the power allocated to each state shall be allocated to new customers in that state. New customers shall be selected on a first requested—first served basis. The amount of power to be allocated to a new customer shall be determined on the ratio that each new customer's load bears to the sum of the existing SEPA customers' total load (including the new customer's load) in that state multiplied by the adjusted allocation in that state. If the amount of power to be allocated exceeds the new customer's allocation, the remaining power shall be allocated to the next new customer in line and so forth. Once a new customer received its allocation, it shall be treated as an existing customer. If the amount to be allocated is less than the new customer's allocation, then that new customer shall be treated as a new customer until such time that it has received its total allocation.

4. Customers with a total allocation greater than 1,000 kWs shall receive scheduled energy at a rate rounded to the nearest 1,000 kWs. Customers with a total allocation equal to or greater than 500 kW but less than 1,000 kW shall receive energy at a rate of 1,000 kW on demand. Customers with a total allocation less than 500 kW shall receive energy at a rate of 1000 kW at SWPA's discretion and not necessarily on the customer's demand. The customer shall receive an average amount of energy equal to the customer's allocated capacity times 1,200 hours per year and an opportunity to share in SWPA's supplemental peaking and excess energy when available.

5. Existing and new customers shall have one year from the date of notice of an allocation to make arrangements to receive on their respective systems the allocation and negotiate a contract with SWPA. If arrangements are not made and/or contracts not negotiated, the allocation shall be considered withdrawn and reallocated to new customers within that state in accordance with Section I, paragraph 3, above.

Section II: Allocation When Financing is with Non-Federal Funds

Part A: Funds Provided by Public Bodies or Cooperatives

If a non-Federal sponsor entitled to preference under Section 5 of the Flood Control Act of 1944 provides funds for a new Federl hydroelectric power project and wants Federal hydroelectric power and energy, the Administrator shall allocate to the sponsor power and energy not to exceed the percentage of the construction funds provided by the sponsor. The allocation shall be determined based on the following factors:

1. If the project is operated and marketed in such a way that it does not impact on, nor is supported by other Federal hydroelectric power projects (positive or negative effects on existing system capacity and energy) or does not increase the SWPA system rates, the Administrator shall allocate to the sponsor power and energy from the project equal to the percentage of construction funds provided by the sponsor. The power and energy not allocated to the sponsor pursuant to Section II shall be allocated in accordance with Section I, above.

2. If the project is operated in such a way that it impacts on, or is supported by other Federal hydroelectric power projects and will be marketed in such a way that it does not increase system rates, the Administrator shall allocate to the sponsor power and energy from the project equal to the percentage of construction funds provided by the sponsor adjusted to account for the impacts on or support furnished by other Federal hydroelectric power projects. The adjustment shall be determined on a project by project basis. The power and energy not allocated to the sponsor pursuant to Section II shall be allocated in accordance with Section I, above.

3. If the project is operated in such a way that it does not impact on nor is supported by other Federal hydroelectric power projects but is marketed in such a way that it does increase system rates, the Administrator shall allocate to the sponsor power and energy from the project equal to the percentage of construction funds provided by the sponsor multiplied by 50%. The power and energy not allocated to the sponsor pursuant to Section II shall be allocated in accordance with Section I, above.

4. If the project is operated and marketed in such a way that it impacts on or is supported by other Federal hydroelectric power projects and increases system rates, the Administrator shall allocate to the sponsor power and energy from the project in the same manner as Section II Part A.2 multiplied by 50%. The power and energy not allocated to the sponsor pursuant to Section II shall be allocated in accordance with Section I, above.

Part B: Funds Provided by Other Than Public Bodies and Cooperatives

If a non-Federal sponsor not entitled to preference under Section 5 of the Flood Control Act of 1944 provides funds for a new Federal hydroelectric power project and wants Federal hydroelectric power and energy, the Administrator shall allocate all of the marketable power and energy from the project in accordance with the preference provisions of section 5 of the 1944 Flood Control Act and the state distribution procedures set forth in Section I, above. However, if preference utilities are not ready, willing and able to accept a portion or all of the new allocation, then the Administrator will allocate the power and energy to the sponsor in accordance with Section II, Part A, above limited to a 5 year term.

Part C: Allocation When Non-Federal Sponsor Does Not Desire Power and Energy

If a non-Federal sponsor provides funds for a new Federal hydroelectric power project and does not want Federal hydroelectric power and energy, the Administrator shall allocate the marketable power and energy in accordance with the factors set forth in Section I, above.

A theoretical example of a new allocation using the policy in Section I (assuming 100% Federal funding) is shown in the following table. Existing customer's loads were based on present data in SWPA files.

ALLOCATION OF NEW RESOURCES TO EXISTING CUSTOMERS

[Project: Allocation Demonstration; Marketable Capacity (KW) = 100,000; Percent set aside for new customers = 10; Equalization Adjustment (percent) = 10]

State	Current load (KW)	Percent of system total load	State's share of project (KW)	Customer	Current load (KW)	Percent of State load	Customer's share of project (KW)	Adjustment allocation (KW)
Arkansas	1,150,220	13.012	13,012					
Equalization adjustment			−1,415	New Customers	0	10.000	1,301	1,160
Adjusted State share			11,597	Agusta	3,700	0.290	38	34
				Bertrandville	30,200	2.363	307	274
				Clarksville	22,449	1.757	229	204
				Jonesboro	109,200	8.544	1,112	991
				Paragould	52,900	4.139	539	480
				Paris	9,771	0.765	99	88
				Piggott	8,000	0.626	81	72
				AECC	914,000	71.517	9,306	8,294
Sub-Total						100.00	13,012	11,597
Kansas	1,052,896	11.911	11,911					
Equalization adjustment			1,191	New Customers	0	10.000	1,191	1,310
Adjusted State share			13,102	Anthony	8,300	0.709	85	93
				Coffeyville	35,000	2.992	356	392
				Kansas City	403,000	34.448	4,103	4,513
				KMEA:				
				Augusta	15,981	1.364	163	179
				Baldwin City	3,921	0.335	40	44
				Chanute	24,600	2.103	250	275
				Clay Center	10,950	0.936	111	122
				Colby	11,070	0.946	113	124
				Garnett	5,300	0.539	64	70
				Herrington	5,080	0.432	51	56
				Holton	7,250	0.620	74	81
				Horton	2,968	0.254	30	33
				Iola	17,634	1.507	180	198
				LaCrosse	3,659	0.313	37	41
				Lindeborg	5,766	0.493	59	65
				Mulvane	7,500	0.641	76	84
				Neodesha	8,100	0.692	82	90
				Norton	7,550	0.645	77	85
				Oakley	5,540	0.474	56	62
				Osawatomie	5,600	0.479	57	63
				Ottawa	6,578	0.562	67	74
				St. Francis	20,400	1.744	208	229
				Sharon Springs	2,950	0.252	30	33
				Wamego	1,580	0.135	16	18
				Wellington	8,001	0.684	81	89
				Winfield	21,800	1.846	220	242
				KEPCo	40,200	3.436	409	450
				Kaw Valley	326,500	28.080	3,345	3,679
				Namaha-Marshall	18,349	1.568	187	205
					9,019	0.771	92	101
Sub-Total						100.000	11,910	13,101
Louisiana	1,839,300	20.807	20,807					
Equalization adjustment			2,081	New Customers	0	10.000	2,081	2,289
Adjusted State share			22,888	Lafayette	268,000	13.114	2,729	3,002
				Natchitoches	34,000	1.664	346	381
				LEPA:				
				Alexandria	137,000	6.704	1,395	1,535
				Houma	56,000	2.740	570	627
				Jonesville	6,000	0.294	61	67
				Minden	30,000	1.468	305	336
				Morgan City	42,000	2.055	428	471
				Plaquemine	20,000	0.979	204	224
				Rayne	16,000	0.783	163	179
				Ruston	45,000	2.202	458	504
				Vidalia	11,300	0.553	115	127
				Winnfield	14,000	0.685	143	157

ALLOCATION OF NEW RESOURCES TO EXISTING CUSTOMERS—Continued

[Project: Allocation Demonstration; Marketable Capacity (KW) = 100,000; Percent set aside for new customers = 10; Equalization Adjustment (percent) = 10]

State	Current load (KW)	Percent of system total load	State's share of project (KW)	Customer	Current load (KW)	Percent of State load	Customer's share of project (KW)	Adjustment allocation (KW)
				CAJUN	1,160,000	56.761	11,810	12,991
Sub-Total						100.000	20,808	22,900
Missouri	2,325,009	26.313	26,313					
Equalization adjustment			−2,862	New Customers	0	10.000	2,631	2,345
Adjusted State share			23,451	Carthage	30,900	1.186	315	281
				Fulton	19,700	0.755	201	179
				Hermann	7,500	0.290	76	68
				Higginsville	9,400	0.364	96	86
				Kennett	25,389	0.982	258	230
				Lamar	12,560	0.486	128	114
				Malden	13,500	0.522	137	122
				New Madrid	6,900	0.267	70	62
				Nixa	5,800	0.224	59	53
				Poplar Bluff	85,000	1.754	464	414
				Sikeston	46,000	1.780	468	417
				Springfield	424,000	16.406	4,317	3,847
				Thayer	1,800	0.070	18	16
				West Plains	23,900	0.925	243	217
				AECI	1,653,000	63.959	16,830	14,999
Sub-Total						100.000	26,311	23,450
Oklahoma	758,166	8.577	8,577					
Equalization adjustment			−933	New Customers	0	10.000	856	785
Adjusted State share			7,644	Comanche	3,911	0.464	40	36
				Copan	1,472	0.175	15	13
				Duncan	36,640	4.373	375	334
				Eldorado	1,079	0.126	11	10
				Gotby	691	0.082	7	6
				Granite	1,941	0.230	20	18
				Hominy	6,371	0.756	65	58
				Lexington	2,741	0.325	28	25
				Manitou	336	0.040	3	3
				Olustee	926	0.110	9	8
				Purcell	11,508	1.368	117	104
				Ryan	1,785	0.212	18	16
				Shattuck	9,784	1.161	100	88
				Spiro	2,216	0.262	23	20
				Walters	5,149	0.611	52	46
				Wetumka	3,016	0.358	31	28
				Yale	2,584	0.306	26	23
				Fort Sill	33,508	3.978	341	304
				Vance AFB	6,286	0.746	64	57
				McAlester Army	3,010	0.357	31	28
				WFEC	622,000	73.836	6,333	5,644
Sub-Total						100.000	8,577	7,644
Texas	1,713,340	19.382	19,382					
Equalization adjustment			1,938	New Customers	0	10.000	1,936	2,132
Adjusted State share			21,320	Reyburn County	299,000	15.705	3,044	3,348
				Tex-La of Tx	181,000	9.508	1,843	2,027
				NETEX	383,500	20.145	3,904	4,294
				Brazos	849,840	44.641	8,652	9,517
Sub-Total						100.000	19,381	21,318
Total Customer load (KW)	8,839,931	100.000					99,999	100,000

[FR Doc. 86-23303 Filed 10-17-86 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Fryingpan-Arkansas Project Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of an extension of the comment period for the proposed power rate adjustment for the Fryingpan-Arkansas Project.

SUMMARY: The Loveland Area Office (LAO) of the Western Area Power Administration (Western) published the "Proposed Power Rate Adjustment for the Fryingpan-Arkansas Project" in the **Federal Register** (51 FR 21614) on June 13, 1986. Interested parties were invited to submit comments concerning the proposed power rate adjustment to the LAO of Western on or before September 11, 1986.

In response to a September 5, 1986, request by the Fryingpan-Arkansas Ratepayers Group, Western notified all customers and other interested parties by letter dated September 18, 1986, of a 60-day extension of the comment period for the proposed power rate adjustment.

DATE: All comments concerning the proposed power rate adjustment should now be submitted on or before November 10, 1986, to be assured of consideration.

ADDRESS: All written comments concerning the proposed power rate adjustment should be sent to: Mr. Mark N. Silverman, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, Colorado 80539.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Stears, Western Area Power Administration, Loveland Area Office, P.O. Box 3700, Loveland, CO 80539, (303) 224–7225.

Issued at Golden, Colorado, October 8, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86–23620 Filed 10–17–86; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00232; FRL–3097–6]

State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Enforcement and Certification of the State FIFRA Issues research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Registration and Classification to discuss various aspects of pesticides. The meetings will be open to the public.

DATE: The Working Committee on Enforcement and Certification will meet on Tuesday and Wednesday, November 4 and 5, 1986. The Working Committee on Registration and Classification will meet on Thursday and Friday, November 6 and 7, 1986. The meetings of both committees will start at 8:30 a.m. each day.

ADDRESS: The meeting will be held at: Barclay Hotel, 237 South 18th Street, Philadelphia, PA 19103. (215–545–0300).

FOR FURTHER INFORMATION CONTACT: By mail: Philip H. Gray, Jr., Office of Pesticide Programs (TS–766C), Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460 Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–7096).

SUPPLEMENTARY INFORMATION: The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. California plant-back problem.
2. Arizona fumigation of fire ants problem.
3. Status of OPP endangered species policy initiative.
4. Issue of definition of non-cropland.
5. Reporting of State enforcement data.
6. Discussion of formula used to determine pesticide cooperative agreement funds.
7. Enforcement grant guidance.
8. Coordination problems with regard to OPTS regulatory actions.
9. Monitoring of experimental use permits: States' concerns/effectiveness.
10. States' position on civil penalties.
11. OPP proposed regulations: termiticides, and worker protection standards.
12. State oversight policy: discussion of sections 26 and 27 report, etc.
13. Unenforceable label language (to be coordinated with WC/Registration and Classification).
14. Label change communication problem, i.e., information regarding removal of uses by large registrant not being provided to other registrants.
15. Channeles of trade dates: status report.
16. Triple rinse policy.
17. Registration standards enforcement strategy: status report.
18. Status of regulation on sale of restricted use pesticides to non-certified applicators.
19. Other topics as appropriate.

The meeting of the Working Committee on Registration and Classification will be concerned with the following topics:

1. Section 24(c) review-update.
2. Update on accuracy of restricted use pesticide information.
3. Policy statement regarding unenforceable label language.
4. Termiticides.
5. Released for shipment/channels of trade dates.
6. EPA chemigation policy.
7. Risk assessment training.
8. Update on Labeling Utility Project.
9. Status of registration of "Command".
10. Aluminum phosphide registration standard.
11. Dinoseb update.
12. Endangered Specise—update on independent study conducted for EPA by contractor.
13. Food contact pesticides: label changes required by EPA.
14. Other topics as appropriate.

Dated: October 10, 1986.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 86–23635 Filed 10–17–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30000/47A; FRL–3085–6]

Intent To Cancel Registrations of Pesticide Products Containing Diazinon; Denial of Applications for Registration of Pesticide Products Containing Diazinon; Conclusion of Special Review

Correction

In FR Doc. 86–22128, beginning on page 35034, in the issue of Wednesday, October 1, 1986, make the following corrections:

On page 35034, the heading should appear as set forth above.

On page 35036, in column one under the heading "*A Summary* * * *" in the first paragraph, in the eighth line, "$_{(50)}$" should read "(LC_{50})" and in the ninth line, "$_{(50)}$" should read "(LD_{50})".

On the same page, same column, second paragraph, fourth line, "$_{50}$" should read "LC_{50}", and in the tenth line, "$_{50,}$" should read "LD_{50}".

BILLING CODE 1505–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice to the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested, parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–005200–050
Title: Pacific Coast European Conference
Parties: Blue Star Line, Ltd., Compagnie Generale-Maritime, A/S Det Ostasiatiske Kompagni, Hapag-Lloyd AG, Johnson Line AB, Sea-Land Service, Inc.
Synopsis: The proposed amendment would permit a member line to elect not to participate in any particular service contract entered into by the conference by so notifying the Chairman prior to execution of the contract by the conference.

Agreement No.: 224–010873–001
Title: Oakland Teminal Agreement
Parties: City of Oakland (Port), Gearbulk Container Services (Gearbulk)
Synopsis: The proposed amendment would alter the basic agreement between the parties to provide for Gearbulk's possible use of the Port's Bay Bridge Terminal for its Southeast Asia/Pacific Coast service.

Agreement No.: 224–011019
Title: Oakland Terminal Agreement
Parties: City of Oakland (Port), Associated Container Transportation (Australia) Ltd. (ACT)
Synopsis: The proposed agreement would permit the Port to provide ACT with the nonexclusive right to certain assigned premises at the Port's 7th Street Public Container Terminal. ACT would agree to designate the assigned premises as its published, regularly schedule Northern California port of call. The agreement would terminate September 30, 1991.

Dated: October 15, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86–23591 Filed 10–17–86; 8:45 am]

BILLING CODE 6730–01–M

Agreement No. 201–000082

West Gulf Maritime Association Assessment Agreement; Erratum

The **Federal Register** Notice of October 8, 1986 (Vol. 51, No. 195, page 36065) designated the above named agreement as Agreement No. 201–000082–009. It should have been designated as Agreement No. 201–000082–010.

Dated: October 15, 1986.

By the Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86–23590 Filed 10–17–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Amity Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 6, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Amity Bancorp, Inc.*, New Haven, Connecticut; to become a bank holding company at acquiring 100 percent of the voting shares of Amity Bank, Woodbridge, Connecticut.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Valley Corporation*, Bethlehem, Pennsylvania; to acquire 100 percent of the voting shares of West Side Bancorp, Inc., West Pittston, Pennsylvania, and thereby indirectly acquire West Side Bank, West Pittston, Pennsylvania. Comments on this application must be received by November 7, 1986.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *FCNB Corp.*, Frederick, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Frederick County National Bank of Frederick, Frederick, Maryland.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SafraCorp*, Miami, Florida; to acquire 100 percent of the voting shares of Colonial Savings Bank, Ocala, Florida, formerly known as Colonial Savings and Loan Association, Ocala, Florida.

E. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *River Associates Bancorp, Inc.*, River Grove, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of River Grove Bank and Trust Company, River Grove, Illinois. Comments on this application must be received by November 4, 1986.

2. *Wenona Bancorp, Inc.*, Wenona, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Wenona State Bank, Wenona, Illinois.

F. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Escrow Corporation of America, Inc.*, Pennock, Minnesota; to acquire 86.5 percent of the Class A voting stock and 100 percent of the Class B non-voting stock of Madelia Holding Corp., Madelia, Minnesota, and thereby indirectly acquire Citizens National Bank of Madelia, Madelia, Minnesota.

2. **Faith Bank Holding Company**, Pierre, South Dakota; to become a bank holding company by acquiring 95.5 percent of the voting shares of Farmers State Bank, Faith, South Dakota.

G. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lincshares, Inc.*, Bellevue, Nebraska: to become a bank holding company by acquiring 100 percent of the voting shares of South Ridge Bank, Lincoln, Nebraska.

2. *Front Range Capital Corporation*, Lafayette, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of the Bank VII, Lafayette, Colorado, the successor to the conversion of Lafayette First Industrial Bank, Lafayette, Colorado, into a commercial bank.

The Board of Governors of the Federal Reserve System, October 14, 1986.

James McAfee,

Association Secretary of the Board.

[FR Doc. 86–23516 Filed 10–17–86; 8:45 am]

BILLING CODE 6210–01–M

Trustcorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The

listed companies have also applied under §225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 4, 1986.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Trustcorp, Inc.*, Toledo, Ohio, to acquire through the successor by merger of St. Joseph Bancorporation, South Bend, Indiana with Trustcorp of Indiana, Inc., Toledo, Ohio, the following: St. Joseph Bank and Trust Company, South Bend, Indiana; First National Bank of Angola, Angola, Indiana; First Union Bank and Trust Company of Winimac, Winimac, Indiana; and Salem Bank and Trust Company, Goshen, Indiana.

Trustcorp, Inc., has also applied to acquire St. Joseph Mortgage Company, Inc., South Bend, Indiana and thereby engage in offering a full line of mortgage banking activities, including variable and conventional mortgage loans, fixed and adjustable rate mortgage loans, and long and short term mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Trustcorp, Inc., has also applied to acquire St. Joseph Insurance Agency, Inc., a subsidiary of St. Joseph Bank and Trust Company, pursuant to section 4(c)(8)(G) of the Bank Holding Company Act.

St. Joseph Bancorporation, South Bend, Indiana, to engage through Salem Financial Life Insurance Company, Goshen, Indiana, as reinsurer of credit life, accident, and health insurance to customers of Salem Bank and Trust Company in connection with extensions of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

St. Joseph Bancororation, has also applied to engage in general insurance activities through Salem Insurance Agency, Inc., Goshen, Indiana, a subsidiary of Salem Bank and Trust Company.

Board of Governors of the Federal Reserve System, October 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-23579 Filed 10-17-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 75N-0184; DESI 10837]

Oxyphencyclimine Hydrochloride With Hydroxyzine Hydrochloride; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document on drug products containing oxyphencyclimine hydrochloride with hydroxyzine hydrochloride that was published on September 26, 1986.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-21784, appearing at page 34253 in the **Federal Register** of Friday, September 26, 1986, the following correction is made:

On page 34253, second column, second line of the fourth complete paragraph, "NDA 11-043" should read "NDA 11-784."

Dated: October 8, 1986.

Paul Parkman,

Deputy Director, Center for Drugs and Biologics.

[FR Doc. 86-23581 Filed 10-17-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the Pueblo of Taos Judgment Funds in Docket 357 Before the United States Claims Court

October 1, 1986.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

EFFECTIVE DATE: This Plan was effective as of June 11, 1986.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Code 440B, 31-SIB, 1951 Constitution Ave., NW., Washington, DC., 20245.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, (Pub. L. 93-134, 87 Stat. 466) as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on March 19, 1985, in satisfaction of the award granted to the Pueblo of Taos before the United States Claims Court in Docket 357. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated March 12, 1986 and was received (as recorded in the Congressional Record) by the Senate on March 18, 1986, and by the House of Representatives on March 17, 1986. The plan became effective on June 11, 1986 as provided by the 1973 Act, as amended by Pub. L. 97-458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

For the Use and Distribution of the Pueblo of Taos Judgment Funds in Docket 357 Before the United States Claims Court

The funds appropriated March 19, 1985 in satisfaction of an award granted to the Pueblo of Taos in Docket 357 before the United States Claims Court, less attorney fees and litigation expenses, including all interest and investment income accrued, shall be used and distributed as herein provided.

Per Capita Payment

Thirty-five (35) percent of the funds shall be distributed in the form of per capita payments by the Secretary of the Interior, in sums as equal as possible, to all duly enrolled Taos Pueblo tribal members. The Taos Pueblo tribal roll shall be made current pursuant to the provisions of the Taos Enrollment Ordinance approved December 13, 1977 to include all eligible members born on or prior to and living on the effective date of this plan.

Any remaining amount, after the per capita payment to the members, shall revert to the tribe for use in the permanent investment program aspect of this plan.

Programing

A. Permanent Investment Program

Thirty (30) percent of the funds shall be invested by the Secretary of the Interior in a permanent investment program.

A semi-annual report on the status of the investment made by the Secretary may be made to the Governor of the Pueblo. This report shall be available for inspection to any enrolled Taos tribal member.

Eighty-five (85) percent of the interest drawn on the principal shall be distributed in the form of dividend payments by the Secretary to all eligible tribal members born on or prior to and living on the dates such dividend payments are declared. Such dividend payments shall be made every three years on July 1st to eligible tribal members, and shall be coordinated with the Tribe's 1978 use and distribution plan under Docket 357-A, so as to have the three (3) year dividend distributions made concurrently. The balance, fifteen (15) percent of the interest shall be reinvested with the principal amount, along with any undistributed amount.

If in the future the Pueblo should desire to undertake the investment of the funds instead of having their investment made by the Secretary, the Tribal Council may present an investment plan to the Secretary for approval. Upon the Secretary's approval of the investment plan the investment funds, at a mutually agreed upon time, will be transferred to the Pueblo and thereafter the Secretary will have no responsibility for them.

Whether invested by the Secretary or by the Pueblo the funds invested under this aspect of the plan shall be subject to review by the Tribal Council prior to each distribution to determine whether continued investment and dividend payments are in the best interest of the Tribe. If the Tribal Council determines that the accrued funds of this investment would best serve the interest of the Tribe in community improvement through tribal programs these procedures will be followed:

1. A proposal for any such usage of the investment and interest for community improvement shall be drawn up by the Tribal Council or an authorized committee consisting of no less than five (5) enrolled tribal members.

2. Such a proposal must be presented to a duly called and publicized meeting of at least twenty-one (21) Tribal Council members and must be approved by two-thirds of those in attendance; furthermore, the proposal must be approved by the majority vote of eligible tribal members in attendance at a duly called and publicized meeting.

3. If the required two-thirds approval is obtained, the proposal will be submitted to the Secretary of the Interior for approval. If the Secretary no longer has investment authority for the funds, then the matter will not be submitted to him, as no Secretarial approval will be required in order for the Pueblo to take action with respect to the investment funds.

At no time shall the principal of the permanent investment funds be withdrawn and used as a per capita payment or for dividend purposes.

B. Community Tribal Development and Improvement Programs

Thirty-five (35) percent of the funds shall be invested by the Secretary on behalf of the Pueblo and the principal, interest, and investment income accrued shall be available for use by the Tribal Council through a council resolution, on a budgetary basis. Priorities will be determined by the tribal governing body in the following program areas: care for the elderly; education; general community improvement; economic development, including but not limited to land acquisitions; operation and administration of tribal government; social and human service programs, and care and protection of the tribal land base and its resources.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512. None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

Ronald L. Esquerra,

Deputy to the Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 86-23603 Filed 10-17-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau and Land Management

[(AK-080-07-4213-11; F-031873)]

Alaska Realty Action, Modification of Existing Classification; Sale of Public Lands for Recreation and Public Purposes

The following described public lands have been found suitable for sale for recreational or public purpose use. The lands will be classified for sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 74; 43 U.S.C. 869 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), at no less than fair market value:

Fairbanks Meridian,

T. 17 S., R. 12 E., Sec. 7, W½W½SW¼

Containing 5 acres more or less.

The Alaska Alpine Club of Fairbanks has been using these lands for recreational or public purposes under a long-term lease pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et. seq.) and has expressed an interest in purchasing the land under said Act. These lands are valuable for public purposes as contemplated by 43 CFR

2430.4(a) and may be properly classified for disposal under the Recreation and Public Purposes Act as stated in 43 CFR 2430.4(c). This classification would be consistent with the criteria of 43 CFR 2410.1(a)-(d).

Sale of the lands will be subject to the following reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official land records at the time of patent issuance.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

5. Any other reservations that the Authorized Officer determines appropriate to ensure public access to proper management of Federal lands and interests therein.

The above-described lands are currently segregated from the operation of the public land laws, including the mining laws by Initial classification Decision of June 1, 1983. Upon publication of this notice in the Federal Register, the lands will continue to be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for sale under the Recreation and Public Purposes Act or any amendments or revisions to this notice. For a period of 45 days from the date of publication of this notice interested persons may submit comments to the District Manager, Bureau of Land Management, Fairbanks District Office, 1541 Gaffney Road, Fairbanks, Alask 99703. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

Michael T. Green,

Yukon Area Manager.

[FR Doc. 86-23672 Filed 10-17-86; 8:45 am]

BILLING CODE 4310-JA-M

National Park Service

Cape Cod National Seashore: Analysis of Management Alternatives: For Three Sisters Lighthouses Relocation With Environmental Assessment

AGENCY: National Park Service, Interior.

ACTION: Notice of Decisions to prepare a supplement to the analysis of management alternatives: for Three Sisters Lighthouses relocation with environmental assessment.

SUMMARY: The National Park Service will prepare a supplement to the Analysis of Management Alternatives for the Three Sisters Lighthouses relocation at Cape Cod National Seashore. Commentors on the environmental assessment suggest that additional sites north of Nauset Light be considered for possible relocation of the Three Sisters Lighthouses.

Additional alternative sites will therefore be evaluated which are accessible from existing roads in the Marconi area of South Wellfleet approximately three and one-half miles north of Nauset Light. A decision on the selection of an alternative site for relocation will be postponed until the supplemental material has been available for public comment.

DATES: Availability of the supplement for public review and comment will be announced at a later date.

ADDRESSES: Comments should be directed to: Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

Dated: October 10, 1986.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

[FR Doc. 86-23617 Filed 10-17-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30389 (Sub-3) et al.[1]]

Seaboard System Railroad Inc., Trackage Rights, Southern Railway Co.; Exemption

On September 23, 1986, Norfolk and Western Railway Company (NW), CSX Transportation Company (CSX) and Southern Railway Company (Southern) filed a notice of exemption under 49 CFR 1180.2(d)(7) and 1180.4(g)(1), as amended, for an extension of temporary trackage rights operations. These operations were previously exempted from Commission regulation in Finance Docket Nos. 30389, 30390, and 30391 [2] and extended for six months from January 1, 1986, to July 1, 1986, in Finance Docket Nos. 30389 (Sub-No. 1), 30390 (Sub-No. 1), and 30391 (Sub-No. 1),[3] and further extended for 90 days from July 1, 1986, to October 1, 1986, in Finance Docket Nos. 30389 (Sub-No. 2), 30390 (Sub-No. 2) and 30391 (Sub-No. 2).[4]

This transaction extends this exemption for an additional 90 days, from October 1, 1986, to January 1, 1987, unless subsequently extended, and exempts from regulation (1) NW and Southern's temporary trackage rights over CSX (successor to Seaboard System Railroad, Inc.) between St. Paul, VA (milepost 42.2) and Frisco, TN (milepost 89.24), a distance of approximately 47 miles; (2) CSX's temporary trackage rights over Southern between Appalachia, VA (milepost 0.74) and Frisco, TN (milepost 46.48T), a distance of approximately 46 miles; and (3) temporary overhead trackage rights for the joint operation by NW, Southern and Interstate Railroad Company, a subsidiary of Southern, of interroad trains between Norton (milepost N-465.8) and Carbo (milepost N-434.5) VA and Bulls Gap, TN (milepost 87.OTC).[5]

Since the transaction involves trackage rights and the renewal of trackage rights based upon a written agreement, and is not filed or sought as a responsive application in a rail consolidation proceeding, it falls within the class of transactions described in 49 CFR 1180.2(d)(7), which the Commission has found to be exempt under 49 U.S.C. 10505.

See Ex Parte No. 282 (Sub-No. 9), *Railroad Consolidation Procedures—Trackage Rights Exemption*, 1 I.C.C. 2d 270, served April 19, 1985.

As a condition to the use of this exemption, any employees affected by the trackage rights agreement shall be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

[1] Embraces also Finance Docket No. 30390 (Sub-No. 3), *Norfolk and Western Railway Company and Southern Railway Company—Trackage Rights—Seaboard System Railroad, Inc.*, and Finance Docket No. 30391 (Sub-No. 3), *Norfolk and Western Railway Company, Southern Railway Company, and Interstate Railroad Company—Joint Use.*

[2] Decision served January 25, 1984 (not printed).

[3] Notice of Exemption served January 9, 1986 (not printed).

[4] Notice of Exemption served July 14, 1986 (not printed).

[5] By notice of exeption served February 25, 1985, in Finance Docket No. 30582 (Sub-No. 1), NW's operation of the properties of Interstate was exempted from regulation. The transaction was consummated in part on November 1, 1985.

Dated: October 14, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-23665 Filed 10-17-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Circular A-76 Management Study]

Audio-Visual Activities

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of OMB Circular A-76 Management Study.

SUMMARY: The Division of Management Services has scheduled an OMB Circular A-76 management study of the Agency's audio-visual activities to begin November 1, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Austin, 703-235-8454.

Dated at Arlington, Virginia, this day of September 30, 1986.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-23631 Filed 10-17-86; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: 10 CFR 74.17, "SNM Physical Inventory Summary Reports."

3. The form number if applicable: NRC Form 327.

4. How often the collection is required: In accordance with the required frequency for physical inventories (i.e. from one to six times per year).

5. Who will be required or asked to report: NRC fuel facility licensees.

6. An estimate of the number of responses: 47 per year.

7. An estimate of the total number of hours needed to complete the requirement or request: 188 per year.

8. An indication of whether Section 350(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: 10 CFR 74.17. "SNM Physical Inventory Summary Reports," requires NRC fuel facility licensees to report the results of their physical inventories of special nuclear material on NRC Form 327. The information in these reports is used to assess the performance of licensees' material control and accounting programs and to provide inventory difference information to the public.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill (202) 395-7340.

NCR Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this tenth day of October 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administrotion.

[FR Doc. 86-23670 Filed 10-17-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Comittee Act by the Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards, which were published October 2, 1985 (50 FR 40248), are renewed by this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The Advisory Committee on Reactor Safeguards (ACRS) is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a nuclear power reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS reveiws do not normally encompass matters pertaining to environmental impacts other than those pertaining to radiological safety. ACRS full Committee and Subcommittee meetings are conducted in accordance with sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.).

General Rules Regarding ACRS Meetings

An agenda is published in the Federal Register for each full Committee meeting and for each Subcommittee meeting which is partially or fully open to public attendance. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACRS meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, DC, reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** notice for the individual meeting in care of the ACRS, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an aprpopriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director of the Committee (telephone: 202–634–3265, ATTN: the Designated Federal Official specfied in the Federal Register Notice for the meeting) between 8:15 a.m. and 5:00 p.m., Washington, DC time.

(d) Questions may be asked only by ACRS Members, Consultants, and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions When Proprietary Sessions are to be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Dated: October 14, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–23668 Filed 10–17–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–389]

Florida Power and Light Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–16, issued to Florida Power and Light Company, Orlando Utilities Commission of the City of Orlando, Florida, and Florida Municipal Power Agency (the licensees), for operation of the St. Lucie Plant, Unit No. 2, located in St. Lucie County, Florida.

The amendment would permit the licensee to transfer Unit No. 1 spent fuel from the Unit No. 1 spent fuel pool to the Unit No. 2 spent fuel pool. This would physically be accomplished by (1) removing Unit No. 1 spent fuel from the Unit No. 1 spent fuel pool storage racks; (2) placing the spent fuel in a fuel shipping cask that meets the packaging and transportation requirements of 10 CFR 71; (3) removing the fuel shipping cask from the Unit No. 1 fuel handling building; (4) moving the fuel shipping cask on a transporter vehicle from fuel handling building No. 1 to fuel handling building No. 2 (a distance of approximately 300 feet); (5) moving the fuel shipment cask into the Unit No. 2 fuel handling building; (6) removing the spent fuel from the fuel shipping cask; and (7) placing the spent fuel in the Unit No. 2 spent fuel pool storage racks.

In order to effect the above, section 2.B.5 of Facility Operating License NPF–16 is proposed to be revised such that the word "facility" will be deleted and the words "St. Lucie Units 1 and 2" be inserted.

The licensee states that this proposal is being submitted to establish the option of transferring spent fuel from Unit No. 1 to Unit No. 2. The Unit No. 1 spent fuel pool will lose full core reserve capacity as a result of the 1987 refueling outage, and the planned rerack of the spent fuel pool cannot be accomplished prior to 1988. If, in the interim, full core off-load of Unit No. 1 should be necessary, available storage in the Unit No. 2 spent fuel pool will be required. The license also states that a separate license amendment is planned for 1987 to support the Unit No. 1 reracking effort.

This amendment was requested in the licensee's application dated July 2, 1986.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application.

In regard to the first standard, the licensee provided the following analysis:

This amendment will not significantly increase the probability or consequences of an accident previously evaluated since the configuration and operation of the plant will remain essentially the same. The only thing that will change is that a certain number of Unit 1 spent fuel assemblies may be transferred from the Unit 1 spent fuel pool to the Unit 2 spent fuel pool. The designs of the two pools, and the associated operating and accident analysis assumptions, are not changed. The Unit 1 assemblies that may be transferred have essentially the same mechanical design (size), enrichments, and burnup histories as evaluated in the Unit 2 FSAR for Unit 2 fuel assemblies. As stated in Reference 4, the Unit 2 spent fuel racks are designed to accommodate storage of the Unit 1 fuel.

In connection with the second standard, the licensee states that:

This amendment will not create the possibility of a new or different kind of accident from any previously evaluated, since this change does not modify the configuration or operation of the plant. A spent fuel shipping cask that meets the packaging and transportation requirements of 10 CFR 71 will be used to transfer spent fuel assemblies between the Unit 1 and Unit 2 fuel handling buildings. Potential fuel handling and cask drop accidents are evaluated in both FSARs, including the potential drop of a cask outside the fuel handling building. The load handling and transport of the spent fuel are enveloped by previous analyses.

Regarding the third standard, the licensee stated that:

This amendment will not involve a significant reduction in the margin of safety. In all cases, the FSAR accident analyses results bound the evolutions contemplated by this amendment.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. In addition, the staff has reviewed the safety evaluation and environmental impact appraisal associated with the Unit No. 1 rerack (Amendment No. 22 dated March 29, 1978), the safety evaluation and environmental assessment associated with the Unit No. 2 rerack (Amendment No. 7 dated October 16, 1984), the applicable technical specifications for both units, the original Safety Evaluation Report for Unit No. 1 dated November 1974, the original Safety Evaluation Report for Unit No. 2 dated October 1981 (NUREG–0834), and the licensee's Updated Safety Analysis Report for each unit.

In regard to Unit No. 1 and loading a spent fuel assembly in the cask and then removing the package of 25 tons or less out of the Unit No. 1 fuel handling building, loads in excess of 2,000 pounds are prohibited from travel over irradiated fuel assemblies in the storage pool per Technical Specification 3.9.7. A Unit No. 1 spent fuel assembly weighs less than 1,300 pounds. The maximum load which may be handled by the spent fuel cask crane will not exceed 25 tons per Technical Specification 3.9.13. The irradiated fuel assemblies in the fuel storage pool will have decayed for at least 1180 hours, unless more than one-third core is placed in the pool, in which case the irradiated fuel assemblies will have decayed for 1490 hours per Technical Specification 3.9.14. This last specification is applicable prior to movement of the spent fuel cask into the fuel cask compartment. Various accident analysis involving the spent fuel were also conducted for potential accidents in the Unit No. 1 fuel handling building and the Unit No. 1 spent fuel pool. The staff and the licensee evaluated the fuel handling accident. The staff's evaluation is contained in Section 15 of the original Safety Evaluation for Unit No. 1 issued on November 8, 1974. The staff again considered the fuel handling accident in the rerack amendment action of March 29, 1978. In both cases, the staff concluded that the doses were well within the 10 CFR Part 100 guideline values. Therefore, the loading of a single fuel element into a spent fuel cask and the movement of the entire package (25 tons or less) out of the Unit No. 1 fuel handling building has already been analyzed and found to be acceptable and technical specifications are in effect.

Based upon the above discussion, it does not appear that this part of the proposed amendment would involve a significant increase in the probability or consequences of an accident previously evaluated, would create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety because this part of the proposed action by the licensee has already been reviewed and approved in previous staff evaluations and technical specifications are in effect.

In regard to Unit No. 2 and transferring the entire package (25 tons or less) into the Unit No. 2 fuel handling building and removing a Unit No. 1 spent fuel assembly (less than 1300 pounds) from the cask and placing it in the Unit No. 2 spent fuel pool, loads in excess of 1600 pounds are prohibited from travel over fuel assemblies in the spent fuel storage pool per Technical Specification 3.9.7. The maximum load which may be handled by the spent fuel cask crane will not exceed 100 tons per Technical Specification 3.9.12. The spent fuel storage pool is designed and maintained with a storage capacity limited to no more than 1076 fuel assemblies per Technical Specification 5.6.3. The recent spent fuel storage pool rerack was reviewed and approved assuming Unit No. 1 fuel in storage (14 X 14 design fuel) and Unit No. 2 fuel in storage (16 X 16 design fuel) per the staff's safety evaluation dated October 16, 1984. Potential fuel handling accidents were included in the staff's evaluation and the doses were within the guidelines of 10 CFR Part 100. Therefore, the movement of the entire package (25 tons or less) into the Unit No. 2 fuel handling building, and placement of Unit No. 1 fuel into the Unit No. 2 spent fuel pool has already been analyzed and found to be acceptable and technical specifications are in effect.

Based upon the above discussion, it does not appear that this part of the proposed amendment would involve a significant increase in the probability or consequences of an accident previously evaluated, would create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety because this part of the proposed action by the licensee has either been explicitly reviewed and approved in previous staff evaluations (e.g., placement of Unit No. 1 spent fuel into the Unit No. 2 spent fuel pool) or bounded by previous staff evaluations (the staff evaluation of a 100 ton cask with 10 irradiated assemblies versus the licensee proposed 25 ton cask with one irradiated assembly). In addition, technical specifications are in effect.

In regard to transfer of the spent fuel shipping cask that meets the packaging and transportation requirements of 10 CFR 71 on a transporter vehicle between the Unit No. 1 fuel handling building and the Unit No. 2 fuel handling building (a distance of approximately 30 feet), the licensee states that the load path was evaluated and found to provide a safe path for transport of the spent fuel. Two transporter vehicles were considered in the load path evaluation. The maximum wheel loads for each of these transporters were found by the licensee to be acceptable considering the effects on all surfaces including the roadway, missile protection slabs, and underground facilities (i.e., pipes, electric conduit, manholes, and catch basins). In connection with a postulated cask drop accident, the staff previously evaluated such an accident outside of the Unit No. 2 fuel handling building. This evaluation is contained in the Unit No. 2 Safety Evaluation Report (section 15.11.6) dated October 1981 (NUREG–0843). The evaluation considered a spent fuel cask containing 10 irradiated fuel assemblies with a total weight of the package being 100 tons. Instantaneous release of the associated radioactivity to the atmosphere from ground level was postulated.

The staff found in the October 1981 safety evaluation report that the doses were well within the 10 CFR Part 100 guideline values, and concluded that the fuel handling and storage design features are acceptable. This conclusion was again reiterated in the staff's safety evaluation associated with the Unit No. 2 spent fuel pool rerack dated October 16, 1984. This staff evaluation for Unit No. 2 bounds the licensee's proposal because the licensee is utilizing a 25-ton cask with one irradiated fuel assembly in it. The licensee also evaluated a single assembly cask failure outside the Unit No. 1 fuel handling building in section 9.1.4.3 of the Unit No. 1 Final Safety Analysis Report. The doses were well within the 10 CFR Part 100 guideline values.

Based upon the above discussion, it does not appear that this part of the proposed amendment would involve a significant increase in the probability or consequences of an accident previously evaluated, would create the possibility

of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety because the previous evaluations performed by the staff and the licensee either directly address the proposed action or the proposed action is within the bounds of previous evaluations.

Based upon the above considerations, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By November 19, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules in implementing section 134 of the NWPA are found in 10 CFR Part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 (October 15, 1985) 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

Subject to the above requirements and any limitations in the order granting leave to intervene, those permitted to intervene become parties to the proceeding and have the opportunity to participate fully in the conduct of any hearing which is held, including the opportunity to present evidence and cross-examine witnesses at such hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ashok C. Thadani: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esq., Newman & Holtzinger, 1615 L Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 2, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Dated at Bethesda, Maryland, this 10th day of October, 1986.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Directorate No. 8, Division of PWR Licensing-B.

[FR Doc. 86-23671 Filed 10-17-86; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Change in Telephone Numbers

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of change in telephone numbers.

SUMMARY: This notice advises the public that the telephone numbers of the Pension Benefit Guaranty Corporation have been changed, effective October 13, 1986. This notice is needed to enable the public to obtain information about published regulations, notices, the PBGC's semiannual agenda of regulations under development, and other subjects of public interest. This notice will enable interested parties to reach the appropriate PBGC persons with questions, comments, or inquiries.

EFFECTIVE DATE: The new telephone numbers were effective October 13, 1986.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Effective October 13, 1986, the telephones of the Pension Benefit Guaranty Corporation (PBGC) were shifted from the Washington, DC, telephone exchange of "956-50xx" to the "778-88xx" exchange. The last two digits of most PBGC telephone numbers are the same as those in the previous numbers; and the area code remains unchanged. Thus, the new telephone number to be called in order to obtain information about published regulations, notices, and the PBGC's semiannual agenda of regulations under development is 202-778-8850. The new number for Coverage and Inquiries is 202-778-8800; and the new number for Communications and Public Affairs is 202-778-8840. Hearing impaired persons may telephone 202-778-8859. These are not toll-free numbers.

Issued at Washington, DC, this 14th day of October, 1986.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86-23804 Filed 10-17-86; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Agreements Filed During the Week Ending October 10, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44402 R-1-R-3

Parties: Members of International Air Transport Association.
Date Filed: October 1, 1986.
Subject: TC3 Passenger Fares.
Proposed Effective Date: November 1, 1986.

Docket No. 44403

Parties: Members of International Air Transport Association.
Date Filed: October 1, 1986.
Subject: TC1 Specific Commodity Rates.
Proposed Effective Date: October 1, 1986.

Docket No. 44404

Parties: Members of International Air Transport Association.
Date Filed: October 1, 1986.
Subject: Atlantic Specific Commodity Rates.
Proposed Effective Date: October 1, 1986.

Docket No. 44405 R-1-R-8

Parties: Members of International Air Transport Association.
Date Filed: October 6, 1986.
Subject: TC1—Within So. America Fares.
Proposed Effective Date: November 15, 1986.

Docket No. 44406

Parties: Members of International Air Transport Association.
Date Filed: October 6, 1986.
Subject: Maximum Permitted Mileage—Tashkent.
Proposed Effective Date: November 1, 1986.

Docket No. 44407

Parties: Members of International Air Transport Association.
Date Filed: October 7, 1986.

BEST COPY AVAILABLE

Subject: TC3 General Cargo Rate Amendment.

Proposed Effective Date: October 15, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-23621 Filed 10-17-86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Week Ended October 10, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44411

Date Filed: October 8, 1986.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 5, 1986.

Description: Application of (U.T.A.) Union De Transports Aeriens pursuant to section 402 of the Act and Subpart Q of the Regulations requests amendment of its foreign air carrier permit issued by Order 74-5-29 such that in lieu of the present language UTA is authorized to engage in foreign air transportation as follows:

1. Between a point or points in the islands of New Caledonia, Tahiti, and Bora-Bora; the intermediate points Nandi, Fiji; Pago Pago, American Samoa; and Honolulu, Hawaii; and the coterminal points Los Angeles and San Francisco, California.

2. Between a terminal point or points in France, and the terminal point San Francisco to a terminal point or points in the islands of Tahiti and Bora-Bora.

The holder shall also be authorized to engage in scheduled air transportation between a point or points on Segment 1 and a point or points in France on Segment 2 via the common junction point, San Francisco, California.

Docket No. 44418

Date Filed: October 10, 1986.

Due Date for Answers, Conforming Application or Motions to Modify Scope: November 7, 1986.

Description: Application of Air Specialties Corporation d/b/a Air America, pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate to authorize air transportation of persons, property and mail between the terminal point Baltimore, Maryland, and the foreign points London, United Kingdom, and Frankfurt, Federal Republic of Germany.

Docket No. 44400

Date Filed: October 6, 1986.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 3, 1986.

Description: Application of Pan American World Airways, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests authority to provide scheduled combination service between the U.S. coterminal points on Segment 4 of its Route 132 and Saudi Arabia (both via intermediate points and on a nonstop routing) and beyond to other points in Europe and Asia on Pan Am's Route 132.

Docket No. 44415

Date Filed: October 10, 1986.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 24, 1986.

Description: Conforming Application of Northwest Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for route 179 so as to remove condition 12 from that certificate. Removal of the condition would permit Northwest to carry local traffic on its London-Frankfurt flights on a year-round basis.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-23622 Filed 10-17-86; 8:45 am]

BILLING CODE 4910-62-M

[Order 86-10-25; Docket 40993]

Proposed Suspension of the Section 401 Certificate of Ellis Air Taxi, Inc.; Order To Show Cause

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of order to show cause (Order 86-10-25) Docket 40993.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order suspending the certificate of Ellis Air Taxi, Inc., issued under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than November 4, 1986.

ADDRESSES: Responses should be filed in Docket 40993 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Janet A. Davis, Special Authorities Division, P-47, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-2340.

Dated: October 14, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-23623 Filed 10-17-86; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 86-063]

Houston/Galveston Navigation Safety Advisory Committee; Renewal of Charter

SUMMARY: USCG announces the renewal of the charter for the Houston/Galveston Navigation Safety Advisory Committee.

The purpose of the Committee is to provide local expertise on such mattes as communications, surveillance, traffic control, anchorages, and other related topics dealings with navigation safety in the Houston/Galveston area as required by the Coast Guard.

FOR FURTHER INFORMATION CONTACT: Commander D.F. Withee, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: October 15, 1986.

W.P. Hewel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 86-23643 Filed 10-17-86; 8:45 am]

BILLING CODE 4910-14-M

[CGD-86-05]

National Boating Safety Advisory Council Subcommittee on Consumer Education; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Consumer Education to be held on Monday, November 10, 1986, at the Stouffer Madison Hotel, 515 Madison Street, Seattle, Washington, beginning at 4:00 p.m. and ending at 6:00 p.m. The agenda for the meeting will be as follows:

1. Information updates on:

ABYC 5% Grant for Boating Safety Bibliography
MRAA 5% Grant for Marine Dealers Boating Education Kit
Boating Safety Hotline

2. Discuss ways to help publicize and distribute the ABYC Boating Safety Bibliography.

3. Discuss ways in which marine dealers and manufacturers may be able to educate boat operators regarding the dangers of operating a vessel while intoxicated, and otherwise participate in initiatives to deal with the growing problem of drunk boat operators.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain M.B. Stenger, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-BBS), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington DC, October 14, 1986.

W.P. Hewel,

Captain, U.S. Coast Guard Acting Chief, Office of Boating, Public, and Consumer Affairs.

October 14, 1986.

[FR Doc. 86-23644 Filed 10-17-86; 8:45 am]

BILLING CODE 4910-14-M

[CGD-86-062]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Tuesday and Wednesday, November 11 & 12, 1986, at the Stouffer Madison Hotel, 515 Madison Street, Seattle, Washington, beginning at 9:00 a.m. and ending at 4:00 p.m. on both days. The agenda for the meeting will be as follows:

1. Introduction of new Council Member.
2. Review of action taken at the 37th meeting of the Council.
3. Members' items.
4. Executive Director's report.
5. Follow-up report on previous meeting's Regulatory review.
6. Consumer Education Subcommittee report.
7. Update on Alcohol (fuel) and Fuel Hose Standards.
8. Discussion on Sportboats.
9. Presentation on recently adopted International Association of Lighthouse Authorities (IALA) Buoyage Guidelines.
10. Presentation on rescue balloon.
11. Update on Hybrid Life Preserver project and PFD pamphlet review.
12. Update on Regulatory Project, Operating a Vessel While Intoxicated.
13. Reply to members' items.
14. Remarks by Chief, Office of Boating, Public, and Consumer Affairs.
15. Chairman's session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain M.B. Stenger, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-BBS), Washington, DC, 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC, October 14, 1986.

W.P. Hewel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

October 14, 1986.

[FR Doc. 86-23645 Filed 10-17-86; 8:45 am]

BILLING CODE 4910-14-M

[CGD 86-007]

Voluntary Uninspected U.S. Commercial Fishing Vessel Safety Program

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of publications.

SUMMARY: The U.S. Coast Guard's Fishing Vessel Safety Task Force has completed its work in developing a voluntary vessel standards program and a safety awareness and education program. The vessel standards have been consolidated in navigation and vessel inspection circular (NVIC) 5-86. The safety awareness and education program has been included in the U.S. Coast Guard/North Pacific Fishing Vessel Owners' Association (NPFVOA) "Vessel Safety Manual." This notice provides information on how these publications may be purchased.

FOR FURTHER INFORMATION CONTACT: LCDR William J. Morani Jr., Fishing Vessel Safety Task Force, (G-MTH-F/V), Room 1400, U.S. Coast Guard Headquarters, 2100 Second St., SW Washington, DC 20593; (202) 267-1053.

SUPPLEMENTARY INFORMATION: It is generally acknowledged that commercial fishermen are engaged in one of the most hazardous of all occupations. It has the poorest safety record of all U.S. industries. In response to this poor safety record the Commandant of the Coast Guard recommended a fishing vessel safety initiative to the Secretary of Transportation to reduce the number of casualties. The Coast Guard formed a full time Fishing Vessel Safety Task Force under the direction of the Chief, Office of Marine Safety, Security, and Environmental Protection to develop the initiative. With the Secretary's support and approval the initiative has developed into a total voluntary program.

The U.S. Coast Guard Fishing Vessel Safety Task Force has completed its work in developing a voluntary vessel standards program and safety awareness and education program. The vessel standards, which originally consisted of a series of five navigation and vessel inspection circulars (NVICs 5-85 thru 9-85) covering several areas, have been consolidated and published in NVIC 5-86, "Voluntary Standards For U.S. Uninspected Commercial Fishing Vessels" after persons in the fishing industry were given the opportunity to review, evaluate, and comment on our initial recommended standards. NVIC 5-86 includes recommended voluntary standards intended to be used as guidelines for increased safety on board U.S. uninspected commercial fishing, fish processing, and fish tender vessels. Boat builders, marine surveyors, insurance underwriters fishing vessel owners, operators, industry associations, and other interested parties are encouraged to adopt and implement these voluntary standards. NVIC 5-86 "Voluntary Standards For U.S. Uninspected Commercial Fishing Vessels", stock number 850-001-000-22-7 can be obtained through the Government Printing Office. Include this information along with your check, in

the amount of $11.00 payable to the "Superintendent of Documents", to Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3238.

NVIC 5–86 is one component of an overall safety program aimed at improving the safety record of commercial fishing vessels. The other components are the USCG/NPFVOA "Vessel Safety Manual" and industry sponsored training courses. The "Vessel Safety Manual", which was developed in a joint effort between the Coast Guard and the NPFVOA, is targeted for use on board fishing vessels by fishermen and will serve as the basis for safety courses to be developed and given locally by fishing industry organizations, universities, community colleges, or similar training institutions. This will provide the framework for the fishing industry to reduce their vessel and human losses without federal regulation. Copies of the "Vessel Safety Manual" are available at a cost of $30.00 from Vessel Safety Program, Room 207, C–3 Building, Fishermen's Terminal, Seattle, WA 98119; (206) 283–083–0861

October 8, 1986.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 86–23646 Filed 10–17–86; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

[Docket No. S–792]

Farrell Lines Inc.; Application to Provide a TR 14/10 Dual Service

Farrell Lines Incorporated (Farrell) by application dated October 2, 1986, has requested an amendment to Appendix A of Operating-Differential Subsidy Agreements (ODSA), Contract Nos. MA/MSB–352 and MA/MSB–482, to provide a Trade Route (TR) 14/10 (U.S. Atlantic-Gulf/West Africa and U.S. Atlantic/Mediterranean) dual service.

Farrell currently provides service on its TR 14 service (U.S. Atlantic-Gulf/West Africa) with two C3–S–46b container vessels. On its TR 10 service (U.S. Atlantic/Mediterranean), Farrell provides service with four C5–S–73b container vessels.

Under ODSA Contract MA/MSB–352 and MA/MSB–482, Farrell is authorized to make a minimum/maximum of 20/38 sailings per year on TR 14 and a minimum/maximum of 44/66 sailings per year on TR 10, respectively.

Farrell's application stresses several benefits it expects will be gained by the combined services. The combination will provide Farrell with more operating flexibility and efficiency. It will not involve an increase in the number of ships, geographical area or authorized number of sailings. It will help maintain regular U.S.-flag berth service in the two service areas and possibly increase U.S.-flag participation.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on November 5, 1986. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such actions with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS))

Dated: October 15, 1986.

By Order of the Maritime Subsidy Board.

James E. Saari,

Secretary.

[FR Doc. 86–23593 Filed 10–17–86; 8:45 am]

BILLING CODE 4910–81–M

[Docket No. S–791]

Lykes Bros. Steamship Co., Inc.; Application for Nonsubsidized Service South of Jacksonville

Notice is hereby given that Lykes Bros. Steamship Co., Inc. (Lykes) by application dated October 2, 1986, has applied for written permission to operate nonsubsidized service between U.S. Atlantic ports south of Jacksonville and the North Coast of Colombia, Venezuela and the Atlantic Coast of Panama, subject to the condition that if Lykes conducts such non-subsidized voyage on its TR 2 service, the subsidy payment for the entire voyage shall be reduced by an amount which bears the same ratio for the subsidy otherwise payable as the gross revenue earned from the non-subsidized operations bears to the gross revenue derived from the entire voyage.

Any person, firm, or corporation having interest in the application and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nssif Building, 400 Seventh Street SW., Washington, DC 20590, by 5:00 P.M. on October 29, 1986.

The Maritime Subsidy Board/Maritime Administrator as a matter of discretion will consider any comments submitted and take such actions with respect thereto as may be deemed to be appropriate.

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS))

Dated: October 15, 1986.

By Order of the Maritime Subsidy Board/Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 86–23594 Filed 10–17–86; 8:45 am]

BILLING CODE 4910–81–M

Approval of Applicant as Trustee; AmSouth Bank, N.A.

Notice is hereby given that AmSouth, N.A., with offices at 31 North Royal Street, Mobile, Alabama, has been approved as Trustee pursuant to Pub. L. 89–346 and 46 CFR 221.21 through 221.30.

Dated: October 14, 1986.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 86–23595 Filed 10–17–86; 8:45 am]

BILLING CODE 4910–81–M

Research and Special Programs Administration

[Docket No. IRA–37]

Citizens Against Nuclear Trucking; Application for Inconsistency Ruling

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Citizens Against Nuclear Trucking (CANT) has applied for an administrative ruling whether §§ 1074.3 and 1075.19 of the regulations of the Triborough Bridge and Tunnel Authority (TBTA) are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder, and, therefore, preempted under section 112(a) of the HMTA. Those TBTA regulations govern the transportation of certain radioactive materials and explosives on or through seven bridges and two tunnels regulated by TBTA.

DATES: Comments received on or before December 19, 1986, and rebuttal comments received on or before February 3, 1987, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Branch, Research and Special Programs Administration, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Branch at the above address, and should include the Docket Number, IRA–37. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Mr. Lindsay Audin, Technical Director, Citizens Against Nuclear Trucking, 21547 47th Ave., Bayside, NY 11591, and to TBTA's counsel, Kevin Healy, Esq., Stadtmauer, Bailkin, Kessler & Ratner, 110 E. 59th St., 25th Floor, New York, NY 10022, and that fact certified to at the time comment is submitted to the Dockets Branch. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Audin and Healy at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590, telephone 202–366–4401.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 U.S.C. app. 1801 *et seq.*) at section 112(a) (49 U.S.C. app. 1811(a)) expressly preempts "any requirement of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112 of the HMTA are codified at 49 CFR 107.201–107.225. These regulations provide for the issuance of inconsistency rulings and nonpreemption determinations. Briefly, an inconsistency ruling is an administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a State or political subdivision requirement is inconsistent:

(1) Whether compliance with both the state or political subdivision requirement and the HMTA or HMR is possible; and

(2) The extent to which the state or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR.

2. The Application for Inconsistency Ruling

Citizens Against Nuclear Trucking (CANT) has filed an application for an administrative ruling seeking a determination that §§ 1074.3 and 1075.19 of the regulations of TBTA regulating the transport of certain radioactive materials and explosives are inconsistent with the HMTA or the HMR. These TBTA rules regulate carriage of certain radioactive materials and explosives over the Triborough Bridge, Bronx-Whitestone Bridge, Throgs Neck Bridge, Henry Hudson Bridge, Marine Parkway Gil Hodges Memorial Bridge, Cross Bay Veterans Memorial Bridge, and the Verrazano-Narrows Bridge and through the Queens Midtown Tunnel and the Brooklyn-Battery Tunnel. They prohibit certain transport unless U.S. Department of Transportation (DOT) requirements have been met and prior permission has been obtained from TBTA. These regulations (together with cross-referenced § 1074.6) are reprinted as Appendix A to this Notice.

CANT contends that its members live and work near a highway affected by the cited provisions, and thus are affected by those provisions. They contend that TBTA's "ban" on radioactive shipments across its bridges caused a truck carrying low level nuclear waste to be diverted into their neighborhood, where it collided with a rail bridge over a city street.

CANT specifically requests that the TBTA regulations be tested for inconsistency with Appendix A to 49 CFR Part 177 and with 49 CFR 177.825(a). Comparison with Appendix A will not be undertaken because Appendix A is not a law or regulation, but merely a statement of DOT policy. Thus, comparison of the TBTA regulations will be made only with 49 CFR 177.825 (and any necessarily-related HMTA or HMR provisions).

CANT asserts that the TBTA regulations are inconsistent for two general reasons:

(1) They place routing restrictions on shipments of materials that are exempted from such requirements under Federal rules, and

(2) They force use of a highly circuitous route that passes through more densely populated areas on local streets when safer interstate highways are available.

The applicant contends that these regulations are inconsistent with the Federal regulation because they significantly restrict movement by public highway and apply because of the hazardous nature of the cargo. Thus, it asserts, they constitute a prohibited local routing rule.

Also, CANT states that these regulations are inconsistent with 49 CFR 177.825(a) because they block use of a route that minimizes radiological risk:

> To avoid the bridge controlled by TBTA, the driver must use New York City bridges that pass through the most densely populated and active areas of the City along local roads not designed to interstate highway standards.

Finally, CANT contends that these regulations fail both the "obstacle" and "dual compliance" tests. They assert that these regulations are an obstacle to choosing a route that minimizes risk and that simultaneous compliance with them and with 49 CFR 177.825(a) is impossible.

3. Public Comment

Comments should be restricted to the issue of whether the challenged TBTA regulations are inconsistent with the HMTA or the HMR issued thereunder.

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Branch, the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201 through 107.211), and the cited TBTA regulations in Appendix A to this notice.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC on October 10, 1986.

Appendix A—Triborough Bridge and Tunnel Authority Regulations at Issue in Application IRA–37 and Cross-Referenced § 1074.6

§ 1074.3 Explosives—radioactive materials.

Except as otherwise set forth in section 1074.6 of this Part, no vehicle shall enter upon the Triborough Bridge, Bronx-Whitestone Bridge, Throgs Neck Bridge, Henry Hudson Bridge, Marine Parkway Gil Hodges Memorial Bridge, Cross Bay Veterans Memorial Bridge or the Verrazano-Narrows Bridge Upper Level, if its load includes:

(a) Any class A or B explosives, as defined by U.S.D.O.T. regulations, except special fireworks—including railway or track torpedoes—in quantities not in excess of 10 pounds gross weight per vehicle; or

(b) Any radioactive materials, including but not limited to radionuclides, nuclear fissionable material, reactor fuel rods, irradiated fuel rods, and radioactive ores, residues and wastes, except:

(1) When the type and quantity of radioactive material is such that it is exempt from all U.S.D.O.T. prescribed packaging, marking, labeling and placarding;

(2) When radioactive materials are a component part of manufactured articles other than liquids, such as instrument or clock dials or electronic tubes or apparatus, which are exempt from all U.S.D.O.T. specification packaging, marking, labeling and placarding; and

(3) With respect to the Verrazano-Narrows Bridge, upper level only, the Bronx-Whitestone Bridge and the Triborough Bridge, when radioactive pharmaceuticals are shipped in compliance with the packaging, marking, labeling, placarding and all other regulations issued by the United States Department of Transportation, and when prior permission has been granted by the facility supervisor or his authorized representative at least two hours before intended travel over the bridge.

§ 1075.19 Radioactive materials.

No vehicle shall enter the Queens Midtown Tunnel, the Brooklyn-Battery Tunnel or the Verrazano-Narrows Bridge Lower Level if its load includes any radioactive material, including but not limited to radionuclides, nuclear or fissionable materials, radioactive ore, residue or waste or any radioactive material, except:

(a) When the load includes specifically packaged and labeled magnesium-thorium alloys in formed shapes (not powdered, and which shall contain not more than four percent nominal thorium 232); or

(b) When the radioactive material is such that it is exempt from all U.S.D.O.T. specification packaging, marking, and labeling because of type and quantity, but not exempt by reason of Nuclear Regulatory Commission shipment and escort, military convoy or other special authorization; but

(c) Vehicles transporting radioactive materials which are not exempt from these rules by reason of subdivision (a) or (b) of this section are allowed passage when all of the following conditions are fulfilled:

(1) The radioactive materials consist solely of manufactured articles other than liquids, namely, instrument or clock dials or electronic tubes of which radioactive materials are a component part;

(2) The radioactive material is being shipped in conformity with all U.S.D.O.T. regulations, including but not limited to all packaging, marking and labeling requirements;

(3) The gross weight of the radioactive material and its container does not exceed 500 pounds per vehicle; and

(4) Prior permission has been granted by the facility supervisor or his authorized representative at least two hours before intended travel across the facility.

§ 1074.6 Transportation of explosives over the Throgs Neck Bridge.

No vehicle shall enter upon the Throgs Neck Bridge if its load shall include any class A or B explosives as defined by U.S.D.O.T. regulations, except special fireworks—including railway or track torpedoes—in quantities not in excess of 10 pounds gross weight per vehicle, except under the following conditions:

(a) Prior permission must be granted by the facility supervisor of the bridge, or his authorized representative, at least two hours before intended travel over the bridge.

(b) If permission to use the facility is granted by the facility supervisor or his representative, passage may be made during the following hours:

Monday through Friday—10 a.m. to 3 p.m., 7 p.m. to 6 a.m.

Saturdays, Sundays and holidays—traffic permitting.

(c) Vehicles transporting class A or B explosives, their contents and shipping documents, shall be subject to inspection by bridge personnel prior to entering the facility.

(d) Operators of vehicles transporting class A or B explosives must comply with all lawful orders, instructions and directives of authorized bridge personnel.

(e) Vehicles transporting class A or B explosives, whether halted or in motion, must remain at least 300 feet behind any vehicle traveling in the same direction while crossing the bridge.

[FR Doc. 86-23624 Filed 10-17-86; 8:45 am]

BILLING CODE 4910-86-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 14, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New
Form Number: ATF REC 5210/2
Type of Review: New
Title: Tobacco Products Manufacturers—Notice for Tobacco Products
Clearance Officer: Robert G. Masarsky (202) 566-7077 Bureau of Alcohol, Tobacco and Firearms Room 7202, Federal Building 1200 Pennsylvania Avenue, NW. Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880 Office of Management and Budget Room 3208, New Executive Office Building Washington, DC 20503

Douglas J. Colley,
Departmental Reports, Management Office.

[FR Doc 86-23661 Filed 10-17-86; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 86-191]

Approval of William A. Finn to Gauge Imported Petroleum and Petroleum Products

AGENCY: Customs Service, Treasury.

ACTION: Notice of approval.

SUMMARY: Pursuant to § 151.43(b), Customs Regulations (19 CFR 151.43(b)), Mr. William A. Finn, 1908 Naomi Street, Glassport, Pennsylvania 15045, has applied to Customs for approval to gauge imported petroleum and petroleum products. It has been determined that Mr. Finn meets all of the requirements to be a Customs approved public gauger.

Accordingly, the application of William A. Finn to gauge imported petroleum and petroleum products in all Customs districts is approved.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Technical Services Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: October 14, 1986.

Roger J. Crain,
Chief, Technical Section, Technical Services Division.

[FR Doc. 86-23615 Filed 10-17-86; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Availability of Report of 38 U.S.C. 219 Program Evaluation

Notice is hereby given that the program evaluation of the veterans Administration's Alcohol and Drug Dependence Treatment (A&DDT) Program has been completed.

Single copies of the A&DDT Program Evaluation are available free. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mrs. Lynn H. Covington, Director, Program Evaluation Service, Veterans Administration (074), 810 Vermont Avenue NW., Washington, DC 20420.

Dated: October 10, 1986.

By direction of the Administrator.

Raymond S. Blunt,
Director, Office of Program Analysis and Evaluation.

[FR Doc. 86-23653 Filed 10-17-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 202
Monday, October 20, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 36631, dated October 14, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time), Monday, October 20, 1986.

CHANGE IN THE MEETING: The following matters have been postponed from the meeting and will be rescheduled at a later date.

"Proposed Contracts for Experts Services in Connection with Court Cases"

CONTACT PERSON FOR FURTHER INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

Dated and issued: October 15, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86-23690 Filed 10-16-86; 11:47 am]

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, October 27, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Compliance Manual, Volume I, Section II, Intake of Charges and Compliance
4. Proposed Compliance Manual, Volume I, Section III, Respondent Notification Procedures
5. Proposed Compliance Manual, Volume I, Section VI, Notice of Right To Sue

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated and issued: October 15, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86-23691 Filed 10-16-86; 11:47 am]

BILLING CODE 6750-06-M

3

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 22, 1986, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This special meeting of the Board, being called to discuss examination and enforcement matters, will be closed to the public pursuant to exemptions prescribed in 5 U.S.C. 552b(c)(4), (8), and (9).

Dated: October 15, 1986.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration.

[FR Doc. 86-23673 Filed 10-15-86; 5:07 pm]

BILLING CODE 6705-01-M

4

FEDERAL COMMUNICATIONS COMMISSION

October 9, 1986.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 16, 1986, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—Title: Amendment of Parts 90 Subparts M and S of the Commission's Rules. Summary: The Commission will consider whether to adopt a Notice of Proposed Rule Making concerning Subpart M and the modification of Subpart S as it applies to trunked specialized Mobile Radio Systems.

Private Radio—2—Title: Declaratory Ruling on Norlight Fiber Optic Network. Summary: The Commission will consider whether to adopt a Declaratory Ruling concerning Norlight's interstate fiber optic network and its request to be a private carrier system, preemted from state rate and entry regulation.

Common Carrier—1—Title: Amendment of the Commission's Rules for Rural Cellular Service Areas (RSAs). Summary: The Commission will consider adopting a Further Notice of Proposed Rulemaking concerning partial wireline settlements, and ownership in multiple applications in the same RSA, restrictions on the sale, barter, transfer or alienation of any interest in a RSA permit or license.

Common Carrier—2—Title: In the Matter of Petitions of MCI Telecommunications and GTE Sprint Communications Regarding the Validity of Connecticut Statute and Decisions of the Connecticut Department of Public Utility Control (CDPUC) Relating to Unauthorized Intrastate Traffic. Summary: The FCC will consider whether certain advertising and compensation requirements imposed on unauthorized intrastate traffic by certain portions of a Connecticut statute and the CDPUC's implementing regulations are void and unenforceable as they relate to the FCC's rules and policies and jurisdiction over interstate communications.

Mass Media—1—Title: Application for authority to construct an experimental broadcast facility on Channel 7, Ponce, Puerto Rico, filed by Ponce Television Corporation (WLUZ-TV). Summary: The Commission will consider Ponce Television Corporation's Application to construct an experimental facility to conduct research on the effects of extreme terrain conditions on television signal reception, along with petitions and objections filed by interested parties.

Mass Media—2—Title: Frequency Coordination Procedures for the Broadcast Auxiliary Services: Part 74, Subparts D, E, F, and H. Summary: The Commission will consider action on a petition requesting amendment of Broadcast Auxiliary Rules to require that applicants certify they have coordinated intended frequency usage.

Mass Media—3—Title: Flexible Operational and Licensing Procedures for the Broadcast Auxiliary Services: Part 74, Subparts D, E, F, and H; and the Cable Television Relay Service, Part 78. Summary: The Commission will consider adoption of a Notice of Inquiry concerning flexible BAS licensing procedures.

Mass Media—4—Title: Notice of Proposed Rule Making to Amend §§73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations. Summary: The Commission will consider potential modifications of these rules in response to a petition for rule making filed by the Arizona Justice Committee.

Mass Media—5—Title: Policy Regarding Character Qualifications in Broadcast Licensing (Gen. Docket No. 81-500), and Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees (BC Docket No. 78-108. Summary: The Commission will consider various petitions for reconsideration or clarification of the *Report, Order, and Policy Statement* which revised policies on the character qualifications of broadcast applicants.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Issued: October 9, 1986.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-23711 Filed 10-16-86; 2:40 pm]

BILLING CODE 6712-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m. on Tuesday, October 14, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a recommendation regarding the Corporation's assistance agreement with an insured bank.

At that same meeting, the Board also considered: (a) The application of Columbus Bank and Trust Company, Columbus, Georgia, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in the Warm Springs Office of First American Bank, Warm Springs, Georgia, and for consent to establish that office as a branch of Columbus Bank and Trust Company; and (b) the application of Bank of Coweta, Newnan, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with the First American Bank, Warm Springs, Georgia, and for consent to establish the Luthersville Office of First American Bank as a branch of the resultant bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: October 15, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-23694 Filed 10-16-86; 12:14 pm]

BILLING CODE 6714-01-M

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federal register

Monday
October 20, 1986

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Nos. 85-AWA-1 and 85-AWA-6]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Theodore Francis Green State Airport, Providence, RI, and Standiford Field Airport, Louisville, KY. The locations designated are public airports at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of the ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATES: 0901 UTC, November 20, 1986, for ASD 85-AWA-6; 0901 UTC, December 18, 1986, for ASD 85-AWA-1.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 64 ARSA's in the implementation of this NAR recommendation.

On July 3, 1985, the FAA proposed to establish an ARSA at Theodore Francis Green State Airport, Providence, RI, under ASD 85-AWA-1 (50 FR 27528), and, on September 30, 1985, proposed to designate an ARSA at Standiford Field Airport, Louisville, KY, under Airspace Docket No. 85-AWA-6 (50 FR 39822). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held an informal airspace meeting for each proposed airpo[illegible]

Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designations. Additionally, several of the comments on individual designations are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposals at Providence and Louisville.

ARSA Program Comments

Comments received from the Aircraft Owners and Pilots Association (AOPA) and several others claimed that the notification for some of the informal airspace meetings held for some of the candidate airports was inadequate. The schedule of the meetings was published in the Notices of Proposed Rulemaking (NPRM) on July 3, 1985 (50 FR 27528) and on September 30, 1985 (50 FR 39822). Additionally, the FAA sent announcements to individuals, fixed-base operators, aviation user organizations, and to the news media organizations in each airport's area. The ARSA program has received considerable coverage in newsletters and official publications of aviation organizations and the schedule of the meetings mailed to members. Furthermore, a 91-day comment period was provided for Providence (ASD 85-AWA-1) and a 277-day comment period for Louisville (ASD 85-AWA-6) in which the public could make comment to the public dockets on the proposals. An extension of comment period and notice of an informal airspace meeting was published on April 28, 1986 (51 FR 15788) for Standiford Field Airport, Louisville, KY, which readvertised the informal airspace meeting and extended the comment period. For the above reasons the FAA believes the opportunity was sufficient to permit full public comment on the proposals.

AOPA and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notices, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

Several commenters, including AOPA, disagreed with the FAA's conclusion that the additional air traffic could be accommodated with existing manpower at locations where TRSA participation was low. The FAA's conclusion for the total program was in part based upon the fact that participation in the existing TRSA's was quite high and, therefore, an increase from the present levels to 100% would not be a significant change. The commenters, while not agreeing with this conclusion, claimed that the FAA's rationale did not apply where participation was low and thus additonal manpower would be needed at these locations if ARSA was designated. The FAA recognizes that participation in the TRSA program is relatively low at some of the candidate locations. However, this is in large part

due to the controllers' walkout of 1981 and the subsequent reduction in fully qualified controllers which led to the discontinuance of TRSA services. A sufficient number of controllers is assigned at the facilities to which the commenters refer and those facilities are ready to provide the service to the increased number of pilots. This factor was considered by the FAA in its intitial evaluation of the ARSA program.

AOPA claimed the staffing at one facility more than doubled in the year prior to implementation of this ARSA. The facility's authorized staffing of 28 controllers did not change. In the facility in question, on January 1, 1985, there were 27 controllers on board but in January 1986, there were the authorized 28 on board. The FAA finds the AOPA claim to be without merit.

The Soaring Society of America (SSA) objected to the ARSA program because it does not provide the same level of safety and service to all classes of aviation. As with other regulations, this rule affects different operators in different ways depending on their respective need to operate in controlled airspace or near the airports involved. The FAA does not agree that this variation in impact is reason not to adopt a rule which benefits the majority of users.

The SSA claims the FAA is changing the criteria that an operating control tower is the only requirement for an airport to be eligible for an ARSA. The FAA has not departed from the NAR criteria which would replace TRSA with ARSA at airports with an operating control tower served by a level III, IV, or V Radar Approach Control Facility.

The SSA claimed that the ARSA rule should state that the ultimate responsibility for separation from other aircraft operating in visual flight rule (VFR) conditions rests with the pilot. While the FAA agrees that such is the case, the agency does not agree that the ARSA rule must so state. Unless a new or amending provision to the Federal Aviation Regulations (FAR) specifically deletes, amends, or supersedes existing sections, the existing regulations still apply. The ARSA rule (50 FR 9252, 9257, March 6, 1985) did not alter the sections of the FAR that establish that level of responsibility.

AOPA faulted the FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Additionally, the FAA does not believe that these considerations should be cause for delaying a program that was recommended by a majority of the members of the National Airspace Review, and which has already produced positive results at most of the designate locations.

Numerous commenters also objected to the proposals based upon their belief that the volume of air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delays will be greater than was estimated by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that estimates of delays were quite preliminary, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. These cost estimates are expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the case at the three locations where ARSA has been in effect for an appreciable period, and is the trend at those locations more recently designated.

AOPA discounted the FAA delay estimates claiming that they were based upon a standard ARSA. The FAA does not agree. FAA's preliminary delay estimates were based upon the ARSA proposed for the individual locations, whether standard or modified.

Several commenters questioned the validity of FAA's estimates of the time savings expected to be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. FAA wants to reemphasize that its estimates of expected savings in time and money which will result from the greater flexibility allowed air traffic controllers in handling traffic within an ARSA are quite preliminary. These estimated savings may or may not offset the delay anticipated at some sites after initial establishment of an ARSA, but are expected to provide overall time savings to all traffic, IFR as well as VFR, which will exceed delay as controllers gain experience with ARSA operating procedures.

Other commenters questioned the operating cost and passenger time values used to calculate delay costs and time savings. The values used are weighted averages of overall activity within an aircraft category for various aircraft types, and represent a typical mix of air passengers. FAA recognizes that for some specific operations actual operating cost and passenger time values will exceed the average values used, while in other cases, the actual values will be less. However, weighted averages represent the most appropriate and equitable measure to use when assessing *overall* impacts. Further, because the delay resulting from implementing ARSA procedures is expected to be transitory and efficiency improvements in the movement of traffic are ultimately expected to result, those operators whose variable cost and passenger time values exceed the averages used in the regulatory evaluation may in fact realize above average benefits.

Several commenters claimed that some aircraft would have to purchase two-way radios in order to enter the ARSA and land at or depart from airports within the ARSA. The FAA does not agree. Each primary airport receiving ARSA designation has an airport traffic area requiring two-way radio communications at present. Therefore, no additional cost will be incurred for purchase of radios for aircraft landing at or departing from primary airports receiving ARSA designation.

Further, some commenters, including AOPA, expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

SSA claimed that some FAA field personnel had indicated that a transponder would be needed to enter an ARSA, and thus, the cost to implement the program was grossly underestimated. An operable two-way radio is the only avionics required for flight in an ARSA. A transponder is not required and the costing estimates are correct.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collison, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot, thus the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Additionally, the FAA has continually monitored for the possibility of compression at all recently designated locations. Compression has not been detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

AOPA, SSA, and other commenters claimed that the FAA provided no demonstrable evidence that the ARSA program would improve aviation safety. The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved, and thus, safety will be improved.

AOPA, and several other commenters, requested that VFR corridors be established at several of the subject locations along routes that are currently contained within an airport traffic area (ATA). The NAR Task Group noted in their evaluation of the TRSA program that under FAR § 91.87 pilots operating under VFR to or from a satellite airport within an ATA are excluded from the two-way radio communications requirement. The Task Group noted that this was acceptable until the volume of air traffic at the primary airport dictated the installation of a radar approach control. The Task Group recommended, and the FAA adopted, the ARSA program as a safety improvement addressing this problem. Thus, the FAA does not believe provisions for VFR corridors that penetrate an ATA in most cases are warranted or in keeping with that recommendation.

SSA claimed that the grouping of ARSA's such as that adopted in the Sacramento Valley area would create "squeezing" of traffic in the corridors between the blocks of ARSA airspace. One area in question, between Sacramento and Beale Air Force Base (AFB), is approximately 20 miles wide. The FAA does not agree that "squeezing" will occur in this area. Additionally, other user organizations have requested VFR corridors between adjacent or grouped ARSA's and these ARSA's have been modified to accommodate this request.

AOPA and others commented that several of the proposals will require pilots to violate FAR § 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR § 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

Furthermore, AOPA claims that the above response does not adequately respond to the issue. They claim that deviations of 2,000 feet horizontally would increase workload and reduce the efficiency of see-and-avoid, and thus, potentially reduce safety. The FAA does not encourage deviation but encourages participation which will not require deviation and will result in controllers providing radar assistance for see-and-avoid.

SSA, and other commenters, claimed that designation of these ARSA's may negatively impact cross-country glider flights operating out of airports 20 miles, or more, from these ARSA's While some deviations may be required, the FAA does not agree that the minor deviations that may be required will result in negatively impacting cross-country glider operations.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not yet been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, the Experimental Aircraft Association (EAA), and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1-2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making their recommendation to the FAA. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, SSA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation. The criteria for this group of candidates was recommended by the NAR Task Group and adopted by the FAA. Namely, ". . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

AOPA, EAA, and others commented that the existence of a TRSA in the above mentioned category should not be considered as justification for an ARSA. After a review of all comments received to the above referenced proposal, the FAA adopted that NAR recommendation (50 FR 9252, March 6, 1985). Therefore, absent a finding that designation would be inappropriate, the existence of a TRSA within that criteria is deemed sufficient for designation.

AOPA, EAA, and others indicated that several of the proposed locations do not meet the criteria that the FAA is considering for future ARSA candidates. The FAA has circulated proposed criteria for future application. However, whatever the nature of any criteria eventually adopted, this group of locations which qualify as ARSA candidates under the adopted NAR criteria would not be affected.

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations. The agency's rationale for nonadoption is set forth immediately above.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadlock to improvement.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility the controllers will give appropriate instructions.

AOPA, SSA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

Underlying a great many of the comments received was the idea that some provision should be made so that pilots could continue their current practices without contacting the responsible ATC facility. While the FAA has made modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

AOPA commented that FAA understimated the one-time cost of distributing Letters to Airmen and the Advisory Circular, and neglected costs related to the informal public meetings. Both of these issues were discussed in the detailed regulatory evaluation of the NPRM, which has been available in the regulatory docket since publication of the NPRM. The availability of this detailed evaluation was indicated in the introductory paragraph of the regulatory evaluation summary included in the Federal Register, NPRM (50 FR 39822, 39824, September 30, 1985). AOPA's comments assumed that every active pilot would be notified at least once. However, FAA intends to mail individual Letters to Airmen only to those pilots living in the vicinity of ARSA sites, and consequently its cost estimate is less than that of AOPA. The total one-time cost of distributing Letters to Airmen and the Advisory Circular was also prorated to reflect only those sites included in the notice, and both total and prorated cost estimates were provided in the notice. Further, as FAA indicated in the detailed regulatory evaluation, the expenses associated with public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, and consequently these expenses are more appropriately considered sunken costs attributable to the rulemaking process rather than implementation costs of the ARSA program. Similarly, information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being

conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

SSA faulted the FAA for using the aviation safety seminars for pilot education on ARSA's. They claim these seminars do not reach many pilots and the seminars are reserved during this year for the FAA "Back to Basics" program. The FAA does not agree. The aviation safety seminars are for all pilots and for education on all aspects of aviation which would include the ARSA program.

SSA, and other commenters questioned whether the FAA considered the impact of the proposed ARSA's on individuals in making its Regulatory Flexibility Determination, and whether the threshold for determining if a significant economic impact on a substantial number of small entities had been exceeded because some small entities might be impacted. The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. Individual citizens, as such, are not considered small entities under the terms of the RFA; however, an individual whose business is a sole proprietorship would be considered a small entity under the RFA. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding almost every satellite airport located within the 5-mile ring to avoid adversely impacting their operations, and in some cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, a substantial number of small entities, defined in FAA Order 2100.14, "Regulatory Flexibility Criteria and Guidance," as more than one-third (but not less than eleven) of the small entities subject to a proposed rule, clearly will not be impacted by this rulemaking. Therefore, adoption of this final rule will not result in a significant economic impact on a substantial number of small entities.

SSA commented that the FAA should take into consideraton the unique operating characteristics of gliders in defining the ARSA airspace at some locations. The FAA has modified the configurations of the ARSA at locations where glider operations would be adversely affected by a standard configuration.

Numerous commenters objected to the ARSA designations claiming they would simply provide the FAA with the basis for additional regulatory restrictions. The FAA does not believe this to be a valid objection. While the agency has no current plans for further regulatory action which imposes additional restrictions, such action if it should ever become a reality would be the subject of additional rulemaking and would of necessity be judged on its own merits, as should these proposals.

The Air Line Pilots Association (ALPA) concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association (ATA) endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received which were supportive of each of the ARSA's addressed here as an improvement in aviation safety, and stating that participation by all pilots was only equitable and that normal safety concerns dictated mandatory two-way communications. The FAA agrees.

Comments on Theodore Francis Green State Airport, Providence, RI

One commenter claimed that Quonset Approach Control would be unable to handle the additional ARSA workloaded due to facility staffing since he is told during present TRSA peak traffic conditions to "Stand-by." The FAA postponed implementation of an ARSA at the airport due to a high proportion of personnel changes at Quonset Approach Control. Since the personnel problem has been resolved, the FAA believes there will be no undue workload which cannot be efficiently handled by the present controller work force.

Numerous commenters objected to the ARSA citing reasons covered above in general comments.

One commenter claimed the ARSA as proposed was a good thing for all pilots and would provide a safer flying environment. The FAA agrees.

The Air Transport Association responded in support of the ARSA at Theodore Francis Green State Airport stating that the positive communications environment would enhance safety for all pilots.

Comments on Standiford Field Airport, Louisville, KY

The Falls Cities Pilots Association presented an issue paper in opposition to the ARSA at Standiford Field. The majority of the claims in this issue paper were national in scope and are covered under "ARSA PROGRAM COMMENTS" above. They stated the controllers at Standiford Field are doing an excellent job with the TRSA so there should be no change. The FAA believes the controllers at Standiford Field will continue to do an excellent job with the ARSA.

Several commenters claimed that the ARSA would unduly restrict aircraft operating to and from Bowman Field and suggested a cutout for this airport. The FAA agrees and will make modifications to the inner core of the ARSA to allow pilots at Bowman Field to continue operations much as they operated previously.

AOPA and other commenters claimed that an ARSA at Standiford Field would increase workload, would not enhance safety, and would force pilots to fly lower under the outer core than at present. These comments have been addressed above.

The ATA responded in support of the ARSA at Standiford Field citing an improvement in safety for all pilots.

Other comments were received which were general in nature and were discussed under "ARSA PROGRAM COMMENTS."

Other Comments

A number of other comments were received addressing matters beyond the scope of these proposals such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

Regulatory Evaluation

Those comments which addressed information presented in the Regulatory Evaluation of the notices for these dockets included in this final rule have been discussed above. A detailed Regulatory Evaluation of this final rule has been placed in the regulatory dockets.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM's, and those comments which addressed it have been discussed above. For the reasons presented in the NPRM's and clarified in the Discussion of Comments, FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates an Airport Radar Service Area (ARSA) at Theodore Francis Green State Airport, Providence, RI, and at Standiford Field Airport, Louisville, KY. Each location designated is a public airport at which a nonregulatory Terminal Radar Service Area is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with ATC while in the ARSA's. Implementation of ARSA procedures at the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

ASD 85-AWA-1

Providence Theodore Francis Green State Airport, RI [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Theodore Francis Green State Airport (lat. 41°43'31" N., long. 71°25'41" W.) and that airspace extending upward from 1,300 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport from the 015° bearing from the airport clockwise to the 195° bearing from the airport, and that airspace extending upward from 1,700 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport from the 195° bearing from the airport clockwise to the 015° bearing from the airport.

ASD 85-AWA-6

Louisville Standiford Field Airport, KY [New]

That airspace extending upward from the surface to and including 4,500 feet MSL within a 5-mile radius of the Standiford Field Airport (lat. 38°10'29" N., long. 85°44'11" W.) excluding that airspace east and north of a line drawn from the point where the 030° bearing intersects the 5-mile radius direct to lat. 38°11'28" N., long. 85°42'01" W., then direct to the point where the 081° bearing from the airport intersects the 5-mile radius; and that airspace extending upward from 2,200 feet MSL to and including 4,500 feet MSL within a 10-mile radius of the airport from the 289° bearing from the airport clockwise to the 081° bearing from the airport, and that airspace extending upward from 1,700 feet MSL to and including 4,500 feet MSL within a 10-mile radius of the airport from the 081° bearing from the airport clockwise to the 289° bearing from the airport.

Issued in Washington, DC, on October 14, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-23606 Filed 10-17-86; 8:45 am]

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Vol. 51, No. 202

Monday, October 20, 1986

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H.R. 5548/Pub. L. 99–472

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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

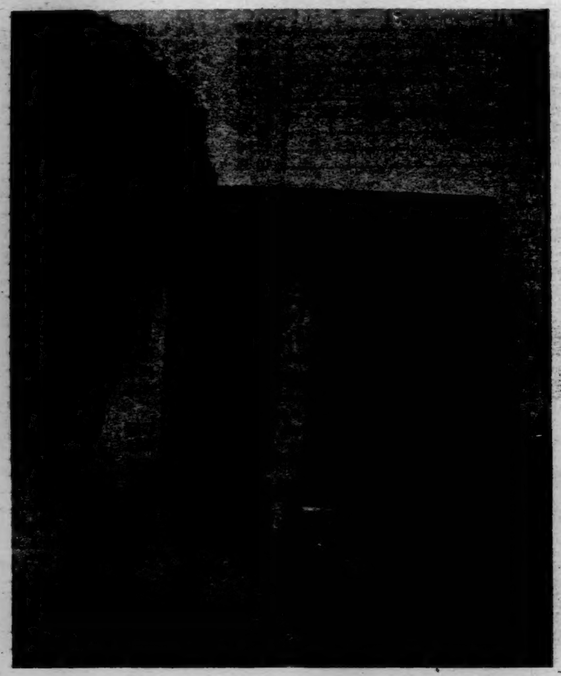
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Customer's Telephone No's
Area Code Home | Area Code Office
Credit Card No.:
Expiration Date Month/Year ☐☐☐☐
Charge orders may be telephoned to GPO order desk at (202) 783–3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday–Friday (except holidays)

24x MICROFICHE FORMAT:

_____ Federal Register: ___ One year as issued: $188 domestic; $235 foreign ___ Six months: $94 domestic; $117.50 foreign

_____ Code of Federal Regulations: ___ Current year: $185 domestic; $231.25 foreign ___ Previous year's full set (single shipment): $115 domestic; $143.75 foreign

CHOICE, MasterCard and VISA accepted.

PLEASE PRINT OR TYPE
Company or Personal Name
Additional address/attention line
Street address
City State ZIP Code
(or Country)

(Rev. 10-1-95)

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